

LOUIS C. VOGT, Steam Book and Job Printer, Morristown, N. J.

In Chancery of New Jersey 10

Between

A. FLETCHER JOHNSON,
Complainant,
and
FREDERICK W. JAQUI,
Defendant.

On Bill.

20

To the Honorable Theodore Runyon, humbly complaining, showeth unto your Honor, your orator Albert F. Johnson, of the township of Morris, in the County of Morris and State of New Jersey.

1. That on and previous to the eighteenth day of Janu- 30

ary, Eighteen Hundred and Sixty-Four, one Charles Johnson of the township of Morris aforesaid, was seized and possessed of a certain grist mill, pond and pondage annexed thereto situated in the County of Morris aforesaid, which mill pond and mill were supplied with water and driven by the waters of a brook which rises near the village of Denville, in said county, and runs in a southerly direction and empties into the Whippany River near Speedwell, a suburb of Morristown.

10

2. That said Johnson was also seized and possessed of a cider mill and pond and pondage, which was supplied with water and driven by a small stream or brook which rises in the side of Trowbridge Mountain, near the site of the new Asylum building, and from the foot of said last mentioned pond, (which had once been used to drive a saw mill, and was called the saw mill pond), a wooden trunk or trough led to the said grist mill pond, so that a portion of the surplus water of said saw mill pond not used for said cider mill, was carried by said trunk over other lands of said Charles Johnson to the said grist mill pond, there being at that time a fall of ten feet or thereabouts from said saw mill pond to said grist mill pond, and said trunk being carried partly on piers and partly on the surface of the earth, and in one or two places passing under the surface of the earth, one of which places was where it crossed the public highway, and one of which was where the same crossed a wagon way leading from the public highway to a dwelling house on the lands of said Charles Johnson; that the position of said grist mill, cider mill ponds and trunk and their surroundings appear by the annexed map.

30

3. That said Charles Johnson was also at and before the date aforesaid, seized and possessed of a considerable track of land surrounding and adjoining the said saw mill and grist mill and their ponds belonging thereto, on which stood two dwelling houses and other out buildings; the location of which is shown on said map and over which passed the said trunk.

40

4. That on the said Eighteenth day of January, Eighteen Hundred and Sixty-Four, the said Charles Johnson by deed of conveyance of that date, sold and conveyed the said grist mill and the lot of land surrounding the same, containing one acre and one quarter, to Frederick W. Jaqui and Nehemiah H. Johnson, and also the pond and pondage connected therewith, mentioned and described in the first paragraph hereof, and also in said deed granted to said Jaqui and Nehemiah H. Johnson the right to raise the dam of said pond three feet above its then present height, and also the right to have and use the water of said saw mill pond mentioned and described in the second paragraph hereof, as it was then being used for the purposes of said grist mill, which grant of the right to use the waters of said saw mill pond was in the words or to the effect following: "Also to have the water from the old saw mill pond of said Charles Johnson in rear of his dwelling as now carried in the trunk or feeder that carries the water from said pond to the grist mill pond above the dam, excepting only so much of said water as said Charles Johnson his heirs or assigns shall want for grinding apples at his cider mill near the old saw mill, and to have the privilege at all times to enter upon all or any of the lands of said Charles Johnson along and adjoining said trunk or feeder, to alter, repair, or renew the same at their convenience, also to keep up the old saw mill dam at its present height, and to take any gravel, stones or earth from the premises of said Charles Johnson adjoining said pond that may in their judgment be needed to keep the same in good repair, or if need be to renew or rebuild the same. All or any repair or rebuilding said dam to be at the proper costs and charges of said party of the second part, their heirs and assigns forever. And in no way to restrict the use of the water for the purpose of the cider mill and grinding apples by the said Charles Johnson, his heirs and assigns as aforesaid."

5. That on or about the _____ day of _____ Eighteen Hundred and Sixty-Six, the said Charles Johnson died, having first duly made and published his last will and

testament in due form of law to pass real estate, in and by which he did give and devise unto your orator all the said cider mill and pond and pondage belonging thereto, and all the lands on which said trunk rested in passing from said saw mill pond to said grist mill pond, as in and by the said will or the record thereof, reference being thereto had will more fully appear, and your orator after the death of said Charles Johnson entered into possession of said last mentioned lands as owner and has ever since possessed and
10 enjoyed the same.

6. That on the date of said deed the water from said saw mill pond or some portion of it, ran through said trunk to said grist mill pond except when used for grinding apples, but after two or three years said trunk or some portions thereof fell into decay for want of repair, and the water ceased to run as it had been accustomed to do.

7. That about seven years ago the said Nehemiah H.
20 Johnson sold and conveyed (as your orator is informed) his interest in said grist mill and appertences, to said Jaqui, and said Jaqui now claims to have the whole title to the same and is in possession of the land, but has never made any repairs of said trunk or of said saw mill dam.

8. That in the month of August in the summer of Eighteen Hundred and Seventy-Three, the said Jaqui entered on the land of your orator near to said trunk and saw mill pond, and made divers excavations thereon, with
30 the intention as he stated of laying down a new trunk to carry away the water from said mill pond, but said excavations were in places and range quite different from that of the old trunk hereinbefore mentioned, and were not at all necessary to repair or replace the same, and your orator thereupon forbade said Jaqui to make any such excavations or to do anything on his premises except to repair or replace the said old trunk; that said Jaqui desisted from the said work for a few days and then commenced again, and then on being again forbidden by your orator again
40 desisted, and afterwards again commenced operations and

again on being forbidden desisted and made or attempted to make no further excavations on your orator's said lands until very recently, as hereinafter stated.

9. That your orator commence an action of trespass against said Jaqui, in the Court for the trial of small causes, holden in said county of Morris, by William J. Easton, Esquire, Justice of the Peace, to recover damages for the acts of said Jaqui in the eighth paragraph hereof mentioned, and such proceedings were thereupon had, that your orator recovered judgment in said action against said Jaqui for fifteen dollars damages, as by reference to the record of said judgment will more fully appear, and which said judgment stands in full force and unreversed. 10

10. That on the twenty-seventh day of April, Eighteen-Hundred and Seventy-Four, the said Jaqui again entered on the lands of your orator between said saw mill pond and grist mill, with about twenty laborers, and with picks and shovels, commenced excavating the earth in the same 20 places that he had done in the summer of Eighteen Hundred and Seventy-Three, and in a line with the same, and from the appearance of the work done, and from the statements and directions of said Jaqui, your orator believes that he intends to dig a trench in the earth, in some places eight feet deep, leading in nearly a straight line from said saw mill pond to said grist mill, and averaging from three to eight feet deep, and to place therein and below the surface of the earth a new trunk or pipe, to carry the water from said saw mill pond directly to said grist mill, and 30 thereby use the head of said saw mill pond directly in propelling the machinery or some part thereof of his said grist mill.

11. That in order to repair or replace the said old trunk mentioned in said grant, no excavation is necessary, excepting in coping said highway and private way, and none of the excavations lately made and now being made by said Jaqui, is necessary therefor, that said Jaqui has already torn away the old trunk leading from the saw mill pond to 40

said cider mill, and the new trunk proposed to be used by said Jaqui, will run under ground, and does not replace the old one in such way that your orator can use the same for his cider mill.

12. That the works now being erected upon your orator's land by said Jaqui, are entirely different from those in existence at the date of said deed and grant, and are being prepared for an entirely different use of the water of
 10 said saw mill pond; that by the old trunk, the water in said saw mill pond could not be drawn down and reduced in height but a very little, and the pond was always kept full, and being a beautiful sheet of water, covering about three acres of land, added very much to the comfort and beauty of your orator's dwelling and surrounding grounds, that by the proposed new trunk and use of the water, the same may be nearly all drawn out of the said saw mill pond, and the surface of the bottom thereof exposed to the view, and covered with water alternately, which, as your orator
 20 is informed, will tend to produce malaria and sickness, besides detracting very much from the beauty and comfort of your orator's dwelling and grounds.

13. And your orator is advised and insists, that by the true construction of said grant, the said Jaqui is only entitled to use the water from said saw mill pond as it was then being used, by carrying the same by the trunk then in use, or one substantially like it, and in the same place and by the same route, and emptying
 30 it into the grist mill pond, and has no right to carry the water by a different route directly to the grist mill, and thereby make use of the head of the saw mill pond, as a power to drive machinery, and has no right to draw the said saw mill pond down lower than it was accustomed to be drawn, and could be drawn by the old trunk, and has no right to place any trunk beneath the surface of the earth or to make any excavations for that purpose on complainant's land, and that the rights of your orator have been already by the said action of trespass, fully established at
 40 law, and the said acts of the said Jaqui decided to be wrong and unauthorized.

And your orator therefore prays the aid of the Court in the premises, and that the said Frederick W. Jaqui may answer all and singular the premises, but not under oath, an answer under oath being waived. And that the said Frederick W. Jaqui may be restrained and enjoined by the order and decree of this Court, from digging up the earth or soil on the land of your orator, situate in the township of Morris aforesaid, bounded on the north by the road leading from Morris Plains, past the Lunatic Asylum, to Walnut Grove; and on the east by the public road passing between your orator's dwelling house and said Jaqui's grist mill, and from placing thereon any trunk or conduit for water, except and in the place and in the position of the old trunk which was in existence on said land on the said eighteenth day of January, eighteen hundred and sixty-four, and except such digging and excavations as shall be necessary to rebuild and replace said old trunk substantially in the position it then occupied, and from making any other different or greater use of the waters of said saw mill pond than was and could be made by said old trunk, or one substantially like it, and placed in the same position occupied by it, and that your orator may have such other and further relief as may be agreeable to equity and good conscience.

May it please your Honor the premises considered to grant unto your orator not only the State's Writ of Injunction to be issued out of and under the seal of this Court, to be directed to the said Frederick W. Jaqui, his agents, and servants, and laborers, enjoining and restraining them from further committing any of the acts of waste and trespass hereinbefore mentioned, but also the State's Writ of Subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said Frederick W. Jaqui, therein and thereby commanding him on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular, the premises and to stand to, abide by and perform such order and de-

cree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

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

PITNEY & YOUNGBLOOD,

Solicitors for Compl't.

H. C. PITNEY,

Of Counsel.

MORRIS COUNTY, ss.

J. Frank Johnson, being duly sworn, deposeth and saith that he is an Engineer and Surveyor, and made the annexed map, showing the situations of the grist mill of Frederick W. Jaqui and pond belonging thereto, and Albert Fletcher Johnson's saw mill pond and cider mill and surroundings:—that all of the work on said map is made from actual survey except the dwelling houses, and the same is correctly made and all notes thereon are correct.

Deponent says that the parallel dotted lines marked "proposed flume," shows the course of a new flume proposed to be made as he understands by said Jaqui, and is laid down according to a survey made by deponent and for said Jaqui for that purpose.

20

J. FRANK JOHNSON.

Sworn and subscribed before me this 27th day of April,
A. D., 1874.

JOHN W. BETTS,
Master in Chancery of N. J.

30

MORRIS COUNTY, ss.

Albert F. Johnson, being duly sworn, deposeth and saith that he is the complainant in the foregoing Bill of Complaint named, and the owner and in possession of a farm and track of land in Morris township, bounded on the north by the road leading from Morris Plains to Walnut Grove, and 40

on the east by a road which runs between the same and Jaqui's Grist Mill, containing about fifty acres of land. On deponent's land is a pond covering about three acres of land, fed by a stream which rises near the new Lunatic Asylum, and which formerly drove a saw mill, and was called the saw mill pond, and now used to drive a cider mill, and from it an old trunk leads to the grist mill pond of Jaqui's grist mill, which is on the stream which runs from Denville to Speedwell; that the waters of the saw mill pond brook, do not naturally empty into the Denville brook above the grist mill. On deponent's land are also two dwelling houses, one of which is nearly new, and their situation as well as the situation of the said ponds, and the trunk connecting the two and said cider and grist mills, appear on the annexed map; that there is about ten feet fall from said mill pond to said grist mill pond, and the colored line on the said map represents truly the said trunk as it was in the year Eighteen Hundred and Sixty-Three and Four, and has ever since been, that the same fell into disuse, and out of repair about six or seven years ago; it stands wholly out of and above the earth, except where it crosses the highway, and where it crosses the roadway leading to deponent's house, and perhaps for a short distance near the cider mill. No excavation is necessary in order to repair or rebuild it, except in crossing said road. Said trunk is only about sixty-eight inches square, and cannot be so used as to draw down the water in said saw mill pond more than a few inches, that deponent claims title to said land and saw mill pond and cider mill by the will of his father, marked exhibit A, and the said trunk is wholly on his land, which at that point extends on all sides to and includes a portion of, if not the whole of the road bed.

That said Jaqui claims title to said grist mill and pond-
 age under deed from Charles Johnson, dated January
 18th, 1864, copy of which is marked exhibit B, and is now
 in possession of the same, and claims the right in conver-
 sation with deponent to build a new trunk, leading the
 water from said saw mill pond directly to said grist mill,

so as to use the head of said saw mill pond as an independent power to drive his mill, or some part of it; that in the month of August said Jaqui commenced digging on deponent's land a ditch in which to lay a new trunk, to be placed under ground and to carry the water of said saw mill pond directly to his grist mill.

Deponent forbade said Jaqui, and commenced an action against him therefore before Esquire Easton, and said Jaqui defended the same and deponent recovered judgment 10 against him, as appears by a transcript of the proceedings, marked exhibit C. Deponent says the trespass charged in the statement of demand, in said proceedings, are the same above mentioned, and are for digging on deponent's land to lay said new trunk; after said action said Jaqui stopped work, and filled up the ditch already dug. That said Jaqui has commenced digging once or twice again, and deponent has always forbidden him, and he has always desisted until this morning when said Jaqui came on deponent's land with fifteen or twenty men and commenced digging a 20 deep ditch in the same place and direction that he dug last summer, and deponent forbade him and he persisted in going on. The ditch he is now digging leads almost directly from said saw mill pond to said grist mill, and the line and course of it is shown by the parallel dotted lines on the annexed map. The nature of the ground is such that a very heavy excavation would be required to carry said water in a straight line, and as the work is being done requires an excavation in some places of at least six feet deep, all the way it will be placed under ground. 30

Deponent says that said mill pond if kept full or nearly so, is a great ornament to his property, and adds to its value and the comfort of his residence, and if the same is drawn out from time to time, and fill again, as it will be liable to be by the proposed new arrangement of the trunk, a large portion of its bottom will be exposed to the sun and will breed sickness and become a nuisance to home and property.

A. FLETCHER JOHNSON. / 40

Sworn and subscribed before me this 27th day of April,
A. D., 1874.

JOHN W. BETTS,
Master in Chancery of New Jersey.

10

MORRIS COUNTY, *ss.*

James T. Willison, being duly sworn, deposeth and saith, that he lives in Morris Township; is thirty-six years old and has been acquainted with Johnson's grist mill and saw mill all his life time; remembers when old Charles Johnson sold his grist mill to Frederick W. Jaqui and Nehemiah H. Johnson; deponent was present when
20 the sale was negotiated and lived many years in that neighborhood; that he has seen the annexed map, and that the same truly represents the situation of the grist mill and cider mill and their ponds, and also truly represents the old trunk which ten years ago carried the water from the saw mill pond to the grist mill pond; that said old trunk ran most of the way above ground. It was just beneath the surface where it crosses the public road, and again where it crossed the road way leading to Mr. Johnson's barn, and again for a few feet near the cider
30 house, and for the rest of the way it was above the ground and in some places one or two feet above the ground, and was about eight inches by six inches in size; that by the use of said trunk the water in said saw mill pond was never drawn down but a few inches, and said pond was always kept full until within two or three years when the dam has been out of repair; no water has run through the old trunk for several years past.

Deponent has been at said mill to-dâÿ, and left there
40 about one o'clock, and said Frederick W. Jaqui has been

engaged all day with a large gang of laborers digging a trench from the said saw mill pond as nearly straight as the ground will permit to his grist mill; in some places the trench is pretty deep, and deponent supposes from appearance that it will be five or six feet most of the way when finished.

No excavations is being made on the line of the old trunk, and little or no excavation is necessary in order to repair the old trunk, except where it crosses said roads. 10

There is a good fall from the saw mill pond to the grist mill pond even since the dam of the latter has been raised, and there is no difficulty in making the water run in the same route it always has run into the grist mill pond.

Deponent is acquainted with the lines of the deed from Charles Johnson to Jaqui and Nehemiah H. Johnson, and the same covers no ground west of the Morristown road.

Deponent owned Nehemiah Johnson's half of said grist mill for a short time. 20

That said Fletcher Johnson has built a new house near said mill pond, and the latter if kept full will be a great addition to his property and add to the comfort and beauty of his residence, but if the same is liable to be frequently drawn out and filled by daily use, the same will tend to breed sickness and will be a nuisance and injury to his property. 30

Said Jaqui has taken away the old trunk leading from the saw mill pond to the cider house.

The digging going to-day is nearly on a line of the dotted parallel lines on the map.

JAMES T. WILLISON.

Sworn and subscribed before me this 27th day of April,
A. D., 1874.

JOHN W. BETTS.
Master in Chancery of New Jersey.

A true copy.

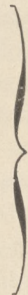
H. S. LITTLE, *Clerk.*

I
an
ta
th
sw
thi
sw
eig
fou

NEW JERSEY SUPREME COURT.

Between

A. FLETCHER JOHNSON,
Complainant,
and
FREDERICK W. JAQUI,
Defendant.



10

Answer.

In Chancery of New Jersey. The answer of Frederick W. Jaqui to the bill of complaint of Albert F. Johnson, complainant.

20

This defendant now, and at all times, hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereto, and unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, that on or about the eighteenth day of January, eighteen hundred and sixty-four, Charles Johnson, the father of the complainant, by 30

deed of conveyance bearing date the day and year above stated, for a good and valuable consideration, did convey to this defendant and Nehemiah H. Johnson, as tenants in common, certain lands, rights and privileges in said deed particularly described, being the mill and water privileges and rights mentioned and referred to in the said bill of complaint.

This defendant has annexed to this his answer, and to
 10 be made a part thereof, a true copy of said deed, and marked it as exhibit A, and this defendant prays leave to refer to said copy and also to said deed as occasion may require.

That on about the sixth day of April, in the year eighteen hundred and sixty-six, by deed of conveyance bearing date the day and year last mentioned, the said Nehemiah H. Johnson, with Margaret E., his wife, did convey to one James T. Willison all of their interest and estate in and to
 20 the equal undivided one-half part of the lands and premises described, and also whatever privileges, rights or benefits of every kind that were conveyed to them or accrued to them by virtue of the said deed of conveyance so as aforesaid made by Charles Johnson to said Nehemiah H. Johnson and this defendant, as by reference to the said last mentioned deed, leave of reference to which is hereby prayed, will more fully and at large appear.

And this defendant further saith that on or about the
 30 twenty-ninth day of May, eighteen hundred and sixty-six, for a good and valuable consideration, by deed of conveyance bearing date the day and year last aforesaid, the said James T. Willison did convey to this defendant in fee simple, all of his right, title and interest in and to the said lands, premises, rights, and privileges so as aforesaid conveyed to this defendant and Nehemiah H. Johnson by Charles Johnson, as by reference to the said deed from James T. Willison to this defendant, leave of reference to which is hereby prayed, will more fully and at
 40 large appear.

And this defendant in further answering says that when the deed first hereinbefore mentioned was made, the trunk which then carried water from the saw mill pond to the grist mill pond, was of wood, and from the saw mill pond to the second angle, said trunk was about three feet deep and two feet wide and open on the top, about eight feet north westerly from the second angle said large trunk was intersected by a smaller trunk which extended from the point last mentioned to the grist mill pond.

This trunk was made of inch and a quarter plank, and was on the outside eight and a half inches deep and ten and a half inches wide. 10

This last mentioned trunk was boarded over on the top, and was above ground except as hereinafter stated, namely: for a distance of about thirty feet in length, where it was buried underground about two feet deep. The part so buried was where the easterly part of the press house now stands, and a distance of about six feet at each end of said "press 20
"house."

2d. From the most southerly angle of said trunk, easterly for a distance of about eighty feet, said trunk was buried in the ground and covered over with earth, so that wagons could and did drive over it.

From the end of said eighty feet said trunk was above ground until it came to the place where it crossed the public road. It crossed the public road underground, and 30 continued underground until it entered the pond, except for a distance of about two feet between the road and the water of the pond where it was above ground.

Where said large trunk entered the saw mill pond it rested on the stone wall of the dam of that pond, and from the face of the dam southerly for a distance of between twenty and twenty-four feet, said trunk had for support two timbers parallel with the trunk, across which timbers at distances of about two feet, cross-pieces were placed, upon 40 which rested the trunk.

Along the highway, said trunk in places, sat on the ground, and in other places on cross-pieces supported by stakes or posts. At that time there was a gate in said trunk where it connected with the saw mill pond, which gate, when drawn up, made an apperture for the passage of water fourteen inches deep and twenty-five inches wide, and the bottom of said gate when pressed down and closed, was about five and sixty hundredths feet below the top of the saw mill dam.

10

At that point where said small trunk connected with the large trunk there was a gate, which, when closed, prevented the water from running to the grist mill pond, and about ten feet south-easterly of the point where said trunk joined, in the large trunk was a gate, which, when open, allowed the water to run to the cider mill.

20

At that time from the dam of the grist mill pond down to within forty or fifty feet of the old dwelling house, (shown on the complainant's map) there was no fence on the westerly side of the highway, nor has there been any fence there at any time since, nor is there now, and all the land shown on the map annexed to the complainant's bill, on the westerly side of the highway, ever since defendant has known, said land has laid open to the highway, except that there is and has been a fence on the north-easterly side of the "old dwelling house," about six feet from said house, which extends from near the north-westerly corner of said old dwelling house to the highway, and then continues along the highway in a southerly direction leaving all said land open to be traveled over by whatever chose to go there.

30

Owing to this, said trunk was much exposed and was often run against, driven over with wagons and broken.

And although said small trunk was built anew about the year eighteen hundred and sixty-two, yet in or about the year eighteen hundred and sixty-eight the said small trunk was so broken and knocked to pieces that it would not

40

any longer carry the water to the grist mill pond, and ever since that time this defendant has had no use of the said small trunk. Soon after said small trunk got unfit to carry the water, and in 1868 or 1869, said complainant was building an addition to his "press house," and he erected it on the ground where said small trunk was buried, and in digging out the foundation for said addition, he, the complainant, dug up about twenty-five feet in length of said small trunk, broke it in pieces, and threw the pieces away, and so it has been ever since, and owing to the erection of 10 said addition to said press house over the place where said small trunk was, this defendant would have difficulty in placing said trunk in the same spot it was before, and if he did so it would be only about a foot from the complainant's cider press, and would be in the way of and greatly incommode the said complainant.

In 1864 and for sometime afterwards, said small trunk, along the highway, was about ten feet from the traveled part of the highway, the traveled highway along there then 20 being about twenty feet wide.

In the year 1869, on the application of the said complainant, this defendant and others, ten and more freeholders of Morris County, the Inferior Court of Common Pleas of the County appointed six surveyors of the highways of the said county, to vacate the said highway from near the said grist mill pond southerly to what is called the Sussex turnpike, a distance of about three-quarters of a mile, and to lay out a new road between the grist mill pond and the 30 Lake Road, the real object as to laying a new road being to widen said highway from the Lake Road to said pond and to straighten it when practicable. Five of the six surveyors so appointed met, pursuant to law and after due notice, and made a return, bearing date the twenty-first day of May, 1869, in and by which return it was certified that said old highway was vacated and the said new highway (of the width of fifty feet) was, by said surveyors, laid out, as by reference to said return (a certified copy of which return is hereto annexed and is made a part of this 40

answer, and is marked exhibit B,) will more fully and at large appear, and this defendant prays leave of reference to said return.

And this defendant further saith that said return was duly filed in the office of the Clerk of the County of Morris, on the 29th of May, and recorded on the 14th of June, 1869, and said return is still in full force and effect.

- 10 And this defendant in further answering says, that the westerly line of said newly laid road is to the westward of the site of so much of said old trunk as was parallel with the old highway, and in some places as much as fifteen feet, and at others only about three feet, and for a distance of at least one hundred and fifty feet the site of said old trunk is several feet within the limits of the said new road. Along the site of said old trunk, the bank on the west side of said new road has not been as yet enough dug away to widen said new road to its full width, a part of that work
20 of widening, under the authority and direction of the overseer of the highway, has been done, and the residue thereof is expected to, and no doubt will be done at a time not far in the future.

And this defendant further saith that the map annexed to this answer and marked "exhibit C," shows the true lines of the said new road, and also the site of the said old trunk, and the true location of other things mentioned or referred to in this answer.

- 30 And this defendant further saith that on the west side of said highway, from opposite this defendant's new mill, northerly to near where said highway forks, the land rises with great steepness, so that when said highway is widened out to its legal width, the natural surface of the ground will be from twelve to fifteen feet above the grade of the highway, and if the trunk is placed on the west side of the highway, it will have to be placed on the sidewalk, in violation of law, or else be sunk in the bank a depth of at
40 least six feet below the surface of the ground in order to

get sufficient fall to make the water run into the grist mill pond, so that a long, deep, expensive excavation, almost wholly in rock, would be absolutely necessary.

In or about the year eighteen hundred and sixty-eight, this defendant in the exercise of the right in that behalf granted by the aforesaid deed from Charles Johnson, raised the dam of his grist mill pond three feet.

The effect of that increased height was in time of fresh- 10
ets to send water from the grist mill pond into the said small trunk and cause it to overflow, and the water to run out on the highway, causing the highway to be wet, washed and broken and unfit to travel, and to avoid that this defendant had to stop up said trunk near its mouth.

In the latter part of the summer of 1866 the said complainant gave notice to this defendant, requiring this defendant to rebuild the dam of the saw mill pond, the old dam then being in a ruinous and leaky condition, and 20
thereupon this defendant did, at his own expense, rebuild the top part of said dam, four or five feet in height, and raised it to within four inches of its former height, and about thirty-four feet in length, at an expense of about two hundred dollars, to no part of which work or the expense thereof did the said complainant in any manner contribute, and said dam ever since 1864 has been kept in repair wholly by this defendant, without any assistance in that behalf from the said complainant.

30

In the year 1871 this defendant commenced the erection of a new grist mill in place of the old one, and finished the same in August, 1872, since which time the old building has been used for a store house for grain, flour, &c. Said new mill is located immediately below the old mill as shown on the map annexed to the said bill of complaint. This mill was built with reference to using the water from said saw mill pond in the said new mill, and this defendant left holes in the walls for the purpose of passing the water pipe into the mill.

