

NEW JERSEY
COURT OF APPEALS

IN THE LAST RESORT IN ALL

CAUSES OF LAW AND EQUITY.

Injunction Bill, Answer, and Testimony, &c.,

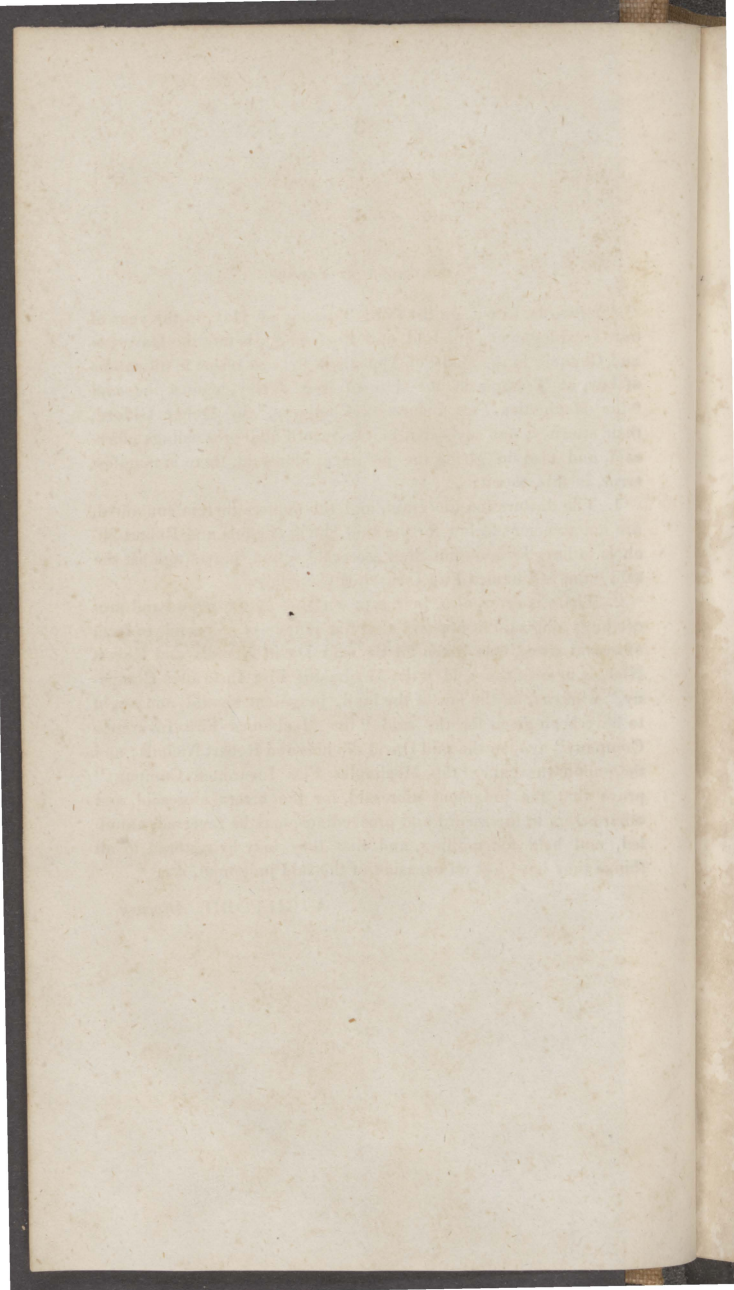
between

SAMUEL SHIELDS and JOHN ARNDT,

ON APPEAL FROM CHANCERY.

TRENTON:
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1843.



James Patterson

**In the Court of Errors and Appeals of the State
of New Jersey in the last resort in all Causes
of Law and Equity.**

SAMUEL SHIELDS, *Appellant*, } *On Appeal from Chancery.*
and } S. R. HAMILTON, *for Appellant.*
JOHN ARNDT, *Respondent.* } W. C. MORRIS, *for Respondent.*

State of the Case.

May 21, 1839.—The appellant filed his bill of complaint in the Court of Chancery, against the respondent, to enjoin him from diverting an ancient watercourse, which was always used and accustomed to flow, in its natural channel, upon the lands of the complainant, contiguous to those of the defendant, an easterly course, about seventy yards along their respective line of lands, and thence to reflow upon the lands of the defendant. The bill states that the parties reside in Mansfield, Warren county, upon adjacent farms.

That at the time of the purchase of the defendant's farm, some years since, there was, and still is, a certain ancient watercourse crossing the said farm nearly at right angles at the Spruce run turnpike road, and always accustomed to flow in a southwestern direction entirely across and over the said farm, and in and upon the lands next adjacent, being the complainant's, lying south thereof.

That the said ancient watercourse was always used and accustomed to flow in its natural channel, by its circuitous route, in and upon the said lands of the complainant, an easterly course a distance of about seventy yards, to a certain other point in the line of the defendant's lands, whence it reflowed in and upon the defendant's lands, and so continued and flowed, and passed off into the Musconetcong river.

That the complainant had formerly owned and occupied another farm, about half a mile south of the said defendant's farm, which was destitute of water, and a great inconvenience, &c.

That in the spring of 1835, complainant, jointly with one John Strader, jun., purchased the premises adjacent to the farm of the

injure the complainant in mind and estate, and impede his progress in husbandry, about two years since, (1837) actually cut a ditch of about four feet wide at top, and three feet at bottom, and eighteen inches deep, in a *straight line along the partition line fence between them*, about three feet distance, where the soil was firm and unbroken, a distance of about fifty yards, and nearly *parallel with that portion of the said ancient watercourse* lying upon the complainant's premises immediately adjacent, designated as his "watering place" aforesaid, and in such position at the extremities of this said ditch that a few hours' labour or an ordinary freshet, would naturally connect the same with the natural course of the said stream and ancient watercourse, and thus turn the same wholly upon the lands of defendant, and dry up the complainant's said watering place.

That, early in the spring of 1839, the freshets broke away the ground at the end of said ditch, and that the water from his said watering place was running into the ditch formed by the defendant; that he sent a messenger to request defendant, in a friendly manner, to come down the lane and converse on the subject, and received for answer, from the defendant, that if he wanted to see defendant more than he did him, complainant must come to his house; and that he thereupon immediately accompanied his said messenger to defendant's house, and requested defendant to go down the line of lands with him—he did so, and while there, at the said ditch, he charged defendant with having cut it, with the *intent that the water should break into it from the natural stream*, and draw the water off from his premises; and now you see that nearly one half of "the old stream is running into your ditch, and if you do not stop and turn it back again, I shall be obliged to bring an action against you; whereupon defendant desired complainant would give him time, until the following week, to take counsel, which was refused, complainant insisting that defendant knew it was a great disadvantage to him, and of no use to defendant, and that he would not have it for thousands of dollars; and the defendant did thereupon stop the waste and turn back the stream by stones, and at the same time informed complainant that he intended to take the water out of the channel at the turnpike road, and lead it out at his (defendant's) house; and complainant forbid him doing so, declaring that *if he attempted such a thing, he would prosecute him.*"

That the defendant afterwards commenced digging large drains and ditches upon his said farm, and dammed up the said ancient watercourse at the said turnpike road, with the *avowed* intent and purpose of turning the waters thereof from their accustomed natural channels, upon and across his said farm, leading them to his own house, and diverting them altogether from the watering place of the complainant, and had in fact turned a large propor-

tion thereof out of the natural channel, thereby diminishing the usual and necessary supply of water at complainant's watering place, to his great inconvenience and detriment and contrary to equity and good conscience, and to the manifest wrong and injury of complainant, and thereupon prayed an *injunction*, with process of subpœna, &c.; which said writs were duly allowed and decreed by His Excellency the Chancellor (*prout*), and served and returned by the sheriff of Warren to the July term, 1839.

That on the 4th of September, 1839, the defendant caused *his answer* to be filed, upon oath, saving all manner of benefit of exception, &c., setting forth that he owns a certain farm in Mansfield, where he now resides, and has so resided since the spring of 1831, adjoining complainant's, lying southerly, and upon which complainant *hath made valuable improvements, as in his said bill is very particularly mentioned and set forth.*

That *when he moved* to his said farm, there was *no water flowing across and over the same*, and upon the lands next adjacent, southerly, *except immediately after a rain* and upon the melting of the snow.

That there *was anciently* (as he has been informed) *a small stream* flowing from the hills and valleys and crossing the farms easterly of the defendant's, until it was lost and entirely disappeared in a sink-hole upon the farm of John and Peter Wire, which is the third farm easterly from the defendant's, between which and the defendant's farm lie two others, Carter's and Riggles'.

That after the Morris canal was made, this stream became *larger* than it formerly *was*, as informed; that hearing in 1832, as he thinks, that his neighbours Wire, Riggle, and Carter, above him, were ditching upon their lands, in order to lead the *said stream* across their farms, he also immediately commenced digging a ditch across his own farm, which ditch, and others therein referred to, are delineated upon a map annexed, marked *A*, referred to as part of his said answer; that when he came to the line between him and the complainant's farm, then of the Crevelings, *being desirous of getting rid of the water at that time*, *PUSHED* it through under the fence, whence it found its way along the line, and upon the said adjoining farm, *about forty-five yards*, when it returned and flowed down upon his farm, to an ancient watering place, very near the complainant's house, where it forms a considerable pond upon the line between them.

That near where this ditch strikes said line fence, between them, *there was a low piece of ground, covered with bogs and grown up with wild grass, which extended a little way upon complainant's farm*, and from which, in the spring of the year, several small springs issued, some upon each of their lands; that he has never heard, after particular inquiry, that *there was an an-*

cient watering place kept at this spot, nor does believe there ever was, until complainant made one there, and to which he has lately made a lane or avenue.

That in time of high water the ditch would overflow, and the water spread over defendant's land, and sour the same, and that solely with a view to prevent this in some measure, and to benefit himself, and not out of mere malice towards complainant, or to vex, harass, and injure him in mind or estate, he dug a *shallow ditch* along the line, upon his own farm, to carry off the surplus water; admitting that in the spring of 1839, Jacob Bowsby came to him with a message from complainant, requesting him to come down the lane, and converse with him on the subject; but he does not recollect or believe that he gave the uncivil answer stated in complainant's bill; as near as recollected, he said to Mr. B., in the mildest manner, that Mr. Shields appeared to be offended; that he had no reason to be so; that if any one had cause, defendant had, but he was not; and if he was offended, defendant would not go with him; and if not, he should come, and he would treat him kindly and go with him anywhere.

That directly after he came over to defendant's house, and he went with him to the ditch, where the conversation between them, in substance as stated in complainant's bill, took place, except that defendant, *according to the best of his recollection*, did not state, as seems to be implied in complainant's bill, *that he intended to take the whole of the water out of the channel at the turnpike road, and lead it down to his house*.

Defendant admits that he has commenced digging a new ditch from the stream, at the turnpike, for the purpose of *leading a part* of the water to his house, where he has no running water at the door; and that he has made small drains from it to water his meadows, and that at the house, he intends to discharge the water into the ancient watering place or pond above mentioned near complainant's house; and, in order to *turn a part of the water into the said ditch*, it became necessary to level the bed of the stream at the turnpike with the ditch; that accordingly on the day before the serving of the injunction, a part of the water was running into the new ditch, but before the next morning, the mouth of the new ditch was stopped by some person or persons unknown to defendant, and the *whole* of the water turned back into the old ditch; that the injunction was served on this defendant, forbidding him to divert any part whatever of the water; insisting that he had a perfect right to make the said new ditch and drains, inasmuch as the said stream of water was originally brought upon his premises by ditching from farm to farm, in the manner hereinbefore stated, and inasmuch as there

never was, in the recollection of the oldest people in the neighbourhood, and as he verily believes, any ancient stream of water flowing across his said farm, and upon complainant's farm, except in time of a freshet or melting of the snow as aforesaid, denying all unlawful combinations, &c., and praying to be dismissed, &c.

To which complainant filed the usual replication, &c.

Testimony.

Joseph Hendrickson, testifies—I am acquainted with the parties in this cause, and the lands on which they live, in the township of Mansfield, county of Warren, state of New Jersey; I have been acquainted with the lands on which they live betwixt thirty and forty years. The first ever I knew of the farm on which Samuel Shields lives, to know anything about the water, was when my father-in-law, William Creveling, bought it. John W. Creveling, his son, got the deed for it. After my father-in-law had agreed for the place, myself and others along with him, were looking over the place; at that time the water crossed on that place where it does now—in *the very place*. I can't particular tell where the water came from; there was a regular natural watercourse from above. There was a spring just above the line, and a kind of pond. The spring and pond was pretty much on the line, I guess. There was a watercourse through several plantations, eastwardly. I believe there was water running through that watercourse the first time I saw it, if my recollection serves me right. I have been acquainted with the property at times ever since. I believe I worked on the property for John W. Creveling. I don't know that I did work for him more than once in particular; can't say how long, for one, two, or three days; it was a good while ago. I recollect very well that the water at that time run through upon Mr. Shields; I can't recollect any particular facts, only that it run through. As for Mr. Arndt's farm, I don't know that I have any particular acquaintance with the water upon his farm. I have frequently seen water running across the turnpike on Mr. Arndt's farm, when travelling the turnpike. I don't know how many years back I have seen the water running there, perhaps it is thirteen, fourteen, or fifteen years ago, perhaps not so long; I can't be particular about it. I think I recollect there being a bridge over the turnpike, under which this water runs. As far as my memory serves me, it was at the time I was crossing this bridge, that I saw the water running there. I know there was something to get across, and that the water run under it; I can't tell whether it was a stone or wooden bridge. I yesterday observed

the ground particularly, on both Mr. Shield's and Arndt's side of the line, but not as far up as the turnpike. Where the water crossed the line when I first knew it, it appeared to me the ground was lower than it is now on Shields' side. My apprehension is, that it then run further through on to Shields, and further down, too, before it crossed back again on Arndt. When I first knew it, both sides of the line where the water crosses *was in a boggy kind of state*. It has every appearance from the ground now, and as it had then, that it would cast the water over on Shields. I observed yesterday, opposite to where the water runs upon Shields, a ditch cut close along the line on Arndt's side. I did not measure the ditch, but it appeared to me to be three or four feet wide. It was not deep, sir; I did not measure the depth; I don't think it was three feet deep. It was some little depth, I cannot pretend to say how deep it was. I did not measure how near the ditch run up to where the water runs in upon Shields, but suppose within four or five feet. I don't know that I took particular notice how near it came to the line fence, but it was close by it. I should think it would take some little trouble to take the water from where it runs, into this ditch—I did not view it particular, but concluded it would take some little work to do it.

And being cross-examined, saith: It is betwixt thirty and forty years since I walked over Shields' farm with my father-in-law and others. I think we walked along the line in this low boggy place. I think Capt. John Eveland was along, John W. Creveling, and two or three more. I don't know that it was our particular object to view the water, only I seen it, and that it did cross the line. I don't know that it was the only object to see the quality of the soil, but to see how it laid, &c. I don't remember that there were any trees, but there was bushes and bogs on both sides of the line, wild plum bushes and such as are natural to wet places, I think. I recollect, very well, that there was a stream of water that come through from above, and run through the line, from Arndt's side to Shields'; I aint particular about the water, that it came across the Arndt farm from the turnpike, I don't know much about that. At that time I thought the water I speak of came from a spring above, but I don't know but that it came all along the watercourse—I mean the present watercourse, as I did not take particular notice of it. The spring that I speak of was on Mr. Arndt's side, or it could not run through. It is so long ago, I am not perfect whether the water did not cross the line in two or three places above the wet place. I don't know that I took notice of several springs on both sides of the line, but it was a springy place. I don't know that ever I took particular notice whether the pond stood there the whole year, or only in the spring, as I was there only once in awhile. This was some years before the turnpike was made; may-be ten or fifteen years. I was there at different seasons of the year; I have seen it entirely dry, clear down to the house. I have seen it flowing across the line from Mr. Arndt's farm to Shields', at other seasons of the year besides the

spring, and at almost all seasons of the year. I can't recollect how near the line this spring was. I don't recollect seeing any stream of water, before the turnpike was made, running from where the turnpike now is across Mr. Arndt's farm. My recollection don't serve me, whether there was or was not. I did not travel there because there was no road there. I have known the Carter, Reigle, and Wire farms, which all lie east of Arndts', as long as I have known these, but not particularly acquainted with them by being over them. I came along by Wire's to-day, and we crossed a stream of water which Mr. Shields, the complainant, told me was the stream that run down through to his farm. I worked one day in harvest for Edward Youmans on one of these farms, more than twenty years ago. It was Reigle's farm. My recollection does not serve me, whether there was a stream of water running down there then, or not, across this farm towards Carter's below it. I had then no knowledge of the sink-hole on Wire's farm. I don't know that I saw any stream of water crossing the turnpike before the year eighteen hundred and thirty-one, but I travelled it frequently, ever since it has been built, and always knew there was a stream running across it. I lived at the Mansfield meeting-house at the time the turnpike was building, and boarded some of the turnpikers. I think it is longer than nine or ten years when I saw a stream running across the turnpike; I don't know that I can tell you exactly how much longer. The reason that I recollect its being longer than nine or ten years ago, is because I travelled it before and since. It is my impression that I did not see the water running across the turnpike more than nine or ten years ago, but have no particular fact by which I can recollect it, further than what I have stated. When I first knew these premises, I lived about four miles off, in Mansfield, and have lived about the same distance ever since, except when I lived at Mansfield meeting-house, which was near the premises, where I lived one year. That is about a mile and a half from where Arndt and Shields now live. I think it is about eight years ago since Mr. Arndt moved on the premises, if my recollection serves me. I have only been along the turnpike, since Arndt moved, once or twice. I know nothing about the ditch that was cut across Reigle's and Carter's and Arndt's farms. I do not mean to say there was a watercourse through several farms eastwardly, as I never examined it; the most I know about it is where it crosses the line fence. The furthest I was ever on it, to view it, was yesterday.

I can't tell how old I am exactly, but from the best information I can get I am sixty-three.

I did not find the old spring that I spoke of yesterday. All the bogs and bushes have been cleared out, and this place is under a nice state of cultivation. I expect the water that now flows there comes from the turnpike.

It is a handsome stream of water. I did not yesterday observe any springs from which the water could come.

Jworn, &c., March 27, 1840.

John Van Natta, sen., testifies—I have known these farms since eighteen hundred and five, when I moved on the place now owned by Reigle. I lived on that farm ten years, and farmed it during that term. Carter's farm lies between this farm and Arndt's farm. Formerly these farms belonged to William McCullough; Arndt's and Carter's were together, and worked by Capt. William Henry. During the time I lived on that farm, there was an ancient watercourse running through it. The head of it was at Newbold Wolston's and Scott's springs, which came together in Beaver's meadow, and run through Henry Carter's and Wire's farm, on to Reigle. During the time I lived there, it did not run there all the time. If it was a wet season, it run pretty much the summer season; but if it was a dry season, they turned it into a sink-hole above, on Wire's farm, but it would dribble down, by times, into a pond we had there for geese and other things, hogs. When the water run, there was a natural ditch through the farm, as much as three feet deep in places, so I could not drive across with the wagon. When the water run, it run down into Henry's field adjoining, and it continued on, when there was a flood of water, down McCullough's farm, on to where Imlah Drake lived (now Shields') and used to come in there where this wet place now is. In the spring of the year there was a great body of water went through there at times.

I never saw the water running there at Drake's in harvest time; but Drake and me changed works, and I went to help him mow in his meadow there, and there was a wet boggy place on both sides of the line fence, as much as a quarter of an acre of wet boggy place, may-be a little more or less, with water in. It was somewhere about where the water now comes through on Shields. I think there is a natural descent from the farm where I lived, down on the farm where Shields lives; and as long as I have known it there has been a natural watercourse where I lived, and Carter and all of them along. I don't know that there was a bridge made over this watercourse when the Spruce run turnpike was made. I don't know that there was a bridge or ditch until it was made through by Carter and them to let the water through. I think, if I recollect right, there was a couple of plank laid over the sluice, as we called it before, in the turnpike.

When I was mowing there for Drake, the water appeared; it seemed to come out from Capt. Henry's side; I did not notice it particularly. I expect the ditch I refer to, through Carter and others, was cut to keep it in a straight course. From the Wire farm, through Reigle, Carter, and Arndt, it is pretty much a limestone land; yes, it is all a limestone land. In all such places, as far as I know it, there are places generally where the water will sink away. In such countries the holes sometimes get stopt up, and then the water will run on again.

And being cross-examined, saith: The ditch I spoke of was cut seven, eight, or nine years ago, say seven; may-be not so long, I think, since Arndt moved. I lived at Washington, in Warren

county, when the ditch was cut. The reason why I expect the ditch was cut was to take the water straight through, because since the canal was made, there was more water came down. Since this ditch was cut, it appears as if the water flows all the time across these farms, pretty much ; but I have not been much along to see it. I cannot tell you when Mr. Arndt ditched across his farm, nor when Carter did.

Whenever there was any water, it flowed down to the line betwixt me and Henry.

To the queestion, do you mean by wet seasons, the spring of the year particularly ? the witness replies, some seasons it run more and some less. At the line between me and Henry, there was a kind of hole or pond, where the water would stop, and would sink, I expect, and when considerable water, and the little bank was full before my door, then it would run down into Henry's field, now Carter's. At this hole under the line fence, it appeared to me that a rock had sunk, and the hogs used to get through, as in limestone countries rocks will sink. After it got on to Carter's it certainly went on, how far I can't say, but a gradual descent through both fields. O yes, I have seen it flow across the Carter farm often, I never see it flow in a dry time across the Carter farm ; sometimes of the year, when there was a heavy rain, it would flow down, but generally in the spring of the year, the most when there was the most water. I don't know that I ever saw it flow across Mr. Arndt's farm ; I have never been down in time of high water. There was not water constantly running in the ditch through my meadow, it was some seasons dry part of the time. If it was a very dry summer it would be dry some weeks—not some months, as long as I lived there. Pretty much water there every season I lived there. My neighbour above me troubled me some, by turning it into a pond or sink-hole on Wire's farm. There is more than as much again water there now as formerly, I expect. When the canal came Wire had too much water, he cut a ditch, and that put it down on the other farm. If he had not cut the ditch, it would followed down the old channel—it could not help it—there was no other course for it. No, it would not have been lost in Wire's sink-hole ; in heavy rains it flowed over. Yes, I know that it did flow down across Henry's (now Arndt's) farm on to Shields', when there was a great body of water ; there was a gradual descent all the way down on to Drake's.

I never was right at this boggy spot, when there was a great body of water there ; but there was no other place for it to go when it was started until it landed there on Drake's farm. When it comes to this boggy place, it flowed over on to Drake, because it was lower—reason tells me so. I was never by it in time of high water, and never saw it flowing upon Shields.

To the question, can you swear, from your own knowledge, that when the water came to this low boggy place it did not flow down on Arndt's side of the fence ? witness replies—my belief is

this, that water come from out of that field into this boggy place, and reason tells me when it run into this place, it flowed there, too, when there was a great body of water; undoubtedly it did come over. I mean by that field, the field adjoining Drake.

Question. Did you ever see the water flowing upon Shields in time of high water?

Answer. No, I never was there; I told you that before. I have been in the field when it went there, but not close by it, but been there when it was so high it could go no where else.

While I lived on Reigle's farm, I *never ploughed* over this watercourse. I had meadow on it. When I cleared the ground, I ploughed it and put wheat in it first, and then turned it into meadow. No, I did not plough across the ditch; I ploughed on both sides of it; may-be I did a few rods at the upper side of it, along the old forge road. The ditch was but a small ditch at the upper side, and I would jerk the plough over; as it got further down it got deeper. There was water running in the ditch when I ploughed it; there was water there considerably for the first two or three years after I moved there, until Kitchen, who lived on Wire's farm, turned it into his sink-hole.

And being called again in chief, saith:

The bogs I referred to were on Shields' side, in the upper corner of the meadow I helped Drake mow in.

Question. Was there an appearance of an ancient watercourse there or not?

Answer. I declare I cannot tell; I cannot tell much about it; I was not examining, or looking, or thinking about it at that time, only I was observing the bogs and wet places. I don't recollect observing the water running among the bogs.

And being cross examined again, saith:

There was a good deal of bushes on Arndt's side at that time, and on both sides; indeed there was. I can't tell you whether there was bogs on Arndt's side, I was not over; it was a wet ugly place. I did not see any water running on Arndt's side, not as I know of. I cannot tell whether there was any running above; I was not there, I was only in the meadow; we did not even cut the bogs.

Sworn, &c., March 27, 1840.

Joseph Johnston, esq., of Hunterdon county, New Jersey, testifies—I have been acquainted with the farms on which the parties live more than fifty years, ever since I can remember anything, and I am more than sixty-six years of age. I own the farm below them. This same stream runs through my farm into the Musconetcong. I have known a stream to run through Carter's across the turnpike on to Arndt's farm ever since the township was made. Sometimes it was dry and did not run across the road, and sometimes there was water, generally speaking there was water. I am not able to tell where it run when it left Arndt's farm in former years. I was not acquainted below at the low spot; I have

not followed it up to see where it run in former years. I know there is a regular descent from the turnpike road on to Mr. Shields' farm. *It is high ground on each side of the descent* all the way down to Mr. Shields' farm. I was upon the ground yesterday and observed it particularly ; it then run *over upon Shields*, and afterwards returned upon Mr. Arndt. From my knowledge of it, it appears to me to be an ancient watercourse. I passed this little stream on the turnpike very frequently before the turnpike was taken up ; it was my usual road to Washington, sometimes once a week, and sometimes not so often, and sometimes oftener. I recollect a little bridge of two or three plank across it on the turnpike where this water run through. I cannot ascertain exactly how long ago the turnpike was made, I think it upwards of twenty years any how. I observed yesterday a ditch cut along on Mr. Arndt's side not far from the line fence. I think it was about eight feet from the line fence, as near as I can calculate. The head of the ditch was *made right up to the natural watercourse*, but it had been stopped with stones and dirt at the place where it crossed from Arndt on to Shields. I think this ditch was four feet on the top, it was narrower towards the bottom. I should not think it was more than eighteen inches deep, if it was that. If the stones and dirt were taken out the water would run into that ditch. When I was on the ground yesterday I observed the channel that had been cut by Mr. Arndt to lead the water out up by the turnpike ; it was of sufficient capacity to carry all the water that flowed there in ordinary times ; it went over some high ground ; some places the ditch was deeper, and sometimes shallower, to give it a regular course. It appeared to be a limestone soil ; it was a loam that was thrown out. A limestone soil is generally a loose soil. It was a very *crooked ditch*. I was not clean down to the end of it, I could see where the dirt was thrown out away down towards Mr. Arndt's buildings. As near as I can judge it was cut near three hundred yards. If I owned Mr. Arndt's farm I should not like the ditch there ; if it was mine I should consider it an injury rather than a benefit. If Shields' farm was mine I would not be deprived of the water for a great deal of money, for I observed the way it was fixed it afforded a watering place to every field on his place. It is a large farm, I should suppose two hundred acres or more. If I owned the farm I would not be deprived of it *for two thousand dollars*.

And being cross-examined, saith : I never followed the stream in former times, either down or up, across Arndt's farm ; I only speak of what I saw from the road ; from my knowledge of it in former times, I cannot say that the stream crossed Arndt's farm upon Shields', and then returned. I recollect that in former years there was a swamp in the low place along the line. I don't know how many years the stream has been running from Arndt's farm on to Mr. Shields. The most of the times I travelled the turnpike, there was water running across it ; but sometimes there was not any : this is what I mean by the term generally. When there

was a drought, of course there was no water, and those are the times I spoke of; *but in a regular season there was water.* The times I speak of, were both before and after the Morris canal was made. I don't know that I have ever noticed its being dry since the Morris canal was made; but I think there is more water there than before.

I have never resided on my farm below, myself; I have a son living there. I don't know when the ditches were cut across Mr. Carter and Arndt's; but I think since Mr. Arndt moved. There is a strip of meadow down this hollow, from the turnpike all the way to near Mr. Shields'. Mr. Arndt has not any running water directly at his door. This new ditch from the turnpike, I should suppose, would enable him to water all his meadow that lays below, and bring running water to his door. After it was discharged by his door, it would run down into a pond close by Mr. Shields' house. I don't know exactly where the line is there, but I think the pond would be mostly on Mr. Arndt. As to watering the meadow, I should not think it any advantage; we can have as good without it as with it, and then we can have the upland too. It would be beneficial, to be sure, to have water brought to the house.

I did not measure the ditch along the line fence, but should think it about eighteen inches deep at the upper end, but not so deep below as the ground descends. It appeared to me it had been dug to draw the water along, and it was deep enough for that purpose. It appeared to me that the dirt was thrown out on the *upper side* next to Mr. Arndt's, and therefore would not drain the meadow on that side. When there was too much water in the natural channel, so that it overflowed its banks, this ditch would naturally carry it off.

It is not long since Mr. Shields moved there. These lanes I spoke of, leading to the watering place, have all been made by Mr. Shields. There was a pond down by the house, where they formerly watered. I never heard or knew of a watering place where it is now in former times.

And being called again in chief, saith:

I have lived nearly all my lifetime at New Hampton, about a mile or a mile and a half from Mr. Shields' and Arndt's. I don't think it is a hundred yards from Mr. Arndt's house to this brook. I recollect this pond by Mr. Shields' to have been larger forty years ago than since the canal has been built.

In a dry season, I have known the stream where Robert H. Kennedy lives, down towards Easton, the Pohatcong, entirely dry. At ordinary times, it was a considerable mill stream. The Pohatcong runs through a limestone country, and is in the adjoining valley to the farms of these parties.

If the water was taken out at the turnpike into this crooked ditch and discharged at Mr. Arndt's house, the water could not reach Mr. Shields' farm, but would empty into the pond between their houses.

I have known all the springs above the pond, of late years, to be dry, but not formerly, as the stream used to be much larger than of late. If the water was all turned into this crooked ditch, and all the springs dry, there would be no water on his farm, of course. I believe Mr. Arndt has a well by his door; I have seen a curb of a well there; I don't know whether there is water in it or not.

And being cross-examined again, saith:

From Arndt's house down to the brook, I think there is considerable descent; if it was levelled, I think it would be twenty feet. There was quite a swamp and miry ground above, which is now all cleared up, and that is the way I account for the pond being larger formerly than now.

Sworn, &c., March 27, 1840.

Samuel Bowlby testifies—I have been acquainted with the premises of the parties ever since I can recollect my own, thirty or thirty-five years. My farm joins Shields, and runs within one field of Mr. Arndt's. I have lived on the same place ever since I was born. It is twenty-four or twenty-six years since I noticed the waters on the line between Arndt and Shields, and about their farms. As near as I can recollect, and what makes me recollect it particularly, I have been up that stream, when I was a chunk of a boy, catching trout. At that time, above where the water runs on to Mr. Shields, there was a great many springs that run out, and formed pretty much of a pond, at that time. This pond was something like fifteen or twenty paces, fifteen any how, above where the water now runs upon Mr. Shields. The water run from this pond pretty close to the fence, sometimes on one side and sometimes on the other, backwards and forwards under the fence. It was an old worm fence, and considerable brush along it, at that time. At that time there was other water that run into this pond; there was a wash ditch that run down pretty near the line, on Mr. Arndt's side, nearer the line than the present one, and that water run out of the ditch into the pond or sink-hole. This sink-hole was in the same pond that I have spoken of, but deeper, and the line fence run through this pond. The water run out of this sink-hole and followed the fence, and crossed it two, three, or four times. I have walked fifty yards on the fence; I had rather walk on the fence than in the mud. This water, I think, ran further down on Shields than it does now, twenty-five or thirty yards. It then ran directly out across into Mr. Arndt's meadow, and, with the water of Mr. Arndt's meadow, formed another trout pond. At that time, except in a dry time most generally, I have seen the water running across Mr. Arndt's farm, from where the turnpike now is, into the first mentioned pond. Well, I should think this would be considered an ancient watercourse. If you consider Pohatcong and Shabbycong ancient watercourses, I should consider this one. I have seen all three dry. Pohatcong and Shabbycong have always been considered ancient water-

courses. There are several important and good mills, some very good mills, on the Pohatcong, and there has been mills on it ever since I can recollect.

I can recollect when the turnpike was made, but I cannot recollect exactly how long ago it has been made. I can recollect a bridge across that stream, of two or three plank, on the turnpike. I recollect seeing water passing under it, as long back as from twenty-three to twenty-five years, and from that it took this ancient channel that I speak of down through the hollow. I have been up and down it both, when it run there. I have also been up above Mr. Arndt's, along the stream, as far as the Morris turnpike, in sight of the Morris canal. *Through this whole distance, I saw the same marks of an ancient watercourse, more so above than below.* Below this pond, into which this water entered, I saw the same marks of an ancient watercourse as above, on both sides of the fence, as it crossed under the fence.

I recollect there being a sink-hole on the farm belonging to Wire, then belonging to Nixon. Sometimes, when the water was turned into it, it took it all away, and at other times, when turned in, it would run over; it would not take it all away. The whole length of the stream is over a limestone soil, and water is very apt to sink on a limestone soil.

I see a new crooked ditch, cut by somebody, in Mr. Arndt's field. I should consider that through the same kind of soil as the soil above. I went along that ditch as far as it was dug, I believe. I saw in that ditch, in one or two places, that it appeared to me as if water had sunk.

If I was the owner of Mr. Arndt's farm, the way the ditch is put through, I should not consider it any great benefit. Well, I should rather consider it an injury, for I have the same kind of ground, on which I have tried to put water. Water won't run over limestone ground, at least over my limestone ground, far enough to do any good. It will get right away; I have tried it; it sinks down. I think Mr. Arndt has plenty of living water, not a great ways from his door. I don't know that there is a spring by the spring-house or not. The spring-house, I should suppose, is sixty or eighty yards, I hardly think a hundred, from the house. He has an appearance of a well by his door; I have seen a well curb; I never looked in. The pond between Arndt's house and Shields' is between fifty and sixty yards from Arndt's house. I have known, of late seasons, all those springs above this pond all dry, two seasons in particular. In those seasons, I should think, if Arndt was to take all the water at the turnpike into his crooked ditch, it would leave Shields a dry farm.

I was on the ground between Shields' and Arndt's, day before yesterday. I observed the ditch cut along on Arndt's side, pretty nearly to the line opposite where the water runs on Shields.

I should suppose, from the centre of the ditch to what is considered the line, now the fence, it is six or seven feet. This ditch I should suppose to be four, or four feet and a half wide at the

top, and narrower at the bottom—rather dish fashion—rounding. I should suppose the average depth from twelve to eighteen inches. It runs right up to the old channel that runs upon Shields; there is a few stones and dirt that stops it up. I should suppose, if the stones and dirt were taken out, the stream would take that ditch without any doubt. I could see no other cause for that ditch but to draw the water, unless it should be in time of a fresh or something of this kind; and I could not think it of any great use then, for it is only a short distance before it all runs on again, any how. I observed the dirt was thrown out of the ditch *from the fence* on Mr. Arndt's side. Throwing the dirt on that side, it would keep the water from spreading over Arndt, if that ditch was full; I mean the water that came down the ditch. It would also prevent the draining of the meadow along side of the ditch.

The ground on both sides where the water runs is a natural hollow, all the way from the turnpike on to Shields'; a descent on to him, from the appearance of the water; it runs lively. The ground on both sides of the ditch rises kind a dish fashion. From my judgment and observation, it appears to me the water would naturally be thrown on to Samuel Shields. I think, twenty-four or twenty-six years ago, there was rather more descent than there is now; the ground is filled up considerably on both sides, rather more on Shields' side. It run further on to Shields than than it does now.

The natural effect of farming around such places would be to fill them up and dry them; I have filled up several by ploughing around them. As long ago as I can recollect, the horses and cattle, or anything of that kind, could get water in this place by going into the mud a little; in some places they might not have got out again. Shields, I should think, owns a very large and valuable farm, two hundred acres or upwards; I don't know exactly. I believe his farm is so arranged that he can have water for all his fields from this place; he has lanes leading to it. I can hardly tell how great would be the damage to be deprived of this watering place; I should think it would be considerable. I should not like to have it taken off if mine, for two thousand or twenty-five hundred dollars; I should not like to be deprived of it at all. There is no water any where else on this farm, except this stream, and the springs connected with it, that I know of.

And being cross-examined, saith:

The pond that I spoke of, as being fifteen or twenty yards above where the water crossed upon Shields, was mostly upon Arndt's side; the deep hole below was mostly upon Shields. There were several springs that appeared to boil up right in this pond, on Arndt's side. There was a bunch of bushes in the pond, and a few bogs, round the roots of which the trout laid. It appears that where this pond was formerly, is now a sod, and no springs coming up that I could see. There was a spring formerly on Shields' side, about opposite, but not so strong as on Mr. Arndt's side. It

appears that the springs have been dried up by cleaning up and cultivation, and washing in; I have dried some of my own by doing so. When the water run from this pond at all, it run as I before described; I never noticed it running any other way, and not only in times of high water and in the spring of the year, and not always on the east, or Arndt's side. What makes me recollect this particularly, is the water's running pretty nearly straight across from Shields' side, to form the second trout pond in Mr. Arndt's meadow. I don't think that the ground east of the ditch, and near it along the line fence, is lower than on Shields' side; and the reason I think so is, that it is cut through a knoll that is higher ground than either above or below it.

The dishing that I spoke of along the natural watercourse across Mr. Arndt's, gets narrower, and stops pretty near where the water crosses upon Mr. Shields. The dishing runs nearly or quite up to the line fence. The water across Arndt's farm appears to run in a new ditch—it used to run wider. At them times they let it run pretty much where it pleased, perhaps now part in the same place. Where the water runs across Arndt's, it appears to me to run in a natural washed ditch; I don't know that ever it was dug. I don't think any dirt thrown out of this ditch, prevents the water running down on Arndt's side. I don't recollect any washed channel on Arndt's side, east of the ditch, near the line fence below the hole, until you come lower down. I can't tell how old I was exactly when I caught trout there; from fourteen to eighteen years old. I caught there several times, three or four different years, perhaps more. I can't tell what caused the marks of this ancient watercourse across Arndt's farm; whether it was from heavy rains, or breaking up of snows, or from the regular running of the water; but there was a great deal more water there sometimes than at others—sometimes a regular little stream and sometimes none at all. I speak now of my knowledge twenty or more years ago; twenty years ago and upwards. Some years there was a stream of water running the bigger part of the year, and some years not, across Arndt's farm. Yes, sir, I so mean to be understood. I think it run every year in the spring of the year, and in heavy showers, I think, it would run clear through. The stream now running across there is larger than formerly; I should suppose increased by the Morris canal. For ten or eleven years previous to Mr. Arndt's moving there, I can't answer exactly whether there was ordinarily any water running across the turnpike and Mr. Arndt's farm, not being there very frequently; but when I crossed the bridge sometimes I saw water, and sometimes I did not. I am not able to say whether it was in the spring of the year, or after heavy rains when I saw water there.

I live about a mile from Arndt's and Shields' house, full that, I think, and entirely on another road. When I caught trout there, Vankirk and Drake lived there part of the time, I think; not positive of either of them. I expect they watered their cattle and horses upon the Shields farm, formerly at the pond by the house

part of the time, and part of the time in the lane that run up between this farm and the Petty farm, from a spring that is now dried up. I should not think the descent from Arndt's door to this pond more than fifteen or eighteen feet. I should suppose it would be some inconvenience to carry their water for domestic uses from this pond or stream to Arndt's.

I think I have been along this low spot a short time before Mr. Arndt moved; within thirty years I have been along as often as once in five years, likely oftener than less. I can't say how short a time before Mr. Arndt moved. I think I have been very close by the line, if not along it, within five years before Mr. Arndt moved. I don't know that I did, for ten or twelve years before Mr. Arndt moved, take notice of the water running across Mr. Arndt's farm on to Shields', and then back on Mr. Arndt's. I can fix upon a period, within twenty-five years, when I saw the water flowing across the Arndt farm on to Shields, when I was catching trout; at any other time I did not mind it particularly. If this dishing stopped by the line, the water would still run over on to Shields, because the ground was lower; it opened out into a flat. It must be lower, or the water would not run there as it does. I don't recollect ever seeing grain raised on the hollow from the turnpike down; I never noticed particularly. I recollect often seeing grain on both sides, and a strip of meadow between.

Sworn, &c., March 28, 1840.

John A. Wright testifies—I have been acquainted with the premises on which these parties live eight years this spring. I then moved on the farm on which Shields lives, and continued on it four years, farming the lower part of it.

After harvest, the first season I moved on the place, I observed the water running across from Mr. Arndt's on to Mr. Shields'; it continued to run pretty much all the time I was there, excepting one time it was pretty much dry. The reason that I did not observe it before, was because there was grain in that field, and I had nothing to do with it till after harvest. I am not able to say how long this dry spell lasted exactly, three or four weeks or thereabouts. It was pretty much dry then, it only stood in ponds about, it did not run. I am not able to say at what season of the year it was. Except at this dry season, there was always water enough to water horses and cattle; I never knew it to fail but that once. It had the appearance of banks, and a regular water-course on Shield's side, during the whole time I lived there. I seen the ditch cut along on Arndt's side near the line, a few days ago. That ditch was not cut while I lived on the other farm. That ditch, I should judge, was about five or six feet from the fence. I think the width of the ditch was about three feet, and about a foot deep, some places a little deeper, and others not so deep. It runs up to the stream that runs upon Shields. The head was stopped by stones thrown in, and dirt thrown on them. It appeared to me that prevented the water running down the ditch. It looked

as if it might have been cut to carry the water on that side, from the appearance of it.

The other day I was along the crooked ditch that started up by the turnpike and run down towards Mr. Arndt's house. I think it passed over a limestone soil. I see at one place towards the lower end a couple of small holes, that looked as if water had sunk away. At ordinary time of water it might reach down to Mr. Arndt's house; but it would soak away considerably. If I was owner of Mr. Arndt's farm, I should not like the way it was cut through. At no great distance from the house, Mr. Arndt has plenty of living water. The well is close by the house, not more than fifteen or twenty feet, but a short distance at any rate from the house. It held water when I was acquainted with it; I have no recollection of its getting dry. I have drawn water out of it. He has a spring about a hundred yards from his house, at the spring-house. The pond of water betwixt his house and Mr. Shields' is about sixty yards from his house. This pond is not dead water, the stream runs down through it.

I have been pretty much all the way up this stream, to the head of it; not exactly on it all the way, but the bigger part; have been on it. It had the appearance, wherever I observed it, of an ancient watercourse. It headed above the Morris canal, by the side of the mountain above Newbold Wolston's. It passed under the Morris canal, through a small aqueduct. Another branch rises above Mr. Ribble's, a little further east, by the side of the canal. The soil is pretty generally, after you get a little way below Wolston's, a limestone soil to the end of it. If I were the owner of Shields' place, I should not like to be deprived of it for a considerable amount, on account there is no other water there, or along there. I don't know that I could fix any sum with any certainty. The spring above the pond, by Shield's and Arndt's house, failed the dry time I was speaking of before, so that we had to carry water from below the turnpike from Mr. Carter's and Johnston's farms, three or four hundred yards. At that time Shields' farm was a dry farm. If the springs were all dry, and at any time Mr. Arndt took in all the water into the crooked ditch, Shields' farm would be a dry farm. I should consider Shields' farm a valuable and good farm.

From my observation of the ground between Shields and the turnpike, where the water crosses on Shields, I think the ground would naturally throw the water upon Shields' farm.

And being cross-examined, saith:

I recollect, shortly after I came on that farm, seeing Mr. Arndt ditching through the hollow from the turnpike, through the sloughy part of it, not far above the line between them; but I can't say it was the first season or not. I don't know that I saw him working close up to the line fence, not as I recollect. I believe there was water come down into the pond by the house before harvest. I have no recollection on which side of the line the water came down; I did not go up to observe it; I might have

been along it. It was after we had our creatures turned in after harvest, I first observed the water. I am not able to say whether it was the first of September or sooner.

When I first observed the water running on to Shields, I think it run down about the same it does now, before it crossed upon Arndt again. When I first observed the water upon Shields there was a ditch worn there, in which the water was running. It was about like the ditch above and below, in which there was a clever little stream running. I might have possibly been along there, but have no recollection of observing whether there was water or not. I had nothing to do with the fences around that field till after harvest. The Wires had their grain there, and they attended to the fences. This short ditch near the line, would carry off the water in time of high water for that distance.

I don't know to a certainty, but I think it was the same season I moved there, that Carter cut the ditch across his farm to lead the water down. I recollect seeing Reigle and Wire digging, but can't tell what season. In Wire's and Reigle's farm it does not run in the old channel, but is taken a clever piece up along the bank in the new ditch, and so through Carter's; not all the way in the old, but is cut straight through. The distance from the pond by Shields up to the low wet place is two or three hundred yards; it may be more. There was no lane when I came there, on the line between Arndt and Shields, but there was a lane between Shields' and Petty's farm that came out to the road, from which cattle could come out to water at the pond by the house.

Sworn, &c., March 28, 1840.

Jacob M. Bowlby testifies—I am pretty well acquainted with the farms owned by Mr. Shields and Arndt. There is a ditch cut on Arndt's side of the line, where the water is running on Shields. I recollect seeing the water run down that ditch sometime last winter a year ago. It was shortly after the time of the high fresh. I should suppose, as near as I can recollect it, it was between three and four feet wide. It might have been on an average eighteen inches deep. I went there on one occasion with Mr. Shields; the water was very nearly all running down that ditch then. Mr. Shields wished Mr. Arndt to turn it in the old course again. Mr. Arndt said he did not wish to do it until next week; he wanted to get advice on it. It was turned back immediately, by me and Mr. Arndt putting stones and dirt at the head. After it was done, Mr. Arndt told Mr. Shields he was going to commence up by the turnpike, and bring it along down his fields to his house, I mean Mr. Arndt's house. I don't know that he said how much he was going to take. Mr. Shields told him if he did, he would bring an action against him. He told Mr. Arndt he would not miss of the water for two thousand dollars. Mr. Arndt told him *to go on, he had two thousand dollars too*. Nothing further, that I recollect of, said at that time. The ditch was afterwards dug, and the water taken into it. I helped to dig all of

it. Jacob Arndt and Reigle helped. Part of the way, I should say, it was a good deal of a limestone soil. I don't recollect that any water sunk in it, but I was not much along it after it was dug.

And being cross-examined, saith :

I suppose I have been acquainted with these premises four or five years. At the time of this conversation by the ditch, I don't recollect Arndt telling Shields that his object in cutting the ditch was to carry off the surplus water to prevent its overflowing his meadow. I don't recollect of Mr. Arndt's telling Mr. Shields that he had pushed the water through the fence over on Shields, the year after he (Arndt) had come there. I don't recollect his saying a word about putting it over. I don't recollect his telling Shields that he cut the ditch where the water now runs, when he heard Carter and others were cutting theirs. I am certain that Mr. Arndt told Mr. Shields he had two thousand dollars too. I was not in Mr. Shields' employ the day of this conversation, but have been employed by him considerable before and since, a great deal. I was over at Mr. Shields' on an errand, and he asked me to go up along with him. Mr. Arndt was not up there when we got there; he was at his own house. Mr. Shields sent me for Mr. Arndt.

And being called again in chief, saith :

Cyrus Arndt, Mr. Arndt's son, was present at this conversation by the ditch. I am certain he was there. I did not work much then for Mr. Arndt, nor since,

Sworn, &c., March 28, 1840.

Jacob M. Baylor testifies—I was living with Mr. Shields, some few years since, when Mr. Arndt cut a short ditch near the line fence. I believe it was three years ago last fall, as near as I can tell. I suppose this ditch was something like three feet wide, and may be a foot and a half deep, as near as I can tell; and as to the length, I can't say how long it was, I never took particular notice of it. At the head, I can't say how near it ran to the water-course that ran in on Shields. I can't say whether it ran into the watercourse or not.

Sworn, &c., March 28, 1840.

John A. Fritz testifies—I am well acquainted with the parties in this cause; I have known them for some time; Mr. Shields longer than Mr. Arndt. I have only lived one year last April close in the neighbourhood of Mr. Arndt. I have lived for five years within two or three miles. I am acquainted with their farms some; have been along by them, and worked on Mr. Shields' and farmed a part of it last summer. I am acquainted with the line where the water passes from Mr. Arndt's farm upon Mr. Shields', and runs some distance upon Shields' and then back again upon Arndt's.

This May a year ago, after corn-planting time, I had a conversation with Mr. Arndt. I went over to Mr. Arndt's and asked him

to show me his fine shaped calf, as I had heard he had a very fine one. We found the calf near where the stream passes off from Shields' to Arndt's, between the stream and the line fence. I recollect stepping over the stream. I mentioned to Mr. Arndt what a fine stream of water it was, and what a privilege it was to have such a stream of water there to water the land. He said it was, and then showed me where he was a going to turn it and dry up the old ditch and make a fine meadow. The new ditch was not then cut, that I saw. He pointed with his hand and showed me where he was a going to cut it. He gave no reason for drying up the old ditch, but to make meadow. I told him how wrong it was. I don't recollect now just the words that was spoke, but the amount of his language was, he was making out Mr. Shields to be *a bad kind of a man, and I would be sorry that I had rented of him, and would find him out before one year.* I told him it was wrong to turn the water from where it run. If he turned the water where he showed me, it would not run on Mr. Shields at all; and *then he told me how bad a man Shields was.*

I have seen this new ditch that has been cut; have been along it three or four times; was along it to day and directly after it was cut. It is a limestone soil, a loose open soil; it looks so to me. It looked to me as if the water would soak away in some places. I saw two or three such places; one of them looked as if it had fresh dirt in it, and a stone covered it, I saw that to-day.

From sixteen to twenty years ago I used to travel along the turnpike frequently; since that but little. Then I saw the water running across the road, upon Mr. Arndt's farm. I have rode through it and watered my horse in it. I don't remember ever seeing it dry when I crossed it; although I will not say it did not get dry. I crossed it at all seasons of the year, for four years. In them times I went to Washington often. I don't think it was hardly as big as it is now.

If I was the owner of Shields' farm I would not be deprived of the water for a great deal, not for *two or three thousand dollars.* If I was the owner of Arndt's farm I would consider that crooked ditch *a great injury* to me. From the appearance of the ground from the turnpike down, the water would naturally run upon Shields' farm. The water runs swift, and the banks would keep it in the channel, unless a ditch was dug to take it out. The bank on the lower side of the ditch, before it runs upon Shields, is a natural bank, it don't look like a made one, it looks like any stream of water running through a meadow.

I should consider this an *ancient natural watercourse.*

And being cross-examined, saith:

At the time I speak of, from sixteen to twenty years ago, I never followed the stream from the turnpike down across Arndt's to see where it went to. Of late years I have been along it three or four times. I could not see from the turnpike where I watered my horse, whether the stream reached Shields or not. I have never

followed all along the stream closely from the turnpike down, but where it went crooked I went across. I don't mean to be understood that the water runs swift all the way from the turnpike to Shields, but the greater part of the way, and where it runs through on to Shields there it runs swift up a good piece.

I don't know when the ditch was cut across Carter's farm; I might have heard of it, but have no recollection of it.

If I lived where Mr. Arndt does, and had no living water at my door, I would consider it a very great privilege to have living water there. It looked to me that the water would not run from the end of this new ditch to the house, the ground looked too high, and it looked too flat, and as if the water would leak away; and, also, too crooked to follow round the flat piece of ground.

There is not, on the lower side of the stream between it and Mr. Arndt's house above where it crosses over on to Mr Shields, the appearance of an embankment, or dirt thrown out of a ditch; I took particular notice, and there is none that I could see.

Mr. Arndt did not tell me, as I remember, that he had turned the water upon Mr. Shields some years ago.

When we were looking at the calf, he said Mr. Shields was a difficult troublesome man to get along with; he had given him the privilege to sharpen some rails on his land, and he had asked him kindly to take them off, and he would not for a long time.

There was a great flood of water last summer when I lived on Shields' farm; it washed away a good many rails where I lived, as far as I could see up through Shields' land as far as Strader's and Miller's place. I did not go up the line to see if any were washed away there. There was grain in Shields' field that season where the water runs on to Shields. The ground was not washed away on Shields' side there, as I saw, more than when I first saw it.

Shields had not then his lane made down to his watering place, it was made shortly after.

There is no other watering place on Shields' farm but this, that I ever saw, except the spring at his house, and that soon runs off from his line. There is but a small part of the pond, at the house, upon Shields.

There is no other springs on Shields' place that I know of. I farmed the upper corner field of Shields' place where, it was said, the water came through from Henry's place, but could find no water there; I had it in with oats.

I don't recollect there being a bridge over the stream where it crossed the turnpike sixteen or twenty years ago.

Sworn, &c., May 22, 1840.

Aaron Myers testifies—I am some acquainted with these farms, on which Mr. Shields and Arndt live. I have worked on both of them. It must be about twenty-five years ago since I left there. I worked on them something like five years, as near as I can recollect. I worked on the farm on which Shields now lives, with

Imlah Drake. These five years was chiefly on that farm with Imlah Drake. Frederick Meddagh worked with me the whole of the time. During the time I lived there, I was acquainted some with the stream of water that comes down between the houses there. I was acquainted with it, as far up as where John Van Natta lived at that time. There was water in the spring of the year, in time of a flood, that come through there. In wet seasons it would last along for a couple of months in the spring. The water came on down through the main hollow, across the turnpike and through Mr. Arndt, and then, as near as I can recollect, it came to Mr. Shields' watering place, or rather above, and there it was all springy on both sides. It come on somewheres by the line, and then these springs mixed with it, rather above the present watering place. As near as I can recollect, it went on down the line. It was all bushes and bogs. It appeared to run along where the fence stood. It must have passed something like thirty or forty yards on Mr. Shields, before it came back on to Mr. Arndt. It appears to be somewheres near the present watering place, where it passed on to Mr. Shields before it passed off on to Mr. Arndt, as near as I can recollect; where the stream came down from Mr. Van Natta's, and mixed with the springs, it formed a pond. This pond was something like twenty or thirty yards above the present watering place. The biggest part of this pond, up where it was wet and boggy, was close by the line, mainly on Mr. Shields' place. In wet seasons these springs would hold on till towards harvest, and in dry seasons would dry up sooner. During this time I lived with Mr. Drake, he kept tavern, and attended to his tavern chiefly. Frederick Meddagh was the main hand in attending to the farming. I know Drake was away a good while; he did not pretend to make a full hand on the farm. I have been down lately to see these premises, on the line between Shields and Arndt.

Question. From your recollection of the ground about the watering place, was it lower than on Mr. Shields' or Mr. Arndt's side?

Answer. I expect it has been altered a great deal since then. Along the line, it must have been pretty nearly level where that boggy wet place was.

Question. Which appears to you to have been filled up most, since that time?

Answer. It is a pretty hard question to answer.

According to my judgment this stream, from Mr. Van Natta's down to the Musconetcong, appeared to be an ancient water-course; in time of a flood the water came through there. I think there was a bridge across this hollow on the turnpike. I believe it was a pole bridge. I should think about three feet wide.

And being cross-examined, saith:

That low place on Shields' side was never tilled while I worked on that farm. I won't be certain whether it was ever mowed. I have no recollection of mowing it while I lived there. I worked there something like four summer seasons. In time of a flood, in

the spring of the year, the water came down the Strader hollow, from the west, rather below the wet boggy place, something near where the present watering place is. It came down, pretty strong down, this Strader hollow in time of a flood. The weeds and stuff that came down that hollow lodged *on Mr. Shields' side of the line fence*. It would be a hard matter for me to tell which current was the strongest in time of a flood, the one that came down the Strader hollow or Van Natta hollow. The water also came down pretty strong from the Mansfield meeting-house hollow in the times of a flood in the spring of the year. The water from the meeting-house hollow first united with the other water from Van Natta's in Mr. Arndt's field. It must have been a hundred and fifty yards above the watering place. It runs in my mind there was weeds and stuff lodged against the line fence on Arndt's side. I think, at the head of this pond, the water that flowed from Van Natta's flowed through *on to Mr. Shields* in a wet time. Above where the watering place is at this pond there were springs on both sides of the line; the springs boiled up in this pond, but not at this watering place, as I recollect. There was a worm-fence along the line at that time. I recollect that this pond was mainly *on Mr. Shields' side*, from the fact of having to climb the fence and from working along there.

Question. Are these the only reasons why you think the pond was mainly on Mr. Shields' side, from your working along there and climbing the fence?

Answer. I don't know in particular that I can give any other reason about it. I think the ground was pretty level between this pond and the present watering place, on both sides. In time of a flood the water would be up as high as three rails of the fence, I should say, on this level ground. It was quite a wide piece of ground there, and it spread, as near as I can recollect, and did not all go down *on Shields*. The main current, in time of high water, was something near the line, as near as I can tell. Along by the watering place, on Arndt's side, not a great ways from the line, there was a *little knoll*. After the water subsided and got low, the stream run along the fence, between the knoll and the fence, *and under the fence*. It run quite crooked, sometimes one side and sometimes the other; between the bogs there was no regular ditch or mark for the water. I do not know that there was a stream run down on the east side of the knoll; there might have been, but I can't tell about that. After the stream coming down across the turnpike stopped, the water from these springs partly flowed *down on Shields along the fence, some little way on Shields' side*. When Mr. Arndt first spoke to me and subpoenaed me last spring, I think I told him about this wet boggy place, that there was water on Shields. I have most forgot what I told him. I could not understand the place he wanted to speak about. I was at his house, but not the ground. I have not seen it for twenty-five years till last Saturday.

Question. Did you never tell any one that the water did not

run on Shields, but that in time of a flood there was water on Shields?

Answer. I told Mr. Shields and Mr. Arndt, both, that I had never seen any watering place over there. Mr. Arndt subpoenaed me last spring in this case, and I told him I never knew any watering place over on Mr. Shields since I knew the farm, as near as I can recollect. I told him I remembered a wet boggy place on Mr. Shields' side of the fence.

Question. Did you not tell him you had never seen any stream of water running on Shields' side of the fence, except in time of a flood?

Answer. I can't certify about it; I might have told him so.

I guess I did tell Mr. Arndt that the water run down through the slough in his meadow; but it was down below the watering place towards his milk-house that I had reference to: and that is the place I thought Mr. Arndt had reference to when he was inquiring of me. I was at Mr. Arndt's house when he was talking to me about it. I can't tell whether we were in the house or out doors when talking about it. I went home with him, and staid all night. He pointed out towards the watering place from the turn-pike. I said I would like to go and see it. Mr. Arndt said it was too wet. I said I could not tell about it, as I had not seen it in twenty-five years.

Question. Did you not at that time tell Mr. Arndt that there was no water run over from his side to Shields' side, except down near the house?

Answer. Well, I don't know; I might have told him; I can't recollect that.

Question. Did you not also tell Mr. Arndt that there was but little water, and that staid on his side?

Answer. I guess likely I did tell him so, but I had reference down by his milk-house; I could not take his meaning from what he said.

Question. Did you not, at the time, make the exception by the milk-house?

Answer. I don't recollect; I might though. I don't recollect one way or t'other.

I have seen the ground, since last spring, last Saturday and this morning. I went to see it last Saturday, at the request of Mr. Shields. He did not try to persuade me in particular that the water run over on his side. He told me that others said it had run over, and thought may-be I knew something about it. I don't know in particular that Mr. Shields did point out the place where the water run, before I pointed out to him the wet place.

Question. Did you tell Mr. Shields that the water run over on him thirty or forty yards, and then turned back on Arndt, before Shields told you where it used to run?

Answer. I don't know as I did. We was talking about this slough, and I told him it run down this slough along the line fence; but I did not recollect how far it run on him,

I don't know as Mr. Arndt asked me any questions about the water down by the house; but there is where I thought he meant. I spoke to him about the water back of Shields' orchard by Arndt's milk-house. There is where I meant no water went over. Mr. Arndt might have tried to ask me about the present watering place up along the line, but I knew of no watering place there. I did not know of any there, and for that reason could not tell him. I told him I knew nothing about a watering place up there; but I can't recollect whether he first asked me about it or not.

Question. How come you to tell Mr. Arndt about this wet boggy place along the line, when you thought he meant down by the spring-house?

Answer. Because there was a watering place down back of the orchard, that is the watering place I thought he meant.

Question repeated.

Answer. They was both talked about. I believe I told him I remembered a wet boggy place up there.

Question repeated, and objected to by counsel of complainant, because an answer had been already given.

Answer. I guess, as near as I can tell, he was telling about the water coming down across the turnpike and along through there.

Question. Did you not tell Mr. Arndt there was no watering place up along the line, on Shields' side?

This question objected to by counsel of complainant, because already asked and answered, unless in connection with the last question.

Answer. Well, I have answered that once; I told you that I did not know of any.

Question. What caused you to tell Mr. Arndt so?

Answer. I had never seen any up there, I expect must have been the cause. I never saw any up there; always had to take the creatures down to the house.

We stood near the brook in the turnpike when we were talking, near the head of Arndt's ditch. He pointed across the field. He did not point towards his spring-house, but towards where the watering place is now, I expect. He was telling there was a watering place on Mr. Shields' side now. I won't be particular about that, whether Arndt asked me whether the water run over at the watering place. I told him there was no watering place there, but I recollected there was a wet place there. I can't tell particular about that, whether that was not the spot that Arndt was inquiring particularly about, we were so far off. We were across a field, and I have not seen it so long.

Question. Did Mr. Arndt ask you about any other spot than that by the present watering place?

Answer. Well, I can't tell you about that one way or t'other; there was a good deal talked about as we went along.

We stopped and talked there a little while.

Question. While you and Mr. Arndt stood there on the turn-

pike, did he ask you about any other spot than that by the present watering place ?

Answer. While we stood there, we talked about all along down the ditch. I mean the ditch that goes from the turnpike down through his field where the water now runs. I can't tell anything about that, whether it runs below the present watering place. I have never been all along to the end of it. I only see where it started at the turnpike. I was at the watering place last Saturday. There was no ditch dug up through the field ; I saw a little one by the watering place. The water was not running in this little ditch ; it was the little ditch on Arndt's side. I believe this little ditch went below the watering place ; I am not certain of it ; it was along by the watering place any how.

Mr. Arndt was telling how the water went through into Mr. Shields' field by the present watering place. That is what I meant when I said we were talking about all along down the ditch. While we stood in the turnpike, I don't know that he talked of any place lower down than the present watering place between that and the house. We could not see his spring-house from where we stood in the turnpike, as I recollect.

Question. I want you now to explain how you could understand Mr. Arndt to mean down by the spring-house, when he spoke only of the present watering place ?

Answer. I don't know any other reason, than because there was a watering place down by the orchard, and none up there, that I ever knowed.

I told Mr. Arndt the water did run over on to Mr. Shields, down by the house. I think I told Mr. Arndt there was water running up along by the present watering place, a kind of pond and boggy place. I don't recollect that I told it run from his side to Shields' side. Likely I told him it might run ; but it had been so long ago I could not tell head nor tail about it. I was already subpoenaed then, I believe. The subpoena was served about three weeks before. I remembered about the wet boggy place, and being to see it, brought it fresher to my mind, and recollect about its being springy there both sides.

Question. What makes you recollect now so particularly that there was a stream of water running formerly on Shields' side, when you told Mr. Arndt, last spring, that it was so long ago you could not tell head nor tail about it ?

(This question objected to, because answered to by the last answer.)

Answer. There was not much of a stream, as I know of, only from this boggy wet place along the line. I recollect it particularly now, by seeing the spot of ground, and recollecting it was boggy and wet on both sides.

Question. Would you have recollected that there was a stream of water running on Mr. Shields' side formerly, if you had not been told by Mr. Shields and others that the water did run there formerly ?

Answer. There was nobody never told me about it.

I have been asked if I ever drank water up by the present watering place on that side of the fence, but I told him I could not remember it. I don't know that I was asked if I did not recollect of stooping down and drinking out of the brook. I went on the ground this morning, at the request of Mr. Arndt. I can't tell whether the gully on Mr. Arndt's side has filled up any by ploughing or tilling. There is a gutter washed by the watering place, on Mr. Shields' side, that was not there twenty-five years ago. It was all bogs and mud, the water went in between; there was no particular ditch. These springs around the watering place are all dried up now; the bogs and pond are all gone. The water from Mr. Arndt's spring went on down along the line, as near as I can recollect (so I meant to be understood) in ordinary times, when no water run down across the turnpike. I know the pond was there, by living there, and not from being told by Mr. Shields or anybody. The water run under the pole bridge at the turnpike, and not over it, unless in a very high flood. I lived one winter on Mr. Arndt's place with Francis Groff. In ordinary times there was no water running across the turnpike, none that ever I seen. Samuel Shields was with me at the ditch and watering place this morning; Mr. Arndt was not there. I don't know that Mr. Shields said anything to me where the water used to run; he said but very little about it. Don't know as he told me where the pond used to be. I don't mean to be understood to mean positively that the water run from Mr. Arndt's side on to Mr. Shields, but that I believe it did; to the best of my recollection it was all bogs and bushes along the line; in noticing it this morning I think the springs come in upon Shields higher up than where the water does now. About the brook I don't know whether it did or not. I think the water appears now to run through Mr. Arndt's field, in a channel worn by itself, and not in a ditch. I have not examined it in particular. The banks might have been thrown up, but what I seen of it I thought it was washed.

And being called again in chief:

When I was talking with Mr. Arndt, on the turnpike, I could not see the present watering place from the turnpike.

Question. When you come to view the ground last Saturday, did you, or did you not, find that the place they were a controverting about was higher up than you expected when you were talking with Mr. Arndt?

Answer. I could not say for that. I have not talked with any other person, except Mr. Arndt, on the subject of this controversy. I have not had any conversation, of any consequence, in particular, with any persons, of what I knew about it. I had a very trifling conversation with Imlah Drake about it.

And being cross-examined again, saith:

When I stood with Mr. Arndt on the turnpike, likely he spoke of the lane through Mr. Shields' farm, that came down to the watering place; he was showing over that way. There was grain in Mr.

Arndt's field, and I could hardly see over it; but I don't recollect whether I saw the lane. I mean to say that I could not see the spot of ground where the watering place is, from the turnpike. When I was there last Saturday, I found the spot where Mr. Arndt pointed it out, as near as I can recollect. I have not talked a great deal with Mr. Shields on the subject of this controversy; no more than I have told here. I have not talked with John Strader, jun. I have had very trifling conversation with Frederick Meddagh; no more than I have told here. He told me we had often drunk on Mr. Shields' side, and I told him I did not recollect; and that was the principal conversation I had with him about it. Had no other with any other person, as I know of. I have had no conversation with Capt. Bowlby, more than I have told here, about the pond and the boggy place. I had this conversation with Capt. Samuel Bowlby last Saturday, down at Mr. Shields'. He said, some said there was no water there; but he said he knew there was a pond, a wet boggy place. I said I remembered it, too. He came there while I was there; we did not go together. Mr. Shields did not send for Capt. Bowlby. Mr. Shields' father-in-law had went to Capt. Bowlby's, and they came down together. I guess Mr. Shields did not send for him, for he had gone from home. William Emery is Mr. Shields' father-in-law; I believe he lived near Beatties-town; I never was into his house. Emery and Capt. Bowlby came to Shields' betwixt three and four o'clock in the afternoon. None of Emery's family was at Shields'; they were at Capt. Bowlby's. I don't know they were, except what they said.

I live about ten miles from Mr. Shields. Mr. Shields came and brought me down to his house on Saturday; he came for me about seven o'clock in the day. He did not tell me Capt. Bowlby was to be at his house, and he wanted to show us the ground together; no such conversation at all. He told me he wanted me to go down and look at the water. That was all he told me about the water in particular. I don't know as he told me a coming along, everybody said the water came over on his side. As we were coming along, he said some said it came over on his side. He said he had made a lane to water his creatures there. He said some said there was water there, and he wanted to know if I knew anything about it; and I told him I knew of a wet boggy place. I don't know as he told me about that pond that Capt. Bowlby spoke of in his testimony, and which he had caught fish out of, as we were coming along; but it was talked of after we got down.

Question. Did not Mr. Shields tell you, in coming along, that Arndt had dug a little ditch on his side, to steal the water from him?

Answer. That was talked of after we were down here.

Question. Did he not tell you, in coming along, that he had proved already that people had gone up the brook, along the line, fishing, and that the brook run on both sides of the line fence?

Answer. I don't know as he did.

Question. Was that talked of when you got there?

Answer. It was talked of; Capt. Bowlby said he had fished up the brook; caught trout.

Sworn, &c., October 1, 1840.

Calcb H. Valentine, esq., testifies—I have had a very slight acquaintance with the premises on which complainant and defendant live, for a number of years. I made a survey of Shields' farm the twenty-fifth day of February last, and I took a level of a part of the premises on the thirteenth day of March last. Mr. Shields was present all the time, and Mr. Arndt part of the time. Mr. Shields gave notice to Mr. Arndt that he was a going to take the level. Mr. Arndt went up, but left before we got through.

The map produced (being *Exhibit No. 1*, on the part of the complainant) is a map of the farm of Samuel Shields, and also represents a part of the premises of Mr. Arndt. The blue marks represent the old channel of the brook, from the Spruce run turnpike crossing on Shields' at the large mark representing the *watering place* of said Shields, at the end of a short lane running on Shields' line, two chains and eight links, then again crossing the line on Arndt's, and uniting with the spring run near Shields' house. The dots across the line and brook represent the stations on which the level of the land was taken. The red marks represent the new channel cut by Arndt from the said turnpike, then again uniting with it near Arndt's house. The yellow lines enclose Shields' farm; the opening through the middle represents the lane leading from Shields' barn to the several fields, and from the fields to the watering place; the blue marks along it represent the gates or outlets from the fields to the lane. This is the whole written description of the farm on the map. Mr. Shields' farm contains a little over two hundred acres in the whole. There is one hundred and ninety-seven acres and forty-nine hundredths in the fields put together, and the openings and ground for buildings make up the rest; the whole of the fields are arable or meadow land; a very small proportion of meadow. I don't know that there is any natural meadow; I think it was ploughed and seeded down. It is a good farm; it is in a very good state of cultivation; the improvements upon it are a dwelling-house and spring-house, a large barn and wagon-house, and corn-cribs, hogan, &c. My impressions are there is a cow-shed, but I am not certain. The buildings are all good and new, except the dwelling-house; that is a comfortable farm-house, but old. There is another small frame dwelling-house on the south-west of the lane that leads through the farm, sufficient for a tenant's house. The fencing is good. The fencing of the lane is new, but I don't remember whether it is posts and rails, or a post and board fence.

There is but one place where they can get to the watering out of any of the fields, and that down the short lane, as laid down in the map. The gates that open out of the fields are large enough to shut up the lane when opened, and that gives an outlet at times for the creatures to go to the watering place. It is about sixteen

chains from Shields' house to the upper end of the watering place; which watering place is at the end of the small lane, the water still passing lower down on Shields before it passes on to Arndt.

The length of the channel where the water now runs, from Shields' corner, standing a little below the turnpike by the house, is forty-four chains and eleven links up to the turnpike again, the way I have it in my field-book. It is all on Mr. Arndt, except the distance at the watering place, and a *little part of the spring run*, that spreads in a large spring near the house. The proportion of the spreading of the spring upon Arndt and Shields is pretty accurately represented on the map. The *new ditch* is dug, and correctly delineated on the map, as far as the black line across it, and designated by figure 1. The rest of the ditch was delineated by the stakes I found standing. This *new crooked ditch is upon high ground*. I did not observe particularly whether it was a loose limestone soil or not. I think I measured the distance from the pond to Arndt's house; but I have no recollection of the distance, nor any memorandum of it. The map represents the distance correctly. I laid down both streams by actual survey, and the distance must be correct.

I made the levelling at and just below the watering place. I done it carefully. I saw the stakes all drove, and took the figures myself. I begun below the watering place and above where the water runs off on to Arndt. I drove three pegs on each side of the stream, at figure 2. I placed the tops of the stakes as nearly level with the surface of the ground as could be. The peg nearest the watercourse on Shields' side, was two-tenths and thirty-four hundredths of a foot lower than the peg on Arndt's side. These pegs were about equal distance from the stream and line. Taking the two next stakes on each side, the one on Shields was six-tenths and fifty-nine hundredths lower than the one on Arndt, and these, also, were about equidistant from the stream and line. The third peg was two-tenths and eighty-nine hundredths lower than the one on Mr. Arndt's side, and these also were equidistant from the stream and line. The next level I took was at the lower end of the watering place, at figure 3. There was a ditch dug out on Mr. Arndt's side of the fence; there was no water running in it. The bottom of the channel on Shields' side, where the water was running, was six-tenths and thirty-three hundredths of a foot lower than the bottom of the dry ditch I mentioned. The top of the ground by the fence, at this same point, was two-tenths and fifty-five hundredths lower on Shields' side than on Arndt's. I took a parallel level from the lower part of the watering place to where the water crosses again on Mr. Arndt. I found the fall of the water to be seven-tenths and sixty hundredths. In taking these two levels across the stream, my object was to ascertain which side of the line was the *lowest ground*, to see where the water would *naturally flow*. *The water would natu-*

rally flow on to Mr. Shields as the face of the ground was when I took the level.

There was a *little knoll* on Mr. Arndt's side, a little further east of the dry ditch. I did not drive any peg east of the knoll, as it was higher than where I drove the peg. I recollect of Mr. Arndt's stating where the channel had run through. I don't recollect driving a peg in that place; but I recollect trying it, and it was higher than the ground on Shields' side; this was near the first station.

And being cross-examined, saith:

I don't know how many acres are contained in Mr. Arndt's farm; I don't recollect that I have heard. It lies between the turnpike and Shields' line. His farm is in a very good state of cultivation, too. In good fence. I have only noted upon this map (*Exhibit No. 1*) the dwelling-house. Besides the dwelling-house, the improvements are a large barn and corn-shed. There is a spring-house, and I believe a new wagon-house, but not so positive. I don't recollect anything else.

I don't recollect that I found any stake at the turnpike, at the end of the new ditch, delineated on the map; my own impressions are that I found no stake, but that Mr. Arndt stated, or showed where he meant to run the ditch to the turnpike. The water at the end of this ditch would naturally run down to the pond by Shields' house, unless carried across the turnpike. The dots from figure 1, towards the house, would represent the stakes as I found them. It was four chains and forty links from the last stake to the turnpike. I am not positive that I got the information from Mr. Arndt. I got it from somewhere; I think it was Mr. Arndt, but I am not positive, *that he meant to carry the ditch to the turnpike*. It might be that I got the impression from Mr. Shields. From the pond up to Mr. Arndt's house there is a pretty considerable ascent. I don't know that I could, from memory, form any estimate of it.

I don't recollect distinctly, but my impressions are, that Mr. Arndt did not stay until I had the level at the first station. I set these stakes rather obliquely to the line at the first station. On Shields' side they were the lowest towards the house. These stakes were set in a line. The furthestmost stake on Shields' side was very little lower than the furthestmost stake on Arndt's side. The line of the stakes might be, perhaps, ten or fifteen degrees from right angle to the fence. The two first stakes, I should judge, were not more than ten feet from the stream or line, and may-be not the half of that; I don't recollect distinctly. I should judge the distance between the two outside stakes was from sixty to eighty feet. I could not discover that the ground by the first stake, on Shields' side, was washed away any or lowered by the tramping of cattle.

The distance from where the water crossed back from Shields upon Arndt to the first level, is half way to where it came on to Shields. The dotted line representing the first level on the map,

appears to be about one-third of the way ; but the actual level was taken about half the way. I don't recollect what caused Mr. Arndt to go away so soon. He pointed out the mode in which he wished the level taken ; I told him I did not think it was a correct principle to work upon. Mr. Shields was present, and what Mr. Arndt said was said in the presence of Mr. Shields.

There was one part on Mr. Arndt's side of the fence that appeared to be a little hole or hollow, and he thought one peg ought to be set in that, and the other directly opposite, that is, nearly at right angles with the line on Mr. Shields. I don't know how far it was from this hole or hollow. I set the first stake ; it was close by, rather further up the stream. This little hole or hollow was between the two levels, nearest the lower one, and I should judge was a little further from the fence than the first stake I set on Mr. Arndt, but between that and the next one. If the water had got in that hole and filled, it would have run out on Mr. Shields before it would on Mr. Arndt ; and that was the reason I did not think it a fair place to level from. There was a little *ridge of high ground below, on Mr. Arndt*, which would have thrown the water on Mr. Shields. This ridge ran a *little obliquely to the line*, and the stakes were set in range with it and on it, to ascertain where the water would flow over that ridge ; that little ridge run up to the fence. I don't recollect of noticing a corresponding ridge on Mr. Shields' side, beyond the stream. This ridge was very slight or small, of course, from the level I took. This ridge continued to get higher towards Mr. Arndt's high ground ; it pointed up north-easterly. The ground got higher on both sides from the fence on Mr. Shields and Mr. Arndt, and that was the reason I stopped setting stakes. Mr. Arndt did not approve of this plan, but I don't recollect how long he stayed. I think he went pretty soon after we commenced setting the stakes on the first level. Mr. Shields gave no directions how the level should be taken. The distance between the two levels, I should think, would be about fifty or fifty-five feet, and I should think twelve to fifteen feet from the upper level to where the water came in upon Shields ; that I judge to be the length of the watering place.

At the upper level, I set two stakes on each side. The stake at the bottom of the dry ditch was five or six feet from the fence, may-be not so much, and the other between that and the fence ; and the other was in the channel on Shields' side, about the same distance from the fence as the one in the dry ditch ; and the other on Shields' side was on the west side of the channel. This watering place was fenced in, and this last stake was below the fence that fenced in the watering place, and below where the creatures could get at it to trample it down. I don't recollect that Mr. Arndt said, that they ought to go above the watering place along the ditch, twenty or thirty paces above where the water enters upon Shields, and take the level there. When I was taking the level, I did not go up the ditch, twenty or thirty paces above where it went in upon Shields, to take an observation of the ground. My

impression is, that the make of the ground was such that the water would necessarily run down near the line; and that is the reason I did not go further up. There seemed to be no dispute that the water would run down pretty near the line. I did not notice particularly, but I should think the water in the ditch runs through the lowest ground all the way down from the turnpike. I am not positive that I told Mr. Arndt it was not a correct principle to work upon, when he objected; but that is my impression. I don't recollect of Mr. Shields saying, go on judge. I don't recollect whether the fence is on the line, or not, down by Shields' house.

Sworn, &c., October 1, 1840.

Frederick Meddagh testifies—I have been acquainted with these farms on which Arndt and Shields lives, upwards of thirty years. I worked on Shields' farm betwixt five and six years for Imlah Drake and Robert Skinner. For Drake first, and afterwards for Skinner. I was not there all the time Drake lived upon the farm; he lived there before I went to work for him; but he moved away before I quit working for him. He kept tavern and farmed while I lived with him, and had the Jugtown mill property, he and his brother together. I generally see to the farming, and he sometimes helped. He generally attended to the tavern, and sometimes me.

I was acquainted with the water along on the line between the farms of Shields and Arndt; the water above the *walnut tree*, which stood a little from the line fence, the *stump* of which is now there, on Shields' side; there the water came in. There was a low piece of ground on which the water came off of Arndt on to Shields. This walnut stump was below the present watering place, thirty or forty, or may-be, sixty or seventy yards, close by the ditch in the hollow that came down from Strader's, on a knoll. The water run upon Shields, may-be sixty or seventy yards, may-be more. It run in them times aways on Shields, if I remember right, and then run through under one pannel, and then run back on to Shields, and then run down aways on Shields, and then run out on Mr. Arndt. The place where this water run on to Shields was betwixt the gully that came from Strader's and a pin-oak tree along the line, *some remains of which are there at this day*. That pin-oak tree was above the present watering place, on a little knoll; I believe it was rather on Shields' side, but pretty much right in the fence. The water that run upon Shields come from springs; it was kind of wet, boggy, and wild. The ground where it run was pretty much of a gully, much more than it is now; it has filled up a sight, considerable, on both sides, to my recollection. I have been to see the ground lately; I seen it this morning, and before some time this season. It was a good many years since I had seen it before that.

Mr. Shields' side, I think, is filled up considerably the most. I recollect there being a pond above the pin-oak tree on Mr. Arndt's side, and boggy and wet close by the fence on both sides where

the water run. It was very wet and boggy on both sides down about the watering place, and just above. The water did not stand only, but run on Shields' side. There was a ditch on his side two feet deep, and some places about a foot deep, by the cattle coming down to drink there, and tramping it in. When they would come down to drink, they would slip the bank in with their fore-feet. When the cattle run in that field, they drank there, and when they did not run there, we drove them down by the house to drink. There was no lane there then, as there is now. Some years they were not in that field at all.

All the water that run down there *did not come from these springs; after a hard rain, and in a wet time, the water run down the hollow from Wyer's into this pond, and then down the ditch.*

At that time this ditch on Mr. Shields' side was the principal outlet to this pond all the while I lived there, except in a terrible heavy long rain, then it would spread the most over Mr. Arndt's side, for his was the widest; I mean Mr. Arndt's flat was the widest. A great deal of water came down that hollow in time of a rain. There is a great distance to both of these hollows that collected the water; a considerable, also, came by Bowlby's, and so on down through the meeting-house hollow. I had frequent opportunities of seeing the water run on Shields, up there on Shields' side. Aaron Myers worked with me a good deal of the time I was there, and John Force from spring to fall; and then Myers come back to his place again. I recollect Myers and myself working up along there together; *often drank out of it*, often in the forenoon. When I was there lately I observed a short ditch cut on Arndt's side, from the watering place down.

Question. What did it appear, to you, was the object of that ditch, from the appearance of the ground?

Objected to by counsel of defendant.

Answer. It appeared to me as if the ditch was made to draw the water from Shields. It appears as if this ditch run clean through to the present channel; but there are stones and dirt in the head of it, that no water runs there now. I observed this season this crooked ditch. I have followed farming and different kinds of work, but farming principally.

Question. If you were the owner of Mr. Arndt's farm, would you consider that ditch, with the water turned in it, an injury or benefit to the farm?

Objected to by counsel of defendant.

Answer. I expect, by turning the water off, it would make the grass a little better; but then by coming to plough again, and the weeds a growing up, I had rather not have it at all, if it was mine.

I have seen how Shields' farm is fixed in reference to his watering place, and I should consider it a considerable benefit to the farm.—Objected to by counsel of defendant.

If I were about to purchase the farm, I would give a great deal more to have that watering place there, than to be deprived of it.

Question. If all the water was taken in this crooked ditch at the turnpike, and discharged into the turnpike by Mr. Arndt's house, where would it run naturally?

Answer. It would come out below the road by Shields', betwixt the blacksmith shop and the bridge.

I observed the road below Mr. Arndt's house, so as to form an opinion that the water would cross the road, or the bigger part of it.

I consider this stream down by Woolston's an ancient water-course; there is a kind of a hollow and natural place for water to run. Of course if there is water, it will find the lowest part of the ground; I have seen a great deal of water there in a wet time.

I live about ten miles from these farms. Mr. Arndt and Imlah Drake came to my house to inquire how the water used to run. They asked me if I knew anything about this water, and I told them it had been so long ago I did not remember exactly how it was. Mr. Drake asked if I did not know that the water did not run over on to Shields, and I told him I knew it did. He asked me then, if I did not remember of hauling stone in that wet place, and I told him I did not; and he said we had hauled a great many. Mr. Arndt was by during this conversation. I made mention then, to both, that there was water enough for Arndt and Shields both, and a half a dozen more; and it was all sent free for every one, and they ought to settle it. And Mr. Arndt said he thought so too, and he had offered everything that was fair. And I think he said he had got Mr. Drake to go and settle it; and then he said, that he had offered him that if Shields would give him the water April, May, and June, he might have it the rest part of the year. Mr. Arndt seemed to take it to heart very much, and shed considerable of tears; and Mr. Drake made mention and said, "*never mind brother, you will gain it any how I expect,*" or something to that purpose, and then went off.

And being cross-examined, saith:

Myers is six years younger, I guess, than I am; I am forty-seven last August. Myers was a small boy of his age. I am sure we drank water out of a running brook, and not out of a spring. There was a small stream running down on Arndt's side at that time, but not as large as this other. It seemed to be a small one, and joined with the other a little below where it came in from Shields' side. I never went a fishing up these streams. I have been after trout when I have been along it. Would see them then in the ditch and try to catch them; but to go a fishing a purpose I never did. There was a little ditch or gully down through Arndt's meadow opposite the watering place, not so large as on Shields' side. The water on Shields' side would sometimes run all summer, sometimes quite low, and sometime plenty. It was springy on both sides, but most on Mr. Arndt's side; and the water came from these springs, I expect. In time of rain it would be higher—it would get the draught of the mills.

Except in a wet time in the spring of the year, after the melting of snows or a heavy rain, the water did not run from Wyer's hollow down across the turnpike. It would run across the turnpike sometimes a considerable time, and sometimes a short time, just according to the wet.

Question. Have you not said, when talking about this, that you would be damned if there was any stream of water running across the turnpike down the Wyer hollow?

Answer. I don't know as I said I would be damned; but I said there was no *steady* stream while I lived there. But I said to the mowers, while they were grinding their scythes, to John Lake, any one that said the water did not run on to Shields in a ditch, was a damned liar. And that I say yet. I have been along there so much, along there almost every day, in hauling. By the walnut tree was the crossing place. In time of a flood, the water came down all these hollows I have mentioned, and mingled together on this long flat ground. In time of a flood, a sight of water came down the Strader and Wyer hollows; I don't know which had the strongest current at that time. The Wyer hollow run the longest; and I guess it had rather the furthest distance to get the wash; the other was pretty rapid, but did not last so long. I don't know but that it would run rapider down the Strader hollow than the Wyer; it was narrower, and had not so wide a space to run. The weeds and stuff would wash up on both sides of the line fence some. I have seen some, I expect, on Arndt's side of course. These channels do not come in together, the one from Strader's comes in a clever step below.

In the time I worked there, the regular watering place for that farm was down by Mr. Shields' house.

This ditch by the watering place on Shields was not wide, may-be in some places three feet, and in some places more, and in some places less; it is a hard matter for me to tell; I don't know. From the head of the watering place to the remains of the pin-oak it is twenty or thirty paces or more. I did not pace it. It stood right at the bend of the line fence.

I did not see any of these old springs on Shields' side. I did not go to look on Arndt's side. I never ploughed this low place on Shields' side while I lived there; it was very wet. I mowed it, I expect, every season, but can't tell whether we did or not. The grass was bigger part wild, some little timothy on the ridge. I don't remember but I might have hauled stones in this ditch, but I do remember hauling by the walnut. I think it was some time last spring, or fore part of summer, that Mr. Arndt and Drake came up to my house; I can't tell exactly.

Question. Are you positive that Mr. Drake said to Mr. Arndt, "never mind it brother, you will gain it anyhow I expect?"

Answer. I am *positive* he said so.

If the water was discharged from the crooked ditch back of Arndt's house, it would run into the pond by Shields' house. There was a ditch part of the way from this pond above the

pin-oak to the watering place. I don't know whether it was ever cut or natural; it was the crookedest stream on Shields' side I ever saw in my life.

I don't know of any ditch or gully across Arndt's field in old times; from the turnpike there was a hollow.

Above the head of this dry ditch with stones in it it was a low, wet, boggy place on Mr. Arndt's side, and on both sides. I don't think it would draw off the water on Mr. Arndt's side, because the ditch is not in the lowest part; if it had been made in a south-east direction, it would have dried it on both sides of the ditch.

Sworn, &c., October 2, 1840.

William H. Lane testifies—I worked on the farm of Mr. Arndt with Henry Groff; I can't say exactly how long ago, full twelve years, and may-be a little more. I think I worked there one year, if I am not mistaken, at farming. I saw the water on the line betwixt Shields and Arndt often.

It is about twenty-two or four years since I first knew it; since I was six or seven years old. From that time until I left there, I was acquainted with it more or less. My father then lived part of the time in New Hampton, about a mile and a half off, and the rest of the time at the place. During this time I was along the brook in the summer time pretty middling often; sometimes fishing, and sometimes catching frogs and turtles, as boys will do, killing snakes, and so on, anything to pass away the time.

On Mr. Shields' side there was a flat boggy place, near or at the present watering place. I think the watering place is part of the flat place I was speaking of. There was water all through those bogs. Through the bogs there was a ditch or channel through which the water run. It did not run very fast in any place, but worked its way through. I don't know as I can tell about that, how far it run on to Mr. Shields. At the head of this wet place it came through on to Mr. Shields, and run a little ways, and then went back on to Mr. Arndt, and then back on to Mr. Shields. There was water on both sides, but the *channel or deepest water run in this manner*. I can't tell how far it run on to Shields before it run on to Arndt again, but it was some little distance. I never saw any change whilst I was there backwards and forwards, but it continued to run about in this manner. At the head of this flat place I have been speaking of, there was considerable of a pond or wet low place on Mr. Arndt's side; on Mr. Shields', it was dry ground.

