New Jersey Court of Errors and Appeals.

William T. Abbott and others, vs. The West Jersey Railroad Company.	In Tort. On Error to Supreme Court.

BRIEF OF DEFENDANTS IN ERROR,
By D. J. Pancoast,
Counsel.

I.

The first error assigned, (page 547) relates to proof by the plaintiffs below, showing the presence of cinders from the engines along the track, which proof the Court ruled out of the case on the motion of the defendant company's counsel, who now bases error upon its admission—pages 124, 125.

II.

The admission of testimony, on the part of the plaintiffs, in the Court below, to prove that prior to and after the date of the fire in question the defendant company's engines were accustomed to throw out sparks of fire, capable of igniting the timber lands along the road in that vicinity, is made the subject matter of several errors assigned—page 548, &c., I, II, VIII, IX, X and XI.

There is a long line of cases in support of such testimony, especially where it appears, as in this case, that all the engines used on the road were similarly equipped with the same kind of spark arresters.

Field vs. N. Y. C. R. R. Co., 32 N. Y., 346, 348.
Webb vs. R. Y. & C. R. R. Co., 49 N. Y., 423, 424.
Loring vs. W. & N. R. R. Co., 131 Mass., 469.
Thacher vs. R. R. Co., 85 Me., 509.
Campbell vs. Misso. Pacific, 121 Misso., 340.
61 A. & E. R. R. Cases, 462 and cases therein cited.
G. Trunk R. R. Co. vs. Richardson, et al., 91 A. S., 470.
Chicago St. Paul Ry. Co., 10 U. S. Ct. of Appeals, 378.
East Tenn. V. &. Ga. Ry. Co. vs. Histers, 90 Ga., 11, 17.

III.

The third error assigned is to the refusal of the Court to non-suit the plaintiffs, on the ground that

there were no facts from which the jury could infer that the fire in question was caused by one of the company's engines.

The facts proved were these: That the company's engines, used over that road before and after the fire, were accustomed to cast out burning sparks in that vicinity (pages 184, 186, 187, 188 and 502 to 516 inclusive); that in the afternoon of September 12th, 1895, the fire originated in the edge of the company's right of way, where it passed through Gravelly Run cedar swamp, within about two hundred feet of the company's signal tower, on the opposite side of its tracks (page 107); that it was an unusually dry time, no rain of any account having fallen since the previous June (pages 107, 164); that the fire was discovered in the edge of the swamp, near the defendant company's tracks, soon after the passage of three of its trains, one at 2.55, one at 3.00 and the other at 3.18 P. M. (pages 80, 82, 354); that the defendant company's signal man and telegraph operator in the signal tower, adjacent to the place where the fire started, left his post and called the company's road gang, whose duty it was to be on the lookout for such fires, to help extinguish it (pages 83, 84); and that no other probable cause of the fire existed in that vicinity.

The occurrence of the fire upon or adjoining the right of way soon after the passage of engines capable of throwing out sparks of fire, in the absence of other reasonable cause of the fire, has uniformly been held

to be proof that it came from the engine, sufficient to go to the jury.

Wiley vs. West Jersey Railroad Co., 15 V., 247, 249, and the cases heretofore cited.

In McGowen and others vs. Glaser, 10 At. Reporter, (Sup. Ct. of Pa.) it was held that it was competent to show that engines had been accustomed to throw out sparks of fire, and that the testimony of two witnesses that they heard the passage of the engines and shortly after saw the bogs of the plaintiffs on fire in a field adjoining the tracks, made out a case to go to the jury.

In Knight vs. Chicago Ry. Co., 81 Iowa, page 310, it was held that the fact that the plaintiff's house took fire shortly after the passage of the defendant company's engine, four hundred and twenty feet from the right of way, with the wind in that direction at the time, and that the right of way was on fire at about the same time, were facts sufficient to take the case to the jury.

In Pa. R. R. Co. vs. Shanahan, 79 Pa. St., 406, it was held that evidence which showed that the company's engines were in the habit of throwing out live coals or sparks, causing fires thereby, and that on the day of the fire, between two and three o'clock, the plaintiff's barn, one hundred and fifty feet distant from the railroad, was discovered to be on fire, and that a train had passed about noon, was sufficient to support a verdict.

IV.

The fourth error assigned, (page 549) is not well founded. The evidence showed that the first intelligence of the fire was communicated by the company's tower signal man, who was stationed within a few feet of the place where the fire started, to a gang of the company's employes on the road, some distance to the south, who, at his call, undertook to put it out. The purpose of the question objected to was to learn if the tower man had notified the company, at its office in Camden, by telegram, of the starting of the fire, but he replied that he could not remember, so that no possible harm was done by the inquiry.

V.

The fifth assignment of error, (page 549) is to the refusal to let one of the defendant company's witnesses, against the plaintiffs' objection, answer the following question: "When you were there in March, 1895, did you see any evidence of more than one fire?" (page 384) It needs no argument to show that the judge was right in disallowing this question, which did not call for facts but an inference based on undisclosed facts.

VI.

The sixth error assigned, (page 449) complains that the Court did not oblige the plaintiffs to offer in evidence a certain report their counsel asked for, and was permitted

to examine, which the defendant company's counsel did not offer on its part. In this there was not the least harm done to the defendant company. If the inspection of the report made it evidence, and the defendant company wanted it in evidence, they should have offered it themselves.

VII.

The seventh error (page 550) complains that the Court refused to compel one of the plaintiffs to produce and offer in evidence a certain estimate of the damage done to their property by the fire, which had been by them used in an effort to compromise the claim with the defendant company. This certainly was not legal error.

VIII.

The twelfth error assigned (page 552) relates to the refusal of the Judge "to direct the jury to find a verdict for the defendant upon the testimony that the defendant company had the engines in use over the road on that day in question, namely, September 12th, 1895, equipped with the most recent and modern and safe appliances for the prevention of the escape of fire from its smoke-stack and ash pan, known in railroad circles."

There was proof in the case that the fire originated at the time of a most unprecedented drought, (pages 37, 107, 121, 164, 180); that the company's road bed, at the place where the fire crossed the track, was covered

with combustible matter (pages 118, 183 and 184); and that the company's engines were accustomed to scatter sparks of fire along that route, which could not have occurred, according to the testimony of the company's experts, had their engines been in proper order (pages 272, 365, 372). Therefore, it was not a proper request. It was for the jury to say, upon the proofs, whether or not the company was free from negligence in that particular.

IX.

The thirteenth error (page 552) is based upon what purports to be the defendant company's drag net request to charge on fourteen different points. This request appears on page 544. It is not admitted that such a request was duly made. The only exception to the Judge's refusal to charge on these points is on page 542; and I insist that it is not the duty of the Court to consider this assignment, predicated upon such an exception; but, if it takes the trouble to do so, and will examine the request in the light of the charge, no error will be found to have been committed by the Judge in dealing with the request as he did. Con T Co as Cheneuth 29 h 416

Of the remaining errors assigned, (page 555, XIV, XV, XVI, XVII, XVIII and XIX) it is unnecessary to speak at length, as in my judgment no one of them merits serious consideration.

February Term, 1897.

DAVID J. PANCOAST,

Counsel.

New Jersey Court of Errors and Appeals.

West Jersey Railroad Company, Plaintiff in Error, and William T. Abbott and others, Defendants in Error.	In Tort, &c.

BRIEF FOR PLAINTIFF IN ERROR.

This action was brought by the plaintiffs below against the West Jersey Railroad Company to recover for damages sustained by fire, which destroyed a certain cedar swamp situate in Atlantic county.

The case was tried at the Atlantic Circuit before his Honor, Justice Ludlow and jury; the verdict was in favor of the plaintiffs below for the sum of one thousand seven hundred and twenty-five dollars.

The allegation of the plaintiffs below was that a spark from the engine of the defendant company set fire to some brush and woodland on the twelfth day of Sep-

tember, 1895, near the switch or block station in Gravelly Run Swamp, ten days before plaintiffs' wood land was burned, and on the opposite side of the railroad and considerable distance therefrom; that this fire, after burning over the country on that side of the railroad for a period of ten days, crossed the railroad and entered their swamp.

There was no allegation that the construction of defendant's locomotives was defective, or that any better appliance was in existence than was in use by them, or that there was any negligent management of the engines or failure in inspection of the engines to keep them in order, nor was there any allegation or proof that the defendant company had failed to keep its right of way as clean from rubbish as was practicable.

The defendant company denied that the fire of September 12th was set by any spark from its engines, or that it was that fire which ten days afterward crossed the railroad track and burned plaintiffs' swamp; they insisted that the fire which started on September 15th, at or near McKee Station, in that same neighborhood, was the fire which crossed the track and entered plaintiffs' swamp.

Defendant also insisted and proved on the trial that its locomotives passing the place where the fire started on September the 12th were equipped with the most modern and safe appliances for the prevention of fire; that the same were duly inspected both immediately before and after the fire and found in good order, that its right of way had been trimmed, cleaned and the rubbish carted away before the fire, and that all practicable means had been taken by the company to prevent the communication of fire from any of its engines to any property along its right of way.

It is upon this point that I shall largely confine myself in the argument of this writ of error. The

question as to what fire, whether that of September 12th or that of September 15th, after burning some days crossed the railroad track and entered plaintiffs' swamp, was disposed of by the jury; also the question of the amount of damages sustained by the plaintiffs below, was disposed of by the jury, and as a matter of course neither of these questions come before this Court. Much of the printed book is taken up with the testimony upon these two questions and will not be referred to in this argument.

The plaintiffs below did not specify what train or engine set the fire, so that the defendant company was obliged to make proof as to the spark arrester and ash pan, and inspection of all its engines passing the *locus* on September 12th. I take it, not from any admission but rather from the argument, that it is now claimed the engine drawing the pay train was the one that started the fire; this is known as engine number 39. This uncertainty required the production of considerable testimony.

In this argument I shall assume that the plaintiffs below insist that the fire was communicated by engine number 39; if, however, I find from his argument here that any other or additional claim is made, I shall beg leave to call attention to the proofs as to the other engines which are equally conclusive and convincing.

The question as to whether or not this fire started from a spark from an engine, comes before this Court upon an exception taken to the ruling of the Trial Judge in refusing to non-suit on the ground that there was not sufficient proof of this matter to go to the jury; and the question as to the appliances used by the defendant company, and the means taken by them to prevent the communication of fire from their engines, also comes before this Court upon the refusal of the Trial Judge to instruct the jury, at the close of the case,

to find a verdict for the defendant, and also upon the refusal of the Court to charge the jury as requested, and upon exception to various parts of the charge as made upon this point, and as to the admission of illegal evidence bearing upon this question.

The basis proposition of the plaintiff in error is: *having used all practicable means to prevent the communication of fire from its locomotive engines used on the railroad passing the locus on the day in question, to any property adjacent to its railroad; and having provided for its engines screens or covers to their smoke-stacks of the most modern and approved pattern, so as to prevent as much as practicable the escape of fire from their smoke-stacks; and having equipped its engines with an ash pan, so contrived as to prevent as far as practicable the escape of coals or cinders from the fire; which appliances were duly inspected by competent mechanics from time to time and found to be in order before and after the fire; and having mowed, raked and cleaned the right of way along the place in question, shortly prior to the fire, in the most thorough manner possible; and there being no evidence of want of care or skill on the part of the employes in charge of the engines, or negligence in their use or management; that the defendant company was not liable for any damages resulting from the fire in question, even if the same was communicated by a spark or coal from its engine.*

The evidence offered on the part of the defendant company as to each and every of the matters contained in this proposition is full, complete and unanswerable; there was no attempt to contradict any of it, nor to impeach any of the witnesses testifying upon any of these points. It stands unchallenged, and the naked proposition of law was presented to the Court below, and is

brought here sustained by the authority of the Courts of our own State.

Hoff vs. West Jersey R. R. Co., 16th Vroom, page 601.

Wiley vs. West Jersey R. R. Co., 15th Vroom, page 274.

Beseman vs. P. R. R. Co., 21st Vroom, page 253. (See page 243.)

It may not be amiss at the outset to call attention to the statutes bearing upon this question; they will be found under the head of "Railroads and Canals," in the Second Volume of the General Statues, page 2670, being Sections 124, 125, 126 and 127 of the General Statutes; in the Revision they are Sections 13, 14, 15 and 16. The first two sections are the first legislation in this State on the subject, and were passed in 1865, (See Pamphlet Laws, 1865, page 905). The other two sections are the act of 1873, (See Pamphlet Laws, page 155). They are as follows:

124. Sec. 13. That it shall be the duty of every railroad company in this State, and of every company or person operating or using any railroad in this State, with a locomotive engine or locomotive engines, to take and use all practicable means to prevent the communication of fire from any locomotive engine used or employed by them on any railroad in this State, in passing along or being upon any such railroad, to any property of whatever description of any owner or occupant of any land adjacent or near to such railroad.

125. Sec. 14. That when any injury is done to any building, grain, hay, crops or other property of any person or corporation, by fire communicated by a locomotive engine of any person or railroad corporation, in violation of the foregoing section of this act, said person or corporation shall be held responsible in damages to the person or corporation so injured; and it shall be

lawful for any railroad corporation to make an agreement for insurance of any such property on which an insurance may be practicable, and such corporation shall have an insurable interest therein accordingly, and may effect insurance thereon in its own behalf.

126. Sec. 15. That it shall be the duty of every railroad company in this State, and of every company or person operating or using any railroad in this State with a locomotive engine or locomotive engines, to provide such engine or engines with a screen or screens, or cover or covers, on the smoke-stack or smoke-pipe of such engine or engines, so as to prevent, as much as practicable, the escape of fire, either from wood, soft coal or hard coal, from the smoke-stack or smoke-stacks, smoke-pipe or smoke-pipes of said engine or engines.

127. Sec. 16. That in every action now or hereafter brought for the recovery of damages for an injury done to the property of any person or corporation, by fire communicated by a locomotive engine of any person or railroad corporation in violation of the preceding sections of this act, proof that the injury was so done shall be *prima facie* evidence of such violation, subject nevertheless to be rebutted by evidence of the taking and using all practicable means to prevent such communication of fire as by said section required.

I.

The plaintiff in error insists (1) that it followed the mandate of Section 124 in using all practicable means to prevent the communication of fire from the engine used by it; (2) that it provided its engine with a screen or cover to the smoke-stack so as to prevent as much as practicable the escape of fire, pursuant to the directions of Section 126; (3) that its engine was equipped with a

suitable ash pan; (4) that the engine was duly inspected and found in order; (5) that its right of way was cleaned from all grass, brush and other rubbish; (6) that no negligence was shown in the use or management of the engine or want of care or skill on the part of the company's employes.

1. The defendant company used all practicable means to prevent the communication of fire from the engine; it not only provided it with proper screens but also had it equipped with suitable ash pan; both of which upon inspection were found to be in order. Having done this the requirements of Section 124 are met. What else was it *practicable* for the company to do to prevent the communication of fire from its engine ?

2. As to the screen used upon the engine in question, as well as upon the other engines which passed the *locus* on the 12th of September, it is what is known as the extended smoke box pattern. Mr. McAllister, one of the witnesses called by the defendant, illustrated this to the jury by a drawing which he made upon paper in their presence, which he explained as he proceeded, and which paper is now presented to this Court. The draughtsman's blue prints of the appliances were also submitted and explained, and are shown here. There is also a model of this appliance, which is one-quarter of the full size, in Court. The explanation of this appliance is fully given in the testimony of Mr. McAllister above referred to. (Pages 263-267.)

Mr. McAllister, who is the master mechanic at the Camden round house of the Pennsylvania Railroad Company, has been a railroad machinist for forty-three years, having served his time as apprentice with Danforth, Cook & Co., of Paterson. (See pages 258 and 259.) He says, "this extended smoke box and screen

is the only appliance now used on the West Jersey Railroad for the purpose of preventing the escape of fire and sparks from the smoke-stack, it having supplanted and taken the place of all others as being safer." (See page 259.)

That the engine No. 39, as well as the other engines named, being all of those that passed the right of way on the day in question prior to the fire, were equipped with these appliances.

Thomas M. Kerr, who is the machinist in the employ of the Pennsylvania Railroad Company, Amboy Division, in charge of the round house in which the West Jersey engines are run, says, "That he served an apprenticeship at Bordentown in the manufacture of locomotives, and has followed his business since 1861, with the exception of six years, part of which time he was in the army (see page 282); that the extended smoke-stack with screen is the latest and best appliance known to prevent the escape of sparks from the smoke-stack; that all other appliances formerly used have been discarded." (See page 283.)

Rufus Hill, the Master Mechanic in charge of the Pavonia Shops, Camden, who has been connected with the motive power department of the railroad for over forty years, commencing his time as apprentice in 1852, and since then has been engaged in the manufacture and repairing of locomotive engines (see page 364). He says, in answer to a question as to what spark arrester is the most generally used at this time, "That of late "years the most improved spark arrester is what is "called the extended front type with a netting and "mechanism therein inclosed; that this type of spark "arrester is in use on the engines of the West Jersey "and Seashore; that it is almost in general use on the "roads running throughout the country; that it is used "on the New Jersey Central, the New York Central,

"Hartford and New Haven, New York and Albany, "Baltimore and Ohio, and a number of others, includ- "ing the Reading to Atlantic City; that it is generally "considered by the best mechanics of the country as "the best and only spark arrester in use."—(See pages 365 and 366.)

The evidence of these three witnesses, together with the sketch made in Court and the blue print shown, was the only testimony on this point introduced during the trial. It is in no way questioned or shaken. No testimony was offered to rebut the claim that this spark-arrester used by the engine in question was the best and latest appliance for the purpose. No expert was called by the defendants, not a railroad man, not a witness of any kind who in any way disputed the defendant's claim on this point.

This fully complies with the requirements of Section 126.

3. But in addition to the screen to the smoke-stack required by Section 126, Section 124 requires that all practical means to prevent the communication of fire should be used. In this connection the defendant below offered proof that the ash pan used was of the most approved and safe construction, and a sketch of it was made before the jury and submitted to them, (See pages 366, 367 and 368). It is here produced in this Court as well as the blue print from the working drawings made for the construction of the ash pan. In addition to the evidence and drawings used below, I have in Court a model of the ash pan made to a scale of one-eighth full size; the ash pan was explained to the jury by Mr. McAllister, (see pages 275, 276 and 277). This ash pan is firmly bolted in its place; it is kept tightly closed except when necessary to open the damper to give draft to the fire, (see page 279). Mr. Kerr states, (page 285),

after describing the ash pan, that it is the safest and best in use.

Mr. Rufus Hill states that he has actual and personal knowledge of the ash pan in use on the engines in question. On pages 366 and 367 he describes the pan of which he made a pencil drawing before the jury. On page 370 he says, "All of our engines are made of "very heavy material and we give the ash pan as much "attention and pains as we would the boiler itself. "You see we have to make it all of very heavy "material; it is a very complicated thing and they have "to be bolted up very solid."

"Ques. For what reason is all this pains taken?

"Ans. To make a perfectly tight ash pan.

"Ques. And do you do that in every case possible?

"Ans. We do it in every case, in the shops.

"Ques. Is there any better construction known to the "trade, of ash pans, than that which you have attached "to the various engines of the West Jersey Railroad?

"Ans. No, sir."

This comprises all of the testimony that was offered in the case upon the question of ash pans; the witnesses called by the defendant below and the drawings submitted, above referred to, was the only evidence in the case; there was no contradiction, no impeachment, no offer of any rebutting testimony. So that it must be conceded, both with respect to the smoke-stack and the ash pan underneath the fire box, that defendant's case was unassailable.

4. The proofs show that the defendant company regularly inspected its engines, including both the spark arrester and the ash pan, and kept the same in order. Engine number 39, which drew the pay train, as well as all of the other engines passing the *locus* on September 12th, prior to the fire, had been inspected within a short

time before the fire, and found to be in perfect condition, and were also examined shortly after the fire, and then found to be in a perfect condition.

It will appear that at the round house in Camden there is an inspector whose duty it is every time an engine comes in to inspect it, opening the ash pan, cleaning the same, ascertain if it is in proper working order and needing any repairs. It is also his duty on these occasions to examine the extended smoke-box and screen, open the caps on the sides, inspect the screen, hopper, and other parts. If either the ash pan, the extended smoke-box or screen need any repairs, he so reports to the master mechanic, who causes the repairs to be made forthwith. He keeps a book in which he records the inspection of every engine, date, its condition and a note of any needed repairs. Once a week the door in front of the engine is taken off and the inspector goes inside and makes a thorough and close examination. Once in two weeks all fires are drawn from every engine, the boilers washed out and the engine still more thoroughly examined in all its parts. These examinations are all that experience has shown railroad managers to be necessary. They are made thus often out of an abundance of caution. (See testimony of Washington McAllister, pages 265 and 268, bottom of 272 and top of page 277; also testimony of Thomas M. Kerr, pages 284, 286, 288, and 289.)

George Wilson was the inspector at the Camden round house, where these engines were housed, at the time of this fire. His duty was to examine the extended smoke-boxes, screens and ash pans. He kept a record of his inspections and the books were offered in evidence before the jury, and are produced in this Court. (See page 291.) He states that once a week he opened the front door of the box and went inside. (See page 292.) At the end of every trip, upon the return

of the engine to the round house, he made what was called an external examination, by taking off the caps at the side of the smoke-box, cleaning it out and examining it, as well as the ash pan, from which he removed the cinders. His records show that he found the extended smoke-box and ash pan of these engines in good condition, at the examination made next before September 12th, and upon the examination made next after.

Wilson, on pages 294 to 302 inclusive, gives the result of his inspection of all the engines in question, including number 39, made immediately before and after September 12th, showing the method of the examination and the results. This examination was close and careful and revealed no defects, so that the records show the condition to be good, both before and after the fire, and that no repairs were needed. As before stated, once a week the front door was opened and the inspector went inside of the smoke-box; this is what is called an internal inspection. Upon the return of the engine to the round house from every trip, the caps on the sides of the smoke-box are removed, the hopper opened and the smoke-box is cleaned of the cinders and examined; this is called the external examination. On page 294 Mr. Wilson gives the record of his inspection, on the 12th and 13th of September, of engine number 39. On one of these days the smoke-box was opened and thoroughly examined on the inside; on the other the external examination was made, no internal examination being made until a week later. On page 303 the inspector gives the manner in which he made his examination, and states that Mr. Kerr, the foreman, went over the engine with him at the time the internal examinations were made; so that once a week we have the examination of all of these engines by the foreman or master mechanic at the round house as well as by the inspector.

By referring to pages 305 and 306 it will be seen that where the external examination, so called, was made the record in the book contains the words "extended smoke-box," signifying that an internal examination was not necessary by reason of the fact that this new appliance was on the engine then examined. Where, however, an examination was made inside, the nthe word "good," if the examination showed everything to be in good order, is written in the lines opposite spark-arrester, ash pan, etc.

This witness had been promoted from the position of inspector of the smoke boxes and ash pans to that of looking after the valves and journals on the engines, in which work he had been engaged some ten or eleven months before the trial, (see page 304). This is the best evidence of his competency, skill and faithfulness.

By referring to page 307 it will be seen that the examination of engine No. 39 on the thirteenth was an internal examination, when the inspector with the foreman opened the front of the smoke-box and went inside and made a thorough examination. Its condition was good, no repairs were needed. Upon cross-examination (pages 331 and 312) it will be noted that on the eleventh of September the examination of engine No. 39 was external; on the tenth it was external; on the ninth it was external; on the sixth it was external; on third it was external, and on August 29th there was an internal examination, which shows that it was in perfect condition, needing no repairs (see page 312). So that we have the engine opened and inspected and thoroughly examined on the interior on August 29th, thirteen days preceding the fire (see page 312). And on the thirteenth of September, the day after the fire, this same internal examination was made, and its condition was found good. (Bottom of page 307 and 308.)

Now, with reference to this testimony, the attention

of the Court is directed to the fact that it is in no way contradicted or impeached; the veracity, standing, skill and efficiency of the inspector are in no way assailed. No testimony whatever on the part of the plaintiffs below was offered in rebuttal of this part of defendant's case. We have, therefore, as a demonstration, the best screen, the safest ash pan, the most thorough inspection, and the use of all practicable means to prevent the escape of fire from the engines.

5. The company's right of way had been cleaned from all the grass, brush and other rubbish. There is no testimony in the case showing the width of the right of way at the place in question; Daniel W. McClure, the foreman of the section gang, was called by the plaintiff below and he testified that he did not know the width of the right of way, but that he kept cleaned through the woods at that place, that part which originally had been cut open, which he judged to be eighty-four or eighty-five feet wide. (See page 77.) William Lake, the surveyor called by the plaintiff below, had no knowledge as to the width of the road bed, and his testimony on that point was stricken out by order of the Court. (See pages 28 and 29.)

Elisha C. Duberson, who is foreman of Col. McKee, who owns the land through which the railroad runs where this fire of September 12th started and raged, says that the railroad right of way has been cut and cleared out to the property lines of Col. McKee; that some of his finger boards and corners are inside of that part cleared and kept clean by the railroad company (page 190), so that the space that the railroad company had to keep in order is clearly fixed and determined by plaintiffs' witnesses.

J. E. P. Abbott had not seen the right of way prior to the fire, and in speaking of its condition he judged by what he saw after the fire (page 40). This is no

evidence of the right of way before the fire; large forest fires had been burning in this neighborhood for two weeks, and debris, cinders and ashes of all kind had been deposited.

Elisha C. Duberson, called by the plaintiff, testified on page 183 that there were low bushes and Indian grass, etc., on each side of the railroad, that is, on each side of the right of way; in speaking of the fire he says: "When it came to the railroad * * * of course the railroad had been mowed at the time."

On cross-examination (pages 191 and 192) he says that the place where the fire started, and where it is alleged it crossed the track, the right of way had been mowed and the grass and stuff had been raked up and carted away (see page 192, line 8). The condition of the right of way at other places, which is in his direct examination, is immaterial.

"Ques. But between McKee's saw mill and the Ab-
"secon road had it been raked up and taken away?
"Ans. Yes, sir. (This is where the fire started.)
"Ques. And along where the fire is alleged to have
"crossed the railroad it had been raked up and taken
"away?
"Ans. Yes, sir."

He also testifies (page 192) that on each side of this railroad, along by the place in question, where the fire is alleged to have started and crossed, there is a ditch on each side of the railroad seven feet from the track. That part of the right of way between these two ditches, extending seven feet outward on each side of the rails, was kept clean of all grass and brush by the use of hoes (see page 192). There was nothing there except an occasional stool of crab-grass. From the ditch out to the line of the right of way is kept clear; the grass and brush and rubbish is mowed every year and had been mowed this year and raked up and carted away; there

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was nothing left except such coarse stubble as would escape through the teeth of the rake, (see pages 194 and 195) and what was left could not be gathered by raking, being such small pieces of stubble and brush.

Jacob Duberson, the son of the preceding witness, on page 207, says (lines 10 and 11) that this grass and stuff had been mowed on the right of way and gathered up as clean as they could get it without getting down on their hands and knees and pick up the little pieces; "*that it couldn't be raked cleaner.*"

Antonio Cirigliano, (bottom of page 214,) says that he had gathered up all the hay and stuff along the railroad and taken it home as soon as the section gang had cut it. This was on cross-examination and the following question was put:

"Ques. Scraped it up as clean as you could and took it home?

"Ans. Yes, sir."

On re-direct examination by Mr. Pancoast, he testifies as follows:

"Ques. What did you scrape it up with?

"Ans With my hands. Scraped it up right in front of my house.

"Ques. Did you pick it up with your hands or fork or what?

"Ans. With my hands. They cut all of the grass right in front of my house.

"They gave you that?

"Yes, sir. I wanted to keep the place clean."

He says further that the railroad men raked it up in piles, and that sometimes one got it and sometimes another; the small farmers in that section all being eager to gather it as fast as the railroad men had cut and raked it. (See page 215.)

All of the above testimony on this point is from the plaintiffs' witnesses, examined before plaintiff rested,

and before the motion to non-suit was made. It is needless to refer to anything further in the case on this point. It is clearly shown that the defendant company had done everything that was practicable to keep and maintain its right of way free from grass, brush and other material which might cause the spread of fire.

It will be born in mind, however, it is not alleged in this case that the fire started on the defendant's right of way, but the point sought to be made by the plaintiffs below was that the rubbish on the right of way had furnished the fuel that enabled this fire to cross the track. Now the fire had been burning many days; it had assumed large proportions, was burning with great fierceness, so that, as some of the witnesses testified when they attempted to check its progress or divert its path, so fiercely and strongly did it come, that they were obliged to run for their lives; the land on both sides of the track at this place was timbered and covered with a growth of scrub oak and low brush up to the defendant company's right of way. The railroad company had no obligation put upon it to keep anything free from combustible matter than its own right of way, and when this fire, driven by the wind, crossed the track, it was coming with such force and fury that it jumped from the woods on one side of the track to the woods on the other side, scorching and burning the cross-ties as it passed.

It was not practicable for the defendant company to have done more in the way of keeping its right of way clean than is shown by the testimony in this particular instance.

6. There is no proof of any negligence in the use or management of the defendant company's engine, or want of skill or care on the part of its employes.

Neligence is not presumed, it must be proven. The burden cast upon the plaintiff to prove his case is not in any wise changed by the statute, except as to the matter of screens to the smoke-stack. By section 127, "Proof that the injury was so done," that is, "by fire communicated by the locomotive engine in violation of the preceding section of this act," shall be "*prima facie* evidence of such violation," subject to be rebutted, &c. Violation of the preceding section would be a failure "to provide such engine or engines with screen or screens or cover or covers on the smoke-stack or smoke-pipe of such engine or engines, so as to prevent, as much as practicable, the escape of fire," etc.

In Wiley vs. West Jersey R. R. Co., 15 Vroom, 247, it was insisted that the plaintiff must prove that the fire was communicated by an engine, in violation of the preceding section; that is, that the plaintiff must prove that the engine had no screen or other suitable appliance. This objection was disposed of in that case. I do not here insist upon that point, but my contention is, that when the plaintiff proves the fire to have originated from an engine, then the burden shifts to the defendant, *so far as to show that it had not violated the preceding section;* that it had provided the screen; that is to say, the words, "proof that the injury was so done," that is, "in violation of the preceding section," in not providing a screen, is the matter which is to be rebutted "by evidence of the taking and using all practicable means to prevent such communication by fire *as by such section required*," and no other.

In other words, the utmost effect that can be given to this statute is simply this, that if a plaintiff proves that the fire complained of originates from a spark from a locomotive engine, his case is made out so as to put a defendant company upon its defense; it may be unnecessary to prove any further acts of negligence until

the defendant company has been heard with reference to its appliances. But when the company shows that it has used the most perfect and modern appliances, which were duly inspected and found to be in order, the presumption of the statute has been met and the plaintiff is thus bound to prove other acts of negligence on the part of the defendant company in order to recover. This is in accordance with the general rule and certainly no good reason can be advanced for any exception in this instance. In some States, where there is no statute such as our act of 1873, it has been held by the Courts that as the possession of the proper appliances and their inspection was a matter wholly within the knowledge of the defendant, that it was not an unfair burden to require proof that there was no negligence in this respect.

Spaulding vs. Chicago R. R. Co., 30 Wisconsin, 110, cited in 3 Elliot on Railroads, Sec. 1,242. The author, after discussing the subject, closes his paragraph as follows: "But as experience has demonstrated that it is almost, if not quite, impossible to operate an engine without the emission of sparks, and as negligence may be proved by circumstantial evidence equally accessible to the plaintiff, we are inclined to think, upon principle, this should not constitute an exception to the general rule that the burden is upon the plaintiff."

The Court must bear in mind in considering this question that the difference in the decisions of the State Courts concerning this matter is largely, if not altogether, a difference in the statutes; and in the absence of statutes, such as our act of 1873, there is a conflict in the decisions as to the burden of proof concerning the negligence of the defendant company; some states holding that proof of the fire originating from an engine being sufficient to cast the burden upon the defendant, while others holding that the plaintiff has the burden

of proof as in all ordinary cases. In New Jersey the statute has relieved the plaintiff of the burden in one particular but in no other; and I am not aware of a single decision in our Court, or in the Courts of this State, where negligence under any circumstances is presumed in the absence of a statute to that effect. Negligence has always been held in this State to be a matter of proof. Some fact or circumstance must be shown from which the jury can reasonably infer there was negligence.

In this case there was no proof offered on the direct case, or any rebuttal offered by the plaintiffs, showing any negligence in the use or management of the engines, or lack of skill or want of care on the part of the defendant's employes; nor is there any evidence on the part of the plaintiffs below from which any such inference can be drawn. The evidence is that the engine in question was managed and run in the ordinary manner and by the ordinary employes in charge of such engines, and that it passed by the place in question on the day it is alleged the fire started. There is no proof that the engine was run at a high rate of speed; that it was so run as to throw out any unusual quantity of sparks or coals of fire; that it was carrying too great a load, requiring excessive firing, nor any other act from which negligence might be presumed.

Negligence is the gist of the action. The Court will also bear in mind, in examining the decisions bearing upon this question, that in many of the States by statute railroad companies are made absolutely liable for damages by fire communicated by their engines to adjoining property. Such is not the case in New Jersey. In the States where this absolute liability exists will be found the decisions which are apparently on their face in conflict with the position of the plaintiff in error in this case. Elliott, in section 1242, says: "If it has

been shown that there was a fire, and that it was set by a locomotive, before there can be a recovery, in the absence of absolute statutory liability, it still remains to be shown that the company was guilty of some act of negligence."

In note 3, of section 1242, on page 1937, citing from 7th American State Reports, 66, in the case of Louisville, &c., R. R. Co. vs. Reese, "the most cogent reasons given for the support of this rule are that the railroad company, which is authorized by law to operate its trains by steam, is not an insurer against accidents by fire, and is not liable for injuries caused by the use of fire in generating steam, if the right is exercised in a lawful manner and with reasonable care and skill; and the owner of adjacent property assumes all risks incident to the lawful and proper use of the right; that negligence is the gist of the liability, without proof of which an action cannot be maintained, and by the general rule in actions founded on negligence, the plaintiff must aver it and the burden of proof rests upon him, and in no case does the mere fact of injury prove negligence."

Where the burden has been cast upon the defendant, in the absence of any statute, it has been upon the reasonableness of requiring the defendant company to prove that which was peculiarly within its own knowledge, that is, what appliances it used and in what condition they were at the time of their use. Justice Dixon, in Wiley vs. W. J. R. R., 15 Vroom, 247, gives this as the reason for the rule in the States where it exists. Applying the same test to this case, is it reasonable, after the defendant company has offered proof as to its appliances, their condition, the right of way, the efforts to put out the fire, to require of it proof of the negative of some matter not within its

knowledge; of some negligence on which the plaintiff intends to rests his case? How can the defendant company know what it has to meet? In the case at bar no engine was specified and the company was left in the dark throughout the case, and even here we are left to conjecture as to whether or not it is engine No. 39 that is alleged to have set the fire.

The defendant company introduced testimony as to the appliances on their engine passing the place in question on the day of the fire, and of the inspection of the same and the condition and repairs, clearing the right of way and of putting out the fire. What more could they do? Without some rebutting testimony which would in some way indicate the claim of the plaintiff below as to what particular act of the defendant company was alleged to be negligent, it was practically impossible further to disprove negligence. This case is an iliustration; it occupied some ten days before the Circuit Court in the trial at bar; the defendant company would have been compelled, either to stop its operations during that period and not run its engines or trains, unless it hired a full crew of persons strange to the road to run its trains, while its own engineers and firemen were dancing attendance at Court in order to prove what is not disputed, that they were running their engines on the day in question by this place in the ordinary manner.

Nor can there be any negligence shown on the part of the company's employes with respect to putting this fire out, after it was discovered. The plaintiffs' own proofs in their direct case show conclusively the highest degree of diligence on the part of the defendant company in this particular. Although the fire did not start on the company's right of way, and although the officials had no information that the fire was set from one of its engines, yet upon the fire being made known,

the road foreman, with his section gang, repaired to the place and put out the fire. On the next day and for days thereafter, other fires appearing, not only this section foreman with his men, but the foremen from the adjoining sections each way up and down the road, with all of their men, repaired to the scene of the fire and for days battled with it until it was finally extinguished.

Daniel W. McClure, the track foreman called by the plaintiffs, says, "on receiving information of the fire, I acted upon that information."

"Ques. And in consequence of what he said, what did you do? (Referring to what the telegraph operator said to him.)

"Ans. *I went up to the fire and put it out.*"—See page 84.

He says that he had five men with him and he worked there until dark.

Mr. Charles T. Abbott, one of the plaintiffs, says that he passed near the scene of the fire on the 13th, the day after it started (see page 104). He says, on page 105, line 28, "The men who had been fighting the fire the day previous had dug around it and had a kind of a path cut around the same, as we always have, and outside of that ring they had surrounded the whole place of the fire that had burned the day before. The section men had been all around it, but it was burning all through inside of their fire line." On page 108 he speaks of their being there afterward. The various foremen were called and their testimony will be found in the book, but it is needless to refer to it, because no insistment was made below, and I do not think any will be made here, that the railroad employes were at all negligent with reference to putting out this fire.

It is thus insisted upon the part of the plaintiff in error that all of the facts upon which its legal proposi-

tion depends were proven and are found in the case, without any contradiction. There was no issue of fact upon these points. The issues of fact found by the jury were, first: That the fire of September the 12th started from one of the defendant's engines; second: That it was this fire, and not that of the 15th, starting near McKee's station, that crossed the railroad and burned plaintiffs' swamp on the twenty-second; and third: The amount of damages which plaintiff had sustained.

II.

"The railway company, being authorized to use steam in the operation of its trains, is only bound to use ordinary care against fires, and is not liable for a purely accidental fire caused by fire escaping from its engines. But is bound to employ the best appliances in known use, in the form of spark arresters, fire boxes, &c., and failure in this respect is want of ordinary care and prudence. In most of the States if the spark arrester, &c., are shown to be of the most approved pattern in use and in proper repair, it is full defense of action of fires set by the company, *unless some negligence in other respects is shown.*" (Italics by the author.)

3 Wood on Railroads, Sec. 236, and cases cited.

Negligence is the gist of liability and the owner of property assumes all the risks from fire incident to the proper and careful use of it.

(Ibid.)

In Elliott on Railroads, Vol. 3, Chap. 48 is devoted to the discussion of the subject of fires set by railroads. This is a work issued this year, 1897, and the above chapter contains a full, elaborate and luminous discus-

sion of the whole subject. Up to 1860 the rule of the ancient common law was enforced, making any person setting out fire absolutely liable. In that year Chief Justice Cockburn, in Vaughan vs. Toff, Vale R. Co., 5 H. and N., 679, laid down the doctrine: "When the Legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the Legislature carries with it this consequence; that if damage results from the use of such a thing, independently of negligence, the party using it is not responsible."

The strict rule of the common law was never enforced in this country and the true rule of liability, independent of statutory enactment, is that where a railroad company is operating its railway by virtue of legislative authority, and using reasonable precaution in the selection and operation of its locomotives, it is not liable for fires resulting therefrom unless it be guilty of some act of negligence. Elliott, section 1221.

Negligence is the gist of the action, and unless negligence is shown there can be no recovery. (Ibid.) "The distinction must be borne in mind between those cases in which liability exists independent of negligence, as a result of statutory enactments, and those in which the burden of proof is upon the defendant to disprove negligence. *In those cases where the burden of proof is upon the defendant the establishment of negligence is as essential to a right to recover as it is in those cases where the burden is upon the plaintiff*, and the mere fact that the burden of proof is changed must not in any way be regarded as rendering the establishment of negligence less necessary."

(Ibid.)

If it appear that the company had in use, on the locomotive which set the fire, appliances and machinery then in general use for the prevention of the escape of sparks and coals of fire, and it is not shown to have been negligent in other particulars, there is no liability. (Elliot, Sec. 1224, page 1896, and cases cited.) One of the Pennslvania cases going so far as to say the company would not be liable under these circumstances, though it fire "every rod of country through which it ran."

Phila., &c., R. Co. vs. Shultz, 93 Pa. State, 341.

Wiley vs. West Jersey Railroad Co., 15th Vroom, 247, was heard on rule to show cause, before Beasley, Chief Justice, and Justices Dixon, Reed and Magie, and the rule insisted upon by the plaintiff in error was recognized. In that case, however, the decision turned upon the fact that the efficiency of the spark arrester in use was challenged and evidence was offered before a jury to show that it was not the best preventive of the escape of fire in use, and that from this evidence, and the model submitted to the jury, it had a right to find that the defendant company had violated its statutory obligation.

Hoff vs. West Jersey R. R. Co., 16 Vroom, 201, was another fire case heard upon a rule to show cause before Chief Justice Beasley and Justices Van Syckel, Knapp and Parker, in which it was held "if a railroad company uses upon its engine a spark arrester of an approved pattern in general use, and which, upon a careful inspection by a skilled mechanic, appeared to be in good condition, such company will not be responsible for damages done by a fire occasioned by sparks escaping through such spark arrester."

With reference to the inspection of the screen, the Chief Justice, in rendering his opinion, says, "With

regard to the latter point, the evidence was altogether in favor of the defendant. Indeed, with the exception of mere theory there was nothing to gainsay such evidence. The verdict founded on the ground of a want of care of the defendant in this particular should not be allowed to stand." And on page 203 the Chief Justice says, "The law does not give immunity in these matters only on the ground that in the selection of its instruments an infallible judgment shall be exercised."

Beseman vs. P. R. R. Co., 21 Vroom, page 235, is a very instructive case upon the rights of a railroad company in the exercise of its chartered powers. It is affirmed in 23 Vroom, 221. Chief Justice Beasley, in delivering the opinion in the Supreme Court, on page 243 says: "It has been the invariable course, so far as is known, for juries to be instructed that these Companies are not responsible for the results of the running of their trains, provided due care and skill be observed in the business. It has been a frequent occurrence that valuable tracts of woodland have been fired from the locomotives drawing trains, and on such occasions the judicial instruction has uniformly been that the *damages so occasioned could not be made the ground of suit unless the spark arresters were out of order or were not of approved pattern*, or negligence of some kind had been exhibited. And it is not remembered that such doctrine has been called in question even to the extent of being challenged in the argument of counsel."

It is respectfully submitted that upon this branch of the case the plaintiff in error is entitled to judgment; the motion made at the close of the testimony to instruct the jury to find for the defendant company should have been granted, and the various requests to charge made by the defendant covering this same subject matter should have been presented by the trial judge to the jury.

III.

There was error in the charge of the Court, covered by the XIV Assignment of Errors, page 555, where the Court charged as follows: "Is a company during dry seasons negligent in allowing its spark arrester and ash pan to throw fire at all?" (See Charge, page 538.)

It is respectfully submitted that this makes a railroad company absolutely liable, in fact an insurer against loss or damage to adjacent property. There is no authority for such a rule in New Jersey, either by statute or decision. The fact that it might be a dry season, while it might increase the degree of care to be exercised, does not change the rule of law with respect to liability if proper appliances are used, inspected and kept in order, and due skill and care exercised in the management.

In this connection is the XV Assignment of Errors, "Although the company had a right to use fire by law —they cannot get along without it—is it, in your judgment, its duty, in times of great danger by reason of drought in localities through which it travels, to exercise increased or sufficient care to prevent fire from escaping from its engines?" (See Charge, page 538, line 11.)

This is also a charge to the effect that there is absolute liability on the part of the company if it allows fire to escape under any circumstances, which it is respectfully submitted is error.

Again, the XIV Assignment of Errors covering charge, page 538, lines 20 to 30, misled the jury as to the law: "if in your judgment it should have exercised increased care or sufficient care (that is, the Judge means, to have prevented the throwing of fire at all) in such a dry season and failed to do it, and was

therefore negligent, &c., then the statute does not protect the company from liability." It is respectfully insisted that this is a charge of absolute liability. The jury necessarily inferred from the charge that during a dry season the company was bound to prevent the escape of any fire from its engine under any circumstances. This is not the law and the plaintiff in error has been prejudiced by such a charge.

IV.

The I and II Assignments of Error (page 548) bring up for review the legality of certain evidence offered by the plaintiff, as part of his direct case, viz: testimony on the part of one of the plaintiffs as to seeing cinders coming from locomotives along the road in that vicinity (pages 121 to 123). The testimony of Elisha C. Duberson, (pages 185 to 187) as to seeing engines used on that railroad throw fire and burning material.

It is submitted that this evidence was irrelevant because the plaintiff was under obligation to prove nothing further than that the fire in question originated from a spark from the engine; such evidence has been admitted in some States where there is no statute similar to ours, and where by the rule of the Court the burden of proving some negligence was put upon the plaintiff before he could get to the jury. It is not claimed that this testimony refers either to the day in question or to the engine alleged to have set the fire, or that the engine throwing fire had been inspected.

V.

Similar evidence was offered by plaintiffs in rebuttal of defendant's case, to which exception was taken; the offers are covered by the VIII, IX, X and XI Assign-

ments of Error (pages 550 to 551), referring to the testimony (pages 505, 506, pages 510 and 511, pages 513 and 514 and page 515.)

It is insisted that all of this testimony was illegal. In the first place, it is not in rebuttal of any part of defendant's case. It in no way shows that the company had not the best appliances to the engine in question, and that they were not duly inspected. The statements of these witnesses are general, both as to the time and place. There is no effort whatever to show that they refer to the engine in question or the day on which the fire occurred. There is nothing to show that the engines which on these occasions threw fire were in proper repair or had been duly inspected. This testimony simply goes to the effect that fire had been thrown from defendant company's engines and leads but to one conclusion, not necessarily that the engines had not the best devices or were not in good order and repair, or had not been inspected, or were not run with skill, but rather that in spite of all the devices which human ingenuity has been able to invent, some fire will escape from these engines and some damage will necessarily result. As there is no absolute liability in this State on the part of the defendant company, as it is not an insurer of the safety of adjacent property, I cannot see how this evidence, in view of the law governing the cases, can be relevant or competent.

In what way does this testimony meet the proof that engine number 39 was equipped with the most modern appliances; that it had been duly inspected and found in order; that there was no negligence shown in its running or management?

It is true that the experts for the railroad company on cross examination were led into expressions of opinion that these appliances were a complete protection, but this is only an opinion, brought out on cross-exam-

ation, and not upon matter referring to any of the direct examination. These gentlemen were called to testify, not as to whether these appliances were absolute protection, but whether they were the latest and safest known to railroad men. One of them claims to be the inventor, and naturally his pride leads him to speak in the strongest terms. And it is upon these expressions of opinion, coupled with the testimony above objected to, that the argument below and the Judge's charge, as found on page 537, is based. The position taken by the learned judge seems to be this, that there is no question but what the appliances on the defendant's engines were the very best known, (see charge, page 536,) then assuming that the defendant's engines, equipped with these appliances, did at various times throw fire, he leaves it to the jury to determine as a question of fact, whether, under such circumstances, the inspection was sufficient. In other words, he attempts to balance a theory against positive proof, which the Supreme Court, in Hoff vs. W. J., says can not be allowed or sustained.

The fallacy of this line of reasoning is apparent when we consider that there is no evidence in the case to show that any inspection whatever of the engines had been made, from which the fire had been thrown out at the times testified to by the above witnesses, nor if inspected that they were in order and needing no repairs. These appliances in time must necessarily wear out and become defective. Whether or not fire was thrown and defects discovered at these times in the appliances is not known.

It will be borne in mind, in the language of the late Chief Justice, in Hoff vs. West Jersey R. R. Co., that infallibility is not required, only the exercise of proper skill and diligence. The proposition of the plaintiff in error is based upon a two-fold statement of a fact, viz:

that the best appliances were used and that they were duly inspected and found in order; now the fact that fire was thrown does not prove that they were not properly inspected and found in order, any more than it proves that the appliances were not the best and most effective. Where both propositions of fact rest upon credible, uncontradicted testimony, the trial Judge has no more right to assume that one is true than he has to assume that the other is equally true; he might just as well have left the question to the jury as to whether the appliances in use were the most modern and effective, as to have left to them the question as to whether or not they were duly inspected and found in order. I shall not repeat my argument with reference to the inspection fully stated in another part of my brief.

The refusal of the Court to charge as requested, the second, third, fourth, fifth, sixth, and the sixteenth requests covering these points, was error, (544 and 545); these requests properly stated the law and were based upon the evidence in the case.

VI.

The trial judge also erred in refusing to non-suit the plaintiffs at the close of their case. (See pages 253 to 257.) There was not sufficient evidence to go to the jury that this fire started from sparks or coals of fire from defendant's engines. It is true that defendant's engines passed along this road near which the fire broke out, but no one saw fire fly from this engine nor from any particular engine, nor was the fire seen soon after any engine passed. Where it first started it was not less than two hundred feet from the railroad track. (See page 281, line 30.) Engine number 39 burned anthracite coal; there is nothing in the case to show that a spark of coal of anthracite can be thrown from

engines that distance; there is no evidence of any wind, or in what direction it was blowing. While the learned judge who presided at circuit refused to nonsuit, yet he evidently believed that the testimony on this point was so weak that the jury would not be justified in finding a verdict against the defendant, and in his charge he practically directed the jury to find for the defendant on this point. See judge's charge, (pages 524 to 533) where he argues the matter at length. I respectfully refer the Court to that part of the charge.

Again, the attention of the Court is called to the fact that there was no testimony whatever offered to exclude any other source for this fire. If the Court should be of opinion that this fire started on defendant's right of way, then unless it escaped by reason of defendant's negligence it is not liable. No liability arises from fire on the defendant company's right of way. Liability arises only from its escape and that escape must be negligent in order that there should be a recovery. Elliott on Railroads, volume 3, section 1229.

VII.

The Court erred in overruling an offer of the defendant company to prove that plaintiffs' timber land had been burned over by a previous fire, and that consequently the damages were not so great as claimed. This evidence was clearly admissible upon the question of damages.—(See page 384.)

VIII.

There was also error in the action of the Court in requiring the defendant below to produce a certain report called for by the plaintiff, which defendants refused to

produce except on order of the Court; that plaintiff, after inspecting and reading, refused to offer the same in evidence, as he was bound to do (see pages 415, 416, 424 and 425). The following is the report in question:

Statement of Robert J. Wilson, November 8, 1895, (dealer in timber; residence, Franklinville, N. J.; employed as examiner and adjuster of fire claims by West Jersey Railroad):

I was down looking at the burned timber below Mays Landing. After careful examination there is no doubt in my mind but that the fire which burned McKee's saw mill was the same fire that started back in McKee's woods, about a mile north of the railroad below McKee City. At the time the fire reached the mill, the wind, by marks on the trees, was blowing quartering to the railroad in a direction coming from a little north of Pleasantville. There is no doubt but what that fire burnt all of McKee's fence, mill and timber on the north side of the railroad up to above the mill. The timber next to the railroad, and for some distance back, was very small and short, and also very thin on the ground, and fire could not get much headway to blow across the railroad. It looks very much as if the McKee fire had run past the place said to be where the fire crossed. It might have crossed from sparks from the burning mill. At that time there was a great deal of what is called "back-firing," and the people on the opposite side of the railroad might have thought the fire was across the railroad by the smoke blowing across, as there was a heavy smoke, and their back-firing to save their buildings might have been the cause of the fire starting on the opposite side of the railroad. Foreman McClure says that it was not the railroad fire which crossed the railroad. I found no one who said they saw it cross.

I looked over the burnt swamp of J. E. P. Abbott and

Brothers. They have a large amount of very nice swamp. Fortunately, most of it was burnt. They claim twelve acres of wood timber burnt, which I think is about correct. I appraise the value on six acres—$150.00 per acre; damage, $75.00 per acre; the value on the other six acres, $100.00 per acre; damage, $50.00 per acre; about forty acres of small cedar, ten years growth, damage, $1.50 per acre. They say one hundred and thirty acres of small brush of all swamp kinds of wood, damage, $1.00 per acre; repairing causeways that are needed to work timber, $100.00.

I am told that McKee purchased his land for $2.50 an acre, and ten years interest on that amount would make $1.50 for the growth, it being considered a good investment when timber pays the interest. This land was burnt over ten years ago, and the young cedar was not very high, as it took it some time to start. Below see statement of above:

Six acres of cedar, at $75 per acre	$450 00
Six acres, at $50 per acre	300 00
About forty acres of cedar, at $1.50 per acre	60 00
One hundred and thirty acres of cedar, at $1.00 per acre	130 00
Repairing causeways	100 00
	$1,040 00

I think the burnt cedar is yet worth $750.00, if properly handled.

Upon the whole case as presented, it is insisted the defendant company was prejudiced by the errors complained of, and the judgment should be set aside.

J. H. GASKILL,
Attorney for Plaintiff in Error.

March 2d, 1897.

NEW JERSEY SUPREME COURT.

ATLANTIC CIRCUIT.

WILLIAM T. ABBOTT, ADALINE H. ABBOTT, CLARK W. ABBOTT, BENJAMIN T. ABBOTT, CHARLES T. ABBOTT AND MARGARET T. KENNY,	IN TORT.
vs.	
THE WEST JERSEY RAILROAD COMPANY,	

NEW JERSEY, SS.

The State of New Jersey to the Supreme Court of Judicature of New Jersey, Greeting:

Forasmuch as in the record and proceedings and also in the giving of judgment in a certain plaint in our Supreme Court, wherein William T. Abbott, Adaline H. Abbott, Clark W. Abbott, Benjamin T. Abbott, Charles T. Abbott and Margaret T. Kenny, are plaintiffs, and the West Jersey Railroad Company is defendant, in a plea of tort, manifest error hath intervened to the great damage of said the West Jersey Railroad Company, as by its complaint we are informed: We be-

ing willing that speedy justice should be done to the parties aforesaid in this behalf, do command you that distinctly and openly, under your hand and seal, you send the record and proceedings aforesaid, with all things touching and concerning the same, to the Judges of the Court of Errors and Appeals in the last resort in all causes, on the thirty-first day of December instant, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done what, according to law, ought to be done.

Witness the Honorable ALEXANDER T. MCGILL, Chancellor of our State of New Jersey, and presiding judge of said Court of Errors and Appeals in the last resort in all causes, the fourteenth day of December, Anno Domini eighteen hundred and ninety-six.

HENRY C. KELSEY,
Clerk.

JOS. H. GASKILL,
Attorney for Plaintiff in Error.

The answer of the Justices of the Supreme Court of the State of New Jersey, within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of the State of New Jersey, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY,
C. J.

NEW JERSEY SUPREME COURT.

William T. Abbott, Adaline H. Abbott, Clark W. Abbott, Benjamin T. Abbott, Charles T. Abbott and Margaret T. Kenney, vs. West Jersey Railroad Company.	In Tort. On Postea. David J. Pancoast, Attorney.

As yet of the fifteenth day of February, A. D. one thousand eight hundred and ninety-six.

Witness,
MERCER BEASLEY, Esquire,
Chief Justice.

Benjamin F. Lee,
Clerk.

Atlantic County, ss:

The West Jersey Railroad Company, the defendant in this suit, was summoned to answer unto the plaintiffs therein in an action of tort; and thereupon the plaintiffs, by David J. Pancoast, their attorney, complain for that the plaintiffs were, before and on the twelfth day of September, eighteen hundred and ninety-five, and still are the owners, as tenants in common, of about two hundred and fifty acres of valuable timber land, being a part of what is known as the Gravelly Run cedar swamp tract, in Hamilton township, Atlan-

tic county, New Jersey, which said tract of two hundred and fifty acres adjoins the West Jersey and Atlantic City Railroad on the west; and that the West Jersey Railroad Company, the proprietors and operators of a certain steam railroad between Camden and Atlantic City, in this State, known as the West Jersey and Atlantic City Railroad, above referred to, on the said twelfth day of September last, by its servants, employes and agents, negligently, carelessly and unskillfully used on said road certain unsuitable, poor and defective locomotive engines, tenders and cars, of a character fitted to set fire to the woodland adjoining or adjacent to the said road, from which there was carelessly and negligently emitted, cast and thrown large quantities of red hot cinders, sparks, ashes and other dangerous burning matter, which fell near and upon the said woodland of the said plaintiffs, adjoining said road, and set fire to the plaintiffs' timber thereon, whereby and by means of which a great quantity of their said timber, to wit, two hundred acres thereof, was burnt, consumed and destroyed, and the like number of acres of soil were burnt, baked, denuded of all vegetation, mould and seed, and permanently injured, to the great damage of the plaintiffs.

And also for that the plaintiffs were, before and on the twelfth day of September, eighteen hundred and ninety-five, and still are the owners, as tenants in common, of two hundred and fifty acres of timber land, being a part of what is known as the Gravelly Run cedar swamp tract, in Hamilton township, Atlantic county, New Jersey, which said tract of two hundred and fifty acres adjoins the West Jersey and Atlantic City Railroad on the west; that the West Jersey Railroad Company, the proprietors and operators of a certain steam railroad between Camden and Atlantic City, in this State, known as the West Jersey and Atlantic City Railroad, above referred to, on the said twelfth day of

September last, by its servants, employes and agents, in the operation of the said road, unskillfully, negligently and carelessly caused the fire from one of its trains to be communicated to the plaintiffs' said woodland, adjoining its said road, whereby the timber and soil thereof were greatly injured, to the plaintiffs' damage ten thousand dollars, for which they bring suit, &c.

And the said defendant, the West Jersey Railroad Company, by Joseph H. Gaskill, its attorney, comes and defends the wrong and injury when, &c., and says that it is not guilty of the several supposed grievances above laid to its charge, or of any or either of them, or of any part thereof, and of this the said defendant puts itself upon the country, etc. And the said plaintiff doth the like, etc.

Therefore let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Mays Landing, in and for the county of Atlantic, on the second Tuesday of September, in the year of our Lord one thousand eight hundred and ninety-six, by whom, &c. And the same day is given to the parties aforesaid there, &c.

And now at this day, to wit, the fifth day of October, A. D. one thousand eight hundred and ninety-six, before our Supreme Court, at Trenton, come the plaintiffs aforesaid, by their attorney aforesaid, and the Justice before whom, &c., having sent hither his record had before him in these words, to wit:

"Afterwards, to wit, at a Circuit Court holden at Mays Landing, in and for the county of Atlantic, before his Honor George C. Ludlow, one of the Justices of the Supreme Court, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-six, according to the form of the statute in such case made and provided, comes as well the

within named plaintiff as the within named defendant, by their respective attorneys within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, upon their oaths say that the defendant is guilty of the grievances within laid to its charge, in manner and form as the plaintiff hath within complained against it, and they assess the damages of the said plaintiff, on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, at the sum of one thousand seven hundred and twenty-five dollars."

Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages by the jurors in form aforesaid found to the sum of one thousand seven hundred and twenty-five dollars, and also eighty-two dollars and sixty-eight cents for their costs and charges aforesaid by the Court now here adjudged to the plaintiffs, and with their assent, which said damages, costs and charges in the whole amount to one thousand eight hundred and seven dollars and sixty-eight cents.

Judgment signed this fifth day of October, A. D. one thousand eight hundred and ninety-six

M. BEASLEY, C. J.

I, BENJAMIN F. LEE, Clerk of the Supreme Court of the State of New Jersey, hereby certify that the foregoing is a true copy of the judgment entered in above stated cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the seal of said Court, this fifteenth day of December, A. D. one thousand eight hundred and ninety-six.

[SEAL.]

BENJ. F. LEE,
Clerk.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY CIRCUIT.

WILLIAM T. ABBOTT, ET ALS., Plaintiffs, vs. THE WEST JERSEY RAILROAD COMPANY, Defendant.	IN TORT.

MAYS LANDING, N. J., SEPTEMBER 8, 1896.

TESTIMONY.

BEFORE HON. GEORGE C. LUDLOW, JUDGE, AND A JURY.

APPEARANCES:

For Plaintiffs, D. J. PANCOAST, ESQ.
For Defendant, HON. JOSEPH H. GASKILL.

It is admitted by the defendant that at the time of the fire alleged by the plaintiffs to have caused the damage, as laid in the declaration, the railroad therein

referred to was operated by the West Jersey Railroad Company.

It is further admitted by the defendant that so far as this suit is concerned, the title to this property in question is in the plaintiffs.

WILLIAM LAKE, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Are you familiar with the burned land in question in this case?

Ans. Yes, sir.

Ques. What is your profession or occupation?

Ans. Surveyor.

Ques. How long have you been a surveyor?

Ans. Over thirty years.

Ques. Where have you practiced your occupation?

Ans. Cape May county and Atlantic county.

Ques. Continuously during that period?

Ans. Yes, sir.

Ques. Have you surveyed this land in question in this suit?

Ans. Yes, sir.

(Deed shown witness and he is asked :)

Ques. Is it described in that deed?

Ans. Yes, sir; the whole survey is described in it.

(Deed offered in evidence and marked "Exhibit P1.")

Ques. Have you made a survey and map of this land?

Ans. Yes, sir.

Ques. For the purpose of this suit?

Ans. Yes, sir.

Ques. According to the plaintiffs' title deed here?

Ans. Yes, sir.

Ques. Are these the two maps that you made as a result of these surveys? (Indicating maps.)

Ans. Yes, sir.

Ques. Here before the court and jury?

Ans. Yes, sir.

Ques. What does Map No. 1 represent?

Ans. This represents the Gravelly Run cedar swamp from the pond up to the bridge.

Ques. The whole of the Gravelly Run cedar swamp is delineated within these black zigzag lines, is it.

Ans. Yes, sir.

Ques. What does this straight line represent here? (Indicating on map.)

Ans. The West Jersey Railroad from Newfield to Atlantic City.

Ques. According to this map that cuts the Gravelly Run cedar swamp almost in two equal parts, does it?

Ans. Very nearly; yes, sir.

Ques. What is this delineated in yellow at the bottom of the map?

Ans. The road that leads from Mays Landing to Somers Point and down on the shore.

Ques. What is this yellow line running from the left half way to the top of the map?

Ans. The road running to Absecon, and one branches off; one goes to Pleasantville and one goes to Absecon.

Ques. What does this represent down toward the bottom of the map that is marked "pond?"

Ans. A mill pond down there; saw mill there.

Ques. Just east of that, what is that?

Ans. Another pond, an older pond, much older.

Ques. Then east of that in darkish color is indicated what?

Ans. Abbott's title.

Ques. Abbott's survey?

Ans. Abbott's survey that belongs to the family, independent of this.

Ques. The property that they held under these deeds, Exhibit P1?

Ans. Yes, sir.

Ques. In the westerly end of that is marked a little island there?

Ans. A little island there. The stream forks.

Ques. The stream running through and the forks at that point?

Ans. Yes, sir.

Ques. And includes a little land that you designate as an island?

Ans. Yes, sir.

Ques. Is this stream that runs through the tract in an easterly direction just as it exists upon the ground, as nearly as may be?

Ans. Without an actual survey. It runs that general direction, up through the swamp.

Ques. And about in that position with relation to the track?

Ans. Yes, sir; these points are correct across here.

Ques. The point where it crosses the boundaries of the Abbott tract are correct?

Ans. Yes, sir.

Ques. And passing eastward it crosses the West Jersey Railroad at that point?

Ans. Yes, sir.

Ques. That is what? (Indicating.)

Ans. A bridge.

Ques. Is there a railroad bridge there?

Ans. Yes, sir; a bridge.

Ques. Then passing on eastward of the Gravelly Run bridge, what? It takes its rise up in the easterly part of that tract, does it?

Ans. Yes, sir.

Ques. Is that a well known swamp tract?

Ans. Yes, sir; well known.

Ques. What are these different things delineated? There is flag a station there delineated in pencil.

Ans. About there is a flag station.

Ques. You didn't put that there?

Ans. No, sir.

Ques. But about there is a flag station?

Ans. Yes, sir.

Ques. Maintained by whom?

Ans. The railroad company.

Ques. Do you know what company operated that road?

Ans. The West Jersey, as we knew it.

Ques. What does this little crossing represent here?

Ans. I found a number of railroad ties burned along there. The fire had gone on its way across on the ties.

Ques. You found there apparently where the fire had crossed?

Ans. Yes, sir; burned along on the ties.

Ques. That point is on the map just southerly of the bridge?

Ans. Yes, sir.

Ques. And southerly of the boundary of this Gravelly Run tract?

Ans. Yes, sir.

Ques. And was that the fire in question in this case that you refer to as having crossed the tract at that point?

Ans. Yes, sir.

Ques. So far as your observation went?

Ans. So far as my observation went that is the point.

Ques. What next is delineated on this line on this railroad?

Ans. Some three or four or five places here. This represents an old road. (Indicating on map.)

Ques. That easterly line on the map represents an old road?

Ans. Yes, sir.

Ques. So marked?

Ans. Yes, sir.

Ques. What does this represent on the other side of the track?

Ans. That is where an old steam saw mill stood.

Ques. You have actually surveyed the whole of the tract, have you?

Ans. Yes, sir; a number of years ago I surveyed this; some ten or twelve years ago I surveyed in this swamp.

Ques. And recently you have surveyed the Abbott holdings?

Ans. Yes, sir.

Ques. Now, have you been on the scene of the alleged fire on the Abbott tract?

Ans. Yes, sir.

Ques. In question in this case?

Ans. Yes, sir.

Ques. For the purpose of making a survey?

Ans. Yes, sir.

Ques. To be used in this case?

Ans. Yes, sir; I was there last March, I believe.

Ques. Does this map No. 2, represent the result of your survey?

Ans. Yes, sir. Well, I had made a survey of this cedar swamp previous to the fire to ascertain the amount of green good cedar around here. I made that in 1885.

Ques. In 1885?

Ans. Yes, sir; of the green cedar around. It was in 1884. Then I had made a survey after, in 1885, for a division, and then after the fire I had made these surveys showing these dark spots where the green cedar had been burned in the fire.

Ques. After the survey?

Ans. Yes, sir; and after the fire.

Ques. So that you surveyed all this ground before and after the fire both?

Ans. Yes, sir.

Ques. What do these dark spots represent on Map No. 2?

Ans. Where there was large cedar burned by the fire.

Ques. And how many of them?

Ans. Eleven.

Ques. And what acreage did that amount to?

Ans. Eight and two-tenths acres.

Ques. What does this delineated in yellow represent on the same map?

Ans. Smaller-sized cedar that they called the Wheat Field; small-sized cedar.

Ques. How many acres of that?

Ans. Twenty-five.

Ques. What is this delineated in smoke color?

Ans. That had all been burned over.

Ques. Timber?

Ans. Timber that had been all burned over, but was not all good cedar.

Ques. Not marketable cedar?

Ans. No, sir; some of it was woodland.

Ques. Some upland?

Ans. Yes, sir; a little.

Ques. How many acres of that?

Ans. One hundred and thirty-five and one-half.

Ques. Have you been much in cedar swamps?

Ans. Well, some little.

Ques. And had an opportunity to notice the character of cedar in swamps in this and adjoining counties?

Ans. I know this was a very good cedar swamp; about the best I was ever in.

Ques. About the best you were ever in?

Ans. Yes, sir.

Ques. You have been in about how many swamps, do you suppose, during your twenty years experience as surveyor.

Ans. I don't know; a great many.

Ques. You have surveyed a great many during the twenty years ?

Ans. Yes, sir.

Ques. And you never knew a better swamp than this ?

Ans. No, sir.

Ques. State the good qualities that went to make this the best swamp you have ever seen ?

Ans. The cedars were large, tall and straight.

Ques. Healthy or unhealthy ?

Ans. Healthy.

Ques. Large, tall ?

Ans. Yes, sir.

Ques. How tall ?

Ans. Forty or fifty feet high.

Ques. Full of limbs down to the bottom ?

Ans. No, sir; growing cedar, no limbs till you get almost to the top; some of them so large that two men couldn't reach round them, reaching this way. (Illustrating.)

Ques. Regular swamp cedars ?

Ans. Yes, sir.

Ques. What was the condition of that timber after it was burned ?

Ans. All dead; roots burned, muck burned; nothing but the bare sand.

Ques. Did they stand after they were burned ?

Ans. No, sir; the roots were burned off and they fell down every which way.

Ques. Cross-piled, so to speak ?

Ans. Yes, sir.

Ques. Well, what caused them to fall.

Ans. The roots were burned; nothing to hold them.

Ques. Was the soil burned? Anything to hold them up?

Ans. No, sir; the soil was burned, the muck and roots and everything.

Ques. So that the muck and soil and everything by which the roots took hold was entirely burned off?

Ans. The roots were entirely burned away, a great many of them.

Ques. Before this fire, had you ever seen any of the causeways that were built to go into this swamp?

Ans. Yes, sir.

Ques. By the Abbotts?

Ans. Yes, sir; I have seen causeways there supposed to be built by them.

Ques. On the ground?

Ans. Yes, sir.

Ques. Could you get at that timber before it was burned without causeways?

Ans. No, sir.

Ques. Do you know whether they are easily built, that is, cheaply built, or not?

Ans. I should think they were quite expensive.

Ques. After the fire what was the condition of these causeways?

Ans There wasn't any.

Ques What were they built of?

Ans. Built of cedar; they were dry and burned up. You could see where the causeway had been, sometimes a half of them left and others entirely gone.

Ques. Have you been on the scene of many fires in this county or adjoining counties?

Ans. I have.

Ques. Many or few?

Ans. Quite a good many.

Ques. Did you ever see more destruction wrought by a fire than in this case?

(Objected to.)

The Court: Yes; we don't want that.

(Question withdrawn.)

Ques Did you measure the causeway?

Ans. Yes, sir.

Ques. What was the size of the causeway; the breadth of it and length of it that went from the Abbott line?

Ans. Well, ten to twelve feet wide; fifteen in some places; just as they happened to cut them down, throw them down, and some one hundred and fifty or one hundred and sixty rods was burned.

Ques. One hundred and fifty or one hundred and sixty rods of this causeway, twelve to fifteen feet wide?

Ans. Yes, sir.

Ques. And this causeway, as I understand from you, was built from cut timber?

Ans. Yes, sir.

Ques. Laid down in the swamp until it made a solid foundation?

Ans. Yes, sir; laid down in the swamp until it was a solid foundation so you could drive a horse and wagon right over it.

Mr. Pancoast: I offer these two maps for the purpose of illustrating the testimony of this and other witnesses in the usual way.

(Map called No. 1, marked Exhibit P2.)

(Map called No. 2, marked Exhibit P3.)

Ques. Does this Abbott tract corner on this railroad as delineated on that map?

Ans. Yes, sir; corners right in the center of the track.

Ques. Right in the road-bed?

Ans. Yes, sir; right in the road-bed.

Cross-examination.

By Mr. Gaskill:

Ques. Have you been on this ground since last March, Mr. Lake?

Ans. No, sir; I don't think I have.

Ques. And how long were you on the ground in March?

Ans. I suppose a couple of days. I don't remember the day.

Ques. You went there then for the purpose of making a map to be used in this case?

Ans. Yes, sir; that is, to ascertain the amount burned.

Ques. What assistance did you have?

Ans. I had a couple of men with me.

Ques. Are the lines represented here upon this map in dark blue as showing the outside edge of the burned the result of any survey that you made last March, or measurement?

Ans. Made previous to that.

Ques. You made no measurement or survey after the fire?

Ans. Yes, sir; where those burned portions are.

Ques. When did you make it?

Ans. Last spring.

Ques. These portions?

Ans. Yes, sir.

Ques. Then in answer to the question I put a moment ago you have made no measurements since the fire which delineate the position of this inside edge of the fire, where it worked into the swamp?

Ans. I had previously made a survey.

Ques. Have you, since that fire, made any survey or measurement by which you put this heavy blue line around this map as showing the place where the fire ate into the swamp?

Ans. I had——

Ques. Answer that question yes or no. It is a simple question. Did you make any measurement or survey for the purpose of locating the survey where the fire ate out into the swamp?

Ans. I have made no survey of these blue lines since the fire.

Ques. Then you have not measured into the swamp to designate on that map for the purpose of this trial where the fire had eaten into it?

Ans. I knew where they were on the ground.

Ques. Answer my question. Then you have not, since the fire, made any survey or measurement for the purpose of designating where the fire had eaten into the swamp, off the side lines? Answer my question, yes or no.

Ans. I don't understand the question.

The Court: Hasn't he already answered it? He didn't make any.

Mr. Gaskill: I am content to take it that way.

Ques. Then, Mr. Lake, the actual fact of that matter is that some two years ago you went there for the Messrs. Abbott and made a survey inside of their outbounds for the purpose of plotting and marking the good cedar in their swamp, didn't you?

Ans. Yes, sir.

Ques. And these blue lines are the result of that work?

Ans. Yes, sir.

Ques. And you have simply shown on your map certain lands as being burned, and part of them ?

Ans. Yes, sir.

Ques. Did you give a copy of your map showing the outbounds and also the lines showing the good cedar within the outbounds to Mr. Cunningham or Mr. Thompson, the assistant engineer of the West Jersey Road ?

Ans. I have no recollection of it.

Ques. Didn't you loan it to him ?

Ans. I have no recollection of loaning it to him.

Ques. Can you state from inspection whether or not the paper that I now show is a copy of the outbounds of this survey and whether or not it also shows inside of it the lines of the good cedar as you ran it in 1894 ?

Ans. I think it does.

Ques. Will you please look at the paper that I now show you, a blue print from the same, and state whether that represents within the heavy yellow lines the outbounds of that survey and whether or not the good cedar within those outbounds is represented by that red line ?

Ans. Yes, sir.

Ques. As you surveyed in 1894 for the Abbotts ?

Ans. Yes, sir.

(Maps marked Exhibits 1 and 2 for identification.)

Ques. Now, Mr. Lake, there is not much of what you designated as the splendid cedar in that swamp that has been burned ?

Ans. No; only about eight acres.

Ques. And how many acres were there altogether within these two irregular pieces as you surveyed it in 1894 ?

Ans. Fifty-two acres and a quarter.

Ques. Then you were telling Judge Pancoast about

those splendid large, tall and straight cedars, forty to fifty feet high; you mean those cedars still standing there, don't you ?

Ans. Yes, sir; some burned. The most of the large cedars burned were over next to what is called the Wheat Field, where they lie fallen; they are all through there.

Ques. There is where the finest cedars are ?

Ans. Yes, sir.

Ques. Now, in that eight acres that you gave us you have included some of the territory outside of that line that you ran in 1894 as being the outside line of the cedar ?

Ans. There are some down along there.

Ques. Haven't you got fully as much outside of what you said in 1894 was the cedars as you have inside ?

Ans. An acre and three-quarters all told.

Ques. How much of that is outside of what you said in 1894 was the line of the cedar ?

Ans. About one-half.

Ques. Then that would take off one-half of the 1.75 acres ?

Ans. Yes, sir.

Ques. That has not grown up to be splendid, large, elegant cedar since 1894 ?

Ans. No, sir.

Ques. Then you either made a mistake in 1894 in not running around that, or else you make a mistake now in including it; that is so, isn't it ?

Ans. This was not as large here as it was in other places.

Ques. That is not what I asked you. I say this is not correctly run, the line of cedar in 1894; you haven't correctly run it for the purpose of this case, have you ?

Ans. I didn't get all the cedar in at that time; no, sir.

Ques. Then you made a mistake at that time, did you?

Ans. I didn't get all the cedar.

Ques. In other words, when the cedar was standing on the ground and before the fire had gone through it and it had been burned and had fallen so, you couldn't run it as well as you could after the fire?

Ans. I hadn't as good a chance.

Ques. Now, Mr. Lake, I notice that you have got a place here where some cedar was burned that is not inside of the line that you drew in 1894 as having good cedar. Will you tell me how much there is there in that?

Ans. Seventy one-hundredths of an acre.

Ques. And also at the top of the map I see a triangular piece that you didn't include in 1894; how much is there there?

Ans. Twenty one-hundredths of an acre.

Ques. And again here at this place near the Wheat Field you have some that is outside the line that you ran in 1894. How much is there outside?

Ans. Ten one-hundredths of an acre.

Ques. You have seventy-two one-hundredths in that part there, but ten one-hundredths of it was not included in 1894?

Ans. Yes, sir.

Ques. Now, do you mean to say, Mr. Lake, that the fire went all across this swamp here?

Ans. All burned over.

Ques. Here is where I am pointing it now, between these two patches of cedar that you have between the two lines. Do you say on oath that that fire burned across there from one side of the swamp to the other; from one outbound to the other, all the way across?

(Objected to.)

Mr. Gaskill: Leave out "on oath."

Mr. Pancoast: We have not examined him on that; the course of the fire.

Mr. Gaskill: I am testing his knowledge of the ground. I insist that the fire never got through to that stream from either side, and your map shows it running all the way across there.

Mr. Pancoast: My criticism is that there is nothing in the examination in chief that will warrant your doing that. He is merely the surveyor that surveyed this land before the fire, and afterward went and surveyed the same tract with reference to the burned district.

Mr. Gaskill: I am going to impeach his map and his testimony, because you put his map in testimony and have made him say that the part of the map colored was the ground burned over. I say that it was not burned over, and I think I can show it by this witness.

The Court: That is all right; he says that was all burned over.

Ques. My question is, is there any mark of fire there along that stream?

Mr. Pancoast: There is no objection to that.

Ans. There may be some portion of it that was not burned.

Ques. Then you haven't got on your map a correct representation of the land that was burned and the land that was not burned?

Ans. Only so far as these cedars go.

Ques. Then the smoke-colored part of the map is utterly unreliable?

Ans. There may be spots in there that was not burned; there may be.

Ques. Now, you said that there was some cedars that had fallen down because the roots were burned off. Will you please point out on the map which one of those parcels it was where the roots were so burned that the cedars fell?

Ans. Along here. (Pointing to piece between the eighty-five one-hundredths and the saw mill pond.) And some in here.

Ques. Next to the yellow?

Ans. Yes, sir. (Pointing to the tract marked sixty-two one-hundredths and ten one-hundredths.)

Ques. These are the places where the cedars were burned next to the Wheat Field?

Ans. Yes, sir. Also along here. (Pointing to place marked one and twenty-six one-hundredths at the corner of the yellow.)

Ques. Now, Mr. Lake, are you experienced in cedar swamps?

Ans. Yes, sir.

Ques. And the cutting of cedar for market purposes?

Ans. As to value?

Ques. No; I don't ask you as to value. I ask you if you are experienced in cedar swamps and the method of cutting them off and working them for market.

Ans. I have had no experience.

Ques. Do you know how long a causeway remains good in a wet cedar swamp?

Ans. I have followed them very old.

Ques. As a surveyor, to walk on?

Ans. Yes, sir.

Ques. You haven't seen them very old when you could take a team and drive over them?

Ans. Well, eight or ten years old.

Ques. Well, eighteen or twenty years old; is it safe to take a team and drive over them then?

Ans. No, sir.

Ques. Isn't it a fact that when you were there large cedars had grown up through the causeways?

Ans. No, sir.

Ques. Did you walk over all the causeways?

Ans. A great many of them.

Ques. And you saw no cedar growing up between the logs?

Ans. No, sir. I saw a stump where cedars had been cut off.

Ques. Where cedars had grown up through the causeway?

Ans. No, sir; cut off and the crossway had been built over them.

Ques. I am talking about the cedar that had grown after the causeway had been built. You didn't see any on that tract of land?

Ans. Yes, sir; I saw one.

Ques. Where did you see that?

Ans. An old causeway not marked here; a very old causeway.

Ques. Up in the corner of this tract of cedar near the railroad?

Ans. Yes, sir; somewhere there.

Ques. And that crossway would not be safe for a team to go upon?

(No answer.)

Adjourned till Wednesday, September 9th, 10 A. M.

MAYS LANDING, N. J., SEPTEMBER 9th, 1896.

WILLIAM LAKE, resumed.

By Mr. Gaskill:

Ques. (Last question repeated.) What is your answer to that, speaking of the causeway in the northeastern part of the cedar near the railroad track; was that crossway as you saw it safe for a team to go upon?

Ans. Not the old crossway down this way a ways. It was pretty old.

Ques. Did you see any crossways around that tract with any kind of trees growing up through them?

Ans. One old crossway.

Ques. What kind of trees were growing through that?

Ans. Old cedars.

Ques. Did you see any with maple growing through?

Ans. One old crossway.

Ques. What part was that?

Ans. Not on the map.

Ques. Will you kindly point out on the map where that is?

(Witness indicates.)

Ans. Running across here, (pointing to a place diagonally across the map nearly paralled with the railroad) not shown on the map or not taken into consideration.

Ques. The one hundred and thirty-five and one-half acres that you gave us as being the part of the tract in what was designated as smoke color, I understand you now to say that not the whole of that was burned?

Ans. There may be some portion of it; I didn't tramp over all of it.

Ques. So that you can't tell us how much of the one hundred and thirty-five acres was burned by actual survey or measurement?

Ans. No; there may be some little spots; I didn't see them.

Ques. And you didn't make any survey for the purpose of ascertaining how much of this brush land or wood land was burned outside of the cedar swamp?

Ans. The only survey I made was these darkest spots, for this purpose.

Ques. Then you didn't make any such survey as I asked about?

Ans. Not of the whole tract.

Ques. Now, Mr. Lake, you tell us that there was about eight acres of good cedar burned, and then when we were looking at the map yesterday you told me that in one place there was eighty-seven one-hundredths of an acre outside of the lands which you surveyed in 1894 as being the lines of the cedar, and in another place seventy one-hundredths, and in another, twenty one-hundredths, and in another place, ten one-hundredths, making one and eighty-seven one-hundredths acres. That would reduce the quantity of cedar that was burned inside of the line as marked by you in 1894 to about six acres or a fraction over?

Ans. Inside of the lines as I ran them in 1893.

Ques. 1893, was it?

Ans. I ran the whole survey in 1893 and ran the others in 1894.

Ques. Now, the whole survey, as I understand you, as shown on this map marked P2, the whole Gravelly Run survey owned by the Abbotts as well as by the others, is what you ran in 1893?

Ans. Oh, no.

Ques. Then is it the outside bounds of the Abbott survey that you ran in 1893?

Ans. That is what I ran in 1893.

Ques. And the lines of the good cedar timber inside of that survey is what you ran in 1894 ?

Ans. Yes, sir.

Ques. And at the same time you ran those lines designating the good cedar within the bounds of the tract, you ran lines across the whole tract, did you not ?

Ans. No, sir; it was in 1893 I ran the lines across.

Ques. Did you run the lines across the tract in 1893 at the same time you ran the outside boundaries ?

Ans. Yes, sir.

Ques. And those lines you ran across the tract in 1893; were they marked cleared ?

Ans. They were cleared out; yes, sir.

Ques. So that you could see them in 1894 when you were there ?

Ans. Yes, sir.

Ques. And so that you could see them in 1895 when you were there ?

Ans. In 1895 I only looked for what I had run around; the woods and swamps.

Ques. Then you didn't notice about the lines running across in 1895 ?

Ans. No, sir; because I had that on a previous map.

Ques. When was it you were there in 1895, March or April ?

Ans. I was there in June of 1895.

Ques. In June of 1895, was it ? 1896 is what I intended to ask you about. When was it you were there in 1896 to measure this burned cedar ?

Ans. The last of March.

Ques. Prior to the last spring term of court ?

Ans. Yes, sir.

Ques. You were there two days ?

Ans. Yes, sir.

Ques. The whole of two days ?

Ans. No, sir.

Ques. What part?

Ans. The whole of one day and part the next day.

Ques. Who was with you on the first day?

Ans. Why, one or two of the Abbotts, Clark Abbott and, I think, Howard Abbott.

Ques. Two of the plaintiffs in this suit?

Ans. Yes, sir; or connected with the family.

Ques. And who was with you the next day when you went there?

Ans. That was both days.

Ques. The same ones were there both days?

Ans. Yes, sir.

Ques. This cedar which you have included within these two places is not entirely destroyed, not entirely burned off, consumed?

Ans. The logs are there.

Ques. And they have some value, as a matter of fact, of course?

Ans. Well, very little I think.

Re-direct examination.

By Mr. Pancoast:

Ques. Mr. Lake, several times in your examination in chief yesterday you spoke of having surveyed this land in 1885; what have you to say about surveying it in 1885?

Ans. If I said 1885, I spoke wrong. It was 1893.

Ques. Did you, as you now recollect it, make the first survey in 1893, or at some other time?

Ans. 1893, of the Abbotts' survey.

Ques. That is what we are talking about. Did you make a map of the Abbotts' survey, of that tract, in 1893?

Ans. Yes, sir.

Ques. From your survey?

Ans. Yes, sir.

Ques. And that was the first survey that you made of this Abbott portion of the Gravelly Run swamp?

Ans. Yes, sir.

(Witness shown map and he is asked.)

Ques. Is that the map?

Ans. That is the map; yes, sir.

Ques. Made at that time?

Ans. Made at that time; yes, sir.

Ques. What is that writing on that map?

Ans. "Map of John C. Abbott's, deceased, cedar swamp in Gravelly Run, made in November, 1893."

Ques. In whose handwriting is that?

Ans. Mine.

Ques. The cross lines in that map, for what purpose were they put, if you know?

Ans. Only from what they told me, contemplating a sale.

Ques. Then, as you understood it, this map made up by you was a map made for the purpose of selling this land in different parcels?

Ans. Yes, sir.

Ques. And these lines show the different parcels they proposed selling?

Ans. Yes, sir.

(Map offered in evidence and marked Exhibit P4.)

Ques. Look at this map containing a survey and say if this map is a map of the Abbott property in question? (Another map shown witness.)

Ans. Yes, sir.

Ques. Was it made by you as surveyor?

Ans. Yes, sir.

Ques. From a survey on the ground?

Ans. Yes, sir.

Ques. It shows, does it, the same division lines as shown on the other map?

Ans. Yes, sir; and this shows the cedar.

Ques. The cedar on the tracts?

Ans. Yes, sir; the majority of the cedar, as they asked me to survey for them.

Ques. Then these zigzag interior lines represent the cedar that you surveyed off for the Abbotts at that time?

Ans. Yes, sir; in 1894.

Ques. There is some writing on this map; in whose hand is it?

Ans. My own.

Ques. Just read what it is.

Ans. "Full black lines,— line of swamp. Red lines are lines of division of land. Green lines are lines of timber or cedar. Scale, three chains to the inch. June, 1894. William Lake, Surveyor."

Ques. Did you make this interior survey showing the cedar in the swamp from actual surveys on the ground?

Ans. Yes, sir.

(Map offered in evidence and marked Exhibit P5.)

Ques. What is the difference, if there is any, to your knowledge, between the lines of the swamp on this map of June, 1894, and the lines of the cedar swamp on this map of yours here, P3?

Ans. This map (referring to P3) has a small piece of cedar that was burned here that is not shown on this map. This is another portion of cedar that was burned that is not shown on this map. (Referring to P5.) Also another portion down here on P3 that is not shown on P5.

Ques. Look at map P3 and the black lines. Now, there are black lines and also blue lines, the blue lines being interior to the black lines. What do the black lines show?

Ans. They show the lines that I surveyed by actual measurement.

Ques. Over the swamp?

Ans. Over the swamp.

Ques. Are they or not represented by similar lines on P5?

Ans. Yes, sir.

Ques. What do the blue lines represent within the black lines?

Ans. They show that portion of the cedar that is not burned.

Ques. Then did or did not the survey of June, 1894, include the whole of the swamp that contained cedar?

Ans. In 1894?

Ques. Yes.

