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*Case table*

New Jersey Court of Errors and Appeals.

JOHN DEN, EX DEM., ADRIAN VAN BLARCOM

AND OTHERS,

VERSUS

WALLING KIP AND NICHOLAS I. KIP.

IN EJECTMENT.

THIS IS AN ACTION OF EJECTMENT BROUGHT IN THE SUPREME COURT TO  
RECOVER POSSESSION OF A DOCK AND ABOUT HALF AN ACRE OF  
LAND ADJOINING, SITUATE AT ACQUACKANONCK IN THE  
COUNTY OF PASSAIC.

NEWARK, N. J.:

A. STEPHEN HOLBROOK, PRINTER,

No. 3 Mechanic street.

1855.

C. A. B. 101

2nd Year Course of Chemistry

General Principles of Chemistry

1. The elements of chemistry

2. The laws of chemical combination

3. The atomic theory of matter

4. The periodic table of elements

5. The properties of acids and bases

6. The properties of salts

7. The properties of metals and non-metals

8. The properties of carbon and its compounds

9. The properties of nitrogen and its compounds

10. The properties of oxygen and its compounds

11. The properties of hydrogen and its compounds

12. The properties of sulphur and its compounds

13. The properties of phosphorus and its compounds

14. The properties of chlorine and its compounds

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JOHN DEN, ex dem., ADRIAN VAN  
BLARCOM and others,

vs.

WALLING KIP and NICHOLAS L.  
KIP.

In ejectment.

This is an action of Ejectment brought in the Supreme Court to recover possession of a dock and about half an acre of land adjoining, situate at Acquackanonck in the County of Passaic. The case was tried at the Circuit held at Paterson, January, 1854, and a verdict rendered for the Plaintiff. The case comes up on exceptions to the Judge's charge to the jury.

PASSAIC CIRCUIT.

DEN,  
vs.  
KIP & KIP. } Charge.

This action is brought to recover the possession of a dock and the ground adjacent to it, situated at Acquackanonck on the Passaic River.

To maintain it the Plaintiffs must show to your satisfaction that the title is in them. If they do not, they cannot recover, whether the Defendants have title or not. It is of no consequence to this issue in whom the title is, if it be not in the Plaintiff.

The first question then is, Have the Plaintiffs shown the title to be in them?

It may be shown either by the production of the title deeds, or 10 by the peaceable, exclusive and *continued possession* for such term of years as raises a presumption of title. The Plaintiffs do not show the original title deeds; but they produce the will of Garret Van Waggoner, dated July 17th, 1769, and proved August 1, 1770, devising the premises to his son Harmonus.

They show that Harmonus was in possession and occupancy by the parol testimony of James Van Winkle.

That Harmonus had two sons, Ruloff and Garret, and by his will, dated 21st August, 1789, proved April 8, 1794, devised the farm of 200 acres to his son Ruloff. There was a condition annexed to this devise, that if Ruloff died without leaving lawful issue the farm should go to certain grandchildren, the children of his daughter Sophia. The condition was performed and the fee of the land vested in Ruloff. He had a son Harmonus who died in the life time of his father, but leaving a son John who survived his grandfather Ruloff, and was his heir at law.

- 10 Ruloff died without leaving a will, and by descent the title to the farm vested in John on 30th June, 1816, when he was an infant of some 17 months old.

John Van Waggoner died 20th February, 1838, without issue, but leaving a will, by which he devised the farm to his half sisters and brothers.

1. Phebe, wife of Adrian Van Blarcom. 2. Mary Ann, wife of Harmon Oldis, who conveyed to Henry P. Simmons. 3. Jacob Shelp. 4. William Shelp.

Some question arising about the execution of the will of John, 20 his heirs at law, viz. Harmonus Vreeland, surviving child of Sophia, daughter of Harmonus Van Waggoner, and Jane, wife of John J. Vreeland and daughter of Jane who was another daughter of Harmonus, released their claim to Cornelius G. Van Riper and Isaac J. Vanderbeck in trust to carry out the provisions of the will of John.

In May, 1853, these trustees released the farm to the lessors of the Plaintiff, Adrian Van Houten, Jacob and William Shelp and Henry P. Simmons.

This vested the title of the farm in them, as against any who do 30 not show a better or older title.

The N. W. line is shown to include the principal part of the premises in question, and if the witnesses are credible the proof is such as entitles the Plaintiff to recover, unless the Defendants have shown a better title.

The Defendants claim under Abraham Ackerman, who, they say, was in possession of the premises more than sixty years ago and that he, and those who hold under him, have continued in such possession to the time of bringing this action, June, 1853.

Possession affords a good ground of defence, but it must be shown 40 to have been, 1st, adverse in its character, that is held by the party

claiming it as his own and as hostile to and against the claim of every one else.

If he enter by the permission of another, as his tenant, it is not adverse but subservient to the claim of him under whom he entered, and the tenant cannot deny the right which he has so acknowledged. It is of no consequence how long the tenant holds if he acknowledge a paramount title, he cannot as against that title acquire one in himself by any length of occupation. (Landlord and Tenant.) But if he enter claiming the premises as his own and exercising over them those acts of ownership which are consistent with such claim, 10 and use the property in a manner appropriate to its enjoyment, he may acquire a right to retain it. Such acts of open notorious occupation are notice to the world and to him who has the legal title, and if continued for a sufficient length of time, it matures into a right. The acquiescence of the true owner will in such case bar his claim.

2d. The possession must appear to have been exclusive. If the occupation was in connexion with that of the person having the legal title, it is a mixed possession and will not bar the claim.

3d. It must be continued for a period of at least twenty years. 20 If it were interrupted during that period the re-entry and further occupation could not, by addition to the term of the previous occupation, be used to make out the twenty years. If there be a disability in the owner of the legal title by reason of infancy or coverture at the time that the right accrues, the time which passes during such disability is not computed. But if the statute commences to run at a time when there is no disability, the minority or coverture of a subsequent owner will not be regarded. When the statute commences to run, it runs over all disabilities. (Den v. Richards, 3 Green, 347.) What are the facts upon these several points? 30 These are for you to determine. My province is to declare to you the law; yours to settle the facts.

1st. Was the occupation of Ackerman adverse?

When Ackerman took possession there is no proof. But Mr. James Van Winkle says Ackerman moved up there when he was about fifteen years old. He is now about 78, making it 62 or 63 years ago: in 1790 or '91.

2d. Abraham Snyder says he went to boating for Ackerman from that place a year before he was married, which was 56 years ago last December, (1797) the year before was 1796, or 57 years ago. 40

Ahraham Bush, Mr. Van Riper and others say he was there 50 years ago.

It is also testified that he repaired the dock, had his lumber and goods upon it, ran his boats from it and used it in every respect as if he had a title deed for it. That he leased it to others and received the rents.

These acts were open and notorious, in the continual sight and observation of Ruloff Van Waggoner up to the time of his death, 30th June, 1816. If this be true, and he entered 25 years before 10 that, in 1796 according to Mr. James Van Winkle, or in 1796, 20 years before, according to Mr. Snyder, it operates as a bar to the claim of Ruloff in his life time, and of John after Ruloff's death, unless Ackerman held as the tenant of and subservient to Ruloff.

