

New Jersey Court of Errors and Appeals.

Between

NATHAN A. COOPER, appellant,

and

ELIZA CARLILE and others, re-
spondents.

} On appeal from decree
of Chancellor.

Bill of Complaint.

[Filed September 12, 1861.]

IN CHANCERY OF NEW JERSEY.

To the Honorable Henry W. Green, Chancellor of the State of
New Jersey.

Humbly complaining, shows unto your Honor Nathan A. Cooper, of Chester, Morris county, New Jersey, that he is the owner of a grist mill, a saw mill, and a mill dam, situate on Black river, in the township of Chester, in the county of Morris, near to and on the south side of the Washington turnpike road.

And your orator further shows, that according to his information and belief, there has been a grist mill, a saw mill, and a mill dam upon the same sites now occupied by your orator's said mills and dam for more than a century last past, 10 and that the lot upon which said dam and mills stand contains about four acres and one-eighth of an acre of land, and that for thirty or forty years prior to the year eighteen hundred and twenty-five said lot belonged to a family by the name of Howell, the last owner of that name being Elias Howell, who died about the year eighteen hundred and twenty-three or the year eighteen hundred and twenty-four

intestate; that Elias Hudson and John Cooper were the administrators, &c., of the said Elias Howell, and that said administrators, on or about the 18th of April, eighteen hundred and twenty-five, by virtue of an order of the Orphans Court of the county of Morris for that purpose, did sell the said mill lot to Nathan Cooper, an uncle of your orator, at public sale, and afterwards, by deed bearing date the thirtieth day of April, in the year last aforesaid, did convey the said lot to the said Nathan Cooper, his heirs and assigns for ever,
 10 which deed, on the day and year last named, was duly recorded in the office of the clerk of the county of Morris, in Book R. R., pages 95, &c., as by reference to said deed, now in the possession of your orator, and to which he prays leave to refer, will more fully and at large appear.

And your orator further shows, that the said Nathan Cooper entered into and took possession of the said mill lot at or about the day and year last named, and he continued in possession thereof, as owner thereof, until his death.

And your orator further shows, that at the time the said
 20 Nathan Cooper bought and took possession of said mill lot there were then standing upon it an old frame grist mill and a saw mill and a mill dam.

And your orator further shows, that in the years 1826 and 1827, the said Nathan Cooper built a new stone mill upon the said lot, placing it on the site of the old frame mill, but extending over more ground than the old mill did, and in the same years said Nathan Cooper made extensive repairs to the saw mill on said lot.

And your orator further shows, that in the year 1827, the
 30 mill dam which stood in said stream at and for said mills when Nathan Cooper purchased said mill lot, in order to adapt the supply of water to the new mill, was raised to a greater height, but how much higher it was raised your orator does not know and cannot state. And your orator has been informed and he believes it to be true, that in the year 1828, and not later than the year 1829, the height of said dam was again slightly increased; but the location of said dam, so far as your orator knows, has heard, and believes, has not been changed in forty years, or at any time
 40 since it was first erected.

And your orator further shows and charges, that the said mill dam has been kept as high as the height to which it was raised in 1828, or at the latest 1829, and in a tight and efficient condition constantly from thence hitherto, and the said grist and saw mills have been constantly run and used since they were built and repaired in 1827 hitherto.

And your orator further shows, that the said Nathan Cooper departed this life in the month of April, 1834; that said Nathan Cooper, in his lifetime, made and published his last will and testament in writing, bearing date November 10 the fourteenth, 1818, and two codicils in writing to said will, one dated 11th February, 1828, and the other one dated March the twelfth, 1834, which will and codicils were all duly executed by the said testator so as to convey and pass title to real estate; and by the said codicil, dated 11th February, 1828, the said Nathan Cooper did devise to your orator in fee simple the said mill lot, describing it as one mill and mill site of better than four acres, on which stood a good grist mill and saw mill, formerly the property of Elias Howell, deceased, subject to a devise in favor of his wife of half 20 of the profits of said mills during her natural life.

And your orator further shows, that the said Nathan Cooper died without revoking the said devise to your orator, and his said will and codicils thereto were duly proved before the surrogate of the said county of Morris, and was recorded in the office of said surrogate, to which will and codicils, or a duly authenticated copy thereof, your orator prays leave to refer.

And your orator further shows, that Elizabeth, the wife of the said Nathan Cooper, died in the lifetime of the said 30 Nathan Cooper, and that immediately after the death of the said Nathan Cooper your orator, by virtue of the aforesaid devise, entered and took possession of said mill lot, mills, and premises, as owner in fee thereof, and ever since that time your orator, by himself and his tenants, has had the full, uninterrupted, and peaceable possession of said mill lot and premises, with the privileges and appurtenances thereunto belonging.

And your orator further shows unto your Honor, that on or about the tenth day of May, 1841, by a grant bearing 40

date the day and year last named, one Obadiah R. Howell, who then, in common with his sister Nancy, owned the land on the west side of your orator's mill pond, extending from the line of your orator's mill lot to the farm now in the possession of Eliza Carlile, then in the possession of her husband, Thomas M. Carlile, in consideration of fifty-four dollars, paid by your orator, did grant, give, and sell unto your orator, and to his heirs and assigns for ever, the right, title, and privilege of flowing all such lands and premises of the
 10 said Obadiah R. Howell and Nancy Howell, situate on and adjoining said Black river, above the said mills and water works of your orator, as your orator then flowed, or which he could or might thereafter flow by reason of his said dam and water works, as they then were or as they might thereafter be erected and built by your orator, and releasing your orator, his heirs and assigns, from all damages which he, said Howell, his heirs or assigns, might sustain by reason of the flowing of the said lands by the means aforesaid, as by reference to the said grant, now in the possession of your ora-
 20 tor, and to which your orator prays leave to refer, will more fully and at large appear.

And your orator further shows, that on the east side of his said mill pond, immediately north of your orator's lands, the land for a considerable distance, prior to 1845, was owned by one Caleb Horton, who died prior to November, 1845; and as it was supposed that the said mill dam, so as aforesaid raised by the said Nathan Cooper, flowed back some water on the land so owned by said Horton, your orator, to satisfy the heirs of said Horton, and to remove any cause of com-
 30 plaint on their part, bought of said heirs their land adjoining said mill pond and river; and on or about the twenty-fourth day of November, 1845, by deed of that date, Julia Horton, Isaiah Horton, Richard T. Horton, David C. Horton, and Elizabeth C., his wife, and James Vanderveer and Miriam his wife, the heirs-at-law of said Caleb Horton, deceased, did grant, bargain, sell, and convey to your orator, for and in consideration of the sum of three hundred and fifty-seven dollars and sixty cents, (at the rate of forty dollars an acre) eight acres and ninety-four hundredths of an acre of land,
 40 situate on the east side of said pond and river above and

north of your orator's land, on that side of said pond, as by reference to said last mentioned deed, now in the possession of your orator, which deed was duly recorded and acknowledged, and to which your orator prays leave to refer, will more fully and at large appear; and your orator further shows and charges, that the purchase of land last mentioned, at and after the same was made by your orator, and the price per acre which your orator paid therefor, were well known to the people living in the vicinity of your orator's said mills, and particularly to Thomas M. Carlile, herein after more particularly mentioned. 10

And your orator further shows, that on the west side of Black river, immediately north of and adjoining to the farm of Obadiah R. Howell, is a farm of about one hundred and twenty-five acres, now in the possession of Eliza Carlile, the widow of Thomas M. Carlile, deceased, and that said last mentioned farm extends along said river for the distance of about forty-six chains; that said last mentioned farm was owned and possessed for many years by John Carlile, the father of Thomas M. Carlile. The said John Carlile died 20 prior to the year eighteen hundred and eighteen: and at or soon after the death of said John Carlile, said Thomas M. Carlile went into possession of said last mentioned farm, as owner thereof until his death, which happened in or about the month of March, 1855. Your orator has been informed that the said Thomas M. Carlile, in his lifetime, made and published a last will and testament, which he left unrevoked at his death, and in and by which he devised the said last mentioned farm to the said Eliza Carlile for her life, with remainder in fee to his children; but your orator has never 30 seen said will nor any copy thereof, and so far as your orator knows and as he believes, said will has never been proved or recorded, and therefore your orator cannot make any more particular statement in reference thereto.

And your orator further shows unto your Honor, that in the year eighteen hundred and forty-six, he was repairing his said mill dam, and adding two additional pairs of millstones to the machinery of his said grist mill; that the millwright, John Vandoren, who was making said additions and repairs, informed your orator that it would be advantageous 40

to your orator's said grist mill to increase the height of said dam; that he, said millwright, had examined the pond and river above your orator's said dam, and that he, said millwright, was satisfied that he could raise the height of said dam as much as he desired to without causing any water to back upon any lands over which your orator did not have the right to flow, unless it might upon a small part of the land of Thomas M. Carlile; but that said dam, if raised as he, said millwright, proposed to raise it, would cause back-
 10 water upon very little, if any of the land of said Thomas M. Carlile; but your orator then objected to the raising of said dam, if there was any probability of its being injurious to the land of said Thomas M. Carlile, without his consent.

And your orator further shows, that he has been informed, and he believes and charges it to be true, that very shortly and within a few days after the conversation between your orator and the said John Vandoren, the said Thomas M. Carlile, commonly called Mulford Carlile, came to the said mill dam, where the said John Vandoren was then at work
 20 repairing said dam, and there engaged in conversation with said Vandoren in respect to the work he, said Vandoren, was then doing, and in the course of that conversation at that place said Vandoren said to said Thomas M. Carlile: "Mulford, we talk of raising this dam some, and what if it causes the water to flow on your land?" (At the same time said Vandoren expressed the opinion that the contemplated raising of the dam would cause no great part of said Carlile's land to be flowed.)

And your orator further shows, that he has been informed,
 30 and he believes and charges it to be true, that said Thomas M. Carlile then and there expressed no objection whatever to the raising of said dam, but said to said Vandoren, in answer to the question so as aforesaid put to him by said Vandoren, that if your orator would pay him, said Carlile, as well as your orator had paid the Hortons, (referring to the purchase which your orator had so as aforesaid made of the heirs of Caleb Horton) your orator might flow all of his, said Carlile's, farm. And your orator further shows and charges, that said Vandoren understood said Carlile to give his con-
 40 sent to the raising of said dam, only stipulating that, for so

much of his land as might be flowed by increasing the height of said dam, he should be paid at the same rate your orator had paid the Horton heirs for the land so as aforesaid purchased of them, and your orator expressly charges that that is precisely what the said Thomas M. Carlile intended and meant.

