

NEW JERSEY COURT OF ERRORS AND APPEALS.

EPHRAIM BEACH, complainant,
and
WILLIAM C. H. WADDELL and WIFE, defendants, } *On appeal.*

STATE OF THE CASE.

To His Excellency William Pennington, Governor, Captain-General, and Commander-in-Chief in and over the State of New Jersey, and the territories thereunto belonging, Chancellor and Ordinary in the same.

In Chancery.—Humbly complaining, showeth unto your Excellency your orator, Ephraim Beach, of the town of Catskill, in the county of Green, and state of New York, formerly of Newark, in the county of Essex, and state of New Jersey, that William Coventry H. Waddell, formerly of the city of New York, now of the county of Morris, in the said state of New Jersey, on or about the third day of December, in the year of our Lord one thousand eight hundred and thirty-five, being indebted to your orator in the sum of five thousand five hundred and forty-six dollars and sixty-six cents, for the purchase money of the lands and premises herein after specified, which your orator had sold and conveyed to him in fee simple for the forbearance of the said sum of money, and for giving day of payment thereof, did propose and agree, to and with your orator, to give to your orator the bond or obligation of him, the said William C. H. Waddell, to secure the payment of the said sum of five thousand five hundred and forty-six dollars and sixty-six cents; and, as a further security for the payment of the said sum of money, the said William Coventry H. Waddell, the lands and premises aforesaid herein after mentioned, and thereupon he, the said William Coventry H. Waddell did, under his hand and seal, make, execute, and deliver to your orator his certain bond or obligation, bearing date on or about the said third day of December, in the year one thousand eight hundred and thirty-five, whereby he, the said William C. H. Waddell, acknowledged himself to be held and firmly bound unto your orator in the sum of eleven thousand and ninety-three dollars and thirty-two cents, lawful money of the United States of America, to be paid to your orator, or to his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, he, the said William C. H. Waddell, did bind himself, his heirs, executors, and administrators, firmly by these presents, to which bond or obligation

there is a condition underwritten, to the tenor or effect following: that if the said William C. H. Waddell, his heirs, executors, administrators, or any of them, should and did well and truly pay, or cause to be paid, unto your orator, or to his certain attorney, executors, administrators, or assigns, the just and full sum of five thousand five hundred and forty-six dollars and sixty-six cents, lawful money as aforesaid, in two equal payments of two thousand seven hundred and seventy-three dollars and thirty-three cents each, the first payment to be made on the first day of April, in the year eight-
 10 teen hundred and thirty-seven, and the second payment to be made on the first day of April, in the year eighteen hundred and thirty-eight, with lawful interest for the same from the first day of April next ensuing the date of the said bond or obligation, payable semi-annually without any fraud or other delay, then the said obligation was to be void, otherwise to be and remain in full force and virtue, as in and by the said bond or obligation, now in possession of your orator, and ready to be produced and proven, as this honorable court shall direct, will, reference thereto being had, more fully and at large appear, and to which your orator, for greater certainty,
 20 prays leave to refer.

And your orator further showeth unto your Excellency, that, as a further security for the payment of the money mentioned in the said bond or obligation, executed as aforesaid by the said William C. H. Waddell to your orator, he, the said William C. H. Waddell and Julia Anne his wife, on or about the said third day of December, in the year one thousand eight hundred and thirty-five, did, under their hands and seals, make, execute, and deliver to your orator a certain indenture of mortgage, bearing date on or about the day and year last aforesaid, whereby they, the said William C. H. Wad-
 30 dell and Julia Anne his wife, for and in consideration of the sum of five thousand five hundred and forty-six dollars and sixty-six cents, to them in hand well and truly paid by your orator at and before the sealing and delivery of the said indenture of mortgage, the receipt whereof was thereby acknowledged, and the said William C. H. Waddell and Julia Anne his wife were therewith fully satisfied, contented, and paid, did, by the said indenture of mortgage, give, grant, bargain, sell, alien, enfeoff, convey, and confirm unto your orator, and to his heirs and assigns for ever, all that tract
 40 or parcel of land and premises situate, lying, and being in the (then township) now city of Newark, county of Essex, and state of New Jersey, beginning at the northwest corner of a lot of land now or late belonging to the heirs of Ichabod Carman, deceased; thence

(first) running south, sixty-four degrees and thirty minutes east, two hundred and twenty-seven feet, to the Passaic river; thence (second) along said river, as the same is now docked out, north, twenty degrees and thirty-five minutes west, one hundred and four feet; thence (third) south, sixty-five degrees and fifty minutes west, two hundred and thirty-two feet eight inches, to the New Jersey Railroad; thence (fourth) along the east line of the same south, twenty-three degrees and fifty minutes east, one hundred and seven feet, to the place of beginning, together with all and singular the profits, privileges, and advantages, with the appurtenances, to the 10 same belonging or in any wise appertaining; also all the estate, right, title, interest, property, claim, and demand whatsoever of the said William C. H. Waddell and Julia Anne his wife of, in, and to the same, and of, in, and to every part and parcel thereof, to have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part in the said mortgage (*to wit*, your orator), his heirs and assigns, to the only proper use, benefit, and behoof of your orator, his heirs and assigns, for ever: provided always, and it was agreed by and between the parties to the said indenture of mortgage, that 20 if the said William C. H. Waddell, his heirs, executors, or administrators, did and should well and truly pay, or cause to be paid, unto your orator, or to his certain attorney, heirs, executors, administrators or assigns, the sum of five thousand five hundred and forty-six dollars and sixty-six cents, lawful money as aforesaid, in two equal payments, of two thousand seven hundred and seventy-three dollars and thirty-three cents each, the first payment to be made on the first day of April, in the year eighteen hundred and thirty-seven, and the second payment to be made on the first day of April, in the year eighteen hundred and thirty-eight, with lawful interest 30 for the same from and after the first day of April next ensuing the date of the said indenture of mortgage, payable semi-annually, according to the condition of the bond or obligation herein before mentioned and set forth, without any deduction or defalcation for taxes, assessments, or any other impositions whatsoever, that then and from thenceforth the said indenture of mortgage and the said bond or obligation, and every thing in either contained, should cease and be void, any thing in either contained to the contrary in any wise notwithstanding; and the said William C. H. Waddell, for himself, his heirs, executors, and administrators, did covenant 40 and grant to and with your orator, his heirs and assigns, that your orator, his heirs and assigns, should and might from time to time,

and all times after default should be made in the performance of the proviso or condition contained in the said indenture of mortgage, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance, or denial of the said William C. H. Waddell, his heirs or assigns, or of any other person or persons whatsoever.

10 And your orator further showeth unto your Excellency, that the indenture of mortgage, executed as aforesaid to your orator by the said William C. H. Waddell and Julia Anne his wife, has been lost or mislaid, so that your orator is unable to make profert of the same; that the said indenture of mortgage remains unpaid and unsatisfied; that it is recorded in the clerk's office of the county of Essex, as is herein before mentioned and set forth; wherefore your orator prays that he may be allowed to bring the record of the said indenture of mortgage into this court, as evidence of the existence and execution of the said indenture of mortgage.

20 And your orator further showeth unto your Excellency, that but a part of the principal money mentioned in the said bond or obligation has been paid or satisfied to your orator, while a large part thereof, together with interest thereon for a long space of time, still remains due and owing to your orator, so that he is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises, the said indenture of mortgage, and the estate thereby mortgaged, have become absolute in your orator and his heirs.

30 And your orator further showeth unto your Excellency, that the said mortgaged premises are a slender and scanty security for the payment of the principal and interest money so due to your orator as aforesaid; and that your orator, or some other person in his behalf, has frequently and in a friendly manner applied to the said William C. H. Waddell and Julia Anne his wife, and requested them to pay to your orator the said principal and interest money so due to your orator as aforesaid; and your orator well hoped that they would have complied with such reasonable request, as in equity and good conscience they were bound to do. But now so it is, may it please your Excellency, the said William C. H. Waddell and Julia Anne his wife, combining and confederating together and with divers other persons at present unknown to your orator,
40 but whose names when discovered your orator prays may be inserted herein as parties hereto, with proper and apt words to charge them, how to injure and aggrieve your orator in the pre-

mises, sometimes give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates, or some of them, pretend that there are other encumbrances upon the said mortgaged premises prior to your orator's said mortgage, but when given, to whom, or for what consideration, or what is the nature thereof, they refuse to discover; whereas your orator charges, that there are no such prior encumbrances as is pretended, and, if any do exist, that they are fraudulent and void, as respects your orator. 10

And your orator further showeth unto your Excellency, that sometimes the said confederates give out and pretend that the said mortgage was never executed by the said William C. H. Waddell and Julia Anne his wife, whereas your orator expressly charges, that the said indenture of mortgage was made, executed, acknowledged, and registered, in manner and form as your orator has herein before stated; all which actings, pretences, and doings of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. 20

In tender consideration whereof, and forasmuch as your orator has not a safe and complete remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment of the principal and interest money so due to your orator as aforesaid, without the aid and decree of this honorable court—to the end, therefore, that the said William C. H. Waddell and Julia Anne his wife, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they thereto severally and particularly interrogated, according to the best of their respective knowledge, information, and belief; and that the said William C. H. Waddell may be decreed to pay and satisfy to your orator the amount so due to your orator for principal and interest as aforesaid; (and that it may be referred to one of the masters of this court to ascertain the amount of principal and interest money remaining due and unsatisfied to your orator) together with your orator's costs and charges in this behalf sustained, both at law and equity, by a short day, to be appointed by this honorable court; and in default thereof, that the said William 30 40

C. H. Waddell and Julia Anne his wife, and all persons claiming or to claim by, through, from, or under them, may be absolutely foreclosed and debarred of and from all equity of redemption or claim of, in, and to the said mortgaged premises, and every part and parcel thereof; and that, by the order and decree of this honorable court, the said mortgaged premises may be sold, and out of the proceeds arising from the sale thereof, your orator may be paid the amount of principal money, with the interest thereon, so due to your orator as aforesaid by virtue of the said bond or obligation and indenture of mortgage, together with your orator's costs, both at law and equity, in this behalf expended; and that your orator may have such further and other relief in the premises as to your Excellency shall seem meet and as shall be agreeable to equity and good conscience.

May it therefore please your Excellency, the premises considered, to grant unto your orator the state's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said William C. H. Waddell and Julia Anne his wife, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty, to be and appear before your Excellency in this honorable court, then and there to answer all and singular the premises, and to perform and abide such decree as to your Excellency shall seem meet and as shall be agreeable to equity and good conscience.

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

A. C. M. PENNINGTON,
Solicitor and of Counsel with complainant.

The joint and several answer of William C. H. Waddell and Julia Anne his wife, defendants, to a bill filed by Ephraim Beach against the said defendants.

And these defendants, William C. H. Waddell and Julia Anne his wife, now and all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exceptions to the way, errors, and insufficiencies in the said complainant's bill of complaint contained, for answer thereto say, they formerly resided in the city of New York, but they now reside in the state of New Jersey, in the county of Morris.

And the said William C. H. Waddell further answering says, that on or about the third day of December, in the year of our Lord one thousand eight hundred and thirty-five, he became in-

debted to the said Ephraim Beach in the sum of five thousand five hundred and forty-six dollars and sixty-six cents, for the purchase money of the lands and premises which he agreed to purchase from the said Ephraim Beach, then of the township of Newark, now of the state of New York: the said land and premises, herein after mentioned, are situated in the city of Newark, in the county of Essex, and state of New Jersey; that, at that time the said Ephraim Beach represented himself to be seized or entitled in fee simple and possessed of, and to have full power and authority to dispose of the fee simple inheritance and possession of the whole 10 and every part of the land and premises, this defendant became indebted as above mentioned, and for no other land or premises and for no other cause or reason whatever; that, upon the representations of the said Ephraim Beach, this defendant, William C. H. Waddell, took the following deed: This indenture, made this third day of December, in the year of our Lord one thousand eight hundred and thirty-five, between Ephraim Beach and Eliza his wife, of the township of Newark, in the county of Essex, and state of New Jersey, of the first part, and William C. H. Waddell, of the city of New York, in the county of New York, and state of 20 New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of eight thousand three hundred and twenty dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at and 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, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey, and con- 30 firm to the said party of the second part, and to his heirs and assigns for ever, all that certain lot, tract, or parcel of land and premises, herein after particularly described, situate, lying, and being in the township of Newark, in the county of Essex, and state of New Jersey, beginning at the northwest corner of a lot of land now or lately owned by the heirs of Ichabod Carman, deceased; thence (1) running north, sixty-four degrees thirty minutes east, two hundred and twenty-seven feet, to the Pssaic river, thence (2) along said river, as the same is now docked out, north, twenty degrees thirty-five minutes west, one hundred and four feet; thence (3) 40 south, sixty-five degrees fifty minutes west, two hundred and thirty-two feet eight inches, to the New Jersey Railroad; thence (4)

along the east line of the same, south, twenty-three degrees fifty minutes east, one hundred and seven feet, to the place of beginning, being lot number eighty-three, as marked and designated on a map of the Ephraim Beach property, made by Stephen Dod, esq., surveyor, and filed in the clerk's office of the county of Essex aforesaid, reference being thereto had will more fully appear; 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 all and singular the above described tract or parcel of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, for ever. And the said Ephraim Beach doth, for himself, his heirs, executors, and administrators, covenant and grant, to and with the said party of the second part, heirs and assigns, that he, the said Ephraim Beach, 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 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 encumbrance 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 hath good right, full power, and lawful authority to grant, bargain, sell, and convey the said land and premises in manner aforesaid. And also, that he, the said Ephraim Beach, will warrant, secure, and for ever defend the said land and premises unto the said William C. H. Waddell, his heirs and assigns, for ever 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. In witness whereof, the said Ephraim Beach and Eliza his wife have hereunto set their hands and seals the day and year first above written.

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(Signed)

EP. BEACH, [L. s.]

ELIZA BEACH, [L. s.]

Signed, sealed, and delivered, in the presence of

L. D. HARDENBURGH, as to Eph. Beach.

P. SYTHOFF, as to Mrs. Eliza Beach.

And on which deed there is the following acknowledgment: New Jersey, Essex co., ss.—Before me, Peter Sythoff, one of the masters in chancery of New Jersey, appeared Ephraim Beach and Eliza his wife, the grantors in the within deed named, and severally acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed, I having first made them acquainted with the contents thereof, 10 and being satisfied that they are the grantors named in the same; and the said Eliza, being by me privately examined separate and apart from her husband, did further acknowledge that she had signed, sealed, and delivered the same freely, without any fear, threats, or compulsion from her said husband. This done at Newark, in said county, this twenty-fifth day of March, A. D. 1836.

(Signed)

P. SYTHOFF.

Said deed is recorded in the office of the clerk of the county of Essex, the thirtieth day of March, A. D. 1836, in Book G 4 of Deeds, pages 307, 308, and 309. The said deed is now in the pos- 20 session of this defendant, ready to be produced as this honorable court may direct, for which for greater certainty, reference being thereto had, will more fully appear.

And this defendant, William C. H. Waddell, further answering says, that, simultaneously with the execution of the said deed of conveyance and grant, he executed and delivered to the said Ephraim Beach the said bond and mortgage, mentioned in the said bill of complaint, as a security for the payment of so much of the price, consideration, or purchase money in the deed of conveyance and grant mentioned as aforesaid, and for no other pur- 30 pose or interest whatever, and the same was so then and there accepted and received by the said Ephraim Beach from this defendant, as such security as aforesaid. And this defendant, William C. H. Waddell, further answering, avers that neither before nor at the time of the execution of the said bond and mortgage in said bill of complaint mentioned, nor at any time before or since, was the said Ephraim Beach the true and lawful and rightful owner of all and singular the above described land and premises; nor was the said Ephraim Beach then, or at any other time before or afterwards, seized in fee of the whole and every part of the said lot of land 40

and premises in the said deed of conveyance and grant mentioned and described, and of which the boundaries are herein before particularly set forth as aforesaid; nor had the said Ephraim Beach then, or at any time before or afterwards, good rightful power and lawful authority to grant, bargain, sell, and convey the said land and premises unto this defendant, in manner aforesaid. And this defendant avers, and charges to be true, that the said Ephraim Beach, at the time of the execution of the said writing obligatory, in the said bill of complaint mentioned, well knew that he, the said

10 Ephraim Beach, was not then, nor at any time before or afterwards, the true, lawful, and rightful owner of all and singular the above described land and premises; and that he, the said Ephraim Beach, had not then, nor at any time before or afterwards, good rightful power and lawful authority to grant, bargain, sell, and convey the said land and premises unto this defendant, in manner aforesaid.

And this defendant, William C. H. Waddell, further answering says, that he hath not received, and is not entitled to any estate in fee, or any other estate, nor the use, occupation, and possession of all the said land and premises herein before described; nor hath

20 this defendant, in any manner, received any consideration whatsoever for the balance or sum aforesaid remaining due on the said writing obligatory, or any part thereof, but therein the consideration thereof hath wholly failed, and is lost to this defendant.

And this defendant, William C. H. Waddell, further answering says, that he hath been defrauded, in manner aforesaid, to his great injury and damage; that the said bond and indenture of mortgage, mentioned in said bill of complaint, were obtained from this defendant by the said Ephraim Beach, and others in collusion with him, falsely and fraudulently representing to this defendant, before

30 the execution and delivery of the said writing obligatory and the said indenture of mortgage, mentioned in the said bill of complaint mentioned, *to wit*, on the said third day of December, in the year of our Lord one thousand eight hundred and thirty-five, in the township of Newark, and county of Essex, were in possession of the land and premises described in the said deed of conveyance, herein before mentioned, bearing date the day and year last aforesaid, and which is now brought here into court, sealed with the seals of the said Ephraim Beach and his said wife, for the consideration of eight thousand three hundred and twenty dollars. And

40 this defendant, William C. H. Waddell, further answering says, that the said Ephraim Beach, upon the said third day of December, in the year of our Lord one thousand eight hundred and

thirty-five, when the said deed was executed for the said land and premises for which the said bond and the said indenture of mortgage, in the said bill of complaint mentioned, were given by this defendant, falsely, and by a gross fraud and imposition upon this defendant, represented that he, the said Ephraim Beach, was seized or entitled in fee simple, and that he had full power and authority to dispose of the fee simple and inheritance of the whole and every part of the premises mentioned and described in the deed herein before mentioned, without exception as to any part whatsoever.

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The said premises described in said deed, herein before mentioned, were offered by the said Ephraim Beach to this defendant freed and cleared from any and every encumbrance of any kind or description, either in law or equity, without any exception as to any part whatsoever thereof, and that the same were in the occupancy, use, enjoyment, and possession of the said Ephraim Beach; whereas in truth, as this defendant charges expressly and believes to be true, there was a considerable part of those premises not in the possession of the said Ephraim Beach, and to which he had no right, power, or lawful authority to convey to this defendant; that the said land and premises are only of value for the uses and purposes of a dock on the said Passaic river, and that one hundred and four feet are necessary for such uses and purposes; that, at the time of the execution of the said deed by the said Ephraim Beach to this defendant, a considerable part of the said dock front, about forty feet of the same, was in the possession of Messrs. Condit & Co., lessees of Mrs. Carman, who have occupied, used, and claimed, and still occupy, use, and claim, title to the said forty feet of dock on said Passaic river, mentioned in the deed herein before described; and that this defendant has been informed by the attorney of Mrs. Carman, that her husband was for several years previous to his death, which was eight or ten years ago, and she has been since, in possession of part of said dock described in the said deed, herein before mentioned, claimed by the said Ephraim Beach, and that she will not, in case Messrs. Condit & Co. give up possession of the premises leased to them, give up possession to any person; that the said forty feet is material and absolutely necessary to the convenient enjoyment of the rest of said land and premises, and without which said forty feet part of the said dock the said dock is rendered completely valueless.

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And this defendant, William C. H. Waddell, further answering, expressly charges, that the said Ephraim Beach, at the time of the

execution of the said deed, herein before mentioned, knew that the said forty feet was in possession of the lessees of Mrs. Carman, and that the said possession of the said lessees was adverse to the possession, title, right, claim, or interest of the said Ephraim Beach in and to the said forty feet; that, by false and gross fraud and imposition, knowing of the said adverse claim, and falsely representing to this defendant that he could have the use, occupation, possession, and enjoyment of the whole and every part and parcel of the said land and premises freed and cleared from any encum-
 10 brance, of any nature or kind whatsoever, he induced and persuaded, by said false representations, this defendant to take the said deed, herein before mentioned, and to execute and deliver, for part of the purchase money for said land and premises, and for no other purpose whatever, the said bond and indenture of mortgage mentioned in said bill of complaint; that the said Ephraim Beach, at the time of the execution of the said bond and mortgage mentioned in said bill, did not disclose the fact, that the possession of the said forty feet was in the lessees of Mrs. Carman, held under a title
 20 adverse to him, the said Ephraim Beach, and that he, this defendant, could not discover the same by the abstract.

And this defendant, William C. H. Waddell, further answering says, that at different times before he was aware, or had in any manner become acquainted with the defect of title, herein before mentioned, *to wit*, the adverse possession of about forty feet of said dock, he paid to the said Ephraim Beach the following sums of money on the said bond and indenture of mortgage, mentioned in said bill of complaint, *to wit*, October first, 1836, one hundred and sixty-six dollars and forty cents; April 28th, 1837, one thousand dollars; January 13th, 1838, one thousand dollars; April 1st,
 30 1838, five hundred dollars; that as soon as he became acquainted or informed of said defect of title, *to wit*, the adverse possession of about forty feet of said dock, he wholly and altogether refused to make any further or other payments to the said Ephraim Beach.

And this defendant, William C. H. Waddell, further answering says, that he does not know that the said indenture of mortgage, mentioned in said bill of complaint, has been lost or mislaid, and of the same is entirely ignorant, therefore can neither admit or deny, but leaves the said complainant to prove the same, as he may be advised.

40 And this defendant, William C. H. Waddell, further answering says, that he does not know that the said indenture of mortgage, mentioned in said bill of complaint, is recorded in the clerk's office

of the county of Essex, and cannot admit or deny the same, but leaves the complainant to prove the same, as he may be advised.

And this defendant, Julia Anne, wife of William C. H. Waddell, says, that she has been in the habit of executing mortgages at the request of her said husband, but that she does not particularly remember the execution of the indenture of mortgage as mentioned in the bill of complaint, and does not admit or deny the same, but leaves the complainant to prove the same, as he may be advised.

And this defendant, Julia Anne, wife of William C. H. Waddell, 10 does not know that the said indenture of mortgage has been lost or mislaid, as mentioned in said bill of complaint, and does not admit or deny the same, but leaves the complainant to prove the same, as he may be advised.

And this defendant, Julia Anne, wife of William C. H. Waddell, further answering says, that she does not know that the said indenture of mortgage is recorded in the clerk's office of the county of Essex, and can neither admit or deny the same, but leaves the complainant to prove the same, as he may be advised.

And these defendants deny all combination and confederacy, 20 charged against them in the said bill of complaint, wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby pray to be hence dismissed, with their reasonable costs and charges in this 30 behalf most wrongfully sustained.

WALTER RUTHERFORD, *Sol. for.*

A. ARMSTRONG, *of Counsel.*

Hundreds interlined, and dollars interlined.

New Jersey, *ss.*—William C. H. Waddell and Julia Anne Waddell, in the foregoing answer named, being duly sworn, depose and say, that the facts, matters, and things set forth and contained in the foregoing answer, so far as they relate to their own acts and deeds, 40 are true of their own knowledge, and so far as they relate to the

acts and deeds of every other person or persons, they believe them to be true.

WM. COVENTRY H. WADDELL,
JULIA ANNE WADDELL.

Sworn and subscribed before me, one of the justices of the peace of the county of Morris, this 6th day of January, A. D. 1842.

JACOB HOLLOWAY.

Replication filed.

10 *To his Excellency William Pennington, Governor, Captain-General, and Commander-in-Chief in and over the State of New Jersey, and the territories thereunto belonging, Chancellor and Ordinary in the same.*

In Chancery.—Humbly complaining, showeth unto your Excellency your orator, William C. H. Waddell, of the state of New Jersey, that on or about the third day of December, in the year eighteen hundred and thirty-five, he agreed to purchase from Ephraim Beach, then of the city of Newark, now of the state of New York, certain land and premises, herein after mentioned, situate in the city of Newark, in the county of Essex, and state of
20 New Jersey; that at that time the said Ephraim Beach represented himself to be seized or entitled in fee simple, and to have full power and authority to dispose of the fee simple and inheritance of the whole, and every part of the land and premises in the deed herein after mentioned, upon which representations your orator took the following described deed: This indenture, made this third day of December, in the year of our Lord one thousand eight hundred and thirty-five, between Ephraim Beach and Eliza his wife, of the township of Newark, in the county of Essex, and state of New Jersey, of the first part, and William C. H. Wad-
30 dell, of the city of New York, in the county of New York, and state of New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of eight thousand three hundred and twenty dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part at and 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, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant,
40 bargain, sell, alien, release, enfeoff, convey, and confirm, to the said

party of the second part, and to his heirs and assigns for ever, all that certain lot, tract, or parcel of land and premises herein after particularly described, situate, lying, and being in the township of Newark, in the county of Essex, and state of New Jersey, beginning at the northwest corner of a lot of land now or lately owned by the heirs of Ichabod Carman, deceased; thence (1) running north, sixty-four degrees thirty minutes east, two hundred and twenty-seven feet, to the Passaic river; thence (2) along said river, as the same is now docked out, north, twenty degrees thirty-five minutes west, one hundred and four feet; thence (3) south, sixty-five de- 10
 grees fifty minutes west, two hundred and thirty-two feet eight inches, to the New Jersey Railroad; thence (4) along the east line of the same south, twenty-three degrees fifty minutes east, one hundred and seven feet, to the place of beginning, being lot number eighty-three, as marked and designated on a map of the Ephraim Beach property made by Stephen Dod, esq., surveyor, and filed in the clerk's office of the county of Essex aforesaid, reference being thereto had will more fully appear; together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belong- 20
 ing or in any wise appertaining. Also, all the estate, right, title, interest, property, claim, and demand whatsoever of the said party of first part of, in, and to the same, and of, in, and to every part and parcel thereof; to have and to hold all and singular the above described tract or parcel of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, for ever. And the said Ephraim Beach doth, for himself, his heirs, executors, and admin- 30
 istrators, covenant and grant, to and with the said party of the second part, heirs, and assigns, that he, the said Ephraim Beach, 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 the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance 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. 40
 And also, that the said party of the first part now hath good right, full power, and lawful authority to grant, bargain, sell, and convey

county of Essex, and state of New Jersey, your orator, simultaneously with the execution of the said deed of conveyance and grant, did, under his hand and seal, make and execute, and deliver to the said Ephraim Beach, his certain bond or obligation, bearing date on or about the said third day of December, in the year one thousand eight hundred and thirty-five, whereby your orator acknowledged himself to be held and firmly bound unto the said Ephraim Beach in the sum of eleven thousand and ninety-three dollars and thirty-two cents, lawful money of the United States of America, to be paid to the said Ephraim Beach, or to his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, your orator did bind himself, his heirs, executors, and administrators firmly by these presents, to which bond or obligation there is a certain condition underwritten, to the tenor or effect following: that if your orator, his heirs, executors, administrators, or any of them, should and did well and truly pay, or cause to be paid, unto the said Ephraim Beach, or to his certain attorney, executors, administrators, or assigns, the just and full sum of five thousand five hundred and forty-six dollars and ninety-six cents, lawful money as aforesaid, in two equal payments, of two thousand seven hundred and seventy-three dollars and thirty-three cents each, the first payment to be made on the first day of April, in the year eighteen hundred and thirty-seven, and the second payment to be made on the first day of April, in the year eighteen hundred and thirty-eight, with lawful interest for the same from the first day of April next ensuing the date of the said bond or obligation, payable semi-annually without any fraud or other delay, then the said obligation to be void, otherwise to be and remain in full force and virtue; which said bond is not in the possession of your orator, but is in the custody or power of the said Ephraim Beach. 30

And your orator further showeth unto your Excellency, that, as a further security for the payment of the money mentioned in the said bond or obligation, executed as aforesaid by your orator to the said Ephraim Beach, your orator, together with Julia Anne his wife, on or about the said third day of December, in the year one thousand eight hundred and thirty-five, under their hands and seals, made, executed, and delivered unto the said Ephraim Beach a certain indenture of mortgage, bearing date on or about the day and year last aforesaid, whereby your orator and Julia Anne his wife, for and in consideration of the sum of five thousand five hundred and forty-six dollars and sixty-six cents, to them in hand well and truly paid by the said Ephraim Beach at and before the sealing and

delivery of the said indenture of mortgage, the receipt whereof was
 thereby acknowledged, and your orator and Julia Anne his wife were
 therewith fully satisfied, contented, and paid, did, by the said inden-
 ture of mortgage, give, grant, bargain, sell, alien, enfeoff, convey,
 and confirm unto the said Ephraim Beach, and to his heirs and as-
 signs for ever, all the land and premises described in the above men-
 tioned deed, together with all and singular the profits, privileges,
 and advantages, with the appurtenances; also, all the right, title,
 interest, property, claim, and demand whatsoever of your orator
 10 and Julia Anne his wife of, in, and to the same, and of, in, and to
 every part and parcel thereof, to have and to hold all and singular
 the above described tract or lot of land and premises, with the ap-
 purtenances, unto the said party of the second part in the said
 mortgage (*to wit*, the said Ephraim Beach, his heirs and assigns)
 to the only proper use, benefit, and behoof of the said Ephraim
 Beach, his heirs and assigns for ever; *provided always*, and it was
 agreed by and between the parties to the said indenture of mort-
 gage, that if your orator, his heirs, executors, or administrators,
 did and should well and truly pay, or cause to be paid, unto the
 20 said Ephraim Beach, or to his certain attorney, heirs, executors,
 administrators, or assigns, the sum of five thousand five hundred
 and forty-six dollars and sixty-six cents, lawful money as aforesaid,
 in two equal payments, of two thousand seven hundred and seventy-
 three dollars and thirty-three cents each, the first payment to be
 made on the first day of April, in the year eighteen hundred and
 thirty-seven, the second on the first of April, eighteen hundred and
 thirty-eight, with lawful interest for the same from and after the
 first day of April next ensuing the date of the said indenture of
 mortgage, payable semi-annually, according to the condition of the
 30 bond or obligation herein before mentioned and set forth, without
 any deduction or defalcation for taxes, assessments, or any other
 impositions whatsoever, that then and from thenceforth the said
 indenture of mortgage and the said bond or obligation should
 cease and be void, any thing in either contained to the contrary in
 any wise notwithstanding. And your orator, for himself, his heirs,
 executors, and administrators, did covenant and grant to and with
 the said Ephraim Beach, his heirs and assigns, that the said Ephraim
 Beach, his heirs and assigns, should and might from time to time,
 and at all times after default should be made in performance of the
 40 proviso or condition contained in said indenture of mortgage, peace-
 ably and quietly enter into, have, hold, use, occupy, possess, and
 enjoy all and singular the above granted and bargained premises,
 with the appurtenances, without the let, suit, trouble, hinderance, or

denial of your orator, his heirs or assigns, or of any other person or persons whatsoever; which said indenture of mortgage is not in the possession or under the control of your orator, therefore he cannot produce the same.