Proof of such tenancy may be made by lease, written or parol, or by payment of rent or acknowledgement of the tenancy, or of the rent due, or of the title of the alleged landlord. It is of no consequence when such admissions are made, except that the greater length of time that has elapsed between the commencement of the occupancy and the declaration, the stronger and more explicit should 20 be the proof. To show such tenancy the Plaintiff has called Mrs. 30 Jane Shelp, who testifies as to a conversation that she says took place between Abraham Ackerman and Ruloff Van Waggoner. It was before John was born, which was in January, 1815. It was in the fall during salt haying time and probably in 1814, nearly two years before Ruloff's death.

She says that Ruloff had a boat load of salt hay which he was about to unload at the dock, and Ackerman had a vessel lying at the reef and he came in to see Ruloff about unloading the hay at the dock, &c. The evidence of this conversation it is not necessary for 30 me to repeat. It is fresh in your minds what Mrs. Shelp said both on her principal and cross examinations. Now if in this conversation Ackerman assented to the right of Ruloff to unload there, or that he owed him for rent of the dock, it is sufficient to show that he held the dock as tenant of Ruloff. If in saying that he'd buy the dock, you are satisfied that he meant to acknowledge that he had no title himself, but would take a title from Ruloff, it is sufficient to show that he did not hold the dock in his own right. But if he merely meant to say that he'd buy his peace, that he'd compromise the matter by buying any right which Ruloff might have, it did not 40 conclude Ackerman. It was but an offer to compromise, and should not be taken as a declaration that he held only as a tenant.

In examining this testimony, I need hardly say that you will consider it with great caution, remembering that Mrs. Shelp is the mother of some of the lessors of the Plaintiff; that it is nearly 40 years since the conversation took place; the difficulty of remembering what was said so long ago; the necessity of accuracy in such cases, where a slight difference in the expressions used might change the effect of the conversation. You will remember the fact of her merely passing through the room, and perhaps not hearing all that was said on the subject, and that there was other conversation which she does not now remember. But at the same time you 10 will consider how deep are impressions made upon the youthful mind, and the distinctness with which they are remembered in after years. You will consider that it is in evidence that the boat load of hay of Ruloff's was unloaded at the dock, and that the witness is not impeached by any other witness. Of all this you are the proper judges and must determine what credit is due to the witness, and what Ackerman meant by that conversation. If he acknowledged his *tenancy*, then his previous occupation was not adverse, then the underletting and name of dock are of no avail to him; they were consistent with his *tenancy*. 20

2. Was the possession exclusive?

It is said by some of the witnesses of the Defendants, that Van Waggoner did not use the dock; that the hay was unloaded at the bank and not at the dock (Abraham Snyder, Aaron A. Van Houten; Henry Schoonmaker). Others say that he did use the dock for wood and hay; that he did it without permission, while others who unloaded there asked permission. Mrs. Shelp says the boat was unloaded there the next morning after the conversation, and that he unloaded there every year. Other witnesses say the same, and that after Ruloff's death those who worked under the widow did the 30 same (John Thompson, colored.)

Now if this be so, if Ruloff and those who came after him did so use the dock as a matter of right, then they also had a possession, and the possession of Ackerman was a mixed possession and not exclusive, and such mixed possession does not bar a right. If then you find that Ackerman's possession was adverse and exclusive for the period of 20 years, the defence is maintained and you will render a verdict for the Defendants for the dock or so much of the premises as he so used and occupied. But if it was not adverse and exclusive you will find for the Plaintiff, if there is no other 40 defence. Then you will enquire what other defence is shown.

There is a deed produced from John J. Vreeland and Henry F. Speer to Abraham Ackerman, dated 25th January, 1800. This deed purports to convey *all our claim and demand to the following land.*

1. What was their claim ?

There is no proof even of their possession, or of the existence of such persons, nor of what their claim was.

2. Begins at lot No. 1 of John Elias Vreeland, a little below the bridge at Acquackanonck, and running thence down the river in 10 front of land belonging to Harmonus Van Waggoner.

What land did it convey ?

Harmonus Van Waggoner's senior died before fourth April, 1794, at which time his will bears date. In 1800 Ruloff owned the land, his son Harmonus was living but the land was not his.

Again the Van Waggoner farm ran to the river. If the land purporting to be conveyed by this deed binds on that it must go below high water mark. If you find such to be the fact, you will give to that deed no weight in determining the question.

Again, the Defendants produce a deed made by the executors of 20 Abraham Ackerman, by virtue of the power given by his will, to their father John Kip, dated May 5, 1830, recorded June 18, 1830.

If Abraham Ackerman had held as the tenant of Ruloff Van Waggoner, this deed conveyed no greater right than he had in his life time, and John Kip would also hold as tenant. But the making and receiving this deed was a declaration that Kip did not any longer hold as tenant, but in his own right.

It was a declaration of his adverse holding, and from the time of its recording made him a trespasser. At that time a cause of action accrued to John, and he might have brought his action of ejectment 30 to dispossess Mr. Kip.

From that time to June 1853, more than 20 years elapsed, but the statute excepts from its operation the right of any one who is a minor, under the age of 21 years, when the title or cause of action accrues.

John was born 13th January, 1815. In June, 1830, he was in his 16th year, 15 years, 4 months. He then had 5 years and 8 months, viz. to January, 1836, before he became of full age. From January, 1836, to the present time is not 20 years; and the statute has not barred the right if it ever existed.

40 This deed does not therefore of itself sustain the defence, and we are left to the question of adverse possession. If you find that against

the Defendant, your verdict will be in favor of the Plaintiff for the whole premises. If you find it in favor of the Defendants, you will then further enquire, how far did the possession of Ackerman extend? It is now claimed to go beyond the middle of the old road. Hence it may become important to determine where that road was.

You have heard what has been said by the witnesses on one side, that it ran along the bank of the river, and east of a fence, a part of which yet remains, easterly of Faulkener's blacksmith shop and the ditch, and so on eastwardly of what Mr. Faulkener calls the triangle. 10

On the other side that it ran more westwardly and around where Mr. Devosney had his shop, leaving the shed on the east side of the middle of that road; which of these statements is most entitled to credit you must judge, remembering what is said about the ditch and the post put in it by Mr. Faulkener; the cherry trees; the post set by Mr. Kip and taken up by Faulkener. The allegation that the tide came up beyond where that would place the road; and the depth that the watering place has washed away, so that the tide rises higher now than before. If the road is as Defendants claim, they are not guilty. 20

If you find that the road is where the Plaintiff contends, then the Defendant's shed is beyond the middle of it and so on the Plaintiff; and it is moreover on the triangle; and in either case the Defendants are guilty of the trespass and ejectment to that extent and your verdict must be for the Plaintiff.

The form of the verdict will be, if in favor of the Defendants wholly, that the Defendants are not guilty.

If in favor of the Plaintiff you will say you find the Defendants guilty of the trespass and ejectment laid to their charge, and assess the Plaintiff's damages at six cents. And you will specify to what 30 extent they are guilty by saying whether the Plaintiffs are entitled to the whole premises or only to a part and to what part.