And your orator further shows, that very shortly, and within a very few days after the conversation last above mentioned, your orator went to his said mills, and was there informed by said Vandoren of what had passed between him 10 and said Thomas M. Carlile in respect to raising said dam, as herein before stated, and by that information your orator was induced to believe, and he did believe that the said Thomas M. Carlile had no objections to increasing the height of said dam; and that if, by increasing the height thereof, any of his land should be flowed, he would only ask your orator to compensate him for the land that might thus be flowed at the rate of forty dollars an acre, that being the price your orator had paid to the heirs of Caleb Horton for the land so as aforesaid purchased of them, and that he 20 would not treat or attempt to treat said dam as a nuisance; and upon this impression and belief, induced by the language and conduct of said Thomas M. Carlile, your orator consented that his said millwright might increase the height of said dam as he desired and deemed necessary; but your orator would not have consented to the raising of said dam, nor permitted the same to have been increased in height, had he not fully believed that he had the consent of said Thomas M. Carlile to do so.

And your orator further shows, that when he gave con- 30 sent to his said millwright, as aforesaid, that the height of said dam might be increased, said millwright proceeded to raise the same, and while engaged at the work of raising the same, and before he had increased the height thereof, and very shortly after the conversation between said Carlile and said Vandoren, herein before mentioned, as your orator has been informed and believes, and as he charges to be true, the said Thomas M. Carlile came to or near to said dam, and to where said Vandoren was preparing the timber for said dam, and then and there asked said Vandoren how 40

much he, said Vandoren, was going to increase or raise the height of said dam, and that said Vandoren then and there told said Thomas M. Carlile that he was going to raise said dam the thickness of the stick of timber at which he, said Vandoren, was then working, and that said Vandoren then and there took his measuring square and measured the thickness of the said stick of timber, and told and showed said Thomas M. Carlile that the thickness thereof was nine inches, and that the height of said dam would be increased
 10 nine inches; and that said Thomas M. Carlile then and there made no objection whatever to increasing the height of said dam, neither expressed nor indicated any unwillingness to increasing the height of said dam, but said, when said Vandoren told and showed him how much the height thereof would be increased, "Well, Cooper is good enough."

And your orator further shows, that so far as he knows, has heard, can learn, and as he verily believes, the said Thomas M. Carlile did not at any time express or in any way indicate to your orator, to said John Vandoren, nor to
 20 any person in the employ of your orator, that he had any objections whatever to the increase of the height of said dam, but on the contrary, as said Thomas M. Carlile was frequently at and by said dam while it was being repaired and raised, while he said or did nothing against raising it, and while he assented to the raising thereof, as herein before stated, he led your orator and his workmen at and about said mills to believe, and they did believe that they were proceeding in raising said dam with the assent of said Thomas M. Carlile.

30 And your orator further shows, that the said Thomas M. Carlile lived near to said dam, and very frequently passed by and near to the same, and in plain sight thereof, in going from his residence to mill, to the store, to church, to the village of Chester, and to a large part of his neighbors, and that all, or nearly all the grain grinding which the said Thomas M. Carlile had done from 1846 until he died was done at your orator's said grist mill.

And your orator further shows, that he has been informed by his tenants and workmen, and he believes and charges it
 40 to be true, that after your orator's said dam was raised in

1846, as aforesaid, the said Thomas M. Carlile, on several occasions and in different years, came to your orator's said mill, when he was gathering his hay on his low land along Black river, and the water in the river was high, and requested the miller at your orator's mill to raise the flood-gates in your orator's said dam to let off the water; that on those occasions he made no complaint in respect to the height of said dam, did not demand the raising of said gates as a right, but asked it as a favor.

And your orator further shows, that he has been informed, 10 and he believes and charges it to be true, that after your orator's said dam was raised as aforesaid in 1846, the said Thomas M. Carlile, on several different occasions and to different persons, admitted and declared that he had consented or given leave to your orator to raise the height of his said dam as aforesaid.

And your orator further shows, that he was well acquainted with the said Thomas M. Carlile, knew him from his boyhood until his death, often met him, never had any difficulty or dispute, and was always upon friendly terms 20 with him; that he never in any way said, intimated, or pretended to your orator that your orator's said dam had been raised without his consent when so raised as aforesaid by John Vandoren in 1846, or that said dam was then wrongfully raised, or that your orator, as against him or his said farm, had not a right to maintain and continue his said dam at the height to which it was raised as aforesaid, nor did the said Thomas M. Carlile ever ask your orator to lower or remove his said dam, and to the best of your orator's recollection, and as he verily believes, the said Thomas M. Carlile 30 never informed or in any way notified your orator that your orator's said mill dam caused any flowage of water upon or damage to his, said Carlile's land, or to pay to him anything for any land of his damaged by your orator's said dam, or by backwater therefrom or caused thereby, nor for any damages occasioned to his, said Carlile's, land by your orator's dam, except that your orator has an indistinct recollection and impression that on one occasion, one or two years before the death of said Thomas M. Carlile, he said something to your orator to the effect that your orator ought to or 40

should pay him something for water on his land caused by your orator's dam, or that he thought your orator's dam was injuring some of his land, and wishing your orator to come and see about it, or see about what compensation he should have; but if the said Thomas did so as last aforesaid speak to your orator, the subject was never again alluded to by the said Thomas M. Carlile in the presence or hearing of your orator, so far as your orator can remember; and although said Thomas M. Carlile lived on his said farm nearly nine
 10 years after your orator had so as aforesaid raised his said dam, yet your orator did not know, nor did he ever hear, so far as he can now remember and as he verily believes, that your orator's said dam, so as aforesaid raised, caused any backwater upon or damage to the lands of said Carlile, except as above stated, until a considerable time after the death of said Carlile, and from the fact that said Carlile did not ask your orator for any pay or compensation for any of his land supposed to be flowed or damaged by your orator's said dam, except, as herein before stated, your orator supposed
 20 said dam did not do any damage to any of the lands of said Thomas M. Carlile, or if any, but very little.

And your orator further shows, that after the consent of said Thomas M. Carlile to the raising of said dam had been given as aforesaid, your orator's said millwright went on, and arranged the machinery in your orator's grist mill, so as to adapt it to such supply of water as would be obtained by increasing the height of said dam nine inches; and in making these alterations, repairs, and improvements, your orator then expended from fifteen hundred to two thousand
 30 dollars, and that if your orator were now obliged to lower and reduce the height of his said dam nine inches, it would be very injurious to his said mill property, and would reduce the value of his said mills, as your orator believes, several thousand dollars.

And your orator further shows unto your Honor, that he has not raised or in any way increased the height of his said dam since the year 1846, nor has he caused or permitted the height thereof to be increased, nor has the height thereof been in any manner increased since the year 1846, nor was
 40 the height thereof increased in the year 1846 more than nine inches, as herein before stated.

And your orator further shows, that about the year 1857 or 1858, the said Eliza Carlile told your orator that she thought that backwater caused by your orator's said dam was injuring a portion of her said farm, and desired your orator to see about it.

And your orator further shows, that some time after he received the notice and request last above mentioned, and about the fall of 1858, he examined that part of said farm adjoining said pond, and discovered that less than three acres thereof appeared to be at times flowed by reason of 10 your orator's said dam: your orator then, or soon after, requested the said Eliza Carlile to sell to your orator, and your orator offered to buy of her all the land of said Carlile farm adjoining his said mill pond which was injured or likely to be injured by means of your orator's said dam, but she declined making such sale, placing her refusal on the ground that she could not, by reason of her limited estate in said lands, make a good or effectual conveyance to your orator.

And your orator further shows unto your Honor, that after the said Eliza Carlile refused, as aforesaid, to sell and convey 20 to your orator, your orator proposed to rent of the said Eliza the land which she alleged was injured by means of your orator's said dam, at a yearly rent of thirty dollars, she did not refuse that offer, but said she must see her friends; but when your orator's attorney was about to draw the lease from the said Eliza to your orator for the land last mentioned, or to co-operate with the attorney of the said Eliza in the preparation of said lease, your orator's attorney was informed by the attorney of the said Eliza that she would not make any such lease. 30

Your orator further shows, that during his efforts to get a lease or conveyance of the said land alleged to be flowed and damaged, he learned from said Eliza that she would accept thirty dollars a year from the death of said Thomas M. Carlile as a full compensation for the damage she alleged had been caused to her said farm by your orator's said dam; and thereupon, on or about the — day of September, 1860, your orator sent and tendered to the said Eliza Carlile the sum of one hundred and eighty dollars in cash as full compensation to her for said damages for six years from the death of her 40

said husband, only asking her to sign a receipt acknowledging the receipt of that sum of money in full for said damages for six years from the death of said Thomas M. Carlile; but as your orator was informed by the person by whom he sent said money, said Eliza refused to receive said money, not because your orator asked such receipt as aforesaid, but because, as she said, she had placed the matter in the hands of her attorney, and she could not or would not have anything to do with it, or words to that purport and
10 effect.

And your orator further shows, that he has been informed, and he believes and charges it to be true, that the attorney of your orator, soon after the tender above mentioned was made, and before any action had been commenced by her against your orator, informed the attorney of the said Eliza that said tender had been made, and also informed him that if he, said Eliza's attorney, would accept the sum of one hundred and eighty dollars as a full compensation for the damages she alleged she had sustained by reason of your
20 orator's said dam for six years from and after the death of her said husband, he, your orator's attorney, would pay the same to him, said Eliza's attorney, for her, but her attorney declined to receive the sum so proposed to be paid.

And your orator further shows and charges, that if his said dam has caused any real damage to the said farm of said Eliza Carlile, it has not been, in the opinion and belief of your orator, as much as twenty dollars a year since the death of the said Thomas M. Carlile, and your orator was only induced to offer to pay her at the rate of thirty dollars
30 a year as a compromise to buy his peace and to avoid a litigation with a woman.

And your orator further shows and charges, that the compensation for alleged damages so as aforesaid offered by your orator was much more than the real amount of said damages, and that the said Eliza Carlile, as your orator verily believes, would have accepted the same as a full and liberal compensation for said damages, had she not been urged and persuaded not to accept the same by persons who own lands along Black river, above the said farm of said Eliza Carlile,
40 who wish to reduce or destroy your orator's said mill dam,

but who have no legal cause of action nor equitable ground of complaint against your orator in respect to his said dam, and who wished to employ her and her interest in said Thomas M. Carlile's farm as instruments to accomplish for them indirectly what they could not and cannot do directly or indirectly in their own names and in their own rights, namely, compel the reduction of your orator's said dam, and that some of the persons so urging on the said Eliza to prosecute your orator, as your orator believes, are John D. G. Carlile, Charles Ming, and James S. Dickerson. 10

And your orator verily believes and charges, that the three persons last above named and other persons unknown to your orator persuaded and induced the said Eliza to refuse to convey to your orator that portion of her said farm which she alleges is injured by your orator's said dam, to refuse to lease the same to your orator, to refuse accepting the amount of damages, to wit, thirty dollars a year, which she fixed and named herself, and to treat your orator's said dam as a nuisance, and to prosecute your orator for maintaining said dam with a view to having it adjudged a nuisance, and ultimately 20 abated by reducing it; and to induce the said Eliza to refuse and prosecute as aforesaid, they in some way assured her they would defray the expenses of her prosecution against your orator, in whole or in part, save her harmless from loss, and bring her out of the litigation as well off, pecuniarily, as if she had settled with your orator in any of the modes before mentioned.