And your orator further showeth unto your Excellency, that, simultaneously with the execution of the said deed of conveyance and grant, he executed and delivered to the said Ephraim Beach the said bond and indenture of mortgage, herein before mentioned, in manner and form, as herein before mentioned, as a security for the payment of so much of the price, consideration, or purchase 10 money, in the said deed of conveyance and grant mentioned as aforesaid, and for no other purpose or intent whatever, and the same was so then and there accepted and received by the said Ephraim Beach from your orator, as such security, as aforesaid. And your orator avers, that neither before nor at the time of the execution of the said deed of conveyance and grant, bargain and sale, nor at the time of execution of the said bond and mortgage, herein before mentioned, nor at any time before or since, was the said Ephraim Beach the true, lawful, and rightful owner of all and singular the above described land and premises, nor was the said 20 Ephraim Beach then, or at any other time before or afterwards, seized in fee of the whole and every part of the said lot of land and premises in the said deed of conveyance and grant mentioned and described, and of which the boundaries are herein before particularly set forth as aforesaid; nor had the said Ephraim Beach then, or at any time before or afterwards, good rightful power and lawful authority to grant, bargain, sell, and convey the said land and premises unto your orator, in manner aforesaid.

And your orator further avers, that the said Ephraim Beach, at the time of the execution of the said deed of conveyance and grant 30 as aforesaid to your orator, and at the time of the execution of the said writing obligatory and the said indenture of mortgage, herein before mentioned, well knew that he, the said Ephraim Beach, was not then, nor at any time before or afterwards, the true, lawful, and rightful owner of all and singular the said above described land and premises, and that he, the said Ephraim Beach, had not then, nor at any time before or afterwards, good rightful power and lawful authority to grant, bargain, sell, and convey the said land and premises unto your orator, in manner aforesaid.

And your orator further showeth unto your Excellency, that he 40 hath been defrauded, in manner aforesaid, to his great injury and damage; that the said bond and indenture of mortgage, herein be-

fore mentioned, were obtained from your orator by the said Ephraim Beach, and others in collusion with him, by fraud, covin, and misrepresentation, that is to say, by the said Ephraim Beach, and others in collusion with him, falsely and fraudulently representing to your orator, before the execution and delivery of the said bond and indenture of mortgage, herein before mentioned, *to wit*, on the said third day of December, in the year of our Lord one thousand eight hundred and thirty-five, in the township of Newark, and county of Essex, were in possession of the land and premises
 10 described in the said deed of conveyance, herein before mentioned, bearing date the day and year last aforesaid, and which is now brought here into court, sealed with the seals of the said Ephraim Beach and his said wife, for the consideration of eight thousand three hundred and twenty dollars.

And your orator further showeth unto your Excellency, that the said Ephraim Beach, upon the said third day of December, in the year of our Lord one thousand eight hundred and thirty-five, when the said deed was executed for the said land and premises for which
 20 the said bond and the said indenture of mortgage, herein before mentioned, were given by your orator, falsely, and by a gross fraud and imposition upon your orator, represented that he, the said Ephraim Beach, was seized or entitled in fee simple, and that he had full power and authority to dispose of the fee simple and inheritance of the whole and every part of the premises mentioned and described in the deed, herein before mentioned, without exception as to any part whatsoever, the said premises described in said deed, herein before mentioned, were offered by the said Ephraim Beach to your orator freed and cleared from any and every encumbrance of any kind or description, either in law or
 30 equity, without any exception as to any part whatsoever thereof, and that the same were in the occupancy, use, enjoyment, and possession of the said Ephraim Beach, whereas in truth, as your orator charges expressly, and believes to be true, there was a considerable part of those premises not in the possession of the said Ephraim Beach, and to which he had no right, power, or lawful authority to convey to your orator; that the said land and premises are only of value for the uses and purposes of a dock on the said Passaic river, and that one hundred and four feet are necessary for
 40 such uses and purposes; that, at the time of the execution of the said deed by the said Ephraim Beach to your orator, a considerable part of the said dock front, about forty feet of the same, was in the possession of Messrs. Condit & Co., lessees of Mrs. Car-

man, who have occupied, used, and claimed, and still occupy, use, and claim, title to the said forty feet of dock on said Passaic river, mentioned in the deed herein before described; and that your orator has been informed by the attorney of Mrs. Carman, that her husband was for several years previous to his death, which was eight or ten years ago, and she has been since, in possession of part of said dock described in the said deed, herein before mentioned, claimed by the said Ephraim Beach, and that she will not, in case Messrs. Condit & Co. give up possession of the premises leased to them, give up possession to any person; that the said forty feet is 10 material and absolutely necessary to the convenient enjoyment of the rest of said land and premises, and without which said forty feet part of the said dock the said dock is rendered completely valueless.

And your orator further showeth unto your Excellency, and charges the same to be true, that the said Ephraim Beach, at the time of the execution of the said deed, herein before mentioned, knew that the said forty feet was in the possession of the lessees of Mrs. Carman, and that the said possession of the said lessees was adverse to the possession, title, right, claim, or interest of the said 20 Ephraim Beach in and to the said forty feet; that, by false and gross fraud and imposition, knowing of the said adverse claim, and falsely representing to your orator that he could have the use, occupation, possession, and enjoyment of the whole and every part and parcel of the said land and premises, freed and cleared from any encumbrance of any nature or kind whatsoever, he induced and persuaded, by said false representations, your orator to take the deed, herein before mentioned, and to execute and deliver for part of the purchase money for said land and premises, and for no other purpose whatever, the said bond and indenture of mortgage, 30 herein before mentioned; that the said Ephraim Beach, at the time of the execution of said bond and indenture of mortgage, did not disclose the fact, that the possession of the said forty feet was in the lessees of Mrs. Carman, held under a title adverse to him, the said Ephraim Beach, and that your orator could not discover the same by the abstract.

And your orator further showeth unto your Excellency, that, at the time said deed of conveyance was given to your orator by the said Ephraim Beach, he was a citizen of the state of New York, very much engaged in business in the city of New York; that for 40 a long time he was entirely ignorant of the defect of title, herein before mentioned, *to wit*, the adverse possession of forty feet of said

dock on the Passaic river, as is herein before mentioned; that your orator hath not used or occupied said land and premises as a dock since he became aware of the defect of title, herein before mentioned; that the said Ephraim Beach was an engineer, and lived within a few hundred yards of said dock at the time of the delivery and execution of the deed, herein before mentioned, and well knew that the lessees of Mrs. Carman had possession of the forty feet of dock on the Passaic river, and did not inform or intimate the said fact at the time of the delivery of said deed in any way or manner

10 to your orator.

And your orator further showeth unto your Excellency, that, at different times before he was aware, or had in any manner become acquainted with the defect of title herein before mentioned, *to wit*, the adverse possession of about forty feet of said dock, he paid to the said Ephraim Beach the following sums of money on the said bond and indenture of mortgage, herein before mentioned, *to wit*, October 1, 1836, one hundred and sixty-six dollars and forty cents; April 28, 1837, one thousand dollars; January 13, 1838, one thousand dollars; April 1, 1838, five hundred dollars; that, as soon as

20 he became acquainted or informed of said defect of title, *to wit*, the adverse possession of about forty feet of said dock, he wholly and altogether refused to make any further or other payments to the said Ephraim Beach; that, on account of said refusal to pay when the said Ephraim Beach and your orator were both citizens of the state of New York, the said Ephraim Beach commenced an action of debt in the Supreme Court of said state against your orator to recover the money due on the bond herein before mentioned, on or about the twenty-ninth day of June, eighteen hundred and thirty-eight; that, on or about the third day of September, in the

30 same year, agreeably to the provisions of the Revised Statutes of the state of New York, vol. 2, page 406, sec. 77, whereby it was enacted as follows: that in every action upon a sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner and to the same extent as if such instrument were not sealed, your orator pleaded in defence to the in said suit in substance the matters herein before stated; that, in the month of January, eighteen hundred and thirty-nine, the said action was discontinued by the said Ephraim Beach, and the costs were paid by him, the said Ephraim

40 Beach.

And your orator further showeth unto your Excellency, that afterwards, when both the said Ephraim Beach and your orator were

citizens of the state of New York, the said Ephraim Beach commenced an action of debt, in the Essex Circuit Court, against your orator to recover the amount supposed or alleged to be due on the bond, herein before mentioned, given by your orator to the said Ephraim Beach; that your orator appeared to the said action, and pleaded to the declaration pleas somewhat similar to those he pleaded in the action brought in New York. And the said Ephraim Beach has demurred to the second, third, and fourth pleas, and replied to the first, which demurrers and replications were filed with the clerk of the said Essex Circuit Court, on the eighteenth of 10 March, eighteen hundred and forty-one, as by reference to the said pleas and demurrers will more fully appear, and your orator has joined in said demurrer. All of which are filed in the office of the clerk of the said Circuit Court, reference being thereto had will more fully appear.

And your orator further showeth unto your Excellency, that the said Ephraim Beach has filed a bill to foreclose the mortgage, herein before mentioned, given by your orator and his wife, in this honorable court, June sixteenth, eighteen hundred and forty-one, as of April sixth, eighteen hundred and forty-one, to which said 20 bill your orator has answered. Said bill and answer are filed in the office of the clerk of this honorable court, reference being thereto had will more fully appear.

And your orator further showeth unto your Excellency, that he has not a good and sufficient title to the land and premises, herein before mentioned, in the deed herein before described, and that your orator, or some other person in his behalf, has frequently and in a friendly manner applied to the said Ephraim Beach, and requested him to cancel the bond and mortgage, herein before mentioned, given as part of the purchase money of the land and pre- 30 mises described in the deed, herein before mentioned, and also offered to reconvey to the said Ephraim Beach the said land and premises free and clear from all encumbrances, except the mortgage herein before mentioned; and your orator is now ready and willing, in the discretion of this honorable court, to reconvey said land and premises to the said Ephraim Beach. And the said Ephraim Beach has often been requested by your orator, and by other persons on behalf of your orator, in a friendly manner, to repay back to your orator all the moneys he has received on account of the consideration money of said deed. And your orator 40 well hoped that he would comply with such reasonable requests, as in equity and good conscience he was bound to do, but now, so

it is, may it please your Excellency, the said Ephraim Beach, combining and confederating together to and with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, as parties hereto, with proper and apt words to charge them, how they have injured and aggrieved your orator in the premises, sometimes giving out that there is no objection, either in law or equity, to the title of your orator to the said land and premises; and at other times the said confederates, or some of them, pretend that they have given, 10 since the execution and delivery of said deed, herein before mentioned, a good and valid title to said land and premises; and at other times the said confederates, or some of them, pretend that your orator, since the execution of said deed, has encumbered said land and premises, but when given, to whom, or for what consideration, or what is the nature thereof, they refuse to discover, whereas your orator expressly charges, that he has not a good title to said land and premises; that the said Ephraim Beach, as he pretends, hath not given your orator a good and sufficient title to said premises since the execution of said deed; that there are not 20 on said premises any encumbrances, except the mortgage herein before mentioned, as is pretended, and, if any do exist, that they are fraudulent and void, as respects your orator.

And your orator further showeth unto your Excellency, that sometimes the said confederates give out and pretend that the said deed was never executed by the said Ephraim Beach and wife, whereas your orator expressly charges that the said deed was made, executed, acknowledged, and registered, in manner and form as your orator has herein before stated.

All which actings, pretences, and doings of the said confederates 30 are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. In tender consideration whereof, and forasmuch as your orator has not a safe and complete remedy in the premises at and by the strict rules of the common law, nor cannot have the said bond and mortgage cancelled, nor the consideration money that has been paid by your orator on account of said deed repaid to your orator, nor have the said action at law perpetually enjoined without the aid and decree of this honorable court—to the end, therefore, that the said Ephraim Beach and his confederates, when discovered, may, upon 40 their several and respective corporal oaths, true, full, and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they thereto

severally and particularly interrogated, according to the best of their respective knowledge, information, and belief; and that the said Ephraim Beach may be decreed to cancel the bond and mortgage, herein before mentioned, given by your orator to the said Ephraim Beach for part of the purchase, as herein before mentioned; and that the said Ephraim Beach may be decreed to repay to your orator the purchase money and interest paid by your orator to the said Ephraim Beach, as consideration money for the deed herein before mentioned; and that it be referred to one of the masters of this court to ascertain the amount of said sum, and the 10 interest thereon, now due and owing to your orator on account of said payments; and that, in the mean time, the said Ephraim Beach, his attorney or attorneys, or any one claiming by or through him, may be restrained by the order and injunction of this honorable court from proceeding in the said action, brought in the Essex circuit, to recover the money claimed to be due the said Ephraim Beach on the bond of your orator, herein before mentioned, and from commencing or prosecuting any other proceedings at law against your orator for the recovery of the said amount claimed by the said Ephraim Beach to be due from your orator on the bond herein be- 20 fore mentioned.

And that the said Ephraim Beach, his attorneys, agents, or assigns, may be compelled, by the decree of this honorable court, to cancel the said bond and indenture of mortgage herein before mentioned, and to pay to your orator the sums of money paid by him to the said Ephraim Beach, together with lawful interest from the time when the same was paid by your orator to the said Ephraim Beach, on account of the consideration money for the deed herein before mentioned, your orator being willing, and hereby offering to reconvey to the said Ephraim Beach the said land and premises 30 mentioned in said deed, free and clear from all encumbrances whatsoever by or on account of your orator to said land and premises, except the mortgage herein before mentioned; and also, by the order and decree of this honorable court, perpetually to enjoin all suits or proceedings at law to recover the said bond or mortgage from your orator.

And that your orator may have such further or other relief in the premises as the nature and circumstances of the case may require, and to your Excellency may seem meet, may it please your Excellency, the premises considered, to grant unto your orator the 40 state's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Ephraim Beach, his at-

torney or attorneys, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty, to be and appear before your Excellency in this honorable court, then and there to answer all and singular the premises, and to perform and abide such decree as to your Excellency shall seem meet and as shall be agreeable to equity and good conscience. And your orator, as in duty bound, will ever pray.

WALTER RUTHERFORD, *Sol. for Com.*
A. ARMSTRONG, *of Counsel.*

- 10 The words "seven, the second on the first of April, 1833," on the seventh page, and the word "five," on the tenth page, the word "time," on the twelfth page, the word "to," on the fourteenth page, the word "premises," on the seventeenth page, interlined before execution.

New Jersey, *ss.*—William Coventry H. Waddell, in the foregoing bill named, being duly sworn, deposeth and saith, that the facts, matters, and things set forth and contained in the foregoing bill, so far as they relate to his own acts and deeds, are true of his own knowledge, and so far as they relate to the acts and deeds of every other person or persons, he believes them to be true.

20

WM. COVENTRY H. WADDELL.

The word "answer," twice erased, and the word "they," erased, and the word "bill," twice interlined, and the word "he," interlined before execution.

Subscribed and sworn, this 8th day of January, 1842, before me.
W. N. JEFFERS, *Master in Chancery of New Jersey.*

The answer of Ephraim Beach, defendant, to the bill of complaint of William C. H. Waddell, complainant.

- 30 This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, that some time in the summer or autumn of the year one thousand eight hundred and thirty-five, this defendant entered into an agreement with Charles O. Bolles and Abel Thompson for the sale of certain lands and real estate, situate in the city of Newark, in the county of Essex, and state of New Jersey, including the tract or parcel of land and premises mentioned and described in the deed of convey-

ance in the said bill set forth; that, it being intended by the said Charles O. Bolles and Abel Thompson to associate others with them in the purchase of the said lands and real estate, and to put up the same in lots at public sale, it was agreed, by and between this defendant and the said Charles O. Bolles and Abel Thompson, that this defendant should continue to hold the title of the said lands and real estate, and, at the request of the said Charles O. Bolles and Abel Thompson, and their associates, make, execute, and deliver to the several purchasers of lots at such public sale, in case such public sale should be had, deeds of conveyance for such lots, 10 respectively, as such purchasers should bid off and purchase; and that it being intended by the said Charles O. Bolles and Abel Thompson to give time of payment to such purchasers for a part of the purchase money of such lots, respectively, to be secured by the bonds of such purchasers, respectively, and indentures of mortgage upon such lots, respectively, to be made by such purchasers, he, this defendant, would receive from the said Charles O. Bolles and Abel Thompson, in payment of part of the consideration money, the bonds and indentures of mortgage of such purchasers, or such of them as he should select, to be made, executed, 20 and delivered to this defendant by such purchasers; that afterwards, and in or about the month of November, in the year aforesaid, the said Charles O. Bolles and Abel Thompson, and their associates, pursuant to such intention as aforesaid, set up the said lands and real estate in lots at public sale, and that at such sale the said complainant bid for the tract or parcel of land and premises in the said deed of conveyance in the said bill set forth, mentioned, and described, and, he being the highest bidder for the same, the said tract or parcel of land and premises last mentioned was struck off to him, at or for about the sum of eight thousand three hundred 30 and twenty dollars; that, pursuant to the agreement aforesaid, this defendant, together with his wife, Eliza Beach, at the request of the said Charles O. Bolles and Abel Thompson, and their associates, made and executed the deed of conveyance in the said bill of complaint set forth, and handed the same to the said Charles O. Bolles and Abel Thompson, and their associates, or some of them, to be delivered to the said complainant; that the said deed of conveyance was drafted and prepared by and at the expense of the said Charles O. Bolles and Abel Thompson, and their associates, and by them, or some of them, delivered to the said complainant, 40 by and with the consent of this defendant, at their request and in pursuance of the agreement aforesaid by and between this defend-

ant and the said Charles O. Bolles and Abel Thompson; that the bond or obligation of the said complainant and the indenture of mortgage of the said complainant and Julia Anne his wife, mentioned in the said bill, were made and executed by them for the sum of five thousand five hundred and forty-six dollars and sixty-six cents, or thereabouts, part of the purchase money aforesaid of the said tract or parcel of land and premises so struck off to the said complainant at such public sale as aforesaid, and by the said complainant delivered to the said Charles O. Bolles and Abel Thompson, and their associates, to be disposed of by them as they saw fit in their discretion; that the said complainant paid to the said Charles O. Bolles and Abel Thompson, and their associates, the sum of two thousand seven hundred and sixty-three dollars and thirty-four cents, or thereabouts, for and on account of the balance of the purchase money aforesaid of the said tract or parcel of land and premises so purchased by the said complainant as aforesaid, and that no part of the said balance was paid or even came to the hands of this defendant; that the said bond and indenture of mortgage were delivered to this defendant by the said Charles O. Bolles and Abel Thompson, and their associates, and were by this defendant received, he having selected the same according to the said agreement, together with divers other bonds and indentures of mortgage of divers other persons, in payment of a part of the consideration money of the sale of the said lands and real estate by this defendant to the said Charles O. Bolles and Abel Thompson, the said consideration money being the sum of seventy-five thousand dollars, and the said bond and indenture of mortgage, in the said bill set forth, being received by this defendant for and at the sum of five thousand five hundred and forty-six dollars and sixty-six cents, or thereabouts; that the said Charles O. Bolles and Abel Thompson, and their associates, sold the said lands and real estate, so purchased of this defendant as aforesaid, for the sum of one hundred and twenty-five thousand dollars, or thereabouts, as this defendant is informed and believes; that the price or consideration at which this defendant really sold and conveyed the said tract or parcel of land and premises, so conveyed to the said complainant as aforesaid, would not exceed the sum of five thousand dollars, or thereabouts, if the price at which this defendant sold the whole of the said lands and real estate were divided and distributed among the several lots into which the same were sold by the said Charles O. Bolles and Abel Thompson, and their associates, accord-

ing to the relative and respective values of the several lots of the same.

And this defendant further answering saith, that before the making of the said agreement by this defendant with the said Charles O. Bolles and Abel Thompson, and before the sale of the same at public sale, as aforesaid, a full and complete search and abstract of the title of this defendant, of, in, and to the said lands and real estate, were made, at the request and under the direction and superintendence of the said Charles O. Bolles and Abel Thompson, at the expense of this defendant, showing the chain of title of 10 the several parcels thereof to this defendant, and the several encumbrances thereon, and that the said Charles O. Bolles and Abel Thompson, and their associates, were fully satisfied that this defendant was seized and well entitled to the fee simple and inheritance of the said lands and real estate, including the tract or parcel of land and premises so conveyed to the said complainant as aforesaid, and that no encumbrance existed on the said last mentioned tract or parcel of land and premises.

And this defendant further answering saith, that the said complainant, at the time when he bid off the said tract or parcel of 20 land and premises, and when he made, executed, and delivered the said bond and indenture of mortgage, as aforesaid; well knew that this defendant had sold the said land and real estate to the said Charles O. Bolles and Abel Thompson for the said sum of seventy-five thousand dollars, and that such agreement had been made by and between them as aforesaid, and that he, this defendant, would convey the said tract or parcel of land and premises to the complainant only upon the request of the said Charles O. Bolles and Abel Thompson, in pursuance of such agreement, as aforesaid; that 30 this defendant continued to hold the title to the said lands and real estate upon such agreement as aforesaid; that this defendant would receive the bond and indenture of mortgage of the said complainant, if at all, only for and towards the payment of so much of the said sum of seventy-five thousand dollars, such consideration money as aforesaid; that such search and abstract had been made as aforesaid, and the result thereof, and that this defendant would not receive any part of the money to be paid by the said complainant on the purchase of the said tract or parcel of land and premises over and above the amount secured by such bond and indenture of mortgage, and all the other facts, matters, and things herein before 40 set forth and alleged; and that the said complainant was one of the associates of the said Charles O. Bolles and Abel Thompson in the

purchase of the said lands and real estate, and, as such, entitled by a contract, made by and between the said complainant and the said Charles O. Bolles and Abel Thompson, to three of the seventy-five shares, of one thousand dollars each, into which the ownership of the said lands and real estate was divided among the said Charles O. Bolles and Abel Thompson, and their said associates.

And this defendant further answering saith, that, otherwise than as herein before set forth, he denies that the said complainant, on or about the third day of December, in the year one thousand eight
 10 hundred and thirty-five, or at any other time, agreed to purchase of this defendant the said tract or parcel of land and premises in the said bill mentioned and described, and that this defendant, at that or any other time, represented himself to be seized or entitled in fee simple, or to have full power and authority to dispose of the fee simple or inheritance of the whole and every part or any part of the said tract or parcel of land and premises, otherwise than by the covenants in the said deed of conveyance, and as appeared by the result of the search and abstract of the title so made as aforesaid.

And your defendant further answering admits, that the said deed
 20 of conveyance was acknowledged and recorded as set forth in the said bill; that simultaneously with, or about the time of the execution of the said deed of conveyance, the said complainant did make and execute the bond or obligation bearing date, in the penalty and upon the condition as in the said bill is set forth; and that the said complainant and Julia Anne his wife did, as a further security for the payment of the money in the said bond mentioned, make and execute the indenture of mortgage bearing date, conveying in mortgage the said tract or parcel of land and premises, and upon the condition as in the said bill is set forth.

And this defendant further answering saith, that he denies that
 30 the said bond and indenture of mortgage were delivered to this defendant otherwise than is herein before mentioned, and admits that the same was made and executed as a security for so much of the price, consideration, or purchase money in the said deed of conveyance mentioned, and for no other purpose or intent whatsoever; but this defendant denies that the same was accepted or received by him, except as herein before set forth, from the said Charles O. Bolles and Abel Thompson, and their associates, in
 40 payment, to the extent of the money secured thereby, of the purchase money of the said lands and real estate so sold to the said Charles O. Bolles and Abel Thompson by this defendant.

And this defendant further answering saith, that he believes and

insists, that before and at the time of the execution of the said deed of conveyance and of the said bond and indenture of mortgage, he, this defendant, was the true, lawful, and right owner of all and singular the said tract or parcel of land and premises in the said deed of conveyance mentioned and described, and every part thereof, and that he was then seized in fee of the whole and every part thereof, and that he then had full power and lawful authority to grant, bargain, sell, and convey the same, and that he then so fully believed.

And this defendant further answering saith, that he denies that the said complainant hath been defrauded to his great injury and damage, as set forth in the said bill, and that the said bond and indenture of mortgage were obtained from the said complainant by this defendant, and others in collusion with him, or otherwise by fraud, covin, or misrepresentation, and that this defendant, or others in collusion with him, falsely and fraudulently represented to the said complainant, before the execution and delivery of the said bond or indenture of mortgage, or at any other time, that he, this defendant, was in possession of the said tract or parcel of land and premises, or any part thereof; and this defendant saith, that no representation whatever was made by this defendant, or any other person in his behalf, to the said complainant, or to any other person, in reference to the possession, use, occupancy, or enjoyment of the said tract or parcel of land and premises in this defendant, or otherwise. 10 20

And this defendant further answering saith, that he denies that a considerable, or any part, of the said tract or parcel of land and premises was, at the time of the making of the said deed of conveyance or of the said bond or indenture of mortgage, out of the possession of this defendant, and saith, that the whole of the said tract or parcel of land and premises was in the possession of this defendant, and that, as he verily believes and insists, he had good right and power and lawful authority to convey the same, and to deliver the possession thereof, and that, by virtue of the said deed, he did deliver to the said complainant full and indisputable possession of the whole of the said tract or parcel of land and premises. 30

And this defendant further answering saith, that the principal, but not the only value of the said tract or parcel of land and premises, consists in its use and adaptation for the purposes of a dock and wharf on the Passaic river; but this defendant denies that one hundred and four feet are necessary for such use, as alleged in the said bill. 40

And this defendant further answering saith, that he denies that,

at the time of the execution of the said deed of conveyance, a considerable or any part of the said tract or parcel of land and premises, or about forty feet, or any part of the dock front of the same, was in the possession of Messrs. Condit & Co., or any other person or persons, as the lessees of Mrs. Carman, and that the said Mrs. Carman, or the said Messrs. Condit & Co., or any other person or persons as the lessee, had occupied or used the same, or any part thereof, or that she or they, at the time of the filing of the said bill, occupied or used the same.

10 And this defendant further answering saith, that he does not know, nor has he been informed, save by the said bill, and cannot state, as to his belief or otherwise, whether or not the said Mrs. Carman or the said Messrs. Condit & Co., as her lessees, claim title to the said tract or parcel of land and premises, or any part thereof, or to the said forty feet of dock, or any part thereof, nor whether or not the said complainant was informed by the attorney of the said Mrs. Carman, that her husband was for several years before his death, or that she has been since his death, in possession of part of the said tract or parcel of land and premises or dock,
 20 and that she will not give up possession to any person, as set forth in the said bill, and admits that the husband of the said Mrs. Carman died eight or ten years before the filing of the said bill; but this defendant saith that the said Mrs. Carman was not, nor was the husband of the said Mrs. Carman, at any time, as far as this defendant knows, and as he verily believes, ever in the possession of the said tract or parcel of land and premises, or any part thereof.

And this defendant further answering saith, that he denies that the said forty feet is absolutely necessary to the convenient enjoyment of the rest of the said tract or parcel of land and premises,
 30 and that without it the said dock is rendered completely valueless, and saith that though he admits that the said forty feet is material and important to the value of the said dock, the same is very valuable without the said forty feet.

And this defendant further answering saith, that, as far as he knows and as he verily believes, neither the said Mrs. Carman nor her said husband ever had any title or interest whatsoever in the said tract or parcel of land and premises, or any part thereof.

40 And this defendant further answering saith, that he admits that the said complainant was at the time of the execution of the said deed of conveyance a citizen of the state of New York and very much engaged in business, and that this defendant was then an en-

gineer, and lived within a few hundred yards of the said dock, but this defendant does not know, nor has he been informed, save by the said bill, nor can he state, as to his belief or otherwise, whether the said complainant has ever used or occupied the said tract or parcel of land and premises.

And this defendant further answering saith, that he admits that the said complainant paid to this defendant the several sums of money, and at the times as in the said bill set forth, on account of the said bond and indenture of mortgage; that he hath, since the last of the said payments, wholly neglected and refused to make any further payments on account of the said bond and indenture of mortgage; that, in consequence of such refusal, he, this defendant, (he and the said complainants being then citizens of the state of New York) commenced an action of debt in the court, and at the time and for the purpose as in the said bill is set forth, and that the said complainant pleaded as in the said bill is set forth, and that this defendant discontinued the said action, and paid the costs thereof, at the time as in the said bill is set forth. 10

And this defendant further answering saith, that he admits that afterwards, when both this defendant and the said complainant were citizens of the state of New York, this defendant commenced an action in the form, and in the court, and for the purpose, as in the said bill is set forth; that the said complainant pleaded, and that such proceedings were had in the said action as in the said bill is set forth; that this defendant hath filed in this honorable court his bill of complaint for the foreclosure of the mortgage in the said bills mentioned, and that such proceedings have been had therein as in the said bill of the said complainant is set forth. 20

And this defendant further answering saith, that he believes and insists that the said complainant has a good and sufficient title to the said tract or parcel of land and premises, and to every part and parcel thereof, and saith that the said complainant hath not been in any way disturbed in the possession, use, and occupation of the same; and that ever since the making of this said deed of conveyance he has been, or might have been but for his own neglect or miscarriage, in the receipt of all the rents, issues, and profits thereof, without the molestation, hinderance, or denial of any person or persons whatsoever. 30

And this defendant submits to this honorable court, and respectfully insists, that the said complainant is bound in law and equity to pay this defendant the principal and interest money due upon the said bond and indenture of mortgage; that the injunction is- 40

sued in this suit ought to be dissolved, and this defendant allowed to proceed in his action at law to recover upon the said bond and upon his said bill for the foreclosure of the said indenture of mortgage; that if it shall be ascertained that any defect exists in the title to any part of the said tract or parcel of land and premises, the said bond and indenture of mortgage should not be declared void or be decreed to be given up to be cancelled, nor should this defendant be decreed to pay back the moneys received by him on the said bond or indenture of mortgage, or any part thereof, but
 10 that such deduction and abatement shall be ordered by this honorable court upon the said bond as shall be equitable and just, and as the nature and circumstances of the case shall require.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer thereunto, and not herein and hereby well and sufficiently answered, confessed, traversed,
 20 and avoided or denied, is true, to the knowledge or belief of this defendant: all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

A. C. M. PENNINGTON,

Solicitor and of Counsel with complainant.