It was always in the summer time I was there, except the year I worked for Groff. I don't know that I can tell about that, how far this wet place extended out on to Mr. Arndt from the line; but there was a clever strip of ground up towards the turnpike that they did not pretend to plough. It was mowed the year I worked for Groff; coarse heavy, not fit for horses. This pond or wet place run to the line; it was all connected with the other on

Shields' side. I think it was a little higher up where the water used to run upon Shields than where it runs now. *The bank* is what I judge from. There was a good many bushes along the line fence; it looks differently from what it did then.

At that time I have seen the water running across the turnpike in time of high water, and running down and connecting with this water on the flat. I can't tell how long or what time of year it was *I have saw it*.

I recollect there being a bridge across the turnpike. I don't know that I can tell what kind it was; either a pole bridge or a small plank bridge; it was raised some little height from the ground. I can't tell how wide it was; there was room for a clever little bunch of water to go through; I have seen water passing under it; I don't know whether once or oftener; I might several times, but I don't recollect.

From my acquaintance with this stream, from Woolston's, and so on down through Shields' and Arndt's to the Musconetcong, I should consider it an *ancient natural watercourse*.

And being cross-examined, saith:

I mean, by an ancient natural watercourse, when it would run when there was water to run; there is no other way for it to run on the top of the ground. I don't know which way it got to the Musconetcong when it sunk in Wyer's hole. I don't know how many years it disappeared in Wyer's sink-hole. I never see any water crossing the turnpike, only in the spring of the year or after a heavy rain.

The water that formed this little stream down by the watering place raised out of the ground on Mr. Arndt's side, and Mr. Shields' side too. It was springy a clever piece up Mr. Arndt's side up the old channel. I don't recollect seeing any springs on to Mr. Shields' side around this wet place; I think likely there was some towards the head of it where it passed through, but don't recollect them. This wet place was above the outlet of the Strader hollow. There was water along down Mr. Arndt's slough, standing, I can't say it was running. There was a little high space of ground between these springs and the slough. Opposite to the watering place, a clever little piece from the line, there was water, that worked its way down through Mr. Arndt's slough to the pond by the house. It would puzzle a man to see it run, except when the water was up after a rain. It was below this ridge of ground. This ridge run across from the watering place to Mr. Arndt's high ground. When the water was up after a rain, and come down from the turnpike, I don't know that I can answer on whose side the current was the strongest. When I said up the old channel, I don't mean a gully or ditch, only where the water used to run.

Sworn, &c., October 2, 1840.

Adam Rhinehart testifies—It is some number of years since I was first acquainted with these farms on which Arndt and Shields live. I lived on Mr. Shields' in eighteen hundred and eighteen.

I and Jacob Carter carried on the farm together. We went away in February or March; not there quite a year.

There was water at that time, if I recollect right, passing through from Mr. Arndt on to Mr. Shields, up pretty near to Mr. Shields' present watering place; rather higher, I think. I can't recollect the time it continued to run, it might have been the whole season; I don't know; can't tell. I am not able to tell whereabouts this water came from; but it was a wet piece of ground all the way up on both sides. It has altered very much. In wet times I have known the water to flow on to Mr. Arndt across the turnpike. I don't know that I can say particularly how long it was, according to the wetness of the weather. I don't know as I can tell whether it was a week or two, or month or two. I never passed along up and down the stream; I have crossed it where the roads cross it. I recollect a bridge across this hollow on the turnpike, I believe; I can't tell the size of it; but it was a clever little bridge for the water to pass under.

Where the water run in upon Shields, the channel was very crooked; it was a boggy place. It was not a great ways that it run on Shields before it got on to Arndt again; it twisted about through the bogs along the fence; it might have passed backwards and forwards. In common times it is the only channel that I recollect for the water that rose up there.

From my acquaintance with the Woolston stream, I should consider it an ancient natural watercourse. If there was more water at the head, and did not sink or dry away, it would run down through to Mr. Arndt's, and go through.

And being cross-examined, saith:

We did not till or mow that boggy place the season I lived there; we worked round it, I believe. The cattle run on it, and we could not mow it. I don't recollect of there being much of a ditch, the water only just passing through the bogs. We had our watering place that season for that farm below the house, above the bridge there.

The ground at the watering place, and above, is very much altered, much drier and filled up. I am not so well acquainted with Mr. Arndt's side, about its being filled up. On Mr. Shields' side it looked to me as if it had been more filled and drier ground, and had been worked and tilled. I can't recollect whether there was a stream flowing down on Mr. Arndt's side, through his meadow to the house, or not. I think I feel certain that I have seen water pass through on to Mr. Shields.

Question. Did you not tell Mr. Arndt that you had not seen any water pass from his side to Shields', where it now crosses the line, but that you thought you had seen water passing through the bogs on Shields' side?

Answer. Yes, sir. It was something like that; I can't recollect exactly.

If Mr. Arndt understood me so, he must have misunderstood me. I was on the ground this summer, and saw that it was filled up.

It is something between one or two miles from Mr. Shields' present watering place to Wyer's sink-hole. I could not say it is nearer two miles than one.

Sworn, &c., October 2, 1840.

Charles Carter testifies—I have been acquainted with the premises on which Mr. Arndt and Mr. Shields live ever since the year eighteen hundred and sixteen. My father, Joseph Carter, then moved upon the farm adjoining Mr. Arndt's, upon which he now lives. I recollect the *hollow* on the back part of that farm on which the water now runs. The first year we moved in Mansfield, Mr. Groff had grain in that field. It was dry then; there was no water in it, not as I recollect; not in harvest, at any rate. Since that time I have seen water there; known water to run down. I can't tell exactly how long back I have known water to run down. I lived at home eleven years with my father, on the farm after we moved there, and in the course of them eleven years I have seen water running several seasons; can't tell how long; I think the most part of the seasons. I have seen it dry also, when it only run in the wet part of the seasons, when there had been a heavy rain, or in the spring of the year.

As I said before, there was no channel the year we come there, but afterwards there was a channel. I have seen water running in a small ditch or furrow, or whatever you may call it. I don't know whether this channel was made or made itself; I don't recollect. This first season I don't mean to say there was no channel, but that I did not observe any. This water passed on across the turnpike through the land Mr. Arndt now has or owns, and where further I can't tell to a certainty. My impression was, that it went on to Mr. Shields' farm, but I don't recollect with certainty at this time.—Objected to by counsel of defendant.

I recollect of a bridge across the turnpike, under which this water run. I think it was a plank bridge, I should think from four to six feet wide. I could not tell how high, but I should suppose two feet, perhaps more. In eighteen hundred and nineteen my father was employed to take away this bridge, and did do it, and dug out on each side of where this stream come down, and under where the stream run, (I don't recollect whether any run there then or not) and paved it with stone; made it hollow, so that the water would run over it. The bridge, I think, was there when we moved.

I have been this summer to see the situation of the ground from the turnpike down to Shields' line, and seen where the water runs in upon Shields. If there was no ditch dug, and the water dammed up at the turnpike, and left to run its natural course, I think, from the nature of the ground, it would flow over on to Shields. This is only my opinion.—Objected to by counsel of defendant.

From my acquaintance with this stream, I should consider it an *ancient natural watercourse*.

And being cross-examined, saith :
 Mr. Groff had grain growing all over this hollow where the water now runs, as far as I know ; wheat and rye both in that field. I think I am certain that I saw water running there during the eleven years, at other times besides the spring of the year, after a heavy rain or a wet season. I think I have seen water when there was showers, and when there was no showers. I mean to be understood that I have seen water running there in ordinary times part of the season. I could not tell how many months of the season I have seen water running there. I think I could say with certainty, that I have seen it run two months in a season at ordinary times. Oh no, there was not as much water as now ; not in ordinary times. The stream was middling weak in ordinary times before ; it would vary, sometimes stronger and sometimes weaker. I can't tell what would make it vary, I believe. I should think the stream six or eight times as large now as formerly in ordinary times ; that is only my opinion. I have seen there is a ditch dug there now, across my father's farm, from Reigle's to the turnpike, a pretty clever ditch ; been dug since I left home, as I understand. I never in particular recollect following that hollow up through Reigle's to Wyer's farm. I have never been up to the sink-hole on Wyer's farm, that I recollect. I can't tell how long after the first year we moved there that I saw the channel up the hollow where the water run, but it was in the eleven years. I think some part of the time it was not tilled where the water come. I think some seasons we ploughed across, and some seasons we had to make a turn there. I think that is the way I recollect of doing ; I mean by that sometimes I think there was a little space left down through the hollow where the water run that was not ploughed, and at other times again I think it was ploughed. It was never in meadow through this hollow, more than clover on it some seasons ; we farmed that field as other fields. If the water run, it was not ploughed across, and if it did not run, it was.

I went this summer to look at the ground, at the request of Mr. Shields, before harvest. I have been there since. I was there day before yesterday. I did not go there then at Mr. Shields' request ; there was another man wanted to see it, and I told him I would go there with him. This other man was my brother, Luther C. Carter.

I was born in the year eighteen hundred, according to my father's account. I know that there is a stream of water at the head of the Strader hollow, that comes down part of the way, but I can't tell how far. In time of a heavy rain, I think, it would have to come down through by Shields ; I don't know that there would be any other outlet. I should not consider that a natural water-course, for I never see water run there that I know of. I might possibly have seen water run there, but I don't recollect. There is also, I believe, or used to be, a small stream of water crossing the road below the Mansfield meeting-house, at the head of the meeting-house hollow, but have not seen it lately. In time of high

water it must come down to Arndt's and Shields'; that is the natural outlet; but there are holes, I think, in which it ordinarily sinks.

I think I have understood there is between Mr. Arndt and my father, a little something that ought not to be between neighbours; but as for my own part I can't say anything about it.

And being called again in chief, saith :

I don't know but what they are on good terms now. I don't know anything about it. I don't know that I ever heard my father say anything on the subject.—Objected to by counsel of defendant.

I live in a separate neighbourhood myself.

I think I have seen, in former times, the water in this hollow on my father's farm spread out some, and sometimes move in a little ditch. It is a limestone bottom.

I recollect the springs by the house being once entirely dry, and once nearly dry.

Question. If you were the owner of Mr. Arndt's farm, would you consider the water taken through this crooked ditch an advantage or disadvantage to it?

Objected to by counsel of defendant.

Answer. I should consider it a disadvantage if I owned the farm—for me.

Question. If all the water was taken in at this ditch at the turnpike, and discharged again at the turnpike, by Mr. Arndt's house, would any of it flow on to Shields again, or where would it go?

Objected to by counsel of defendant.

Answer. I think not, sir, from the way it is situated now; it would flow down the Musconetcong.

Question. If the springs were all dry, and the water discharged from the crooked ditch by the turnpike, would, or would not, Shields have a dry farm?

Objected to by counsel of defendant.

Answer. I suppose he would, sir; I don't know of any other waters on his farm.

And being cross-examined again, saith :

Question. If the water in this crooked ditch were discharged back of Arndt's house, would it not flow down into the pond by Shields' house above the bridge?

Answer. I should think it would go in the pond.

Sworn, &c., October 3, 1840.

John Lake testifies—I have been acquainted with these premises belonging to the parties these seven or eight and twenty years. I have lived within two or three hundred yards of Mr. Arndt during that time, except a couple of seasons. During that time I have worked on both of these farms different seasons, more or less each season. I have worked on both sides of the line where the water now runs upon Shields. When I first knew it, it was in bogs each side and wild grass. Where bogs were, it was wet, and through them water did not run, except where the stream run at

time of common water. It first started on Mr. Arndt, above where it runs on to Mr. Shields now, then it come on to Mr. Shields ; it run a short distance, and then it run back on Mr. Arndt, and then it run down to where the water came down through Mr. Shields' field from the Strader hollow, and there it eddied over a little on to Mr. Shields ; and from there it went down on Mr. Arndt all the way down.

When the water first came on to Mr. Shields, there was a kind of a ditch through where the water had its course through between the bogs. When the water come from towards the turnpike, I should consider it run into this ditch. The ground has altered a good deal, to my views, since I knew it in this respect, they have tilled the bogs, and got them all subdued ; they have made a new fence there, and that makes an alteration. It appears to be filled up some ; I can't say as to that particularly. I mowed grass there, on both sides of the fence, more than once.

Question. Has that water continued to run on Shields, or not, ever since you knew it ?

Answer. Well, sometimes the water would be dry, and sometimes not, the springs would. When it did run I always considered it run on Mr. Shields.

And being cross-examined, saith :

This water that run through the bogs on to Mr. Shields come out of them there springs ; they sprung out of Mr. Arndt's side. I don't recollect of seeing any on Mr. Shields' side.

There would come water down across Arndt's farm from the turnpike in the spring of the year and when there was heavy freshes or rains, but have never seen none in ordinary times. From these springs in Arndt's meadow up to Wyer's sink-hole, I don't know that I am able to tell the distance exactly. It is between a half a mile and three-quarters ; I should say it was that ; that would be my views.

There is now a post and rail fence along by the watering place. I believe that is Shields' fence. The bottom rail is, I should suppose, from eighteen inches to two feet from the ground. There is some stone laid along under it. It is so hogs can creep through, and perhaps sheep too. I have never seen them creep through.

After the water came back from Shields, and flowed down on Arndt, it flowed down to the pond by Shields' house. I have never seen the line run. I can't say whether any part of this pond is on Shields or not. The pond lays out to the road, not fenced in by either party ; the line fence stops above the pond. If the line runs close by the milk-house, as Mr. Arndt says, there is no part of the pond on Shields ; but if it runs as other people say, part of it is on Shields. In old times the watering place for Shields' farm was at this pond.

These springs I spoke of on Arndt are dried up now. I don't know of any other water up by the present watering place, but what comes across the turnpike. I have been along the stream that comes down from Woolston's to Wyer's frequently, back-

wards and forwards. I should consider it was a little larger since the canal has been made. I say only a little larger. I should consider it not as large again. This stream extended into Wyer's field into a sink-hole, and then sunk away. After the canal was made, Wyers first ditched, and the others afterwards, (don't know which first). The water was brought down from Wyer's to the turnpike by a ditch. I think Mr. Carter's upper field was not ditched at all, to my knowledge, but the lower one was. Mr. Arndt ditched a part of his field, but whether he cut all the way through to Shields' line I don't know. I have travelled over Mr. Arndt's farm in every direction frequently, every year, not less than a hundred times a year. I can't say, that in the years eighteen hundred and thirty-three and thirty-four, I noticed particularly how the water run out of that ditch from where it stopped.

And being called again in chief, saith :

In former times, when the water run into Wyer's sink-hole, when there would come heavy rains, high water, and the sink-hole would not contain it, it would go through. I can't see much difference now in the stream in summer or winter, except when it is all frozen up. The water is out of the canal in the winter time.

Sworn, &c., October 3, 1840.

Luther C. Carter testifies—I have been some acquainted with these farms of Mr. Shields and Mr. Arndt for upwards of twenty years. I moved with my father to where he now lives, in eighteen hundred and sixteen. I was middling young then ; nine years old. I continued with him till two years last spring. I can't recollect a great deal the first few years about the water on the back part of my father's farm, through this hollow. I have some recollection of these farms before the water was in the canal, and some since. I don't know that I can specify any definite number of years that I can recollect about the water. I recollect in wet seasons or wet times there was more or less water passed down, according to the wetness, before the canal was made. In dry seasons I recollect of ploughing across this hollow where the water runs. In wet times we could not plough across. I said could not, but did not, in consequence of the water at such times. There was some places wider than others we did not plough over ; it was owing to the levelness of the ground. The water run one-third or more, probably, of the season some seasons. There was a course and some kind of channel where we did not plough ; I don't know what to call it ; it was a place lower than the ground each side of it. There was a low place there, and we ploughed over there in a dry time ; and it might have part been made by the plough and part by the water. After it left our farm it crossed over the turnpike on to Mr. Arndt. I suppose it then passed down through his field. There was a few springs on to Mr. Arndt's field ; before it come to Shields these waters mixed together, and it then passed on down till it come to Mr. Shields' fence, or near it. I can't tell whether exactly where it now runs or not. It passed down the fence, and

whether it run into Mr. Shields' field or not; I can't tell certain; but I recollect seeing water in Mr. Shields' field about that spot. I never examined close down about that spot.

I recollect there being a bridge across the turnpike under which this run. I think it was from three to six plank wide. I think no hand-rails. I should think it was from two to three feet high from the ground. I recollect its being taken away by my father, myself, and his hands; I don't recollect the time. I had not seen the spot about the watering place this season till day before yesterday, in company with my brother Charles Carter.

Question. From the appearance of the ground, would the water, without any ditch being there, naturally run on to Shields or not, according to your judgment?

Objected to by counsel of defendant.

Answer. According to my judgment I think it would.

Question. From your acquaintance with the stream, would you consider this an ancient natural watercourse or not?

Answer. I would consider it so.

Question. If you were the owner of Mr. Arndt's farm, would you consider the water passing through this crooked ditch an advantage or disadvantage to it?

Objected to by counsel of defendant.

Answer. I should think it a disadvantage to me.

And being cross-examined, saith:

I farmed the one half of my father's farm, and he the other, and he cut a ditch through his half of the farm, after the canal was in operation, middling soon after, and I ditched the other half a little the first. I can't tell whether Reigle had commenced ditching or not; it was not ditched next to me when I ditched. I farmed that half six years. We raised grain on this hollow where the water now runs some seasons before the canal was made. We never sowed grass-seed on it where the water runs; when we sowed grain on it we sowed clover-seed; we would mow that clover the next year; we never mowed more than one season before we would plough again.

Question. Was there a gully worn by the water through this clover sod?

Answer. There were at one end of the field; the other end was level, and would spread over. The end next to Mr. Reigle's was washed a little from the very line fence down a little; it tapered off, perhaps, from ten to twenty yards. There was stones thrown against the fence on Mr. Reigle's side, and the water had a fall. I think we did not till this hollow every year that it was not in with clover. The wetness prevented us from tilling it, from driving clear through with the plough some seasons, before the canal was made.

It was in wet seasons that the water would flow one-third of the season or more.

Before the canal was made I have been up and down through the hollow that way frequently, but I can't recollect particularly

that I ever followed the stream from the turnpike down to Shields' line. Mr. Arndt ditched pretty near the same time my father ditched; can't say certain whether before or after. Very seldom down through the hollow after the canal was made. I can't recollect whether I saw water standing or running on Mr. Shields' house. I tried to walk across there, and found it boggy and wet. There is more water coming down now across my father's farm than when the canal was made; considerably more.

And being called again in chief, saith:

I am hardly able to tell what proportion; more water runs down now; I should think there was more than as much again now.

I should not suppose a great deal of difference in the water now and when the canal was first made.

In ordinary times I perceive but very little difference between winter and summer, unless it is frozen up. I spoke of its fall over the stones at Reigle's line and a natural fall too.

I consider this hollow through the farms a limestone soil.

When we sowed clover-seed on this hollow it would freeze out a little near the water sometimes, more or less, owing to the season. I think the seasons run pretty dry for several seasons about the time I spoke of the water's running one-third of the season.

And being cross-examined again, saith:

Question. Do you mean to be understood that in dry seasons the water would run one-third of the season or more?

Answer. I wish to be understood that in wet seasons more, and in dry less, probably.

Sworn, &c., October 2, 1840.

Exhibit No. 1, on part of complainant, a map of Samuel Shields' farm, and a part of the premises of John Arndt, the defendant, made by Caleb H. Valentine, esq.

Jacob Myers testifies—I have been acquainted with the farms of Shields and Arndt since seventeen hundred and eighty-one, and then I was about eleven years old. My father then lived within two miles of these farms. I have lived principally ever since in the neighbourhood, except sixteen years back. For sixteen years back I have lived where I now do, near the mineral springs on Schooley's mountain. It is eight miles, or thereabouts, from where I now live to these farms. When I was young I used to go along with my father where he was grubbing on the McCullough farm, and was then some acquainted with the Woolston stream, crossing it and going along it. The hollow through which the Woolston stream run was grown up with thorns and plum bushes principally. From the old tavern where Shields now lives, these thorns and plum bushes extended up as far as above the Washington turnpike near Woolston's house, but not quite up to the house. I was a part of the way up and down this stream in this hollow once and awhile. Principally in the younger part of my days I was

along the lower part down towards Shields, through the farm that then belonged to Benjamin McCullough, father of William McCullough. That farm included the present farms of Shields, Arndt, Carter, and the one above. My father was a grubbing for McCullough the time I used to be back and forth there. The grubbing was down on the high part of the ground, not on this hollow. At that time there was water that came down through these places through the plums and thorns I mentioned before. At times, when I was over there, I see the water going down frequently. At that time the whole country was in a wild state in a great degree. I have some recollection of when they began to clear up this hollow for meadow. This was by degrees along, after I was first acquainted with it. The water was handled along by one and another to water their meadows after they got to clearing. As they got their meadows cleared they would take out little ditches, and after they were done with it, would lead it into sink-holes. It had the effect to dry the water below, by taking the water out of the natural channel and watering their meadows. I think Samuel Hornbecker was the first that began to take the water out in this manner. He lived on the farm belonging to Wyer's, if I am right. It is pretty well to fifty years ago since he began to take the water out in that manner. He led it into a sink-hole on the left hand of the hollow, and that went down after he had watered his meadow. Esquire Beavers took it out on his meadow. That was when I lived at Woolston's, about seventeen or twenty years back. I lived on the stream then nine years, and carried on the business of a blacksmith. After the water was turned in the sink-hole by Hornbecker, I was frequently down the hollow below, and observed a difference. The difference was, when they turned the water into these holes they took it all; and before, that when they would not use it, the water would be working its way through. It would work its way through all the way down to the pond-holes. The first pond-hole was on Beavers', the next on Wyer's, and another on Van Natta's, now Reigle's farm. The last pond-hole on Reigle's farm, it did not sink in that one, but extended down to the lower end, and then went on. It then extended down through this hollow along; and in time of water it would make another pond on McCullough's farm, and then took off into the spring-brook. I think we used to call it about two hundred and fifty yards from the old sign-post, right straight up an old fence, grown up with briers and thorns, to this last pond-hole. The sign-post I speak of stood by Shields' house; one Squire Pyatt kept the tavern at that time. I have been down within four or five weeks to view this ground. It is all cleared out and altered, so that you can't exactly ascertain; but from appearance the pond-hole is about in the same place yet. It was up along this old line fence, which I expect is the line fence between Shields and Arndt now. It was an old rail fence, with brush under pretty much. I saw Shields' watering place when I was there; it appears to me this pond was about the *same place* where the water goes through there. My first remembrance of this

pond-hole was, that it was quite a large hole; it might have been forty or fifty yards round, not a very deep hole. When the old fence was there it extended on *both sides of the fence, the bigger part on Shields*; and when the water left the pond it ran out on Shields' side, and then got under the fence again and run some distance under the fence, so that each could have had the water, and then run into the spring-brook. It worked its way pretty much as it does now, unless the fence should have been altered. From my recollection of this old line fence, I can't fairly say whether the present line fence runs in the same place or not; then it run through brush and stuff, now it is all cleared out. I have been at this pond several times, may-be oftener, when I was first acquainted with it. Not there of late years; used to go there to shoot wild ducks in the pond, and hunt rabbits in the swamp. I have shot several ducks there in former times, not lately; it was a place they frequented in the spring of the year. We used to hunt considerably up and down this hollow as far up as Hornbecker's. In a dry time the water would not get all the way through this hollow. After it was turned into the sink-holes it was dry almost every season. Before they cleared out the hollow, and before they turned it into the sink-holes, it used to work its way down the hollow, that is spring and fall, when I was there, at ordinary seasons. In the summer time I was not often there, not later than May. I have catched eels as high up as where I lived by Woolston's, but never catched any other fish there.

And being cross-examined, saith:

My father lived near the old Mansfield meeting-house, near this place, fifteen years. I did not assist my father in grubbing; I was not old enough to grub. We then moved up to a house on the hill here, a little further from the farm. I think we lived there something like four years, if I am not mistaken; we then moved about three-quarters of a mile east of this place, and we lived there two years, I think, and there my father built a house. We then moved down into a log house, where the Washington turnpike now is, and lived there two years, about five hundred yards from the last place. He then moved back on Pohatcong, back of this place, and he lived there two years; and he then moved about five hundred yards down the stream, into a house then belonging to Shippen, below Van Natta's, and lived there fifteen years. From there he moved, I think, to Mansfield meeting-house, and lived there one or two years; he then moved away along the mountain here, near where one Baylor used to live; one Pickle used to own it. That must be something like three miles, I think, from Arndt and Shields. He lived there three or four years, I can't tell which. He died there. I left my father when he first lived east of Washington. I first moved and commenced keeping house near Baylor's, about three miles from these farms, and lived there four years, and then I moved to Oxford furnace, and lived there fourteen or fifteen years. I then went to Anderson-town, and lived there four years. I next went to Woolston's, near the head of this

brook, and lived there nine years, and from there I moved to where I now live, on Schooley's mountain. Until I moved off to the furnace I used to go up and down this hollow, pretty much every season, sometimes as much as a dozen times in a winter, hunting; did not use to go there much in the summer time; after it was cleared up there was not much to hunt there then. After my father moved from the Mansfield meeting-house I did not go so often over in the other valley. I recollect, by a small plough ditch, (it was not made by a hoe) that Hornbecker turned the water into these sink-holes, for I was over it often and often. I did not see him make the ditch. I could not tell exactly how long back it should be he made that ditch, it is a good many years back. I have been each side of the stream up and down the hollow from Hornbecker's down. It was so thick with brush and briers could not get through where the stream was. The whole hollow was in some places not more than sixty yards, and in some places not so wide. I have never followed the stream down. There used to be an old forge road, which was the only way to cross this hollow, and there we used to cross it, and then away down towards the lower end of the thicket we could cross by working a way through it, but generally it was so thick we could not cross it. This lower end was about half way down from the old forge road to where the water runs through the line fence between Shields and Arndt. Below that there was two or three places where there was not so many thorns. This lower end was not a great way from where the Spruce run turnpike now is, perhaps a little below it; there was no road there then, and from there down to the line fence it was pretty thick again.

In the winter time we could not tell whether there was any running water there, or only water standing in the swamp, there would be so much slush and snow. I have seen a running stream of water there in time of a rain. When there would be an over-plus of water there it would run down. In the breaking up of winter there would be water there, that you could not get over on foot. I have seen water running along this stream, except when they led it off above, at other times besides when it was rain, or the spring of the year, or breaking up of winter; but it would be may-be two-thirds of the year thoroughly dry. I could not specify at what other times besides I have seen it running. I have seen it in a wet season and in a dry season that the water would go, provided they would let it go. Before they turned the water into these sink-holes I saw water running down, clear down below where the turnpike now is, nearly twenty years before. That is what made the pond-hole in the field above the spring. There used to be a small stream of water, that come down the hollow from the Mansfield meeting-house and run into the pond-hole. They both came into the pond-hole together. In the spring and fall there come quite a stream down the Strader hollow. There used to be a large pond-hole up that hollow, and used to stand the principal part of the season when it got full of water. The water did not

run the principal part of the season from that pond-hole down this hollow. At that time there were springs that broke up under the old fence along. It would be hard getting along the fence to see where they come, but I could see water along the fence there. I don't recollect of any springs on Shields' side, off from the fence. I don't recollect any springs *off from the fence* on Arndt's side above the one at the spring-house. All these springs that I recollect were pretty much all along the fence. I could not ascertain anything about that, whether the fence has been moved latterly or not. It is but a short distance from this pond, where the Woolston and the Strader streams empty into, to where the water run from the pond into these spring-runs. I could not tell exactly. It was a wild boggy place where the springs appeared to break up. I could not say how far this old line fence run up in a straight direction; it was all brush and stuff; I could not tell you. It was a worm-fence. I don't believe the fence was on the highest ground, from the sign-post up pretty much on a level; it was right up the swamp to the pond-hole. There was no other stream of water coming down through Mr. Arndt's meadow but these that came down from above, except the one from his spring-house, and that made a pretty clever brook. There was no stream easterly or south-easterly from this pond in Arndt's meadow, as I know of.

Mr. Shields asked me if I was coming that way, and whether I would look to see whether it was as it used to be. This conversation was in my shop; Jacob Johnson was with him. Capt. Samuel Bowlby went with me to look at the ground. I called at Mr. Shields' house; he was not at home. I met with Captain Bowlby at Shields'. He was not to meet me there, as I know of. I told Mr. Shields I had an errand away down below Hampton, and some day or another I would be down and I would call; I did not set any day in particular. I can't answer that, how Capt. Bowlby happened to be there. Capt. Bowlby and I went up along this line fence.

Question. Who first mentioned about this pond-hole; did he tell you, or you tell him about it?

Answer. I don't think I could answer that there. Capt. Bowlby did not tell me anything what he recollected about it, as I know of. I could not answer what Capt. Bowlby told me; there was very little said about it. I can't ascertain what was said between us.

Question. Did not Capt. Bowlby tell you that he knew the water formerly run over on to Shields'?

Answer. It kind of strikes me that he said something about the water; but I can't say what it was.

I guess Capt. Bowlby did not tell me that Shields wanted him to show me the ground. He was there, and after we shook hands he asked me where I was going, and I told him I had promised Mr. Shields' to come down and look at the water, as I mentioned before.

Question. Did he then say he would go and show it to you?

Answer. He did not.

I asked him to go along with me.

Capt. Bowlby did not speak to me to-day about this water just before I was sworn. Nor Mr. Johnson.

Question. Has not Mr. Johnson told you what he thought about it when he was there?

Answer. No.

Question. Did not Mr. Johnson tell you he guessed the water used to run over the Spruce run turnpike?

Answer. I guess not.

And being called again in chief, saith :

The old forge road crossed the hollow above the knoll in Reigle's farm. There was always water there in the old forge road. The old line fence above the pond-hole immediately got on to higher ground. The ground makes quite a little ridge above it.

I meant by the expression the water would come down when they would let it go, after they had got to clearing out the hollow and making meadow, and taking the water to water their meadows. Squire Beavers took it out on the south side, and run it over his meadow, and when he was done with it, run it into a sink-hole; he then dried it all below thoroughly; and then they would go up nights and stop the ditch and turn it in again; and then it would go over the place that Slater lived on, that belongs now to Henry Carter; and then it would go through that farm along down to the road, and then there was a bridge there that it went under; and then it commenced on Nixon's farm a part of the way, and there was a hole that wasted the water; and then, when this little plough ditch would be stopped, it would extend down on the farm where Edward Yeomans lived (now Reigle's); it then went on down through there down to the other place.

I have a son Charles living in the neighbourhood of Change-water, a blacksmith.

I think I can recollect things better that occurred when I was young than what occurs now some short time back.

After Mr. Shields had called upon me at my shop, as spoken of before, Mr. Arndt called to see me. I think he did not want me to see the ground; I think he said nothing about it. There was some few words passed between us about it; I was pretty much in a hurry shoeing horses; it was nearly sunset.

And being cross-examined again, saith :

I could not say that the water always run at the old forge road where it crossed the hollow, but it always stood there; water may appear to be standing at the same time it runs. There was no pond-hole there, it was a kind of a sloughy place. There was water always there when I crossed; I was not there at all seasons of the year; I was over it very often though.

Sworn, &c., September 6, 1841.

Conrad Davis testifies—According to the way I have had my age handed to me, I will be eighty-one years the twenty-second

day of next October. I act at present as crier of the courts of Warren county. I think I was not more than eight years old when I first recollect this hollow through which the Woolston stream runs. My first recollection of it was, that it was in a wild state, grown up with plums, grapes, hazle-nuts, and high-bush huckleberries, and they first drew my attention to it. There was but one farm between this place and where we lived. We lived on the road side before Beavers, about half a mile from this swamp.

The water flowed from Newbold Woolston's on to a corner of a piece of land where Mr. Dusenberry now lives; then on to the corner of Beavers' farm, and from there it went to one Hawke's land; it then was afterwards owned by John Laird, by heirship, now Henry Carter's; then from these, after it left Laird, it went into this brush that had never been cleared up on the land that it was said that McCullough got. This thicket was four or five hundred yards above where the road then run across to the forge. The next stream was Scott's stream, that crosses the Washington turnpike by Ribble's tavern that runs from there on to Beavers' land and united with the Woolston stream as soon as it crossed Beavers' line. There was no obstructions to it first awhile; some years back, may be twenty or thirty, Capt. Beavers took part of this stream to his still-house, and then from that on to his meadow, and from that out into the other stream that come from Woolston's in his meadow.

There was another stream, that came from Squire Beavers' springs, that run into Squire Beavers' meadow and went on into the other stream on to Hawke. Then when the water got high there would be considerable water there, and when low not so much; it was so always when I went through there. The last time that I have any recollection of it, was when this John Laird had a vendue; then it was cleared up; the swamp was cleared out below there on down. I can't tell how long ago that was; I have no recollection of it. I can't tell the year, nor I don't know as I can come within five years. It was a flood then, that prevented people's getting through without going a great ways round; it was in the spring of the year, just about the breaking up, the early part of April I think.

When I was about eight years old, I recollect there was some water passing by the old forge road. There was an old gentleman by the name of Stiers, who lived on the premises, and we, living his neighbours, was asked to a frolic to help him draw in his harvest. My brother-in-law, that commonly drove the team, went, and took me along. I was put, after I got there, to watch either a gap or a pair of bars where the teams come out into this old forge road; it was into the field they went in and out, next to the road. I recollect, at the time I was there, of seeing water in this old forge road. I can't say how far this gap was from the water, whether one or two hundred yards. This was the only place that was cleared up, after we left the Hawke or Laird lot, to the forge road. I don't recollect of passing this old forge road again

until the Oxford furnace was in blast; then I recollect passing frequently with a team, and would take more notice of water with a team than when on horseback. The Oxford furnace was in blast from eighteen hundred and three to eighteen hundred and eleven. I carried it on the last three years. I was hauling pig frequently along this road, and flour to the furnace. I can't say, from my observations then, that I ever saw it entirely dry; but I have seen very little water there. In time of low water I have seen but very little water there, and when there was a flood I have seen a considerable deal of it. I have crossed at all seasons of the year, both winter and summer. I won't be so positive that there was a bridge at all times there; my recollection is, that there was a bridge there part of the time, and a part of the time there was not. It was a temporary thing, thrown up. I have no recollection of any other part of this hollow until we get down to the old McCullough farm. I knew that before the Revolution; it was called Richard Bowlby's farm. The whole three farms was confiscated property, and sold by George Warne and Col. Bond, commissioners appointed by congress, and purchased by Benjamin McCullough, the father of William McCullough. I mean, by the three farms, the Shields, Arndt, and Jos. Carter farms. From what I can recollect, the spring was about a hundred yards from Bowlby's house. Mr. Arndt's house is not where Bowlby's was. Bowlby's was north-west of the spring. There was no house where Shields', Arndt's, and Carter's now is. Bowlby's house was probably about two hundred yards from where Arndt's now is, pretty much a north-west course. It was on the dry ground on Mr. Arndt's side of the low ground, and about one hundred yards from his spring-house.

I have known the whole of the spring-run, down by Shields' and Arndt's house, to be dry, but I don't know what year, so as not to run across the road; but the water would stand in puddles above the road. I think it was when Vankirk kept the tavern, and before I carried on the furnace.

And being cross-examined, saith:

I do not have any recollection of their taking the water out of the stream by furrows up by Beavers, and watering their meadows and then turning it into sink-holes. All I recollect about it was in later years, when the water was taken from the Scott stream to the still-house, which was then turned again on Beavers. At no one place, that I have any recollection, could the water be taken from the stream by a furrow, and turned into that sink-hole on Beavers, from the nature of the ground. I have traversed the ground frequently, excepting the little stream from Beavers' spring, that they would occasionally turn into the sink-hole when the water was high, as it would run across the corner of a field. The Scott stream and the Woolston stream could not be turned into the sink-hole, it was entirely on the other side of the farm. The sink-hole was on pretty high ground on the bank. In fact I don't recollect of seeing the water from that spring run on the meadow

any time I lived there; the meadow was naturally too wet any how. In the year seventeen hundred and seventy-five or six, the year of the battle on Long Island, I that year lived with Robert Beavers, esquire, worked for him on that farm, was hired to him for the summer season by my mother. The reason of my introducing this, is to show how I came by my knowledge of this farm.

I have seen the stream at Wyer's not frequently, but several times, since the canal has been made. I think it is considerably larger than formerly after the junction of the three little streams. I know the brook that come from Woolston's is considerably larger; that would help the others from the forge road down the hollow. I have no knowledge of the water nor the ground either. At the old forge road the water was in different positions; sometimes it would be standing there, and when there was a flow of water it would be running there. I mean by a flow of water when there was a freshet, the breaking up in the spring, high rains, and such as that.

I know where the Allen lot was, over by Capt. Bowlby's; I believe there was no house there the last time I passed it. It would be probably, in a straight line to Capt. Bowlby's house, four or five hundred yards, may-be more to go round the road; it makes a great elbow. It was on the same farm. It would be, may-be, nearly as far again to go round the road. From this old house to Capt. Bowlby's the ground seemed to fall a little towards Allen's, and towards Allen's it began to raise again; Allen's house stood on a bank. From Allen's house down to Mr. Shields, it was a considerable distance. I recollect there was an old road went round the fields to where Samuel Shields now lives. I should suppose that to go round the road there, it would be from a half a mile to three-quarters, may-be three-quarters. It was a considerable distance further than to Bowlby's house; across the fields it would be all the odds from Shields' up to the turn of the road. It would not be a great deal shorter to go directly across. I don't know where Allens got their water from; I have seen them apparently haul water sometimes. I presume after you got over the road, it was rather descending all the way to Shields', rather more so than to Bowlby's. It would be more convenient to get water at Bowlby's than at Shields' house. It would be considerable further to go round the road, and if they went across the fields they would have to climb the fences.

And being called again in chief, saith:

Above the old forge road, where I was gathering nuts and such things, there was a natural channel washed, that is, after it left Laird's; some places it was of considerable depth below the soil down to the clay, and in that channel I saw the water running at different times, more before it was cleared up than after.

I don't know that Imlah Drake ever inquired of me about this watercourse. We have talked about it, but he never inquired particularly. I am not so positive, but I think I introduced the subject, and I said it was a pity but that they could make up. We have

had two or three conversations on the subject, just small conversations; not much.

And being cross-examined again, saith :

This channel above the old forge road would likely be occasioned by freshets and heavy rains; that was what I considered, for it never would be taken out so deep, I am confident, by the natural stream that was running there.

Capt. Bowlby never talked with me about this trial that I recollect, no further than public conversation; there might have been something said when I was standing by; I can't say that there was or was not.

Sworn, &c., September 7, 1841.

James Allen testifies—I think I can remember these farms of the parties since I was five or six years old. I am now thirty-nine, the twenty-fourth day of next March, or forty; am not positive which. My father lived on the Allen lot, now belonging to William Shields, when I first recollect. I was not born there; my father moved from Hampton there, they told me, when I was about three years old. He moved away from there when I was twelve. Along through this time, as soon as I can recollect, I recollect creatures breaking through into this field where Samuel Shields now has his lane to go down through *this stream of water*. It was then woods on the outside of the fields. When they broke in they went to water to this stream of water that is now on Samuel Shields' farm, at or near the present watering place. The appearance of the watering place at that time was, that it was a nice stream of water running from the turnpike into Mr. Arndt's meadow; it is now, it was not his then, and then it run through his meadow until it came into a certain pond that was on the line betwixt Mr. Shields and Mr. Arndt—it is now. That pond was a little higher up the line than where the watering place is now on the line. I could not tell exactly how large this pond was; I should suppose it was eighteen or twenty feet wide. *The most of it then was on Mr. Shields* when I knew it. That pond continued there all the time; I knowed it at that present time, all the while we lived there. The water run out of that pond into Mr. Shields' field, and run down his line in his field. It run down, I should say, twenty-five or thirty paces further than now, and altogether *about fifty yards, and then crossed on Mr. Arndt again*. I recollect of getting water for family use there, when I was about nine or ten years old, I expect about nine years old, I watered a mare of Isaac Irwine through the first summer, *at dry times, at this place*. At wet times there was water in the field; there was a pond stood in the field, right below my father's house, where she could drink out of. This pond was in the field where she was in pasture. In dry times this pond would be dry, and he would wish me to water her whenever the pond would get so the water was not fit for her to drink, and he would pay me for it. The next summer I watered her pretty nearly every day, because she run further back in the

place, and there was no water in the field when it was wet nor when it was dry. This last summer I watered her also at the same place where the water run through on to Mr. Shields. I watered my father's cows there that season. I carried water from there and hauled water from there that same summer up to my father's house; a good deal, pretty much all we made use of for four or five months, at the lowest. The reason why I carried water from there, and not from Bowlby's, that summer was, uncle Robert Bowlby and I had a falling out about the children; he thought I abused them, and he told me he would rather that I would fetch water from some other place, as he did not want me about there any more. Before that I had got water up at Robert Bowlby's. Capt. Samuel Bowlby lives where Robert Bowlby used to live, and is his son.

I went across the turnpike there frequently, and I have seen water run under the bridge there. I have known it both before and after the turnpike was built. There was a stream running there pretty much all the time, unless it was a very dry time; the stream larger sometimes and smaller sometimes, according to the seasons. I recollect seeing fish in it as high up as the turnpike. I have seen fish in it oftener than once, five or six times or more.

And being cross-examined, saith:

Matthias Vankirk lived on the place that Samuel Shields now lives on at the time my father lived on the Allen lot; I can't tell whether the whole time or not. I know he lived there at that present time when I carried water from there; I think both the summers I spoke of. I expect that Matthias Vankirk is dead; I have not heard from him in a long time, and I don't know whether he is dead or alive. I rather expect that Imlah Drake lived there a part of the time; I rather think the last summer that we lived there. I cannot tell rightly how many years Vankirk lived on that place, he must have lived there two years, if not longer. I can't tell whether Drake came on when he left or not; it appears to me he did. I could not tell who lived on it before Vankirk. I can't tell what years I got water there, it was when I was *eight or nine years old*. I had known the stream before that, from the cows breaking in and going there, and afterwards, and two or three years before that. I could not tell you who lived on the place then; I was quite small then. That water that came on Shields' side *came from the turnpike*; I am sure of that, and that there was a stream running across Arndt's place across this meadow. I believe it run then all summer at that time—both summers. The first summer I was there frequently, when it was very dry, and there was water there then, and the next summer there was water all the summer—a stream running across the turnpike all the summer. The turnpike *was not there then*, there was an old road there then. I went across that way frequently. I went across once or twice to the forge.

Question. Do you mean to be understood to say that there was

water running across the turnpike at all times during these two summers, or only after there had been a rain?

Answer. I don't notice of its ever being dry in them two summers. I knew it always to run there when I crossed. These two summers were not wet seasons, it was pretty dry; when there was a wet time there was water in the pond by my father's house. The first summer I don't know of more than once or twice of crossing there by the turnpike; I think once in the fore part, and once in the latter part of summer. I can't tell exactly how early or late; I think it was some time before harvest the first time, and a little after harvest the last time. Both these times were not right after a rain, one time in particular it was a very dry time, I think it was the first time in the first summer. I can remember it by this, when I came to the forge I remember the creek being very low, and they told us there that it had been lower than it had been for some time, and it was then very low. It was a pretty small stream, not a large one, so that it run nicely across the turnpike. There was no grain in Arndt's field, I believe, either time, especially along the east side of the brook; it was in with timothy. I am sure the upper meadow next to the turnpike was in with timothy. I knew timothy from other grass at that early age. There was no particular circumstance by which I can remember that it was timothy, only as I walked through. The water spread through the grass; the gully pretty much as it is now, a small ditch like.

The second summer I can't tell how often I was across there. I must have been across there as much as three or four times. I could not tell you exactly at what times in the summer, sometimes in the fore part of the summer, and sometimes in the latter part. I have been along just before there had been a rain, and just after. I am sure I have seen water running there across the turnpike just before there had been a rain; and the water run pretty much the whole season. I have never seen it dry either of those two seasons. I can't tell you who lived those two seasons in the house Mr. Arndt lives in; I forget now. I can't tell you where Vankirk watered his cattle at that time, without they watered them part of the time at this pond and part of the time at the house; the cattle did not run in the same field that father's did; I could not tell where they watered; I have seen them water horses down below at the house; when they would ungear at the barn they would take their horses down by the house. I never saw them drive cattle to this pond, but I have seen cattle and horses in the field there. I could not tell you where Imlah Drake watered his cattle. The two last years, the last year anyhow, I did not go down there often. I never hauled or got water from the house when I went down there. When I fetched water from there Imlah Drake did not live there. I can't tell where he lived.

Question. Did not Imlah Drake forbid your getting water at the house?

Answer. He did not.

Question. You do not recollect, then, of Imlah Drake's driving you away, and forbidding you to come near his house ?

Answer. No, I do not.

I don't recollect of Imlah Drake or some of his family ever scolding me for throwing stones or sticks into the water by the house and dirtying the water. When I carried water I carried it in blickeys or pails, I forget which. I expect some part of the time some of my sisters were along with me; I won't be sure though. Some of my sisters are younger, and one older than myself. I forget whether they carried any or not; them that were younger were pretty small, and could not have carried much, if they carried any. I can't recollect exactly, whether my oldest sister carried any. I don't recollect of my oldest sister being along, but she might have been along. If there was any such a thing as that to do, I most generally had to do it myself. I never carried any water across the fields, only across the one field to the old road. We used to go down the road that run between the woods and the field. It was kind of an old by-road; not many people travelled it, except on horseback sometimes. It run from just below my father's and came out near Shields' barn, close by his little red house, and divided this farm of Shields from the Petty farm. That little red house is there yet; the house was not there when I fetched this water. I always found the water running out of this pond on Shields' side when I fetched water. I got pretty much all the water for family use there, when we did not get at Bowlby's, except once in a great while my mother used to fetch some from uncle Bob Bowlby's spring. I went down as often as once a week, and oftener too. We used to fetch from there every day pretty much. Around this pond there was a good many bushes growing, and along down below along the fence, only in this one place, where the cattle had kept them down by coming in for water; it may be three or four yards or further; there there was no bushes. When I hauled water I hauled on a little hand-wagon I had, in a half a barrel and not with a team. I did not fetch across any fence; the bars were all down that season; there was no grain in that field that season or the summer before. I was never down to Mr. Imlah Drake's house with that little hand-cart while he lived there. I was never, that I can remember, at Drake's with this hand-cart with a parcel of boys, and throwing sticks and stones, and dirtying the water, and he scolding us about it. I never drew any water with this hand-cart from the spring or pond by the house there. I used to draw that half barrel alone, pretty much always. I don't know of any time of any persons helping me, without it was a man that worked for Tice Vankirk; I tied to his wagon behind, once or twice, as he was coming up. It was not all the way up hill to my father's, pretty much level ground, without it was one place, a little pinch of a hill, and after you got over that little pinch of a hill it was rather descending, I should say. Mr. Vankirk did not till his field by the water those two seasons. Had been kind of pasture in it; the same field that I went

through, the lower part of it; it was kind of summer grass and blue grass. I don't know how long they had laid in grass, but had been for some time. I don't know of their mowing that field. I cannot tell you certain whether I have ever seen that field in grain or not. I think the name of this man that was driving Vankirk's team, when I hitched my wagon to it, was John Hazard. I can't tell where he is now, whether living or not. I think that was what they called his name. I can't recollect how long he worked for Vankirk. He worked on the farm for Vankirk; he was hauling out manure at that time. My elder sister that I spoke of is dead. I have followed the stream, from the pond-hole up, along to the turnpike. I went across the field that way and went up this brook. I never went across Carter's farm not right up the brook. I can't tell you where Mr. Irvine is, whether he is dead or alive. I cannot tell. He was a schoolmaster; taught school both summers in a log school-house just below the Mansfield meeting-house. He kept his horse in a field that belonged to the Vankirk farm. I don't know that he kept school more than two years, or something like that.

The water out of the pond ran down on Mr. Shields' side of the fence, four or five feet from the fence, some places not so wide as that, and some places wider, and so continued on down about the fifty yards. In a wet time like there was a little stream of water that came down from uncle Thommy Bowlby's and along the line fence, and fell into this pond. There was never, that I seen, a stream of water running down through Mr. Arndt's meadow easterly of the pond-hole. It was kind of wet through there and boggy and bushes.

I live now on a little place above John Strader's, in the same neighbourhood. I follow working about by day's work. I have been working a good deal this summer for Samuel Miller, William Miller's son. I have not worked any this summer for Samuel Shields, I believe. I have worked before for him; this last winter I threshed on the machine for him. I did not make garden for him this last spring. I have not worked any for Capt. Bowlby this summer, nor last summer nor winter. I have worked three summers for Miller, pretty much hand-running; this summer pretty much steady.

I am a married man, and have been married fifteen years the first day of last April, and have lived the biggest part of the time where I do now. I lived two years of this time in a house belonging to Lambert Bowman. I lived two years in a house that belonged to John Kinney. From the time I moved away from the Allen lot, and before the fifteen years, I lived the biggest part of the time in the neighbourhood. The first place my father moved to after he left the Allen lot, was a lot belonging to John Wise, up in Timber swamp. I was with him very little that time. Sometimes I was at work out by the month, and sometimes by the day, sometimes at one place and sometimes at another. I can't tell how many years it was from the time my father went away from

the Allen lot until I got married; without some time, I am a poor hand to reckon up. I know I am thirty-nine or forty, by what my folks told me when I was one-and-twenty. Some other folks besides our people told me the same thing. When I was married I was twenty-three years old. I only know that I was twelve years old when I went away from the Allen lot, by these people's telling me.

I can't remember exactly what year the turnpike was built. It seems to me that the turnpike was about running out when I was along that way. I could tell that it was running all the time at the turnpike; from its running at the watering place it must have come from the turnpike; there was no other place for it to come from, except this little stream from uncle Tommy Bowlby's, in a very wet time. The reason why they did not water the creatures down by the house was, they came out of the wood, and the bars being very poor, and being used to run there, they broke through and went to water. I can't tell you who drove them out, I never see anybody drive them out. Part of the time they would just go in backwards or forwards. I can't tell you whose cattle they were; some part of the time ours got in sometimes. It was very wet in some places round the pond where they watered, and miry and boggy in places. Old Mr. Vankirk gave me permission to water the horse there, and his son too. My father kept hogs; they run out to the commons part of the time, and they watered themselves. I don't recollect driving them any where to water. I worked one year for Jacob Skinner, that lived on Reigle's place. I can't tell you exactly; it was that spring that I came twenty-one years old that I went there to work. I can't recollect of any stream of water coming down the hollow that summer. I made a remark to Skinner about the water's not running down there, that it used to run down there; he said a hard fresh had turned it into a sink-hole; he did not say what sink-hole.

Question. Do you mean to say positively that there was a stream of water running across the turnpike the whole year during these two years?

Answer. Yes, sir, I think there did.

All that I ever saw there I never saw it dry these two seasons.

Question. Are you intimate with John Strader, jun.?

Answer. Yes, sir.

Question. Was he not a witness against you upon a charge of theft, some years ago, and gave testimony against you?

Answer. Not that I remember of.

Question. Was you not accused of stealing by John Woolhever, and John Strader, jun., called as a witness against you to prove it?

Answer. I don't remember ever John Strader being called against me upon such a charge; if he has I have forgot it. I was accused by John Woolhever.

Question. What justice was you brought before on that occasion?

Answer. Esquire Scureman.

Question. Was you condemned to be whipped?

Answer. Not as I remember of.

Question. Did not Abner Parke interfere to save you from a whipping?

Answer. I don't know that he did. Mr. Parke found I was ignorant of the law, and poor and unable to hire a lawyer, or pay him if I did hire one, and I believe he said some few words about it; I don't know how many, nor what they were about much.

Question. Was you not also charged with stealing rails by John Ritchie?

Answer. I don't remember of ever being; if he did, he never mentioned it to me, not as I remember of.

And being called again in chief, saith:

The season I worked for Skinner, the biggest part of the season it was pretty dry.

I have worked for Mr. Arndt some days during the last season; it was early in the spring. He wanted me to come and trim his orchard; he asked me in the winter, and I told him I would come. I staid at his house part of the time I was at it. Mr. Arndt would come out there every once and awhile while I was trimming. He did not at that time talk to me about this suit between him and Shields about the water. He talked to me something about the water up here at camp-meeting, two or three weeks ago. I don't remember of his ever speaking to me before about it, not as I remember of.

Sworn, &c., September 7, 1841.

Philip Johnston, esq., testifies—I am now sixty-five years old. When I was ten or twelve years old, I went to school near these premises, and have been acquainted with them partially ever since. The school-house was close by the run. I recollect of a snug stream of water running through there at that time. I never traced the stream up at that time further than where the old original house of Benjamin McCullough was, back of where Mr. Arndt now lives, in the meadow. I never saw that stream entirely dry, at that time by the house. I have seen it once since entirely dry; I recollect at one time of passing by and seeing it entirely dry, and was astonished, as it used to be so regular a stream; this was ten or fifteen years ago, more or less. I recollect of passing along the turnpike since it has been made; I passed along it occasionally, perhaps every year since. I recollect there was a bridge on it, of some kind or other, in the hollow up past Mr. Arndt's. I had crossed when there were no bridge there and after the bridge was built. I have seen the water running across there. It is a low, wet, marshy, muddy place, and I could not say it was always a running stream; but when I passed it, I saw water there, but whether it was before or after a shower of rain I cannot tell, that I saw it running there. I have crossed it at almost every season of the year, and perhaps every year, for these twenty years and ever since the turnpike has been built. From my observation of it at that time, I thought it was a natural watercourse, but I could

not say whether it was or was not positively. My impression was this, at that time, that I thought it was a small little watercourse that came down there. I knew nothing else. I am not acquainted with it any further up than at the turnpike. At Wyer's I have been across it very often, and always thought it was the same stream. I always see a stream running there. I have not crossed it as often there as at the other place, but there appeared to be water there.

And being cross-examined, saith :

This school-house was about a hundred yards down the run, close by a spring that puts out into the main run. Perhaps I went to school there, as near as I can tell, off and on for three years—not all the time. That was long before the turnpike was made or the canal. There was no public road through there then; there might have been a private road through, but I don't know that there was. It is more than I can tell you where the water came from that supplied this stream that came by the school-house. I can't answer you whether there was springs up in the meadow or not; I was never up higher than the old house at that time to see where the springs were. The stream did not pass near by the old mansion-house; it was some considerable distance down from the house where the spring-house were. It strikes me there was a spring by the spring-house that run into the main stream. The main stream came down the meadow from towards Bowlby's and Strader's and the hollow from the turnpike, as it appears to do now. They united somewhere up the meadow, I can't tell exactly the spot where. I can't say whether the stream at the turnpike has become larger or not, since the canal has been made; it is a question I have never thought of. I can't tell you how the water continued through the year to run there. It appeared to me that there was a small stream running through there, and it was wet and muddy round it. It was a kind of a muddy hollow. It was a hollow that was always muddy, and a small stream that run through it.

Question. Was it miry and marshy there?

Answer. I tell you now, I will answer your question; before the bridge was over it, it was a muddy place or hollow, with a small stream running through it.

Question repeated.

Answer. I said it was a muddy marshy hollow, with a little stream passing through it. When I first knew it, above and below the road was a marshy place, with bushes grown up. I don't mean to say it was miry in the road.

I passed along the turnpike this season. I can't tell whether the stream is larger now than formerly. I can't say whether ever I saw water running across there, unless in the spring of the year, the breaking up of winter, the melting of snows, or after a rain, or not. I never took pains to think of such a thing. I never thought of it at the time; there was water there, but don't know at what season of the year. I have passed it at different seasons

of the year. I could not tell the seasons of the year there was a great deal of water there or a little water there. I can't tell whether that stream across the turnpike continued on down through Arndt's farm or on to Shields' or not. At that time I was never down to trace the stream. I never followed the stream up the hollow from the turnpike in old times.

I think the bridge was built across the hollow on the turnpike some time after the turnpike was built. The water went under it. It was a little plank or slab bridge, as near as I can recollect.

I was up last week to look at the premises and see the water, at the request of Mr. Shields. My brother, Judge Joseph Johnston, was along with me too. I was at the blacksmith's shop, and Mr. Shields was there, and said, now can't you go up with me. I told him I would go down to the store, Joseph Johnston's, and send my team home, and I would walk up. I went down to the store, and sent my team home with my boy, and Shields came after me there. I asked Joseph Johnston if he would not go along up there. I insisted upon it that he should go along, and he went.

I have followed practising the law a little before justices' courts for some years past, in Hunterdon and Warren counties, and as far as Morris county. I have advocated causes in all those counties, and other places too. I have known James Allen, who was sworn here to day, from his youth; brought up in the same neighbourhood.

Question. What is his character for honesty and integrity in the neighbourhood?

Objected to by complainant's counsel.

Answer. As to my own knowledge, I know nothing about the man; what is generally said of him is, the people said he was a thief.

Question. From what you have heard of him, would you believe him under oath?

Answer. If I believed him to be a thief, I would believe him to be a liar.

I don't know as there was an old road running across the hollow where the turnpike now is, but have heard that there was. I don't recollect of ever being along that old road.

I have been acquainted with old Joseph Hendrickson for a great many years, we were boys together; I knew him from a boy. I have been acquainted with him, more or less, for some years past, but not particularly. I do not live in the same neighbourhood with him—seven or eight miles apart.

And being called again in chief, saith:

When I was on the premises, last week, I observed the water that run down from the turnpike across Arndt, and so on to Shields, and then down on to Shields some distance, and then back again on to Arndt. The lowest part of the ground where the brook comes on to Shields the ground is lowest on Shields' side of the line; but the lowest part appears to be a little lower down, but it is a very level piece of ground. If the water was left to take

its course from the turnpike, according to my judgment and observation, it would run down on to that level spot of ground. It strikes me it would go to the lowest part of the ground. It strikes me it had run on to Shields sometimes. It strikes me that it would run in on to Shields rather above where it does now.

Question. Have you had some considerable conversation with Mr. Imlah Drake about this controversy?

Answer. I have had very little conversation with Mr. Drake, one way or the other, about it.

Mr. Drake mentioned to me about the old wood road, that there used to be a wood road where the turnpike now is across that hollow. We were talking about an old man that hung himself up there, and not about this case.

Mr. Drake spoke to me about Mr. Allen. When he was giving in his testimony he said that that was not the time, and then he told why he knew it.

And being cross-examined again, saith :

As near as I can tell you, this Mr. Drake said Allen was mistaken; for when he considered that Vankirk lived there, he (Drake) lived there.

Sworn, &c., September 7, 1841.

John Parke testifies—I have known these farms for the last twenty-five years the last spring, since Mr. Carter moved up there, and I moved up there with him. I worked with him two years while he lived on that farm; the first two years I worked for him. The field in which this hollow is was in, the first season I came up there, with rye and wheat, belonging to Henry Groff.

The water run the fore part of the season a little along, a small stream, and dried up before harvest. While it run it run clear across the turnpike, and I have seen it run through Mr. Arndt's place, and so through the fence on to Mr. Shields, there was a kind of pond there, and bushes all along the fence. On that wet part, in Carter's field, the wheat was very poor. I think it dried up in May or the first of June. The next season I helped plough this same field for corn; it was wet till planting time, so that we had to leave it, and we could not get it planted till very late. Along the fore part of the season the water was running again, until the dry part of the season it dried up again. When we first ploughed it we could not turn up on it at all; we had to leave a strip of twenty or thirty paces.

One year I moved away from Mr. Carter's, and the second year I moved on the Reigle farm, and continued there one year. That year there was water enough there for hogs and cattle till pretty well towards harvest; then it dried up, and we had to haul water. Well and all dried up; the well dried up after harvest a little while. I considered it a very dry year; the water dried up by Shields, and we had to haul water from below Mr. Carter's, and afterwards I had to get it still lower down, on Philip Johnston's.

And being cross-examined, saith :

The rye and wheat had been sown all through the hollow, but was very poor there; and the next year we planted our corn over the whole hollow. We began to plough our corn ground in April along, and did not plant till along the tenth or fifteenth of May; it might have been as late as the twentieth. We ploughed a thirty acre field for oats and flax before we commenced ploughing for corn. There was a little stream running through when we began to plough, a small like stream. That stream continued to run until we planted all the rest of the field; we had to leave that, and we could not get that planted till it was very late. I call very late planting, from the twentieth to the twenty-fifth of May. It run all the time, every day, until it dried up entirely, and not after rains only. That spring had not been wetter than common. After it had dried up, I don't know as it would commence running again till pretty well towards the next spring. The way I come to follow the stream down through Arndt's field on to Shields, we, another young man and myself, would be walking about on Sundays, and sometimes a hunting on other days. I have been along there a hunting along that brook along the line among the bushes. I don't know exactly that it did not run for nine or ten months. It might have been as long as that, and may-be not so long. I don't know exactly about that. There was no ditch dug there then like it is now, nothing more than a little hollow what the water naturally made.

Question. Mr. Parke, did you not tell Mr. Arndt, a few weeks ago, that there was no water there in the hollow to hurt, and that there was no gutter there, and nothing to hinder ploughing through it?

Answer. I don't recollect of telling him that I told him it run a part of the time in the spring; I told him it did not run all the time, it dried up. I believe I did say something to him about rain. I told him when I lived on the Reigle farm there was water enough for the cattle and hogs for a month or six weeks, may-be two months, pretty well towards harvest, for a week of the time I watered my horses there.

I told Mr. Arndt that along through summer, when there would be heavy rains, there would be water there along through the dry season of the year.

Along through the Carter farm I don't know of the water's running only in the spring of the year, or towards spring; through the heart of the summer I don't recollect it. I do not recollect of seeing it running at any other time, except in the spring, or towards spring.

Question. Did you not tell Mr. Arndt that you did not know whether it run across on Mr. Shields or not?

Answer. No, sir, not as I remember of; I told him it did.

And being called again in chief, saith:

Mr. Arndt said to me, that some had said there never had been a natural channel through that hollow. I don't recollect of his mentioning any particular one that said it did not run over on to

Shields. Some of the Skinners had said it did not run over on to Shields. He said some of the Skinners, or something to that purpose.

I think that he said that no one had sworn it run through but Capt. Bowlby. He said Mr. Shields would not let him have the water; he would not let him turn it where he wanted it.

Robert Skinner lived one year on Shields' farm, the time I lived with Carter; his wife was an aunt to my wife. I was well acquainted with the boys during that time—frequently associated with them. I was with them along this line, may-be half a dozen times, may-be oftener, and may-be not quite so often. I did observe the water running on to Shields at these times; I don't recollect how far it run down on to Shields before it run on to Arndt again.

And being cross-examined again, saith:

Mr. Arndt told me that he had put the water across there; I forget whether he said when or what year, or not. I think he said he opened it through with the shovel or the grubbing hoe, or something like that. He did not say anything of his drawing a furrow leading it to the fence, as I recollect of. He said before he put it through it had run a little this side of the fence, I think, down on him.

And being called again in chief, saith:

This conversation between Mr. Arndt and me occurred, I think, two weeks ago to day.

Sworn, &c., September 7, 1841.

Daniel Castner testifies—I have known the farms of Mr. Shields and Arndt, and passed and repassed them for twenty-five years, may-be longer. Have been acquainted with the Woolston stream full out as long as that. Have frequently crossed this stream at the different crossing places. I have travelled the Spruce run turnpike very often, backward and forwards, for twenty years and upwards; I can't tell you how often, or how many times, but have crossed it very often. I travelled it on different kinds of business, in going to Mansfield church, camp-meetings, vendues, and sometimes I have come out of Hunterdon into Warren to look at horses, and have attended gatherings at this place. I lived then in Hunterdon county. I have lived the principal part of my days in Lebanon township, Hunterdon county. The Spruce run turnpike runs through that township. I should suppose I have passed along that turnpike, by Arndt's and Shields', once in two weeks, may-be oftener, and may-be not quite so often, during the whole twenty years, more or less. I recollect there being a bridge on the turnpike across that hollow. I have frequently seen water running down off of Mr. Carter's field on to Mr. Arndt's, often and again; quite a nice stream of water. I believe I have seen water at all seasons of the year. I think I recollect of crossing when there was no water at the turnpike. I think I see it dry. I don't recollect of seeing it dry more than once or twice during the time I passed it. I have frequently crossed this little stream on the road

by Wyer's oftener than any other way. I crossed it this summer two years ago one hundred and fifty times at least. I followed carting every day for six months, and crossed it six times a day. I had frequently crossed at this place before the canal was made. I have crossed it this season when the canal has been dry, before harvest and since harvest. I have perceived very little difference this season and last, and the season before, except after a rain it would be larger, of course. I don't think I can perceive any material difference this season and before the canal was made.

Question. From your acquaintance and observation of this stream, do you or do you not consider it an ancient natural water-course from Woolston's down to Shields' ?

Answer. I have always thought it so, sir.

I have been on the ground along the line between Shields and Arndt; never till this season though. I observed the ground particularly along the fence where the water flows on to Shields, but not so particularly up through the meadow towards the turnpike. According to my judgment, if the water was left to take its course and flow natural, I think it would run on to Shields at this place. I should consider it a great loss and injury to Shields to be deprived of this water, and not have the use of it, certainly. If I owned the place, and was on it as Mr. Shields is, and had as many creatures, and had it divided off into fields, and lane running to this watering place, I should consider it a great damage to me to be deprived of it, and it would be to him. I would not, if I owned the place, be deprived of it for a hundred dollars a year. If I had to take so many creatures all down by the door to water them, I would not hire myself to do it for a hundred dollars a year. Shields has now on hand a large stock of creatures, and has had, as long as I have been acquainted with his farm to know what creatures he had.

I have seen a ditch that has been dug down through Mr. Arndt's field from the turnpike, called the crooked ditch; it is middling crooked. If I owned the farm, I should consider it an injury to have the ditch there, and all the water taken in it and conveyed to the house; it is taking up good ground, and I would have it filled up. There is not much meadow to be made there, as I can perceive. It is only a small strip of watered meadow, it is agoing to make there that ditch. I should consider it more injury to me than it would be profit to me to have the ditch there, and leading soft water to the house, and making that little strip of watered meadow. I observed a spring rising up in Mr. Arndt's meadow, a few paces below where the water crosses on to Shields. The water from that spring ran a south-west course, right towards the line fence of the two gentlemen. From the fence to the spring may be about ten paces, may-be a little over; I did not pace it; I am not so particular about that. That spring-run got to the fence, part of it went through and part went on Mr. Arndt's side. That on Mr. Arndt's side ran down a little ditch that I thought had been made by the hands of man. If there had been no ditch there to have

hindered it, it would all go into Shields' field ; it seemed to make its way that way.

And being cross-examined, saith :

I don't know the year the canal was made ; it has been made eight or ten years. I was along the Spruce run turnpike while they was at work at it. It is something like thirty years ago since that was built. I lived at them days about two miles from Changewater, in Lebanon township. I now live about a mile and a quarter from this place ; I have lived there going on two years. It is two years, last spring, since I moved from Lebanon. I lived, after I left Lebanon, not quite a year at Port Colden. I have been travelling about a good deal since I left Lebanon.

I think, perhaps, I have been in the habit of passing the Spruce run turnpike as often as once a fortnight the whole year round, winter and summer, spring and fall. It might have been a fortnight between ; sometimes I have passed twice a week, and sometimes not once in two weeks. I think not a month or two months between ; might have been, but I think not. I have told the kind of business that led me along the road, by which I recollect that I passed it so often.

In coming from Lebanon, where I lived, to this place, this would be the road. I have come it different ways, by Hampton, and sometimes other ways.

I have observed a nice stream of water crossing the turnpike, from Carter's field on to Arndt, twenty years ago and upwards. In those former years I always see water running there ; always, with the exception of once or twice. I am sure I saw water running there further back than nine, ten, or eleven years ago ; I am very sure of it, sir. It was not in the spring of the year, or after rains only, that I have seen water running, but at different seasons of the year. I have crossed it all seasons of the year. I have never seen much difference in the size of the stream, only in the time of wet weather, then it is larger, of course. I think I have travelled along this road every year between eighteen hundred and twenty and thirty, and saw nice streams running there whenever I passed it, at all seasons of the year. I have passed it in the winter, when I have seen ice frozen over it, that I could not see water then running under it. I have seen the adjoining fields in the hollow of Arndt and Carter tilled within the last twenty years. I don't know as I ever noticed whether they ploughed across this little stream above or below or not. Don't know as I ever looked into these little streams, never charged my mind about it. I have seen Mr. Carter reaping grain in his field, and have seen them cutting corn in it. I don't know but I have seen Mr. Arndt, also, reaping grain in the field where his meadow now is. I have seen Mr. Arndt in his harvest field several times.

I have seen grain growing very close to the hollow. I don't know as I ever saw grain growing in it. I think I never see any grain growing in it. It could not be, of course, for there was always water running in it. I have never saw much difference in

the size of the stream, before and after the canal was made, only after rains I observed a difference. I never knew anything of a sink-hole at all on Wyer's farm; I never was down through the farm. I would not consider any hollow through which the water would flow after showers a natural watercourse by any means; while the water run in it, I would consider it a watercourse. I know nothing at all about the Bowlby hollow from the Mansfield meeting-house, whether it is a natural watercourse or not.

It was this last spring since I first noticed the spring I spoke of rising in Arndt's meadow. I don't know how much the ground has been altered the last twenty years; knew nothing about it till this last spring; never was on to the ground before. I never followed the stream from the turnpike down to the line to see where it run. I was working for Mr. Shields this last spring when I noticed this spring near the fence. I have been working for Mr. Shields, off and on, since last fall about this time of year, only once and a while, a day, some times three or four days, at a tack; not most of the time. I don't know as it is any difference what kind of work I worked at. I tended the threshing machine, husked corn, planted corn, helped take up oats, and threshed a little with the flail, &c., &c., and helped him clean up and measure corn. I think I did not help him hunt up witnesses for this cause. I think I have not told him who would be good witnesses for him, because he has never said much to me about his witnesses. I don't know as he ever inquired of me if I knew who would be good witnesses for him. I think he did not never name such a thing to me. It is about three weeks ago since I worked for him. Mr. Shields first spoke to me to be a witness; Captain Bowlby never did, nor no other live man except Samuel Shields. I did not first speak to him. I live in Shields' neighbourhood, close by John Strader's, jun., not over half a mile from him; I rent a house and small farm of him. I have a family, three sons and one daughter, myself and wife, living at home. My wife is living with me now.

From Shields' up to the watering place is from a hundred and fifty to two hundred yards, may-be more. I have never been up along the fence all the way. It would cost from twenty to forty dollars to buy the stuff for a fence from the watering place down to the house.

And being called again in chief, saith :

I have been a farmer principally all my lifetime, except one year at Port Colden. I don't think I have worked one-tenth part of my time for Shields since last fall. I have work to do at home; I only worked for him when I had time. It is something like two miles across from where I lived to Shields', and if I go round it is further; I think it makes nearly a mile difference, may-be quite.

And being cross-examined again, saith :

I don't know as John Strader, jun., ever talked to me about this trial. I don't think he did; never named such a thing to me.

Sworn, &c., September 8, 1841.

Robert Allen testifies—I have known the farm on which Mr. Shields lives something like thirty years or upwards; my father lived at Hampton when I first knew it, and afterwards moved to this Jimmy Allen lot, as they call it. I worked two years and eight months for William Creveling, where Philip Johnston now lives, below Shields, on the same stream, right where it empties into the the Musconetcong. This farm runs up to within a hundred yards of the Shields farm. During this two years and eight months my father lived on the Allen lot. I used to generally, in that time, go home every Sunday, or every other Sunday, for my clothes; washing and mending done at home then. My road, and as near a course for me to go home, was right up the line fence, and most generally went that way, but have been up the turnpike. In going up the line fence I have seen a pond about where the present watering place is, right on the line betwixt Mr. Arndt and Mr. Shields, may-be fifteen or twenty feet wide. The water run out of this pond on to Mr. Shields, and ran down upon him something like twenty-five or thirty paces; as it run down it passed backwards and forwards through the fence until it come to where it runs on to Mr. Arndt now. This pond was above where Mr. Shields' watering place now is, in Mr. Shields' corn field side. I think the pond was rather more on to Mr. Arndt than it was on to Mr. Shields. The line fence passed through the pond. During the whole of this two years and eight months, in my passing through there, I found the water running on to Mr. Shields; whenever I passed by there I see it run. It run out of the pond first on Mr. Shields' side, as near as I can tell, from one to two paces from the fence. This pond was from twenty-five to thirty paces above Mr. Shields' present watering place, where it now runs on to Mr. Shields; and that is what I meant when I spoke of twenty-five or thirty paces above. I don't know as it run further down on to Mr. Shields from the watering place than it does now; if any, it was very trifling. During these times, as I passed along backwards and forwards to my father's, I was along the turnpike, but not a great deal. I recollect there being a bridge on the turnpike. There was a small stream there, coming down from Mr. Carter's field and running across the road on to Mr. Arndt; and then it run down through Mr. Arndt's field into this pond. Always see it running there when I passed along the turnpike. I can't say that it always run. I have not passed along at all seasons of the year; I have passed along there once or twice right away after harvest; I don't particularly recollect any other times—not just along the turnpike. I don't recollect of following the stream, from the line up to the turnpike, more than once or twice. The appearance of it then was, that there was a small stream running through like a furrow; can't say whether it was a furrow, or the water washed it. It was meadow from the line up to the turnpike, close along each side of the brook. About the pond there was a hedge-row—you could not tell whether there was a fence there or not, only here and there a place. This hedge-row

continued on down clear to Mr. Shields' house, or very close to it. I don't know anything about my father's family getting water out of this pond for family use; can't tell anything about that, as I did not live at home. When I first know'd the farm, Tice Vankirk lived on it. I never saw any cattle drink water there at this pond; but if the bars were down, or they broke through, they could get water there without any difficulty, not else.

The winter after I left William Creveling I have been along the line fence a hunting a little. When along this line fence, I still found water there running upon Shields. I can't tell you exactly how many years ago, or how long it is since I went to William Creveling or left him. I could not tell within a year or two. I think it was in eighteen hundred and thirteen I went to Samuel Drake's to live; that was in the spring, as I left Creveling in the fall. I will be forty-seven in February next. I don't know how old I was when I went to Crevelings', or left there, or when I went to Drake's. I continued at Drake's somewhere about four years. I did not stay at Drake's till I was of age. I went from there to live with Mr. Ingham, and lived with him three years, and then I came of age. I don't know that I have ever been up the stream further than the turnpike. I have been across the road at Wyer's, when the canal was first made, but never traced the stream down from there. I never but once crossed the stream by Woolston's.

Question. From your acquaintance with this stream, do you consider it an ancient natural watercourse?

Answer. Yes, sir, I do.

I have seen the water down on the line but once this season. I have seen it before then when the canal was in operation. I don't know that I have seen any difference in the stream this season or when the canal was in operation; very little if any. I saw quite a great deal of difference now and when I first know'd it. I don't think the stream, when I first know'd it, was half as big as it is now, hardly quarter; not more than half as big anyhow. I observed the stream to vary some, according to the season; always will do that in a wet time or dry time.

And being cross-examined, saith:

It is more than I am able to tell, how many years Tice Vankirk lived on that farm. I can't tell who lived on it before him. After he went off Imlah Drake moved on. I can't say that Imlah Drake lived on it any part of the time I was at Creveling's, more than one year. I can't say that Tice Vankirk watered his creatures down by the house. I can't say anything about where he watered them, nor where Imlah Drake watered his; never saw either of them watering their cattle or horses. It was not trampled down a great deal by cattle around this pond along the line. I have seen marks around it of horses and cows both, but not a great deal. That field where the pond was, on Shields' side, the first year I knowed it, it had wheat in it, the next year corn.

Question. What was it in with the third year?

Answer. I did not know it but two years. In going up and

coming back, both, I would most generally keep on Mr. Arndt's side until I got above the pond, and then I would strike across the fields to my father's. I would go up above the pond two or three hundred yards, and sometimes not so far, and then strike off across the fields. From this pond on the line up to my father's it was a half a mile, may-be three quarters, as near as I can tell; I should think not near a mile.

Question. Do you now say, upon the oath you have taken, that you saw running water from this pond upon Shields' side always when you went up home?

Answer. Yes, sir. But whether it run all the time I can't say.

I paced it from the centre of where the pond used to be, as near as I can tell, to where the water runs back on to Mr. Arndt, and I think it was twenty-eight paces. The water passed backwards and forwards under the fence that distance, as I said before. I did not stay home all Sundays when I went home. I don't know as I ever staid at home all Sunday. While I worked for him I had to go back to do the work. I can't tell anything about that, where my father's family got their water from for family use, whether from Bowlby's or Shields', or where.

I am eight years older than my brother James. I can't tell you anything about that, whether my brother, at five or six years of age, would be able to draw a half a barrel of water on a hand-cart from this pond to my father's.

When I passed along the turnpike, right after harvest, it was not right after a rain—it was before a rain; I know it was before a rain, because the roads were as dry as they are now. I can remember that the roads were as dry as they are now, by walking along it and seeing the dust in it. I can remember that there was dust in the road, when I walked along it, twenty years ago. I am certain there was dust in the road at the time I walked along the turnpike at this particular time when I saw water there.

I was hunting rabbits along the line fence the winter after I left Creveling's. I remember it was the winter after I left Creveling's, because I had left Creveling's and went home and went to school. I went to school here by the Mansfield meeting-house; Irwine taught the school then. I went to school part of the time, and a part of the time I worked for uncle Tom Bowlby, a brother of Capt. Sam's father, who lived where Joseph Carter, jun., does. Can't tell how long Irwine kept school, as I went to Samuel Drake's in the spring. Irwine kept a horse. I don't know anything about my brother James watering the horse. I can't tell where his horse run. I don't know anything of their forbidding my father's family or brother from getting water at Bowlby's. I never heard anything about his abusing the children. The bars I spoke of were outside of Shields' field along side the old road; an old road went down on the outside of the field. There was no fence, as I recollect of, between the bars and this pond.

I think the present line fence stands where the old hedge-row used to run, as near as may be. I don't know that it does exactly.

I know it, from my going along there so often. There was no new fence built when I quit going along; the old fence stood wherever you could see it; it was only here and there you could see. I don't know when the fence was renewed. I don't know that the fence stands exactly where the old hedge-row was, but is as near as I can recollect. I waded through the bogs and stream in crossing, when I passed up and down on Arndt's side, above where it runs into the pond. I started in below, not far from Mr. Arndt's house—between that and the brook on the high ground. I did not keep up the hedge-row exactly. Mr. Richard Riddle and Henry Groff lived then where Mr. Arndt lives. Riddle lived there first, I think; I am not certain whether he did or not. At other times, when I went home, I went up once by the turnpike, and once or twice up the old road by the bars; all the rest of the time I went up by the pond pretty much. As near as I can tell, that hedge-row was from eight to ten paces wide up by the pond; I never paced it. This pond was right under the fence, the biggest part on Mr. Arndt's side, I think. The fence run right over the pond. The Arndt farm and Shields farm was not both one at that time; I think not. I don't know who owned either of them at that time. I always went alone—no one went with me at any time. I can't tell how many years since that pond has been dried up; I have not been about there much in latter years. It was just after harvest that I followed the stream from the pond up Arndt's meadow to the turnpike; they had just cut the grass along the brook. It was while I lived at Creveling's. I went up as I was a going home to my father's for my clothes. I knew it was out of my way, but I went up to see whether the water run all the way from the road or not. I had no other idea. I don't know any other reason, only just to see it, that's all. I went up only once, as I told you before, up on one side, and down on t'other, to the line fence again. I went up just to see whether the water run all the way from the turnpike. I had no other idea, as I told you just before. I had no particular reason that I wanted to know for, at all. It was nothing to me, one way or t'other.

I have been working for Jacob Johnston, of Hampton, this last season, and have worked for him these four years. He has not talked a good deal to me about this water. No, sir, he has not said anything to me about it, one way or t'other.

Question. Have you not told different people in Hampton that the water did not run across the turnpike?

Answer. I don't know that ever I did; if I did, I don't recollect it.

I paced from the centre of the pond down, this summer, the fore part of the summer. I was invited by Mr. Shields to go and see it, and that is the way I come to pace it; he requested me to pace it. He did not tell me that Capt. Bowlby had sworn that there was a pond there that he used to catch trout in, as I recollect. Capt. Bowlby was along when I paced it, nobody else. I can't

tell you about that, how Capt. Bowlby came to be there. Mr. Shields and he came to me in the field, where I was ploughing for Jacob Johnston. Bowlby did not point out to me where the pond was when I came there.

And being called again in chief, saith :

I recollected the place of the pond from my own knowledge. I went myself right up, and pointed out the spot where it was. In pacing down the twenty-eight paces, they came out, as near as may be, where the water crosses back from Shields on to Arndt. I paced on apast the watering place still on down. I should say that it was from ten or twelve to fifteen paces, from where the water runs in on to Shields from Arndt at the watering place, to the centre of this pond, as near as I can tell.

From where my father used to live, on the Allen lot, to Robert Bowlby's spring, I should say was a mile, to go the road ; and if I went across, it was not half a mile ; it was easy quite as far again round the road. I never recollect of getting water myself down at Imlah Drake's for my father's family.

And being cross-examined again, saith :

It was the nearest to the pond from my father's house, and not to Bowlby's spring. I should say it was. Bowlby's spring was forty or fifty yards back of the house, up against the hill.

Question. Is it not as far again, or nearly as far again, from the Allen lot to this pond as to Bowlby's spring ?

Answer. No, sir, I should say not. I think I could go to the pond sooner than go to the spring, to go the road.

Sworn, &c., September 8, 1841.

Abraham Castner testifies—I recollect this Woolston stream something like thirty years, may-be a year or so more. I fix that date, from its being about thirty-one or two years since the Washington turnpike was made through. Since that time to the present, I have passed it frequently on this turnpike. I never seen it dry there by Woolston's, to my knowledge. I have crossed it on the road from Port Colden to Changewater by Wyer's, but not so often as on the turnpike. I have generally seen the water running there at Wyer's ; and before that road was made, I recollect of crossing it on the old forge road. At that day, I believe, it run between the two places, Wyer's and Reigle's ; but don't know that their line now is where the old road was then. Both farms were owned then by the same person. I was along that old road middling often. I used to cart along it. It used to be the road that I went to Easton, when I went there with grain. Easton, at that time, was the principal place of market for wheat, rye, and flax-seed ; corn generally taken to Brunswick. I had business in this county, was another cause of my travelling it, and I have went that road also to old Mansfield meeting-house. I have saw water run there at these times, and I have saw water stand there. I have saw it dry, and I have saw water running there, and I have saw water standing there ; that it did not appear to run.

Question. When you crossed at this place, did you generally see the water running, standing still, or was it dry ?

Answer. Well, sir, I think I have saw it dry as often as I have seen water there—in the road I mean. I have observed the water by Mr. Reigle's barn, once in such a situation that I could not cross it without climbing on the fence. I can't tell you what it was owing to. If I recollect right, I think I most generally saw water by his barn. I speak of when I went across Mr. Reigle's place, and not at the old road. I am unable to tell you what become of this water. I don't know that it did run ; it stood there by the barn. I did not observe it running below in the field below it. It might have run, and I not observed it. I saw it once dry in the road up by Wyer's, but only once, when I went along.

And being cross-examined, saith :

I don't know as the Woolston stream is larger since the canal has been made. I think about one thing ; it possibly may be larger. I think it is pretty much the same as when I first knew it ; I don't recollect, for my part. I think it was in the fall of the year when I saw so much water by Reigle's barn. I don't recollect, as to that, whether it was after a rain or not, or what caused it, or whether it was a wet time or a dry time. This barn must have been as much as two hundred yards from the old road, south-west down the hollow, probably ; when I come to recollect, more. I can't say if it was running in or not ; it was rather a pond. It was a hill each side or descending ground. I don't know how long that continued to stand there. I could not say that the stream by Wyer's had become larger since the canal has been built, or that it had not. I think Col. McCullough owned those two places, Wyer's and Reigle's, at the time I speak of ; the one that Mr. Reigle lives on now I am confident the colonel owned.

I don't know that I ever passed it in the winter season ; I passed it from, say, the first of April to gathering corn—I mean down by the barn. I think I have seen water up by the road at different times in the summer season, and not only in the spring, at the breaking up of winter, and after rains. I have no knowledge of the hollow further down on Reigle's place, but have crossed the hollow on Carter's place. I have crossed it several times in my lifetime. I never found any water there. Have crossed at different seasons there, too, about the same as at the other farm. I have travelled along the Spruce run turnpike, too, not so frequent, every year, some years several times and some years not at all. Beyond ten or eleven years ago, I don't recollect of seeing water run there ; I did not take notice ; I see water there, but not able to tell if it run or not. I pretty generally, in summer seasons, passed there ; I don't recollect whether it was just after a rain that I passed there. What I mean by the summer season, I mean from spring to cold weather. I don't mean just the three months itself ; I include from about the first of April—but which of the months from April on to fall, I can't say. I live about eight miles from here, over in Hunterdon. I don't know who informed Mr.

Shields that I knew anything about this matter. I never lived in this neighbourhood; I formerly lived about two miles from Changewater when I used to travel that old road.

And being called again in chief, saith :

I think there was a little bridge on the Spruce run turnpike at this hollow. It rather seems to be the impression of my mind that there were. Beyond these ten or twelve years back, I recollect, in the year eighteen hundred and eighteen, of passing the Spruce run turnpike several times, as many as half a dozen times after harvest till fall. Any other season than that I cannot specify any number of times. At any other seasons, I think, I passed as much as twice or more, but not very frequently. I have seen that little stream crossing the Spruce run turnpike this season. I think it is about the same now as when I first saw it, seven, eight, or nine years ago, at that place. I think, if I recollect right, it is pretty much the same as I used to see it up by Wyer's.

Question. From your knowledge and observation of it, would you, or would you not, consider it an ancient natural watercourse from Woolston's to the Spruce run turnpike ?

Answer. Well, of course, the water would bend itself that way. There is no other way for the water to run, unless it run up hill.

Question. Then I understand you as answering in the affirmative ?

Certainly, sir. If there is water enough to run, it must run that way.

And being cross-examined again, saith :

Question. Do you mean to be understood to say that this is an ancient natural watercourse from Woolston's down to the Spruce run turnpike ?

Answer. I don't pretend to say that there has always water anciently run there, but if there is water sufficient to run through, it must run that course. I can't conceive any other course it could go, from the situation of the ground.

I don't conceive that the water, from the melting of snows, heavy rains, and breaking up in the spring, could take any other course.

Affirmed, &c., September 8, 1841.

George Creveling, esq., testifies—I have been acquainted with this Woolston stream since eighteen hundred and seventeen. What particularly called my attention to it then was, that I bought a little property adjoining Mr. Woolston, through which this stream runs. I have been pretty well acquainted with the stream ever since that time. I never knew it dry at my farm there. I have partially been acquainted with it down through the farms below that. I have been on all the farms through which it runs, down as far as the Spruce run turnpike; I am not able to tell how far back. It is about twelve or fourteen years since I was on that farm where Mr. Reigle lives frequently. I have been before that and since that on the farms above and below it. I have not been so fre-

quently on Mr. Joseph Carter's farm across it. Before the canal was in operation, I never saw the stream through my farm dry, nor since. Before the canal was in operation, I never seen this stream dry on Mr. Henry Carter's farm, to my recollection. I think I have seen it dry on Wyer's farm. On Reigle's farm I have saw it dry there. On Joseph Carter's farm I have seen it dry there. I have seen it run, also, on all these different farms. It must not have been a regular stream, or it would have run all the time. I have seen it run at other seasons besides the breaking up in the spring, melting of snows, and heavy rains. I cannot state what proportion of the season it continued to run on those lower farms. As far as my memory serves me, when I was on the Reigle farm, twelve or fourteen years ago, I saw the water run from spring till pretty well on till towards harvest. I can't tell you that, whether it was a wet, dry, or common season. I have travelled the Spruce run turnpike occasionally since it has been made. Before the canal was made, I think I have seen the water running across it from Joseph Carter's. I have crossed that road occasionally ever since I moved into Mansfield. I moved into Mansfield twenty-eight years ago. During that time I have seen the water run across the turnpike there occasionally. When I saw it, it was a small stream; and I have crossed in the spring of the year and after rains when it was quite a large stream. I don't know that I can say that I have crossed it pretty much at all seasons of the year. I have crossed it different times in the season, but as to state what times, I can't. I recollect of there being a bridge across the turnpike at that hollow. I have seen the stream there where it crosses the turnpike the present season. I have saw the stream larger before the canal was made, and I have seen it less than it is this present season. I don't know but I have, I can't say positive. I was not acquainted formerly with the ground on the line between Arndt and Shields.

