NEW JERSEY COURT OF ERRORS AND APPEALS.

THE PENNSYLVANIA RAILROAD COMPANY, *Plaintiff in Error,* *v.* HARRY W. BRECKINRIDGE AND THE UNITED STATES PIPE LINE COMPANY, *Defendants in Error.*	On Writ of Error to Warren Circuit Court.

Brief of Joseph M. Roseberry, Attorney for Harry W. Breckinridge, Defendant in Error.

This writ of error was taken from an action of ejectment tried in the Warren Circuit Court to recover, as plaintiff alleged, possession of the land in a public highway crossed by the Belvidere-Delaware Railroad, by an arched culvert, in the township of Oxford, Warren county, New Jersey, in which the defendants had laid their oil pipes.

The oil pipes of the defendants, it was not claimed, interfered in any manner with the operation of the railroad by the plaintiff in error, or with the embankment or culvert of the railroad.

The question was solely one of title—whether the defendants in error had a lawful right to lay their oil pipes beneath the surface of the soil at the above intercrossing of the railroad with the public highway.

As the foundation of the plaintiff's claim to title they offered in evidence a certified copy of a deed from Thomas Lommasson and wife to the Belvidere-Delaware Railroad Company, bearing date the third day of September, 1853, and recorded in Book 38 of Deeds, page 393, on the eighth day of March, 1854, and marked Exhibit P 1.

The first exception sealed for the plaintiff is the refusal of the trial court, upon objection made by defendants, to admit what purported to be a map, (marked P 5) for identification, offered by the plaintiff. The Court excluded the map because there was no explanation of who made it, what date it was made, or why it was made.

On page 157 of testimony Frederick Wood's knowledge of this map extended back eleven years.

Abel I. Stout, another witness for plaintiff, says he knew nothing about the map (page 158, lines 30 35.)

Hugh B. Ely, another witness for plaintiff, on page 160, line 30, says that he had no knowledge of this map.

Frederick Wood, being recalled, on page 161, lines 25-35, says that he did not compare this map with the notes in General Davis's notebook and that it was impossible to make a close one. Nor had he compared the map with the Lommasson deed. (Exhibit P 1,) page 162, lines 5-10.)

The map had some courses and distances marked, not along the lines of the map, but in one corner of the map, but no monuments of any kind.

At the bottom of page 162 plaintiff's attorney and Mr. Wood, the witness, began to compare the map with the Lommasson deed.

On page 163, lines 10-15, the tenth course of the deed and map differed. In the deed this course ran southwest; in the map it ran southeast. Then in the fifteenth course they differ. The sixteenth, seventeenth and eighteenth courses in the deed do not appear on the map either by diagram or courses and distances. One course also appears in the map which is not in the deed.

The defendants' counsel objected to the map because the description in the map did not correspond with the description in the deed.

Mr. Strong (plaintiff's counsel): "I submit that the variation simply shows an error in one description or the other."

This offer was a plain violation of one of the cardinal principles of law and an attempt to alter a deed in a most material part of it.

The Court in the case of Opdyke v. Stephens, 4 Dutcher, page 89, says, among other things, that ancient maps and drafts are admissible to show practical location.

It does not appear who made this map; eleven years do not stamp upon it the venerable aspect of an ancient map or draft. It does not appear with any conveyance embracing its courses and distances to show its genuineness. It is an astray without name, date or parentage found recently (eleven years ago) in the vault of the plaintiff in Philadelphia, to which different persons had access.

What appears in the case to show its genuineness? Certainly not its antiquity. What appears to show its practical location? Certainly not its monuments, courses and distances. What appears by the map to show that its courses and distances are true? It does

not coincide with the courses and distances in the notebook of General Davis or in the deed. Nor does it contain the same area as the deed.

Nor does it appear that its creation was coincident with the execution of the Lommasson deed. Anyway, what evidence is it of the Lommasson tract and Robeson acre? What connection had these defendants or those from whom they derived title with the map? Surely nothing; certainly nothing appears by evidence that they had.

If this map be evidence then any number of additional maps of like kind are evidence, each adding weight to the other in the proof of a case. The law does not permit the plaintiff to make evidence in this manner against the defendant.

I submit that there was no error in the trial court in the exclusion of this map.

The third, fourth and fifth exceptions relate to the admission by the Court of the survey to Alexander White of 485 acres, which was the surplus of the Penn tract, with the accompanying map (marked Exhibits D 4 and D 5 on the part of the defendants.)

The survey is dated the second day of August, 1814, signed Robert Smith, Surveyor General, and inspected and approved by the Council of Proprietors and ordered to be recorded November 1st, 1814, William Woolman, Clerk. (Printed in full on pages 367 and 368.)

The map (Exhibit D 5) was found with the survey (Exhibit D 4) among the deeds and papers of Alexander White in the possession of Amzi White, his grandson, and William White, his great grandson. Accompanying the survey of the 485 acres to Alexander White and the map was the deed from John Penn, Richard Penn and Thomas Penn to Jacobus Vannatta, bearing the date of 1740 (marked Exhibit D 2, page 301) and a deed from Jacobus Vannatta, dated June 6, 1841. (marked Exhibit D 3 for defendants, page 301.)

Exhibits D 2, 3, 4 and 5 were kept together, as evidently they were laid away by Alexander White in 1814, in a walnut box, and the witness, William White, the grandson of Alexander White (on pages 262, 263, 264 and 265,) testifies that he saw them in the walnut box over thirty years ago in the possession of Amzi White, his father, and which came into the possession of the witness May 29th, 1880, and in 1893 into the possession of Joseph M. Roseberry, his attorney.

The defendants trace title to the *locus in quo* from William Penn, from a survey of 1,250 acres to him signed by John Reading, Jr., surveyor, February 21st, 1716, inspected and approved by the Council of Proprietors and ordered to be recorded October 10th, 1716, in Book A, folio 164, in the Surveyor's office at Burlington. (Marked Exhibit D 24, page 301.)

Exhibit D 2 conveys the 1,250 acre tract from Wil-

liam Penn's heirs to Jacobus Vannatta by deed dated December 30th, 1740. (See page 301.)

Now by Exhibit D 3, Jacobus Vannatta conveys 200 acres of the 1,250 acre tract to Johannes Vannetta June 6th, 1841. (See page 301.)

Johannes Vannetta by deed bearing date May 3rd, 1744 (marked Exhibit D 23 and printed on page 353), conveyed the one acre tract to Jonathan Robeson, retaining the balance of the 200 acre tract.

Afterward both tracts became united in Dr. William Shippen, the elder, who left a will and codicil dated October 4th, 1795 (Exhibit D 21), in pursuance of which the 200 acre tract was conveyed by his devisees to William I. Shippen (Exhibit D 20, page 357), excepting out the one acre and describing it as follows:

"Reserving nevertheless and it is hereby reserved that the aforesaid one acre of land containing within the above described boundaries (being the premises which Johanna Van Etta by Deed of Indenture dated the third day of May, one thousand seven hundred and forty-four, granted and conveyed to Jonathan Robeson which the said Jonathan Robeson and Elizabeth, his wife, by a deed of Indenture, dated the twenty first day of May, one thousand seven hundred and sixty-two, conveyed to the said William Shippen, the elder, in fee simple). Beginning at and in the mouth of a run that vents into the Delaware from the Spring by the dwelling house of him the said Johanna Van Etta thence down the said River eight perches to a post; thence extending from the River twenty perches to a corner; thence parrallel with Delaware eight perches to post; thence to the place of beginning containing one acre of land."

The description in the last deed, January 18th, 1806, of the one acre and in the Jonathan Robeson deed of May 3d, 1744, differs in a part of one course only and that is the fourth course. The Jonathan Robeson deed of May 3d, 1744, describes the last course as follows:

"Thence to the river so as to include the full one-half part of the spring and said run to the place of

beginning, the said lot to be laid out to contain one acre of land."

The above exception of the one acre in the deed to William I. Shippen (January 18th, 1806) describes the last course as follows:

"Thence to the place of beginning containing one acre of land."

January 18th, 1806, was the final separation of the one acre from the two hundred acre tract. The one acre has passed by various conveyances to the defendant Harry W. Breckinridge, while there is no evidence of any transmission of title from the said William I. Shippen to Thomas Lommasson or to any other person from whom Thomas Lommasson acquired title.

The Penn tract of 1,250 acres, of which the one acre was a part, was bounded on one side by the Delaware river. One of the four sides of the one acre tract was bounded on the Delaware river. The deed says, "lying and being bounded by the River Delaware." The first course is "thence down the said river eight perches to a post."

The one side of the one acre therefore is part of one side of the boundary in the Penn deed, namely, the Delaware river.

The survey warrant and map were offered together to show this boundary on the Delaware river (page 301, lines 20-34.)

In the words of the Court in Opdyke v. Stephens, 4 Dutcher, page 89, it is "an ancient map and draft" of the Penn tract bearing the date on its face of July 26th, 1814. The testimony of Mr. William White shows that it had an existence to his knowledge of over thirty years, and that it came to him from the proper custody, from Amzi White, the grandson of Alexander White, to whom the survey was made.

The map (Exhibit D 5) is proved because it is shown to be over thirty years old (on its face over eighty years) and it came from the proper custody.+

Also there is internal evidence in the survey and warrant to prove its authenticity and genuineness.

X The courts take judicial notice of original grants. The survey, return and proceedings in allotting proprietary lands is discussed in Estelle v. Bricksburg Land and Improvement Company, 6 Vroom, pages 236, &c., particularly 238.

A recital in an ancient deed or document of any antecedent deed or document is presumptive proof of the former existence of such deed or document. Fuller ads. Saxton et al., Spencer, p. 65.

The survey and warrant conveys 485 acres, the overplus in the Penn tract, by courses and distances with certain monuments. These are all delineated on the map. The date of July 26th, 1814, on the map is earlier than the warrant, which is August 2d, 1814, the warrant following the survey and map, as it should.

But in order to ascertain the overplus in the Penn tract it was essential to survey and ascertain the boundaries of the 1,250 acre tract surveyed to Penn. The sides were given. It was only necessary to ascertain the excess on the fourth side, but still a survey of the whole tract was absolutely necessary to get the data to ascertain the boundary of the 1,250 acres. This is what was done. The warrant says, "Hyman McMiller, one of my lawful Deputies, hath made return to me of the said four hundred and eighty-five acres of land for the said Alexander White, situate in the Township of Oxford, County of Sussex and by the said Return bearing date the twenty-fifth day of July, 1814, bounded as follows, viz:" and then it gives the monuments, courses and distances on the map and when delivered to Alexander White the Penn deed of 1740 was put away in the walnut box with the survey warrant and map because they were together when William White saw them over thirty years ago in the possession of Amzi White, the grandson of Alexander White.

The description of the one acre in the exception in the conveyance to William I. Shippen, was in 1806. The re-survey of the Penn tract was in 1814, only eight years later, practically about the same time. Both the lands conveyed to William I. Shippen and the exception of the one acre had as their common boundary on one side the Delaware river, the old boundary on that side of the Penn tract.

The one corner of the one acre was anchored in the spring run and its one side by the Delaware river.

The description of the land conveyed by Thomas Lommasson and wife to the Belvidere-Delaware Railroad Company (Exhibit P 1, page 348, &c.) not only

recognized the one acre, but attempts to locate it by running around one end of it, and, by extending its side lines, anchor it on the Delaware river, and even attempts to move northward the Shippen spring and run so that the spring and run will be made to fit the northerly extended line of the one acre, as the plaintiff wishes to make it. The north line of the one acre, as the plaintiff makes it, does not strike the spring, and where it strikes the Delaware river is from thirty to forty feet north of the spring or run. (Elbridge G. Weir, page 324, top of page.)

The plaintiff, therefore, from the Lommasson deed, tries to anchor the one side of the one acre on the Delaware river and also locate the beginning corner. Now, by the map of 1814, Shippen's spring is given as a certain number of chains from an elm tree, the beginning corner of the Penn tract. The courses and distances north and south of the spring are given. The spring is an angle. To make an angle on each side of the spring, and to alter the line of the river is the effort of the plaintiff.

The map D 5 was made from a survey in 1814 about the time the conveyance was made to William I. Shippen, with the exception of the one acre, having the Delaware river as a boundary on one side. The boundary line of the Delaware river is a question in the suit with the location of the spring and run.

The map showing that at about the time of the conveyance to William I. Shippen, with the exception of the one acre, describing it, is competent and material under the decision above mentioned of Opdyke v. Stephens, 4 Dutcher, page 89, &c.

I submit that the exceptions of the plaintiff in these particulars are not well taken.

The sixth, seventh, eighth and ninth exceptions relate to the charge of the Court to the jury.

The last exception taken, which is in the eighth assignment of error is to "Where is the Robeson acre located?" and not the addition put to it by the plaintiff's counsel in his eighth assignment of error of "Where is its southerly line?"

Exhibits D 18, 17, 19, 16 and 14 (pages 357, 358, 359), conveys the undivided one-half of the one acre tract from Susan Blair and husband, one of the two devisees of Dr. William Shippen, the elder, to William P. Robeson and John P. B. Maxwell April 1st, 1834, and the remaining one-half of the one acre tract was conveyed by William Shippen and wife, the other devisee under the will of Dr. William Shippen, to William P. Robeson and John P. B. Maxwell by deed bearing date, March 31st, 1832 (Exhibit D 15, page 360), so that by these two conveyances William P. Robeson and John P. B. Maxwell became tenants in common in equal part of the one acre of land.

John P. B. Maxwell died about the year 1845, leaving no wife and no children and leaving no brothers, but leaving one sister Anna M. Robeson, wife of William P. Robeson, who thereupon became seized of the equal one-half of said acre and tenant in common with William P. Robeson. (Richard B. Wilson, pages 291, 292, 293.)

Exhibits D 12, 13, 7, 6, 10, 9 and 8 (pages 360, 361, 362, 363) show the various conveyances of the one acre to Harry W. Breckinridge, the defendant in this suit, from George M. Robeson, the executor of William P. Robeson and Anna M. Robeson. William P. Robeson died about 1864 and Anna M. Robeson died about the year 1886, (page 292.)

But while William P. Robeson and Anna M. Robeson were tenants in common of the one acre tract an article of agreement was entered into between William P. Robeson and John M. Sherrerd as to lands owned by them in common and by each separately in the township of Oxford and county of Warren, lying

between the farm of William White (below Thomas Lommasson's farm) and the lands of John Hoff, Jr. (above Abram McMurtrie's land), and the Belvidere-Delaware Railroad Company, on the 25th day of June, A. D. 1851. (Agreement printed; Exhibit D 1 on pages 351, 352 and 353.)

The plaintiff as complainant filed against the defendants a bill in Chancery prior to the bringing of this action in ejectment, setting forth therein said agreement at length and then forthwith proceeding to state in the bill as follows, "And that your said orator accordingly did under said agreement and without any further conveyance or assurance, *but with the entire concurrence or approval of the said William P. Robeson* shortly after said agreement proceed to occupy so much of said one acre lot as was sufficient and required for the purposes of said road bed, ditches and appendages upon and across the easterly end of said one acre lot, said road bed being at that place elevated above the surrounding land to a height of about twenty feet by means of an embankment in part on said lot and built by your said orator for the purpose of its said road bed at great expense, of solid earth except for a space of less than twenty feet, just sufficient for the passage of said public highway, where said railroad is carried over the same by a stone arch bridge or culvert built into and forming part of said embankment." (Exhibit D 28, pages 375, 376 and 377.)

The agreement (Exhibit D 1) was offered in evidence by the complainant to prove the above allegation set out in their bill of complaint. (Alan H. Strong, pages 307, 308, 309, 310 and 311; also Alexander P. Gest, pages 303, 304, 305, 306 and 307.)

It will be observed that it is alleged in the bill filed by the plaintiff in Chancery that the stone arch bridge or culvert is within the eastern end of the one acre tract and by the evidence of Alan H. Strong, above referred to, it is the only one in that neighborhood (page 311.)

The charter of the Belvidere-Delaware Railroad Company (laws of 1836, page 229, section 8) prescribes the only method of acquiring lands for railroad purposes, viz: (1) by gift or consent; (2) by agreement; (3) by condemnation. The method of acquiring title to land, by the plaintiff under its charter, by adverse possession is not given.

The third section of the Corporation Act, Revision, page 177, says, "In addition to the powers enumerated in the first section of this act and to those expressly given in its charter, or, in the act or certificate under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given." I am aware that the act of 1896 changes the third section materially, but that cannot affect the law as it stood before 1896.

The right to acquire title by adverse possession is not given by the charter of the Belvidere-Delaware Railroad Company expressly, and any power of acquiring title to land except by the method expressly given by its charter is expressly prohibited by statute.

If the plaintiff had power to acquire title by adverse possession, the presumption is against a larger grant than an easement, in any case.

Washington Cemetery v. Prospect Park & C. I. R., 68 N. Y., 591.

Quimby v. Vermont C. R. R., 23 Vermont, 387.

Slote v. Rives, 5 Ired. L., 237.

New Orleans Pac. R. Co. v. Gey., 32 La., 471.

Speaking of the exercise of the right of eminent domain in taking land for public use, Judge Cooley says, "In any case, however, an easement only would be taken unless the State plainly contemplated and provided for the appropriation of a larger interest. Cooley's Const. Lim., 559.

Every statute that takes away the estate of a citizen is to be construed strictly. Washington Cemetery v. Prospect Park & Coney Island Railroad Company, 68 N. Y., 694.

If the plaintiff could by law acquire any interest by adverse possession in the land, it would be simply an easement, and for all other purposes the land could be used by the owner so as not to interfere with the operation of the railroad. Taylor v. New York & Long Branch Railroad Company, 9 Vr., page 28.

But the plaintiff entered into possession and held the land upon which is constructed their road bed, under a written agreement with William P. Robeson and John M. Sherrerd, for the conveyance of their land owned together and of each separately. Such holding is permissive and not adverse, and adverse possession will not begin to run until the full and complete performance of the agreement on the part of the plaintiff.

Appleby v. Obert, 1 Harr., 344.
Washburn on Real Property, Book 3, 162.
Brown v. King, 5 Metc., 173.
Knox v. Hook, 12 Mass., 329.
McClannahan v. Barrow, 27 Miss., 664.
Slamper v. Triffin, 12 Ga., 450.
Harris V. Richey, 56 Penn St., 395.
McCracken v. Roberts, 19 Id., 390.
Cook v. McClure, 10 Gratt., 205.
Doe v. Roe, 32 Alt. Rep., 391.
Jackson v. Comp, 1 Cowen, 606.
Jackson v. John, 5 Cowen, 74.
Briggs v. Prosser, 14 Wend., 227.
Boorst v. Boyd, 3 Sand. (N. Y.), 501.
Ripley v. Gale, 19 Vermont, 150.
Harvey v. Tyler, 2 Wall., 876.
Smith's Leading Cases, Vol. 2, Part 2, page 721.
Great number of cases cited in 1 Ency. of Law, page 229, note 1.

The plaintiff paid no money for the property on the agreement and made no crossing on the strip of land or lane lying between the lands of Abram McMurtrie, Jr., and John Hoff, Jr. And made no crossings for teams or otherwise to the water power canal, mill properties and land lying between the railroad and

the Delaware river. (John H. Dahlke, pages 276 and 277; William B. Titman, page 312.)

The plaintiff has not shown a performance of the agreement in any particular to entitle him to hold by adverse possession.

The Court's charge to the jury on the question of adverse possession (pages 336, 337, 338) is exactly correct. The question of adverse possession cannot enter in this case.

This Court in the case of Foulke v. Bond, 12 Vroom, page 540, says, "Entry by a grantee holding under a deed of conveyance for the *entire estate*, made by one of the co-tenants and *duly placed on record*, has all the constituent elements of a disseizin at common law. The conveyance by one tenant of the estate in entirety is decisive of his purpose to appropriate the entire estate to his own use, especially if his deed contain full covenants of seisin and warranty. The entry of the grantee under such a conveyance is equally evincive of his intention to claim the whole to the exclusion of the other co-tenants, and if the deed *be duly recorded* the transaction acquires that notoriety which is equivalent to the notoriety of livery of seisin. The disseizin therefore becomes complete and if possession be held continuously thereafter for the period of twenty years by open and notorious acts of ownership, without any interference on the part of the other co-tenant, title to the whole estate may be acquired by adverse possession."

First—There was no conveyance by deed, but simply an agreement.

Second—There was no estate conveyed.

Third—There was no record notice of any conveyance.

The plaintiff, even though it had the title of William P. Robeson, did not have a sufficient conveyance, nor a conveyance by deed of the entire tract, nor any public record of any conveyance by deed of the whole tract to claim adversely by constructive notice as

against Mrs. Anna M. Robeson, or the defendant who holds her title to the one acre.

It is not one element which the plaintiff lacks in setting up the title of adverse possession against a co-tenant, but it is a lack of every element which gives constructive notice to a co-tenant of holding by adverse possession.

On page 539 of the same case this Court says, "The presumption that the entry of one co-tenant is for the benefit of all applies to a third person who acquires an undivided interest under a conveyance to that effect from one of the original co-tenants."

On page 538 of the same case this Court says, "The relations between the joint owners are presumed to be amicable rather than hostile, and the acts of one affecting the common property are presumed to be done for the common benefit."

William P. Robeson does not by his agreement with the Belvidere-Delaware Railroad Company agree to convey anything more than "so much of the land as belongs to himself separately," and so much of the land as he and John M. Sherrerd held in common (page 532.) He does not undertake in that agreement to convey Mrs. Robeson's one half interest in the one acre, but "so much of the land as belongs to himself separately."

The plaintiff claimed as before stated (page 377) that it entered upon the land "with the entire concurrence and approval of the said William P. Robeson shortly after said agreement," and under said agreement.

The plaintiff having entered with the "concurrence and approval" of William P. Robeson, what could there be to indicate to Mrs. Robeson that the plaintiff's entry was hostile?

William P. Robeson permitted the Belvidere-Delaware Railroad Company to construct their railroad, with its embankment and tracks, across this acre. This was a consent to the entry of the railroad company and he had the right to presume that the entry and occupation of this land was in pursuance of

that consent, and as was said in the case of the Lehigh Valley Railroad Company v. McFarlan, 14 Vroom, page 621, by this Court, the defendant "may explain the user or enjoyment by showing that it was under permission asked and granted," and unless the railroad company gave him actual notice of their intention to hold the land adversely to him and ultimately to claim title by adverse possession, the law would permit him to stand by and see that occupation continued indefinitely without losing his rights.

Such occupation, being by permission of William P. Robeson, is not adverse to him, and cannot, according to the law laid down in the above case of Foulke v. Bond, 12 Vroom, page 539, be adverse to his cotenant, Mrs. Robeson, and she had the right to conclude just as her husband was entitled to believe, that the occupation was in pursuance of the permission given by her husband, and, as the trial court said to the jury, "until she had notice that it was intended to claim a right adverse to her ownersnip, she had a right to sit quietly by and permit the occupation by the railroad company without losing her rights."

The trial court did not charge as stated in the ninth assignment of error. What is said of the culvert and of the land beneath the culvert is contained in his charge on page 338, as follows:

"But even if it were true that the possession by the railroad company of this strip of land where it crosses the Robeson acre (if the culvert is located within its bounds) was adverse, it is only adverse so far as it exists. I mean by what I have just said, this: that, when the owner of that land went to it and saw this embankment on it, and saw this arched culvert built over and above the road, if his eyes would have told him what part of his property was occupied, he would have seen that so far as his land in this public road was concerned, there was no occupation of the surface of the ground, but only an occupation of a stone culvert built over the road, with its ends resting on each side thereof, and they would have a right to conclude, from that, that the railroad company proposed to claim at the end of twenty years, if they were not interfered with sooner, that they had a right to go across that part of the Robeson tract which lay within the limits of the road above grade, over that arched culvert, and to maintain that culvert, but they would not have had any reason to suppose that the railroad company also claimed a right to occupy the surface of the road, except where the ends of its culvert rested, or any rights beneath the surface of the soil."

There is no conveyance of any kind of the *locus in quo* from William I. Shippen to Thomas Lommasson. If the latter had any title at all, it must rest upon the doctrine of adverse possession, a possession that must not only be hostile but exclusive as well. The *locus in quo* is a public highway laid out as such November 1st, 1786 (Exhibit D 25, page 363; identified by Mr. Walker, bottom of pages 176 and 177), and an hostile exclusive possession is inconsistent with its public use.

In the case of Parker and others v. Inhabitants of Framingham, 8 Met. (49 Mass.), page 268, the Court says, "It was intimated, in behalf of the appellees,

that having long occupied a part of the soil of the turnpike, lying between their shop and the travelled part of the road, for laying materials and other like uses, they had acquired a title by possession. But we think it is very clear that such occupation was permissive and not adverse, and therefore constituted no title by possession. *It was not adverse to the owner of the soil; because during the continuance of the turnpike he had no right to the possession.* It could be no disseizin of the turnpike proprietors, or of the public; for they had an easement only and no seizin.

"But further: it is common for farmers and mechanics, and other adjacent owners, to use part of the soil of the highways, turnpikes and other public ways, especially where they are wide and where the travelled part occupies a part only of the width. We think this is usually understood to be permissive and liable at any time to be suppressed as a nuisance; and it would be contrary to the truth of the case and the understanding of the parties, *as well as contrary to true policy* and the rights of the public, to consider such use of the highway adverse."

In Thomas v. Marshfield, 13 Pick. (30 Mass.), page 249, the Court says, "So no one will acquire a title by prescription by pasturing his cattle on an open common, training field or highway; for these being kept open for public use, no one by using them can raise any presumption of a particular grant in his favor."

On page 250, "And to constitute an ouster of him who was seized, the disseizor must have the *actual exclusive occupation of the land.*"

In Bliss v. Johnson et al., 94 New York Court of Appeals, page 241, the Court says, "Where the law authorizes the owner of lands adjoining a highway to use and occupy it in any manner not inconsistent with the right of passage thereon by the travelling public, yet its permanent occupation by enclosure or cultivation is manifestly inconsistent with such right of passage; and no matter how long continued can certainly never ripen into a title as against the public, whatever

may be the rule as to its effect upon the owner of the soil of such highway. The fact, therefore, that the defendant Johnson did not take and hold the actual occupation of the highway in question does not militate against his title, inasmuch as he had all the possession of the property in question of which it was legally susceptible. The settled principles of law require courts to consider the true owner as constructively in possession of the land to which he holds the title, unless they are in the *actual hostile occupation* of another under claim of title."

In Foulke v. Bond, 12 Vroom, page 550, this Court says, "The rule of law that possession by one having paper title will be presumed to be co-extensive with the boundaries of the title deeds, applies only to the owner of the legal title. There is no such presumption in favor of the disseisor, though he has color of title."

Thomas Lommasson could not have acquired any title to the soil in the highway, unless by adverse possession, but there is no testimony to show that he claimed by adverse possession, but, on the contrary, he expressly recognized the title of the one acre to be in the Robesons by his deed made to the Belvidere-Delaware Railroad Company in 1853, but the plaintiffs say if the *locus in quo* is within the boundaries of the Robeson acre still the lessor and we have held adversely for a period of more than twenty years. The trial court, in charging the jury, said in such a case "it is only adverse so far as it exists."

This Court in the case of the Lehigh Valley Railroad Company v. McFarlan, 14 Vroom, page 617, says, "These statutes applied only to actions for the recovery of land; none of them embrace actions in which the right to an incorporeal hereditament was involved. But by judicial construction an adverse user of an easement for the period mentioned in the statutes, as they were passed from time to time, became evidence of a prescriptive right and finally the fiction was invented of a lost grant." The same elements of proof are required of use or enjoyment for the requisite

time of an incorporeal hereditament as of a corporeal hereditament. The claim of an easement or other right in land less than the entire fee does not confer any adverse right to the fee, but to have that effect, under the statute, the claim must be of the entire title, exclusive of the title of any other person. A claim of the fee is a claim to the entire dominion over the land, to use it for every purpose to which land may be devoted, a capability to use it for the establishment of manufacturing industries in their various branches, of mining the ores beneath the surface, and in fine, to exercise all those acts of ownership which belong to an individual who owns land in fee simple absolute.

The Belvidere-Delaware Railroad Company is an artificial person possessing only those powers given to it by its charter. These powers are circumscribed and limited. The courts hold that all it acquires by condemnation is an easement, because that is sufficient for its purpose. Taylor v. New York & Long Branch Railroad Company, 9 Vroom, page 28. On page 30 the Court in this case says, "The fee in the land is not acquired by the company, but a mere easement in such land. The title remains in the owner of the property, being made servient to the purposes of a railroad." 1 Redf. on Railways, page 277.

In the New Jersey Zinc and Iron Company v. Morris Canal and Banking Company, 17 Stew., page 404, the Vice-Chancellor forcibly deals with the very question now in hand. He says, "Where the State invests a corporation with the sovereign prerogative of eminent domain for the purpose of enabling them to construct and operate a public highway, *and they take land by force of their charter, or by any other means than by grant*, for the purposes of such highway, it is manifest that the plain purpose of the grant to them is not to give them capacity or invest them with power to take a fee, but merely to give them power to acquire such an easement in the land as will enable them fully to accomplish the purposes for which they were created. The title to the land taken

remains, in such cases, in the owner, subject only to such servitude as the corporation has power to impose, and their power in this respect is limited, as a general rule, to such use of the land as may be reasonably necessary for a right of way."

The Belvidere-Delaware Railroad by its charter is declared to be a public highway, and the language of the Vice-Chancellor is clear and to the point—"if they take land by force of their charter, or *by any other means* than by grant"—they take only an easement, an incorporeal hereditament. The fee in the soil remains in the owner.

It was an indisputed fact that the *locus in quo* was spanned by a culvert or bridge of the Belvidere-Delaware Railroad, and it was used for railroad purposes under its charter as a public highway, in the transportation of freight and passengers. And it was not used for any other purpose. It was a case of two public highways crossing each other both used for the purpose of transporting freight and passengers, one by steam power, the other by horse power.

The question of law was: What particular grant could the plaintiff claim under the charter of the Belvidere-Delaware Railroad Company, made manifest by the user for railroad purposes, to the holders of the legal title in the land at the crossing? Was the use of a bridge or culvert at this crossing evincive of a claim of absolute dominion in the soil of the land beneath the bridge or culvert, under their charter, or was it indicative of a claim of an easement? It was a matter of law for the Court upon the evidence, and I submit that his charge was correct upon that point and upon the question of adverse possession in this case.

"What constitutes adverse possession is a question of *law*; and if the evidence in the cause, admitting its truth, does not show such possession, it is the duty of the Court so to declare."

Cornelius and Empson v. Giberson, 1 Dutcher, 31.
Argotsinger v. Vines et al., 82 N. Y. Appeals, 313.
Bowie v. Brake, 3 Duer., 35-41.

TO THE EIGHTH ASSIGNMENT OF ERROR.

On page 341, the council for plaintiff prayed an exception to so much of the charge of the Court as instructs the jury that the only thing of importance for them to consider was, Where is the Robeson acre located? and an exception was allowed as to what was said by the Court on that subject.

What was said by the trial court to the jury upon that subject will be seen on pages 339, 340 and 341.

The Court, on page 334, says, "In that deed, as you will remember from the fact that counsel for the plaintiff has just read the description of certain of the courses of land conveyed, there is a recognition of Thomas Lommasson that there was some land enclosed in his tract belonging to General Robeson, because in his description he runs around a part of a tract, which he designates as the Robeson tract, or around the Robeson line. And it seems to me that the principal question in this case, and almost the only question of fact to be determined is, Where was the Robeson tract which has been spoken of all through this case as the Robeson acre? Now the plaintiffs claim primarily that the southerly boundary of that Robeson acre was north of the culvert which is involved in this case."

The plaintiffs' claim through the whole trial was that the southerly line of the one acre was north of the culvert, and their whole endeavor was to locate the southerly line north of the culvert. On page 335, the trial court said to the jury, "So as I said a moment ago, if you should conclude that the southerly line of this Robeson acre is north of the culvert, then the plaintiffs would be entitled to a verdict. The defendants say that the southerly line of that Robeson acre is not north of the culvert, but is about where it is delineated on the Walker map, that is, south of the culvert, and that the whole of the culvert is within the lines of the Robeson acre. That, as I understand, is their position. That is disputed by the plaintiffs

whose claim, as I said before, is that it is not any of it contained within the boundary of the Robeson acre."

Then the Court goes over the whole case, and finally says (page 340, lines 22, 23 and 24), "As I stated in the beginning of my charge, *all the facts in the case are for you to determine.*"

"If you should find that the culvert is not within the lines of the Robeson acre, but is embraced in the boundaries of the land conveyed by Lommasson to the Belvidere-Delaware Railroad Company, then your verdict should be for the plaintiffs," &c. (Bottom of page 340 and top of page 341.)

This was said in the conclusion of the Court's charge.

If the plaintiff was dissatisfied with the charge of the Court to the jury, he should have made his objections known to the Court at the time.

"Under a settled rule of procedure if the Court delivers to the jury an instruction which a party conceives to be erroneous and prejudicial to him, he must call attention of the trial court at the time to the supposed error by an explicit objection. If he fails to do this the error is deemed waived and he cannot review it in his motion for a new trial."

Thompson on Trials, Vol. 2, sec. 2394, page 1737.

Jencks v. Smith, 1 New York (Court of Appeals), page 90.

If the objection is overruled "and if the party would stand on his objection, and renew the same in his motion for a new trial" he must except to the Court's ruling.

Thompson on Trials, Vol. 2, sec. 2395, page 1738.

Krock v. Wolf, 39 Ind., 88.

Murray v. State, 26 Ind., 144.

Bills v. Ottumwa, 35 Iowa, 107.

"A party cannot make an exception to a charge of instruction available on the ground that it was not sufficiently full and explicit unless he requested the proper complimentary instruction, and his request was refused, and he excepted to the ruling of the Court at the time."

Thompson on Trials, section 2396, page 1739 and cases cited.

VanDuzer v. Lehigh & Hudson River Railway Company, 29 Vroom, 10.

Winchell v. Hicks, 18 N. Y., 558.

Mallory v. Tioga R. Co., 5 Abb. Pr. N. S. (New York), 420.

Seymour v. Coming, 1 Keys (New York), 532.

This eighth assignment of error relates wholly to the Court's comment upon the evidence which he leaves to the jury to determine. He says, "As I stated in the beginning of my charge all the facts in the case are for you to determine."

The rule laid down by this Court in the case of Bruch v. Carter, 3 Vroom, page 565, was as follows: "A judge has an undoubted right to make such comments upon the testimony as he thinks necessary or proper for the direction of the jury. He may intimate an opinion as to the weight of evidence; he may direct the attention of the jury to any matter in the cause affecting the credibility of a witness. But whether he will exercise all or any of these rights in a given case, and to what extent, depends entirely upon his judicial discretion. Even if the judge, therefore, in the present case, was mistaken in the exercise of this discretion, as in my opinion he clearly was not, such mistake cannot be assigned for error. See cases before cited as to matters resting in discretion."

Belcher v. Prittle, 4 Moore & Scott, 295; *s. c.*, 10 Bing., 408.

Foster v. Steel, 5 Scott, 28.

Solarte v. Melville, 7 Barn. & Cres., 430-435.

In the case of the United States v. Phila., &c., R. Co., 123 U. S., 113, 114; *s. c.*, 8 Supreme Court Reports, 77, Mr. Justice Gray says, "Trial by jury in the courts of the United States is a trial presided over by a judge, with authority not only to rule upon objections to evidence, and instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by

explaining and commenting upon the testimony, and even giving them his opinion upon questions of fact, provided only he submits those questions to their determination." And in the case of Taylor v. Ashton, 11 Mees. & W., 401 ; *s. c.* 12 L. J. Exch., 363, it was held that a wrong observation of the judge, upon a question of fact, which was left as a question of fact to the jury, is no ground for a new trial. The Court gave the jury in this case distinctly to understand that his observations were advisory merely, and that the responsibility of deciding the facts rested entirely with them.

I submit that the eighth assignment of error is not well taken.

THE LOCATION OF THE ONE ACRE.

The description of the one acre in the deed from the devisees of Dr. William Shippen to William I. Shippen (see 6th page of this brief for description), in 1806, is exactly the same as the description in the deed to Jonathan Robeson, 1744 (Exhibit D 23, page 353), except the last course, which in the Shippen deed ran from the third corner "thence to the place of beginning, containing one acre of land." In the old Robeson deed of 1744, the last course ran from the third corner "thence to the river so as to include the full one-half part of the spring and said run to the place of beginning, the said to be laid out to contain one acre of land." The question of the boundary of the tract of land described in the old Robeson deed of 1744, is easily ascertainable. In the Shippen deed of 1806 the first and third lines are parallel and ~~five~~ 8 perches in length, and, of course, the second and fourth lines must be parallel and twenty perches in length. Now, to contain one acre, as the deed says it does, all its angles must be right angles in order to make forty-eight hundred and ~~sixty~~ 40 square yards or exactly one acre, no more and no less.

The first line or river line is fixed, its beginning corner is fixed and its course is fixed. Taking that line therefore as a base line and swinging the lines of the whole tract either north or south, each line preserving its length, it is apparent that when it is swung around to ninety degrees the four lines will merge into one line. Its original area is entirely lost. It is because the lot is swung around some that the deed from Lommasson and plaintiff's map lengthen the first and third lines to ~~five~~ 8 perches and four links. Still it does not contain one acre with the lengthening of these two lines.

Now clap the one acre described in the Shippen deed upon the tract described in the Jonathan Robeson deed of 1744, and we have the four corners and three sides

coinciding exactly, and on the fourth line of the acre in the Shippen deed there is a very small fraction of an acre added in the Robeson deed by running out "so as to include the full one-half part of the spring and run."

The Shippen deed has all the corners and three lines of the Robeson deed. Its fourth line simply lops off the bulge on the fourth line caused by taking in half of the spring and run. By the Robeson deed it was "to be laid out to contain one acre of land." By the Shippen deed we find the corners and distances in the Robeson deed preserved while half of the spring and run was left out, and the line from the third corner to the beginning corner was made a straight line, and the Shippen deed makes the boundaries contain one acre, while in the old Robeson deed it was "to be laid out to contain one acre of land," so it is apparent that sometime between 1744 and 1806, when the one acre was finally detached from the 200 acre tract, that the lot was laid out to contain one acre and the spring and run were omitted. The fourth line in the Shippen deed is a perfectly straight one while the thread or center line of the spring and run is sinuous.

Anyway, the defendants have what is contained in the boundaries of the one acre excepted out in the conveyance of the 200 acre tract in 1806, without any reference to the Robeson deed of 1744.

Again, while William P. Robeson and Mrs. Robeson were owners of the one acre and Thomas Lommasson of the contiguous land, the location of the third corner to the one acre tract as well as the second line, as between their lands, were agreed upon or acknowledged.

That corner and line were fixed by them as being about where the Walker map makes it. It was south of the public highway and east of the railroad line, and, therefore, made the whole of the *locus in quo* within the one acre. The testimony of Thomas Lommasson, on pages 213, 214, 215 and 216, says that the occasion was the division of the farm between Lom-

masson and White in 1850, and they were at the time making a survey of the whole tract. William P. Robeson took Thomas Lommasson, plaintiff's grantor, to a stone, the southeast corner of the one acre. This corner was east of the railroad line and south of the public highway. This was the southerly line of the one acre lot and ran within four or five feet of the barn as it passed on its course to the river. The barn as it then stood was located by several witnesses as being about thirty feet from the present location of the railroad on the western side, and from fifteen to twenty feet south of the public highway. (See location of barn on plaintiff's map; also testimony of Elbridge G. Wire, page 23, from line 10 and half of page 24; Thomas Lommasson, page 215; Jesse Lommasson, page 233; Solomon Daily, page 257; Jabez D. Cyphers, pages 289 and 290.)

Jesse Lommasson, a grandson of Thomas Lommasson, testifies (see page 231 et seq.) that about 1849 or 1850, William P. Robeson had some words with his father, George K. Lommasson, about some hay, and that William P. Robeson and Thomas Lommasson went together to the southeast corner of the one acre tract to a heap of stones with a stone in the middle standing above the other stones, and agreed that that was the corner of the one acre, and that heap of stones, the witness says, was two paces east of the railroad line and south of the public highway, and that they agreed that the line ran by the barn between the barn and the public road in the north of it. The stone heap and the line were the south line and the southeast corner of the one acre as surveyed and mapped by Nathan F. Walker.

Thomas Lommasson, on page 216, says:

"Q. Did you hear him (Thomas Lommasson) say anything to your father about that corner?"

"A. I did."

"Q. When was that?"

"A. It was about 1851 or 1852 that he was there helping them thresh, if I remember right."

"Q. What did he say about that corner?"

"A. Was talking about that corner, about removing hay from that lot, and he told him that was the corner, and he supposed he had a right to the hay, that was all there was about it."

"Q. Who had a right to the hay?"

"A. William P. Robeson."

Here we see a recognition by Thomas Lommasson of the southeast corner of the one acre as pointed out by William P. Robeson, and as testified to by Thomas and Jesse Lommasson.

Solomon Daily, on page 257, says that Thomas Lommasson fifty-six years ago (1841) told his father in his presence that the southerly line of the one acre ran close to the barn between the public road and barn. This was ten years before he pointed out the stone heap as the corner.

Thomas Lommasson not only consented to Robeson's statement that the corner pointed out was the corner to the one acre which was south of the public highway and east of the railroad line and that the line ran to the river between the public highway and the barn on the south side of the public highway, but also pointed out and said that this location of the corner and line was correct, not to one witness, but to three witnesses, varying ten years in time. Now the agreement of parties, adjoining owners of land, upon the lines of uncertain boundaries is effectual and binding. Acquiescence is sufficient to estop a party from denying the location.

The Court, in the case of Ivins v. Ackerson, 9 Vroom, page 224, says, "There are cases which hold that the verbal settlement by the owners of contiguous lands of the boundary line between their possessions is absolutely conclusive."

In Wood v. Lafayette, 46 New York Court of Appeals, page 488, the Court says, "Where there is a disputed, indefinite or uncertain boundary line between adjoining proprietors, they may, by parol agreement, or by arbitration, fix upon a line between themselves."

Stout v. Woodward, 5 Hun., 340; affirmed in 71 New York, 590.

In Den d. Haring v. VanHouten, 2 Zab., page 68, the Court says, "To conclude the parties' rights it is not necessary that there should have been an actual agreement between the adverse claimants, or that the practical location should have existed over twenty years."

In Jackson v. Perrine et ux., 6 Vroom, page 143, the Court says, "In all cases where the language of a deed is of doubtful construction as to the boundaries, the construction given to it by the parties themselves, as shown by their acts and admissions, is deemed the true one, unless the contrary is clearly shown. Stone v. Clark, 1 Metcalf, 378. The doctrine in this State has been carried still farther."

The testimony of Thomas Lommasson, on page 217, shows that William P. Robeson in 1848 or 1849 and in 1850 or 1851 cut and hauled hay off of the one acre, taking it as his property.

"Q. Do you remember William P. Robeson ever getting the hay under this railroad here?"

"A. I do remember his cutting hay further than that railroad is now."

"Q. Further east than the railroad?"

"A. Yes, sir."

Jesse Lommassons wears to the same thing on pages 233 and 234, and further, that the hay was taken under the railroad and out to the public highway where the culvert now is, and on one occasion George K. Lommasson cut the hay on shares and hauled Robeson's share for him. Both say further on page 220 and also page 235, that the land east of the railroad in the highway laid always open and unfenced to the river after the railroad was built and that a man by the name of Phillips occupied the one acre north of the public highway, running up to the highway and the railroad embankment (pages 218 and 219.)

In 1877 William Fisher, by permission of Colonel Robeson, agent of the owners, built a small house and

occupied it for two or three years. (John McMurtry, pages 266, 267 and 268; also Hugh H. Fisher, pages 268, 269, 270 and 271.)

Levi Linn lived in the same building after William Fisher moved out, and lived there until 1886. (George Lommasson, pages 293 and 294; Jabez G. Cyphers, page 293.)

The testimony before stated shows that all of the acre running from the river, taking in the small dwelling, lay open and unfenced up the road to the east side of the culvert.

As I stated before, the plaintiff makes their location of the north line of the one acre north of both the spring and run and where it strikes the river it is from twenty to forty feet north of the run and its outlet, and then from that point attempts to make a straight line eight perches and four links in length to a point south of the spring.

Birge Pierson, a practical surveyor of forty years standing, testifies, on page 282, that looking over this river line of the plaintiff, as shown by their stakes, if continued either way, it will at once leave the river, and he further says on page 280, &c., that the Walker survey is the correct one. Mr. Walker, on pages 209 and 210, says that the third line being parallel with the river, must have an angle or break in it to correspond with the angle made in the river line at the outlet of the run by plaintiff's map, and by swinging the acre to the north on its base or river line they had necessarily to widen the end lines four links to preserve the area of one acre, but still it shows less than an acre. This survey of the plaintiff's is clumsily and inaccurately made. Even on the claimed line between Lommasson and White, a line of two or three chains, the difference is one and one-quarter degrees as Mr. Weir stated somewhere in his testimony, and surveyed evidently at the same time.

Mr. Samuel Depue and Mr. George Lommasson both testify that the action of the current of the river

on the Pennsylvania side of the river has torn away a considerable portion of the bank of the river on that side and this would have a tendency by widening the river to lessen its depth, while on the Jersey side of the river the water eddies back with a tendency to deposit refuse material on the shore. Mr. James Depue in his testimony says that he used to row a boat in early times into the spring almost the whole of the year and the testimony of all witnesses in the case show that the river is the highest in the months of April and May, and the survey of the old Robeson acre was made May 3d, 1744. Mr. Walker, the defendants' surveyor, took as his beginning corner the point in the middle of the run of water from the spring where it meets on a level the waters of the Delaware river.

I submit that no one of the exceptions of the plaintiff is well taken.

JOSEPH M. ROSEBERRY,
Of Counsel with Defendant,
Harry W. Breckinridge.

J. Heidingsfeld, Printer, New Brunswick, N. J.

New Jersey Court of Errors and Appeals.

The Pennsylvania Railroad Company, Plaintiff in Error, v. Harry W. Breckenridge and The United States Pipe Line Company, Defendants in Error.	In Error to Warren County Circuit Court.

BRIEF FOR PLAINTIFF IN ERROR.

The judgment to be reviewed in this case was rendered in an action of ejectment brought in the Warren County Circuit Court by The Pennsylvania Railroad Company against Harry W. Breckenridge and the United States Pipe Line Company to recover possession of a piece of land in Oxford Township, in said county, lying within the public highway leading from Belvidere past the Shippen Spring, where said highway is crossed by the railroad embankment and culvert of The Belvidere-Delaware Railroad Company (now under lease from said Company to said plaintiff) bounded on the east and west by the extreme easterly and westerly lines of said embankment as produced and carried across said highway, and on the north and south by

the northerly and southerly foundation walls and abutments of the arch or culvert by which the said railroad is carried over said highway (page 3).

The plaintiff had been for over twenty years prior to July 21, 1896, in the actual possession of the embankment referred to, operating thereon a railroad under lease from The Belvidere-Delaware Railroad Company dated February 15, 1876, to The United New Jersey Railroad and Canal Company (ending June 30, A. D. 2870) and assigned by the latter Company to the plaintiff, all under the sanction of an Act approved March 9, 1874. (P. L. 1874, p. 1138.)

Prior to said lease The Belvidere-Delaware Railroad Company had been in the like possession of said embankment and operation of said railroad thereon ever since the original construction thereof by said Company which was about the year 1854, or 1853, to 1855 (pg. 48, bottom).

It was proved and not denied that the land in question lies within the boundaries of a deed, Exhibit P 1 (page 348) made by Thomas Lommasson and wife to The Belvidere-Delaware Railroad Company September 3, 1853, and recorded March 8, 1854, which conveys a long strip of land crossing and including said highway, "containing two acres and a half of land, more or less, "over which the said Company are to build their rail-"road" (p. 349, l. 30); and that Lommasson, the grantor, then was and for many years previously had been in the possession of said land personally or by his tenants.

On July 21, 1896, the defendants, by their employees, with a large gang of men, by night, laid two lines of iron pipes for the conveyance of oil through said undergrade crossing, under the surface of the highway (pp. 61, &c.).

The defendants deduced a paper title in said Breckenridge, through a long series of conveyances from one Johannes Vannatta, to an acre of land described in a

deed (Exhibit D 23, p. 353) made by said Vanatta to Jonathan Robeson, dated May 3, 1744, and the effort on their part was to show that this tract (called "the Robeson acre") embraced the land in question.

The bulk of the evidence in this case is directed to the true location of this Robeson acre, the same being according to the contention of the plaintiffs, and according to the said Lomasson deed (Exhibit P 1), wholly to the north of said culvert or undergrade crossing.

The defendants also put in evidence an agreement (Exhibit D 1) dated June 25, 1851 (pp. 351-353) made by William P. Robeson (who at that time had the paper title to an undivided one-half of the Robeson acre) and John M. Sherrerd with the Belvidere-Delaware Railroad Company, by Ashbel Welch, its agent, whereby said Robeson and Sherrerd agreed "to convey in fee simple each so much of the land as belongs to himself separately, and both so much of the land as they now hold in common, lying on the route of the said railroad in the said township of Oxford and county of Warren aforesaid, anywhere between the farm of William White (below Thomas Lomasson's farm) and the land of John Huff, Jr. (above Abraham McMurtrie's land) as may be sufficient for the construction of said railroad, with its ditches and appendages."

The defendants also offer in evidence a bill (Exhibit D 28, pp. 369–383) filed by said The Pennsylvania Railroad Company against the defendants in this suit, in the Court of Chancery of this State, in the year 1895, for specific performance of said agreement so far as related to this acre, which lies between the points designated in said agreement (and is in part occupied by the railroad embankment and tracks, whether the acre includes the road crossing, or is to the north of it) and for an injunction to restrain them from laying their oil pipes through this culvert.

The plaintiff, in addition to their claim that the Robeson acre properly located did not include the land

in controversy, further insisted that they had acquired title to said land by adverse possession.

(See charge, page 336, lines 20–30.)

This latter contention the Court overruled, holding as matter of law that the possession had not been adverse, and charging the jury (on page 338, line 28) that the question of adverse possession was not in the case, and (on page 339, top) that the only thing of importance for the jury to consider was "where is the Robeson acre located; where is its southerly line?" and that if the culvert was included in the Robeson acre, then the verdict should be for the defendant (page 340, line 30).

The Court further charged the jury (page 338, lines 3 to 28) that if the possession was adverse it amounted to an occupation of the surface of the road only so far as the ends of the culvert rested upon it, and the right acquired by such occupation and use of the culvert, if adverse would only be the right to cross by means of such culvert.

To these propositions respectively several exceptions were taken and sealed on page 341.

There was error in excluding the question of adverse possession from the consideration of the jury.

There was no dispute that for over forty years before the entry of the defendants on the land in controversy, the lessors of the plaintiff and the plaintiff successively, had maintained the open, notorious and exclusive possession of the land included in the Lommasson deed, by an earthen embankment about twenty feet high, upon which during all that time a railroad had been continuously operated by them. This embankment was practically coextensive with the lines of this deed, except where the highway rendered necessary the culvert for its crossing undergrade.

The ground upon which the Court denied to the plaintiff the rights ordinarily conceded to arise from an occupation for ~~over~~ only half the length of time here shown, was that by reason of the existence of the agreement (Exhibit D 1, pages 351 to 353) the possession could not be considered as adverse.

(1)

But the position so taken by the Court rests upon the assumption not warranted by the evidence, that it is beyond controversy that the plaintiff held the particular land in question *under this agreement.*

That the Railroad Companies did so hold was strenuously denied and it appeared that plaintiff's lessor purchased in 1853 by warrantee deed from a person in possession a tract of land which undisputedly included the culvert.

The courses of the Lommasson deed as well as the notebook of General Davis, who surveyed the Robeson acre at that time (see the two lithograph maps facing page ~~346~~ 342), leave no doubt whatever that the parties to that deed located the Robeson acre (just as the plaintiff now claims that it should be located) wholly to the north of the highway crossing. This deed was recorded March 8, 1854, and possession was taken and an expensive embankment constructed, which has ever since been maintained, in substantial accordance with the boundaries of this deed.

It does not appear that any possession had been taken previous to this deed—nor is there anything to show that under the Robeson agreement the Belvidere-Delaware Railroad Company was at any time put in possession of the particular piece of land including the culvert, or that the boundaries of the Robeson acre were ever ascertained or referred to between the parties to the agreement. It does appear, however, that the location of this one acre lot is doubtful, and within two years after the agreement the Railroad Company

(as applied on the ground)

took title from another source by a deed expressly and distinctly locating the Robeson acre in another place. This was certainly enough to make a question for the jury whether the Railroad Company regard the Robeson acre as including the culvert, and so entered upon *that* land under the agreement.

There is no principle of law to prevent the plaintiff saying that although its lessor did accept this agreement from Robeson, yet the location of the acre being uncertain and not specifically agreed upon between the parties, the Company, whether with or without the concurrence of Robeson entered upon and held a different piece of land from that which the agreement in fact embraced and has held the tract which the agreement is now found by the jury to have embraced ever since under a different title. Nor would such possession be any the less adverse because of the mislocation.

French v. Pearce, 8 Conn. 439.
Wood Lim. § 263.

In other words the effect given to the Robeson agreement by the charge taking away as a matter of law the adverse character of the holding as to the particular piece of land in controversy only arises when the question of fact has been settled, that the party in possession understood that the agreement covered that identical piece of land.

There can be no recognition of title to particular land, unless the land be identified. It was erroneous to hold as matter of law that the possession was necessarily not adverse from the mere existence of the agreement.

It is a question of fact, whether the Company did or did not *under the agreement* hold this piece of land as the defendants now locate it. More especially is that so where the agreement describes no land particulary. Suppose the agreement had been to convey

any tract of land that Robeson owned in the township of Oxford, could he or his representatives after a forty years' holding by the Company under another title sweep away all benefit of adverse possession by showing that in fact Robeson's title did cover land which the parties to the agreement did not claim or imagine that it did?

(2)

If possession had been taken in 1851 under the agreement, the deed from Lommasson in 1853 (recorded March, 1854) shows an inconsistent holding from that time.

"When one enters under a contract for a deed with "one party and afterward takes a deed from another "party, his possession from this time is adverse to the "first vendor, and if continued the statutory period "will bar his entry."

Tyler Eject. & Adv. Poss. p. 878.

The possession of a tenant or vendee, though not originally hostile to the title of the landlord or vendor may become so. The only distinction between this class of cases and those in which no privity between the parties existed when the possession commenced is in the degree of proof required to establish the adverse character of the possession.

Tyler Ejectment & Adv. Poss. p. 876.
Foulke v. Bond, 12 Vroom, 527, 538–539

After possession held for so long a time under claim of title, any fact may be presumed, which may be necessary to validate the title. The hostility of the holding may be so presumed. Thus in Camp v. Camp, 5 Conn. 291, where a tenant at will had remained in uninterrupted possession fifty-seven years after the

death of the lessor, it was held that a restoration of the premises to the lessor's heirs and subsequent ouster by the former tenant might be presumed, and that by virtue of such possession the tenant acquired title.

This case was approved and followed in Hanford v. Fitch, 41 Conn. 486.

In Doe v. Prosser, Cowper 217, Lord Mansfield held that a jury was warranted after thirty-six years' possession by one tenant, in presuming an ouster, and that after having entered lawfully he held over adversely, so as to acquire title. (See further cases cited below as to presumptions indulged to quiet title after long adverse possession.)

(3)

But if it were admitted that the Railroad Companies successively occupied under this agreement the Robeson acre as located by the defendant, such possession was none the less adverse.

The possession of a vendee under contract to purchase who has paid the purchase money is adverse.

Especially so since the contract gives no right of possession before delivery of deed

Van Blarcom v. Kip, 2 Dutch. 351.
Tyler on Ejectment, &c. p. 879.

Such practically was the situation of the Belvidere-Delaware Railroad Company. The money consideration was but nominal, the real consideration being the benefit anticipated from the construction of the railroad. Nothing was required to be done by the Company but to construct its road with the crossings specified in the agreement.

If under such an agreement, with the acquiescence of the vendor, the Company entered on the land and erected its embankment and constructed its tracks at an expense many times exceeding the value of the land occupied, it became in equity the owner and entitled to a conveyance.

From the time that the vendee in possession is entitled to a deed his possession is adverse. From that time he claims not under his vendor but in his own right, for the vendor has but the legal estate which he is bound to convey to the vendee. The attitude of the parties is that which subsists in case of a dry trust between a cestui que trust and his trustee, who is bound to surrender the legal estate. And in such cases it has been repeatedly decided in this State that a surrender of the legal estate will be presumed.

Brown v. Combs, 5 Dutch. 36.
Den, Obert v. Bordine, Spen. 394.
Baxter v. Baxter, 16 Stew. 82, 86.
Comrs. v. Johnson, 9 Stew. 211, 213.

And so after twenty years' possession under an executory agreement a deed may be presumed.

Chiles v. Conley's heirs, 2 Dana, 22.

In Bartholomey v. Johnson, 3 B. Mon. 90, it was held that possession for thirty years under an undoubted equity would authorize a presumption of conveyance of the legal title.

Tyler on Ejectment, &c. p. 879.

(4)

The possession shown was sufficient to pass the title to the land in the highway.

If the possession of the land on each side of the highway which was unquestionably exclusive, was of such adverse character and long continuance as to transfer the title to said adjacent land, the land in the highway would pass with it. This must be so or else in almost every case of title by adverse possession to land bordering on a public road, the land in the road would re-

main in the holder of the paper title. For it is rarely possible to make out title to land so situated by adverse possession, in the usual sense, of the very land which is subject to the public right and hence incapable of exclusive possession by any one.

It is believed, however, that such severance of title to the land in the highway has never been understood to result, and in almost every case the effect of it would be to render the land in the road useless to anybody.

Salter v. Jonas, 10 Vroom, 469.

If the possession of the adjoining land where the embankment entered the highway on each side, was such in point of hostility (which was at least a question for the jury) the exclusiveness and continuance of it as to that land being indisputable, then there arose a presumption of a conveyance of the legal title to the party in possession, for the land so held.

1 Greenleaf Evidence, § 45.
Lawson Presumptive Evidence.
Valentine v. Piper, 22 Pick. 85.
Field v. Brown, 24 Grat. 74.
Marr v. Gilliam, 1 Coldw. 488.
Props. of Church in Brattle St. Square v. Bullard, 2 Metc. 363.
Newman v. Studley, 5 Mo. 291.
~~Jelleck v. Brannon, 78 Pa. St. 342.~~
Fritz v. Brandow, 78 Pa. St. 342.
Jackson v. McCall, 10 Johns. 377.
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Presumptions do not always proceed on the belief that the thing presumed has actually taken place.

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They are often a mere fiction of law to prevent a just title from being defeated by a mere form.

And the conveyance would be presumed to have been in the usual form—which would include the land in the highway to the centre on each side.

Salter v. Jonas, 10 Vroom, 469.

This would be so even without reference to the fact that, whether under the agreement or under the Lomasson deed, the color of title included the highway as part of the larger tract through which it ran.

But there was clear evidence of possession of the very land in the road. The arch or tunnel or culvert through which the roadway passed was part of a solid embankment extending on each side up to and within the highway. The abutments were within the highway and narrowed it. The embankment extended over the arch and the Company exercised the same rights over that part of it as over the rest of the embankment. As to the other portions of the embankment (held under the same color of title, whether it was the Robeson agreement or the Lommasson deed) no possible question can be made that the Companies successively had the exclusive and notorious possession. Why then should it be held that the erection and maintenance of this arch manifestly only for the accommodation of the public easement (but for which the embankment would have been as solid and impassable there as at any other point), is evidence or notice of any different purpose or claim by the Companies of the land in the highway as against persons not claiming or exercising the public right? The maintenance of such a structure was an invasion of the right of ownership in the highway and the instrument under which it was done gives character to the act.

Foulke v. Bond, 12 Vroom, 527, 547.

Whether that instrument was the agreement or was Lomasson's deed, was immaterial upon this point, for

both contemplated ownership (*not* a mere easement). The agreement was for a conveyance in fee, and the deed was itself a present conveyance in fee.

"I do not think that a person claiming a right to "land by virtue of adverse possession under color of "title, should be restricted to so much only as he or "those under whom he claims have had in actual occu- "pancy by substantial enclosures or under cultivation, "provided he had for the requisite period of time exer- "cised such acts of ownership over the other parts of "the land as are calculated to assert to the world a "claim of right, or will amount to actual possession." Whitehead J. in Den. v. Hunt, Spencer 487—quoted with approval in Foulke v. Bond, 12 Vroom 527, 547, 548.

It was surely too strict a rule to hold that there was no evidence for the jury of possession of the land under the arch.

In fact it may be said that, just as in Foulke v. Bond, 12 Vroom 527, 551, the fact of possession was not in question, the only real doubt being whether the possession was adverse or not.

(5)

Finally, there was error in excluding the question of adverse possession, at least as to the undivided one-half of said Robeson acre to which the defendants claimed title under Mrs. Anna M. Robeson.

At the time of the making of the agreement by Robeson and Sherrerd in 1851, Anna M., wife of said William P. Robeson, was the owner of an undivided one-half of said lot, which had passed to her by descent on the death of her brother, John P. B. Maxwell, about 1844 or 1845 (page 292), the title having been vested in fee in William P. Robeson and John P. B. Maxwell by deed from Tacy Robeson, executrix, April 1, 1834 (page 359); Mrs. Robeson was no party to the agree-

ment; and if it be said that during her coverture and the tenancy by courtesy initiate of her husband (who was a party to it) the possession could not be adverse to her, these obstacles ceased to exist on the death of William P. Robeson in December, 1864 (see his will dated November 28, 1864, and proven December 23, 1864, page 360).

From that time therefore, for over thirty years, the possession was adverse as to this undivided one-half, unless the ground taken by the Court below was correct, that possession under her cotenant William P. Robeson was as matter of law, not adverse (page 337, line 25, &c.).

But the position so taken by the learned trial judge in his charge is directly opposed to the decision of this Court in Foulke v. Bond, 12 Vroom, 527, where it is held that the possession of a grantee of one cotenant by deed purporting to convey the whole, is adverse to the other cotenant. Such was in effect the possession of the Railroad Company if under this agreement, for the agreement was for a conveyance of the whole estate.

The defendants in this case did not pursue the course prescribed by Section 24 of the Ejectment Act, but by their pleas and at the trial defended for the whole, so that the plaintiff was entitled to recover for any undivided interest he showed a right to.

Brown v. Combs, 5 Dutch 36.

Inasmuch therefore as the trial judge took from the consideration of the jury the question of adverse possession, so important in all the aspects of the case above pointed out, the judgment should be reversed.

ALAN H. STRONG,

Of Counsel with Plaintiff in Error.

J. Heidingsfeld, Printer, New Brunswick, N. J.

New Jersey Court of Errors and Appeals.

The Pennsylvania Railroad Company, Plaintiff in Error, v. Harry W. Breckenridge and The United States Pipe Line Company, Defendants in Error.	In Error to Warren County Circuit Court.

BRIEF FOR PLAINTIFF IN ERROR.

The judgment to be reviewed in this case was rendered in an action of ejectment brought in the Warren County Circuit Court by The Pennsylvania Railroad Company against Harry W. Breckenridge and the United States Pipe Line Company to recover possession of a piece of land in Oxford Township, in said county, lying within the public highway leading from Belvidere past the Shippen Spring, where said highway is crossed by the railroad embankment and culvert of The Belvidere-Delaware Railroad Company (now under lease from said Company to said plaintiff) bounded on the east and west by the extreme easterly and westerly lines of said embankment as produced and carried across said highway, and on the north and south by

the northerly and southerly foundation walls and abutments of the arch or culvert by which the said railroad is carried over said highway (page 3).

The plaintiff had been for over twenty years prior to July 21, 1896, in the actual possession of the embankment referred to, operating thereon a railroad under lease from The Belvidere-Delaware Railroad Company dated February 15, 1876, to The United New Jersey Railroad and Canal Company (ending June 30, A. D. 2870) and assigned by the latter Company to the plaintiff, all under the sanction of an Act approved March 9, 1874. (P. L. 1874, p. 1138.)

Prior to said lease The Belvidere-Delaware Railroad Company had been in the like possession of said embankment and operation of said railroad thereon ever since the original construction thereof by said Company which was about the year 1854, or 1853, to 1855 (pg. 48, bottom).

It was proved and not denied that the land in question lies within the boundaries of a deed, Exhibit P 1 (page 348) made by Thomas Lommasson and wife to The Belvidere-Delaware Railroad Company September 3, 1853, and recorded March 8, 1854, which conveys a long strip of land crossing and including said highway, "containing two acres and a half of land, more or less, "over which the said Company are to build their rail-"road" (p. 349, l. 30); and that Lommasson, the grantor, then was and for many years previously had been in the possession of said land personally or by his tenants.

On July 21, 1896, the defendants, by their employees, with a large gang of men, by night, laid two lines of iron pipes for the conveyance of oil through said undergrade crossing, under the surface of the highway (pp. 61, &c.).

The defendants deduced a paper title in said Breckenridge, through a long series of conveyances from one Johannes Vannatta, to an acre of land described in a

deed (Exhibit D 23, p. 353) made by said Vanatta to Jonathan Robeson, dated May 3, 1744, and the effort on their part was to show that this tract (called "the Robeson acre") embraced the land in question.

The bulk of the evidence in this case is directed to the true location of this Robeson acre, the same being according to the contention of the plaintiffs, and according to the said Lomasson deed (Exhibit P 1), wholly to the north of said culvert or undergrade crossing.

The defendants also put in evidence an agreement (Exhibit D 1) dated June 25, 1851 (pp. 351-353) made by William P. Robeson (who at that time had the paper title to an undivided one-half of the Robeson acre) and John M. Sherrerd with the Belvidere-Delaware Railroad Company, by Ashbel Welch, its agent, whereby said Robeson and Sherrerd agreed "to convey in fee simple each so much of the land as belongs to himself separately, and both so much of the land as they now hold in common, lying on the route of the said railroad in the said township of Oxford and county of Warren aforesaid, anywhere between the farm of William White (below Thomas Lomasson's farm) and the land of John Huff, Jr. (above Abraham McMurtrie's land) as may be sufficient for the construction of said railroad, with its ditches and appendages."

The defendants also offer in evidence a bill (Exhibit D 28, pp. 369–383) filed by said The Pennsylvania Railroad Company against the defendants in this suit, in the Court of Chancery of this State, in the year 1895, for specific performance of said agreement so far as related to this acre, which lies between the points designated in said agreement (and is in part occupied by the railroad embankment and tracks, whether the acre includes the road crossing, or is to the north of it) and for an injunction to restrain them from laying their oil pipes through this culvert.

The plaintiff, in addition to their claim that the Robeson acre properly located did not include the land

in controversy, further insisted that they had acquired title to said land by adverse possession.

(See charge, page 336, lines 20–30.)

This latter contention the Court overruled, holding as matter of law that the possession had not been adverse, and charging the jury (on page 338, line 28) that the question of adverse possession was not in the case, and (on page 339, top) that the only thing of importance for the jury to consider was "where is the Robeson acre located; where is its southerly line?" and that if the culvert was included in the Robeson acre, then the verdict should be for the defendant (page 340, line 30).

The Court further charged the jury (page 338, lines 3 to 28) that if the possession was adverse it amounted to an occupation of the surface of the road only so far as the ends of the culvert rested upon it, and the right acquired by such occupation and use of the culvert, if adverse would only be the right to cross by means of such culvert.

To these propositions respectively several exceptions were taken and sealed on page 341.

There was error in excluding the question of adverse possession from the consideration of the jury.

There was no dispute that for over forty years before the entry of the defendants on the land in controversy, the lessors of the plaintiff and the plaintiff successively, had maintained the open, notorious and exclusive possession of the land included in the Lommasson deed, by an earthen embankment about twenty feet high, upon which during all that time a railroad had been continuously operated by them. This embankment was practically coextensive with the lines of this deed, except where the highway rendered necessary the culvert for its crossing undergrade.

The ground upon which the Court denied to the plaintiff the rights ordinarily conceded to arise from an occupation for ~~over~~ only half the length of time here shown, was that by reason of the existence of the agreement (Exhibit D 1, pages 351 to 353) the possession could not be considered as adverse.

(1)

But the position so taken by the Court rests upon the assumption not warranted by the evidence, that it is beyond controversy that the plaintiff held the particular land in question *under this agreement.*

That the Railroad Companies did so hold was strenuously denied and it appeared that plaintiff's lessor purchased in 1853 by warrantee deed from a person in possession a tract of land which undisputedly included the culvert.

The courses of the Lommasson deed as well as the notebook of General Davis, who surveyed the Robeson acre at that time (see the two lithograph maps facing page ~~346~~ 312), leave no doubt whatever that the parties to that deed located the Robeson acre (just as the plaintiff now claims that it should be located) wholly to the north of the highway crossing. This deed was recorded March 8, 1854, and possession was taken and an expensive embankment constructed, which has ever since been maintained, in substantial accordance with the boundaries of this deed.

It does not appear that any possession had been taken previous to this deed—nor is there anything to show that under the Robeson agreement the Belvidere-Delaware Railroad Company was at any time put in possession of the particular piece of land including the culvert, or that the boundaries of the Robeson acre (as applied on the ground) were ever ascertained or referred to between the parties to the agreement. It does appear, however, that the location of this one acre lot is doubtful, and within two years after the agreement the Railroad Company

took title from another source by a deed expressly and distinctly locating the Robeson acre in another place. This was certainly enough to make a question for the jury whether the Railroad Company regarded the Robeson acre as including the culvert, and so entered upon *that* land under the agreement.

There is no principle of law to prevent the plaintiff saying that although its lessor did accept this agreement from Robeson, yet the location of the acre being uncertain and not specifically agreed upon between the parties, the Company, whether with or without the concurrence of Robeson entered upon and held a different piece of land from that which the agreement in fact embraced and has held the tract which the agreement is now found by the jury to have embraced ever since under a different title. Nor would such possession be any the adverse because of the mislocation.

French v. Pearce, 8 Conn. 439.
Wood Lim. § 263.

In other words the effect given to the Robeson agreement by the charge taking away as a matter of law the adverse character of the holding as to the particular piece of land in controversy only arises when the question of fact has been settled, that the party in possession understood that the agreement covered that identical piece of land.

There can be no recognition of title to particular land, unless the land be identified. It was erroneous to hold as matter of law that the possession was necessarily not adverse from the mere existence of the agreement.

It is a question of fact, whether the Company did or did not *under the agreement* hold this piece of land as the defendants now locate it. More especially is that so where the agreement describes no land particulary. Suppose the agreement had been to convey

any tract of land that Robeson owned in the township of Oxford, could he or his representatives after a forty years' holding by the Company under another title sweep away all benefit of adverse possession by showing that in fact Robeson's title did cover land which the parties to the agreement did not claim or imagine that it did?

(2)

If possession had been taken in 1851 under the agreement, the deed from Lommasson in 1853 (recorded March, 1854) shows an inconsistent holding from that time.

"When one enters under a contract for a deed with "one party and afterward takes a deed from another "party, his possession from this time is adverse to the "first vendor, and if continued the statutory period "will bar his entry."

Tyler Eject. & Adv. Poss. p. 878.

The possession of a tenant or vendee, though not originally hostile to the title of the landlord or vendor may become so. The only distinction between this class of cases and those in which no privity between the parties existed when the possession commenced is in the degree of proof required to establish the adverse character of the possession.

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Foulke v. Bond, 12 Vroom, 527, 538–539

After possession held for so long a time under claim of title, any fact may be presumed, which may be necessary to validate the title. The hostility of the holding may be so presumed. Thus in Camp v. Camp, 5 Com. 291, where a tenant at will had remained in uninterrupted possession fifty-seven years after the

death of the lessor, it was held that a restoration of the premises to the lessor's heirs and subsequent ouster by the former tenant might be presumed, and that by virtue of such possession the tenant acquired title.

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But if it were admitted that the Railroad Companies successively occupied under this agreement the Robeson acre as located by the defendant, such possession was none the less adverse.

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If under such an agreement, with the acquiescence of the vendor, the Company entered on the land and erected its embankment and constructed its tracks at an expense many times exceeding the value of the land occupied, it became in equity the owner and entitled to a conveyance.

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The possession shown was sufficient to pass the title to the land in the highway.

If the possession of the land on each side of the highway which was unquestionably exclusive, was of such adverse character and long continuance as to transfer the title to said adjacent land, the land in the highway would pass with it. This must be so or else in almost every case of title by adverse possession to land bordering on a public road, the land in the road would re-

main in the holder of the paper title. For it is rarely possible to make out title to land so situated by adverse possession, in the usual sense, of the very land which is subject to the public right and hence incapable of exclusive possession by any one.

It is believed, however, that such severance of title to the land in the highway has never been understood to result, and in almost every case the effect of it would be to render the land in the road useless to anybody.

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If the possession of the adjoining land where the embankment entered the highway on each side, was such in point of hostility (which was at least a question for the jury) the exclusiveness and continuance of it as to that land being indisputable, then there arose a presumption of a conveyance of the legal title to the party in possession, for the land so held.

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This would be so even without reference to the fact that, whether under the agreement or under the Lomasson deed, the color of title included the highway as part of the larger tract through which it ran.

But there was clear evidence of possession of the very land in the road. The arch or tunnel or culvert through which the roadway passed was part of a solid embankment extending on each side up to and within the highway. The abutments were within the highway and narrowed it. The embankment extended over the arch and the Company exercised the same rights over that part of it as over the rest of the embankment. As to the other portions of the embankment (held under the same color of title, whether it was the Robeson agreement or the Lommasson deed) no possible question can be made that the Companies successively had the exclusive and notorious possession. Why then should it be held that the erection and maintenance of this arch manifestly only for the accommodation of the public easement (but for which the embankment would have been as solid and impassable there as at any other point), is evidence or notice of any different purpose or claim by the Companies of the land in the highway as against persons not claiming or exercising the public right? The maintenance of such a structure was an invasion of the right of ownership in the highway and the instrument under which it was done gives character to the act.

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It was surely too strict a rule to hold that there was no evidence for the jury of possession of the land under the arch.

In fact it may be said that, just as in Foulke v. Bond, 12 Vroom 527, 551, the fact of possession was not in question, the only real doubt being whether the possession was adverse or not.

(5)

Finally, there was error in excluding the question of adverse possession, at least as to the undivided one-half of said Robeson acre to which the defendants claimed title under Mrs. Anna M. Robeson.

At the time of the making of the agreement by Robeson and Sherrerd in 1851, Anna M., wife of said William P. Robeson, was the owner of an undivided one-half of said lot, which had passed to her by descent on the death of her brother, John P. B. Maxwell, about 1844 or 1845 (page 292), the title having been vested in fee in William P. Robeson and John P. B. Maxwell by deed from Tacy Robeson, executrix, April 1, 1834 (page 359); Mrs. Robeson was no party to the agree-

ment; and if it be said that during her coverture and the tenancy by courtesy initiate of her husband (who was a party to it) the possession could not be adverse to her, these obstacles ceased to exist on the death of William P. Robeson in December, 1864 (see his will dated November 28, 1864, and proven December 23, 1864, page 360).

From that time therefore, for over thirty years, the possession was adverse as to this undivided one-half, unless the ground taken by the Court below was correct, that possession under her cotenant William P. Robeson was as matter of law, not adverse (page 337, line 25, &c.).

But the position so taken by the learned trial judge in his charge is directly opposed to the decision of this Court in Foulke v. Bond, 12 Vroom, 527, where it is held that the possession of a grantee of one cotenant by deed purporting to convey the whole, is adverse to the other cotenant. Such was in effect the possession of the Railroad Company if under this agreement, for the agreement was for a conveyance of the whole estate.

The defendants in this case did not pursue the course prescribed by Section 24 of the Ejectment Act, but by their pleas and at the trial defended for the whole, so that the plaintiff was entitled to recover for any undivided interest he showed a right to.

Brown v. Combs, 5 Dutch 36.

Inasmuch therefore as the trial judge took from the consideration of the jury the question of adverse possession, so important in all the aspects of the case above pointed out, the judgment should be reversed.

ALAN H. STRONG,

Of Counsel with Plaintiff in Error.

JOHN L. MURPHY PUB. CO., Printers, Trenton, N. J.

Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COMPANY,
Plaintiff in Error,

v.

HARRY W. BRECKENRIDGE AND THE UNITED STATES PIPE LINE COMPANY,
Defendants in Error.

On Writ of Error to Warren Circuit.

POINTS FOR DEFENDANTS IN ERROR.

The first, third, sixth and tenth assignments of error are so general in character that no insistment upon them is anticipated.

The second assignment relates to the exclusion of the map marked *P 5* for identification, offered by the plaintiff.

That such exclusion was entirely proper, appears on pages 164 and 165 of the printed case.