Replication filed.

Examination of witnesses, taken the 15th day of May, 1847, before Staats S. Morris, one of the masters and examiners of the Court of Chancery, in the presence of Archer Gifford, esquire, solicitor,
 30 and Joseph P. Bradley, of counsel with the complainant, and Alexander C. M. Pennington, esquire, solicitor and of counsel for the said defendant, service of the original notice being admitted by Mr. Pennington.

Francis W. Brinley, a witness produced on the part of the complainant, being duly sworn according to law saith—My age is forty-eight years; I reside in Perth Amboy; I am a surveyor and manufacturer; I have made surveys in the city of Newark; during the year eighteen hundred and thirty-six, I surveyed a great deal in Newark; I did some in eighteen hundred and thirty-four and eight-
 40 teen hundred and thirty-five. I made a survey along the Passaic

river of the Beach property and the adjoining property, at the request of Mr. Gifford. This property is situated between the foot of Market street, or the Egg dock, as it is usually called, and the foot of Mulberry and Centre streets, and between the river road and the Passaic river. I made this survey in January eighteen hundred and forty-six; I made this survey for the purpose of ascertaining the southerly line of the Beach property, as conveyed to Beach; by the Beach property, I mean the property of Ephraim Beach. I was two or three days in making the survey; afterwards, on my return from Amboy, I surveyed it again, to arrive at a certainty. 10
Mr. Beach was at one time present; at another time there was another man present assisting in making the survey. I used surveys and deeds in making this survey.

[The paper produced by counsel of complainant, and shown to witness, and which is marked Exhibit B 1, on the part of the complainant, witness says,] I used this in making the survey. I also used the papers marked Exhibits B 2, B 3, B 4, B 5, B 6, B 7, and B 8, in making the survey, which were severally produced by the counsel of the complainant, and at his request marked as exhibits, and shown to the witness. I was directed, in making my survey, by 20
these papers and some information I possessed in regard to the lines in that section, and also from maps and other information I accumulated from inquiry.

[The papers produced and marked as exhibits above are objected to by defendant's counsel as evidence, otherwise than is identified by the witness as papers used by him in making his survey.]

In fixing the location of the Beach property, I surveyed other tracts of land, that is to say, two properties on the north side and one on the south side. One of the properties on the north side was called the Baldwin property, and the other the John Stiles 30
property. I followed the description, as contained in Exhibit B 1, in ascertaining the Baldwin property, which is the most northerly lot I surveyed. In ascertaining the position of the Stiles property, I followed the paper marked Exhibit B 2, which lies next south of the Baldwin property. In tracing the Beach property, I followed the paper marked Exhibit B 3. In tracing the lot on the south side of the Beach property, I used the papers marked Exhibits B 4, B 5, B 6, and B 7. The property south of the Beach property is called the Carman property. I followed the paper marked Exhibit B 8, in tracing the northern part of the Carman property. The 40
Beach property lies between the Stiles property and the Carman property. The papers marked Exhibits B 4, B 5, B 6, and B 7,

cover only the southern part of the Carman property. In making my survey, I first located the Baldwin property; I took, as a starting point, the description contained in Exhibit B 1, beginning at the northeast corner of judge William Peartree Smith's house, that was my starting point. The house was situated near the foot of Mulberry street; the house was standing when I made the survey, hill and all. The beginning corner of the Baldwin lot was south, forty-nine degrees and thirty minutes east, (S. 49° 30' E.) one chain and sixty-seven links (1 chain 67 links) from the northeast corner
10 of the house above specified.

[The parties here consent to have the courses and distances expressed in numerical figures.]

In making my survey from these papers, I made a due allowance for the variation of the needle. I made an allowance of two degrees for the variation of the needle in the survey of the Baldwin property. I did not make the same allowance in all the surveys; I made allowance in each case according to the dates of the surveys in the deeds and papers furnished, having reference to the lines adjoining and such landmarks as I could obtain. I made a
20 map of my survey.

[The paper marked Exhibit B 9, produced by the complainant's counsel, and at his request marked as an exhibit in this cause on the part of the complainant, being shown to witness, he says,]

It contains a skeleton map, made by me, of my said survey of the several properties above referred to. Diagram A, on said paper, is the map I refer to. In this map, or diagram, the letter H designates the house above referred to; figure 1 designates the beginning point of the survey, being the northeast corner of the house aforesaid; figure 2 designates the beginning corner of the
30 Baldwin lot, which is marked No. 1; figure 3 designates the beginning corner of the Stiles lot, which is marked No. 2 on the diagram; figure 4 and letter A designate the beginning corner of the Beach property, which is marked No. 3 on the diagram; E e designate the beginning corner of the Carman lot, which is marked No's 4 and 5 on the diagram, the northerly part of which is embraced by the lines *f g c h*. The easterly line of the lots designated on the diagram is the edge of the dock along the Passaic river; the westerly line of the said lots is the easterly line of the River road or street. The representation of the needle in the corner of
40 the diagram represents the meridian. That portion of the diagram nearest to the William Peartree Smith house, marked letter H as aforesaid, is the north. The Diagram W, on the same exhibit, re-

presents the Carman lot and the Beach lot, showing the position of the Railroad through the properties, cutting off some short lots between the Railroad and the River street. My beginning corner, in surveying the Carman lot, was on the north side of the road leading to the new dock, one chain easterly from the home lot of Eleazer Bruen, deceased. The point is designated on diagram A in Exhibit B 9, by the letters E e; that point is the southwest corner of the last southerly house between the New Jersey Railroad and River street, built within the last four or five years.

[The description of the lot of land and premises contained in a 10 deed from Ephraim Beach and wife to William C. H. Waddell, the complainant in this cause, dated the third day of December, eighteen hundred and thirty-five, as set forth in the cross-bill of complaint of the said complainant in this cause, being read to the witness, he says,]

That the position of the said lot of land and premises is exhibited in the said diagram A (on Exhibit B 9) by the red lines *a b c d* and the said lot being numbered No. 6. The position of the said lot is represented on the said diagram W by black lines, *a b c d*, and marked 83 in red figures. According to my survey, the lot 20 above mentioned is partly in the Beach lot and partly out; twenty-four feet of said lot lies within the Beach property, and the rest out of it, that part of the same lying within the Beach property being designated in the diagram A by the lines and figures *a n m d*, and by the same letters in the diagram W. From the beginning corner of the Baldwin property, as aforesaid, I ran south, $19^{\circ} 45'$ east, 4 chains, to the beginning of the John Stiles property, and from thence south, $16^{\circ} 30'$ east, 4 chains, the breadth of the Stiles property, to the beginning of the Beach property. This was the way I got at the beginning corner of the Beach property. For the 30 Beach property, from the end of the four chains last mentioned, I ran south, $10^{\circ} 45'$ east, 2 chains 85 links; thence south, $24^{\circ} 30'$ east, 2 chains 75 links, to the southwest corner of the Beach property, which last point is designated by the letter and a figure *c 2*; thence north, 56° east, to the Passaic river, which is designated by *c 2* and *c* on the diagram A; the same line is designated on the diagram W in red ink, by the letters *c c*. In the course of my survey I took another beginning corner for the Beach property different from the one above stated, that is to say: in running the first course of the Beach property, I noted at the distance of thirty- 40 three and a third links ($33\frac{1}{3}$ links), thence on from the beginning, a line running north, 74° east, (which was shown to me by Mr. Aaron

Ward to be where a line had been agreed upon between him and Beach) which line is represented on the said diagram A by the dotted line B 2, B, and on the diagram W by the line A A. I ran the property of Mr. Beach from that point as a beginning, after I had completed the other survey, to show the position of the Beach property on that basis by the same survey. I ran it out by the same courses and distances as before with the new beginning point, which courses and distances are designated on the said diagram A by the lines B 2, 6, D D, and B, and on the said diagram W by the red dotted lines A D D, and the Beach lines D A A. In my first survey the west line of the Beach property corresponded with the east side of the river road; in the second survey the west line of the Beach property ran into the road full twenty feet. This second survey brought the south line of the Beach property $33\frac{1}{2}$ links farther south, as designated by the dotted lines D D in both of said diagrams. This second survey would, of course, bring the said lot conveyed to Waddell $33\frac{1}{2}$ links farther on the Beach property, which would make 46 feet in all. When I say that, by the first survey, 24 feet of the lot conveyed to Waddell, as aforesaid, came within the Beach property, and by the second survey 46 feet, I mean that the westerly end of the Waddell lot, on the Railroad, was in that position; and the same was the case with the easterly end on the river, the strip being nearly a parallelogram. The William Peartree Smith house was the house next southwesterly on Mulberry street from the Holden house, which stood at the south corner of Centre and Mulberry streets.

In running the Carman lot, I began at the point aforesaid on the north side of the road leading to the new dock, represented on the said diagram A by the letters E e; and I ran by the Carman deeds, after making due allowances for variations, north $26^{\circ} 30'$ west, 4 chains 60 links, to the northwest corner of the Carman property, as represented on the said diagram A, by the letter *f*, being the distance required by the two sets of deeds, exhibited as above, for the Carman property. I then found myself at the distance of (83 feet) eighty-three feet south, $26^{\circ} 30'$ east, from the southwest corner of the Beach property, according to my said first survey thereof, and sixty-six feet south, $40^{\circ} 10'$ east, from the southwest corner of the Beach property, according to my said second survey. I then ran for the north line of the Carman property north, 58° east, which was originally north, 56° east, to the river, as is represented on the said diagram A by the line *f g*, and also on the said diagram W by the dotted line *f g*. This survey of the Carman lot took in twenty-

two feet of the Waddell lot aforesaid on the west end, and sixty-two feet on the east end on the river, measuring on the Railroad and the river, and taking the length from the title deed of Beach to Waddell and from the original map of division made by Stephen Dod. I examined the map of the Beach property made by Mr. Dod, which is on record in the clerk's office of the county of Essex. I copied the diagram W, except the red lines, from it, by which map and division it appears that the distance along River street from the beginning of the Carman property, and allowed for the same by Mr. Dod, is two hundred and ninety-four feet and a half, 10 or four chains and forty-seven links, instead of three hundred and three six-tenths, or four chains and sixty links, making the beginning of the said Waddell lot twenty-two feet within side of the Carman title. According to my survey of the Carman lot and both of my said surveys of the Beach property, there is a small gore of land between them, as represented on the said diagram A by the lines C 2, *m g f*, and on the diagram W by the lines *c c g f*. [The paper produced on the part of the complainant, and at the request of the complainant's counsel, I have marked Exhibit B 10, and made an exhibit, being shown to witness, he says,] it is the map of 20 the Beach property made by Mr. Dod, above referred to.

[At this period of the examination it was adjourned, by agreement of the parties, to Monday, the twenty-fourth day of May, instant, at ten o'clock in the forenoon.]

[This examination is further continued until Tuesday evening next, at seven o'clock.] [This examination was further continued unto the ninth day of September, eighteen hundred and forty-seven, at ten o'clock A. M., by consent and agreement of the parties, at which time Messrs. Gifford and Bradley appeared on behalf of the complainant, and Mr. Pennington, on behalf of the defendant, and 30 proceeded with the examination.]

F. W. Brinley, being further examined on the part of the complainant, saith—On having my attention called to the description of the premises contained in the deed from Ephraim Beach, the defendant, to Waddell, the complainant, as set forth in the cross-bill filed in this cause, I have examined the said description. The northwest corner of the lot lately owned by the heirs of Ichabod Carman, deceased, is designated by the letter Z, in red ink, on the diagram W, on the Exhibit B 9 in this cause; I mean the northwest corner of said lot lying east of the Railroad. The northwest 40 corner of said lot, as designated on the map prepared by Mr. Dod, marked Exhibit B 10, is designated on the said diagram W by the

small letter *s*. When I say the letter Z, in red ink, designates the northwest corner of the Carman lot, I mean that that is the true corner of the lot, as designated in the deeds marked Exhibits B 4, B 5, B 6, B 7, B 8. A line drawn on a course of north, 64° east, from the northwest corner of the Carman lot on River street, as designated in the deeds aforesaid, would take in a part of the said Waddell lot, and the portion of the said Waddell lot so taken in would be nine feet of the said Carman lot, supposing said line to be the north line of said Carman lot; the space so taken in is designated by the letters *b c k k* on said diagram W.

Cross-examination by Mr. Pennington.—The B line in black ink, marked A C *f y*, on the diagram W of Exhibit B No. 9, is intended to designate the line of River street, the same as on the original map drawn by Mr. Dod, of which it is a copy. I cannot say whether that is the true line of River street. The road was originally the River road, as granted by the proprietors to the town of Newark, as running along the bank, without courses and distances. It is now impossible to trace the original position of the said road, but its position as laid down on the map marked diagram W and on Stephen Dod's map marked Exhibit B 10, is as the River street is now held and used. I have ascertained, by actual survey and inspection, that the line, as laid out by A C *f* and *y* on the diagram W, is the easterly line of River street, as now laid out and used, allowing one chain for the breadth of the street from the line of the lots on the west side of the street. I ascertained the west line of the street by actual survey from the old Eleazer Bruen property, from surveys and maps made by Stephen Dod, and particularly by the map made by Stephen Dod marked B 10. I referred to the Eleazer Bruen property, because the property on one side of the street referred to the property on the other. I ran all that was necessary of the west line of River street before I ran the east line.

Quest. Did you, in that survey and inspection, ascertain the actual position of the line fences of either the westerly or easterly side of River street, or of the front lines of the lots on either side of the street, as now enclosed?

Ans. I did, as far as they were enclosed; only part of the east line of River street was occupied by any fence or building when I made the survey; there was a building on the lot marked No. 82, and a fence in the rear extending northerly along the line of River street, to the northward of the same; either upon the lots marked 78, 79, 80, or 81, were two new cellars, the stone work up at that time directly on the line of the street, as shown on the map; north-

ward of that there were no fences or buildings at that time on the line designated on the diagram. I cannot recollect whether there were any street fences or buildings directly on the westerly line of said street at that time; there were houses and fences, at the time of that survey, on the west side of River street. Those houses and fences stood westwardly of the westerly line, as given on the map marked Exhibit B 10. I can only speak generally; there were some as to enable me, by the assistance of the map B 10, and their position, to ascertain the position of River street, as laid down on the map of the Beach property made by Mr. Dod. I saw some of 10 the fences were new fences, and some were very old. I have been personally conversant with River street, so as to say it was used as it now is for twelve or thirteen years. I have no personal knowledge of the actual boundary or lines of the street, as used prior to thirteen years ago. The point *b* on diagram W is ascertained from crossing map marked B 10 by a scale, taking the courses and distances, as laid down in said map B 10. The line *kk* on the diagram W is a delineation to show where the northerly line of the Carman property would run, if said northerly line was parallel with its southerly line, instead of on an angle of nine degrees, as 20 per the title, making *yf* the line of River street and the westerly line of the Carman property, as per deeds before referred to. When I made the survey of the Carman property there was no fence at or near the corner of the Eleazer Bruen property, the same having been dug away for the making of the canal, nor opposite the beginning of the Carman property, as shown to me, and from which I made my survey.

Quest. How did you ascertain where the fence of the house lot of the Eleazer Bruen property stood at the time of the survey contained in deed from J. D. Bruen to Carman & Crowell, marked 30 Exhibit B 5, as called for in said survey?

Ans. By the information derived personally, at the time of my survey and on the spot, from Mr. Poinier and other old residents in that section, whose names I don't recollect, from the papers, title deeds, and maps placed in my hands to aid me in ascertaining the position, and from the map marked B 10, and surveys predicated thereon.

Quest. What papers, title deeds, and maps were placed in your hands for that purpose?

Ans. There was Exhibit B No. 5, B No. 4, Exhibit No. 7, the 40 deed from Robert N. Waite and Ann Inness to Ephraim Beach, an abstract of which is marked Exhibit B 3, and map, originally

made by Stephen Dod, of the Carman property, [which being produced by complainant, I have marked, at his request, Exhibit B No. 11], the map marked B No. 10, and other papers, not now recollected, which were furnished by the attorney of Mr. Waddell. I examined the whole of them with the records in the clerk's office. Exhibit B No. 11 was not recorded, but is to my knowledge with Stephen Dod, and is in his handwriting, an original draft, made by the said Stephen Dod, and signed by him; the other papers, above mentioned, were, to the best of my knowledge, on record. From the information I derived, as above, of where the Bruen line of fence was at the time of the deed marked B 5, and by the same papers and deeds just mentioned, and the neighborhood information given, and the comparison and examination of the whole by survey, I ascertained the position of the southwest or beginning corner of the Carman property, which agreed with where it was shown me and agreed with the maps. In making the survey of the Carman property, as protracted on diagram W, I measured the distance on the southerly line of the Carman property to the river, and took the bearing of the said line. I also took the bearing of the north line of the Carman property, after measuring the distance of four chains and sixty links along River street. The distance on the southerly line mentioned in the deed, according to my recollection, fell short of the whole distance to the river, the wharves having been extended out. According to the best of my recollection, the length of that line, at that time, was about five chains to the river. I distinctly recollect the Poinier dock, as far back as eighteen hundred and thirty-four, which is part of the survey embraced in B 5. When the dock was extended out I don't recollect. The first of my recollection was, that it was docked out.

30 The contents of land contained in the lines in Exhibit B 5 is one acre and eighty-five hundredths, supposing the river line to be straight; if the north line is parallel to the south line, the contents would be one acre and seventy hundredths nearly. The contents of land between *k k* and *b c* on diagram W is a little over four hundredths of an acre, or forty-six thousandths of an acre. The distance upon the Railroad and the river is about nine feet, it being a little wider on the river than on the Railroad; and the contents between the lines, *k k* and *C g* on diagram W, is nineteen hundredths of an acre nearly. The distance between *k* and *Z* is intended to

40 be thirteen feet, and between *k* and *g*, on the river, sixty-two feet.

[The solicitor of complainant here offered a certified copy of a deed from the administrators of Luther Baldwin, deceased, to

Mary Baldwin, which, at his request, I have marked Exhibit B 12.] The west lines of the lots No. 1 and No. 2, on the diagram A and on Exhibit B 9, correspond nearly with the easterly line of River street, as now travelled; there were no fences along there at the time of my survey, except a small portion of fence near the corner marked 4 A; there were one or two houses to the eastward of this fence; the fence referred to was an old fence, and was nearly on the line. I think the Stiles house was very nearly on the line A A on diagram A; which side of that line, or whether the line run through the house, I cannot recollect. I think the line run 10 to the north of the house, and that the house was between the line A A and B and B 2, at any rate it was north of the line B B 2. The line B B 2 on the diagram A is represented by the line A A on the diagram W. The point B 2 on the diagram A is represented by the cross near the point A on the diagram W.

Running the Beach title, according to its courses and distances in Exhibit B 3, from the \times near the point A on diagram W, the southwesterly corner of the Beach title would be at \textcircled{e} , in red ink, near the letter D. Running the same courses and distances from \textcircled{e} , in black ink, designated as John Stiles' true southwest corner 20 in diagram W, and which is intended to exhibit the point A 4 on the diagram A, the southwest corner of the Beach title would be at C, on the diagram W. Running the same lines from the point A on the diagram W the southwest corner of the Beach title would be at D. The distance on diagram W from y to f is four chains and sixty links. The distance between f and C, on same diagram, is eighty-three feet. The distance between f and D is sixty-six feet.

The contents of the survey of Exhibit B No. 3, by the lines, is two acres and seventy hundredths nearly; adding another chain in width to the length would make half an acre more in all, being 30 three acres and twenty hundredths nearly: my calculation is made on the supposition that the line along the river is straight. If the line along the river ran parallel with the westerly line of said survey, the contents would be sixteen hundredths less, leaving three acres and three hundredths of an acre.

Direct examination resumed by Mr. Bradley.—The contents of these lots along the river rises and falls with the tide, they all say, more or less.

Quest. In ascertaining the beginning point of the Carman lot and the other starting points in your survey, did you adopt the usual 40 mode resorted to by good surveyors for that purpose?

Ans. I did.

I cannot recollect the names of any other persons from whom I got information, except that of Mr. Poinier. I think Mr. Aaron Ward was present at one time; when I was at the Egg dock, there were a number of persons present whom I did not know. The survey made by me, predicated on the beginning point as shown to me, corresponded with landmarks, as stated in my examination heretofore. I saw by the examination of the papers, by the information obtained from the persons in the neighborhood, and by comparisons and calculations founded thereon, that the survey made by me had every indication of correctness. In running the lines of the survey in Exhibit B 3, the line of the street is more closely followed by starting from Q , in black ink on diagram W, than by starting from the point A on the same diagram. The red dotted line running from the point A shows the lines of the survey, when A is taken for a starting point. I can't tell whether the lines A c, in black ink, or the red line from Q to c, in red ink, is the nearest the true line to the street. None of the recent maps exhibited to me at the time I made my survey, appear to have gone back to the Peartree Smith house as a starting point.

20 Cross-examination resumed.—So far as I know since the deeds referring to the Peartree Smith house were given, no survey has been made from that starting point.

Quest. Had you, at the time you made your survey, any record, or certified copy of a record, of the laying out of River street or road as a public highway by any public authority, and if any what?

Ans. I had in my possession at the time of making my survey, and had kept them as such in my possession, as register and surveyor general of the eastern division of New Jersey, for several 30 years prior thereto, records of the general proprietors of New Jersey, wherein is a grant to the inhabitants of the town of Newark, under special provisions, of the streets and roads in the said town, as they then laid. I had, among the same records, a variety of grants from the same, to individual inhabitants of the same, of lands binding on the River road. I had no other record of the laying out of that road by public authority. I examined those records with reference to this survey. Those grants do not give the courses or distances of the lines of the road, but bind on the road. The grant of the road contains no courses or distances; I do not know 40 how this road run prior to that grant; I don't know where there is any record of the laying out of that road; I don't pretend to know what the true line of that road is, excepting from those surveys

and such documents as I could obtain. No survey that I made beginning at the Peartree Smith house, running by the lines of the title deed, brought me to the point A. on the diagram W. From **Q**, in black ink, on diagram W, to the edge of the paper in the left hand, is a red line drawn, showing the line of John Stiles' title, as coming from the Peartree Smith house. In making my survey, I had a copy of the survey in a deed from Aaron Johnson and wife to Ephraim Beach, and a map of the same. It was a survey of property on the west side of the River road, opposite this property in question. I think I did not, by this map and survey, in comparison with other maps and surveys in my possession for the purpose of the survey, undertake to find either of the courses of the Carman property. I ran the Carman property from its own deed. 10

[A copy of the map above referred to is here permitted to be introduced, on the part of the complainant, and which, at the request of the complainant's counsel, I have marked Exhibit B No. 13.]

I did not attempt to ascertain the corner of Mrs. Inness' lot, as specified in that deed, on the west side of the road. I do not think, in making my survey, that I referred to a deed from John Bruen and wife to Aaron Johnson. In ascertaining the boundaries of the lot conveyed by the Poiniers to Carman, fronting sixty links on the east side of River street, I did not ascertain, or attempt to ascertain, a point on the easterly line of River street opposite a corner of Mrs. Inness on the west side. I had no reference to Mrs. Inness' line on the west side in making my survey. The beginning corner of the Carman property would be the same distance from the Bruen fence, if it were nine feet farther south on the east side of River street. I had no record of a street laid out from River street to the Egg dock, in making my survey; I believe it was vacant land. For my guide in ascertaining the south line of the Carman property, I had the same guides as I have herein before stated; there were houses and fences on the line. 30

Quest. What old, fixed, and permanent landmark or monument, referred to in any of the old surveys or maps used by you in making this survey, did you find to correspond with and prove the accuracy of your survey?

Ans. The Eleazer Bruen fence, though not standing at the point opposite the Carman property, yet its position was distinctly ascertained and pointed out; the southwest corner of the Carman property, near which is a house, agreed with the line of the Egg dock or the south line of the Carman property, as per my survey. 40

The foundation of certain houses, then erecting, agreed with the lines of the surveys contained in the old deeds and maps, and the general examination and position of matters, at the time of my survey, plainly proved that my survey was per the old landmarks.

Direct examination resumed.—In getting at the line of the road, I had reference to the old deeds for property along the bank there, particularly the deeds that have been marked exhibits in this cause. Exhibit B No. 13 is a copy of the map made by Mr. Dod, and used by me in making my survey.

- 10 Cross-examination.—I don't think I used any other deeds in ascertaining the line of River street, except those marked exhibits in this cause; these deeds gave their own courses on the street. I made the copy of the map marked Exhibit B No. 13 from a map made by Stephen Dod.

Direct examination.—When I said I examined no other deeds, I did not mean to say I had had no reference to the records in the register's office.

Cross-examined.—My examination in the register's office gave me an insight into the whole matter.

- 20 *Quest.* Did that record furnish you with any landmark by which to ascertain the line of River street?

Ans. Certainly not.

Quest. Did that record furnish you with any course or distance, by which to ascertain the course or distance of any line in River street?

Ans. I have heretofore answered that question.

The question is here again repeated.

Ans. I have heretofore answered that question in my testimony.

Quest. Do you refuse to answer that question?

- 30 *Ans.* I do not say so; I decline to answer this last question.

Quest. How did that examination give you an insight into the matter of that survey?

Ans. As records generally do. It gave me an insight into the matter; there was a road and lands binding on that road.

Quest. Did you ascertain, by examining those records, any point, course, or distance of River street in making your survey?

Ans. I did not.

Direct examination.—I mean the proprietary records in the register's office.

J. W. BRINLEY.

- 40 By consent of the parties, the further examination of witnesses in this cause is adjourned to Wednesday, the fifteenth day of September, instant, at ten o'clock A. M.

Calvin W. Baldwin, of the city of Newark, in the county of Essex, and state of New Jersey, a witness produced on the part of the complainant, being duly sworn, on his oath saith—I reside at No. 28 Lawrence street, in the city of Newark; I am forty-eight years of age, and will be forty-nine years old in December next; I was born under the hill in the Luther Baldwin house; my mother was born there; I lived there until within eleven years next April. My mother's maiden name was Mary Stiles; my father's name was Luther Baldwin; he was the husband of Mary Stiles; as long as my mother did live she lived there. The Stiles property commenced 10 at a cedar tree running up the river. We owned four acres; two acres were bought of the Grants, one acre of Mr. Ogden, and one acre of Gen. Cummings. As I have understood from the family, the south part was confiscated at the close of the Revolutionary war. I understood from my mother that a part was bought of the Grants, and there was a house built on it, in which we lived; there was marked on the house that it was built in seventeen hundred and forty-two. I understood, in the family, that my father built a house on the southerly part of the property which was occupied by Richard Johnson, who was sometimes called Richard Stiles; he was the 20 half-brother to my mother; he was a good deal younger than my mother. This property included the hill and marsh from River street to the river. There was a little creek between this property and the property owned by Mr. Beach; this creek was dug out; this creek was all on our side of the line. The water covered the marsh at high tide, but at low tide it all ran off. At high tide the water covered all the marsh; you could sail a boat over it, except where it was filled up. As early as I can recollect the first wharf on the north was that occupied by the Holdens, at the foot of what is now called Front street. I remember the Carman property; Mr. 30 Beach had a fence between us and the Carman property; Mr. Bruen, also, had a fence between us and the Carman property. I recollect seeing a fence between the Carman property originally and the Bruen property. I understood the Bruen property was sold to Capt. Johnson, afterwards sold to Mr. Poinier, and then to Mr. Carman. It was a board fence; there was a bottom board, and then the boards ran up and down; it extended five or six panels from the hill down; it only took in the land on the hill, the marsh was all open. The fence was of this description all the way down. The fence ran about parallel with the old dock and in the same di- 40 rection, inclining up the river. I misuse the word parallel, I mean at right angles with the old dock. I don't remember any other fence

except ours. There was no fence between the property occupied by us and the Carman fence, already spoken of; it was a permanent fence. The dock itself inclined up the river, and the line being at right angles with the dock, also itself, inclined up the river. There was a walnut tree that stood on the hill; there were two walnut trees on the hill; the tree the lowest down was the line between Mr. Carman and Mr. Bruen, as I always understood. This tree stood on top of the hill, but the fence stood part the way down the hill, running up towards the tree. At my earliest recollection the

10 northeast corner of the Gabriel Bruen property, on the west side of River street, was the southeast corner of the Durand property; Gabriel Bruen was the son of old Eleazer Bruen. Mr. Beach bought the Gabriel Bruen property, which was owned intermediately by Mrs. Inness. The Bruen property ran down south to the Carman property, I mean the Gabriel Bruen property together with the Eleazer Bruen property, which last adjoined the former on the south. The Carman property, just referred to, is the Carman homestead on the west side of River street, and not the property in controversy. I remember the Carman tavern, it was at the upper end

20 of the old Egg dock; it faced the southwest; it is now standing, though it was moved towards the river on the building of the Railroad. The line of the street upon which it stands has never been altered within my recollection. What I speak of as a street, is a public dock used as a public highway. Part of the way down the hill, about half way, there was a fence that run along the River road; it ran from the tavern house to Mr. Eleazer Bruen's line; it ran up to the line of the strip sold to Johnson by Bruen; it ran to the fence already spoken of, running down the hill. There was a fence in front of our place that ran on the top of the hill, some dis-

30 tance from the edge of the bank. My mother's house, where I was born, stood twenty or thirty feet down the bank. The Stiles house, where Richard Johnson lived, also stood about twenty or thirty feet down the bank; both of those houses now stand where they always did. The whole property, including my mother's and Richard Johnson's, measured, when we sold to Mr. Ward, five hundred feet along River street. It was twelve feet from the Johnson house to where the cedar tree stood; I measured it. I mean the south line of the Stiles property was twelve feet south from the Johnson house. I remember the Peartree Smith house; Courtland Hays' mother

40 lived there when I was a boy; it stood on the hill on the west side of River street, next to Mr. Holden's stone house; it has lately been moved away. Mr. Poinier bought his present wharf of Mr. Carman.

Mr. Poinier gave in exchange for part of this wharf the strip of forty feet, lying to the north of this fence, running down the hill towards the river, and ten dollars, as I understood. The main part of Mr. Poinier's wharf had been previously purchased of Mr. Carman for \$1700, as I understood.

