

COURT OF ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CASES.

STATE OF NEW JERSEY. }
JACOB F. SMITH, PROSECUTOR, } Writ of Error to the Supreme
vs } Court, in matter of Public Road.
JOSEPH FRENCH AND OTHERS. } Returnable to the second Tues-
day of March, A. D. 1852.

After the return of the said Writ of Error, the following assignment of Errors was filed by the Plaintiff in Error, to wit :

State of New Jersey, ss.) Court of Errors and Appeals in the
last resort.

The State, Jacob F. Smith, Pro'r }
vs. } In error to the Supreme
Joseph French and others. } Court in matter of
Public Road.

Afterwards, to wit, on the second Tuesday of March, in the year of our Lord one thousand eight hundred and fifty-two, came the plaintiff in error, by William Hartough, attorney of said plaintiff, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, that the said surveyors of the highways laid out the said road in another place than that described in the petition of the applicants for said road, and particularly set forth and described in the rule of the court appointing said surveyors. And also there is error in this, that by the record aforesaid it appears that the said road, as laid out by the said surveyors of the highways, is not the same road as that described by them in their said return. And also there is error in this, that it appears by the record aforesaid that the said surveyors of the highways did not lay out the said road upon the lines and in the places designated in the rule of the court appointing said surveyors of the highways. And also there is error in this, that by the record aforesaid, it appears that the said surveyors of the highways did not begin the said road in the

place designated in the rule of the court appointing said surveyors of the highways. And also there is error in this, that by the record aforesaid, it appears that the said surveyors of the highways did not lay out the said road in the places and upon the lines and upon the lands designated in their said return. And also there is error in this, that it appears by the record aforesaid, that the said surveyors had a private interview with several of the said applicants for said road at the time they the said surveyors met to lay out said road. And also there is error in this, that it appears by the said record aforesaid, that the said surveyors of the highways received from the said applicants for the said road greater sums of money for their services than by law they were entitled to. And also there is error in this, that it appears by the record aforesaid, that the said applicants paid the expenses and bills of the said surveyors of the highways at the tavern where they were directed by the rule of the court to meet. And also there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said defendants in error; whereas, by the law of the land, the said judgment ought to have been given for the plaintiff in error against the defendant in error. And the said plaintiff prays that the said judgment for the errors aforesaid, and for divers other manifest errors in the said record and proceedings, may be reversed, annulled, and altogether holden for nought, and that the said plaintiff in error may be restored in all things lost by reason of said judgment.

WILLIAM HARTOUGH,
Attorney of Plaintiff in Error.

New Jersey ss.

The State of New Jersey puts in its place William Hartough its Attorney, against Joseph French and others in matter of Public Road.

The defendants filed the following joinder in error:

State of New Jersey. Court of Errors and Appeals in the last resort in all causes, &c.

Joseph French and others,	} In error to the Supreme Court,	
<i>ads.</i>		in the matter of Public Road,
The State. (Jacob F. Smith, prosecutor.)		&c.

And the said defendants, by George A. Vroom, their attorney, come and say, that there is no error either in the record and proceedings aforesaid, or in the giving judgment aforesaid, and further, by way of protestation and denial, they say that it is not true as is alleged in the assignment of errors in that behalf; that the said surveyors of the highways laid out the said road in another place than that described in the petition of the

applicants for said road, and particularly set forth and described in the rule of the court appointing said surveyors; nor is it true as therein is further alleged that by the record aforesaid it appears that the said road, as laid out by the said surveyors of the highways, is not the same road as that described by them in their said return; nor is it true, as therein is further alleged, that it appears by the record aforesaid that the said surveyors of the highways did not lay out the said road upon the lines and in the places designated in the rule of the court appointing said surveyors of the highways; nor is it true, as is therein further alleged, that by the record aforesaid it appears that the said surveyors of the highways did not begin the said road in the place designated in the rule of the court appointing said surveyors of the highways; nor is it true, as therein is further alleged, that by the record aforesaid it appears that the said surveyors of the highways did not lay out the said road in the places, and upon the lines, and upon the lands designated in their said returns; nor is it true, as therein is further alleged, that it appears by the record aforesaid that the said surveyors had a private interview with several of the applicants for the said road at the time they, the said surveyors, met to lay out the said road; nor is it true, as therein is further alleged, that it appears by the said record aforesaid that the said surveyors of the highways received from the said applicants for the said road greater sums of money for their services than by law they were entitled to; nor is it true, as therein is further alleged, that it appears by the record aforesaid that the said applicants paid the expenses and bills of the said surveyors of the highways at the tavern where they were directed by the rule of the court to meet.

And the defendants aforesaid pray that the Court of Errors and Appeals in the last resort, &c., may proceed to examine as well the record and proceedings aforesaid as the matters assigned for error, and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed.

GEORGE A. VROOM,

Attorney for the Defendants in error.

New Jersey ss.

Joseph French and the other defendants put in their place George A. Vroom their attorney, at the suit of the State of New Jersey in the matter of Public Road, &c.

STATE OF THE CASE.

PETITION.

To the Judges of the Inferior Court of Common Pleas of the county of Somerset.

The subscribers, freeholders and residents in said county, think a public road to be necessary in the township of Franklin, in said county, beginning on the south side of the Amwell road, on the line between the lands of John Polhemus and John

Probasco, thence running southerly along the said line to the line dividing the lands of John Polhemus and Joseph French, thence in the said dividing line in a southerly direction to the lands of Jacob F. Smith, then across the land of said Smith, southerly to the lands of Joseph French, then southerly across his land to the lands of Peter S. Van Dervere, then southerly across the land of said Van Dervere about two hundred yards, then westerly at right angles with the last course as near as may be, about two hundred yards over the lands of said Van Dervere, and running in front of his dwelling house, then again southerly, and upon said Van Dervere's land, to the line of Jacob S. Wyckoff's land, then southerly across said Wyckoff's land to the division line between the said Wyckoff's land and Frederick V. L. Van Doren, then along the said line to the road leading from Blackwell's mills to New Brunswick and there to end, and do hereby apply to the court to appoint six surveyors of the highways, to meet at such time and place as the court shall direct for the purpose of laying out the said road.

Dated April 20, 1850.

JOSEPH FRENCH,
DENNIS C. VAN DUYN,
ABRAHAM S. VAN DERVERE,
FREDERICK V. S. VOHREES,
THOMAS LAYTON,
JOSEPH HOWELL,
TUNIS HOAGLAND,

PETER H. STAATS,
DANIEL DISBOROUGH,
GARRET HAGAMAN,
JACOB S. VAN CLEEF,
JOHN G. POLHEMUS,
C. S. NEVINS,
JACOB WYCKOFF, JR.

SOMERSET COMMON PLEAS,

MAY TERM, 1850.

On the application of Joseph French and others, more than ten of the freeholders and residents of the county of Somerset, setting forth that a public road is necessary in the township of Franklin, in said county, beginning on the south side of the Amwell road, on the line between the lands of John Polhemus and John Probasco, thence running southerly along the said line to the line dividing the lands of John Polhemus and Joseph French, thence on the said dividing line, in a southerly direction, to the lands of Jacob F. Smith, then across the land of said Smith southerly to the lands of Joseph French, then southerly across his land to the lands of Peter S. Van Dervere, then southerly across the land of said Van Dervere, about two hundred yards, then westerly at right angles with the last course, as near as may be, about two hundred yards over the land of the said Van Dervere, and running in front of his dwelling-

house, then again southerly, and upon said Van Dervere's land, to the line of Jacob S. Wyckoff's land, then southerly across said Wyckoff's land to the division line between said Wyckoff and Frederick V. L. Van Doren, then along the said line to the road leading from Blackwell's mills to New Brunswick, and there to end, praying the appointment of surveyors of the highways to lay out the said road, and due proof being made that at least ten days previous notice was given of such intended application, and of the day in which said application would be made, by advertisements under the hands of said applicants, put up at three of the most public places in the township of Franklin, in which said road is proposed to be laid out, it is ordered, that Abraham B. Beekman, of Montgomery, Isaac Hall and Andrew Fleming, of Branchburg, David M. Vohrees, of Hillsborough, Daniel Cory, of Warren, and Jouathan F. Vandeventer, of Bedminster, six surveyors of the highways of the said county, be and they are appointed accordingly, regard having been had to the appointment of the surveyors of the township where the said road is applied for to be laid, which said surveyors shall meet at the tavern of Peter P. Wortman, at Johnsville, on the 22d day of June next, at ten o'clock in the forenoon.

I do certify that this is a true copy from the minutes.

W. KENNEDY, *Clerk.*

RETURN OF THE SURVEYORS OF THE HIGHWAYS.

We, the subscribers, six of the surveyors of the highways of the county of Somerset, appointed on the application of Joseph French and others, ten of the freeholders, and residents of the county aforesaid, by the Inferior Court of Common Pleas of the said county, in the term of May last, to lay out a public road in the township of Franklin, in the said county, as by the order and appointment of the said Court, in the minutes of the said Court, whereof a certified copy is hereunto annexed more fully appears, do certify and return, that having met agreeably to the order of the said Court, on this twenty-second day of June, in the year eighteen hundred and fifty, at the house of Peter P. Wortman, at Johnsville, in the township of Franklin, in the said county, and due proof being made to us, that advertisements of our said meeting have been set up according to law, on which we decided, and having viewed the premises, and heard what could be said for and against the said road, do think and adjudge the said road as applied for, and as mentioned in the said order of the said Court, to be necessary, and have laid out, and do accordingly lay the same, as appears to us most for the public and private convenience, and having regard to the best ground for a road, and the shortest distance in such a manner, as to do the least injury to private property, as follows, to wit :

We do lay out a public road of two rods wide, in the township of Franklin, in the said county, to begin on the south side of the Amwell road, in the line of John Polhemus and John

Probasco, nineteen links southerly from a stone planted in said road as a corner between said Polhemus and Probasco; thence south twenty-one degrees and a half, west thirteen chains and five links to a corner of Joseph French's land in the said line of John Polhemus' land to a stone there planted; thence on the line of John Polhemus and Joseph French, some twenty-one degrees and thirty minutes, west thirteen chains and sixteen links to the line of Jacob F. Smith's land and a stake; thence across his land south twenty-one degrees and thirty minutes, west sixteen chains and 82 links to a stake in the line of Joseph French's land; thence upon his land south 21 degrees and thirty minutes west, sixteen chains and eighty-two links, to a stake in the line of Peter S. Vandevere's land; thence upon said Vandevere's land, south twenty-one degrees and thirty minutes west, eight chains and thirty-eight links to a stake; thence upon said Van Devere's land, north sixty-eight degrees west, thirteen chains and forty-five links to a stake, near Peter S. Van Devere's dwelling house; thence on his lands, south twenty-three and a half degrees west eight chains and seventy-three links, to a stake in the line of Jacob S. Wyckoff's land; thence on his land, south twenty-three degrees and a half west, ten chains and sixty links, to a stake at the fence near said Wyckoff's hovel; thence upon his lands south thirty-three and a half degrees west, six chains and eighty-one links, to a stake at the corner of Frederick V. L. Van Doren's land; thence on the line between the lands of said Van Doren and Jacob S. Wyckoff, south twenty degrees west nineteen chains and sixty-six links to a stake planted on northerly side of the road leading from Blackwell's mills to New Brunswick, and there to end, which said lines of corner are in the middle of the public road now laid out, that is to say, the said public road is now by us laid out at one rod wide on each side of the said lines of course herein-before expressed, which said road so by us laid out we have caused to be marked at proper distances in the line of the same, and we do hereby make return thereof, with a map or draft of the said road so laid out with the courses and distances, and references to the most remarkable places, and the improvements through which the said road passes, herein-before mentioned and described, which map or draft is hereunto annexed, and we do hereby affix the first Monday in April next as the time when the overseers of the highways of the said township of Franklin shall open the same for public use.