The trial judge, as will be seen, gave his reasons for rejecting said map, that there was no "explanation of who made it, what date it was made, or why it was made."

No association or history adduced, connected it with the land in controversy.

The fourth and fifth assignments relate to the admission

in evidence of a certified copy of a certain survey to Alexander White, marked *D 4*, and a map, *Exhibit D 5*, offered with said survey.

As appears on page 301 of the printed case, these exhibits were offered to show the course of the river Delaware in front of the acre, the location of which was in dispute.

The survey bears date August 2d, 1814, is signed by Robert Smith, then Surveyor-General, and was inspected and approved by the Council of Proprietors, and ordered to be recorded, November 1st, 1814 (page 302 of case).

As appears by the testimony of William White, great-grandson of Alexander White (pages 262, 263 and 264), the said survey and map came to him from his father, Amzi B. White, together with the ancient deed of John, Richard and Thomas Penn to Jacobus Vanetta (*Exhibit D 3*), and the deed of Jacob to Johannes Vanetta (*Exhibit D 2*).

These title papers had been known to the witness to have been kept together in a walnut box in his father's house on a part of the property for over thirty years.

The admission of the survey and map worked no harm to the plaintiff in error.

The seventh and ninth assignments question the charge of the court upon the subject of adverse possession.

The language excepted to will be found on pages 337 and 338, and was, it is submitted, accurate in legal statement.

After referring to the agreement between Wm. P. Robeson and Sherred with the railroad company, as giving consent to the entry of the company upon this Robeson acre, the charge was that the law would permit Robeson to stand by and see that occupation continue indefinitely without losing his rights, unless the company gave him notice of occupancy, not by reason of his consent, but under a claim adverse to his title; and that he and those holding under him had a right to presume that the occupation was in pursuance of the permission, and that such occupation was also not adverse to his co-tenant, who was his wife, Mrs. Anna Maxwell Robeson, under whom the defendants in error also hold.

His Honor further charged, "But even if it were true that the possession by the railroad company of this strip of land, where it crosses the Robeson acre (if the culvert is located within its bounds), was adverse, it is only adverse so far as it exists." And further, that the owner seeing that, so far as his land in this public road was concerned, there was no occupation of the surface of the ground, but only a stone culvert built over the road, he would have a right to conclude that the company intended to claim, at the end of twenty years, a right to go across that part of the Robeson acre which lay within the limits of the road, above grade, over that arched culvert, but not to claim a right to occupy the surface of the road or any rights beneath the surface of the soil.

In Foulke *v.* Bond, 12 Vr. 527, it was held that possession, as a presumption of law, is intended only in favor of the true owner. On page 547 it is said: "Color of title and actual occupation by residence, cultivation or enclosure of part of a tract will not relieve the disseisor from satisfying the 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 by it."

The defendants in error are *bona fide* purchasers for value without notice of any right or claim other than of a right of way over the land in question.

The charter of the Bel. Del. R. R. Co. provided that they might cross highways.

P. L. 1836, page 229, sec. 7.

The public easement is legally consistent with title to the soil in a private owner.

Hoboken L. & Imp. Co., 7 Vr. 540–551.

The use of the road is in the public. The owner parts with this use only.

Barclay et al. *v.* Howell's Lessee, 6 Pet. 498, 513.

Gidney *v.* Earle, 12 Wend. 98.

Hinchman *v.* Paterson Horse R. R. Co., 2 C. E. Gr. 80.

N. J. Southern R. R. *v.* Long Branch Com's, 10 Vr. 28.

Natl. Docks, &c., R. R. Co. *v.* United Companies, 24 Vr. 217.

Taylor *v.* Long Branch R. R, 9 Vr. 28.

The eighth assignment attacks that portion of the charge wherein it was stated to the jury that the only thing of importance for them to consider was, "where is the Robeson acre located—where is its southerly line?"

This was in no sense erroneous, and a perusal of the judge's statement of the question on pages 339 and 340 will lead to the conclusion that it was presented to the jury with entire fairness and impartiality.

That the jury correctly decided the location of that southerly line can hardly be doubted.

In his presentation of this question of location, the trial judge gave to the uncertain claim of the plaintiff's engineer even more than due consideration. His idea seemed to be that he, in making his map, could lengthen and change lines. Note his testimony (page 128, lines 10 to 22) where his north line is admitted to be twenty feet north of the spring run. There was, he says (page 130, line 13), a discrepancy somewhere in the survey from which he made his map.

The map of Mr. Walker, the able and conscientious engineer of the defendants, meets the requirements of the deed from Johanna Vannetta to Jonathan Robeson, and is in accordance with legal principles. It embraces a little more than an acre, but this, the only criticism passed upon it, does not impair its accuracy.

In Devlin on Deeds, Vol. 2, sec. 1044 (2d Ed.), the writer says: "Unless there is an express covenant that there

is the quantity of land mentioned, the clause as to quantity is considered simply a part of the description and will be rejected if inconsistent with actual area, when the same is capable of being ascertained by monuments and boundaries. The mention of the quantity of the land conveyed may aid in defining the premises, but it cannot control the rest of the description."

The lot is described in the deed to Robeson (page 353) as "Beginning at and in the mouth of a run that vents into the Delaware from the spring, * * * thence *down the said river* eight perches to a post."

This means running in that direction in a straight line. It was so held in the case of Wharton *v.* ———, 20 Vr. 289, where a course under consideration was "up the branch of Mechexatuxen river," though said branch was stated in the opinion to be extremely crooked.

In Negbauer *v.* Smith, 15 Vr. 672, it was held that where no monuments are named in a grant, distance must govern location.

Must not such be the case where the monuments are effaced?

In Chinowith *v.* Haskell's Lessee, 3 Pet. 92, 96, when course and distance are to be relied on, is discussed by Chief Justice Marshall.

In this case we have, in addition to the original deed, the deed of William Shippen, Samuel Blair and Susan Blair, devisees of William Shippen, to William I. Shippen. *Exhibit D 20.* This deed, dated January 18th, 1806, reserves the one acre in question, and describes it in such manner as to support the contention of the defendants as to the land under the culvert.

The testimony of Thomas Lomasson (page 213) and of his brother, Jesse Lomasson (page 229), show where the south-east corner was located by William P. Robeson and their grandfather, Thomas Lomasson, the plaintiff's grantor.

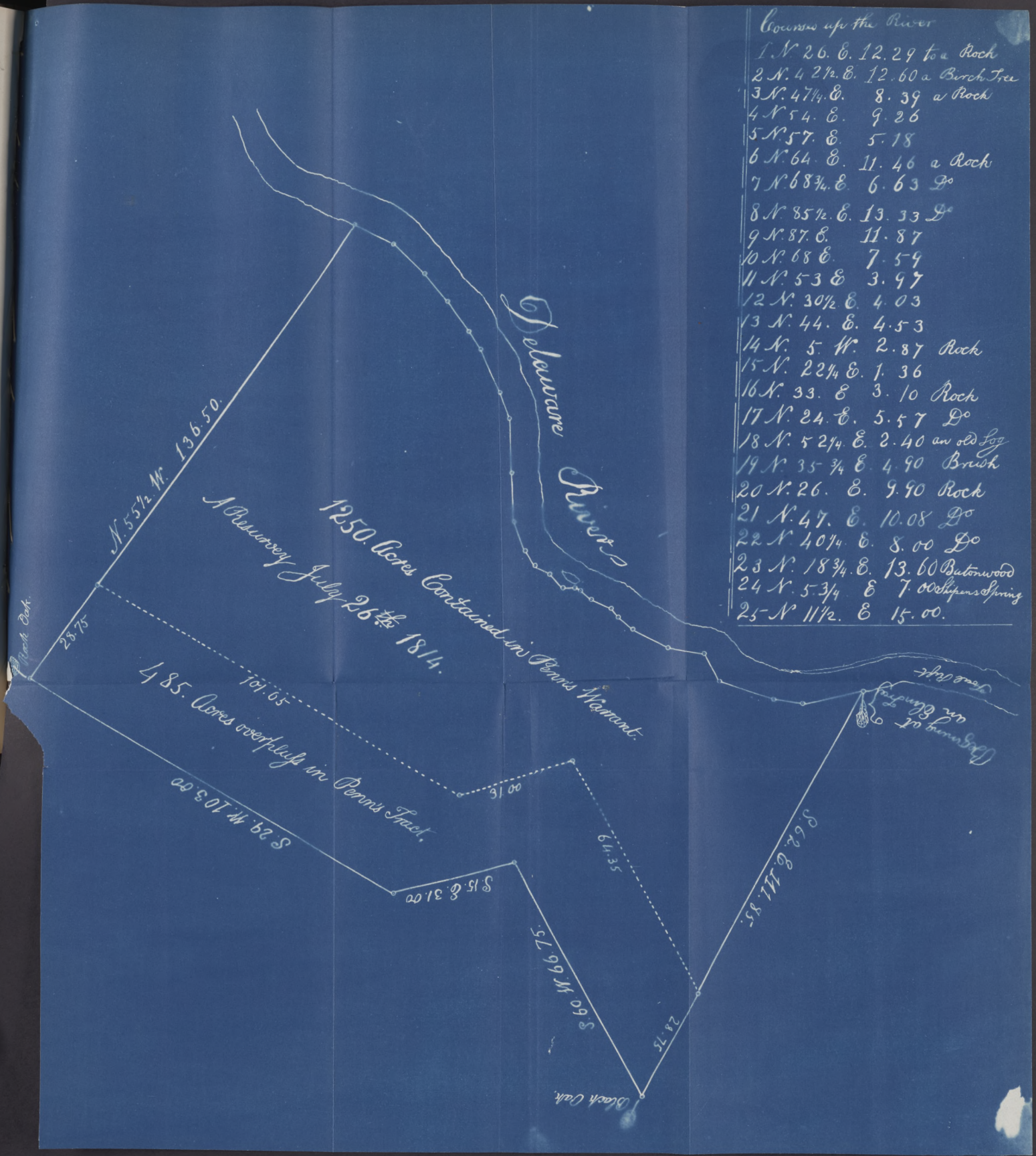
The road which was shown to be identical with that relaid in the return of 1786 (*Exhibit D 25*, page 363) indicates the location of the acre in harmony with the map of Mr. Walker, the testimony of the Lomassons and the location of the wharf below the spring seen by George Linn in 1832 (page 253, line 25).

The return of the river road to Belvidere, of March 27th, 1799 (*Exhibit D 26*), shows that road as beginning in the road in question (page 365).

Tne verdict of the jury was in accordance with the evidence.

It was incumbent upon the plaintiffs to prove that they were the owners of the land in question and entitled to its possession. It is submitted that we have successfully shown that it is ours and not theirs.

HENRY S. HARRIS,
Of Counsel with Defendants in Error.



Courses up the River

1	N. 26. E.	12.29	to a Rock
2	N. 42½. E.	12.60	a Birch Tree
3	N. 47¼. E.	8.39	a Rock
4	N. 54. E.	9.26	
5	N. 57. E.	5.18	
6	N. 64. E.	11.46	a Rock
7	N. 68¾. E.	6.63	Do
8	N. 85½. E.	13.33	Do
9	N. 87. E.	11.87	
10	N. 68 E.	7.59	
11	N. 53 E	3.97	
12	N. 30½ E.	4.03	
13	N. 44. E.	4.53	
14	N. 5. W.	2.87	Rock
15	N. 22¼ E.	1.36	
16	N. 33. E	3.10	Rock
17	N. 24. E.	5.57	Do
18	N. 52¼. E.	2.40	an old Log
19	N. 35¾ E.	4.90	Brush
20	N. 26. E.	9.90	Rock
21	N. 47. E.	10.08	Do
22	N. 40¼. E.	8.00	Do
23	N. 18¾. E.	13.60	Butonwood
24	N. 5¾ E	7.00	Shipens Spring
25	N 11½. E	15.00.	

A

Resurvey of Penns

Tracts

July 26th 1814

173 5/ Acres

Ex. D. 5.

J. Heidingsfeld, Printer, New Brunswick, N. J.

New Jersey Court of Errors and Appeals.

The Pennsylvania Railroad Company, Plaintiff in Error, v. Harry W. Breckenridge and The United States Pipe Line Company, Defendants in Error.	Writ of Error to Warren Circuit Court.

10

New Jersey, ss.—

The State of New Jersey to the Judge of the [L.S.] Circuit Court in and for the County of Warren. *Greeting :—*

Because in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our Circuit Court before you holden at Belvidere, in and for our county of Warren, between The Pennsylvania Railroad Company, plaintiff, and Harry W. Breckenridge and The United States Pipe Line Company, defendants, in ejectment, manifest error hath intervened to the great damage of the said The Pennsylvania Railroad Company, as by its complaint we are informed; we being willing that the error, if any there

be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you do distinctly and openly under your seal send the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-fifth day of January instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law we shall see fit to be done.

Witness, Alexander T. McGill, Esquire, our Chancellor, and President Judge of said Court of Errors and Appeals, at Trenton aforesaid, the fifth day of January, in the year eighteen hundred and ninety-seven.

HENRY C. KELSEY,
Clerk.

ALAN H. STRONG,
Attorney.

The answer of William S. Gummere, Esquire, Judge of the Circuit Court, within named, the record and proceedings of the plaint whereof mention is within named, with all things touching the same, I certify to the Court of Errors and Appeals in the last resort in all causes, within specified at the day and place within contained, in a certain schedule to this writ annexed, as I am commanded.

WM. S. GUMMERE, J.

WARREN CIRCUIT COURT.

THE PENNSYLVANIA RAILROAD COMPANY vs. HARRY W. BRECKENRIDGE AND THE UNITED STATES PIPE LINE COMPANY.	In Ejectment.

Warren County Circuit Court, of the fifteenth day of August, in the year eighteen hundred and ninety-six :—

WARREN COUNTY, ss.—

The Pennsylvania Railroad Company, the plaintiff in this action, by Alan H. Strong, its attorney, demands of Henry W. Breckenridge and The United States Pipe Line Company, the defendants therein, the possession of all that certain piece or parcel of land in the township of Oxford, county of Warren and State of New Jersey, lying within the public highway leading from Belvidere past the Shippen Spring, where the said highway is crossed by the railroad embankment and culvert of The Belvidere-Delaware Railroad Company (now under lease from said company to the said plaintiff) at a distance in a straight line of about two hundred feet southeasterly from said Shippen Spring. Bounded on the east and west by the extreme easterly and westerly lines of said embankment as produced and carried across said highway, and on the north and south by the northerly and southerly foundation walls and abutments of the arch or culvert by which the said railroad is carried over said highway.

And in default of their appearing and defending this action judgment will be entered against them and they will be turned out of possession of said land.

And the plaintiff saith that its right to the possession of the same accrued on the twenty-first day of July, in the year eighteen hundred and ninety-six, and that the defendants wrongfully deprive it of the possession thereof to its damage two hundred dollars.

ALAN H. STRONG,
Plaintiff's Attorney.

And the said United States Pipe Line Company, impleaded with Harry W. Breckenridge, by Henry S. Harris, their attorney, appear and defend this action, and say that they are not guilty of the injury whereof the said Pennsylvania Railroad Company have complained in their declaration, nor of any part thereof, and of this the said United States Pipe Line Company puts itself upon the country, and the said Pennsylvania Railroad Company doth the like.

HENRY S. HARRIS,
Attorney of Defendant.

STATE OF NEW JERSEY, }
WARREN COUNTY. } ss.

Henry S. Harris, of full age being duly sworn, on his oath says, that he is the attorney and agent in this action of the defendant, The United States Pipe Line Company, a foreign corporation which is absent, and that the above plea about to be filed by them is not intended for the purpose of delay, and that he verily believes that they have a just and legal defense to said action on the merits of the case.

HENRY S. HARRIS.

Sworn and subscribed before me this 24th day of August, A. D. 1896.

JACOB V. CARTER,
Notary Public.

———

And the said Harry W. Breckenridge, who is impleaded with The United States Pipe Line Company in the above entitled suit, by Joseph M. Roseberry, his attorney, appears and defends this action, and says that he is not guilty of the injury whereof the said The Pennsylvania Railroad Company hath complained in its declaration, nor of any part thereof, and of this he puts himself upon the country, and the said The Pennsylvania Railroad Company doth the like.

JOSEPH M. ROSEBERRY,
Attorney for Defendant,
Harry W. Breckenridge.

WARREN COUNTY, ss.—

Harry W. Breckenridge, of full age being duly sworn, on his oath says, that he is the defendant in the above plea mentioned, and deponent further says that the said plea is not intended for the purpose of delay, and that he, the deponent, verily believes that he has a just and legal defense to said action on the merits of the case.

HARRY W. BRECKENRIDGE.

Sworn and subscribed before me, at Belvidere, New Jersey, August 21, 1896.

FRANK W. GIVENS,
Commissioner of Deeds.

———

Therefore, let a jury come before the Judge of the Circuit Court of the county of Warren, aforesaid, at a

Circuit Court, to be holden at Belvidere, in and for the county of Warren aforesaid, on the eighth day of October, in the year of our Lord one thousand eight hundred and ninety-six. By whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, then, &c.

And now at this day, that is to say, on the said eighth day of October, in the year of our Lord eighteen hundred and ninety-six, at the said Circuit Court, held at Belvidere, in and for the county of Warren, before the Honorable William S. Gummere, Judge of the said Circuit Court of the county of Warren, according to the form of the statute in such case made and provided, come as well the within named The Pennsylvania Railroad Company, as the within named The United States Pipe Line Company, impleaded with Henry W. Breckenridge, by their attorneys within named, and the jurors of the jury being summoned to try the said issue also come, who to try the truth of the matters within contained, being elected, tried and duly sworn, upon their oath and affirmation say, that they find the defendant, The United States Pipe Line Company, impleaded, &c., not guilty of the trespass and ejectment within laid to its charge, in manner and form as the said The Pennsylvania Railroad Company hath thereof complained against it.

Therefore, it is considered that the said The Pennsylvania Railroad Company take nothing by its said writ, but that it be in mercy, &c., and that the said The United States Pipe Line Company, impleaded with the said Henry W. Breckenridge, do go thereof without day, &c. And it is further considered by the Court that the said The United States Pipe Line Company, impleaded, &c., do recover against the said The Pennsylvania Railroad Company, the sum of two hundred and twenty dollars and thirty-four cents for its costs and charges, by it laid out about its defense in this behalf expended and now here adjudged to the

said The United States Pipe Line Company, impleaded, &c., and with its assent, according to the form of the statute in such case made and provided, and that the said defendant, The United States Pipe Line Company, impleaded, &c., have execution thereof. Judgment entered and signed October eighth, A. D. eighteen hundred and ninety-six.

WM. S. GUMMERE, J.

Therefore, let a jury come before the Judge of the Circuit Court of the county of Warren, aforesaid, at a Circuit Court, to be holden at Belvidere, in and for the county of Warren aforesaid, on the eighth day of October, in the year of our Lord one thousand eight hundred and ninety-six, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, then, &c. And now at this day, that is to say, on the said eighth day of October, in the year of our Lord eighteen hundred and ninety-six, at the said Circuit Court, held at Belvidere, in and for the county of Warren, before the Honorable William S. Gummere, Judge of the said Circuit Court of the county of Warren, according to the form of the statute in such case made and provided, come as well the within named The Pennsylvania Railroad Company, as the within named Henry W. Breckenridge, impleaded with The United States Pipe Line Company, by their attorneys within named, and the jurors of the jury being summoned to try the said issue also come, who to try the truth of the matters within contained, being elected, tried and duly sworn upon their oath and affirmation say, that they find the defendant, Henry W. Breckenridge, impleaded, &c., not guilty of the trespass and ejectment within laid to his charge, in manner and form as the said The Pennsylvania Railroad Company hath thereof complained against it.

Therefore, it is considered that the said The Pennsylvania Railroad Company take nothing by its said writ, but that it be in mercy, &c. And the said Henry W. Breckenridge, impleaded with The United States Pipe Line Company, do go thereof without day, &c. And it is further considered by the Court that the said Henry W. Breckenridge, impleaded, &c., do recover against the said The Pennsylvania Railroad Company the sum of nineteen dollars and twenty-nine cents, for his costs and charges by him laid out about his defense in this behalf expended and now here adjudged to the said Henry W. Breckenridge, impleaded, &c., and with its assent, according to the form of the statute in such case made and provided, and that said defendant, Henry W. Breckenridge, impleaded, &c., have execution thereof.

Judgment entered and signed October eighth, A. D. eighteen hundred and ninety-six.

WM. S. GUMMERE, J.

I, Charles E. Harris, Clerk of the Circuit Court in and for the county of Warren, in the State of New Jersey, do hereby certify the above to be a true transcript of the proceedings and judgment in a cause wherein The Pennsylvania Railroad Company is plaintiff, and The United States Pipe Line Company and Henry W. Breckenridge are defendants, as the same remains of record in my office, and of the whole thereof.

In witness whereof I have hereunto set my [L. S.] hand and affixed the official seal of said Court, this twenty-fifth day of January, A. D. eighteen hundred and ninety-seven.

CHARLES E. HARRIS,
Clerk.

Warren County Circuit Court

SEPTEMBER TERM, 1896.

The Pennsylvania Railroad Company, v. The United States Pipe Line Company, et al.	In Ejectment. Bill of Exceptions.

[Filed January 18, 1897.]

Be it known, that on the first, second, seventh and eighth days of October, in the year eighteen hundred and ninety six, at a Circuit Court held at Belvidere, in and for the county of Warren, the issue joined in said cause between the said parties (*pro ut* the pleadings) came on to be tried before the Honorable William S. Gummere, Judge of said Court, and a jury duly empanelled for the purpose, and thereupon the said parties respectively to maintain the issue produced the following evidence, that is to say:

Plaintiff's counsel offers in evidence certified copy of a deed from Thomas Lomasson and wife to the Belvidere-Delaware Railroad Company, bearing date the third day of September, 1853, duly acknowledged on the same day before David A. Depue, Master in Chancery, and recorded in Book 38 of Deeds, page 393, on

the eighth day of March, 1854, and the same is marked Exhibit P 1.

LeRoy H. Anderson, sworn for the plaintiff.

Direct Examination by Mr. Strong.

Q. Have you in your possession the original lease from the Belvidere-Delaware Railroad Company to the United New Jersey Railroad and Canal Company? *A.* Yes, sir.

Q. Will you produce it? *A.* [Same produced].

Plaintiff's counsel offers in evidence lease bearing date the fifteenth day of February, 1876, from the Belvidere-Delaware Railroad Company to the United New Jersey Railroad and Canal Company, by virtue of an act of the Legislature of the State of New Jersey, entitled "An Act to authorize the Belvidere-Delaware Railroad Company to lease their road and franchises to the United New Jersey Railroad and Canal Company," and the assignment of the said lease to the Pennsylvania Railroad Company, approved March 19th, 1874.

Mr. Roseberry—I object to that lease on the ground that it was not recorded in the Secretary of State's office in two months, and had not been lodged with the Secretary of State to be recorded within one month from the time of its execution, as required by the act of 1871, which was in force then.

The Court—Why do you say it was not?

Mr. Roseberry—It says in the bill of particulars it was not recorded.

The Court—Read the act to which you refer. (Mr. Roseberry reads said act.)

The Court—Was not this lease made under a special act?

Mr. Strong—Yes, sir.

The Court—Read me that act.

Mr. Roseberry—I haven't got that act.

(Mr. Strong reads a copy of the special act passed 1874.)

The Court—I will reserve that question until I have an opportunity to examine the statutes with more care. In the meantime I will admit the lease in order to get on with the case.

Mr. Harris—Our right to exception will be reserved also, then.

Said lease is marked Exhibit P 2.

Q. Mr. Anderson, there is annexed to this paper what purports to be an assignment of the lease? *A.* Yes, sir.

Q. I call your attention to the attestation of that; is that your signature? *A.* Yes, sir.

Q. In two places, I see. *A.* In two places; yes, sir.

Q. First as secretary. and subsequently as a witness? *A.* Yes, sir.

Q. That was signed by you? *A.* Signed by me in both instances.

Q. And the signature purporting to be the signature of Mr. Stevens; what is his first name? *A.* J. G. He was president of the company at the time.

Q. Did you see him sign it? *A.* I did.

Q. And as to affixing the seal; did you see the seal affixed? *A.* I did; yes, sir.

Q. Is that the seal of the United New Jersey Railroad and Canal Company. *A.* It is; yes, sir.

Q. And did you sign your name as secretary and witness at the time of signing by the president and sealing of this paper? *A.* I did; yes, sir.

Not cross examined.

Plaintiff's counsel offers in evidence the assignment of said lease.

Mr. Roseberry—We make the same objection to this assignment of lease as we did to the lease, that the statute of 1871 requires it to be recorded.

The Court—I will reserve the decision of that question also.

Mr. Roseberry—And that such assignment was illegal.

The Court—Why?

Mr. Roseberry—Well, it was not properly lodged or recorded under this act.

Mr. Strong—It is the same point you made before, isn't it?

Mr. Roseberry—Yes.

The Court—I will reserve the question, but at the same time it is only fair to suggest to counsel that there may be another question in the case which will do away with the necessity of deciding this question. Assuming that the assignment and lease were void for failure of complying with the statute, it may be that the railroad company, the plaintiff company, have been in possession of this property under cover of title for more than the statutory period of twenty years; I see the lease was dated in 1874, and if that were so, as against any third person, they would have their rights to maintain an action of ejectment, whether the lease was valid or not.

Said assignment of lease was marked Exhibit P 3.

Eldridge G. Weir, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Where do you reside? *A.* City of Trenton.

Q. Were you formerly a resident of Warren county? *A.* Yes, sir.

Q. Down to what time? *A.* To 1889.

Q. And for how long prior to that time? About forty years.

Q. What is your profession? *A.* Civil engineer; surveying.

Q. And how long have you followed that profession? *A.* Twenty-eight years.

Q. Where have you followed it? *A.* Up to seven years ago in this county, and in the State of Pennsylvania. Since 1889 the majority of my business has been in the city of Trenton.

Q. I call your attention to this deed, of which I have offered a certified copy, from Thomas Lomasson to the Belvidere-Delaware Railroad Company, dated the third of September, 1853, and call your attention to the description of that deed; are you familiar with the description? *A.* Yes, I had a transcript of a description.

Q. Well, look at the certified copy. *A.* This seems to be the same as the transcript; I have the description.

Q. Can you locate that description? *A.* Yes, sir.

Q. I call your attention to this map; did you make that map? *A.* I did.

Q. From personal survey, or how? *A.* Personal survey.

Q. Does that show the land described in this deed? *A.* Shows a portion of it.

Q. Does it show the crossing of the public road under the railroad at this point? *A.* Yes, sir.

Q. I call your attention to the description of the land in question in this case, which is a piece of land in the township of Oxford, lying within the public highway leading from Belvidere past the Shippen Spring; is that highway shown there? *A.* Yes, sir.

Q. Just show where it is on the map. *A.* The part with the yellow tint extending down under the railroad and out to the right of the map.

Q. Where is the Shippen Spring? *A.* Right in there (indicating).

Q. Marked "Spring" on the map? *A.* Marked Spring.

Q. That is the highway and the land; where is the culvert? *A.* The culvert is at this point (indicating).

Q. Shown on the map, is it? *A.* Yes, sir; it is marked.

Q. That is the culvert referred to in the description, is it? *A.* Yes, sir.

Q. Now in locating this description in the land of the Lomasson deed, it begins at a stone in the boundary line between said Lomasson and Thomas and Amzi White? *A.* That is the point (indicating).

Q. The line in question, how is that marked? *A.* "Old Lomasson and White division line."

Q. And this description begins at a stone in that boundary line, as I understand it? *A.* Yes, sir.

Q. Now how is that boundary line defined? *A.* Upon the ground, do you mean?

Q. Yes; what do you find on that line? *A.* A line fence extending from the east side of the public road off easterly over the hills; I don't know how great a distance; half a mile or more, I should judge; I didn't trace it all the way.

Q. A straight line? *A.* Yes, sir.

Q. Is the fence an old or recent one? *A.* Oh, it is an old fence.

Q. How long have you known that fence, of your own knowledge, to be there? *A.* Twenty-two years ago I had occasion to make a survey right in that neighborhood.

Q. And did you find the line located then as it is now? *A.* Yes, sir.

Q. Now, beginning at the stone in this boundary line the first course is north eleven degrees and three-quarters east two chains and two links? *A.* (Referring to map.) That is, beginning here at the place marked "beginning" and extending up to that point, which is about six inches on the map.

Q. That course is the course and distance given there on the map? *A.* Yes, sir.

Q. And brings you to the point which you now indicate? *A.* Yes, sir.

Q. Second course north six degrees east three chains six links? *A.* That extends up along the easterly embankment of the railroad, crossing the highway at about (shown on the map) about three inches above the highway, where my finger now indicates.

Q. That carries you beyond the crossing in question, does it? *A.* Yes, sir.

Q. The third course north one degree one-quarter west three chains? *A.* That is still further north.

Q. Then the other courses, there are upwards of twenty of them? *A.* Yes; they extend up quite a distance and coming down on the other side of the railroad.

Q. You have not shown on the map the entire tract? *A.* No, sir; it would be a map as high as this ceiling.

Q. It extends a very long distance, does it? *A.* Yes, sir.

Q. Then coming back? *A.* The first course shown on the map coming back is a portion of the fourteenth course in that description.

Q. Now, the courses between those that you have given and the fourteenth course are courses running in the same general direction and then crossing above and coming back? *A.* Yes, sir; coming down on the westerly side of the embankment.

Q. So that it makes a long tract, does it? *A.* Yes, sir.

Q. Then the first one shown coming back is a part of the fourteenth? *A.* Part of the fourteenth course.

Q. Which leads south eight degrees three-quarters east? *A.* Yes, sir.

Q. Two chains ninety-two links? *A.* Down to that point indicated by my finger.

Q. Then the fifteenth course runs how? *A.* South one and one-fourth degrees east one chain and fifty-

seven links to the south side of a large willow tree marked for a corner in the boundary line between said Lomasson and William P. Robeson, Esquire, running from that point to that point down to a point indicated by a willow tree,

By the Court.

Q. Is that tree there now? *A.* No, sir; it is not.

Further Direct.

Q. Then along the same sixteen ——? *A.* Thence along William P. Robeson, Esq., north eighty-one and a half degrees east one chain and twenty-seven links; that extends easterly to where my finger is now; thence seventeen, south three-quarter degree west, two chains and four links down to that point; eighteen, south eighty-one and a half degrees west, a parallel course with the sixteenth course, in a contrary direction, south eighty-one degrees and a half west one chain fifteen links back to there; then nineteen, south six degrees west two chains seven links, crossing the public road at the point where my finger indicates; twenty, south eleven and three-quarter degrees west one chain seventy-four links to the boundary line between said Lomasson and said company, down to that point, that is in the boundary line between Lomasson and this Company; thence along said Company's and said White's first mentioned boundary line, that is the line mentioned in the beginning of the description, south fifty-six and a half degrees east one chain and sixty-four links to the place of beginning. From that point back to the beginning part, containing two and a half acres of land more or less.

Q. Now reversing these courses, beginning at the end of the next to the last course and reversing that, from the division line as you found it there, taking the distance as you find it there, brings you where?

A. Well, starting from the beginning corner and reversing this course, that would run north fifty-six degrees thirty minutes west, instead of southeast; then reversing this course from a southwest course to a northeast course would be there (indicating).

Q. Then reversing the next course to that? *A.* Lands me there (indicating), and so on round.

Q. Now measuring the distance called for by the two courses from the boundary line back, where do those two courses carry you? *A.* I don't quite understand your question.

Q. Measuring the distance called for by these two courses from the boundary line, and following these courses, where would they bring you to; do they carry you across the public road or not? *A.* Carry me across the public road and to a piece of land called Robeson.

Q. I mean by measurement on the ground, where do they carry you; how far beyond the crossing? *A.* About fifty feet beyond the centre of the highway, north of the centre of the highway.

Q. And how far beyond the northerly line of the highway? *A.* I plotted this on here as being two rods in width; I don't know whether it is that width or not; if it is two rods in width it would be t hirty-five feet north of the north boundary of the highway.

Q. What is the width of the road as being laid out, as actually existing on the ground? *A.* I didn't take that definitely.

Q. Does this Robeson deed include or not the land mentioned in the description of the declaration, being land within the culvert? *A.* Yes, sir; it embraces that.

Q. How long could you say that you knew of the existence—you knew of this boundary line and located it twenty-two years ago? *A.* Twenty-two years ago—

Q. The Lomasson and White line? *A.* I was called to assist in laying a public highway from Roxburg

Station, or near there, on the Belvidere branch of the Pennsylvania Railroad, northerly, up to the mouth of this culvert. I had occasion to take the property lines of the different properties in making that survey That old fence, as the land exists there now, was described to us as the line between; I think the owners were John Roseberry and George K. Lomasson, and that was the old Lomasson division line.

Q. Well, now let me ask you as to this land which is shown on the map there and included in the Lomasson deed. How is that land—how has it been used within your recollection; what is there there that occupies that piece of land? *A.* This strip (indicating).

Q. Yes. *A.* It is the public highway now along here.

Q. No, no; I mean the Lomasson tract? *A.* Oh, it is used for railroad purposes.

Q. Well, describe what there is on it? *A.* Well, there is an embankment varying in height, I should judge from twenty, twenty-two, perhaps twenty-three or twenty-four feet high in places; the widths of that embankment are marked on this map at various points; at the beginning point down here it extends forty-five feet, forty-three feet to the east, thirty-nine feet to the west; one hundred feet up thirty-four feet, two to the east, forty-three, four to the west.

Q. Are the lines of the embankment shown here? *A.* Shown here by a broken line, or a dotted line.

Q. And the embankment to the east continues throughout the entire distance shown on the map? *A.* Yes, sir.

Q. What is that embankment used for, did you say? *A.* It carries a railroad track.

Q. And is operated as a railroad? *A.* Yes, sir.

Q. At the point that you have marked "culvert" there, what is there there? *A.* That is a roadway extending through the embankment of the railroad.

Q. What is there that passes through there? *A.* A highway or roadway.

Q. That is where the public road goes under, is it? *A.* Public road; yes, sir.

Q. What is the character of the culvert, is it a solid stone arch? *A.* The arch proper, I think, is cement, masonry, while the wing walls are dry masonry; that is my recollection.

Q. Do you know the dimensions of it? *A.* Not exactly; no, sir.

Q. Approximately, can you state? *A.* Well, I should judge twelve feet in the clear, and perhaps forty feet through it.

Q. By what company is the railroad operated? *A.* Known as the Pennsylvania Railroad Company.

Mr. Roseberry—Well, does he know?

Q. Do you know? *A.* Only from hearsay.

The Court—You can prove that by somebody else.

Q. How long have you known the situation which you have described to exist there; that is, the existence of the embankment and the railroad track, and all, as it appears at present? *A.* About thirty-five years.

Q. You have been more or less familiar with the locality as long as that? *A.* Yes, sir.

Cross Examination, by Mr. Roseberry.

Q. From whom did you obtain information that the old fence between John Roseberry and Lomasson was on the line? *A.* I don't remember it exactly, Mr. Roseberry. There was a large party of us the day we were making that survey. I think your brother, John Roseberry, was along; it strikes me Mr. Levy Young was along, and two or three others of the neighbors went by there. I don't remember who the attorneys were in the case now.

Q. Was Mr. Harris along? *A.* It strikes me he was; I won't be certain.

Q. Well, is that the line between Mr. John Rose-

berry and Lomasson? *A.* I won't be positive about that. That was pointed out as the division line of the George K. Lomasson part of the farm.

Q. Do you say you surveyed back to the line of this fence when you made this map? *A.* I merely sighted along the fence as far as I could see it.

Q. Did you survey it from the corner at the river to ascertain the line? *A.* No, sir.

Q. In ascertaining the line, did you examine the White deed and Lomasson deed? *A.* Which White and Lomasson deed do you refer to?

Q. The deed from Thomas and Amzi White to the Belvidere-Delaware Railroad Company? *A.* I had a copy of that with me. In making this survey I merely used the Lomasson deed.

Q. Did you find that the line coincided with the Lomasson and White deed? *A.* I don't remember whether it did or not.

Q. Have you got a copy of the White deed? *A.* I have.

Q. Will you look at that line, please? *A.* Now, what is your question, Mr. Roseberry?

Q. Do you find that the line in the White deed and the Lomasson deed coincide? *A.* In what?

Q. On that line, the bearings? *A.* There is a difference of one and a quarter degrees.

Q. In the line, in the bearing of the Lomasson deed and the White deed? *A.* Yes, sir.

Q. So that one or the other is wrong? *A.* I don't know about that.

Q. Where did you begin to make the survey? *A.* In that line.

Q. Where in that line? *A.* As indicated by the fence.

Q. As indicated by what fence? *A.* The division line fence between the White and Lomasson tract.

Q. Was that the worm fence? *A.* Yes, sir.

Q. Then what, what point? *A.* Why, from a point

—that is all; I simply started in that point, and in the centre of the railroad track.

Q. You started in the centre of the railroad track? *A.* Yes, sir.

Q. What data had you for starting in the centre of the railroad track? *A.* The extension of the Lomasson line across that track.

Q. Did you know where the rails were laid; the exact position in which the rails were laid on that track when you begun there? *A.* Only as I saw it on the ground.

Q. You simply then assumed that, and made measurements from it, did you? *A.* I measured from the—

Q. Well, answer my question; you then assumed that the track was in a certain position and measured from that? *A.* No; I started from the easterly embankment of the railroad at an old stake that stood there with the tack driven in it, which looked to me like one of the original fence stakes that had been there for years, I assumed as the easterly boundary.

Q. Had been there for years? *A.* It looked so.

Q. How high was that stake with a tack in it? *A.* Why, about a foot above the ground.

Q. You assumed then that that was the corner? *A.* About the easterly line of the railroad right of way.

Q. What do you mean then by stating that you took the centre of the track? *A.* I did my work from the centre of the track; I extended the Lomasson line up on the centre of the track and did the bulk of my work on the embankment.

Q. You first ran up the center of the track then to ascertain the line of embankment, did you, on each side? *A.* I ran a parallel line with the side lines on the embankment, and then measured my sights from that to establish my corners, as I would get my distances.

Q. You started a corner from the stake with the tack

in it and surveyed it around; followed the deed? *A.* Followed the deed after I got my starting point.

Q. When you got up to the other end and came back, how did that line——? *A.* I didn't go to the other end; you mean the extreme northern end of the property?

Q. Yes. *A.* I didn't go that far.

Q. The north end of the property mentioned in the deed? *A.* I didn't go that far.

Q. Why didn't you go that far? *A.* Well, I didn't think it was necessary.

Q. How could you get the width then up there at the northerly extremity of the track? *A.* I explained that, I think, in my direct testimony; I took the course from this point, which is marked a beginning, reversed them, reversed the courses and then ran up in this direction, and so on back.

Q. Oh, you didn't run around the tract then at all? *A.* No, sir.

Q. Is that the way it was surveyed? *A.* I don't know how it was surveyed.

Q. Where does it begin and which way does it go until it arrives at the end? *A.* Begins by the description on the easterly side of the embankment, follows up on the easterly side, crosses over and comes down the westerly side.

Q. It goes on up this twenty some courses? *A.* Yes, sir.

Q. You didn't follow the survey all around and come back to the beginning, did you? *A.* I ran both sides.

Q. Answer that question; you didn't start at the beginning point and run all the way around the track just as described in the deed? *A.* No, sir; I didn't.

Q. You simply reversed, you ran first one line on the easterly side of the railroad and then came back and ran the other line diagonally? *A.* I ran three courses

on the easterly side, then came back and ran the westerly course.

Q. Is that the correct location of that culvert and road? *A.* That culvert is located from the distance—what is that building, that little building there on the southwest side of the road? You asked me if the culvert was the proper location, did you not?

Q. Yes. *A.* That culvert is located at 226 feet 9 from the centre point of the Lomasson line; between the two tracks; measures right up the track, 226 feet 9.

Q. You ascertained that from the outside lines, did you? *A.* No, sir; that is from actual measurement right up the track.

Q. What is that building there on the south side of that public road? *A.* That is marked "formerly a barn."

Q. What side is that of the public highway there? *A.* South side.

Q. Do you know whose barn that was? *A.* I do not.

Mr. Strong—I suggest that you are getting beyond cross examination.

The Court—He has a right to cross examine on the map.

Q. Did you put that barn there, that location on the map? *A.* Did I plot that on there?

Q. Yes, sir. *A.* Yes, sir.

Q. From information or knowledge of your own? *A.* From information.

Q. How far is that located on the map from the public highway? *A.* About thirty feet from the centre of the highway down to the barn.

Q. Well, from the edge of the highway, how far? *A.* Well, it is shown here as about fifteen feet.

Q. And how far from the railroad line? *A.* From the property line or the foot of the embankment?

Q. Foot of the embankment. *A.* About thirty feet.

Q. And from the line that you have got drawn there? *A.* From the property line?

Q. Yes? *A.* About twenty-one feet.

Q. About thirty feet, then, from the bottom of the embankment? *A.* Yes, sir.

Q. How wide is the road there? *A.* The rail-road?

Q. The public road. *A.* I didn't take an actual measurement of it.

Q. Well, on what scale is the road put on the map? *A.* It is plotted there as a two-rod road.

Q. Then you made, in measuring the building from the centre, you made it a rod, did you? *A.* Assumed a rod each side for the width of the road.

Q. You don't know the actual width of the road? *A.* I do not, because it is so irregular. The fences, I didn't bother trying to get that.

Q. Which way does the fence run from the culvert—the south fence? Have you got it correctly plotted there? *A.* No, sir; not absolutely correct.

Q. You plotted that from measurement? *A.* No, sir; from being on the ground.

Q. You say it is not correct? *A.* Only from ocular measurement.

Q. That is, from eyesight? *A.* Yes, sir.

Q. How far is it from the road up to the Robeson acre, as you have it mapped? *A.* This point here (indicating)?

Q. Yes. *A.* Well, I can get it better from the centre of the road than anywhere else.

Q. Well, from the edge of the road? *A.* Well, it is about thirty-five feet.

Q. Suppose those lines were swung around so that came up and struck the corner of that barn, where would that carry it? *A.* I don't know.

Q. Would it carry it south of this road here? *A.* I don't know.

Q. Suppose this line was swung around so as to

strike the edge of the barn, where would it carry it in this direction, south of that road?

Mr. Strong—I hardly think that is correct.

The Court—I don't understand the question.

Q. I ask if that whole Robeson lot was swung down so that the south line of the Robeson lot strikes the corner of that barn, leaving the river corners as they are, where would it carry it, south of the road or not?

Mr. Strong—Is that a proper cross examination? What basis is there for that question? I have simply introduced this map as a diagram, showing the courses and distances of the Lomasson deed, and anything that has a bearing on that is a cross examination; but counsel, I think, desires to enlarge the cross examination so as to take in questions pertaining to the location of the Robeson acre. We have nothing to do with that at this time. I have simply introduced it for the purpose of following those courses around and seeing where the courses with the distances would carry the lines.

The Court—I think the question is competent. One of the questions asked this witness was in relation to the location of a portion of the southerly line of the Robeson tract, that is, the line separating the Robeson tract from the tract conveyed by Lomasson to the company, and that whole line is shown on the map. Now, I understand the question to be this: If the Robeson line was swung around so as to come between the southerly side of the road and the diagram of the place marked as a barn, whether it would be to the south of the road.

Mr. Roseberry—That is correct.

The Court—The witness may answer it.

The Witness—I would like to explain my answer before I make it.

Mr. Roseberry—No, you can answer it.

The Court—He can explain his answer.

A. This barn, or the location of the barn, was pointed out to me by a Mr. James Depue by a little

depression in the ground and some stones and stuff that lay there; that is merely struck on there without any reference to its accuracy whatever; I don't know the size of the barn; it was merely plotted on there without any size or reference to size. Now, to start a line from the river and pass through one corner of the barn, where it would land, I don't know.

Q. Can't you tell? *A.* I can't tell, because I don't know where that barn is on the ground.

Q. I mean according to your location there on the map, not the location on the ground; the location on the map, would it not come on the south side of the road? *A.* That appears so; I haven't any straight edge to draw it by.

Q. What is that very little line that runs up there; this line here, what is this (indicating on map)? *A.* That is a line presumably parallel with the outlet of the stream.

Q. Had you anything to draw the Robeson acre except what information you got in the Lomasson deed? *A.* No, sir; I had the description.

Mr. Strong—One moment; I submit—

The Court—Yes, that is immaterial, I think.

Q. Why did you put that on there? *A.* I haven't an acre of land in my tract.

Q. You didn't have an acre of ground in your tract? *A.* I didn't have an acre of land in my tract, to make this line straight to the river, and I had to take some in up here to offset what I lost up there.

Q. Then that boundary line runs down to the river; that is north of the mouth of the run of the water, is it? *A.* That is a trial line that I ran from a point near the willow, producing the line of the sixteenth course, taking the sixteenth course to the river; a straight line; I just ran it as a trial line.

Q. Your idea of putting that piece in there was to take the place here between the line as you ran it? *A.* That is the idea.

Q. What authority did you have for that?

Mr. Strong—Now let me ask again whether that has any relevancy to the direct examination.

Mr. Roseberry—He has got the Robeson lot in there, and I think I can ask the exact location of the Robeson lot.

The Court—I think the defense have a right to cross examine on any material fact in this case which appears on that map, Mr. Strong; it ought not to have been put on the map if it is not to have a bearing on this case.

Mr. Strong—I will ask an exception.

Exception granted.

Q. You found it necessary to put in a littte territory to the south, for the purpose of making up the little territory which is lost by the prolongation of the line of the spring? *A.* I said so, yes.

Q. Is that the exact location of the spring? *A.* The spring is exactly located down here where there is an eleven foot offset; that point is exactly located.

Q. Where is your spring? *A.* Right in there (indicating).

Q. What is that other projection? *A.* That is another spring.

Q. Does not the largest volume of water come from that spring? *A.* Here is another.

Q. Does not the largest volume of water come from that lower spring, the southeastern spring? *A.* I don't remember about that.

Q. Isn't there a very large volume of water comes from that spring?

The Court—What is that cross examination on?

Q. Where does that line strike that spring? *A.* This line hits four feet north of the spring.

Q. What was your reason for putting in this line here?

The Court—He has already told you that, in order

to make up the offset of the amount of land called for on the upper line.

Mr. Roseberry—But I ask why did he want to make it up?

Q. Why did you want to make that up down there?

Mr. Strong—I object.

The Court—I don't think that is material at all, why he wanted to make it up.

Mr. Roseberry—It may be of some considerable importance. I want to know why he made this line; he hasn't given any reason why he took in this little piece to make up that little piece there.

The Court—It is immaterial.

Q. Well, then there is some part of that map you cannot explain? *A.* Every inch of it, I guess.

Q. Where is located that tree; right here at the point of the road; that large willow tree? *A.* At the point of the road?

Q. Yes. *A.* I don't remember that willow tree there.

Q. Do you remember any willow tree down here on the bank of the river? *A.* Not distinctly; no, sir; there were several trees down in the neighborhood there.

Q. Did you locate any of the trees here? *A.* One tree.

Q. Which tree was that? *A.* The one up by the spring.

Q. Why did you take that spring? Is that marked? Those two springs there, from knowledge, the one called Shippen Spring? *A.* There are really two springs there.

Q. Close together, are they not? *A.* Quite close; yes, sir.

Q. Who pointed that out to you? *A.* The springs?

Q. Yes. *A.* Mr. James ——.

Q. James Depue? *A.* He was about; I don't know

whether he pointed it out to me or whether we all walked down together.

Q. Where do you get the location of that "formerly a house"? *A.* Mr. James Depue.

Q. Where did you get that roadway to the house? *A.* Through the assistance of Mr. James Depue.

Q. Where did you get that tree, "formerly a willow"? *A.* Through Mr. James Depue, and also the record I had calls for a tree there.

Q. Well, the record called for a tree there? *A.* Yes, sir.

Q. Mr. Weir, tell me why you depend at this point on that stake with a tack in it; why you didn't run all the way around that tract and come back here and come down? *A.* No; I can't give you any reasons why, only my time was limited to make this survey, and I used the shortest and best method to get it.

Q. When did you make that? *A.* Only a week ago last Monday.

Q. When did you make the survey? *A.* The week previous.

Q. How long were you at it; what day was it? *A.* I was on the ground on Wednesday and Friday, two weeks ago.

Q. You were two days then surveying there? *A.* Two days on the ground, three days; one was rainy; I don't count that.

Q. Did anybody tell you not to make that survey around the north end of this tract? *A.* No, sir.

Q. Were you requested not to make it? *A.* No, sir.

Q. Was there a suggestion not to make it? *A.* No, sir.

Q. Were you instructed where to make it? *A.* Yes, sir; my instructions were to go on the ground and use my own means and method of making the survey.

Q. Did they instruct you exactly where to go? *A.* No, not where to go.

Q. Did they tell you they could not bring the sur-

vey together if you should make it all the way around? *A.* No, sir; I never heard that before.

Q. Who was with you when you surveyed it? *A.* A man by the name of Ferguson of Trenton, and two Belvidere gentlemen.

Q. Mr. Ferguson is—— *A.* He is my assistant.

Q. Who were the Belvidere men? *A.* One was Emery, and the other, I think, was Waganer.

Q. Was anybody else surveying there at the time? *A.* No, sir.

Q. Was anybody around there when you were surveying and talking to you about the survey? *A.* No, sir; except the track foreman.

Q. By whom were you requested to survey there? *A.* Mr. A. W. Preston, division engineer of the Pennsylvania Railroad.

Q. Did he talk to you about that before you came up? *A.* I met Mr. Preston on Monday, and I came on the work on Wednesday.

Q. Where did you see Mr. Preston? *A.* In my office in Trenton.

Q. How long a conversation had you there? *A.* Perhaps thirty minutes.

Q. You went on there yourself, did you not? *A.* No.

Q. Did he show you the deed? *A.* No, sir; I didn't get the documents until the following day.

Q. Well, you talked about the location of this survey, did you not? *A.* No, sir; I don't think we did; I don't remember of it, not at that time.

Q. Was James Depue down there with you all the time you surveyed? *A.* Oh, no.

Q. Was he there any of the time? *A.* I saw James Depue, I think, only a few minutes on Wednesday afternoon, perhaps; I am not sure.

Q. Where? *A.* On the ground.

Q. Was he the only one besides Mr. Emery and Mr. Wagner? *A.* That is all I remember of.

Q. You have described there a currant bush; how

did you come to put that there? *A.* Through Mr. James Depue.

Q. Did he locate the currant bush? *A.* He did.

Q. Told you just where it was, did he? *A.* Pointed it out; I located it, referenced it, and plotted it on the map.

Q. Why didn't you put down the width of the public road? *A.* I didn't know it would be necessary; I gave the general direction of the public road as it appeared on the ground from ocular measurements. I remember this. I had a stake sticking right here, which was one hundred feet from this point; a large one, sticking in the easterly side of the road one hundred feet from that point, and from those stakes as a guide I plotted the road.

Q. Do you mean to say that road runs as close to the spring as that? *A.* No; the wagon track is about that far.

Q. How far is the wagon track from that spring? *A.* Well, it must be twenty feet or more up to the wagon track.

Q. How far is it on the map? *A.* The wagon track isn't shown on the map.

Q. What have you got there on the map? *A.* This is merely the general direction of the road, and plotted at the width of two rods wide.

Q. What authority had you for plotting it two rods wide? *A.* None, only assuming it; that is the general width of a public highway.

Q. Did you give the edge of the road from the spring? *A.* No, sir.

Q. Well, just give that. *A.* I can't give it exactly.

Q. You haven't got the road, then, exactly as it is? *A.* Not the wagon track.

Q. And you can't tell how far the wagon track is from the spring, can you? *A.* I can give a very close approximation.

Q. From the fence, the spring? *A.* Which, the easterly fence?

Q. The wire fence. *A.* I think I can give that very closely; it is about forty feet from the wire fence to the spring.

Q. (By Mr. Strong.) Show the fence you mean. *A.* From the easterly fence; now, this line here is about where the fence is; the easterly fence of the road; there is a stake stands just on the roadside of that fence and it is thirty-eight feet and a half from that stake down to the spring; so from the fence down to the spring it is about forty feet.

Further Cross Examination.

Q. I was referring to the westerly fence. *A.* There isn't a westerly fence there that I am aware of; I don't remember any.

Q. Isn't there a fence on both sides of that road? *A.* I think not; yes, I guess there is a fence on both sides.

Q. Now, how far is it from that fence on the westerly side? *A.* I don't know; I didn't measure it.

Q. How far is it from that one hundred feet to the spring that you speak of? *A.* Thirty-eight feet and a half from the one hundred feet stake.

Q. Were not you and Mr. Preston on the train together when you went there one day? *A.* No, sir.

Q. Or came away? *A.* No, sir.

Q. Didn't you go in together? *A.* No, sir.

Q. Were not you on the train together? *A.* We came to Belvidere together and parted here at Belvidere.

Q. You went on down there? *A.* Yes, sir.

Q. What became of Mr. Preston in the meanwhile? *A.* I don't know.

Q. Did you go back with him? *A.* No, sir.

Q. On what scale is your map drawn? *A.* Twenty feet to the inch.

Q. Where does this line carry you at the river; I see you have it prolonged to the river; where does that carry you there? *A.* I don't know.

Q. Where is that point? *A.* That point is on top of the river bank.

Q. Then what is this line here? *A.* That is to represent the northerly end of the westerly right of way of the Thomas White property.

Q. Thomas and Amzi White? *A.* Thomas White and Amzi; yes, sir.

Q. Where is that corner? *A.* That corner is just west of a wire fence standing about on the top of the slope as it begins to descend to the river.

Q. On the west of a wire fence? *A.* Well, I won't be certain but that there is a little fence there; I didn't go down to the spot myself.

Q. How did you come to make it then? *A.* From the difference in the distance of one chain and sixty-four links, and three chains and fifty links.

Q. The difference? *A.* Yes, sir.

Q. So you fix it there, but yet you don't know where that point is, do you? *A.* No; not exactly.

Q. And you don't know how prolonged— *A.* That I didn't measure.

Q. You don't know where this is either, do you (indicating a point on the map)? *A.* That is merely a prolongation of the line of the river.

Q. Then so far as this is concerned, that is a sort of imaginary line? *A.* No; that is plotted from measurement.

Q. If that corner is true, that line is true? *A.* Yes, sir.

Q. You say the difference is three and a half chains, or something; how many feet is that? *A.* One hundred and twenty-two feet, nine inches, in round numbers.

Q. How much? *A.* 172.76 feet.

Q. You don't know the distance from there to the river? *A.* No; I don't.

Q. I see you have got in the sand bar; why did you put that there? *A.* Why there is a bar extends out there; looks like a recent formation.

Q. And your line runs then to what you call the easterly line of the sand bar? *A.* No; it is about on a line with the turf or sod, which seemed to be above that sand bar; my line ended at that point; it was really a little on the sand bar.

Q. Does that represent the turf line? *A.* That is about at the base of the turf—no, the turf is really a little back of this point, at this point along here; of course it is washed here; I don't know whether it has covered up any turf or not.

Q. How is the wash there; just describe that. *A.* It looks to me as if it came down under this roadway, the culvert, and so on down across the shore of the space between the roadway and the river, pushed it right out in the river, made a little sort of bar out there; it isn't very high.

Q. It runs from nearly the spring's mouth down to the stone heap—did you see that stone heap down there? *A.* No; I didn't look for any; didn't know there was any there.

Q. And the reason you put that in as a sand bar, there was a wash came down through this culvert down to the river and lodged there?

The Court—No; he says it looks as if it had; he don't know where it came from.

Mr. Strong—I submit that is immaterial, anyway.

The Court—It seems to be, entirely.

Q. Did you say you made the corner of the fence 122 feet down there? *A.* The distance from the Lomasson line down to that point should be 122 feet and something.

Q. Did you measure that? *A.* No, sir; I didn't.

Q. What wire fence were you speaking about? *A.* I didn't say positively there was a wire fence there; there is a fence that stands along 99.

Q. Running down here, this fence here (indicating)? *A.* Yes, sir; and I think some bars or rails extend a little above this point, a little north of it. I know the man I sent down had to jump over a fence to the point I wanted him to get to.

Q. What is your variation from September, 1853, to the present time? *A.* The correct variation should be two degrees, forty-five minutes, and a fraction.

Q. Now, how did you get that, Mr. Weir? *A.* From the records of the United States Coast Survey; but actually, as I found it on the ground, it is two degrees forty minutes.

Q. How did you find that on the ground? *A.* The taking of the Lomasson line, and the courses that I had on the Lomasson line, and after I had gone far enough to get away from any local attraction, then I tested my needle.

Q. Where did you go to get away from local attraction? *A.* I did it at a point—two hundred feet from a point here marked willow tree; two hundred feet, that is about sixty feet west of where a spring is on that land.

Q. Where did you get in the Lomasson deed any courses running to that point? *A.* I backed the sixteenth course toward the river.

Q. You just then backed both lines of the Lomasson deed; of the Robeson property run by the Lomasson deed, you just backed two courses to the river, did you? *A.* That is the idea,

Q. And that is the way you tested it? *A.* It is on those lines I tested the variations.

Q. On the north side prolongated? *A.* Yes, sir.

Q. Did you find any indications of pig iron down around that stream? *A.* No.

Q. Or any wavering of the needle? *A.* No. I will

mention another point where I tried it; I tried it at a point midway between this willow tree and the road, two points on that line; there was no difference in the bearing, consequently there was no variation or attraction; both read alike.

Q. That is the New Brunswick variation? *A.* I don't know anything about the New Brunswick variation.

Q. What was the first variation you spoke of? *A.* From the records of the Coast Survey.

Q. Which point from the records of the Coast Survey did you take to show the point of variation? *A.* The point of Trenton, Oxford, Newton, Stroudsburg, Newark, Easton, Bethlehem, Millville, Philadelphia, New York, New Haven, Oxford, N. Y., and other points in the vicinity of those, and interpolated those points to find the variation at this latitude.

Q. Did you take the average? *A.* Interpolated those records at this point.

Q. What do you mean by interlopated? *A.* That was a certain radius around Warren county, and I brought all those in so it would leak in this county.

Q. Where did you go through this county? *A.* Well, I plotted it intended for the western end of the county.

Q. Well, didn't you have the variation for Easton? *A.* Yes, sir.

Q. Why didn't you take that? *A.* I think I used that, too.

Q. Why did you use it with these others to make an interpolation? *A.* Well, I had a point the other side of it, Newark; and I had Princeton.

Q. Why did you go all the way down to Newark? *A.* I had Princeton.

Q. Why did you take Princeton? *A.* I could demonstrate that to you if I had the work here to show you.

Q. Don't that survey give the magnetic variation of

a needle for a certain district? *A.* I have all records of variation of needle as far back as 1600.

Q. I know that, but don't it give the variation for a certain district?

The Court—Don't what?

Q. Don't the Coast Survey? *A.* Certainly; I have the records of variation for every year.

Q. Does not the records of the Coast Survey give you the variation of a certain district; for instance, take Easton? *A.* That is just for Easton; if it is given for Belvidere it is just for Belvidere; we have to get at an average from those things, and that is the only way I could get them.

Q. You said you went up as far as New England to get some of those bearings? *A.* New Haven.

Q. And you went up to Oxford, N. Y.? *A.* Yes, sir.

Q. Why didn't you take some place in Pennsylvania? *A.* I did.

Q. As far west as New Haven is east? *A.* I had Bethlehem and Philadelphia.

Q. Those are as far west as you took it, are they? *A.* This work was done—

Q. Now answer my question. *A.* I don't know, because—

Q. Why didn't you take some point west that was as far removed from this survey as New Haven is east? *A.* I did.

Q. Now what place is it? *A.* I don't remember, because this work was done eighteen years ago that I am speaking of; the start of getting this record—

Q. Did you go over it then to ascertain at this time whether it was accurate or not? *A.* Oh, I have made tests along every few years or so.

Q. How could you tell—if that was the record of the bearings eighteen years ago, how could you make an estimate for eighteen years afterwards? *A.* I have taken observations of the North Star since.

Q. The variations of different places are different, are they not? *A.* We have records of them in the Coast Survey.

Q. You say you made this record eighteen years ago? *A.* I told you a moment ago that this record of the variation of the needle I commenced to prepare it eighteen years ago for use, and I arranged it so as to take in a certain scope of territory, and I made it so as to take in the eastern part of Northampton county, and practically all of Warren county.

Q. If this was made up by you why did you call in the assistance of the Coast Survey? *A.* I had to have records from somewhere, and that is the only place I could get them.

Q. You had those records eighteen years ago? *A.* Commenced to get them, but I have had them since that time; I tested my variation; I have observed the North Star and found I was correct within two or three minutes, and let it go at that; and since that every year or two I take an observation to see where I am getting to.

Q. Isn't the proper way to take some point that cannot be affected by magnetic influence? *A.* Certainly.

Q. Isn't the proper way to find two established corners of certain years standing, and run between those corners, if they have no magnetic influence, and ascertain the variation? *A.* That is very good if you have two monuments and know the courses between these two monuments at a certain date, and take it to-day you can get the exact amount of variation between those two dates.

Q. So that the thing you did here was to take this bearing running down here and prolong it to the river, and then make another survey back here and take the difference? *A.* I fixed two points in that line and I read the needle on each point.

Q. The first thing is why did you fix the two points

on these lines? *A.* I wanted to get away from the influence of the railroad track and telegraph wire and wire fence.

Q. How did you fix the variation back here at this point? *A.* I didn't know what it was until I got away from the local attraction.

Q. How did you fix that point if you didn't have the variation to begin with down here? *A.* I didn't attempt to use any needle whatever on this work; I used the Lomasson line, and took the courses as given there in the Lomasson deed, and I ran the courses independent of the needle, because of local attraction there.

Q. And then you assumed that corner? *A.* No assumption about it whatever.

Q. How did you fix that corner? *A.* I ran the lines independent of the needle; my instrument is so arranged that I can take angles independent of the needle.

Q. That is if you have a beginning corner? *A.* Yes, sir; I took the line for my base, the old Lomasson line for my base, and I turned my angles from that line; it is a very easy thing to find what that line would be, described by those two lines if you knew the course of each one.

Q. Don't you have to have two established corners in order to do that by angles; don't you have to know accurately that corner and that corner there, in order to get definitely the centre of the track, to ascertain the angle? *A.* No; I don't understand your question anyhow.

Q. Unless you establish a corner upon the track, how could you draw your side lines by angles? *A.* By producing the Lomasson line to the centre of the track.

Q. What right have you to produce it to the centre of the track? *A.* The Lomasson line is a long, straight line—I don't know where it ends—one hundred feet from the river, or at the river, or in the river;

all I know about it, it is a long straight line, long enough to reach from the westerly side of the embankment down to the river. Being so, I produced that line down to the centre of the railroad track, and measured from there back to the outside of the embankment, or to where the fence stood, and assumed that as my westerly boundary, and ran my angles independent of the needle all the way around here. When I got to this point here (indicating) I had a point fixed on the easterly embankment; I went on top of the track; set the instrument here; took a back sight. On two of those points I tested my bearing to see how it checked with the bearing given in 1853 in the Lomasson deed, and found I was two degrees and forty minutes out of the way.

Q. Didn't you find any local attraction. *A.* I didn't find any; the two readings were alike.

Q. So originally you took the old fence? *A.* That was the start; that was the base.

Q. Did you see any other stakes there when you began on the embankment of the railroad? *A.* Two or three stakes there.

Q. Why did you take one and not the other? *A.* I took the one that hit in the prolongation of the Lomasson line.

Q. Then you took the big stake, did you? *A.* No; my measurement to get out to the edge of the right of way about up right opposite a large log like a rail.

Q. Are there not two stakes there right in the fence, a big stake and a little stake? *A.* I saw two or three stakes; I don't know whether it was in the fence. There were two, I think, on the road side of the fence; that is, one looked like a rail driven in the ground.

Q. Isn't the rail you are speaking of, or the stake, driven down in the ground, down the road further, about a chain and ninety links, or about ninety links down? *A.* I don't know about that.

Q. Aren't there three stakes there, and are not two

of them right in the wire fence, one about that far from the other? *A.* I don't remember seeing but one.

Q. You just said you saw three? *A.* One stake, besides this large piece of rail, looked like a post; might have been sawed off some time; I don't know.

Q. How large was the stake you took? *A.* That was to get my distance out——

Q. No, the stake you took there; how large was it? *A.* I say it looked like a stake driven down in the ground.

Q. Why didn't you take the other stake that was there? *A.* I did afterwards.

Q. How far was the other stake removed from that one? *A.* Well, it was a stake that had a tack in it; from the large stake I was speaking of a moment ago?

Q. Yes. *A.* I don't think it was over a foot or so.

Q. Why did you take the one stake in preference to the other? *A.* Well, I was chaining out some distances merely to get some starting point; merely to see if the railroad track was in the centre of the right of way.

Q. You merely took that then because one stake looked a little better than the other, and one had a tack in? *A.* No; not necessarily; no object in that.

Q. You said you took that stake as a prolongation of the Lomasson line; didn't I understand you to say awhile ago you didn't run the Lomasson line between Lomasson and White, or Roseberry, as you called it a moment ago? *A.* I only ran a portion of it up on the brow of the hill, and took the fence down at the base of the hill.

Q. That fence is crooked running up there, is it not? *A.* Follows the contour of the ground.

Q. If you stand on the railroad and look over that fence won't it shoot you right on over the other field, below the other field? *A.* Up over the hill?

Q. Yes. *A.* I don't know.

Q. Did you look at that? *A.* No, sir.

Q. When you strike the fence on top of the hill, there is a cedar tree there, isn't there? *A.* Yes, sir.

Q. Setting the fence on the hill, there is a road runs around there in a sort of semi-circle, do you remember that? You don't remember looking at the fence up there? *A.* Oh, yes; but nothing beyond the hill.

Q. Just answer that question. *A.* I didn't look at anything east of the brow of the hill.

Q. The brow of the first hill? *A.* Yes, sir.

Q. You didn't look at the fence on the brow of the second hill? *A.* No; how far is the second hill from the cedar you spoke of?

Q. It is across a field, probably three hundred yards. *A.* No; I didn't look at that.

Q. How near did you go up to that cedar, how near did you go to the top of the first hill? *A.* I did my work from the railroad bank by getting a point on the base of the hill from the east of the public road, then on by that fence past the cedar to a fence on the top of the hill.

Q. Now, right down here below the cedar, isn't there an angle in that fence? *A.* I didn't observe it.

Q. You didn't see it? *A.* No, sir.

Q. Is that fence then, according to your memory, straight, clear up the road past the cedar? *A.* It appeared so.

Q. Do you swear to that as a fact? *A.* I believe it was, as far as I can remember; I took the bend of the hill and directed the telescope and followed down the foot of the fence down to the road.

Q. Did you begin at the road and follow it up? *A.* I followed it both ways.

Q. When you got up a certain distance didn't you have to turn your glass around a little? *A.* No.

Q. Did you have it there in the centre of the square, that fence, all the way up? *A.* I tell you I used the brow of the hill and the end of the fence at the foot of the hill by the roadside.

Q. And I understand you now you took the point at the road and then you took the fence on the brow of the hill? *A.* Yes.

Q. That is all you took? *A.* Yes, and the general direction of the fence between those two points was an air line as far as I could see.

Q. Did you look to see? *A.* Yes, I followed it with the telescope.

Q. Didn't you turn your telescope? *A.* No, I was on the general line of the fence; wouldn't do to turn the telescope then.

Q. You say positively the general line of the fence is straight? *A.* Oh, there might be a little angle there on the point.

Q. Which stake did you take then? *A.* In that case I struck the little stake with a tack in it.

Q. After that did you try to fix the other stake? *A.* No, not after that.

Q. You say you didn't see the third stake there? *A.* I don't remember; there might have been after all a stake standing—

Q. Don't that deed call for a stone monument standing—? *A.* Calls for a stone, but I couldn't find any.

Q. Did you search? *A.* Looked around; yes, sir.

Q. You said that you took the variation of the North Star a year or two ago; what is the present variation you have taken? *A.* I don't remember; I haven't the record here; it was two years ago.

Q. And the variation you took in the survey of this was two degrees and how many minutes? *A.* Two degrees, forty-five minutes and a fraction; that is what it should be, but my instrument showed only two degrees and forty minutes; that five minutes might be the difference in the instruments, from the one I used and the one the surveyor used forty odd years ago.

Q. Is the magnetic variation affected by heat? *A.* Yes, sir.

Q. Then it is affected differently every day, is it not?

A. Yes, sir; there is a diurnal variation that we cannot compute.

Q. Do you know what it is? *A.* That varies.

Q. About how much? *A.* From five minutes up to a quarter of a degree.

Q. What time of day was this that you made the survey? *A.* In the afternoon; I don't remember the hour now exactly; about four o'clock, perhaps.

Q. Then you surveyed it in the hottest part of the day? *A.* No; the sun was pretty well down over the horizon then.

Q. What time did you begin the survey? *A.* At twelve o'clock; a little before twelve o'clock.

Q. Then how long did you survey? *A.* All of that Wednesday afternoon.

Q. What time did you quit in the afternoon? *A.* About five o'clock.

Q. And then you surveyed again on Friday? *A.* On Friday.

Q. What time did you begin then? *A.* About eight o'clock in the morning.

Q. What time did you quit? *A.* About one, I think, in the afternoon.

Q. Did you make any allowance for this diurnal variation? *A.* No, sir.

A. Did you survey this line here; is that the true line of that road?

The Court--He said he did not.

LeRoy H. Anderson recalled for further

Direct Examination, by Mr. Strong.

Q. I think it appeared—I am not sure whether it did—in your former examination, that you are Secretary of the United New Jersey Railroad and Canal Company? *A.* Yes, sir.

Q. That is the company by which this lease was as-

signed to the Pennsylvania Railroad Company? *A.* Yes, sir.

Q. Are you still that officer? *A.* I am.

Q. Still hold the same position? *A.* Yes, sir.

Q. Upon the execution of the assignment of the lease what change, if any, was made in the operation of the road? *A.* In what respect, sir?

Q. Well, there was an assignment of the lease from the United New Jersey Railroad & Canal Company to the Pennsylvania Railroad—was there any transfer made of the road or not?

Mr. Harris—I object to that question; the assignment has not been admitted yet; it is based upon the assumption that the assignment is admitted in evidence.

The Court—Not necessarily. I understand the question to be whether there was any change in the operation of the road after the date of this assignment; that is competent.

A. There was a difference, sir, in the method of—

Q. No, no; I don't mean as to that. *A.* As to the practical operation of the road?

Q. No, as to the company having control of it.

Mr. Roseberry—I obect to that, because there is better evidence.

The Court—What is the better evidence?

Mr. Roseberry—Well, if that assignment was in evidence.

The Court—The assignment might never have gone into effect. It is perfectly well settled that a man who enters into possession of property without a shred of legal right, and who remains in possession for twenty years, has a right to maintain that possession as against anybody, and during the whole twenty years as against any who has no title.

Mr. Roseberry—The objection is not levelled at that; it is levelled at this person who has no legal existence in the State of New Jersey.

The Court—Oh, yes; it has legal existence in this State.

Mr. Roseberry—Well, to operate a road.

The Court—Now, I don't understand what you mean.

Mr. Roseberry—It has no legal existence as an artificial person to operate that road according to the laws of New Jersey.

The Court—You mean it has no legal right to operate it?

Mr. Roseberry—Yes, sir.

The Court—That I think is entirely immaterial. You have no legal right to enter into the property of your associate counsel, but if you do so, and I come along afterwards and attempt to take possession of it from you, you can prevent me from doing it; and if I succeed in doing it, you can maintain an ejectment against me, although you have no particle of right there as against the real owner. And so in this case, the Pennsylvania Railroad, assuming it has no right to take possession of the road and operate it, it may be a fact that it has done so; and that, I understand, is what counsel seeks to prove, and if they did it seems to me it is very material to show that fact as against an alleged wrongdoer who finds that company in possession and comes along and undertakes to deprive it of that possession.

Mr. Roseberry—My objection is that the railroad company has no legal entity whatever.

The Court—You need not discuss that; I hold that it has. I think the question is perfectly competent to show that this plaintiff corporation has been in possession of this property from the date of this assignment. I will admit the question. You may have an exception if you desire it.

Defendant's counsel prays exception, and same granted.

Q. What is your answer? *A.* Your question is whether the company entered into possession of this property upon obtaining the assignment?

Q. (By the Court.) From the date after the execution of the assignment? *A.* Yes, sir.

Q. (Further direct.) That is the Pennsylvania Railroad Company? *A.* The Pennsylvania Railroad.

Q. And has it been in possession and operation of that railroad ever since? *A.* It has.

Cross Examination, by Mr. Harris.

Q. You don't know what land was taken possession of, do you, Mr. Anderson? *A.* No, sir; not specifically, only all of the lands of the Belvidere-Delaware Railroad Company.

Q. You know nothing about this land in question here? *A.* No, sir; I am not familiar with the engineering features of it at all.

Q. That's all.

The Court—I am ready now to pass on the question of the admissibility in evidence of the lease and of the assignment, and I think they are admissible for the purpose, at least, of showing that the plaintiff corporation entered into possession of the property described in the lease under color of title, under color of right, and that they are competent evidence, even if it be true, as suggested by counsel, that as legal instruments passing possession they are of no validity.

Mr. Roseberry—We pray an exception.

Exception granted.

Adjourned to October 2d, 1896, at 9.30 A. M.

OCTOBER 2D, 1896.

Continued pursuant to adjournment.

James Depue, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Where do you reside, Mr. Depue? *A.* Belvidere.

Q. Did you formerly reside in the neighborhood of this crossing that has been spoken of in this case? *A.* Just below it.

Q. By below, you mean to the south of it? *A.* South of it; yes, sir.

Q. How long did you live in that neighborhood? *A.* I was born in 1834, and lived there until 1852, when we moved across the river on the Pennsylvania side.

Q. And since 1852, have you any knowledge of the locality? *A.* I have for most of the time.

Q. Do you know the location of the division line between Lomasson and White? *A.* Yes, sir; I saw that line run in 1850, and saw them build the fence.

Q. Was the fence placed on the line as it was then run? *A.* Yes, sir; to the best of my knowledge the stakes were there, and they built the line along it.

Q. And has the fence remained there ever since? *A.* It has.

Q. In the same location? *A.* Yes, sir.

Q. Can you point it out on this map, the location of that line? *A.* That is the public road and culvert; I should think it was here (indicating on map).

Q. You mean the line marked "Old Lomasson and White division line"? *A.* Yes, sir.

Q. Was that there prior to the building of the railroad? *A.* Yes, sir.

Q. Do you remember in what year the railroad was built there? *A.* I think it was built between 1853 and 1855.

Q. And from the time of its building has it been continuously operated? *A.* Yes, sir.

Q. Where does the railroad run; between what points? What railroad is it? *A.* It was the Belvidere—it wasn't the Pennsylvania railroad when it started, it was the Belvidere and,—I forget the title of it.

Q. Well, between what points did it run?

Mr. Roseberry—If he knows.

Q. You have been over it, have you? *A.* Yes, sir; between Trenton and Belvidere; it stopped at Belvidere when it was first located and run, afterwards it went to Manunka Chunk.

Q. Was it the Belvidere and Delaware railroad you are trying to think of? *A.* Yes, sir.

Q. Has there been any change in the culvert since it was built, as you say, between 1853 and 1855? *A.* I don't think there has; it looks to me just as it looked when it was built.

Q. Is the culvert, I mean the bed of the road where it goes under the railroad embankment and culvert, is that paved? *A.* There is stones in it; I don't know whether it is regular paved or stones put in; it is a stony piece of ground; I wouldn't say whether it has been regularly paved.

Q. Has your attention been drawn to that particularly? *A.* No, sir.

Cross Examination, by Mr. Roseberry.

Q. You say that you have lived in the vicinity of that crossing ever since 1852? *A.* No, sir; I didn't say that.

Q. What did I understand you to say then? *A.* I said I was born in 1834 and lived there until 1852, and moved across to Pennsylvania, on the banks of the river, or something to that effect.

Q. You mean to say then since that time you have

lived across the river on the bank? *A.* No; I didn't.

Q. Now as a matter of fact when did you move away from across the river on the bank? *A.* I moved to the upper part of the same farm, half a mile west of it, on the same tract in 1862, about the first of October, 1862, and I remained there until 1866 in April.

Q. And then where did you go? *A.* I went to Upper Mount Bethel.

Q. About how far distant was that? *A.* It was about eight miles to where I moved.

Q. How long did you live there? *A.* Until 1872.

Q. From 1866 to 1872? *A.* Yes, sir.

Q. Then where did you go to? *A.* I was in Jersey City two years, and then I was here one, and then we moved to Belvidere.