Ans. Yes; I got more cedar in 1894, because I didn't survey them at the time of the fire or at the time I made this survey map P5, 1894. They didn't ask me to survey these.

Ques. That is, those tracts that now lie outside of those lines?

Ans. That lie outside of them.

Ques. Yesterday in my examination-in-chief I undertook to ask you about the character of the timber on these eight acres that was burned over and you answered my question then. Now, in answering my question, were you speaking of the timber that was not burned or the burned timber?

Ans. The timber that was burned.

Ques. I understood you to say upon your cross examination there was a large amount of green timber there that was fine in its character as well as the burned timber; is that so?

Ans. Yes, sir.

Ques. Now, is the causeway that you spoke of yesterday as being from twelve to fifteen feet wide and

one hundred and forty-six rods long, I think, delineated on this map?

Ans. Yes, sir; known as the Scowsides causeway and the Bear causeway.

Ques. And so marked?

Ans. Yes, sir.

Ques. These other older causeways, about which you have been examined on cross-examination, are not delineated on this map at all.

Ans. No, sir.

Ques. One question I forgot by inadvertence. What is the width of the West Jersey Railroad as operated, of this track? What is the width of the road-bed, the right of way?

Ans. I think it is one hundred feet. I am not positive about that.

Ques. You are sure it is that or thereabouts?

Ans. Thereabouts.

Ques. At the point in question, where this road crosses Gravelly Run cedar swamp, is it a single track road or a double tract road?

Ans. Where it crosses the Mays Landing road it is a single track, except right there there is a little station. (Indicating on map.)

Ques. That is a mere switch, isn't it?

Ans. A switch or turn out.

Ques. This road extends from Atlantic City, as I understand it, up to Newfield?

Ans. Yes, sir.

Ques. And is it a single track road, omitting switches, between those points?

Ans. Yes, sir.

Ques. Now, you have given us the areas of several burned districts here. In the first place, the eight acres made up of these different parcels, you made up that result from actual surveys lately made, since the fire, as I understand?

Ans. Yes, sir.

Ques. Now, how did you ascertain the twenty-five acres as the amount of timberland burned over in what is called the Wheat Field? How did you make that up?

Ans. By having the bounds of the Abbott survey and laying the other down inside of it and getting the contents of the other.

Ques. No trouble about the method, is there?

Ans. No, sir.

Ques. How did you get the boundaries of the other tracts of one hundred and thirty-five and one-half acres?

Ans. By the same process.

Ques. State whether or not you traversed this larger district in different ways, different directions?

Ans. No, sir.

Ques. What opportunity had you then for knowing how much of that was burned, so as to arrive at the one hundred and thirty-five and one-half acres?

Ans. By going around the side lines. There may be some portions of it that are not burned.

Ques. You went all around the side lines?

Ans. All around the side lines; yes, sir.

Ques. And did you go through it along the line of these causeways?

Ans. Yes, sir.

Ques. Both places there?

Ans. Yes, sir.

Ques. Was it burned wherever you went?

Ans. Yes, sir.

Ques. And could you see over the other side of the tract from these causeways?

Ans. You couldn't see clear across to the edge of the swamp.

Ques. As far as you could see was it burned?

Ans. Yes, sir.

Ques. Excepting the green places in the wet bottom?

Ans. Yes, sir.

Ques. And when you went down to the side lines did it appear to be burned into the swamp?

Ans. Appeared to be burned in.

Ques. It was the swamp and watery wet bottom then that was not burned?

Ans. Yes, sir.

Ques. And that character of land is delineated here in white?

Ans. Yes, sir.

Ques. Between the red and the black lines?

Ans. Yes, sir.

Re-cross-examination.

By Mr. Gaskill:

Ques. Mr. Lake, how do you know that the width of the road-bed is one hundred feet? Have you ever seen any deeds?

Ans. I said I judged it to be.

Ques. You have no knowledge of that?

Ans. I judge it to be.

Ques. I ask if you if you have any knowledge as to the width of the road-bed.

Ans. I have not.

Mr. Gaskill: I move to strike from the record his testimony as to the width of the road-bed.

By Mr. Pancoast:

Ques. Well, have you seen the road-bed frequently?

Ans. I have seen the road-bed. It is from my judgment.

Ques. Have you surveyed along this road at different times and points along it?

Ans. Yes, sir.

Ques. And do you know where the accepted side lines of the road are?

Ans. Where they are? Whether the deed covers it or not I don't know. I suppose it does.

Ques. But what is the recognized line?

Ans. I take it to be fifty feet on each side.

Testimony as to width of road-bed ordered stricken out.

Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.

By Mr. Gaskill:

Ques. Upon re-direct examination you said to Judge Pancoast that some of the cedars that were burned, or some places where there was burned cedar, there was some large enough to just reach around, or that two men couldn't reach around. Will you be kind enough to show me on the map where there were any such trees? Will you just come here to the map and make some mark or something that will indicate to the jury?

Mr. Pancoast: I would suggest to counsel right here that right in the line of locating this timber, an order may be made for the jury to go down and see this timber.

Mr. Gaskill: I have no objection to that. I should be glad to assent to that, and each side appoint a shower to accompany the jury.

Ques. Will you be kind enough to mark?

Ans. I can't mark the exact locality, but off here in this corner somewhere, large cedar.

Ques. You are now designating the tract marked

sixty-two one-hundredths and ten one-hundredths in that Wheat Field?

Ans. No; off here somewhere.

Ques. I am not asking you about that. I want you to point out on the map where there was any cedar burned that two men could not reach around?

Ans. I don't think I said anything like that, where they were burned.

Ques. Then there were no cedars burned that two men could not reach around; I understand you to say that now, do I?

Ans. I saw none that were burned that two men could not reach around.

Ques. It takes a pretty good tree that two men could not reach around?

Ans. Yes, sir.

Ques. A larger tree than this big oak out here?

Ans. I suppose it does.

Re-direct examination.

By Mr. Pancoast:

Ques. State whether or not you can recall any circumstances of attempting with another person to reach around any of this burned timber.

Ans. In 1894, when we were making the survey——

Ques. No; my question relates——

Ans. I can answer the question. William T. Abbott and myself tried to reach around some.

Ques. When?

Ans. In 1894.

Ques. Were they among the trees burned by this fire?

Ans. No, sir; they were scattering around the outside before the fire.

Ques. That was not my question. My question was

whether you can recall any circumstances of an attempt of you and another person to reach around some of the timber after it was burned?

Ans. No, sir.

JOSEPH E. P. ABBOTT, sworn.

Direct examination.

By Mr. Pancoast:

Ques. What is your occupation?

Ans. Lawyer.

Ques. A member of the bar of this county and State?

Ans. Yes, sir.

Ques. How long have you been such?

Ans. Since 1865, November.

Ques. Aside from your professional duty have you ever had to do with cedar swamps in this county and vicinity?

Ans. Since 1868 continuously; at no time been out of the business.

Ques. How long have you known and had to do with this cedar swamp in question in this case?

Ans. I went through it with my father from one end to the other frequently prior to 1868; the divisions of their interest in the swamp. Prior to that it was owned in common.

Ques. Since that time what have you had to do with it?

Ans. Since that time we began to work it off, in 1869. In 1871 I built a mill, a water mill, at the lower end of what is now our cranberry bog; the first pond immediately below Gravelly Run cedar swamp. Since that time I have operated or had charge of either a water mill or steam mill, or both, continuously up to the present time.

By the Court:

Ques. Since when?
Ans. 1871.

By Mr. Pancoast:

Ques. In doing what with these mills?

Ans. Cutting cedar almost entirely; very little of any other material.

Ques. On what sort of property, this property in question or other, or both?

Ans. I bought, superintended and purchased all the cedar that was standing some years ago on the Babcock stream, northwestwardly of Gravelly Run. I built a steam mill there in 1881 and ran it until 1890. Then after that I took charge of the cedar swamp, all the cedar on Miry Run, which is below us, with the exception of the Doughty interest below us, and worked that off in connection with my brother Charles, I taking full charge of all the timber, the cutting in Gravelly Run, keeping the books, made all payments, and made collections, either myself or from the family returned to me. No one else has had any charge of the books since 1871, but myself. I have them all in my office now.

Ques. During your experience in relation to swamp land and wood land, which you have detailed, have you had any occasion to deal with forest fires?

Ans. I presume there has been hardly a year since 1880 or 1881 that we have not had several fires. Prior to that there would be occasionally a fire.

Ques. You say we; who do you have reference to?

Ans. I have reference to the family; watching the fires. We have had them to come at us from every direction, but would turn out instantly, with our knowledge of the roads.

Ques. How many years have you been accustomed to go into the woods and practically fight fires?

Ans. Well, say fifteen years, some prior to that.

Ques. When was the last time you had occasion to fight off the common enemy?

Ans. In September, 1895.

Ques. That was this fire in question?

Ans. Yes, sir.

Ques. Do you recollect when Mr. Lake made his first survey of this tract in question?

Ans. Yes, sir.

Ques. When was it?

Ans. In the fall of 1893, November, I think.

Ques. Look at Exhibit P4 and say if that is a map of the survey he made at the request of you and the others as owners of this property?

Ans. He did; and the irregular lines——

Ques. Cross lines?

Ans. Yes, sir; we made because we desired to strike into and put some of the best cedar into each of the sections, making five of them.

Ques. With the view——

Ans. To sell the property, to close my father's undivided estate there. That was the object of it.

Ques. Did he after that, after 1893, make another map for you of this same property?

Ans. Yes, sir; the inside of it.

Ques. From actual surveys?

Ans. Actual surveys.

Ques. Were you ever on the ground with him?

Ans. Not while they were surveying. I went frequently to the lands but never went with them to my recollection while he was surveying.

Ques. Look at Exhibit P5 and say whether that is a map of the survey made by him for the owners.

Ans. That is the map, because people——

(Objected to, as no question has been put.)

Ques. What does this map show? What do the outbounds there show?

Ans. This map shows the outlines of the Gravelly Run cedar swamp which our family owns; two hundred and forty-seven acres and a half.

Ques. What do these interior cross lines represent?

Ans. The same that we made in the fall of 1893.

Ques. What do these other zigzag lines, if I may call them such, in the interior represent?

Ans. They represent the outer lines of the larger timber within the cross lines, in order to ascertain the quantity——

(Objected to.)

The Court: We don't want that. We want what they represent.

Ques. Quantity of what?

Ans. Large cedar, to purchasers.

Ques. Do these lines represent all the large cedar that existed in there?

Ans. They do not. There are smaller pieces on the outside which we could show people without a survey.

Ques. They are not included?

Ans. Not included.

Ques. Now, has this swamp in question, this tract of land in question, received any damage or injury by fire within a short time past?

Ans. Yes, sir.

Ques. When?

Ans. In September, 1895.

Ques. What date?

Ans. The fire entered the swamp on the 22d day of September, on Sunday.

Ques. On Sunday?

Ans. Yes, sir.

Ques. Now, when was your personal attention first drawn to the fire in that immediate vicinity ?

Ans. About the 13th of September, 13th or 14th. I was down at Atlantic City. Coming up on the railroad—

(Objected to, as he has answered the question.)

The Court: The question was when your attention was first attracted. You have answered the question, I think.

Ques. Where was this fire to which your attention was attracted on the 13th ?

Ans. It was on the—we call it the northerly side of the West Jersey Railroad, not very far from the flag station in Gravelly Run swamp.

Ques. Are you familiar with these two maps put in evidence on the part of the plaintiff, Exhibits P2 and P3, here on the rack ?

Ans. Yes, sir.

Ques. You understand the lay of the land there as delineated by these maps ?

Ans. Yes, sir; thoroughly.

Ques. They were made by the surveyor at your request for the purpose of illustration in this case ?

Ans. With the family generally, more directly through my instructions.

Ques. Can you point out on this map the point where you first noticed this fire in question ?

Ans. There is a branch this map does not show that starts out here. (Indicating on map.)

Ques. To the left hand of this branch, is it ?

Ans. Yes, sir; somewhere about there.

Ques. Well, now, is there a flag station there in that locality ?

Ans. About here. (Indicating.)

Ques. About where the flag station is delineated on the map, is it?

Ans. Yes, sir; that is about the locality.

Ques. There is a flag station there, then, just east of your property, is there?

Ans. Yes, sir.

Ques. And on the west side of the railroad?

Ans. West side of the railroad.

Ques. That is a flag station to the railroad, used by the railroad?

Ans. Yes, sir. They use that in the summer season when they have heavy travel.

Ques. A block signal station?

Ans. I don't know how they designate it.

Ques. Where is that flag station? That is the south side?

Ans. Southwesterly.

Ques. Where did you see the fire with respect to that flag station?

Ans. South, this location.

Ques. Just make a ring there.

Ans. About there. (Marking on map.)

By the Court:

Ques. That was on the northeast side of the railroad track?

Mr. Pancoast: Yes, sir.

Ques. It caught southwest of his land?

Mr. Pancoast: No, sir; to the north of his land; east of his land; northeast.

Ques. It was not on his land when he first saw it?

Mr. Pancoast: No, sir; on the other side of the railroad.

By Mr. Pancoast:

Ques. About how far distant, as near as you can judge, from your tract?

Ans. Two or three hundred yards, perhaps.

By Mr. Gaskill:

Ques. Two or three hundred yards from the railroad?

Ans. No; from our land, I should judge. I am guessing at it largely.

By Mr. Pancoast:

Ques. About how far from the railroad?

Ans. A few rods.

Ques. On the thirteenth, I understand you?

Ans. Or fourteenth.

Ques. You first noticed the fire there?

Ans. Yes, sir.

Ques. What was the character of the land there?

Ans. It was in a swampy place where there is a great deal of muck and roots. Timber had been cut off.

Ques. What kind of weather was it at that time, in regard to humidity of the atmosphere?

Ans. Excessively warm and dry; had been for some time prior to that, very dry.

Ques. Now, how long did you, if at all, continue to observe that fire in that immediate vicinity?

Ans. Well, I heard through the rest of the family—

(Objected to.)

For that reason I can't tell you. I didn't go to the ground. The rest did.

Ques. When did you first go the scene of the fire after you first noticed it burning in that vicinity?

Ans. On Sunday, the 22d of September.

Ques. What circumstances or facts called you to it then, on the 22d?

Ans. One of my brothers reported the fire in the woods and said send men there.

Ques. From what he said to you——

Ans. I went to the ground.

Ques. With men, did you?

Ans. Yes, sir.

Ques. Well, where did you find the fire when you went to fight it on Sunday with men?

Ans. I traced it from about this point (indicating) where it crosses the railroad; it was turned over towards Peet's Branch out here.

By Mr. Gaskill:

Ques. Won't you please designate on the map by something we can get upon the record where you said it crossed the railroad?

Ans. At this crossing. It is already marked. The surveyor spoke of that.

By the Court:

Ques. How far above or below the point in question?

Ans. At that time when I first saw it, half a mile, I presume.

Ques. Half a mile from your tract?

Ans. About that, I presume; perhaps not so much.

Ques. What direction, southeast?

Ans. Westwardly. The track is northwestwardly. It was northwest of the fire. The fire was burning all in here. (Indicating on map.)

By Mr. Pancoast:

Ques. Then you found the fire burning here on the southwest side of the railroad?

Ans. Yes, sir.

Ques. Westwardly from the point where you say it seemed to have crossed?

Ans. Yes, sir; where I know it crossed, because I followed the fire up where it crossed and it burned the railroad ties where it crossed, burned the ties right over it. The last time I was there the burned ties were there, some of them. Some of them had been taken away.

Ques. Did you hear Mr. Lake, the surveyor, in his testimony yesterday, speak of the point where the fire had apparently crossed the road?

Ans. Yes, sir; I had him measure it and locate it on this map.

Ques. You fixed the point of crossing at the same place?

Ans. Yes, sir.

Ques. What evidence was there upon the ground that the fire that originally started had crossed at that point, or any fire had crossed at that point?

Ans. It showed conclusively—

(Objected to and asked to be stricken out.)

(Ordered stricken out.)

Ques. The word conclusively don't use. That is for the Court and jury. Just state your judgment.

Ans. In my judgment you could trace it by the timber, by the burnt material in the swamp, till we approached near the railroad, very near the ties. Then there was no longer any of these bushes, but it took the dry stubble and brush and material until it reached in some places that close to the ties, (indicating) sometimes that far; I don't think it would be farther.

Ques. Give it in figures?

Ans. Two feet; a foot and a half or two feet. It

caught the railroad ties, burned them on the surface, and went over, caught the stubble on this side and went.

Ques. What was there on the right of way to carry it across, if anything?

Ans. There was dry material.

Ques. What kind of material?

Ans. Indian grass, more or less; other grass dried up with the heat.

Mr. Gaskill: I desire, to save further trouble, to ask that this witness testify what was there before the fire. I understand he was not on the premises before the fire and doesn't know what was there, and is now testifying as to what he learned after the fire.

Ques. Did you see that before the fire?

Ans. Not particularly, but the fire showed what it left; you could see where it burned the stubble and the ashes were there, and little twigs were there, and are there yet; I saw it only a few days since.

Ques. From your observation of fires in the forest, they left the marks where they went?

Ans. Yes, sir.

By the Court:

Ques. How wide was that passage across the track?

Ans. Well, where it burnt the ties about a rod, I should think. There must have been a dozen or more ties burned.

By Mr. Pancoast:

Ques. Are you speaking of the ties where the rails were laid or ties piled up there, or scattered around?

Ans. Ties upon which the rails were laid, the bed of the road.

Ques. Were there any other ties there that had been burned or were burned?

Ans. I didn't notice any. There were rails near there, but no ties.

Ques. Well, now, just tell us, without expressing any opinion, what evidence there was there of the fire having moved from the point where you originally saw it down to the railroad and across? How did you trace the course of the fire?

Ans. I actually traced it into the swamp here. It was all burned off.

Ques. Is there any means of tracing a fire?

Ans. Yes, sir.

Ques. What are they, when you go upon the ground, to see the course of the fire?

Ans. A fire running through the woods can always be traced by means of the pitch of the fire by striking the material.

Ques. By the direction of the blaze, in other words?

Ans. Yes, sir; invariably. It will sometimes burn the trees so completely that you have got to go to one side of it to locate it, because the heat of the fire is so fierce it will sometimes completely burn the tree up; but you can trace it by the wings of the fire. You can trace it always.

Ques. Now, what course did this fire take on that Sunday when you were there?

Ans. First it was burning in this direction.

Ques. That is, a southerly direction?

Ans. Yes, sir.

Ques. On the southerly side of the railroad?

Ans. Yes, sir. We commenced to fight it on this side.

Ques. The side towards the swamp?

Ans. Yes, sir; towards the swamp. We fought it from this railroad down to Peet's Branch. The wind

changed suddenly with us and it went down there with great fierceness.

Ques. Towards the swamp or away from it?

Ans. Directly into it.

Ques. On that same day?

Ans. Yes, sir.

Ques. Sunday?

Ans. Yes, sir.

Ques. How many men had you out there to work that day?

Ans. On Sunday, I don't recall how many; as many as we could gather together, twelve or fifteen, besides the men, as I understand, the railroad men, on the other side; I didn't see them; I can't speak of that.

Ques. Were there any railroad men there that Sunday when you were there?

Ans. They were on the other side, I understand; I didn't see them; they were not on this land with us. Sunday and Sunday night it got down into the swamp, and we were fighting it then along the swamp. You asked how many men we employed. We employed altogether, different men, fighting the fire, in that swamp, on different days, thirty-seven, besides our own family. They were on the pay roll that I paid.

Ques. Thirty-seven?

Ans. Yes, sir; some of them would fight one time; some another, and one or two all the time. One of the men was paid for ten days, I think, another twelve, another twelve and a half, because we kept him watching till the rains began to fall. It burnt until the rain put it out.

Ques. Did you keep any estimate of the amount it cost you?

Ans. To the very penny.

Ques. What was the amount?

Ans. I paid afterwards a surveyor's bill, which I don't recall. $221.45.

By Mr. Gaskill:

Ques. May I see that?
Ans. Yes, sir.

(Paper handed to Mr. Gaskill.)

There were other expenses that came in afterwards I didn't keep any account of.

By Mr. Pancoast:

Ques. You have heard Mr. Lake testify in relation to this timber that was burnt by this fire, haven't you?
Ans. Yes, sir.
Ques. Do you know the character of this good timber, amounting to eight acres, as was alleged, that was burnt by that fire?
Ans. Yes, sir.
Ques. What was the character of that timber?
Ans. That was what we would call good workable cedar.
Ques. About, as near as you can tell, what was its age and general size?
Ans. It depended on the locality. Some places it was larger than others. Some of this and that, more particularly this up here, (indicating on map) was quite large timber.
Ques. Give a description of it to the jury.
Ans. Well, say from six to fifteen inches over.
Ques. How thick on the ground?
Ans. Some places it was very thick; other places, edges of the swamp, was not so thick as other places again.
Ques. From your experience in the business of dealing in this kind of lumber, what, at the time of the fire, was the fair market value per acre on an average of this eight acres, assuming them now to be eight acres?

Ans. In 1894, when we intended to have a sale—

(Objected to).

Ans. I want simply to put it the way I estimate it.

The Court: You are not asked that; the fair market value of the eight acres at the time of the fire.

Ans. I put it at $175, which I offered and was refused.

(Objected to.)

The Court: That won't do.

Ans. I fix the value because I offered it and was refused.

The Court: That won't do.

Ans. Well, that was the value then.

By Mr. Pancoast:

Ques. That, you think, was the fair valuation per acre, averaging it?

Ans. Averaging it. Some of it was worth $225 an acre, but I am speaking of the average now.

Ques. Are you familiar with the twenty-five acre tract there marked in yellow?

Ans. Yes, sir; more or less.

Ques. Known as the Wheat Field?

Ans. Known as the Wheat Field.

Ques. How old is the growth of timber there and what is the character of it?

Ans. In 1868 to 1875 we worked this off. It came up soon afterwards as thick as a wheat field, and took its name of Wheat Field from that.

Ques. Came up what kind of timber?

Ans. Came up on cedar bottom that we had worked off, heavy mucky bottom, as a general thing. We cut very heavy timber there.

Ques. The last of your cutting was in 1875 on the Wheat Field?

Ans. Yes, sir; I should judge 1875. There might have been some little cut here in the lower part of it.

Ques. Do you know whether the fire consumed that Wheat Field tract or not?

Ans. Yes, sir; I was there when it was burning here, but not when it burned that and this part. (Indicating on map.)

Ques. What was the fair value of that timber there at the time it was burned by this fire?

Ans. I consider $25 an acre a very low estimate, young cedar swamp as that was.

Ques. Was there other timber there that was burned?

Ans. Yes, sir.

Ques. How many acres?

Ans. Well, I have to take the surveyor's estimate of that.

Ques. This larger tract delineated on map P3, is it?

Ans. Yes, sir.

Ques. Have you been in and upon and through that since the fire?

Ans. Yes, sir; parts of it; not all of the whole tract. My brother has attended to that business more than me.

Ques. So far as you noticed it, the fire swept over the whole of it?

Ans. As far as I know that is correct, with the exception, it is possible, that sometimes along the stream where we would go and gather up water and save a few rods around about. With that exception there may have been a small spot; I never discovered it.

Ques. How old was the timber on that tract?

Ans. This represents——

(Objected to.)

The Court: Just answer the question.

Ans. It is all the way from one year up to twenty-five where we worked, and where we didn't work why there were spots of young timber that were not large enough, and of course I can't give the age of them.

Ques. Give us the age of the different parcels?

Ans. Well, it is all the way from two feet up.

Ques. How much of it is two feet up?

Ans. I couldn't tell you that; several acres of it, but I couldn't tell you; it runs in different stages all through this.

Ques. How high is the best of it?

Ans. Well, I couldn't locate any particular spot as to the sizes. It runs all the way, as I say, from small material up to rail size. Where it would be the edges of the timber when we would work it, we would work out the big cedar and leave the small timber, too small to work.

Ques. Uneven?

Ans. Yes, sir; uneven, as all swamps are.

Ques. What, according to your best judgment, would be the fair value of that burned tract at the time it was burned?

(Objected to as not market value.)

Ques. The fair market value is what I mean to ask, of this tract that we are speaking about, this one hundred and thirty-five and one-half acres.

Ans. Taking the whole of it on an average, I should say $15 per acre, I should say was a very low estimate, because it had a very heavy mucky bottom, very deep and exceptionally good for cedar growth.

Ques. Do you know about the causeway that existed here?

Ans. Yes, sir.

Ques. That is the causeway delineated on this map?

Ans. These causeways—as we commenced working we had to make a solid, substantial road-bed, which we always kept up. As we worked either side we would make temporary causeways, which are not delineated on the map and were burned up. These roads were made permanent, that one and this one. (Indicating on map.) The continuation of that allows us to get our lumber up to the road. There is a steam mill right here. (Indicating on map.) This causeway came out to the road. The causeways that we made in different directions to work off the timber are not delineated here and are burned up. We had no further use for them, so that the very large causeway which came in from the other side, from the Gravelly Run road out here, and struck this piece of timber about this place, and went up through it,—my earliest recollection of that causeway was it was a very old causeway in my earliest days.

Ques. This causeway is not delineated on the map?

Ans. It is not delineated, and there were cedars growing there. We had no occasion to use it. Cedars were growing in the causeway not marked on the map, the old causeway we didn't use.

Ques. Can the swamp be used without a causeway?

Ans. It is not possible. There are no green cedars on either side to build of.

Ques. Do you know what it would cost to build causeways on either side as these were?

Ans. These causeways cost us a great deal of money.

Ques. Can you give us an idea?

Ans. I have built a good many causeways; I built this causeway. To build this one from green material,

you must use the small cedar. There is no cedar around in the country. It can't be hauled and put in that road again for less than $3 or $3.25 per rod.

Ques. Could it be done any cheaper in this tract? (Indicating other tract.)

Ans. It would cost just the same there; there is no way to get them out any other way; it is impracticable to get it out over this sand.

Ques. It would cost how much?

Ans. $3 to $3.25, according to my experience, not temporary causeways, but solid.

Ques. What was this eight acres there worth after it was burned, per acre, if anything?

Ans. I don't consider it worth one cent; it is worth it to get it out.

Ques. Has anything been done with it?

Ans. Nothing; no occasion; we can't get it out without cutting our green timber and we don't want to cut it.

Ques. What effect did that fire have upon this swamp bottom and this soil that reared that good cedar?

Ans. In many places it runs from two to four feet deep; it burned it down to the very soil.

Ques. What do you call soil?

Ans. Sand, the roots of these trees.

Ques. What is left there above the sand to nourish vegetation in the future?

Ans. Where the fire went it burned the substance out of everything.

Ques. How long will it take cedar trees to get mould and roots there, according to your observation?

Ans. I couldn't have any. No man could live long enough, I don't think.

Ques. What was the twenty-five acres worth after the fire swept through it?

Ans. It was worth comparatively nothing.

Ques. What was the timber worth, the burned timber, anything?

Ans. It is merely stuff, absolutely worthless.

Ques. What effect did the fire have upon the soil of the twenty-five acres?

Ans. It destroyed that for many years to come for any growing purposes. It would have to form by the sediment ordinarily coming down through the swamps.

Ques. In course of time?

Ans. In course of time it will, I suppose.

Ques. What was the one hundred and thirty-five and one-half acres worth after it was fire swept?

Ans. Not over $5 per acre. It is a hard matter to find any person to fix any price on it.

Ques. Before bringing this suit, did you present a claim to the West Jersey Railroad Company for this damage?

Ans. I had an interview with Mr. Dayton, the Superintendent of the road.

Ques. The General Superintendent of the road?

Ans. Yes, sir.

Ques. To your personal knowledge?

Ans. Yes, sir. I have had a great deal of business with him as such.

Ques. Well, what passed between you on the subject?

(Objected to.)

Mr. Pancoast: I am not trying to get in anything that is incompetent.

Mr. Gaskill: I object to anything that took place between the witness, one of the plaintiffs, and any officer of the company, unless it be shown that it was at a time when the officer was engaged in the specific business of fighting the fire. Any declaration made by

any officer of a corporation after the act can never be admitted. That has been ruled by our courts.

The Court: I don't think the evidence is admissible. Any conversation he had with an officer of the company after the fire cannot amount to anything.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. You had an interview with Mr. Dayton?
Ans. I did.
Ques. In respect to this fire did you?
Ans. Yes, sir.
Ques. And did he make any appointment with you in respect to the investigation, as to the origin of the fire and the amount of the damage?

(Objected to on the same ground as before stated. Objection sustained and question ruled out.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Do you know from personal knowledge that Superintendent Dayton is the officer of this company that represents the company in relation to claims for damages done by fire and otherwise?
Ans. Yes, sir.

Mr. Gaskill: How does he know that?

The Witness: I settled with him on other fires.

The Court: I don't see what that has to do with it, gentlemen, an officer of the company.

Mr. Pancoast: Why, a corporation cannot act; it

has not hands ; it cannot speak ; it has not a tongue ; but it has very important corporate existence and its life is expressed in the action and conduct of its officers.

The Court: This man is a settler of claims. He sees one man one day and another the next.

Mr. Pancoast: He says he has seen the Superintendent of the railroad who settles claims.

Mr. Gaskill: He may have been specially deputized by a superior officer to settle these claims. There is no proof of his authority.

The Court: I don't think it is competent.

Ques. Through and by means of your intercourse with Superintendent Dayton in relation to your claim for damages from this fire, was there one or more persons through Mr. Dayton's agency sent to meet you to make an investigation in relation to the origin of this fire and the amount of damages done by it ?

(Objected to.)

The Court: I think it is subject to the same objection, Judge. I will overrule it.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Do you know who was the section boss of this portion of the railroad which includes the vicinity of this fire ?

Ans. Yes, sir.

Ques. What is his name ?

Ans. Daniel McClure.

Ques. Employed by what company?

Ans. It is this West Jersey Railroad.

Ques. How long has he been a section boss?

Ans. Quite a number of years. I can't recall it.

Ques. Well, as near as you can recall it.

Ans. Oh, well, I should say at least ten, nearly since the road was built, I should say. I should say ten years at least.

Ques. Do you know what he does for the company in respect to fires along the road in the way of his employment?

Ans. Part of his employment—

(Objected to.)

Ques. Do you know what he does in respect to that?

Ans. I know what he does.

Ques. As section boss?

Ans. I know what he does. He looks after fire in his jurisdiction.

Ques. What is his jurisdiction along that road for several years past?

Ans. About from the lower end of Mays Landing to about McKee City, about that distance.

Ques. Including the portion that crosses Gravelly Run cedar swamp, that portion of it?

Ans. Yes, sir.

Ques. Do you know whether he keeps an account in a book of the different fires that come within his observation along the road as the result of the operation of the road?

Ans. Yes, sir; I have seen his book.

Ques. And do you know as a matter of fact whether or not when a fire occurs from the road he and the men under him are charged with the duty of putting it out, fighting it?

Ans. Only in a general way. I know they do it.

Ques. You know they do that?

Ans. Yes, sir.

Ques. How long has it been a custom to do that?

Ans. Always, as far as I know, since the road has been built. I think that was in 1880 or 1881.

Ques. Well, now, did you ever have any interview with this road boss in respect to this fire in question?

Ans. Yes, sir.

Ques. First, tell the different steps that led to that interview with him.

(Objected to.

Mr. Pancoast: I want to show that he was acting as road boss under proper instructions from the officers of this company when he had this interview.

The Court: Interview with the section boss?

Mr. Pancoast: Yes, sir. He had charge of that section of the road, the section of the fire.

Mr. Gaskill: My objection, if the Court please, is upon the same ground as heretofore. Certainly if you can't prove an interview with a superior officer and what occurred there, you can't trace from that superior officer down to a subordinate, the road boss, and then detail an interview with him; and if that is so, it is utterly immaterial and irrelevant as to how he came to have that interview with the road boss. If he does show that by some direction he had this interview with the road boss it will be utterly irrelevant because the Court must rule out anything that occurred at the time of the interview with the road boss, because it cannot be shown that the road boss was authorized to make any statement or to do any act that would bind the corporation.

The Court: I don't think the evidence is any differ-

ent from the other. It is really getting back to that again, I suppose.

Mr. Pancoast: In my point of view, it only shows the fallacy, I say with respect to the Court, of the view held by the Court.

The Court: You are getting back to the same thing.

Mr. Pancoast: I am getting back to the company.

The Court: It is the same thing. I will rule it out.

Mr. Pancoast: The offer is on the part of the plaintiffs to show by the examination of this witness that McClure, the road boss, was charged with the duty of investigating and giving information to these plaintiffs in respect to the origin of the fire in question within his personal knowledge.

Mr. Gaskill: I object to that offer so far as it has been demonstrated by the questions put to the witness. I don't object to it any further than that. If you can show by the chief officers of the corporation that had authority to give orders, that is a different thing. I don't object to that. I object only to the question as put.

The Court: The question as you put it I believe was overruled. This is a new proposition.

Mr. Gaskill: I take it that the Court is not bound to rule upon a proposition put in that form. He is to rule on questions put to the witness.

(Question withdrawn.)

Ques. Where did you meet Mr. McClure, the road boss that you have spoken of, in respect to this fire?

Ans. At the station opposite here, and proceeded to my office.

By the Court:

Ques. Opposite here?
Ans. Opposite the Court House.

By Mr. Pancoast:

Ques. When?
Ans. About the 31st day of October. I am not right positive of the exact date. It may vary one day one way or the other. I will say about the 31st day of October, 1895.
Ques. Who was present?
Ans. Thomas Wilson, Robert J. Wilson, Charles T. Abbott, Clark W. Abbott and myself, with Mr. McClure.
Ques. Who were the Wilsons and how did they happen to be there?
Ans. Sent there by General Sewell. I should say, Mr. Dayton.

(Objected to.)

The Court: The testimony as to who sent the Wilsons will be overruled.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. What were the Wilsons there for, without respect to who sent them there?

(Objected to. Objection sustained.)

Mr. Pancoast: The object is to show that they were there for and on behalf of the West Jersey Railroad

Company to make an investigation and report in relation to the origin of this fire and the amount of damage done.

(Offer overruled.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Now, state whether or not an investigation did take place there between these persons that you have named in respect to the origin of this fire and the amount of damage caused on your lands.

(Objected to. Objection sustained.)

Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.

Ques. Did Mr. McClure have his road book as foreman there?

Ans. He did?

Ques. Wherein he made entries in relation to the fire?

Ans. Yes, sir.

Ques. Did he make any statement from it or read anything from it touching this fire in question?

Ans. He did.

Mr. Pancoast: I call for the production of that book. I have served a duces tecum.

Mr. Gaskill: I have the book in court in obedience to the process of the court, which I thought proper, but I decline to produce the book and submit that book, for they have no right to it, because it comes within the rule already made, because it contains a declaration of the

road boss, his memoranda only, and it is for the use of the company, his superior officers of the corporation, and the defence to this suit, and no such matter as that or any such document or book as that can be produced by the other side on subpœna or by rule or notice. He may just as well, and in fact he has in his notice asked me to produce the letters between myself and Judge Logan and the manager of the West Jersey Road, and all of our notes and investigations and such things. As a matter of course no such investigation can be of any use. We are not compelled to produce anything for inspection, and when it is produced the counsel must offer it in evidence.

Mr. Gaskill argues and Mr. Pancoast replies.

The Court: I don't think you have any right to it at all.

Mr. Pancoast: That, then, settles this without a debate or opportunity for debate. If your Honor's mind is already made up on an important question like this I cannot argue upon it, but simply acquiesce in your Honor's ruling and ask an exception. As I understand your Honor's ruling, it is that I am not entitled to this road master's book.

The Court: Yes, sir.

Mr. Pancoast: That I am not entitled to know what he wrote down in that book touching this fire and reported to the company in the line of his duty as such agent of the company.

The Court: I don't think you are; no, sir.

The plaintiffs, by their counsel, pray a bill of exception, which is allowed and sealed accordingly.

Cross-examination.

By Mr. Gaskill:

Ques. I understood you to say that it was on some day after the 22d of September that you went along the railroad and noticed where this fire had crossed?

Ans. Yes, sir.

Ques. Will you please give me the day?

Ans. I couldn't do that. It was within a week.

Ques. Well, which end of the week?

Ans. It was either Monday or Tuesday.

Ques. After the fire?

Ans. Yes, sir.

Ques. Well, then, instead of being within a week you ought to say the next day after the fire?

Ans. It might have been the second day.

Ques. As a lawyer, in appreciating the value of accuracy in statement, why didn't you tell us it was the next or the next but one day instead of saying within a week?

Ans. I wasn't certain until I thought about it.

Ques. Then you made your answer without thinking about it at first?

Ans. I said within a week, and it was correct.

Ques. Was it on Monday or Tuesday?

Ans. I think Monday afternoon.

Ques. Where did you start from and where did you go to along the railroad track?

Ans. There is a road leads——

Ques. I didn't ask you about any roads. Along the railroad track?

Ans. I was going to tell you. I used the road that leads over Peet's Branch to Reega station, which is marked there——

Ques. You started at Reega station on the railroad; how far did you go?

Ans. Down as far as the bridge, and crossed over some distance from the bridge but not all the way across the swamp, I think it was.

Ques. This was on Monday afternoon?

Ans. I think it was.

Ques. As you now think, you took the railroad track at Reega station, which is somewhere near the end of what you have marked on this map as New York avenue?

Ans. Yes, sir.

Ques. And went along the railroad track until you came to the railroad bridge over Gravelly Run?

Ans. Yes, sir.

Ques. Over which your swamp is?

Ans. Yes, sir; some distance in; I don't know.

Ques. And that is all you travelled on that railroad track that day?

Ans. Yes, sir.

Ques. When again did you go along that railroad track?

Ans. I wasn't along there again to stop. I passed Friday and looked out the rear end of the car, but to stop and look at it I hadn't been there again until about the 31st day of October, when I accompanied Mr. Wilson and Mr. McClure.

Ques. Then between the Monday afternoon after the fire in your swamp, which was the Monday afternoon of the 23d of September, up the 31st day of October, you hadn't been along that railroad track on foot?

Ans. On foot; no, sir.

Ques. All that you had seen of it was the passing view as you went by on a railroad train.

Ans. Yes, sir; once or twice perhaps, only.

Ques. On which day was it you noticed the debris, the burned grass and twigs?

Ans. The first time.

Ques. On the 22d?

Ans. Yes, sir; also on the 31st of October.

Ques. Where did you go on the 31st along the railroap track?

Ans. We left our team—

Ques. I didn't ask you where you left your team. Can't you tell how much of the railroad track you walked over?

Ans. Where the road from Gravelly Run to Absecon crosses the West Jersey Railroad there we walked down the track past the small flag station—

Ques. I asked you what you walked over on this track. You commenced here. Where else did you go?

Ans. Came right on to the bridge, crossed the bridge to where the fire crossed the railroad track. Then we spent—

Ques. Did you go any further on the track?

Ans. Yes, sir; to McKee City, two and a half to three miles on the road.

Ques. McKee City is a pretty large place, covers almost all the country around here?

Ans. McKee City station.

Ques. Yes, that is where I got lost. I wandered about McKee City and found it covered several miles around here.

Ans. Yes; a large tract.

Ques. When last had you been along the railroad track before Monday afternoon, September 23d?

Ans. On foot?

Ques. Yes.

Ans. I don't recall any time except when Mr. Lake, about the same time Mr. Lake surveyed; yes, after he surveyed in the summer.

Ques. In 1894?

Ans. Yes, sir; but I—

Ques. Well, I don't care about going back as far as that. You hadn't been there that summer, 1895?

Ans. No, sir; not on foot.

Ques. Then you hadn't seen where the section boss and railroad men had mowed off and removed the grass and so on from the right of way, prior to the fire, had you?

Ans. No, sir.

Ques. And you had no knowledge as to whether or not the track had not been cleared of all the grass and removed?

Ans. I have knowledge—

Ques. Before the fire?

Ans. Not before the fire; afterwards.

Ques. And all that you can tell about the twigs or grass from your personal observation is that after the fire you saw some debris such as you have described?

Ans. Yes, sir; showed it very plainly.

Ques. That is all that you saw?

Ans. Yes, sir.

Ques. Now, Mr. Abbott, you were not on this ground until either the 13th or 14th of September, you are unable to say which?

Ans. I hadn't been there for some weeks or months, not on foot, frequently passing there.

Ques. Yes; passing on the railroad train; but during June, July and August, you had not been through there on foot or to make any observation?

Ans. I don't recall it now.

Ques. In the month of September was your attention called to any other fire in that neighborhood?

Ans. The immediate neighborhood?

Ques. Yes.

Ans. Yes, sir. That is, when you mean immediate neighborhood I don't know whether you mean one mile or ten miles.

Ques. Well, within a circuit of one mile or two miles?

Ans. Only that which came from the swamp.

Ques. No; I said other fire. You understand the English language. Whether your attention had been called to any other fire within a circuit of two or three miles?

Ans. Yes, sir; within two or three miles.

Ques. Did you attempt or make any effort to trace the fire in the swamp that crossed the railroad track to any of these other fires?

Ans. Yes, sir.

Ques. Which one did you attempt to trace it to?

Ans. I with others put the fire out.

Ques. That is not what I asked you.

Ans. What did you ask?

Ques. I asked you if you attempted to trace this fire which crossed the railroad track and came to your swamp to any other fire.

Ans. No; no other fire. Traced it right through the swamp.

Ques. You made no effort to trace the path of this fire to any other fire?

Ans. We made an effort——

Ques. No; answer my question. I want to know what effort you made. You have already told us that you traced this fire back to this place.

Ans. Yes, sir.

Ques. Now, did you make any effort to trace the fire from where it crossed the railroad track to any other fire or any other direction?

Ans. Certainly not; there was not any other fire; we traced it right there.

Ques. Did you receive knowledge that between the 12th day of September, when this fire that you had located as being on the northeast side of the right of way is alleged to have started, did you get any knowledge that any other fire within a circuit of three or four miles

between that date and the date your swamp was burned had been in that neighborhood?

Ans. No, sir.

Ques. You hadn't heard anything about this fire which started on the 15th at McKee City?

Ans. That is two or three miles away.

Ques. That is not what I asked you; didn't you know there was a fire started about the 15th in McKee City and burned up to the time your swamp was burned?

Ans. No, sir.

Ques. Did you know that a fire was at McKee City?

Ans. Yes, sir; a week before.

Ques. Yes, a week before; that was the 15th?

Ans. Yes, sir.

Ques. Mr. Abbott, the map which is marked P5, you loaned that to Mr. Thompson, didn't you, one of the engineers of the West Jersey Railroad?

Ans. Yes, sir; I loaned it.

Ques. Now, as I understood your direct examination, you had a survey of the large cedar made by Mr. Lake inside the outbounds of your tract, and lines run across it for the purpose of selling—holding it out to purchasers?

Ans. Yes, sir.

Ques. When was that, 1893 or 1894?

Ans. The first lines were run in 1893.

Ques. These were the outbounds?

Ans. Well, and also the division lines, expecting to sell between these lines.

Ques. The outbounds were run in 1893?

Ans. Yes, sir.

Ques. And also those cross lines?

Ans. Yes, sir.

Ques. Which are shown in red on your map, Exhibit P5?

Ans. Yes, sir; but only those cross lines.

Ques. Now, it was in 1894 that the cedar swamp was run out?

Ans. Yes, sir.

Ques. And at that time you were running out lines to include all the large cedar?

Ans. No, sir; that was not our intention.

Ques. What were you running it out for?

Ans. Our intention—

Ques. I didn't ask you that. What were you running it out for if you were not running out lines to include the large cedar?

Ans. To include the large cedar in two separate patches, which were very large. You could not show them without having a survey. The small pieces outside anybody could see, and we didn't have a survey.

Ques. Then down here (pointing to map where there are figures, 1.75) down here you did undertake to get in all the large cedar?

Ans. I was not present. My brother will explain that. I cannot answer it.

Ques. The lines don't show all the large cedar?

Ans. It does not. It was not intended to.

Ques. And up here near the Wheat Field it doesn't show all the large cedar?

Ans. Not quite; the extreme point.

Ques. The ten one-hundredths of an acre?

Ans. Yes, sir.

Ques. Now, I understand you to say that you didn't see this fire that started on the 12th until on the 13th or 14th?

Ans. I did not see it. I heard of it. I did not see it.

Ques. You were not on the ground until after the fire had gotten into your swamp?

Ans. No, sir.

Ques. So that you didn't see the course the fire took?

Ans. No, sir; on Sunday I did.

Ques. You did not see the course the fire took while it was burning?

Ans. On Sunday I did; the 21st.

Ques. Well, it had already gotten into the swamp. You didn't watch it? You didn't see it physically go across?

Ans. I saw it; yes, sir; before it got into the swamp.

Ques. But it had crossed the railroad track?

Ans. It had crossed the railroad track the afternoon before, but it was an easy matter to trace it across.

Ques. There had been considerable territory burned over in the neighborhood of this swamp before, hadn't there?

Ans. Yes, sir.

Ques. Just show.

Ans. In 1894 the fire struck the cranberry bogs we own here, (indicating on map), and the pond was full of water. It did no damage then. It crossed and burned this. It went across there. (Pointing to the most westwardly part of the map, No. 3.) It is not calculated in this fire at all. The main body of the fire struck this pond.

Ques. Didn't that fire also burn some of the woodland outside of the bounds of your survey?

Ans. It burned over here some on the upland, where it was put out.

Ques. And along by the Absecon road it had burned?

Ans. I think it burned all the way from the Absecon road; it was put out there.

Ques. Now, you were speaking of the fire of 1894?

Ans. Yes, sir; it burned over here somewhere and burned this much of our cedars (indicating on map).

Ques. Had there been any fire there in 1895, prior to September?

Ans. No, sir.

Ques. Nowhere near your cedar swamp or your tract of land?

Ans. No, sir.

Ques. When you were there, on either the 13th or the 14th, as it may be, and on the 22d, did you see any back firing?

Ans. On the 22d?

Ques. Either of those dates, the 13th or 14th or the 22d?

Ans. The 13th there was only a fire smoldering in the cedar swamp.

Ques. I asked you if you saw any back-firing?

Ans. There could not be. On the 13th there was no back-firing.

Ques. That you saw?

Ans. That I saw.

Ques. How about the 22d?

Ans. On the 22d the wind—

Ques. I didn't ask you about the wind.

Ans. Well, allow me to explain.

Ques. I asked you whether there was any back-firing on the 22d.

Ans. There was none there that I know of.

Ques. Did you see any anywhere?

Ans. Not that I know of. We—

Ques. Never mind that. I may be ignorant as to the right terms to use in regard to this. It is suggested that side-firing may be different from back-firing. What I mean is, did you see any place where any persons had kindled any fire for the purpose of keeping fire from their property?

Ans. Yes, sir.

Ques. Well, show us.

Ans. The fire was burning in this direction; it always runs in the shape of a V, spreading out.

Ques. Oh, never mind that.

Ans. You wanted an explanation. I am giving it. Now, there is a road running from Reega there into the swamp. When the wind changed we commenced to see if we couldn't stop it. We commenced firing on this side and hadn't gone a hundred yards when the wind changed over here and drove us out immediately. I almost got burned myself.

Ques. In other words, it drove you out of your swamp?

Ans. No, sir.

Ques. You were doing some side-firing here?

Ans. Yes, sir.

Ques. And the wind changed here?

Ans. Yes, sir.

Ques. And you ran away to keep from being burned?

Ans. No, sir; it just started.

Ques. You had to run away?

Ans. Not from this fire, from the other fire.

Ques. It ran right into your swamp?

Ans. No, sir; the other fire. If the wind hadn't changed we would have kept it out of Gravelly Run swamp.

Ques. Did you see any other backfiring?

Ans. No, sir.

Ques. Only what you did yourself?

Ans. No, sir; there wasn't any. I was there all the time.

Ques. You didn't see any back-firing over there by any of the property owners north of the block station over somewhere along here?

Ans. I was not over here.

Ques. Then you don't know whether there was any or not?

Ans. Which day do you mean?

Ques. Any day between the 12th and the 22d?

Ans. I don't know; the others will tell that.

Ques. You don't know whether there was any back-firing over here at McKee station?

Ans. Not to my knowledge; others will tell that.

Ques. Or side-firing?

Ans. Others will tell that; I couldn't be in two places at once.

Ques. Now, Mr. Abbott, prior to this fire on September 12th or 15th or 22d, had there been a fire that had swept over the whole of that country outside of the swamp bottom for miles?

Ans. Some years ago there had been a fire somewhere up there, I don't know what extent; but it had been long enough so that this fire burned right over it again; I don't know how long it had been.

Ques. Hadn't there been a fire within eighteen months or two years that had been into your cedar swamp?

Ans. At any other place than I have mentioned?

Ques. Yes.

Ans. No, sir; not that I know of.

Ques. Don't you remember a neighbor burning brush there?

Ans. You are speaking now of 1894?

Ques. In May or June, 1894, do you remember a neighbor burning brush and getting into your swamp?

Ans. I have told you about that.

Ques. Down here at the bottom of the swamp?

Ans. Yes, sir.

Ques. Anywhere else?

Ans. No, sir; it burned on the upland, but we cut it off. It burned across the road, but not down into the swamp.

Ques. Do I understand you to say that the whole of this so-called Wheat Field has been burned over?

Ans. So far as I know. Others will testify as to that.

Ques. Well, I understood you to say that the whole of it had been burned over?

Ans. As far as I could discover by looking along the line. I didn't go over the whole of it.

Ques. Then you have no knowledge of your own as to whether the whole of what is called the Wheat Field is burned over?

Ans. Not the whole of it.

Ques. You can't say but that there is a large quantity of green trees in there to-day?

Ans. Well, not the whole twenty-five acres, I don't know.

Ques. And you cannot say that there is not dead Indian grass from last summer still in there?

Ans. I have not been there.

Ques. So that you cannot testify to the jury that the whole of that twenty-five acres has been burned over?

Ans. Not on this side, (indicating on map,) but this side——

Ques. Well, I am through.

Ans. Well, I explained that before. I was on one side of the swamp and the others on the other side. We had to divide our forces.

Ques. You say that this timber is absolutely of no value whatever where the fire has been?

Ans. I should think it would be fully worth the cedar to get it out of there. I don't think it would be —in fact I have had a little experience in that line, to my sorrow.

Ques. When you say that this cedar that has been burned, some eight acres, is worth $175, do you mean to say that $175 was the price in open market in September, 1895, for that kind of cedar, situated as that was?

Ans. I say, yes, sir; I say it was worth that.

Ques. Do you know of any sales of cedar timber of

that character being made in the summer or fall of 1895?

Ans. Per acre?

Ques. Yes.

Ans. I do not; there isn't any cedar there for sale.

Ques. Then you put this price upon it because you own the only cedar there is here?

Ans. The family owned it and I wanted it.

Ques. And you put the price upon it because that is the only cedar that there is here?

Ans. No, sir; the very price that I have been paying for twenty or thirty years; for twenty years. I have paid twice that amount too.

Ques. What was the cedar that was burned—the large cedar I am now speaking of—what was that particularly valuable for?

Ans. Siding and boat boards when there is a market for it.

Ques. And the market for boat boards is not very good in these days?

Ans. Not so good as it was.

Ques. In fact, there is very little demand for boat boards in these days?

Ans. Very little. There were some beautiful boat boards. It was principally siding and shingles and plank we cut them into.

Ques. Have you known of any young cedar being sold within the last two or three years, such as that cedar you have described as being on the Wheat Field?

Ans. I don't recollect any?

Ques. Now, with reference to the rest of the tract, which is what has been called smoke color, what kind of timber was upon that?

Ans. In spots almost any size that you can imagine, where timber has been worked off and cut out.

Ques. What kind of timber, pine?

Ans. Only on the outside edges.

Ques. Maple?

Ans. Yes, sir; some.

Ques. Gum?

Ans. Yes, sir; some.

Ques. And the wood that was there was only valuable for making cross ways and for fire wood? The wood on the edges I am speaking of.

Ans. The wood outside of cedar on that tract was but little amount.

Ques. And of little value?

Ans. It couldn't be of only little value if there wasn't much.

Ques. But if there was much it would have been of little value?

Ans. It wasn't worth anything after the fire went through.

Ques. Before the fire?

Ans. We didn't cut such stuff.

Ques. It is worth it to cut it?

Ans. It has its value to keep it, to grow.

Ques. Now, in the 135 acres, how much cedar was there?

Ans. As I have told you,—

Ques. Tell me again, please.

Ans. The other larger black lines show the workable cedar. The rest was from that size down to two feet.

Ques. Well, you didn't answer my question. I didn't ask you the size of it. I asked you how much cedar there was in the rest of it there, the 135 acres. Wasn't it simply scattered cedar timber where the point of the upland came?

Ans. Not all of it.

Ques. How much of it?

Ans. The cedar swamp bottom produces young cedar.

Ques. How much of it was there?

Ans. A very large part of it.

Ques. How much of it?

Ans. Of that one hundred and thirty-five acres?

Ques. Yes.

Ans. One hundred acres of it cedar bottom.

Ques. One hundred acres?

Ans. Yes, sir; I think one hundred acres cedar bottom. I cut a great deal of it.

Ques. I am asking you how much of that one hundred and thirty-five acres had cedar on it.

Ans. I should judge one hundred acres of it.

Ques. Oh, I am not speaking of that cedar that grows out on the edges, all limbs, but good cedar.

Ans. Oh, not all good cedar.

Ques. How much good cedar?

Ans. Very little good cedar, because it was not included—we didn't undertake to run that out for good cedar.

Ques. Then how much of that was good cedar bottom?

Ans. The great bulk of it.

Ques. That is what you put one hundred acres?

Ans. Yes, sir.

Ques. How much of that one hundred acres is so destroyed that cedar won't grow there?

Ans. I couldn't tell you the proportion. The main part of the fire in the swamp burned down—

Ques. I don't care about that.

Ans. I don't know. Others can tell you who have been over the ground more.

Ques. You didn't give us the number of rods of causeways that had been burned. The Judge perhaps omitted that. He got the price per rod.

Ans. I had nothing to do with them. The map shows, I presume. The surveyor testified as to that. I think it is marked on the map.

Ques. Mr. Abbott, what do you value that entire tract of land within those outbounds as being worth prior to September 12th, or on September 12, 1895, before the fire?

Ans. We didn't put any value on it.

Ques. What was it worth in the market?

Ans. We put a value on the cedar.

Ques. I ask you now what was the market value of your survey within those outbounds before the fire, on the 12th day of September, timber and soil?

Ans. Well, I couldn't tell without some considerable thought. That is a large tract of diversified timber land.

Ques. You can't tell what it was then?

Ans. Not without making an estimate. It would take some little time.

Ques. What was it worth after the fire in the market, timber and soil?

Ans. I could only get at that also by estimate.

Ques. That you can't give us?

Ans. Not directly, immediately. I shall have to calculate it, then I could give it to you.

Ques. Your idea is that these little pieces that are burned are worth over $4,000?

Ans. No, sir; I never made any such statement to any person living.

Ques. Well, that together with what has been burned and the Wheat Field there, one hundred and thirty-five acres?

Ans. That, together with all the burning and damage to the soil, the burning of these permanent causeways, that is the way that estimate was made. You have it.

Ques. Outside of the causeways you figure it at $4,112?

Ans. Perhaps.

Ques. There are fifty-six acres of cedar inside of these two surveys?

Ans. Certainly.

Ques. And about eight of it used?

Ans. About fifty-two left.

Ques. And the fifty-two left of the same value as that which was burned?

Ans. Yes, sir; of the larger timber that was burned.

Ques. Then you get the value of the timber that was left in the swamp at some $25,000 or $30,000?

Ans. Oh, no; you don't understand me at all.

Ques. Well, I am asking the price. You put the part that was burned, which is about one-seventh of it——

Ans. Of what?

Ques. Of the whole tract.

Ans. Oh, no; we made our estimate on the upland and the big timber.

Ques. Then I understand you that this in here is all big timber that is not burned?

Ans. Yes; all large timber.

Ques. So that your swamp as it stands here to-day is worth some $25,000 or $30,000? That is your basis?

Ans. I didn't give it to you at all; you mistake the figures entirely.

Ques. Now, I understand you to say that you can't give me the market value of your whole tract of land prior to the fire?

Ans. Not without calculating.

Ques. You can't give it to me now?

Ans. I will give it to you after dinner, after I have time to figure it out.

Ques. Will you give me the market value after the fire?

Ans. Yes, sir; as near as I can.

Adjourned till two P. M.

AFTERNOON SESSION.

Ques. Mr. Abbott, just before dinner you said that if you had time you could tell me what the value of your cedar swamp was as it stood the day of the fire, in September, 1895, its value in the open market. Can you give me that figure now?

Ans. I cannot. I find a great difficulty in attempting to make an estimate.

Ques. Then you can't tell me what it was worth at the time of the fire?

Ans. No, sir. I arrived at the—

Ques. You have answered the question. Now, Mr. Abbott, as an experienced man in cedar swamp property, don't you know it to be a fact that after these swamps are cut off nowadays they never grow up as thickly and over as great an extent of acreage as formerly?

Ans. That is not true.

Ques. It is not true?

Ans. Not in Gravelly Run swamp it is not.

Ques. Isn't it particularly the case that where a pond has been set out in cranberry ground that that which was formerly swamp and good cedar swamp bottom, after being cut will not grow one-fourth as much cedar as theretofore?

Ans. It is not our experience; no, sir.

Ques. Now, Mr. Abbott, you gave Judge Pancoast an estimate this morning of $3 to $3.25 per rod for building a crossway in the swamp. Have you ever seen causeways built into swamp for the purpose of bringing out cedars of scantling, such as built for the purpose of carrying turf and so on?

Ans. I have.

Ques. What does it cost to build that kind of a crossway?

Ans. I don't know.

Ques. Don't you know that such a crossway as that can be built for less than a dollar a rod?

Ans. I don't know anything about it. I have tried it in our swamp and it was a failure. It was too far away. It was a failure.

DANIEL W. MCCLURE, sworn.

Drect examination.

By Mr. Pancoast:

Ques. In September, 1895, were you in the employ of the West Jersey Railroad Company?

Ans. I was.

Ques. As what?

Ans. As track foreman.

Ques. Or section boss?

Ans. Track foreman or section boss.

Ques. What portion of the track between Atlantic City and Newfield did you have charge of as track foreman or section boss?

Ans. From the brick plant at Mays Landing to McKee City and beyond about two thousand feet; beyond McKee City.

Ques. From the brick plant in Mays Landing?

Ans. Yes, sir.

Ques. A distance of how much?

Ans. A little over six miles.

Ques. Including the part of this road which traversed Gravelly Run cedar swamp?

Ans. Yes, sir.

Ques. Is that a single track road?

Ans. It is; yes, sir.

Ques. What is the width of it, the right of way?

Ans. I don't know the width. I have no knowledge of the width of the right of way.

Ques. Don't you know how much you have charge of there?

Ans. What is cut there; yes, sir.

Ques. What was the width of what you had charge of?

Ans. I don't know the width.

Ques. About, as near as you can tell?

Ans. Well, about as much as was cut there; I should think about eighty-four or eighty-five feet, possibly. I never measured it.

Ques. Weren't there any stakes set up there by any of the employes of the company as a guide for you?

Ans. No, sir.

Ques. No stakes set up to indicate the side lines of the road?

Ans. Not to my knowledge; no, sir.

Ques. Then, in doing whatever you had to do on this roadbed, from time to time, you had to guess at the side lines of the road?

Ans. No, sir; I took it from the original clearing. Wherever it had been cleared I kept it open.

Ques. That was your sole guide?

Ans. Yes, sir; nothing else.

Ques. And that, as near as you are able to judge, was eighty-five or eighty-six feet?

Ans. Somewhere about that; yes, sir.

Ques. Now, how long were you employed on that section by the West Jersey Railroad Company up to and including September?

Ans. From the 11th of May, 1880, until this time.

Ques. Now, what officer of the company employed you?

Ans. What officer?

Ques. That is the question.

Ans. William M. Bannard, at that time.

Ques. What officer was he?

Ans. He was then—I don't know whether he was termed Assistant Engineer or Supervisor at that time; I don't recollect about it.

Ques. Don't you know that he was called at that time by everybody as a Railroad Superintendent?

Ans. No, sir.

Ques. Did Mr. Dayton, the present Superintendent, take his place?

Ans. No, sir.

Ques. Who did?

Ans. Mr. F. P. Abercrombie, I think; I am not positive of that matter.

Ques. Is he still on that road?

Ans. I don't know; not on this road, not to my knowledge; no, sir.

Ques. To whom did you report from time to time as track foreman?

Ans. At this time do you mean?

Ques. At that time.

By Mr. Gaskill:

Ques. What time?

Mr. Pancoast: September, 1895.

Ans. Mr. S. R. Stubbs.

By Mr. Pancoast:

Ques. Who was he?

Ans. He is known as Supervisor, known by us.

Ques. In September last, as section boss working for the West Jersey Railroad Company, what was your duty, if you had any, in respect to fires caused along the road by the operation of the road?

Ans. To put them out if possible, and as quick as possible.

Ques. In the discharge of your duty state whether or not you were required to keep an account and make a report as to the origin and locality of the different fires along the road?

Ans. I never was instructed to keep an account any more than send a report, a fire report, is done usually.

Ques. Of each fire as it occurred along the road?

Ans. Yes, sir.

Ques. To whom did you address and send that report?

Ans. Mr. S. R. Stubbs.

Ques. Where did you send it to?

Ans. Millville.

Ques. Did you keep a book in which you made entries from time to time of what you saw of these fires in order to make up these reports?

Ans. No, sir; not unless I had special instructions to do so, and I never had such.

Ques. Never had what?

Ans. No instructions to keep any book account of any fires.

(Question repeated.)

Ques. You will observe that the question does not ask anything about the instructions that you had. It asks you whether or not you kept a book in which you entered a memorandum of these fires as they occurred in order that you could make up your report to Mr. Stubbs in relation to them.

Ans. Well, no; I did not keep any book account. I would make up the report as soon as I got home at night, and very often telegraph him; let him know as soon as possible.

Ques. Who employed the men to help put out the fires along your section?

Ans. I did, myself.

Ques. Of your own responsibility at the time the fires would occur?

Ans. No; only my help that was working with me day by day; whatever force I happened to have.

Ques. You know where Gravelly Run swamp is, don't you?

Ans. Yes, sir.

Ques. And you know where this Abbott land in controversy is, don't you?

Ans. Yes, sir, somewhat; not very much about it, until since the fire.

Ques. Do you know where the bridge is there, along the line of the railroad at the Gravelly Run swamp, on the track just before you reach McKee City?

Ans. I do; yes, sir.

Ques. And to the north of that, by the side of the railroad in Gravelly Run swamp, there is a flag or block station, isn't there?

Ans. Yes, sir.

Ques. Now did you take notice of the origin of the fire on the northerly or easterly side of the road there in the vicinity of that flag or block station on or about the 12th day of September, 1895?

Ans. I saw a fire there; yes, sir.

Ques. When for the first time on that day?

Ans. Between 3.30 and 4 o'clock.

Ques. In the afternoon?

Ans. In the afternoon; yes, sir.

Ques. About how far was it on the other side of the railroad from that station, that little station?

Ans. Two hundred and fifty to three hundred feet; about three hundred feet.

Ques. The West Jersey pay train had passed along that point just before you noticed that fire; hadn't it?

Ans. There were three trains passed along there before I noticed it.

Ques. What was the first train that passed that point before you noticed the fire?

Ans. Well, in the afternoon there were several, but there were three trains in the afternoon.

Mr. Gaskill: If the Court please, I desire here to enter an objection unless the witness knows of his own knowledge that these trains were there, because he has not shown that he was there.

The Court: I think it is all right.

Ques. About how far from the track was it when you noticed this fire first?

Ans. I understood you to ask me how far from the flag station, in your other question, abreast of the fire; was that your other question?

Ques. Yes; you answered that; two hundred and fifty to three hundred feet.

Ans. Yes; from the opposite part of the fire to the flag station.

Ques. Now, how far was the nearest point of the fire to the track when you first saw it?

Mr. Gaskill: Do you mean the track or the right of way?

Mr. Pancoast: To the track, to the rail.

Ans. Quite a distance. I couldn't say.

Ques. Well, as near as you can tell.

Ans. Well, not less than two hundred feet.

Ques. What three trains passed that point that day before the fire?

Ans. Well, I can only answer that by the regular schedule; an accommodation and express train which were regularly on time, I believe; and I only presumed that they passed that day by that fact.

Ques. Was the last one of those three trains a pay train?

Ans. Yes, sir.

Ques. When, if you know, did the pay train pass that point?

Ans. Somewhere between 2.30 and 3.30; I couldn't tell exactly, because I haven't the date of their passage. That was an extra train and I have no knowledge of their time.

Ques. When did the train next before it pass, next before the pay train?

Ans. I can't remember just exactly; it is a regular train, an express train.

Ques. Where were you at the time you discovered this fire?

Ans. I was working down below the cedar swamp about a mile and a half.

Ques. That was towards Atlantic City?

Ans. Towards Atlantic City; yes, sir.

Ques. What day?

Ans. I don't know as I can exactly remember what day; we have various works on the railroad, and I can't remember from day to day.

Ques. What first drew your attention to the fire?

Ans. From the operator coming after me; the operator at the cedar swamp came after me and told me there was a fire.

(Objected to.)

Ques. What is his name?

Ans. I don't remember his name.

Ques. That is the telegraph operator?

Ans. Yes, sir.

Ques. Did he come after you or telegraph you?

Ans. He came after me.

Ques. What is his name?

Ans. I can't recall it just now.

Ques. Where is the operator? Where is that man?

Ans. He works at Sea Isle City now, I think. I am not positive of that fact.

Ques. Where was his place of work at the time he left it to come tell you about the fire?

Ans. In that block signal station.

Ques. Then he was the signal agent of the company stationed at that station to signal the different trains?

Ans. he was; yes, sir.

Ques. Wasn't he on your pay roll?

Ans. No, sir.

Ques. You can't give his name?

Ans. I know his name, but I can't just think of it just now. They only come there for the summer and sometimes have three or four of them during the summer. I know his name, but can't just recall it just now.

Ques. Well, give it to us as best you can. What is his business at Sea Isle City?

Ans. I suppose the same as he did there; block signal operator; telegraph operator.

Ques. Then he was in that station on that day, the 12th; in that signal station?

Ans. Yes, sir.

Ques. And that was how far away from you?

Ans. I should judge a mile and a half or two mlles.

Ques. And he left his station and came down to call your attention to this fire?

Ans. Yes, sir.

Ques. Is that a telegraph station?

Ans. It is a signal block station. It is not a telegraph station.

Ques. No telegraph?

Ans. There is a telegraph there; yes, sir.

Ques. To what point could he telegraph?

Ans. I suppose he could telegraph anywhere.

Ques. He could telegraph to the home office at Camden?

New Jersey State Library

Ans. I suppose he could; yes, sir.

Ques. What did he say to you about the fire?

(Objected to, for the same reason previously given. Question overruled.)

Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.

Ques. Well, did you act upon what he said, whatever it might be?

Ans. I did; yes, sir.

Ques. And in consequence of what he said what did you do?

Ans. I went up to the fire and put it out.

Ques. You went up to see the fire, did you?

Ans. Yes, sir.

Ques. You went up to the fire there, did you?

Ans. Yes, sir.

Ques. What time did you get there?

Ans. Well, some time after four o'clock.

Ques. What time did you say he got to you?

Ans. He got to me sometime between 2.30 and 3 o'clock; I don't remember exactly the time he got to me, nor I don't remember exactly the time I got up there, but sometime near 4 o'clock.

Ques. When did he reach you?

Ans. Well, he reached me sometime between 2.30 and 3.30, but I don't remember exactly the time; sometime after those trains.

Ques. How many men had you with you when you went up there? How many men did you take?

Ans. I think I had five men at that time.

Ques. Took five men with you, did you?

Ans. Yes, sir; took all I had. I think it was five.

Ques. How long did you work there?

Ans. Well, I worked there until dark that night.

Ques. This was in the swamp, was it?

Ans. No, sir; on the northerly edge of the swamp.

Ques. Now, you had a book at that time, in which you made an entry in respect to this fire, right at the time?

Ans. At that time; no, sir.

Ques. Well did you afterwards make an entry in this book?

Ans. I made a statement, that is, for my own information; yes, sir.

Ques. Write it down in a book?

Ans. Yes, sir.

Ques. Where is that book?

Ans. It is here.

Ques. I would like to see it. Please produce it.

Mr. Gaskill: I object to the introduction of the book for inspection. They have no right to inspect it.

The Court: I don't see what we have to do with that book, Mr. Pancoast.

Mr. Pancoast: It is simply for information. Here is a man wrote down in this book his recollection for the purpose of making a statement and remembering the fact.

The Court: I don't see what that has to do with it; the man is here himself; I don't see what right you have to call upon him to produce books or papers; he is your own witness. What we are after is what he knows of that fire.

Mr. Pancoast: What he spontaneously wrote down in that book to perpetuate as the truth is the best evidence possible.

The Court: Not at all; it is his recollection.

Mr. Pancoast: I want what he wrote down in that book when there was no controversy about this matter.

The Court: I don't think you have any right to it; he is your own witness.

Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.

Ques. How long after the occurrence of this fire was it that you made a report of it to Mr. Stubbs?

Ans. I think I made a report pretty soon; I can't tell exactly when; just as soon as I had time and opportunity to do so, but I can't just remember that time.

Ques. Was that report in writing?

Ans. It is in the regular form of our report; yes, sir.

Ques. Have you got a copy of it?

Ans. No, sir.

Mr. Pancoast: I call upon the other side to produce that report.

Mr. Gaskill: I shall cross-examine the witness with reference to the report before it is produced, and if it contains nothing but what is in his own knowledge, counsel is entitled to it. If it contains facts obtained from somebody else he is not entitled to it.

The Court: I think that is all right, Mr. Pancoast. You have examined upon it and they propose to cross-examine upon it.

Mr. Pancoast: Cross-examine upon it before it is produced?

The Court: Yes, sir. They have a paper here which you want, and they say if it is proper to exhibit, it shall go in.

Mr. Pancoast: I think it ought to be exhibited to the Court.

Mr. Gaskill: I have no objection to exhibiting it to the Court, but not to counsel.

Mr. Pancoast: The legal question as presented by this examination is whether or not this report is testimony.

The Court: We will look at it and see whether it is testimony or not.

Mr. Pancoast: I call for the report; but the idea of cross-examining upon a paper withheld is new to me.

Mr. Gaskill: My insistment is that before the paper is produced for inspection that counsel is to cross-examine this witness to see whether it is made up from his own knowledge. If so, counsel is entitled to it. If it is obtained from anybody else, it is hearsay, and the mere fact that it is in writing does not dignify it. I propose to show it is hearsay and obtained from others, and not facts of his own knowledge.

Tho Court: This witness is a witness for the plaintiff. There is no question raised as to his evidence. I don't know how you can contradict your own witness; you have his testimony as to the facts, and that is all you can prove.

Mr. Pancoast: The Court cannot shut its eyes to the fact that this is an adverse witness, and an employee of the company.

The Court: You chose to put him on the stand.

Mr. Pancoast: We were bound to put him on the stand.

The Court: Suppose you were; you are bound by what he says.

Mr. Pancoast: This witness says, as an employee of the company he was charged with the duty of dealing with these fires and further charged with the duty of making a report to this company in relation to that matter.

The Court: He says he went there and put the fire out; if he made up any statement which you propose to use for the contradiction of this man, do you think it is right? Suppose he made up a report which he got from other people which contradicts his statement.

Mr. Pancoast: That is not the question before the Court; the question is, whether this witness, an employee of the corporation, a report made up touching this affair, whether that report is not evidence.

The Court: I have doubts whether you can take any such proceeding as that; but the report is here, and you have the right to call for it.

Mr. Pancoast: I call for the report.

Mr. Gaskill: I decline to produce it unless ordered by the Court under the rules of law.

The Court: I don't think you are entitled to that report. I don't think the law allows it. He is your witness and you will have to stand by it.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. In that report did you state that this fire arose from this pay train that passed that point on that 12th day of September, 1895?

Mr. Gaskill: I object. Not being entitled to the report under the law, as a matter of course he is not entitled to the contents of it.

The Court: I don't think he is entitled to the contents of it at all.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Did you and two gentlemen by the name of Wilson—you know to whom I refer, do you?

Ans. Yes, sir.

Ques. After this fire had occurred, meet the plaintiffs in this suit, or some of them, and go to the scene of the fire with a view to ascertaining the cause of it and arrange as to the amount of damages?

Mr. Gaskill: I object. The first part I couldn't object to; as to whether he met with them and went, is immaterial; as to arranging for any damages, I object to it on the same grounds.

The Court: I will overrule that part.

Ques. Leave out that part relating to any arrangement. After this fire had occurred did you meet the plaintiffs in this suit, or some of them, and go to the scene of this fire to make an investigation?

Mr. Gaskill: I object to that part of the question as to investigation.

Mr. Pancoast: Leave out that part as to the investigation. Let's get at something.

Ans. I met the Messrs. Wilson and Mr. Abbott, yes, sir.

Ques. At or near the scene of the fire?

Ans. No, sir; I met them on the platform here.

Ques. In relation to the fire, was it?

Ans. Yes, sir.

Ques. By whose direction or authority on the part of the West Jersey Railroad Company did you meet these plaintiffs?

(Objected to. Objection sustained.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Did you go to meet these gentlemen on that occasion on your own account or by virtue of some directions or authority on the part of some of the officers of the West Jersey Railroad Company?

(Objected to as being the same question in another form. Objection sustained.)

Ques. Well, did you and the Messrs. Wilson, on the one part, and the plaintiffs on the other part, whom you met, have some conversation relative to the fire?

(Objected to as irrelevant. Objection sustained.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Did you, on that or some future occasion, adjourn and meet near the scene of the fire?

(Objected to. Objection sustained.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Did you gentlemen, that is, yourself and the Messrs. Wilson on the one part, and the Abbotts or some of them on the other part, sometime shortly after the fire, meet in the vicinity of the fire, and you point out the particular place where the fire was caused by the pay train of the West Jersey Railroad Company?

Mr. Gaskill: I object, not on the same grounds as heretofore, but because he assumes in the question that the fire was caused by the pay train. If he will modify it by cutting out the part and saying it is where it is said to have been caused by the pay train, I do not object.

The Court: In that shape I will overrule the question.

Ques. How long after dark on that day did you continue with these five men in working putting out that fire?

Ans. I can't remember exactly; in fact, I didn't look at the time.

Ques. Well, can't you give this court and jury any reasonable idea?

Ans. Well, it was sometime after dark, in September; you would know about what time it was.

Ques. How long after dark did you continue to work?

Ans. Well, it might possibly be about seven o'clock.

Ques. Now, did you send any telegrams in respect to the fire that day?

Ans. No, sir.

Ques. Did you receive any telegrams from any of the officers of the company in respect to that fire on that day?

Ans. No, sir.

Ques. Did you, on the 21st or 22nd, send any telegrams or receive any telegrams in respect to the fire from the officers of the company?

Ans. I think I did on the 21st.

Ques. That was Sunday, wasn't it?

Ans. No, sir; that was on Saturday.

Ques. From whom did you receive a telegram respecting this fire on Saturday, the 21st?

Ans. I am not positive, but I think from the agent at Mays Landing here.

Ques. What is his name?

Ans. His name is Kelly.

Ques. Does he live here now?

Ans. No, sir.

Ques. Where is that telegram?

Mr. Gaskill: We have none except Camden papers, but I will have a search made in the office here, too, and see if it can be found.

The Court: I don't see what the telegram has to do with the case.

Ques. Now, in consequence of that telegram did you go to fight fire, go to fight that fire?

Ans. Yes, sir.

Ques. Where?

Ans. Went to the bridge at the cedar swamp.

Ques. That is below this flag or block station?

Ans. Yes, sir.

Cross-examination.

By Mr. Gaskill:

Ques. There is only one question I will ask you now, Mr. McClure; that is this: Counsel asked you with respect to your duties as to fires caused by the road, as to whether it is not your duty to put them out and report them. I ask whether it is not your duty to report all fires, whether caused by the road or any other manner, to put them out and report them to the officers?

(Objected to).

The Court: I don't see any objection to that, on cross-examination.

Ans. Yes, sir; it is my duty.

Re-direct examination.

By Mr. Pancoast:

Ques. It was not your duty to report that the train fired any timber when it had not done so, was it?

Ans. If we didn't know it; no, sir.

Ques. It was your duty to make a report according to the facts, wasn't it?

Ans. As far as we knew them; yes, sir.

Ques. That is the kind of report you made, wasn't it?

Ans. Yes, sir.

The Court: Don't go back again to that matter.

ROBERT J. WILSON, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you live, Mr. Wilson?

Ans. Franklinville, Gloucester county.

Ques. In September, 1895, and before that, were you occasionally called upon to render some service for the West Jersey Railroad Company?

Ans. Yes, sir.

Ques. You recollect the occurrence of this fire in question in this suit in Gravelly Run swamp, in Hamilton township, where this timber was said to have been injured by fire?

Ans. After it happened some time; yes, sir.

Ques. Who is your father?

Ans. Thomas Wilson.

Ques. Was he occasionally employed by the railroad company in like manner?

Ans. Yes, sir.

Ques. Is he living?

Ans. No, sir.

Ques. Were you and your father employed by the West Jersey Railroad Company in relation to this fire.

(Objected to.)

The Court: That is the same matter we have had before; I overrule it.

Mr. Pancoast: The offer is, of course, to show by the examination of this witness, acts and admissions going to bind a company in respect to the origin of this fire.

Mr. Gaskill: That is the ground of my objection, that the company cannot be bound.

(Objection sustained.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Did you actually go with these plaintiffs on the ground to make some investigation in relation to this fire?

Ans. I don't understand the question, Judge, quite.

(Question repeated.)

Ans. I did.

Ques. And after you made the investigation did you make a report in writing to the company of the result of your investigation?

Ans. I did.

Ques. Have you got a copy of that report?

Ans. No, sir.

Ques. To whom did you send it?

Ans. A. O. Dayton, Aaron Ogden Dayton.

Ques. A. O. Dayton is the Superintendent of the road?

Ans. The Superintendent of the West Jersey Railroad.

Ques. Why did you send it to him?

Ans. That is where we had to send all communications to.

Ques. In similar cases?

(Objected to. Objection sustained.)

Ques. Can you tell when you sent it to him?

Ans. I think about November 8th or 9th, along there somewheres.

Ques. Following the fire?

Ans. Yes, sir; in 1895.

Ques. Was it in writing?

Ans. It was.

Ques. Signed by yourself and father both?

Ans. Signed by myself, I think.

Ques. Was your father living at the time you sent it in?

Ans. Yes, sir.

Ques. Did it contain a true statement of the facts as you understood them from your investigation?

Ans. I think it did; yes, sir.

Ques. This investigation was carried on there jointly by you and the Abbotts? It was a joint investigation; you and the Abbotts and McClure were there on the ground together?

Ans. Yes, sir.

Ques. Did any one on that occasion point out the place where the fire began?

Ans. I think they did.

Ques. Who ?

Ans. I am not positive now whether it was the Abbotts or McClure.

Mr. Pancoast: I call for the production of that report.

Mr. Gaskill: I object.

Mr. Pancoast: Where is that subpoena ?

Mr. Gaskill: There is a subpoena issued and served upon Mr. Dayton in person. That subpoena, by arrangement with Mr. Pancoast, the paper and other papers, were put in the possession of Mr. Nichol, and that paper of which he is now speaking is in my possession, and being called upon to produce it I decline to do so, and I will state my objections.

Mr. Pancoast: I call for it on the ground that it contains admissions of a fact in support of the plaintiffs' contention in this case.

Mr. Gaskill: That is your claim. I don't admit that.

The Court: I take the same course with this as I did with the other, McClure's. I overrule it.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Mr. Gaskill: The witness can be examined himself as to what he did and what he saw.

Ques. Now, did you receive any communication in writing from Mr. Dayton on this subject of the fire, the Superintendent of the West Jersey Railroad ?

(Objected to.)

The Court: I don't see what that has to do with the case. I overrule it.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

CHARLES T. ABBOTT, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Are you one of the plaintiffs in this suit?

Ans. Yes, sir.

Ques. Have you a knowledge of this cedar swamp which it is alleged on your part was devastated by fire in September, 1895?

Ans. I have.

Ques. How long have you had knowledge of it?

Ans. I helped survey it in 1868, the first time; I have known about it ever since.

Ques. What is your occupation?

Ans. I am an attorney.

Ques. How long have you been an attorney?

Ans. Since June, 1879.

Ques Of this bar?

Ans. Yes, sir.

Ques. Have you had anything to do in a practical way with timber land, sale or exchange, or the cutting of it off?

Ans. I have worked in it ever since I have been sixteen years of age.

Ques. Well, in what way, generally?

Ans. Well, I carted the large bulk of that cedar out of there myself with a team; helped cut a part of it.

Ques. Have you had to do with the selling of standing timber?

Ans. No; I never sold any standing timber.

Ques. Have you knowledge of the sales of standing timber in this county?

Ans. Not of that kind, personally.

Ques. You have had practically to do with the working off of such timber?

Ans. Yes, sir; done nothing else for several years but cart and handle cedar logs.

Ques. Were you present with Mr. Lake when this swamp in question was surveyed in 1893 or 1894, or since?

Ans. Yes, sir.

Ques. When for the first time?

Ans. I helped survey it in 1893; helped survey it in 1894; didn't help survey it after the fire.

Ques. Have you some practical knowledge of surveying yourself?

Ans. Yes, sir; some little, I think.

Ques. Have you a recollection of the fire in question?

Ans. Yes, sir; I have.

Ques. What was the character of the land before this fire devastated it in September, 1895?

Ans. I considered it a very valuable piece of land.

Ques. What part of it was injured by fire?

Ans. The parts that are colored there.

Ques. The dark colored spots?

Ans. Yes, sir; and the yellow.

Ques. And what else?

Ans. All of the shaded there. The white is all there is that has not been burned.

Ques. Were you present with Mr. Lake when he surveyed the spots of heavy cedar that were destroyed?

Ans. Yes, sir. He done it under my direction. He done the surveying under my direction in the woods.

Ques. Your personal direction in the woods on the ground?

Ans. Yes, sir.

Ques. And was it accurately and properly done, so far as you were able to judge from being with him?

Ans. It was.

Ques. From your experience?

Ans. It was.

Ques. What was the character of the timber on these heavily timbered spots, darkly colored on the map?

Ans. Very good cedar.

Ques. Well, about what?

Ans. All large workable cedar inside of those lines.

Ques. Assuming there were eight acres of it at the time of the fire, what would have been its fair market value if it had not been destroyed in September?

Mr. Gaskill: I object to that, because counsel when he first began to question the witness said that he had no knowledge of the sale but was only engaged in handling and carting the logs, so he is not competent to judge of value.

The Court: I understand he has knowledge of it, has worked in it?

The Witness: Yes, sir.

The Court: As such I think he is competent to judge of what that timber land is worth. If he has never made any sale he has some idea of what that land is worth. I think his opinion is good.

Mr. Gaskill: My suggestion to the Court is that when a person appears before a jury he must show some knowledge of the market price. The jury deals with the market price, not the owner's estimate, but its

value in the market, and unless the witness is qualified to speak of market values I think his testimony is inadmissible.

The Court: Well, there may be such a thing as no market value except in the person's mind who owns it. There may be no sale for it. This timber land at that time had no particular market value, say. It was a valuable piece of timber nevertheless. He knew what its value was; he knew what its value was if anybody wanted to buy it, which I think would have been the market price. If you limit it to the technical market price, it may have had none at all, although it may have had large value. I think you can take his opinion of what it is worth and the jury can take his opinion of what it is worth.

Mr. Gaskill: I will withdraw my objection and let it stand that way.

(Question repeated.)

Ans. Those eight acres that were burned over, all in black, they are worth $200; were on the day of that fire, or day they were burned; $200 per acre.

Ques. What is it worth now or since it was burned?

Ans. It is not worth a penny to me; my interest is not.

Ques. Well, what could you get for it, to sell it, as far as you know?

Ans. I don't believe I could get a penny for it; it would cost twice as much to get it out as it is worth.

Ques. What is the condition of that part of the map delineated in yellow, known as the Wheat Field?

Ans. What is its condition?

Ques. What was the condition of it prior to the fire?

Ans. It is a very nice young growth of cedar.

Ques. How old was the growth?

Ans. I carted the cedar off of that upper piece there to the left, commenced carting it in 1869, and we worked three or four years before we took all of that upper piece out. It has had ever since that to grow.

Ques. How much of that was burned over, destroyed?

Ans. How much of that upper piece?

Ques. Yes; the Wheat Field.

Ans. All of it.

Ques. Have you been over the whole of it?

Ans. I have. There is some of that Wheat Field that is above that line of John McKee, above that line; but all of ours, every inch of it, is burned.

Ques. What is that worth in its burned condition?

Ans. It is not worth anything.

Ques. What effect did that fire have upon this vegetable mould that supported this growth?

Ans. Burned it all up.

Ques. What effect will that have upon future vegetation?

Ans. I don't believe anything will ever grow there again, except some small swamp brush.

Ques. What other land was injured by the fire there?

Ans. All of it that is colored there.

Ques. Shaded in the lighter color on the map?

Ans. Yes, sir.

Ques. Have you been over that tract since the fire?

Ans. I have; there was a place right here; that run comes across here (indicating). This is the line of cedar; the line of fire is where the section men—I took charge of the gang of section men at Mr. McClure's request one morning and we fought that fire out to the race; that runs right down here (indicating); we carried water from the race and we threw the water as far as we could; there is a small piece of swamp brush there that is not burned.

Ques. That is a little north of the center of the tract?

Ans. Yes, sir; and it is the north side of the race here; the fire burned right down to the race here; there is a small portion of brush there that we stopped the fire on, nothing but bush land.

Ques. Is there any portion of that timber land there that has not been burned?

Ans. No, sir; nothing that I have been able to find; I have tracked over it several days—except what is indicated there in white.

Ques. What was the character of that timber land before the fire?

Ans. What part have you reference to?

Ques. This larger tract—one hundred and thirty-five acres?

Ans. Well, part of it has been cut off; cedar swamp cut off, and was all kind of swamp brush; a strip of upland in small spots on either side, little pines and upland running down to the edge of the swamp. That had some pine timber on it.

Ques. Well, what was a fair market value of it? A dollar per acre before the fire?

Ans. Well, a cedar swamp like that ought to be worth at least $15 per acre.

Ques. What is it worth now since the fire?

Ans. That is all burned up, nothing left but raw sand in the bottom.

Ques. What is it worth?

Ans. That is not worth anything to me.

Ques. Well, what could you get for it?

Ans. I don't believe we could get anything for it, don't believe we could find a purchaser at any price.

Ques. Were there any good causeways on that tract before the fire?

Ans. There was.

Ques. What became of those?

Ans. They were burned up, went up in smoke, as the saying is.

Ques. Are you now referring to the two that are delineated on the map?

Ans. Yes, sir.

Ques. Are there other older causeways there?