Dated at the house of the said Peter P. Wortman, this 22nd day of June, A. D. 1850.

A. B. BEEKMAN,
 A. FLEMING,
 J. F. VAN DEVENTER,
 DAVID M. VOORHEES,
 ISAAC HALL,
 DANIEL CORY.

Within the period limited by law, Jacob F. Smith, (the prosecutor of the Writ of Error in this cause,) Frederick V. L. Van Doren, Jacob S. Wyckoff and John S. Probasco, filed a caveat in the usual form in the office of the clerk of Somerset county, against recording the foregoing return.

A the August term, A. D. 1850, of the said Court of Common Pleas of the said county of Somerset, the said Jacob F. Smith, Frederick V. L. Van Doren, Jacob S. Wyckoff, and John S. Probasco, presented a petition in the usual form, to said Court, praying the appointment of six of the chosen freeholders of said county of Somerset, to view said road, and certify in regard to the same according to law, dated August 15th, A. D. 1850, and filed in the Clerk's Office of said county, August 20th, 1850. Upon the presentation of which said petition, the said Court of Common Pleas granted a rule appointing Henry V. Demott and Josiah Schenck, of Franklin, John Van Doren and Ezekial Blue, of Hillsborough, Martin Voorhies and Abraham C. Skillman, of Montgomery, six of the chosen freeholders of said county of Somerset, to view and certify in regard to said road according to law; and ordered that said freeholders do meet at the house of Peter P. Wortman, at Johnsville, in the township of Franklin, on Friday, the 27th day of September, then next ensuing, at 10 o'clock in the forenoon. The said freeholders met at the time and place mentioned in said rule, and viewed said road, but being equally divided, they were unable to certify according to law.

At the next term of said Court of Common Pleas, to wit: the term of November, A. D. 1850, the said Court granted the following rule, to wit:

At a Court of Common Pleas in and for the county of Somerset, held at Bridgewater, this ninth day of December, of the term of November, in the year of our Lord one thousand eight hundred and fifty.

In the matter of a public road laid out in the township of Franklin, in said county, on the application of Joseph French and others, on the caveat of Jacob F. Smith, Jacob S. Wyckoff, Frederick V. L. Van Doren and John J. Probasco.

Rule to show cause.

The freeholders appointed by this Court at the last term thereof to view said road, and certify to this Court at the present term, according to law, having failed to certify, and it being suggested to this Court that the return of the surveyors which had been made in this matter, is in divers respects erroneous and contrary to law. It is ordered by the Court, that cause be shown on the first day of the next term, at ten o'clock in the forenoon of said day, why the said return made by the surveyors in said matter should not be set aside and for nothing holden, and that either party have leave to take affidavits to be read in the argument of said rule.

On motion of WILLIAM HARTOUGH, Attorney of Caveators.

I hereby certify the foregoing to be a true copy from the minutes of the Court.
HENRY D. JOHNSON, Clerk.

Under said rule, the following reasons were filed:—

State of New Jersey, Somerset county, ss.

Inferior Court of Common Pleas of the county of Somerset, of the 9th of December, of the term of November, A. D. 1850.

In the matter of a public road laid out upon the application of Joseph French and others, in the township of Franklin in said county of Somerset, upon the caveat of Jacob F. Smith, Jacob S. Wyckoff, Frederick V. L. Van Doren and John S. Probasco.

On Rule to show cause. Reasons.

The above-named caveators, by William Hartough, their attorney, pray that the return of the surveyors of the highways made in the above stated matter of a public road, may be set aside and for nothing holden for the following reasons, to wit:

1st. Because the said surveyors of the highways laid out the said road in another place than that described in the petition of the said applicants for the said road, and particularly set forth and described in the rule of this court appointing the said surveyors of the highways.

2d. Because the said road, as laid out by the said surveyors of the highways, is not the same road as that described in their said return.

3d. Because the said surveyors of the highways did not lay out the said road on the lines and upon the lands of the persons in their return particularly mentioned and described.

4th. Because the said surveyors of the highways did not lay out the said road on the line of the lands of John Polhemus and Joseph French to the line of Jacob F. Smith's land, as in their said return is particularly mentioned and set forth.

5th. Because the said road, as laid out by the said surveyors of the highways and their said return thereof, are in divers other respects and particulars erroneous and contrary to law.

WILLIAM HARTOUGH, Attorney of Caveators.

Somerset County, ss.

The above-named Jacob F. Smith, Jacob S. Wyckoff, Frederick V. L. Van Doran and John S. Probasco, the aforesaid caveators, put in their place William Hartough, their attorney, to prosecute the above matter of public road.

At a court of Common Pleas in and for the county of Somerset, held at Bridgewater, this fifteenth day of March, of the term of February, A. D. 1851.

In the matter of a public road laid out in the township of Franklin, in said county, on the application of Joseph French and others, on the caveat of Jacob F. Smith, Jacob S. Wyckoff, Frederick V. L. Van Doren and John Probasco.

On rule to show cause why the return of the surveyors should not be set aside.

The rule to show cause heretofore granted in this matter, on the application of Jacob F. Smith and others, caveators, coming or to be heard, and the court having seen and inspected the exhibits, and heard the allegations and arguments of counsel for the parties respectively, it is ordered, on motion in behalf of the applicants, that the said rule to show cause be discharged, and the return of the surveyors recorded:

On motion of George A. Vroom, attorney of said applicant.

I do hereby certify the foregoing to be a true, full and correct copy from the minutes.

HENRY D. JOHNSON, Clerk.

Whereupon the Supreme Court of Judicature of the State of New Jersey granted a writ of certiorari, entitled as follows, to wit:

The State, Jacob F. Smith prosecutor, vs. Joseph French and others.	}	Certiorari to the Somerset Common Pleas, in matter of public road laid out in the township of Franklin, in said county, June 22d, 1850.
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Returnable the first Tuesday of July, A. D. 1852.

The plaintiff filed the following reasons for reversal, to wit:

State of New Jersey ss.

Supreme Court of the term of April, A. D. 1851.

The State, Jacob F. Smith, prosecutor, vs. Joseph French and others.	}	Certiorari to the Somerset Common Pleas in matter of public road, laid out in the township of Franklin, in said county, June 22d, 1850.
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And the said Jacob F. Smith, the above named prosecutor, by William Hartough, his attorney, prays that the proceedings of the said court and the return of the said surveyors of the highways in the above matter of public road, may be set aside and for nothing holden for the reasons following, to wit:

First, Because the said surveyors of the highways laid out the said road in another place than that described in the petition of the applicants for said road, and particularly set forth and described in the rule of said court appointing the said surveyors of the highways.

Second, Because the said road, as laid out by the said surveyors of the highways, is not the same road as that described in their said return.

Third, Because the said surveyors of the highways did not lay out the said road upon the lines dividing the lands of John Polhemus, and John Probasco, and Joseph French, from the Amwell road to the line of Jacob F. Smith's land, as mentioned in the petition of the applicants, and the rule of the court appointing said surveyors of the highways to lay out said road.

Fourth, Because they did not lay out the said road upon the lines and upon the lands mentioned and described in their return.

Fifth, Because the road laid out by the said surveyors of the highways is not laid out in the same place as that mentioned in their said return.

Sixth, Because the said road if opened according to the return of the surveyors, will run through the lands of Jacob S. Wyckoff, and not upon the line dividing the lands of Frederick V. S. Van Doren and Jacob S. Wyckoff, as called for by the petition of the applicants, and the rule of the court appointing the said surveyors of the highways to lay out said road.

Seventh, Because the said road if opened according to the return of the surveyors of the highways, will have to be opened upon the lands of Jacob S. Wyckoff, instead of being opened upon the line dividing the lands of Jacob S. Wyckoff and Frederick V. L. Van Doren, as mentioned in the rule of the court appointing said surveyors.

Eighth, Because the said road if opened according to the return of the surveyors of the highways, will run through the hovel of Jacob S. Wyckoff.

Ninth, Because the applicants for, and contributors to, the expenses of laying out the said road, paid the expenses and bills of the surveyors of the highways at the tavern where they were directed to meet, and paid them the sum of two dollars per day a-piece for their services.

Tenth, Because the return of the surveyors, and the proceedings of the said court, are in divers other respects erroneous and contrary to law.

Eleventh, Because a private interview was held between the surveyors and several of the applicants on the ground during the laying of the road.

WILLIAM HARTOUGH, Attorney of Prosecutors.

State of New Jersey to wit :

Jacob F. Smith, the above-named prosecutor, puts in his place William Hartough his attorney in the above stated case.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1851.

Joseph French and others,	}	Matter of road or certiorari to Somerset Pleas.
ads.		
The State. Jacob F. Smith, prosecutor.		

This cause having been duly argued at the present term by the counsel for both parties, and the court having considered the same, and examined the record and proceedings below, and the reasons assigned for reversal, and the depositions taken in support thereof, it is ordered that the judgment and proceedings below be and the same are hereby in all things affirmed with costs to be taxed. On motion of

G. A. VROOM, Attorney for Applicants.

I, James Wilson, Clerk of the Supreme Court of New Jersey, do hereby certify that the foregoing is a true transcript of the proceedings in the above cause, as the same remain upon the files and of record in my office.

J. WILSON, Clerk.

Whereupon, the foregoing Writ of Error was issued.

In a matter of a writ of error in the Supreme Court of New Jersey, do hereby certify that the foregoing is a true transcript of the proceedings in the above cause, as the same remain upon the files and of record in my office. J. WILSON, Clerk. Whereupon, the foregoing Writ of Error was issued.

Deposition taken in the above matter before the undersigned Master in Chancery of New Jersey, on the 15th day of February, A. D. 1831, in the presence of William Harshbarger, Attorney for the caveator, and George A. Vroom, Attorney for the applicant. Service of notice of taking said depositions being admitted, and the attorney of the applicants waiving all objection to the taking said affidavits and depositions before a Master of the Court of Chancery, agree that they shall be considered the same as if taken before a Judge of the Common Pleas of Somerset County.

WILLIAM HARSHBARGER
Master and Examinor in Chancery.