## BILL OF EXCEPTIONS.

New Jersey, to wit. Be it remembered, that in the term of June, in the year eighteen hundred and fifty-three, came John Den by his attorney in our Supreme Court of Judicature and impleaded Walling Kip and Nicholas I. Kip in a plea of trespass and ejectment, to recover the possession of a half acre of land situated in the township of Acquackanonck, in the county of Passaic, in the state of New Jersey, demised to said John Den by Adrian Van Blarcom and Phebe his wife, Henry P. Simmons, Jacob Shelp, and William Shelp, on the fifth day of August, 1853, and from the possession  
 10 whereof the said John Den was ejected by the said Walling Kip and Nicholas I. Kip on the tenth day of the same month of August, and the said Walling Kip and Nicholas I. Kip by their attorney pleaded not guilty to the declaration of the said John Den, and thereupon issue was joined between the plaintiff and defendants. And afterwards, to wit at the Circuit Court held at Paterson in and for the county of Passaic, on the thirteenth day of January, in the year eighteen hundred and fifty-four, before the honorable Daniel Haines, one of the justices of our Supreme Court, the aforesaid issue so joined between the parties aforesaid came on to be tried  
 20 by a jury of the said county for that purpose duly impaneled, at which day came also the said John Den and the said Walling Kip and Nicholas I. Kip by their respective attorneys, and the jurors of the jury aforesaid impaneled to try said issue being called also came and were then and there in due manner chosen and sworn to try the same issue, and upon the trial of that issue, the counsel for the plaintiff, to prove and maintain the said issue on his part, called several witnesses to prove that the land in question was a dock or wharf on the Passaic river, at Acquackanonck, and about a quarter of an acre adjoining, used as a lumber yard, in the possession of  
 30 the defendants; that it was south of the Van Waggoner line, in which direction the Van Waggoner farm lies; that the farm was in the possession of Garret Van Waggoner, who on the seventeenth of July, A. D. 1769, by his will, devised it to his son, Harmonus (pro ut said will); that Harmonus Van Waggoner the son, by his will, dated first of August, A. D. 1789, devised it to his son Ruloff,

(pro ut said will); and that the plaintiffs, by virtue of divers wills and deeds became the owner of the same, through and under the said Ruloff.

*C. G. Van Riper*, sworn.—The farm was called the Van Waggoner farm, and had been in the Van Waggoner family two hundred years. I remember the old road ran along the river; as soon as it passed south of the dock, it went on the bank of the river; the watering place is next south of the property in dispute; the Van Waggoner farm was enclosed to the road, which was right on the bank of the river; the Dock was on the lot and the old road 10 was next to the dock; Ackerman and all the other merchants at Acquackanonck used the Dock and piled hoop-poles and wood on it; the watering-place has always been considered part of the Van Waggoner farm; the farms had all watering-places on the river; upon the old road going out of use, the farms there, including Van Waggoner's to watering place were enclosed down to the river; they all bind on the river; the old road is not used at all; the Kips now have it enclosed with fence and sheds &c. and I presume that some of them must be on the old road—(returns of new and 20 old roads offered in evidence) I have seen Faulkener work in the blacksmith shop on the triangle, some fifteen years ago; there is the remains of a furnace there now on part of the triangle that is not now enclosed; the defendants Kips have the lot enclosed now by a Dock and fences and sheds; it is all shut up by them; I saw the shed put up that is furthest northwest within two years past; I have been over the Van Waggoner line several times; by the eye that line would leave this lot, as part of the Van Waggoner farm. Since we got the deed about two years ago either Walling or Nicholas (I think the latter) asked me if I could not see the Van Waggoner family and see if they would sell to Kips up to the 30 road, so as to make their lot more square; dont recollect of any other application by them. The garden fence of Van Waggoner opposite the lot in dispute has always been where it now is; I know of no change; the other farms north butt upon this line; the other farms south have the same line; all run to the river; there were six farms on the same course; Ruloff Van Waggoner was a man considered a fine man, easy, accommodating, at peace with all his neighbors.

*Cross-examined.*—I have not much doubt about the location of old road; I traveled it hundreds of times when a school boy; there was 40 a very slight bend in it there; I dont think the bridge crossed the

river where it does now in 1812 when the new road was laid ; I think it crossed higher up the stream ; the butment of bridge has been extended into the river and Kips dock lot also ; Andersons store house north of bridge has been there many years ; I think it was built after new road was laid ; I think old bridge crossed seventy-five or a hundred yards above present one ; the old road got on bank of river just below watering place ; where Kips dock is now, there has been a dock as long as I can recollect used formerly for wood and staves ; Mr. Abraham Ackerman deceased used it ;

10 this dock was generally said Ackerman's when he used it ; when others rented and took possession Van Houten and Ryerson it was called theirs ; Van Houten has told me he rented of Ackerman ; they rented all the stores, boats and business stores where Kips are now ; the store belonged to Ackerman known to be his ; as long as I remember I believe this dock has been occupied by those who used the store ; whenever I saw it as long as I remember it was occupied and used by Ackerman and his tenants with the store ; John Kip was partner with Ackerman and occupied the store and wharf together ; present defendants have used it since their fathers

20 death, eight or ten years probably or more—twelve or thirteen years ; Abraham Ackerman died in 1828, I think ; I recollect it about fifty years and the dock part, has been in possession as long as I recollect of Ackerman and his tenants ; Ruliff VanWaggoner was pretty much always walking about—no doubt at Ackerman's store ; his house overlooks the dock and could see all that was done on it ; I think that Ruloff Van Waggoner was living when Van Houten took the premises from Ackerman ; I have no recollection particularly of Kips possession being disputed, until I became trustee, when they requested me to see what could be done

30 to get it ; when I first recollect there was no store on the disputed lot ; there have been sheds on some time, may be fifteen years more or less ; I think Ackerman kept the dock in repair during his life time ; I dont remember during his life time of hearing that any one claimed it beside him.

*In Chief.*—The Ackerman store is north of the Van Waggoner line entirely ; said to lie between the patents ; Ackerman had John Kip in partnership ; the dock was used by them and others who had the store ; I have never known of the dock being occupied by any of them separately ; there was very little spoken of who was

40 owner of the dock ; I had no knowledge as to who was the owner, only know that it was possessed ; after Ruloff's death John was

there alone, and was very intemperate and was wasteful; Levi Shelp attended to his business for the first few years, but he soon neglected and became intemperate, and at last deranged; until the girls were married there was no one calculated to assert the rights to the dock; the dispute about John Van Waggoner's will was going on five or six years; John and William Shelp are just over twenty-one years; Mrs. Oldis is next older; when the heirs asked us to see about the dock I told them I would not like as trustee to sue for the dock, but might rather wait until all were of age; Rujoff Van Waggoner was a farmer, and wealthy; he had no use for 10 it, except I suppose to load his hay; he and Ackerman were on good terms; no fence around the dock or any part of it, until a few years.