Cross-examined by Mr. Pennington.—The line of fence on the north of the Carman property, and all the lines of property between the river and the River road, and between the Egg dock and the Stiles property, ran parallel with the line of Egg dock; by that line I mean the line from the Railroad to the river, along Mr. 10 Poinier's line. The only land between the Stiles property and the Carman property, as they were severally occupied, were the two pieces of which I have spoken as the strip sold to Johnson and the property more recently known as the Beach property. From my recollection, the measurement on the river and along the River road, of these strips, taken together, was about equal. The only fences along the east side of River street, as long as I remember, were the fence running in front of our property and the fence along the Carman property, half way under the hill. The fences on the west side of River street, as long as I can recollect, ran very zigzag and 20 irregular, more so than at present. The whole of the house built by John Caldwell north of the Gabriel Bruen house, on the west side of the street, stands in what was formerly used as the street. In some places along the west line of the River street the fence is farther back, and in some places farther out than where the original fence stood. There were several small walnut trees under the hill, that were cut down by Mr. Carman.

Direct examination resumed.—The fence I have spoken of was destroyed about the time Mr. Carman built his dock. This fence was five or six panels long, or more. As to the width of the pro- 30 perty on the river and on the bank, I don't know any thing about it. I worked on Capt. Beach's dock, on Mr. Carman's dock, and also Mr. Poinier's dock; I helped build them. I never measured the property there for the purpose of ascertaining the difference above and below.

Cross-examined.—The Stiles property was always since my memory used and occupied for twelve feet south of the Johnson house.

Direct examination.—When I speak of a permanent fence, I mean a fence designed to keep cattle out. As land was plenty in those days, I calculate they did not stand much upon the lines. 40 I thought the big walnut tree was the line. As to the other property on the river, I don't know where the lines began or where

they came out; there were no marks on the river to designate where the lines came out. This creek that I speak of was dug; it was dug by my uncle Richard, all on our land, with the south edge on the line between us and Mr. Beach, or what is said to be the Beach property, as claimed by him.

Cross-examined.—The south edge of that ditch was on the division line between our property and the property on the south, as possessed by the several owners.

Direct examination.—This ditch was not dug by any map or survey, as far as I know.

CALVIN W. BALDWIN.

John Riock, of the city of Newark, in the county of Essex, and state of New Jersey, being duly sworn, on his oath saith—I am fifty-eight years of age, and a resident of Newark twelve or thirteen years next spring; previous to that time I have been in the habit of frequently being in Newark, from Orange, my native place. I have been acquainted with the Carman dock for ten years; part of the time I leased it, and part of the time have been agent for it.

20 I assisted to make a survey of this property within two years; I carried the chain for Mr. Brinley. I can't say that I have ever seen the map marked Exhibit B 9 before now. I believe it to be like the map we made when we surveyed the property. [The map marked B 10 being shown witness, he says,] that the diagram W, on Exhibit B 9, exhibits the property that I assisted in surveying, by carrying the chain. Upon recollection, I assisted in surveying this property a year ago last January. We began, on the first survey that was made, at the Smith house; we ran down River street, clear through, down by the dock, to the south part of the Carman

30 line. We commenced at the Smith house, understanding that some deed mentioned the Smith house as a beginning point. We surveyed for the purpose of ascertaining the quantity of land contained in the several deeds. My impression is, that the next survey we made commenced at the northeast corner of the Holden stone house, and then ran down River street, and then back on the Railroad. My impression is, that we started with our survey from the corner of the Stiles property, as near as we could ascertain the corner from the conversations we had with Aaron Ward. My impression then is, we started from the Egg dock, and made a survey,

40 commencing with the southerly line of the Carman property, taking the range of fence along the Egg dock, as near as we could ascertain it. When I say the dock, I mean the lot constituting the wharf.

After commencing at the Smith house, we then commenced at the intersection of River street and the Egg dock, and run up the street, ascertaining that intersection by taking the range with the line running along the Poinier dock. We surveyed from the Carman deed, and ranged with the Poinier fence below. I think we took the line to the wharf by the compass, but do not think we made any measurement down the line to the river. I think I have seen several of the deeds for property along there; I think I have seen the deed to Mr. Beach; I think I compared that deed with the records in the clerk's office of the county of Essex. I thought there was a 10 variation between the two; the variation was in the distance, the line in the deed was longer than that in the record by one chain; I think it was one chain, I won't be positive. I spoke to Mr. Dod, in whose office the deed was, and asked him what it meant. There has been no variation of the line running from the Railroad down to the dock, along the Poinier dock, that I know of, none since I have been acquainted with it. The north end of the Carman wharf is designated by the small letter *f* on diagram W, and running down to *g*, in red ink, the line being the red dotted line. I occupied that wharf during the time I was one of the firm of Stephens, 20 Condit & Co., and after that as an agent, in all for the space of about ten years. Within that time Mr. Ford put up a fence, which was cut down by the orders of the Messrs. Carman; that was the only interruption I had during the time I occupied it. The fence was put up, I think, about three years ago.

Cross-examined by Mr. Pennington.—I could not tell you by whom the deed I have spoken about to Mr. Beach was executed, or purported to be executed. My first impression was, that it was a deed, then afterwards I thought it was a copy of a deed. It is 30 now my impression that it was a copy of a deed. My impression is, it was a description of the Beach property in controversy, but extending, by an interlineation, one chain farther towards the Carman property. I think it was about ten years ago that I went into partnership with Stephens & Condit; it might have been more, it may have been less. Prior to that time the name of that firm was Stephens, Condit & Co. I went into the firm on the first day of April; the firm had hired the Carman dock before that time; how long they had occupied that wharf I don't know. I have not in my possession any written lease between the Carmans and Stephens, 40 Condit & Co., nor do I recollect certainly whether there ever was one; yet my impression is, that there was one for the first year I hired it, but I am not certain. The first time I hired it was the Ja-

nuary, or in the winter following the first April I went in with Stephens & Condit. If there was any such lease, I don't think it contained any description of the lands by metes and bounds, but only a general description; there was a store house on the dock. There was no fence north of the store house, running from the river up towards the road, that I ever saw, except the fence put up by Mr. Ford. I have no knowledge of any dock being occupied by the Morris Canal and Banking Company for the storage and sale of coal, north of the store house during the time of my connection
 10 with Stephens, Condit & Co. Stephens, Condit & Co. used the wharf for freighting, storage of coal, iron, &c. There were two posts that designated the division line between the Carman and Beach property; those posts, I think, were there when I first went there. I cannot tell you how far north of the store house those posts stand, though I have measured it; my impression is, they are about twenty feet, but I am not certain. There was but one store house on the premises when we occupied it. When I first went into that firm the space north of the store house was occupied by a large parcel of plaster, and, I think, by some scrap iron, stored
 20 there, that went up the canal.

Direct examination.—We occupied the space designated between a notch, that was shown us, and those posts and the store house. [The counsel for the complainant here offered a deed from Ephraim Beach to William C. H. Waddell, and which, at his request, I have marked on exhibit marked Exhibit B 14.]

The diagram A, on B 9, represents the property surveyed under the hill, starting from the Smith house, as I have described; No. 3, thereon, the property as claimed by Mr. Beach; No. 4 and 5 the Carman property, with the disputed property between.

30

JOHN RIOCK.

Lindsley Beach, a witness produced on the part of the defendant, being duly sworn, on his oath deposeth and saith—I am twenty-eight years old and a little over, and reside in Catskill, Green county, and state of New York. I am an attorney at law. I was formerly a resident of the city of Newark, and left here in the fall of eighteen hundred and thirty-six. I am acquainted with the dock property known as the Carman dock, and with the dock formerly owned and occupied by Ephraim Beach, the party to this suit. I always understood that the docks, as occupied by the Car-
 40 mans and Mr. Beach, respectively, were adjoining each other and abutted on to each other, that is to say, they joined to each other.

I recollect an old board fence that ran from River street down to the foot of the hill, and from thence into the marsh a short distance; whether it ran to the river, I can't say; it is as long ago as eighteen hundred and twenty-eight, possibly the year before when I first recollect the said board fence; it was there when I first moved to Newark, which was as early as eighteen hundred and twenty-eight; it was an old board fence when I first recollect it. This fence commenced on the east side of River street, nearly opposite the middle of the stone house known as the Bruen house. I don't recollect which side of the middle of the said house the fence commenced. There has been great alterations made in the ground there since. I only recollect generally, that it was opposite the front door, which was the middle of the house; the direction of the said fence from the starting point was very near straight to the river; it was at right angles to the road, as near as I can recollect, I mean the general course of the road; it was a straight fence running towards the river. On the supposition that the road and river ran parallel, I supposed the fence ran at right angles to both. The course of the fence was parallel with the road running down to the town dock. I have been upon these premises within a short time; I have seen and been upon the property to-day; I noticed a store house on the dock, that looks like a barn, which I think is rather north of where the fence would have struck, had it been continued to the river.

Cross-examined by Mr. Bradley.—When I say opposite the Bruen house, I mean opposite the house with reference to the direction of the road; the idea I mean to convey is, that if the fence had been continued up, it would have struck the door, or near to the door. It is only from my eye that I supposed the fence spoken of to have been parallel with the road leading to the new dock, I never measured it. If I recollect right, my impression is, that the fence towards the top of the hill was put up picket-wise, the boards running up and down; down the hill the fence was repaired more slightly, and the boards may have been put on lengthwise; I do not recollect distinctly. I can't recollect whether the fence was a close one or open one; I recollect it was an easy one to get over; I used frequently to get over there to get black walnuts, from a tree that used to stand near to it, on the south side I think it was. I should think the trunk of that tree was between one and three feet from the fence, it might have been four feet; I should think it was more than half of the way down the hill, as it then was, so that I used to collect the nuts from the marsh; but they may have

rolled down the hill to the marsh. If I recollect right, the fence towards the top of the hill stood very well, under the hill it was in worse repair; I don't recollect how it stood. The fence ended eastwardly in the marsh; I don't recollect that it ended in the water. I can't recollect how far the fence extended from the foot of the hill towards the river; it was a regular continuous fence from the top of the hill as far as it extended, according to the best of my recollection; it was designed to be a continuous fence; some parts of it may have been broken down at times: the fence I supposed
 10 to be an ordinary line fence. I don't think the marsh was filled up for the purpose of making the fence. I have no recollection whether the bank was ever carried out or not for the purpose of making the fence.

LINDSLEY BEACH.

Lindsley Beach, produced and re-examined on the part of the defendant, says—he believes he made a mistake in his previous examination, and now wishes to correct the same. I first discovered that I had made the mistake on the same day I gave in my testimony. The mistake was in reference to that fence I swore to on
 20 my previous examination, and where it would strike the river. There are two store houses on the dock, both of them are near the termination where that fence would be. The upper, or northerly one, lies entirely north of where that fence would be if continued; the fence continued would strike near the southerly side of the lower or southerly store house. It might strike the house, or below it; it would strike somewhere near that point. The store house referred to by me, as looking something like a barn, is the northerly one. My former mistake occurred in this wise: I went on the ground with a compass for the purpose of taking the course
 30 of that fence, that is, about where I supposed that fence stood on the Railroad; the needle would not traverse well, on account of the iron, I supposed; and I moved off south, and went on the hill, northerly, and set the compass and took the course parallel to the fence, and it was in reference to that course where I located the fence, it having escaped my mind when I gave my testimony, that this offset had been made. The distance of the offset was from forty to fifty feet; the distance of offset perpendicularly was forty or forty-five feet; this is according to the best of my recollection; I took no measurement; it is my indefinite impression. My testimony be-
 40 fore was given in some haste, being anxious to get away and leave town. I have been on the ground since. I have no doubt that the

fence produced would strike near where I now state. I recollect a line fence between the property of my father and the Johnson property, as it stood before my father purchased the Johnson property. By the Johnson property, I mean the stone house property; it joins the south side of the Inness property. I recollect the termination of that line fence on the westerly side of the River road. I don't know that that point had any particular name, except that it was the boundary line between us. This point was the south end of the stone wall in front of my father's house, as it then was; whether the wall stands now as it did then I can't say; I have not 10 noticed.

[Witness here retired for the purpose of viewing the stone wall.]

I think the termination of the wall stands where it was. The fence on the north side of the stone house terminated on the west side of River street, at the southerly termination of the stone wall. That fence terminated on the west side of the River road, twelve or fifteen feet north of the stone house. The stone wall was laid dry in the first place, if I recollect right, and subsequently pointed; it was coped on the top with a flat stone, and surmounted with an iron railing, and is so at this time. This wall extends from this 20 point northerly to the barn on the Beach property, on the west side of River street. The fence between the Inness property and the Johnson property was an old one, and had the appearance of having stood some time.

Cross-examination by Mr. Bradley.—The front door of the old stone house is the most satisfactory mark I have in designating the line of the fence under the hill, in running down the hill. I have been in the door frequently, and looked down towards the river; have played with the boys that lived in the house, and on the green in the front of the house. The property that we occupied was called 30 the Inness property, lying northerly from the old stone house, and fronting on the River road. I don't know who occupied it before my father. I was a little over eight years of age when we moved there. There was one family, by the name of Davis, that lived on the Johnson property at that time. I don't recollect what it was called at that time; I don't know that it was called by any name except the old stone house. The reason why I call the stone house the Johnson property, is Aaron Johnson formerly owned it; I have seen him about the property. I call the other the Inness property, from hearing it called so since we sold it. I don't recollect of hear- 40 ing it called so before, though I may have heard it called so.

Direct examination resumed.—The River road, in front of the

Inness and Johnson property, has been very much cut down since I first knew it; it is cut down in front of Mrs. Inness' property as much as ten or twelve feet, perhaps more; the bank on the opposite side was about as high as that on which the house stands. The road began to descend towards the Egg dock and foot of Market street; a little south of the old stone house there was quite a hill. The perpendicular descent from Mrs. Inness' house to the foot of the hill, on the road to the town dock, was twenty-five or thirty feet. The width of the road, from the west side of River street to
 10 the brow of the hill on the east side of the street, was seventy-five feet; it did not extend as far as the Railroad. There was a descent from the top of the bank opposite the Inness property towards the southwest corner of the Carman property, but it did not commence until south of the Johnson house; it was pretty rapid there; it was twenty-five or thirty feet in descent, I should judge; it was rather an uneven surface on top of the bank between those points; the edge of the bank was east of the road; I don't know how wide the theoretical road was.

LINDSLEY BEACH.

20

Lindsley Beach recalled by consent, and re-examined.—The Carman and Beach property below the bank, when I first knew it, was a marsh. The first filling up of that marsh was in the winter of 1827 or 1828, and was done by my father, or others for him; those operations were, drawing down the bank into the marsh. It was done first by plowing with oxen and scraping; it was done subsequently with horses, carts, wheelbarrows, &c. This excavation of the embankment was carried on up to a point or line opposite the
 30 house, where the wall in front of the Inness house terminated on the south; the southerly line of those operations ran at about right angles with the river and the River road, down towards the river. It was with reference to the old fence running down the hill, parallel, up to the time my father sold the property. My father, as far as I know to the contrary, was in the occupation of that marsh so filled up, up to the southerly line aforesaid. Those operations were continued from time to time, up to the same line on the southerly side, by my father, or those under him.

The dock was filled up at the expense of the defendant, I be-
 40 lieve; it was done by him, or others under him. I knew Ichabod Carman in his lifetime; I don't know how many years ago he died, it is a number of years ago; I won't be positive as to the time; it

was after the marsh was filled up to that line, but I won't be positive it was after the dock was filled up. The marsh on the other side of that line was subsequently filled up, and I presume it was filled up by Ichabod Carman. I have frequently seen Ichabod Carman in company with my father on these premises while these operations were going on. This line of operations I have spoken of would terminate between the two store houses. Some of the logs of those docks were laid prior to the death of Mr. Carman; Mr. Carman laid his logs first. I have frequently heard, that is several times heard, my father and Mr. Carman converse in the house and 10 out of doors, and at times in relation to their property and their docks and land, and I have a strong impression, but I won't swear positively, that there was a conversation between them in relation to Mr. Carman's dock logs; my impression is, that Mr. Carman's logs were longer than necessary, and overran on to my father's premises; that they had a conversation about his logs being too long, and overrunning my father's; it was an amicable conversation, and they arrived at an understanding. I also well recollect that Mr. Carman did not fill in the upper part of his dock, as he made it, with earth; it remained for some time unfilled in; that end was 20 filled in by my father, to the best of my recollection, when he filled in his dock.

Cross-examined.

Quest. What part of your testimony delivered in here have you been reminded of by your father during the time we have taken your testimony?

Ans. I have been reminded of no part of it that I did not recollect of without being reminded of it.

Quest. What part of your testimony is it in which your memory has been refreshed by Mr. Beach? 30

Ans. There was no part of my testimony that has been refreshed by that conversation. [Witness offers to tell a conversation that has taken place with his father in an adjoining room. Counsel for defendant objects to that conversation being detailed.]

The line to which my father filled out the marsh was north of the old fence that ran down the hill; I should think it was some thirty-five or forty feet, it might have been forty-five feet north. Mr. Carman, I believe, laid logs in front of the dock to the north of the line to which my father filled out the marsh, how far I cannot recollect; I should think it was a rod; there were two or three cross- 40 ties that Carman laid above that point to which this line would come out on the river; these cross-ties were hardly six feet apart,

perhaps five feet; they might not have been more than four feet apart. The ties were in different courses of the logs, and might come intermedial in the different courses; the lower ones might be six feet apart, but those in different courses not more than three feet apart.

Quest. Do you recollect of any agreement between your father and Mr. Carman, or between your father and any of Mr. Carman's family, that your father should fill up any part of the Carman dock?

Ans. I do not.

- 10 My father moved to Catskill in the year 1836, my father having sold his property in the spring of that year or in the fall of the year before. I was then about seventeen years of age, between seventeen and eighteen years of age. I went to Princeton in 1834, and graduated in 1838, and during that time was at home during vacations, and occasionally at other times. Prior to going to college, I did not attend school at any other place than Newark, that is for several years prior.

Quest. What understanding did your father and Mr. Carman arrive at, as referred to in your direct examination?

- 20 *Ans.* I don't recollect exactly what understanding that was. They had been talking about the dock logs, and about their extending longer than was necessary, or that there was more of them, or that there was a surplus of them; whether they came to any particular bargain, I can't say; they parted in an amicable way, as though they understood one another. Whether my father was to pay him for the logs, or he was to fill in the dock for Carman, I don't recollect; I can't say any thing about it. The reason why I recollect those facts so distinctly about the upper end of the dock being unfilled, is, that I used to go there to fish, and had to go below the end
30 some distance, and had to walk along the logs to the end of them, instead of climbing up.

Direct examination resumed.—There was no dispute between my father and Mr. Carman as to the fact, that the logs overran, because this was the matter of conversation between them and the reason of their coming together; it appeared the reason of their being together.

Cross-examination.

Quest. Have you a distinct recollection of the cause of your father and Mr. Carman coming together?

- 40 *Ans.* I can't say that I have a distinct recollection of the cause of their coming together. It might have been an accidental meeting of their being together. I have not a distinct recollection of the

conversation, or of all that was said between them. It is a pretty distinct recollection I have, that they had some talk about it.

My father and Ichabod Carman were upon friendly terms, as far as I know, up to the time of his death; they lived neighbors. Mr. Carman lived at the lower part of Market street. It was six, seven, or eight chains from my father's. I recollect the dock as occupied by the Lehigh Coal and Navigation Company; I can't remember how long it was occupied by them; it was occupied by them for the purpose of storing and shipping coal. The southerly line of occupation of the Lehigh Coal Company was the line that we have 10 spoken of, as running from opposite the termination of the fence between the old stone house and the Inness property, directly to the river, on the dock north of the store house; I mean the store house as contra-distinguished from the stable, that is, about twenty feet north of the store house. I have no other knowledge of the occupation of that dock, except for the purposes of coal. I recollect that it was used, before the Lehigh Company used it, for a saw-pit by Platt Soper, or some person for whom he worked; this was before the dock was built, but after the marsh was filled in.

Cross-examined.—I was nine or ten years old when the saw-pit 20 was there; I don't recollect the year it was there, I recollect only of it being there. I was eleven, twelve, or thirteen years old, or some where along there, when the Lehigh Coal Company was there. Platt Soper occupied by permission of my father; I think he aided my father in building his dock. This saw-pit was about opposite the Beach barn, some seventy or seventy-five feet north of this line.

LINDSLEY BEACH.

[Mr. Pennington, counsel for defendant, here presented a pa- 30 per purporting to be a copy of a survey and record of a public road in the town of Newark, copied from the county records, and requested to have the same made an exhibit, and which is marked Exhibit P No. 1 on the part of the defendant.]

Almer L. Downer, a witness produced and sworn on the part of the defendant, saith—I reside in the city of Newark; I am forty years old and upwards. I know the property designated by the names of the "Carman dock" and the "Beach dock," on the Passaic river, in the city of Newark. I recollect the store house upon 40 the Carman dock, as it was called. I recollect the situation of that house as long as the spring of eighteen hundred and thirty-five. I

think it still remains where it then was ; I have examined it to-day. I heard the testimony of Lindsley Beach given this day ; his explanatory examination, I mean, in reference to the two store houses spoken of to-day. I refer to the southerly one of the two store houses ; the most northerly one was a barn, it may be a store house now. I occupied the Beach dock, as the agent of the Lehigh Coal and Navigation Company, from the spring of 1835 to the spring of 1836. The Carman dock was on the southerly side of the Beach dock, as occupied by me, and below it on the river ; it adjoined the

10 Beach dock. I do not remember any fence on the dock between the two properties when I occupied it. I think there was no fence any where on the line of the two docks, but think there were a few scattering posts down towards the river, that look as if there had been a fence. The agent of the New Jersey Iron Company and Stephens, Condit & Co., I think, were in the occupation of the Carman property at that time ; I know they were. George S. Mills was the agent of the New Jersey Iron Company. The only store house there at that time was the southerly one, and was occupied by Stephens, Condit & Co. and by Mills.

20 occupied it as an under tenant to Stephens, Condit & Co. The old barn was put there since the occupancy of the Beach property by me ; I should think within the last three or four years ; I am not positive as to the time. The line between the docks, as occupied by the tenants, ran about twenty feet north of the store house. The front of this Beach property was considered to be too small to receive the large amount of coal brought down that year, and we occasionally crowded upon the tenants of the Carman dock, there being no fence between them ; and Mr. Whitlock, one of the firm

30 of Stephens, Condit & Co., called my attention one or more times to the point about twenty feet north of their store house on the front of the dock, as being the line between the two docks, the Carman and Beach docks, and a board fence then existing above the Railroad, from which two points from the west of the two docks, or a line running between those two points, Mr. Whitlock informed me was the line between the two docks.

[Mr. Bradley objects to the evidence of the declarations of Mr. Whitlock in reference to the position of the line between the two properties.] This same line was pointed out to me by Ephraim Beach, as being the line. [Mr. Bradley also objects to this.] And

40 it was so occupied in reference to this line during the time I was there. It was so occupied when I took possession there ; I found coal lying there. The termination of the board fence on the River

road was at the north end of the old stone house. I don't recollect precisely where the board fence terminated in reference to the end of the stone wall. I think the fence came out some ten or fifteen feet north of the stone house. I understood that this was the line of occupation between the two properties when I went into possession. The Beach dock was occupied by us for the receiving storage, screening and shipping of coal. The southerly part of the Beach property was occupied for the same purposes. We occupied beyond the line in some instances. We used to talk of the Beach property, as being docked out about three hundred feet. It did 10 not vary much from it; part of the Beach property was not docked out. I occupied a part of it that was not docked out, and a part was occupied as a ship yard by Noah Brown. There was about a hundred feet that was not docked. There was not a hundred feet of the property that I occupied that was not docked out. I think there was something more than a hundred feet occupied by me and Mr. Brown that was not docked out; my impression was there was from one hundred feet to one hundred and fifty feet not docked out, including that occupied by Mr. Brown. I was on the dock to-day. I could readily find the point on the front of the dock to 20 which we occupied, as occupied upon both sides. I pointed it out to Mr. Lindsley Beach and to Stephen Dod, the surveyor; Mr. Ephraim Beach was present; the point was fixed with reference to the distance from the store house from memory, and with reference to the position of the old stone house above River street; my recollection of the distance of that line from the old store house was about twenty feet, and my recollection is founded upon making use of the front of that dock in mooring vessels, about which there would be scolding when the line would be encroached on. The Lehigh Coal and Navigation Company did such a business that 30 year that the dock was not considered adequate for the business of the company. There was a top log put on the dock, up to that point occupied by us, during the time we occupied it; it was put there by the orders of Mr. Beach. It was put along the whole length of the dock, as docked out, and at Mr. Beach's expense, as I understood. A new log has been put on since, for a part of the distance. I don't know whether the dock is higher or lower than when we occupied it; I have not examined particularly; should think it was about the same.

Cross-examined by Mr. Bradley.—I heard the dock occupied by 40 Stephens, Condit and Co. called the Carman dock, during the year I was there. I heard it called so by Mr. Whitlock; I heard it

called so several times; I think I heard Capt. Mills call it so; I don't recollect any one else calling it so. I came here doing business among strangers, and knew but few persons. I have a distinct recollection of some old posts standing along that line I speak of; those posts stood nearest to the river; I don't remember how long those posts seemed to have stood there. I think one of our wheeling plank was put against those posts, to prevent the coal from falling on to the other side; the plank was put there after I came there. Coal would wear and discolor a post. Those posts stood

10 between the bottom of the hill and the river, nearer to the river than the hill; those scattering posts stood within fifty or sixty feet of the river. The distance from the Railroad to the river was about one hundred and fifty feet. The posts presented the appearance of there having been a fence there, and the boards knocked away. The board fence at the west side of the Railroad, I think, is not there now. The fence I spoke of, as west of the Railroad, is also west of River street. I can't say positively whether the fence is there now or not. I left there in the spring of 1836. I occupied the dock with coal, up to that point, up to the time the coal was

20 carried off in the fall. After the coal was taken off, we had no other use to make of the dock, although we held possession of it under our agreement. I think the dock was used up to the line before spoken of all through the winter by Calvin Tompkins, by the consent of myself, for the Lehigh Company, for the purposes of retailing coal. He occupied by permission of the Lehigh Company. He occupied the southwest part of the dock, not out to the river; I don't recollect precisely how far from the river; he was perhaps seventy-five feet from the river. I know he occupied up to the line I spoke of, because he occupied both sides of it in the fall of 1835

30 and spring of 1836. I think the south side of the dock, between Calvin Tompkins and the river, was not occupied after the coal was removed in the fall, except by wheeling plank and tools that had been used in handling and shipping the coal. I think the coal was sold out by the company by the first of December of 1835; what Tompkins bought remained; it was weighed out to him, and put out to him on the part of the dock occupied by him. A lot of limeburners' coal, not merchantable, remained unsold; that was on the northerly part of the dock. The tools and implements I spoke

40 of were piled up about the dock, I don't recollect where precisely; I mean the plank; the tools were gathered to a tool house about the centre of the wharf. The company brought no more coal there

until the spring, when they took another yard; they brought no more coal to that dock.

Direct examination resumed by Mr. Pennington.—It was the understanding that Calvin Tompkins, in selling him the coal, was to have the use of that part of the dock occupied by him for the purpose of retailing the coal; there was no particular bargain made about it, and no charge made.

Cross-examination resumed.—I think Calvin Tompkins occupied a part of the Carman dock towards the Railroad; he kept coal to sell there, on the Carman dock, and sold occasionally from the 10
heaps of the Lehigh Coal and Navigation Company. Some of the coal weighed out to him was carried over the line I have spoken of; I can't remember what portion was carried over the line, the most of it was. I think he had not room enough over there without interfering with turning his teams, and being detrimental to other persons. The last sale I made him was about two thousand tons, which he bought rather unexpectedly. In weighing it out to him, it occupied so much as to run on to the Beach side of the line; I can't tell how many feet it ran on to the line; I should think it ran over twenty feet. I think it was said that he should have to occupy 20
a part of our dock, as he had not room without to handle the coal conveniently. This conversation was between Mr. Tompkins and myself. I am under the impression that such a conversation occurred, and have reason to think it was probably so; I should hardly think it probable that nothing was said on the subject. I have a very strong impression that such a conversation did take place, but I cannot say that I have a distinct recollection that it did take place.

The witness here states, in explanation—that I now recollect that I sold the coal lying in the river in front of the dock to John Flinn, for himself and Calvin Tompkins, and they took it up and spread it 30
out on the dock to clean it, and it was sold during the winter. They used the whole front of the dock for that purpose. Calvin H. Barker preceded me as the agent of the Lehigh Coal and Navigation Company.

ALMER L. DOWNER.

George S. Mills, a witness produced on the part of the defendant, being duly sworn according to law deposeth and saith—I am a resident of the city of Newark, have resided here about eighteen years; am fifty-two years of age. I know the two docks, formerly called the Beach dock and Carman dock; have known them ten 40
or twelve years. I occupied the store house on the Carman dock

while the same was occupied by Stephens, Condit & Co. I was their agent, and was also agent for the Morris Canal Transportation Company, and kept my office there. That company established a transportation to Easton; I was the agent; I occupied the premises for two years. I was there while the Lehigh Company occupied the Beach dock. Mr. Barker was the agent of the Lehigh Company two years; Mr. Downer was the agent after him. I don't know but I was there three years; I was there while Barker and Downer were there. I was not there when the Lehigh

10 Company changed their location; I left in the fall, and they left in the spring following. I think they had coal laying there until spring. They left in the spring, and went down to Downer's. I have been on the dock recently; I was there last Saturday. There is another building on the dock, near the store house, occupied by Stephens, Condit & Co.; I think it is a building formerly standing back on the Carman dock, and used as a stable; I think it has been where it now stands about two years; it stands north of the old store house I occupied; I think the position of the old store house has

20 not been changed since I occupied it. I don't know exactly the line between the two docks as occupied during the time Barker and Downer were there; there used to be a notch in the top log, about twenty feet north of the old store house occupied by us; the docks were occupied by the two tenants up to that notch; there was a small fence put up by Capt. Beach or Mr. Barker, as I supposed, running back from the point claimed by Capt. Beach some two or three lengths of boards, commencing at the dock, and running westerly, against which Mr. Barker used to occupy; he had his coal piled right up against the fence. That fence used to run very near at right angles with the dock, a westerly course. Barker used

30 to occupy upon that line produced up back to the Railroad. Stephens, Condit & Co. occupied only the front on the river; they had no use for the rear. They would have occupied it, had they a use for it; they leased it. I do not find the notch that I spoke of there now. I think the timber has been removed, and a new one replaced. I have no doubt but that notch was near twenty feet north of the old store house; it may have been a foot or two short, or more than that. I won't be positive of the number of feet; there was room enough to back a wagon, but not room enough to turn a wagon. I pointed out to Esq. Dod, when he was down

40 there with me, the place where I thought the notch was; there is no post there now. I was the agent of the New Jersey Iron Company at that time; I did their freighting. The most of the stable build-

ing, and I don't know but the whole of it stands north of the line of occupation spoken of; I can't speak positive, I have not examined particularly. I knew Mr. Carman in his lifetime, the man that owned that dock.