40

About the same time and since, in the exercise of the right granted by said deed from Charles Johnson, this defendant has dug out and sunk the tail race below said grist mill, about four feet deeper than it was across lands which belonged to said Charles Johnson when said last mentioned deed was made.

- 10 And this defendant is advised and he respectfully submits, that said deed from Charles Johnson clearly grants, and the true intent and meaning of said deed is to grant, for the use of said grist mill, all the water in the said saw mill pond, excepting only so much of said water as may be necessary for grinding apples at said cider mill, and that said grant of said water, carries with it, as an incident, a right to take said water from the saw mill pond to the grist mill, in such manner as may be most beneficial to this defendant, provided the means of conveyance of the
- 20 water does not deprive the said cider mill of the water it may want to grind apples, and provided the means of conveyance used are not more injurious or burdensome to the servient tenement than those in use when said deed was made.

- And this defendant in further answering says, that having finished his new grist mill and being in want of the water in said saw mill pond to aid in driving his grist mill, the small part of said trunk under said press house being
- 30 entirely destroyed and removed, and all of the original location of said small trunk along the side of the highway being taken for and included within the limits of the highway, it was, and is, impossible to place the new trunk on the same ground the old one was on, and that condition of things compelled this defendant to adopt another route in part for carrying said water to his grist mill. 'This defendant intended to have put up the new trunk in the year 1873, and would have done so if he could have then obtained the services of the mill wright whom this defendant wished to do the work of making and putting up said trunk, and this defendant denies that he refrained from then going on
- 40 with putting up of the new trunk, because of the suit in

the Court for the trial of small causes before William J. Easton, Justice of the Peace, mentioned in said bill.

And this defendant as to that judgment says that very soon after it was rendered, this defendant appealed therefrom to the Inferior Court of Common Pleas of the County of Morris, in which Court said appeal is still depending undetermined.

In August, 1873, this defendant upon the expectation of 10
having his mill wright to then make and put in said new trunk, commenced digging a ditch to hold said trunk and dug about twenty feet in length, about six feet of which was in the highway, and the residue in a south-westerly direction on land of the complainant. Then the said mill wright came to see this defendant, and said that he could not that summer or fall make and put in said new trunk, and thereupon this defendant stopped digging, and to prevent persons from stepping or falling into the ditch, this defendant filled it up. 20

And this defendant in further answering says, that this spring his said mill wright prepared the material to make said new trunk, and had it, substantially, ready to put together and put in place, when this defendant was stopped from doing so by the conduct of the complainant and the injunction of this Honorable Court.

And this defendant in further answering says, that the new trunk is made and intended to be put together and 30
put up, is as follows: a wooden cylinder, hooped with iron bands, or hoops, two feet apart, the diameter of the cylinder inside to be twenty inches, and for a distance of about eighty-five feet from the face of the saw mill pond dam said trunk is intended to be above ground, and all the remainder is to be under ground in a ditch, the top of the trunk to be covered over about two feet with earth to protect it from injury from teams, animals and other things. Then to continue in a straight line the flume which carried 40
the water from the old trunk to the complainant's cider

mill to a junction with the new trunk, and by means of a gate to allow so much of said water to flow to the complainant's cider mill, as he, his heirs and assigns shall want for grinding apples at his cider mill, and as much as he has heretofore had or used.

And this defendant saith that the allegation in said bill of complaint, that this defendant intended or intends to deprive the complainant of the water he may want for
 10 grinding apples at his said cider mill, is untrue, and the said complainant had no ground or reason to believe or suppose that this defendant had any such intention or purpose, this defendant never having said or done anything to warrant any such belief or supposition.

And this defendant further saith, that the said new trunk, where it will receive the water from the saw mill pond, is intended to be one inch higher than the bottom of the old trunk at the same place, and when put in and in
 20 use the bottom of the new trunk will not be as low by one inch as the bottom of the old trunk was, and cannot and will not draw down the water in the saw mill pond any lower than or so low as it was drawn down by the old trunk, and this defendant never intended to make or place said new trunk so as to draw down the saw mill pond lower than it could be and was drawn down by the old trunk, and every allegation to that effect in said bill of complaint is untrue, and the said complainant never had
 30 any ground to believe or suppose that this defendant wished or intended to make or keep the water in said saw mill pond lower than it has heretofore been, although this defendant respectfully submits that he has a right to do so by virtue of the said deed from Charles Johnson. This defendant further saith that the said new trunk, if put up according to the design and intent of this defendant, will go in a straight line from the dam of the saw mill pond to a point about one hundred and fifty feet south-easterly, and then turning to the left or northward, will go
 40 in a straight line to this defendant's new grist mill, a further distance of about one hundred and fifty feet, in all about

three hundred feet as shown by the map hereto annexed, instead of the old trunks which were together over four hundred and seventy-two feet in length. Said new trunk after it gets beneath the surface of the ground will not only be well protected, but will be entirely out of the way of the complainant, and will not interfere with the use of the surface of the ground as it would do if above ground, and from the point where the said new trunk is intended to cross the highway, north-easterly a distance, measuring along the highway, of about two hundred and thirty-two 10 feet, the land of the complainant will be entirely freed of the servitude of said trunk, thus making the new location of the trunk not only advantageous to this defendant, but advantageous and beneficial to the complainant.

And this defendant further saith, that the carrying of the water from the saw mill pond to the grist mill pond on the route of the old trunk, has never been and never can be in any manner beneficial or advantageous to the complainant or his property, while the change of route desired and in- 20 tended to be made by this defendant will be a large relief and benefit to the complainant's property.

This defendant further saith, that the allegation in the seventh paragraph of said bill of complaint, that this defendant has never made any repairs of said saw mill dam, is untrue, and that the truth in that respect is as hereinbefore stated.

This defendant also denies the allegations contained in 30 the eleventh paragraph of said bill, that in order to repair or replace the said old trunk no excavation is necessary excepting in crossing said highway and private way, and that the excavation lately made by this defendant to receive said trunk is unnecessary, but this defendant saith that the truth in that respect is as hereinbefore stated.

This defendant admits that he lately tore away the old trunk from the saw mill dam south-easterly, but that was not done until after the materials to make a 40

new one in place thereof were all made ready, and, but for the interference of the complainant, said new trunk before this would have been up and finished and in working order, and from the saw mill pond to a point southerly of the point where the water is and was intended to be drawn from said trunk to supply the complainant's cider mill, (as hereinbefore mentioned) would have been entirely above ground.

- 10 And this defendant in further answering says, that the trunk which he intended and now purposes to put in, to carry the water from said saw mill pond to his grist mill, is intended to be straighter and shorter than were the old trunks, to incumber and burden much less of the complainant's land than did the old trunk, and so far as it is on the complainant's land, to be more out of the way of the complainant than was the old one, but in no other material respect will it be different from the old one. It will take no more water from the saw mill pond, nor indeed will
- 20 it draw the water of that pond to so low a point as did the old trunk, nor will it nor can it diminish the supply of water which the complainant can and will receive for grinding apples at his cider mill, nor will or can the said new trunk in any way or manner injure the complainant, but in every respect will be advantageous and beneficial to him.

And this deponent denies all unlawful combinations, &c. in said bill charged, without that, that any other matter or thing, material for this defendant to make answer unto and

30 not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and he prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

J. J. CUTLER,

Sol. and

JACOB VANATTA,

of Counsel with Defendant.

NEW JERSEY, MORRIS COUNTY, ss.

I, Frederick W. Jaqui, the defendant named in the foregoing answer, make oath and say as follows :

1. All the statements in my said answer so far as the same relate to or concern my own acts, deeds, purposes and intentions, are true, and all the statements in my said answer, so far as the same relate to or concern the acts and deeds of any other person or persons therein named, are true to the best of my belief. 10

2. I crave leave to refer to my said answer and the statements therein contained, as evidence on my behalf at the hearing of this cause and on the hearing of my motion made in this cause, as if the same were repeated in this affidavit. 20

FREDERICK W. JAQUI.

Sworn and subscribed before me the 8th day of May, 1874.

CHARLES E. PIERSON,
Master in Chancery of New Jersey.

30

NEW JERSEY, MORRIS COUNTY ss.

Simeon D. Hulbert, of Randolph Township, in said county, of full age, being duly sworn, on his oath saith :

That he now is, and for several years last past has been, a stone mason ; that in or about the summer of 1867, deponent and his workmen did the mason or stone work of 40

repairing the dam of the saw mill pond on the property of A. Fletcher Johnson near Jaqui's first mill ; said repairs, so far as deponent did them, was to relay a large part of the stone work of the front or face of said dam, the front wall in some places was relayed as high as five feet, and said repairs extended along nearly the whole of the front of said dam. Deponent was employed to do said work by, and he did it for, Frederick W. Jaqui, and he paid deponent therefore.

10

The other work done at said dam at and about the same time, such as graveling, planking, procuring the stones, &c. was done by said Jaqui and his work bands, and said Johnson, so far as deponent saw, had nothing to do with said work.

SIMEON D. HULBERT,

Sworn and subscribed before me this 8th day of May, 1874.

CHARLES E. PIERSON,

20

Master in Chancery of New Jersey.

NEW JERSEY, MORRIS COUNTY, ss.

30 Hugh Bartley, of the township of Washington, in said County, being duly sworn, according to law, on his oath saith, that he is a mill wright and has worked at that trade over fifteen years ; that in 1871 and 1872 deponent did the mill wright work of and for Frederick W. Jaqui's new first mill near Morris Plains. In 1873 said Jaqui requested deponent to that year make and put in a new trunk to carry the water from the saw mill pond to said new grist mill. At one time deponent said to said Jaqui that he thought he could do that work in 1873, but deponent after-
40 wards informed said Jaqui that he could not do it in that

year. That in the latter part of March, 1874, deponent commenced to work at said mill of said Jaqui, and since then he has been working there in making the said new trunk, and the construction of and preparations for placing said new trunk have been under the direction and control of deponent.

That when deponent went to work at said new trunk, the old trunk, or rather the bottom and sides of the upper end of the old trunk, was in the saw mill pond and in the dam of that pond, and is there yet, except a small part of the extreme upper end thereof, which deponent cut off to make some to put posts in the old bottom sill which was, and which is still there in the same position. The bottom of the old trunk at the upper end of the trunk in the saw mill pond rested immediately and entirely on that old bottom sill. The bottom of the upper end of said new trunk, in said saw mill pond, which deponent intended and was about ready to put in, was to be placed and fixed one inch above the top of that old sill, and the intention of deponent was and is to permanently place and fasten the bottom of said new trunk in said pond, one inch higher than was and is the bottom of the old trunk. Said old trunk in the pond where it received the water from the pond had an aperture for the reception and flow of the water, of fourteen inches in depth and of twenty-five inches in width. The aperture of said new trunk in said pond has been made to be and will be circular and of the diameter of twenty inches, and when located and fastened as deponent has designed and intended, and as he now designs and intends, the water in said pond, by means of said new trunk, cannot and will not be drawn down as low by from two to four inches, as it could be and was drawn down by means of the old trunk, and while deponent was at work fixing the location in said pond of the upper end of the new trunk, Albert Fletcher Johnson was there and saw what had been done and what was doing, and could not fail to see that the bottom of the new trunk would be higher than the bottom of the old trunk had been.

Deponent further saith, that from the first and at all times, he has been directed by said Jaqui to so construct said new trunk as to permit to be discharged therefrom into the trough or flume which led and carried the water from the old trunk to said Johnson's cider mill, so much of the water of said saw mill pond as said Johnson shall want for grinding apples at his said cider mill, and deponent has intended and arranged to obey those directions of said Jaqui, and if said new trunk is put up it will have ample and in every respect sufficient arrangements to supply to said cider mill all the water said Johnson will want for grinding apples there.

Deponent further saith, that said new trunk as designed to be put in, from the saw mill pond down to and past the point where the water is to be drawn from said trunk to supply said cider mill, will be wholly and entirely above ground.

Deponent further saith, that to have the water from said saw mill pond carried on the route of the old trunk into the grist mill pond, so far as deponent can discover and as he believes, would and could not in any way be of any possible advantage or benefit to said Johnson or his property, but in several respects would be injurious to both.

Deponent further saith, that after careful observation and examination, his judgment and belief are that in no way can the water from said saw mill pond be conducted to said Jaqui's grist mill with so little inconvenience, and injury to said Johnson and his property, as by the route and means adopted by said Jaqui and which was in course of execution when the injunction in this cause was served.

HUGH BARTLEY.

Sworn and subscribed before me 8th May, 1874.

CHARLES E. PIERSON.

Master in Chancery of New Jersey.

NEW JERSEY, MORRIS COUNTY, *ss.*

J. Frank Johnson, of Morristown, being duly sworn, on his oath saith, that he is a Civil Engineer and land surveyor, and made the map annexed to the bill of complaint in this cause. That the highway shown on said map represented the road as actually worked and traveled, and does not represent the lines of said highway as those lines are made and given by the return of the surveyors of the highway who laid out said highway in the year 1869. That deponent has surveyed that road according to the description thereof given in said return, and the true and actual location of said highway opposite to the grist mill of Frederick W. Jaqui and opposite to the land of Albert Fletcher Johnson is correctly shown by the map hereto annexed, which map was made by this deponent and that the location of the old trunk, with reference to said highway, is also and substantially correctly shown by the map hereto annexed, and the distances from the site of said old trunk to the westerly line of said highway are correctly and truly marked on the last mentioned map.

That the most easterly angle of said old trunk was ascertained by deponent from portions of the old trunk in the ground within a foot of said angle, and by having said angle pointed out to deponent by Albert Fletcher Johnson at one time and by Frederick W. Jaqui at another time—they both agreeing greatly as to where said angle was.

The most northerly angle in said old trunk was ascertained from the old trunk itself, a portion of it being still there, northerly of said last mentioned angle about fifteen feet of the old trunk is standing in its place, and southerly of that angle about thirty-three feet of the old trunk stands in its place.

The appearance on the ground indicates that said old

trunk did not go in a straight line from the last mentioned angle to the most easterly angle hereinbefore mentioned, but, to conform to the shape of the hill, carried somewhat to the eastward or towards the centre of the highway.

At the point shown on said map as where the trunk was nine feet above the road, the natural surface of the ground immediately west of the west line of the highway is about fifteen feet higher than the centre of the road, and from
10 appearance, without having taken a level, deponent judges the natural surface of the ground at the point last hereinbefore referred to, is considerably higher than the saw mill pond.

Deponent further saith, that he surveyed the highway hereinbefore spoken of two or three years ago and again on the 6th of May, 1874. The monuments referred to in said road return are certain and easy to be found, and deponent had no difficulty in ascertaining and correctly locating the
20 lines of said highway, and the lines thereof are correctly located on the map hereto annexed.

In the building shown on the map hereto annexed, marked "press house and mill," deponent has correctly marked the location of the cider presses which are in said building and also correctly marked the location of the old trunk, location of said old trunk at that place having been shown to deponent by said A. Fletcher Johnson.

J. FRANK JOHNSON.

30

Sworn and subscribed before me 8th May, 1874.

CHARLES E. PIERSON.

Master in Chancery of N. J.

EXHIBIT B.

RETURN OF SURVEYORS.

Whereas, the Court of Common Pleas of the County of Morris, on the seventh day of May instant, did order and appoint as follows :

10

In the matter of the application of Richard Gray and others, for the vacating of a public road already laid out, and also for the laying out of a public road in the Township of Morris.

Appointment
of
Surveyors.

20

Application, in writing, being made to the Court by Richard Gray and others, ten Freeholders and residents of the County of Morris, that they think a public road to be necessary in the Township of Morris in said County, beginning at the boundary line between the Township of Morris and Hanover, about one hundred feet north and west of the grist mill of F. W. Jaqui, thence in a southerly direction, passing in front of said mill and the dwelling houses of A. Fletcher Johnson, James J. Cooper, David Trowbridge, and Richard Gray, and over the lands of said 30

Jaqui, A. Fletcher Johnson, Charles H. Johnson, Gordon Burnham, James J. Cooper, Elam R. Brant, David Trowbridge, Richard Gray, J. Boyd Headley, Augustus W. Cutler, and J. Elliott Condict, to the public road leading from Morristown to Walnut Grove, (known as the Sussex turnpike) and there to end, and that they think a public road to be necessary in the Township of Morris in the County of Morris, beginning at the same point on the

10 over, and thence running southerly and in front of the said mill of F. W. Jaqui and the said dwelling houses of A. Fletcher Johnson, James J. Cooper, Elam R. Brant, David Trowbridge and Richard Gray, and over lands of the said Jaqui, A. Fletcher Johnson, Charles A. Johnson, Gordon Burnham, James J. Cooper, David Trowbridge, Richard Gray and J. Boyd Headley, to the public road leading from the dwelling house of said Headley to Morristown, (known as the "lake road,") and there to end, and due proof being

20 intended application, and of the day on which said application was intended to be made, by advertisements under the hands of said applicants, set up in three of the most public places in the Township of Morris in which the one road is proposed to be vacated and the other road laid out. It is ordered that Richard M. Stites and Hugh McComb of the Township of Morris, Silas R. Lindsley of the Township of Passaic, Sylvester Peeney and Nathan Guerin of the Township of Mendham, and James H. Carrell of the Township of Randolph, six surveyors of the highways of said County, be

30 and they are appointed accordingly, (regard having been had to the appointment of the surveyors of the highways of the township of Morris where the one road is applied to be vacated and the other laid out), which said surveyors shall meet at the dwelling house of J. Boyd Headley, in the Township of Morris on the twenty-first day of May instant, at the hour of ten o'clock in the forenoon.

Dated May 7th 1869.

40 Now, we the surveyors aforesaid, do certify and return, that Hugh McComb of the Township of Morris, Silas R.

Lindsley of the Township of Passaic, Sylvester Peeney and Nathan Guerin of the Township of Mendham, and James H. Carrel of the Township of Randolph, met at the time and place in the said order specified, and due proof being made to us, that the advertisements of our said meeting, had been set up according to law, on which we decided, and it being proved to us that a copy of the above order of the Court had been served by J. Boyd Headley, one of the applicants, on Richard M. Stites, one of the said surveyors who did not attend at least six days prior to this 10 time, and having viewed the premises, we whose names are hereto subscribed, think and adjudge the said public road, to be unnecessary in the Township of Morris, beginning at the boundary line between the Townships of Hanover and Morris, about one hundred feet north and west of the grist mill of F. W. Jaqui, thence in a southerly direction passing in front of the said mill and the dwelling houses of A. Fletcher Johnson, James J. Cooper, David Trowbridge, Richard Gray, and over the lands of said Jaqui, A. Fletcher Johnson, Charles H. Johnson, Gordon Burnham, 20 James J. Cooper, Elam R. Brant, David Trowbridge, Richard Gray, J. Boyd Headley, Augustus W. Cutler and J. Elliott Condict, to the public road leading from Morristown to Walnut Grove, (known as the Sussex turnpike), and there to end, and do vacate the same.

And, we whose names are hereto subscribed, think and adjudge the said public road to be necessary, and do lay the same, as appears to us to be the most for the public and private convenience, having a regard to the best ground 30 for a road, and the shortest distance, and in such a manner as to do the least injury to private property, that is to say, beginning on the northerly side of Lake Road, where the road leading from Jaqui's mill to the Morris turnpike crosses Lake Road, thence (1) north forty-six degrees and thirty-five minutes east eight hundred and twenty-two feet to a stake; thence (2) north forty-five degrees east one hundred and seven feet; thence (3) north forty-three degrees and thirty-three minutes east one hundred and 40 ninety-four and a half feet; thence (4) north thirty-six

degrees fifty minutes east one hundred and eighty-five and a half feet ; thence (5) north twenty-five degrees and fifty-eight minutes east three hundred and fifty-six feet ; thence (6) north twenty-three degrees and twenty-two minutes east one hundred and ninety-three feet ; thence (7) north sixteen degrees and five minutes east one hundred and three and a half feet ; thence (8) north twelve degrees and fifty-eight minutes east one hundred and sixteen feet ; thence (9) north five degrees and thirty minutes west two

10 hundred and sixty-nine feet to a notch in a culvert leading into the pond ; (10) north eighteen degrees and thirty-five minutes east three hundred and thirty-six feet ; thence (11) north four degrees and twenty-five minutes east one hundred and fifty-five feet ; thence (12) north two degrees and seventeen minutes east one hundred and seventy-five feet ; thence (13) north seven degrees and thirty minutes east one hundred and sixty-three feet ; (14) north twenty-one degrees east one hundred and three feet ; thence (15) north forty-four degrees and twelve minutes east two

20 hundred and forty-one feet ; thence (16) north twenty-three minutes east one hundred and fifty-three feet ; thence (17) north twenty degrees and three minutes west three hundred and nineteen feet to the southerly side of the road leading past Jaqui's mill, the dividing line between the Townships of Hanover and Morris, which said lines are the middle of the road, and have been by us marked, at proper distances in the line of the same, said road to be fifty feet wide, and we do order the same to be opened by the overseers of the highways, on the fifteenth day of June next, and do here-

30 with return a map and draughts of the said road, with the courses and distances and reference to the most remarkable places, and the improvements through which it passes. And we do further return, that we have made an assessment of the damages to the respective owners of the land, for the laying out of the aforesaid road, (said owners not being applicants for the same), and do hereby assess in favor of David Trowbridge of the Township of Morris, the sum of five dollars for the damages he will sustain, by the laying out of said road, and in favor of Gordon Burnham,

40 of the Township of Morris, the sum of ten dollars for the

damages he will sustain, by the lying out of said road, to be paid by the inhabitants of the said Township of Morris. Witness our hands this twenty-first day of May, A. D., 1869.

H. McCOMB,
 SILAS R. LINDSLEY,
 NATHAN GUERIN,
 SYLVESTER PEENEY,
 JAMES H. CARREL,
Surveyors of the Highways. 10

Explanation of the line and point of the map on the other side of this sheet.

Line 1. Begins on the northerly side of lake road at a point in said side, 635 feet from a mark on the fence of the same, which mark is in the range of the easterly end of the David Johnson house, now belonging to J. Boyd Headley, and same line end 50 minutes 9 seconds on a course south-east 72 degrees from the south-easterly corner of Richard Gray's dwelling house. 20

Line 2. Ends opposite the line fence between said Gray and David Trowbridge. 30

Line 3. Ends opposite David Trowbridge's well and 36 minutes 3 seconds from middle of it.

Line 4. Ends opposite David Trowbridge's barn and 25 feet from the north-easterly corner thereof, and opposite the line fence between said Trowbridge and J. Boyd Headley.

Line 5. Ends opposite the line fence between said Head- 40

ley and Jas. J. Cooper, and 25 feet easterly of end of said fence.

Line 6. Ends opposite the line fence between said Cooper and E. R. Brant, and 25 feet from westerly fence of road at junction of said line fence.

10 Line 7. Ends opposite the mouth of the road leading from this point to Speedwell road, and 54 minutes 6 seconds measured on course south-east $42\frac{1}{2}$ degrees from the south-easterly corner of said Brant's dwelling house.

Line 8. Ends opposite line fence between Jas. J. Cooper and said Brant, and 25 feet from its junction with westerly fence of road as the fence now stands.

20 Line 9. Ends at a mark on a culvert near edge of mill pond, and 40 degrees 3 seconds easterly of a nail in a marked apple tree standing in Jas. J. Cooper's lands.

Line 10. Ends opposite the line between Jas. J. Cooper and Chas. Henry Johnson, and 31 feet 2 inches from a marked hickory tree in said Johnson's lot and near the said fence.

Line 11. Ends opposite a large hickory tree (marked standing in Gordon Burnham's lot on easterly side of road,) or 25 feet therefrom.

30 Line 12. Ends opposite a large white oak tree marked in said lot, and 15 minutes 4 seconds from a mark or blaze on it.

Line 13. Ends opposite, or nearly so, a black walnut (tree standing westerly of the road in Chas. Henry Johnson's lot) and 30 minutes 6 seconds from it, and 36 minutes 5 seconds from a large ash tree marked standing in same lot.

40 Line 14. Ends 41 minutes 3 seconds easterly from a

mark on a butternut tree, and 47 minutes 1 second easterly of an ash tree marked, both trees standing in Chas. Henry Johnson's lot.

Line 15. Ends $59\frac{1}{2}$ minutes northerly of the south-westerly post of culvert at A. F. Johnson's garden, and 34 minutes 5 second westerly of a mark on an apple tree standing in said Johnson's brook orchard, and 37 minutes 1 second easterly from a black walnut tree in his garden.

Line 16. Ends 11 feet westerly of a stake 34 feet south-erly of the south-west corner of said Johnson's wagon shed. 10

Line 17. Begins at end of last line passes 25 feet westerly of the south-west corner of Jaqui's grist mill, and runs in direction of the second fence post westerly (or to the left as this line is run) of a large apple tree standing opposite the mouth of this road where it enters the road leading from the "Speedwell road" to Walnut Grove, and ends in the southerly side of said last described road. 20

"Description of that part of the road leading from the "Sussex turnpike" to the road from Morris Plains to Walnut Grove, *vacated* by the surveyors of the highways on the 21st day of May, 1869.

Beginning in the northerly line of said Sussex turnpike, and in the middle of the said road vacated. (1) Thence along the middle as near as may be of the last named road north-west 8 degrees, 10 seconds, a distance of 305 feet to a turn; (2) thence still along the middle of said road north-west 1 degree, 50 minutes—129 feet; (3) thence still along the middle of said road north-east 19 degrees, 45 minutes—150 feet; (4) thence still along the middle of said road north-east 24 degrees, 10 minutes—687 feet; (5) thence still along the middle of said road north-east 18 degrees, 20 minutes—103 feet; (6) thence still along the middle of said road north-west 20 degrees, 10 minutes—95 feet; (7) thence still along the middle of said road north-west 48 degrees, 50 minutes—122 feet; (8) thence still along the middle of said 40

road north-east 19 degrees, 10 minutes—210 feet—to the middle of the bridge crossing the Whippany river; (9) thence still along the middle of said road north-east 17 degrees, 30 minutes—67½ feet; (10) thence still along the middle of said road north-east 1 degree, 40 minutes—650 feet to the southerly side of lake road.

THOS. HUGHES, *Surveyor*.

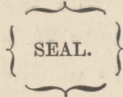
May 24th, 1869.