John following a witness produced on the part of the caveator being first duly sworn according to law to testify the truth, the whole truth and nothing but the truth in the above stated case on his oath says; I am acquainted with the location of the road and was one of the applicants for it. I think the petition for this road was made in the February term of the Somerset Pleas 1830, the second application was made in the May term but I cannot be certain. The road was laid out upon the second application. My name was the notice for the first of the surveys; I am acquainted with the lands upon which the road was laid, the road was laid out to the township of Franklin in said county of Somerset. A person in the name of the Court being read to the witness) cannot say; I was present at the time the surveyors laid the road; they laid out the road upon the line dividing the lands between myself and John Probasco; the line that divides my land and John Probasco's land has no angle in it. (The witness states he did not understand the question and being interested answers as follows.) W. H. The line between me and Mr. Probasco before Mr. French bought of me had an angle in it; at the time the road was laid it was a straight line there was no angle in it; at the time the second petition was presented to the Court of Somerset, the line was a straight line; at the time of the presentation of the

DEPOSITIONS.

SOMERSET PLEAS.

In matter of a public Road in the township of Franklin, in Somerset County, laid out on the twenty-second day of June, 1850, on the application of Joseph French and others, on the caveat of Jacob F. Smith and others.

On rule to show cause.

Depositions taken in the above matter before the subscriber, a Master in Chancery, of New Jersey, on the 7th day of February, A. D. 1851, in the presence of William Hartough, Attorney for the caveators, and George A. Vroom, Attorney for the applicants. Service of notice of taking said depositions being admitted, and the attorney of the applicants waiving all objection to the taking said affidavits and depositions before a Master of the Court of Chancery, agree that they shall be considered the same as if taken before a Judge of the Common Pleas of Somerset County.

WARREN HARDENBURGH.

Master and Examiner in Chancery.

John Polhemus, a witness produced on the part of the caveators being first duly sworn according to law to testify the truth, the whole truth and nothing but the truth in the above stated cause on his oath, says: I am acquainted with the location of the road, and was one of the applicants for it. I think the petition for this road was made in the February term of the Somerset Pleas, 1850—the second application was made in the May term, but I cannot be certain. The road was laid out upon the second application. My name was to the notices for the meeting of the surveyors; I am acquainted with the lands upon which this road was laid; the road was laid out in the township of Franklin, in said county of Somerset. (A portion of the order of the Court being read to the witness,) witness says: I was present at the time the surveyors laid the road; they laid out the road upon the line dividing the lands between myself and John Probasco; the line that divides my land and John Probasco's land has no angle in it. (The witness states he did not understand the question, and being interrogated answers as follows:) W. H. The line between me and Mr. Probasco, before Mr. French bought of me, had an angle in it; at the time the road was laid it was a straight line, there was no angle in it; at the time the second petition was presented to the Court of Somerset, the line was a straight line; at the time of the presentation of the

second petition, I had sold that land to Mr. French; I had not made Mr. French a title at that time; there were no writings between Mr. French and me relative to these lands at the time the petition was presented; at the time the road was laid there I had possession of the land sold, or, at least, my crops was on there, and I gathered them; it was in my inclosure. Witness being shown a certified copy of a map of said road made by the surveyors says: The piece of land which I sold to Joseph French lays between the road laid out by the surveyors and the line that formerly divided my land and French's. (By reference to said map, witness says:) The piece of land spoken of is described in my deed to Joseph French, recorded in Somerset County Clerk's Office, in Book L, No. 2, of Deeds, pages 444, 445, 446, recorded August 21st, 1851. There was no other writing between Mr. French and myself relative to this land, except the deed; I think the deed was made about the last of July, or the first of August; the lands lie as they always have laid since I have been there; the deed was made after the road was laid out.

Witness being cross-examined, says at the time the agreement was made between Mr. French and myself for the value of the land, the agreement was, that I was to put it in with oats and seed it down; one piece I was to have plowed up for corn; I was to have the crops of grain now sowed down, and after that he was to have possession of the land. At the time we made this bargain, we agreed upon the price per acre, he was to pay me; he agreed to give me forty dollars per acre for the land, and nothing was said about the fence; afterwards I told him that if I took the fence he was to have the land for thirty-five dollars an acre; this agreement took place before the second application was made to the Court; Mr. Peter Van Deveer was present at the time this bargain was made, for forty dollars an acre; I think I sold him an acre and five or six hundredths of an acre, I wont be certain. This sale was made before the application to the Court was made, that the road might be made in a straight line, without the offset it would otherwise have had when we came to the point in the road where the offset was in the fence, (marked A on the map); the surveyors, or some of them, asked me where the line was that divided me and Mr. French; I told them the straight line was the line, that we thought it better for the road and the public to have it straight; I told them (the surveyors) that I had sold that piece of land to Mr. Joseph French, and that he had bought it; when we came to the offset, Mr. Hartough, attorney for the opponents of the road, made some objection, and said that the line ran according to the fence as it then stood. The surveyors called both Mr. French and myself aside, and asked where the line was that divided me and Mr. French; the surveyors expressed themselves satisfied, and laid the road in a straight line, as they thought it would be better with a straight line than have an angle in it—at least, those surveyors who conversed with me

did. The whole bargain for the sale of the land at thirty-five dollars an acre, I having the fence, was completed before the application was made.

Witness being re-examined on the part of the caveators says: I don't recollect whether any one was present or not at the time we made the bargain for thirty-five dollars an acre; I don't think there was any one present; this last bargain for the sale of the land at thirty-five dollars an acre, was made previous to the advertisements being put up—the advertisements for the application to the Court I mean. I can't say to a certainty whether the advertisements were put up in May or June; the first bargain was made at my house; it was made in the day time; Mr. French and Mr. Van Devere came there and were going about to get subscribers to the application; they both came together; there was nobody at my place at the time, that I know of; I was in the garden; I don't recollect the time or place where the second bargain was made; I had some conversation with the neighbors about the price of the land per acre, and Mr. Cornelius S. Nevius told me that he thought forty dollars an acre was too much, that thirty-five dollars an acre was enough for it; this conversation took place after I had sold the land to Mr. French, and the next time I saw Mr. French, I told him he should have the land for thirty-five dollars an acre; I don't recollect that any one suggested to me about the fence. This changing land was talked of between me and Mr. French before the first application was made, and others had suggested too, that the road would be better straight. I don't think I stated to the surveyors, that if the road was not laid there, Mr. French would not take the land of me; I don't recollect that I stated to the surveyors that no writings had passed between me and Mr. French, relative to the land; I don't recollect whether I stated to the surveyors that the land was in my possession; it was understood when the bargain was first talked of before the first application, that Mr. French was not to take the land in case the road was not laid; when the bargain was afterwards made and settled, it was an absolute bargain, there was no reservation about it; I don't recollect whether I ever talked to Mr. John P. Smith about the sale, but I think it likely I have; one day when I was at dinner Mr. Van Devere came to my house and called me out; he said that he and Mr. French wanted me on the route of the road where the road was to be laid, that afternoon or the next morning; when I came back to the table, I told Mr. Smith what Mr. Van Devere's errand was; I can't tell when this was; don't recollect whether it was before the first application, but it was before the second application, and I think before the purchase of the land.

Question, (by Mr. Hartough)—Did Mr. Smith then say to you that he had been a surveyor of the highways, and that the course you were pursuing in relation to the road was unusual and wrong, and that we might yet be called on to account for it?

Answer.—I don't know that I can answer any such question; my memory is poor and I don't wish to say any thing unless I am certain of it; I don't recollect what was said concerning it; Mr. Smith was at work at my house and we talked of it several times. Mr. Smith was at work at my house both in the Fall and in the commencement of the Spring, at the time the road was talked of; I don't recollect whether he worked for me the forepart of June, 1850; it might have been that time that he put up the bannister, but I don't recollect; he might have been there more than one time last Spring, but I don't recollect.

Witness being re-cross-examined says, I did not put up the advertisements for the application for a highway.

Question.—(by Mr. Hartough.) Witness being again examined in chief, says: At the time Smith and you were at dinner when Mr. Van Devere called at the house, had the applicants for the road determined upon the route?

Answer.—I believe we had determined that it should be the route; we went to see about that little offset.

Question.—(by Mr. Hartough.) Had the notices for application to the Court for the appointment of surveyors been put up at that time?

Answer.—No; I think it was before the first application was made; I can't tell whether it was in the winter or in the spring. The route spoken of was the route upon which the road was afterwards laid.

JOHN G. POLHEMUS.

Sworn and subscribed this seventeen day of February, A. D. 1851, before me.

WARREN HARDENBURGH,

Master and Examiner.

Peter N. Beekman, a witness produced on the part of the caveators, being first duly sworn according to law, to testify the truth, the whole truth and nothing but the truth in the above stated cause, on his oath says: (being showed a certified copy of the return of the road) I have seen it before and looked it over; I have made a survey of that road according to the return. The measurement I made corresponded with the return very nearly, until I came to the line that divided Mr. French and Mr. Van Devere, and then there was a shade of difference, owing I think to the set of the instrument; we set our instrument at this point (the point marked E. on a sketch made by the surveyors) marked exhibit A. to difference of twenty-three links, and found the distance from A to B to be 139-22"; this distance was twenty-three links shorter than the surveyors return, there being a difference of about fifteen feet between the survey and the return of the surveyors. From the point C on said sketch marked exhibit A to the fence as it now stands between the land of John Polhemus and Joseph French, I found the difference to be ninety-eight links. The fence on said sketch is designated by a dotted line; from the point D on the

same sketch to the fence, I found the difference to be fifty-nine links. I found the courses and distances in other parts of the map made by the surveyors of the highway to be nearly the same as my measurement, except the last when there was a trifling variation of a few minutes on the course.

Witness being cross-examined says: John I. Van Nostrand was the surveyor employed by the surveyors of the highways who made the survey before; he has the reputation of being a good surveyor, he is a very careful man; I don't know that I ever compared my chains with his; I cannot say under oath that my chain was right, and his was wrong. I could take the certified copy of the returns of the surveyors and lay out the road without any difficulty with the exception of the difference at the points A, C and D. I followed the map accompanying the return all the way out, and came to the same places.

Witness being re-examined in chief says, to following the line indicated on the return of the surveyors, the line would not come out correctly at the point A. The dotted line in said sketch between the points C and D was the line dividing the property of Mr. French and Mr. Polhemus. Taking the fence as it now stands, to be the line dividing Mr. French and Mr. Polhemus, there would be a difficulty in laying out the road according to the return when we got to the points C and D. It is agreed between attorney for the caveators and the attorney for the applicants, that the deed on record from Cornelius S. Nevius to Joseph French, shall be used on the argument.

WARREN HARDENBURGH, *Examiner.*

According to the copy of the description of the Clerk from the deed of Cornelius S. Nevius to Joseph French, the dotted line on said sketch from C to D, appears to be the division line between Mr. French and Mr. Polhemus. Taking the dotted line as the dividing line between French and Polhemus, mentioned in the return of the surveyors, the road could not be opened without difficulty.

Witness recross-examined. *Question*--(by Mr. Vroom). Is their either on the return of the surveyors or the map attached to it, any offset from the Amwell road to the point A marked on your sketch? Exhibit A.

Answer--No offset--not in the course on the map, but in the representation on the return to appearance.

What representation is there of an offset in the return?

Witness says--the return says the line between Mr. French and Mr. Polhemus.

Question--(by Mr. Vroom). How do you know the line set out in the return is not the dividing line between Mr. French and Mr. Polhemus?