Ans. Any quantity of them. There was a causeway right between this and that. (Indicating on map.) That is known by us, the family, as the Conover and Flanigan causeway. They at one time cut over the line and cut a piece of cedar on our land and built a piece of causeway here. That is all grown up. We never had anything to do with it, never used it or made any account of it. There is another one here (indicating) running down off the point of Devil's Island; another one here that we used in carting that cedar out that Mr. Russell and father built together, and that is all burned up.

Ques. What would it cost to replace this causeway delineated on the map, one hundred and forty-six rods in length?

Ans. There is no way to replace that except by cuting the green stuff growing around. I don't believe they could be replaced for anything less than $3 per rod. Possible it would cost $4 per rod.

Ques. And can the swamp be worked off or utilized without them?

Ans. It could not. Then you will notice on the map this causeway runs to our steam saw mill, runs up along the swamp. We had a causeway built in, as you see, and had this worked off. We kept it right up to this, and we had to do that if we wanted to use it so as to get right to the cedar and run it off. That is the same way (indicating), extending out to that point. That is not indicated on the map, that causeway. It crossed that bridge right there. That was all burned

up. Those causeways, we kept them up and could use them any time, and did use them in fighting that fire, carrying water with the team, until they were burned up. We worked along and carried water right to the barrels. That one was the same way. (Indicating on map.) That is where the only two causeways are that we made any account of on the map.

Ques. Do you recollect when the fire was started in this swamp on the northerly or easterly side of the West Jersey Railroad Company, just opposite a flag or block signal station?

Ans. I do.

Ques. Where the road crosses Gravelly Run swamp?

Ans. Yes, sir.

Ques. When was your attention first called to that fire?

Ans. My attention was first called to it the night it was set, the night of the 12th.

Ques. How?

Ans. When I went home—I had been there to the office.

Ques. The night of the 12th?

Ans. The evening of the 12th. When I went home the swamp on the inside there was afire up along the railroad. The next morning I drove up to see, and I found it.

Ques. You found the fire there?

Ans. I did.

Ques. The next morning?

Ans. Yes, sir.

Ques. Was that the first you saw of the fire?

Ans. The first I saw of the fire was on the morning of the 13th.

Ques. From where did you see it first on the morning of the 13th?

Ans. I drove up; I live—I will show you and then

you will know exactly; I live right down here, right at that point (indicating on map).

(Mr. Pancoast makes a cross on the map in pencil to indicate Mr. Abbott's residence.)

Ques. It is near the forks of what road there, on the map?

Ans. Somers Point and what we call the Bacon farm road, the road leading from Gravelly Run to the Bacon farm; I drove up this road to my house.

Ques. What time the next morning?

Ans. The next morning just before the morning train went up.

Ques. Give us some idea?

Ans. Well, sometime about seven o'clock I drove up. There is a little lot there.

Ques. Over what road?

Ans. That is the Bacon farm, the road from Gravelly Run swamp to the Bacon farm.

Ques. Towards the railroad?

Ans. Right up near the crossing. Within a hundred or two feet, an old lot where we usually tie our horses. I tied my horses. I went up on the road and went down here, walked down the road.

Ques. Towards Atlantic City?

Ans. Down towards the swamp, yes sir; and the fire was then burning. The men who had been fighting the fire the day previous had dug around it and had a kind of a path cut, the same as we always do to fight fire, and had it inside of that ring. They had surrounded the whole place of the fire that had burned the day before. The section men had been all around it, but it was burning all through inside of their fire line.

Ques. Inside or outside?

Ans. Inside of their fire line. They had been

around it. Inside of the zigzag line, of course, the fire line, it was still burning. They had stopped the headway of it but it was not put out, nor wasn't for the next four weeks, three weeks at any rate.

By the Court:

Ques. That was at the place spoken of by Mr. McClure?

Ans. Yes, sir, right near; nearly opposite the flag station, as they term it, on the north side of the railroad.

By Mr. Pancoast:

Ques. Is that the place indicated by Mr. McClure?

Ans. Yes, sir; somewhere near it, as near as I can judge. It was right near the flag station.

Ques. Now, how far was that burning place there that had been surrounded and inclosed, how far was it from the railroad right of way?

Ans. It had burned right to the right of way and a little inside of it. The day before it had burned there. You could see where they had fought it out. The next day I had occasion to be riding around through the woods there, and there are several families in this section of the country, and it was just before a caucus that we were going to have.

Ques. The 13th?

Ans. No, sir; that was the next day, the 14th, I speak of.

Ques. Just wait a moment before you get away from the 13th. How far was the fire burning from the railroad on the 13th, that morning that you saw it there?

Ans. It was, I should judge, the nearest edge of the fire that was burning then, something like one hundred and fifty feet. It had burned nearer the road the day before. It worked away from the road going up.

Ques. On the 13th it was burning within one hundred and fifty feet of the road?

Ans. Yes, sir.

Ques. Well, go on.

Ans. It had burned in a good ways further. That is about the nearest, I should judge, to the line of the road.

Ques. How far was the seat of this fire from this flag station where this operator was?

Ans. I don't think it was over a couple of hundred feet.

By the Court:

Ques. Let me understand that. You say that you found the fire on the 12th had burned up nearly to the track and they had knocked it back?

Ans. The indications were that it had started right in the edge of the right of way, and had burned off from it.

Ques. But a hundred feet off, there was fire?

Ans. Yes, sir.

Ques. That was all inside of the ring?

Ans. Well, it was a zigzag line. It was shut off.

Ques. They had shut off all around it?

Ans. All around it; yes, sir.

By Mr. Pancoast:

Ques. Well, what was the character of the sub-soil there where the fire was burning?

Ans. Why, it was just as hard and dry as an old pump. It burned right on and on until it had to be put out by the rain.

Ques. What was the condition of the earth around there as to dryness?

Ans. Dry as could be. You couldn't dig. You couldn't dig enough with a shovel right there in the

swamp to find water. If you dug to-day you could find a little water to-morrow. We had to carry water from the race, from the stream. After I looked around that and knew the section men were attending to the fires there in that swamp I drove on across to the Bacon farm and came on into Mays Landing.

Ques. That was on what day?

Ans. That was on the 13th.

By the Court:

Ques. You were there on the 14th?

Ans. On the 14th I had occasion to go that road again.

By Mr. Pancoast:

Ques. Which, the old Bacon farm road?

Ans. Yes; the old Bacon farm road. I drove that time until my horse began to go up a big hill there and the road slants right down. I drove my horse clear up into the clearing and noticed the smoke coming in there; I backed her down again and tied her in the same place again. I walked down the road after I tied my horse and I came out on the road and I saw down towards the swamp—the section men have a little—I don't know what they call it, but where they take their hand-car out on the side of the track; I noticed their hand-car on the outside of the track; it is the regular place they have there; I don't know whether it is above or below where the fire was. I walked down to it; there was no men there; they were all in to the fire, I suppose. I walked down toward the flag station and I could hear the men out in the swamp there, and it was smoking, appeared to be burning considerable.

Ques. Go on.

Ans. I knew they were there attending to it and I

had been around the day before, and I thought they would have it under control, so it could not get out. I had made an appointment to go off several miles, and I got in my wagon after going back and drove off. I came back late in the afternoon, right back the same way, and the fire was still burning in there. When I got to the Bacon farm I could see the smoke pouring up in there, a cloud of fire, right from the Bacon farm, right across. The Bacon farm is up on the road and you can see right across the swamp. The timber had been cut off there, no large timber, and it was still burning.

Ques. On the 14th?

Ans. Yes, sir. I hadn't been at the office that day, and after supper I drove up to Mays Landing to the office. That was on the evening of the 14th, after supper.

Ques. Well, what after that did you see?

Ans. I spoke to the section boss.

Ques. On the evening of the 14th?

Ans. Yes, sir.

Ques. That was McClure?

Ans. Yes, sir.

Ques. What did you say to him?

(Objected to.)

Ques. Did you call his attention to the fire then?

Ans. I did.

Ques. Go on. What did you do then?

Ans. I asked about the condition——

The Court: I understood that was not to be allowed.

Ques. You called his attention to the fire?

Ans. Yes, sir.

Ques. What did you do after that?

Ans. It was night then. They had left the fire and all hands of course were home.

Ques. Go on. What did you do after that?

Ans. That was Saturday night. My recollection is that was Saturday night. I know it was. Saturday is when I was up there.

Ques. The 14th?

Ans. Yes, sir.

Ques. Now, go on to the 15th.

Ans. The 15th was Sunday.

Ques. What did you see then with respect to this fire?

Ans. The fire was still burning there. I went up there on Sunday.

By the Court:

Ques. Still burning the inside of that ring?

Ans. Well, it would eat out over the path they had cut.

Ques. Did it get outside of that path?

Ans. It didn't get out to get away from them into the upland until Monday.

Ques. After that Sunday?

Ans. Yes, sir.

By Mr. Pancoast:

Ques. As I understand, you went around and saw it on Sunday?

Ans. Yes, sir; the fire was burning there and the section men were guarding it; tending it to see that it didn't get out over their fire line, they called it. I only went to the crossing and seen their hand car there and knew they were there. I could see the fire burning. It was only a short distance.

Ques. Now, after Sunday. Monday, the 16th, did you see it then?

Ans. I didn't go up there on Monday.

By the Court:

Ques. Didn't go up on Monday?

Ans. No, sir.

Ques. You just now said it caught on Monday; now, you were not up there at all.

(Mr. Gaskill asks to have that part of the testimony in reference to the Monday stricken out. Ordered stricken out.)

By Mr. Pancoast:

Ques. Pass on now.

Ans. I saw it the next time on Tuesday. On Tuesday I had taken another route from my house and had gone off below and crossed up here at McKee City, across the road in McKee City, what we call Kate's road.

Ques. Were you in the vicinity of that fire that day?

Ans. I came back in the afternoon on Tuesday. When I got here to the Bacon farm—

Ques. You came by the Bacon farm?

Ans. Yes, sir; that was my nearest way home. There is a family lives on this side and one on that side of the road right there. (Indicating on map, marked by spear head.) I can't think of his name now, the man that lived on this Bacon farm—Gottlieb Fell. I stopped there to see him. He was not at the house. The fire was burning down in here yet.

By the Court:

Ques. Where?

Ans. Down in here. (Indicating.)

Ques. In that ring?

Ans. Not inside of that ring; no, sir. It had been all out in the upland here.

Ques. The same fire burning in the upland?

("Same fire" objected to.)

Ans. Well, there was a fire burning in the upland. I called for Mr. Fell. I wanted to see him. That was my errand around there. Mrs. Fell told me—

(Objected to.)

Mr. Pancoast:

Ques. Well, from what she said—

Ans. From what she said—I didn't see him, that is all. I came away. When I got to the lower end of the Bacon farm coming home I found that the fire, since I had been there, had burned out and had gone across the road.

By the Court:

Ques. How is that?

Ans. The fire had come since I had been this road the last day; the fire had eat out and burned clear up to that road and burned across it out into the field.

Ques. You say that the fire in that road across the fields had been put out?

Ans. Yes, sir.

Ques. Did you trace it at all?

Ans. Not that day.

By Mr. Pancoast:

Ques. Go on.

Ans. I noticed the fire had been put out and I went on home.

By the Court:

Ques. You noticed the fire was put out and you went home?

Ans. Yes, sir; I drove right on through it, this fire that had gone across the Bacon farm right into the fields, that had been put out. The fire was roaring then down in there.

By Mr. Pancoast:

Ques. Down in where?

Ans. In the swamp.

By the Court:

Ques. What part of the swamp?

Ans. Near where it had been burning, in here. (indicating on map.)

Ques. Outside of the ring?

Ans. Outside of this large ring that I spoke of?

Ques. Yes.

Ans. Yes, sir; all around in every direction.

Ques. Then there was a fire all around there?

Ans. All around that spot; yes, sir.

Ques. What spot?

Ans. The spot where I first speak of. The fire kept increasing, going out.

By Mr. Pancoast:

Ques. In the cedar swamp?

Ans. Yes, sir; the cedar swamp bottom.

By the Court:

Ques. After you had passed the Bacon farm on your way home, there was a fire over on the Bacon property in the swamp there?

Ans. Not the Bacon property.

Ques. In the swamp, a big fire there?

Ans. Yes, sir; the smoke boiling up fearfully, just a little ways in there.

By Mr. Pancoast:

Ques. Show the Judge where the swamp is there.
Ans. This is the line of the swamp and this is the road. (Indicating on map.)

By the Court:

Ques. That is upland?
Ans. Yes, sir; that is upland.

By Mr. Pancoast:

Ques. Show him where it was put out.
Ans. The fire had gone out here, a narrow streak.

By the Court:

Ques. How wide?
Ans. A hundred yards or so.
Ques. That was put out?
Ans. That was put out on the upland.
Ques. Where was the fire roaring so?
Ans. Down in the swamp where it was not put out.
Ques. What day was that, Tuesday?
Ans. Yes, sir.

By Mr. Pancoast:

Ques. Now, go on to Wednesday.
Ans. Wednesday I was not there.
Ques. That was the 18th?
Ans. Yes, sir.
Ques. Well, now Thursday.
Ans. I was not there on Thursday, not to the fire.
Ques. Now, Friday.

Ans. On Friday, from our house, you could see the fire roaring and raging, and I started again.

By the Court:

Ques. Where you live, at that point?

Ans. Right there; yes, sir. You could see the smoke. I drove up here to the Bacon farm and when I got to this point—it is cleared off in there and McKee has a barn and a house and other buildings there and the line of the fire had gone right past that. You could see it smoking. I drove up, and a man by the name of Yearicks lives in the next house.

By Mr. Gaskill:

Ques. Where those two houses are, Jacob Yearicks'?

Ans. Yes. I got there and drove in alongside of the house. There is a driveway. The fire was raging along past the place. He and his wife and a small boy and a half grown boy were there fighting it. The little boy came there and held my horse. I threw my coat in the wagon and took a shovel and helped them fight that fire off the place all the afternoon.

By Mr. Pancoast:

Ques. Did you notice whether it was burning then down in the swamp?

Ans. Going right up it, yes, sir; right up past the place. This was a side fire that had eat out on to the upland. The farms run back to the swamp.

Mr. Gaskill: I object, and ask that it be stricken out. He didn't see it eat out. He doesn't know.

Ans. I was there all the afternoon and saw it.

The Court: I think, Mr. Abbott, you had better con-

fine yourself to the statement of fighting the fire, the fact of where it came from you don't know.

Ans. I saw it.

The Court: You didn't see the start of it. All you want to do is to give an account of what you saw, of your own knowledge.

By Mr. Pancoast:

Ques. From what direction did the fire that you were fighting on the 20th with Yearicks come, the direction of it?

Ans. Right out of there. (Indicating.)

Ques. Well, what direction?

Ans. Right out of the swamp.

Ques. It was that fire that threatened Yearicks' place and you took off your coat and used a shovel?

Ans. Yes, sir; and we did save that by hard work.

Ques. Well, now, Saturday the 21st, were you there and did you see the fire?

Ans. No, sir; I was not there. I didn't get there.

Ques. Well, go on.

Ans. The fire had passed and went up in this and went right on back of Mr. Beckmire's, who lives on the farm above, and when I left there that night we had got the side fire out clear up to the plowed ground and the edge of the track and the ground along these farms so that it couldn't get up along here any more. We had fought and side-fired it, and there was a string of light from the fire. When I got up to the Beckmire farm you could see a string of blaze at least half a mile long in that swamp.

Ques. That was the 20th?

Ans. That was on the night of the 20th, right along back of Mr. Beckmire's and Jacob Yearicks'.

By Mr. Gaskill:

Ques. How long did you say that was?

Ans. I judged it to be half a mile long; it was a pretty long string, all the way from there up to Beckmire's.

Ques. Reaching from Beckmire's to where below?

Ans. Well, I looked down New York avenue; it was away below New York avenue, the line of the fire.

By Mr. Pancoast:

Ques. Did you see any more of it Friday, the 20th?

Ans. No, sir; I came home at night.

Ques. Helped to fight it till night, did you?

Ans. Yes, sir.

Ques. Now, on the 21st, you were not at the scene of the fire?

Ans. No, sir.

Ques. What about the 22d?

Ans. I was not there the 22d until that night; I was there in the night.

Ques. Were you away from home on those two days?

Ans. Well, I was here in town on the 21st and I was away out of town on the 22d.

By the Court:

Ques. Did you say you were not there on the 22d?

Ans. Not until evening; I went there with the night gang at night; I was away in the daytime.

By Mr. Pancoast:

Ques. Where was it then?

Ans. The fire then was—

Ques. On the 22d?

Ans. The fire was all the way along in here. (Designating southern side of swamp, on P2.) That is where we were fighting it.

Ques. That is, on the 22d?

Ans. Yes, sir.

Ques. In the night?

Ans. Yes, sir; it was also—at the same time the fire had burned up here, two wings of the fire had burned in the swamp as that map shows. One wing went in here and another here.

Ques. Did you see at any time where the fire crossed the railroad?

Ans. Did I see it?

Ques. Yes.

Ans. Yes; the place where the fire crossed the railroad.

Ques. Where?

Ans. Right from that point up to near that house. It was burned right up in front all the way along here. (Designating on P2.) It crossed from near that house down here.

Ques. About what was the width of the crossing of the fire?

Ans. Where the fire went across?

Ques. Yes.

Ans. It looked to me as if it had gone across one hundred and fifty or two hundred feet wide.

Ques. What was there on the road, if anything, to show where it crossed?

Ans. The stubble where it had burned right up, where it had burned across, and the ties in the bottom of the road-bed were black all the way across, nearly every one, some of them pretty bad. The section men had to put them out.

Ques. What was this stubble?

Ans. The stubble was where they had mowed down the brush, grass and so on that had grown inside of the right of way and where they mowed it down.

Ques. How near up to the ties did that stubble extend?

Ans. Some places it came very near to the end of the tie.

Ques. All the stubble was burned and the ties blackened too by the fire?

Ans. Yes, sir.

Ques. Is there anything there to show that the fire that was there in the swamp, that same fire, anything on the ground or timber there to show the course that fire took up over that track?

Ans. There?

Ques. Yes.

Ans. Yes.

Ques. What was it?

Ans. Burned timber in here shows that the fire blacked it on this side, and showed very plain.

Ques. Can you tell the course the fire took, by the examination of the timber?

Ans. You can, the head of the fire, unless it is tremendously severe, so it burns the trees all up.

Ques. Could you in this case?

Ans. We could.

Ques. And from those appearances which way did it go out of the swamp?

Ans. Went right out this way, right across the railroad, and went right on down.

Ques. And eventually went where?

Ans. The wind shifted off here and brought it right into the swamp.

Ques. Which swamp?

Ans. Gravelly Run cedar swamp.

Ques. Yours or whose?

Ans. Ours.

Ques. Now, is there any rise in the roadbed from right across the swamp southerly to McKee City?

Ans. The railroad coming to the Bacon farm right here (indicating on map) going up through here, comes

out of a deep cut and commences to fill along here, and there is quite a high fill all the way down, keeps getting lower and lower until you get to the bridge.

Ques. Where are you going now?

Ans. To Gravelly Run swamp. Until you get to the swamp line there is a very high fill.

Ques. You mean by a fill, an elevation?

Ans. Yes, sir.

Ques. Where the fire crossed was it an elevation or a level?

Ans. Very nearly level, just before it ran into a large hill on the other side.

By the Court:

Ques. Did you say it runs across Gravelly Run swamp on an elevation?

Ans. No, sir; quite a large hill there.

Ques. From there to the bridge over it is a level?

Mr. Pancoast: No, sir; where the fire crossed the road.

Ans. The fill began just this side of the Bacon road towards Mays Landing.

By Mr. Pancoast:

Ques. And continues where?

Ans. Continues down here, (indicating on map) and then begins to get smaller. As it comes down through the swamp, from here down, it gets smaller.

By the Court:

Ques. As it gets down to the grade of the swamp, do you mean that?

Ans. No, sir.

Ques. What do you mean?

Ans. It goes across on the other side to meet a large hill. From the swamp it is very nearly level. There is a big hill on each side of the swamp.

Ques. Then if that fire had come to the embankment, if it had kept on, that embankment would have kept it from going over?

Ans. It would have had a tendency to.

Ques. Was it there at all? Was the fire along that embankment?

Ans. No, sir; not then.

By Mr. Pancoast:

Ques. Had the weather previous to the 12th of September been usually or unusually dry for that section of the country?

Ans. Very unusually dry. We couldn't dig holes deep enough anywhere in the swamp where we were fighting fire to get water, with a long shandled shovel. We had to cut paths all along and go to the main race to get water.

Ques. How deep did the fire burn in parts of this eight acres of good cedar?

Ans. Well, some places it is a good bit deeper than others. Now, there is a place (indicating on map) where it didn't burn very deep till it came to sand. Other places, there is a place and here (indicating) where it burned three feet down through the roots and tussocks and everything else.

Ques. What became of the cedars?

Ans. They fell down.

Ques. All of them?

Ans. Yes, sir. I think there are two trees standing there inside of our lines, was the last time I was there; I think two. The rest are all down at that point.

Ques. There is one other question. At or about the time of this fire did you ever notice any of the cinders

coming from the locomotives along the road in that vicinity?

Mr. Gaskill: I object. It seems to me it must be confined to this day and this engine that is alleged to have set the fire.

The Court: I think not. I think that question is competent.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

Ans. Yes, sir.
Ques. Just state what you noticed.

Mr. Gaskill: If your Honor please, I am not clear in my recollection as to what the rules are upon this subject, but it occurs to me that where they can show that the engine which is alleged to have set the fire was seen to have sparks and burning matter escaping from it, that may go to the jury as the basis of their presumption that it gave forth the fire in question; but as I understand, their case as they have made it is this, that the pay car on the day in question set this fire. Now, then, if that engine was within the requirements of the statute, that ends this case. All the inquiry is limited to that engine, or at any rate the inquiry must be limited to the engines that passed that day, the other two trains, the express and the accommodation. We cannot be called upon to go into the proof of all the engines on the road. All the statute requires is to show that the most approved appliances were used at the time of the fire. I call your Honor's attention to it for the purpose of showing the difficulty we labor

under on the part of the defence if this general inquiry is allowed. There is no possible way in which the matter may be reached in the statutory way, except by producing every engine, every inspection, that has been over the road at any time. Now, I admit that if they can show that if this engine on this day, or that this same engine within a few days, emitted fire and cinders, that is a circumstance that may go to the jury. But it seems to me it is limited to that. I submit that to the Court with great respect, as it is probably more familiar with this rule than I am.

The Court: I think the question is perfectly competent if you confine yourself to the time of this occurrence.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

Ans. Just previous to this fire.

By the Court:

Ques. How much previous.

Ans. I don't just recall the day, but it was a short time before, just a short time.

Ques. One day or two days.

Ans. Oh, it was in the neighborhood of two weeks.

Ques. Two weeks prior to this fire?

Ans. Yes, sir. We saw the fire in Gravelly Run swamp.

Mr. Gaskill: I object. That is not in answer to the question.

Ans. I am going to show we went there.

Mr. Gaskill: The question must be limited to whether he saw engines throwing out fire and cinders.

Mr. Pancoast: I haven't asked him that. Whether cinders were on the tracks and right of way; that is what the Court has ruled upon.

The Court: Cinders on the track and right of way?

Mr. Pancoast: Yes, sir.

The Court: Let's confine ourselves to that.

Mr. Gaskill: Let him answer that question as to whether he saw cinders on the track.

The Court: Burning cinders?

Mr. Pancoast: No; cinders.

The Court: I want cinders on fire. I take it that is what you mean.

Ques. (Question repeated.) At or about the time of this fire did you ever notice any of the cinders coming from the locomotives along the road in that vicinity?

By the Court:

Ques. Now, were they burning or were they black?
Ans. They had gone out when I saw them.
Ques. You never saw any burning cinders coming?
Ans. No, sir.

By Mr. Pancoast:

Ques. Did you see dead cinders?
Ans. Yes, sir.
Ques. Where?
Ans. Can I show you on the map?
Ques. Yes.

Ans. That is a high fill there. (Indicating on map.)

Mr. Gaskill: We don't ask you that.

Ans. Right along that right of way there it is trimmed out fifty feet wide.

(Objected to.)

By the Court:

Ques. Where you saw dead cinders?

By Mr. Pancoast:

Ques. Between the Bacon road and the swamp?

Ans. Between the swamp line and the Bacon farm, they are strewed out as thick as you ever saw buckwheat strewn on the ground; strewn all along as if you had sown the ground; both sides of the track.

The Court: We were talking about burning cinders.

Ans. I didn't see any on fire.

Mr. Gaskill: I move to strike out all he has testified to with reference to seeing dead cinders along the track.

The Court: I think it is entirely immaterial. I shall overrule it.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

The Court: I want it understood that it is on the idea that he does not refer to burning cinders.

Mr. Pancoast: No; I don't refer to burning cinders.

The Court: Then it is out of the case.

Cross-examination.

By Mr. Gaskill:

Ques. You have stated to counsel that you saw where this fire crossed the railroad track and that by the marks on the trees you could see the direction from which it had come? You then made some investigation as to where the fire came from after crossing the railroad track and going into your swamp?

Ans. Afterwards we went with the railroad men.

Ques. And after you had made your investigation did you say that it came from a fire started by a Dutchman?

Ans. I never did in my life.

Ques. You remember on Tuesday morning meeting Mr. George V. Letts, who was acting as foreman of a section gang, and Josiah Ashton and J. S. Sutton there on your ground?

Ans. I remember seeing Mr. Letts as the section boss; I am acquainted with him, but the rest I don't know.

Ques. They were there with him?

Ans. Yes, sir.

Ques. Didn't you, in that conversation with him and those other gentlemen at that time, say that this fire was started by some damned Dutchman over on the Absecon road, or words to that effect?

Ans. I never made any such remark to Mr. Letts or anyone else in my life.

Ques. You have stated something about the value of this swamp to yourself and family, irrespective of market value? What, from the same standpoint, was this whole tract worth prior to the fire, just immediately prior to the fire?

Ans. Do you mean soil and all?

Ques. Yes; soil and timber and all.

Ans. I consider it is worth $14,000 to me. That is, my interest of it.

By the Court:

Ques. Your interest in it is worth that?
Ans. My interest is one-sixth of that amount.
Ques. Of $14,000?
Ans. Yes, sir.

By Mr. Gaskill:

Ques. And what, from the same standpoint, was the swamp worth after the fire of the 22d?
Ans. I consider the timber—
Ques. The whole thing.
Ans. On that swamp worth $12,000, and the other, the ground, the soil, worth $2,000. Since that fire I don't consider that soil is worth anything where the fire has been.
Ques. Well, you haven't answered my question yet. I ask you now what was the whole of that survey worth, timber and soil after the fire, from the same standpoint from which you made up your $14,000 estimate?
Ans. I don't think it is worth to-day over $7,000.
Ques. Well, this is a year later than the fire.
Ans. I mean after the fire had burned what it has burned, when the fire was put out.
Ques. Only worth $7,000; is that what I understand?
Ans. That is my opinion of it; yes, sir.
Ques. Now, Mr. Abbott, on one of these days when you were traveling around the country—I think you said you were caucusing.
Ans. A part of the time I was; yes, sir.
Ques. You went around a road that is not shown on the map here, that is called the Kates road?

Ans. I went through McKee City on Kates' road.

Ques. That was what day?

Ans. I don't recall the day now.

Ques. Can you tell me what day it was you crossed at McKee City?

Ans. My recollection is that was Saturday, I think, Saturday that I took that trip.

Ques. What Saturday. What day of the month, the 14th or the 21st?

Ans. The 14th. It was not the 21st. I was here in Mays Landing on the 21st.

Ques. Are your sure it was Saturday the 14th?

Ans. I am not sure whether it was Saturday or the Tuesday following. One or the other it is. I made two trips there.

Ques. What is it makes you uncertain about it?

Ans. Because I am uncertain which way I went first.

Ques. Well, then, if it was on Saturday that you went around this way, you didn't see the things along that road that you told us you saw Saturday?

Ans. When I went the other way I came back that way.

Ques. But you didn't see that if you went the other way.

Ans. It was on Tuesday that I went that way.

Ques. Now you have got it straight.

Ans. Yes, sir; it was Tuesday.

Ques. It was on Tuesday you went around by McKee City. Now, what day of the month was that?

Ans. I think about the 17th.

Ques. And when you got around here to McKee City, did you see any fire burning around there in that neighborhood?

Ans. There was a fire burning in there; yes, sir.

Ques. And had been burning since the 15th, hadn't it?

Ans. Prior to that, since the 12th.

Ques. Up here at McKee City, I am speaking of?

Ans. No, sir; not there.

Ques. You don't know any in that neighborhood?

Ans. No, sir.

Ques. Did you see any evidence of a recent fire there?

Ans. Saw that there had been sometime before.

Ques. Saw evidences of the fire?

Ans. Yes, sir; some parts of it.

Ques. Which way from McKee City did you see evidences of the fire? McKee City is up here, isn't it, on this map?

Ans. Yes; away up above that.

Ques. Now, then, McKee City, when you crossed there how many fires did you see, or the evidence of how many fires.

Ans. I was not away down to McKee City station, understand. I crossed Kate's road; that is half way up to this swamp.

Ques. I don't understand you quite. Don't I understand you to say that you crossed the railroad at McKee City?

Ans. At Kate's road crossing, I said.

Ques. Let me get where Kate's road crossing is. Where does Kate's road cross the railroad track?

Ans. I should judge something over a mile below that Reega Station.

Ques. That is, between Reega Station and McKee City Station?

Ans. Yes, sir.

Ques. How far is it between those two stations?

Ans. I don't know exactly.

Ques. Isn't Kate's road crossing somewhere near half way?

Ans. I should judge it was.

Ques. Then we will put it at half way between, where you crossed. That is Tuesday, the 17th?

Ans. Yes, sir.

Ques. Now, on that day when you crossed there I want to know where you saw any evidences of fire.

Ans. There had been a fire before that.

Ques. Up towards McKee City Station, hadn't there?

Ans. Yes, sir.

Ques. And that fire had left that neighborhood, hadn't it, and gone over towards Pomona?

Ans. I don't know where it went. It had gone out.

Ques. Wasn't there fire still burning?

Ans. Not where I went. That had crossed over on the high land toward the swamp, or the head of the swamp.

Ques. Didn't that fire that you saw as you crossed get in the swamp up at that end?

Ans. No, sir.

Ques. Did you go into the swamp to look?

Ans. It had been in the swamp below the road.

Ques. Did you go into the swamp to examine?

Ans. Not then I did not.

Ques. Then you have answered it?

Ans. I have been into it since, though.

Ques. Do I understand you to say that the whole of the Wheat Field within your outbounds has been burned over?

Ans. Yes, sir.

Ques. Have you been over the whole of it?

Ans. I think I have.

Ques. Is there any Indian grass there now unburned?

Ans. There might be a little spot, but none that I have been able to discover.

Ques. Aren't there large patches of trees in this Wheat Field that are not burned?

Ans. None that I have seen, except north of McKee's line, there are plenty of them there.

Ques. I mean on your land.

Ans. No, sir.

Ques. Now, these crossways which you have there of which you say one hundred and forty-six rods were burned; you don't pretend to say they cost $3 a rod to build?

Ans. They didn't cost as much to build then as they would now; I said it would cost that to build them now.

Ques. What makes it cost so much to build now?

Ans. When they were built there was plenty of timber right there alongside to build them of; now you have to cart it from somewheres else.

Ques. The principal difference is in the carting then?

Ans. Yes, sir; and then the bottom makes a difference; where you have got a good solid bottom to build your crossway on.

Ques. Can't any of this burned timber, limbs, tops or pieces be used to build the crossway?

Ans. After you get in to where it is; yes, sir.

Ques. Can't you carry it out?

Ans. How are you going to get in there?

Ques. Well, that is not an answer to the question.

Ans. Well, I say you can't get there with a team.

Ques. Have you ever seen any crossways built of 3x4 timbers built of boards, on which little cars run?

Ans. Yes; I used one once, or attempted to do so.

Ques. They can be built for less than a dollar a rod?

Ans. I don't know; we attempted to use one once and threw it away; it wasn't any good.

Ques. You know that 3 x 4 can be bought for about two cents a foot, and eighteen feet, that is thirty-six cents; you can get material of that kind and build a crossway?

Ans. I don't know anything about that kind of a crossway.

Ques. And the lumber wouldn't run up over a dollar, would it?

Ans. I don't know anything about that kind of a road, I tell you.

Ques. When were these two crossways built, Mr. Abbott, of which the one hundred and forty-six rods have been burned?

Ans. The upper one was built first. The lower one has not been built, over from five to six or seven years; not over seven years since it was built, at the outside; I don't think over five years since it was built new.

Ques. Was it fit to haul loads upon at the time of the fire?

Ans. Yes, sir; in good order.

Ques. What experience have you had in noticing the growth of cedar swamp after it has been cut off once and the swamp is drained for the purpose of feeding cranberry bogs or anything of that nature? Have you noticed? Have you any experience as to whether it will grow up as thickly after it has been cut off as before?

Ans. Yes, sir.

Ques. After it has been cut off awhile, it will grow up as thickly as it did before, if it is drained for the purpose of furnishing water for cranberry bogs?

Ans. Any cedar swamp is always thicker on the ground than it is after it gets larger.

Ques. That doesn't answer my question. I want to know whether it will grow up as thickly as before. Have you had any experience in it?

Ans. Do you mean where a cranberry bog has been allowed to grow up in cedar?

Ques. Yes.

Ans. I don't know anything about it.

Ques. You have a cranberry bog, I understand, down at the foot of this Gravelly Run?

Ans. Yes, sir.

Ques. And this lower one is your mill pond?

Ans. Not ours; no, sir.

Ques. It is a mill pond there.

Ans. Yes, sir.

Ques. And this is your cranberry bog?

Ans. Yes, sir.

Ques. And is there any dam above that pond; above the stream, or is it below that pond?

Ans. The dam is right there at the lower end; right where the mill stood.

Ques. There is no dam between the mill pond which you used as yours and the one marked "pond"?

Ans. Yes, sir; that is a dam right across here.

Ques. Have you any objection to putting the word "dam" right across here?

Ans. No, sir. It is a mill dam, it should be.

Ques. Well, it is your map. I don't care to mark it. I will put it this way. There is a mill dam across the westerly end of what is designated on map No. 2 as the "old pond?"

Ans. There was a water mill until the last three or four years.

Ques. Now, when you told us about the direction from which the fire was coming the day you was fighting the fire back of Yearicks' I understand you to say that you were on the ground at a place indicated by two crosses on map P2, on which is written, or opposite to which is written, "Jacob Yearicks?"

Ans. Yes, sir.

Ques. You were there?

Ans. Yes, sir.

Ques. Now, the fire was right there that you were fighting?

Ans. From there to the swamp; yes, sir.

Ques. How far is it from that place to the swamp where the fire was then, the ditch or fire line of the railroad men?

Ans. A straight course?

Ques. Yes?

Ans. Well, it is some over a half a mile, I should judge.

Ques. Now, do I understand you as saying that the whole half a mile was on blaze at the time that you were shoveling sand here back of the barn?

Ans. I said this—

Ques. No; answer my question. Was the whole half mile in a blaze from that fire line by the flag station to the barns back of Yearicks?

Ans. I didn't say there was any fire there at that point. I could have explained it all by this time and showed you where the fire was.

Ques. Yes; undoubtedly; but you will pardon me if I take it my own way. I am not on the same side of the case. Now, then, Mr. Abbott, did the fire at the time you were shoveling sand reach from that place back of the barns down to what is designated at New York avenue?

Ans. Yes, sir; it was burning rails up there. You could hear them snapping and blazing.

Ques. Was it on each side of New York avenue? How far was the snapping and blazing at the time you speak of?

Ans. It was on both sides.

Ques. I didn't ask you that. I asked you how far west of New York avenue the fire was burning and blazing at the time you were shoveling sand back of their barns?

Ans. It was down opposite their place.

Ques. The place we designated by a spear head?

Ans. I don't see what is there.

Ques. And they were down opposite this place?

Ans. All fires, to make it plain, have two sides.

Ques. I am asking for two things——

Ans. One end of it was away up here (indicating).

Ques. Where, up past Beckmire's?

Ans. Yes, sir; it was going past us.

Ques. Now, at the time that you were shoveling sand one end was away up here at Beckmire's?

Ans. Yes, sir; and they were saving their buildings.

Ques. Where was the other end of it?

Ans. It extended away down here somewheres and there was so much smoke I couldn't see the end of it.

Ques. You are positive it extended from Beckmire's on the east to a point opposite the spear head on the west?

Ans. Yes, sir; I could hear the fire burning up the railroad there beyond New York avenue.

Ques. Now, Mr. Abbott, what was the direction of the wind that day?

Ans. The wind was blowing what I call a southwest wind that day?

By the Court:

Ques. Which day was that?

Ans. On Friday.

Mr. Gaskill: Friday, the day that he is fighting back of Yearicks'.

By Mr. Gaskill:

Ques. Now, you were fighting the side of the fire that was towards Absecon road, and at the same time you were fighting it you say Beckmire's up above were fighting it?

Ans. It went on up and they had to leave there and come on up there.

Ques. Was there any side-firing done there?

Ans. There was a little bit of a notch there. I can only explain on the map; right between this—that barn

sets back of the house. This is all cleared here, along the road. He had a piece of corn here and there was a sharp corner there and the fire was following it right up. He was afraid the fire would burn that up, and he set the boy to firing along the edge of the corn to keep from eating his fodder up. That is all there was set there. That was not over 150 feet long.

Ques. Now then, was there any side-firing there on the other side of this fire; the southerly side of your swamp?

Ans. No, sir; no one there fighting it.

Ques. And did the fire extend all the way from Beckmire's south to the side of the swamp, so far as you saw?

Ans. Clear into the swamp; yes, sir.

Ques. That was Friday?

Ans. Yes, sir; and on both sides of New York avenue.

Adjourned till Thursday 10 A. M.

MAYS LANDING, N. J., September 10, 1896.

CHARLES T. ABBOTT, resumed.

Re-direct examination.

By Mr. Pancoast:

Ques. Mr. Abbott, have you any knowledge at all showing or going to show that a gentleman that has been named in the testimony as a Dutchman set fire to this swamp?

Mr. Gaskill: I object. Your Honor will recollect that I asked him yesterday afternoon a question as to a

conversation which we claimed he had with certain persons, placing the time and place of that conversation and the names of the persons, for the purpose of contradiction. Now, all that the counsel can do by way of re-direct examination is to ask whether he had any conversation and what the conversation was. He cannot ask what was in his knowledge or what was in his information.

The Court: As I understand that now, the question was put for the purpose of contradiction hereafter. You can't go any further than that. That was put for the purpose of contradictiou. I don't think it is proper to ask that now.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Does a fire in the ground, so to speak, the soil, and the muck, such as you have described in this case, necessarily go with the wind, follow the wind?

Ans. No, sir; it burns in every direction.

Ques. What was the general character of the land on either side of the railroad at the point where the fire crossed as you have stated; timberland or otherwise?

Ans. Low brush land; bush land.

Ques. On both sides?

Ans. On the side this way the Reega Company had it all cleared off a year ago, and the brush I don't think was over a foot and a half or two feet high. On the other side it was somewhat higher.

Ques. On the notherly side?

Ans. On the northerly side.

JACOB YEARICKS, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Mr. Yearicks, where do you reside?
Ans. On the Absecon road, McKee City.
Ques. In this county?
Ans. Yes, sir.
Ques. How long have you lived in this county?
Ans. Since March, 1894.
Ques. What is your occupation?
Ans. Farming, at the present time.
Ques. I didn't mean to ask you how long you had lived on that farm, but how long you had lived in the county.
Ans. Since 1894, spring of 1894, March.
Ques. And have you lived on this same place ever since?
Ans. No, sir; moved there a year ago this last March.
Ques. You have been attending here as a witness for a couple of days or more, have you not?
Ans. Yes, sir.
Ques. You have heard some of the testimony?
Ans. I have.
Ques. Do you know where the Gravelly Run cedar swamp spoken of is?
Ans. Yes, sir.
Ques. Do you know where the steam railroad is that crosses the swamp?
Ans. Yes, sir.
Ques. Do you know where the bridge across the railroad in the swamp is?
Ans. Well, I have seen it; I don't know as I could tell you on the map where it was.
Ques. You go to it, you have seen it?

Ans. Yes, sir; I can go to it.

Ques. Do you know where the flag station or the block signal station is on that road near by the bridge?

Ans. Yes, sir.

Ques. Do you know where McKee City is?

Ans. Yes, sir.

Ques. Between this bridge in question and Atlantic City, isn't it?

Ans. Yes, sir.

Ques. Do you know where the road to Mays Landing is?

Ans. From where?

Ques. To the southward of the Gravelly Run cedar swamp.

Ans. The river road?

Ques. The road from Mays Landing to Somers Point?

Ans. Yes, sir.

Ques. Do you know where the pond is on that road below the Gravelly Run cedar swamp?

Ans. Yes, sir.

Ques. Do you know where the Abbott swamp in question in this case is?

Ans. I do; yes, sir.

Ques. Do you know where Gravelly Run itself is that goes through the swamp?

Ans. I do.

Ques. Do you know where the Absecon road is?

Ans. Yes; I know where the Absecon road is.

Ques. Well, now, just come over here a moment. Just look at the map. Now, down here at the bottom of the map is a road purporting to be the road from Somers Point to Mays Landing?

Ans. Yes, sir.

Ques. This purports to be a pond to the northward of it?

Ans. Yes, sir.

Ques. This purports to be the Absecon road here running to the left-hand, away up to the top of the map?

Ans. Yes, sir.

Ques. This purports to be Gravelly Run; this little streamlet here.

Ans. Yes, sir.

Ques. These black lines purport to be the outlines of the swamp, and this dark colored portion here purports to be the Abbott holdings of the swamp?

Ans. Yes, sir.

Ques. This line here that crosses the swamp purports to be the railroad?

Ans. Yes, sir.

Ques. Here is marked a little place; here is a flag station here?

Ans. Yes, sir.

Ques. Here is a point marked the bridge; here are some houses up here; this is Reega, isn't it?

Ans. Yes, sir.

Ques. Here the old road?

Ans. Yes, sir.

Ques. Now, do you comprehend the lay of the land on this map?

Ans. Yes, sir.

Ques. Can you point out where you live on this map?

Ans. On the east side of New York avenue (pointing to vicinity of spear head on the map.) I live on the east side of New York avenue.

Ques. New York avenue is here delineated on this map, is it?

Ans. Yes, sir.

Ques. On the east side of New York avenue and on the Absecon road?

Ans. Yes, sir.

By the Court:

Ques. How does he get into McKee City?

Mr. Pancoast: McKee City, as the rest of us understand, is here to southward.

Ques. Is New York avenue in McKee City?
Ans. McKee City covers all McKee's property.
Ques. This is called Reega here at the railroad?
Ans. McKee City is northeast or east of it.
Ques. Well, it is between Reega and Atlantic City?
Ans. Yes, sir.

By Mr. Pancoast:

Ques. Do you recollect a fire in that Gravelly Run cedar swamp last September, a year ago?
Ans. Yes, sir; I recollect a fire there.
Ques. As nearly as you can tell, when did you first notice the fire?
Ans. On the 12th of September.
Ques. What time in the day, forenoon or afternoon?
Ans. Oh, in the afternoon; I couldn't tell the exact minute; between two and four o'oclock.
Ques. Now, where were you when you noticed that fire?
Ans. I was in the field that was next to the Absecon road.
Ques. Your own field?
Ans. My own field; yes, sir.
Ques. To the eastward of New York avenue?
Ans. Yes, sir.
Ques. What were you doing there?
Ans. If I am not mistaken, I was picking tomatoes or something like that.
Ques. Your own farm work?
Ans. Yes. My attention was drawn to it by the children seeing the smoke.

Ques. Where was that fire then as near as you can tell, with reference to the flag station or the bridge?

Ans. Well, it was here in the corner of McKee's swamp, near the flag station.

Ques. That is, to the eastward of the railroad?

Ans. Yes, sir.

Ques. How long did you continue to notice the fire burning there; how many days afterwards, as nearly as you can tell?

Ans. Well, it was on Thursday, the 12th, and I seen the smoke in the swamp and I knew it was on that side of the railroad because I had been down to see and on the following Monday I had to fight that fire on the Absecon road.

Ques. That same fire?

Ans. That same fire; yes, sir.

Ques. Where did you fight it?

Ans. On the road that runs from Gravelly Run to Absecon.

Ques. That was when?

Ans. That was on Monday.

Ques. That was how many days after you first saw it?

Ans. Well, I suppose it was four days.

Ques. Well, in these four intervening days, had you noticed the same fire?

Ans. Well, I could see the smoke rolling in that place all the time and you could see the light of the fire at night.

Ques. Well, what became of the fire after that?

Ans. Well, we put that fire out.

Ques. Where was the fire that you put out?

Ans. The fire that came across came up here to the Absecon road and went across on to the Bacon farm, if I am not mistaken.

Ques. Where is the Bacon farm?

Ans. The Bacon farm lays here.

Ques. Westwardly of you? The Bacon farm is westwardly of you?

Ans. Yes, sir.

Ques. Well, how long did you fight there?

Ans. We fought the fire till dark, till we got it out.

Ques. What day?

Ans. Monday; from the Absecon road into Colonel McKee's swamp.

Ques. Now, on which side of the road was that fire; the railroad?

Ans. On this side of the railroad.

Ques. That is on the easterly side of the railroad?

Ans. Yes, sir.

Ques. Well, after that what did you notice of the fire?

Ans. Then on Tuesday morning I took three with me and we went down into the swamp where we had stopped putting the fire out Monday evening. It was not burning up, but it was the turf all underneath burning. We couldn't put it out. It was impossible to put it out. We had to leave it burning. Tuesday all day we could see smoke rolling, and Wednesday all day, and then on Thursday in the neighborhood of two o'clock this fire broke out again in here. The wind caught it and fetched it to here. (Indicating on map.)

Ques. That is on the Bacon farm?

Ans. No; not on the Bacon farm, towards the Bacon farm; Colonel McKee's first farm, 2560. Mr. Beckmire and myself put the fire out to keep it from burning that barn down. We put this out till it came to the swamp again. Then we couldn't do any more with it; and on Friday, I suppose in the neighborhood of one o'clock, this fire broke out again and came up to my place and came up New York avenue right up to my farm and went on to Beckmire's.

Ques. Beckmire is to the east of you?

Ans. Yes, sir.

Ques. What was done that day?

Ans. Well, they fought this fire and I fought the fire down by the house, and just about the time this fire was leaving my place, going by the barn, Mr. Charles Abbott drove in there and my boy attended his horse while he grabbed a shovel and helped put the fire out to keep the barn from burning.

Ques. What day is that?

Ans. That was on Friday.

Ques. Friday after you saw the fire start?

Ans. Yes, sir.

Ques. Well, go on.

Ans. Then on Friday we put this fire out so as to keep from burning the buildings down. Then the fire was still in the swamp down here. Then Saturday morning at six o'clock I got up and took a boy with me. We went down New York avenue towards Reega. We got down there about a hundred yards off of the upland. We couldn't go any further.

Ques. In the swamp?

Ans. In the swamp; yes, sir. It was afire from a hundred yards of the upland to very near the race; that is Gravelly Run; we call it the race.

Ques. Is that that point where the race crosses New York avenue?

Ans. Yes, sir; it was from along in here all the way up, all the way to Devil's Island. (Running his finger on both sides New York avenue.) I went over to the place called Jack Pudding and was back again at eight o'clock. I went down with the boy. It was afire on both sides of the race. It was all burned in here on that side of the race and the only green streak of stuff to burn any more laid on the side of the hill at the Colonel's farm at Reega and where the fire was then, from Devil's Island back to Reega Station.

Ques. That was up to Sunday?

Ans. That was up to Sunday.

Ques. Up to that time was there any fire that you saw in that swamp that had crossed the railroad?

Ans. No, sir; it was not to the railroad.

Ques. You saw it there in that swamp, as you described, from the beginning up to Saturday?

Ans. Yes, sir.

Ques. Well, did you see it after it got over the railroad down here by Reega?

Ans. No, sir; I didn't see it cross the railroad. I was in Mays Landing.

Ques. You didn't help fight it?

Ans. I helped fight it one Sunday down in Abbott's swamp; Sunday week after that caught Abbott's swamp. I was to go fight it that Sunday, but it went in. We had to fight a fire on that side of New York road, at Jack Pudding, to keep it from going in here and burning the house up.

Ques. Then, so far as you know, it never crossed the Absecon road?

Ans. The fire coming from the north or northeast or northwest never crossed the Absecon road; no, sir.

Ques. That is the fire from this swamp?

Ans. This fire from this swamp did cross the Absecon road; yes, sir.

Ques. Where?

Ans. It crossed the Absecon road on the road that comes from Gravelly Run avenue; the place we call Gravelly Run avenue; it crossed there about two hundred feet wide, on Monday.

Ques. That was the Bacon place farm?

Ans. Yes, sir.

Ques. Was that put out in the way that you have spoken of?

Ans. No; that fire went on, but we put the side-fire

out. The main body went on, but we put the side-fire out.

Ques. You said your son and Charles Abbott helped fight the fire?

Ans. No; it is my housekeeper's son that helped fight it.

Ques. What is his name?

Ans. James Seigfried.

Cross-examination.

By Mr. Gaskill:

Ques. When the Judge was asking you just a moment ago as to whether the fire crossed the Absecon road, and you said no, not that fire, you were then alluding to the fire that was then burning at the same time off here to the northeast?

Ans. No; I was not.

Ques. On the north side of Absecon road?

Ans. No, sir.

Ques. Wasn't there any fire there?

Ans. Not at that time; no, sir.

Ques. Wasn't there during that week, between the 12th and 22d, those ten days?

Ans. Yes, sir.

Ques. That was quite a large fire?

Ans. It was.

Ques. And wasn't there also during that time a fire here to the northwest, coming from the direction of what is known as Cream Pond?

Ans. There was a fire in there; yes, sir.

Ques. And wasn't there between the 15th and 22d a fire that started over at McKee City station?

Ans. I don't know anything about it.

Ques. Didn't you see any smoke?

Ans. I seen plenty of smoke. I didn't know where the fire was.

Ques. You didn't go over to look at that?

Ans. No, sir.

Ques. When you first saw the fire and the smoke down here at the flag station you didn't go and look at that?

Ans. No, sir.

Ques. And you judged there was a fire there because you saw the smoke?

Ans. Yes, sir.

Ques. And by the same judgment you would say there was a fire at McKee City because you saw the smoke?

Ans. Certainly.

Ques. Now, the fire that you fought, that crossed the Absecon road, was that east or west of what is know as the Bacon farm, as delineated on the map here?

Ans. Well, it was on the west side.

Ques. And it was across the Absecon road?

Ans. Yes, sir; it crossed.

Ques. To the north of the Absecon road?

Ans. Yes, sir.

Ques. And that is the fire that you say you put out?

Ans. We put the side fire out; yes, sir.

Ques. But you didn't put the whole fire out?

Ans. No; we didn't put the main body out. That still went on.

Ques. The main body still went on in a northerly direction, did it?

Ans. Yes, sir.

Ques. Right around there between where that fire was put out and your place there was timber and brush land or other land that had been burned over before, wasn't there?

Ans. Not to my knowledge.

Ques. And didn't you say that you tried to fire in there so as to protect the property, and couldn't do it because it had been burned over before?

Ans. Oh, no. I didn't say any such words as that.

Ques. Didn't you say to Thomas H. McClure, the son of the foreman of the section gang, on Monday, at or near the Absecon road, and while you were engaged in in fighting that fire, or just afterward, that you had tried firing a place there to prevent this fire from spreading, but couldn't do it because it had been burned over before or recently?

Ans. No, sir.

Ques. Any words to that effect?

Ans. No, sir.

Ques. Now I understand, Mr. Yearicks, that you didn't go down to this fire which you saw in Colonel McKee's cedar swamp? You describe this as Colonel McKee's cedar swamp?

Ans. Yes, sir.

Ques. On the opposite side of the railroad from the Abbott?

Ans. Yes, sir.

Ques. You didn't go down there to that fire from which you saw the smoke arising?

Ans. No, sir.

Ques. When was it you did do down there?

Ans. On Friday morning.

Ques. On Friday morning, the 13th?

Ans. Yes, sir.

Ques. What time in the day was it on Thursday that you saw that fire?

Ans. In the afternoon, between three and four o'clock; I don't know just what time.

Ques. When was it you saw it last on that day, the 12th?

Ans. I could see the light of it in the evening when I went to bed.

Ques. What time did you go to bed?

Ans. Ten o'clock.

Ques. Went to bed at ten o'clock?

Ans. Yes, sir.

Ques. Did you see a light from that fire up till ten o'clock?

Ans. Yes, sir.

Ques. You are positive?

Ans. Yes, sir.

Ques. How far from where you live over to that swamp in a straight line, over to where the fire was in the fire circle; how far is it across?

Ans. I suppose in the neighborhood of a mile.

Ques. What kind of land is it there between you, cleared or timber?

Ans. Small timber.

Ques. No large timber at all?

Ans. No; there ain't any large timber except a few gums and so on.

Ques. What is it, brush land?

Ans. Yes, sir; we would call it brush land.

Ques. How high is the brush, ten or twelve feet high or high as your head?

Ans. Higher than your head some parts of it.

Ques. On Monday you didn't go down to that swamp? What you did is to go to the Absecon road to fight the side line of the fire?

Ans. We didn't want to go down in the swamp.

Ques. When was it you first went down to that swamp where the fire circle was?

Ans. We fought that side fire down into the swamp on Monday; yes, sir.

Ques. Did you go down there to where the fire circle was on Monday?

Ans. We fought it down into the swamp to where we couldn't put it out.

Ques. You didn't see their circle at all?

Ans. No, sir.

Ques. So that you don't know whether there was any fire inside of that circle on Monday or not from what you saw?

Ans. I don't know anything about what they did. I know what I seen.

Ques. Did you do any back-firing or side-firing?

Ans. Not me; no.

Ques. The boy did?

Ans. He did.

Ques. Housekeeper's son?

Ans. Yes, sir.

Ques. Where was that done, back of your place?

Ans. No, sir; down close to the Absecon road, by the side of a cornfield I have.

Ques. What day was that done?

Ans. Done on Friday.

Ques. Friday a week after this fire along the railroad, or the next day after; the 13th or 20th?

Ans. Why on the 20th, I suppose.

Ques. Well, Mr. Yearicks, where is McKee's sawmill, or where was it?

Ans. Well, about opposite, if I am not mistaken, Reega Station.

Ques. About opposite Reega Station, or in the immediate vicinity of it?

Ans. Yes, sir.

Ques. And at some distance above where you say the fire crossed the railroad?

Ans. I won't say where it crossed. I didn't see it.

Ques. Won't you come here to the map and say whether it is not north of where they say it crossed the map? There is the place which they have marked on the map as the crossing of the fire over the railroad and here is Reega Station. Now, that steam sawmill was to the east of New York avenue and a considerable distance from the point designated on the map as where the fire crossed.

Ans. Yes, sir.

Ques. Now, that sawmill was burned, wasn't it?

Ans. That is what they say. I haven't seen it.

Ques. And that sawmill was burned before the fire crossed the track?

Ans. I don't know.

Ques. Well, the fire didn't cross the track until Saturday afternoon?

Ans. I don't know.

Ques. The saw mill was burned about noon or before?

Ans. No; I don't think so.

Ques. Did you see anyone else besides your own people side-firing or back-firing?

Ans. No, sir.

JAMES SEIGFRIED, sworn.

Direct examination.

By Mr. Pancoast:

Ques. What is your age?

Ans. My age is fifteen. I will be sixteen next summer.

Ques. Where do you live?

Ans. McKee City, Absecon avenue; 2508.

Ques. Where do you live?

Ans. At Jacob Yearicks'.

Ques. Jacob Yearicks who has been on the witness stand in this case?

Ans. Yes, sir; my home was there. I live now in Cologne.

Ques. You heard Mr. Yearicks' testimony in relation to the fire in Gravelly Run cedar swamp?

Ans. Yes, sir.

Ques. Are you acquainted with that vicinity, know

the roads there and where the railroad is, where the swamp is and where the different people live there in that immediate vicinity?

Ans. Yes, sir.

Ques. Did you in September, 1895, know about this locality?

Ans. Yes, sir.

Ques. Now do you recollect seeing this fire in the cedar swamp, in the Gravelly Run cedar swamp, in September, 1895?

Ans. I seen it, that is all. I didn't help fight it.

Ques. You saw it?

Ans. Yes, sir; I passed there one Sunday.

Ques. How many days did you see it?

Ans. In the cedar swamp?

Ques. Yes.

Ans. I can't recollect quite how many days, but it was a good while, anyhow.

Ques. In the swamp, was it?

Ans. Yes, sir; it was in the swamp when I saw it.

Ques. Did you see it in the daytime or the nighttime?

Ans. In the daytime, the Sunday after it got in the swamp on Saturday.

Ques. You had nothing to do with fighting it?

Ans. No, sir.

Ques. Never went down to the actual spot where the fire was in the swamp?

Ans. No, sir.

Ques. Do you remember when the fire was up near Yearicks' house?

Ans. Yes, sir.

Ques. Were you there at the time?

Ans. Yes, sir; I was there at the time.

Ques. Did you do anything with the others to help stop that fire?

Ans. Yes, sir.

Ques. What did you mean a moment ago when you said you didn't have anything to do with helping?

Ans. I didn't have anything to do with the fire in Abbott's swamp, I meant.

Ques. Then when you made that remark you referred to the fire in Abbott's swamp afterwards?

Ans. Yes, sir.

Ques. You did help fight this fire when it came up to your employer's place?

Ans. Yes, sir.

Ques. Who else helped fight it there?

Ans. Jacob Yearicks and my mother and Charles Abbott.

Ques. Did you succeed in putting it out?

Ans. We put out the side-fire. The main body went past, on up to Beckmire's, and after it was up to Beckmire's I had a side-fire along the corn-field to keep it from burning our corn up. It was very dry.

Ques. Beckmire's is to the eastward of Yearicks' place, isn't it?

Ans. Yes, sir.

Ques. When you fought it, this side-fire took a course towards his place?

Ans. Yes, sir.

Ques. From which direction did this fire that you were fighting there come?

Ans. It came from the direction of the flag station in the swamp.

Ques. In the Gravelly Run swamp?

Ans. No; McKee's swamp, opposite the Gravelly Run swamp.

Ques. Did you ever go down to the railroad with Yearicks to look at the fire?

Ans. Yes, sir; we went down to the swamp.

Ques. What morning was that?

Ans. It was on Sunday morning.

Ques. What swamp?

Ans. Down near McKee's swamp.

Ques. Near what place?

Ans. New York avenue.

Ques. And how far from the flag station, as near as you can tell?

Ans. I couldn't tell you how near it was to the flag station.

Ques. Was it away off?

Ans. It was a good piece off from the flag station.

Ques. Between New York avenue and the flag station, was it?

Ans. Yes, sir; we went down from Absecon avenue, down New York avenue, near the race.

Ques. Near the race?

Ans. Yes, sir; as near as we could get to the fire.

Ques. By the race you mean Gravelly Run?

Ans. Yes, sir.

Ques. What did you find there Saturday morning?

Ans. Fire. We couldn't get to the race.

Ques. A large fire?

Ans. Yes, sir.

Ques. On which side of the avenue?

Ans. On both sides were fire.

Ques. Both sides of the avenue?

Ans. Yes, sir.

Ques. In the swamp?

Ans. Yes, sir.

Ques. Now do you recall anybody's putting a stick down in the soil to see how deep the fire was there?

Ans. You could see without putting a stick down. You could see it was all the way down.

Ques. You could see without doing that, eh?

Ans. Yes, sir.

Ques. What had been the character of the weather before that time, dry or wet?

Ans. It was all dry; no rain. Everything was dry.

Cross-examination.

By Mr. Gaskill:

Ques. James, what was it that you set on fire there at the time that you were fighting fire there back of the place?

Ans. The bushes back of the corn field.

Ques. And which way did that fire run when you set them on fire?

Ans. It burned into the side fire and then went out.

Ques. And which way was the side fire going at that time?

Ans. Going right up to the corn field.

Ques. Going in an easterly direction?

Ans. Well, the wind was coming from the southwest, driving it towards Absecon avenue.

Ques. To the northeast?

Ans. Yes, sir.

Ques. Then your fire went in an opposite direction, did it?

Ans. It went against the side-fire and went out.

Ques. How much ground did you burn over there?

Ans. It was not more than twenty feet.

Ques. And how wide?

Ans. Oh, maybe two acres; hardly that.

Ques. Two acres in one direction and twenty feet in the other? Well, James, did you see anybody else setting any fires at that time?

Ans. Not at that time.

Ques. Not at what time?

Ans. The day I was.

Ques. What day was it you were doing it?

Ans. On Friday.

Ques. Did you see anybody doing it on Thursday?

Ans. No, sir.

Ques. Or on Wednesday?

Ans. No, sir.

Ques. Had you that week seen anybody?

Ans. No, sir; I didn't see anybody.

Ques. Did you see any fires burning except this one in the swamp?

Ans. Yes, sir; seen one in the northwest.

Ques. Do you know where Cream Pond is?

Ans. No, sir.

Ques. Did you see any over on Absecon Road towards Pomona, any smoke in that direction?

Ans. No, sir.

Ques. Did you see any smoke coming down from McKee City station?

Ans. I saw the smoke down there.

Ques. But you didn't go down to that fire?

Ans. No, sir.

Ques. Did you go down to the fire at McKee's sawmill?

Ans. No, sir.

Ques. That sawmill was burned; you have been up there since?

Ans. Yes, sir.

Ques. And the mill was burned?

Ans. Yes, sir.

Ques. Where were you on Saturday afternoon?

Ans. I can't recollect where I was.

Ques. You were somewhere around home?

Ans. Yes, sir.

Ques. That sawmill is as near, about, as the flag station, isn't it?

Ans. Yes, sir.

Ques. And still you never saw the fire there?

Ans. There was too much smoke. You couldn't see across the swamp to see whether it was burning or not.

Ques. You didn't go out to that fire at McKee City station to see whether that had been put out or not?

Ans. No, sir.

Ques. You didn't see where that had got to?

Ans. No, sir.

HARRY BECKMIRE, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Mr. Beckmire, where do you live?

Ans. 2510 Absecon avenue.

Ques. Is that in this county?

Ans. Yes, sir; it is. That is in Hamilton township.

Ques. You are a neighbor of Jacob Yearicks?

Ans. Yes, sir; the next farm above, or below.

Ques. Next towards Absecon?

Ans. Yes, sir.

Ques. To the eastward?

Ans. Yes, sir.

Ques. Is your occupation that of a farmer?

Ans. Yes, sir.

Ques. How long have you lived in that neighborhood?

Ans. Nine years this month.

Ques. Do you know where the Gravelly Run cedar swamp is in that neighborhood?

Ans. Yes, sir.

Ques. Do you know where the West Jersey Railroad is that crosses that swamp?

Ans. Yes, sir.

Ques. Do you know where the little flag station is along the railway in the swamp?

Ans. Yes, sir.

Ques. Do you know of the streamlet or creek that runs through Gravelly Run swamp?

Ans. Yes, sir.

Ques. Do you know the bridge where it crosses the railroad?

Ans. Yes, sir.

Ques. Do you know the place called Reega there?

Ans. Yes, sir.

Ques. And McKee City, between Reega and Atlantic City?

Ans. Yes, sir.

Ques. Do you know where the old road is?

Ans. Which old road?

Ques. That runs from near Reega, marked here on the map as running down near Reega, to the end of New York avenue, an old road.

Ans. An old road running from opposite Reega up across the swamp and towards the northeast?

Ques. Yes.

Ans. There are several old roads in there.

Ques. Yes.

Ans. Yes; I know where they all are. I am acquainted that section of the railway.

Ques. What farms are to the eastward of you on the Absecon road?

Ans. The farm east of us, Otto Zesta lives.

Ques. Where does Yearicks live?

Ans. To the westward.

Ques. The next farm to his?

Ans. A party lived there by the name of Shrump; but the Malloys live there.

Ques. This is what is called the Bacon Farm, is it? (Indicating on map.)

Ans. Opposite; yes, sir.

Ques. You have been here as a witness in attendance, have you?

Ans. Yes, sir.

Ques. And you know what this suit is about, in rela-

tion to the alleged fire which burned the Abbott swamp?

Ans. Yes, sir.

Ques. Do you know where the Abbott swamp is?

Ans. Yes, sir.

Ques. Now was your attention drawn to a fire in this Gravelly Run cedar swamp in the early part of September, 1895?

Ans. Yes, sir.

Ques. When, as nearly as you can tell, was you attention first drawn to it?

Ans. My attention was drawn there on Thursday afternoon.

Ques. What day was that?

Ans. I think that must have been about the 13th; Thursday was the 13th wasn't it, or 14th? I can't exactly fix the date of the month.

Ques. It was in the afternoon?

Ans. It was in the afternoon.

Ques. Where was the fire when you first discovered it?

Ans. It was down in Gravelly Run swamp, towards the flag station.

Ques. On which side of the railroad?

Ans. I couldn't tell on which side, but we could look down out of the window and see the fire there, see the smoke rolling up. You could look right from our window and see Reega station.

Ques. It appeared to be near this flag station?

Ans. Yes, sir; appeared to be right along the railroad near the flag station there somewheres.

Ques. How long did you continue to notice that fire in that swamp, as near as you can tell?

Ans. Well, on Thursday I says to father, "There is a fire down there, and we have got to watch it."

(Objected to.)

Ques. You need not tell what you said to your father.

Ans. I said there was a fire down there and we would have to watch it; it would likely come up the swamp.

Ques. What did you see after Thursday?

Ans. We saw it Thursday night. It was burning yet, and I waited for it to see what it would do the next day.

Ques. That is, the night of the first day?

Ans. Yes, sir; I took particular notice of it.

Ques. How long after that, as near as you can recall, was it burning?

Ans. Well, it was burning continuously there for several days after.

Ques. How do you know it was burning several days?

Ans. We could see the light by night, out of the window. We could look down into the swamp. Our house is on a little elevation and you can look over the top of all the brush land. You could see the railroad from our house.

Ques. Here is a map that pretends to properly delineate the lay of the land. This in yellow is the road from Somers Point to Mays Landing. Here is the pond adjacent to it. Do you know about that pond?

Ans. Yes, sir.

Ques. Here is Absecon Road running to the left hand?

Ans. Yes, sir.

Ques. Here is the Abbott property delineated here in dark colors?

Ans. Yes, sir.

Ques. Here is the stream running through it?

Ans. Yes, sir.

Ques. Here is what pretends to be the railroad crossing; here is the flag station; here is the bridge; here is the place called Reega; there an old road?

Ans. Yes, sir.

Ques. Now here on the map is a point said to be the site of the Bacon Farm?

Ans. Yes, sir.

Ques. Is that the proper situation, according to your view?

Ans. Yes, sir; that is about the proper situation.

Ques. Then above it is Jacob Yearick's place; is that it?

Ans. Yes, sir.

Ques. Then above it Beckmire's place. Is that your place?

Ans. Yes, sir.

Ques. Well, what became of that fire in the swamp that you were watching?

Ans. Well, it was still burning there on Thursday night, and on Friday I looked down the road and I says, "There is a fire down there."

Mr. Gaskill: What you said we don't want.

Ques. What did you do?

Ans. Well, I had to ask assistance, to go with me. I couldn't go to fight it by myself; I had to ask assistance. I to told father—

Ques. Did you get him to go and help?

Ans. I got him to go and help. I thought it would sweep off to the Malloy place. Sunday it did. Saturday the fire was down there again.

Ques. Did you see it there on Saturday?

Ans. Yes, sir.

Ques. What did you do there?

Ans. We went there and sanded it out again on the upland.

Ques. Where was it on the upland when you were fighting it?

Ans. It was in here opposite the Bacon farm, on the place where Malloy lives.

Ques. What day was this?

Ans. That was on Saturday.

Ques. Outside the limits of the swamp then?

Ans. Yes, sir.

Ques. Towards Absecon Road?

Ans. Yes, sir.

Ques. What did you do with it by way of sanding it?

Ans. Well we put it out on the upland, as we thought. On Sunday it didn't come up so bad, and all we did to it was to watch it to keep it from coming up. On Monday we seen the fire coming up a road that is not designated here, what we call the Gravelly Run road. They call it the Bacon farm road. It comes out here at the end of the Bacon farm. The fire came up here.

Ques. What direction?

Ans. From the railroad. We tried to stop it, but couldn't. It jumped the road here and crossed over and burned in back of the Bacon field and came around to a green place.

Ques. To the road again?

Ans. No, sir; it didn't get out to the road again. It came out in this direction. There is an old road that used to lead to Abbott's swamp. We called it the Sawmill road. The fire burned through there and on outside in this. The following Monday I went over at night by myself and put this fire all out, as I thought, and on Wednesday morning I again came in that section and completely outened this fire here, for we went over it and put out the stumps where there was a stump burniug here and there, filling them with sand.

Ques. That was all north of the Absecon road?

Ans. Yes, sir; and on Thursday we could see the fire burning down in here.

Ques. Where?

Ans. Here towards the swamp, in Gravelly Run swamp, and we thought, well, now, maybe we will have some work to do there, and we will watch. We couldn't attend to our other things, from having to leave and go down there to watch. On Thursday afternoon we saw the fire start up.

Ques. From where?

Ans. From the swamp again, and we ran down here to Yearick's and tried to sand it out there, but it was too heavy for us, only three or four of us, and it jumped New York avenue there and went back of Yearick's place. I helped fight until it got back of the barn, and then the wind shifted and brought it back up here.

Ques. What day was that?

Ans. That was on Friday; and we took to saving the barn, fighting the fire off here, and thought we had it thoroughly out. We had it confined to a space as big as from here to the wall. We carried water until night to pour on this muck. We thought we had it out. That was dark Friday night. Saturday morning, somewhere near noon, I say's "The fire has started in that swamp again."

Ques. Did you see it in that swamp?

Ans. Yes, sir; I saw it there, where we thought we had it out; but when that puff of wind came the fire went on up to Zesta's place. From there it went on around in this direction again. When the wind shifted to west northwest it passed this way again.

Ques. It passed your place?

Ans. Yes, sir; passed our place and passed Zesta's.

Ques. That was the last you had to do with it, was it?

Ans. Yes; that fire, because we had it all out, as we thought.

Ques. Had you anything to do with fighting it off the Abbott place later?

Ans. No, sir.

Ques. What was the weather prior to this fire and during this fire as to dryness?

Ans. Well, it was extremely dry. We hadn't had any rain since sometime in June; about the 10th of June since we had rain.

Ques. No rain from that time until September, when these fires took place?

Ans. No, sir.

Ques. What about the shower on Wednesday?

Ans. That was when the fire was raging.

Ques. Was that any substantial shower?

Ans. No, sir; it didn't extend far. It seemed to be only a strip.

Ques. Did it seem to affect the main body of the fire in the swamp?

Ans. No, sir; I don't think it was down there.

Cross-examination.

By Mr. Gaskill:

Ques. While you are there won't you please point out on the map the point in the swamp where the fire came out Saturday morning—where it came out of the swamp. Was it east or west of New York avenue?

Ans. Well, it was to the eastward. Well, it is about southeast; more to the southeast in here.

Ques. That is where it came out on Saturday morning?

Ans. Yes, sir.

Ques. Nearly opposite your place?

Ans. Yes, sir; that is Saturday, the 20th.

Ques. That is what I am talking about, Saturday the 21st. The fire that you speak of as coming out of the

swamp came out of the upper end of the swamp nearly opposite your place?

Ans. Yes, sir; in fact, right at the back of our place.

Ques. How far is the upper end of this swamp from McKee City station?

Ans. In a direct line I should say about a mile and a half.

Ques. How far is it from your place over to the race in Gravelly Run swamp?

Ans. Well, about five hundred yards.

Ques. How far is it from your place in a straight line down to the flag station?

Ans. Well, I don't know. I think it must be a mile and a half.

Ques. And how far did you say from your place over to McKee city station, or from the head of the swamp over to McKee City station?

Ans. I didn't say the head of the swamp. Well, from this part of the swamp about five hundred yards.

Ques. And from here over to McKee City station?

Ans. Well, I never walked that to get any knowledge of the distance.

Ques. Then, as I understand you, on Saturday, the 21st, the fire was in the upper end of Gravelly Run cedar swamp?

Ans. Yes, sir.

Ques. And broke out on the north side towards your house?

Ans. No, sir.

Ques. Which side did it break out?

Ans. On the southwesterly side.

Ques. Towards the railroad?

Ans. Yes, sir.

Ques. And then did it run down between Gravelly Run and the railroad?

Ans. It started here and went around this way and came back there. (Indicating on map.)

Ques. And then came down between Gravelly Run and the railroad?

Ans. I can't tell where it came down there. I know it came down this way, after starting up from there. It came this way.

Ques. Did you see the sawmill burn?

Ans. No, sir.

Ques. You didn't go over to that?

Ans. No, sir.

Ques. You know where the sawmill is, or was?

Ans. Yes, sir.

Ques. Have you seen this place where the fire is supposed to have crossed the railroad track?

Ans. No, sir.

Ques. You haven't been down to that?

Ans. No, sir.

Ques. You spoke of seeing a fire over by the flag station; do you mean the flag station at Reega?

Ans. Yes, sir.

Ques. Now, Mr. Beckmire, on the Saturday before this fire broke out at the upper end of the swamp from your place, I understand you to say that you saw fire on the upland down here by the Bacon Farm?

Ans. Yes, sir.

Ques. Were you down there?

Ans. Yes, sir; I was there.

Ques. That was on Saturday, the 14th?

Ans. I believe so.

Ques. Did you see Mr. Charles Abbott there?

Ans. No, sir.

Ques. Whom did you see down there?

Ans. Jacob Yearicks, James Siegfried, Gottlieb Fell, Joseph Wood and his mother-in-law, and Mrs. Wood.

Ques. Then it is not true that the fire was confined

within the fire circle there in the swamp, on Saturday, the 14th?

Mr. Pancoast: I object. You can't invite one witness to criticise the testimony of another witness.

The Court: Well, he can modify the question so as to get rid of that.

(Question withdrawn.)

Ques. Then the fire was not confined within the fire circle on Saturday, the 14th?

Ans. I don't know where the fire circle was. Please illustrate, and I might.

Ques. Did you see any fire circle down in McKee's swamp, near the swamp siding, as it is called?

Ans. We saw a fire down there, but I can't tell whether it was in the circle or not.

Ques. But this is not the fire that you alluded to when you saw a fire burning on the upland on Saturday?

Ans. That was this fire down here.

Ques. Then it was another fire, other than what might have been in the fire circle, that you saw on Saturday?

Ans. Well, it might have been, but it was all in the same neighborhood. I didn't go down and look in the circle.

Ques. Between the 12th of September and the 22d of September did you see any other fires in that neighborhood, or the smoke from any other fires?

Ans. In which direction, please?

Ques. Any direction; anywhere in your neighborhood?

Ans. Yes, sir.

Ques. Where?

Ans. There was a fire off to the northeast.

Ques. Off in this direction? (Indicating on map.)

Ans. Yes, sir.

Ques. When did you see that fire?

Ans. Well, we saw that fire on, I think, the 15th or 16th, same day of this fire here.

Ques. On the 15th or 16th?

Ans. Yes, sir.

Ques. Did you see any other fire during this time?

Ans. No, sir.

Ques. Did you see any other fire over at McKee City station?

Ans. No, sir; we saw the smoke, but we couldn't designate the fire.

Ques. You saw a smoke there?

Ans. Yes, sir.

Ques. When was it you saw that smoke?

Ans. Well, we saw it for several days; I can't tell.

Ques. And that was the other side of the swamp from you? This Gravelly Run swamp heads up between where you live and where you saw this fire, this smoke?

Ans. I couldn't tell whether it was the other side of the swamp or directly in the swamp. It was in that direction.

Ques. It was not on your side of the swamp?

Ans. Not that I could possibly say.

By the Court:

Ques. Gravelly Run swamp starts up above your place, doesn't it?

Ans. Yes, sir.

Ques. And that swamp runs down how far?

Ans. That swamp runs down until it runs into Great Egg Harbor river.

Ques. It crosses the tract, does it?

Ans. Yes, sir. It takes in this tract, the Abbott tract, and then goes into the river at what we call the old mill.

Ques. When you are talking of Gravelly Run swamp you are talking of both sides of the tract?

Ans. Yes, sir.

By Mr. Gaskill:

Ques. Did you do any back or side firing?

Ans. No, sir; only to confine this fire in here, and we confined it.

Ques. What day did you do that?

Ans. Friday.

Ques. Which Friday?

Ans. The 21st or 22d.

Ques. Well, Friday would be the 20th, if it is that Friday.

Ans. It is that Friday.

Ques. Do you know where Cream Pond is?

Ans. No, sir.

Ques. You have spoken about a fire from the northeast. Did you see any from the northwest about that time, at or about here?

Ans. No, sir; off here. (Indicating on map.)

Ques. In addition to that fire?

Ans. No, sir; the same fire.

Ques. And that extended there?

Ans. Yes, sir; and this one extended around here.

Ques. The other side of the Bacon Road?

Ans. Yes, sir.

Re-direct examination.

By Mr. Pancoast:

Ques. You said, in answer to Judge Gaskill's question, that this flag station I asked you about, that you said was in the swamp, was at Reega?

Mr. Gaskill: In answer to Judge Pancoast, this wit-

ness said that the fire that he first noticed on the 12th was near the flag station. Then on cross-examination, as I had a perfect right, and strictly within the rules of evidence, I asked him this question: "You mean the flag station at Reega, don't you," and he said yes.

The Witness: That is the only one I know of.

The Court: The only flag station he knows of is Reega.

The Witness: The one at the swamp.

Mr. Gaskill: I object to this. You have no right to take your own witness and coach him back.

The Witness: I beg your pardon, Judge, but I made no mistake. The flag station that I call Reega is here at the swamp, where the switch is.

The Court: There is no flag station at Reega. I don't understand there is any flag station referred to in this case at the Reega station.

Mr. Gaskill: No, sir; there isn't any in fact.

The Court: This one referred to is down below Reega; is that the one he refers to?

Ques. Is that so?
Ans. Yes, sir; this one in the swamp.

GOTTLIEB FELL, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you live, Mr. Fell?
Ans. Absecon avenue, 2505; the Bacon place.

Ques. You have been in attendance on this trial here and heard the testimony?

Ans. Yes, sir.

Ques. Is it the same Bacon place that has been referred to by the previous witnesses?

Ans. Yes, sir.

Ques. What is your business there?

Ans. Farming.

Ques. How long have you lived there?

Ans. A year and a half.

Ques. Do you know where Gravelly Run cedar swamp, spoken of in this case, is?

Ans. Yes, sir.

Ques. Do you know where the May's Landing and Somers' Point Road is?

Ans. Yes, sir.

Ques. Do you know where the pond is adjacent to it?

Ans. Yes, sir.

Ques. Do you know where the Absecon road is?

Ans. Yes, sir.

Ques. Do you know where the Abbott swamp is?

Ans. Yes, sir.

Ques. Do you know where Gravelly Run is that traverses the swamp?

Ans. Yes, sir.

Ques. Do you know where the railroad is that crosses the swamp?

Ans. Yes, sir.

Ques. Do you know of the little flag station on the railroad that crosses the swamp?

Ans. Reega station?

Ques. I am not asking you about Reega station. I am asking you about the signal station alongside of the railroad.

Ans. I don't know any station but the Reega station.

Ques. Do you know what a signal station is, where the signal man stands?

Ans. Yes, sir.

Ques. Do you know of any on that road where it crosses the swamp, such a station?

Ans. Yes, sir.

Ques. Is there more than one in that neighborhood? Is there more than one such station in that neighborhood, along the road?

Ans. No, sir; McKee City station is the other station.

Ques. You know where Reega is, do you?

Ans. Yes, sir.

Ques. How far from the houses at Reega is this flag station, signal station, as near as you can tell?

Ans. Not far. Oh, you mean over to that station on the switch there. I don't know.

Ques. Do you know of the siding along the road in the swamp where there is a little—

Ans. Oh, I know that; yes, sir.

Ques. There is a man stationed there to give signals?

Ans. Yes, sir.

Ques. And that is along the road in the swamp, isn't it?

Ans. Yes, sir.

Ques. Is there any other one of that kind in that neighborhood?

Ans. No, sir.

Ques. Do you know where the New York road is?

Ans. Yes, sir.

Ques. Do you know where Jacob Yearick's place is?

Ans. Yes, sir.

Ques. Do you know where Beckmire's place is?

Ans. Yes, sir.

Ques. They are neighbors to you, are they?

Ans. I have got neighbors, yes, sir; other families there on Absecon road.

Ques. This appears to be the Mays Landing and Somers Point road here; this is the pond; this is the Abbott

swamp; this here is Gravelly Run swamp, and this here is the stream that goes through it; this is the railroad that crosses the swamp; this is a flag station; this is the railroad bridge; this is Reega; this is the Absecon road here, and this is the Bacon farm, as indicated by some witnesses; this is the Jacob Yearicks place; this is Beckmire's place as pointed out. (Indicating on map.) Now do you understand the lay of the land as pointed out on this map?

Ans. Yes, sir.

Ques. Now about where is your place; if this is Yearics' place here and Beckmire's place here, where is your place? Here is New York avenue here. (Indicating on map.)

Ans. My place is over there. (Indicating.)

Ques. Put your finger where you think your place is, about.

Ans. Right here. (Marked by Mr. Pancoast.)

Ques. That is your place, is it?

Ans. Yes, sir.

Ques. Is your place what is called the Bacon place?

Ans. Yes, sir.

Ques. Now was your attention called to this fire in question in early September, 1895?

Ans. Yes, sir.

Ques. When was your attention first called to this fire in Gravelly Run cedar swamp? When did you first notice it?

Ans. I first noticed that Monday; Monday afternoon.

Ques. What day was that? Do you know what day of the month it was?

Ans. I think it was the 13th; the 14th; I can't tell you for sure. It was Monday; Monday afternoon. I can tell you it was Monday. I can't tell you exactly what day of the month; whether the 13th or 14th.

Ques. Where was the fire when you first noticed it?

Ans. It came right from the cedar swamp; out from the swamp.

Ques. What swamp?

Ans. The Gravelly Run cedar swamp; McKee swamp. I don't know what you call it.

Ques. How far was this fire when you first noticed it from the flag station?

Ans. I could see the fire from my house.

Ques. Was it near or far from the flag station in the swamp?

Ans. Yes, sir; right to the flag station it comes out, right by that Gravelly Run road. It comes right into Absecon road; it comes out from the swamp, across Absecon avenue, towards my place.

Ques. Then, if I understand you, it came out from Gravelly Run swamp towards your place?

Ans. Yes, sir.

Ques. How many days did you see that fire there?

Ans. In that swamp for a week.

Ques. How often did you see it there during that week?

Ans. I seen it pretty near every night. I watched every night for that fire.

Ques. That is the fire that comes out?

Ans. Yes, sir.

Ques. What did you do to keep it back?

Ans. I put sand on it with a shovel.

Ques. Did anybody help?

Ans. Yes, sir; sometimes Jacob Yearicks and Mr. Beckmire.

Ques. These are your neighbors?

Ans. Yes, sir.

Ques. What became of that fire that came out of that swamp up to your place?

Ans. We fight it and keep it back, and it come out and stopped for two days, I guess. It comes out, too.

It comes out from this swamp that time; comes out to my neighbors, too. We had to fight to save the place. The neighbors ran out, and my wife and children, and cried, "Too bad."

Ques. Do you remember when it crossed the railroad and got on the side of the railroad where the Abbott property is? Do you remember that day? Were you there then?

Ans. I wasn't down in the swamp.

Ques. You don't know where it crossed the railroad?

Ans. No.

Cross-examination.

By Mr. Gaskill:

Ques. Gottlieb, I understand that the first you noticed of the fire was on Monday afternoon?

Ans. Yes, sir.

Ques. And what you saw then was a fire coming up towards your place?

Ans. Yes, sir; it comes from the swamp, on Monday afternoon; right from the swamp, from the railroad, jumps it and comes over and jumps the Absecon road, and comes over to my place.

Ques. And you fought it there Monday afternoon?

Ans. Yes, sir.

Ques. You put sand on it?

Ans. Yes, sir.

Ques. And you back-fired or side-fired?

Ans. No, sir.

Ques. Didn't you kindle any fire?

Ans. No, sir.

Ques. No fire at all?

Ans. I make a little back-fire alongside of my corn-field. That is all I back-fired.

Ques. Did you or anybody else make any fires around there?

Ans. No, sir.

Ques. No back-fire or side-fire?

Ans. No, sir; everybody fought with their shovels.

Ques. You got the fire put out so far as it was on the upland Monday afternoon?

Ans. Yes, sir.

Ques. And all that you know about it is that you saw a fire in the swamp after that at night? You didn't go down there?

Ans. No, sir.

Ques. You did all your work on the fire that Monday afternoon?

Ans. Yes, sir; and I worked on Thursday afternoon, too.

Ques. Where did you work at the fire then?

Ans. Right at my neighbor's.

Ques. What neighbor?

Ans. Malloy's.

Ques. Was any back-firing done there, or side-firing?

Ans. No, sir.

ELISHA C. DUBERSON, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you reside, Mr. Duberson?

Ans. McKee City.

Ques. In this county?

Ans. Yes, sir.

Ques. How long have you resided there?

Ans. In this county?

Ques. Yes.

Ans. All my life in this county.

Ques. How long at McKee City?

Ans. Well, I have been off and on for about eleven years; two years steady since I have been around there, last May.

Ques. What is your present employment?

Ans. Overseeing the property of McKee.

Ques. What was your employment last September?

Ans. Well, I went to work looking after the clearing and so on.

Ques. Were you doing the same for McKee as you are now?

Ans. Yes, sir.

Ques. How long have you been at work for McKee?

Ans. In the neighborhood of going on eleven years.

Ques. Do you look after his lands?

Ans. Yes, sir.

Ques. And have you anything to do with fires when they occur on his lands along the railroad?

Ans. Try to put out all fires that I see.

Ques. Is that a part of your employment?

Ans. Yes, sir.

Ques. Mr. McKee owns large quantities of land on both sides of this railroad, doesn't he, between Reega and Atlantic City?

Ans. Yes, sir.

Ques. It is over this land and the buildings on them, I understand, you have oversight?

Ans. Yes, sir.

Ques. You have been a witness in attendance at this trial for several days, have you?

Ans. Yes, sir.

Ques. And heard the testimony of the different witnesses?

Ans. Yes, sir.

Ques. Do you know where the Gravelly Run cedar swamp in question is?

Ans. Yes, sir.

Ques. Do you know where the Abbott portion of it is?

Ans. Yes, sir.

Ques. Do you know where these different roads spoken of in this vicinity are?

Ans. Yes, sir.

Ques. The Mays Landing and Somers Point road?

Ans. Yes, sir.

Ques. The Absecon road?

Ans. Yes, sir.

Ques. Do you know where the little creek or branch is that runs through the Gravelly Run swamp?

Ans. Yes, sir.

Ques. Do you know where the railroad crosses it?

Ans. Yes, sir.

Ques. Do you know where New York avenue is?

Ans. Yes, sir.