10 STATE OF NEW JERSEY, MORRIS COUNTY, ss.

I, William McCarty, Clerk of the County of Morris, and also Clerk of the Inferior Court of Common Pleas in and for said County, do hereby certify that the foregoing is a true and correct copy of the return of the surveyors, "in the matter of the application of Richard Gray and others for the vacating of a public road already laid out, and also for the laying out of a public road in the Township of Morris," and also of the maps accompanying said return.

20

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court and County, at Morristown, this eighth day of May, A. D. eighteen hundred and seventy-four.

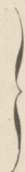


WM. McCARTY, *Clerk*.

7
the
(64
in t
the
Liv
sey,
over
part
of th
thou
Stat
the
and
here
ther
gran
vey
barg

EXHIBIT A.

CHARLES JOHNSON,
to
FREDERICK W. JAQUI
and
NEHEMIAH H. JOHNSON.



10

This indenture, made the Eighteenth day of January, in the year One Thousand Eighth Hundred and Sixty-Four, (64) between Charles Johnson of the Township of Morris, in the County of Morris and State of New Jersey, party of the first part, and Frederick W. Jaqui of the Township of Livingston, in the County of Essex and State of New Jersey, and Nehemiah H. Johnson of the Township of Hanover, in the County of Morris and State of New Jersey, party of the second part ; Witnesseth, that the said party 20 of the first part, for and in consideration of the sum of four thousand five hundred dollars, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, convey and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, 30

to the said party of the second part, and to their heirs and assigns forever, all that tract or parcel of land and premises hereinafter particularly described, situated, lying and being in the Townships of Morris and Hanover, in the County of Morris and State of New Jersey. Being the late grist mill or grain and flouring mill of said Charles Johnson, situate in and upon his homestead farm on the road leading from Morris Plains to Walnut Grove. The grist mill lot (by a survey in September, 1863), is butted and bounded as follows: Beginning at a point in the road leading in front of the dwelling of Charles Johnson, past said grist mill, twenty five links distant, westerly from the range and line of the front of the grist mill, or westerly side of the same, and one chain and eleven links distant on a course north Twenty-one degrees east from the lower easterly corner of said Charles Johnson's dwelling house; and runs thence (1) with other lands of said Charles Johnson, south eighty nine degrees east crossing the brook below the mill, three chains and fifty seven links to a stake and stones for a corner, on the side of a steep hill, in the orchard; thence (2) with said Johnson's lands north eighteen degrees and fifteen minutes east two chains and thirty-two links to the middle of the road leading from Morris Plains to Walnut Grove; thence (3) on said road north sixty-six degrees and forty minutes west four chains and seven links to the easterly corner post of the bridge over the stream and dam to the grist mill; thence (4) on the northerly side of said bridge and across the pond and brook south eighty-seven degrees and thirty minutes west one chain and fifty-three links to a post on the edge of the dam, opposite the middle of the road in front of the mill, and twenty-eight links short of the middle of a large black oak tree on the edge of the pond; thence (5) on the last named road south sixteen degrees and thirty minutes west three chains and seventy-one links to the place of beginning, containing one acre and twenty-five hundredths of an acre of land, more or less, and also to include the pond, dam, tail race, and all the privileges heretofore had and used in connection with and for the purposes of said grist mill. Also the further privilege of raising the dam to said mill three feet above its

present height, and to keep and maintain the same at that height, at their discretion, or any height less than that if they chose, and to include the privilege and right of flowing any of the lands of said Charles Johnson above the dam that may be flowed by raising the dam three feet above its present height, at all times forever, and to enter upon his said land at any time, to fix, improve, or repair said dam, and pond, as in their judgment, or their heirs or assigns may be necessary, and also to have the privilege of digging out the tail race below the grist mill, across the land of said Charles Johnson, to any depth they chose, and at any time most convenient. Also to have the water from the old saw mill pond of said Charles Johnson, in rear of his dwelling, as now carried in the trunk or feeder that carries the water from said pond, to the grist mill pond, above the dam, excepting only so much of said water as said Charles Johnson, his heirs or assigns shall want for grinding apples at his cider mill, near the old saw mill; and to have the privilege at all times to enter upon all or any of the lands of said Charles Johnson, along and joining said trunk or feeder, to alter, repair or renew the same at their convenience, also to keep up the old saw mill dam at its present height, and to take any gravel, stones or earth from the premises of said Charles Johnson, joining said pond, that may in their judgment be needed to keep the same in good repair, or if need be to renew or rebuild the same. All or any repairs or rebuilding said dam, to be at the proper costs and charges of said party of the second part, their heirs and assigns forever. And in no way to restrict the use of the water for the purpose of the said cider mill, and grinding apples by the said Charles Johnson, his heirs or assigns as aforesaid, together with all and singular, the houses, buildings, trees, ways, waters, profits privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining. Also all the estate, right, title, interest, property, claim, and demand whatsoever of the said party of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof. To have and to hold, and singular, the above described tract or parcels of land and premises with the appurtenances unto the

said party of the second part, their heirs or assigns, to
 the only proper use, benefit and behoof of the said party
 of the second part, their heirs and assigns forever. And
 the said Charles Johnson, does for himself, his heirs, ex-
 cutors and administrators covenant, and grant to and with
 the said party of the second part, his heirs and assigns
 that he, the said Charles Johnson, is the true, lawful and
 right owner of all and singular, the above described land
 and premises, and of every part and parcel thereof, with
 10 the appurtenances thereunto belonging, and that the said
 land and premises or any part thereof, at the time of the
 sealing and delivery of these presents, are not encumbered
 by any mortgage judgment or limitation, or by any encum-
 brance whatsoever, by which the title of the said party of
 the second part, hereby made or intended to be made for the
 above described land and premises can or may be changed,
 charged, altered or defeated in any way whatsoever. And
 also that the said party of the first part, now has good
 right, full power and lawful authority to grant, bargain,
 20 sell and convey the said land and premises in manner
 aforesaid. And also that he will warrant, secure and
 forever defend the said land and premises, unto the said
 party of the second part, as joint owners and purchasers,
 share and share alike, their heirs and assigns forever,
 against the lawful claims and demands of all and every
 person and persons, freely and clearly freed and discharged
 of and from all manner of encumbrances whatsoever.

30 { L. S. } In witness, whereof, the said Charles Johnson
 has hereunto set his hand and seal in the
 day and year first above written.

CHARLES JOHNSON.

Signed sealed and delivered in the presence of

Note, "of the words and right" interlined over the 18th
 and 19th line of second page, and the word "three" altered
 before signing.

JOHN W. HANCOCK.

STATE OF NEW JERSEY, MORRIS COUNTY, ss.

Be it remembered, that on this Eighteenth day of January, in the year One Thousand Eight Hundred and Sixty-four, before me, John W. Hancock, one of the commissioners of said County, appointed by law to take the acknowledgments and proof of deed, personally appeared 10 Charles Johnson, who I am satisfied is the grantor in the within deed of conveyance named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOHN W. HANCOCK, *Commissioner.*

Received and recorded Feb. 8th, 1864.

WM. McCARTY, *Clerk.* 20

STATE OF NEW JERSEY, MORRIS COUNTY, ss.

I, William McCarty, Clerk of the County of Morris, do hereby certify that the foregoing is a true and correct copy of the above stated deed, as the same remains of record in my office, in Book K 6, page 28, &c.

30

{ L. S. }

In testimony, whereof, I have hereunto set my hand and affixed the seal of said County at Morristown, this Eighth day of May, A. D., 1874.

WM. McCARTY, *Clerk.*

A true copy

H. S. LITTLE, *Clk.*

GENERAL REPLICATION.

I
M
C
Joh
C
A

IN CHANCERY OF NEW JERSEY.

Between

A. FLETCHER JOHNSON,
Complainant,

and

FREDERICK W. JAQUI,
Defendant.

On Bill.

10

MORRISTOWN COURT HOUSE.

MONDAY, August 24th, 1874.

20

Before his Honor Amzi Dodd, Vice Chancellor.

Messrs. Pitney & Youngblood, for Complainant.

Messrs. Vanatta and J. Cutler, for Defendant.

Complainant's Counsel opened and called *Albert Fletche Johnson*, sworn :

Question. You are the complainant in this case ?

Answer. Yes, sir.

30

Q. And you are in possession of the property as devisee under your father's will?

A. Yes, sir.

Q. You lived at home in your father's life time?

A. Yes, sir.

Q. And at the time he made the deed to Jaqui?

A. Yes, sir, I was present.

Q. How was the water carried at that time from the saw mill pond to the grist mill pond?

10 *A.* Well, it had an open flow from the dam of the saw mill pond, as it always had, and there was a small trough in the dam which started from that, and run along to the grist mill pond.

Q. This map annexed to your bill of complaint in this case shows how that was, does it.

A. Yes, sir.

Q. Was there ever any pressure on that trough—did it run under a head, or run as if it was an open trunk?

A. No head, no, sir; it ran into the open trough first.

20 *Q.* And from there into a little trough?

A. That was inclosed in the big trough.

Q. The board on top of the little trough was put on for what purpose?

A. To keep it from leaking, as with a pressure the water would be higher in the trough—in the pond trough—than it would be in the smaller trough, and of course it would run over if it was not tight, but then there was no great pressure on, as there was no head to it.

Q. Did it run on top of the ground or under it?

30 *A.* On top of the ground most of the way.

Q. Where did it run under ground first after leaving the cider mill trunk?

A. Well, about 10 feet I should think from the trunk, and it ran under ground for some 15 feet.

Q. Where your press house is now?

A. Yes, that is a short distance of it.

Q. How deep was it there below the surface?

A. About 1 foot or 6 inches.

Q. That was through where the press house stands now?

40 *A.* Yes, sir.

Q. After it left the press house, how did it go there ?

A. It went on top of the ground until it crossed the road.

Q. What road ?

A. The road that leads to the cider mill and house.

Q. The wagon way, as they call it ?

A. Yes, sir.

Q. And the wagon way runs from where to where ?

A. It leads to my house, my residence and to the cider mill. 10

Q. From where ?

A. From the public road.

Q. Then where it crossed the wagon way, how was it, above or under ground ?

A. Above ground

Q. What, where it crossed the wagon way ?

A. No, it was under ground.

Q. How much ?

A. It was just covered so that wagons would not disturb it. 20

Q. Just barely beneath the surface ?

A. Yes, sir, about six inches.

Q. Did it run square across the wagon way or diagonally ?

A. Well, there was a a turn there, it was rather diagonal.

Q. Well, it ran along in front of a cellar you had there ?

A. Yes, sir, all along on top of the ground there, clear to the other pond, with the exception of the road way there.

Q. How was it where you had to cross the main road in front of the grist mill pond ? 30

A. It run underground there, I think, for three or four feet—three feet, I think.

Q. You say that the water sometimes stood a little higher in the saw mill pond trunk than it did in this trough—how much higher ?

A. Well, the height of the trunk is about two feet, eight inches, when the trunk was full it would stand a little higher.

Q. How was this box put together, by anything more than nails ? 40

A. No, that is all.

Q. I mean the small trunk?

A. Yes, sir, it was just nailed together, and it had a strip of iron drawn through at the joints.

Q. This emptied into the pond—now how much higher was the end of it at the time your father sold this property to Mr. Jaqui?

A. Eight or ten feet, I think.

Q. The dam was afterwards raised by Jaqui—was it not,
10 the dam of the grist mill pond?

A. Yes, sir.

Q. How much did he raise it?

A. Three feet, four inches, or six inches, I am not positive which, but it was over three feet, he had raised it three feet.

Q. Well, he raised it three or four feet?

A. Yes, sir.

Q. Did he raise the dam of the grist mill pond so that the water flowed up into the mouth of the little trough?

20 A. I think not, no, sir, it never was up unless there was a freshet, then it might in a freshet.

Q. At this time, as matters now stand, how is the end of that little trough, with regard to the water in the grist mill pond?

A. It runs the same as it always did.

Q. But the end of it where it empties into the grist mill pond is still higher than the level of the water?

A. Yes, sir.

Q. Was there any other trough in there by which the
30 water was carried from the saw mill pond to the grist mill pond, or to the grist mill, except that which you have described and is shown on that map?

A. No, sir.

Q. Is any part of that trough still in existence?

A. Yes, sir.

Q. On the ground?

A. Yes, sir.

Q. Has any part of it been taken away?

A. Yes, sir.

40 Q. Who took it away?

A. Mr. Jaqui took the most away, I may have taken a portion of it.

Q. Did he ever disturb it so that the water could not run out?

A. No, sir.

Q. Did it ever run to any extent after your father sold the place?

A. No, sir.

Q. Did Jaqui ever make use of it to any extent?

A. No, sir.

Q. Is there any other convenient way for you to get up to your place except by this wagon way?

A. No, sir.

Q. There is a steep bank all along in front of your premises, so that it would be inconvenient to go up there except for this place at the wagon way?

A. Yes, sir.

Q. Now, sir, describe as near as you can the big trunk that carried the water from the saw mill dam out to the cider mill?

20

A. It was a square trunk, about sixteen inches or a foot high, which passed through the dam—that was an open trunk.

Q. About how deep?

A. Two and-a-half or three feet.

Q. About how wide?

A. I should think eighteen inches wide.

Q. Now, where it passed through the dam—right in the dam—how was it.

A. Well, it was square, at least a flat flume, about one 30 foot or one and-a-half feet wide.

Q. How deep?

A. About a foot.

Q. Covered up at the top?

A. Yes, sir.

Q. With plank?

A. Yes, above and below.

Q. What was on the upper end of that in the pond?

A. There was the end of plank, the same size as the flume.

40

- Q. Could the pond be drawn down to the bottom of that trunk or not ?
- A. No, sir—it could be drawn down to the top of this flume—the inside flume.
- Q. Has that been taken out lately ?
- A. Yes, sir.
- Q. Who took it out ?
- A. It was taken out four years ago I guess.
- Q. The flume itself ?
- 10 A. Yes, Jaqui took it out.
- Q. When ?
- A. This summer.
- Q. Did you save pieces of it ?
- A. I saved the ends, yes, sir.
- Q. Have you got them here ?
- A. Yes, sir.
- Q. Are these the ends, (producing same and showing to witness) ?
- A. Yes, sir.
- 20 Q. These two pieces are the sides of the flume that went on the big one ?
- A. Yes, sir, there were the sides which were boarded over across.
- Q. What was made in these grooves ?
- A. There were for planks sot in, the same thickness as this.
- Q. Who took that out ?
- A. I did, (witness explained how the flume used to be.)
- Q. You saw it at the time your father made it ?
- 30 A. No, I did not see it at that time.
- Q. Well how long after ?
- A. Some years after my father died, I knocked that off so as to let the water go down lower and to let the grass grow on the upper end of the pond.
- Q. The bottom of this covered flume which you have just been testifying about, was how much below the over-flow of the dam about ?
- A. I think it was four or five feet.
- Q. Ordinarily, what kind of a stream comes down
- 40 through that saw mill pond of yours ?

A. Well, this trough takes nearly one-half, all of it in ordinary times.

Q. The little covered trough ?

A. Yes, sir.

Q. How, did it compare in size with the main stream that drives the grist mill ?

A. It was not one-sixth part as large as the main stream.

Q. How far is it from your place that it rises ?

A. About a mile and a half, I think,

10

Q. Just up by the Asylum ?

A. Yes, sir.

Q. And the new Lunatic Asylum will be supplied with water from that stream ?

A. Yes, sir, they use the water now.

Q. And they take a good part of the stream away, don't they ?

A. Yes, sir.

Q. When the water used to flow in old times through this little square covered box, or trough, from the saw mill pond into the grist mill pond, how did it effect the water in the saw mill pond—used you to have it running all the time ?

A. It used to run all the time, and this pond kept about the same.

Q. Did it rise and fall suddenly—I mean the pond under the old usage ?

A. No, sir, it was hardly perceptible.

Q. There was no occasion, was there, under the old usage of it, for any sudden fluctuation in the height of the saw mill pond ?

A. No, sir, you could not draw it off suddenly through this trough.

Q. Now, sir, what kind of a trunk is this that Mr. Jaqui proposes to put in now ?

A. A large round trunk.

Q. About how large in diameter ?

A. Eighteen inches, I suppose.

Q. And where does this lead to ?

A. He dug a trench to put it down directly to his mill. 40

Q. Do you know what his intentions are in that respect?

A. I know what it seems, and what he says.

Q. Well, what did you hear him say about it?

A. He told me he was going to make a direct application of it to his mill.

Q. Whereabouts is this round trunk inserted into the saw mill pond?

A. It is inserted at the part of the pond where my flume was.

10 *Q.* He took out the square flume?

A. Yes, sir, my cider mill flume.

Q. And put this in the same place?

A. Yes, sir.

Q. The bottom of the inside of this trunk that is now put in, or was put in when the injunction was served—how is that as to height, as compared with the bottom of the old flume, pieces of which you have produced here?

A. Well, it is too low; I believe that is about an inch above the old flume; the thickness of the plank that the
20 flume was made of, above the old flume, the bottom of it, and the new—

[Interrupted.]

Q. Does it correspond with the bottom or top of the old flume?

A. With the bottom, within an inch.

Q. If he should draw the pond out as low as he could with that new trunk, would that draw it down lower than
30 it could be drawn down at the time your father sold to him?

A. It would draw it down lower by the depth of the old flume.

Q. How deep is that?

A. Fourteen or thirteen inches.

Q. If that big trunk that he has got there was in use—how long would it take to draw that pond out—to draw the water out in using it on the grist mill, or on any other power?

A. I don't know, but that flume would carry it all out
40 in an hour or two, if it was left open.

Q. The trunk he has put in would carry the water all out in an hour or two, beyond what it would when it was run in it at an ordinary time?

A. Well, at the present time it would take two weeks to fill the pond up, and more too.

Q. How deep is he digging to put in this new flume?

A. Well, in some places deeper than others, as he was obliged to go down lower.

Q. Right where this trunk is now put down, the line of it is shown on the map annexed to your bill here—is that 10 shown as near as you can tell correctly—do the dotted lines on your map show where the new trunk is to go?

A. Yes, sir.

Q. How does it correspond with your wagon way up here?

A. Well, it goes right under the wagon way.

Q. Does it run across or over lengthways of it?

A. Both lengthwise and across the wagon way.

Q. Where he is laying it through the wagon way—how 20 deep has he dug?

A. About eight feet.

Q. Had he got dug the depth, which according to your supposition, he wanted to dig to let his pipe, when you served the injunction?

A. No, sir.

Q. Well, can you tell from the bank whether it is necessary for him to go down further?

A. I suppose in some places he would have to go fifteen feet where he crosses the road.

Q. This round trunk that he is putting down is hooped 30 with iron?

A. Yes, sir.

Q. And made, you understand to stand pressure?

A. Yes, sir.

Q. To be used under a head?

A. Yes, sir.

Q. Is it made, according to your understanding of the mill wright business, to be used under a head or pressure?

A. Yes, sir.

Q. What had you to do with the laying of the public 40 road along there?

- A. I had nothing to do with it.
- Q. You signed the application?
- A. Yes, sir, out of consideration as I was asked to.
- Q. Who asked you to?
- A. Mr. Headley and Mr. Gray.
- Q. Did you know they were going to disturb the land in front of your house—to disturb this water trough at that time?
- A. No, sir.
- 10 Q. Did you interfere with the surveyors when they were on the ground there, with regard to the line laid along by the Jaqui mill?
- A. No, sir.
- Q. Was Jaqui there when the road was laid?
- A. Yes, sir.
- Q. And when the surveyors were present?
- A. Yes, sir, down by his mill.
- Q. How was the road by Jaqui's before the surveyors laid it—how wide was it right by the mill?
- 20 A. About three wagons.
- Q. Do you know whether Jaqui complained about its being too narrow for use, or not—do you know whether he desired it widened, or not?
- A. Yes, sir, he desired it widened.
- Q. Well, who did widen it?
- A. He did, I guess.
- Q. If any new road was laid—who did the work of widening it?
- A. Jaqui.
- 30 Q. Where Mr. Jaqui has dug for his trough—what is the nature of the ground?
- A. Very rocky.
- Q. Almost solid?
- A. It is when you get down deep.
- Q. Was he digging in solid rock?
- A. Yes, sir, he used drills for splitting the rock, but I don't know whether he put any blasts in there, or not.
- Q. You say he took away almost all the old trough—where was that?
- 40 A. Near the press house.

Q. Since your father's death you have built a new press house?

A. Yes, sir.

Q. Did you excavate a little for a foundation?

A. Yes, sir.

Q. And there you found the remains of this old trough?

A. A little of it had rotted away.

Q. Was it in serviceable use when you dug it up?

A. No, sir, and it had not been for years.

Q. It had fallen entirely into disuse?

A. Yes, sir. 10

Q. Is there any difficulty in lying that trough through your press house now?

A. No, sir.

Q. Is there any objection to its being laid there on your part?

A. No, sir.

Q. What will be the effect of filling up that little saw mill pond and then drawing it out suddenly—will it be pleasant to you to have that done? 20

A. No, sir, it will be very unpleasant, we shall have a stench there all the summer.

Q. There is grass grows there?

A. Yes, sir, it is muddy, low ground, the washings and settlings of years.

Q. If the water was drawn out and the sun shines on it in the summer time—what will be the effect?

A. It would be very unhealthy—it would be a public nuisance to the whole neighborhood.

Q. Did that thing occur under the old way of using it? 30

A. No, sir, not at all.

Q. The other either kept it full or empty?

A. Yes, sir.

By the Vice-Chancellor :

Q. Do you occupy the new dwelling house or the old?

A. The new.

Q. Who occupies the old?

A. It is rented of me, it belongs to me. 40

Further examined :

Q. You own all the property there ?

A. Yes, sir.

By the Vice-Chancellor :

Q. How near is the new dwelling house to the saw mill pond ?

10 *A.* Twenty-eight feet.

Cross-examined :

Q. Where were you living in January, 1864, at time your father conveyed this property to Mr. Jaqui ?

A. In the old building with my father.

Q. And you had lived there most of your time previously, I suppose ?

A. Well, for a few years.

20 *Q.* How long had that saw mill pond been there, or how long has it been a pond where the saw mill pond now is ?

A. There has always been a pond there.

Q. Since you can remember ?

A. Yes, sir.

Q. And it was there at your first recollection ?

A. Yes, sir, but the original was raised.

Q. When was it raised to its present height ?

30 *A.* Well, some—I don't know, I was away from home at the time, I suppose ; it never was raised to its present height, the way it is now, it is higher than it ever was.

Q. It was put up to near its present height before your father sold it ?

A. Yes, sir, a good many years before.

Q. How much was it raised the last time during your father's ownership of it—how much was put on to it ?

A. I think, two and a half feet.

Q. Was it not four and a half feet ?

A. No, sir, I think not.

40 *Q.* Who was the miller there at that time ?

A. Henry Johnson, I guess, had the mill at that time?

Q. You are sure of that?

A. Yes, sir, I am not sure because I have not been home always.

Q. When was this trunk put in that was there when your father sold to Jaqui?

A. I recollect that I was home at that time, Mr. Leonard put it in.

Q. How long ago, as near as you can tell?

A. I could not tell you.

10

Q. Give in the best notion you can?

A. I am not good at dates, but I can recollect when it was put in.

Q. That is what I am speaking about, when was that put in?

A. I think it was twenty years ago,—twenty-five perhaps, or may be more.

Q. And you say that the pond end of that trunk was so fastened that the water should go into the trunk and run over the top of it, and when it sunk down so that the water would not run over the top of it, it stopped running out of the pond?

A. Yes, sir.

Q. Well then the pond was kept full most of the time?

A. It was kept up to the top of this old flume.

Q. That was how far—the top of that was how far below the top of the tumble of the dam, when it was put in there?

A. I don't know,—about four or five feet.

Q. How deep was the water in the pond when it got just level with the top of that trunk, about?

A. The water varied very much, in some places it was fifteen feet and in some places only three or four feet.

Q. You spoke about cutting grass at the head of the pond when you first began to go there?

A. You could always cut grass there, sometimes you can down lower on the pond than at this place.

Q. When you had this trunk in you could not cut the grass where you had been cutting it lately, could you?

A. Well no, not cut it so far down, and I took the end

40

out to let the grass grow further down the pond.

Q. When did you take the end out?

A. In 1869 I think it was, when I fixed my press.

Q. Was it in 1869?

A. Somewhere in that time, either 1869 or 1870.

Q. And it had been in that condition up to that time?

A. Yes, sir.

Q. Well, up to that time Jaqui had been taking water from that pond, had he not, from the saw mill pond?

10 *A.* No, sir, he had not?

Q. Are you sure of that?

A. Yes, sir.

Q. Did he not use it four or five years after he got his deed, every year and every month of the year, the water from that saw mill pond?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir, about the time, he might have used it six months to a year after, but a very short time after he got
20 his deed, it leaked all the way.

Q. You had rebuilt the smaller and longer part of that trunk shortly before the deed was made to Jaqui, or your father had?

A. No, sir.

Q. Had it not rebuilt in the year 1862?

A. Never did.

Q. Re-made it then?

A. Never re-made it.

Q. Are you sure of that?

30 *A.* Yes, sir.

Q. It had been there since twenty years or more prior to this time?

A. Twenty years? oh no, a few years.

Q. The trunk which was there, what you call the smaller trunk, how long had that been there, the same boards and the same material before the deed was made to Jaqui?

A. Well, I don't know how long, six or eight years I presume.

40 *Q.* Do you think it was so long as that?

A. I don't know how long it was.

Q. Who did the work when it was last made,—I am speaking of this smaller trunk now?

A. I never knew it had been made but once.

Q. Who did the work then?

A. I don't know, I did not employ him.

Q. You did not see it done?

A. No, sir.

Q. These you say were the sides, (alluding to pieces of board before referred to,) which was the bottom, this or 10 this?

A. This, (the one with pin hole in,) is the top.

Q. This was the end in the up stream side of the pond?

A. Yes, sir.

Q. What was on top here?

A. There was one plank on top.

Q. Spiked fast?

A. Yes, sir.

Q. And stopped at the lower side of these grooves, did it not?

A. I don't know,—oh, the plank?—the plank was on top, the opening was between the slide gate and here. 20

Q. I understand you, that you had plank on top like this?

A. Yes, sir, one plank on top, this came out three or four feet from where the gate was.

Q. These were the ends of the trunk, did the plank on top stop at these grooves, or was it continued up to end?

A. I don't know, there was one plank here at the end.

Q. How far from the upper end, did it stop here, or go 30 on up to there, (counsel pointed to plank produced by witness)?

A. I could not tell.

Q. Was there a gate sliding in these grooves?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Was there not a gate sliding up and down this groove when Jaqui bought that property?