Answer--It is not so from appearances; I mean appearances on the ground, and not the face of the paper; by that I mean there is a fence standing which appears to be the line fence. I have no further knowledge of what the line fence is than

what I see there, and the deed from Cornelius S. Nevius to Joseph French. The paper that purports to be a description from the deed from Cornelius S. Nevius to Joseph French, does not show on the face of it that it contains such a description as that of which I have spoken.

Question—(by Mr. Vroom) Does the copy of the description spoken of by you contain such a line as the dotted line contained in your sketch?

Answer—It does; it contains the courses of side lines of Mr. Frenche's land above spoken of.

P. N. BEEKMAN.

Sworn and subscribed this seventeenth of February, A. D. 1851, before me

WARREN HARDENBURGH, *Examiner*.

John J. Polhemus being recalled, says, Mr. French spoken of in my deposition was one of the applicants for said road.

WARREN HARDENBURGH, *Examiner*.

John P. Smith, a witness produced on the part of the caveators, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, says: I know where this road was laid out. It starts from the Amwell road and goes on to the road that comes from Blackwell's Mills to New Brunswick. I was present at the time the road was laid out. I am acquainted with the lands upon which it was laid. I am acquainted with the lines and boundaries between Mr. Polhemus and Mr. Probasco, Mr. Polhemus and Mr. French; have been acquainted with them for seventeen years back. The road was laid out by the surveyors upon the lines of Probasco and Polhemus, until it came to the corner of Probasco's lands. It did not then follow the line dividing Mr. Probasco and Mr. Polhemus till it come to Mr. French's land; when it came to the corner of Probasco's lands it was laid across lots—across Polhemus' land. As the road was laid it did not touch the line dividing French's and Polhemus' land. I know where the dividing line between their lands was. When the surveyors came to the corner of Probasco's land, the question was raised, where they should then go. They had quite a talk then, and Mr. Hartough told them to go on the line, and Mr. Vroom told them to go ahead and he would make it all right—that the land was bought. They went on and laid the road through Mr. Polhemus' land.

Question—(by Mr. Hartough). Did Mr. Polhemus then say there were no writings between him and Mr. French?

Answer—I don't recollect, but there is nothing to show that the land has changed hands; what I mean by that is, that there are no stakes, (This question and answer was objected to by Mr. Vroom, Attorney for applicant.—W. H. *Ex.*) or stones showing it. When lands change owners, there are generally stakes and stones showing it. Mr. Hartough, on the

part of the opponents, did object to its being laid on any other line than the line between Mr. Polhemus and Mr. French. Mr. Jacob Smith did not take any part in where the road must be laid; he said he would have nothing to do with it, and did not intend. I heard Mr. French and Mr. Polhemus say on the ground, that if they got the road there, Mr. French was to have the land, and if not, he was not to have it. I cannot say whether they said there was a deed made for the land. I think they did, however. I talked with Mr. Polhemus some time afterwards, and he said there were no writing. I had a conversation with Mr. Polhemus in reference to this land the first day of June—of a rainy Saturday, the day that Mr. Van Devere was going to put up the notices for the meeting of the surveyors. I was at work in the barn for Mr. Polhemus, and Mr. Van Devere passed in a little sly, and called Mr. Polhemus out; they were sheering sheep in the barn; when Mr. Polhemus came back in the barn, he told me what Mr. Van Devere's errand was; he said he was putting up the notices of the meeting of the surveyors to-day, and wanted him for to come upon the ground to view it; he wanted him to see the ground where the road was. When Mr. Polhemus came back, he said there had been some conversation about that piece of land, and said that he must have forty dollars for the land if he sold it to him. It was not sold then. I said to him, John, it is a poor look to make an application to the Court and call the surveyors to survey the ground and then get the land, because I had seen these things, and after the application I did not see how they could go and make dealings for land. On the following Monday me and John Polhemus were talking over it. On Monday they didn't come, and on Tuesday as we were going to dinner, or while we were at dinner, says I, John, they have not come yet, and the application is made, and I would not give a row of pins for the application. There is new laws, or else they work roads very different from what they did when I was acquainted with it. Polhemus then said he was going to Brunswick, and if they came I must tell them he would meet them there next day. Mr. Van Devere did not come then before Polhemus went away. I am certain these conversations took place on the days I spoke of.

Question.—By what do you fix the time when these conversations took place so distinct by?

Answer.—Because it was not as I was used to seeing road matters worked; because I had had a good many pulls on these road matters. I was used to seeing lands sold and dealt for before the application was made.

Question.—(by Mr. Hartough). Have you a charge in your day book of these days that you worked there, to which you have recently referred to fix the day of the month?

Answer.—I have. From this reference to my day book, I have a distinct knowledge of the days of the month when these conversations happened. After the road was laid, the next

morning or the morning after, I had a conversation with Mr. Polhemus. Says I, John, you have got the road. Yes, he says. Says I, you have not settled that land yet. No, says he. Says I, have you got any writings yet? and he said no, and I said to him, then I would not give a row of pins for it. If the road had been laid upon the lands of Joseph French and John Polhemus, it would not have gone in the same direction, and in the same place that it does now through the lands of Jacob F. Smith. At the time the application was made, there were some stakes or stones put up on the route or course of this road. These stakes were changed, I think, after the notices of the applications were put up; they went too close to Mr. French's garden for his notion; they were changed after Mr. Van Devere called at Mr. Polhemus'. The Mr. Van Devere I have spoken of is Mr. Peter S. Van Devere. I was with Mr. Beekman at the time he made the survey upon which the sketch marked exhibits A is based. The measures from the point C, on the dotted line, to the point D, were correctly stated by Mr. Beekman.

Witness being cross-examined says: I am a brother of Jacob F. Smith. I was on the ground the day the surveyors were there, and staid with them till it was over. I showed a good deal of zeal and feeling against this road on that day. When the controversy took place as to where French and Polhemus' line was, I don't know, as I took no part in it. The road does not touch my line. The surveyors had quite a talk about the line of French and Polhemus. I think I repeat Mr. Vroom's very words to the surveyors, when I said he told them to go ahead, he would make it all right; he said Mr. French had bought the land. Mr. Vroom did not say that they must go ahead and he would take the risk. I did not hear him use these words. I don't remember Mr. French's saying to the surveyors he had bought the land, nor his being asked by the surveyors if he had bought the land, for they were all through one another. I don't recollect either of the surveyors asking Mr. Polhemus if he had sold the land, nor do I remember, Mr. Polhemus telling the surveyors that he had sold the land. It was before the difficulty about French's and Polhemus' line arose that I heard French and Polhemus both say that if the road was got French was to have the land, and if not, that he was not to have.

Question.—Who was that conversation directed to?

Answer.—I don't know. I could not name who they were talking to. George W. Barkalow was present and heard French and Polhemus say so at that time besides myself; don't know of any one else. Barkalow and I were walking along together. John Polhemus told me when he came in the barn on the first of June, after he had been called out by Van Devere, that Van Devere was going to put up the notices for the meeting of surveyors that day; he also told me that he and Van Devere had had a conversation about selling the land to French. I was

surveyor of the highways at that time five years, and was out as surveyor three or four times a year. I was elected a surveyor in 1845; continued surveyor five successive years. In my experience in laying out roads I have seen a good many cases where there was a dispute in laying out a line; we had a case at Plainfield, where there was a dispute whether a certain line was such a man's line or not. There was another case at Flagtown. I can't think of any more. There never was a dispute whether a sale of land which was made before the road was laid out was valid or not. I did not work at all myself for Mr. Polhemus last year until the 30th or 31st of May, and then I was there four days. I made a memorandum of the conversations I have sworn to between Mr. Polhemus and myself in my noddle. I did not make one any where else; did not put it down on paper. I inspected my day book to find out the days on which I worked for Mr. Polhemus not long since. I looked at it this morning. I looked at it this morning for the purpose of satisfying myself when these conversations took place. Since the day the road was laid out I have not heard either Mr. French or Mr. Polhemus say that in case the road was not laid out the land was to come back to Polhemus. After the day the road was laid out, Mr. Polhemus never said to me that he had agreed to sell the land. Three of the stakes along the road were changed; one stood by Mr. French's garden; they were changed after the notice of the meeting of the surveyors had been put up. If the stakes had not been changed from the place where they originally were, the road would not have been carried from the point C along the dotted line on the exhibit marked A. The next morning, I think it was on Saturday, (witness being shown an Almanac, ascertained that Saturday was the 22d, the day the surveyors met. *W. H. Ex.*) after the surveyors met, I had the conversation with Mr. Polhemus, which I have spoken of. We were alone; there was nobody by. It might not have been the day, but one after, because that day was Sunday.

Witness being re-examined in chief, says: There is a private road within a few hundred yards of this road, and running in nearly the same direction up to Mr. French's buildings. There is a private wagon way that leads to the same spot where this one is. I never heard of any difficulty from persons using that road.

Witness being re-cross-examined, says: There are eleven gates and bars on this private road between the Amwell road and the road running from Blackwell's to Brunswick. I keep a memorandum in my book of the times I buy lime.

JOHN P. SMITH.

Sworn and subscribed this 7th day of February, A. D. 1851, before me, WARREN HARDENBURGH, *Examiner.*

Cornelius W. Wyckoff, a witness produced on the part of the

covenanters, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, on his oath, says: I am acquainted with the route upon which this road lays. I am acquainted with the line dividing the lands of Mr. Prohasco and Mr. Polhemus, and Mr. French and Mr. Polhemus. I was upon the grounds when this road was laid, and when the freeholders reviewed the road. I saw the stakes which were put up by the surveyors, and conceded by all persons to be the line of the road. The line of the road, indicated by the stakes, was upon the line dividing the lands of John Prohasco and John Polhemus, till it came to the corner of Prohasco's land. I was present when Mr. Beekman made the survey, from which the sketch marked exhibit A was made. I was chain-bearer. From the point C to the point D on said sketch, the road was not laid on the line which was formerly French and Polhemus' land. The fence which stands upon the dotted line on said sketch has always been considered the line fence between French and Polhemus. There is no fence where the road was laid out, nor any appearance of a dividing line that I see. I have been acquainted with that land, and known it to be the dividing line between French and Polhemus for nearly forty years.

CORNELIUS W. WYCKOFF.

Sworn and subscribed this 7th day of February, A. D. 1851, before me, WARREN HARDENBURGH, *Examiner*.

A paper writing, purporting to be a map or sketch of the route of a certain road running from the Amwell road to the road from Blackwell's to New Brunswick, produced and marked exhibit A on the part of the covenanter, February 7th, 1851.

WARREN HARDENBURGH, *Examiner*.

A paper writing, purporting to be a copy of a description of a certain property, produced and marked exhibit B on the part of the covenanters, February 7th, 1851.

WARREN HARDENBURGH, *Examiner*.

[Copy.]

NEW BRUNSWICK, January 22, 1851.

DEAR SIR:

Will you be so kind as to send me the description of the premises conveyed by Cornelius S. Nevius to Joseph French? The grantor and grantee both lived in the township of Franklin, county of Somerset, at the time of making the deed, where they still reside. The premises are situated at Middlebush, in the township of Franklin, and were conveyed along with another piece of land to Cornelius S. Nevius by John Van Liew, about 17 or 18 years ago. They adjoin the lands

of John Polhemus, (formerly of Peter L. Suydam,) Jacob F. Smith, John S. Prohasco, and others. The date of the deed from Nevius to French I do not know. I do not want a certified copy of the deed; all I want is a copy of the description as it stands in the deed from Nevius to French. Please be so kind as to write me whether there is deed on record from John Polhemus to Joseph French, dated since the 1st June. Write me the amount of your charge.