*John G. Banta, sworn.*—I am forty-nine years old next June; lived at Acquackanonck sixteen years, from 1807 to 1823; have known it since; I remember the property and know where the blacksmith shop was; I recollect the cherry trees, a row along the southerly line of triangle lot running on north side of watering place lane and east of new road; I recollect stealing the cherries as a boy; Mr. Van Waggoner's people frequently drove me away 20 from them; it was all open then, no fence enclosing the dock on west side; I used to water the horses, and I went through the part marked as old road with my horses; I was there yesterday, but did not notice it; there was an old dock then on south side, repaired since; the cherry trees were there before 1823; I must have quit taking the cherries about 1816; don't recollect of the trees being cut down before 1823; the trees were about as thick as my thigh.

*Cross-examined.*—There was a row; can't state the number; might be half a dozen; came down to east corner of triangle; no blacksmith shop nor any sheds were built then; I know the old road was open 30 through there to Post's line; the cherries were Dutch cherries and very full; don't recollect the old road.

*In Chief.*—I do know it was open there and open through Van Waggoner farm to Post's line; the cherry trees were close together; we used to bleach on bleaching lot of Van Waggoner's, by their consent; it was enclosed and I used to water the linen for my mother.

*Cross-examined.*—The shore was a very gentle slope from low water mark up; I presume the tide might have flowed up thirty feet above low water mark; I used to swim there; when it was 40 low water I presume the water was up about to corner of the dock;

don't know having seen vessels keel over there at low water ; can't tell the distance from east cherry tree to the river ; think the row of trees did not extend along on west of new road ; think there was no fence along the row of trees ; don't recollect getting on a fence for the cherries ; don't remember of any shop or building of any kind ; never saw or remember of any lumber or any thing piled along the trees ; lumber and hoop poles piled along the river.

*In Chief.*—I recollect hoop poles on river south of dock ; Mr. Jackson had some there.

- 10 *John A. Post, sworn.*—I shall be forty-nine next February ; always lived at Acquackanonck, and acquainted with locality ; I recollect seeing a bridge there being carried away, which is said to be in 1810 ; about 1840 the bridge from present place was carried away ; while it was down we had a ferry across the river from the watering place ; the lane at that time had run out a good deal and was impassable, and the sand et cetera had been a good deal washed there into the river ; there is always a great flow of water through there into the river ; that flow forms a flat in edge of the river ; runs out a good ways between dock and our lumber yard ; the lane to  
 20 watering place has been carried out into the river ; I have seen in very heavy rains a great flow of water through that lane, and this flow has formed quite a sand bar just south of Kip's dock ; I took the lumber yard in 1857, and then the fence ran around the bleach place, and along from the bank of the river south to near lane of our farm, and was from river wide enough for road way ; when we built the dock we broke through the fence for our dock ; don't think there was as much of a variance from a straight line in the fence as the map shows ; many years ago a man erected a crane about middle of watering place ; I recollect at first flood (1810) my  
 30 father took all the cords he could get to keep his old road fence from being carried away ; when I first recollect, don't remember any enclosure about the dock ; I remember old cherry tree stalks quite lately ; think one was near that blacksmith shop ; I don't remember of riding through where the buildings are ; our farm was next south of Van Waggoner's ; it runs to river ; remember the north Van Waggoner line correctly laid on map ; I was one of the Commissioners to run it out and divide it among the Van Waggoner heirs ; I don't know of any alteration in any of the fences on west side of new road, except along opposite our yard, set  
 40 west, about a foot west ; there has been garden fence in front of

Van Waggoner's house as long as I recollect, and I don't know of any change in its position.

*Cross-examined.*—I don't know that the fence on east side of new road below the watering place has been changed, except that I varied mine about a couple or feet to the west to get it on higher ground; I mean the fence on my farm; I took a little on the south end of my farm, not so much, nor at all perhaps at the north; we took up the fence on east side of road, along our yard; don't know of any change in east fence across Van Waggoner farm; I saw the bridge at present site built; don't know if built before or after new 10 road; the middle shed of Kip's was built or put in present place within ten years, and fence put there from shed to bridge about same time; the new fence there now and part of new shed is, I think, a little westerly of the old fence; before the old fence and shed put up about ten years ago I don't remember of any enclosure of west of dock.

*John Thompson.*—I was brought up at Mr. Van Waggoner's by Mrs. Sarah Van Waggoner; I have carted wood on this dock and got hay from the scow on the dock; it was every summer.

*John H. Goetschius, sworn.*—I am surveyor—made survey and 20 made this map shown; I know the line known as the north line of VanWaggoner farm; I have run it a number of times; it is about north 47 degrees west; I followed the line up nearly two miles; it extends further; found the fences on same line; it runs within a foot of the corner of Peter Jackson's house; it strikes the dock at river 7 feet and 2-10 south inside of the dock lot now occupied by the defendants; I have surveyed the line for other purposes than for this map and suit; the rear of farms north bind on this line; on map the heavy blue lines are docks; the red lines mark what was enclosed by defendants except a piece of north shed 30 which has since been removed by them; The old road is represented on map as I received it from information; there is a part of fence still standing between watering place lane and Andersons and Posts lumber yard; the remnants of a fence not very old; it is on the west line of old road; there was old furnace in blacksmith's shop marked on map; the sheds are closed on out side lines open inside for storing lumber; the dock is 65 feet on river; from river to edge of gateway on north is 79 feet; they have a gateway there; the vessels come up to dock there; it is made by logs horizontal; there are stones under logs on south side; I surveyed part of new 40 road not from the beginning at Ludlows; the road on map is

according to the course in return ; there is an old pear tree said to be in the Van Waggoner's line ; we took the line of the fence just south of the pear tree ; the return across Van Waggoner lands calls for 12 chains 79 links ; I found it 12 chains 73 links ; I have made the road on a map 3 rods ; Kips are 9 feet 10 inches on the road as measured ; there are fences there on the west side of new road except the lane from Van Waggoner's house ; the Paterson and Hamburg Turnpike begins at the north side of Anderson's store house ; the return of that begins at 77 links from old Abraham  
 10 Ackerman's store house, on a course of south 77 degrees west from the south west corner of said store house, where Kips house is now.

*Cross-examined.*—The information as to old road was from a person who showed me 2 points where he said the old road was ; I can show those points on map ; the line on the west line of new road follows the fences, except a part of the Van Waggoner fence opposite to Kip ; there the fence runs a little west of the survey of the road ; those fences answer the survey of the road ; on east side of road the fences run on the course ; but the road has not its width ; no fence on the east side of the road on  
 20 part laid down on map ; furthest south the fences are about as far out so as to bring them about on the line as Kips have enclosed ; I did not go to the beginning of road ; I began two courses south of Van Waggoner's ; if I had surveyed the east fences instead of the west it would not have made the west fences over the line of the road ; the east fences if continued would carry past the present bridge ; the last line of return is a different course and if we had surveyed further west for the true line of the road it would have carried us to far north for the ending of road ; the two points showed me for old road, were showed by Faulkener, were first a  
 30 post where the easterly line of triangle crosses the west line of Kips shed, and second where that line of triangle strikes the north line of Kips, and he also showed me a point as about where the east line of old road ran ; the first fence west of road on Van Waggoner line was on the same line ; there is a fence on east side of road ; there is a little bank there.