A. Never.

Q. Did not every man who attended to that mill, when he went, turn the water on or off?

A. There was a gate three feet from that.

Q. What were these grooves for?

A. To allow the plank to set in there, there was one board over the top.

Q. Were they fast?

A. Yes, nailed fast, you can see where they were nailed in—the gate was at the dam.

10 *Q.* I understand you, that no water could get in it but what run over here?

A. That was the way, it did run over.

Q. Where was that gate?

A. The gate was about two and-a-half feet from the end of this, three feet.

Q. And up to the year 1869, there was no water went into the flume, except what run over the top here?

A. No, sir.

20 *Q.* And when you hoisted that gate, it naturally let the water in that ran over the top?

A. Yes, sir.

Q. Who helped you dig this up?

A. I don't know that any one helped me.

Q. Did you say anything about Jaqui helping you dig it out?

A. I did not know that I did, Mr. Jaqui never used this gate, his gate was down in my flume.

Q. About how far from the end was the gate he used?

30 *A.* About four feet from my gate, where I get the water down to my water wheel.

Q. Was there not a gate nearer the pond, that he used?

A. No, sir, he used that gate.

Q. There was not one nearer the pond?

A. No, sir.

Q. The gate he used was how far from the pond?

A. It came out of my flume.

Q. About how many feet was that from the dam?

A. About forty or fifty feet.

40 *Q.* You cannot mow that land of yours unless the pond is dry down to the bottom of this flume, can you?

A. I don't mow it when it is full of water.

Q. You have said repeatedly that the reason you did not want Jaqui to have this pond full, was because you could not mow that land there?

A. No, sir, I never said so—he put a gate in here a short time ago, and I took it out.

Q. The reason you gave for taking it out, was, that it would interfere with the grass at the head of the pond?

A. No, sir, it was because he had no right to that gate at all.

Q. Was not the reason you assigned, was, that you could not mow that grass when the pond was full? 10

A. I might have said so, that I could not mow.

Q. Did you not say that that was the reason?

Complainant's counsel objected.

Defendant's counsel wished to show the complainant complained of the water being drawn off, and yet insisted upon its being kept empty.

20

Complainant's counsel held that such testimony was not relevant to the question involved in the suit.

The Vice-Chancellor over-ruled the question.

Q. You say this new trunk would draw the pond out in a couple of hours.

A. Well, I don't know, but I think so.

Q. And it would not before draw it down from this pond from 1869 to the present time? 30

A. Well, it remained low to the present time and grass has been growing.

Q. It could not get lower than that?

A. No, sir.

Q. Have you suffered in health or comfort?

A. No, sir, we would not while grass was growing there.

Q. So that if you are deprived of the water and yet have the grass growing, you are not hurt?

A. As this is—as the grass is growing there—it is all right. 40

Q. The mischief is the filling of the thirteen inches of shore?

A. On the bed of three or four acres.

Q. Suppose the pond was filled in so that it would be running highly over the tumble, you mean that then it would draw the water down to the bottom of the trunk in two or three hours—is that what you mean?

A. Yes, sir.

Q. How do you get at that?

10 *A.* From the size of the present stream that runs in there, and the size of the stream that runs out.

Q. You assume that both ends of that trunk will be left wide open?

A. Yes, sir.

Q. What kind of gate are they going to have in the end of that trunk to let the water on to the wheel—what is the size of the aperture there?

A. It would depend upon his wheel how much power he would derive.

20 *Q.* Do you know anything about the size of the wheel and the size of the aperture?

A. I don't know.

Q. Then you give it as your opinion that if both ends of the trunk were left open the water would run out in two or three hours?

A. Yes, sir.

Q. If there was a small aperture there, a foot in height and ten or eleven inches long, how long will it take then—have you any idea about that?

30 *A.* I have ideas, but I am not a practical machinist or mechanic.

Q. Would it not take four or five days if you did not put in a drop of water there in the pond?

A. No, sir, it would not—it would not take a day.

Q. How much more water would be discharged through an opening of that sort than there would be in the natural stream there?

A. The natural stream in the summer time was low.

Q. What is the size of the natural stream?

40 *A.* Four inches, I guess.

Q. Deep?

A. Square.

By the Vice-Chancellor :

Q. The stream that supplies the pond?

A. Yes, sir, at present it is about four inches square.

Further Cross Examined :

10

Q. Did you ever measure that stream just above the commencement of the backwater?

A. I have.

Q. When?

A. Years ago—a year or two ago.

Q. What was the size of it then?

A. Four inches square, I suppose.

Q. What do you mean by that—do you mean that it was only four inches wide—the bed of the brook?

A. I mean that a four inch pipe at present will take 20 all the water that runs in, a four inch round pipe would take it.

Q. You cannot give us any figures of that measurement?

A. I have no figures, no, sir; I know the stream is not more than one-fourth what it was before the Asylum took it; there is not much stream there except what rises up on my land.

Re-examined.

30

(Direct.)

Q. When that pond is drawn down as low as you can draw it, to the bottom of that old flume—how deep. is it just above the dam, about?

A. Well, it runs about from four to six feet right straight from the dam in its deepest places, and then it goes off gradually.

Q. How much more land does it flow over when it is 40

full to the top, than it does when it is down to the bottom of the flume?

A. About four times as much, sir.

Q. How many acres do you think it flows over more when it is full, than when it is down at the bottom of the flume?

A. About three acres.

Q. And that land that is flowed over is right near your dwelling house?

10 *A.* Yes, sir.

Q. And has had grass growing on it last summer?

A. Yes, sir.

Q. And had grass growing on it at the time you tore the permanent end out of the old flume?

A. Yes, sir.

Q. Then, as I understand you, at the time you tore the permanent end out of the old flume, the water had not been running to the grist mill pond for a long time?

A. No, sir.

20 *Q.* And you had no occasion to use your mill except in the fall of the year for your cider mill after the grass was gathered?

A. Yes, sir.

Q. And so you tore that out to let the water down lower and so get the benefit of your grass?

A. Yes, sir.

Q. These nails that appear in this wood, were in there when you tore that out, were they?

A. Yes, sir.

30 *Q.* And they used to hold the pieces in, that you took out?

A. Yes, sir.

Q. What means did you use to get those pieces out?

A. An iron crow bar.

Q. How far from the end of these two planks now shown was it, that the water actually ran into this flume and so on out to the machinery.

A. I suppose two and-a-half feet, when the water ran in here, from the gate head out towards the end here, of
40 this.

Q. There was an aperture to let the water in ?

A. Yes, sir, just by the gate ?

Q. And this head gate was near the stone work of the dam ?

A. Yes, sir.

Q. That head gate went right across these planks ?

A. Yes, sir.

Q. And these planks, these ends of them then were sawed off by whom ?

A. I sawed them off to bring here this morning. 10

Q. The gate way don't show on these planks ?

A. No, sir,

Complainant's counsel also called *J. Frank Johnson*, sworn :

Q. You are a surveyor and civil engineer ?

A. Yes, sir.

Q. Did you make the map annexed to the complainant's bill, now shown ? 20

A. Yes, sir.

Q. From actual measurement ?

A. Yes, sir.

Q. And are you certain the figures you have put down here are correct ?

A. Yes, sir.

Q. Do you know what is the difference in height, between the old saw mill pond and the grist mill pond ?

A. No, sir, I do not, I did take it at one time.

Q. Do you know what the difference in height is between the saw mill pond and the tail race of the grist mill pond ? 30

A. I don't remember, I think about thirty feet.

Q. Then the new proposed trunk of Mr. Jaqui's, would subject to a head of about thirty feet pressure ?

A. I suppose it would be near that.

Q. You made a survey for Mr. Jaqui, did you, of the place to put this proposed new trunk, and this is laid down, (alluding to map) in accordance with that ?

A. Yes, sir. 40

Q. Do you know how deep that trunk must be laid?

A. The only place I tried was where it crosses the road.

Q. How deep was it there?

A. Five feet.

Q. You don't know how deep they did actually make it?

A. No, sir, I do not.

Q. Generally this map is correct, and made from survey?

A. It is all correct, that road shows the road just as it was traveled.

Q. The line of the present road, as marked on this complainant's map, on the opposite side from Mr. Jaqui's grist mill, is a very high, perpendicular bank, cut in almost solid rock?

A. Yes, sir, not solid rock, it can be picked out.

Q. Do you know how high that is now, that perpendicular wall there?

A. I don't know, but I suppose from sixteen to eighteen feet.

Q. Well, this has been made very straight there, as your map shows?

A. Yes, sir, it is about straight along there, I took that more as the road is travelled to day.

Q. This line as it is actually, as it is now is very steep, almost like the side of a house, and from ten to fifteen feet high?

A. Yes, sir.

30 Cross-examined.

Q. You made both of these maps, the one annexed to the answer, and one with the bill?

A. Yes, sir, the originals.

Q. And on the complainant's map you marked the road as you found it in use?

A. Yes, sir.

Q. On the other one, you located the lines as contained in the return of the road laid out some three or four years ago?

40

A. Yes, sir.

Q. Just tell the Vice-Chancellor how far you have correctly located the lines of that newly laid out road, or whether they are correct?

A. They are correct in the map of Jaqui.

Q. How did you get the points to locate it?

A. I got them from the County Clerk's office.

Q. Did you find the monuments referred to?

A. Yes, sir, and I located it from the tree, that is spoken of, the trunk there, just on the bank of Jaqui's pond, and 10 from what used to be called the lower corner of the mill, it is the lower corner of the old mill, it measured twenty-five feet from that, from the centre.

Q. You found marks sufficient to give you confidence in the location?

A. Yes, sir.

Q. Had you surveyed previous to when you made this map?

A. Yes, sir.

Re-Examined.

20

(Direct.)

Q. What sort of excavation would be necessary in order to put that road to its full width?

A. There will be ten feet of earth to be dug out of this bank in the top, about ten feet, and it would be about twenty-two feet high, or from sixteen to twenty-two feet, of course that is not the whole length of the road, I should 30 suppose that would be one hundred and fifty feet.

Q. Then it amounts to this, if the road master ever attempts to do that, he will have to take an average of ten feet in width and twenty feet in depth, and about one hundred feet long?

A. Yes, sir.

Q. In depth will be about twenty feet?

A. I should say so, or twenty feet would run one-half the distance.

Q. From ten to twenty feet?

40

A. Yes, sir.

Q. And the most of it is pretty nearly solid rock?

A. It is not solid rock, it is such rock as can be picked out, but not shoveled out.

Q. Small rock, soft enough to be picked by patient work?

A. Yes, sir.

Re-Cross-Examined.

10

Q. How many cubic yards of excavation are there there?

A. I have not measured it.

Q. You have not data enough to give it correctly?

A. I have no data at all for that, what I have been giving here is mere guess work, I have not measured it all.

Re-Examined.

(Direct.)

20

Q. Does it not include the whole road, the excavation, and what is left merely amounts to side walk?

A. It would be just the side walk, yes, sir.

Complainant's counsel also called *Nehemiah H. Johnson*, sworn :

Q. How old are you?

A. Fifty-six.

30 Q. You are the oldest son of Charles Johnson, deceased?

A. There is one older.

Q. You are a brother of the complainant?

A. Yes, sir.

Q. You have been familiar with the premises in question, all your lifetime?

A. Yes, sir, I lived there all my life, or the most of my life.

40 Q. What was the condition of the old trough at the time that your father made the deed to you and Jaqui—the trough that led the water from the saw mill trunk to the grist mill pond?

A. It was for a short distance, down toward the cider mill, an open trunk, I should judge it was about two and-a-half feet high, and eighteen inches wide, that would not be far from correct—from there it was in a close trunk, probably eight inches by ten inches.

Q. What was the condition of the closed trunk as to age and usefulness?

A. I cannot tell exactly, I put in that trunk myself, but I cannot tell exactly how long it had been in, I should judge, perhaps three or four years.

Q. The little one?

10

A. Yes, sir.

Q. How long was it in use and how long did the water run from the saw mill pond to the grist mill pond, after the deed was made to you and Jaqui?

A. Well, a very short time, I don't know how long, but it was not over a year, possibly it may be more, but I think it was not over a year.

Q. From that time on, it did not run at all?

A. No, sir, for a long time it has not run.

20

Q. How was it as to the surface of the ground, being above or below it, commencing at the junction with the open trunk?

A. Well, for a short distance it was under ground, not a great many feet, perhaps fifteen or twenty feet, then it ran a little ways out of the ground, six feet if I recollect right, then it crossed the road which led to my brothers house and there it was under ground sufficient to drive over, and perhaps a little more, it was under ground from six inches to two feet, hardly 2 feet, but it may be that.

30

Q. For how long a distance?

A. I should judge fifteen feet.

Q. Then from there was it above or below ground, and for how far?

A. It was above ground I think until you come to the road leading over to the mill dam, and then it went under the road.

Q. How high was the end of it above the level of the water in the pond?

A. I don't know exactly, but quite a distance.

40

Q. Since the grist mill pond has been raised does it flow up to the old trough?

A. I have not looked, and I don't know how that is.

Q. Give us your recollection?

A. I should think it would go there, but Jaqui's dam, his flow was five and-a-half inches more than he has a right to.

Q. My question is this, whether there is any difference in the running of the water, round from the saw mill pond into the grist mill pond?

A. I think there is no difference.

Q. Was that box or trough that you made and put down, so made as to stand pressure of water running under a head?

A. No, sir.

Q. Was it what we call a tight box?

A. It was a tight box, but not designed for pressure—not made to contain water under a pressure.

Q. Did you ever put any pressure on it?

A. Not a great deal.

Q. That box was about eight inches square on the inside was it?

A. About that.

Q. In ordinary times of the water—low water, would that take all the stream?

A. Yes, and more when it was low.

Q. How did you use to use it, Mr. Johnson—steadily?

A. We run all the time.

Q. Did the use of it under the old circumstances have the effect of making any fluctuation in the water in the saw mill pond—did it raise and lower it suddenly?

A. No, sir, very slowly.

Q. If the saw mill pond was filled up by a freshet or rain and then there came a dry spell after it, this would draw it all out gradually, I suppose, in the course of time?

A. Yes, sir.

Q. Well, how long would it take?

A. I don't know I never saw it clear down, not by our use, but it may have been so.

Q. You have no recollection of it ever being drawn out by your use of it, into the grist mill pond?

A. No, sir, but it may have been in a few cases, but not to my recollection now.

Q. You could draw the saw mill pond out by opening the gates to the cider mill?

A. Yes, sir.

Q. Would that draw it out very quick?

A. I suppose so; I never paid any particular attention to it.

Q. How much of a stream is there in the saw mill pond?

10

A. The stream is small, and I think it is smaller now than it was.

Q. Do you think its use by the Asylum has taken any?

A. I think before that even it was less.

Q. The result of cultivation?

A. That is what I thought; I think the stream is much lighter than it was when I was engaged in business there.

Q. Is it sufficient of itself to drive steadily the grist mill?

A. Not steadily.

20

Q. Under a foot head, suppose you had a foot head—how big a hole would it run through?

A. I think that at such times as the present, I think it is under a foot; I think four inches would take out the water without any difficulty; that is my impression.

Q. Judging from your knowledge of your stream all your life time?

A. Yes, sir.

Q. You have been a miller, and a sort of half mill wright?

30

A. No, sir; but I am a miller.

Q. You have run a saw mill and a grist mill?

A. Yes, sir.

Q. With the exception of under a very high head, can you tell whether a stream of that kind is sufficient to run a stone steadily—you say it is not?

A. No, sir.

Q. Could you make any beneficial use of that saw mill pond by itself, by direct application, without running it into the grist mill pond—is there enough there to run a mill steadily, or run any piece of machinery steadily?

40

A. It would depend upon the kind of machinery.

Q. Well, to run stones?

A. I should not think so.

Q. The result would be that you would have to let the pond fill up and then draw it down, and then let the machinery stand while the pond filled up again, and then draw it down?

A. Yes, to supply the mill you would have to let it stand I presume; it would have to be supplied in that way as you say.

10 *Q.* Now, that trunk that they have got there—what is the size of that?

A. I have not examined it, but I should judge it was from eighteen to twenty inches in diameter—not less than that.

Q. Under thirty feet head—how much higher is the level of the water in the saw mill pond than the level of the tail race of the grist mill?

A. Thirty feet, I think.

20 *Q.* How much head and fall is there to the grist mill pond?

A. That would be over thirty feet, the way it is supplied to the wheel or tail race.

Q. Do you know how much the head and fall is to the grist mill pond?

A. About twenty feet it used to be.

Q. Then this you think is about thirty feet?

A. Yes, sir.

30 *Q.* Now, sir, take that trunk that they have got there, and apply it directly to the running of stone or any other such machinery, and fill the pond full, and then how long will it take to draw it out?

A. It would take quite a while—some days.

Q. How long would it take to fill that pond up if it was all drawn out, and that stream was running ordinarily?

A. Well, in dry times with the summer water, I suppose it might take a fortnight, and sometimes more than that.

Q. Well, it would draw it out much quicker than it would run out?

40 *A.* It would draw it out in a few hours with a trunk of that kind.

Q. The trunk, if open, without machinery, it would draw it out in a few hours ?

A. Yes, sir.

Q. But running machinery with it, it would take longer ?

A. Yes, sir.

Q. Those round trunks—can they be made absolutely tight ?

A. I should not like to say much about that.

Q. Do they last for ever ?

A. No, sir.

Q. Do they decay after a while ?

A. Yes, sir, especially under ground.

10

Q. When they begin to decay and fall to pieces, won't they begin to leak ?

A. They will begin to leak.

Q. If one of those trunks ran along under the road, or under any other place with a head averaging from one to thirty feet of water in it—when it begins to decay and leak, what will be the effect upon the earth, &c. there ?

A. I should think it would make it muddy.

20

Q. Would it leak any the less on account of there being a pressure of ten or fifteen feet head ?

A. It would make it leak a great deal more.

Q. Suppose that trunk should burst under a head of ten or fifteen feet of water, what would be the effect on the earth round that ?

A. It would overflow a place of about thirty feet or so.

Q. Just give us your recollection as to how the water was taken out of the old pond, as the trunk was when your father died ?

30

A. According to my recollection the trunk run out into the pond, and then it was fastened up at the end, and the water run over the top ; the water so far as I recollect when we used it, always run over the top of this ; we did not draw it down to the bottom, but it was made so as to run over the top ; we could not draw it below the top.

By the Vice-Chancellor :

Q. Is your recollection on that point clear and distinct ? 40

A. I think it is—it was so when this was made, and I don't know of any alteration.

Further examined :

Q. Do you recognize these two pieces of plank now shown you?

A. No, sir, but they look like the plank we had in there.

10 Q. You did not see them taken out?

A. No, sir.

Q. Where was the gate that let the water into the old trunk, according to your recollection?

A. Well, we were experimenting, my brother and myself, about that, and I think we had the gate right on the end at one time, and I think finally we took it away.

Q. Were these grooves in the end here used for a gate or not?

A. No, sir.

20 Q. Where did you finally have the gate to draw the water out of the box?

A. My recollection is that it was always used in that way with a kind of a gate on top, at all events that was boarded up at the end, and the water always run over the top.

Cross-examined.

30 Q. You recollect a good deal of the trunk you have just been speaking of?

A. Yes, sir.

Q. About how long ago was it done?

A. I should say that it had been done; I should guess fifteen years, but I have got no data to go by.

Q. Do you mean fifteen years before you and Mr. Jaqui got the deed from your father, or fifteen years from the present time?

A. No, fifteen years ago now, or it may be more.

40 Q. You speak about the what I call the smaller trunk—the long one—being put in, as you thought, three or four years before Mr. Jaqui got the deed?

A. Yes, sir, that small trunk has never been put in but once, and I think, these (alluding to pieces of plank) were not put in at the same time; I think they were put in before.

Q. Do you recollect what mechanic did the work?

A. I do not.

Q. Do you recollect what mechanic did the work of making that small trunk?

A. It has passed by my recollection, and I cannot state.

Q. When did you first begin to carry the water from the saw mill pond into the grist mill pond?

A. As near as I can recollect it, was three or four years before Jaqui and I bought that place from my father. 10

Q. That was the first of it?

A. Yes, sir.

Q. You never used the water from the saw mill pond for the grist mill pond before that time?

A. No, sir, never.

Q. It had served for the grist mill and cider mill as the case may be, and then entered the stream below?

A. No, it entered the small trunk then.

Q. The only use you made of it was to drive the work that might be about where the present cider mill is? 20

A. Yes, sir.

Q. Was there contributed enough to the grist mill power previous to the putting up of the small trunk?

A. No, sir.

Q. Why do you think it was three or four years before the deed was made to Jaqui, that you commenced to carry the water from the saw mill to the grist mill pond?

A. I think I used it about that time for the grist mill. 30

Q. Were you using the mill as a tenant of your father, before the deed was made to you and Jaqui?

A. Yes, sir, it was understood between us.

Q. About how far from the face of the saw mill did the old trunk go below the surface of the ground—where did it begin, about how far from the saw mill pond—the large trunk I mean?

A. The large trunk never went into the ground at all, except where it went through the dam.

Q. Then the small trunk went into the ground where-
abouts? 40

- A. Pretty shortly after leaving the large trunk.
- Q. And continued under ground until it got past where the cider mill is, did it not?
- A. I think so.
- Q. And then it continued under ground until it got to the road?
- A. No, I think there was a small space there open.
- Q. Are you clear on that?
- A. I think so, it may have been covered up at some
- 10 time, I think perhaps it was afterward.
- Q. It was beneath the surface where it crossed the wagon way?
- A. Yes, sir.
- Q. How deep?
- A. I should say six inches to two feet, in different places.
- Q. The length of that ditch you cannot tell with any accuracy now?
- A. No, sir.
- 20 Q. How was that small trunk made?
- A. Just exactly as the other.
- Q. How wide were the boards?
- A. Not very close together.
- Q. About how close?
- A. I cannot remember that, I am sure there was hoops on it.
- Q. Can you state whether it was hoops or bands?
- A. I am not clear whether it was hoops or grips—I think it was hoops.
- 30 Q. Was it caulked with tow?
- A. I think we put on that white lead.
- Q. How do you remember when the property was sold to Jaqui, of his being told that it had been there two years at that time?
- A. It might be so—I said three or four years.
- Q. It is the recollection of some distance of time afterwards?
- A. I told you I could not tell exactly—I mean it had
- 40 mill, that is what I mean by the small trunk.

Q. You remained there as part owner of the mill for two years after Mr. Jaqui and you bought it?

A. Yes, sir.

Q. I see the deed which conveys to you and Jaqui, is dated January 1864, and your deed to (Willison) is dated six of April 1866, being about two years and nearly three months?

A. Yes, sir.

Q. After you parted with your interest in the property, did you have anything further to do with the use of the mill or anything? 10

A. No, sir.

Q. Who was the miller for you and Jaqui, when you and he first began business there together?

A. I think we had a German—yes, the first miller we had was a German, his name has past my mind.

Q. Who did you have after that?

A. After that we had Mr. Thompson for a short time.

Q. What time did he come?

A. He was there when I sold out to Mr. Willison. 20

Q. Did not Mr. Thompson come there in the spring after you and Jaqui went?

A. I cannot tell, I remember very well we had a German during the first part of our term there.

Q. You said you thought you and your brother had an experiment with the gate here?

A. My brother Henry is more of a mechanic than I am, and he can explain it to you better than I.

Q. You have tried it?

A. Oh, for quite a while, but I don't know whether we kept on trying it or not, I think it was changed a little. 30

Q. Can you tell when the boards were removed from there, assuming they were there?

A. I could not.

Q. Can you say whether that was there when you and Jaqui got the care?

A. I suppose so.

Q. But you don't know?

A. I think I can remember now.

Q. After you and Jaqui became the owners of that 40

property, did this small trunk that I am speaking about, ever leak any?

A. Yes, sir.

Q. Was it a small leak or pretty bad?

A. I don't remember that we had any difficulty with that.

Q. Did not dirt get washed into the box where it went under the highway there, and it was knocked and made to leak?

10 A. No, sir.

Q. Where was the leak?

A. At various places along.

Q. When you sold out to Mr. Willison, was the water running from the saw mill pond into the grist mill pond by that small trunk?

A. I cannot say, but I presume it was.

Complainant's counsel also called *Charles H. Johnson*, sworn:

20

Q. You are a brother of the complainant?

A. Yes, sir.

Q. How old are you?

A. Fifty years.

Q. You always lived in the neighborhood of this place in question?

A. Yes, sir, I may have been away two or three years.

Q. You live there now?

A. Yes, sir.

30 Q. Do you recollect how the old flume was constructed, that carried the water out of the saw mill pond down to the cider mill, and from there through the small trunk into the grist mill pond?

A. Yes, sir.

Q. Just state slowly, I want to know how low you could draw the water down?

A. I used to attend the saw mill, and I helped build one or two trunks that have been put in there, but this trunk I did not have the building of, my brother thought
40 I had the building of it but I did not, it was the time after

that, when he was using the mill he had a miller who helped him build it; the trunk I believe was a round trunk, similar to the one Jaqui is building now, with the exception of its not being so large, and in that trunk we had a gate that slid up and down, on the pond side; on the lower side we had a plank gate, four inches thick, turned by iron rods attached to the gate and the saw mill gate, so that when we hoisted the saw mill gate it opened the other gate, and when we shut the saw mill gate it shut the other. The pond at that time was 10 four feet higher than the flume, then we raised the dam and put in that flume, three or four feet. This trunk that I am speaking of, rotted away and became useless, and then Nehemiah and a man with him put in this square trunk, and they put in a gate right on top here, and shut it up at the end, and the gate they put on top was something similar to a churn staff.

Q. How low under that arrangement could you draw the water down?

A. The water had to run over the top of this, and I 20 think the plank was still higher than this; the plank ran across the flume all along on top of the dam, and I think the thickness of the plank was two inches, and above this the water run over; the gate that shut down on the plank was nailed across the flume.

Q. At that time the water could not get down as low as the top of the sides of the flume by two inches?

A. Yes, sir, that is my impression.

Q. Did that arrangement continue or was it altered?

A. That was altered, it was found that when that gate 30 was raised there was too much suction, so that gate was taken out, and a gate made to slide down in front of the breast work.

Q. How far from the end of the trunk?

A. I should think it extended from there in the neighborhood of two feet, or perhaps a little more or less.

Q. The gate you made was about two feet from the end of the flume?

A. From the end of this trunk—well, I think the gate was not quite as far as that; it might have been eighteen 40 inches, it was a little ways from the breast work.