Ques. Do you know where Fell's place is, on Absecon road?

Ans. Yes, sir.

Ques. Do you know where the Bacon farm is?

Ans. Yes, sir; that is all one. That is all one, that farm that Gottlieb Fell is on, and the Bacon farm.

Ques. Do you know where Jacob Yearicks' place is?

Ans. Yes, sir.

Ques. Do you know where Beckmire's place is?

Ans. Yes, sir.

Ques. Do you know where the little station at the swamp siding, the block signal station is, in the swamp?

Ans. Yes, sir.

Ques. Do you know where the bridge is there in the swamp?

Ans. Where the train runs across?

Ques. Yes.

Ans. Yes, sir.

Ques. Do you know where the place called Reega is?

Ans. Yes, sir.

Ques. Now, this map purports to show the lay of the land in this vicinity?

Ans. Yes, sir.

Ques. Here is the May's Landing and Somers' Point road?

Ans. Yes, sir.

Ques. Here is the pond adjacent to it?

Ans. Yes, sir.

Ques. Here is the Abbott part of the swamp?

Ans. Yes, sir.

Ques. Here is the little streamlet that runs through the swamp?

Ans. Yes, sir.

Ques. Here is the railroad that traverses the swamp?

Ans. Yes, sir.

Ques. Here is the siding and the station?

Ans. Yes, sir.

Ques. Here is the bridge; here is Reega; here is New York?

Ans. Yes, sir.

Ques. Here is the Bacon farm; here is the Yearicks place; there is the Beckmire place.

Ans. Yes, sir.

Ques. Now, do you understand the lay of the land as exhibited by that map generally?

Ans. Yes, sir.

Ques. Have you a recollection of this forest fire in that swamp spoken of by the witnesses, in September, 1895?

Ans. I saw the fire there; yes, sir. We saw the smoke of the fire there.

Ques. When did you first see the smoke of the fire there in that swamp?

Ans. Well, some five or six days previous to the 21st of September.

Ques. What first called your attention to it?

Ans. Well, I saw fires around, and of course I was engaged around at other work and I didn't want to go

without it was really necessary, and I saw it spring up and loom up pretty bright and then go down again, and I saw it in the swamp, and we were not very strong handed then, and it was no use to fight it in the swamp.

Ques. Was it an unusually dry time?

Ans. Yes, sir.

Ques. When did you go to the scene of the fire?

Ans. I went up there to the scene of the fire on the 21st.

Ques. On the 21st?

Ans. Of September; yes, sir.

Ques. Where was the fire then?

Ans. The fire then, on this map—this is the steam sawmill here.

Ques. Is that Reega? (Indicating.)

Ans. Yes, sir; that is Reega, the steam sawmill. Right up here on the hill, there is a house here, No. 2742. The fire came right out from the swamp and about in this direction, right out from the race and through a cut-off.

Ques. Right out from the race?

Ans. Yes, sir. There is a road here, and down to the race. There is low pine brush here. It was coming out from this race here and up that hill. It descends here.

Ques. What race are you speaking of?

Ans. Gravelly Run race.

Ques. It runs through here?

Ans. Yes, sir. It was coming out through here. This is New York avenue?

Ques. Yes; that is New York avenue.

Ans. It was coming out in this direction. The wind seemed to be about northwest, driving it out. As it came out here on the hill——

Ques. What day was that?

Ans. That was on the 21st of September, some-

wheres about one o'clock, when we got there; not later than one o'clock; one, or quarter of one; not later than one.

Ques. Go on.

Ans. The fire came out and as it got up on the hill back of this house here the wind kept coming around to the northward; in fact it came clear around northeast with the breeze and this fire went around right below the road between that house and this bridge and went across the railroad. Then this fire was eating up in here, and I fought this fire up by here a while and then there was another fire which came out of Gravelly Run swamp above this. About 1892 or 1893 there was a fire in here once that split this fire, I suppose. It was going up here where I live. After this fire went across the railroad we had this fire all subdued, as far as McKee's property is concerned. I was watching this fire and it came right around to my house. I started for my house and when I got there, everybody was away from McKee City pretty near. When I got there my wife was carrying water to it. That was over to McKee avenue and was going up towards McKee's steam saw mill. That just swept up towards the railroad.

Ques. Which side of the railroad, on the north side?

Ans. More on the northeast side. It swept all the way along until somewheres along by this point. We have an avenue there called Virginia avenue, somewheres down along here, I should judge,—well, Virginia avenue, about, below McKee avenue, is about three thousand one hundred feet down the railroad where Virginia avenue sets in. There is a farm there, No. 2746. There is another farm just below that, 2748. Between 2748 this fire came up here, and then I had got there by that time. We fought that around there, I should judge, a full half mile before it made

connections with the big fire that I had put out before. Then I went up to the steam saw mill to see if everything was safe up there. We had fences up around there, of course, and the fences got on fire, but I didn't make as much value of the fences as of the farms. When I went back I was putting out some fires down by this fire. I looked up to the steam saw mill and I saw some smoke shooting out of the corner of the steam saw mill, and I ran up there. Mr. McClure was going up from the gate of this house to the fire with buckets. I seen the mill was on fire inside, which showed a spark had lit on the roof.

Ques. Which side of the road was the mill?

Ans. This side. (Indicating.)

Ques. On the easterly side?

Ans. Yes, sir.

Ques. What time was it that the steam sawmill was burned down?

Ans. Somewheres in the neighborhood of five o'clock; along there, about. I couldn't give the exact time.

Ques. What time was it the fire crossed the road?

Ans. It crossed that railroad between one and two o'clock.

Ques. You were right there at the time?

Ans. I was there and saw the fire.

Ques. Who else was with you fighting it?

Ans. My son was the only man I took with me; or boy, rather.

Ques. Was that the only point that the fire crossed the railroad along there that you know of?

Ans. That is the only point that it crossed the railroad along there.

Ques. How many persons did you say were with you?

Ans. There was one there when the fire came out of the swamp.

Ques. What is his name?

Ans. Jacob Duberson, my son. He was the only one with me. About fifteen minutes before this fire went across the railroad a man by the name of Tony—I don't know his last name; he lives right there in a little house——

Ques. Was he there when it went across?

Ans. He was.

Ques. What was the nature of the country surrounding this crossing; timber or cleared land?

Ans. Before you get out to the railroad it is small brush.

Ques. Which side; on the easterly side?

Ans. On the other side. On the other side it seems to be brush and once and a while high trees; then as high as my head, and so on down.

Ques. You saw the fire go across the track?

Ans. Yes, sir.

Ques. In what character did it cross the track?

Ans. It just crossed. It was literally dry. There was brush clear up to the railroad.

Ans. Are you speaking of the cleared right of way of the railroad?

Ans. I am speaking as I came along. This brush was all low, and Indian grass and so on. When it came to the railroad—of course the railroad had been moved at the time. Of course in raking the railroad there is more or less Indian grass; of course, there is the bog, and spears growing up. Of course the spears are there, and of course the fire ran right along them.

Ques. Then it was that stuff on the roadbed—

(Objected to.)

Ques. What was it carried the fire on?

Ans. Why, it was carried on by chaff and stuff that had been mowed off and had not been raked up.

Ques. Was it a single or double track?

Ans. Single.

Ques. How near did this stuff come to the ties?

Ans. I should judge a foot or a foot and a half. There was cinders and stuff there.

Ques. Was anything burned there in crossing the track?

Ans. Yes, sir; the ties were burned more or less.

Ques. Where was your place of residence in September last and prior to that, with reference to the railroad? How near this railroad, the West Jersey?

Ans. Well, I live about two hundred and fifty feet, two hundred and twenty-seven feet from the right of way.

Ques. Did you live there in September?

Ans. Yes, sir.

Ques. And how long before September?

Ans. I lived there two years the 15th of last May.

Ques. You have lived there continuously then?

Ans. Yes, sir.

By the Court:

Ques. Two hundred and fifty feet east of the road, or northwest?

Ans. Northeast.

By Mr. Pancoast:

Ques. How far from this Gravelly Run swamp is your residence?

Ans. I should judge it is a mile and three-quarters, about.

Ques. Up to and including September, 1895, were you or were you not accustomed to notice the passage of the engines and cars along that road?

Ans. Of course I sat out on the front porch nights and seen them go by.

Ques. Did you ever see the engines throw out fire, burning matter?

(Objected to).

The Court: About what time, Mr. Pancoast?

Mr. Pancoast: Well, let us see whether he ever did or not. I mean to confine myself within the rulings the Court made.

Adjourned to 2 P. M.

AFTERNOON SESSION.

Ques. (Last question repeated.)

The Court: I think the question is too broad.

Ques. Did you ever see the engines used on that road, along that point near which this fire occurred, throw out fire, burning material?

Mr. Gaskill: I enter an objection, if the Court please, to the question, for the same reason that I gave yesterday; that the inquiry must be confined to the engines passing the place where the fire occurred on the day that it was alleged the fire occurred.

The Court: Well, I understood you were going to modify it by asking the time, prior to the time.

Mr. Pancoast: I will amend the question by adding "prior and up to the time of the fire in question."

Mr. Gaskill: My objection is to that question.

The Court: I think the question is too broad, in that you don't fix a reasonable time. "Prior to" may take a great many years. I think you should fix a reasonable time.

Mr. Pancoast: If he knows the time I will fix the time, if your Honor obliges me to now.

The Court: I don't see any objection to going into that question.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is granted and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

Ques. (Question repeated.)

Ans. To make a definite answer to that I would like to ask the question, how near to this fire?

Ques. From where you live?

Ans. From where the fire was that I saw this?

The Court: Well, that will come in after a while.

Ans. Yes, sir; I have.

Ques. From your place of residence along the road or elsewhere?

Ans. From my place of residence along the railroad.

By the Court:

Ques. Seen that from your residence?

Ans. Yes, sir.

Ques. And along the road?

Ans. Along the road as they passed.

By Mr. Pancoast:

Ques. For how long a period before and up to including the time of this fire in question did you notice this?

(Objected to. Objection overruled.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

Ques. For how long a period before this fire were you accustomed to see this?

Ans. Oh, all along, before and since.

Ques. For how long a period before this fire were you accustomed to see this?

Ans. Yes, sir; saw it right along.

Ques. For how long a period, a month, a year or a couple of years?

Ans. Almost every night. One night I would and another night I wouldn't.

Ques. During what period before September, 1895, were you accustomed to see this fire cast out from the engines?

Ans. Why, the first of September, and every month along.

Ques. Well, for how many months along to September?

Ans. Why, I would see them every month.

Ques. For how large a period? What period of time before September, 1895?

Ans. Well, I saw them within a week before that.

Ques. For how long a period?

Ans. I don't understand the question.

Mr. Gaskill: I make the same objection to all this.

The Court: I understand that is all under your objection.

Ques. How frequently before and up to the time of the fire did you notice this fact?

Ans. Why, as I stated before, I seen it right along

before. We have got children, one thing, that spoke about the engine throwing fire out. I know. I saw it myself.

Ques. Well, how frequently did you see it?

Ans. Probably I would see it three or four times a week. Of course I couldn't exactly state how many times I saw it, for the fact is, I didn't expect to be called to answer that question, and I am not here to say how many times I would see it. I can say in regards to that I saw it there—sparks coming out. If she would be running slow, steaming up, puffing harder than at other times, trying to get up speed, then it would be most apt to be seen.

By the Court:

Ques. You can't say the times or how long, I understand you to say?

Ans. The exact dates I cannot, the exact dates I saw these fires coming out of the smoke-stack, I can't say the exact dates.

By Mr. Pancoast:

Ques. I think you stated a while ago how far you lived from the swamp?

Ans. Yes, sir; I stated a while ago how far I lived from the swamp.

Ques. And that you live alongside of the road?

Ans. Yes, sir; about two hundred and twenty-seven feet from the right of way.

Ques. Now, state whether or not the seeing of this fire cast from the engines was a common or uncommon thing prior to the burning of this swamp?

(Objected to.)

The Court: I don't think that is a fair question. If

he saw anything, if you can fix the time and the circumstances of that subject, it is all well enough. I don't think that is a fair question. I will overrule the question.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. State whether or not you noticed during the period spoken of the throwing of this fire by the engines frequently or unfrequently.

(Objected to.)

The Court: I will rule that out. It is the same thing.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Cross-examination.

By Mr. Gaskill:

Ques. I understand, Mr. Duberson, that you are the agent of Colonel McKee in charge of this property, at what is known as McKee City?

Ans. Yes, sir.

Ques. McKee City is a pretty big place, isn't it, on the ground?

Ans. Yes, sir.

Ques. And on paper?

Ans. Yes, sir.

Ques. How many acres are there within what you call McKee City?

Ans. I should judge somewheres between four and five thousand acres.

Ques. And within the bounds of that tract there is a cross roads or tract known as McKee station?

Ans. Well, we call it all McKee City, all within the bounds of McKee City. It is all called McKee City. We have put finger-boards up at all the cross roads and around McKee City.

Ques. You are acquainted with where the finger-boards are and the corners of Colonel McKee?

Ans. Yes, sir.

Ques. Some of them are outside of and nearer to the railroad, or what has been cleared or cut out for the railroad?

Ans. Yes, sir.

Ques. So that the clear part where the railroad comes through is cleared back of what is cleared up and marked by Colonel McKee?

Ans. Cleared up to these trees.

Ques. And some of your monuments are outside of the trees; on the cleared ground?

Ans. What I have represented is the right of way.

Ques. No; I am talking about the cleared ground, your corners and stakes and posts and stones, marble stones outside of the timber and on this ground that has been cleared and cut through the woods on which the railroad runs.

Ans. We purposed on getting——

Ques. I didn't ask you what you purposed. My question is a simple one.

(Objected to as not cross-examination.)

The Court: It is for the purpose, I suppose, of testing some matters of knowledge about which he has already testified.

Ques. Are not some of Colonel McKee's marble monuments and some of his signs and stakes outside of the timber and the high brush land and out on that part of the land which has been cut through the woods for the railroad?

Ans. Right on the line. They keep up to the line; right on the line, as near as we can get it.

Ques. It is cleared all the way up to these lines marked by Colonel McKee?

Ans. With one exception. Where we made a corner anywhere near the railroad we put a corner post in and some stones.

Ques. And it is cleared right up to these?

Ans. Yes, sir.

Ques. And in this place that has been cleared off between these monuments and land owned by Colonel McKee was mowed off this year?

Ans. Yes, sir.

Ques. I mean the year 1895. That is the year we are inquiring about.

Ans. Yes, sir.

Ques. And prior to the fire, before the fire?

Ans. Yes, sir.

Ques. And the grass and stuff that had been mowed off had been taken away?

Ans. Yes, sir; been raked up, a portion of it.

Ques. Hadn't it all been taken away so far as they could gather it?

Ans. No, sir.

Ques. Do you mean to say they could have raked it closer and cleaner than they did?

Ans. No, sir. I mean to say——

Ques. Answer my question. Could it have been raked up any closer and cleaner than it was?

Ans. I was going to answer your question.

Ques. Well, just answer me.

Ans. It was raked up, but as I was going to say, some portion of it hadn't been taken away.

Ques. Where was there any grass or stubble that had been mowed and had not been taken away prior to the fire?

Ans. Down below McKee City, as we burned it in one fire.

Ques. Down below McKee station towards Atlantic City?

Ans. Yes, sir.

Ques. On the map that would be here? (Indicating.)

Ans. Yes, sir.

Ques. But between McKee's saw mill and Absecon road it had been all raked up and taken away?

Ans. Yes, sir.

Ques. And along where the fire is alleged to have crossed the railroad it had been raked up and taken away?

Ans. Yes, sir.

Ques. You are familiar, as a matter of course, with the railroad along there?

Ans. Yes, sir.

Ques. Now, on each side of the railroad, where it runs through this swamp along by the place in question where the fire is alleged to have crossed, isn't there a ditch about seven feet from the rail on each side of the railroad?

Ans. No, sir; it is not exactly a ditch. It is a little low place, of course, along the edge.

Ques. There is something for a water course there, isn't there?

Ans. It is descending.

Ques. And that is about six or seven feet from the railroad track?

Ans. When it is dressed up it is.

Ques. Isn't all of the tract or right of way between that ditch or water course and the rail kept entirely clear of grass and weeds?

Ans. No, sir.

Ques. Wasn't it so in September of 1895?

Ans. No, sir.

Ques. When were you along the road near McKee's saw mill, prior to the fire of September 12th, 1895?

Ans. I can't tell exactly the date. I was along there almost every week.

Ques. Well, had you been along there within a month?

Ans. Yes, sir.

Ques. Sure?

Ans. Yes, sir.

Ques. Walked along the railroad?

Ans. Yes, sir.

Ques. And noticed the condition of the road at that time, the road-bed?

Ans. Well, I noticed the grass along; of course, between the centre of the track and along the end of the track for two feet, of course there wasn't much. There was cinders there. That prevented it.

Ques. It was cinder ballast there?

Ans. Yes, sir; but along to this ditch, not exactly a ditch but a water course to keep the water away from the railroad, there was more or less grass growing up.

Ques. Crab grass?

Ans. Yes, sir; that is what it was, crab grass.

Ques. But it had been kept cleaned out and cleared from year to year?

Ans. Of course they had been clearing that part each year, but that year they hadn't got that far. They came along with little hoes and cleared out that crab grass.

Ques. But they hadn't got that done this year?

Ans. No, sir.

Ques. But all there was was this little crab grass along. It was not thick over the ground there and solid between the rail and ditch?

Ans. Of course it was not a regular mat; no, sir.

Ques. Now, Mr. Duberson, you didn't see in the

month of September, 1895, within a week or ten days before this fire, any living sparks or coals come from the locomotive that were alive when they touched the ground?

Ans. Well, I can't answer that question, as I stated before.

Ques. All you know is, you saw the engine come along and you could see something come out of the smoke stack?

Ans. Yes, sir.

Ques. Weren't they dead before they reached the ground?

Ans. No, sir; I wouldn't say about that.

Ques. Did you see them within a week before the fire?

Ans. I couldn't say. I wouldn't undertake to pledge myself about that.

Ques. But the greater part of the sparks died before they reached the ground?

Ans. Oh, yes; of course.

Ques. Evidently small ones?

Ans. Oh, yes; of course, evidently small ones.

Ques. Now, when you said in answer to Judge Pancoast, or was describing to Judge Pancoast, rather, the character of the land and growth, you said that there was underbrush up to the railroad. What you mean is there was a growth, a small growth of pines and underbrush and huckleberry bushes; there was a small growth up to the right of way?

Ans. Yes, sir.

Ques. And then from that place out to this ditch it was mowed?

Ans. Yes, sir.

Ques. And that was not grown up with bushes and undergrowth?

Ans. No, sir; just simply a stubble.

Ques. Just stubble left after mowing?

Ans. Yes, sir.

Ques. And anything that may have escaped the rake in raking it up?

Ans. Yes, sir.

Ques. And as far as you could see, that had been raked up and taken away carefully?

(Objected to. Objection withdrawn.)

Ques. So far as you could see along there, Mr. Duberson, prior to this fire, the right of way had been mowed between this ditch or water course and the line of the timber where Colonel McKee's monuments were, and the material mowed off, raked up and carted away.

Ans. Yes, sir.

Ques. And had been done cleanly?

Ans. Well, that is a thing—what do I understand you by clean?

Ques. Well, hadn't it all been taken away so far as it could be?

Ans. No, sir; not so far as it could be.

Ques. Well, how much could have been obtained after it had been raked up and taken away? I am not speaking of this place away down here where it was not cut.

Ans. No; I am speaking of where the fire was. Of course, raking up, you rake along and keep up with these men. Of course more or less goes through the rake; the short pieces and huckleberry brush is bound to escape, it being rough stubble as you mow. Sometimes this stubble will be like this, (illustrating,) and of course you can't rake down close to get that on account of these stubbles. Of course more or less drops off in raking.

Ques. I understand you to say what had been left there was what you couldn't get by raking it up.

Ans. No, sir; not without a good deal of trouble.

Ques. And it would escape through the rake?

Ans. Yes, sir.

Ques. Didn't they use pitch forks there in gathering this stuff together?

Ans. I never saw the railroad men, to my knowledge, use pitch forks.

Ques. Have you ever seen the small farmers gather this stuff up after the railroad company?

Ans. Yes, sir; I have seen them take it away in wagons.

Ques. I understand you to say that this fire crossed the railroad track between one and two o'clock on Saturday, September 21st?

Ans. Yes, sir.

Ques. The mill burned down later in the afternoon?

Ans. Yes, sir.

Ques. Were you there when it crossed the track?

Ans. Yes, sir.

Ques. At one or two o'clock?

Ans. Between one and two.

Ques. Well, that fire as it came up to the track was quite a large fire?

Ans. Well, there was a pretty good string of it.

Ques. And the wind blowing with some force?

Ans. The wind was coming pretty fresh.

Ques. So that the fire going with the wind had a considerable current?

Ans. Yes; more or less.

Ques. So that independent of any stubble that might have been there, the wind was sufficient to drive the fire across the track, was it not, jump the track?

Ans. Well, I wouldn't like to say about that, if it had been entirely clear, whether it would or not.

Ques. You can't say as to that?

Ans. No; I wouldn't like to say as to that, whether it would or not.

Ques. Now, Mr. Duberson, I understand you to say that the fire that crossed the track, and also the fire that burned McKee's sawmill, came out of the south side and the upper end of Gravelly Run cedar swamp, came out of the side of the cedar swamp towards the railroad?

Ans. Yes, sir. It came up on the hill first. I was speaking now of the one coming out on the hill running down towards the railroad.

Ques. This one along by the house on the hill referred to by you, that came out of the south side of the swamp?

Ans. Yes, sir.

Ques. That was the first you saw of that fire?

Ans. That is the first I saw of the blaze of the fire.

Ques. And you didn't pretend to trace that fire that came out Saturday afternoon to any other fire? All that you know is that it came out of the swamp that afternoon.

Ans. It came out of the swamp that afternoon, as far as the real fire is concerned.

Ques. I understood you to say that while you were here at work this fire started out of the swamp and you had to go up there?

Ans. They were both burning when I started to this fire.

Ques. That is what I understand. You were down here and this fire was raging and you saw a fire break out further up that you thought was going to endanger your property? That was more easterly?

Ans. Yes, sir.

Ques. And you left this fire and went up to this one still further up?

Ans. No, sir.

Ques. Then you had this fire out?

Ans. No, sir. Coming up to my house I had the fire that went across by the railroad; we had that subdued.

Ques. This fire that came up the hill towards the house, that one you thought was subdued, was going across the railroad then?

Ans. Yes, sir.

Ques. Where did this other fire come out—further up the swamp?

Ans. Yes, sir.

Ques. How far up the swamp? Opposite Beckmire's?

Ans. I should judge it was, somewheres near back of Beckmire's, on the opposite side of the swamp.

Ques. Where did that fire go?

Ans. That fire was going down towards McKee avenue. That is way down there, running north and south, McKee avenue does.

Ques. That is east of New York avenue; it is up towards McKee station?

Ans. Yes, sir.

Ques. And that fire that broke out was still east of McKee avenue?

Ans. No, sir; west of McKee avenue.

Ques. You live up here somewhere, two hundred and fifty feet from the railroad, live up near McKee City station, don't you?

Ans. I live somewheres about six hundred feet west of McKee avenue along the railroad.

Ques. And about two hundred and fifty feet from the railroad?

Ans. Yes, sir.

Ques. Where were you when you saw that fire Saturday afternoon come out of the swamp and start and run up the hill toward the house?

Ans. I was getting the horse out to go to Bargaintown.

Ques. How far were you from the place where the fire came out?

Ans. I suppose it was in the neighborhood of a mile and three-quarters.

Ques. You told us that you first saw the fire in the swamp five or six days before the 21st of September?

Ans. Yes, sir.

Ques. That is to say, you fix the date of the burning of McKee's sawmill, and then back of that for the time, five or six days, that you saw the fire in the swamp?

Ans. Well, we had a fire down in McKee's swamp, and I noticed this five or six days afterwards.

Ques. When did that fire break out?

Ans. It broke out, if I remember right, on the 15th; on Sunday afternoon, the 15th.

Ques. Were you home?

Ans. I was not home. I was in Atlantic City.

Ques. How far from the McKee City station did that fire break out?

Ans. I should think, as near as I could locate the fire when I came back and went around to put the fire out, between McKee avenue and English Creek avenue—I should think it was in the neighborhood of four hundred feet from the McKee City station, on the English Creek road.

Ques. What time did you get home that Sunday afternoon?

Ans. I think somewhere about five. I got off the accommodation train in the afternoon.

Ques. So that it was burning before you got home?

Ans. Yes, sir; I was on the meadows in Atlantic City looking at it.

Ques. When you got home it was still burning?

Ans. Yes, sir.

Ques. Do you know whether they had fought that fire when you got home?

Ans. Yes, sir.

Ques. Where had they fought that fire?

Ans. All along the west of McKee avenue.

Ques. And had kept the fire on which side of McKee avenue?

Ans. On the east side.

Ques. McKee avenue running parallel with New York avenue, over here?

Ans. Yes, sir.

Ques. And the fire starting at McKee station about four hundred yards?

Ans. Yes, sir.

Ques. But they had fought it and kept it east of that?

Ans. Yes, sir.

Ques. Where did you find that fire when you got home?

Ans. I found the main body of the fire went out. The wind was blowing somewhere east. The big fire was still eating up towards Pomona station.

Ques. You fought a fire along the fence there, didn't you, after you got home, still there on McKee's property?

Ans. Yes, sir.

Ques. That was to the east of McKee avenue and north of the railroad?

Ans. That night I first fought this fire that I was speaking of, burning in to the east. I fought that fire first.

Ques. Pomona is off this way, isn't it, to the north?

Ans. Yes, sir.

Ques. When was it that fire went up to the north, towards Pomona?

Ans. On Monday afternoon the wind breezed up pretty brisk. It was about south. I couldn't give the direction, but off in that direction.

Ques. That was Monday?

Ans. Yes, sir.

Ques. How long did you see that fire?

Ans. I didn't pay much attention to the fire after it got out of the limits of the town there, or McKee's property.

Ques. You didn't see that fire put out?

Ans. I seen the fire off that way.

Ques. That fire went off across the head of Gravelly Run and towards Pomona.

Ans. It went across towards Pomona.

Ques. Across the head of Gravelly Run towards Pomona?

Ans. Gravelly Run heads it before it comes to Pomona.

Ques. Doesn't it head on McKee avenue?

Ans. It goes right across McKee avenue.

Ques. Isn't there an iron pipe across McKee avenue?

Ans. Yes, sir; that is about the head of it.

Ques. But the head of it is on the east of McKee avenue?

Ans. I think so.

Ques. It went towards Pomona?

Ans. Yes, sir.

Ques. And you saw that fire burning until Thursday, didn't you?

Ans. Well, I couldn't say about that fire. I didn't pay much attention.

Ques. You didn't see that fire put out?

Ans. No, sir.

Ques. That fire that started on this Sunday afternoon, you didn't see put entirely out?

Ans. No, sir.

Ques. Now, Mr. Duberson, I understood from your direct examination that you hadn't seen any fire on the northerly side of Gravelly Run swamp, and that you saw there, on Saturday, a fire come out of Gravelly Run swamp on the south; now this fire started on the

south side or southeasterly side of Gravelly Run that started on Monday, did it not?

Ans. Yes, sir.

Ques. On the opposite side of the run from the fire which they have been describing?

Ans. Yes, sir; somewhere about two miles below.

Re-direct examination.

By Mr. Pancoast:

Ques. How far is McKee avenue spoken of easterly of the point here where the fire in question crossed the West Jersey Railroad?

Ans. I should judge somewhere about two miles.

Ques. Two miles?

Ans. Yes, sir; near that. Somewhere about that.

Ques. Did that fire to your knowledge ever get on the westerly of McKee avenue?

Ans. No, sir; never did.

Ques. And how far was McKee station away from this swamp where the fire in question was?

Ans. Somewheres about two miles and a half, I should think, by the mile-posts on the railroad. It extends up to the second mile post each way, the station one way and the fire the other.

Ques. As far as you know, did that fire ever get down in the vicinity of this fire?

(Objected to.)

The Court: That is an inference to be drawn from the facts one way or the other.

JACOB DUBERSON, sworn.

Direct examination.

By Mr. Pancoast:

Ques. What is your age?

Ans. Nineteen in November; that is, next November coming.

Ques. What relation are you to Elisha C. Duberson?

Ans. Son.

Ques. You have been here attending court a day or two as a witness?

Ans. Yes, sir.

Ques. At this trial?

Ans. Yes, sir.

Ques. You have heard the testimony, have you, and know what the trouble is about?

Ans. Yes, sir.

Ques. Where were you living in September, 1895, the time this fire in question started in Gravelly Run cedar swamp?

Ans. McKee City.

Ques. With whom?

Ans. My father, Elisha Duberson.

Ques. When was your attention first drawn to this fire, as nearly as you can tell?

Ans. Why, several days before the 21st.

Ques. What circumstances first called your attention to it?

Ans. The smoke of it.

Ques. Where were you when you first discovered the smoke, indicating that there was a fire there?

Ans. Home.

Ques. At your home?

Ans. Yes, sir.

Ques. Where did that smoke come from, as far as you saw and were able to judge?

Ans. Gravelly Run swamp.

Ques. Do you know where the little switch and block station is there on the road?

Ans. Yes, sir.

Ques. Was it anywhere near that that the fire seemed to be when you first noticed it?

Ans. Yes, sir; it seemed to be right around that.

Ques. Did you see it in the daytime or night time, or both?

Ans. Daytime.

Ques. When did you first go to the scene of the fire at all, go down to the place?

Ans. Saturday, September 21st.

Ques. With whom?

Ans. Father.

Ques. For what purpose?

Ans. Fighting it.

Ques. Where did you go from?

Ans. Home.

Ques. Your home, then, was along the line of the West Jersey Railroad, between the fire and Atlantic City, was it?

Ans. Yes, sir.

Ques. About how far distant?

Ans. About a mile and three-quarters.

Ques. How did you go to the fire? What road did you take?

Ans. The railroad.

Ques. You took the railroad?

Ans. Yes, sir.

Ques. Well, in coming towards the Gravelly Run cedar swamp, where did you first encounter the fire and fight it, when you came up towards it? Where did you first meet the fire coming up the road?

Ans. Why, it was back in the swamp.

Ques. What swamp?

Ans. Gravelly Run swamp.

Ques. On which side of the road?

Ans. On this side that we are on now.

Ques. The easterly side?

Ans. Yes, sir.

Ques. In which direction then was the fire moving?

Ans. Well, it was just eating around in there, going towards the railroad.

Ques. Well, what did you do, if anything, to stop the fire?

Ans. Shortly after I got there the wind backened and breezed up this way towards the railroad, from Gravelly Run swamp towards the railroad, and it drove the fire out towards the railroad, and I was fighting to keep it off the mill towards May's Landing.

Ques. Well, what was the result of the fighting?

Ans. The fire crossed the railroad and went on down, and I put out the fire around the mill.

Ques. What did it burn in crossing the right of way of the railroad?

Ans. Why, the kind of stuff that laid there and couldn't be—that is, hadn't been gathered up.

Ques. What kind of stuff?

Ans. Grass, leaves and other stuff like that.

Ques. At the point of crossing were the ties burned any; the railroad ties?

Ans. Some.

Ques. What time did it cross?

Ans. Between one and two o'clock.

Ques. Who else was there, if any one, trying to check its progress?

Ans. My father and another fellow named Tony. I can't speak his last name.

Ques. Is he an Italian?

Ans. Yes, sir; he is here.

Ques. Well, where did that fire go to then, after it crossed the railroad?

Ans. Went down into Mr. Abbott's cedar swamp.

Ques. Which direction did the fire take after it crossed the railroad on the 21st?

Ans. Right on down.

Ques. What direction with reference to the Abbott swamp, away from it or towards it?

Ans. Towards it.

Ques. Were you there on the 22d?

Ans. No, sir.

Ques. Was there a mill there burned that day?

Ans. After the fire had crossed the railroad there was a mill burned.

Ques. Whose mill? What was the name of the mill? What was it called?

Ans. McKee's mill.

Ques. On which side of the road?

Ans. On the easterly side of the road.

Ques. That is the side of the road from which the fire crossed?

Ans. Yes, sir.

Ques. Do you know about what time the mill was burned?

Ans. The mill was burned——

Ques. As near as you can tell.

Ans. After four o'clock. I left about half past three, or a quarter after, and the mill was burned the same afternoon.

Cross-examination.

By Mr. Gaskill:

Ques. Now, Jacob, what back-fires did you kindle, or side-fires?

Ans. None.

Ques. Did you or anybody kindle any that day?

Ans. No, sir.

Ques. None at all?

Ans. None at all.

Ques. You were not there when Mr. J. E. P. Abbott kindled his side-fire?

Ans. No, sir.

Ques. Did you see this fire after it crossed the railroad track go off in this direction, (indicating on map) off southerly, directly on across the railroad track, off to the south?

Ans. No; sort of down the other way.

Ques. Went right down this way? (Indicating.)

Ans. Yes, sir.

Ques. Didn't start to go this way at all?

Ans. No, sir; not as I know of.

Ques. Now, this grass and stuff that had been mowed on the right of way had been gathered up as clean as they could get it without getting down on their hands and knees and picking up the little pieces?

Ans. Well, it couldn't be raked any cleaner.

Ques. Ends of scrub oaks?

Ans. You might call them scrub oaks where the stuff had been cut off.

Ques. Now, when you saw this smoke several days before the 21st in the swamp, I don't understand you to say that you went to it at all?

Ans. No, sir.

Ques. And you don't know what part of the swamp it was in?

Ans. No, sir.

Ques. And don't know whether it was in the swamp or on the south side of the swamp?

Ans. No, sir; I know it was in the swamp.

Ques. You lived up here somewhere, or there? (Indicating on map.)

Ans. Yes, sir.

Ques. And that is about how many miles from the flag station and switch siding down in the swamp?

Ans. That was about, as near as I can tell, two miles.

Ques. Isn't it two miles and a half from McKee City station to Reega?

Ans. I can't say that.

Ques. You live up near McKee City station?

Ans. Yes, sir.

Ques. And then this would be the additional distance from Reega down to that siding?

Ans. Yes, sir.

Ques. Wouldn't it be nearer three or four miles from where you live down here to this switch in the swamp?

Ans. It isn't as much as four miles.

Ques. Is it not as much as three miles?

Ans. No, sir.

Ques. You are positive of that?

Ans. Yes, sir.

Ques. You saw the smoke in the swamp up here?

Ans. Yes, sir.

Ques. That was not the only fire that you saw at that time? It was not the only smoke that you saw from a fire at that time?

Ans. At the present time it was.

Ques. At what present time?

Ans. Why, three or four days; something like that; before the 21st.

Ques. On the 15th you had seen fire there?

Ans. Yes, sir.

Ques. You were home on Sunday afternoon, weren't you?

Ans. I came home, as near as I can tell, at five o'clock, or half past.

Ques. Was the fire burning when you got home?

Ans. Yes, sir.

Ques. Were you with your father that day at Atlantic City?

Ans. Yes, sir.

Ques. When you got home did you help fight that fire?

Ans. Yes, sir.

Ques. That fire went in a northerly direction off toward Pomona, didn't it?

Ans. In what direction?

Ques. Northerly or northeasterly?

Ans. Yes, sir.

Ques. And burned around there two or three days?

Ans. Yes, sir.

Ques. And you didn't see it put out?

Ans. No, sir.

Re-direct examination.

By Mr. Pancoast:

Ques. Did that fire ever come up across McKee avenue?

Ans. Not as I know of.

Ques. About how far away from that, from the site of this fire in question, to the other fire?

Ans. Why, somewhere near two miles, I should judge.

ANTONIO CIRIGLIANO, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Are you an Italian?

Ans. Yes, sir.

Ques. Can you speak English very well?

Ans. I speak a little bit, not much. I understand some. I can't speak every word.

Ques. Where do you live?

Ans. Close to Reega station.

Ques. On the West Jersey Railroad?

Ans. Yes, sir.

Ques. In this county?

Ans. Yes, sir.

Ques. How long have you lived there?

Ans. About three years, last April.

Ques. Do you know where the Gravelly Run cedar swamp is, in that neighborhood?

Ans. Yes, sir.

Ques. Do you know where the Abbott swamp is?

Ans. Yes, sir.

Ques. Do you know where the West Jersey Railroad crosses the swamp?

Ans. Yes, sir.

Ques. Do you know where this little station and switch is on the road there in that swamp?

Ans. Yes, sir.

Ques. Do you know where the bridge is over the road?

Ans. Yes, sir.

Ques. In the swamp?

Ans. Yes, sir.

Ques. Are there several houses at Reega station?

Ans. About six or seven houses there.

Ques. Is yours the nearest or farthest from the railroad bridge?

Ans. Yes, sir.

Ques. Which?

Ans. Mine is first.

Ques. The nearest to the bridge, is it?

Ans. Yes, sir.

Ques. The nearest house in Reega to the swamp?

Ans. Yes, sir.

Ques. Gravelly Run cedar swamp?

Ans. Yes, sir.

Ques. How far is your house from the railroad?

Ans. Oh, not very much.

Ques. As near as you can judge?

Ans. I don't believe a hundred feet.

Ques. Do you remember the fire that was in Gravelly Run cedar swamp in September, 1895?

Ans. Yes, sir.

Ques. How long did you notice it there, as near as you can tell?

Ans. That fire?

Ques. Yes.

Ans. Well, a good many days; maybe six or seven days. I didn't take notice how many days. I see the smoke all the time.

Ques. How far was this smoke or fire that you saw there from this little flag station where the switch was?

Ans. About pretty near half a mile; maybe more; maybe close to the Bacon farm, or what you call it.

Ques. It was in that direction, was it?

Ans. All along the road. I see the light every night.

Ques. When did you first go to the fire?

Ans. I didn't go to the fire at all. I fight the fire that day; jump off the railroad, that is all.

Ques. You were there that day?

Ans. No; I work back in the woods, you know. I see the smoke. I gone home. I see the fire getting up close to the railroad there.

Ques. You were at work on your farm there?

Ans. Yes; I was back in the woods all along Somers Point road that day. I see the light and smoke that day.

Ques. On which side were you working, on the side your house is, or the other side?

Ans. On the side my house is. I see the smoke all day. I come here to see about the fire, as soon as I see Duberson and his boy fighting fire. He was the other side of me.

Ques. Which way was the fire going that they had to fight it?

Ans. Coming from the station, right by the sawmill.

Ques. From which direction was it coming?

Ans. They stayed in the road.

Ques. No; from which direction was it coming; from the Absecon road or towards Absecon road?

Ans. Yes, sir.

Ques. Was that the direction of the Gravelly Run swamp?

Ans. I don't know what you call the place. It come close to New York avenue. It comes right this way.

Ques. Was it coming from the direction of New York avenue?

Ans. Yes, sir.

Ques. Did you try to fight it off, there?

Ans. Yes; I tried to fight the fire. As soon as the wind changed it blew a little hard and I had to get out of the fire; and soon it blew a little stronger and it jump the other side of the railroad. I had to hunt for myself that time. Of course the fire was by my house. I got scared. I didn't know what it was going to do.

Ques. What time of the day, as near as you can tell, did it cross the railroad?

Ans. About quarter after two o'clock; half past two, I guess. I didn't have no time.

Ques. Do you recollect when the mill was burned there?

Ans. Yes, sir.

Ques. Was that before or after it crossed?

Ans. After it crossed.

Ques. How near up to the ties did the fire burn when it was crossing the railroad?

Ans. Well, you can't tell that, because the wind blow hard. The fire gone into the ties and through the ties and jump the other side of the road.

Ques. Were the ties burned, too?

Ans. Yes, sir.

Ques. After it got across the railroad, which direction did it take then, towards Abbott's swamp or away from it?

Ans. Well, it had gone right below my house and gone right straight into the swamp.

Ques. What swamp?

Ans. Mr. Abbott's swamp.

Ques. Were you there on the 22d?

Ans. I don't know what day.

Ques. The day after it crossed?

Ans. I know it was Saturday, that is all. I don't know the day of the month.

Ques. Were you there when it got into Abbott's swamp?

Ans. Yes, sir; I was when the fire went across the railroad, that is all.

Ques. Were you there on the next day; the day after the fire got into Abbott's swamp?

Ans. The next day, Sunday, I was pretty near sick. I stayed home all the time. From the work and smoke I was sick that day. I couldn't get out of the house. Shoveling sand right in the smoke blinded me. I was sick for a couple of weeks.

Ques. Sick for a couple of weeks?

Ans. Yes, sir; my eyes were sore.

Ques. On account of that fight you had with the fire on Saturday?

Ans. Yes, sir.

Cross-examination.

By Mr. Gaskill:

Ques. You didn't go down into the swamp?

Ans. No, sir.

Ques. And all that you know about where any fire was, was by seeing the smoke?

Ans. That is all; smoke.

Ques. And the smoke that you saw you told us was over towards the Bacon farm?

Ans. Yes, sir.

Ques. And that is all the smoke that you saw before this Saturday when the fires came out from Gravelly Run?

Ans. Yes, sir.

Ques. Did you see any other smoke in that direction?

Ans. Only from that swamp. I see it a good many days in that swamp. As soon as the wind get strong it push it there.

Ques. Did you see any smoke over towards McKee City?

Ans. After the fire crossed the railroad?

Ques. Before the fire crossed the railroad, did you see any fire or smoke?

Ans. No, sir.

Ques. At McKee City station?

Ans. No, sir.

Ques. You say that the wind was strong there when the fire crossed the railroad?

Ans. Yes, sir.

Ques. And it was the wind that blew the fire across the railroad?

Ans. Yes. It jumped three or four places.

Ques. You were trying to fight it and had to get out of the way?

Ans. Yes, sir.

Ques. And save yourself?

Ans. Yes, sir.

Ques. You were right in front of it?

Ans. Yes; right in front of my door it jumped first.

Ques. Before this fire came, you had gathered all the hay and stuff along the railroad and taken it home?

Ans. Well, sometimes as soon as the section gang cut the brush I tried to get the brush.

Ques. Scraped it up as clean as you could and took it home?

Ans. Yes, sir.

Re-direct examination.

By Mr. Pancoast:

Ques. What did you scrape it up with?

Ans. With my hands; scraped it up right in front of my house.

Ques. Did you pick it up with your hands, or a fork, or what?

Ans. With my hands. They cut all the grass right in front of my house.

Ques. They gave you that?

Ans. Yes, sir. I wanted to keep the place clean.

Ques. Did they give you that for your—

Ans. Well, sometimes others got it before I would. Nobody come right in front of my house.

By Mr. Gaskill:

Ques. What was right in front of your house nobody else got?

Ans. No, sir.

Ques. The railroad men had raked and scraped it up into nice piles for you?

Ans. Maybe you do some things you want somebody to help you.

Ques. Did the railroad men rake it up into piles?

Ans. Oh, I tell it one time, and that is enough.

By Mr. Pancoast:

Ques. Then those who wanted it could come and get it, and the first one there could take it away?

Ans. I ain't going to steal the grass. I wanted to get it clean in front of my house.

By Mr. Gaskill:

Ques. When you were fighting this fire on this Saturday afternoon, did you back-fire or side-fire?

Ans. I don't know what you call side-fire. I don't know what you call it.

Ques. Did you start any fires by your house to keep the other one off?

Ans. No, sir.

Ques. Did you start any by the mill to keep it off the property?

Ans. No, sir; I didn't start any at all. I only drop sand on it, that is all.

Ques. You know this man here? (Indicating McClure.)

Ans. Yes, sir.

Ques. On that Saturday afternoon of the fire, on that same Saturday afternoon that it jumped the track, didn't you tell Mr. McClure that you kindled a fire to help save the mill?

Ans. Certainly.

Ques. And you kindled a fire to help save the mill?

Ans. I don't know what you mean.

Ques. Did you tell him that you did?

Ans. No, sir; I didn't start any fire.

Ques. Did you tell him that?

Ans. No, sir.

CLARK ABBOTT, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Are you one of the plaintiffs?

Ans. Yes, sir.

Ques. Do you recollect the fire that occurred in your swamp in question in this case, of September, 1895?

Ans. Yes, sir.

Ques. How was the earth at that time, as to dryness?

Ans. Very dry. I never knew it dryer.

Ques. When was your attention first drawn to this fire, as near as you can recall?

Ans. I think about the 13th or 14th of September.

Ques. Did you see it then?

Ans. I could see the smoke of it.

Ques. Where did it seem to be on the 13th or 14th, when you saw the smoke of it?

Ans. Well, in Gravelly Run swamp.

Ques. Where in relation to the West Jersey Railroad, near by or far off?

Ans. Well, near the railroad.

Ques. On which side?

Ans. The north side; northeast side.

Ques. How long did you notice it there, if at all, after the 13th or 14th, when your attention was first drawn to it?

Ans. Well, for several days. On the 16th I had a conversation with one of the section men.

Ques. Well, you can't state that conversation. You can state what you did in consequence of that conversation.

Ans. Well, I didn't go to the fire from that; because from what he said——

(Objected to.)

Ques. You didn't go to the fire?

Ans. Not at that time.

Ques. Pass on then.

Ans. I didn't go to the fire until the 22d, the morning after the fire had crossed the railroad.

Ques. From the time you first noticed it there in the swamp until the 22d, did you see it there continuously or not?

Ans. Yes, sir; most every day. I could see the

smoke and kept inquiring where it was, and thought it was safe on the north side.

Ques. North side of what?

Ans. Of the railroad and our property on the south side.

Ques. Did you go to the scene of the fire on the 22nd?

Ans. I did.

Ques. For what purpose?

Ans. To fight the fire and try to put it out.

Ques. Where did you find the fire then?

Ans. Burning right straight out from where it had crossed, the day before, on Saturday, and of course spreading out. The head of the fire was straight, but spreading out like a balloon.

Ques. Were you where the fire crossed that morning?

Ans. Yes, sir; Sunday morning.

Ques. What morning?

Ans. Sunday morning, the 22nd.

Ques. Did it leave any trace there at the point of crossing?

Ans. It did, to the inch. To the very inch you could tell.

Ques. How could you tell?

Ans. Well, it was black and charred, just the same as if you poured a bottle of ink across a paper. You could tell where it was burned.

Ques. What was there on the outer edge of the right of way up to the track?

Ans. Pieces of stubble and Indian grass. The top had been mowed off and this was fine. The fire went like lightning across it. That was within a few inches of the ties on either side.

Ques. What was the condition of the ties intervening between these tracks?

Ans. Not less than twenty ties set fire to, and quite

big holes burned in them; so much so that they have been removed since, a great many of them.

Ques. About what was the width of that crossing?

Ans. About thirty to fifty feet.

Ques. Was that the only point of crossing by fire that you saw?

Ans. The only point.

Ques. How many feet? I didn't catch that.

Ans. I said from thirty to fifty where it crossed the ties.

Ques. Was there anything there to indicate from what direction the fire had come to the crossing?

Ans. Yes, sir.

Ques. What?

Ans. The trees. The trees on one side were black and on the other side were not black at all, which indicates from where it had come. I have been used to fighting fire, and you could tell from that.

Ques. From which direction had it come?

Ans. Right up out of the swamp.

Ques. What direction did this fire take on this Sunday when you were there to fight it?

Ans. Right on out. When we were there it kept right on northerly.

Ques. Right on at right angles to the railroad?

Ans. Yes, sir; right in balloon shape. It was spreading out. We met the fire on high ground.

Ques. That was on Sunday?

Ans. Yes, sir.

Ques. What was the result of your effort?

Ans. We thought we could whip it out right there if the wind hadn't breezed up any more.

Ques. How many of you?

Ans. Well, six or eight. I won't be positive unless I should think awhile.

Ques. A gang of men?

Ans. Yes, sir. We commenced to whip it out and here came the wind to the southward and it went right over our heads into the swamp, and we had to let it go.

Ques. You saw it go there, did you?

Ans. I did.

Ques. Are you familiar with the bounds of your swamp?

Ans. Yes, sir.

Ques. Were you through it after the fire?

Ans. Yes, sir; several times.

Ques. What part of the swamp was injured, generally speaking? Do you know where what is called the Wheat Field is?

Ans. Yes, sir. The body of the fire struck in there. It widened out in different wings as the wind would take it.

Ques. Was all your part of that Wheat Field burned, to your personal knowledge?

Ans. Well, you may find a tree or two that was missed.

Ques. Have you been around there since?

Ans. Yes, sir; walked all through it.

Ques. You found everything dead, killed?

Ans. Yes, sir.

Ques. Do you know what these dark spots are meant to represent on map P3, in this case?

Ans. Yes, sir.

Ques. What?

Ans. That which is burned of the big timber.

Ques. Did you see those spots?

Ans. Yes, sir.

Ques. After the timber was burned?

Ans. Yes, sir; helped survey them.

Ques. What are the white places not colored on this map, Exhibit P3, meant to represent?

Ans. That represents the green cedar that was not burned.

Ques. What does this in lead color, smoke color, on map, Exhibit P3, represent?

Ans. Do you want to know what kind of timber or what it represents?

Ques. Yes, sir.

Ans. It represents that which was burned at that time by the fire.

Ques. Well, different character of timber, was it?

Ans. Oh, yes; younger timber. It had been cut off and was started up, a good deal of it in young timber.

Ques. After the fire were you all over that smoke colored tract?

Ans. Yes, sir; aimed to get all over it; tried to get all over it. I was there several times and tried to get all over it.

Ques. How much of the Wheat Field was not burned, if any, as far as you know going over it?

Ans. As I said before, you might find a tree or two there left, but you would consider it all killed.

Ques. This eight acres spoken of in the testimony, you saw that?

Ans. Yes, sir.

Ques. How was that?

Ans. All killed; a good deal of it down; some standing.

Ques. What experience have you had in your lifetime touching timber land; working off timber land and disposing of it?

Ans. Well, I have worked at it more or less from 1875 until within the last year. I generally had the taking up of the logs and did the hauling and built the causeways—those communicating with the cedar. Those made of brush in the swamp the choppers made.

Ques. You have been engaged in the business of getting off and chopping cedar for many years in this county?

Ans. Yes, sir.

Ques. Timber similar to this on this tract?

Ans. Yes, sir; most all cedar.

Ques. Have you had to do with the timber that has been cut off this tract from time to time?

Ans. Yes, sir.

Ques. You are one of the owners now, are you?

Ans. Yes, sir.

Ques. What in your judgment was the fair market value of the Wheat Field tract before it was burned?

Ans. Well, I should judge it was worth $25 an acre. It had got a nice growth, and was growing fast.

Ques. What is it worth now, after it is burned?

Ans. Nothing to me.

Ques. Well, to anybody?

Ans. Well, nothing to anybody.

Ques. What can you dispose of it for in the markets?

Ans. I don't know that you could get anything.

Ques. What are these eight acres of good timber that were burned, represented by the dark spots on this map, that were burned, worth per acre in your judgment?

Ans. Well, I should say they were worth $175.

Ques. What is it worth per acre since it has been burned?

Ans. Well, you could hardly give it to me.

Ques. What could you get for it?

Ans. Well, I don't know as it is worth anything. Someone may take it to get it off, but I don't consider it worth anything to sell. You must take the location?

Ques. Give us a general description of the run of timber there at the time the fire struck it.

Ans. It was good timber, all workable timber, called saw stuff, all good timber. You could work it and put it into market.

Ques. How high and how thick there?

Ans. Large enough for nice plank, boat boards or

anything of that sort that we have sale for around the country.

Ques. Tall or short?

Ans. Tall.

Ques. Thick on the ground or otherwise?

Ans. In places very thick.

Ques. What was the character of this part of the tract delineated in smoke color?

Ans. As I said before, that had been cut off before, part of it, and started up in young cedar in places. Other spots hadn't started. It was started in young cedar.

Ques. What was the age of the growth?

Ans. From eight to twelve years.

Ques. Pretty well set with timber?

Ans. It was getting to be in places. Cedar don't always start alike all over. Some places were started nicely, and others just started.

Ques. What was that tract worth per acre at the time of the fire?

Ans. I should think on an average $15.

Ques. What would be the fair market value of it now?

Ans. I don't think it is worth anything.

Ques. What, according to your observation and experience, is the effect of such a fire as this upon the soil?

Ans. Well, I shouldn't expect it to start in my day or my children's day; so I shouldn't consider it worth anything for that. If you raise the water for a cranberry bog, of course you kill your swamp.

Ques. Could this timber be worked off this swamp without the use of causeways?

Ans. It could not.

Ques. Were there any causeways in this swamp at the time of the fire?

Ans. Yes, sir.

Ques. How many?

Ans. Well, we had two that we kept up, always kept in shape.

Ques. Were there others, older ones, that you didn't keep us?

Ans. Yes, sir; those we hadn't any use for rotted down.

Ques. Are these two that you kept up delineated on this map, Exhibit P3?

Ans. Yes, sir.

Ques. Were they in condition to be used at the time of the fire?

Ans. Yes, sir; we used them during the fire till the fire burned them up; used them to carry water on, all the way from Gravelly Run to the edge of the swamp. When the fire took in we turned around and came back. We couldn't haul water enough to put it out. It would get the best of us.

Ques. Do you know what the dimensions of these causeways were?

Ans. Well, I did know, but the surveyor took the account, and I didn't make any memorandum myself.

Ques. What would it cost to put down such causeways per rod?

Ans. Take the ground as it is now, with nothing alongside to make it, in the neighborhood of $3.

Ques. $3 a rod?

Ans. Yes, sir.

Ques. Is that a fair estimate, in your judgment?

Ans. Yes, sir; I think so.

Ques. What remains of those two causeways now?

Ans. Well, in most places there is nothing; in other places you can find pieces this long (Indicating) and some others like charcoal. I will say that in measuring the causeway, wherever it was burned we didn't measure it. We measured that which was burned.

Ques. Did you investigate to see whether the fire had burned down beneath the causeway?

Ans. Oh, yes; in places everything was burned out clear down.

Ques. Well, how far down?

Ans. Well, it is owing to the soil. In places where the soil is deep, it would go down to the sand, two or three feet. In other places where the soil was, not so deep, it would go to the sand; wouldn't go so deep.

Ques. Were these charred trees on the wooded part there standing or falling after the fire?

Ans. Well, both. Some were standing and some down. Some clumps are all down; other clumps, where they stood close together, to protect each other, were standing.

Cross-examination.

By Mr. Gaskill:

Ques. Then according to the figures which you have given to us, Mr. Abbott, the damages to this swamp after the fire amount to something like $4,500 or $5,000?

Ans. No, sir.

Ques. Well, now, just figure it out. Eight acres at $175 an acre is what? You are collector of taxes in this township; you can figure what it is that amounts to? Can you tell me how much eight acres at $175 amounts to? Can't you figure it?

Ans. Yes, if you wish me to.

Ques. Just tell us what eight acres at $175 per acre amounts to.

Ans. $1,200.

Ques. Isn't it $1,400?

Ans. Yes, that is right.

Ques. Now, then, one hundred and thirty-five acres at $15 an acre, what will that amount to?

Ans. $2,025.

Ques. Now twenty-five acres of the woodland at $25 an acre comes to what?

Ans. $625.

Ques. Now one hundred and sixty rods of crossway, at $3 a rod?

Ans. $480.

Ques. Now just add $1,400 and $2,025 and $625 and $480 together and see if you don't get about what I said.

Ans. $4,530.

Ques. That is the amount that you are now claiming by your figures for the damage that is done?

Ans. Yes, sir.

Ques. And you have got over fifty acres of good cedar left?

Ans. Yes, sir.

Ques. And $1,000 was all it was assessed before the fire, wasn't it?

(Objected to as not being evidence of value.)

The Court: He is cross-examining this witness as to the value.

Ques. Prior to the fire the whole thing was assessed at only $1,000?

(Objected to on the ground that the assessment is no evidence of value. Objection overruled.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. The whole thing prior to the fire was only assessed at $1,000?

Ans. I think so.

Ques. And you were kicking on that assessment and trying to reduce it?

Ans. I never heard of it.

Ques. You were collector of taxes and were not aware of it?

Ans. Not that I heard of.

Ques. You were present at the various meetings of the Commissioners of Appeal?

Ans. Yes, sir. Well, except this last year.

Ques. How long have you been collector?

Ans. One year.

Ques. Then you don't know what was done with reference to securing a reduction in the year 1895?

Ans. No, sir.

Ques. Nothing of this whatever?

Ans. No, sir.

Ques. Let's go back a moment to some of those figures. What were those causeways in that swamp built of?

Ans. Poles.

Ques. All of them?

Ans. Those two.

Ques. Weren't there any causeways in there built of slabs?

Ans. None that we counted.

Ques. I didn't ask you that.

Ans. One that we saw.

Ques. You can still build crossways with slabs?

Ans. Well, they are pretty costly.

Ques. They won't cost $3 a rod?

Ans. Well, they don't last long.

Ques. They don't cost $3 a rod?

Ans. Well, if you had to keep them up a number of years it might.

Ques. You know it would not cost $3 a rod for a slab crossway?

Ans. It wouldn't cost much right there, but you have got to take all these things to it. We haven't got them.

Ques. Have you been working this swamp since this fire?

Ans. No, sir.

Ques. Haven't taken any out of it?

Ans. Not that I am aware of, a single stick.

Ques. Have you cut into the swamp or taken any out?

Ans. No, sir.

Ques. Within the outbounds of the tract, have you cut or worked any off since the fire?

Ans. Not where the fire was. I didn't work that. There was a few poles that fell down right ashore by the bridge that I brought home. That has nothing to do with this fire at all.

Ques. There had been a fire in there before, hadn't there?

Ans. Right here at the pond bridge.

Ques. Will you swear of your own knowledge that there have been any cross-ties put in that railroad where that fire crossed since the fire?

Ans. Mr. McClure said that.

Ques. When did you hear him say that?

Ans. Some time ago.

Ques. Don't you know as a matter of fact that no new ties have been put in at that place?

Ans. No, sir; not unless I should go there.

Ques. All that you know is what you heard somebody say?

Ans. Ask Mr. McClure.

Ques. I am asking you.

Ans. Well, I believe there has been.

Ques. Have you been there to look and will you now say on your oath that there has been?

Ans. I won't say positive.

Ques. Have you been there since the fire?

Ans. Several times.

Ques. Along the railroad?

Ans. Yes, sir.

Ques. And from what you saw you think there have been new cross-ties put in there where the fire crossed?

Ans. Yes, I think so.

Ques. You say that you helped survey these black spots in there where the timber was damaged by the fire. Will you be kind enough to tell me when that was done?

Ans. I think in March.

Ques. March of this year?

Ans. Yes, sir; I think so. I can't be positive. I think it was March.

Ques. That is since the time that you and Mr. Wilson and the others were out there on the ground? That was last fall or the fall before?

Ans. They were down, I think, in October.

Ques. October or November?

Ans. I think so.

Ques. There wasn't any survey made definitely to ascertain the cedar burned until March of this year?

Ans. No, sir.

Ques. Do I understand you to say that all of this tract of land shown on map No. 3, in smoke color, was started up in young cedar?

Ans. Most of it; I won't say all of it.

Ques. How many acres out of the hundred and thirty-five?

Ans. That I won't say; biggest part of it.

Ques. Was it in thick bunches, or all over?

Ans. In places in thick bunches.

Ques. Where were there thick bunches? Will you mark on the map where there was a thick bunch of young cedar?

(Witness indicates.)

Ques. Is that the only place?

Ans. Scattered all through here.

Ques. How much of it?

Ans. Then over again on this side. (Indicating.)

Ques. How old was that cedar that was started up in there?

Ans. I said from six to eight years, I think, or six to ten years.

JOHN H. BOZARTH, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Mr. Bozarth, where do you live?

Ans. Elwood.

Ques. Atlantic county?

Ans. Yes, sir.

Ques. What is your business?

Ans. Lumber business.

Ques. How long have you been in the lumber business?

Ans. About thirteen years?

Ques. In this county?

Ans. Yes, sir.

Ques. In what way have you been in the lumber business for thirteen years? What kind of lumber business have you been doing?

Ans. Cutting and sawing cedar.

Ques. Have you bought any cedar land in that time?

Ans. Yes, sir.

Ques. Worked it off?

Ans. Yes, sir.

Ques. Are you engaged in that business at the present time?

Ans. Yes, sir.

Ques. Running a mill?

Ans. Yes, sir.

Ques. Now?

Ans. Yes, sir.

Ques. Have you been in attendance at this trial for a day or two?

Ans. Yes, sir.

Ques. You know what the controversy is about, do you?

Ans. Yes, sir.

Ques. Do you know this Abbott swamp in question?

Ans. I do; yes, sir.

Ques. Have you been over it since the fire of September, 1895?

Ans. Yes, sir.

Ques. With some of the Abbotts?

Ans. Yes, sir.

Ques. With a view to qualify yourself to speak as a witness in relation to the damages?

Ans. Yes, sir.

Ques. Were you there on more than one occasion?

Ans. Only once; that is, since the fire.

Ques. Were you there before the fire?

Ans. Yes, sir.

Ques. Now, do you see these several black spots delineated on map P3 that has been spoken of by the various witnesses in this case?

Ans. Yes, sir.

Ques. Did you see these spots on the ground?

Ans. I did.

Ques. Were they pointed out to you?

Ans. Yes, sir.

Ques. By whom?

Ans. Mr. Abbott, Charles Abbott and Mr. Clark Abbott.

Ques. What, in your judgment, was the fair value of those bits, assuming that there were about seven or eight acres, per acre, at the time of the fire.

Mr. Gaskill: I object to "their value." It must be market value.

Mr. Pancoast: Fair market value.

Ans. Before it was burned?

Ques. Yes; at the time it was burned.

Ans. Well, about $125 an acre I put it at.

Ques. What was it worth after it was burned?

Ans. Well, there is portions of it I don't think that is worth anything. It would cost all it is worth to get it out; that is, some of the black lines.

Ques. Well, take it as it is now; what could you fairly get for it; timber as it stands?

Ans. There is about two acres of it—about an acre and a half at one end and a little over half an acre at this end—there might be something got out of, but beyond that——

Ques. Well, how much according to your judgment?

Ans. I should judge you could get about one-third of the value of those two acres.

Ques. Did you notice how the fire had burned into the soil there?

Ans. Yes, sir; burned it very bad.

Ques. What effect does that have upon the land after the timber is taken off of it?

Ans. Well, it has destroyed that portion of it that I saw for raising cedar for many years.

Ques. You think it has practically destroyed the land for further vegetation?

Ans. Yes, sir; for raising cedar.

Ques. Did you look at that part which has been spoken of as the Wheat Field, delineated in yellow, about twenty-five acres?

Ans. Yes, sir; we went along through part of it. I didn't see it all; saw part of it.

Ques. You traversed it from one end to the other, did you?

Ans. Yes, sir; around the edge of it.

Ques. Did you see any portion of that that was not burned?

Ans. No, sir; all I saw was burned?

Ques. What was the fair market value of that tract per acre at the time it was burned?

Ans. From what I saw of it, it was worth about $25 an acre.

Ques. Well, now, what was it worth after the fire went through it?

Ans. Well, that is pretty hard to tell.

Ques. Well, what is a fair market value, if it has any? What could you sell it for?

Ans. Well, you couldn't sell the cedar for any price.

Ques. What could you sell the land for?

Ans. That I couldn't tell, what you could get for the land.

Ques. You don't know that it had any value then?

Ans. No, sir; I don't know that it had.

Ques. Now, did you go over the larger tract here delineated on this map in smoke color?

Ans. Very little of it. We followed the fire lines to where the large timber was, mostly.

Ques. Did you go through that?

Ans. Yes, sir.

Ques. And looked at it with a view of estimating it so far as you could?

Ans. So far as I saw of it; yes, sir.

Ques. What in your judgment was the fair value of that per acre when the fire struck it?

Ans. From what I could see of it, the cedar that

was standing, the scattering cedar, I should judge, with the land, was worth $15 an acre.

Ques. What was it worth after the fire went over it?

Ans. Practically nothing, I don't think.

Ques. Could that cedar be worked off from that swamp without causeways?

Ans. No, sir.

Ques. Have you any experience in building causeways?

Ans. I have; yes, sir.

Ques. Do you know what kind of causeways were in there before the fire?

Ans. I saw a few of the ends, but I didn't see any of the main crossways that were left that were not burned.

Ques. Did you see enough to judge of the character of the causeways that existed there before the fire?

Ans. Yes; they had been good rail crossways.

Ques. Were they crossways suitable for that kind of swamp?

Ans. Oh, yes; they would have been all right, I think.

Ques. Are they the kind that is usually built for that kind of swamp?

Ans. Yes, sir; the kind usually built.

Ques. What would it take to replace those causeways in a proper manner?

Ans. Well, through that part of the swamp that is burned so bad, there is no bottom to work on. You would have to build a foundation to put the crossway on, in the first place. Then you would have to use larger rails than you commonly did to make it strong enough to bear a team over. Now, the ordinary way of building a crossway, you build it there from the swamp. You take the tops and the small trees. That comes very cheap. But where you have to get the poles and move them and have the disadvantage and then have to

use long stringers in order to keep the poles in place, in that case I think it would take seventy-five to eighty rails to the rod of crossway, not including the stringers; and the kind of rails that I used, three to four inches, I generally get about $3 to $4 a hundred for those rails.

Ques. How much a rod would it cost?

Ans. Well, it would come in the neighborhood, with the expense of building and all, close to $3 a rod, to build that portion of it, that section. Now, if it could be built through the green cedar clumps why then it would be much cheaper to get through it.

Cross-examination.

By Mr. Gaskill:

Ques. Mr. Bozarth, I don't understand you as saying that if you had that swamp and was working it off that you would build $3 crossways to get out your timber?

Ans. No, sir.

Ques. And you would be able to build crossways to get out your timber at considerably less than that?

Ans. If I was working green timber I could.

Ques. How much could you build it for?

Ans. You couldn't build it for less than I spoke of unless you were working in the green timber.

Ques. How much could you build the crossways for to get out the green timber that is inside the swamp now?

Ans. Green timber?

Ques. Yes, sir. How much could you build that for now?

Ans. Well, across this place—

Ques. I am not talking about this place. I am talking about a man getting it at the nearest point in the pieces under existing circumstances. Now, then, if you were there to cut it as it is and get it out the nearest

way and the cheapest way, what would it cost you to do it?

Ans. Well, if you cut through the green cedar it wouldn't cost over 12 cents a rod.

Ques. You could come out this way and go in here (indicating on map) and build your crossway for twelve cents a rod?

Ans. I don't think you could.

Ques. How much could you?

Ans. Well, I don't know the distance from the shore.

Ques. Well, it comes right to the line of the shore.

Ans. Well, if it comes to the line of the shore then you can build it for twelve cents.

Ques. When it comes here close to the shore what can you build it for to get out this green timber?

Ans. Well, that would cost more, because that is burned off there.

Ques. Well, here is a green piece near the shore. (Indicating on map.)

Ans. That is the piece I was speaking of that might be of some use.

Ques. And you could build a crossway there so as to take the whole of it out for how much a rod?

Ans. Well, I suppose from that shore there you could build it in for a dollar a rod, I think, to strike the green cedar.

Ques. How far would it cost you a dollar a rod on across this smoke colored part and across the burned cedar part?

Ans. Across where there is no green cedar.

Ques. And when you get there to the green cedar it would not cost you anything, except the labor—twelve cents?

Ans. No, sir.

Ques. In other words, when you get to the green cedar you use what is otherwise waste for crossways?

Ans. Yes, sir.

Ques. Have you had any experience in using crossways made of scantling?

Ans. No, sir.

Ques. And carting it out?

Ans. No, sir.

Ques. You don't know what that would cost?

Ans. No, sir.

Ques. When you were talking about putting in stringers and rails, you said you put them in at the price you sell them at?

Ans. Yes, sir; what they are worth to me.

Ques. That was four cents apiece?

Ans. Yes, sir.

Ques. Well, in the woods, cut by the owner, right there on the ground, they are not worth three or four cents.

Ans. No; it has to be cut and take the expense of hauling.

Ques. Not worth more than a cent or two, are they?

Ans. Well, I don't know. They are worth more than that to me.

Ques. In the market?

Ans. Yes, sir.

Ques. Now, of course, this burned timber, tree-tops, and so forth, could be used in making a crossway for the poles?

Ans. Not very well. It becomes rotten and brittle. It would not stand anything.

Ques. But before it becomes rotten and brittle some of it can be used?

Ans. Some of it.

Ques. That would cut down the expense of building a crossway the way you said?

Ans. Well, through this place there isn't any timber of that sort that you could build a crossway of or across

this low place. There isn't anything there to build from. That is the reason I said it would cost extra to put it there. You would have to cart it two or three miles to get it there.

Ques. How about slab crossways; have you ever built them?

Ans. Yes; but I don't think it pays to use them.

Ques. They are good enough to take timber out?

Ans. Well, that depends on the bottom. If you have got a good bottom you can use it.

Ques. Well, you spoke about the bottom being uneven and having to have stringers; that is on the supposition that you use the longest distance, this way? (Indicating on map.)

Ans. Yes, sir.

Ques. But if you go in the other side you won't have to do that?

Ans. Yes; if you cut the green timber you don't have to do that.

Ques. And when you are cutting the green timber you can take the tops and put on the ground and lay on top of that?

Ans. Yes, sir.

Ques. You said that before the fire you had been through this swamp?

Ans. Yes, sir.

Ques. How long before the fire was it?

Ans. I think it was in 1894.

Ques. You went there with the view of purchasing, didn't you?

Ans. Yes, sir.

Ques. And what in your judgment, prior to the fire, was that whole survey worth; upland cedar, and everything?

Ans. Well, I was not looking at the land at all; only just this clump of cedar. I didn't notice anything out-

side of that. I just looked at this clump that was offered for sale. There was some pieces in that that was not included; some pieces outside not included at the time of the sale.

Ques. What in your judgment at the time of the fire was all that worth?

Ans. The green cedar without the land?

Ques. No; take the whole tract.

Ans. Oh, that I couldn't tell, because I didn't give any estimate.

Ques. Well, what was the cedar worth?

Ans. I suppose cedar at that time—what it was worth to me?

Ques. Oh, no; what it was worth in the market?

Ans. It is pretty hard for me to answer that.

Ques. Well, but you are coming here as an expert to fix value; fixing the sum of money for us to pay for what we burned. I am asking you a question which is in line with what you have qualified for. What was that cedar timber within those two irregularly defined tracts worth in money?

Ans. About $8,000.

Ques. And there was some five or six or eight acres of it?

Ans. I think there was.

Ques. Mr. Bozarth, what is cedar swamp bottom worth per acre in the market after the timber is cut, such as that?

Ans. Without any cedar at all on it?

Ques. Yes, sir.

Ans. Well, I suppose that depends upon the locality it is in.

Ques. Well, I am saying such as this, situated as this is.

Ans. I judge it is worth $10 an acre.

Ques. Have you ever known, within the last five or

six years, any cedar swamp bottom, where the cedar has been cut off, selling for $10 an acre?

Ans. Without any cedar on? No; I don't know of any being sold.

Ques. And you never knew any such price as that to be paid for any? I am talking about this inside of the tract now, these irregular pieces. You say $8,000. Let me explain my question. You have given me, as I understood, a valuation of $8,000 as the market value of the cedar inside of these two irregular shaped tracts?

Ans. Yes, sir.

Ques. That is, for the timber alone, prior to the fire?

Ans. Yes, sir.

Ques. Now, I ask you how much would that soil on which that timber stands bring in market per acre without the cedar? Suppose the timber was sold off, as is often the case, to different buyers at a sale; then at the close of the sale the soil is sold; how much would that be worth?

Ans. I don't know. I have no idea what it would be worth here; the bare ground itself.

Ques. You have never had any experience in the sale of that whatever?

Ans. No, sir.

Ques. You know this, Mr. Bozarth, that from your experience—how old a man are you?

Ans. Forty-seven.

Ques. How long have you been in the business?

Ans. Thirteen years.

Ques. Since you were thirty-four years of age, then?

Ans. Yes, sir.

Ques. Prior to the time you went in this business you had no knowledge of the business?

Ans. Yes; I worked in the business nearly all my life.

Ques. Then all your life you have been acquainted

with the growth of cedar timber and with cedar bottom?

Ans. Yes, sir.

Ques. That is so, is it?

Ans. Yes, sir.

Ques. After cedar is cut off will it grow up as thickly as it did before?

Ans. Well, sometimes it does and sometimes it don't. It depends on how it is situated.

Ques. Suppose we take a piece of ground with a mill and cranberry bog at one end of it. Have you any experience on ground like that?

Ans. I don't think that will have any effect on the swamp above it.

Ques. Don't you know as a matter of fact that it won't grow up one-quarter as thickly as before?

Ans. I don't know that.

Ques. And wasn't that the case here, that it wasn't one-quarter as thickly set as that in the woods below and inside these two large tracts, was it?

Ans. I don't think it was, but I didn't see all the one hundred and thirty-five acres.

Ques. But what you did see of it was not one-quarter as thickly set as what the other was?

Ans. No, sir.

Ques. You know this from your experience and observation that cedar swamp streams are drying up?

Ans. Yes, sir.

Ques. And that the extent of these cedar swamps is gradually narrowing about the streams? You know that to be a fact?

Ans. Yes, sir.

Ques. Now, upon what do you base the valuation of $15 an acre for this smoke-colored tract?

Ans. From what I saw of it.

Ques. What was it you saw there?

Ans. Along the fire-lines and across that mark connecting the two green clumps beyond.

Ques. It is still green cedar in there, isn't it?

Ans. I don't think it is.

Ques. Will you swear there is no green cedar in there along that stream?

Ans. There may be a few; I didn't see them.

Ques. Isn't there green cedar and Indian grass in there to-day?

Ans. I couldn't say.

Ques. You can't say whether there is any green cedar and Indian grass in this swamp?

Ans. No, sir; I only saw a portion of it.

Ques. How long were you there?

Ans. We were there, I judge, four or five hours.

Ques. Who went with you?

Ans. Clark Abbott, Charles Abbott and Mr. Stewart.

Ques. Will you be kind enough to show me where you went into the swamp?

Ans. Yes, sir.

Ques. Where did you go into the swamp?

Ans. We went in about here. (Indicating on map.)

Ques. Where the causeway is represented which is designated on the map as the Scow Sides Causeway?

Ans. Yes, sir. We went in here and followed this old crossway until we came somewheres about here.

Ques. Half way in?

Ans. Yes, sir. We took the crossway at that point, it had all been burned up, and followed it up in here. (Designating 135 acres.) Then we followed this line around and came on the edge of it and came across till we struck this burned timber. (Designating part of one and seventy-five hundredths acres.) Then we followed down from here and came out somewhere about here. Then we came ashore and came on back up to where we left the team. We left the team somewhere up here.

Ques. Above the crossway?

Ans. Yes, sir.

Ques. Where did you start in then?

Ans. To the best of my knowledge somewhere about here. (Designating a point between the Scow Sides Causeway and the Bear Causeway.) Well, it might have been here that we went in, at the next crossway. Then we followed in here and struck this Wheat Field and struck this piece here, and then travelled around and struck this. (Designating one and twenty-six hundredths acres.) Then we followed this around and came out in here. (Forty-three one-hundredths acres.) Then there was a small piece that we saw in here.

Ques. Ten hundredths of an acre?

Ans. Yes, sir.

Ques. Then where did you go?

Ans. Then we followed the line around past the Wheat Field and came on down and struck this part of the Wheat Field here.

Ques. Fallen timber of the Wheat Field?

Ans. Yes, sir. Then we followed around and struck the other piece here.

Ques. The eighty-five one-hundredths acre piece?

Ans. Yes, sir. We then followed this from here and came out and struck this piece up here.

Ques. The one and forty-seven one-hundredths acres?

Ans. Yes, sir; and I think they called that Slab Crossway right here. I think that is what they called it. Then we left the swamp and came out here at this point and followed the swamp down around this way and came back and went through the swamp again and struck where we left the wagon, somewheres right this course.

Ques. Went right across there?

Ans. That is the route we took.

Re-direct examination.

By Mr. Pancoast:

Ques. It depends then, from what you said, a great deal on the situation of the causeway as to its value or cost?

Ans. Yes, sir.

Ques. When you spoke of the cost of the causeway you referred to these two causeways delineated on the map which you saw here?

Ans. Yes, sir.

Ques. Leading into the south of the swamp, from the south side?

Ans. Yes, sir.

Re-cross examination.

By Mr. Gaskill:

Ques. There is no live cedar that this causeway comes in contact with, is there, this Bear Causeway?

Ans. I don't think there is.

Ques. So that would be no good for getting out live cedar?

Ans. No, sir.

Ques. This causeway down here, this Scow Side Causeway, you have to go about half way into the swamp before you strike any cedar?

Ans. Yes, sir; the main clump.

Ques. And that same body of cedar comes out to the upland on the other side of the swamp?

Ans. I think it does; yes, sir.

Re-direct examination.

By Mr. Pancoast:

Ques. Do you know on which side of this swamp the Abbott mill is?

Ans. I think it is on the lower side.

Ques. On which side is the principal road in that neighborhood?

Ans. A crossway road?

Ques. No; the main road, to use in getting into the swamp; getting into the causeway.

Ans. On the lower side of Gravelly Run swamp from here.

Ques. The south side?

Ans. Yes, sir.

By Mr. Gaskill:

Ques. Won't you just mark on the map the saw mill. He is talking about the saw mill. Where is that Abbott saw mill?

Ans. I don't know as I could exactly. I don't know hardly the distance.

Ques. Point out generally then and we will get it fixed afterwards.

Ans. Is this the cranberry bog? (Indicating on map.)

Ques. Yes.

Ans. (Witness indicates position on map.)

Ques. Will you be kind enough to tell me how much the cedar inside of these two large tracts, which you say was worth for timber $8,000 before the fire, was worth after the fire, market value?

Ans. Green timber?

Ques. Yes.

Ans. Well, I am not prepared to tell you.

Ques. Well, can't you tell me?

Ans. I have no estimate on it. I have not been through it to examine it closely.

Ques. Well, it is there just as it was before, with the exception of what you saw was burned. What is that worth since the fire?

Ans. The green timber?

Ques. Yes; between the two large tracts.

(Objected to.)

The Court: I suppose he can tell, taking these black spots off.

Ans. The balance is worth, I suppose, about $6,000 or $7,000.

ANDREW G. STEWART, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Mr. Stewart, where do you live?

Ans. Weymouth, Atlantic county, New Jersey.

Ques. How long have you lived in this county?

Ans Twenty-seven years.

Ques. What is your business?

Ans. At present I have charge of the lands of the Industrial Developement Company for the receiver, the old Weymouth tract.

Ques. How long have you had that position?

Ans. A year and a half, a little more.

Ques. Before that what was your business?

Ans. I worked for the Weymouth Manufacturing Company.

Ques. And before that what did you do?

Ans. For the Colwell family generally.

Ques. In these employments had you to do with timber land?

Ans. I did.

Ques. In this county?

Ans. Yes, sir.

Ques. With the sale of it?

Ans. Yes, in tracts; the appraising of it and selling it for the Colwells.

Ques. Did you ever work any timber off?

Ans. Yes; kept a sawmill going most of the time.

Ques. For how many years did you work in connection with getting out timber?

Ans. For the first seven years I hadn't much to do with the sawmill except appraising.

Ques. An appraiser of timber?

Ans. Yes, sir; say Mr. Abbott or Mr. Bing or somebody would want to buy a cedar swamp.

Ques. How long did you practice the office of appraising timber?

Ans. Well, I don't know how long. These men would want to buy a piece of timber and Mr. Campbell, the man in the store, would want me to go out with him, and we would look at it and say what it was worth.

Ques. Have you frequently done that?

Ans. Yes, several times; for Mr. Abbott four or five times and Mr. Bing twice.

Ques. You were consulted by people about the value of timber lands in this county where there was no controversy or lawsuit?

Ans. Oh, no; just a mere matter of business.

Ques. You have been here present at the trial a number of days?

Ans. I have.

Ques. You know what the controversy is over?

Ans. Yes, sir.

Ques. Do you know this Abbott swamp in question?

Ans. I went there to examine the burned district.

Ques. With the view to be a witness here and testify?

Ans. I supposed that was what it would lead to.

Ques. Were you over in this swamp some time before the fire?

Ans. Yes, sir; once. I have been around the edges of it, but never in it.

Ques. Now, after the fire, when you went there to qualify yourself to be a witness, who went with you?

Ans. Clark Abbott, Charles T. Abbott, J. H. Bozarth, who has just left the stand, and myself.

Ques. Now, did you go over this tract with Mr. Bozarth in the way that he has already stated ?

Ans. Yes, sir; followed it just about as he stated it. We looked through it. We might be apart a little ways, but practically together the whole time we were in there.

Ques. You have heard the testimony of the different witnesses relating to map No. 3 here, haven't you, as to the Wheat Field, as to the eight acres of heavy timber, and as to the larger tract ?

Ans. Yes, sir.

Ques. Well, now, what, in your judgment, was that Wheat Field tract of twenty-five acres worth at the time it was struck by the fire ?

Ans. $25 an acre.

Ques. What was it worth after the fire had done with it ?

Ans. The timber ?

Ques. Or anything; the tract itself.

Ans. Nothing, as far as I could see. There was some few places I saw just green cedar enough to judge what was there before, but nothing of any account.

Ques. What was the soil worth ?

Ans. I don't know so much about the soil. I believe that it is bought and sold in some places, but I don't know how much; don't pretend to say.

Ques. So far as you know, is there any market for fire-swept timber like that Wheat Field is ?

Ans. Oh, it was not large enough to make anything. No, sir; there is nothing that I know of that you could put it into money.

Ques. What, in your judgment, was the fair market value of these several parcels of good timber, said to amount to eight acres ?

Ans. $125 an acre.

Ques. What was the value after the fire had done with it?

Ans. With the exception of the lower or next to the lower piece, was best, and the north piece, or towards the railroad there, I suppose about two acres there, or whatever the acreage is, I would suppose you could get $40 an acre. That ought to be deducted in fairness. That could be got out. The other is too far back to be got out without working the green timber with it. This is practically nearer the shore, and wouldn't be so much expense. The others would need roads, and the roads would eat them up.

Ques. The rest of it has no market value, you think?

Ans. No, sir.

Ques. Now as to the larger tract delineated on this map in smoke color, said to contain one hundred and thirty-five and one-half acres. What in your judgment was the fair value of that at the time?

Ans. I think that would be worth $15 an acre.

Ques. At the time the fire struck it?

Ans. Yes, sir.

Ques. What was it worth after the fire?

Ans. Nothing. It spoilt it for a swamp.

Ques. Did you see two causeways there on the southerly side of that swamp that had been destroyed by the fire?

Ans. I did.

Ques. Have you some practical knowledge of the construction of causeways and the cost of them?

Ans. I have had them built in swamps to get out timber.

Ques. Were they suitable crossways for that swamp?

Ans. They were, for what we call a leading causeway, where you go ashore on the main causeway. After you get in the swamp you go on brush causeways. When

you go ashore you have to get on the main causeway, and that must be strong.

Ques. What would it cost to build this main causeway now ?

Ans. It would cost $3 to put that back, where you would have to cart the stuff, and the value of the kind of stuff you put in.

Ques. Do you know on which side of that tract Abbott's mill is ?

Ans. On the south side. I suppose you call it the south side. It is below Gravelly Run stream there.

Ques. On the east or west side of the May's Landing and Somers Point road ?

Ans. It is on the side next to the Great Egg Harbor River; on the west side, I suppose. I don't know so much about the courses. The roads fork there. The upper road, I take it, I always understood, goes to Somers point, on the Somers Point road. The mill is toward the river from that.

Cross-examination.

By Mr. Gaskill:

Ques. Mr. Stewart, when you went out these five or six times as an expert to help people form correct judgment on the value of timber land, what was it to view, timber land or cedar swamp?

Ans. Cedar swamp.

Ques. Each time ?

Ans. Each time.

Ques. And the greatest number of times that you were out was for the Abbott family ?

Ans. No, sir; I don't know; four times for Bozarth and twice for Bing, and twice there; about equal.

Ques. Well, see if I took it down right as you said it in the first place. You said that you had been con-

sulted some five or six times by different people; did you say that?

Ans. Yes, sir.

Ques. By Abbott four or five times; did you say that?

Ans. Yes, sir; I suppose so.

Ques. And Bing twice?

Ans. Yes, sir.

Ques. And by Bozarth; that was how many times?

Ans. Bozarth bought three different pieces, and I think three different times I was with him. The other times I have spoken of, William Post bought of the Weymouth Company, and John Ashmead represented the company, and I the other side.

Ques. When you went there for Abbott or for Bing—

Ans. I didn't go for Abbott. I went against him. He wanted to buy a piece of timber of Bing and Bozarth.

Ques. How much did you get for your services?

Ans. I got so much a year. It didn't make a bit of difference to me whether I stayed in the store or went there.

Ques. What I want to get at is, when you went to help different people form opinions, did you get any pay from them?

Ans. No, sir; I did not. I didn't do that business.

Ques. Well, did you get anything from the others?

Ans. No, sir. I got my salary, so much a month.

Ques. From the Colwells?

Ans. From the other people I was working for.

Ques. As the agent of the Colwells, it was a part of your duty to form a judgment of the value of the land?

Ans. It was not my duty. I would go out of the office at his request, as their agent had a cancer this year, and thought I ought to know something about it. It was over in Washington township, and I was called to meet a Burlington county man.

Ques. You were bookkeeper for the firm or corporation?

Ans. Yes, sir; part of the time.

Ques. And when that firm or corporation was selling any timber to Abbott or Bing, or any one else, you were to go out and see that they kept the price up?

Ans. That is it; to see that they didn't give it away.

Ques. What I am trying to get out of you is that you didn't value timber for anybody else?

Ans. Only William Post.

Ques. That was not in the line of your bookkeeping business?

Ans. That had all stopped then; it was the Industrial Land and Development Company.

Ques. Well, it was the old company in the hands of new owners?

Ans. Yes, sir.

Ques. So that you were still acting for your employers?

Ans. Yes, sir.

Ques. And never acted for any outside person?

Ans. No, sir.

Ques. Never was held up in the community as a man that people would come to, getting a local reputation?

Ans. No, sir.

JOSEPH E. P. ABBOTT, recalled.

Direct examination.

By Mr. Pancoast:

Ques. In your judgment, is it practicable to rebuild these causeways on the northerly side of this swamp to get the timber out?

Ans. There is a road—

(Objected to).

Ques. Just say whether it is or not.

Ans. It is not.

Ques. Well, why?

Ans. On this side of the swamp—

Ques. Which side?

Ans. The south side of the swamp leading to the mill, there is a good road leading up as close to the swamp as possible, and not far from our line. From that we would go into the swamp. We made a permanent causeway also here, a permanent causeway, and we would work off in any direction. They were permanent causeways. When we would get off on the good road we could cart twice as much at a load as we could on this side. This is a sandy road. This map is on a small scale. It is a long distance from the swamp out into this road. It would be so much expense to cart it here on this side that it would be impracticable to go on this side. It is not possible to go on those sandy roads. The expense is so much greater that it is absolutely necessary to have the roads over there. Hence we have always kept up those permanent causeways to the race, leading here. The map does not show this causeway.