*In Chief.*—The south part of triangle between two roads is enclosed, and the blacksmith's shop was then on that part ; I made the survey a little before May, 1853 ; there is about a hundred feet of the Van Waggoner fence opposite Kips' out of line of west side  
 40 of road ; at the corner of garden fence it is very trifling and gradually increases, and in one part is about three feet.

*Peter Jackson*, sworn.—I came to Acquackanonck in 1800; knew Ruloff Van Waggoner; Ruloff Van Waggoner had a brother living at English lands, Stone-house Plains; this brother had a sister married to John J. Vreeland; Harmonus Vreeland was son of another sister of Ruloff Van Waggoner; I was always intimate with the Van Waggoner family; they had a large farm, ran far back from the river; I bought lot north and up to the north line of Van Waggoner farm; I built my kitchen close up to the Van Waggoner line; I got Esquire Van Houten, surveyor, to run it and show me the line; my object was to get my building as far south 10 as I could to that line; the south-west corner of my smaller building was up to the line; this was my dining-room; I always understood the Van Waggoner line to be a well-established and reputed line; extending this line down to the river it would leave the lot in dispute south of line; I left Acquackanonck in April, 1839; John Kip then occupied the dock lot; there was then a shed on it, on what was the old road, or where it was; the old road ran on bank of river; I remember it well; it ran through where Kip now has possession; I had a blacksmith's shop, which I built on east side of new road in front of Van Waggoner's house; you 20 could not pass along old road without going over part of what is now Kip dock; in 1800, when I came there, a small dock was on this lot used for stowing lumber, et cetera; the old bridge was above; Abraham Ackerman then used the lot; Ruloff Van Waggoner lived in his house; I never heard Ackerman say how he possessed the dock; I have known Ruloff Van Waggoner to use that dock for his hay brought from salt meadows; he brought it up in scows or brought up on vessels; I have known other people to do the same by getting consent; I never knew Ruloff to ask any consent; I don't remember Ruloff's people to take chips from the 30 dock; dock is of no use to Ruloff, except for hay; he was very easy, obliging and good-natured; he could hardly say no; I occupied part of Van Waggoner land for garden next to my building; Ruloff brought his hay up every year from the salt-meadows; I think the old dock was not quite so far in the river; the dock was open to the road; below the watering place there was a fence on the west side of the road; my fence of garden, et cetera, was on west side of old road, or there was no fence.

*Cross-examined.*—When I was there it was common to the neighborhood to take chips from the dock; it was common to the farm- 40 ers about to bring their hay to the docks by getting consent of the

owners of the docks ; it was the most convenient dock for Van Waggoner ; Ackerman carried on store business ; sent wood by his boats ; he used this dock ; the wood was carted on it and he loaded and unloaded his vessels there ; Ackerman continued a few years ; after Ackerman gave up the business Ryerson & Van Houten succeeded him in his business and used it after Ackerman ; I don't know whom they held under ; they were there several years ; I think Ryerson & Demarest succeeded them ; Jacob M. Ryerson & Demarest ; they had the same business and used the dock ; old  
 10 Judge Ryerson used to send his iron down there on the dock ; I think Abraham Ackerman and John Kip succeeded them ; after Ackerman's death John Kip continued to occupy, and during the whole period this property was occupied in same way ; the dock was extended little further into the river by Ackerman ; those who occupied the dock repaired it for their own benefit, but it needed very little ; John Kip kept his lumber pretty much behind his store.

*In Chief.*—As to the occupation it was only of the dock part, not to the extent as now occupied ; Ryerson & Van Houten succeeded  
 20 to the whole business of Ackerman and the same to the several successors ; they had the store, et cetera ; I never heard any conversation between Ruloff and Ackerman about the property ; vessels of others used to take things from that dock, but they were taken for Ryersons ; the present Defendants took the same business after their father's death.

*Cross-examined.*—I bought of the church lands ; I bought of Cornelius Van Winkle ; he bought from trustees of church ; mine was the southerly part of the church lands ; in ordinary tides the high water was four feet at the dock, sometimes six feet ; at ordinary  
 30 low tide might be two or three feet at the dock ; vessels lay at dock at ordinary low water ; the tide along side south of the dock ; I think the water at high tide would run up the length of this house ; the dock when renewed was carried out only a little, merely the logs put outside the stones of old dock.

*In Chief.*—The bank of the river was good for docking all the way down ; the shore is very shelving at watering place.

*Abraham Faulkener, sworn.*—My business is blacksmithing ; I have always lived near and at Acquackanonck ; I have carried on business there since 1831 ; for two years I hired of Judge Van  
 40 Ripper ; in spring of 1832 I hired shop of Mrs. Sarah Van Waggoner, widow of Ruloff ; the lot I hired was in front of house and front

of Kip's dock; I went to her to get this spot of ground; she told me I could have it at \$6 a year until John came of age; I took the triangle lot and built shop on it; I put shop on the south part of it; I occupied it until *April*, 1835; I sold it to my brother and he occupied alone until 1838; when I went back into partnership with him I left him in 1840; my brother kept it a few years after; the part of fence between watering place and Anderson & Post's has stood where it is as long as I recollect; always considered west side of old road along river; the furnace of shop and part of foundation is there yet; I used the triangular lot outside of my black-10 smith shop for hooping wheels, et cetera, and also used part of the old road east of triangle; Kip occupied part of what I then used with my shop; the part of Kip's sheds are on part I used; that shed was put there last summer; in 1834 I think John Kip set four posts in square at the end of my shop, on what they called the old road and now covered by middle shed; I told him they had no business there; I took them down and that was the last of it; he did not interfere again; he made no complaint to me at all; during the whole time I was there Kip had no enclosure of the parts now covered by the three adjoining sheds; there was before 20 only one shed used for cotton house; they did not keep much lumber there while I was there; I have passed through with wagons and loads where the sheds are now; I pointed out the post to Goetschius; I set that post in the ditch, which was said to have been in the side of old road; where Kip's gate is now was nearly the entrance of old road, and they used east of that for their hoop poles; the old cotton-house ran along south part of dock lot east of present sheds; it was open towards the river by a door wholly enclosed; the parts of old fence I pointed out to Goetschius are as the west side of old road between watering place lane and Ander-30 son & Post's lumber yard; when I passed through there with wagons was in John Kip's time; the old ditch was a small ditch and came about where Kip's gate post stands now, and ran along as on side of old road; I don't recollect of Ackerman or Kip, or any of them, ever occupying part west of old road until lately; the opening of old road was east of triangle; they used to encroach sometimes on the old road; I have seen hoop poles put on part of it occasionally; sometimes wholly clear; I believe the fences on west side of new road there stand where I always recollect them.

*Cross-examined.*—The triangle was north of the watering place; 40 I don't know the length, I did not measure it; I hooped my wheels

on the triangle east of shop, sometimes on old road ; Kip never complained to me about it ; I dont know about the old road except what people said and as the people used it ; I recollect when a boy to have walked the old road and there was always a fence along it ; there was appearance of road as waggons went along it as far down as it was opened ; dont recollect if I had a lease in writing or not for the triangle ; there was never a fence around the triangle ; was not ridden as the other parts of the road ; the little ditch was along one side of the triangle ; I did not lease part of the  
 10 old road but I used to run my wagons on it and hoop wheels ; the old road was at that time open through to Major Post's line ; Mr. Jackson used to have it for hoop poles ; it was open fifteen or twenty feet between my shop and the cotton house of Kip ; the cotton house stood on corner of dock lot ; I am about forty nine or fifty years old.