Q. In using that last gate, or the new gate—how low could you draw the water down in the pond?

A. While the fastening remained in the gate it could not be drawn down any lower than it was before, that is, to the top of the flume.

Q. Well, the end was made tight with a plank, I understand you, across?

A. Yes, sir.

Q. Were there grooves along that plank similar to those
10 in that plank there, (alluding to grooves in plank produced by complainant)?

A. I was not there when they were made, but I presume there was.

Q. And it was a firm piece of structure?

A. Yes, sir, permanent.

Q. And while that was there the water could not be drawn down lower than the top of the sides of the plank?

A. No, sir.

Q. Do you know anything about when that was taken
20 out?

A. No, I recollect seeing it there after the gate was altered, when the pond was altered.

Q. How late was that?

A. I am sure I cannot tell you; I would not give the date.

Q. Do you know whether it was before or after your father's death?

A. I don't know positively.

Q. Do you know who took the end out, that is, of
30 your own knowledge?

A. I don't know; I have some recollection about it, but not sufficient to warrant me in saying.

Q. You have no doubt in your own mind as to this trunk, the original structure, that the water could not be drawn down below the top of the sides?

A. There is no doubt about that whatever.

Q. But you are unable to state when, or who took the end out?

A. I am not able to state the date, nor who did it.

40 *Q.* The little trough, the square trough, which carried

the water from the saw mill pond to the grist mill pond—what was the condition of that as to its being tight and sound at the time the deed was made to you and Jaqui?

A. Well, I am not very positive about that thing; I know it was in the habit of leaking quite some.

Q. Do you recollect how long it ran after the deed was made?

A. I don't think the trunk was used only a few years afterwards.

Q. You recollect where you passed up in the rear of 10 your father's old dwelling house, and on the opposite side of the wagon way which passed in the rear of the dwelling house, there was a cellar and a gate to the vegetable cellar—now, do you recollect how the old trough ran along in front of that gate?

A. Well, it ran right along in front of the cellar door, but I don't know whether it was above or below the ground.

Q. Well, it was above at the door?

A. Yes, sir.

Q. At that point where it ran along in front of that cel- 20 lar or cave—how deep is the excavation that has been made for the new trunk?

A. I should think some three or four feet.

Q. Has, or has not, an excavation been commenced along the line of that wagon way for a long distance right along side of where the trough used to be above the ground?

A. Yes, sir.

Q. How is the fall in that trough from the cider mill to the grist mill?

A. I have not measured, and I don't know, but it was 30 quite a fall.

Q. The water ran freely?

A. I don't know.

Q. It emptied into the grist mill pond several feet above the level of the water of the grist mill pond?

A. Two or three feet above it, I should think.

Q. How did the use of this trough used to effect the water in the saw mill pond?

A. Well, it took away a small stream.

Q. Used you to let it run all the time?

A. Well, when we wanted to use it we did.

Q. Steady?

A. Yes, sir.

Q. It did not have the effect of raising or lowering the water suddenly?

A. Not suddenly, but in dry times it would take the water out of the pond.

Q. Take it all?

A. Yes, sir.

10 *Q.* This new trunk that they have put in there—how about that in regard to drawing the water down?

A. Well, it will draw it down very much sooner, I should think.

Q. Was there any pressure on that old trough—was it under what you call a head?

A. No, sir.

Q. Was it made to carry water under a head?

A. No, sir.

Q. Was it put together so as to stand pressure at all?

20 *A.* I think not.

Q. How was it fastened together?

A. The boards were nailed together, and where the ends were there was a little piece of hoop iron.

Q. Was there any other hoop iron round it, except that?

A. No, sir.

Q. You are quite sure?

A. Yes, sir.

Q. There was no hoop iron round it to make it water tight?

30 *A.* No, sir.

Q. But simply a hoop put on where the ends came together to make them tight?

A. Yes, sir.

Q. How high did the water used to stand, if at all, in the big trunk above the top of the aperture at which the little trunk came out there?

A. I should think the depth of that trunk might be one to one and a half feet.

40 *Q.* Then the lower end was always open and the water ran through freely?

A. Yes, sir.

Q. Can you describe all about this trough under ground and how deep it was—the little one?

A. I think the trough entered the ground near the first bend, and it ran under ground until it got way down to this bend, and then there was a little part exposed when it was first constructed, and then it run under ground until it got past the road and near the wall.

Q. About how many feet is that?

A. That might have been thirty or thirty-five feet. 10

Q. Now, from near that place opposite the old dwelling house—how was it?

A. Above ground until it got over the road at the next bend, and there it was under ground clear along.

Q. How deep under ground in the wagon way—was it near the old dwelling house?

A. Not very deep; I should think fifteen inches, but it varied and tapered off; the deepest point might be twelve or fifteen inches.

Q. Just enough to keep the horses and wagon wheels 20 away from it?

A. Yes, sir.

Q. How much larger is that pond when filled up to overflow, than it is when drawn down as low as it can be?

A. Such as it is now, I should think it would cover four times the surface.

Q. Then if you filled it and emptied it down to the bottom of the present trunk, or old trunk, it would make it four times its size?

A. Yes, sir. 30

Q. Would it hold more water?

A. I should think five feet or five and a half feet.

Q. If it was raised five and a half feet it would make it flow four times the surface?

A. That is my opinion.

Q. About how many acres is that?

A. I should think five acres.

Q. You have been overseer of the road there, Mr. Johnson?

A. Yes, sir. 40

Q. Were you overseer of the roads when the road was widened by Jaqui's mill?

A. I think I was.

Q. Who did the work of that?

A. Jaqui.

Q. Did you do it as overseer, at all?

A. No, sir.

Q. Do you know how the line got to be made just as it is there?

10 *A.* I know something about it.

Q. I mean the present line of the road, where it is cut down steep and high?

A. I guess he wanted it so, I don't know; in order to make it wide enough for his mill.

Q. Is it wide enough?

A. I don't know that it is any too wide.

Cross-examined :

20 *Q.* You were overseer of the road at the time he widened the road there?

A. Yes, sir, I think I was.

Q. Did you allow him anything for doing that work?

A. I don't think I did, sir.

Q. Are you sure you did not?

A. Yes, sir, I allowed him for work on the road, but not for that work.

Q. Something was said about your getting him an allowance—did you not go down to the Town Committee to
30 get him an allowance for that work?

A. No, sir, Jaqui raised his dam, and filled in the road on the side next his house, and I think of George Wheeler's on the other side, and the approach of the road had to be raised; George Wheeler took much of the ground and built a road next to my brother's land, or where the old road used to be, which left the old road near the dam, near Jaqui's mill, between his mill and the dam, down so steep that no one could get up it; Jaqui did not like that, and neither did I, and Jaqui went on and filled in there, and did a
40 great deal on the road; well, after he had done it, he said

he thought he ought to have some compensation for it; I said I thought so too, and I told him I would get something for him from the Town Committee, but I did not succeed in getting anything but the regular appropriation, and as I had a balance of a few dollars, I gave it to him, but there was no contract in regard to the matter.

Q. Where did he get the dirt to fill in this place you speak of?

A. On the other side by his house, or he may have got some up the other road.

Q. Was not part of that dirt taken from the bank opposite the mill? 10

A. Yes, sir, and thrown over next the mill.

Q. He had some talk with you about his taking that bank?

A. Well, we often talked matters over together.

Q. Did you tell him he had better move that, and say it would be a good thing for him to move it, or widen the road there?

A. I don't remember ever telling him so, but it was a good thing, and I never hindered anybody from improving the road. 20

Q. You did talk with him about it?

A. I may have done.

Q. Did you not talk approvingly of his widening that road?

A. I may have, and I may not, but I certainly should if anything was said about it, because, of course, it was an improvement to the road.

Q. You knew he was doing it, and you made no objection? 30

A. Yes, sir.

Q. Is your memory clear as to whether he asked for the privilege, or not?

A. No, sir, but if he did I granted it to him, because I had no objections to that road being widened at all.

Q. How far from the old homestead are you residing now?

A. About one-eighth of a mile.

Q. Towards the Asylum? 40

A. Towards Morristown, this way.

Q. On the same road?

A. Yes, sir.

Q. When did you commence living where you live now?

A. Well, sir, some seventeen or eighteen years ago.

Q. Did you attend the saw mill any after you began to live where you live now?

A. I was attending the saw mill when I built the house, and I may have run the saw mill a short time afterwards, 10 but not a great while.

Q. Since that time, when you stopped running the saw mill, you have had nothing to do with the running of any of these mills have you?

A. No, sir.

Q. Or any change of the water or the arrangements?

A. No, sir.

Q. And whatever you have noticed was what fell under your observation casually?

A. Yes, sir.

20

Re-examined :

(Direct.)

Q. You are in the habit of being frequently on the ground there?

A. Yes, sir, in crossing the place to the school house where I frequently go, and to the mill.

Q. You mean the dam of the little saw mill pond you 30 crossed?

A. Yes, sir.

Q. Instead of going up the road or down the road to get to your brother's, or anywhere, you got right through the fields and across the saw mill dam?

A. Not so much as to have a bath there.

Q. You have crossed that saw mill dam a good many times?

A. Yes, sir.

Q. And saw the water running over the top there?

40 *A.* I recollect seeing that after the gate was put in the front part.

Q. After the churn staff gate was taken out, and the sliding gate was put in, you saw it running over there?

A. Yes, sir.

Q. After you left working there?

A. Yes, sir.

Complainant's counsel also called *James T. Willison*, sworn :

Q. You are a brother-in-law of the complainant? 10

A. Yes, sir.

Q. You have been living with him on these premises?

A. Yes, sir, part of the time; I was five or six years in Newark, but before that I worked with him.

Q. At the time the mill was sold, where were you living?

A. I boarded with Mr. Johnson.

Q. On these premises?

A. Yes, sir.

20

By the Vice-Chancellor :

Q. When the mill was sold, to who?

A. Jaqui and Johnson.

Further examined :

Q. Then you bought out Johnson and was with Jaqui for a time?

A. Yes, sir. 30

Q. Then you sold out to Jaqui?

A. Yes, sir.

Q. And for five or six years you have been living in Newark?

A. Yes, sir.

Q. And for five or six previous to that you lived on these premises?

A. Yes, sir.

Q. Are you familiar with the construction of those works?

40

A. Well, I know how things were arranged there.

Q. I will ask you first when you bought out Nehemiah's interest, was the water running through the old trough into the grist mill pond?

A. No, sir.

Q. That was two years after he bought, was it not?

A. Yes, sir.

Q. And two years after Jaqui first got his interest?

A. Yes, sir.

10 Q. How long was it after Jaqui got his first deed, that that water did run through that little trough?

A. I don't know; it might have run there for a year; what makes me particular about knowing, is that when I came back from the army I resided with my brother one year, and at that time the small trunk leaked so that it was almost impossible to keep the water in it anyhow.

Q. When you came back from the army, you went into partnership with Fletcher Johnson in the cider mill, before you bought out the grist mill?

20 A. Yes, sir.

Q. That was 1865, when you came back from the army?

A. It was the Fall of 1862 or 1863.

Q. Well, at that time the trough was in a very leaky condition?

A. Yes, sir.

Q. And the water did not run long after that?

A. No, sir.

Q. Was that original trough made to stand pressure?

A. No, sir.

30 Q. How was it held together?

A. It was a square box or trough, just nailed together, and where the ends joined, they were put together by pieces of hoop iron put in between, the iron that was put in, was this way, one half went in one part, and the other half went in the other, that is all that made it tight, there were no hoops on it.

Q. Did it stand pressure?

A. There was no more pressure than that the water would go into the flume above and run right through.

40 Q. How much fall was there from that down to the other dam?

A. Seven or eight feet fall, I should think.

Q. How high was the end of that trough where it emptied into the grist mill pond?

A. Two or three feet.

Q. Do you recollect where the cave or vault is, on the upper side of the wagon way, nearly opposite the old dwelling house?

A. Yes, sir.

Q. How did that trough run along there?

A. It run above ground.

10

Q. Right opposite that, how is the excavation in the road for the new trunk--how deep?

A. I should judge at the present time, it is dug between three or four feet deep, right in front of the vegetable cellar.

Q. Is there more or less excavation for the new trunk than there was for the old one?

A. More.

Q. And in a different place?

A. Yes, sir.

Q. It is longer and deeper?

20

A. Yes, sir.

Q. Do you know how long that trench or ditch is?

A. I never measured it.

Q. The excavation is the whole length of the way?

A. Yes, sir, from the time it leaves the old flume, some thirty or forty feet from the old dam, and from there clear to the old grist mill.

Q. How deep will it be necessary to put it, according to your idea?

A. I think somewhere near six or eight feet, near the cellar, if they put it on grade so as to strike the road and go under it.

Q. Do you recollect about that old trunk?

A. I recollect seeing the water run over the end.

Q. When?

A. Since I came back from the army and before--that used to be a regular bathing place for us, and I used to see the water running over it.

Q. Was that when you came back from the army?

A. Yes, sir, there was a head block in there, and I remember the water ran over that.

40

Q. Looking now at these two pieces of timber shown, do you recognize them, or not, as pieces of the end of the trunk that was in the pond?

A. I recognize these pieces as pieces that laid on the flume after Mr. Bartley came and sawed them out, that laid there and I helped pick them up and fetched them up to the cellar—a day or two after they were sawed off, Mr. Johnson and I went and picked them up and put them down cellar.

10 *Q.* These are the pieces that Mr. Bartley took out of the trunk?

A. Yes, sir.

Q. They were longer when he sawed them off?

A. Yes, sir.

Q. And you sawed these pieces off for the purpose of carrying?

A. Mr. Johnson did.

Q. When you sawed these ends off, was there a head block in there to prevent the water from running through?

20 *A.* Yes, sir.

Q. That was after you came back from the war?

A. Yes, sir.

Q. And after this deed was made?

A. I don't know, but I know it was since I have been there boarding at Mr. Johnson's.

Q. Do you know who took that out?

A. I do not, part was taken out while I was away.

Q. You had been away five or six years?

A. Yes, sir.

30 *Q.* Was it in there when you left?

A. Yes, sir.

Q. You have no recollection of ever seeing it out?

A. No, sir, not until I came back; I came up last fall from Newark: I have not had anything to do with that for the last four or five years, until last fall; then I built his new house.

Q. Then you saw that the head piece was gone?

A. Yes, sir.

Q. And that was the first time you saw that?

40 *A.* Yes, sir, the first time I ever noticed it was out.

Q. Did you have opportunities to see whether it was in during the five years you boarded there, after you came back from the war?

A. Yes, sir, of course; I was up there nearly every day off and on; it was when I and Jaqui owned the mill that the block was taken out; I have no doubt about that in my own mind.

Q. You and Jaqui owned the mill in partnership?

A. Yes, sir.

10

Cross-examined.

Q. You owned the mill about how long?

A. I cannot recollect, but it was only a short time, only a few months.

Q. Did you ever play the part of miller?

A. No, sir, Jaqui did that.

Q. And you took no part in the running of it?

A. No, sir, only in fixing up the mill; I helped fix the big water wheel, and some work inside.

20

Q. What is your age?

A. My age was thirty-six last February.

Q. And you are a carpenter, I infer?

A. Yes, sir.

Q. And you went into the army when?

A. I think in the fall of '61.

Q. In what regiment?

A. The 27th—Captain——.

Q. They were nine month's men?

A. Yes, sir, I had ten months.

30

Q. So you came back in the summer of 1862?

A. Yes, sir, I think so, or 1863.

Q. Then how long was it before you went to Newark?

A. It was five or six years ago.

Q. Where did you work after you left the army?

A. I was sick when I came back, and the next fall I was running with Johnson, the cider mill, and the next summer I worked for Mr. P—— at Morris, and I worked as carpenter; for the next year I worked for myself at Mr. Sherman's place, and then I went to Speedwell to

40

work, and after that I went to Newark, and I have been there ever since up to this time.

Q. Were you there when Mr. Johnson rebuilt his press house?

A. I was at Newark.

Re-Examined.

(Direct.)

10

Q. You went to the war in the fall of 1862?

A. I said 1861.

Q. Was it not in the fall of 1862?

A. Yes, sir.

Q. And you returned in the summer of 1863?

A. Yes, sir.

Q. And then you boarded there for about five years?

A. Yes, sir, about five years.

20 Complainant's counsel re-called *A. Fletcher Johnson*, sworn :

Q. Do you now recollect about how the ends of the planks of this little trough were fastened together?

A. The end of the little trough?

Q. Yes, where the planks came together?

A. They had hoop iron drawn down between the ends.

Q. But there was no hoop iron on it?

A. No, sir.

30 *Q.* And there was no hoop iron used round it, except that?

A. No, sir.

Q. How near does the excavation—the ditch which they are digging for the new trunk—correspond with the place where the old trunk laid?

A. In some places it is ten feet.

Q. Are they digging in the same places, or in different places?

A. In different places altogether.

40 *Q.* Take the place where the little trough passed near

the vegetable cellar—that cave or vault there—and that road, the wagon way north of the old house ?

A. Yes, sir.

Q. How was the little trough there ?

A. Above ground right close to the cellar, and the trough was used as a step to a go into the cellar.

Q. Now, right there, how is the new trunk to be put ?

A. Down in the road, the excavation at that point is two or three or four feet.

Q. You don't know how deep they are going to go ? 10

A. No, sir.

Q. They were still digging when you stopped them by the injunction ?

A. Yes, sir.

Q. You filled in there some, did you not ?

A. Yes, sir.

Cross-Examined :

Q. Has he got the old route of the trunk, or the new 20 route of the trunk drawn and located on the map here ?

A. No, sir.

Q. Did you not see Mr. Johnson there, when he was taking the survey to make Mr. Jaqui's map ?

A. I saw him there, but I was not with him.

Q. Was not the digging done when he made that survey ?

A. No, sir, I had a survey made previous to any digging being done.

Q. Of all the digging that has been done there, has 30 there been any done since you got the injunction ?

A. No, sir.

Complainant's counsel recalled *J. Frank Johnson*, sworn :

Q. These dotted lines showing the track of the proposed trunk, are they put there from actual survey, where the digging was done, or to be done, or from a preliminary survey you made ?

A. I don't know anything about the digging. 40

Q. Were these lines put down there from actual survey of the digging, or put down there from the proposed lines?

A. From the proposed lines.

Complainant's counsel re-called *Nehemiah Johnson*, sworn :

Q. What is your recollection with regard to their being hoop iron on the trunk?

10 A. I thought at first we had grabs on it, but now I recollect that it was not put on there, but the hoop iron was placed at the end.

Q. Then there was no hoop iron round it to bind it up?

A. No, that was at the ends to keep them together.

Q. Between the ends of the boards where they came together?

A. Yes, sir, that is my recollection of it; I had not thought anything about it, and that is why I thought we had grabs on it.

20 Q. You are now satisfied there were no hoops on it?

A. Yes, sir.

Cross-Examined.

Q. It was a very frail thing, was it not?

A. It was not very strong.

Q. It was not expected to last long?

A. Well, it was designed merely to take water through
30 trough.

Re-Examined.

(Direct.)

Q. There are long pieces of it lying there now?

A. Yes, sir.

Q. And there are no signs of any hoops having been on
it?

40 A. No, sir, but iron was put in at the ends to fasten them together and secure them.

Complainant's counsel re-called *James T. Willison*, sworn :

Q. Where the pieces of the trough lie there now, there are no signs of hoops having been on it?

A. No, sir, I never saw any hoops there that I know of.

Complainant rests.

A. I took possession on the first day of October, 1863.

Q. Before you got your deed?

A. Yes, sir.

Q. Three months before?

A. Yes, sir.

Q. And you have been in possession of the mill ever since?

A. No, me and Nehemiah Johnson went into business together for one year, and then we dissolved partnership.

Q. But you have been there ever since, have you not? 10

A. No, sir, I have been the one-half of one year away.

Q. Where were you?

A. In Livingston, Essex County.

Q. Who owned the mill that year?

A. I had my share rented to Nehemiah Johnson.

Q. When?

A. From 1864 to '65.

Q. From what time in 1864?

A. From the 1st day of October to the next year.

Q. From October 1864?

20

A. Yes, sir, to 1865, a little of a year, it was from the first of October 1864 to 1st April 1866.

Q. He run it alone from October in what year, 1864?

A. From October 1st 1864 to April 1st 1866.

Q. A year and a half?

A. Yes, sir.

Q. What did you do when you first went there, the first year?

A. Well, I attended to the selling part, I sold the stuff we manufactured.

30

Q. Did you work about the mill any?

A. A good deal, yes, sir, when I could work, I was not a practical miller, and I could only attend to such work as I could do.

Q. You bought the saw mill pond?

A. When me and Nehemiah Johnson bought the property we bought the water right from the saw mill pond, all except his water right to the cider mill.

Q. Were you at and about the saw mill pond, did you do any work or anything about that?

40

- A.* Yes, sir, a good deal.
- Q.* When did you begin to go there?
- A.* The first day when I got there, after and before I bought the property.
- Q.* What were you doing there?
- A.* Looking around the premises to see how they were situated.
- Q.* The first three months you were there, did you do any work about the pond?
- 10 *A.* Mr. Johnson notified me that I have to fix the tumble.
- Q.* I am talking about the first three months you were there, did you examine the arrangements to carry the water from the saw mill pond to the grist mill pond?
- A.* Very particularly.
- Q.* Before or after you bought it?
- A.* Before and after.
- Q.* How was the water taken out of the saw mill pond at that time?
- 20 *A.* Through the flume, trunk, with a gate in it; I went up there many times.
- Q.* About how far from the end of the flume was this gate?
- A.* I think about eighteen inches or two feet.
- Q.* From the pond end?
- A.* Yes, sir.
- Q.* Well, what if anything was between that gate and the water in the flume?
- A.* Not that I can recollect, there was no obstruction in
- 30 the flume, only a small piece at the end; only about two inches inside and four inches outside when the water ran over.
- Q.* Was there that piece in that, on the end?
- A.* Outside in the end, yes, sir.
- Q.* Were there any planks in here, in these grooves?
- A.* No, sir.
- Q.* At the time you went there, was there?
- A.* No, sir.
- Q.* Have you ever seen any there?
- 40 *A.* No, sir.

Q. Now, taking this to be the pond end, next you—where was that piece you spoke of?

A. Down here, inside two inches and four inches on the outside; there was a plank here two inches thick at the bottom of this piece, by this here; it was two inches inside and four inches outside; I think if I recollect right there was a small piece nailed across here.

By the Vice-Chancellor :

Q. Where was the gate? 10

A. About here, eighteen inches from the end of the flume, I think, perhaps it was two feet.

Further examined :

Q. Before this law-suit commenced—did you ever hear that this had been stopped up here with plank or boards?

A. No, sir.

Q. Did Mr. Johnson at the time you bought, tell you 20 how long that little trunk had been built?

A. No, sir, he never told me, but I saw it had been put in new when I came there in 1863.

Q. Who told you so?

A. I did not ask, but I saw it was nearly new myself; it was not there over two years or probably may be three, but it was not very long when I got there.

Q. What part of the trunk was above the ground—just begin at the saw mill dam and follow along and tell us how much was above ground? 30

A. The little trunk was connected with the big trunk, there was a space there of six feet, and then it went under ground for a space, well, I should judge about thirty or forty feet—from where it ran in and came out on the other side of the mill was, I should judge, was thirty feet; then it went into the ground a little way below the cider mill.

Q. How far did it keep under ground?

A. From there about thirty feet.

By Complainant's counsel :

Q. That was the second time ?

A. Yes, sir.

Further Examined :

Q. Well, go on ?

A. Then it ran above ground until it came to the public highway, and then it run under ground.

Q. How deep ?

10 *A.* Not very deep, about one foot.

Q. Below the surface ?

A. Yes, sir.

Q. Was the water running in that into the grist mill pond when you bought the property ?

A. Yes, sir.

Q. How long did it continue to run up that trunk into the grist mill pond ?

A. Well, from 1863 to late in 1868.

Q. And how did it come to stop then ?

20 *A.* I raised the grist mill pond three feet and by raising it three feet, a high freshet would take the water back.

Q. Back in this trunk ?

A. Yes, sir, and made a great flood in the street, and I had quite a little trouble to stop it ; I had to take up a place, and stop the water in two or three places.

Q. When was it you raised the dam ?

A. I think about 1869.

Q. Did the water run up this trunk when you raised the grist mill dam ?

30 *A.* Pretty near, I think, it ran until 1868, late in the season.

Q. Why did it stop then ?

A. We could not use it any more on account of its being worn out in some places, and in high water it was carried back.

Q. Did it do that before you raised your dam ?

A. No, sir.

Q. You say it stopped in 1868—you did not raise the dam until 1869 ?

40 *A.* No, but we had occasion for to use it.

Q. Why?

A. Well, when I raised the dam I thought I had quite enough height; I put three feet on, but I found I did not have enough.

Q. What state of repair was the trunk in when you stopped using it?

A. Very poorly; it got rotted out in different places; where it was above ground it has been rotted away into nothing, and where it was under ground altogether, in some places it is good yet, and in some places where it is above ground there are pieces left good yet. 10

Q. At those places where it was between—where it went under ground and came out again—it had rotted away?

A. Yes, sir.

Q. How about where it crossed this road way—how deep was it where it crossed the road way?

A. It was not, may be, eighteen inches below the surface.

Q. It was out a good part?

A. Not on the public highway. 20

Q. Well, the other private road?

A. Yes, a good part.

Q. How deep was it there?

A. Well, the first time it might be eighteen inches, or more, but a little while after the thing got out of repair, as the horses and vehicles stepped on top of it and broke the top in, and the water ran into the rear of Mr. Johnson's house; they could not stop the hole and the water washed the soil off, and there was nothing there to keep it; the planks got bare and the vehicles stepped on it and broke it. 30

Q. Where it lay above ground, did it stand steadily there, or did it get run against and knocked out of place?

A. It stood steady.

Q. Did you raise the dam of the saw mill pond any higher?

A. I raised it to its whole height.

Q. Who did you get its height from?

A. I took it I guess from the line on the edge of the pond. 40

Q. Did you take all that dam down ?

A. No, sir, only about five feet, I should guess.

Q. Well, the whole length ?

A. Yes, sir.

Q. Is it not higher than it was originally ?

A. No, sir.

Q. What year was it when you repaired that saw mill dam ?

A. In 1868, I think.

10 Q. What time in 1868 did you repair that dam ?

A. In August.

Q. That was the year before you raised the dam of the grist mill pond, was it ?

A. Yes, sir.

Q. When did Mr. Johnson begin to mow this land of his that he has spoken about—either he or his father ?

A. I don't think he ever mowed it before, within four or five years lately.

20 Q. How far is that from his dwelling house—the place where he mowed it ?

A. About three hundred yards.

Q. Up stream ?

A. Up stream.

Q. About your widening the road there—did you have anything to say to the overseer of the roads about widening it ?

30 A. Mr. Johnson was overseer then, and he directed me to widen it to the full width, as far as I choose to widen it, but not over the line, and that I could do it at any time I liked to ?