Q. When did you go to Jersey City? *A.* I think it was 1873; it was about the latter part of 1873.

Q. And you lived there from 1873 to 1875? *A.* No; I was in Easton in 1875; I was in Jersey City I think two years.

Q. That is what I say; you moved there in 1873 and staid until 1875? *A.* Yes, sir; you are right.

Q. And then where did you go? *A.* I was to Easton one year, and then came to Belvidere; Easton part of the year.

Q. When did you go to Easton? *A.* In 1876.

Q. And moved to Belvidere when? *A.* In 1877.

Q. And you say you saw the division of the farm? *A.* Yes, sir; I saw it made; I wasn't with the surveyors all the time, but I saw it made, and was with them occasionally as a boy.

Q. What is your business? *A.* Well, I have no settled business just now; for the last two weeks my business is buying apples.

Q. And you have worked down there on the farm, haven't you? *A.* Yes, sir.

Q. And you sell oil too, don't you? *A.* No, I am not an oil agent at all; I sell for my son Will; he is an

agent, and when he is away I take the orders in Belvidere.

Q. Orders for what? *A.* Kerosene oil, the Standard Oil Company.

Q. Haven't you talked to the owners down there about that line fence? *A.* Which owners?

Q. The present owners? *A.* No, I haven't.

Q. Haven't you been told that the line fence running from the top of the hill down to the road is out of line about three or four feet?

Objected to.

The Court—What difference does that make? That is no cross examination, what he has been told by somebody down there.

Q. Well, then, I will put it in this way: Haven't you been told by the owners of that land that that fence was out of shape as it comes to the road there, about three or four feet out of line?

Objected to.

The Court—It is not competent; it is no cross examination.

Mr. Roseberry—Why, he was swearing to the line; that it is the same line now as it was then. I want to show if the owners of the land did not tell him that line was out of shape as it approached the road, three or four feet.

The Court—I have overruled the question; I don't think it is proper at all; it is no cross examination.

Q. Well, now, do you say that the line is now just exactly as it was when that fence was built?

The Court—Do you mean whether the line is as it was, or whether the fence is as it was?

Q. Well, the fence? *A.* Well, I won't say the fence is off the corners. There is a stone row under it; runs all the way. I wouldn't swear that that fence set exactly on——

Q. Is there any stone row from the hill to the road? *A.* No; nothing there except the corner stones to my knowledge.

Q. You were employed by me, were you not, to haul stone upon that stone road? *A.* The upper end of it; yes, sir.

Q. And, in hauling it, didn't you let down the fence? *A.* Where, at the foot of the hill?

Q. Yes. *A.* No; there was an opening in the fence above it; I didn't open it.

Q. Didn't you let down the fence there? *A.* No; it was done by some other hands.

Q. It was done? *A.* It was done, but I didn't do it.

Q. Was that fence set on the same line?

The Court—What fence?

Mr. Roseberry—This fence, in that very same field.

The Court—The whole of it?

Mr. Roseberry—No, not the whole of it, part of it.

A. I beg pardon; I was thinking of the fence running north and south, where we drove out unloading stone on the public road; I didn't open any part of the line fence.

Q. Didn't you take the stones out from that fence and the fence come down? *A.* On the upper part of the field I took stone from your side of the fence, and there was one corner of the fence undermined; I didn't take stone only half a day.

Q. Do you remember telling me that that fence down there next to the road had got shoved north side?

Mr. Strong—I think you ought to particularize the occasion.

The Court—Yes; time and place.

Q. You were there when we were surveying it, were you not? *A.* Yes, sir; I helped carry the chain.

Q. With Mr. Ayers and Mr. —? *A.* Arthur.

Q. Did you see that fence come down there? *A.* I was up at the top of the hill; you and Mr. Arthur and

Mr. Ayers were coming down the hill when I got there.

Q. At that time didn't you say by that survey that that fence was not on that line?

The Court—That is immaterial; that is no cross examination.

Q. Didn't you say at that time that that fence had got shoved north from where it came to the road, three or four feet, in the presence of Mr. Ayers, Mr. Arthur and myself? *A.* I don't think I did.

Q. Well, are you positive or not positive, Mr. Depue?

The Court—You are speaking of this line fence?

Mr. Roseberry—Yes, sir.

A. I am positive of a recollection of what passed between Mr. Ayers and in your presence, but—

Q. Will you answer my question? *A.* I am positive of Mr. Ayers saying that to me, but I have no recollection of my saying it.

Q. Do you remember that you said it first? *A.* No.

Q. You have no recollection whatever of your saying it first? *A.* It came of my question to Mr. Ayers, if that fence was on the line, and he said it was, only the corners had slipped off in some places; and I said I suppose it had on that wide stone fence.

Q. You spoke of the fence being shoved off where it came to the road, three or four feet? *A.* Maybe I did, but he declared the fence being on the line with the exception of that sliding.

Q. Further up the road? *A.* Oh, at different places he referred to.

Q. Now, you say that the culvert—the road was built in 1853 or 1854? *A.* 1853, I think; they were two years at that; the first train passed up in October, 1885.

Q. How long have you known that culvert in the road? *A.* Well, ever since it was built.

Q. How long have you known the road? *A.* Ever

since I can recollect anything I have known the road.

Q. That is, the road under the culvert? *A.* Well, the whole of the road.

Q. How wide was that road there before the culvert was built? *A.* From the foot of the hill to the culvert that road was quite wide; I recollect that farmers were in the habit of having their wagons stand on both sides of the road, and there was a roadway between; then it narrowed very much above the hill; that was the shape of the road when I was a boy.

Q. So that horses and wagons stood out at right angles from the road on both sides, and yet there was room to pass between? *A.* And a row of corn cribs stood along the side—

Mr. Strong—I don't think that is cross examination.

Mr. Roseberry—We are asking about the road under the culvert.

Mr. Strong—If you confine it to that point I don't know that we have any objection; still I think my question was confined to the culvert and the subsequent appearance of the road at that point, not prior to that.

Q. How long have you known the culvert and the road under the culvert?

The Court—He has already answered that.

Q. Now that is fifty years you have known the road? *A.* Yes; longer than that; fifty-five.

Q. And where were you born, Mr. Depue? *A.* Down where John Roseberry lives, the farm below the White part of this tract, adjoining it.

Q. You say that the road was that width; can you give it approximately in feet, about how wide the road was where the culvert is? *A.* No; I could not.

Q. As near as you can tell. *A.* All I based the width of the road on, was from having corn cribs sitting in it and wagons standing on each side, and I rode through there.

Q. No; give me the width of the road through there? *A.* I couldn't.

Q. Three rod wide road?

Mr. Strong—I think the witness has said he does not know.

The Court—It is to test his recollection.

A. I should say thirty-five feet.

Q. Was it not more than thirty-five feet? *A.* I wouldn't say that it wasn't; I would say from thirty-five to forty feet; not any more than that.

Q. Where does that road go to; where does it lead to? *A.* Leads from the road leading to Belvidere back to the road leading from here to Easton.

Q. And what was that place called out there where it led to? *A.* Why, I never heard its name but so few times that—I don't think I ever heard it but twice in my younger days, from my father's mentioning what that was called—

Q. (By the Court.) Well, what was it? *A.* I cannot recollect.

Q. (Further Cross.) Connard? *A.* I think it was.

Q. A road which led from the road leading from Hope to Easton, Belvidere to Easton? *A.* Yes.

Q. Generally known as Newton to Easton; did you ever work on this road where the culvert is? *A.* Yes; I worked when a boy on the road all around there.

Q. Under whose direction did you work?

The Court—What is this a cross examination of, Mr. Roseberry.

Mr. Roseberry—Well, that is the road under the culvert. Whether the road under the culvert has been narrowed, that is the question; I think we have a right to inquire all about that road under the culvert.

The Court—Certainly you have; but not on cross examination of a witness on a particular point.

Mr. Roseberry—That is all.

Re-Direct Examination.

Q. Let me understand at what point it was that there was some talk about the fence being two feet to the north of the line; what part of the line does that refer to? *A.* (Referring to map). This is the railroad, and this is the public road; why the fence came down the hill and struck the public road, the fence was out of shape there; it was in several places right on the east side of the road in the field where it came together to the road in this direction.

Q. Well, who was this Mr. Ayers? *A.* He was a surveyor from Dover or Morristown then, who had formerly been a surveyor in this county.

Q. What was he doing at that time there? *A.* He was taking a survey regarding the pipe line and railroad on the White tract.

Q. I mean with reference to this line? *A.* Why, he came down the line from on top of the hill; I came around to help chain over there, and I asked him if the fence was on the line, and he said it is—

Q. I don't care about your repeating that, but he was surveying this same particular line, was he? *A.* Yes, sir; coming from the east down.

Q. You say Mr. Roseberry was there at that time? *A.* Yes, sir.

Q. Was Mr. Ayers employed by Mr. Roseberry.

The Court—How does he know that?

Re-Cross Examination.

Mr. Roseberry—There was one point you stopped him on; I think that part ought to be put in; that is, he said the fence was on the line, except, and then Mr. Strong stopped him.

Mr. Strong—I have no objection to his completing his answer if it was of any consequence.

The Witness—Well, he said in a few places the old

rail fence had slipped off of the corners, but still it was on the line; it had slipped from the corners.

Q. What was on the line? *A.* The fence in the main; and there at the end we all admitted that the rails were three or four feet, probably, north, right at that point.

Q. (By Mr. Strong)—But the general direction was on the line? *A.* Yes, sir.

Q. (By Mr. Roseberry)—The rails in the fence had slipped three or four feet north? *A.* In different places; there among other places.

Q. Where it joined the road in the flat? *A.* Yes, sir.

Samuel Depue, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Are you a brother of Mr. James Depue, the last witness? *A.* Yes, sir.

Q. And where do you reside? *A.* I reside at Hudson Station now, Harmony township, five miles below this place.

Q. Did you formerly reside in the neighborhood of this crossing that is in question in this case? *A.* Yes, sir; I was born just below it, and lived there until I was twenty years old, and then moved on the opposite side of the river, and lived there about five years.

Q. Have you always been familiar with the locality since that time on? *A.* Yes, sir.

Q. Do you know the division line between the White and Lomasson properties? *A.* Yes, sir.

Q. What is there on that line now, or is there anything to mark the line? *A.* There is a rail fence on it.

Q. When was that put there? *A.* Well, it was put there, I think, at the time when the division was made between Mr. White and Thomas Lomasson.

Q. When was that? *A.* Well, forty-five or six years ago at least.

Q. About 1850? *A.* Yes, sir.

Q. Was that before the railroad was built through there? *A.* Yes, sir.

Q. Did you see the line run at the time the partition was made? *A.* I was along occasionally with the surveyors, like boys would be; I wasn't with them continuously, but I saw them surveying, and was present sometimes when they were running the line.

Q. And was the fence located at the time on that line? *A.* I think it was.

Q. Has it remained there ever since? *A.* To the best of my knowledge it has; I have no recollection of it being changed.

Q. Do you remember when the railroad was put through there? *A.* Yes, sir.

Q. The embankment built? *A.* I do.

Q. And the culvert? *A.* Yes, sir.

Q. Do you remember the building of that? *A.* Yes, sir.

Q. Has that remained—the culvert that was built—remained so ever since? *A.* I think it has.

Q. Had the railroad been continuously operated from the time it was completed until now? *A.* Yes, sir.

Q. In what year was it completed, do you know? *A.* I think in 1855; I think trains commenced running at that time.

Q. Do you know whether or not the roadway under the culvert is paved? *A.* Well, I couldn't say positively whether you would call it paved or not; but it is stoned—has been.

Q. Stone has been placed there? *A.* Yes, sir; I think they have; it is quite stony, anyway.

Q. Did you see stones placed there? *A.* I think I saw them putting stones there at one time, but whether it is paved I could not say.

Q. Who did you see putting stones there? *A.* I think I saw some of the railroad men hauling stones or putting stones there.

Q. Could you say when that was? *A.* No, I couldn't say; it was a good while ago.

Cross Examination, by Mr. Roseberry.

Q. Mr. Depue you are a farmer, are you not? *A.* Yes, sir.

Q. Running up from the road up that little hill, it projects toward the north, slants down? *A.* The line fence you are speaking of?

Q. Yes; the ground, does it not? *A.* Yes, sir.

Q. Don't you know as a farmer fences will slide wherever there is a little inclination? *A.* Oh, yes; they will do that.

Q. You would not say as a matter of fact that the fence has remained permanently in the position it was when it was built? *A.* No; I said I have no recollection of its being changed.

Q. So it is simply negative; you have no recollection of it being changed, although it might have been changed? *A.* It might have been, although I never saw that it had been.

Q. Do you know whether it was put exactly as it was surveyed? *A.* No, I could not say.

Q. You don't know who put the stones in under the culvert? *A.* No, I don't; not exactly; I saw the hands of the railroad company working there at one time; I think it had washed some.

Q It had washed under there, had it? *A.* Yes, sir; and they were repairing it; I travelled that road coming to Belvidere quite often.

Q. That is the exit for surface water for a considerable distance around, is it not? *A.* Yes, sir.

Q. And it tore into the road? *A.* Yes, sir.

Q. When was that wash? *A.* Well, I couldn't say;

it was a good while ago; it has been washed I think more than once; at least to my knowledge; I frequently travelled it.

Q. And at that time they put some stones in there to fill up the wash? *A.* Yes, sir.

Q. The surface water before the railroad was built was not accustomed to go down through there, was it?

Objected to.

The Court—What difference does that make?

Mr. Roseberry—They created an exit which by law they were compelled to remove, that is all.

The Court—Do you think if the water did run down or did not run down, it would affect the location of this line?

Mr. Roseberry—That is not the point. The point is, your Honor, they want to show that they had paved it, and the point I want to show is that they put it in such a position that the surface water flowing through there in unusual quantities tore out the road, and it was simply repairs to the road.

The Court—Now admit that that was so, what light would that throw on this case?

Mr. Roseberry—Then I shall object to their proving any paving in there.

The Court—I do not see myself that the paving has any relevancy in this case.

Mr. Strong—Only as a circumstance, perhaps, carrying out the idea of general possession, that is all; perhaps it is not very important.

Mr. Roseberry—Then I ask that the testimony relating to paving be stricken out, or that we be allowed to cross examine.

The Court—You are allowed to cross examine; I have allowed you to cross examine, and you may go on cross examining.

Q. When did this wash occur, Mr. Depue? *A.* There has been a number of washes there at different times.

Q. I mean in relation to putting the stones in there?

A. I couldn't tell; it is quite a number of years ago that I first recollect there being a wash there.

Q. It was washed quite deeply? *A.* Well, considerably, so it was difficult to get through with a wagon, yet you could drive it, but it wasn't in good condition.

Q. And they repaired it at that time? *A.* Yes, sir.

Q. You don't know who operated that road except by hearsay? *A.* No, sir.

Mr. Roseberry—I would like to ask Mr. James Depue a question.

James Depue recalled for further

Cross Examination, by Mr. Roseberry.

Q. You have no knowledge of your own who operated this railroud? *A.* Only by seeing it on their engines and general—

Q. Well, it is simply hearsay? *A.* Oh, see, say both together.

Q. Well, did you see it on their engines, Belvidere-Delaware Railroad Company? *A.* Yes, sir.

Q. On their engines? *A.* Yes, sir.

Q. Well, that will do.

James Brophy, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Are you employed by the Pennsylvania Railroad Company? *A.* Yes, sir; as watchman.

Q. In July, last July, this year, were you employed by them as watchman? *A.* Yes, sir.

Q. At what point were you watchman during July? *A.* I watched the culvert there at the Foul Rift, Mr. Roseberry's farm.

Q. Is that the culvert where the road goes under the railroad? *A.* Yes, sir.

Q. How long were you watching that culvert? *A.* Well, I was watching it two or three different times, but not very long at a time.

Q. I mean at that time? *A.* I think only two or three days; I had been working at Manunka Chunk, and was put on there in Jim Emery's place; he was watchman before I was.

Q. For whom were you watching it? *A.* The Pennsylvania Railroad Company.

Q. While you were watching it, did anything occur—anybody come there? *A.* Yes, sir.

Q. What day was it; do you remember? *A.* No, sir; I don't.

Q. In July? *A.* Well, sir, I couldn't tell you know.

Q. Couldn't tell the month even? *A.* No, sir; I couldn't tell the month.

Mr. Strong—It was the twenty-first of July, gentlemen; is there any dispute about it?

Mr. Roseberry—I don't know whether it was the twenty-first of July or not.

Q. Well, now, tell us what took place? *A.* Well, when I went down there in the morning, I guess it was a little after four o'clock, that early freight passed me right by the stone house, and I went right down after that passed, and I saw the men at work, and so I came up and reported to Mr. Phillibron at Belvidere, Supervisor of the Pennsylvania Railroad.

Q. Had you been watching there through the night? *A.* Yes, sir; on all night, from twelve o'clock on.

Q. And when had you been at this culvert before this time? *A.* Three o'clock.

Q. And where did you go then after three o'clock? *A.* I went up out of the rain; that is, up in Mr. Depue's farm there.

Q. You went to go out of the rain; was it raining that morning hard? *A.* Yes, sir; it was raining when

I went down; I got wringing wet when I went down; it was raining more or less all through the night; I went up then to eat my supper.

Q. When you were coming back then at four o'clock—
A. A little after four.

Q. Did you find anyone there? *A.* Yes, sir; I found a big gang of men there, some working, some standing looking on; they couldn't all work, for they didn't have room.

Q. A large number of men there, were they? *A.* Yes, sir; I should judge about seventy-five.

Q. And where were they? *A.* Well, they were working digging up the road-bed to put in the pipe, and a great many standing around that had no room to work, I guess.

Q. They were digging up the road-bed; where do you mean, through the culvert? *A.* Yes, sir; through the culvert and each side, under the road-bed and through the culvert, and each side of it.

Q. What did you do, anything; I mean with regard to these men? *A.* I came up and reported first to the Company, and also to the section boss, and then went back and served the paper on them.

W. Who did you serve it on? *A.* On one of the pipe line bosses; I didn't know the man at the time; I inquired whether he was a boss or not, and somebody told me he was, and I asked him and he said he was a boss, and he read the paper, and he said they were the same that was on the culvert, and the paper was on the culvert at the same time the men were working there.

Q. There was a paper on the culvert? *A.* Yes, sir; on all day, I guess; Mr. Garris, the section boss, was up there at ten o'clock.

Q. You saw the paper there on the culvert, did you? *A.* Yes, sir; there was one each end of the culvert; there were two papers; one on the east side, and one

on the west, tacked up in conspicuous places; tacked up so the men could read it.

Q. What became of the paper afterwards? *A.* I don't know sir; I was relieved at ten o'clock; the boss told me I could go home about ten o'clock, and so I went home.

Q. And you had a paper like that, did you? *A.* I had one paper; I gave it to the boss of the oil company, and the man kept the papers; I told him to keep them, for I thought they were for him, you know.

Mr. Strong—Gentlemen, will you produce that notice that was served.

Mr. Roseberry—I have never seen the notice.

Mr. Strong—You haven't got it?

Mr. Roseberry—No; I haven't got it.

Q. What was the notice that was there, and that you served on the oil men? *A.* I couldn't recollect now, sir.

Q. Didn't you read it? *A.* I read it, yes, sir; but I couldn't give it word for word.

Q. Give your recollection of it? *A.* You must excuse me, I couldn't do it.

Q. Who did you get the paper from? *A.* From the watchman, Al. Schultz; there was two of us; I relieved him.

Q. And you got the paper from Al. what? *A.* Schultz; he would have it on his beat, and when I would go down to relieve him, he would give it to me.

Q. When you gave that paper to the foreman of the gang, did they stop work? *A.* No. sir.

Q. What did you do then, after you had given him the paper; did you stay there, or did you go away? *A.* I staid there.

Q. What did you see them doing? Well, I seen them putting in their pipe, disturbing the roadbed and—

Q. Through the culvert? *A.* Through the culvert and each side of the culvert, on the road, getting their

pipes ready and putting it in there ; I staid there until they put all the pipe in.

Cross Examination, by Mr. Roseberry.

Q. You spoke about disturbing the roadbed ; you don't mean the roadbed? *A.* The public highway ; of course they had to disturb it to get it in.

Q. They didn't disturb the roadbed any? *A.* No, sir.

Q. Or disturb the walls any ? *A.* No, sir.

Re-Direct Examination.

Q. Did you have any talk with any of the men who were there working ?

Mr. Roseberry—I object to that.

The Court—What difference does that make?

Q. I mean, did you tell them who you represented, who you were and what you were doing there ?

The Court—What difference does that make?

Mr. Strong—To show protest against their action, that is all.

The Court—Is that material?

Mr. Strong—Perhaps not vitally material ; well, I will withdraw it. That is all.

The plaintiff rests.

The Court—I will say to counsel that the practice in this circuit is that the plaintiff must make out his case, must put in the testimony that he has got, in order that the defense may know what they have got to meet ; that it is not permitted counsel to call part of his witnesses to prove a certain fact, and then when that is contradicted to call another set of witnesses to prove the same fact, on the theory that it is rebuttal. So if you have any other witnesses to call for the pur-

pose of making out your case, you must call them now, or you will not be permitted to call them after the defense is in.

Mr. Strong—We claim to have proved the possession of this culvert and the location of the Lomasson tract, and that, as it seems to me, is our case. I do not know what your Honor is alluding to.

The Court—I mean this; assuming you have made out a case now, which I will assume for the purpose of what I am about to say, the contest presumably will be over the location of certain lines, or perhaps one line, the dividing line between the White and Lomasson tract, perhaps other lines; now if you have any other testimony to offer for the purpose of proving the practical location of those lines, you must offer it now; the Court will not permit you under the guise of producing evidence in rebuttal, after the defense has shown you their case, to call other witnesses to prove the location of those lines.

Mr. Strong—I assumed that would be the course of the Court.

The Court—To give you an example of what I mean, you have called two witnesses to locate that dividing line from personal knowledge; now if that is a matter in dispute the defense probably will call witnesses to prove that that is not the location; after they have done that I would not permit you to call other witnesses to prove that the defendant's witnesses are mistaken, and that that line is where your witnesses say it was.

Mr. Strong—That is the dividing line of the Lomasson tract?

The Court—Or any other line that is important.

Mr. Strong—There is only this that comes to my mind in that connection: We have not undertaken to do anything more, and I do not think we are at this time called upon to prove anything more than the location of the Lomasson survey under which we have now

possession. As to that I am content to rest my case where it is, without producing any further witnesses. But I do not understand that if afterwards the location of another tract, not the Lomasson tract, but another tract claimed to have prior title, if that should come into dispute I do not understand we are precluded from rebutting on that point.

The Court—It is very possible you may be if the tract which you refer to now is a tract adjoining the Lomasson tract, and the question is where the true division line between that tract and the Lomasson tract is. That is a part of your case.

Mr. Strong—I have not so understood it. I have endeavored to make clear that I was proving simply the boundary of the Lomasson tract as found in the Lomasson deed, and to show the location of those lines not by reference to anything but the Lomasson deed. Now, if the defendant should come in and try to prove a prior title to the same ground that the Lomasson deed covers, depending on a location inconsistent with the Lomasson deed, why that, I do not think I would be precluded from rebutting.

The Court—That probably would raise another question. But one of your lines, as I understood Mr. Weir yesterday, the sixteenth course in the Lomasson deed, is a course separating what he has designated on the map as the Robeson tract from the Lomasson grant. He has undertaken to locate the Lomasson grant on the map, and he has undertaken to show where the dividing line between the Lomasson and the White tracts is. If one of his lines is incorrectly laid on that map, necessarily, if I understand anything about the science of surveying, every other line of that tract is improperly laid on the map. Now, if they come in and show that the line between the Robeson tract and the Lomasson tract is not where Mr. Weir says it is, but is somewhere else, they disprove your whole

survey ; they disprove not only that line, but the White line and every other.

Mr. Strong—As I understand the matter in dispute in this case, it will resolve itself, probably, on the defendant's case into the location of that Robeson acre. Now I have not undertaken to locate the Robeson acre at all.

The Court—There I do not agree with you.

Mr. Strong—I have undertaken to locate the Lomasson survey by reference to this line, and by reference to the distance called for from that line. Now it runs to the Robeson tract, or runs around the Robeson tract; but I have not undertaken to locate that Robeson tract, except as to locate the way that the Robeson tract is bounded in the Lomasson deed. Now, if they come in with evidence, I don't know of what character, to show a different location of the Robeson tract, I do not think that I am precluded from rebutting by showing our location of the Robeson tract. As to this line here (indicating), which is the basis of the Lomasson deed, of course I have put in my case affirmatively. On that case we base our survey from that line, and I understand perfectly well I would not be allowed to rebut by calling other witnesses to locate that line. But as to a different location arising from a different deed of that Robeson acre, I do not think I have opened that matter at all; I do not think I am precluded from rebutting it.

The Court—I do not propose to pass on that question until I am compelled to. I am only mentioning what the practice here is, and of course you must take your own course. If you are right in your theory, why, then, you are perfectly safe ; if you are not right, which I do not mean to pass on now, why, then, you run a risk. I want to be perfectly fair to counsel, though, and I will say, in my judgment, that line is just as much involved in your case as any other line in the Lomasson grant. You do not prove by merely

locating one line the contents of the grant to your Company; you have got to locate every line to show that the *locus in quo* is confined within the bounds of that grant; nothing follows from the location of one line, and I think the defense have a right to dispute any one of your lines, if, by disputing, they show the falseness of the conclusion upon which your case rests. But, as I say, I will not dispose of that question until I am called on to do it.

Mr. Strong—With the intimation which your Honor has given, it will be necessary for me to recall some of my witnesses.

The Court—Very well.

James Depue, recalled for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Mr. Depue, you have said that your first recollection of this neighborhood was when? *A.* Well, I suppose I was six or seven years old; I can't tell when I did first begin to remember, but I was around there from the start.

Q. Did I understand you to say it was fifty years ago? *A.* Yes, it was over fifty; I have recollection back as far as the winter of 1841; January 8th or 9th, 1841.

Q. Do you remember at that time, your earliest recollection, whether a spring of water was located in that neighborhood? *A.* Yes, sir.

Q. About where was the location of it? *A.* Well, it was west of the road leading to Belvidere, and north of the road the culvert is on; north of that road some sixty paces.

Q. North of this road (indicating)? *A.* Yes.

Q. And west from the road to Belvidere? *A.* A little west of it; yes.

Q. And from that spring is there a run of water, and was there then? *A.* Yes, sir; always has been.

Q. Running where? *A.* Into the Delaware.

Q. Is the spring there to be seen now? *A.* Yes, sir.

Q. And the run of water from it? *A.* Yes, sir.

Q. Have you seen it lately? *A.* Yes, sir; I see it every little while; I saw it last week.

Q. Is there any change in respect to the spring's run of water that you can recall at this time? *A.* In regard to the water itself there isn't, but to the outlet of it, what you would call the gully it goes through, there has been.

Q. Just explain what change there has been. *A.* At the head of it the stream used to come out about the middle of what I call the gully, but now it is filled up so it comes to the northeast; there is a tree, a bass tree that has stood there ever since my recollection, and the spring comes from the roots of it; it leans strongly towards the river; there is now an average elevation of two inches to the foot, as it goes from the spring towards the river.

Q. That is, the tree leans as much as that? *A.* Yes, sir; and it is filled in with sand on the north side, and the far end it runs under the tree.

Q. Has that shifted the opening of the spring? *A.* It has not shifted the opening of the spring, but it has turned it more to the southwest; it don't run as direct to the river.

Q. To what extent has it been shifted? *A.* Well, it has been shifted, in running fifteen feet, I should think it has shifted five; it strikes the spring—there is another spring adjoins it, if I am permitted to state.

Q. Yes, certainly. *A.* This is the spring on the northeast corner, and then it runs southwest; the stream would be about fifteen feet in reaching fourteen feet along the south bank of the stream; then there is another stream comes out directly from the south, I should say, striking in this; there is a basin dug out,

and two or three stones laid so that stream No. 1, above there, strikes in that and forms a little basin and eddy; this stream comes right out in that; then the streams run twenty-one feet, or thereabouts, further toward the river, and then another stream comes out directly from the south.

Q. Which is the main spring? *A.* Well, the head of the spring; the first spring is the one up under the tree, but I think the largest spring is the one towards the river.

Q. How much nearer the river is that? *A.* The second spring is fourteen feet west of the first one, and the third spring twenty or twenty-one feet from the second spring. The biggest flow of water is from the third one; it don't appear larger, but it flows very much faster than either of the upper ones at the start.

Q. Have there always been those three springs, to your recollection? *A.* There has; the springs isn't near as large as they used to be; they never showed as prominent as they do since the main spring is diminished in size.

Q. Well, the main spring, as you call it, is the one nearest the road? *A.* Well, I wouldn't call it the main spring.

Q. I thought you did? *A.* I did; I don't call it the main spring in regard to its size, but being the first spring, the head of the spring.

Q. And do you say the water from the spring which you called the head of the spring, has diminished in flow? *A.* Yes, sir.

Q. And that has made the other spring more prominent, you say?

Mr. Roseberry—I object to asking leading questions like that.

The Court--He has alread said that.

Q. Now, in your earliest recollection, do you remember a house standing somewhere here where "formerly

a house" is stated; do you remember a house in that neighborhood? *A.* Yes, sir.

Q. Do you remember what kind of house it was? *A.* It was a log house; it was an old log house with the gables weatherboarded.

Q. Was that there at your earliest recollection? *A.* Yes, sir; an old house at my earliest recollection.

Q. And how long did it remain there? *A.* It remained there until the railroad was built; I can't say whether they destroyed the house in 1853 or 1854; somewhere around there.

Q. And where was it with reference to the present location of the railroad embankment? *A.* It is in it.

Q. It had to be removed for the purpose of the embankment, then? *A.* Yes, sir.

Q. Was there in that neighborhood a willow tree? *A.* Yes, sir.

Q. Can you give us the location of that willow tree upon this map? *A.* (Indicating.) There is the spring; a little north of the head of the spring there was a fence running, I will call it east, that was the general direction of it, up to the yard of the house; there was a rail fence right north, ran up there, and at the end of that, just west of the dooryard, was a large willow tree leaning strongly to the north; now I am speaking of the time that George Lomasson lived there, and I don't know whether the fence always remained in the position it did, but just before 1850 I am positive that the tree stood north of the rail fence and west of the yard fence, right in the corner; but the old rail fence was removed two or three times in my recollection by freshets, and may have been put in another direction. And then about forty feet north of this fence, running up—thirty-five to forty feet, I will put it—was a fence running in the same direction this fence from the spring struck, and in front was the front yard fence; it was a rail fence until it struck the yard, then it was a board fence with a gate; and the other

fence I think struck the northwest corner of the house; I am not positive; that is my recollection; it came down this way; and while George Lomasson lived there there was a hog pen stood there, and then the fence continued on from that; it was a wet piece of ground; on the south side was the dryest; on the north side there was a spring would come up some parts of the year—I don't think it did all the time—and ran towards the river; and there had been stones hauled in; it was filled up with stones, as a road naturally would be, and grown up with weeds; it wasn't used except to go from the road into the house, stop there, and at the end of the road the old house stood; on the north side of that there are stones there that have been used in some foundation; on the west of the house, probably twenty or thirty feet, my recollection is there was a fence struck northward quite a little ways and then east again beyond the house, which constituted the garden coming around to the yard.

Q. You say there was a fence that led up to the road? *A.* From the road; yes, sir.

Q. And running to the south of the house? *A.* South of the yard.

Q. Was there a yard then between that fence and the house? *A.* Yes, sir.

Q. Of what distance? *A.* Well, it wasn't less than twenty feet; parts of it may have been near thirty feet or may have been thirty.

Q. Was that fence an old one? *A.* Yes, sir; it was an old rail fence.

Q. How long did it remain there within your knowledge? *A.* I think it was pretty well gone down, probably flat there, before the railroad was built; it went down more while George Lomasson was there, towards the last; it was always a rickety fence.

Q. Was it always there from the time you recollect down to that time? *A.* Yes, sir; except when it was

moved two or three times by a freshet; water overflowed it sometimes, then the rails were moved back.

Q. Is there anything of that fence there now? *A.* No, sir.

Q. Or the willow tree? *A.* No, sir.

Q. Where was the willow tree with reference to that fence? *A.* Well, I have stated it was between—

The Court—In the corner, he said, of the fence that ran north and south.

A. North of the fence that ran east at the time George Lomasson lived there.

Q. How long did George Lomasson live there? *A.* Well, he came there about 1844, and was there until after the railroad was built—some years after; I could not state the time of year he left.

Q. Who was there before George Lomasson? *A.* His brother, Andrew Lomasson.

Q. Lived in that same house? *A.* The same house; yes, sir.

Q. What lands were there that went with the property; that were used, farmed with the house?

Mr. Roseberry—Well, does he know?

Mr. Strong—I suppose he does.

A. There were two tracts; the Lomasson and White tract was one at that time, probably one hundred and twenty acres undivided between William S. White and Thomas Lomasson.

Q. That was all thrown together at that time? *A.* Yes.

Q. And do you mean it was all occupied by the Lomassons? *A.* Yes, sir.

Q. First Andrew, and afterward by George? *A.* Yes, sir.

Q. Who was Thomas Lomasson? *A.* The father of Andrew and George.

Q. Where did he live? *A.* He lived on the road leading to Easton from here; just back of it the farms adjoin.

Q. Do you know how Andrew and Thomas Lomasson occupied the place? *A.* Andrew, that is the son of Thomas, he rented it.

Q. From whom? *A.* Rented it from William White and his father.

Q. You are speaking now of your recollection going back as far as 1841, you say? *A.* Yes, sir.

Q. That was the situation at that time? *A.* Yes, sir, at that time.

Q. And did you say when it was Andrew left and George took his place? *A.* About 1844, if I remember right.

Q. I notice on the map the location of a currant bush; do you know anything about that? *A.* That is on the east side of the railroad, north of the house.

Q. Is that to be seen now? *A.* It was a week or ten days ago.

Q. And do you remember any currant bush about the property when the house was there? *A.* There were in the garden; on that side of the house there was a row of currant bushes.

Q. The currant bushes—that is, the currant bush that you pointed out to Mr. Weir, I think? *A.* Yes, sir; I located the house and garden.

Q. Did you also point out to him the location of the old willow tree? *A.* As near as I could from the run of the fence from the spring. There is one thing that may turn into a mistake. Has a witness a right to correct himself on what may raise a question afterwards?

The Court—If you made any mistake you may correct it.

The Witness—I stated about the renting of the farm of William White and Thomas Lomasson; it was William White's mother then living, William White had the charge of it, but Mrs. White, his mother, was the one the dealings was with also; that is all.

Cross Examination, by Mr. Roseberry.

Q. When you were picking stone in the field by the barn, back in the far corner of it, did you notice a currant or gooseberry bush there? *A.* Which do you mean?

Q. In the field by the barn, in the back corner next the hill? *A.* No, I didn't; I didn't pick stones in the corner; I must have been thirty yards from the corner where we loaded stone the day I was there.

Q. There never any house stood there, did there? *A.* Not to my knowledge.

Q. Do not currant bushes and gooseberry bushes grow around the fence same as a grapevine? *A.* I have seen it.

Q. And the seeds are carried by bulbs are they not? *A.* I can't testify on that; I presume so, but I haven't —

Q. You and I were down there setting out grape vines once, weren't we?

The Court—What has that got to do with this case; there are no grape vines proved in this case.

Q. Now, Mr. Depue, you spoke about that tree settling down; what kind of a tree is that? *A.* A bass tree, I think.

Q. Bass tree of Balm of Gilead tree? *A.* I was learned to call that kind of tree, bass.

Q. Didn't that tree incline when you first knew it? *A.* Yes.

Q. How much different from its inclination now? *A.* Not very much.

Q. Well, how much? *A.* Well, I would say that it had a rise of more than six inches to the foot when I first knew it.

Q. Oh, give it in feet.

The Court—Well, what point do you want?

Q. I want to know the inclination ten feet up that tree, to the foot. *A.* Well, I should say that the tree

ten feet from the root was raised five feet higher than it is now.

Q. When you first knew it, how long ago was that? *A.* Well, when I first knew it, I will say 1850 or 1851; along there.

Q. Now that spring that comes up there, it boils up, from the bottom, don't it? *A.* Partly so.

Q. And does it come out from under the roots of the tree at all? *A.* Yes; I think there is no mistake about that.

Q. Are you positive about it? *A.* Well, I examined it a week ago, carefully.

Q. I think you said it was filled up with mud. *A.* I don't think I said it was filled up with mud.

Q. What you saw coming out there, did it boil up as if it came up through quicksand? *A.* Yes, part of it does.

Q. Where is the part that you saw there that did not? *A.* Why, under the roots of the tree, and a little north, say a foot from the fence.

Q. Don't those little springs boil up all around there? *A.* Yes; but it is in a small circle.

Q. Do you remember when I had that spring cleaned out once? *A.* No; I don't.

Q. Weren't you down there trucking? *A.* I never saw anybody clean the spring out.

Q. Don't you know it was cleaned out? *A.* No, I don't.

Q. Don't you know that the head of that spring, between those two springs, the one that boils up from the south, and the one that comes up by the tree, don't you know there was a series of springs right around there between those two? *A.* I never noticed it.

Q. Don't you know there are springs down that run there? *A.* I suppose there are smaller, but those are the only two that are strong enough to make a current.

Q. You spoke of stone; where did you see any stone? *A.* You notice those stones where you step on the

stream, just from spring No. 2; they extend up on the north side from spring No. 1; I think there are four or five stones right in there to keep the water where it can be dipped in spring No. 2.

Q. Isn't this the fact, that all there is in these stones is the placing of a few right across the middle of the stream; isn't that so? *A.* No; they don't run—

Q. And isn't it so now? *A.* Yes, but they are diagonally across the stream.

Q. And are not right across? *A.* No.

Q. Are you positive about that? *A.* Well, I made an examination last Saturday.

Q. Well, I put them there.

The Court—Well, if you want to testify, Mr. Roseberry.

Q. How far is that south spring above that little—how high are those stones? *A.* They are so you can just step on them to keep your feet out of water.

Q. Only half a dozen put there, isn't there? *A.* That is what I testified to.

Q. Beyond that, where this little bridge of stones goes across, how many feet are those south of the spring? *A.* The current from spring No. 1?

Q. Are not the stones down there below those springs fully ten feet? *A.* Not what I am testifying about; no, sir.

Q. They are not below it? *A.* Why; no.

Q. You don't mean to say those few stones are right up there against the south spring? *A.* They are right from spring No. 1, running up towards spring No. 2.

Q. I don't care anything about spring No. 2, and spring No. 1 is the north spring and the other the south spring; the northeast spring is the one that comes out under the tree.

The Court—That is the one he calls No. 1.

Mr. Roseberry—The jury will understand it better by calling it the northeast spring and the southeast spring.

Q. Now Mr. Depue, isn't that little ridge of stone right here; you come down, don't you, you come down there don't you, from the south down to the run? *A.* Yes.

Q. And you come there, down to the run, don't you, from the north? *A.* Not so far.

Q. Are not they right opposite each other, the places where you come down on each side to that run, are not they right opposite each other?

A. No, sir.

Q. You say there is a bass tree there right where that spring is; isn't there a small maple or birch tree? *A.* That is spring No. 2?

Q. Yes. *A.* Yes; there are trees there.

Q. And there are bass trees down towards the third spring? *A.* Yes.

Q. And right across from that is a great big birch tree, an immense tree? *A.* Yes.

Q. Now as they come down here from here there is a little maple there (indicating)?

The Court—Excuse me; is there a path coming down there.

Mr. Roseberry—Yes.

Q. Now coming down this path, this bank from the south, that is about midway between that spring and that spring, isn't it? *A.* It is just east of spring No. 2.

Q. I don't care about spring No. 2, where that comes down there is midway between those two bass trees, where that spring is, and those little maple trees, or birch trees, where that spring is? *A.* No.

Q. Don't it come down there? *A.* No.

Q. Where did it come down? *A.* It came down fourteen feet from the head of spring No. 1, the tree is ten feet—

Q. I am not asking about that; I want to get this path that comes down here? *A.* It comes down east by the second spring.

By the Court.

How near to it? *A.* Well, it must be four feet; three feet at least east of it.

Further Cross Examination.

Q. What; a path? *A.* Yes.

Q. Now? *A.* Now.

Q. A path leading to that second spring; do you mean there? *A.* Right above it; between that and the head—

Q. Do you mean there is a path in there? *A.* Yes.

Q. I am not asking you about that path at all; I am asking you about the path there—you say there is a path coming there? *A.* Yes.

Q. Don't you remember part of that spring was washed away? *A.* The bank.

Q. Don't you know as a fact there is no path there at all now? *A.* Well, it is the only path I have gone down this summer.

Q. I don't care when you have gone down; I am asking you as a fact, do you mean to say there is a path there now, between that spring and that spring? *A.* Yes, sir; there is a path, a steep path.

Q. Been traveled by anybody this summer? *A.* There are tracks down it.

Q. Tracks made by you? *A.* No, no; there are tracks on it.

Q. Are not there roots bare there? *A.* Below the third spring.

Q. And isn't there a little dam put there, and wasn't that put there to walk over? *A.* Yes; but those stones are a little east of the second spring.

Q. Are not those stones at the second spring right down in the bottom where the water boils up? *A.* I don't know.

Q. You don't remember those stones in the bottom

of that spring? *A.* I never examined it further down that—

Q. Don't the most of the water boil up in that spring? *A.* I couldn't say.

Q. And does it run from that spring out here into this little channel? *A.* Yes; the waters from the first spring strike in this place (indicating).

Q. That map don't show it. *A.* I am not testifying to the map only as an indication, but that is the fact of the spring.

Q. You mean to say the waters of this stream run right into— *A.* Strike into it about four feet; where it comes from the north bank there is hardly any current; I tested it with dry leaves, to be sure.

Q. Don't it boil up there just exactly like a pot is boiling? *A.* It comes up, but a stream from No. 1 makes an eddy of it.

Q. Isn't that south spring the big spring; the heaviest body of water comes out there? *A.* Well, I think it would be a little heavier, but very little.

Q. Not that it would be, but is it not? *A.* I think it is.

Q. And there is quite a body of water flows down there? *A.* From the upper spring.

Q. From those two springs there? *A.* Yes, sir.

Q. Did you ever notice a spring across here? *A.* On the other side, yes; there is a small—; they don't raise any current and have no channel of their own; it is springy there.

Q. Do you say that has been filled in there? *A.* On the north side; yes, sir.

Q. How much has been filled in, Mr. Depue? *A.* I would say that it is filled in four feet north—

Q. At what point? *A.* At the bass tree.

Q. Where the roots of the bass tree is? *A.* This don't take as much to fill in; at the outer end it is filled in more than four feet, and at the foot of the bass tree I should say it is filled in two and a half or three feet.

Q. You mean at the bottom? *A.* Yes, judging from the position of the tree years ago.

Q. You mean as it goes toward the stream of water? *A.* Yes, sir; right under it.

Q. And you say there it is filled; now as a matter of fact, don't you know that the water there eddies up? *A.* Which?

Q. That there is no current where this spring is and this stream of water; that the water flows in between the mouth of the spring and this heap of stones down there and flows north, eddies in there? *A.* I don't understand what you are driving at.

Q. Don't the river when it comes down bend in? *A.* You mean towards the Jersey side?

Q. The water eddies up, up towards Mr. Depue's? *A.* I think there is a current downward there, a slow current; much slower than on the Pennsylvania side.

Q. You saw driftwood and rails and things brought in there? *A.* They are always brought in by the middle of the river in a freshet being swifter than the shore.

Q. I ask you as a matter of fact, don't the water come down there below the spring and pass back in and flows up, and have you seen ice go up that way and then go out again—have you ever seen that in freshets? *A.* I have seen that in freshets; of course I have.

Q. So that when it came here to this spring it was deposited to the south, was it not, and would pass southward over that spring? *A.* I stated that that tree—

Q. I don't care what you stated. I am asking you as a matter of fact. *A.* Not in all cases, no; there is so much sand at the mouth of the spring it has made a deposit; if you will allow me to explain—

Q. Answer my question. *A.* No, it don't.

Q. You say in one place on the south side it has

made a deposit? *A.* In the middle of the spring it has; right here there is a deposit, on the south side of that spring, and made the spring run very crooked.

Q. Didn't the spring run always crooked? *A.* No, not like it does now; you could see down it from the head of the river.

Q. Did you ever go in there with boats?

A. Yes.

Q. When? *A.* Often in 1852 and 1862.

Q. How long during the year did you go in with boats? *A.* The first year we lived in Pennsylvania we went in every day, some of us; we were under the necessity of going in there three times a day; our well was filled with stone and we got our water there.

Q. During the entire year? *A.* Not the entire year; from April to October; we got our cistern fixed in October.

Q. That is the season of low water? *A.* Yes.

Q. You rowed right in from the river? *A.* Not all the time; no, I ain't stating we did.

Q. You rowed in from the river into this spring, did you not? *A.* When the river was high enough.

Q. What do I understand you to say? *A.* Low water mark—

Q. I ain't asking you about low water mark; I am asking you about that spring? *A.* Sometimes we go in; sometimes we couldn't.

Q. Didn't you say you rowed in there every day from April to October? *A.* To the spring; I didn't say we rowed into it.

Q. You didn't; where did you row? *A.* When the river was high enough to float the boat in there.

Q. You said you went in three times a week from April to October; is that true or not true? *A.* I didn't say three times a week.

Q. What did you say, then? *A.* I said we were under the necessity of going three times a day to that spring to get our water for use.

Q. Oh, you have changed it now? *A.* No; I don't think I have changed it.

Q. Then you never did row up in the spring? *A.* Yes, I did; I tied my boat to that tree up there.

Q. Much? *A.* Pretty often.

Q. During what time? *A.* Always I am testifying to those years.

Q. What years were they? *A.* Between 1852 and 1862.

Q. Was the water in the run deeper than it is now? *A.* Yes, it was.

Q. How much deeper? *A.* Well, it was a good deal heavier stream then than it is now.

Q. What season of the year did you row in, April and May? *A.* I think so, and sometimes later in the season.

Q. The river was pretty well up in April, was it not? *A.* Sometimes.

Q. Did you row in there during the summer? *A.* We went in sometimes during the summer; we pushed the boat up; I say "rowing" in, I mean going in; I will say going in.

Q. Now, you say here was a fence going up? *A.* Yes, sir.

Q. Is this the old road as you gave it to Mr. Weir? *A.* Oh, I showed him the road on the ground there; it showed for itself.

Q. Is that road in a little depression there? *A.* Yes, sir.

Q. That represents a little depression; a little sort of gully runs up there, don't it? *A.* It don't represent to me, because it is crooked; the road is straight in my recollection; I have nothing to do with that on the map.

Q. I thought you told him? *A.* I told him where it went and where it terminated; that is all; I didn't give him any lines in that shape; I told him about where he would find the willow there in my judgment.

Q. You were cutting brush along here this year, weren't you? *A.* Yes.

Q. Why didn't you cut down that currant bush? *A.* I didn't cut to it.

Q. Didn't, eh? *A.* I don't think I did.

Q. When were you cutting? *A.* I only cut there about an hour; it rained.

Q. But you saw the currant bush? *A.* I saw it.

Q. Isn't there a wet place right up in the hollow? *A.* There is a wet place, I testified, by the straight road; that road I understood was a straight road; there was no such crook as that.

Q. Well, you don't know whether that currant bush is located just exactly right or not, do you? *A.* No; I have nothing to do with locating it, it is about there, just north of the house.

Q. How do you know? *A.* By the lay of the land.

Q. Don't you know in that gully there is a wet place? *A.* Yes.

Q. And won't horses go clear down to their knees in that place? *A.* I think not; they might.

Q. Most of the year? *A.* Oh, no.

Q. Don't you know cows will? *A.* I never seen cows in there; not in wet time.

Q. And in that place, just about there—now where is the fence you say runs up here? *A.* I would say it started a little north here—

Q. It didn't cut across the public highway, did it? *A.* It started on the east side, a little north of the spring.

Q. Where did it start? *A.* It started probably two paces, maybe only one.

Q. Point out there. *A.* About here (indicating), around that corner, and ran up to the house.

Q. Two paces from where? *A.* North of what would be a straight line from the spring.

Q. That is right across this way? *A.* Yes; I would say the fence would be near to two paces north of the spring.

Q. Where did you say that joined the yard? *A.* Right in front; this ran according to my recollection, right to the south side of the barnyard, and joined a fence there.

Q. Thirty to forty feet of barnyard you say in front of the house? *A.* No; I say it wasn't less than twenty and may have been thirty.

Q. Wasn't it forty? *A.* I don't know; I am testifying to my recollection.

Q. So that this ran south of the house and the yard, this fence? *A.* Yes, sir.

Q. Now was that fence straight or was it crooked; didn't it bow; didn't you tell me once that that fence bowed there? *A.* It bowed at the corner, and I ain't testifying that it was an absolutely straight fence.

Q. Didn't you tell me that that fence bowed? *A.* Yes, it bowed around here; turned the corner.

Q. It bowed up? *A.* No, it didn't bow anything like that to my recollection; it was a round corner here, and round up there.

Q. Just show us how that fence bowed? *A.* I can't show it.

Q. Well, it did bow; it didn't run straight? *A.* I won't say whether it bowed or not; I know it was a round corner.

Q. What do you mean by a round corner? *A.* Where it turned up from the road leading to Belvidere.

Q. Around this way? *A.* Yes; it turned off from the Belvidere road, and went a mile nearly before it got on—

Q. How many panels? *A.* Probably one.

Q. Not more than that? *A.* I wouldn't say that it was.

Q. Well that, was it straight after that? *A.* Oh, I wouldn't say it was straight; my goodness.

Q. How far was the other fence from it? *A.* My recollection is from thirty-five to forty feet north.

Q. What kind of fence was that; a straight fence? *A.* A crooked fence would pass for a straight one sometimes; the wood pile was right there, and drive in there and turn around; I think there was a kind of round corner; I won't be positive; I think it was made so you could turn either way.

Q. You were there for the purpose of giving Mr. Weir information? *A.* No; I didn't know Mr. Weir was there when I left home.

Q. How did you go? *A.* I went down on the train; after I bought my ticket I found Mr. Weir was there.

Q. And then you gave him this information, did you? *A.* I was asked to; yes, sir.

Q. Then you gave him this information about the barn, and about the house and about the currant bush, and you are supposed to have given him information about the roadway? *A.* I gave him information about the roadway; a straight way.

Q. Have you any responsibility for that house? *A.* I located it, and can locate it to you to-day.

Q. You say that barn is fifteen feet back from the public road? *A.* No; I didn't say it was; I told him from fifteen to twenty feet, probably, from the public road.

Q. As it is now? *A.* As it is now; I located it from my memory, and everything.

Q. Now that willow; there are quite a number of willows down there, are there not? *A.* Yes; there has been a number of willow trees along that road, and a good many willow trees had disappeared around those premises.

Q. Around that yard? *A.* I won't say as to that.

Q. Weren't there other willows up here than that willow? *A.* No; there was an old pear tree stood inside the dooryard, and another here; another tree stood west of the willow, but it wasn't a willow.

Q. How big a willow was that? *A.* Oh, I should say it was fifteen to eighteen inches in diameter.

Q. Do you remember being down with me once? *A.* Been down there often ; yes.

Q. And do you remember walking along the railroad and saying that the old landmarks were so removed you could not locate where the house was ? *A.* No.

Q. And couldn't tell where the yard was ? *A.* No.

Q. And couldn't tell where the fence was ? *A.* No ; that roadbed has been—

Q. Didn't you make an affidavit once ? *A.* When ?

Q. In the case of the Pennsylvania Railroad against the United States Pipe Line Company ? *A.* Not about this road.

Q. I am asking you if you didn't make an affidavit ? *A.* Yes.

Q. And didn't you at that time tell me you didn't know anything about the location of this fence here ? *A.* No.

Q. And didn't you at that time say that that spring was exactly the same now as it was when you first knew it? *A.* Yes, but—

Q. The spring and the run ? *A.* I had stated the spring came out here exactly where it is.

Q. There was a series of springs between that spring and this spring ? *A.* I haven't seen it.

Q. Didn't you see them ? *A.* No, there is no spring, that is a visible current spring, except those two.

Q. That is a visible current spring now, but weren't they formerly—didn't they all boil up in there, wasn't it all one mass of springs in there ? *A.* Might have been and might not ; I couldn't say about that.

Q. You don't recollect that, do you ? *A.* There may be persons here that do ; I don't.

Q. You wouldn't swear as a positive fact that that willow tree was located there, can you ? *A.* I think that willow tree, from the observations of the ground, I think I ain't more than two or three feet out of the

way, unless I am too far west; it may have been in the railroad bank further.

Q. Is there anything there to indicate a stump of a tree now? *A.* No, sir.

Q. The land has been farmed on the west side of it? *A.* Yes.

Q. Clear up to the railroad bank? *A.* Yes.

Q. And farmed on the east side clear up to the railroad bank? *A.* Yes.

Q. And the old landmarks obliterated? *A.* In respect to the face of the land.

Q. What have you to indicate the position there of that willow tree? *A.* I can indicate the position of the willow tree from the old roadbed and—

Q. What old roadbed? *A.* That I have been testifying to here.

Q. Hasn't the old roadbed been ploughed up several times? *A.* Yes, but the indentation is there.

Q. Where is it? *A.* It is between that fence—

Q. Is it that gully? *A.* Yes, sir.

Q. Wasn't the gully the exit of surface water from above? *A.* I have stated it was on the north side and was filled in with stones.

Q. On which north side? *A.* The north side of the roadway up to the house; there was a spring part way, but didn't lead all the way to the house.

Q. Isn't that a wet place? *A.* It was at that time.

Q. Well, isn't it at the present time? *A.* I haven't went up there—

Q. Isn't it wet there? *A.* When it rains it is.

Q. You say everything is obliterated there, and you have nothing but the embankment and cultivated ground on each side; you can positively locate that willow tree within two or three feet? *A.* I think I can.

Q. How do you know? *A.* I can; yes, sir.

Q. And you swear positively that is the location of the willow tree? *A.* In my judgment—

Q. How wide is the railroad embankment there?

A. I don't know; maybe somewhere between sixty and eighty feet.

Q. You don't know, do you? *A.* Not to my positive knowledge; I suppose it is seventy-five feet.

Q. Then the location of this house is only guesswork, isn't it? *A.* No, it isn't guesswork.

Q. How did you fix that in the railroad? *A.* I fixed it by the roadbed—

Q. The roadbed was obliterated, isn't it? *A.* Not entirely obliterated; no, sir.

Q. You know it has been farmed, don't you, and didn't you cultivate it yourself? *A.* Yes, I cultivated it myself; I could always tell when I cultivated that roadbed by two things; there is two things—

Q. Now, never mind; I haven't asked anything about your two things; you have sent a plough right through back and forth? *A.* Yes, ploughed it.

Q. And how long ago was that roadbed wiped out? *A.* Well cultivated; I won't say wiped out.

Q. Well cultivated? *A.* Since the old house was torn and the railroad built.

Q. That is since 1852? *A.* Yes, sir.

Q. And there are indications in that old roadbed that tells you there is a roadbed there?. *A.* There is indications there.

Q. Isn't that all sandy loam? *A.* Yes.

Q. No stones in it? *A.* There is stones in the road.

Q. Where are there stones in the road? *A.* Down in that gully.

Q. Are there any on the surface? *A.* Not more than plough deep; I have struck stones in there.

Q. When did you plough there? *A.* I helped plough that about three years ago.

Q. You helped plough in that place? *A.* Yes, sir.

Q. And you struck stones? *A.* I certainly did.

Q. How many stones did you strike? *A.* I ran the plough on a number of stones going up in the centre of the gully.

Q. Did you plough long ways or short ways? *A.* Long ways.

Q. How did you know that Andrew Lomasson was a tenant of Thomas Lomasson? *A.* By them paying rent to Thomas Lomasson.

Q. Did you ever see him pay rent? *A.* I have seen him hauling corn there.

Q. How do you know that was for the rent? *A.* They spoke that it was their share.

Q. Who spoke of it? *A.* Andrew Lomasson.

Q. Did Thomas Lomasson ever tell you that Andrew Lomasson paid rent? *A.* No.

Q. Did Thomas Lomasson ever tell you that George K. Lomasson paid rent to him? *A.* No.

Q. You say that William S. White was one of the owners with Thomas Lomasson of that farm? *A.* Yes, sir; supposed to be.

Q. Do you know who William S. White was? *A.* Did I say William S. White?

Q. You certainly did. *A.* William White was his name; William S. was an error.

Q. Did Mrs. Lomasson ever receive any rent? *A.* She owned her interest.

Q. How do you know? *A.* Andrew Lomasson got me to go with George, stopped one morning on his way to school, and Mrs. Lomasson was crazy, and he went over to tell Mrs. White that her grain was ready, and to know what to do with it; George walked inside the door of the old stone house, and I was afraid to go further than the step, and George told her, Pop said I should tell you that her share of the grain was ready; that is how I know it.

Q. Did that land belong to her? *A.* No; and I heard William White also, if I dare state it, tell my father that he always gave the rent of—

Q. Who was William White? *A.* William White, the owner of the land, sir.

Q. How long did he own that land? *A.* Joint in-

terest in it up to 1850; as I have already stated, he got one-half of the rent and Thomas Lomasson the other.

Q. Now you propose to swear that he was a tenant of Thomas Lomasson or he was a tenant of both those people? *A.* That is what I have said; yes.

Q. Now the paying of this rent to Thomas Lomasson, how do you fix that? *A.* By hearing Andrew Lomasson speak to my father two or three times about giving his one-quarter, the half of the rent, to his father, and how much it would amount to.

Q. That is all you know about it? *A.* Yes, sir.

Q. And that is the reason you say he paid rent to his father, Thomas Lomasson? *A.* Yes, sir.

Mr. Roseberry—I object to it; it's nothing but hearsay.

The Court--It may be; do you want your question and answer stricken out.

Mr. Roseberry—No; but the former testimony.

The Court—Not at this stage.

Q. How about George K. Lomasson; do you know that he paid rent? *A.* I know he lived on it.

Q. You don't know anything about paying rent to Thomas Lomasson, do you? *A.* No; I don't know whether George K. paid rent or not.

Q. You say there has been a change in the gully—what change do you mean? *A.* I have stated about filling up the bank there; and there has been a change about the mouth of the spring.

Q. You are speaking about the—? *A.* About the ground.

A. The spring run? *A.* The spring run; I call it a gully; it is not probably the proper word; it is the ditch, whatever you call it, what the spring passes through.

Q. There are high banks on each side, are there not—high spring banks? *A.* Most of the way until you get down to an ordinary raft, fresh or fishing ground.

Q. That is, steep banks until it strikes the river banks? *A.* Yes.

Q. When is the ordinary raft fresh that you speak about? *A.* Spring and fall.

Q. What time in the spring? *A.* Well, April and May, June.

Re-Direct Examination.

Q. How much is the outlet of the stream shifted from what you formerly remember it? *A.* Well, I think it has shifted in running twenty feet; I would have to show on the map, if it is allowable.

Q. All right. *A.* The river as it is now, about twenty feet, twenty-two feet from the river where the bank stops, strikes the river bank, there was a stone and two trees which had disappeared; it used to run in a straighter line towards the river; it goes south about fifteen feet in running twenty west, and that is filled in.

Q. How much further then in the stream mouth to the south at its outlet, how much further south is it than it was formerly? *A.* When the river is low it would be fifteen feet, but if there would be an ordinary raft fresh it would bring the water up here to this stone I have spoken of, and then anybody looking at it would say the outlet was just where it was before; the change comes between these two points.

Q. And between those two points you say it has shifted about fifteen feet south? *A.* Yes, sir.

Q. You say there were two indications by which you could tell the old private roadway; what were they? *A.* Indenture in the ground and stones that it was underlaid with up that gully that seemed to have been hauled in.

Q. Was the roadway in the depression or was the depression one side of the roadway? *A.* The depression was inside of this what I have described as thirty-five or forty feet between the two fences.

Q. Was the roadway itself in that depression? *A.* Yes, sir; drove up the south side of it, the tracks were.

Q. And how near did the fence go to the roadway? *A.* The fence ran up to the railroad.

Q. Does it come down to that wall? *A.* So on and right to the road and joined the fence in a piece of meadow that laid south here was fenced in, and the fence ran down from the yard I have described to the public road where the culvert is.

Q. What I am asking you about is, how close that fence which came down from the yard to the spring, went to the old roadway? *A.* Came right to it.

Q. I mean the old roadway to the house? *A.* Yes; this roadway to the house; it came down to the public road.

Q. Now, how near did the fence run to the roadway? *A.* Oh, well it was just a driftway; it wasn't a road.

Q. I mean the driftway? *A.* It was nearer the south than the north, because the woodpile was right in here, and then turned to the north; that is the way it was used.

Re-Cross Examination.

Q. You say there was two trees there, on each side of the mouth, formerly? *A.* At the bank, where the high banks are; yes.

Q. And there was a stone at the north tree? *A.* At the foot of the north tree was a boulder.

Q. And you say from that point out fifteen feet into the river, it has been filled up? *A.* Twenty feet I say it was filled up, so that the stones, if it has not been removed, is covered up.

Q. So the ordinary freshet now would be the position in which that bank was at that time? *A.* A raft freshet would bring the river up over them so you would not notice it was gone at all; it would bring the outlet right by the stone.

Q. Just where the outlet was formerly? *A.* Yes; as far as that goes.

Q. Now, don't you know, Mr. Depue, as a fact, that the stream runs right down here, and strikes right against the root of that tree? *A.* Yes; and then goes south from that.

Q. But it strikes right against the stump of that, and that boulder you speak of, was right back of that, was it? *A.* Yes, it was; it may be there yet, under the ground.

Q. And there was a tree right across hereabout; they were old birch trees, were they not? *A.* I don't think those two trees there were birch; I recollect one of them—

Q. If that stream came down there and struck against them, and was deflected to the south—did you notice the stump there? *A.* Yes.

Q. If the stream came down and struck that tree, and was deflected to the south— *A.* Oh, I didn't say so.

Q. How could it ever go out there? *A.* The stream came down and went straight from the tree to the river

Q. Have you told other people different?

The Court—You need not answer that, Mr. Depue.

Q. That is all.

Samuel Depue, recalled for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Mr. Depue, I want to ask you about the location of the spring; do you remember the old spring that was there? *A.* I do.

Q. And how early do you say you remember it? *A.* About fifty-five years, anyway.

Q. That would bring it back in 1841? *A.* Yes, sir.

Q. And you have seen the spring recently, have you, and the run of water? *A.* I have.

Q. What have you to say about the spring, and the location of the spring and the run of water as compared with your first recollection of it? *A.* Well, there is not near so much water apparently in the spring now as there was forty or fifty years ago. In regards to the location of it, the basswood tree that the stream formerly came out under both sides, now is filled up on the north side so the stream comes out under and turns the mouth over probably three feet, by filling up of the north side of the tree.

Q. Comes out on the south now? *A.* Yes, sir.

Q. Then the run of the water itself, how is that changed, if at all? *A.* Well, the gully through which it flows is much narrower than it used to be.

Q. Has the location of the run changed? *A.* Well, I can't say that it has, only it has got narrower and appears to be crooked; winds more than it used to.

Q. Does it come into the Delaware river at the same point it used to? *A.* It doesn't in low water; it has moved southward when the water is low, but of course it wouldn't show when the river is up; you wouldn't notice it.

Q. When the river is low what difference is there now from what it used to be? *A.* Well, I think five feet.

Q. In which direction? *A.* South.

Q. Now as to the location of the Lomasson house; do you remember the house? *A.* I do.

Q. Familiar with it; were you? *A.* Yes, sir; I have been in it a great many times when I was young.

Q. And as you went from the bank towards the house, how did you go from the spring to the house? *A.* There was a lane or a road that they used to go.

Q. Was that the entrance to the house from the public road, where it got into the barnyard? *A.* The public road was outside, the lane ran from the public road into the house.

Q. That is what I mean; how did that lane run from the public road? *A.* Well, it was a very little north of the spring, if that is the proper answer, if I understand your question.

Q. Yes; it began a little north of the spring, do you mean, or it inclined as you went to the house, it inclined to the north? *A.* I think it did a little.

Q. Then was this road—had this road a fence near it? *A.* Yes, sir.

Q. On which side? *A.* There was a rail fence on the south side of it, and there was a fence on the other side too, but I couldn't say what material it was positively.

Q. This fence on the south side ran from where to where? *A.* From the public road up to the garden fence at the house, the yard fence at the house.

Q. And it joined the garden fence, did it, at the house? *A.* No; it ran to the yard fence at the house.

Q. And when it joined the yard fence, did the yard fence continue on in the same direction? *A.* I think it did.

Q. Was the yard fence of a different kind from the fence that ran up from the spring? *A.* It was; at one time it was a board fence, and the other was a rail fence.

Q. The fence that ran up from the neighborhood of the spring; was that always there in your recollection down to the time that the railroad came through? *A.* I think it was; sometimes it was in a dilapidated condition; but it was there, however.

Q. Kept up; when it fell down they put it up again? *A.* Yes, sir; wash one end of it sometimes, the river would.

Q. And how near was that fence to the old roadway; I mean the way you went into the house? *A.* You mean the public road?

Q. No; the private road. *A.* Oh, I couldn't tell; it was quite a distance; perhaps—I couldn't really

give you the exact estimate of the distance; quite a ways.

Q. You have been on the ground recently, haven't you? *A.* I have.

Q. Did you observe any signs of the old roadway that led to the house? *A.* There is a depression in the ground there that looks as though it was; had been the roadway, and it is a about where my recollection puts the roadway looking from the direction of the spring.

Q. Did that private roadway run straight up to the house? *A.* Nearly so; I think it is what we would probably call straight.

Q. Do you remember the location of a willow tree near the house? *A.* There was a willow tree stood near the woodpile, out a little from the house; I could not give the exact location of it, but I remember the tree very well.

Q. There is nothing there to show where it was at that time? *A.* No.

Q. How did that willow tree stand with reference to the fence? *A.* It was on the north side of the road, I think; that is, the road that went into the house, and the woodpile right there by it.

Q. Where did the fence come with reference to the willow tree? *A.* I think the willow tree was north of it. Which fence do you mean?

Q. I mean the fence that came up from the spring. *A.* That was on the other side of the road, south; my impression is that the tree stood on the north side of the road.

Q. On the north of the road? *A.* I think so.

Q. Are you sure about that? *A.* Well, no; I wouldn't be positive, but then I had that impression; it was by the woodpile, anyway; but my recollection is a little indistinct in regard to the exact location.

Q. Do you remember the locality of the woodpile; which side of the private road was that? *A.* I think

it was on the north side; that is my impression, yet I would not be positive.

Q. There was only one willow tree there, was there? *A.* That is the only one I recollect; there were small ones, but this was a large, old tree.

Q. In your earliest recollection, who lived in this property? *A.* Mr. Andrew Lomasson.

Q. And he was a son of Thomas Lomasson *A.* Yes, sir.

Q. Thomas himself did not occupy it? *A.* No, sir.

Q. How long did Andrew occupy it? *A.* I think thirteen years; about that.

Q. I mean down to what period? *A.* 1844 or 1845; I would not be positive which; one of those years he moved away.

Q. And then who took the place? *A.* George Lomasson, a brother of Andrew.

Q. And how long did George Lomasson continue to occupy it? *A.* He occupied it on up to the time, I think, well, after the railroad was built; I couldn't say how long; I guess nearly as long as the railroad was built, I don't recollect the time, it was there quite a while; the property was divided in the meantime while he was there.

Q. Originally Andrew and Thomas occupied successively the two properties that were afterwards divided, as I understand? *A.* Andrew and George.

Q. What did they do with the property; farm it? Farm land, was it? I mean before the railroad went through? *A.* Yes, sir; farm land.

Cross Examination, by Mr. Roseberry.

Q. You think, Mr. Depue, that the old willow was on the north side of that lane that led up from the public road to the house? *A.* That is my impression, yet I ain't positive; it is so long ago, my memory is a little indistinct in regard to the location of it.

Q. However, you are certain that it was on the north side of the woodpile? *A.* It was by the woodpile; I couldn't say whether it was on the north side or not.

Q. Where was the woodpile as to the lane? *A.* My impression is it was on the north side; yet as I say—

Q. The woodpile was on the north side? *A.* Of the tree; they were both together; yet I say I am not positive in regard to the matter.

Q. How long was the house? *A.* I would think thirty-six or forty feet; it was built in two parts; it was log and was built in two parts; it was quite long and low.

Q. And which way did it extend? *A.* East and west.

Q. Do you know where it was located in the railroad? *A.* Not exactly; I know it was right in the embankment of the railroad.

Q. You didn't see anything to indicate where it was, did you? *A.* No, I didn't; there was a few stones there that looked as though they might have been the foundation of some building, and yet they might have been there some other way.

Q. Might have been carried there? *A.* Yes, sir; I couldn't say.

Q. The fence that ran up from the road, that you say was a rail fence, was it? *A.* Yes, sir; up to the yard fence.

Q. It was frequently washed away, was it not? *A.* Occasionally; yes, it was, especially the lower part of it; sometimes the whole of it was washed away.

Q. And was it always put back just exactly in the same position, or somewhat changed? *A.* Oh, I could not say that.

Q. It kind of was a bow, was it not? *A.* At the corner it was, where it turned around the corner, where it left the public road.

Q. Well, they came and went in around this way? *A.* Yes.

Q. Or did they come and go in around this way (indicating)? *A.* Came and went around that way.

Q. It was a place made to turn to go in? *A.* Yes.

Q. The public road was only a wagon road, wasn't it? *A.* Yes.

Q. So it was evidently built to adapt itself for coming in from the public road? *A.* Yes.

Q. And on each side it was bent to adapt itself for that purpose? *A.* Yes, sir; the public road was narrow at that place.

Q. And it was simply used as a lane to the house? *A.* Yes, sir; a lane to the house.

Q. And the woodpile was in the lane? *A.* Yes, sir; by the side of it.

Q. You say that the spring run is not quite so crooked, or a little more crooked than it used to be? *A.* It is more crooked than it used to be; it is narrower and more crooked, I think.

Q. Right at the ends it is a little more crooked, that is all, is it not?

A. Principally there; yes, sir.

Q. In other places it is about the same? *A.* Pretty much.

Q. In the middle it is about the same, is it not? *A.* Yes, sir; in the middle it is about the same.

Q. How has it become changed at the end? *A.* Well, it is filled in, the bank, is, on the north side.

Q. Well, you mean the north side? *A.* By the tree.

Q. At the head of the spring? *A.* Yes; I don't think it is filled as much below.

Q. What is called the head of the spring is a sort of series of springs, is it not? *A.* Yes, I think it is.

Q. The tree that lies bent over, there came a spring out from under that? *A.* Yes, sir.

Q. Then a spring from the south under some birch trees? *A.* Yes.

Q. And the heavy spring comes from the south? *A.* Yes, the south is apparently the heaviest.

Q. And some stones in the bottom where it boils up through? *A.* I don't recollect.

Q. It boils up and keeps the sand boiling out? *A.* Yes.

Q. And don't it do that under the tree, too? *A.* I think it does.

Q. And they both meet in common current of water and flow on out? *A.* Yes, sir.

Q. The spring down here; that sets pretty well back from those up in under two old trees; the third spring? *A.* Yes, sir.

Q. Pretty well back under two old trees? *A.* Yes, sir.

Q. And it is kind of filled up on each side? *A.* Yes, sir.

Q. And those are pretty steep banks coming down there? *A.* Yes, sir; quite steep.

Q. Did you notice where people have traveled down those little cross stones? *A.* No, sir; I didn't.

Q. Have you been there lately? *A.* I have been a week ago.

Q. Did you notice where people traveled down to get water? *A.* No, sir; I didn't look.

Q. On the opposite side of the spring, on the north bank, is an immense tree, is there not? *A.* Yes, sir; a variety, I think, of water birch.

Q. And do you remember right here somewhere, where this run comes down, it strikes right against the stump of what was formerly a tree? *A.* Yes, sir.

Q. And that turns the current? *A.* On the north bank.

Q. It strikes right against it, and the current there is turned and deflected toward the south? *A.* Yes, sir.

Q. Now, it was turned by that tree, wasn't it? *A.* Well, I couldn't say; probably it was.

Q. You saw the stump there? *A.* Yes, sir.

Q. Didn't that tree stand there in your earliest recollection? *A.* Yes, sir.

Q. Wasn't it a large tree when you first knew it? *A.* It was.

Q. About how big across it? *A.* Well, between twenty inches and two feet I should think in diameter.

Q. So that the current of that water coming out struck against the tree and was deflected to the south? *A.* Yes.

Q. And apparently had always been that way? *A.* Yes, sir.

Q. So that made the bend there in the line? *A.* Yes, sir.

Q. And then on the south side there stood also, right opposite from it, a tree? *A.* Yes, sir.

Q. That was a birch, too, wasn't it? *A.* I think it was; the stump is there yet, I think.

Q. And one of about equal size? *A.* Yes, sir.

Q. Where did you say the filling up was here, right there (indicating)? *A.* Right there by the tree; oh, you mean at the mouth?

Q. Yes. *A.* That is down the river, towards low water mark; it has crooked south considerably, five paces.

Q. Filled in there? *A.* Filled in; crowded the stream towards the south.

Q. Do you remember how this water strikes below the spring, and then up this way (indicating)? *A.* Yes; when the water is up.

Q. I mean in time of freshet? *A.* Yes.

Q. So in time of freshet there is no current striking there against this bank? *A.* No, sir.

Q. Hasn't the Pennsylvania side of the river been considerably washed away? *A.* Yes, it has below the spring on the Pennsylvania side it has been washed away occasionally in the last forty years.

Q. And the current flows over there, does it not? *A.* Yes, it does much more than it did in early times.

Q. And the river on account of that has been widened? *A.* Yes.

Q. And thrown over on the Pennsylvania side? *A.* Yes.

Q. And filled in on the Jersey side? *A.* Yes, it looks as if it had filled in on the Jersey side.

John Lomasson, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. What relation are you to Thomas Lomasson? *A.* He was my grandfather.

Q. And what was your father's name? *A.* Andrew Lomasson.

Q. It has been said that Andrew Lomasson at one time lived in a house, the location of which has been pointed out here near the Shippen Spring? *A.* Yes, sir.

Q. When was that? *A* I believe he lived there in 1831.

Q. And he remained there until what year? *A.* Thirteen years; until 1842.

Q. Thirteen years from 1831 would be 1844? *A.* Well, between 1841 and 1844.

Q. During that time where did you live? *A.* I lived with him.

Q. How old are you now, Mr. Lomasson? *A.* Seventy-three.

Q. So that in 1831, how old a boy were you when you moved there? *A.* I was eight years old in October, and my father moved there the first of April in that year.

Q. Do you remember the situation of the property at that time? *A.* Yes, sir.

Q. You remember the old spring? *A.* Yes, sir.

Q. And the run of water that went from the spring into the Delaware? *A.* Yes, sir.

Q. Are they there yet? *A.* Yes, sir.

Q. What have you to say as to any change in their appearance? *A.* I say there isn't any more than a little fill of sand from the high freshets, about the same as there has been ever since I can remember, back to that old basswood tree, at the head of the the spring; the reason it has filled up, it was always kept cleaned out, and boards put in there for dipping the water, and there was springs boiled up all the way between there and the river.

Q. The other springs; were they boarded up? *A.* No, sir; they were little boiling springs in the sand.

Q. The spring under the basswood was the one nearest to the road? *A.* Yes, sir.

Q. Has that basswood fallen over any now? *A.* I don't think it has fallen over any; it has filled up with sand under it.

Q. Has the boarding been kept up? *A.* No, sir; I don't think it has now.

Q. Now, as you went from the roadway to go into the house where your father lived, how did you go up? *A.* Came around the road that came through the culvert, and came around until we came nearly opposite the spring, and there was a curve in the fence that went up to the house, up to the yard fence.

Q. There was a fence that ran up from the road, nearly opposite the spring? *A.* Yes, sir.

Q. That ran up to the corner of the yard fence? *A.* Yes, sir; to the yard fence, and also a part of the yard fence ran right along; it was the same fence, only one was a rail fence, and the other was a board fence along the yard.

Q. Now, the road that you entered, I mean the private lane that led to the house; where did that go with reference to this fence that went up? *A.* It didn't go any further than the yard fence.

Q. Did the road to the house go near the fence or not? *A.* The public road?

Q. No; I mean the private road. *A.* We drove up

to the yard fence, to the corner, and there we had a woodpile right outside of the yard fence, and the other board fence was along the yard, and that ran up there; we had a woodpile on the right hand side as we drove in, came around a curve and went up there; there was a rail fence up to the corner of the yard; there stood a cherry tree right on that corner; right below the woodpile my mother planted a willow sprout, and made a willow tree; just below that she planted a Balm of Gilead, and that stood there and growed to be trees.