*Samuel Ackerman*, sworn (colored).—Kips put up the last building on the lot early in last spring ; I helped to lay the foundation ; I helped Walling Kip ; Adrian Van Blarcom came there and asked about it and he told Nicholas Kip to leave it be, that there  
 20 was a dispute and if he did he would have to take it down ; Kip said the property was theirs and they had something to show for it ; they renewed shingle house at same time ; they righted up the shed.

*Halmagh M. Post*, sworn.—I was born and have always lived at Acquackanonck ; I know the Van Waggoner farm and north line ; always supposed it to be a notorious and well established line extending through the Kips dock ; dont remember the old road ; the fences have always been the same on west side of new road not changed ; the north western shed of defendants, as laid down was built last spring ; there was a fence there before more easterly,  
 30 shows on map ; it ran from the gate post six feet east of Kips' most north west corner ; then ran irregular to about south east corner of new shed ; running along east line of said shed ; the north east side of shed is twenty five feet ; the north side is eighteen feet ; the north width of old shed is fifteen feet and the old post of middle shed at its north east corner was the corner of fence ; west of that old fence was not in possession of defendants before last spring ; but it laid open to road ; the middle shed was old ; the new shed takes in part of the new road and part of what was not new road ; I suppose the Kips kept up the old fence before last spring ; dont  
 40 recollect the time of its being put up ; but I recollect the fact of that fence being put up ; think Kip put it up before that old fence

was put up; before that old fence it was all open there; the middle shed was put up *by defendants seven or eight years ago*; There is part of old fence south of watering place; I dont know the old road except from hearsay; the dock is bulged out plainly on south side eighteen inches to two feet; the old foundation is to be seen; about midway there is an end of the log on the stone and then the upper logs are extended over; I have no doubt about it much; in grave yard at Acquackanonck the grave stone of Ruloff Van Waggoner shows that he died June 30, 1816, aged sixty five years, three months and ten days; Harmonus Van Waggoner died October 15, 1815, aged twenty years, four months and eight days; John Van Waggoner died February 21, 1838, aged twenty-three years, one month and eight days; born January 13, 1815; I am thirty-seven years old last September; part of an old fence is still standing on west side of what is always called old road, few posts and some panels; always recollect it same place; it is about twenty-five to thirty feet to bank of the river; I have always lived one quarter of a mile or less from this place.

*Cross-ex'd.*—The bulging out of top of south dock is either by pressure or by being built out, can't tell; was filled in with shavings, etc; 20 the top projects beyond lower part twelve, fifteen, eighteen and twenty-four inches; it is roughly put up; I can see underneath what I suppose to be the line of old dock; it appears to have been regular, it is rather rough now; the tides wash up along some part of the dock; ordinary high tide within a foot of the top of the dock; the ordinary tide flows up eighteen or twenty feet along side of this dock; ordinary rise of tide is three to four feet perpendicular; in front of dock water not more than three feet at ordinary low tide; dont know if vessels ground there at ordinary low tide; the vessels there empty draw two and a-half feet, and loaded six feet 30 I suppose; the ordinary high tides flow about twenty-five feet along side of dock, from the south corner of dock may be more; dont think it would come to second store-house, suppose within eight or ten feet; think it would come up on first one; I know there was an old ditch between old shed and blacksmith shop; I remember old cotton-house, was burnt down; dont recollect where it was; very high tides, not freshets, do not go up to the remains of old fence; there is a bank there, steep, then shelving; think the posts of old cotton-shed were inside of dock.

*In Chief.*—Before the middle shed and old fence were put up, 40 there was no enclosure on west at all of the dock; the top logs of

the south dock extending over appear to lie as they were originally laid, not canted over. (It is sixty-three feet from front of dock to line of first shed, and one hundred and three feet to what is marked as west side of old road, near blacksmith's shop—as appears by map.)

*Jane Shelp*, a witness on the part of the Plaintiff, testified—I married Harmonus Van Waggoner, and we lived with Ruloff; one morning Ackerman came to Ruloff and said to Ruloff, "I understand you mean to unload a float of hay at the dock;" Ruloff said  
10 "Yes;" Ackerman said, "No you wont; if you bring the float of hay to the dock, I (Ackerman) will cut the rope;" Ruloff said, "I would like to see you try that;" Ackerman said then, "Mr. Van Waggoner I want to buy the dock," and Ruloff said, "Pay me the rent up for the time you have had the dock."

To a question from the Court witness testified Ackerman said, "I want to buy the dock of you," and Ruloff said, "Mr. Ackerman, pay me up the rent for the time you have had the dock;" Ruloff unloaded his hay at the dock first, before Ackerman's boat; I saw the boats; Ruloff had a scow and Ackerman a sloop; Ruloff  
20 would unload his hay first; I think John was not born then; as long as I lived in the family Ruloff unloaded his hay on the dock and put on his cord wood and had it cut up by his hands, and he put on it what he pleased; I lived there nine or ten years after this conversation until Ruloff's death; the land was open through where Kips have now built and they always rode through where Kips have enclosed, and that was always called the old road.

Being cross-examined, says, I am fifty-nine years of age; I did not hear it said how much rent was due; this was the only conversation I heard about the dock between them; I believe other people  
30 unloaded at the dock besides Mr. Van Waggoner; the neighbors do very often; I passed through the room and stood a few moments at the door and listened; it was in the front room towards the kitchen; I came down stairs and into the front door; he said "As soon as you pay the rent, I'll talk about it;" I dont know that he told him that he had no right there; Ackerman said, "I'll buy the dock of you;" Ruloff had said, "you talk as though the dock belonged to you, you have not paid up the rent for the time you have had it;" Ackerman then said, "I'll buy it of you;" they were good friends before, and afterwards too; Ackerman and Ruloff stood towards the  
40 the door that opens into the hall; I came from up stairs; first Ackerman said, "I understand you are going to unload your hay to

day," he answered "Yes;" Ackerman said, "No you wont;" Ruloff said, "Why should I not unload it;" Ackerman said, "Because I want to unload mine;" Ruloff said, "I will unload it;" Ackerman said, "If you do I will cut the rope;" Ruloff said, "No you wont;" Ackerman said, "Then I will buy the dock of you;" Ruloff said, "You have not paid me the rent for it yet;" I have always recollected this; it has never been out of my mind; I have told it over a thousand times.

Being again examined *in chief*, she testified—Ruloff said, "As soon as you pay up the rent for the dock we will talk more about 10 your buying it;" Ruloff first said "You talk about the dock as if it belonged to you; you pay me up the rent first for what you have had, and then we will talk about it further;" Ackerman said "I will buy the dock then."

Being again *cross-examined*, she testified—When Ackerman talked about cutting the rope, then Ruloff said, "You talk as if you owned the dock;" Ruloff said, "You have never paid up the rent for the time you have had the dock;" the words were "paid rent," or "paid up rent;" cannot say which; Ruloff said, "As soon as you pay up the rent then we will talk about the price of it;" Ruloff al- 20 ways called it "our dock."