Question. Can you say how the stream was this season when there was no water in the canal, in comparison with it in former seasons when the canal was in operation, at this place spoken of?

Answer. I have seen it entirely dry at this season of the year, and this season, when I saw it last, the water was running there, about three to four weeks ago, and before the water was put in the canal. At that time it was a pretty nice little stream. I was then on the ground on the line between Shields and Arndt, to see where the water run across. I was over the ground from the turnpike down to the line.

Question. From your judgment and observation of the ground, if the water was suffered to run naturally from the turnpike, would it flow over on to Shields or not?

Answer. It is my opinion it would.

From the watering place up, the lowest ground appears to be on the west side of the ditch between the ditch and the line fence, extending down to the line fence above the watering place, and also above where it crosses from Arndt on to Shields.

Question. From your knowledge and observation of the Woolston stream, from your farm down to Shields, would you consider it an ancient natural watercourse, or not?

Answer. I should consider it a regular watercourse when there is water to pass that way.

If I owned Shields' farm, and should be deprived of the water there, I would consider it an injury, a considerable injury, to be deprived of water altogether. If I owned Mr. Arndt's farm, I should not consider it any benefit to have all the water turned into that crooked ditch.

Question. If all the water at the turnpike was taken into this crooked ditch, and discharged at his house into the turnpike, and the springs above Shields' house all dry, would or would not Shields have a dry farm?

Answer. In my opinion, as far as my knowledge extends, it would be a dry farm.

I have been through by Arndt's and Shields' houses occasionally, not very frequently. I don't feel prepared to answer the question, how high it would be from the level of the water in the pond, between the houses of Shields and Arndt, to the foundation of Mr. Arndt's house. In my opinion it would not be more than ten or twelve feet, may-be more. I did look at it with reference to form a judgment, when I was down there last.

And being cross-examined, saith:

This Woolston hollow is not a very large hollow.

In times of flood and rains there is no other way for the water to pass off from that region but down that hollow, that I know of, to the Musconetcong. The hollow does not extend over a very large extent of ground. It may be from a half a mile to a mile between the ridges, but I am not able to tell; I have never noticed it with reference to judging. I give you, as my opinion, the average width of it, from half a mile to a mile. It is narrower at Port Colden, on the turnpike, than below. My first remark did not embrace the Scott hollow. On the turnpike, to embrace both hollows, it is a little over a mile across from where the water would descend both ways into these hollows. The Strader hollow, that comes in by Shields, is a pretty extensive hollow also. The Strader hollow, at the head of it, is over a mile across, and from the top of the high ground at the head down to Shields, on an average, from a mile and a half to two miles. There is also another hollow running down from the old Mansfield meeting-house to this ground, between Shields and Arndt. I don't know of any other course for these hollows to discharge themselves, but down the hollow by Shields and Arndt to the Musconetcong, in time of freshets and rains. There is a little stream at the head of the Strader hollow, and there is occasionally here, by Mansfield meeting-house, I have never saw the streams at the head of the Strader hollow cross the road by William Shields, except in very high water. I can't tell what becomes of them, whether lost in a sink-hole or not. The little stream that runs down the Bowlby hollow

from Mansfield meeting-house runs into a pond in Mr. Parke's field, above Mr. Arndt's and Shields' farms, and it sinks there somewheres; I don't know what becomes of it. If these streams were continued down, by ditching or otherwise, and the water running, I should consider them a regular natural watercourse; there is no other way for the water to run.

Question. When you say, then, that you would consider the hollow that crosses the Spruce run turnpike and the farms above it an ancient natural watercourse, do you mean anything more than that it would be a natural course for the water to flow when there was water?

Answer. It is my opinion it is the course the water must go.

Question. You mean when there is water to flow?

Answer. That is my opinion.

I can't state distinctly whether it was only after rains, or the breaking up of winter, or in the spring of the year, that I saw water flowing across the Spruce run turnpike before the canal was made and before the water was led down in ditches. I have saw water flow there at different seasons of the year.

I observed the ground in Arndt's meadow easterly of the ditch in which the water now flows near the watering place. In my opinion the ground easterly of the ditch is not lower than westerly of it. Westerly it is lowest. My observation was only made by the eye.

If I had only hard water at my door or in my well, to have a stream of fresh water brought to the door would be an advantage.

If the water brought in this crooked ditch was discharged back of Mr. Arndt's house, it is my opinion it would flow down into the pond by Shields' house, if it had a straight direction. I have never been in Shields' house till within three or four weeks ago. I have been along there occasionally, not frequently, in former times, and might have stopped at the door. I have saw water there when I have passed, and have saw it entirely dry. I expect that was their watering place, but can't tell. I have seen creatures in there drinking, but I don't know whose.

The farms at the head of the Woolston hollow have been cleared up some since I first knew them. I have straightened the old ditch on my farm—never cut any new ditch. I believe my neighbours have also ditched in late years there. I don't know anything about the water's sinking on Wyer's farm, of my own knowledge, in old times; but I have heard people say it did. It is my opinion that they ditched across these farms down the hollow. I never saw them ditching, but on the Wyer farm I saw them a throwing the ground out, that they said was for a ditch to turn the water in. When I saw them throwing out ground on the Wyer farm I expected they were ditching; but did not know what for till they told me. I cannot tell you how long ago. It may be eight or ten years ago, and may be five or six. I think, when I come to reflect, it is not over five or six years, but it may be; there is nothing by which I can recollect distinctly. Or while they were

ditching, I don't know where the water was running to; I saw it up along the road. I was passing along the road from Port Colden to Changewater when I saw them ditching. I never afterwards saw the water running in the ditch. I have passed there afterwards. It still crosses the road just where it always did ever since I knew it. I don't know where it is taken into the ditch. I have not been upon the Reigle farm since the ditch was done.

Question. If the streams that you have mentioned at the head of the Strader and Bowlby hollows were continued down, and the water run in them, would you not consider these hollows natural watercourses as much as the hollow by Reigle's and Joseph Carter's farms?

Answer. Well, I will answer it, as I did before. If the water continued to run, it would be a regular watercourse; there is no other way for it to pass off that I know of.

And being called again in chief, saith:

I have known the Shabbycong at this place to be dry before the canal was made; I cannot tell how long at a time. Before and since the time I saw it dry, I think I have known it to run the whole season. I consider that an ancient natural watercourse.

Before the canal was made, I never knew the Pohatcong dry, that I know of; I have no recollection of it.

I have no knowledge of the water from Beavers' spring flowing into the Woolston stream. My wife was an Anderson, widow of John A. Beavers. The property I bought was, I believe, originally part of the Beavers' property, so the writings stated. John A. Beavers owned that property.

These three hollows spoken of, all pass over a limestone soil. At times of freshets and breaking up of spring, unless there is frost in the ground, water will sink more on limestone land than on clay or other soils.

And being cross-examined again, saith:

I have no recollection of the Shabbycong's being dry since the canal has been made. I cannot tell whether the water could be led down the Bowlby and Strader hollow by ditches, or not. I have never been down there.

Sworn, &c., September 9, 1841.

John Garrison testifies—I once lived on the Reigle farm, I believe you call it; it joins Joseph Carter's. I lived on it two years. Mr. John Davis and myself farmed it. I had a son born there in March of the second year, and he will be twenty-one years old next March. I have no learning of any account, is the reason I give you this calculation.

One of them years we were pretty much bothered for water, but which I have forgot; but it pretty generally run the biggest part of the time. One of these years it run better than the other; it run principal of the time. I can't tell that exactly, but I expect it run nine months in the year. I have followed down this hollow as far as the turnpike, and have seen the water running all the

way as far as I went. After I left the Reigle farm, I lived seven years joining Joseph Carter's farm. I lived four years where Philip Johnston lives and three years where James Groff lives. During these seven years I was frequently across this hollow, and expect pretty much at all seasons of the year; I could not tell justly about that—different times. When I crossed this hollow I saw water running sometimes, and sometimes I saw it dry. I think I have saw the water running there oftener than I saw it dry.

I have seen the ground lately where the water runs over off of Arndt on to Shields—to-day.

Question. According to your judgment, if the water was left to run naturally from the turnpike, would it flow over on to Shields or not?

Answer. I think it will; yes, sir.

I think if the water was left alone, it would run on the west side of the ditch near the line, and I think it would cross the line twenty yards, or upwards, higher up than it now does.

And being cross-examined, saith:

I can't tell exactly, but I think it run nine months of the year in that dry season; not at all times as large a stream as there is now. I think it was during these two years that I followed the stream down to the turnpike. I don't think I travelled it much afterwards. I have been down it more than once during these two years. Did not always see it run all the way down. A good deal of it was lost on the Reigle place. I can't tell you all about that, where else, but when we were plagued for it, it was lost above. I never followed it further down than to the turnpike. I don't know whether it then run across Arndt's farm on to Shields or not.

During the seven years the most of my crossing this hollow was at the turnpike; that was most of my business about it; I can't tell exactly at what seasons of the year I saw water there, but in the spring always, I think. I can't tell what portion of the year I saw water running there.

I viewed the ground to-day, at Mr. Shields' request; he was along, and that man, Mr. Wright, I believe his name is.

I live now in the township of Alexandria, in Hunterdon, something like twelve miles from here. Mr. Shields and two other men came to see me there; these two men were Jacob Johnston and Thomas Leonard.

I don't know that I was ever down there along the line in Arndt's meadow before to-day. I don't know what alteration has been made in the ground by tilling.

When the water was lost above me, (as I said above) it sunk in the ground on the Wyer farm. There must have been sufficient rain to keep the brook agoing the season we had plenty of water. There was not much of a pond there then on the Reigle farm; there was a pond to be sure, but not so much as above. These ponds could not have been fair sink-holes, or they would have sunk right down, I would imagine. Where it settled in the ground upon Wyer's I would call a sink-hole. It did not sink in these ponds, I

think. Capt. Bowlby and myself have had no discourse about this suit; we had a little here, but I can't tell what it was. I was talking to the captain, and said, I wondered what these men wanted of me, as I knew so little about it. I don't know what to tell you what the captain said to me.

Question. Did he say much or little about it?

Answer. He said little about it to me.

Question. Did you not go out with him to the canal this morning?

Answer. Yes.

Question. For what purpose did you go out to the canal?

Answer. He told me he wanted to see if they had any ceiling lath, and invited me along. I had no errand there.

Question. Did he talk about this suit on the way?

Answer. I don't know that he did, sir.

The water has sunk sometimes on the lower end of the Reigle place next to the Carter farm.

Before I went up to view the line, it had been represented to me that the water had run formerly across there, by Mr. Shields. I think he did not tell me who had sworn to it. I think he did not say that it had been sworn to or proved.

The four years I lived where Philip Johnston lives, I think the Wyers lived on Shields; not certain, but I think the whole four years. I was very seldom up to see them, but have been there sometimes. I generally saw them watering their cattle at the house; was never up the line to see whether they had water there or not.

And being called again in chief, saith:

Question. From your knowledge of the Woolston stream at Wyer's down to the turnpike, would you consider it an ancient natural watercourse?

Answer. Yes, sir.

And being cross-examined again, saith:

Question. Do you mean anything more than that, from the face of the country, the water would naturally flow down this hollow, when there was any?

Answer. I believe it would flow down there when there was any to run.

Question. You have said that you would consider the Woolston stream, from Wyer's down to the turnpike, an ancient natural watercourse; do you mean anything now, in calling it an ancient natural watercourse, than that this hollow is a natural course for the water to run down, when there is any to run?

Answer. No, sir, nothing, only I think it is a natural watercourse.

Question. Do you think so because there is no other way for the water to run?

Answer. I think there is no other way from the time it comes to Wyer's; it might be some other way above.

Question. Is that the reason why you think it is a natural watercourse?

Answer. Yes, sir.

And being called again in chief, saith:

Question. Do you also think that the water always used to run down this hollow, when there was any to run, in ancient times?

Answer. I do.

Sworn, &c., September 9, 1841.

Thomas Banghart testifies—It is about in the year eighteen hundred and fifteen or sixteen that I was first along the Spruce run turnpike apast these farms. I was called to measure the road from this place down to Clinton, and carried chain. At that time I observed water running across the road in the hollow this side of Mr. Arndt's. I have passed along the road several times from that time to this, not every year; I have passed it several times, I don't recollect how often; some years several times in the year, and at the different seasons of the year, in the summer time and in the winter time. I have generally seen water there when I passed it. There was a little bridge built at the time the turnpike was made, to let the water through. I have also crossed this stream several times on the road from Port Colden to Changewater. I have always seen water running across there.

From your knowledge and observation of it, do you consider it an ancient natural watercourse, or not, from Wyer's to the turnpike?

Answer. I do, sir. I don't see which way it would run without it would run down there.

Question. Do you consider it as much so as the Spruce run or Musconetcong?

Answer. Yes, sir, I do. I don't see any other way for it to run, unless it run up hill.

And being cross-examined, saith:

I don't recollect but what there was always water in this hollow when I passed it. I mean running water. I can't tell you whether it run across Arndt's farm on to Shields' or not, for I never followed it down there.

Question. If the water did not run across the turnpike more than three or four months in the year, and was dry the rest of the year, would you then consider this an ancient natural watercourse as much as the Spruce run or Musconetcong?

Answer. Why, no. I should not think it was.

Question. Would not the water naturally run down any hollow like that in the breaking up of winter or after heavy rains?

Answer. I should suppose it would; the water often runs along the road after heavy rains.

And being called again in chief, saith:

I recollect it was in warm weather when they run out the turnpike; rather think it was after harvest, but am not positive. It appeared so to me, that the water in this hollow had run from old

times; I don't see any other way it could go. I have often known other *ancient natural streams that were sometimes dry*, and then *commence running again*. I have known several such in our county, and one in particular below Rocktown, that sometimes was a clever stream, and at others dry.

And being cross-examined again, saith :

I don't recollect, in passing along the turnpike, of noticing whether there was a channel worn in the field, above and below, or not, in former times.

When I spoke of seeing water running there, I mean water running across from the field above to the field below. I refer this seeing water run there to former times, further back than nine or ten years.

Sworn, &c., September 9, 1841.

John Wright testifies—It is going on sixteen years, as near as my memory serves, that I have been acquainted with the farms of these parties. I worked for John Wyer, when they lived on Shields' place, a year and four months. During the time I was there, I was often up along the turnpike by this hollow across that brook. I most generally found water running across there. I was up there pretty much at all seasons of the year. I was also, during that time, frequently up along the line betwixt Shields and Arndt. There was water there along the line generally. It was both sides of the fence. It was boggy and bushy and wild place along the line by the present watering place. The water was there at the present watering place, and higher up too, but did not run there then as it does now; it was boggy and bushy and more obstructed, and did not run as freely on that account. It was, perhaps, twenty-four or five yards higher up where the water first came over on to Shields. I recollect of there being a kind of a pond there. This pond was about where the fence stands the largest on Mr. Arndt's side, though the fence has been altered, I expect, moved a little one way or t'other, may have been, I don't know; it is a new fence now. The old fence run through this pond and marshy place. It was bushy and marshy from there all the way down, almost to Mr. Shields' milk-house. At this pond or wet place there the cattle, horses, and hogs went to get drink there. Could see the marks along the edge where they slipped in; see them go there.

Question. This Woolston stream that you see crossing the turnpike, did it run into this pond or marshy place, or where did it go?

Answer. Well, sir, I see no other places it could go. I don't know how far the water run down on Mr. Shields. I think the water then run down further on Mr. Shields than it does at present.

Question. From your knowledge of this Woolston stream, would you consider it an ancient natural watercourse or not?

Answer. I do.

Question. Do you consider that the water must have run there from old times?

Answer. Yes, sir.

During the time I lived at Wyer's I think I never saw the stream by Shields' house entirely dry. It was so it run across the road, but very weak though, at one spell. The spring above Shields' house I never knew to get entirely dry, but was so low that it was not fit for house use one spell. We then got water for house use from Mr. Carter's spring, over across his field and road too.

If Mr. Shields was deprived of the water up along his line there, I should think it would be a great loss and injury to him. If I owned Arndt's farm, and took all the water out at the turn-pike in this crooked ditch, and carried it to his house, it might be a benefit in some ways, and in some ways no benefit.

Question. Upon an average, would you consider it a benefit or injury?

Answer. Well, sir, I should think it an injury. It is cutting up the field in such curious kind of pieces so.

And being cross-examined, saith :

I commenced working for the Wyers in the fall. I was with them but one summer. I do not remember whether they raised anything in that field along the line by this wet place. It runs in my mind they had clover in it. If it was in clover they mowed it ; whether it was that field, or the next to it, I am not certain, but they mowed one. I don't know as I can tell what year I worked there. I went there in the fall, as I was twenty-one in August before, and am now thirty-seven years old last August. When Wyers fetched their cattle and horses out to water they watered them at the pond at the house. Sometimes they were in a field where there was no water, and that is the reason they fetched them there when there was water up the line. I guess the water was pretty scant sometimes up along the line, but there was always some water the whole season, sufficient to water them there on Shields' side. It run sometimes when the brook was up so as to fetch it over. It run almost any time of year, except in the heat of summer, when all the streams were down, and not only after rains and in the spring of the year. When the stream was low in the summer time the stream come in among the bogs and brush, and was wet on both sides, and of course there would not be so much on Mr. Shields' side, because it was clustered up and one way another, and could not get through as well with bogs and mire. A small stream at such times would find its way through the bogs. It was flat like, and it moved along ; can't say there was any particular channel, it kind of weeped along when very low. At such times you could see a little water on Shields' side, but not much more than that the ground was just wet when the water was very low. The water would then be very low on both sides. The water run, but it was very slow. It was the most on Mr. Arndt's side, because, as I told you before, it did not reach through on account of the obstructions ; it had not strength to force its passage through as when it was up. I could not say that it run at all on Mr. Shields' side when the water was so low, but it run slowly down on Arndt's

side through the bogs. The main stream, when it was very low, was right about the fence there at the pond-hole, as you call it. The bogs reached up as far as the pond, and above as far as the pond-hole extended, at any rate; most bogs and wild grass on Mr. Arndt's side. The western edge of this boggy place on Mr. Arndt's side reached over on to Mr. Shields' side more than one, two, or three feet, perhaps ten feet. It reached out a considerable distance on Mr. Arndt's side, a good deal further than on Shields', perhaps ten or fifteen yards, for anything I know. The bogs did not grow out to the very edge of it. Grass and weeds grew on the edge of it. I guess the bogs were not mowed on either side that year. Mr. Groff mowed his meadow, but did not mow off the bogs up to the fence at the pond-hole. That pond-hole was on both sides, but principally on Mr. Groff's side, who then lived where Arndt does now. This pond was not very large, perhaps the water might spread there twenty yards across it sometimes when the water was up a little. I have known it a good deal larger in times of a fresh. There was a stream running out of that pond. Where the water started out of the pond was under the fence; it run through, and afterwards back on Mr. Arndt again. There was more or less water in this pond all the time all this summer. That pond would get filled through the winter and spring, and in times of heavy rain too.

I never was across Mr. Groff's farm; I don't recollect that I was the whole time, and don't know that this stream at the turnpike ran into this pond. I did not go to see where the water went from the turnpike. If I did not go to see, I had good reason to believe that it passed down through Arndt's meadow. In the spring and when there was heavy rains, I think, this pond would not be filled with water coming down the Bowlby hollow. I always calculated it was filled from the stream that came across the turnpike, because I see no other place it could run to. There did not come in this pond a great deal of water from the Bowlby hollow, I guess, while I lived there, at such times as I recollect of. I don't remember noticing about the water coming down the Bowlby hollow. I said I had good reason for believing the water went down Arndt's meadow, because I did not see it had any other way to go to. The middle of this boggy place was a considerable distance from the line fence on Groff's, or Arndt's, farm. When the water was low, it wept down somewheres in it; I can't say in the middle of it. It was a little wetter along the middle of these bogs than the edges, of course. I never examined particularly to see where the stream passed through the bogs. There were bogs growing on Shields' side, as much as two or three feet from the fence; there were bogs and brush there. That hole was not very deep when I knew it. There was not a third of it on Shields' side; perhaps there might have been. I remember that part of it was on Shields' side, by seeing it and being up along there. I never got over the fence to see whether there was a stream come in on Mr. Groff's side or not, in a low time. I don't know whether there did or not.

I did not trouble myself to look from Shields' side, whether there was any water come or not from the other side or at the head of the pond. The way I come to notice the water being on Shields' side below the pond, was from my being up and down there. I was up and down there frequently, after rabbits and possums, on Sundays too. I worked in the blacksmith's shop for Wyers. They never drove their cattle up to this pond up along the line while I was there, as I know of, to water; their only watering place was by the house that they drove to.

Question. Are you willing to say, upon the oath you have taken, that this stream that you saw at the turnpike run across Arndt's farm upon Shields', and then run down a few yards on him, and then crossed back again on Arndt?

Answer. Why, I believe it did, for I saw no other place for it to run, as I told you before, and I see the water was down there.

Question. Are you willing to swear that you saw the water running on Shields' side when this stream was low?

Answer. Well, I tell you, as I told you before, I see water there.

Question repeated.

Answer. Well, it run, but it was very slow, as I told you. I understood your question, and I thought I had answered it fully before. I don't know but what the ground is a little lower on Arndt's side than Shields', a few feet from where the water now passes on to Shields between a little bank and the line fence, but I did not notice it particularly. It looks a little as if the ground on both sides of the ditch near the line in Arndt's meadow was a little lower than where the water now runs in the ditch.

I now live near Belvidere, at Philip Miller's shop up the creek. I have lived there going on two years. I have been living in the county since I left Wyers, except one year in Sussex.

I don't remember whether Groff had grain growing in that field next to the turnpike or not. I have no recollection of their harvesting on that ground.

And being called again in chief, saith:

This pond and boggy wet place was all the same place that I have been speaking about in my examination. It was all above the present watering place. I thought the lowest part of the pond was on Arndt's side. I considered the lowest part where the water run out. This lowest point was very near the fence, almost at the fence. When I spoke of a stream running down on Arndt's side through this pond, I did not mean a stream running apast the present watering place, but a stream running out at the end of the pond. When I spoke of the meadow through which the water run, I meant the meadow between the turnpike and the pond-hole. When I spoke of the low place on Arndt's side near where the water crossed off of Arndt on to Shields, I did not mean to say that the ground there was lower than at the pond-hole.

And being cross-examined again, saith:

The water that wept through these bogs in a low time, I sup-

pose came from springs about there in Arndt's meadow; there were springy places about there.

Sworn, &c., September 9, 1841.

Jacob Martens testifies—It is twenty-two or three years ago since I have travelled the Spruce run turnpike considerable along where these parties live. I recollect seeing a little bridge on it in the hollow on Mr. Arndt's farm. I did observe water running there when I crossed it at that time. About that time I believe I crossed it at different seasons of the year, both winter and summer; then a young man. I used to come up here to Mansfield church, may-be every two or three weeks, or oftener, and sometimes to this place around. I have crossed this stream by Wyer's several times, but not as often as at the other place, twenty odd years ago, and two or three times within two years.

Question. From your knowledge and observation of this stream, do you consider it an ancient natural watercourse or not?

Answer. Well, I should suppose that would be the course the stream would have to follow; I don't see any other way for that water to go, except it come to this hollow.

Question. Is it your judgment that the water used to run there in old times?

Answer. Well, sir, I have saw the water run through this bridge twenty-two years ago, and I have seen it run since.

Question. Do you then consider that the water must have run there in old times?

Answer. I told you, Mr. Sherrerd, that I had seen water run there twenty-two years ago.

I consider that it must have run there before the twenty-two years.

And being cross-examined, saith:

I do not know whether the water I saw running across the Spruce run turnpike came from the Woolston stream or not, or where it come from, or out of Carter's field or not; I never examined. I don't know whether it come down the turnpike or not. I have seen water running there, and I have seen it when it did not run across. I could not say it was entirely dry at the sides. I was never down the hollow from Wyer's down to the turnpike. There is a little stream running from a little below the Mansfield meeting-house, down in the Bowlby farm in the Bowlby hollow. I can't tell what becomes of it. The water, in times of melting of snow and in breaking up of winter, runs in every hollow almost through the country wherever the draught takes it. I live now near New Hampton, in Hunterdon county.

And being called again in chief, saith:

When I passed along the turnpike, I can't tell you whether I saw it oftener running or not running, it has been so long ago.

Sworn, &c., September 9, 1841.

John Scott testifies—I have known the Woolston stream upwards of thirty years. I never have been more than six months out of the neighbourhood in all my life. I was bred and born close by it, and have always lived within seven miles of it. My father and Woolston joined farms. I shall be forty-seven or forty-eight years old if I live to see next April. My father owned the farm upon which one branch of this stream rose. In old times I have known it to run down as far as Wyers lived a good stream full and flush, and I have known it to run some below there, and make ponds on the Reigle, and likewise on the Wyer farm. And when the pond by Reigle's got full, it run over the old Change-water road, and flowed down the hollow; it could not run up hill. In Beavers' meadow there was a dam made across the stream, at the head of the meadow and ditch dug there on purpose to take it out over the knoll, and which they did do, and it dried them totally below. I have helped put in the dam, and helped tear it out also, when I worked for the Beavers. I helped put it in, and, when I worked for the people below, I helped tear it out. After being thrown over the meadow, it would spread out, and the old channel being obstructed with grass and things, as they did not take as much pains to clear it out as they did their ditches, it would draw the channel and run into sink-holes; there were several sink-holes. The last sink-hole was something like three hundred yards, or thereabouts, above the present road by Wyers. I never paced the ground, and can't tell exactly. It is near the hickory trees that stand there yet. I was very frequently along this stream, backwards and forwards to my grandfather's, John Laird, who lived on the Henry Carter farm in my younger days; he owned a lot there joining Beavers. I recollect of working for Robert Skinner when he lived where Samuel Shields lives; it was only three days in the fall of the year, in husking corn time, as near as I can tell in the year 1813 or 14. I never was up the line or to the watering place, was only through the field close by it, as we went from the house to our work. I saw them turn the cattle there, for to go and get drink. I recollect it was a bushy wet place there. I have been there this present season to view the ground at the watering place, at Mr. Shields' request. I saw the water then running across the turnpike on to Mr. Shields. I followed it all the way down.

If the water was left to itself at the turnpike it would flow on to Shields, I think likely, from the appearance of it to me.

Question. From your knowledge of this stream, would you consider it an ancient natural watercourse or not?

Answer. Well, sir, that there is more than I am able to tell; for there is so much difficulty in ancient watercourses I could not tell. Where there is a main channel that never fails, that I call an ancient watercourse, and not these small streams.

Question. Do you judge that the water always used to run there, when there was any to run?

Answer. From the appearance of the ground, to me, it must go

that way. I see no other way for it to go without it sunk altogether.

This present season I have followed this stream from the Washington turnpike all the way down to Shields'. I don't think it is a great deal larger there by Wyer's than it used to be in old ancient times when I first knew it. There was water in the canal when I went down it; it is a week ago last Monday. There has several springs been taken off from it, as well as its being increased by leakage from the canal. Some springs above the canal, on my father's old farm, run into the canal; they can't cross it. I have not seen this stream at Wyer's any time this season when the canal has been dry.

And being cross-examined, saith :

The spring of the year and heavy rains, I expect, caused this pond on Reigle's to overflow. I can't say what caused it. In former times I was never further down than where Mr. Reigle lives. I know nothing of its running down in former times across the turnpike, any more than in a fresh or a shower.

In former times, I expect that this whole stream was lost on Wyer's and Reigle's farms; but it is more than I can tell. I know that there were sink-holes on these farms. The water does not run down now all the way across these two farms where it used to. In one place it runs now near about where it used to in old times on Mr. Reigle's farm, as near as I can tell. The stream was shifted by ditching, because I never saw it run there before till since it has been ditched, unless in a shower, or something like that. I have not observed it being ditched only two years ago last June. I don't know when the ditches were dug. They kept up the dam across Beavers' meadow a great many years; I can't tell how many. They were always disputing about it. It was there when I first knowed it. There were two dams in Beavers' meadows. Capt. Moses had one, to take the Scott stream, Squire Roberts one, for the Woolston stream. The Woolston and Scott streams would have come together below these dams. They would not come together if they was turned over the meadow. Those two streams now in part run where they did in former times, and in part they don't; they have been straightening up more by ditching, for their own conveniences, and not have them so crooked. When these dams were torn away, it would run down as far as Wyer's and Reigle's part of the season, and part it would not.

In 1813 or 14, when I worked at Robert Skinner's, I did not see any water running across the turnpike over Arndt on to Shields. I did not see any there at the turnpike then, never only just in time of a fresh or hard showers, breaking up of the springs, or heavy showers, is all ever I seen till now. I don't know that I ever see it run across the turnpike till last Monday a week ago, to make a fair running stream, as it does now. It is more than I can tell, whether when I went through the field there was any running water there or not; I did not go to see; I only saw them

turn their cattle there. It was not my business ; I had to attend to my work. I saw two or three boys turning the cattle there ; it is more than I can tell whose they were, whether Skinner's or not ; he had quite a grist of them about. They were said to be Skinner's cattle ; I did not know. There was a watering place down there below the house. As I passed along to my work, I could not see any water at all, only the brush, without going into the brush, and I had no business there. Nor I don't know how it got there.

I can't call anything else an ancient watercourse only, as I have said before, where a stream never fails or where it runs from a spring and don't sink, and therefore I would not call it an ancient watercourse where the water only run down the hollow in the spring of the year, or breaking up of winter, or after heavy rains ; at such times the water will always gather to the hollows ; it won't stay on a hill. I have passed along the old forge road before it was taken up, and ploughed across it since it has been taken up on Reigle's. I have lived so far from it but I must cross it sometimes. It was warm weather when I first knew this water, and I would be paddling in it as boys generally do. It would run sometimes and sometimes stand still. I don't know that ever I was there in the fall of the year or right in the middle of the summer. I don't recollect as I was. Some time about May and the first of June, as near as I can recollect, I saw it running there. It is more than I can recollect, whether it was after a heavy rain ; that is a little too far for me.]

And being called again in chief, saith :

By straightening up these ditches, and clearing out the stream, would have the effect of making more water in them ; it would not waste so much over the ground, but make more of a channel. In old times, when I spoke of paddling in the water, I had no acquaintance at all on Joseph Carter's and Arndt's farms ; that was a little too far for me. In old times I never caught any fish above, only as I run after them they would get under the banks ; they was too quick for me. I never seen other people catch any. I have seen eels caught by Wyer's. One was caught there in Nixon's time that weighed three pounds ; I helped catch that one, and have known others caught above.

Before the canal was made I have seen the Shabbycong, not entirely dry, there would be puddles in it, but so dry it would not run. I expect that is a natural watercourse ; it is counted so, or else it would not be recorded.

And being cross-examined again, saith :

I have heard tell of fish being caught in a pond that had no outlet, but never caught any myself.

John G. Robbins testifies—I have lived in this place twenty-seven or eight years, and have been backwards and forwards across the Woolston stream on the Washington turnpike, and also by Wyer's, during that time. During that time I almost

always saw water running across at Mr. Wyer's and a watering place. During this time I have been in the habit, also, of travelling the Spruce run turnpike frequently across by Arndt's and Shields'. During one season I farmed the farm then owned by Richard Rounsevall, that led me so frequently to go along the Spruce run turnpike. I don't recollect about there being a bridge across this hollow. I have often seen water there when passing and repassing, and sometimes I have seen it dry. I don't recollect particularly about that, whether I generally see water or generally see it dry. I have been on the ground, along down the line between Shields and Arndt, with Major Creveling, this summer. I see the little stream running down across the turnpike. It was quite a stream. It was before the water was put into the canal; there was no water in it then. If there was no ditch there, and the water left to flow naturally, it would, I think, flow on to Mr. Shields, according to my judgment. I could not tell, but appears to me to be lowest ground on the line above where the watering place is. I think it looks to be rather the lowest about ten or fifteen yards above where the water runs upon Shields; in fact it looked to me as if that used to be the channel of the old stream, and filled up since the ditch had been there where the water now runs. I rather thought it was a little lower also, the east side of this ditch, judging by the eye, but the lowest place I thought was on the west side.

Question. Is it your judgment, then, if the present ditch was filled up even, and the water suffered to run naturally from the turnpike, that it would flow on to Shields west of the present ditch, or not?

Answer. I think it would.

I should think it a great injury to Shields to be deprived of the water there.

If all the water was taken out at the turnpike into this crooked ditch, and taken down to Mr. Arndt's house, I should not consider it any benefit to his farm; but I can't tell though. Some would like to have it there, and some would not. If it was mine, I would rather not have it. I have so much water, I think it rather an injury on land.

I live upon the Shabbycong; it passes through my farm, and empties into the Pohatcong on the line between Mr. Warne and me. I have known it entirely dry at my place before the canal was built. We have hauled water from the other brook. I once lived in this village twelve or fifteen years, I think something like that, may-be longer. I have known the Shabbycong often dry above here above where the spring comes in from Yeomans. His spring comes in right by the turnpike here. That spring-run I never knew to be dry. I don't know as I can tell how long I have known the Shabbycong dry. I have seen it dry for several days; I can't fix any certain time.

Question. From your knowledge of the Woolston stream, would you consider it an ancient natural watercourse or not?

Answer. Well, I don't know as I can tell for that. It appears,

from the looks of the ground, it was, and the brook now running.

Question. Is it your opinion that the water must have run there in old times, when there was water to run?

Answer. Well, I should think so.

I consider the Shabbycong an ancient natural watercourse.

And being cross-examined, saith:

I don't recollect whether the water that I saw at the Spruce run turnpike formerly run or not. It appeared, by the ground, that it would run. I don't know as I could tell whether I saw a stream as is now running there or not. I could not tell whether it flowed through Arndt's farm on to Shields or not, or altogether on Arndt. I was never down on the ground till this summer.

I don't recollect ever seeing the water at Wyer's that it did run across. At the time I was along the Spruce run turnpike the most, was when I farmed Rounsevall's place, seventeen or eighteen years ago. We commenced at April, and was backwards and forwards at all seasons pretty nearly every day, and some days every day, and then again not more than once a week, may-be. I could not tell at what seasons I saw water there, and when I saw it dry. It appeared to be no regular stream at that time, by its being dry. This Rounsevall farm is next above Joseph Carter's, and runs to the Musconetcong.

Major Creveling and myself went down this summer to view the ground, at Mr. Shields' request. I formed the opinion that the old channel was west of the ditch by the bogs, and the wetness of the ground and the appearance of the ground as it was then; not bogs exactly, but between bogs and tame grass. There was not as much of that appearance easterly of the ditch as there was there. I was along, and examined that side as particularly as I did the other; we examined both sides. I followed the low ground west of the ditch to see where it would take us. We followed down where I thought it might have went, and that would take us in a little above where the water now runs upon Mr. Shields. We examined the low ground on the east side of the ditch, down as far as where the water goes on to Mr. Shields. I did notice a little bunk just below where the water goes in on to Shields. This bunk was a little way from the fence; not far from it; did not take particular notice. Around the end of this bunk, I think it looked a little wettish, and below it looked pretty wet. It did not appear to me to be so much bogs like and wild grass around the bunk on the east side as on the west side; the ground on the west side appeared to be looser like, and that is what I judged from. I did not understand you; the bunk I refer to is lower down, and I did not notice the spot you refer to. If the water running from the turnpike should fall into the low ground on the east side of the ditch, I don't know whether the water would flow on to Shields or not.

If I had no soft water at my door, and a stream of soft water was fetched there, I think it would be an advantage if I had none.

I know there used to be a nice watering place down by Shields' house; I don't know anything about any other in former times.

And being called again in chief, saith:

It appeared to me that this low place on the west side of the ditch in Mr. Arndt's meadow commenced near his cross-fence, not far from the line fence. I form my opinion where this used to run from having a good many such places in my own meadow, where I stopped the water from running, and took it in ditches; I see just such places. I have seen the Pohatcong dry in former years down by Kennedy's mill. I think I have seen the pond and all dry; I used to go to mill there when I lived in Bloomsbury, and also when I lived at Schooley's, near Easton. I should consider this stream an ancient natural watercourse.

And being cross-examined, saith:

I did not take a spade to examine the ground to see if there was any gravel as marks of a channel. I think you could pretty easily tell in such ground as that. I could not tell where the water at the Spruce run turnpike came from in former times, whether from the sides of the turnpike or Carter's field.

And being called again in chief, saith:

I thought it came down that hollow, although in time of a shower it might come down the sides of the turnpike.

Sworn, &c., September 10, 1841.

Daniel Axford, esq., testifies—I served the injunction in this case between Shields and Arndt on Mr. Arndt, about the last of May or first of June. After I served it on Mr. Arndt, I then went back to Mr. Shields, and Mr. Arndt sent some one of his sons over. I don't know which one; he wanted to see me again. I went back to his house, and what he asked me respecting it can't recollect exactly, but stated that he had never lawed any, and wanted some information, and I think I told him he must go to an attorney. Before I went over to Mr. Arndt's the last time, whether I mentioned to Mr. Shields about a compromise, or he did to me, I don't recollect; but, by his consent, I mentioned to Mr. Arndt about a compromise. I stated to Mr. Arndt whether it would not be better to divide the water, and each one take half of the water. Mr. Arndt had stated before that he wanted the water to flow his land the latter part of the winter season, and that is the way I came to mention that part of it to him—for him to take the water that part of the time, and let it flow on to Mr. Shields afterwards. And he stated that Mr. Shields had been hasty. I answered him I thought probable it might be so; and Mr. Arndt then said he would have the *whole of the water or none*, or words to that effect, as near as I can recollect. I am confident that was the substance of what he said.

If I owned Mr. Arndt's farm, I should consider it an injury to have the crooked ditch opened. I should consider it an injury to Shields to be deprived of the water there.

And being cross-examined, saith:

I served the injunction in the morning after I had eat my breakfast. I breakfasted at Mr. Shields'. I came down the evening before, and staid all night with him. When I went down the evening before, I went down along the turnpike. It was dark; I did not see the stream; I did not notice which way it was running, whether into the crooked ditch or not. Did not see the ditch till next morning. I went up to the ditch next morning after I had served the injunction, with Mr. Arndt. The principal of the water was then running into the old ditch. It had the appearance that it had not been long turned out of the new ditch. I don't recollect about fresh ground being thrown up to stop the mouth of the new ditch. The water had the appearance of being recently turned. Before I got there, I saw a person beyond or about the stream; he had a shovel in his hand, and went up the turnpike, how far I don't know; I paid no attention to him. I don't recollect seeing an embankment of fresh dirt, of eighteen inches or two feet high, thrown up across the mouth of the new ditch under the fence.

Question. Was anything said by Mr. Arndt about opening it when he was there?

Objected to by complainant's counsel.

Answer. I don't recollect.

I recollect of telling Mr. Arndt not to touch the water under pain of imprisonment, or that they would send an attachment against him. I might have told Mr. Arndt, the second time I was there, not to touch the water, as well as the first time. I am not positive about that. I got to Shields' pretty well in the evening; can't tell the hour I left home—about sunset.

Question. Did you understand there that the water was then running into the crooked ditch, and was anything said about having it turned out before the injunction was served?

Answer. No, sir. I heard no such conversation as that while I was there.

Question. Did not Shields ask you if the water must not be turned back before the injunction was served?

Answer. Never. He did not ask me any such thing.

Question. Did you not inquire of him as to the situation of the water at that time?

Answer. No, sir.

We went up the turnpike, to the ditch there, right after I served the injunction on Mr. Arndt. He and I were alone. From there we went down the ditch to the line fence. Mr. Shields came to us there. They talked considerable, but I can't tell what they said; I paid but little attention to it.

Question. Did not Mr. Arndt ask Mr. Shields how he came to sue him, when he had been so kind to him?

Answer. Well, I declare I can't answer it. But one thing that I recollect distinctly in this conversation.

In conversation betwixt Mr. Arndt and Mr. Shields, Mr. Arndt's son came up, and put in his tongue, and Mr. Shields took him off

pretty short about putting in his talk while he and his father was talking.

Question. Did not Mr. Arndt tell Shields there that he had put the water across the line ?

Answer. There were something said about the water ; considerable conversation about the water, and how long it had been there, but I could not say positively whether he did or did not, Mr. Morris.

Question. Did he not tell him that he had ditched through his meadow, and put the water there ?

Answer. I think he did tell him something like that.

I don't recollect Shields' reply.

Question. Did he not tell Shields that he and his father and two brothers made two hundred years, and they had never a lawsuit ?

Answer. I don't recollect his telling Mr. Shields so in my presence. I recollect of his telling me so, in one of the conversations above referred to, but I don't recollect just about the length of time, whether he mentioned that. Mr. Arndt mentioned to me about wanting the water to flow his land whilst we were in the field. I think likely Mr. Shields might have been by. Mr. Arndt mentioned something about the wash in the latter part of winter.

Question. Are you positive that Mr. Arndt said he would have the whole of the water or none—that he used those words ?

Answer. I think he said them words.

Question. Did he not say, after stating that he thought Mr. Shields had been hasty, that he was determined to have his right ?

Answer. I don't have any recollection of that.

Question. Are you positive he did use the word right ?

Answer. I have no recollection that he used that word.

Question. Can you pretend to give the very words that Mr. Arndt made use of ?

Answer. I can give the words as I have give them. I am satisfied that that is the answer he gave to me ; I have no recollection of any other.

Question. Did not Mr. Arndt say he would not have any of Shields' right, or something to that effect ?

Answer. I have no recollection of it.

Question. When you came over, and proposed to Mr. Arndt to compromise, did not Arndt say that Shields had all the water now, and asked you what he should do ?

Answer. I think he did.

I think I told him he should go to an attorney, and they would tell him what course to pursue.

If I had no soft water at my door, and had a stream of soft water brought there, I should consider it an advantage to me.

Question. Did not Mr. Arndt tell you, when you came to the ditch at the turnpike, and saw the ditch empty, that it had not been so ; that he had part of the water running into the ditch ?

Objected to by complainant's counsel.

Answer. I have no recollection of these words. He stated when we came there, that somebody had been here. I said to him, probably it has been some of your folks; and the old gentleman said not. I have no recollection of anything being said about the quantity of water that had been running into it.

And being called again in chief, saith:

Question. Do you recollect what Shields said, in this conversation with Arndt, about the ditch Arndt had dug close to the line below where the water passes on to Shields?

Answer. I don't recollect the whole conversation, but I recollect his stating that Arndt had dug one there; but I don't recollect what Mr. Arndt answered to it.

He admitted he had dug the ditch, but I don't recollect what use it was for.

Question. Did not Shields say to him, he calculated that he, Mr. Arndt, intended by that ditch to take all the water from him, or words to that effect?

Answer. Mr. Shields said something respecting about his taking the water from him, but whether it was all, I can't recollect.

Question. Could you see any use in that ditch, but to take the water down on Arndt's side?

Answer. No, sir. I did not discover any use the ditch would be.

Question. Did you judge it might all be taken down in that ditch?

Answer. Yes, sir. It might all be taken in that ditch.

And being cross-examined again, saith:

Question. Did not Mr Arndt state what that ditch was made for?

Answer. I have no recollection. But when Mr. Shields stated to him about taking all the water, Mr. Arndt said it was not for that purpose; but I don't recollect what he stated it was for.

Question. Did he not say it was for the purpose of draining the low ground round the head of the ditch, and point out the ground, or something to that effect?

Answer. I can't recollect; he might have said it, but have no recollection; a great deal was said on both sides.

Question. Would it not, in your judgment, drain the ground around and above it?

Answer. Yes sir. If there were water laying around to come into it, and if the ground were wet.

Question. Was not the ground low at the head of it and easterly of it?

Answer. I think it were, it is the impression of my mind it was; not far distant though.

And being called again in chief, saith:

I don't recollect of any water between the head of this ditch and the other ditch. I don't know how near it came to the other ditch that runs on to Shields.

Sworn, &c., September 10, 1841.

John Petty, jun., testifies—I have been acquainted with this Woolston stream as long as I have known anything, and not much about it either. Never was up and down it much, but crossed it frequently. I am now something like forty-eight years old. When I was young, we lived about six years on the farm adjoining the farm it passes through, Wyer's farm. John Van Natta lived on the Reigle farm at that time. When we left there, I suppose I was something like seventeen or eighteen. I could not be certain. John Van Natta was an uncle to me. During that six years, I was frequently at Van Natta's. Recollect of seeing the water run at that time frequently. I recollect of their having a watering place on it. I can't tell you what become of the water after it left that place; I never followed it down to know. I recollect of seeing it flow on at times. I recollect of seeing it dry at times. Mostly when I saw it in them days there was water. I have seen the Shabbycong dry before the canal was made, and since it has been made too; I have seen it dry this summer. I never saw it dry when the canal was in operation, while there was water in the canal. In former times, I think I have known it to be dry two months in one season, so that water would not run, varying according to the seasons, sometimes not more than a month. It was dry a week or ten days this summer; we had frequent showers. My shop is close on the bank of the stream; so close to my blacksmith's shop, that it has drove them out when it was high.

Question. From your knowledge of the Woolston stream, would you consider it an ancient natural watercourse or not?

Answer. I should, sir. About such a one as ours, from what I knowed of it there.

I mean by ours, the Shabbycong.

And being cross-examined again, saith:

Question. How far down do you consider the Woolston stream an ancient natural watercourse?

Answer. I could say no further than the Reigle farm; I see it pass there; I never went down it.

Most of the time I saw it, it was running at Reigle's during the six years. I have seen it dry once, that I recollect, and I have seen it other times when the water did not run. No sink-hole above it on the Wyer farm that I know of; there might have been, but I did not know of any. I never saw one below. I have heard said there was; never went to it to see it.

Question. Did you not know that that stream in ancient times did not run over the Joseph Carter farm below, except in the spring of the year, or the breaking up of winter, or heavy rains?

Answer. I could not say whether it did or did not. I have lived here in this place upwards of twenty years, and very seldom during the time passed along the Spruce run turnpike. I have not any recollection of passing along there seven, eight, or ten years ago, and noticing a stream running there.

The water made a kind of a pond on the Reigle farm, not much of a one either; it passed through the lane that went up to the

big road. I recollect my uncle Van Natta's clearing, during this time, the hollow; it was pretty much of a thorn swamp before the door where the water come down through. I can't tell what he put it in with, or whether he ploughed it or not. I was then from twelve to eighteen years of age.

Sworn, &c., September 10, 1841.

John Petty testifies—I have known the farms on which these parties now live thirty-five years since. I can recollect them distinctly. I am now turned of fifty years of age, since the tenth of last April. My father formerly owned and lived on the Petty farm, adjoining Shields. I was born on that farm, and lived there till about twenty-three years since I left it. I recollect being down at Shields', and up along the line between Shields and Arndt frequently during that time. At that time, up along the line, it was grown up a good deal with bushes along side of the water. At those times I recollect of seeing water coming down the line on Shields' side *almost always; I believe always*. I don't recollect of ever seeing it dry on Shields' side or Arndt's side either. I recollect seeing several places along this brook, on Shields' side, where cattle go and drink; seen places where they had gone to drink whenever there was pasture in them fields where the water was. It was no detriment to them any where, for them to get in and get water. I don't recollect seeing tracks, but I have seen them often close by the water. I was up along the line this morning with Mr. Shields, and saw the water running *in on to him* from Arndt. I rather think it appeared to me to run in as it did in *old times* pretty much. It appeared to run down on Shields something like it did; I saw no alteration of the water, it was pretty much as it was when I used to know it. I saw a good deal of alteration in the bushes, being cleared up, different entirely in that respect. The fence is different, it used to be a worm-fence, very crooked like, it was laid; now it is a board fence, I believe. They used to have a watering place down by the house, also, at that time. It was a watering place for the other neighbours also. There was full out as much water there as now, I think a little more. After the Spruce run turnpike was made I have often been along it. I have seen water through the hollow there. I have seen water run across there. I think I have seen it dry there, too, sometimes. I have seen water there frequently, and sometimes not, when I passed there. I can't say whether I have seen water run across there oftener there than dry or not. I have been up at the Reigle farm when Van Natta lived there. I am not so positive whether I saw water there or not. I was not frequently there; but seldom. I believe I have crossed this Woolston stream on the Washington turnpike up here by Port Colden. I think I have crossed it on the road from Port Colden to Changewater by Wyer's farm.

Question. From your acquaintance with this stream down to

Shields', would you consider it an ancient natural watercourse or not?

Answer. I should rather think it was. I was always informed that it was.

I have known other streams dry part of the season that I should consider natural watercourses.

And being cross-examined, saith :

The Petty farm is west of Shields. What often took me up along the line was, I got water there for the work hands when working in the field adjoining, from the springs there. One broke out on Shields that I used to get water out of; the other one, that was on Arndt. This spring on Shields was situated about a hundred yards above his house, something like that. That spring was considerably lower down than where the present watering place is. Something considerable below where the water passes back again on to Arndt, may-be sixty or seventy yards. The other spring upon Arndt, was situated up the line fence where the water come down between them. I should think may-be it was three or four rods from the line fence, something like that. It was above where the water crosses from Arndt on to Shields. I should say it was forty or fifty yards above. I most frequently got water out of Shields' spring. I did not often get out of the other. It was a chance time. The reason for my going to Arndt's spring sometimes, was, I rather thought that was better water there. There was one other spring besides this on Shields at the house, the same spring that is there yet by the house, I believe. This other one that I used to get water out of, is pretty nearly dried up, I believe. I don't recollect of any other springs on Shields' side along the line. The water from the upper spring on Shields ran out across the line on to Arndt. I don't recollect more than that one spring on Arndt. The water out of Arndt's spring come out on Arndt, *and flowed over on to Shields.* The water from that spring crossed on to Shields about sixty yards below the spring. It crossed upon Shields near the lower end of the present watering place. I expect it run down on Shields' side of the fence I should say about thirty or forty yards. I guess it crossed back on to Arndt lower down than where the water now crosses on Arndt. The water kept pretty much under this worm-fence, it did. This spring is now dried up; I could not see anything of it. I think the stream from this spring was something like as large as the stream is now. It was a middling large spring on Arndt. I don't know that I could dip up a pail full at once, but I could with a cup; it was too shallow for a pail. It was middling large, about the size of the bottom of a small tub. The water I see boil up in one place pretty free. That spring was, I guess, fifty or sixty yards below the first cross-fence above the watering place, may-be more. I don't recollect seeing any other smaller or weaker springs being on Arndt's side round about in his meadow. The ground on Arndt's side was some wet and boggy where the water run through. I don't recollect about that, whether there was bogs on Shields' side. I seen

bogs on Arndt's side. They extended from the fence, I should say, not over ten or fifteen yards. The water, when it run from this spring, it kept this boggy place kind of wettish like. The stream seemed to go down through this boggy place, near about the middle of it, I thought. It spread out so as to reach the fence; it was kind of flat below. I think it run down through the middle more freeer than any other place. I should say the main channel from this spring was down through the middle of this boggy place. I think I have seen the water run down under the fence *when it was dry*, and not after rains only. There is no particular thing by which I can recollect the circumstance of my seeing it run there in dry weather, only my memory, and it is so long ago.

Question. It being so long ago, can you be any way positive that you saw it run there in dry weather?

Answer. I never see it dry there, I think; I see it run at all seasons.

Question repeated.

Answer. I did see water run there in dry weather.

Question repeated.

Answer. I have frequently been there in dry weather, and seen water run there.

Question repeated.

Answer. I can't answer that question fairly.

Question. It being now twenty-five or thirty years since you was along there, can you now undertake to swear positively that you saw the water running from this spring on Arndt upon Shields?

This question objected to by complainant's counsel, being repeated so often after the above answers.

Answer. Well, I could not say about that there. I rather guess that spring lasted the whole year round. I did not go to it in the winter along, in summer there was water. I never got water at any other place along the line than at these two springs and the spring down by the house. A few yards below the spring it got into a *natural channel*, and that channel run down along the line fence. It run through the middle of the bogs above the line fence. I don't recollect that there was any bogs below on either side of the line fence. It was kind of wet and bushy below, pretty much. I did not see that they did anything with it; it had grown up considerable. I should calculate that some part of the water come from above the spring. I have seen water run apast above the spring; I can't tell how far above; I was never up just to examine the water to see how far it come from. I was never but a little way up above the spring to examine. It run on the west side of the spring. It come pretty near the spring, I can't just tell exactly. It come nearer the spring than the line fence. The water that I see come past the spring went down the line fence. The spring run into this stream about two rods below the spring, or something like that. I can't say as to that there, whether this stream ran all the season or not, or only after heavy rains or in the spring of the year.

I can't say, from my knowledge and observation, whether that little stream that came past the spring came from the turnpike or not. [I rather think it did; I always thought it did]. Objected to by defendant's counsel, because not asked his thoughts.

I have seen the water after heavy rains come down the Bowlby hollow. I can't say that it come into the spring-run. I think it made a pond above. I don't think it come into this water. I can't say how far above it made a pond; I rather think on Bowlby, before it come on to Mr. Arndt's or Shields' land. I never saw the water come into this stream. I rather think it sunk.

I have seen the water come down the Strader hollow from the west after a heavy rain, and I think I have seen a fresh in the spring of the year come through. I have seen a large body of water come down. I don't know whether the water run down to the line fence or not, but the hollow does. The water used to make a very large pond on the Petty farm. I can't say whether that pond did receive and hold all the water or not. I never see it pass any further.

I can't say how often I went up to this Arndt spring for water. It was not much difference in the distance from where I worked to these two springs. I can't say how often I saw the water pass in old times across the turnpike. I have seen it since the turnpike has been through, may-be two or three times like. The water that I saw there come from Carter's field and run across the turnpike; I am positive of that. I am positive, because I see it come out of Carter's field. Well, I think I likely have seen it at different times in the winter time towards spring, and I think I have seen it in the summer time, too, after there had been a wet spell. When I passed there, it appeared there was a *regular stream* there, the water seemed to run regular down this hollow. I don't know how many months in the year it used to run there. I can't say whether it run one, two, or three months of the year.

[I have heard people say that the Woolston stream sunk in former times. I never was up to where they say it sunk. It was the general reputation in the neighbourhood that it sunk on the Reigle and Wyer farms]. Objected to by complainant's counsel as hearsay evidence.

When my father lived on the Petty farm one Moses Moore lived on the Shields farm. I rather guess he owned it. I can't say how many years he lived on it, but he lived several on it. Tice Van-kirk lived there; he must have lived there five or six years. Imlah Drake lived there three or four years, may-be longer. They used to have their watering place down by the house. I rather think the present line fence is somewheres near where the old fence was, but I can't say that it is right on to the same place. I rather guess Col. McCullough did not own the farm when Moses Moore lived on it; he owned the farm where Joseph Carter lives. There was no house then where Arndt lives. Capt. William Hendrie farmed the whole farm then altogether; he lived where Joseph Carter

lives. Capt. Hendrie lived there seven, eight, or ten years may-be, can't tell how long.

Since I left my father's place, twenty-three years ago, I have lived in different places, in Hunterdon county and in this county part of the times. I now live in this township, in the upper end of it, near Daniel Hull's. I should consider it something like seven miles from this place. My occupation has been farming.

I don't know how it is about that, whether I have told any person I did not know anything about this water on the line or not. I did not understand about the water when I was first called upon. I could not understand fairly what they wanted to prove by me. I think I told, they wanted to know if I knowed that that was the water that come down from Van Natta's and run all the season of the year, or not. I told them I could not tell about that.

Question. Did you never tell any one you did not know anything about the water on the line between Shields and Arndt?

Answer. Well, I don't think I did.

I rather think it was my sister that was talking to me about it when I could not understand—my sister Polly Petty.

Mr. Shields called on me before I and her was talking about it, or about the time. I don't know as I did certain tell Mr. Shields I did not know anything about it. I did not want to have anything to do with it, would rather be clear of it. I did come here once; was subœnaed, and kind of slipped away; wanted to get clear of it.

I think Mr. Arndt asked me something about seeing water come down by Van Natta's, and I told him I did not recollect about that thing. I think that is all I recollect of telling Mr. Arndt.

I was not discharged when I slipped away; my business was so I could not stay from home all night.

Question. Did you not tell Mr. Arndt, when you was here for a witness the first time, that you did not know of any water along the line but just above the spring-house?

Answer. I don't recollect about telling that there; I told him above the spring-house, but I don't think I told him the distance about the thing.

Question. Did not Mr. Arndt ask you, at that time, if you knew of any water by the present watering place or about it, and did you not tell him it was all dry there till just above the spring-house, where you saw the first water, and close to the spring-house?

Answer. I don't recollect telling him any such thing as that.

Question. Did you not tell him you saw no water above the present watering place?

Answer. I believe not.

And being called again in chief, saith:

I can't tell exact the time when I first heard this general talk about the water's sinking, but it was some time ago. Wyer lived there then, I guess. I rather think I did not hear it before Wyer lived there. I think I have seen water run down this hollow before

the turnpike was made, after a wet spell; never was there very often before the turnpike was made.

Sworn, &c., September 11, 1841.

John Cunningham testifies—I was born in seventeen hundred and ninety-one, and I first came to live and work in a blacksmith's shop near the premises of the parties, when I was about sixteen years old, and staid there about five years. Daniel Colcher carried on the shop there then; he lived across the creek about 120 or 30 yards in front of Shields'. During that time, I was up through the farm and up the brook; there was an open farm road that went up through Shields' farm; I went up that, and along the brook occasionally, not frequently. At these times I saw water running on Shields' side of the line; as near as I can tell, pretty much about where the *present watering place is*. I see no difference in the location of the water. I was up again this morning. I expect it is twenty odd years since I had been there before this morning; not been back there much since I left the place. The turnpike was not built when I left there.

During the time I was there I was on Van Natta's farm. We generally went up the road towards the forge, and down through the east end of the farm. We generally crossed the hollow opposite the house pretty much. I have at times seen water there; there seem to be quite a large quantity of it at times. I could not say whether it was running or standing still—not at present. The appearance of the hollow was quite a wild state, bushy, as far as I could see up and down. The hollow was not cleared up when I was first acquainted with it. I could not say that I have crossed the Woolston stream up on Washington turnpike. I have not much knowledge about it at Wyer's; I have been up and down that way. I have crossed this hollow on the old forge road. I could not say if I had seen water at that place. I crossed it there only occasionally once in a good while.

Question. From your acquaintance with this hollow and stream, would you consider it an ancient natural watercourse or not?

Answer. I should.

I have known other streams, mill-streams, that would run part of the season and be dry. I consider them, also, ancient natural watercourses.

If I owned Shields' property, I should consider it great damage to the property to have the water taken from that place.

If I owned the Arndt property, and could take all the water in that crooked ditch, I should consider that a great disadvantage to the property.

And being cross-examined, saith:

Tice Vankirk then lived where Shields now lives. He did not live there the whole time I was there—a part of the time. Imlah Drake succeeded him. When I first went there Capt. William Hendrie then lived in the Carter house, and farmed the Carter and Arndt property; it was all one at that day. I think Capt.

Hendrie did not live there the whole time I was there. Henry Groff succeeded him.

It was a worm rail fence that was up along the line in old times. It answered as a line fence betwixt the neighbours. I never heard any complaint about it. I generally went up on Shields' side when I went along the line. I have worked in the meadow just above, round the turn there, half a day on the Arndt farm for Mr. Hendrie. It would be pretty hard for me to tell what took me up along the line. Sometimes I used to go along through all the way up to the old log school-house below the Mansfield meeting-house. I went part of one winter to school there. I have went through there frequently at other times besides, at different seasons of the year. I had a good many notions that took me up through to the other road in the summer, as well as hunting in the winter, once and awhile.

The water come through a little below the corner there between Shields and Arndt, in a channel, and *above* the present watering place. I could not tell how far above ten or fifteen yards, may-be more or less; just below the corner that stood at the edge of the slough or surface. That slough runs across the Strader hollow on Shields' land; the Strader hollow run through Shields' farm. I could not say where this water come from that come down the channel; I never examined or made any search about. I don't know whether it came from springs or where.

I could not say whether a great flood of water come down the Strader or Woolston hollow in times of freshets or not; I never took any notice. The whole bed of the stream or channel came through on to Shields, went down in a circle, and then turned and went back on to Arndt. I suppose it run as much as ten or twelve yards on Shields, may-be more; it would be hard to give the true dimensions of the thing. The channel was about like the rest of the brook in depth. It was quite a *smart little stream*, I think larger than it is at the present, if anything. I never seen any springs in Arndt's meadow; in that part of it where the water crosses the line, I have no knowledge of any. I don't think it was as tame as it is now, the meadow was rather in a rough state. It was what we call wild grass a growing where the water run. Don't particularly remember bogs. I went up and down the stream frequently, once in particular in chasing a horse five or six times, and at other times from the shop above the present watering place. It was on Hendrie's side I chased the horse. I did not know of any stream running down through Arndt's meadow easterly of the present watering place. I could not answer how many times a year I was up and down along that line fence. I have no knowledge of any stream coming from the turnpike across Arndt towards the line; I know nothing about that.

If the water did run down the Strader hollow steady, I would call it a natural watercourse. If there was a good deal of water above, and always believed it run down the Woolston hollow,

that is what I mean by an ancient watercourse. I don't know whether it run down that hollow or not all the way.

I now live at Hope, in this county, and follow my trade there ; about twelve miles from here. Capt. Hendrie used to plough on each side of the hollow up to the turnpike ; he used to mow the hollow generally. I have known them to work in the meadow there, and I recollect the hands that worked for him, Jimmy Lagerty, Sam. Smith, and Benj. Pyatt, I was in the meadow there by them. What makes me remember it so particularly was they were eating their afternoon piece on the eastern side of the hollow. I don't recollect of seeing any water run through the meadow at that time.

And being called again in chief, saith :

From my observation to-day, I think the water runs *in and down up Shields as it used to*. I don't see any difference, except the channel is narrower. I thought it was about the same circle and distance from where it come in upon Shields and off again, as near as I can come at it.

Sworn, &c., September 11, 1841.

Henry Miller testifies—I have known the Woolston stream by the house there ever since I have been a small boy. I am now sixty-three years old. I have always been in the habit of crossing it ever since. I have been in the habit of crossing this stream at Wyer's, on the road from Port Colden, whenever I had business. I have seen it dry at Wyer's ; not often as I recollect. I never saw it dry at Woolston's. I have been in the habit of travelling the Spruce run turnpike since it has been made, not as frequently as I have other roads. I have travelled it pretty much every year since it has been made till within two years. I have seen water along the road in this hollow when I have travelled the road. I think I have travelled along there when I have seen no water there—I am sure I have ; not often, only once or twice, that I recollect. When I see water there I generally see it running water, but where it run to I don't know.

Question. From your knowledge and observation of this Woolston stream, would you consider it an ancient natural watercourse or not ?

Answer. Well now, I guess it is. I am not so certain of that thing, but up at Woolston's I should consider it a natural watercourse.

I have known Shabbycong to be dry here on the turnpike ; I think I see it dry this season—I have known it dry, too, before the canal was made. It looked so to me to be an ancient natural watercourse. It looked to me that the water would run down the Woolston hollow to the turnpike. It might have always run down there, for anything I know, if there was water in it. I have known Woolston to take out the stream below his house in little ditches about.

Question. If this stream was not obstructed in this way, is it

your judgment that it would run all the way down to the turnpike or not?

Answer. I think so, sir. It looked so there to me.

And being cross-examined, saith:

I don't know when they ditched across the Wyer, Reigle, and Carter farms to lead this stream down.

This water that I saw crossing the Spruce run turnpike, I took it it came from fields down the hollow. The spring and fall was the most times I went through there, I suppose about in March and some time in April; I guess somewhere about the middle of April, as near as I can recollect. In the fall generally, after seed-time, September, October, and December. I recollect seeing water there in October, after there had been a rain.

Question. Captain would you not consider any hollow, stretching through the country a considerable distance, a natural course for water to flow in in times of freshets or heavy rains, or breaking up of winter?

Answer. It appears so, for it does so.

Question. Do you suppose the Woolston stream could find its way down to the Spruce run turnpike, if there were sink-holes upon the Wyer and Reigle farms into which it run, unless in times of freshets or heavy rains?

Answer. As for that, I can't answer that question fairly. If it got in those sink-holes, and there was little water, I should suppose it would not reach there.

Question. If in former times, in ordinary times of water, it was all lost upon the Wyer and Reigle farms, would you then call it a natural watercourse down to the Spruce run turnpike?

Answer. I don't know how to answer that question. If it was lost, it could not go there.

Question repeated.

Answer. If it is all lost, it cannot be a natural stream.

And being called again in chief, saith:

I have been occasionally along the Spruce run turnpike at other seasons besides spring and fall; not so often as in the spring and fall.

Question. If when the Shabbycong was dry, and you came to it, would you not consider that the natural course for it to run where it did anciently run?

Answer. Yes, sir. I would consider that the natural course for it to run where anciently it did run.

Sworn, &c., September 11, 1841.

Adjourned till 10 o'clock, A. M. on Monday, September 13, 1841.

MONDAY MORNING, September 13, 1841.

Previous to commencing the examination this morning, Mr. Morris, of counsel for defendant, claimed the right to proceed in the examination of witnesses on the part of the defendant, pursuant to notice to that effect.

Examination continued.

Jacob Haney testifies—I have been acquainted with the farms of these parties since 1835. In the spring of 1835, I moved in a small house of Mr. Shields, just west of his barn, on the premises; continued one year in that house. Mr. Shields moved on these premises in the spring of 1836. He purchased in the year 1835. In those years, 1835 and 1836, I was frequently up along the line between Mr. Shields and Mr. Arndt, as far up as this present watering place. The water was a running at that time where it now runs. It was about the same sized stream that it is now, pretty much. The first time I saw it it was running through pretty much. It appeared to me that there was a natural channel worn, in which it run in. It runs in a little further on to Shields now than it did then; because then it was a crooked fence, now it is a straight one. I mean no more by a crooked fence than a worm-fence. I don't mean that the channel has shifted; but from the fence being made straight, it looks as if it run more on Shields. The centre of the fence, I think, is where it then was. Where it then run in on to Shields, I saw no obstruction to hinder it; at that time it run in about as freely as it does now. I have seen it different years, from that time down to the present. I have not seen much difference in its running that time, in comparison to what it was the first time I saw it. I have seen it this season while the canal was dry. I seen it this season at harvest time. I now live close by the canal, within a hundred yards of it. I know the canal was dry at that season of the year. The stream was then about as it is now at this present time, I mean last week when I saw it. The water was then in the canal, and had been a week or ten days, may-be longer. This water that I have seen these different years came from across the turnpike, and through Carter's farm, as far as I could see. I have frequently crossed this stream by Wyer's on the road from the forge to Port Colden. I have also crossed it on the Washington turnpike below Woolston's frequently.

Question. From your knowledge and observation of this stream, do you consider it an ancient natural watercourse or not?

Answer. I would consider it a natural watercourse. It appears so to me that the water always used to run there.

Question. From your observation of the stream at the Spruce run turnpike, if left to flow naturally, would it run on to Shields or not?

Answer. Well, I think it would run on to Shields.

I consider it an injury to Mr. Shields' place, in not having the water there.

I observed the ground along the line particularly, and I think the lowest ground is above where the water passes on to Shields twenty-four paces; I paced it myself. It looks like a natural hollow above where it now runs over. This natural hollow rather

runs over on to Mr. Shields at the place I paced from, and runs down as far as the watering place.

I observed the short straight ditch on Mr. Arndt's side below where the water runs in on to Shields. It was dug in the fall of 1838, I think. I saw it after it was dug, but did not see any one dig it. It was but a small ditch. I don't know as I can tell how wide or how deep it was, except it was not quite deep enough at the upper end to take the water down where it was first dug, clear up to the old channel, the head of it. I could not tell that there was any space at all between that and the old channel. I don't know, as for that, how the ground was all around there, whether it was dry or not; I did not take particular notice.

Question. From your observation of the ground, what did you judge was the object of that ditch?

Answer. I could not see for anything, only taking the water from Mr. Shields and making a straight ditch of it.

The crooked ditch was made after I moved away from the neighbourhood. I lived three years, after I left Shields' house, in Joseph Carter's house. The lane through the middle of Shields' farm was made before I moved away. I was backwards and forwards at different times after I moved away, working for Shields.

The spur lane to the watering place was partly made before I moved away. I can't tell, as for that, whether it was all made down to the watering place before this crooked ditch was made.

Question. If you owned Mr. Arndt's farm, and had all the water taken into the crooked ditch at the turnpike, would you consider it an injury to the farm or not?

Answer. Well, if it was mine, I should not like to have it in the crooked ditch.

During the time I lived there, I have known the spring by Wm. Shields' house dry two different seasons—1835 was one season. I recollect that, for then I had to fetch the water from there myself. The other, I think, was 1836. I recollect Shields digging a well there, but I don't recollect what season it was. I recollect the short ditch was dug the fall before the great freshet.

And being cross-examined, saith:

I moved on the premises, now Shields', on the first day of April, 1835. The house then belonged to Henry Smith, esq. John A. Wright then lived where Shields now does. The first time I observed the water along the line that season was about mowing time, before harvest. When I first saw it, the ditch on Shields' side was not quite as wide as it is now; it was not trod by cattle as much as it is now. I don't know but what it was pretty nigh as deep, may-be not quite. I should judge it had been washed out by freshets a little since that. It would naturally wash a little. I don't think the channel was washed wider by the freshets on Shields' side, might have been a little deeper; if it was wider, it was trod so by the cattle. I never noticed, on the east side of the ditch above the watering place, where the water run to. I don't know that I noticed where the water run to on the ground right oppo-

site Shields' watering place; nor if there was any water at all on the east side of the ditch.

Question. Don't you recollect of telling Mr. Arndt here last week, that before that ditch was dug along the fence, you saw a little water on his side, near where the water now crosses the line, which run down a little, and then turned off from the line into Arndt's meadow?

Answer. He must have misunderstood me there. I did not mean above this little straight ditch, I meant below it. He misunderstood me there. I have mentioned to no one since something like that, that I know of. I don't recollect of seeing any of Mr. Arndt's hands at work up in his meadow above the watering place that spring I came there.

There has been a little water standing in the canal, in places, this season. I should judge not any leakage from the canal, from the water that was in. I never see water out of Mr. Arndt's meadow flowing into and out of this straight ditch. I never worked in Mr. Arndt's meadow. The ground in Mr. Arndt's meadow is lower on the east side of the ditch than where the ditch is. I don't know, as for that, whether this straight ditch would answer the purpose of draining this low ground or not; probably it would, if you would take it deep enough. Above the head of the straight ditch, and east of the ditch where the water runs, is a little lower ground than where the ditch is—a small corner of it. It does not extend up twenty or twenty-five yards, I think. I never measured it; I could not tell unless I paced it. The low ground ended where the knoll commenced, where the water crosses on to Shields. I think there is no ground lower east of where the water passes on to Shields than at the watering place.

I knew nothing of there being a stream across the Spruce run turnpike before 1835. I knew of the Woolston stream above about nine or ten years ago. At the head of this straight ditch, the soil was broken into the channel, but not dug as deep as the bottom of it. I think there is not a yard or two between the head of this straight ditch and the channel; there may be, but I think not. Mr. Shields built his new barn in the year 1835. He built his barn before he moved, the same year he bought, and wagon-house too. He repaired the house the next year, and after he moved there, viz. 1836.

If I had no soft water at the door, and I had a stream of soft water brought to the door, I should certainly consider it an advantage.

Mr. Shields' spring was dry; the first season it was dry may-be six months, or thereabouts; the next season I don't know how long, for I did not use the water out of it. This straight ditch, I think, did not take the water into it, because it was not dug deep enough at the upper end.

I am a tailor by trade, sir.

Question. Do you say positively that this straight ditch was dug the fall before the fresh?

Answer. I say it was dug then, but it might have been dug one or two years before that.

And being called again in chief, saith:

I should rather think I could in five or ten minutes let all the stream into this straight ditch. It would have taken but very little time.

Sworn, &c., September 13, 1841.

Kitchen Hartpence, esq., testifies—It was in the spring of 1812 that I moved up into this county, and have been acquainted ever since with the premises of these parties. In the month of April, 1812, I went down to the barn, now Mr. Arndt's. I went to it from where Jim Groff now lives; there was a wood road that led into a lane that went down to the barn, and that lane was about where the Spruce run turnpike now is. I did not return the same way. I returned on the old forge road, on the line betwixt Reigle's place and Wyer's, I rather guess it is. I observed a stream of water when I went down the lane. I don't recollect about seeing any water when I returned. I recollect of frequently crossing this hollow on the John Van Natta farm in the fall of 1813, in going to New Hampton. I had singing school at New Hampton that winter, and crossed backwards and forwards every week, either on foot, by Van Natta's, or on horseback, along the lane. I can't recollect particular about that, whether I ever crossed that hollow that winter without seeing water there or not. I can't particularize the times I saw water, and the times I did not see water. I remember crossing ice in the lane in a sleigh. I recollect seeing water at Van Natta's, when I crossed there on foot. There was some company with me; it was below the barn a little piece, and we stept from stone to stone; the water was of considerable width. Generally passed it at one place. Since that, I have crossed it on the road from Port Colden to Changelwater several times, not often. I was called as a freeholder to build a bridge across it by Wyer's. Generally saw water there also. I have also crossed it frequently on the Washington turnpike by Woolston's, and saw water there also. Since the Spruce run turnpike has been built, I have crossed it, not very often, occasionally; I think not every season; not much. I think I saw water crossing the turnpike in that hollow.

Question. From your knowledge and observation of this stream, would you consider it an ancient natural watercourse or not?

Answer. Why, I should. I think it would be the course for the water to run whenever there was water to run.

I used to live pretty near the Shabbycong before the canal was made—two years, 1812 and '13. During those years, I saw the Shabbycong dry where it crossed the Washington turnpike. I don't recollect but one season when they were scarce of water at the brickyard; there would be water at the fording place above the turnpike, and dry along towards Washington here from the turnpike down. I consider that an ancient natural watercourse.

I have once seen the Pohatcong dry pretty well down, a year or two before the canal was made, ten or twelve miles below this place, at Lerch's mill, and at Robert H. Kennedy's, below Lerch's; no water running there. At that time the water was running in Pohatcong near this place. I consider that an ancient natural watercourse. Several mills upon that stream above where I have seen it dry. I recollect of one such stream in Hunterdon county, near the Boar's-head. It would be dry some length of time; there were saw mills on it. I have crossed apparently pretty large streams from Buchannan's to Flemington, and the latter part of the season would be dry.

And being cross-examined, saith :

I recollect there was water in the hollow the first time I crossed it, from the circumstance it was the first time I had been along the lane, and I took notice of what very fine land it was; and I thought to myself what a *nice little stream* there was, not very wide *but run so briskly*. It was a pretty muddy road I was going, it was the forepart of April; the water, I think, was clear. It was always my impression that the water was clear. I think I crossed it several times that year, but I don't recollect particularly about water, for I did not notice it as I did the first time. I went down to help Imlah Drake harvest, and *I saw water then running across it*. It was not right after a shower, it had been wet a few days before. I can't answer that question, whether it was the water *from the Woolston stream* or not, but it *came from that way*. I have heard it mentioned of the water's sinking in old times up by John Kitchen's, now Wyer's. I was at John Kitchen's once in time of a shower; the creek raised so that it filled the pond, and the boys went a bobbing for eels in that pond; they said there were eels there. When it was low, they said it run into that pond. I did not hear them say whether it would run below that pond or not when it was low, but it did at that time run down on grandad Van Natta's place.—Counsel for complainant objected to declarations of Kitchens and others.

I never heard any general reputation in particular in the neighbourhood about its sinking there. In the winter of 1813—14, when I kept singing school, I can't recollect of seeing it dry in particular, but I recollect of seeing ice sometimes, and sometimes water; since, when Moore Furman was there, I recollect seeing water in the pond, and did not notice whether it run from or into it or not. It appeared to be running water every time I crossed over it in 1813—14. Can't remember whether it was a fast current or not; sometimes it was very large, I recollect, and run fast enough towards spring when the snows were melting, and rather the breaking up of winter.

I don't know whether that stream that crossed the lane ran down across Arndt's farm on to Shields', or not. I can't say that, for I never followed the stream down. I think I did not always see water along the turnpike when I crossed there. After the two years, I lived down in Greenwich for several years, and never

passed it hardly at all. After I moved up to Mr. Sherrerd's place, and after the turnpike was made, I used to cross it once in awhile.
Sworn, &c., September 13, 1841.

James Hinton testifies—I made a part of the present line fence between Mr. Arndt and Shields, and on the 18th day of September, 1838, I crossed the water with the fence. I made a memorandum at the time, by which I refresh my memory, and have it now in my possession. The old fence was a worm-fence, crooked fence some call them; the new fence is made of posts and rails. As near as I know, the new fence was not put two inches out of the way of the centre of the old fence on the flat where the present watering place now is. Both parties were perfectly satisfied with it, in the presence of myself and my brother. The water at that time run on Mr. Shields' side one hundred and forty feet, and the greatest distance from the fence was twelve feet. This measurement I have from my memorandum I made at the time. From my observation at that time, the lowest ground was on Shields' side, to the best of my knowledge. I was at the watering place twice this morning. There is more water now than at the time I made the fence; it was then very dry. It appeared to me to run in upon down on Shields, and off again in the same position it had formerly. At that time it did not cross on to Shields as low down as it now does, by something like twenty feet, as near as I can tell about it. At the lower place where it now runs on, I first stopped it to put in a post, and at that time it run a little higher up, where it had formerly run across when I first saw it. After I got my post in, I took out the obstructions, and let it run through. Once during the time I was there I was up as far as Reigle's, and saw the stream there.

Question. From what you observed of the stream, did you consider it an ancient natural watercourse or not?

Answer. I would consider it so, from the best of my knowledge, from the natural appearance; further I can't go.

It appears to me that the water must have run there in old times.

Question. If the water was left to flow naturally from the turnpike, do you think it would go over on to Shields at the present place or a little higher up?

Answer. It would go, to the best of my knowledge, about seventy feet higher up.

I made the spur lane fence altogether myself, except Jacob Bowlby helped me two half days. While I was at work at the spur lane fence, I saw Mr. Arndt's people at work at the crooked ditch. I had one side of the lane fence made out there, and the other side about sixteen panels done. Mr. Arndt's son, Jacob Arndt, and Jacob Bowlby was at work at the crooked ditch. I did not see Mr. Arndt about there at all. I asked Jacob Bowlby if he would not help me, and he said no, he was engaged at that watercourse; he did not pronounce it a ditch. Jacob Arndt said we might as well let that be, we would have a dry watering place.

Defendant's counsel objects to conversations with Arndt and Bowlby.

I went on and finished the spur lane, and after they put the water in the new ditch there was no water at the watering place—it trickled along a little.

There was some water in the spring by Mr. Shields' house, but it did not run out. I recollect of going, with the girl he had to work for him, to Mr. Carter's spring to fetch water at nights.

And being cross-examined, saith :

At the time I made the line fence, there was not much water running there. It then run a little higher up than where it now does, and it would a little higher yet, if it had its natural course, to the best of my knowledge. I mean it would run *seventy feet* higher up across under the line fence. It was not then running across the line fence, it run under.

Question. At the place where you first stopped the water to put in a post, was the water running across the line on to Shields or not ?

Answer. The water was, at the time I stopped it.

I told you it was in two places. The other place where it run across was about eleven feet higher up, to the best of my knowledge. When I made the line fence, I first see it running across there.

Question. You said, in your principal examination, that the water did not cross on to Shields as low down as it now does by something like twenty feet, and you now say it crossed about eleven feet higher up ; which is right, the eleven or twenty feet.

Answer. Why I say this much, at any rate, the water does not cross in the same place, some part of it, as when I made the fence. I put four rails to a panel in that new fence. I was very particular, and wanted it very nice, and measured it, and the lower rail was four and a quarter inches from the ground through this low flat place, and over the water about two feet at the watering place as far as the ground was level. It was only one panel, and at the one place, that the bottom rail was two feet from the ground. I heard Mr. Shields say he wanted to plough a ditch on his side of the fence, and take the water down. The way he spoke, he was going to have a ditch there and throw up the dirt, (I made a four rail fence) and fetch the water down.

Question. Did you not hear Mr. Shields say he intended to have all the water or none ?

Answer. I heard Mr. Shields say that he would not divide the water.

I never heard Mr. Shields say anything more in particular, only this, that it would be a disadvantage to him to lose the water at that spot, of three thousand dollars. And if I owned it I would not for five thousand. At the time I made the spur lane fence, Mr. Shields had a man to work for him by the name of George Duck. I was at Shields' when the sheriff came to serve the injunction. I was not at work. I was on my way to bed when he came. It

was between nine and ten o'clock, as near as I can tell, when the sheriff come there; I did not carry a watch. This Duck was not sent off to John Strader's, jun., that night, that was different from my knowledge. I can't tell whether he was sent the next morning or not.

Question. Did you not hear Shields tell Duck to go to John Strader, jun., and he would tell him what to do?

Answer. No, sir, I did not. I did not hear him say to John Strader, jun., or no other man. Not to John Strader, jun.

Question. Did he not tell him to go to John Strader, and he would tell him what to do, or something to that effect?

Answer. He told him to go to John Strader, but not John Strader, jun. He was not mentioned. He told him to go there, and he would go with him, and then afterwards George Duck come in from the field with the mule's bridle in his hand. It did not appear to me that he could have opened the watercourse, not with the mule's bridle.

Question. Did I ask you anything about his opening the watercourse?

Answer. I know nothing at all about that.

Question. Was not Strader to tell Duck what to do?

Answer. I can't tell for that, nothing at all; I was not there.

Question. Did not Shields tell him Strader would show him what to do?

Answer. Shields told him Strader would go with him, and one of his hands, and show him what to do; but what it was to do I don't know.

Question. What time in the morning was it when Duck was sent to Strader's?

Answer. I don't know that he was sent; I can't tell that.

Question. What time in the morning did Duck go over to Strader's?

Answer. I can't tell you anything at all about that, what time in the morning he went over there.

Question. Was it before or after sunrise?

Answer. I can't tell you when he got there.

Question. Was it before or after sunrise that he left Shields' to go to Strader's?

Answer. He left Shields' about at daylight.

Question. How far is it from Shields' to Strader's, where he went?

Answer. I don't know anything about the distance; I never measured it.

Question. How far do you suppose it to be?

Answer. Why, I can't, under oath, make any supposes; guess-work don't answer.

Question. Is it over or under a mile?

Answer. It is more than a mile. I would suppose it is two miles, as near as I can tell.

Question. What time did Duck get back with the mule's bridle in his hand?

Answer. Why I can't exactly tell; I was going to my work; it was a little after sunrise, very little.

Question. After Duck came back, did you hear Shields say he had the water again?

Answer. I did not hear Shields say such a word.

Question. What did you hear him say after Duck came back?

Answer. He came out to me near about a mile from his house; he said the water is back in its old course.

Question. Did he say it got back?

Answer. He did not say, nor I never heard him say how it got back.

Question. What time in the morning did Shields come out to where you were at work?

Answer. Between nine and eleven. I could not tell you the minute; I could not afford to keep a watch.

Question. Was you at work that morning up along the line of fence?

Answer. The line fence! No. It was a lane fence Mr. Morris.

Question. Did you not ask Mr. Shields how he got the water?

Answer. No, sir, I did not.

Question. Nor nothing to that effect?

Answer. I asked him who turned the water. It was best known to themselves, he said.

Question. Did Duck get back before the sheriff went over to Arndt's?

Answer. I can't tell about that, 'tis enough for me to look after the constables, and not after the sheriff, to keep a good look-out about them.

Question. Did Duck get back before you went out to your work?

Answer. Why ha'nt you got that down; I told you before I met him as I was going to my work.

Question. Did you see any one that morning going from the turnpike, where the water now crosses, with a spade or shovel?

Answer. No, sir. Not at all.

Question. Do you not know (or have you not heard) who turned the water back again out of the crooked ditch that morning?

The hear-say part objected to by complainant's counsel.

Answer. No, sir. I don't know nor never heard a whisper.

Question. Did you not plague Duck about it?

This question objected to, as altogether irrelevant, by complainant's counsel.

Answer. I can't say that I plagued him.

Question. What did you do then?

This question also objected to as irrelevant, by complainant's counsel.

Answer. I asked him what he done when he turned that wa-

ter; and he said he did not. That was all the plague there was, and that I don't call plaguing.

Question. Is not the watering place much altered since you made the fence?

Answer. Yes, sir. It is considerable altered by the running of creatures in there; they trod it down some, that is all the alteration.

Sworn, &c., September 14, 1841.

Peter Petty testifies—I will be twenty-three years old the tenth day of March next; was born on the Petty farm adjoining the premises, and lived there since. Have been acquainted with the premises of these parties as long as I can recollect. I could not say in particular, in regard to that, how long. I can't recollect along the line between Shields and Arndt; eight or ten years. Mr. Groff lived where Mr. Arndt does, and Mr. Wyers where Shields does, when I was first acquainted with the premises. While the Wyers lived there, I was frequently up and down along that line. At those times the water run as it now does. I can't say as to that, that I saw a place where the cattle went into water; but I recollect seeing a place where they could go in. I recollect of there being a spring in Mr. Arndt's meadow above that present watering place. I have been at that a few times, not very often; I only see water come from it, I never see water come down from above or apast it. I have seen water crossing the turnpike; that came down past this spring and run on to Shields. I could not say as to that, how near to this spring it run.

This spring-run empties into the same run that now runs. I could not justly say as to the time how long I have known the water from the turnpike to run past this spring on to Shields. I have no recollection not longer than six or seven years.

And being cross-examined, saith:

I can't say as to that, whether, when I first saw the water running from the turnpike, it was running in a ditch lately dug or not. I never saw Arndt or any of his hands at work in his meadow digging a ditch. I never saw Carter or any of the others above ditching. This water I first spoke of as seeing along the line there, part of it come from this spring on Arndt; the other part of it is the same water that now runs, I mean while Wyers lived there, and came from the turnpike. I could not say exactly as to the years, how long ago. It came in the old channel as it now is, I suppose. I am certain of that, that it is as long ago as when Wyers lived there. I saw, at different seasons, this stream running from the turnpike. It run in both wet and dry times. I have no recollection of its running from the turnpike longer than six or seven years. This spring was forty-five yards above the upper end of the watering place; I paced it last Monday morning. The spring was not then running, was dried up. I knew the spot where the spring was, by the apple tree that stood there. I did not pace the distance from that spring to the line fence. I should not

judge it was over fifteen or twenty paces. That spring is easterly of where the water now runs. The water from that spring was not led along, it made its own way.

That spring is easterly of the main stream, I should think, as much as seven or eight yards. I never noticed their raising grain on this hollow above and below the turnpike where the water runs, whether they did or did not. I have not lived on the Petty farm for some years. I was ten years old, turning eleven, when my father moved from there. He moved down to Hampton, on this side of the bridge, where James Riddle now lives. It was after my father moved that I was up along the line, and before too. I don't know that I can mention particular what took me up along the line; I had no particular business; just walking about.

Question. Are you positive you saw a running stream of water on Shields' side of the line when Groff lived where Arndt does?

Answer. I am, sir.

Question. Did it then run on Shields as far as it now does?

Answer. It did.

Question. Where did that water come from?

Answer. It come part from the spring I spoke of, and also part in the old channel that comes now.

Question. But do you not say you have no recollection of water coming from the turnpike longer back than six or seven years?

Answer. I think Mr. Sherrerd did not understand me right, or I did not understand him, about the water come past the spring or above it. He asked me if I knew it, as I understand, whether it flowed out from the ground or no. My answer was, I did not, I think. That is all I have to say as to that; but by this I did not mean to say that the water did not run down the old channel, Mr. Morris.

Question. Well, sir, I now ask you if you have any knowledge of water coming across the turnpike and running on to Shields longer back than six or seven years, unless in time of a freshet, or in the spring of the year, or breaking up of winter?

Answer. I have none, sir.

And being called again in chief, saith:

I recollect I fetched water from that spring in Arndt's meadow as long ago as when my father lived on the Petty farm. I have frequently fetched water from there, and it was at those times that I see the water coming down in the old channel. The watering place is three hundred and forty yards from Shields' house—I paced it.

Question. From your knowledge of this stream, do you consider it an ancient natural watercourse or not?

Answer. I do, sir.

And being cross-examined, saith:

On Monday morning last I paced from the house to the watering place, at the request of Mr. Shields. He asked me to do it

last Monday morning when I come there. I come by the way of Mr. Shields' to come here yesterday.

Sworn, &c., September 11, 1841.