And your orator further shows, that under these circumstances, the said Eliza Carlile, on or about the eighth day of January, 1861, commenced an action of trespass on the case 30 against your orator in the Supreme Court of New Jersey by summons, returnable on the thirtieth day of January, 1861; that on the twenty-seventh day of June, 1861, the said Eliza Carlile filed her declaration in said action containing three counts, in the first of which she complains that your orator, on the first day of May, 1855, wrongfully built and erected across Black river a dam (meaning your orator's mill dam herein before mentioned), and has since wrongfully continued the said dam, and by means thereof has caused the water of said stream to overflow its banks, and drown and 40 spoil a large quantity of her said farm, causing damage.

In the second one of said counts she complains that your orator, since the first of May, 1855, has kept and continued a certain dam, before then by your orator wrongfully erected across said river (referring to your orator's dam herein before mentioned), by means whereof a part of her said farm has been overflowed with water, and damage done to said farm, and her dwelling house rendered unhealthy.

And in the third count she complains that your orator, on the second of May, 1855, wrongfully enlarged and increased
 10 the height of your orator's said dam, and has since wrongfully continued the same at its increased height, and thereby has kept back the water of said river, caused it to overflow a large quantity of her said land and damaged it, and noxious and offensive vapors were caused to rise, whereby she was greatly annoyed and incommoded in the use and enjoyment of her dwelling house and lands.

And your orator further shows, that on the 10th day of September, 1861, he caused to be mailed to the clerk of the Supreme Court, to be filed, his plea, the general issue to
 20 said declaration, and that the said cause is now at issue, and that the said Eliza threatens and intends to bring the said cause to trial at an early day.

And your orator further shows and charges, that the said Eliza Carlile, on or about the 8th of January, 1861, commenced another action of trespass on the case against your orator in the Supreme Court of New Jersey, in the names of her four infant children, to wit, Mary M. Carlile, John Carlile, Thomas M. Carlile, and Nancy R. Carlile, as plaintiffs, by summons returnable on the 30th day of January, 1861;
 30 that the said Supreme Court afterwards appointed the said Eliza Carlile guardian *ad litem* to prosecute the said last mentioned action against your orator, and in which action a declaration was filed on the 27th of June, 1861, in and by which the said last mentioned plaintiffs claim that the reversion of the said farm so as aforesaid in the possession of the said Eliza Carlile, expectant on the determination of the life estate of the said Eliza Carlile, belonged to them, the said infants, and that your orator's said mill dam had injured and was injuring their reversionary estate in said farm.

40 And your orator further shows, that he sent per mail to

the clerk of the Supreme Court, to be filed, his plea, the general issue to the said last mentioned declaration, on the tenth day of September, 1861; that said last mentioned cause is now at issue, and that the same is likely to be soon brought to trial. And your orator further shows, that in an ordinary condition of the said Black river stream, your orator's said mill dam will cause the said stream to overflow about three acres and three one-hundredths of an acre of the said farm of Eliza Carlile, as marked at two spots on the annexed map, and that all of the land last mentioned, and 10 more adjacent to it, before your orator's said dam was raised in 1846 as aforesaid, from time immemorial was accustomed to be overflowed and covered with water in times of high water, very frequently every year, for considerable periods of time. And your orator further shows, that about the year 1835 or 1836, certain persons claiming to act by authority of an act of the legislature of New Jersey entitled, "An act to enable the owners and possessors of the meadows and low lands adjoining Black river, in the township of Chester, in the county of Morris, to drain the same, and 20 to straighten the channel of said river within the limits therein mentioned," approved March 3d, 1835, (*Laws* 1835, page 141,) from the bridge called Topping's bridge, situate partly on the said farm now of the said Eliza Carlile, to the bridge on the road leading from Chester to Flanders, a distance of more than one mile and a half, did straighten the channel of said Black river by digging, for a large part of that distance, a new, deeper, straighter, and wider channel, and in the distance aforesaid did lower the bed of said river several feet, and from a few yards north of said Topping's 30 bridge to the mouth of Tanner's brook, both marked on the map hereto annexed, (the said Tanner's brook being the north boundary line of the farm now of said Eliza Carlile,) a distance of about nine chains and sixty-five links, the bottom of said river was cut down and lowered in 1835 or 1836, as your orator has been informed and believes and charges, as much as eighteen inches. And your orator further shows unto your Honor, that the natural channel of Black river, from your orator's said dam to the said bridge over the road from Chester to Flanders, is flat, exceedingly serpentine, and 40

much obstructed, so that the stream was slow and sluggish; that the new channel for said river was made nearly straight, and a large part of the way through light sandy earth. The consequence has been that the water runs into your orator's pond much more rapidly than it formerly did, and carries with it immense quantities of sand and sediment, which when coming to the turns, narrow parts of and obstructions in the channel of said stream below Topping's bridge, along the said farm now of Eliza Carlile, and below her said farm,

10 settles and forms bars, banks, and obstructions, so that the water runs to your orator's said dam with much less freedom than it did before the channel of said river was straightened and lowered, and by the same means more water is kept along and on the land now of said Eliza Carlile than was before said channel was straightened and lowered, and that much of the water on the said land of the said Eliza Carlile is owing to the said changes and obstructions in the channel of said stream, instead of to your orator's said dam. And your orator respectfully submits that he is in no way respon-

20 sible or liable for any consequences resulting from any such changes as aforesaid in the channel of said river, nor for any consequences resulting from natural changes in the course or condition of the channel of said river.

And your orator further shows, that the said Thomas M. Carlile left him surviving another son, to wit, Elias Carlile, who, as your orator believes and charges, has some interest and estate in said farm now of said Eliza Carlile, either as devisee or heir-at-law of his father, Thomas M. Carlile, deceased, but the precise nature or extent of his interest or

30 estate your orator cannot state, but he believes and charges it to be that of a tenant in common of the reversion expectant upon the life estate of said Eliza, and your orator charges that he is entitled to make the said Elias a party defendant in this suit, and is entitled to have from and as against him, by reason of his estate in said farm, the relief prayed for in this bill. And your orator respectfully submits to your Honor, that under the circumstances of this case he was entitled to have a conveyance in fee made to him by the said Thomas M. Carlile, now deceased, in his lifetime, for so

40 much of the said farm now of said Eliza as was flowed or

injured by the increased height added to your orator's dam as aforesaid in 1846, or else a grant in fee of a right to flow said land, by means of your orator's dam, at its increased height, without any liability for damages, upon your orator's compensating him therefor at a rate not exceeding forty dollars an acre; and that as soon as your orator had increased the height of his said dam in 1846, as aforesaid, in pursuance and upon the consent of the said Thomas, so as aforesaid given, and adapted the machinery in his mill to the water at that height, he became entitled in equity to have 10 from said Thomas, his heirs or assigns, such conveyance or grant as last above mentioned, and he, his heirs or assigns, became entitled to have and receive from your orator the compensation for such grant or conveyance mentioned and indicated by said Thomas when he gave his consent to the raising of said dam as aforesaid; and that your orator in equity, under the circumstances herein before mentioned, would have been entitled to demand, recover, and receive of the said Thomas M. Carlile one or the other of the grants 20 last mentioned, and he, said Thomas M. Carlile, would have been and was estopped from treating your orator's said dam, or any part thereof, as unlawful. And your orator further shows and respectfully submits, that he has a right and an equity to have a grant in fee from the said Eliza Carlile and her five children, herein before named, for so much of their said farm as is or has been flowed by your orator's said dam, or a grant of a perpetual right to flow the last mentioned part of said farm, by your orator's said dam as it now is, upon your orator's making equitable and just 30 compensation for such grant, not exceeding the compensation so as aforesaid agreed upon by your orator and the said Thomas M. Carlile in his lifetime.

And your orator further shows, that he is and has been ready and willing to render and pay unto the said Eliza Carlile and her five children, herein before named, such compensation for their said land and damages as, under the circumstances herein before stated, they are or may be equitably entitled to receive; and your orator respectfully submits that he is entitled, upon making or tendering such compensation, to be quieted and assured, as far as the said 40

Eliza Carlile and her said five children, and as far as any owners of the said farm now of the said Eliza, claiming the same by, through, or under the said Thomas M. Carlile, deceased, are concerned or interested, in the peaceable and undisturbed enjoyment of his said mill dam, at the height the same now is and has been since the year 1846.

And your orator well hoped that the said Eliza Carlile, Elias Carlile, Mary M. Carlile, John Carlile, Thomas M. Carlile, and Nancy R. Carlile would have complied with
 10 your orator's reasonable request, and assured your orator in the full, peaceable, and undisturbed enjoyment of his said mill dam, as in justice and equity they ought to have done; but now so it is, may it please your Honor, that the said defendants, combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this bill of complaint with apt and proper words to charge them as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse to convey to your orator so
 20 much of the said farm now of the said Eliza Carlile as is or has been flowed with water by means of the aforesaid increased height of your orator's said mill dam, refuse to grant to your orator the right to flow the last mentioned portion of the said farm now of the said Eliza Carlile by means of your orator's said dam, as it now is and has been since 1846, and refuse in any manner to assure or quiet your orator in the peaceable enjoyment of his said mill dam, but, on the contrary, they vex and harass your orator with actions at law on account of said dam, and endeavor to have the said
 30 dam treated and abated as a nuisance, to little or no advantage to them, but to the great damage of your orator; and they pretend and give out in speeches that the said Thomas M. Carlile, now deceased, in his lifetime did not consent that your orator might increase the height of his said dam as aforesaid; that your orator was not influenced by and did not act, expend his money, and change his position upon and relying on the consent of said Thomas M. Carlisle, given as aforesaid, to the increase of the height of his said dam as aforesaid, and that although the said Thomas
 40 M. Carlile did consent to increasing the height of said dam,

as herein before stated, upon the understanding that he should be paid at the rate of forty dollars an acre for so much of his said farm as might be damaged by the increased height of your orator's said dam, and that although the said Thomas M. Carlile knew of the increasing of the height of said dam at and before it was done; that although he stood by when the height of said dam was being increased, made no objection thereto, but encouraged the doing thereof, and for years and as long as he lived acquiesced in the raising of said dam, yet his widow and heirs and devisees are not 10 bound by his acts and conduct in that respect, and that they may now treat the increased height of your orator's said dam as a nuisance, whereas your orator expressly charges the contrary of all and every of the said pretences to be true, all which actings, doings, and pretences of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises by the strict rules of the common law and without 20 the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated paragraph by paragraph, and that the said defendants and each and every of them, their and each of their heirs and assigns, their and 30 each of their agents, attorneys, and counsellors, may be perpetually enjoined and restrained from further prosecuting the said actions of law so as aforesaid commenced against your orator, or either of them, or any other action for keeping or maintaining your orator's said mill dam at the height it now is and has been since 1846, that the said defendants and each and every of them may be decreed and required to grant, bargain, sell, and convey unto your orator, his heirs and assigns for ever, so much of the said farm, now of the said Eliza Carlile, as is or has been flowed or damaged by 40