DEFENDANT'S MOTION FOR NON-SUIT.

Mr. Gaskill: I move that the plaintiffs be non-suited without calling the defendant to produce any witnesses, on the ground that they have not made out such a case as under the law entitles them to recover, even if no defense is interposed.

My first point is this: That there is no proof whatever in this case that the fire in question can be traced to the railroad company. The only semblance of proof is that

on the 12th day of September there was a fire near what is called the switch or flag station in the Gravelly Run swamp, some two hundred and fifty or three hundred feet north or northeast of the railroad track; that trains passed along on that track during the day; but it has not escaped your Honor that there is no proof whatever that this fire was seen springing up immediately or soon after the passage of any train; and while our Supreme Court has held that it is sufficient to go to the jury, and a fact from which they may possibly raise the inference that the locomotive communicated the fire, if it be shown that immediately after the train had passed a fire is seen starting from their right of way or alongside of it, while that has been admitted, there is no decision whatever which says that simply by proving that trains passed along a certain railroad on a certain day, and at some indefinite period of time after the passage of these trains a fire was seen somewhere near the railroad, that therefore it was sufficient for the jury to infer that the trains set that fire.

The facts are that there was a pay train, but there is not a particle of testimony to show what time that train went by there. One witness said two other trains passed, but there is no testimony as to the time they passed. We are left wholly at sea. The matter is entirely indefinite; and this fire which is found there is not a fire which is on the right of way; it is not a fire which is close to the right of way; but it is a fire which is some two hundred and fifty or three hundred feet from the right of way. There is no proof that immediately before that fire was discovered a train had passed. There is no proof whatever in this case as to how long an interval there was between the passing of the train and the discovery of this fire. The only evidence is that of Mr. McClure, that sometime in the afternoon he received word from the operator at the flag station that

there was a fire, and he went there and put it out. So that I submit to the court that the first point in the case necessary to be shown, to wit, that the railroad company, defendant, communicated the fire, has not been shown by any evidence.

If the Court please, my second proposition is, that there is no negligence shown on the part of the defendant company. As a matter of course, I cannot, on a motion to non-suit, go into the question of screens, appliances or locomotives. That is a matter of defence in the suit. But there are two points in which the defendant company may have been negligent, and the plaintiff's own testimony shows that the defendant company used the utmost diligence in both respects. The first is this: that after they are informed that there is a fire somewhere near their right of way, they at once repair to the scene of the fire, and with all the force they can muster they attempt to put out the fire, and do put it out; they circle in a ring and keep it there in that circle. The plaintiffs have shown that after the discovery of the fire there was no negligence on the part of the company, but that the company, through its servants and agents, used the utmost diligence to put the fire out. In that very particular the plaintiffs have shown that the defendant used the utmost diligence and care possible. In the second place, by plaintiffs' own witnesses, it appears that this railroad track for a distance of some seven or eight feet on each side was kept clear, not only of shrubbery, grass, etc., but even of roots, except here and there where a little piece of crab grass would grow up. That is the only thing shown to be found within a distance of seven feet each side the track; thence to the line on which the neighbors have their monuments to mark their boundaries, that whole part of the right of way was trimmed over, mown and as carefully raked up and

cleaned as it was possible to do. As one of the plaintiffs' witnesses said, it could not have been cleaned more thoroughly. So that with respect to the matter of diligence, I submit that the plaintiffs have failed to show that they are entitled to a verdict upon the matter of negligence.

In the next place, and I think as a matter of law it is very important, the plaintiffs have not shown that the causal connection is complete. In other words, the plaintiffs say that the defendant company set the fire on the 12th day of September, and then say their swamp was burned on the 22d day of September, ten days thereafter. Now, I submit to the Court that the plaintiffs are bound to show by connected, consistent and credible statements that the fire of the 12th of September was the fire of the 22d day of September; the cause must be traced and the connection must be made complete by the plaintiff, or he cannot recover. If you take the plaintiffs' own proof, we have this statement of facts: First, Foreman McClure says he put out the fire of September 12th. I am dealing with their own testimony. As a matter of course, that is all I can deal with; and there is no witness that contradicts that statement. To be sure, they have witnesses who saw smoke down in that neighborhood on the 12th of September; to be sure, there was smoke there, because there was a fire; but he said they stayed there with that fire all night, and that that fire was put out; and there is no evidence by any of their witnesses that they traced that fire from day to day, as they are bound to do, consistently and connectedly, and show that the fire which burned the swamp was the fire of September 12th and no other fire.

It appears also by the plaintiffs' own testimony that there was a fire here at McKee City, opposite the upper end of this swamp, and it appears that all their own

witnesses testified to a fire on the north side of the swamp until they came to the Saturday afternoon, and then they bring a fire out of this south side of the swamp; and not a witness, if the Court please, connects the fire on the north side of the swamp with the fire on south side of the swamp; and by their own witnesses it is shown that on the south side of Gravelly Run and between it and the railroad there was started, on the 15th day of September, another fire which spread over part of this country, and coming across the head of Gravelly Run ran across what is called McKee avenue, or to the east of it; and that that fire was never extinguished, as far as any of their witnesses know.

So I submit to the Court that there is not sufficient proof of the causal connection being complete to entitle the plaintiff to go to the jury, and that, being so, the Court should non-suit, and with this I submit my motion.

The Court: I think the case as it stands should go to the jury, and I decline to grant the motion to non-suit.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

MAY'S LANDING, N. J., September 11, 1896.

WASHINGTON MCALLISTER, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Mr. McAllister, where do you live?

Ans. Camden.

Ques. What is your occupation or profession?

Ans. Machinist.

Ques. And how long have you been a machinist?

Ans. I went to the business in 1853.

Ques. Some forty-three years?

Ans. Yes, sir.

Ques. Where are you now employed?

Ans. At the Camden round-house.

Ques. In what company's employ?

Ans. Pennsylvania Railroad, Amboy division.

Ques. And what is your position there?

Ans. Master mechanic.

Ques. Master mechanic at the round-house?

Ans. Yes, sir; charged with slight repairs; slight running repairs.

Ques. Do you at that round-house have charge of the engines on the West Jersey road?

Ans. Yes, sir; attend to them just the same as we do to our own.

Ques. The Amboy Division?

Ans. Yes, sir.

Ques. How long have you been connected with that round-house?

Ans. I have been in Camden thirty-one years and been connected with the railroad company for thirty-four years. I came with the Camden and Amboy Railroad Company in 1862, in March, and with the West Jersey Railroad Company November 30th, 1864.

Ques. And all of this time have you been connected with this department of work that you have spoken of?

Ans. Yes, sir.

Ques. Are you acquainted with locomotive engines?

Ans. Somewhat; I served my time in a locomotive shop.

Ques. What shop?

Ans. Danforth, Cook & Company, Paterson, New Jersey.

Ques. You took the regular apprenticeship?

Ans. Yes, sir; regularly indentured apprentice.

Ques. How long did you serve?

Ans. Three years and nine months.

Ques. And upon the completion of your apprenticeship commenced work as a mechanic?

Ans. Yes, sir.

Ques. And on up to your present position?

Ans. Yes, sir.

Ques. Are you acquainted with the various devices used in locomotive engines for the prevention of the escape of fire and sparks?

Ans. Yes, sir.

Ques. How many kinds are there in use now?

Ans. There is only one kind in use on our road at the present time that I know of.

Ques. That one kind has supplanted and taken the place of all others?

(Objected to as leading.)

(Question withdrawn.)

Ques. State whether or not there were formerly other appliances used?

Ans. There was.

Ques. And more than one?

Ans. Yes, sir.

Ques. And why were they discarded and the present one adopted?

Ans. Because we thought the present one was a safer appliance.

Ques. And is it so considered in railway circles?

Mr. Pancoast: I object. The consideration and judgment of this witness we can deal with. What is the

consideration and judgment of railway circles, we can't deal with.

Ques. I will change the word to known. Is the present appliance known in railway circles as being better than those formerly used?

Mr. Pancoast: I object. It is what this witness knows, not what circles know. What this witness knows we can meet.

The Court: This man is an expert. You want to get his idea of what is known as the best modern devices. I think that is competent. You might modify it to what is most generally in use.

Mr. Pancoast: I can't object to what this witness knows. I object to this question because it is not confined to what this witness himself knows as an expert mechanic and machinist.

The Court: As a mechanic he must know what is the best device for the purpose. That you can attack, of course, hereafter by experts from your side. He has a right to give his opinion from his knowledge as an expert. I think the question is right?

(Plaintiffs' counsel asks an exception.)

(Question withdrawn.)

Ques. What is the appliance at present used on the West Jersey engines?

Ans. The extended smoke-stack, with a three-sixteenths inch mesh screen.

Ques. Smoke-box, you mean?

Ans. Extended smoke-box.

Ques. Is that the best known appliance in railway circles?

(Objected to on the ground that it does not call for the judgment of this witness alone. It calls for the judgment of others.)

(Objection overruled and question admitted.)

Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.

Ans. That is the best that I know of.

Ques. Do you aim to keep yourself posted as to the various appliances which are invented and produced from time to time for the purpose of preventing the escape of fire and cinders?

Mr. Pancoast: We object. We can't meet such testimony as that. What the mental aim, ambition or purpose of this witness is, we can't meet. It is what he knows in respect to this matter we can meet. If he states a fact we can meet that; but if he can state what his aim or purpose is we can't meet that.

The Court: I think the question had better be changed. You show that he has had experience and has examined these various devices. From that experience he gives a result of his knowledge as well as his study.

Mr. Gaskill: Very well. We will modify the question and put it in different shape.

Ques. Have you any knowledge of any better appliance than that which you have described?

Ans. I have not.

Ques. I hand you a piece of wire netting about six inches square and ask you to tell us what that is.

Ans. That is the size of netting we use in the exten-

sion smoke-box, and any sparks that escape from the furnace have to go through that mesh before it gets out into the atmosphere.

Mr. Gaskill: I offer that in evidence, subject to cross-examination.

(Offer objected to.)

The Court: Well, he says that is a specimen of wire netting that he uses in the smoke-box.

Mr. Gaskill: Let me add another question so as to be sure and regular.

Ques. Is this a piece of the wire netting used in the extended smoke-box?

Ans. It is.

Mr. Gaskill: I now offer it.

(Objected to on the ground that it is not competent. Objection overruled and specimen admitted.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Now, Mr. McAllister, will you kindly explain to the court and jury the extended smoke-box and how that, in connection with this netting, operates to prevent the escape of cinders? Can you do it without using this diagram? Do it without the diagram first, please, and then afterwards with the diagram.

Ans. This extended smoke-box is about fifty inches in diameter and fifty inches long.

Ques. You may take your pencil and make a sketch and let the jury see it.

(Witness makes diagram.)

Ans. This shows the extension end here; extension smoke-box.

Ques. That space between A and B, do you mean?

Ans. In between here. (Indicating on sketch.) That is the netting, that line. This represents the tubes in the boiler here.

Mr. Pancoast: Just put boiler tubes there now, will you, please? We all want to understand.

Ans. That represents the boiler tubes. Well, all the fire that comes from the locomotive comes through the tubes; through these tubes.

Mr. Pancoast: Just put a spear-head there, will you, to show the direction?

(Witness marks on sketch.)

Ans. And this is a deflector plate, solid plate.

Mr. Pancoast: Will you write "deflector plate" there, to indicate?

(Witness marks on sketch "solid deflector plate."

Ans. Solid deflector plate with no perforations.

Mr. Pancoast: You need not mark that.

Ans. I thought you would want to know that no sparks could get through that. That is a solid plate. All sparks coming through the tubes in the first place strike that solid plate and are deflected down to the bottom of the smoke-box here. Then what gets below here is carried forward. This is a receptacle that holds these sparks, this front end of the extension, and the exhaust carries whatever sparks may be in it out into the atmosphere. This netting is supposed to be tight.

New Jersey State Library

It extends all around these exhaust pipes from the cylinder.

Ques. These exhaust pipes bring the waste steam from the cylinder which makes the draught?

Ans. Yes, sir; makes the draught.

By a Juror:

Ques. I would like to ask where the outlet is.

Ans. The outlet is here; that is what we call the hopper.

Ques. And the front opening is simply to examine or brush it?

Ans. These have a cap for that.

By Mr. Pancoast:

Ques. What is this here? (Indicating on sketch.)

Ans. That is the hopper; that is where they are cleaned out.

Ques. Down underneath the engine?

Ans. Yes, sir.

Ques. Just mark that "hopper for cleaning out cinders."

(Witness marks on sketch.)

By Mr. Gaskill:

Ques. I want to ask you about that. This hopper, is that open or closed when the train is running?

Ans. It is closed, always.

Ques. Won't you put the letter C right in front of that, please, and then write what it is.

(Witness marks on sketch.)

Ques. Now, what is that you have got marked C?

Ans. Cleaning hole. (Marked by witness.)

Ques. What is this?

Ans. Stack. (Marked by witness.)

Ques. Now, mark on there another thing, where they open that smoke-box to clean it out.

Ans. This is it, the hopper.

Ques. How do they get into it?

Ans. There is a lid on that, fastened with a screw.

Ques. Don't they open the front door?

Ans. That is for examination of the screen.

Ques. That is what I want you to mark, where they open to examine screen.

(Witness marks on sketch "door to open for examining screen."

Ques. That is right on the front end of that smoke-box?

Ans. Yes, sir; takes the whole front end, except the rim here, about six inches wide, and then that whole door opens up. There are five or six plates go on there, fastened with set screws. There is a set bolt and clamp that holds it, so that is perfectly tight joint, that front door is.

Ques. These two pieces that you have coming up from the bottom underneath the extended smoke-box which you have marked "exhaust pipe," do they have any fire coming through there?

Ans. No, sir; nothing but the exhaust steam.

Ques. Where does that come from?

Ans. From the cylinders. After the steam has been used in the cylinder, after the travel of the valve has been run at full throw or half stroke, or whatever it is; say, for instance, twenty inches; after she travels twenty inches this steam is exhausted. That is what makes the forced draught.

By a Juror:

Ques. The waste steam?

Ans. Yes, sir; the waste steam after it has been used.

By Mr. Gaskill:

Ques. Then, forcing this waste steam up through the smokestack, through this exhaust pipe, forces the fire from the boiler; that is what makes the draught?

Ans. Yes, sir; that is what makes the draught.

Mr. Gaskill: The paper on which the witness has made his illustrations in the presence of the jury I offer in evidence.

(Marked "Exhibit D3.")

Ques. Have you with you a blue-print drawing of the working drawing of the extended smoke-box?

Ans. Well, that is a blue-print of the extended smoke-box.

Ques. Will you please hold that before the jury and explain to them what you showed them on that sketch? Show the jury on that drawing.

Ans. Now, you see there is just one tube indicated there. I marked more tubes on mine back of that. This is nothing but just the extended box that I drew you the sketch of.

By a Juror:

Ques. The steam coming from this way?

Ans. The fire comes from this way.

By Mr. Gaskill:

Ques. Just let me put four letters on the four corners of that so we can identify it. (Marks A, B, C and D.) Do you refer to that part of the plan in what you have just stated, which is within the four letters that I have

marked A, B, C and D? You were pointing out that part of this plan within those four letters?

Ans. Yes, sir.

Ques. Go on.

Ans. I marked on the other plan where the tubes come from. The fire comes this way. Here is our tube sheet there. There is one that shows how they come in. Here is our deflector plate there, solid plate.

Ques. Are there any tubes opening into the top of the fire-box upon the top of that plate?

Ans. Not at all. It is entirely closed and the cinders that come into that top within thirteen inches of the top of this box have to strike that deflector plate. It breaks them up and powders them. These are the exhaust pipes I showed you on the other plan. Here is the netting. It is fastened tightly to the top of the extension box, this netting, all the way along here. That netting is that sample I showed you, and this is the cleaning hole that I marked on the side there, and this is the hopper. Now, in running along the road this is the receptacle for whatever cinders do not go out of the stack here. This is the stack here. Whatever does not go out of the stack is accumulated in here, and at the end of each trip these cinders are taken out.

Ques. How?

Ans. This hole you see is opened here; push that handle down and take the cap off. That goes on with a clamp. The hopper here is opened and a man goes in here with a bar and cleans that all out. That is done at the end of every trip.

Ques. Every run?

Ans. Every run. Here is the door where we inspect the screen. We open that door. There is a perfectly tight joint right there. That is put on there with clamps That shows them there. There are six clamps. These are studs that go into the rim of the door, and

that is held perfectly tight with these clamps. When we want to inspect that, these clamps are taken off and the door opened.

Ques. These are the hinges?

Ans. Yes, sir; that gives a full opening to examine the screen and see if anything is the matter at all. The end of the exhaust pipe comes just beyond the netting, but there is a perfect joint made all around the outside of it.

Ques. In experience, how often is it found necessary to open that large front door for the purpose of examining the netting and the interior of the smoke-box?

Ans. Well, we try to do it as near as possible once a week. Of course, when that is put in perfect order, it would not be liable to get out of order in six months; but we examine it every week, try to, but once in two weeks, sure. Every two weeks we wash boiler, and then our engine is cold and gives us a still better opportunity to examine it.

Ques. What do you mean by cold?

Ans. The steam and water is blown out of the boiler and she is cold. But even when there is steam in the boiler we can get in there to examine that without any danger whatever.

Ques. You go inside?

Ans. We go inside and examine it all around in there.

Ques. Who is inspector in the round-house in Camden, whose duty it was to go in and examine that?

Ans. George Wilson was, at that time.

Ques. Will you state whether or not, from your knowledge and experience, if the examination of that screen and the smoke-box by entering it and making a personal inspection is done sufficiently often if done once in two weeks?

Ans. I do.

(Blue print offered in evidence and marked Exhibit D4.)

Ques. Mr. McAllister, you have charge, you say, of the engines of the West Jersey road?

Ans. Yes, sir.

Ques. Did you have charge of the engines that ran over that road on the 12th day of September, 1895?

Ans. Yes, sir.

Ques. Do you know what engines ran over that road of your own knowledge?

Ans. No, sir.

Ques. Do you know engine No. 10?

Ans. Yes, sir; I know it.

Ques. Will you please state whether or not engine No. 10 was, in September of 1895, equipped with this extended smoke box and screen?

Ans. She was.

Ques. Do you know engine No. 35?

Ans. Yes, sir.

Ques. State whether or not that engine, in September, 1895, was equipped with the extended smoke-box and screen?

Ans. She was.

Ques. Engine No. 39; do you know that engine?

Ans. Yes, sir.

Ques. Was that likewise equipped?

Ans. She was.

Ques. Engine 502?

Ans. Yes, sir.

Ques. That was—

Ans. Equipped the same way.

Ques. Engine 507?

Ans. Yes, sir.

Ques. Engine 512?

Ans. Yes, sir.

Ques. When you say yes you mean what?

Ans. I mean she was equipped the same as the rest of them. All our engines are equipped that way. I don't know of an engine on the road that is not equipped that same way.

Ques. Engine 698?

Ans. Yes, sir.

Ques. Engine 700?

Ans. Yes, sir.

Ques. Engine 1,659?

Ans. Yes, sir.

Ques. Do you know which engine had the pay train that day?

Ans. No.

Ques. Do you know that engine No. 39 was equipped in the manner that you have described to the jury?

Ans. She was equipped in the same way.

Ques. You didn't make the inspection yourself?

Ans. Occasionally I did. That is, if there is anything wrong about it, why, my attention sometimes is called to it, and my foreman most always looks after that, Mr. Kirk, besides the inspector.

Ques. Was your attention called to any needed repairs on any of the engines that passed over the road on the 12th day of September?

Ans. Not that I remember.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know what kind of fire screens are used on the Reading Railroad system of New Jersey?

Ans. I couldn't say from personal knowledge.

Ques. That is what I want. Can you tell what kind of fire screens are in use on the New Jersey Central road?

Ans. No, sir.

Ques. Do you know what kind is used on any other railroad system in New Jersey excepting your own?

Ans. Only from hearsay and from what I see in the papers.

Ques. Hard coal is burned on your system of road, isn't it? Hard coal it is called?

Ans. Anthracite coal and bituminous coal, both.

Ques. Mixed, or how?

Ans. No; they don't mix it when they are using it on the engines.

Ques. When do they use one and when the other?

Ans. Well, on different classes of engines. Freight engines all use bituminous coal.

Ques. And the others all used hard coal?

Ans. Not all of them. Some of the passenger engines use bituminous coal sometimes.

Ques. When? What is the occasion of using that?

Ans. Well, in the winter time sometimes, when they are not running express trains.

Ques. At other times they use hard coal?

Ans. Yes, sir.

Ques. Now, do you know what kind of fire screens are used on the New York Central?

Ans. No, sir.

Ques. Do you know what kind of screens are used in the different great railway systems throughout the West?

Ans. I don't know anything about what they use only what I read in the magazines. Personal knowledge I haven't any of any other road.

Ques. Have you seen different kinds of fire screens from this?

Ans. I have.

Ques. Have you ever seen any containing two grades of meshes, larger first and then smaller?

Ans. No. May I understand you correctly?

Ques. Certainly. I hope you will.

Ans. Not in the same engines I have never seen any used in two grades; but years ago we used meshes of a different size.

Ques. I mean two grades in the same engine.

Ans. In the same engine, no, sir; I have never seen that.

Ques. Now, from your point of view, if an engine was properly equipped with this sort of a smoke arrester that you have described and the same was in good order, would an engine using it passing through a wooded country cast fire through the smoke-stack sufficiently to ignite the adjoining timber land?

Ans. I do not.

Ques. Then, if I understand you, every engine on this system is equipped with this sort of spark arrester?

Ans. As far as I know.

Ques. And in your judgment, if all the engines are equipped with this sort of spark arrester and they are kept in order, there is no possibility of any of these engines setting fire to the adjacent country, woodland through which they pass?

Ans. I don't think there is.

Ques. You think, then, it is a perfect guard against fire, this fire screen, when it is properly used?

Ans. As near as can be.

Ques. They are easily disordered, aren't they; put out of order?

Ans. No, sir.

Ques. They are not easily put out of order?

Ans. No, sir.

Ques. Then, if they are not easily put out of order, why do they require inspection weekly, or at least bi-weekly, as you have already said?

Ans. Why, to satisfy ourselves that they are all right.

Ques. It is not necessary then, in your judgment?

Ans. I do think it is necessary.

Ques. To examine them once or twice a week; is that your judgment?

Ans. It is my judgment. I think they should be examined once a week.

Ques. But you say they are not easily put out of order?

Ans. They may run for six months without needing any repairs after they are thoroughly gone over.

Ques. And then again, I suppose, they may get out of repair within a day or two after they are inspected?

Ans. No; I don't think so.

Ques. Well, within a week or two.

Ans. Oh, they might.

Ques. Now, you have given this matter of inspecting these fire screens some personal attention, haven't you?

Ans. I have.

Ques. What have you generally found to be the matter with them?

Ans. Well, the screen may be a little worn, probably worn a little thin some times.

Ques. Well, is that all you are likely to find in these weekly and bi-weekly inspections, worn a little thin?

Ans. Not very often anything more than that. Probably a bolt works out once in a while.

Ques. When a bolt would work out what would be the result then?

Ans. Well, it wants a new one in its place. One bolt working out wouldn't injure it any, any more than it must be held firm. It would stay in its place with one bolt out.

Ques. Then from your point of view it is next to no trouble to keep this fire screen in the engines in good order?

Ans. Well, anything is some trouble. No more than any other arrangement about the engine.

Ques. Now, why isn't this mesh made smaller?

Ans. From the very fact that we wouldn't have a draught. If you stopped up your stove-pipe hole you wouldn't cook your dinner.

Ques. Couldn't it be made less than that and get a good draught?

Ans. I don't think so. We don't get all we want sometimes now.

Ques. With this?

Ans. With that.

Ques. And without draught you can't get speed, can you?

Ans. We can't go without we can have a draught; the same as if a man got hold of you by the neck—

Ques. And this screen over the fire box is a serious impediment in the way of the draught?

Ans. Somewhat. Years ago we didn't use the thing though.

Ques. And then the speed was much less than it is now, wasn't it?

Ans. That is right; about one-half.

Ques. Did you ever run an engine yourself?

Ans. I have run some little, not a great deal.

Ques. When?

Ans. When I was apprentice we used to run them in the shop and test them after they were built and then on the road I have run them some little, but not much.

Ques. Experimental running?

Ans. No; not experimental running.

Ques. When did you run them?

Ans. When I first came on the road.

Ques. That was before fire screens were used?

Ans. Oh, no. We had fire screens them days, too.

Ques. Well, now, what other possible means of letting out fire is there to a running engine?

Ans. Well, there might be a possibility of a spark escaping from the ash pan, through the damper.

Ques. Where would the ash pan be, on this?

Ans. Well, we haven't got any illustration of it on here.

Ques. Well, just give it here. All these engines have ash pans, don't they?

Ans. They do.

(Witness marks ash pan on drawing.)

Here is the smoke-stack again. There are the flues through there. There is the ash pan.

Ques. At the bottom of the main part of the engine?

Ans. That is the bottom of the boiler, and the ash pan is attached to that.

Mr. Gaskill: Won't you write that on there?

(Witness writes "ash pan" on drawing.)

Ques. Now, where could fire escape from a locomotive from that ash pan?

Ans. Well, it might escape; drop out of the damper.

Ques. Make a mark there where it might drop out of the damper.

(Witness marks on drawing, "fire might escape from here.")

Ques. Where might it drop out from the damper?

Ans. Well, if there was a strong wind blowing and they had the damper raised the wind might get in there and blow a spark out.

Ques. How could the wind get in there and blow a spark out?

Ans. Well, at the velocity that a train is running it would take the wind in there pretty lively.

Ques. There are live coals in there?

Ans. No; only the ashes and cinders that drop through the grate bars.

Ques. And a train going at a good rate of speed, with a lively wind, might drop these ashes out and in that way communicate fire?

Ans. No; I don't think that there would be enough of it to do that, to communicate any fire.

Ques. Well, but I think you before said that that was a means of the escape of fire?

Ans. Yes, sir.

Ques. And haven't you already said that the reason of it is that a good wind with a high rate of speed would get in there considerably and blow out the ashes and fire?

Ans. Yes, sir; if there was any in there; but you don't get much fire down through the grate bars.

Ques. Well, that is to hold the fire and ashes that drop down? What is it to hold?

Ans. The grate bars hold the fire.

Ques. Well, they would have to get in there to drop out.

Ans. Yes, sir. Well, there might be some small sparks, like the chimney of your house.

Ques. It would be merely ashes in there, as the ashes furnished by a stove?

Ans. Yes, sir.

Ques. And when the train was running the wind could get in there and disturb it and throw some of it out?

Ans. It might.

Ques. Now, is there any other place where fire might get out from a running engine?

Ans. Not that I know of.

Ques. Who draws the ashes from that ash pan?

Ans. We have men on purpose to do that. Every

time the engine comes to the round-house the first thing to do is to go over it and take the ashes out. The extension box is cleaned and the ash pan is cleaned thoroughly. We have men especially for that business.

Mr. Pancoast: I offer this sketch in evidence.

(Marked "Exhibit P6.")

Mr. Pancoast: On the ash pan, as delineated on P6, the witness who drew the plan and was cross-examined about it has written "ash pan" at the bottom of the boiler and has made a mark to indicate an opening from the ash pan, opposite which he has written the words "fire might escape from here."

Ques. The fireman is obliged to punch the fires frequently, running at high rate of speed?

Ans. Well, they do it occasionally. We don't like them to do that any more than they can help. It has a bad effect upon the fire.

Ques. When the fire is being punched, if the wind is blowing and the train running rapidly, that would multiply the chances of some of the fire escaping, wouldn't it?

Ans. Yes, sir; that is only done when it is impossible to make the steam without it.

Ques. The effort to make steam is the effort to make headway; you want the steam to make headway always, don't you?

Ans. That is what we do.

Ques. Now, is this fire screen riveted in place or is it set in place so it may be taken out?

Ans. It is bolted in place, bolted all around in places so that to take it out you have to unscrew the bolt.

Ques. You have to unscrew all the bolts to get into it?

Ans. No; we have a man-hole.

Ques. Do you know about what the life of one of these fire screens is, on one of the express trains of your company?

Ans. No; I couldn't say, exactly

Ques. Well, have you any idea? You pretend to be an expert.

Ans. No; I am not an expert.

Ques. You are not an expert?

Ans. I could give you that by looking up our records.

Ques. No; you can't book yourself as a witness. Now, couldn't fire get out of this hopper for cleaning out cinders?

Ans. No, sir; that is a good joint on that.

Ques. That is a tight joint?

Ans. Yes, sir; that is a tight joint; put on with a clamp and screw.

Ques. Well, there is a door to that, isn't there?

Ans. Yes, sir.

Ques. The door to the fire box can be so fixed that no fire can get out of it?

Ans. Yes, sir.

Ques. No difficulty about that?

Ans. None at all; both turned joints; faced in a lathe.

Ques. But the door to the ash pan wasn't so fixed?

Ans. Oh, yes, it is. It is not a perfect joint. It is impossible to make a perfect joint to an ash pan damper.

Ques. So that the wind can get in?

Ans. That is not practicable; and then that is only when it is open, understand; when the damper would be open. When it is closed, why it is as near tight as can be made.

Re-direct examination.

By Mr. Gaskill:

Ques. On what occasions is the damper of the ash pan opened?

Ans. In running along the road.

Ques. And for what purpose?

Ans. In order to get a draught on the fire, the same as it would be with a stove in your house. If you want the fire to come up, open the damper.

Ques. And is that a necessity in connection with the running of an engine?

Ans. It is.

Ques. Is it at the front or at the rear end?

Ans. The front.

Ques. Then the draught is inward?

Ans. Yes, sir; that comes right underneath the fire.

Ques. And whatever sparks might be in the ash pan and were driven by the current of air, which way would they be driven?

Ans. Well, the most of the draught would come up through the grate bars, out through the tubes.

Ques. Then it would drive sparks or anything of that kind inward and up through the grate bars?

Ans. More likely to do that than otherwise.

Ques. With reference to this ash pan, can you state what kind of ash pans these engines about which I have been inquiring were equipped, if there is any difference in them.

Ans. There is some difference in the ash pans. Some have a sliding door and some have a door on a hinge, that is, a damper on a hinge, and some a sliding door.

Ques. Is there any difference between them with reference to their safety in use?

Ans. I don't think there is a great deal.

Ques. And what kind were these engines equipped with?

Ans. I couldn't say. 502 has a hinge damper, but the other engines I couldn't state.

Ques. How often are the ash pans inspected?

Ans. Every day regularly.

Ques. And for what purpose are they inspected?

Ans. To find out if they are in perfect order, tight.

Ques. If a spark or coal dropped from the ash pan where does that alight in a running train?

Ans. Well, I should judge it dropped down between the rails.

Ques. Would you expect to find it two hundred and fifty or three hundred feet from the rail?

(Objected to.)

Ques. From your experience and knowledge would an ash pan throw a spark two hundred and fifty or three hundred feet from the rail?

Ans. No, sir.

Ques. Would that be possible?

Ans. I don't think so.

Ques. You spoke in answer to some question of Judge Pancoast as to your knowledge of what was used on other roads from reading magazines. What character of magazines do you mean?

Ans. The Railway Gazette.

Ques. The technical magazines of your profession?

Ans. Yes, sir. This that we use, I think, from all the knowledge I can gather, is universally used all over the country.

Ques. This extended smoke-box?

Ans. Yes, sir; at the present time.

Ques. Were you at the Chicago Fair, in 1893?

Ans. I was.

Ques. Did you at that time make any examination of the engines and appliances on exhibition there?

Ans. Well, I didn't look at them a great deal, very little.

Ques. Did you look at this appliance?

Ans. No; the smoke-box doors were not open.

Re-cross examination.

By Mr. Pancoast:

Ques. Well, on a train that was running fast and the wind blowing, the sparks driven out of the ash pan by the wind would not be likely, in your judgment, to fall on the track?

Ans. They would fall between the track.

Ques. They wouldn't be wafted by the wind?

Ans. No, sir; the ash pan is too low down.

Ques. How far above the ties is the ash pan?

Ans. Well, it varies. Some of them run down as close as eight or ten inches.

Ques. And others?

Ans. Others are a little higher up. I don't recollect the distance.

THOMAS M. KERR, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Kerr?

Ans. Camden.

Ques. And what is your profession or occupation?

Ans. Machinist.

Ques. Where are you employed?

Ans. At the Camden round-house.

Ques. By what company?

Ans. Pennsylvania Railroad Company, Amboy Division.

Ques. Do you also have charge of the round-house in which the West Jersey engines are run?

Ans. Yes, sir; they all come into one round-house.

Ques. State whether or not you have the same charge

and oversight of these engines as over the Amboy Division.

Ans. Just the same.

Ques. How long have you been connected with the railroad company?

Ans. With the exception of six years, since 1861.

Ques. And where were you those six years?

Ans. I was three of them in Virginia.

Ques. In the army?

Ans. No, sir. I was in the army, but not those years.

Ques. But what employment were you following during those six years?

Ans. Well, three years farming and the balance at my own business, for the North Penn.

Ques. At your business as engineer?

Ans. As machinist.

Ques. Did you serve an apprenticeship?

Ans. Yes, sir.

Ques. Where?

Ans. Bordentown.

Ques. How long was that?

Ans. Four years. Four years, for the old Camden and Amboy Railroad.

Ques. In the shops?

Ans. Yes, sir.

Ques. What is your position there?

Ans. Round-house foreman.

Ques. What are your special duties?

Ans. To look after all the work in connection with the locomotives that come in at that point.

Ques. When you say you served your apprenticeship at Bordentown as machinist, it was in the manufacture of what?

Ans. Manufacture and repair of locomotives and steamboats. They used to do their own marine work at that time, too.

Ques. In connection with engine work?

Ans. Yes, sir. I also occupied the same position part of the time that I do now with the Pennsylvania Railroad. I was in that position when they leased the Camden & Amboy Railroad.

Ques. Then you are somewhat acquainted with the structure of a locomotive engine?

Ans. Yes, sir.

Ques. What kind of an appliance is there attached to the engines used by the West Jersey Company for the prevention of the escape of fire and hot cinders?

Ans. The extended smoke-box, with a screen; an iron screen, with meshes three-sixteenths of an inch. That takes in a space of four to the inch.

Ques. Is that the latest appliance known to you?

Ans. Yes, sir; and the best.

Ques. And the best?

Ans. Yes, sir.

Ques. There were formerly other appliances?

Ans. Yes, sir.

Ques. They have been discarded?

Ans. Yes, sir; they have been discarded. We know no other now.

Ques. Have you any knowledge of any other or better appliance than this used in the country?

Ans. No, sir.

Ques. You have heard Mr. McAllister's description?

Ans. Yes, sir.

Ques. Will you please look at the sketch he drew for the jury, Exhibit No. 3, and state whether or not that is substantially correct.

Ans. Well, sir, that conveys the idea all right.

Ques. I show you the blue-print, Exhibit 4. Please look at that and tell us what that is.

Ans. That is a correct representation of the extended smoke box and of the appliance, the spark arrester.

Ques. Now, Mr. Kerr, with reference to the inspection, what inspection is made of the engines with this extended smoke-box?

Ans. Well, as nearly as possible we get into the extended smoke-box once a week.

Ques. When you say as nearly as possible, what is there to prevent?

Ans. Well, sometimes we don't get the engine to the round-house at that time.

Ques. Sometimes the engine within a week will not be at your round house?

Ans. Yes, sir.

Ques. If it is there what do you do?

Ans. Well, we make a practice of getting into it.

Ques. But at least how often do you get into it?

Ans. At least every two weeks. That is, when we take the engine in to wash out her boiler and do incidental repairs, and generally go into the extended smoke-box and make a thorough examination. I myself at those periods make a personal examination in connection with my inspector.

Ques. Who is your inspector, or who was your inspector in September, 1895?

Ans. George Wilson.

Ques. Is he here?

Ans. Yes, sir.

Ques. From your knowledge and experience, is an inspection such as you have described sufficient for the purpose of determining the safety of the appliance and its condition?

Ans. Yes, sir.

Ques. Do you know whether or not the engines on the West Jersey road are equipped with this extended smoke-box that you have described?

Ans. Every one of them, with the exception of the motor engines. Of course they are an enclosed car—what we call a dummy car.

Ques. What you mean by those motor or dummy engines are those little enclosed engines used from Somers' Point into Atlantic City?

Ans. Yes, sir.

Ques. What kind of an ash pan is there on these engines, Mr. Kerr?

Ans. Well, we have them made out of sheet iron; some cast iron, and different classes of engines have different ash pans; that is, different construction.

Ques. Will you state whether or not the ash pans used upon the engines are the best or not, or safest?

Mr. Pancoast: I object. We can't meet any such proposition as that. He says different ash pans are used on different engines, without any description of them or anything. How are we to meet that?

The Court: You can get at that by cross-examination.

Mr. Pancoast: I object to it, on the ground that we are not obliged to hunt around for information on cross-examination.

The Court: He speaks from his actual knowledge and experience and says he has examined them and they are all right.

Mr. Pancoast: According to this question he can't be speaking from his own knowledge and experience.

Mr. Gaskill: Well, I will ask him that before repeating this question.

Ques. State whether or not the ash pan used on all the engines of the West Jersey system, on this portion of the road, have come under your inspection.

Ans. Yes, sir.

Ques. And did they, during the month of September, 1895?

Ans. As far as I could get over them. Of course I am not always at liberty to get around at all times, but the majority of cases.

Ques. (Former question repeated.) Will you state whether or not the ash pans used upon the engines are the best or not, or safest?

(Objected to. Objection overruled and question admitted.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ans. Yes, sir; they are to my knowledge.

Ques. Are you acquainted with engine No. 10?

Ans. Yes, sir.

Ques. How often are these ash pans examined or inspected?

Ans. Every day. At the end of every trip; that would bring the answer more direct. Of course, as I said before, we don't get them every day; that is, in the shop.

Ques. How often are the ash pans cleaned out?

Ans. Every day; at the end of every trip.

Ques. And where is the ashes, coal, cinders, or whatever may be in the ash pan, cleaned into?

Ans. Into the ash pit made especially for that purpose.

Ques. And where are those ash pits located?

Ans. At the round-house at Atlantic City, Cape May and various points where the terminus is.

Ques. Can you state whether or not engine No. 10 of the West Jersey is equipped with this extended smoke-box and screen?

Ans. Yes, sir.
Ques. And engine No. 35?
Ans. Yes, sir.
Ques. Engine 39?
Ans. Yes, sir.
Ques. Engine 502?
Ans. Yes, sir.
Ques. Engine 507?
Ans. Yes, sir.
Ques. Engine 512?
Ans. Yes, sir.
Ques. Engine 698?
Ans. Yes, sir.
Ques. Engine 700?
Ans. Yes, sir.
Ques. Engine 1659?
Ans. Yes, sir.
Ques. What is the duty of the inspector when he examines these extended smoke-boxes and screens?

(Objected to.)

Ques. Let me put the question a little more fully by adding, with reference to making any records.

Mr. Pancoast: I object. We had a ruling on this record business the other day, to the effect that these records were private and sacred and could not be brought out.

Mr. Gaskill: I don't think it is material here. I will withdraw it for the present, but I have very clear ideas about it. I will get at it in a moment.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know, from your own knowledge, what

kind and character of fire screens are used on the locomotive engines of other prominent roads throughout this state and country ?

Ans. No, sir; not of my own knowledge.

Ques. Do you know what kind of fire boxes are used by any other roads ?

Ans. Yes, sir.

Ques. What kind ?

Ans. Well, there is the Wootton fire-box on the Reading Railroad, the Delaware & Lackawanna, the Lehigh Valley, and other roads.

Ques. Different from the fire-box used on your road ?

Ans. Yes, sir.

Ques. Have you had any practical experience with these other fire-boxes used on these other roads ?

Ans. No, sir.

Ques. These fire screens are apt to get out of order, aren't they ?

Ans. Well, that is possible; but not very probable.

Ques. Then why do you inspect them every other week ?

Ans. As a precautionary measure.

Ques. And make a more thorough inspection every two weeks ?

Ans. So as to be absolutely safe.

Ques. Don't these repeated examinations made by you reveal defects ?

Ans. Well, not as a rule.

Ques. Sometimes you find these defects ?

Ans. Well, sometimes.

Ques. Can you tell about what the life of one of these fire screens is ?

Ans. We have known them to last for at least five years.

Ques. Last that long ?

Ans. Oh, yes.

Ques. Well, on an average, from your experience, how long do they last? Not how long can they last, but how long do they last?

Ans. Well, it depends altogether on the service they get.

Ques. Well, take them on the hard service, on the express trains between Philadelphia and Atlantic City.

Ans. Well, five years.

Ques. They will last five years on an express train?

Ans. Yes, sir.

Ques. Now, these fire boxes require frequent inspection?

Ans. Oh, yes.

Ques. Daily inspection?

Ans. They sometimes get leaky.

Ques. Daily inspection?

Ans. No; not necessarily.

The Court: What do you call fire-boxes?

Mr. Pancoast: The ash pans.

The Court: Well, that is something different.

Ques. The ash pan is very likely to get out of order?

Ans. We give them daily inspection.

Ques. You haven't answered my question. They are very likely to get out of order?

Ans. Not very likely.

Ques. Then, why do they require daily inspection?

Ans. Why, to be on the safe side, as I said before, as a precautionary measure, carrying out the rules of the company.

Re-direct examination.

By Mr. Gaskill:

Ques. Now, Mr. Kerr, let's get this matter about fire-

boxes straight. The Judge asked you about fire-boxes used on certain roads and you mentioned the Wootton fire-box.

Ans. Yes, sir.

Ques. Is that the extended smoke-box?

Ans. No, sir. That is the fire-box where the fire is carried.

Ques. And the difference in the fire-boxes is one of construction?

Ans. Yes, sir.

Ques. And is or not the ash pan of these different fire-boxes practically the same?

Ans. They answer the same purpose, but it is the construction of the engine that makes the difference of shape. It is the construction of the engine.

Ques. How about the smoke-box?

Ans. That is the same, only on different classes of engines there are different sized smoke-boxes. Some require larger smoke-boxes than others.

Ques. And whether they have the Wootton fire-box or not, the smoke-boxes are the same?

Ans. We have none on our road.

Ques. Well, the fire-pit; that has nothing to do with the extended smoke-box?

Ans. No, sir.

Re-cross examination.

By Mr. Pancoast:

Ques. Is the fire-pit the same as the ash pan?

Ans. No, sir; it is above the ash pan.

GEORGE WILSON, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Wilson?

Ans. Camden.

Ques. In whose employ are you?

Ans. The Pennsylvania Railroad.

Ques. And how long have you been in their employ?

Ans. Close to two years.

Ques. Where are you stationed?

Ans. At the Camden round-house.

Ques. What are your duties there?

Ans. My duties at present?

Ques. Yes.

Ans. Just looking after the valves and the journals of engines.

Ques. What were your duties in September of 1895?

Ans. Inspection of the extended smoke-boxes and ash-pans.

Ques. Did you make inspection of the engines in September of 1895 of the West Jersey road?

Ans. Yes, sir.

Ques. Did you do anything else at that time?

Ans. Yes; there was other work attached to the position.

Ques. State whether or not that was your principal duty?

Ans. That was the principal duty; yes, sir.

Ques. Did you make any record of your inspections?

Ans. Yes, sir.

(Witness shown two books, inspector's record of spark arresters and ash pans of locomotives, Books No. 1354 and 1355, and he is asked):

Ques. Are those the books in which you entered the record of your inspection of September, 1895?

Ans. Yes, sir.

Ques. Please state how often you made the inspection.

Ans. Of the extended smoke-boxes?

Ques. Yes.

Ans. Once a week.

Ques. Suppose the engine didn't get in at the end of the week?

Ans. Well, if the engine wasn't there of course I couldn't make the inspection. That was the general rule, once a week always.

Ques. How did you make the inspection?

Ans. By opening the front door and making an internal inspection.

Ques. How would you make this internal inspection?

Ans. By opening the front door and going in.

Ques. And did you, in September, 1895, go inside of these engines with the extended smoke-box?

Ans. Yes, sir.

Ques. Do you know what engine on the 12th day of September, 1895, ran the pay train?

Ans. I couldn't tell.

Ques. Only what someone else has told you?

Ans. Yes, sir.

Ques. Just turn to the inspection of engine 39?

Ans. On what date?

Ques. Have you before you the record made by yourself of the inspection of engine 39?

Ans. Yes, sir.

Ques. On what date did you inspect that engine?

(Objected to.)

By the Court:

Ques. That book, I understand, is the book kept by you by their rules, and a full record?

Ans. Yes, sir.

Ques. And you have kept that by the rules of the company?

Ans. Yes, sir.
Ques. And you refer to that to refresh your memory?
Ans. Yes, sir.

Mr. Pancoast: I object to the book because it is not competent evidence. It was not written down under the sanction of an oath.

The Court: He is swearing to it now.

Mr. Pancoast: Will the Court allow the book in evidence?

The Court: I certainly will.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

By Mr. Gaskill:

Ques. Now, referring to your book, the record of the examination of engine 39, on what date did you make that inspection?
Ans. On the 12th.
Ques. What month?
Ans. September.
Ques. What year?
Ans. 1895.
Ques. What record did you make with reference to the spark arrester?

(Objected to. Objection overruled.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ans. As everything being good, ash pan and extended smoke-box.

Ques. And your signature as inspector?

Ans. Yes, sir.

Ques. That lead pencil memorandum, "C13," is not in your handwriting?

(Objected to.)

Ques. Is the lead pencil memorandum, "C13," endorsed on the certificate of your inspection, 9th month, 12th, in your handwriting?

Ans. No, sir.

Ques. Now, let's turn to the 13th. Now, then, referring to the next inspection of engine No. 39, when was that made?

Ans. That was made on the 13th.

Ques. Of September?

Ans. Yes, sir; 1895.

Ques. Referring again to your record of September 12th, will you tell us whether you opened and entered the extended smoke-box that day?

Ans. In that case, the smoke-box was entered and a thorough examination made; on the 12th, where it says "extended smoke-box," this is the ash pan, and everything gone over externally.

Ques. All marked good?

Ans. All marked good.

Ques. Was the inspection as you have it recorded on the 12th, and the inspection as you have it recorded on the 13th, of engine No. 39, made in the same manner?

Ans. No, sir.

Ques. Please state the difference.

Ans. On the 12th, there was a thorough examination made internally. The engine smoke-box was opened and everything examined inside. On the 13th, there was just an external examination made of the ash pan and smoke-box, to see that there was no holes or leaks in there.

Ques. And, by reference to your record to that engine on the 12th and 13th, of engine 39, please state in what condition you found the engine's screen, smoke-box and ash pan?

Ans. Found everything good.

Ques. Now, let's turn to the record of engine No. 10. Do these books contain other inspections of the same engine, prior and subsequent?

Ans. I guess they do.

Ques. The books are dated what?

Ans. August 28th to September 12th.

Ques. That is 1,354?

Ans. Yes, sir.

Ques. What is the date now of book 1,355?

Ans. September 13th to September 25th.

Ques. State whether or not each time the engine was inspected there is a record of it in these books, between these dates?

Ans. Yes, sir.

Ques. August 28th and September 25th?

Ans. Yes, sir.

Ques. You have in your hand now book what?

Ans. 1,355.

Ques. And on what date in that book do you find an inspection of engine No. 10?

Ans. September 19th.

Ques. And opposite the words "Spark arrester," what is your record of the condition of the engine on arrival?

Ans. Good.

Ques. The next item underneath "Condition on arrival" are the words, "Repairs made?"

Ans. Yes, sir.

Ques. What have you on that line?

Ans. "No repairs made."

Ques. And the next item is "Condition on departure;" what is your record?

Ans. "Good."

Ques. Now, as to the ash pan of engine No. 10 on the 19th, "Condition on arrival," what is your record?

Ans. "Good."

Ques. "Repairs made?"

Ans. "None."

Ques. "Condition on departure?"

Ans. "Good."

Ques. And your signature?

Ans. Yes, sir.

Ques. Now, running back in your book from the 19th, when was the next previous examination of engine No. 10?

Ans. On the 17th; September 17th.

Ques. Now, what memorandum have you opposite "Spark arrester," the three items, "Condition on arrival," "Repairs made," and "Condition on departure?"

Ans. An internal inspection, the doors opened and a general inspection made.

Ques. What are the words there?

Ans. "Good."

Ques. No; but what are the words you have written there?

Ans. "Extended smoke-box."

Ques. You haven't got any word "Good" there?

Ans. No, sir.

Ques. What was its condition of the arrester?

Ans. Good.

Ques. Any repairs made?

Ans. No, sir.

Ques. What was the condition on departure?

Ans. Good.

Ques. Now, the next previous examination of engine No. 10 was when?

Ans. On the 14th of September.

Ques. And what entry have you written out there opposite the items under "spark arrester?"

Ans. "Extended smoke-box."

Ques. And what have you entered opposite "ash pan?"

Ans. "Good," on arrival.

Ques. And how on departure?

Ans. "Good."

Ques. Any repairs?

Ans. No, sir.

Ques. When was engine No. 10 inspected before the last inspection?

Ans. The 13th of September.

Ques. And what is your entry opposite "Spark arrester?"

Ans. "Extended smoke-box."

Ques. And what are your entries opposite "Ash pan?"

Ans. "Good."

Ques. Both——

Ans. On arrival and departure.

Ques. That is, on the 13th?

Ans. Yes, sir.

Ques. Now, referring again to your record on the 12th day of September as to your inspection of engine No. 39, please tell me what your record is opposite "Spark arrester."

Ans. "Extended smoke-box."

Ques. And you have nothing written opposite "Condition on arrival" or "Condition on departure?"

Ans. Condition on arrival and condition on departure good.

Ques. Why is that so?

Ans. Because that is the way that I found them.

Ques. And what about the ash pan?

Ans. Good.

Ques. Both on arrival and departure?

Ans. Arrival and departure.

Ques. Where you have entered upon your record the words "Extended smoke-box," have you made any record of condition on arrival and condition on departure?

Ans. No, sir.

Ques. And why not?

Ans. Because that signifies a thorough examination internally.

Ques. Now, Mr. Wilson, aren't you mistaken with reference to the signification of those words "Extended smoke-box?"

Ans. In what way?

Ques. Don't you make that entry when you don't make the internal examination?

(Objected to).

The Court: He is asking him to explain.

Mr. Pancoast: He is suggesting to his own witness that he has made a mistake.

(Objection overruled and question admitted.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. Now, don't you write the words "Extended smoke-box" out opposite the entry as to spark arrester on any day when you don't get inside of it, and write the word "Good" when you do get inside of it?

Mr. Pancoast: I object to the question as manifestly illegal, because it is an invitation of counsel to the witness to change his testimony, indicates to him in the plainest manner what he wants him to say.

The Court: I will admit the question.

(Plaintiffs' counsel asks an exception.)

(Question withdrawn.)

Adjourned till 2 P. M.

AFTERNOON SESSION.

Ques. Now, Mr. Wilson, give me the record of engine No. 502.

Ans. 502, on the 12th of September, "Extended smoke-box good. Ash pan good on arrival and departure."

Ques. You were then referring to Book 1354?

Ans. Yes, sir.

Ques. Now, in Book 1355, when is your inspection of 502?

Ans. The next inspection is on the 13th of September, 1895.

Ques. Read the record as you made it at that time.

Ans. "Extended smoke-box good; ash pan good on arrival and departure."

Ques. Now, engine 507, what is the record in regard to that?

Ans. On the 12th of September, 1895, "Extended smoke-box good."

Ques. Just read the record as you have it.

Ans. Opposite "Condition on arrival," "Repairs made" and "Condition on departure," I entered "Extended smoke-box."

Ques. Now, with reference to the ash pan, what did you enter?

Ans. "Condition on arrival," "Good," and "Condition on departure," "Good."

Ques. Engine 512? I call your attention to book 1354. Under what date there have you an inspection of engine 512?

Ans. The 6th of September, 1895.

Ques. And just give what you wrote in there.

Ans. Condition of spark arrester on arrival and departure, "Good."

Ques. The word "Good" written twice?

Ans. Yes, sir; on arrival and departure.

Ques. Now, the condition of the ash pan?

Ans. The condition of the ash pan on arrival, "Good;" condition of the ash pan on departure, "Good."

Ques. I call your attention to the certificate of inspection of the same engine, 512, in book 1355. Give the date and entry that you have there just as you entered it?

Ans. Of 512?

Ques. Yes.

Ans. "September 14th, 1895, condition on arrival, good; condition on departure good." That is, opposite the printed words "Condition on arrival," "Repairs made" and "Condition on departure," I have written "Extended smoke-box." Condition of ash pan on arrival "Good," condition on departure "Good."

Ques. Now, engine 698. I call your attention to the entry in book 1354. Give us what you have entered there.

Ans. On September 12th, 1895, the words opposite "Extended smoke-box;" that is, opposite the words, "Condition on arrival," "Repairs made," and "Condition on departure," of "Spark arrester." Ash pan, condition on arrival, "Good;" condition on departure, "Good."

Ques. I now call your attention to the same engine in book 1355, No. 698. Give the entries as you made them there. What date?

Ans. 698, the 16th day of September, 1895. Opposite the words, "Condition on arrival," "Repairs made," and "Condition on departure," is "Good." That is, for smoke arrester.

Ques. Well, how many times have you got the word "Good" written there?

Ans. Four times.

Ques. Opposite "Spark arrester" and opposite the printed inquiries or remarks?

Ans. It is written twice; that is, in regard to the spark arrester.

Ques. First, it is opposite what?

Ans. "Condition on arrival."

Ques. And the second time?

Ans. "Condition on departure."

Ques. Now, take the ash pan.

Ans. "Condition on arrival good, condition on departure good."

Ques. Now, engine 700; what is your entry there in Book 1354?

Ans. After the printed matter, spark arrester, the words "Extended smoke-box."

Ques. Written opposite the printed inquiries concerning spark arrester?

Ans. Yes, sir.

Ques. Now, as to the ash pan?

Ans. Ash pan, "Condition on arrival good, condition on departure good."

Ques. Now, the same engine in Book 1355? Is there an entry?

Ans. Yes, sir.

Ques. What is it?

Ans. On the 13th of September, 1895.

Ques. And what have you there opposite "Spark arrester," as to condition on arrival?

Ans. "Good."

Ques. And as to condition on departure?

Ans. "Good."

Ques. And as to the ash pan, condition on arrival?

Ans. "Good."

Ques. And condition on departure?

Ans. "Good."

Ques. Now, engine 1659, in Book 1354; what is the date?

Ans. 1659, the 12th of September.

Ques. And what is the condition of spark arrester on arrival?

Ans. "Good."

Ques. Condition on departure?

Ans. "Good."

Ques. And of the ash pan, condition on arrival?

Ans. "Good."

Ques. And condition on departure?

Ans. "Good."

Ques. That is the 12th. Now, the same engine, what is the entry there? (Indicating.)

Ans. September 16th.

Ques. And opposite "Spark arrester," "Condition on arrival," "Repairs made" and "Condition on departure," what is your entry?

Ans. "Extended smoke-box."

Ques. And ash pan, condition on arrival?

Ans. "Good."

Ques. And condition on departure?

Ans. "Good."

Ques. These entries to which your attention has been called were made by whom, in these books?

Ans. Made by me.

Ques. And prior to the making of these entries, will you state whether or not you had inspected the engines there referred to?

Ans. Yes, sir.

Ques. At the Camden round-house ?

Ans. Yes, sir.

Ques. On what days did you make these inspections ?

Ans. On the days designated in the book.

Ques. And with respect to the engines to which I have called your attention, and the dates to which I have called your attention, about the 12th of September, were there any repairs needed for any of these engines ?

Ans. No, sir; not that I remember of.

Ques. If there were any, would they be entered on the book ?

Ans. Not in that book; no, sir.

Ques. I mean if there were any repairs necessary to the spark arrester or ash pan ?

Ans. No; not in that book.

Ques. After you had inspected the engines and made your records, what would you do with these records and books ?

Ans. Leave them in the office.

Ques. With whom ?

Ans. Mr. Kerr.

Ques. Your foreman ?

Ans. Yes, sir.

Ques. Would he go over them with you ?

Ans. As a general thing he went over them with me. I thought you meant speaking of the engines. In the interior examination he always went over it with me.

Ques. And that interior examination was made how often ?

Ans. Once a week.

Ques. And on the other occasions with reference to the smoke-box what did you do ?

Ans. Every day.

Ques. And what did you do every day ?

Ans. Examined them to see that there was no holes or leaks in them, ash pan and extended smoke box.

Mr. Gaskill: I offer these two books.

Mr. Pancoast: I object to the offer on the ground that these books are not competent testimony.

The Court: I understand the books are merely the records which he has kept of his own work, in his own handwriting, filed in the office of the company where he works, and he has testified from those books. In any event they are proper as memoranda used by him for the purpose of refreshing his recollection.

Mr. Gaskill: And as such I offer them, and for no other purpose.

The Court: I will admit them in that way.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. How long has it been since you ceased inspecting the smoke-boxes and ash pans and commenced this new work of looking after the valves and journals?

Ans. Eleven months, or ten months.

Cross-examination.

By Mr. Pancoast:

Ques. Now, without reference to this book, you have no recollection of how and in what manner you daily inspected each one of the different engines in September, 1895, have you?

Ans. Without reference to that book?

Ques. Yes.

Ans. No, sir; I couldn't tell.

Ques. Now, have you noted any repairs were needed? If you found upon inspection that any repairs were needed, where did you make a note of that fact?

Ans. Made no note of it; reported it to Mr. Kerr.

Ques. Made no note of it at all?

Ans. No, sir.

Ques. You simply made a verbal report of it?

Ans. A report to Mr. Kerr.

Ques. Then if anything needed repairing it would not be noted in this book?

Ans. No, sir.

Ques. When would you make this inspection? Would it be at the beginning of the day or the end of the day when the engine came in from its work?

Ans. Any time that we happened to find the engine there, all times during the day, some in the morning, some in the middle of the day and some at night, or the latter part of the day.

Ques. So you had no regular time for making the inspection?

Ans. It depended on the time of the engines being there.

Ques. Now, what is the meaning of these words in this book opposite the words "Spark arrester," "Repairs made," in printing, and continuation after the words "Repairs made," in writing, "Extended smoke-box?"

Ans. That is when we gave them an external examination without opening the front door.

Ques. Read altogether the entry reads, opposite the words "Spark arrester," "Repairs made, extended smoke-box." Did that mean that repairs were needed to the smoke-box?

Ans. No, sir.

Ques. That repairs had been made to the smoke-box?

Ans. No, sir.

Ques. The smoke-box was a part of the spark arrester, wasn't it?

Ans. Yes, sir.

Ques. The part beneath the wire screen?

Ans. Beneath and above, too.

Ques. I see here some entries opposite "Spark arrester" read this way: "Spark arrester" on the left hand; on the right hand, "Condition on arrival," blank; "Repairs made," "Extended smoke-box," ("Extended smoke-box" being in ink); "Condition on departure," blank. In other places, opposite the words "Spark arrester," the words "Condition on arrival, good;" the word "Good" being in ink; "Repairs made," blank; "Condition on departure, good." Now, what is the difference between these two reports?

Ans That is when we make an internal examination, opening the front door.

Ques. Which is when you make an internal examination?

Ans. When it is marked "Good on arrival."

Ques. Well, what does the other indicate?

Ans. That is an external examination.

Ques. The other is merely an external examination?

Ans. Yes, sir.

Ques. When you didn't enter the smoke-box?

Ans. Yes, sir; I saw that everything outside was in proper shape.

Ques. And you didn't go inside?

Ans. No, sir.

Ques. And that is the difference between the two?

Ans. Yes, sir.

Ques. When you did go inside you wrote opposite the words "Condition on arrival," "Good;" "Condition on departure," "Good?"

Ans. Yes, sir.

Ques. And when you made simply an external inspection, you wrote opposite the words, "Extended smoke-box?"

Ans. Yes, sir.

Ques. Then you made only an outside examination?

Ans. That is all.

Ques. Then your examination of engine 39 on the 12th day of September, 1895, was external examination only, wasn't it?

Ans. No, sir. I was looking at the other one. You didn't give me a chance to look at the book.

(Question repeated.)

Ans. Not unless I saw the book. I couldn't remember that.

Ques. I will read what is entered: "Engine No. 39, round house No. blank; arrived 9.12, inspected 9.12, departed 9.12; condition on arrival, blank; repairs made, extended smoke-box; condition on departure," opposite the words "spark arrester." That shows that you made only an external examination of that spark arrester on that day, doesn't it?

Ans. Yes, sir.

Ques. And wherever that formula occurs, it shows you made only an external examination?

Ans. Yes, sir.

Re-direct examination.

By Mr. Gaskill:

Ques. Well, now, let me call his attention to the next examination of 39 on the 13th. I call your attention to Book 1355, the next examination of 39. When was that?

Ans. The 13th of September.

Ques. And opposite "Spark arrester" what have you?

Ans. "Good."

Ques. "Repairs made?"

Ans. "No repairs."

Ques. "Condition on departure?"

Ans. "Good."

Ques. What does that indicate?

Ans. That indicates an internal examination.

Ques. On the day after?

Ans. Yes, sir.

Ques. Now, let me see if we have got these other engines. Now, 502. I show you Book 1355.

Ans. Yes, sir.

Ques. What is you inspection there at that time?

Ans. September 19th.

Ques. And what was the condition of the spark arrester on arrival, as you have entered it?

Ans. Good.

Ques. On departure?

Ans. Good.

Ques. What does that indicate?

Ans. That indicates a internal examination.

Ques. Now, 507. I call your attention to the record in Book 1355. What was the date of that?

Ans. September 23d.

Ques. And what was the condition of the spark arrester on arrival of the train?

Ans. Good.

Ques. And condition on departure?

Ans. Good.

Ques. What does that indicate?

Ans. That indicates an interior examination.

Ques. Can you say why that hadn't been examined on the inside earlier than that date?

Ans. Which one?

Ques. The one we have just spoken of, on the 23d of September?

Ans. 507?

Ques. Yes.

Ans. The engine might not have been there during working hours.

Ques. Now, 512. Now, with reference to engine 512 I call your attention to Book 1355. Is there an inspection of that engine under date of September 14th?

Ans. Yes, sir.

Ques. And what is your entry there?

Ans. "Extended smoke-box."

Ques. And that indicates what?

Ans. External examination.

Ques. An examination on the outside?

Ans. Yes, sir.

Ques. The same engine, 512, under date of the 20th; what have you there?

Ans. "Extended smoke-box."

Ques. Indicates what?

Ans. Outside examination.

Ques. The same engine, on the 21st of September; what have you there as to condition on arrival?

Ans. "Good."

Ques. And condition on departure?

Ans. "Good."

Ques. And what does that indicate?

Ans. Indicates an internal examination.

Ques. With reference to engine 698, your inspection of 9th month, 12th, has the written entry of what?

Ans. "Extended smoke-box."

Ques. And an inspection of the same engine in Book 1355, under date of the 13th, has what entry?

Ans. "Extended smoke-box."

Ques. And the same engine, under date of the 16th, has what entry opposite "Spark arrester," and "Condition on arrival?"

Ans. "Good."

Ques. And "Condition on departure?"

Ans. "Good."

Ques. And that indicates what?

Ans. Internal examination.

Ques. Engine 700; your inspection under date of September 12th, opposite "Spark arrester," has what record?

Ans. "Extended smoke-box."

Ques. And the inspection of the same engine, in Book 1355, under the 16th of September, has what written opposite "Spark arrester on arrival?"

Ans. "Good."

Ques. And "Condition on departure?"

Ans. "Good."

Ques. Engine 1659. I call your attention to the inspection of engine 1659. What is the date?

Ans. The 12th of September.

Ques. What was the condition of the spark arrester on arrival?

Ans. Good.

Ques. And spark arrester on departure?

Ans. Good.

Ques. And that indicates what kind of an examination?

Ans. Internal.

Ques. Engine No. 10. I call your attention to inspection of that on the 12th day of September. What is your entry opposite "Spark arrester?"

Ans. "Extended smoke-box."

Ques. Inspection of the same engine on the 13th; what is your entry opposite "Spark arrester?"

Ans. "Extended smoke-box."

Ques. And of the same engine on the 14th?

Ans. "Extended smoke-box."

Ques. And of the same engine on the 17th?

Ans. "Extended smoke-box."

Ques. And of the same engine on the 19th; opposite "Spark arrester, condition on arrival?"

Ans. "Good."

Ques. "Condition on departure?"

Ans. "Good."

Ques. That indicates what kind of an examination?

Ans. Internal.

Ques. Engine No. 35, under date of the 14th, you have got opposite "Spark arrester" what?

Ans. "Extended smoke-box."

Ques. The same engine opposite the 16th, you have "Spark arrester, condition on arrival?"

Ans. "Good."

Ques. "Condition on departure?"

Ans. "Good."

Ques. That indicates what?

Ans. Internal examination.

Re-cross examination.

By Mr. Pancoast:

Ques. I want to ask you a few questions about the inspector's records from August 28th to September 12th, 1895. I asked you some questions as to engine 39, which was the engine to the pay train. Now, the entry here on your book in relation to engine 39, the pay train engine, on September 12th, shows that you only gave it an external examination?

Ans. External examinations; yes, sir.

Ques. Now, turn over the book and let's see when you next before examined it. Follow me, please, along with the book, till we come to 39 again. It was inspected next before that, according to your record, on the 11th, September 11th; that was the day before, was it?

Ans. Yes, sir.

Ques. And that, according to your record here, was an external examination?

Ans. Yes, sir.

Ques. Can you say why you examined that two days in succession then from your records?

Ans. I don't know. I suppose the engine happened to be there, and we generally went over them all, every day.

Ques. Now, the next record that you have got here, proceeding backward, is on what day?

Ans. On the 10th.

Ques. And that shows an external examination?

Ans. Yes, sir.

Ques. And the next?

Ans. The 9th.

Ques. And that shows an external examination?

Ans. Yes, sir.

Ques. And the next?

Ans. The 6th.

Ques. Of September?

Ans. Yes, sir.

Ques. And that shows an external examination?

Ans. Yes, sir.

Ques. And the next?

Ans. Is on the 3d.

Ques. Of September?

Ans. Yes, sir.

Ques. And that shows an external examination?

Ans. Yes, sir.

Ques. And the next?

Ans. The 29th of August.

Ques. And what does that show?

Ans. Shows an internal examination.

Ques. That shows a good examination?

Ans. Yes, sir.

Ques. Then, it was not inspected from August 29th, internally, until when? Now, we will go forward. We will go forward until we strike it. Until when?

Ans. September 13th.

Ques. What kind of an examination was that?

Ans. That was an internal inspection.

Mr. Gaskill: I offer in evidence the books.

(Marked "Exhibits D5 and D6.")

JOSEPH H. VAUGHAN, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Vaughan?

Ans. Philadelphia.

Ques. And what is your business?

Ans. I am a clerk in the West Jersey Railroad office.

Ques. And how long have you been a clerk in their office?

Ans. Three years last spring.

Ques. In what department are you?

Ans. In the Superintendent's office.

Ques. Are the records of which engines travel over certain roads kept in that department?

Ans. They are not kept in that department, but we have access to them.

Ques. Have you at my request made an examination of the records in the office for the purpose of ascertaining what engines passed over the West Jersey Road on the 12th day of September, 1895?

Ans. Yes, sir.

Ques. And have you that with you?

Ans. Yes, sir; I brought the train sheet along.

Ques. That is made up in the office?

Ans. Yes, sir; made up on the same day.

Ques. On that day?

Ans. Yes, sir.

Ques. Can you tell us what engines passed over the West Jersey and Atlantic road between Mays Landing and Atlantic City on the 12th day of September, 1895?

Mr. Pancoast: I object to that on the ground that it is not competent by any known rule or principle of law. Here is a record kept by a private company by some one else and you propose to prove by this stranger to it what it is.

Mr. Gaskill: If your Honor please, I don't want to take any chances on that. My instructions were to bring the man who made the entries. I am told that this man is simply familiar with the office, and I shall withdraw this man and on Monday bring down the man who made the entries.

Ques. Have you any knowledge of your own what engines passed over the West Jersey and Atlantic road on the 12th day of September, 1895, between Mays Landing and Pleasantville?

Ans. Only from this record.

Ques. You don't keep that record yourself?

Ans. No, sir.

Ques. Don't make it up?

Ans. No, sir.

Ques. Where is that record made up?

Ans. That record is kept by the train dispatcher's operators, and as each train passes that station that operator reports to the general office in Camden and on this sheet it is marked by the operator who has charge of this sheet as to whether the train passes on time, and if it does it is marked with a cross, and if not the number of minutes behind time.

Ques. All you could tell would be by referring to a record made by somebody else and which is not in the line of your duty?

Ans. Well, I have had occasion to use these sheets.

Ques. But you didn't make that. All that you know is that that passed as correct in the office?

Ans. Yes, sir. In fact, they are not made by any

one man. They are made by the operators on duty in one day. It would be impossible to get one man to say he made every entry on that sheet.

The Court: What time in the afternoon was it this fire started, as proved by the plaintiff?

Mr. Pancoast: Between 3.30 and 4.30. It was within that time that the pay train passed; within that time that the tower man went down and gave the alarm.

The Court: Do I understand that the pay train passed prior to 3.30?

Mr. Gaskill: There is no proof as to when the pay train passed.

The Court: I don't see why, if this is the ordinary record furnished of the engines that went over there, that it is not good enough. Of course, it is not strictly legal. Counsel can of course take his own course about it.

Mr. Gaskill: Well, it is good enough, but I don't want to risk any verdict that I might get on it.

The Court: I am speaking of the time that the fire occurred. I don't see why we should take all the engines on the road. I think if you can get the engines that went over it in a reasonable time it would be sufficient.

Mr. Gaskill: That is the reason why I produce the record of all the engines, and prove all of them, because there is no proof of what engine it was.

HENRY J. IRICK, affirmed.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Irick?

Ans. I live near Vincentown, Burlington county, New Jersey.

Ques. How long have you lived there?

Ans. Sixty-three years.

Ques. That is about the years of your pilgrimage then?

Ans. Yes, sir.

Ques. And who was your father?

Ans. John S. Irick.

Ques. Recently deceased?

Ans. Yes, sir.

Ques. Are you the owner of any cedar swamp?

Ans. Yes; I own some.

Ques. And was your father in his lifetime the owner of any cedar swamp?

Ans. Yes; he was a large owner.

Ques. And at the time of his death?

Ans. He was a large owner.

Ques. What quantity of cedar swamp and pine land?

Ans. Well, about five or six thousand acres.

Ques. Are you one of his executors?

Ans. I am.

Ques. How long has he been dead?

Ans. Two years the fourth of August last.

Ques. Will you state whether or not since his death his executors have been disposing of his cedar swamp and other outlands?

Ans. We have.

Ques. Outside of this ownership of your father which comes to you as executor to dispose of, have you bought and sold cedar swamp yourself, and pine lands?

Ans. I haven't bought any within the last two years, but I have sold a large quantity.

Ques. How much?

Ans. Two hundred acres, I should judge.

Ques. Your father's estate?

Ans. No; outside of that.

Ques. State what your occupation is in Burlington county outside of your farming operations.

Ans. I have been a surveyor since 1861.

Ques. Have you held a warrant as deputy surveyor under the Council of Proprietors of West Jersey?

Ans. I never was a deputy surveyor.

Ques. What position do you hold in the Council of Proprietors of West Jersey, the association holding lands?

Ans. I am President of the Council.

Ques. At this time?

Ans. Yes, sir.

Ques. Have you served in any public capacities?

Ans. I have.

Ques. Which have familiarized you with outlands?

Ans. Yes, I have been commissioner and executor and administrator and arbitrator very often.

Ques. And outside of your position as commissioner and arbitrator and executor, have you as surveyor acted for other owners?

Ans. I have.

Ques. And what knowledge then have you of the sales of cedar swamp and pine lands in the western part of the State?

Ans. So far as the counties of Atlantic, Burlington, Ocean and Camden are concerned, I have had considerable.

Ques. How many thousand acres have you had dealings with?

Ans. I couldn't tell that exactly, but I have had for a great many years.

Ques. Can you give us an estimate of the number of acres?

Ans. I could not, but it runs from ten to fifty acres a year, and five or six hundred acres of pine land.

Ques. You said you had had experience in Atlantic county?

Ans. Yes, sir.

Ques. Have you bought and sold in Atlantic county?

Ans. I have helped sell.

Ques. Did your father have dealings in Atlantic county?

Ans. No, sir; but William Richards' estate.

Ques. Did you have to do with the Richards estate?

Ans. No; but my father did; I helped.

Ques. What did he hold?

Ans. He held some two thousand acres—some of it at Hammonton, this county.

Ques. And partly in Burlington county?

Ans. Partly in Burlington county.

Ques. Have you had any experience in testing the market within the last two years concerning the values of cedar swamp and pine land?

Ans. Yes, sir.

Ques. Did you, at my request, Mr. Irick, come to this Abbott swamp to make an examination?

Ans. Yes; came last Monday.

Ques. For the purpose of testifying in this case?

Ans. Yes, sir.

Ques. Before you came here, were you informed as to what amount of money they claimed?

Ans. No, sir.

Ques. Were you informed as to what amount of money the experts secured by the railroad company had estimated it to be worth?

Ans. Never heard it till I heard it on the witness stand.

Ques. When you went in the swamp had you any knowledge of anyone else's figures?

Ans. No, sir.

Ques. Who went with you to the swamp?

Ans. Mr. Chambers, of Mount Holly, and Mr. Cunningham, I think, of the railroad company.

Ques. What Chambers?

Ans. Samuel H.

Ques. Is he, to your knowledge, a large owner of cedar swamp and pine lands in Burlington county?

Ans. One of the largest I know of.

Ques. Do you know the extent of his holdings at this time?

Ans. Not exactly, but I know it is very large.

Ques. How many acres?

Ans. Several thousand.

Ques. Some six thousand acres, isn't it?

Ans. I think so.

Ques. Did you have with you a tracing of the map, another copy of the blue-print of the map that is now upon the easel?

Ans. Yes, sir.

Ques. Without the coloring?

Ans. Without the coloring; yes, sir.

Ques. Did you, with Mr. Chambers and Mr. Cunningham, go upon this land?

Ans. Yes, sir.

Ques. And what part of the day did you spend upon the land?

Ans. We got there about eleven o'clock and staid there till four.

Ques. Did you finish your calculations upon the land or after you returned?

Ans. On the land.

Ques. Will you please state to the Court and jury how you and Mr. Chambers made the estimate, with reference to each knowing what the other was doing?

Ans. We hadn't any consultation there at all.

Ques. Did you communicate to Mr. Chambers as you went around over this land what valuations you were putting on the different parcels?

Ans. No, sir.

Ques. Did he communicate to you?

Ans. No, sir.

Ques. When was it you first compared your figures?

Ans. After we got in the wagon and went across the causeway to get a look at the outlands, we made a calculation.

Ques. Have you changed the figures you made in the swamp?

Ans. No, sir; never did.

Ques. And the figures are the figures you made before you consulted with Mr. Chambers?

Ans. Yes, sir.

Ques. The book which you have just laid upon the table is what?

Ans. A book which the surveyor gave me; a blank book.

Ques. What did you enter in that?

Ans. As we went to each particular point I made a note of the condition of the swamp, and marked the station upon one of these maps.

Ques. And are the marks upon the map yet?

Ans. Yes, sir; they are.

Ques. The map which I now show you in two pieces, state whether or not that is the map you had with you.

Ans. Those are the two maps we had.

Mr. Gaskill: I offer these in evidence.

(Marked Exhibits P7 and P8.)

Ques. Did you mark on the map the course you took?

Ans. Yes, sir; started first with a black pencil and finished up with a red one.

Ques. Now, Mr. Irick, will you kindly come to the easel and point out to the jury the course you took, and

as you travel along kindly tell them the character of the cedar or other timber that you saw, how much was burned and the valuation that you put upon it as you went along. Where the black pencil marks were put in the first place, will you change the black to red? (Witness marks in red.) Where did you commence? Where did you enter the swamp?

Ans. We went down past where Mr. Abbott, one of the Mr. Abbotts, lives. We went in back of his building, and went down to an old causeway near the cranberry bog. We walked across the bridge, over the stream, to a corner stone at the junction of two old roads, which I suppose to be these. (Indicating on map.) There were no courses and distances on either of the two maps I have seen yet. I suppose that was it. That is the place where we were. We then immediately went upon the burned ground. There was an area of savannah ground burned over, burned clean; the moss and grass and brush were all burned clean, and we went into that piece of cedar swamp (indicating).

Ques. What is it marked?

Ans. That is marked "Cedar swamp killed, about five inches through." My memorandum is this: "Viewed piece of swamp of about one acre—burned and killed."

Ques. And what did you estimate its value, and how much its damage?

Ans. We estimated the damage at $35 upon that one acre, immediately after the fire.

Ques. How did you fix that $35; will you tell the jury?

Ans. The timber was entirely killed, but if it had been cut last winter and gotten out it would have been worth nearly as much as it ever was.

Ques. Is that No. 1?

Ans. That is No. 1.

Ques. Will you please put a 1 there in red—a large 1?

(Witness marks 1 on map.)

Ques. Now, then, go on from there.

Ans. We then came out of that place to the line of the survey. That is this line, (indicating) about here, where there were some live oak trees that were not killed. We then went into the swamp to another piece that was down badly, of the same quality of cedar, and burned badly.

Ques. Is this red line on the map the line that you traversed?

Ans. That is the line that I traversed, but I can't see it.

Ques. Where was this, where it says "five inch cedars fallen down?"

Ans. We passed that as I said before. That was downed cedar, and we went to another piece. That is it. (Indicating.) It was not marked in Mr. Lake's survey. It was a piece that was not killed when Mr. Lake surveyed it, but has died since.

Ques. And how much did you find there and what was the damage?

Ans. I make my estimates from the survey made by Mr. Cunningham, who had it in feet, and mine isn't exactly to the point, that is, down to the square foot. He keeps everything in square feet, and I always keep everything in acres, and I made it the nearest to the quantity, but don't call it a half an acre in square feet. I call it a half an acre of swamp.

Ques. You made no survey yourself?

Ans. I made no survey myself.

Ques. Mr. Cunningham's map showed at each one of these places how much the quantity was embraced in the fire line?

Ans. Yes, sir.

Ques. Now, then, from your experience as a surveyor, in looking upon that point of land last Monday, please state how near in your judgment Mr. Cunningham's survey was.

(Objected to. Question withdrawn.)

Ques. Did you, independent of Mr. Cunningham's survey, estimate the quantity in each of these surveys?

(Objected to. Question withdrawn.)

Ques. Now, Mr. Irick, what did you estimate the damage in there?

Ans. At point No. 2?

Ques. Yes.

Ans. $20.

Ques. For how much cedar?

Ans. About a half acre.

Ques. Now, where did you go, following that red line?

Ans. We went to point No. 3, if you can see it. I can't.

Ques. Now, you went from No. 2, which is where my finger is, according to the map, to No. 3? What did you find there?

Ans. We looked to see whether the land had ever been set with young cedar, and this is my note: "Has no appearance of any cedar ever having been started," the piece marked half an acre, point opposite a line across. There is a cross line there. The surveyor marked two above and three below.

Ques. What did you find there?

Ans. We found a piece of timber burned lightly, not measured in on this map.

Ques. That is No. 4. You found nothing on No. 3?

Ans. The soil was damaged some and that was $20.

By Mr. Pancoast:

Ques. What was that, No. 3 or 2?
Ans. No. 3.

By Mr. Gaskill:

Ques. Go on.
Ans. No. 4 we found a half an acre that didn't appear to be measured in on Mr. Lake's map, but we went into it, and it was in the heart of the swamp, on the outside of what is now cut, and it was about the average of the timber.
Ques. What is that worth, or the damage?
Ans. $20.
Ques. Then where did you go?
Ans. Went from there to one of the causeways that had been spoken of as burned up, No. 5.
Ques. Pole causeway?
Ans. Yes, sir; pole causeway; it had been a pole causeway, I guess.
Ques. That was from 4 to 5?
Ans. Yes, sir; there wasn't any timber from 4 to 5 that had been burned, but the causeway was almost entirely burned; we could just follow it. That took us up to point No. 6.
Ques. That is here? (Indicating.)
Ans. Yes, sir; and then there was a causeway that you could walk over.
Ques. You found no damaged timber at 5 or 6?
Ans. No, sir; nothing but the causeway; it had been worked off there several years before.
Ques. Then you went out and came up following this line up to the edge of the swamp?
Ans. First we went to No. 7 on the line of the survey, so as to know we were not on somebody else; we came to the outbounds of the survey and near a corner

thereof. The fire seemed to have followed in around this causeway; from here back to No. 4 no cedar of any size to speak of.

Ques. That is No. 4?

Ans. Yes, sir.

Ques. Between these two points?

Ans. Yes, sir; at No. 8 we passed in upon a causeway, found but little cedar, passing by another small piece not mentioned upon Mr. Lake's map and not measured in before by Mr. Cunningham. There was a half an acre of this; damage, $15 to it. It can be used and worked now, for it is not much destroyed.

Ques. Then coming out from No. 8—

Ans. We came back then, out on the line of the survey, followed down to a corner, witnessed the same as some others I had seen—two above and three below.

Ques. What do you mean by that?

Ans. A place with two marks above and three below; a surveyor's mark.

Ques. A chip taken out of the tree and then the axe socked in two times above and three below?

Ans. Yes, sir.

Ques. Each surveyor has a certain mark?

Ans. Yes, sir.

Ques. Whose mark is this?

Ans. Mr. Lake's.

Ques. Are these marks recorded in the books of your association?

Ans. They are.

Ques. Are you a member?

Ans. Yes, sir.

Ques. Mr. Lake is a member?

Ans. Yes, sir.

Ques. You found his marks on that corner?

Ans. Yes, sir.

Ques. What then?

Ans. The brush at this station——

By Mr. Pancoast:

Ques. Is this No. 9?

Ans. Yes, sir; brush land intermixed with a few gums and a very few cedars. It was all burned, and this is upon a causeway.

By Mr. Gaskill:

Ques. And what damage did you put to the timber that was burned there?

Ans. None whatever.

Ques. Why didn't you put any damage to the gums and brush burned there?

Ans. They were not worth getting out any time; they were so small.

Ques. Where did you go from there?

Ans. We went from there across the swamp and into the swamp to No. 10.

Ques. What did you find there?

Ans. That station No. 10 was right in the heart of the swamp, along the stream. We then went to the next station, where the largest cedar that I saw upon the tract was burned and downed.

By Mr. Pancoast:

Ques. Well, what about No. 10? Is there any damage?

Ans. Coming back to No. 10 we found there a half to three-quarters of an acre cedar burned. We put the loss upon that at $40.

By Mr. Gaskill:

Ques. Then where did you go?

Ans. Then we went to the large cedar after that. Now, we came first, however, to No. 11, which

is the first Wheat Field, they call it, seven acres. There is a causeway by the side of this where I supposed it was first worked out when it was taken out. This is one of the pieces called by the witnesses the Wheat Field.

Ques. Did that extend all the way up?

Ans. Yes, sir; seemed to. We walked all the way up. That has been young timber burned over, not all killed. It will not average as high as the easel.

Ques. Do these red lines around here indicate the course you took around here?

Ans. Yes, sir. We put that on as we went around.

Ques. Around over this Wheat Field?

Ans. Yes, sir.

Ques. What damage did you estimate there for the young cedar in that first Wheat Field, so called, or did you after estimate the Wheat Fields together?

Ans. I put them in afterwards.

Ques. Well, then go on.

By Mr. Pancoast:

Ques. Does No. 11 include both sides of the Wheat Field?

Ans. No.

Ques. That is part of the Wheat Field then?

Ans. Yes. The good cedar up the branch divides it.

By Mr. Gaskill:

Ques. Now, then, from the Wheat Field here you took the course indicated by the red lines?

Ans. Yes, sir.

Ques. And then came down to this line marked across the swamp?

Ans. Yes, sir; we came out to the large cedar.

Ques. On the other side of the stream?

Ans. Yes, sir.

Ques. Now, you have got across Gravelly Run?

Ans. Got across Gravelly Run.

Ques. And where did you stop?

Ans. Alongside of the second Wheat Field, they call it. That was the largest piece of cedar and the largest trees that I saw anywhere upon the tract, either upon the tract or—

By Mr. Pancoast:

Ques. What is that? You haven't dealt with No. 11.

By Mr. Gaskill:

Ques. I find the next numbers up here, the line running back, 16, 15, 14, 13 and then over there was 11?

Ans. Yes, sir. At 11 I have put the damages $36. There was very nearly an acre of swamp there.

Ques. At 11?

Ans. Yes, sir.

Ques. No; 11 is what you have described as an acre, the Wheat Field.

Ans. I have got that mixed a little. The Wheat Field is No. 11, part of the Wheat Field. That is part of the Wheat Field at the southeast corner of the whole tract. No. 11 and 12, I have got them together. There was an acre of swamp burned at those two points. They were right close together.

Ques. Well, how much have you got the damage to?

Ans. $36. It was a nice piece of young swamp.

Ques. That is that strip along there? (Indicating.)

Ans. Yes, sir.

Ques. That is No. 12, Mr. Irick, marked on the map, "Cedar timber, six inches, killed." That is what you estimated how much?

Ans. $40 damage.

Ques. Now, come up to 13.

Ans. We went across the swamp to a corner in the swamp along near the branch. That is another corner marked and witnessed as the other corners are marked —two above and three below; looked as if it had been done about two years.

Ques. You then went where?

Ans. We then went across the stream to the big piece of timber on the east side of the swamp.

Ques. No. 14?

Ans. Yes, sir.

Ques. And what quantity of damage did you put there? This is marked "Surface burned; cedar not killed."

By Mr. Pancoast:

Ques. What was 13?

Ans. Simply a corner; a station. It is one of the sub-divisions made by Mr. Lake. We found a piece of swamp near this station containing a half acre, about. Damage $15.

By Mr. Gaskill: Then where did you go?

Ans. Then we went to station 15, one acre of good cedar, nearly all down.

Ques. At this place? (Indicating.)

Ans. Yes; the largest that I have yet seen upon the whole tract.

Ques. It is marked on the map "Fallen cedar timber, bottom burned?"

Ans. Yes; those were the largest trees that I have seen anywhere burned; it would make good plank or boat boards or anything you want.

Ques. That is 15?

Ans. Yes, sir.

Ques. What damage have you there?

Ans. $55.

Ques. How much is there?

Ans. Sixty hundredths, I thought, about, of an acre.

Ques. A little over half an acre?

Ans. Yes, sir.

Ques. And is the timber of any value as it lies there?

Ans. Not unless it is gotten out.

Ques. Did you, in estimating that $55, allow anything for salvage?

Ans. Yes, sir.

Ques. $55 is the damage?

Ans. Yes, sir.

Ques. Not the value of the timber before it was burned?

Ans. No, sir.

Ques. Then where did you go?

Ans. Followed that red line around.

Ques. To 16?

Ans. Yes, sir. I think we came out to an old causeway. No; No. 16 is another belt of timber burned, not measured in by Mr. Lake or Mr. Cunningham. It is right along the edge of the standing timber, a little piece burned there. That was one chain wide and six chains long, making sixty one hundredths of an acre.