John S. Bowlby testifies—I have known this stream of water to run across the Spruce run turnpike ever since it was made, and I don't know but before. I recollect working for old John Van Natta in harvest on the Reigle farm. I guess I worked ten days for him as much as five-and-twenty years ago. At that time I saw a little bit of a stream, a very little stream, run on down past his house in the hollow there, in front of his house. I can't say exactly whether it run there the whole time or not; it run part of the time, that I am sure of, a small *little stream*. I don't recollect minding about its running the whole time. I recollect mowing for old Billy Hendrie on the Carter farm, in the field above the turnpike where the water comes through now. I could not tell how many days, I suppose may-be four or five days. It was before harvest—we mowed clover.

It seems to run in my head there was a small little stream run through it then, a very small stream. I recollect crossing this hollow along the turnpike, since it has been made, at different seasons of the year. I recollect seeing water running across there—generally running across there when I crossed it. I recollect seeing fish in it by the turnpike, ever since the turnpike was made. I recollect seeing them there, one time in particular, in company with my brother, Joseph L. Bowlby. I can't tell how long ago. It must be as much as ten years, at all events. I could not say whether more or less. I recollect there was a bridge there, or boards to cross on, or something; I recollect we stood on them.

Question. From your knowledge of this stream, do you consider it an ancient natural watercourse or not?

Answer. Well, it appears to me as if it was a natural watercourse.

I could not say for certain what it was in old ancient times; but from the looks of the course it looks like it.

And being cross-examined, saith:

I never followed this stream down across Arndt's farm in old times. I know where it used to sink. Whether it is this same stream that sunk there I can't say. I never was further up than the sink-hole that was away up there on Wyer's farm.

The stream that crossed the Changewater road by Wyer's used to run into that sink-hole pretty much a good many years ago. I can't say about that, whether it run further than the sink-hole or not in time of high water or freshets. I can't tell whether it all run into the sink-hole. I can't say, at any time, whether it all run in or not; I never examined as to that. There was not a sink-hole on John Van Natta's farm as I know of. I don't recollect anything of a pond being there.

This stream that runs across the turnpike is larger than it used to be a good many years ago. I can't tell how much larger it is,

a good deal larger than when I first knew it. I don't recollect whether the little stream I saw, when I worked at Van Natta's the ten days, was occasioned by a shower or wet time or not. I can't tell you how many years ago I worked for Capt. Hendrie; it is a good many years ago. Yes, I am positive I saw water running part of the time, at any rate when I was mowing clover there, not positive as to observing it all the time. *It run along in a regular stream in a course where it appeared as if it had run along a good while; the grass had grown up along it. The ditch was not so deep as it is now; there is more water now. I can't say if the stream had washed out a gully or not; the water had washed the soil away, and did not run on the top of the ground. I can't say about that, whether the water had washed a gully all the way across the Carter farm or not, only where I crossed it as I went to my work. We did not mow right over it. I can't tell you that, how much space was left not mowed over. It looks to me as if it had been ditched across there, but can't tell when it was done. I don't know when they ditched above on the Reigle and Carter farm. I don't know when they ditched across Mr. Arndt's farm. I noticed that ditches had been dug.*

Question. Did you not say last evening, or this morning, that no water came down this hollow in old times, and that you had mown all over it?

Answer. No. I never said that I had mowed all over it; I never said that.

Question. Did you not say no water came down, unless in time of rain, in former times?

Answer. I don't think I ever said that.

Question. Did you not say, would I be such a fool as to go all my way to Capt. Hendrie's with a dirty face if there was water in the hollow, or something to that effect?

Answer. I never said such a word as that.

Question. Do you recollect what you said last evening at Hampton?

Answer. I don't recollect of saying anything at Hampton last evening in particular.

Question. Was you not talking about the water last evening at Hampton?

Answer. Likely I was; but I don't recollect what I said about it. I have talked about it many a time.

Question. Who was you talking with about the water there?

Answer. I don't know who. I don't recollect, for there is every one talking about it.

I have not been along the Spruce run turnpike frequently, maybe not once in two years. I don't recollect how long ago it was when I stood on the bridge or boards or something. It was before any ditches were dug above the road. I don't recollect about that, whether it was before there was a ditch dug in Arndt's meadow or not; I never took much notice of that; I know there was no ditch above the road.

I can't tell when I saw water at the turnpike when I passed it, whether it was after rain or not; I can't tell anything about that.
Sworn, &c., September 14, 1841.

George Franks testifies—I am slightly acquainted with the premises owned by Mr. Arndt and Mr. Shields. I was down upon the premises this morning. I took a level of the ground between Mr. Arndt's house and the pond by Mr. Shields' house, at the request of Mr. Shields. I commenced at the edge of the pond next to Mr. Shields'; from thence, across the pond along the edge of the turnpike, up even with the lower end of Mr. Arndt's house, next to the pond; and then from the edge of the turnpike to the house, about at right angles. I found the ascent in the turnpike from the pond eight feet four and a quarter inches, and from the turnpike where it formed the angle to the house, two feet two and a half inches, making the whole ascent from the brook up to the house ten feet six inches and three quarters. In levelling from the pond up the turnpike I took three stations, and in sighting back there was a variation of the fall of about three quarters of an inch more, in the one sight back. I can't say that I have been much in the habit of levelling; I have done it for myself, and occasionally for others when required. I am a miller by profession myself; have erected a mill for myself and made my own levels. In making this level, I used a water level of very simple construction. I am satisfied that the level I made was a correct one. I measured the distance from the edge of the pond next to Mr. Arndt's house up the turnpike, even with the lower end of his house, and found it one hundred and sixty-seven feet. I did not measure the distance in to his house. Inside of his enclosure, I should think it a little further, or greater from the pond to his house than along the turnpike. I did not pay much attention to the distance from the turnpike to Mr. Arndt's house, but I should suppose it to be about thirty feet.

And being cross-examined, saith:

I don't know as I can answer that question positively; whether it is an advantage to farmers generally to water meadows positively. I have used water on some small meadows where I live, and think it an advantage. I am of the opinion that the ground watered by me is improved. I have watered a piece of meadow, say from two to three acres; commenced four years ago. It had been seeded down with timothy, say five, six, or seven years (can't say positively) previous to my commencing watering it. I think there has been a gradual improvement in the grass up to this time very perceptible. In comparing the product of this piece where it has had the advantage of water, before it was watered and now, I think it has the advantage of one-third in its favour.

And being called again in chief, saith:

The situation of my watered ground was on a side-hill, not on a limestone bottom—a clay bottom. It would have the wash of

the roads and side-hill, perhaps for about half a mile, also a spring-run. It was so situated that the water could run pretty freely off of it after passing over it. I did not manure it any, only that I put on some leached ashes, that was taken from the house and corn-kiln, only on part of it. The ashes was only put on about a year ago, and I can't perceive that there is much improvement perceptible at this present time. I did not observe the ground over which Mr. Arndt was taking this crooked ditch. What I have seen of Mr. Arndt's farm was a limestone soil. I have not been over it all; there may be portions not limestone. I done some levelling for him about his ditches some years since. I did not pay much attention to it, to observe whether there was much descent from his crooked ditch, or whether it was rather level. There was a small descent from where it first commenced to the original channel. There was generally a small descent from the proposed (or crooked) ditch down to the original channel. I don't know that I can answer that question, whether water would be an advantage on level meadow or not. I have not paid attention enough to the subject, farming being a branch of business in which I have not been engaged.

And being cross-examined again, saith :

Some little of the wash of Henry Carter's barnyard and Mr. Wyer's, I should say, would run into the brook flowing down this hollow; the others I have never been upon the premises, and I don't know which way the wash would run.

Sworn, &c., September 15, 1841.

Abraham Hill testifies—I have worked for Mr. Arndt, the defendant, nine months and a few days, I believe it was. It is four years ago next spring since I went to work for him, I think it is that long any how. During that time I recollect seeing the water run over on to Mr. Shields at the present watering place, at the same place it does now, as near as I can tell. I don't think it has varied any for my part. It run on to him, and then down along ways, and then off of him on to Mr. Arndt, as it does now. This nine months was before the crooked ditch was dug. I recollect hearing Mr. Arndt speak of bringing the water out of the old channel, and little lower down than where it was dug, if I am not mistaken. He told me he was agoing to take the *whole of it out*. I heard him say, several times, that he was agoing to take it out, but I never heard him say, but the once, that he was agoing to take the whole. If the water was left to take its natural course at the turnpike, and left to flow over the ground, and not led in a ditch, it would flow over on to Shields higher up, I think, than what it does. I think it would run over on to him twenty-five or thirty yards further up; that is the lowest ground up there, I think. There is the appearance of an old channal right above along the line fence in Arndt's meadow; there is a hollow there that has the appearance of an old channel.

I would consider it a great disadvantage to Mr. Shields to lose

the water there, on account of taking it away from his creatures for one thing. The fences are laid out, too, with great expense, with reference to that watering place.

If I owned Mr. Arndt's farm, and had all the water taken in that crooked ditch, I would not consider it much of an advantage; I would not have it there no how at all, if it was mine.

Question. From your knowledge and observation of this stream, would you consider it an ancient natural watercourse or not?

Answer. Well, I think it is. It looks so any how, to my eyesight.

I would judge the water used to run there in old times by the looks of the stream.

I was acquainted with Berlin Metlar; he worked there at the same time I did. It is more than I can tell how long he worked there, a clever little spell I believe. He was not there half of the time I was there. I could not tell you how long he worked there at all. I am not able to tell whether he was there when I come or come there afterwards.

Question. Would you consider him a man of common sense or half-witted, or how?

Answer. I would not consider him a man of good common sense at all.

Question. Would you consider him more than half-witted or not?

Answer. Well, that I could not tell you; I don't think him a man of good sense, that is as far as I can tell you. I don't like to measure a man's sense, for I don't know that.

Question. Would you like him to be a witness against you since he has removed west?

Answer. No, sir, I don't think I would.

And being cross-examined, saith:

I am twenty-four years old the eleventh day of next May, so they tell me. I am working at Mr. Shields' (the complainant) now. I began to work for him the 27th of last June; am working on the farm.

This conversation about taking the water out of the old channel was in Mr. Arndt's meadow; nobody at all was by, I believe. He begun it himself first; I don't know what way he come to begin it. He said he was going to take it down to his house, because he had no soft water there. He has no soft water by his door, I believe. His well is hard water, I believe. He said nothing about watering his meadow, as I remember. [I think he told me he had put the water over on to Shields, but not at the time of this conversation; I don't think it was at that time; if it was, I don't remember it. I heard him say that Carter had ditched above him, in the first conversation.]—Objected to by complainant's counsel.

He said that Mr. Carter had dug it through his fields, and then he had dug through his, and put it on to Mr. Shields. This was not in the first conversation about taking the water out of the old channel.—Objected to by complainant's counsel.

Question. You said just now, Mr. Hill, that you heard Mr Arndt speak of Carter's ditching above him, in the same conversation that he spoke of taking the water out of the old channel?

Answer. I did not mean to say so, and I think I did not say so.

Question. How do you know it was not in the same conversation?

Answer. Well, I don't know as it was not; but I don't remember of his speaking it then.

Question. Have you any particular thing by which you can remember that he did not speak it then?

Answer. No, sir.

Mr. Shields did not point out this low spot to me.

The appearance of an old channel is, that there is a low place, and a gutter on the side of it. That gutter runs out eight or ten paces from the low place; I am not certain, but I think it that far. Mr. Arndt did not give any reason for saying that he intended to take the whole of the water. I am sure I did not hear him say anything at all about taking it away because he put it there.

If I lived on Mr. Arndt's farm, and had no soft water at the door, I don't think I would consider it an advantage to have a stream of soft water brought to the door, as he has so much water already, and would cut up the meadow so. Mr. Shields has plenty of water at his door at this present time, but if that was turned off I don't know how it would be then, I don't think he would.

Question. Was not this Berlin Metlar pretty smart and cute in his dealings and money matters?

Answer. I don't know anything about that.

Question. Did you never hear him bargaining about anything?

Answer. No, sir.

I don't know anything at all about it for my part, whether he was careful to keep out of debt and keep his accounts square.

Question. Did he not manage his business well, and was he not faithful to his work?

Answer. He was pretty sharp when Mr. Arndt was by.

Question. What reason have you for saying that you would not like to have him for a witness against you, now he has moved west?

Answer. Why, I think he was a man who did not know as much as some folks, and his mind was too much on other things, sometimes on one thing and sometimes on another.

Question. Had you any dispute or misunderstanding with him while you worked together?

Answer. We never had but once.

Question. What was that about?

Answer. It was about harvesting. He wanted to cut a through after the company were all willing to quit, and that occasioned the dispute between us. Mr. Arndt was not by. The dispute arose between us because he was willing to cut a swath through more than the rest. I don't know he was willing, but he wanted to.

I have no knowledge of this stream in old times. When I first

come to Mr. Arndt's to work, is the first I ever knew about the stream.

And being called again in chief, saith :

This dispute was not anything more than words, and we parted good friends.

Sworn, &c., September 15, 1841.

John Petty, sen., testifies—I can't exactly ascertain how old I am, but I am sixty-eight or nine the 13th day of October last. That is the way I received my age from my parents. I must have been about eight or nine when my father moved up into this county from Hunterdon into Asbury, and lived there one year; and after that year he removed about a mile above Washington, just across where the canal now is. I forget now whose lands he moved on. It was a man who lived in Burlington; his name I have often heard, but to name him I can't. He continued there about eight years, having to live there a year longer on account of having taken a place in Coxe's wood that had no buildings on it. The farm he had taken in Coxe's wood was above Hampton, on the cross-roads where Robert Strader now lives, the same that is called the Petty farm. During the last year we staid about Washington we built a house on the farm in Coxe's woods. I was backwards and forwards from spring to fall that year to this farm, carrying them dinners and provision. A part of the time I would go the road, and part of the time I would go across the fields—it was nigher; and in going there I would cross this little hollow through which the brook runs about which these parties are contending. I generally crossed the hollow below the buildings on the farm on which John Van Natta used to live. When I crossed that little hollow, *I always saw a stream of running water there.* I never see it any other way for my part. The hollow at that time was grown up with thorn bushes and plum and hazel, and alder and grape vines, cruel thick. They had opened places to get at the water; I would always aim at them; I could not get across at any other place. During that year I recollect crossing it at the old forge road at different times. I recollect *seeing running water there every time that ever I had crossed it.* At times there was a bridge, and at times there was not. After freshes it would be taken off, not take it far down on account of the fence and the brush damming it up. I have took up them boards often from below, and brought them up to their place. When my father moved down on the Petty farm on the cross-roads, I moved down with him, and staid till I was of age and till I was a little apast. During the time I lived with my father, I recollect crossing this hollow above where Shields and Arndt now live a many of a time, perhaps ten, twelve, fifteen, or twenty times a year, and perhaps oftener. I don't know what took me up there in particular, only to go and see the neighbours, and going to the old home, and good many errands, and a great many stone frolics above.

While I lived at home, my father rented of McCullough six

acres of the McCullough farm one year for buckwheat. This six acres was below the Spruce run turnpike and joining that ditch where the water now runs. I helped him farm the land and gather the crop, and I cradled it all for him. *There was always water there running down the hollow at that time, and at the elbow of the stream it made a pond that covered from a quarter to a half an acre of ground. From that pond the water ran down the hollow toward the buildings, and there crossed the road. At that time I thought there was a boiling spring in this pond. At that time all the low ground was all in one; there was no partition fence through it, and for years after I knew it first. It was all the meadow ground they had on the farm. At that time Shields' and Arndt's and Carter's farms were all in one. I never knew that pond dry up at the elbow. I thought it was a boiling spring there; it was grown up with bushes around and hid like. I never fished there; can't tell whether there was fish in there or not. I did hear there was trout in the brook, but can't tell anything about it. The stream came into the pond from the Van Natta farm and it all appears to me now as it did then, except that the pond is dried up. I observed that it is ditched now, and runs straighter and more water, I perceive, in the ditches.*

When I left my father's I went to Changewater. My brother and me had rented a large farm there, of old Mark Thomson, for three years. That farm bounded on the Musconetcong creek, and run back over this Woolston stream. It lay below the old forge road; the forge road was the upper line. Hornbecker lived on the farm above the old forge road. Thomson did not own that farm at that time, he rented it of Chew for twenty pounds a year, and we paid him one-third of the grain. During those three years I was along that run pretty frequently. I helped to clear thirty acres along it—too hazelly and thorny to go all the way through it. *At that time there was a stream of running water there; and it was so during the whole three years I was there, every time I was about it. If we had it into grain we would not go so often there, and if we had not it in with grain we would till it and be there every day almost. We did not often water our horses there. We had to take them home to feed them, and we watered them there. One Stires, at that time, lived on the upper end of the Reigle farm, on which farm Van Natta afterwards lived; there was an old house and log barn there. The house that Reigle now lives in was not built then. Stires did not use this stream; his house was at the other end of the farm, and he had a fine spring by his house, and a brook too.*

I was well acquainted with John Van Natta when he lived on this farm; he was a brother-in-law of mine. It was after our three years expired that John Van Natta moved on the Reigle farm, but how long I can't ascertain; he did not live in the old house, he moved into the new house; I don't exactly know how long he lived on it. I often went to see him while he lived there. *Whenever I was there to see him, or across that hollow, I always*

found water. It was always going. After I left the forge farm, I moved about a half a mile above it, for one year. During that year I crossed this hollow on the old forge road different times. At those times *there was water running there.* I crossed it at different seasons of the year. At that time this old forge road was the principal road to come over into Mansfield.

After that I moved to Pohatcong, back of Washington, and during the first year I was frequently along the old forge road after seed wheat, harvesting and hauling in. During that year *I always saw water running there* when I crossed it. I recollect watering *my horses* there; there was a hole just above the road that had washed in, it was a fine deep place. This hole was full of water, and the water would float over the road; the gravel had kind of dammed it up. I was acquainted with the head of this little stream. It was on a farm of Woolston's, on a line joining Scott's farm; it boiled up there, and made quite a pond. I have been acquainted with this little stream, I guess, from fifty-eight to sixty years—I mean since I first knew it.

It is eighteen years since I left Pohatcong, and have been living since that in Newton, Sussex county. I have not seen this hollow since I left this county till a day or two ago. On Wednesday I went from the turnpike up to the forge road. The hollow and neighbourhood looked familiar to me, except the clearing up.

I am acquainted with Joseph Hendrickson; have known him for forty years; used to be well acquainted with him before I moved to Sussex. I never heard anything agin him, as ever I heard or knowed of; he was as fair a man as the common go.

This answer was given to the question, what was the general character of Joseph Hendrickson when you were acquainted with him.

Question. Did you ever hear his general character for truth and veracity, or for truth and veracity under oath, called in question?

Answer. No, not as I know of. He was always called a civilized man.

And being cross-examined, saith:

I have no record of my age. I tell my age by keeping an account along, and I have asked others; I knew how much older I was than them. My father moved out of Hanterdon, from about a mile below Asbury. I say he lived one year at Asbury, from the family talk that he had it but one year. I can't ascertain to you how long ago it is since I heard the family talk about it. For me to say to you which of the family, I don't know that I can. My father followed farming at Asbury; he rented of Peter Woolhever.

There is a house there where my father used to live, above Washington. I saw it to-day. I don't believe it is a hundred yards off from the old house. I don't know who lives there now. My father did not buy the farm where Robert Strader now lives; he bought a lease on it for seven years, six years of which was to come. Two persons had a part of this farm where Strader now lives for three years, to clear thirty acres and put up a log house,

and made a partition between, so that each one had a room. My father had bought the first original lease, and after he come on there to live he put a log end, and they were contentious, and then he bargained with them and bought them out and they quit. I think he gave forty bushels of wheat to go. They had put up the buildings and had cleared about ten acres, and he bought them out and cleared them of all harm. The putting up the log end was the building my father did. The log end my father put up after these men had moved away, and after my father had moved there. He put up a log end and an entry. It made a good large room; I can't tell the size. My father did not make a frolic; he had help enough of his own; he was clearing off the ground, and whenever he found a log that would do we would measure it and log it off, and whenever we had a chance we would haul it home. It was after harvest I know, towards fall, that my father built this log end. I don't know how much my father cleared before he built. The season he moved he had a harvest off of ten or twelve acres. This was off of his own clearing. When he got it he did not move till the next winter about the holidays. I cannot pretend to say how long it took to put up this log end. It was one story, and a high kind of chamber and entry that would hold a bed, and some room besides. The logs were all hauled there, and then we had a frolic to put it up, and it took about a day. It was filled in with mud, as common. My father cleared that ten acres the year before he had moved there. He had one hired hand and three boys. All these hands worked at the clearing. There were often two, three, and four choppers. I helped chop. I helped as much as I was able to do, but could not do a man's work. I was there all the time helping them clear. I did not cut down the trees, I would trim out. I don't know how old I was at that time I declare, I can't ascertain that. I was not a man grown. At grubbing I would take half a rod to a man's rod. I suppose I was fourteen or fifteen years of age. This clearing was done in the summer. My other brothers were, two older and two younger, at home. The grubbers remained there, and their breakfast and dinners were brought to them, and supper and breakfast again for fear we would not get there early enough in the morning. I and the smaller one had to attend home and carry backwards and forwards. The grubbers that staid there were my brothers Jacob and Joe and one Joe Breese. My younger brother, next to me, would help me carry provisions out to them. I did not grub there the first season, but the next season. Oftentimes when I went to carry provisions I went the forge road, that is the road I spoke of. I can't tell whether I went the oftenest by the road or across the fields. I can't pretend to ascertain at all how often I carried provisions. It was half a mile or so nearer to go across the fields.

Question. Can you say, from your memory, that you carried provisions along the forge road six times to the hands at work?

Answer. Well, I don't know indeed. If it was over or under how should I know.

I also travelled an old road that went across the hollow in carrying provisions. This old road run out to the cleared ground on Thomson's farm ; I guess the same farm I and my brother afterwards rented. I afterwards ploughed up this old road myself. It crossed the hollow on the farm my brother and I rented, and I afterwards cleared out the old road and cleared up the land. It had formerly before that went out to the old Hackettstown road. When I went across the fields I often went out to the Hackettstown road by this old road. This old road and the old forge road run not more than twenty yards apart at the brook in the hollow. I often crossed the hollow below these roads, not to say so very often, I guess I have crossed it to carry provisions ; it is so long ago 'tis hard to remember these little errands. I don't know that I can tell you exactly where I crossed below, but to besure I have crossed it. Joseph Carter's farm along the hollow was then all in woods. I crossed the hollow many times above the pond at the elbow, in carrying provisions. I don't know how far above the elbow ; I did not really pace it, for I did not expect to be called upon as a witness. I don't think it was higher up than where the turnpike now is, unless I did it in the woods.

I have crossed it in so many places, I can't ascertain to you what road I travelled from home when I crossed it then. If I were to say five hundred, it would not be wrong, but I have a hundred, at the least counting. I can't pretend to answer you how often I crossed the hollow above the pond for the space of fifty years, it would take a stronger head than I have. There was not any old road where I crossed it above the pond ; it was cleared ground, and so on all the way to the upper end of the McCullough farm.

Question. Can you say positively you ever crossed the hollow above the pond to carry provisions six times ?

Answer. Pugh ! If it was anything worth answering. I told you, sir, I had over and over, and at other times I crossed it over a hundred.

Question repeated.

Answer. I tell you to ascertain to you I can't, it has been so long, but I know as to myself three or four times anyhow.

Question. Can you tell me, then, the first time you crossed above the pond ?

Answer. I can't, for it is too long ago.

Question. How then do you know positively you have crossed it three or four times ?

Answer. Well, sir, how can I answer you the first time.

Question repeated.

Answer. I have no proof, but I say I have.

Question. Are there any circumstances by which you can recollect crossing it at any one time at this last mentioned place ?

Answer. Why, I had told you I had called to mind I had, but I had no proof by which I can prove it, and if you won't believe it I can't answer you any more.

I can't answer you that, how many weeks the grubbers were out to work. Oh yes, most surely a month or more. It was in the spring most surely when my father cleared this, and it was grubbed afterwards, but before harvest. It was in the spring of the year that the grubbers were there. I don't know how early in the spring; grubbers commonly enter in April. I can't tell what month in the spring this grubbing was done in. I have crossed that hollow in the summer season, and seen water running there. It would be low at times, but it was always agoing, or at least all that I knowed about it.

Question. Whereabouts did you cross the hollow at any time in the summer season and saw water running?

Answer. Why I had many a time crossed it in May, June, and July, and I found water every time I crossed it, up against where John Van Natta lived.

Question. How many times can you recollect crossing this hollow in May?

Answer. Well, I don't know, it is too long to remember.

Question. How many times in June and July?

Answer. Perhaps twice in a month.

Question repeated.

Answer. Well, I told you perhaps twice, and that I am sure of.

Question. How are you sure; are there any circumstances by which you can remember it?

Answer. Yes. For I know I crossed it twice in one day in June and July, by the knowledge I have of it. I do not believe I am under any obligation to answer that question any further, for I know I crossed over. One day I had an errand not a hundred yards over it, I crossed over and returned back; and another day, about a month after, I was agoing up to the Brick and I crossed it there, and crossed again coming home.

Question. What errand had you when you crossed it, and what was your business when you went to the Brick?

Answer. I don't know that I am obliged to tell you. Well, it was a bit of a lawsuit that I had there at the Brick. The other time I was after a hog that had run away from me, and a plague of a heat I had after him too.

Question. Are you certain you went after the hog in June or July, or in either of those months?

Answer. Yes, I am.

Question. Tell us, then, by what you know, was it in either of those months?

Answer. That is a most too hash, aint it; because it is a foolish kind of a question to ask a man.

Question. By what circumstance do you know that it was in June or July that you had a lawsuit at the Brick?

Answer. July, I was in harvest then, I had to lose a half a day on the same account. I was in harvest for myself. I lived there at Pohatcong, about a mile and a half off of the Brick, this May,

up towards the mill this May, on the Pohatcong. I mean by the Brick where Richard S. Allen lives, at Washington.

I can't tell you how many places were open in the bushes that I spoke of to get the water—three or four. One before Van Natta's door, one up towards the old forge road, and one or two lower down; may-be one or two hundred yards below his barn, at the end of an old field that had been cleared this fifty or sixty years. I don't know how often I recollect crossing these places up there by his house, may-be ten, fifteen, may-be twenty times.

Question. I don't ask you how many times you guess, but how many times you can recollect certainly?

Answer. To be under par say five times, but it is above forty times.

Question. When was the first of these five times that you recollect?

Answer. Who do you think can answer you that.

Question. Is there any circumstance by which you can recollect of crossing the hollow by these open places once?

Answer. Not here, as I know of, except that you will believe me. I would often go to Van Natta's, and would cross it there, perhaps three times a week, or twice, or once.

When I lived down with my father on the Petty farm I crossed the hollow by Shields above the elbow, where I crossed ten, fifteen, to twenty times. I can't pretend to tell you how far above the elbow, may-be it was ten rods, perhaps a little further, perhaps a little less. Old Hornbecker had stone frolics; he had a stone frolic every year once. He lived over the forge road where Wyers now live. It was the highest way that took across the hollow to go to Hornbecker's. It was nigher by a half a mile than to go the road, if you went a foot; but if you went with a team you had to go the road. I went both ways. When Shields', Arndt's, and Carter's farms were all one, Col. William McCullough and his father lived on it. It was confiscated property, and the old man he bought it. I don't know how many years Col. McCullough lived there, it was several, and his father, before the stone house was finished yet, he died; the stone house that Carter lives in now.

Question. Who do you suppose would know best whether a stream of water crossed that farm, you or Col. McCullough who lived on it a number of years?

Answer. I don't know anything about that; but I can tell you whenever I crossed it there was water. I don't know what Col. McCullough said about water.

The six acres of buckwheat was this side of the ditch, north-west side. There was brush along, and I had to turn up agin the brush around, hazel and thorn, there was bushes and thorns down along the hollow below where the turnpike now is, a part of the way from the pond up, and around the pond it was cruel full. I ploughed the ground for this buckwheat, I believe. I know I did; I broke it up and crossed it too. I don't know anything about that, where McCulloughs had their watering place. I believe they

took their horses home to the brook—it was cooler and finer there. I have seen them often do that, and if they had any other water I don't know. There was no stream of water come down the Bowlby hollow from Mansfield meeting-house into that pond at the elbow, except in rains—no steady stream.

Question. Were there any bushes running up from Shields' house towards this pond or boiling spring?

Answer. Not any bushes there that I know of. There was a fence run up along side of the meadow from Shields' house to this pond, but there was no line there then. It was a worm-fence, not where the line fence now is. It was all the hay they had on the place along that run. It was a piece of meadow they had fenced in by itself, seven, eight, or nine acres. The fence from Shields' house up was along the edge of the mowing ground, and went round and took in the pond and came down again. This meadow came all the way down to the houses of Shields and Arndt, and they mowed it all the way down. It was tame grass, timothy, along the brook flags, wild grass not much.

There was no one living there then where Shields now lives, no house there then.

There were *not any sink-holes on Van Natta's farm* in old times that I know of. I aint a knowing of any sink-holes on the farm above where Hornbecker lived; if there was any, I never seen them or heard of them, as I know of. Shields and I were up a part of this stream, and I saw it was ditched down.

Question. How do you know it was ditched?

Answer. I seen it, that is all I know of it, that is a piece of it; I did not see it all.

Question. Could you tell, by the looks of it on Wednesday, whether it had been ditched or not?

Answer. Yes.

Question. Did not Shields tell you it had been ditched down from Wyer's?

Answer. No. No, he did not, as I know of; I know he did not in reason.

It was about six months after I came of age that I rented this farm at Changewater. The water never stood in a pond on the farm that Van Natta lived on, the one we rented, as I know of. A brother of mine, or two of them, helped me clear off this thirty acres in that hollow. Jacob Strader cleared five acres of it, and got well paid for it, for he got one hundred and seventeen bushels of wheat, and got twelve shillings a bushel at Easton. I know he got the one hundred and seventeen bushels, for I helped him, and saw it done; and I know he got the price, for I asked him; and I went a few days after and got the same. That clearing was right in the hollow, not across it, but from fence to fence across the farm. It was too wet to bear the wheat there, and after we got in the alder and brush we halted there. I made that clearing the second year. We cleared it all out at once in April and May.

Question. How do you know that it was in April and May that the clearing was done, and not at some other time of the year?

Answer. Well, sir, the way I know, it was always the rule to grub in April or May, if possible, not after harvest, for it would not bear grain. It was always the rule I made, and helped clear two hundred acres and upwards. We sowed it the same year we grubbed it, and it was thirty acres of as pretty wheat as ever you saw. The next year we put rye in it. This clearing was on the south side of the hollow, not along the big road, it come up to the forge road.

This water that run down had a narrow channel to run in, and whenever it was afloat it would spread out. The strip of bushes in the hollow was part of it narrower and a part of it middling wide, say four rod in the narrowest part on this farm, and the widest perhaps may be eight rod. The farm ran over the hollow, but the rear fence was not out of the bushes—it was a pole-fence. We had no farming on this side of the hollow to do; we had not anything to do with that.

Question. What business, then, had you across this hollow during those three years?

Answer. To the water to that same brook. Our water was often out, and it was a half a mile to the house and over, nearly a mile, and we had to drink this; it was good water, only warm.

Col. McCullough built the house that Van Natta lived in and the barn, and sunk the well before the door.

Question. Will you say, on the oath you have taken, that you ever saw water run down this hollow, except in the spring of the year, or melting of snows, or after a heavy rain?

Answer. Every time that I crossed I saw water; perhaps it might have dried up, but if it is the case it is not to my knowing.

Question repeated.

Answer. Well, sir, I have crossed it, I always found water there; perhaps it may have dried up, but I aint knowen.

Question repeated.

Answer. I have most surely crossed at other seasons of the year besides in the spring of the year, after the melting of snows and heavy rains. I have crossed it at all seasons of the year.

Question. Will you say, on the oath you have taken, that you ever saw water running there in the summer time in an ordinary season?

Answer. Well, I have told you whenever I crossed it, I saw water there. I don't know if there had been a drought, or anything about it.

I disposed of all my crop of wheat that same year I raised it. I had need of it, for I owed it. I had wheat the next year on the fields next to the creek.

The water did not stand in that deep hole in the road; it had made its own way in the bank on the side of the road, and come off into the channel again; whenever I was there I saw the water running.

Question. Did you ever see it run out of that hole, unless in time of high water?

Answer. I was not there, perhaps, to see it.

Question repeated.

Answer. Oh, yes.

Can't name any season as I know of. If it did not it is a thing I did not know of.

It was yesterday I saw this stream. Samuel Shields was with me. We went up to the old forge road. We walked up the hollow from the turnpike. I saw marks of the old channel of the old brook that I used to know. The old marks were, that I saw water in it. I also saw the ditch that had water in it. I saw water running in the old channel. I saw these marks on Joseph Carter's farm. I saw a ditch on his farm that went round and come into the old channel. It was not far from the ditch where I saw water in the old channel; it was a little piece off, may-be four or five paces up. I saw the water run in the old channel all the way to the elbow, not water running in old channel and ditch both, but the ditch was apparently turned into the old channel, and the water had taken its course again as it had done heretofore. Where I saw the water in the old channel, it had no vent to run off; the water was standing there. It was not a pond. It was not the old channel, it was a little over where I saw the water standing. The old channel was a little further south. The water stood there in a kind of a ditch that run up and down the hollow the course the water went, perhaps a rod or two, not all across the field. Apparently this place was more up the upper side of the field. I don't know how near the upper side, I did not notice. Mr. Shields did not tell me what other persons had sworn to about it, nor nobody else. I came to Mr. Shields' a Tuesday evening last. I have had no conversation with Capt. Bowlby, nor John Strader, jun., nor Daniel Castner about this suit. A boy brought a letter to me naming the circumstance of the thing. This letter was from Shields.

I have not lived in Joseph Hendrickson's neighbourhood for the last eighteen years. I have lived at Newton the last eighteen years. I saw Joseph Hendrickson on Tuesday evening, on the road opposite Shields' barn. I had not seen him before in eighteen years, and he halted and I knowed him. I have not known anything about him for the last eighteen years.

It was my own hog that I followed across the hollow once; he was a boar, and had strayed away, and I happened to find him. I had a lawsuit with Garret Lacy at the Brick. I lived along the Pohatcong when I followed the hog. I guess it is about three miles from this hollow to where I lived on the Pohatcong. The hog got away before harvest a little, not long before. I had a controversy with Dusenberry, at New Hampton, before I left the county. I joined lands to him, and I burnt a little coal pit of old wood, and he came and tore down my cabin and claimed the wood; and he had too men to guard him, and I walked up to him

and knocked him down. He did not get me indicted, but swore his life against me. I was arrested upon that, and I got clear because he did not appear against me. That happened the last year I lived in this county. I was bound over to appear at Newton. I was there, and remained there. I did not come back to my old neighbourhood, because I did not want to; I thought I had as soon be there as here. I had no family here. I had a wife; she was at her son-in-law's, and is now, I believe; been at her son-in-law's ever since that. I was not bound over upon this* affair of Dusenberry's, but was taken to jail, and there was seven or eight offered to bail me, but I was so angry I refused to be bailed, but had to go to jail, but had the limits shortly after I went there.

Question. Was you not taken there and lodged in jail on the complaint of Dusenberry for stealing wood?

This question objected to by complainant's counsel, because not the best evidence in the cause.

Answer. No, sir.

He also gave up the land, and I own it now—a strip of fourteen acres along his line. I don't know when he gave up the land, but he shortly after had it run out in strips, and halted at my line. I have a deed for that land, and it is recorded at Burlington. It was a piece of vacant land, between three farms below, and Dusenberry above. I took Hymen McMiller, a deputy surveyor, and had it surveyed, and he and I went to Burlington and got a deed for it and eighty acres more. I have never sold any of it yet. One John Wyckoff lives on it now; I must claim it now, agoing home, and order him off, I guess. Wyckoff has not been living on it ever since I have been out of the county. Jake Kinney lived on it, too, awhile. I don't know how long Wyckoff has lived on it, seven or eight years I guess. I claimed the land before it came into the hands of Wyckoff. He bought it of—I don't now recollect who. Kinney had not bought it.

I was taken to jail for knocking down Dusenberry. I need not have gone a rod; enough offered to bail me, but I was so angry I would not let them.

I followed every kind of business almost since I have been to Newton, chopping wood, mowing and cradling, &c. I have lived most of the time in Newton; I now live over the bridge about two hundred yards from the tavern.

Question. Have you had any conversation this evening, since your examination commenced and while we adjourned for supper, with Mr. Shields about this business?

Answer. No. He did not remain in the bar-room. I asked him if he had his horses up. I know my own business, and he could not teach me in it.

Question. Had you no conversation with him, out in the stable or wagon-house, about this business after supper?

Answer. Out here on the porch him and me talked a few words. I said to him, be-hanged! we won't get through to-night;

and he said we won't go home to night any how; and I asked him if he had his horse up, and he said he had.

Question. Did he not ask you to go out to the stable with him, or did not you and he go there together and talk about this business after supper?

Answer. No. We had not, as I know of; we had nothing to talk about. I had an occasion to go out, and he was walking towards the shed, and I asked him if he had his horses up, and he said he had.

Question. Had you no conversation with Shields under the shed or in the street this evening, about this business?

Answer. Not as I know on about it. It was dark. He took me by the arm to keep me from falling off of the porch.

Question. When he took you by the arm did not he and you walk out to the shed together?

Answer. No, sir. I had an errand across the road alone, and when I came back he was on his way coming in. He had been to see his horse, as I suppose, and I asked him if he had his horse up, and he said he had.

Question. Was not you and he under the shed this evening, after supper, together?

Answer. No, sir.

Question. Did not you and Shields walk together from the porch here to the shed, this evening after supper, and there converse about this business?

Answer. No, sir.

I come here to-day with Mr. Shields. If he had anything to relate to me he might have said it by the way, and not whispered it about here.

I am no relation to Mr. Shields, no way. I am a relation to John Strader, jun.; I married his aunt. Hendrickson and I had no talk together about this business.

Question. Did not Hendrickson ask you what you had come down for?

Answer. Not as I know of. No, no, he was in a good deal of a hurry, and I asked him how far he was going, and he said up to Baylor's.

Question. How did you come down from Newton?

Answer. In the mail wagon, with Johnson's boy at Hampton; and stopped at Shields' and staid all night.

Question. How often did you drink liquor on your way down from Newton last Tuesday?

Answer. I cannot pretend to say to you, but I drunk it when I was wanten of it. I believe I got a glass of whiskey of old Jake Sharp at the head of Hackettstown.

Question. How much, did you drink, a gill, or two gills, or a tumbler full?

Answer. I guess about a half a gill, no more; I know I did not, I was partly froze too.

Question. Was that all you drank on your way from Newton to Shields'?

Answer. Yes.

Question. Was you not very drunk when you got to Shields' that evening?

Answer. Me, I guess not. Half a gill would not have made me drunk in coming thirty miles, I guess, not half a pint. No, sir, nor any did not see me elevated with liquor after I had got there.

Question. Have you never been turned out of the taverns at Newton for being drunk.

Answer. No, sir, nor any where else; nor I never did call for a glass in my life but it was always handed in to me as soon as called for. I have never been turned out of doors by any one.

Sworn, &c., November 11, 1841.

Thomas Bowlby testifies—I was sixty-six years old the fifth day of last March. I was born where Capt. Samuel Bowlby lives, and lived there till I was married, and then I moved to within five or six rods of Mansfield meeting-house, and lived there till about eighteen years ago. While I lived there I recollect a man keeping school there by the name of Isaac Irvine. I can't tell exactly how long he kept school there, but the best part of two years, in 1809 and 1810. Pretty much the two years, I guess; I can't say for certain. I recollect the time, from Irvine's boarding with me part of the time; and, after I was called to come here as a witness, I looked in an old book where I had charged him with his board. I won't say that he kept a horse or mare during the time he boarded with me, but after he left me he went to my brother's, and while there he kept a mare. I did not see any charge in my book for keeping her, and I think it likely if he had had her while with me I would have found some charge for keeping her some part of the time, and that satisfied me that he had not the creature while he was with me. I know where he kept her in the summer season, she run in a field that now belongs to Samuel Shields, adjoining to my field, at least I occupied it. It was the upper field of the Creveling farm, as it was called. I can't tell exactly how long he kept her there, I think the most part of the summer season perhaps, may-be all, and likely some part of the next summer. That field was so situated that I could see her in every field I had, excepting one small field; and when I stood on my porch I could see her in certain parts of the field. That was a dry field (only in times of rain) in the season of pasturing.

I am acquainted with James Allen and Robert Allen, known them since they were children—they lived in the same neighbourhood where I lived from the time they were of any size, within about a half a mile.

Question. Do you know their general character for truth and veracity, and if so, what is it?

Answer. Well, I don't know anything against their general

character, but what I would take their witness as soon as the common run of people.

Question. Have you ever heard anything generally said against their character for truth and veracity under oath, or against either of them?

Answer. No, I never have.

Question. Are you acquainted with Joseph Hendrickson, and if so, how long have you known him?

Answer. Well, I have known him ever since he was a young man, and more along while he was a young man than of late years; there is not much difference in his age and mine, not over a year, I think. I have not seen him very often in seventeen years, more than three or four times. I don't know exactly where he does live now, may-be three miles, or a little more, from me.

Question. Have you ever heard anything against his character for truth and veracity under oath?

Answer. I never have.

Question. Are you acquainted with John C. Woolhever, and how long have you known him?

Answer. Well, I reckon I have known him by sight for thirty years, and that is pretty much all; never had any particular acquaintance with him.

Question. How far did he live from you?

Answer. I reckon he lived three or four miles from me, and from where I now live may-be half a mile further.

Question. Are you acquainted with Guy A. Bryan?

Answer. Well, yes. I have been acquainted with him, I guess, about twelve years; have seen him a few times; acquainted by sight.

Question. How far do you live from him?

Answer. Well, I expect it is between four and six miles from where I now live.

Question. From what you know and have heard of the general character of Guy A. Bryan and John C. Woolhever, if you were sitting as a juryman, would you have more confidence in what they would testify than what Joseph Hendrickson and James and Robert Allen would testify?

Answer. Well, I don't think I would.

At the time Irvine kept the school by me, I guess it was Tice Vankirk that kept the tavern down where Shields now lives.

Question. Have you heard the general talk of John C. Woolhever's living with his brother's daughter without being married to her, and having children by her?

Answer. Well, I have heard such a talk. First I heard they had been married, and afterwards I heard they were not married, and they lived together and had children.

And being cross-examined, saith:

This Irvine kept school through the summer season in that neighbourhood. I can't tell exactly the time he boarded with me, but I guess likely the two-thirds of these two years. After he left

boarding with me he went to my brother's and continued to keep school in the school-house. Most likely he kept school the whole of the two years, and likely longer, for I kept no memorandum after he left boarding with me. I can't tell now how long he boarded at my brother's. My brother lived a little over a half a mile from me, and the school-house stood partly right between us; my brother lived where Capt. Sam does now.

The stream below the school-house would not run down into Shields' field, unless in time of rain. It would sometimes soak away before it got across the road, and sometimes it would gather a little anights, and run a little over in my field below the road.

James and Robert Allen's father lived at that time about a half a mile below the school-house on the right hand side of the road. It is rather descending ground from where he lived the chief part of the way to Shields', I don't know but what I might say all the way. From where Allen lived to Shields' I don't think it is quite a mile, not over I guess. Allen's house stood in a hollow; the ground rose for a little way from the house, and then it descended all the way to Shields'.

Question. Would you suppose it possible for a little boy, three, four, or five years of age, to draw up a half-barrel cask of water on a hand-cart from Shields' to where Allen lived?

Answer. Well, I would not hardly think they could very handily—not alone.

But I have seen children, and I think I have seen the same children, with a rope fixed to a wheelbarrow, and one pulling and the other pushing, drawing water from Robert Bowlby's, where I had a chance of seeing them often. I won't pretend to say how much, whether they would have a half a barrel cask on or what.

I now live by Abraham Woolston's, and have about a year and a half; before that I lived some time at Washington, I guess about ten or twelve years. I have not been in the habit of going out much and frequenting public meetings for the last twelve or fourteen years; sometimes to town meeting and to election once and awhile. I reckon it is something like five or six miles, may-be a little further, from where I live to Broadway; upon reflection I think it about five and a half.

I don't know where Joseph Hendrickson lives now, nor where he has lived for eighteen years. He lives somewhere about Broadway, I think over on the hill south-east of it. That is a different neighbourhood from where I have been living for a number of years past.

I don't know that I have ever heard anything against Guy A. Bryan and John C. Woolhever's veracity under oath; I think not.

Question. Did you never hear that James Allen was a thief?

Answer. Well, I have heard such a report about his taking some trifling things, but I never heard of its being made out so; whether it was so I can't tell.

Question. Has not Robert Allen the reputation of being a drunkard in the neighbourhood and a trifling kind of fellow?

Answer. Well, I don't know that he has; now I have not seen him often for a number of years, and I don't know that I ever seen him drunk, and I can say I never heard of his being drunk to my knowledge. I have never heard of his being a trifling kind of fellow; I never heard anything against him; I have heard him praised for being a good fellow to work and being trusty with a team.

I am an uncle to Capt. Sam Bowlby.

Sworn, &c., November 12, 1841.

Philip Wilson testifies—I live in Asbury, and have lived there about twenty-five or six years. I have been acquainted with the Woolston hollow about the same length of time. The first I become acquainted with that, Col. McCullough hired me to work for him by the year, about twenty-five or six years ago. The first work I done for the colonel, he and I went up to where Reigle now lives for sheep, in the month of March. We then crossed the hollow not far from Reigle's barn. There was water there then running through the fence. The next place we commenced working was on the Spruce run turnpike road, about a month after, in April, by Mr. Arndt's barn. There were several hands and two or three yoke of oxen, and I was there with a team of horses drawing stone and filling up places. In the hollow we dug down the road, filled in stone, and made a sluice-way for the water to pass, some would call it a bridge. I don't think it was over two or three feet wide. There was water along the road at that time—stood there. I don't know where it came from. It was a low place and made a large mud-hole, and we drained it off from the road to make the road dry. There was quite a pond of water in the road—we drove right through it. I did not observe whether it run off some below the road before we made the drain or not—did not take any notice. I worked on that road till somewhere about harvest, and I passed this place frequently during that time. When I passed there I don't think there was much water there, not generally. After it was bridged, the road was made higher. There was some water there sometimes; I never observed where it came from.

Question. From your knowledge and observation of that hollow, would you judge the water used to run there before the country was cleared up or not?

This question objected to by defendant's counsel.

Answer. I think it did sometimes.

Question. Would you consider it an ancient natural watercourse or not?

Answer. It was a watercourse by times, but whether it run there all the time before it was cleared up, I don't know.

Question. Have you known any other ancient natural watercourses that were dry some seasons, or parts of seasons, and if so, name them?

Answer. I have, one that run out of the woods, part on Capt. Hendrie's farm, and the one John Ritchey now lives on. I have

known that twenty years ; also the stream that comes from a spring on Isaac Smith's farm, and crossed the road by William Richey's. I have seen the Pohatcong dry by Robert Kennedy's ; I have seen his mill-pond as dry as a chip. I am a blacksmith, and have followed it twenty years. That stream that come down from Isaac Smith's farm, I have known it dry for two or three years, that it did not run any across the road at all. For two or three years back it has been a fine stream there, plenty of water for the creatures, and runs across the road. This stream runs through the upper end of the village of Asbury down into the Musconetcong creek. That stream now is pretty much such a stream, for size, as the one that runs across the turnpike above Mr. Arndt's barn. I have known that stream down by Shields' and Arndt's house entirely dry. Can't tell how long ago.

I am acquainted with John C. Woolhever, he lives a little over two miles from Asbury ; he is frequently there ; he comes to our shop with part of his blacksmithing. It is his place to go to mill also.

Question. What is his general character in the neighbourhood ?

Answer. They find a good deal of fault in the neighbourhood around for taking his brother's daughter for a wife—making use of her for a wife.

Question. What is the general talk about him in other respects ?

Answer. Well, he is pretty much always at law with somebody or another—little suits.

Question. If you were a juryman would you place much confidence in what he would say ?

Answer. Well, what dealings we ever had he has always behaved very honest with me, and always paid me what he owed me.

Question repeated.

Answer. If a man is setting as a juryman he can tell pretty well whether a man swears to the truth or not. I have heard people say he strained the truth very hard in giving in his evidence.

I am acquainted with Guy A. Bryan also ; he lives about three miles, may-be a little more, from me ; I see him frequently at Asbury. He attends there usually as a pettifogger and attends justices' courts.

I am acquainted with Joseph Hendrickson, and have known him ever since I have known anybody ; he has lived the greater part of the time in the neighbourhood.

Question. Did you ever hear anything generally said against his character for truth and veracity ?

Answer. I don't know that I have.

Question. Did you ever hear anything said against his character for truth and veracity under oath ?

Answer. I don't know that I have.

I am acquainted with James and Robert Allen, and have known them for twenty years, I guess.

Question. Did you ever hear anything generally said against

their character for truth, or either of them, under oath or otherwise?

Answer. Not against Robert I have not, nor against James for truth.

Question. If you were a jurymen would you place most confidence in the testimony of John C. Woolhever and Guy A. Bryan or in that of Joseph Hendrickson and James and Robert Allen?

Answer. I don't think I would make any difference in them.

And being cross-examined, saith:

I worked no more upon this property than what I have stated. I think it was somewhere about the middle of March I went up to Reigle's after sheep. There was snow-banks along the fences. I can't say where the water that I saw running there came from, whether from the melting of snows or the Woolston stream. I don't know how far it run down the hollow. When I was at work on the turnpike at the sluiceway I did not observe whether the water came out of Carter's field or not. It was necessary to have a sluiceway to drain the road, and that is what the colonel had it made for. It was necessary to drain off the water that come down the road, and also what come off of Carter's field too, in time of a heavy rain.

When that stream from Smith's was dug the seasons had been drier than they have been for two or three years back. It was right before the last two or three years that it was dug.

Question. Can you name any persons whom you have heard say that John C. Woolhever would strain the truth in giving in his evidence?

Answer. I can. John Skinner. I don't know that I can any one else in particular.

He had been a witness against Skinner in a suit before a justice.

Question. You said you had never heard anything against James Allen for truth; have you in other respects, and what?

This question objected to by complainant's counsel.

Answer. I have. They had him up at Asbury once; they said he had been stealing; was tried before a justice.

This answer also objected to by complainant's counsel, because not the best evidence.

The most of my business from home is to go to Port Colden for coal and iron, and to Easton bridge for iron; not much out at meetings and gatherings in the neighbourhood.

And being called again in chief, saith:

Question. When they had James Allen up at Asbury before a justice, as they said for stealing, do you know whether they found him guilty or not?

Objected to by defendant's counsel.

Answer. They let him go home; they did not do anything with him.

Question. Have you not heard of other innocent persons being charged with crimes of which they were not guilty?

Answer. Well, I think I have.

And being cross-examined again, saith :

Question. Did they let him go home because he was acquitted of the charge, or did some persons interfere to save him from a whipping ?

Answer. There were two or three witnesses sworn, and the justices thought there was not enough proved against him to have him punished.

I heard Squire Scureman say so the same evening ; both justices were present.

I don't recollect of the justices calling John C. Woolhever in, and consulting with him before they let him go. I was present during the whole trial.

And being called again in chief, saith :

One of the witnesses sworn against him was John Woolhever, son of John C. Woolhever, and William Woolhever, his son also. I don't recollect anybody else.

Sworn, &c., November 12, 1841.

Aaron Wilson testifies—I have been acquainted with this hollow through which the Woolston stream runs about five or six and twenty years. I lived at Mansfield meeting-house, with David Butler, when I first become acquainted with it. I lived with him there five or six years, I can't exactly tell which. During the time I lived there I was middling frequently up and down along the Spruce run turnpike. We had a good deal of carting to do down where we used to live at Mr. Vansickle's ; carted up hay every year and lumber, old staves and boards, and oftentimes I went along when he went up along the mountain to buy beef cattle, and come that way. He followed butchering some. Pretty much of the time I went through that way. I was along all seasons of the year. I recollect travelling through there as late as September.

Question. When you crossed the hollow there, did you generally see water running there or not ?

Answer. I did almost generally.

Sometimes I saw it dry, and sometimes the stream quite small. There was a bridge across the road at that time in this hollow. During this time I worked a half a month, I think, for Joseph Carter, digging potatoes and husking corn ; that was about the first of September.

Question. During that time, do you recollect crossing that hollow ?

Answer. Yes, sir.

Question. Do you recollect seeing water run there at that time ?

Answer. Yes, sir, I believe I do.

Question. Do you recollect observing where this water came from that you saw there running across the road ?

Answer. It come out of Mr. Carter's field.

And being cross-examined, saith :

I think it was in 1815, 16, 17, and 18 that I lived with Mr. Butler, and on till I was twenty-two. I am not able to tell whether it was in 1818, 19, or 20 that I worked for Mr. Carter; I can't tell which. I did not cart lumber and staves and boards every year from Vansickle's. Well, I can't tell how often I was along the turnpike, in any one year, carting from Vansickle's. Through the course of the summer we was backwards and forwards, from the beginning of mowing on till we got our hay in. Sometimes we would go twice a week till we got our hay up. I can't tell how many loads of hay we generally brought. I can't tell whether it was a half a dozen, or more or less. Sometimes we would bring a two-horse load and sometimes a one-horse load. Well, I don't know whether it came across Carter's field or not. I can't tell how far the water came that run across the turnpike. I was never at the head, but it came out of Carter's field.

Question. Can you say whether you ever saw water running there, unless it was in the spring of the year or in the melting of snows, or after a shower or heavy rain?

Answer. Yes, sir. I have seen it running there when there haint been no rain.

I can't tell how often; I think I can recollect one time particularly, we brought up a load of hay, it run then and frequently before—that was in June.

Question. By what circumstance do you recollect that this was in June, as you carted hay several times?

Answer. Well, we had some that was in the barn that we wanted to get up out of the way to put other in and to mow.

Question. Well, sir, did you bring but one load out of the barn?

Answer. That was all we had there at that time that I mentioned.

Question. In what year was that?

Answer. Well, I am not able to say what year it was in.

Question. Can you recollect any other time when you saw water there?

Answer. Well, I seen it, as I stated before, several times.

Question. Are there any particular circumstances by which you can bring to mind any other time when you saw water running there?

Answer. Not more than I have said before, I believe.

Question. How many times can you recollect seeing water there during the summer season?

Answer. Well, I can't tell how many times.

Question. Can you particularize any other time than the one you have mentioned in June?

Answer. No particular circumstance that I know of more than I have said before.

Question. By what circumstance do you know that you saw water there at other times than in the spring of the year, or upon the melting of snows, or in time of rains?

Answer. Well, this time I told you in June, when we brought up that load of hay, it was running there then.

Question repeated.

Answer. It might have rained a month back, for all I know ; I can't tell how long before it might have rained.

Question. Do you mean, then, to be understood to swear positively that you saw water running there at any other times than in the spring of the year, upon the melting of snows, or after rains?

Answer. No more than what I have told you.

Question repeated.

Answer. That time that we brought up that load of hay I know particularly, and no more as to the rest than I have stated before.

Question. Do you know particularly that when you brought up that load of hay in June, there had not been a rain a few days, or shortly before then?

Answer. Well, I can't recollect whether it did rain or not before, or how long before I can't say.

Question. Do you know anything about this Woolston stream at the head of this hollow, and whether it sunk or not on Wyer's farm?

Answer. I can't tell anything about that stream. There is a stream runs across the turnpike by Mr. Woolston's, and I expect it is the same stream that runs down by Mr. Wyer's. I can't tell anything about the sinking there.

Question. Have you never understood in the neighbourhood that it sunk there?

This objected to by complainant's counsel, as hearsay and illegal.

Answer. Well, I can't recollect whether I ever heard anybody say anything about its sinking or not.

Question. Upon what part of Carter's farm did you gather potatoes?

Answer. It was on the left hand side of the turnpike. If I aint very much mistaken, it was in the field up this side of the hollow. The fields have been altered, and I haint been along there in a good while. I don't know as I could tell which field it was now.

Question. In what field did you husk the corn?

Answer. The corn that I helped husk was next to Mr. Carter's house ; I think it was.

And being called again in chief, saith :

Question. How far in Mr. Carter's field could you see the water before it came to the edge of the turnpike?

Well, I can't tell the distance. It mought have been that I could see twenty or thirty paces up from the road.

And being cross-examined again, saith :

Question. Where do you now live?

Answer. I live at Samuel Ramsay's now. It has been nineteen or twenty years since I went there ; I have been off and on the biggest part of the time I have been there since I left Mr. Butler's.

Question. Who came to see you about being a witness in this cause?

Answer. Mr. Shields.

Question. No one else?

Answer. Capt. Sam Bowlby was with him.

Question. Has no one else said anything to you about this cause?

Answer. Not as I recollect of.

Sworn, &c., November 12, 1841.

*John Wyckoff, jun., testifies—*Well, I have always known the hollow through which the Woolston stream passes ever since I can remember anything, and the stream, from its head down to Wyer's. I worked on the farm Mr. Reigle now lives on about six weeks in 1816, I think, for Edward Yeomans. I recollect it was that year, because it was the year the frost killed the corn. I went there in September and quit in October, I think, if I remember right. When I first went there was water in the pond-hole below the barn, and I think the cattle, horses, and hogs drunk out of it. There was considerable in it when I went there, and before I quit it was pretty much dried up, so the hogs wallowed in it—pretty much mud.

Question. Do you recollect, above and below this pond, observing in the hollow whether there was any old channel or marks of a watercourse?

Answer. Yes, there was, above and below both.

Question. Describe the appearance of it above and below?

Answer. The hollow before the house was in with timothy then, and there were marks of a watercourse all the way up through the meadow, something like a foot deep, and from a foot and a half to two feet wide. I know it was a pretty good step to step across it. I crossed it every morning, almost, after the horses running in the meadow in the fall of the year. The field below the barn was about the same; that was in with corn and, I think, a strip of buckwheat, but am not certain. I think the corn was planted down to the ditch, and betwixt that and the stone fence there was a strip of buckwheat. I think there was corn in the field above the meadow too. I think, if I remember right, I remember going through that field once while I was there, and see a ditch through that of pretty much the same description, though I am not positive of this upper field.

Question. Did you ever observe it below on the Carter's farm?

Answer. Yes, sir.

Question. Describe it?

Answer. I never crossed Mr. Carter's field but once, and there was a small ditch there. What made me notice it more there was a small ditch above.

Question. Did you ever observe the lower side of Mr. Carter's farm, next to the turnpike, any marks of water there, and if so describe them?

Answer. Yes, sir, I have. I have seen water stand there; it was quite a flat place around for twenty or thirty yards from the turnpike up. It appeared as if the water had drowned the wheat; they had not cut over it, and large weeds were growing on it. The time I saw the water there was not the time I saw it at Yeomans'—it was all dry there then. I think it was afterwards I recollect seeing water standing there; but I aint sure whether it was before or afterwards.

Question. Do you recollect the season you worked at Yeomans', whether it was a wet or dry season?

Answer. No, sir, I can't. I know it was a very cold one; I recollect that very well.

Question. Where did you get water for house use?

Answer. Yes, sir. When I first went there they hauled water from Francis Nixon's; he lived where Mr. Wyer now does: and the stream got so low there before I quit that they hauled from the forge and the spring by Shields' and Arndt's. The well on the place was so dry they could not get any water out.

Question. When you hauled from the spring by Shields' and Arndt's, how was it above the road?

Answer. We got it from above the bridge from a spring-run; the spring was further up, I believe. There were several springs, as I have heard folks say, one above and one below the bridge, but I don't know about them myself.

Question. Did you ever work again on the Yeomans farm, and how long after?

Answer. Yes, sir. I think it was about two years after the first time. I think it was in August when I went there to work.

Question. Did you then observe whether there was water in this pond or not?

Answer. Yes, sir, there was water in then I know.

Question. Did you form any judgment where this water came from the two different years you were there, and if so, where?

Answer. Well, I expected it had come down from where Mr. Wyer lives.

Question. Do you recollect any thorn bushes along this channel in the meadow?

Answer. Yes, sir. There was thorn bushes in the meadow along this little ditch. I can't say whether it was both sides or one side. I know there was thorn bushes along it.

Question. Do you recollect of there being a bridge across the turnpike in this hollow?

Answer. Yes, sir, I remember a bridge being in the turnpike.

Question. From your acquaintance and observation of this Woolston stream, do you or do you not consider it an ancient natural watercourse?

Answer. Yes, sir, I always thought so; the water did not always run through.

Question. Have you known any other natural ancient water-courses dry some seasons of the year, and if so, name them?

Answer. Well, there is one on the farm my father lives on that runs part of the season, and part of the season it is dry.

And being cross-examined, saith :

I think I was about fifteen or sixteen when I first worked on the Reigle farm. I never saw any running water there. I never saw any run from Mr. Wyer's down through the field. I have seen the water run across the lane into Wyer's first field, but not further. I don't know what became of it there. These gullies that I speak of might be occasioned by heavy showers; I can't tell anything about that; I don't know as I ever have seen such gullies through fields by showers where there was no regular stream. I have seen washes. Heavy rains will make deep gullies sometimes, but this ditch did not look like a wash at that time.

Where I crossed in Carter's field it did not look like a wash; it looked about the same as above. I don't know when that timothy had been put in; it had been mowed that season, that is all I know about it. I declare I can't tell whether that season was a wet season, as well as a cold season, or not.

Question. Have you never seen washes in other fields two feet wide and a foot deep, made by heavy showers or freshets?

Answer. Well, like I have short ones; I never seen as long ones as that was, I don't think. In a great flood of water it can't pass off anywhere else, I think.

The second time I was there my father sowed a bushel of flax-seed, and my brother and I pulled it; and we might have been there two or three days. It was not in the hollow, it was sowed in the field next to the meadow. I don't know whether I crossed the hollow at that time or not; I can't say. I think the cornfield below was not ploughed across the hollow; I think there would not have been such a ditch there if they had ploughed across it. I don't know how that water come there in Carter's field. I don't recollect whether there had been any heavy showers of rain just before or not.

I know there was water in the pond on Reigle's farm the second year I was there, because there was two young horses come out of the upper field, and run into the pond and drunk.

Question. What is your reason for considering this an ancient natural watercourse, when you never saw water run down this hollow below Wyer's?

Answer. Well, it was always a pretty good sized stream above, all the way down into Mr. Wyer's field, and I did not know. It was a dry part of the season, and I thought that had dried it. I could not tell; I did not know what had dried it below.

I think that stream from Woolston's to Wyer's is increased since the canal has been made. I think the stream is as strong again, likely, than it was, that is when the water is in the canal.

And being called again in chief, saith :

I saw the stream down by Wyer's this season when the water was out of the canal. I don't think it was hardly as strong as when the water was in the canal, not by Mr. Wyer's. It was a

pretty smart snug stream; it run quite lively across the land. It was larger considerable than at the time I worked at Yeomans' that time. There was a clever little flat in the hollow on Reigle's farm, on each side of the ditch, may-be from ten to fifteen paces; the right hand side, I think, was the widest, as you went up. In time of a great flood of water it would cover this flat, I think, pretty much above the pond through the meadow. There was stones across the lane where they crossed it, that dammed the water up and that caused the pond above, I think likely. Through this hollow on the Reigle and Carter farm down it was pretty much level.

And being cross-examined again, saith:

I frequently travelled along the Spruce run turnpike, some years ago, across this hollow; as much as twenty or twenty-five years ago since I first travelled. Travelled along once and awhile ever since, once a year, may-be, and sometimes oftener. I don't remember of ever seeing the water run across the turnpike in former years, until last spring I went along there, the last of April or first of May. I have been along once and awhile for the five or six years before, but did not notice it till last season. In former years I saw water standing in Mr. Carter's field in that flat place, as I mentioned before. I have seen water in the road, above the bridge and below both, I think, standing on the side of the road. I don't know where it come from, whether down the road or across the fields. I should think the hollow on Reigle's farm was a half a mile wide from the top of one ridge to the other. I don't know whether it is quite as wide on the Wyer farm; I think not quite so wide. On the Carter farm I don't think it is near so wide as on the Reigle farm.

And being called again in chief, saith:

When I travelled along the turnpike in former years, I observed there was a strip of meadow below the bridge, on Mr. Arndt, down the hollow. I don't recollect observing any watercourse through that meadow or not; I did not cross it, and could not tell.

Sworn, &c., November 12, 1841.

William S. McTier, testifies—I have been acquainted with the hollow through which the Woolston stream runs twenty years and upwards, longer some. I lived about two miles from the hollow when I was first acquainted with it, at the Mansfield meeting-house; I speak of the part where it crossed the turnpike. I lived there about six or seven years. During that six or seven years I was frequently up the hollow; sometimes my father would send me of an errand and sometimes I would go a gunning a little. I crossed it at different seasons of the year; in the fall I was up and down the stream more than any other season of the year. At these times in the fall my business up the hollow was a little sport a hunting. I lived at home, had not much to do, and when I was not at school I exercised myself with the gun.

Question. During these six or seven years, when you was up and down the hollow and across it, did you generally see water running down this hollow or not?

Answer. Yes, sir, I did.

Question. Did it run all over the ground, or did it run in a washed channel, and if so describe it?

Answer. No, sir. It was a small channel at that time it run in; it was washed; it was a natural stream at that time.

Question. From your acquaintance and observation of it, do you consider it an ancient natural watercourse or not?

Answer. I did at that time. Yes, sir.

And being cross-examined, saith:

I am going on my thirty-fourth year, pretty near thirty-four years old.

I went a hunting up this hollow for rabbits, quails, and pheasants, up in Mr. Woolston's swamp, where the water starts from. Sometimes I would strike the hollow on Mr. Joseph Carter's place, and sometimes I would strike it and go down on Mr. Arndt's and Shields' places, and then go through up the hollow. There was the most game up the hollow at them times, (there was some knobs up above the hollow) and they would fly down into the hollow, and we would chase them round; and sometimes I would come in without going all over the hollow. I hunted up and down that hollow, and other hollows too, every year from the time I began to hunt until I went to learn my trade, say for six or seven years. It would be impossible for me to tell how often I went a hunting a year, for I was a boy, and left to myself, and went when I pleased. I have seen water running at all seasons when I went across it and up and down it. I hunted up and down in the fall more than any other season. I seen the water run down through Mr. Carter's farm, and the farm next above it, Reigle owns it now. I have seen it run through there, then Mr. Wyer's farm, then Henry Carter's, and then Beavers' tract, and then come to Mr. Woolston's. I have seen water cross the turnpike, and so on down the hollow *through Mr. Arndt's farm, cross the line fence, a little on to Creveling*, I think it was, and then down into the stream by the house. I have seen it run across the turnpike a number of times, I could not tell you how many—see, I lived close by, and passing backwards and forwards, and I was young. It is impossible for me to tell you, Mr. Morris, the number of times.—I recollect seeing it crossing the turnpike and Mr. Arndt's farm more than once, twice, or a dozen times.

Question. Tell me the first time you recollect seeing the water run across Arndt?

Answer. The first time! I can't do that, Mr. Morris.

Question. Can you tell me the second time that you recollect seeing the water run across the Arndt farm?

Answer. Why, I have told you that, haint I, Mr. Morris.

Question repeated.

Answer. Yes, sir. Well, I did. I thought you meant the year or

the day, but I can't tell you the day nor the year; but I told I had seen it once, or more than a dozen times, or somehow so, and I have, Mr. Morris.

Question. If you are so certain you have seen it so many times, why can you not name any one time in particular?

Answer. Why, it has been a good while ago, Mr. Morris.

Question. Are there any circumstances by which you can recollect any one time in particular when you saw water running across the Arndt farm?

Answer. I can't, as I told you before, state the day or the year, Mr. Morris.

Question. At what season of the year was it when you saw water running across the Arndt farm?

Answer. Why, I have seen it in the fall and in the spring, and through the course of the year; I could not say exactly the month.

Question. How late in the fall have you seen it?

Answer. I have seen it along in September and along this season of the year; generally we go to hunt for quails and rabbits, and the like of that.

Question. At what time in the spring have you seen it?

Answer. Along in the spring; I can't say rightly whether in March, April, or May; I seen it frequently as I would be through.

Question. How do you know you ever saw it in September?

Answer. Why reason gives me to know I saw it in September; it is the season of the year we hunt a good deal we go.

Question. Did you see water running there on the Arndt farm every time you went a hunting?

Answer. Every time I went a hunting I did not go on the Arndt farm. Well, I expect I did, Mr. Morris; if I went down by it, sometimes I was not down close by the stream.

Question. Did you see water running across the Arndt farm every time you went down there a hunting?

Answer. I don't know how it is for that, Mr. Morris; I can't say about that.

Question. How then can you say that you saw water running there in September?

Answer. I told you I thought I did see it run in September, or along through that season of the year, in the fall.

Question. You are not positive, then, what time in the fall of the year you saw it running there, are you?

Answer. No, not to the day; but I seen it run along there in the fall and in the spring of the year, and in the summer. I was along there frequently; I lived close by.

Question. How many times have you seen it running there in the summer?

Answer. Oh, I could not say, Mr. Morris, how many times. I have give you the answer, about as often as you ought to have it.

Question. Can you positively mention one time when you saw it running there in the summer?

Answer. Yes, sir, as I told you before, Mr. Morris, I know it to run there in the summer.

Question. If you know it, tell me how you know it?

Answer. I know it just as well as I see the pen in your hand, because I seen it, I told you.

Question. Did you ever see water running there across Arndt, except directly after a rain?

Answer. No. I never see any other place that the water run, except after a rain.

Question. Did you ever see water run there, unless it was directly after a rain or shower?

Answer. I cannot say about that, Mr. Morris; I don't recollect about a shower nor nothing else; I might have passed directly after a shower, and I might not.

Question. You do not mean to swear, then, that there was a regular stream running there in ordinary times, do you?

Answer. In ordinary times, I believe I have known it to be dry across the turnpike, if my recollection is right, I think I have known it to be dry there, Mr. Morris.

Question. Can you name any time when you have seen the water running there, except in the spring of the year or when the snows were going off, or after a shower?

Answer. I have seen it, as I told you before, several times, Mr. Morris, repeatedly, at all seasons of the year, and I have seen it dry some part of the season, as far as I can think of now.

Question repeated.

Answer. As I told you before, Mr. Morris, I had seen it at all seasons of the year. I can't say anything about the showers. I have answered you three or four times already. I think you are old enough, Mr. Morris, not to put a question a dozen times.

Question repeated.

Answer. Why I expect I have, Mr. Morris; I don't remember about the showers when I crossed back and fore.

Question. Is there any circumstance or circumstances by which you can bring to mind that you ever saw water running there at any other time than in the spring of the year, or melting of snows, or after a heavy rain?

Answer. As I told you before, Mr. Morris, I passed along at all seasons of the year, and I seen water running there, and I don't know whether it was before a rain or after; anything about it I can't tell.

Question. How often was you down along the line between the Shields and Arndt farm?

Answer. That is impossible for me to tell, Mr. Morris, that thing.

Question. Can you mention any one time you was down along the line?

Answer. I have been down along it so much I can't tell you how many times, Mr. Morris; you might as well ask me how many meals victuals I eat, and I could give you the same satisfaction.

Question. I did not ask you how many times you was down, but if you could name any one time you was down along the line, can you answer that?

Answer. Yes. I have been down a hundred times, if that will answer you, Mr. Morris.

Question. If you have been down a hundred times, I ask you to name one time, if you can, that you recollect of going down along the line?

Answer. I went with the gun, and I went of errands, and I can't say the day nor the hour, nor minute or the second.

Question. Did you ever go down along the line with a gun in the summer season?

Answer. Yes, sir, I believe I have, Mr. Morris.

Question. More than once?

Answer. Oh, yes, I expect I have, Mr. Morris; I used to run a good deal with the gun.

Question. When you went down along the line with the gun, was your attention particularly called to notice how the water run, or was you looking after your game?

Answer. I was looking after my game, and did not notice it any more, Mr. Morris, than I would any other stream, any more than you would go along here by the Pequest and notice that.

Question. Did you, in hunting, follow the stream from the turnpike down to where Shields now lives?

Answer. I expect I have, Mr. Morris, that is back and fore across. I did not go right down the stream, but back and forwards across the fields and across the stream.

Question. Whereabouts along the line did you see the water run over on to the Creveling farm?

Answer. Oh, well, I can't tell you exactly the spot, Mr. Morris. It run across the turnpike, then up a little, and then down, and then took a turn, that is kept the hollow, which twisted a little, and went over on to the Creveling farm.

Question. How far above the house was it where it struck the line and passed on to the Creveling farm?

Answer. I could not tell positively, but it may be three, four, or five hundred yards, may-be six of them; I can't say positively, Mr. Morris.

Question. How far did it run on the Creveling farm?

Answer. I could not say, Mr. Morris, I forget about it.

Question. Who lived then where Mr. Shields does now?

Answer. I forget whether Mr. Creveling lived there or Mr. Hunt, or whether Mr. Creveling died in the time, or just before.

Question. Who lived where Mr. Arndt does now?

Answer. Mr. Riddle, I guess it was, Mr. Morris, Richard Riddle.

Question. How many years did Richard Riddle live there?

Answer. He lived there several, I could not say rightly how many, Mr. Morris.

Question. Who lived where Joseph Carter does now?

Answer. Mr. Carter I believe, Mr. Morris, if my recollection is right.

Question. Who lived then on the Reigle farm and on Wyer's?

Answer. Mr. Yeomans on the Reigle farm, as it is called now, and Mr. Nixon, I think, Francis Nixon, he lived on the Wyer farm, but I won't be so positive about that.

Question. Do you suppose that persons who lived upon the property, and farmed the land, would know whether a stream of water crossed their farms better than persons who occasionally crossed the hollow?

Answer. Well, they ought, I should suppose, as well as a man what would cross it?

Question. Did you work for John Hesselton, who lived on the Wyer farm, and if so, how long?

Answer. I did not work for John Hesselton, I worked for Andrew Hesselton, Mr. Morris.

Question. Did Andrew live with John on the Wyer farm, and did they farm together?

Answer. No, sir, John farmed the upper part of the place, and Andrew Hesselton the lower part.

Question. How long did you work there for Andrew Hesselton?

Answer. I worked, I think, there for three months, Mr. Morris, as near as I can recollect.

Question. At what season of the year?

Answer. I commenced a little before harvest, Mr. Morris, as near as I can tell, in the month of June, I expect it was.

Question. What year was it you worked there?

Answer. I cannot say, Mr. Morris, as for that.

Question. Can you not tell pretty nearly how many years ago it was?

Answer. No, I cannot at this present time, Mr. Morris, I can't.

Question. Was there any stream of water during those three months crossing that farm on to the farm below?

Answer. It run on Hesselton's farm, and I don't know how much further, Mr. Morris; I was employed then, and I had to attend to my business.

Question. Was you ever at the sink-hole on the Wyer farm, where the water sunk?

Answer. No, sir. I don't recollect of ever knowing, Mr. Morris, of the water's sinking, along in my time of any sink-hole along.

Question. Did you not work in the hollow on the Wyer farm at that time?

Answer. I think we harvested that field that season, but I am not so positive; and if we did not, I did not work there in the lower field of the place where the water run through.

Question. Was it the field next to the Reigle farm?

Answer. Yes, sir.

Question. Was there any stream of water at that time passing through that harvest field?

Answer. Well, I can't recollect so positive for that.

Question. How long did Andrew Husselton live on that place?

Answer. I do not know, Mr. Morris, how many years he lived there.

Question. Were there any bushes along this stream which you say you saw on the Josey Carter and the Arndt farms?

Answer. I don't recollect any bushes on the Arndt farm. On the Carter farm there might be some alders, but I will not be so positive. There were some knobs and bushes right above on his farm, close by.

Question. Was it before or after the Spruce run turnpike was made that you hunted along there?

Answer. Well, the road was there; I don't know whether they called it a turnpike or not. It is the same road that is there now.

Question. In going from the turnpike in the hollow down towards Shields' along the line, when hunting, did you cross the line fence?

Answer. Sometimes I crossed the line fence and sometimes I did not, I expect.

Question. Can you recollect any one time when you crossed the line fence in going down the hollow from the turnpike?

Answer. Not particular to the day nor the year, as I told you last night, but I have frequently crossed it.

Question. How many times did you cross it the first year you went a hunting?

Answer. I do not know, Mr. Morris.

Question. Can you state how many times you crossed it in any one year?

Answer. No, sir.

Question. Have you not oftener seen that hollow, from Reigle's down, dry than with a stream?

Answer. I cannot say as for that, Mr. Morris.

Question. Did you always hunt alone, or had you company, and if in company, with whom?

Answer. Sometimes I would have company and sometimes I would not; sometimes Mowder's boys would be with me, Henry sometimes, and Benjamin; Peter Colcher and William his brother once and awhile. I don't recollect any more, Mr. Morris, but there has been more; I can't remember.

Question. What year did Henry Mowder go with you?

Answer. Why, I cannot tell you, Mr. Morris, the year; we were boys together, raised together; it is impossible to tell all that.

Question. Can you mention any time when Benjamin Mowder, Peter Colcher, or William Colcher went with you?

Answer. I can't name any particular time, but they went with me a number of times.

Question. Were any of them along with you at any time in the lower part of the hollow between the turnpike and Shields'?

Answer. I expect they have frequently, sir; I can't name no day positive, nor year.

Question. Were the fields in the hollow on the Carter and Arndt

farms, above and below the turnpike, cultivated at the time you hunted through there?

Answer. Yes, they was along the stream. Mr. Carter cleared out some above afterwards; along the stream they ploughed all along; tillable land along the stream, and in fields the same as it is now; they might have been larger fields than what they are now, but it was in the same cultivation.

Question. Have you seen grain growing in the hollow, on both sides of the turnpike, where the water now runs?

Answer. Yes, sir, I have seen the grain growing on both sides of the turnpike in the fields, but not where the water runs in particular ever, as I know of.

Question. What kind of grain have you seen growing there?

Answer. I have seen corn, wheat, rye, and oats.

Question. Can you say, under the oath you have taken, that you ever saw a stream of water running through the grain there in the hollow, unless it might be in time of a shower or heavy rain?

Answer. I have seen it run across the turnpike. I was not in the grain to see about that, but I have seen it run across the turnpike at the time there was grain in the fields. I cannot say positive whether it was right away after a shower or before.

Question. Did you ever notice, when the ground was ploughed there in the hollow, whether it was ploughed all across the hollow, or a place left for the water to run?

Answer. I cannot be positive whether I ever took notice of it being ploughed all over the channel where the brook run or not, Mr. Morris.

Question. Did the water, which you saw crossing the turnpike when the grain was growing, come out of Carter's field or down along the sides of the turnpike?

Answer. It came across Mr. Carter's field across the turnpike into what is called Mr. Arndt's field.

Question. How do you know it came across Carter's field, when you did not go into the grain to see?

Answer. Why, I seen the water come out of the field, the same as when I see Pequest. I would suppose it would go through Belvidere; I would suppose the water would come out of Mr. Carter's field the same way.

Question. Can you swear positively it did not come down the turnpike?

Answer. No, sir, it did not come down the turnpike, because I travelled the turnpike.

Question. Where have you lived since these six or seven years that you followed hunting?

Answer. I lived at Washington, Beatties-town, Timber swamp, and this side of Townsbury aways, and in Hunterdon and in Oxford here, where I live now.

Question. How long have you lived here in Oxford?

Answer. It will be three years in the spring.

Question. What business do you follow?

Answer. A wheelwright.

Question. When did you first inform Samuel Shields that you knew anything about this water?

Answer. Never, Mr. Morris—Capt. Sam Bowlby fetched me a subpoena yesterday, was the first I knew about being a witness. Shields never said anything about it in my life, as I remember.

Question. Did Bowlby talk to you about the controversy?

Answer. He said but a word or two about it; he handed me the subpoena, and told me Mr. Shields wanted me to come down here immediately.

Question. Do you know who informed Mr. Shields that you knew anything about it?

Answer. No, sir, no one ever asked me anything about it at all.

Question. Who has talked to you about it since you came here?

Answer. Mr. Arndt has talked to me about it. He asked me if I knew anything about it. I was telling him along, and he said Mr. McCullough and others had said there was no water there; and I said I did not care what others said about it, and then Mr. Shields came in about that time, and the conversation was dropped; but a word or two said after that.

Question. Has no one else talked to you about it besides Mr. Arndt, since you came here?

Answer. Mr. Sherrerd and Mr. Shields went in the room with me, and I told them in a very few words what I knew of it—and we come right in.

Question. Is that all the conversation you had with Mr. Shields about it since you came here?

Answer. I believe it is, Mr. Morris.

Question. You have said you don't know whether you saw the hollow oftener dry than with a stream, what then became of the Woolston stream that run on to the Wyer farm?

Answer. Well, I don't know, as for that, more than any other streams in a dry time; it was dried up, I expect, when it was dry.

Question. Are you a son of James McTier, who formerly lived in Mansfield?

Answer. So was called, sir.

Question. Do you mean to be understood to swear positively, under the oath you have taken, that the Woolston stream ever run down this hollow across the Josey Carter and Arndt farms, unless in the spring of the year, or breaking up of winter, or after heavy rains and freshets?

Answer. I should say it did, sir, because there aint any other stream connected with it whatever to my knowledge, without it is some little springs along.

Question. Did you ever follow the Woolston stream all the way

down from Wyer's at any one time when the water was running all the way through?

Answer. I don't know as ever I followed the stream all the way down right along the stream ever, but I have crossed it.

And being called again in chief, saith :

Question. How old were you when you went to a trade?

Answer. About eighteen years of age.

Question. How long is it since you were last on the ground on the line betwixt Shields and Arndt, and up and down that hollow, as near as you can tell?

Answer. It may be sixteen years—somewheres thereabouts I should suppose.

Sworn, &c., November 13, 1841.

Moore Furman testifies—I once lived on the Reigle farm. I lived there one year, and carried it on, about fourteen years ago. The water stood in the lane that passes from the house to the road pretty much the year round. That water came from the rains probably, and I presume it came from above, towards Mr. Wyer's. I think it run part of the season a small stream, particularly in a wet time. I think there was a small stream when I first went there in the spring of the year. I don't recollect how long it continued to run. I think it run pretty much all winter a small stream. I think there was corn in the field in the hollow above the lane, but I won't be right sure. When the water run it did not run all over, but run in a little furrow along. I don't recollect its running in the summer season, except in a wet time. In ploughing that field, we ploughed as close as we could to the little furrow like, that was close to the stone fence where the water run, that is my impression, I can't speak positively. The stone fence run up and down the hollow, and we, in breaking it up, ploughed lengthwise with the fence, I think. In the field above there was a small channel passed through that field. As to the grade of that hollow, from Woolston's down to the turnpike, I should think it very regular, so as to carry the water without any difficulty. I should think so from the recollection I have. I should think it part of the way quite a moderate descent, say from the road at Mr. Wyer's to the Spruce run turnpike. No very rapid fall between the Washington turnpike and Wyer's, I should think. I lived five years on the Beavers lot, lately owned by George Creveling, through which this stream passed.

I recollect seeing the stream at Wyer's twice or three times this last summer while there was no water in the canal. I did not observe any difference then and formerly; I did not take any notice. I have been *subpœnaed* before as a witness in this cause, by Mr. Arndt, and attended at Washington. I had some conversation there, with Mr. Morris and Mr. Arndt, about it, and was dismissed without any examination before the master.

And being cross-examined, saith :

I don't know that that little stream ran any further than the

lane, except in a great flow of water. I know that it did not run any further except in a great flow of water. This little stream that I saw on the Reigle farm was not as large as the stream in the road by Wyer's farm. There was a great difference in the quantity of water. I believe the most of the water sunk in Mr. Wyer's field and in the edge of Mr. Reigle's. This little stream was led, in a furrow, along the stone fence, and had not made its channel through, I think so far, from appearance. When this little stream got to the lane, it laid there, and seemed to soak away and evaporate.

Sworn, &c., November 13, 1841.

William C. Baylor testifies—I live now just beyond Oxford church: I formerly lived in Mansfield, about two miles and a half this side of Asbury, as near as I can tell. It is something like forty-two or three years since I first recollect the farm of Col. William McCullough, that Capt. Hendrie lived on afterwards. I worked there a little while Capt. Hendrie lived on it, thirty odd years ago. I can't tell exactly the time. I was not there but about a week, or something like that. It was in the fall of the year in seeding time. At that time there were water running through the hollow. I can't tell exactly through which fields I saw the water running, the fences have been altered since I was there. It was right back of where Mr. Carter lives where the water came down towards where the turnpike now is, north of Mr. Carter's towards Mansfield meeting-house. *It was before the turnpike was made*, I think. I don't recollect of any turnpike being there at that time. The water were running in a small like channel, and not spread out over the ground.

And being cross-examined, saith:

I don't know where that water came from; I can't tell how far it run down through that farm. It emptied out into a swamp south-west of where the turnpike now is, back of where Samuel Shields now lives. It was quite a swamp there then. I was backwards and forwards along that little stream, to see where it emptied. I think it was in the month of September I worked for Capt. Hendrie. I recollect it was in September, because it was in the beginning of seeding rather. I threshed some seed rye for him. I ploughed some and helped him pick apples. He did not sow any while I was there, as I recollect. They generally pick apples as early as September, sometimes in the month of August; not common though to pick apples in August. The ploughing was in the orchard back of where Mr. Arndt's house now stands. I think I did not plough up to the hollow. I can't tell whether there had been rain just before or not; it is too long ago for me to remember that; there was no rain that week I was there. I had no work in the hollow or across it, except going for the horses.

I have been along there since the turnpike was formed and since I worked for Capt. Hendrie, but not over two or three times. Nor across the hollow any where. When I crossed it afterwards I

don't recollect seeing any water. I don't recollect anything about it.

Sworn, &c., November 13, 1841.

Testimony on part of John Arndt, the defendant.

William McCullough, upon examination *de bene esse* before Wm. P. Robeson, esq., testifies—I am well acquainted with the parties in this suit, John Arndt and Samuel Shields, and have been for some time. I am acquainted with the respective farms on which they now reside, in the township of Mansfield, in the county of Warren. I have been acquainted with those lands forty or fifty years, ever since I got a title for both farms from my father. I resided on the adjoining farm, now in possession of Joseph Carter, a number of years, and afterwards rented it and the other farms, for several years, to different persons. The tract of five hundred and twelve acres I purchased of my father embraced the Shields farm, Arndt farm, and Carter farm.

Question. Did you ever know of any stream of water which was accustomed to flow across the Carter farm and Arndt farm, and upon the Shield farm, until certain ditches were dug across the same?

Answer. No, sir. No natural stream, except after a heavy rain. I never knew of any ancient watercourse flowing across the Arndt farm. There was a boiling spring on the Shield farm, which immediately fell upon the Arndt farm. The water that flowed down from the mountains and from Port Colden, above, run into a sink-hole on the farm now in possession of John and Peter Wyers, the third farm above Arndt's. I have since seen the water running in ditches through the Carter farm and the Arndt farm. It strikes me, in time of freshets, the water would flow down on the east, or Arndt side of the fence. I should say the ground was the highest on the west side, as you stand up by the corner by the boiling spring. There is a slant or descent from the spring towards the house where Mr. Arndt lives. It is my impression the *land is highest on Shields all along the line*. I do not recollect of the water making any cut or channel for itself across the Arndt farm. I recollect of ploughing and harrowing the land along the hollow from the turnpike to the Shields line. The largest crop of wheat I ever raised was across this valley. There was no watering place formerly on the Shields farm up by the boiling spring; the ancient watering place for the Shields farm was down by the house, on the line between the two farms.

Cross-examination:

I was eighty-two years of age the 18th of December last. I have had several severe spells of sickness. I sold the farm on which Shields lives to one Capt. Moore; I do not recollect his

christian name; it was about forty or fifty years ago that I sold the Shields farm. I cannot tell how long it is since I sold to Mr. Arndt without referring to my papers; I think I can recollect things that took place in the revolutionary war sooner than things that have taken place since; I should say my memory has failed of late years. I cannot tell how long since it was I was along and observed the line between the Arndt farm and Shields farm; but, from the map I have seen now, I think I am right about the boiling spring. I do not know that I have been along the line between the two farms in fifteen years, to observe it particularly, but I think I am acquainted with it; there is no ground that I am better acquainted with than the ground between the boiling spring and the springs that break out upon Shields below. I do not know that I have been along this line at all in fifteen years. I have not been along this line since the water has run across Arndt upon Shields, and back upon Arndt. I think I have not been along this line since I run it out to Mr. Moore. When there was a freshet and high water the water *did not run across Arndt and upon Shields, to my knowledge*. At the time of a freshet, I did not notice to see if the water run on the east side of the line the whole way to the turnpike. I can't tell the reason why I made the line so crooked between the farms, when I sold to Moore; we fixed upon the corners. I can't say that it is my impression it was done to accommodate both farms with water, *but it looks natural it was so*. I formerly owned the farm adjoining Carter's farm, now occupied by Reigle, and also the Wyer farm, through which this stream passes.