- reason of the increased height so as aforesaid added to your orator's said mill dam in the year 1846, or else to grant, bargain, sell, and convey to your orator, his heirs and assigns for ever, the right to flow, by means of his said mill dam, so much of the said farm now of the said Eliza Carlile as is or has been flowed or damaged by the height so as aforesaid added to your orator's said mill dam in 1846, and also a release to your orator, his heirs and assigns for ever, from all damages which have been or hereafter may be sustained by
- 10 reason of the said additional height of your orator's said mill dam, your orator, in either case, being ready and willing, and he hereby tenders himself ready and willing to pay to the said defendants, in such proportions and in such way as this honorable court shall direct, such compensation and damages as under the facts and circumstances herein before mentioned and stated will be equitable and just. And that your orator may have such other and further relief in the premises as may be equitable and just, and may be agreeable to equity and good conscience, may it please your Honor,
- 20 the premises considered, to grant unto your orator not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Eliza Carlile, Elias Carlile, Mary M. Carlile, John Carlile, Thomas M. Carlile, and Nancy R. Carlile, their and each and every of their agents, attorneys, and counsellors, perpetually enjoining them and each and every of them from any further prosecuting the said two actions at law so as aforesaid commenced against your orator, one in favor of the said Eliza Carlile, and the other one in favor of her four children,
- 30 herein before named, and from commencing or prosecuting any other action at law against your orator, his heirs or assigns, for or on account of increasing the height of his said mill dam, as he did in 1846, or for maintaining his said dam at the height at which it has been since 1846, but also the state's writ of subpœna, issuing out of and under the seal of this court, to be directed to the said Eliza Carlile, Elias Carlile, Mary M. Carlile, John Carlile, Thomas M. Carlile, and Nancy R. Carlile, commanding them and each and every of them, on a certain day and under a certain penalty, therein
- 40 to be expressed, personally to be and appear in this honor-

able court, then and there to fully answer the premises, and to stand to, abide, and perform such decree in the premises as to your Honor shall seem meet and shall be agreeable to equity and good conscience. And your orator, as in duty bound, will ever pray, &c.

JACOB VANATTA,

Solicitor and of counsel with complainant.

New Jersey, Morris county, ss.—Nathan A. Cooper, of the said county of Morris, the complainant named in the foregoing bill, being duly sworn, on his oath saith, that he has 10 heard the foregoing bill read, and that the facts, matters, and things therein stated, so far as they relate to his own acts, are true, and that so far as they relate to the acts or deeds of any other person or persons, he believes them to be true.

NATHAN A. COOPER.

Sworn and subscribed before me, September 11th, 1861.

H. C. PITNEY, *M. C.*

Order for Injunction.

[Filed September 12, 1861.]

20

IN CHANCERY OF NEW JERSEY.

Upon reading the bill of complaint in this cause, and the affidavit thereunto annexed, and on motion of Jacob Vanatta, of counsel with the complainant—It is ordered, that upon the filing the said bill and affidavit, an injunction do issue according to the prayer of said bill.

Dated September 12th, 1861.

HENRY W. GREEN, *C.*

Order for Time.

[Filed November 27, 1861.]

IN CHANCERY OF NEW JERSEY.

On opening the matter to the court this day by Theodore Little, of counsel with the defendants, and on sufficient cause shown—It is ordered, on motion as aforesaid, that the defendants have thirty days to file their answer to the complainant's bill of complaint from and after the date of this order.

10 Dated November 27th, 1861.

HENRY W. GREEN, C.

Petition.

[Filed December 18, 1861.]

IN CHANCERY OF NEW JERSEY.

To his Honor Henry W. Green, Chancellor of the State of New Jersey.

The petition of Thomas M. Carlile and John Carlile, sons of Thomas M. Carlile, late of the township of Chester, in the county of Morris, and of Eliza Carlile, the widow of said
 20 Thomas M. Carlile, respectfully sheweth, that your petitioners, Thomas M. Carlile and John Carlile, and their sister, Nancy Carlile, are defendants named in a bill of complaint, filed in this honorable court by Nathan A. Cooper, of the said township of Chester, complainant, against your petitioners and others, defendants, to be relieved touching the matters in the said bill set forth; that your petitioners, John Carlile and Thomas M. Carlile, are minors under the age of twenty-one years and over the age of fourteen years, and by
 30 reason of their minority, they are unable to answer or make defence unto said bill of complaint in a legal, competent, and proper manner. Your petitioners, John Carlile and Thomas M. Carlile, therefore pray that their mother, the

said Eliza Carlile, who is also a defendant to said bill of complaint, may be appointed by your Honor, in this honorable court, guardian *ad litem* of your petitioners, John and Thomas M. Carlile, for them and on their behalf, to make answer and defence to said bill of complaint.

And your petitioner, Eliza Carlile, also further represents that she is the mother of Nancy R. Carlile, a minor under the age of fourteen years, one of the children of said Thomas M. Carlile, deceased; that said Nancy is one of the defendants to the above mentioned bill of complaint of said Nathan 10 A. Cooper; that said Nancy is in the twelfth year of her age, and your petitioner, Eliza Carlile, respectfully prays that she may be appointed guardian *ad litem* to defend the said Nancy R. Carlile against the said bill of complaint of said Nathan A. Cooper. And your petitioners, &c.

Dated December 16th, 1861.

ELIZA CARLILE,
JOHN CARLILE,
THOMAS M. CARLILE.

Present JOHN D. G. CARLILE.

20

I, Eliza Carlile, above named, do hereby consent and agree to accept of the appointment of guardian *ad litem* of John Carlile, Thomas M. Carlile, and Nancy R. Carlile, children of Thomas M. Carlile, deceased, and minors under the age of twenty-one years, to make answer and defence, in behalf of said infants, to the bill of complaint lately exhibited in the Court of Chancery of New Jersey by Nathan A. Cooper, complainant, against me, the said Eliza Carlile, the said John Carlile, Thomas M. Carlile, and others, defendants.

In witness whereof, I have hereto signed my name, this 30 sixteenth day of December, A. D. 1861.

ELIZA CARLILE.

Signed in the presence of
JOHN D. G. CARLILE.

New Jersey, ss.—Eliza Carlile, one of the petitioners above named, being duly sworn, on her oath saith, that the above petition truly expresses the age of her daughter, Nancy R. Carlile, in said petition named, according to the best of her

recollection and belief, and that her sons, Thomas M. Carlile and John Carlile, are over fourteen years of age, but under twenty-one.

ELIZA CARLILE.

Sworn and subscribed, this 16th day of December, A. D. 1861, before me.

PETER CHURCHFIELD, *J. P.*

New Jersey, Morris county, ss.—John D. G. Carlile, of said county of Morris, being duly sworn, on his oath saith,
 10 that he was present and saw the said John Carlile and Thomas M. Carlile, named in the foregoing petition, sign the same, and that he also saw said Eliza Carlile sign said petition and said agreement at the same time; and before said petition and agreement were signed by either of said parties, they were first read over and explained to them by this deponent; and this deponent further saith, that he knows said John Carlile, Thomas M. Carlile, and Nancy R. Carlile, and verily believes said John and Thomas to be minors over
 20 to be under fourteen years of age; and further deponent saith not.

JOHN D. G. CARLILE.

Sworn and subscribed, this 16th day of December, A. D. 1861, before me.

PETER CHURCHFIELD, *J. P.*

Order appointing Guardian.

[Filed December 19, 1861.]

IN CHANCERY OF NEW JERSEY.

Upon reading and filing the petition filed in this cause by
 30 the defendants, Thomas M. Carlile, John Carlile, and Eliza Carlile, setting out that said Eliza is the mother of said Thomas and John, and also of the defendant, Nancy R. Carlile, that said Thomas and John are minors under the age of twenty-one years, but above the age of fourteen years, and that said Nancy R. is a minor under the age of fourteen

years, and praying that the said Eliza Carlile may be appointed guardian *ad litem* of said minors, and upon reading the written assent of the said Eliza Carlile to said appointment, and the affidavit of John D. G. Carlile that said petition and assent were duly signed, and the affidavit of said Eliza verifying the ages of her said children—It is ordered that the said Eliza Carlile be appointed guardian *ad litem* of the said Thomas M. Carlile, John Carlile, and Nancy R. Carlile, by whom they may appear and answer and defend this suit.

10

Dated December 19th, 1861.

HENRY W. GREEN, C.

Answer.

[Filed December 30, 1861.]

IN CHANCERY OF NEW JERSEY.

The answer of Eliza Carlile, Elias Carlile, and Mary M. Carlile and John Carlile, Thomas M. Carlile, and Nancy R. Carlile, infants under the age of twenty-one years, by Eliza Carlile, their guardian, defendants to the bill of complaint of Nathan A. Cooper, complainant.

20

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering say, that they admit that the complainant is the owner of a grist mill, saw mill, and mill dam, situate on Black river, in the township of Chester, in the county of Morris, as is alleged in his bill of complaint. These defendants further answering say, that they have no knowledge or information as to how many acres are embraced in the lot on which said mills

and mill dam are located, except as the same is stated in the said bill of complaint; they also admit that there have been a grist mill, saw mill, and mill dam on or nearly on the same sites for a great many years, and as long as these defendants have had any knowledge of the premises; but whether they have been there for as long a time as a century, or whether they are precisely on the same sites on which they originally stood, these defendants have no knowledge or information, nor have they any means of ascertaining.

- 10 These defendants also admit that said mill lot formerly belonged to Elias Howell, who died about the year eighteen hundred and ——— intestate, and as these defendants believe, said premises were sold by the administrators of said Elias Howell, deceased, to Nathan Cooper, as alleged in said bill; but these defendants have no actual knowledge as to the particular mode in which said Nathan Cooper obtained title to said premises, or the time when he obtained such title, or at what time he entered into the possession and occupancy of said mills, but they admit he did occupy the same until
20 his death; that during his possession he erected a new mill, or rebuilt the old one, and made various repairs, of the particulars of which these defendants have no knowledge.

And these defendants further answering say, that they know nothing as to the raising of the dam in the years eighteen hundred and twenty-seven and twenty-nine, as alleged in the said bill, of their own knowledge, but they have no doubt it was raised, as alleged in the bill of complaint; and these defendants have no knowledge or information as to whether said dam has been kept in a tight condition since that time or not, but they admit said mills have
30 been in use since that date, as alleged in the bill of complaint.