Ques. And what did you estimate the damage there?

Ans. $20.

Ques. Then following this—

Ans. Then we followed that line up, and we came to 17.

Ques. On the map marked opposite where you entered is "Scattering pine timber."

Ans. Yes, sir; that is it; an old causeway, pretty much a slab causeway.

Ques. Did you put any valuation on that or go to the cedar?

Ans. No; no valuation.

Ques. Then following this red line down to the next cedar—

Ans. The next station that we came to was 18; came to an old road or causeway. On the north side of this causeway there was two acres of fine young swamp; would make good railing; perhaps now and then a siding log. We valued that, the damage, at $40. That is easily gotten out.

Ques. Then, following this line, where did you go?

Ans. We went then out this old causeway to a stake by the side of the causeway.

By Mr. Pancoast:

Ques. Number what?

Mr. Gaskill: No. 19.

Ans. On to the savannah grounds.

By Mr. Gaskill:

Ques. What did you find there?

Ans. That is simply a station where the man came with the horses and wagon to meet us.

Ques. Then where did you go?

Ans. Then we drove around, following the line right on down to the pine timber, where the pine timber was burned. We drove down to station No. 20, where an old road crosses the outbounds of the survey. That is right there. (Indicating.) This is nothing but common low savannah and huckleberry ground, and now and then a pine tree and gum tree, which was killed.

Ques. You went in here?

Ans. Yes, sir.

Ques. What value is that, Mr. Irick?

Ans. There was three or four acres; I put the same valuation that we usually give upon land of that kind in our section, about $2 an acre, called it $10.

Ques. Where did you go then?

Ans. We then went into a piece of pine timber, principally; would cut ten or twelve cords to the acre.

By Mr. Pancoast:

Ques. Was that 22?

Ans. Yes, sir; but it was not entirely killed, unfit for use.

By Mr. Gaskill:

Ques. What damage did you put upon that?

Ans. Didn't put any, for it was not killed.

Ques. Where did you go then?

Ans. We then went to another place near by, all connected right along, and found the timber in the same condition.

Ques. Over here?

Ans. Yes, sir; burned, but not injured permanently.

Ques. Station 22?

Ans. Yes, sir; station 22.

Ques. Where it is marked "Trees burned, pine trees not killed"?

Ans. Yes, sir; No. 23 is in the same condition.

Ques. Did that conclude your work upon the ground?

Ans. All except the estimate upon the loss in the two Wheat Fields.

Ques. How much did you estimate the damage to be in the two Wheat Fields?

Ans. I think it was about seven acres in the southeast one, and I don't think there was over ten in the easterly one. That made about seventeen acres, and I thought the damage to that, considering it had put the growth of it back again for several years, $200.

Ques. Was the soil burned out there in the Wheat Field?

Ans. Not all over; only in a few places.

Ques. Did you find any green trees there?

Ans. Yes, sir; quite a number of green trees all through it.

Ques. Now, Mr. Irick, what is the total of the damage that you have, as you estimated it?

Ans. $650.

Ques. What does that cover?

Ans. That covers the difference between the value of the timber before the fire and after the fire.

Ques. It had some value then on the ground after the fire?

Ans. Yes, sir; the big timber.

Ques. This $200, Mr. Irick, was that for the Wheat Fields or for general damage?

Ans. That includes the Wheat Fields and for all other damages.

Ques. Now, with reference to this that is burned over outside of the cedar swamp, this pine land, so far as it is within the fire line, what was the character of this land, and what is its value; what has been called in this case one hundred and thirty-five acres?

Ans. I am almost afraid to say, there has been such high values put on it by the witnesses.

Ques. Well, give us your idea.

Ans. Well, in our section, I suppose, after the timber has been removed, $5 an acre.

Ques. And from what you saw of that one hundred and thirty-five acres that has been burned, what valuation would you put upon it in September, 1895?

Ans. $5 would be a big valuation, taking the whole, upland and all.

Ques. Will that grow cedar again?

Ans. Some of it will.

Ques. What has been your experience with reference to the second growth of cedar after a swamp has been cut off?

Ans. I never saw a piece of swamp in all my experience that comes up again in cedar out to the limits that it did in the first place.

Ques. Outside of the fifty-two acres of cedar in this survey of the Abbotts, which fifty-two acres is included within what has been termed the zigzag lines made by Mr. Lake, what was the value of the rest of that per acre?

Ans. I wouldn't like to have given over $2 an acre for it.

Ques. And what kind of timber did you find on it where it had not been burned?

Ans. As I said, there was some pine in places, some gum, huckleberry brush, and now and then a scattering cedar tree.

Ques. What value is this scattering pine and gum and this scattering cedar?

Ans. It is not large enough to be of any great value.

Ques. The scattering cedars that you found in this upland, what is their value as compared with the value of cedar trees growing in the swamp? What is the difference of the two kinds?

Ans. In this case the cedars outside were small. These inside were large.

Ques. With respect to limbs, how about cedars that grow outside of the swamp?

Ans. Scattering cedars are a great deal more limby than the others.

Ques. And about its value?

Ans. Well, not worth so much; it is generally sappy.

Ques. These scattering pines and gums, were they suitable for fire-wood?

Ans. Yes, sir.

Ques. Well, what is its value, standing?

Ans. Well, you can't give it away with us; I don't know what it is worth in this section.

Ques. It is worth it to get it?

Ans. Yes, sir.

Ques. Have you had any experience in cutting off and shoring timber from cedar swamps?

Ans. Yes, sir.

Ques. And have you ever built any crossways or causeways?

Ans. Built all kinds.

Ques. You saw these causeways in there?

Ans. Yes, sir.

Ques. In the first place, tell us what kind of causeways these were in this tract, following the red line as you went over it?

Ans. There were various kinds, some of them pole, several of them pine slabs and cedar slabs; looked as if they had been made several years.

Ques. Were they in condition to use?

Ans. No, sir; you couldn't use them.

Ques. Did you see any causeway in there that could have been used with a team and load?

Ans. The only one that I would have liked to use was the one that comes up in the northeast corner.

Ques. In the Wheat Field?

Ans. No; in the northeast corner.

Ques. Over here? (Indicating.)

Ans. Yes, sir.

Ques. Then you wouldn't liked to have risked this causeway here with a team, nor this causeway here? (Indicating.)

Ans. No, sir. This second causeway you pointed to you could drive up where they drove with water, you could drive to the edge of the causeway, but you couldn't drive on it. It is not fit to drive upon.

Ques. How about this one pointed out here, the Bear causeway?

Ans. I think that is the one I have reference to there. You can drive into the water-hole.

Ques. But you couldn't use it any further?

Ans. No, sir; it was not safe.

Ques. Then about this one down below known as the Scow Sides Causeway, down here? (Indicating.)

Ans. Well, if it is all like that that is left, it couldn't haven't been used.

Ques. Now, Mr. Irick, as a practical man, taking the cedar timber in the swamp that is in it, and to cut that off and to shore it to the best advantage, what would it cost you to build causeways in that swamp per rod?

Ans. If I were going to work that piece of swamp I should work it out on the northwest side.

Ques. This side? (Indicating.)

Ans. Yes; to the fast land. Causeways in the swamp cost from twelve to fifty cents a rod. In this case, to get from the timber to the shore, there being no stuff there to make it of, you would have to make it of something else.

Ques. In which case are you speaking of now, this piece here?

Ans. Yes, sir. That is, to get from the timber to this shore on this side, if I worked it on that side. I would work it all the other way.

Ques. What else is used in building causeways?

Ans. I have used 3 x 4 scantling, pine and hemlock scantling; make a little rail of it.

Ques. What does that cost?

Ans. That costs you about a dollar a rod.

Ques. How effective is that, or what can you accomplish by the use of such a causeway as that?

Ans. Two men can run a great deal of timber out in a day without the aid of a horse, out on the fast land. They don't want a horse at all. The car is not heavy enough, generally, in cedar swamps, and you can push it out nearly on a level.

Ques. Now, Mr. Irick, with reference to the cause-

ways you testified could not be used safely with a team, why couldn't they be used with a team?

Ans. Well, they have been used so long that the horses would go through.

Ques. Because of their age and not because they were burned?

Ans. No, sir; several of them were intact in parts, only on the end, but they were so rotten that I would not trust a horse on them.

Ques. The causeways there now that are only burned on the ends and the poles making them?

Ans. Yes, sir.

Cross-examination.

By Mr. Pancoast:

Ques. Mr. Irick, are you interested in this defendant railroad company?

Ans. No, sir; only I am a small stockholder.

Ques. Do you hold any of the bonds?

Ans. No. I have got twenty-six shares of the stock.

By Mr. Gaskill:

Ques. That of the new consolidated stock?

Ans. Yes, sir.

By Mr. Pancoast:

Ques. Exchanged for West Jersey?

Ans. Yes, sir.

Ques. You have a pass over the road, I suppose?

Ans. No, sir.

Ques. Who requested you to come here and testify?

Ans. It is signed Lewis P. Scott. (Producing paper.)

Ques. Who is he?

Ans. I don't know. Here it is.

By Mr. Gaskill:

Ques. That is your subpœna, isn't it?
Ans. Yes, sir.

By Mr. Pancoast:

Ques. It was not Judge Gaskill, was it?
Ans. I don't know. This has Scott's name to it. If I hadn't had that in my pocket I shouldn't have stayed here.
Ques. Did you estimate how much, in your judgment, could have been gotten of this burned timber by working it out to the best advantage? You said it could have been worked out, a good deal of this timber?
Ans. It could have been worked out.
Ques. You took that into consideration in estimating your damage?
Ans. Yes, sir.
Ques. Now, how much could have been worked out of the available burned timber there, from your point of view?
Ans. If it had been mine it would all have been out to the shore now.
Ques. How much could have been used?
Ans. I put the valuation so much an acre and then took the land and put the two together.
Ques. I want to know how much, in your judgment, could have been realized from the burned timber if they had utilized it as you would?
Ans. If this timber had been mine I would have worked every foot of it last winter when the ground was frozen, taking it out upon the shore—
Ques. You needn't tell us that. That is a long story. You would have done the best you could to have made valuable timber?
Ans. Of course I would.

Ques. How much could you have made of it?

Ans. I believe I could have made $600 out of that timber.

Ques. And you took that into consideration in making up your estimate?

Ans. I did, most undoubtedly.

Ques. So that if you were in error and there could not have been anything substantial made out of it, you would have to add $600 to your estimate?

Ans. If I could not; yes, sir.

Ques. You have never been in this swamp before?

Ans. No, sir; I have been in many others.

Ques. Have you ever had any experience in cutting off and putting into the market timber of that kind in this county?

Ans. Yes, sir; my wife owned ten acres on the Mechesactauxin Branch, near Hammonton, in the northeast corner of this county, which I worked off and sold.

Ques. When?

Ans. Five or six years ago; it belonged to the Roberts estate.

Ques. Was it burned timber?

Ans. No, sir.

Ques. Did you ever have experience in working off burned timber?

Ans. Yes, sir.

Ques. When?

Ans. I had about two acres on the sandy causeway, which belonged to my wife and sister.

Ques. Did you work that off?

Ans. I sold it. It was about such timber as this.

Ques. All your knowledge of this land, this burned timber and that which is not burned, was obtained from information given you on that day by the people who took you out there? I mean the locality and extent of land.

Ans. I never was on this tract before, excepting in crossing it on the railroad, I suppose.

Ques. And in your estimate, general, you give the value of this difference between the value of this timber before the fire and the value of it after the fire?

Ans. In the old tract, yes, sir. That is the way I made my estimate.

Ques. Did you make any estimate of the permanent damage that was done to the soil by the consumption of the vegetable mould that goes to support vegetation?

Ans. That is in the $200. That is in the Wheat Field estimate. I included that in the $200. I estimated the whole thing.

Ques. Please break up that estimate and say how much you estimated the damage to the Wheat Field, and how much you estimated as damage to the soil by having its fertility destroyed.

Ans. That would take quite a long answer to do that. I will do it, if you desire.

Ques. Oh, I desire it. I don't think you apprehend the question.

Ans. Yes, I do. You ask me to put a valuation on it.

(Question repeated.)

Ques. You say you have made a general estimate of $200 damage to the Wheat Field, and that includes the damage to all the other lands?

Ans. Yes, sir.

Ques. Now, I say resolve that into all the elements. First, damage to the Wheat Field, and then damage to the other land.

Ans. That question will have to be estimated by divisions. Where you first go into this swamp from the point which we went everything is burned.

Ques. Well, I know, but that is not answering the

question. You say you have estimated certain lump damages here, which includes the damage done to the Wheat Field and general damage done to the soil in all the rest of the tract.

Ans. I estimated $5 an acre damage to the Wheat Field. That is a good deal more than I would give for it if it was in our section of the country, before or after the fire.

Ques. Well, now, how much an acre is injury to the soil of the whole tract?

Ans. In the twenty-four acres about which I estimated in the two pieces that were called the Wheat Field, I put them at the price I would be willing to give for it if it was in five or ten miles of me, and if it was of the size it was now, only burned.

Ques. Now, without regard to the Wheat Field, how much damage per acre on an average did this fire do to the soil by the consumption of the vegetable mould which would go to support future vegetation?

Ans. Well, I have known a great many fires in our neighborhood, and I will answer that practically none.

By Mr. Gaskill:

Ques. One question I omitted to ask you on direct examination. Mr. Irick, as you went over the ground with this map before you, will you please state whether or not you compared the description of the timber, brush or whatever it may be, which was described on the map, and how it was injured, with what you saw there on the ground?

Ans. I did; most certainly.

Ques. And how did it compare with the description on the map?

Ans. I think in every particular it was right, except in the two cases I mention he hadn't put in on the map, neither had Mr. Lake.

Ques. Now, with reference to the fire line which has been described in this case, which is this heavy interior yellowish white line, following around my pointer, please state whether or not, with this map in your hand as you were upon the ground, whether or not that interior fire line is correctly designated here.

Ans. I believe that to be practically correct.

SAMUEL H. CHAMBERS, affirmed.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Chambers?

Ans. Mt. Holly.

Ques. And what is your occupation?

Ans. I have none. I live without doing anything.

Ques. Are you a retired farmer?

Ans. I used to farm. I have property to look after?

Ques. Are you a surveyor?

Ans. I have done considerable surveying.

Ques. In the pine lands and cedar swamps of West Jersey?

Ans. Yes; and Burlington county particularly.

Ques. Are you an owner of cedar swamp and pine land?

Ans. Pretty considerable.

Ques. Of some that came to you from your father?

Ans. Yes; a part that came to me and some that I bought.

Ques. And about to what extent?

Ans. Pretty much seven thousand acres; six thousand six or seven hundred acres; some that I bought and some that came from my father.

Ques. Have you ever yourself surveyed in the cedar swamps?

Ans. Yes, and have since 1862 had exclusive charge. My father was a very old man.

Ques. Your father was an old man?

Ans. He lived to be eighty-four.

Ques. Have you also acted as commissioner, executor, guardian and trustee, having charge?

Ans. Yes, I have acted as administrator and commissioner having charge of this land.

Ques. Have you also surveyed for other persons?

Ans. Yes.

Ques. State whether or not you have bought and marketed cedar timber?

Ans. Yes.

Ques. Have you made sales of cedar timber standing or cut it in the last three years?

Ans. Yes.

Ques. To what extent?

Ans. About fifty acres within the last three years; previous to that, for this last fifteen years, a good deal more. Well, I sold seventy-five acres to one man; forty acres of it was big cedar; the other was small stuff.

Ques. Have you been on Abbotts' cedar swamp?

Ans. On Monday afternoon, with Mr. Irick and this young surveyor here.

Ques. Mr. Cunningham?

Ans. Yes.

Ques. Did you see the course on the map indicated in red pointed out by Mr. Irick?

Ans. Yes; I suggested the making of it, and did make the first of it in a pencil mark, but I saw Cunningham had a red pencil and could see it better.

Ques. Then the red line showing where you went was made on the ground?

Ans. As near as we could designate the rambles we took through it.

Ques. What kind of an examination did you make of this swamp and land?

Ans. Just as full as we could make for the time we were in it.

Ques. You knew for what purpose you were making it?

Ans. Yes.

Ques. To testify here?

Ans. Yes.

Ques. Before that did you know what amount the Abbotts claimed as damages?

Ans. No.

Ques. Did you know what amount the railroad men were putting upon it?

Ans. No; nor I don't now.

Ques. Well, Mr. Chambers, did you and Mr. Irick, as you viewed these places where the timber had been burned, indicate to each other on the ground what your figures were?

Ans. At almost every station where we would meet we would talk about the cedar, but we agreed when we went in that we wouldn't give each other our figures.

Ques. All you did was to compare notes as to the quality of the cedar?

Ans. Yes.

Ques. With this map in your possession on the grounds can you state whether or not the description of the timber and the kind of land as designated on the map corresponds with that on the ground?

Ans. So far as I could judge, I think it does.

Ques. And with reference to the interior fire lines where the fire ate into the swamp, from your observation can you tell whether this map is a correct representation of that?

Ans. I think it is.

Ques. Will you be kind enough to state to the court

and jury the different parcels of burned timber, and the valuation or the amount of damages that you place upon it.

Ans. I can go to the map?

Ques. Yes; and you can refer to your memoranda if you wish.

Ans. We entered the swamp at this point, (indicating on map) at exactly ten and a half o'clock. We looked at these pieces of ground as we walked over and examined these pieces of cedar. I depended largely on what Cunningham said in reference to the quantity, except in one or two instances; in my memorandam in one or two instances I have increased them a little. I found this to be a piece of cedar; the largest of it is about what I call five-inch cedar, about an acre. I would have valued it, according to my valuation, I would have valued it at $175. I think it is worth $40 yet.

Ques. Making the damage $35?

Ans. Yes. It could be worked out and make just as many shingles and rails and paling as it ever would; but it is more work to work it and more work to get at it, and there may be a few trees spoiled by the heat cracking it, but it is worth almost as much, and I have taken off $40, leaving the damage $35. We then proceeded through here (indicating) and found this piece of cedar very much the same thing, represented as being half an acre, and I had no reason to dispute but there was half an acre. I valued that at $40 before it was burned, and worth $20 now. We then traced through here to this little piece. (Indicating.) There was a little running clump of trees.

Ques. That point there?

Ans. It is there in lead pencil. I marked it point 3. It was a little open clump of cedar there. I valued the damage to that at $10. No. 4 was on the old causeway. We walked along the causeway here to stations

No. 4, 5 and 6. In here a team could go in, I think, pretty much to that point, that elbow in from there to the point marked 5, pretty much to 7, and here after it got there the causeway was burned there. From fifteen to eighteen rods had been burned. The causeway had been built, you could tell how it had been built, by stringers laying down that way and crossing pieces this way, (illustrating) cullen pieces about two inches or two and a half, looked as if it had been worked from the top of the trees. There I believe a team could have been worked in, but now, of course, they could not. At that point we measured the depth of the soil, stuck down a stick pretty well, on the edge, and found it would go in about fourteen inches.

Ques. Could the rest of that causeway be travelled by team ?

Ans. No. Fifteen or eighteen rods were burned out. I will say this. My general observation of the causeway was that while they were not entirely rotten, it would be entirely unsafe to fetch out a load. Certainly a team, if it went in once, if it had a load, wouldn't fetch out another load, because the lumber that was in it would break and let the team through it. I didn't actually think the causeways were safe to take a team on. We left there and traveled in here (indicating) where we found a piece of scorched timber. They marked it half an acre. I thought it might be a little more than that. I have marked it half to three-quarters of an acre. I valued it at $40, and it is still worth $25. I valued the damage at $15. Then we traveled from there along here to point 9 and then went into 10. That is one acre of cedar I marked at $80, one acre $80. It is still worth $40; damage, $40. We turned and went back and came up here. (Indicating.) Here was an old crossway. There is where we found a piece of timber that was scorched, one acre. I

valued it at $90 and took off $40. I am speaking now of the piece I spoke of once before. At 11 we came to what I would call the lower Wheat Field, or the southern Wheat Field. It was a piece of cedar represented to be seven acres. It was from two to four feet high, fairly set, but not as thick as wheat grows in Burlington county, fairly set with cedar, looked as if it might have been pretty thrifty. I valued that, the damage there, at $10 an acre, $70.

Ques. That is for the damage to the Wheat Field in the southeastern corner?

Ans. That is for this Wheat Field, yes. We went there to 11. That is the Wheat Field. 12 is a skirt of cedar along here. (Indicating.) I valued that at $80 and took off $40 for what it is still worth, leaving the damage at $4[illegible]. 13 was nothing but a corner. 14 was about a half an acre of cedar. I marked it scorched. I marked the damage there, without putting anything what I thought it was worth, $18.

Ques. Then you came down here and came down to that big timber?

Ans. Yes, I understand. There is where we crossed the creek. I made a ring around that, where we crossed the creek. Then we went up there to look at that and then came down here. There was a young growth of cedar. I estimated that big piece first.

Ques. What did you estimate that?

Ans. They said three-quarters of an acre. I thought it was a little more. I called it an acre. Just there is where we seen them big trees that takes two men to reach around them. They must be very short armed men around here.

Ques. What makes you say that?

Ans. I tried reaching around it, and I smutted my shirt and had to buy a new one. I thought they certainly must be short armed men around here. I seen

no such trees there. There was some nice trees there, and that was a nice piece of cedar, and it was blown in, pretty well down, there.

Ques. It was pretty well down there?

Ans. Yes. I estimated that at $150, and I said it was damaged $75 an acre, and worth $75 now. I could notice that there was another fire in the swamp sometime before. I seen trees with leaves all blown off, and other trees with leaves all on. Some of them were eaten in. I concluded the first fire had come along and killed it, and the second fire had eaten in.

Now, 15 is the second Wheat Field. I have got two 15s on my paper. 15 is the second Wheat Field. Just at this point I was tired out and I didn't go in that. These trees that were blown down here I could go out on and see almost all over it.

Ques. Did you go up and examine it?

Ans. I did go up and examine it. They told me there was ten acres of it. I had no opportunity of judging. I assumed it was ten acres. It was largely brush, but there was some trees on it. I valued the damage to that at $5 an acre, $50. Now, we came down here to this little belt of timber here, 16. I put that at $30 an acre, $60; damage, $30; leaving $30 there. I got pretty tolerably tired then, I tell you. We seen some pine timber there at 17. I marked it six acres of pine timber; damage, $2 an acre; $12. Now, we came down here to another piece of cedar swamp, 18. I valued that at $80 and took off $40 for what it is still worth, leaving $40 damage. I see I have marked there "Shows another fire:" I don't know why I did that.

Ques. Then you came down where?

Ans. Then we followed down to a stake, just a station. That is 19, where we came out of the swamp. We came out and drove the rest the way. We drove down a road down here and then I think we drove back. I most forget how we did drive.

Ques. Here is 20 and there is 21.

Ans. Well, at 20, about five acres. I valued the loss at $10. 21, 22 and 23 I have put no valuations on.

Ques. Why not?

Ans. Well, I will tell you. We got in the wagon and came home then. After we came home and after I had rested up some and washed, and washed the smut off some, Mr. Irick and I got this map and went over it. I says, "We have not allowed anything—here is a piece pretty well burned; the soil is burned out." All over the tract, wherever we went, here was pieces we hadn't put any valuation. I thought the damage would be about $200 on those pieces.

Ques. Taking 21, 22 and 23?

Ans. Yes; and taking some other little pieces I haven't got down.

Ques. Including the damage to the soil you lumped that at $200?

Ans. Making $685.

Ques. That is your estimate of the damage?

Ans. Yes; that is my estimate of the damage.

Ques. Now, in reference to the causeway in this swamp. To work off the cedar that is inside of what has been described as zigzag lines, the two tracts, to work that off to the best advantage, what would be the expense of building crossways?

Ans. Well, if you build it from the north side of the swamp it would be very little. There could be causeways worked in from the north here. If I was going to work that I would select a good landing out on the high land and work it into the back part of the swamp a strip about fifty feet wide, cutting up the brush and filling it up with that. Then I would commence at the back part and work towards the landing, and the brush I would cut beyond the fifty feet I would use all the time to build the crossway.

Ques. What would it cost you for that kind of a causeway?

Ans. Oh, the material would cost you nothing, and they build them from fifteen to forty cents a rod.

Ques. From what you saw of the causeways in the tract, could they before the fire have been used for the purpose of working out this swamp?

Ans. I think that one or two loads would have smashed them up. That is my judgment about it.

Cross-examination.

By Mr. Pancoast:

Ques. How much did you conclude that the value of the burned timber left standing was?

Ans. The burned timber left standing, including the Wheat Fields, $485.

Ques. That includes the Wheat Field, and includes all the burned timber that is now standing? That is, you could have got that much in money off of it after the fire?

Ans. Yes. Since the fire you could get that much money out of it.

Ques. Then if you are mistaken in that——

Ans. Well, I will tell you.

Ques. Wait a minute; don't talk so fast.

Ans. Let me tell you. You asked if they could get that money out of it. Mind you, there are seventy and fifty,—there are about one hundred and twenty-five acres at least that has nothing on that I have given them full value. It would not sell for $10 an acre, and it wouldn't sell for that with the stuff on it.

Ques. Well, now come back.

Ans. Well, I will answer that if I can.

Ques. What, in your judgment, was the value of the burned timber that the Abbotts could have taken off

and put in the market? You said from time to time in your testimony that the burned timber left there was of considerable value.

Ans. $365. That would be the value of the timber.

Ques. That is exclusive of the Wheat Field?

Ans. The Wheat Fields are worth nothing.

Ques. I understand that. You have already estimated that. Then if you are mistaken and there was no valuable timber there, you would have to add that?

Ans. I have taken off half of what it was worth before for working it. I don't think I am mistaken about it.

Ques. You don't think you are mistaken about it?

Ans. No; I am so positive.

Ques. You may be.

Ans. I may be. I have seen other people who have been mistaken before.

Ques. You seem to take a good deal of interest in it.

Ans. No, sir; not a bit of interest. No, sir; I never owned a share of stock that paid a dividend. I never had a free ticket in my life till I got a free ticket to come down here.

Ques. They did give you a ticket?

Ans. Yes; to take me home, that is all. They limited it to one trip.

Ques. Did you ever come over in this county to testify in a case like this before?

Ans. No, sir; I never did.

Ques. Who got you to come, Clerk Scott or somebody else? Mr. Irick said Clerk Scott got him to come; who got you to come?

Ans. Why, a subpœna under direction of the court. I don't know whether it was Abbotts' or not. It says, testify in a case between Abbotts and them; but I supposed it was the railroad company, for Joe was talking to me.

Ques. You supposed that?

Ans. Yes; but you don't take anything for a supposition now. You make a man swear to what he knows.

Ques. You are a retired gentleman of means, aren't you?

Ans. No, I am not. I propose to be a decent man, but you see I am a little rough. You couldn't have lived in Camden as long as you have if you couldn't see that.

Ques. Well, you are pretty rough on the plaintiffs. We have seen that before you went on the stand.

Ans. Well, I don't know. I have done just what I believe to be right.

Ques. I suppose you have been frequently called upon to testify as an expert in timber cases; have you or haven't you?

Ans. No; not very often.

Ques. Well, have you ever?

Ans. Well, now, I don't just call a case. I have testified in land cases, but not as an expert, that I know of—as an expert on timber.

Ques. Never in this kind of a case?

Ans. No; I don't know that I have.

Adjourned till 10 A. M. Monday, September 14th.

MAYS LANDING, N. J., September 14th, 1896.

PETER B. YOUNG, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Young?

Ans. Camden.

Ques. What is your business?

Ans. At present train dispatcher for the West Jersey and Seashore Railroad.

Ques. Were you in the employ of that company in September of 1895?

Ans. I was.

Ques. In what position at that time?

Ans. Train Dispatcher's operator.

Ques. Were you on duty on September 12th, 1895?

Ans. From one o'clock until sometime during the night.

Ques. Did you, during the time you were on duty, keep a record of the trains that passed on the West Jersey and Atlantic Railroad between Mays Landing and Pleasantville?

Ans. I did.

Ques. By reference to that record can you give us the record of those that passed?

Ans. I can.

Ques. Do so. Give us the record of those that passed during the afternoon.

Ans. Which way?

Ques. Either way.

Ans. North bound, the first was No. 507, Engine No. 507.

By Mr. Pancoast:

Ques. Was that north or south bound?

Ans. North.

Ques. Is the time given?

By Mr. Gaskill: It can be.

The Court: Let's have the time now.

By Mr. Gaskill:

Ques. Now in giving us the time, Mr. Young, can you tell what time those trains passed the signal station at the Cedar Swamp, below Mays Landing?

Ans. Within a minute, yes, sir.

Ques. Well, then, as you give us the number of the engine, please give us the time that the train passed the Cedar Swamp siding. Now 507 was the first, engine 507. Now the time of it.

Ans. Engine 507 at 3 o'clock.

Ques. That is in the afternoon?

Ans. Yes, sir.

Ques. Now the next.

Ans. The next is engine 39—No, that should have been first,—extra engine 39, at 2.55. Engine 39 should have been first. That was an extra.

Ques. Do you know what extra it was that engine ran that day?

Ans. The pay car.

Ques. Go on.

Ans. Train 52—

Ques. No; I don't care for the train number,—engine number.

Ans. Engine 700, at 3.18. Next, engine 1659, at 5.52. Then engine 35, at 6.26. That is all the north bound.

Ques. Now, then, give us the trains in the afternoon; now the south bound engines.

Ans. 512.

Ques. The time?

Ans. At 5.13.

By Mr. Pancoast:

Ques. P. M.?

Ans. Yes, sir. That is all.

By Mr. Gaskill:

Ques. Now can you give us from the record the engines that passed in the forenoon and the time?

Ans. Yes, sir; north bound——

Ques. Is there any other south bound?

Ans. Not in the afternoon.

Ques. Now give us those in the forenoon?

Ans. In the forenoon, north bound, is engine 512, at 7.41; that is north bound in the morning; engine 502, north bound, at 11.40; that is all north.

Ques. Now, then, the south bound in the forenoon.

Ans. Engine 507, at 10.09; engine 700, at 9.51. I give you these backwards as they come on our sheet; they pass each other on the way. Engine 35, at 8.59; engine 502, at 9.45; engine 35 at 11.10. Now I find I haven't given you the court trains. They are north bound, and I have overlooked them. Extra 502, at 9.30.

By Mr. Pancoast:

Ques. A. M., is this?

Ans. A. M., yes, sir; engine 35, at 10.50.

Ques. Both those extras?

Ans. Both extras; yes, sir.

By Mr. Gaskill:

Ques. Now about the afternoon court trains?

Ans. I gave you the court trains; there is no court train goes south.

Ques. You don't find any record of either engine 10 or engine 698 on that day, passing that point?

Ans. Engine 698 passed that point at about 8.13 P. M. Engine 10 does not appear.

Cross-examination.

By Mr. Pancoast:

Ques. What did you say your position was?

Ans. Train dispatcher.

Ques. For the West Jersey Railroad Company last September?

Ans. I was train dispatcher's operator last September.

Ques. Well, you received, did you, as that officer, the dispatches from the different points along the road showing when the trains passed?

Ans. I do.

Ques. Then there was a telegraph station at this block signal station at Gravelly Run at this time, was there not?

Ans. If by Gravelly Run you refer to Cedar Swamp, yes, sir.

Ques. This is near Reega?

Ans. Near Reega; yes, sir.

Ques. Who was the dispatcher there last September, on the 12th?

Ans. G. C. Kadel.

Ques. Does he occupy that station still?

Ans. He does.

Ques. Is this Kadel the man that was stationed there at the block station there in the swamp?

Ans. No; he is Train Dispatcher in the Camden office.

Ques. Who was the operator, the telegraph operator, on the road at this block station?

Ans. Mr. Edsall, I believe.

Ques. Is he there at that station still?

Ans. He is, to the best of my knowledge.

Ques. Then all the information touching the passage of trains at that point on that day came from him?

By Mr. Gaskill:

Ques. When you say that point, what do you mean?

Ans. McKee City.

By Mr. Pancoast:

Ques. Now, you have given certain information touching the passage of these trains by this block sigcal station, haven't you, here this morning on the witness stand?

Ans. Yes, sir. Just excuse me for—

Ques. Hold on. You have answered it. Did you get that information from Edsall, who was stationed at that block signal station?

Ans. To what block signal station do you refer?

Ques. There at the swamp.

Ans. No; Edsall is not at the swamp. Edsall is at McKee City, the next station below the swamp. Who the operator was at the swamp I don't know.

Ques. Well, that is what I mean.

Ans. I misunderstood your question.

Ques. Well, now, you have been testifying, as I understood you, as to the time these trains passed this block signal station at the swamp.

Ans. Yes, sir; I have given you the time of the trains at the cedar swamp.

Ques. Now, you didn't get the report of the time these trains passed the swamp from the man in the block signal station?

Ans. We did.

Ques. I thought you just now said you got it from the station agent at McKee City.

Ans. No, sir. We got the reports from the operator at the swamp; the time of the trains at McKee City, from the operator at McKee City.

Ques. In your testimony haven't you been testifying as to the time the trains passed the station or siding at the cedar swamp?

Ans. I have been giving you the time at cedar swamp; yes, sir.

Ques. Well, that time then must have come from the telegraph operator there at the block station in the swamp, didn't it?

Ans. At Cedar Swamp; yes, sir.

Ques. And so far as you know, that is his station still?

Ans. No, sir. I don't know anything to that effect. I don't believe that he is there.

Ques. Well, do you know anything about whether he is or not?

Ans. I do not.

Ques. Now, what becomes of the telegraphic information that you receive in this way?

Ans. We keep it on a register.

Ques. Then you have got all the telegrams on the register from which you made up this sheet from which you have testified here?

Ans. We make this sheet up at once. These records are put down as they are given us.

(Question repeated.)

Ans. I still don't understand the question.

Ques. If you will just give a little bit of attention to the question, it is a very simple question. What did you say were done with the telegrams received giving information of the time of the passage of the trains?

Ans. They are placed on the register as they are received.

Ques. How placed on the register? Where is the register?

Ans. This is the register. (Indicating paper in his hands.)

Ques. That paper?

Ans. That paper is the register.

Ques. Are these telegrams preserved in any other form than on the register?

Ans. They are not.

Ques. Did you receive any telegram the afternoon of the 12th of September from this agent stationed there at this block signal station, touching the fire?

(Objected to as not cross-examination.)

Mr. Gaskill: He has been examined simply as to the passage of trains.

Mr. Pancoast: That is true, and I don't know but the point is well taken, but it is within the discretion of the Court. If he doesn't want me to examine this witness on that now, he will have to remain.

The Court: I don't think it is worth while to examine him on that now.

Mr. Pancoast: Well, I wish this witness to remain then in the court.

Mr. Gaskill: If the Court will consent that you have a right to recall him, I will consider that you are doing it now, under any such ruling as the Court may make, but I will object to it then. The Court has disposed of the matter now before us. Now, counsel has asked that this witness remain. I state that the exigencies of business are such that he must return to the office as soon as possible. I am willing for the Court to rule on it now.

The Court: In reference to the telegrams he received?

Mr. Pancoast: Yes, sir.

The Court: Is this man here?

Mr. Gaskill: Edsall is here; yes, sir.

The Court: Well, I don't see why you can't have this testimony now. You have Edsall here and he can explain. Edsall, I understand, is the operator at the swamp station, not at Reega, but at the block signal

station at the switch. Now, it seems that all this information came from him. Anything you have in regard to that I don't see why you can't ask it now.

Mr. Gaskill: My objection to it would be now that it would not be rebuttal. Supposing this witness was now called by the plaintiff, after I have closed my case, we taking it now as a matter of convenience; my objection is that it is not rebuttal.

The Court: We haven't the telegrams; they are gone. We have the information, and I don't see any objection to having the information received from this man.

(Defendant's objection overruled and question admitted.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

(Question repeated.)

Ques. Did you receive any telegram the afternoon of the 12th of September from this agent stationed at this block signal station, touching the fire?

Ans. I can't answer that question for a certainty, the telegram as to the fire. We received too many telegrams in the meantime to remember any one telegram in that length of time.

Ques. There seems to be some little confusion in the minds of some of us touching who this operator was at the block signal station there. Who did you say it was?

Ans. I said I didn't know who the block signal station operator was, but I said the operator at McKee City, to the best of my information, was Mr. Edsall.

Ques. You don't know his name?

Ans. No, sir.

Ques. How long had he been there before the 12th of September?

Ans. I don't know.

Ques. Do you know where he is now?

Ans. No, sir.

Ques. If such a telegram relating to the fire had been sent by him would there be a record of it kept in your office?

Ans. I think there would.

Ques. Where?

Ans. On the Messages file, as received.

Ques. Who keeps the Messages file?

Ans. Mr. H. L. Husted.

Ques. What does H. stand for?

Ans. Henry or Harry, I don't know which.

Ques. Where is his office?

Ans. Camden.

Ques. At the office of the company?

Ans. Yes, sir.

Ques. Now, if any message had been sent from the West Jersey Railroad Company's office at Camden to this agent stationed at the block signal station there at the swamp, where would that be preserved?

Ans. In the same place.

By Mr. Gaskill:

Ques. Mr. Young, are the messages from the different operators concerning the passing of trains by their stations reduced to writing and handed to you?

Ans. No, sir.

Ques. How do you get them?

Ans. I receive them myself.

Ques. Receive them yourself from what?

Ans. From the operator sending them.

New Jersey State Library

Ques. How?

Ans. By sound.

Ques. From the instrument in front of you?

Ans. Yes, sir.

Ques. In other words, you sit in front of the instrument?

Ans. Yes, sir.

Ques. And you sit and take that as it comes from the operator?

Ans. Yes, sir.

Mr. Pancoast: I move to strike out the testimony of this witness as to the writing upon this paper or sheet produced here, on the ground that it is wholly hearsay, not in anyway under the sanction of an oath. He simply testifies to what some other employee of the company, on the 12th day of September, 1895, not produced here, is said to have said to him over the wire in reference to the passage of the trains over this road. I move to strike it out because it is wholly hearsay. The force of it all depends upon the alleged statement of this employee there at the block signal station.

The Court: This man was the regular telegraph operator stationed at that point for the purpose of keeping a record of the transactions of trains at that point. I can't see how it is possible for the railroad companies to conduct their business in any other way than that. This is the only way that we can ever get at the fact unless we produce every railroad engineer and everybody else. It came over the telegraph and he took it from the operator there. He says such a train passed at such a time. If you can show that this man is not reliable, that is another thing. In fact, I don't see how you can get along with your case without taking such testimony.

Mr. Gaskill: I am perfectly willing that it should be stricken out, the time of the passage of the trains at this point. I didn't commence to ask him about the time of the passage of the trains, but the Judge invited me to ask him the time of the trains. What I called this witness for, and the only thing I desire to have retained in his testimony, is that he is the train dispatcher and has personal knowledge of the passage of trains that went over the road that day, and from his personal knowledge he testifies as to the trains that passed over the road. I am willing to have that part stricken out.

The Court: I suppose the stenographer's notes show the time as it was called for by Mr. Pancoast himself; but I can't see why it is not as perfectly relevant as you can have testimony in a case of such importance.

(Plaintiffs' motion overruled.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

The Court: Does this train dispatcher know what sort of coal is used in the engines that go over that road?

The Witness: He does not.

It is admitted that all these engines spoken of by the last witness carried passenger trains, except the train at night, which was a freight train, and No. 502, which was a north bound freight.

RUFUS HILL, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Hill?

Ans. Stanwick, New Jersey.

Ques. What is your occupation?

Ans. Master Mechanic.

Ques. In charge of what shop?

Ans. The Camden, shop, at Pavonia.

Ques. That is on the Camden & Amboy Railroad, just above Camden?

Ans. Yes, sir.

Ques. How long have you been in charge of those shops?

Ans. Ever since they have been built, since 1888.

Ques. And prior to that where were you?

Ans. I was on the Camden & Amboy Railroad.

Ques. In what capacity?

Ans. Well, in various capacities; as Master Mechanic since 1871.

Ques. How long have you been engaged in railroading in connection with the motive power department?

Ans. About forty years.

Ques. Served an apprenticeship?

Ans. Yes, sir.

Ques. Where?

Ans. I served my apprenticeship in Jersey City; commenced my time in 1852.

Ques. In what shops?

Ans. It was called the North Point foundry; general jobbing and machinery.

Ques. What were they engaged in manufacturing and repairing there?

Ans. All classes of machinery and steamboat work.

Ques. How long have you been engaged in manufacturing and repairing of locomotive engines for any company?

Ans. Since 1856.

Ques. Forty years?

Ans. Yes, sir.

Ques. Mr. Hill, at the Pavonia shops what engines do you have charge of; make repairs to?

Ans. We repair all the engines of the West Jersey and Seashore road and the Amboy Division engines, and, of course, sometimes of the New York Division engines.

Ques. All the West Jersey and Seashore engines?

Ans. Yes, sir.

Ques. Have you actual personal knowledge of the different kinds of spark arresters and ash pans that are in use and have been in use for some years back?

Ans. I have a general knowledge; yes, sir.

Ques. What spark arrester is most generally in use at this time?

Ans. Late years the most improved spark arrester is what we call the extension front type, with the netting and mechanism therein enclosed.

(Witness being shown Exhibit B4, he is asked:

Ques. Does that blue print represent the spark arrester that you are now speaking of?

Ans. That represents the improved type.

Ques. Please state whether or not this type of spark arrester is in use on the engines of the West Jersey and Seashore Railroad?

Ans. It is, on all.

Ques. On all?

Ans. On all.

Ques. Do you know from actual knowledge, in having inspected or looked over the engines or otherwise, to what extent this spark arrester is used throughout the country, this same type?

Ans. Well, it is almost in general use on the roads running throughout the country. They are using that type: the New Jersey Central, New York Central, Hart-

ford and New Haven, New York & Albany, Baltimore & Ohio, and a number of others.

Ques. The Reading?

Ans. They do on the road that runs to Atlantic City.

Ques. To your knowledge is there any better or more efficient spark arrester than that?

Ans. No, sir; it is generally conceded by the best mechanics of the country that it is the best and only spark arrester that we have.

Ques. I think you already stated it was attached to every engine on the West Jersey?

Ans. Yes, sir.

Ques. Now, with reference to the ash pan, Mr. Hill; are you acquainted with the ash pan attached to the engines on the West Jersey and Seashore Railroad?

Ans. Yes, sir.

Ques. Can you make a sketch of it?

Ans. Yes, sir.

Ques. Will you sit there before the jury and take a paper and pencil?

Ans. Yes; but what kind of a sketch do you want?

Ques. Such as is on 39.

Ans. This I represent is the frame line of the engine, irrespective of fire-box.

Ques. Where you state "frame line of engine," won't you please write that?

(Witness writes "frame line of engine.")

Ques. Now, what are these? Just number that A and B and say what they are.

Ans. They are deflectors inside of the ash pan. As the ash pan comes out it follows the curve of the fire-box, and we use what we call water-bars in the fire-box so as to prevent any ashes or coal or anything like that that would fall down on the ends. It deflects upon this plate and throws it away into the extreme centre of the ash pan.

Ques. Mark them C and D and tell us what they are.

Ans. The class A engines, the ash pans are all constructed this way: This is the frame of the engine. This ash pan comes up inside of the engine and fastens another way, which I can show you another way a section. Now, this represents the fire-box and this is to represent the section of the frame. There is a boiler iron or boiler sheet, and is fastened to it at the bottom of the fire-box and comes up inside of the frame and then the ash pan is bolted on here to this, so there is no opening or anything of that kind possible on the fire-box, excepting to the centre part of the ash pan. The ash pan—this is the form of construction. At this point, as shown on the other side, it is bolted to the inside of the frame all solid. This flat place comes down to it and this place comes down to it as far as we can bring it, not to interfere with the eccentric. This angle here—

Ques. That angle you have illustrated is to do what?

Ans. To pitch in all the ashes, or anything of that kind.

Ques. It is like the edge of a dish, or pan?

Ans. Yes, sir; very much enlarged though. This you see is the driving axle. The ash pan is formed right over the top of the axle, the same construction front and back. Here is what we call the slides, where all this dirt and ashes is cleared out. These work on the damper here at that point, and this angle-iron here is so as to form a joint. Then this, we have an angle-iron coming way up in here, so the dirt would come away up here before any can get out here.

Ques. Where do the ashes lie in that ash pan after they are dropped from the bar?

Ans. Why, all in here. All rattle away down in here from the bars.

Ques. Do they lie out to the lips of the pan?

Ans. No; there is too much space to give them a chance to lay out. These deflectors in here are to throw it away from the front of the pan, so the most of the material all runs away up here. Here is the most convenient point. The damper this shows.

(Sketch offered in evidence and marked "D7.")

I think I can explain that with the blue print much easier.

Ques. Well, now, you may refer to the blue print.

Ans. Now, as I was showing you, this is a section of the fire-box.

Ques. The end view of it?

Ans. Yes, perhaps. Well, no; it is not of the end view; say we cut right through the center of the fire-box.

Ques. And look from the front or back?

Ans. Yes, sir. Now, this would be what we call a section; there would be a water section and a boiler, and there the mud plate; here is the plate to bolt the ash pan to; then we come down here; this is the ash pan down here; this is the end view of the ash pan; here is the bottom view, and here is the perspective.

Ques. You pointed out this as a bottom view. Are those two plates the squares here within which the ashes are taken?

Ans. That is where the ashes are allowed to come out.

Ques. Which is the front of this?

Ans. This is the front.

Ques. Won't you put "front" or the letter F on it?

Ans. Now, then, I will explain. In convention of the different master mechanics we improved this pan by this alteration.

Ques. Shown by the black lines on the blue print?

Ans. Yes, sir. Now, all ash pans of this character

are made with this improvement and all engines are made up just as far possible as the eccentric would allow us.

Ques. Is that extension on the ash pan of engine 39?

Ans. Yes, sir.

Ques. And all the others?

Ans. All the others.

(Blue print offered in evidence and marked "Exhibit D8.")

Ques. Is that ash pan on all of the engines of the West Jersey?

Ans. Only on class A, all of that class. On every class of engines the construction will not allow the same construction of the pan on it; so therefore on some classes we take that pan and on others a different one.

Ques. Class A is what kind?

Ans. Anthracite engines, and takes that pan.

Ques. That is what 39 was?

Ans. Yes, sir.

Ques. Do you know which these other engines were with this class of pans—507?

Ans. Well, I wouldn't like to class them according to memory. I could, of course, give the class of every engine.

Ques. The difference in the pan is according to the difference of the engine?

Ans. Yes, sir.

Ques. In some of them you don't have to have that arch in the middle of the pan?

Ans. No, sir.

Ques. Because the action of the engine does not interfere?

Ans. Wherever the fire-box comes in between the two axles, we have to do that.

Ques. The point I want to get at is the construction

of the ash pan and the method of attachment to the engine, rather than the shape of the ash pan. In what respect do they differ, with respect to workmanship and attachment to the engine?

Ans. All our engines are made of very heavy material, and we give the ash pan as much attention and pains as we would the boiler itself. You see we have to make it of very heavy material, and a very complicated thing, and they have to be bolted up very solid.

Ques. And for what reason is all this pains taken?

Ans. To make a perfectly tight ash pan.

Ques. And do you do that in every case possible?

Ans. We do it in every case in the shops.

Ques. Is there any better construction known to the trade of ash pans than that which you have attached to the various engines of the West Jersey?

Ans. No, sir.

Ques. Mr. Hill, can you tell me when engine 39 was last in the shops for repairs?

Ans. Well, the records will show it.

Ques. Well, have you a record to which you can refer?

Ans. Yes, sir.

Ques. Will you please refer to it and give me the date?

By Mr. Pancoast:

Ques. Did you make up this record yourself from personal knowledge or was it made up by others?

Ans. It was made under my personal supervision. I am responsible for all the work in the shop.

Ques. I didn't ask you that. Did you make up this record yourself?

Ans. Individually, no, sir.

Ques. Who did make it up?

Ans. My chief clerk.

By Mr. Gaskill:

Ques. State whether or not after it is made up you go over it for verification?

Ans. I do, undoubtedly.

Ques. And by reference to it can you give us the date when this engine was at the shop last?

Mr. Pancoast: I object to it, on the ground that the book, if competent, must speak for itself.

Mr. Gaskill: I have not asked about the book except for him to refer to it and refresh his recollection.

Mr. Pancoast: You ask him to refer to the book, and after referring to the book to say something. I say that the book must speak for itself.

The Court: He, as I understand it, verifies all the records made up in that book, and he looks at it now to refresh his memory. I think it is all right.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Ques. What is the date?

Ans. The last date was June 2d. She came in the shop June 2, 1896.

Ques. Well, in 1895, prior to September?

Ans. That is the first that I have had it. It is a new engine.

Ques. That is the first you have had her?

Ans. Yes, sir.

Ques. In 1896?

Ans. Yes, sir.

Cross-examination.

By Mr. Pancoast:

Ques. You did not have her in 1895 at all?

Ans. No, sir.

Ques. Where is that deflector that you were speaking of inside the ash pan; at the point A?

Ans. At the point A; yes, sir.

Ques. What is above the deflector there represented?

Ans. That is the engine frame. This is to represent the frame of the boiler, or fire-box rather. (Indicating.)

Ques. Where is the screen and spark arrester?

Ans. That is in the front end of the engine.

Ques. Where is the ash pan here?

Ans. That is the ash pan. (Indicating on sketch.) This represents it all through here, from this down to this point.

Ques. Above the ash pan is the fire-box?

Ans. Yes, sir.

Ques. What is the use of this deflector here between the fire-box and the ash pan?

Ans. It is to prevent all droppings to come to the front of the pan, as the idea is to throw the fire down near the center of the ash pan.

Ques. To throw the fire down near the centre of the ash pan?

Ans. Yes, sir.

Ques. So the ash pan is the receptacle largely of the ignited coals?

Ans. Yes, sir; what passes through the deflecting bars.

Ques. In your judgment, if this spark arrester is in perfect order would any sparks of anthracite coal get through it so as to ignite combustible material after it passed out?

Ans. No; if the netting is properly placed and in good order.

Ques. It would be an absolute shield?

Ans. Be an absolute shield.

Ques. In your judgment?

Ans. Yes, sir.

Ques. You were speaking of the spark arrester?

Ans. Yes, sir; that time.

Ques. Then if any of the sparks actually should come out of an engine so equipped with this spark arrester, it would indicate something out of order, wouldn't it?

Ans. Yes, sir.

Re-direct examination.

By Mr. Gaskill:

Ques. You were asked if any spark should actually come out of an engine so equipped with this spark arrester, it would indicate something out of order?

Ans. Yes, sir; that is correct.

Ques. What size of sparks are you referring to?

Ans. Well, I mean sparks large enough to do any damage.

Ques. You don't mean to say any sparks?

(Objected to as leading.)

The Court: He is calling the attention of the witness to his answer. Of course we know that the witness don't mean to say that no sparks at all of any size can get out of that engine.

Ans. Well, the size of the netting determines what can pass over, the size of what we call sparks; but dirt will pass out, of course.

Ques. You don't mean to say that no sparks will pass out of the engine at all?

Mr. Pancoast: I object because it is a suggestion to the witness what to say.

The Court: I think you had better modify the question.

Ques. Do any sparks pass out of the engine, and if so, what character of sparks pass out?

Ans. The dirt and sparks will pass out, depending upon the size of the netting; but there is a certain amount of sparks that come out, regulated by the mesh and the size of the netting.

EDWARD CUNNINGHAM, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Cunningham?

Ans. Vineland.

Ques. What is your business?

Ans. I am employed in the assistant engineer's office of the West Jersey and Seashore Railroad.

Ques. How long have you been in that office?

Ans. Nearly three years and a half.

Ques. Doing what?

Ans. General railroad engineer work; that is, not locomotive work; not that work; engineering.

Ques. Surveying?

Ans. Surveying and engineering work generally.

Ques. You mean civil engineering work?

Ans. Yes, sir.

(Question objected to as leading.)

Ques. During this time have you made surveys of different tracts of land?

Ans. Yes, sir.

Ques. How long have you been engaged in surveying land?

Ans. Since the 8th of March, 1889.

Ques. Did you do any of it before you went into the railroad employ?

Ans. Yes, sir; all that time up until the 24th of April, 1893, when I went into their service.

Ques. Have you or not made surveys of outlands, pine lands, cedar swamp, and so on?

Ans. Yes, sir; I have.

Ques. I call your attention to the two maps on the easel which I will now mark Exhibits D9 and D10. Whose work are these maps?

Ans. I made them, sir.

Ques. Referring now to map D9; from what did you make this map?

Ans. That is an exact reproduction of a map which was published by the State.

Ques. Enlarged to what scale?

Ans. Enlarged to ten inches on the map, equalling one mile on the ground.

Ques. And what country does this map D9 represent?

Ans. It embraces that country that lies between what is known as Gravelly Run and a trifle beyond McKee City station, a mile or so beyond McKee City station.

Ques. A mile or so beyond McKee City station in what direction?

Ans. Eastward.

Ques. Towards Atlantic City?

Ans. Towards Atlantic City.

Ques. And it represents the land westward from the swamp siding about how far?

Ans. Well, nearly two miles.

Ques. Towards Mays Landing?

Ans. Yes, sir; in this direction.

Ques. From what data have you laid down the lines of these streams and roads, with the exception of New York avenue?

Ans. From the State map.

Ques. And from what have you laid down New York avenue ?

Ans. From my observation, that New York avenue almost exactly faces Reega station and also that it has a northerly course from the farm of Mr. McKee, I was told—

Ques. No; that would not be proper. Did you notice the plaintiffs' map when it was on the easel in Court?

Ans. Yes, sir.

Ques. State whether or not the location of New York avenue on this map is the same as on the plaintiffs' map, as near as you could make it?

Ans. I think it is.

Ques. I call your attention to this irregular shaped piece of ground on D9, which is colored in green or yellow over blue. What does that represent?

Ans. That is the Abbott property in question.

Ques. And from what did you lay that down on this map?

Ans. Partly from actual personal surveys and partly from information furnished by the Abbotts themselves.

Ques. Did you have in your possession one of their maps shown in this case?

Ans. I did; yes, sir.

Ques. I show you Exhibit P5 for plaintiff. Is that the map that was in your possession?

Ans. So near as I can tell, it is.

Ques. State what you did from this map?

Ans. I made a tracing directly from this map.

Ques. Have you that tracing here?

Ans. Yes, sir; it is on the table.

Ques. I show you vellum map marked Exhibit 1 for identification. Is that the map?

Ans. That is the map.

Ques. Directly from their own?

Ans. Yes, sir.

(Map offered in evidence, and marked Exhibit D11.)

Ques. Have you traversed this country yourself?

Ans. Yes, sir.

Ques. The roads and so on thereabouts?

Ans. The roads to some extent, but I have not covered all those roads shown on there by any means.

Ques. Can you state from your actual observation on the ground whether or not the territory in question is correctly represented on the map?

Ans. So far as I am able to judge by eye, it is. I have had frequent occasions to check the State map. Invariably it is found correct.

Ques. And so far as you have occasion to check it with reference to this territory, how did you find it?

Ans. All right.

Ques. What does this broken line that runs diagonally across your map, nearly in an east and west direction, or a northwesterly and southeasterly direction, indicate?

Ans. That is the Newfield branch of the West Jersey and Seashore Railroad, from Newfield to Atlantic City.

Ques. The line of road in question in this case?

Ans. Yes, sir.

Ques. I pass the pointer on the map where the branch of Gravelly Run proceeds in a northerly direction. I notice there a double line and that broken line. What does that represent?

Ans. That is what is known, I believe, as the Cedar Swamp crossing, a switch for the passage of trains.

Ques. Is there a signal station there?

Ans. Yes, sir; a small box.

Ques. The various roads are delineated on the map?

Ans. Yes, sir.

Ques. What is this upon the northeasterly edge of the map?

Ans. That is McKee City station.

Ques. What road crossed the railroad there?

Ans. Well, that is the road that runs from English Creek, I believe, to Pomona.

Ques. Off this way? (Indicating.)

Ans. Yes, sir.

Ques. To the northeast?

Ans. Yes, sir.

Ques. And this broken line that I now put my pointer on, commencing on the westerly side of the map near the railroad and running along somewhat or nearly parallel to the northerly side of the map, is known as what?

Ans. That is known as Absecon avenue, running from Mays Landing to Absecon.

Ques. And here it branches to Pleasantville? (Indicating.)

Ans. Yes, sir.

Ques. What is this on the map just below McKee City station?

Ans. That is called McKee avenue.

Ques. And here at the southerly end of New York avenue you have on the map what?

Ans. Reega Station.

Ques. And the little siding going out to—

Ans. To the sawmill there, the saw mill in question.

Ques. These names that you have put on the map to the different roads and the different streams, state whether or not they are the names given for these places?

Ans. These names are names that have been given to me traveling over the road, and the streams, of course I know some of them and some of them are taken from the State map as marked there.

Ques. I now call your attention to D10 and ask you what that represents.

Ans. That is the Abbott property, generally speaking.

Ques. Within what lines?

Ans. Within the wide, broad yellow lines you are following, is the property line.

Ques. The outside boundaries?

Ans. Yes, sir.

Ques. And what is this at the northeast corner of the map?

Ans. That represents the railroad where it touches their property.

Ques. What is this heavy red crayon line, bright red, pursuing somewhat of zigzag course inside of that Abbott survey? What does that represent?

Ans. That is the line of the cedar swamp as run out by William Lake in 1894.

Ques. Well, Mr. Cunningham, did you see Mr. Lake's line of that cedar swamp on the ground?

Ans. Oh, yes; and followed every one of them.

Ques. Will you state whether or not you have those lines correctly represented on this map?

Ans. As nearly as it is possible to reproduce them from the smaller map.

Ques. State whether or not Exhibit D11 is an enlargement of your tracing of their map?

Ans. It is.

Ques. And are all the parts exactly reproduced on a larger scale?

Ans. As close as it is practicable to make them.

Ques. Have you been on this ground to survey?

Ans. I have.

Ques. When did you go there?

Ans. First about the 3d or 4th of March.

Ques. What year?

Ans. This present year.

Ques. 1896?

Ans. 1896.

Ques. For what purpose did you go there?

Ans. For the purpose of making a survey to show the extent of the fire that had been in the swamp.

Ques. How long were you there?

Ans. Well, I spent eleven days in that swamp.

Ques. Who was with you?

Ans. I had three men for four days. Do you want their names?

Ques. Yes.

Ans. Peter Pomelier, Nicholas Fry and John Souder. I say four days. We were down there on four different days, but they were paid for three days and three-quarters.

Ques. Who was with you on the three other days?

Ans. I was alone then for several days after I secured their survey of the land, and since completing the map I have had on the ground three residents of Mays Landing, Mr. Lucien Corson, Captain Daniel Gifford and Christopher Rape. I have also had over the ground, as they testified on Friday afternoon, Mr. Chambers and Mr. Irick.

Ques. Which of the lines represented on the map here, or the outlines, did you actually run upon the ground, this out boundary?

Ans. Well, I started from the track and ran back to the property first. I started from a point in here somewhere. (Indicating on map.)

Ques. Let's put a point A on the map.

(Marked by Mr. Gaskill.)

Ans. I ran a line back; this was before I secured their map. I ran a line back until I intersected this line; with that as a basis for my work, I knew that this line came out to the track. However, I started off here so as to tie it up perfectly. I worked down here into this piece, worked off into that, ran another line there, and another in here, noting the accurate measurements all

the way along in to here, running in to that point, going both ways there and coming across there. Then I started from here and went down, and followed down to that point; I also ran from here to there.

Ques. The easterly boundary?

Ans. Yes, sir; or rather, I should say, from there to there; I ran a line in there, ran a line along here to that point, and took side lines off to this causeway, down that causeway in there, and these two lines.

Ques. These side lines, how far did you run into the swamp from the boundary line?

Ans. Just as far as I found any evidence of fire.

Ques. And for what purpose did you run these side lines in?

Ans. To find the extent of the fire.

Ques. Have you shown on the map the interior fire line?

Ans. As nearly as practicable, I think, to be designated on the map.

Ques. How is it designated on the map?

Ans. By this white line. These isolated parts are of course the same thing. I didn't carry it off here because it goes off the property, and was not in question.

Ques. And your map is a correct representation of the fire line as you found it on the ground?

Ans. Yes, sir; it is.

Ques. Did you designate on that map the kind of timber that you found at different places.

Ans. Yes, sir.

Ques. Is that correctly set down on the map?

Ans. Yes, sir; I believe it is. I have been in here on several occasions since the making of the map and have had no occasion to change it in any particular, except where you stated, where I marked cedar scorched in March; that cedar showed actually green.

Since then it has died,—couldn't stand the summer. That you will find in two or three places. That is the only place I would change my map, after several days of observation.

Ques. Have you calculated the quantity of land on which timber was burned and scorched and damaged?

Ans. Yes, sir.

Ques. How did you make that calculation?

Ans. After completing my map these irregularities were all divided into triangles and carefully scaled, and from this scale the acreages are computed. I computed them first and another party checked my work, in the office.

Ques. Did you make a memorandum on the map of the quantities thus computed?

Ans. Excepting the totals here.

Ques. Just tell us how much of good cedar timber was destroyed.

Ans. Well, including what I marked at the time as only scorched and what I marked as dead, I make exactly six acres.

Ques. How much does your map show was actually dead in March when you made the survey?

Ans. Three and one-tenth acres.

Ques. And how much does it show of good cedar that was scorched at that time, which has died since?

Ans. Two and nine-tenths acres.

Ques. Now, how much pine timber have you that was destroyed?

Ans. Twenty-three and eighth-tenths acres.

Ques. And how much pine timber was injured?

Ans. Seven and eight-tenths acres. That means, of course, not destroyed but burned over. I mean by destroyed, killed, not wiped off the face of the earth.

Ques. And how much brushland have you burned over?

Ans. Forty-three and four-tenths acres.

Ques. Young cedar injured?

Ans. Fifteen and two-tenths acres.

Ques. And did you measure the causeways, good, bad and indifferent, that were burned, and if so, how many rods did you find?

Ans. I took what causeway was destroyed, one hundred and thirty-five rods.

Ques. Those figures are all shown on your map, Exhibit D10?

Ans. Yes, sir.

Ques. Mr. Cunningham, before you went on this ground please state to the Court and jury what experience you had had in surveying among pine and cedar timber?

Ans. Well, I have worked, as I stated, since 1889 as a railroad surveyor.

Ques. What experience did that give you?

Ans. And of course I have run a good many miles of line right through swamp; I was on the location of the South Jersey Railroad all the way from Winslow to Cape May, running all of the Cape May end of it from Tuckahoe myself; that is, being in charge of the party, and I have worked on other different railroads in different sections of the country.

Ques. Well, before you worked at this railroad survey, what did you do?

Ans. Well, I was brought up in Vineland on a farm.

Ques. Did that bring you in contact with timber land and wood land?

Ans. Yes, sir.

Ques. You know the difference between pine timber and cedar timber, do you?

Ans. Yes, sir.

Ques. There was another map shown here, Mr. Cunningham—the map used by Mr. Chambers and Mr. Irick. Have you seen that?

Ans. Yes, sir; I made the map.

Ques. Well, state what it is with reference to the map before you, Exhibit D10.

Ans. This is the same as this, except that I didn't put the color on the map. It is the bare print.

Ques. State how you made these maps.

Ans. The first is a map made on coarse paper and then from that we make a tracing on vellum; something of the nature of that, and from that, by exposure to the sun, we produce these prints.

Ques. And this Chambers map is a blue print?

Ans. Yes, sir; made in that way.

Ques. I show you a map in two sheets and ask you if that is another one of the blue prints?

Ans. That is another one.

(The two sheets of the map offered in evidence and marked Exhibits D12 and D13.)

Ques. There was a map identified by Mr. Lake, Exhibit 2, for identification. State what that is?

Ans. Well, when I obtained the Abbott map I made two tracings. That is another that I made for the use of the office, because I knew that would get the use it has.

Ques. You are referring to D11?

Ans. Yes, sir. That blue print is another print from the same map. If you will lay them one on the other you will see there is no difference whatever.

Ques. When you were there in March of 1895, did you see any evidence of more than one fire?

Mr. Pancoast: I object and ask to have the question stricken out.

Mr. Gaskill: I offer it upon the question of damages.

(Question ordered stricken out.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

Cross-examination.

By Mr. Pancoast:

Ques. This map (referring to D9) was largely made up from data got from others outside of the Abbott swamp?

Ans. No, sir; it is not.

Ques. Well, then, it was largely made up from personal knowledge, wasn't it, outside of the Abbott swamp?

Ans. To some extent; yes, sir.

Ques. Well, haven't you already said that outside of the Abbott swamp this map showed the work on the State map? Haven't you already said that?

Ans. Yes, sir.

Ques. And haven't you already said that as to these avenues and roads, they were placed from what you heard other people say about them, mostly?

Ans. No, sir; I don't know that I said that. It is a reproduction of the State map, which is absolutely correct.

Ques. I haven't asked you about that. Have you ever surveyed the ground covered by the State map, so that you can say under the sanction of an oath?

Ans. I surveyed in some places.

Ques. Have you ever surveyed the points covered by the map?

Ans. Yes, sir; I have surveyed upon the railroad, and I found wherever it strikes this it is correct.

Ques. And you say from that that the State map is absolutely correct?

Ans. I say it is correct because I have tested it frequently, and it is generally accepted so, and I have found it correct in this case in this point, in the crossing of the streams and the Reega station and McKee City, from our own actual work, and from that State map I reproduced these roads.

Ques. Now, did you find McKee avenue there on the State map?

Ans. I did, sir.

Ques. And you put it here as you found it here on that map?

Ans. I did, sir.

Ques. Did you find New York avenue on that map?

Ans. No, sir; and that is the reason why it is not there; it is a wild-cat avenue.

Ques. What do you mean by wild-cat avenue?

Ans. Run by land schemers.

Ques. How do you know it was run by land schemers?

Ans. Because it was run by Colonel McKee, who is trying to make all he can out of that land down here.

Ques. How do you know he is a land schemer?

Ans. Well, I have seen the gentleman and have talked with him, and I know that Colonel McKee aims to make money out of the land down here.

Ques. What do you mean by a schemer?

Ans. A concocter of plans.

Ques. Are you a schemer in this case to reduce the damages claimed by the plaintiff?

Ans. No, sir; in no respect whatever. I was sent on the ground to make a map of this ground. I should have lost my position if these men reported my map as not realiable.

Ques. Then from your work your position may be in jeopardy?

Ans. It demands accurate work, the same as it does in every case where I go out.

Ques. As a rule do you agree or disagree with the other surveyors that go over the ground?

Ans. That depends upon the quality of the surveyor.

Ques. What quality of surveyors do you generally meet?

Ans. I generally meet good surveyors.

Ques. You have seen Mr. Lake, the surveyor? Did you meet the gentleman?

Ans. Yes, sir.

Ques. He is a pretty good surveyor, isn't he?

(Objected to.)

The Court: I don't think you want that.

Mr. Pancoast: Well, I don't want to do anything to interfere with this witness from the company. We will withdraw the question.

Ques. You are an educated surveyor, I suppose?

Ans. Yes, sir.

Ques. What school did you graduate from?

Ans. I don't hold a degree.

Ques. Well, what school or college—

Ans. As I said, I didn't graduate from any school.

Ques. Can't you attend a school without getting a degree? What school did you attend?

Ans. The school of experience.

Ques. Where is the school of experience situated?

Ans. Well, in the field and in the court, supplemented, as I said, by private work.

Ques. Where was your work done before you went in the service of the West Jersey Railroad? Did you have any experience?

Ans. I had several years.

Ques. Where?

Ans. In various states; here in New Jersey and Pennsylvania and Delaware, for railroad corporations and private work.

Ques. When were you first put on this work by the West Jersey Railroad Company?

Ans. March 1st, I think.

Ques. You put a good deal of work on it?

Ans. Yes, sir; I made a very exhaustive study of that swamp.

Ques. Do you recollect Mr. Stewart, who was here on the stand?

Ans. I don't recollect the name.

Ques. Wasn't he one of the men that went down with you in the swamp?

Ans. No, sir.

Ques. You recollect Mr. Chambers?

Ans. Yes, sir.

Ques. You took him over the ground?

Ans. Yes, sir; I took him down there one day; I didn't take him; I showed him the property and let him go.

Ques. Well, he found fault with some of your surveying?

Ans. Well, judging by his eye he did, but he made no measurements.

Ques. He thought you were inaccurate and so charged, didn't he?

Ans. Judging by the eye, yes, sir; but he has made no measurements on the ground.

Ques. Did you say you were in the swamp eleven days?

Ans. I have been in the swamp eleven days.

Ques. Three or four days you were there by yourself?

Ans. I was there three days, I think, with this map in my hand. (Referring to Exhibit 12.)

Ques. What were you doing there three days by yourself without the help of anyone? What were you doing?

Ans. You will see by reference to that map and the scale on which it is made, you will see that the courses are very short. None of them are over three hundred feet, and the majority of them are seventy-five to one hundred feet. With this map in my hand, I carefully traced over these lines here.

By Mr. Gaskill:

Ques. Which lines?

Ans. Every line on the map. I have traveled over every line. As I found any indication of fire whatever, I traced it to its extreme limits and I placed it on this map in reference to this line.

By Mr. Pancoast:

Ques. And that you were doing by yourself three days in this swamp?

Ans. Yes, sir; I think it was three days. I have surveyed the out boundaries of this tract from a point about here to there. (Indicating on map.) I went around the portion that showed the indications and the points here. I didn't go out around this little point here. That has nothing to do with this case.

Ques. How much do these out boundaries contain?

Ans. Do you mean the total acreage?

Ques. Yes.

Ans. Well, I didn't make any estimate whatever; I had nothing to do with where there was no fire; where there was no fire I made no estimate whatever.

PETER POMELIER, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live?

Ans. I live in Clayton.

Ques. Are you in the employ of the railroad company?

Ans. No, sir.

Ques. Did you go with Mr. Cunningham on this ground when he made this map and survey?

Ans. I was with him when he made the survey; yes, sir.

Ques. What did you do?

Ans. I cut brush.

Ques. What else; did you carry chain?

Ans. No, sir; I carried no chain.

Ques. Over what part of the tract did you go with him?

Ans. We went around the fire, just where the fire had burned.

Ques. The interior fire line?

Ans. Yes, sir.

Ques. Who was assisting him to make his measurements there?

Ans. Nicholas Fry and John Souder.

Ques. How long were you there?

Ans. Well, we were down there four days.

Ques. Did you find any lines already cut when you got there?

Ans. Yes, sir.

Ques. Did you see how Mr. Cunningham made his measurements there, those lines cut to the fire line?

Ans. Yes, sir.

Ques. How?

Ans. Well, he would take his chain and measure in and cut in and make his measurements.

Ques. And you were along to do the cutting?

Ans. Yes, sir.

No cross-examination.

JOHN SOUDER, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live?
Ans. Mays Landing.
Ques. How long have you lived here?
Ans. Three years and seven months, about.
Ques. Are you in the employ of the railroad company?
Ans. No, sir.
Ques. Did you go with Mr. Cunningham to make a survey of this Abbott swamp?
Ans. Yes, sir.
Ques. Had you ever been on the ground before?
Ans. No, sir.
Ques. What did you do?
Ans. Helped carry the chain and make the measurements.
Ques. As chain carrier state whether or not you made a report from time to time to Mr. Cunningham as to the length of chain and stakes you had in your hand?
Ans. I think I did.
Ques. Did you do that correctly or not?
Ans. Yes, sir; I think that it was.
Ques. If in doubt what did you do?
Ans. I called his attention to it.
Ques. Did you see any lines cut on the ground or opened when you got there?
Ans. Yes, sir.
Ques. State what he did with reference to them when he got there. Did he measure from them?
Ans. Yes, sir.
Ques. Where to?

Ans. Well, I hardly know how to explain that.

Ques. What was he getting at, as you understood it?

Ans. From the outside line to the inside line of the fire.

Ques. Did you carry chain?

Ans. Yes, sir.

Ques. Out around the swamp, too?

Ans. Yes, sir.

Ques. All those three days?

Ans. Yes, sir; four days.

No cross-examination.

NICHOLAS FRY, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live?

Ans. Clarktown.

Ques. Where is that?

Ans. About a mile and a half below here.

Ques. Do you work for the railroad company?

Ans. No, sir.

Ques. Do you know Mr. Cunningham here?

Ans. Yes, sir.

Ques. Did you do any work for him in the Abbott cedar swamp?

Ans. I did.

Ques. When?

Ans. Last March.

Ques. Who was with you?

Ans. Pete Pomelier and Souder.

Ques. What did you do?

Ans. Cut brush and carried chain some little.

Ques. In carrying chain what kind of a report did you make as to the distance the chain showed and the stakes you had in your hand and so on?

Ans. Correctly, to the best of my knowledge.

Ques. Where were you measuring to? What was the line you were trying to get at?

Ans. Measuring from the outside line of the swamp to the extent of the burned timber.

Ques. And was that measurement made correctly in to the inside line of the burned timber?

Ans. To the best of my knowledge.

No cross-examination.

LUCIEN CORSON, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Corson?

Ans. Mays Landing.

Ques. Are you in the employ of the railroad company?

Ans. No, sir.

Ques. What is your business?

Ans. I haven't any particular business now. I have been in the mercantile business, except during the last two or three years.

Ques. You live in Mays Landing, retired?

Ans. Well, I had to retire.

Ques. Were you acquainted with the Abbott cedar swamp?

Ans. I never was until April, this last year. I went down with Mr. Cunningham.

Ques. Who was with you?

Ans. Thompson, Cunningham, Mr. Rape and Captain Gifford.

Ques. What did you have with you, if anything?

Ans. We had a blue print map and also that blue print tracing.

Ques. This tracing, D11 ?

Ans. Yes, sir.

Ques. (The blue print that has been marked Exhibit 12 and 13 shown witness.) Is that the blue print that you had with you ?

Ans. Yes, sir; I think it is.

Ques. I notice on that map an irregular red crayon line, and in another place an irregular yellow crayon line. Do you know what they represent ?

(Question withdrawn to save time.)

Ques. Just be kind enough to tell the jury, Mr. Corson, where you went on the ground and what you did.

Ans. Why, we went down there and crossed over—— I can show you if you will put it up.

Ques. Can you show it on this map on the easel, or do you want this one put up ?

Ans. Well, that is the one we used and I am more familiar with it. We came in across the head of the cranberry bog, across the bridge and causeway, and came into this part of the swamp and here we found some—here was the first burned cedar we found. Here the cedar was burned and it had fallen down. Then we came up by here and there appeared to be no fire there and we came into this old causeway and came in here and crossed over to here and then came out again. We found over here, apparently it was just a fringe of cedar that was burned. The cedar didn't appear to be entirely killed at that time. My recollection of it is that it was just scorched. Then we came back here and examined these causeways. We found a causeway in here pretty much burned up, but out here we found the causeway remaining almost intact. Occasionally we could see where the ends of the poles had been burned. It showed just about what it had been before we were there. Then we came up here and we discovered that

this was burned here, but it was nothing much but brush; and then we went up and went into this. Here we found another causeway. We went in around here and here we saw that we could see this. We didn't go up along that but we could see that this cedar was burned along here inside of these lines that you spoke about. Then we came up here and as we went up along this edge of the Wheat Field, as we were informed that it was at this time, there we found it was partially burned; that is, there were spots around that were burned; partially green and partially burned in spots. This was in April. I don't know, of course, what the condition is at this time. That was Thursday.

Ques. Then I understand you went along the south of the cedar swamp on Thursday?

Ans. Yes, sir.

Ques. Going into the various points you have described?

Ans. Yes, sir.

Ques. On the south side?

Ans. Yes, sir.

Ques. When did you go there again?

Ans. We came down again on Friday and went down to the lower end of the fire here. Then we went along the property line here.

Ques. Along the north property line?

Ans. Yes, sir.

Ques. And the limits of the fire?

Ans. Yes, sir; as far as we could find any fire; to the extreme limit. We followed this fire around and found it down here into the cedar there. My recollection is that it was savannah ground, covered by a kind of scrub growth of pine. Then we went around this and went around in here and found it pretty much of the same character, but at one place we found where the fire had got into the cedar just beyond

this survey that was said to have been run around, the green cedar, but it hadn't burned in to any extent. Then we came up to this point and went in to here. We went through the swamp then. This was a line that we found cut there. We went in there up to that point, down here, up to there, up to that place, and here—no, I am mistaken. There is where we came out, and here is where we found the large cedar that has been spoken of, which was very nice cedar. (Indicating eastern side of map.) That we found was burned and fallen down. We went around that and got up on top of the trees. That is where they were piled up. I believe they designated this as another one of the Wheat Fields.

Ques. At this point?

Ans. Yes, sir; where the roots of the timber were burned. The cedar didn't appear to be burned, but just the roots were burned off and it had fallen down. We didn't go out in this. We got up on top of the trees that were down there and looked over to see what we could see. Then we took this line here up to here; we saw there appeared to be some little cedar burned there. We didn't go to that, but we could see it from where we were. Then we came back and took this line down to here and came out to this line again. Then we followed this line up here and went—I think this is the causeway here, and we went into that. The fire had just burned along the edge of this causeway and hadn't burned into this side. This was young cedar here that was partially burned. Some of it appeared to be burned and some of it was not. That is, the eastern edge of it seemed to be burned very much more than it had in next to the causeway. We then came out and went here. That is about the extent.

Ques. While you were going around the property on these two days, did you have these two sections of the map with you?

Ans. Yes; we had these two sections of the map with us, and we verified the survey of the burned district as nearly as we possibly could.

Ques. Did you at any time make any test of the map when Mr. Cunningham was not present?

Ans. Yes, sir. When we came out from this place Mr. Cunningham took this route out after the horse and carriage and we came out alone, and when we got out here we came up here; right there. We came across some burned timber and I says, "Here is some burned timber and we will verify the map and see whether Mr. Cunningham is correct in his survey," and we found it to be just like the map.

Ques. Did you compare the comments that Mr. Cunningham made upon the map with the timber upon the ground?

Ans. Yes, sir; we did. This timber down here was not very large. That is five inch, I think.

Ques. Had he the timber on the various parts of that map correctly noted on his map?

Ans. Yes, sir; we found the map to be correct, a correct representation of it.

Cross-examination.

By Mr. Pancoast:

Ques. He had the whole thing then delineated on the map?

Ans. He had this map just as it is.

Ques. You went there with this map to verify it?

Ans. Yes, sir.

Ques. Now, point out then, please, Mr. Corson, where you said this place was, where the jury may be able to look at it—where you said you found a little fringe of cedar slightly burned.

Ans. Yes, sir.

Ques. Now, what did you see there?

Ans. We saw, apparently, a fringe of timber. That is, there would be some green and some dead.

Ques. Did you see any big fallen trees there?

Ans. We didn't go into that.

Ques. Can you tell now from what you saw, whether there are any big burned fallen trees on that point where you saw a little fringe?

Ans. I can't say now, because we didn't go in. It was last April then, and they may be down now.

Ques. Where did you find big fallen timber next after that?

Ans. Up in here. (Indicating.)

Ques. Was that the only place?

Ans. That is the only place that I saw large timber down. We saw timber down here, but it is not what I would call large timber; not large cedar.

Ques. What is not what you would call large timber?

Ans. What we saw in this place here.

Ques. I haven't asked you that. Where were the different points, if there were different points, at which you saw large fallen cedar trees?

Ans. Well, that point.

Ques. That one point?

Ans. Yes, sir.

Ques. A single point?

Ans. Yes, sir.

Ques. And about what, as far as you are able to judge, was that single point where you saw some fallen trees?

Ans. At this point here?

Ques. Yes; where you saw them.

Ans. In my judgment there was about an acre there.

Ques. About an acre?

Ans. Yes, sir; that is my judgment. Mr. Cunningham and I differ a little there. I didn't make a measurement and he did.

Ques. Your eye didn't fit his eye?

Ans. Well, I didn't measure it.

Ques. What did you disagree about?

Ans. Well, I thought there was a little more than what he thought there was.

Ques. That was at this point where the heavy timber was?

Ans. Yes, sir.

Ques. Now, how much did Cunningham set that down as being?

Ans. I don't know that he had that set down separately; I don't think he did. I don't think he had that set down, but we were discussing the matter.

Ques. I am not asking you about discussing it. You are trying to discuss it largely here.

CHRISTOPHER N. RAPE, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Rape?

Ans. Mays Landing.

Ques. How long have you lived here?

Ans. All my life.

Ques. What is your business?

Ans. Now?

Ques. Yes; and then what has it been?

Ans. Well, I have been in the real estate business at Atlantic City. I was there about a year and a half. Since that time I have not been doing anything of any account.

Ques. Are you acquainted with the Abbott cedar swamp?

Ans. Nothing more than the day when we went there to look at it.

Ques. With whom did you go?

Ans. Mr. Cunningham, Mr. Corson and Mr. Gifford and myself.

Ques. Did you have a map with you?

Ans. Yes, sir; had those two there.

Ques. The two that are now on the easel?

Ans. Yes, sir.

Ques. Last marked as exhibits?

Ans. Yes, sir.

Ques. Who has had those maps ever since?

Ans. I think Captain Gifford. I think when we came home we gave them to him to keep.

Ques. When did you see them again?

Ans. When did I see them again?

Ques. Yes.

Ans. After we were down there?

Ques. Yes.

Ans. One night last week.

Ques. Monday night?

Ans. The night I was here. I think I saw them that night and once since.

Ques. Who put this red crayon and yellow crayon marks on that map?

Ans. I did. I put one on there. I don't know whether anybody else has or not.

Ques. Which ones?

Ans. I put the red and the yellow.

Ques. What do they represent?

Ans. The yellow represents the way we went the first day.

Ques. And the red the second day?

Ans. Yes, sir.

Ques. You heard what Mr. Corson said?

Ans. Yes, sir.

Ques. You with this map in your hand went over those premises?

Ans. Yes, sir.

Ques. Did you compare the timber, brush, savannah ground and so on, as you passed over it, with your map?

Ans. We did.

Ques. Will you state whether it is correctly represented on the ground?

Ans. I think it is.

Ques. As you compared it on the ground?

Ans. Yes, sir.

Ques. And with respect to the lines showing the interior line of the fire, how were they, as near as you can tell by your observation?

Ans. As near as we could tell by the eye—we had no compass.

Ques. How were they?

Ans. That is what I say. As near as we could tell by the eye they were correct.

Ques. Did you see the causeways?

Ans. Yes, sir.

Ques. Are you anything of a horseman?

Ans. I can judge for myself.

Ques. You are accustomed to handling a team?

Ans. Yes, sir.

Ques. Will you state to the jury whether or not these causeways that you saw there were or were not safe for a team to drive over with a load?

Mr. Pancoast: Of course they were not safe. They were burned up.

Ans. They were not.

Ques. Did you see the causeways, part of which were burned, as well as the other causeways?

Ans. We did.

Ques. And are you testifying to them as well as the others?

Ans. Well, there was one of them pretty hard for us to get over with gum boots on.

Cross-examination.

By Mr. Pancoast:

Ques. Did you see the causeways there that had been burned?

Ans. We did.

Ques. Are you speaking of those that were burned or those that were not burned in saying they were unsafe?

Ans. Well, they had been there a good long while. I think with a team going in——

Ques. That is not the question.

(Question repeated.)

Ans. I don't think there was any of them safe.

Ques. Did you see any there that had been burned?

Ans. Yes, sir.

Ques. Did you see more than one that was burned?

Ans. I can't say.

Ques. Where were these causeways that you say were not safe?

Ans. They were leading in from the line to the swamp.

Ques. Well, whereabouts? Take this pointer. Now, show us the bounds of the tract here on this map, the bounds of the Abbott tract?

Ans. There is where we went; right in there.

Ques. Run around the boundaries in a general way. What were the bounds of the Abbott tract as you understood it?

Ans. These red lines.

Ques. Didn't you go to any other place except where the red lines are?

Ans. Yes, sir; we went to all these places in here to see to our satisfaction whether——

Ques. Where did you see these causeways that you say were unsafe? That is what we want to get at.

Ans. Down here. Here is the causeway.

Ques. Where? Put your pointer where the jury can get a chance to look at you. You put your pointer there and hold it a while.

Ans. Where do you want me to put it?

Ques. I want you to put it where you saw that causeway that was not safe and hold it there till I can see.

(Witness indicates, and Mr. Pancoast marks with a star.)

Ques. Now go on and show where else there was a causeway.

Ans. Up here. (Indicating.)

(Marked by Mr. Pancoast with a star.)

Ques. Go on.

Ans. There is a causeway. (Indicating.)

(Marked by Mr. Pancoast.)

Ques. Where else?

Ans. I guess that is about all that I saw.

Ques. Those you say were not safe?

Ans. No, sir.

Recess until 2 P. M.

DANIEL GIFFORD, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Gifford?

Ans. Mays Landing.

Ques. How long have you lived here; how many years?

Ans. Thirty.

Ques. What is your business?

Ans. Well, I used to go to sea, but I haven't been for years.

Ques. As captain of a coasting vessel?

Ans. Yes, sir.

Ques. Were you on the premises in question, known as the Abbott cedar swamp, last April?

Ans. Yes, sir.

Ques. Along with Mr. Rape, Mr. Corson and Mr. Cunningham?

Ans. Yes, sir.

Ques. Did you have a map with you?

Ans. Yes, sir.

Ques. Is the map now upon the easel, Exhibit 11 and 12, the map that you then had?

Ans. I think so.

Ques. Who has had that map since?

Ans. I have up to last week.

Ques. You have heard the testimony of Mr. Rape and Mr. Corson in this case?

Ans. Yes, sir.

Ques. Did you compare the ground that you passed over with the description written upon the map as you went around?

Ans. I did.

Ques. And how did you find it to compare with the description?

Ans. In my judgment the map was correct.

Ques. From your observation, I mean.

Ans. Yes, sir.

Ques. Is that as to the line that the fire ate into the swamp, as well as to the description of the kind of timber?

Ans. I should think it was.

Cross-examination.

By Mr. Pancoast:

Ques. Were you here this morning when Mr. Corson testified?

Ans. Yes, sir; I was in the Court.

Ques. How often were you there?

Ans. How often was I at the swamp?

Ques. Yes.

Ans. Two days.

ROBERT J. WILSON, recalled.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Wilson?

Ans. Franklinville, New Jersey.

Ques. And your business is what?

Ans. Lumber.

Ques. What kind of lumber business do you carry on?

Ans. Cord wood, sawed lumber, telegraph poles, upland and swamp together, mostly upland.

Ques. Have you bought cedar swamp timber?

Ans. I have.

Ques. Standing?

Ans. Yes, sir.

Ques. Worked it off?

Ans. Yes, sir.

Ques. Are you acquainted with the values of cedar swamp and timber lands in this neigborhood?

Ans. This neighborhood?

Ques. In Atlantic county.

Ans. We have timber land in Atlantic county of our own; yes, sir.

Ques. How far is Franklinville from here?

Ans. Well, I can't answer that question.

Ques. Is it on the West Jersey road?

Ans. It is on the Cape May road.

Ques. On the West Jersey road between Newfield and Cape May?

Ans. Between Newfield and Philadelphia, Camden.