Called again in chief:

My health is now better than it has been, considerably. I am setting up now, and not confined to my bed. I do not feel as if I was fit to be doing business, neither do I wish to be, if I was not compelled. To my knowledge there was no ditch dug across the Arndt farm, by myself or my tenants, while I owned that farm.

Sworn, &c., September 28, 1841.

Interrogatories put to Berlin Messler, an absent witness, on part of defendant.

1st. Do you know the parties, complainant and defendant, in the title of these interrogatories named, or any and which of them, and how long have you known them, or any and which of them, respectively? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

2d. Did you, or did you not, draw a furrow from the end of a certain ditch in the said Arndt's meadow, in the township of Mansfield, in the county of Warren, New Jersey, to the line fence between Arndt and Shields; and if so, was it drawn on higher or lower ground than where the water was then running from the mouth of the said ditch? Declare the truth of the several matters

by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

3d. When the water reached the line fence in this furrow, what became of it? Do you know whether or not it was put through under the line fence on to Shields, and if so, by whom was it put through, by Mr. Arndt or by any other person? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

4th. Before you drew the said furrow, where did the water run that flowed out of the mouth of the said ditch in Arndt's meadow; did any of it flow upon Shields before you drew the said furrow, and if not, where did it flow down; and after the said furrow was drawn, how did the water then flow down, upon Shields or Arndt; and if upon Shields, how far did it flow upon him before it recrossed the line fence? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

5th. Do you know whether or no the said furrow was afterwards ditched, and when, and by whom was it ditched; and whether or not the water was then put through under the line fence? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

6th. Do you know anything of a certain ditch dug along the line fence, between where the water ran in upon Shields, and when it again returned upon Arndt; when and by whom was the said ditch dug, and for what purpose was it dug? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

Lastly. Do you know of any other matter or thing, that may tend to the benefit and advantage of the defendant in this cause? If yea, declare the same as fully as if you had been thereunto particularly interrogated.

Cross-interrogatories on part of complainant:

1st. How long did you work for John Arndt, the defendant, at what business, and in what year or years? How old were you at the time of the commencement of your working with him? How near to his premises did you live before working with him, and how long did you live there? How near did your father live to said Arndt, before you commenced working with him, and had you any particular acquaintance with the line fence between the said parties before you commenced working with said Arndt?

2d. When you were first acquainted with the line between said Arndt and Shields, did not part of the water run upon one side, and part upon the other side of said line fence, for a short distance?

3d. When said Arndt drew the furrows through his meadow, was it not for the purpose of drying the same, and preventing the water from spreading over the same; and before this confining it to a furrow or ditch, did it not spread out and weep over and

through the line, forming a wet sloughy place on both sides of the line?

4th. Did you never hear said Arndt say that he intended to take all the water down on his own side of the fence, or words to that effect?

The witness testified before a commissioner in Ohio, in answer:

To the 1st interrogatory.—I am acquainted with both the parties, and have been acquainted with them for nine or ten years.

To the 2d.—I drew the furrow from the mouth of the ditch mentioned, and commenced it on lower ground, and terminated on higher ground than where the water was then running.

To the 3d.—When the water reached the line fence between Shields and Arndt, it was put through under the fence on to Shields by me, at the time I drew the furrow.

To the 4th.—The water flowed from the mouth of the ditch through the line fence on to Shields, and flowed about four rod, as near as I can tell, and then recrossed the line on to Arndt, before and after I drew the furrow.

To the 5th.—The furrow from the mouth of the ditch to the line fence was afterwards ditched; I helped ditch it, but cannot recollect the time when it was done.

To the 6th.—I, together with Arndt's son, drew some furrows along the line fence between where the water flowed on Shields and where it recrossed the line, and shovelled it out, but do not recollect that it was ever ditched; and the last furrows did not intersect the ditch that crossed on to Shields at the upper end of the furrow. It was drawn for the purpose of draining the meadow, and was done in the fall of 1835.

To the 7th.—I recollect when drawing these furrows, that Arndt particularly told me not to take the water from Shields, but to let it through under the line fence.

To plaintiff's 1st interrogatory.—I worked for Arndt from 1833 to 1839, at different times, at the farming business. I was about twenty-seven years old when I commenced working with him. My home was at my father's previous to working for Arndt, which is between three or four miles distant, and my father had been living eighteen or twenty years there before that time. I had no particular acquaintance with the line fence before I commenced working for him.

To the 2d.—I do not recollect of it running on to Shields only in the elbow of about four rod.

To the 3d.—The furrow that was drawn through Arndt's meadow was to drain it, and prevent the water from spreading over the same; but I do not recollect that it ever spread through on to Shields, except where the ditch was put through under the line fence.

To the 4th.—I never did, but to the contrary told me to let the water run through under the fence on to Shields.

Sworn, &c., August, 1841.

William B. McCullough testifies—I am acquainted with the parties in this cause, and the farms on which they live, in the township of Mansfield, in this county. I have some recollection of these farms as far back as eighteen hundred and eleven and twelve; my recollection is not very distinct as far back as that. Previous to the turnpike's being made, I was not much upon the property; since that I have passed through there frequently. It must be upwards of twenty years since the turnpike was made; I don't recollect the time particularly. I don't think there was a stream of water running across Reigle's and Carter's, upon Arndt's and Shields', since I have had a distinct recollection of these farms, except within a few years. I was along when the farm was run out to Arndt. I feel satisfied there was no running stream of water crossing the turnpike, and running over Arndt's upon Shields' then.

Mr. Arndt purchased this farm of my father, William McCullough, now deceased, and was run out to him in about eighteen hundred and twenty-eight or nine, I think. I went around the place with them; I was along the line between Shields and Arndt. There was not at that time a stream of water flowing across Arndt on to Shields, as it now does. I don't think there was any water at all flowing across Mr. Arndt's farm. I don't think there was any water, except on the lower end of the place between the buildings. I don't know that I can tell, from my own knowledge, where this water came from that I last spoke of, only from hearsay. The first I saw of the water flowing across the turnpike, from Mr. Carter on to Mr. Arndt, was in eighteen hundred and thirty-four, after I returned from the west; I had been there about four years. Before my father sold to Reigle and Arndt, I was frequently through the premises. I have not been through Reigle's farm since he purchased, which was about the same time that Arndt purchased; but have been along the turnpike frequently since. There was some water upon Wyer's place, but I don't know what become of it. I believe there has always been water upon it. I think this water occasionally flowed upon Reigle, opposite the buildings; I have seen it there sufficient to water the horses in the lane, occasionally. It was dammed up there a little. I think the water flowed across this lane into the adjoining field. I don't think the water flowed across the Reigle farm on to Carter. I do not know, from my own *personal* knowledge, that it did not flow across the Reigle farm on to Carter. I have been along the line between Carter and Reigle, but have no recollection of seeing any water there.

I was on Mr. Arndt's farm this morning, a part of the way along the line between Arndt and Shields. I was along where a ditch had been cut on Mr. Arndt's side near the fence. There was water flowing in that ditch this morning. It appeared to rise upon Mr. Arndt, and flow into this ditch, independent of what came across the turnpike. There was a low piece of ground there appeared wet—a meadow. I saw no springs, but I saw water. The water appears to come from about the middle of one of Mr.

Arndt's fields, and run towards Mr. Shields' into this ditch. It appeared wet-up in the field, but I did not go up to see it. From the appearance of the ground, I think this water would flow upon Mr. Arndt past where this ditch was made, in case there was no ditch there. If it were not for this ditch, I think it would spread considerably over Mr. Arndt's meadow. I don't think this water could flow naturally into the ditch that crosses over upon Mr. Shields. This ditch upon Mr. Arndt's side appeared to me to be intended to carry off the surplus water, that would otherwise spread over the bottom. This bottom of Mr. Arndt was quite wet—it may have been owing to the heavy rains. I don't recollect any water flowing from the ditch, but in case the ditch was full and overflowing it would naturally flow upon Mr. Arndt eastwardly. Before we reached this ditch there were two other small ditches, about the size of a plough furrow, that were higher up; they were quite full, and overflowing a little. These small ditches were on the east side of the brook, and nearly parallel with it. I suppose the object of these ditches was to drain the meadow.

I measured some part of the ditch along the line. I did not measure the width. The depth was from six to nine inches, where I measured it. I measured the deepest places; I mean the depth from the level of the ground; I did not take into account the embankment. The embankment was on the side next to Mr. Arndt; I suppose to prevent the water flowing over on to the meadow. I measured the ditch nearly opposite where the stream passes over on to Mr. Shields; below that there is a little elevation, through which it passes, where it is deeper, but I did not measure that. The water spread over the meadow above this elevation.

From as far back as I can recollect until I went to the west, I believe the only watering place for the cattle and horses on Mr. Shields' farm was by the house. I don't know of any other watering place. I don't know whether there was or was not a watering place along the line where Mr. Shields now has one.

I noticed a ditch on Mr. Shields' farm, coming from the west corner of one of his fields to this watering place. I can't say whether there was running water in it or not; I did not observe it particularly enough.

There is a spring upon Mr. Shields' farm, I think, down near the house; the line is very close to it. I believe it is a never-failing one, as far as I know.

And being cross-examined, saith:

The upper end of the ditch along the line was shallower than lower down, because the ground was lower there.

There was so much water running on Mr. Shields' side there, that I could not tell whether the ground was lower on his side or Mr. Arndt's. These two little ditches, spoken of before, empty into the ditch made by Mr. Arndt, at the head of it. The embankment, where I measured the depth of the ditch, I suppose was about one foot.

Before my father sold to Reigle and Arndt, I was from home,

at school a great deal of the time, but when I came home I was in the habit of crossing Reigle's farm with my father, in going to his other farms at Washington, sometimes daily, when he was digging wells or building. This was during my vacations at school and college. It was as I passed through the farm that I observed the stream. I had never been up and down along it. There is a hollow, extending from Wyer's all the way down to Shields', that looks as if the water might have run there. I don't now recollect any bridge on the turnpike about where this stream crosses on to Arndt. The turnpike, since eighteen hundred and thirty-four, has not been used as a general thoroughfare. Before I went to the west it had got out of order, and not worked by anybody, and consequently but little travelled by the public.

It was in warm weather when the farm was run out to Arndt. I don't recollect the season exactly. I do not recollect whether it was a wet or dry season, but I recollect the ground was dry at that time.

Before I went west I think I never saw the water running across the turnpike on to Arndt. I do not mean to say that it did not run across, but that I have no recollection of it. Nor do I mean to say that there was no bridge across the turnpike, but that I do not recollect it. I am now in my fortieth year since February last.

These farms before referred to are all limestone bottom. It is very common on such soils for water to sink away. There was a very heavy rain yesterday. I can't say whether the stream that flows across Arndt overflowed its banks this morning or not. I saw the crooked new ditch, but think there was not much water in it.

From my observation of this watering place of Mr. Shields, I should consider it a great advantage to his farm.

And being called again in chief, saith :

By saying the ground was higher below the head of the ditch along the line, I mean that there is a little ridge that runs across it.

If the water was left to flow naturally down this hollow, without being ditched through these farms, I should think it would flow on to Shields a short distance. If the water was sufficient to come down without any aid, it would flow on to him. I know there were no ditches across Carter's and Arndt's farms, as far as I could see from the turnpike, before I went to the west. I don't think the little stream which I formerly knew coming from Wyer's would have reached Shields without aid by ditching.

Sworn, &c., April 30, 1840.

John Kitchen testifies—I am in my seventieth year. I used to live on the farm that Mr. Wyer lives on now. I come there thirty or thirty-one years ago. I lived there six years. There was a stream of water, at that time, that came down a little below the house I lived in then, all sunk away, and below that we ploughed and sowed, and planted; we had none to go any further. I ex-

pect it is the farm Wyer lived on—so they tell me. I have never been there since he lived there. This stream come from up above Woolston's and through Beavers' land. Below where this sunk away to Arndt's farm it was all dry. There was never any ditch or gully, or marks of a watercourse, that I noticed. I never noticed any. I had no knowledge of the country before I moved there, nor since I went away, except to take away my crop and travel along the road. To-day is the first I crossed the stream since I left there. There was no such a stream there then as there is now, except once when there came a thaw in the winter, and that only lasted a day. I crossed the stream on the turnpike to-day. I never saw any stream there before to-day.

And being cross-examined, saith :

There was more water run across the turnpike to-day than used to run up by my house when I lived there. It was a very weak stream there. It was never very strong. It was not ditched above, but wasted along as it came down. I expect there was more in the spring of the year than it was at midsummer ; there was always scant enough where we lived. I never traced the stream along, but sometimes crossed it in going to the neighbours above. It made no pond hardly at all there ; some little water would stand where it sunk away, in a spot. I don't recollect whether Beavers were in the habit of taking it out on their meadows or not. I don't know whether there was any fish in it or not. I don't know whether the canal is filled with water or not. I recollect carrying chain along the turnpike after it was shaped out, while I lived there. I can't tell what season of the year, or how long ago. My memory is not so good as it used to be ; if I hear anything now I can't recollect it as well as I used I could. I recollect being along the turnpike once after I moved away, and that is the only time I recollect, except to-day. I expect the earth is more full of water now than I ever recollect.

Sworn, &c., May 10, 1841.

Jacob Castner testifies—I entered my seventieth year since the twenty-third day of March last. I lived for many years on a farm of Col. Thomson's, a mile above Changewater. I saw a small stream of water running through lands of Beavers and across the present road. I think I lived on that one farm thirty-six years, and have been ten years off. During that time I was in the habit of crossing the little stream from Woolston's frequently. I see a great increase latterly in that stream of water where I cross it now, on the road from Changewater to Port Colden. I don't cross it now where I used to formerly. The first stream was merely nothing. I have cut grass in Captain Beavers' meadow. I don't recollect any water at all at that season of the year. I don't recollect wetting my feet, though there might have been a little crawling through the grass. This little stream extended on—I don't know where to ; I never followed it up. I was in the habit of going to worship at the Mansfield church, and in going there I

frequently crossed this valley, passing over the Reigle farm and the Carter farm, then in the possession of Col. McCullough. At that time that was my regular place of worship more than any other. I crossed it during all seasons of the year, except when bad walking or in deep snows. I did not attend church as constantly then as I do at present. During all the time I lived on that place I never saw any water running across the Reigle and Carter farm. The little stream above did not reach down so far, or I should have seen it. I never saw any failure of grain or corn in that valley. I have passed round and through the fields. I did not observe any mark of a ditch or gully, or watercourse. I never had any idea there was any water there. Previous to the thirty-six years before mentioned, I worked on what is called the Reigle farm. I was then in my twenty-second year. I was hired by Mark Thomson and Elijah Bird, and worked one summer season. I believe, according to the best of my recollection, there is a natural pitch of the valley to this hollow, and the fence run the course of the valley; the fences stood on the west side, rather on the rise. I think the lowest part of this valley was on the inside of this fence, where I have reaped corn, buckwheat, &c.

And being cross-examined, saith:

Since the time I worked there, I have not noticed the ground particularly where this fence was, but crossed it at another place. There used to be an old road from Changewater, running a west course across this hollow, to the Hackettstown road, about on the line between the Reigle farm and the Wyer farm. I think I have seen, at one time, three or four poles laid across, something in the shape of a bridge, in this road in the hollow.

From Woolston's to the farms of these parties there was a natural hollow for the water to run, when there was any. It used to be a curiosity to me to see poles in this old road, and not any water. Not a drop did I ever discover in this spot.

The first place I spoke of crossing this little stream was through the Beavers' meadow. I never discovered that the Beavers turned the water over their meadows; the water appeared to creep through the grass; no particular channel cut, nor naturally one. There was two heads to this stream that united in Robert Beavers' meadow, one coming down from Woolston's and the other from above Kelsey's. I don't recollect any natural channel where they united, nor above or below. I have crossed below. They forced themselves down to the Port Colden road. I was overseer on that road, and I recollect Frank Nixon's putting up a bridge, I think the first bridge on it, about twenty-five years ago. I saw some little water there when the bridge was built. I have seen three or four times as much since the canal was built. There was more mud-hole than water at that time. I think not as much in it now as I have seen since the canal has been built, but I did not notice it particularly. It is not fed now by the canal, it is empty. I observed a considerable stream this morning, but did not observe it, to say whether there is more or less than when it was fed by the

canal; but the ditches are opened now, and the earth is full of water.

Sworn, &c., May 10, 1841.

James S. Nixon testifies—I lived on the farm where Wyers now live two years, with my father, and was back and forwards for six years afterwards; helped them mow and seeded some. It is about twenty-five years ago since my father moved on the farm. There was a small stream came down, from the direction of Woolston's, across Beavers' meadow, and it went down about half way across my father's farm, and there it would sink away. The stream used to run into a hole that had been filled up with stone, and my father took it out to lead it down, and the ground fell away and it sunk in that hole. The stream was small. I have not seen it since the canal was built. The stream was so small that it did not reach on the farm below, except in the time of a fresh in the summer or in the winter when the snow went off. I was acquainted with the valley down as far as the turnpike, but not over on Mr. Arndt's farm, to know anything about it. I never saw any water running there, except in time of freshets or breaking up of winter. The stream would often be dry at our barn, and we had to go to the bridge on the Port Colden road to water the cattle. In time of freshets the water would flow down this valley, as the ground descended each way to it, and the water had no other way to get out. My father built the bridge on the Port Colden road over that stream. It was the first bridge, I believe, that was ever put on it. The road was newly made. At that time it was considerable of a mud-hole.

The meadow on my father's farm ran down about half way from the sink-hole to the line fence and below the meadow. We ploughed and sowed all to the line fence and to the cross-fence; the water never interfered with the farming. There was no ditch or gully worn by the water through the meadow or field. During the eight years my father lived there, he was never prevented by the water from tilling. We always tilled up to the fences.

And being cross-examined, saith:

Question. Was the natural stream where this water run near this cross-fence?

Answer. It came into the first sink-hole about fifty yards from this cross-fence. I never knew it to run over this sink-hole over two days at a time when there was a freshet. When it went past this sink-hole it went on down the hollow. I don't know how far; I never went down to see. I believe I have been down as far as the Reigle house to see it. It still run on further. Where the cross-fence met the line below the sink-hole the water went through in time of a fresh. I expect it was a limestone bottom where the water sunk; there was limestone on both sides in the ridges. I was somewhere about twenty-two years old when my father moved there. I was twenty-two in October, as my father moved in the spring. I never knew any fish being caught in that stream; I

have seen a few little ones by the bridge. During the time we lived there, the Beavers tried watering their meadows, and they dried us up entirely, so that we had none at the road.

And being called again in chief, saith :

I don't know how the fish got there by the bridge. Jacob Myers used to catch a great many fish ; whether they put any in or not I can't tell.

And being cross-examined again, saith :

I have been with them a fishing, and have seen them a fishing when they were by themselves alone. I can't say that I ever knew him to take a live fish home. What part I got was all dead, and I would have thought his would be the same.

Sworn, &c., May 10, 1841.

Alexander Bowlby testifies—I have been acquainted with the farms on which Mr. Shields and Arndt now live about fifteen years. It is over eight, and under twelve years, since I have observed a stream of water crossing the turnpike and running on to Mr. Arndt. Within this same time I have sometimes noticed a very little water running across the road, if any. I know of its going across Arndt's farm, previous to its being ditched and since, by its being ditched, but don't know that it was ditched all the way across or not ; neither do I know that it went all the way across his farm previous to its being ditched. I never followed it all the way along. I have been up the line fence betwixt Mr. Shields and Arndt about the same time. At the time I went up the line fence the most I was working for Mr. Wright, who then lived on Mr. Shields' farm. It is over six years ago ; I think the second year that Wright came on the farm. There was one fence on Shields' farm where the lane is now, standing near where the lower fence is now. And where the watering place is now there was no water at that time ; we was cutting grain in the same field ; but about fifteen or twenty yards below the watering place there was water came off from Mr. Arndt on to Mr. Shields, that is, if the fence stood anywhere near the line. The ground where the watering place now is was higher than it now is ; it appears to be dug out, or the cattle's going into it had wasted the bank away and made it lower than it was at that time. At the time I was working for Wright, me and him sat on the fence near where the watering place is. At this time he observed to me how he would have the water to come, provided the farm belonged to him, which caused me to take particular notice of some things which I am now agoing to state. There was two streams above the watering place, one larger than the other, or rather one was a spring ; I was to the head of it, and got water out of it ; these streams were on Mr. Arndt. The two streams intersected just above where the watering place now is ; they come very near to the fence, I should suppose a yard, as near as I could guess at it, and that stream kept down the fence on Mr. Arndt's side about one distance, close along the line fence, for about ten or fifteen yards, then they

parted. The stream went against a large bog, and *part went on to Mr. Shields*, and part spread out in a low marsh on Mr. Arndt. The part that went on to Mr. Shields went where the hollow comes down from Strader's; for about five yards it went on to Mr. Shields, and then it came on to Mr. Arndt, and went down the line fence about twenty yards.

At the time we was cutting the grain there was no grain growing on that hollow. To the place where the water came on to Mr. Shields, it appeared to be wet spewey land. From the hollow up to where the lane now is we cut grain. There was grain growing somewheres close where the watering place now is. Where there was no grain growing the grass was growing by the watering place; the grass grew where it was too close to sow grain. It was very warm and dry at that time, and I don't think the stream was one quarter as large as it is now. This was previous to the ditch being dug across Arndt's farm. I could not say whether there was or was not a stream running across the turnpike on to Arndt's farm at that time; not certain, I could not say, but I am inclined to think there was. The head of the one stream was from thirty to fifty yards above the watering place, near an apple tree, and about twenty yards from the line fence near a cross-fence of Mr. Arndt's. The other stream crosses this cross-fence, and comes in a direction from the turnpike. I am now twenty-seven years old. I can't answer whether I ever saw any water running across the turnpike or not before the canal was made. I have no knowledge of any ancient stream coming down from Woolston's through these farms before this canal was made. I knew it to come down as far as Wyer's. I did not tell all this to Mr. Arndt before he subpoenaed me; I told him a part; such questions as he asked me, as near as I could remember. I told him I thought my evidence would not do him any good—either of them. Mr. Shields was asking me too, and I told him so too.

Mr. Arndt asked me whether I knew of any water coming across him upon Shields at the watering place, previous to his taking me to see the ground. He asked me if I knew of any water coming across anywhere along the line between him and Shields. I told him there was but *one place*, to my knowledge, and that was *in the hollow I have before described*.

Question. Are you certain you told him so?

Answer. Yes, I am certain I told him so, or I should not have answered the question you asked previous in the way that I did.

Question. Did you not tell Mr. Arndt that you thought he was very much imposed upon?

Answer. I don't know as I did; but I might have told him that, but not at the time he took me to see the water. I have no recollection of ever telling him so.

Complainant's counsel objected to leading questions being put to witness.

Question. Did you not, at Mr. Arndt's house, tell him how you had been imposed upon by the Shoemakers?

Answer. That has nothing to do with what I came here to testify to. I had said I would not answer that question, and I will not.

Question. Do you not now recollect telling Mr. Arndt, at his own house, at the time you were down looking at the water, that he was imposed upon?

Answer. No, sir.

Question. Where did you tell him that there was but one place where the water came over, and that at the hollow?

Answer. I told him that at Port Colden, up stairs on the side of the bed, where he and I were sitting previous to his taking me down to see it, but the same day.

Question. What was Mr. Arndt's reply to that?

Answer. He wished me to go down and show him where the water went through, and tell him how it was, as near as I could recollect all about it, at the time I was working for Wright.

Question. Did you not tell Mr. Arndt that you had arguments with Wright, and that he said it run across, and you said it did not?

Answer. Mr. Arndt told me that Wright had sworn that the water had went across where the watering place now is, at the time I helped him with his grain. I told Mr. Arndt that it was not so, or I did not see none, or to that effect; and then mentioned *about the hollow*, and said Mr. Wright was mistaken, it must have been *there where he meant*. I told him, likewise, that Mr. Wright and me had talked about it, and we could not agree on the spot.

Question. Did you not tell Mr. Arndt it was all the way higher on Shields' side than on Mr. Arndt's?

Answer. No, sir, I did not.

And being cross-examined, saith:

I was *subpœnaed* before, *by Mr. Arndt*, to give evidence in this cause, either the last time or the time before, when we met here to take testimony. Mr. Arndt then asked me some questions, and told me he would not have me sworn, or to that effect. When he *subpœnaed* me for the present time he did not ask me any additional matters, nor any questions about this cause. There has been no misunderstanding between me and Mr. Arndt, that I know of, but we have always been upon the best of terms.

Sworn, &c., May 10, 1841.

John Force testifies—I noticed when Mr. Arndt dug the crooked ditch, the water was not all turned into it at the turnpike, about one-third was left, perhaps more, and perhaps less; I did not notice it particularly. It was not a great many days afterwards before I noticed that the mouth of the new ditch was stopped, and the water was running in the old one.

I have been along the ditch where the water now runs from the turnpike to the line between Arndt and Shields. From fifteen to twenty paces below the first cross-fence above the watering place on Mr. Arndt, down to the line fence, the water appears to run

on higher ground than the ground a little eastwardly of it. If it was not for the embankment of the brook, the water would run down the hollow eastwardly of it, on Mr. Arndt's side. From the appearance of the ground lower down, I hardly know whether it would cross over on to Mr. Shields or all run down on Mr. Arndt, if there was no ditch there. There are springs now rising on Mr. Arndt's side, opposite where the water runs on Shields, some of which run along down through Mr. Arndt's meadow, and some run into Mr. Arndt's ditch along the line fence. There is water *springs out on Mr. Shields* a little above the watering place. It goes down the fence till just above the watering place, and then the bigger part of it goes through the fence on to Mr. Arndt, into the ditch or brook; *the residue goes on into this watering place.* The ground at the watering place looks as if it was worn away and lower than formerly. Along the ditch, above the watering place, it looks to me as if the dirt had been thrown out on both sides, and forms a little embankment. The ground along the line by the watering place is washed away. I saw it about a year ago, and I saw it a couple of weeks ago, and is lower now than then.

And being cross-examined, saith:

Mr. Arndt's sons and Jacob Bowlby, I guess, worked at this crooked ditch, in excavating it. I believe I saw Mr. Arndt there some part of the time. I understood, from Mr. Arndt's sons, that the object of making this ditch was to water their meadow, and they talked some of taking it round by the house. They told me that they were a going to take all the water out of the old ditch, and plough it up.—Counsel for defendant objected to witness detailing conversations with sons.

The time the water was in the new ditch was about two weeks, or thereabouts.

The low ground I have spoken of to the east of the ditch and the ditch come very close together at the watering place, and it appears to me that the dirt thrown out of Mr. Arndt's ditch along the line makes the embankment there. I never measured the ground around the watering place that I spoke of as worn away. The ditch appears to be worn away considerable wider and deeper where it passes under the fence. That is what I mean by the ground being worn away and lower than formerly. I suppose the ground forming the embankment of the ditch above the watering place to be about eighteen inches higher than the ground east of it.

And being called again in chief, saith:

The low ground east of the ditch and the ditch come together, within three or four feet, at the watering place. The embankment thrown out of the ditches is between them.

Sworn, &c., May 10, 1841.

Samuel Sherrerd testifies—I took a level of the ground about the watering place on the line between Shields and Arndt, at the request of Mr. Arndt, on March 25, 1840, or thereabouts, in the

presence of Mr. Arndt, Mr. Samuel Shields, Capt. Samuel Bowlby, and John Strader, jun. I think William Shields and Peter Kleinhans, and one of Mr. Arndt's sons, was there part of the time.

Upon being shown *Exhibit No. 1*, on the part of defendant, saith—It is a draft of the level that I took. I first placed my level on the edge of the bank in Mr. Arndt's meadow, nearly opposite the watering place, and then directed Mr. Kleinhans to place the rod in different stations, on lines as nearly as possible at right angles with the course of the water, the height of the rod would then represent the depth of the depression of the ground; and in doing this I chose, as nearly as I could, the original surface of the ground, as far as I could tell. I continued a series of these lines from above the watering place down on to the bank near the fence, about half the distance *the water now runs upon Shields*. Until the last two lines, I found the lowest ground upon Arndt quite near the fence, except the third line from the last. I found the lowest ground some distance out in the meadow of Mr. Arndt, the next to the last line; the lowest point was in Mr. Shields' field, quite near the fence. Next to the fence on Mr. Arndt's side is a bank, apparently natural; between that bank and the high ground in the field the ground was three inches higher than on Shields' side. From that low place on Mr. Arndt's side the water would flow down through Mr. Arndt's meadow towards his house. The lower line is about half way down from where the *water comes in on to Shields* to where it comes on to Arndt again. The figures 1, 2, and 3, &c., represent the stations where the rod stood; the other figures denote the height of the rod, in feet, inches, and tenths of inches. The ground appeared to be very much disturbed by cultivation and washing, so that it was very difficult to get the natural surface with any degree of certainty. It was *impossible* to identify it with any degree of certainty. The bank I spoke of, at the second line from below, runs up near the fence, being *one inch higher on Mr. Arndt's side than Mr. Shields'* close to the fence on both sides, perhaps a yard or two apart. At the lower line the bank runs quite to the fence, being six inches difference in the height of that and the lowest point on Mr. Shields. Assuming that the stations which I took had been the natural surface of the ground, and that there had been no impediments of any kind, the water would have flown down to the third line from the last on Mr. Arndt, and then would have *passed over on Mr. Shields*, above the bank near the fence. I can't say that the points I took on the two lower lines were particularly affected by washing more than anywhere else; they were quite near to where the water now runs on Shields' side.

And being cross-examined, saith :

I think it was in grass on both sides where I made the survey and where I took my stations.

Sworn, &c., May 11, 1841.

Exhibit No. 1, on the part of the defendant, a draft of leveling taken by Samuel Sherrerd, March 25, 1840.

Edward H. Swayze testifies—On the 14th and 15th days of June, A. D. 1839, at the request of Mr. Arndt, I made a survey of the stream running through Mr. Arndt's farm, and of the new or crooked ditch, so far as dug, and also of the proposed route to the house. On the 29th and 30th days of April, 1841, I made a survey of his farm, at his request, of which surveys *Exhibit No. 2*, on part of the defendant, is a map. According to my survey, *Exhibit No. 2* is a correct map of it. The several letters, *a, b, c, d, e,* and *f*, on the map represent springs. There was last spring quite a smart stream run down from spring *a*, which united with another stream coming from spring *b*, which emptied into the ditch next the turn at *c*. I think there were two or three springs which boiled up out of the ground; they, I think, started in a gully that had been washed, and which gully ran up to the 6th fence, or a little past it. They emptied into the old ditch, about two or three rods from the 7th fence above. At *d* there was a spring which started out at the foot of a little bank or knoll; it then ran down into another branch, and these two ran down into the ditch on Mr. Arndt's side of the line fence, at the head of it. These two form more of a channel than a furrow; it seemed to have been naturally washed out; there were no marks of a plough. There is a spring also at *e*; the water from that, for I suppose some little distance, suppose ten feet, flowed into the same ditch; but it is a wet sloughy place on the north-eastwardly side of spring *e*, on which the water stands; and from that is formed a branch which runs down and empties into the main stream near the 8th fence. At *f* there is also a spring on Mr. Shields' side, which ran across on to Mr. Arndt's side, and emptied into the ditch near the watering place. There was a good deal of water round there then. The spring *f* is but a very little distance above the watering place, not over, I think, two or three yards above the head of the watering place. The ground was very full of water, and the ditch also, it being the spring of the year; the ditch was full to overflowing, and ran over not far below the bend of the stream below the 7th fence, and ran towards the line into a branch that empties into the stream near the watering place; it also overflowed about half way from this fence to the watering place, and ran into the same branch. The ground between the ditch and the rising ground near Shields' line was nearly covered with water. The rising ground I now speak of is near station No. 5, and above it. The water overflowed, also, on the north-east side of the ditch near this same bend, and ran down into a branch on the same north-east side. The low ground on the north-east side of the ditch here was also nearly covered with water.

The ditch from the level near the 7th fence, down to or near the watering place, runs on rather higher ground than there is on each side of it—it has the appearance—and of course from the

water running out of the ditches on either side at that place, proves it to be so. I cannot say how much lower the ground is on either side of the ditch, because I did not level it. I should judge that the bottom of the ditch is lower than the ground on either side of it at either place. The level ground on the north-east side of the ditch commences near the 7th fence, and runs down in the direction of, or towards the watering place, and continues on down to spring *e*. Below spring *e*, along Mr. Arndt's ditch, there is a rise or bank of ground, through which Mr. Arndt's ditch is cut along the line. Between this land and the high ground to the north-east, in Arndt's meadow, the ground is wet and spewey, on which the water stands, and from that is formed the branch which empties in near the 8th fence.

There appears to be a very slight elevation to the eastern side of spring *e*, it is hardly perceptible to the naked eye. I looked at the water this morning to see which way it run, and could not determine which way it did run. I could not perceive it run at all. There is water now running down from spring *d*, and through Mr. Arndt's ditch. There is also water running in the branch connected with it, between it and the ditch; I saw it this morning. If the short ditch on Mr. Arndt's side of the line was filled up, and the ground restored to its natural condition, I cannot express an opinion where the water from the neighbourhood of spring *d* and 7th fence would flow, whether upon Mr. Arndt or Mr. Shields. It is very low ground, and I never levelled it. To the naked eye the ground on Mr. Shields' side appears a little higher, but whether it is really higher than the slight elevation to the north-east of spring *e* I cannot determine with the naked eye. Last spring, when I was there, the water flowed from Arndt on to Shields a pannel higher up than when I took the survey in 1839. There were a few stones in the old ditch near the line fence just above the watering place, but this morning I observed the stones had been removed, and the water flowed down in the old channel. I observed, too, that the water from spring *f*, on Mr. Shields, this morning seemed to spread and divide, and part run on to Mr. Arndt, and part ran down Mr. Shields' side into the watering place. I observed, also this morning, that there were a number of furrows from the head of the watering place, diverging up past spring *f*, towards station No. 5, and southwardly from that. I don't recollect observing any elevation between spring *e* and the branch flowing from spring *d*.

Looking over the ground this morning, I thought the water would naturally flow down the hollow *n*, eastwardly of the old ditch, as far as spring *e*, but I could not determine, if the short ditch were filled up, whether it could flow from along spring *e*, down through the wet spewey ground down on Arndt's side, or whether it would go across upon Shields. I recollect seeing a number of springs breaking out of the banks down near Mr. Shields' house opposite to and above the pond. I counted them then, but I have forgotten the number. The springs came out as far up as station 6, and

perhaps a little above it. These springs flow into the stream and pond. The pond by the house is about three chains, or twelve rods, long—and about three rods wide. The map shows the proportion of the pond that is on Shields very nearly. The distances from station 5 to station 6 is fourteen chains and fifty links—and from station 6 to station 7 five chains and twelve links, to a point above the bridge on the west side of the turnpike.

The distance from the pond to Mr. Arndt's house, on a line parallel with the turnpike, is two chains and ninety-two links. The ground ascends from the pond to Mr. Arndt's house at an angle of from twenty to thirty degrees, perhaps not over twenty degrees.

The angle is mere conjecture; I never looked at it with reference to judging of the elevation. If it were at an angle of twenty degrees, the house would be about seventy feet above the pond; if at an angle of thirty degrees, the house would be one hundred and thirty-five, to one hundred and forty feet above the pond, but I am satisfied it is not so high as that.

The distance from station 4 to station 5 is nine chains and thirty-one links; from station 5 to fence 7 is two chains and six links; and from station 5 to fence 8, the distance is eight chains and thirteen links. The ditch on the map, represented as Shields' ditch, runs up Strader's hollow. The hollow running nearly north-west from spring *c* is what is called the Bowlby, or meeting-house hollow. Near station No. 1, last spring, there was a small stream of water which ran from Park's farm, above, on to Mr. Shields'. The most of it followed the furrow nearest the fence, and then sank away; he was then ploughing for corn. The rest of it ran off of Mr. Shields on to Mr. Arndt, down the Bowlby hollow. The land is limestone land.

And being cross-examined, saith:

I never levelled any of the ground on or near Shields' and Arndt's line. When running the lines of Mr. Arndt's farm, I understood, from Mr. Arndt, that there was no dispute between him and Shields *about the line.* Mr. Arndt stated that he and Shields had agreed upon the courses.

Sworn, &c., August 6, 1841.

The defendant produces and offers a map of the lands of John Arndt, containing a survey of the ditch or watercourse in dispute, marked *Exhibit No. 2*, on part of defendant, this sixth day of August, 1841, by me.

WM. T. CLEMSON, *Master in Chancery.*

Capt. William Henarie testifies—I have been acquainted with the farm on which John Arndt now lives, in the township of Mansfield, more than fifty years. It is forty-one years since I moved on it, and lived on it twelve years. Mr. Carter's farm and the Arndt farm at that time constituted one farm. Capt. McCullough and William McCullough resided on it when I first knew it.

Capt. McCullough, and after his death his son, Col. William McCullough, owned that part of Mr. Shields' farm called the Creveling farm.

Col. McCullough sold it to a man called Moses Moore, forty-one years ago last fall, and Moore sold it to Creveling about thirty-seven or thirty-eight years ago. Moore owned it three years, if not four years. I helped him move away at the time Creveling bought it.

There was no stream of living water at the time I lived on it, flowing across the Carter and Arndt farm upon Shields.

The water by Shields' house broke out within two hundred yards of the house, or thereabouts; I never paced it. There was *no living water* where Shields' watering place now is up along the line. In the fore part of the season it broke out a good piece above Mr. Shields' watering place, at the head of Mr. Arndt's mowing ground; but it was no living water—it soon dried up. What I call living water, is to run the whole year round; but by the time mowing season came on it was gone. There was a number of springs up along the line, but not so many on Shields as on Arndt; but I have known them all to fail above the buildings occasionally. They were generally living springs above the buildings, but no living springs above Mr. Shields' present watering place. I don't know of any large spring above Mr. Shields' present watering place; there was none, but there was a low marshy piece of ground. I went a few days ago to show Mr. Arndt the situation of it, and I afterwards called to show Mr. Shields, but he was not at home. At the season when these springs did flow, those on Mr. Arndt's side flowed down on Mr. Arndt's side. They never flowed over on Shields' side, that I recollect of. I showed Mr. Arndt, last week one day, the ground where the water used to have its natural course. That natural course was on Mr. Arndt's side, and did not approach nearer than twenty feet, I think, to Shields' line. Formerly there was living water down on the Reigle's farm—there it sunk; it never reached the Carter farm at all. There was no living water, not a drop, flowing across the Carter and Arndt farm formerly. I always ploughed the land when the lot come in to be cultivated. The water that sunk on Reigle's farm came from Woolston's lands and from the Beavers' lands, and I believe a little part from the Scott lands, all north and north-east of Reigle's. I moved away before the Spruce run turnpike was made. I lived at this house when that was made. I don't know of any bridge across where the turnpike now is, and where the water now crosses upon Arndt, while I lived there, there being no occasion for any, for there was no water; nor since, that that I recollect of; but I have not travelled the road in twenty years that I recollect; but before I had travelled it.

As to the bridge, I have no recollection of it. There was no bridge there while I lived there. While I lived there I ploughed and sowed the ground where the water now runs on both farms, (Carter's and Arndt's) and never knew any obstruction from the

water. There was no watering place on the Shields farm formerly, only at the buildings, that I recollect of. I believe there was not any other. Yes, sir, that is my opinion; I say there was none.

From my observation lately, there appears now to be a water-course worked round upon Shields. I don't know that it would be any benefit to have the water flowing over Mr. Arndt's meadow. I don't know what his views are. If I owned the property, I would not have the ditch to lead the water to the house for the benefit it would be to the property; but he may be of a different opinion.

And being cross-examined, saith :

Where Mr. Arndt's spring-house is there used to be a living spring pretty generally, but it would fail occasionally, as well as the rest of them. The spring-house is from a hundred and twenty to a hundred and fifty yards from Mr. Arndt's house; I never took any particular notice. I don't know that there is a well at Mr. Arndt's door. The house had been erected since I left there. At the time I lived there there was no difficulty about water; there was always water a little below where Shields now lives, on the Carter land, and generally by Shields' house, but it would dry up sometimes. The Petty farm and the Shields farm, adjoining this Creveling farm, were always dry land farms with no living water on them. The farm now owned by Shields consists of three parts : the Creveling farm, a part of the Petty farm, and a part of the Shields farm.

At the time I lived there it was more desirable to have dry land than wet land, and it would be at this day, for I would rather have wheat land. Others may prefer grass land, but I can make grass land out of wheat land, but I can't make wheat land out of grass land. In the early settlement of the country it was desirable to get the land dry to cultivate it: if you wanted it to lay in grass, it was not so particular. I can recollect the stream running from Woolston's and others forty-one years. Since the canal has been made, it has increased considerably, and that is the reason (in my opinion) it flows down on these other farms. I don't know anything about the increase of the stream from my own knowledge. I considered this stream that ran down to where it sunk at Reigle's an ancient watercourse. I think it was on to Reigle's farm where it sunk; it might have been on Wyer's. It was very seldom that this stream flowed down on to these other farms (Carter's and Arndt's) in the spring of the year or when the water was high. It would occasionally, but would soon disappear when the weather wound up. *I have no doubt but this stream was a living stream all the way through to the Musconetcong at one day.*

When I was by Shields' farm the other day, I observed his watering place, and it is a great accommodation; it relieves him from coming down to the buildings to get that privilege. If I owned this farm of Shields, I would not be deprived of this watering place for a good deal of money.

The old watering place by Shields' house is, perhaps, about eighty yards from Arndt's house, and immediately at the door of Shields' house, as it were, within perhaps twenty feet. The line between Shields and Arndt runs pretty near through the centre of the pond by the house, as the line fence used to stand when I lived there. If Arndt takes out all the water by the turnpike, and leads it down to his house, and these springs by Mr. Shields' house dry up, Mr. Shields' farm would be entirely dry, if the water is taken into the road, and not returned into its natural channel above the road. I should make a material difference having Shields' farm watered, as it now is, or a dry farm.

And being called again in chief, saith :

There was always a watering place down by the house, on the Creveling farm, for both farms, except occasionally, perhaps once or twice in the twelve years while I lived there, when it was dried up. There were no marks of a watercourse formerly upon the Shields farm where it now is, that I recollect of. If the water was taken out at the turnpike, and brought to Arndt's house, and left to its natural flow, it might possibly get back into the pond, but I can't speak positively ; but it could easily be put there by running a furrow with the plough. If let off back of the house, it would get there without any difficulty or without any conducting.

And being cross-examined again, saith :

I did not observe any part of this new ditch, except the head of it. It is taken over a loose limestone soil. When water is taken out of its natural course over a loose limestone soil it is very apt to sink.

Sworn, &c., June 15, 1840.

John Skinner testifies—I have been acquainted with the farms of Mr. Arndt and Shields something like twenty-five or six years. We lived on the Shields farm over two years. My father moved on that farm when Imlah Drake left it, and moved here into this house about twenty-six years ago. It was kept as a tavern by Drake, and afterwards by my father. My father farmed the place then, and I worked at home with him. While I lived there the two years and a half there was not any living stream of water that ran down across Arndt's farm upon Shields, nor was there any living water at Mr. Shields' present watering place. There was a watering place by the house, but it was dried up once while we lived there, and we had to get our water from Cook's spring, below the spring on Carter's farm. There was at that time quite a hedge of bushes up along the line, on both sides of it, but the most of it on Shields' side, and the water came out in a number of places along these bushes. A little above Arndt's spring-house there was a couple of ponds, where there was water the principal part of the time there was any water at the house; and this was as high up as there was any living water. These two little ponds were on Mr. Arndt's side; and the water flowed down on Mr. Arndt's side below his milk-house until it crossed the fence on

Mr. Shields' side, about fifty yards above his house. These ponds are below where it now runs upon Shields.

There was no water running into these ponds from above, only in the spring of the year in a wet time or in the winter when the snow was going off. There was no watering place up there where it now is on Mr. Shields' farm when we lived there. There was no regular stream running across the turnpike at that time, excepting after a rain, when we see water in any hollow place. We tilled the field in which the watering place is, except a little small round boggy place joining the line, which we left for mowing, which was dry enough for meadow. We did not plough it, but it might have been ploughed, I suppose. There was not at that time any marks of a watercourse where the water now runs on Shields' side, but where it turned upon Shields was down considerably nearer the house, near the head of the pond. A little way above these ponds it was left for meadow, and above that, up towards the turnpike, it was ploughed—all tillable land. There was no regular channel washed from the turnpike down—not washed so but that they farmed over it. Above, on Carter's farm, I have seen grain of all kinds and corn growing where the water now runs—it was all alike. There was no obstruction from water. I have seen the water running down after a shower. There was no meadow left.

And being cross-examined, saith :

Where I speak of the water running in upon Mr. Shields, is below these little ponds, just at the head of the pond by Shields' house. I am sure the water *run over on Mr. Shields* there when we lived there, if the fence stood on the line. I have not been to that spot lately at the head of the pond. I am now thirty-eight years old.

Question. When you speak of there being no marks of a watercourse on Shields' side of the line, where the water now runs, do you speak positively, or from the best of your recollection?

Answer. I say there is a natural channel for water, if it was turned in there from both sides, but there was no water there only in a wet time; but there is not a natural channel for the water to run off from Mr. Arndt's to Mr. Shields'.

To the best of my knowledge it is so. The two ponds were above the bushy places, and the water seemed to spring out there as high as there was any living water. In the spring of year, when the water was high, it would come down both courses, some from the Woolston watercourse and some from the Petty farm, through Shields, to the line. I don't know whether the fence stood on the line at all, but the *fence stands where it used to*, up by the watering place, and where it was called the line, but by the bushes; I don't know anything about it; I have not seen it lately; there was no bushes of any consequence, but a very few, up by the watering place since my recollection. I have never fished up as high as the watering place—there was no water to fish in there. I can't tell you how long the watering place by the house was dry,

but it was a clever spell. I did not become acquainted with the stream by Woolston's till after we left the Shields farm and moved on to the Henry Carter farm, above Wyer's, twenty-three or four years ago. That stream run on down till into Wyer's meadow, and there it disappeared always, unless in time of snow going off. As far as I knew that stream, I considered it an ancient watercourse, a living stream, but it was very small; the further it got the smaller it got. I can't tell where the head of it is, but have seen it as far up as the canal, on the Woolston farm. I never saw any bridge on the turnpike between Carter's and Arndt's farm, to my recollection.

When I was on Mr. Shields' farm, lately, I saw the water running through on his farm. If I owned Shields' farm, I should consider this watering place a great addition to the value of it. If I owned Arndt's farm, I should not think the crooked ditch any benefit to it; but I can't answer for others.

And being called again in chief, saith:

The reason why I am so positive of there being no marks of a watercourse on Shields' side, was because I was along there frequently, and boys with me whom I could name, and it was bogs and a sod; and there was no gutter washed on either side.

In the time of high water in the spring of the year, when the snow was going off, the stream from Woolston's would come down across Arndt's farm, and would eddy in upon Shields' farm, at his present watering place, unless headed by the water coming down through Petty's farm. I have known it to make a pond belly-deep to a horse on both sides; but as soon as the storm was over it was gone.

And being cross-examined again, saith:

The hollow down which the Woolston stream runs, is higher up the line between Shields and Arndt than the hollow that comes down through the Strader farm.

And being called again in chief, saith:

I do not mean that the water coming down from Woolston's would flow over upon Shields before it met the water coming down from Strader's, but they would meet together and form a pond, from its being so level, and it would run through the fence either way, if a large body of water came.

Sworn, &c., June 15, 1840.

Abraham Woolston testifies—I have seen the farms of Mr. Arndt and Shields frequently, and known them since seventeen hundred and eighty-eight. I knew them a long time before Capt. William Henarie lived on them, and all the farms between, up to my father's, Newbold Woolston's, farm. From my earliest recollection down to within eight or ten years, I never knew any stream running across the Wyer, Reigle, Carter, and Arndt farms upon Shields. I live where my father lived. The stream that comes down by my house run no further than Wyer's sink-hole, a little below his house. I have often been down the hollow to

where McCullough lived, where Joseph Carter now lives, but *not along where the stream now runs*; I went to school there. Carter's house stands across the turnpike from Arndt's, close by. I crossed the hollow on the Carter farm above the turnpike. There was no water nor watercourse there, but good wheat growing there then on Mr. Carter's farm, both sides, and in the place where the water now runs. I never followed down from the turnpike across Arndt's farm, as the brook now runs, but have followed up from Shields' house as far as the water went. At a place near where Mr. Arndt's spring-house now is, was called the upper spring. At times in wet times there was water higher up, near where Mr. Shields' present watering place is now, on Mr. Arndt's side of the fence. That was the end of it; as far as I went that was the end of the water; that was the farthest I see any water—there was none. I have been there when there was no water there. When there was no water there, it sprung up out of the ground. There was none that came across Mr. Arndt's farm—I see none—it was all dry. I was up there two or three times a year for two or three years, when I went to school there. I went along with other boys fishing, catching trout. I caught trout below the spring-house, and we would sometimes drive them up to the spring-house, where the water was a little shallow, and strike them with sticks. There was no trout pond along or near the line above the spring-house; I did not see any. I have never been by the spring-house since it was built, but judge it was built by the spring, or near it—looked so to me. There was no pond above the spring-house while I went to school there.

And being cross-examined, saith:

I don't know when the spring-house was built. I han't frequented the brook, so as to go up and down it, since I went to school there, first in 1788, and last in 1792. Since I went to school I have known nothing about the *line fence* between them; as far as I can judge it *stands now as it did then*. I don't know how long it is since the water began to run over on to Shields' farm. I don't undertake to swear that the water never run over on to Shields before I went to school there. The little stream that runs by my house has always been a clever little stream there. It rose, in a common time, about four hundred yards above the house, a good bit above the canal. Two springs, one on each side of the hill, were the principal heads of it. It never was dry by the house.

There were a good many small springs that run into it down below the house and by the house. There was a bridge across it in the old road by my house; we built a bridge there. There is a branch of it rises on the Scott farm, (now John P. Ribble's) a pretty clever little stream, but not so large as the one by my house. There was another branch, that rose on Peter Weller's farm, that now runs into the canal. There was no branch rose in Beavers' meadow, only a wet weather spring. The branch from Scott's place was a living stream; the one from Weller's did not come

down only in a wet time and when he did not turn it on his meadow. When these streams all united, they then flowed down to this sink-hole by Wyer's. I considered it, so far as Mr. Wyer's, an ancient watercourse. It was sometimes turned off in Beavers' meadow, to water the meadow. That from Scott's was turned on Beavers' meadow, to water the meadow. That from Scott's was turned on Moses Beavers' meadow, and sometimes not a drop came off of his premises. The brook from my house was turned on Robert Beavers' meadow, and sometimes not a drop came off. There was often complaint from those who lived on Wyer's farm for want of water.—Objected to by defendant's counsel.

When my father owned the Henry Carter farm, I took our creatures home to water, because the brook was all dry. That was at seasons when the water was turned on to these meadows. This water was turned off on the meadows yearly for a great many years. I heard of no lawsuits about it. I took the cattle home for many years to water, but not in every successive year. In dry seasons they made use of it, in wet seasons they did not want it. The Henry Carter farm is the first farm above Wyer's; only a road between them. A short time after the road was laid out there was a bridge made over this stream by Wyer's—twenty to thirty years ago. There was no bridge on the old Changewater road where it crossed through the Reigle farm; there was no brook there—none that I ever saw—none that I ever recollect; I was along there frequently. They made a bridge on the turnpike, between Carter and Arndt, when they made the turnpike, or shortly after. I saw it there the first time I went along it.

I would consider this watering place a very great advantage to Shields' farm. I would consider a watering place a great advantage to any farm. I would give something to get it there, if I owned the farm.

I am now between sixty and sixty-five, not quite sixty-five years of age yet.

Question. You and Mr. Arndt are both members of the Methodist society?

Answer. I am not a member of any society but my own; I am friendly to all christian societies.

And being called again in chief, saith:

I can't tell whether it was the same season the turnpike was made or the next, or the season after that, that I first went along the turnpike. There was no water running across. I should say it was necessary to make a bridge, for in making the turnpike they made a gutter each side, and this being the lowest place, the water would stand there and make a pond, unless there was a bridge to carry it off. I can't tell how the water got on to Shields' farm, whether it got there itself or was put there. These little streams I described are as nearly as large again since the canal was made. As far down as Wyer's, where it disappeared in the sink-holes, there were marks of a channel. After the water increased, and since the canal was in operation, Wyer's turned it

out of the sink-hole, and ditches were cut through Reigle's and Carter's; I don't know how long ago. Reigle and Carter ditched their farms, and I believe it was a year before it got down to Mr. Arndt's. I believe it was a year afterwards that Mr. Arndt cut his ditch. I did not see him make the ditch, but I saw the ditch there. This stream that came down to Wyer's I don't think would have ever reached Arndt's and Shields' farms, unless it had been helped along by ditches.—Objected to by complainant's counsel.

If left to itself, it would have sunk in the sink-holes by Wyer's.

If my memory serves right, it was in eighteen hundred and thirty-two that the canal broke above my house, close by the brook. The water in the canal, between the plane at my house and the lock at Port Colden, ran down this hollow by Wyer's. It made pretty much of a flood up there, but it never got down to Mr. Arndt's, as I heard of; if it did, I never heard tell of it.

These persons who turned the water upon their meadows, considered it a great advantage to water their meadows.—Objected to by complainant's counsel.

I think it is an advantage to water meadows in the spring.

And being cross-examined again, saith:

The way I know that Beavers considered it an advantage to water their meadows, they told me so.

It is a little over a quarter of a mile from the plane at my house to the lock at Port Colden. The canal, I think, was filled with water in eighteen hundred and thirty, after harvest. It is not kept filled in the winter.

I have been on the Reigle farm within the last twenty years three or four times. I have crossed part of it where this hollow is; I took no particular notice of it, except where I was going. I can't see as far as some folks; I am near-sighted.

I know that Mr. Wyer ditched round the sink-hole by his saying so; he told me that Mr. Reigle did.

In the spring of the year, when there is no soakage in the canal, these little streams are no larger than usual, but when the water is put in the canal they increase. In the winter they are as small as usual, after they are done soaking from the canal. I have never made any measurement to know how much they have increased by the canal—I judge of it merely by the eye.

And being called again in chief, saith:

I can see well enough to know whether I cross a stream of water or not.

Sworn, &c., June 15, 1840.

Joseph Carter, jun. testifies—I am acquainted with the farms of Shields and Arndt, where they now live, in Mansfield, and have been for twelve or thirteen years; have seen them and been along by them; lived in the neighbourhood. I never worked upon either of the farms, that I recollect of. I have been up along the line between Shields and Arndt upon this low piece of ground. I don't recollect of being up along there but once, to notice any-

thing about the water, and that I think was eighteen hundred and thirty-two, in the spring of the year. We went up there fishing with Joseph L. Bowlby. This was before any water came down across the turnpike, to the best of my knowledge. I had seen none come over, to the best of my knowledge. I know it was before Mr. Arndt had dug his first ditch.

The stream was quite small, and we fished on up to the upper side of the second field on Mr. Arndt's side, and we stopped; we could not get the net in the stream; we had a small scoop-net for trout. We turned and went home—that was the last of our fishing, and the last I was there, that I recollect of.

In following that stream up from the pond by the house, I don't know as the stream crossed over from Mr. Arndt to Mr. Shields' side; we did not climb over any fence, as I recollect of. It was pretty close to the fence in some places, and then again it was off. We stopped in the second field, at the raise of the ground just over the hollow. John A. Wright then lived on Mr. Shields' farm. This was after Mr. Arndt moved there. This water which made the stream appeared to spring up out of the ground along, in different places. There was no part of the water that came across from Mr. Carter's upon Arndt into these springs at that time, that I recollect of. There was a part that came across Mr. Shields', and run on to Mr. Arndt, from a springy sloughy place. I can't tell whether they come upon Mr. Arndt where Shields' present watering place is or not. I can't tell where it is—I have never seen it.

There is a descent of ground, both ways, into a hollow on Shields' farm, where Mr. Shields has since bridged across his lane that runs from his house up through his farm—a good bit above the spring-house there, was where the water came over from Shields upon Arndt. Mr. Shields has dug a ditch through this hollow, that leads the water towards Mr. Arndt's meadow.

The watering place for the Shields farm was then, when Wright lived there, at the pond by the house; I frequently seen him drive his cattle there; I never knew him to water anywhere else.

And being cross-examined, saith :

This fishing expedition with Bowlby was in the day-time, in the morning.

Question. Did you, in this fishing excursion, look more after the fish or after the course of the stream?

Answer. In fishing we had to follow the stream, of course, to find the fish.

Question. Did you observe the course of the stream very particularly?

Answer. I recollect running all the way up on Mr. Arndt's side to fish.

Question. Did you observe that no part of the stream run on to Shields' side, large or small?

Answer. No, sir, I did not; only, as I stated before, at that

springy place by the hollow where the springs came out and where the ditch was dug.

Question. Do you say there was no part of the stream besides what you have named on Shields' side, or that you did not observe any?

Answer. I did not observe any.

Sworn, &c., June 16, 1841.

James Groff testifies—I have been acquainted with these farms of Arndt and Shields twenty-nine years. I think it is twenty-nine years since my father moved on to the Carter and Arndt farm; they were then both under one head. He moved in when Capt. William Henarie moved out, in 1810 or 11. We lived there, in the house where Joseph Carter now lives, five years. We then moved on the Capt. Moses Beavers farm, and lived there one year; and then we lived on Schooly's mountain four years; and then we moved from the mountain to a brick house just above Washington, and two years we lived there; and then moved back into the house where Mr. Arndt now lives, and farmed part of the farm we did before. It was divided while my father lived there the first five years. The turnpike was made during that time, which divided the farm.

I always lived at home and worked with my father on the farm, except one winter I went to school at Hackettstown. I ploughed the ground across the hollow on the Carter farm above the turnpike, and I never saw any water run down there, except after a heavy rain in the spring of the year or when the snow went off. It must be an uncommon heavy rain to make the water run. I was a small boy at that time, but was out with the hands ploughing, and ploughed myself; was eight or ten years old, I suppose. What makes me recollect it, is my trotting horses with the plough across this hollow; it was a smooth level piece of ground. We raised grain and grass along that hollow. I fetched the cows frequently out of these fields, to water them at Mr. Shields' house, and below there. It was not fenced then. We never had any water up in the field then to water creatures, as I recollect. I think they were not so particular in them days about water and land as they are now-a-days.

When this turnpike was first made, they made what the Yankees call a sluice; they made them in low wet ground. They made one where the hollow crosses from the Carter to the Arndt farm. There is a descent each way along the turnpike; and it was made to let the water that collected in the hollow, or after a heavy rain, to let it run through on to Mr. Arndt's farm. I think they set up stone across the road and covered them with large broad stone. I think that is the way they managed it. After the five years we moved away, and what kind of bridge was put there I can't positively say, whether plank or not. The four years we lived on the mountain I might have travelled it possibly every

year, but since that time I have travelled it every year, more or less, up till now.

Before the turnpike was made there was no bridge or sluiceway there; there was no occasion for any as I recollect, I think not. We travelled it in going to the woods to draw wood and in taking our cattle up to the fields. When we moved back again into Mr. Arndt's house, I think there was no bridge there; there was no plank there that I recollect, nor did I ever see any, as I recollect, the eight years we lived there. These stones were hammered down dish-fashion, or hollow, so we could drive over it and let the water pass over it.

I can well recollect what was on the Arndt farm, when we moved there the first time, in the hollow where the water now runs. The first year we moved there it was in beautiful meadow up to the bank and still further up, but how long my father kept it so I can't say. I recollect loading hay there and being on the hay. I can't say how far the meadow ran down towards Shields' line. I do expect it run all the way, but I could not say positively.

During the first five years we lived there, there was no living stream of water running from the turnpike across Arndt's farm. I suppose you mean by a living stream, one that *runs all the time*. I recollect then the stream's first starting out from Shields' house. It was all grown up with bushes; it was springy on both sides; it ran very strong from the bank on Mr. Shields' side, and the water bursted up on Mr. Arndt's side and connected together along up above Mr. Shields' house, along the line on both sides, a little ways up, say about two hundred yards, more or less.

I recollect carrying chain, and we went through the bushes and water on both sides of the line.

The water still continued to come out above these bushes, in ordinary seasons, on Mr. Arndt's side. They would come out up in two little gullies above Shields' upper watering place, one from towards Bowlby's and the other from towards Reigle's—out of hollows—not confined to one spring, but numbers of them rose up. I should think some of them came out a hundred and fifty yards above Shields' upper watering place, and likely two hundred, in a wet season, in both these hollows. I don't think there was as many springs there the last time we lived there, unless in a very heavy rain or in a wet time in the spring of the year. When the water that rose from these springs up the hollow towards Mr. Reigle's run, it never, as I recollect, flowed over on to Mr. Shields until it came near to his house. In times of heavy rains, or in the spring of the year, or when the snow was melting off, the water coming down the hollow from the turnpike there might a part of it strike the line, as it met the water coming down from Strader's, near about Shields' watering place.

As the water subsided, and the stream became small, it would not flow upon Shields. It would run down on Mr. Arndt's side to Mr. Shields' house, and then run into the pond. The channel for the water was on Mr. Arndt's side, and quite a big channel in

some places below the upper watering place. I can't say that there was any channel on Mr. Shields' side from the watering place down, or that I ever saw one. I expect I have been pretty often up the stream, from Shields' house, a fishing. I don't doubt it at all—I know I have. I am certain that the water where I went a fishing did not cross over upon Mr. Shields above the head of the pond till it come down near the house.

When we moved back the second time we lived there eight years. We then ploughed and tilled across this hollow from the turnpike down—not all the way; along the line there was a strip we did not. Raised grain on the spot where the water is now running in the ditch. We planted corn upon it the first year—I recollect it well—and up next to the turnpike we raised wheat and rye; always farmed all over it. Where the water goes through, I never knew any such ditch of water to hinder us from ploughing it.

I have been acquainted with the farms lying along up the hollow to Woolston's. I never followed Woolston's stream down to see where it went to—not as I recollect of. If the water was taken out at the turnpike in this new ditch to Mr. Arndt's house, and discharged at the back corner, if there was any head to it, I think it would discharge itself in the pond by Shields'; and if but a few drops, it would be consumed in the ground. I don't think it could get across the turnpike, unless it was led across, until it got to the brook.

The water in the well at Arndt's house is limestone water. I helped to dig the well, and the bottom is a flat limestone rock, and the water comes in on the upper side, the vein from towards Mr. Arndt's barn. I should suppose it would be a benefit to Mr. Arndt to have soft water brought to his door. Some people are in the practice of watering their meadows—I have never tried it.

And being cross-examined, saith:

I am now about thirty-seven or eight years old, I suppose; I can't tell exactly. My first acquaintance I got with this stream up by Woolston's was when we moved up on Beavers' farm. I have known the stream, and passed along there more or less ever since, more than twenty years. I can't say about that stream, whether I consider it an ancient watercourse or not. I have seen water there frequently as I passed over the bridge there by Mr. Scott's, pretty generally, or always, I believe. I never saw it dry at Newbold Woolston's, as I recollect—I never did.

I don't recollect trotting the horses with the plough over the hollow at Mr. Carter's more than once. I can't say whether it was before or after the turnpike was made; can't tell whether it was the first or last year that we were there, but recollect we done it. I don't know, as I can recollect, whether it was the first or second year after we come there that I fished up the stream, but know we fished there. I am sure I fished up there the first five years we lived there; I can well remember the trout laying in schools in two ponds above Mr. Arndt's milk-house; one was but a little

ways, probably not over from thirty to fifty or sixty yards up, and the other was a little further up, say from twenty to fifty yards, and not so large. These two ponds I last spoke of I judge were from twenty to thirty yards from the line on Mr. Arndt's side. The water still continued further up, not ponds but holes, where the water washed and grass grew in the channel, and in which I have seen fish; the further it went up the smaller it got. These holes were on Mr. Arndt's side, in a strip of meadow that was left that we did not plough. I think I have seen a little grass opposite, or somewheres near where Mr. Shields' watering place now is, that was not ploughed.

Above the watering place a little bushes were growing along the line fence. There stood an old dead oak tree for many years among the bushes near the bend of the fence. There were some large thorn bushes along the line fence below the upper watering place, but I can't say whether they were on Mr. Shields' side or not. There were not any other bushes on Mr. Shields' side below, as I recollect, there might have been, except a little apple tree, until you come near the house or down to the orchard. I think the bushes commenced near the orchard.

In the first five years we lived there I can't tell how often I fished there, but I think very often; it would be impossible for me to tell.

Question. Can you recollect fishing up that stream the first five years five times?

Answer. Yes, ten times. I can't tell the first time I fished there, whether it was in May or June; it was in fishing time, while the fish were up. In the winter season, when the water was up there, the trout was up, but not so many as in the spring.

Question. Can you recollect the first time you fished, whether it was before or after harvest?

Answer. I fished before and after harvest too.

Question repeated.

Answer. I can't tell you the day or the hour.

Question repeated again.

Answer. I fished it the fore part of the season, in May, and after harvest, and as long as there was fish there through the season. I did this the first year I moved there and every year we lived there, when there was water in it, unless it was dried up.

Question. During the first five years you lived there, how often do you recollect going up the line, on Shields' side, as far up as his present watering place?

Answer. I don't recollect of getting over on Mr. Shields' side how often.

Question. Do you recollect going up once all the way on Shields' side of the line, the first five years you lived there?

Answer. I can't say that I recollect following the line all the way up to the next farm. I have frequently been up along the fence on Shields' side, as far as the upper end of the watering place, with Imlah Drake's hands, to bring their horses to water.

I can't say we kept close to the fence, we kept off a little, I can't say how many feet or how many yards. There was a kind of road path through the field, not far from the fence, which started from the bushes or by the houses, but can't tell where we always got over. Along the line, at or near the watering place, there was a low wet place, where they mowed sometimes, and there we took off from the line a little. I have saw it in grass, and I think I saw it mowed. If there come a rain, the water would probably stand there a little after a heavy rain. During the first five years I lived there, I don't know that I examined that low wet place on Mr. Shields' side particularly.

I can't say whether there was or was not the marks of a watercourse on Mr. Shields' side there.

Question. Do you say, that in ordinary times there was no communication between these holes or ponds on Mr. Arndt's side and this low wet place on Mr. Shield's side, or that you don't recollect any?

Answer. No, sir, I don't recollect any.

When we returned the second time to this farm, the stream from the pond to up above Mr. Arndt's milk-house was the same as when we were there before, as near as I can tell.

I can't tell how often I was up to this watering place during this eight years, but was up frequently. I worked on Shields' farm—I changed work with Mr. Wyer, who lived there then.

Question. During this eight years, did you particularly examine this low wet place, at or near where the present watering place is on Shields' side of the line?

Answer. I don't know that I went into the grass, and scratched about, and particularly examined it.

Question. During this eight years, do you say there was no marks of a watercourse in this low wet place?

Answer. I never saw any, no more than the ground was flat, and the water would run over it when it came down from Strader's or the hollow in a high time, when the snow goes off, or after a heavy rain; I mean in the spring of the year, when the winter breaks up, or in the fall of the year, any time when it makes running water and would flow over on to Arndt.

The water that now comes down from Mr. Reigle's runs on to Mr. Shields, crossing the line below where a bunch of bushes and an old tree stood, near the bend of the fence at the head of his upper watering place, and runs upon Shields some feet, I can't exactly say; I should judge likely thirty or forty feet, more or less. I can't tell exactly where this hollow from Strader's come in to this watering place, or butt it or strike it, I should suppose below this thirty or forty feet.

William H. Lane lived with us one year, or the summer season. I don't recollect fishing with him along this stream, but fished frequently. He worked for my father. I suppose he is a good deal younger than I am. He ploughed occasionally and done such work as he could—as my father sat him at. I don't know as

I fished, except on broken days, or wet days, or on Saturday afternoon, or when it suited me.

Question. Did it ever suit you to go a fishing when your father had work for you to do?

Answer. I went oftentimes when we had work to do.

Question. Was not your father a hardworking very industrious man, and kept all his hands busy in the spring and summer seasons?

Answer. He was an industrious man and worked hard.

I have talked to other people about this water question, and people has talked to me. I don't know as I have taken a great deal of pains to talk with different people about it. I don't know as I have taken any particular pains to pry into it.

Question. Have you not informed Mr. Arndt who would be good witnesses for him in this cause?

Answer. Mr. Arndt has asked me who formerly lived there and worked for my father. I think Mr. Arndt first asked me the question, but I am not positive; I can't tell how long ago.

Question. Have you not taken an interest for Mr. Arndt in finding out witnesses, and telling him of them, since the first conversation?

Answer. No more than when Mr. Arndt would ask me if I knew such a man that had ever worked for my father, or had worked on the place for Mr. Carter, or such like; and if I knew I would answer, the man, and so I would Mr. Shields or any other man. I have taken no other interest than this—only if after Mr. Arndt had been talking with me, the name of some person would come into my mind, the next time I would get talking with Mr. Arndt I would tell him of it. I can't say how many persons I have talked to about it. I have talked to Mr. Wyer and Mr. Lake, to Mr. John Wright, and frequently in the store at Port Colden, when we would sit and talk about it, they would talk to me and I would talk to them.

I talked some this morning; you and me were talking about it, and Mr. Morris and I have talked about it. Mr. Reigle and me has severally, probably two or three times, talked about the lawsuit, Mr. Rounsevell. I might have talked to others, but don't recollect every man.

Jacob Skinner and I talked about it; I can't tell who commenced it. I have talked to William M. Creveling about it; I think I first mentioned it to him through Mr. Arndt's request. I have talked to Henry Slater about it; I spoke to him first. There may be others that I first spoke to about it, but I don't recollect them.

I told Johnny Wyer if I was in his place I would turn the water into the sink-hole again, and they would soon settle amicably.

(This was in answer to the question, did you not advise John Wyer to turn the water into the sink-hole again.)

Question. Did you never tell, or say in the presence of any

persons, that there was no marks of a channel, either on Shields' or Arndt's side of the line, below where the water now crosses on to Shields, when you lived on the farm?

Answer. No, sir, not as I recollect.

The well by Arndt's never failed while we lived there; we lived there after it was dug either three or four years. I judge it was from sixty or seventy yards from Arndt's house to the nearest point of water between him and Shields.

This spring-house of Arndt is something more, over a hundred yards, more or less, from the door; I mean the brick spring-house that was there when we lived there.

If I owned Mr. Arndt's farm, I should be very glad to have that water by the corner of my house, and think it of very great value.

If I owned Shields' farm I should consider that watering place a very great accommodation; I should suppose it of great value to him.

I know the Yankees made these sluices to carry off the water from the low places, because they made them above and made one in this hollow, and they made one in another hollow above Mr. Arndt's lime-kiln, where the road descended each way, whether for the water to run through or not I can't tell—I expect for the water to run through. I can't tell what else they made them for. I don't know any other reason why they made these sluices, except from what I have heard them say and what I have already said.

And being called again in chief, saith:

Question. Did the water in ordinary times run from these holes or ponds on Arndt's side to this low wet place on Shields' side?

Answer. No, sir. It did not run into it; it run down along side of it when the water was low, on Mr. Arndt's side, as the water kept drying up above. In some seasons I have known it to be dry clear down to Mr. Shields' house; likewise none at Mr. Arndt's. Before we dug the well we had to go to Cooke's spring. I have been very frequently up through the middle of Shields' farm.

I have been up along the line on Mr. Shields' side occasionally—I can't tell how often. I don't know how the water that now comes down from Reigle's got across on Shields' side. I don't know when Mr. Arndt dug his ditch across his farm. The ground from Mr. Arndt's house towards Shields' pond is descending part of the way. I should say the descent is from five to ten feet, probably more, and probably not so much.

Question. When you told John Wyer you would turn the water into the sink-hole, what did he reply?

Objected to by complainant's counsel.

Answer. He laughed, and said he could easily do it. We stood in the yard when we was talking about this. He had come to my house to get clover-seed. Mr. Wyer then mentioned to me, and wanted me to speak to Mr. Arndt, and he would speak to Mr. Shields, and we would try to get them to settle. He thought it

was best for them to settle. I told him I would, and Mr. Arndt set at that time in my house. I live about a mile and a quarter or a mile and a half from Mr. Arndt. This was all the conversation that I recollect.

And being cross-examined again, saith :

Question. In the spring of the year, how near could you get to the line fence on Shields' side in this low wet place without getting your feet wet?

Answer. I can tell you as I told you before, when we come up to the grass, I don't recollect of going through it.

Question. Could you get through it without getting your feet wet?

Answer. I don't know as I could or could not. It is more than I can tell, whether there was any bogs on it or not. I frequently see high docks growing in the grass along the fence in this low wet spot.

And being again called in chief, saith :

Question. Were there any springs on Mr. Shields' side, opposite to or above this low wet place, where the water would rise up in the spring of the year?

Answer. Never, as I saw, in the time I told you of. The springs on Shields' side were down by the house—none above the orchard.

Question. How did this low place become wet then?

Answer. By the water's coming down through the farms from Strader's and Miller's, and gathered and collected there. Miller's farm lay off westerly and joining Mr. Strader's.

Sworn, &c., June 16, 1840.

Andrew Schooly testifies—I know this farm of Mr. Arndt, and have known it for thirty years, but never on it much only the four years I lived close by, within a half a mile. I never was up along the line between Shields and Arndt only on Arndt's side, when I worked along there for Capt. Henarie. It is something like twenty-nine years since I moved away from that place to Oxford. I mowed the grass up along that slough for one or two years for myself; Henarie gave it me. There was a little water running always the four years I was there, running on Arndt's side, a little kind of stream, and spread about, and so run down into the spring-run below; and the lower it got the bigger it got. There was no gully or channel washed through the grass, that I could see. I mowed up that gully as far as the slough run up—it was wild sour grass grew on it at that time—there was no bog grass. This water soaked out from the head of it about a pine tree along the fence, and sprung up in different places, and got larger as it went down. This pine tree was upon the line between Shields and Arndt, as near as may be; I can't exactly tell, it is so long ago; nor I can't be positive which side of the fence it did stand. I never saw any spring there, only water soaked out. There was no stream running there, it only soaked along. I mowed all over it at that time.

I never saw any water running from where the turnpike now is down across Arndt's farm; it was all ploughed ground. The hollow was ploughed both sides of the turnpike, clear up to Van Natta's, now Reigle's, and I sowed it for Mr. Henarie one year. I never knew any watering place on the Shields place but down at the bridge by the house, and there they always watered their cattle and horses. I never did know of any watering place higher up on Shields' side, where he now claims it, at the time I lived there. I know there was no watering place up there on Mr. Shields' side at that time. The water that sprung up from these springs that I have mentioned all flowed down on Mr. Arndt's side—every bit of it.

There was other water above the pine tree, springing up in the hollow towards where the turnpike now is, but none very far up.

And being cross-examined, saith :

I was never on the farm since the time I moved away, twenty-nine years ago. I don't know where Shields now claims his watering place. There was not any wet place on Shields' side opposite to where I mowed, as I know of. I never was on this place of Shields often at that time. I do not say there was no wet places, but I do not recollect any; and the reason I give is, the fields ran from the line fence towards the road by Mansfield meeting-house, and if there had been any water there Imlah Drake need not to have brought his cattle down to the house to water. I don't recollect whether there was or was not any bushes growing along this line fence; there most generally is along such wet places. The grass along this slough was of but very little value—wild.

I don't recollect how it was in the spring of the year about water coming down these hollows; I knew but little about it. When I was done working and sowing I never went over the farm.

I have seen this stream by Woolston's, but know but little about it. I have seen it, and that is all. I have seen it ever since I was a boy. I am now fifty-seven years old. I don't know how far that stream runs down. I don't know as I ever knew it dry. I consider it an ancient watercourse from Woolston's, as far as Wyer's down. I have known it to go further than Wyer's, but in a dry time it did not go further than there, and then nothing but a mud-hole in harvest time. I don't know how much further than Wyer's it came down. I never was further down along the stream in my life.

I have travelled along the turnpike, after it was built. I never recollect there being a bridge across the turnpike; there might have been one. I have not been along it in fifteen or sixteen years.

Mr. Arndt first spoke to me to be a witness in this cause, and came and subpoenaed me the other day.

And being called again in chief, saith :

The stream of Woolston's never came down across the land of Capt. Henarie, which I sowed, as I see.

Sworn, &c., June 16, 1840.

John Fisher testifies—I have seen the two farms of Arndt and Shields frequently. I knew them upwards of fifty years ago. I am now upwards of sixty. Upwards of fifty years ago I lived with my parents at Changewater, was hired by McCullough, and worked on this land one year, on what is now the Carter and Arndt farm, upwards of fifty years ago. I know that when I worked there there was a stream of water came down on the side of Arndt, formed from the springs springing up all along from the road by Shields' house all the way up in the flat a piece. They did not go up as high as the turnpike now runs. There was no water running at that time from where the turnpike now is down across Arndt's farm to where the springs were. I mean to be understood that this stream running down by the house was formed altogether by the springs up along this hollow and slough, but not as high up as the turnpike. The water from these springs runs upon Arndt's side; if it run upon Shields' side I don't know. I can't recollect of being over on Shields' side. McCullough tilled the hollow above this slough on Arndt's and Carter's farm, and raised grain on it. I can't recollect of any place being left that was not ploughed above the springs. I believe I did not plough any part of this, but I harrowed and hauled grain from this hollow; raised a great deal of wheat.

I was in the habit of crossing this hollow frequently in going to work in the back fields. I never see a stream of water coming down that hollow the year I worked there. I have been across a number of times since, and never saw any stream of water running there till within eight or ten years.

I have frequently seen the little stream by Woolston's in old times. It appears to me to be larger since the canal was made. I don't know where it run to. I don't know that it came down through the Carter and Arndt farm—there was no stream there formerly.

And being cross-examined, saith:

At the time I worked for Col. McCullough I don't know how old I was. What my attention was called to where I worked, I have a distinct recollection of matters and things of that day.—What my attention was not called to, I do not pretend to recollect so particularly. Some things then occurred that I can recollect as well as things that occurred latterly.

My attention was called particularly to this wet sloughy place sometimes. I was very fond of fishing, and I fished in it along, and others fished there; there was a good many fish in it. As to its being wet and miry along this low place, I don't recollect; it was a brook, and pretty full of bushes. These bushes extended up pretty much to the head of the stream where these springs came out. I recollect there was holes where the trout would be in more than others—deep places. I don't recollect how many of these holes there were above the main pond by the house. I can't tell that there was as many as four or five of these holes. I have no recollection that in the spring of the year, in time of high wa-

ter, the water came down this hollow from Reigle's and run into this stream, any more than it did along the road or any other place.

Ever since I knew this stream by Newbold Woolston's, I considered it an ancient watercourse.

When I was farming these fields for Col. McCullough through this hollow, I don't recollect any marks of water. It is not two weeks since I have been on these premises to view them. I was taken on by Mr. Arndt to view them. I saw a material difference betwixt now and when I worked there.

I don't recollect of there being a bridge across the turnpike.

I can't tell how many times I have been along the turnpike across this hollow—something like ten or a dozen times.

In these ten or a dozen times I crossed this hollow, my attention was not called particularly to it, whether there was water there or not.

I have not much recollection of this old forge road that crosses this hollow where Van Natta lived; I have seen it, I think. I don't recollect whether there was a bridge or not.

I have lived the last fifty years within six to twelve miles of these premises.

Question. Who first spoke to you about this water controversy?

Answer. James Groff.

I don't recollect that I have had conversations with other persons besides Mr. Arndt about it.

In those days water was plentier in the country than now.

Question. Are you and Mr. Arndt members of the same society?

Answer. I have been a member of the Episcopal Methodist Society for something like thirty years, and I hope to live and die a member of that church.

Witness was reminded that he had not answered the question, by Mr. Sherrerd. Witness replied, I wish you to ascertain to me whether he is a member of the Methodist Episcopal Church. I expect he is, but don't know.

I have heard Mr. Arndt say he was a member of the Methodist Church.

I can't tell how often I have seen this Woolston stream since the canal has been made. I have seen it five times since the canal has been made. I have seen it pretty much all seasons of the year.

Question. Since the canal has been made, and the times you have seen it, did you observe that it was generally increased at all seasons of the year?

Answer. I did not take particular notice.

I don't know how far it runs down now; I never was to the end of it. If that is the same that comes across the turnpike betwixt Carter's and Arndt's, I don't know.

I can't tell how much, upwards of sixty I am now; my age is not down. I don't recollect of understanding from either of my

parents, my birth-day. I was born in Pennsylvania. I never understood, from either of them, how old I was, as I can recollect; nor from any other one who pretended to know, for a certainty.

My idea is, that my age is somewhere about sixty-six or seven years.

Mr. Arndt says he moved from Pennsylvania to this part of the country. I don't know.

And being called again in chief, saith :

Mr. Arndt came to my house, and wished me to go and view the premises, and I wanted to see it. He came to see me, and talk to me about it, and I told him I would like to see how it looked now. He said I should see it, and I went afterwards. I live somewhere about six miles from Mr. Arndt.

Question. What did Mr. Groff tell you about this controversy, when he spoke to you about it?

Objected to by complainant's counsel.

Answer. There was but a few words; he merely told me that there was a controversy. I never knew it before. I don't recollect any particular conversation. This conversation was somewhere about two or three weeks ago. He did not come to my house, but met him at Washington accidentally.

I was not acquainted with Mr. Arndt in Pennsylvania, before he moved over here. I have been intimate with him, and seen him frequently as other neighbours. I have not been more intimate with him than other neighbours.

And being cross-examined again, saith :

I have not been more intimate with him than neighbours of other denominations at the same distance, or nearly so.

I have been as intimate with some Presbyterians. I can't name them.

Question. In the conversation which the defendant has inquired about, did not James Groff tell you that he knew all about the controversy, or words to that effect?

Answer. He did not tell me he knew all about it. He told me he knew how it was when he lived there. He likewise asked me whether I had any knowledge of it being as I lived there when I was young. I can't recollect any more; the conversation was short. I can't just recollect the words I told him; the substance was, I told him I had no knowledge of water coming down from above while I lived there. He said he never knew any. I don't recollect that he said anything about the water's sinking away in the sink-hole; I did not tell him anything about it. He said there had been some talk about Mr. Arndt's wanting me as a witness. I don't recollect any more; the conversation was short.

I had a particular errand to Asbury; I carried wool down there to get manufactured, and on my return I stopped at Mr. Arndt's—and Mr. Arndt and I walked up and viewed the premises, and returned to his house. Mr. Shields was not along. I did not know him. I don't know that he had any notice.

I would not have went on purpose to view the premises, but it came into my mind just as I was starting that I would stop.

Sworn, &c., June 17, 1840.

William Hazlett testifies—I have been acquainted with these farms of Arndt and Shields something like forty years, as I can recollect. I have lived in the neighbourhood, two years where Robert Strader now lives, adjoining Shields' farm, and so about. When Capt. Henarie lived there I worked for him, something like thirty-five years ago, when I farmed the widow Petty's place. I don't know how much I worked for him, but, as occasion required, I would slip out and help him when I could make it convenient. I worked for him in harvest. We harvested for him on that place below the turnpike, west of it, just above the slough, and so on back this way. It was rye we harvested, I believe. The grain was growing above the orchard, where the stream now crosses the turnpike. The farm was all in one at that time, and Capt. Henarie lived in the stone house where Carter now lives. I don't think the grain extended over the turnpike. I saw no stream of water running there at that time. I did not harvest more than one year for him. I never mowed any for him. I helped Mr. Henarie get out his dung from the barn.

I saw no stream of water running down by Shields' house, except the water from this wet slough, grown up with bushes on Mr. Arndt's side, along the fence. Mr. Henarie made no use of this slough at that time to till it. There was wild grass that grew up along this slough. The slough is narrower up towards the turnpike than it is down; likely it is cleared out now more than it was in those days. The water that came down by the house, I never saw any but what come from this slough; it did not come across the turnpike. There were no particular springs, only damp and wet places about the slough. The water from these damp wet places did not form a stream down to the house, that I recollect; it spread—just by Shields' house it spread out quite large, and run out quite free.

I have worked on both farms, and I never see any water running across from Mr. Arndt on to Mr. Shields, and so back again. The watering place for Shields' farm, thirty-five years ago, was down at the bridge betwixt Mr. Arndt's and Mr. Shields' house.

There was not any other watering place higher up on Shields' side, that I know of; I never saw any. Mr. Vankirk and Creveling, who lived in Shields' house, used to fetch their cattle there. I used to haul water for the widow Petty, who lived where Robt. Strader now lives, from there, and I have then frequently seen them watering their creatures.

I never knew any stream of water running down across the turnpike at Arndt's until after the canal was made, six or seven years ago, may-be longer, as it does now.

I am in my fifty-ninth year now.

And being cross-examined, saith :

During the time I helped Capt. Henarie I was carrying on the Petty farm myself, and helped him when I could spare time. When I was helping him I took more notice of my work than I did of other things about the farm. I *don't recollect about Mr. Shields' side*, whether the bushes were on his side or not along the slough. My attention was not called particularly to that at that time. I never mowed the wet place on Shields' side of the fence.

I don't recollect seeing any water on Shields' side. I was there often enough. I was along on Shields' side of the fence a number of times. I was along the fence, and got over it backwards and forwards. I was above the slough far enough, and harvested there; yet I don't justly recollect whether there was bushes on Shields' side along it or not, at present.

Question. Well, sir, do you recollect any wet place on Shields' side or not?

Answer. No, sir, I never saw any wet place on Shields' side only in time of rain; what I mean, there was no springs springing up.

Question. How many times do you recollect crossing that fence, backwards and forwards, while you farmed the Petty farm?

Answer. Oh, I don't know, sir, I have crossed it a number of times.

Question. Do you recollect crossing in that time five times?

Answer. Well, I don't justly recollect.

Question. Do you recollect crossing it three times during that time?

Answer. Well, I don't, sir. I don't know how often, nor the distance apart.

Question. For what purpose did you cross it, when you lived on the Petty farm?

Answer. Well, I don't know in particular. I was at work both sides of the fence, one at one time, and another at another.

Question. For what purpose did you go up and down this fence on Shields' side, close to it, while you worked the Petty farm?

Answer. Well, I don't justly recollect; I might have been at work there.

Question. How close on Arndt's side of this fence by the slough did you work while living on the Petty farm?

Answer. I worked right along the fence.

Question. What did you work at there?

Answer. At harvesting, I recollect well, ploughing, that was long since harvesting.

Question. Are both the barns of Mr. Shields and Arndt down by the houses?

Answer. Yes, sir, at that time as they are now.

Question. When you see Vankirk and others watering their cattle by the house, was it at all seasons of the year?

Answer. No, sir, only in the summer time. In the winter we drew our water from Hampton, and not from Shields'?

Question. Who spoke to you first about this controversy?

Answer. Well, sir, it was talked about, and I heard it, and I was here at this place, and I were a going home, and it was somewheres this side of the brook where it crosses the turnpike where I should have met Mr. Arndt.

I don't know who first spoke to me about it. Alexander Bowlby was talking to me about it this morning, and I said I did not see who informed Mr. Arndt that I knew anything about it, and he said he was the person.

Question. Who are the different persons that you did hear talking about it besides those you have mentioned?

Answer. I can't tell you who, only two or three persons, Mr. Reigle and my two sons, John and William, but what was said I can't tell you.

Question. Are you a member of the same society as Mr. Arndt?

Answer. That is my business, not yours.

Question. Did you never know the stream that runs upon Weyer's farm?

Answer. No, sir, not in them days, nor the one by Woolston's.

And being called again in chief, saith:

I took notice enough to see whether there was a stream of water running in that hollow or not, when I worked for Henarie. There was none fit to drink—none only such as would stand after a rain, or like that; I rather believe there was no running stream there to my knowledge at the present; I have frequently been there.

There was not any wet place on Shields' side of the fence, along the line opposite to the slough on Arndt's side—never that I saw.

Down by Mr. Shields' milk-house, that was all the water that ever I saw on that side of the line that was durable water. I don't know anything about Shields' present watering place. I crossed the line fence from Arndt's side about half way up the slough several times, somewhere along forgin Arndt's milk-house, and may-be above. I can't tell you how many yards above Shields' house I crossed it; it is a great while ago; I never set it down or expected to be called as a witness.