Most respectfully,

Your obedient servant,

WM. HARTOUGH.

H. D. JOHNSON, Somerville, N. J.

[Copy.]

Beginning at a stake standing in the north-west corner of Peter L. Suydam's land; thence north seventy-one degrees twenty-eight minutes, west twenty-four chains and seventy-six links to a stone, being corner of woodland of Joseph V. Van Doren; thence south nineteen degrees and thirty minutes, west twelve chains and ninety-six links to a stake standing in the line of woodland of John Smith, formerly Peter Voorhees; thence in the line of the same south seventy-one degrees and ten minutes, east twenty-four chains and seventy-six links to a stake; thence north nineteen degrees and fifteen minutes, east thirteen chains and fifteen links in the line of land of Peter L. Suydam to the place of beginning, containing thirty-two acres and thirty-one hundredths of land more or less. Together, &c.

The deed from John Polhemus to Joseph French is recorded in Book L, No. 2, of Deeds, pages 444, 445, 446, August 20th, 1850. Fees \$100, placed to your account.

Yours, &c.,

HENRY D. JOHNSON, *Clerk.*

Exhibit B. On the part of the Caveators, Feb. 7th, 1851.

WARREN HARDENBURGH, *Ex.*

Further examination of witnesses taken in the above matter on rule to show cause in the Somerset Pleas before the subscriber, a Master in Chancery of New Jersey, on the 17th day of February, A. D. 1851, in the presence of George A. Vroom, attorney for the applicants, and William Hartough, attorney for the caveators, at the house of Henry Smith, inn-keeper, in the city of New Brunswick, service of notice of taking said depositions being admitted by the attorney of the caveators.

WARREN HARDENBURGH, *Examiner*

Peter S. Brokaw, a witness produced on the part of the applicants, being first duly sworn according to law, on his oath says:—I reside within about half a mile of this road. I know John Polhemus and Joseph French. I had a conversation with John Polhemus in regard to his selling a strip of land along that road to Mr. French. [All conversation with Mr. Polhemus by the witness objected to.—W. H. *Ex.*] He stated to me that he and Mr. French had agreed to buy and sell. I understood

it was a strip of land west of where the road would come. He stated to me it was for the purpose of having the road straight. It was something new to me that there was an offset in the line, and therefore I asked him more particularly about it. We talked together about the propriety of having the matter settled before the road was made, or else they would have to make a new application. This conversation took place about the 28th of March, 1850, at my house. I fix the time because I helped to move Mr. Gulick on that day, and Mr. Polhemus and his wife were at my house on a visit in the evening of that day.

Witness being cross-examined, says:—This was Mr. Peter Gulick. He lived at the village of Middlebush. He was a tailor by trade. I moved him to Griggstown. I further recollect the time that I moved Mr. Gulick, because there was a young gentleman at my house the same evening who was sparking a girl there. This was Thursday evening. He came again Sunday evening and he got the mitten, and the Monday following was the first of April. This young man has not been to my house since on business of that kind. The girl left on the first of April. This girl was Maria Scott. The gentleman was Evert B. Staats. He has worked for me since that time. He worked for me in hay and harvest in the year 1850—the summer time. He did not work for me any last spring. He commenced to work for me about the first of June, 1850. I live about half a mile from this road—the east side of the road. I suppose this young man worked for me somewhere about the time the road was laid out. Mr. Polhemus never visited my house upon any other occasion than I have spoken of until last winter. There was no conversation between Mr. Polhemus and myself last winter about this land. I know the piece of land in question of my personal knowledge. To the question—This piece of land does it lie between the road as laid out and the line of Mr. French and Mr. Polhemus? Witness answers Yes. To the question—Do you know of your personal knowledge that this road was sold before the road was laid out, except what you know from other people? Witness answers I do not. At the time the road was laid out the land was in the possession of Mr. Polhemus, I suppose. He worked it. I don't know that there was anything on the ground to mark it as the dividing line of farms at the time the road was laid. I was not on the ground when the road was laid. I have been pretty much over all the route of that road recently. I can't say that there is anything now on the line of this road at this place to mark it as the division of farms. I do not know now from anything but the representations of persons that the land has been sold by Mr. Polhemus. I was never present when any bargain was made between Mr. Polhemus and Mr. French for the sale of this land. This road does not touch my lands in any way, nor am I in the least interested in the road. I do not contribute anything towards the expense of litigating the suit.

PETER S. BROKAW.

Sworn and subscribed this 17th day of February, 1851,
before me, WARREN HARDENBURGH, *Examiner.*

Abraham T. Beekman, a witness produced on the part of the applicants, being first duly sworn according to law, on his oath says:—I was one of the surveyors of the highway in the county of Somerset in June last. I was one of the surveyors who laid out a road in the township of Franklin on the twenty-second of June. We commenced on the Amwell road, on the line between Polhemus and Probasco, and we run upon the line of Polhemus and Probasco until we came to a corner, and when we came to that corner we stopped, and Mr. Polhemus stated to us that he had sold a piece of land to Mr. French, and Mr. French likewise stated that he had bought that streak of land from Mr. Polhemus up to the line of Mr. Smith between Polhemus and Smith, and stated that was the line between Polhemus and French. One had sold and the other had bought. We consulted together, and the surveyors were all satisfied that that was the line, and from the corner of Probasco to the lines of Smith and Polhemus they showed us a post, or a rail, or stake as a mark for us to run to. Not one word was said that day about its being a conditional sale that I heard.

Witness being cross-examined, says:—I did not hear it then denied that there was a sale of the lands. To the question—Who raised the question when you came to the corner of Polhemus' and Probasco's land about the place where you were going to run, being the line of French and Polhemus? Witness answers, Mr. Polhemus raised the question. Mr. Polhemus said he had sold it to Mr. French, and Mr. French said he had bought it, and showed us to a stake on the line of Mr. Smith where the line was from Mr. Probasco to Mr. Smith. I was particular in asking the question whether they considered that the line between them, and they answered me that it was, and we were called to lay the road upon the line. To the question, Did any one say the fence standing near where the road was laid was the line between Polhemus and French? Witness answers, They said it was formerly the line, but one said he had bought, the other said he had sold. To the question, Who were they that said this? Witness answers, Polhemus and French. To the question, whether any one else then spoke about that line? Witness answers, You (William Hartough) spoke about it. You said something or other about that being the line. I think you said that fence was the line. You said so, but the landholders said not. To the question, Did the surveyors undertake to decide between the disputants about the line where it was? Witness answers, They (the surveyors) got together and they decided we were obliged to go where the landholders showed us where the line was. I don't recollect whether either of them (the surveyors) asked whether any title-deeds existed between the parties in relation to this land. To the question, Did I (William Hartough) ask French in the pre-

sence of the surveyors to produce his deed for that piece of land? Witness answers, I don't recollect. To the question, Did I (William Hartough) ask Mr. French and Mr. Polhemus, in the presence of the surveyors, whether any writings existed between the parties in relation to this piece of land? Witness says, I don't recollect. To the question, Did the surveyors have Mr. French and Mr. Polhemus apart from the bystanders on the ground? Witness answers, I don't recollect. To the question, Did the surveyors ask French and Polhemus if they considered that the line? Witness answers, Yes and they said it was. To the question, Did the surveyors lay the road according to the representations of Mr. Polhemus and Mr. French? Witness answers, They (the surveyors) laid the road where they (French and Polhemus) said the line was between them. To the question, Was it not there denied by me (Hartough) or somebody else upon the ground that that road was laid upon the line of French and Polhemus? Witness answers, I don't know but what it was by Mr. Hartough. To the question, Did the surveyors that day have a consultation apart from the bystanders with Mr. Vroom? Witness answers, I don't know that they had. To the question, Did Mr. Vroom say to the surveyors that day, "Lay the road where we show you and we will take the consequences?" Witness says, I don't know that he did say that. To the question, Did Mr. Vroom say anything like that? Witness says, I don't recollect. The surveyors returned the road according to the map made by our practical surveyor, to the best of my knowledge. I don't recollect whether the return corresponded with the application. We generally go with the application—have a starting point and ending point. I guess I read over the application and the rule of the court appointing me that day. We generally do. At the time the return was presented to us for our signatures, I don't recollect that there was an objection made. I don't recollect that you (Hartough) said to the surveyors that their presenting that return was an outrage because it was different from the road as laid out. I don't recollect THAT you (Hartough) objected to the return, because they represented the road to have been laid upon the line of French and Polhemus, whereas it was not so in fact. To the question, If that fence was the line, was the road laid according to the rule of the court appointing the surveyors? Witness answers, No, not if that fence was the line. I do not know of my personal knowledge that the road laid between French and Polhemus was on the line. I know no more than what they said. Being shown a certificate copy of the map and return of surveyors, witness says the piece of land of which I speak lies between the points A and B. My name is Abraham T. B. Beekman. Upon the direct examination, witness says that in writing his name he joins the T and B together.

A. T. B. BEEKMAN.

Sworn and subscribed, this 17th day of February, A. D. 1851, before me,

WARREN HARDENBURGH, *Examiner.*

Cornelius S. Nevius, a witness produced on the part of the applicants, being first duly sworn according to law, on his oath says:—I know these parties, French and Polhemus, and live neighbors to them. I don't know that I have heard any conversation between these parties in regard to the strip of land spoken of. I have frequently had a conversation with Mr. John G. Polhemus about it. He consulted me about the sale of this strip of land. I advised him to sell it to Mr. French. He told me he asked forty dollars an acre for it. I told him he could afford to let Mr. French have it at thirty-five dollars an acre. He told me after that that he had sold it. I can't fix the time when this was. It was before the surveyors met on the ground. The distance of the road spoken of, from the beginning to the ending point, was one mile and five eighths, so I was told by the practical surveyor. In going from the Amwell road to the road leading from Blackwell's Mills to New Brunswick, there are fifteen gates and bars. By this new road in going from Blackwell's Mills to Buralow's tannery, the distance gained would be a mile and a quarter—I mean if in going from the two points I take any public open road. Mr. Peter S. Van Dervere has no way in going to the Blackwell's Mills road or the Amwell road except by permission on mere sufferance.

Witness being cross-examined, says:—This road runs nearly in the same direction that the Delaware and Raritan Canal does. There is considerable difference in the course which this road runs from that taken by the canal. They incline to each other, or the one end of the road is nearer to the canal than the other. The one end of the road is over a mile and a half from the canal. The other end of the road, I should suppose, was something like six-eighths or three quarters from the canal. From Blackwell's Mills to the canal I would suppose the distance about three hundred yards. To the question, If the course of the road were south 21 and a half degrees west, what would be the course of the canal? Witness answers, I am no surveyor, and don't know anything about the courses and degrees. To the question, Does the canal incline to the south or to the west of the line of that road? Witness answers, The answer to this question will be found in a sketch of the bearings of this road marked A presented by the witness. [W. H. *Ex.*] From Blackwell's Mills to Boralow's tannery, by the way of the canal and the Amwell road, the distance is in the neighborhood of four miles. I have not measured the distance.