## DEFENDANTS' TESTIMONY.

*Abraham Snyder*, sworn.—I have always lived about two miles below Acquackanonck; I boated twenty three years from Acquackanonck to New York; I was married fifty six years ago last December and boated one year before my marriage for Mr. Ackerman; In 1796 when in employ of Ackerman I landed at Ackermans dock as it was called the four years I boated for him; the dock was there before I went boating; cant tell if it was old; it was repaired at that time; four years I boated for him, three years after I was 30 married; cant tell who repaired the dock; vessels that came up for Jackson and others laid to the dock to open the draw; I boated afterwards for Jackson; the other vessels used to stop at the dock because it was right against the draw; Van Waggoner used to float his hay below at the watering place because it was too hard work to load on top of a load of hay on wagons; dont know that I ever saw Van Waggoner unload his hay from schooner at dock.

*Cross-examined.*—The draw was right by the dock; I knew Ruloff Van Waggoner pretty well; the farmers brought hay on scow to the watering place where it was much easier than the dock; I knew Ackerman afterwards always; he was particular in his business; he was very close and careful, sometimes mild, sometimes out of humor; always called Ackerman's dock by others; John Ryerson had Ackerman's store and he had Van Houten a clerk for three years and then partners; I knew nothing about the title; Jackson's dock above the bridge, when I first boated for Ackerman  
 10 there were no boats to Acquackanonck that I know of; I boated for Peter Jackson one year next after I boated for Ackerman; boated for Jackson then ten or eleven years; I did not boat for any one after that; after that I kept home; dont know that I ever saw floats of hay on the dock; it would be very difficult work to load from the scows on to the wagons and double trouble to pitch on dock first; I was seventy nine years last October.

*In Chief.*—I never heard Ackerman say otherwise than by telling us to come up to his dock; called Kip's dock since he was there; I have heard people generally speak about going to John Kip's dock.  
 20 *Henry Schoonmaker, sworn.*—I lived at Centreville twenty-six years 11th next April; before that I lived at Acquackanonck; the last time I lived at Acquackanonck next previous to my present place was about sixteen years; the first nine years I was clerk for Ludlow; was clerk for Ryerson & Demarest; I came to them September 3d, 1818, in the same place where Kips are now; Demarest had been there since 1817; they had freighting business and wharf at the store and lower dock; the lower dock we always kept our wood and hoops on, the same as now on Kips dock; Ryerson & Demarest hired of Abraham Ackerman at two hundred  
 30 and fifty-dollars (\$250) per year; I was with them until 1822; I was with them three years and eight months; they were there five years; in 1822 we went further up and then Ackerman & Kip occupied the dock; the freighting business on our dock I attended to; I knew Ruloff Van Waggoner; but he was dead while I was at Ludlow's, when I went to Acquackanonck; the scow would carry about twenty loads of hay; I don't recollect ever seeing it unloaded at the dock; Mr. Demarest built a blacksmith shop for Devosney; he moved it from upper dock to lower one; cant say where it came to; think it might be pretty near to east of line of new  
 40 road; it is twenty-five or twenty-six years ago; we used from the blacksmith shop down to dock for hoop and poles; we have had

them piled up against the shop nearly to top of it, and then there was no passage between shop and dock; I remember cherry trees along north side of watering place; think not more than three; there was a small lot enclosed on north side of cherry trees; it was fenced in for the use of mine and Demarest's family to bleach clothes; this was until Devosney's shop, and then the cinders stopped it; the first bleaching lot was enclosed, and Ryerson & Demarest used it for bleaching when I came there; I have not been there to examine the premises; I recollect the old road; the ordinary tides rise within a foot of top of dock, and I think the water 10 would flow up aside the dock the length of this house; the new road was open when Devosney had shop; it was little above cherry trees; can't tell how long Devosney occupied it, might be a couple of years; from the map I think the high tides would flow over the old road as laid down; if it was across the dock as laid down on map the road would be pretty much at high water mark; we used to have garden clear below watering place; Shelp pulled the fence away below the watering place and then he and Ackerman had a law suit after that.

*John Devosney*, sworn.—I occupied blacksmith shop under Ryerson & Demarest; the west corner was right where the west corner of new shed of Defendant's is now; we dug up foundations of forge when we set the new shed there; the shop fronted straight up north; it was pretty close up to new road as it is now; Mr. Demarest had it built; Defendant's map shown; that is where shop was; it might have a little more round; I was brought up one and three-quarter miles below Acquackanonck; I was fifty-five years old 12th January, inst; dont remember where old road ran before new one was laid out; I showed Mr. Goetschius where I thought it was; I was not positive; all I judged from was that they used 30 to go around my shop to go down old road when Mr. Jackson stored his lumber below there; I went there in shop in spring of 1820, and left it the first of July, 1821, and I dont know how long it stood afterwards; I started a shop about one and a-half miles below it; between shop and river it was all lumbered up from shop to river as high as they could pile; I remember there was a ditch or small drain running there out side of my shop; I recollect Faulkener's shop was put much further west than mine; his was right up against new road; I knew John Kip; dead more than five years; he left Walling, Nicholas, Clarissa and Christina; John Kip built old shed; 40 dont know how long before his death.

*Cross-examined.*—I worked for John Kip, now for Defendants; worked for them going on three years; dont know and dont think the shop was ever used for blacksmith shop after I left; in summer time they did not use to ride through east of shop, on account of wood and hoops; Jackson's poles was taken down west side of my shop; there was but one little ditch about my shop on west side of it; my stoop stood north from Faulkener's; it might have been between north and north-east; had hoop poles whole year round.

*In Chief.*—They might have gone round east of my shop if hoop  
10 poles, et cetera, were not there.

*Aaron A. Van Houten, sworn.*—I first went to Acquackanonck in 1804; went as clerk for John M. Ryerson, who hired the dock in question of Ackerman; Ryerson carries on his own business; I was his clerk from 1804 to 1807; he had schooners and freighted from the wharf; he hired of Ackerman, and he also had hoop poles and staves all along below the watering place on bank of river; the wood he loaded at dock; I believe he hired dock as well as store; John M. Ryerson moved to Ringwood and I staid at store in partnership; I rented for five years at two hundred dollars (\$200)  
20 per year; that commenced in 1807; we continued for five years and then we hired at two hundred and fifty dollars (\$250) till 1817; hired of Ackerman always; then I moved away; paid rent to Ackerman only; no one else demanded rent; dont remember repairs to dock while I was there; I knew Ruloff Van Waggoner; on good terms with him; often in store; very intimate; I hired a garden of him next below Jackson's house for ten years; I should say that Ruloff knew we hired store and dock, et cetera, of Ackerman; he never said any thing to me about it; never heard old Ruloff say a single word about the dock; I know the farmers had  
30 a scow brought hay up in fall of year; a great many of them and Van Waggoner too went up below the dock at high water, and when the water went down they backed to scow; 1817 Ryerson and Demarest took the store; they remained, dont know how long; I have seen their schooner lay along side the dock, and have seen them cart wood and hoop poles there; after death of John Ryerson I do not recollect who took it; I have known Ackerman & Kip to be in partnership and have the store and dock; it was said that Ackerman was in the business at his death, and then John Kip remained, and it was said he bought that property of the Executors;  
40 we put our wood and lumber on the dock, that is as far as the old road went; that we left open; there was a public road across the

dock, and we piled up as close as we could to that road; I dont remember Ruloff unloading hay on dock during our ten years; he might have done so; when we went there Ackerman claimed the dock as his; Ryerson was there and had possession of the dock when I came there; he was there some years before I came there doing an established business; I dont know that Ruloff ever cut wood or sold it; he might, I wont say that he has not; the dock was built when I came there, in 1804; I never heard by tradition who built it.