And these defendants further answering say, that they have no knowledge or information as to the time when said Nathan Cooper died, except as is alleged in the bill of complaint, or whether he made a will, or what disposition he made by his will or otherwise of the said mill property, except this defendant, Eliza Carlile, has heard it stated that, in some way, said mill property was given or conveyed by said Nathan Cooper to said Nathan A. Cooper, the complainant;
40 but these defendants pray that said complainant may be re-

quired to make such proof of the allegations of his said bill in that regard as he may be able to make, and as is required by the rules and practice of this honorable court.

These defendants also admit that said complainant took possession of said premises at or about the time mentioned in his bill of complaint, and that he has continued in possession thereof to the present time claiming to own them.

These defendants also admit that they have heard that Obadiah R. Howell, in the complainant's bill named, granted and conveyed to the complainant the right to flow some portion of his lands, and that the heirs of Caleb Horton, deceased, also granted and conveyed to the complainant some part of the lands owned by them, or the right to flow the same; but as to the time when said grants or conveyances were made, or the particular estate thereby conveyed or granted to the complainant, or the consideration on which said conveyances were founded, these defendants have no knowledge and have no means of knowing, and if material to this suit, these defendants pray that the complainant may be required to make such proof thereof as may be consistent with the rules and practice of this court. 10 20

And these defendants further answering say, that they have no knowledge or information whatsoever as to whether or not the fact of said conveyance by the heirs of Caleb Horton, deceased, to the complainant was known to people in the neighborhood at the time it was made, or whether the consideration for which it was made was publicly known or not; but this defendant, Eliza Carlile, has some recollection of hearing her husband, Thomas M. Carlile, speak of it, and thinks he said the complainant was to pay forty dollars per acre for the land so conveyed to him. 30

And these defendants admit it to be true, as stated in the complainant's bill, that on the west side of Black river, and adjoining the farm of Obadiah R. Howell, is a farm of about one hundred and twenty-five acres, now in possession of this defendant, Eliza Carlile; that said farm extends a long distance along said Black river, but the number of chains is unknown to these defendants; that it was formerly owned by John Carlile, the father of Thomas M. Carlile, the husband of this defendant, Eliza Carlile; that said Thomas 40

came into possession of said farm at or about the time of his said father's death, in or about the year eighteen hundred and eighteen, and continued in possession thereof until he died, in the month of April, eighteen hundred and fifty-five, as owner; that said Thomas, in his lifetime, made and executed his last will and testament, bearing date the fifth day of April, eighteen hundred and fifty-five, and thereby devised said farm to this defendant, Eliza Carlile, until his youngest child arrived to the age of eighteen years, but made no further disposition thereof; that he died leaving said will in full force and unrevoked; that said will has never been proved, but is in possession of this defendant, Eliza Carlile, ready to be produced and proven as this honorable court shall direct; that these defendants have continued to live on said farm since the death of said Thomas, and still live thereon; and these defendants also admit that said Thomas left surviving him five children, to wit, Elias, Mary M., John, Thomas M., and Nancy R.; that said Elias is now in the twenty-third year of his age, Mary was twenty-one years of age on the twenty-first day of November last, and John, Thomas M., and Nancy R. are minors under the age of twenty-one years, said Nancy being in her twelfth year.

And these defendants further answering say, that it is true, as stated in said bill of complaint, that while said Thomas M. Carlile owned and possessed said farm, said complainant made some repairs to his said mills, and raised the dam so as to flow the waters of said river and pond back upon and over several acres of the most valuable part of said farm; but whether such repairs and such raising of the dam was in eighteen hundred and forty-six, as stated in the complainant's bill or not, these defendants do not know, nor have these defendants any knowledge or information, except as obtained from said bill, what particular repairs or additions were made to the mills, or whether he added two additional pairs of millstones or not, nor do they know, nor have they any information other than what is derived from said bill, how much money the complainant expended in making such repairs and alterations.

And these defendants further answering say, that they have no knowledge or information whatsoever what conver-

sation, if any, took place between said complainant and his millwright or agents in reference to raising the height of his said dam at the time the same was raised, or whether or not any such conversation took place as is set out in the complainant's bill, or whether the said complainant objected to raising said dam without the consent of said Thomas M. Carlile or not, or what assurance, if any, the said millwright gave the complainant as to whether the lands of said Thomas would be flowed or injured thereby or not; and these defendants respectfully submit that their rights can in no way be 10 affected by any such conversations, whatever they may have been.

And these defendants in further answering say, that they have no knowledge or information, except from the allegations of said complainant's bill, whether any, or if any what conversation took place between said John Vandoren and Thomas M. Carlile while said Vandoren was engaged in repairs at said mill or dam, or whether any such conversation occurred between them as is mentioned in said bill of complaint or not, or whether said Thomas, in answer to any 20 question put to him by said Vandoren, or otherwise, said to said Vandoren, as charged in said bill of complaint, that "if the complainant would pay him as well as he had paid the Hortons, the complainant might flow all his farm;" nor do these defendants know how said Vandoren stated any such conversation which he professed to have had with said Thomas M. Carlile to said complainant; but for many reasons, these defendants are quite sure that said Thomas M. Carlile never, directly or indirectly, gave his consent to said 30 Cooper to flow any part of his land for any price, much less for the price which said Cooper alleges he paid to the heirs of said Caleb Horton, deceased; and these defendants do not believe that said Thomas, either by his language or conduct, intended to convey to said Vandoren or to said Cooper the impression that he, the said Thomas, was willing said Cooper should flow any part of his said farm, provided said Cooper would pay him at the rate mentioned in said bill for the part so flowed, for these defendants know that said Thomas valued the part of his farm flowed and injured by said pond very highly, and considered it the best part of his farm; and 40

- these defendants do not believe that either said John Vandoren or said complainant ever so understood the said Thomas, for the reason, among others, that both said Vandoren and the complainant, as these defendants believe, well knew that that part of said Thomas' farm which would be injured by raising the water of said pond was valuable natural meadow, and was a very important and essential part of his farm, and worth much more, and as these defendants insist at least twice as much as the land purchased by said
- 10 Cooper of the heirs of said Caleb Horton, deceased. And these defendants further insist and believe, that if said Thomas M. Carlile did in fact ever say anything to said Vandoren from which said Vandoren could fairly imply that said Thomas was willing that said Cooper should flow any part of his lands upon the terms alleged in said bill of complaint, such language was induced by the misrepresentation of said Vandoren as to the height to which they intended to raise the water, and its effects on his land, and that neither the said Thomas or these defendants can or ought in any way to
- 20 be prejudiced or bound by what he then said.

- And these defendants in further answering say, that they have no knowledge or information, and therefore cannot answer whether or not said Thomas M. Carlile, while said dam was being raised, ever made any objection to such raising, either to the complainant or any person in his employ; and these defendants respectfully submit that he was not bound to make any such objection, nor had he any right to object to said dam being raised until the water of the pond was in fact thereby raised so as to injure his land; and these de-
- 30 fendants further submit that this insistment or charge of said complainant comes with a bad grace from the complainant, inasmuch as he admits, by his bill, that although he knew the intended raising of the dam would injure the lands of said Thomas, yet he never spoke to said Thomas on the subject, or asked his consent thereto, but relied, as he alleges, on loose and passing remarks, alleged to have been made by said Thomas to said Vandoren, when said Thomas could not have had any reliable information as to the injury which he would sustain from raising the water of said pond.
- 40 And these defendants further answering admit, that said

Thomas M. Carlile lived near said dam, and frequently passed said mill, and had some, and perhaps all of his grinding done at said mill from the time of raising said dam until the death of said Thomas, in the year eighteen hundred and fifty-five; that during that time his land was injured every year by being flooded with water from said pond; and although these defendants have no knowledge as to whether or not said Thomas ever during that time asked the agents or tenants of said complainant to hoist the floodgates, so that he could gather his hay, these defendants presume that 10 such was the case; but they do not believe said Thomas ever asked the raising of said floodgates as a favor, in the strict and proper sense of that term, or that at such times, or any other, said Thomas ever admitted that he had given his consent to the raising of said dam, or to the flowing of any part of his land by the complainant. And these defendants do not believe that the complainant was at all induced to direct or consent to the raising of his said dam by the belief that he had the consent of said Thomas M. Carlile to such raising, nor do these defendants believe that any remon- 20 strance or objection to the said raising on the part of said Thomas would have prevented it, or produced any change of plan or purpose on the part of said complainant; and these defendants are confirmed in this belief by the course pursued by said complainant, both towards said Thomas in his lifetime, and toward these defendants since the death of said Thomas, in utterly neglecting and refusing to make any compensation to them for the damages caused by raising the water of said pond over their land until they were compelled to bring suit against him, as stated in said bill of complaint, 30 and by the allegations sworn to by the complainant, in his said bill, as to his belief that the said Thomas and these defendants have been very little injured indeed by the raising of said pond.

And these defendants further answering say, that they do not know, and cannot answer whether said Thomas M. Carlile ever complained to the complainant of the injury to his lands by raising said pond at any time, except as herein after stated or not; but this defendant, Eliza Carlile, well remembers being in company with her husband at one time (but 40

the particular time she cannot now recollect) when they saw said complainant, and her said husband complained to him of the injury to his land by raising the water in the complainant's said pond, and requested the complainant to come and see to it, and the complainant promised to do so; but so far as this defendant, Eliza, knows, and as she believes and insists, said complainant never did come as he had promised, and never paid any further attention to the request of her said husband, and matters remained unadjusted
 10 at the death of the said Thomas M. Carlile.

And this defendant, Eliza Carlile, further answering saith, that she was not accustomed, during the lifetime of her husband, to pay much attention to his business, her own time being occupied with her family affairs; but she recollects having frequently heard her husband complain from year to year of the damage caused to his land by the raising of the water of said pond after said dam was raised, as she thinks, in or about the year eighteen hundred and forty-six, and particularly does she remember her husband making such
 20 complaints in the early part of the spring in which he died, and his declaring his intention to permit it no longer, and to compel the complainant, by legal proceedings if necessary, to pay him the damages he had sustained, and to stop damaging him for the future; but in all the conversations between her husband and herself in reference to said flowing, she never heard from him that he had given to the complainant or to said John Vandoren any consent to raise said dam, or to raise the water of said pond, or to flow any part of his land, at any price or on any terms, nor does she be-
 30 lieve he ever did so consent.