It is agreed between the parties that the map of Somerset county, recently made by Loyd Van Dervere, shall be offered in evidence.

WARREN HARDENBURGH, *Examiner*

I do not know of my personal knowledge whether Mr. Polhemus sold the land to French before the application to the court. I don't know but what I have had conversations with Mr. Polhemus, and others interested in this road, recently. I have on their behalf made an offer to compromise the suit. I contrived the whole thing myself, and to-day is the first that I offered it. I made the offer to Mr. Smith, one of the caveators. I told him that if he would drop this suit, and let us extend the time of opening the road until the first day of May, 1852, we would let the road lay as it is, and each party defray his own expense hitherto incurred; and further, I now offer that Mr. Polhemus and I will give Mr. Vroom and Mr. Hartough ten dollars a piece for the sake of peace and settlement. From the Middlebush church to the Delaware and Raritan Canal, by the Amwell road, the distance is called three miles; from Blackwell's mills to the Middlebush road the distance is called scant two miles. The south end of this new road lays nearer the Middlebush road than the north end does. There is a driftway or gateway laid from the Amwell road to Mr. French's buildings across John Polhemus' and Jacob Smith's lands, and on a small part of Mr. French's land. It runs the same course of this road until it gets to the middle of Jacob Smith's farm and then it goes up in a westerly direction until it takes another turn and goes southerly to Mr. French's buildings. This new road crosses it. From French's buildings to the Blackwell's mill road there is a private road which any one may use as he pleases. It is a sufferance road—I have not rode it myself over eight or ten years. There are some few who use it; I don't know how many. To the question, Is there much traveling across there? Witness answers, Considerable. It is used more in the winter when the bars are down than in the summer. I suppose Mr. Van Derveere and Mr. French would be rather more benefitted by this road than any other two individuals that I could name. A private road would not answer their purposes as well as a public road. To the question, Of the men through whose lands this road runs, how many oppose it? Witness says, I thought Mr. Smith stood alone—that is, in going to the expense of stopping it. To the question, Who don't want the road? Witness says, Mr. Smith, uncle Jacob Wyckoff, about the other caveators I don't know. I sent Lou Van Doren word if the road came, whether he opposed it or not, I would give him twenty-five white oak posts. I don't know that Mr. Van Derveere has ever been denied communication there across to the Amwell road. Some part of this road lays upon the private road. The communication is as direct for him as this road would be.

Direct examination being resumed, witness says:—This private road that I speak of, from Van Derveere's to the Blackwell's mills road, is not laid out that I know of. It is merely a sufferance road. The public ride it. This compromise that I made to Jacob F. Smith was not accepted.

Sworn and subscribed this 17th day of February, A. D. 1851, before me,

WILLIAM HARDENBURGH, *Examiner.*

George W. Barcalow, a witness produced on the part of the applicants, being first duly sworn according to law, on his oath says:—To the question, Mr. John P. Smith, who was a witness examined in this cause some time ago, stated that on the day this public road was laid out by the surveyors, that you and he were walking together, and that you and he heard Mr. Polhemus and Mr. French both say that if the road was got through French was to have a certain piece of land, if not, that he was not to have it. Now were you on the ground the day the road was run by the surveyors? Witness says, I was not; I was there the day the freeholders were on the ground. I never heard either Mr. French or Mr. Polhemus say anything about this—if I have, I have forgotten it. I live close by this road. I know Mr. French and Mr. Polhemus.

Witness being cross-examined, says:—I was not there the day the road was laid by the surveyors, that I can remember. It appears to me I was not there. I might have been there and have forgotten it. I don't say positively that I was not. My impression is that I was not. I could see the surveyors from my house. I am acquainted with the ground over which the road lays. I don't exactly know the course of that road. I know where it begins and where it comes out. [Everything, except as to the facts testified to on the direct examination, excepted to.—*W. H. Ex.*] I should judge the distance from this road to the road running by the canal to be from a mile and a quarter to a mile and a half. [This question objected to.—*W. H. Ex.*] To the question, Is this road necessary? Witness says, I can't answer that question. I don't know. To the question, Was any deception practised upon you in getting your name? Witness says, Mr. French and Mr. Van Dervere both were at my house and I refused to sign the paper. I asked them if Mr. Smith and Mr. Wychoff were opposed to the road, and they signified that they (Smith and Wychoff) would not oppose it, and on those conditions I signed it. The direct examination being resumed, witness says, I recollect positively that I was on the line of the road the day the freeholders were there. I was not there more than once when public officers were there on the line of that road. I should suppose I would be as likely to remember the one occasion as the other. One was a little longer. Whether I was there or not, I don't remember hearing anything said by Mr. Polhemus and Mr. French.

Witness being re-cross-examined, says:—In going from my place to Blackwell's mills, I suppose it would be a little nearer across by the new road. To the question, You might have been there the day when the surveyors were there and have forgotten it, might you not? Witness says, I don't think I was

there. I must be very much mistaken if I was. I don't know of my being there more than once.

GEORGE W. BARCALOW.

Sworn and subscribed this 17th day of February, A. D. 1851, before me,

WARREN HARDENBURGH, *Examiner.*

This witness, Peter S. Van Dervere, objected to by the caveators on the ground of interest.

WARREN HARDENBURGH, *Examiner.*

Peter S. Van Dervere, a witness produced on the part of the applicants, being first duly sworn according to law, on his oath says:—[All conversations with other persons objected to.—*W. H. Ex.*] Mr. French and Polhemus have told me this strip of land in controversy had been sold. They told me the price and terms. It was before the last application. I have heard those persons talk several times together about this matter before it was consummated. I recollect going to Mr. Polhemus' house at the time they were shearing sheep in the barn. Polhemus came out of the house. I did not go there to talk about the sale of that piece of land by Polhemus to French. I went there to get Mr. Polhemus' name on the notice for the meeting of surveyors. I had no conversation that day about the sale of that piece of land or the price of it.

Witness being cross-examined, says:—I can't tell what day of the month I was at Polhemus'. I think it was somewhere about the forepart of June. I did not see Mr. Smith there. I knew Mr. Polhemus had not made Mr. French a title for that land before the road was laid. There were no writings between them in relation to this land that I know of. All the bargaining I heard of was in words.

PETER S. VAN DERVERE.

Sworn and subscribed this 17th day of February, A. D. 1851, before me,

WARREN HARDENBURGH, *Examiner.*

John Polhemus, a witness who was sworn on the 7th day of February, being re-called by the applicants, says:—I recollect the day when I was working in the barn, and Mr. Van Dervere came there on horseback. He came to get me to sign the paper to call the surveyors together. There was nothing said between me and Mr. Van Dervere about my selling the land to Mr. French. When I returned to the barn I did not tell Mr. Smith the land was not sold at that time to Mr. French. It was sold at that time. I might have told him. There were no writings, though I don't recollect that we talked anything about it. I think Mr. Smith is mistaken when he says that on the day when the road was laid I stated that Mr. French was not to take the land in case the road was not laid out. The

bargain between Mr. French and me was as firm as it could be without any writings between us.

Witness being cross-examined, says:—I am certain the time that I referred to was the time when I was shearing sheep, and the time when Mr. Smith says in his evidence was on Saturday. I am certain I did not say anything upon the ground that day, as Mr. Smith says I did, namely, that if we got the road then Mr. French was to have the land, and if not, he was not to have it. There was considerable conversation there that day. The surveyors called me and Mr. French aside from the bystanders and had a talk with us at the corner. I can't say all what was said and what was not said.

JOHN G. POLHEMUS.

Sworn and subscribed this 17th day of February, A. D. 1851, before me,

WARREN HARDENBURGH, *Examiner*.

Mr. Van Derveer being recalled, and examined by the caveators, says:—To the question, Do you contribute anything towards the expense of getting this road? Witness says, I am not legally bound to. Question being repeated, witness says, I am not paying anything now. To the question, have you paid anything towards the expenses of getting this road? Witness says, Yes. To the question, Do you expect to pay anything towards the expenses of this law suit? Witness says, I expect to pay my part. I put up the notices of the meeting of the surveyors and the notices of the application without pay.

This cross examination objected to by the applicants.

WARREN HARDENBURGH, *Examiner*.

Witness being cross examined, says:—There is only an honorable obligation on my part to contribute towards the expenses of this suit—no legal obligation. I have entered into no undertaking to contribute. I have not paid fifty dollars out of my own pocket.

WARREN HARDENBURGH, *Examiner*.

Witness being re-called and examined by the caveators, says:—I have not paid over forty dollars.

WARREN HARDENBURGH, *Examiner*.

John S. Polhemus being recalled on the part of the caveators, says:—I do not contribute anything to the expenses of this suit, nor do I expect to.

WARREN HARDENBURGH, *Examiner*.

Subscribed and sworn this 1st day of June, A. D. 1851,
before me,

WARREN HARDENBURGH,
S. C. Commissioner.

David M. Voorhees, a witness produced on the part of the prosecutor, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in the above stated cause, on his oath says: I was one of the surveyors of the highways who laid out the road here spoken of. The surveyors met at the house of Peter P. Wortman. They put up their horses and took dinner there. Don't know who paid the bills of the surveyors that day. I believe the surveyors were all paid for their services that day two dollars a-piece. That's what they charge. When the surveyors met at Mr. Wortman's house they organized by appointing one of their number to act as chairman. Mr. Abraham T. B. Beekman was appointed chairman. When the money was paid, Mr. Beekman received it in behalf of the surveyors. I don't know what Mr. Beekman said to the applicants for the road as to what sum the surveyors were to receive. I was not by when Mr. Beekman received the money from the applicants. Mr. Beekman handed me two dollars. I did not nor do I know which of the surveyors did say anything to the applicants for the road about the sum we were to receive, except Mr. Beekman, and I don't know that he did. The conversations as to the sum we were to receive were had among ourselves. It was after the return was made out and signed by us that Mr. Beekman handed me the money. I don't know that Mr. Beekman said anything about our bills at the tavern being paid. Whenever I have been out on the road our bills have been paid without our saying anything about it. I am a young hand, but was told by the older ones that it was customary. I have met with the surveyors at a tavern once before this road was laid, and several times since. When we laid this road we met at a tavern—at Mr. Wortman's. When we met before at a tavern, when we were ready to go the landlord told us our bills were all paid by the applicants. Whether they paid or not, I can't say. I don't know that the applicants for the road had any more conversation with Mr. Abraham T. B. Beekman than they had with the rest. I don't know that on the ground the day the road was laid the surveyors had any conversation with any of the applicants apart from the bystanders. I know some difficulty occurred after we had run the first course when we came to the corner of lands owned by Mr. Probasco and Mr. Polhemus. I can't say positively, but it runs in my mind that Mr. Polhemus and Mr. French, just at that place, were talking with the surveyors apart from the bystanders. I think the surveyors were all there; four of them, at least, were there. I don't exactly recollect about all six. I don't recollect that Mr. Beekman was more active in behalf of the road than the other surveyors—more than his duty as foreman re-

quired him to be. I don't think Mr. Beekman was a more active advocat e for the road, or acted more in its favor than any other of the surveyors. I don't know that there were any more active in behalf of the road than Mr. Beekman. I don't recollect that Mr. Beekman called Mr. French and Mr. Polhemus aside at that point of the road. Several questions were asked by myself and others, of different people, at that corner, as to who owned the land, and Mr. Beekman might have called Mr. French and Mr. Polhemus aside at that place, but I don't recollect it; he was talking with them, but not separately from the surveyors; they were not called out one side to my recollection.