Q. The woodpile, you say, stood on the right hand side as you went in from the road? *A.* Yes, sir.

Q. That is the south side? *A.* The south side of the private lane; yes, sir.

Q. Now, how near, as you went into the—by this private lane, how near was the fence that was on the right side of it, how near was it to the lane as you went in? *A.* To which lane do you mean; to the lane that came in from the river, upwards?

Q. Yes. *A.* That went right by that lane; I suppose it wasn't—well, up to the corner of the house, you might say.

Q. Well, what I am trying to get at is, how near did this private lane run to the fence that went along it?

The Court—Do you mean the south fence?

Q. (Indicating on map). Here is the spring, and the water running down to the Delaware; now up here is where they say the house was, and then there is a fence running up somewhere along here to the corner of the yard; now how near was the road that went off here; how near was that to this fence? *A.* That is the main road you mean?

Q. Oh, no; I mean the private road. *A.* That road was always from one fence to the other fence, on the right and left both, I suppose, probably—well, probably, thirty or forty yards apart; quite a wide road, so you could drive up there and turn around with a team and come out again; the garden was on the left as you

you went up from the river, and a couple of pig pens, and quite a waste place, and it used to wash out; I helped haul stones in there once and fill it up; the surface water might wash in there; there was a place to drive up there and come up to the house and turn around by the house.

Q. Now, you spoke of a willow tree I think you said your mother planted? *A.* Yes, sir.

Q. And where did that stand with reference to the fence that came up from the stream? *A.* Right under the fence, just at the lower end of the woodpile, and the Balm of Gilead just a little ways below it.

Q. Was that the only willow tree there was? *A.* The only willow tree there was there.

Q. I mean was there any other willow tree around there? *A.* No, nothing short of the river bank; I helped to plant a good many at the river bank.

Q. How far did the house stand from the fence and from the yard fence? *A.* I don't suppose more than thirty feet from the yard fence.

Q. That is, there was a yard of about thirty feet from the house to the fence that came up from the spring? *A.* Yes, sir.

Q. The house stood about thirty feet north of that fence? *A.* Yes, sir.

Q. Your father lived there down to some time in the forties, you say? *A.* Yes, sir; forty-three or forty-four; I don't remember which.

Q. In what way did your father occupy the place? *A.* His father gave him his interest off of it, and gave William White the one-half; gave him one-quarter of what he raised on the property, and the other my grandfather gave him, whatever he could make off it.

Q. And he occupied it under the arrangement with William White and your grandfather? *A.* Yes, sir; one hundred and forty acres of land at that time.

Q. Where were the one hundred and forty acres?

A. It was the White property and the Lomasson property there together.

Q. Afterwards divided into two parts? *A.* Ran from the river back; there was no railroad when I was there.

Q. And after your father left who did you say took the property? *A.* George K. Lomasson, my uncle.

Q. How long was he there? *A.* Well, he was there until after the property was divided, and was there for a number of years afterwards.

Q. That was until after the railroad came through, wasn't it? *A.* Yes, he was there at the time the railroad went through.

Q. Well, in what way did he occupy the property, do you know? *A.* He went on there to farm it and make a living off of it, and his father gave him all he could raise on it.

Q. That is Thomas Lomasson? *A.* Yes, sir.

Q. How far was the old house where you lived from the culvert as it is now, where it goes under the railroad? *A.* I couldn't tell you exactly what the distance was, it was quite a little piece; I couldn't say for what distance; I was away from there for some time and the location of the railroad there has changed the appearance of it considerable.

Cross Examination, by Mr. Harris.

Q. Do you know of the existence of a tract of land there known as the Robeson acre in that locality?

Mr. Strong—One moment, I don't think that is cross examination.

The Court—I don't know, it may be; I suppose counsel's intention is to test the accuracy of the recollection of this witness as to the locality of old indications on the ground.

A. Nothing more than I saw Mr. Robeson on the

property a good many times, saying he was come down to look over his acre of land; that is all know about it.

Mr. Strong—I object to that.

The Court—It is not material so far.

Mr. Strong—Shall it be stricken out?

The Court—No.

Q. Do you know where Judge Robeson's acre was? *A.* No, sir.

Q. Do you know where the piece of land formerly called the Landing Place was situated there? *A.* I don't think I do.

Q. Do you remember there being in that immediate locality a long frame building? *A.* Yes, sir.

Q. Do you know what it was used for? *A.* I don't, to my own knowledge; they always told me—

Mr. Strong—Well, one moment, if you don't know of your own knowledge.

The Court—No.

Q. You are familiar with the public road in that locality? *A.* Yes, sir.

Q. The one that runs under the culvert, you know that? *A.* Yes, sir.

Q. Do you know where that public road entered the Robeson acre? *A.* No, sir, I don't; I suppose about the culvert, about the turn of the road.

By Mr. Strong—What do you say? *A.* I suppose about the turn of the road; I couldn't say positively anything about that.

Q. Is this the turn of the road you mean—the first turn after you come under the culvert? *A.* Yes, sir.

Re-Direct Examination.

Q. Who was Judge Robeson; who do you mean by Judge Robeson? *A.* Well, sir, he was—

Q. William P. Robeson? *A.* William P. Robeson.

Q. You said you have seen him on the ground claiming an acre of land? *A.* Yes, sir.

Q. Where have you seen him? *A.* Along the ground; down there at that spring; around that spring bank, and walked around there by the spring.

Q. And what did he say about his acre of ground, as to where it was? *A.* Nothing particular; only he said, "I have come down to look at this acre of land."

Q. Did you hear him say where any of the lines of it were? *A.* No, sir.

Q. Or where it was in reference to the spring? *A.* Nothing more than the spring; he claimed he had a part of that spring.

Q. That is all you ever heard him say about it? *A.* Yes, sir; he never showed any bounds or corners.

Elbridge G. Weir, recalled for the plaintiffs.

Direct Examination by Mr. Strong.

Q. You have on this map, Mr. Weir, a piece of land which you have designated as the Robeson acre; how do you locate that Robeson acre? *A.* The description of the deed of Lomasson to the Belvidere-Delaware Railroad, courses fifteen, sixteen and seventeen, read south one and a quarter degrees east one chain, fifty-seven links to the south side of a large willow tree marked for a corner in a boundary line between said Lomasson and William P. Robeson, Esq.; thence along the same north eighty-one and a half degrees east one chain, twenty-seven links; thence along the same south three quarters degree west, two chains, four links; thence still along the same south eighty-one and a half degrees west one chain and fifteen links; thence it leaves that land and over other lands of said Lomasson.

Q. Have you run those courses? *A.* I have run those courses, and those three courses mark the east end of the Robeson tract.

Q. What is the width of the tract?

Mr. Harris—Isn't this matter that was fully examined into yesterday?

The Court—No, I think not.

Q. What is the width of the tract in perches; the width of the Robeson tract? *A.* The easterly line here is given as two chains and four links; this is about thirty-two inches more than eight perches would be.

Q. Now, did you find any willow tree there? *A.* No, sir.

Q. You have a willow tree, however, noted on your map there? *A.* Yes, sir.

Q. How did you make that location of a willow tree?

The Court—I think he mentioned that, that Mr. James Depue told him.

Mr. Harris—Yes, sir; and he gave the courses yesterday too.

Mr. Roseberry — I cross examined him fully about it.

Q. How did the information as to the location of that willow tree received from James Depue agree with the courses of the Lomasson deed? *A.* I stood at this point here with my instrument, and Mr. Depue was off I think at this end of the property, and I called him to me; said I, "Mr. Depue, there is something I want to ask you—"

Q. Don't give the conversation particularly, but he located that tree, did he? *A.* I asked him about the tree as near as I could, and he made a mark on the ground, and when I came around with my survey I struck within three feet of where the willow tree stood.

Q. So that you arrived within three feet of that point independently? *A.* Yes, sir.

Q. In which direction was that? *A.* I struck south of where he indicated the tree.

Q. That is, the line where you ran it came three feet further this way than where he located the tree to be? *A.* Yes, sir.

Q. Did you have any regard to the description of the

Robeson acre; did you attempt to locate it from its own description? *A.* No, sir.

Q. Are you familiar with the description? *A.* I have read it; yes, sir.

Q. How does the location of that description agree with the location you have here? *A.* It agrees.

Q. The line of the—that is the northerly line of what you call the Robeson acre, twenty perches, following out the course of the Robeson deed, reversing the course, how near does that come to the spring as it exists?

A. Why, I missed the spring four feet.

Q. To the north?

Mr. Roseberry—I object to that; that was fully examined yesterday; he spoke about being four feet from that spring half a dozen times, and I examined him all about it, about that portion of land there below to make up for what was above the spring on the north side.

The Court—I don't recollect that; however, if there is any doubt about it, you can ask him again.

Mr. Strong—I was under the impression he had not gone over that.

Q. The lines of the Robeson acre as located with reference to the Lomasson tract, that is the north and south lines, are they or not parallel? *A.* The north and south lines are parallel.

Q. And at a distance of eight perches and thirty-two inches apart? *A.* Yes, sir; well, measured at right angles this eastery line is not on a right angle with the north and south lines; measured at right angles the distance from the south line up to the north line would be about eight inches more than the eight perches.

Q. But still the lines are as you say parallel? *A.* Yes, sir.

Q. Now the westerly, or I should say the easterly line of what you call the Robeson acre, where does that come; you have it marked there, haven't you?

A. Yes, sir; it is just east of the centre line of the railroad track.

Q. And how far is that line from the river? *A.* That is twenty perches, or three hundred and thirty feet.

Q. Measured from where in the river; what do you take? *A.* Well, I measure from the northeasterly corner of the Robeson tract three hundred and thirty feet down to the river.

Q. Where did that bring you? *A.* That will be just in a newly made sandbar, I don't know how far the edge of the water was from it; to-day the water touches the stake; I was there this morning; but at that time it was a trifle lower perhaps, seven or eight feet, from that stake out to the water's edge; this is about in line with the general line of the shore of the river.

Q. How is it on the other side of the Robeson acre, that is, you ran this line as called for in the Lomasson deed? *A.* Yes, sir.

Q. Now, what is the distance from the southeast corner of the Robeson tract to the river? *A.* Well, that is a straight line; I measured three hundred and thirty feet.

Q. That is twenty perches, is it? *A.* Yes, sir.

Q. And where does that bring you to the river; at what point? *A.* It lands me on a newly made sandbar—loam and sand together—about—I took a sight from that point down the river; it is about in line with the range of the shore for quite a long distance.

Q. You spoke of a newly made sandbar; why do you say that? *A.* Well, it is from a recent wash.

Q. How recent? *A.* A heavy rain; I heard since it was this summer, some of it.

Mr. Harris—Well, one moment.

Q. Well, has it the appearance of being recent? *A.* Yes, sir.

Q. Now as to the outlet of the spring; does that show any evidence of having shifted? *A.* I can't answer that.

Q. Did you in making your survey there find any indications of the roadway leading to the house, the private way?

Mr. Roseberry—I object to that; he was asked about that yesterday.

The Witness—No, sir; I have not been asked about that.

Mr. Harris—He said he put it down there by information by James Depue—the currant bush, the roadway, and the house.

Mr. Roseberry—And I asked him if he didn't go up through a gully there to the house, a depression in the ground.

Q. (Question read). There is a depression leading from the public road up to about fifty feet, thirty feet north of where the willow is located, and that depression is an average of about thirty feet north of the north line of the boundary of the Robeson lot, and it has wilder grass growing in it than the rest of the field; weeds, and like that, that you don't see in any other part of the field, and Mr. Depue told me that depression was a part of the road.

The Court—Never mind what he told you.

Q. You found a different character of vegetation there? *A.* Yes, sir.

Q. And how wide is the strip where you find that difference? *A.* It varies in different places; some places it appears to be twenty or thirty feet wide, and other parts narrower.

Q. How far does it continue? *A.* Well, you can trace it all the way from the road; I think quite up to the railroad line.

Q. Up to the embankment? *A.* Yes, sir.

Q. You have indicated on your map in yellow "old roadway to the house." *A.* That is about the shape the depression is, as I found it.

Q. Well, does the difference in vegetation follow

that course, too? *A.* Yes, sir; it has a sort of long curve to it.

Q. That is, it curves toward the north, as you show it there? *A.* Yes, sir.

Q. And you have shown the location of the depression, and of the growth of weeds, as you call it, on the map; have you, accurately? *A.* Yes, sir; I passed over this line to get the average width.

Q. And what did you say the average was? *A.* About thirty feet.

Q. Did you say something in reference to a correction you wished to make in your testimony of yesterday? *A.* Yes, sir; in my testimony yesterday I said that this point here in the Lomasson line was down near a fence, or just over a fence; I am mistaken about that; that is the centre of a willow tree in the field perhaps thirty feet east of the fence that I spoke of yesterday, and I was asked a question yesterday that I couldn't answer—how far it was from this point to the river—

Mr. Harris--No.

A. And this distance from this point here—

Mr. Harris—Well, wait.

Q. Were you asked that distance yesterday? *A.* Well, we checked it this morning.

Mr. Strong—If he gave an erroneous answer.

The Witness—I can make a more intelligent answer, that is all.

Q. Well, it is only to correct a measurement? *A.* I didn't make any measurement yesterday.

Recess.

Cross Examination, by Mr. Roseberry.

Q. Mr. Weir, there is a pair of bars that enters that field right there, don't they? *A.* Yes, sir.

Q. How wide is it from that point to that point

(indicating); just approximately? *A.* That is, from the railroad line down to the road?

Q. Yes. *A.* About one hundred feet.

Q. Of course the road isn't its true width; you said you made it two rods wide, yesterday? *A.* Well, this point here is its proper size, and this point here is its proper place.

Q. Yes; you mean one hundred feet? *A.* One hundred feet down to the railroad company's lines, down to just over the fence on the roadside.

Q. You say that was indicated to you as the old roadway, because there were weeds there? *A.* A depression in the ground, and a different growth of vegetation.

Q. Did you examine all that piece of land there; it is all one piece, is it not? *A.* It is all one field, now; I just glanced my eye over it; I didn't walk over it.

Q. What kind of weeds were there that were different there? *A.* The rest of the field was grass; grass in this point too, but there were weeds in this grass that distinguished it from the rest of the field.

Q. What was there in that field last summer? *A.* I don't know.

Q. Did you see whether there was any rye in it last summer? *A.* I didn't notice that at all; I think there was clover or grass there now.

Q. Did you notice that it was all tramped down around there, as you entered the bars? *A.* I didn't observe that; no, sir.

Q. And that it was all tramped down here by cattle going in there? *A.* I didn't notice that; no, sir.

Q. Tell me the kind of weeds you saw there, Mr. Weir? *A.* Well, I can't because I didn't take notice enough of them.

Q. Do you know rag weed from a smart weed? *A.* Yes, sir.

Q. And a pig weed from rag weed? *A.* I think I do.

Q. You only think you do? *A.* I don't know whether I know what a pig weed is.

Q. And do you know the different kinds of smart weed? *A.* I know what a smart weed is.

Q. Do you know what is called a stick hard? *A.* I don't know as I do.

Q. If you can tell me any kind of weed you saw there, just tell me; would you call a red jacket a weed? *A.* I would in grass; yes, sir.

Q. Did you see any of them there? *A.* I don't remember.

Q. Did you see any red jackets right around there? *A.* I might, I don't know.

Q. How high do they grow? *A.* Six or seven feet.

Q. Did you see any? *A.* I didn't notice any at all.

Q. Did you see any what is called red top in there? *A.* I don't know what red top is.

Q. Did you see any clover there? *A.* Well, it is clover and grass together in the field.

Q. Do you know what blue grass is? *A.* Well, I don't know; is it the grass that has the large head on top?

Q. I am asking you, don't ask me. *A.* If that is it, then I know what blue grass is.

Q. Well, if that is it, then you know what blue grass is? *A.* Yes, sir.

Q. Has a large head on it? *A.* I think it has quite a large head.

Q. A stalk three sided? *A.* I don't mean a corn-stalk.

Q. I don't either, but grows three sided, with a large head on it; is that the grass you mean? *A.* I don't know; I will say I don't know.

Q. You don't know the different kinds of grass then? *A.* I know some of them, I know hay and honeycomb grass and lawn grass.

Q. Now didn't you see as you entered the bars there clover and timothy? *A.* I think I did.

Q. And that stubble; you didn't observe any stubbles right in there, did you, at all? *A.* Rye stubbles?

Q. Yes. *A.* No, sir; I didn't.

Q. They were all tramped down by cattle running in there? *A.* I don't know.

Q. Did you ever see where cattle ran in a stubble field? *A.* Yes, sir.

Q. And you notice perhaps a distance of one hundred and fifty to two hundred feet stubble tramped down flat? *A.* Yes, sir.

Q. Now wasn't all that stubble tramped down that one hundred feet clear across to the railroad? *A.* I didn't notice that.

Q. And if the stubble was tramped down, were not the weeds tramped down? *A.* These weeds were standing up two or three feet high.

Q. Now tell me what kind of weed it was? *A.* It looked like rag weed.

Q. Does dockweed grow two or three feet? *A.* I don't know.

Q. Tell me what kind of weed this was? *A.* It wasn't grass, it wasn't fodder, it was a weed that stood about two feet high.

Q. You can't tell we what weed it was? *A.* I can't tell what it was.

Q. Was there any road made by cattle through the woods? *A.* I didn't observe any.

Q. This point here (indicating); did Mr. Depue give you that location?

A. He called my attention to it.

Q. Give it to you just as it is on there? *A.* Well, he called my attention to the depression, and I made some measurements locating it, and sketched it on the map as shown there.

Q. As he told you? *A.* No, sir; he showed me the depression; he wasn't by at all when I made the measurement; that is about the shade of the depression.

Q. Didn't the depression go out in that way (indicating)? *A.* I didn't observe it at all.

Q. You didn't observe that; you say that you were here by the culvert when you saw Mr. Depue over here? *A.* He was over on the side towards the——

Q. You both took the same train? *A.* I don't know how he got there.

Q. You came down on the train? *A.* I came down on the handcar.

Q. Got there about the same time? *A.* I don't know what time he got there.

Q. How soon did you see him after you got there; at once? *A.* No; I guess it was perhaps two o'clock in the afternoon; I got there about half-past eleven, and I think it was about two o'clock in the afternoon when I met Mr. Depue; it might be a little—no, about two o'clock I guess it was.

Q. How long did he stay there with you? *A.* I guess he was around there about an hour; he wasn't with me——

Q. You say that is about the bottom of the turf (indicating)? *A.* That was really on a little bit of bar; the turf is a few feet back of that, towards the east.

Q. Is that also the case here? *A.* Yes, sir.

Q. Then the bar actually extends up here a ways further east? *A.* Yes, sir.

Q. Didn't you say yesterday you put that point right at the end of the turf? *A.* Well, if the bar was removed.

Q. Answer my question; the question is what you said yesterday. *A.* I don't remember what I said yesterday.

Q. Now you say that the point is down on the sandbar some feet? *A.* That point stands in grass; I remember now very distinctly; that point is in grass, and just beyond that commences that little bar.

Q. Here (indicating)? *A.* Yes, sir.

Q. Didn't you say this morning the water came there? *A.* The water now touches up to the stake.

Q. So it is right on the edge of the water as it is now? *A.* Yes, sir; as it was this morning; the stake stands up four inches above the ground, and the water was just up and around it a little.

Q. Now, yesterday you said this line running here, and that line running there, were prolongations of these two lines in the Lomasson survey? *A.* Yes, sir.

Q. What did you say about its coinciding with something else in your examination? *A.* That particular point?

Q. Yes; those lines; didn't you say that they agreed with something else? *A.* I think not.

Q. Who furnished you with a description that the acre agrees with? *A.* It came from the Lambertville office, I think, of the Pennsylvania Railroad.

Q. And who gave it to you? *A.* It came to me by mail.

Q. And that description agrees with this? *A.* The Robeson acre, you are speaking of now?

Q. Yes. *A.* Yes, sir; well, I will qualify that a little; I said yesterday that when I arrived at this point here, and took this line over that, I missed this spring four feet; of course the description says that line must hit the spring and follow the spring on down; I don't know what throws it four feet above the spring; I simply used the old division line as a base line, and took the line up from that to locate the boundaries of the railroad, and then I simply produced those lines across to the river, and the upper line passes four feet north of the spring.

Q. Was it a deed you had? *A.* A deed for this?

Q. Yes; that description you had. *A.* It wasn't a deed; it was simply a transcript from a description of a deed I took up.

Q. Did you make this survey of that line of the river yourself? *A.* At this point; after fixing this point

here, I set my instruments over, to start and take a back sight over this line, and a sight up the river, and that line is eighty—

Q. No; just answer whether that is your map, that river part, whether that is from a survey by you? *A.* Yes, sir.

Q. Did you survey it up here? *A.* I merely took a sight line up here, and checked a bearing down that line.

Q. Did you say this is a continuous bank from this point here down? *A.* I don't—did I say so?

Q. I asked you if you did? *A.* I don't remember.

Q. Didn't you say it was about in line; in range with the shore line? *A.* Yes, sir; I did.

Q. For how far down? *A.* Oh, for a quarter of a mile, I should say.

Q. What did you mean by about? *A.* About a quarter of a mile.

Q. No; "about in range with the shore line below"? *A.* Taking a general run of the shore, it is very direct; it is very straight.

Q. What part of the shore? *A.* Between the water and the land; the shore.

Q. Where the water strikes the land?

A. Yes, sir.

Q. Now, if that is so here, there is a wash in there, isn't there? *A.* Yes, sir,

Q. A heavy wash? *A.* Yes, sir.

Q. It is washed out and filled in there two or three feet, isn't it; probably tearing away the bank here, isn't it? *A.* Well, perhaps it is two feet above the low water of the river.

Q. Well, it is washed out in the river; the river is quite a ways from where the old shore was? *A.* I passed it this morning; it is about twenty feet.

Q. Isn't it about fifty feet back there? *A.* I don't think it is.

Q. Isn't there two washouts; one here, back to the

fish house, tore out and filled in with stones? *A.* Yes, sir.

Q. An immense amount of earth had been torn out and thrown into the river, hadn't it? *A.* Quite a quantity.

Q. And right up there by the willow tree you saw it also filled in with stone? *A.* Yes, sir.

Q. That was all heaved out with the river, was it not? *A.* I presume so; I don't know.

Q. And right next the spring there was some torn out and thrown into the river, was there not? *A.* I don't remember that.

Q. Wasn't that thrown out there to at least fifty feet? *A.* No, sir.

Q. What represents this sandbar? *A.* The sandbar; that is shown there about twenty feet beyond the stake.

Q. These two places thrown out into the river; are not they oblong, with an indentation coming out this way like a W? *A.* It doesn't run straight, of course.

Q. Have you got that represented that way? *A.* No, sir; I have merely given the general shape of it.

Q. Does that sandbar run below that ridge of stone? *A.* I think it does; ridge of stone? I don't know of any ridge of stone.

Q. Didn't you see a ridge of stone there? *A.* I didn't see any.

Q. Didn't you see thirty or forty tons of stone about that point? *A.* I didn't observe it particularly.

Q. Where is that stake in there? *A.* That stands twenty feet from the water's edge this morning.

Q. How high up on the bank is it? *A.* It is down by the river.

Q. You say that is twenty feet about from the water? *A.* About twenty feet from the water's edge this morning.

Q. Then it is down on the flat, isn't it? *A.* Down on the bar.

Q. Where the wash-in is? *A.* Yes, sir.

Q. How high is the stake? *A.* The stake stands up about a foot above the ground.

Q. Right in the wash? *A.* Right in the edge of it.

Q. Didn't you notice back of it the bank sloping up? *A.* Well, the bank commences to ascend almost at the stake.

Q. Isn't it a bar out there? *A.* Well, I am speaking of the bank generally.

Q. Didn't you see that long line of stones thrown in there to check the waves of the river? *A.* I noticed stone thrown in there.

Q. A heavy stone row thrown in there? *A.* I didn't notice that.

Q. Didn't you see where the wagons had driven down there? *A.* I didn't notice it.

Q. How long were you looking at it? *A.* At that particular part perhaps half an hour.

Q. Along this bank and didn't notice that? *A.* I wasn't looking for anything of the kind; I was at other work.

Q. Then you didn't notice the bank in this one particular spot? *A.* Well, I walked down it and walked on it.

Q. Did you walk on that stone row down here? *A.* No.

Q. The stone row extends from there down, don't it? *A.* I don't know.

Q. From here down? *A.* I don't know.

Q. Well, the truth of it is you don't know very much about that bank, do you? *A.* Only on the upper and lower lines as shown on the Robeson acre, that is all.

Q. How near did that line there come into the washout? *A.* Just struck into it a few feet; I can't say how much; maybe five feet, perhaps ten feet; that is in the washout?

Q. Yes. *A.* I don't think it struck in the washout at all; I thought you meant that bar; I didn't ob-

serve any washout right at that point; yet there may have been.

Q. How could you get eight perches from that spring without striking that washout? *A.* Well, I didn't measure it that way.

Q. How did you measure it, sir? *A.* I took this line—

Q. I don't care anything about that; I mean down here (indicating). *A.* I didn't measure its distance.

Q. That is an imaginary line? *A.* No, sir; I just simply located this line and that line, and the two lines are parallel with each other.

Q. You merely prolonged that and this? *A.* Yes, sir.

Q. Without actual measurement, and for that reason you put those dotted lines there, and that dotted line, indicating that fact from your survey here? *A.* Those lines are a prolongation of that shore line there, and this one here, and the distance was measured from that point to there and from that point to the short; this was measured from there to there, those lines were parallel, and consequently that distance must be exactly like that.

Q. (Question read). *A.* Yes, sir; those dotted lines indicate the prolongation of the two shore lines.

Q. So you did not actually survey from that point to that down, and from there up? *A.* No, sir; I didn't measure up and down the river.

Q. And you didn't survey from that point to that point? *A.* Yes, sir.

Q. And from that point to that point? *A.* I did, yes, sir; both of those.

Q. And measure? *A.* Yes, sir.

Q. And this point was out there on the flat, or the washout, about eight or ten feet, wasn't it? *A.* Ten feet from the old shore I should judge, still it was covered by the shore.

Q. And how far is that point north of this outlet of the spring. *A.* About twenty feet.

Q. And here you made a line corresponding with this spring line?

The Court—You have been all over that yesterday.

Q. What indicated that that was a new formation of sand there to you; what right had you to say that? *A.* Well, there is a bar there, and it looked as if it had not been there very long; no grass on it or weeds, or anything of that kind; merely bare sand and loam.

Q. Suppose somebody had told you they had been fishing there, what would you think about it then; did you know there was a shad fishery there? *A.* I knew there was one on the other side of the river; I didn't know they fished on the Jersey side.

Q. Didn't know they fished for shad there? *A.* Not on the Jersey side; no, sir.

Q. What kind of bank is here? *A.* Sand; it is made of sand and loam, and covered with grass.

Q. Is it steep or sloping? *A.* Not very steep; it slopes down; oh, I presume—well I can't answer that.

Q. You were not there, were you? *A.* I was at the lower end and sighted up the shore.

Q. Isn't it a lot of old brush around there? *A.* Yes, sir; a good deal of brush there.

Q. And up here quite some trees? *A.* At the upper end; quite some trees.

Q. So your sighting was as near as you could tell? *A.* No, sir; I could see the water all along the shore.

Q. You got down here by the edge of the water and sighted up the edge of the water? *A.* Yes, sir.

Q. And you mean to say you started down here and sighted down? *A.* No, sir; from the lower point down there.

Q. To where the railroad strikes the river? *A.* Yes, sir; down near that point.

Q. You say that this was two chains and four links; that is how many feet? *A.* One hundred and thirty-four feet sixty-four one-hundredths.

Q. Those four links make how many inches? *A.* About thirty-two inches.

Q. That is two feet and how much; two-thirds? *A.* About two feet eight inches.

Q. The survey that was shown you called for how much? *A.* Called for two chains and four links.

Q. The survey that was shown you? *A.* Yes, sir.

Q. The survey that was given to you called for two chains and four links? *A.* Yes, sir; which survey are you alluding to?

Q. The one that coincided with this; you said you had a survey sent to you from the office, or something sent to you from the office that coincided with this? *A.* That was an acre of land; it was to be eight perches wide and twenty perches in length.

Q. Is that eight perches wide there? *A.* A trifle over.

Q. How much over? *A.* Thirty-two inches, that is measured on that—

Q. Then that is not two perches; eight perches I should say; is it? *A.* A trifle more.

Q. It is thirty-two inches more? *A.* Yes, sir.

Q. What right had you to put that thirty-two inches on there and say that was correct? *A.* The—

Q. Now, just answer that question. *A.* Well, I followed the Lomasson survey of that line.

Q. And then you say that that line—that east line—ought to be thirty-two inches, contrary to the directions to what you had— *A.* No, I didn't say that at all; the Lomasson deed says that line is two chains, four links long, if it ran at right angles—

Q. We are not talking about right angles; what right had you, when the description you had said it was eight perches or two chains, what right had you to make it two chains and four links, and then say the two are correct? *A.* Well, the description of the Robeson—

Q. Answer that question; we don't care anything

about the description; if that line as you have made it is two chains and four links, and the other description as you have it requires between those two points to be exactly two chains, what right have you to put on four links? *A.* The description of the acre lot does not say that that line shall be two chains, because it does not describe that particular line; there is no course given.

Q. Didn't that description that you had say that this line must be parallel with the Delaware river? *A.* Yes, sir.

Q. Did that tell you that it must be eight perches? *A.* Eight perches.

Q. Then what right had you to make it four links longer? *A.* I didn't make that particular line four links longer.

Q. Then, if you did not make that particular line four links longer, what right have you to say that that survey, according to that description of the acre, coincides exactly with it? *A.* I don't mean to say it does coincide exactly.

Q. You did say it. *A.* The description of the acre lot—

Q. That is what I asked you; now answer it, yes or no.

The Court—The witness has a right to answer as he sees fit, providing he answers your questions properly.

Mr. Roseberry—Well, I asked him to answer it.

A. I don't mean to say that two chains, four links, is the same as two chains.

Q. And you do not mean to say that two chains and four links is eight perches? *A.* I do not.

Q. Eight perches are two chains? *A.* That is it.

Q. Now, you say that was surveyed according to that other description; didn't that tell you that it was to run from the third point to the place of beginning, so as to include one-half of the spring run; did it tell you that? *A.* Yes, sir.

Q. Now, why did you run that line four feet north of the northeast spring? *A.* I explained that in my—

Q. Well, explain it now; why did you do it? I ask you that in the survey of the first description, not the description in the Lomasson deed; I am asking you about the other one? *A.* This line was just simply a prolongation—

Q. I understand that; we all understand that; but I want to know in the survey of the other tract by the other description, when the fourth line stated that it ran from the third corner to the place of beginning, so as to include one-half of the spring run; why you traced that line as you have indicated on that map, twenty feet north of the spring run? *A.* Well, that line is just simply a prolongation of that.

Q. We understand that. *A.* I don't claim that that line is the boundary of the Robeson acre.

Q. Then you simply say that the acre as you surveyed on the description given you, does not correspond with that? *A.* I don't claim that the spring is on the line of that acre; I didn't hit the spring; that line is four feet too far north.

Q. Then you say that it does not coincide at all with the tract, exactly coincide? *A.* I do not mean to say so; they do not exactly coincide; one says eight perches, the other says eight perches and four links.

Q. Now, that map then does not show the location of the Robeson acre according to the description as furnished to you? *A.* Yes, sir; it shows the location of the Robeson acre by the Lomasson deed.

Q. By the description that was furnished to you, not by the Lomasson deed? *A.* Practically does; yes, sir.

Q Didn't you say awhile ago, it does not; that that point there was four feet north, and did not coincide? You said that the lines of the description given you by the office, the lines of the Robeson acre, correspond with those taken from the Lomasson deed prolongated; didn't you say that? *A.* No, sir; I did not say that.

Q. Then they do not coincide? *A.* No, sir; they do not; there is four inches difference between them.

Q. That representation then simply represents the description taken from the Lomasson deed, doesn't it? *A.* Yes, sir; that end, that east end.

Q. Well, here, down here, all the way down, the prolongation of it is simply a prolongation of this east end?

The Court—You mean the prolongation of the northerly line?

Q. Yes, sir; the prolongation of the northerly line, and the prolongation of the southerly line? *A.* Yes, sir.

Q. Does the description on that map agree with the delineation of the acre as furnished to you by the Lambertville office, of the Robeson acre? *A.* If the north line were drawn down four feet so as to embrace the spring.

Q. I don't ask you with the north line drawn down; I simply ask you for a categorical answer, whether the delineation of the Robeson acre as on that map agrees with the description given by the Lambertville office? *A.* It does not on the map there; the north line is not in the proper position on the map; it is shown there that it is four feet out of its place.

Re-Direct Examination.

Q. You say that you made this diagram from the Lomasson deed? *A.* Yes, sir.

Q. And then compared it with the description of the Robeson acre? *A.* Yes, sir.

Q. And you found that the north line as laid down according to the Lomasson deed—

Mr. Roseberry—That is a very leading question.

Q. That the north line was only four feet—

The Court—Let him state what he said.

Q. Well, just make your explanation about that. *A.* After retracing the boundaries of the Lomasson

deed around the east end of this acre, and up here to a few hundred feet above, I came back then to this point, and just simply produced these lines down to the river to see how near I would hit the spring; I found that line threw me four feet above the spring; I didn't change the line; I didn't change the line from where I ran; and this point here, I merely produced the line across to the river here, and that is all I did; the description of this Robeson acre says that this line must come down from this point and hit this spring, and then down the line to the river, but the line as shown on the map here is four feet above its place; there is a discrepancy somewhere in this survey that throws me four feet too far north; I don't know where it is.

Q. It is also said that there was thirty-two inches in excess on that line? *A.* Yes, sir.

Q. Let me ask you if, in locating ancient surveys, surveys that were formulated perhaps one hundred or more years ago, in your experience as a surveyor and engineer, whether or not it is common to find a larger quantity of land than the description calls for? *A.* It is very common to find that; yes, sir.

Q. Would it be an unusual thing to find so great an excess as thirty-two inches in a line said to be eight perches in length? *A.* Well—

Q. An ancient description? *A.* That is a pretty short line, and a pretty big percentage of gain; that would perhaps be a little unusual in a line as short as that.

Q. The tract as you have plotted it there from the Lomasson deed, does that enclose more than an acre, or what area of ground? *A.* It encloses a strip of land four feet wide along this north side too much, that is, the way it is plotted on the map.

Q. That is, taking the dotted lines? *A.* Yes, sir.

Q. If that north line were made to coincide exactly by running through the spring, then it would be an ex-

act acre, would it? *A.* No, sir; I misspoke myself; that would take off a little too much, four feet; the angle at this easterly line that the acre makes with the southerly line is not a right angle, consequently that line, if we want to lay off a tract of land eight perches in width, if we run it off on a skew shape, as that is there, we have got to increase the length of that a little; that two chains and four links on that end, if measured correctly across the line, will be two chains and one link; there is an excess of one link of land too much in the description of the plot as I have it here.

Q. More than an acre? *A.* Yes, that much more; one link in a strip five chains long and one link in width.

By the Court.

Q. What I do not understand is this: You say that the north line of the Robeson acre, as delineated on that map, is four feet further north than the description of that tract furnished you by the Lambertville office calls for? *A.* Yes, sir.

Q. Well, if that is so, where is the south line? *A.* Four feet too far north.

Q. That is also? *A.* Yes, sir.

Further Direct.

Q. So the entire tract is moved just that much too far north, is it? *A.* Yes, sir; the discrepancy is somewhere between this point and the old Lomasson division line—somewhere between the south line of the acre lot and the old Lomasson division line; now, then, there is a way of explaining, perhaps, some of that. This survey was made with a common surveyor's chain, and it is impossible to get as accurate measurements with a chain as you can with a steel tape.

Q. Now, which survey are you referring to? *A.* The

Lomasson, my survey; we used steel tape and used plummets with all my measurements, and it is possible I have gained a little that way over the old chain.

Q. How do you mean gaining? *A.* Pushing ahead, overreaching their old measurements; you cannot measure as accurately with a chain as you can with a light steel tape.

Q. That would have a tendency to throw your location of the Robeson acre which way? *A.* A little too much off.

Q. How much too far north? *A.* I couldn't say that; perhaps the difference of four feet.

Re-Cross Examination.

Q. Did that description of yours say "the beginning point at and in the mouth of a run of water that vents in the river Delaware by the spring near the house of Joannes Vannetta"? *A.* Yes, sir.

Q. And runs thence down the river eight perches to a post? *A.* Yes, sir.

Q. And then from the river twenty perches to a corner, then parallel with the river eight perches to the corner? *A.* Yes, sir.

Q. And then to the place of beginning so as to include one-half of the spring and the run? *A.* Yes, sir; and the lot to be so laid out as to contain one acre of land.

Q. Now Mr. Weir if you take a lot——when you take a lot that is eight perches on two ends, that is, two chains on two sides, and on the other two sides twenty perches or five chains, if at right angles, if the lines are at right angles, it is exactly four thousand, eight hundred and sixty square yards, or one acre? *A.* Eight by twenty, yes, sir; just exactly an acre of land.

Q. Then if you take an acre just that way, and swing it around, don't you bring the two long sides

closer to each other? *A.* Yes; if you maintain your end distances eight perches.

Q. Yes; if it ran that way, and you swing it around that way, wouldn't you have necessarily lengthened out your end lines to make an acre? *A.* Yes, sir.

Q. Isn't that exactly what was done there? *A.* I don't know.

Q. Now why didn't you begin, when it said the beginning point was at and in the mouth of a run of water that vents in the Delaware river from a spring near the house of Johannes Vannetta, why didn't you begin there, why didn't you begin twenty feet north of it? *A.* I didn't begin twenty feet north of it; I ended there.

Q. Well, where did you begin then? *A.* To survey the Robeson acre?

Q. Yes. *A.* I just ran the north line of it and the south line of it.

Q. Does your map show the beginning point of the Robeson acre? *A.* It is in the mouth of this run there.

Q. It doesn't show the beginning point of the Robeson acre then? *A.* No.

Q. Why don't it show the beginning point?

A. Simply an oversight; I didn't mark it on there.

Q. But the beginning point is some twenty feet further down? *A.* If you want it on, I will mark it there during the recess.

Q. So according to that, that line should begin there and run up that way, in that fashion (indicating on map)? *A.* That is the idea; parallel with that run.

Q. The idea of that map was to maintain or keep the acre, was it not; and isn't there exactly one acre in that as you have got it surveyed on that map? *A.* As the lines are drawn on the map there, there is a trifle over an acre.

Q. How much? *A.* A strip of land one link in width and five chains long.

Q. What right had you to make it a trifle over an acre? *A.* I didn't try to make it there at all.

Q. In making that survey you got from the Lambertville office, you knew two sides, eight perches, and two other sides twenty perches long, must be at right angles in order to contain an acre? *A.* Not necessarily at right angles.

Q. Do you mean to say as a surveyor or a mathematician or anything else, that you can get an acre in two sides twenty perches long and two sides eight perches long if they are not at right angles? *A.* You cannot; no, sir.

Q. Then why didn't you make that at right angles? *A.* I hadn't any authority to make it so.

Q. You received your instructions from the Lambertville office, did you? *A.* From the Lomasson deed.

Q. Now you say you might have made the mistake in the measurement by the chain; you say your chain is a new chain? *A.* It is a steel tape.

Q. A new one? *A.* I have had it about six months, I think.

Q. And the discrepancy might be due to that, you say? *A.* I think that is where I gained this four feet of distance.

Q. How do you mean gained? *A.* The original survey was made with a chain, and a chain is a cumbersome, heavy instrument to measure with; a steel tape, its whole weight is less than a pound.

Q. I see your process of reasoning is this, that having a tape, a tape being accurate, unworn, would measure longer than the old chain? *A.* Yes.

Q. Now do not the links of chains wear? *A.* Certainly.

Q. And prolong that way? *A.* Certainly.

Q. And wouldn't a chain that is worn, and that is natural, links naturally wear, would not that be longer? *A.* Naturally so.

Q. Than your tape? *A.* Yes, sir.

Q. What reason have you to say your tape would measure more and throw you out that way, than a chain? *A.* If he was a good surveyor he would keep his chain a proper length.

Q. What reason have you to make a deduction from that? *A.* I assume every surveyor keeps his chain correct.

Q. Don't you assume that your measuring tape, being continuous, so that it won't wear, being solid as it were, so it won't wear, would always remain so, while a chain which is composed of links would naturally wear and lengthen out, necessarily; isn't that so? Now what right have you to make the deduction you did that your tape would measure more than the old chain? *A.* I take it for granted his chain was accurate in its length.

Q. Then if you take it for granted his chain was accurate, your tape must have been wrong? *A.* No, you don't understand me; his chain, if laid on the level floor, or a railroad track, would measure its true length there, but through weeds or grass you can't do it; it is impossible unless he holds it up and draws it so tight that it is perfectly level and straight, and used plummets; but a heavy chain you can't do that.

Q. You don't know how that thing was surveyed originally, do you? *A.* Only from the record; the record says it was done in chains and links.

Q. That is all you know about it? *A.* That is all I know about it.

Q. And you made it according to that description? *A.* I did.

Q. And that is accurate there on the map? *A.* That is, following that survey that I had; yes, sir.

Q. Won't the weight of a surveyor's chain measure more accurately through grass and weeds than a tape line? *A.* No, sir; hold your tape above the grass and use a plummet at each end; that is the way this was done.

Q. Can't you hold a chain up, too? *A.* No, sir; it is too sagging.

Q. Won't a chain go right down on the ground? *A.* No, sir.

Q. Now, Mr. Strong asked you this: If going between two corners, surveying between two corners, if they would not vary, and you said they would in a long distance, but in a short—that that variation there was excessive of four links; now that description required exactly two chains, or eight perches, didn't it? *A.* The description of the acre you mean?

Q. Yes. *A.* Eight perches it should be.

Q. That is two chains exactly? *A.* Yes, sir.

Q. Now, what on earth authorized you to make it four links longer? *A.* I didn't change the Robeson acre description at all; that two chains and four links is taken from the Lomasson deed, and I assume that the Lomasson survey went around the end of that acre.

Q. So, in fact, that don't agree at all with the Robeson acre? *A.* No; the Robeson acre says it shall be eight perches, but it seems when the surveyor surveyed it he found it eight perches and four links.

Q. So what Mr. Strong asked you about, between two established corners, has nothing to do with this eight perches, has it? *A.* I don't know; I don't know what he asked me about that.

Joseph Wamsley, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Where do you live, Mr. Wamsley? *A.* Phillipsburg.

Q. How old are you? *A.* I am seventy-seven years old.

Q. Did you have anything to do with making the surveys for the land required for the Belvidere Delaware Railroad when it was laid out? *A.* Yes, sir.

Q. What part did you have to do? *A.* I was chain bearer for Adam C. Davis, who was the surveyor.

Q. When was that? *A.* Well, I can't tell exactly when; I have been on the road construction, and all forty-nine years, the 16th of next May, the road came into Phillipsburg in 1854, February 6th; prior to that time I was employed, and after the road ran in, I helped to survey from Phillipsburg to Manunka Chunk, under Mr. Davis.

Q. Did you assist General Davis in the survey near the Foul Rift? *A.* Yes, sir.

Q. That is where the culvert is? *A.* Where that culvert is; the Lomasson culvert, we called it.

Q. Did you assist him in making the survey for the land that was sold by Lomasson to the company? *A.* Yes, sir.

Q. Have you any recollection about getting the deed from Mr. Lomasson? *A.* Yes, sir; I was present when he got the deed from Thomas Lomasson.

Q. To the Belvidere-Delaware Railroad Company? *A.* Yes, sir.

Q. Before that deed was obtained, was there a survey made for the purpose of getting a description? *A.* Yes, sir.

Q. And did you assist in that work; I think you said so? *A.* Yes, sir.

Q. Do you remember the situation of the line at that time? *A.* Yes, sir; I think I do.

Q. Do you remember the Shippen Spring? *A.* Yes, sir.

Q. And do you remember the Lomasson house? *A.* Yes, sir; by my being there.

Q. Who lived there at that time? *A.* I think Andrew Lomasson, if I am right.

Q. Do you know whether it was Andrew or George K.? *A.* George K.; you are right; it was George K.

Q. Well, who was he?

A. He was Tommy Lomasson's son.

Q. Do you remember where the house stood? *A.* Oh, yes.

Q. Do you remember the big willow tree that was there? *A.* Yes, sir.

Mr. Roseberry—I object to that.

The Court—You are leading the witness considerably.

Q. And now, as you went up from the Shippen Spring, that was on the opposite side of the road—

Mr. Roseberry—I object to that.

The Court—Don't say where it was.

Q. As you went up to the Shippen Spring toward the Lomasson house, how did you get up from the public road? *A.* Why, there was driftway, I call it, that went up by the line; the line up there, now while I think of it, and the centre of the line ran right through the middle of the spring that I drank out of so often, right through the centre of the spring; now it appears there is more springs there; I haven't seen it in thirty-five years, that I know of.

Q. You say you ran to the middle of the spring; what spring was that? *A.* That was the only spring that was there then; right in the bank, right under the roots of these trees, or was then, right under the roots of the trees; the trees stood there hovering around the spring.

Q. And you ran the line through the centre of the spring? *A.* Yes, sir.

Q. And then where? *A.* Then on up, we carried the line—I can't tell you exactly, but we carried the line way back to a mountain, it occurs to me, ran the line all the way through.

Q. A long distance? *A.* A long distance; yes, a mile probably, more or less.

Q. Now this line that you were surveying was what line? *A.* It was a line between Lomasson and White, if my memory serves me right.

Q. That is where you went back to the mountains? *A.* Yes; way back to the mountains, it appears to me.

Q. I want to direct your attention to the Shippen Spring and the line that run through the centre of the spring, now on that side—that is the opposite of the tract from the Lomasson land, you know—

Mr. Harris—I object to the witness being led.

Q. Now then, as you went up from the bank toward the Lomasson house, was there a fence along there? *A.* Yes, sir; a worm fence.

Mr. Harris—That is leading; the witness should describe.

The Court—I don't think that was leading, to ask if there was a fence there.

Q. Where did that worm fence run? *A.* Ran right up the hill; up towards this house; now I can't tell you exactly, but it appears to me there was a lane between that fence and the old house fence.

Q. There was a lane; where did that lane lead to? *A.* It led to this old house.

Q. Well, now this worm fence that you speak of, where did that run; it ran, you say, or tell me where it ran? *A.* Well, it was a lane fence; it was this lane fence that came down there.

Q. Do you understand this map? *A.* No, sir; I don't know anything about the map.

Q. You haven't looked at it yet? *A.* No, sir; it is a new thing.

Q. See if you can make it out? *A.* (Witness examines map.) The Robeson lot, I remember, there was just one acre in it, and then called the Oxford Iron Company lot.

Q. Now, did you make any survey of that lot, you and General Davis? *A.* Yes, sir; we went around that lot and surveyed it, and he made a map of it; it was in a book somewheres, wherever that is.

Q. Would you recognize his book if you saw it? *A.* I think I would, sir.

Q. His field book? *A.* His field book; the one he used in the field when he surveyed.

Q. And you ran around the Robeson acre; now, how did you run? *A.* Well, I declare if I can describe it to you; it was just one acre that belonged to the Oxford Iron Company.

Q. Was there anything on the ground there that showed where the acre was; any fence? *A.* No, sir; they used to ship iron from the Oxford furnace there, and then load it on Durham boats at the dock there.

Q. (By Mr. Harris)—Dock, you said? *A.* They called it a dock.

Further Direct.

Q. (Showing witness a book). Now, I show you this book; see if you can tell what it is? *A.* General Davis's figures.

Q. Do you know his handwriting? *A.* Yes, sir; that is his handwriting.

Q. On the first page? *A.* Yes, sir; that is his handwriting.

Q. (Showing witness another page in the book). *A.* Isn't that that acre?

Q. Well, what do you? *A.* I say it is; yes, sir; it is dim, though; I lost my good glasses and I can't see so good; I said he had it mapped out in a book, and this is the book, I believe.

Q. Did you see it made in his book at that time? *A.* Yes, sir; I seen him do it; I can't see the figures distinctly.

Q. Is that his writing and figuring? *A.* That is his writing and figuring.

Q. And that is his book, you say? *A.* That is his book; yes, sir; I said before it was in a book somewheres; I didn't know the book was in existence.

Q. Well, now, do you remember anything with reference to—you said there was a willow tree there? *A.* A

willow tree, but it was cut down when we made the survey, there was so much sprouts growing around it.

Q. Are you sure that that willow tree had been cut down at that time? *A.* I believe it was cut down preparatory to building the road.

Q. Now, where was that willow tree with reference to the worm fence you have been telling about? *A.* Well, I can't say exactly; I can't locate it exactly; I know the willow tree—it seemed as if the fence was here, and it was off there (indicating), although I won't be positive.

Q. How near did the driftway that went up to the house; how near did that go to the worm fence? *A.* Why, right alongside of it; this tree was cut out of the way, I think, when the survey was made, this willow tree; it was a pretty large tree then; I think it was cut out then.

Q. You say at that time George K. Lomasson was living there? *A.* Yes, sir.

Q. And what was he, a farmer? *A.* Yes, sir; farmed that farm there.

Q. What was there of the farm, was it a large farm or a small farm? *A.* Not a very large farm; I don't know the number of acres.

Q. How about this land in here where you say the Robeson acre was; what was that land used for?

A. Well, it was never used for anything that I knew of; but when we made the survey they called it the Iron Company; there was a dock here; something like that, that was connected with the spring if I am right.

Q. I mean that part of it that laid on the east side of the road, how was that used? *A.* It occurs to me it was farmed.

Q. Farmed in with the rest of the farm? *A.* Yes, sir; it occurs to me so.

Q. And what was on the other side was called the dock? *A.* Yes, called the dock.

Cross Examination, by Mr. Harris.

Q. Mr. Wamsley how long were you down there on this land? *A.* I can't tell you sir how long, we were there, different times.

Q. There several times? *A.* There several times.

Q. When was your attention first called to this matter? *A.* About a year ago, as near as I remember.

Q. And you remember that the Robeson acre was south of the spring? *A.* I think so, sir.

Q. You don't remember of there being more than one spring there at that time? *A.* At that time.

Q. But you are not positive as to that, are you? *A.* I think there was none but the one there at that time, to the best of my memory.

Q. You think these have come since? *A.* I think so; I haven't seen them, never seen but the one, nor I haven't seen it recently.

Q. How long since you have been down there? *A.* About thirty-five years, I guess.

Q. You haven't been there since, eh? *A.* I guess not.

Q. You spoke of the centre of some line running through the spring when Mr. Strong was questioning you? *A.* Yes.

Q. Which line did you refer to? *A.* Well, I can't tell you, but General Davis ran a line through the centre of the spring; that is all I can tell you.

Q. And through the run to the spring? *A.* I can't tell you about that; I remember the line going through the centre of the spring; the run was a crooked run.

Q. When did you say the railroad came to Phillipsburg? *A.* 1854.

Q. And afterward it came to Belvidere; what year was that? *A.* I can't tell you; I think that is about thirty-five years ago; that is, stopped there awhile, then ran on to Manunka Chunk.

Q. Did you assist in the survey between Belvidere and Manunka Chunk. *A.* Yes, sir.

Q. You spoke of a willow tree, and I understood you to say that the fence was here (pointing in a straight line on the floor), and the willow tree some feet beyond it, to the north of it? *A.* I think to the north.

Q. How many feet to the north? *A.* I couldn't tell you, sir; I couldn't answer that question.

Q. You indicated when you were being examined by Mr. Strong, quite some little distance? *A.* Well, quite some little distance; I didn't indicate to him how far it was.

Q. No; I know. *A.* I say I can't tell you; some little distance.

Q. North? *A.* North.

Q. Towards Belvidere? *A.* Towards Belvidere.

Q. And that willow tree, you think, was cut down in the surveying? *A.* I think so.

Q. There was no other willow tree right near there, was there? *A.* Only sprouts that were coming up from the old original tree.

Q. Do you remember the public road being there at that time? *A.* Yes.

Q. The road leading where the culvert is now? *A.* Yes.

Q. You know where the culvert is, don't you? *A.* I know where the culvert is.

Q. That same road ran there then? *A.* Yes; there was a road there then; I suppose it is the same one.

Q. How wide was it then? *A.* I can't tell you, because I never measured it.

Q. I don't mean by measurement; I mean judgment; from the eye? *A.* Two rod road I should think; I never paid much attention to the road at all.

Q. Did you go back with this line to the mountain with General Davis? *A.* Yes, sir; to the mountain, I think, or to the woods, either.

Q. There was a lane led from the public road up to this house, was there? *A.* Yes.

Q. How big a house was this old house? *A.* It was

a long, low story and a half house, if my memory serves me right; I should think probably forty feet long, if I am right; thirty-five years is a good while.

Q. Was this spring situated deep down in the ground? *A.* Oh, well, it was in the embankment under the roots of those trees.

Q. How deep in the ground; how deep from the level surface of the ground? *A.* Oh, well, six or eight feet.

Q. And the run that led from the spring out into the river, was that deep likewise? *A.* No, not very; not very deep.

Q. The run wasn't deep, but as to the banks on the side of it? *A.* Yes; the banks were up pretty well each side of the stream until it got out.

Q. How high? *A.* Oh, well, I can't tell; six or seven feet, as near as I can remember.

Q. Until it got out where; out into the river? *A.* Into the river, lower ground; of course it didn't run directly into the river from there; it ran over a space at low water time.

Q. You think, Mr. Wamsley, you recognize this as General Davis's book, do you? *A.* Yes, sir; I think I do.

Q. From reading this on the front page? *A.* Yes; it is in his handwriting.

Q. That you think is his handwriting, do you? *A.* Yes, I think so; I think that is the—

Q. You think that is the— *A.* I think that is the Robeson.

Q. You think those are his figures? *A.* Yes, sir.

Q. You think you would know them after this lapse of time? *A.* I think so; I was with him eight years, and I became very conversant with his figuring and writing.

Q. I don't suppose you remember his surveying this particular acre, do you? *A.* I remember we surveyed the acre, and we made just one acre of it; that is all I

can remember; it was an acre; I wasn't surveyor, I was chain carrier and stake driver.

Q. Do you remember seeing Mr. Davis make this little line here (referring to book)? *A.* Yes, sir; I do.

Q. And that little line? *A.* Right there on the ground.

Q. That represented the run, didn't it? *A.* I think it did.

Q. The upper one? *A.* Yes, I think it did; I spoke of this; I said it was in a book somewheres, and I didn't know the book was in existence.

Q. You had seen the book before you went on the stand; you saw it before just now didn't you? *A.* Never saw it, sir, since General Davis put that there.

Q. Didn't you see it this morning? *A.* Yes, sir.

Q. Or yesterday? *A.* No, sir.

Q. Didn't you see it when you made an affidavit in the suit in Chancery? *A.* No, sir; I never seen it until this—

Q. You remember his making those marks there, do you? *A.* Yes, sir.

Q. You remember his making the one that represents the run? *A.* I think I remember the whole thing; we sat side by side up where the roadbed runs now when he did the work.

Q. Anybody else there? *A.* No, sir.

Q. He did considerable figuring there? *A.* No, sir.

Q. Where did he do the figuring, on a piece of paper? *A.* On a piece of paper and in the book generally.

Q. Do you remember what became of that piece of paper? *A.* No, sir.

Q. Do you remember his making that little mark down here (referring to the book)? *A.* I remember his plotting the whole thing just as you see it there. It has been on my mind, and I spoke of it; I never saw the book until just now; I said the matter of that acre

of ground and the spring run is in a book somewhere, and here it is.

Q. You and he sat up under a tree and made that? *A.* Well, we sat somewheres there; I can't tell just where; about where the roadbed is now; there was no railroad there at all then.

Q. I see on the preceding page here these words, "William P. Robeson, Esq., 24-100 of an acre," and "William P. Robeson" down here on this page, the next page before that? *A.* Yes.

Q. Do you know what that refers to? *A.* I don't know; this ground was got of William P. Robeson, not of the Iron Company; Robeson was the man that negotiated with General Davis about that acre of land, but what they did I don't know; I don't remember; I did know at the time.

Q. The Iron Company didn't have anything to do with it, did they? *A.* Robeson, I guess, acted for them.

Q. You think he acted for them, do you? *A.* I can't say as to that, but he acted in the case, however.

Q. There was a parcel of other land that belonged to Robeson, wasn't there, between that point and Belvidere? *A.* I suppose there was; I don't remember.

Q. What is that a survey of there (referring to book)? *A.* I can't tell; I don't remember, sir.

Q. Well, do you know what *that* is? *A.* No, sir, I don't; I don't know; I can't see it well, and I can't see without my glasses; I lost my glasses, and these I see very dimly with.

Q. Well, can you see that without your glasses? *A.* No, hardly; I can't see that; yes, sir; that is the acre of land and that is the run.

Q. You didn't see the run in that short glance, did you? *A.* Yes; I seen it before.

Q. Tell me what that is on the next page but one? *A.* I can't see that; I can't answer it.

Q. Can you tell what that is on that page? *A.* A

survey of some land, I suppose; I was with him on all the surveys of the land; no, sir; I know his handwriting and know his figures, but as to the surveys I can't tell.

Q. What kind of chain did General Davis use? *A.* A steel tape chain.

Q. How long was it? *A.* Sixty-six feet.

Q. Did he have a one-hundred foot chain? *A.* Not to my knowledge.

———

William H. Davis, sworn for the plaintiff.

Direct Examination by Mr. Strong.

Q. Are you a son of General A. C. Davis? *A.* Yes, sir.

Q. Formerly connected with the construction and laying out of the Belvidere-Delaware Railroad?

A. Yes, sir.

Q. Are you familiar with his handwriting? *A.* Yes, sir.

Q. I call your attention to this notebook which was spoken of by Mr. Wamsley; what have you to say about it? *A.* That is his handwriting on the front, certainly.

Q. Just look through the book and see what you can say about it? *A.* (Witness examines book.) All that I found so far is his handwriting.

Q. I forgot to ask whether your father is still living? *A.* No, sir; he died in 1861.

Q. I call your attention particularly to that page, which is the page spoken of by Mr. Wamsley as containing a sketch of the Robeson acre? *A.* Do you mean as to the figures and writing?

Q. Yes; is that your father's writing, to the best of your knowledge and belief? *A.* Yes, sir; that is his handwriting, figures and everything of the kind.

Q. And that sketch is his work? *A.* Yes, sir.

Q. Do you know as to his habit of using books similiar to this?

Mr. Roseberry—Is that proper?

The Court—I don't think that is material.

Q. Well, as to this particular book; have you any knowledge yourself as to this particular book? *A.* No, sir.

Cross Examination, by Mr. Harris.

Q. How old was your father when he died? *A.* Sixty-one years and about two months.

Q. That is all.

By Mr. Strong.

Q. I omitted to ask you whether you knew as a fact that he was concerned in making surveys for the Belvidere-Delaware Railroad? *A.* Yes, sir; I assisted him at times.

Mr. Strong—I offer the book.

Mr. Harris—For what purpose?

Mr. Strong—In connection with other testimony, as showing the location made by the persons who made the description of the Lomasson tract, and the location of the Robeson acre in connection with it, done at that time, the surveyor's notes.

Said book marked Exhibit P 4.

Frederick Wood, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. What is your profession? *A.* Civil engineer.

Q. Employed by whom? *A.* The Pennsylvania Railroad Company.

Q. In what department are you employed? *A.* In the department of the maintainence of way.

Q. And what is your work? *A.* Draughting and estimating.

Q. How long have you been engaged in that work? *A.* With the Pennsylvania Railroad Company?

Q. No, generally speaking; how long have you been a surveyor and draughtsman? *A.* About sixteen years.

Q. And with this company how long? *A.* Fifteen.

Q. I call your attention to this book marked Exhibit P 4, which was the book referred to by the last witness; have you seen that before? *A.* Yes, sir.

Q. Where? *A.* In the office of the Pennsylvania Railroad Company, in my own care.

Q. How long has it been in your care? *A.* Eleven years and over.

Q. And from whom did you receive it? *A.* I received it from the chief engineer of the company, that is I was in his office when he received it from the officers of the United Companies at Trenton where it had been kept previous to that time.

Q. Have you made an enlarged sketch— *A.* Yes, sir; I made a sketch on a scale of twenty feet to the inch.

Q. Of what? *A.* Of the so-called Robeson tract, W. P. Robeson tract.

Q. From what? *A.* From the notes as they are entered in that book.

Q. What is this that I show you now? *A.* That is the sketch that I refer to.

Q. Is it made wholly from that sketch in the book? *A.* Yes; I made it entirely from the notes in that book.

Q. Is that a correct enlargement of the sketch in the book? *A.* I consider it so; yes, sir.

Q. That is all. *A.* You asked me, Mr. Strong, if that was made wholly from the notes in the book; it is; I had nothing else from which to make it; there is one

distance shown on there which I obtained by subtraction which is not shown on the notes.

Q. What is that? *A.* Two hundred and twenty-three from this point here to the southeast corner of the tract; total distance of five chains from that point to this.

Q. Raise your voice. *A.* The distance shown from the point, 1.62 chains from the river to the southeast corner of the tract, that is given in the notes; then the other line is given as five chains, and the distance here is the difference between the five chains and the 1.62 chains.

Q. The entire distance is given as five chains; is that right? *A.* Yes, sir.

Q. But the distance from the end of the first course on the south line to the end of the tract you had to obtain by subtracting? *A.* Yes, sir; there was two lines given in the notes, just as I show there.

Q. Is that the only thing that you did not get from the notes? *A.* Yes, sir; that I got from the notes by deduction.

Q. I see that the map shows the centre line, does it not? *A.* Shows the centre line in three chain courses.

Q. Is that shown in the note book? *A.* Yes, sir.

Q. Where do you find that? *A.* (Witness refers to book.) I have the places marked there, 1054-5-6-7, as I found them in this book.

Q. Did you use a glass to make out the— *A.* It is pretty well worn in places, but it is perfectly legible with a glass; a person with a good pair of eyes could read it anyway, without a glass.

Cross Examination, by Mr. Harris.

Q. What is this line you have on this map here, Mr. Wood? *A.* That is the centre line survey of the railroad.

Q. Is that taken from this sketch? *A.* That is taken from those notes; yes, sir.

Q. Is there any line given there on that sketch? *A.* This red line is used as centre line of the survey from one end to the other.

Q. Then that black line on the map represents this red line on the book; *A.* Yes, sir.

Q. What are these figures here (pointing to figures south eighty-one and one-half degrees west)? *A.* It is a bearing on the north line of the Roseberry tract.

Q. What are those figures, 19.4 on the left hand side of the red line in the book? *A.* I can't tell you; well, I can't tell you positively; probably they are the distance from the centre line out to the edge of the property that the surveyor intended to take, but I have nothing but these notes.

Q. Why do you turn to the preceding page? *A.* This is a survey of the Robeson lot, and this is a survey of the Lomasson lot around the Robeson lot, in which those same distances are shown again.

Q. But that is not on your map there? *A.* No, sir; well it is on the under side of the line, in smaller figures.

Q. What are those figures on the right hand side of this book? *A.* From the centre line of the survey to the corner of the property you will find 29-100 chain on the south side.

Q. Where do you get that 29-100 chain from? *A.* Referring to the book.

Q. But not from this diagram; those figures are obtained from another source than from this diagram? *A.* This diagram covers both these surveys, the south end of the Lomasson and the Robeson tract down as far as the fence, the line between Robeson and White.

Q. But the figures you put there are from something else than this diagram? *A.* No, sir.

Q. There are no such figures on the diagram? *A.* (Witness refers to book.)

Q. That is another diagram; you certainly didn't get

these figures from this diagram? *A.* Not from the Robeson diagram alone, no; but from the Robeson and the Lomasson.

Q. What is this dotted line here? *A.* That indicates the distance from this station; there is an arrowhead on the end of the dotted line; that is the distance between the station and the property line where it crosses the centre line.

Q. Where is there anything on this diagram like that? *A.* On one or the other of these two; this is the Lomasson and this the Robeson; I used the two together.

Q. Then this diagram; this map is made from the two together. *A.* From the two pages together.

Q. And not from this diagram alone? *A.* Not from that page alone; no, sir.

Q. What is this on the preceding page here? *A.* It is a sketch of his survey through the Lomasson tract.

Q. What are those words, "William P. Robeson"? *A.* Entered in there as a property line crossing the centre line and passing out again.

Q. Is that this acre? *A.* It does not give the acreage.

Q. Is that supposed to be this acre? *A.* Yes, sir.

Q. The same as drawn on the diagram on the next page? *A.* Yes, sir; it is the Lomasson property, with the acre piece shown in it.

Q. Are not the lines of the Robeson tract shown in this diagram on the preceding page? *A.* In part.

Q. They are shown straight, are they not? *A.* Yes, sir.

Q. They do not run as those run? *A.* Yes, they do, the same course there, north eighty-one and a half east.

Q. What is this figure here? *A.* That is 1.28 chains, the side measurement; there they are (indicating).

Q. Where is that 1.28? *A.* Right here (indicating).

Q. Where is that on this map? *A.* That is this dotted line.

Q. Where are the figures 1.28 on this map? *A.* From that corner to this corner.

Q. I know, but where are the figures? *A.* I haven't shown them; I divided that and put it in two separate figures.

Q. What is this line here? *A.* It is a line indicates—

Q. Was that a strip proposed to be taken by the railroad? *A.* That is my idea exactly; calls for 21-100 of an acre.

Q. And this is the centre line of the railroad? *A.* Yes, sir; that is the centre line of the railroad surveyed on one of those two sketches; you will see this line marked with the course and distance.

Q. Can you give from any data here the reason for this position of this line—the direction? *A.* Only this line there; I can't account for the division, those two lines there as I have shown it.

Q. He makes a line here, does he not? *A.* Yes, and I have one.

Q. He has two lines there, has he not? *A.* He has a free hand drawing of the run from the spring down to the river, and I have the same here.

Q. Looking on the diagram, there is the spring run? *A.* Yes.

Q. And then a straight line running to the river? *A.* Yes, sir.

Q. And then in there there is another line, is there not? *A.* No; two sides of the run, you see; you see the river turns up on both sides and flows up to the spring.

Q. Is it represented here as turning? *A.* Yes; turns a corner and goes up.

Q. The river turns in there? *A.* Yes, sir; the river turns in there, just as I have shown in there.

Q. His line from the spring is straight down to the

river on the diagram? *A.* A mere line with the distance on it.

Q. His diagram is a right angle parallelogram, is it not; that is, if you take these straight lines of the diagram? *A.* If you take the courses given it cannot be right angles.

Q. But his diagram is different from yours? *A.* A free hand sketch, without even a ruler.

Q. You think that is not a third line in there, but that is a part of the shore of the run? *A.* He produced his line on to the river to get the distance in a straight line.

Q. It is five chains in length, this whole line? *A.* Five chains; I haven't shown that up here, but those two parts given in the little book, 3.38 from the spring up, and 1.62 from the spring down, make a total of five chains again, the same course parallel with this.

Q. What are his figures in this diagram in the book on the red line, 1.27? *A.* That is the total of those two short measurements again, 1.27, on the north side against 1.28 on the south side.

Q. What are these figures in a circle running across the diagram in the book from the spring to the centre line? *A.* That is the station, 1056, that is that station, that survey station.

Q. Then this part of this diagram in this book, the upper half of the diagram, is represented on your diagram by this part of the map? *A.* He has it so sketched; yes, sir.

Q. What is this line here? *A.* That is the same line again.

Q. This line over here to the left of the red line in the book is represented by this line on your map? *A.* Yes, sir.

Q. So that the diagram here in the book is wholly incorrect? *A.* As to its location I should say it was; he has shown his distances in figures.

Q. But this diagram is entirely inaccurate? *A.* It

is a man's own free notes in the field for use in the office as he has sketched it there; he has more on the one side than he has on the next page.

Q. What are those figures 5.0? *A.* Five chains; that is the total course around.

Q. What are those two figures after the five? *A.* A five, decimal point and two cyphers.

Q. That means five chains, does it? *A.* Five chains.

Q. On this diagram this line which you take to be the outside of the railroad location is represented as running to the spring, is it not? *A.* Ran it down to the spring apparently in the rough sketch; at the same time it was only 1.27 chains from that corner.

Q. Isn't it on the diagram marked as 3.38 from— *A.* Yes, that is 3.38 down to the spring; there is a mark in there to indicate where it goes to, but that 3.38 is the total from that corner down to the spring.

Q. Down to this line? *A.* No, sir; down to the spring.

Q. Doesn't the line terminate in the spring? *A.* No, sir; it terminates 1.27.

Q. It terminates in the spring, doesn't it? *A.* It terminates very close to it in the diagram.

Q. Very close to the spring? *A.* Yes, sir.

Q. Then this map is not a copy of Mr. Davis's diagram, but it is made from his figures? *A.* No; I tried to make it up from his figures; I can't translate his diagram, for I wasn't with him.

Re-Direct Examination.

Q. Is the diagram drawn to a scale? *A.* Yes, sir; twenty feet to an inch.

Q. I mean in the book? *A.* No, sir; it is a free-hand sketch as he went along.

Q. Your diagram is drawn on what scale?

A. Twenty feet to the inch.

Q. Is that the same scale as Mr. Weir's map? *A.* I don't know.

Q. Well, I guess so; can you tell from the sketch you have made, whether your sketch of the Robeson acre as shown on your sketch, whether it does or not include the locality of the crossing?

Mr. Roseberry—Is that proper?

The Court—How can he tell that?

Mr. Strong—I ask him if he can; I don't know whether he has any knowledge at all.

Mr. Roseberry—Is that proper re-direct?

The Court—No, not strictly; but if counsel forgot to ask it you may ask the question, Mr. Strong.

Q. Can you tell whether the Robeson acre as delineated on your sketch, whether that embraces the culvert, the road crossing? *A.* I should say it did not by any means; the road crossing would be somewhere about that (indicating), I should think, from what I know of it; but that I have never tried, never made any effort to see where the road crossing would come on that plot; that is made simply from those figures.

Q. Can you tell readily by figuring, or examination, where the culvert would be?

Mr. Roseberry—Well, now hold on; I object to that; that is not proper.

The Court—Where is the impropriety?

Mr. Roseberry—It don't throw any light on the case; he don't know where the culvert is.

The Court—Now he is asked whether he can ascertain by calculation or by examination.

Q. Can you tell by calculation or by examination where the culvert would come? *A.* No, I cannot; I made no measurements on the ground; I could not tell you where the culvert would come.

Q. Your sketch shows the centre line measurements correctly between the stations, does it? *A.* Yes; as indicated in the notebook.

Mr. Strong--There is one other subject that quite

escaped my mind, that I meant to ask this witness about, I will ask the privilege of alluding to it now.

The Court—Proceed.

Q. What knowledge have you of this paper? *A.* I received that map at the same time that I received the notebook, and in the same manner and from the same party.

Q. The manner you have already stated? *A.* Yes, sir.

Q. And in whose custody has it been ever since? *A.* It has been practically in mine; it was in my possession up to eighteen months since, when I turned it over to the real estate agent of the Pennsylvania Railroad office, and in his office I have had frequent access to it since; so I can say it has been kept there since.

Q. Then your knowledge of it extends back for how many years? *A.* Eleven years.

Mr. Strong—I would like to have this marked for identification for the present, and I will probably have to recall this witness after we prove the map further by another witness.

Said map marked P 5, for identification.

Abel I. Stout, sworn by the uplifted hand, on the part of the plaintiff.

Direct Examination, by Mr. Strong.

Q. Where do you reside, sir? *A.* In Philadelphia.

Q. Employed by the Pennsylvania Railroad Company? *A.* Yes, sir.

Q. In what capacity? *A.* As an assistant engineer.

Q. Were you formerly employed in the office at Trenton? *A.* I had an office in the building in Trenton at one time.

Q. And what had you to do there; what was your

position at that time? *A.* At that time I was a transit man.

Q. Did you have anything to do with sending certain documents and notebooks from that office to Trenton, some eleven years ago? *A.* I did.

Q. As spoken of by Mr. Wood? *A.* I did.

Q. What did you have to do with that? *A.* I sorted out the plans and books, packed them up, and shipped them to the chief engineer at Philadelphia.

Q. And when did you say that was? *A.* That was in the early part of 1885.

Q. Those plans and books which you sent at that time, where did you receive them? *A.* I found them in a large vault in connection with the office that we occupied.

Q. Who had charge of the vault and of those papers? *A.* The secretary, I suppose, of the Belvidere-Delaware Railroad Company, or else the secretary of the United Railroads Company.

Q. Who was the secretary of the United Railroads Company at that time, or of the Belvidere-Delaware road, either? *A.* Mr. Hugh B. Ely, I think, was secretary of the Belvidere-Delaware Railroad at that time.

Q. Did you get them yourself from the vault at that time? *A.* Yes, sir.

Q. By whose direction? *A.* Direction of the chief engineer.

Q. Who was that? *A.* Mr. William H. Brown, of Philadelphia.

Q. Are you able to say whether this, which is now marked P 5 for identification, was among the plans which you sent at that time? *A.* I am not able to say specifically that this identical plan was there; there was quite a bundle, a lot of our plans like this, and they were all bundled up and sent together.

Not cross examined.

Hugh B. Ely, sworn for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Where do you reside, sir? *A.* In Beverley, New Jersey.

Q. And are you connected with the Belvidere-Delaware Railroad Company? *A.* Yes, sir; I am still a director of the company.

Q. And were you formerly secretary of the company? *A.* I was secretary from 1872 to 1895.

Q. As secretary of that company had you possession of the plans of right of way, and books and documents connected with it? *A.* They were possibly under my direct possession or control; they were under the control of Mr. Ashbel Welsh, who was then president and chief engineer.

Q. Is he living? *A.* No, sir.

Q. He had the immediate coutrol of them, you say? *A.* Yes, sir.

Q. When did he die? *A.* He died in 1882; September, 1882.

Q. Did he have possession of them down to his death? *A.* Yes, sir.

Q. And after that who had them in charge; do you know? *A.* Thomas B. Fidler, was his assistant, and he died in 1882; I went to Philadelphia in October, 1882, and from that time the office was not occupied by anyone excepting the United Companies, and I think the Pennsylvania Railroad Company had a big reservoir in the building, but I had the key of the vault; it might be considered under my control.

Q. Do you remember the occasion of those plans, &c. being sent to Trenton? *A.* I wasn't there.

Q. You were not there at that time? *A.* No, Mr. Stout was there.

Q. Have you knowledge of the plans which were in the vault? *A.* They were not, as I said before, under

my direct control; I had general knowledge that there were such papers.

Q. That is where the papers of the company were kept? *A.* Yes, sir.

Q. Plans and documents relating to the right of way? *A.* Yes, sir.

Q. How long did you know such things to be kept in the vault? *A.* From 1872.

Q. Always kept there within your knowledge, I think? *A.* Yes, sir; they were moved from Lambertville in 1872.

Q. Well, prior to 1872 had you knowledge of the custody of those papers? *A.* Yes; I was in the superintendent's office as an assistant to Mr. John A. Anderson, superintendent, and I knew that they were in that office, in the building, but not being in the engineering department I had no direct control over them.

Q. Had you anything to do with their removal in 1872 to Trenton? *A.* No, sir.

Q. Who attended to that? *A.* Mr. Thomas B. Fidler.

Q. And he also is dead you say? *A.* He is dead too; I was chief clerk for the engineer of construction and also secretary of the Belvidere-Delaware Railroad Company, and in that capacity I had control of the papers.

Q. Have you any knowledge of this paper marked P 5, for identification? *A.* Not of that particular paper; I knew there were such papers.

Not cross examined.

Frederick Wood, recalled for the plaintiff.

Direct Examination, by Mr. Strong.

Q. Have you examined that paper before, P 5, for identification? *A.* Yes, sir.

Q. What have you done in connection with it? *A.* I have done nothing with the map at all except to examine it and familiarize myself with the outlines of the tract represented on it.

Q. Have you compared it to ascertain its correctness as a representation of that tract?

Mr. Harris—We object to that.

The Court—Yes; compared it with what?

A. I don't remember as I ever have.

Q. You say you don't remember as you ever have? *A.* I don't remember as I have ever used it to test it at all.

Q. What does that purport to be; can you tell? *A.* Purports to be a survey of the land purchased of T. Lomasson and W. P. Robeson.

Mr. Harris—The paper speaks for itself, I suppose.

Q. I mean not from the title, but the diagram itself? *A.* The diagram itself seems to cover those two tracts purchased from T. Lomasson and Mr. Robeson, as near as I can judge.

Q. Have you examined it to see how it compares with the data contained in this notebook of General Davis? *A.* In a general way it seems to—

Mr. Roseberry—We object to that.

Mr. Harris—No, no; that is not the question.

Q. Have you made comparison with the notes in General Davis's notebook? *A.* This map?

Q. Yes. *A.* No, sir.

Q. You made no comparison at all, you mean? *A.* Except in a general way from looking at the one; being familiar with the one and looking at the other; I have never made a direct comparison between the two; in fact it would be impossible to make a close one.