Q. He told you that ?

A. Yes, sir.

Q. Did he allow you anything for any work you did there ?

A. I suppose he did, he gave me \$18.85 for it once, he had a balance left out of \$135, which was for extra work which was done, and he gave me the \$18.85 of it.

Q. Did you do any work before you got his permission to dig that bank away ?

40 A. No, sir.

Q. Can you tell the Vice-Chancellor how deep the trench is that you have dug to put the new trunk in?

A. It is in some places two feet and in some places three feet deep, and the deepest place where we go is about five feet—on Mr. Johnson's land that is.

Q. Where is the deepest digging?

A. Right across to the mill on my lands.

Q. On the east side of the road?

A. Yes, sir.

Q. How deep do you design to cover the trunk? 10

A. The calculation is two feet on the lowest place.

Q. Well, why do you put it under ground?

A. Well, it would be such a public nuisance to be above ground, and I think the way it used to be was a nuisance, when it was put above ground the water kept running all the time in the public highway, and we could not stop it.

Q. How long did that leak, before you stopped using it?

A. It leaked all the time.

Q. Much, or little? 20

A. A little, sometimes more, just as the sun affected the wood, the boards were worn a kind of slowly away, and we spent a good many dollars for nails, but we could not keep it tight, as the sun drew the nails through the wood and lifted the top off, and that is the reason I thought that I had better go under ground and stop that public nuisance; in the winter season it was very bad there on account of the ice, as the water got running there into the street, and so made the roads very bad.

Q. Where would it last longest, above or below ground? 30

A. Mr. Bartley advised me about this, he had an experiment made of it, and he said it lasted longer under ground, that is below the surface than it would above ground, and that is the reason I am putting it under ground; otherwise it would not make any difference if I take it above or under ground.

Q. Which way do you think it would be most in Mr. Johnson's way?

A. Above ground, I would not like to have it knocked to pieces all the time like it was above ground; Mr. John- 40

son bored some holes in the old trunk and used it for his cider mill.

Q. How many of those holes were bored in?

A. I recollect one right by the press house.

Q. When was this new press house of his built?

A. It has been built I think since 1868, if I recollect right either 1868 or 1869.

Q. Was it before or after you raised the dam at the grist mill pond?

10 *A.* I think before, or at the same time.

Q. At the same time?

A. I think the same time.

Q. The old trunk was under ground in that press house. was it?

A. Some, it has been taken out, he bored a hole in the trunk and took water out for his purposes, I suppose.

Q. How did it stand the digging out at the foundation there?

A. When he put up his press house?

20 *Q.* Yes.

A. Well, he got the old trunk out of the way so as to get his cellar dug.

Q. How is the bottom of the trunk you proposed to put in there, compared with the bottom of the old trunk taken out this summer?

A. The bottom is one inch higher than the old bottom.

Q. How rapidly do you expect to take the water out of the saw mill pond for the use of your mill?

30 *A.* Well, the calculation is made that we shall use from five to six hours in twenty-four hours with the present supply.

Q. Do you mean by that, that the water running in—the water in the natural stream—will furnish as much as will run your stone for four or five hours?

A. Five or six hours, yes, sir.

Q. That is what you mean?

A. That is the calculation which we got from our wheel maker.

40 *Q.* How long do you suppose it would take to run the water out of the pond, if the pond was full?

A. It would take six days, I suppose, at ten hours a day when there was no supply coming to it.

Q. If you stopped the stream from running into it?

A. Yes, sir.

Q. Do you know what quantity of water has to be let on the wheel?

A. You should have asked my mill wright for that, I am not mechanic enough to explain that.

Q. Have you expected or intended to keep the water in the saw mill pond lower than it was kept when you were 10 using it at first?

A. No, sir.

Q. You have provided arrangements to supply the cider mill with water in this new trunk?

A. Yes, sir.

Q. Did you have the place where you were going to place the new trunk surveyed for you?

A. Yes, sir.

Q. By whom?

A. By Frank Johnson. 20

Q. What did he leave there to let you know where the place was?

A. He left sticks there.

Q. How near to the line that he ran and put the sticks on, did you dig your ditch?

A. He ran a straight line to the stick, only when we came to the street he made a round angle—a curve.

Q. Then from that curve down to the road—how near did you make the ditch to the line which Mr. Johnson ran?

A. We ran in the same course that he staked out according to the lines he ran. 30

Q. This curve you speak of was where?

A. (Witness showed on map.)

Q. Did the sticks make an acute angle?

A. Yes, sir.

Q. You made a curve?

A. Yes, sir.

Q. And from that on you followed the line he ran?

A. Yes, sir.

Q. The old trunk from the dam down—how far was that 40 covered on the top?

A. It was not covered at all from the dam down to the saw mill.

Q. The part that went through the dam was covered—was it not?

A. Yes, sir.

Q. And from that down to near the saw mill—was just above it?

A. To the side of the mill it was not covered at all.

Q. The other trunk was covered?

10 *A.* Yes, sir, the little trunk connected with the big trunk.

Q. What was the size of the trunk in the dam?

A. I never measured it particularly, Mr. Bartley measured it.

Q. Do you know what size the small trunk was—did you not measure that?

A. I think seven inches by eight inches.

Q. Did Mr. Bartley measure that?

A. Yes, sir.

20 *Q.* When you filled up this trench—did you intend to leave a bank there or to make it level?

A. To make it just as smooth as ever it had been before, or a little better, because it was not very smooth there.

Q. What miller did you have there first?

A. We had a German miller for a short time.

Q. For how long?

A. I think about four months.

Q. Who was the next?

A. Mr. B. B. Thompson.

30 *Q.* How long did he stay?

A. Off and on; I cannot tell exactly, he is there yet.

Q. How long did he stay the first time he worked for you?

A. Two or three years.

Cross-Examined.

Q. How far up the old trunk did the water back from the grist mill pond in freshets?

40 *A.* Into the front of my mill.

Q. That was only in freshets?

A. Yes, sir.

Q. Did it not back up the old trough in ordinary times?

A. Not quite, the water was level at that time.

Q. When the water was level with the dam, the lower end of that trough was free?

A. I think it was just about even with the bottom of the flume.

Q. The bottom of what flume?

A. Of that trunk.

Q. The bottom of that little eight inch square trunk was about level with the top of the water—was it?

A. Yes, sir.

Q. In the grist mill pond?

A. Yes, sir.

Q. You know how much higher the saw mill pond was than the grist mill pond, don't you?

A. Mr. Frank Johnson leveled it for me, and he made it between seven and eight feet.

Q. How high has this flood—how high did the water have to rise in the grist mill pond to make the flood you spoke of?

A. It was not any extraordinarily big flood.

Q. How high did it have to rise?

A. Ten inches.

Q. Well, you say that Mr. Johnson never mowed his grass until within four or five years ago?

A. Yes, sir.

Q. Is it more than four years since he mowed there?

A. I cannot tell.

Q. It is since you came back from Livingston?

A. Yes, sir.

Q. And he never pretended to mow it before that—did he?

A. No, sir, he could not.

Q. You say that the deepest place you dug that trench of yours is five feet?

A. Yes, sir.

Q. Now, how much deeper have you got to dig it?

A. Not any.

10

30

40

Q. Then five feet is the deepest?

A. Yes, sir.

Q. Is that the under side, or the upper side of the trunk?

A. It is the upper end.

Q. You say you are going to put the trunk five feet deep in its deepest part?

A. In some places.

Q. What part of the trunk will be five feet deep—the upper or the under side?

A. The under side.

Q. You propose to put it under ground all the way—do you not?

A. Yes, sir, except by the side of the mill, where we want to fix a place.

Q. You expect to run under the head of the pond?

A. That is the calculation, yes, sir.

Q. The calculation is to work your run of stone—the extra run of stone in your mill under the head of the saw mill pond?

A. Yes, sir.

Q. Then the water in this new trunk of yours will stand under a pressure with a head all the time?

A. Not all the time, but only when we want to use it.

Q. Don't you allow the water to stand in there all the while?

A. No, sir, if I don't use the water I don't have it in the trunk.

Q. Are you going up to the pond every time to turn the water out of the trunk?

A. Yes, sir.

Q. How large a hole is it that you are going to turn the water on to your grist mill through?

A. I don't know.

Q. Do you know whether it is six inches or four inches, or what not.

A. I think I heard Mr. Bartley say it was twelve square inches—a hole three by four, I think—that is the calculation, but I won't say positively.

Q. Do you know how much water will run through a hole three by four under a thirty-foot head?

A. I don't know.

Q. What was your object in spending so much money if you only use so little water—why do you make that trunk so big?

A. To use it to a better advantage.

Q. Does that make it of any better advantage, if you are only going to have so small an aperture to your wheel?

A. I think so.

Q. Do you know whether you have to make it a great deal stronger in that case?

A. No, sir. 10

Q. You say your calculation is, that the stream will supply enough water in twenty-four hours to run your turbine wheel for five or six hours a day?

A. Yes, sir.

Q. How big is it?

A. Thirteen inches in diameter.

Q. It is a little fellow?

A. Yes, sir.

Q. How deep?

A. Two and-a-half to three inches. 20

Q. Did you see that piece of a trunk, that Mr. Fletcher Johnson took out at the end of his press house, when he built it up there?

A. Yes, sir.

Q. How did it look?

A. He used it for several years for his cellar step.

Q. What cellar step?

A. In front of his vegetable cellar.

Q. Did not the trunk then run in front of his vegetable cellar. 30

A. Yes, sir, one piece of it.

Q. How long had that been away from in front of his vegetable cellar?

A. Four or five years.

Q. Had it not been away longer than that?

A. I think not.

Q. How came that to get away?

A. I don't know.

Q. And the pieces he took out from the press house were put down there? 40

A. Yes, sir, one piece of it about four feet long.

Q. How long do you calculate in the ordinary run of the water, it would take to fill that pond, from the bottom of the trunk up to the overflow, if you did not use any thing out of it ?

A. I wanted to try the experiment, but Johnson would not let me.

Q. Did you go up and measure the water ?

A. We tried to shut the gate, but he would not let me.

10 *Q.* Did you go up to measure the water ?

A. Mr. Bartley did.

Q. Did you not go up and measure the water ?

A. No, sir.

Q. You don't know how long it would take to fill it ?

A. No, sir.

Q. Have you not made calculations about that ?

A. I left that to my machinist.

Q. Is it Mr. Bartley that gave you these calculations, with regard to how long that water would run that wheel ?

20 *A.* Mr. Bartley did, and Mr. Wm. Bartley did, and they made it what the catalogue said.

Q. This miller that sold the wheel considered there was water enough to run that for five or six hours a day ?

A. Yes, sir.

Q. When did these men that sold these wheels see the stream ?

A. Mr. Bartley took the measurements and sent to them.

Q. When was that done ?

30 *A.* Three years ago, I suppose.

Q. What time of the year ?

A. The last time was about this time of the year, August, we wanted to be sure how much water we had.

Q. Did you ever go up there and examine that water at all, or examine the gates and so forth about that old mill, the old saw mill, until after you came back from Livingston ?

A. Before and after, a good many times.

40 *Q.* And you have found a piece of board nailed on the end of that ?

A. Yes, sir.

(Counsel pointed to boards produced by complainant.)

Q. You know do you, that these two pieces of timber came out of there ?

A. No, sir, this is the timber, I suppose, but this shows that if this was under, there was nothing nailed here.

Q. Have you any doubt about that being the upper side ?

A. It looks like it. 20

Q. You never saw that, when there was anything in under there ?

A. No, sir.

Q. How many times did Henry Johnson pay you for extra work done on the road ?

A. I think he paid me, and then he made a contract with me for taking his work.

Q. How many times did he pay you for extra work ?

A. Once. 20

Q. Was not that once, the time he paid you for work which you did in front of the dam, on the other cross road ?

A. No, Mr. Johnson made up a subscription list for me to do that work for him, and I can show in the Town book that he allowed me \$20 for filling in and so forth, on the school house place.

Q. No, I mean filling in the road where you raised your dam ?

A. He allowed me \$20 for that.

Q. Did he ever pay you more than once ? 30

A. He did not give me \$20, but I did \$20 worth of work, and he made up a subscription from other parties and collected the money for me.

Defendant's counsel offered certified deed in evidence.

Defendant's counsel also called *Barnabas B. Thompson*, sworn :

Q. What is your age ?

40

- A. Sixty-eight.
- Q. And you are a miller I believe?
- A. Yes, sir.
- Q. How long have you followed that business?
- A. Well, twenty-five or thirty years, more or less.
- Q. Were you ever miller in Johnson's mill, or Jaqui's?
- A. Yes, sir.
- Q. When were you first employed there?
- A. Soon after Mr. Jaqui bought it.
- 10 Q. Before that had you ever worked there?
- A. I attended the saw mill.
- Q. When did you first attend the saw mill?
- A. Thirty-five years ago, I think.
- Q. Who did you work for then?
- A. For old Mr. Charles Johnson.
- Q. How long were you there then?
- A. Two or three years, I believe.
- Q. How was the height of that saw mill pond then, compared to what it is now?
- 20 A. Well, the first time I was there it was down to the old height, this new part was not put on when I was there the first time?
- Q. Well, when was it first raised?
- A. Well, then it was raised when I was away, I was there two different times, attending saw mill for Mr. Chas. Johnson.
- Q. When was the second time you were there?
- A. I think it was ten years after.
- Q. About twenty-five years ago?
- 30 A. Yes, sir, something like that.
- Q. And between the first and the second time you were there, the dam was raised?
- A. Yes, sir, Henry Johnson attended the mill after I left the first time, and while I was away he put on this new part of the dam, of about three or four feet, but I don't know how much, as I have never measured it, but there was more put on.
- Q. How did the height of the dam then compare with the present height—how does the height now compare with the height then?
- 40

(Complainant's counsel objected as not being relevant.)

Question admitted.

A. Well, the water was drawn out after the dam was raised, the same as it was before, the trunk was not raised, we had a round trunk through the dam, and a telegraph wire from the gate to the one at the pond, that round trunk was there when I attended the last time.

Q. You went to work for Jaqui after he became inter- 10
ested there ?

A. Yes, sir.

Q. When did you begin to work for him ?

A. I think it was in the spring after he bought the mill, he bought it in the fall, I think.

Q. And you went there in the next spring ?

A. Yes, sir, I believe it was in the spring of the year.

Q. Well, now at the time you went there in 1863, was the water being carried from the saw mill pond to the grist mill pond ?

20

A. Yes, sir.

Q. Was there any gate near the saw mill pond to regulate the water in that trunk ?

A. There was a gate in the big trunk.

Q. Near the saw mill pond ?

A. Well, it was where this little trunk was connected with the big trunk, there was a little gate which we hoisted to let the water into the smaller trunk.

Q. Was the gate in the big trunk near the pond ?

A. Yes, sir, the one which we used to loist and lower. 30

Q. Did you used to hoist it at that time ?

A. Yes, sir.

Q. When you went to work for Jaqui ?

A. Yes, sir.

Q. Will you tell us how the end of the old trunk was at that time, the pond end ?

A. I could not tell you about that, for I never examined it, and I don't recollect seeing such a log as they speak of, the gate always worked up and down when I used it.

40

By the Vice-Chancellor :

Q. How far was the gate from the end of the flume?

A. The water was never out of the pond while I worked there, so that I could see.

Further Examined :

Q. Did you ever see the arrangement that has been
10 spoken about by the Johnson's, that on the pond end there was a plank across here, so that no water got in the trunk except what run over the top?

A. I never saw that arrangement, all I know was a gate that drew up and down, but I don't know anything about a piece nailed on here.

Q. Well, in from the end, two inches?

A. It might have been down low enough for me to see it, the water might, but I never examined it.

20 By the Vice-Chancellor :

Q. Can you tell whether it was or not opened at the end?

A. No, sir.

Further Examined.

(Witness,) I always supposed the water ran to the end of the trunk by the gate working up and down, but I never
30 looked to see whether it was nailed on the end of the trunk or not.

Q. Did you ever hear of such a thing while you worked there?

A. No, sir.

Q. When did the water stop going to the mill, from the saw mill pond?

A. I could not say.

Q. When did you leave there?

A. I worked for Jaqui and Johnson while they remained
40 together in partnership, after they dissolved Mr. Johnson

rented the mill and I attended it for him, but for how long I cannot say, it was not over a year though; then I went to work somewhere else, and was away for a while, and Mr. Jaqui took the mill and run it himself a while, then I worked for him a short time, and then they got into law, and we shut the gate down and let it stand, then I left again.

Q. When was it you went back the second time to work for Mr. Jaqui?

A. After they got the thing settled Mr. Willison sold 10 out to Jaqui, and he fixed the mill up then and ran it, and I worked more or less for him ever since.

Q. How near the time of his buying out Willison did you go back there?

A. I don't know, he was there repairing the wheel and getting the mill into running order again.

Q. Did Willison do some work on the wheel?

A. Yes, sir.

Q. Were you there then?

A. I believe I was.

20

Q. Do you recollect whether the water was running into the pond at that time or not.

A. I don't recollect whether it was or not?

Q. What was the condition of that trunk during the latter part of that time?

A. The trunk leaked a great deal when I was there to work, he used to nail it up and pitch it; when the water was taken out I think I was away.

Q. When you used to pitch it, did it leak a good deal or only a little?

30

A. A good deal, sometimes it will get started leaking, and we kept nailing the boards and pitching it up, and kept it so that the water did not leak away much.

Q. Were you there when the grist mill was raised?

A. I went back to work, I think, just as they were finishing up the dam, I helped put the plank on it and finish it up, they had the stone work up before I went back to work.

Q. When this trunk leaked, where did the water run out most along the road?

40

A. Well, it ran down and it sank away pretty much in the ground, it was a kind of a little leak.

Cross-Examined :

Q. You were away for a while, for Mr. Jaqui bought out Willison ?

A. Yes, sir.

Q. Then you came back there, when Jaqui took hold
10 of the mill alone ?

A. Yes, sir.

Q. And he bought out Willison and repaired the mill some, about the time he bought Willison out, did he ?

A. Yes, sir, I think Mr. Willison helped fix the wheel up and get things into running order, and then Jaqui took the mill.

Q. From that time on you have been there all the time, more or less, have you not ?

A. Yes, sir.

20 Q. But for a while Nehemiah Johnson had the mill, running it alone, you were down in Livingston, you were not there ?

A. Yes, sir, I attended it for Johnson.

Q. But for a while you were not there ?

A. Well, I don't know what was the reason, I think they stopped the mill.

Q. The mill was about played out, was it not ?

A. While Johnson was running, I quit a little before he stopped.

30 Q. The date of the time when you say you were away from there, away sort of permanently, that was just before the time Jaqui bought Willison out, was it not ?

A. Yes, sir.

Q. After he bought Willison out, you were there steady ?

A. Yes, sir.

Q. And after he bought Willison out, you don't recollect seeing that water run very much, do you ?

A. No, sir, I do not.

Q. You say it stopped while you were away ?

40 A. Yes, sir.

Q. That was before he bought Willison out?

A. Yes, sir.

Q. Have you no recollection of seeing the water run through that trough at all, after the time you went to work there steady, after the time he bought Willison out?

A. No, sir, I have no recollection of it.

Q. That is not much of a stream is it?

A. Well, it was sufficient to drive a saw mill all the year round, except in dry weather.

10

Defendant's counsel also called *Charles G. Wise*, sworn :

Q. You are a practical miller, are you not Mr. Wise?

A. Yes, sir.

Q. Did you work for Mr. Jaqui as a miller?

A. Yes, sir.

Q. How long did you work at the mill?

A. I was at the mill about fifteen years altogether.

Q. At Jaqui's mill?

A. No, sir, I worked for him about three years?

20

Q. When did you first go there?

A. I went there in 1867, in July.

Q. And stayed, how long?

A. Three years?

Q. Steady, right along, continuously?

A. Yes, sir.

Q. What did you do while you were there?

A. I attended his mill always as a miller, and nothing else.

Q. Do you remember whether there was water passing 30 from the saw mill pond to the grist mill pond when you went there to work?

A. Yes, sir, it went over from the saw mill pond to the grist mill pond.

Q. In what way?

A. Through the trunk.

Q. How long was it before it quit running into the grist mill pond?

A. I think pretty nearly, till we raised the dam.

Q. When did you raise the dam?

40

A. I think we raised the dam in 1869.

Q. You mean the grist mill dam ?

A. Yes, sir.

Q. How was the trunk while you were there ?

A. The trunk was good then.

Q. Was it leaky or tight ?

A. No, sir, it did not leak, you mean that little trunk, that goes from the saw mill pond.

Q. Yes, sir ?

10 A. Well, that was good yet, at that time.

Q. Was there any gate near the saw mill pond ?

A. There was three of them out there, one near the dam, another one across the big flume, and a little one where the water run in the mill, a gate in the little one.

Q. Did you used to hoist these gates ?

A. At different times, yes, sir.

Q. Were you ever about that gate near the pond, in the flume or trunk ?

A. No, sir, I was often there swimming, but I never
20 took any particular notice about the gate inside of it ?

Q. Which gate ?

A. About this gate in the trunk.

Q. Did you ever hoist it ?

A. Yes, sir, I did, and when I hoisted the gate I would stand on the dam.

Q. Did you go in swimming at that place ?

A. Oh, yes.

Q. How did the water get into the trunk from the pond ?

A. Well, the gate that was in the pond, always was
30 hoisted, but most of the time it was open and the water was stopped inside the trunk.

Q. By what was it stopped ?

A. By another gate.

Q. In the trunk ?

A. Yes, sir.

Q. Where was that ?

A. That was near to the cider mill.

Q. How was the end of the trunk that was in the pond, was that boarded up or open ?

40 A. It never was boarded up.

Q. How do you know?

A. I often saw the water running in it, while I was in there?

Q. In where?

A. While I was in there swimming.

Cross-Examined :

Q. What do you mean by saying you never noticed it while you were swimming?

10

A. Because I never went up to look at it, and whenever we needed water I went up to hoist the gate.

Q. What gate?

A. The little gate where the water goes through.

Q. Do you mean the little gate near the cider mill?

A. Yes, sir.

Q. The big gate was generally always open?

A. That was nearly always open.

Q. But you say you never noticed it?

A. No, but I knew there was a gate there.

20

Q. But you never noticed it even when you were in swimming?

A. No, sir.

Q. So you don't really know anything about it?

A. No, sir.

Defendant's counsel also called *John H. Pierson*, sworn :

Q. Where do you live?

A. Morris Plains.

30

Q. How far is that from these mills?

A. About one-eighth of a mile.

Q. And you have lived there some time?

A. My lifetime.

Q. You have a saw mill just above there, have you not?

A. Yes, sir.

Q. And have had for a good many years?

A. Yes, sir.

Q. Were you much or little about this saw mill dam that we are talking about of the Jaqui mill?

40

A. I was frequently there.

Q. Did you go swimming in that saw mill pond?

A. Yes, sir.

Q. You would go in where?

A. On the dam and sometimes on the opposite side.

Q. Did you ever attend that saw mill?

A. I attended it a day and a half at the winding up of it, they had a sawyer there who got into difficulty in sawing a large log, which he could not manage, and so they
10 got me to come over and do it for them.

Q. Do you mean to say that you never used their saw mill after that?

A. I think not.

Q. Well, when was that time that you have spoken of?

A. A short time after Mr. Jaqui bought it.

Q. Was it the same year?

A. I cannot tell whether it was the same year or the second year, probably it may be one-half a year, or a year afterwards.

20 Q. Did you ever hoist the gate that was in the trunk near the dam?

A. Yes, sir.

Q. Now, how was the end of that trunk in the pond at that time, was it boarded up or open?

A. I did not observe any board there, if there had been I should have knocked it out as we wanted all the water we could get, the water was low at that time.

Q. What time of the year was that?

A. Summer time.

30 Q. Could that end have been boarded up when you were using it?

A. I think not.

Q. Did you ever notice its being boarded up when you were working or swimming there?

A. No, sir.

Q. You have been there since you attended that saw mill?

A. Yes, sir.

Q. Frequently or not?

40 A. Occasionally I used to pass there.

Q. Did you ever see the end of that trunk boarded up?

A. No, sir, I never did.

Q. Before the law suit was commenced—did you ever hear of such a thing?

A. No, sir.

Q. Can you tell anything about when the water stopped running from the saw mill pond into the grist mill pond?

A. I cannot tell you that, sir.

Cross Examined.

10

Q. You are on good terms with Mr. Johnson, I suppose, ain't you, or are you not?

A. I hope so, all of them.

Q. And consider yourself friendly?

A. Certainly, to both parties, I try to be.

Q. How do you fix the time you went into this saw mill to work?

A. I recollect Jaqui saying that there was a log there that his man couldn't saw.

20

Q. Did Jaqui come to you and get you to do the work?

A. I cannot tell whether it was him or Johnson.

Q. Jaqui never lived in that neighborhood before he went to the grist mill?

A. Not that I know of.

Q. Did you ever hear of him?

A. No, sir.

Q. He lived way down here?

A. Somewhere below.

Q. Do you recollect the conversation with Mr. Jaqui in connection with the sawing of that log?

30

A. Yes, sir.

Q. Was he running the mill at that time?

A. I don't know.

Q. You heard of his buying that grist mill?

A. Shortly after, I don't know how long it was after he first came there.

Q. He was interested there at the time he talked to you about that log?

A. I don't know at that time whether he was or not.

40

Q. How came he to say anything about that log?

A. They wanted to fix the old mill up.

Q. And Mr. Jaqui was interested in having the log sawed was he not?

A. Yes sir.

Q. You attended that saw mill a day or day and a half?

A. Yes, sir, but we could not see it, the mill gave out.

Q. You have no recollection of seeing the end of that trunk fastened up?

A. No, sir.

Q. Do you say it never has been fastened up?

A. I don't know.

Q. Have you looked at this, is there any appearance of its having been so?

(Counsel referred to boards produced by complainant.)

A. None that I can see on this end.

20 *Q.* You don't see any signs of a plank having been fastened in?