Witness being cross-examined, says: I have been a surveyor of the highways one year. I was out during that year some ten or twelve times—not over ten times. On each occasion I was paid for my services two dollars, except on one occasion when there was an adjournment, and when we met again we received for our services three dollars. On those occasions I expect our tavern bills were paid by the applicants, at least we did not pay anything, and on one occasion the applicants told the landlord to make out our bills and they would pay them. I live five or six miles from Wortman's tavern. Andrew Fleming lives something like fourteen miles from Wortman's tavern.

Witness being re-examined in chief says: I don't know of my personal knowledge who paid the money to Mr. Beekman.

DAVID M. VOORHEES.

Sworn and subscribed this twenty-first day of June, A. D. 1851, before me,

WARREN HARDENBURGH, *Commissioner.*

David Mercereau, a witness produced on the part of the prosecutor, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, on his oath says, (being shown a certified copy of the return of the road)—I have seen it before. I did survey that road according to the return. I made a map of the survey (map was produced by witness and offered in evidence as exhibit A.) When I made my survey I began at the southerly side of the Amwell road at the place designated in the return of the surveyors, nineteen links from a stone dividing the lands of Mr. Probasco and Mr. Polhemus. Running the course designated by the return, I found from the first station to the second to be thirteen chains and eight links. The second station came out in the field at the corner of Probasco's land, but not from appearances on French's land. From the second station to the fence which appeared to divide the lands of French and Polhemus, was ninety-eight links. I continued the same course from the second to the third station. From the second station to the third I found the distance to be thirteen chains and sixteen links. From the third station to what appears to be

French's line, the distance was fifty-nine links. I have designated French's line on the map marked exhibit A by the dotted line from Probasco's line to Smith's line. There is a fence now standing upon the line on said map represented as the dotted line. From station third I run the same course to the fourth station. The distance from the third station to the fourth was sixteen chains seventy-seven links; these courses as far as the fourth station corresponded with the stakes, except with the difference of a few minutes. We hardly ever get two compasses to track alike; I sat my compass at station three, and took a backward observation to station two, and a forward observation to station four, by which I got the true course of the road. In running after other compasses I got the true course from monuments put up on a survey made by them. From station four I run the same course to station five. From station four to station five I found the distance to be sixteen chains and seventy-nine links. There was a stake put up at station five, but we did not reach the stake—we ran twenty links westerly of the stake. The line indicated by the return was twenty links westerly of the stake standing at station five. To the question.—From station five where did you run? Witness says—I continued by the same course to station six. To the question.—How far did you find the distance from station five to station six? Witness says—Eight chains and thirty-eight links. To the question.—Did the line called for by the return touch the stake standing near station six? Witness says—I ran twenty-seven links westerly from that stake. To the question.—Did the line called for by the return touch that stake? Witness says—It ran twenty-seven links westerly from it. To the question.—From station six where did you run? Witness says—I ran to station seven. To the question.—What was the distance from station six to station seven? Witness says—Thirteen chains, forty-five links, is the distance called for by the return. To the question.—From station six to station seven did you run the course called for by the return? Witness says—Yes. To the question.—Did the line and the distance called for by the return touch the stake standing near station seven? Witness says: The distance overrun the stake twenty-seven links—it was further west than the stake. To the question: From station seven where did you run? Witness says: To station eight. To the question: What was the distance from station seven to eight? Witness says: Eight chains seventy-two links. To the question: From station seven to eight did you run the line called for by the return of the surveyors? Witness says: Yes. To the question: From station eight where did you run? Witness says: To station nine. To the question: What was the distance from station eight to nine? Witness says: Ten chains and sixty links. To the question: From station eight to nine did you run the road called for by the return? Witness says: Yes. To the question: Between station eight and nine did the line called for by the return touch any building? Witness says:

Agreeably as I ran it, it came three or four links on to a cow house; the line that I ran as the centre of the road came three or four links on the easterly end of the cow house. To the question: Was the line that you ran as the centre of the road in the return of the surveyors? Witness says: Yes. To the question: From station nine where did you run? Witness says: To station ten. To the question: What was the distance from station nine to ten? Witness says: Six chains and eighty-one links. To the question: From station nine to ten did you run the line called for by the return? Witness says: Yes. To the question: Did the line at station ten come out in the field or at the corner of the field? Witness says: It came twenty-seven links westerly from the corner of Van Doren's land. To the question: Did it come out on Mr. Wyckoff's land? Witness says: It came out twenty-seven links westerly on Jacob Wyckoff's land. To the question: Was it the centre of the road that came out twenty-seven links from the corner of Van Doren's land? Witness says: It was so intended to be. To the question: Was the line that came out twenty-seven links westerly from the corner of Van Doren's land called the centre of the road in the return of the surveyors? Witness says: I ran agreeable to the return; that line was the centre of the road which ran twenty-seven links westerly from the corner of Van Doren's land. To the question: From station ten where did you run? Witness says: I ran to the road running from Blackwell's mills to New Brunswick. To the question: From station ten to that road did you run the line called for by the return of the surveyors? Witness says: Yes. To the question: How far is that line from the line of Van Doren's and Wyckoff's land? Witness says: Twenty-seven links west. To the question: Was this line the centre of the road? Witness says: I ran it agreeably to the return, and that line was the centre of the road. To the question: If this road was two rods wide would it touch the line of Van Doren and Wyckoff's land? Witness says: It would not touch it by two links. To the question: Would the easterly line of the road be two links west of Van Doren's line? Witness says: Yes. To the question, (being shown the certified copy of the return:) Is station three and four lines of Smith's land? Witness says: Yes. French's land is between stations four and five, Van Dervere's land is between stations five and eight, Jacob Wyckoff's land is from station eight to ten, and from thence on the westerly side of the road to the road from Blackwell's mills. To the question: Explain the dotted lines on this map? Witness says: The road represented by the dotted lines beginning at the star represents the road leading from Middlebush to the road that runs from Blackwell's mills to New Brunswick, and runs through Smith's, French's, Van Dervere's and Wyckoff's land. The road represented by the dotted lines marked represents a road running from the aforesaid described road near the house of Jacob Smith, to the Amwell road—running through lands of Jacob Smith and John Polhemus.

Witness being cross-examined, says: I don't know what part of the road, commencing at the star, has ever been laid out. Two rods will be thirty-three feet. The stake at the fourth station was right. From the fourth to the sixth station I departed from the stakes twenty-seven links, running by the return. Twenty-seven links is seventeen feet and eighty-two hundredths of a foot. I made this survey yesterday; Mr. Barcalow and Smith assisted me. Mr. John Smith and Barcalow carried the chain. Mr. Jacob Smith employed me to make the survey; he was on the ground part of the time at the beginning. I believe Mr. Wyckoff went along with us by the chain bearers. I don't recollect anybody else. Mr. Wyckoff pointed out the stake at station six, that the surveyors had run as the centre of the road. I agree with the return of the surveyors from the stone to station four with but a trifling variation. I can't tell how it came that there was a difference of twenty-seven links in the stakes set up by the surveyors and the course that I run by the return. When we came to station six, I continued the same course through, and run one point of compass from the road up to station six. To the question: Is not the difference of twenty-seven links made by two surveyors in running a course of twenty-five chains and seventeen links a very great difference? Witness says: If they ran the same course that I did, there ought to have been no difference. I don't know what course they run, but I run by the return. I run a straight line from station one to six. Being shown a certified copy of a map and return, witness says, from station one to six on this map, is a straight line all the way through. I have not frequently been a witness in Court in matters appertaining to surveys—not more than once or twice in my life. To the question: Are you satisfied that your instruments are the only correct ones that are to be found? Witness says, certainly not. To the question: When you make a survey, do you consider yourself infallible, or are you liable to err as other men are? Witness says: Every surveyor is liable to err in certain cases. The courses laid down on this certified copy of a map from station six out to the road, are the same as they are in my map. With the exception of that twenty-seven links at station six, the distances are pretty much the same. Mr. Smith called on me to survey for him; he said he wanted me to run a road that had been laid out from the Amwell road to the road from Blackwell's Mills; he did not say anything about this road having been laid out wrong. I had no further conversation with him except that he told me he wanted me to run the road.

Witness being re-examined in chief, says: I think the line from station one to station six is a perfectly straight line. I believe my compass is a good instrument; I have always found it so. The engineers on the canal and railroad have used it a good deal; they say they never run with a better one. I made this survey with care—set my instrument, and run the line as well as I could. I took my back observation to have it

straight; when I got two stations on the road by taking back observations, I could have run a straight line, even if the needle had varied. After I ran from station one to station three, by taking back observations, I could take a straight line even if I had no needle at all. I ran this line in that way by back observations. To the question: From your survey are you satisfied that the departure from a straight line was made by the practical surveyor on the ground that day, or by yourself? Witness says: I can't answer that question; can't tell anything about it. To the question: Are you satisfied that you ran a straight line from station one to six. Witness says: I am satisfied I run it straight, of course. I measured my chain before I ran out the road. My chain was correct; I measured it four or five days ago with a scale, and when I got up to Mr. Jacob Smith's I measured it again on a plank with a ten foot pole, and it came out to a hair's breadth; I was satisfied before it was correct. To the question: Did you overlook the measuring of the ground with the chain? Witness says: The chain-bearers attended to the measuring. The line which I run from station one to station six was the line called for by the return as the centre of the road. At station six the line came west of the stake shown me as the stake put up by the surveyors twenty-seven links. From station seven to the road leading from Blackwell's Mills, the line called for by the return as the centre of the road, runs twenty-seven links westerly of the stakes put up by the surveyors all the way through. I have no doubt in my mind that the survey made by me was correct all the way through. From the road indicated by the dotted line on said map marked O, to the road in question, the distance, I think, was twelve chains and twenty-two links.

DAVID MERCEREAU.

Sworn and subscribed this 21st day of June, A. D. 1851, before me, WARREN HARDENBURGH, *Examiner*.