Q. Why? *A.* There are no figures shown on the map, that is, distance; the courses and distances are given in the corner, not on the map.

Q. Can you tell how these distances, given in the

corner, apply to the map? Are the stations given on the map? *A.* The courses are there, and the angles are there on the map to correspond with the courses.

Q. Have you compared to see whether those courses agree with the deeds for the property? *A.* Well, I haven't exactly; if I ever did, I don't—you mean with the deed, or with the notebook?

Q. With either? *A.* I can see now that some of the courses agree with the notebook.

Mr. Harris—That is not the question.

A. I have not compared it with the deeds for a good while; I could not answer directly.

Q. Will you look at that (notebook) and see whether the courses given agree with the courses in the notebook? *A.* Yes, sir; (witness examines notebook and diagram.) The course along the south end of the Lomasson tract, on the line between Lomasson and White, agrees with the notebook, being fifty-six east; that is the only one I find that agrees with anything in the notebook; there is nothing in the notebook, because the notebook gives no courses and distances of the sides of the Lomasson tract, and this map is made up of two pieces of ground together, and this schedule down here does not show the courses and distances of the Robeson tract, but takes them all in one tract.

Q. I refer you to the courses and distances in the Lomasson deed which is in evidence, P 1, first course north eleven degrees three-quarters east, three chains and two links, do you find that? *A.* Yes, sir.

Q. North six degrees, east three chains and six links? *A.* Yes, sir; that is No. 2 course here.

Q. The third course here is north one degree and a quarter, west three chains? *A.* That is the same as this.

Q. Fourth, north eight degrees and three-quarters, west two chains ninety-four links? *A.* Yes, sir; that is here.

Q. How is it marked there? *A.* Four.

Q. Five, north twelve degrees, west three chains and two links? *A.* That is the same.

Q. Six, north fourteen degrees, west two chains and ten links? *A.* Yes, sir; that is the same.

Q. Seven, north fifty-nine and a half, west seventy-one links? *A.* Yes, sir.

Q. Eight, north eighteen degrees, west three chains and sixty-five links? *A.* Yes, sir.

Q. Nine, south seventy-two degrees and one-quarter, west sixty links? *A.* Yes, sir.

Q. Ten, south eighteen degrees, west two chains, twenty-seven links? *A.* That is south eighteen degrees east here.

Q. Well, it is west in here; it is east there instead of west, is it? *A.* Yes, sir.

Q. Two chains twenty-seven links; that is right. Eleven, north fifty-nine degrees and a half, west seventy-one links? *A.* The same as this.

Q. Twelve, south sixteen and a half, east three chains, ninety-two links? *A.* That is the same.

Q. Thirteen, south twelve degrees, east two chains, ninety-six links? *A.* That is the same.

Q. Fourteen, south eight degrees three quarters east, two chains, ninety-two links? *A.* That is the same.

Q. Fifteen, south, one and one-quarter degree east, one chain, fifty-seven links? *A.* That is the same, but it says to a willow tree.

Q. To the south side of a large willow tree, marked for a corner in the boundary line, &c., as it is given here; sixteen, north eighty-one, one-half degrees east, one chain. *A.* We differ on that course; this description, instead of going around here, goes around and takes in the two pieces in one description.

Q. Instead of going around the end of the Robeson tract, it runs across it? *A.* Runs across it.

Q. Does it make any difference in the subsequent course; let us see; seventeen, south three-quarters degree west, two chains, four links? *A.* I haven't that.

Q. Well then, eighteen, south eighty-one and one-half degrees, one chain, fifteen links over land of said Lomasson; nineteen, south six degrees west, two chains, seven links? *A.* I have that, south six degrees, west two chains, seven links, as No. 17 on this diagram.

Q. Twenty ,south eleven degrees, three-quarters west, one chain, seventy-four links? *A.* That is the same.

Q. That is the eighteenth course, is it? *A.* That is the eigthteenth here.

Q. Twenty-one, south fifty-six degrees and one-half east, one chain, sixty-four links, to the place of beginning? *A.* That is the same as my seventeen.

Q. There are two courses left out? *A.* Yes, sir; that is, going around the corner here.

Q. Are there any other courses or distances given on that? *A.* Well, yes; where that shows the acre there I had a course and a distance which you did not have in that deed at all; across there.

Q. What is that course? *A.* South two and a quarter, east 2.02 chains; that is my No. 16.

Q. Now, you say the sketch itself is numbered to refer to those courses? *A.* Numbered to refer to these courses down here.

Mr. Strong—We offer that map.

Mr. Roseberry—We object because they are not identical; there is one course in there that I noticed in the map was southwest; and there it is southeast.

Q. Can you tell from an examination of that map as to that course; I think it is the tenth? *A.* It is the tenth.

Q. Can you tell whether that course, in fact, on the sketch runs southeast or southwest? *A.* It is plotted here to run south eighteen east.

Mr. Roseberry—The deed is south, eighteen west.

Q. And south eighteen east agrees with the course you have there? *A.* Yes, sir.

Q. That is the only difference in the courses except

where it runs across the end of the Robeson lot? *A.* Yes, sir.

Mr. Strong—I submit that that variation simply shows an error in one description or the other.

Mr. Roseberry—It does not correspond with the deed.

The Court—What is the object of offering it?

Mr. Strong—It is offered as a map showing the joint locations of the Robeson tract and the Lomasson tract.

The Court—How is it evidence against the defendants in this case.

Mr. Strong—Well, only as a survey made long ago, evidently by some person for the purpose of fixing those lines.

The Court—Not necessarily a survey.

Mr. Strong—Well, a map.

The Court—It does not fix the courses correctly.

Mr. Strong—It does with the exception of one course, which may be a mistake in the deed; I think it is for the jury to say whether that is a map of those tracts.

The Court—It does not seem to me it is competent evidence against the defendants in this case without any explanation of who made it, what date it was made or why it was made. I exclude the map.

Mr. Strong—We pray an exception.

Exception allowed and sealed accordingly.

WM. S. GUMMERE, J. [L.S.]

Plaintiff rests.

———

The Court—Mr. Strong what evidence is there in this case, assuming now that you have shown possession of the *locus in quo*, and of ousting, what evidence is there in the case to show that the defendant Breck-

inridge has been guilty of ousting your client from the possession of this property.

Mr. Strong—The plea as I understand it admits that.

The Court—The plea is general issue and denies it.

Mr. Strong—It is in the form of general issue, but it it is the statutory plea.

The Court—That covers it then.

Defendant's counsel moved to non-suit the plaintiff on the ground that the plaintiff has not shown that they have an existence as a corporation, which they are bound to show in a case of ejectment; the plea is in the statutory form, the general issue, and no plea of nue tiel corporation is possible.

Plaintiff's counsel opposed the motion.

The Court—I think the motion cannot prevail. The proof in the case as it stands now is that by an act of the Legislature of this State, the Belvidere-Delaware Railroad Company was authorized to lease their property and franchises to the United New Jersey Railroad & Canal Company; by an act of the Legislature that latter company was authorized to assign that lease to the Pennsylvania Railroad Company in pursuance of the statutory authority.

It has been proved in this case that a lease was made by the Belvidere-Delaware Railroad Company to the United Companies, and that in further pursuance of legislative authority, that lease was assigned by the United Companies to the Pennsylvania Railroad Company. It has been proved, although it is said that that lease and assignment were void by reason of the failure to record them; it has been proved that immediately after the execution of the assignment of the lease, that this property was turned over to this company; they entered into possession of it, and have operated the road ever since. It seems to me that the leg-

islature, having recognized the existence of this corporation, that it is not necessary in this case to do anything more than put in evidence the act recognizing their existence, any more than it would be necessary if it was a corporation of the State, to put in evidence the charter creating it.

Mr. Harris—That assignment required the consent of a certain number of stockholders; that has not been shown.

The Court—It seems to me that the act of the Legislature which recognized the existence of the corporation is exactly the same in its legal effect as an act of the State creating a domestic corporation would be, and that that is all that is necessary to do in this case, even if it be true, as you say, that the plea of general issue does not admit the existence of the corporation, because it is a statutory plea, and you are prevented from pleading it specially. I overrule the motion, and the defendants may have an exception.

Defendants' counsel prayed exception, and same granted.

Mr. Roseberry opened for the defendant.

Adjourned to Wednesday, October 7th, 1896, at 9.30 A. M.

October 7th, 1896.

Continued pursuant to adjournment.

Mr. Strong—I find that in closing my case at the last sitting of the Court, I omitted one formal matter, which was to offer the maps, and also the statute under which this lease was made. My impression was at that time that it was a public statute; I find, however, that it is not declared to be such. It was referred to by the Court, and I wish it to be formally offered.

The Court—The two maps are offered unless there is some objection.

Mr. Harris—I think the second map there is objectionable; it appears to have been made by Mr. Wood, not from the locality at all.

The Court—Yes, the second map perhaps is not, strictly speaking, evidence. It is nothing more than an enlargement of the field sketch which was found in a notebook, drawn to show what that sketch would be accurately. It could only be used by way of illustration.

Mr. Strong—Yes, sir; that was my object.

The Court—It is not evidence *per se*, of course. The statute that you offered you had better refer to by the law and the page of the law, Mr. Strong. Does that authorize the assignment also?

Mr. Strong—Yes, sir; it is all under the same act. The title of the act is "An act to authorize the Belvidere-Delaware Railroad Company to lease their road and franchises to the United New Jersey Railroad & Canal Company, and the assignment of such lease to the Pennsylvania Railroad Company," and it is approved March 19th, 1874, and is found in the laws of 1874, on page 1138.

Mr. Roseberry—The objection to that map is this, that there was a survey sketched—

The Court—Yes; I have said it was not in evidence.

Mr. Roseberry—The centre line was not on the sketch at all, but it was considered by Mr. Wood.

The Court—It is not competent as evidence in my judgment; it can only be used for the purpose of illustration before the jury.

Mr. Strong—I understand the maps go before the jury for purposes of illustration; that is all, and I want them to be considered as formally offered.

The Court—So far as evidence is concerned, the last map is not competent; you may use it before the jury in your argument, for purposes of illustration, just as

counsel could any other sketch or map, but it is not evidence.

Mr. Harris—This act, now offered for the first time, requires the consent of two-thirds in interest of the stockholders of the Belvidere-Delaware Railroad Company; no evidence has been shown in connection with this offer of any consent or action.

The Court—I understand the act is offered for the purpose of showing the recognition of the existence of the Pennsylvania Railroad Company, by the State of New Jersey. It was claimed by counsel for the defendants that there was nothing from which this Court could assume the corporate existence of that company in the case.

Mr. Strong—My idea, further, was that the assent of two-thirds of the stockholders might certainly be presumed after twenty years occupation under the lease made in pursuance of that act; I think, at any rate, that requirement does not affect the introduction of the act at all.

Mr. Harris—No, but we may now renew our motion to non-suit, because that consent of two-thirds of the stockholders is not shown; I think it proper to renew the motion to non-suit on that ground.

The Court—How does that affect this case?

Mr. Harris—It affects the assignment of the lease which was offered in evidence.

The Court—The validity of the assignment, you mean.

Mr. Harris—Yes, sir.

The Court—That raises the same question which I disposed of on the inception of this case; here are parties in possession under color of a lease and an assignment which perhaps, if your theory is right, has not been shown to be valid; still they are in possession under that lease; I understand the well settled rule to be that where parties are in possession under color of title, even where they have no title in reality, they can

maintain ejectment against any other person except the true owner, or any person claiming under him; against a mere trespasser they can maintain ejectment; that is the position of this case now. If I understand the situation it is this: Originally Thomas Lomasson owned the *locus in quo;* by a conveyance which has been offered in evidence, he conveyed it to the Belvidere-Delaware Railroad Company. Under color of a statute which authorized the Belvidere-Delaware Railroad Company to lease its powers and franchises they executed a lease to the United Railroad Companies; you say that lease is void notwithstanding the statute, because certain conditions have not been complied with. Under color of that same statute the United Railroads assigned this lease to the Pennsylvania Railroad Company; you say that assignment is void because it did not comply with the statute; but notwithstanding that fact, under color of that lease and of that assignment these people, the plaintiff corporation, have entered into possession and operated the road. Now do you mean to say that because that lease is void that you can disregard the conveyance made by Lomasson to the Belvidere-Delaware Railroad Company, and the subsequent proceedings which vested the property in the Pennsylvania Railroad Company, and without a shadow of right take possession of the property merely because the statute has not been complied with?

Mr. Roseberry—The point is that they connot claim under a lease; it must be by a conveyance. Even though the lease was good they could not claim under that lease to the right which the Belvidere-Delaware Railroad Company had.

The Court—It does not make any difference whether they can or whether they cannot; they are in possession, and certainly whether they are in possession rightly or wrongly, so far as the statutory provision is concerned, you cannot oust them. It would be a most

monstrous thing if anybody should find another person in possession of property, being satisfied he had no right to the possession of it, could come along and oust him. The whole theory of the doctrine of ejectment is that it does not make any difference whether the possessor has any right of title or not, whether he was there wrongfully or not; the only question for the Court to consider is whether he was in possession wrongly against the person who brings the action. I overrule the objection for the reason which I have tried to make clear.

Mr. Roseberry—We ask for an exception.

The Court—To what?

Mr. Roseberry—The overruling of the renewal of the motion to non-suit.

The Court—I have already allowed you that.

Mr. Strong—I wish to call attention, although possibly it is not necessary at this time, but counsel has repeatedly referred to the act of 1871 as making this lease void; I wish to call attention to a supplement passing in 1873. (Counsel reads from page 1096 of the Revision.)

The Court—What have you to say to that?

Mr. Roseberry—That says "as between the parties, and all other parties having notice thereof."

The Court—Well, must not you show you have not had notice?

Mr. Roseberry—There was an act passed in 1886, which—

The Court—Oh that does not affect this.

Mr. Roseberry—That act says it shall have no effect except between the parties, and those persons whom they show have had notice of it.

The Court—No; it does not say they must show notice; you must show that you have not had notice. If you undertake to take advantage of a person having an unrecorded deed or lease, you must show that you

have not had notice; the law will not presume that you did not have notice.

Nathan F. Walker, sworn for the defendants.

Direct Examination by Mr. Harris.

Q. Where do you reside? *A.* Washington, at present.

Q. Where did you formerly live? *A.* At Athens, Pennsylvania.

Q. What is your occupation? *A.* Civil engineer.

Q. How long have you been such? *A.* Eighteen years.

Q. What kind of engineering have you been employed in? *A.* Land surveying; railroad engineering.

Q. In what localities? *A.* Railroad engineering on the Lehigh Valley Railroad, the Addison and North Pennsylvania Railroad, preliminary survey of the contemplated Binghamton and Williamsport Railroad, land surveying throughout the county of Bradford, Pennsylvania, Tioga county, New York State.

Q. And you are now engaged by whom? *A.* The United States Pipe Line Company.

Q. And how long have you been engaged by them? *A.* I have worked steadily with them since about a year ago last September; I commenced work for them in May, 1892; worked a few months and then was laid off.

Q. Are you familiar with the land near the Shippen Spring at the foot of Foul Rift, in this county? *A.* Yes, sir.

Q. Have you made a survey of the Robeson acre there situated? *A.* I have.

Q. From what description did you make it?

A. From a description given in the deed to Mr. Breckinridge and the description in the deed given by Johannes Vannatta to Jonathan Robeson.

Q. The deed from whom, to Mr. Breckinridge?

A. Mr. Roseberry.

Q. Where those descriptions identical? *A.* They were.

Q. Have you made a map of that acre from those descriptions? *A.* I have.

Q. (Producing map). Is this it? *A.* It is.

Q. Show the jury on that map the lines of that acre. *A.* (Indicating on map). The portion colored green.

Q. What is the portion colored blue? *A.* Represents the public highway as at the present time.

Q. The top of that map is north and the bottom south? *A.* Yes, sir.

Q. What are those lines at the east of the acre? *A.* This is the road leading to Roxbury station; it is the road leading to Oxford Furnace from the main road leading from Belvidere to Easton.

Q. What is the object in the northwest corner of the map, of the acre? *A.* This represents the Spring Run; this represents the top of the bank sloping down into the run.

Q. In making your survey, where did you begin? *A.* At the mouth of the run.

Q. And where did your first course go? *A.* Down the river.

Q. How far? *A.* Two chains, or eight perches or rods; 132 feet.

Q. And then the second course; where did that go? *A.* The second course at right angles to the first course; a distance of 330 feet, five chains, or twenty rods.

Q. Twenty perches? *A.* Yes, sir.

Q. The descriptions in the deeds call it by the word perches? *A.* Yes, sir.

Q. The third course? *A.* Parallel with the first course, at right angles with the second; 132 feet or eight perches.

Q. And the fourth course? *A.* Back to the place of

beginning, so as to include half of the spring and the spring run.

Q. A perch and rod are identical, are they not? *A.* Yes, sir; lineal measure.

Q. What is the object marked near the southern boundary of the acre, consisting of two dark squares there? *A.* This represents a building which is on the ground at the present time.

Q. What are those four objects immediately south of that? *A.* Represents four willow trees.

Q. What is the object at the river bank running into the water southwest of those objects? *A.* It is a heap of stones.

Q. What is the line southeast of that object? *A.* This line do you mean (indicating)?

Q. I mean the line running more south, starting about eight inches from the heap of stones; that line; what does that represent? *A.* The boundary of the land purchased by the railroad company of Amzi White.

Q. You obtained that line from the deed of Thomas and Amzi White? *A.* Yes, sir.

Q. And that you have marked there with what words? *A.* "Top of the river bank, railroad deed of 1853."

Q. How did you fix that river line; how did you obtain that? *A.* I obtained the river line on the basis that the water in the river in May would be fully two feet higher than it is at the present time, or than it was when I made this survey last year, when the water was about the same stage as it is now.

Q. You made your survey in the month of May? *A.* No; I made my survey in the latter part of August last year.

Q. And how did you obtain the line of the river bank? *A.* I obtained that by measurements from my other lines up to the top of the bank.

By Mr. Strong.

Q. By what? *A.* Measurements from the line I have here.

Further Direct.

Q. (Indicating.) What does this represent at this point; this line here? *A.* Represents the break of the lower slope of the bank.

Q. And this western line of the creek; is it or is it not below the top of the bank? *A.* Below the top of the bank.

Q. And the mouth of the run is shown by that map to be at what point? *A.* This point right here (indicating)

Q. And that point was determined how? *A.* By the level of the river extending back into the run, or where the two waters meet on the same level.

Q. That is the water of the run and the water of the river? *A.* Yes, sir.

Q. And starting from that point you measured first down the river eight perches? *A.* Yes, sir.

Q. And then at right angles, twenty perches? *A.* Yes, sir.

Q. And then parallel with the first course, eight perches? *A.* Yes, sir.

Q. And thence back on this course; what course is that? *A.* North seventy-two degrees, thirty minutes west.

Q. To the spring? *A.* Yes, sir.

Q. And thence down the run to the place of beginning? *A.* Yes, sir.

Q. What does this object here represent, this dock near the river bank? *A.* A willow tree.

Q. And this object near the road? *A.* A willow tree.

Q. Another willow tree, eh? *A.* Yes, sir.

Q. What does this line represent running along here from the heap of stones? *A.* It is a continuation of a line which I found by using a stake which I found here, and another stake in the centre of the railroad, extended on over to see where it will go to the river.

Q. What line is this, this yellow shaded line below the line you last mentioned? *A.* That would be starting from the same point here and running in accordance with the course mentioned in the White deed.

Q. What are these objects marked around the spring here? *A.* A birch tree.

Q. On the north side? *A.* Yes, sir.

Q. And what is this mark at the head of the most easterly spring, what is that? *A.* A leaning basswood tree.

Q. And what is this tree? *A.* A small birch and maple.

Q. And what is this mark here by the third spring? *A.* Basswood.

Q. What is the distance from the head of the spring to the mouth of the run? *A.* Seventy-two feet.

Q. On what scale is your map? *A.* Fifteen feet to one inch.

Q. Had you any other aid in fixing the river bank? *A.* I had.

Q. What was that? *A.* A survey of the river bank made in 1814.

Q. Where is that? *A.* I don't know.

Q. Is that west line in accordance with that survey? *A.* It is.

Mr. Strong—Assuming that that survey will be shown later; otherwise I object.

Mr. Harris—Of course.

Q. What object is that marked "culvert"? *A.* The present culvert over the public highway.

Q. How wide is that culvert? *A.* Twelve feet.

Q. How wide is the road at the outside of the culvert? *A.* What point?

Q. Immediately outside of it. *A.* It varies in width; this point here would be about—very near two rods wide.

Q. And that eastern end? *A.* This point here will be about the same width.

Q. Are you familiar with these roads that are marked on your map? *A.* I have become familiar with them during the past year and a half.

Q. I show you a road return made by Joseph Beavers, Matthias Shipman and others, November 1st, 1786.

Mr. Strong—Is that the original?

Mr. Harris—It is certified by the clerk of Sussex County to be a copy of the return.

Q. I ask you if that coincides with the road as now located there?

Mr. Strong—He has not said that that is this road.

The Court—That is what he is asking him now.

A. It does.

Q. Show which part of the road that return relates to? *A.* The part of the road running here (through the culvert) corresponds with the return; the original road went on down this way further; started at the river bank.

Q. Being shown a certified copy of the road return, bearing date March 4, 1799, made by Matthias Shipman, Garrett Vliet and others, is asked whether that road return corresponds in a part with one of the roads on your map? *A.* I find a road here leading up the river to Belvidere; I have not surveyed it, so I could not answer whether it corresponds or not; there is a road there on the ground following the general tendency of the description in this paper.

Q. That is, "starting in a road beginning on the bank of the river Delaware, a public road near the foot of Foul Rift, and thence to run up said river"?

A. Yes, sir.

Q. How much land is enclosed within the boundaries

of that map, of the Robeson acre? *A.* About one and one-tenth acres.

Q. I show you the map made by Mr. Weir and ask you whether the west line of the acre as he has fixed it there follows the course of the river or not? *A.* It does not.

Q. Does the north line of the acre as he has depicted it coincide with the description in the deed from Roseberry to Breckenridge, or from Johannes Vannatta, to Jonathan Robeson?

Mr. Strong—Ought not these deeds to be put in evidence?

The Court—I think counsel is entitled to see the Johannes Vannatta deed, certainly; I don't know that the other is important.

Mr. Harris—They are identical; I will show him both.

Q. Being shown certified copy of deed from Joseph M. Roseberry to Harry W. Breckenridge, bearing date the first day of August, 1895, and also the original deed of Johannes Vannatta to Jonathan Robeson, bearing date the third day of May, in the year 1744, is asked: Does the north line of the Robeson acre as depicted by Mr. Weir coincide with the description of that line in the deed of JohannesVannatta, or the deed of Mr. Roseberry to Harry W. Breckenridge? *A.* It does not.

Q. In what respects is it different or variant from those descriptions? *A.* It does not follow back to the run; it does not hit the run when it comes back to the river; passes north of it.

Q. State whether it touches the spring. *A.* It does not.

Q. You have been shown a copy of the deed of Thomas Lomasson to the Belvidere-Delaware Railroad Company, have you not? *A.* I have.

Q. Have you made a map in accordance with the description in that deed? *A.* I have.

Q. Have you it here with you? *A.* Yes, sir.

Q. Will you produce it? *A.* (Witness produces a map.)

Q. That contains the courses and distances in the deed of Lomasson to the Railroad Company, does it? *A.* Yes, sir.

Q. What do you find as the result of that work as to that description? *A.* I find that the survey will not close.

Q. To what extent will it not close? *A.* I come down on the west side of the track on the next to the last course, I find that the distance given there carries me too far to the south.

Q. And to what extent too far? *A.* It would be equal to about very nearly half of the last course; have to shorten up the last course in the neighborhood of fifty or sixty links, I think, by scaling it.

Q. Well, give it in feet? *A.* In the neighborhood of eighty links or fifty to fifty-five feet.

By Mr. Strong.

Q. That is, the course is too long by that amount? *A.* Yes, sir.

Further Direct.

Q. You mean this course here, from that point to there (indicating)? *A.* Yes, sir.

Q. Too long to make the survey close at this point? *A.* Yes, sir.

Q. Would that have any effect upon the position of this point here? *A.* Yes, sir.

Q. What effect would it have? *A.* If you start from this point here and run the line off it would bring you to a point there, and then use these distances marked here, measuring up to locate the acre, you would shove the acre north all the while from its true position.

Q. If the survey closed here, it would shove it still further north? *A.* That is, if you start from here and run a line across here parallel with that line, and then use the distances mentioned in the deed in the last two courses—no, I can give you the number of the course by reference in a moment.

Q. Well, do that. *A.* Starting at this point here, running a line across parallel with the twenty-first course given in the deed; thence following back the twentieth and nineteenth courses, would bring you up to where they locate the acre; it would crowd the acre as much north as the difference would be between the point where this line extended across would hit there, say some fifty or sixty feet.

Q. If this line should be produced out here to an angle, so that a line from it would agree with that ending, what would be the effect upon the acre, the location of it? *A.* I don't think I understand that question clearly.

Q. To close this survey, this course would have to be produced, would it not, at an angle on the line with the ending? *A.* It would have to be produced where an extension of the other line would cross it, or else the next to the last course would have to be shortened.

Q. Well, what would be the effect if that is done, upon the location of this acre? *A.* It would draw the acre down; the result would be the same either way.

Q. The result would be the same? *A.* Yes, sir; the result would be the same if you produced this line down and used this point here near the edge of the paper for your starting point, then ran this line up, measured back the distance given, it would produce the same result as it would to go from here across and measure up, and make your first measurement here some eighty links shorter.

Q. Does this part of your plotting of their description represent this part of Mr. Weir's map? *A.* Yes, sir.

Q. Taking the other end of the map as made from the description in their deed, do these lines coincide as shown here on this end of the map? *A.* Which lines do you refer to?

Q. Well, I don't know the numbers of the courses; the courses are not numbered. *A.* Well, if you will point them out, I can tell you.

Q. This course, north fifty-nine degrees, thirty minutes west, seventy-one links; does that coincide with the course on the opposite side of the location? *A.* The courses and distances are the same in each line, but one line is not in the extension of another.

Q. The west side is not an extension of the eastern; one side is not an extension of the other? *A.* No, sir.

Q. Show which is the twelfth course on that plot. *A.* The course at this point (indicating).

Q. Now, that is opposite what course? *A.* That is opposite to this course here, No. 6.

Q. Are those courses parallel? *A.* They are not.

Q. In the delineation made by Mr. Weir of the eastern end of the Robeson acre as he depicts it, are the angles right angles or not? *A.* No, sir.

Q. Is the eastern course, the third course on this map, parallel with the Delaware river? *A.* I could not say; there is no line drawn along the river.

Q. Parallel with the Delaware river as it is? *A.* No, sir; not parallell with the river.

Cross Examination, by Mr. Strong.

Q. I didn't understand you how you ascertained where the river is? *A.* I said by assuming that the river was two feet higher than it was at the time I made my survey.

Q. Assuming that it is two feet higher? *A.* Yes, sir.

Q. Well, at what time was it two feet higher?

A. In May generally the river is two or three feet higher than it is in August or September.

Q. Suppose you had taken the actual state of the river at the time you made the survey, what would have been the effect on your location? *A.* My water line would have been further this way.

Q. How much further? *A.* That depends upon the slope of the banks.

Q. You know that land there; I mean how much further as applied to this locality? *A.* Make a difference of fourteen or fifteen feet, possibly twenty.

Q. Possibly more than that, wouldn't it? *A.* No, sir.

Q. You think twenty at the outside? *A.* Yes, sir; twenty at the outside.

Q. That is, it would draw the acre this way that much? *A.* Draw the river line.

Q. Draw the river line, and consequently draw the acre that way, wouldn't it, if you located it on the river line? *A.* No, sir; if I made the acre to follow the river line it would draw it.

Q. Well, don't you understand that the acre is to follow the river line? *A.* No, sir.

Q. "Beginniug in the mouth of the run, emptying into the Delaware river," &c.; "thence down the said river eight perches to a post"; what do you understand that to mean? *A.* To be the west side of the acre.

Q. When it says it runs down the river, what do you understand that to mean? *A.* Passed down the river; starts at the mouth of the run and passes down the river.

Q. Then don't you understand that the line follows the river? *A.* No, sir.

Q. Well, how would you locate it then if it does not follow the river? *A.* Take a point where the mouth of the run was and establish my line.

Q. And what direction do you run if you don't run

down the river and along the river; how can you locate your line? *A.* I do run down the river.

Q. I thought you just said you didn't mean to run along the river? *A.* I mean the line is stationary; the line don't go to the west when the river falls, and doesn't go to the east when the river rises.

Q. But you assume the condition of the river in May, and lay your acre in accordance with that assumed condition? *A.* And in accordance with the survey made in 1814 that I used to establish my river line.

Q. That influenced you somewhat, did it—that survey? *A.* Yes, sir.

Q. Where did you get that survey of 1814? *A.* Given to me by Mr. Roseberry.

Q. And that is all that you know about it, is it? *A.* Yes, sir.

Q. Well, now, after you ran down the river, as you say, for a distance of eight perches, your next course runs how? *A.* At right angles to the first course.

Q. Well, now, where did you get that idea? *A.* Because a piece of land eight rods by twenty would have to be at right angles in order to contain an acre.

Q. Is the piece of land that you have laid out here, eight rods by twenty? *A.* Eight rods on two sides, and twenty on one.

Q. And it contains an acre, and one-tenth besides? *A.* Yes, sir.

Q. A tract of land eight rods one way and twenty rods the other, or eight perches, to use the language of the old description, eight perches by twenty perches, in order to contain precisely an acre, must be bounded by four straight lines and four right angles, musn't it? *A.* To contain exactly an acre it would.

Q. Well now, how many right angles have you got in this delineation there? *A.* There are two.

Q. You haven't four, have you? *A.* No, sir.

Q. The right angle on the southwest corner is ninety degrees, is it? *A.* Yes, sir.

Q. That is a right angle; and the angle on the southeast corner, that is near the culvert, is ninety degrees? *A.* Yes, sir.

Q. Now, the angle on the northeast corner; you haven't given the angle there at all, on your map, have you? *A.* No, sir.

Q. Now tell us what it is—why didn't you put it on your map? *A.* I had the course on there to represent the angle.

Q. You show the angles here, but you don't show them on that point, do you; now, why don't you? *A.* Ninety-five degrees, forty-five minutes.

Q. Isn't it ninety-eight degrees? *A.* I took an angle of ninety-eight degrees, but that wasn't extended to the spring run.

Q. Where did that go to? *A.* That was a point up on the bank.

Q. What point did you take that for? *A.* To set my instruments up there; I couldn't get down to the spring at the time I made that; I didn't know which was the original Shippen Spring.

Q. Now you have got more light as to where the spring is? *A.* Yes, sir.

Q. So I understand that on some previous occasion you made another map on which the angle there at the northeast corner of what you call the Robeson acre was ninety-eight degrees, and that that line ran to a different point from that which you now call the spring; is that so? *A.* Ran to a point up on the bank above the spring.

Q. Didn't that run to a spring? *A.* No, sir.

Q. Didn't you mean it to run to a spring? *A.* No, sir.

Q. You didn't? *A.* No, sir.

Q. Well, now you intended that to be a description of the acre, didn't you, just as you intend this now to be a description of the acre? *A.* I intended it to show very nearly where the acre was.

Q. Very nearly, or exactly? *A.* Well, exactly, with the exception of that point being up on the bank and above the spring there.

Q. Why did you take it up on the bank instead of running right to the spring; you had the same description to follow, didn't you? *A.* Yes, sir; because the spring is down under the roots of a tree, and I could sit up there on top and turn my angle.

Q. And that was so much more convenient, and you didn't run your line to the spring at all, although the description says you must, and you actually made a difference of about three degrees in this angle for the sake of convenience?

A. About three degrees.

Q. Well, what do you call the spring now? *A.* The point where that long line coming down meets the other.

Q. Is that where the leaning basswood tree is? *A.* Yes, sir.

Q. Under the roots of the tree? *A.* Yes, sir.

Q. Is that the upper spring? *A.* That is the upper spring.

Q. The head of the spring? *A.* Yes, sir.

Q. That you consider to be the spring called for, do you? *A.* That is what I understand from what I heard the old settlers say; I don't know anything further about it.

Q. You take it to be the spring for the purpose of your location, don't you? *A.* Yes, sir.

Q. Now you say you have got an angle up here of ninety-five degrees, and you have got three more angles; now what are those angles, what size? *A.* I didn't take those angles.

Q. Well, you have got them represented on your map, haven't you? *A.* Put them in there by courses.

Q. Well, can't you tell then by taking the courses what the angles are; of course you can, as a surveyor; just give them to us? *A.* This angle here is sixty

degress; this angle here, an angle of about thirty-two degrees.

Q. And the angle at the mouth of the run? *A.* I didn't take that angle.

Q. Well, give it to us now, please? *A.* About one hundred and eight degrees.

Q. Now you understood that this description required that this acre should be so run, that this tract of land should be so laid out as to contain one acre, didn't you? *A.* No, sir.

Q. You didn't understand that? *A.* No, sir.

Q. Did you have the description of the Vannatta deed before you? *A.* I understood there was to be at least an acre of land there.

Q. Did you have the original, or did you have some kind of copy that was furnished you by somebody? *A.* I had notes which I took from the original deed myself.

Q. You inspected the original Vannatta deed, did you? *A.* Yes, sir.

Q. And you took your own memorandum from it? *A.* Yes, sir.

Q. Did you observe in that deed the following language, "The said lot to be laid out to contain one acre of land"? *A.* Yes, sir.

Q. You observed that; well, why didn't you lay it out so as to contain one acre of land instead of one acre and one-tenth? *A.* Because the fourth course of it said it was to come back to the place of beginning, so as to include fully one-half of the spring and the run.

Q. Why didn't you make a rectangular figure of it, four right angles? *A.* Because that wouldn't fit the run.

Q. Well, you could not, could you? *A.* No, sir.

Q. And could not make a rectangular figure, could you? *A.* I could, but not hit the run.

Q. If you should follow the first course you have

laid out, and the second course and the third course, that is giving you the two right angles at the southwest and the southeast corners, then in order to run your fourth course and to make exactly one acre of it, you would run your returning line, your fourth line, parallel with your second line, wouldn't you? *A.* Yes, sir.

Q. That is to say you would make that line from the third corner run directly to the beginning, would you? *A.* Yes, sir.

Q. So that your figure would be like that (indicating); is that so? *A.* If I ran a parallel with the second line.

Q. And that would contain exactly one acre? *A.* Yes, sir.

Q. Now, whatever there is outside of that line to the north is in excess of one acre, isn't it? *A.* Yes, sir.

Q. And you could not run that acre out so as to make four right angles out of it, by any possible means, could you? *A.* No, sir; not follow that run.

Q. When did you say you made your first survey of this acre? *A.* In August, 1895.

Q. What time in August? *A.* Twenty-ninth and thirtieth.

Q. Was that before or after the conveyance by Mr. Roseberry to Mr. Breckenridge? *A.* I couldn't say as to that.

Q. Well then, can't you state whether or not you had the Roseberry deed to work by, or did you work by the Vannatta deed entirely? *A.* I did; I depended entirely upon the Vannatta deed.

Q. Did you or not have the Roseberry deed at all? *A.* I had it and looked it over, but I don't remember whether it was at this time; I surveyed there several times.

Q. You locate on your map here a division line, or a prolongation of the division line between White and Lomasson; do I understand you so? *A.* Prolonga-

tion of the line which I found by stakes there on the ground.

Q. Did you make any survey of that line there at all? *A.* The division line?

Q. Yes. *A.* No, sir.

Q. Have you shown here the prolongation of the fence line, or is it the course given? *A.* It is the course given; there is no fence.

Q. There is no fence at this point, but there is a fence further up, isn't there? *A.* Yes, sir; further up that way.

Q. What I ask you is, whether you have prolonged the fence line, or the course given in the description of those deeds? *A.* I prolonged the line as I found by the stakes there on the ground.

Q. Had you run the line by the course given in the deed? *A.* I followed that course, allowing the difference in the two courses given in the deed.

Q. Now you say that you surveyed the tract conveyed by Lomasson to the Belvidere-Delaware Railroad Company? *A.* No, sir; I don't say so.

Q. You didn't survey? *A.* No, sir.

Q. What did you do; just plot it out? *A.* I plotted it out from the Lomasson deed.

Q. You didn't undertake to go on the ground to apply it to the ground at all then? *A.* No, sir.

Q. And you don't know how the delineation which you have made here of this Robeson acre, you don't know how that fits the actual location of the tract, do you, on the ground? *A.* What is true on paper, would be true on the ground.

Q. Yes, that is what you say? *A.* Well, that is true.

Q. And you have not in fact actually located it on the ground, I understand you, and you say that you cannot close this final course? *A.* No, sir.

Q. What do you infer from that as a surveyor? *A.* An error somewheres in the surveying.

Q. An error in the courses that are given, is that so? *A.* Yes, sir.

Q. Did you make any effort to ascertain where the error was? *A.* No, sir; no special effort.

Q. Well, any effort at all, special or general? *A.* I looked it over some.

Q. What is the trouble with the description? *A.* Too long and too wide; shows for itself.

Q. You didn't have in plotting out this description, anything except the Lomasson deed to go by, did you? *A.* No, sir.

Q. So that by taking the end of the next to the last course,—or rather, suppose we take the end of the survey, the end of the last course, and run that course as it is called for by the deed; that course is along the Lomasson and White line prolongated, isn't it?

A. Yes, sir.

Q. Now suppose you reverse that course and run along that line, and then reverse the next course, and go the distance required, and also the next course to that, that should bring you to the Robeson acre, shouldn't it? *A.* It should if the survey closed right.

Q. Well, where you find the survey does not close right, is it not a common method of testing the description to reverse the courses? *A.* Yes, sir, you can reverse them; run clear around.

Q. Oh, yes; well don't you do that constantly in your work as a surveyor when you find any discrepancy; isn't that the way of testing that is commonly resorted to by surveyors? *A.* To reverse the courses?

Q. Yes; didn't you ever hear of that before? *A.* I have heard of reversing courses, but I don't see how that would test the survey.

Q. Well, did you try that method here and reverse the course? *A.* No, sir.

Q. Can you state now; suppose you reversed those courses, and ran back here, and then when you got to the Robeson acre, you ran the course which the deed

calls for, following that acre, reversing them also, and got to that point, did you make an effort to see whether that line ran from the prolongation of the first course given in the Lomasson deed as the Robeson acre; that is this course on the larger map; did you make the effort to see whether when you got around to that point by reversing these courses, a line run on that course would come anywhere near the spring? *A.* I said I didn't survey it.

Q. And so you can't tell whether that is so or not, can you? *A.* No, sir.

Q. Now, if it should appear that a line run on that course would strike the spring, or would come within a few feet of the spring, say four feet, wouldn't that tend to show that the Robeson acre as surveyed by the draughtsman of the Lomasson deed, was correctly located by these last few courses? *A.* Using the Lomasson deed, I don't have any recollection that it says anything about a spring.

Q. No; but it does refer to a tract of land belonging to Robeson, doesn't it? *A.* Yes, sir.

Q. And the description of the tract of land belonging to Robeson is found in the Vannatta deed, isn't it? *A.* Yes, sir.

Q. And the description in the Vannatta deed requires that that north line of the Robeson acre should run through the spring, doesn't it? *A.* Yes, sir.

Q. Now you state that locating this Lomasson tract according to the erroneous description, would not allow it to close, and you say that locating the Robeson acre with reference to that description would throw it too far north of your survey; now would it not have the effect of throwing the Robeson acre to the west, that is, further toward the river? *A.* Yes, sir.

Q. How much? *A.* Whatever the excess would be in width.

Q. Well, that would be something like one hundred feet nearer the river, wouldn't it?

A. Approximately, I should say, yes.

Q. Now the tenth course as shown on this delineation of the Lomasson tract as made by you, is given as south eighteen degrees west two chains and twenty-seven links; isn't that so? *A.* Yes, sir.

Q. To the boundary line claimed by the said Cyphers; did you ascertain where the boundary line claimed by Cyphers was? *A.* I have said I didn't survey it at all.

Q. So you took that tenth course to be absolute in length without regard at all to the monument which the course calls for, didn't you? *A.* I took all the courses to be just as they were put down in the deed.

Q. And you say you didn't survey it, and so of course you did not look for any monuments, and you didn't attempt to ascertain where the said Cyphers line was, did you? *A.* No, sir; I could see by the paper that it didn't agree with the one on the east.

Q. That is to say you could see on the paper, if you took the Cyphers line to be at the end of that distance, then it would not come out right? *A.* No, sir; I say I could see that the Cyphers line which comes next following the tenth course, don't agree with the Cyphers line mentioned before at the end of the seventh course.

Q. You have dotted something on there; what do you mean that to be? *A.* An extension of the Cyphers line as called for in the seventh course.

Q. So that you could see without making any effort to locate the Cyphers line on the ground, that there was an error in the tenth course, couldn't you? *A.* I could see that the distance mentioned there seemed a little long by the other line.

Q. So there would be apparently a discrepancy or an error in that tenth course which might be corrected by referring to the Cyphers line; isn't that so? *A.* It might be long—

Q. Well—

Mr. Roseberry—Is that a proper cross examination? He made that according to the Lomasson deed; now can he go out of the Lomasson deed and ask about corrections that could be made? He cannot contradict that deed in any way.

The Court—As I understand this part of the cross examination, it is directed to this point. The deed calls for a line so many links and chains to a fixed monument. Now, I suppose ordinarily you would go to that monument, if it is known, and if your course is too long or too short, that yields to the monument, whether your distances are correctly stated in the deed or not. The counsel is cross examining in order to show that instead of making any allowance for a mistake in description in going to a fixed monument, he just mapped out on the paper the courses and distances without regard to fixed monuments. That, I understand is the object of the cross examination. It seems to me it is proper.

Q. And so after you ran a few more courses along here on the westerly line of the Lomasson plot as you were plotting it, you came to the fifteenth course which runs south one degree and a quarter east one chain and fifty-seven links to the south side of a large willow tree, marked for a corner, in the boundary line between said Lomasson and Robeson; you didn't locate that willow tree, either, did you? *A.* No, sir.

Q. And you have already said generally you did not go there to survey this tract at all? *A.* I have stated that was a plot of the deed, not a survey of the tract on the ground.

Q. And you don't mean it to be taken as a survey of the tract on the ground, do you? *A.* I mean it to be taken as an exact representation of the courses and distances in the Lomasson deed to the Belvidere-Delaware Railroad Company.

Q. Now suppose, Mr. Walker, that there had been an error in running, or in transcribing this tenth course,

whereby it was made to read, as it does read here, south eighteen degrees west, instead of south eighteen degrees east; would that account for the failure to close? *A.* That would draw it together.

Q. Didn't it strike you as you went over this plotting, that that was probably where the difficulty was? *A.* No, sir.

Q. Did you make any trial to see where a line run from the head of the spring on a course north eighty-one degrees thirty minutes east would come to; did you run that course *A.* No, sir.

Q. You didn't run that? *A.* Not at that time.

Q. Did you run it at any time? *A.* I ran the course within the last two weeks.

Q. That course? *A.* I tried the course and stakes which I see there on the ground which I suppose stood on that line.

Q. Well, you ran over the course, did you? *A.* Took a needle reading of the course.

Q. You say you set up your instrument somewhere; did you take it from the spring? *A.* No, sir; I used the stakes which I suppose were set to represent that line.

Q. Where were the stakes? *A.* One up where it is marked willow tree, and another stake down the bank of the river, one on the side of the road, and one about forty or fifty feet back from the road.

Q. You say there was one by the willow tree, what do you mean? *A.* Right near that corner, as I supposed; that point there (indicating).

Q. That is where you supposed the willow tree was formerly? *A.* Yes, sir.

Q. And you ran that line, did you, north eighty-one degrees thirty minutes east? *A.* No, sir; I didn't make that course, that is the old course of it.

Q. What course; did you make it? *A.* Eighty-three something; about what it would be with the variation.

Q. And you found that course to be correct, then? *A.* Coincided; yes, sir.

Q. Now, if you assumed that to be the north line of the Robeson acre, and take a width of eight perches from that line, you won't reach the culvert, will you; the culvert will not be included? *A.* No, sir.

Q. You are in the employ of the Pipe Line Company you say? *A.* Yes, sir.

Q. Have been for some time? *A.* Yes, sir.

Q. At whose request did you make this survey? *A.* At the request of the company and Mr. Breckenridge.

Q. Who went with you; who assisted you? *A.* I had a young gentleman by the name of Warren.

Q. Where is he from? *A.* Washington.

Q. Is he employed by the Pipe Line Company? *A.* Only to help me those days I was there.

Q. Is he a surveyor? *A.* No, sir.

Q. What did he do; carry chain? *A.* Yes, sir.

Q. You understood, did you not, that it was desired by the company who employed you to locate that Robeson acre in such a manner as that it should cover the culvert? *A.* They didn't express what their desire was to me.

Q. Well, didn't you know that that was the purpose of your survey? *A.* No, sir.

Q. And you didn't understand that that was a point you were to keep in mind? *A.* I testified that I adopted my river line, swung a right angle—

Q. No, no; didn't you understand you were to keep in mind the point that your location should cover the culvert if possible? *A.* If I was so instructed.

Q. Ah, but didn't you understand that that was the object which was sought to be arrived at by your employer? *A.* No, sir; they didn't express nothing to me.

Q. And you didn't understand it to be so? *A.* No, sir.

Q. You didn't understand that they had any interest in making the Robeson acre cover the culvert; do you mean to tell us that? *A.* Why, they probably had an interest.

Q. You understood that, didn't you? *A.* I knew they had an interest there.

Q. They had an interest in having that Robeson acre cover the culvert; you understood that, didn't you? *A.* Yes, sir.

Q. Of course you did; you might have said that earlier. *A.* You didn't ask the question that way.

Q. Now you say that this road return which bears date November, 1786, begins where? *A.* Back of the river.

Q. Did you survey that description? *A.* I re-run over that road.

Q. Where did you run? *A.* From the ending to the beginning point of it.

Q. Well, the road doesn't run to the river, does it, now? *A.* No, sir.

Q. I thought you said that the road as you found it, corresponded with the return as laid out? *A.* I did so state, with the exception, I said, that the—

Q. Oh, you didn't make an exception, did you? *A.* Yes, sir.

Q. I didn't hear you; now give us the exception. You didn't find it running to the river at all, did you? *A.* Not at the present time; it turns and passes up the river toward Belvidere.

Q. How much of the road as located and existing there corresponds with the old return? *A.* Of the first course mentioned in this return all with the exception of possibly seventy-five or one hundred feet.

Q. What is the course which you find there now of the road? *A.* The present course of that road—

Q. Did you actually run it to see? *A.* Yes, sir—(referring to book)—I ran it north seventy-seven degrees west.

Q. How does that correspond with the original course? *A.* Five degrees different from the original course; the original course was eighty-two.

Q. And what would the variation amount to? *A.* The variation would be about five degrees.

Q. You assume that because you found the road located on a course five degrees different, but would that be the proper variation? *A.* I took the road just as it laid, and five degrees would be the proper variation.

Q. Thence north eighty-two degrees, twenty-six perches, where does that bring you to? *A.* It don't show on the map; passing across the culvert and then north a few rods to that sharp angle in the road.

Q. This return says the road shall be laid out four rods wide, doesn't it? *A.* Yes, sir.

Q. You didn't find it was four rods wide at this time at all, did you? *A.* No, sir.

Q. On the contrary, you found the road to be very irregular in width? *A.* Yes, sir.

Q. What is the widest? *A.* I don't think at any point it is over three rods wide, if it is that.

Q. Have you given the outline of the road correctly, or just sketched it? *A.* That is correct just as the fences are there on the ground at the present time, with the exception of the south side of the road; that fence is gone now.

Q. Whereabouts do you mean? *A.* From the west side of the culvert down to the turn of the road.

Q. Do you mean there are fences along that line? *A.* There are no fences at the present time; posts left.

Q. Whereabouts are they? *A.* Right where the angle in the line was.

Q. At that point (indicating)? *A.* Yes, sir.

Q. And where do they run; how many posts are there? *A.* Another post right up where the next angle is going towards the culvert.

Q. Are there any posts between those two?

A. I don't think there is.

Q. Or any evidence of a fence except those two posts? *A.* No evidence there at present.

Q. Or when you made the survey; of course we are talking about that. I am asking you what you found there to indicate a fence. You found one post at each of those corners you have given on the map? *A.* Yes, sir.

Q. On the south side of the road just east of the turn? *A.* There was a fence there when I was making the other survey, but it was washed out last winter.

Q. There was a fence? *A.* Yes, sir.

Q. All along that line? *A.* Yes, sir; in 1895, in August.

Q. Was there any fence beyond that? *A.* Yes, sir.

Q. Where did that go? *A.* Went up toward the wing wall.

Q. From there up toward the culvert, eh? *A.* No, sir; followed about the line on the paper.

Q. Followed that line (indicating)? *A.* Yes, sir; I think there was a pair of bars right there where that slanting line is, where they drove into the field.

Q. Then do you mean there was a continuous fence from the turn of the road on the south side of it all the way up to the wing wall? *A.* Up to—yes, sir; I think it came very near up to the wing wall.

Q. What other fences did you find about that acre? *A.* All of them, just as they are shown there on the map.

Q. Well, I didn't understand before whether these lines meant fence lines. *A.* Those are fence lines, all the rest of them; the fences are on the ground at the present time.

Q. You mean along the road? *A.* Yes, sir.

Q. You don't mean that the green tract that you have called the Robeson acre—you don't mean there is any fence surrounding that, do you? *A.* No, sir.

Q. Not on any side? *A.* No, sir; my dot and dash lines were meant to represent fences.

Q. You located the road as laid out by this return of 1799, you said also? *A.* No, sir.

The Court—No, he didn't.

Q. What did you say about that? *A.* I said I didn't locate it; I said I knew there was a road there on the ground at the present time running to Belvidere.

Q. Which way does this lay? *A.* Passes up to Belvidere.

Q. From that point through the acre? *A.* Yes, sir.

Q. Running to the north? *A.* Yes, sir.

Q. You have a line shown here as the top of the river bank in 1853; did you find anything there to indicate that on the ground? *A.* Following the line down the river?

Q. Yes; what do you mean by that line, anyway? *A.* That is the western boundary of the tract of land which the Belvidere Railroad Company bought of Thomas and Amzi White.

Q. In 1853? *A.* Yes, sir.

Q. And did you find anything to indicate the top of the river bank there? *A.* Yes, sir.

Q. What is there there? *A.* There is where the first break of the bank is towards the river.

Q. How does that line run; you have shown part of it there; how does it run as you come from the spring —from that point? *A.* It didn't look that way at all.

Q. Why? *A.* The line runs down the river.

Q. But couldn't you trace a continuation of the top of the river bank in that line somewhere, running further to the north? *A.* Yes, sir; but that wasn't the question; you asked how the line ran.

Q. No; the top of the river bank I am talking about. *A.* The river bank apparently runs out after you come to that point.

Q. Out which way? *A.* Disappears when you come to that point there.

Q. Just take your pointer and show us. *A.* (Indicating.) As you come up to this line here; at a point here the bank is well defined; as you pass on down the line it is quite high; as you come up here the slope gets less, and at this point virtually runs out.

Q. Then you found no indications of the river bank to the north of that? *A.* Not any indications of the same abrupt slope.

Q. Well, did you find any indication at all of the river bank running from that point further north? *A.* No, sir.

Q. Does it run out entirely just at that point? *A.* My memory is that as you pass over in this field there is a little slope over here, but it finally disappears.

Q. Now, out here what did I understand you to say that meant? *A.* To the heap of stones built out, a sort of wing wall into the river.

Q. Is it an artificial slope of stones or merely a collection of stones out in the river? *A.* It is artificial I should say, from the appearance of it.

Q. Is it drawn to scale there? *A.* No, sir; it is not.

Q. How large a heap of stones is it? *A.* Oh, maybe twenty feet in length and eight or ten feet in width, maybe not so wide.

Q. Well, is that heap of stones called for in any of the descriptions of land in that neighborhood? *A.* I wouldn't say positively, but I think I have seen a description in some paper that called for a heap of stones there in the corner.

Q. Isn't it called for in the dividing line between White and Lomasson? *A.* I wouldn't say positively, for I don't remember what the paper was.

Q. What is the distance across this Robeson acre as you make it, say at right angles from the southerly line at its widest distance, the widest distance would be somewhere near the head of the spring, wouldn't it?

A. Yes, sir; about one hundred and sixty feet as near as I can scale.

Q. That is about thirty feet more than eight perches would amount to, isn't it? *A.* Twenty-eight more.

Q. Does your acre of land, as you locate it, contain more or less land than the acre as located by Mr. Weir? *A.* It contains more.

Q. How much more? *A.* About one tenth of an acre.

Q. In other words, his location contains just an acre as near as you can make it, doesn't it; and yours is one tenth of an acre more? *A.* Yes, sir.

Re-Direct Examination.

Q. (Showing witness survey of 1814.) Is that the survey of which you spoke? *A.* Yes, sir; it is.

Q. Which course of that survey contains the land in question?

Mr. Strong—What land does that refer to?

Mr. Harris—Well, the Robeson acre.

The Court—Which course?

Q. Well, which course is in front of the Robeson acre on the river Delaware? *A.* The twenth-fourth course of the river line.

Q. Read that course. *A.* North five and three-quarter degrees east seven chains to Shippen Spring.

Mr. Strong—It seems to me that ought to be proved before it is testified to.

The Court—He is only being asked now what the course was in the survey which he referred to as having been used by him in order to locate that line; I think the question is perfectly proper.

Q. Show that on the survey; where that is? *A.* The distance between those points (witness marks in pencil).

Q. That embraces the shore front, where this acre is? *A.* Yes, sir.

Q. Who furnished you with this survey? *A.* Mr. Roseberry.

Q. What is the course of this water here from the mouth of the run, when the map was made? *A.* Running southwest.

Q. What is this represented here? *A.* A sort of sand beach formation.

Q. Below the bank? *A.* Yes, sir.

Q. This road, I understood, you ran the courses of this road toward Oxford Furnace; how far did you run this road? *A.* I ran over the road from the beginning to the end.

Q. To the ending in the main road leading to Easton? *A.* Yes, sir.

Q. Look at this map of Mr. Weir's, and state whether that run is depicted there as the run is or not. *A.* Not an exact representation of it.

Q. Did you go over his line of the river? *A.* Yes, sir.

Q. State whether that is in accordance with the situation as it is now? *A.* I don't understand that question.

Q. Well, was his western line of the acre in a line with the river bank? *A.* No, sir.

Q. Did you look at his line on the ground and see where it would go if produced? *A.* I did.

Q. Well, where would it go? *A.* Standing at this corner, looking over this corner, I find that his line as you go north bears to the right and passes up in the direction of a house that I think Mr. Depue lives in at the present time; reversing, and standing at this point, and looking that way, I find the line would bear to the west, or run in the house of Mr. Roseberry; diverge from the river bank.

Q. Not up and down the river at all? *A.* No, sir.

Q. Did you run over Mr. Weir's stakes, using his stakes? *A.* I ran over some stakes which I found there on the ground; I don't know whether they were Mr. Weir's, or whose they were.

Q. And using the stake you found there, you looked over this line? *A.* Yes, sir.

Q. The line which counsel has questioned you about, marked eighty-three and eighty-two; did you look at the line in the Thomas and Amzi White deed where it joined the Lomasson property? *A.* Yes, sir.

Q. Well, have you shown it on your map here? *A.* I have shown two lines on the map; one line is a prolongation of the stakes which I found in the ground, and the other is a line made for allowing the angle which the difference in that course of the two deeds shows.

Q. What was that difference? *A.* I think it one degree and fifteen minutes.

Q. What was the difference in time and date of those deeds? *A.* They are both given the same year; I don't remember just how many days or months difference.

Q. Do those two lines you have made there properly represent the lines in each of those deeds? *A.* They show the divergence of the two lines in accordance with those courses.

Q. In running this road, marked "Road to Oxford Furnace," I notice you have a turn on your map at the extreme right of the map? *A.* Yes, sir.

Q. Does that road turn there? *A.* Yes, sir.

Q. To the left somewhat? *A.* Yes, sir.

Q. Does it make any turn then in the next course? *A.* Yes, sir.

Q. And then, now, is it to the main road? *A.* There are two or three or more turns; then it strikes the division line between some farms, and follows that division line to the main road.

Q. For how far? *A.* Two hundred and fifty some rods, or two hundred and thirty, very nearly three-quarters of a mile.

Q. To where it ends in the main Easton road? *A.* Ends in the Easton road.

Re-Cross Examination.

Q. One thing you said, that if you produced the line of the river, as given on Mr. Weir's map, in a northerly direction, it would run back from the river bank as it is? *A.* Yes, sir.

Q. Well now, what will be the effect of producing the line of the river as given on your map, for the purpose of the Robeson tract; it would run back further yet, wouldn't it? *A.* Yes, sir.

Q. Is it not a fact that the river makes a bend in that neighborhood? *A.* Makes an angle at that point.

Q. You call it an angle; it is a bend. *A.* It is a bend; yes, sir.

Q. That is, it is a gradual rounded turn; it is not like two lines coming at a sharp point? *A.* No, sir; it is like the shore of any river; forms a bend more than an angle.

Q. Now, you have shown here between two yellow lines, a strip of land marked Belvidere-Delaware Railroad Company; what do you mean by that? *A.* That is the land that is occupied by the Belvidere-Delaware Railroad Company.

Q. Well, do you mean occupied by them at present, or what do you mean about the present occupation of it? *A.* Well, they are running their trains over the embankment of the road.

Q. Do you mean the Belvidere-Delaware Company is running their trains, or do you mean the Pennsylvania Railroad Company? *A.* Well, the Pennsylvania Railroad Company.

Q. Now operated by the Pennsylvania? *A.* Yes, sir.

Q. And you have given angles, apparently, in these lines, I see; what do those angles indicate? *A.* Those angles on the west side are what I obtained from the Lomasson deed,—on the east side.

Q. On that side, (indicating)? *A.* Yes, sir; on the west side is what I got by following the stakes which I found set up on the ground.

Q. And the stakes indicating the line of the tracks? *A.* Yes, sir.

Q. Well, how do those stakes agree with the courses given in the deed from Lomasson to the railroad company in 1853; the stakes on the west side you say you got from that—or the angles on the west side you got from that deed? *A.* Yes, sir.

Q. And the angles on the east side, how do they agree with that deed? *A.* They are the same that are given in that deed.

Q. And the same distances? *A.* Yes, sir.

Q. That is measuring from this Lomasson and White line, measuring the reverse courses you find they agree with these angles given on your map, do you? *A.* Yes, sir.

Q. You found stakes, you say, showing those corners; did I understand you you found stakes? *A.* No, sir; not on that side I didn't find stakes.

Q. Well, where did you find stakes? *A.* I found at this point three stakes, one small stake with a tack in driven close to the ground, a stake here, in the centre of the track, a stake at the point here; another stake about this point; I found a stake at that point and one at that point (indicating).

Q. That point that you have last pointed to is the first angle to the north of the culvert, as located on your map in the westerly line of the railroad strip, isn't it? *A.* Yes, sir.

Q. Then, going north on the same line, did you find any more stakes? *A.* I found a stake to correspond with the stake at this point.

Q. That is the willow tree point?

A. Yes, sir.

Q. Where would that be on your map? *A.* Somewheres about this point.

Q. Just make a pencil mark in that line where it would come. *A.* I can do so approximately.

Q. Yes, as closely as you can; of course I understand it is only approximately. *A.* (Witness does as requested).

Q. And that is the willow tree point, is it; where you found that stake? *A.* Approximately it is.

Q. For locating the Robeson acre by measuring eight chains in a southerly direction from that point, it would not touch the culvert, would it? *A.* No, sir.

By Mr. Harris.

Q. You didn't see any willow tree there? *A.* No, sir.

Q. That is all.

By the Court.

Q. I understand that you started making this survey at the mouth of this run? *A.* Yes, sir.

Q. And ran down the river eight chains to an imaginary point in the river bank; on the shore, rather; is that right? *A.* Yes, sir; but at the same time I used the course mentioned in this 1814 survey as the guide to give me the line down the river.

Q. You found that was the same then as it is now? *A.* Yes, sir; I ran three or four courses of that 1814 survey down the river.

Q. There had not been any change? *A.* No, sir.

Q. Then I understand, after you ran the end of your first line, you turned a right angle? *A.* Yes, sir.

Q. I don't understand why you did that; the deed does not call in terms for a right angle, does it? *A.* No, sir.

Q. Then, why did you turn a right angle? *A.* Why, because at first, not knowing where the line would go,

I would not know where the closing line would be, and as the deed not specifying that it was any other angle, why the natural inference would be that they would use a right angle.

Q. Why is that a natural inference? *A.* If they intended to make it anything but a right angle, the probability would be that they would have so mentioned in the deed.

Q. Do you mean that is the usual course in surveying; that when you find a new course started without mentioning the angle, it is a right angle? *A.* A piece of land of this description and size, reading the way it is in the deed.

Q. What is there in this description that made you assume that? *A.* Well, it specifies a piece of land; it only gives three sides of it; two of those sides were parallel, eight rods long and the other one twenty; and I inferred from that that it would be at right angles; but then I had at the same time the deed—

Q. Your inference would only be warranted upon the theory that the fourth side was also parallel to and of equal length with the second side, wouldn't it? *A.* No, sir; the description does not state that the fourth is parallel.

Q. I know it doesn't, but it calls for an acre, doesn't it? *A.* It says to contain an acre, but it doesn't say it is to be absolutely an acre, strict measure.

Q. It doesn't say more than an acre? *A.* No, sir.

Q. But just an acre? *A.* Yes, sir.

Q. When you find a piece of lands calls for an acre, do you assume it means more than an acre, or that it means what it says? *A.* I assume that it means what it says, unless the corners are marked.

Q. And is that the reason you assumed that this was a right angle, because, as you testified in your direct examination, a parallelogram eight chains on two sides and twenty chains on the other two sides, will contain

exactly an acre, providing the angles are right angles? *A.* That would be one reason, and another reason was that the deed specified they were to have a road to come to the acre, and that the road was upon the ground, and that the present line of the road would—

Q. Which deed was that? *A.* That is this Vannetta deed, mentions there is to be a road to this acre at the time they bought it.

Q. How did that help you? *A.* The road was there upon the ground, and a right angle line from this river course would almost exactly agree with the present course of the road.

Q. But I understood you to say that road was laid out some forty or fifty years after the Vanatta deed? *A.* It was relaid in 1786.

Q. How did that help you to the conclusion that the first angle should be a right angle? *A.* My inference was that if they had an acre of land there, and having the road also to come to the acre, the acre would be laid out so the road would come immediately into the acre.

Q. Well, wouldn't it come into the acre if the acre was moved further up; that is, assuming that your first course is right, wouldn't it strike the acre if you moved your second course north? *A.* It would hit it in the side.

Q. It would hit the acre? *A.* Yes, sir.

Q. Then how did that help you, if it did not say where it was to hit the acre; how did that help you to determine that that angle should be a right angle? *A.* As I stated before, the course of the road—then I had been informed by some of the older settlers that the south side of the acre originally was over on the south side of the present road.

Mr. Strong—I object to that as incompetent.

The Court—Yes; that is incompetent.

A. (Continued.) Using that information, I made my angle accordingly.

Q. Then you made your survey not only from the deed, but from the information you got outside? *A.* I made it from every information I could get bearing on the subject.

Q. Then this map you made is not an exact representation of the Robeson acre, as called for in the Vannatta deed? *A.* Literally it is, in one sense; of course it don't say in so many words it is right angle corner.

Q. If you had made that angle instead of a right angle an acute angle, so as to have thrown the end of the second line further north, then made your third line parallel with your first line, and then from the end of your third line come down through the centre of the spring and down the run to the mouth of the creek, would you have contained more or less land? *A.* Less land.

Q. That would be nearer to the acre? *A.* Yes, sir.

Q. Could not that second line be moved north so far that if you made the third line as called for by the deed, and the fourth line as called for by the deed, there would have been just an acre in it? *A.* Yes, sir; I think you could.

Q. About where would the end of the second line come? Would that bring the second line above or below the culvert? *A.* Bring it above the culvert.

Q. Would not that tend to show that the first angle was not a right angle in the conveyance of Vannatta? *A.* Yes, sir; it might in that respect.

Q. That is all.

Mr. Roseberry—Will the Court permit me to ask him a question?

The Court—Certainly.

By Mr. Roseberry.

Q. Suppose this third line was swung around, could that remain a straight line if parallel with the Dela-

ware river? *A.* It would not be parallel with the Delaware river, but if you put the whole acre on a pivot and swing around, and then swing up or down.

The Court—I don't understand your question.

Q. If your line is swung around so this line comes here (indicating) would it be parallel with the Delaware river?

The Court—Does the deed call for the third line to be parallel with the Delaware River?

Mr. Roseberry—Yes, sir; it does.

Q. So if swung around north, it could not possibly be parallel with the first line, that is the point? *A.* This third line would be broken in two, because there is an abrupt angle there; the mouth of that stream is an abrupt angle here.

The Court—You mean that the river on the first line was an exactly straight line without curve or waver in it?

Mr. Roseberry—Yes, sir; two perches; that is a straight line; it can't he anything else.

The Court—Do you suppose the river line itself was a perfectly straight line?

Mr. Roseberry—Yes, sir; it was straight for that distance.

The Court—Is this what the deed says?

Mr. Roseberry—Yes, sir.

The Court—But is it to-day.

Mr. Roseberry--It was when he surveyed it; the river bank was absolutely straight.

The Court—He has so testified.

By Mr. Harris.

Q. How is that, Mr. Walker? *A.* What is the question?

Q. Whether the river line was a straight line when you surveyed it? *A.* (Not answered.)

By Mr. Roseberry.

Q. How is that bank there; is that abrupt or sloping? *A.* Sloping.

Q. How is it down here? *A.* About the same slope; it is not so now; it is washed away.

By the Court.

Q. The bank is changed since you made the survey? *A.* Yes, sir.

Q. Then could you possibly tell what was the shape of that bank one hundred and fifty years ago? *A.* I am speaking of the survey of last fall.

Q. Can anybody tell what the condition of that river line was in 1740, or can you say you have got that line as it existed then? *A.* No, sir.

Mr. Roseberry—The river bank was changed last spring by an immense body of water coming through the culvert.

The Court—What would you assume from that?

Mr. Roseberry—Well, it has never been changed due to floods of that kind before, in the memory of man.

Mr. Strong—Well, that is hardly testimony, and should not go in unless it is.

By Mr. Harris.

Q. You used the survey of 1814 in locating the river bank, did you not? *A.* Yes, sir.

By Mr. Strong.

Q. Mr. Walker, what difficulty is there, provided you should swing this acre around to the north, providing you maintain the same length of side lines, would not

the end line necessarily be parallel with the others? *A.* The end line would remain parallel.

Q. What difficulty would there be about it?

A. (Illustrating.) Let the blotter represent the acre, If I swing it, I change the course of this line here in reference to the river in passing down the river, it is diverging from the river.

Q. Yes, but your third line is to be parallel with the river you say; now would there be any difficulty in maintaining that third line parallel with the river? That would make a change in the length of the fourth line would it? *A.* Yes, sir.

Q. Now, that fourth line is called for as running from a point determined by the end of the third line, to the river, so many chains; of course, if the distance was more or less that fourth line would have to alter, wouldn't it? *A.* There is no chains mentioned in the fourth line.

Q. It does not call for twenty chains necessarily, then? *A.* No, sir.

By the Court.

Q. I don't understand why the witness says that if that second line was moved—that is, the termination of the second line was moved further north, the third line could not be laid parallel with the river? *A.* If the acre stood in the position of the blotter, making this edge of the acre parallel with the river, then if I swing it, if this point here is on a pivot, I said that this line would diverge and leave the river.

Q. That I don't understand; how should it leave this line here; you don't swing your acre around; you leave this so, leave that line stationary and swing this around; why can't you draw a parallel line to this and then come back? *A.* I can.

Q. And then your third line would be parallel with the river? *A.* Yes, sir; it would.

Q. And couldn't you so map that acre as that your first and third lines would be parallel, the second point of your second line be moved north, and make the tract contain just an acre, running the fourth course as the deed calls for through the centre of the spring? *A.* Yes, sir; or I could bring it far enough so it would not contain an acre.

Q. Then you would not comply with the requirements of the deed? *A.* No, sir.

Q. You have got three courses and you have got the contents of your lot, you know the length of your third course, but you don't know their angles; you know generally where your fourth course runs; now the problem you have to solve as a surveyor, I should think would be, how to lay out that acre so that it would contain an acre, so that your lines would be the length that the deed called for, so that the third course would be parallel to the first course; couldn't that be done? *A.* Yes, sir; go over the ground and make the first and third lines parallel and have exactly an acre.

Q. And run the fourth line through the spring and down the run? *A.* Yes, sir.

Q. Where would that bring your second line? *A.* Swing the second line to the north.

Q. To the north of the culvert? *A.* I should judge it would, sir.

Q. (By Mr. Roseberry.) When it says on the third line "thence parallel with the Delaware eight perches to a post," running from a corner, "thence parallel with the Delaware eight perches to a post," it means the Delaware river, does it not?

The Court—Well, anybody could tell that.

A. Yes, sir.

Q. Then you take that point that they have drawn there; is that parallel with the Delaware river? *A.* No, sir.

Q. That is all.


BELVIDERE RAILROAD
DELAWARE CO.
ROBESON ROAD
ROAD TO OXFORD FURNACE
ROAD TO ROXBURG
ROAD TO BELVIDERE
N 11 15 E 132 FEET
N 72 30 W 2715 FEET
S 78 45 E 330 FEET
CULVERT
90°
108.24
S 56 30 E IN 1853 AS GIVEN IN DEED TO RR Co.
122.76
S 57 45 E 231 Ft. AS GIVEN IN DEED TO RAILROAD Co. IN 1853
TOP OF RIVER BANK RAILROAD DEED OF 1853
121.3
STONE WING WALL
WILLOW TREE
BIRCH TREE
SAND FORMATION
72.0
SCALE 30 FEET = ONE INCH
DELAWARE RIVER
N
E
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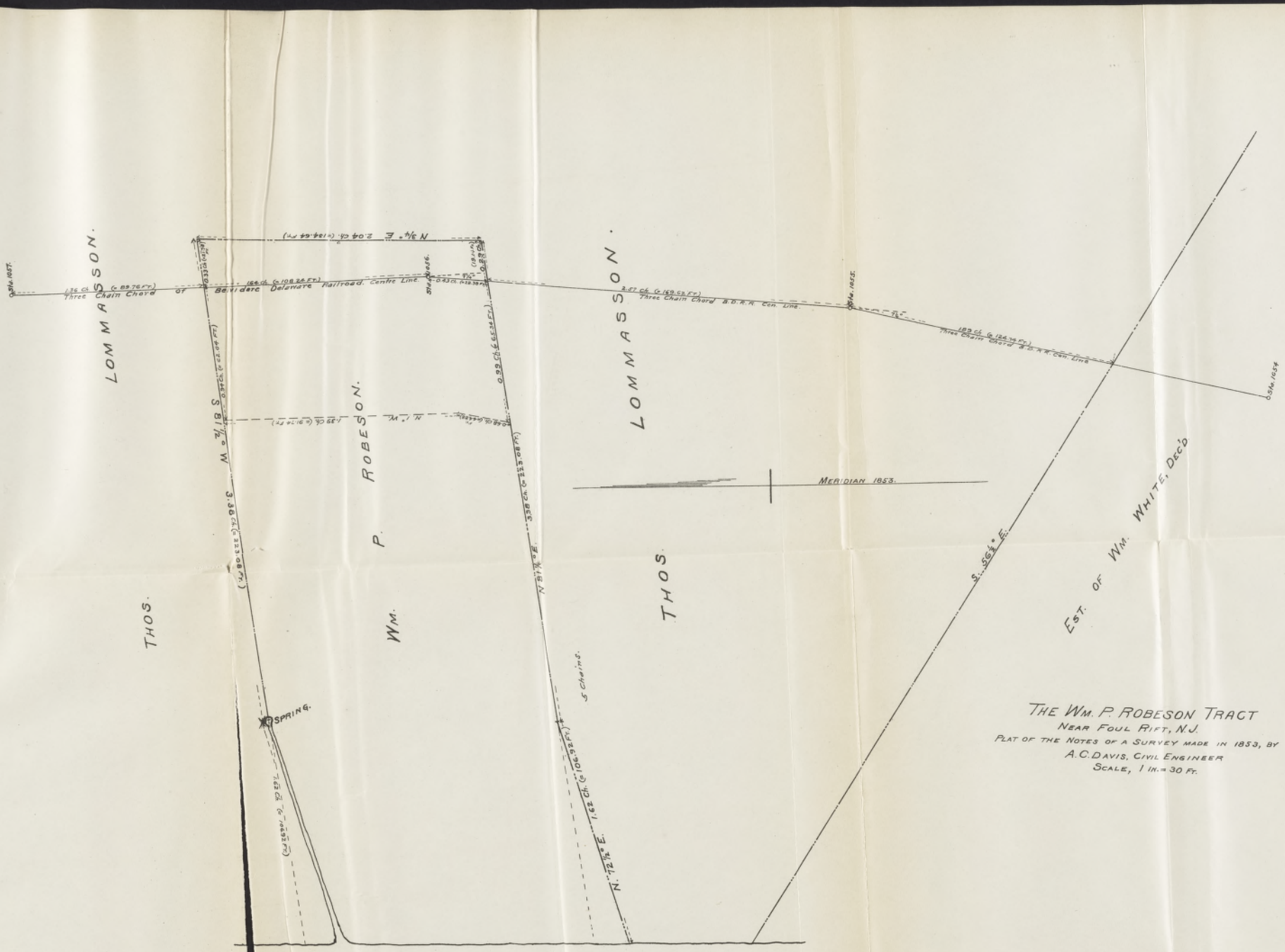


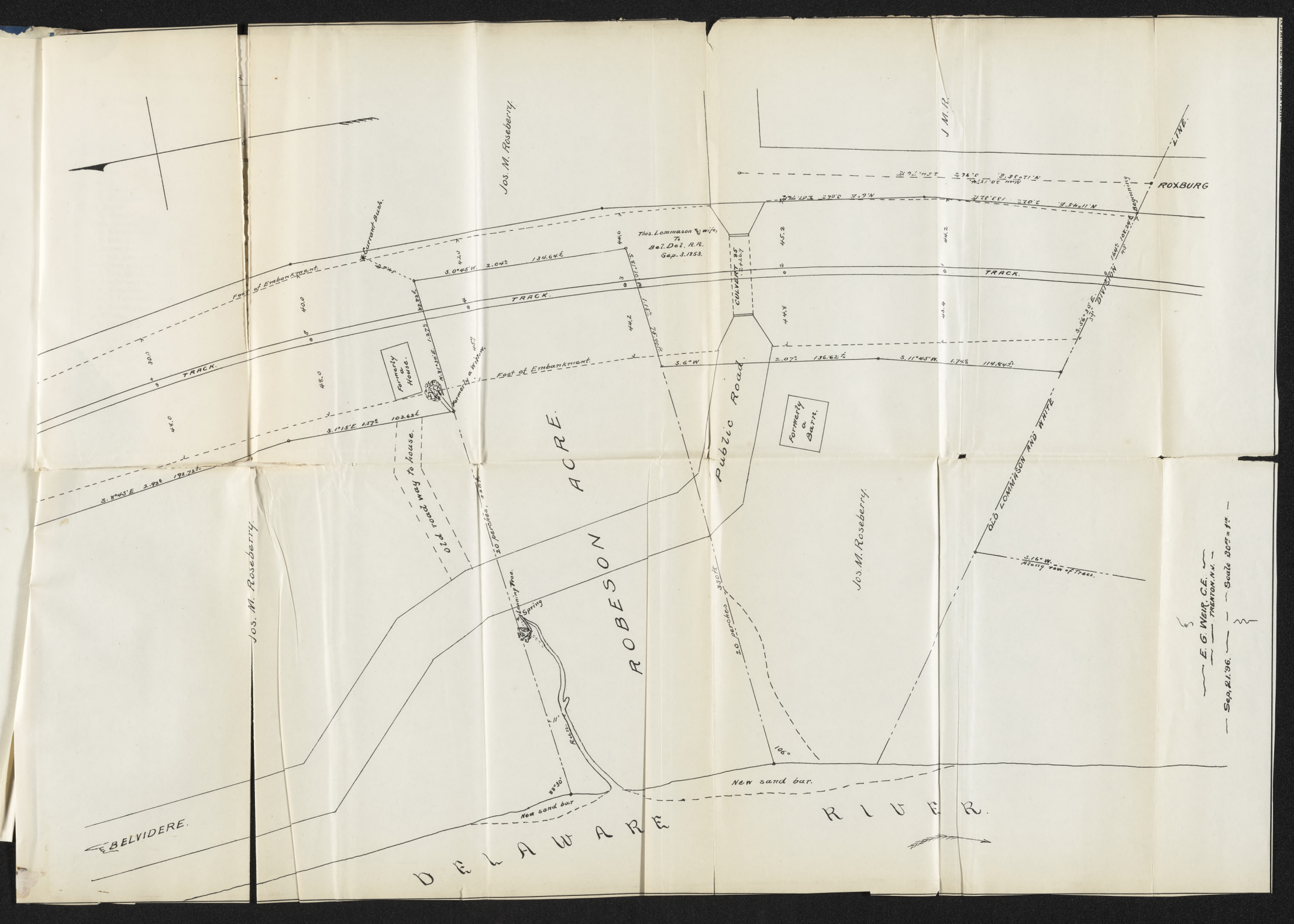
THE WM. P. ROBESON TRACT

NEAR FOUL RIFT, N.J.