*Cross-examined.*—There was no written lease for the property 10 we hired; it comprised the dock, store and dwelling; the bridge then in 1804 was further north; there was a great deal of business in hoops and staves; those we laid below the watering place and we got our privilege for that from Ackerman; he had his there when we came; Ruloff knew it and never demanded anything for the use of it; he knew it; Ackerman had his lumber lying down on both sides of the road and we took the same privilege; Ackerman never told me he had a deed for the dock; when I came there in 1804 there was a public road down along the river; the watering place and banks of river below it are all washed out since I was 20 there; I went along when Goetschius and Faulkener surveyed and they had a pole up; I have no recollection of there being a short turn in the road there at all; I dont recollect how far we used to pile our wood out on the dock; Ackerman spoke of the dock as his dock, and the store as his store.

*Devosney recalled.*—This morning I examined the place alongside of dock and at ordinary tides the water runs up to eight feet of old shed; last Friday a spring tide ran up to corner of old shed; the stones outside the shed middle appears as foundation of old dock; the stones are laid up to old shed and then under the shed, and I 30 cant tell if these stones are raised above watering place; to the best of my knowledge the watering place along side of dock had been filled in since 1820; shavings have been thrown in lately; when I was there in 1820 the watering place along side of those stones was lower than at present; John Kip died in 1842; after Kip bought I believe he extended the dock some into the river, in fact I know he did, between 1837 and 1840; I knew the cotton shed before it was burnt down and the old posts of that shed stand exactly in present range of south side of dock; cant say when it was burnt down; the stumps stand outside of string pieces. 40

*Cross-examined.*—I examined them this morning; I laid the

string pieces of dock for John Kip; I dont say the timbers of the dock ever laid on those stones; the dock was carried in river by John Kip; I helped do it; John Kip carried the dock out only by driving spiles down against the old dock and putting cap pieces across and these cap pieces are now off.

*James Van Winkle.*—I shall be seventy-eight in about a fortnight, lived near Acquackanonck since my birth; I know the dock in question; have known it I suppose from the time it was built but cant say positively when it was built; when I was quite a lad I got  
10 acquainted with Ackerman, he was then I understood a boatman for Ludlow; Ludlow kept a store and Ackerman put up a small store where Aaron A. Van Houten now lives; shortly after he moved up to Acquackanonck; after he had been there some time I was taken with the rheumatism; was then about fourteen years; John Gould went up where Ackerman was and attended as his clerk; Mr. Gould purchased a remedy for my complaint, this makes me remember; ever since then the dock has been in existence; I have always since then heard it called Ackerman's dock; the dock was used by Ackerman and it always had things on it; all I know was  
20 Ackerman moved up there and then the dock was built and used by him; I was fourteen or fifteen then for I was not a young man grown; always took it to be Ackerman's dock; it was called Ackerman's dock, when it came in conversation.

*John Goetschius*, on part of defendants, Is shown map; says, I made it for defendants a few days ago; from the other map Devosney showed me where his shop was; and I put it on map; Mr. Devosney always showed me as centre of road about five feet easterly of old fence; last Thursday when I was there the tide was about eight feet from first shed; the water was higher than last May when I  
30 surveyed; I was also shown last Thursday by Snyder, where old road ran; he said it was *about there*.

*Cross-examined.*—When we were on the ground last May and had put up long pole, as the line of old road, Mr. Aaron A. Van Houten was there and said that was about right; that was in west line of old road, as laid down on plaintiff's map.

The defendants also gave in evidence a deed from the executors of Abraham Ackerman, dated May 5th, 1840, to John Kip, the defendants' father, for the land in question; and produced the will of said John Kip, wherein the said land was devised to the defen-  
40 dants; and also gave in evidence a deed to Abraham Ackerman from John J. Vreeland and Henry F. Speer, dated January 25th,

1800, for lands south of the Acquackanonck bridge, and in front of lands of Harmonus Van Waggoner, down the river (pro ut the deeds and will).

*Abraham Bush* testified, pro ut commission issued.

After the testimony was closed and summed up by the counsel to the jury, the said justice charged the jury as follows (pro ut the charge); whereupon the defendants, by their counsel, except to so much of the said charge as relates to the testimony of Mrs. Jane Shelp, also to that part of the charge of the court by which the jury was instructed, that the plaintiff had shown title to the premises and was entitled to recover, unless the defendants by their evidence had shown a title in themselves or some other person.

And they pray that a bill of exceptions pursuant to the statute may be sealed and it is sealed accordingly.

### NEW JERSEY COURT OF ERRORS AND APPEAL IN THE LAST RESORT,

of the term of June, in the year of our Lord eighteen hundred and fifty-four.

WALLING KIP and NICHOLAS I. KIP,  
vs.  
JOHN DEN, ex dem., ADRIAN VAN BLARCOM  
and wife, and others, defendants.

} *In Ejectment—Assignment  
of Errors.*

Afterwards, that is to say, in the term of June, eighteen hundred and fifty-four of the Court of Errors and Appeals in the last resort, come the Plaintiffs in error by Robert Van Arsdale their attorney, and say that in the records and proceedings aforesaid, and also all the matters referred to and contained in certain bills of exception, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit: That it appears by the record aforesaid and the said bill of exceptions and the charge of the court to the jury, that the justice of the Supreme Court holding the said

Circuit Court charged the jury erroneously in several matters and more especially in the following particulars :

First, That the said Walling Kip and Nicholas I. Kip had not shown an adverse possession sufficient to bar the Plaintiff of his action.

Second, That the testimony of the witness Jane Shelp was sufficient to show or infer a tenancy in Abraham Ackerman of the premises in question, through whom the said Walling Kip and Nicholas I. Kip claim title, and also that the possession of said  
10 Abraham Ackerman was not exclusive.

Third, In instructing the jury to give no weight to the deed of John J. Vreeland and Henry F. Speer to Abraham Ackerman.

Fourth, In charging the jury that the proof was such as entitled the plaintiff to recover, unless the defendants in the action below had shown a better title.

And there is also error in this, to wit, that it appears by the record aforesaid that the judgment aforesaid was given for the said John Den, whereas by the law of the land the said judgment should have been given for the said Walling Kip and Nicholas I.  
20 Kip against the said John Den, and thereupon the said plaintiffs in error pray that the judgment aforesaid for the errors aforesaid and others in said record and proceedings, may be reversed, annulled and held for nothing, and that the said plaintiffs in error may be restored in all things they have lost by occasion of said judgment.