John P. Smith, a witness produced on the part of the prosecutors, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, according to law in the above stated cause, on his oath says:—I heard the greater part of Mr. Mercereau's examination; I assisted Mr. Mercereau in making the survey—I was one of the chain-bearers. The other chain-bearer was George W. Barcalow; Cornelius W. Wyckoff was with us on the ground; I saw Mr. Mercereau's chain measured—I helped him measure it. The distances chained by us from the Amwell road through to the road leading from Blackwell's mill to New Brunswick, was correctly chained; so far as I have anything to do with it, it was as fairly done as it could be. The distances stated by Mr. Mercereau from station to station all the way through, was correctly stated as near as I can remember; so far as I remember this was according to the chaining, as by reference to Mr. Mercereau's map; I was on the ground

with the surveyors of the highway when they laid this road; the stakes spoken of at stations five six and seven on Mercereau's map, were the stakes put up by the surveyor. Mr. Cornelius W. Wyckoff showed Mr. Mercereau the stakes; the stake at station five is twenty links easterly from the line run by Mr. Mercereau; the stake standing at station seven was twenty-seven links easterly from the line run by Mercereau. To the question: What was the distance from the stake standing near station seven to station seven? Witness says: Twenty-seven links. The stake near station seven stands easterly from station seven. To the question: Do you recollect the distance from the stake standing near station seven to station seven by measurement on the map? Witness says: From my measurement, in running from station eight to nine, I recollect the road struck the hovel of Mr. Wyckoff—the centre of the road came a little on the hovel, may be a foot or two; when I came to station ten at the corner of Van Doren's land, the centre of the road did not touch the corner of Van Doren's land; the centre of the road went to the west of the corner of Van Doren's land; it was twenty-seven links and a half from the corner of Van Doren's land. I was at Peter D. Wortman's the day the road was laid, and the surveyors met there; I was present when the surveyors were paid; I saw the money handed to them; I don't recollect how much was handed them; the money was paid to Mr. Beekman; I don't know how many dollars were given to Mr. Beekman—it was in bills; I saw Mr. Beekman hand the money out to the other surveyors; I don't remember how much he handed out a piece to them; Mr. Joseph French told me they paid them two dollars a piece; Mr. Joseph French is one of the applicants for the road; Mr. Peter S. Van Devere handed the money to Mr. Beekman; I do not know in any other way than from Mr. French's statement, how much money the surveyors received a piece. Reference being made to depositors taken on a will to show cause, and the part of page 13 contained within brackets, of the evidence taken on the coveators being read, the witness says: Upon reflection, I am satisfied that my deposition as read to me is entirely correct.

The attorney for the defendants excepted to the last above evidence. WARREN HARDENBURGH, *Commissioner*.

Reference being made to page 16 of depositions marked in brackets, of depositions taken on a rule to show cause, and such part being read to the witness, and witness being asked whether the time spoken of by him in such depositions was the time when the surveyors were there, or when the freeholders were there? Witness answers: The time when the surveyors were there; the first time they were there.

Attorney for defendants excepted to the last above evidence. WARREN HARDENBURGH, *Commissioner*.

There were disputes both times when the surveyors and freeholders were upon the ground about French's and Polhemus' line. I was upon the ground both days. Mr. Barcalow was there both times, I think.

Above evidence excepted to. W. H., *Com.*

Witness being cross-examined.—(To the question)—Mr. Smith: You have stated in your examination that you speak of the distances you chained, yesterday, not from looking at the map which lay before you, but from memory; is it so?—Witness says: Yes. The number of chains on the second course; I can't tell how many on the eighth; nineteen chains on the tenth. I can state on these distances if I begin at the beginning and go through. I gave Mr. Mercereau the length of chain. I was aware that Mercereau was deaf. I spoke to him so that he might hear me; sometimes I was close by him, and sometimes farther off. Mercereau counted the links. The money paid by Mr. Van Dervere to Mr. Beekman was paid at Wortman's tavern, in the bar-room; several persons were present; there was no attempt at concealment; it was done openly.

Witness being re-examined in chief, says: I don't know that Mr. Peter S. Van Dervere was an active advocate and supporter of the road. I know that he has taken an active part in the neighborhood in behalf of the road. I never heard him say he had contributed anything towards the expenses of procuring the road. To the question: Was the time when George W. Barcalow was on the road that you refer to in your deposition taken on the rule to show cause, the day the freeholders were there, or the day the surveyors were there? Witness answers: The day the freeholders were there.

Defendants attorney protests to the manner in which this last question and answer was taken, for this reason, that the witness, while under examination, was taken out of the room, talked with privately, and when brought in this question was asked him.

WARREN HARDENBURGH, *Commissioner.*

The witness had just finished answering, and his further examination appeared to be closed, and I presume he would have signed the deposition, when the attorney for the prosecutors requested witness to step out, and soon after returned, when attorney for prosecutors asked him the above question.

WARREN HARDENBURGH, *Commissioner.*

Witness being asked whether he wished his deposition altered in accordance with the facts testified to in his last answer, says: Yes. Witness requested the alteration to be made as follows: That the words "surveyors" and "first" on page be stricken out, and the words "freeholders" and "second" inserted.

Attorney for defendants objects to any alteration being made in above manner in the deposition of witness. Witness insisted upon the alteration before signature. W. H. Com.

JOHN SMITH.

Sworn and subscribed this 21st day of June, 1851, before me,
WARREN HARDENBURGH, *Commissioner*.

George W. Barcalow, a witness produced on the part of the prosecutors, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, on the above stated cause, on his oath says:—I was present and assisted in the survey of this road yesterday—I was a chain-bearer; I did not see the chain measured. Being shown certified copy of the return, witness says: I did not observe it yesterday; that is the road we ran out. Every time we came from one station to another, Mercereau counted the stakes and links; he appeared, too, very particular about, and seemed to want to have it correct. So far as I was concerned, the measures were correctly made. Mr. Mercereau made the measures every time we came to a station; I was present at the time they came up to the hovel; it strikes me Mr. Mercereau's survey struck the hovel a few links; when we came to the corner of Van Doren's land Mercereau made the measure; he counted the links and noted it down on his paper as he always did; I did not know whether the line from station ten to the road leading from Blackwell's was along the fence or a little in the field till afterwards; I did not know it was in the field until to-day. The day I was on the ground was the day the freeholders were there.

GEORGE W. BARCALOW.

Sworn and subscribed this twenty-first day of June, A. D. 1851, before me,
WARREN HARDENBURGH,

S. C. *Commissioner*.

NEW JERSEY SUPREME COURT.

The State, Jacob F. Smith, prosecutor, <i>vs.</i> Joseph French and others.	}	On certiorari to Somerset Pleas, in matter of highway, &c. &c.
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Examinations and depositions of witness in the above cause, taken before me, John S. Blauvelt, one of the Commissioners of the Supreme Court of Judicature of the State of New Jersey, for taking bail and affidavits in causes depending in said Court, at my office in the city of New Brunswick, in the county of Middlesex, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and fifty-one, in the presence of William Hartough, attorney of the Plaintiff, and George A. Vroom, attorney of the defendants, due notice thereof admitted before me by the parties attending.

JOHN BLAUVELT, *Commissioner, &c.*

Cornelius S. Nevius a witness produced on the part of the defendants, being first duly sworn according to law, to testify the whole truth, touching such matter as shall be put to him in the above stated cause, on his oath says: I reside in Franklin township, Somerset county, and was one of the overseers of the Highway of said township, in the year eighteen hundred and fifty, elected at the town meeting in the spring of that year as one of the overseers of the highways. I opened a part of the road in question, in this case, on the first Monday in April of this present year. I had a copy of the return of the surveyors of said road. When I commenced opening the road, John Van Nostrand was with me. This John Van Nostrand is the same man who was the practical surveyor who surveyed the road for the surveyors when the road was laid. I opened the road to the line between Jacob Smith and Joseph French's farms, commencing at the Amwell road. I did not go further in opening the road, because Mr. Smith was in the district that I had to work, and Mr. French was in another district; besides this, I wanted to be at Six Mile Run that morning at the meeting of the town committee. Mr. Van Nostrand, the surveyor, took his chain and held the chain at the station stake, and he went out with it. Mr. Van Nostrand measured off sixteen and a half feet from that stake each way. There we drove up two stakes,

one at each side where he measured from the station stake: we did that at every station stake as far as I went with him. I left there I think about half-past eight o'clock in the morning; after we left the Amwell road and got near the second station, we met Mr. French and Mr. Van Dervere; they went with me to where I left off. Mr. Van Dervere talked about going on, and asked Van Nostrand whether there had come a letter for him. Mr. Van Nostrand said, no. I don't recollect of saying anything to Van Dervere on that day about his opening the road, but the Saturday previous. I went to Millstone and saw Van Nostrand about it, and made our arrangement for him to be there earlier. He told me that he had made an engagement to be on the ground on Monday morning at nine o'clock. I told him, as I was one of the town committee, and had to meet them on Monday, I wanted him to be there earlier if he could. He said he would be there at half-past seven. I then went to Van Dervere's and saw him; he wanted me to open the road all the way through. I told him I had to meet the town committee on Monday, and as he was the overseer of the district, where part of the new road was laid, I thought it would make no difference for him to open that part of the road. When I left the new road on Monday, I left Van Dervere and Van Nostrand there. I removed the fences as far as I went—that is the cross fences on the road; some of them were put up again; I don't know by whom. I heard one of the landholders (Mr. Polhemus) say, that he would go and shut it up. Mr. Van Dervere was elected an overseer of the road the same time that I was. I saw the paper marked Exhibit No. 1, on the part of the defendant, for the first time, on the morning of the eighth day of April last, between one and two o'clock; it was left at my house in my absence with my son, who is about fifteen years of age, on the afternoon of the seventh.

The witness being cross-examined on the part of the plaintiff, says: I am one of the applicants for the road; I am positive that the time I have above mentioned as the time when I opened the road, is the correct time; I am certain I cannot be mistaken about the time. There was a fence standing in the middle of the road part of the way; this was on the line between Probasco and Polhemus. I did not pull up this fence; there is wood growing upon Probasco's half of the road, from the beginning of the road to the second station. I did not clear the wood off, I did nothing more than pull down the fences that crossed this road, and drove up stakes; at the time I was there, Mr. Jacob Smith forbid me pulling down his fences. This road had not been assigned to me by the township committee, to be opened and worked by me, as one of the overseers of the highways. The roads in Franklin township were divided into districts by the town committee, and assigned to particular overseers to be opened and worked. The roads are worked by monies raised from tax on the inhabitants of the township. There is more work done than what the money raised will pay for. The dis-

districts were assigned to the overseers in April, and by the middle of October when we settled, some seven or eight of the overseers had done more work on their districts than the money given them would pay for—none of them exceeded five dollars. This arose in part from the overseers being willing that the inhabitants should work out their taxes, and partly where an overseer has a pride about the working of the road, and keeps on till he makes them passible. There was no letter to come to me from Brunswick in reference to the opening of the road. I expected that there was to come one to Mr. Van Derveer; I think it was Mr. French who informed me. Mr. French was one of the applicants for this road. Mr. French brought a letter to my house, which had been sent by Mr. Vroom to Mr. Van Derveer—this was some days before the road was opened. Mr. French also brought a copy of the return of the road; the letter stated that the road was to be opened, that nothing had been done; that the road was not removed to the Supreme Court. Mr. Van Derveer is one of the contributors towards the expenses of this road. Previous to the town meeting in April last, this road had not been assigned to me or any other overseer of the township, because it was no road. Question: Was the road opened by you of your own volition, or was you requested to open it? The witness says: I was requested to open it by Mr. Van Derveer and Mr. French.

CORNELIUS S. NEVIUS.

Sworn and subscribed this 27th day of June, A. D. 1850, before me,
 J. S. BLAUVELT, *Commissioner*.

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 opened to open it? The witness says: I was requested to open
 it by Mr. Van Dyke and Mr. French.

CORNELIUS S. KETTER

Sworn and subscribed the 27th day of June, A. D. 1830, before
 A. S. BRADLEY, J. Commissioner.