Cross-examined by Mr. Bradley.—I don't know who placed that stable where it stands. Where the notch was, I think there was no break in the logs as of two docks meeting; there was no appearance of there being a division of the docks at that place, except the notch; I don't know who made the notch. As to the reason why the fence running back from the notch was put up, I know 10 that Barker and Whitlock used to quarrel about the line, and the fence was finally put up, and the dock, on both sides, was occupied up to it after that. As to who put up the fence, I can't tell; it was done by Barker, or some one who occupied above, against the consent of Mr. Whitlock; he threatened to tear it down, but never did: it remained there; I think it remained as long as the Lehigh Company occupied the dock, that is after it was put up; it was not put up until some time after they occupied the dock; it was only about three feet high. There were two or three years after Stephens, Condit & Co. left it, the Messrs. Carman had no tenant 20 for the dock. They had an agent who used to collect tolls for dockage or wharfage of vessels; I don't know how many years; I know there was a considerable length of time the dock was not occupied, except by themselves. I did not know much about this wharf until I went there to occupy it.

GEO. S. MILLS.

Stephen Dod, a witness produced on the part of defendant, being duly sworn according to law deposeth and saith—I reside in the city of Newark, in Bleeker street, and am seventy-seven years of 30 age and upwards. I have resided in Newark twenty-nine years, with the exception of the two years last past. I came into Newark in eighteen hundred and eighteen. The latter part of the time of my residing here, surveying has been my principal occupation; previous to that I worked at bookbinders' gilding tools, stamps, and rollers; during that time I have been a practical surveyor. I made a map of the Beach property.

[Exhibit B No. 10 being shown to witness,] he says,

That is the map; it was made in my office by my son, under my direction; this is a copy which was made for the purpose of being filed in the clerk's office. I knew Ichabod Carman in his 40 lifetime. I do not recollect when he died; it was several years

ago, but I can't tell how long. I know Ephraim Beach, the former owner of the property designated in the map; I know the properties formerly known as the Carman dock and Beach dock. I was called on by Mr. Carman and Mr. Beach to ascertain and fix the line between them. I acted in conjunction with Mr. Robert B. Campfield and Mr. James Bruen in fixing the line; they acted I presume, with the request of the same parties; they were there and the parties were there. They met on the ground with the parties; by the parties I mean Mr. Beach and Mr. Carman. I can't

10 say in what year this was; I imagine it was soon after Mr. Beach bought the property; it was about the time Mr. Carman was filling up his part; Mr. Beach was not yet filled up; Mr. Carman filled his first, I believe. We proceeded, accordingly, to ascertain and fix the line. The line was ascertained and fixed; we decided where the line, in our opinion, ought to run, and marked it some way, I suppose, but how I do not now recollect. Whether there was any dock built, or any dock logs laid at that time, is more than I can say. My impression is, that Mr. Carman's dock was built, or the

20 logs partly laid, but I am not positive as to it. The line, as we ascertained and fixed it, was acquiesced in by the parties, as I think; there was no dispute between them; they were about to improve their respective properties; it was done in good humor. They were satisfied with the line as fixed; I believe that both were. I have no distinct recollection of the means we had in fixing the boundary lines; I suppose we had their respective deeds before us, and they gave us such information as they were in possession of. There was reference had to a particular point on the west side of River street. That point was what was called Mrs. Inness' corner; it was the corner of the Bruen property, afterwards pur-

30 chased by Johnson. The location of that point was ascertained and acquiesced in by the parties at the time of fixing the line. I believe it was never disputed. The line between the Beach and Carman property commenced on the east side of River street, at a point directly opposite the Inness corner, before spoken of, at right angles across the street from the Inness corner. That point of commencement was acquiesced in by the parties. I believe so. I have no distinct recollection of there being a fence to the south of the point determined as the beginning corner; my impression is there was an old fence there, but have no distinct recollection about it.

40 [The counsel of the defendant here produced a paper purporting to be a certified copy of a record of deed from John Bruen and wife to Aaron Johnson, and the acknowledgment thereof, which

deed bears date April 20, 1824, and requested the same to be made an exhibit on the part of the defendant, which I have marked Exhibit P No. 2. The exhibit is objected to by Mr. Bradley, counsel of complainant.]

Witness being shown this exhibit, he says, I have no distinct recollection of the deed being used in making the survey, though I think it probable that it was. In making that survey, in fixing the line I do not recollect whether any reference was had to the relative quantities of land of the two parties.

[Being shown Exhibit B 10, and being asked if the southerly 10 line of the Beach property on the dock, as marked on that map, corresponds with the line as fixed on that occasion, he says,] I cannot tell. I have measured the line from the point on the east side of River street, opposite the Inness corner, to the southwest corner of the Carman property. I suppose I have measured it several times; I have done so recently. I cannot tell where the southwest corner of the Carman property was; the old buildings and old monuments having been removed, it is almost impossible to tell where that corner was. There is a small old building near the river, below the hill, which is on or near the old south line of the 20 Carman property. The buildings and erections and fences on the south line of the Carman property, including what is now the Poinier dock, do not form a continuous direct line. If we take the house that stands on or near that old corner of the Carman property, the distance from the point above referred to, opposite the Inness corner, running down four chains and sixty links, the distance given in the two Carman deeds, would run past the house aforesaid about six feet. That house is one built within a few years, since the Railroad was laid there. That measurement, taking the 30 general course of the building and erections on the south end of the Carman and Poinier properties, would extend about three feet beyond that corner. I took the measurement from the middle of the lock to the south end of the Carman property, as indicated by the general course of the erections above referred to, and found that distance to be two chains and seven links. I have no doubt or opinion about the middle of the lock being the middle of the canal, I know nothing about it. Apparently, as the canal is now constructed, the middle of the lock is the middle of the canal. I thought you had reference to the line between the town dock and Thomas V. Johnson, which I know nothing about. As near as I 40 could judge by my eye, having no compass, the measurement from

the middle of the lock up to the line of fence was made at right angles.

[Exhibit B No. 13 being shown to witness, he says,] I think it very probable it is a copy of a map made by me. I cannot tell whether any map made by me located an old fence. If I made the map of which this is a copy, I can't tell for whom I made it; it may have been made for Mr. Beach or for Mr. Carman; I can't tell when it was made, but I presume it was made while the fence was standing, or no mention would have been made of the fence. I
 10 have recently made a partial survey and a map of these premises. The courses and distances in making the new map I took from the old writings, the old deeds, I might say.

[The counsel of the defendant here presented a map, and requested the same be made an exhibit in this cause on the part of the defendant, and which I have marked Exhibit P No. 3 on the part of the defendant, and which being shown to witness, he says,] this is the map recently made by me; it has been made within a few days. The property plotted on the west side of the road is the property sold by John Bruen to Mr. Johnson; the property
 20 was formerly called the Bruen property; the old stone house is indicated on the northeast corner of the plot; the map is correctly plotted from the survey contained in Exhibit P No. 2; the location of the house is correctly marked on the map according to an actual measurement. The corner I have spoken of as the Inness corner is marked on the map, and designated on the map as "Mrs. Inness' corner." The point on the east side of River street, at right angles from Mrs. Inness' corner, is at the intersection of the northerly black and dashed lines; that is the point I have referred to as the
 30 commencement of the boundary line between the Carman and Beach docks. I ran a line on a course north, sixty-four degrees east, from that point, as designated on the map; that line strikes the river at a point twenty feet northerly of the lower and largest store house. I cannot pretend to say that that is the boundary line between the Carman and Beach property, as settled upon by the three persons above spoken of, in company with the owners, but my impression is that it is. I can't say that I have any doubt of it; as I said before, I have no distinct recollection of where that line was. I have no distinct recollection of the course of that line; if
 40 Exhibit B No. 13, I have no doubt I run the line parallel with that fence. I have no recollection of the course of that line with reference to the southerly line of the Carman property or of the River

road or river. There is a survey in a deed that calls for a line parallel with the old fence, and, if that fence was standing, I have no doubt I ran the line parallel with that fence. If that fence was not standing, but if there were any indications where that fence stood, or it could be ascertained, I have no doubt we followed that fence in making the line. And if I made the map of which Exhibit B 13 is a copy, I have no doubt that the dotted line indicating the place of the old fence was the true line of the fence. The old store house and the stable are correctly located on the map marked Exhibit P No. 3.

10

Quest. Did Almer L. Downer and George S. Mills, or either of them, point out to you, on the dock, the boundary line between the Beach and Carman docks, and its termination on the face of the dock, within the last few days?

[The complainant's counsel objects to this question, as being entirely contrary to the rules of evidence.]

Ans. Yes, they did. They did not, either of them, point out more than one place. They were not there together with me. I was there with Mr. Mills; one day last week we went down there to the dock, and he pointed to a place on the dock, which he said 20 was the place, or within a very short distance from the place, to which the several parties had occupied, and where there had been a small fence. Mr. Downer was there with me yesterday, and he went to the same spot where Mr. Mills went; that spot is at the termination of the northerly black line (not dashed) on the dock, which line runs from the point opposite the Mrs. Inness corner, on a course of north, sixty-four degrees east, and strikes the dock at a point between the store house and stable, if they are such, about twenty feet north of the store house, and about five feet south of the stable. The four chains and sixty links, as designated on the 30 east side of the River road, would extend about six feet beyond the house that now stands near the southwest corner of the Carman property, and about three feet beyond the general range of the buildings, erections, and fences, as they now stand on the southerly end of the property. A point on the east side of the River road, directly opposite the front door of the old stone house, would be the southwest corner of the sixty links lot, which would be the northwest corner of the old Carman lot. I have seen the paper marked Exhibit P No. 1 on the part of the defendant. I have located that road upon this map. That road is indicated on this map 40 directly south of the plat of the old Carman lot, between the two lines, running one chain and four rods wide from the River road

down to the river, and then down the river two chains from the Carman line. I have calculated the area of the Carman lot according to the survey, calling for a course north, fifty-six degrees east, on the north line. I make the quantity of land one acre and ninety hundredths, I mean the old Carman property, exclusive of the sixty links lot. Taking a course north, sixty-five degrees east, I make the quantity one acre and seventy-one hundredths. I have calculated the area of the Beach property by the survey, calling for the distance of two chains and seventy-five links on the road in the

10 course south, twenty-six degrees and thirty minutes east. I fixed the area two acres and sixty-nine hundredths. Calling that distance three chains and seventy-five links, supposing the course along the river to be a straight line, I make the area three acres and nineteen hundredths. In both cases I have regarded the line along the river as a straight line. Supposing the courses of the Beach property along the river to be parallel with the lines along the road, the contents would be less by eight or nine hundredths of an acre. The map is drawn according to the courses and distances given in the

20 road have been projected to the line of the docks as they now exist. In my calculation, I have taken the courses and distances as in the old deeds.

STEPHEN DOD.

[The foregoing examination in chief of Stephen Dod was signed by him at the time of the last adjournment, with the understanding that he was to be cross-examined by the counsel of the complainant at such time as might be agreed upon by the parties for a continuance of the examination.]

30 January 31, 1848.—The parties appeared by consent, and proceeded with the examination of Stephen Dod. Mr. Gifford called Stephen Dod for cross-examination, who deposeth and saith—[The 37th page of witness' examination in chief being read to him, he says,] I run the line from opposite the Inness corner, and mentioned on this page, from Mr. Beach's deed, that is, the deed to Mr. Beach from Waite and Inness. I run the line along River street from the measurement furnished by the deeds to Mr. Beach. We took the distances from Mr. Beach's deed, and added one chain to the measurement given in Mr. Beach's deed along River street. I don't

40 remember there was any interlineation in Mr. Beach's deed, giving one chain more, though there may have been an interlineation.

Quest. Why did you run that one chain more ?

Ans. In the first place it required the one chain added to the distance to bring us down opposite Mrs. Inness' corner. I also ascertained it was necessary to go down that distance to obtain the quantity of land called for by that deed. I don't recollect of any other reason why I went down to Mrs. Inness' corner.

Quest. Did you compute the contents of that lot before you ran that one chain more?

Ans. I am not able to answer whether I computed the contents or not; I have done it repeatedly; I have computed the contents of that lot several times before I made the survey, as contained in 10 Exhibit P No. 3. I may have run that line originally the three chains seventy-five links before I computed the contents of that lot.

Quest. Do you recollect Mr. Riock calling for a deed of Mr. Beach's at your office, and directing your attention to an interlineation in that deed, and that it was not noted at the bottom?

Ans. I do not. I have no recollection of Mr. Riock ever calling at my office for a deed of Mr. Beach's.

Quest. Why was the point opposite to the fence, between the old Bruen or Johnson property and the Inness property, taken as a commencing point for running a line to the river? 20

Ans. Because it was given as a starting point in a deed from Johnson to Carman. [Upon reflection, and examination of the paper marked Exhibit P No. 2, witness says,] that is the deed I refer to.

Quest. For what property was that deed?

Ans. It was for the property called the old Bruen property, on the west side of River street, which was one lot, and for a lot on the east side of River street, opposite the other lot, running sixty links down River street (I mean southerly). The deed is dated the twelfth day of April, eighteen hundred and twenty-four. The last of those lots is a part of the Carman property. The part of the 30 Carman property, as contained in that deed, is sixty links wide, and running down that width to the river. I don't recollect of any other deed that gave me that point.

[Witness being shown the paper marked Exhibit B 5, being deed from Job Brown to Ichabod Carman, he says,] the beginning point in that deed is at a stake one chain from the fence of the home lot of Eleazer Bruen, on the north side of the road leading to the Egg dock; the date of that deed is the eleventh day of September, eighteen hundred and nine. [Exhibit B No. 6 being shown to 40 witness, and also the Exhibit B No. 4, he says,] that both of those deeds take the same beginning corner, and in the same words, I believe exactly, as in Exhibit B 5.

Never, in any of the surveys I ever made of that property, did I take the point mentioned as the beginning point in the three deeds above mentioned, as the beginning of my surveys.

Quest. Does not the road along the river, called River street, lead to the Egg dock?

Ans. River street does not lead to the river, it runs parallel with it. It runs to the road that leads to the Egg dock. If the Beach line along River street was but two chains and seventy-five links, 10 instead of three chains and seventy-five links, it would be one chain from the Carman line, presuming the commencement of that line to be opposite the Inness corner.

Quest. How long ago did you make the map of which exhibit marked Exhibit B No. 13 is a copy?

Ans. I cannot tell. I can't tell whether the map was made after the ground was filled in; it must have been made several years ago; it is probable it was made about the time of the meeting of the referees before mentioned, and perhaps at the very time, but I can't tell. I can't recollect whether it was made before the dock 20 was made. I represented the state of the ground as it then existed.

Quest. Is it customary to delineate a dock or building on a map, as is delineated on your map, unless they actually existed?

Ans. I don't believe that the lines along the river on that map were designed to represent a dock.

Quest. In your examination, on page 35, you say you took your measurement from the middle of the lock to the south end of the Carman property, why did you stake from the middle of the lock for your measurement?

Ans. We inquired of Mr. Johnson (Thos. V.) where his line was, 30 and he said it ran through the middle of the lock.

Quest. You say, on page 37 of your examination, that you ran a course N. 64° E. from a point on the east of River street, at right angles from Mr. Inness' corner, which line is that on Exhibit P No. 3?

Ans. It is the marked black line, not the dashed line.

In making the map marked Exhibit P No. 3, I had reference to the surveys contained in Mr. Beach's deed; the map is laid down according to the courses and distances contained in his deed or deeds. I suppose I had the minutes of the Carman deeds when I made the map, and from them delineated the Carman property. 40 Mr. Beach furnished them to me, I believe. In computing the contents of the Beach lot, I allowed for the courses South $12^{\circ} 24'$ E., and South $26^{\circ} 30'$ E. I allowed for the angle formed by those

courses, that is to say, I calculated the contents according to those courses and distances, taking it for granted that the courses along the river corresponded with, and were parallel to the courses along River street. If the line on the street had been straight, the contents of the lot would have been less.

Quest. In making this survey, why did you prefer taking the course N. 64° E. instead of the course N. 56° E. ?

Ans. Because the course N. 64° E. was the one given in Mr. Beach's deed ; by that course, also, Mr. Beach had the quantity of land contained in his deed, and Mr. Carman, also, had his quantity 10 of land, according to my computation, which was right.

Quest. Did you find the course N. 64° E. in any other deed except Mr. Beach's ?

Ans. I don't think I ever saw that course given in any other deed. The same course in all the other deeds is given as N. 56° E., that is, by the other deeds I mean those marked Exhibits B 4, B 6, B 7, and B 5. [Exhibit B No. 14, being deed from Beach to Waddell, being shown to witness, he says,] the same line there is N. $64^{\circ} 30'$ E., being a variation of a degree.

[Defendant's counsel here offered a deed from Mrs. Ann Inness 20 and trustee to Ephraim Beach, dated September 11, 1827, and requested the same made an exhibit, which I have marked Exhibit P No. 4.]

Quest. Do you remember whether the reference to Campfield, Bruen, and yourself determined the settlement between the parties, or was it to lay down preliminaries for a settlement ?

Ans. We were not appointed by any rules of court, nor do I think there was any bond or arbitration bonds executed between the parties ; we were called in merely as neighbors. I supposed at that time, and for a long time afterwards, that was a final settle- 30 ment between the parties. I don't know of my own knowledge that it was a final settlement between the parties.

[Witness being shown Exhibit B No. 10 on the part of the complainant says,]

That map was made in November or December, 1835, as near as I can ascertain. The small black figures within the lots on that map represent the dimensions of the lots in feet and inches ; the red figures represent the numbers of the lots. The course and plot of the Railroad is marked on that map. The points of the compass are marked on various courses on the map by the usual abbrevia- 40 tions of the initials of the cardinal points, with the degrees and minutes represented by figures and arbitrary points annexed. Passaic

river is represented on the easterly side of the map. The line mark on this map, S. $64^{\circ} 30'$ W. 227, is intended to represent the southern boundary of Mr. Beach's property between the Railroad and the river; the property lying in blank next south is the Carman property. In that map Mr. Beach has three chains and seventy links in that course, about which I have been questioned. The courses and distances of the Beach property on the east side of River street, as delineated on that map, beginning at the northwest corner, are as follows: first, S. $17^{\circ} 45'$ E. 277 feet 6 inches, along the west side of lots 61, 62, 63, 64, 65, 66, 67, 68, and 69; thence

10 (2) S. $27^{\circ} 15'$ E. 154 feet, along the west side of lots 70, 71, 72, 73, and part of 74. I have no certain knowledge that the house on the corner of River street and the Egg dock road does not stand where the old house did. There was a house that stood at or near where the house now stands; it was an old house.

Quest. In measuring off four chains and sixty links, for the westerly boundary line of the Carman property, when making your survey for the map called P No. 3, where do you begin to measure that line?

20 *Ans.* I began opposite the Mrs. Inness corner.

Quest. Are you certain that you commenced at the exact point where you, together with Mr. Campfield and Mr. Bruen, fixed the commencement of the boundary line between Beach and Carman?

Ans. I am as confident of that as I am confident of any thing. I can't tell, after a lapse of twenty years, every circumstance that occurred about it. We had the same things to guide us in the one case that we had in the other, and I have no doubt that I commenced in the same spot in making the map that we did in fixing the boundary.

30 *Quest.* What things, other than deeds, do you refer to as guiding you in ascertaining that point?

Ans. I refer to the conversations of the parties at the time the referees were there. I had not the same conversations before me when I made the map that I had when the referees met.

Quest. Did you find any monument at that point at the time of your last survey, which had been put down by you at the time of your reference?

Ans. No.

40 *Quest.* Did you, at the time of your survey, have recourse to any other monument from which you took a course and distance, so as to render it certain that you commenced the said line (in your last

survey) at the point fixed by the referees as the beginning of the said division line.

Ans. Nothing but the Inness corner.

Quest. Is there any monument existing now at the Inness corner, which was there at the time of the reference ?

Ans. I don't know that there is.

Quest. Did you, in your late survey, take any measurement or course from the Inness corner to ascertain this beginning corner ?

Ans. I did both.

Quest. In what manner did you take the course ?

10

Ans. By the compass.

Quest. What course did you take ?

Ans. I took a right angle with the street, with the present course of the street.

Quest. Who pointed out to you the Inness corner at the time of your late survey ?

Ans. Mr. Beach was with me, but I knew the Inness corner myself.

Quest. Did you, in your late survey, ascertain with certainty where the Inness corner was at the time of the reference ?

20

Ans. I did.

Quest. By what means did you ascertain it ?

Ans. Mr. Beach bought the Inness property first, and he built a stone wall there. That I have seen pretty frequently ever since it was built. I took the end of that stone wall, in my late survey, for the Inness corner. That point had the same relative position to the stone house, near by at the time of the survey, that it had at the time of the reference; the stone wall, perhaps, was not there at the time of the reference, but either that or a line fence, or both, was there at the time of the reference. I only know from my eye 30 and from the general localities that the place which I took in my late survey for the Inness corner has the same relative position to the stone house which the Inness corner had at the time of the reference. I recollect the positions of the fence at the rear and on the side of the stone house, on the line between the Inness and the Johnson or Bruen property; I had surveyed them before the reference, and found those fences upon the lines as represented on the map marked Exhibit P No. 3.

Quest. In surveying the Beach property, according to map P No. 3, did you make allowance for the variation of the needle ?

40

Ans. Yes.

Quest. Does your map, in describing the courses, lay them down according to the present pointing of the needle?

Ans. All those that I run do; some I laid down according to the old deed.

Quest. Which lines on that map are laid down according to the present pointing of the needle?

Ans. The boundary lines between the Beach and Carman property, except the dotted lines; that is to say, the lines marked No. 64° E. 5 chains, which pass between the two buildings represented
10 on the map.

Quest. How much does the needle vary in that location in the space of fifty years?

Ans. The surveys in that quarter fifty years old vary about two degrees and a half. It is supposed that the variation is about a degree in twenty years.

Quest. Is there any brook or creek at the foot of the Egg dock road?

Ans. I believe not.

[The counsel of the defendant here offered a paper purporting
20 to be a copy of deed from Jonathan Johnson to Robert Nichols and others, dated November 29, 1783, and requested the same made an exhibit. I have marked the same Exhibit P No. 5 on the part of defendant. Exhibit objected to by counsel of complainant.]

Quest. By what other names is the Egg dock called?

Ans. The new town dock.

Direct examination resumed by Mr. Pennington.—I have noticed the line of the dock which is known as the Beach dock; that line is not a straight line; the bend encroaches upon the dock, if it
30 were a straight line there would be more land. I don't remember how the river run before it was docked out. The general course of the dock is exhibited by the black line on the easterly side of map P No. 3. The dock has a sweep somewhat parallel with the easterly line of River street. I was for many years city surveyor for the city of Newark; in that character I became conversant with River street in some measure. I knew of a survey of some part of that street by metes and bounds long before I was city surveyor. The street was straightened considerable by cutting off on one side, and adding to the other.

40 [Mr. Bradley objects to the above, and calls for the record of the street.]

There has been a considerable alteration of the street, com-

mencing at the corner of Mulberry street and extending down to the Inness property, and below there, as practicably occupied by finding it has been considerably altered. I can't say as to that portion by the Inness property, I think it must have been straightened there.

Quest. From your knowledge and experience, as a scriviner and surveyor, is not the transposition of the figures, and a mistake of one figure for another in taking down the minutes of a survey, and in drawing conveyances therefrom, an error often made by the most exact persons ?

10

[Objected to by Mr. Bradley as leading.]

Ans. It is not frequently uncommon for persons generally correct to make such errors.

Quest. From the same knowledge and experience, what would you say from an examination of the conflicting surveys brought to your notice in this examination of the dotted line N. 56° E. on map P No. 3, and called for in the deed from Brown to Carman ?

[Objected to by Mr. Bradley.]

Ans. My opinion is, that it was intended to run that north line parallel with the south line in the same survey, that is to say, the 20 line along the Egg dock road. My principal reason for that belief is, that to run the north line parallel with the south, will give each tract its quantity called for in the several deeds.

Quest. In making surveys of small lots, and giving the area in acres and hundredths, is it not common to calculate with accuracy the area, notwithstanding the use of the words "more or less" in the survey embraced in the conveyance ?

Ans. It is my uniform practice, especially when the lots are small and valuable. I use the words "more or less" to cover any accidental error. As far as I am acquainted, that is the uniform 30 practice of surveyors. [Objected to by Mr. Bradley.]

Quest. Suppose the measurement of the Beach property along River street to be made on the courses called for by this deed from Waite and Inness, as laid down on map Exhibit P No. 3, protracted on Exhibit B No. 10, what would be the length of the two lines of that property ?

Ans. The same as upon Exhibit P 3. It is a little less on Exhibit B No. 10, because there is less of a sweep on the latter than the former. I don't think I ever fixed a monument at the point opposite the Inness corner.

40

Quest. Are not old surveys usually copied in conveyancing with-

out any allowance or calculation of any variation of the compass?
[Objected to, as leading, by Mr. Bradley.]

Ans. It is, and I find such to be the fact in many of the deeds exhibited to me in this examination. I made an allowance of half a degree in drawing the line between the Carman and Beach properties in making the map Exhibit P No. 3. The variation was to the east. Allowing that variation, the line would correspond with the line in the deed from Beach to Waddell.

Quest. What was the object or purpose of the reference to
10 Campfield, Bruen, and yourself, as you understood it from the parties at the time? [Objected to by Mr. Bradley.]

Ans. The parties were about improving their property, and they were desirous of having the line between them fixed. They had discovered a discrepancy between their deeds, and called us to fix on the line for them. The parties met on the ground and made their mutual representations, and, after hearing what they had to say, we settled the line according to the best of our judgment.

Quest. Did they express their satisfaction and acquiescence in the line you had made? [Objected to, as leading, by Mr. Bradley.]

20 *Ans.* They did appear satisfied with the line we fixed. There was no angry dispute, and the parties appeared satisfied. The present width of the canal lock is twelve feet, I think. I measured it, and think it was about that.

Cross-examination.—The parties were on the ground when they manifested their satisfaction and acquiescence; there were no papers made use of to settle it in legal form.

STEPHEN DOD.

Edmund Bruen, a witness produced on the part of the defendant,
30 being duly sworn according to law deposeth and saith—I reside in the city of Newark; I shall be forty-eight years of age next March; I was the son of Eleazer Bruen, although I never recollect my father; I was young when he died; he died in eighteen hundred and two, I think in September or October, or somewhere thereabouts; I was a year and half old when he died; I presume he was somewhere near twenty-three years of age when he died. His father's name was Eleazer Bruen also. My grandfather, Eleazer Bruen, died in the year eighteen hundred and twenty; I was then about
40 twenty years of age. My grandfather resided at the time of his death at the stone house on the River road, known as the Bruen house. My father also resided there in the stone house at the time of his death, as I have been informed, the same being a double house, and he occupying one end.

I lived with my grandfather up to the time I went to a trade, which was on the twenty-sixth day of September, eighteen hundred and fifteen; afterwards I lived with Aaron Nichols, in the city of Newark, as an apprentice to the carpenter's trade. I used to visit my grandfather frequently after I went to learn my trade. I was there in the evenings and on Sundays, and often on week days. My grandfather had other children besides my father; these were Gabriel Bruen, John Bruen, Rebecca, now wife of Aaron Camp, and two or three other daughters. Sally Wheeler, wife of James Wheeler, was one of them, Joseph Bruen's wife was another. There were two other daughters, whose names I cannot recollect; they died suddenly, unmarried. My mother is now living, she is the wife of David Doremus. My grandfather's father built the old stone house above referred to. My mother resided at the old stone house; she was there at my birth, and remained there until eighteen hundred and fifteen, when she was married to Mr. Doremus that is, as near as my recollection will serve me. At my earliest recollection, Gabriel Bruen, my uncle, owned the property immediately on the north of the old stone house. I cannot say how my uncle Gabriel came to be the owner of that property; I presume it was by deed from my grandfather to him. I do not recollect who next became the owner of that property; I think it was a man by the name of Blackford: whether he was the first purchaser after my uncle left the place, I can't recollect. Aaron Johnson succeeded to the ownership of the Bruen property by deed from my uncle John Bruen, who was the sole acting executor. I do not recollect who owned the Gabriel Bruen property after Blackford; I know that Mr. Beach owned it subsequently. There was a line of fence that stood in the neighborhood of twelve feet from the north end of the stone house; that was a partition line between the Eleazer Bruen and Gabriel Bruen properties. The measurement of about twelve feet I speak of, is from the north front end of the stone house to the fence; it was not less than that, it might be more. I recollect that, because I have been through there so many hundred times that I know it. There was a short line of fence from the north front end running out quartering to the line of the street, meeting a post and rail fence, in which was a pair of bars of ten or twelve feet in length. The north end of these bars was smack up against this partition fence; the south end of the bars was the termination of the quartering fence before spoken of. The distance on the street from the end of the partition fence to the line of the north gable of the stone house produced

to the street, as I said before, would be about twelve feet, it may be fifteen feet. I have not been upon the property recently to examine it. I have been upon the premises within five or six weeks. I don't recollect of a stone wall on the line of the street in front of the Capt. Beach property; hold on, I recollect the stone wall now standing there; I thought you had reference to some old stone wall. The southerly termination of that stone wall came to the end of that partition fence before spoken of. The partition line, as occupied by the partition line before spoken of, was not a continuous straight line, there was an offset; the offset projected into the stone house property; the offset projected within about ten feet of the rear of the old stone house. I don't undertake to say with certainty; I won't say for certainty, but I should think the offset projected about ten feet. The partition fence I speak of was an old and permanent fence made of boards. I know the two dock properties, known as the Carman and Beach properties, in front of the old stone house. I have known that property as long as I can remember; it used to be a marsh where the Carman dock is now, and also the Beach property used to be a marsh. I recollect a line of fence running from the River road towards the river, in a parallel direction, as near as I can remember, from the front door of the stone house; by a parallel direction, I mean a direct line from the front door. It might, perhaps, have varied a point or two of the compass. That line terminated towards the stone house at the River road; it was a little below the top of the bank, some eight or ten feet, or in that neighborhood. That point of termination was nearly opposite the front middle door of the stone house. That line of fence extended from the solid ground into the marsh about twenty feet, according to the best of my recollection. The entire length of that fence I will not vouch for, but should think it was about eighty feet, sixty feet on the upland and twenty feet in the marsh. That line of fence ran nearly at right angles with the front of the stone house, it might vary a little.