Sworn, &c., June 17, 1840.

*William P. Robeson, esq., testifies—*I have been acquainted with the Spruce run turnpike about twenty-two years. From 1819 to 1825 I travelled it frequently, not so much since, along by Arndt's and Carter's; I consider myself the owner of it, of what lies in this county, and have since eighteen hundred and twenty-two. I worked it twice, once before I considered myself the owner and once since.

From the time I first knew the turnpike, till within eight or ten years, I have no knowledge of a stream of water running across the turnpike down on Arndt's farm. In a low place there in the

hollow there was a place made to conduct the water on to Arndt's farm, if I remember right, formed when the turnpike was made. North of the hollow along the turnpike there is considerable distance of descending ground, and, if I remember right, there was a covered sluice-way originally there.

(My impressions are, that it was made to conduct the water that came down along the east side of the turnpike.)

Objected to by complainant's counsel.

There was no other water there to be conducted, as I remember. There would likely water come off the adjoining fields in time of rain. I don't remember any running stream. It is some five or six years since I first saw the water running there—since the canal was made. I recollect being struck at seeing so much water there. I don't recollect being along it for four or five years previous to that time.

I have seen grain growing upon the hollow on both sides of the turnpike.

And being cross-examined, saith :

I cleared out that sluice-way, for the purpose of conducting the water across, once myself; but from my own knowledge I do not know what the original intention of making it was. My impression is, that the original one was covered with stone, and afterwards that I saw it covered with plank, and since that I have drove over it when it was down.

I have known the stream by Woolston's more than twenty years. My impression is, that I never saw it dry, but I have seen it very weak. I should consider that an ancient watercourse by Woolston's.

When I worked the turnpike I was with the hands all the time, directed them and worked a little. Across this hollow along Arndt's farm we usually only threw out the stone and dressed up the sides a little, which took but a short time.

Question. Do you mean to be understood to say that the water never run down this hollow, or that you have no recollection of it if it did, previous to the canal being made?

Answer. During the time I was acquainted with it, I am confident there was no constant running stream there previous to the time I mentioned of seeing the water running there.

Question. Are you confident there was no occasional stream of water running there during that time?

Answer. During a rain or thawing of snow I have seen water running there. I don't remember any other times, except after a rain.

And being called again in chief, saith :

The stream by Woolston's runs across the Washington turnpike, and takes a southerly course.

Affirmed, &c., June 17, 1840.

William M. Creveling testifies—I have no knowledge of my father's living on the place where Shields now lives, but he owned

it. 'Twas said I was born there, but my father moved away when I was quite young, to my grandfather's. After my father's death, my mother moved back there with the family of us, in the year eighteen hundred and seventeen, I think. I was then something like between thirteen and fourteen years old. I lived on it four years with my mother. I assisted on the farm the two last years, the two first it was rented out. I worked some along with the men that farmed the place the two first years; they lived in the same house with us.

I am pretty well acquainted with the line between Shields and Arndt from Shields' house up. The watering place for that farm at that time was down by the house. There was no watering place anywhere else up along the line on Shields' side. The watering place by the house was formed by a number of springs breaking out just above the house. All the springs principally were on Mr. Shields' side. There were one or two little ones in the spring of the year up in Mr. Arndt's field, that would run in the spring of the year, may-be to the first of June, owing to the wetness of the season. I can't recollect how many springs were on Mr. Shields' side, but they were in the orchard field, as it was then, the upper one not over sixty or seventy yards from the house. I have not seen where he has made his present watering place further up along the line. I don't think there was any stream of water that flowed across Mr. Arndt's on to Mr. Shields above these springs on Shields' side. In the spring of the year, when there was a flood of water, it used to come down through that hollow into the brook, and so down, and it would follow over on to Mr. Shields' side, as it is now. The same when the snow broke up. In such time there was a great deal of water came down; I have known it to run over the bridge by the house. Part of it came down the hollow from the turnpike, and some would come down the hollow from Mr. Strader's. That was the only way the water had to pass from these hollows off to the Musconetcong. There was not, to my knowledge, any stream of water coming down either of these hollows in ordinary times. I think there was not any stream of water running a little way on Mr. Shields' side of the line above these springs, and passing off on to Mr. Arndt. The ground in the hollow above these springs towards the turnpike was tilled. I have known grain to be there, in the upper end of the hollow towards the turnpike. The grain was all over it, I believe; there was none left for a watercourse. I think I have seen two crops of grain growing there, a crop of corn and a crop of wheat or rye. I have been up the hollow over Mr. Carter's farm while I lived there. I see no water running there in ordinary times. I have been up on Mr. Reigle's farm, next above, along the hollow, I saw no stream there that came upon Carter. It used to be a kind of Sunday resort for a parcel of us boys to go up that hollow as far as Mr. Beavers' for pears. In going up as far as Mr. Beavers' we used to meet a stream of water. I have known it to come down as far as Mr. Reigle's; it

would be there along in the fore part of the season. When Mr. Yeomans lived there I have known him to draw water from this brook by Shields' house, along in the summer season and towards fall. Wyer's farm is next above Reigle's; there was a stream there, which some parts of the year would pass a sink-hole, and some parts it would swallow it all. At ordinary times at Wyer's it was a nice little stream. It is the same stream that flows down from Woolston's. I think it contains more water since the canal has been made; I should calculate it was a third higher.

Question. Did that stream from Woolston's flow down in ordinary seasons across Arndt's farm upon Shields'?

Answer. Never to my knowledge.

I have tilled the field lying back of the orchard from Shields'. There was a hollow a little way above the orchard that used to overflow in time of a flood, along the line, that we did not plough all up. Grass was growing in this hollow, principally timothy and red-top. There was no gully nor gutter, nor watercourse through it.

The water from these two little springs I mentioned on Mr. Arndt's side of the line, did not flow on to Shields until they came down to the head of the brook by the house.

And being cross-examined, saith:

The stream from Woolston's ran down on to Mr. Reigle's farm a little past the buildings, which are a little nearer the lower than the upper side of the farm. I think it kind of wasted away in the ground there. I don't recollect any sink-hole. From the end of the place where it wasted away it had to cross Mr. Carter's place, and nearly two narrow fields of Mr. Reigle's before it reached the turnpike. From the turnpike to where it wasted away, I should think was something about five hundred yards. From that place to Newbold Woolston's I should think it would be full two miles, to follow the course of the stream up. I don't know whether there was any fish or not in this stream; I never fished in it.

I don't recollect seeing any marks of a watercourse through Mr. Carter's farm only after a freshet. I consider the stream by Woolston's an ancient watercourse as far as it run. I can recollect a bridge being across it in the road by Wyer's farm for several years back. I don't know that as I ever crossed it at that place any other way than by a bridge. I recollect there being a bridge across the turnpike, between Arndt and Carter. I am not certain but what there was a furrow ploughed from the turnpike, to convey the water from the road into Mr. Arndt's field in former times. I don't recollect how far this furrow ran across Mr. Arndt—it was no great distance though. I never went along this furrow in particular to see how far it did go.

Question. Did you ever observe that wet place on Shields' side particularly, to see whether there was the marks of a watercourse or not?

Answer. I believe I have mowed over it.

Question. Which hollow comes in furthest up the line, the one from Reigle's or the one from Strader's?

Answer. The hollow from Strader's, I think, forms a neck a little further up the line than where the hollow from Reigle's comes in.

Question. Is the wet place you speak of on Shields' side of the line above or below the upper end of this hollow from Strader's?

Answer. I should think where it formerly was, was pretty near the centre of the hollow.

Question. How long and how wide was this wet place when you recollect it?

Answer. The length of it, up and down the line, was not more than fifteen yards, and fifteen yards wide.

Question. When the water came down the hollow from Strader's did it flow over on to Arndt above or below this fifteen yards?

Answer. It must have passed through this fifteen yards—it was the lowest place for a channel.

Question. Who spoke to you first about this controversy about the water?

Answer. Mr. Shields.

Question. Who else?

Answer. James Groff, I think, was the next one, Mr. Imlah Drake was the next, and then Mr. Arndt.

Question. Who were the tenants that lived on this farm when you lived there?

Answer. William Nixon the first year, Jacob Crater and Adam Rhinehart the second, and lived in the house with us.

Question. Do you not recollect James Groff's speaking to you about this controversy, at a vendue in this place, before Shields said anything to you about it?

Answer. I think not; between the two, I don't know which is first, but it is my impression that Mr. Shields spoke to me first.

Question. At the time Shields and Strader purchased this farm, had you not some claims upon it, which were afterwards compromised between you and them?

Answer. There was.

Question. Had you not some hard feelings towards them at that time?

Answer. I was not satisfied with them at that time. What created the hard feelings was, they claimed a crop of grain which I thought justly mine, and which they took from me. They compromised with me, and paid me part value for the crop, and that removed all the hard feelings on my part. I have not been aggrieved by them since.

Question. Did you not take advice, or consent that they should take advice of an attorney, and find that they could hold the crop?

Answer. I did not take the advice of any attorney myself. Mr. Strader produced Mr. Williamson's opinion in writing.

Question. Did you not agree to be governed by Mr. Williamson's, or some other attorney's opinion in writing?

Answer. I did, sir.

And being called again in chief, saith :

I expect that bridge across the turnpike between Arndt's and Carter's was intended for the water to flow under in time of freshets. In ordinary rains the water would go through. In times of flood it would not all run through it. I think the plank once was carried down by the bridge by Shields' house. It was necessary to have a bridge or sluice to let the water off from the upper side of the road, as there was no hollow there.

This spot of timothy and red-top where I mowed was something like two hundred yards above Mr. Shields' house.

I believe there was some few bogs in it, along under the fence like, on both sides.

It runs in my mind that Mr. Shields was the first person that spoke to me about this controversy. He was asking me if I knew anything of a watercourse running through there, passing through Mr. Arndt's hollow and under the fence on to him. I told him I thought that it did not pass through there upon him. He then asked me if I did not recollect these bogs along the fence. I told him I did. And he asked me if the water did not run in under there, and then come out on to Mr. Arndt again. I told him I was not certain, but I thought not; I thought it bore down pretty close to the fence in one place, but that it did not go through. Mr. Shields allowed that it had the appearance to him as though it had went through. He seemed to think that may-be I might have forgotten about it, and wished I could see it, and if I came down that way I might take a look at it. We were talking about some other witnesses. I don't know that he inquired of me about any other witnesses.

Question. Do you still entertain any unkind feelings towards Mr. Shields on account of that crop?

Answer. I don't, sir.

And being cross-examined again, saith :

I don't know what the present fix in the hollow across the turnpike is.

A place sunk down below the level of the turnpike, and filled up with stone to the level of the hollow, would have carried off the water collected there as well as a bridge.

I have known the whole of the springs by Shields' house to dry up; three times I have known it dry above the bridge by Shields' house—I mean three different seasons. We carted water from Mr. Carter's spring below the turnpike and below Mr. Carter's barn, seventy-five to a hundred yards from Mr. Shields' house. I have known that spring once to be dry. We got water then at a spring down in the woods, on a property that belongs to Joseph Johnston now, full a hundred yards further. In these dry seasons, I think, these springs by the house were dry four months one season, another season not quite so long, and the other season Wyers lived there I don't know how long.

Sworn, &c., June 17, 1840.

Imlah Drake testifies—I have lived upon the farm now occupied by Mr. Shields four years, nine months, and some few days. It is thirty years ago this April past that I moved on to that farm—I think in 1810. Capt. Wm. Henarie lived on the Arndt and Carter farm when I came there. We watered altogether, while I lived there, at the brook by the house. There was nothing of a watering place above the orchard, on my side, up along the line between that place and Arndt's. There was no regular stream that came through from Mr. Arndt's side on to Mr. Shields' side or the side I had, and then flowed back. What I mean by a regular stream, there was no water flowing there in a common time, only in time of a freshet. In time of a freshet, and when there was a good deal of water, we had plenty of water on that side. It strikes me that was the only channel for the water to run from the west and from the north-west. There was no water flowing down the hollow across the Carter and Arndt farm, unless there was a great glut of water, a heavy rain or a freshet, or melting of snow. In such times there would water flow down from the west too—I thought equally as much. These waters coming from the east and west would meet along this line fence betwixt Mr. Shields and Mr. Arndt, it is now. The hollow on Mr. Arndt's the water would strike the line rather the highest up than the hollow from Strader's, that is, in a straight line across the farms. It then formed an angle, or most a right angle, and flowed directly down through the slough and flat to the watering place—not a perfect angle, but a circle, on Mr. Arndt's side. I don't know which hollow contained the most water from the range of the neighbourhood; I should suppose they were pretty nearly equal. The space being narrower on Mr. Shields' side than what it was on Mr. Arndt's, made the current appear to be more strong; that drove over into the flat that it always lodged the stubble and drift stuff against the fence on Mr. Shields' side; that the stream that run on Mr. Arndt's side was in a straight line, as it were, to its base; that the water that went through the fence from Mr. Shields' side had to form its angle as it went through the fence, to get into the line of the body of water.

Question. On whose side of the line did the great body of water flow down after it came together?

Answer. It flowed the greatest body down on Mr. Arndt's side, till it come to the orchard, and then the water spread more on Mr. Shields than it did above.

The water that came down from the west passed over this low place on Mr. Shields' side, there was no other place for it to go. On the west side of Shields' farm the hollow was very narrow, and widened from where it entered until it emptied off the farm.

It was directly against the fence where the present watering place is that this drift stuff would lodge against the fence, and lie there. The water was so strong on the west side of Shields' farm, where it entered across the line, that it washed the fence down. I never knew it to wash the fence down on the line betwixt Mr.

Shields and Mr. Arndt while I lived there. I never used this low place where the present watering place now is on my side only for grass, while I lived there. The upper part of it, and where the water would not stand at all, and round the edges up and down the swail, there was white clover and red clover, and spear-grass, in the centre was timothy and herd. When you got about half way down across it, it was timothy, some herd, red-top, some few bogs near the fence, and in a wet season the lower part somewhat sour.

There was no marks of a gully, as a stream gully, that the grass and roots were washed bare to the ground, only where we crossed through the farm with the wagon to haul our grain and hay and wood. This is pretty near the centre of the farm, which is very narrow. It aint near the line fence.

There was no marks of a natural watercourse through this low wet place near the line only in time of a freshet, and then left no brook marks but only dirt and drift; and that dirt and drift come from the west side, and left it over this flat space next to the line on Shields' side. It has sludged the grass so that we could scarcely mow it. This low place on Shields' side to the upper part from the house is about two hundred paces.

While I lived there, there was no stream flowing in ordinary times from the Joseph Carter farm across the Arndt farm towards Shields', except in heavy rains, or melting of snow, or breaking up of winter. There were water on the west side of Mr. Arndt's farm broke out or ris that appeared there, it broke on the east side of the swail more than on the west on Mr. Arndt's farm, passed down by the line fence, run close in under the pannels amongst the bogs, intermingled with waters that either ris or was settled there. At one place on Mr. Arndt's side, close by the fence and the upper north corner of Samuel Shields' north corner of his swail, there was formerly a hole with stones in and around it. The boys stood on the line fence and fished in it, because on the east side of the hole it was sloughy and miry and not so pleasant to fish there. The water flowing from these springs on Arndt's side did not flow across the line fence, not that we made any use of it to water—for watering.

There never, to my knowledge, sprung up any water as high up as the turnpike. The highest that I can recollect, I think, is about sixty paces from the line fence in a straight line to the upper part of Shields' swail above the watering place. I think from this low spot, the present watering place, to where the highest spring broke out there would be from sixty to seventy yards. Above these springs to the turnpike up the hollow, they ploughed and sowed grain all over it and planted corn. The water flowing from these springs down under these pannels did not flow across on Shields' side, except in a very wet time. I know there was a pine tree there—it aint there now—not along the line. I should judge, to take the highest place across from the line, betwixt thirty and

forty paces. There was none standing in the line, or nearer to it, that I recollect.

The turnpike was made while I lived there. There was a sluice made across the turnpike in the hollow where the water now runs. There was not any regular water running there at that time—not any constant stream. Whenever there was great gluts of rain there would run a stream across, snow a going off or very heavy showers. I am acquainted with the hollow that runs up the Carter and Reigle and Wyer farms, more acquainted with the Carter and Reigle than the Wyer farm all the way up. They raised grain on the Carter farm all the way through this hollow to the line fence. I never seen any channel for water or gutter through the Carter farm. I have cut harvest on the same ground, from the turnpike ('tis now) clear across to the line, and the grain very heavy; and upon the very spot where this water runs is where I cradled on that ground. I have seen the stream flowing from Woolston's down across the Washington turnpike frequently, from the year 1808 to the year 1817, and from the year 1834 to the year 1840. This stream, with its tributaries, flowed down the hollow—had nowhere else to go. It used to come down through to Johnny Laird's lot, now Henry Carter's farm, above Wyer's farm. When there was a surplus of water it entered on to the farm of Wyers. At that time there was quite a pond stood in the flats by the house on Wyer's farm. I expect it sunk or evaporated, or something in part. Some part of the seasons there would be water down through on the low ground in a swamp there, on the east side of Reigle's buildings now. That swamp now cleared up, done by John Van Natta. In through that swamp there appeared to be watercourses, from a foot, I think, to two and a half, washed and gullied, because I was there when John cleared it up; he was my neighbour. Some places so deep and so bad that the old fellow could not cross it with his wagon. He ploughed it and dragged it, and pretty much filled up those gullies for meadow ground. Water did pass down at certain times in the season below the house in the line of this hollow spoken of. There the old fellow had a place for his cattle to drink, hogs to wallow—not a general watering place for his horses. It was so filthy and muddy, with the geese dung and every thing else, his horses would not drink it. Water would pass through or by in certain seasons down the swail to the line fence betwixt Reigle and Carter. It there sank or disappeared. From the east line of Carter's farm down along the hollow to Shields' line must be in the neighbourhood of eight hundred paces, or nearly half a mile. I have never saw the stream from Woolston's down by Wyer's run across the Spruce run turnpike, not in common, until after the canal was made and they cut their ditches. I know there has been ditches cut across Joseph Carter's farm as long as five years ago, to my knowledge. I have been on Reigle's farm and saw that there was a ditch cut there. I can't say that it goes clear across Reigle's farm, because I did not examine it through—neither did I on Wyer's. There is a ditch cut across

Arndt's. I am not able to tell whether the water is increased or not in this stream above since the canal was made. I can't tell whether it was from the making of the canal, the digging of these ditches, the change of seasons, or that the streams flowed stronger, that causes the water now to come down across the turnpike. I can't tell if the ditches had been dug before the canal was made, whether the water would have come down or not.

There are abundance of small streams running down at the head of the valley west and north-west of Shields' farm. Some of them run a good piece where they have been ditched and led. They all appear to evaporate, sink away, and disappear; they none of them reach Mr. Shields' farm above the surface unless they mingle with heavy rains.

I believe there was as much of a natural watercourse west of this line, on Shields' side, up towards Strader's and Miller's, as there was at the turnpike and across Joseph Carter's farm formerly. I can't tell whether the water might be brought from these streams, by ditching, to Shields' or not. It might be tried, but whether it would sink or not I can't tell. It could be brought by pipes or an aqueduct from either of these places, for they all have got height enough to send it, and I believe there is plenty of water too.

A sluice was made across the turnpike betwixt Carter and Arndt to carry off the water from Joseph Carter's farm from both sides of the swail and the east side of the turnpike, so that they might have a dry road.

This pond where the boys fished from the fence was on Arndt's side. When it was full to the surface, it was not more than ten feet across in the centre of the hole. It was dry ground on Shields' side of the pond, we could stand up by the fence. The pond was immediately over the fence on Arndt's side, and could stand up by the fence on dry ground and look immediately over in the hole; I have stood there a hundred times. I think there was brier bushes and seven barks there close along the fence on both sides. I think further over on Arndt's side, in the slough, there was some large bogs and some bunches of red willows, and all the way down to the watering place there was bunches of red willows and bushes stood about in bunches—miry and boggy, and produced sour bog grass, which I recollect well Andrew Schooley mowing a part of it—did not mow the whole of it, because he could not do it. These bunches of red willow and bushes and bogs were, all the way down to the watering place by the house, on Arndt's side through the slough. On Mr. Shields' side, at the upper spring at the corner of the orchard down the line fence on Shields' side, there were bushes, seven barks, briers, all the way down to the milk-house, or within a few feet of it. The water that flowed from these springs from Shields' side passed through the fence and under the fence, and mingled with the water which flowed down on Arndt's side together to the place of watering.

From Shields' house to the upper spring at the corner of the

orchard, I should suppose is in the neighbourhood of seventy paces.

And being cross-examined, saith :

During the time I lived there I kept a public house, as well as farm, as quick as I could get license. I had hands to assist me in farming all the time I was there.

Aaron Myers was with me three or four years. Frederick Medagh was with me four years and upwards. These men worked on the farm, and I worked with them; their business was not to tend the tavern. Frederick might at nights, when I was not there, and occasionally as circumstances required. My wife and the girls used to tend when I was not there in the daytime. John Hazard worked there two summers; he was a boy then. Isaac Hildebrandt worked for me while I lived there, I guess something like six months, a part of the summer season and through the fall. I had two others before; they got drunk, and I made them disappear, I had not them long. I had other hands by the day, harvesting hay, threshing, husking, and such like—no other steady hand I believe. Medagh was hired by the year; Myers was there best part of the time Medagh was there; he was a chunk of a boy and fetched the cows and such like notions—did all he could. I think he was big enough that he harrowed some, and I don't know that he ploughed any; he might have done some little in crossing.

It strikes me that Creveling said there was something like a hundred and seventeen or twenty acres in the farm. There was no woodland on it; it was all tillable but about three and a half acres, which was broken ground at that time, since cleared up by Shields. Medagh was the hand that I depended upon when I was not there; he had the managing of the work, and a good hand he was; he paid attention to nobody's business but his own.

The part I cleared out when I was there and fixed up was in the north corner of the second field. It was rocky, it was grown up with sprouts, bushes, briars, thorns. It is on the east line of the farm, not far from the middle of the place up and down, farther above the upper pond where the boys fished than it was from that to the road. I cleared out the stones, and made a stone fence cross-wise of the field.

Water used to come along here, and run along both sides of the fence in the third field when there was a great glut of water. This water came off of Thomas Bowlby's farm, off of part of the farm Jim Groff now owns, and passed off of Groff's on to the farm that Mr. Arndt now owns, the upper part of his farm, and part off of Capt. Sam Bowlby, and runs on to the line betwixt Shields' and Arndt. I have seen it run along the upper field so that you could not get near the line fence in places. If they have not altered the line fences, it would run when it come down to the lower end of the first field. When I lived there the principal part would run on to Shields, and from thence would run down the line, sometimes a little nigher and sometimes not so nigh, and

sometimes under the fences along, and when it connected with the waters which flowed from the east it was on Arndt's side of the line above the upper fish-pond before spoken of.

Upon Thomas Bowlby's farm there were springs that I never knew to be dry—one by the meeting-house.—There is one breaks out west of that, on the west side of the road that leads from Washington to Hampton. I have known that at the road for to run all the season, and I have known it to be dry part of the season.

There is below the meeting-house a long line of low wet sloughy ground towards Arndt's farm, extending from near the turnpike nearly across Bowlby's farm in that place, but not below. There was always a wet sloughy place that weeped out of the bank along the bank of Samuel Bowlby's, first field next to Thomas Bowlby. This was not connected with the first slough, but went over part of Thomas Bowlby's farm below the slough, and part on to the farms of Arndt and Shields. When there was an overflush of water, heavy rains and breaking up of winter, the water would stand in the upper end of Shields' field. I have known my corn to be there under water when it was small. It was there connected with the water from the slough up towards the meeting-house, and also from Groff's and Mowder's woods (now).

Over this stream that came down from Woolston's there has been a bridge in the road through Wyer's to Changewater five years, to the best of my knowledge.

I have passed it when it wanted two or three bridges, because there was so much water there. When I first knew it there was no open road there. I did not live in the neighbourhood when they opened it. Whenever I have travelled it there has been a temporary bridge. I can't tell how long since it was opened. I might have passed it when there was no bridge. I don't say there was a pole bridge. I took notice of a very fine stream of water running there within five years. I recollect well the road that used to cross this hollow by John Van Natta's, it run from the ridge road that leads from Mansfield meeting-house, that went up north and intersected the old Morris stage line road, and run from that road down through the farms then owned by William McCullough, and intersected the road that leads from New Hampton to Hackettstown. This road crossed the hollow on the line betwixt Reigle's and Wyer's farm. I worked that road, as an overseer, for two years. I don't remember any bridge; if there was, it was only a temporary sluice with planks, but no abutments. I don't recollect that there was any. There was not any frame.

I moved away from this county in eighteen hundred and seventeen, to Hunterdon; and there may have been one afterwards. This road was pretty much travelled by the teams going from Oxford furnace to Changewater while the furnace and forge were in blast.

I think Robert C. Thomson got the pigs that he used from Ox-

ford furnace along this road. I know that his teams carted, and I carted some pigs for him myself.

I can't tell whether I considered the stream from Newbold Woolston's to where it sunk away in Reigle's farm an ancient watercourse or not—not all the way. I could not, for it might have varied through the woods and sloughs. The reason that I judge, that, from travelling through swamps and woods and bogs, a man may consider that he has come to a natural watercourse: passing on further he may find another stream, which one or the other may be a branch, and hard to tell which is the ancient stream—can't tell which is the master stream, and yet they may flow together and become one. There is the Woolston stream, and the two Beavers' streams, and the Scott stream, all must flow down and connect themselves before or while passing through Henry Carter's farm.—It used to be a swamp up there too, and the water came in by different links. I considered that Woolston's was an ancient stream, because I never saw it dry. I might have said a regular stream; it appeared to run weaker at some times than others—Scott's stream in the same way—Beavers', I think, not so strong as either. I don't know anything about a stream that used to run down from Peter Weller's into this stream before the canal was made.

(What I consider an ancient watercourse is, where the water flows freely and runs from farm to farm, and continues to run for the use and benefit of them who use it, without being taken or led. By continuing to run, I mean that it never dries up—that is this, a man travelling may discover a course for water, and where water has been, but if he sees none, he is at a loss to judge whether it is a regular watercourse or not, but travelling, and always finding water in that course, he is ready to judge that it is a natural watercourse.)

I have known the Pohatcong for thirty years, and more too. It is a mill stream, and mills built on it. Have crossed it at almost all seasons of the year. I consider that an ancient watercourse, for I never saw it dry.

I have known the Shabbycong, the little stream that runs through by Washington, as long as the other, I mean the Pohatcong. I have known the Shabbycong very low, and in a manner dry. I believe that to be an ancient watercourse, for there is no way for the water to escape any other way; and when there is water, it must go there. The length of this stream, from its head at Gibson's to where it empties into the Pohatcong, is from two and half to three miles. The Pohatcong, from this place to where it empties into the Delaware, I should say, was from seventeen to twenty miles. I know it from here up as far as Joseph Carr's, as much as five miles, where it is a clever little stream at ordinary seasons.

I passed over the bridge on the old road by Shields' house, when (it strikes me) Wyer or Wright lived there—Shields did not. I was astonished to see there was no water there, because when I

lived there there was an abundance. It was an ancient water-course while I lived there.

Taking the hollow from Shields' watering place, as the water would run or flow down it, when it did run, up to Miller's house, I think, would be full a mile and a half; to Strader's not quite so far. When there is surplus water that runs down the Strader hollow, it collects from the top of the Pohatcong mountain, above Miller's and Strader's, a half a mile back, over a space more than a mile wide, up and down the mountain. Then there is a portion collects from Samuel Bowlby's house, westerly, across part of his farm, across Strader's, Miller's two farms, Joseph Weller's farm, part of William Carhart's farm, a full mile in width. As it gathers and descends we take in William Shields' old farm and the farm he bought of Samuel Shields, a great proportion of Robert Strader's farm. The distance across from Robert Strader's to the corner of the Creveling old farm, on Shields' line, is a mile wide, and continues to narrow. Almost the whole water passes through this line from the old Petty farm on to the farm of Samuel Shields, as heretofore described.

The east hollow, commencing at Joseph Carter's orchard on the east side above the turnpike, and running a line to Mr. Arnt's old orchard near the lime-kiln, is three-quarters of a mile, I should say—and then take it from the head of the forge lane across to the ridge above James Groff's, I should say it would be betwixt a mile and a half and a mile and three-quarters. This line is nearly a mile above the first line. From the ridge back of Moses Beavers' old house across to the ridge on the old Scott and Woolston farms, is pretty nearly a mile. This station is a mile and three-quarter's to two miles above the second station. From that last line the water weeps out, I should say, about a half a mile further north and north-east. I don't know how far above the canal this Woolston stream runs. I don't know whether there is or is not fish in this stream.

At that early day, in swamps, large bodies of woods, there would be water, apparently, at most all seasons. By clearing out the swamps, cutting off the wood, and cultivating the ground, it would become to be apparently a pretty dry soil; still I don't believe there is any less water on the earth than there used to be—not any more.

I consider the upper watering place of Samuel Shields handier for him than if there was none there. His property is worth more than if it was not there, especially if he had none at the house—at any rate it is worth more.

I can't tell which is the greatest descent, the hollow across the Arndt farm or across the Shields farm the same distance.

All the time I lived there there was water all the season up the slough above Mr. Arndt's spring-house. There was another fish-pond below the one first spoken of, as wide across, but not so deep; where there were no bogs of grass growing up in it that I could discover; it was not so near the fence as the upper one

was, and rising thirty paces lower down, and below Shields' watering place, where it is now, but above where the water runs on to Mr. Arndt again;—and I always see water in that—never saw it dry while I lived there. It was a spewy boggy wet place, and miry about this pond. Don't know that anybody caught fish out of the lower pond; I never caught fish out of either of these ponds. From this upper pond-hole to where the water now crosses over from Arndt on to Shields might be from eight to twelve paces; but I can't speak with any confidence as to the distance.

Mr. Arndt and I are members of the same society; we both attend one church; but in this controversy I don't know him from any other man. As a church member, I would do nothing for him which I would not do for neighbour Shields. I have known Mr. Shields from a child, and respect him. I have been acquainted with Mr. Arndt for about eight years. I have taken no essential interest in this cause at all, (any more than Mr. Arndt came to me, asked me what he should do about this matter. It was going on before I knew anything about it. I advised him to settle it, if possible. I advised Mr. Shields, as my old neighbour and friend, to settle it. I plead with them both, and with Mr. Shields repeatedly, that there was water enough for them both, plenty and to spare. I wished them to settle it, and live friendly and neighbourly as they had before. I found I could not get them together, so as to have the thing all quashed. I told them both that they must go their own heads; I thought they would both be sorry when they come to pay all expenses, and could not be good neighbours.)

Conversations objected to by complainant's counsel, and cautioned witness that he wanted no conversation.

I have talked to people who have been witnesses, and likely will be witnesses, on this. I have never went to hunt up witnesses personally for Mr. Arndt.

And being called again in chief, saith:

The body of water which flowed from the upper part of the slough through Arndt's farm, and the spring that flowed out on the east side of the slough, came together and formed a channel, and flowed down towards the watering place by the house. I think it did not run within thirty feet of the line; there it was the deepest and run the most water, but there was water through the bogs clear to the fence and under the edge of the fence, on Mr. Arndt's side, around this lower hole, and below the upper one too. This water appeared to spread all over the slough, but the great body run in the channel. There was water along under the fence on Arndt's side, but I can't say it was running water, as it was out in this ditch. I don't mean a dug ditch, but a natural watercourse; it had made a channel where it had the least obstruction from bogs. I lived out of this county eighteen years. When I passed the bridge at Wyer's, when it wanted two or three bridges, was this spring, in time of a great rain. I always called it an ancient watercourse from the head of the slough in Arndt's meadow along

down to the Musconetcong, because I never saw it dry while I lived there.

Sworn, &c., June 18, 1841.

Joseph L. Bowlby testifies—I am acquainted with the farms on which Mr. Shields and John Arndt live, and have been ever since I can remember and could travel about; I should say between thirty and forty years. I have been along the line between the farms often, and used to when I was a boy go along there with my brother a hunting. It was pretty much of a swamp then at that time on Mr. Shields' side, above the pond-hole, and we used to go and catch rabbits. We used generally to go upon Mr. Shields' side. We went up on that side to keep out of the mud and wet—would pick the driest part of the ground. I don't recollect then of seeing any stream of water on that side. I saw a stream of water over on the other side—I mean Arndt's. The last time I was along there was when John Wright lived on Shields' place. I went up with Joseph Carter fishing. We come up to the upper end of the brook, sometimes on one side and sometimes on the other; there we found a pond on Mr. Arndt's side, and we caught a number of fish; I don't remember how many it was. The last place we fished, and on Wright's side, we found a boggy place, as big or bigger than this room, and we climbed the fence to keep out of the mud. This hole was the upper end of the brook; I can't tell how far it was from the line fence. The hole was as big as half of this floor, and it appears to me we had a rail or stake to walk out on from the line fence to the pond-hole, to keep from going too much in the mud. I don't recollect being along the brook since. It strikes me this was the last year Wright lived there. The water from this hole did not run down on both sides of the line; it run on Mr. Arndt's side. I don't recollect being above the road by the house a fishing but that once. I have been there a hunting often and often; could not begin to tell how often.

This boggy swampy place on Wright's side was opposite the hole where we caught the fish; but the swamp where we caught rabbits was higher up.

There was not, (that I can remember) when I was a boy, any stream of water crossing Arndt's farm from above and flowing on towards Shields'. I am acquainted with a stream that came down from the east some part of the way. This stream came down from Mr. Newbold Woolston's to a field in Mr. Wyer's farm, and there sunk in a hole in the meadow. I was well acquainted with it. That always sunk there ever since I knew it till since the canal was made. It is thirty years or more since I used to follow the hollow up from where grandad Van Natta then lived (now Reigle's) to old Newbold Woolston's. I worked for him. I never recollect that stream running further than the hole but once, in the spring of the year, and then it flowed on down through the hollow, from the melting of snow; but I can't tell where it went to.

I can't recollect how near the stream from the pond-hole run to the line fence ; some places it was nearer and some further off.

I don't know of their watering their cattle at any other place on Shields' farm but in the road by the house, where there was a large watering place. They tilled the field on Shields' side adjoining the line, above the house.

And being cross-examined, saith :

This stream that came down from Woolston's was a clever little stream ever since I knew it. I never caught any fish in it. I don't know whether there was any in it or not. I never have seen any in it of any size. I have seen little fish in it. It appears to me to be a natural hollow from Woolston's down to Arndt's and Shields'. I don't know of any place where this stream comes out after it sinks ; there is higher ground on both sides of it from Wyer's where it sinks to Shields' and Arndt's farms. I don't know of any stream above that formed the brook by Shields and Arndt in former times. I consider this stream by Woolston's to Wyer's an ancient watercourse. I consider the stream from this pond-hole I spoke of down to the Musconetcong an ancient watercourse. There is a hollow from Wyer's sink-hole all the way down to the pond-hole at the head of the brook. I don't recollect seeing any marks of water in that hollow. There used to be quite a thicket of bushes through Van Natta's farm. I travelled through the bushes and outside of them both. I did not see any marks of water through Van Natta's farm at all. I have often and often crossed that hollow on Van Natta's farm, and saw no marks of water there—not as a running stream. I think I saw a pond-hole there, near Reigle's lane, sometimes water in it and sometimes none. I don't recollect a bridge across this hollow on the old Changewater road, when Van Natta lived there ; but I recollect one when Husselton lived there, and when Kitchen lived there before Husselton.

I don't recollect there being a bridge across this hollow on the turnpike by Mr. Arndt's farm. I recollect its being dry at the road by Shields' and Arndt's house, I think twice, and as far down as Mr. Carter's milk-house. There is a spring at this milk-house that never failed, as I know of. When I and my brother went a hunting along the line, my attention was not called particularly to the water, my object was to keep on the dry ground.

Sworn, &c., September 28, 1840.

George Martenis testifies—It is thirty years ago this summer season, I believe, since I have been acquainted with this hollow that comes down from Wyer's towards Arndt's and Shields'. I worked one summer season on Arndt's and Carter's farm for Mr. Henarie ; it was all one farm at that day. I have frequently been along this hollow, besides the summer season I worked there, before the canal was made. I used to come to meeting to Mansfield along the road. There was no running stream flowing across from Wyer's towards Mr. Arndt's the summer season I worked there. There was none across Mr. Carter's farm, and I have never seen

any since till they got a ditch there, I expect, or something else. I never was much acquainted up the hollow, except where the road by Wyer's crossed and the turnpike now is, and Carter's farm. I have been along the road several times since I worked there, different years. There was no bridge there on the road between Mr. Carter's and Arndt's before the turnpike was made. There is a sort of a bridge on the turnpike there now. I don't know when it was built.

There was water all the time down by Shields' house ; I never knew it dry ; sometimes there was a pretty good stream there.

There was no mark or channel for water across the Carter farm then, as I remember.

Sworn, &c., September, 1840.

Anthony W. Rhinehart testifies—I am acquainted with the farms now owned by Shields and Arndt. It is something like twenty-three years since I have been first acquainted with them. I have been up along the line between the farms. Seventeen years ago I worked on the farm where Mr. Arndt now lives betwixt seven and eight months. I never saw any water flow on to Shields' farm. Below, at the lower end of Mr. Arndt's meadow near Mr. Shields', there was water running there at that time, but none above. It sprung up in Mr. Arndt's meadow and from Mr. Shields'.

There never was, to my knowledge, any stream coming down from Carter's across Arndt's till after Arndt moved there. The summer I worked there I mowed all the way up along the line to a cross-fence of Mr. Arndt, which is not there now, and I never saw any water flow from Mr. Arndt across upon Shields. At that time Mr. Wyer lived on the Shields farm, and they watered at the house; I never saw them water anywhere else. There was not at that time a watering place up along the line where Shields has one now. I can't tell exactly whether it was ploughed on Shields' side up along there or not. I have been along the line once since I worked there (two or three years afterwards) with Henry Groff. As near as I can recollect, some few steps from the line fence on Mr. Arndt's side was the lowest ground. From this place I have mentioned, a few steps from the fence, the ground rose both ways.

Question. Was the ground on Shields' side higher or lower than on Arndt's side?

Answer. It was higher, I believe.

After the canal was made, and the water brought across Carter's farm to Arndt's, and there left to take its natural course, I don't believe it would flow from Mr. Arndt upon Shields, from the nature of the ground.

And being cross-examined, saith :

This cross-fence spoken of was above Mr. Shields' upper watering place, I should suppose, one hundred to a hundred and fifty yards. There was, I believe, another cross-fence below this wa-

tering place. From above Mr. Shields' house, where the springs began to break out, the low ground I spoke of began to rise on both sides, and the hollow extended to the second cross-fence. I mean to say that all the way from where the springs broke out up to the second cross-fence the ground is lowest on Mr. Arndt's side. I saw that ground to-day. I don't think it is to-day the highest on Shields' side, where and since the ditch has been cut through. It has got lower since the ditch has been cut through. It is higher below the ditch on Arndt's side where the water runs on to Shields, on account of the ditch being dug and the dirt thrown up. I know, from my own knowledge, that a ditch has been dug there, for I saw one there. I never saw a ditch dug there, but I saw one there. I can't tell exactly how wide this bank is in the lowest place in Mr. Arndt's meadow; below the ditch it is wider in some places than others. I can't answer your question exactly, or tell how wide it is in the widest place, as I never paced it or measured in any other way. It may be between five and ten paces, and may be more. This ditch may be a foot deep, or something like that, and two or three feet wide. I don't know that I stepped across it. I can't tell you exactly how much higher this high ground is below the ditch; that at the surface of the ditch, to stand and look at it, it is higher ground. There is a raise of ground from the turnpike, below the ditch, till it comes within a few steps of Mr. Shields' line, where there was a hollow for the water to pass through in its natural course. That raise of ground was there when I lived and worked there. I see no other alterations, except where the ditch is cut through on to Mr. Shields. The reason that I can account for the water's running on to Mr. Shields is, there has been a ditch cut there; there was no ditch there then. This raise of ground may run to within five or ten paces of Shields' line. I never measured the comparative height of the ground on Mr. Shields' side, and on Mr. Arndt's side nothing more than by the eye.

Question. At the time you mowed there, was not the ground along the line near the present watering place wet and boggy?

Answer. No, there was not much; there was a spring broke out right opposite the watering place, which we cleaned out and drank out of it. There was some bushes and briars along the line fence then. I can't tell you how many times I was along there after I mowed there. I can't tell you whether I was exactly on that very spot to take notice of it since, except with Mr. Groff and to-day. I was thirty-seven years old last March.

Sworn, &c., September 28, 1840.

Daniel Colcher testifies—I have been acquainted with these premises thirty-odd years. I lived five or six years on a lot that belonged to the tract. It is twenty-eight or nine years since I left that lot. I have not been much on these farms since, till last fall I came across it, and was down there just before the last time you were taking testimony. It has altered very much since I lived

there; the slough has filled up very much on Mr. Shields' side, up along the upper watering place. It appeared so to me.

At the time I lived on the McCullough lot I was up along the line between Arndt and Shields different times. There was not, to my knowledge, at that time any watering place on Shields' side. The watering place for that farm was down by the bridge below the house, open to the road. Some of the water that supplied the watering place by the house broke out in a piece of meadow ground of Mr. Arndt. There was a small stream worked down, how large I can't say, on Mr. Arndt's side, something like fifteen or twenty paces from the line fence. I can't say. Back of Mr. Shields' house there was some bushes and a bank where different springs broke out, twenty or thirty yards from the house. The head of the springs on Mr. Arndt's side that supplied this stream, was twenty or thirty yards above the present watering place. The head of this little stream was on Mr. Arndt's side. I think the water, at that day, from the head of this stream could not, if left to its natural course, run over on Mr. Shields.

There was no living stream running from Carter's across Mr. Arndt's farm, during the time I lived there. I have known it to run across in time of a heavy rain, but it did not last any time. There is a slough all the way down that hollow from Reigle's. The water, if left to itself, of such a stream as now is in ordinary times, I do not think would reach Mr. Shields. The ground appeared to me to be the lowest on Mr. Arndt's side. I think the water would fall into the head of this hollow before it reached the line fence, and so pass down on Mr. Arndt's side. It is ditched from Mr. Wyer's and Reigle's, and so on down across all the way; three or four years ago, I am not certain, it may be more.

I have known for some years the stream that came down from Newbold Woolston's. I believe what little came down sunk pretty much on Wyer's; there was a pond on Reigle's. There was not, to my knowledge, any living stream that came across the turnpike on to Arndt's farm till after the canal was made, and it was ditched along. The water, where it now runs, has worn a pretty deep channel on Shields' side; but can't say when the water began to run there: it did not run there when I lived there. They mowed a strip along the line fence, where the watering place now is, of an acre or an acre and a half, when I lived there. There was a slough, that came down from towards Strader's, that grew wider as it got to the line fence. I have known a pond of water to stand there, on both sides of the line fence, for several days, but it would not last. They mowed a kind of mixed grass off of this spot—timothy and other grass.

And being cross-examined, saith:

I have known this stream from Newbold Woolston's this many years—twenty or thirty—as long as I have known any of the other streams. I never knew it to be dry. It is generally a clever little stream, but the water did not run very strong down. I consider it an ancient watercourse from Woolston's down to Mr.

Arndt's; there is no other course for it to go, unless it goes up hill. From the springs above the bridge by Shields' and Arndt's house, down to the Musconetcong, I consider it an ancient watercourse. I think I recollect this stream dry twice; all the springs above the road was dry; we had to get water at Creveling's spring, three or four hundred yards below Mr. Shields' house. From Reigle's farm down to Arndt's meadow, there is considerable descent. I have noticed along the line fence between Carter and Reigle, in this slough, that it was washed some by the water; there was considerable fall there. In the road where the turnpike now is there was a mud-hole in the line of this slough—the hogs had a wallowing place there. There was no water in Mr. Arndt's field below; I have ploughed corn there for Mr. Henarie in harvest time. I have never known the Pohatcong dry up here. I have known it very low here at the pond. I followed the blacksmithing while I lived down there, and ever since. I can't say for certain whether I have ever known the Shabbycong dry or not. I think I have seen it dry, but won't say for certain. I consider the Shabbycong an ancient watercourse, and the Delaware too.

And being called again in chief, saith:

I have seen very good wheat growing in Mr. Arndt's field below the turnpike, where I ploughed corn for Mr. Henarie. I think it was the next year.

I have seen very big rye grow in this hollow, on Carter's side; there was no water there then. I recollect pasturing my cow one season in the same field where this big rye grew; we had to take her out at noon, and water her at the watering place down by the bridge by the house. That field was tilled every year with one thing or another; it took its turn with clover and grain.

And being cross-examined again, saith:

This time I pastured my cow in this field I imagine it was before harvest. I think I had three cows. As far as I can recollect, we had to water them the whole season; I am pretty certain we did.

Sworn, &c., September 28, 1840.

Peter Wyer testifies—I have lived several years upon the farm where Shields now lives; about ten years, I believe. It is eight years last spring since I moved away; my brother moved away a little before. While I lived there we had no watering place up along the line where Mr. Shields now claims it. The watering place was down by the house by the bridge. While I lived there, when it was wet weather and the ground full of water, there was some water sprung up on Arndt's side, above the present watering place, and came down; but which side of the fence it run generally I can't tell. There was a watercourse under the fence, but whether it run down in common I can't tell. I can't tell how far above the watering place it sprung up. I think there were several there in a wet time, but one was as far as fifty yards or more.

There was no stream run across Arndt's farm, coming from

Carter's, while I lived there, except in very high water. I tilled the ground along the line fence, the wet slough two or three times while I lived there, but generally so wet we could not till it. The wetness was caused by soakage, I should suppose. There was a slough came down from Strader's, and I think the soakage from this slough caused this wet place. When it was not very wet, there was no water sprung up on Mr. Arndt's side above this watering place, and that is the reason I don't recollect so much about it. The pond at the house was then supplied by springs below.

The water from the hollow from towards Mansfield meeting-house, in wet times, would come pretty much in the same channel as the water from the springs that sprung up on Arndt's side above Shields' watering place.

I can't tell you exactly, when it did run at the watering place, which side it took. There was a kind of a course or gutter washed under the fence, a rod or two on Shields' side, and also a little course on Arndt's side; it was a pretty level lowish place; I can't tell which course the water took when it come. This gutter on Shields was just a little gutter; I can't tell exactly how deep, about five or six inches.

The course of the water on Arndt's side was a few paces from the line fence—four or five paces; it did not keep one distance.

When I moved away from there, I moved where I live now, on the farm east of Reigle's. I was not acquainted with the stream from Woolston's till I moved on this place. When that stream reached our place, the most of it soaked away; there was a low place down by the line betwixt me and Reigle, where it soaked away. I never examined to see whether any went over on Reigle or not. I can't call it a sink-hole—it was a low place; it formed a pond and stood. I turned it out of the course it run in this low place by ditching, in the year eighteen hundred and thirty-two or three, in thirty-two, I think. We led it, on a little higher ground, to Reigle's fence. It run down along the fence into the old course for awhile, until Mr. Reigle ditched. I think it was a year or so after. I never observed, in ordinary times, any water running across the turnpike before this ditch was dug. About the time the canal was finished, I moved where I now live. While I lived on Shields' farm, the hollow on Mr. Arndt's and on Carter's farm was tilled. This hollow on Arndt's farm, above these springs up to the turnpike, was tilled all over where the water now runs; but I never examined the part in particular where they spring up.—The hollow in Carter's field was tilled all over where the water now runs.

When we did not till the wet spot on Shields' side up by the watering place, we mowed it and pastured it. It was natural grass—we never sowed it; some of it was tame grass, some timothy, the lower part wild rough grass, coarse water grass.

The ditch I dug to turn the water out of the hole has broke several times. It would then run down into its old course into this

hole; sometimes for a little while it would all run out, where it would be lost.

And being cross-examined, saith:

When I speak of this land being tilled in Carter's hollow, I can't tell whether there was a furrow left for the water to run down or not. I can't tell whether there was one left on Mr. Arndt's farm or not.

When I first turned the water out of this ditch on to Mr. Reigle, I can't tell how far it run down on his farm. The occasion of my ditch's breaking was, in the spring of the year the water was uncommonly high, and it would run over the bank and cause it to break.

In Arndt's meadow, below these springs opposite to Shields' watering place, the ground was a little lower there than nearer the fence. There was no gutter washed; that was all the course I saw there. I can't remember at any time of seeing water run across the turnpike. I don't remember any bridge across the turnpike.

The gutter that I spoke of running a rod or two on Shields' side, run just close to the fence, part of the way under it; then through the fence, on Mr. Arndt's side.

Once, while I lived there, all the springs above the road were dry, and by the watering place, and once pretty nearly dry. I have seen the manner in which Shields' farm is now watered. I consider it valuable to it. It has been some considerable expense to have it arranged as it now is. I consider it a valuable farm. I should consider it worth some more, with this watering place to it.

I have seen a little of this crooked ditch on Mr. Arndt's farm. I was not along it enough to judge whether it would be an injury to it or not. If all the water at the turnpike was taken into this crooked ditch, and discharged at the road below the house, and all the springs by the house dried up, Mr. Shields would have a dry farm.

And being called again in chief, saith:

If the water was discharged from this crooked ditch back of Mr. Arndt's house, it would flow into the old watering place by the house.

The low place in Mr. Arndt's meadow opposite Mr. Shields' watering place, which I mentioned as a few paces from the line, as it runs up towards the turnpike, gets further from the line fence. I can't tell whether the water now running at the turnpike, if left to take its natural course, would run down this low place on Arndt's side or in the gutter on to Shields, for it is so nearly level at the upper end of the watering place, that I can't tell which is the lowest. The place I spoke of before, as being a little lower on Mr. Arndt's side four or five paces from the fence, is a little lower than the upper end of the watering place. The water coming from these springs, when they do run, would mingle with the water coming from the turnpike, where it now runs, a little above

the watering place. I mean to be understood, if the water at the turnpike was left to take its own course, it would mingle with the water from these springs a little above or at the watering place.

Question. Did it ever enter into your mind to make a watering place up along the line, where it now is, while you lived there?

Objected to by J. M. Sherrerd, solicitor of complainant.

Answer. Not that I remember.

Question. If there had been water flowing there, would you not have made it a watering place?

Answer. I would have used it when we turned in that field, of course.

I don't know that there was ever water there in ordinary times sufficient to water cattle. I have never taken any actual measurement of the ground on Mr. Arndt's and Mr. Shields' side.

Sworn, &c., September 28, 1840.

William Hulsizer testifies—I am acquainted with the stream of water that comes down from Woolston's, along the valley, to Wyer's. I have known this stream for thirty-five years, not so well as I have for twenty-one years; I have lived that time in sight of the hollow down which it run. Before the canal was made, it run into a certain sink-hole in Mr. Wyer's meadow. The stream sometimes got considerably larger, and sometimes not so much so, since the canal was made; it was all owing to the canal, that raises and falls it. It was all lost in the sink-hole, I believe, unless in time of a great rain or breaking up of winter, or something of that description. I can't recollect exactly when it was turned out of the sink-hole. Seven or eight years, seven I should say, since it was turned out by ditching. Mr. Wyers turned it out in the first place. Mr. Reigle he ditched also after Mr. Wyer did, the next year after Wyer ditched. It run on to Mr. Carter, and he ditched also—I don't recollect if it was the same season or not—and that brought it down to the turnpike. Mr. Arndt conveyed it on, but I don't remember whether he ditched or opened it with the plough. This valley down across Reigle's, Carter's, and Arndt's, was tilled before the canal was made; I helped to harvest grain where the water now runs on the Carter farm and Reigle farm too. I have seen grain growing on the Arndt farm where the water now runs. I helped Joseph Carter harvest one season, and one season Charles Carter, on the Reigle farm. I should say that, for perhaps two or three years after the canal was made, the water was lost in this sink-hole till it was ditched. I should say there is about the same water now as when the canal was first made, at ordinary times.

And being cross-examined, saith:

For the last twenty-one years I have lived within three-quarters or a half a mile of this stream. I usually see this stream at Mr. Carter's on the road to the forge, and I have frequently seen it now on the turnpike, in the ditches on the Carter and Arndt farm. I have never followed up and down the stream. The sink-hole

I speak of on Wyer's farm, I should say might be six hundred yards, I think not so far, from the road. I think it hardly half way through the farm, rather nearer the road than Reigle's line; I have never taken particular notice of that thing. I have been at that sink-hole, but I could not answer you how often, but I have been at it several times. The water all run away at the sink-hole; I have seen it run down through the rocks I have seen it sink there since Wyer lived there; I can't say more than once. I have been along the hollow below the sink-hole to the turnpike; I could not say how often, perhaps a hundred times would not be too often. I don't know that I ever saw any natural marks of the water down that hollow; it was farmed. I think I have seen furrows through the fields where they would sow, to drain the fields when it was wet weather. I think along Mr. Reigle's they generally drew furrows in that hollow, when they sowed it with winter grain, but I think not any across Mr. Carter's farm. I don't mean to say they did not, but I think they did not. I don't think there was any across Mr. Arndt's. I think Richard Riddle had wheat sown there, harrowed over smooth and fine.

Question. From your acquaintance with the ground on the line between Shields and Arndt, if the water, as it now runs, is left to take its natural course from the turnpike through Mr. Arndt's farm, would it run upon Shields, or stop short of his line?

Answer. Yes, sir. I think it would run upon Shields, the way the ground is at the present day.

I could not say that I consider this stream down from Woolston's an ancient watercourse, from the water's sinking in Wyer's sink-hole, and not appearing on the top of the ground. From Woolston's down to the sink-hole I consider it an ancient watercourse, but from the sink-hole to the turnpike I do not. If the water did not sink, there is no other course for it to run but down the hollow to Shields'.

I have seen the crooked ditch dug on Mr. Arndt's farm. I am acquainted, also, with the springs down by the house that supplies Shields and Arndt with water. If I was the owner of Mr. Arndt's farm, that ditch might be a great benefit in a dry season, and other times I might better be without it.

I have seen how Shields' farm is arranged, in reference to the watering place, up along Mr. Arndt's line. I consider it a very good advantage to have the water to come there.

I have known the whole of the springs by the house dry once or twice—once entirely dry while I lived there. It kept so all winter; we had to go down to Crevelings' spring below the road for water—three hundred yards below the house.

I have been by the canal, where I have seen it leaking into this stream by Woolston's—above Mr. Woolston's, in a deep hollow near Mr. Woolston's house. I have observed it different times—can't tell how often.

I was down this spring twice, to see this upper watering place

of Shields. I was there at the request of Mr. Shields and Arndt both, and the ground shown to me by both.

And being called again in chief, saith :

After the water came across the turnpike, and before Mr. Arndt cut his ditch, I did not notice where the water did actually run, whether upon Shields or Arndt. I never was on that piece of ground till this spring, although I lived within three or four hundred yards of it. My opinion that the water would flow upon Shields, if left to its natural course, is from the eye, and not from actual measurement.

If I lived where Mr. Arndt lives, I would consider it a great benefit to have good soft water by the door; that water that is there is very hard water—heard the women complain often about washing. If the water was left to discharge back of Mr. Arndt's house, it could go down into the pond. It would go there, unless led across the road. Part of that pond is on to Mr. Shields, the way Mr. Shields showed me the corners.

At the time I was at the watering place last spring, there were two little springs above the watering place boiled up on Mr. Arndt's side; they formed two little streams, which I think flowed into a certain little ditch Mr. Arndt had this side of the fence. That water I don't think went on to Mr. Shields at all. It was in a sod when I saw it, but it appeared to me that it had been ploughed and harrowed down for the purpose of drying the land, and then a furrow drawn from where the water boiled up. These two springs I speak of might have been fifteen or twenty yards above the head of the watering place, and about as far from the fence. The spot about the springs was lower ground on Mr. Arndt's side than on Mr. Shields' side. The water appeared to lay dead and heavy in the sod, but drained a little towards the ditch on Mr. Arndt's side of the fence. This spot of ground about the springs is lower than the water now running in the ditch from the turnpike. These springs were below the ditch where the water now runs. If the water was not ditched round, I think it would fall in coming from the turnpike into this low place.

And being cross-examined again, saith :

If there was no ditch on Arndt's side along the fence, the water from these springs would flow on to Mr. Shields, I think, as the ground now is. The ground appears to be washed a great deal away along and under the fence by rush of water, and on Mr. Shields' side it appears to be washed or trampled by creatures. There is a hole round. Where Mr. Arndt dug his ditch along the fence, there was one part a little higher ground, a knoll like, where the water sprung up (it was a wet time) and run into this ditch. If there had been no ditch there, it must have went over on to Mr. Shields, the way the ground is at present. At the head of this watering place, on Mr. Arndt's side, the ground is pretty nearly level. It is a pretty hard matter, I believe, to tell which is the lowest. It seems to enter my mind there is a little knoll, be-

tween the watering place and these two springs I spoke of, that would throw the water from these springs on to Mr. Arndt.

Sworn, &c., September 29, 1840.

John W. Smith testifies—I was first acquainted with these farms of Mr. Shields and Arndt in eighteen hundred and twenty-two, when I moved on Shields' place with Wyer. I lived in with Wyer. I lived there four years, and then moved over just across the road, about two hundred yards from there, and lived there one year, and then moved to Washington, and lived there two years, and then moved back again, and lived there again two years.

I have been frequently up along the line between Shields' and Arndt's places; I have been up along apast there often. I noticed once, when I was a coming across on Mr. Arndt's side, going over on to the other side, I wanted to cross over on to Wyer's part. I found, between the main land and a little knoll, a narrow place, and there I found a stream of water running on Mr. Arndt's side. This knoll was close by the line fence on Mr. Arndt's side. I then come to the fence, and got over it, and there I found some difficulty in getting over the bogs; it was quite a sloughy wet place till I got to the main land. I did not see any water running on that side. I supposed that what made that wet place was that it was springy and a very flat piece of ground. The springs came out along the bank on Shields' side, and when the water was high it would overflow all that piece. It was a very flat piece of ground for an acre or so. It was a very flat piece of ground on both sides, except that knoll.

This stream that I crossed was probably from five to ten paces from the fence—the knoll was between the stream and the fence. This stream was formed by springs in Mr. Arndt's farm, between that knoll and the turnpike. I did not notice whether any spring on Mr. Arndt's side run over on to Mr. Shields or not. I did not see them run any other way than as I tell you. I have crossed the whole of the piece of low ground. I don't recollect rightly what time of year I crossed this stream, but I would suppose it must have been in May, from the springs being up; in the latter part of the season there was no water. It must have been the second year I lived there I crossed there. It was the year Groff lived on the Arndt farm. There was no particular one spring on Shields; but there was a bank, and it was springy up along—no spring dug out. This stream would run sometimes longer, sometimes shorter, it depended upon the wetness of the season. I think I have known it to run sometimes to pretty near harvest. While I was acquainted with the place, I never saw a stream flowing from Mr. Arndt's side upon Shields', and flowing on to him a little way, and then flowing back again upon Mr. Arndt. I had not very frequent opportunity of seeing this place. It was a miserable place at that time, not very desirable to go to. I know about the tilling on Shields' side. I think it was in eighteen hundred and twenty-four; it was an uncommonly dry season, and they ploughed and

broke it up and put corn on it, close up to the fence. They took four or five hands to plough it, and the corn failed, and then they put buckwheat on it then. I did not help plough it; it did not take so many hands.

From my knowledge of the ground, my opinion is, that if water had been left at the turnpike, to flow naturally it would have run down on Mr. Arndt's side of the knoll' at that time, but it is so long ago I can't say with any certainty, but it is my impression.

While I lived there there was no regular stream of water flowing down the hollow from Carter's across the turnpike upon Arndt, only when there was a very heavy rain. This hollow was tilled. Mr. Arndt's was tilled about half way down from the turnpike where the water now flows. Mr. Carter's was tilled all the way up.

I am acquainted with the Woolston stream. Before Mr. Wyer made his ditch it run in the sink-hole on his farm. After the canal was made, it did not all sink on Mr. Wyer's farm, some of it run down to Mr. Reigle's line, where there was a pond on his line and Wyer's, where I expect there was a slow sink, as there was water running in, and none out. I have noticed the stream often by Henry Carter's before the canal was made; it became considerably larger after the canal was made. When I helped plough this piece for corn, on Mr. Shields' side, I did not notice any course or mark for water. I don't remember any. From my knowledge of the ground, now and formerly, I think the ground is washed away on Mr. Shields' side, and is now lower than it formerly was.

And being cross-examined, saith :

When I crossed this stream in Arndt's meadow, I think it was a low piece of ground, a hollow with sod over it. It was bog and wild grass, and pretty well up, and the water had washed it down so I could not see the ground; but I think it was a low piece covered with sod. At that time nor since I never levelled that piece of ground by the watering place, I only judge of it by the eye. If the water was left to run from the turnpike, as the ground now is, it would naturally run on to Shields—I think it would by the looks of it to me. I never knew Mr. Arndt's meadow opposite the watering place to be ploughed. When this ground of Arndt and Carter in this hollow was tilled, I noticed a furrow in Mr. Carter's to draw off the water.

At this watering place, and so on down the line to within a hundred yards of Shields' house, it was clear of bushes, but at the watering place it was a tremendous boggy wet place for about an acre, full of snakes and turtles. This wet boggy place was on both sides of the line. I do not mean to say there was no watercourse on Mr. Shields' side, but that I never saw any.

I know there were fish in the Woolston stream above the sink-hole. I have seen chubs and eels in it—I don't know that I have ever seen any trout.

I am a blacksmith by trade ; I followed it when I lived with Mr. Wyer, in twenty-two, and since that time.

When I spoke of being frequently up the line between Shields and Arndt, we went up to the wet place, and then went round it on a stone row across the hollow from Miller's, till we got on to the line again. Except this dry season I went up the line frequently. I have went up it at other times too. I was speaking of our general course.

Question. Do you consider this an ancient and natural water-course from Woolston's down to the Musconetcong ?

Answer. Well, sir, if there was a pond of water let out at the head of it, that would be the course it would take to get to the Musconetcong.

The fall of the same season we ploughed up the wet place, and in winter the springs above the house were all dry, and all below too, till we got down three hundred yards to Creveling's spring.

And being called again in chief, saith :

The biggest part of this wet boggy place along the line was on Mr. Shields' side—a good deal. This knoll by the fence was in the midst of this boggy place, and in the widest place this boggy place extended over on to Mr. Arndt thirty yards. The widest place across was below the knoll. The watering place commences above the knoll, and all the bogs I found between this knoll and the main land was in this place, where the water run down probably two or three paces wide. At the upper end and above the watering place the bogs got wider on Mr. Arndt.

Sworn, &c., September 29, 1840.

James Bowlby testifies—I have seen the water running across the turnpike into this ditch on Mr. Arndt's farm. I don't know when it was first dug. I have no recollection of seeing it until after the ditch was dug. In eighteen hundred and thirty-three and four, the water run all the way down on Mr. Arndt's side ; at that time the ditch was not carried across on to Mr. Shields or across the line fence. The water run down the ditch and on till within five or six paces of the fence, and then took a turn. The end of the ditch was within twenty-five or thirty yards of the line fence. There the water took its own course and run down on to Mr. Arndt, within five or six paces of the line fence, and sometimes closer, and sometimes further off. I don't recollect of its running over on to Mr. Shields at all at that time. I noticed its running so from the beginning of eighteen hundred and thirty-three to eighteen hundred and thirty-four, nearly two years. The knoll along the fence is something I never took particular notice of. The stream run down the slough in Mr. Arndt's meadow, and came out in the head of the pond by the house. After eighteen hundred and thirty-four, in eighteen hundred and thirty-five or six, I was along this place gunning with some one, and I noticed what an alteration had been made there, and I see a ditch made out of Mr. Arndt's field into Mr. Shields', not knowing who did it.

On Mr. Shields' side there was a sloughy and marshy kind of place grown up with blue-grass and stuff, and the water run in at the corner and round in a small circle, and run out again into Mr. Arndt's field or meadow, and then took down the same old stream. Along where Mr. Shields' line fence set there was quite a knoll and a hollow, on Mr. Arndt's side, below where the watering place is, but rising on Shields' side, that caused the water to turn back again. In eighteen hundred and thirty-three-four I was at work for Mr. Arndt, on and off, by the day.

And being cross-examined, saith :

Below the end of the ditch, where the water first turned on Mr. Arndt's side, there was a small channel. I think I did observe it very particularly well. I don't know what induced me to notice it particularly. I was along there, backwards and forwards, driving the calves, and I think I could see it without getting down on my knees to it. I helped Mr. Arndt in harvest, picking up corn and such like, that and potatoes. I noticed it very frequently very particularly, as I was passing backwards and forwards—especially boys like to play in such places.

Question. Did you ever catch any fish up at the end of the ditch in this stream ?

Answer. No, sir.

Question. Did you play in this stream in eighteen hundred and thirty-three-four, while you were driving the calves along ?

Answer. Yes, sir.

Question. How many times ?

Answer. I can't tell about that ; I don't recollect about such things.

Question. How many times do you recollect driving the calves along this stream at that time ?

Answer. I recollect several times ; can't tell how many times ; I kept no account.

Question. Do you recollect driving the calves along it five times in eighteen hundred and thirty-three ?

Answer. Well, I don't recollect whether it was five times or more—very probably more—very frequently ?

Question. When you were playing in the stream, what were you playing at, that you noticed the stream that it had washed for itself a channel through the sod ?

Answer. I noticed that before I was playing in it.

Question repeated.

Answer. I can't tell you exactly what I was playing at ; boys are very apt to play in the water without hunting for anything, in running up and down in the water. I said awhile ago. I don't think it worth while to tell such stuff.

Question. How old were you when you worked for Mr. Arndt at the first ?

Answer. I was fifteen—somewheres thereabout.

Question. How old are you now ?

Answer. Twenty-three.

Question. Have you ever been sworn before in a cause?

Answer. No, sir.

Question. Have you often talked with Mr. Arndt about this matter before you were called to-day as a witness?

Answer. Never but once.

Question. Who first informed Mr. Arndt of what you knew about it?

Answer. I can't tell. I should think he ought to know himself that I knew something about it.

Question. Did you not tell Mr. Arndt, before to-day, what you knew about it?

Answer. Yes, sir.

Question. When?

Answer. I can't tell exactly when it was—some time since.

Question. Did you inform him, or send him word, what you knew about it first, or did he first apply to you to learn what you knew about it?

Answer. He first applied to me.

Question. Do you know that, in giving testimony, you are bound to tell all you know in Shields' favour, as well as what you know in Arndt's favour?

Answer. I did not know it; but I believe I have told all I could tell in Shields' favour.

Question. Who lived on Shields' farm in thirty-three and four, when you worked for Arndt?

Answer. I declare I can't tell exactly, but I think John Wright. And being called again in chief, saith:

There is nothing that I now recollect in Shields' favour that I have not stated.

Sworn, &c., September 29, 1840.

James Van Natta testifies—I know when the ditch was dug across Mr. Arndt's farm to lead the water. It was in eighteen hundred and thirty-two. I know it, for I helped dig it. It was dug clean across the field, as far down as the little meadow of Mr. Arndt. I should say the ditch stopped fifty yards from the line fence, may-be more. The water run in then on to Mr. Arndt's meadow, a low piece of ground there. It went down to the pond. I think it flowed on Mr. Arndt. I did not notice particularly how far the course was from the line fence. I have been down the slough where it run frequently. I lived with him a year, and I was all over the place pretty much. After the ditch was dug, I was along this slough. I think I remember the water's running down there then, if my memory serves me right. I did not observe any flowing on to Mr. Shields a little way, and then back again, that I remember. It was the year eighteen hundred and thirty-two I worked for Mr. Arndt.

Carter brought his ditch through first, and then Arndt took it along down.

And being cross-examined, saith:

In eighteen hundred and thirty-two, I can't say whether I was over on Mr. Shields' side by the present watering place, to see whether it flowed there or not. I have been along the line fence frequently. From the end of the ditch, and over on to Mr. Shields' side, it was quite a level piece of ground. I am not able to state at present whether it was the lowest on Mr. Arndt's side or Mr. Shields'. I don't remember taking much notice of it, only being over the ground at work. It is seven years since I was on it.

Sworn, &c., September 29, 1840.

Stacy Bowlby testifies—I recollect seeing the ditch come down from the turnpike, but I don't know how near it come to the fence. It came down to Arndt's meadow. The water run out of the ditch down through Mr. Arndt's meadow a little distance from the fence, as far as I can recollect. I have seen it a great many times run down through the meadow. I have been up the stream a fishing. I began somewhere down about Mr. Arndt's, and I followed up on Mr. Arndt's side until I came to the middle of the field towards the turnpike. I don't recollect the year; it is since that ditch has been dug down through the field.

I don't recollect the number of times. I recollect, once in particular, a fishing up it; my older brother William, I think, was along with me; I am not too certain. We followed the stream up to the ditch, and then went up the ditch aways, where it was dug out. I think this was quite early in the spring. Fished with a scoop-net. We were fishing for trout—don't recollect what we caught—whether we caught them or not.

I worked for Wyer in the summer season of eighteen hundred and thirty, and was frequently along the line fence. I never saw any water running over on Mr. Shields' side, only when it came down the other hollow from Strader's in time of rain. I was at this low place on Shields. I have been along the fence from the house for a quarter of a mile, pretty well to the backside of the farm. I was as close by the line fence as a man could get at this low place, and if there had been any water, I could see it.

I worked for John Wright on this Shields farm, about a month about seeding time. He put in the field where this wet place was with wheat and rye, I think pretty much the whole of it. I think there was a little piece along this hollow that came down from Strader's that was boggy, naturally wet, that he did not put in. I think this boggy place came to the fence, or very near the fence. It was very near, if not quite to this watering place. I think the watering place is a little above, if I am not mistaken. I worked for Wright in eighteen hundred and thirty-four.

And being cross-examined, saith:

This fishing expedition was after I worked for Wyer. I think I am confident of that. I don't recollect how long it was; I think it was after the ditch was made through the field. I don't recollect whether it was before or after I worked for Wright. At the time of this fishing expedition, I did not get over the fence by the wa-

tering place to see whether it run upon Shields or not, to the best of my knowledge. I don't recollect particularly about it, whether I did or did not look over to see whether it run there or not. I don't recollect how the ground was about the fence by the watering place. On Mr. Arndt's side it was level, and one place on Mr. Shields it was quite low. At that time I did not, that I recollect of, look at the ground, and compare in my own mind to see which was the lowest, on Mr. Arndt's or Mr. Shields' side.

I will be twenty-five years old in October next.

And being called again in chief, saith :

I don't recollect that I noticed when I went up this stream a fishing, that it parted, and run any part of it towards Mr. Shields', but it run very close to the fence. I can't state exactly how far it run from the fence ; I should suppose from five to fifteen yards from the fence, as far as I took notice.

And being cross-examined again, saith :

I did not observe opposite this watering place, whether a gully had been washed through the sod or not.

And being called again in chief, saith :

The year I worked for Wyer, from after harvest to fall, I am certain no water came down from Arndt's upon Shields, for I drove the hogs and cattle along there every day and drove them out to water. It was my particular business.

And being cross-examined, saith :

I believe it was not drier than ordinary seasons, as far as I can recollect. I can't recollect particularly.

Sworn, &c., September 29, 1840.

Elias Smith testifies—I was acquainted with the stream that came down from Woolston's in former times, and I live along a branch of it, that comes out by John P. Ribble's now. In eighteen hundred and fifteen, I lived where Mr. Wyer lives now ; I lived there one year. The stream only came down to us ; there was a sink-hole there, and it run into that and sunk away. It was a very weak stream. We had to cross the road often to get water for our horses, on to the other farm, Henry Carter's.

In eighteen hundred and sixteen, I lived on Mr. Carter's farm, the next one above. The stream was very weak there. We had water, except when Esquire Beavers would put a sod in and turn it over his meadow ; then we were dry until we would go up and prevail upon him to take it out.

In eighteen hundred and twenty-nine, I lived on Mr. Reigle's farm one year. There was no stream there at all.

I harvested after that for Joseph Carter two years hand-running, and one year on the same farm. In that hollow I cut grain right through for Joseph Carter where the water now runs ; there was no water there then.

About two years after the canal was made, the water came on down through as far as Reigle's. I saw it there after the canal got in operation. I won't say whether it came down further or not.

If any one would go to the culvert or aqueduct they could see what formed the stream. I live along a branch of the stream now, and I should say it is as big again as it was formerly; and coming together, I should say the stream was four times as big as formerly.

And being cross-examined, saith:

The first season I lived on the stream, I don't know whether they watered the meadow above or not. I can't recollect whether it was a wet or dry season. When I lived on the Reigle farm, I saw no other marks of water in the hollow than what the snow or freshets would make, such as I seen in the other hollows. I never saw any furrow left on Carter's farm.

Question. Do you mean to be understood to say that there was no furrow there, or that you don't recollect seeing any there?

Answer. If there was a furrow there, I did not know it. I never saw one there, to best of my knowledge.

Question repeated.

Answer. There was no other furrow on Carter's farm, that I saw, but the middle furrow.

I never measured the water. All the way I judge of it, is by looking at it in the ditches. There are no springs that fall into it below Mr. Woolston's, that I remember of. There are some springs that fall in the branch that comes by Ribble's.

The brook that comes down by where I live now did not come into the other stream when I lived on Carter's farm—it sunk away in the bogs on Capt. Beaver's land. I don't know whether there was any fish in that little stream or not. I consider it a natural watercourse as far down as where Mr. Wyer lives. I consider it a natural watercourse now—there is water from Mr. Woolston's in the hollow all the way down. If the water does not sink, there is no other course for it to run but down that hollow to the Musconetcong. Two years that I lived there, I knew this branch to sink away, and not run in. I know it runs in now—I followed it down this morning. I knew it run in before, by crossing it two or three times. I don't know when it commenced running in.

I never knew the Pohatcong dry. I have seen it pretty near dry.

And being called again in chief, saith:

I ploughed this hollow on Reigle's farm twice or three times, but all in one season, and sowed it with winter grain. I drew no furrow at all for the water to pass off.

And being cross-examined again, saith:

I only ploughed one field of the Reigle farm across this hollow, the whole length of the hollow. This hollow was in three fields that belonged to that farm. I saw no other marks of water in the other two fields, except the same I mentioned by snow and freshets.

Charles Carter lived on the Reigle farm when I worked it.

I remember seeing the old forge road run through this farm. I do not recollect observing the appearance of a bridge in this hol-

low on that road. There was a hole on this farm below the road, that water used to stand in in the spring of the year a spell.

Sworn, &c., September 29, 1840.

Eli Reigle testifies—I now live betwixt Joseph Carter's farm and Mr. Wyer's; I have lived there eight years last spring. There was no water there when I came there; the water came that summer, but what time I can't tell. When it came we opened it along, so that it would follow on down. It appeared to be a couple of furrows had been drawn, and we opened them along through the hollow. I can't answer how long it continued to run through the furrows; part of the time we had water, and part of the time there was none. Four years ago this summer we cut a ditch part of the way, and since we have cut it through to Mr. Carter's. Mr. Wyer ditched before I ditched, but he altered the ditch part of the way. When it first came down on my farm, it kind of spread next to Mr. Wyer's, a little below the line. Mr. Carter opened a ditch across his farm, but I don't know what time.

I saw the new ditch by the turnpike cut, by Mr. Arndt. He left about one-third of the water to run in the old ditch.

When the water came upon my farm, it did not find its way across my farm before I opened these furrows. It could not find its way across; I expect there was not enough of it, is the reason. I can't answer whether there is more water now than there was then.

And being cross-examined, saith:

I can't answer how far up and down across my farm there was an appearance of these two furrows. I have three fields in this hollow on my farm. I can't tell in how many fields there was an appearance of these furrows; the appearance was in more than one, and was in this hollow.

I did not measure the water that run down the old ditch at the turnpike, but I am certain there was one-third.

Sworn, &c., September 30, 1840.

William P. Hazlett testifies—In eighteen hundred and thirty-three and thirty-four, I lived with Mr. Arnd't; I worked for him by the year, at farming business. When I came there there was water running across the turnpike. It run across the turnpike, and so on down through his fields, and so on down below his house there. It run through a ditch through one field. The end of that ditch, I should suppose, was about fifty yards from the line fence betwixt him and Shields; I don't know exactly how far. After it left the mouth of that ditch, no part of it, to my knowledge, flowed on to Mr. Shields in going down to the house. It was quite a little stream and had a natural course of its own. I can't tell particularly how near it approached the line fence in running from the mouth of the ditch down to the pond. I should think twelve or fifteen feet, may-be a little further, and may-be not so far. It continued to run so while I lived with him the two years. We did

plough and furrow to lead it on a dry knoll towards his house, but the stream still continued where it was during the time I lived there. There was not, to my knowledge, a watering place over on Shields' side up along the line. When it left the mouth of the ditch, some of it did not part and go towards Mr. Shields; it all went together down on Arndt's side. There was quite a knoll between the line and the mouth of the ditch. There was a little channel worn in the ground through the sod. While I was there the two years, pretty nearly opposite the watering place, we started to plough the furrow I spoke of. I was one that helped—there was two of us. We ploughed several furrows; we did not pretend to make a ditch of it. I had worked along the line frequently, and been after the horses, and I often seen the water, and not so particular then as when I worked in the water when we ploughed the furrow, and another time when we led it in a furrow on the other side of the brook, on Arndt's side of the fence, on to a dry knoll. At these times I was along the line there I did not, to my knowledge, see any water running from Arndt's side of the fence upon Shields, and running a little way, and then turn back again. That ditch from the turnpike was not carried any further than I have stated while I was there.

The water does not run in the old channel now that it did in eighteen hundred and thirty-three-four; part of the way it does, and part of the way it does not; by Mr. Shields' line there is quite an alteration. From the mouth of the old ditch, it starts and goes towards Mr. Shields' line, more towards the bank, and then led to the fence and through on Shields—and how much further I don't know. From the mouth of the old ditch, the ditch has been extended to the line since thirty-four.

And being cross-examined, saith:

I have understood that my father, William Hazlett, has been examined as a witness in this case. I did not live with him on the Petty farm; he was a single man then, I guess. From the mouth of the old ditch to Shields' line, it looks to me as if a ditch was dug, and not worn in the soil. On the left or lower side of the ditch, I think I observed a bank thrown up; I can't say whether all the way. I can't particularly state how much higher the bank is than the ground round. When I saw it, it was in with timothy, I believe. I don't know that I can answer what time of year it was, whether before or after harvest. I can't say how many times I have been along there since thirty-four. I have not noticed the ditch and the bank from the end of the old ditch but once, and that was this summer. Mr. Arndt and me was along it—Shields was not along. The knoll that I spoke of between the mouth of the old ditch and the line, is the rising ground towards which the ditch now runs, on the other side of the flat. From the end of the old ditch, to the left of the high ground towards the line, the ground is pretty level, and the water runs pretty still to where the big spring was. I should suppose the big spring was twelve or fifteen paces, may-be more, and may-be not so much, to where the

water now goes on to Shields. I should say the big spring leaned a little up from the head of Mr. Shields' watering place.

At the time I worked for Mr. Arndt, I don't know that I ever went over on to Mr. Shields' side, to see whether there was water there or not at the present watering place.

And being called again in chief, saith :

From the mouth of the old ditch to the line, the water runs on higher ground than it formerly did in eighteen hundred and thirty-three-four. In the course which it finds down through Arndt's meadow, which I mentioned I believe, it run through this big spring. I saw the new crooked ditch from the turnpike, as I passed along the road. I can't say I particularly noticed how Mr. Arndt had divided the water; I saw water running in the old ditch, and also in the new, but how much I can't say.

Sworn, &c., September 30, 1840.

Jesper Smith testifies—I worked for Mr. Arndt in eighteen hundred and thirty-five occasionally, by the day. When I worked for him the water run then from the turnpike, in the same place that it does now, through the first field from the turnpike. In the next field it had a crooked kind of a course—it appeared as if there had been furrows drawn by the plough. Through the first field it was ditched. These furrows took it to where the present watering place is on Mr. Shields. There was a furrow that went crooked, from the fence of the field before mentioned down to the watering place. Near the upper end of this furrow there was a place where water stood; the water from that was let into the furrow first mentioned by a furrow. I ditched from the mouth of the ditch in the first field down to the present watering place, and there I found part of the water running into Mr. Shields' side, and part did not. The part that run in come out again at the next panel. After it came out it joined in with the other water again, and went down on Mr. Arndt's side. There was a fence across Arndt's meadow opposite the present watering place; there was leaves, dry weeds, and stuff washed against the bottom of the fence, and I was a going to open that place and let the water straight ahead; (and Mr. Arndt did not want that done, and he said we would turn the water through on the place now owned by Shields. He did not own it then). Objected to by J. M. Sherrerd, solicitor of complainant.—We then put the whole of the stream through the fence—turned it through. Mr. Arndt then got over the fence, and assisted it in its course—helped it by clearing a way for it with a spade or shovel. That was all that was done at that time.

I was not over the fence myself. There was ground lower than the ditch on the left or lower side of the ditch. As near as I can recollect, it was dug about a foot deep, and about two feet and a half or three feet wide at the bottom. I threw up the dirt on both sides, but the most on the left side, or east side, towards the lowest ground. If the cross-fence I spoke of had been removed, I think the water would not at that time, from the nature of the

ground, run upon Shields. This cross-fence joined the line fence just at the place where the water went in upon Shields—the water went in at the corner, where it appeared to be dammed up, the next panel below. That cross-fence is not there now. When Mr. Arndt got over the fence, the whole of the water was turned in upon Shields—part of it went in before. I never saw where the water went before the furrow was drawn from the end of the ditch to the fence.

And being cross-examined, saith :

If I mistake not, it was after harvest when I dug this ditch ; I believe I dug it according to Mr. Arndt's directions. I dug it according to his directions, as far as I know or recollect anything about it. From where I began to dig, to where I ended, there was not a great deal of fall in the water. The length of the ditch I dug was perhaps fifteen or twenty rods.

The ground was so level where I ended, that I could easily put it on Mr. Shields or leave it on Mr. Arndt. I did not remove the cross-fence before I took the water over upon Shields. I can't tell how long after this fence was removed. I would not suppose it was more than one yard where we took the water through from where the cross-fence joined the line fence. I brought it to the line fence obliquely—not much so. As near as I can recollect, the line fence was a worm-fence, and the water was let in at about right angles with a panel of the fence, but obliquely to the line. The lower ground I spoke of on the left side of the ditch was at the edge of the slough next to the plough land of Mr. Arndt. This low ground started near where I began to ditch, and ran down towards the present watering place, and at the lower end of the ditch it was nearer the ditch than further up. The meadow was fenced off from the plough land, and this cross-fence divided the meadow. I did not form any estimate how much lower the low ground was than where I dug the ditch ; but it was so much lower that the water stood on it four or five inches, while where I dug the ditch it was part of the way in fresh dry ground and part in this furrow where the water was led. I made the ditch straighter than the furrow was before. At the upper end I started in the furrow, and part of the way down I think, the furrow was on the left side of the ditch, and at the lower end, the ditch was made where the furrow was. I did not examine the furrow to see whether it was of equal depth along. I can't tell how deep any part was. The furrow had the appearance of being made by a plough, and the water had washed in in some places and made it of irregular depth. There may have been a little irregularity in the width of it ; the grass was growing on the edge of it, and I judge it not sufficient to carry the water when plenty. I did not see the furrow drawn with a plough. I have often ploughed myself, and I can give a pretty good guess what looks like a furrow. I have not often ploughed myself where the water has followed on for years in that furrow, as I recollect. I don't just recollect of an instance where I have ploughed such furrow. I am a cooper just now—

have followed it since the beginning of last winter. I was on the ground the next year after I worked for Mr. Arndt—I did not go particularly to observe it—and I was there this summer, with Mr. Arndt, particularly to observe it. Mr. Shields was there at the same time. I think nothing was said by Mr. Shields, or pointed out by him, where the water run, but their discourse was about examining witnesses next. I don't know that I can tell positively about that, whether Mr. Arndt, when he got over the fence to let the water through, he dug away the soil or only *removed the rubbish and stuff*.

And being called again in chief, saith :

I suppose if it had not been for the cross-fence, and the rubbish heaped up against it, the water would not have went over on Mr. Shields, from the nature of the ground.

And being cross-examined again, saith :

This rubbish was heaped up just along one panel, and not the whole of one panel either, but it made a fair dam. I don't recollect whether there was any rubbish heaped up against Mr. Shields' fence or not. Shields' fence was tolerably old. I did not examine along, but as far as that place the fence was tolerably close to the ground. I could not tell how old Mr. Arndt's was, but it was in better condition than the line fence.

Sworn, &c., September 30, 1840.

James Davis testifies—I helped dig the ditch across the first field from the turnpike for Mr. Arndt, in the year thirty-two. From where I stopped digging to the line fence might have been fifty yards, or sixty. I can't tell where the water flowed to after it run out of the end of the ditch.

I worked for Mr. Wyer while he lived on Shields' place ; I don't know exactly how long, but I worked for him considerably the first year, and also different years ; can't state how many years. I moved there with him, and lived with him the first year, and then I was not there for a little while. I worked on the farm for him. I did not know of any water or watering place up along the line while I worked there. The watering place was lower down by the house. I helped plough the ground where the water now runs upon Mr. Shields. I can't tell you exactly how close to the fence we ploughed it. There was buckwheat sowed on it after we ploughed it. I could not tell whether it was good or poor. That was not tilled any other year while I was there, as I know of. It was in a meadow sod before the buckwheat was put on : after the buckwheat was off, can't tell what was done with it. I can't tell what state it was in, as to wetness, when I ploughed it. While I lived there I was up along this line fence—not so very frequently. I was not every day along, and may-be not every month ; I could not tell. Probably I have been along a dozen times, at different seasons of the year. I don't remember as I ever have seen, at any time or any season of the year, water flowing from Mr. Arndt upon Mr. Shields a little way, and then back. I recollect a couple of

furrows being drawn from the end of the ditch I dug, on the left hand side of the ditch, betwixt the plough land and the meadow, in a circle like, and this was done after I finished the ditch. It was for the water to run along—I don't know what for. I know nothing about the furrow from the end of the ditch I dug to the line fence, or when it was put there. I worked for Mr. Arndt after I dug the ditch and before.

And being cross-examined, saith :

I don't recollect about the season when this ground was ploughed, whether it was wet or dry. I don't remember whether there was any springs on Mr. Arndt's side that season that had water in them.

Sworn, &c., September 30, 1840.

Richard Riddle testifies—I have been acquainted with Mr. Shields' and Mr. Arndt's farms for some length of time. I lived on Mr. Arndt's place four or five years some time back ; I guess it must be about sixteen years ago since I left it. There was not at that time any stream of water running across the turnpike between Carter and Arndt, as I recollect, unless in the time of a heavy rain or breaking up in the spring. On the place I lived on there was no ditch or gully from the turnpike, across the farm, for the water to run in ; there was a low piece of ground that the grass grew on—we did not plough it. There was not any ditch or gully on the farm above (Carter's) as I recollect of ; they ploughed and sowed and planted across the hollow at that time as well as any other place. I will be sixty-three years old next March.

And being cross-examined, saith :

I recollect there being a little bridge across the hollow on the turnpike, a few plank ; it was afterwards taken away. I can't tell what kind of bridge it was when first made there, whether stone or plank. The turnpike was made some time before I came there. It was about three miles I lived from that place before I moved on it. I was not particularly acquainted with these places before I moved on it, except in passing along the old road.

I never noticed any natural watercourse in Carter's field while I lived there. I should have thought, if there had been one there, I would have noticed it. I never see any channel for the water to run in whilst I was there. I can't tell what was there before, or what was since, as I never noticed it. I can't recollect how long the water continued to run there in the spring. I can't mention any time, how long it was—a short time, and even then I can't say that it come through Carter's farm. The water would collect on each side of the turnpike in time of a heavy rain, and run on the farm down this hollow. I could not say about the water along the line, how that was when I lived there. The fence then, I think, belonged to the other farm ; I never repaired it or had anything to do with it, and therefore I did not take any notice of that place. Part of the way along the line betwixt Arndt and Shields was a wet sloughy place ; we generally mowed it and drove over it

with the wagon, and handed the hay off. This wet sloughy place was on Mr. Arndt's side, and pretty well up. I was never on the other side of the line, nor paid particular attention how it was there, whether it was wet and miry or otherwise. I was not often along that part of the farm, except just at mowing time. I think this wet place I speak of was a little lower down than where Mr. Shields' present watering place is. There was none so wet but what we could go on it and haul off our hay. This wet place was away down below where the water returns from Shields upon Arndt—it was by the cross-fence in the meadow. I am not able to tell whether the part of the line fence they of the other place had to make, extended up above the watering place or not. I have forgot all about that. There is a great alteration in the appearance of the ground in the meadow part that I used to mow since I lived there, by ploughing, drains, and ditching. I don't know what became of the water that run across the turnpike in time of a shower. There has been times when the water was very high, and took away the fences at the bridge; it passed on like other high waters. Adam Rhinehardt and Crater farmed Shields' place one year while I lived there; John Hunt one year, I think, and then Wyers the rest of the time.