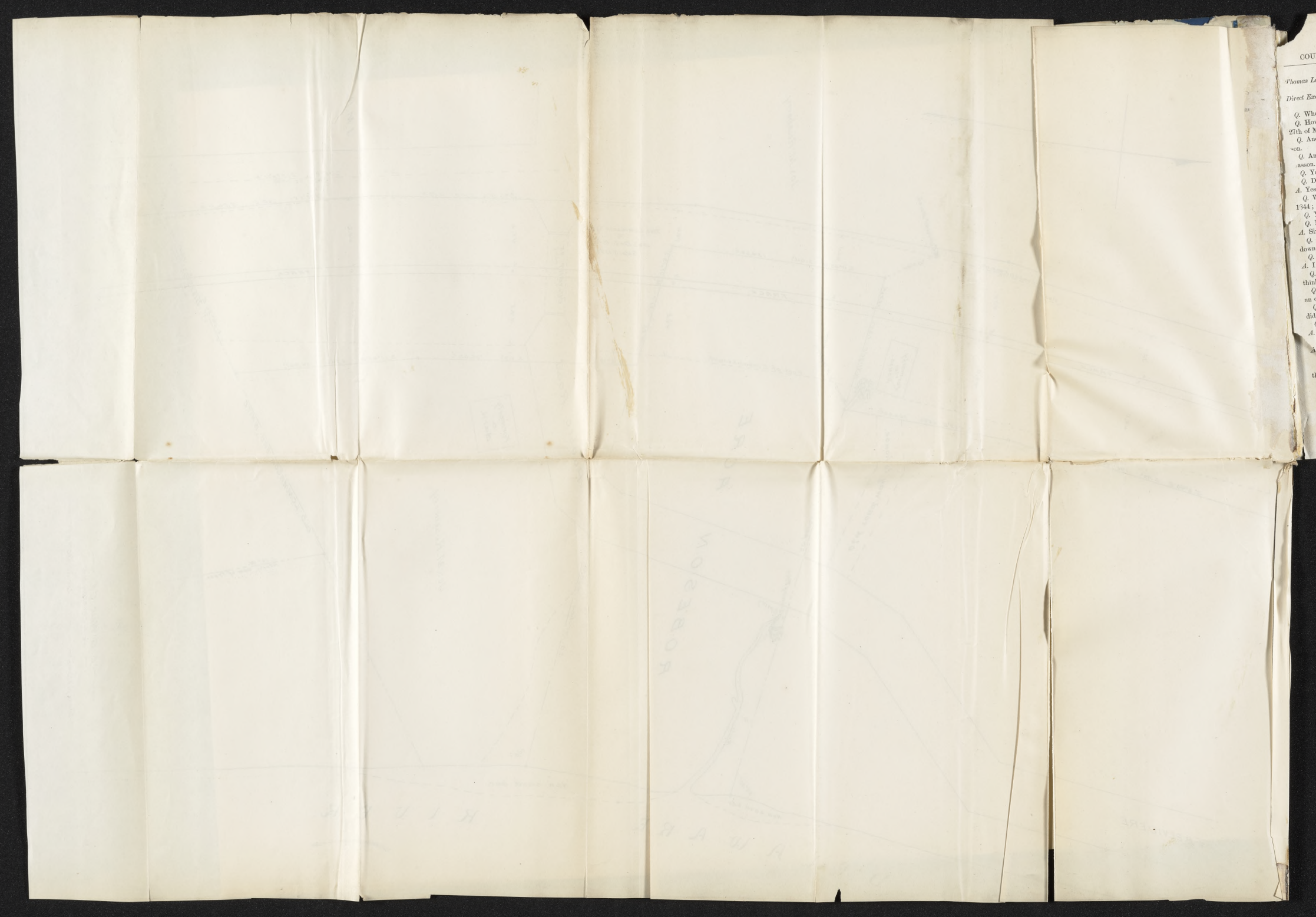
PLAT OF THE NOTES OF A SURVEY MADE IN 1853, BY

A.C. DAVIS, CIVIL ENGINEER

SCALE, 1 IN. = 30 FT.



Jos. M. Roseberry.
J. M. R.
ROXBURG
LINE.
Thos. Lommason & wife, To Bel. Del. R.R. Sep. 3. 1853.
Currant Bush.
Foot of Embankment.
TRACK.
CULVERT 95
Formerly a House.
Formerly a Willow.
Formerly a Barn.
Public Road.
ROBESON ACRE.
Old road way to house.
20 perches
Leaning Tree.
Spring
Run
New sand bar.
BELVIDERE.
DELAWARE RIVER.
OLD LOMMASON AND WHITE
DIVISION
Beginning
S. 16° W. Along row of Trees.
E. G. WEIR, C.E.
TRENTON, N.J.
Sep. 21. '96.
Scale 30 ft = 1 in.



Thomas Lomasson, sworn for the defendants.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside? *A.* In Belvidere.

Q. How old are you? *A.* Fifty-eight years old the 27th of March coming.

Q. And the son of whom? *A.* George K. Lomasson.

Q. And the grandson of whom? *A.* Thomas Lomasson.

Q. Your uncle was Andrew Lomasson? *A.* Yes, sir.

Q. Do you remember living near the Shippen Spring? *A.* Yes, sir.

Q. When did you first move there? *A.* I think in 1344; the spring of 1844, I think.

Q. You went there with your father? *A.* I did.

Q. How long did you live there then after that? *A.* Sixteen years.

Q. Did your grandfather, Thomas Lomasson, come down there at any time? *A.* Yes, sir.

Q. How old was Thomas Lomasson when he died? *A.* I really can't answer that exactly, how old he was.

Q. When did he die, or don't you recollect? *A.* I think, if I recollect right, he died in 1864.

Q. He was quite an old man, wasn't he? *A.* He was an old man.

Q. Did he come down at your place often? *A.* He did.

Q. Did you ever see William P. Robeson there? *A.* I did.

Q. Do you ever remember their being there together? *A.* I do.

Q. About when was that? *A.* About 1850.

Q. Do you remember the occasion of their being there? *A.* Yes, sir.

Q. What was it? *A.* They were making a survey of

the farm that belonged to my grandfather and William White at the time.

Q. A division of the farm? *A.* They divided the farm; yes, sir.

Q. Did you overhear or were you present at a conversation between William P. Robeson and your grandfather Thomas Lomasson? *A.* I did.

The Court—At that time do you mean?

Q. At that time? *A.* Yes, sir; at that time.

Q. What was that conversation? *A.* That conversation was about locating a corner of that acre there was so much trouble about.

Q. Now just state what was said and what was done. *A.* William P. Robeson located the corner of that acre to my grandfather, just south of the railroad as it is now, south of that culvert about—

Mr. Strong—I think the witness should state just what was said and done.

By the Court.

Q. Just state what the conversation was; what did Mr. Robeson say? *A.* Mr. Robeson said he owned an acre of land in there; my grandfather told him it was no difference to him if he did; he was at him to buy it, claimed he didn't want it no more; with that he took him across and showed him the corner; he wanted to know where his acre started and he showed him where that corner was there.

Further Direct.

Q. Now, where did he point out the corner to your grandfather? *A.* Pointed it out just south of the public highway coming down past the house that is there; now, the south side of that one, where that wing wall comes out now, I think, if I recollect right, it might be

four or five feet, maybe six feet, from that wing wall, that way; the road was wide there at the time.

Q. And how far from the embankment of the railroad as it is now? *A.* It is pretty close to the railroad; I wouldn't wonder if it might be no more than four feet from the railroad now.

Q. Outside of the wire fence? *A.* Outside of the wire fence, would be my judgment.

Q. You have looked at it lately, have you not? *A.* I have.

Q. Does the road come down past my house; passing through the railroad culvert right there; was it about that point (indicating)? *A.* That was about the place, sir; as near as I can locate it.

Q. What did your grandfather, Thomas Lomasson, say? *A.* He didn't say anything more about it; he said, "Well, take your acre."

Q. Was there any fixed monument there at that point? *A.* I won't say whether it was a stone or a stake, but it runs in my mind there was a stone there.

Q. Did they say anything about where it ran when it went down by the barn? *A.* Yes, sir.

Q. What did they say? *A.* Mr. Robeson stated that it ran right past the barn, within about four feet of the end of the barn.

Q. The barn was situated about how far from the public road? *A.* I should judge about fifteen or twenty feet.

Q. As it is now? *A.* Yes, sir.

Q. But how was it then, Mr. Lomasson? *A.* The barn?

Q. Yes. *A.* I should judge as it was then it would be about that distance, only it has been dug out there.

Q. Was anything said about the eastern line of the lot—of the acre at that time? *A.* I don't really recollect as there was anything said about it in my presence any more than them corners; I remember seeing them pointed out.

Q. Did your grandfather ever say anything to you afterwards about that corner?

Objected to.

The Court—Yes, that is too general.

Q. Did you have any conversation with your grandfather afterwards?

Objected to.

The Court—When, afterwards?

Q. When did you have any conversation after that with your grandfather in relation to this corner? *A.* I never asked him any questions after that in regards to the corner at all.

Q. Did you hear him say anything to your father about that corner? *A.* I did—

Q. When was that? *A.* It was about in 1851 or 1852 that he was there helping them thrash, if I remember right.

Q. What did he say then about that corner? *A.* Was talking about that corner, about removing hay from the lot, and he told him that was the corner, and he supposed he had a right to the hay; that was all there was about it.

Q. Who had a right to the hay? *A.* William P. Robeson.

Q. What was going on about the hay at that time? *A.* How is that?

Q. How did your grandfather come to say that to your father about the hay? *A.* Why he was telling him about Robeson demanding the hay, and he told him to let him take it, because he had a right to it.

Q. Do you remember who came after the hay? *A.* I think it was Robeson.

By Mr. Strong.

Q. That is, if you know of your own knowledge? *A.* I know Robeson's team came and hauled the hay, Judge Robeson's, William P. Robeson.

Further Direct.

Q. Who drove the team? *A.* I can't tell you that.

Q. Do you remember Peter Medler coming over there for the hay? *A.* I remember his mowing hay there.

Q. When was that? *A.* I remember his mowing hay there about 1848 or 1849; one or the other of those years.

Q. Do you know for whom he mowed hay?

Mr. Strong—Wait; how did the witness know that?

Mr. Roseberry—He was living there.

The Court—How does he know for whom this man was acting?

Q. Do you know for whom Medler worked? *A.* He was working for William P. Robeson; at least he said so.

Q. Did you see the team come there and haul it away? *A.* I saw the team come there and haul it away.

Q. Whose team was that? *A.* Robeson's team.

Q. You knew the team? *A.* I knew the team.

Q. That was about what time? *A.* 1848 or 1849, one of those two years.

Q. Who was accustomed to get hay on that lot? *A.* We were accustomed to it, at times; whenever he demanded the hay he got it.

Q. Do you remember William P. Robeson ever getting the hay under this railroad here? *A.* I do remember his cutting hay further than that railroad is now.

Q. Further east than the railroad? *A.* Yes, sir.

Q. About what time do you remember that Mr. Lomasson—about what year was that as near as you can tell? *A.* That probably was in 1850; I can't locate the year exactly; about 1850 or 1851.

Q. Do you remember, after the railroad was built, do you remember a man by the name of Phillips living

on that lot, that acre? *A.* I don't remember his living there.

Q. I mean working?

Mr. Strong—Of course anything that was done after the railroad was built—do you mean he lived on that portion of it where the railroad was built?

Mr. Rosebery—The Robeson acre, outside of where the railroad—where the railroad embankment is built, I mean—occupied the part of the acre not occupied by the embankment.

Mr. Strong—I object to that; I don't think it is material.

The Court—I don't know about that; I don't know what the question seeks to establish; I don't know who Phillips is yet.

Mr. Harris—We offer to show cultivation of that part of the acre north and east of the road and adjoining the embankment by a man named Phillips.

Mr. Strong—My proposition was that supposing it be so, that they occupied the remaining portion of the tract not occupied by the railroad, that that would not affect this question, because it would not show possession of the particular *locus*, nor could it be evidence as tending to locate the boundaries, because it would be an act done after the title passed from Lomasson.

Mr. Roseberry—We are proving the title of Robeson, not Lomasson.

The Court—Yes, I think it is competent; the defense is that this land which you say was originally owned by Lomasson, and came to your clients through the conveyance made by him, as a matter of fact never did belong to Lomasson, but belonged to a man named Robeson, and they are attempting to show where the Robeson tract was located, and that after you took possession of the part occupied by your embankment, that Robeson, or his assigns, continued to occupy and cultivate the balance of the tract as they locate it.

Mr. Strong—It don't seem to me that any conduct

of that sort after we had acquired title would be of any value in this suit as establishing the lines against us. Whatever was done while the tract lay in one parcel, and with the acquiescence of the owner of the entire parcel, would be evidence as against the subsequent grantees of the parcel. But now, after the grant had been made to us, the effort is to establish the location and boundaries by some conduct of other parties with reference to other parts of the supposed tracts. Of course if it extended so far as to show or affect the position of our track, then it would be competent; but it does not show as far as that; it affects the position of another part, and while we were in actual possession of the part involved in this suit.

The Court—I am not so clear about that. As I understand the situation the land in dispute was not in the possession of either party, except theoretically, it was a public highway, and it is only because the owner of the land abutting on the highway owns to the middle of the road, that the law presumes, as against anybody except the public, that the owner had possession. It seems to me it is competent to show the occupation of the Robeson acre.

Q. (Question read). *A.* Yes, sir; I do.

The Court—I assume you are going to connect Mr. Phillips with the Robeson title; otherwise it is not material.

Q. What year is that? *A.* I think it was as late as 1865 or 1866, perhaps, when that was done.

Q. Do you know from whom he had authority to cultivate that acre? *A.* No more than what he told me.

The Court—That is not competent.

Q. What did he say?

The Court—That is not competent.

Q. Did you see William P. Robeson there at that time, or don't you recollect? *A.* No, sir; I do not.

Q. How many years did Phillips cultivate it?

A. I won't be positive about it, but I think for a couple of years anyhow, I might be safe in saying.

Q. How far out did he cultivate it? *A.* Cultivated out as far as the road runs around, out towards the spring there; that vacant spot is where he cultivated, up to where the railroad embankment is now.

Q. Did there used to be any fence running along here next the river, on the south and west side of the public highway? *A.* No fence; no, sir; next the river.

Q. And all this lay open down here? *A.* From there to the river; yes, sir.

Q. All up through the road here east of the culvert, all the way laid open south of the Shippen Spring? *A.* Yes, sir.

Q. Do you remember how long that laid open and unfenced? *A.* No, sir; I don't.

Q. When did it first become fenced; do you know? *A.* No, sir; I can't tell you that neither.

Cross Examination, by Mr. Strong.

Q. You went there to live in 1844? *A.* In 1844; yes, sir.

Q. How old were you at that time? *A.* I was five years old.

Q. And you lived there until you were how old? *A.* Until I was twenty-one years old.

Q. And that was in the year 1860? *A.* Yes, sir.

Q. Where did you go then? *A.* I went from there just a farm below where I was raised, and worked there for nine months.

Q. And where have you lived since then? *A.* I lived two years, three years here at Little Oxford since that, then I lived in Williamsburg, Pennsylvania, two years, moved back here to Belvidere in the fall of 1867, and lived here ever since.

Q. Now, it was at the time that the division was being made between your grandfather and White that

you heard this first talk with Robeson? *A.* That is when I heard the first talk with Robeson.

Q. Who else was there besides your grandfather and Robeson and you? *A.* Yes, sir; my father and Levi Young, a neighbor, and my uncle George Titman and my uncle Andrew Lomasson.

Q. Any of them living except you? *A.* I don't think any of them are; all the old ones are dead.

Q. You are the only living person who was present at that time? *A.* I am the only living person who was present at that time.

Q. The persons you have named, are any of them living? *A.* No, none of those I have mentioned.

Q. Do you remember any others that was present at that conversation? *A.* William P. Robeson was present.

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

Q. Do you remember any other person now living, except yourself, who was present? *A.* I do not; no, sir.

Q. Well, how did that corner come to be talked about at that time; that had nothing to do with this line, had it? *A.* The way that that come to be talked about, Robeson was there and claimed he had an acre; he wanted to sell it to my grandfather at that time; he told him he had land enough; didn't want to buy any more land.

Q. Your grandfather wouldn't have it? *A.* No, sir.

Q. He said he had an acre, and then he pointed out that corner? *A.* He did, pointed out that corner; took him over there and showed him that corner.

Q. Your grandfather didn't know where the corner was, did he? *A.* No, sir; he didn't rightly know where the corner was until Robeson located it there.

Q. When Robeson claimed he had an acre, what did your grandfather say? *A.* He said if he had an acre, to take it.

Q. And did your grandfather say he didn't know anything about where the corners were? *A.* He paid

no attention to what he was talking about, and he said, "Come over here and I will show you where it starts from," and he took him over there and showed him that corner where it started from, and then showed him where it ran to the river.

Q. Where were they standing when the conversation first came about? *A.* Stood right outside of the doorway yard fence; where the house stood, on the meadow side.

Q. And then they walked over here, did they? *A.* Yes, sir; they walked over there.

Q. Whereabouts did the house stand? *A.* The house stood about, as near as I can tell, near the roadway that came up from the spring; the railroad ran right through it.

Q. The railroad ran where the house formerly stood? *A.* Yes, sir; ran right through it.

Q. Well then, the land between the—that house was over here somewhere then? *A.* Yes; the house was on the north side of the field, the way I would locate it.

Q. Then the road came up from here towards the house? *A.* Yes, sir.

Q. Come right up to the house, didn't it? *A.* Came right up to the house; the road was very wide then, just a driveway came up to the house, a fence along each side of it.

Q. Did the course of the road follow about the course of the run of the spring? *A.* No, sir.

Q. Which way did it go? *A.* It ran up back here, and then off this way; didn't run straight up here to the house.

Q. It ran more to the south than to the north, did it? *A.* Yes, sir.

Q. Then the ground between the roadway as it was fenced, and the house, there was considerable land, wasn't there? *A.* Yes, sir.

Q. Over to the public road? *A.* Yes, sir.

Q. How was that used? *A.* Used as a meadow.

Q. And did it lay right in with the other land belonging to your grandfather's farm? *A.* It did.

Q. It all laid in there together?

A. Yes, sir.

Q. And was there a fence along the east side of the road following the road around? *A.* Yes, sir; there was; coming all the way around the meadow there was a fence.

Q. All the way around where? *A.* Clear from the corner here where it starts, on the north side of the road here from the house, running all the way around that meadow and so back up to the house.

Q. Followed the road, didn't it. *A.* Yes, sir; followed the road.

Q. How far did it go to the east? *A.* To the east of the road?

Q. Yes, following the road, how far did it follow the east? *A.* Why it followed that way and went right on up to the road where the railroad is now.

Q. How far did it go to the east; all the length of the farm, didn't it? *A.* Yes, sir; all the way on up.

Q. And that was a meadow you say? *A.* Yes, sir.

Q. Was it ever ploughed or cultivated? *A.* Not to my knowledge.

Q. Used for pasture? *A.* Used for pasture and mowing.

Q. Who did? *A.* My father and Judge Robeson together.

Q. Well, your father at your first recollection, when you first remember that piece of land lying in there, your father used to mow it, didn't he; and pasture it as part of his farm? *A.* Certainly; we used it right in there.

Q. Now, down to what time; when did you first know of Robeson doing anything to that acre? *A.* The first I remember of his coming there demanding hay off that acre was, I think, in 1848 or 1849.

Q. What do you know about his demanding hay at that time? *A.* Claimed he had an acre in there; said he used to have rent for it.

Q. Who did he say that to? *A.* To my father.

Q. Your grandfather wasn't there at that time? *A.* No, sir.

Q. Well, he didn't get his rent at that time, did he? *A.* He got hay off it; told him if he wanted it to take it.

Q. Well, who told him that? *A.* My father.

Q. Your father was then occupying the farm? *A.* Yes, sir.

Q. For your grandfather? *A.* Yes, sir.

Q. Your grandfather was owner of the farm? *A.* My grandfather was owner of the farm.

Q. That is, he and Mr. White together; until they divided it?

A. Until they divided it.

Q. Well, where did Robeson get his hay; where did he take it from? *A.* He took it from the half of the west side of the railroad now, up until it came above the embankment where the railroad is now; I think there was only three parts of the meadow he mowed.

Q. Three-fourths of the meadow he mowed?

A. Yes, sir.

Q. What was there to stop him on this side; how far did he go on the east side? *A.* There was nothing to stop him, only he didn't go any further than that.

Q. Than what? *A.* Where he called the acre went.

Q. How far up did he claim? *A.* Up as far as the east side of the railroad now.

Q. And somewhat further, wasn't it? *A.* I wouldn't say how much further; might have been a few paces further.

Q. And how far did he go toward the north? *A.* Came back within about twenty feet of the yard fence.

Q. Well, did he come all the way over and take all

the grass there was, over to the fence? *A.* Yes; that is, on the south side.

Q. Well, did he really mow all the ground between the road culvert and the house fence? *A.* No, sir; some of it growed up with weeds that he didn't mow.

Q. Well, there was nothing there to mow? *A.* Nothing there that he could mow; I don't know that he had any title to it, or documents to that.

Q. Well, you only know where he mowed? *A.* Yes, sir.

Q. You don't really know anything about the title? *A.* No, sir; of course I don't.

Q. During that time and the time you lived there there was a barn; where did that stand? *A.* I would call it, if that is the vacant spot I have reference to, it stood about the middle of this patch of meadow, only on the east side of it—no, I will recall that, it wasn't the meadow where the barn stood in.

Q. Where was it? *A.* The other side of the highway, the other side of the road; the end of it was toward the north, and it ran south, a stable each end of the barn and there was a floor in the middle. There is about where I would locate the barn (indicating).

Q. Now, you think that barn stood about fifteen or twenty feet back from the road? *A.* Yes, sir; I do.

Q. Then what was there further south, about the south line of that tract? *A.* Nothing stood in my presence about the south line of that tract than what I have told you.

Q. So that, if I understand, what Robeson claimed was that his part of his acre cut the barn off from the road entirely, eh? *A.* Yes, sir; no, sir—yes, it cut the barn off from the road, that is right.

Q. Now, do you mean to tell us that your grandfather agreed to that at all? *A.* He did agree to it, because he couldn't help himself; how could he help himself if that acre laid in there?

Q. How do you know it laid in there? *A.* I don't

know anything more about it than Judge Robeson claimed.

Q. And your grandfather said if he had an acre, to take it? *A.* Yes, sir.

Q. That is all he said, I think? *A.* That is all he said, so far as I know.

Q. Well, Robeson never did take that piece of land that laid between the barn and the road, did he? *A.* No, sir; it was nothing but a little strip between the highway and barn, laid out to the public; it was all used as roadway.

Q. And the access to the barn was over that little strip? *A.* Yes, sir; it was.

Q. And your grandfather, or father, continued to occupy the place, use all that strip of land along there for purposes of barn and access to it? *A.* Yes, sir; had a wagon out there, or anything like that.

Q. Now this conversation in 1850 was before the railroad was put there, wasn't it? *A.* Yes, sir.

Q. And of course the house was standing there? *A.* Yes, sir.

Q. It isn't there now? *A.* It isn't there now.

Q. And the fence from the spring to the house isn't there now? *A.* It isn't there now.

Q. And the roadway from the spring to the house isn't there now? *A.* No, sir.

Q. And the culvert wasn't there then? *A.* No, sir.

Q. What makes you say that the location of that corner was where you see it now, where you pointed out there on the south side of the culvert? *A.* Judge Robeson told my grandfather at that time, and William White, and those people that were with them.

Q. How do you fix the particular point where it was? *A.* I fix it, as near as I can locate it anyway at all, by the place they was when they located that corner.

Q. But the whole locality there is changed; you might not be able to fix the exact place? *A.* The road is narrowed up, I admit that.

Q. There was no survey made at that time by anybody, was there? *A.* Caleb H. Valentine surveyed the farm, but none of that acre.

Q. You never knew of any survey to be made of that acre, did you? *A.* I didn't.

Q. Now, you say Peter Medler cut some hay in 1848 or 1849? *A.* Yes, sir.

Q. You don't know who he cut it for, except what Medler said? *A.* Medler cut it for Robeson; that is what he said.

Mr. Strong—I move to strike that out.

The Court—He said Robeson's team came there to haul it.

Q. Did you say that? *A.* Yes, sir.

Q. How many years did Robeson or Medler or anybody get hay off of that acre? *A.* I remember two distinct times that Judge Robeson got hay off of there.

Q. That is assuming Medler got it for him? *A.* Peter Medler got it one year, and another year Samuel Medler, his father, cut it for him.

Q. And hauled it away with Robeson's team? *A.* Yes, sir.

Q. That was in 1848 and 1849? *A.* Yes, sir.

Q. And those were the only years you could remember you said? *A.* Didn't I say 1848 or 1849 he got it once, and 1850 or 1851 he got it again.

Q. 1850 or 1851 you were telling us of the conversation with your grandfather? *A.* Yes, sir.

Q. He didn't get any hay that time, did he? *A.* No, sir; he didn't.

Q. Now you say it was in 1865 or 1866 that a man named Phillips—what did he do, cultivate the acre? *A.* Yes, sir; he did cultivate what was left of the acre.

Q. Well, what did he cultivate? *A.* He cultivated that piece of ground which lies now west of the railroad track down as far as the public road.

Q. And how far north did he go? *A.* He came north just about where the driveway would come up

there, or not quite to that; I suppose within ten or fifteen feet of that driveway.

Q. Sure he didn't cultivate up all the way to the driveway? *A.* No; I don't think he did.

Q. What makes you think he did not? *A.* Because I was up there when he had poles in there.

Q. Where did he live? *A.* Lived in Belvidere.

Q. Is he living? *A.* No, sir.

Q. What did he plant on it? *A.* I saw bean poles there.

Q. Do you mean to say he cultivated that piece of land all the way over there, from near the old fence out to the culvert and road? *A.* Yes, sir.

Q. And had that all in beans? *A.* Oh, no, sir; he didn't have it all in beans, he had other things planted there, but what it was I couldn't say; I didn't look; he trucked it.

Q. He was there two years, you say? *A.* Yes, sir.

Q. What years were they? *A.* I think 1865 and 1866; I may be a little mistaken about that, but he worked it all right.

Q. Where were you living in 1865 and 1866? *A.* In 1866 I lived in Williamsburg; in 1865 I lived in Belvidere.

Q. Didn't you say you came back to Belvidere in 1867? *A.* I did; 1865 and 1866 I lived in Williamsburg, and 1865 I lived here in Belvidere.

Q. Had you any occasion to be in the neighborhood of that tract at that time? *A.* Yes, sir.

Q. What were you doing there? *A.* My father still lived there.

Q. Your father lived there down to when? *A.* I think we brought him away from there in 1883, if I remember right; 1883 or 1885, I won't say which, but 1883 or 1885 he come to live with me.

Q. And down to that time he lived in this same property? *A.* Yes, sir.

Q. Where did he live after the railroad went through?

A. In that house on the Roseberry farm now; he lived on the north side of the road to Oxford Furnace.

Q. And he still continued to farm the whole property? *A.* Rented it out to different parties; whoever would take a field; rented it by field to different parties.

Q. After the division between your grandfather, or was it your great grandfather? *A.* My grandfather.

Q. After the division between Thomas Lomasson and White; the land which your father occupied extended down to that division line, I suppose? *A.* Yes, sir; this is the stone row, isn't it (indicating on map)?

Q. Yes. *A.* Well, that was the corner between the two properties.

Q. That stone was the corner? *A.* Yes, sir; that was the corner between the two properties.

Q. And do you remember the line fence that was put there in 1850? *A.* Yes, sir.

Q. It is there yet, isn't it?

Objected to as not cross examination.

Mr. Strong—Well, I don't care to press it; he, however, has spoken of locating that line in 1850.

A. It was nothing more than a line fence between the two parties; that is all it was; I wouldn't undertake to locate it now; it has probably been thrown down by throwing stones against it.

Q. Well, you don't know anything about that fence now, do you? *A.* I could locate the fence; that is all.

Mr. Roseberry—I object to that testimony as not cross examination.

The Court—It is immaterial whether the fence is there or not.

Jesse Lomasson, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside? *A.* I reside in Pennsylvania.

Q. How old are you? *A.* Fifty-four.

Q. Are you a brother of Thomas Lomasson, just on the stand? *A.* Yes, sir.

Q. Your father's name was George K. Lomasson? *A.* George K.

Q. And your grandfather's name was Thomas Lomasson? *A.* Thomas.

Q. Do you remember living on this place by the Robeson acre? *A.* Yes, sir.

Q. And the Shippen Spring? *A.* Yes, sir.

Q. When did you move there, Mr. Lomasson? *A.* I moved there in the spring of 1854, if my recollection is right.

Q. With your father? *A.* Yes, sir.

Q. How long did you continue to live there? *A.* I lived there until 1860.

Q. Where did you move then? *A.* I moved then to Pennsylvania.

Q. But you were back to this place frequently, were you? *A.* Off and on, yes; from that time.

Q. Your father continued to live there up to what time? *A.* Well, up to 1883 or 1884; somewhere along there.

Q. And then who had charge of it after his death? *A.* Why, Roseberry bought the farm.

Q. How long after? About 1889, was it not? *A.* Yes; spring of 1889.

Q. And has always had charge of it up to that time; after his death? *A.* Yes, sir.

Q. Did you see much of your grandfather, down there where you lived? *A.* Oh, quite often; yes, sir.

Q. Prior to building the railroad? *A.* Quite often; yes, sir; because we neighbored back and forth; we helped him and he helped us a good deal at that time.

Q. Do you remember William P. Robeson coming there? *A.* Yes, sir; I do.

Q. What brings it to your mind; his coming there? *A.* Why, Grandfather Lomasson and myself and my

father were in the barn threshing, and as we came out of the barn, Mr. Robeson came up from the river and stopped there and entered into conversation, and while they were talking, Mr. Robeson fetched up this acre of ground, which he had there at that time.

Q. Well, what was done and said? *A.* Well, he claimed that he should have a share of the hay off of it, and grandfather told him that George K. was living there, and whatever he done was all right.

Q. He was your father? *A.* Yes, sir; they were there together at that time, and then Mr. Robeson spoke about the corner.

Q. Now, what was said and done about the corner? *A.* Well, he went to this one corner; him and Grandfather Lomasson went to this corner, and my father, and of course I went along.

Q. Now, what was said? *A.* Mr. Robeson pointed out the corner to my grandfather, and my grandfather acknowledged that was the corner.

Objected to.

By the Court.

Q. What did your grandfather say? *A.* That is to Robeson?

Further Direct.

Q. Yes; about the corner? *A.* Why, he said in the first place he didn't know where it was located, and then Robeson and he went over and he pointed out the corner to him; of course he acknowledged it was the corner.

Objected to.

By the Court.

Q. What did he say when Robeson pointed out the

corner to him? *A.* Robeson said that is the corner of his acre.

Q. What did your grandfather say? *A.* Grandfather said, "You have an acre there," but couldn't locate the corner; Robeson said that was the corner; acknowledged it at that time.

Further Direct.

Q. Now where was that corner as then located by them? *A.* Why, the road that comes down from above the railroad now; that was before the railroad was there; from the railroad now—

Q. Up here is the house; this is the south side of the lot; this is the road going down the river (referring to map)? *A.* Well, the road that comes from the east down; I can't see from here, anyhow; the road that comes down from the east to the railroad, this wing that leads from the culvert; this corner was located about, I should judge near two paces from the railroad bed; that is outside of the line of the railroad; that corner was right in the corner of that fence at that time; that is the fence that came down the railroad on the south side of the public road—well, the south side of the railroad.

By the Court.

Q. The railroad runs north and south? *A.* Well, I say what we call the south side, on the east corner, over on the opposite side of the railroad, what I would call it, the railroad naturally runs north and south; at the east corner.

Further Direct.

Q. Can you see this map? *A.* I can see the map, but I can't—

Q. (Referring to map). This is the road to Oxford Furnace going this way? *A.* This would be the south side, the east corner, and it was about two paces from the wing wall of the culvert; I should judge about that.

Q. Have you been down there lately? *A.* No, sir; the changes—I don't know what the changes may be now.

Q. Do you remember hearing your grandfather talk about that afterwards—oh, was there anything said about its running to the river? *A.* Yes, sir; when Robeson and my grandfather were here and Robeson pointed out the line to the river, running direct towards the river on the opposite side of the road.

Q. On which side of the road? *A.* On the south side of the public road towards the barn.

Q. Do you remember the barn? *A.* Yes, sir.

Q. Was there anything said about the barn in connection with it? *A.* As to the distance from the barn, that would be somewheres, I suppose, between fifteen and twenty feet.

Q. The distance from the road, the public highway? *A.* Yes, sir; to the barn at that time.

Q. Where did this line pass down in front of the barn, do you know? *A.* I do; about fifteen or twenty feet from the barn.

By the Court.

Q. North or south of the barn? *A.* It would have been north of the barn.

Further Direct.

Q. Do you remember William P. Robeson on that lot at any time? *A.* Yes, sir; one time he came there and demanded hay, and my father hauled it up, or he didn't haul it up himself; his hands did.

Q. What was his hand's name? *A.* George Bird; the hay was taken from—

By Mr. Strong.

Q. Were you there when the hay was taken? *A.* I was there and saw it at that time; that was before the railroad was built.

Further Direct.

Q. On which portion of this lot on the north side of the public highway did they get the hay? *A.* Commencing up here and going down towards another road, the fence below, and so out towards the house.

Q. Was anything gotten from where the railroad is now? *A.* That is what I was speaking about; from the railroad out towards the house, and so on down.

Q. Do you remember what year that was? *A.* About 1874, if I remember right; something like that.

Q. Who cut the hay? *A.* At that time the hired man; my father cut it at that time and Robeson hauled it away.

Q. Do you remember Robeson getting hay there at any other time? *A.* Well, the Medlers cut hay there.

Q. About how often did you see them cut hay there? *A.* In 1848, I think, they cut it for the Robesons.

Q. Did you see the team that hauled it? *A.* Judge Robeson's team.

Q. Did you see them get any hay there after 1848?

A. In 1849; it was cut by Samuel Medler.

Q. Cut it for Robeson? *A.* Yes, sir.

Q. Did Robeson's team haul it? *A.* (Not answered).

By Mr. Strong.

Q. How do you know they hauled it for Robeson?

A. I suppose so.

Further Direct.

Q. Did you see the team? *A.* I saw the team the

first time; the second time I ain't certain whether Medler hauled it with his team for Robeson, or whether Robeson found the team; I am not positive about it.

Q. Do you remember Phillips being there? *A.* I do not.

Q. Do you remember whether this fence was there, that fence next the river, near the public highway? *A.* Do you mean whether—

Q. When you knew it? *A.* Before the railroad was there?

Q. No, no; the fence near the public highway; well, I won't ask you anything about it; this lot was all open down to the river, wasn't it, when you lived in there? *A.* Yes; next to the river.

Q. Well, it ran from the river up this road, and clea r up here, laid all open and unfenced under the culvert; the whole thing? *A.* Yes.

Q. As long as you have known it? *A.* Yes.

Q. Until just lately? *A.* Yes.

Cross Examination, by Mr. Strong.

Q. All this part that you say laid unfenced, that is on the west side of the road down toward the river, that all laid in with this part of the farm that your father occupied? *A.* Yes, sir; that acre and all.

Q. All laid in together, and you say that your father's barn, the barn your father occupied—it was your grandfather's property, wasn't it? *A.* Yes, sir.

Q. Stood somewhere in here (indicating)? *A.* Yes, sir.

Q. And all this laid open in connection with the barn? *A.* Yes, sir.

Q. And the farm your grandfather owned extended up here on the north; on the north side of the spring? *A.* Yes, sir.

Q. And all around the acre? *A.* Yes, sir.

Q. When did you go away from there?

A. I went away from there in 1860.

Q. Where did you go then? *A.* Pennsylvania.

Q. And where have you been since? *A.* Well, I have lived in Pennsylvania from 1860 until the fall of 1862; then I went to the army in the fall of 1862, and came back in 1863.

Q. After you came back, where did you go to live? *A.* After I came back I worked by the day; I followed at different work; whatever I could get.

Q. Well, whereabouts were you? *A.* I was in Pennsylvania, right across the river from this property of Moses Depue; it was at that time, and at different places.

Q. From that time until now, where have have you been living? *A.* Living principally in Pennsylvania, at Richmond, near Mt. Bethel.

Q. How far is that from here? *A.* Three or four miles.

Q. Have you seen this property recently? *A.* Not very recently.

Q. How recently? *A.* In 1888.

Q. What were you doing out there in 1888? *A.* I had the renting of it, and me and my brother rented it out until my father's death.

Q. Well, you rented out the entire farm? *A.* Yes, sir.

Q. To tenants? *A.* Yes, sir.

Q. And did your tenants occupy and cultivate the portion of the Robeson acre, as you call it that lay east of the road; that in with the rest of the farm, didn't it? *A.* It laid in with the rest of the farm down to the road.

Q. That all laid in with your father's farm and was cultivated and occupied by your tenants down to the time it was sold by Commissioners, wasn't it? *A.* Yes.

Q. And that piece of land in there was always, from your earliest recollection, used and occupied and fenced in and cultivated with your father's farm, wasn't it?

A. Not cultivated; this acre wasn't, because it was in the meadow.

Q. It was the same as the rest of the farm? *A.* Yes, sir.

Q. There was a fence that ran along the east side of the road to Belvidere? *A.* Yes, sir; until it came to the lane that went to the house, and then on the opposite side that was fenced, down again; and so on around by the Cyphers lot.

Q. Now, you said something about cutting from hay sometime; when was it, 1847? *A.* The first was in 1847.

Q. That was the first you ever heard of it, wasn't it? *A.* Yes; I was young, you know.

Q. I am talking about your knowledge, and in 1847 was the first of it as far as you know? *A.* Yes.

Q. What happened in 1847? *A.* Well, in 1847—

Q. How do you fix that year, by the way? *A.* Why, Bird was there, as near as I can tell, that year; the son of John A. Bird; he is in Michigan, the last I heard.

Q. Now, in 1847 how old were you? *A.* I was born in 1841; so I was six years old.

Q. And you remember, at the age of six years, about this cutting hay, do you? *A.* Oh, yes; I remember—

Q. Now, what do you remember about it? *A.* I remember that my father had Bird for his help, and they cut hay that year from this meadow.

Q. What do you call the meadow? *A.* Why, the meadow was fenced in beyond the railroad; the railroad wasn't there then, but beyond the railroad it was fenced in, and then came out; there was a fence all the way around it and so on down to the house.

Q. How much land was there in that meadow that was fenced around? *A.* Well, I couldn't tell exactly.

Q. Give us an idea; four or five acres? *A.* No, sir; I think about two acres and a half in the whole thing.

Q. That two acres and a half was fenced around along

the road, and how far did it run to the east where the railroad is now? *A.* The whole meadow runs quite a ways; I couldn't say exactly how far, but some distance to a hill; of course if I was there I could locate it.

Q. Now, you think there was about two and a half acres in the meadow? *A.* About two acres and a half or three acres.

Q. What was done about that hay in 1847? *A.* My father and his hand Bird cut hay for Robeson.

Q. What do you mean by that; they cut the meadow the same as usual? *A.* They cut it the same as usual, and my father said—

Q. Now wait, you only know what your father said? *A.* Yes, sir.

Q. You didn't see Robeson himself there at that time, did you? *A.* Robeson himself was there, of course.

Q. I mean at that time; in 1847? *A.* In 1847.

Q. Do you remember his being there at that time? *A.* He was there the time before they mowed the meadow; right before they mowed it.

Q. That was when you was six years old? *A.* Yes, sir.

Q. Do you remember exactly what meadow they mowed at that time; they mowed the whole meadow, didn't they? *A.* As far as it was fit to mow; over towards the house, the chickens had eaten off the grass, you know.

Q. But they mowed the whole two acres and a half that was fenced in there as far as it was worth mowing? *A.* Yes; as far as it was worth mowing.

Q. And there was no distinction made as to the lower portion of it down towards the road, was there; it was all mowed as one piece of meadow? *A.* It was all mowed at one time; yes, sir.

Q. It was all put in together, wasn't it? *A.* Well, Mr. Robeson's hay—

Q. Well, wait a minute; you say the meadow was all mowed at that time; was there any marking off of any particular hay? *A.* Well, Robeson took the hay there; as I say, Robeson took the hay—

Q. Did you see him take it? *A.* I didn't see him; I know that my father mowed it; he was there either that day or the day before.

Q. Your grandfather, as far as you know, knew nothing about taking the hay off the meadow at that time, did he? *A.* At that time of course not, because—

Q. Can you tell from off what part of the meadow this hay came that Robeson got? *A.* I told you a moment ago it came off from the east corner above the railroad, and out towards the house and on down.

Q. Took all the hay between the culvert and the house? *A.* Well, the upper part of the culvert it would be now.

Q. That is all the hay between the road where it goes under the culvert down to the house? *A.* I said the hay as far as it was thick to mow from above the railroad out to that corner, as far as it goes out, and then out to the house and down.

Q. And he took all the hay? *A.* My father hauled it for him.

Q. You were six years old at that time? *A.* I was six years old at that time.

Q. The next time you knew anything about any hay being taken off of there—when was that? *A.* That was in 1848.

Q. The next year? *A.* Yes, sir.

Q. And then you were seven years old? *A.* Seven years old.

Q. Who got the hay at that time? *A.* Peter Medler; he was employed by Robeson.

Q. How do you know that? *A.* Well, I wasn't there, but of course he must have been paid by Robeson or he wouldn't have cut the hay.

Q. He might have cut it for your father or grand-

father; you don't know who employed him? *A.* I know he didn't work for them.

Q. Well, what part of the hay did Medler take? *A.* He took from this same direction of it.

Q. Did he take all the hay between the house and the road where it went under the culvert? *A.* Well, from above the culvert.

Q. How far did he cut to the east? *A.* He started at this corner above here and cut out the next year; the first year they cut it all.

Q. Cut all what? *A.* All this hay that lay between the two places here.

Q. Do you mean they cut the whole two acres; the meadow? *A.* The first year, and after that, the second year, when Robeson claimed it himself—

Q. Did you see Robeson the next year? *A.* Medler cut it, and I understood he cut it for Robeson, and Robeson's team hauled it.

Q. Did I understand you that the first year, 1847, the whole two acres was cut and given to—your father hauling it to Robeson? *A.* I wouldn't say he hauled it all, but up as far as this corner and then out.

Q. Didn't you say the whole two acres was cut and hauled by your father the first year? *A.* The first year it was cut all the way; the whole two acres was cut the first year.

Q. The whole two acres was received by Robeson from your father? *A.* I can't say he took it all.

Q. From what part of the land? *A.* Why, I was speaking that Robeson, or my father, took it from this here, across which they claimed at that time was the line.

Q. Didn't you tell me a while ago that Robeson took the hay off the whole two acres? *A.* I don't think I did.

Q. Didn't you mean to say that? *A.* No; the idea was of their cutting it, as I said it was all cut at once.

Q. Didn't you say Robeson got the whole two acres

at that time? *A.* I didn't; my father, as I said a little spell ago, came up to this line.

By the Court.

Q. How much did Robeson get of the hay that was cut in 1847? *A.* I suppose there was about two loads.

Q. Was that all the hay cut on the whole meadow? *A.* No, sir; but he claimed I said Robeson took it all, but I didn't; my father cut all the hay and it was taken across from this corner, the east side of the railroad on out, that is from the house on down; all the lot above that I claim my father took.

Further Cross Examination.

Q. Do you know whether your father did or not? *A.* Well, he hauled it into the barn anyhow.

Q. Well, now you have told us about 1847 and 1848, then when was it that your father or grandfather, or somebody, had some conversation with Robeson? *A.* That was in the fall of 1849.

Q. What were you doing there? *A.* I was in the barn handling sheaves at that time; grandfather was at the machine.

Q. In 1849 how old were you? *A.* I was born in 1841; that would be eight.

Q. And what did Robeson come for that time? *A.* Well, he came up from the river when we came out of the barn.

Q. When who came out of the barn? *A.* When I and my father and grandfather.

Q. What did you come out of the barn for? *A.* We were going to the house; it was about noon; and we met Robeson right there in the road as he came up from the river.

Q. And what did he have to say? *A.* He stopped

there and talked a little spell, and then he spoke about getting the hay from this acre.

Q. That year had he got it? *A.* That is the year before he got it; spoke about getting the hay that year, and my grandfather says to him—spoke about the hay.

Q. Did your grandfather say he didn't know where the acre was? *A.* He said—he told Robeson that George had the property and to do what he pleased.

Q. If George K. saw fit to give him the hay he could do it; your grandfather said that George K., that is your father, had the property and he might do what he pleased with it? *A.* Yes; that is in that way.

Q. With the hay? *A.* Yes, sir.

Q. You said a while ago that your grandfather at first didn't know where the corner was, and then Robeson showed it to him? *A.* Robeson went and took him; yes.

Q. When Robeson spoke about the acre, didn't your grandfather speak anything about where the acre was? *A.* He spoke about it being in there; yes, sir; Robeson followed up about the acre and they got in a talk about it, and, of course—

Q. What was the talk they had? *A.* Talked about where the acre was located.

Q. Did your grandfather say where it was located? *A.* Robeson said to my grandfather, "We will go and see the corner"; and my grandfather hesitated at first and then went with him.

Q. Did your grandfather say anything about the acre—didn't know where it was? *A.* Well, he knowed it laid in there, but didn't know where it was exactly.

Q. And that is what made Robeson go up and show him the corner? *A.* That is the idea; yes, sir.

Q. There wasn't any survey made at that time? *A.* No, sir.

Q. There never was any survey, to your knowledge, of that acre? *A.* No, sir; I can't say there was.

Q. And all it amounted to was Robeson claimed this was the corner, and your father claimed he didn't know where it was? *A.* When Robeson showed him the corner he was satisfied.

Q. What did he say? *A.* He said it was all right, just how Robeson and George K. made it; that is about the hay.

Q. When they went up there, what was there that Robeson showed your father? *A.* A round stone heap; and if my recollection is right, a stone set up out of the heap about that high (indicating).

Q. Are you sure about that? *A.* There was a stone heap; yes, sir.

Q. There was stones all around that place? *A.* Well, yes; there was stones around there.

Q. That, you say, was in 1849? *A.* Yes, sir; that was in 1849.

Q. How far over was the house from this culvert; the house where you lived? *A.* The house from the culvert?

Q. Yes; where the culvert is now; I mean the road, you know?

A. You mean the wagon road?

Q. The public road; how far was the house from the culvert? *A.* I couldn't exactly locate the distance.

Q. A couple of hundred feet; two or three hundred? *A.* Yes; it was further than that; it laid just north of the spring.

Q. And there was a driveway there went up from the spring to the house? *A.* Yes, sir.

Q. How did that driveway run directly from the house to the spring? *A.* The fence ran, that is the fence that came from Belvidere down on the opposite side, that came, I claim, came right up to the corner of the garden fence, and the garden fence ran up to the corner of the house, if my memory serves me right.

Q. Wasn't there a space between the house and the garden fence? *A.* The garden fence, to my mind,

came straight up to the corner of the house; that would be the south corner.

Q. Then the fence that came up alongside of the private road came to the southwest corner of the house? *A.* The north fence did, and the other on the opposite side, on the south side of the lane, would come up to the corner of the yard fence that ran along the front of the house.

Q. That is, ran along on the south side of the house? *A.* Yes, sir.

Q. So that there was some distance, quite a wide driveway, fifteen or twenty feet or so, between the south side of the house and the southerly fence? *A.* Yes, sir; oh, yes; it was quite wide through there.

Q. Now, that driveway that ran up from the spring, which direction did it take? *A.* Well, from the corner of the meadow there, it ran north of the spring a little, the same that came down here, and just turned off to the north a little.

Q. About what was the general direction of that road? *A.* The road laid a little north of the spring run, except at the upper end of the next house, and from there down it came pretty close.

Q. Did it take a turn to the south when it got to the house? Suppose that is the spring there, and this is the house up here, now the road was north of the spring somewhat? *A.* Yes.

Q. And it ran in a direction like that (indicating), did it, and then when it came towards the house turned to the south, or how did it run? *A.* I think it ran pretty near straight.

Q. Was the general direction of that road to the house about the same as the general direction of the run of water to the spring? *A.* Well, it ran pretty well that way, only it ran north of the spring before you got down to it.

Q. And it ran a little in a northerly direction? *A.* Yes, sir.

Q. Do you remember an old willow tree that stood there in the fence by the house? *A.* Yes, sir.

Q. Where did that stand? *A.* That stood about—there was a cherry tree stood right in the corner, and it stood I think eighteen or twenty feet below that cherry tree.

Q. It was in the fence, wasn't it? *A.* If my recollection serves me right it stood on the meadow side of the fence so that the fence passed it.

Q. And which was it that ran right past that tree? *A.* That would be the south fence.

Q. When Robeson pointed out the corner, as you say, to your father, did he point out any other angles or sides of that acre? *A.* Well, from that corner they pointed down towards the river; past the barn towards the river.

Q. He didn't go down to the river and point out where it struck the river, did he? *A.* No, sir; he didn't.

Q. And he didn't go down and point out where it went past the barn, did he? *A.* Only by this direction down.

Q. When they were talking about this corner, and talking about the line down to the river, did he state how far it went over in the other direction, towards the north? *A.* Well, he pointed towards the river, and after they looked down that way, of course they looked the other way, which would be in a northeasterly direction; it ran over pretty well towards the barnyard fence.

Q. He claimed it ran to the fence, didn't he? *A.* No, it didn't run to the fence, it ran above the fence; that is more east of the yard fence.

Q. But he claimed in a northerly direction, it ran as far as the barnyard fence? *A.* Ran out very near, around this way, on a slant from the yard fence out.

Q. How do you mean on a slant? *A.* Slanted more towards the south; that is, this way would be naturally

southeast, you know; instead of coming to the yard, it was was still further over towards the public road.

Q. Now see if I can understand what you mean (referring to map); there is about where the house was, as I make it out; we will suppose that is the house, and here is the public road coming around this way, and went through the culvert, and over here somewhere as I understand is where you, your father and Robeson were talking, and your grandfather?

A. The east corner.

Q. Now, he mentioned that the line went down from there to the river? *A.* Yes, sir.

Q. And what did he say about its going over in a northerly direction towards the house? *A.* Well, he spoke of it going over in a northerly direction from that fence, there was a bake oven, and from the bake oven it went out I suppose fifteen or twenty feet.

Q. They didn't go over to the house, they stood here, didn't they? *A.* Yes, sir; there was a stake.

Q. Where did he say his line was on the north side of it? *A.* Well, the stake stood about fifteen or twenty feet from this bake oven house, on a slant this way, that is what my father claimed was the other corner.

Q. What did Robeson say at that time? *A.* He pointed in that direction, but didn't say that was the corner.

Q. Where was the bake oven, in the yard? *A.* Yes, sir; right in the corner of the yard, the outer corner, the southeast corner.

Q. Suppose that is the yard fence, that is the willow tree, and there is the house, whereabouts is the bake oven; come here and point.

Mr. Harris—The witness doesn't understand that map.

A. This is the house; the yard fence comes out this way, and right in this corner was the bake oven, and out this way about fifteen or twenty feet there was a

stake; coming down from the bake oven there was a slant out this way.

Q. And was that stake about in the line with the southerly fence that came up along the road? *A.* Well, came up along the road from the spring to the house; that stake was about in line, I should think, with the cherry tree and willow tree.

Q. The stake was about in line with that and with the spring, was it? *A.* Well, it didn't run all the way down, you know; went to the north, but the line went down the center of the spring, they say.

Q. A line from that stake down to the spring, how near would that come to the willlow tree? *A.* Well, the fence went north of the spring a little, so I can't tell you exactly what distance it went there in that part.

Q. What I mean is, would the stake and willow tree and spring be in the same straight line? *A.* All would be in the same line; yes, sir; the lane was north of that.

Q. I mean if you stood at that stake and sighted down to the spring, would that strike the willow tree? *A.* That is what he claimed it would.

Q. That was always understood to be the line of that acre, wasn't it? *A.* That is what we understood.

Q. And that is what Robeson understood? *A.* That is what Robeson understood.

Re-Direct Examination.

Q. Didn't you say that Robeson, when he stood at this corner, pointed out that direction, that he didn't point out that corner; didn't you say when Robeson pointed out the corner south of the road, east of the railroad, he said it passed the barn and went out this way, but didn't go out? *A.* He didn't go out; no.

Q. And didn't you say your father told you that that stake was the corner out there? *A.* Yes. sir.

Q. But Robeson didn't tell you that? *A.* No, sir; Robeson didn't go out there, but he pointed in that direction.

Q. How far from the southwest corner of the fence did the south fence from the road strike the yard fence? *A.* The southwest corner of the—

Q. Yes, here; the fence running out here, wherever it was; running up here; how far did the yard run south of that fence, where it struck the yard fence? *A.* You mean the south fence?

Q. The yard fence, yes; how long was the yard? *A.* The yard fence, how long it was?

Q. Yes. *A.* Well, there was a short panel between the house and the gate, which I suppose might be eight feet, and then I couldn't say whether it was sixteen feet or eighteen feet, the next two.

Q. Then it was about thirty-two or thirty-six; it was about forty feet south of the house that the yard extended? *A.* Yes, sir.

Q. Now, at the southeast corner, I understood you to say, of the yard, which was about forty-six or forty-eight feet from the house, was a bake oven? *A.* Yes.

Q. And then from that bake oven in a southeasterly course fifteen or twenty feet was this stake? *A.* Yes, sir.

Q. Now, starting from that stake and running from the spring it could not possibly run through that willow, could it?

Mr. Strong—Now, that is reasoning with his witness.

The Court—Mr. Roseberry, you must remember that the rule governing the re-direct examination of a witness is very different from that which governs a cross examination; cross examining counsel has a right to put leading questions and to put words in the witness's mouth; that right does not belong to counsel examining a witness in his own behalf; you must not lead the witness.

Q. Well, that was correct what you said; the stake was southeast from this bake oven about fifteen or twenty feet; how far was the willow from the house? *A.* Well, the willow from the house would have been located about twenty feet, I should suppose, from the lower end of the yard fence.

Q. Twenty feet from which lower corner? *A.* The south fence, it would be; the willow didn't come up to the yard; the willow, if I understood right, stood right inside.

Q. Didn't that fence come right up to the yard fence? *A.* Yes, sir.

Q. And how far did that fence strike the yard fence from the south side of the yard? *A.* Why, it came right up to the corner of it.

Q. How far was the dooryard fence from this south line fence? *A.* Why, they came right up together; the rail fence came up from the river and struck this yard fence.

Q. How far from the door yard fence? *A.* Well, I guess the first panel fence was eight feet, about that; and the other were sixteen or eighteen; two of them.

Q. How long a building was that house? *A.* Between thirty-six and forty feet.

Q. With a yard extending out in front of it eight feet one panel, and two panels, either sixteen or eighteen feet? *A.* Yes.

Q. And then the bake oven was at the southeast corner, and then this stake was fifteen or twenty feet southeast of that yet?

Mr. Strong—No; he hasn't said that the stake was fifteen or twenty feet southeast of the bake oven.

The Witness—Yes, sir; fifteen or twenty feet I think was my answer.

Q. Where was the garden? *A.* The garden lay on the west side and back of the house, on the east side, ran around the back part of the house.

Q. Did your father or grandfather ever claim title to that property there?

Objected to.

The Court—That is a very leading question.

Q. Ever claim to own it, then?

The Court—Own what?

Mr. Roseberry—Any part of that acre.

Q. Can you state whether your father or grandfather claimed any title to the Robeson acre?

Objected to.

A. Not to my knowledge.

The Court—Strike that out.

Q. Did they ever claim to own it?

The Court—One moment; what acre do you mean?

Mr. Roseberry—Any part of this Robeson acre.

The Court—How is that relevant?

Mr. Roseberry—If they claimed it by adverse possession they must make it known; it must be notorious.

The Court—I do not understand that there is any claim in this case that Lomasson had any title to this Robeson acre; the only dispute is as to the location of the Robeson acre.

Q. Do you remember the barnyard fence? *A.* Oh, yes, sir.

Q. Whereabouts did that barnyard fence strike the road fence that came down? *A.* Why, it struck it near that corner; the barnyard fence came right up to the corner, and here was the corn crib.

Q. This road wasn't there at that time? *A.* No, sir.

Q. How wide was that road right in here, do you recollect?

A. It was quite wide; a two rod road.

Q. Where was this corner as to this barnyard fence?

Mr. Strong—I submit that corner has been located and talked about.

The Court—He may answer that question.

Q. Where was that corner as to this barnyard fence where it joined the road fence? *A.* It came up to

this eastern corner here, the barnyard fence, the south side of the railroad, the eastern corner here.

Q. You mean the corner Mr. Robeson pointed out to your father; about how far was this corner away from where the barnyard fence joined the road fence? *A.* The Robeson corner do you mean?

Q. Yes, sir. *A.* Well, right inside of the fence where it came out here to the road.

By the Court.

Q. Inside, but how far inside? *A.* Well, it was but a short distance inside.

Q. Well, a quarter of a mile? *A.* Oh, no; I think not.

Q. How far inside the fence was it? *A.* If my memory serves me right it might have been three or four paces, maybe a little more or less; that I could not say exactly.

Re-Cross Examination.

Q. (Referring to map.) That seems to be where the barn was as I understand it? *A.* Yes, sir.

Q. Now, the barnyard fence ran where? *A.* The barnyard fence ran eastward.

Q. Along the road? *A.* Well, the roads were wide, of course; it ran eastward on up until it struck this corner of the fence that came down from the field above.

Q. Which way did the fence come down? *A.* Came right down along the road.

Q. To the barnyard fence? *A.* They came to the corner together.

Q. And then was there a fence that ran south from that corner of the barnyard fence? *A.* There was a hovel stood in there and a shed stood inside of that

yet; that was all taken in the barnyard and made the barnyard very large.

Q. How near was that to the road? *A.* The hovel came right out open, and went right into it through a pair of bars; it faced on the road.

Q. And the fence; that inclosed the yard and hovel and all? *A.* That took in the whole barnyard.

Q. Now, when Robeson stood on that corner, as you say, and looked over toward the stake by the house, what did he say?

The Court—We have been all over that, Mr. Strong.

Mr. Strong—I don't desire to repeat, but it seems to me that the witness left it in a rather uncertain condition.

The Court—Well, ask it again.

A. Well, the first place, when they came to the corner, Robeson told my grandfather that was the corner; then they looked towards the river, and afterwards he put his hand out this way (illustrating) and pointed out towards the stake.

Q. How far did he say; went over to the stake? *A.* Went over to the stake, as I understood him.

Q. That is what he said, did he? *A.* No, he didn't say so, but it came over to the stake; my father told me afterwards.

Q. What did Robeson say how far it went in that direction? *A.* He didn't say anything more than point towards the stake.

Q. What was Robeson's language when he pointed over towards the stake? *A.* Well, he pointed to the line running in that direction.

Q. Did he say how far it ran? *A.* He didn't say how far it ran; of course I supposed it ran as far as the stake, and from there down to the river.

Q. That is what you understood him to mean? *A.* Yes, sir.

George Linn, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside? *A.* Near Oxford.

Q. How old are you? *A.* Seventy-six years old next February.

Q. Do you remember a place called the old landing place? *A.* Yes, sir.

Q. Just state where that place is? *A.* It is down the Delaware River here at the spring called Shippen Spring.

Q. What is your earliest recollection of that place? *A.* The fall of 1832.

Q. What occasion had you to go there? *A.* I went there with my uncle driving teams for the Oxford Furnace Company.

Q. What was he hauling? *A.* Taking down pig iron, and if there was any wood fetch it back.

Q. What was your uncle's name? *A.* William Pittinger.

Q. Do you remember seeing at that time the—what did you seen when you went down there? *A.* I didn't see nothing more than the spring and the long warehouse stood there to put things in, trade that was fetched up the river.

Q. And what else? *A.* A wharf that was below the spring; a kind of temporary wharf.

Q. You know where that willow tree right above the bank of the river is? *A.* Yes, sir; I know where there are two there.

Q. And you know a willow tree there? *A.* Yes, sir.

Q. And where the fish shanty is? *A.* Yes, sir.

Q. And a willow tree back of the fish shanty? *A.* Yes, sir.

Q. Do you remember in those days coming down this road? *A.* I do.

Q. How was that road at that time? *A.* Where is the culvert?

Q. There (indicating). *A.* Came in on the east side of it; east end; about there, as near I can tell (indicating).

Q. How wide was the road? *A.* It was a very wide road.

Q. Here by the culvert, how was the road there? *A.* Well, it went around there by a building.

Q. About how wide was the road at that time, as near as you can tell? *A.* Well, I should think it was two rods anyhow, maybe more.

Q. How did it go then to the river? *A.* It went out at the end by the shanty.

Q. How close to the shanty did it go? *A.* About ten feet of where the shanty stands now, and went up towards the spring.

Q. Where was this wharf? *A.* I call it about eighty or ninety feet from the mouth of the spring run.

Q. What kind of a structure was it? *A.* Why, it was log, timber built up so as to slide off; have a little descent to the river.

Q. Where did this warehouse stand? *A.* It stood between a willow tree and the shanty there; I think about there (indicating); there was a road there between the spring; go in either way and turned around by the shanty.

Q. You say that was about 1832? *A.* The fall of 1832, and 1833 I was there in the Spring a little; along about May.

Q. Have you any knowledge of where that landing place extended; the area of it; know anything about the corners of it?

Mr. Strong—I think the witness should be asked to describe the appearance of the locality, and what there was to mark it.

The Court—He is asked the preliminary question whether he has any knowledge of the extent of it.

Q. (Question read.) *A.* Well, the upper corner I think was about—

By the Court.

Q. Do you know anything about it, or don't you? *A.* I know I see it there, and I should think the upper end of it was about forty feet, maybe forty-five feet, from the spring, and then extended down about forty feet.

Further Direct.

Q. Did you have an uncle living down there? *A.* I had.

Q. What was his name? *A.* Levi Linn.

Q. Do you remember when he lived there? *A.* I remember his living there, and he lived there about nine years ago, I think, but how long he was there I can't tell.

Q. What did he live in? *A.* A shanty.

Q. Do you remember what kind of shanty it was? *A.* It was nothing but a board shanty.

Q. Well, the interior?

The Court—What difference does that make?

Q. Where was that shanty situated? *A.* I think the upper end of it was about six feet back from this (indicating).

Q. Supposing that to be the shanty there, where was it situated as to that? *A.* Well, it was but very little difference, only it was a little further from it up stream; up towards the spring.

Q. How did you know he lived there eight or nine years ago? *A.* Well, I think it is nine years ago this winter since he died, and he lived there a few months before.

Q. Did you ever visit there? *A.* I did.

Q. When? *A.* About a year before he died, was the last I was there.

Not cross examined.

Solomon Daly, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. How old are you, Mr. Daly? *A.* Seventy years.

Q. How long have you lived in your present location? *A.* Well, over forty year.

Q. How far is that from this place? *A.* Oh, well, it ain't but half a mile.

Q. Did you know Andrew Lomasson? *A.* Yes, sir.

Q. He was the son of Thomas Lomasson? *A.* Yes.

Q. Did you know Thomas Lomasson? *A.* Oh, yes.

Q. Did you ever hear them speak about the one acre?

Mr. Strong—One moment; wait.

The Court—Who?

Mr. Roseberry—Every one of them; would not the declarations of Andew Lomasson be competent while he was occupying the land?

The Court—I think not; he wasn't one of the owners, and I don't think the tenant would have power to bind the grantee of the lessor by statements of the lines; of course what the owner stated is competent, provided he said it before the conveyance.

Q. Did you ever hear Andrew Lomasson say anything in the presence of his father about this line?

Mr. Strong—Now wait; what time do you refer to?

Q. Before the conveyance to the railroad? *A.* I can't say what time; when I was a boy I came with my father down there, and Mr. Lomasson and old Thomas Lomasson were there, and him and Andrew and my father were talking.

By the Court.

Q. How old were you then? *A.* 12 or 14 years old

By Mr. Strong.

Q. Who were talking? *A.* Old Mr. Tommy Lomasson, the son Andrew and my father.

Q. And when was that?

The Court—When the witness was about fourteen years old; that is fifty-six years ago.

A. They were talking, showing where the line was on that south side; came down past the barn; they were all talking there; I remember that.

Further Direct.

Q. Which one said it came down past the barn? *A.* Old Mr. Lomasson.

Q. Did he say how close it came to the barn?

Mr. Strong—Suppose we have just what he did say.

A. About fifteen feet he showed, I think; on the lower end towards the river it wasn't quite so far.

Q. There was a stable door there, wasn't there? *A.* Yes; the barn stood with gable end to the road.

Q. How near did it come to the stable door? *A.* Well, I think about twelve feet; somewheres there; I didn't measure it; I have often been in the barn.

Q. Was that barn the same barn that has been described here by the other witnesses? *A.* Yes, sir.

Cross Examination, by Mr. Strong.

Q. What barn was it? *A.* It was the barn of that farm right on the road as you come down.

Q. Who occupied the barn? *A.* Andrew Lomasson.

Q. It was on the Thomas Lomasson farm, was it? *A.* Yes, sir.

Q. And Andrew Lomasson was farming it at that time? *A.* Yes, sir.

Q. How did they come to be talking about this mat-

ter at all? *A.* Well, they were speaking of the acre that laid in there.

Q. Laid in where? *A.* Where the road comes down; an acre laid below the house; an old house stood there then.

Q. Who said that? *A.* Old Mr. Lomasson and Andrew Lomasson, telling my father about it; I never knew where the corners were or anything about that.

Q. Where were they at that time when they were talking? *A.* In the road close to the barn.

Q. How did they happen to be there? *A.* I don't know; I came down with my father for grain; something of that kind.

Q. And they at once began talking about this acre, eh? *A.* Well, yes.

Q. You don't know what led them to speak of it? *A.* I don't remember; no.

Q. Or who spoke of it first? *A.* No.

Q. What else did they say about it? *A.* They were showing my father where it came.

Q. Your father wasn't interested in the acre in any way, was he? *A.* No, sir; used to work there a good bit.

Q. Well, what did they show him? *A.* They were showing him how far that line came from the road and the barn, and laid it off in that way, down to the spring and so on.

Q. What did they want to show him how near it came to the barn for? *A.* Now, I can't tell you what the idea was.

Q. What did they say about how far to the north it extended? *A.* I don't remember.

Q. Now, what is it you remember, just the simple distance from the barn; is that all you can remember? *A.* Yes, sir.

Q. How does it come you remember that fact and don't remember anything else about it; didn't they tell you all the boundaries of that acre? *A.* Well, it

ran out so and so; I can't describe the distance; they didn't speak of the distance at that time; it was all levelled, it isn't as it is now, it came down level, and the road was wide; now it is all washed away.

Q. Did they say it extended all the way over to the yard fence on the north? *A.* Yes, sir; spoke of running back of a bake oven standing there.

Q. They spoke of that, did they? *A.* Of the bake oven and from there down to the spring.

Q. That it ran over to the yard fence and from there down to the spring.

Mr. Harris—He didn't say it ran over to the yard fence.

The Court—Back of the bake oven, he said.

A. I meant to the bake oven that they spoke of; it ran over to the bake oven that stood there.

Q. And from the bake oven it ran down to the spring? *A.* Yes; that is what they spoke of.

Q. From the bake oven it ran directly down to the spring?

The Court—Yes; he says so.

Q. And do you remember a willow tree that stood there in the lane? *A.* Yes, sir.

Q. Did it run down past that willow tree so as to strike the tree? *A.* Well, pretty close; yes, what they showed us.

Q. So from the bake oven it ran right down with the tree to the spring, is that so? *A.* I think so; yes.

Q. When did this conversation first come to your mind? *A.* Oh—well, I don't know; often thought about it, for I was often around there, and fishing around there and down to the barn.

Q. When did you first tell anybody about this conversation? *A.* I don't know as I have told anything particular about it.

Q. Until when? Haven't you told Mr. Roseberry lately about it? *A.* Mr. Roseberry talked to me about it; I told him I couldn't tell much about it.

Q. How lately did he talk to you about it? *A.* A few weeks ago.

Q. Is that the first time you spoke of it? *A.* Yes, sir.

Q. You made an affidavit for Mr. Roseberry along last fall, didn't you; near a year ago? *A.* I think I did.

Q. And you didn't say anything in that affidavit about this conversation, did you?

The Court—What difference does that make, Mr. Strong?

Mr. Strong—I may want to show it was a novel matter.

Q. You didn't tell Mr. Roseberry until about three weeks ago? *A.* I don't think Mr. Roseberry asked me those questions at all in that affidavit.

Re-Direct Examination.

Q. Did you hear Jesse Lomasson describe where the bake oven was? *A.* He didn't mention the bake oven.

Q. How far back of the bake oven was it?

The Court—Was what?

Mr. Roseberry—Where this line ran; this acre ran.

The Court—He didn't say it was back of the bake oven at all.

Mr. Harris—I think he did.

A. They used to describe the line to run through down below back of the bake oven.

Q. What do you mean by back of the bake oven? *A.* On the lower side; towards the river.

Q. Between the bake oven and the river? *A.* Well, the bake oven is here, and it ran back of it, and so down to the spring.

Q. Do you mean that the line was between the bake oven and Belvidere; or between the bake oven and where you were standing when you were talking? Was this line between the bake oven and Belvidere, or

between the bake oven and where you were standing? *A.* Well, it was a little the lower side of the bake oven, and from there down to the spring.

Q. What do you mean by the lower side of the bake oven? *A.* Towards the river.

Q. That is west? *A.* Yes, sir; there stood a bake oven there.

Joseph Wamsley, recalled for defendant.

Direct Examination, by Mr. Harris.

Q. Mr. Wamsley, you knew Mr. Martin Corielle in his lifetime, did you? *A.* Yes, sir.

Q. Were you familiar with his handwriting? *A.* Yes, sir; I used to know his handwriting.

Q. You have seen him write? *A.* I have seen him write; I have seen his writing after he had written it.

Q. State whether that is his writing, that signature? *A.* Well, now I can't see; I have forgotten my glasses; yes, sir; I take that to be his handwriting.

Q. What was his business? *A.* He was a civil engineer.

Q. Employed by the railroad company, the Belvidere-Delaware Railroad Company? *A.* Well, not recently; no, sir; I think he ran lines at one time for the old Camden and Amboy Railroad Company; civil engineer was his occupation.

Q. Haven't you often seen Mr. Corielle write his name? *A.* No, sir; not often.

Q. Sometimes? *A.* Sometimes.

Q. And that is his name? *A.* That is his name; I think that is his signature.

Q. In his handwriting? *A.* In his handwriting.

Not cross examined.

Agreement between William P. Robeson and John

Mr. Sherrerd and the Belvidere-Delaware Railroad Company, dated June 25th, 1851, is marked D 1, for identification.

William White, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. How old are you, Mr. White? *A.* 42.

Q. Where were you born? *A.* Oxford township.

Q. What was your father's name? *A.* Amzi B. White.

Q. And your grandfather's name? *A.* William White.

Q. And your great grandfather's name? *A.* Alexander White.

Q. Do you know whether the farm on which you lived—how long it has been in the White family?

Mr. Strong—One moment.

Mr. Roseberry—It was only to identify him, that is all; merely preliminary.

The Court—You seem to have identified him pretty well already.

Q. Do you remember seeing any deeds and title papers? *A.* Yes, sir.

Q. Where did you see them? *A.* Saw them in a box up in a bedroom, in a closet.

Q. In your house? *A.* Yes, sir.

Q. And who lived in that house before you? *A.* Why, Skaddin; he lived on the place.

Q. Where did your father live? *A.* He lived in that house.

Q. Before you? *A.* Yes, sir.

Q. On the same farm; the old stone house? *A.* Yes, sir.

Q. What kind of box was this? *A.* Why, it was a walnut box.

Q. And how long have you known those title deeds and papers in that box? *A.* Over thirty years.

Q. In your possession, and in your father's possession? *A.* Yes, sir.

Q. When did your father die? *A.* He died the twenty-ninth day of May, 1880.

Q. Do you remember taking out those title deeds and examining them, and giving them to anyone? *A.* I did; to my wife.

Q. Do you know what she did with them?

Mr. Strong—One moment.

Mr. Roseberry—We only want to show the connection of the title deeds; they will be offered later.

Q. Do you know what your wife did with them? *A.* She handed them over to you.

Q. Your wife's name is what? *A.* Alice M. White.

Q. Do you know how long ago that was? *A.* 1893.

Q. They were the deeds that were in that walnut box and which you have known over thirty years?

The Court—Those are the only deeds he has been talking about.

A. Yes, sir.

Q. Would you know any of those deeds if they were shown to you? *A.* Yes, sir.

Q. (Showing witness a paper.) Just look at that deed? *A.* That was in the box.

Q. You remember that deed as being in the box? *A.* Yes, sir.

Q. From John Penn and Richard Penn and Thomas Penn to Jacobus Vanetta? *A.* Yes, sir.

Q. Dated 1740; do you remember seeing also in the box, a deed from—

Mr. Strong—Ask him if he can identify the deed; that is the proper way, I suppose.

Q. (Showing witness another paper.) Just look at that deed; do you remember seeing that deed in the box? *A.* Yes, sir; wrapped up in the one you had out first.

Mr. Roseberry—That is Jacob Vanetta to Joannes Vanetta, dated the sixth day of June, 1741.

Q. (Showing witness another paper.) Just look at that paper and state if you saw that paper in the box also?

A. Yes, sir.

Mr. Roseberry—That is a deed for a warrant of land, 485 acres, to Jackson White.

Q. Just look at that map; do you remember seeing that map? *A.* Yes, sir.

Q. Was that also in this box? *A.* Yes, sir.

Mr. Strong—I suppose these ought to be marked for identification as we go along.

The Court—Yes.

The Witness--They were all in this box together.

Cross Examination, by Mr. Strong.

Q. When did you first see these papers? *A.* Why, I saw them when I was ten years old.

Q. In whose possession were they then? *A.* In my father's.

Q. William White? *A.* Amzi B. White.

Q. And were they in this box, or where were they? *A.* Yes, sir; in this box, as I said, in this closet.

Q. How did you happen to see the inside of the box; was it kept locked or not? *A.* No, sir; the lock was torn off.

Q. No lock to it? *A.* No lock.

Q. And did you used to go to the box yourself, or did you see your father have the papers out? *A.* I saw him.

Q. After that, when did you see them? *A.* After he died.

Q. And he died in? *A.* The twenty-ninth of May, 1880.

Q. And you had not seen them from the time you were ten years old until he died; is that so? *A.* Well, my wife saw them.

Q. But you did not? *A.* No, sir.

Q. After his death what did you have to do with them? *A.* Why, I took care of them.

Q. Were there any other papers besides those? *A.* No, sir.

Q. How many were there? *A.* There was four.

Q. Did you read them over? *A.* No, sir.

Q. Can you read? *A.* Yes, sir.

Q. And you gave these papers at that time to whom; yourself? *A.* Roseberry; my wife gave them to Roseberry.

Q. Who did you give them to? *A.* My wife.

Q. And when was that? *A.* That was in 1893.

Q. Did you get them out of the box in 1893? *A.* Yes, sir.

Q. And you gave them to your wife? *A.* Yes, sir.

Q. And what she did with them you only know from what she told you, I suppose? *A.* I was with her when she gave them to Mr. Roseberry.

Q. That is all.

By Mr. Roseberry.

Q. There were some other deeds, I think, were there not? *A.* Yes, sir.

By Mr. Strong.

Q. Didn't you tell me there weren't any more? *A.* No, sir.

Q. I understood you; I asked you if those were all— *A.* I said there were other papers in the box.

The deed from Penn to Jacobus Vanetta is marked D 2 for identification.