Ques. Have you ever done any work for the West Jersey Railroad Company?

Ans. Nothing any more than to go around and look at the timber that is burned.

Ques. Have you been upon the Abbott cedar swamp?

Ans. I have.

Ques. When did you go there?

Ans. About the 7th of November I went over the swamp.

Ques. Who was with you?

Ans. Mr. McClure and three of the Abbotts. I think there was three of them.

Ques. State what you did with reference to the examining of the portion of the swamp that had been burned over.

Ans. Well, I took notes of what I thought the valuation of it was and compared them after I got home.

Ques. Of the valuation of what?

Ans. Of the timber; the swamp that was burned.

Ques. Did you make any survey or have any survey made to ascertain the quantity?

Ans. No, sir. The Abbotts gave me about twelve acres. They told me.

Ques. Gave you in as about twelve acres of what?

Ans. Burned cedar.

Ques. And was it upon the quantity of land burned over that they gave you, that you made you estimate?

Ans. It was.

Ques. Now, I understand you to say that you made your memoranda at the different places as you went around?

Ans. Yes, sir.

Ques. And then you made your estimate afterward upon the whole thing?

Ans. On the whole thing after I got home.

Ques. Now, what did you value that cedar at that had been burned?

Ans. Well, I valued one-half of it at $150 an acre, the value of it; present value $75; leaving a damage of $75 to the acre.

By a Juror:

Ques. How many acres was that?

Mr. Gaskill: One-half of the total quantity. They gave him in as twelve acres.

By Mr. Gaskill:

Ques. One-half now you valued at $150 before the fire?

Ans. Yes, sir.

Ques. And $75 an acre after the fire?

Ans. Yes, sir.

Ques. Making the damage——

Ans. $75.

Ques. Taking one-half the quantity they gave you would be six acres, at $75, making $450?

Ans. Yes, sir.

Ques. Now, as to the rest?

Ans. $100 I valued it before the fire——

Ques. Now, the other half of what you saw and which they gave you as six acres, how much did you value that before the fire?

Ans. $100.

Ques. And what value after the fire?

Ans. $50.

Ques. Making the damage——

Ans. $50 per acre.

Ques. Now, Mr. Wilson, it appears by the plaintiffs' testimony in this case that they claim only eight acres of cedar swamp burned?

Ans. Well, that would be four acres on the valuation before the fire, $150, four acres before the fire at $100, and half of that—worth half of it in both cases.

Ques. That is, you think four acres of $75 damage instead of six?

Ans. Yes, sir.

Ques. And four acres instead of eight at $100?

Ans. Yes, sir.

Ques. That makes $300 plus $200 according to their present measurement?

Ans. Yes, sir.

Ques. And if there is only six acres there that is burned?

Ans. Well, the same percentage.

Ques. $75 off for one acre and $50 for the other?

Ans. Yes, sir.

Ques. Now, what other damages did you estimate as having been done there to the swamp?

Ans. Well, they had what they called a Wheat Field.

Ques. And what did that Wheat Field consist of?

Ans. Why, small cedar. It was not all burned at that time. It was not killed. I made that $1.50 an acre, $60. They gave me forty acres of that.

Ques. Forty acres?

Ans. Yes, sir; forty acres of the little cedars.

Ques. If in fact there were only twenty-five acres of that Wheat Field then the price would be reduced accordingly?

Ans. Yes, sir.

Ques. Now, how many acres of other timber land did they state to you was included in the fire lines?

Ans. One hundred and thirty acres.

Ques. And what damage did you estimate had been done to that?

Ans. One dollar. That was merely outside brush, a good bit of it, scattering.

Ques. Did you see any valuable timber on that?

Ans. I did not.

The Court: How much did he estimate that?

Mr. Gaskill: One dollar.

The Witness: One dollar per acre—130 acres.

Ques. Who gave you the 130 acres?

Ans. The Abbotts. I think Joseph Abbott.

Ques. But whatever the quantity was, you estimated the damage at one dollar per acre.

Ans. On that tract; yes, sir; savannah bottom.

Ques. What is such land as that worth per acre, Mr. Wilson? I mean this land outside of the cedar swamp?

Ans. McKee told me—

(Objected to.)

Ans. Well, the Abbotts told me $2.50.

Ques. Did you learn from the plaintiffs what such land had been selling for?

Ans. That is what they said—told me.

By Mr. Pancoast:

Ques. What Abbott?

By Mr. Gaskill:

Ques. Joseph Abbott or Charles?

Ans. The other one.

Ques. Do you know for which land that was that price had been paid?

Ans. A little piece adjoining; at least, it had been cut off.

Ques. Did you make any estimate as to what it would cost to repair the causeways?

Ans. Well, I thought $100 would put them in fair shape. It is not necessary to go in around where they are burned up.

Ques. Prior to that time, or at that time, did you make any investigation as to where this fire had come from, from what direction it had burned into the Abbott swamp?

Ans. About the first of the month, or the last day—

By Mr. Pancoast:

Ques. What month?

Ans. November. My father and I came down.

Ques. About the first part of what month—November, you say—or the last of what month?

Ans. Well, it was on the first of November, I think it was, about that time.

By Mr. Gaskill:

Ques. Now, can you as an expert woodsman determine the direction from which a fire comes that does not consume entirely the standing timber?

Ans. Yes, sir.

Ques. And how do you do that?

Ans. Well, by the fire marks on the trees.

Ques. Just explain that to the jury.

Ans. The tree when the fire is running—if the fire is running this way (indicating) this side of the tree will be smoked up more than the other side. That is about the way you can tell it.

Ques. Where did you trace that fire back to?

Ans. Well, we traced it back in a kind of a quartering direction; I suppose we went back a quarter of a mile probably. It showed it had come from the back.

Ques. When you say back, can you indicate on the map?

Ans. We didn't have any map when I was there.

Ques. Can you indicate on the map now?

Ans. It wasn't run out.

By the Court:

Ques. Back to what place?

Ans. We were at the railroad and we traced it on back.

By Mr. Gaskill:

Ques. Now, Mr. Wilson, where was it that it crossed the railroad with reference to Reega?

Ans. This side of Reega, so I am told. I couldn't say where it crossed.

Ques. Suppose we put that thumb tack between Reega and Gravelly Run as where it crossed the railroad. Where did you trace it back?

Ans. Traced it back in this direction, (indicating) quartering towards the railroad.

By Mr. Pancoast:

Ques. And parallel to that run?

Ans. Something like that.

Ques. Crossing New York avenue?

Ans. Yes, sir; about that.

By Mr. Gaskill:

Ques. Now, how far back did you trace that? You traced that about a quarter of a mile you say?

Ans. I should suppose in that neighborhood.

Ques. That was on the 1st of November, as you testified?

Ans. Yes, sir; and then Mr. McClure and I went on the 7th of November back again.

Ques. Well, did you attempt at any time to trace it any further?

Ans. Well, we may have went a little further.

Ques. How was the country around there on the north and northeast side of the railroad with reference to having been burned over?

Ans. Why, it was small timber; small brush.

Ques. And had it not been burned over?

Ans. It was burned over then.

Ques. When you were there?

Ans. Yes, sir; when I was there.

Ques. Was there any territory between the line of the railroad and the line of Gravelly Run, as indicated on the map that was not burned over, up in here from where it crossed the railroad; up in here between the railroad, which is here, and Gravelly Run, which is there; now, across here, was there any timber land, any of it, that was not burned over?

Ans. I didn't notice any but what was burned.

Ques. Could you, from where you stopped in tracing the fire, see still further to the east up this way?

Ans. Yes, sir.

Ques. Parallel with the railroad?

Ans. Yes, sir.

Ques. Did you see any timber or brush land up that way that had not been burned?

Ans. I did not.

The Court: Which do you mean by east, towards McKee City?

Mr. Gaskill: Yes, sir.

Ques. You were not there at the time of the fire, as a matter of course?

Ans. No, sir.

Ques. And could you or could you not tell from an inspection of the ground as to whether there had been back or side-firing?

Ans. It looked as if there was side-firing along that field.

Ques. Along which field?

Ans. Along the field above the mill, up in there.

Ques. Up in here above the railroad?

Ans. No, above the mill; between the mill and McKee City it looked as if it had.

Cross-examination.

By Mr. Pancoast:

Ques. What is the difference in a side fire and any other fire in its characteristics on the ground, say a month or two afterwards?

Ans. Well, you can see where they eat. The head fire make a cleaner sweep, and the side fire will not burn so hard.

Ques. Is not the sweep controlled largely by the combustible matter and the wind?

Ans. Well, a good deal of it is; yes, sir.

Ques. When was your attention first drawn to this matter of this fire by any person or circumstances?

Ans. About the middle of October.

Ques. Following September, 1895?

Ans. Yes, sir.

Ques. Who first called your attention to it?

Ans. My father.

Ques. Who is deceased?

Ans. Yes, sir; since that time.

Ques. Now, how did you come to go down into this swamp with the Messrs. Abbott for the purpose of making an inspection?

Ans. Through the railroad company. Mr. Dayton requested my father and me to go do down.

Ques. What Mr. Dayton?

Ans. A. O. Dayton, of Camden.

Ques. What has he got to do with the railroad?

Ans. He is superintendent.

Ques. Then it was in consequence of something he said to you that you went down to take an interest in this matter, did you?

Ans. Looked over it, examined it; yes, sir.

Ques. Did he give you any instructions in writing?

Ans. I don't think he did; he might have given my father something.

Ques. Have you any communications from him in writing on the subject?

Ans. On this subject, no, sir; not on this one.

Ques. After the conclusion of the investigation did you make a report to him in writing?

Ans. I did.

Ques. Have you got a copy of that report?

Ans. I have not.

Ques. Did you make a report to him in writing as to the origin of the fire and also as to the amount of damages?

Ans. I don't think I made any report about the origin of the fire, because I didn't know.

Ques. Well, did you or did you not?

Ans. I didn't about the origin of it.

Ques. But you said you were charged with the busi-

ness of going there and investigating the origin of it, wasn't you ?

Ans. I went there; I think I did mention to him about—I haven't seen this report. That report must speak for itself.

Ques. It is whether or not you said in that report—whether you reported anything touching the origin of the fire ?

Ans. I told him about the fire starting on the 15th, down at McKee City.

Ques. You did say something about how this fire in question originated, did you ?

Ans. About one fire.

Ques. Did you do that by virtue of what he said to you in relation to the matter ?

Ans. How is that ?

Ques. Did you make that statement on account of what he had told you to do ?

Ans. Yes, sir.

Ques. And in that same report you sent in an estimate of the damage done, did you ?

Ans. I did.

Ques. A detailed estimate ?

Ans. Detailed.

Ques. Have you got a copy of that estimate that you sent him in writing ?

Ans. I have not got any papers whatever.

Ques. You sent a copy of it to Superintendent Dayton, didn't you ?

Ans. Yes, sir.

Ques. That report contained the result of your investigation as to the origin of the fire, and also your judgment as to the amount of damages done on the Abbott property ?

Ans. Yes, sir.

Mr. Pancoast: Now, I call for that report. The

other side admitted the other day that they had this report.

The Court: I think you are entitled to it now.

Mr. Gaskill: I produce it under the call of counsel.

(Paper produced and examined by Mr. Pancoast.)

Mr. Gaskill: Counsel pursuant to the demand required the production of the report from the witness now under cross-examination. He had no rights to that paper simply for inspection. His only rights were to offer it in evidence on its production. It was produced on the order, and is subject thereby to cross-examination by the adverse party, and I now submit that counsel is bound to offer it in evidence. Do I understand that the counsel does not offer it?

The Court: For the present he does not.

(Paper marked Exhibit 3 for identification at the request of Mr. Gaskill.)

Ques. Were the Abbott boys with you when you first went down on this ground?

Ans. Yes, sir.

Ques. Before that time did you know where their swamp was?

Ans. No, sir.

Ques. Had you known that locality at all?

Ans. Nothing more than riding through on the train.

Ques. On the railroad?

Ans. That is all.

Ques. You never had been through the roads of that part of the country?

Ans. No, sir.

Ques. Didn't know them?

Ans. No, sir.

Ques. Didn't know the roads, nor streams, nor swamps, nor the people through there?

Ans. No, sir.

Ques. You were a stranger there until the Abbotts went there with you?

Ans. An entire stranger.

Ques. In relation to the subject matter of this suit in November, 1895; is that correct?

Ans. That is correct.

Ques. Where did you meet the Abbotts?

Ans. Mays Landing.

Ques. And started for this place, did you?

Ans. Yes, sir.

Ques. Where did you go to? Come here and look at the map.

Ans. You mean the first day?

Ques. That is what we are talking about now. Do you know where Duberson's house is, below Reega Station?

Ans. I don't know it by name; no.

Ques. Do you know where the site of the mill was that was burned?

Ans. Yes, sir.

Ques. They call this Reega Station?

Ans. Yes, sir; that is somewhere near the mill.

Ques. Do you know where McKee avenue is in that neighborhood?

Ans. I am not familiar with the neighborhood; no.

Ques. Do you know where New York avenue is?

Ans. No; I am not familiar with it.

Ques. Do you know where Absecon road is? Which side of the swamp was that, if you know?

Ans. Well, there is a road that we went. It was on the north.

Ques. Do you know where Beckmire's place is?

Ans. I don't know it by the name. I know where the vacant farm is up on the road.

Ques. Don't you know where the occupied farms are, that are occupied?

Ans. I suppose so.

Ques. Where did you go with the Abbotts on this November 1st?

Ans. Went through the cedar.

Ques. Where did you go, to Reega Station, or where?

Ans. I got out near that little telegraph operator's house?

Ques. That block signal station?

Ans. Yes, sir.

Ques. Did you get out there with them?

Ans. I think they met me there.

Ques. And then which direction did you go?

Ans. Then we started and went down on the east side of the swamp.

Ques. That is, down into their swamp?

Ans. Down into their swamp. That is, on the 7th of November.

Ques. I am talking to you about the 1st.

Ans. You said the 7th a minute ago.

Ques. I said the 1st a moment ago. When did you first go there with the Abbotts?

Ans. About the 1st of November.

Ques. Now, we will go back to the 1st of November, then. Now, what you say now, does that apply to the 1st of November, or the 7th?

Ans. 1st now we are talking about.

Ques. Did you go down the railroad to that little flag station?

Ans. Afterwards we went down——

Ques. No, no; how did you get there?

Ans. We walked down the railroad.

Ques. They took you down from that station?

Ans. Yes, sir.

Ques. Then from that station they took you right across to their swamp, did they?

Ans. Not that day.

Ques. Where did they take you that day?

Ans. They took us in from the opposite side of the mill here.

Ques. Show on this map. Here is the flag station on their side of the road. Where did they take you now?

Ans. On the opposite side of the road to where their timber is; we didn't cross over.

Ques. Well, then, did you go into their swamp that day?

Ans. No, sir.

Ques. Well, did you go on the opposite side of the railroad to their swamp that day?

Ans. I didn't go to their swamp that day.

Ques. Well, did you go into Gravelly Run swamp on the opposite side of the railroad to their swamp, saying their swamp is down here and this the opposite side?

Ans. We went in opposite the mill.

Ques. Which is the sawmill, up at Reega station? A moment ago you said you went down here opposite the little block station.

Ans. That is where I landed on the 7th, I said then. That is on the 7th I got out there.

Ques. Well, now, on the 1st where did you start from?

Ans. Started from Mays Landing.

Ques. Where did you go then?

Ans. Went on down that railroad and crossed over the railroad and went on back out where these farms are, up this way, I suppose, by Yearick's place and Beckmire's place and Fell's place, and went up here by this burned timber. (Pointing to a star near the Bacon farm.)

Ques. Well, then where?

Ans. Then we got out and looked around and went a little bit further and went to a little piece of green timber.

Ques. Where was that?

Ans. It is that side of this burned timber. Then we went back to the railroad, and there the horses were hitched and we went up by the railroad to the sawmill.

Ques. Then you had inspected the burned region here around the Bacon farm, if this is the Bacon farm?

Ans. Yes, sir.

Ques. Then you went down to the railroad, struck the railroad?

Ans. Yes, sir.

Ques. And went down to the railroad to Reega, where the burned mill was?

Ans. Yes, sir.

Ques. What did you do then?

Ans. Went back into the woods to investigate which way the fire came from.

Ques. With the Abbotts?

Ans. The Abbotts, my father and McClure. My father was along that day.

Ques. Where did you go from there?

Ans. Went back in the woods.

Ques. Whereabouts in the woods? Here is the sawmill now; there is supposed to be a saw mill; here is the bridge. Did you see the bridge there?

Ans. Yes, sir; we crossed over there.

Ques. Here is the flag station.

Ans. Yes, sir.

Ques. Now, did they show you where the fire had crossed the railroad, where they said it had crossed? You went to that place, did you, where they said it crossed?

Ans. Yes, sir; went all along the railroad there.

Ques. Where was it they said the fire had crossed?

Ans. This way from the mill.

Ques. Toward the flag station?

Ans. Yes, sir. (Indicating on map.)

Ques. Well, did you go there?

Ans. Where the fire crossed?

Ques. Yes, sir.

Ans. Yes, sir.

Ques. Then where did you go from there?

Ans. We went on back.

Ques. Which way did you go?

Ans. Back to the mill. back behind the mill, back this way out.

Ques. Where did you go then?

Ans. Then we came back to the railroad.

Ques. How far did you go up there?

Ans. I think we went in the neighborhood of a quarter of a mile.

Ques. Up in this direction?

Ans. Yes, sir.

Ques. With the Abbotts?

Ans. Yes, sir; and McClure was along at the time.

Ques. Now, you didn't go down the railroad here in the direction of the swamp, where they said the fire originated?

Ans. We went down from here towards the swamp in back a ways.

Ques. Where did they say the fire originated?

Ans. They said it originated about one hundred and fifty yards this side of the flag station.

Ques. Down in here? (Indicating on map.)

Ans. Yes, sir.

Ques. Well, didn't you go from this crossing that day down there to where they said the fire originated?

Ans. We got out of our wagon here somewheres and went from here up that way, the other way.

Ques. You didn't go into the swamp then, eh, where they said the fire originated?

Ans. I don't remember that we did.

Ques. And you didn't undertake to trace the course of the fire where they said it originated up to the crossing at all?

Ans. Well, the fire——

Ques. Did you?

Ans. I don't know as we did.

Ques. We come now to the what?

Ans. To the seventh.

Ques. All you did then on the first was what?

Ans. Just to take a general drive around there.

Ques. That is the first day?

Ans. That is about the long and short of the first day.

Ques. Did you drive in the woods?

Ans. No; we did not; we left the team.

Ques. Now, pass to the seventh. Who did you go with there on the seventh?

Ans. McClure and three of the Abbotts. This Mr. Abbott here and his other two brothers—not Joseph.

Ques. For the same purpose, did you?

Ans. Went down to investigate, by appointment we had made the other day to go down again.

Ques. Where did you start from then?

Ans. We started from the Abbott corner somewheres.

Ques. The corner of their tract?

Ans. Yes, sir.

Ques. Did you go to the scene of the fire then, where the fire was supposed to have started?

Ans. Not that day. We went right down into the swamp.

Ques. Which swamp?

Ans. The head of the Abbott swamp, down around those lines.

Ques. Well, when you got down into the Abbott swamp, and was through viewing the Abbott swamp, did you afterwards go on the other side at the place where it was supposed the fire started, near the little flag station?

Ans. Well, McClure and I went up there; yes, sir.

Ques. Up here? (Indicating on map.)

Ans. No; up here, where it goes across.

Ques. But that is not my question. I asked you whether or not, after you got done going through the Abbott swamp when you went there on the 7th, when you went there the second time, you went to the alleged place where the fire started, near the flag station, to investigate that fire?

Ans. I don't think we did. We went up here—

Ques. I understand that. So that on neither occasion, the one on the 1st of November and the other on the 7th of November, did you go into the swamp here opposite the little flag station with a view of investigating the fire which was originally said to have started?

Ans. We started to look where the fire was supposed to have started, but I don't remember going in—

Ques. And making an investigation?

Ans. No, sir; I don't remember.

Ques. Who pointed out the spot where the fire was said to have originated near the flag station?

Ans. I think one of the Mr. Abbotts. I don't know which one.

Ques. McClure was there at the time, was he?

Ans. Mr. McClure was there.

Ques. And that is all the investigation you have made, then, is it?

Ans. That is all with the exception—we went up here to McKee City.

Ques. You have already told that.

Ans. There the information was that the fire—

Ques. We don't want the information.

Ans. Well, nothing more than a bird's-eye view going up the railroad.

Ques. That is all you got ?

Ans. Yes, sir.

Ques. Then all the information you got was from these two occasions ?

Ans. Yes, sir.

Ques. And you did then what you have already testified to ?

Ans. Yes, sir.

Ques. And nothing further that you can recall ?

Ans. Nothing that I remember.

Ques. Do you, or do you not, recollect that your father requested someone to point out the place where the fire was said to have started there ?

Ans. I think probably he did.

Ques. Now, can you state whether he requested Mr. McClure to do so ?

Ans. I can't tell who. That was ten months ago and I don't know who he requested. It might have been Mr. McClure and it might have been one of the Abbotts who did it. I couldn't say.

Mr. Gaskill: I take exception to the fact that the gentleman has not put in evidence and read to the jury the report of the witness which he called for and which was produced under his call.

Mr. Pancoast: Well, you can hand the report to the Court and let the Court read it.

The Court: I don't understand that he is required to offer it in evidence.

Mr. Gaskill: I don't think I have any right to offer it, because he is my witness. I am in the same posi-

tion Judge Pancoast was when he examined him. I can only ask him what he did there.

The Court: He doesn't offer it because there are things in there that he doesn't admit.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

GEORGE V. LETTS, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live?
Ans. Richland.
Ques. Is that in this neighborhood?
Ans. Well, it is about eight miles, I judge, from here.
Ques. It is in Atlantic county then, is it?
Ans. Yes, sir.
Ques. Are you in the employ of the railroad company?
Ans. Yes, sir.
Ques. And in what capacity?
Ans. Foreman.
Ques. Of what?
Ans. Sub-division, or division section, some call it.
Ques. And where is your section?
Ans. It runs from Buena Vista six miles south, this way; that is, from Buena Vista.
Ques. Does your section adjoin that of Mr. McClure?
Ans. No, sir.
Ques. A section between you?
Ans. Yes, sir.

Ques. Were you in the neighborhood of the Abbott cedar swamp on Tuesday, the 24th of September, 1895?

Ans. I was, sir.

Ques. Did you see Mr. Charles Abbott there that day?

Ans. Yes, sir.

Ques. Did you have a conversation with him as to the origin of this fire?

Ans. I did, sir.

Ques. Did Mr. Abbott, on that day, in answer to a question as to whether he had investigated the origin of the fire, say yes, that it had been set by some Dutchman, or some damned Dutchman, up on the Absecon road, or words to that effect?

Ans. He said that some Dutchman.

Ques. You don't remember the use of the word "damned?"

Ans. No, sir; I can't say that he used that word.

Ques. Who were present at the time, Mr. Letts?

Mr. Pancoast: I move to strike out that part of the testimony.

The Court: What was his answer?

(Answer repeated.)

The Court: He practically understands that this question is the rest of his answer. Let's find out whether that is what he means or not.

(To the witness:)

Ques. Don't you understand the question, Mr. Letts?

Ans. Yes; I understand it.

Ques. Well, now, he asks you that question, and you want to repeat everything the witness said to you at

that time. Don't take any part of the question for an answer now.

Ans. I would rather report the circumstances as I was talking to Mr. Abbott.

Ques. The question was whether you had asked Mr. Abbott whether he had made up his mind as to what the origin of the fire was, and what did Mr. Abbott say.

Ans. He said that some Dutchman was burning brush.

Ques. Is that all he said?

Ans. First I asked him where did all this fire come from. He said it was the old fire that had been burning ten or twelve days. Then I asked him the other question, where it came from, and he said that some Dutchman had set it, burning brush. That is what he said then.

(Mr. Pancoast moves to strike out all this part of the testimony. Ordered stricken out.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

Mr. Gaskill: Now, if your Honor please, I ask permission of the Court to recall Mr. Charles Abbott for the purpose of putting this question to him, in order that I may lay the foundation for a contradiction, being now better informed as to the language used.

The Court: I think that is proper.

Mr. Pancoast: It seems to me that he ought not to be experimenting with this witness.

The Court: I don't think it is experimenting. I think it is a matter of common practice.

CHARLES T. ABBOTT, recalled.

Direct examination.

By Mr. Gaskill:

Ques. Mr. Abbott, you remember that on Tuesday after the fire in your swamp on Saturday, you met Mr. Letts and some others near your swamp at or about lunch time, did you not?

Ans. No, sir. To answer that I will say I met them early in the morning.

Mr. Pancoast: Answer the questions direct.

Ques. It was early in the morning, was it?

Ans. When I met them; yes, sir.

Ques. Were any of the party engaged in cutting bread or arranging for a lunch?

Ans. I don't recall that they were; there was a big crowd of them.

Ques. Now, was not Mr. George V. Letts there present, and while he was cutting bread on his knees did he not say to you, in words to this effect, "Where has all this fire come from?" or "Where did all this fire come from?" and you replied that it was the old fire broke out again and he then say, "How did it start?" and you answer some Dutchman had set it burning brush?

Ans. My answer to that is that there was not one word passed between us in regard to the origin of this fire, no time during the day.

Ques. Was the language which I have quoted to you used during that day in conversation between you Mr. Letts?

Ans. It was not; positively, it was not.

Ques. And in the presence of Josiah Ashton, J. S. Sutton and Mr. E. Pancoast?

Ans. It was not.

GEORGE V. LETTS, recalled.

Direct examination.

By Mr. Gaskill:

Ques. On the day in question, Mr. Letts, in the morning, while you were on your knees cutting bread for lunch or breakfast, did you have a conversation with Mr. Charles Abbott, who was just on the stand?

Ans. I did, sir.

Ques. Did you ask him where all this fire had come from?

Ans. I did, sir.

Ques. Did he say that it was the old fire broke out again.

Ans. He did, sir.

Ques. And did you then ask him, "How did it start?

Ans. I did, sir.

Ques. And did he say some Dutchman had set it burning brush?

Ans. Yes, sir; that is what he said.

Cross-examination.

By Mr. Pancoast:

Ques. How long have you been in the railroad company's employ?

Ans. Somewhere about since the year 1872, when I first commenced to work for them.

Ques. Have you been a witness for them frequently since that time?

Ans. But once.

Ques. What else did you and Mr. Abbott talk about on this occasion?

Ans. Well, that about ended the conversation. He

led us into the swamp then where the fire was and we went to carrying water and putting out the fire.

Ques. That was all that was said between you and him about it?

Ans. Yes, sir. I met him on the road first.

Ques. At the time you were chopping bread did anything else pass between you?

Ans. That is about all there was on the subject.

J. S. SUTTON, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Mr. Sutton, where do you live?

Ans. Newfield, Gloucester county.

Ques. What is your business?

Ans. Track foreman.

Ques. In what gang?

Ans. Gang of sub-division No. 39, Newfield.

Ques. Were you at the scene of the fire in the Abbott swamp, on Tuesday after the fire, Tuesday, September 24th, 1895?

Ans. Yes, sir.

Ques. Do you remember a conversation between Mr. Letts and Mr. Charles Abbott on that day?

Ans. Yes, sir.

Ques. What time in the morning did that take place?

Ans. Well, I couldn't say positively to the minute. It was pretty early in the morning.

Ques. Do you remember what Mr. Letts was doing?

Ans. Well, we were about to take lunch. I don't remember what he was doing.

Ques. In that conversation did you hear Mr. Letts inquire of Mr. Charles Abbott where all this fire had come from?

(Objected to.)

Mr. Gaskill: I will change that question.

The Court: You had better modify the question.

Ques. Did Mr. Letts say to Mr. Abbott, "Where did all this fire come from?" or "Where has all this fire come from?"

(Objected to as not indicating the time.)

The Court: I think perhaps you might improve on that.

Mr. Pancoast: Will the Court let me ask him one or two questions with a view to find out?

The Court: Yes, sir.

By Mr. Pancoast:

Ques. Do you recollect on that day that Mr. Letts was cutting bread there?

Ans. Yes, sir.

Ques. While he was cutting bread do you recollect any particular conversation that he had with any person?

Ans. Yes, sir.

Ques. With whom?

Ans. That man that sits there. I don't know his first name. (Indicating Mr. Charles Abbott.)

Mr. Pancoast: Go on. He didn't know that till I asked him.

By Mr. Gaskill:

Ques. (Question repeated.) Did Mr. Letts say to Mr. Abbott, "Where did all this fire come from?" or "Where has all this fire come from?"

Ans. I believe he did; yes, sir.

Mr. Pancoast: I ask to have that striken out; he says that he believes that he did.

The Court: He says, "I believe he did, yes, sir." I think that rather intensifies it.

Ques. In answer to that did Mr. Charles Abbott say that it was the old fire broke out again?

Ans. Yes, sir.

Ques. Did Mr. Letts then say to him, "How did it start?"

Ans. I don't remember that.

Ques. Did Mr. Abbott, in answer to Mr. Letts' inquiry, say some Dutchman had set it burning brush?

Ans. Mr. Abbott said what I have in the first question that was asked.

Ques. Along with the first question?

Ans. Yes, sir.

Cross-examination.

By Mr. Pancoast:

Ques. Now, you give this conversation that occurred between Letts and Abbott there while Letts was cutting bread, in full, from beginning to end?

Ans. Well, Mr. Letts says to Mr. Abbott, he says, "Where in the plaguenation did all this fire come from?" Mr. Abbott says, "This fire has been burning for two weeks. It came from a Dutchman over here somewhere burning brush." That is all I heard.

Ques. That was the whole of that you heard?

Ans. Yes, sir.

Mr. Pancoast: Now, I ask to have this previous testimony stricken out.

(Motion refused.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

EPHRAIM PANCOAST, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Pancoast?
Ans. Forest Grove.
Ques. And are you a railroad man?
Ans. Yes, sir.
Ques. In whose section or gang of workmen do you work?
Ans. In sub-division 48.
Ques. Are you foreman?
Ans. Yes, sir.
Ques. Does that adjoin Mr. McClure's division?
Ans. No, sir.
Ques. Which way is that, towards Atlantic City or the other way?
Ans. Between Newfield and Buena.
Ques. Were you at the scene of this fire on the Abbott cedar swamp on Tuesday, the 24th day of September, 1895?
Ans. Yes, sir.
Ques. Do you remember a conversation between Mr. Letts and Mr. Charles Abbott, the gentleman sitting there?
Ans. Yes, sir.
Ques. What time in the morning, as near as you can tell, did that conversation take place?
Ans. Somewhere near seven o'clock.
Ques. Do you remember what Mr. Letts was doing at the time?

Ans. Yes, sir.

Ques. What was it?

Ans. He was cutting up some bread.

Ques. Where was he with respect to his position?

Ans. I think he was squatting down or on his knees, or something like that.

Ques. At that time did you hear Mr. Letts say to Mr. Abbott, "Where has all this fire come from?" or words to that effect?

Ans. Yes, sir.

Ques. In answer to that did you hear Mr. Abbott say that it was the old fire broke out again?

Ans. Not exactly in them words; no, sir.

Ques. What were the words that he used?

Ans. The words he used were, "Had been burning there for some two weeks."

Ques. Did Mr. Letts then ask him how it started, "How did it start?"

Ans. No, sir; I didn't understand it that way, hardly.

Ques. Well, what was it that you did understand?

Ans. Well, Mr. Letts asked him where this fire all came from.

Ques. What did he say?

Ans. He said it had been burning there for some two weeks, came from a Dutchman burning brush somewhere off the east or the northeast.

No cross-examination.

JOSIAH ASHTON, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Ashton?

Ans. Richland.

Ques. Are you a railroad man?

Ans. Yes, sir.

Ques. In whose section or gang?

Ans. Mr. Letts'.

Ques. Were you at the scene of this fire, near the Abbott cedar swamp, on Tuesday morning, September 24th, a year ago?

Ans. Yes, sir.

Ques. Did you see Mr. Charles Abbott there?

Ans. Yes, sir.

Ques. Did you see Mr. Letts there?

Ans. Yes, sir.

Ques. Mr. Sutton?

Ans. Yes, sir.

Ques. Mr. Pancoast?

Ans. Yes, sir.

Ques. Did you hear any conversation between Mr. Letts and Mr. Charles Abbott at that time?

Ans. Yes, sir.

Ques. What time in the day was it, as near as you can remember?

Ans. I think it was about seven o'clock, or a little after.

Ques. What was Mr. Letts doing at the time?

Ans. I don't understand what time.

Ques. At the time of the conversation; at seven o'clock in the morning.

Ans. One time he was cutting bread when he had some conversation.

Ques. And was about the time of the conversation?

Ans. The conversation? I don't understand what conversation. We met them before this.

Ques. But there was a conversation while Mr. Letts was cutting bread?

Ans. Yes, sir.

Ques. Between him and Mr. Abbott?

Ans. Yes, sir.

Ques. At that time Mr. Letts was cutting bread, did he say to Mr. Abbott, "Where has all this fire come from?" or, "Where did all this fire come from?"

Ans. Yes, sir.

Ques. And did Mr. Abbott, in answer, say that it was the old fire broke out again?

Ans. Yes, sir.

Ques. And did Mr. Letts then ask him, "How did it start?"

Ans. Yes, sir.

Ques. And did Mr. Abbott then say some Dutchman had set it burning brush?

Ans. Said it got away from some Dutchman.

Mr. Pancoast: I move to strike out this testimony.

Mr. Gaskill: That is the same in substance, I submit.

The Court: I think it is.

By Mr. Pancoast:

No cross-examination.

Ques. What were you and these employes doing there at the scene of the fire on the 24th of September, 1895?

Ans. We had orders to go there.

Ques. To do what?

Ans. To fight fire.

Ques. That was on this Abbott place?

Ans. We had no orders to go on the Abbott place; we had orders to go to a fire.

Ques. Where was this fire?

Ans. That was where they left us; I am a stranger in that country.

Ques. You were there then with a railroad gang on the twenty-fourth with orders to fight the fire in that neighborhood?

Ans. Yes, sir.

Ques. How many different gangs were there?

Ans. That is more than I could say.

Ques. Well, there were several railroad gangs, weren't there?

Ans. Yes, sir.

Ques. And where were you fighting this fire, in the vicinity of Reega station?

Ans. I don't know where Reega station is.

Ques. But it was where the Abbotts were?

Ans. Where we met Mr. Abbott.

Ques. Was that the first time you had been there to fight fire in that neighborhood?

Ans. No, sir. We were there some time before that, above that.

Ques. How many days before that?

Ans. I couldn't tell you the exact date; several days.

JOHN ALLOWAY, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Alloway?

Ans. Down in one of Mr. McKee's houses.

Ques. In McKee City?

Ans. Yes, sir.

Ques. How near to McKee City station is that?

Ans. Well, where I lived at that time, close by.

Ques. Where you lived in September, 1895—September a year ago?

Ans. Yes, sir.

Ques. Close by it?

Ans. Yes, sir.

Ques. On what road?

Ans. English Creek avenue.

Ques. That is the road leading from English creek—

Ans. To Pomona.

Ques. Across the railroad to Pomona?

Ans. Yes, sir.

Ques. Which side of the railroad do you live?

Ans. Why, the northeast side.

Ques. Is that here somewhere then? (Indicating on map.)

Ans. Yes, sir.

Ques. How long had you lived there at that time, Mr. Alloway?

Ans. Since sometime in March before. The last spring I went there. I don't recollect what time I went there. It was in March some time.

Ques. In March, 1895?

Ans. Yes, sir.

Ques. Had you lived in that neighborhood before?

Ans. No.

Ques. Where had you lived before you came there?

Ans. Well, I had been there, but not in that house.

Ques. No; but I mean where had you lived before?

Ans. Up this way further, at 2758.

Ques. You still lived on one of McKee's lots?

Ans. Oh, yes; one of his places.

Ques. Do you remember a fire there over this tract of land, in May or June of 1894?

Ans. Yes, sir.

Ques. Do you know how that fire started?

Mr. Pancoast: I object; what have we got to do with a fire in June, 1894?

The Court: I don't see what we have to do with it.

Mr. Gaskill: My offer is, if the Court please, to show a fire in May or June of 1894 for two purposes: first, to show that the greater part of this country had been

burned over before, and I think the Court will see that will have important bearing on the case. In the second place, they attempt to trace the fire on the north side of Gravelly Run, while this fire was on the south side of Gravelly Run. I propose to show that the combustible material on the north side of Gravelly Run had been practically exhausted by a previous fire, and the fire that they say forms the connection between the 12th and the 22d of September did not run as they say it run, and I shall prove that by eye-witnesses, and I shall show that the ground over which it must have gone in order to run through Gravelly Run swamp and again through to the south side of it, must have had to go over land that had been burned within a year. Further, as to the question of damages, the value of timber burned in the Abbott swamp, that this fire about which I am inquiring got into the Abbott swamp and that it damaged the swamp, and therefore that the damage to be assessed against us, if the jury find against us, is not to be assessed as the value of the standing timber, but had been partially destroyed by the fire of the previous year.

The Court: That is the only point upon which it has any relevancy. As to the fact whether fires have been over it before, you can go down here now and find growing land where it has been burned over.

(Objection withdrawn.)

(Question repeated.)

Ques. Do you know how that fire started?

Mr. Pancoast: What fire?

Mr. Gaskill: The one I was asking him about.

The Witness: The fire of 1894?

Mr. Pancoast: I object to the question.

The Court: I thought you had withdrawn your objection.

Mr. Pancoast: I object to the proof of any specific origin of any fire of 1894.

(Question withdrawn.)

Ques. I don't know that it is necessary for you to prove that. Referring to the fire of May or June of 1894, where did that fire start, which way did it burn, and over what territory did it burn?

Ans. It started with me at 2749. It got away from me in spite of me.

Ques. And where did it go?

Ans. Well, it went on the course and got away from me towards English creek.

Ques. Where is 2749? What road does it front on?

Ans. No road there, only the West Jersey Road. Right along the railroad, 2749 is, right below Reega.

Ques. Is it below or above the railroad where the stream crosses it?

Ans. Oh, below.

Ques. How near to the swamp siding is it?

Ans. Why, below.

Ques. Which way is below, towards McKee City?

Ans. Between Reega and McKee City station.

Ques. You were along the railroad here?

Ans. Along the railroad.

Ques. Now, how much ground did this fire burn over?

Ans. Well, that I couldn't say.

Ques. Well, as near as you can tell, before it was put out?

Ans. Oh, a hundred acres.

Ques. Do you know whether or not it got into Abbotts' swamp?

Ans. No; I couldn't say it did, only what people say.

Ques. Do you know whether the Abbott swamp was burned to any extent at or about that time?

Ans. No; I wasn't in there.

Ques. You don't know?

Ans. No, sir.

Ques. You weren't in there?

Ans. No, sir.

Ques. You didn't follow it up?

Ans. Didn't follow it up.

Ques. Now, Mr. Alloway, last September what do you know about any fire starting in the neighborhood of Reega or McKee City station?

Ans. Well, I don't know of any one started at Reega. I know one started on English Creek avenue.

Ques. Whereabouts on English Creek avenue?

Ans. Well, about five hundred yards from the railroad?

Ques. Which way from the railroad?

Ans. North.

Ques. On which side of English Creek avenue?

Ans. Well, it started—it was on both sides; swept right across both sides.

Ques. Where were you when it started?

Ans. I was at the station.

Ques. At McKee City station?

Ans. Yes, sir.

Ques. What time in the day was it that it started?

Ans. In the afternoon, about two o'clock.

Ques. And what day of the week was that?

Ans. Sunday.

Ques. How long did you see that fire, or watch it?

Ans. Well, till pretty near night.

Ques. Did you help fight it?

Ans. Yes, sir.

Ques. Was there anything of it after that day?

Ans. Not after that day.

Ques. Not after that Sunday?

Ans. Not after that Sunday.

Ques. Where did it go to that Sunday?

Ans. Well, the wind kind of changed and took it out the course of Pomona.

Ques. Did you see any fire during that next week, between the 15th and the 22d, or the smoke of any fire?

Ans. Yes, sir; I saw smoke.

Ques. Whereabouts?

Ans. North; north of the railroad.

Ques. In what direction?

Ans. It swept kind of up; kind of northwest. Then the wind shifted and fetched it right across southwest.

Ques. And where did it strike then?

Ans. It came across McKee swamp.

Ques. What part of McKee's swamp?

Ans. Well, up there back of Reega.

Ques. Somewhere near New York avenue?

Ans. Yes, sir.

Ques. What day was it that that fire came back across there?

Ans. Saturday, the 21st.

The Court: Is he talking about the fire of 1894?

Mr. Gaskill: No, sir; the fire at McKee City station, September 12th, 1895.

The Court: Do I understand the fire started at 2749? Where was that number?

Mr. Gaskill: That was along the railroad.

The Court: That was the old 1894 fire?

Mr. Gaskill: Yes, sir.

The Court: Now, he has got to the other fire?

Mr. Gaskill: Yes, sir.

The Court: And where does he say that started?

Mr. Gaskill: On the north side of McKee City station, over towards Pomona, Sunday afternoon about two o'clock.

The Court: And then it backed down and got into McKee swamp?

Mr. Gaskill: Yes, sir.

The Court: Well, now, go on.

Mr. Gaskill: And across McKee's swamp about Reega, opposite Reega.

Ques. What were you doing there that week, Mr. Alloway?

Ans. Cutting brush up along the railroad track, near 2749.

Ques. Who were you working for?

Ans. McKee.

Ques. And from where you were working state whether or not you could see the smoke of this fire every day.

Ans. Well, not every day I couldn't see it. I didn't take notice of it every day.

Ques. Which are the days that you did see it?

Ans. The first day I seen it so heavy was on Saturday, the 21st.

Ques. And where were you at that time?

Ans. I was right at the upper end of 49.

Ques. Can you tell us how near McKee avenue No. 2749 is?

Ans. Why, this side of McKee avenue.

Ques. Can you tell us how near it is to this old road that goes through the woods towards the railroad?

Ans. Virginia avenue? Why, it is below that from Reega. That is the only one. It is called Virginia avenue there.

The Court: When does he say that fire started?

Mr. Gaskill: Sunday afternoon, the 15th, at 2 o'clock. Started right in the road and went from both sides. He was up at the station at that time.

Ques. Did you see that distance measured from that station where that fire started?

Ans. Yes; measured it myself; five hundred yards.

Ques. Did you see anyone go up that road before the fire started?

Ans. I did; I met a man at my place driving along in a roadcart.

Ques. Do you know whether or not he was smoking?

Ans. He was smoking a cigar when he passed me.

Ques. How soon after he passed did you see this fire start?

Ans. I suppose about a half or three-quarters of an hour.

Ques. Did he pass in his roadcart on this English Creek road on which the fire started?

Ans. Yes, sir.

Ques. Was that fire which started that afternoon to your knowledge entirely put out?

Ans. I couldn't say whether it was or not.

Ques. You didn't see it put out?

Ans. I didn't see it; after we fought it out there where it started of course I couldn't say whether it had been put out or not.

Ques. Did you do any backfiring or sidefiring?

Ans. No; I didn't do none.

Ques. Did you see any done during this week?

Ans. No; I did not.

Cross-examination.

By Mr. Pancoast:

Ques. You are one of the men that is not in the employ of the railroad, are you?

Ans. No.

Ques. What occasioned you to go there and measure the distance from the station where you saw a fire to the point of the fire?

Ans. The way I came to do it, I was measuring off some land where I was brushing and I had the tape and I thought I would run it off.

Ques. You never thought of being a witness?

Ans. No, sir; I never thought of being up here at the time.

Ques. You didn't think anything about bringing a suit?

Ans. No, sir.

Ques. The fire didn't hurt your land?

Ans. No.

Ques. You weren't interested in it?

Ans. No.

Ques. You just measured it out of curiosity?

Ans. Yes; just curiosity, to see, while I was measuring the other land.

Ques. On Sunday afternoon did you go out there to fight this fire?

Ans. I went out to fight it.

Ques. Who else went out to fight it.

Ans. Well, a pretty good crowd got out there.

Ques. Did you go there any other day to fight it except Sunday, the 15th?

Ans. That was the only day, the 15th.

Ques. How far was it from your place then?

Ans. Well, from the place I lived then I suppose it was about, maybe, 200 yards from that.

Ques. Why didn't you go fight it after Sunday, the 15th?

Ans. Oh, well; I had no call to do it.

Ques. It didn't threaten to do you any damage?

Ans. It didn't do me any damage. I hadn't anything for it to damage. If there had been any special call I would have gone.

Ques. You paid no special attention to it after that?

Ans. No, sir.

Ques. You only saw smoke from a distance?

Ans. Yes, sir.

Ques. Now and then.

Ans. Yes, sir.

Ques. Never went to the fire?

Ans. No, sir.

Ques. Never undertook to follow the course of it?

Ans. No, sir.

Ques. Never had any interest in it?

Ans. No, sir.

Ques. You never were down at the alleged place of crossing in this case, were you?

Ans. No.

Ques. Do you know whether prior to the 15th there were any other fires down below?

Ans. No; I didn't take notice.

Ques. You don't know anything about that?

Ans. I didn't take notice.

Ques. Do you know where McKee avenue is?

Ans. Yes, sir.

Ques. How far is McKee avenue from the fire?

Ans. Oh, I guess it was near half a mile off from the fire—from where the fire started.

Ques. How far is it from McKee avenue down to Reega?

Ans. Well, I guess it is close to two miles.

Ques. Then up there where that fire started on that Sunday was about two miles and a half away from Reega, wasn't it?

Ans. I guess it was about half a mile.

Ques. You never saw it at all except that one Sunday?

Ans. No, sir.

Ques. When it was up here two miles and a half from Reega, on that Sunday, what course did it take?

Ans. I don't know. I wasn't there. Oh! on that Sunday, it took the course I mentioned, out towards Pomona.

Ques. What course did it take on Tuesday?

Ans. I didn't take notice of it.

Ques. What course did it take on Wednesday?

Ans. None of them days I didn't take notice of it. On Friday I seen the smoke coming around.

Ques. Did you take notice of the course after Sunday?

Ans. Saturday I did.

Ques. That is the first time you noticed it particularly then after Sunday?

Ans. After Sunday.

Ques. You didn't notice it particularly again until Saturday?

Ans. Until Saturday.

Ques. Then you saw the fire down towards where?

Ans. Down towards Reega.

Ques. How near Reega was it when you saw it Saturday?

Ans. All along Reega there.

Ques. Right at Reega, you saw it Saturday?

Ans. Yes, sir.

Ques. And between Saturday and Sunday you didn't notice the course of the fire at all?

Ans. No, sir.

Ques. You didn't go to it on Saturday?

Ans. No, sir.

Ques. Never went to it after that Sunday?

Ans. No, sir.

Ques. You have never been in the Abbott swamp?

Ans. No, sir.

Ques. Don't know where it is?

Ans. I couldn't tell you where it is.

Ques. Don't know whether there was a fire in it at that time or not?

Ans. No, sir.

Ques. Do you know where there is a little flag station on the railroad?

Ans. Yes, sir; I know where that is.

Ques. Was there a fire down in that direction when you saw that on Saturday?

Ans. No; I don't know.

Ques. Can't you tell?

Ans. I think it was a little this side of it.

Ques. You were two miles and a half away?

Ans. Yes, sir.

Ques. Where were you when you saw a fire in this direction, home?

Ans. I was up at 47.

Ques. How far away was that?

Ans. I couldn't tell.

Ques. Two miles and a half?

Ans. I guess it was.

Qus. That was the nearest you were to it on Saturday?

Ans. Yes, sir.

Ques. And you were not any nearer to it afterwards?

Ans. No, sir; I was not to it afterwards.

Ques. Did you take notice of that man smoking that day?

Ans. Yes, sir.

Ques. What kind of a man was it?

Ans. A big stout man.

Ques. Did he look like an American or a Dutchman?

Ans. I didn't take any notice what nation he was.

Ques. Was he driving along the highway?

Ans. Yes, sir.

Ques. Is it a rare thing to see a man smoke along the highway?

Ans. I don't know as it was.

Ques. Do you smoke yourself?

Ans. Yes, sir.

Ques. Did you ever set any fire with a cigar?

Ans. No; I don't set any fires with cigars or pipes either.

DAVID EDWARDS, sworn.

Direct examination.

Examined by Mr. Gaskill:

Ques. Mr. Edwards, where do you live?

Ans. On English Creek road, sir.

Ques. And how far from McKee City station?

Ans. About one mile and a quarter.

Ques. Is your house anywhere near the forks of the road?

Ans. It is about a thousand feet from the road called Absecon and English Creek road.

Ques. In going from McKee City station up the English Creek road toward your house, you pass over the road to Pleasantville?

Ans. Yes, sir.

Ques. And then you are within a thousand feet—

Ans. Within a thousand feet from that road.

Ques. How long have you lived there?

Ans. Two years this month.

Ques. You have lived there a year then before September, 1895?

Ans. Yes, sir.

Ques. Do you remember any fire in that neighborhood last September?

Ans. Yes, sir.

Ques. Where did the fire break out?

Ans. Sixteen hundred and fifty feet north of McKee City station.

Ques. How do you fix the distance?

Ans. Measured it with tape.

Ques. When did that fire break out?

Ans. Sunday, the 15th, at two o'clock.

Ques. Where were you?

Ans. I was home, sir.

Ques. Did you go to the fire?

Ans. I simply went down to see where it started?

Ques. When did you go down to see where it started?

Ans. In the afternoon.

Ques. That Sunday afternoon?

Ans. Yes, sir.

Ques. Where did that fire go?

Ans. Why, it went westward; toward the railroad.

Ques. And was it fought anywhere before it got to the railroad?

Ans. Why, I don't know. I went back to the house to see that my property was secure.

Ques. You don't know then whether it was fought along the line of McKee avenue?

Ans. No, sir.

Ques. Only that the fire was burning westward?

Ans. Westward as well as northwestward, and taking its course towards the northwest.

Ques. Along this way?

Ans. Yes, sir.

Ques. Now, how late on Sunday did you see that fire or the smoke from it?

Ans. I seen smoke all the afternoon till I retired.

Ques. And how about the next day, did you see anything of it?

Ans. I seen the smoke laying down in the same section, but the smoke was coming on the 16th northwest.

Ques. Coming to the northeast?

Ans. Yes, sir; coming towards our place.

Ques. This way, over towards your place? (Indicating on map.)

Ans. Yes, sir.

Ques. How long on Monday, the 16th, did it continue to come that way?

Ans. It played there, I think it reached our house the 16th or 17th.

Ques. How could you watch it so well on those weekdays; what were you doing?

Ans. Well, I was fearing of this fire to reach our place, and I was preparing the brush around our place, afraid it would catch the brush and burn our house. I still watched the smoke and seen it coming in the same direction, the 16th and 17th.

Ques. How about the 18th?

Ans. Well, at half-past eight o'clock on the morning of the 18th it was on our ground, and it crossed there. Our ground is cleaned three hundred and sixty feet deep by four hundred feet wide, and that is the reason that the house didn't get burned; but there was a good many of the timber that got burned there. This fire played on the 17th and 18th up to the swamp of somebody, I don't know who.

Ques. This Gravelly Run swamp?

Ans. No, sir; that is towards Pomona, from our place.

Ques. Over here? (Indicating on map.)

Ans. Yes, sir.

Ques. Well, what became of it then?

Ans. Then the wind changed again.

Ques. And what day did the wind change?

Ans. That was the 20th, and blew westward, and continued so the 20th and 21st.

Ques. Where did the fire get to by the 21st?

Ans. Why, I don't know how far it got to, but I still watched this fire on the roof until I seen it got so far, until it reached very high timber. Whatever this high timber was I couldn't exactly say.

Ques. What direction was that?

Ans. That was direct west.

Ques. Your place is here? Direct west is right down the map?

Ans. Yes, sir.

Ques. Do you known where McKee City station is?

Ans. I know, but I never passed through there.

Ques. Was it in that direction from your place? (Indicating.)

Ans. No. It crossed somewhere there to McKee avenue; some kind of a swamp there.

Ques. There at McKee avenue?

Ans. Yes, sir.

Ques. Now, what day was it you say it crossed McKee avenue to the swamp that was there?

Ans. That was on the 20th.

Ques. Friday?

Ans. Yes, sir.

Ques. Did it get in the swamp that day?

Ans. I expect it did and across there, too, because the wind blew very rapidly.

Ques. Which way did the wind blow on the 21st?

Ans. The same direction.

Ques. Westward?

Ans. Yes, sir.

Ques. Now, Mr. Edwards, were you building a new house?

Ans. I was, sir.

Ques. And what part of the house were you working on during this week, between the 15th and the 22d?

Ans. Well, when the fire passed, I was putting up the rafters.

Ques. And what day was it the fire passed over that cleared ground of yours?

Ans. 18th.

Ques. And how high is this house that you were putting up rafters on?

Ans. Why, the studding are eighteen feet and the rafters have twelve feet pitch.

Ques. Were you up on the roof?

Ans. No; on the plate.

Ques. On the plate at the top of the studding and posts?

Ans. Yes, sir.

Ques. Did you go down to the fire at the sawmill at McKee City?

Ans. No, sir.

Ques. Nor down to the fire at the swamp?

Ans. No, sir. I had plenty of work there to watch our own place, because all our timber was afire, and we lost twelve cords of wood that was out there.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know who, if anybody, was fighting this fire in its course here towards the Doughty swamp?

Ans. No, sir.

Ques. After the 15th up to the 18th?

Ans. No, sir.

Ques. You saw it from your home only ?

Ans. That is all.

Ques. You never undertook to follow the fire ?

Ans. No; only just to watch the atmosphere to see where it went.

Ques. And the atmosphere was very dense with smoke, wasn't it ?

Ans. Yes, sir.

Ques. And it took this course the 18th towards what is called the Doughty swamp ?

Ans. Yes, sir.

Ques. How far away was that ?

Ans. From our property ?

Ques. Yes; from where you saw it.

Ans. Well, about a quarter a mile from our property, that swamp is.

Ques. It took the direction of that swamp on the 18th, did it ?

Ans. Yes, sir.

Ques. How far is your property from Reega station ?

Ans. That I couldn't say, because I never traveled it.

Ques. As near as you can judge, taking it around McKee City station to that Reega station ?

Ans. They tell me it is two miles and a half from Reega, then it is a mile and a quarter from McKee City, my property.

Ques. You are four miles, then, from Reega ?

Ans. Yes, sir; that is, in a crooked direction, you know.

Ques. You never was down here at the scene of the fire at all ?

Ans. No, sir.

Ques. What caused you to go and make that measurement that Sunday ?

Ans. What caused me to go down ? Why, I only

done it for curiosity, as well as somebody else. I seen a crowd down there running with a tape.

Ques. Just for curiosity?

Ans. Just took a hand in it as well as the balance.

Ques. You are not employed by the railroad?

Ans. No, sir.

Ques. Who got you to come here as a witness? Who secured you as a witness?

Ans. I don't know who it was; some young man came there and subpœnæd me on here; I don't know his name.

Ques. Who first did you talk to about this before you were subpœnæd as a witness?

Ans. Why, I was talking to several parties in McKee City there.

Ques. Did you notice any fire before the 15th any place in that neighborhood?

Ans. Oh, yes; there was plenty of fire around there

Ques. That is, down towards Pleasantville and towards E. A. Doughty and towards the Reading Railroad? A number of fires in that neighborhood at that time?

Ans. Yes, sir.

Ques. Separate and distinct fires?

Ans. Yes, sir.

Ques. Very dry there at that time?

Ans. Yes, sir; very dry; hadn't had any rain for three months.

Ques. Had you noticed any fire down here below Reega station or any smoke down there before the 15th?

Ans. No, sir; I was so very busy about the house. But after this fire was past this property, I only took notice to see where this fire got, this direction.

Ques. You were very busy up to the 15th?

Ans. Yes, sir.

Ques. You didn't take notice of these surrounding fires?

Ans. No, sir.

Ques. You knew there were fires in various parts of the country?

Ans. Yes, sir.

Ques. And you didn't pay any particular attention?

Ans. No, sir.

Ques. But this fire you gave particular attention to, it being in your neighborhood?

Ans. Yes, sir.

Ques. But you never followed that up at all?

Ans. No, sir; I never followed after it.

Ques. You don't know where it crossed down below, or whether it crossed at all or not?

Ans. No.

Ques. You don't know whether it ever got on the other side of the railroad or not?

Ans. No.

Re-direct examination.

By Mr. Gaskill:

Ques. Can you tell me about how far it is from your place, at the corner of Absecon road and English Creek road, in a straight line, down to the head of the Gravelly Run swamp on McKee avenue?

Ans. Yes, sir; somewhere about a mile and a half.

WILLIAM BADGER, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Badger?

Ans. At McKee avenue and Wrangleboro avenue, called Pomona road.

Ques. Can you point it out on the map, Mr. Badger,

that avenue, or where you live? Here is McKee City station. (Indicating on map.)

Ans. Yes, sir.

Ques. And here is English Creek road crossing McKee City station going over towards Pomona?

Ans. Yes, sir.

Ques. Here is the Pleasantville road and here is the Absecon road. Are you on Absecon avenue or McKee avenue?

Ans. McKee avenue. It is the end of McKee avenue.

Ques. Away out here?

Ans. Yes, sir.

Ques. Towards Pomona?

Ans. Yes, sir.

Ques. That is at the junction of McKee avenue and the road from McKee town to Pomona; that is right, is it?

Ans. Yes, sir.

Ques. Now, how long had you lived there before last September?

Ans. Five years.

Ques. Do you remember Sunday afternoon, September 15th, a year ago?

Ans. Yes, sir.

Ques. Did you see any fire on that day or the smoke from any fire?

Ans. Yes, sir; I saw a fire going from towards McKee avenue as I was going up and I hurried up and procured a shovel and went to work.

Ques. You were going from your home towards McKee City Station?

Ans. Yes, sir.

Ques. Along the line of McKee avenue?

Ans. Yes, sir.

Ques. What time of the afternoon was it that you saw that fire?

Ans. About two o'clock.

Ques. Where was it at that time?

Ans. Coming towards the avenue.

Ques. McKee avenue?

Ans. Yes, sir.

Ques. What did you do?

Ans. I hurried up through the avenue before it would cut me off and got on the railroad and saw the fire and got a shovel and went to work trying to save the fence on McKee's property.

Ques. Was the fire fought away from this property?

Ans. It didn't seem to be; seemed to be close on.

Ques. Did you succeed in fighting it off?

Ans. I saw a crowd of men coming there and didn't use my shovel. I got my mail and went home.

Ques. What time did you leave the scene of the fire?

Ans. About four o'clock.

Ques. Where had the fire spread to, if in any other direction, at that time?

Ans. Well, I didn't take particular notice, but it seemed to be burning both ways; towards McKee avenue and the other way both.

Ques. By the other way, do you mean east of English Creek road?

Ans. Yes; it was burning in right through there all the time on the left.

Ques. Did you see where that fire went to?

Ans. No, sir.

The Court: He said it was burning both ways. What does he mean by that?

Mr. Gaskill: I assume that to be from the point of starting it spread this way, and they fought it that way.

The Witness: It was spreading.

Ques. Well, did you see any fire in that vicinity or in the vicinity of your home after this Sunday afternoon?

Ans. I saw a fire in towards McKee's property.

Ques. When did you see that?

Ans. All the week then after that, towards McKee's property.

Ques. Will you just point out on the map what you mean by that, saw a fire for a week?

Ans. In this direction, towards the railroad. (Indicating on map.)

By Mr. Pancoast:

Ques. The word "Reega," and from Reega pointing to McKee town and Reega?

Ans. Yes, sir.

By Mr. Gaskill:

Ques. All in through there the whole week?

Ans. Yes, sir.

Ques. Did any fire come over towards you?

Ans. No, sir.

Ques. Did you see any fire go off to the east or northeast of you?

Ans. Towards Absecon and Pleasantville I saw fires in through there during the week.

Ques. After you had seen this fire on Sunday?

Ans. Yes, sir.

Ques. Did you watch the course of any of those fires?

Ans. No, sir; not particularly.

Ques. Did you watch the course that any of these fires took?

Ans. No, sir.

Ques. How large a fire was that, that one of Sunday afternoon, when you left it?

Ans. It was a good big fire, spreading over a good deal of country.

Ques. Which way was it headed? Which way was the wind blowing?

Ans. The wind was blowing from the east to the west.

Ques. Did it change after that day?

Ans. I didn't particularly notice.

Ques. Did you notice which way the wind took the next day, or about?

Ans. No, sir.

Ques. You had no further interest after fighting it out on that avenue that Sunday afternoon?

Ans. No, sir; that was all.

Ques. Was that fire extinguished, to your knowledge? Was it put out?

Ans. No, sir; I don't know that. It was not when I left.

Ques. And so far as you saw, how many days did that fire that started at McKee City continue to burn?

Ans. It burned all that week, so far as I can judge. I seen fire every day.

Ques. In which direction was it burning during that week, in one direction or changing?

Ans. Oh, it changed according to the wind, going backwards and forwards.

Cross-examination.

By Mr. Pancoast:

Ques. Was it a very dry time?

Ans. Yes, sir.

Ques. Were there other fires in that surrounding country?

Ans. Yes, sir.

Ques. All separate and distinct?

Ans. I couldn't tell.

Ques. Well, as far as you can tell?

Ans. No, sir.

Ques. After you left that fire, on Sunday, you know nothing about what became of it do you?

Ans. No, sir.

WILLIAM A. MURRAY, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Murray?

Ans. McKee City, West Jersey avenue.

Ques. Which is West Jersey avenue?

Ans. That is the one on the railroad.

Ques. Is it the avenue designated on the map as running parallel with the railroad, between McKee avenue and the English Creek road? Is it on that same avenue?

Ans. Yes, sir.

Ques. You live along there?

Ans. Yes, sir; I did at the time of the fire.

Ques. That is, September a year ago?

Ans. Yes, sir.

Ques. Where were you on Sunday afternoon, September 15th, a year ago?

Ans. Sunday afternoon, September 15th, I was home, and Duberson's little girl called me down to put the fire out, so it would not burn his woods; and I went right to the scene of the fire and started to keep it from coming any further.

Ques. Where was the fire when you saw it that afternoon?

Ans. When I first saw the fire it was on English Creek avenue, a small distance from the station. It hadn't burned very far then. It had just started.

Ques. Which way was it burning?

Ans. Well, at that time it was burning north, towards Reega station; in that direction.

Ques. That would not be north?

(Objected to.)

The Court: What is the trouble now?

Mr. Pancoast: The trouble is the counsel is in the act of correcting, tutoring the witness. If that is right, he is right; if it is wrong, he is wrong.

Mr. Gaskill: I want to find out which he is most sure of, the points of the compass or the direction on the ground.

Ques. Now, towards what avenue did the fire burn?

Ans. Towards McKee avenue.

Ques. Where was it you stood when you were fighting it?

Ans. Well, I started to fight it on English Creek avenue, and then I seen that the wind had come up from the east very strong, and I went around by the railroad and came up from McKee avenue to stop it from crossing at that point.

Ques. Who was there with you on McKee avenue to keep it from crossing at that point?

Ans. Myself and a man by the name of Joe Edwards, and Mr. Badger, he was there.

Ques. State to the jury whether or not you succeeded at that time in keeping the fire from crossing McKee avenue.

Ans. Yes, sir; we succeeded in stopping the fire from crossing McKee avenue at that point.

Ques. Where did it burn after that?

Ans. Well, after that it burned toward the Absecon road. It died down that night a little bit, but still kept burning, and Monday it sprung up again, burning

toward the Absecon road, and then it burned across the English Creek road again, that is, further east across the English Creek road.

By the Court:

Ques. When did you say it started up again?

Ans. Monday morning.

Ques. And burned where?

Ans. Toward English Creek road, and burned further out, over that country past Absecon road. That is as far as I know of the fire until Thursday, I think, and at that time it was in the swamp out past the Absecon road.

By Mr. Gaskill:

Ques. Over towards Pomona?

Ans. Yes, sir; past Mr. Edwards' place.

Ques. What did you see of it after that?

Ans. After that I didn't pay any attention to the fire until Saturday, the 21st, I think.

Ques. And what time did you notice the fire on Saturday, the 21st?

Ans. On Saturday, the 21st, I had notice of the fire at just three o'clock. I remember it on account of the accommodation coming up from Atlantic City, and I was just at that point; and from there I went up to our house and stopped there about ten minutes and it was all burning all along the railroad at that time, from Reega to McKee avenue, and back of our house.

Ques. From Reega to McKee avenue and all back of your house, it was burning that whole distance that Saturday afternoon?

Ans. That Saturday afternoon.

Ques. It traversed that country?

Ans. Yes, sir.

Ques. Which way was it going?

Ans. When I was called to it, it was going directly towards Duberson's house, and I went to fight around and save some lumber for him and outbuildings.

Cross-examination.

By Mr. Pancoast:

Ques. How far is McKee City, where you were, down to Reega ?

Ans. I suppose it is about a mile and a half, to the best of my knowledge.

Ques. That was the nearest you were to this fire, was it ?

Ans. No, sir.

Ques. Where were you nearer to it ?

Ans. I was about three-quarters of a mile nearer to it.

Ques. When ?

Ans. That same afternoon.

Ques. What afternoon ?

Ans. Of the Saturday spoken of.

Ques. Where were you then ?

Ans. Back of our house; between our house and Mr. Duberson's.

Ques. What direction on the map is that ?

Ans. That was towards Reega station.

Ques. That is the nearest point that you were to the fire ?

Ans. I was above there, fighting the fire; watching a fire and putting it out at the same time. That night I was to Reega.

Ques. How far from Reega ?

Ans. Well, I was fighting that fire that night.

Ques. What night are you speaking of ?

Ans. Saturday night.

Ques. In the daytime, too ?

Ans. No, sir; not in the daytime.

Ques. Who else was fighting the fire?

Ans. Mr. Duberson and Mr. Duberson's son.

Ques. Where were they fighting it?

Ans. Well, we went up to a point that would be about a quarter of a mile from Reega and went through the brush and came out on the back road and then eventually came right out McKee avenue and we seen that that country had all been burned over, and what hadn't been burned over was still burning.

Ques. And then you fought the fire on the night of the 15th?

Ans. Yes, sir.

Ques. And then you helped fight it up above Reega on Saturday, following the 15th?

Ans. Yes, sir.

Ques. And the course of these two parts of the fire you didn't follow, you spoke of as being able to see it very far off?

Ans. Well, I could see it; it was not very far off.

Ques. From where?

Ans. From McKee station.

Ques. You didn't undertake to fight the fire after that?

Ans. Yes, sir; fought it on Monday.

Ques. Where did you on Monday?

Ans. On McKee avenue.

Ques. Prevented it from crossing McKee avenue?

Ans. No, sir; we went and seen where the fire was burning and we seen it was burning towards English Creek, and we couldn't do anything with it.

Ques. Do you know whether the country was very dry at that time?

Ans. Well, it was supposed to be a very dry season.

Ques. Did you notice at that time various fires in different localities there, apparently separate fires?

Ans. Not that I took any notice of. I never had occasion to fight any fires there.

Ques. You had no occasion to fight any fires except this one?

Ans. Except this one, and I was called to fight this fire.

Ques. You wasn't at the place where the fire crossed the railroad?

Ans. On that Saturday?

Ques. Yes.

Ans. No, sir; but I could see the place where it crossed the railroad from where I was.

Ques. You were not there then?

Ans. Not at that time; no, sir.

Re-direct examination.

By Mr. Gaskill:

Ques. One question I omitted. Mr. Murray, when was it you and Duberson and Duberson's son were fighting fire?

Ans. On Saturday; Saturday night.

Ques. Saturday night; what date?

Ans. It was the day that it crossed the railroad.

Ques. Yes; the 21st. Did you do any back-firing or side-firing?

Ans. Yes; we back-fired it back of his house to save some lumber; and back-fired on McKee avenue, a point that hadn't been burned; and he said back-fire that and let it burn all the country there.

Ques. Who did that back-firing?

Ans. Well, I am not sure whether Mr. Duberson or his son done it, about four o'clock that afternoon.

Ques. Had any been done on Sunday?

Ans. Yes, sir.

Ques. Where was that?

Ans. Back-firing? That was done above McKee avenue there. That would be in back of Mr. Duberson's house.

Ques. How near the Gravelly Run swamp, where Gravelly Run swamp crosses McKee avenue?

Ans. Well, that would be quite a distance. I suppose it would be a mile.

Ques. What direction was the wind?

Ans. Well, that afternoon the wind changed very often. I couldn't tell you. It changed in three or four directions, because the fire traversed that country in three or four directions that afternoon, and I couldn't tell you what direction the wind was in.

JOHN CARTS, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, John?

Ans. McKee City.

Ques. Whereabouts in McKee City?

Ans. On McKee avenue; 2757 McKee avenue, corner of West Jersey avenue.

Ques. How near the railroad?

Ans. I am next from the railroad.

Ques. Which side of the railroad are you on?

Ans. On this side of the railroad; English creek side.

Ques. South side?

Ans. Yes, sir.

Ques. Then you are over here somewhere? (Indicating on map.)

Ans. Yes, sir.

Ques. Did you live there last September, a year ago?

Ans. Yes, sir.

Ques. Were you home Sunday afternoon, September 15th?

Ans. I was at Egg Harbor and came home about one o'clock.

Ques. Did you see any fire in that neighborhood that afternoon?

Ans. No, sir.

Ques. When did you see any fire there?

Ans. I never seen fire before. That fire burst off about two o'clock, about five hundred yards from McKee station. My wife was up to the station and she been seeing it from the station and she been halloaing for me that the fire broke out.

Ques. Where were you, John, when your wife saw it and halloaed to you?

Ans. I was home downstairs.

Ques. What did you do when she halloaed loud enough?

Ans. Well; I come out and see that smoke, and about an hour afterwards the wind blew it over towards McKee avenue and the other side my neighbor was full of smoke too. My neighbor took his horse and cow out of his stable and put in my stable. It was awful dangerous at his place.

Ques. Where was your neighbor whose cow and horse you took and put in your stable.

Ans. On the other corner of McKee avenue.

Ques. What did you do after you got his horse and cow over to your place?

Ans. Well, I had been watching that fire. My place never catch fire because I got the ground close to the fence.

Ques. Did you help fight fire there that afternoon?

Ans. No, sir.

Ques. Do you know where the fire went?

Ans. Yes, sir.

Ques. Where did it go?

Ans. About evening the wind changed and threw that fire back to Pomona, this direction, to Pomona.

Ques. What did you see of it after that?

Ans. Well, I just see smoke and fire every day.

Ques. For how long?

Ans. About a week. The next Friday after that Sunday I was—I remember pretty good—I was at Egg Harbor to the fair on Sunday. I drove my horse from Pomona to McKee town and there was fire on both sides of the road. My horse didn't want to go through that fire and I whipped her. The fire was on both sides and I drove that road from Mays Landing to McKee City and fire was on this side.

Ques. What day was this that you went to Egg Harbor?

Ans. Friday.

Ques. Was this the Friday after the Sunday your wife called to you?

Ans. Yes; I got a couple of beers. I remember pretty good that time. I got a keg of beer in the wagon I wanted to throw off the wagon, only it was so much expense to me.

Ques. What time in the afternoon was it you were going home with the two beers inside of you and the keg in the wagon?

Ans. About half past twelve.

Ques. Which road were you going on to go home?

Ans. From Pomona go to McKee town, what is called the Bell farm.

Ques. From Pomona down this way to McKee town?

Ans. Yes, sir.

Ques. Was it along that road that you found the fire on both sides of it?

Ans. Yes, sir.

Ques. At half past twelve Friday noon?

Ans. Yes, sir.

Ques. How far down did that fire on both sides of this road reach? How far down to McKee town?

Ans. All over McKee town.

Ques. And how far was it up towards Pomona along that road?

Ans. Oh, about two miles, two and a half miles.

Ques. How did you get along the road, John?

Ans. Oh, all right. I drove pretty fast.

Ques. You said your horse didn't like it much?

Ans. No; didn't like that smoke. I got to whip her going through.

Ques. How did you get home then, John, after you got down here to McKee town?

Ans. Well, I go to McKee avenue and drive home to McKee avenue and the fire was on the right side of McKee avenue.

Ques. On the right side as you were driving McKee avenue?

Ans. Yes, sir.

Ques. That was down towards—

Ans. This way to Reega.

Ques. Now, how far down that side of McKee avenue was the fire that afternoon?

Ans. That was all on fire, an awful big fire.

Ques. Did it reach all the way up to McKee avenue?

Ans. Yes, sir.

Ques. And which way was it going that afternoon?

Ans. This direction to Reega.

Ques. Was it going towards Reega?

Ans. Yes, sir.

Ques. Well, what did you see of it after that?

Ans. Well, I stayed home with my keg of beer watching that fire; and Sunday afternoon, about four o'clock, I went down there to look to see that big fire. At 2742 I stopped there and watched that fire, and the fire was

burning on both sides of Mr. Abbott's cedar swamp, and the mill and everything burned down.

Ques. You watched the fire Friday afternoon and then you were telling us about Sunday?

Ans. Yes, sir.

Ques. Did you see any fire on Saturday?

Ans. Before that Sunday?

Ques. Yes.

Ans. Yes, sir; that fire been burning this direction, in the corner of McKee's cedar swamp.

Ques. On Saturday?

Ans. Yes, sir.

Ques. Well, John, had that fire been put out from Sunday afternoon when it first started over there to the station, up to the day when you were coming along here from Egg Harbor fair?

Ans. I guess not. I see smoke all the time.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know where New York avenue is there?

Ans. Yes, sir.

Ques. Did the fire you saw get down from New York avenue?

Ans. Yes, sir.

Ques. When?

Ans. About Friday and Saturday.

Ques. Where were you then?

Ans. I was home. I been watching that fire.

Ques. And you saw that from your home?

Ans. Yes; about two miles from my home.

Ques. And the whole country was ablaze?

Ans. Yes, sir.

Ques. And on Friday was it down the railroad?

Ans. On Friday I was watching a fire on Absecon road.

Ques. When you saw it Friday was it down the railroad?

Ans. Yes, sir.

Ques. Was it on the other side of New York avenue, away from Reega, down towards the railroad on Friday?

Ans. Yes, sir.

Ques. Was it across the railroad, too, on Friday?

Ans. No, sir; I never seen it across the railroad.

Ques. Never seen it across the railroad?

Ans. No, sir.

Ques. But the whole countty on the other side of the railroad was ablaze?

Ans. Yes, sir.

Ques. Away up here along McKee avenue?

Ans. Yes, sir.

Ques. And down here along New York avenue?

Ans. Yes, sir.

Ques. And down to the railroad?

Ans. Yes, sir.

Ques. And that whole country over to the Absecon road?

Ans. Yes, sir.

Ques. The whole country was a blaze?

Ans. Yes, sir.

Ques. And you could see that distinctly two miles away?

Ans. Certainly.

Ques. You didn't go down there to see it?

Ans. No, sir; only Sunday I was down.

Ques. Do you know when it got into Abbotts' cedar swamp?

Ans. On Sunday I seen it was afire in Mr. Abbott's swamp.

Ques. Did you see where it crossed?

Ans. I seen the place.

Ques. You could see the place where it crossed?

Ans. Yes, sir.

Ques. That was down there between Reega and the bridge?

Ans. Yes, sir.

Ques. You could see where that was burned across in a little place?

Ans. Yes, sir.

Ques. Only one little place? How far was that place from Reega, where the fire crossed?

Ans. About fifteen hundred yards, or maybe sixteen hundred yards.

Ques. From Reega?

Ans. Yes, sir.

Ques. That was the only place where it crossed down here into the swamp?

Ans. Yes, sir.

Ques. Were there many fires around there at the time in the surrounding country?

Ans. No, sir.

Ques. No other fires there at all?

Ans. No, sir.

Ques. You didn't notice any other?

Ans. No, sir.

GEORGE GRAFTON, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, George?

Ans. About a mile and a quarter east of McKee City station, on the West Jersey Railroad.

Ques. Do you remember Sunday afternoon, September 15th, 1895?

Ans. Yes, sir.

Ques. Where were you that afternoon?

Ans. Well, I was, when I first seen the fire, down at my house. I was working on the Pleasantville division, section 23, and they stopped in front of the house for me to go up to fight this fire. When we got up there the fire was going at a lively rate and it got on Colonel McKee's avenue, and we started to tear the fences down to keep it from getting to the track.

Ques. Which fences?

Ans. West of the Pleasantville road.

Ques. Towards McKee avenue?

Ans. Yes, sir.

Ques. What time in the afternoon was it that you first noticed this fire?

Ans. Well, it was about a quarter after two that I first seen the smoke of it.

Ques. Did you go down there at once?

Ans. Yes; we went down there at once on a hand-car.

Ques. Who went with you?

Ans. Well, it was the section gang from Pleasantville, and there was Marshall Ruley.

Ques. Well, now tell us what you did after you helped fight the fire there along that fence.

Ans. Well, after that the wind had changed and took the fire towards Pomona, and we got on a hand-car and went down to our own home here, to save our own home. It was burned on the other side of the railroad there at McKee City station.

Ques. Up here? (Indicating on map.)

Ans. Yes, sir.

Ques. How far did you say east of the English Creek road that you refer to?

Ans. About a mile and a quarter.

Ques. A mile and a quarter up this road?

Ans. Yes, sir.

Ques. Was it this same fire that had burned up there?

Ans. No, sir; a different fire.

Ques. Where did that come from?

Ans. Why, it came from over on the Reading Railroad somewhere.

Ques. Which direction is that from the West Jersey Railroad?

Ans. Well, it lies to the northward.

Ques. Somewhere over here? (Indicating on map.)

Ans. Yes, sir; over towards Pomona.

Ques. Well, what did you see of this fire that you helped fight this Sunday afternoon down by McKee City station?

Ans. Well, Sunday afternoon at five o'clock I seen the fire was burning pretty lively off towards Pomona, and all Sunday night the sky was red from the flames, and Monday morning it was still burning. I didn't see anything of it until Friday. Then it was burning towards Reega.

Ques. What part of the country was on fire on Friday when you saw it again, from where you were?

Ans. Somewheres around Absecon avenue, all around there.

Ques. How near Reega station?

Ans. Well, I should judge it would be about two miles and a half.

Ques. And in what direction from Reega station?

Ans. Northward.

Ques. Over this way?

Ans. Yes, sir.

Ques. Did you see any fire between Reega station and McKee avenue on that Friday?

Ans. Not to my knowledge.

Ques. Where were you?

Ans. On Friday ?

Ques. Yes.

Ans. We were between Tilton road and Cardiff station fighting fire down there.

Ques. Where is Cardiff station ?

Ans. About a mile below us, towards Atlantic City.

Ques. Below McKee City ?

Ans. Yes, sir.

Ques. What time Friday afternoon did you get back home, or get back where you could see this fire ?

Ans. Why, it was around four o'clock.

Ques. And from what point was it that you saw it at four o'clock Friday afternoon ?

Ans. Well, it laid——

Ques. No; where were you ?

Ans. I was standing at my house down there on a big hill.

Ques. A mile and a quarter to the eastward ?

Ans. Yes, sir.

Ques. And from there you looked and saw the fire over in this direction ?

Ans. Yes, sir.

Ques. Now, Mr. Grafton, where were you at work between Monday and Friday ?

Ans. Between Monday and Friday ? Well, I was running from Tilton road up to Ivins avenue, fighting all along there to save the ties for the West Jersey.

Ques. For whom were you working ?

Ans. The West Jersey Railroad at that time.

Ques. Were you in one of the regular gangs ?

Ans. No, sir; just hired to fight fires.

Ques. You came home at night ?

Ans. Yes, sir.

Ques. Did you at any time see whether the fire started at McKee City station on Sunday afternoon had been put out before the next Friday ?

Ans. No, sir; not that I know of.

Ques. Well, what do you mean by that; you didn't see, or that it wasn't put out ?

Ans. Well, from what I seen of it, it wasn't put out.

Cross-examination.

By Mr. Pancoast:

Ques. Was it a very dry time ?

Ans. Yes, sir; it was dry.

Ques. And hard to put out fires ?

Ans. Yes, sir; hard to put out.

Ques. There were numerous separate fires raging——

Ans. Yes, sir.

Ques. Wait. You are not a mind reader. You can't answer the question till I have put it. And there was other fires, separate and distinct, raging in that neighborhood there ?

Ans. Yes, sir.

Ques. Three that you have spoken of in the neighborhood of McKee City station—well, two of them at McKee City station—all of them within a radius of a mile or two ?

Ans. Yes, sir.

Ques. And you were helping fight them ?

Ans. Yes, sir.

Ques. But you don't know what started any of these fires ?

Ans. No, sir.

Ques. Employed by the railroad company to put them out ?

Ans. Yes, sir.

Ques. You were not down at the vicinity of Reega station to put out fires ?

Ans. Yes, sir.

Ques. When ?

Ans. Sunday night, September 22d.

Ques. Was that after the fire had crossed the railroad?

Ans. Well, that Sunday night we seen the fire across the railroad again, right this side of Gravelly Run road.

Ques. Well, it had crossed it before that, hadn't it?

Ans. Yes, sir.

Ques. Now, between the 15th and 22d you were not down there in the neighborhood of Reega fighting fire, were you?

Ans. On Sunday, the 22d, I was; yes, sir.

Ques. Between the 15th and the 22d you were not?

Ans. No, sir.

Ques. You were fighting the other fires up here?

Ans. Yes, sir.

Adjourned till Wednesday, September 16th, 10 A. M.

MAYS LANDING, N. J., September 16th, 1896.

MARSHALL RULEY, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Marshall?

Ans. Well, the time of the fire I lived about a mile and a quarter below McKee City station.

Ques. On what road?

Ans. On West Jersey avenue.

Ques. That is the road along the railroad?

Ans. Yes, sir.

Ques. Between what two streets or avenues does that run?

Ans. Well, it runs parallel with the railroad.

Ques. Does it connect with McKee avenue on the west?

Ans. No, sir.

Ques. Is it shown on the map, West Jersey avenue?

Ans. Yes; it is the road that runs right down with the railroad.

Ques. Is that it, that dotted line along there? (Indicating on map.)

Ans. That is Main avenue.

Ques. Well, it is up there in the neighborhood of McKee City station?

Ans. Yes, sir.

Ques. East of the Pomona road from English Creek?

Ans. Yes, sir.

Ques. Do you remember Sunday afternoon, September 15th, a year ago?

Ans. Yes, sir.

Ques. Where were you that afternoon after dinner?

Ans. Well, I was standing at my home, right along the railroad.

Ques. Did you tell us how far your home was from McKee City station?

Ans. About a mile and a quarter.

Ques. Did you see any fire break out that afternoon?

Ans. Yes, sir; I did.

Ques. Where?

Ans. On English Creek avenue, about five hundred feet from the station—five hundred yards, rather.

Ques. On which side of the railroad?

Ans. Towards Pomona.

Ques. What did you do after you saw that break out?

Ans. Well, the section hands from Pleasantville came up and I got on the hand-car with them and went up to help them fight it along the railroad.

Ques. How long were you there that Sunday afternoon fighting that fire?

Ans. Well, I judge an hour or an hour and a half, something like that.

Ques. What became of the fire?

Ans. Well, we put it out right on the railroad and then it burned backwards toward Pomona.

Ques. What time did you leave Sunday afternoon?

Ans. From the fire?

Ques. Yes.

Ans. Well, somewheres around about half past three.

Ques. And went back home?

Ans. Yes, sir.

Ques. The fire was still burning towards Pomona?

Ans. Yes, sir.

Ques. Now, what was the next that you saw of it?

Ans. Well, I didn't pay any more attention to it that day because I had to watch the fire around my own home; but I seen it right along afterwards that night by the flames, the reflection of it.

Ques. Where was it?

Ans. Right along Absecon avenue and towards the swamp.

Ques. Whose swamp?

Ans. Well, I don't know whose swamp; right over on Absecon avenue and along there.

Ques. Where is that swamp toward which you saw the fire burning situated with respect to the railroad and Absecon avenue?

Ans. Why, it lies right between, I guess, at the head of McKee's swamp.

Ques. On the same stream that the Abbott swamp is on?

Ans. Yes, sir.

Ques. Now, what day was it that you saw it burn to the head of that swamp?

Ans. Well, I couldn't say exactly what day it was. I seen the reflection of the light at night.

Ques. Did you go down to it?
Ans. No, sir; not till Sunday.
Ques. What Sunday?
Ans. The 21st,—the 22d, at least.
Ques. The Sunday after you saw the fire break out?
Ans. Yes, sir.
Ques. Were you home every day?
Ans. Yes, sir.
Ques. What part of the days were you home?
Ans. The whole day.
Ques. And during that week?
Ans. Yes, sir.
Ques. From the 15th to the 22d?
Ans. Yes, sir.
Ques. Will you state whether or not you saw the fire on each one of those days and each one of those nights?
Ans. I didn't see it in the daytime, but I seen the reflection of it at night. I could see it lying in bed; seen it right out of the window.
Ques. Where did it seem to be?
Ans. Well, it seemed to be around between the swamp and English Creek avenue. Of course, every night it seemed a little further—and up that way every night; but it was hard to tell where it was, exactly.
Ques. You say further up and up——
Ans. Towards the swamp.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know where the Abbott swamp is?
Ans. No, sir.
Ques. Do you know where the Gravelly Run swamp is?
Ans. Yes, sir.

Ques. Do you know where the block signal station is?

Ans. Yes, sir.

Ques. How far away from that point do you live?

Ans. Well, about three miles and a half, something like that.

Ques. You helped fight this fire on Sunday, the 15th?

Ans. Yes, sir.

Ques. Were there several fires in that neighborhood about that time?

Ans. Well, there was below the station; that is, toward the sawmill.

Ques. Several, were there?

Ans. Yes, sir.

Ques. And after that 15th you had nothing particular to do with those fires?

Ans. Not up there; down around my own home I did.

Ques. That is, where you lived?

Ans. Yes, sir.

Ques. You could see the reflection off several miles of the fire?

Ans. Yes, sir.

Ques. You never went to it?

Ans. No, sir.

Ques. You looked at this reflection from your bed, did you?

Ans. Yes, sir.

Ques. That is all you know about it?

Ans. Well, on Sunday.

Ques. Could you see that fire by looking down the line of the railroad?

Ans. No, sir.

Ques. Could you see it by looking off at right angles from the railroad?

Ans. Yes, sir.

Ques. It appeared to be several miles away, did it?
Ans. From my home it did.

CHRISTIAN KICK, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Christian, where do you live?
Ans. McKee City.
Ques. And in what part of McKee City?
Ans. Right near the Pennsylvania Railroad.
Ques. How far from McKee City station?
Ans. About a mile.
Ques. Which way from the McKee City station, east or west, toward Atlantic City or Mays Landing?
Ans. North.
Ques. Can you tell us whether that is towards Mays Landing or towards Atlantic City?
Ans. Towards Pomona.
Ques. North of the railroad?
Ans. Yes, sir.
Ques. Do you remember a fire in September, a year ago?
Ans. Yes, sir.
Ques. Where were you on Sunday afternoon, the 15th of September?
Ans. I am home.
Ques. Did you see a fire break out that day?
Ans. Yes, sir.
Ques. What time did it break out?
Ans. Between one and two o'clock.
Ques. What did you do after you saw it Sunday?
Ans. Well, I came out of my stable and I seen the smoke and fire all around it there and I stand and I seen it just as plain from my house as if I was there at it.