And the said defendant, Eliza Carlile, in further answering saith, knowing the feeling and intention of her said husband, as herein before mentioned, this defendant, during the same spring, and very soon after said Thomas M. Carlile died, called to see said complainant at his house, and told him she had called to see him about the overflowing of her said land by the water of said pond, told him that it injured the farm very much, and wished him to come and see about it; that said complainant replied, that if it damaged
 40 the farm, he was willing to pay for it; but he thought the

damage was very little, if any. During said conversation, the complainant at first professed not to remember that said Thomas M. Carlile had ever complained to him about said damage to his lands, until this defendant reminded him that she was with her said husband, at one time, when such complaint was made to the complainant, in presence of one Nathan A. C. Seward, when he promised to come and see to it, but never came; and when so reminded, said complainant admitted his recollection of it, and expressed his regret that he had not had the matter settled in the lifetime 10 of said Thomas M. Carlile, and then again promised this defendant that he would come and examine the alleged injury to her said lands, and settle the matter, but he did not come until about two years after; that during said two years this defendant suffered greatly from the water upon her land, and talked with several of her friends about it, and about the course best for her to pursue in reference to it; but whether she spoke during that time to the complainant again or not, or whether the complainant heard of her complaints from other persons, she cannot tell, but in 20 the spring or summer of eighteen hundred and fifty-seven, as near as this defendant can remember, the complainant came and saw this defendant, said he had been examining her meadow, and that it was injured but little; that he thought it was overflowed and injured mainly by the springs along the hillside; that he would like to buy the land injured, but made no offer and mentioned no price; that he was willing to pay what damage he caused, but he hadn't time to attend to it then, as he was going to have some one to dine with him, and must hurry home, and talked, as this 30 defendant thought, in a very overbearing and tantalizing manner.

And this defendant, Eliza Carlile, further answering saith, that some time after the last mentioned conversation with the complainant, but how long this defendant does not recollect, John Vandoren, named in the complainant's bill, called on her—said he came at the request of said complainant, and wished her to fix a sum which she would accept for the damages which she might sustain thereafter from the flowing of said lands; but so far as this defendant recollects, 40

said nothing about paying for past damages—said this defendant and complainant must not go to law, but must settle the matter; that he (said Vandoren) wished it to be settled without going to law, but said Vandoren did not make any proposition of settlement; and this defendant further saith, that being anxious, if possible, to avoid the vexation and expenses of litigation, particularly with a person having the wealth of the complainant, she advised with some of her friends, who advised her that, rather than incur the expense
 10 and trouble of a lawsuit with the complainant, she had better take thirty dollars per year for her damages; that although that was not enough, it would be better than to go to law—and although this defendant knew that thirty dollars a year was a small and inadequate compensation for the damage she sustained, to avoid litigation, she concluded to accept it, and went to the house of said John Vandoren in a very few days after the aforesaid interview, and so informed him.

And this defendant, Eliza Carlile, further answering saith,
 20 that she heard nothing more from said complainant or the said John Vandoren, and in the spring of eighteen hundred and fifty-nine, according to her recollection, she wrote a note to said complainant, again complaining of damages from the water of his pond, and requesting him to come and see to it that spring, as the matter had lain long enough, and must be settled; that she is quite sure he received the note, for she caused it to be placed in the post-office at Chester, where he receives his letters; and this defendant further answering saith, that the complainant paid no attention to her said note,
 30 and although this defendant frequently met the complainant, and he knew her well, he never even spoke to her or noticed her until in the summer of eighteen hundred and sixty, and after receiving a letter from the counsel of this defendant, as he then stated.

And this defendant further answering saith, that very soon after the death of her husband, in eighteen hundred and fifty-five, she consulted her present counsel in reference to the damages to her land caused by the dam of the complainant, and acted in accordance with his advice in making
 40 every effort to have the matter adjusted without recourse to

law; but finding it impossible to effect any settlement, she, of her own accord, and not at the instigation of the persons named in the complainant's bill, again called on her counsel, who was then engaged in examining the lands of John D. G. Carlile alleged to be injured by the same dam, and requested him to take charge of her demand against said complainant, and take such course as was necessary to obtain her legal rights and protect the interest of her children; that she is informed by her counsel, and believes the same to be true, that on or about the twenty-sixth day of July, in the year 10
 eighteen hundred and sixty, he wrote to said complainant a letter, of which the following is a copy:

Morristown, July 26, 1860.

Nathan A. Cooper, esq.

Sir,—Mrs. Carlile has requested me to settle with you for the damages she has sustained by the raising of your dam across Black river, if the matter can be amicably settled. I have no desire other than to effect an amicable arrangement. She is a widow with a family of children, and neither you nor I should desire to put her to unnecessary cost. I trust 20
 we do not. Trusting I may hear from you on the subject in the course of a very few days,

I am respectfully yours, &c.,

THEO. LITTLE.

And this defendant, Eliza Carlile, further answering saith, that instead of answering said letter to her counsel as requested, said Nathan A. Cooper came to this defendant's house, soon after receiving it, with said John Vandoren, and informed this defendant he had received a letter from her counsel—said he had now come to see about the damages 30
 this defendant claimed, and made many excuses for not having come before, and among others, that he was waiting to have the land surveyed, and now wanted to know how much this defendant would take for her past damages; and this defendant admits that she then told said complainant she would take thirty dollars a year, although she knew at the time it was far too small a sum. Said complainant replied that he would be plain with her, and said he thought she asked too much. The complainant then asked if this de-

fendant would leave the matter to arbitrators, and she replied she would; and as this defendant understood, it was then agreed that it should be left to the decision of arbitrators to decide how much said complainant should pay for past damages, and that the matter should be heard the next week, though the arbitrators were not then selected; but before the time arrived said Cooper returned to this defendant's with said John Vandoren, and said that thirty dollars a year was too much damages, and asked this defendant if she
 10 would not accept twenty-five dollars per year. Said complainant then proposed to lease the land for time to come which was injured, and said, if he paid thirty dollars a year damages, he ought to have all he could get off of it—and this defendant, though exceedingly anxious to settle with the complainant, yet knowing that to get to the land which the complainant wished to lease he must cross other lands of this defendant, and not feeling prepared to give the complainant a definite answer, told him she wished before
 20 answering him to consult with her counsel, and would meet him at her counsel's office, in Morristown, on the then next Monday; that she did go to Morristown at the appointed day, and said complainant also went there with his friend, John Vandoren; that upon stating the matter to her counsel, she was advised by him not to lease said land to the complainant, and thus put it out of her control, for the reason, among others, that if by such an arrangement she permitted said lands to be flowed, during the continuance of her estate in them, they would be permanently injured to the great damage of her children, while they would receive no com-
 30 pensation for such damage. She was also advised by her said counsel, in order to avoid litigation with the complainant, to accept thirty dollars a year for past damages, provided the complainant would pay her the yearly damages from the time of raising his said dam, which proposition was made to the complainant, who refused to pay any damages which had accrued before the death of said Thomas M. Carlile.

And this defendant, Eliza Carlile, further answering saith, that it is true, as stated in said bill of complaint, that the complainant did at one time say he would like to buy the
 40 part of her land which was injured by the water; but while

this defendant had no desire to sell, and much preferred not selling said land, she has no recollection of ever having declined to sell, for the reason that her title was not perfect, though that was well known to the complainant, as she believes; but this defendant has no recollection of fixing any price upon said injured land until the complainant called on her again after the said suits were brought against him in the Supreme Court, and just about the time the complainant's bill was filed in this cause, and as she thinks in the month of September last, and again proposed buying said land, or 10 wished the defendant to fix a price upon it, and this defendant then offered to take the sum of fifteen hundred dollars for said lands, which sum she fixed with reference to the permanent injury to her farm resulting not only from the loss of the use of this land, but from having it flooded with water; and this defendant has no hesitation in saying she would prefer to have her farm as it was before said dam was raised, than to receive said sum of money, and permit said lands to be flowed as they have been since the raising of the dam. 20

And said Eliza Carlile further answering saith, that neither in the conversation between her husband, Thomas M. Carlile, and said complainant, herein before mentioned, nor in any of the several conversations or negotiations which have taken place between the complainant and this defendant in reference to the injury to her land caused by the complainant's said dam, did the said complainant ever, by word or act, intimate or claim that said dam was raised by and with the consent, express or implied, of said Thomas M. Carlile, or under any agreement on the part of the complainant to 30 pay, and of said Thomas to receive, for such part of his land as might be flowed or damaged, such price per acre as the complainant had paid the heirs of Caleb Horton, deceased, for the land he had purchased of them; nor did the complainant ever pretend in any of said conversations that there was any agreement or understanding, express or implied, between himself and said Thomas M. Carlile in reference to the raising of said dam, or the compensation to be paid to said Thomas for any damages sustained by him; nor did the complainant ever pretend, in any of those conversations or 40

at any other time, so far as this defendant knows, that he was not legally and equitably liable to pay all the damages sustained by said Thomas, or by this defendant since the death of said Thomas, nor did this defendant hear of any such pretended agreement or consent on the part of said Thomas until she heard it read from the complainant's bill; and this defendant submits that the conduct of said complainant is palpably inconsistent with the existence of any such pretended agreement or consent on the part of said Thomas M.

10 Carlile.

And this defendant, Eliza Carlile, further answering saith, that although it is true, as herein before stated, that she had at different times offered to accept thirty dollars a year for her past damages, rather than incur the vexation and expense of a lawsuit, the complainant never accepted such offer, but uniformly refused to accept it until after her offer was withdrawn, and she had notified the complainant of its withdrawal; and after that she admits that a person came to her residence representing that he came, at the request of
 20 the complainant, to tender her one hundred and eighty dollars for six years' damages to her land since the death of her husband; that that offer was made, as she thinks, about the month of September, in the year eighteen hundred and sixty, and that she replied that she had placed the matter in the hands of her counsel, and they must settle it with him; and this defendant is informed by her counsel that a similar offer was made to him by the attorney of said complainant before the suits mentioned in the bill of complaint were commenced, and that he refused to accept said sum, but
 30 offered to accept thirty dollars per year from the time the said dam was raised, which was also rejected by the attorney of the complainant.

And this defendant, Eliza Carlile, further answering saith, that she never knew of any survey being made by the complainant of that part of her lands which are flowed and injured by the said pond, except one made during the past summer or fall, at a time when the streams were lower than for many years before; and although this defendant has not had said damaged lands surveyed, she believes and insists
 40 that at least five or six acres (instead of three acres and

three hundredths, as stated in the complainant's bill) are seriously damaged by the raising of said dam; that before said dam was raised said land was considerably above the surface of the water of said pond when the pond was full, and was dry land, and cut an excellent quality of grass, and a very large burthen of it per acre; that although it is true that in times of freshet said land would at times be covered with water, it very soon ran off, and did not materially injure the land, but that since said dam has been raised said land is several inches under water when the dam is full, 10 which in ordinary seasons is the greater part of the year; that the land has become boggy in places, miry and unfit for use, so that it cannot be pastured, and the grass which this defendant has had cut has been used to cover the shelters or hovels for her cattle, and in some instances she has given it to persons to cut it and carry it away, so that it might not decay on the ground in summer, and generate disease and sickness; and this defendant further answering says, that so far from her damage being slight and less than twenty dollars a year, as alleged by the complainant, she in- 20 sists, and has been so repeatedly advised by her friends who are best capable of judging, that her actual yearly damage is much more than that sum, besides the permanent injury to the soil, and besides the tendency to decrease the general value of the whole farm, by rendering the dwelling house, which is near the flowed land, unhealthy; and this defendant believes and insists that the said farm would sell for fifteen hundred dollars more with the water of said pond as it was before said dam was raised, in or about the year eighteen hundred and forty-six, than it would sell for with the 30 water as it now is.