The deed from Jacobus Vanetta to Joannes Vanetta is marked D 3 for identification.

The warrant for 485 acres is marked D 4 for identification.

The map is marked D 5 for identification.

JohnMcMurtry, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. Where do you reside? *A.* In Washington, N. J.

Q. What is your business? *A.* Well, I am working at the organ business now; making organs.

Q. Where did you live in the year 1877? *A.* I lived in Belvidere.

Q. Were you acquainted with William Fisher when you lived in Belvidere? *A.* Yes, sir.

Q. Where did he live in the year 1877? *A.* He lived in Belvidere here; at his home here.

Q. Did he live anywhere else that year? *A.* Well, he lived a portion of the year down at the foot of Foul Rift; he had a house there and lived there part of the time.

Q. How near to Shippen Spring was that house? *A.* Well, it was close by; maybe not thirty yards; something thereabouts; maybe not so far; close by the spring.

Q. State whether you were down there while he was there. *A.* Yes, sir; I helped him build a house, or work on it, and used to go there once in a while after he had the house built.

Q. You helped him build the house, did you? *A.* Yes, sir.

Q. Who else helped him build it? *A.* Well, I don't really—my son, I think, helped us here; I don't know whether Uzal Fosher, a brother of William, he may have helped us once in awhile.

Q. Can you tell what time of the year he built the house there? *A.* It was in the spring; along in May, 1877.

Q. Can you tell what time in May you worked there? *A.* Well, somewhere along about the twentieth, twenty-fourth; somewheres along there; worked there maybe a week off and on; somewheres along there.

Q. And after it was completed you say you were

there at the house? *A.* Yes, sir; used to go down there once in a while; used to go fishing down there, and stopped with him; kind of made it headquarters there.

Q. How near the public road was this house? *A.* Well, it was nearly opposite; maybe a little—nearly opposite the public road that comes down through the culvert; where it comes down to the culvert, straight towards the river; it was nearly opposite; being some time ago, I don't recollect exactly.

Q. That road turns there near that point, does it not? *A.* Yes; this house was built; it was below where the road turns to go to Belvidere.

Q. If that road, instead of turning, had run down to the river, where would it have gone, with reference to this house? *A.* Well, it would have come very near the house; maybe between the house and spring, somewhere there; might have left the house a little ways.

Q. Yes? *A.* Below, down the river from the spring; left the house down the river from the road, if it came straight through.

Q. Down the river is south, isn't it, there? *A.* Well, south.

Q. Have you been down to this place lately? *A.* Yes, sir; I was down there a few days ago.

Q. Did you notice a small building on that land, near the spring? *A.* I noticed a small building there; yes, sir.

Q. How did this house of Mr. Fisher's stand, with reference to the small building that is there now? *A.* My opinion is that the Fisher house stood up nearer the spring.

Q. How do you fix the time so accurately? *A.* Well, I found a memorandum book where the work was charged at that time.

Q. Work charged to whom? *A.* Charged to William Fisher.

Q. On this house? *A.* Yes, sir.

Q. State whether in 1877 there was any fence between Mr. Fisher's house and the public road? *A.* Well, I think there was a sort of dilapidated fence from the road up towards Belvidere, it strikes me, and I think there was also a fence on the lower side of the road and down the river to fence in a piece of ground there below the public road; and I think at that time the fence was not so good; but there was a fence right along the public road which comes from Belvidere and turns up through the culvert; I think there was a fence there.

Q. On which side of the public road? On the side next the railroad.

Q. But on the lower side? *A.* No fence along there, I don't think.

Q. No fence along the lower side of that road? *A.* No, sir; I think not.

Cross Examination, by Mr. Strong.

Q. There was no fence anywhere on the lower side of the road, was there, at that time? *A.* Not between the road and the river; I don't think there was any fence at that time.

Q. No fence around the house, or anything of that kind? *A.* No, sir; it was a place there rather common—no fence around it.

Hugh H. Fisher, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. Where do you live? *A.* Phillipsburg.

Q. What is your business? *A.* Carpenter.

Q. Where did you live in 1876 and 1877? *A.* Belvidere.

Q. What was your business then? *A.* Keeping hotel.

Q. What hotel? *A.* Belvidere House.

Q. Were you a brother of William Fisher? *A.* Yes, sir.

Q. Do you remember his having a house near the Shippen Spring? *A.* I do.

Q. State whether you were there or not. *A.* I was there on several different occasions.

Q. When did he die? *A.* I think it was in 1884 or 1885.

Q. Were you there when his house was built? *A.* I was there and helped him one day on to it.

Q. Were you there after it was built? *A.* Yes, sir.

Q. How long did he remain there? *A.* He was there two summers; the first summer pretty late in the fall.

Q. Do you know how he came to build his house on that land? *A.* Yes, sir.

Q. State.

Mr. Strong—One moment; I don't know whether that is important, or whether it is competent.

The Court—I don't know what it is.

By the Court.

Q. How do you know? *A.* I know from the authority he got to put it there, and where he got the authority.

By Mr. Strong.

Q. From what your brother told you? *A.* No, sir; I know from the authority he got.

By the Court.

Q. Were you present when he got the authority? *A.* I was, sir.

The Court—Well, let us hear what it is.

Further Direct.

Q. State how he come to locate his house there. *A.* Colonel James M. Robeson gave him the privilege; we used to call him Robison; they call him Robeson now; gave him the privilege in my presence.

The Court—As I understand, Colonel Robeson gave the witness's brother permission to put a house on the Robeson acre.

Q. How was this house situated with reference to the public road which comes down under the culvert there? *A.* Well, it would be nearly in a straight line if the road came straight on through the lot, it might come on this north side of it and miss the house; that is about all.

Q. After the house was built do you remember any conversation with Colonel Robeson concerning it? *A.* Yes; I heard Colonel—I don't know as it was after or not, but the time he gave him permission he charged him very particularly that he should put the house there; his intention was keeping it there for the accommodation of fishermen that came there, and he gave him permission particularly if he would keep a respectable place there and not make a nuisance out of it.

Q. You knew Judge Robeson in his lifetime? *A.* Yes, sir; I did.

Q. And that Colonel James M. Robeson was a relative of his? *A.* Yes, sir.

Q. And do you know whether he was in charge of his estate? *A.* I don't know it any more than what I understood and heard.

Cross Examination, by Mr. Strong.

Q. Do you know exactly where that house stood? *A.* No, sir; I don't.

Q. And you don't pretend to locate it exactly? *A.* No, sir; I couldn't do that.

Q. You think it was somewhere nearly opposite where the road comes down from the culvert? *A.* As near as I can tell.

Q. But whether it was twenty or thirty feet one way or the other, you could not? *A.* I could tell nearer than that.

Q. How near could you fix it? *A.* I think I could locate it within five, six or seven feet; something like that; I don't think that road would have missed it more than five or six feet, if it come down in a straight line through the culvert to the river.

Q. The house would be on the north side of it about five or six feet? *A.* On the southern side of it.

Q. Are you sure about that? *A.* Yes, sir.

Q. Did you ever take the range of the house to see where it would come with the road? *A.* If I hadn't I wouldn't know anything about it; certainly I have taken the range of it.

Q. To see where it would strike the house? *A.* Not as I know of particularly in that regard; just an impression in my mind.

Q. There is nothing there to show that old house now, is there? *A.* No; not exactly where that stood; I know this little shanty that stands there now, stands down quite a piece below where the other one stood.

Q. The house stands further south than the other one? *A.* Yes, sir.

Q. Quite a piece you say? *A.* Quite a piece.

Q. How far to the south does the house that stands there now, how far to the south is that from where the other house stood? *A.* I should think that stood eight or ten feet from where the other did.

Q. How large a house was it your brother had? *A.* Well, I don't know as I can tell you the dimensions; it was built out of old lumber and built to suit the lumber.

Q. A small shanty, wasn't it? *A.* Well, probably eighteen or twenty feet front, twelve feet in depth, one story high.

By the Court.

Q. How near to the river did it stand? *A.* It was within, I should think, fifty or sixty feet, maybe; something like that.

Further Cross Examination.

Q. How near did it stand to the side of the road? *A.* Well, I should judge it was thirty or forty yards off from that road—no, it wasn't that far; I would say seventy-five or eighty feet from the road.

Q. He had that as a kind of headquarters for fishing people, eh? *A.* Yes, sir; entertain them there.

Re-Direct Examination.

Q. Did he keep boats there? *A.* Yes, sir.

Q. And where did he keep the boats? *A.* Kept them there up in that spring; that place there.

John H. Dahlke, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. You are a member of the Bar, residing in this town? *A.* Yes, sir.

Q. And since the death of Colonel James M. Robeson, you have been the agent for the Robeson estate, have you not? *A.* Yes, sir.

Q. And you were with Colonel Robeson prior to his death, in the office, were you not? *A.* I was.

Q. For how long? *A.* A little above three years.

Q. And state, if you know, what his relations were to the estate of William P. Robeson and Mrs. Anna Maxwell Robeson? *A.* Colonel Robeson was the agent of the estate of William P. Robeson, and also agent of Anna M. Robeson, while she was living.

Q. She was Judge Robeson's widow? *A.* Yes, sir.

Q. And they had property jointly in various parts of the town and county? *A.* Yes, sir.

Q. Have you in your possession Colonel Robeson's account book? *A.* I have.

Q. Of the estate? *A.* I have.

Q. When did he begin to act as agent? *A.* In December, 1864.

By Mr. Strong.

Q. One moment; do you speak of your own knowledge, or how? *A.* As to that part, only from the account book and from the—

Mr. Strong—I move that that be stricken out.

The Court—The account book will show that; is it important?

Mr. Roseberry—He was going to add something to that.

By the Court.

Q. What? *A.* The litigation that took place between the estate of William P. Robeson and the estate of Colonel Robeson, including those accounts, which suit I tried in the Court of Chancery.

Further Direct.

Q. Pretty thoroughly acquainted with it, weren't you? *A.* Yes, sir.

Q. Do you remember a deed being made by George M. Robeson, executor of William P. Robeson, and George M. Robeson, executor of Anna Maxwell Robeson, to William O'Neill? *A.* I do.

Q. To whom was the consideration for those deeds paid? *A.* To me.

Q. In what capacity was it paid you? *A.* As the agent of George M. Robeson, who was the executor of the estate of William P. Robeson and executor of the estate of Anna M. Robeson.

Q. And how much was paid you on each? *A.* $37.50, making $75 for the two.

Q. And the lands conveyed were what is known as the Robeson acre or Foul Rift? *A.* The Robeson acre, better known as the old landing place.

Mr. Strong—The description says what it is.

Mr. Harris—Yes, sir; these are certified copies of those deeds, and may be marked for identification.

Said deeds marked D 6 and D 7 for identification.

Q. At that time did you pass any papers to the grantee? *A.* I did.

Q. Do you remember what they were? *A.* Well, I remember specially one deed that was made by, I think, Joannes Vanetta to Jonathan Robeson.

Q. (Showing witness a paper.) Is that the deed? *A.* Yes; that is the deed; that is the one I passed over to him.

Q. From whom did you receive that deed? *A.* That deed I either received from Gen. Robeson himself, or I took it from his office in Trenton, at the time when I was examining his papers there, with refence to the real estate in Warren county, at which time I brought away a bundle of papers, and I think that deed was among them.

Q. And the General Robeson you speak of is George M. Robeson? *A.* Yes, sir.

Q. And what relation was he to Judge William P.

Robeson? *A.* He was a son of Judge William P. Robeson.

Q. And of Anna Maxwell Robeson? *A.* And of Anna Maxwell Robeson.

Said paper marked D 8 for identification.

Q. Are you acquainted with the lands of William P. Robeson and John M. Sherrod; owned separately by them, or together, as tenants in common, lying between the lands formerly of William White and John Huff, Jr., in Oxford township? *A.* Generally.

Q. How far do they extend along the river Delaware? *A.* I should think for about a mile and three-quarters, and it is known as the Riftan property.

Q. And do you know generally the location of the Belvidere-Delaware Railroad across that land? *A.* Yes, sir.

Q. And how does that railroad affect those lands, as to separating them?

Mr. Strong—One moment.

The Court—What light does that throw on this case, Mr. Harris?

Mr. Harris—Well, sir, I ask him this now because he is on the stand, and I suppose I have to ask him everything that is necessary at this time.

The Court—Why is that necessary; what has it to do with this case? This is some other land; it does not affect the *locus in quo* at all, does it?

Mr. Harris—I think it does, sir; we propose to offer a certain agreement of the Belvidere-Delaware Railroad Company and Messrs. Robeson and Sherrod, in which certain things were agreed to be done with reference to these lands; improving all of them—all their lands that were within the terms of that agreement; we now propose to show by this witness, that none of those things were done; that agreement will show the permissive entry on Robeson's lands, so far as the lands crossed by this railroad are concerned; it is to negative the idea of adverse possession.

The Court--They do not claim to hold under adverse possession; they claim to hold under deed from Thomas Lomasson.

Mr. Harris—We propose to show they did claim to hold this very land adversely in another court.

The Court—You may show that.

Mr. Harris—Then this testimony is germain.

The Court—No; it does not seem to be material at all; I cannot see that it has any relevancy as yet, and if it does you may recall the witness.

Mr. Harris—It was simply a single question, whether there were any openings or crossings on any of those lines between the land of White and the land of Huff.

The Court—You may ask him that.

The Witness—You mean crossings over the railroad?

Mr. Harris—Yes.

The Court—Over the railroad?

Mr. Roseberry—Over or under.

By the Court.

Q. Well, are there? *A.* There is none except the public road crossing; that is on the line of lands between McMurtry and Mackey, and a crossing over the railroad; I don't know who owns the land now; Cypher, I think.

Q. And at the culvert near the Shippen Spring? *A.* And the culvert near the Shippen Spring where it goes under the railroad.

Q. You don't know whether that is on the Robeson property or not, do you? *A.* No, sir; I don't.

Further Direct.

Q. Is there any crossing at a line of a lane lying between the land of Abram McMurtry, Jr., and John Huff, Jr.? *A.* The one that I have mentioned, and

there is one near the old site of the Rifton Mill as it is known, where the public road crosses; that makes three crossings.

By the Court.

Q. That does not answer the question; he is asking about a specific locality, where there is a crossing there at a line or lane formerly between the lands of McMurtry and Huff, Jr.? *A.* No, sir; not that I know of.

Q. And the only crossings you know of are these three public road crossings? *A.* Are these three public road crossings?

Cross Examination, by Mr. Strong.

Q. You said there was a crossing somewhere on the line between McMurtry and someone; who was that? *A.* McMurtry and lands formerly of Huff, now Mackey.

Q. There is a crossing there? *A.* Yes, sir; that is a public road.

Q. When did James M. Robeson die? *A.* He died in 1885.

Q. That is all.

Mr. Strong—I think perhaps I ought to say, inasmuch as your Honor intimated a moment ago, your understanding that we did not claim by adverse possession, I ought to say, I suppose, that we do claim as well by adverse possession as under the title deed. We claim we have had the possession continuously of that property ever since that deed was given, and we also claim under the possession prior to that of Thomas Lomasson.

The Court—Ever since that deed was given?

Mr. Strong—Ever since the deed from Lomasson to the Belvidere-Delaware Company in 1853. And we

also claim we have held possession continuously from that time, and annex our possession to the previous possession of Thomas Lomasson down to that time.

Mr. Harris—I would like to ask Hugh H. Fisher another question, that I did not know anything about when he was on the stand.

Hugh H. Fisher, recalled for the defendant.

Direct Examination, by Mr. Harris.

Q. Mr. Fisher, state whether you ever saw Col. Robeson at this house of your brother's, or not. *A.* I did, sir.

Q. Do you remember when it was? *A.* It was the same summer that he went down there; about the time he got the house finished.

Q. Was there anything occured at that time that you recall? *A.* General conversation, talking.

Q. With reference to any of the property there?

Mr. Strong—One moment. I submit that declarations of that kind are not competent against other persons who were not then present.

The Court—I don't know about that; I don't know what the declaration is; it may be competent; let us hear what it was.

A. I don't know what you have reference to.

Q. Well, you remember Colonel Robeson being there? *A.* He was there, yes, sir; and I was there at the time.

Q. Do you recall anything done in connection with the spring run? *A.* That was the time that he made the remark to Will, particularly--

Mr. Strong—One moment; wait.

By the Court.

Q. Do you remember anything being done about it?

A. I do; I recollect now what he said he would like to have done, and what was done afterwards.

Further Direct.

Q. Well, state that.

Mr. Strong—If the Court please, I do not think it appears that he was sufficiently the agent of the Robeson estate to make any declaration; nor if he did make declarations, or give directions, I do not think they would be of any effect as against us.

The Court—I think it is competent to show an act of ownership over the property.

Q. State what it was, Mr. Fisher. *A.* We called my brother's attention to it, how nice it would be if he would make a dam in front of that spring and sink a box there to put his fish in and keep them alive, sink a dam below the spring and back the water up high enough to cover the box, and he did that; I helped him do it.

Q. Your brother did so? *A.* Yes, sir.

Q. You said that was the first year? *A.* That was right after my brother went there.

Not cross examined.

Birge Pierson, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. Where do you reside? *A.* Easton, Pennsylvania.

Q. What is your occupation? *A.* Surveyor and civil engineer.

Q. What experience have you had in that business? *A.* I have been at it for about forty years.

Q. In what locality? *A.* Northampton county, principally, Pennsylvania.

Q. What kind of work have you done? *A.* Both surveying and civil engineering.

Q. Have you been on the lands near the foot of Foul Rift near the Shippen Spring? *A.* Yes, sir.

Q. At whose request did you go there? *A.* At a gentleman's ; I forget his name.

Q. Mr. Breckenridge ? *A.* Yes, sir.

Q. Have you examined the map of Mr. Walker and the Robeson acre and the surrounding objects and lines there ? *A.* Yes, sir.

Q. Did you notice the beginning point of the said acre as fixed by him on the map? *A.* Yes, sir.

Q. And at the place where the said beginning is actually on the ground ? *A.* Yes, sir.

A. State whether or not—you were furnished with a description of those lands? *A.* Yes, sir.

Q. And have read the description in the deed from Joannes Vannetta to Jonathan Robeson ?

A. Yes, sir.

Q. State whether or not in your judgment the said beginning point is or is not correctly located? *A.* In my judgment as near as it possibly can be located.

Q. Just give your reasons for that judgment. *A.* As far as the point is concerned relative to the distance from the river, it is distant from the river on a rise of water in the Delaware on the twenty-sixth of last month of one foot, will reach that point, and my experience of the Delaware is that in the month of May, when the original survey was made, that that was more probably the condition of the river at that time ; so far as the point is concerned relative to north and the south, it is located in the vent of the Shippen Springs, as stated in the deed ; and further, there was a draft of survey made of a reserve by the Beans of some one thousand two hundred acres of land, showing the line front of this lot given to me, and applying that draft up and down the Delaware from this point for a distance of about a mile it corresponds also with

that point; that is the way I determined that point in my opinion.

Q. As to the first course of the description? *A.* Of the Robeson deed?

Q. Of the Robeson acre. *A.* Corresponds, allowing the variation as near as we can get it, with that draft of 1814, and also with the general course of the river, on the 26th of last month.

Q. What have you to say as to the third line? *A.* The third line is located parallel with the river, as well as with the first line.

Q. And the second line? *A.* The second line is located at a right angle with the first.

Q. And also with the third line? *A.* Yes, sir.

Q. And its distance correctly given on Mr. Walker's map? *A.* According to that deed?

Q. Yes, sir. *A.* Yes, sir.

Q. What have you to say as to the fourth line? *A.* The fourth line is—there is no line given in that deed; it states no line of any kind, simply from the third point to the river, passing so as to include half of the spring and half of the run, I think is the language used, and located so as to contain one acre; there is no expression of any line in the deed at all on the fourth line, excepting as from the spring to the river.

Q. Did you notice the course of the road there? *A.* Which one?

Q. The road leading down under the culvert? *A.* Yes, sir.

Q. What relation does that bear to the second line of the lot? *A.* It is parallel, within about three-fourths of a degree, I think three-fourths, or half a degree; I don't just remember.

By the Court.

Q. You mean as it is laid out on the map? *A.* Yes, sir; on this map here.

Further Direct.

Q. State whether you examined some stakes that were shown you, and took from them the courses up and down the river. *A.* I did.

Q. Using those stakes, where would a line run both north and south? *A.* Commencing at the spring and going southward—

Mr. Strong—What stakes are they?

Mr. Harris—They are stakes described by Mr. Walker as having been fixed there by Mr. Weir.

The Witness—They were said to be Mr. Weir's stakes to me; that is the only explanation.

By Mr. Strong.

Q. Where were they located? *A.* The most northerly was located perhaps twelve or fifteen feet above the mouth of the vent of the spring, up the river, and down to the edge of the river on that day, or very nearly the edge of the water; the water was not quite to the stake, I think, and the other one was in a southerly direction; a line drawn through those two points would leave the river, in a very short time, to the right.

Further Direct.

Q. Did you notice to what objects they would go if produced? *A.* I don't remember any special object; I only know it deflects from the river.

Q. Both north and south? *A.* Well, north there is an angle anyhow, that is an angle in the survey and upon a turn in the river, and could not be compared, perhaps, with any consistency as to the north, but to the south it will deflect from the river; leave the river to the right.

Cross Examination, by Mr. Strong.

Q. Now, if you produce the line of Mr. Walker's survey as given there along the river, produce that to the south, it will soon run into the stream, won't it? *A.* No, sir.

Q. It will not? *A.* No, sir.

Q. It would appear so on the map; perhaps I am wrong about that? *A.* I am only testifying as to facts; I haven't tried the map in that respect.

———

William Wagner, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. I want to read you a description of property, Mr. Wagner, and see if you can identify it: "Situate in the township of Oxford, county of Warren and State of New Jersey, and is bounded on the east by lands of George Lomasson, on the south by lands of Thomas White, and on the north by the property of Isaac ——— and Andrew J. Roseberry, and on the west by the Delaware river, containing about sixty-two acres of land, more or less." Do you know that property? *A.* Yes, sir.

Q. Whose property is it? *A.* Joseph Roseberry.

Q. Did you live on that property? *A.* Yes, sir.

Q. When?

The Court—What has that property to do with this case; we are not trying title to property you own?

Mr. Roseberry—I have got title to that land under that culvert by deed and I have used it.

The Court—Who?

Mr. Roseberry—Why, my tenants have.

The Court—What of that?

Mr. Roseberry—I have just as much right there as the railroad company, and I have a right to show it.

The Court—Not at all; you may be co-tenant with the railroad company.

Mr. Roseberry—In an action on ejectment, if you can show title to property out of the plaintiff, we have a right to show that.

The Court—Are you going to show exclusive title to yourself?

Mr. Roseberry—I am going to show I have title to land under that culvert, and that my tenants drove their cattle down there every day to water, back and forth.

The Court—And are you going to show that that is exclusive title to possession?

Mr. Roseberry—I am going to show that the railroad company's was not exclusive; if they show adverse possession they must show exclusive.

The Court—Oh, no; it does not mean that one man must hold exclusively; if you and I get possession of property and hold it exclusively against the rest of the world, that is adverse possession, unless you propose to show that the railroad company did not have possession of it.

Mr. Roseberry—They did not have possession under there in the roadway; I will show that.

The Court—You mean you are going to show that you used the road.

Mr. Roseberry—Yes, sir; and have title to it.

The Court—You need not waste time on that; I shall assume you and everybody else in that neighborhood used that road.

Mr. Roseberry—Well, I offer to show that I had title by deed to the land in the roadway.

The Court—You may show that; you may show that you had title by deed to that roadway.

Mr. Roseberry—And used it without regard to its being a public road; for every purpose that it could be used.

The Court—You may show the character of the

user; that is the general expression; you mean you used it for the purpose of passing to and fro?

Mr. Roseberry—Yes, sir.

The Court—That is using it for a public road; did you make any different use of it, from other members of the public?

Mr. Roseberry—I used it a great deal more than other members of the public; I used it continuously going from one part of the farm to the other.

The Court—That does not make any difference; that don't show any adverse enjoyment of the public road.

Mr. Roseberry—Then I offer to show that the railroad company has not had adverse possession in the public road.

The Court—They have not claimed to yet, except by statement of counsel; their evidence now is, that they have possession under deed of Thomas Lomasson; that is all.

Mr. Rosebery—I offer to show what I have there.

The Court—I say I will permit you to show that you have a deed covering this property.

Q. On whose farm did you live; did you live on this farm described in this deed? *A.* Yes, sir.

Q. When? *A.* Eight years ago.

Q. How long did you live there? *A.* One year.

Q. You traveled through this culvert in going up and down to the river? *A.* Yes, sir.

Q. How often?

The Court—That is immaterial; you need not answer that.

Q. Were you a tenant under me? *A.* Yes, sir.

Not cross examined.

Jeremiah Green, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside? *A.* Oxford township.

Q. You heard the description of this deed read? *A.* Yes, sir.

Q. Did you occupy that farm? *A.* Yes, sir.

Q. How? *A.* Rented it.

Q. What year? *A.* 1895.

Q. The lands—how were they situated as to the railroad? *A.* Well, some laid on the lower side and some on the upper side.

Mr. Roseberry—I want to make the same offer to show the use of this public highway by Mr. Green during that year.

The Court—Ask your question.

Q. How much did you—how did you use that culvert, Mr. Green, during the time you lived on the farm? *A.* I farmed under there; drove the stock to water.

By the Court.

Q. You do not mean you farmed the public road under the culvert? *A.* Oh, no.

Further Direct.

Q. How often did you drive your stock through there under the culvert?

The Court—That is immaterial.

Defendant's counsel prays exception and the same granted.

Cross Examination, by Mr. Strong.

Q. This farm you occupied—how long did you occupy it. *A.* One year.

Q. When was that? *A.* 1895.

Q. Did that include the Shippen Spring?

The Court—He has not said anything about where

it was, or what it included; it may have been a mile away from this place.

Re-Direct Examination.

Q. How near was this farm to the Shippen Spring? *A.* The farm?

Q. Yes; do you know where the Shippen Spring is? *A.* The spring you mean down below the railroad; down there?

Q. Yes. *A.* Oh, I don't know just how far it was; it is through the railroad; through the culvert.

Q. Do you know who formerly used to own that property there? *A.* No, sir; I don't.

William Wolf, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside, Mr. Wolf? *A.* Foul Rift.

Q. Do you know what is known as Shippen Spring? *A.* Yes, sir.

Q. How far do you live from that? *A.* Probably a couple of hundred yards.

Q. And you know the crossing? *A.* Yes, sir.

Q. How do you occupy that farm where you live; it is the farm—did you hear the description read to Mr. Wagner? *A.* Yes, sir.

Q. Is that the same farm? *A.* Yes, sir.

Q. How long have you occupied it? *A.* Why, I was there two years, and went back again this spring; that is, three years ago I was there two years.

Q. And you are living there now? *A.* Yes, sir.

Q. How do you water your cattle and stock? *A.* At the river.

Q. How do you get them to the river? *A.* Take them through under the culvert.

Q. What culvert? *A.* Below the house there, the Pennsylvania Railroad.

Q. Is that the place where the dotted lines are laid? *A.* Yes, sir.

Q. How long have you driven them through there?

The Court—That does not make any difference.

Q. How often are they driven through there?

The Court—Nor that; it is immaterial.

Defendant's counsel prayed exception and same granted.

Q. State whether or not that is the only way of going to the river at that point?

The Court—That is immaterial; you need not answer that.

Q. You moved on the farm about the first of April? *A.* Yes, sir.

Q. The spring run next to the road; has that been changed any since you moved there?

The Court—You mean the run that runs out of the spring into the river?

Mr. Roseberry—Yes, sir; the spring or spring run, whatever you may call it.

The Court—Part of the northerly line of the Robeson acre?

Mr. Roseberry—Yes, sir.

A. Not that I know of.

Q. Do you know anything about its being used? *A.* On the side next to the fish shanty it is used.

Q. No; up the next road? *A.* I couldn't say about that; next the road.

Q. Where does the path lead down to the water? *A.* There is a path on each side, one coming in from the fish shanty and one coming in from the opposite side.

Q. One from the south and one from the north? *A.* Yes, sir.

Q. How far is that from where the springs come out, the two springs next the road? *A.* Well, it is probably

six feet from one spring; then the other one up under the tree is probably twelve or thirteen.

Q. Is there any path comes down next the road to get to those springs? *A.* No, sir.

Q. None whatever? *A.* No, sir; you meant right straight down?

Q. Yes, right down to the head of the spring. Did you ever see that bank occupied by anyone; used for anything? *A.* Fishing.

Q. And how was that bank worn as compared with the bank up here before it was torn out this last spring by the surface water? *A.* How is it now?

Q. No, not now; how was it before it was torn out by the surface water last spring; how was this bank compared with this bank up here? *A.* It sloped in more.

Q. Did it slope more than this did up here? *A.* Yes, sir; I think it did a little.

Q. Here is where they pulled in their nets, did they not; down along here? *A.* Yes, sir.

Not cross examined.

Recess to 7.30 P. M.

7.30 P. M., continued pursuant to adjournment.

Jabez D. Cyphers, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. How old are you, Mr. Cyphers? *A.* Sixty-six.

Q. Where do you live? *A.* Oxford township.

Q. How far from this Shippen Spring? *A.* A quarter of a mile.

Q. How long have you lived there? *A.* All my life.

Q. Did you know the barn on the Lomasson property; the old barn? *A.* Yes, sir; well acquainted with it.

Q. About where was it situated? *A.* From the culvert it stood about thirty feet below the railroad.

Q. West from the railroad, and about how far from the public road? *A.* I should judge it stood about fourteen or fifteen feet.

Q. On which side of the public road? *A.* On the lower side; on the west side, southwest side.

Q. From what time did you first know that barn? *A.* Well, I knowed that ever since I was fifty-five; I am well acquainted with it; since I am fifty-five years old; I am well acquainted with it fifty-five years.

Q. When was it torn away? *A.* That is more than I can tell; it was torn away I think about the time the railroad was built; shortly afterwards.

Q. Do you know; did you ever fish down there? *A.* Yes, sir.

Q. How far can you remember back fishing on this land? *A.* How far up the river?

Q. No; how far back; how long ago? *A.* Oh, I can recollect thirty-five years.

Q. Fishing down there? *A.* Yes, sir.

Q. Did you fish over here? *A.* Yes, sir.

Q. Where did they fish? *A.* On the bar principally, right below the wing there.

Q. Did they fish above? *A.* Used to occasionally; used to fish for Mr. White.

Q. Where did they draw out? *A.* Right above, or below.

Q. Above the bar? *A.* Above the spring; always pulled out above the spring.

Q. I mean above the big stone heap; north of the big stone heap. *A.* We used to pull out below the bar when we fished.

Q. Below the stone heap? *A.* Yes, sir.

Q. Where did you see them fish above the barn? *A.* We used to start out sometimes clear up to the spring's mouth, that is the outlet of the spring; we called it the spring's mouth, the outlet.

Q. Did you ever see them pull out above the bar on the upper fishery? *A.* Yes, sir; I seen the upper fishery pull out across the spring there, pull out below the spring; they would oftentimes pull out in there for a change; it was used as a fishery.

Q. How long ago do you remember that? *A.* Oh, twenty-five years ago.

Q. Do you remember ever seeing William P. Robeson down there? *A.* Oh, yes; often saw him there; he used to have a share there.

Q. What share was that? *A.* That was above the spring; he used to have a share with Billy White, John Mackey, Uncle Phillip Murray and Mr. Loder; there was sixteen of them had shares there.

Q. Did they pull in below the spring? *A.* Sometimes they would; not very often.

Q. How is the road under the culvert as compared with it before the railroad was built? *A.* Oh, the road always ran there; I don't think it has ever been changed; had never been changed in my time as I can see.

Q. How long do you recollect that road being there —that public road? *A.* Oh, I recollect it fifty-five years ago.

Q. How was it worked? *A.* It was worked by the township.

Q. There where the culvert is? *A.* Yes, sir; I helped work it.

Q. How wide was the public road there by the culvert? *A.* I should judge it was about eighty feet in them days.

Not cross examined.

Richard B. Wilson, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. Where do you reside? *A.* Belvidere.

Q. Were you related to John P. B. Maxwell? *A.* Yes, sir.

Q. What relation were you? *A.* He was a first cousin to my mother.

Q. Do you know when he died? *A.* I don't know exactly; a number of years ago; but I can't tell exactly the date of his death.

Q. Do you know whether he was— *A.* But I think somewheres about 1844 or 1845, I think, but I am not certain.

Q. Do you know whether he left any children him surviving? *A.* He did not, to the best of my knowledge.

Q. Do you know whether his wife died previous to him? *A.* Yes, sir; he was only married a month or two to his wife, when she died.

Q. What relations did he leave surviving him? *A.* He left one sister, Mrs. Anna Robeson, formerly Anna Maxwell.

Q. Do you know where he lived? *A.* Yes, sir; he lived with Mr. William P. Robeson and his sister.

Q. And when did Mrs. Robeson die? *A.* I think about 1886; I am not certain about that; I was to her funeral here, I know; I think it was about 1886.

Q. Are you familiar with the book written by Mr. Henry G. Maxwell, called the History of the Maxwell Family?

A. Yes, sir; I read it all through.

Q. These facts concerned Mr. John P. B. Maxwell are contained in that book? *A.* Yes, sir; the whole Maxwell family.

Q. And when did Mr. William P. Robeson die? *A.* I don't know exactly; I can't remember the dates exactly when he did die; it was in the sixties something, but I don't know exactly where.

Q. He died before his wife? *A.* Oh, yes, a number of years before his wife.

Cross Examination, by Mr. Strong.

Q. Did I understand you that Mr. Maxwell had only one sister? *A.* That is all, sir.

Q. And no brothers? *A.* No brothers; they were the children of George Maxwell, who had but two children.

By Mr. Roseberry.

Q. Where did he live? *A.* Lived in Flemington, I believe, sir.

Jabez D. Cyphers, recalled for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Did you know Levi Linn? *A.* Yes, sir.

Q. Did you know of his living near the Shippen Spring? *A.* He used to live in the building that Mr. Fisher put up there, a year or two.

Q. How long was it after Mr. Fisher lived in it; do you mean William Fisher? *A.* He came to it right away when Fisher went away.

Q. You mean William Fisher? *A.* Yes, sir.

Not cross examined.

George Lomasson, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. How old are you, Mr. Lomasson? *A.* I am in my 64th year.

Q. And the son of whom? *A.* Andrew Lomasson.

Q. Do you remember Levi Linn? *A.* I do; yes sir.

Q. Do you remember having a sale for him? *A.* Yes, sir.

Q. Where did he live when you had that sale? *A.* Lived in a shanty down by the river bank.

Q. How close was it to the Shippen Spring? *A.* Oh, I should think it was 150 to 200 feet away from the spring.

Q. Did you know when William Fisher lived down there? *A.* I do not.

Q. When did you have that sale for him? *A.* I can't remember dates, but my impression is it was in 1886.

Q. How long have you known the Delaware river, Mr. Lomasson? *A.* Ever since I was old enough to remember anything.

Q. How is the river on the Pennsylvania side now as compared with what it was when you first knew it?

Mr. Strong--The Pennsylvania side?

Mr. Roseberry—Yes.

The Court—What difference does that make, Mr. Roseberry?

Mr. Roseberry—The banks over there has been washed away considerably.

A. It was washed away considerably; the river is wider from bank to bank than it was when I first knew it.

Q. How was the river on this side when it was up? *A.* When it was high or low?

Q. High. *A.* When the river was high I have known it to cover up the road there clear up to the fence above the spring.

Q. And how did the river get there, the waters of the river? *A.* Why, it appeared to be a—the current appeared to work back, gave a swing up back.

Q. Beyond the spring north? *A.* Yes, sir; beyond the spring north.

Not cross examined.

Julius Griel, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you live, Mr. Griel? *A.* Lomasson's Glen.

Q. Do you know this spring we have been speaking of? *A.* Yes, sir.

Q. Did you clean it out any time? *A.* Yes, sir.

Q. When was it? *A.* This spring; I can't remember the day and the month; it was this spring; I guess May.

Q. What did you do with the dirt you took out?

A. I throwed it on the side of the bank.

Q. On which side? *A.* Why, either side, right and left.

Q. Did you throw any under the tree that is bent over? *A.* Some.

Cross Examination, by Mr. Strong.

Q. When did you do that? *A.* This spring.

Q. Who told you to do that? *A.* Mr. Roseberry.

Q. You say you put some dirt under the tree? *A.* Yes, sir; right out on the side, and I throwed it right there; this side.

Q. How much dirt did you take out? *A.* Oh, I took a good bit out.

Q. Well, how much? *A.* I don't know how many loads; I throwed it down there; from the middle I throwed it on each side.

Q. How much did you raise the banks? *A.* Nearly two feet.

Q. Nearly two feet? *A.* Yes.

Q. On each side? *A.* Yes.

Q. That is just where the spring is? *A.* No; all the way down.

Q. You spread the earth all the way down the river? *A.* Yes.

Q. And you banked it up two feet on either side? *A.* Yes, sir.

Q. All the way down? *A.* Pretty near all the way down.

Q. Well, did you put this dirt on the top of the old banks, or just inside? *A.* On the top.

Q. On the very top of the old banks? *A.* On the top.

Q. Did you put it down along the side of the stream? *A.* On the side; it came like this, and I throwed it right out.

Q. On each side? *A.* Yes.

Q. But you didn't throw it on the top of the banks? *A.* Some.

Q. Not much? *A.* I don't know how much.

Q. Well, the dirt you put there, is it there yet, or has it been washed away? *A.* I guess it is there yet, I don't know; I haven't been down there since.

Q. When were you down there since? *A.* Oh, two or three months ago.

Re-Direct.

Q. That was washed in by that flood last spring, was it not? *A.* Some.

Q. Your orders were only to clean out the spring, weren't they? *A.* Yes.

Marcus Hopler, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. You reside in Belvidere? *A.* Yes, sir.

Q. Do you remember making a search in the Surrogate's office in this county for a will of John P. D. Maxwell? *A.* Yes.

Q. For what period did you search? *A.* From 1825

to the time that I made the search, which I think was in December.

Q. And did you find any will there? *A.* I did not.

Q. Any record of any will? *A.* No, sir.

Q. To December of what year did you say? *A.* 1895, last December.

Q. Were you also in the Secretary of State's office? *A.* Yes, sir; I was there one time with you.

Q. And was search made there for a will of Mr. Maxwell? *A.* Yes, sir.

Q. And was any found? *A.* No, sir.

Not cross examined.

Mr. Harris—Will counsel admit that these deeds were the deeds handed by Mrs. White to Mr. Roseberry?

Mr. Strong—I understand the witness swore to it.

The Court—That is in evidence. The crucial point in the case, so far as these papers are concerned, is that they were found by the witness who was on the stand, Mr. White, among old papers in the possession of his father; I don't know as it makes much difference where they have been in the meantime.

Defendant's counsel offers in evidence certified copy of a deed from Joseph M. Roseberry to Harry W. Breckenridge, bearing date the 31st day of August, 1895, recorded in Vol. 156 of deeds, page 37, &c., and the same is marked Exhibit D 8.

Also certified copy of a deed from Marcus Hopler and wife to Joseph M. Roseberry, dated the 30th day of August, 1895.

The Court—Does that cover the *locus in quo*?

Mr. Harris—Yes, sir; they describe this acre of land, both of these deeds.

Recorded in Vol. 156 of deeds, page 35, in Warren County Clerk's office.

The same is marked Exhibit D 9.

Also certified copy of a deed from William O'Neil and wife to Marcus Hopler, bearing date the 30th day of August, 1895, recorded in Vol. 156 of deeds, page 35, in Warren County Clerk's office.

The same is marked Exhibit D 10.

Also certified copy of a deed bearing date the twenty-seventh day of June, 1895, from George M. Robeson, Executor and Trustee of the last will and testament of Anna M. Robeson, to William O'Neil, recorded in Vol. 156 of deeds, page 32, &c., in Warren County Clerk's office.

The same is marked Exhibit E 6.

Also certified copy of a deed from George M. Robeson, executor of the last will and testament of William P. Robeson, to William O'Neil, recorded in Vol. 156 of deeds, page 30, &c., for Warren county, bearing date the twenty-seventh day of June, 1895, and the same is marked Exhibit D 7.

Also certified copy of the will of William P. Robeson containing power of sale to the executor, bearing date the twenty eighth day of November, 1864, with the probate annexed, bearing date December 23d, 1864, certified by George L. Schillinger; certified the twenty-fifth day of November, 1895; recorded in Warren county Surrogate's office.

The same is marked Exhibit D 12.

Also certified copy of the last will and probate proceeding of Anna M. Robeson, deceased, under the seal of George S. West; surrogate of the county of Camden, giving power of sale to the executors; will dated March

3, 1884, and date of probate July 18th, 1887; the same is marked Exhibit D 13.

Also certified copy of the record of a deed from Racy Robeson, executrix of Morris Robeson, bearing date April 1st, 1834, to William P. Robeson and John P. B. Maxwell, covering the lands in question.

Mr. Strong—That deed, by the way, only conveys an undivided one-half.

Mr. Harris—It covers this land by description, though.

Recorded in Vol. 12 of deeds for Warren county, page 523, and the same is marked Exhibit 14.

Also certified copy of a deed from William Shippen and wife to William P. Robeson and John P. B. Maxwell, dated March 31st, 1832, recorded in Vol. 9 of deeds of Warren county, page 509; the same is marked Exhibit D 15.

Also certified copy of the last will of Morris Robeson, dated May 14th, 1816, giving power of sale to executor, date of probate February 28th, 1823, recorded in Sussex county Surrogate's office, and the same is marked Exhibit D 16.

Also certified copy of a deed bearing date May 1st, 1809, between Susan S. Robeson and Morris Robeson of the city of Philadelphia, recorded in Sussex County Clerk's office, in book T of deeds, page 205, &c., and the same is marked Exhibit D 17.

Also certified copy of a deed bearing date the 27th day of September, 1802, between Samuel Blair of Germantown, in the county of Philadelphia, State of Pennsylvania, and Susan, his wife, of the one part, and Isaac Roberdeau of Oxford Furnace, county of Sussex and

State of New Jersey, and Susan, his wife, of the second part, and Samuel Blair, Jr., of Germantown aforesaid, of the third part; recorded in Sussex County Clerk's office, Book H, of Deeds, page 238; and the same is marked Exhibit D 18.

Also certified copy of a deed from Samuel Blair, Jr., trustee for Susan S. Roberdeau, of the one part, and Morris Robeson of the city of Philadelphia, of the other part, recorded in Book T, of Deeds, page 211, &c., in the Clerk's office of Sussex county, dated May 2nd, 1809; the same is marked Exhibit D 19.

Also certified copy of a deed bearing date January 18th, 1806, from William Shippen, Samuel Blair and Susan Blair, devisees of William Shippen the elder, to William I. Shippen, recorded in Book O, of Deeds, page 452, &c., of Sussex county; and the same is marked Exhibit D 20.

Mr. Harris—That is a deed excepting the one acre.

Also certified copy of the record of the last will and testament and codicils thereto of William Shippen, deceased, with the certificates thereto annexed, certified by George L. Schillinger, surrogate of the county of Warren; probated November 10, 1801; and the same is marked Exhibit D 21.

Also a deed dated May 21st, 1862, between Jonathan Robeson, of Hunterdon county, West Jersey, Esquire, and his wife, and William Shippen of the city of Philadelphia, of the other part, certified by the Clerk of the county of Sussex, to be on record in book H of deeds, page 209, &c., and the same is marked Exhibit D 22.

Mr. Harris—That deed seems to convey three full undivided eighth parts of Robeson to two lots, tracts or pieces of land, &c.

Also deed of Joannes Vannetta to Janathan Robeson, dated May 3d, 1744, and same is marked Exhibit D 23

Also deed from Jacobus Vanetta to Joannes Vanatta, dated June 6th, 1841, and the same is marked Eahibit D 3.

Also deed from John Penn, Richard Penn and Thomas Penn to Jacobus Vanetta, dated December 30th, 1740; and the same is marked Exhibit D 2.

Also certified copy of a survey from Book A, folio 164, in the Surveyor General's office, of Burlington, of 1,250 acres allotted to William Penn, signed John Reading, Jr., surveyor, February 21st, 1716, inspected and approved by the Council of Proprietors and ordered to be entered on record on the date it was surveyed, October 10, 1716, and the same is marked Exhibit D 24.

Also survey to Alexander White of 485 acres which was the surplus of the Penn tract.

Mr. Harris—It is to identify the map, that is all.

The Court—Is this 485 acres part of the *locus in quo?*

Mr. Harris—No; it is not part of the *locus in quo*, but the survey shows the course of the river.

The Court—I don't see that it has any bearing on this case.

Mr. Harris—Except it shows the course of the river in front of the acre.

The Court—The survey shows that, but not the deed necessarily; I don't think it is material to have the deed.

Mr. Harris—I intended to offer the survey and the map together.

The Court—Very well; put them in.

Mr. Harris—Well, the survey is dated the 2d of

August, 1814, signed Robert Smith, surveyor general, and inspected and approved by the Council of Proprietors and ordered to be recorded November 1st, 1814, William Woolman, clerk.

Mr. Strong—I object to that; I don't see that this deed has anything at all to do with the matter; the only ground upon which it is offered, as I understand, is because they have a map here which they think has something to do with the case, and the map itself is not evidence without some further proof, I take it; it does not seem to me it ought to be in the case; it does not affect the land in question, and does not tend in any way to establish the genuineness of the map, because it does not refer to the map.

The Court—Does the map show on its face who made it?

Mr. Strong—No, sir; there is nothing official about it apparently.

The Court—I have some doubt as to its competency, but I will admit it if counsel desires.

Mr. Strong—Kindly allow us an exception.

The Court—Certainly, if counsel choose to take the risk of putting it in, I will allow you an exception.

Said survey and map are marked Exhibit D 4 and D 5.

Mr. Strong—I would like a separate exception to each, to the survey and warrant and also the map.

The Court—Very well, you may have an exception to each.

Whereupon the said counsel for the plaintiff, insisting that each of said documents was immaterial and incompetent as against said plaintiff and not sufficiently proved, prayed that his separate exception to the admission of each of said survey, warrant and map, respectively, might be sealed, and it is hereby sealed accordingly.

Wm. S. Gummere, J. [L.S.]

Defendant's counsel also offers certified copy of Road Return of November 1st, 1786, certified by the Clerk of Sussex county as on record in his office in Book A of Roads, page 144, and the same is marked Exhibit D 25.

Also certified copy of the return of public roads, dated March 24th, 1799, recorded in Sussex County Clerk's office, Book A of Roads, page 3,355, &c., and the same is marked Exhibit D 26.

Also deed of Phillip M. Houghwaut, Levi Rehrer and Matthew A. Howard, Commissioners, to Joseph M. Roseberry, dated April 1st, 1889, covering the *locus in quo*, recorded in Book 138 of Deeds, page 292, duly acknowledged before K. F. Albertson, Commissioner of Deeds.

The same is marked Exhibit D 27.

Also articles of agreement entered into on the twenty-fifth day of June, 1851, between William P. Robeson and John M. Sherrod, of the town of Belvidere, and the Belvidere-Delaware Railroad Company.

Alexander P. Gest, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. You reside in Lambertville? *A.* Yes, sir.

Q. And are the superintendent of the Belvidere division of the Pennsylvania railroad? *A.* Yes, sir.

Q. I show you an agreement signed by John M. Sherrod, William P. Robeson and Ashbel Welsh, and witnessed by Martin Coriell. Do you recognize that paper? *A.* I think that is the same paper I have seen before.

Q. That came from the possession of your company at Lambertville? *A.* No, sir; not at Lambertville;

never in our possession at Lambertville, so far as my knowledge goes.

Q. Where did it come from? *A.* It was in the custody of our office at Philadelphia.

Q. Were you present in the Court of Chancery at the hearing in the suit of the Belvidere-Delaware Railroad Company and the Pennsylvania Railroad Company, against The United States Pipe Line Company, and Harry W. Breckenridge? *A.* Yes, sir.

Q. Did you see that paper produced in court? *A.* I think this is the same paper that was produced there.

Q. Produced by Mr. Strong? *A.* Yes, sir.

Q. And state whether or not, under that paper, the ownership of the lands in question in this case was claimed?

Mr. Strong—One moment; that cannot be proved in this way, I take it.

The Court—I suppose the record will show that.

Mr. Harris—Yes, but this is another thing; this is proving the act and conduct with reference to this paper in the court.

The Court—Conduct of whom?

Mr. Harris—Of the plaintiff in this suit.

The Court—No, I don't see that it is; the plaintiff is an artificial being; if you propose to bind the plaintiff by the act of another person, you will have to show the agency which will bind the principal.

Mr. Harris—The witness says that the paper was produced by Mr. Strong; I can ask if he was the attorney of the company at that time.

The Witness—This is the fact; I was there and it was produced by Mr. Strong; what he intended to prove by this paper I do not like to state, because I might misstate.

Q. You made an affidavit to the bill filed in that case, did you not? *A.* Yes, sir.

Q. That agreement is set forth in the bill filed in that case.

Mr. Strong—One moment.

The Court—The bill shows for itself.

Q. Well, wasn't title claimed by Mr. Strong, representing the Pennsylvania Railroad Company, to the lands in dispute in this case, by virtue of that agreement? *A.* That we claimed title to that place? Not as I understand it; no.

Q. Claim was made under that paper to those lands, was it not? *A.* That he claimed title to this? Shall I answer that?

Mr. Strong—One moment; I should like to have the ruling of the Court as to whether that is proper or not?

The Court—It seems to me the claim of the company is a matter of record, and that is the best evidence of what the claim was; this is a suit in Court, and the record shows what the company's claim was, I presume; if it does, that is the best evidence, of course.

Q. Well, the matter in dispute was the land under this culvert, was it not?

Mr. Strong—One moment; that is a matter of paper proof; the bill shows for itself.

The Court—Yes; the bill must show what the subject matter of that litigation was; the bill and answer.

Mr. Harris—As I understand it, we might show acts done in Court with reference to this matter, as well as the bill and the claim made by the bill. Well, I will offer the bill before proceeding with the examination of the witness any further, then.

The Court—Very well.

Mr. Harris—I offer a certified copy of the bill filed by the Pennsylvania Railroad Company, January 7th, 1896, certified by the Clerk of the Court of Chancery, to be a true copy thereof.

Mr. Strong—I think the affidavits verifying the bill should be with it.

The Court—Oh, no; they are not part of the bill.

Said bill marked Exhibit D 28.

Q. Now, please state whether this agreement was not offered to prove title to the lands in question in this suit.

Mr. Strong—As to the purpose of the offer, the witness is not a lawyer, and he has already stated he does not know what the purpose was, accurately and properly; he states it was offered, and the bill shows the issue; now, I do not think, beyond that, it is competent to ask this witness.

The Court—I think you can show anything that was done in the trial of the cause; you can prove the fact that a certain paper was offered in evidence, but I do not think you can bind the party by showing that when his attorney offered the paper in evidence, he offered it for a certain purpose. I do not think the power of an attorney goes to that extent, that a statement made by an attorney in the trial of a case, shall bind the principal in another trial. You can prove that the paper was offered in evidence, but not what the attorney said when he made the offer.

Mr. Harris—Well, I ask him if this paper was not offered with reference to the lands now in question in this case.

The Court—No, you can ask him whether in the trial of the case before the Vice Chancellor the paper was not offered in evidence by the attorney of the plaintiff; that is all.

Mr. Harris—I believe I did ask him that question.

The Court—I am not certain.

Q. Was this paper offered in evidence by Mr. Strong, the solicitor of the Pennsylvania Company, in the trial before the Vice Chancellor? *A.* Yes, sir.

Q. And furnished to him by you? *A.* No, sir.

Mr. Harris—I respectfully pray an exception to your Honor's ruling on my question, to the exclusion of the questions relating to the purpose for which this paper was offered.

Exception allowed.

Cross Examination, by Mr. Strong.

Q. You stated, Mr. Gest, that you made an affidavit to a bill filed in the Court of Chancery. Was that affidavit to the bill originally filed, or to this amended bill, which was filed later? *A.* To the bill originally filed, I think. I don't think I made an affidavit to the amended bill. I could not say without looking that up.

Q. At the time that the bill was filed originally, had you any knowledge of the existence of this paper? *A.* No, sir.

Q. The original bill was filed under your direction, wasn't it? *A.* Yes, sir.

Q. And this paper was discovered afterwards? *A.* So far as I am concerned, I didn't know of it at the time.

Re-Direct Examination.

Q. Well, the amended bill was also sworn to, was it not?

Mr. Strong—Wait, now; let us see if it was; you ought to have the affidavits.

The Court—Do you mean sworn to by the witness?

Mr. Strong—He says it wasn't sworn to by him.

Q. It wasn't sworn to by you? *A.* I think not.

Q. Sworn to by others, wasn't it? *A.* Sworn to by others, yes, sir; certainly.

Alan H. Strong, sworn for the defendant.

Direct Examination, by Mr. Harris.

Q. Mr. Strong, you were the solicitor and counsel in charge of the case of The Pennsylvania Railroad Company and Belvidere-Delaware Railroad Company against The United States Pipe Line Company and Harry W. Breckenridge and others, defendants, in the Court of Chancery concerning the land at this crossing,

were you not? *A.* I was the solicitor and counsel by whom that bill was filed; you refer to that suit?

Q. Yes, sir. *A.* Yes.

Q. And you offered, did you not, this agreement in evidence in that case? *A.* That is my recollection.

Q. Upon the trial before Vice Chancellor Bird? *A.* That is my recollection.

Q. Did the lands in question in that case embrace those in question in this case?

Mr. Strong--As counsel I desire to object to that question, on the ground that the record is the best evidence, and the bill is in the case.

The Court—Well, if the bill shows.

Mr. Harris—I don't think it shows clearly enough; I ask the question to identify the lands now in question as part of those then in question, and the bill does not show that; they claimed in that case the whole acre, and now they claim this under the culvert.

Mr. Strong—Oh, no; we never claimed the entire acre.

The Court—The question is whether the Chancery suit—

Mr. Harris—Whether the lands in question in the Chancery suit embraced the lands in question here now.

The Court—That is a competent question; he says the bill does not show.

A. I think the bill shows just what the questions raised were, and it certainly defines the lands involved.

Q. That is an answer, is it?

A. Yes; I think it is.

Q. Repeat the question, please (question read)? *A.* "The lands in question in that case embraced the lands in question in this case?" Let me see what you mean; the lands in question in this case are the lands under the culvert; is that what you mean?

Q. Described in the declaration? *A.* And the culvert was in question in the Chancery case.

Q. The lands under the culvert? *A.* Yes.

Q. And that agreement was offered in evidence by you? *A.* Oh, yes.

Q. Concerning those lands, was it not? *A.* Well, that comes back to the question as to whether the Court wants me to answer as to that; if the Court says it is proper I will do so.

The Court—It does not seem to me that it is so; the fact that that was offered in evidence in support of the plaintiff's case appears; the evidence shows that the paper was offered in support of the contention of the complainant in that case; what was stated by counsel in making his offer, it seems to me, is not competent, and that, as I understand, is what you seek to ascertain from this witness.

Mr. Harris—Not what was stated, but what land this agreement referred to.

The Court—The agreement shows on its face the land it relates to.

Mr. Harris—Well, it does not particularize the land. We have now a different description in this suit, limiting the land to the boundaries of the culvert, the railroad embankment, and what I wish to show is—

The Court—And that land was embraced in the Chancery suit.

Mr. Harris—And the next question I have asked him is whether this agreement was offered as relating to these lands—to the lands under the culvert.

A. It was offered as relating to the Robeson acre wherever it might be, but our insistment in that case was, as we insist here, that it did not cover the culvert; that if by any chance it did cover the culvert, we had a right to it under this agreement; but our primary contention was that the right to the culvert came to the railroad under the Lomasson deed.

Q. That was before the amended bill, wasn't it? *A.* That was the primary contention in the case.

Q. Primary in that sense? *A.* Yes; and as I understand it, it was this contention all through; and we

claimed that if the Robeson acre was within the culvert, then we had the right to the Robeson acre under this agreement; but I intented to insist upon, and think I did all the way through, that the culvert was not within the Robeson acre; that we had legal title to it under the Lomasson deed.

Q. Didn't you claim title to the culvert under the Robeson agreement—the land under the culvert? *A.* No, sir; I think not; we left the question of the location of the culvert—we proved that question and left it out of the case entirely, except that we insisted, as I say, that the culvert was in the Lomasson deed, but we said that if it was within the Robeson acre, then in that case we had title to it under this agreement.

Q. Then that paper was offered to show ownership of the lands under the culvert in that event? *A.* If the culvert should be ascertained to be within the Robeson acre, then we claimed title to it under this agreement, but we claimed primarily, as I say, that it was not in the Robeson acre at all.

Q. Primarily you mean by your first bill, not by the amended bill? *A.* That contention was never given up, as I understand it.

Q. Don't you recall that the description given of what was claimed under the Robeson and Sherrod agreement related to the culvert? *A.* Only in the way that I have stated.

Q. And that it was contended that after the making of the said agreement, and under the said agreement, without any further conveyance or assurance, that the complainants, or one of them, proceeded to occupy so much of the one acre lot as was necessary for the said roadbed, &c., (reading from bill)? *A.* I suppose that language is from the bill; it sounds like it; but you will observe that whether the Robeson acre is located at the culvert or at some other point, the com-

pany certainly did occupy the easterly end of it with its embankment.

Q. Yes, but left the roadway? *A.* That does not state that the roadway is on this acre.

Q. So much of the one acre lot except for a space of twenty feet in width? *A.* We filed our bill upon the Lomasson deed, claiming title; you came in and said that the Lomasson deed did not cover it, but the Robeson acre did; that was a surprise to us; then we said if the Robeson acre did cover this crossing, then we had an equitable title to it under this agreement, but we did not at any time, as I understood it, and understand it now, give up the contention that the crossing was within the Lomasson deed.

Q. Do you remember that it was alleged "that the complainant did under the said agreement occupy so much of said acre as was sufficient and required for the purpose of said roadbed, upon and across the easterly end of said one acre lot, said roadbed being at that place elevated above the surrounding land at a height of about twenty feet by means of an embankment, etc."? *A.* I understand that relates to the general course of the embankment through that part of the country, not necessarily confined at all to the one acre.

Q. "By a stone bridge or culvert"? *A.* Yes.

Q. There is no other culvert in that region, than this, is there? *A.* I don't know of any.

Q. That is all, sir.

Mr. Harris—I offer the agreement made between William P. Robeson and John R. Sherrod with the Belvidere-Delaware Railroad Company, June 25th, 1851, and the same is marked Exhibit D 1.

William B. Titman, sworn for the defendant.

Direct Examination, by Mr. Roseberry.

Q. Where do you reside, Mr. Titman? *A.* Belvidere.

Q. And you are the husband of Margaret R. Titman? *A.* Yes, sir.

Q. Does she own a farm adjoining the lands of Sherrod and Robeson? *A.* Yes, sir.

Q. Have you ever surveyed along her line where it adjoins? *A.* I have.

Q. Do you know where there is water power canal along the Sherrod and Robeson lines?

Mr. Strong—I object; it does not seem to have any relation to the lands in question.

The Court—I presume it has, or counsel would not ask the question; go on, Mr. Roseberry.

A. In reference to a—

Q. Water power canal? *A.* Yes, sir; I know where it is.

Q. And do you know, are there cleared lots of land between the Belvidere-Delaware Railroad and the river on the Robeson tract?

The Court—What bearing has that in this case?

Mr. Roseberry—Showing there are no crossings to it.

The Court—That you have already proved by Mr. Dahlke.

Mr. Roseberry—I want to prove there is no access to those lots except over the lands of Mrs. Margaret R. Titman.

The Court—What differance does that make.

Mr. Roseberry—That there is no crossing of the railroad over the lands.

The Court—You have already proved that.

Not cross examined.

George German, sworn for the defendants.

Direct Examination, by Mr. Harris.

Q. Are you the township clerk of the township of Oxford? *A.* Yes, sir.

Q. Have you the township book? *A.* Yes, sir.

Q. Have you it with you? *A.* Yes, sir.

Q. Produce it, will you? *A.* (Witness produces book.)

Q. Turn to an entry of the date of August 31st, 1895; do you find there a resolution of the township committee granting Mr. Breckenridge permission to lay a pipe or pipes in the highway? *A.* Yes, there is a resolution here.

Q. What page is it on? *A.* Page 196.

The Court—Is that the resolution?

Mr. Harris—That is the resolution.

The Witness—There are two resolutions; another on page 198.

Mr. Harris—I suppose I will have to read those resolutions.

The Court—What for?

Mr. Harris—I don't suppose we can read the book very well

The Court—Resolutions granting the Pipe Line Company the right to put their pipes down on the public highway?

Mr. Harris—A resolution granting Harry W. Breckenridge the privilege, and the second one is a contract with Harry W. Breckenridge to lay a water pipe for the township in this locality.

The Court—What has the second one to do with this case?

Mr. Harris—They both relate to the laying of the pipe; on page 196 is a contract with Mr. Breckenridge to lay a water pipe for the township below the surface of the highway, &c. (Reading same.)

The Court—That seems to be totally irrelevant to this case.

Mr. Harris—The next resolution was granting him permission to lay two oil pipes at the same time he made the other excavations, both dated the same day; I offer those documents.

Mr. Strong—I object.

The Court—I think they are both incompetent for this reason: As I understand the law of New Jersey, the fee to the soil in the public highway belongs to the abutting owners, to the middle line of the road on each side; the public authorities have nothing to do with the road except the preservation and repairing of it for the public use; they have not the right to grant to a private individual permission to put down pipe or anything else in the centre of a street; the public have a right, but certainly the town of Belvidere would not have a right to grant me permission to put a pipe or anything of that kind in front of your house.

Mr. Harris—Well, I only offer the evidence to show that he had permission to disturb the soil of the highway.

The Court—It is objected to, and I overrule the offer and allow you an exception.

Mr. Harris—We pray an exception.

Exception allowed.

Mr. Harris—We offer the certificate of the Secretary of the State, that the United States Pipe Line Company, organized under the laws of the State of Pennsylvania, have complied with all the requirements of the act entitled "An Act relating to corporation," approved 1894, and the supplements thereto, dated November 12th, 1895.

Mr. Strong—I don't know whether that is evidence; in fact, I doubt very much that it is.

The Court—It does not seem to me that it is, but I presume that so far as the corporate existence of your client is concerned, is admitted by the fact that the plaintiff has sued them.

Mr. Harris—We offer the certificate.

The Court—If the certificate is provided for by an act, and is in the language of the act, I suppose it is competent.

Mr. Strong—I do not think the statement of the

facts, that the certificate is evidence of those facts. I object on the ground that the statement of the certificate is not evidence of the facts.

The Court—It does not seem to me that it is; it seems to me that the certificate is not material at all.

Mr. Harris—The act requires that we have the certificate, and we offer it to show that we have that certificate, not as evidence of anything that is in it.

The Court—Well, it may go in for that purpose; to show that you have that certificate.

Said certificate marked Exhibit D 29.

Mr. Harris—We offer the map in evidence, and also the small map.

Mr. Strong—I object to the introduction of the small map, because it appears it is a plotting simply of the courses, without any regard to the monuments.

The Court—I think it is competent.

Defendant rests.

Elbridge G. Weir, recalled for plaintiff in rebuttal.

Direct Examination, by Mr. Strong.

Q. Have you examined the map produced here by the other side? *A.* Yes, sir.

Q. What have you to say as to the line given on this map along the river? *A.* The course here given is south eleven degrees and fifteen minutes west one hundred and thirty-two feet.

Q. What have you to say as to that location and that line? *A.* I don't think I get your meaning, Mr. Strong.

Q. Well, is that along the Delaware river as it is at present? *A.* No, sir; it is not.

Q. Where does that line begin, that is actually on the

ground, where is that line, the beginning point of it? *A.* As shown here?

Q. As shown there, where would that be on the ground? *A.* About fifteen feet east of the junction, or vent of the stream with the Delaware river, as shown at present.

Q. Is it not in the vent of the river? *A.* It is in the vent; yes, sir.

Q. Well, at the point where it reaches the river or not? *A.* Back from that point.

Q. You say how much? *A.* About fifteen feet; I understand the scale of this map is drawn fifteen feet to the inch; measured at right angles out to the river it is twenty-two or twenty-three feet.

Q. Then as to the direction of that line, does it follow the course of the river or not? *A.* Well, I have to do that, with the map I have made; taking the shore of the river as I found it, there is a bend in the river, and from this extension of the northerly line to the river, the angle that that line makes with the river is eighty-eight degrees and thirty minutes; take the extension of the southerly line running out straight to the river, that makes an angle with the south direction of the river shore of one hundred and six degrees, indicating a point in the river between the northwest corner, or this northwest stake; that, I understand, is not claimed as the corner of the tract; it is simply a production of this line to the river, showing where it would strike if carried out straight; between that point and the south point there is a bend in the river.

Q. Now, it has been said that that line on the river agrees with this survey of 1814, I mean with this map; what have you to say to that; have you examined the 1814 map? *A.* Yes, sir; I have examined that; taking course No. 23 in this map, it says that there is a buttonwood twenty-two chains and sixty links south, a distance of seven chains from opposite this spring—

that course is north eighteen degrees, three-fourths east, running in that direction; now, the twenty-fourth course is north five and three-fourths degrees east, seven chains to Shippen Spring; that line there is intended to be on that line, although it is three chains longer than the line indicated here; now, the next course, the twenty-fifth course, is north eleven and one-half degrees east, fifteen chains, which would take it off in that direction; those courses indicate what we would call a bulge in the shore of the river, instead of concave.

Q. In other words, that the point protruded out instead of being caved in? *A.* Yes, sir.

Q. At the date when that map was made? *A.* When this map was made, in 1814.

Q. So, how would that compare with the present line of the shore; has the shore gained or lost, according to that? *A.* The shore has lost.

Q. That is, the river is now nearer in than it was then? *A.* Yes, sir; judging from that map.

Q. Now, in those courses which are run upon that map; do they follow each indentation of the shore, or are they from headland to headland? *A.* The length of the courses are so long; they run eleven chains, twelve chains, nine chains, thirteen chains, fifteen chains; they take an average from point to point, perhaps giving a little inside and a little outside.

Q. Well, now, this course may be given on the five chain course that is given, but suppose there were given a two chain course from a point in the run, to a point two chains distant, would that necessarily be with the five chain course? *A.* I couldn't tell where two chains would hit; I don't know what point they would strike with; it might be a point further in or further out than the five chain line.

Q. So that the mere fact that the five chain course is on this line would not necessarily indicate where the two chain course would come? *A.* No, sir.

Q. You located that acre on the map as you have shown it there, as you said, from a survey of the Lomasson tract, didn't you? *A.* Yes, sir.

Q. Supposing you had had no Lomasson tract to guide you, but simply the description of the Robeson acre, how would you have located it?

Objected to.

The Court—Yes, that is not rebuttal, Mr. Strong; you can ask him how he would locate the Robeson acre from a description in the Vannetta deed without regard to the Lomasson survey.

Q. You may go into that. *A.* This is on the assumption that the description of the acre is from the deed that I have, as I understand you?

Q. Yes. *A.* First we always look over a description. "Beginning at and in the mouth of the run that vents in the Delaware river from the spring by the dwelling house of him, the said John Vanetta;" I don't know where that house is. "Thence down the said river eight perches to a post; thence extending from the river twenty perches to a corner." Well, at first sight that appears to be at about right angles. "Thence parallel with the river eight perches to a post; thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning." The last course indicates the general direction of that east and west line; in other words the spring and the said run is to be the general direction of the north line of this acre. Now I would go to the junction of the vent of the run with the river, set up my instrument there, take a general course of that spring and run, also the course of the river; I would retrace that line backward twenty perches along the general line of the spring and the run, twenty perches to where it would strike, then I would turn an angle from the east end of that parallel with the line of the river down, and then my closing course, or south

course, I would make that parallel; now it says further that the "said lot to be laid out to contain one acre of land." If I measure only eight perches at each end of this, I won't have quite enough to make the acre; the angle that I have established here will show how much I must increase the length of that in order to make it measure eight perches at right angles at any part across the acre, by twenty perches in length; it would be what we call a parallelogram, the opposite sides parallel.

Q. Do you find any requirement in the description that the angle shall be right angles? *A.* No, sir; I take it from this description that the angles must be as I find it run with the river.

Q. Is it possible to lay that tract out so there shall be four right angles in it? *A.* No, sir; it cannot be done and make it an acre.

Q. And can you, in that case, accommodate it to the line of water of the Delaware; does that make a right angle? *A.* No, sir.

Q. So you have to give up the idea of making right angles of it? *A.* Yes, sir; entirely.

Q. Following the method which you have explained, what would be the location of that Robeson acre; would it be in accordance with—well, where would it be located? *A.* It would throw the east end of it further north than here shown.

Q. That is, if you should take the general direction of the run? *A.* Yes, sir.

Q. It would come further still up that way? *A.* Yes, sir.

Q. Now, did you hear the testimony in relation to the location of the hut or small house, that Fisher had in that neighborhood? *A.* I did.

Q. From the location given, would that that be upon the Robeson acre as you located it before, or not? *A.* It would.

Q. Now, I want to ask you with reference to this

plotting of the Lomasson deed; you have examined that, haven't you? *A.* Yes, sir.

Q. What is the reason that that plotting fails to close? *A.* It is an error in a course.

Q. What course? *A.* In the tenth course, which reads "south eighteen degrees west, two chains and twenty-seven links."

By Mr. Roseberry.

Q. To what; where does it go to? *A.* I don't know.

Mr. Strong—Well, do you want it from the deed?

Mr. Roseberry—Yes.

Q. Suppose you take it from the deed? *A.* South eighteen degrees west, two chains and twenty-seven links to said boundary line claimed by said Cyphers.

Q. Now what error is there in that course? *A.* That course should be south eighteen degrees east.

Q. How do you arrive at that conclusion? *A.* I have been on the ground, and this eighth course, north eighteen degrees west, and the course on the ground south eighteen degrees west is wrong, because the lines are parallel with each other on the ground.

Q. In other words the tenth course should be parallel with what course? *A.* Parallel with the eighth course.

Q. Now if it should be so run how would the survey come out? *A.* The survey will close within three links, so there will be a difference of three links between the north and south radius, six links between east and west departure, practically a closing, because in a survey of that size, twenty-one courses, that is remarkably close work, unusually close with a survey done with a needle, as that was done.

Q. How is it evident to your mind that there has been this error in the courses; why do you say there is an error there? *A.* Because the survey does not close; does not come together.

Q. It does not come together at the end, and what effect has it upon all the other lines? *A.* It would remove the western line of that right of way—

Q. That is taking it as the course is given? *A.* Yes, sir; using what I claim the error; it would set every course, the eleventh, and so on down to the twenty-first course, ninety-two feet and six tenths further west.

Q. That is, it would throw this line of the railroad so much further towards the river? *A.* Yes, sir.

Q. And what effect would that have on the acreage? *A.* It would throw the acre that much west too.

Q. I mean as to the contents of the tract just given as two and a half acres, isn't it? *A.* Well, I haven't made any calculation of that; of course it would increase that if we tried to force the last course to close.

Q. What acreage would you have there? *A.* I haven't completed that, but I have an idea it would give us about five acres in the tract.

Mr. Roseberry—I object to that.

The Court—I don't see what relevancy it has.

Q. Are such errors common?

Objected to.

The Court—That is immaterial.

Q. Did I ask you before who assisted you in this survey? *A.* I don't think you did; I think Mr. Roseberry did.

Q. Who was it? *A.* Why, I brought a man with me from Trenton by the name of Ferguson; a man who had worked for me seven years; he is simply a chain bearer and rod man.

Q. Your regular assistant? *A.* Yes, sir.

Q. Not connected in any way with the railroad company? *A.* Not at all; never worked a day for them that I know of.

Q. In preparing and making your survey there, and your map, did you act at all in concert or in consultation with Mr. Wood? *A.* No, sir; never saw Mr.

Wood until, I guess, three days after I finished the survey.

Mr. Harris—How is that rebuttal?

The Court—That is not material.

Cross Examination, by Mr. Roseberry.

Q. What relation is this man Ferguson that helped you survey? *A.* None whatever that I am aware of.

Q. You say according to this map the line is run east in this direction? *A.* Yes, sir.

Q. Now does it run out there according to that survey; you take that line along the Delaware and does it run that way as you said? *A.* I don't know anything about that; that is simply a rough—

Q. How does it do there? *A.* Why, it appears there to run a little the other way.

Q. Yes, to what? *A.* Beginning at an elm tree.

Q. You were saying a while ago that the monuments have preference over the courses and distances, weren't you? *A.* No; I don't think I said so.

Q. Didn't you say so here, about this (indicating)? *A.* Well, that is true; it is usual to use monuments.

Q. Then, why did you want to make this jury believe, with that map in front of your eyes, and this line running up here and in that direction, that the line ran out there; when you had that right before you, what did you do that for? *A.* Well, we take the record—

Q. You take that line there which runs back to an elm tree; there is your monument? *A.* There is no course or distance to run by.

Q. When that runs back from the Shippen Spring to an elm tree, have you two monuments? *A.* Yes, sir.

Q. Then, why did you tell the jury that the line ran out there? *A.* I didn't say it would go to the elm tree; I didn't know there was an elm tree there until just now; that elm tree undoubtedly, judging from

this map, is up in this direction; now, if we reverse that course, it will run way out into the river.

Q. Where is the Shippen Spring? *A.* There is the Shippen Spring on the map (indicating). Now you refer to the map, the map shows the point is at the river's edge, not up in the spring.

Q. Have you looked at that elm? *A.* No, sir.

Q. Never seen it? *A.* Not that I know of.

Q. You don't know its position then as to the river bank? *A.* Well I ran that old Penn line a good many years ago, and I don't remember whether the elm was there or not.

Q. Now you say that you stood here and you surveyed the long line to get your line yesterday, didn't you? *A.* I beg pardon?

Q. You said yesterday you stood at the spring mouth and you surveyed down the long line to get your line, did you not? *A.* No; I said—

Q. Didn't you say you had surveyed down to the water's edge? *A.* I did that from the southwest corner.

Q. You made a bend right at that point? *A.* Well, two bends; one here and one here (indicating).

Q. This map doesn't give any bend there, does it? *A.* I don't know.

Q. Well, look from Shippen Spring up to that elm tree, does that give any bend? *A.* Yes, sir; six degrees—five degrees and three-quarters.

Q. Between those two points does it give any bend? *A.* Between this point and the elm, yes; it gives an angle of six degrees.

Q. I want to know whether there is any angle between the spring and the elm tree? *A.* Oh, no; there is an angle by the spring.

Q. Have you got the angle by the spring there? *A.* That is not my work.

Q. Where is your work? *A.* This is mine.

Q. Do you call that an angle there at the spring?

A. There is an angle ; yes.

Q. And you call that at the spring ; didn't you say yesterday it was thirty or forty feet from the spring ? *A.* Well, I mean at the stake.

Q. Does the old survey call for an angle at that point ? *A.* Yes, run north five and three-quarters east, seven chains to the spring.

Q. Is that the spring, thirty or forty feet north of the spring ? *A.* No, sir.

Q. Then it is not in the spring ; now when you run down here, this course down here is seven chains, it runs north from somewhere down here, seven chains in a straight line to Shippen Spring; that is what it says, doesn't it ? *A.* Yes, sir.

Q. Where did you get any authority for that bend in there ? *A.* I haven't ; I explained why I did that, looking at the river as I found it that day ; that is all.

Q. Now striking this run, you say, take the fourth line and reverse the bearing and run by that spring you would come way back to the house, wouldn't you ? *A.* Yes ; I don't know how far.

Q. What authority have you to go there ? *A.* From the description of the one acre lot.

Q. That is from your interpretation of the description ? *A.* Yes.

Q. Now you say in bringing it up that way you would have to lengthen out the end lines ? *A.* Yes ; to get a parallelogram.

Q. Don't the end lines say eight perches. *A.* Yes, sir.

Q. Where did you get any authority then from that old deed to lengthen out the end line ? *A.* It must be so laid out as to contain an acre.

Q. It says eight perches, from a point at and in the mouth of the run, down the Delaware river eight perches ; then back twenty perches, and then parallel with the Delaware river eight perches ? *A.* Yes, sir.

Q. Now, does that give you anything more than eight

perches on that line, or that line (indicating)? *A.* There is a conflict—

Q. Never mind about the conflict; does it give you one inch more than eight perches on those ends. *A.* It does.

Q. Where? *A.* The closing clause says it shall be so laid out as to contain one acre.

Q. Doesn't it say it shall run from this point and back to the beginning, and also take in addition the half of the spring and run; isn't that what it means? *A.* No; I don't think it means that; so if I were to run it a hundred times I couldn't run it any other way than that.