A. If there was a plank in that groove, probably it has

Q. Have you any doubt about it, that it was for a gateway?

been for a gate way?

A. Judging from the way that groove is made, it was for a gate way—that plank might have been one inch wide, and have rotted away?

Q. The plank you think would have rotted away?

30 *A.* Yes, sir.

Q. And the plank may have been an inch wide?

A. Yes, sir.

Q. The groove would wear?

A. Not so much as the side would.

Re-Examined :

(Direct.)

40 *Q.* Who employed you to do this sawing?

A. I charged Johnson and Jaqui.

Defendant's counsel also called *Frederick W. Jaqui, Jr.*, sworn :

Q. How old are you ?

A. Twenty-three years and six months.

Q. Have you been employed about the mill ?

A. Well, I have been about their mills for nine years.

Q. Doing what ?

10

A. Well, first time I ever came there, I went up with my father to see where the place was, and I think we went over with a load of feed and flour, shortly after that father bought the place, and I came there to help him occasionally, and I used to take out little orders such as I could manage, as I was only thirteen or fourteen years old then—I did no particular work about the mill at all, any more than sweeping and sometimes taking away the little orders down town, but at that time I was not very steady.

Q. Well, when did you begin to be very steady ?

20

A. Not until father took the mill alone.

Q. When did you move up there ?

A. I did not move up there, when I began to go there steady, we lived here in Morristown then, in Bridge street, I worked a short time for father and Mr. Johnson, Mr. Johnson's little boy was working in the mill, and I was working in the mill too, and attending to the store part of the time, but I was not very steady then nor until father bought the mill alone.

Q. Since your father bought the mill alone, have you been there steady ?

A. I was there then for about a year, I think, then I went away for two years, and after that I was home again about a year, then I went to work for Mr. Searing of Morristown.

Q. How long have you been at the mill this last time ?

A. Two years.

Q. Do you remember the water running from the saw mill pond into the grist mill pond ?

A. Yes, sir.

40

Q. Can you tell when it stopped doing that?

A. I don't think I was home at the time it stopped, but I think it was between 1868 and 1869 when it stopped running, I would be home perhaps occasionally, that is mornings and evenings, it was at the time I was working in Searing's that this water stopped.

Q. Do you recollect the repairing of the saw mill dam?

A. I was away then, but I recollect the time it was done, I think I was home to see it, and I walked over that way.

10 *Q.* Do you recollect the raising of the grist mill dam?

A. Yes, sir, I recollect when that was done, but I was not home at that time, I was then working for Searing, and so I only had a chance to see that on Sundays.

Q. How near to that time did the water continue running to the grist mill pond?

A. One dam was raised about a year before the other was, and I think it was a short time after the raising of the saw mill dam, that is after it was put up to its original height, a short time the water stopped from running; the trunk laid there yet, the pieces run out in the pond. I
20 recollect father telling me about the damage it done in the road by raising the pond three feet, that was when I came home, he told me about how it washed the road out.

Q. How was the trunk in the latter part, while you were there, as to holding water?

A. Well, it always leaked a little, where it most leaked was right at the angle of the road, and there was another leak near the black walnut tree, near where the blacksmith's shop stood, and then it leaked and the water used to run
30 in the highway there.

Q. Do you recollect whether it continued to run until Wise went there?

A. Yes, sir, I have been in there swimming on Sundays with Wise and others.

Q. I am talking about the water running into the trunk from the saw mill pond to the grist mill pond, was it running into that when Wise went there to work?

A. Yes, sir.

Q. And it stopped while he was there did it?

40 *A.* I think it did, between 1868 and 1869.

Q. How came it to stop, do you know?

A. Well, I was not home at the time it stopped, but the reason they stopped it, I believe was because it leaked so, and it ran over into Johnson's cellar, and it leaked in the road and ran over to the grist mill pond, so that it cut a hole into it which they filled up.

Q. Were you about that saw mill dam when you first went up there?

A. Yes, sir, I think the first day I was there, I went up with the school boys, Nehemiah Johnson's son and I went up there together. 10

Q. Since then have you been there often or seldom?

A. Very often since that.

Q. Have you been in the water there?

A. Yes, sir, that is the only place we had to go in swimming without being right on the road.

Q. Were you there when they took out the end of the trunk this summer?

A. I was not, no, sir.

Q. Were you there near the time?

A. I was there at the time of the frost, and the water had washed the earth from the top of this trunk away and washed it down to the stream, and there was danger of the dam being washed away; I went in then and knocked the whole top of the trunk out and took the stone away, so as to give the water free passage out; some of the present dam, the top of the dam was washed down, and I stood on top the bank with some others and witnessed the washing away of it. 20

Q. Did you see the end of the trunk after Mr. Bartley had taken it out? 30

A. I don't know that I particularly noticed it after he had taken it out, but I saw it before it was taken out.

Q. Supposing this to be the pond end of the trunk, what was there here (counsel pointed to the end) to stop the water from running in?

A. There was a small piece nailed on here, I think, on the outside, it was perhaps two inches high on the inside here, where the water ran over and dropped into the trunk.

Q. In these grooves was there any boards or planks in there? 40

A. I never saw them.

Q. Did you at any time ever see any?

A. No, sir.

Q. Did you ever hear there had been until this suit was commenced?

A. No, sir, not until the suit began, in fact, not until the day after the trial we had here.

Q. When these affidavits were read?

A. Yes, sir, in the afternoon.

10 Q. That strip was all you ever saw there?

A. Yes, sir.

Q. What became of it?

A. I don't know, I knocked it off at the time the water knocked the top of the trunk down, and took the earth out, and I did so to give the water a better chance to run out.

Q. Was that the spring?

A. Yes, sir, here in the winter.

Cross-Examined.

20

Q. You have no recollection of anything at all about it?

A. I think I ought to know something about it, I saw it most every week or two.

Q. You think there never was such a thing as a bulk-head there?

A. I never saw one.

Q. Do you think there ever was one in there at all?

A. I don't know that there was, if there was I never saw it.

30 Q. Do you believe there ever was one in there at all?

A. I don't believe anything about that, I don't believe anything but what I saw.

Q. Where is the nail that that piece was nailed on with there?

A. I don't know.

Q. What do you suppose that was put on there for?

A. I could not say.

Q. It was pretty well down in the trunk was it?

40 A. No, sir, it was not more than—I think the gravel came up about level with the top of this piece.

Defendant's counsel also called *Hugh Bartley*, sworn :

Q. You are a millwright ?

A. Yes, sir.

Q. You were working in Mr. Jaqui's mill ?

A. Yes, sir.

Q. When did you first work there ?

A. I think in the winter of 1868, first.

Q. What were you doing then ?

A. Putting in a grain breaker. 10

Q. When did you go back to work there after that ?

A. I was there once after that, about a year afterwards, I think, and then I went to work at the new mill in 1871.

Q. Let me ask you whether when you were there in 1868, if you can tell us whether the water was still running from the saw mill pond to the grist mill pond through the old trunk ?

A. I could not be positive about that, but I have the impression that it was running ; I saw water flowing down, but whether it was flowing through, or was leakage, I cannot say which it was. 20

Q. Your attention was not called to that at that time ?

A. No, sir, I saw the trunk there.

Q. You recollect seeing the water drop from it ?

A. Yes, sir, the water was running down near the walnut tree that is nearly in front of the old mill, but whether the trunk was in use or not at that I could not say.

Q. You went there in 1871 to build the new mill ?

A. Yes, sir.

Q. You were boss of that job ? 30

A. Yes, sir.

Q. When did you intend to put in this trunk ?

A. Well, we had expected to put it in the next year after I finished the mill ; I finished the mill in 1872, in the fall of 1872, and, I think, it was put in the next season about.

Q. Now, you planned that new trunk, did you not ?

A. Yes, sir.

Q. And the arrangements for putting it in were under your direction ? 40

A. Yes, sir.

Q. It was your plan?

A. Yes, sir.

Q. You have been there to carry it out?

A. Yes, sir.

Q. You took out the end of the old trunk, did you?

A. Yes, sir, I helped.

Q. Tell us what was the size of the trunk, or that part of it that was in the pond and immediately connected with it?

A. Fourteen inches one way and twenty-four the other, but really at the upper end it was twenty-five inches, but I suppose it was worn away a little.

Q. The fourteen inches was the height and the twenty-four inches was the width, was it?

A. Yes, sir, I just clapped my rule down on the bottom of the plank and measured up to the top.

Q. Now, just tell us how the bottom of that old trunk was placed—what it rested on?

A. There was a sill put down across the stream and four posts set in it, and the bottom of this trunk, that is the bottom plank of the trunk, rested directly on that sill; we left that sill there to place the new one above it, and we placed the new posts in it; the sill was in the pond above the stone work.

Q. The bottom plank of the old trunk rested on that sill?

A. Yes, sir.

Q. And you put something on that sill?

A. In sawing there on the board by these posts I sawed a round hole out for this trunk to go through higher—to run the board in.

Q. The sides of the trunk going southward—what was the next small size of the trunk, or did it continue the same size to where the water led off to the mill?

A. It ran through the dam into the open trunk outside.

Q. What was the size of it?

A. It was two feet wide by three feet deep, but I did not measure it myself.

Q. This first trunk was covered on top.

A. Yes, sir, it went through the dam, and earth was covered over it ; the other was open at the top.

Q. The small trunk started off near the saw mill ?

A. That was inclosed in the square trunk.

Q. Have you measured it and can you give us the size of that ?

A. It is six inches by eight inches square inside.

Q. Can you tell us the difference in elevation between the saw mill dam and the grist mill dam ?

A. About seven and a half feet ; one dam is seven and 10 a half feet higher than the other.

Q. Did you measure it ?

A. Yes, sir.

Q. Now, tell us the plan of that new trunk—you told us how you place it in the pond ?

A. Then we have the course marked out on the map, and we follow that course with the exception at the bend, and there we did not turn quite so short at the bend there as it is marked on the map, otherwise we followed the course laid out there.

20

Q. Who laid it out ?

A. The surveyor ; I was not there when he surveyed it, but I suppose he surveyed it according to that.

Q. The deviation from the course as laid out, is at this bend here ?

A. Yes, sir, instead of running a short bend there, it runs a little more gradually.

Q. Was there any stakes left in there ?

A. I think there was a spike driven in the road, an iron spike or something of that kind driven down.

30

Q. More than one ?

A. I don't recollect seeing but one ?

Q. How deep is that ditch—how deep is it dug ?

A. At the upper end near the press house, I should think it was about four and a half feet deep, then down in front of this cellar or cave, or whatever you call it, it is about three feet deep, down further next the road there is a bank, but it goes through somewhere near five feet deep.

Q. Did you pay attention to how much it will be below the surface assuming the road to be widened out.

40

A. When it comes to be widened out to its full width we will hardly get room enough to cover it ; the trunk will almost come out to the top of the ground ; then it runs with a gradual slope to the mill, and it will be about nine feet deep at the mill ; where it crosses Mr. Johnson's land it would be near five feet at the deepest place at the bottom of the trunk, but perhaps it will have from one and a half feet to two feet of earth on top of the trunk.

Q. Which is the best place for a trunk, above or under
10 ground ?

A. Well, I would prefer to have it under ground.

Q. Why ?

A. Because it is more out of the way, that is, in that situation, as it is there—in that situation it would be better under ground.

Q. Give us the reason ?

A. Because if you carry it out along there it is exposed to the weather, and if a leak was caused at any time it would leak in the road, but if it is covered it will leak under
20 ground.

Q. Is it designed to have any gate in near the saw mill pond ?

A. At the upper end in the pond they have a gate, then there is another one where they propose to take the water from Johnson to grind his apples.

Q. Your trunk is made with reference to tapping it for the cider mill ?

A. Yes, sir, so that they close it down and don't allow the water to run to the grist mill when he wants to use it
30 for his cider mill.

Q. You give him all the water that goes down ?

A. Yes, sir.

Q. Any difficulty occurring with leakage in the trunk would be met by closing that gate at the pond, I suppose ?

A. Yes, sir.

Q. What quantity of water is intended to be discharged on the wheel under this trunk ?

A. Twelve and a half square inches of water, that would be an aperture twelve and a half inches long, and one
40 inch deep.

Q. Is it made on that idea ?

A. Yes, sir.

Q. Will it require that amount to run the wheel ?

A. No, sir, I don't think it will ; I don't think they will ever need to draw more than two-thirds of it.

Q. Give us your reasons for that belief ?

A. A wheel under that head gives nearly twelve horse power, and they don't need that for grinding wheat.

Q. Why not ?

A. It is generally rated, I believe, one horse power to 10 a bushel of wheat, so that if they ground five, which is perhaps what they will do, they will perhaps use six or seven horse power, instead of what they can get.

Q. How long will the natural flow of that stream keep that wheel in motion, in your judgment ?

A. According to the measurement I have taken, and I have measured it three different times, in the past three years.

Q. Give the measurements ?

A. The first time I measured it, it was somewhere near 20 three inches deep, and twenty-four inches wide, that was in 1871 ; the summer after they commenced at the mill it was three and a half inches running over—

Q. What pond was that ?

A. It ran over the dam here at this part where the road was formed, then to the mill ; the second measurement I made it was two and a half inches deep ; that was two years ago this summer, if I remember right, at a low time of the water ; it was two and a half inches deep and twenty-four inches wide ; then I measured it again this summer and I measured it more correctly then than I did before. 30

Q. Tell us how ?

A. I put a board in the head of the trunk and cut a notch eighteen inches wide, then I drove a stake in the pond four feet above it, and let the water raise its height and measured it with a stick, and that gave me three and three-eighth inches deep and eighteen inches wide and according to that I make the water run on that wheel, about four hours and sixty-nine hundredths in twenty-four.

Q. How long will the water which that pond consists 40

of keep this wheel in motion, constructed as you are going to make it?

A. I don't know what amount of water there is in that pond; I have never measured it, but according to their ideas here (alluding to catalogue) with three or four acres in the pond, or five or six, or something like that, it will run for five or six days before it will run down any particular depth; I had the idea that if it run six days in a dry time, it might run it down three feet.

10 *Q.* Is that with a constant flow of water?

A. Yes, sir, as it is, commencing on Monday morning and running to Saturday night at ten hours a day.

Q. That would reduce it how much?

A. Three feet lower.

Q. How much higher is the top of the dam than the bottom of this trunk you expect to put in?

A. I think a little over five feet.

Q. Mr. Bartley, which, in your judgment as a mechanical engineer, is going to be the least liable to injury or to breakage, a trunk being constructed under ground, or one constructed above ground as the old trunk was?

(Complainant's counsel objected.)

Vice-Chancellor over-ruled objection.

A. A round trunk is always tighter than a square trunk.

Q. Which is the more strongly made, the one you are putting in, or the old one.

30 *A.* The one we are putting in.

Q. How do they compare in strength with each other?

A. I don't know how to compare them with each other; the old one won't stand hardly anything, and this one we don't know how much pressure it will stand; we never had one burst, and I cannot say how much it will stand.

Q. Have you put up such trunks before?

A. Yes, sir.

Q. Have you ever had them burst before?

A. No, sir, we have got one there now under a twenty 40 foot head, but I don't know how much it leaks.

Q. What is the danger of bursting or leaking of a trunk constructed under ground?

A. I cannot see any danger, but there is less danger of its bursting under ground than there is above.

Q. Give us the reason of that?

A. In the first place it has the earth to support it and then it is kept moist all the time so that the sun would not effect it a great deal, but I have not lived long enough to find out how long they will last.

Q. Well, how long have you known them to last? 10

A. I have taken out old ones of twenty years old, or at least that is what they told me.

Q. Will they not rot faster above ground than they will buried two feet under ground?

A. I am not able to answer that distinctly, I have not had experience enough to find out, but my impression is it will last better under ground.

Q. What size lumber was this trunk made of?

A. White pine.

Q. What thickness?

A. Two inches. 20

Q. Did it have iron bands on it.

A. Yes, sir.

Q. You saw how the old trunk was made, didn't you.

A. Yes, sir.

Q. Well, how was it?

A. It was simply boards, four boards; there was a bottom board with sides nailed on to it, and a board over the top, and the ends were kept together by a band of iron put in. 30

Q. How long were these pieces of board?

A. Well, I never measured them, but I suppose them to be twelve or fifteen feet.

Q. This band of iron was put where the joints were made?

A. Yes, sir, where the ends of the boards came together.

Q. And the rest was fastened with ten-penny nails?

A. Well, either ten-penny or twelve-penny.

Q. That would hardly stand the wind, would it? 40

A. Well, not a very strong wind.

Cross Examined.

Q. You made three experiments of the measurement of the water in that brook, and the last one did not at all correspond with the other two?

A. No, sir, the other two were different.

Q. The first two were not properly made, were they?

10 A. No, sir.

Q. Now, how much fall did you have over your weir?

A. From twelve to fifteen inches.

Q. That was what you considered the clear fall?

A. Yes, sir.

Q. How many gallons an hour did you make in the third measurement?

A. Two and five hundred and ninety-nine thousandths, that is in every inch of width per minute—multiply that by eighteen—

20 Q. That would be about forty-six feet a minute then?

A. Yes, sir.

Q. How fast will the water discharge on that grist mill through a twelve square inch aperture under a pressure of a thirty feet head—how much head is there on that?

A. About thirty-two feet with the pond full.

Q. The water that runs through the aperture depends altogether upon the pressure?

A. Yes, sir.

30 Q. The water running through that twelve square inches under a thirty-two feet head would be a great deal more than under a fifteen feet head?

A. Yes, sir.

Q. How much will run through there in a minute?

A. Two hundred and thirty nine cubic feet.

Q. Then in round figures that stream would supply according to your measurements forty-five feet a minute, and the wheel wanted two hundred and forty?

A. No, two hundred and thirty-nine.

40 Q. Then to run on steady all the summer you would run between one-fifth and one-sixth of the time.

A. Yes, sir.

Q. With that stream, in six hours you would run the mill one?

A. Yes, sir.

Q. To use that mill practically with that stream of water, you would necessarily have to make a great fluctuation in the pond?

A. No, sir.

Q. Why, you would have to wait for the pond to fill up before you could use it?

10

A. Yes, sir.

Q. And when it was filled up you would have to draw it out pretty nearly?

A. Not at that rate that I spoke of, that is four and three-quarter hours in twenty-four, that would be only twenty-eight hours in the six days.

Q. Then you would run a little over one day in the week?

A. No, a little over two days.

Q. Then you would certainly have to fill the pond up 20 and draw it out?

A. We should run down to a certain depth and wait until it filled up.

Q. Is not that fluctuation?

A. Well, it will take some little time.

Q. If the pond ran down five times as fast as the water came in, that is a pretty sudden fluctuation, is it not?

A. It might be, perhaps.

Q. If there was water enough in that pond to last about a week, it would take four or five weeks to fill it up again?

30

A. I don't know how long it would take.

Q. But you guess it would, perhaps take a week to run out, and after that, would it not take several weeks to fill up?

A. Yes, sir, unless there was a good stream, if there was a good stream it would fill it all up.

Q. I don't mean fluctuation in one day, but fluctuation in a week—the pond may be full one week and drawn out the next; is it not liable to that?

A. Yes, sir.

40

Q. Could there be any beneficial use of that water, in that saw mill pond, for any practical purpose, without the privilege of doing that?

A. No, sir.

Q. Then the natural result would be, at one week the pond would be full, and the next week it would all be drawn out?

A. Yes, sir.

Q. Now, you say that trunk was two feet on the outside
10 and twenty inches inside?

A. Yes, sir, that is the size of the trunk.

Q. Have you ever calculated the number of pounds to the square inch, of pressure, on each square inch inside that trunk?

A. Not on that.

Q. How much does thirty feet give, fifteen pounds don't it?

A. Something in that neighborhood, yes, sir—I never calculated on that.

Q. You know the bigger a pipe is the weaker it is?
20

A. Yes, sir.

Q. Do you think that box or that pipe, as you made it, is strong enough to stand a pressure of fifteen pounds on the square inch, without danger of its bursting?

A. Yes, sir.

Q. Have you ever had one of that size, under that pressure?

A. I have had one, three foot in diameter, the pressure on this is about twenty-six feet head, there is thirty-two
30 feet head and fall, but there is a draught tube.

Q. You don't suppose that is going to last for ever, under ground?

A. No, sir.

Q. Don't you know it would rot quicker under ground, than it would above ground?

A. I have never tested it.

Q. Don't you know that posts and stakes rot out under ground, quicker than they do above ground?

A. At the top of the ground they do.

40 *Q.* Don't you know they do all the way?

A. No, sir.

Q. You don't mean to suppose that that trunk will last for ever?

A. No, sir.

Q. How long do you think it would last before it began to leak?

A. I cannot tell.

Q. Will it not leak badly before it will have to be taken out?

A. Well, it will commence leaking.

10

Q. You can use a trunk sometime after it commences to leak, generally?

A. Yes, sir.

Q. You don't consider it necessary to replace the trunk as soon as it begins to spout out water?

A. Yes, sir.

Q. What is the difference between the starting out of a trunk under a pressure of thirty feet, and one starting under no pressure?

A. Considerable.

20

Q. In the leak, in a trunk under a head, and in one not under a head?

A. Yes, sir.

Q. Have you had experiments in the effect of leaks in pipes under a head such as are laid through the streets in this town?

A. Not very much.

Q. Well, do you know or not, whether the effects of these leaks always comes to the surface?

A. Yes, sir.

30

Q. If it is a serious leak, it always comes to the surface?

A. It depends on how the pipes are put in, if there is a passage way made under it, it don't.

Q. Well, if that passage way becomes stopped up, how then?

A. It forces its way out.

Q. Do you suppose then, as an engineer, that there can be leaks in that pipe, without those leaks coming to the surface of the earth, and making it muddy and miry over it?

40

A. I don't think there is much danger of that.

Q. Well, what do they do?

A. I don't know if I exactly understand you?

Q. Will not the natural result of a leakage, be to bring the water to the surface of the ground, over that pipe?

A. If it could not get off anywhere else.

Q. And if it does, won't it make the earth miry?

A. Yes, sir, certainly.

Q. It will make a spring in the road?

10 *A.* Yes, sir, something of that kind.

Q. You spoke of the passage of the water from the end of the flume to the wheel, now it passes through what?

A. It passes through the wheel itself.

Q. From the end of the flume there is a distance of several feet, before you strike the wheel?

20 *A.* From the end of the trunk we have a wheel box, that is made tight of iron, and in this the wheel is placed, and in that we propose to put a partition across that box, and let the water right in, to fill one partition, and we just open the shute and let the water in to drive it, then the wheel, uses according to their statement, twelve and-a-half inches of water.

Q. You regulate the rush of the water into the wheel by means of that shute?

A. Yes, sir.

30 *Q.* You distinguished, a little while ago, between the length of this cylindrical trunk which is twenty inches inside, you distinguished between the length of that trunk, and the head and fall of water, you said first it was twenty-seven feet, and secondly that it was about thirty two feet; now there is a difference of five feet—now I want to ask you what that difference of five feet is?

A. There is about seven and-a-half feet difference, one is about twenty-seven feet and the other twenty feet.

Q. You said the head and fall from the saw mill dam down to the grist mill, was thirty-two feet?

A. To the water in the tail race, the wheel set up some five feet above the bottom of the tail race.

Q. That makes it about twenty-seven feet?

40 *A.* Yes, sir, somewhere about that.

Q. Now, this cylindrical flume you are building comes down close to this wheel ?

A. Yes, sir, the water passes right through and on to this wheel, and passes down the draught tube we have.

Q. When you want to stop the wheel, you close these gates in the end of the flume ?

A. Yes, sir.

Q. And under ordinary circumstances, you let the flume stand filled with water, with the gate open at the dam ?

A. Yes, sir.

Q. Do you ever let a less quantity of water on to your wheel at one time than another ?

A. Yes, sir.

Q. According to the power you want to drive ?

A. Yes, sir.

Q. You cannot however use that wheel without the trunk standing full of water ?

A. Yes, sir.

By the Vice-Chancellor :

20

Q. The trunk will be full certainly ?

A. Yes, sir.

Further Cross Examined :

Q. It must stand under a pressure all the time ?

A. Yes, sir.

Q. The object of having a big trunk, is to make a quick flow of water to the wheel, to take off the friction ?

30

A. Yes, sir.

Q. If it was a small pipe, you would loose some of the head in friction ?

A. Yes, sir.

By the Vice-Chancellor :

Q. You never measured the stream that makes this pond ?

A. That is what I made the three measurements about. 40

Q. Where did you make them ?

A. In the saw mill pond.

Q. You never measured to see how much water comes into the saw mill pond up above ?

A. No, sir, I measured where it went out.

Q. What I call the supply is up above, you understood me to speak of what ?

A. The water in the stream, I measured it where it went out, not where it came in.

10 Q. I understand your measurements to apply to the stream running from the saw mill pond into the passage way ?

A. It was the stream that flowed out of the saw mill pond with no flume there.

Q. You measured to see what the quantity of water was, flowing out of the pond in its ordinary full state ?

A. Yes, sir.

Q. As if there was no use of it by the mill, and the dam filled up, and there was no escape from the dam, except
20 that which flowed over the top ; now, then, did I understand you to say that this is how those three measurements were made ?

A. Yes, sir.

Q. Where was that near ?

A. At the upper end of the new trunk, that was put in.

Q. You consider the last measurement as nearly correct as you can make it ?

A. Yes, sir, I was very particular about that ?

Q. You measured it with a view of giving it as near as
30 possible ?

A. Yes, sir.

Re-Examined :

Q. When did you take this last test ?

A. I think in June of this year.

Q. At what time ?

A. I don't recollect just the time.

Q. Was it before or after you were stopped by the in-
40 junction ?

A. Afterwards, I measured it both before and after, but this last measurement was afterward, and I made the last more accurately, because I wanted to satisfy myself I was right, I drove a stick in up above and took the depth on that stick.