And these defendants further answering say, that the said Eliza Carlile, failing to effect any settlement with said complainant of the damage sustained by them, caused two suits to be brought against said complainant in the Supreme Court of this state, as stated in the complainant's bill; that said suits were commenced at or about the time mentioned in the complainant's bill, and declarations were filed of the purport set forth in said bill, and these defendants would have brought the same to trial but for the interposition of 40 this honorable court on the application of said complainant.

And this defendant, Eliza Carlile, admits, as she has also herein before stated, that she was very loth to enter into a legal controversy with a man of the wealth of the complainant, and was very much disposed to settle with him on almost any terms for several years; that some of her friends advised her to settle for a small amount, rather than incur the hazard and expense of a lawsuit, and others advised her to demand her full damages, and placed those damages higher than the complainant was willing to pay; and she also
 10 admits that among the friends with whom she advised was John D. G. Carlile, the brother of her husband and her near neighbor, who had known her farm his whole lifetime, and was as well capable of judging as to her damage as any other person. She also advised with James L. Dickerson, and may have done so with Charles Ming, all of whom are landholders along the same stream, as alleged in said bill of complaint; but these defendants were not governed by the advice of these persons in commencing said suits, but by the advice of their counsel.

20 And this defendant, Eliza, admits also that some of her friends (and she does not know but the three persons above named were among them) did assure her that if she needed pecuniary assistance in carrying on her suit against the complainant they would assist her, but neither the persons named in the complainant's bill nor any other person has ever furnished these defendants any money to carry on said suits, nor have these defendants ever asked them to do so; and this defendant, Eliza Carlile, denies that either of the persons named in the complainant's bill, or any owner of lands along
 30 said river, persuaded or induced her to refuse to convey to the complainant the part of her land which is injured by said dam, or to refuse to lease the same to the complainant, or to refuse to accept the offer of thirty dollars a year made by the complainant, or to treat the complainant's dam as a nuisance, and to prosecute the complainant for maintaining said dam, or assured her that they would defray the expenses of her prosecution against the complainant in whole or in part, or that they would save her harmless or bring her out of the litigation as well off pecuniarily as if she had settled
 40 with the complainant as he proposed, as is falsely charged

in said bill of complaint; and these defendants deny that either of the persons named in the complainant's bill, or any others, ever advised them, or either of them, not to settle with the complainant, if he would pay a fair compensation for the damages he had caused them—while these defendants admit that all the persons named in the said bill, and many others, did advise this defendant, Eliza Carlile, that thirty dollars a year was not a sufficient compensation for said damages.

And these defendants further answering say, that they believe it to be true, as stated in the complainant's bill, that about the year 1835 or 1836, certain persons claiming to act under an act of the legislature of this state, as mentioned in said bill, undertook to straighten the channel of Black river between the points mentioned in said bill of complaint, and these defendants believe they did so straighten it; and these defendants have heard, and presume it is true, that in making such changes in the channel of said stream, the bed of the channel was lowered eighteen inches at what is commonly known as the outlet, which was at or near the point where Tanner's brook empties into said Black river, but for what distance said channel was so lowered, or whether it was so lowered the whole distance between the said mouth of Tanner's brook and Topping's bridge these defendants have no knowledge or information, nor have these defendants any knowledge or information whether the channel of said stream was at all lowered above the mouth of said Tanner's brook or not, nor can these defendants perceive how the alterations of the channel of said stream can in any way account for the rise of water on the lands of these defendants, and especially so as such rise of water has only been since the dam of the complainant was raised, and began at or about the time said dam was raised. 10 20 30

And these defendants further answering say, that they have no knowledge personally how much said dam was raised by the complainant, but from information received from others, they believe that the efficient height of the dam was raised much more than nine inches; and these defendants respectfully insist that the matters and things set out in the complainant's bill, if true as therein stated, could give 40

to the complainant no right to flow their said lands nor constitute any defence against their said actions at law, and especially so, as the complainant does not pretend in his said bill that he has ever offered to fulfil said alleged agreement or understanding with said Thomas M. Carlile, either with said Thomas in his lifetime, or with these defendants since the death of said Thomas. And these defendants further insist, that to give to the pretended agreement set up in the complainant's bill the effect therein prayed would be contrary to and in violation of the statute of frauds and perjuries, and these defendants respectfully claim the benefit and protection of said statute to the same extent as if they, the same, were pleaded by them.

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants—all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

THEO. LITTLE,

Solicitor and of counsel with defendants.

New Jersey, Morris county, ss.—Eliza Carlile, one of the above named defendants, and also guardian of Thomas M. Carlile, John Carlile, and Nancy R. Carlile, infant defendants, being duly sworn according to law, on her oath saith, that the facts and matters set out in the foregoing answer, so far as they relate to the acts and deeds of this deponent, are true, and so far as they relate to the acts and deeds of other persons, she believes them to be true.

ELIZA CARLILE.

Sworn and subscribed, this 20th December, 1861, before me.

AUGUSTUS W. BELL, *M. C.*

New Jersey, ss.—Mary M. Carlile and Elias H. Carlile, two of the defendants above named, being duly sworn according to law, on their oaths respectively say, that the facts, matters, and things in the foregoing answer contained, so far as they relate to the acts and deeds of these deponents, are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true.

MARY M. CARLILE,
ELIAS H. CARLILE.

Sworn and subscribed, this 20th December, 1861, before me. 10

AUGUSTUS W. BELL, *M. C.*

Replication.

[Filed May 29, 1862.]

IN CHANCERY OF NEW JERSEY.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and 20 insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true—all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

JACOB VANATTA,
Solicitor and of counsel with complainant.

Evidence.

ON PART OF COMPLAINANT.

[Filed October 19, 1862.]

IN CHANCERY OF NEW JERSEY.

Examination of witnesses, &c., in the above stated cause, on part of the complainant, taken in the presence of J. Vanatta, esq., solicitor of complainant, and T. Little, esq., solicitor of defendants, on the 19th day of June, A. D. 1862, before me, at my office in Morristown, N. J.—Due notice admitted.

10

ALFRED MILLS, M. C.

David A. Douglass, a witness on part of the complainant, being duly sworn, deposes as follows:

I will be 68 years old next December; I now live at Mendham, Morris county; my occupation has been that of a miller—have followed that most of my life while I could do anything; I have attended Gen. Cooper's mill at Chester, on Black river; I went there the 1st or 2d of April, 1846, and remained there six years continuously; I rented the mill of Nathan A. Cooper.

20 *Quest.* Was there anything done to the dam after you went there?

Ans. Yes, sir; the dam was repaired, new trunks put up; we repaired the tumbling dam; Mr. John Vandoren bossed the job—there were several other hands at work there; the dam got leaking, and we repaired that, and raised it a little—put in a stick of timber to raise it.

Quest. How much was it raised?

Ans. Can't tell exactly—between seven and ten inches—think probably about nine inches; it was not raised more
30 than the thickness of the stick of timber that we put on the top, that I recollect of; I assisted in fixing the dam and flume; I think I assisted in putting on that stick—I am not positive, but think I did; that was done in 1846—the first
year I was there; there was nothing more added to the

height of that dam while I remained there—there has never been since, to my knowledge; I have been gone from there ten years, I think—I think it was ten years last spring since I left; I was on the dam about a year ago.

Quest. Was there any difference then in the height of the dam from what it was when you left there?

Ans. I couldn't tell, there was so much water in the dam; the tumble was covered with water.

Quest. Why was that piece put on the top of dam?

Ans. Well, the lower one under it was out of order, and I wanted repairing, and we wanted to raise the water; that increased height of the dam is of a good deal of value to the mill—can't tell how much. [This evidence objected to by Mr. Little.]

I could work all day on nine inches of water in ordinary times, after the piece was put on, with two stone.

Quest. How much more work, in your opinion, will the mill do with that nine inches on the dam than it would do with nine inches off—I mean the same mill and the grist mill. [Objected to.] 20

Ans. Well, I can't tell—that is an experiment I never tried.

Quest. Give us the best of your judgment?

Ans. Well, I can't tell you—it's a question I wouldn't think of being asked, and I never tried the experiment to know.

Quest. Would it be considerable or slight?

Ans. It would be considerable.

Quest. Would it be one-third or one-quarter more?

Ans. I think it would be one-quarter more—as near that 30 as I can tell; nine inches of water on the surface of a pond is worth eighteen at the bottom you know, and more too.

Quest. What was the condition of the flume when you went there, tight or leaky? [Objected to.]

Ans. Very leaky, all worn out—that and the trunks too; the dam itself was tight; the trunks let out half of the water in the month of April, they were so worn out and leaky; when we tried to saw plank from the trunk we couldn't run the grist mill at all—had to run the saw mill one day, and the grist mill the next; this piece was put on the dam in the 40

fall of 1846—don't recollect the month; think the repairs to the mill and flume were commenced in August or September; I knew Thomas M. Carlile—we usually called him Mulford Carlile—he lived about half a mile above the general's mill, while I lived there—on the road—on the west side of the river; he lived there all the while I had the mill; I believe I generally did his milling work during that six years—never heard of his taking it to any other place; he was at the mill frequently; the nearest store to his place was
 10 within one hundred yards of the mill, I should think; he had to come past the mill to get to this store; his nearest church and post-office were at the village of Chester, I believe, sir; in going to Chester, I think he usually went up the turnpike past the mill; there are two bridges over the ford, one over the main stream, and one over the race, for the use of the mill—they form part of the turnpike; the bridge by the tumbling dam is not over twenty-five or thirty feet from the dam, I think.

Quest. While you were there as miller, did Mr. Mulford
 20 Carlile ever complain to you about that dam?

Ans. He came down once, and asked me if I would hoist the gates—he had been along the river, and the water was very high, and he wanted to get his hay off—that was the most of a complaint he ever rendered to me; the water was then higher than in an ordinary time; we wouldn't call it high water; I can't tell you what year that was.

Quest. Fix the time as nearly as you can?

Ans. I can't tell anything about it—I was there six years, but can't tell which it was; it was after the dam was raised,
 30 and after the new trunks were put up; it was in haying time—don't know the month; I went right away and hoisted the gates when he requested me; he never asked me to hoist the gates at any other time while I was there; Mr. Carlile said at that time that the water was three or four inches deep in his meadow.

Quest. Did he ever request you to take the dam down, or have it lowered?

Ans. No, sir.

Quest. Did he ever say to you that he desired to have it
 40 taken down or lowered?