Q. Has any surveyor any authority to lengthen that line from that description of eight perches? *A.* Yes, he has; he has got less than an acre if he carries that out entirely, and parallels the river and make it parallel with the spring run; if he tries to do that he is going to have less than an acre; he must either add on to the twenty perches, or add on to the eight perches.

Q. Where does it say this line shall be parallel with the spring or run? *A.* The north line must be so located as to pass through that run.

Q. Now, couldn't you, when it gave you this side eight perches, that side twenty perches and that side eight perches, have you any right to go beyond those perches, and then in going back again you include the spring and run in that line; wouldn't it make it just a little bit over one acre? *A.* I don't understand you.

Q. And doesn't it say so as to include that; now, you can't lay that out in any way you fix it—the way you have it laid out—to make that line eight perches, can you? *A.* Well—

Q. Now, answer my question. *A.* I don't understand you fully.

Q. You cannot by twisting the acre around that way; you cannot possibly make it run only eight perches or two chains, can you? *A.* The description is vague.

Q. Never mind; answer that; the description is plain; it says eight perches; now, the way you have got it you can't make that eight perches to get an acre, can you? *A.* No, sir; not unless I lengthen the twenty perches.

Q. You have got to lengthen one or the other? *A.* Yes, sir; it has got to be done.

Q. If it ran up here and back to the house you would have to lengthen that out further, wouldn't you? *A.* Still more; yes, sir.

Q. And the further it is swung around the longer you would have to make that line, wouldn't you? *A.* That is right.

Q. If this line is run from that mouth where it vents into the Delaware river, down the river eight perches to a post, and then back twenty perches to a corner at right angles, and then eight perches to a post, parallel with the Delaware, and then runs back here to this point and down the spring to the place of beginning, wouldn't that contain one acre? *A.* More than an acre.

Q. Well, wouldn't it contain an acre; that is the question?

The Court—He said it would contain more than an acre; it doesn't require an expert to say that more than an acre contains an acre.

Q. Now you said you were on this line (referring to small map)? *A.* Yes, sir.

Q. And examined it all around here? *A.* Yes, sir.

Q. When did you do that? *A.* On Friday; a week ago last Friday.

Q. When were you sworn here in this case before? *A.* It was about a week ago, I guess.

Q. You did it before that? *A.* Did it before that.

Q. Didn't you say the reason you ran back from this point there, and this point here, was because you hadn't paid any attention to that point, surveyed that at all? *A.* No; I didn't testify to that.

Q. Now that is the map you made, began here, running up and beginning there and running back? *A.* Yes.

Q. And when you were asked the question didn't you say you had not surveyed the northern end of that tract? *A.* I said that.

Q. And hadn't examined it at all? *A.* No.

Q. Didn't know anything about it? *A.* No; I said I hadn't surveyed it; I didn't say I hadn't examined it, though.

Q. You didn't survey it? *A.* I didn't survey it.

Q. How do you know that that line is a straight line; how do you know there isn't a corner right in there; an angle? *A.* An angle; where, please?

Q. Right between this point here and that point there (indicating). *A.* There is an angle.

Q. I ask you how do you know there isn't an angle? *A.* I took the two opposite sides; I didn't take the corner down there to see whether that was in line with the Cyphers line or not.

Q. Didn't you assume that Cypher's line was a straight line? *A.* No.

Q. Why could you say that the line then ought to be back here on that line? *A.* I didn't say so; it will stop north of that line.

Q. How did you know where the Cyphers line was? *A.* Well, you can see the fence coming down on the east side of the road, coming down from the east to the railroad, and then it stops; that fence originally ran straight to the river.

Q. How did you know? *A.* I traced the line in 1873.

Q. Now, how do you know that there was a straight line running across there? *A.* It isn't, to-day.

Q. Didn't you only assume it was a straight line? *A.* No.

Q. Well, now what data have you? *A.* I simply looked at the east line and the west line; up the east

side of the track and down the west side of the track; those two lines are parallel.

Q. Where; on the Cyphers line? *A.* Yes, sir.

Q. Well, now, on the west side of the track, where did you see a fence? *A.* Well, there is a little portion of it.

Q. Running around a pig pen, isn't it? *A.* There is a little portion of it.

Q. Running around a pig pen? *A.* There is a small building there; I don't know what it is.

Q. If you extend that fence, won't it run around the back of that pig pen; isn't that true? *A.* That is right.

Q. Where did you get the fence down here; to sight from one to the other? *A.* I didn't try that.

Q. How did you know it was a straight line? *A.* I don't say it was a straight line.

Q. Why did you say that line ought to stop there? *A.* I didn't say so, and don't say so.

Q. How did you find that error; you based that error on two points of Cypher's line or a monument, and you based your error in the deed upon that ground? *A.* No; the east line first runs up to Cypher's line, then runs westerly along it a short distance, then goes north again, then crosses the railroad track and comes down parallel with the east line of the railroad.

Q. Parallel with the east line of the railroad; does that say so? *A.* Yes, sir; the west line coming down the railroad should be parallel with the east line.

Q. Does the deed say that? *A.* No, sir; the deed doesn't.

Q. The deed says it shall come back to land claimed by Cyphers? *A.* Yes, sir.

Q. Now you say you saw a fence over here, and a fence over there, and a fence at a pig pen over here, and afterwards you say that this line ought to be a straight line, and you have no authority for calling it a straight line? *A.* This map here says it is a straight line.

Q. When was that map made? *A.* In 1814.

Q. That was at a time when the Alford tract was north of it?

A. Yes, sir.

Q. Do you know who owns those lands in there now? *A.* No, sir; I don't know.

Q. How do you know but what that has been changed since 1814? *A.* Well, it might have been changed for all I know; this I do know though, that the road coming from Dark Hollow near the mountain, the old Penn line running from there to the Delaware river, and the fence running out to the Easton road that is on my division line between Penn and Alford, that line originally ran straight to the river.

Q. Didn't the old Penn line begin at an extraordinary fall of water?

The Court—What is this cross examination on?

Q. Where did you come out on the river with that line? *A.* I arrived south of the house where Mr. Depue lives, and ended at the river.

Q. Where? *A.* I can't tell that now, because it is twenty-three years ago.

Q. Was it an oak tree? *A.* I don't remember now; it ended at the river bank; my recollection is at the foot of Rocky Falls, it was called then.

Q. Didn't you find that old line, when you surveyed it, running right in front of the house of Isaac Snyder; right in his barnyard; then running down through the fields of Mr. John C. Depue, and back of the house, striking this old elm tree?

The Court—You need not answer that; that doesn't seem to have anything to do with this.

Q. So you assumed that then to be a straight line, is the reason you say there is an an error there? *A.* No, I don't say so.

Q. Are the sixth and twelfth courses parallel in that deed; the Lomasson deed? *A.* No, sir.

Q. Give the sixth and twelfth courses. *A.* The

sixth course is north fourteen degrees west, the twelfth course—

Q. That is south fourteen degrees east, isn't it, reversed? *A.* No, sir—yes; it would be that reversed.

Q. Now run the twelfth, how much is that? *A.* That is south sixteen and a half degrees east.

Q. So they are not parallel, are they? *A.* No, sir; not intended to be parallel; not at that point.

Q. Did you say that the other lines are parallel? *A.* No.

Q. Didn't you say so last Friday? *A.* No.

Q. Didn't you say so to-night, that they are parallel? *A.* No, sir.

Q. What courses did you say were parallel? *A.* I said north eighteen west and south eighteen east would be parallel.

Q. You said that this line here—according to the old deed you say this line is about ninety-two feet too long? *A.* Ninety-two feet 6-10, it will throw the whole western boundary of this tract ninety-two feet 6-10 directly west.

Q. And how far south? *A.* Fifty-two feet about, below the old Lomasson division line, the twenty-first course.

Q. Would it carry the acre down with it? *A.* No, it would carry the acre directly west.

Q. Wouldn't it carry the acre also south? *A.* No, because the division line is on a bias or skew.

Q. If this new position of the line is carried down fifty-two feet, wouldn't it carry the acre down with it? *A.* No; not that much.

Q. How much would it carry the acre? If that line is carried down over the White line, how much would it—wouldn't it carry that acre down with it fifty-two feet? *A.* No, sir.

Q. If the end of that line there is prolonged across the White line, wouldn't it carry that line there down fifty-two feet? *A.* No.

Q. Between that point and that point; are the courses between the point where it leaves the Robeson acre and the point where it strikes the White line? *A.* Those are the two courses; yes.

Q. Now, you carried that course bodily down fifty-two feet further; do you mean to say it won't carry this down with it? *A.* No, sir.

Q. Won't it carry that course down fifty-two feet? *A.* No; it will set the piece directly west where it is now.

Q. I am asking you if that was carried over the White line fifty-two feet; you say, as a surveyor, it won't carry that piece with it? *A.* Emphatically.

The Court—He has said so two or three times, Mr. Roseberry.

Q. Now, if that corner is carried down fifty-two feet from the White line, the White line moved down fifty-two feet further than where you started to retrace the other day this line, and then you start fifty-two feet down and retrace back, won't it carry this line fifty-two feet? *A.* Where must I start?

Q. Where you started the other day on that line to retrace, you say you retraced that back there? *A.* Yes, sir.

Q. Now, suppose you begin right there, fifty-two feet at that point? *A.* Yes, sir.

Q. Move this one down to fifty-two feet; where would it throw that; wouldn't it bring that down fifty-two feet? *A.* It would that way, yes; but that is not the effect this has.

Re-Direct Examination.

Q. Explain what you mean with reference to that error. *A.* Well, your Lomasson and White line does not run square with the railway, or right of way; now, when we set these lines right directly west ninety-two feet, it sets that point out here directly ninety-two

feet, and fifty two feet from this line; that is the effect it has; it sets my beginning point when I retrace this line here; now, then, if I commence at this point out here, directly west from here ninety-two feet and a half, I simply run parallel lines with this; it does not move the acre any further north or south than it is now; it only sets it directly west.

Q. Then you say that error has no effect at all to throw the tract further south? *A.* No, sir; only directly west.

Q. With reference to this old map of 1814, is that drawn to a scale, or what scale? *A.* I haven't tried that; I don't know.

Q. It is very small, is it not? *A.* Yes, sir.

Q. Is it large enough for you to judge from looking at the map itself, without regard to the courses, to judge anything about the shape of the shore there? *A.* No, sir; I wouldn't consider the way that is plotted there any guide much; it gives a general direction.

Q. That is all.

Plaintiff rests in rebuttal.

Defendant rests.

Case closed.

(The above is the entire testimony on both sides.)

Adjourned to October 8th, 1896, at 10 o'clock A. M.

OCTOBER 8th, 1896.

Counsel summed up.

The Court charged the jury as follows:

JUDGE'S CHARGE.

GUMMERE, J.

Gentlemen of the Jury:—The fact that the matter involved in this case is merely a small strip of land twelve feet in width, and sixty or eighty feet in length, is not a necessary indication that it is a matter of no importance, and you must not assume that it is. The fact that we have spent more than three days over the trial of this case, that a large number of witnesses have been examined, and that eminent counsel have been employed on both sides, warrant us, I think, in concluding that as between the parties to this suit the matter is an important one, and they have a right to expect the Court and Jury to deal with it as such.

So far as the evidence which has been taken during these three days is concerned, I do not propose to say very much, if anything, about it; it is a matter for you to consider, and to consider under the rules of law which are applicable to it, as I shall state them to you.

It is undisputed in this case, that in 1853, Thomas Lomasson conveyed to the Belvidere-Delaware Railroad Company a strip of land south of Belvidere, a part of which is delineated on the map which was prepared by the engineer Weir, in fee, and so far as this case is concerned, we must assume that the railroad company became owners in fee of that strip of land wherever it was, because it was made by a man who has been proved to have been in possession of the land in question, for many years, and has been occupied by the railroad company under the deed from 1853 to

the present time, either personally or by their lessees, or by the assignees of their lessees; that is, either by the Belvidere-Delaware Railroad Company, the United New Jersey Railroad & Canal Company, or to the present plaintiffs, the Pennsylvania Railroad Company.

In that deed, as you will remember from the fact that counsel for the plaintiff has just read the description of certain of the courses of land conveyed, there is a recognition of Thomas Lomasson that there was some land enclosed in his tract belonging to General Robeson, because in his description he runs around a part of a tract which he designates as the Robeson tract, or around the Robeson line. And it seems to me that the principal question in this case, and almost the only question of fact to be determined is, where was the Robeson tract which has been spoken of all through this case as the Robeson acre.

Now the plaintiffs claim primarily that the southerly boundary of that Robeson acre was north of the culvert which is involved in this case. If that is so, the plaintiffs in this case would be entitled to a verdict, because then the land covered by the culvert was a part of the land conveyed to the railroad company by Thomas Lomasson, and the fact that it is in the public road is a matter of no importance whatever in this case, because, under the law of New Jersey, a man who owns land bounding on a public road owns not only the land outside of the road, but he owns as well the land in the road to the middle; if he owns on both sides of the road, then he owns all the land in the road between his two plots of land. So if that road crossed the Lomasson property south of the southern line of the Robeson acre, the ownership of the soil within the road was in Lomasson, subject to the public right of travel over it, and by his deed it passed to the railroad company; and if they have the title to the land to the road, these defendants have no right to occupy any part of it for any purpose whatever except for the pur-

pose of travel backward and forward over its surface as members of the public, just as you or I would have; but so far as any other rights are concerned they would have none. So, as I said a moment ago, if you should conclude that the southerly line of this Robeson acre is north of the culvert, then the plaintiffs would be entitled to a verdict. The defendants say that the southerly line of that Robeson acre is not north of the culvert, but is about where it is delineated on the Walker map, that is, south of the culvert, and that the whole of the culvert is within the lines of the Robeson acre. That, as I understand, is their position. That is disputed by the plaintiffs whose claim, as I said before, is that it is not any of it contained within the boundary of the Robeson acre.

Now, if that culvert is within the lines of the Robeson acre, we have this situation of affairs: In 1832 and 1834, by two deeds, one made by Tacy Robeson, executrix, and the other by William Shippen and wife, the Robeson acre was attempted, at least, to be conveyed to William P. Robeson and John D. Maxwell, as tenants in common. That is each of them had an undivided interest in the whole property. Each of them had a right to use the whole of it, or any part of it, without doing any injury to his fellow tenant. Now, from the documentary proofs in this case, it appears that the title of John D. Maxwell in this property passed to his sister, who was Mr. Robeson's wife, and that after her death all her title passed by conveyance made by her executor, and then by subsequent conveyances to the defendants in this case. They claim, therefore, that they are entitled to have, and do have to-day, the interest which Mrs. Robeson died seized of in that land. They claim further that they have the interest of which Mr. Robeson died seized in the land, they having taken conveyances from the executor of each of these parties.

So far as the interest of Mrs. Robeson is concerned,

it is not necessary for me to say anything, because in any event the interest which these defendants obtained by the conveyance of Mrs. Robeson's interest in the land embraced in the Robeson acre, would give them the right to occupy jointly with the parties who held the William P. Robeson title, the land embraced within the Robeson acre.

To make myself plain, if the evidence should have shown that the Pennsylvania Railroad Company were to-day vested with the title of William P. Robeson in that acre, and it also showed that the defendants held the title of Mrs. Robeson to that acre, they would hold as tenants in common, and each would have a right to occupy the acre, and neither would have the right to exclude the other from the occupation.

So that from the evidence in this case it must be admitted, I think, and I so charge you, that the defendants are entitled to the occupation, not exclusive occupation, but to the occupation of the Robeson acre. It has been suggested by counsel for the plaintiff that even if this land, where the culvert is, is not included within the Thomas Lomasson grant, but lies within the Robeson acre, nevertheless, by reason of the fact that they have constructed their railroad embankment and their culvert over this highway, and have occupied it for a period of more than twenty years before the beginning of this suit, or before the laying of this pipe in this highway by the defendants, that they have acquired a title to that land by adverse possession as against parties claiming under the Robeson title.

That, in my judgment, is a misstatement of the legal principles governing the law of adverse possession. It appears in this case that about the time of the Lomasson grant, or about the time of the construction of this railway, that William P. Robeson and one Sherrod made an agreement with the Belvidere-Delaware Railroad Company, permitting them to construct their railroad, with its embankment and tracks, across their

property, beginning at the White line, as I recollect it, and thence north to Belvidere. There was a consent, you see, by Robeson to the entry of the railroad company upon his land for the purpose of constructing their road; and if, after getting that consent, they entered upon this Robeson acre and constructed their line on it, he had a right to presume that their entry and occupation of his land was in pursuance of that consent, and the law would permit him to stand by and see that occupation continued indefinitely without losing his rights, unless the railroad company gave him notice that they occupied, not by reason of the consent which they had received from him, but under a claim adverse to his title, so that he might have notice of the fact that they had assumed a position of hostility to his claim of ownership.

That I understand to be be the law on this supject. Now, there was no suggestion made to Robeson, so far as the evidence in this case discloses, or to anybody holding under him, that the railroad company occupied any part of the Robeson acre adversely to the Robeson title; and until that notice was given, Robeson and those holding under him had a right to presume that the occupation was in pursuance of the permission given by Robeson and Sherrod.

So, too, where one tenant in common, as Mr. Robeson was in the Robeson acre, gives permission to a stranger to occupy the land, that occupation not only is not adverse to the tenant in common who gives permission, but it is not adverse to his co-tenant.

In this case the occupation of this land, if it was within the Robeson acre, was such as would have warranted Mrs. Robeson in concluding, just as her husband had a right to conclude, that it was in pursuance of the permission given by her husband and by Sherrod; and until she had notice that it was intended to claim a right adverse to her ownership, she had a

right to sit quietly by and permit the occupation by the railroad company without losing her rights.

But even if it were true that the possession by the railroad company of this strip of land where it crosses the Robeson acre (if the culvert is located within its bounds) was adverse, it is only adverse so far as it exists. I mean by what I have just said, this: that, when the owner of that land went to it and saw this embankment on it, and saw this arched culvert built over and above the road, if his eyes would have told him what part of his property was occupied, he would have seen that so far as his land in this public road was concerned, there was no occupation of the surface of the ground, but only an occupation of a stone culvert built over the road, with its ends resting on each side thereof, and they would have a right to conclude, from that, that the railroad company proposed to claim at the end of twenty years, if they were not interfered with sooner, that they had a right to go across that part of the Robeson tract which lay within the limits of the road above grade, over that arched culvert, and to maintain that culvert, but they would not have any reason to suppose that the railroad company also claimed a right to occupy the surface of the road, except where the ends of its culvert rested, or any rights beneath the surface of the soil.

But, as I said before, it does not seem to me that the question of adverse possession is in this case, because, if this man was on the Robeson tract, the owners of that tract had a right to presume that the entry of the railroad company was made in pursuance of the agreement, that it was a permissive entry, and therefore could not be changed into an adverse possession except on giving notice to the owners of the land that they no longer held under the agreement, but proposed to hold adversely to the Robesons. That situation of affairs does not exist in this case, so that the question narrows itself down to this, in my judgment, and

this is the only thing of importance for you to consider, namely: Where is the Robeson acre located; where is its southerly line. Is it where Mr. Weir says it is, or is it where Mr. Walker says it is, or are they both wrong, and is it somewhere else than where either of them say it is?

Mr. Weir undertakes to locate the Robeson acre, not by a description of the acre, as I understand his testimony, but from certain lines of the Robeson acre which are given in the Lomasson deed, and by a description of property which, as I understood it, was the Robeson acre, which he obtained from the office of the railroad company at Lambertville. He used those two means of information, and information which he receives from old inhabitants, and he plots on the map a tract of land which does not exactly correspond with the description of the Robeson acre as contained in the old deeds of that tract or in the deeds of the sepresent defendants, because some of the lines are too long; and he says that he has made those lines longer than the deed calls for, because otherwise he would not have an acre in the tract.

The defendants say that he had not any business to do that, he had not any business to lengthen those lines so as to get an acre. On the other hand Mr. Walker comes here with a map, and says he puts the lines down, and gets them all right, that he thinks it very important to do that, but he disregards the fact that the conveyance was for an acre, and his map embraces considerably more than an acre. He says you should not shorten or lengthen the line as called for by the deed, but, that there is not any reason why you should not increase or diminish the quantity of land called for in the deed.

Of course the plaintiffs declaim against that; they say the amount of land conveyed by the deed must govern rather than the length of lines.

It appeared in Mr. Walker's testimony, in answer to

a question of mine, as I understood him, that there would be no difficulty in laying out on a map a plot of ground containing the sides called for in that deed, and the acreage called for in the deed; that is, two parallel sides of eight chains each, a lower boundary of twenty chains, and an upper boundary running from the end of the third course, through the spring and down the run to the point of beginning; and that such a tract could be laid out with the first and third courses parallel, so as to contain just one acre. But neither the surveyor for the plaintiff, nor the surveyor for the defendant has made his map so as to make the Robeson acre conform to the description of the deed, both as to length of sides and quantity of land. It seems to me that if we had so delineating that tract, we would have something that would give us a pretty good idea of its exact location, although I may be mistaken.

There is other evidence here to show that there was a practical location of the lower line of the Robeson acre. You have heard the comments of counsel on that, and I do not propose to add anything on this subject to what they have said. As I stated in the beginning of my charge, all the facts in the case are for you to determine; they have been thoroughly argued by counsel, and what I might say on them would probably not throw very much additional light on the case. What you must do is to determine whether that culvert is included in the Robeson acre, or whether it is not, and you must determine that from all the testimony in the case. If it is included in the Robeson acre, then your verdict should be for the defendant for the reasons I have stated, and you will say that they are not guilty of the charge brought against them in the plaintiff's declaration, that is, of wrongfully occupying the land of the plaintiffs. If you should find that the culvert is not within the lines of the Robeson acre, but is embraced in the boundaries of the land conveyed by Lomasson to the Belvidere-Delaware Railroad Com-

pany, then your verdict should be for the plaintiffs, and you will find the defendants guilty of having wrongfully occupied land to which the plaintiffs are entitled to the exclusive possession, except so far as the public use thereof is concerned.

(The above is the entire charge of the Court to the jury).

Plaintiffs' counsel prays exception to the proposition as expressed by the Court that the question of adverse possession does not enter into the case.

Exception allowed to what was said by the Court on this subject and sealed accordingly.

WM. S. GUMMERE, J. [L.S.]

Plaintiffs' counsel also excepts to the proposition that the character of the possession of the culvert was not such as to give title by adverse possession to the soil.

Exception granted to what was said by the Court on this subject and sealed accordingly.

WM. S. GUMMERE, J. [L.S.]

Counsel for plaintiff also prayed an exception to so much of said charge as instructs the jury that the only thing of importance for them to consider was, where is the Robeson acre located, and the said exception is hereby allowed as to what was said by the Court on that subject and sealed accordingly.

WM. S. GUMMERE, J. [L.S.]

New Jersey Court of Errors and Appeals.

The Pennsylvania Railroad Company, Plaintiff in Error, vs. The United States Pipe Line Company and Harry W. Breckenridge, Defendants in Error.	In Error to Warren Circuit Court. Assignment of Errors.

[Filed February 24, 1897.]

And now, on this twenty-fifth day of January, in the year eighteen hundred and ninety-seven, before the Court here comes The Pennsylvania Railroad Company, by Alan H. Strong, its Attorney, and says that in the record and proceedings and in the matters contained in the bills of exceptions and in the giving of judgment in the said cause in the said Circuit Court in and for said county of Warren there is manifest error in this:

First,—That the said Court upon said trial excluded and refused to admit lawful evidence offered on the part of the said plaintiff in error, *pro ut* the said bills of exceptions;

Second,—And in this, that the said Court upon said trial excluded and refused to admit a certain map marked P 5, for identification offered on the part of the said plaintiff in error, *pro ut* the said bills of exceptions;

Third,—And in this that the said Court upon said trial admitted illegal evidence on the part of said defendant in error against the objection of the said plaintiff in error and contrary to exception duly taken, *pro ut* the said bills of exceptions;

Fourth,—And in this, that the said Court upon said trial admitted in evidence on the part of the said defendant in error and contrary to the objection of the said plaintiff in error and to exception duly taken in that behalf, a certain survey to Alexander White, marked Exhibit D 4, *pro ut* the said bills of exceptions;

Fifth,—And in this the said Court upon said trial admitted in evidence on the part of the said defendant in error and contrary to the objection of the said plaintiff in error and to exception duly taken in that behalf a certain map marked Exhibit D 5, *pro ut* the said bills of exceptions;

Sixth,—And in this that the said Court upon said trial charged the said jury contrary to law and to the exceptions duly taken on the part of the said plaintiff in error, *pro ut* the said bills of exceptions;

Seventh,—And in this that the said Court upon said trial charged the said jury that the question of adverse possession did not enter into this case, *pro ut* the said bills of exceptions;

Eighth,—And in this that the said Court upon said trial charged the said jury that the only thing of importance for them to consider was, "Where is the Robeson acre located; where is its southerly line?" *pro ut* the said bills of exceptions;

Ninth,—And in this that the said Court upon said trial charged the said jury that the possession by the plaintiff in error of the land within the arch of the culvert, even if adverse was not such as to give title to the soil, *pro ut* the said bills of exceptions;

Tenth,—And in this that judgment in the said Circuit Court was given in favor of the said defendants in error, and against the said plaintiff in error, whereas the same should have been given against the said defendants in error and in favor of the said plaintiff in error.

Wherefore the said The Pennsylvania Railroad Com-

pany prays that the said judgment, by reason of the said errors and of other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden, and that it may be restored to all things that it has lost on occasion of said judgment.

ALAN H. STRONG,
Attorney for Plaintiff in Error.

New Jersey Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COMPANY,

v.

HARRY W. BRECKENRIDGE, IMPLEADED IN ERROR WITH THE UNITED STATES PIPE LINE COMPANY.

} Joinder in Error.

[Filed March 23, 1897.]

And hereupon, afterwards, to wit, on the twenty-third day of March, A. D., eighteen hundred and ninety-seven, &c., the said Harry W. Breckenridge, impleaded in error with The United States Pipe Line Company, by Joseph M. Roseberry, his attorney, comes into Court and says that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for errors, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

JOSEPH M. ROSEBERRY.

Attorney for and of counsel with defendant Harry W. Breckenridge.

JOSEPH M. ROSEBERRY,
Counselor-at-Law.

BELVIDERE, N. J., March 23d, 1897.

HON. HENRY C. KELSEY,
Clerk Court Errors and Appeals,
Trenton, N. J.

Dear Sir:—Kindly file the enclosed pleading to-day (March 23) and oblige,

Very sincerely yours,

JOSEPH M. ROSEBERRY.

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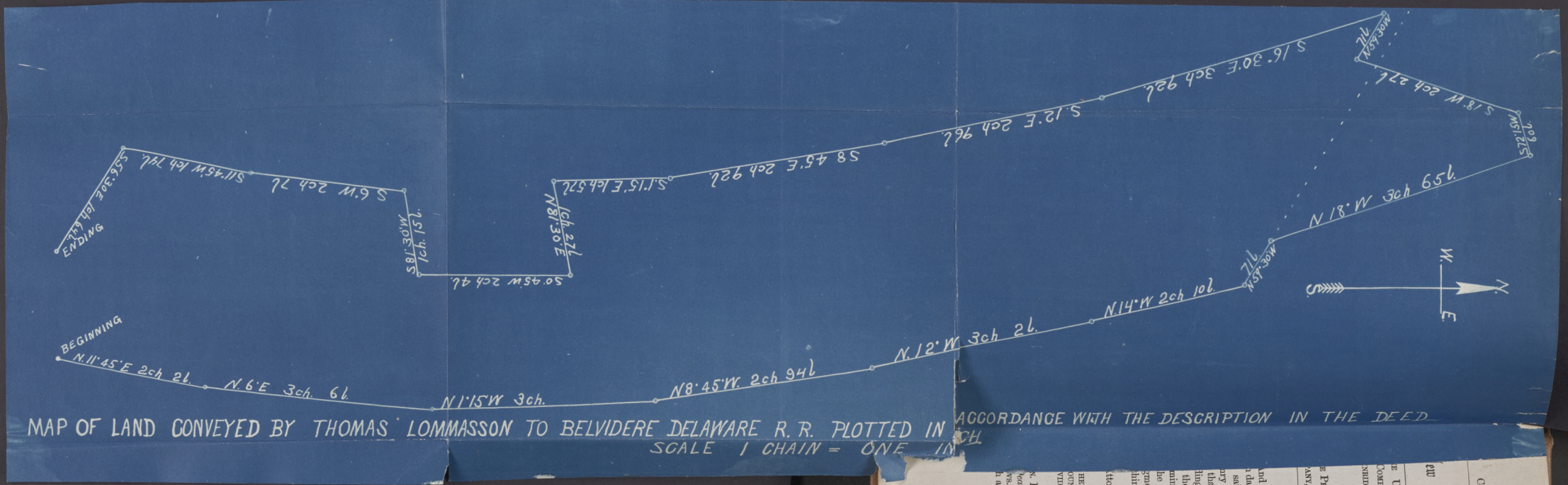

MAP OF LAND CONVEYED BY THOMAS LOMMASSON TO BELVIDERE DELAWARE R. R. PLOTTED IN ACCORDANCE WITH THE DESCRIPTION IN THE DEED

SCALE 1 CHAIN = ONE INCH

APPEALS.

March 23d, 1897.

Appeals,

d pleading to-day

,

ROSEBERY.

ew Jersey Court of Errors and Appeal.

E UNITED STATES PIPE LINE COMPANY AND HARRY W. BRECKINRIDGE, Defendants in Error, ADS. E PENNSYLVANIA RAILROAD COMPANY, Plaintiff in Error.	In Error. Joinder.

[Filed March 25, 1897.]

And thereupon afterwards, to-wit: On the twenty-h day of March, eighteen hundred and ninety-seven, said The United States Pipe Line Company by nry S. Harris, their attorney, came into Court and that there is no error, either in the record and proding aforesaid, or in giving the judgment aforesaid, they pray here that the Court here may proceed to mine as well the record and proceedings aforesaid he matter aforesaid assigned for error, and that the gment aforesaid, in manner aforesaid given, may in hings be affirmed, &c.

HENRY S. HARRIS,
ttorney and of Counsel with Defendants in Error.

HENRY S. HARRIS,
OUNSELLOR AT LAW,
VIDERE, NEW JERSEY.

BELVIDERE, N. J., March 22d, 1897.

N. H. C. KELSEY, Sec. of State:

Dear Sir:—I enclose joinder in error in D., L. & vs. U. S. Pipe Line Co., which please file on the h and oblige. Respy. Yours,

HENRY S. HARRIS.

ACCORDANCE WITH THE DESCRIPTION IN THE DEED

[EXHIBIT P 1.]

Thomas Lommasson and wife
to
The Belvidere Del. R. R. Co.

This indenture made the third day of September, in the year of our Lord eighteen hundred and fifty-three, between Thomas Lommasson and Hannah his wife of the township of Oxford in the county of Warren and State of New Jersey party of the first part, and the Belvidere-Delaware Railroad Company party of the second part witnesseth that the said Thomas Lommasson and Hannah his wife, for and in consideration of the sum of one thousand and fifty dollars, the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, sell, alien, enfeoff, release convey and confirm unto the said the Belvidere-Delaware Railroad Company their successors and assigns forever, all that certain lot or parcel of land situate in the township of Oxford aforesaid, bounded and described as follows: Beginning at a stone in the boundary line between said Lommasson and Thomas and Amzi White, thence over land of said Lommasson 1, north eleven degrees and three-quarters east two chains and two links; thence 2, north six degrees east three chains and six links; thence 3, north one degree and a quarter west three chains; thence 4, north eight degrees and three-quarters west two chains and ninety-four links; thence 5, north twelve degrees west, three chains and two links; thence 6, north fourteen degrees west two chains and ten links to the boundary line, claimed by Michael Cyphers, between him and said Lommasson; thence along said boundary line 7, north fifty-nine degrees, and a half west seventy-one links; thence over land of said Lommasson claimed by said Cyphers 8, north eighteen degrees west three chains and sixty-five links; thence along the boundary line claimed by said Lommasson as the line between

him and said Cyphers 9, south seventy-two degrees and a (and a) quarter west sixty links; thence again over land claimed both by said Lommasson and said Cyphers 10, south eighteen degrees, west two chains and twenty-seven links to said boundary line, claimed by said Cyphers; thence again along the same 11, north fifty-nine degrees and a half west, seventy-one links to a stone; thence again over land of said Lommasson 12, south sixteen degrees and a half east, three chains and ninety-two links; thence 13, south twelve degrees east two chains and ninety-six links; thence 14, south eight degrees and three-quarters east, two chains and ninety-two links; thence 15, south one degree and a quarter east, one chain and fifty-seven links to the south side of a large willow tree marked for a corner in the boundary line between said Lomasson and William P. Robeson, Esquire; thence along the same 16, north eighty-one degrees and a half east, one chain and twenty-seven links; thence along the same 17, south three-quarters of a degree west two chains and four links; thence still along the same 18, south eighty-one degrees and a half west, one chain and fifteen links; thence again over land of said Lommasson 19, south six degrees west, two chains and seven links; thence 20, south eleven degrees and three-quarters west one chain and seventy-four links to the boundary between said Lommasson and said company, and thence along said company's and said White's first mentioned boundary line 21, south fifty-six degrees and a half east, one chain and sixty-four links to the place of beginning, containing two acres and a half of land more or less over which the said company are to build their railroad, also the gravel and material, on a lot adjoining the one above described on the east, and extending from the edge of the corn field along Michael Cyphers line fence, down said company's line, about five chains and fifty-eight links, and two chains and a half in perpendicular width from said company's easterly line, containing by

estimation, one acre and thirty-hundredths more or less, which said gravel shall be removed within two years from the date hereof, said company are to have the privilege of entering upon said last described lot to dig and remove the gravel and material from said lot to their own premises and that they shall as they remove said gravel and material slope up at a regular grade from said company's easterly line to an easterly line of said gravel lot and when said gravel and material shall have been removed said company shall leave said lot sufficiently smooth for being tilled, said Lommasson releases said company from making and maintaining any fence along said premises, and from the inconvenience, and damage incident to the construction and use of said railroad, together except as above excepted, with all the rights, members, privileges, hereditaments and appurtenances and the reversions and remainders, rents, issues and profits thereof, also all the estate, right title, interest, use, property, possession, claim and demand whatsoever, either in law or equity of them the said Thomas Lommasson and Hannah his wife, of, in and to the same, to have and to hold the said lot of land and premises unto the said, the Belvidere Delaware Railroad Company, their successors and assigns to their only proper use, benefit and behoof forever. And the said Thomas Lommasson doth for himself his heirs, executors and administrators, covenant with the said the Belvidere Delaware Railroad Company, their successors and assigns that at the sealing and delivery hereof he is the owner in fee simple of the premises granted or intended so to be that the same are free and clear of all charges and incumbrances whatsoever, and that he and they the said premises unto the said The Delaware Railroad Company their successors and assigns against all persons lawfully claiming or to claim the same shall and will warrant and forever defend.

In witness whereof the said party of the first part

have hereunto set their hands and seals the day and year first above written.

THOMAS LOMMASSON, [L.S.]
HANNAH LOMMASSON, [L.S.]

Sealed and delivered in the presence of. The words, which said gravel shall be removed within two years from the date hereof interlined and noticed, previous to execution.

DAVID A. DEPUE.

State of New Jersey, } ss.
Warren County, }

On this third day of September, eighteen hundred and fifty-three, personally appeared before me, a Master in Chancery, Thomas Lommasson, and Hannah his wife, known to me to be the grantors of the foregoing deed, and I having made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. And the said Hannah Lommasson on a private examination, separate and apart from her said husband, acknowledged that she signed, sealed and delivered the same freely and without any fear, threat or compulsion of her said husband.

DAVID A. DEPUE, M. C. C.

Received and recorded }
March 8th, 1854. }

[EXHIBIT D 1.]

ARTICLES OF AGREEMENT entered into this twenty-fifth day of June Anno Domini 1851 between William P. Robeson and John M. Sherrerd, Esquires of the town of Belvidere in the county of Warren and State of New Jersey and the Belvidere-Delaware Rail-

road Company by Ashbel Welch an agent duly authorized by the Board of Directors.

Said Robeson and Sherrerd for and in consideration of the sum of one dollar to be paid to each of them by said company and in consideration of the benefits which the Belvidere-Delaware Railroad if constructed will produce to their property, hereby agree to convey in fee simple each so much of the land as belongs to himself separately and both, so much of the land they now held in common lying on the route of the said railroad in the township of Oxford and county of Warren aforesaid anywhere between the farm of William White (below Thomas Lommasson's farm) and the land of John Hoff, Jr., (above Abraham McMurtrie's land) as may be sufficient for the construction of said railroad with its ditches and appendages and for procuring materials, reserving the timber on said land also the buildings and the following rights to wit; the right of passing with teams or otherwise across said railroad on the strip of land or lane lying between the lands of Abraham McMurtrie, Jr., and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works, erected or to be erected, also the right of passing their shafts, belts or contrivances for transmitting power from water wheels near the river to buildings above said railroad through openings under the same, provided said railroad shall be constructed.

And the said company agree to pay the said sum of money for said land, and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd with good approaches to said crossings, and to make when necessary openings under their railroads for the passage of belts, shafts or other contrivances for the transmission of power, and to pay the increased expense which said Robeson and Sherrerd shall incur in constructing their

water power canal over and above what would be the expense if said railroad had not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance.

This agreement shall apply to the lot now owned by Miss Allan Mowry if purchased by any of the parties hereto. Witness our hands the day and year first above written.

J. M. SHERRERD,
WM. P. ROBESON,
ASHBEL WELSH, Agent
Bel.-Del. R. R. Co.

Present,
MARTIN CORYELL.

[EXHIBIT D 23.]

This Indenture made the third day of May in the year of our Lord one thousand seven hundred and forty-four, between John Vannetta of Greenage in Morris county in West New Jersey, of the one part, and Jonathan Robeson of the other part, Witnesseth that the said John Vannetta for and in consideration of the sum of six pounds current money of Jersey aforsaid to him in hand paid by the said Jonathan Robeson the receipt is hereby acknowledged, hath and by these presents doth grant, bargain and sell unto the said Jonathan Robeson a certain lot or piece of land situate, lying and being bounded by the river Delaware Beginning at and in the mouth of a run that vents into the Delaware from the spring by the dwelling house of him the said John Vannetta, thence down the said river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with Delaware eight perches to a post, thence to the river so as to include the full one half part of the spring and the said run to the place of beginning, the said lot to

be laid out to contain one acre of land being part of the land whereon the said John Vannetta now dwells. Together also with the uninterrupted passage into and out of the said run, and the right of a road to be laid out to and from the said lot, and all other the right and appurtenances unto the said land belonging. To have and to hold to him the said Jonathan Robeson, his heirs and assigns forever, and the said John Vannetta doth covenant for himself, his heirs, exers. and admin. that he shall and will upon the payment of the aforesaid sum of six pounds current money of New Jersey and within one month after date hereof lawfully and sufficiently grant and convey all the before said mentioned and described tract or lot of land and premises unto the said Jonathan Robeson, his exers. and admrs. or assigns by all and every such act and acts, deed and deeds, device and devices in law whatsoever for the further assurance and confirmation of the said lot or piece of land and premises unto the said Jonathan Robeson, his heirs and assigns as by him or them or by his or their counsel learned in the laws shall be reasonably devised, advised or required.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

JOHANNES VENNETTA, [L.S.]
JONO. ROBESON, [L.S.]

Sealed, signed and delivered in the presence of us.

JAS. DENNIS,
CHARLES RUSSEL,
his
CABUS X VENNETTA.
mark.

[EXHIBIT D 22.]

JONATHAN ROBESON AND WIFE, ELIZABETH, TO WILLIAM SHIPPEN, "Chemist and Practitioner of Physic."	Deed dated May 21, 1762. Recorded Sussex County Clerk's office, November 24, 1802, Book H, of Deeds, page 209.

Conveys in fee undivided interests in several other tracts of land, "and also three full undivided eighth parts of, and in all the right, title, estate, interest and property claim and demand whatsoever of him, the said Jonathan Robeson, of, in and to the following lots, tracts, or pieces of land—that is to say, one of them contains twenty-five acres and a half, bought of John Axford, adjoining said furnace tract, and the other of them is situate in Delaware, containing one acre, which Jonathan Robeson, by Article of Indenture, dated the third day of May, 1744, bought of Johannes Vanetta."

[EXHIBIT D 21.]

Codicil dated October 4, 1795, to will of Dr. William Shippen, the elder.

Proven Nov. 10, 1801, and letters testamentary granted by Register of Wills of Philadelphia County, Pennsylvania, to Dr. William Shippen and Rev. Dr. Samuel Blair, executors named in said codicil.

"Be it known to all whom it may concern, that, whereas in and by my last will and testament heretofore duly made and executed in Pennsylvania, I did give, devise and bequeath to my son, Joseph W. Shippen, all my lands and tenements adjoining or contigu-

ous to Oxford furnace, which I purchased of Jonathan Robeson and my brother, Joseph Shippen, together also with several lots of ground and other parts of my estate in the State of Pennsylvania. And whereas, my said son, Joseph W. Shippen, is now dead and has left no will, but has left his housekeeper, Martha Oxford, and seven children unprovided for, I do now, therefore, will, devise and bequeath all that part of my estate in Philadelphia, as aforesaid, unto my son William Shippen, his heirs and assigns forever, and also all that part of my estate in New Jersey so devised as aforesaid to my son Joseph W. Shippen, which I bought of Jonathan Robeson and my brother Joseph Shippen, I do give and devise to my son William Shippen, and to my daughter Susan Blair, as tenants in common, in equal parts to them and their heirs and assigns forever, they paying a sufficient sum of money to maintain and support the said housekeeper named Martha Oxford, not less than fifty pounds per annum, during the term of her natural life, and also paying to each of the four daughters of my said son Joseph W. Shippen the sum of sixty pounds per annum during the term of their natural lives, to wit. To Maria, Ann, Susan and to Abby, the four daughters of my said son Joseph W. Shippen, the aforesaid sum of sixty pounds each, and also to alot and set apart a small farm or tract of land not less than one hundred and fifty acres in each for each of the sons of the said Joseph W. Shippen, to wit: William, John and Joseph, where it may be most likely to advantageous and sufficient to them to maintain with proper care and industry to be to them, their heirs and assigns forever, with proper farming utensils and stock."

[EXHIBIT D 20.]

WILLIAM SHIPPEN, SAMUEL BLAIR AND SUSAN BLAIR, Devisees of WM. SHIPHEN, JR. TO WILLIAM J. SHIPPEN.	Deed. Dated Jan. 18, 1806. Recorded Nov. 25, 1806, Sussex County Clerk's office, Book O of Deeds, page 452.

Allots and sets apart to William J. Shippen, eldest son of Joseph W. Shippen, deceased, in accordance with will of Wm. Shippen, Sr., a farm, said to contain 200 acres in Oxford township, Sussex county, *excepting* or *reserving* one acre of land which Johannes Vannetta, by deed dated May 3, 1744, conveyed to Jonathan Robeson, and which the said Jonathan Robeson and Elizabeth, his wife, by deed dated May 21, 1742, conveyed to Wm. Shippen, the elder, in fee simple. (Describing said acre as in the deed referred to.)

[EXHIBIT D 18.]

SAMUEL BLAIR AND SUSAN, HIS WIFE, OF 1ST PART; ISAAC ROBESON AND SUSAN S., HIS WIFE, OF 2D PART, TO SAMUEL BLAIR, JR., OF 3D PART.	Trust Deed, Dated and acknowledged Sept. 27, 1802. Recorded Nov. 24, 1802, Book H, page 238, Sussex County Clerk's office.

Samuel Blair, Jr., of third part conveys to party of third part in fee the undivided half of all those lands and pieces of ground situate in the county of Sussex,

devised to William Shippen and Susan Blair by will of William Shippen, Sr.

In trust that party of third part, his heirs and assigns shall and do grant, demise and to form, let or convey and dispose of the hereditaments and premises hereinbefore granted, bargained and sold or mentioned so to be, and every part thereof with the appurtenances unto such person or persons, and for such estates or estate uses, intents and purposes, and in such parts and proportions, manner and form, without power of revocation as she, the said Susan S. Roberdeau, from time to time, notwithstanding her coverture and whether she be sole or married, by any deed or deeds, writing and writings under her hand and seal, attested by two or more credible witnesses, or by her last will and testament, in due form of law executed, shall direct, limit, give or appoint.

[EXHIBIT D 17.]

SUSAN S. ROBERDEAU, WIFE OF ISAAC ROBERDEAU, TO MORRIS ROBESON.	Deed dated May 1, 1809. Recorded Aug. 16, 1809, Sussex County Clerk's office, Book T of Deeds at page 205.

Conveys in fee and directs, limits and appoints accordingly with other lands, undivided half of "an acre of land on Delaware ford landing place," and desires and requests Samuel Blair, Jr., her trustee, to make conveyance in fee to said Morris Robeson.

[EXHIBIT D 19.]

SAMUEL BLAIR, JR., Trustee of SUSAN S. ROBERDEAU, TO MORRIS ROBESON.	Deed dated May 2, 1809. Recorded Aug. 16, 1809, Sussex County Clerk's office, Book T of Deeds at page 211.

Conveys in fee same as mentioned in deed last above in compliance with directions contained therein.

[EXHIBIT D 16.]

Will of Morris Robeson.

Dated May 4, 1816.

Proven February 28, 1823, and letters granted by Surrogate of Sussex county to Tacy Robeson, executrix.

"Thirdly, I do hereby appoint my wife, Tacy Robeson, to be sole executrix of this my testament and last will, and do hereby authorize and empower her to sell and convey any land and real estate," &c.

[EXHIBIT D 14.]

TACY ROBESON, Executrix, &c., of MORRIS ROBESON, deceased, TO WILLIAM P. ROBESON AND JOHN P. B. MAXWELL.	Deed dated April 1, 1834, Ack. Jan. 20, 1835, Recorded Feb. 5, 1835, Warren Co. Clerk's office, Book 12 of Deeds, p. 523.

Conveys in fee by virtue of the power conferred by the will of Morris Robeson (with other lands) "the

undivided one-half of a tract or lot of one acre lying on the River Delaware, commonly called and designated as the landing place."

[EXHIBIT D 15.]

WILLIAM SHIPPEN AND WIFE, MARY L.,		Deed dated March 31, 1832, Ack. April 7, 1832, Recorded April, 1832, Book 9 of Deeds at page 509, Warren Co. Clerk's office.
	TO	
WILLIAM P. ROBESON AND JOHN P. B. MAXWELL.		

Conveys in fee (among other tracts of lands in Oxford township, Warren county), "the fourth tract in an undivided half of a small tract or lot of land lying in the said township of Oxford, on the River Delaware, commonly known and designated as the landing place. Beginning," &c. (Describing it precisely as in deed from Johannes Vannetta to Jonathan Robeson, dated May 3, 1744, to which this deed refers.)

[EXHIBIT D 12.]

Will of William P. Robeson.

Dated November 28, 1864.

Proven December 23, 1864, and letters testamentary issued by Surrogate of Warren county to George M. Robeson, executor.

Appoints George M. Robeson executor and empowers him to convey and sell lands.

[EXHIBIT D 13.]

Will of Anna M. Robeson.
Dated March 3, 1884.
Proven July 18, 1887, and letters testamentary issued by Surrogate of Camden county to George M. Robeson.
Appoints George M. Robeson executor, with power to sell lands.

[EXHIBIT D 7.]

GEORGE M. ROBESON, Executor, &c., of WILLIAM P. ROBESON, deceased,

TO

WILLIAM O'NEIL.

Deed consideration, $37.50.
Dated June 27, 1875.
Acknowledged July 3, 1895.
Recorded November 25, 1895.
Warren County Clerk's office, Book 156, p. 30.

Conveys in fee by virtue of the power and authority to him given in and by the last will and testament of William P. Robeson the same tract described substantially as in deed from Johannes Vannetta. [Exhibit D 23.]

[EXHIBIT D 6.]

GEORGE M. ROBESON, Executor of ANNA M. ROBESON, deceased,

TO

WILLIAM O'NEIL.

Deed consideration, $37.50.
Dated June 27, 1895.
Acknowledged July 3, 1895.
Recorded November 25, 1895.
Warren County Clerk's office, Book 156, of Deeds, page 32.

Conveys in fee by virtue of power and authority to him given by will of Anna M. Robeson same tract by same description as in deed last above.

[EXHIBIT D 10.]

WILLIAM O'NEIL AND WIFE, AGNES E.,

TO

MARCUS HOPLER.

Deed consideration, $75.
Dated August 30, 1895.
Acknowledged August 31, 1895.
Recorded November 25, 1895.
Warren County Clerk's office, Book 156, p. 33.

Conveys in fee same lot by substantially same description.

[EXHIBIT D 9.]

MARCUS HOPLER AND WIFE, ANNIE,
TO
JOSEPH M. ROSEBERRY.

Deed consideration, $75.
Dated August 30, 1895.
Acknowledged August 31, 1895.
Recorded November 25, 1895.
Warren County Clerk's office, Book 156, of Deeds, page 35.

Conveys in fee same lot by substantially same description.

[EXHIBIT D 8.]

JOSEPH M. ROSEBERRY to HARRY W. BRECKENRIDGE.

Deed consideration $75.
Date August 31, 1895.
Ack'd August 31, 1895.

Recorded November 25, 1895, Warren county clerk's office, book 156 of deeds, page 37.

Conveys in fee same lot by substantially same description.

[EXHIBIT D 25.]

Sussex County, ss. November the 1st, A. D., 1786, Oxford township.

We, the under subscribers, surveyors of roads for the Countys of Hunterdon & Sussex, being legally called have met on the petition of John Miller and William Carr, to relay a road leading from George Hydeler's Ferry at the foot of foul rift to John

McVicker's Tavern, and having viewed and relayed the said road as followeth, to be four rods wide.

Beginning at the banks of the river Delaware at the banks of sd. river at the ferry aforesaid and from thence South 82 east 26 perches, then North 64 east 6 perches, then North 79 east 32 perches, North 73 E. 16 perches, then North 41 E. 8 perches; which courses and distances runs throu lands of Mr. Shippen then along a line dividing lands of sundry persons South 58 E. 232 perches to the main road which leads from Greenwich to the sd. tavern & so on to Newtown in sd. County.

Given under our hands the day and year aforesd.

Jos. Beavers,	Caleb Sweezy,	Adam Sliger,
Mathias Shipman,	Willm. Hazlett,	Wm. Creveling,
Joseph Hidon,	Thos. V. Buskirk,	Peter Creveling,
Joseph Howey,	Wm. Lowry,	Richard Leary,

Recorded Bk. A of Roads p. 144.

[EXHIBIT D 26.]

Whereas, the Inferior Court of Common Pleas for the County of Sussex, at the term of February last past, on application of sundry freeholders of the County of Sussex for a publick road. Beginning on the bank of the river Delaware in a publick road near the foot of the foul rift in the township of Oxford and thence to run up the said river as direct a course as the situation and ground will admit through the lands of Doctor Shippen, Philip Murray, Abraham McMurtrie, Thomas Paul, and the Belvidere estate so as to strike the bridge over the Pequest at Belvidere mill, the other beginning in the road which leads from Belvidere to Easton on the line between the Belvidere estate and Thomas Paul, and then to run along said

line till it strikes the road above did order that the applyers call the surveyors of Greenwich, Oxford and Knowlton to meet at the house of John Hendershot in Oxford on the fourth day of March, then next to proceed on that business, &c., as may by the minutes of the said Court may appear. Now be it known to all of whom it may concern that we the subscribers surveyors of the highways of the townships of Greenwich, Oxford and Knowlton in pursuance of the above order to us directed, having met and viewed the ground and premises and duly considered the same, do lay out a publick two-rod road as follows, viz.: Beginning on the brink of the river Delaware in a publick road near the foot of the foul rift leading to Concord in the township of Oxford aforesaid thence 1st, North five degrees West three chains and eighty-two links; thence 2, South eighty-four degrees West three chains and forty-two links; thence 3, North eighty degrees and fifteen minutes West six chains and eighty two links; thence 4, North twenty-four degrees East three chains and fifty links; thence 5, North forty degrees West two chains and eighty-seven links; thence 6, North twenty-nine degrees West two chains and seventy-five links; thence 7, North five degrees and three-quarters West one chain and fifty links; thence 8, North thirty-four degrees East one chain and seventy-five links; thence 9, North forty-two degrees and a half East one chain and twenty-nine links; thence 10, North thirty-nine degrees East four chains and sixty-three links; thence 11, North fifty-one degrees and three-quarters East six chains and sixty-four links; thence 12, North fifty-one degrees East five chains; thence 13, North forty-three degrees and a half East one chain and seventy-six links; thence 14, North seventeen degrees East seven chains and ninety-seven links; thence 15, North twenty-one degrees and a half East five chains and fifty-six links; thence 16, North fifty degrees and three-quarters East four chains and twenty-seven links;

thence 17, North twenty-two degrees East five chains and thirteen links; thence 18, North twenty-nine degrees and one-quarter East five chains and thirty-two links; thence 19, North thirty-four degrees and a half East two chains and twenty-seven links; thence 20, North sixty-four degrees East eight chains and fifty links; thence 21, North forty-five degrees East four chains and twenty-three links; thence 22, North fifty-eight degrees East thirteen chains and thirty-five links; thence 23, North thirty-three degrees and one-quarter East fourteen chains; thence 24, North thirty-two degrees East thirteen chains and twenty-four links; thence 25, North twenty-seven degrees East eight chains and forty-three links; thence 26, North forty-two degrees East eight chains and six links; thence 27, North seventy-five degrees East five chains and seventy-six links; thence 28, North nineteen degrees and one-quarter East nineteen chains and twenty-three links to the Belvidere and Thomas Pauls line; thence North eight degrees and three-quarters East eighteen chains and eighty links to the middle of the southerly side of the bridge over Pequest at the Belvidere mill, the road to be two rods wide; that is, one rod in width on each side of the above courses; and also a two rod road beginning in the road which leads from Belvidere to Easton on the line between the Belvidere estate and Thomas Paul; thence along said line North forty-five degrees and thirty-three minutes West fourteen chains and forty-three links to the middle of the road by us herein before layed out; this road to be equally layed out on the Belvidere estate and the land of Thomas Paul; and we hereby order the overseer of the road to open the above described two rods (excepting that part of the first road which leads thro the land of Thomas Paul which is now farmed with winter grain, which shall be opened on or before the first day of August next,) in thirty days from the date hereof.

In witness whereof, we have hereunto set our hands

and seals this fourth day of March, Anno Domini, one thousand seven hundred and ninety-nine.

MATTHIAS SHIPMAN, [L. S.]
GARRET VLIET, [L. S.]
YOUNG LENTZ, [L. S.]
WILLIAM TAYLOR, [L. S.]
BENJIN PARKE, [L. S.]
ANTHONY JOHNSON, [L. S.]

Recorded 27th March, 1799, Book A of Roads, p. 335.

[EXHIBIT D 4.]

ON A WARRANT
OF THE
SOCIETIES OF 100000 ACRES
TO
ALEXANDER WHITE
485 ACRES.

By virtue of a warrant from the Council of Proprietors to the Surveyor General directed, bearing date the twenty-ninth day of March Anno Dom. one thousand seven hundred and seventeen Requiring him to survey unto the West New Jersey Society the full quantity of one hundred thousand acres of land anywhere unappropriated in the western division of New Jersey As Reference to the said warrant had filed in the Surveyor General's Office at Burlington and entered on record in the same Office in Lib. M folio 6 may more fully appear And by virtue of a Conveyance from the said Society by Thomas Cadwalader their lawful attorney to Benjamin B. Cooper of forty-two thousand nine hundred and sixty-nine & sixty-five hundredths of an acre thereof (together with other unlocated lands) bearing date the twenty-eighth day of September One thousand eight hundred & twelve And by virtue of a Conveyance from the said Benjamin B. Cooper to William Griffith

of forty-one thousand six hundred and forty-five acres of the same by deed dated the twenty-fourth of October in the same year And by virtue of a Conveyance from the said William Griffith to Benjamin B. Cooper of thirty-six thousand six hundred and forty-five acres thereof by deed dated the eighth day of June One thousand eight hundred and thirteen And by virtue of a Conveyance from the said Benjamin B. Cooper to Alexander White of four hundred and eighty-five acres part thereof by deed dated the second day of August One thousand eight hundred & fourteen Hyman McMiller one of my lawful Deputies hath made Return to me of the said four hundred and eighty-five acres of land for the said Alexander White Situate in the Township of Oxford County of Sussex and by the said Return bearing date the twenty-fifth day of July 1814 bounded as followeth viz: BEGINNING at a black oak John Alford's corner thence (1st) South sixty degrees West sixty-six chains & seventy-five links thence (2d) South fifteen degrees East thirty-one chains to another corner thence (3rd) South twenty-nine degrees West One hundred and three chains thence (4) North fifty-five & a half degrees West twenty-eight chains and seventy-five links thence (5th) North twenty-nine degrees east One hundred and one chains and sixty-five links thence (6) North fifteen degrees West thirty-one chains thence (7th) North sixty degrees East sixty-four chains and thirty-five links thence (8th) South sixty-two degrees East twenty-eight chains and seventy-five links to the beginning containing four hundred & eighty-five acres of land and allowance for highways. WITNESS my hand the Second day of the Eighth Month August Anno Domini One thousand eight hundred and fourteen 1814. Words (William Griffith to) Interlined

ROBT SMITH Sur Genl.

Inspected and approved by the Council of proprietors and ordered to be recorded November 1st 1814.

WILLIAM WOOLMAN Clk.

[EXHIBIT D 28.]

In Chancery of New Jersey:

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining showeth unto your Honor your orators The Pennsylvania Railroad Company a corporation organized under the laws of the State of Pennsylvania and The Belvidere Delaware Railroad Company a corporation of the State of New Jersey, That by an act of the Legislature of the State of New Jersey, entitled "An Act to incorporate the Belvidere Delaware Railroad Company," passed March 2, 1836, certain persons therein named and their associates and successors were constituted a party politic and corporate by the name of The Belvidere Delaware Railroad Company, and said corporation was thereby among other things invested with all the powers necessary and expedient to lay out, construct and operate a railroad from a point in the town of Belvidere and thence following the river Delaware to the head of the feeder of The Delaware and Raritan Canal, with further power to extend the same to the city of Trenton in the discretion of the Board of Directors of said company.

That under the authority and in pursuance of said act and certain supplements thereto the said The Belvidere Delaware Railroad Company prior to the year eighteen hundred and seventy-four had duly constructed and was then operating its said line of railroads from Belvidere aforesaid to the city of Trenton and that by an act of the Legislature of this State approved March 13, 1874, entitled, "An Act to authorize The Belvidere Delaware Railroad Company to lease their road and franchises to the United New Jersey Railroad and Canal Company and the assignment of such lease to the Pennsylvania Railroad Company," it

was made lawful for the said The Belvidere Delaware Railroad Company with the consent of two-thirds in interest of the stockholders thereof to lease their said railroad with its franchises, appurtenances and appendages for a term and upon such conditions as should be agreed upon to the United New Jersey Railroad and Canal Company, and further that upon the execution and delivery of such lease it should be lawful for the said The United New Jersey Railroad and Canal Company to assign, transfer and set over the same to The Pennsylvania Railroad Company, which said last mentioned railroad company, (one of your orators,) was thereby authorized and empowered to operate said leased road and to exercise the franchises thereunto appertaining, under and in pursuance of which last mentioned act the said The Belvidere Delaware Railroad Company by lease bearing date on or about the fifteenth day of February in the year eighteen hundred and seventy-six, with the consent of its stockholders did demise and lease unto the said The United New Jersey Railroad and Canal Company for a term to end on the thirteenth day of May, A. D., twenty-eight hundred and seventy, the said railroad with its said franchises and appurtenances which said lease was afterward on or about the seventh day of March in the year eighteen hundred and seventy-six duly assigned and transferred as further authorized by said last mentioned statute to your orator the said The Pennsylvania Railroad Company; and that your said orator upon the execution and delivery of said assignment duly entered upon the said railroad and has ever since continued and still continues to operate the same and to exercise the franchises of the said The Belvidere Delaware Railroad Company, so as aforesaid leased, under and by virtue of said lease and the said statutes in that behalf.

That your orators further show that the United States Pipe Line Company claiming to be a corpora-

tion of the State of Pennsylvania or of some one of the United States other than the State of New Jersey is now engaged in constructing and laying a line of pipe under ground for the conveyance of oil from some point in the State of Pennsylvania to some point to the east of the railroad the said The Belvidere Delaware Railroad Company so as aforesaid leased to and operated by said The Pennsylvania Railroad Company; that said pipe line is being constructed and laid from a point east of said railroad track toward the same in a westerly direction and in such manner and direction that the same will necessarily cross the said tracks of said railroad company, and has been so constructed and laid to a point at or near the town of Washington in the county of Warren, at which point the said pipe line meets the railroad of the Delaware, Lackawanna & Western Railroad Company; that the said The United States Pipe Line Company having succeeded against the wishes and protests of said The Delaware, Lackawanna and Western Railroad Company in laying its line of pipe through a right of way at a private undergrade crossing of said track, resisted the efforts of said last mentioned railroad company to remove the same; employing in such resistance a large force of men, so that a serious disturbance of the public peace has resulted.

That your orators believe that it is the purpose and intention of the said The United States Pipe Line Company to resort to like measures to effect and maintain a crossing for their said pipe line over or through the railroad of your orators at some point not definitely known at this time to your orators, and they fear that such design will be carried out by stealth and without warning to your orators and before your orators can prevent the accomplishment thereof; that judging from the direction in which the said line of pipe is now being constructed it will meet the line of said railroad at a point somewhere

about two miles south of Belvidere and in the immediate neighborhood of a private undergrade crossing on land now or formerly of Mary White Roseberry, through which private undergrade crossing of said railroad a line of pipe was laid with the consent of said Mary White Roseberry in or about the month of June, A. D. eighteen hundred and ninety-four; that your orators shortly after the laying of said pipe through said crossing caused the same to be removed, whereupon an action was brought in the Supreme Court of this State by the said Mary White Roseberry against The Pennsylvania Railroad Company claiming damages for, among other things, the said removal of said pipe, which said action came on to be tried at the September term in said year of the circuit of said Supreme Court held in and for the county of Warren, and on said trial a jury for that purpose empannelled were instructed by his Honor the Justice of said court, holding said circuit, that the said defendant had the right to remove said pipe and that no damages could be recovered against it for such removal, whereupon a verdict was returned for damages for other torts found to have been committed by said defendant, but not for the removal of said pipe, and judgment upon such verdict was entered in the said Supreme Court as by the record thereof appears.

That the only other point in the said neighborhood where a crossing of said railroad can be effected by said the United States Pipe Line Company for its said line of pipe without actually disturbing the road bed of said railroad company is where a public road crosses said railroad track under grade about nine hundred and fifty feet north of the said private crossing.

That on or about the thirty-first day of August last the township committee of the township of Oxford in the county of Warren in which township the said crossing of said highway under your orators said

right of way is situate, (said committee being composed of Elias J. Mackey, William Miller, Jr., and Samuel Sheridan) entered into an agreement with one Henry (or Harry) W. Breckenridge, who is the superintendent of the said the United States Pipe Line Company and has been actively engaged in securing for said company the right of way for its said line of pipe in said neighborhood, by which said agreement the said township committee undertook and assumed to authorize the said Breckenridge to remove the pavement in said undergrade crossing and relay the same, and to lay thereunder an iron pipe not less than eight inches in diameter three feet deep for the ostensible purpose of draining the water from said highway, for doing which the said township committee agreed to pay said Breckenridge the sum of $5, and further in consideration thereof to allow him to lay two lines of oil pipe in the same ditch with said drain pipe, said oil pipe to connect land owned or claimed by Breckenridge on the west side of the culvert with the right of way obtained by him for a line of pipe on land on the east side of said crossing, belonging to J. M. Roseberry, and so to connect with and form a part of the continuous line or lines of pipe now being laid as aforesaid by or in the interest of said the United States Pipe Line Company for the conveyance of oil from some point in the State of Pennsylvania under your orators said road-bed by means of said crossing to some point east of said railroad.

And your orators show that the said Henry (or Harry) W. Breckenridge claims to have lately acquired title by deed from Joseph M. Roseberry bearing date the said thirty-first day of August in the year eighteen hundred and ninety-five to a certain tract of land situate in the said township of Oxford and county of Warren described as follows: Beginning at and in the mouth of a run that vents into the Delaware river from the spring by the dwelling

house (formerly) of John Vanetta, thence down the river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with the Delaware eight perches to a post, thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning, the same to be laid out to contain one acre of land; and that it is further claimed by said Breckenridge that the location of the said one acre of land is such that the said public road at the place where it crosses your orators said railroad as aforesaid runs through and over said one acre of land, and that as said acre of land also includes your orators road bed at that point, the said crossing is wholly included within the boundaries of said lot. That the said title so as aforesaid assumed to be conveyed to said Henry W. Breckenridge by said Joseph M. Roseberry is derived through certain mesne conveyances, from one William P. Robeson whose executor George M. Robeson by deed under color of the authority conferred upon him as such executor by the will of said William P. Robeson, who died in the year eighteen hundred and sixty-four, conveyed or assumed to convey the same to one William O'Neill (under whom said Breckenridge claims title) on or about the twenty-seventh day of June in the year eighteen hundred and ninety-five.

And your orators show that it is true that the said William P. Robeson was in his lifetime and on and prior to the twenty-fifth day of June in the year eighteen hundred and fifty-one seized in fee of the said one acre of land as above described and also both in severalty and as tenant in common with one John M. Sherrerd was then seized in fee of several other parcels of land through and over which it was then contemplated by your orator the Belvidere Delaware Railroad Company to construct its railroad as the same was in fact constructed within a few years

thereafter; and that the said Robeson and Sherrerd being seized as aforesaid and being desirous that the said railroad should be so constructed, and anticipating that great advantages would accrue therefrom to their said lands did on or about the date last mentioned in order to induce your said orator to construct its said proposed railroad in the place where the same was subsequently constructed and not elsewhere enter into an agreement in writing with your said orator the Belvidere Delaware Railroad Company (by Ashbel Welsh its agent duly authorized to act for your said orator in that behalf) in the language or of the tenor and effect following, that is to say,

ARTICLES OF AGREEMENT entered into this twenty-fifth day of June Anno Domini 1851, between William P. Robeson and John M. Sherrerd, Esquires of the town of Belvidere, in the county of Warren and State of New Jersey, and The Belvidere Delaware Railroad Company by Ashbel Welch, an agent duly authorized by the Board of Directors.

Said Robeson and Sherrerd for and in consideration of the sum of one dollar to be paid to each of them by said company and in consideration of the benefits which The Belvidere Delaware Company if constructed will produce to their property, hereby agrees to convey in fee simple each so much of the land as belongs to himself separately and both, so much of the land they now hold in common lying on the route of the said railroad in the Township of Oxford and County of Warren aforesaid, anywhere between the farm of William White, (below Thomas Lomason's farm,) and the land of John Hoff, Jr., (above Abraham McMutrie's land,) as may be sufficient for the construction of said railroad with its ditches and appendages and for procuring materials, reserving the timber on said land also the buildings and the following rights to wit: The right of passing with teams or otherwise across the said railroad

on the strip of land or lane lying between the lands of Abraham McMurtrie, Jr., and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works, erected or to be erected, also the right of passing their shafts, belts or contrivances for transmitting power from water wheels near the river to buildings above said railroad through openings under the same, provided said railroad shall be constructed.

And the said company agree to pay the said sum of money for said land, and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd, with good approaches to said crossings, and to make, when necessary, openings under their railroads for the passage of belts, shafts or other contrivances for the transmission of power, and to pay the increased expense which said Robeson and Sherrerd shall incur in constructing their water power canal over and above what would be the expense if said railroad had not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance.

This agreement shall apply to the lot now owned by Miss Allan Mowry if purchased by any of the parties hereto.

Witness our hands the day and year first above written.

J. M. Sherrerd,
Wm. P. Robeson,
Ashbel Welch, Agent, Bel. Del. R. R. Co.
Present: Martin Coryell.

And your orators show that the said one acre of land as above described and claimed as aforesaid by said Breckenridge lies between the points mentioned in said agreement, that is to say, between the farm then

of William White and the lands then of John Hoff, Jr., and is among the parcels of land thereby (to the extent necessary for the construction of said railroad, its ditches and appendages,) agreed to be conveyed to your said orator, and that your said orator accordingly did under the said agreement and without any further conveyance or assurance, but with the entire concurrence and approval of the said William P. Robeson, shortly after said agreement proceed to occupy so much of said one acre lot as was sufficient and required for the purposes of said road-bed, ditches and appendages, and constructed said road-bed, ditches and appendages upon and across the easterly end of said one acre lot, said road-bed being at that place elevated above the surrounding land to a height of about twenty feet by means of an embankment in part on said lot and built by your said orator for the purpose of its said road-bed at great expense, of solid earth except for a space of less than twenty feet, just sufficient for the passage of said public highway, where said railroad is carried over the same by a stone arch bridge or culvert built into and forming part of said embankment; and that the said railroad thereupon constructed upon said embankment in or prior to the year eighteen hundred and fifty-five has ever since then until the present time been continuously operated, at first by your orator the said The Belvidere Delaware Railroad Company and subsequently by your orator the said The Pennsylvania Railroad Company, under its lease aforesaid; and that your said orators have successively during all of said period for more than forty years held, occupied, possessed and enjoyed so much of said one acre of land as was required for said embankment and road-bed and appendages, peaceably and quietly and without question or dispute until the effort of said Breckenridge to assert title thereto as aforesaid. That the possession of your orators under said agreement being thus undisturbed and nothing having ever occurred to draw attention to

any infirmity or informality in the legal title to the land so held no formal conveyance of said title was ever obtained or demanded by said The Belvidere Delaware Railroad Company from said Robeson or his representatives.

That the said provisions contained in said agreement for crossings for teams or otherwise, and for passage of belts, shafts or contrivances for transmitting power under said railroad and also the mention therein made of the projected water power canal have relation to other parcels of land owned by said Robeson and Sherrerd affected by said agreement, and upon some of the portions of which not required for said railroad it was then their intention to erect mills and works of various kinds for the purpose of utilizing by means of such canal the water power of the falls in the river Delaware adjacent to which some of said parcels of land were located, but that said contemplated works were never built, so that no occasion has ever arisen for the said crossings, (other than the crossing at or near lands of Hoff and McMurtrie which has always been used and enjoyed in compliance with said agreement) or for said passages for belts, shafts or other contrivances for transmitting power, nor has any claim ever arisen or been made for the payment of said increased expense caused by interference with the location of said canal, and all requirements of the said agreement as to the removal of buildings by said company were fully performed to the entire satisfaction of the persons concerned and no controversy, contention or difference of opinion ever arose with respect to said company having complied with all its obligations in the premises, and your orators in fact say that all such requirements and obligations were in fact fully and completely met and carried out except so far as the same were waived in consequence of the abandonment of the said enterprise of said Robeson and

Sherrerd in contemplation of which said stipulations were inserted in said agreement.

And your orators insist that said agreement was made upon good consideration, and that your orator the said The Belvidere Delaware Railroad Company having as aforesaid taken possession of and made large expenditures of money in the construction of its said embankment and road-bed upon said portion of said one acre of land with the acquiescence and express approval of said Robeson and Sherrerd is entitled to have the said agreement specifically performed by a conveyance of the legal title, and is in equity the owner thereof ; that the possession of said land maintained by said embankment and road-bed and the continual running of trains thereon was notice to all persons of your orator's rights in the premises, and that not only the said Breckenridge but the several persons through whom he claims title to said one acre had each at and prior to the time of the several conveyances to them not only constructive but actual notice of your orators said equitable rights, and that the said Breckenridge was not nor was any of the said mesne grantors a bona fide purchaser of said land, nor did they or any of them pay any valuable consideration therefor. But your orators show that notwithstanding your orators said equitable rights the said Breckenridge insists that your orators have no legal title to said lands, and that the possession aforesaid maintained by them has not extended to the land within the said highway in such manner as to give to your orators or either of them a title by adverse possession, and your orators are advised that the assertion of their title to said land in said highway based upon said agreement and the possession thereunder as aforesaid in the courts of common law will be attended with uncertainty.

And your orators further show that it is only by

virtue of his said supposed ownership of the legal title to the said one acre of land that said Henry (or Harry) W. Breckenridge claims to have any right or interest in the land in said public road at said crossing, but that the true location of said lot is uncertain by reason of the fact that although the said spring and run of water referred to in the description as well as the said river Delaware, remain as visible boundaries, yet the said tract has never, within the memory of living men, been defined on its southerly side by any monument whatever, but has always lain open in common with adjoining lands on that side and vacant and unoccupied, except by the occupants of said adjoining lands. That your orators have heretofore supposed and claimed that said lot lay wholly to the north of said crossing and that said public road at the place of said crossing was within a certain tract of land conveyed to said The Belvidere Delaware Railroad Company by Thomas Lommasson (who was then seized in fee thereof,) and his wife, dated the third day of September in the year eighteen hundred and fifty-three, conveying a tract of land of two and one-half acres, more or less, adjoining the said Robeson acre on three sides; and that if the true location of said crossing is not within said Robeson acre it is within said Lommasson tract, in which case said Breckenridge has no claim or pretense of title thereto, but the soil of said highway subject to the public easement is owned in fee simple by your orator the said The Belvidere Delaware Railroad Company, subject to said lease.

And your orators charge and insist that the aforesaid agreement between said Breckenridge and the said Township Committee is illegal and void and in excess of the powers of said committee, and contrary to public policy and that the said public easement does not include a right to cross said tract of land with the said line of pipe; that any such use of said

highway will impose upon said land a further and additional servitude; that if the said The United States Pipe Line Company should lay its said line of pipe or attempt to do so through or under the road-bed of said railroad at any other point than said crossings or one of them such disturbance of the said road-bed would be attended with very great danger by reason of the running of trains over said track, and that the laying of said pipe line through or under the tracks of said railroad whether at a public or private crossing, or at any other point, will be a permanent appropriation to the use of said pipe line company of so much of the land as shall be thus utilized, and being done without compensation to your orators, or either of them, is contrary to the laws and constitution of this State, and will be greatly to the injury of your orators.

That unless great care is observed in the laying of said pipe there will be a liability to leakage and the oil conveyed thereby being highly inflammable and the operation of said railroad being necessarily attended by the use of fire in case of the escape of oil from said pipe there will be great danger from that source.

In tender consideration whereof and as much as your orators are without remedy in the premises, except in this honorable court, where matters of this nature are properly relievable, to the end therefore that the said The United States Pipe Line Company, Henry (or Harry) W. Breckenridge, and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee, of the township of Oxford, in the county of Warren, defendants, herein may without oath, full, true, direct and perfect answer make to all and singular the premises, and that they may be enjoined and restrained from constructing or attempting to construct a line of pipe through, under or across the said road-bed of your orators, operated

as aforesaid by The Pennsylvania Railroad Company whether at the said undergrade crossing or either of them or at any other point, and from in any manner disturbing the soil of said road-bed or of said crossings or either of them at any point whatsoever. And that said Henry (or Harry) W. Breckenridge may be enjoined from setting up or claiming any right or title to the land occupied by the road-bed and embankment of said railroad or within the said highway crossing by virtue of his said supposed ownership of said one acre of land, and that he may be decreed by proper conveyance to release unto your orator the said The Belvidere-Delaware Railroad Company all right, title and interest in or to so much of said one acre of land as is occupied by the road-bed, ditches and appendages of said railroad, and that said agreement of said Robeson and Sherrerd with your said orator dated June twenty-fifth A. D. 1851, as to said one acre of land or so much thereof as is required for the purposes aforesaid may be specifically performed, and that your orators may have such other or further relief in the premises as the nature of the case may require and shall be agreeable to equity and good conscience.

May it please your Honor the premises considered to grant unto your orators not only the State's writ of injunction issuing out of this honorable court and under the seal thereof to be directed to the said the United States Pipe Line Company its officers, servants and agents and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee of the township of Oxford in the county of Warren and Henry W. Breckenridge, commanding and enjoining them that they absolutely desist and refrain from constructing or attempting to construct a line of pipe through, under or across the said road-bed of your orators operated as aforesaid by the Pennsylvania Railroad Company, and from in any manner disturbing the

soil of said road-bed or of said crossing or either of them at any point whatsoever, and also commanding and enjoining the said Henry or Harry W. Breckenridge that he desist and refrain from setting up or claiming any right or title to the land occupied by the road-bed and embankment of said railroad or within said highway crossing by virtue of his said supposed ownership of said one acre of land, but also the State's writ of subpœna issuing in like manner out of this honorable court and under the seal thereof, to be directed to the said the United States Pipe Line Company, and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee of the township of Oxford in the county of Warren and Henry W. Breckenridge, therein and thereby commanding them on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience,

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

ALAN H. STRONG,
Solicitor and of counsel with complainants.

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