And being called again in chief, saith :

There was not any watering place up where Shields' now is, as I recollect. The watering place was down by the house at the turnpike, just above the bridge.

Sworn, &c., August 5, 1841.

John Mowder testifies—I have been acquainted with the two farms Mr. Shields and Arndt live on, I guess this thirty-five years, may-be more. I have lived the principal part of the time in the neighbourhood, all excepting three or four years.

I have been across the hollow that comes down through the Reigle and Carter farms at different times, one time and another. I don't remember as there was any stream of water before the canal was made coming down this hollow; if there was, it is more than I remember. Likely I might have seen it if there had been one, if I did, I did not take notice of it. I think they farmed and ploughed across this hollow. I have often crossed this hollow along the turnpike. I never observed any water running there, unless in time of high water, in time of a shower or freshet, or in the spring of the year. I have crossed the hollow along the old forge road, not so very often, but I have crossed it different times. I did not observe any running stream there, to my knowledge, never.

There was a pond-hole just above this road, in what is called Wyer's field now, in which I have seen the water stand in it, and the creatures drinking in it. Into that hole I expect the little stream from Woolston's emptied—I never followed it down—people said it did.

And being cross-examined, saith :

I have seen this stream of water that runs across Arndt's farm

on to Shields, where the present watering place now is, this morning. It is a pretty decent little stream of water. I have not taken notice of any water in the canal this season, except what stands in it. The water has not been let in as usual. I went down to view the ground at the watering place, at the request of Mr. Arndt. I never knew how the water was along the line in former years at the watering place. If the water was left free to run as it pleases, according to nature, I should think there would be nothing to hinder its running on to Mr. Shields at the present watering place, from my observation of the ground at the present time. If there was no sink-hole in Wyer's field, I should think this hollow the natural course for the water to run down—I know of no other. Water might have run across the turnpike, and I not observed it. I don't remember of seeing any, but I am not agoing to say it did not.

And being called again in chief, saith :

I noticed very little alteration in the ground at the watering place now and a year ago, when I was there. In former years, I believe, they used to water down by the house, on Mr. Shields' place, but I don't know much about it. I observed a hole under the fence above the watering place, that appears to have been washed in by high water. It might have been there last season, but I did not take notice of it. There is no water running through it now. I thought it was made there this spring by high water. This hole is a few paces above where the water now runs on to Shields.

Sworn, &c., August 5, 1841.

Jacob Skinner testifies—I lived three years on Mr. Reigle's place up this hollow. I think I moved there in eighteen hundred and twenty or twenty-one. There was not during that time a running stream of water across Mr. Reigle's farm down that hollow. The little stream from Woolston's ran down into Nixon's meadow, now Wyer's, and sunk there. I tilled this hollow. I farmed the field next Nixon's with corn, and had corn on it—some of it was drowned out by high water. There was no running stream through it. The field below the cornfield was meadow when I moved there; the water used to come through it in a high time, but no living stream. It used to settle in the lane below the barn, where I watered my cattle. In a reasonable season, it used to continue there eight or ten days, or two weeks; I mean by a reasonable season an ordinary season, when we had rain every few weeks.

I lived one year on the Henry Carter farm, above this, in eighteen hundred and sixteen, seventeen, or eighteen. I moved from where Mr. Shields now lives on to that farm. I lived with my father then, and was nothing but a boy. I think my father lived on Shields' farm three years. I was living from home then, and went home and lived with him one year. I assisted him in farming that year. Our watering place was down at the house. There was no

water running through on to Shields up by the present watering place, unless there was a flood in a high time. I don't know that I can tell you whether there was any springs on Shields' side that have since dried up, as I did not examine very particularly. I have been along the turnpike very frequently since it has been made. There was not any stream crossing it in former times, to my recollection, except in a high time of water, till since this ditch has been altered, since which I have seen it often. I mean by this ditch, the ditch in Wyer's meadow that turned the water out of the sink-hole. I am now about forty-three or four years of age—I am not positive which.

And being cross-examined, saith :

If the water was turned out of this sink-hole, this hollow appears to be the *lowest ground as the water now runs*. I see *no other way for it to run*. It was some time last season that I was on the ground where the water passes off from Arndt on to Shields. I observed the ground particularly at that time, and was on both sides of the line. I am of the impression that the water *would run on to Mr. Shields*, from the appearance of the ground at that time, if there was no ditch there. I should certainly value the water there, if I owned Shields' property, valuable.

Question. If you were the owner of Shields' property, would you be deprived of the water there for two thousand dollars ?

Answer. I don't know that I could fix any sum that I would be deprived of the water for ; it would depend on circumstances. If I had water at other places, that I could fix, I should not value it so high ; but if I had not, I don't know how I could put value enough on it. The springs down by the house go dry at some seasons of the year. The season we lived there we had to go to Carter's spring for water for a few months. The spring was dry, and there was very little water in the brook that we watered the creatures by, and I think for a few days we had to drive them below the bridge. That season was very dry ; I have heard old people say they never knew it to be so dry.

I saw some part of the crooked ditch that Mr. Arndt cut through his field, but never followed it down.

Question. If you were the owner of Mr. Arndt's farm, and all this stream turned in it, and carried down to Mr. Arndt's house, would you consider it an advantage or disadvantage to the farm ?

Answer. Well, sir, I don't know that I can answer that question exactly. If I was living there, I might think differently ; I might see an advantage in it, but now I don't see any advantage in it.

I recollect there being a bridge across the turnpike in this hollow ; my impression is, that the first was a frame bridge.

And being called again in chief, saith :

If I lived where Mr. Arndt does, and had only hard water in my well, I should certainly think it an advantage to have a living stream of soft water running by the door.

I can't say that the ground by the watering place is altered

now from what it used to be, but in a high time of water formerly the water used to *run over on to Mr. Shields*. When my father lived there where the watering place now is, the ground was a flat wet sloughy piece of ground. It was meadow on Mr. Shields' side, and I mowed over it. It was a small strip of meadow, and we considered the grass worth more than to farm it. I don't remember about there being bogs; there was some wild grass in it. Sworn, &c., August 5, 1841.

Jonah M. Smith testifies—I lived on the farm adjoining Joseph Carter's eleven years—northerly of it. It is twenty-five years ago last April since I moved there. I have been across this hollow frequently. I saw no stream of water running down that hollow all the time I lived there. The first year I moved down and helped harvest in Carter's field, and cut good wheat through that hollow. The subsequent years I lived there they (Carter and Reigle) generally tilled it with the rest of the fields. I never saw any difference—they ploughed right through the hollow the same as the rest of the fields. All this was previous to the water coming into the canal. In the winter, at the time of snow's going off, I have seen the sand wash over the grain, and thought it would injure it, but the grain would grow up through it and do well.

I can say positively there was no stream of water running down this hollow while I lived there.

And being cross-examined, saith :

Question. How often did you cross that hollow during the time you lived there ?

Answer. I can't tell how often; but if it will be any satisfaction, I got my blacksmithing done for two years at Carter's shop, and used to travel across through the fields across the hollow.

Question. How often during that two years did you go to that blacksmith ?

Answer. I could not tell how often I went.

Question. As often as once a week ?

Answer. No, sir, not as often as once a week.

Question. Did you go as often as once a week for other business besides blacksmithing, across that hollow during that time ?

Answer. I don't know as that belongs to the question.

Question repeated.

Answer. No, sir, I don't think I did go as often as once a week for other business.

Question. How can you then say positively that there was no stream of water running through that hollow while you lived there ?

Answer. I said positively I saw none running through there, of course, in that time; that is what I meant that I had never seen none.

Question. Did you mean that Carter and Reigle made no difference in ploughing through this hollow, or that you saw none ?

Answer. That is what I meant, that I saw no difference.

Question. In harvesting this grain on Carter's farm, did you see no marks of where the water had run through that hollow?

Answer. Nothing more than I have expressed before, that the sand had washed over. I saw no gully washed in the ground at all.

Question. Have you ever followed this Woolston stream down to the Musconetcong?

Answer. I have been down it as far as Mr. Arndt's farm. I believe I have not been down further.

Question. Do you consider it a natural watercourse thus far?

Answer. No, sir.

Question. What other course could this water run if there was no place for it to sink on the way?

Answer. Of course, if there was no place for it to sink, it would run down through—but it sinks.

Question. Do you mean that it would run as it now runs, if there was no place for it to sink?

Answer. I believe it would go over the same ground if it did not sink, of course, but not so much water.

Question. Are you a member of the same society with Mr. Arndt?

Answer. I am a member of the Methodist Episcopal Church.

Question repeated.

Answer. I am a member of the same church, but not of the same society; may-be you don't understand our rules.

Question. Has the water been let into the Morris canal or not, as you know, this season?

Answer. I don't know that it has this season.

Question. Did you not cross it to-day, and can't you say whether it has been let in or not?

Answer. I can say that there was no water where I crossed to-day, but I have been informed there is water let in at the upper end of it.

Question. How near did you cross it to-day to where Woolston's stream runs under it?

Answer. About a half a quarter of a mile below—I can't tell exactly.

Question. Is there any lock between where you crossed it and this stream?

Answer. No, sir, there is no lock.

Question. Have you seen the stream by Arndt's farm lately, and if so, how lately and how large is it?

Answer. I have crossed the stream by Arndt's farm, on the turnpike, this summer; it is a clever brook; I can't tell how large it is.

Question. While the canal was dry?

Answer. Yes.

And being called in chief, saith:

Question. Do you know that the water was turned out of the

sink-hole a few years ago, and led along down the hollow by ditching?

Answer. Yes, sir.

Question. Were those ditches made on the lowest ground the whole way down?

Answer. No, sir, they were not made on the lowest ground.

Question. When you say, then, that if the water did not sink, it would run where it now runs, do you mean anything more than that it would find its way down this hollow, or do you mean to be understood that it would run precisely where it now runs, through the ditches and across Arndt on to Shields?

Answer. I don't believe it would run all the way down; I believe it would sink before it got there, if it was not for these ditches that take it round these sink-holes on the high ground.

Question repeated.

Answer. I believe if the water did not sink, it would find its way down through the hollow of course.

Question. Would it find its way down on the same ground it now runs?

Answer. I believe it would not.

Question. Why would not it?

Answer. Why, the ditches prevented it.

Question. Do the ditches carry the water where it would not run naturally?

Answer. Yes, sir.

Question. Has the canal been entirely dry, or has there been water standing in it most of the season?

Answer. There has water been standing in it, in different places along.

Question. Has Mr. Arndt said to you that he expected anything more of you because you were a methodist?

Question objected to by complainant's counsel, and objects to any conversation being given in evidence between the witness and defendant, unless in presence of complainant.

Answer. No, sir. He never indicated any such a thing to me at all.

Question. Are you a licensed preacher of the methodist denomination?

Answer. I have stood as a licensed preacher for a number of years, but am now an ordained deacon.

And being cross-examined again, saith:

Question. Did you ever go along the stream, and examine it all the way from the sink-hole to the Shields' farm?

Answer. There was no stream to go along; how could I go along the stream if there was none.

Question. Did you not say there had been a stream ever since the sink-hole had been ditched around from it to Shields' farm?

Answer. Yes, sir, I did.

Question. How then can you say there was no stream for you to go along?

Answer. The impression I had was, that it was before it was turned out of the sink-hole was what you had reference to.

Question. Well, now as you understand it differently, please answer it?

Answer. I have never followed the stream directly down, but I believe I have been across every lot.

Question. If you have been in every lot, can you say it is led in by a ditch or ditches all the way down to Shields' farm, from your own personal observation?

Answer. No, sir, it is not led in a ditch all the way down.

Question. Where does it run when it is not led by a ditch?

Answer. It runs on the lowest ground across the fields below the ditches.

Question. Does not Woolston's stream run under the canal at the foot of a plane, or under part of a plane?

Answer. It is at the foot of a plane; I believe it runs under it in a culvert.

Sworn, &c., August 5, 1841.

Adam Runkle testifies—I am some little acquainted with Mr. Arndt's farm; I surveyed it before he purchased it of Col. McCullough. I don't recollect the year, but I think about a year before Mr. Arndt purchased it. There was not any stream of water running across the turnpike and through Mr. Arndt's farm, that I recollect. I don't recollect any. In the first place I run round it, and calculated the number of acres, and some time afterwards Mr. Arndt got me to divide it into fields. At that time I was across the premises at different times. There was not then any stream running, as I recollect, not a bit more than when I surveyed, if my memory serves. The gentleman that lived on the farm could tell more about it than I can; for my part I know but very little about it. I have passed along the turnpike occasionally, not very often, before, and don't recollect of ever seeing running water. I have passed along, I can't tell how often, not as often as some other roads. I expect I passed across what is called the meadow when I laid off the fields, but I can't tell whereabouts now. I don't recollect any stream of water not until we got down pretty near to where Mr. Shields lives; there might have been, but I don't recollect it. I think it was not the same season I surveyed the farm that I laid off the fields—it was some time afterwards, but I don't know how long. When I surveyed the farm, I don't recollect on which side they carried the chain between Shields and Arndt; I rather think on Arndt's side, as there were fewer bushes on that side. I have no recollection of being impeded by water along that line.

Sworn, &c., August 6, 1841.

James Baylor testifies—I have been acquainted with the valley or hollow that runs from Woolston's down to Shields a considerable length of time—over forty years.

I am now a little turned of sixty years of age. I have never lived during this forty years over five miles from it. I have been frequently over across it. About forty-three years ago I lived one year on the Arndt and Carter farm (then one farm) with John Eveland, which then belonged to Col. McCullough. There was not while I lived there any stream of water running down the hollow across the Carter and Arndt farm, not that I noticed. We tilled the ground where the water now runs. There was not any ditch or gully made by the water that I ploughed over that I ever seen. In after years I was frequently over the ground; used to go over it often with a gun, hunting, which is the most acquaintance I have had with it since. I was in the habit of going over it several times a year; it used to be a great place for squirrels that way. I was in the habit of going there a gunning as much as ten years, I should say. In all that time I never saw a stream of water running from Wyer's down, to my recollection, till after the year eighteen hundred and eighteen. I have seen water run across since that—since they have got it ditched across their fields. I know of their bringing it through by ditches. I don't recollect that it was ditched in the year eighteen hundred and eighteen. I can't tell you when the water was first taken across the fields. It was after the Morris canal was made, that I first noticed the water running through the field. Before that I never recollect of the little stream from Woolston's running much further down than in Henry Carter's woods, above Wyer's. It has been cleared out a good deal since. The year I lived on the farm, we always watered the cattle down by the house. The stream that we watered the cattle at, rose up in the meadow—the meadow that belonged to the farm.

And being cross-examined, saith :

I follow carpentering as my trade; have followed it for a good many years; I don't recollect exactly how long I have followed it—for fifteen years, I guess, may-be not so long. Before that I farmed several years, and kept tavern four years, and tended mill three years, and the rest part of the time I have supported myself by the carpenter's trade. I have never been all the way along down the line of the ditches from Wyer's to Shields' since the stream has been ditched. I have been on each farm at different times, but not all along at one time. I have been along the ditch all across Wyer's farm. I worked there, repaired the barn and helped to build some corn-cribs. I have not been all along it on Carter's farm. I have been all along it on Arndt's farm. It appeared to me that there was a ditch dug all the way through Carter's farm. I never knew the stream by Shields' house entirely dry. I was never there when it was dry. I can't tell how many years ago it is since I first saw the water crossing the turnpike. It is about ten years, I think, since I first saw the water cross. I lived in this house in the year eighteen hundred and eighteen, and passed along the turnpike frequently, and I never saw any water running across at that time. There was no bridge in this

hollow across the turnpike at that time that I recollect. I never recollect a bridge on the turnpike there. I don't recollect a bridge in this hollow on the old forge road. I remember of a road going through to the old forge, but where I can't tell. The water in Carter's woods in former years wasted away and scattered. Before the woods was taken away and the country cleared up, I don't think there was more water than now. If there was water, and no sink-hole at Wyer's, I should suppose that the water would come through this hollow to the Musconetcong.

This brook intersects with the spring in Mr. Arndt's meadow, or field. I can't tell whether, if the water was left to itself, it would now run on Mr. Shields or not. In time of a heavy shower, in course of the summer, the water would come down through the field and stand for a day or so in low spots. I never knew it to run on Mr. Shields' farm at all. It might have run on Shields, and I not have known it; it would have to have been middling high to have got there. At the time I lived in this house, in eighteen hundred and eighteen, the water might have run across, and I not have seen it, in time of a shower, but not any regular stream, for I used to go to mill and to the store along that road, and I think I should have noticed it. There is no more water in the canal this season than what has rained in it.

I crossed this stream this season, about a month ago, in Mr. Carter's field and along the turnpike. It was a clever little brook—I can't tell how large. I saw it last season; I did not see much alteration in it—pretty much the same thing.

And being called again in chief, saith:

I never took notice of the Woolston stream, whether it was or was not increased since the building of the canal. This season has been a wet season—called so by most people. I think there was considerable rain in the spring, and the streams have kept up through the season as well as I most ever knew them.

And being cross-examined, saith:

I have not seen Shabbycong dry this season, but I have seen it very low; but what is the cause of it I can't say. They can shut it up and keep all the water back, by a gate in the canal, but there has been water enough in it to water cattle every time I have crossed it along the turnpike. It does not run under the canal at Port Colden. This gate has not been closed, as I know of, this season. It is a waste weir, and they can close it down to catch fish.

And being called again in chief, saith:

The Shabbycong comes directly into the canal at Port Colden, and runs right across it, and the waste weir let out the water in the old channel. The Shabbycong runs through this place (Washington.)

Sworn, &c., August 6, 1841.

Thomas Matlock testifies—I am not so well acquainted with this valley, from Wyer's down to Shields', as I am with the Car-

ter and Arndt farms ; they were one formerly ; they have been divided, I believe, since I left the parts. I think it eighteen or twenty years since I left. Before that I was well acquainted with the farm for twenty years. I lived one year, or something like about a year, with an uncle of mine, a blacksmith, in a log house that used to stand right opposite Carter's stone milk-house across the brook. The rest part of the twenty years I lived in Hampton, which I suppose is about a mile and a half off. I was very frequently across this valley or hollow down which the stream now runs. I used to work some on the farm. I worked for Mr. Henarie, harvesting different years, while he lived there. I have helped harvest across the hollow. Can't say exactly where the water runs, for I never see any running water there. I helped work on the place, perhaps two or three different years. At other times I used to be pretty much of a hunter, and used to hunt a good deal across there. Hunted every season pretty much, two or three or four times in a season, but not during the whole twenty years ; I think it might have been for eight years or more. In all that time I never saw any running stream of water down that hollow—never to my recollection. I know there was a little stream up by Woolston's, but don't know what became of it.

And being cross-examined, saith :

I can't recollect whether the seasons I helped Mr. Henarie harvest whether they were dry or wet. I have known the stream down by Mr. Shields' house to be dry ; I don't recollect how often. I have seen it dry so that there was no water. Harvest is generally in the dry season of the year—sometimes it is a little rainy and catchy. During the times I crossed this hollow I don't think there might have been water running, and I not observed it. I always observed where water run it always left a track or channel, and I don't recollect of seeing any there, either before or after the turnpike was made. I don't recollect of there being a bridge across the turnpike in this hollow ; I never see any as I recollect.

Sworn, &c., August 6, 1841.

Isaac Scott testifies—I live on a place adjoining John P. Ribble's, at Mount Rose, near Port Colden, about a half a mile from it. I was born there. I have lived in that neighbourhood most of the time. I have been acquainted with the Woolston stream all my lifetime, ever since I was big enough to know anything ; it is close by. I expect I was forty-five or forty-six last July, maybe a little older. I think that stream is bigger when the water is in the canal than common ; there is more water into it. Our stream is bigger, too, when the water is in the canal. This stream of ours emptied into that.

By our stream, I mean a branch of the Woolston stream that crosses the Washington turnpike by Ribble's. In former times, before the canal was made, the Woolston stream ran down as far as Wyer's. There there was a kind of sink-hole that it run in.

Sometimes Esquire Beavers used to turn it over his land, and then it would not come down so far, and there was not enough to water the creatures; then they would go up and open it, and let the water out again.

I worked one summer on the Reigle farm, as near as I can tell you about fifteen or sixteen years ago. Frank Nixon then lived on it. There was no water at all there then. I am not able to tell whether they farmed the hollow or not that year. It seems to strike me that Jacob Skinner had it in with wheat that year, but am not positive about that. The well went dry that season, and they dug another one. While the well was dry, they drew their water from the brook down by Mr. Shields and Arndt. Sometimes they drew it from the forge, when they had an errand there.

And being cross-examined, saith :

The season I lived on the Reigle farm, it was without doubt a very dry season; there were several dry seasons about that time. It is so long ago, I forget about the seasons. I know of fish being caught in the Woolston stream above Wyer's, small little chubs and eels, several times. Eels was not much, but little chubs several times. I never went down further than Beavers' a fishing. The way we would catch the eels we would dam up the brook, and then we would go down the stream and pick them up. I forget whether there was any marks of a stream or gully down that hollow on the Reigle farm or not; likely there was, but I don't know. The farm ran off both ways, making a kind of hollow. I know nothing about the hollow further down.

Sworn, &c., August 6, 1841.

Guy A. Bryan testifies—I am acquainted with Joseph Hendrickson, that lives down near Broadway, in this county; I have known him for about twenty or twenty-five years. I have lived pretty much in the same neighbourhood during this time, sometimes a little further off; he moved generally every year or two.

Question. What is his general reputation in the neighbourhood for truth and veracity?

Answer. Well, I should take it, from what I have heard in the neighbourhood, he would not be taken for a man of truth and veracity in that neighbourhood.

I have been in the habit of going a good deal about through the neighbourhood.

And being cross-examined saith :

I have been about the neighbourhood considerably, attending justices' courts; pettifogging, a little at that; otherways I have been around the neighbourhood considerably.

Question. How long have you followed the business of pettifogger?

Answer. It is a pretty hard question to answer how long.

Question. Do you mean by that that you do not know how long?

Answer. What I mean by that is, that I do not follow it all the time as a lawyer; but putting the times together I can't tell how long.

Question. Have you been often at the justices' courts as a witness, also?

Answer. I have been frequently.

Question. Have you also been there frequently as a party?

Answer. Yes, frequently as a party.

Question. Have you and Hendrickson ever had any controversies at law or any other misunderstanding?

Answer. Well, I believe not. I never had any lawsuit, but had some trouble in settling with him sometimes.

Question. How many persons in the neighbourhood have you heard say he was not a person of truth and veracity, and who were they and when did they say so?

Answer. I could not answer that question, I judge; more people than I can recollect of at this time.

Question. Can't you name any of them and all of them that you recollect?

Answer. I can name some of them. There was old Jonny Ulp, Jacob Andruss, Benjamin C. McCullough, and a number of others that I can't recollect; they were the nearest neighbours.

Question. Was not John Olp and Hendrickson brothers-in-law, and had they not a difficulty about settling Hendrickson's father-in-law's estate?

Answer. They were called brothers-in-law. I don't know about any difficulty in settling the estate; but Olp had interest money to pay Hendrickson's wife, but I don't know how much, during her life.

Question. Do you not know that there was some difficulty between them about the payment of it or the settlement of it?

Answer. I don't know any difficulty between them, except it was left to a jury once whether it should be six or seven per cent.; that is all the difficulty I know of.

Question. Do you not know of any difficulty between Jacob Andrews and him?

Answer. Nothing particular that I know of, except the difficulty I heard this morning: Andrews said he owed him a good deal for blacksmithing, and he would never get the pay out of him.

Question. Do you not know of any difficulty between him and Benjamin C. McCullough?

Answer. None in particular. Sometimes he would drink too much rum at Mr. McCullough's tavern, and would not pay for it according to appointment.

I was acquainted with Berlin Metlar ever since he was a boy, until he moved to Ohio. As to his character for truth and veracity, I never heard anything. I don't know of any contentions he got in in the law; he was but a youngish man when he went away. I was never much acquainted with him; I never heard much about his character; all I can say, he was a Metlar.

Question. Well, sir, what was the general character of that family of the Metlars?

This question objected to by counsel of defendant.

Answer. Well, the general character of that family was, that the people of the neighbourhood did not think they knew as much as some people of the neighbourhood.

Question. Well, what was their character for honesty?

Objected to by defendant's counsel.

Answer. Well, I never had much dealings with them. I never knew much about them nor heard much about them; they lived at home, and had not much business with other people, as I know of.

Question. Were they not considered of a light trifling character?

Objected to by defendant's counsel.

Answer. I don't know any answer to make to that; I have not heard enough to know.

Question. Would you like Berlin Metlar to be a witness against you?

Objected to by defendant's counsel.

Answer. No, sir, nor anybody else, if I could avoid it; but I always thought Berlin the most steady of the family.

And being called again in chief, saith:

I declare I can't recollect how long it is since Berlin Metlar moved to Ohio; I suppose about three years ago. He lived with his father, down near the Mansfield mineral springs, till he began to work out.

Sworn, &c., August 6, 1841.

Thomas Schureman, esq., testifies—I am acquainted with Joseph Hendrickson, and have been for some time, twenty or twenty-five years perhaps. Sometimes I lived nearer to him, sometimes further off, from three to five miles; he moved about sometimes. I have been in commission as justice of the peace seventeen or eighteen years.

Hendrickson's general character for truth and veracity in the neighbourhood has not been for some time very good.

I have heard different people speak against him, that he was not a man of truth.

And being cross-examined, saith:

As a general thing, I don't know that I have heard his general character for truth and veracity when under oath spoken against.

I don't know that I can recollect the persons that I have heard speak against his general character for truth and veracity. I have heard James Doolittle, Judge Abraham Warne, Major Warne, Col. McCullough, Doct. McCullough, and Benjamin C. McCullough, and numbers that I can't recollect. I know that Col. McCullough had a controversy with him. Doct. McCullough and Benjamin C. McCullough are reputed the colonel's sons. I don't know that ever Judge Warne and he had any controversy. I don't

know of James Doolittle and he having any controversy. James Doolittle has been a constable for some time. I don't know of his having many executions against him. I don't recollect at present of having given any execution to Doolittle against him. Hendrickson is quite a poor man.

I knew Berlin Metlar when he was a boy, until he grew up, and to the time he went away. I suppose I lived within two or three miles of him. He lived with his father, on the mountain near the mineral springs, and made his home there when he worked out; and they lived a couple of years in Asbury. I live in Asbury. I never heard anything said against his character for truth and veracity, nor for it, as I know of.

I approve of the Methodist Church, and hold that way, but have withdrawn. Joseph Hendrickson and myself had a difficulty. I sued him for an honest debt. I don't know of him and Major Warne having a difficulty of any kind.

And being called again in chief, saith :

Question. Who did you hear speak against his (Hendrickson's) character for truth and veracity when under oath?

Objected to by complainant's counsel, because not inquiring for general character under oath.

Answer. I heard Col. McCullough.

Question. Was you going to give this last answer as a part of your answer to Mr. Sherrerd's first question, put to you on the cross-examination, and did he stop you and refuse to take it?

Answer. I was a going to say that I had not heard it generally spoken against but individually, but was not a going to mention Col. McCullough's name, unless asked. I don't know that there were any other individuals I was a going to mention. I think it likely there were other individuals, whose names I do not now recollect.

James Doolittle is the under-sheriff of the county of Warren—so reputed.

And being cross-examined, saith :

Judge Warne is now a judge of the county of Warren, and Major Warne is not a major.

Sworn, &c., August 6, 1841.

Abraham Warne, esq., testifies—I am acquainted with Joseph Hendrickson, and have known him twenty-odd years. At certain times he has lived close in the neighbourhood by me—a short distance.

His general character for truth and veracity in the neighbourhood, I have heard it spoken against. I think I have heard it said frequently in the neighbourhood that he would make contracts with people in the neighbourhood, and after making contracts, would deny them. As I said before, I have heard it so said in the neighbourhood. He was a trifling man as to his word; after making agreements, he would deny making such agreements.

I was judge in commission in this county for one term, at any

rate ; I think it was two—I am not certain. I am not now a judge in commission.

Question. Why are you not ?

This question objected to by complainant's counsel, because irrelevant, impertinent, and not relevant to the matter in issue.

Answer. I should rather consider that a little too hard for me to tell. I have only my own conjectures. As I said before, the two parties was what I conjectured on ; I was on the minority party.

And being cross-examined, saith :

I can't tell how long Joseph Hendrickson was out of the neighbourhood. It was more than a week or a month—I think likely more than a year.

I don't know that I can say for a certainty, at this time, that I have heard anything said against his general character for truth and veracity when under oath. I can't for an uncertainty say that I have heard anything against it.

I have heard Jacob Andrews, John Olp, and I should say several others, but I can't tell the persons, speak against his general character about his contracts. I understood that Jacob Andrews had a controversy with him. He told me that Hendrickson owed him a sum of money, and promised to pay him, and afterwards denied he had promised to pay him. I know that John Olp and he had some controversy that was respecting a sum of money, or the interest of it, that was to be paid to his wife from her father's estate. I have frequently heard the old man (John Olp) exclaim very hard against Hendrickson, as being a dishonest man. Hendrickson and myself have had some little difficulties. I was acquainted with Berlin Metlar, and more or less since a small boy, till he moved saw him frequently. I think he did not work for me ; if he did, it was very little.

Question. Did you consider him of sufficient capacity to give evidence in a court of justice ?

Answer. Well, sir, I have been of that opinion that he was not.

I lived something like a mile from his father, or a little over, when he lived at the springs, where he still lives.

And being called again in chief, saith :

I have been of the opinion that he was not of sufficient capacity to give evidence in a court of justice, because I consider him rather under-witted—not so small as some others. He was not considered an idiot or lunatic in the neighbourhood—not altogether so. I don't know anything about his drinking ; I never heard of his being a drunkard ; I never saw him in liquor that I know of. I can't say whether he was a man of industrious habits or not. I mean by the expression, not altogether an idiot or lunatic. In conversation with him, and his actions when in company with him, I formed that opinion of him.

Question. Do you mean that you formed the opinion that he was not altogether an idiot or lunatic ?

Answer. I do not believe him to be an idiot or lunatic altogether, as I said before. I mean nothing more than that he was not

so smart and had so much wit as other people; that is what I said or meant before.

And being cross-examined again, saith :

Question. Did you consider him as having sufficient wit to give evidence as much as the commonality of witnesses ?

Question objected to by defendant's counsel, because the same question in substance has been asked before.

Answer. That is about the same I have answered before, I beleve. I did not consider him as competent as some other men I knew. Sworn, &c., August 6, 1841.

Edward Youmans testifies—I lived on the Reigle farm awhile. I bought it after I had been on it a year. I think I lived on it four years, and occupied it one year after I moved off of it. It is about twenty-two years this spring since I left it.

There was not any stream of water running down through the hollow while I lived there and occupied it, more than in time of a heavy rain it would gather and run down. At the time I lived there, old Mr. Nixon lived on Wyer's farm. It appears that the Woolston stream ran but little on the Wyer farm, and run into a sink-hole. At the time I lived there, I had to haul my water from Nixon's farm (Wyer's now), so I hauled a few times from before his door.

I can't tell whether the Woolston stream is larger now than before the canal was made; it was a nice stream of water when I lived there.

I was acquainted with Col. William McCullough, of Asbury. I bought of him, and sold back to him. He is now dead. He has been dead a year or more.

And being cross-examined, saith :

At the time I spoke of hauling water, it was a very dry time at the time. There was a well on the farm, and it dried up the season I had to haul water. It was dry a couple of seasons, maybe more. That was the season I had to haul water; and there was no water for my creatures either, but I could have watered them down at Job Carter's. At other seasons I always watered my creatures at Carter's—there was no other place. During the time I lived there, I observed there was naturally a washed place through the hollow. At that present time I did not consider it a natural course, because there was no water there. If there was water, it *must go down there*; and whenever there was a surplus of water, it *did run down there*.

I was down on the line between Shields and Arndt day before yesterday, at Mr. Arndt's request. He was not with me, I was in company with John Mowder. I was a viewing the ground just at the place where the water runs over on to Shields, as much as my eyes would do.

Question. From your view of the ground, would you judge that the water would naturally flow on to Shields, or continue on to Arndt, if there were no obstructions in the way ?

Answer. My view was this, Mr. Sherrerd, and that was my object in going down there. I went back from where the water flows down betwixt Mr. Shields and Mr. Arndt, as far as my eyes could help me in viewing the ground, according to nature, if nothing had disturbed it, it would *run over on them both*, and gather there into a pond. I observed a little spring just below the watering place in the flat on Mr. Arndt. There was so much grass and stuff that I could not tell which way the stream run; it seemed to gather round there. It was a nice spring; there was high grass there. If it had been just mowed I could have told better.

I seen the crooked ditch of Mr. Arndt carried down through the field from the turapike.

Question. If you owned Mr. Arndt's farm, and had all this stream running down that ditch, would you consider it an advantage or disadvantage to the farm?

Answer. If it was my farm, I would not want the water to run there; but people have different opinions about water. If I owned Mr. Shields' farm, I should consider it a great disadvantage to be deprived of the water there, if he had no water there. Even if he had plenty of water at the house, it would be a great disadvantage for him to be deprived of the water there, the way he has got his farm.

When I was down there, day before yesterday, it was quite a nice little stream, better than I expected to see. The reason why it was larger than I expected to see it, was that the people said the canal done it, and *the canal don't do it now*; the water has not been let in the canal this season; the water must gather from some other place.

And being called again in chief, saith:

In the Reigle farm there was a channel naturally washed there; but still I always ploughed over it, except a little pond before the door, where the water would stand awhile. I planted and sowed right over this gully; I never kept it as a ditch.

This surplus of water would occur whenever there was a heavy rain; there was no other place for it to run; it descended each way towards it. It would not run longer than it would in other places after a shower, while the water was upon the ground.

I don't know as I can tell what alteration there is in the ground by the watering place, by ploughing or washing; it appears to be washed a little more on Arndt's side. I was there about a year ago, or may-be a little longer, to look at it, at Mr. Shields' request. I don't know that I could form in my own views that there had been a change in the ground since that time.

If I lived at Mr. Arndt's, and had nothing but hard water, I should certainly consider it an advantage to have a stream of soft water at the door.

Mr. Shields could extend his lane down to his house to the watering place there on his own ground, but it would not be as convenient as where it is. There would be no other expense than making the fence and losing the ground.

And being cross-examined again, saith :

If I could see any alteration at all on Mr. Arndt's side by the watering place, it was in the ditch—it was a little deeper where the water runs steady ; and that is what I meant by its being washed more on Mr. Arndt's side. John Van Natta lived on the Reigle farm before I went there, and when I left there John Davison and John Garrison moved there ; and John Nixon or Jacob Skinner followed them.

Question. During the time you lived on the Reigle farm, did not the water continue to run some part of the winter season and part of the spring ?

Answer. It did while the snow was melting—it had no other place to run.

Question. Did not the sink-hole, while you lived there, at any time get stopped up, and if so, where did the water run ?

Answer. It never appeared to get stopped up while I lived there ; if it did, the water did not come down.

Question. During the whole five years you lived there, were the seasons generally dry or wet ?

Answer. It was a very dry time then, on account of streams.

Question. If the whole of the water at the turnpike was turned into the crooked ditch, and carried down to Mr. Arndt's house, and there discharged into the road, and the spring above the road all dry, would not Shields have a dry farm ?

Answer. Certainly he would have a dry farm.

Question. Have you ever known the springs above the road by the house to be dry ?

Answer. I think I saw them dry once, at the time I lived on Reigle's farm, when my well was dry.

And being called again in chief, saith :

This season has been a very wet season here with us in this valley, and that too, quite a fine season, a good deal of rain.

I expect there has been water standing in the canal this season from rains, though I have not been along, only across up here at this place. I saw water standing in it there.

Question. If the water from this crooked ditch was discharged back of Mr. Arndt's house, would it not naturally flow down into the pond by Shields' house ?

Answer. I think it would, if it was not disturbed any ; but it might be sent either way.

And being cross-examined again, saith :

I consider this a very good season for everything—very good for farmers ; nothing suffered for want of rain. I don't consider it a very wet season, just about wet enough to make everything grow. When I crossed the canal this season, I did not see a great deal of water standing in it—just a little pond there by the 'squire's. It was in the basin, and a little higher up—not as far as I could see. I observed it around the boats above the bridge ; that was as far as I took notice of it.

Shabbycong has been drier this year than what it has this good

many seasons. It has not been entirely dry here. I have known it this twenty years; I have never known it entirely dry, but have known it to fail so the water only stood in ponds—the fish died. I don't know as I could tell you how often it has happened, but more than once, and that before the canal was built. I consider it an ancient natural watercourse. I have never known the Pohatcong entirely dry in any part of it. I have seen it oftentimes, but never seen it dry.

The counsel for complainant objected to the sentence, "I have seen it oftentimes, but never seen it dry," after it was written down, because not in answer to the question, the question being, "Have you ever seen the Pohatcong in a dry season below Kennedy's mills." The counsel for complainant then insisted upon having the question written down, and the following question was put:

Question. Have you ever seen the Pohatcong, in the dry seasons, below Kennedy's mills, near Carter's?

Answer. I could not tell whether it was in wet or dry seasons I saw it.

And being called again in chief, saith:

Question. Have the streams generally through this part of the country kept up pretty well through the season?

Answer. Well, the stream by my own house has, and that was what I have to go by pretty much, and that has been as good as ever since I lived there.

Sworn, &c., August 7, 1841.

James Riddle testifies—I am a son of Richard Riddle, and lived at home with my father when he lived on the place where Mr. Arndt now lives. I lived five years on the place. It is seventeen or eighteen years ago since we left the place. There was no stream of water running across the farm from the turnpike, unless in the spring of the year in a break up of snow; then there would be a stream down across the turnpike and across Mr. Arndt's fields. It is so long ago I am not able to tell anything about it, whether it went across upon Shields or straight down. It come into the pond by Mr. Shields. It would continue as long as the snow kept running and until the water soaked away. Father ploughed and tilled where the water now runs down from the turnpike through the flat. I was too small; I plastered corn there on the same field. There was a field up next to the turnpike, below that there was meadow. I am now thirty-one years old, to the best of my knowledge—not certain—thirty-one or two. I recollect that the field by the turnpike was tilled more than one season, but am not able to tell you every year what it was in with. There was no well at Mr. Arndt's house when we lived there.

And being cross-examined, saith:

I have no remembrance of a little strip being left, and was not cultivated, in the first field below the turnpike. I mean to say there was none, to the best of my knowledge. I don't remember

of any wash or gully in the first field, the second field meadow. I recollect none in the meadow, the second field. As it continued down nearer towards the line of Shields, near where the watering place now is, there was some wet low spewy boggy ground; the water would lay in betwixt the bogs. I have no knowledge how far this extended. I am not able to say that it did or did not go over the line. I can't say that it continued up to Shields' line. I have no idea of it at all, it is too long ago to tell anything about it. I was too young a boy to take any notice. I have known it in times of great flood. I have known it to take the fences away by the pond by Mr. Shields'. I have no knowledge of taking them off through the fields above.

It is better than a year ago since I was on the ground with Mr. Shields and Arndt. Mr. Arndt requested me to go and look. To take away the ditches and level the ground, I am not able to tell whether the water would run over upon Shields. I was not able to ascertain which way it would run.

And being called again in chief, saith :

I don't remember of any watering place on Shields' side, up where it is now, when we lived there. I have no recollection of any little stream running in the head of the pond or any streams above the pond, any more than the pond by the house, as it now is. There was a spring in Mr. Arndt's meadow below the present watering place, and whether it run on to Mr. Shields' or run on Arndt's meadow, I don't know. There was another spring in Arndt's meadow above the milk-house; there was a little pond there, and we supposed the water boiled up. I don't recollect of any springs in the second field from the turnpike, which was in meadow.

And being cross-examined again, saith :

I have no recollection of being over on Shields' side, where the present watering place now is, to see whether it was wet or not. I have no recollection of that spot. The probability is, I have been over, but I can't recollect to say whether it was wet or not.

I recollect hauling hay off this wet spewy place; we mowed it and took the hay off, but whether we went over it with a wagon or not, I am not able to tell, it is so long ago. I don't recollect these things.

Sworn, &c., August 7, 1841.

Charles Myers testifies—I lived formerly right along the Woolston stream. It is about twenty-five years ago since my father moved there, and I lived with him eight years by the stream. I can't tell whether the stream formerly was smaller or not; at that time it was all shut up, no way for it only what it made itself; it was spread over Woolston's meadow above the turnpike. It went down on to Mr. Wyer's place, and went in a large pond along the road to Changewater, and when that was full it went into a sink-hole on Wyer's place. I never saw it go any further than the sink-hole, except once in a very wet time I saw a pond on the lower side of

that place by Reigle's line. How it got there I don't know—I suppose from the brook. I don't know whether the rain formed it or it come from the brook. I did not see any water running from it or running to it. I have crossed the valley lower down, at different places. I have crossed it on Mr. Carter's farm and Mr. Reigle's. I never saw any stream of water running through it, except since the canal has been in operation. That valley was tilled and ploughed all across it. I will be forty-one years old the twelfth of this October.

And being cross-examined, saith :

This Woolston stream passes under the canal, at or by the foot of the plane. After it passed on by where I lived, it used to pass on into Beavers' meadow, and some sunk there. It was not spread out so much there as in Mr. Woolston's bogs. It run out of the natural course, in two different places, into ponds on Beavers' land. One of the ponds was off about four rods from the watercourse, the other about a rod and a half. The water would run into them, and wasted away there. In a wet time it would run in there, and stood there and dried away—the watercourse was not sufficient to carry it off. There was some small fish in this Woolston stream ; I recollect catching them when I was a boy ; chubs—never caught but one eel, to my recollection.

And being called again in chief, saith :

I have seen it entirely dry at Wyer's. The streams flowing from the springs around the head of this stream have been opened, and there is more water flows down now than formerly, independently of the canal.

I worked on Wyer's farm, but not any below, when Mr. Nixon lived there and Mr. Husselton. Below the sink-hole on Wyer's farm it was ploughed across the hollow, and raised grain on it. I have taken rye up on it, and cradled rye there also.

I put some catfish in the Woolston stream myself, after I caught the little chubs out. I don't know any one putting chubs in.

I have been acquainted with Berlin Metlar some time back. My particular acquaintance with him has been for twelve or fourteen years. I have known him a good while longer. I have never heard anything said against his character for truth and veracity. I always considered him an upright honest young man in my sight. I did not consider him a fool or half-witted ; I don't know what other people thought of him. I never had any dealings with him. He used to work for Mr. Arndt, and come to the shop, and always seemed to do his errands correctly. He was something of a talker, and we had considerable conversation together. He worked for Mr. Arndt more than one year, but I don't know how long. I saw him at work at Mr. Arndt's before he came to my shop. He came to my shop for more than a year before he went away from there ; he did not come to my shop all the time he lived with Mr. Arndt. I understand Col. William McCullough is dead. Mr. Arndt had his blacksmithing done at my shop.

Sworn, &c., August 7, 1841.

Richard Rounsavell testifies—I have been acquainted with the Spruce run turnpike ever since it has been made. I have been in the habit of passing along it to Mansfield meeting a good many times, and to this place oftener than to the meeting-house. I think the turnpike was made in the year eighteen hundred and thirteen. I am a stockholder in it. Before the canal was made, I never see any stream of water crossing the turnpike where it now flows on to Mr. Arndt. If there had been any such thing, I judge I must have seen it, from the number of times I passed. I passed it most of the time on foot—I kept no horse.

And being cross-examined, saith :

I don't recollect of there being a bridge there across this hollow ; it does appear to me too as if I have seen a bridge there, but am not certain of it. If there had been a bridge there, I think there might not have been a small stream of water, and I not observed it.

Mansfield meeting is not on the Spruce run turnpike, and when I lived at New Hampton, I oftener came the old road than the turnpike. I now live about a mile above Hampton, on the Hampton side. I have lived there eight years last spring. Since I lived there, I most generally came the turnpike when I came to meeting.

Sworn, &c., August 7, 1841.

David Parke, esq., testifies—I have been acquainted with the Spruce run turnpike since it was made, and I used to travel it very frequently from New Hampton, where I live, to this place, until within six or seven years ; since then I don't know that I have been along further than to Mr. Arndt's. In all my travelling over it before the canal was made I never saw a stream of water crossing it in the hollow above Mr. Arndt's. I have travelled it on foot and on horseback, and in a wagon—oftener afoot than any other way.

I had no particular acquaintance with Berlin Metlar before he went away. I knew him. I don't know as I ever had any conversation with him. I frequently see him come to the store and buy things, and the clerk waited upon him. I believe that was while he lived with Mr. Arndt. I understood he lived there. I heard him talk with others while in the store. Don't know that I ever saw him at any other place. He used frequently to be there. He always appeared to me to be a man that was a pretty close dealer—seemed to be anxious to take care of himself; I did not see anything in him but what he could take care of himself. I should consider him more than half-witted ; I don't consider him a fool. For an uneducated man, I should consider him possessed of as much sense as ordinary. I never heard anything said against him, as a man of truth, either under oath or otherwise. I never had any dealings with him, except in the store as mentioned before. I am now a justice of the peace in the county of Hunterdon. I

have been in commission about eight years. I don't know where he was brought up.

And being cross-examined, saith :

I have never heard any general reputation about him, one way or the other.

I am of the opinion, when the turnpike was first made, there was a small plank bridge across this hollow. I think there might not have been water passing under this bridge, and I not observed it. In the course of a few years this bridge went down, and there was then a kind of a hollow where the water would go through in time of a flood. I never saw any water passing along this place at any time, in a flood or any other time. I did not pass this place as often as once a week. I could not say how often I passed it. I think not as often as once in two weeks. It might have been once a month the year round, may-be not so often. There might have been water running there when I was not passing, and I know nothing of it.

And being called again in chief, saith :

The way the land was situated there it was necessary to have a bridge there, in order to carry the water off that would collect in time of rain, otherwise it would dam up and run over.

Sworn, &c., August 7, 1841.

Benjamin Reigle testifies—I am the father of *Eli Reigle*, who lives in this township on the farm adjoining *Joseph Carter's*. I reside in Pennsylvania, in the township of *Durham*, county of *Bucks*. I will be sixty-four years old against *December* next ; I was born in seventy-seven. I still own the farm on which my son lives here. I purchased that farm, in the year 1829, of *Col. William McCullough*. I was over the farm to view it before I purchased it. There was not any stream of water crossing that farm at the time I purchased it. I went over the farm in different directions, so as to have a fair view of the whole of it, and I made an objection to it because there was no running water on it.

Col. McCullough said that water could easily be brought upon it, if I made an agreement with the man who lived on the farm above.

What *Col. McCullough* said objected to by complainant's counsel.

I bought this farm and paid for one hundred and fifty acres, at thirty dollars an acre. I was upon it at different seasons of the year. I think it was in 1832 that there was first to my knowledge, running water there. The way the water came there then I heard the canal had broken, and I afterwards saw it myself, and it was a wet season. The waters came there then, and they spread over the flat, it was a large level piece of ground ; and we then come to the conclusion that we must collect this water together and carry it off in a ditch. I then went to see *Wyer's* people, who lived on the next farm above. We finally then agreed amongst us, the *Wyer's* and myself, to make a ditch to carry off the water. I

don't know that I can positively say when that ditch was made ; I think it was commenced in 1832, but can't say that it was finished then. When this water spread over the fields, as before mentioned, it passed off where there was descent enough to carry it away ; but in the upper field there was a large pond where it stood, and there was a stone fence that likely prevented it some, but I don't know. At the time I purchased the farm, I saw no watercourse nor any marks of a watercourse. The valley was tilled when I bought it, and not in meadow. The upper field in the valley had come in that season. After I bought it, I went up to look for the stream I heard of above ; I don't recollect how long after, but not less than a year and a half anyhow. I seen water then about Wyer's and so did at Henry Carter's—running water about Wyer's. The stream was not then as large as the one now crossing the turnpike ; to the best of my recollection it was not half as large. The water at Wyer's run through their field part way, where it sunk away. I was also on the farm where Mr. Arndt now lives at the time I purchased. Henry Groff then lived on it, as tenant of Mr. Arndt. Henry Groff is now dead, so I heard at least. I was across the hollow and across the field from one end to the other. I was anxious to see it ; Mr. Groff showed it to me. I was anxious to see it, because it lay in the same neighbourhood of the one I was agoing to buy, and I had heard a good deal said about it. There was not any stream of water upon it then crossing it from the turnpike. I think the hollow where the water now runs was then in with grass and clover, to the best of my recollection. I did not observe any gully or channel for the water to run in at that time ; it looked as if it had been ploughed clear across from fence to fence. I have followed farming this last thirty-five years, own land in Pennsylvania, where I now live, and farm there. From my experience, as a farmer, in watering meadows, I call it beneficial.

When Wyer's ditched they run the ditch on higher ground than the water would naturally run if it run out of the sink-hole. Charles Carter was living on the farm I bought when I bought it.

And being cross-examined, saith :

It was in October when I first went to look at the farm I purchased of Col. McCullough. I was there again, I think, the latter part of November—then I bought it. I do not recollect whether it was a dry or wet season. I know there was fine crops of corn. The farm was wore down, and it is a good deal so yet. The fences were at that time tolerably good ; the buildings were indifferent. Lands were quite low at that time. I do not recollect what season of the year it was I went up to look for the stream above ; I think it was after harvest. I can't pretend to say whether that was a dry or wet season. I never lived on the farm myself. I do not visit it more than once or twice a year, not unless I am particularly called on. From 1832, as much as I can recollect, the water has been running since. The stream is as large now as ever I knew it. I did see it this season before the water was put

in the canal, as it was said. I think there is more water now than there was then. I saw it this present season, either the latter part of July or first of August. As owner of that farm, I could not hardly tell for what I would be deprived of the water on that farm. I would not for a thousand dollars.

Affirmed, &c., November 1, 1841.

Henry Hummer testifies—I lived on the farm Mr. Reigle (the last witness) purchased, after he purchased it, from 31 to 32. My father rented it of Mr. Reigle, and I lived at home with my father and attended to the farming. There was not any stream of water running across it at that time, unless in time of a rain or melting of snow, or something of that kind, but no stream at any other time. There was not any old channel or marks of a watercourse. We had corn in one field that run down to the hollow, and an open fallow that run all the way across the hollow, and one field in with clover, that run down to the hollow. I don't recollect what kind of grain we put in this open fallow field—we put in winter grain. We left no place for the water to run through, but ploughed right through. I did not help harvest the next year; my father sold it to Philip Johnston.

I also travelled along the Spruce run turnpike frequently that year, and at different times in former years. I was along winter and summer, but can't recollect at what times. I never noticed any stream of water running there, unless in time of heavy rains or melting of snow, or something of that kind. I never took notice, nor saw any gully on the Carter or Arndt farm there, to my knowledge. I have noticed they raised grain in the hollow, on both sides, where the water now runs. I was along there every once and awhile for two to three years before my father lived on the Reigle farm. My father got water out of the well the year he lived on that farm.

And being cross-examined, saith :

I don't recollect whether it was a dry or wet season I lived there. There was a mud-hole above the lane that had water in, and we filled it up with stone to drive across it, and that made a pond above. When there was rains, or snow water, or showers, the water would run into it, and settle there. The ground descended each way to it. I don't recollect that I was ever at the sink-hole while I lived there. I was across the place where Wyers lives, but not at the place where it sunk. When I speak of seeing grain growing where the water now runs, both sides of the turnpike, I mean both fields, and right through the hollow, but don't recollect seeing any watercourse. I never looked in particular to see if there was a watercourse, for I never thought of such a thing; there was no water crossing the road. I don't recollect of there being a bridge at this place. I don't recollect there being a hollow scooped out across the turnpike and paved with stone. I recollect there being a mud-hole on the side of the road, on the upper side of it.

I was thirty years old the second day of last August.

And being called again in chief, saith :

What formed that mud-hole, I suppose, was the water coming down the turnpike each way.

The stream that I crossed on the turnpike to-day is considerably larger than the stream was up by Wyer's when I lived on the Reigle farm.

And being cross-examined again, saith :

I should think it was pretty near as large again, from the appearance of it, as it was there then. I could not tell how often I saw it that year by Wyer's—I saw it frequently that year. I don't recollect whether it differed considerably in size that year at different seasons of the year.

Question. At that season, in times of freshets and high water, did the water run down the Reigle farm ?

Answer. Yes, sir.

If there had been no sink-hole on Wyer's farm, it would have run down on the Reigle farm, and made a big mud-hole in the upper field. There is a ridge in the upper field it could not have got over, unless it spread a good deal.

And being called again in chief, saith :

The water would continue to run after rains till it run off a day or so, except the mud-hole by the barn, where it would stand.

Sworn, &c., November 1, 1841.

Peter Hummer testifies—I am the father of the last witness sworn. We moved on the Reigle farm in the year 1831, and lived there one year. There was no stream of water crossing that farm the year I lived there, at no time, except in time of rain or snows melting. We never was obstructed in farming, excepting in rains; we ploughed right across the hollow when we ploughed. There was no old gully or channel for water across the farm. I had been acquainted with the Joseph Carter farm for some years, say a dozen, but not much with the Reigle farm before I moved on it. I was often backward and forward a visiting Joseph Carter's, who is my brother-in-law. I was different times and different years up across the hollow on his farm; would go up and look at the grain. I never saw any water coming down across that farm. I never saw any old gully or channel for water, to my recollection. They ploughed all over it and sowed and tilled it all. While and before I lived on the Reigle farm, I was in the habit of passing along the Spruce run turnpike frequently, at different seasons of the year. I never saw a running stream across the turnpike, not a natural running stream. I mean by a natural running stream, water that has its natural course, and always running the same, as a spring-run or brook. I mean I never saw it run only in times of rain and melting of snows, and such like, and not any natural running brook.

I was sixty years old the first day of September last. I now reside about a half a mile below Broadway, in this county. I can't

tell how often I was up with Joseph Carter across the hollow looking at his grain, but different times. I have been in the habit of visiting him once and twice a year, as occasion required, ever since he lived there.

And being cross-examined, saith :

I don't recollect exactly whether it was a wet or dry season the year I lived on Reigle's farm. I recollect we did not suffer any on account of the want of rain ; we did not have to stop our ploughs on account of dry weather. The time I spoke of passing along the Spruce run turnpike, a dozen years before I moved on Reigle's farm. I passed along it sometimes, may-be three or four times a year, and sometimes may-be not more than once. As I did not know of water passing down this hollow, my attention was not called particularly to look ; I never thought of there being a stream. I don't recollect of there being a bridge across the turnpike at this place. I do not recollect of there being a hollow scooped out for the water to pass. I don't know that I went up over this hollow every time I visited Mr. Carter ; generally when there was grain a growing we went up to see it sometimes ; we went over one field and sometimes another. Whenever I saw they had been ploughing over the flat field I never saw a place left for a channel. I don't mean to say they never did leave a channel for the water. I visited my brother-in-law in the winter and summer season both—most frequently in the summer, on account of my wife's not being very hearty, and could not go out so well in the winter.

Sworn, &c., November 1, 1841.

John Husselton testifies—I lived on the Wyer farm five years where John and Peter Wyer now live. I moved there in the year 1823. While I lived there, there was not a stream of water crossing the road at all times. When it did run, it run just below the houses in a little swamp, and sunk. I don't know that it ever, to my recollection, run across the farm, except in time of high water. I farmed the upper part of the farm, and my brother farmed the lower part, during these five years. I believe my brother ploughed the field below the sink-hole. He left no place for the water to run, that I know of. I was over it to see—there was no place left. I am upwards of fifty years of age—I don't know how much. I now reside at Asbury, on William Richie's farm. Different persons lived on the Reigle farm during these five years—Mr. Nixon for one, and Jacob Skinner and Moore Furman.

And being cross-examined, saith :

I can't recollect how often the stream did not run across the road. One season, I recollect in particular, the water did not run down the whole year ; the other seasons the water run down a little. That one it was very dry ; the brook and well and all was dry ; we had to haul water. I don't know that I can recollect more than one year that the stream did not cross the road, and that year only part of the year it did not cross. I don't know whether they turned the water out on their meadows above, that

year or not. I am not certain whether they turned it out other years or not, but sometimes the water would not come down, and we would go up and hunt it; and sometimes they would open the ditch a little, and then we would get a little water. This was on the Henry Carter farm; Slater lived there then. I don't recollect of their ever catching fish in that stream. I don't know of their catching any eels. The Woolston brook is a regular watercourse to there where I lived. I hardly ever saw it so that the sink-hole did not take it all, except in time of high water. In time of high water it flowed over the fields on the Reigle farm below us, and don't know anything about it further.

And being called again in chief, saith:

I went different times up and cleared out the ditch through Carter's meadow, and then the water would come down to us. I did not make it my business to go up often. We did not hunt for it after we dug a well there; we had water enough then. I think I went up two years, at different times after harvest, to hunt the water before the well was dug. I can't tell how many days or how long the water would continue to run out of the sink-hole, when it was full of water, in time of heavy rains. It never lasted a great while, but would cease as soon as the water fell.

Sworn, &c., November 1, 1841.

William Husselton testifies—I am a son of the last witness that was sworn. I lived at home with my father during the five years he lived on the Wyer farm, and have done ever since till this year. I assisted him in farming. I will be thirty years old the tenth day of next February, if my age has been kept right. A stream of water at that time came through on Mr. Wyer's farm—not at all times during the five years. There is a course for it through on to Mr. Wyer's farm. Only one year that I recollect that it was entirely dry, and then not the whole year. It sunk in a hole on the farm—always sunk there, unless in time of high water, to the best of my recollection. I recollect that my uncle ploughed the field below the sink-hole in the hollow and tilled it. He left no channel, to the best of my recollection. There was no old channel or gully that he ploughed up that I know of. My father used to go up to look for the water several times, but don't know how many.

Sworn, &c., November 1, 1841.

Imla Lake testifies—I worked on the Reigle farm in 1829, the first, and in 1830, for Charles Carter, the summer seasons of those two years. The first summer I worked two months, and the next I worked five. There was no stream of water crossing that farm at those times. There was no old channel or gully across the farm. We did not leave any place in the hollow for the water to run across. That hollow field was tilled both those summers. I ploughed it myself. Wheat and corn was raised upon it. The little stream above entered into a sink-hole on the farm above the

farm I lived on. That sink-hole never overflowed, to my knowledge—not where I seen it. That stream I don't think was as it is now. My home then was about a hundred yards above Joseph Carter's, on the road to Andersontown, with my father, John Lake. I can recollect that hollow back as far as 1824. Frequently crossed it, and up and down it at different seasons and at various places. During the whole time of my acquaintance with it, from 1824 till the time they commenced ditching, there was no stream of water running down it. Before I worked for Carter, I went up and down and across that hollow, sometimes after the cows and sometimes after raspberries, and several times across it. I crossed it on the Carter farm and on the line between that and the Reigle farm, then the McCullough farm. There was not then, to the best of my knowledge, any old channel or gully on the Carter farm.

I worked also for Mr. Arndt, the first season he moved here, the whole summer season, in 1831. There was not then any stream of water running across his farm. The hollow where the water now runs was then in with clover, and Mr. Arndt had it ploughed up. I helped plough it. There was not then any marks of an old channel or ditch. In ploughing, we did not leave any for the water to run.

It was in the fall of 1832 when the Wyers commenced ditching. Reigle ditched the same year that Wyer did. Wyer ditched down to the fence, and Reigle met him.

I am now thirty-three years old, past. I now live in Hampton, about a mile from Mr. Arndt's and Shields'.

And being cross-examined, saith :

I am positive there was no gully in Mr. Arndt's field when I helped plough up the clover in 1831. When I say a thing, I mean it. I can't say how often I mean by frequently crossing the hollow since 1824. I remember going often across. I don't mean to say as often as once a week. I could not say as often as once a month through the year perhaps. When I was after my cows and after raspberries I was looking after the water also. I don't remember any water—there was none. There was nothing particular induced me to look after the water. I can't say exactly how old I was when I first recollect crossing the hollow. I recollect what induced me the first time I crossed that hollow, I went to Skinner's, who lived on the Reigle farm, to see my brother, who worked for him. I crossed it by the barn below Reigle's house. I can't say what season of the year it was. There was no water there then. I am positive there was no water there then.

I have seen this stream that crosses Mr. Arndt's farm several times this season. I saw it before the water was let into the canal and since. I see a difference before the water was let in the canal and since. It is higher now—I can't say how much; it is something bigger I think. I saw it last year; it was larger then than it was this season before the water was let in the canal. I observed it particularly this season to notice it was larger; crossing it in-

duced me to look at it. I have no acquaintance particularly with the waters along the line between Shields and Arndt. I can't remember anything about that, whether the water crossed over from Arndt on to Shields. I remember there was water there. I recollect there was water above the first fence on Mr. Arndt. I don't remember of any on Mr. Shields. I recollect the stream below the first fence, but I don't know where it sprung from. When we ploughed the clover, we ploughed clear up to the line fence. I don't know that I ploughed up, but it was ploughed up to the line fence. We ploughed it up about harvest, for winter grain. It was not a wet place down along the line fence at that time. It was not a very dry season that season—a usual season, about as common. I never told any one that I saw water on Shields' side; I am positive I never told any one I did. I don't recollect any bridge on the turnpike. There was not a hollow scooped across for the water to run through, till they ditched it for the water to come through. I am positive, too, there was no bridge on the turnpike. I am not now a member of the same church as Mr. Arndt. I have got my certificate, and am a member of no church now. I was a member of the same church with him.

And being called again in chief, saith :

I mean by the first fence, the first above from the house. When I speak of there being no water on Shields, I refer to the present watering place, and not down by the house. The reason why I took my certificate was, I was living at Hackettstown, and I left and came down here and I took my certificate, expecting not to return to the same neighbourhood; and I have not connected myself yet with the church here.

When I say there was no hollow scooped out across the turnpike, I mean I did not see any in crossing it.

Sworn, &c., November 2, 1841.

John B. Riddle testifies—I lived on Mr. Arndt's farm at the time my father lived there five years. I don't know exactly how long ago it is. It is something like seventeen or eighteen years ago since we left there. James Groff, or rather his father, Henry Groff, came on it when we left. Francis Groff had been living on it, I think, before my father moved on it. During the five years we lived there there was not any steady stream of water crossing that farm. I mean by steady stream, that the water only run in time of rains and of freshes. At such times it would not continue to run any longer than any other place for the water to drain off. The water would collect at such times from the turnpike each way. During those five years we tilled the ground in the hollow where the water now runs, the same as we did the other part. We never left any place for the water to run—we had no occasion to while we lived there. Sowed our grain upon this low spot all over the whole field, and left no place for any water. We never had any grain injured by any water; it used to sludge our grass a little in time of showers. They raised grain, also, on the hollow above us

on Mr. Carter's. They ploughed over the hollow without leaving a place for a brook.

I don't know my age exactly; I suppose I am something like thirty-eight. I reside in this county.

Mr. Shields applied to me, to know what I knew about the water, a couple of times. I now live on the farm Mr. Shields lived on before he moved where he now lives—on the farm he sold to his brother. I suppose, to take it across, about a mile from Mr. Arndt's.

And being cross-examined, saith :

I told Mr. Shields, when he called on me, that I had forgot all about the water. He wanted to know where it had run on to him, and whether it did or not, I understood him. I told him it had all slipped my memory. Mr. Arndt had then never been to me. This conversation between Mr. Shields and me was last general training a year ago. I told him my memory was poor at best, and it had all slipped my memory; I recollected there being water in the meadow, but how it run, or whether it run at all, I did not remember. It never hindered us from mowing or getting our grass. During the whole five years we were there we continued to keep this low wet place next to the line fence in grass. We never ploughed the hollow up to the line fence. In time of rains and freshes, I don't know whether the water run over on to Mr. Shields or not. I don't recollect exactly, but there was some bushes standing along the line fence. When I spoke of the water running down each side of the turnpike, I don't recollect whether the water also run off Mr. Carter's farm. I recollect there being a bridge on the turnpike. I don't recollect about travelling along the turnpike when there was no bridge there. I can't tell that they did always plough over the hollow on Carter's without leaving a place for the water; as far as I know, they did not. The first season we ploughed up this hollow I don't recollect seeing any ditch or gully where the water had run.

Sworn, &c., November 2, 1841.

Jacob Vosseller testifies—I am sixty-one years old. I now live in Hunterdon, about a mile from Changewater. I was in the habit of passing along the old Changewater road in old times frequently. That road, as near as I can recollect, crossed the corner of Wyer's farm; it was not fenced in then.

The road went, as it were, between the Wyer and Reigle farms at that present time. For seven years I was accustomed to pass along that road, carting pig metal from Oxford furnace to Changewater—thirty-two or three years back. Mr. Showers and Adam Runkle drove the furnace at that present time. Some days I went twice a day, and sometimes once, and then I would miss while I went a trip to Brunswick. During those seven years there was not a steady stream passing along down that hollow. In the fall and spring and breaking up of winter it would create a good deal of water; it was a hollow that descended some distance each way.

It would continue to run sometimes longer than others—a month or six weeks there would be water there. Water running there for a month or six weeks in breaking up of winter, and at other seasons of the year it was dry. The head of the Woolston stream was there as at present, but I don't know what the end of it was. (It was said frequently it sunk, but I never saw it sink.)—Objected to by complainant's counsel.

There was no bridge on the old Changewater road during the seven years I travelled it; they did not work the road much, let alone making bridges. I never stuck fast in a mud-hole on the old road, or anywhere else. There would be mud there in the spring and fall of the year.

Sworn, &c., November 2, 1841.

John B. Parke testifies—From the account I have of my age from my parents, I was sixty years old 24th day of last January. I was born on the farm that joins Shields' and Arndt's, commonly called the Bowlby farm, and have lived in the bounds of the neighbourhood ever since. I own part of it yet, a small farm joining Arndt's and Shields'. I own a farm at Changewater, about a mile from Shields' and Arndt's, and did own a farm that lies between the Reigle farm and the Musconetcong. I have been in the habit of crossing this hollow below the Wyer farm a great deal, at different places. I have crossed the Reigle farm frequently, and Carter's, and along the turnpike, and also the road that goes from Port Colden to Changewater. I never was much in the habit of travelling in bad weather, I am not so robust as other people. I have travelled it at different seasons. From my knowledge of that hollow, I don't recollect of any stream of water running down it below the Wyer farm in old times, before it was ditched—a nice stream running ever since. If there had been such a stream then as there is now, I should have noticed it. I am satisfied there was none. I can't tell how many times a year I have crossed that hollow; some years more than others; I used to frequently. I have travelled the turnpike and the road from Changewater to Port Colden a very great deal, and across the farms frequently, but not so often.

There was a stream come down from Woolston's across the road on to Wyer's land—a small stream. I think, when the canal got into operation, that stream increased where it crossed the road on to Wyer's, and still remains so. (I have understood it formerly sunk in Wyer's land, but I never went to see.)—Objected to by complainant's counsel.

I have crossed frequently on Reigle's farm, and it did not appear there. I am satisfied, too, from my knowledge of the country, that it did not formerly cross the Spruce run turnpike.

I have seen them farming the hollow, and there appeared to be dry land all through it.

And being cross-examined, saith:

I was never in the habit of going from home much without business called me.

In travelling the turnpike I used to go to Mansfield meeting-house, Washington, and many other places. I recollect, before the turnpike was made, there was an old road that went west of Creveling's farm, now Shields', and along Coxe's woods. I travelled that frequently in going up to Mansfield meeting-house. I can't tell how often I have crossed this hollow, (when I did not travel on these public roads) not as often as once a week. In former times, before ditching took place, I have crossed the farms oftener there since; but to tell how often I have travelled across, I can't do it. I think I did not cross these farms as often as once a month besides the times I travelled the roads.

Question. In crossing these farms in former times, might there not have been a smaller stream than the one above, and you not have observed it?

Answer. I think not. I recollect there was a mud-hole by Reigle's—have seen it frequently when I crossed the fields. Can't tell how long the water continued there, but I don't recollect of ever crossing there without seeing water in that mud-hole. I can't tell, but I think it likely they used to water their cattle in that mud-hole. I have never seen them.

Question. Do you know where this water came from?

Answer. I don't. I did not see water run into it. I lived at Asbury about nine years; the rest part of my life, besides what I lived where I was born, I lived at Hampton and Changewater. My father moved to New Hampton when I was very young, and lived there until I moved to Asbury, when I was about two or three and twenty. Before I moved to Changewater I was in the habit of crossing this hollow frequently, along the Spruce run turnpike. I recollect of travelling, about forty years ago, the old forge road; I can't tell for certainty more than once, but I recollect travelling it. From that time down till the Spruce run turnpike was made, I don't know as I can recollect of crossing that hollow. I think there was a kind of a turnpike bridge, with a sluice under it, when the turnpike was first built. At the time I travelled the old forge road, I don't think there was any bridge on it. I have been along the turnpike this season, and seen a nice stream of water running. I guess I was along there the last time about six weeks or two months ago. I did not see much difference, I think, in the size of the stream then and last year. I did not take particular notice whether there was any difference the last time I saw it and early in the season.

I was subpoenaed here before as a witness by Mr. Arndt, and attended at this place. Mr. Arndt then said he would give me clear for the present. Mr. Arndt and Mr. Morris had some conversation with me then about the trial. I don't know whether the water was in the canal or not this season when I saw this stream—I guess not.

And being called again in chief, saith:

From the mud-hole at Reigle's the ground ascends a good ways each way, and calculated by nature to receive a good deal of water from rains and the snow going off. There was not a small stream running in to it on the upper side from Wyer's; I did not see any; I am satisfied there was none when I saw it. I was subpoenaed here the last time Mr. Arndt had witnesses examined, on his part.

Sworn, &c., November 2, 1841.

Mark Thomson testifies—I am a son of Robert C. Thomson, formerly of this township, so said. Lived most of my days at Changewater, except lately. I was thirty-nine years old last March. I was in the habit of passing along the Spruce run turnpike very often in my younger days, between this place and Shields' and Arndt's; I can't tell how often through the year, but very frequently. Went to Mansfield meeting-house almost every Sunday, and sometimes passed it through the week. I was in the habit of going to church there for four or five years, and have been in the habit of travelling the turnpike backwards and forwards for more than thirty years. I don't recollect that I ever saw a stream of water crossing the turnpike; not a permanent stream; there might have been in time of rain, but I don't recollect of seeing one there. I speak of the time previous to the canal's going into operation.

Question. If there had been a stream there anything like the present one, must you not have seen it?

Answer. I think so. I could not pass it without seeing it—not at all times anyhow.

And being cross-examined, saith:

I think there was a bridge on the turnpike. I have not noticed the stream particularly this season, but have seen it. I have not crossed it there more than twice in the last three years. I have crossed it frequently this season, on the road from Port Colden to Changewater; sometimes twice a day and sometimes not once in a week. I have observed a nice stream of water there the whole season. I did not observe any difference in the regular stream before the water was let into the canal and since. It is a stream that rises very rapidly in time of a rain, and in two hours' time will overflow its banks where I live, and goes down in the same time too.

I recollect, after the bridge was taken off of the Spruce run turnpike, a sluice-way was made, and paved with stone.

In former years, when I lived at home, I was in the habit of frequently crossing the road from Changewater to Port Colden, and generally saw water crossing the road by Wyer's, except in a very dry time. From my own knowledge, I can't tell what became of it.

Question. From your knowledge of the country, if this stream met with no obstruction, must it not have gone down the hollow to the turnpike without any ditching?

Answer. That question I am not able to answer; I have not travelled through there enough to know; I don't think it would without ditching.

I did not understand your question about no obstruction.

If there is no obstruction at all it must have gone through at times. Sometimes it was dry up there.

And being called again in chief, saith:

I believe down that valley it is a limestone soil.

Question. Do you believe the small stream you saw above Wyer's in former times could have found its way down over that limestone soil without ditching?

Answer. I believe it never did in my time, whether it could or not without it went under ground or something. It is my opinion it never went down there since my recollection.

I think it was necessary to have a bridge over the turnpike in that hollow, from the nature of the ground. It descended both ways and was ditched both sides of the turnpike, and in heavy rains, of course, it must have some place to carry it off.

I think that stream up by Wyer's is now larger than it was in former years, before the canal was made. I should suppose it was almost as large again as when I first knew it, or a third larger at any rate.

And being cross-examined, saith:

Question. How do you account for its being so much larger this season, before the water was put in the canal, and formerly, before the canal was made?

Answer. I think in former times, or believe so, that the water spread over all those meadows down to Wyer's; it overflowed and no regular ditch; and since they have ditched all the way down as far as Wyer's, and now has a regular course. I could take all the water away from them now by turning it off and watering the meadows. This stream does not come out of the canal, but under it and from above it. There is one branch comes in from Ribble's.

And being called again in chief, saith:

Question. Is it or is it not, then, your opinion that this stream has been increased in consequence of the canal?

Answer. I think, sir, it has; if the canal had not have been there it would not have been as large as at present.

And being cross-examined again, saith:

During this season, when there has been no water in the canal, a nice lively little stream flowed down to Wyer's. I crossed the turnpike once this season at Arndt's—I saw it running there; that was also before the water was put in the canal. My opinion is, that they could have ditched it in former times so it would have run all the way, as they have done since; but there was a big pond there by Wyer's, which in the winter season would overflow the road and make it troublesome crossing.

Question. Is it your opinion, then, that this stream has been increased by water from the canal, or by their ditching, and thereby

preventing the water from flowing over the meadows and other grounds?

Answer. I think it is by their preventing the water flowing over the ground—I think from ditching it; but when the canal is in operation it is larger than when it is not in operation.

Sworn, &c., November 2, 1841.

Robert Bryan testifies—I worked for Joseph Carter two years and about three months. It is thirteen years this fall since I went there. I attended to farming business for him. I ploughed and tilled the hollow where the water now runs across. I ploughed the whole, I believe there was none left. During the time I worked there I don't recollect as there was a stream of water crossing that farm, unless in time of a fresh; there might have been, but I don't recollect there was then. I can't recollect whether it was ploughed both years I worked there, but it was ploughed I know. They had corn on it one year and oats on it the next. Henry Groff then lived on the farm where Mr. Arndt lives.

I will be twenty-seven years old next March.

Question. Have you any doubt in your mind, whatever, whether there was or was not a stream of water crossing the Carter farm while you lived there?

Answer. No, sir. I don't know that there was. In time of a fresh there might have been.

And being cross-examined, saith:

I don't recollect whether I ploughed for the corn or no. I recollect pulling weeds and wild buckwheat out of the corn in the hollow. I recollect helping plant corn in that hollow. I can't recollect whether it was wet or not in the hollow. This wild buckwheat grew all through the field. This hollow was tilled all the way across the farm, and not in one field only. It was all in one field when I lived there. I don't know that my attention was called particularly, on that occasion, to see if there was any water there or not. I was thirteen years old, past, when I went there. I did not take any notice to see whether there was any difference in the oats and in the corn in this hollow and the rest of the field or not.

And being called again in chief, saith:

Question. If there had been a stream there like the present, do you think you could forget it?

Answer. No, sir, I think I could not.

And being cross-examined again, saith:

Question. Might there not have been some water running there some parts of the year, and you not have observed it?

Answer. Not a regular stream there might not.

Question repeated.

Answer. There might have been, may-be, in time of a fresh, or something of that sort.

Question. And no other time but a fresh?

Answer. Well, I never seen it if there was. There might have been and I not have seen it.

Sworn, &c., November 2, 1841.

John Castner testifies—I live in this county. I have lived the last six or seven years at Changewater mills. Two miles from that I was born and brought up.

It is more than twenty years ago since I recollect travelling the Spruce run turnpike betwixt Mr. Arndt's (it is now) and Joseph Carter's. When I first began to travel it I used to go over with my brother, and sometimes alone, after stalks for my father's hired people. We got stalks off of Mr. Arndt's place; we crossed the hollow to get the stalks. I can't say how often I crossed it. I han't crossed it more than from twice to five times a year. At other times I have went a few times to Mansfield meeting-house to meeting. I have crossed the hollow on Reigle's to get stalks betwixt Mr. Carter's and Mr. Wyer's. I have crossed the hollow, either on the turnpike or across the farms, every year from that time down to the present. I never saw a running stream of water running there until the ditches were dug. I have seen all the little stream that crossed the road from Port Colden to Changewater sink in Wyer's field. I never see any pass there. When I passed along the turnpike to haul stalks for Samuel Slater I saw grain sowed on Mr. Carter's field in the hollow, and it was as dry as the rest of the field. I saw it, too, on Mr. Arndt's side. I saw good wheat grow on Mr. Arndt's side when Mr. Groff lived there, right where the water runs now, and I saw it harvested. I saw them cutting it, and saw it in shocks, and saw it growing too. It is more than one year I saw grain growing there. I will say two or three anyway. It is much as fourteen or fifteen years ago, and may-be a little longer and a little shorter. I won't say more than a dozen years ago. I was born in the year 1806, on the 24th day of October.

And being cross-examined, saith :

I never kept any memorandum book of the times I went to get stalks; every time my father told me to go and help these men I would go. It was principally in the fall of the year. I have went oftener than once. I can say oftener than twice, and tell the truth, and may-be oftener yet. Within twenty years and upwards, and from that time up to this time, I have been getting stalks. I think it is about twenty years ago when I first went for stalks, and may-be a little upwards. It was from one fall to another, and most every fall. I would slip over and fetch a few before the ditches were drawn to lead the water. I can't say for how many years—I kept no account. I done my errand, and kept no book at that time. I done it as much as three years. Well, I won't say that I done it as much as five years, as I told you before I done it and kept no account of it. I won't say that it was altogether of Mr. Groff I got the stalks. I won't say it was Mr. Groff at all. I got the stalks off of the farm where Mr. Arndt lives now. I can't say

that ever there was a bridge over the turnpike. I won't say but what I saw a few poles there once. They looked like some old poles that had been torn out of a swell, like other hollows where there are swells built across, and never saw water running. After that I saw stones there in the hollow; I can't tell what they were put there for; they were as dry as any other part of the road.

Question. Did you never see these stones the least damp?

Answer. I can't say that I ever did till after the ditch was dug.

Question. Did you never see any water in the road at this hollow until after the ditches were dug?

Answer. Well, I saw water at the side of the road after a shower, and a parcel of pigs laying in it.

Question. Did you never see marks of a watercourse in this hollow below Wyer's sink-hole before the ditches were dug?

Answer. No, sir, I never did.

Question. Do you mean to be understood that the water never run past Wyer's sink-hole at ordinary times, or that you never saw it do so?

Answer. Well, sir, I never saw it, at no time I ever passed it, to the best of my remembrance, until the ditch was dug.

Question. Might not the water have run, and you not have seen it?

Answer. I can't say for that.

Question. Do you mean to be understood that Carter and Arndt, when they farmed the hollow, never left a place for the water to run until after the ditches were dug?

Answer. No, sir, I don't know that they ever did form places for water to run.

I can't say so; I never saw it.

Question. Did Carter never leave a place for the water to run in before the ditches were dug, when he farmed the hollow?

Answer. Well, I can't say that he did or did not, because I never seed it.

Question. Did you ever observe closely to see whether he did leave a place for the water or not?

Answer. Well, I have passed and repassed there and looked, and I never saw any way to lead water till since it was ditched.

Question repeated.

Answer. I never saw any place on the farms.

Question repeated again.

Answer. I never saw it, sir.

Question repeated.

Answer. I never took notice to see whether there was or not. I never saw it.

Question repeated.

Answer. I never did, sir, because I did not look. When I was upon the Reigle farm I saw a pond of muddy water; I don't know as I ever saw it clear. I think I saw it every time I was on the place, and it stands there yet, as far as I know; it did the last time I was there. I have went close along by it—it was at the left hand

as I went by the barn after the stalks. I was not close by it every time I went on the farm. I think I do know, from my own knowledge, where the water in that pond came from. I think it descends from the clouds, and falls on descending ground, on both sides, and runs into that place. I know it is so. Oh no, sir, I was not there every time it fell from the clouds, but I have seen it fall from the clouds, and I know it runs there. I never examined to see whether there were any springs that sprung up in this pond. It might have run down from Wyer's, and I not have known it. I never did examine above the pond to see if there were marks of water; I never saw marks of water below the pond.

I have been by the line fence between Shields and Arndt. I went right straight from Mr. Arndt's house to the line fence, where it was ditched. It was this side of the present watering place, on Mr. Arndt's side, I saw how Mr. Shields' farm was fixed, so as to water his cattle there. I saw a lane there. If I owned Mr. Shields' farm I should not wish to be deprived of it, if I had not water on the place. If I owned Mr. Shields' farm, and had no water on it, except at one corner, I would not be deprived of this watering place for a trifle.

I was across the hollow on Reigle's farm a few times for stalks, and a few times I went across to Mansfield meeting-house, and when there used to be camp meeting here I would cut across the fields a nights, or just before night. I can't recollect how often I crossed the hollow on Reigle's farm the first year. I can recollect once, and what it was about—it was going to camp meeting here by Edward Yeomans'. I don't know what year it was, but it was the first time camp meeting was there, to my remembrance. It was after wheat and rye harvest. I won't say that I went at all across it again that year. The next year I went to Mansfield meeting-house once, I will say anyhow. It was betwixt fall and spring.

Question. The first time the second year you crossed the Reigle farm, when you say you went to Mansfield meeting-house, were you alone or in company, and if in company who with?

Answer. I won't say, sir, because I went with different ones and different times.

Question repeated.

Answer. I went in company.

Question. Who was with you?

Answer. I told you I never kept a memorandum.

Question. Do you recollect being on that farm again that same season, and if so, what was your business?

Answer. I can't say that I was or was not.

Question. What do you recollect your doing on that farm the third year?

Answer. I walked across it. I was going to Mansfield meeting.

Question. Do you recollect being across that farm again that season, and if so, what was your business?

Answer. I told you every year, from twice to five times, to go to meeting.

Yes, I do recollect it, to the best of my knowledge.

Question. Was you alone, or had you company the second time you crossed it the third year?

Answer. Well, I can't say whether I had or had not.

Question. Do you recollect crossing it again that third year?

Answer. I won't say that I did or did not.

Question. What do you recollect doing the fourth year you crossed it?

Answer. Well, I have been a going across to meeting, as I have been telling you, and I guess about that time I have been coming on the farm to draw stalks off.

Question. Who lived on it that fourth year?

Answer. I cannot say, sir; somebody lived there—I saw folks.

Question. Do you recollect crossing it again that fourth year?

Answer. I won't say that I did or did not the second time.

Question. How did it happen that you crossed this hollow so often before the ditches were dug, and not since so often?

Answer. Well, I was like other young fellows, run browsing round from one place to 'tother, running round to see the girls and such like things; and since I got married I sat myself down and tended to my plough and taking care of my family.

Question. Are we to understand you, then, that you only went to Mansfield meeting from two to five times a year, to see the girls and browse about, and such like?

Answer. I have answered you that, sir. I have told you once what I did it for.

Question repeated.

Answer. Besure, sir, as I told you before, that was the only reason.

Question. Do you believe in a future state of rewards and punishments after death?

Answer. I do, sir.

And being called again in chief, saith:

Question. Are you certain that there was no stream of water in that hollow between Wyer's sink-hole and the turnpike, whenever you crossed it, for the last twenty-five years and upwards?

Answer. Yes, sir, I are, whenever I crossed it till since the ditch was dug.

And being cross-examined again, saith:

Question. Might it not have run in that space, and you not have seen it?

Answer. Well, I can't say it would or won't. I can't say for that.

Sworn, &c., November 2, 1841.

Charles S. Johnston testifies—I reside in this place now, and have resided here it will be fifteen years next April. Before that I lived in New Hampton, Hunterdon county, about nine years and

a half. While I resided in New Hampton I was in the habit of travelling the Spruce run turnpike some part of the time very frequently, and some part of the time once in two or three months, perhaps not once in six months some part of the time. I was up here two or three times a week. When I moved to Hampton, for the first few years I thought the Spruce run turnpike was travelled more than what the old road was. During the time I lived at Hampton, and was in the habit of travelling the turnpike, there was no stream of water crossing the turnpike in the hollow this side of Mr. Arndt's, that I see. I saw water there in the spring of the year, when the snow was melting and water running. I have passed along there after heavy showers of rain, and I have seen water run over the turnpike. I think some part of the time there was some kind of little bridge there, a couple of plank, and part of the time only a hollow in the road.

I was forty-eight years old last May.

There was no stream there when I crossed it, except those times of rain and the melting of snows, that is, while I lived in Hampton. Since I have lived in this place I can answer different, I think, for the last, I might say, six or seven years I have saw water running down across the turnpike. It might be a little longer and it might be a little shorter; I speak as near to it as I can recollect. I have passed along but a few times—not travelled the road as much as when I lived at Hampton—it has got very poor. When I have travelled it since I moved to this place there was no stream of water running across the turnpike, except as before stated, till within the last six or seven years.

And being cross-examined, saith :

When I first moved to Hampton I had not my business settled up at Hackettstown, and I used to come up here every court day to see the constables.

Question. What season of the year was it that you travelled the turnpike from Hampton to this place two or three times a week?

Answer. I moved to Hampton, I think, in the month of September, and from that on for about eighteen months I was here more frequently than I was afterwards.

Question repeated.

Answer. I can't tell any plainer, Mr. Sherrerd.

Question. How many weeks can you remember being at this place as often as two or three times a week?

Answer. I can't remember how many weeks, but in all probability not more than three or four weeks, that I was up here so often within the first eighteen months.

For the first eight or nine years I lived here, I think I have not travelled the turnpike more than twice a year. I might have travelled it oftener, but I can't tell.

Question. During this time, do you mean to be understood that there was no water running there, or that you saw none when you passed along the turnpike?

Answer. There was none running there when I passed, with the exceptions of rains, melting of snows, &c.

I have frequently crossed this stream up by Wyer's in former years. I never crossed there, that I recollect of, but what I saw a stream of water crossing the road between Wyer's and Henry Carter's. I don't recollect of seeing that dry. I think I have crossed about three times this present season, may-be more. I went down to the forge and back again within four weeks. I was across it last summer. I did not notice the stream sufficiently to say there was a difference in the size. I did not notice it sufficiently to answer that question. I noticed it was a smart stream, a clever little stream, running across that road.

I can't say whether it is larger or smaller now than in old times, I did not notice it sufficiently.

According to my judgment, if there were no obstructions from sink-holes or otherwise, I should think there was sufficient water to flow down to the turnpike this summer and in former times.

I don't know how long the water continued to run across the turnpike in the hollow by Arndt's in the spring of the year.

Sworn, &c., November 3, 1841.

John Reiley testifies—I reside in Greenwich, in this county, a farmer by occupation, and have been a farmer this thirty years. I formerly lived in Bucks county, Pennsylvania, before I purchased in Greenwich. Before I purchased in Greenwich, I came to look at this farm where Mr. Arndt now lives, in order to purchase it. It is either fourteen or fifteen years ago this fall, about this time of year. I then walked over the farm to view it, and all round it. Col. McCullough showed me the lines. There were several objections why I did not buy it, but the principal one was, that there was no water on it, except by the buildings, and it was a long strip of land, all long and no wide; and the spring was then dry too. A Mr. Groff lived on the farm then, now deceased. There was no mark of a watercourse from the turnpike across the farm.

I was there again the next year, to show Mr. Arndt the property; that was in the fall season, I think. I don't recollect particularly what season it was. We went then again over the farm. Mr. Arndt made objections, and we afterwards went over it again the second time—I think the same season, but of that I am not right sure. In a short time we came over again the third time, and he bought the farm—not certain whether the fall or the next spring. The third time we did not go over it again, but we rode up the turnpike and came home this way; but am not certain of that, whether it was the second or third time we came home this way. We went over the place twice particularly before he bought. After he had bought, he called on me to go and see it surveyed (this is the fourth time now), and then we went all over it. This was the same year he bought it. At none of these times I see no water nor signs of water; nor no watercourse appeared, as I took

notice. My attention was drawn particularly to the subject of water, because I lived on the property that had a nice stream of water running through it, and I valued it highly; and when I want to buy property for myself I look particularly for water. Two years after Mr. Arndt bought this property, and the first after he lived there, I think, I came to visit him. Upon this visit to Mr. Arndt, I went over his farm to view his crops and fields, and there was then no water crossing the turnpike. I have not been there since till this morning—this morning is the first I have seen this water.