[Being shown map marked Exhibit P No. 3, and indicating the starting point opposite the old stone house, he says,] I do not think that the line of that fence ran as much quartering, askew, as the dotted line starting from that point marked N. 56° E. I think, to the best of my recollection, that the full line starting from the same point, marked N. 65° E., is the true line. I don't think I have any doubt of it. That line of fence was of boards, that ran lengthwise. That fence was there from my earliest recollection; I won't say how long it was there, but I will say it was there after

I went to a trade, in eighteen hundred and fifteen. To the best of my recollection, that line ran nearly parallel with the north line of the old Egg dock road. The upland on the south side of this line was, part of it, the river bank; part of it near the Carman house was used as a garden, and that part near this line was occupied by grass.

The Carmans occupied this property on the north up to that line; it was fenced in, and they occupied the whole of it. There was a line of fence on the Carman property along the River road; this fence ran northwest and southeast, intended to be along the 10 River road. Uncle Gabriel Bruen occupied on the north of this line of fence running down to the river, but made no particular use of it; I should have said, except a small strip, perhaps thirty feet wide, running to the river immediately adjoining the Carman property. That strip of land was occupied by Eleazer Bruen and his son John. They made no particular use of it, except one year they used it for a duck pen and pond; this was so occupied in the war time, about the year eighteen hundred and thirteen; that line of fence was standing about that time. I assisted in putting up the 20 fence around it, and we only put up three sides of fence, the north Carman fence being then standing, and forming the other side.

Cross-examined by Mr. Gifford.—I never measured the ten or twelve feet I speak of north of the stone house precisely; I never measured any of the distances I speak of in my chief examination. I speak of the partition fence, and call it such because it was a line of fence that always stood there, and formed the division line between the properties. There was no other fence that ran down at right angles, or nearly so, with the stone house than the one I have mentioned, except the fence of the duck pen, which was a temporary one, and stood only for one summer. The ground north of the 30 fence was always open or in common, until you come up to the Baldwin or Stiles property, up to the time of the building of the Railroad; it was never fenced in until that period. There was a kind of a gully and an ascent from this property up to the Beach property. There was one part of the Beach property where the water flowed in as the tide arose, this was near the Stiles property. The water flowed in towards the land along both the Beach and Carman property, and also along the Carman property; the water flowed in by a kind of low ditch; I presume it was a natural ditch, and not dug. At high tide the water overflowed the whole of the 40 marsh up to the upland. I remember old Mr. Carman. I remember the old Carman house that was used as a tavern; there used to be

a piazza in front of that house, about six feet wide, I should think. I think the front of this piazza was nearly on a line of the street. If I recollect right, there was a kind of shed to the west of this house on the River road; we used to walk up this shed to an end door of the house. This shed was a kind of kitchen, stoned up on the side towards the River road; it was stoned up all round; the fire-place took up pretty much all the rear part, except a door that went out. There was a door, also, that went into it from the street.

EDMUND BRUEN.

10 *John Thompson*, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith—I reside in the city of Newark; I will be forty-five on the tenth day of March next. I was in the employ of the defendant in this suit; I entered his employ on the morning of the thirty-first day of January, eighteen hundred and thirty-three, and left his employ on the eighth day of March, eighteen hundred and thirty-four. I know the property known as the Beach dock property.

20 *Quest.* Where did the division line between the Beach dock property and the Carman dock property, as occupied by Mr. Beach and Mr. Carman, respectively run? [Objected to by Mr. Bradley, as leading.]

Ans. It ran as near parallel from the end of the stone wall to the river, as near as I can recollect, without wavering up or down; at this present day I should think the line struck between the two store houses on the dock; all of one building, and more, lies on Mr. Beach's property. The corner of the store house on the Beach property nearest to the dock is nearest to the line. I did not notice particularly how far that line would run north of the old store
30 house; at that time there was a hollow, so that there was no difficulty in ascertaining where the line run; it was a little ditch or hollow dug out with a hoe or spade, so that when it rained there would be a little stream of water running down to the dock. This ran from the foot of the hill down to the river.

Quest. How was the Beach dock occupied during the time you lived with him, or any part of that time?

Ans. It was occupied by the Morris Canal Company; he granted them the privilege of unloading vessels. There was no fence on that line, except a small bit of a few boards put up by the dock;
40 that fence was on what I considered as the line; this strip of fence might have been from ten to twenty feet; whether it was to pile coal against, or what, I don't know.

Quest. Who filled up the Beach dock up to that line?

Ans. Capt. Beach. It was done in the year eighteen hundred and thirty-three, while I was with him; the dirt was taken from Capt. Beach's property on Cherry street and back on the canal.

Quest. Who built the dock?

Ans. Platt Soper, under the directions of Capt. Beach.

Quest. Do you recollect the condition of the dock logs before Capt. Beach commenced to build up his dock?

Ans. They were left open; some of them extended over more than others; the top log was off; there had never been any top log 10 put on. Capt. Beach, in building his dock, notched in these logs; these logs extended, some of them, twenty feet, only so far as to allow the logs to be spliced in.

Quest. How far north had the Carman dock been filled in when Capt. Beach filled in his dock?

Ans. It was timbered in some twenty feet beyond the division line. The Carman dock was filled in up to the line, or perhaps a little over, I don't recollect how much over; not much over the natural wash in falling from the tides and the agitation of the steam-boat. I was frequently down upon the dock. The top log was put 20 on, by Capt. Beach's orders, by Platt Soper and others; that top log run up to that line, and covered the timbers that had been laid there before. The Morris Canal Company occupied the Beach dock; when I left Beach's employ, coal still remained there.

Quest. Do you recollect whether or not the persons employed by Mr. Beach to fill up his dock carted earth from Cherry street, and back on the canal, to any extent, to fill up the Carman dock?

Ans. Yes, they filled in considerable dirt on the Carman dock besides his own dock, but to what extent I don't know.

Cross-examination by Mr. Bradley.

30

Quest. How are you so particular in recollecting the dates of your commencing work with Mr. Beach, and leaving him?

Ans. By my memory. I think the east end of the store house I referred to is three feet from this line, or less.

JOHN THOMPSON.

John W. Poinier, a witness produced on the part of the defendant, being duly sworn according to law deposeseth and saith—I am in my forty-seventh year of age; I now reside in Morristown, in this state; I have resided there for twelve or thirteen years; previous to that I resided in Newark. I was born and lived in New-ark until I was thirty-five years of age. I know the dock properties 40

called the Beach property and the Carman property. My father, John Poinier, and myself owned a strip of land, now a part of Carman's dock, which we sold Mr. Carman. I think we sold it to Mr. Carman in eighteen hundred and twenty-eight.

[Being shown paper marked Exhibit B No. 8, he says,] that is the deed by which that conveyance was made. We purchased that strip from Aaron Johnson; I think we purchased that strip in the same year that we sold it; we purchased it from Johnson for the purpose of exchanging with Carman.

- 10 [Being shown a paper writing purporting to be a deed from Aaron Johnson and wife to John Poinier and John W. Poinier, bearing date the twelfth day November, eighteen hundred and twenty-eight, and which is offered as an exhibit, and marked Exhibit P No. 6, he says,] that is the deed by which we purchased of Aaron Johnson. I have been acquainted with those properties upwards of thirty years. John Bruen owned that strip of land prior to Aaron Johnson. I recollect very well a fence on the south-
 20 erly line of that strip running from the road towards the river; I recollect it for upwards of thirty years ago; it was built of boards that were nailed up and down; I don't recollect whether the
 30 boards were nailed up and down for the whole distance; I don't recollect about the upper part of it; I recollect distinctly a part of it; that fence extended from the hill on River road, that is from the upper corner of the fence running apparently along the east side of the River road on the top of the brow of the hill down to the marsh, I should think between a hundred and twenty to a hundred and fifty feet towards the river. The appearance of this fence was that of an old fence, as long as I can recollect. I recollect of Mr. Carman's repairing this fence, and having boards
 40 nailed on for that purpose. That line of fence was understood to be a division fence.

Quest. Did Mr. Carman so treat it?

[Question objected to by Mr. Gifford.]

Ans. Yes, sir. At my earliest recollection Eleazer Bruen occupied the strip of land on the north side of that line; he was the father of John Bruen; this was thirty years ago. I can't say positively, but to the best of my recollection that line of fence ran parallel with his south line on the Egg dock road, and, with reference to the River road and the river, I should think at right angles.

- 40 *Quest.* Have you any doubt, from the best of your recollection and observation as to the course of that line, that your statement of its course already given is accurate?

Ans. No.

Quest. What have been the means of your observation of the course of that line?

Ans. I should say from fifteen to twenty years' experience in seeing it almost every day, beginning in eighteen hundred and twelve, the time that we moved into the house then belonging to Mr. Inness. The Inness house was the house next north of the old stone house. We lived in that house five years. My father carried on the lumber business on the south part of the Carman dock from eighteen hundred and twelve to eighteen hundred and twenty-four, 10 and in connection with myself from that time to eighteen hundred and thirty-five or thirty-six.

[Being shown the map marked Exhibit P No. 3, he says,]

Quest. Could the strip spoken of by you have run towards the river at an angle with the road and river, and so far from a parallel line with the south line of the Carman dock as the strip indicated between the dotted lines on this map, without having impressed itself upon your mind in relation to those courses?

Ans. No, sir.

[After the answer was given, and the master had begun to write 20 the answer, the question and answer were objected to by complainant's counsel.]

Cross-examined by Mr. Gifford.—The place called the dam, on the Passaic river, was down below what is now called Downer's coal yard. This place was called the dam from my earliest recollection. There was no other place along the Passaic river that could, by any possibility, be called the dam.

Quest. Did the marsh at this dam appear to stop, and the bank commence?

[Objected to as immaterial.]

30

Ans. There was no marsh there at all. The marsh along the river ceased below the dam. I have often taken an observation, from in front of the stone house, of the line of fence running down towards the river. My impression has always been, that if that line had been produced back to the stone house, it would have run parallel with the north side of the stone house, but of this I am not certain. I don't mean it would run parallel with the north end of the stone house, but that it would strike about the northeast corner of the stone house.

Quest. How did you know this line to be a division fence?

40

Ans. I knew this to be a division fence from Mr. Carman occupying one side of it, and Mr. John Bruen the other.

That strip north of the Carman fence was never enclosed; it was in common. All the way that Bruen occupied it, was by having a large duck and goose pen there, which occupied only a part of it; I can't say how long that duck and goose pen was there. There was another fence that ran parallel, or nearly so, with the division fence before spoken of; it was about half way between the Carman house, on the Egg dock road, and the said division fence; this fence enclosed Carman's garden, and the other part was occupied by his cow. This fence that enclosed the garden, I might say, 10 was within one hundred and fifty feet south of the division fence before spoken of, but I can't tell within fifty feet.

Quest. Where would the north line of the property you conveyed to Mr. Carman, as contained in Exhibit B No. 8, strike the Inness house, where you say you formerly resided, to the best of your recollection?

[Question objected to, as leading, by Mr. Pennington.]

Ans. I am trying to think. I don't recollect the distance there.

[Upon looking at Exhibit B No. 8, he says,]

It will strike near the south end of the kitchen; I won't say; I 20 can't be positive about it. The building that stood on the corner of the Carman property was a wooden building.

Quest. What sort of a structure extended out to the line of the street—River street and Egg dock street? [Objected to by Mr. Pennington.]

Ans. The structure consisted of a wooden shed.

Quest. Was that structure built over a cellar? [Objected to by Mr. Pennington.]

Ans. No, sir.

Quest. Was the tavern house on the line of the street? [Ob- 30 jected to.]

Ans. I don't know, I should think though that it was.

Quest. Did you pass there every day? [Objected to.]

Ans. Nearly.

Quest. How often did you pass there?

Ans. I could not tell, though very frequently.

Quest. Was there a fence on the line of that street—River street? [Objected to.]

Ans. Yes, sir.

Quest. Have you any interest in the event of this suit?

40 *Ans.* No, sir.

Direct examination resumed by Mr. Pennington.

Quest. What portion of that strip you have spoken of, did that duck and goose pen occupy ?

Ans. I should say it occupied a space of about twenty-four feet by fifty feet. It occupied the lower part of the hill running into the marsh—for mud and water.

Quest. How did John Bruen and his family have access to it ?

Ans. From the road over this strip.

Quest. Which side of this strip was occupied by this pen ?

Ans. The southerly side, along the division fence.

Quest. When do you first recollect this duck pen, what period ? 10

Ans. I could not tell you ; as near as I can recollect it was about eighteen hundred and fifteen or sixteen.

Quest. How long was it continued, as near as you can recollect, how many years ?

Ans. Two or three years.

Quest. In fixing, according to the best of your recollection, the point where the north line of this strip produced would strike the Inness house, do you do so from having actually made an observation on the ground, or relatively with reference to the south line of the strip and the position of the Inness house ? 20

Ans. I do it relatively from both, and not by observation. What I mean you to understand by “relatively,” is by recollection.

Quest. Have you any better recollection, or are you any more positive, as to where the north line of the strip produced would strike the Inness property, than as to the point where the south line produced would strike the Bruen property ?

Ans. No, sir, I have not.

Quest. Do you know the precise line of River street or Egg dock street, as actually laid by public authority ? [Question objected to.] 30

Ans. No, sir.

Quest. When you speak of the tavern house and the fence on River street, and the structure on River street and Egg dock road, as being on the lines of River street or Egg dock street, do you mean to say, or to be understood, that either of them occupy the precise line of either of those streets ?

Ans. No, sir.

Cross-examination resumed.

Quest. When you speak of the tavern house and the fence on River street, and the structure on River street and Egg dock road, 40 as being on the lines of River street or Egg dock street, do you

not mean that it was so as long as you can recollect? [Objected to.]

Ans. Yes, sir.

Quest. Which line of that strip you sold to Carman, the north or the south, do you recollect the position of best, as to where they would strike the west side of River street?

Ans. The south line.

Quest. When you lived in the Inness house, was the land immediately north of this strip spoken of occupied, or was it open and
10 in common. [Objected to as a leading question.]

Ans. It was open common.

Quest. Was it so or not so until you moved away from that house? [Objected to.]

Ans. It was so.

Quest. How long had it been open?

Ans. I suppose from the creation.

Quest. What year did you remove from that house?

Ans. Eighteen hundred and sixteen or seventeen.

Quest. Was you acquainted with that neighborhood after that
20 time, and if so, for how long?

Ans. As long as I have lived.

Quest. When was the land immediately north of that strip first occupied?

Ans. I believe when the Railroad crossed it.

Quest. Was the north side of the Egg dock road, as open and used, straight or crooked?

Ans. Straight.

Direct examination resumed.

Quest. Was not the bank or hill on the lot immediately north of
30 the strip dragged down, and the meadow of the same lot filled up therewith, more or less, before the Railroad crossed it? [Objected to as leading.]

Ans. I don't recollect.

Quest. Was it not occupied as a ship yard and for sawing timber before the Railroad crossed it?

Ans. I don't remember.

Quest. From your earliest recollection, who was the reputed owner of that land immediately north of that strip? [Objected to as irrelevant, incompetent, and improper.]

40 *Ans.* Mrs. Inness; she owned it when we lived in the Inness house.

Quest. Do you know of any acts of ownership exercised by her over it? [Objected to.]

Ans. No, sir.

J. W. POINIER.

Thomas V. Johnson, a witness produced on the part of the defendant, being duly sworn according to law deposed and saith—I reside in the city of Newark; I am thirty-eight years of age. I know the property called sometimes the town dock and sometimes the Egg dock. I have known those docks about twenty years, but have known them more particularly within ten or twelve years last 10
past. The New Jersey Railroad Company own the dock between me and the Egg dock. The dock that I own is known as the Cory dock, and sometimes called the Commercial dock. There is no other dock than the one owned by the New Jersey Railroad Company that intervenes between the one owned by me and the Egg dock. The dock owned by the New Jersey Railroad Company was owned, immediately prior to them, by Mr. A. W. Kinney and others, as I believe. Mr. Jonathan Cory, I believe, owned it immediately prior to Mr. Kinney and others. This dock, together with the Commercial or Cory dock, was held in common by Mr. Cory 20
with the Railroad and others, until the fall of 1837, or spring of 1838. The Railroad dock was a part of what was called the Commercial dock. Mr. Cory owned the Commercial dock prior to the time it was held in common as aforesaid, excepting a space on the dock of fifty-four and a half feet front. [This evidence objected to by Mr. Gifford, as not being documentary.]

Benjamin Warner's estate owned the fifty-four and a half feet front dock. Mr. Cory purchased this part in 1836, while the other dock was held in common. The undivided third of the whole Commercial dock, exclusive of the fifty-four and a half feet, was left to 30
me by the will of Mr. Cory, and I divided it with the company. The fifty-four and a half feet was also devised to me by Mr. Cory. This fifty-four and a half feet was a lot sold out of near the middle of what was called the Commercial dock, and was no part of the property that was held in common, as before stated. The dock originally called the Commercial dock, including the Munn dock, extending from the Egg dock to the most southerly line of the Commercial dock, occupied a front on the dock or river of four hundred and fifty-six feet, including twenty-feet in the slip, which was part of the Commercial dock. That number of feet is the same 40
as occupied by the Commercial dock, from my earliest recollection

of it, as near as my memory serves me. [Mr. Gifford objects generally to all this testimony, as not being documentary.]

Mr. Charles T. Shipman, Prudden Alling, and others, owned the property on the southerly line of the Commercial dock; the same is now owned by Stoutenburg, Day & Co., as I understand, and is now occupied by David Ripley & Co., who underlet to William Jackson, who occupies the front part of it. I have recently measured the distance along the dock from the southeast corner of the Munn lot, now owned by me, northerly to the Poinier fence
 10 north of the egg dock. That whole distance is four hundred thirty and a half feet; I measured it at the suggestion of Mr. Beach. The proper front of that part of what was called the Commercial dock, including the Munn dock and the twenty feet of slip, and up to the Egg dock, is two hundred and ninety-two and a half feet, according to my measurement, and from there to the Poiniers' fence, as it now stands, is one hundred and thirty-eight feet. That slip is now there. My measurement for the front of the Commercial dock took me about twenty feet into the slip; the slip, I believe, is about thirty-five feet wide. The parties to the division of the property owned
 20 in common by Jonathan Cory and others, were myself, as devisee of Jonathan Cory, of one undivided third part, and the Railroad Company, as owners of the undivided two-thirds part.

Quest. Does the measurement from the southeast corner of the Munn lot, northerly two hundred and ninety-two and a half feet along the dock, embrace all the front of the Commercial dock northerly of the said southeast corner, as understood, claimed and occupied, and divided by the parties to the aforesaid division? [Objected to by Mr. Gifford.]

Ans. It does.

30 Cross-examined by Mr. Gifford.—I have been a resident of Newark about twenty-one years. I have obtained my knowledge of the ownership of the properties referred to by the evidence presented by the deeds and a map. I refer to the deed from the trustees of the Munn estate. I don't know, I believe they were commissioners' and other deeds. I have not those deeds here in my possession. The other deeds I refer to are the deed from John Alling and wife to Jonathan Cory, and the deed from David Cook to Jonathan Cory; those deeds are in my possession, I mean I have them at home. The map I refer to, I don't know who made it. It came
 40 with the deeds, and was said to have been made when the property was divided. The River road is laid down on that map. It does not designate the number of feet in width of the River road. I never

saw any name on the map designating by whom it was made. I have not the deeds of the property adjoining the Cory property, and of which I have been speaking. I don't pretend to know any thing about any other property than that in which I was interested.

Quest. When you say that you measured this at the suggestion of Mr. Beach, do you mean to be understood that he assisted you in the measurement?

Ans. He did at one time, and since then I measured it myself. I measured it myself the last time. My brother and one of our men, by the name of Gills, I believe, assisted me in measuring it the last 10 time. Gills' first name is Aaron; he held the tape; my brother marked the distances.

Quest. Have you not in one instance before, in the measurement about which you have been examined, found that you have made a mistake?

Ans. I measured in one instance with Capt. Beach; I took him where I supposed the point commenced on the slip; we measured it from there. I suggested to him, the best way would be to measure from the point where we knew where the beginning corner was. I told him, it is possible I might be mistaken in the point 20 where it began in the slip, as the dock had been rebuilt there. We did so measure it, and found the result about the same; the variance was only about three inches, if I remember right.

Quest. Have you not, at any time, found there was a defect in the measuring tape that you used?

Ans. Yes, sir, we did. When we come to measure the tape we used with other tapes, I found there was a variance of three inches too much in the tape we used, in my fifty feet. I measured over the tape, and made a calculation according to the corrected measurement. Mr. Beach was at the wharf at the last measurement, 30 and I think he came over on the town dock where we were summing up the measurements.

Quest. Was this any such official measurement as required your chain bearers or attendants to be sworn, or were they sworn?

Ans. No, sir. The beginning corner I speak of in my cross-examination, is the corner known for a number of years as Munn corner; there was a post there. The dock I speak of as being rebuilt, is the dock fronting on the slip, that is the southeast side of the slip. It was this dock that I did not know had been built in the same place where it was before. I did not have the deeds 40 before me at any time when I made the measurement.

Direct examination resumed by Mr. Pennington.—I did not know

whose tape I compared the one I used with; it was said to be the tape of Smith, the city surveyor. I superintended the measurement; it was done as accurately as I could do. I don't know that I could do it as accurately as a surveyor. The dock rebuilt is the one on the southeast line of the slip running from the river towards the lock, westerly.

Cross-examined.—I held one end of the tape in the measurement.

THOS. V. JOHNSON.

- 10 February 15, 1848.—Parties appeared at the office of Staats S. Morris, master. Mr. Gifford, on the part of the complainant, offered a paper purporting to be a deed of release from Phœbe Carman to Sarah M. Carman, bearing date the first day of January, 1848, and requested the same made an exhibit in this cause. Mr. Pennington, on the part of the defendant, objected to the exhibit. I marked the paper Exhibit B No. 15 on the part of the complainant.

20 *Phæbe Carman*, offered as a witness on the part of the complainant, being sworn on her *voir dire*, at the request of defendant's counsel, deposeth and saith—I am the daughter of Ichabod Carman, late of the city of Newark, deceased; he did not leave a will; I am one of his heirs-at-law.

Quest. Did you inherit, as one of the heirs-at-law of Ichabod Carman, deceased, the dock property formerly owned by him, situate at the corner of the River road and the Egg dock, and lying between the River road and the Passaic river? [Objected to by counsel of complainant, as leading.]

30 *Ans.* Yes, sir. I have an interest in some part of that dock property now; I have an interest in the southern part of it. My interest in that property is an undivided interest with my sisters; I have released a part of it.

Quest. In what portion of that dock have you an undivided interest?

40 *Ans.* I don't know the exact number of feet. There are about three hundred and three feet, or between three hundred and three feet and three hundred and four feet, along the River road from the corner of the River road and the Egg dock road to the north-westerly corner of that dock property. I have seen it measured several years ago; I have not seen it measured lately; I don't recollect how long ago I saw it measured, I think it was between six and seven years ago; it was since the Railroad was built there. I measured according to my father's deeds. The distance of three

hundred and three, or three hundred and four feet, was the entire front of the whole property.

Quest. Up to what line on the north was the measurement taken?

Ans. Up to what was supposed to be Capt. Beach's line.

[Question and answer objected to as irrelevant, and all further questions on the merits of the case upon the *voir dire* are objected to by counsel of complainant.]

Quest. In making that measurement, did you measure to any monument, stake, or fixed point on the ground? [Objected to as irrelevant on the *voir dire*.]

10

Ans. I did not; there was no such thing there.

Quest. Was the object of that measurement to ascertain where the distances called for by the deed would reach to? [Objected to on same ground as before.]

Ans. Yes, sir.

Quest. You say you released a part of that dock; what consideration did you get for that release? [Objected to as immaterial and irrelevant.]

Ans. One dollar.

Quest. Is there not an understanding that this property so released is to be reconveyed to you? [Objected to as immaterial.]

20

Ans. No, sir.

Quest. Do not the heirs of Ichabod Carman claim to be the owners of a strip of land running from the River road to the river, conveyed by Ephraim Beach, the defendant, to William C. H. Waddell, the complainant in this case?

Ans. Part of them do at present.

Quest. Have you not, as one of the heirs, at some time made such claim?

Ans. I have.

30

Quest. Are not the claims of the other heirs and your own identical on the same, except so far as you have released such right?

Ans. Yes.

Quest. Did you make the release you refer to for the purpose of qualifying yourself as a witness in this cause? [Objected to as immaterial.]

Ans. I made the release because my sister asked me to; she said she wanted it.

Quest. Did you not, in making the release, understand from your sister, or some other person, and from whom, that the release was necessary to qualify you as a witness, and was it not made for that express purpose? [Objected to as immaterial.]

40

Ans. I did make the release for the purpose of qualifying me as a witness. I understood it was necessary for that purpose from my sister and Mr. Gifford.

Quest. Was Mr. Gifford your counsel and the counsel of the heirs with regard to their rights to that strip? [Objected to, as having nothing to do with this matter.]

Ans. Yes, sir.

Quest. Was he employed by you and the other heirs to bring a suit involving the question of the title of that strip?

10 *Ans.* There has never been any suit.

Quest. Was there not a suit commenced against Stephen K. Ford, authorized by you?

Ans. There was.

Quest. Who was employed to bring that suit?

Ans. Mr. Gifford and Mr. William Pennington the elder, the former governor of the state.

Quest. Did not that suit involve the question of the title to that strip? [Objected to as immaterial.]

Ans. I don't know.

20 *Quest.* Was it not brought for an alleged trespass on that strip? [Objected to as immaterial.]

Ans. Yes, sir.

Cross-examined on *voir dire*.

Quest. Are you satisfied that all your right to the property in dispute in this suit has been released by this release made an exhibit this morning, and that you have no interest in the property whatever, nor in the event of this suit?

Ans. I am satisfied.

30 The witness was here offered for examination in chief, and was objected to by the counsel of the defendant. Being duly sworn according to law, on her oath she deposeth and saith—I am thirty-six years of age.

Quest. Do you remember when your father occupied the property on what is called the Egg dock street or New dock street?

Ans. Yes, sir.

Quest. Was that before or after the Railroad was run there?

Ans. Before.

Quest. Has the house been since moved, and when and in what position?

40 *Ans.* It has been moved nearer towards the river, and brought out on to line with the town dock.

Quest. What do you mean by the line of the town dock?

Ans. The house formerly stood back about six feet, it may be more, or may be less; the piazza was about the half of a length of a board. The front of the piazza did not quite reach the line of the street, I mean the north line of the town dock.

[Upon being shown Exhibit B No. 10,]

Quest. Which is the line there you mean by the line of the town dock?

Ans. It is the line N. 65° E. on the northerly line of the street there laid down.

Quest. How long has that line of the street continued built on as 10 it now is, within your recollection?

Ans. There was a small building below the house, which stood on the line as long as I can recollect, and the other buildings were moved out when the Railroad was built.

Quest. Can you designate the corner of what was called the River road and the Egg dock street?

Ans. There is a building now on that corner.

Quest. How do you know it to be the corner?

Ans. I believe it to be so, as near as I can recollect the corner and the present appearances. 20

Quest. When you moved from the old house on Egg dock street, to what house did you move, and how far from this corner?

Ans. To the house on the opposite side of the street, it was not far, but a short distance; the house is still standing there.

Quest. Until what time did you reside there, in the house opposite?

Ans. Until April, eighteen hundred and thirty-four.

Quest. Did you ever take the distance of that corner from what was called the fence of Eleazer Bruen?

Ans. Yes, sir. 30

Quest. What distance did you make it?

Ans. About one chain.

Quest. Do you remember from what deed you took this measurement, or saw it measured, and for what purpose? [Objected to by Mr. Pennington.]

Ans. From my father's deed, the deed from Job Brown, to see if I could be sure where the corner was.

Quest. Do you remember a board fence that run along on the northerly line of your property, in front of Eleazer Bruen's; describe it? 40

Ans. There were two board fences that run down from the street

towards the river; the south one was our garden fence, and the north one enclosed the lot back of the garden.

Quest. How far up the hill did this fence run, and how far down towards the river?

Ans. Both fences commenced not quite on the top of the hill, a little below the top, and ran down to the marsh.

Quest. What kind of a fence was this northerly fence?

Ans. It was a board fence; the boards ran up and down until it reached the marsh; then the boards ran lengthwise. It was an open fence. It might not have been more than three boards high in some places, and two in others; it was frequently washed off by the tide.

[Exhibit P No. 3 being shown to witness,] she is requested to state, from that map, the course of the fence. [Question objected to by counsel of defendant.]

Ans. The most northerly dotted line.

Quest. If that fence had been continued westerly across River street towards the Eleazer Bruen property, where would it strike that house?

20 *Ans.* I do not think it would strike that house at all; it would strike north of the house.

Quest. Have you any recollection how far north of the house?

Ans. I should think about ten or twelve feet.

Quest. How do you come to your conclusion on that subject, or what opportunities have you of knowing that fact?

Ans. I remember being in that house, and the street fence that ran parallel with the river run past the window; I mean the fence running along the east side of River street.

30 *Quest.* How often did you visit that house, and from what part of it did you make your observations?

Ans. I visited it very often, and was in the lower front room of the north end.

Quest. How long ago was this?

Ans. Before my father's death, before the dock was built, and before any thing was done with the ground.

Quest. Do you remember the store houses on the Carman wharf; describe them, and how long have they been there?

40 *Ans.* I remember them, they are wooden buildings; the first one was put there quite early in the spring of eighteen hundred and thirty-three, the other was put there in eighteen hundred and forty-four.

Quest. Where does the northerly store house stand with respect to the fence, if continued down to the river?

Ans. South of it, very nearly on to the line, not more than one or two feet south of it.

Quest. Do you recollect when the first filling up of the marsh was?

Ans. It was in the winter of eighteen hundred and twenty-eight; my father's was done then, and Mr. Beach's was done previously, in the same year.

Quest. Do you remember when it was finished? 10

Ans. It was late in December of that year.

Quest. Have you any data by which you can recollect it?

Ans. My father gave a mortgage in payment for it, and it was dated in January, eighteen hundred and twenty-nine. Mr. Nathaniel S. Crane, of Caldwell, did the filling up. My father made the agreement with him, but I think he was not there much of the time; his nephew did the work. That mortgage has been paid since my father's death; I have that mortgage in possession now.

[The mortgage is produced, and offered as an exhibit, and marked Exhibit B No. 16 on the part of the complainant.] 20

[The marking of this exhibit is objected to by counsel of defendant, as incompetent evidence.]