Re-Cross-Examined :

Q. You expect to have this thing packed in tight by earth ?

A. Yes, sir.

10

Q. You don't expect to put stones round it ?

A. No, sir.

Q. You consider it rather dangerous to put stones round it, you prefer earth ?

A. Yes, sir.

Re-Examined :

Q. That earth is sand and clay, is it not ?

20

A. There is sand and clay in there, there is not much clay about it, there is more gravel than anything else.

Defendant's counsel also called *William Barclay*, sworn :

Q. You are a machinist and millwright ?

A. Yes, sir.

Q. How long have you followed that business ?

A. That has been my only business for twenty-five years, twenty-five or thirty years.

30

Q. Have you been up to this mill of Jaqui's lately ?

A. I have been there this summer.

Q. Since the new trunk arrangement ?

A. Yes, sir, while the work was going on.

Q. Were you consulted about it ?

A. My brother consulted me the most.

Q. The last witness was your brother ?

A. Yes, sir.

Q. Before you went there I suppose, to look at it ?

A. Yes, sir, he took those measurements that he spoke of, and then came to me, and we figured it up together.

40

Q. Now, I wish you would give us your opinion of the safety of that trunk, which you propose to put in there?

A. I consider it perfectly safe.

Q. Have you any doubt about it?

A. Not in the least, if I had I should not have advised them, I made the hoops for it and if I had had any doubt about its strength I should have told them.

Q. You know the amount of pressure it will be subject to?

10 *A.* Yes, sir.

Q. Do you think it quite sufficient to withstand that pressure?

A. Quite.

Q. What is your idea of the lasting or duration of that trunk, under ground?

A. Well, I cannot tell you how long it will last, it must of course decay in time, but then that is as strong and as durable as anything we could make except an iron one.

20 *Q.* How will its durability compare with a structure of wood above ground?

A. Well so far as my experience has gone, I may say I have had experience enough to know how long it would last, although wood will rot under different circumstances, and even if I should suppose it would last as long there as it would above ground, and perhaps longer, it is a mere matter of opinion.

Q. What quantity of water would be required to drive the wheel?

30 *A.* Well, my brother's figures and mine agree, we figured it out, of course we have never had any opportunities or facilities for knowing whether these tables that are furnished us by the makers, are correct; although we have never been disappointed in the calculations we have made upon them, and we have considered them correct.

Q. You have used these wheels previously?

A. Yes, sir.

Q. For how long a time?

A. Since 1866 we commenced using these turbine wheels?

40 *Q.* And you have found your calculations to be realized in practice?

A. Yes, sir, we consider the tables very reliable, the tables are furnished by the makers of the wheels, and they agree with actual experiments.

Q. Have you got books on the subject?

A. Yes, sir, and they agree.

Q. Then they stand in practice, do they?

A. Yes, sir.

Q. How many of these wheels have you put in?

A. It would take me some time to count—some twenty I think.

10

Q. At a great many different places?

A. Yes, sir, and under different circumstances.

Q. You heard your brother's statement, with regard to the length of time the water in that pond would run his wheel, in his opinion?

A. Yes, sir.

Q. Now, without asking you a detailed question, do you concur in that belief?

A. Yes, sir, the time with this flow of water which he measures, twenty-four hours run of water would run this wheel for four hours and sixty-nine one-hundredths, or about 20 four hours and forty minutes, provided it was run at its full capacity, but Mr. Jaqui don't even use it at its full capacity, he grinds I suppose four to six bushels, where he ought to grind some twelve bushels, he don't use his full gate.

Q. Practically you expect it to take how much?

A. I should think three-fourths of that amount would be about the amount he would probably use.

Q. And that would increase the duration of the supply of water thirty-five per cent?

A. Yes, sir.

Cross-Examined :

Q. The use that is proposed by Mr. Jaqui, of this saw mill pond, is by direct application of the head or pressure of the water in the saw mill pond on to his wheel, is it not?

A. Yes, sir.

Q. And for that, the works that you are putting in are 40 intended?

A. They don't increase his head any.

Q. But he could not use the works you have commenced putting in, in connection with the natural head of that water there, could he ?

A. Yes, sir.

Q. For the water to run down there without a head would be of no use at all, the way you have it there, would it ?

A. Yes, sir.

10 *Q.* You expect to work under a pressure, don't you ?

A. Yes, sir.

Q. Then you use not only the water, but the head ?

A. Yes, sir.

Q. You used it very differently from what it was when it run round by the open trough into the other pond ?

A. The difference is the difference in the head of the two ponds.

Q. That ran round there, but you did not use the head at all ?

20 *A.* Yes, sir, they had the use of the head in the other pond.

Q. But not the use of the saw mill pond head ?

A. No, sir.

Q. They did not use the saw mill pond head at all ?

A. No, sir.

Q. But now they are going to ?

A. Yes, sir.

Q. And they get seven and-a-half feet additional head ?

A. Yes, sir.

30 *Q.* The practical use of that machinery, as you have provided for it, will be, that when the grist mill is not in motion the water will stand pressing against the sides of that trunk, and the trunk is made so large that the draught of water through it, is not to take the pressure off at all ?

A. Yes, sir.

Q. And when you stop the wheel below, you stop it by a gate at the wheel ?

A. Yes, sir.

40 *Q.* You don't expect to run and shut it off at the pond every time you stop the wheel ?

A. Oh, no.

Q. Then the idea is to let the water stand in the trunk?

A. Yes, sir.

Q. You expect to put in earth round that trunk and join it down close and tight?

A. I don't know how much it is going to be packed down.

Q. Well, that would be the natural effect of the wagons running over it, would it not?

A. Yes, sir.

10

Q. And it runs pretty nearly all the way in the wagon way, does it not?

A. I think the wagons were to run across it, but I am not acquainted with the road enough to answer your question.

Q. It is running under ground that is in constant use?

A. Yes sir.

Q. Then the natural effect will be to pack the earth around it?

A. Yes, sir.

20

Q. Have you ever noticed the effect of a leak in a pipe under a pressure, like that will be?

A. Yes, sir.

Q. What will be the effect of any serious leak there?

A. My impression is, that under the circumstances, if I had the arranging of that, I should put stones on the sides of it and keep the dirt on the top, then the water flows down.

Q. Can you put stones down there so that the dirt would not run in among them?

30

A. Such dirt as they have there.

Q. Have you ever known a leak of that character where it did not come to the surface?

A. I have known one case where it did.

Q. Take the cities and towns where they have water pipes running through the streets under ground, don't the water from leaks always come to the surface—even in this town?

A. I have had no experience in that.

Q. Well, where you did have any experience, did it not 40

come to the surface and make a moist road way?

A. Yes, sir.

Q. Will pine wood last longer under ground than it will above?

A. I have not had experience enough to know the difference.

Q. You know that is, as a general thing, all wood that is under ground rots—is pine wood an exception to that?

A. No, sir.

10 *Q.* Would not a part be more apt to rot quicker on the end under ground?

A. That is the natural effect of the earth lying against any kind of wood.

Q. Especially if it was only one or two feet from the ground.

A. That would be the natural effect.

Q. In many places the trunk would only be one or two feet below the surface?

A. I am not acquainted with that.

20 *Q.* Won't that be more apt to rot away quicker under ground than it would above it?

A. I have nothing to go by to answer that question.

Q. When you come to repair that trunk you have got to dig it up that is certain, and every time you repair it too?

A. Yes, sir.

Q. And you have got to dig it up the whole length of it if you repair it?

A. Yes, sir.

30 *Q.* You don't know anything about the reliability of these tables that are furnished by the men who make these wheels—do you?

A. Well, we always found them reliable.

Q. Have you ever compared them with the regular standard scientific tables?

A. His tables that they furnish were correct.

Q. I mean in regard to the quantity of water running through a certain aperture under a certain pressure?

A. They agree substantially.

40 Defendant's rests.

Complainant's counsel then re-called for rebuttal *A. Fletcher Johnson*, sworn :

Q. The old saw mill was torn away and the cider mill was put in its place—when was that?

A. Three years before Jaqui came there.

Q. Was the saw mill there after Jaqui came there?

A. No, sir.

Complainant's counsel also re-called *Henry Johnson*, 10 sworn :

Q. You heard what Mr. Jaqui said about your paying him for work on the road—what was that eighteen dollars paid him?

A. Well, I think it was for filling in.

Q. He says you raised a subscription of twenty dollars to pay him for some work?

A. There was a subscription raised in the township to pay for work on the road up above—for something that he 20 had nothing to do with, &c.

Q. Was the saw mill taken away from there before or after Jaqui went there?

A. Before; we put a cider mill there.

Q. How long before the mill was sold?

A. I don't know.

Q. Was there any saw mill there when Jaqui came there?

A. I think the saw mill was torn down before the cider mill was built, and the cider mill was built where the saw 30 mill was.

Q. The cider mill was built before Jaqui came there?

A. Yes, sir.

Complainant's counsel also re-called *Nehemiah Johnson*, sworn :

Q. Well, how was that?

A. There was no saw mill there when Jaqui bought it.

Complainant's counsel also re-called *James T. Willison*, sworn :

Q. Well, how was it ?

A. I put the present cider mill house up.

Q. Was it before or after Jaqui bought the place ?

A. I think it was before Jaqui bought.

Q. Were they both there at once, the saw mill and the cider mill ?

10 A. Yes, sir, the saw mill and the old cider mill, but I took them down and put a new cider mill up on the place where it now stands.

Complainant's counsel also called *John L. Baldwin*, sworn :

Q. You are a millwright ?

A. Yes, sir, I used to be, ten years ago.

Q. Have you seen this water—the stream running up
20 there ?

A. I have been up to the dam, yes, sir.

Q. I mean the little pond—the saw mill pond ?

A. Yes, sir.

Q. How long do you think that ran to the grist mill, down there ?

A. I did not examine it particularly, but it was a small stream running out of the pond, at the time I was there.

Q. Did it run constantly, for any length of time ?

A. I should not think so.

30 Q. How long do you think it would run, constantly under a thirty feet head ?

A. With the water running there at that time, I should think it would run a very short time—it was about two weeks ago that I was there, I did not examine the quantity of water, I did not examine it particularly, but I saw a small stream running out of the trunk.

Q. With regard to the length of time that the trunk that you saw will last under ground, as compared to what it was last under ground, give us your idea ?

40 A. Well, wood exposed to the action of the earth won't

last as long as it will out of the earth, *that* I am satisfied of, and I have seen it tried.

Q. What is the difference?

A. It commences where it comes out on the surface, when if you have a trunk that is made tight up above ground, it won't rot on the outside, I had a trunk above ground that lasted thirteen years, but that was made of very poor material, it was spruce.

Q. Did it begin to leak before it finally gave out?

A. Not seriously, it kind of gave out all at once.

Q. But under ground you don't think it would last so long? 10

A. I should think not, I never put one under ground, I only judge from other circumstances, that it would not last so long under ground as it would above ground.

Complainant's case closed.

20

Defendant's counsel called for rebutting testimony.

Frederick W. Jaqui, sworn :

Q. At the time you bought this mill and got the deed for it were there any other works there?

A. Yes, sir.

Q. Of what kind?

A. They were put up for his own use. 30

Q. Was the saw mill there?

A. Yes, sir.

Q. When you went there?

A. Yes, sir.

Q. Was it in usable condition?

A. I didn't notice that.

Q. How long did that continue there after you bought?

A. I don't recollect.

Q. Well, give it us as near as you can recollect? 40

A. It stood next the cider press, but I don't know how long.

Q. Did they build another cider mill afterwards?

A. They built an addition to the old cider mill, and put another press in, a bigger one.

Q. When?

A. In 1869.

Q. When you went there was the press house the same as the present one?

10 A. Yes, sir, the first part of it, but there was an addition put to it in 1869.

Q. Why did you not get an iron pipe there instead of having a wooden pipe made?

A. I consulted Mr. Bartley, and he advised me to have a wooden pipe because it was cheaper.

Defendant's counsel also re-called *Barnabas B. Thompson*, sworn :

20 Q. When you went to work for Jaqui first, up at the mill, was the saw mill gone, or was it there yet?

A. I think it was there, but I did not go to examine, but this mill was put up there after I had been to work there some time, I mean the new cider mill that stands where the old saw mill used to stand?

Q. You recollect when the new cider mill was put up?

A. There was a cider mill built a little above, that stands there yet, they put up a new building below that where the old saw mill stood.

30 Q. They pulled the old saw mill down and put the new cider mill up at the same time?

A. They pulled the old saw mill down and put the new cider mill up.

Q. Was it done in the same season?

A. I could not say.

Q. When was the new cider mill put up?

A. It was put up, I think, when I worked for Jaqui, after Mr. Johnson went out, or it might have been while I was working for them together, but I was there at work
40 when the new building was put up.

Q. Who did the work?

A. Mr. Willison.

Q. That was after he came back from the army?

A. Well, it must have been after he came back.

All papers, maps, &c., used during examination of witnesses were offered in evidence.

Case closed, and arguments set for Saturday, 30th of August, 1871.

IN CHANCERY OF NEW JERSEY.

Between

10

ALBERT FLETCHER JOHNSON,

Complainant,

and

FREDERICK W. JAQUI,

Defendant.

} *Final Decree.*

This cause coming on to be heard and tried before the
Honorable Amzi Dodd, Vice-Chancellor, upon the plead-
20 ings, exhibits and the evidence, of witnesses orally exam-
ined before him in the presence of Henry C. Pitney, of
counsel with complainant, and Jacob Vanatta, of counsel
with defendant, and the Vice-Chancellor having heard the
same, and being now of opinion that the said defendant is
not entitled and has not the right by him claimed in his
answer to carry the water of complainant's saw mill pond
stream, mentioned in said pleadings, from said saw mill
pond directly to the said defendant's grist mill, mentioned
in said pleadings, nor to use the head and power of said
30 saw mill pond by direct application to the machinery of

said grist mill, nor to make in the soil and earth of complainant the excavations mentioned and described in the pleadings as in course of being made, nor to place in said soil and earth the new trunk and conduit for water mentioned and described in said pleadings and by the said defendant, intended to be placed therein for the purpose of carrying said water of said saw mill pond directly therefrom to said grist mill, and having advised the Chancellor accordingly :

10

It is therefore on this twenty-ninth day of September, eighteen hundred and seventy-four, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged, declared and decreed accordingly, that the said defendant be, and he is hereby perpetually enjoined and restrained from making any further excavations on the land of complainant, in the manner and for the purpose mentioned in said pleadings and from placing therein or thereon the said new trunk or conduit or any other trunk or conduit for water for the purpose of so carrying and applying said 20 water, as is hereinbefore mentioned.

And it is further ordered that a writ of perpetual injunction do issue out of this court to be directed to the said defendant, perpetually enjoining and restraining him accordingly, and that the injunction heretofore issued herein shall upon the issuing of such perpetual injunction be dissolved.

And it is further ordered that the defendant do pay to 30 the complainant his costs of suit to be taxed.

THEODORE RUNYON,
Chancellor.

I respectfully advise the above decree.

AMZI DODD,
Vice-Chancellor.

Sept. 29, 1874.

A true copy.
H. S. LITTLE, *Clerk.*

40

IN CHANCERY OF NEW JERSEY.

ALFRED F. JOHNSON,

10

vs.

FREDERICK W. JAQUI,

} *Opinion.*

Mr. Pitney for Complainant.

Mr. Vanatta and J. Cutler for Defendant.

20

The Vice-Chancellor :

Whether the injunction issued in this case upon the filing of the bill, shall now, after final hearing upon the pleadings and proofs, be dissolved or made perpetual, depends very little, if at all, upon the testimony offered at the hearing, but must be decided by determining the true construction and effect of the grant contained in the defendant's deed. A brief statement will suffice to show the situation of things to which the grant relates and the few facts

30

necessary to be known in order to settle its nature and extent.

In January, 1864, Charles Johnson, the father of the complainant, was the owner of two tracts of land in the County of Morris, on each of which were a mill pond, mill and appurtenances. The tracts were separated from each other by a public highway and differed considerably in their respective relations ; that on which a grist mill and pond were located being much lower than the tract where-
 on were a saw mill, cider mill and pond. The difference
 between the ordinary levels of the two ponds was from
 nine to ten feet. The water of the upper, or saw mill pond,
 was not used exclusively for the saw mill or cider mill, but
 to some extent was used to add to the water of the lower
 pond on the opposite side of the road. The water was
 carried from the upper to the lower pond through a wood-
 en feeder or trunk, not more than a foot square, extending
 several hundred feet in a circuitous course, placed partly
 on piers, partly on the surface of the ground and partly
 under it, running first across the homestead lot of Johnson
 to the highway, or near it, then along the highway, and
 then under it and emptying into the pond of the grist mill.
 In this situation of things, Charles Johnson, by deed of
 January 18th, 1864, conveyed to Jaqui and Nehemiah H.
 Johnson the grist mill lot containing an acre and a quarter
 of land, to the description of which were added the words
 of the grant now in controversy, as follows :

“ And also to include the pond, dam, tail race and all
 “ the privileges heretofore had and used in connection with
 “ and for the purposes of said grist mill, also to have the
 “ water from the old saw mill pond of said Charles John-
 “ son in rear of his dwelling as now carried in the trunk or
 “ feeder that carries the water from said pond to the grist
 “ mill pond above the dam, excepting only so much of said
 “ water as said Charles Johnson, his heirs or assigns shall
 “ want for grinding apples at his cider mill near the old
 “ saw mill, and to have the privilege at all times to enter
 “ upon all or any of the lands of said Charles Johnson

“ along and joining said trunk or feeder, to alter, repair
 “ or renew the same at their convenience.”

By a subsequent deed from Nehemiah H. Johnson, Jaqui became the owner of the whole grist mill premises. By the will of his deceased father, the complainant became the owner of the mill property and land and dwellings on the opposite side of the road. The water continued to flow through the trunk or feeder several years after Jaqui's purchase and then ceased, the trunk having fallen into decay and disuse.

After the trunk had so decayed and been partially removed, Jaqui began to construct on the complainant's land a new conduit or trunk, by which to carry the water from the upper pond, not to the lower one, as expressed in the deed, but directly down to the grist mill to apply it there to the driving of a wheel fifteen or twenty feet lower than the level of the lower pond. This conduit was to be
 20 a cylindrical hooped flume, two feet in diameter, crossing the complainant's premises to the highway, in nearly, though not exactly, the same route or location with the former one, but unlike the former one, to be mainly under ground, and at some points to the depth of several feet, for which the defendant began to make excavations—at that juncture the injunction was issued.

It is clear in my judgment that what the defendant proposes, and what he contends he is entitled to do, is not
 30 authorized by the above recited deed, and is a threatened invasion of the complainant's rights, which the latter is entitled to have enjoined. By the true construction of the grant, the defendant may take the water from the upper pond to the lower, but not to any other place he may select. He proposes to carry it to a point, distant from the pond much lower than the level of the pond, and to apply it there under the head which his proposed arrangement is intended to furnish. The complainant insists that the consequences of this arrangement will be greatly de-
 40 trimental to him, that the sudden and rapid lowering of

the water, the laying bare of the lands flowed by it, will be injurious to health and to the valued comfort of his dwelling. The defendant denies that these consequences will follow and insists that no loss or injury will result to the complainant. Witnesses were examined at the hearing upon these points, but I am satisfied that their testimony cannot avail to effect the question to be decided. The inquiry is what right over the water does the defendant take under the grant. Whether the right he now claims will impose a greater or less burden on the complainant than the right to carry the water to the pond is an irrelevant inquiry. The place to which the water is to be taken is expressly stated in the grant. There is no ambiguity or uncertainty in the words, and no room for the application of the principle that the grant must be taken most strongly against the grantor. Because the water after getting to the pond can then be used to drive the wheel is certainly no reason why it can be carried to the wheel in the first instance. This would be making for the parties by inference, or reasoning, an agreement different from that which their plain words express. It is of no avail to say that the proposed arrangement would be as advantageous to the complainant or more so than the former one. I do not think it would be so in fact, but if it were so proved the answer is, it was not so agreed so far therefore as the proposed work is being done to carry the water elsewhere than to the pond, the injunction prohibiting it must be decreed to be perpetual.

There was discussion at the argument as to how far variations from the location of the old trunk or feeder and from its position above the surface of the ground or under it, would be permissible in constructing another trunk, in view of the words of the deed empowering the defendant "to alter, repair and renew the same at his convenience." These words apply solely to a trunk leading from one pond to the other. Such a trunk does not appear to be intended by the defendant. He does not propose to construct it, and any controversies or difficulties that might arise as to the location of it, if attempted to be constructed,

cannot now be determined or anticipated. The thing granted is the right to take the water to the lower pond. The terms by which the mode of doing it is described may be regarded as admitting of some latitude of meaning. The mode of transfer will not be so treated or the words descriptive of the modes so strictly construed as to defeat or impare the substance of the grant. The words descriptive of the mode will be construed most strongly against the grantor. I will advise a decree for a perpetual injunction, 10 restraining the defendant from making any excavations on the complainant's lands, and from doing on it any other acts in further prosecution of the proposed trunk or flume.

Bill
J. FR
ALBER
JAMES
ANS
FRED
SIMEC
HUGH
J. FR

A. F.

J. FR

NEHE

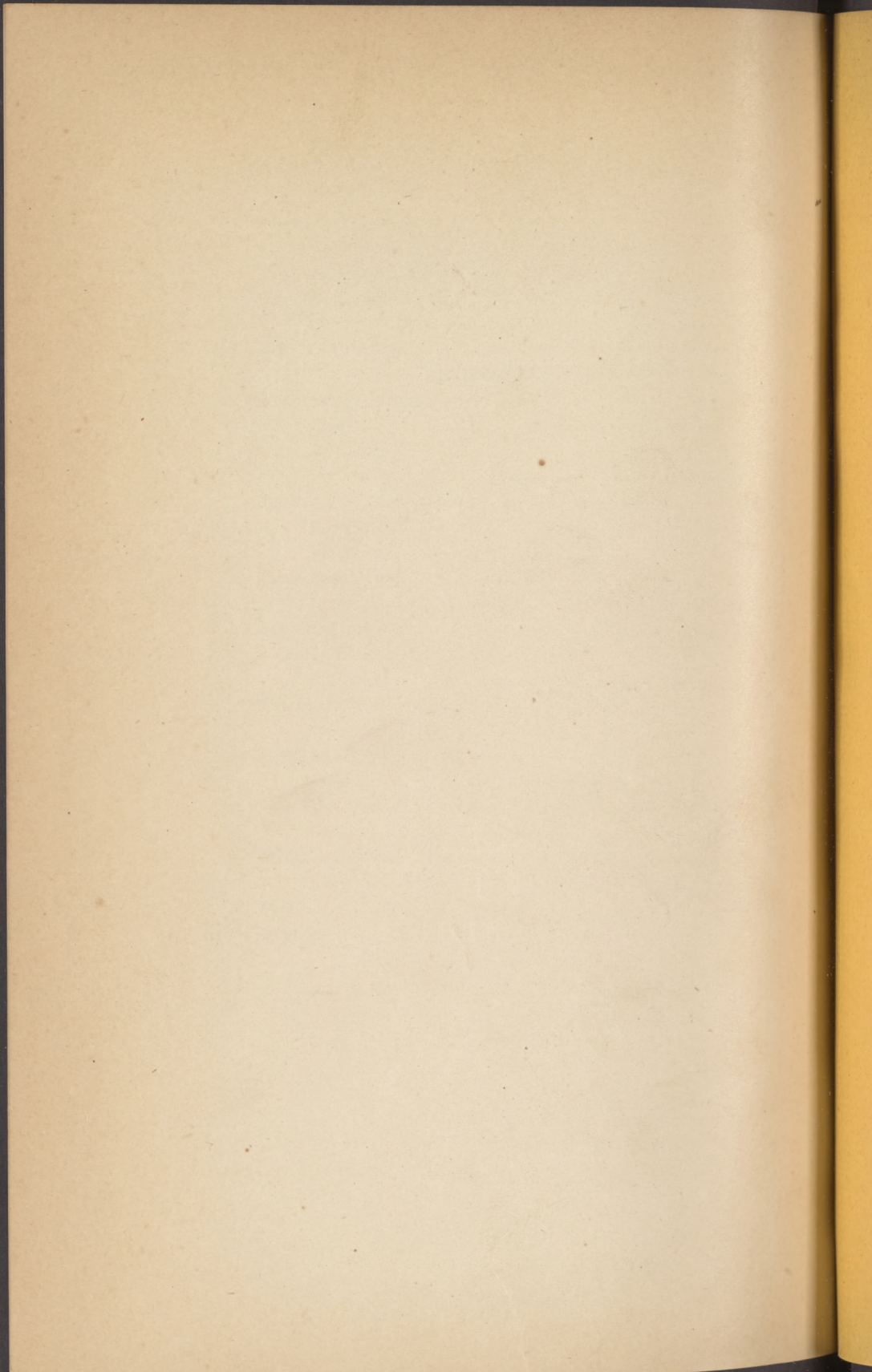
INDEX.

	Page.
Bill.....	1
J. FRANK JOHNSON, Deposition.....	9
ALBERT F. JOHNSON, ".....	9
JAMES T. WILLISON, ".....	12
Answer.....	15
FREDERICK W. JAQUL, ".....	27
SIMEON D. HULBERT, ".....	27
HUGH BARTLEY, ".....	28
J. FRANK JOHNSON, ".....	31
Return of Surveyors, Exhibit B.....	33
Indenture, Exhibit A.....	41
General Replication.....	45
COMPLAINANT'S WITNESSES.	
A. F. JOHNSON.....	47
Cross.....	58
Re-Direct.....	65
Re-Called.....	94
Cross.....	95
Re-Called.....	149
J. FRANK JOHNSON.....	67
Cross.....	68
Re-Direct.....	69
Re-Cross.....	70
Re-Direct.....	70
Re-Called.....	95
NEHEMIAH JOHNSON.....	70
Cross.....	76
Re-Called.....	96
Cross.....	96
Re-Direct.....	96

CHARLES H. JOHNSON.....	80
Cross.....	86
Re-Direct.....	88
Re-Called.....	149
JAMES T. WILLISON.....	89
Cross.....	93
Re-Direct.....	94
Re-Called.....	97
“ “.....	150
JOHN L. BALDWIN.....	150
DEFENDANT'S WITNESSES.	
FREDERICK W. JAQUI.....	98
Cross.....	108
Re-Called.....	149
“ “.....	151
BARNABUS B. THOMPSON.....	113
Cross.....	118
Re-Called.....	152
CHARLES G. WISE.....	119
Cross.....	121
JOHN H. PIERSON.....	121
Cross.....	123
Re-Direct.....	124
FREDERICK W. JAQUI, JR.....	125
Cross.....	128
HUGH BARTLEY.....	129
Cross.....	136
Re-Direct.....	142
Cross.....	143
WILLIAM BARTLEY.....	143
Cross.....	145
Decree.....	154
Opinion.....	156

80
86
88
149
89
93
94
97
150
150

98
108
149
151
113
118
152
119
121
121
123
124
125
128
129
136
142
143
143
145
154
156





C

Th

C.

Ne

giv
Su
De
cul
to
Ci
Ge
Ge
Co
err
Co
are