And being cross-examined, saith :

Question. Was your attention called at these different visits to view that hollow as a place where water had run ?

Answer. No sir, my attention was not called to it. The owner of the property did not recommend or signify that there was any water there.

The first time I was there it was a very dry season. I can't recollect about the succession of dry seasons, but I recollect we had one or two dry seasons. I think it was after harvest, in August, when I visited Mr. Arndt. At either of these times I never see any water up along the line fence. The spring, the last time I was there, was running a plenty of water. I mean the spring at the house. The first time I was there the pond by Shields' house was all dry.

I am a brother-in-law of Mr. Arndt.

And being called again in chief, saith :

Question. If Col. McCullough, the owner of the property, had recommended or signified to you that there was water at any time in that hollow, would you have bought; and did you so state in answer to the first question on the cross-examination, or to that effect ?

Answer. I meant to say, if the water had run there as it does now, if I could have been led to believe it would, I might have bought the property.

Sworn, &c., November 3, 1841.

Henry Hankinson, esq., testifies—I think I have been acquainted with the Spruce run turnpike since about 1813 or '14, or since it was laid out. I was occasionally clerk of the company. I don't know whether I was director or not. I had offices in the company, and was a stockholder too. I passed along it very frequently at that time. We had meetings every week or two while they were building the road, sometimes once and sometimes twice a week, I think. After the turnpike was built I travelled along the road frequently. I can't state how many times I travelled it on an average in a year; but after the turnpike was first made I travelled along oftener than of late years, in consequence of professional business. From the time I first knew it, I have seen water running across the turnpike occasionally, from the melting of snows and heavy rains. I generally found it dry in the summer season before

the canal was in operation. I don't recollect of seeing water run there in the winter season, unless in times of heavy rains and snows going away. I took particular notice of it, on account of being a little interested. My father-in-law owned the property there on both sides of the road. William McCullough was my father-in-law. I noticed it particularly, because if there was water there, I thought it would be so convenient to water the back fields. I think I took particular notice that, on the side Mr. Arndt owns now, there was grass and grain both growing where the water now runs, and the ground was ploughed also all over. There certainly could not have been such a stream there as there is now, and I not have noticed it—at least I think not.

And being cross-examined, saith :

I do not recollect seeing a small stream running across the turnpike in the summer season, unless after heavy rains, as in other hollows. And my impression was, that there was not a constant stream. That impression I learned two ways, from my own observation and from information. I can't tell how long it would run in the spring of the year and breaking up of winter, as I only passed it occasionally. Sometimes when I passed it the water would be running, and the next time it would not. When I crossed this stream I have seen it sometimes larger and sometimes smaller. I have crossed it sometimes when there has been quite a flood or heavy swell.

I have looked at it, and thought it spread over the field and sunk. It was only my thoughts, I never went over the fence to see. I should not have thought there might have been a small stream of water, and I not have noticed it, in the summer season, but it might be possible.

I was seventy-four years old the twenty-seventh day of last August.

My memory is not as good as it used to be. I have some recollection of a bridge, some kind of a one. I don't recollect that after the bridge was taken away the hollow was paved across the road where the bridge was.

And being called again in chief, saith :

Question. Would it not be necessary, from the nature of the ground, to have a bridge or sluice-way across the road in this hollow to carry off the water that would run down the turnpike in time of rains?

Answer. I should think it would in heavy rains or when the snow went off; in small rains I should not think it necessary.

Sworn, &c., November 3, 1841.

Frederick Hipp testifies—I am now eighty-three years old, all but within a week or month, or something like that. It was in the year seventeen hundred and eighty that I first knew the hollow by Wyer's and below. I lived seven years, about, at that time with Boss Pence, not over two miles from Wyer's. That hollow was then all a wilderness, and settled by one Samuel Hornbecker

about that time. During that seven years, I used to travel the old forge road to meeting and to Oxford furnace, and to my brother-in-law's, in Pennsylvania. I can't tell you how often I travelled it a year. In going to meeting and to my brother-in-law's in Pennsylvania, was the most I travelled it. There was no stream of water crossing the old forge road at that time; I never saw any nor any sign of it. The little stream from Woolston's used to come down, and I used to hear them say it sunk. I don't know where it sunk, but it did not come down below the road. There was a muddy place in the edge of the old forge road; it appeared to me as if it come there in high water. I generally travelled it on foot. There was no marks of a watercourse across the road; that is as true as anything in the world, as far as I see; and if a hundred men was to say there was, I would not believe it. When I went along by this mud-hole I used to crowd round next to the barrens to keep on dry ground.

And being cross-examined, saith:

I always found that mud-hole there, but I don't know that ever I seed water in it. During that seven years I did not travel it as often as once a week—I reckon not as much as once a month. It is a hard thing for me to tell you whether I went along there once a month or once in six weeks, but I went along every once and awhile. I might have went along once in two months during the seven years. I was no great meeting man—did not go as often as some other people—only went once in a great while. I worked at the wagon making business and other wood work, at old Boss Pence's, and at farming. Whether it was a wet or dry time every time I passed there, it is impossible for me to tell.

And being called again in chief, saith:

I did not pass it much in the winter. In summer I passed it more than in winter. I can't tell exactly about spring and fall when I passed it, it is so long ago; but whenever I went there was no water.

Sworn, &c., November 3, 1841.

Samuel Slater, jun., testifies—I lived with my father, something like nine years, on Henry Carter's place, next above Wyer's. During that nine years I was frequently down the hollow to Wyer's, and below off and on. The water from Woolston's came on down to Wyer's, and I believe it sunk there, the principal part of it. The rest of it, I expect, must have went on. I think it all sunk there, except in high water. I don't know for certain whether there was any stream of water in ordinary times or not below Wyer's sink-hole. I remember seeing water in high water, and I remember seeing it dry oftentimes. I have been down by the sink-hole. It took the whole of this stream from Woolston's in a common time.

And being cross-examined, saith:

I can't say for certain how often I was down to the sink-hole; I dare say I was there very often. I can't say how small or large

a rise it would take to make it run over. I have been at the sink-hole, and see it run over. The stream rose very high sometimes. I recollect its being very low at my father's sometimes. The waters spread over the meadows above sometimes. I believe there was some small fish in that stream, but none worth fishing for. I never saw any eels, nor heard of any being caught. At the time I lived there, I can remember being down as far as Reigle's. I recollect there being a pond-hole down by Reigle's barn, where the water generally stood in. I don't know how that water got there. I don't recollect of the water's ever passing there.

And being called again in chief, saith :

If I recollect right, it is about eleven years ago since we left there.

I will be twenty-nine years old next January.

Sworn, &c., November 3, 1841.

Frederick Langher testifies—I have been acquainted with the hollow, from Woolston's down, for betwixt thirty and forty years. I am now in my sixty-first year. I worked on Mr. Arndt's farm when Richard Riddle lived there, for him, in harvest; I cradled for him every year for five years. He had a harvest on the field below the turnpike where the water now runs. I can't tell exactly whether he had harvest there more than once or twice, but I cut grain in every field on his place. There was not any stream of water crossing that place at that time, to my knowledge—in harvest time at any rate. When we did not harvest in that field, we had to cross the hollow to go to other fields. There was not, to my knowledge, any marks of a watercourse over that field; they ploughed and sowed all over that field like the other fields. There was no watercourse, and I did not think of any water's going through. I had no idea of any going through, unless in time of rain.

I have passed backwards and forwards different times along the turnpike since that was made. I don't recollect of seeing any water cross the road there until latterly.

And being cross-examined, saith :

I have not passed the turnpike latterly as often as I did when it was first made. At the time Richard Riddle lived there, I used to pass it pretty often, as much as once a month a year on an average, while he lived there, sometimes every week, going or coming from meeting. During these times my attention was not called particularly to water. I think likely in the spring of the year there did a little water run there, from breaking up and heavy rains, like in other hollows where the water would collect sometimes. I can't tell how long it run in the spring of the year, but I think not a great while, I think, from the appearance it had. I have been up through the hollow. I have been on the Reigle farm. There used to be some water there, a little kind of a pond by his barn. I built a barn there when Col. McCullough owned the place. I don't know that I can tell you where that water came from; there was

a kind of pond of muddy water there, but I expect it come on from further up. I think there was kind of little marks of a water-course on that farm, came down from the place above. I have been on the Carter farm below, across the hollow, but only just going through back and forwards to the colonel's timber land. I don't know that I paid any attention to notice whether there was any watercourse or not. I think I do recollect of a kind of a bridge fixed up across the turnpike, when it was first made, to let the water go through in time of rain, as in other hollows. It was kind of a temporary thing, not much of a bridge. There has been latterly a kind of sluice-way fixed for the water to run over where the bridge was.

And being called again in chief, saith :

While passing there several times, if there had been such a stream then as there is now, or anything like it, I should have noticed it.

And being cross-examined again, saith :

I think if there had been any water running there, I should have took notice of it. I think I have seen water standing on the side of the turnpike, a kind of a mud-hole, in the spring of the year. I think I have went through there when it was dry as this floor. I can't say whether there was generally a mud-hole there or not.

Sworn, &c., November 3, 1841.

Henry Carter testifies—I live on the farm above Mr. Wyer's. I have lived there eleven or twelve years. There was a sink-hole on my place, up in the meadow. This Woolston stream, by high freshes of water, would overflow and get into this sink-hole, which always contained water—was full of water. It was but a small stream when I went there, and it dried up, I think, the second year, and I went to see what was the matter with the water that it did not come down, and found that the muskrats had come out of this pond and had taken the water out of the ditch we had made, and it sunk there; it was a boggy piece of ground, and they had got twisted round among the bogs and got the water out of this channel into this pond, where it sunk. I stopped the holes they had made and then we had water—a nice little stream, but small. After the canal was made, then come, I guess, as much as four or five times as much; we had a great flow of water then; we had to go to work then and dig a bigger ditch to contain the water, and keep it from overflowing the meadow. We dug a ditch five feet wide at the top and eighteen inches deep, and since that it has kept the course pretty much.

The stream raises very much in high water—rises suddenly and goes down as suddenly. It went down on the Wyer's place into a sink-hole, and sunk there, but where it went then I can't say. The water stood down at Reigle's; it appeared as if it sprung up there. In time of high water the whole flat, from my house down, was all covered with water, and had to run down that hollow. I helped Capt. Smith build a shed on the place where Shields now

lives thirty-five or thirty years ago, may-be forty. Jacob Pyatt then lived there. Col. McCullough then owned all the land where Shields lives and Arndt, and my brother. We got the timber for the shed back of Mr. Arndt's barn across the hollow, where the water runs now. There was not any stream of water running there, to my knowledge; some of it was woods and some plough-land.

There was a bridge there by Reigle's to go out to the big road, and the water stood above it, and to his fields.

And being cross-examined, saith:

The water up by my house has failed very much this summer. I don't think there is more than half as much as there was last. It is filling up now again. I have been up along the stream a year or two ago, and seen where they had turned the water out on the meadow, formerly Beavers'; they had a ditch besides to lead the water down, to prevent its spreading all over the meadow.

The privilege of water is certainly of great value to the farm, and I should not want to lose it at all. Since the canal was made, we have had an abundance, before that it was rather scant. Since the canal was made, they have ditched above, to keep the water from overflowing the land. Before that season, when the muskrats turned it, we had water plenty for common purposes, for washing and for our creatures, but it was small. We had an excellent well besides, and did not want for water.

Question. Would you be willing to be deprived of the water, as it now runs, for a thousand dollars?

Answer. As it now runs, it is worth a great deal of money; I would not undertake to fix the value of it. I have water plenty. I could get along without it; but then I would not want any place without water. If I had a spring there, instead of the brook, I would not take a thousand dollars for it, such a spring as I have seen; but I would not give that for that brook.

Question. If you had no other water upon that farm but that brook, would you be deprived of it for a thousand dollars?

Answer. I can't tell you anything about it until I had that tried.

Sworn, &c., November 3, 1841.

Abner Parke testifies—It is something over forty years, I should say forty-one or two years, since I have been acquainted with this hollow. It is rising forty years since I first crossed it in Joseph Carter's field. There was no stream of water running through there, nor the appearance of any, that is, where I crossed on the north-east side of the turnpike. I was in the habit of travelling the turnpike from the time it was made until since the canal was made. I have travelled it considerable; whenever my business called me this way I generally travelled it. It is an impossibility for me to tell how often I travelled it in a year, sometimes twice in a week and sometimes not in a month or two. I would go the turnpike, and return the same way, and, of course, travel it twice

in the same day. For many years the turnpike was not passable. There was no bridge for some time across the Musconetcong—the company had given it up. In all my travelling, I never saw water running across the turnpike in this hollow. I think I have travelled it at every season of the year (except in wet weather) in a sleigh, in a wagon, and on horseback. I have seen something like a hog-wallow on the north side of the turnpike. In that hollow it looked as if the hogs had wallowed in it. The turnpike was thrown up pretty deep on the north side, in fact it was thrown up on both sides, and of course it would flow there in time of rains. It was a considerable of a rise from the hollow up towards Mansfield, for I should say something like four or five hundred yards. There appears to be some little descent from towards Mr. Arndt's. There was no other place for the water to pass that had collected on the north side of the turnpike. I judge that the water that I saw there had come down along the side of the turnpike, and had not dried up yet. There was no other way for the water to pass until it came into this hollow, and I have no recollection of a bridge or sluice-way for it to pass.

And being cross-examined, saith :

I think I lived at New Hampton when the turnpike was commenced, but am not certain of that ; then I moved to Asbury, and lived twenty years in Asbury ; and then moved to where I live now, between Hampton and Asbury, and have lived there thirteen years.

Question. When you lived at Asbury, was it not out of your direct route to this place to come up the turnpike by Arndt's ?

Answer. I should say it was the most direct from Asbury to this place to come the back road, and not to come by Mr. Arndt's.

Question. Before the canal was built, can you say you travelled that turnpike from Arndt's up this way as often as once a month the year through ?

Answer. I can't tell, sir, how often I travelled it, as I mentioned before ; I can't say positively whether I did or did not.

Question. What particular business had you to call you up to this place ?

Answer. That would be another impossibility for me to state, at all times or any particular times.

Question. When you travelled the turnpike, was your attention ever called particularly to see whether water run down that hollow or not ?

Answer. I don't know that any particular thing called my attention to it.

Question. When you first crossed this hollow, was your attention particularly called to see if there was water there or not ?

Answer. It was not.

Question. Can you state what season of the year it was ?

Answer. I should say that was in the month of October, from circumstances that took place.

Question. When you saw the hog-wallow, and judged the water came down the turnpike, did you not judge that part of it came down the hollow through Carter's field also?

Answer. I had no idea of a drop of it coming through that field at that time; I had no knowledge of any coming from there.

Question. How long have you known a stream of water to cross the road by Wyer's in this hollow?

Answer. I never was at Mr. Wyer's house. I don't recollect that I ever travelled that road from the forge to Port Colden till since the canal was in operation.

Question. How long have you known a stream of water to cross the turnpike below Newbold Woolston's?

Answer. Well, I don't recollect of ever crossing it before the canal was built.

And being called again in chief, saith:

The reason I came the turnpike to this place, and not the back road, was that my father-in-law lived on the road between Hampton and Asbury, and my brother at Hampton, and I could, by coming that way, do errands at both places. I had business with them, and I used to come that way for my brother's accommodation. I can state another reason: there was a masonic lodge held in this place, of which I was a member, and my brother was also a member, and I used to come that way to bring him along. It was as easy a road as the other; I would not make much difference to travel. I can tell the circumstances why: I recollect it was in October when I first crossed the hollow, from the fruit I gathered, getting pears and peaches the same day, and shutting the master out at the end of the quarter.

Question. Can you or can you not say positively there was no stream of water passing down that hollow whenever you crossed it, although your attention was not particularly called to it?

Answer. I positively never saw any water coming down that hollow, nor any marks of water or gutter, to my knowledge, from Joseph Carter's field on the north side of the turnpike; I mean, also, when I passed along the turnpike.

And being cross-examined again, saith:

Question. When the Spruce run turnpike was first made, was there any road leading from Asbury to New Hampton by your father-in-law's?

Answer. There was no laid out road by my father-in-law's when the turnpike was first made. There was a drift-way, or you may call it what you please, ever since my remembrance, which people travelled; there were bars to let down and such. There were four pair of bars and a gate to open. This was for a short period. It has been a laid out road by my father-in-law's, I think, as much as twenty-five years, but I am not certain. It was opened the same time it was laid out, I believe. I am not certain when the bridge was built.

Question. When you travelled the turnpike up to this place to attend the lodge, did you usually go and return both by day?

Answer. I went by daylight, and generally returned by night.

Question. When you passed over this hollow, was your attention particularly called to see if there were any marks of a water-course in Joseph Carter's field?

Answer. I don't recollect any circumstance that called my attention to examine particularly.

Question. Do you believe in a future state of rewards and punishments?

Answer. I do believe in it—do you, Mr. Sherrerd?

Sworn, &c., November 3, 1841.

William M. Bowlby testifies—I have been acquainted with the valley, from Wyer's down, for twenty years, and from Beavers' down to Wyer's twelve years; I have crossed it frequently. During this twenty years I have lived close to Hampton. I lived up there by Beavers' property when I was fourteen years old, and that's been twelve years, I believe. I lived there two years with William Miller. William Miller lived on the Beavers property. During the time I lived there, I was up and down the stream every two weeks, to go home. It sunk in places up there—where Mr. Wyers lives is one place, and up along there in places in Beavers' meadow. I believe, it sunk some—I am pretty certain it did.

Question. How far did that stream from Beavers' meadow flow down the hollow?

Answer. I never saw it go further down than where Mr. Wyers lives, unless it was in a wet time.

Question. What became of it there at Wyer's?

Answer. I have saw where it led down through there, yes, sir. It appears to me it was in thirty or thirty-one; it seems to run in my mind so—I can't tell exactly.

Question. Did you see the ditch in Mr. Arndt's meadow, before it was dug all the way across the farm?

Answer. Yes, sir.

Question. Where did the water run when it flowed out of the end of the ditch before it was extended to the line, did it cross over to Shields', or did it run down altogether on Arndt's side?

Answer. It run down on Mr. Arndt's side.

Question. Did you afterwards see a furrow drawn from the end of that ditch to the line fence, and describe how the furrow was drawn?

Answer. Yes, sir. It was drawn with a plough, and taken to the fence, and run a little down on to Mr. Shields, and then run back again into its course where it formerly run.

Question. Do you mean to say the furrow was drawn on Shields' side too, or that the water was put through under the fence?

Answer. Through under the fence.

Question. Was you in Mr. Arndt's meadow below the turnpike

before the ditch was dug from the turnpike across, and what was the situation of things as respects water then?

Answer. No water at that present time.

Question. Was there or was there not a stream of water down this hollow from Wyer's before it was ditched, within the time you have been acquainted with it?

Answer. No, sir, were none.

Question. How was it in the breaking up of winter and in freshets?

Answer. Well, then it run through a little.

Question. How long would it continue to run at such times?

Answer. Well, it would not run but a little spell—it would soon sink away; as the water abated it would get dry again.

Question. How old are you?

Answer. Twenty-eight years old, little apast.

Question. Was that furrow from the end of the ditch to the line fence drawn on the lowest ground, or not, between that and the fence?

Answer. No, sir. It was on the raising ground; the ground was higher where the furrow was drawn than where the water did run before.

Question. Do you know whether that furrow was afterwards ditched?

Answer. Yes, sir. I guess in thirty-five.

Question. Describe how the water run from the end of the ditch in Arndt's meadow before this furrow was made?

Answer. Why, it spreaded on Mr. Arndt's little meadow there.

Question. How near did it run to the line fence?

Answer. Oh, well, it run along a little ways from the fence.

And being cross-examined, saith:

Question. Is it twelve years since you went to Miller's, or since you left there?

Answer. Well, I guess it is twelve years since I left there.

Question. Did you always during that time go home along the stream all the way down?

Answer. The stream did not extend all the way down.

Question. Did you always go down the hollow where the stream now runs?

Answer. Yes, sir. I always went down the hollow—it was nearer for me to go home that way.

Question. Does not Miller's house lie east of the hollow and nearer the public road than this Woolston stream?

Answer. I should judge not.

Question. Was it not a more direct route to New Hampton, from Miller's house, along the road than along this hollow, all the way down?

Answer. It was further the road. I went across because it was nigher, as I told you before.

Question. Did you ever measure it or pace it, to see which was nighest?

Answer. I never thought it worth while to measure it or pace it.

Question. Was there any road along the hollow, either a public or by-road?

Answer. Well, there was a path went through there.

Question. What was that path for?

Answer. The path the neighbours had to travel from one to the other's houses.

Question. In passing up and down, did you generally see water standing by Reigle's?

Answer. Well, I don't recollect much about that.

Question. What little do you recollect about that?

Answer. I recollect passing through there; that is enough to recollect about that.

Question. In wet times, how far did the water run down this hollow?

Answer. Well, I believe it run clear through.

Question. Did it then run on to Shields', or stay all on Mr. Arndt's side of the line fence?

Answer. It spread over a little on Shields', and when the water fell it come off again.

Question. Were you ever there to see the water when it spread a little on Shields and fell, so that it came off again?

Answer. Yes, sir. I recollect being there when there was a big fresh in the brook; went up the brook and saw it on him. I were up afterwards, and saw that it fell and run off of him.

Question. How long afterwards was that?

Answer. It was not more than a week or two weeks to the outside after it abated. I can't exactly remember.

Question. When was this big fresh that you went up and see on Shields?

Answer. Well, I can't justly remember the very time—it was several years ago. I guess it was in 1829 or '30, I won't be certain which.

Question. How do you recollect it was 1829 or '30?

Answer. Well, I don't recollect in particular, but the way I know, the water broke through the canal made it raise so.

Question. What induced you to go up and see it on Shields then?

Answer. I did not go up in particular to see it on Shields; I went up a hunting after muskrats; fur was a pretty good bounty then, and I went up for it.

Question. What season of the year was it?

Answer. In the spring of the year. I can't exactly remember how late it was, whether it was in March or April.

Question. Are you certain it was before the first of May?

Answer. I declare it has been a good spell ago, I can't exactly remember.

Question. Where did you go from?

Answer. I was at my father's at that time, living at home.

Question. In going home from Miller's, down that hollow, was

it not nearer for you to go across the fields, before you got to the turnpike, than to follow it down to Shields' and Arndt's line?

Answer. Oh, no, sir, I should think not, or I should not have went that way. I come down to the turnpike, and then took the road for it.

Question. What business had you then over in Arndt's meadow?

Answer. Well, I had passed over it frequently; I don't know that I had any business in particular?

Question. What took you then to see them digging the ditch in Arndt's meadow below the turnpike?

Answer. I did not go to see them dig any ditch, but saw it after it was digged.

Question. How do you know, then, it was not ditched all across the meadow at once?

Answer. Well, I saw the ditch in 1832—never saw it before.

Question. Which was the lowest ground by the ditch, on the east or west side of it?

Answer. I can't explain that, that's all along the ditch; and suppose that to be in a hollow—know it's in the hollow.

Question. What did you mean, then, in saying it was not dug on the lowest ground?

Ans. You are before your story; you are dreadful queer, I think.

Question. How often did you see the water running out of the ditch before it was extended by a furrow to the line fence?

Answer. Well, I could not tell how often I have saw, though frequently.

Question. How do you know it was extended to the line fence in 1835?

Answer. Why, I saw it running in that year, and I went apast when it was fresh ploughed up to the fence, and happened to see it as I passed by.

Question. What was your business there by the line fence?

Answer. Well, sir, I can't tell you in particular, but was going somewhere and passed through that way.

Question. Where did you live at that time?

Answer. I was at home.

Question. In passing up and down the hollow from Miller's, did you see no marks of a watercourse below Wyer's sink-hole?

Answer. Not at that present time, as I recollect of. No, sir.

Question. Where did you work after you left Miller's, the different years down to this time?

Answer. Well, I have worked at different places down in that section. I worked at John Riddle's almost one year; he lived out here on Jacob Johnson's farm—it is now not his, then I believe; then I worked six years for old Mr. Riddle—he lived down below Mr. Shields, I suppose two miles or two and a half, may-be more may-be less, (I never measured the ground to know) joining Thomas Stewart's. I worked one season for Peter Weller—he lived joining Mr. Riddle. Then I worked around by the month and by the day for a year and a half, I suppose. I can't tell all

where. From that time on I have worked in the upper end of this county for four years, or very close to it.

Question. Do you know you are bound to tell all you know in favour of Shields as much as what you know in favour of Arndt?

Answer. Yes, sir. I tell the truth betwixt both, as far as I know.

Question. How do you know the time Wyers ditched?

Answer. Why, I can't tell exactly, as I said before, but I seen it ditched along that time as I passed through.

Question. Might it not have been ditched years before, and you not known it?

Answer. When I travelled up and down it was not ditched then, but has been ditched since. It might have been ditched before I was born—I can't tell about that.

Question. Do you recollect there being a bridge across the turnpike in this hollow, or sluice-way across it?

Answer. No, sir, I don't recollect of ever seeing any.

Question. How do you know the ditch in Arndt's meadow was extended with a plough first?

Answer. I could tell it was a furrow struck, for I have done so many myself.

Question. Do you know next to the turnpike it was done with a plough or not?

Answer. I can't tell about that. No, sir.

Question. Who lived on Shields' farm when the ditch was extended by the furrow?

Answer. It appears to me that Wright lived there—I won't be certain though.

Question. Who lived there when it was ditched next to the turnpike?

Answer. Well, I declare I have most forgotten about that. I can't think.

Question. Have you told all you know in favour of Shields in this cause?

Answer. Yes, sir, I believe I have, as far as I have any knowledge of.

Question. How many houses were there down this hollow below Wyer's and above Shields' and Arndt's?

Answer. I believe there was not but one. I know there was but one, unless they have been built since.

Question. How far was it from Wyer's sink-hole down to the turnpike?

Answer. Well, it is over a mile, may-be two miles; I can't tell exactly. It was a good honest mile anyhow. I ain't acquainted with miles much.

And being called again in chief, saith :

Question. What part of the ditch in Arndt's meadow did you mean to be understood was on higher ground?

Answer. The lower part next to Mr. Shields, on the west side, was the highest ground.

And being cross-examined again, saith :

Question. Was there not lower ground on both sides of the lower end of the ditch in Arndt's meadow than where the ditch was dug?

Answer. Well, I believe not. On the west side was the highest, and on the east side of the ditch was the lowest ground.

Question repeated.

Answer. I declare it is past my knowledge about that; but it was the highest where the ditch was, I know.

And being called again in chief, saith:

Question. Was the ground a little lower on both sides of the furrow that was drawn from the end of the ditch in Arndt's meadow than where the furrow itself was?

Answer. Why, yes, it is a little lower on each side of the ditch than where the ditch is.

Question. Before the furrow was drawn, and while the water was running out of the end of the ditch down on Mr. Arndt, did it run easterly or westerly of where that furrow was drawn when it first left the mouth of the ditch?

Answer. On the east side.

And being cross-examined again, saith:

Question. How often did you see the water running out of the end of the ditch on the low ground east of the furrow before the furrow was drawn?

Answer. Well, I never kept any account how many times I saw it, but I have saw it run there?

Question. Can you recollect seeing it more than once, and if so, say how often?

Answer. Well, I have saw it run out of them four times anyhow, I will say that for certainty.

Question. When was the first time, and how do you recollect it?

Answer. In my going across there I saw it, and it was in 1832 when I first saw it.

Question. What season of the year was it when you first saw it?

Answer. I guess it was in the fall of the year.

Question. What was your business along there then?

Answer. Well, I had some business to do, but I can't recollect what it was—but I saw it. I can't recollect whether I was sent somewhere or going after chesnuts—I don't know what.

Question. When did you next see it?

Answer. Well, I can't remember when I saw it next, but from that time since.

Question. Did you see it again before spring?

Answer. I think I did.

Question. What was your business the second time?

Answer. Well, I can't remember about that—I did not keep an account of such little futery things as that.

Question. When did you see it the third time?

Answer. Well, I can't tell you exactly.

Question. What was your business the third time ?

Answer. You know boys have business whenever they go from home, if it ain't one thing it is another.

Question. When did you see it the fourth time ?

Answer. Well, sir, I can't tell you when I seen it, as I told you before—I seen it, and that is enough for me, and you too I suppose. I ain't a going to tell you a lie at all about it.

Question. If you have no circumstances by which you can recollect the time or business you were on, how can you say you saw it with certainty four times ?

Answer. Why, you know persons will forget things too ; as I told you before, I went after chesnuts once or something else ; well, I went a hunting, say the rest part of the time, for I was always a hunting.

Question. What called your attention to the water running to the east side of the furrow, so that you observed it did not run on the west side also ?

Answer. Well, there was a natural stream that it run down on the east side of the furrow after the ditch was dug, and after the furrow was dug it run in that ; it did not run on the west side—never to my knowledge.

Question. You say, now, it never run on the west side, to your knowledge, how could you say it never did run on the west side ?

Answer. I can't say no further than this, only when there was high water to throw it over, then it did.

Sworn, &c., November 4, 1841.

Isaac Smith testifies—I lived on the Wyer farm some years ago, I think in 1815. I moved there, I rather think, the last of March, and lived there till the January following. There was very little water on the farm at that time, unless it was in the time of a rain or something like that. Sometimes there was a small stream would come down on to it, and sometimes not any at all. We generally carried our water from where Mr. Henry Carter lives, on the farm above. Our drinking water we got from the farm below, where Edward Yeomans then lived, now Reigle's. Sometimes there would be a little in the morning, and by the middle of the day it would be all gone away—we could not use it. I don't think it ever reached across the farm, unless in time of rain, through the season I was there. I have been along the road from the forge to Port Colden, and seen the stream since the canal was made. There is a great deal more water there now than there used to be.

I now live at Asbury—moved there last spring. I went from this farm to Vankirk's, and have lived there ever since till I moved to Asbury. I bought the farm above Henry Carter's, and that is the reason I see the brook so often latterly. This farm lies between Woolston's and Henry Carter's, and the stream runs across my farm on to Henry Carter's farm.

I am fifty-seven last September.

And being cross-examined, saith :

I do not recollect whether that season was drier than common seasons or not. I don't recollect as I ever went up the brook to see what was the reason the water did not come down. I think I see the stream this season. I am confident there is more water than when I lived there. I sold my farm there three or four years ago.

Question. With this little stream running through your farm, and no other water on it except at one corner of it, would you be deprived of it for a small amount?

Answer. I should not want to be deprived of it, that is certain. If I owned a farm of two hundred acres, and watered by such a little stream as this, I can't say what I would be deprived of it for.

Sworn, &c., November 4, 1841.

Nelson Lake testifies—I am acquainted with this hollow from Wyer's down to Shields', all the way down, for as long as I can recollect, as long as I have any remembrance of anything. I will shortly, in the course of a month, be twenty-eight, according to the record. I am a son of John Lake, and lived with my father about two-thirds of a mile from this hollow. My father moved away—was gone about two years, and then returned to the same place. I was very young at that time. I lived there, with the exception of these two years, until I was about eighteen years old; then I went to a trade, and left the neighbourhood, except two summers I was hired out up above here, but was home frequently. I have been on all these farms and up and down the hollow frequently. I have worked on all of them. I went first to work on Joseph Carter's farm, the first I went to work by the month, and worked there the first summer three months, and the next summer season seven or eight months. I ploughed and harrowed and sot up corn, &c., done boys' work, whatever I was set at. I don't know as I can say whether I ploughed or harrowed across that hollow there or not. I was as well acquainted with it as though I did. I recollect harvesting across it. The next I worked, I worked on the Reigle farm the two next summers, I believe; I worked eight months each summer. I ploughed there in the hollow. I helped harvest on the hollow at Reigle's while I was there. After I left Reigle's I worked for Mr. Wyers, the third year after I left Reigle's. I worked on Wyer's farm seven months, I believe. I don't recollect of farming in the hollow there. I believe it was in with timothy, meadow. At other times, besides the times I worked on these farms, I was often across the hollow. The first I ever saw a stream of water coming down that hollow was after I went to my trade, I believe; I don't know as I can tell how long after, probably a year or two. I don't know as I can say there ever was a stream coming down that hollow in former times, unless in time of hard rains. Oh, yes, I am positive there was none, unless in times of hard rains or freshes. The little stream that came down from Woolston's used to sink somewhere on Wyer's farm. I know where it sunk, have been to the sink-hole. I guess it never run by

that, unless in time of freshes—not that I ever saw, and I saw it at all seasons of the year.

And being cross-examined, saith :

I was eleven years old, past I think, when I first went to work for Mr. Carter by the month. During the time I worked at Carter's, I am positive there was no water running there, no steady stream at all. Don't know that I ever saw any there in high water.

Question. Was your attention ever called particularly, while you worked for Mr. Carter, to see if there was any water running down that hollow or not ?

Answer. No, sir. I never expected to be called here; of course did not think it worth while of noting it down.

Question. What work did you do in harvesting at Mr. Carter's ?

Answer. I raked in harvest. I forget whether I raked and bound sheaf about the last year or not.

Question. You say you are as well acquainted with the hollow on Carter's farm as if you had ploughed and harrowed across it; what made you so well acquainted with it ?

Answer. Well, sir, because I was on it so often.

Question. Did you never see any marks of a watercourse on Mr. Carter's farm ?

Answer. No, sir, I don't think I ever did.

Question. Did you observe it closely while you worked there, to see if there were any marks of a watercourse or not ?

Answer. Well, sir, I never see any watercourse there, it always grewed as much grain in one place of the hollow as another. I did not see that there was any soil taken away, or anything of the kind.

Question repeated.

Answer. Well, Mr. Sherrerd, I have passed over it frequently, and never see anything of the kind. I did not observe it so closely, as I never expected to be called as a witness on a trial.

Question. Who lived on Reigle's farm when you worked there ?

Answer. John Nixon.

Question. Did you never observe any marks of a watercourse on Reigle's farm ?

Answer. There was one field, the upper field, there was none in that; there was none in the lower field. In the middle field, which was the orchard, there was a high bank; I never see no water run there. We ploughed it all over and planted corn there.

Question. Did you ever observe closely, in the upper or lower field on that farm, to see if there were any marks of a watercourse or not ?

Answer. Well, I did not examine it closely, no more than I was in them every day or two for two summers; that was as closely as I examined it. I know we farmed both fields.

Question. Did you not judge that there were marks of a watercourse in the middle field, when you speak of there being a bank, or high banks there ?

Answer. I did not say I see high banks. I said I see a high bank, and rather descended each way.

Question repeated.

Answer. Well, I think not.

Question. Did you ever see water standing in a pond on the Reigle farm, and if so, how long?

Answer. Well, I think I have seen water standing on the Reigle farm a short time, till it dried away, merely brought there by high water. In the corner of the middle field and the lane, at that time, there was a mud-hole or pond of water, and in time of high water the water would run there and stay till it dried away; probably it might remain there two weeks.

Question. Have you not known water to be in that pond-hole two months at a time?

Answer. No, sir. I never knew it there that long.

Question. Did they not water their creatures there?

Answer. Never, while I was there, sir.

Question. Or where did they?

Answer. The first summer I worked there our wells and all were dry, and I had to drive the creatures and horses in the woods (it is a field now) where Philip Johnson lives, below Shields'.

Question. Was the springs and brook above the road at Shields' all dry at that time?

Answer. I think they were. There was no brook there I ever see.

Question. What business had you at all seasons of the year at the sink-hole on Wyer's farm?

Answer. I have not said so; I said I have been over the farm at all seasons of the year, and so I have. I did not say I had been at the sink-hole at all seasons of the year.

Question. What took you so frequently to the sink-hole?

Answer. Well, sir, I was very intimate with Mr. Husselton's boys—I was there almost every Sunday with them; we generally took that day to hunt rabbits.

Question. Do you mean to be understood to swear positively that, from the time you commenced working for Mr. Carter until the time you went to a trade, there was no water running down that hollow below Wyer's farm at ordinary times, or that you never saw any?

Answer. With the exception of these two years I was away and the times I was away, I am positive there was no water there at ordinary times. I am very positive there was none.

Question. Do you recollect of there being a bridge on the turnpike across this hollow?

Answer. I do not.

Question. Are you positive that you do not recollect of there being a bridge or sluice-way across the turnpike?

Answer. I never see any there; I am positive of that.

Question. Have you never told any one that you remembered there being a bridge or sluice-way there?

Answer. I think not. If I have told something, I did not know. Sworn, &c., November 4, 1841.

Joseph Bryan testifies—I worked on the Joseph Carter farm one year with Henry Groff. I was ten years old when I went there, and now am thirty-seven, last August. I was a mere boy then. I had to drive the cattle and horses, and such like little chores; I had to drive them down by the house where Shields now lives from out of the fields, sometimes one field, and sometimes another—I can't exactly state which ones. I had to go across this hollow, up and down this road, to fetch them out of the upper field. There was not, to my knowledge, any stream of water crossing that road down the hollow; I never saw any there during that year. I can't tell you how often I crossed that hollow; I might have crossed a great many times through the course of the summer season: I watered the cattle every day, and might have crossed it twice every day when I brought them out of the fields above the hollow;—they did not run in those fields all the time. The horses we had to fetch out in the middle of the day; the cattle we would take out in the morning, and fetch them back at night.

I never see any stream there until after the canal was in operation, and then noticed it and spoke of it what an advantage it was to the neighbourhood.

And being cross-examined, saith:

I can't recollect whether it was a dry season I lived with Henry Groff or not. I lived the whole year with him, and moved away with him the next season. I don't recollect of any bridge or sluice-way on the turnpike in that hollow as long as I have known it. I have known it ever since I was ten years old.

Sworn, &c., November 4, 1841.

David Hansler testifies—I was raised on the place where Henry Carter lives now, and lived there till I was seventeen years old. I am now forty-eight, and a little past. After I was seventeen I went to work at the mason trade, at Oxford furnace, but had my home up there during that time. I was back and forth on the place until I was thirty. I worked nine years, in harvest, on Wyer's place after I was seventeen years old, and worked on every year. The Woolston stream came down in former times through that place. It run down until it got pretty well down across the Wyer farm, and then it sunk there, or it went in there at any rate. It always disappeared there, except in heavy rain or breaking up in the spring of the year; then it would overflow and run through. It was owing to the weather a good deal how long it would run. Sometimes in a flood it would last a couple of days, sometimes more. I was very frequently down to the sink-hole until I was seventeen. There was a good many things that called

boys there; there was grapes, plums, hazel-nuts, and a good many things that enticed us to go there. While I harvested on the Wyr farm nine years, I harvested in the hollow there below the sink-hole. I think likely we harvested every fourth year in that field across the hollow. Sometimes they harvested over the hollow in the front fields. There was no stream of water there at that time, no further than what run into the sink-hole.

That stream that came down by Carter's was not as large formerly as now—there is quite a considerable difference—one half difference, if not more. I calculated that the canal supported it, and by ditching it has a chance of getting along better than before.

And being cross-examined, saith :

I recollect seeing water stand in a pond by Reigle's frequently. I do not know where it came from; I did not see any inlet or outlet—it was a pond-hole. I have seen where the water has made some marks between this pond-hole and the sink-hole—looked as if it had been torn up by freshes; there was no stream there, no continual stream. I have seen marks of water below that pond-hole down the hollow. I don't know that I could ascertain, from my own knowledge, how long the water continued to run there in the spring of the year. It was only a chance time I was down below the pond-hole. I know they used to turn out this little Woolston stream on their meadows above Henry Carter's. I know that well. They turned it out on Judge Beavers' meadows, to water their meadows, and deprived us of water below. I would go up early in the morning, or in the evenings, and open their dams; and that is the reason I know it so well. I don't know of any meadows above that they used to turn the waters upon. Below they used to turn it out on part of the Henry Carter farm. The other stream, from John P. Ribble's, empties into the Woolston stream on the farm above, Henry Carter's. I know they used to turn that out on their meadows, and that used to be wasted almost altogether by turning on the meadows and sinking; very little water ever came down into the Woolston brook. Since that time, both brooks have been ditched, and carried together in one ditch. I know of there being a flat place up there, a kind of quagmire, in which the brook used to waste away before it was ditched. I consider that the brooks have been increased by ditching, without the canal. In old times, if there had been no obstructions by sink-holes or other things, the water would have went on down through, no two ways about that; the stream was strong enough—besure some part of the year it got quite low.

And being called again in chief, saith :

Those marks of water below the pond-hole on Reigle's looked as if they had been caused by water in time of a fresh.

Question. Is it not common for gullies to be washed by freshets in places where there is no running water at any other time than time of rain?

Answer. It is a very common thing—very frequent where I have been travelling through.

And being cross-examined again, saith :

Question. Have you never known any ancient natural water-course that was dry at certain seasons of the year ?

Answer. I have. I have known Shabbycong to be dry that it did not run at all—only little puddles along.

Sworn, &c., November 4, 1841.

Joseph Groff testifies—I have worked on the farm where Mr. Arndt now lives. I worked there a year for Henry Groff, my brother, about fifteen or sixteen years ago to the best of my knowledge, at the farming business altogether. During that year there was no stream of water crossing that farm, to my knowledge. In the field where I suppose the water now runs we planted corn all through the field. I helped plough and plant it, and helped gather it also. I never saw any water there in the field. When there would come a fresh, there would be water each side of the turnpike. That water, I took it, came down each side of the turnpike, but no water through the field, to my knowledge. There was a kind of drain across the turnpike. That drain came by showers, and by a big heavy rain it would wash it across. That season was not drier than common—just a common season—but it was so dry we had to drive all our cattle down to where Mr. Shields now lives to water them.

Sworn, &c., November 4, 1841.

Daniel Groff testifies—I am a brothr of Henry Groff, who lived on the Arndt farm. I helped him move there, that is on the farm where Joseph Carter now lives. I helped him move thirty-one years ago last spring. He lived there five years, and eight years on the Arndt farm. I was over the farm at the time he moved, and I was up there very often to see him while he was on those farms—went up the road, and was round his farm to see how his grain came on; and have been acquainted with that hollow ever since.

Question. Have you travelled along the turnpike frequently since your brother lived there ?

Answer. Yes, sir.

Question. During the thirteen years your brother lived there, was there any stream of water crossing those farms down this hollow ?

Answer. There was not, sir.

Question. When did you first notice a stream of water running across the turnpike in this hollow ?

Answer. I can't recollect what year it was—it was after the canal was made and after they had ditched the ground down. I went down a horseback, and I just stopped my horse and looked what a nice stream there was there, which I had never seen before.

Question. Did it particularly arrest your attention on that account?

Answer. It did, sir.

Question. Did you visit your brother at different seasons of the year?

Answer. I did, sir. I was there very often the time he lived there.

And being cross-examined, saith :

Question. Did your brother move from the Carter farm on to the Arndt farm?

Answer. That I don't recollect about that, whether he did or not.

Question. Where else did he live about that time, or between the times of his living on the Carter and Arndt farm?

Answer. Well, sir, I don't recollect, for I never charged my mind, for I never expected to be called on as a witness.

Question. Did he not buy a farm on the hill, of Robert C. Thomson, and live there between these times, and how long?

Answer. He did ; but how long I don't pretend to know any thing about it.

Question. After he lost the farm on the hill, did he not move on the Beavers' farm, and live there several years?

Answer. Well, I don't recollect exactly. I don't pretend to know.

Question. Did he not live on the Arndt farm until Arndt moved on to it, after Riddle moved away?

Answer. Sir, I don't remember anything about it at all, for I did not charge my mind with it no way.

Question. Where did you live the first year your brother was on that farm?

Answer. I lived in Morris county, about two miles this side of Beattiestown, about eight miles I expect from where my brother lived.

Question. What business were you engaged in?

Answer. Farming business.

Question. How many times do you remember visiting him that year?

Answer. Well, sir, I can't tell how many times. I was there very often while he lived there.

Question. Do you remember visiting him more than once that year?

Answer. I am sure of being there every two or three weeks that year, for I went a courting there.

Question. When you went there a courting was your attention ever particularly called to see if there was water running in that hollow or not?

Answer. I don't know that it was particularly called on that account.

Question. Where did you live the second year?

Answer. I lived at the same place sixteen or seventeen years.

Question. How often do you remember visiting him the second year?

Answer. Well, I don't remember anything about it, how often I was there at all.

Question. Can you say positively you were there twice the second year, and if so, at what seasons of the year?

Answer. I can't remember how often I was there the second year, or third year, or fourth year: I was there very often—I might have been there a dozen times.

Question. Can you say positively you were there once the third year?

Answer. Yes, sir. I can say positively, a half a dozen times.

Question. At what particular times?

Answer. I don't know that I can mention any particular times at all about them—I don't remember.

Question. At any of the different times you were there, was your attention particularly called to see if there was water in that hollow or not?

Answer. Well, I don't know that it was.

Question. Do you recollect how often you visited your brother the fourth year?

Answer. I don't, sir.

Question. Can you say positively you visited him twice that fourth year?

Answer. Yes, sir.

Question. At what seasons, and on what occasions?

Answer. Why, I can't justly tell what part of the season it was; of course I went to see him I expect, certainly.

Question. Do you remember how many times you visited him the fifth year?

Answer. I do not.

Question. Are you positive you visited him twice that year?

Answer. Yes, sir, I think I am.

Question. Do you recollect how often you visited him the sixth year?

Answer. I do not.

Question. Were you there once or twice that year?

Answer. Well, sir, I think I was there twice.

Question. Do you recollect your brother living in the brick house just above Washington, between the time of his living on the Carter and Arndt farm, and if so, how long?

Answer. I do. I think he was there ten years, sir.

Question. Do you recollect how often you visited him the seventh year?

Answer. I do not.

Question. Will you swear positively you were there twice that year, or only once?

Answer. I think I could swear positively I was there twice.

Question. At what seasons of the year?

Answer. I don't recollect at what seasons of the year.

Question. How often did you visit him the eighth year, on the Carter farm?

Answer. I can't answer that question.

Question. Can you swear positively you visited him twice that season, and if so, at what season of the year?

Answer. I can't answer that question.

Question. Is this hollow on the turnpike on the direct route from Beattiestown to the house where Henry Groff then lived, on the Carter and Arndt farms?

Answer. It is not on the direct route. No, sir.

Question. How often did you visit him the ninth year?

Answer. I don't remember, sir.

Question. Did you visit him when he lived on the mountain, and how often in each year?

Answer. I don't remember how often I visited him. I did, sir, visit him there likely—certainly.

Question. Are you positive as often as twice a year?

Answer. I can't tell how often, sir.

Question. Did you visit him while he lived on the Beavers farm, and if so, how often a year, and at what seasons?

Answer. I don't recollect at what seasons nor how often. I visited besure.

Question. Did you visit him while he lived in the brick house above here, and if so, at what seasons and how often?

Answer. I visited him while he lived up here. I don't recollect how often nor what seasons of the year.

Question. Did you not generally visit him in the winter season?

Answer. I did not, sir.

Question. As you were not all the time at your brother's during the thirteen years he lived there, but only visited him occasionally, how can you say positively there was no stream of water crossing these farms down that hollow during that time?

Answer. There was none that ever I seen at all.

Question repeated.

Answer. I have answered all I can answer about it.

Question repeated.

Answer. I have answered you.

Question. When you swore positively that there was no stream of water crossing those farms down this hollow during the thirteen years your brother lived there, did you mean so, or only that there was none that you saw when you visited him or went up and down the turnpike?

Answer. Well, I believe I have answered all that I know about it Mr. Sherrerd.

Question repeated.

Answer. I have answered you all that I know about it.

Question. Will you answer that question or not?

Answer. I never seen no water, sir, when I travelled through there, until the canal got in operation.

Question repeated.

Answer. Well, I have answered you all I know about it at the present.

Question repeated.

Answer. I think there was no stream, sir.

Question. Will you answer the question any further or not?

Answer. I know no more to answer, sir.

And being called again in chief, saith :

Question. If there had been a stream there in former times, as there is now, could you have passed it without noticing it, as you did when you stopped your horse there?

Answer. I think not, sir. I think I could not have passed it without noticing it.

Sworn, &c., November 4, 1841.

John C. Woolever testifies—I am acquainted with James Allen.

Question. Whose son was he, and where did his father live formerly?

Answer. I think he is called the son of old James Allen, a tailor, who lived at New Hampton when I first knew him, and then lived on the road between Mansfield meeting-house and Hampton, near Capt. Samuel Bowlby's.

Question. How long have you been acquainted with James Allen?

Answer. Well, I may say that I have known him since he was a child about nine years old, but never had much acquaintance with him but for about fifteen years.

Question. How near have you lived to him these last fifteen years?

Answer. I guess part of the time within three hundred yards and part of the time within about three-quarters of a mile.

Question. What is his general character in the neighbourhood?

This question objected to by complainant's counsel, as too general a one.

Answer. It is very light.

Question. In what respects is his character very light?

Answer. He has been called a thief and a liar.

Question. Is that his general reputation in the neighbourhood?

Answer. I think it is, from what I can hear amongst the neighbours.

Question. Was you present when he was brought up for stealing some few years ago?

Answer. Yes, sir.

This last question objected to, because not legal and competent testimony, by complainant's counsel.

Question. Can you state why he was not whipped at that time?

This question also objected to on same grounds.

Answer. I don't know hardly whether I can properly, or no. I think that after the witnesses had given in against him, the squires, as we call them, went to a room, and I was called in to them, and they asked me if I was a neighbour to him, and I tell them I was. They asked me whether I thought it proper to whip or fine him,

and let him go clear. I told them if they took my advice they should fine him a little, in place of whipping, and let him go. And it was done so; but whether done so agreeably to my wishes, I don't know; but it was so done, I believe.

Question. If you were sitting as a juror, would you place any confidence in his testimony?

This question also objected to on same account.

Answer. I should not, unless I knowed something a little about it myself.

Question. Are you acquainted with Joseph Hendrickson, and how long have you known him?

Answer. I am sir, I expect, and have known him several years, forty years I guess.

Question. Have you lived in the same neighbourhood with him?

Answer. Well, I have by times—not all the time—part of the time I might say he lived on a lot of ours. We have not lived quite so near neighbours within six or seven years, within two or three miles one year within the last twelve or fifteen years; he lived in Shamokin the rest of the time, pretty much in the neighbourhood—not out of the neighbourhood that I recollect.

Question. What is his general character in the neighbourhood for truth and veracity?

Answer. Well, it is a good deal talked of, too, that it is pretty indifferent.

Question. How do you mean indifferent?

Answer. By not being a just, upright, and fair man, and punctual, as I take it.

Question. Is it or not generally said of him that his word is not to be relied on?

Answer. I should not think so; but I have not heard quite so much talking of neighbours about that.

Question. What have you heard the neighbours say of him?

This question objected to, because too general and indefinite, by complainant's counsel.

Answer. I have heard them say that they think very light of his word. There is a good deal of talk about him, some one way and some another, some talk more against him than others. I don't know that I can state anything else in particular that his neighbours talk about him.

Question. Would you think him worthy of belief if sitting as a juror?

Answer. I could not.

And being cross-examined, saith:

Question. Have you and James Allen ever had any difficulty or misunderstanding?

Answer. No, sir, I believe not.

Question. Ever any ill friends between you?

Answer. No, sir, not the least. If ever he was mad at me, I had no knowledge of it.

Question. Was you never mad at him in the least, or put out with him or his conduct?

Answer. No, sir.

Question. Who were the squires you spoke of?

Answer. Abram Warner and Squire Scureman.

Question. Who were the witnesses you spoke of given in against him?

Answer. I don't know that I can tell them all, there were several: William Woolever was one and John Woolever. I was called upon, but I don't recollect whether I was sworn or not. I can't tell whether there was any others or not.

Question. Who made the complaint against him?

Answer. I guess it was Bill Woolever.

Question. When the justices consulted you, did not they tell you all about it?

Answer. No, sir, they did not, I believe.

Question. What was the complaint?

Answer. For stealing, I believe a little rye. I think it was a bag and some other things. I can't recollect, but I think it was a bag and some rye from Bill Woolever.

Question. Are you sure there was any other articles?

Answer. I am not sure whether there was or not.

Question. Don't you recollect he asked for time to get witnesses, and they would not let him have it?

Answer. No, sir, I do not.

Question. Were you present all the time of the trial?

Answer. I guess I was not. I don't think I was quite all.

Question. Can you swear positively, from your own knowledge, that he was not acquitted?

Answer. I don't know as I can.

Question. Have you ever employed him since to work for you?

Answer. I think I have.

Question. Frequently or seldom?

Answer. Not often.

Question. Have him board with you when he worked for you?

Answer. Yes, sir.

Question. Name the different persons you have heard speak against his character in the neighbourhood?

Answer. Thomas Cornell, Benjamin Fritz, I believe the rest are new neighbours pretty much. Morris Myers is another, Peter Baker, John G. Baylor. They are pretty much all the neighbours around there. There are others, but just moved there, within a year or two or three.

Question. How long since Thomas Cornell came into the neighbourhood and left it?

Answer. I can't tell exactly how long. I guess it is four or five years since he left the neighbourhood, may-be longer. It may be six, seven, or eight years. I am not able to tell you how long he lived there nother.

Question. Don't you know that Allen and Cornell had a falling out about something?

Answer. No, sir. I never heard Cornell say so.

Question. Don't you know, or have you not heard that Allen had some misunderstanding with Benjamin Fritz, Morris Myers, Peter Baker, John E. Baylor, or some of them?

Answer. No, sir. I don't know that I have with any of them.

Question. How came you and them to be talking about him and his character?

Answer. Well, I am not able to tell you that in particular.

Question. Have you and Joseph Hendrickson never had any misunderstanding at all, on either side?

Answer. I guess we had a little about the time he went to Shamokin.

Question. Don't you know that what the neighbourhood talk about men is not always true?

Answer. I know it is not.

Question. Have you ever known a man against whom nothing was said in the neighbourhood?

Answer. Not many. I don't know as ever I did any, unless it was you.

Question. Have you never heard any one say anything against me in the neighbourhood?

Answer. I don't know that I have, in particular.

Question. Have you none in general?

Answer. I don't know that I have, but a little nonsense almost about any one.

Question. Would you not believe James Allen or Joseph Hendrickson on a jury, if their testimony was corroborated by other witnesses?

Answer. It would not before me.

Question. Who have you heard speak against the character of Joseph Hendrickson?

Answer. I don't know that any the neighbours just there at present. I have—Thomas Cornell, old Peter Fritz, Henry M. Winters, Guy A. Bryan—nobody else that I can recollect at present.

Question. How long since you heard any of them speak against him?

Answer. Well, it has not been over six months. Winters for one, and old Mr. Lomasson I forgot to mention.

Question. Do you not know, or have you not heard, that Peter Fritz and he had some difficulty about the settlement of their father-in-law's estate?

Answer. No, sir, not in particular.

Question. Have you never said you had heard or knew there was difficulty between them about the settlement of their father-in-law, William Creveling's estate?

Answer. Not betwixt Peter Fritz and Joseph Hendrickson, I think I never did, but between some of the family.

Question. Is the Guy A. Bryan you speak of the pettifogger at Broadway?

Answer. He is by times; I don't know that he is always.

Question. Don't you know, or have you never heard, that Winters and Lomasson, or either of them, has had some difficulty or misunderstanding with Joseph Hendrickson?

Answer. I think I have—Mr. Lomasson, or with Hendrickson's children rather—Winters I have not.

Question. Is not the John E. Baylor you spoke of your son-in-law?

Answer. I expect he is.

And being called again in chief, saith:

Question. Is Henry M. Winters you spoke of the former sheriff of the county?

Answer. Yes, sir.

Question. Who are Benjamin Fritz, Morris Myers, Peter Baker, Peter Fritz, and Lomasson, and what are their occupations?

Answer. Benjamin Fritz is a farmer, Morris Myers is a carpenter by trade, Peter Baker works about for his living, and Peter Fritz is a farmer, and Lomasson is a farmer, or has been.

Question. Are they, or are they not all respectable men?

Answer. I should say so.

Question. What dispute or misunderstanding had you with Hendrickson about the time he went to Shamokin, and how long ago is it?

Answer. It is more than I can tell how long ago it is, a good many years—fifteen years, may-be longer.

The misunderstanding was concerning the rent of a house and lot, that he owed me. I rented a house and lot for him, and he refused paying me.

Question. Have you generally heard your neighbours called thieves and liars?

This question objected to by complainant's counsel, as too indefinite.

Answer. Oh, yes, I have heard some of them called thieves and liars.

And being cross-examined again, saith:

Question. What reason did Joseph Hendrickson give why he would not pay you the rent?

Answer. He gave me none.

Sworn, &c., November 5, 1841.

Jacob T. Thomson testifies—I am a son of Robert C. Thomson, late of this county. I will be thirty years old the twenty-sixth of this present month. Bred and born here at Changewater. I was formerly in the habit of travelling along the Spruce run turnpike very frequently, from the time I was able to drive a horse, say from twelve until I was eighteen years old, I went to Mansfield church. I was in the habit of driving my mother there, whenever the weather would permit to go—pretty generally every sabbath

through the year, at all seasons of the year. Travelled it some through the week days—not so much. In all my travelling along that road, I have no recollection of seeing any stream of water crossing that road in the hollow till latterly, four or five years or more. Can't tell how lately. I have no recollection of seeing any whenever I travelled it. I think I noticed the stream running there. The first time I suppose I crossed it after it was running, a few years ago, it seemed to be something new to me, that I had not seen before. I would suppose if there had been a stream crossing the road in former times I would have noticed it. I have a distinct recollection of seeing a stream there lately, but have none of any there before. I have seen puddles standing on the side of the road—no recollection of seeing it run across, but it might. I never see it, to my knowledge. I have travelled it in a sleigh and wagon and on horseback, but not so frequently—in a wagon particularly. I think I can see that stream has been increased since the canal has been made, considerably on the Port Colden road, near to Wyer's; I most frequently travel that road. Increased more sometimes than others. I supposed it was increased by the leakage of the canal. I have crossed the road from Changewater to Port Colden, and observed a little stream crossing the road there and when I crossed along the turnpike. I saw none there, and wondered what become of it, and thought it was something singular. I had heard it sunk, but never went to the sink-hole. It was my impression there was water enough by times to go through, if not obstructed by sink-holes or other obstructions. I have seen it once dry, and only once, that I can recollect.

And being cross-examined, saith :

I never went up to see whether it was increased by the leakage from the canal—it was only an impression that I had. I have crossed it frequently this summer. I think I observed a difference since the canal has been in operation this season—more water in it since than before. I have seen it at times, when the canal was in operation, when there was as much again water in it as at others, but what was the cause of it I don't know; it might have been dammed under the bridge. Before the canal was in operation this season, I observed it was a nice lively little stream at that place.

And being called again in chief, saith :

In passing along the turnpike in former times, I think I have noticed the fields on each side in the hollow were tilled and ploughed all across the hollow. I have no recollection of seeing any sluice-way or stream. The water I saw on both sides of the turnpike I supposed came from rains, and settled there, from the descending grounds. I judged it come down each side of the turnpike, at least I have seen it come down there in time of showers; but I did not know.

And being cross-examined again, saith :

When travelling the road to Mansfield meeting-house, there was nothing in particular called my attention to notice whether

there was water or not in that hollow, only in passing and repassing along the road.

Sworn, &c., November 5, 1841.

Christopher Martenus testifies—I was acquainted with the farm that Joseph Carter lives on and the farm Mr. Arndt lives on when Capt. Henarie lived there above thirty years ago, I suppose, maybe not so long. He farmed both those places. It was all in one—there was no turnpike there then. I harvested for Capt. Henarie, I guess it was six or seven years, or as long as he lived there—harvested every season, and cut oats for him, too, every year.

The first year I cut there was in the field in the hollow—wheat and rye both. I cut in the same field the last year I cut; it was all one field, and cut all the way down to a little stream that I supposed came down from Mansfield meeting-house. I cut oats there once on the hollow. The other years I cut in different fields round; some years it was down towards the house, and some years across the hollow. The ground in that hollow was all dry all the times that ever I was there. There was not any marks of a stream in that hollow in that time. There was grain all over, but there was one place where the water would stand a little, in a hollow—would not stand there nother without it was big rains. It is not down in the hollow where that race runs now, it was up in the field above the turnpike, in the middle of the field in the hollow, but not where the water runs now—it would stand as in other fields. I never saw water there but once, and then it dried up in a day or two. After the turnpike was made, I went over there on purpose to see it once, and I saw no water there then. When we cut grain we cut clean through; I never saw any water places or nothing. We got water out of a spring right up in the hollow between Arndt and Shields; can't tell whose lands it was on. Can't tell whether it was in the field we worked in or not, or whether there was a fence there—was bushes all round, a kind of hedge-row. When I mentioned I cut all the way down to the stream, I took it to be a stream, because there was a brook above it towards Mansfield meeting-house.

And being cross-examined, saith:

At the time I harvested, I did not see the water that I supposed came down from Mansfield. That wet bushy place I spoke of, I guess, was two hundred yards, or more, down from the turnpike. About where the turnpike now is, they had bars to go through to their back fields, along a middle fence. The fields were of different shape from what they are now. During the time I was there, my attention was not particularly called to see if there might not have been a little stream there in the spring of the year or not. My attention was chiefly called to my harvesting work. When I come to see the turnpike, I did not come to see whether there was any water or not, though I did not see any there. That place I see above the turnpike, where the water stood, was not bigger than this floor, say fifteen or twenty feet. I don't know, of my own

knowledge, whether the water stood there in the spring of the year or not. I was there in the spring of the year, and I never see any stream of water there. My brother was at work there, and I went over to see him once, and we went all over the place. We just walked across to see the farm—I wanted to see it once. My attention was not called particularly to see the water.

And being called again in chief, saith :

When I walked over the place with my brother, there was no stream of water there then, else I would have seen it. When I harvested there, if there had been a stream, I would have seen it, for I cut back and forward. It was three or four hundred yards from Shields' house up where Capt. Henarie came through the hedge with the water—the hedge continued all the way up Mr. Arndt's place.

Sworn, &c., November 5, 1841.

Peter F. Baylor testifies—I lived at this place five years, and Hampton three. I moved here in 1822, and to Hampton in 1827. While I lived at this place I was in the habit of travelling the Spruce run turnpike very frequently—I should judge I travelled it once in two weeks in course of the year. What caused me to travel it so frequently was, in going to the forge I very frequently went that road, and I very frequently went that road in going to Hampton; and there was a man lived in a small house by Josey Carter's that worked for me—I used to go to his house backwards and forwards frequently. I followed hatting. While I lived at Hampton I was backwards and forwards to this place on business, having lived here—generally carted my hats through the upper part of the county, Hope, Log-jail, and Belvidere. In coming this way, I generally come the turnpike. While I lived at New Hampton I did not travel it so often as when I lived here; but I suppose I travelled it twelve times a year, if not oftener. During these eight years I never saw any stream of water crossing the turnpike in that hollow by Arndt's, to the best of my recollection, except in the winter season. I have saw water there in the road in the time of a freshet. I suppose that water collected from the fields descending to the hollow, and also down each side of the turnpike, in time of snow going off, freshets, and heavy rain.

And being cross-examined, saith :

I think there was a small bridge there across the turnpike, a plank or two, if my memory serves me right. In my passing backwards and forwards, I don't know that there was anything in particular to call my attention to see whether there was high water there or not. During those years I sometimes travelled the road from Changewater to Port Colden, but not so frequently as this road; having business here, I came this way while I lived at Hampton. When I travelled it, I observed a stream crossing the road there by Wyer's, a pretty clever little stream, sufficient, I should suppose, to run all the way through to the turnpike, if there were no obstructions in the way. I think that stream is larger

there since the canal has been in operation than it was at that time. I noticed it this summer. I did not see a great deal of difference in it this season. There appeared to be more water in it for a few years than formerly. I did not notice any difference in it between this summer and last. I do not know whether the difference was produced by the canal or by ditching their meadows, and preventing it flowing over the ground. I know the canal was dry this summer at Port Colden; I saw no water in it there—not up or down it further.

And being called again in chief, saith:

I think I should as readily noticed a stream on the turnpike, if there had been one there, as at Wyer's. It is usual and necessary to place bridges across turnpikes in such places to carry off the water that collects along the sides. I have seen it done. I know where there is an arch bridge built, where no water passes through except in time of a rain. I never saw none. That is this side of Clinton.

In passing along the turnpike, I used to notice the grain and clover growing in the fields in the hollow. What caused me to notice them was, that I generally notice such things as I go along, especially where things look as promising and as good land as that is.

And being cross-examined again, saith:

I have known bridges built across streams that was very low in dry seasons of the year. The Shannock is one; there is an arch bridge over it, two eighteen feet arches and two sixteen or seventeen feet arches. The water was very low when I was building it—not average more than two inches water across the stream part of the time.

Question. Don't you know of any ancient natural watercourses in the county of Hunterdon, or elsewhere, that are entirely dry at certain seasons of the year?

Answer. I can't call any to mind at present.

Question. Have you never known the Shabbycong dry, or very nearly so, in a dry time, that it did not run?

Answer. I don't recollect of ever seeing it dry, although it might have been. I have seen it very low, though.

Question. Have you never seen the Pohatcong dry, or heard of its being dry, down by Kennedy's mills?

Answer. I don't recollect that I ever have either seen or heard of it.

Sworn, &c., November 5, 1841.

James Anderson testifies—I have been acquainted with the hollow by Arndt's and Carter's as much as thirty years. I am son-in-law of Joseph Carter, who lives there. It will be twenty-one years ago next February since I was married. At the time of courting my wife, and before I went to keeping house, I visited my father-in-law's frequently. Before I was married, I was there sometimes every two weeks, sometimes every week, and sometimes three or

four times a week, in sleighing time especially. After I was married, my wife remained there from January till about the first of April. I was in the habit of visiting there for nearly two years before my marriage. The summer after I was married I was several times over my father-in-law's farm. I was not over it before. I travelled over it to see how their farming was going on and to look at their stock. I was across this hollow. I was there most frequently on Sundays. Before my courtship commenced, I was in the habit of travelling along the turnpike frequently for several years—unable to say how many years. I have been along the turnpike frequently since and at my father-in-law's, but not over the farm for a dozen years. I think I have been along that turnpike at all seasons of the year some years ago. I am unable to say how often a year upon an average, but frequently; I think more than half a dozen times a year; I think sometimes half a dozen times a month in sleighing time, so that I would not be able to make any kind of calculation. During my whole acquaintance with it, for thirty years back till within a few years back, I never saw any stream of water crossing the turnpike in that hollow. I recollect my father-in-law tilled that hollow, ploughed and sowed it; recollect seeing it in with grain, saw wheat on it, and corn and clover; don't know that it was ever kept for bottom meadow—it was not at that time. I have always lived in the neighbourhood, never further off than at Andersontown; always lived at Andersontown since I was five years old. I am not able to say anything about that, whether the stream is increased at Wyer's since the canal has been made or not.

Question. Do you know what became of that stream?

Answer. No, sir, I do not.

Question. Would you not have noticed a stream crossing the turnpike in former times as easily as you noticed this stream above Wyer's?

Answer. If there had been a stream at them times, I should no doubt have noticed it.

And being cross-examined, saith:

Question. Do you think you would know as well as your brothers-in-law, who worked the farm, whether a stream of water ever crossed that farm in that hollow?

Answer. I think I would as well at those times when I passed it.

Question. Would you at other times?

Answer. Not so well as them at other times.

Question. Might not this stream have often run between the times of your crossing the hollow, and you know nothing about it?

Answer. I suppose it might have run, but not to my knowledge. I never see it.

Question. Do you recollect there being a bridge on the turnpike?

Answer. Yes, sir.

Question. Might not a stream of water been passing under

that bridge in sleighing time, and you crossed it frequently without seeing it?

Answer. There might have been a stream passing under it without my seeing it.

Question. Do you mean to be understood as saying positively that there was no stream of water crossing that farm, or that you never saw any when you were there or passing along the road?

Answer. I mean to be understood, sir, as saying that I never saw any stream of water passing that farm.

Question. Do you know whether, in farming, they ever left a place in that hollow for the water to pass or not?

Answer. I never observed any such place, sir. I don't know whether they did or not. If there was such a place I never saw it. I was not over it every season.

And being called again in chief, saith :

Question. Are bridges built on roads sometimes where no stream passes, in low places?

Answer. I believe they are, sir. I built one myself across the turnpike near where Esquire Hartpence lives, where there is no regular stream.

And being cross-examined again, saith :

Question. Is there not a regular stream there in the spring of the year for several months?

Answer. Not to the best of my knowledge.

Question. How long have you known it to run there in the spring of the year?

Answer. I don't know that I have known it run there at all; there was water there, in the gutters on both sides of the road, and I built that bridge to carry the water off.

Question. Is the bridge you refer to on this side of Hartpence's or below?

Answer. This side.

Question. How did it carry the water off, if there was water both sides of the road?

Answer. The calculation was to carry the water off from the upper gutter, the lower side was drained off.

Question. Have you ever known a bridge built across an ancient natural watercourse that would be dry sometimes?

Answer. I may have seen such, but I can't call any to mind now.

Question. Have you never seen Shabbycong dry along the turnpike above this place?

Answer. Not to my recollection. I never have.

Question. Have you never seen or heard of Pohatcong being dry at or near Kennedy's mills?

Answer. No, sir, I never saw it so, and I think I never heard of it.

Question. Have you never passed over a bridge or bridges in Hunterdon county that had no water running under them, and at other times had a considerable stream?

Answer. I don't know that I have.

Question. Is there not one or two bridges in the turnpike over Shabbycong just above this place?

Answer. Yes, sir. I can't say certain whether one or two. I recollect when there has been two.

Sworn, &c., November 5, 1841.

William Carter testifies—I am a son of Henry Carter, who lives on the farm above Wyer's. I have lived there with my father twelve years, it will be in the spring. That Woolston stream, before it was carried down in ditches, sunk in my father's field first, and then it crossed the road into Wyer's field, right along the road; that is about as far as it went in a low time of water. It sunk there. When there was rains, it run on down across to Mr. Wyer's lower fence across the field; there it sunk again, sir. Then in a high time in the spring it went on into Mr. Reigle's field; there it sunk again. It went on down to Mr. Reigle's lane in the spring of the year; there it sunk again. That is as far as ever I saw it go, unless in the spring of the year it might have gone further—I can't say as for that. I have crossed the turnpike below, before the stream was ditched, several times in the course of a year. I think I have at all times of the year. I never saw any stream there. The stream up by my father's has been increased since the canal was in operation. This season I noticed it—it was about as big again after the water come in the canal as it was before. I viewed it so close I could tell, and I laid it at a low rate—half. I am twenty-nine years old.

And being cross-examined, saith:

I don't know as I can tell you very close when we ditched through my father's farm; it is about six or seven years ago since we first opened a ditch. Then since that my father and Mr. Creveling both have ditched, at the same time. Mr. Creveling owned the farm above. This last ditching was done the latter part of last summer a year. I have been up to the canal, but can't say to see if the water was increased from the canal; but I could see the water come out of the canal over Mr. Woolston's field, so they could not plough it. I don't recollect more than one or two years I saw it all the summer season. I should say it leaked out of the canal. I don't know, no more than it used to be dry ground, and now it is wet.

Question. Do you know whether the stream was increased by leakage from the canal or by ditching above, and thereby preventing the water spreading over the ground, or from both these causes together?

Answer. Well, sir, I have reason to believe it was from the canal alone.

Question. Do you think ditching a wet piece of ground, where the water flows over it, makes more or less water in the stream below?

Answer. I should think it made more by ditching.

Question. Did you ever see the water sink in the first pond in Mr. Wyer's field, or did it only evaporate and waste away?

Answer. I can't say I see it sink—I never went to the hole to see; it went away as fast as it came in.

Question. Did you ever see it sink by Mr. Wyer's lower fence?

Answer. It was the same thing there it was above. I have saw it sink away there the same as I did in the other place.

Question. Did you ever see it sink where it first came into Mr. Reigle's field?

Answer. Yes, sir.

Question. How often?

Answer. Dozens of times I have been there on that place—could not say how often I saw it sink.

Question. Did you ever see it sink at Reigle's lane?

Answer. There it run right down in a hole among the stones—and I expect it sunk.

Question. How long have you known it to continue in that pond by the lane?

Answer. Sometimes there would be scarcely any in, sometimes it would be full, and sometimes none at all. I can't say, as to that, how long I have seen it in; I think I have seen it there a week in times of rain, and may-be longer—I can't say.

Question. Did you ever see any marks of a watercourse between these different sink-holes?

Answer. I have saw where it washed from one sink-hole to the other, not so but what they would till the ground in the summer season.

Question. Did you ever see any marks of a watercourse below Mr. Reigle's lane?

Answer. I never did, sir.

Question. At ordinary times, before the canal was made, unless in a dry time, was there water enough to run down to the turn-pike, if there had been no sink-holes or other obstructions?

Answer. Well, sir, I could not say as to that. Before the water came into the canal, I should think not—after that was made, there would be.

Question. How, then, came it to run down this season, when there was no water in the canal?

Answer. Well, sir, I can't tell you that.

And being called again in chief, saith:

Question. Do you not know, or have you not heard, that the stream has been ditched down from Wyer's within a few years past?

Answer. Yes, sir, it has.

Question. Would not that be sufficient to account for its running down now?

Answer. Well, sir, I should think it would.

And being cross-examined again, saith:

Question. Would it not have run down in a natural channel, if there were no sink-holes or other obstructions?

Answer. Well, sir, I should say it would.
Sworn, &c., November 5, 1841.

John Hazlett testifies—I worked for Henry Groff on this farm of Mr. Arndt's some years ago—eleven years this last summer. I worked on the farm eight months, from about the first of April. There was rye and wheat, I think, on this field in the hollow below the turnpike—it was winter grain any how. There was grain all over the flat there where the water now runs. I attended to farming business—all kinds of work. John Lake, Joseph Force, and, I think, Francis Cruser, were the three cradlers that harvested that year. I bound pretty much all the time through harvest. There was not any place at that time through that grain for the water to run. There was not any water running through there during that eight months. It was dry ground. The field was left in stubble—I believe there was clover on it—not ploughed at any rate. I declare I forget the rakers and binders, unless Jim Groff, and Sidney Groff, a chunk of a boy.

And being cross-examined, saith :

I am a son of William Hazlett. I believe that season was a pretty dry season—about the time corn was setting for ears it was pretty dry. I can't exactly tell how near the grain went down towards Shields' and Arndt's line fence; whether it went all the way down I can't tell. I believe there was a little piece of meadow down the hollow along the line fence, but whether it was in that field or not I can't say. I meant there was no place through the grain for the water to run that I saw. There was no water running there at all, all the time, except in time of a rain, and that I am not certain of.

Question. Might there not have been water running through that hollow some days when you were not across it, and you not observed it?

Answer. No, sir, there was not.

Question repeated.

Answer. There might when I did not see it. I can't positively say whether there was water or was not every time I crossed it, for I crossed it very frequently.

And being called again in chief, saith :

Question. How frequently did you cross that hollow, as often as two or three times a week, or more or less, while you were there?

Answer. Yes, sir. I expect I did more than that, may-be three or four times a day.

Question. What fields did you plough on the place that year, and had you to cross the hollow in going to plough?

Answer. Yes, sir. The two fields next to the brook field above, as they call it. The field they call the lime-kiln field had come in it.

Question. Had you to cross the hollow to go to these fields to your work?

Answer. Yes, sir.

Question. Was there any ground ploughed that year on the lower side of the place next the house?

Answer. No, sir, I believe not.

Question. You say it was pretty dry about the time of corn setting for ears, how was it the fore part of the season?

Answer. I can't recollect about that.

Question. If there had been any ditch or gully, or place for the water to run down that hollow, must you not have seen it when you worked across it in harvest?

Answer. If there had of been, I certainly would have seen it.

Question. When you say there might have been water running through that hollow some days when you were not across it, and you not observed it, do you mean any more than that there might have been in time of rain?

Answer. No, sir, I don't.

And being cross-examined again, saith:

Question. Did you cross that hollow every day during the eight months you lived there?

Answer. Well, I don't know whether I did or no. I can't say as for every day.

Sworn, &c., November 6, 1841.

Nicholas E. Emmons testifies—I come to this place in the year 1825, sixteen years ago last spring, and lived here ever since. I have travelled the turnpike road from here, that runs down past Mr. Arndt's and Shields', more or less ever since I have been here. I can't tell how often a year on an average—some years more than others. I think, when I first come, Mr. Groff lived there on Mr. Arndt's farm, and Mr. Wyer carried on a blacksmith's shop there on the corner—and I travelled it oftener then than since. When I first came to this place, I got acquainted with Mr. Groff, and got to dealing with him some, and got a good many materials of him. I made him a wagon, and got timber of him and necessaries that we use about the house, and grain and hay and stalks, and such things. I never had a great deal of blacksmith work done at the shop, but had some—not a great deal. I have travelled it sometimes perhaps every week, and sometimes not once in a month or two months. I think I have travelled it at all seasons of the year, although I could not state—have never borne it in my mind. During all that time in former years, till the canal was made, I have crossed it when there was water in the turnpike and when there was none. In former times, I never saw a stream of water coming down the hollow and crossing the turnpike, except after a rain or in the spring of the year. That water come from every direction; that being the lowest ground it settled there. I can't tell exactly how long ago it is since I first observed a regular stream of water running there; it is some six or seven or eight years ago. I noticed it in particular the first time I crossed it—it was quite a smart stream the first time I crossed it.

What caused me to notice it so particularly was, that I had to cross over it was one thing; by not seeing it before, was another reason why I noticed it.

Question. Do you recollect whether you made any inquiry about it, how that stream came there?

Answer. I think I do, Mr. Morris. I think I made the inquiry where it came from, or what was the cause of it.

It strikes me now it was either two or three years after the canal was in operation—it was some time after when I first noticed it. As I passed along in former years, I recollect observing that the fields were tilled and ploughed both sides of the road before the stream came through, on the same ground where the water now runs. In passing along, I have no recollection of noticing any marks of an old brook, gully, or ditch. I have seen the grain all across the hollow without leaving any place for the water to run, but can't say how often?

Sworn, &c., November 6, 1841.

Peter Weller testifies—I have lived all my days in this township. I live within two miles and a half from this place, and never have been further. If I live till the twenty-fourth of February, I will be eighty years old. I used to travel the Spruce run turnpike for several years after it was first formed. I am not able to tell how often, perhaps two or three times a year, nor what season I could not recollect. When I was first acquainted with that hollow, I don't recollect of seeing any stream of water crossing the turnpike; I mean the several years I travelled it. The first that I noticed a stream of water crossing it was this last spring. I had not travelled that way before for a number of years. I took particular notice, more than I ever had done or would have done, from seeing the stream there.

What caused me to take more particular notice, was on account of its being in dispute, than I would have done. I don't know of any other reason. Besure it occurred to my mind that I had never seen it there before in former years.

I have been acquainted with old Joseph Hendrickson for a number of years, more so formerly than latterly.

Question. What is his general character in the neighbourhood?

Answer. Well now, his general character in the neighbourhood is but low—I have always considered it so.

Question. In what respects would you consider his character low?

Answer. Well, as to being a man of his word or truth. I would not put much confidence in what he would say;—that is my opinion of him.

Question. If you were sitting as a juror, would you place any confidence in his testimony?

Answer. Well, it is a pretty tough concern, but I could not put as much confidence in him as I would in a right sound man. Well,

well, there is people I would place more confidence in—that is what I mean.

Question. Are you acquainted with James Allen, and what is his character in the neighbourhood?

Answer. Oh, yes, I am acquainted with him as other neighbours, but never had any dealings, as I recollect, with him. His character is but indifferent certainly. It is a pity it is so, and I am sorry to say it.

Question. In what respects is his character so indifferent?

Answer. Well, I should take it in different respects, hardly a man of his word, and a trifling pilfering fellow any how—that is my opinion of him.

Question. Is this his character in the neighbourhood?

Answer. Well, I consider it so, as far as I know by what I hear.

Question. Would you place any confidence in his testimony, if you were sitting as a juror?

Answer. Well, that is a pretty hard question, but I could not put as much confidence in him as some men.

Question. If you had a lawsuit, would you like either Allen or Hendrickson to be witnesses against you?

Answer. Well, that is a pretty serious question—the law would allow them to. I should not put as much confidence as many others; they may be honest for all I know, but not much conscience bound—that is my opinion of them.

Question. Are you acquainted with Robert Allen, the brother of James Allen?

Answer. Oh, well, I have been acquainted with him for a number of years, but never had no dealings with him.

Question. What is his general character in the neighbourhood?

Answer. Well, I don't know hardly what to say or how to answer you. He is a poor trifling little creature, but may be honest for all I know of him.

Question. I don't ask you what you know of him or think of him, but his character in the neighbourhood?

Answer. As to that I really can't say; he is not a near neighbour to us.

Question. Have you never heard anything about his character in the neighbourhood?

Answer. I can't say that I did, anything more than his common conduct. He is a careless, idle, little creature, that spends all he makes and does not take care of his family—that's all I know about him. May be honest for what I know, and I am sorry to say anything against him.

Question. How does he spend all he makes?

Answer. Well, I am not able to tell you, but in my opinion he drinks a good deal of it.

And being cross-examined, saith:

Question. Are you acquainted with pettifogger Guy A. Bryan, and what is his character in the neighbourhood?

Answer. I have known him a number of years, ever since he

has been in the neighbourhood, but not particularly acquainted with him—never had any dealings with him. Oh, well, now really I cannot tell what his character is. I should not consider him the first in the neighbourhood; he is a pettifogger, and that is not the first character. There are people I have more confidence in than him.

Question. Does he not spend a good part of his earnings in drinking?

Answer. Well, I don't know that he does. It is quite likely he does; I think people would say so.

Question. What do people in the neighbourhood say about him?

Answer. Well, upon my word I don't know that I can tell you anything they say about him. Well now, when they want anybody to pettifogger they go to him, and I hear a good deal of talk about him. I should not know what to say against him or for him, for my part.

Question. Is his character rather light, or otherwise, in the neighbourhood.

Answer. Well, indeed, I am not able to say how it is in the neighbourhood, I should consider there were better characters in the neighbourhood than him.

Question. Did you know Berlin Metlar, the son of Collins Metlar, before he left the neighbourhood, and what did people say of him in the neighbourhood?

Answer. Well, I knowed him when I seed him, and that is all, pretty much. He was not of the first character, I should say; that is my opinion.

Question. Are you acquainted with John C. Woolever; how long have you known him, and what is his character in the neighbourhood?

Answer. I am acquainted with him, and have known him several years, but no particular acquaintance with him nother, no dealings with him. He has always used me very well, I must say that. Well, they talk about him as they do everybody else, pretty much; they will say a good many things. Oh, upon my word now, I don't recollect anything in particular he is charged with. I recollect about their saying his being a little contentious about some things, but don't recollect any particular case myself.

Question. Do you recollect hearing of his living with his brother's daughter, and having children by her while his wife was living, or since her death?

This was objected to by Arndt's counsel on account of its particularity.

Answer. Oh, well, that is the report, I suppose.

Question. How near to Joseph Hendrickson did you generally live?

Answer. I never lived nearer to him than a couple of miles.

Question. Have you ever heard any general report against his general character for truth and veracity when under oath?

Answer. I do not recollect that I have under oath.

Question. How near did you live to James Allen ?

Answer. I expect a couple a miles, may-be not so far.

Question. Did he generally work in your neighbourhood, or the one over the hill ?

Answer. He works very little in our neighbourhood.

Question. Did you ever hear any general report against his character for truth and veracity when under oath ?

Answer. Under oath, I can't say that I did.

Question. How near did you live to Robert Allen, and did he generally work in your neighbourhood ?

Answer. He has never worked in our neighbourhood, as I know of, and lives, I should say, about four miles from our house to Hampton.

Question. Who did you ever hear speak against the character of Joseph Hendrickson ?

Answer. Upon my word I can't name one now, because I do not recollect ; but it seems to me I heard old Mr. Lomasson complain of him about some dealings they had.

Question. Who did you ever hear speak against the character of James Allen ?

Answer. Well, I don't know that I can name anybody justly.

Question. Who did you hear speak against the character of Robert Allen ?

Answer. Well, I have heard a good many of the neighbours, but the names I can't tell you ; I forget, but I have certainly heard them.

Question. How long is it since you gave up attending to business as formerly, and have you not of late years been pretty much at home ?

Answer. Well, upon my word I don't know that I am able to answer you that exactly ; I suppose six or seven years ago.— Well, I don't know but I have been from home as much since as I have before among my own people, backwards and forwards in the neighbourhood.

Question. How many years ago is it since Berlin Metlar left this county, as near as you can tell ?

Answer. Well, upon my word I can't give you much information about that. It is not a great many years since he was about here.

Sworn, &c., November 6, 1841.

In Chancery.

SAMUEL SHIELDS, *Complainant*, }
 and } *On Bill, Answer, Replica-*
 JOHN ARNDT, *Defendant*, } *tion, and Proofs.*

This cause, coming on to be heard at the last regular term of the Court of Chancery, held at the State House in the city of Trenton, before the Chancellor, in the presence of Samuel R. Hamilton and Henry W. Green, of counsel with the complainant, and Peter D. Vroom and Isaac H. Williamson, of counsel with the defendant, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise them—And now, on this fourteenth day of October, in the year of our Lord one thousand eight hundred and forty-two, it appearing to the Chancellor that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint—

It is ordered, adjudged, and decreed, That the injunction heretofore granted in this cause be dissolved, and that the complainant's said bill be, and the same is hereby dismissed, without costs.

On motion in behalf of William C. Morris, solicitor of the said defendant.

WM. PENNINGTON, C.

A true copy.

SAML. R. GUMMERE, *Ck.*

SAMUEL SHIELDS, *Appellant*, } *On Bill for Injunction, Answer,*
 and } *and Proofs.*
 JOHN ARNDT, *Respondent*, } *Petition of Appeal.*

To the Honourable the Court of Appeals in the last resort in all causes of law.

The humble petition of Samuel Shields, the appellant in the above stated cause, respectfully sheweth, That your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by his Excellency William Pennington, Governor and Chancellor of New Jersey, bearing date October fourteenth, A. D. eighteen hundred and forty-two, wherein the said Samuel Shields was complainant, and John Arndt defendant, in this respect, viz : That the said decree adjudges that the said complainant hath wholly failed to sustain the allegations of the bill of complaint, in that the said watercourse was an ancient watercourse, and in that the complainant had any right to use and enjoy the same, and dismissed the said bill and dissolved the said injunction heretofore allowed, each party to pay his own costs. And your petitioner humbly appeals from the said decree as aforesaid upon the ground that the same is erroneous, for that the said watercourse *is ancient, and accustomed to flow as charged*, and that the *complainant has the right to use and enjoy the same*, as in his said bill of complaint alleged ; and that the said injunction ought to be decreed to be perpetual, with costs. Your petitioner therefore prays that the said decree of the said Chancellor may be in the said particulars reversed, set aside, and for nothing holden, and your petitioner have such other relief in the premises as to this honourable court shall seem meet.

SAML. R. HAMILTON, *Solicitor of Appellant.*

Dated October 14, 1842.

James S. Hamilton, Appellant,)
and)
John A. Taylor, Respondent,)
Petition of appeal

To the Honorable the Court of Appeals in the last resort in all
cases of law.

The humble petition of Samuel Shields, the appellant in the
above stated case, respectfully sheweth, That your petitioner finds
himself aggrieved by a final decree made in the Court of Chan-
cery by his Excellency William Livingston, Governor and Chancery
Judge of New Jersey bearing date October fourteenth, A. D.
eighteen hundred and forty-two, wherein the said Samuel Shields
was complainant, and John A. Taylor defendant, in this respect, viz:
That the said decree adjudges that the said complainant hath
wholly failed to sustain the allegations of the bill of complaint, in
that the said watercourse was an ancient watercourse, and in that
the complainant had any right to use and enjoy the same, and dis-
missed the said bill and dissolved the said injunction lastore
allowed each party to pay his own costs. And your petitioner
humbly appeals from the said decree as alleged upon the ground
that the same is erroneous for that the said watercourse is ancient,
and occurred to him as a tenant, and that the complainant has
the right to use and enjoy the same, as in his said bill of com-
plaint alleged; and that the said injunction ought to be decreed
to be perpetual, with costs. Your petitioner therefore prays that
the said decree of the said Chancellor may be in the said par-
ticulars reversed, set aside, and for nothing holden, and your peti-
tioner have such other relief in the premises as to this honorable
court shall seem meet.

SAMUEL R. HAMILTON, Solicitor of Appellant.

Dated October 14, 1845.