Quest. Do you know in whose handwriting the survey of that mortgage is?

Ans. I believe it is Mr. Dod's. I know he drew mortgages for my father at that time—two mortgages. I think it is his handwriting.

Quest. Up to what time did that old line fence continue?

Ans. Until the commencement of the work when my father began to fill in, when he took it down. That fence was not considered as marking the line of my father's ground. There has never been 30 any fence there since.

Quest. Previous to its being taken down, do you remember any tree that stood near it; if so, what kind of a one was it, and where did it stand?

Ans. There were two black walnut trees on top of the hill on the street, and two below the hill in the lot, one below the hill was considerably larger than the other; the larger one was nearest to the fence.

Quest. Do you recollect any understanding between Mr. Beach and your father with respect to the filling up of any part of your 40 father's wharf? [Question objected to by counsel of defendant.]

Ans. No, I do not know of any.

Quest. Was the line to which Mr. Beach filled to the north or south of that old fence ?

Ans. North.

Quest. Do you remember any negotiation between Mr. Beach and your father respecting property ? [Objected to by counsel of defendant.]

Ans. Mr. Beach wished to make an agreement with my father to straighten the line.

Quest. In what manner to straighten it ?

- 10 *Ans.* My father had more ground on the river, and Mr. Beach had more on the street ; he wished my father to exchange, and give him ground on the river, and take ground on the street, to make the line run parallel with my father's south line.

Quest. Do you recollect about Mr. Beach's coming to your father's house about this, and what your father said ? [Question objected to by counsel of defendant.]

Ans. Yes, I recollect of his coming several times.

Quest. Do you recollect the conversations between Mr. Beach and your father, if so, state what they were ?

- 20 *Ans.* Yes, sir. Mr. Beach wished my father to give him ground on the river, and take ground in the rear in exchange. My father said he would wish to accommodate Mr. Beach ; he did not wish to part with any of his ground on the river, the ground on the river was more valuable than that on the rear ; he thought it would lessen the value of that which remained if he did so.

Quest. At what time was this ?

Ans. It was at different times, when the marsh was being filled and afterwards.

- 30 *Quest.* Do you remember a meeting of any persons to settle any matter between Mr. Beach and your father respecting this property ?

Ans. I do not. I think there was some proposition to that effect after my father's death, but I don't think it ever was done.

Quest. At whose instance was this proposition made ?

Ans. I think it was at Mr. Beach's ; I don't recollect much about it ; I don't think it was ever carried into effect.

Quest. Do you recollect of any persons making a survey and map of that property, if so, who and when ? [Question objected to by counsel of defendant.]

- 40 *Ans.* Mr. Dod has surveyed it. I don't recollect whether he surveyed it before my father's death or when ; I think he did ; he

surveyed it afterwards. I think my father had a map made by Mr. Dod before the filling in.

Quest. In speaking of the Eleazer Bruen house, do you know the number of feet from the centre of the front door to the north end of the house?

Ans. I should think it was about twenty-five feet; I can't say exactly.

Cross-examined by Mr. Pennington.

Quest. You say you took the measurement from the Eleazer Bruen fence to ascertain the corner of the dock property; when 10 was this done?

Ans. I did not say from the fence; I mean from where I thought the fence was; it had been removed at that time. It was since the railroad and canal has been there.

Quest. Was there any appearance of the old fence left when this measurement was taken?

Ans. No, sir.

Quest. Are you sure that you measured from the very place where the old fence stood?

Ans. As near as I could judge in ranging with the front of the 20 Bruen house.

Quest. Does that house stand on the line of the street, or a little back?

Ans. It stands a little back, I should think three or four feet.

Quest. In ranging with the house to ascertain the line of the fence, how far back did you suppose the house to be?

Ans. I should think about three or four feet; I can't be exact.

Quest. Did you fix the supposed line of the fence by taking a range with the house?

Ans. Partly so and partly from measuring; recollecting that fence 30 was somewhat farther out than the house.

Quest. You say you found the distance of the corner about one chain from the fence; how near was it to one chain?

Ans. It was within one or two or three feet.

Quest. Did this measurement enable you to ascertain the line on the south of the dock, or only the line along the River road?

Ans. Only the latter.

Quest. Did you ever take the measurement from the property south of the Egg dock to ascertain the north line of the Egg dock?

Ans. No, I never did.

Quest. What is the width of the Egg dock property?

Ans. I don't know.

Quest. When you speak of the north line of the Egg dock, do you speak of it as the apparent line, as indicated by buildings and fences, or as the actual line?

Ans. Both.

Quest. Do you know, of your own knowledge, what the actual and correct north line of the Egg dock is?

Ans. I never surveyed it or measured it. I speak of it, as what has always been considered the true line, as occupied by the fences and buildings.

10 *Quest.* You say there is a building on the corner of the Egg dock and the River road; is the front of that building on the same line as the front of the Carman house, as it now stands, since its removal?

Ans. I think it is within a few inches; I think it is on the same front where the old shed formerly stood. The houses all stand a little crooked, the easterly corners of the houses, I think, are on the line; the westerly corners may be a few inches back from the line.

20 *Quest.* Are you certain that the old houses, when moved, were moved forward?

Ans. They were.

Quest. Can you tell certainly, within three or four feet, where the corner of that shed was, by going on the spot now?

Ans. I think that Mr. Kirkpatrick's house stands on the same spot.

Quest. Is the front on the same line?

Ans. I think it is.

Quest. Are you certain within three or four feet?

Ans. Yes, sir.

30 *Quest.* How near a certainty are you with respect to that line?

Ans. As near as I can recollect, I think it is within one foot of it?

Quest. You speak of the fence on the north of the dock; how far did that fence extend into the marsh?

Ans. About one length and a half; it was sometimes farther and sometimes shorter.

Quest. Had that fence, from your earliest recollection, the appearance of an old fence?

Ans. It had stood some years when I first recollect it.

40 *Quest.* Who did you visit when you visited at the Bruen house?

Ans. My aunt, Mrs. Ball.

Quest. Did you ever see Stephen Dod write?

Ans. I don't think I ever did.

Quest. How many years have you been familiar with that property?

Ans. Ever since I can recollect.

PHOEBE CARMAN.

Pursuant to notice issued for taking further testimony in this cause, the parties appeared before the master, at his office, on the eleventh day of December, 1848, and proceeded with the examination; Gifford appearing for complainant, and Pennington for defendant.

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John Rioch recalled, by consent of the counsel of the parties.

Quest. You say, in your examination, that two posts, twenty feet north of the store house, designated the division line between the Carman and Beach property, and that your impression was that they were about twenty feet north of the store house; have you measured this distance accurately since that time to ascertain that distance; if so, state?

Ans. I have; it is forty-eight feet from the north corner of the store house to the line, what they have always called the line. This store house that I am now speaking of is the one on the dock when I was there, and is the one now known as the south one. The north store house was moved there since. If I recollect, the northwest corner of the north store house stands within one or two inches of the post. There are twenty-six feet between the two store houses. The north store house is twenty-one feet front, and I should think it stands within a foot, one way or the other, of this post. Those posts have been standing there ever since I occupied the dock, and now stand as they did then. The appearance of those two docks at the joining is, as if there had been two docks built at different times. The front top logs are not joined, they are about two, three, or four inches apart. There is a slight angle in the dock at that point. These posts were meant to be put on the Carman dock, as near the line as they could be put down. It was meant they should be on the Carman dock, near the line, as they have always told me. By always, I mean as long as I have known the dock, and I have always occupied accordingly.

Quest. If you had stood in the door of the old stone house on the bank, could you have looked down to the bottom of the bank and seen a fence, if one had been standing there?

Ans. Now you could not; before those buildings were put up, I

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cannot answer. I can't answer positively where the north line of the Carman dock would run, if continued from the point in the dock referred to, back to the house; but my impression is, it would not strike the house, but would go north of it.

Cross-examined by Mr. Pennington.—Both docks were filled up when I first knew them. All the timbers of the dock do not join at that point; I think there are as many as two or three of the top logs that do not come together; those at the bottom do, as I think; each log in each course ends at that point. I did not assist in putting down the posts that I speak of; they were down when I went there. We used the post nearest the dock to make fast to, the other was so far off we could make no use of it. I have no knowledge of the purpose for which those posts were put there, except from the Carmans. I have no knowledge, except from the Carmans, where the line is, except it may be from the survey of Mr. Brinley and from what Mr. Dod has told me.

Quest. When you occupied the Carman dock were you cramped for room?

Ans. No, sir, not as a general thing. I do not recollect a stick of fence, or any thing like one, running down toward the river since I have known it. I don't recollect any other posts on that line, or near it, except those I have spoken of. I don't recollect any other line of posts, either north or south of those two posts, running down towards the river, during the time I have known the property. I don't know whether I was a resident of the city of Newark at the time of the sale of the Beach property, for I don't know when that was. I was a resident of Newark some three or four years before I was particularly acquainted with the Carman dock so as to know anything about the lines of the dock. I could not tell at what time my partnership with Stephens, Condit & Co. commenced without referring to our old books. I have been a resident of the city of Newark fourteen years next April, such is my impression; it is either thirteen or fourteen years. I first took possession of the Carman dock on the first of April, and quit it on the first of April. I was not one of the first to form the company of Stephens, Condit and Co.; I took the place of Mr. Whitlock in that firm; the firm of Stephens, Condit & Co. were occupying the Carman dock before I became connected with it. When I say I took possession of the Carman dock on the first of April, I mean I went into that firm at that period of the year; they had hired the dock for that year, and I continued their possession and paid the rent. When I took possession of the Carman dock, I can't say who occupied the Beach dock, or

whether Gould was there or not; he was there shortly after, perhaps a year or two after; he occupied only part of the dock. There was a space between the the docks that Gould had nothing to do with. There was a space between the part that Gould occupied and the Carman line. There was a man there who said he had the care of it for Mr. Waddell, but what time that was I can't tell. This was when I went there, or perhaps a year or two after, I recollect of a vessel arriving there and making fast, and a man claiming wharfage of the master of the vessel as the agent of Mr. Waddell. I don't recollect who that person was.

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JOHN RIOCK.

Mr. Gifford here offered a paper purporting to be a copy of a will of Joseph Alling, also a paper purporting to be exemplifications of certain deeds, endorsed thereon, and requested them made exhibits, which I have marked as follows: the first paper B No. 17, and the latter B No. 18, under objections made by Mr. Pennington. The examination is adjourned to Monday, December 18th, instant, at ten o'clock A. M.

This examination is resumed this fourteenth day of March, by virtue of a new notice and adjournments from time to time, as appears by the notice hereunto annexed, and notice of adjournment thereunder written, signed by the master.

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Capt. Lewis Bosworth, a witness produced on the part of the complainant, being duly sworn according to law deposeth and saith—I am sixty-seven years of age. I have been upon the water for the greater part of my life; I commenced upon the water in eighteen hundred and four; I became master of a vessel in eighteen hundred and eight; I commenced following the water in eighteen hundred and eight, from Newark; Newark has been my home of departure since. When I commenced following the water, the vessels navigating our river would range from twenty to forty tons; vessels in our river now will average from fifty to one hundred tons; and vessels in the wood and coal trade, that navigate our river, will range from one hundred and fifty to two hundred tons. The average length of vessels of one hundred and fifty to two hundred tons, from the end of the bowsprit, having flying jib boom, to end of boom, is from one hundred and thirty-five feet to one hundred and forty feet. A river vessel of a hundred tons will cover from one hundred and fifteen feet to one hundred and twenty-five feet. Those vessels of one hundred and seventy-five feet in length

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are most generally in the coal and wood trade and in southern trade and the plaster, lime, and lumber from the east. A vessel of a hundred tons wants one hundred feet of wharf to lie, without interfering with other vessels unloading at the same time; they can do with less, but then they will encroach upon their neighbors. A cargo of lumber wants that, for a cargo of coal you may use less, but then you will encroach on your neighbors.

Cross-examined by Mr. Pennington.—It is customary with owners of adjoining docks with short fronts to accommodate each other
 10 by laying two vessels at the same time when they are unloading. As a general thing there is a necessary and usual comity between owners of vessels to accommodate one another. If persons so situated are disposed to be accommodating, they can get along very well, but if otherwise they cannot.

LEWIS BOSWORTH.

Upon due notice given in this cause, dated the 2d day of May, 1849, and service thereof acknowledged, as appears by said notices hereunto annexed, the parties appeared by their respective
 20 counsel with complainant, and A. C. M. Pennington, esq., of counsel with defendant. At the same time it is understood and agreed, between the solicitors and counsel present, that the examination shall proceed notwithstanding the notice of argument given, and service thereof, acknowledged before me by Mr. Pennington: and that the further examination of witnesses, after said notice given, shall not prejudice the hearing of the said causes noticed for the next term of this court.

Jeremiah D. Poinier, a witness produced on part of the complainant, being duly sworn deposeth and saith—I am thirty-three
 30 years of age, and reside in the city of Newark, I have been accustomed to do business on the wharf of Passaic river, at the foot of Market street, for the last seventeen or eighteen years. I have been well acquainted with the vessels that have been in the habit of coming to our wharves. The vessels are engaged in the lumber, coal, and freighting business. The yards along the river are employed for lumber, coal, and freighting of merchandise. There are about an equal proportion devoted to those kinds of business. According to the best of my knowledge, I should think the length of the vessels coming there with coal would average about eighty
 40 feet, that is the hull of the vessels. In addition to the hull, the

bowsprit and boom would extend at least twenty feet ; river craft would extend about that distance, coasters would extend over that.

Cross-examined by Mr. Pennington.—I am pretty well acquainted with the docks along the Passaic river. I don't know of any docks less than seventy-five feet, and extending to three hundred feet along the front; the usual width of the docks is from one hundred and twenty-five, to one hundred and fifty feet, some more and some less. There is a necessary comity existing between owners of adjoining docks respecting the lapping of vessels in loading and discharging. The length of our wharf is about one hundred and seventy-five feet, that of Mr. Ford's, above the property in dispute, is about one hundred feet. 10

J. D. POINIER.

By consent of the counsel and solicitors of the respective parties, the taking of examination of further witnesses is adjourned to Tuesday the fifth day of June, eighteen hundred and forty-nine, at ten o'clock in the forenoon, at the office of Staats S. Morris.

Tuesday June 5, 1849.—Mr. Gifford, of counsel with complainant, appeared with a witness, and at the request of the examiner delayed the examination until eleven o'clock, of which notice was given to Mr. Pennington, counsel of defendant. At 11 o'clock, Mr. Gifford appeared with a witness. Mr. Pennington appeared also, and proceeded with the examination. 20

Eliphalet C. Smith, a witness produced on the part of the complainant, being duly sworn deposeth and saith—I am acquainted with what are called the Beach and Carman property, on the Passaic river, in the city of Newark ; I am a surveyor ; I have acted as city surveyor for the city of Newark. 30

Quest. In what capacity were you ever called, and when, to survey and run a line along that bank ; and what was the result of that survey, as to distances and courses, affecting the Beach property from the River road to the river ?

[Objected to as being too general and indefinite, and immaterial.]

Ans. I was called by Mr. Gifford to survey the property some time last fall, along in the winter. I have surveyed several times there. I don't know that I can state the result, the map will show that. 40

[The map referred to by the witness is now offered in evi-

dence, and objected to by Mr. Pennington ; said map is marked Exhibit B 18½.]

The map extends from Mulberry street to Egg dock street. The words and figures designating the courses and distances on the map and other writings are in my own handwriting, and are correctly and truly stated. In the making of the map, I had recourse to the papers marked Exhibits P 1, 4, and 5, 3, 7, 8, 11, 6, 12, 13, 2, 10, 9, P 3 and 14. I also used the paper marked 17, particularly the ones therein marked 1, 2, 3, 4, 5, 6, and 7.

- 10 Complainant's solicitor here offers a paper as an exhibit, and which I have marked Exhibit B 19, and which is objected to by Mr. Pennington.

Complainant's solicitor also offered a paper purporting to be a copy of Exhibit P 1, as an exhibit, which I have marked Exhibit B 20 on the part of the complainant, and which is objected to by Mr. Pennington. I used the papers marked Exhibits B 19 and B 20, particularly the deeds in B 19, marked 1, 2, 3, 5.

- 20 *Quest.* Where, as the city surveyor, when you first made a survey along the bank, did you locate the course of the road and the Egg dock street, in front of what is now called Kirkpatrick's work or paint shop ?

[Question objected to by Mr. Pennington.]

Ans. The corner of Kirkpatrick's shop was always supposed to be the corner on a range with the front of said shop, which also ranged with the front of what was called Dickinson's tavern. We located the course of those streets at the corner of that shop.

- 30 *Quest.* When you ran the line four chains and sixty links, as on that map, from the north side of the road leading to the dock to the northwest corner of the Carman property, how many feet of the Waddell lot, as laid down on Exhibit B 9, did you take in ?

Ans. Eighteen feet on the Railroad.

Quest. Where does the four chains and sixty links, as measured from the southwest corner of the Carman property, stop, with respect to any opposite point on the west side of the River road ?

[Question objected to.]

- 40 *Ans.* It stops directly opposite, or within a foot, at right angles with the street, or nearly so, from the new board fence. That fence is thirty-one feet four inches from the end of the kitchen attached to the Beach house. The four chains end opposite the Bruen house, about eleven feet from the north corner of the building.

Quest. What do you make the distance from the point opposite to the Carmans' southwest corner on the Eleazer Bruen property

to the Inness corner, taking the course, as in Johnson's deed to Beach, on the west side of the River road?

Ans. Four chains and seventy links, or three hundred and ten feet and two inches and a half. I know what was called the Durand property, it was the property extending from Mulberry street to the Beach or Inness lot.

Quest. Have you measured the line of the Durand property from the corner of Mulberry street and the River road, which Durand property is referred to in the deed to Mr. Beach from Robert N. Waite and Inness, if so, where does it end? 10

Ans. The distance is twelve chains and forty-three links, or eight hundred and twenty feet and four inches, and was at a point within six or eight inches of the Beach barn, as it now stands.

Quest. At what point on the west side of the River road will the line of the Inness property stop, beginning at the point of commencement, as designated in the deed of Waite and Inness to Ephraim Beach?

Ans. One lot stops exactly in range with the south gable end of the kitchen of the Beach house. This front is one chain and eighty-four links, or one hundred and ten feet and forty-four hundredths. 20

Quest. The other lot stops at a point sixteen feet two inches north off a range with north gable end of the Bruen house?

Quest. If you run two chains and eighty-five links, and then two chains and seventy-five links, or three hundred and sixty feet, the courses and distances, as in the deed from Waite and Camp to Beach, from what points would you run to keep the nearest to the easterly line of the River road?

Ans. To commence in the range with the south side of the Stiles house, we would keep the nearest to the easterly side of the River road; to make this survey, we commenced at a point twelve feet 30 south of the range from the south side of the Stiles house.

Quest. Where would such line terminate, that is, opposite to what point on the west side of the River road, and how far from the northwest corner of the Carman property?

Ans. The line would terminate at a point about opposite the middle of the kitchen of the Beach house, and sixty-two links, or forty feet eleven inches, north of the northwest corner of the Carman property.

Quest. How many more links or feet would you have to run before you come to the point where the four chains and sixty links of 40 the Carman property terminates?

Ans. It would be sixty-two links, or forty feet eleven inches.

Quest. Where would the line N. 56° E., running from the end of the four chains sixty links, strike the wharf?

Ans. It strikes on the Waddell lot, fifty-one feet ten inches from the south line of the Waddell lot.

At this period of the examination, the same was adjourned, by consent of the counsel of the parties, to Thursday, the seventh day of June, instant, at ten o'clock A. M.

Thursday, June 7, 1849.—The counsel of the parties appeared, 10 as on previous day, and proceeded in the examination of Mr. Smith.

Quest. Where would the line at the end of the four chains strike?

Ans. It would strike from ten to thirteen feet on the Waddell lot. In running the Carman lot we used the deeds from Job Brown and wife to Ichabod Carman, and from Caleb Crowell to Ichabod Carman, and the deed for the sixty links from John W. Poinier to Ichabod Carman. The north line of the lot from Job Brown to Carman is designated on the map by a red dotted line.

Quest. What do you mean by the words on the map "Carman line, as originally surveyed?"

20 *Ans.* The Brinley survey was the only one which we had containing that course. We had Exhibits No. 13 and No. 10 when we made the survey. The front length of the Eleazer Bruen house is forty-seven feet eight inches; from the middle of the door to the north end of the stone house is twenty-three feet ten inches; from the south end of the stone wall in front of the Inness property to the new board fence separating the Beach or Inness property from the Eleazer Bruen property there must be eleven feet and nine inches, I think; there are thirty-one feet nine inches from the board fence to the Inness kitchen?

30 *Quest.* From the Durand line on River street, where will the one chain and eighty-four links, and sixty-six links of the Inness property, and the four chains and seventy links of the Bruen property terminate?

Ans. It terminates on the west side of River street at a point in a direct range with the old line fence on the southerly boundary of the Bruen property. There are forty feet and eleven inches in the gore between the Beach and Carman properties, as designated on the map?

Quest. How many feet are there on the wharf from the south 40 line of the Waddell lot, as conveyed by Beach, to Egg dock street?

Ans. I have not the number of feet set down, should think there were two hundred and ninety-nine feet.

Quest. How much farther than a point directly opposite the Carman's southwest corner must the Bruen line be extended to meet the range of the north line of Egg dock street ?

Ans. The range of the south line of the Bruen property, continued across River street, strikes the southwest corner of Kirkpatrick's house, which is the corner of River and Egg dock streets. I make in my survey, sixty-six feet to a chain, and seven inches and ninety-four hundredths to a link, and sixteen and a half feet to a rod.

Cross-examined by Mr. Pennington.

Quest. Have you indicated on this map any point as the Inness 10 corner ?

Ans. Yes, it is indicated by the words "Inness corner," and is a point in the west line of River street at the termination of a course indicated on the map as running south, fifty-four degrees thirty minutes west, seventy-five links. I think an old stone wall terminates there; this wall is from three to six feet high; that part of the wall is rather poor, and tumbling down. I believe there is no line of fence terminating or ranging to that point at present; I have no recollection of any. 20

Quest. Have you indicated on the map, in any way, a point on the east side of River street, at right angles, opposite the Inness corner, as indicated on your map ?

Ans. I have by a dot, marked with the letter A in red ink.

Quest. What is the distance from that point to the point designated on the map as the beginning corner of the Carman lot ?

Ans. It will be about two hundred and ninety-four feet seven inches.

Quest. You have dotted a point near the point indicated as the beginning of the Carman lot; what bearing has that point from the point of the Bruen fence, called on the map the Bruen corner, with reference to the line of River street ? 30

Ans. It is intended to be at right angles opposite that point.

Quest. What is the width of River street along this property ?

Ans. It is from sixty-two to sixty-six feet. It was surveyed as sixty-six feet, in about eighteen hundred and thirty-five.

Quest. What is the distance from the point indicated as the beginning of the Carman lot to the point opposite the Bruen corner, at right angles ?

Ans. About thirteen feet.

Quest. Did you find, in any of the surveys or documents used by you in the survey of which you say this map is the result, any 40

thing pointing to or indicating as a corner of the Carman property a point opposite to the point indicated as the Bruen corner?

Ans. I refer to the Job Brown deed, which says "beginning at a stake one chain from the fence of the house lot of Eleazer Bruen on the north side of the road leading to Egg dock."

Quest. You have laid, or located, on this map what you indicate as the Waddell lot, as conveyed by Ephraim Beach, will you state whether the relative position of that lot, with reference to the Carman property and other property laid down on that map, as indicated by the map, was ascertained by you by any natural or artificial monuments or boundaries on the property which you call the Waddell lot?

Ans. It was ascertained by taking the Beach map. There are no natural or artificial monuments on the property, to my knowledge, from which the survey was made. The Beach map commenced at the Stiles line. [The latter part of this answer objected to.]

Quest. Did you make the survey for the Beach map, or assist in so doing?

Ans. I did not.

20 *Quest.* Was you present when it was made?

Ans. No.

Quest. Do you know that a survey was ever made of it, for the purpose of making that map?

Ans. I do. I have the signature of Stephen Dod for it, and he told me so. [Mr. Pennington objects to the answer, from the words "I do."]

Quest. Do you know where the Stiles line is of your own knowledge?

Ans. I think I do.

30 *Quest.* How?

Ans. Ascertained by surveys made on the ground, and partly from information derived from Mr. Ward, when I first made the surveys on the ground.

Quest. When did you first make the surveys on the ground?

Ans. The surveys for this map were made some time last fall. I don't recollect exactly the time.

Quest. Is Mr. Ward now the owner of what you call the Stiles property?

40 *Ans.* I believe not. Mr. James R. Sayre, jun., now owns that, but I may be mistaken.

Quest. Had you any other information in making the surveys than that derived from Mr. Ward in ascertaining the Stiles line?

Ans. I had the buildings erected along the line, one building on the dock, on an angle in the dock; we had Mr. Ward's deed of his distance on the dock, commencing from Stephens & Condit's dock. I think we had the deeds of the Baldwin and Stiles lots, commencing on Mulberry street; we had the distances, if we had not the deeds. We also had the deeds covering the ground from Egg dock street to the Stiles line. The Stiles house is supposed to stand on the line, that is, as the line is now fixed.

Quest. What is your age Mr. Smith?

Ans. Thirty-two years. I have resided in this city since May 10 eighteen hundred and thirty-three; I have not been here all the time since.

Quest. Have you any personal knowledge, of your own recollection, of the ancient line of the Stiles property?

Ans. I can't say that I have. I recollect the property before the dock was filled up; there was a ditch there, I think.

Quest. Could you, from your knowledge or recollection of the old line of the Stiles property, derived from personal observation, now locate that line?

Ans. I had no personal knowledge of the course laid down until 20 I got the deeds, no further than to stand at the house and look down the ditch, that is, where I thought the ditch ran, as I think there was a ditch; I am not certain.

Quest. Did you ever know or hear, until you came to make the survey, that that house was on the line?

Ans. I did. I knew it was on the line. I always made the line about two feet south of the house, by my measurement.

Quest. When did you first make a measurement, and for whom?

Ans. The first measurement I ever made on the ground was, I think, in eighteen hundred and thirty-seven, for the city of Newark. 30 The first survey I ever made, where it was necessary to get the Stiles line in order to get our starting point, was made for Mr. Sayre, I think in eighteen hundred and forty-three.

Quest. Did you know before that time, the starting point?

Ans. I knew before I made the survey, or I could not have started; I ascertained it for the purpose of the survey.

Quest. What was Mr. Sayre's object in having this survey?

Ans. His object was to get the line of his lot, to erect a building on it.

Quest. Did you consult Capt. Beach at any time in making that 40 survey, or was he present at any time when you run or fixed the Stiles line?

Ans. I did not consult him; I don't know that he ever was present.

Quest. Does the map indicate the Beach property as projected according to the surveys and the deed to Beach?

Ans. It does. It is bounded on the north by the Stiles property, on the west by the River road, Passaic river on the east, and on the south by a line north, sixty-four degrees east, called on the map "Ephraim Beach's south line." The foregoing is only a part of the Beach property, as was laid down on the map of Mr. Dod.

Quest. What is the distance on the River road from the termination of what you call Ephraim Beach's south line to the termination of what you call the Stiles line, as projected on the map?

Ans. Three hundred and eighty feet, as near as I can get at it here.

Quest. Are the courses of River street, as you have projected it between those points, such as were called for by the surveys in the Beach deed?

Ans. The Beach line is what is now called River street, to a point about opposite the Durand corner running from the south line, it corresponds with the old survey in the Beach deed; it may vary a little; from that point running north to the Stiles line the old survey in the Beach deed runs according to the dotted line. The Beach line varies from it.

Quest. What is the distance from the south line of the Beach property, as you have projected it, measured on the Beach line until you reach the dotted line, and then on the dotted line until you reach the point you indicate as the beginning of the Beach lot?

Three hundred and eighty-one feet seven inches, less twelve feet; that is, three hundred and sixty-nine feet seven inches.

Mr. Pennington here stated that he could not proceed this afternoon, whereupon the examination is here rested, and, by consent of the counsel of the parties, adjourned to be resumed on cross-examination, on Wednesday, the thirtieth day of June, instant, at ten o'clock A. M.

June 13, 1849.—Counsel of parties appeared, and defendant's counsel called for the exhibits in the case on part of Waddell, which were stated, by Mr. Gifford, to be in counsel's possession at Trenton. It was then consented that the further cross-examination in this case be further postponed until Monday, the 18th day of June, instant, at ten o'clock A. M.

40 Monday, June 18, 1849.—Mr. Gifford appeared, and stated that the witness under examination was out of town, and would return at three o'clock P. M., and wished the examination adjourned to

that time, of which I gave Mr. Pennington, counsel of defendant, notice.

Monday, June 18, 1849, at 3 P. M.—Complainant and his counsel, A. Gifford, esq., appeared. Defendant's counsel, on account of engagements, could not appear, but requested the examiner to have the examination adjourned to Saturday of this week. Eliphalet C. Smith, the witness, also appeared, Mr. Pennington not being present. Mr. Gifford offered a paper purporting to be a copy of a deed from Nathaniel Beach and Stephen Hays to Mary Baldwin, which he requested to be made an exhibit, and which I have marked Ex- 10
hibit B 21.

At request of Mr. Gifford, I read the foregoing examination to witness, whereupon he was requested to sign the same.

ELIPHALET C. SMITH.

September 12, 1849.—The parties appeared before me, for the purpose of proceeding with the examination of witnesses in this case, pursuant to the agreements contained in the paper hereunto affixed, and which, at the request of the parties, I have marked ex- 20
hibit A.