Ques. What did you do after you stood and looked at it? Did you go to it?

Ans. No, sir; I didn't go to it. I thought I stay home. It was pretty near on my place—to see how it was going on.

Ques. Now, let's see if we can't fix a little more clearly where your place is. I confess I don't quite understand. Just tell us where your house is.

Ans. Right close to the Pennsylvania Railroad, between Mrs. Moore's—I mean the road near the Pennsylvania track, on Pennsylvania avenue.

Ques. On Pennsylvania avenue, right along the railroad track?

Ans. Yes, sir.

Ques. Not on the English Creek road?

Ans. No, sir; the English Creek road is to the station—McKee station.

Ques. And you are this side of McKee station?

Ans. I am this side, between Reega station and McKee station.

Ques. Now, about how far between those two are you? How near to the Reega station are you?

Ans. Just about the same distance; a mile or two.

Ques. What did you see of that fire after that Sunday afternoon?

Ans. Well, I seen it burning around towards Pomona, and all around there.

Ques. When was it you saw it burning toward Pomona?

Ans. I think it was on the 16th.

Ques. Did you go to it?

Ans. No, sir; I staid home.

Ques. Which direction was it going on the 16th?

Ans. Why, right around there towards Pomona, right around all over; not so high as I seen it the first time. I seen smoke and fire all the time.

Ques. What did you see of it the next day?

Ans. Why, it was the same thing I seen. It was the same fire around there all the time.

Ques. Well, what was the last you saw of it?

Ans. Then on the 21st the fire came along pretty strong.

Ques. What fire?

Ans. Why, from Virginia avenue, coming over towards my place, Virginia avenue and Pennsylvania avenue, right around all over around pretty hot.

By the Court:

Ques. What day was that?

Ans. The 21st, on Saturday.

By Mr. Gaskill:

Ques. Which way was the wind blowing?

Ans. Coming right from Mr. Beckmire's place over here. Mr. Beckmire's place, I guess, is nearly over here.

Ques. Well, up to this Saturday, the 21st, had you seen any other fire than this one that started at McKee City station on the Sunday before?

Ans. Well, some fire all around all the time nights, towards morning; fire all the time.

Ques. In what direction did you see this fire?

Ans. Towards Pomona; that is all the fire that I see.

Ques. That is all the fire that you saw, over towards Pomona?

Ans. Yes, sir.

Ques. Now, what time was it the fire came to your house?

Ans. Why, between three and four o'clock.

Ques. What day?

Ans. Saturday.

Ques. Where did that fire go to?

Ans. Well, then it burned all around back and forth so far as Virginia avenue, all around right there the fire is, going right for my cornfield. I had to fight to get the fire away to save my cornfield that time.

Ques. Did you do any back-firing, Christian, or side-firing, to save your corn?

Ans. No, sir.

Cross-examination.

By Mr. Pancoast:

Ques. How near the Pennsylvania Railroad tracks did you first notice this fire of Sunday, the 15th of September, 1895?

Ans. Well, I saw them the same time I seen—

(Question repeated.)

Ans. Well, it was one hundred feet of the tracks.

Ques. There is where it started, was it?

Ans. There is where it started.

Ques. Well, are you sure of that?

Ans. Well, it first started about sixteen hundred feet off the track, and then it was one hundred feet from my house.

Ques. Where you first seen it it was one hundred feet from the railroad track?

Mr. Gaskill: No; he said sixteen hundred feet.

The Court: He says it first started about sixteen hundred feet from the railroad.

Ques. How far was this fire from the Pennsylvania Railroad track when you first saw it on Sunday?

Ans. Well, sixteen hundred feet from the Pennsylvania track.

Ques. You went out to help fight it, did you?

Ans. No, sir.

Ques. Now, on the 17th and afterwards it worked away from the railroad track towards Pomona?

Ans. Yes, sir.

Ques. You didn't go to follow it any time?

Ans. No, sir.

Ques. And it was off then from you several miles?

Ans. Yes, sir.

Ques. On Saturday it came back from the direction of Beckmire's, the fire did?

Ans. From Mr. Beckmire's; yes, sir.

Ques. That is the fire that got up around your place?

Ans. Yes, sir.

Ques. Were there any other fires in that neighborhood at that time?

Ans. Not that I know.

Ques. You don't know of any or didn't see any?

Ans. No, sir.

Ques. Was it a very dry time?

Ans. Yes, sir; pretty dry. The wind and everything dry; that is the reason it got all over.

Ques. Hard to put out a fire then, was it?

Ans. Pretty hard.

Re-direct examination.

By Mr. Gaskill:

Ques. Where does Beckmire live?

Ans. Why, he lives somewhere on New York avenue, somewhere around back that direction.

Ques. Well, on the Absecon road.

Ans. I guess he does.

Ques. Have you been to his house?

Ans. No, sir; I heard it.

Ques. Oh, then, I will withdraw that question. Now, what time on Saturday did you see that fire over to Beckmire's?

Ans. Well, it was a little before three o'clock, I seen smoke, and four o'clock it like to got over on my place.

Ques. Now, at the time you saw the fire at Beckmire's, which way did it extend from Beckmire's, toward Pomona or towards New York avenue?

Ans. Why, New York avenue.

Ques. Was there any fire over towards Pomona at that time?

Ans. No, sir.

Ques. You didn't see any?

Ans. No; I didn't see any.

Re-cross-examination.

By Mr. Pancoast:

Ques. From what direction did this fire come, by the points of the compass, on Saturday, north, east, or west?

Ans. North.

Ques. Then it came pretty well along the railroad if it came north?

Ans. No, sir; pretty far off from the railroad.

Ques. But it was coming in a north direction?

Ans. Coming in a north direction; yes, sir.

Ques. Did you see any indication of fire that day down along the railroad, just beyond Reega?

Ans. No, sir.

Ques. Did you see any smoke or any indication of fire along there at all?

Ans. No, sir.

Ques. Did you see where the fire crossed the railroad that day?

Ans. No, sir.

Ques. Ever been there?

Ans. No, sir.

Ques. You don't know whether it did cross the railroad there or not?

Ans. No, sir.

Ques. You don't know whether it was burning there that day or not, from what you saw?

Ans. Yes, I saw it burning over on the track, a good many feet off.

Ques. How many feet off?

Ans. Well, about sixteen hundred feet off, I guess.

Ques. Sixteen hundred feet off of the track?

Ans. Yes, sir.

Ques. On Saturday?

Ans. Yes, sir.

Ques. Coming in your direction?

Ans. Yes, sir; coming in our direction.

ISAAC WILLMORE, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Isaac, where do you live?

Ans. 2750 West Jersey avenue, McKee City.

Ques. How near McKee City station is that?

Ans. About a mile and a quarter.

Ques. In which direction?

Ans. Between McKee City and Reega Station.

Ques. How near to Christian Kick do you live?

Ans. The adjoining farm.

Ques. Do you remember Sunday afternoon, the 15th of September, a year ago?

Ans. Yes, sir.

Ques. Did you see a fire that afternoon?

Ans. I did, sir.

Ques. Where?

Ans. About fifteen hundred or sixteen hundred yards, as near as I can get at it, from McKee City station.

Ques. Did you go and measure it?

Ans. I didn't measure it; I just judged it from the distance it appeared to be.

Ques. Do you mean yards or feet?

Ans. Feet.

Ques. Do you mean fifteen hundred or sixteen hundred yards, or fifteen hundred or sixteen hundred feet?

Ans. Fifteen hundred or sixteen hundred yards.

Ques. Well, I ask what time in the afternoon was that fire that you saw up there at McKee City station?

Ans. Well, it was about very near two o'clock.

Ques. What did you do?

Ans. I went down to the station when I first saw it, after some papers, some business I had there, and went home again, and I saw smoke raising so highly I went back down to Mr. Duberson's to help fight it; I helped fight that fire then.

Ques. Where was it you helped fight it?

Ans. Between McKee avenue and English Creek road. It was on English Creek road where it first started from, where I first saw the smoke.

Ques. What time did you leave that fire Sunday afternoon?

Ans. I am not positive, but I think it was somewheres near five o'clock, or along that way.

Ques. Where did you go?

Ans. The fire?

Ques. No, you.

Ans. I went home. I went home after that.

Ques. Which way was the fire going when you left it?

Ans. The fire was going then towards Pomona, between McKee avenue and Absecon avenue, then worked its way towards Pomona. I fought till I was tired and had to stop.

Ques. How long did that fire continue burning?

Ans. I saw that fire every day afterwards up until

Friday. Friday I had occasion to go to Philadelphia. Every day and night you could see it.

Ques. Where was it when you saw it?

Ans. Where was it?

Ques. Yes; where was that fire every day and night that you saw it up till Friday?

Ans. Well, I saw it, I suppose, up to about Monday or Tuesday. It began to work its way from English Creek avenue, worked its way over towards Egg Harbor direction, more towards Egg Harbor direction. It kept on that way, and on Thursday I could see the cinders coming over towards my place like snow, most, the cinders, you know, smoke and ashes.

Ques. What day was it you saw the cinders coming over?

Ans. About Wednesday or Thursday.

Ques. Then you went to Philadelphia on Friday?

Ans. On Friday afternoon.

Ques. Tell us where it was when you went.

Ans. When I left it was then over here about the head of McKee's swamp there.

Ques. Which side of McKee avenue?

Ans. It was west of McKee avenue.

Ques. That Friday afternoon?

Ans. Yes, sir.

Ques. Now, what time was it you left to go to Philadelphia Friday afternoon?

Ans. About three or half-past three, about the time the train went up.

Ques. What time did you get back?

Ans. Got back Saturday afternoon about five or something like that.

Ques. That was after McKee's sawmill had been burned?

Ans. The mill was burning when I came down.

Cross-examination.

By Mr. Pancoast:

Ques. You never undertook to fight this fire?

Ans. Yes, sir.

Ques. When? Never except the Sunday?

Ans. That is the only time.

Ques. You didn't undertake to follow and fight the fire after that?

Ans. No, sir; not after that.

Ques. Were there other fires in that neighborhood at that time, in the surrounding country?

Ans. There was only one fire that I could see towards Absecon; that was another fire entirely.

Ques. That was another fire?

Ans. Yes, sir.

Ques. Was it very dry?

Ans. A very dry time. The ground, I guess, was about a foot deep, because I was digging, working.

Ques. You were not below, at Reega, at any time?

Ans. Below Reega?

Ques. Yes; you didn't go down to Reega at any time while it was going on?

Ans. No, sir.

Ques. All you saw of this fire was at a distance?

Ans. Yes, sir; at a distance; I could see smoke all the daytime, and fire at night.

Re-direct examination.

By Mr. Gaskill:

Ques. What train did you take when you left for Philadelphia?

Ans. McKee City station.

Ques. Did you see that fire down in that neighborhood Friday afternoon, when you took the train?

Ans. The only fire, as I stated before, was that at Absecon, in that direction.

By Mr. Pancoast:

Ques. In what direction was that by the points of the compass, Absecon?

Ans. Why it is over towards—well, you might say between the direction of McKee station, towards—

Ques. Was it north, east or west?

Ans. Well, an easterly, northeasterly direction.

Ques. Do you know where Gravelly Run cedar swamp was?

Ans. Yes; I know where Gravelly Run is.

Ques. Do you know where the cedar swamp is there?

Ans. Yes, sir.

Ques. This fire that you saw on Friday came from that direction?

Ans. Came from the cedar swamp? No, sir; it didn't come from that direction.

Ques. Did it come from the direction of New York avenue?

Ans. The fire?

Ques. Oh, that is what I am talking about.

Ans. I don't understand.

Ques. Did it come from the direction of New York avenue?

Ans. The fire?

Ques. That is what we are talking about.

Ans. Yes, sir.

Ques. Do you know whether New York avenue crosses Gravelly Run cedar swamp or not?

Ans. Yes, sir; it does.

JOSEPH E. P. ABBOTT, recalled.

Direct examination.

By Mr. Gaskill:

Ques. Did you make out a written claim of your damages and present? Please look at that paper and tell me if that is it. (Paper shown witness.) That is in your handwriting?

Ans. Yes, that is my handwriting.

Mr. Gaskill: I offer that.

Cross-examination.

By Mr. Pancoast:

Ques. This paper is dated November 7th, 1895, is it?

Ans. Yes, sir.

Ques. Was that the day that Mr. Wilson testified you had this meeting in respect to this fire?

Ans. Yes, sir; at his request. I was not in the swamp.

Ques. Were you at that time trying to compromise this claim?

Ans. He asked for compromise figures so he could report it to the railroad.

Ques. Did you give this statement in your hand to have this thing settled without litigation?

Ans. That is the object, and asked to do so.

Re-direct examination.

By Mr. Gaskill:

Ques. In this paper, Mr. Abbott, you made a statement of the quantity of cedar at that time which was burned, did you not?

Ans. Yes, sir.

Ques. And you didn't present a false statement as to the quantity?

Ans. I hadn't been in the swamp and those figures were given me as guess work. We afterwards had it surveyed.

Ques. But that is what you understood of the fire at that time; from fixing that as the quantity of cedar that had been destroyed?

Ans. Other people's figures. I hadn't been there.

Ques. And from that you presented this as a true statement, as near as you could get it?

Ans. Yes, sir.

Ques. And was that the small cedar and the swamp and other timber lands?

Ans. We didn't separate it in this statement.

Ques. And this is what you understood to be the damages done to you at that time?

Ans. As near as we could estimate without a survey.

Ques. And with whom did you consult before you handed this in; your brother Charles?

Ans. Some of the family.

Ques. Well, did you consult with Charles?

Ans. I should judge so; naturally would, I think. I hurt my leg and couldn't get in the swamp.

Mr. Pancoast: I object to it under the rule of law that forbids anything done under an offer of settlement.

Mr Gaskill: I offer it to show the difference in their figures at that time and now.

The Court: I understand this is given in the way of a negotiation?

Mr. Pancoast: Yes, sir.

The Court: I don't understand that you can admit any such papers. I think it is a failure of compromise, and I do not think it proper to offer in evidence. I don't think it would be a matter of any use at all, because the evidence shows that he didn't understand at that time what he was doing. He afterwards found that the offer of compromise failed.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

(Paper marked Exhibit A for identification.)

ADDISON D. EDSALL, sworn.

Direct examination.

By Mr. Gaskill:

Ques. Where do you live, Mr. Edsall?

Ans. McKee City.

Ques. And what is your business?

Ans. Agent and operator for the West Jersey and Seashore Railroad.

Ques. How long have you been at McKee City in that capacity?

Ans. Since 1890; April 21st, 1890.

Ques. Were you there on duty in September, one year ago?

Ans. I was; yes, sir.

Ques. Do you remember a fire breaking out near your station?

Ans. Yes, sir.

Ques. When was that?

Ans. Sunday, September 15th.

Ques. What time?

Ans. About two o'clock in the afternoon.

Ques. Where, with respect to your station, did it break out?

Ans. It broke out on English Creek avenue, about between fifteen hundred and sixteen hundred feet from our right of way.

Ques. What did you do with respect to that fire?

Ans. I helped fight it a while.

Ques. Did you see anyone passing along that road before the fire broke out ?

Ans. I did; yes, sir.

Ques. Who ?

Ans. I don't know; I don't know who it was. There was a gentleman drove past the station in a roadcart, driving a gray horse.

Ques. Going which way ?

Ans. Going in the direction of Pomona. A few minutes after he had passed I noticed smoke and flames.

Ques. Did you notice as he passed whether he was smoking ?

Ans. He was.

Ques. When you saw the smoke and flames what did you do ?

Ans. I immediately procured a shovel as soon as possible and went to assist the fighting. Others were there, some other people fighting at the time.

Ques. Where did you commence fighting it ?

Ans. I commenced fighting the fire along West Jersey avenue, between the station and McKee avenue; it was going cut at that time in the direction of the railroad.

Ques. Well, with what success ?

Ans. We succeeded in saving some of the fences belonging to Colonel McKee. The wind changed sometime after and it burned in a direction of Pomona, between McKee avenue and English Creek avenue.

Ques. Well, what became of the fire after that Sunday afternoon. How late did you see it that day ?

Ans. I saw it all the balance of the day and till quite late at night. I didn't retire until quite late. My wife and I was sitting upstairs at the window watching it burn.

Ques. Where was it burning ?

Ans. It was burning in the direction of Absecon avenue.

Ques. Can you take the pointer and illustrate on the map? Put your pointer on McKee City station?

Ans. The fire started about one thousand five hundred or one thousand six hundred feet. It burned in this direction until it struck McKee avenue Sunday afternoon. The wind changed Sunday afternoon and it burned this section of the country between English creek and McKee avenue in the direction of Absecon avenue. It burned on past those two fences until it struck the head of the swamp known as Gravelly Run, I think. On the 16th and 17th was when it was burning in this direction, after leaving the station on Sunday, the 15th. On the 17th and 18th it had gotten in the head of what is known as McKee swamp and burned over McKee avenue and burned down in this direction. You could plainly see the smoke rolling up all the time, following this line down; the same way on the 18th and 19th. It was still burning; you could see it very plainly indeed. The smoke kept rolling up all the time.

Ques. Where are you pointing now, to get it on the notes?

Ans. Pointing to this side now of McKee avenue.

Ques. When you say this side, which side, according to the points of the compass?

Ans. This is north, isn't it?

Ques. Yes.

Ans. It would be burning in a westerly direction then.

Ques. What day was that?

Ans. That was on the 17th and 18th. On the 18th and 19th it still kept coming down and gradually closing up this part all the way between McKee avenue and nearly down to Reega Station, on the east side of

this run here; kept bringing this country right in the direction of the railroad. On Saturday, the 21st, in the morning, I visited Atlantic City. I wasn't home and didn't get home until about three o'clock in the afternoon. Shortly after arriving home I learned that a fire had crossed at Reega Station.

Ques. You were not home when it crossed?

Ans. I was not home when it crossed; no, sir.

Ques. What time did you leave on Saturday?

Ans. I left on the ten o'clock train, the accommodation, south.

Ques. And where was the fire when you left at ten o'clock?

Ans. At ten o'clock, when I left, the fire was right close to Reega Station.

Ques. Burning in what direction?

Ans. Burning in the direction of the railroad.

Ques. At what point?

Ans. At Reega station, bringing this section of the country down with it as it came. When I arrived home, at three o'clock, this section of the country, from Reega station to McKee avenue, was all afire all along the railroad here. I took a walk up the track after arriving home in the afternoon, and noticed that this section of the country all the way down to McKee avenue to Reega was all ablaze and had burned quite close to the railroad; in fact, as far as it could get out there. The greater part of the country here has been farmed all the way along, say fifteen hundred or sixteen hundred feet back, and there was nothing to burn; but the fire had burned out as far as it could burn and was burning some of the people's corn and fodder stuff. I watched this fire as it was working around here on the 17th and 18th, and different dates; and, in fact, between the 15th and 21st, at night, my wife and I would frequently sit at the window upstairs before retiring and watch it.

You could see it very plainly in the daytime. The smoke was very thick and very heavy all the time.

Ques. From the time that fire started on Sunday afternoon, the 15th, up to the time that you have spoken of, Saturday, when you went to Atlantic City, had that been out?

Ans. It had not; no, sir.

Ques. Did you at that time see any other fire burning down in the neighborhood of the Gravelly Swamp siding?

Ans. I did not; no, sir.

Cross-examination.

By Mr. Pancoast:

Ques. When did you first, if at all, hear of the fire on the 12th down at the siding?

Ans. On the 12th?

Ques. When did you first hear of fire in that swamp, Gravelly Run cedar swamp, on the 12th?

Ans. I don't know that I heard of any fire down there, or knew of any fire down there on the 12th.

Ques. You never heard of any there on the 12th?

Ans. No, sir. I have heard it since that there was supposed to have been a fire down there, but I didn't know it to be a fact. I knew nothing of a fire on the 12th down there, down at the cedar swamp.

Ques. Did you fight this fire on Sunday?

Ans. I did, a little while, as long as my duty would allow me to; I was operator at the station and couldn't leave only a little while in the afternoon. When the trains commenced running again I had to be in the office.

Ques. Was there any train passing there about two o'clock?

Ans. No, sir.

Ques. Was that a very dry time?

Ans. It was; yes, sir.

Ques. You saw this fire start soon after this man smoking a cigar passed, did you?

Ans. I did; yes, sir; saw the smoke.

Ques. And immediately went out there to put it out?

Ans. I did; yes, sir.

Ques. With assistance?

Ans. Yes; what assistance I could get.

Ques. And you couldn't do it?

Ans. No, sir; we didn't succeed.

Ques. Why couldn't you put it out?

Ans. Well, because it was very dry and the wind had got into it and drove it from here where it first started over towards McKee avenue and there was no putting it out. It was licking through the tops of the trees as it was going. It would be impossible to do it.

Ques. It went east towards Pomona? Did it or not?

Ans. On the 16th and 17th it did.

Ques. But not on Sunday?

Ans. Immediately. That is, until it burned itself out to the railroad and the wind had changed; then it went out that way.

Ques. Were you ever in Gravelly Run cedar swamp?

Ans. I never have been in Gravelly Run cedar swamp; no, sir.

Ques. Do you know where Gravelly Run is?

Ans. I do; yes, sir.

Ques. Do you know where Abbotts' swamp is?

Ans. I know the direction it lies, but I have never been there.

Ques. You have never been along McKee avenue then where it crosses the swamp?

Ans. Yes, sir; I have been along McKee avenue where McKee avenue crosses the swamp up here. I have never been in the swamp.

Ques. You never undertook to follow this fire?

Ans. No, sir; I did not, when I first noticed it.

Ques. And all you know of it and have described is what you saw at a distance?

Ans. What I saw at a distance; yes, sir.

Ques. Were there other fires in that neighborhood?

Ans. Yes, sir.

Ques. How many?

Ans. Off towards Atlantic City from my station, the only one that I know of that time.

Ques. And the surrounding neighborhood was filled with smoke, wasn't it?

Ans. Here in this place; yes, sir. (Indicating on map.)

Mr. Gaskill: We rest, offering the maps as illustrations.

PLAINTIFFS' TESTIMONY IN REBUTTAL.

ELISHA DUBERSON, recalled.

Direct examination.

By Mr. Pancoast:

Ques. Do you know anything of this fire that has been spoken of by the witnesses of the defendant company here as having arisen or occurred at McKee City on Sunday, the 15th of September, 1895?

Ans. Yes, sir; I know of the fire.

Ques. You were asked about that fire on cross examination, weren't you?

Ans. Yes, sir.

Ques. Did that fire ever reach this point of crossing where the fire crossed on the 21st, as you have already testified to?

Mr. Gaskill: I object. He is asking the witness for a conclusion from certain facts which he must have noticed on the ground. He can testify to those facts and the jury will draw the conclusion.

Ques. State the result of your observation of that fire with reference to whether or not it ever reached this point of crossing.

(Answer ordered stricken out.)

The Court: I think he should state facts.

Ques. State what your knowledge is with reference to those facts.

Ans. The fire on the 15th, when it broke out I wasn't home. Five o'clock was about when the train came from Atlantic City and I got off, and the fire then had burned out to the corner of West Jersey and McKee avenue. We call it West Jersey avenue along the railroad. This fire had burned out and come out above the railroad, from the station about this point along here, (indicating on map) and burned up West Jersey avenue until it struck McKee avenue here and there burned down McKee avenue, about, I judge, probably two or three hundred feet; and at that time there was also a side-fire working in here. I went home and changed my clothes and went back and entirely put that fire out.

Ques. When?

Ans. On Sunday night; Sunday evening; right early in the evening.

Ques. What date?

Ans. On the 15th. Then I went back home again and went out in the evening and fought this fire, the same fire which had extended across on the east side of English Creek avenue, and I fought that all around in

there as well as I could; in fact, it was so burned up in there I couldn't tell where it was; it was a bunch here and a bunch there; in the night time I could see better than I could in the daytime. I followed this around to McKee avenue and seen it was entirely out and went home. In the morning where I had fought this fire down below here—well, McKee's line fences down here —I don't know whether they have got these side fences or no—that is what we call Mt. Washington avenue; the old original name is Clam road. Across this fire line was an old log laid, and it eat out of that and sprung up again and was going along this lot along McKee road and I fought it off the fence. I should judge somewheres about ten or eleven o'clock Monday the fire broke out afresh and went over towards Pomona, and I kept seeing it burn that afternoon, and I fought this, and this kept burning towards Pomona, and that is the last I saw of that fire.

Ques. Did that fire, so far as your knowledge and observation went, ever go up and cross McKee avenue to the westward, across the railroad?

(Objected to as a conclusion.)

The Court: Let him say as far as his knowledge goes.

Ans. No, sir; it did not.

Ques. Now, you said in your examination the other day that you live right on the line of the railroad, didn't you?

Ans. Yes, sir.

Ques. How many feet from the railroad?

Ans. Well, two hundred and twenty-seven feet, I think, about, from the track, right of way.

Ques. And that you are accustomed to see the railroad trains of the West Jersey Company pass that point?

Ans. Yes, sir; do yet.

Ques. Before September, 1895, and since?

Ans. Yes, sir.

Ques. Now, can you say from your observation of the passage of these trains whether or not, both before September, 1895, and since, the engines drawing those trains cast fire, sparks and fire, from the smokestack?

(Objected to.)

The Court: That has been already gone over.

Mr. Gaskill: I want to state my ground of objection. In the first place, this witness was fully examined as to his knowledge concerning the throwing of sparks and fire from the engines. In the second place, I submit that it is not rebuttal; and in the next place, I submit that it is incompetent and illegal.

Mr. Pancoast: Now, if your Honor please, the defence has undertaken to prove, and the Court has criticised it a little—the defence has not only undertaken to prove that both the engines that passed this siding about the time of this fire, on the 12th of September, 1895, were perfectly equipped, so as not to throw any sparks, according to the testimony of the defence, if they were in good order; but they went further and showed that every engine on that road, every one excepting the freight trains and excepting the motor trains, were equipped in exactly the same manner. Now, I have a case that holds where it is proved that a spark must have come from one of a class of engines that passed over that road, all the same class fitted up in the same way, where that is in evidence it is competent to show, both before and after the accident, when it appears that the same engines were used all the time, what those engines did. For the defence to prove one engine is enough. Now, the

defendant says, "We didn't cast any sparks there, because they are so equipped and carefully maintained that they would not throw any sparks from the spark arrester at all."

Mr. Gaskill: Your case is not a New Jersey case.

Mr. Pancoast: No.

Mr. Gaskill: It is one of those Western decisions where they have a different statute.

Mr. Pancoast: Now, if they had said only that those two particular engines that passed there that day, the one at 2.55 o'clock, and the one at 3.18 in the afternoon, were equipped so that they would not throw sparks, then we would be confined in our rebuttal to proof in respect to those two engines; but they don't stop there. They say every one of their engines that they were pulling on their road prior to September, 1895, and subsequently up to the present time, were equipped in the same perfect manner. That being so, their proof is, as detailed by some of their witnesses, that there could not have been any sparks thrown at all.

The Court: No; they don't say that.

(Objection overruled and question admitted.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

(Question repeated.)

Ques. Now, can you say from your observation of the passage of these trains whether or not both, before

September, 1895, and since, the engines drawing those trains cast fire, sparks and fire, from the smokestack? I refer to the passenger trains.

Ans. Yes, sir.

Ques. Was it at rare or frequent intervals that you noticed this?

(Objected to.)

The Court: I think you have got to give us something more definite than that, Mr. Pancoast.

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

Mr. Pancoast: Whether he saw it frequently or not it seems to me is very material.

The Court: Well, he can't very well tell what is frequently.

Ques. Well, as near as you can tell, prior to September, 1895, and subsequently, how often did you notice sparks thrown from the engine?

Mr. Gaskill: All of this has been gone over and is found on the stenographer's notes.

The Court: Yes; I think it has. Now, you are simply saying what they have proved. The question that you are talking about you are going over now. You are really repeating your case.

(Question withdrawn.)

No cross-examination.

FRANK MATHERN, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you live?
Ans. I live on Absecon avenue.
Ques. Where?
Ans. Right on the corner from Absecon avenue across McKee avenue, on the east corner.
Ques. That is McKee avenue here on the railroad, represented here? (Indicating on map.)
Ans. Yes, sir.
Ques. Here is the railroad, here is McKee avenue running across here, and here is Absecon avenue. (Indicating.) Now, you live where?
Ans. On the east side, on the corner.
Ques. Right there on the corner?
Ans. Yes, sir.
Ques. Won't you come here and show me?
Ans. I lived right in this corner here where the road crosses. (Indicating on map.)

Mr. Pancoast: I will make a red mark where he says he lives.

Ques. Your fence runs along McKee avenue?
Ans. And Absecon avenue runs along my property.
Ques. Now, where does McKee avenue run there?
Ans. Runs across the railroad—this part—and this part runs to Wrangleboro avenue.
Ques. What was your business there then?
Ans. I was farming.
Ques. There in September, 1895?
Ans. Yes, sir.
Ques. Do you remember the fire that was started at McKee City station and that came over from McKee City?

Ans. I remember it; yes, sir.

Ques. On Sunday, the 15th of September?

Ans. Yes, sir; on Sunday, the 15th?

Ques. Did you fight that fire up there any?

Ans. No, sir; I didn't go there when the fire was burning.

Ques. Where were you?

Ans. I was home.

Ques. Here at the corner of these two avenues?

Ans. Yes, sir.

Ques. Did you see that fire at any time that came from McKee Station burn across McKee avenue to the westward?

Ans. No, sir; it never crossed any McKee avenue.

Ques. You saw it all the time, did you?

Ans. Yes, sir; I seen it. The fire that Sunday went over towards Pomona road, and about five or six hundred feet from this side of McKee avenue. It never came any further towards McKee avenue.

No cross-examination.

CHARLES T. ABBOTT, recalled.

Direct examination.

By Mr. Pancoast:

Ques. Did you ever have any knowledge of any character or sort of the fact that a Dutchman set fire to this Gravelly Run swamp in question?

(Objected to).

The Court: What is the object of that, Mr. Pancoast?

Mr. Pancoast: It is to rebut the testimony of those witnesses who said he made such a declaration.

The Court: That doesn't rebut it.

Mr. Pancoast: Why doesn't it, if he has no knowledge at all.

The Court: Well, I don't think it is rebuttal at all.

(Question overruled.)

(Whereupon the plaintiffs, by their counsel, pray a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE RENNEY, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where did you live with reference to the West Jersey Railroad running through this county to Atlantic City in the summer of 1895?

Ans. Down at Sugar Hill.

Ques. Where is Sugar Hill?

Ans. Down town.

Ques. Do you mean by that, below Mays Landing, towards Atlantic City?

Ans. Yes, sir.

Ques. In the town of Mays Landing, or outside of it?

Ans. In the town.

Ques. State whether or not during that summer you were accustomed to see the passenger trains of the West Jersey Railroad pass by?

Ans. Yes, sir.

Ques. How far from your house?

Ans. About twenty-five yards.

Ques. State whether or not you ever saw any of the engines cast out sparks or fire from the smokestack?

Ans. I did.

(Objected to as not rebuttal and incompetent.)

Mr. Pancoast: The Court has already ruled on that.

The Court: He is showing now that he saw fire and sparks coming from engines on this road. I think as the case stands it is competent.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

GEORGE C. LUDLOW, [SEAL.]
Judge.

Ques. Now, state whether or not you ever saw such sparks set fire to anything during that summer?

(Objected to as not rebuttal and incompetent. Objection overruled.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

Ques. Did you or did you not?

Ans. I seen the train set a fire, but I didn't just see the sparks at the time.

Ques. When was this you refer to?

Ans. Last August.

Ques. What train was it?

Ans. An up train.

Ques. A passenger train?

Ans. Yes, sir.

Ques. August of which year?

Ans. 1895.

Ques. Well, now just state what you saw in your own way.

Mr. Gaskill: The Court understands that all these

questions are subject to my objection, the same as before?

The Court: Yes, sir.

Ans. I was in the front yard at the time and my sister was on the front porch and just before night I was looking at the track and didn't see any signs of a fire; and the train went by, and after the train went by I seen a fire come up in the grass.

Ques. How far from the train?

Ans. About three feet this side of the track.

Ques. On the right of way?

Ans. Yes, sir.

Ques. What became of that fire?

Ans. I put it out.

Ques. What time of day was that?

Ans. Between four or five o'clock in the afternoon.

No cross-examination.

ELIZABETH FRY, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you live?

Ans. Below Sugar Hill.

Ques. Is that within the limits of the town of Mays Landing?

Ans. Yes; I suppose so. It is just right opposite the brick-yard.

Ques. Did you live there in September of 1895?

Ans. Yes, sir.

Ques. How far away from the West Jersey Railroad did you live then?

Ans. Well, I can't tell exactly how far.

Ques. Well, as near as you can tell.

Ans. I live between the main road and the railroad.

Ques. A few feet or a few yards or many feet or many yards?

Ans. Well, I couldn't tell that, how many yards or how many feet. I don't like to say. I live between the main road that goes down, the Absecon road, and the railroad.

Ques. Is it the width of an ordinary road between you and the railroad?

Ans. Oh, yes.

Ques. More than that?

Ans. Yes, sir.

Ques. Well, did you live from the railroad the length of the Court House or more?

Ans. Yes; about that, I guess.

Ques. Well, in the summer of 1895 and in September and since, were you accustomed to notice the passenger trains that passed along the road?

Ans. Yes, sir.

Ques. State whether or not you ever saw any of those engines drawing passenger trains cast fire out as they went along.

Mr. Gaskill: I desire to enter as an additional objection that this testimony is not restricted to engines about which I made a particular examination, and upon which I rely, engines of certain numbers which passed on the 12th day of September.

The Court: My impression is that your testimony went to prove the fact that all engines on that road burning coal were protected with this fire arrester, and that those engines passing on that day were also equipped that way. I think such testimony is admissible.

(Whereupon the defendant, by its counsel, prays a

bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

(Question repeated.)

Ans. Yes; I saw them cast some out of their smoke-stacks.

Ques. Was that prior to September, 1895, or both before and since?

Ans. I have seen that before. I don't know whether I have seen that since or not. I ain't took particular notice. I can't say.

Ques. State whether or not any of these sparks that you saw started fire along the road?

Ans. Well, I couldn't particularly say right at that time that them sparks started the fire or not; but I know right after she went by the fire was there.

Ques. What are you speaking of, a passenger train? What do you mean by "she?"

Ans. Why, the train. I don't know whether it was a passenger train or not. I suppose it was a passenger train; it wasn't a freight.

Ques. Was this a large or a small fire that you spoke of as having seen right after the train?

(Objected to.)

The Court: I don't think it makes any difference.

(Question withdrawn.)

By the Court:

Ques. There wasn't any fire there before?
Ans. No, sir.

No cross-examination.

SHEDRICK TOWSER, sworn.

Direct examination.

By Mr. Pancoast:

Ques. Where do you live?

Ans. Right up above the cotton mill here in Mays Landing.

Ques. In Mays Landing?

Ans. Yes, sir.

Ques. Near the line of the West Jersey Railroad?

Ans. I suppose some four or five hundred yards.

Ques. State whether or not you have been accustomed to notice the passage and watch passenger trains along this road?

Ans. Why, I have often noticed them running, of course, when they have been going up and down the road. Been along the road.

Ques. Within a year or so?

Ans. Yes, sir.

Ques. Have you ever seen any of the engines drawing passenger trains cast fire?

(Objected to as before by Mr. Gaskill.)

(Objection overruled.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL,]
Judge.

Ans. I have saw them drop fire along the track from the fire-box or ash pan, or whatever it is called, from under the engines, along on the track at different times.

By the Court:

Ques. You saw it from the ash pan, you say?

Mr. Pancoast: Yes, sir.

Ques. Saw it drop on the track?

Ans. Saw it drop on the track between the rails along.

Ques. Between the rails?

Ans. Yes, sir.

No cross-examination.

Both sides rest.

MOTION FOR A VERDICT.

Mr. Gaskill: If the Court please, the testimony now being closed on both sides, I move the court to direct the jury to find a verdict for the defendant upon the testimony as it stands. The ground upon which I base that motion is this: That the evidence shows conclusively—it is not questioned in any shape or form or by any manner impeached—that the defendant company had the engines in use over its roads on the day in question, namely, September 12th, 1895, equipped with the most recent and modern and safe appliances for the prevention of the escape of fire from its smokestack and ash pan, known in railroad circles.

It is unnecessary to recapitulate any of the testimony; it is fresh in the mind of the court. There is not a particle of testimony in the case which can go to the jury making that a questionable fact. That is a fact established beyond any question, beyond any controversy, that the latest, most modern and best fitted for the purpose appliances have been used by the defen-

dant company and were in use on the day in question. So that, if your Honor please, I insist as a matter of law that under the statutes of New Jersey and the decisions of our Supreme Court, that even if the fire in question be traced to the defendant company, it is not liable.

Fire is one of the necessary incidents in connection with the running of trains, and being a dangerous element that this company is intrusted with, it is required to use its best efforts, best appliances and most recent appliances for the purpose of preventing the escape of fire. It is also obliged to inspect these appliances from time to time, and as Chief Justice Beasley has twice laid down in our courts, "If the company does that, even though a fire ensues which comes from and is traced to one of its passenger or other trains, or its locomotive engines, it is not liable, on the ground that that is one of the necessary incidents of running trains throughout the state." The decisions of some of the courts of other states are at variance with ours, in the Western States especially. Whether or not they have a statute such as we have I don't know; neither is it material for us to inquire. We have a flat-footed decision from the Supreme Court of this State upon the question at issue; we need not look to the courts outside of our State; and the decisions to which I refer have been affirmed by the Court of Errors and Appeals and have been repeatedly cited with approval.

If your Honor will pardon me, I will briefly call your Honor's attention to the case of Hoff vs. The West Jersey Railroad Company. That was decided in February, 1883, the opinion being by Chief Justice Beasley, and the judges who sat with him were Van Syckel, Knapp and Parker. The whole question in that case was this: Whether or not the defendant had used the proper spark arrester. The proof offered showed that there were two different spark arresters known at that

time, both of them in common use, and the test there seemed to be which one of the two was the better. The jury found against the defendant company, that the engine which had set this fire was not, in their judgment, equipped with the better spark arrester. The Chief Justice says, touching this proposition respecting the fire arrester: "It appears to be clear that it was not considered in a proper light by the jury. It is manifest, from the entire state of the case, that the question that was on this head tried by the jury had nothing to do with the inquiry whether the defendant had or had not been careless in this regard. The only rational deduction to be made from the papers before the Court is, that the jury considered and decided the question simply whether the spark arrester, to the insufficiency of which the fire was attributed, was as good a spark arrester as certain others which the defendant had in use. This may have really been the case, and yet it does not thereby inevitably follow that the defendant is responsible for the damages occasioned by this fire. Both kinds of screens in question appear to have been in common use, and if, after the exercise of due care and skill, the defendant had adopted them both, on the conviction that they were equally good, or that it was uncertain which was the better, an error in a careful judgment of that kind would not have made the defendant liable for the consequences of such error. The law does not give immunity in these matters only on the ground that in the selection of its instruments an infallible judgment shall be exercised. There is no breach of duty on the part of the company, if, in the choice of such an instrument as the one in question, it selects one which is in common use, and which has been approved by experience, although it may appear that there is some new invention which has been but partly tried in practice,

but which, it may be, will supersede the contrivance adopted."

The verdict in that case was set aside.

Now, Chief Justice Beasley in a later case, Beseman vs. The Pennsylvania Railroad Company, decided in 1888, lays down the same principle. In 1888 the question comes before the court as to the injury done by a railroad company in the necessary prosecution of its business and for which it was chartered.

The plea was a special plea, averring its chartered right to build this elevated road, and then averred "that in execution of said powers, and by force and virtue of said acts, it did survey, lay out and locate said railroad on the several courses set down in said survey, and did construct a railroad between the point in the said last above act set forth, as it fully might do, doing no unnecessary damage to private or other property, &c.," it necessarily caused noise, smoke and so on, and did necessarily transport cattle, sheep, swine and all that. So that the question before the Court was simply this: Whether or not a railroad company is liable for damages which it might do to private property when in the proper exercise of its franchises; the opinion is an exhaustive one; it was dissented to by Judge Dixon, of the Supreme Court; and in the Court of Errors and Appeals it was (23 Vroom, 231) unanimously affirmed upon the opinion given by the Chief Justice. His opinion is an exhaustive one, in which he treats of the different classes of injuries which may be done by railroad companies in the proper exercise of their franchises, and among others he speaks of this self-same question of fires. I quote from page 243.

"And this for at least the third of a century has been the practical construction given by the courts of this State to the characters of these corporations. It has been the invariable course, so far as is known, for juries

to be instructed that these companies are not responsible for the results of the running of their trains, provided due care and skill be observed in the business. It has been of frequent occurrence that valuable tracts of woodland have been fired from the locomotives drawing trains, and on such occasions the judicial instruction has uniformly been that the damages so occasioned could not be made the ground of suit, unless the spark arresters were out of order or were not of approved patterns, or negligence of some kind had been exhibited. And it is not remembered that such doctrine has been called in question, even to the extent of being challenged in the argument of counsel."

So that, if your Honor please, it is entirely a matter of indifference to us as to what other States may have decided. It is clearly in this State the law that if the railroad company, as in this case, makes use of the best appliances and keeps them in proper order—and that is not questioned in this case—that then they are not liable, even if the fire came from them. I submit that the Court should instruct the jury to find the verdict for the defendant.

The Court: I have some doubt just now about this motion and I prefer that the case should go to the jury.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

CHARGE OF THE COURT.

Gentlemen of the Jury:

This case has been a very interesting one, and is yet interesting, and it is proper to say that the jury are entitled to credit for having given unusual and particularly close care and attention throughout its long period of trial. For this reason and because of your view of the premises, some matters of evidence in the case need not be considered in detail.

The suit is brought against the West Jersey Railroad Company, and it is an action of tort, and the plaintiffs in the suit are the Messrs. Abbott, a number of them, and the damages are laid at $10,000. The charge is that the railroad company, on the 21st of September, 1895, by its fault or negligence, fired the timber or cedar swamp of the plaintiffs in this county and substantially destroyed a large part of it and the timber and trees thereon. The cedar swamp, part of which was burned, is situate near Reega station, on the defendant's road, and is said to contain about two hundred and forty-seven acres. It is made up of eight acres (about the number of acres of which there is some question) shown on the map as having good large cedar; twenty-five acres of younger growth cedar, and one hundred and thirty-five acres of still younger growth, of different sorts of trees, including some cedar; and there are some fifty-two acres remaining not burned, which runs along about the center of the tract. It is claimed that all this tract of two hundred and forty-seven acres, except these fifty-two acres, was substantially destroyed. The plaintiffs claim that the eight acres, more or less, are worth $175 a acre. For the twenty-five acres they claim $25 an acre; for the 135 acres, $15 an acre; and for fighting

the fire, $251.45 ; and they also claim for the causeways ruined, $3 a rod for rebuilding one hundred and sixty rods. That valuation put upon it by themselves runs the whole claim up to something over $4,000.

These are the valuations which are made by the plaintiffs, and they may be high. Mr. Bozarth is a very respectable and exceedingly competent witness upon the subject of valuations of cedar timber land. He makes some variations in regard to the values, not much, from the plaintiffs. Mr. Irick and Mr. Chambers are two very competent witnesses. They make different valuations, in which they include the idea of salvage in estimating loss, and they put expenses of building causeways at less than $1 per rod.

You have all the facts as to loss and cost and damage, and can readily determine, if you reach the question of damages, what is fair to be paid the plaintiffs for compensation for the losses which they sustained by the fire. These various estimates, which are very wide apart, as you notice, are to be considered by you, and you will no doubt reach a fair result. It is claimed without objection that the difference in the market value of the timber or woodland before the fire and after the fire is a fair basis upon which to consider and to make up the verdict. That matter, gentlemen, will be left, if you reach, as I say, the question of damages, entirely to your judgment.

It is a fact that this tract was burned over and injured. Mr. Abbott, in his testimony, shows that the timber was either burned, or the roots burned, and the trees fell, and all that sort of thing, resulting in the entire loss of this land as timber land, by a fire which crossed the railroad on Saturday, the 21st day of September, 1895, about one o'clock P. M., going from north to south, or southerly, and northerly and westerly, and which, after being driven across the tracks,

was shortly afterwards turned by a shift of the wind to southeast, and changed in its direction to a northwesterly course, and thus into the plaintiffs' swamp.

It is also true that it traveled rapidly, this fire, overcoming all efforts to check it, and was a wild, raging, furious fire. It not only burned the cedars, some of them, but it fired the ground or basis of the cedar land, eating up the roots of large trees, which fell and were piled on each other in confusion, leaving the bodies of some of the large trees apparently uninjured, but, as the plaintiffs claim, in such a condition, and the land in such a state, that it would cost more money to get them out, or avail themselves of any use they could be put to, than their worth, and therefore they became absolutely valueless.

It is scarcely worth while to go into the details more particularly as to the ravages of the fire in that swamp, because you have been there. You have seen the locality of the fire, and the appearance of it will be of service to you in your deliberations. This swamp was thus seriously damaged by the fire which crossed the defendant's track near Reega station September 21st, 1895, and went so furiously that, it may be fairly said, no ordinary human power then available could have checked it. The plaintiffs hired a large force of fighters of this fire, who worked several days to prevent its spreading and going beyond their swamp.

That is the fire which it is claimed did all this damage to the plaintiffs' property. Therefore, and first of all, the most important question for you to settle is, who or what started that fire—where did it come from? The plaintiffs say that the defendant started it by a spark or sparks from one of its locomotives which passed along its track nine days before the 21st of September, and that on its way near a block signal station, north of this place of the fire's

crossing, it cast out a spark or sparks, through negligence in the equipment or handling of the engine, which started a fire on the land called McKee swamp, north of the track, which fire kept on burning around and in the McKee swamp for over nine days, and finally came out of the lower end of that swamp, and was driven by wind southwardly along the land thereabouts, and crossed the track upon Saturday, the 21st of September, at about one or two o'clock, P. M.

The plaintiffs claim that this fire originated through the negligence of the defendant, or its agents, or servants, in the equipment or use of one of its engines; and the plaintiffs, at the very start of their case—that being their claim upon which the whole of this case rests—must prove to your satisfaction that it was that fire, so started on the 12th, which went across that track on that 21st day of September. They must prove that, to your satisfaction, otherwise the defendant must have your verdict.

The plaintiffs can only recover on satisfactory proof of their allegation of such negligence. To establish this they produce a witness upon their part, Daniel McClure, who proves that on September 12th, 1895, about three or half-past two, or somewhere along there in the afternoon, he was at work on the section of the road in his charge and was notified of a fire near the block signal station; that he went with his gang at once. He reached the place between three and four, or about four, found a fire burning whose edge nearest to the railroad track, then—that is, at the time he arrived—was two hundred feet at least away from the track, and that he worked at it with his gang until after dark and put it out and left it. That is the plaintiffs' evidence.

That fire was near the upper end of the McKee swamp, that is, the end this way towards Mays Land-

ing. This testimony is important for your consideration, because in all the matters of conflict, dispute and confusion in this case, here you have the only witness who knows where the fire started—that is, the fire of September 12th—where it started, and how near it was to the railroad track at or about four o'clock P. M. of the 12th; and he swears that he and his gang put that fire out.

This is the fire which the plaintiffs claim was the origin, the beginning of the fire of September 21st, and according to McClure, an eye-witness, about four o'clock, while it was burning and being fought, no part of that fire, up to his arrival, had come to within less than two hundred feet of the railroad tracks.

Mr. Pancoast: I beg your Honor's pardon; I don't think that is in the testimony.

The Court: Yes; I rather think you will find that to be true. If the gentleman will show me the testimony, we will see whether or not it is correct. I have it right here.

Mr. Pancoast: Mr. McClure testified to seeing the fire burning, not where he saw the fire burning when he got there.

The Court: It is a very important part of the case, gentlemen. I don't want any mistake about it at all. McClure's testimony reads as follows: (Reading.)

"By Mr. Pancoast: Ques. Now, did you take notice of the origin of the fire on the northerly or easterly side of the road there in the vicinity of that flag or block station on or about the 12th day of September, 1895? Ans. I saw a fire there; yes, sir. Ques. When for the first time that day? Ans. Between 3.30 and 4 o'clock. Ques. In the afternoon? Ans. In the after-

noon; yes, sir. Ques. About how far was it on the other side of the railroad from that station, that little station? Ans. Two hundred and fifty to three hundred feet; about three hundred feet." That is, from the station. "Ques. The West Jersey pay train had passed along that point just before you noticed that fire, hadn't it? Ans. There were three trains passed along there before I noticed it. Ques. What was the first train that passed that point before you noticed that fire? Ans. Well, in the afternoon there were several, but there were three trains in the afternoon. Ques. About how far from the track was it when you noticed this fire first? Ans. I understood you to ask me how far from the flag station, in your other question, abreast of the fire. Was that your other question? Ques. Yes; You answered that two hundred and fifty to three hundred feet. Ans. Yes; from the opposite part of the fire to the flag station."

Then Mr. Pancoast's question was: "Ques. Now, how far was the nearest point of the fire to the track when you first saw it?" Mr. Gaskill says: "Do you mean the track or right of way?" Mr. Pancoast says: "To the track,—to the rail." McClure's answer is: "Quite a distance. I couldn't say." "Ques. Well, as near as you can tell?" The answer is: "Well, not less than two hundred feet."

Mr. Pancoast: (To the Court) Now my point is, as I said yesterday, that he never said in answer to any question how far it had burned.

The Court: I don't pretend to say that; but he thought, as he said, that when he got there, the nearest edge of the track was two hundred feet away.

Mr. Gaskill: (To the Court) And my point is, that the substance of the matter is where it originated.

The Court: He swears positively he was there on the ground, and he went in there (showing on map) and in answer to a question of the party who called him, he swears that, in his judgment, the edge of the fire nearest to the track was not less than two hundred feet away from the track. This case, gentlemen, is all reduced down after awhile to a very small compass.

Now, Mr. Charles T. Abbott is very confusing. He was called in their own behalf and gave his testimony; and he says that he saw the burned spot on the morning after the fire. Perhaps it would be as well for me to refer to his testimony lest I may in my note of it have made a mistake. This is one of the plaintiffs in the suit, and you will pardon me if I go over this part of the case to refresh your memory. Having so many matters, you may perhaps overlook it; and I don't suppose either side would like to have evidence of this sort confused.

He went around there the next morning about seven o'clock, and I find in the notes that I have here, that he drove up, you remember—up Absecon road shown on the map—and tied his horse; and then he walked over to the place of the fire. He says: "I went up the road here and went down here—walked down the road." That was all done by pointing on the map. You will have to remember that. He pointed out on the map where he was: "Down towards the swamp, and the fire was then burning. The men who had been fighting the fire the day previous had dug around it, and had a kind of a path cut, the same as we always do to fight fire, and had it inside of that ring." I don't know anything about this fire business. It is a very serious thing down here, I admit; but it has been so a good many years; all light timber, undergrowth and grass, and all that sort of thing in a dry time, of course, become very dangerous things to have around. In old

times it didn't make so much difference. There were not so many people. Less land was under cultivation. But now in these days it becomes a very important thing. Fire may come from many causes, as you all know. A gunner in the fall time, or other times, may drop fire from his cigar or pipe. You understand all that.

Mr. C. T. Abbott says: "They had surrounded the whole place of the fire that had burned the day before. The section men had been all around it, and it was burning all through inside of their fire line. Ques. Inside or outside? Ans. Inside of their fire line. They had been around it. Inside of the zigzag line, of course, the fire line, it was still burning." Well, that you understand, as I said. "They had stopped the headway of it, but it was not put out; nor wasn't for the next four weeks—three weeks, at any rate." That, of course, is his opinion very largely. But take it as positive knowledge, or assumption on his part, it goes for what it is worth.

Then I say to him, the Court does: (Reading testimony.) "That was at the place spoken of by Mr. McClure? Ans. Yes, sir; right near; nearly opposite the flag station, as they term it, on the north side of the railroad. By Mr. Pancoast: Ques. Is that the place indicated by Mr. McClure? Ans. Yes, sir; somewhere near it, as near as I can judge; it was right near the flag station. Ques. Now, how far was that burning place there, that had been surrounded and enclosed; how far was it from the railroad right of way?" Not track—railroad right of way. "Ans. It had burned right to the right of way, and a little inside of it."

That is, when he saw it the next morning, it had burned from wherever it had come from, right to the track; not from the track, but to it; not the track, but the right of way, which you will remember is some

forty feet outside of the track. He goes on, "The day before it had burned there; you could see where they had fought it out. The next day I had occasion to be riding around through the woods there, and there are several families in this section of the country, and it was just before a caucus that we were going to have. Ques. The 13th? Ans. No, sir; that was the next day, the 14th, I speak of. Ques. Just wait a moment before you get away from the 13th. How far was the fire burning from the railroad on the 13th, that morning that you saw it there? Ans. It was, I should judge, the nearest edge of the fire that was burning then, something like a hundred and fifty feet."

Now, allowing for the right of way, thirty or forty feet, you see there does not appear to be much difference between Mr. McClure and Mr. Charles T. Abbott. He says, "It had burned nearer the road the day before. It worked away from the road going up. Ques. On the 13th it was burning within a hundred and fifty feet of the road? Ans. Yes, sir. Ques. Well, go on. Ans. It had burned in a good ways further. That is about the nearest, I should judge, to the line of the road. Ques. How far was the seat of this fire from this flag station where this operator was? Ans. I don't think it was over a couple of hundred feet."

Now, the Court asks: "Ques. Let me understand that. You say that you found the fire on the 12th had burned up nearly to the track and they had knocked it back? Ans. The indications were that it had started right in the edge of the right of way, and had burned off from it." You have his two statements, gentlemen. "Ques. But a hundred feet off there was fire? Ans. Yes, sir. Ques. That was all inside of the ring? Ans. Well, it was a zigzag line. It was shut off. Ques. They had shut off all around it? Ans. Yes, sir."

Now that shows what their witnesses upon that point say, and you see just how far you are to reconcile their evidence. That is their evidence, and we are upon the subject of the origin of the fire, and you have McClure testifying as to where it was when he got there, the nearest edge, and Mr. Abbott's testimony, and you are to reconcile these statements and determine what the distance was when McClure reached there in the afternoon of September 12th—the nearest edge of the fire—from the railroad track.

When McClure first saw the fire its nearest point to the track, as he thinks, was two hundred feet. That was when he first saw it, and before they tackled it. Now, how far it went towards the road before they shut it off does not appear. It may have extended up to the right of way before it was shut off, and this may explain the difference between Mr. Charles T. Abbott and Mr. McClure.

Mr. Pancoast: If the Court will pardon me, I will be willing to have the notes go to the jury.

Mr. Gaskill: I won't agree to that; that would be very improper.

The Court: But it is clear, gentleman, from McClure, that in his judgment, when he got there the fire had not reached the tracks by less than two hundred feet. Abbott measures to the right of way; McClure measures, in his line, to the track; and the difference between them is the difference of the distance, or about half the distance of the right of way. This evidence of Mr. McClure and Mr. Abbott is very important for you on the point of origin. How far from the railroad track did that fire start? Where was its beginning? It had burned to two hundred feet, by McClure, from the track. That is, a distance of not less

than two hundred feet to the track. Where did it start? According to McClure, the plaintiffs' witness, when he got there it had come to a point, reached a point, not less than two hundred feet from the track. If this be true, and the plaintiffs prove it, where did that fire start, the fire of September 12th? This is for you to say from the evidence of McClure and Abbott. If the fire burned any nearer to the track and up to the right of way before they ringed it, or put it in this zig-zag circle, both these gentleman may be right. The right of way is said to be some forty feet or thereabouts from each side of the tracks, and that is about the difference between the locations of the fire made by McClure and Abbott. You must consider and determine this important fact of the start of the fire from the evidence of these two witnesses and any other evidence relating thereto.

Did this fire start more than two hundred feet away from the track? If so, what started it, this fire of September 12th? In your judgment, could it have been started by a spark from the smokestack or the ash pan of a locomotive two hundred feet or more away? Is there any evidence that a spark of fire thrown straight out of a stack or dropped from an ash pan has ever, on this road, gone that distance before reaching the ground? If there is any evidence of that kind, gentlemen, I have no note of it.

Some witnesses tell us of some fire right alongside of the track on the roadbed at different places coming from sparks; and one witness saw fire dropped from the ash pan on the roadbed in Mays Landing. The track at this point where the engine was on September 12th, I believe, is on an elevation. How high, I don't know that it appears. But what, in your judgment, were the probabilities as to a piece of live coal or fire—anthracite coal, not soft coal—going two hundred feet away

before striking the ground? These are questions for you, gentlemen.

I don't remember any evidence as to the wind. Gentlemen, was there any of it on that afternoon? Was it high or not? If there was any wind, you will recollect it, and you can judge, if any wind, as to whether it was strong enough or not to carry a spark sufficient to light fire two hundred feet away from the track as it struck the ground. In the absence of proof of a strong wind, is such a thing possible, in your judgment, as practical men? This is a matter for you to decide.

The plaintiff must prove that the fire was started by fire from some engine of the defendant, negligently. That he must prove. There is no evidence that there was no other way in which the fire could have caught there. It is true it was an out of the way part of the country, and was in a time of a very long, dry season, with no rain, I believe, for some months. Everything was terribly dry.

There is some evidence that Mr. Charles T. Abbott, on the 22d of September, said something or other about this fire and its supposed origin, but I don't think it is worth while to call your attention to that.

Now, I come to this. The plaintiffs say it started by a spark from the defendant's engine, and could not have originated in any other way. While the plaintiffs are not bound to prove the particular engine which sent out the spark which they say set the fire, if a spark did set it on fire, yet if the evidence in the case, in your judgment, warrants the inference that the fire was in fact communicated by one of the engines, and tends to disprove the existence of any other cause, it would not be unreasonable for you to believe that the engine fire was the real cause. You must, however, bear in mind that the engines used anthracite coal, and not soft coal,

and that there is no evidence that any engine using such coal ever did cast fire a distance of two hundred feet away from the railroad.

But notwithstanding this, if you believe from the evidence that an engine of this company using hard coal would, or could, or did, throw fire a distance of two hundred feet away from the track, and that the evidence tends to disprove that there was any other cause of this fire of September 12th than such engine fire, then you are warranted in inferring and finding that this fire was communicated by and originated from sparks or a spark cast from an engine of the railroad of the defendant. And you will then have to go further before reaching a final result. But if you do not so believe from the evidence, if you do not believe that you can so infer and find the origin of this fire from all the facts before you, then you should give your verdict for the defendant. If you do conclude that all the facts of the case warrant the inference and belief, there being no other cause shown or known, that this fire possibly came, or did come, from a spark cast from an engine of defendant, then by our railroad laws the burden of proof is thrown from the plaintiffs on the defendant, as to defendant's negligence, and the defendant must show that such fire did not result from a want of proper care on its part—from any negligence on its part.

Up to this stage of the case we have held the plaintiffs, as I have charged you, responsible for proof of origin of the fire, and they are or may be still required to prove to your satisfaction their allegation that this fire had its origin from a spark from an engine, through negligence on the part of the defendant. They were not able to show what particular engine or engines did pass there, but engines did pass that locality just before the fire started. Therefore, if under all the circumstances you say and feel

that you are warranted in inferring and finding that this fire could not, under any circumstances whatever, have come from any other cause than from a railroad spark, take that course. Then, as above said, by our railroad law, the burden of proof is shifted upon the railroad company, as to its negligence. So, if you conclude that this fire came from a railroad spark from defendant's engine, the question arises, was or was not such firing the result of any negligence or want of proper care on defendant's part? The defendant railroad invokes the railroad statute of this state as an absolute defence upon that point. Perhaps, gentlemen, it will be well to read parts of the statute relied on to you. (Reads.)

"It shall be the duty of every railroad company in this state, and of every company or person operating or using any railroad in this State, with a locomotive engine or locomotive engines, to take and use all practical means to prevent the communication of fire from any locomotive engines used or employed by them on any railroad in this State, in passing along or being upon any such railroad, to any property of whatever description of any owner or occupant of any land adjacent to or near to such railroad.

"When any injury is done to any building, grain, hay, crops, or other property of any person or corporation, by fire communicated by a locomotive engine of any person or railroad corporation, in violation of the foregoing section of this act, said person or corporation shall be held responsible in damages to the person or corporation so injured; and it shall be lawful for any railroad corporation to make an agreement for insurance of any such property on which an insurance may be practicable and such corporation shall have an insurable interest therein accordingly, and may effect such insurance thereon in its own behalf.

"It shall be the duty of every railroad company in this State, and of every company or person operating or using any railroad in this State with a locomotive engine or locomotive engines, to provide such engine or engines with a screen or screens, or cover or covers, on the smokestack or smokepipe of such engine or engines, so as to prevent as much as practicable the escape of fire, either from wood, soft coal, or hard coal, from the smokestack or smokestacks, smokepipe or smokepipes of said engine or engines."

"In every action now or hereafter brought for the recovery of damages, for an injury done to the property of any person or corporation by fire communicated by a locomotive engine of any person or railroad corporation, in violation of the preceding sections of this act, proof that the injury was so done shall be prima facie evidence of such violation, subject nevertheless to be rebutted by evidence of the taking and using all practicable means to prevent such communication of fire as by said section required."

I have said that you have the right, if you believe and find the facts in the case in your judgment warrant it, to infer and find that this fire was caused by a railroad spark. Then that operates as prima facie proof, according to that statute, that the fire was caused by violation of said law, or negligence of some sort on the part of the defendant. The defendant appeals to that statute, which is all right. But the burden is then cast upon them to show that there was no default, negligence or want of due care on their part as to their road, engines and appliances by which any such fire could have been communicated.

Having found that fire was communicated to the place of burning on September 12th, if you believe it, by a locomotive engine of the defendant, this is prima facie evidence. That is, it is sufficient evidence to

throw the burden on the defendant of proving, according to the statute, that all practicable means had been employed by the defendant to prevent the escape of sparks, and it is thereby driven to the proof of the exercise of due care on its part and due care in relation to that place, so far as it relates to its engines, spark arresters and ash pans, and the proper care thereof.

The defendant cites an opinion of the Supreme Court on this section, which is entirely acquiesced in; but that opinion also says that where there is no evidence of negligence—referring to spark arresters, etc.—in the absence of proof of negligence, or that the spark arresters were not in order, etc., then it is an absolute defence. But if there is any show of negligence or want of due care, then that statute does not save a railroad from injuries which arise from its want of due care.

Thus, gentlemen, we come to the point where the defendant says: "We have done all that the law requires us to do, and there is no proof of want of due care or negligence on our part. So that if you conclude that it is possible that a spark from a railroad engine caused this damage, we meet it by proving the exercise of care on our part, and our compliance with the statute as to spark arresters, etc."

There is no doubt in this case that the defendants put on their engines the best and most approved apparatus for the prevention of the escape of fire known in modern use. It is not disputed. And if that was all, you would have to find a verdict for the defendant, because there is no better spark arrester. I speak from the evidence in the case. The plaintiffs don't pretend to question it. It is the best known, approved by all of the master mechanics at their late conventions. It is a capital affair; it is all right. But it is not enough to show that the spark arrester and ash pan are the best

in use. It must appear that there was the exercise of proper care in regard to them; that they were watched carefully, inspected by skilled inspectors, and were kept at all times in proper order. Otherwise they could put a spark arrester on an engine and let her go; having the spark arrester on, she is all right, no matter where she would go or what she might do. They are to prove that this apparatus was properly watched, inspected and kept in good order, and as you will see, when I refer in a moment to this part of the case, it was particularly necessary that they should do this at that time, because if this apparatus is not kept in proper order, it is conceded and proved by the defendant's witnesses that an engine with such an arrester and ash pan on her will, unless properly cared for, throw fire, or fire will escape; and I leave it to you to determine whether, under the evidence, the company exercised due and proper care in the inspection and care of such spark arresters and ash pans, so as to keep them in proper order. That is a question I leave to you. If they are kept in proper order, Mr. Hill, the expert, says they will not throw fire at all (qualified afterwards by him) that they will not throw fire to do any damage. As all the anthracite burning engines on defendant's road have such spark arresters and ash pans, if you find them throwing sparks which set fire to grass and bushes on the roadbed, were they kept in proper order? It is proved that fire from engines of the defendant, during the past year, has been communicated to grass and dry stuff on the roadway, and that fire had escaped from ash pans and dropped on the road between the rails. So it becomes a question of the exercise of due care on the part of the company in its use of those appliances, and a question for you to decide, were they kept in proper order? Was the inspection given to the engines that passed this road, which they have brought proof about, such an inspec-

tion as the circumstances of the case required from the defendant ?

And here, gentlemen, there is a further question which I submit in this connection to you. Is a company during an exceedingly dry season, with grass, herbage, leaves and the earth itself all along its route parched by an unusually long period of drought and heat, negligent in allowing its spark arrester and ash pans, such as this company claims to use, to throw fire at all,—fire which will set fire ? Although the company had the right to use fire by law—they cannot get along without it—is it in your judgment its duty in times of great danger by reason of drought in localities through which it travels, to exercise increased, or sufficient care to prevent fire from escaping from its engines ? Is that their duty ? If in your judgment the company was negligent in allowing fire to escape at all from its engines in such a dry season as existed in September, 1895, and if in your judgment it should have exercised increased care or sufficient care in such a dry season and failed to do it, and was therefore negligent, in your judgment; and if you believe from the evidence that the fire in question was communicated to the country about the block signal station referred to by reason of its negligence, and at the distance mentioned, then the statute referred to by the defendant in this case does not protect the company from liability for originating the fire of September 12th, 1895. It must show in spite of that statute, if that is your opinion, that this fire was not the result of any want of due care upon its part.

So if this fire of September 12th, 1895, in your judgment, originated or was communicated from an engine of the defendant, negligently, then the next and very important question for you to decide is, was that the fire which swept across the tracks near Reega station

September 21st, and finally whirled into the plaintiffs' cedar swamp and wrecked it? This is a very complicated question, gentlemen, and the evidence conflicting. There should be no guess work about it. The rights of the railroad company are just as important as the rights of individuals, and there must be no feeling of prejudice or hostility, or do the best you can, or go as you please, in a case like this. It is too serious a matter. Railroad companies have their rights, and you have yours, and you must not guess.

The question is, if the fire of September 12th had its origin or was communicated from an engine of the defendant, and you believe it, and having inferred it you say it is a fact, we take that for granted for the present. Then was that fire of September 12th the very same fire which swept across these tracks of the railroad near Reega station on the 21st day of September, 1895, and pushed off into that swamp of the plaintiffs? This is important, and it is a complicated matter—the evidence is conflicting.

The plaintiffs have brought this suit, and they must prove their case. There is to be no guesswork about it, as I told you. While the company may, under the circumstances which I have stated, have started the fire at the block station, and negligently, it does not by any means follow that that fire crossed the railroad track on the 21st. The plaintiffs must prove that to your satisfaction before you can give them your verdict. You have seen the prominent places and the general layout of the territory and you are well able to judge whether that fire crossed the tract September 21st, or what fire crossed it, assisted by the evidence you have already had.

About that time or just before it, on September 15th, it appears that a large fire was started somewhere about McKee station. That was a terribly dry season, and a

good many fires were there about the country, in one place and another, as the evidence seems to show. The history of that McKee station fire is given by Edsall and others who watched along its course until it had traveled many ways and long distances, and came back, as they say, driven by the changes of the wind and its own forces, to the track and crossed it on the 21st day of September. That was a different fire—three or four miles away. It was a large fire and it was so driven by and with great violence and rapidity, traveling fast and jumping around—you will remember the evidence on that point—and it resisted all fighting. The railroad company claims that that was the fire which crossed their tracks September 21st.

The fire of September 12th started a long way from the McKee station fire, and McClure says that he and his gang put it out about dark of the day of its starting. He was there. They made a ring or a circle about it, or a zigzag enclosure, and whether it ever got out of that ring or not it is for you to say from the evidence. It is said that it broke out from the ring once or several times—it makes little difference when it was—but it is said it broke out between September 12th and September 21st, and went from the ring towards the Bacon Farm, and that by side-firing it was held all along the Absecon Road and was finally seen going along up at Beckmire's, or somewhere or other at the top of the the map; and where it went from there, you will determine from the evidence. What became of it I confess I have been unable to tell from the testimony, but you will remember. At any rate, the plaintiffs must prove by preponderance of testimony or proof—bear this in mind—that the fire of September 12th crossed the track on September 21st, otherwise the plaintiffs cannot recover, and your verdict must be for the defendant.

Mr. Abbott tells us he went down to McKee swamp

several times and he heard voices of men in the swamp as if they were at work at the fire, and that he saw smoke there. It would be of some service in considering this question if there was any evidence as to the condition of the McKee swamp after the fire of September 21st, or during the week prior thereto. I don't know whether there is any or not. I can't find it. But you are to determine and find the fact. When the plaintiff seeks to recover for a wrong he must prove his facts. You are to find by the evidence that that fire of September 12th was the same fire which crossed that track on the 21st day of September, otherwise you cannot render a verdict for the plaintiffs.

There are various and conflicting and complicated statements on both sides as to the starting and pathways of both these fires, and if from a careful consideration of the testimony of the several witnesses you are unable to determine or to find what fire crossed the track, or if from the evidence you cannot find any rational ground for an honest belief that the fire of September 12th crossed the track on September 21st, your verdict should be for the defendant. If you determine from the evidence that the fire which crossed the track was the said fire of September 12th, then the plaintiff is entitled to recover, and you fix the damages as I have stated to you before.

There are some requests here to charge, gentlemen, and I think I have covered all the points which the gentlemen have raised. I will refuse to charge except as I have already charged to the jury. That will perhaps cover the points. If counsel for the defendant prefers, I will charge specifically on each point raised by him. There are one or two points which have not come up in the case. There is no evidence of them; so I will generally refuse to charge except as I have charged.

DEFENDANT'S EXCEPTIONS.

The defendant excepts to the refusal of the Court to charge as requested.

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

The defendant specially excepts to that part of the charge in which the Court said: "Is a company during a dry season negligent in allowing its spark arrester and ash pan to throw fire at all?"

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

The defendant further excepts to that part of the charge in which the Court said: "Although the company had a right to use fire, it is their duty at such a time to exercise increased care."

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

The defendant further excepts to that part of the charge in which the Court said: "If in your judgment they should have used increased care, and you believe that a fire was communicated by an engine, then the statute does not protect the company from liability for the fire of September 12th, 1895."

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL]
Judge.

The defendant further excepts to that part of the charge in which the Court instructed the jury that they had a right to regard the fact that the engines had thrown fire within the past year as proof of the fact that the spark arresters were out of order.

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

The defendant further excepts to that part of the charge in which the Court instructed the jury that it was a question for them to determine if the inspection of the engine was such as the case required, there being no evidence concerning inspection other than that offered by the defendant.

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

The defendant further excepts to that part of the charge wherein the Court said that it was a question for the jury as to whether or not they had inspected and watched the engines, when there was no proof in contradiction of the defendants' testimony on that point.

(Which exception is hereby allowed and sealed accordingly.)

GEORGE C. LUDLOW, [SEAL.]
Judge.

DEFENDANT'S REQUESTS TO CHARGE.

1. In order to recover against the defendant, the jury must find that the fire in question was the result of the defendant's negligence.

2. The defendant was not negligent if it used all the modern appliances and all practicable means to prevent the communication of fire from its engines.

3. If jury finds it to be the fact that the defendant did use the most most modern appliances and all practicable means to prevent the communication of fire from its engines, then the verdict must be for the defendant.

4. The uncontradicted evidence is that the smoke-stacks of the defendant's engines passing the point in question, on September 12th, 1895, were equipped with the best screens and appliances to prevent the escape of sparks and burning matter known to railroad men; and that the ash pans were so constructed as to prevent the escape of fire; that the engines were duly inspected and the screens and ash pans found to be in good condition—this being the fact, the defendant is entitled to a verdict.

5. If the defendant company kept its right of way mowed and raked up, doing in that particular all that was practicable, it is not responsible by reason of a fire crossing its right of way.

6. It appearing by the undisputed testimony that before the fire the right of way had been cleaned, the grass, brush, &c., mowed and carted away, the defendant has fully performed its duty in this particular and no verdict can be found against it because a large fire crossed its track on the 21st.

7. The plaintiff has the burden of proof and must fully satisfy the jury that the fire of September 12th was started by an engine of the defendant company.

8. The fact that the fire, when first seen by any

witness who has testified in this case, was two hundred feet from the railroad is a fact that the jury must consider before finding a verdict against the defendant.

9. The plaintiff must trace the fire of September 12th to defendant. If it is left as a matter of inference, the plaintiffs must by their evidence exclude all other causes from which the fire might have originated.

10. The plaintiff must trace the fire of September 12th to the fire which burned its swamp on September 22d. The connection must be unbroken.

11. If any intervening act or agency occur between the fire of the 12th and 22d, the defendant is not liable.

12. If the fire of September 15th, starting near McKee City, was the fire that crossed the railroad and burned the Abbott swamp, the verdict must be for the defendant.

13. If the jury find the evidence connecting the McKee City fire of the 15th with the fire that burned the swamp on the 22d of as much weight as the evidence connecting the fire of the 12th with that of the 22d, then the verdict must be for the defendant.

14. If the jury are satisfied from the evidence that the McKee City fire of the 15th might have been the one that crossed the railroad on the 21st, and burned defendants' swamp on the 22d, then their verdict must be for the defendant.

15. The evidence on part of the plaintiff, showing the connection between the fire of the 12th and that of the 22d must be so strong as to outweigh the evidence connecting the McKee City fire with that which burned the swamp.

16. The plaintiff must establish by a preponderance of the testimony, and to the satisfaction of the jury, every point necessary to establish their case, namely:

That the fire of the 12th was occasioned by the negligence of the defendant.

That it was started by an engine of the defendant company.

That the engine was not equipped with the best known means to prevent the escape of fire.

That all practicable means had not been taken to prevent the communication of fire from its engines by defendant company.

That this fire of the 12th was the same fire that burned plaintiffs' swamp on the 22d.

That the right of way had not been mowed, raked and cleaned as far as practicable.

That the fire of the 12th crossed the railroad on the 21st because the right of way had not been so cleaned.

That the McKee City fire did not cross the railroad on the 21st and burn defendant's swamp.

The burden of proof as to all these points is upon plaintiffs, and if they fail to establish any one of them, he verdict must be for the defendant.

IN THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

THE WEST JERSEY RAILROAD COMPANY, Plaintiff in Error, vs. WILLIAM T. ABBOTT, ADALINE H. ABBOTT, CLARK W. ABBOTT, BENJAMIN T. ABBOTT, CHARLES T. ABBOTT AND MARGARET T. KENNEY.	IN TORT. ASSIGNMENT OF ERRORS.

Afterward, that is to say, on the twentieth day of January, 1897, before this high and Honorable Court here, comes the said plaintiff in error, by Joseph H. Gaskill, its attorney, and says that there is manifest error in the trial of the above stated cause before the Supreme Court of the State of New Jersey, and in the giving of judgment therein in favor of said defendant in error and against said plaintiff in error in this:

I. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the objection of the plaintiff in error, permitted one Charles T. Abbott, a witness produced on the part of the defendants in error, to be asked the following questions and to make answer thereto:

Ques. At or about the time of this fire, did you ever

notice any of the cinders coming from the locomotives along the road in that vicinity?

Ans. Yes, sir. (Book, pages 121 and 122.)

II. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the objection of the plaintiff in error, permitted one Elisha C. Duberson, a witness produced on the part of the defendants in error, to be asked the following questions and to make answer thereto: (Referring to other engines and other times.)

Ques. Did you ever see the engines used on that road, along that point near which this fire occurred, throw out fire, burning material?

Ans. To make a definite answer to that I would like to ask the question, how near to this fire?

Ques. From where you live?

Ans. From where the fire was that I saw this?

The Court: Well, that will come in after awhile.

Ans. Yes, sir; I have.

Ques. From your place of residence along the road or elsewhere?

Ans. From my place of residence along the railroad.

Ques. Seen that from your residence?

Ans. Yes, sir.

Ques. And along the road?

Ans. Along the road as they passed.

Ques. For how long a period before and up to including the time of this fire in question did you notice this?

Ques. (Repeated.) For how long a period before this fire were you accustomed to see this?

Ans. Oh, all along; before and since. (Book, pages 185-6 and 7.)

III. That after the said defendants in error, upon the

trial of the said cause at nisi prius, they being the plaintiffs below, had submitted all of their evidence in support of their declaration to the jury selected to try the issues joined in said cause, said plaintiff in error therefor, by its attorney, moved said Supreme Court for a judgment of non-suit against the said defendants in error, and thereupon said Supreme Court unlawfully and erroneously refused to order said judgment to be entered, but permitted said cause and the issues therein to be submitted to the jury. (Book, pages 253 and 7.)

IV. That the Supreme Court, on the trial of the said cause, erroneously and unlawfully, and contrary to the objection of the plaintiff in error, permitted one Peter B. Young, a witness produced on the part of the plaintiff in error, to be asked the following questions and to make answers thereto:

Ques. Did you receive any telegram the afternoon of the 12th of September from this agent stationed at this block signal station, touching the fire?

Ans. I can't answer that question for a certainty—the telegram as to the fire. We received too many telegrams in the meantime to remember any one telegram in that length of time. (Book, page 360.)

V. That the Supreme Court, in the trial of said cause, erroneously and unlawfully overruled the following question put to one Edward Cunningham, a witness produced on the part of the plaintiff in error:

Ques. When you were there in March of 1895, did you see any evidence of more than one fire? (Book, page 384.)

VI. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to objection of plaintiff in error, required the plaintiff in error to produce a certain report to be offered in evi-

dence, and permitted the defendants in error, by their attorney, after inspection of the same, to withhold it from the records, and to refuse to offer the same in evinence. (Book, pages 415, 416, 424 and 5.)

VII. That the Supreme Court, in the trial of said cause, erroneously and unlawfully refused to admit in evidence the written claim of damages of Joseph E. P. Abbott, one of the defendants in error. (Book, pages 494 and 6.)

VIII. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the objection of the plaintiff in error, permitted one Elisha Duberson, a witness produced on the part of the defendants in error in rebuttal, to be asked the following question and to make answer thereto:

Ques. Now, can you say from your observation of the passage of these trains, whether or not, both before September, 1895, and since, the engines drawing those trains cast fire, sparks and fire, from the smoke stack?

Ans. Yes, sir. (Book, pages 505 and 6.)

IX. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the objection of plaintiff in error, permitted one George Renny, a witness produced on the part of the defendants in error, to be asked the following questions and to make answer thereto:

Ques. State whether or not you ever saw any of the engines cast out sparks or fire from the smoke stack?

Ans. I did.

And the said Supreme Court, during the examination of the same witness, erroneously and unlawfully, and contrary to the objection of the plaintiff in error, permitted the following questions to be put and answer to be made thereto:

Ques. Now, state whether or not you ever saw such sparks set fire to any thing during the summer?

Ques. Did you or did you not?

Ans. I seen the train set a fire but I didn't just see the sparks at the time.

Ques. When was this you refer to?

Ans. Last August. (Book, pages 510 and 11.)

X. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the objections of the plaintiff in error, permitted one Elizabeth Fry, a witness produced on the part of the defendants in error, to be asked the following questions and to make answers thereto:

Ques. In the summer of 1895 and in September and since were you accustomed to notice the passenger trains that passed along the road?

Ans. Yes, sir.

Ques. State whether or not you ever saw any of those engines drawing passenger trains cast fire out as they went along?

Ans. Yes; I saw them cast some out of their smoke stack.

Ques. Was that prior to September, 1895, or both before and since?

Ans. I have seen that before. I don't know whether I have seen that since or not; I ain't took particular notice. I can't say.

Ques. State whether or not any of these sparks that you saw started fire along the road.

Ans. Well, I couldn't particularly say right at that time that them sparks started the fire or not, but I know right after she went by the fire was there. (Book, pages 513 and 14.)

XI. That the Supreme Court, in the trial of said cause, erroneously and unlawfully, and contrary to the

objection of plaintiff in error, permitted one Shedrick Towser, a witness produced on the part of the defendants in error, to be asked the following questions and to make answer thereto:

Ques. State whether or not you have been accustomed to notice the passage and watch passenger trains along this road.

Ans. Why, I have noticed them running, of course, when they have been going up and down the road. Been along the road.

Ques. Within a year or so?

Ans. Yes, sir.

Ques. Have you ever seen any of the engines drawing passenger trains cast fire?

Ans. I have saw them drop fire along the track from the fire box or ash pan or whatever it is called, from under the engine, along the track at different times. (Book, page 515.)

XII. That the said Supreme Court, in the trial of said cause at nisi prius, erroneously and unlawfully refused to direct the jury, having been thereto moved by attorney of plaintiff in error, to find a verdict for the defendant upon the testimony that the defendant company had the engines in use over the roads on that day in question, namely, September 12th, 1895, equipped with the most recent and modern and safe appliances for the prevention of the escape of fire from its smoke stack and ash pan known in railroad circles. (Book, pages 512 and 20.)

XIII. That the said Supreme Court, in the trial of said cause at nisi prius, erroneously and unlawfully refused to charge the jury, having been thereto requested by counsel of the plaintiff in error, as follows:

1. In order to recover against the defendant, the jury must find that the fire in question was the result of defendant's negligence.

2. Defendant was not negligent if it used all the modern appliances and all practicable means to prevent the communication of fire from its engines.

3. If the jury finds it to be the fact that the defendant did use the most modern appliances and all practicable means to prevent the communication of fire from its engines, then the verdict must be for the defendant.

4. The uncontradicted evidence is that the smoke stacks of the defendant's engines, passing the point in question on September 12th, 1895, were equipped with the best screens and appliances to prevent the escape of sparks and burning matter known to railroad men, and that the ash pans were so constructed as to prevent the escape of fire; that the engines were duly inspected and the screens and ash pans were found in good condition; this being the fact, the defendant is entitled to the verdict.

5. If the defendant company kept its right of way mowed and raked up, doing in that particular all that was practicable, it is not responsible by reason of a fire crossing its right of way.

6. It appearing by the undisputed testimony that before the fire the right of way had been cleaned, the grass, brush, etc., mowed and carted away, the defendant has fully performed its duty in this particular, and no verdict can be found against it because a large fire crossed its track on the 21st.

7. The plaintiff has the burden of proof and must fully satisfy the jury that the fire of September 12th was started by an engine of the defendant company.

8. The fact that the fire when first seen by any witness who has testified in this case, was two hundred feet from the railroad, is a fact that the jury must consider before finding a verdict against the defendant.

9. The plaintiff must trace the fire of September 12th to defendant. If it is left as a matter of inference, the

plaintiffs must by their evidence exclude all other causes from which the fire might have originated.

10. The plaintiff must trace the fire of September 12th to the fire which burned its swamp on September 22d; the connection must be unbroken.

11. If any intervening act or agency occur between the fire of the 12th and the 22d, the defendant is not liable.

12. If the fire of September 15, starting near McKee City, was the fire that crossed the railroad and burned the Abbott swamp, the verdict must be for the defendant.

13. If the jury find the evidence connecting the McKee City fire of the 15th with the fire that burned the swamp on the 22d of as much weight as the evidence connecting the fire of 12th with that of the 22d, then the verdict must be for the defendant.

14. If the jury are satisfied from the evidence that the McKee City fire, on the 15th, might have been the one that crossed the railroad on the 21st and burned defendant's swamp on the 22d, then their verdict must be for the defendant.

15. The evidence on the part of the plaintiff, showing the connection between the fire of the 12th and that of the 22d, must be so strong as to outweigh the evidence connecting the McKee City fire with that which burned the swamp.

16. The plaintiffs must establish, by a preponderance of the testimony, and to the satisfaction of the jury, every point necessary to establish their case, namely:

That the fire of the 12th was occasioned by the negligence of the defendant.

That it was started by an engine of the defendant company.

That the engine was not equipped with the best known means to prevent the escape of fire.

That all practicable means had not been taken to prevent the communication of fire from the engines by defendant company.

That this fire of the 12th was the same fire that burned plaintiffs' swamp on the 22d.

That the right of way had not been mowed, raked and cleaned, as far as practicable.

That the fire of the 12th crossed the railroad because the right of way had not been cleaned.

That the McKee City fire did not cross the railroad on the 21st and burn plaintiffs' swamp.

The burden of proof as to all these points is upon plaintiffs, and if they fail to establish any one of them, the verdict must be for the defendant.

XIV. That the said Supreme Court erroneously and unlawfully, at the trial of said cause at nisi prius, charged the jury as follows:

"Is a company during dry season negligent in allowing its spark arrester and ash pan to throw fire at all?

XV. That the said Supreme Court erroneously and unlawfully, at the trial of said cause at nisi prius, charged the jury as follows:

"Although the company had a right to use fire, it is their duty at such a time to exercise increased care."

XVI. That the said Supreme Court erroneously and unlawfully, at the trial of said cause at nisi prius, charged the jury as follows:

"If in your judgment they should have used increased care, and you believe that a fire was communicated by an engine, then the statute does not protect the company from liability for the fire of September 12th, 1895."

XVII. That the said Supreme Court erroneously and

unlawfully, in the trial of said cause, charged the jury as follows:

"You have a right to regard the fact that the engines had thrown fire within the past year as proof of the fact that the spark arresters were out of order."

XVIII. That the said Supreme Court erroneously and unlawfully, at the trial of the said cause at nisi prius, charged the jury as follows:

"It is a question for you to determine if the inspection of the engine was such as the case required, there being no other evidence concerning inspection than that offered by the defendant."

XIX. That the said Supreme Court erroneously and unlawfully, at the trial of said cause at nisi prius, charged the jury as follows:

"It is a question for the jury as to whether or not they had inspected and watched the engines," when there was no proof in contradiction of defendant's testimony on that point.

IN THE COURT OF ERRORS AND APPEALS
IN THE LAST RESORT IN ALL
CAUSES.

THE WEST JERSEY RAILROAD COMPANY, Plaintiff in Error, vs. WILLIAM T. ABBOTT, ADALINE H. ABBOTT, CLARK W. ABBOTT, BENJAMIN T. ABBOTT, CHARLES T. ABBOTT AND MARGARET T. KENNY, Defendants in Error.	JOINDER IN ERROR.

And hereupon, afterward, to wit, on the ninth day of February, 1897, said William T. Abbott, Adaline H. Abbott, Clark W. Abbott, Benjamin T. Abbott, Charles T. Abbott and Margaret T. Kenny, defendants in error, by their attorney, David J. Pancoast, come into Court here and say that as to the said several errors assigned as aforesaid by the said West Jersey Railroad Company, plaintiff in error, there is no error, either in the record or proceedings aforesaid, or in the giving of judgment as aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid for error assigned, and that the judgment aforesaid, in a manner and form aforesaid, may in all things be affirmed.

D. J. PANCOAST,
Attorney for Defendant in Error.

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