The cross-examination of *Eliphalet C. Smith*, the witness heretofore produced on the part of Mr. Waddell, being now resumed, said witness deposeth and saith—When I speak of the new fence as being between the Inness and Bruen properties, on the west side of River street, I don't mean to be understood as saying that that fence is the division line between those two properties. I think that fence does not occupy the place of division line between those properties; I think it stands some distance north of the division line, say from ten to thirteen feet north of it. I think the new fence is nearly at right angles with River street. In making my survey, I 30
took the courses from the west side of River street, of the northerly and southerly lines of what is called the Beach or Inness lot. In running the northerly line of the property called, on the map, the Beach or Inness lot, I think I took the point which I found to be the termination of twelve chains and forty-three links on the west side of River street, from the corner of Mulberry and River streets, as a starting point. I took the measurement of the distance of twelve chains and forty-three links from the deed of Durand to Meeker, as contained in Exhibit B No. 19 on the part of Waddell. My impression is I had 40
other deeds; at all events that is the exact distance from Mulberry street to the point assumed by me as the starting point in my survey

of the Beach or Inness lot, as the line now is. I cannot particularize with any certainty, by looking over the exhibits in this case, any other deed from which I took that distance. I measured on the west side of River street from the point so as aforesaid assumed by me as a starting point, southerly one chain and eighty-four links, and thence a further distance of sixty-six links. I took these two distances from deed No. 5, on Exhibit B No. 18, on the part of Waddell, being deed from Waite and Inness to Beach. I took the distances from the courses mentioned in said deed, which corresponded with the

10 line of the street as it now is, nearly or quite. A barn, near the corner I speak of, and stone wall, occupy these distances on the west line of River street, terminating at the end of the sixty-six links. The distance of twelve chains and forty-three links was measured on the west line of River street, as it is now occupied by said street. The distance of four chains and seventy links, as mentioned on the map, was measured southerly from the termination of the stone wall. The distance from the end of the stone wall on Inness' corner to the line of north gable end of the stone house, produced

20 to the street, is sixteen feet two inches. The stone house stands from eight to ten feet back from the west line of River street, as at present located. The "Stiles line," as marked on the map, touches or strikes the southeast corner of the Stiles house, and is the line of occupation of the properties, on either side, by the respective owners at this time. I noticed, on the ground, where that line of occupation struck the dock. That point was ascertained and noted on the spot, both by taking the bearings and as the same was practically occupied on the dock. I don't think we measured on the line of the dock southerly from the point so noted to any particular point in the dock. I believe, on reflection, we did measure from

30 that point to ascertain the southeast corner or line of the Waddell lot, as laid down on the Beach map; that distance is three hundred and eighty-two feet six inches. That measurement was made, I think, very nearly on a direct line.

Quest. Can you specify the place or point on the dock where that measurement terminated, from your recollection, by designating any natural or artificial mark on or near the dock, of which you took actual observation at the time of the measurement?

Ans. It terminated some five or six feet south of the north store house. I have not my actual measurement here.

40 I took the point designated as the beginning of the Beach lot on the map, twelve feet from the Stiles line, because I had heard that that was the beginning of the Beach survey. I did not get that point

from any survey or deeds. I only measured the distance of twelve feet from the Stiles line. I went back from the line of the street, as laid on the map, by running back from the southwest corner of the Beach lot, and running the courses up to that point. I got the southwest corner by measuring the width of the street from the west side. I think Mr. Ward stated to me, some five or six years ago, that the said point of beginning was twelve feet from the Stiles line; I think I have heard others say so. I think Mr. Gifford requested me to plot that survey of the Beach property, beginning at that point. The line marked on the map "Ephraim Beach's south line" commences at the termination of the two courses and distances, 285, and 275, from the point called the "beginning of the Beach lot," and is run according to the survey in deed No. 5, on Exhibit B No. 18. If the termination of the "Stiles line" on the east side of River street had been the starting point of that survey, the "Eph. Beach south line" would have been twelve feet north of the line, as plotted on the map, taking the same courses and distances. The distance between the point on the map marked as Beach's southwest corner, and the point marked on the map "N. W. Carman cor." is sixty-two links or forty feet, and between the latter point and the point marked A, in red ink, is, I think, about nine feet, although I have not got that distance. 10 20

I made a survey of the lots called the "Baldwin lot" and "Stiles lot" from the surveys contained in their respective deeds. I used the deeds marked Exhibits B No. 1, and B No. 2. I commenced those surveys from the north; they brought me on the east side of River street, about twenty-seven feet six inches short of the line marked on the map as "Stiles line." I found on the southerly line of the Bruen lot, as marked on this map, an old line of fence. I took a course along the line of that old fence from the west side of River street and from the termination of the four chains and seventy links, as marked on the map; I found that to correspond with the survey. 30

Quest. In plotting the Stiles line and Stiles house, as indicated on this map on the east side of River street, what means did you use to ascertain their position with reference to the several lots and properties protracted on the map on the west side of River street?

Ans. It was got at by means of the chain and compass, and other assistance, by measurement. One point we took was at the end of the four chains from the beginning of the Carman property. At the end of the four chains and sixty links we got another mark; our beginning point was opposite the Bruen corner, in a range with the 40

fence on the south line of the "Bruen lot." The lot marked on the map as "the Waddell lot" was plotted in the same way, and by using the Beach map and measurement on the ground. Supposing the northerly and southerly lines of the Carman property to be parallel and in the course of the south line, and the east line on the river to close the survey in a direct line, the quantity of land in the survey would be one acre and seventy hundredths of an acre. Supposing the north course to be N. 56° E., instead of N. 65° E., the quantity would be one acre and eighty-six hundredths of an acre.

10 Taking the survey, as contained in the Waite and Inness deed to Beach, and supposing the line along the river to be a straight line, the quantity of land in the Beach deed would be two acres and sixty-five hundredths; and supposing the line called two chains and seventy-five links in the survey, to be three chains and seventy-five links, there would be three acres and twelve hundredths.

Supposing the southerly line of the Waddell lot, as plotted on the map, to be produced to the east line of River street, it would strike said line six feet and a half south of the line marked on said map as "the Carman line, as originally surveyed," or the point

20 called N. W. Carman corner. I recollect an angle in the line of the dock near the north store house; I think a few feet north of the north store house.

Direct examination resumed by Mr. Gifford.

Quest. What is the distance in a straight line from the corner of Mulberry and River streets along the River road, as the road is now laid, to the point at which the twelve chains and forty-three links terminates, or where the corner of the Beach barn stands?

Ans. Twelve chains and forty-three links. The distance along the centre of the Railroad from the Stiles line to the original Car-

30 man line is four hundred feet. The distance from the termination of the Stiles line on the river, to the termination of the Carman line on the river, is three hundred and thirty feet eight inches. The distance from the end of the twelve feet from the Stiles line to the northwest Carman corner is six chains and twenty-two links, or four hundred and ten feet six inches, measuring by the courses S. $12^{\circ} 45'$ E., 285, and S. $26^{\circ} 30'$ E., 275, and sixty-two links on the same course. The distance between the same points on a line

40 of the street is about 408 or 409 feet. The dotted line between the Inness corner and the Beach house is intended to represent the new fence that I have before spoken of, which I suppose to be the line of Stevens' lot. I have seen the point represented as twelve

feet south of the Stiles line, taken as a starting point on some other map; I have seen it on Mr. Brinley's map.

Cross-examination resumed by Mr. Pennington.—In stating the distances and measurements now given, on my direct examination resumed, I give them from actual measurement, except the last distance given. I have protracted the Waddell lot and other lots east of the Railroad on the Beach property correctly, according to the number of feet given on the map in red ink. The dotted line, indicating the location of the new fence on the west side of River street, would be represented on the map marked Exhibit B No. 10, 10 by the line between lots 8 and 9, as near as I can judge from comparison and looking at the maps. I do not speak with certainty of the location of those lines. I have no doubt of its striking somewhere near that point.

E. C. SMITH.

Examination of witnesses on the part of Ephraim Beach.

⁷ *Ellis Dunn*, a witness produced on the part of Ephraim Beach, being duly sworn deposeseth and saith—I am thirty-seven years of age. I am a surveyor by profession, and am now constantly employed in surveying in the city of Newark. I am now the city surveyor of said city. I have recently made a map of certain docks, wharves, and streets, on and near the Passaic river, from a survey of the premises recently made by me. The paper here shown me is the map. [The map is here offered as an exhibit, and marked Exhibit P No. 8, on the part of the complainant Beach.] I used this map in making my survey. [The map is here offered as an exhibit, and marked Exhibit P No. 9 on the part of the complainant Beach.] In making this survey, I assumed a certain point, as a point, called the "Mrs. Inness corner." This point is at the end of a stone wall on the west side of River street, south of the Capt. 30 Beach house, and north of the old stone house on the Eleazer Bruen property. This stone wall is pointed and coped, and surmounted by an iron railing. The end is very pointed and defined, and is about five or six feet high. The wall has the appearance of one of long standing. I assumed a point on the River road, as the termination of the Stiles line on said road. The line assumed as the Stiles line strikes or touches along the gable of the Stiles house. The course of that line, as assumed, is south 74° west, allowing a variation of one degree from the survey in the Beach deed. The southerly termination of the stone wall, above referred to, is fifteen 40

feet and ten inches from the line of the north gable end of the old stone house, measuring along the line of the street. The stone house stands back from the line of the street, as indicated by the stone wall, nine feet and six inches. The lots on the line of the street opposite the Inness corner are built on or enclosed. Mr. Mr. Stevens' shop stands opposite the said corner. The street at the Inness corner measures sixty-six feet across to the buildings or enclosures opposite. I have indicated the Inness corner on the map P No. 8, where I have written the words "Mrs. Inness' corner,"

10 at the termination, on River road, of the line marked S. $54^{\circ} 30'$ W., 75 links. In surveying, when we speak of the term "opposite," we mean at right angles from the point indicated with the line in which the point is located: for example, a point opposite another in a street would be understood by a surveyor to be a point opposite that other at right angles with the line of the street. I took such a point opposite the Inness corner in making this map. That point is indicated on the map by the termination of the red dotted line running from the Inness corner across River street to the east line of said street. I ran from that point the courses and distances indicated by the lines on the map marked "S. $26^{\circ} 30'$ E. 375," and

20 "S. $12^{\circ} 45'$ E. 285," but by reversed courses, that is, N. $26^{\circ} 30'$ W. 375, and N. $12^{\circ} 45'$ W. 285. These courses and distances brought me to a point on the east side of the River road at termination of the Stiles line, as assumed by me. That point of termination is indicated on the map by the letter A in red ink. I found at that point a line that was recognised as the dividing line between the adjoining properties. That line was indicated by several buildings built on the line, and was the line of occupancy by the several owners on either side. That line ran to the river, and is marked

30 "Stiles line S. 73° W. 5 chains" on the map. I ran the course of that line to the river as mapped. Starting again at the same point opposite the Inness corner, I ran a line S. $28^{\circ} 30'$ E. 4.60 links, as indicated on the map. I know the building built by Kirkpatrick between the Railroad and River street; the house fronts southerly. I found the distance of four chains and sixty links, from the point opposite the Inness corner, to reach beyond the front line of the Kirkpatrick house eight feet and seven inches. I know the property called the Commercial dock. I have recently been on that dock. I noticed, at the northeasterly end of that dock, a slip into

40 which the outlet lock of the Morris canal empties into the Passaic river; that slip is thirty-five feet wide. I had with me at that time the map marked Exhibit P 9. Prudden Alling was present with

me at the time he saw this map there. He told me he had previously been interested in, or a part owner of the Commercial dock. He pointed out to me on the map, as the termination of the southerly line of the slip on the river, a point which is indicated on the map as the intersection of the line of the Passaic river with the line marked on the map S. 62° W. 118." He indicated to me, on the ground, what would be the northeasterly corner of the Commercial dock property; this was twenty feet northerly, on the river, from the termination of the southerly line of the slip, as above mentioned. The Commercial dock property was docked from the southerly line 10 of the slip southerly to the end of the property. The slip was docked up on each side.

I ran a line from the northeasterly corner of the Commercial dock, as indicated to me, on a course S. 63° W. to River street. I took the distance from the termination of that line on the east side of River street to the front of Kirkpatrick's house, on the line of River street, and found it to be one hundred and forty feet and seven inches; that would be two chains eight feet and seven inches. The canal occupies a part of the Commercial dock property, and a part of the town dock property, nearly half and half. I was shown 20 a point on the Passaic river which was called the southeasterly corner of the Commercial dock property; the point was indicated by the appearance of the logs coming together, as representing different docking by distinct owners; there was a joint in the dock; Thomas V. Johnson, now the owner, pointed it out to me, as his southeasterly corner. These points were all indicated to me before any measurements were made. I measured the front of the Commercial dock on the Passaic river, and found it to correspond with that given on the map marked P 9. I measured between the points shown me by Mr. Alling as the N. E. and S. E. corners. Measuring 30 from the N. E. corner of the Commercial dock property to the southeast corner of the Poinier dock, as indicated by the fence and an offset in the dock, I found the distance to be two chains five feet and four inches. I have noticed the buildings, fences, and other erections in the northerly side of the town dock. They are not in a direct line. I think I could not, as a surveyor, define any satisfactory line from those buildings, erections, and fences, as the northerly line of the town dock property. I should think those buildings, &c., may have been erected twelve or thirteen years. Those buildings and erections and fences stand so irregular that no line could be 40 got from them.

Starting from the same point opposite the Inness corner, I ran a line, in a course N. 64° E., to the river. That line terminated on the dock, at a point nineteen feet ten inches northerly from the range of the northerly line of the southerly store house; that line would run fifteen feet nine inches from the northwesterly corner of that store house; I noticed splicing in the dock at that point. I ran a line from the same point opposite the Inness corner, on a course N. 56° E. to the river; that line struck the dock on the river fifty feet north of the termination of the other line, conse-

10 quently sixty-nine feet ten inches north of the southerly store house, or stable, stands five feet nine inches at the southwest corner thereof, and seven feet seven inches at the southeast corner thereof, from the line indicated as N. 64° E. running from the point opposite the Inness corner. I saw, on the dock a joint or angle, indicated on the map P 8, by the words "end of logs." There is at that point a very perceptible angle in the dock. I should think that was caused by a sweep in the river. That angle is eighteen feet south from the termination of the line N. 56 E. running from the point opposite the Inness corner, and thirty-two feet north

20 from the termination of the line N. 64° E. running from the same point. A line running N. 56° E. from a point in the east line of River street, sixty links southerly from the point opposite the Inness corner, would strike the dock twenty-one feet seven inches south of the angle, and ten feet five inches north of the termination of the line N. 64° E. running from the point opposite the Inness corner. A line from the point opposite the Inness corner, running on a course N. 65° E. to the river, would strike south of the termination of the line N. 64° E. from the same point. I took the measurement along the dock from the Stiles line, southerly to the

30 termination of the line No. 64° E. running from the point opposite the Inness corner, and found it to be three feet over the amount represented on the map by which the Beach property was sold, that is to say, in all 385 feet 6 inches. The map calls for 382 feet 6 inches. The distance between the terminations on the dock of the lines N. 64° E. and N. 65° E., running from the point opposite the Inness corner, would be four feet and eleven inches.

The actual quantity of land within the survey contained in Carman's deed, taking a course on the River road S. 28° 30' E. 4 chains, and on the southerly line N. 65° E. 4 chains 27 links, and on

40 the northerly line N. 56° E. 4 chains 27 links, and supposing the survey to close by a direct line on east, would be one acre and eighty-six hundredths. Supposing the northerly line to be parallel

with the southerly line, and all other lines the same, there would be one acre and seventy hundredths, making a difference between the two quantities of sixteen hundredths of an acre. The quantity of land contained by the survey in the deed marked Exhibit P No. 4 of the meadow between the River road and the river, supposing the survey to close by a direct line, is two acres and sixty-two hundredths of an acre. Supposing the course S. $26^{\circ} 30'$ E. to be three chains and seventy-five links, instead of two chains and seventy-five links, the quantity would be three acres and twelve hundredths, supposing the survey to close by a direct line.

10

By taking the line running N. 64° E. from the point opposite the Inness corner, as the dividing line between the Carman and Beach properties, each property, by actual computation, will have the quantity of land called for by the surveys in their respective deeds; no other line but that will result in that manner. As a surveyor, taking together all the surveys of the several properties noted on the map, I am of opinion that that line is the dividing line between the properties. I found room enough in making my survey, that is to say, measure enough, commencing at the point assumed as the termination of the Stiles line on the River road, for the Beach pro- 20
perty, supposing the course S. $26^{\circ} 30'$ E. to be 3 chains 75 links, and the Carman property to be 4 chains and 60 links, and the town dock two chains for each of those properties, without encroaching upon the Commercial dock.

At this point of the examination of this witness, the same was adjourned, by consent of the parties, to Friday morning, September 14th, instant, at 10 A. M.

September 14, 1849. The parties appeared as before, for the purpose of proceeding with the examination of Mr. Ellis Dunn.

It is here agreed by the parties, that the paper which I have 30
marked "copy of Exhibit P No. 9," and which is a *fac simile* thereof, shall be substituted in the place of the original exhibit.

The cross-examination of Ellis Dunn is here opened.

Said witness saith—I made the map marked Exhibit P No. 8. I can't say who made the map marked Exhibit P No 9.

Quest. What mark of authority does the latter map bear upon its face, or by endorsement.

Ans. The map was given to me by Mr. Johnson, and he stated to me that it was the map which he claimed under. I supposed it to be a map of his property, and took it as such.

40

Quest. Why did you assume Mrs. Inness' corner, or how did you get at that point to make your beginning?

Ans. I was shown that point; it was a point that was consistent with the measurement from the Stiles corner. I think Capt. Beach, the complainant, pointed it out to me as the Mrs. Inness corner.

Quest. Why did you assume a point in the Stiles gable as on the Stiles line?

Ans. It was shown to me to be the Stiles line by surveys made some years previous, and was indicated as such by buildings on the line. That line was shown to me in the first place by Mr. Dod, and I have always used that line in making surveys of property in 10 that neighborhood.

Quest. When you say you found at the red letter A the point recognised as the dividing line between the Beach and Stiles properties, by whom do you mean to say it was so recognised?

Ans. By the owners on both sides.

Quest. How long have you known the Kirkpatrick building?

Ans. I surveyed the lot for that building in 1837 or 1838, and the building was put up, I think, about that time.

Quest. Supposing you commence where you fix the corner of River and Egg dock streets, eight feet seven inches beyond the 20 corner of Kirkpatrick's house, and run the line northerly along the easterly line of River street, according to the distances on the map B No. 10, how far south of your position of the Stiles line will it bring the Beach corner?

Ans. I have never surveyed it by this map.

Quest. From what deeds did you take the length of the lines of the Beach property from the Stiles corner?

Ans. I think it was from Ann Inness to Beach, being Exhibit P No. 4. I took the courses and distances, as laid down in that deed; instead of two chains and seventy-five links, as mentioned in the 30 deed, I took three chains and seventy-five links. The course N. 50° E. 3.18 links, being the southerly line of the old Eleazer Bruen property, was run according to the plot of the deed. While I was making my survey, Mr. Beach was present part of the time, Mr. Johnson was present part of the time, Mr. Alling was also present part of the time.

Mr. Gifford here excepted to what Prudden Alling and Thomas V. Johnson told witness, as mentioned on pages 90, 91, and 92 B, and as to the measurement from any points pointed out by Mr. Johnson.

40 The point I speak of, as where I noticed splicing, is at the termination of the line N. 64° E. by Beach's deed. The point or angle marked "end of logs," is thirty-two feet northerly from the last

point, and, according to the map, a little northerly of the north corner of the north store house.

Direct examination resumed by Mr. Pennington.—I noticed a board fence standing on the southerly line of the Eleazer Bruen house lot, as marked on my map. Taking a point on the easterly side of River street, sixty links south of the point opposite the Inness corner, a line through that point on a course N. 65° E., produced across the street, would strike about the middle of the front door of the old stone house. If that line was N. 56° E., if it strikes the house at all, it will strike south of the other line. Upon calculation, I think it will strike rising ten feet south of the middle of the front door. 10

Cross-examination resumed by Mr. Gifford.

Quest. With respect to your extending lines from the east side of River street to the west side thereof, with reference to the old stone house, can it be done with any certainty, and why, or why not?

Ans. It can, because I have the exact measurement of the house and the distance of the house from the Mrs. Inness corner. The extension of the lines is based upon my assumed position of the Mrs. Inness corner. 20

ELLIS DUNN.

Prudden Alling, a witness produced on the part of Mr. Beach, being duly sworn, deposes and saith—I shall be seventy years of age on the twentieth day of next October. I was once part owner of the property known as the Commercial dock. Before I became part owner, but while I was interested in shares in it, there was a survey and map made of it, as it was then owned and occupied, and subsequently sold. I believe that map was made in eighteen hundred and ten, and I sold out in eighteen hundred and fifteen. I identify the map here produced, marked Exhibit P No. 9, as the map to which I refer. I have been familiar with that dock ever since the map was made; it was docked while I was part owner. There was a slip of twenty feet left on the northeast corner of the property, which was docked up along the southerly line of the slip. I was on the dock a few days ago with Mr. Dunn, the city surveyor. I pointed out to him the northeast corner of the Commercial dock property and the southerly line of the slip; this I did from my knowledge and recollection of the property. The property adjoining the Commercial dock property, on the north, was called the new town dock, and sometimes the Egg dock. I can't be mis- 40

taken as to the point I showed to Mr. Dunn as the northeast corner of the Commercial dock property and the line of the slip. The lot on the N. E. corner of the property, as mapped with a front of twenty feet, called "Water lot," was the slip. The property has always been occupied in accordance with that map.

Cross-examined by Mr. Gifford.—I can't tell by whom that map was made; I can't remember, it was so long ago; I can't tell from what deeds it was made; I think the map was made in eighteen hundred and ten; I think the dock was also made during the same
10 year. I don't remember the time when the wall in front of Mr. Beach's house was put up. Carman's wharf was made before the wall was put up, Beach's wharf was made afterwards. The northerly line of the Egg dock road run a direct course from the River road to the river, four rods down, then four rods down along the river, and four rods back; it is so recorded. That north line, since my recollection, has been occupied as it now is. The Poiniers got of Carman, and have occupied it about the same, as near as I can judge.

Direct examination resumed.—The map I speak of was made at
20 the instance of the owners, and recognised, I presume, by them. I was myself one of the largest owners. I consider the map as an accurate map of the property. From my recollection and knowledge of the properties in that neighborhood, I consider the corner of the strip, pointed out by me to Dunn, as the best settled and most fixed and definite point to ascertain the lines. I speak of the northerly line of Egg dock street, as I have always considered it.

P. ALLING.

John Caldwell, a witness produced on the part of Mr. Waddell, being duly sworn deposeth and saith—

30 *Quest.* Can you tell when the entire stone fence or wall, in front of the Ephraim Beach property, on the west side of River street adjoining the Eleazer Bruen property, was built, and how and by what means do you know it?

Ans. I owned property adjoining it at that time; it was built in eighteen hundred and thirty-three; it may be that a part of it was built in eighteen hundred and thirty-four.

JOHN CALDWELL.

It is here agreed by the counsel of the parties that the testimony in this case shall close.

Exhibits B on part of Complainant.

	Anno.
No. 1. Nathaniel Beach and Stephen Hayes, commissioners' deed, to Mary Baldwin,	1806
2. Jacob Arent to John Stiles, deed, binding on Joseph Johnson,	1738
3. Waite and Inness to Beach, deed,	1827
4. Nathaniel Squier and Nancy Crowell, administrators of Moses Crowell, to Job Brown, deed,	1809
5. Job Brown and wife to Ichabod Carman and Caleb Crowell, deed,	1809
6. Elias Osborn to Ichabod Carman, deed, release of dower,	1823
7. Caleb Crowell and wife to Ichabod Carman, deed, (for his interest),	1814
8. John Poinier and John Poinier, jun., to Ichabod Carman, deed for 60 links N. of Job Brown survey,	1828
9. Brinley's map, with diagrams A and W,	1846
10. Dod's map of division of the whole Beach property,	1836
11. Dod's map of Carman property, showing the northerly line N. 56 E.	
12. Administrators of Luther Baldwin to Mary Baldwin, deed, (same as Exhibit B No. 1),	1806
13. Draft of property to Beach, showing place of old fence, <i>dotted line</i> ,	no date.
14. Ephraim Beach and wife to William C. H. Waddell, deed of premises,	1835
15. Phœbe Carman to Sarah M. Carman, (deed of release to make her a witness),	1848
16. Ichabod Carman to Nathaniel S. Crane, (cancelled mortgage for money paid to fill up wharf),	1829
17. Copy of will of Joseph Alling, (devising to his daughter, Joanna Burnet, the Job Brown lot).	
18. Exemplification of sundry deeds by clerk of Essex :	
No. 1. Joanna Burnet to Moses Crowell, 4th February, 1802, page 13, Carman lot from Job Brown.	
2. Eleazer Bruen to John Turner, 30th September, 1805, page 21, for the Inness property.	
3. John Turner and wife to Edward Blackford, 4th May, 1807, page 33, for same.	

4. Edward Blackford to Ann Church and J. F. Rickard, 5th October, 1808, page 25, same.
 5. Robert N. Waite and Ann Inness to Ephraim Beach, 4th September, 1827, page 1, same.
 6. Ephraim Beach to Albert Dunn, M. Heath, and al., 3d December, 1830, page 17.
 7. Aaron Johnson and wife to Ephraim Beach, 8th July, 1835, page 9, for the Eleazer Bruen lot.
19. No. 1. John P. Durand to Jonathan Meeker, 13th December, 1820, page 1, distance along River road from Mulberry street.
2. Ephraim Beach to New Jersey Railroad and Transportation Company, 1st April, 1834, page 9, for tract of New Jersey Railroad section of Beach premises.
 3. Aaron Johnson to Ephraim Beach, 8th July, 1835, page 33, same as No. 7 on B 18.
 4. Ephraim Beach to William C. Gould, 3d December, 1835, page 17, lot next N. of Waddell lot.
 5. Ephraim Beach and wife to Milo Heath and al., 3d December, 1835, page 21, lot next N. of William C. Gould, same as B 18 No. 6.
 6. Mary Carman and al., to Ephraim Beach, 16th May, 1835, page 26, for a section E. of Railroad.
20. Survey of road, copy of Exhibit P No. 1, road laid out 3d March, 1774

Exhibits P on part of Defendant.

- No. 1. Road record (New town) dock, *alias* Egg dock road, 1774
2. Deed from John Bruen to Aaron Johnson for Bruen property, 1824
3. Map made by Stephen Dod, lately, 1848
4. Robert N. Waite and Ann Inness to Ephraim Beach, deed, same as Exhibit B No. 3, 1827
5. Jonathan Johnson to Robert Nichols and al., 1783, (Book K 2, 442-3,) for New (or Egg) town dock, 1783

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|---|---------------|
| 6. Deed, Aaron Johnson to John Poinier and John W. Poinier, deed for the 60 links (Z 2, 341), | Anno.
1828 |
|---|---------------|

Cause noticed for hearing on the 19th of March, 1850.

D E C R E E .

These causes, coming on to be heard together at the term of March last, upon bill, answer, and replication on each cause, and upon the proofs and exhibits therein, in the presence of Alexander C. M. Pennington, of counsel with Ephraim Beach, and of Archer Gifford and Peter D. Vroom, of counsel with William C. H. Waddell, and the counsel of the respective parties, being heard in argument of the said causes and in support of the relief prayed by the bills therein respectively, and the chancellor having taken time till the present term to consider of the matters presented for adjudication in the said causes, respectively, and having considered the same—It is now, on this first day of July, in the year one thousand eight hundred and fifty, ordered, adjudged, and decreed, by the chancellor, and he doth hereby, by virtue of the power and authority of this court, order, adjudge, and decree, that the said William C. H. Waddell is not entitled to the relief prayed for in his said cross-bill, and that the relief so prayed for by him be, and the same is hereby denied; that his said cross-bill be, and the same is hereby for that cause wholly dismissed, and that the injunction heretofore granted upon the said cross-bill be, and the same is hereby, in all respects, dissolved, and that the said Ephraim Beach be, and he is hereby allowed his costs in the said cause upon cross-bill, to be taxed against the said William C. H. Waddell. 20

And it is further ordered, adjudged, and decreed by the chancellor, that the said Ephraim Beach is well entitled to the said bond and indenture of mortgage in the said original bill set forth and described, and to have and demand the amount now due, and to grow due thereon, for principal and interest; that the said bond and indenture of mortgage be, and the same are hereby declared to be valid and in full force and effect; that the said Ephraim Beach be, and he is hereby allowed his costs in the said cause upon the said original bill, to be taxed; that the said Ephraim Beach is entitled to have sold so much of the said mortgaged premises, with the appurtenances, in the said indenture of mortgage embraced and in the said original bill set forth and described, as shall be necessary to raise, pay off, and satisfy to him the amount now due and 30 40

to grow due on the said bond and indenture of mortgage, for principal and interest, together with interest thereon from the date of this decree, together with his said costs, as well upon the said cross-bill as upon the said original bill, to be taxed; that the said William C. H. Waddell shall stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to so much and such part of the said mortgaged premises as shall be sold by virtue of this decree, to raise, pay off, and satisfy the amount now due and to grow due, for principal and interest, as aforesaid, together with the said costs, to be taxed. And it appearing to the court, by the said pleadings, that there is due, to the date of this decree, to the said Ephraim Beach upon the said bond and indenture of mortgage the sum of six thousand and sixty dollars and forty-four cents, for principal and interest, it is further ordered, adjudged, and decreed, that so much of the said mortgaged premises, with the appurtenances, as shall be necessary, shall be sold to raise, pay off, and satisfy the said debt, together with interest thereon, to be computed from the date of this decree, and also the said costs of the said Ephraim Beach; and that a writ of fieri facias, for that purpose, do issue out of that court, directed to the sheriff of the county of Essex, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to raise, pay off, and satisfy the said debt, interest, and costs, and that he pay the same to the said Ephraim Beach or his solicitor, and that, in case more money shall be raised by the sale than will be sufficient to answer such payment, such surplus money shall be brought into this court, and deposited with the clerk, to abide the further order of the court, unless otherwise previously ordered, and that the said sheriff shall make return to this court of his proceedings by virtue of said writ.

O. S. HASLTED, C.

From this decree the defendant, Wm. C. H. Waddell, appealed, upon the grounds stated and set forth in his petition of appeal."

liam C. H. Waddell should not have relief from the payment of his bond and mortgage, by reason of the conveyance by the said Beach to the said Waddell of a part of certain wharf premises material for his use and enjoyment, and to which the said Beach had not any title; and that the said Waddell should not have relief by a rescision of the contract and refunding the money, with interest, paid by the said William C. H. Waddell in part of the consideration of a full and complete title in said Beach to the said premises; and for that the decree has put the decision of the cause on the
 10 ground that there has been no eviction; that Waddell hath not shown that any other person than the said Beach have the title to any part of the land the said Beach conveyed to him.

And your petitioner further shows, that he is advised and believes that the said decree is erroneous, and ought to be annulled and altogether held for nothing: he therefore appeals from the whole thereof, because of the grounds expressed in the chancellor's opinion.

And further, because the said decree has been in other and material respects without proper cause, and not consistent with the
 20 pleadings between the parties nor agreeable to the evidence offered by your petitioner, or agreeable to equity.

A. GIFFORD,

Solicitor and of Counsel with Appellant.