Ans. Not that I remember of.

Quest. Did you ever say anything to Mulford Carlile about his selling to Gen. Cooper his (Mr. Carlile's) low land along the pond, and if so, what did you say to him, and what did he say to you? [Objected to.]

Ans. He made the remark to me about the dam—something about it—and I told him he had better sell it to Mr. Cooper, as the Hortons had; he said if he would give me the same that he (Cooper) gave the Hortons he might have all my lands, or something to that effect—that's all; I don't 10 recollect what he said afterwards; he made that remark.

Quest. When was that?

Ans. I can't tell the month nor year.

Quest. Was it before or after the dam had been raised?

Ans. After.

Quest. How long after, a short or long time?

Ans. I don't remember.

Quest. Whereabouts did the conversation take place?

Ans. At the mill.

Quest. Did the mill pond of that mill fill up any while 20 you were there, and if so from what cause? [Objected to.]

Ans. It did fill up—I think it come from ditching the meadows in the ground up the river.

Quest. Why do you think it came from that cause?

Ans. The mud was washed in that they took out—a great deal of it; I think the mud and stuff they took out of the ditch washed into the river, and then in time of high water it washed down into the pond, and filled it up.

Quest. Did you discover any increase in the filling up of the pond while you lived there? 30

Ans. Yes, sir.

Quest. Increase large or small?

Ans. It was large.

Quest. Can you tell in what parts of the pond the principal accumulations took place while you were there?

Ans. On the west side of the pond mostly.

Quest. Did you, while there, ever go up the pond in a boat any considerable distance, so as to notice the accumulations in the pond some distance above the mill? [Objected to.] 40

Ans. I never did.

Quest. How many run of stone were in the mill while you had it?

Ans. Two—that number was in when I left—no more.

Quest. Was there room for any more?

Ans. Yes, sir.

Quest. Was saw mill driven while you were there?

Ans. Yes, sir; I have known a saw and grist mill on the same site as long as I have been in the habit of going up
10 the turnpike—should think fifty years; there was considerable sawing done there.

Quest. Was that a good or inferior situation for a mill—I mean in reference to the surrounding country? [Objected to.]

Ans. I think it is a good situation.

Cross-examination of *David A. Douglass* by Mr. Little.

The same mill has stood there in the same situation ever since I can remember; we did nothing to the tumbling dam except to put a new piece of timber on top of it, and
20 stop up what holes there were in it—it was a worn out leaky thing, and we put boards over the leaks until we got the trunks up, and then we was going to make tight work of it by putting in dirt; the whole of the tumbling dam was not built anew while I was there; there was a new mudsill put in in place of part of the old mudsill—the rest of the old mudsill was left there; the dam was then a stone dam; we laid boards over the leaks, and nailed them there, and then filled up with dirt—nailed the boards to the pieces of timber in the dam; I think the height of the dam was
30 raised about nine inches; we did not change the floodgates—we put in new floodgates; the gates that Vandoren put in wouldn't raise the water to the top of the dam, except in very high water; we had a couple of narrow gates, about a foot wide, which we put on the top of the gates that Vandoren put in in low water, and that shut the water off—we used them very seldom; the pond was in the habit of filling up after the repairs while I was there; if the water got down ever so low, it would fill up every night so as to run over the tumble; the floodgates are higher than the tumble;

in common ordinary times, when we had two stones and the saw on, we would run the water off in two hours so that it wouldn't run over the tumble; we might use the water nearly till night in that way; I can't tell how many inches the water would be reduced by running it all day in ordinary times; in ordinary times the water would run over the tumble to perhaps the depth of five or six inches; in the morning we had, generally speaking, enough water to run two stone and the saw mill all day—in the dry weather in the summer season we could not do that; in the summer season I 10 never seen the season when we could not run two stone all day; we would stop at nine or ten o'clock at night; during the summer season we hadn't any more water than we needed for that purpose; I suppose we would require just as much again water to run four run of stone; I haven't been there very much of late years—was there about a year ago, about this time of year I should think; it was not in a time of freshet; the water was that day higher than it usually was when I drove on the mill, for they had the gates all in then, which was not at all necessary, and throwed the water 20 over the road west of the floodgates toward Howell's; they were only running one run of stone at the time; during the six years I was there I never ran the water over the road at the west end of the floodgates in an ordinary time of water; I don't know how deep the water was in the road at the west end of the floodgates, but it was so deep it had washed quite a gully in the road; I can't tell how long those trunks and that dam had been so leaky; I recollect being at the mill twice or three times before I went there; my son 30 had it one year, and then I was there several times—then the water was running through the trunks; the new water wheel was put in after I left; I don't know whether the little floodgates (that are put on top of the large ones) are used there now or not; I took it that the day of which Carlile spoke as being overflowed, was down below his barn—never was up there—don't exact'ly know; I do not know whether Mulford Carlile's land was overflowed in ordinary time of water—he never complained to me but this once, when the water was higher than usual; I did not know at that time of any right on the part of Gen. Cooper to flow 40

Mr. Carlile's lands, or any claim of right on Cooper's part; it was not what you might call a freshet when Carlile spoke to me, but the water was higher than usual—had been heavy rains; it was after this that Carlile made the remark to me, that if Mr. Cooper would pay him what he paid the Hortons he might flow all his lands.

Quest. How long after the gates were hoisted for Carlile was it that this remark was made?

Ans. I can't tell you—it might have been a year.

10 *Quest.* Will you state, if you please, what remark he made about the dam—state the conversation?

Ans. I can't do that—he made that remark; I told him he had better sell his land that was drowned to Mr. Cooper as the Hortons had; he said I will sell him my farm at the same price he gave the Hortons.

Quest. How came you to suggest to Mr. Mulford Carlile to sell his land that was drowned to Mr. Cooper as the Hortons had?

Ans. I can't tell you, sir; there was a conversation that
20 led to it; there was somebody else there at the same time talking with us about the dam; Mulford Carlile did not complain of the dam at that time at all.

Quest. Did the other person who was conversing there complain of the dam?

Ans. No, sir; don't recollect who it was—it was not one of the neighbors; no one had requested me to request Carlile to sell that land to Gen. Cooper.

Quest. If Mr. Carlile was not complaining of his lands being injured by the dam, how did you know that they were
30 injured?

Ans. I did not—I knew there had been a talk about it.

Re-examination of *David A. Douglass.*

Quest. When you repaired the dam, were the stones which composed the dam taken up, or left laying as they were when you began the repairs?

Ans. I don't recollect of any new stone work being done—the stones were left laying there; this mudsill that I have spoken of was not at the bottom of the stone work of the dam, but on the top of the stone work; this piece that Mr. Vandoren

put on is the same one that I call the mudsill—that is, the one I spoke of as being about nine inches; a part of the old one was there I believe—the ends were there yet.

Quest. When the floodgates were in (which Mr. Vandoren made and put in), as the water rose in the pond, would it first run over those floodgates, or over the top of the dam at the west of the floodgates?

Ans. Over the dam, when both sets were in—I mean both those that Vandoren made and the small gates that I made.

Quest. You say that last year, when you were there, the 10 water was very high, and the miller gave some reason for its being so high that day, what reason did he give for the water's being up so? [Objected to.]

Ans. I asked him the reason, and he said he might as well have the pond full as not; I said the water run over the road; he said he did not care where it went; the miller's name was Schurts, I believe.

Cross-examination of *David A. Douglass* resumed.

Quest. Was the new mudsill that you put on any thicker than the old one? 20

Ans. I don't know whether it was or not, sir; I never measured it.

Quest. According to your recollection, how was it?

Ans. I can't recollect anything about it; it was put on top of what was left of the old one; when I was there a year ago, and the water run over the road at the west end of the dam, it run over the east end of the dam, over the high cap piece; I can't tell the distance between the mudsill and the cap piece; the cap piece has nothing to do with raising the water; the space between the mudsill and the cap piece was 30 perhaps two feet and a half; I never knew the water to run over the cap piece while I was there.

DAVID A. DOUGLASS.

Sworn to and subscribed this 19th day of June, 1862, before me.

ALFRED MILLS, M. C.

William W. Dorland, a witness produced on part of the complainant, being duly sworn, says—I reside at Chester,

Morris county—am thirty-nine years old—am a miller—am now engaged at Flanders in milling; I have used and occupied Gen. Cooper's mill on Black river, near Chester—went there in April, 1852, and left in spring of 1856, in April; I rented the mill the first year; the second year Vanderveer and Swayze had it with me; the third, Vanderveer and I had it together, and the fourth year I was alone again; there were two run of stone in that mill when I went there; two more were put in while I was there—we put them in in 1852 and 10 1853—got done in January, 1853; the four run were used after that; Mr. John Vandoren bossed the work; the mill dam was not raised in any way while I was there; the saw mill was used while I was there; there was a stick of timber on the top of the dam, over which the water fell—it was there when I went there—looked as if it had been there some time—same one was there in same place when I left; nothing was done to the dam to increase the volume of water, except putting dirt on where it got washed through—nothing to raise the height of the dam—I lived about 100 20 yards from the mill—was engaged in no other business—the principal part of the time was in the mill; three months of the time of the last year I was there I was sick on my back in my house there; I was taken the first of August; I knew Thomas M. Carlile; he got the principal part of his milling work done at this mill while I was there, I guess—I don't know as he got any part of it done anywhere else; he was at the mill quite often; I believe he once applied to me to hoist the gates in the dam while I was there; I won't say what year that was—I think it was the first year I was there; 30 he said that Hall had cut the hay on his meadow—it was in haying time; he came down to the mill, and said he wished me for to let off the water—the hay was all afloat in the meadow he wanted to get it off; the meadow was up above the barn up the river east of Carlile's house; I told him I had let out all the water I could; I had drawn the gates clear out, and yet it run over the road; it was very high water—unusually high—there had been a very heavy rain; he never asked me to hoist the gates at any other time, as I recollect of; I don't recollect that he ever made any complaint about 40 the dam while I lived there.

Quest. Did you at any time hear Mr. Carlile say anything about selling to Gen. Cooper his land along the general's pond—and if so, what did you say to him, and he to you?

Ans. At the time he came down to tell me to hoist the gates he talked about it; he said he had mentioned to Mr. Cooper about it; he said he hadn't paid no attention to it; he didn't say what he said to him.

Quest. State the rest of the conversation? [Objected to.]

Ans. I told him then that he ought to try and see him and make a bargain, as it was drowned there; he repeated that 10 he had mentioned it to him, but he hadn't paid any attention to it, but that if he would give him as much as he gave Horton he might have the whole farm; this talk took place at Mr. Vanderveer's store; I think Mr. Vanderveer was there, and several had collected there—it was in the afternoon pretty late, and it had rained hard; think John Vandoren was there; think he (Vandoren) was working at the mill at the time; think Vandoren heard the conversation—he was close by, and spoke a word once in a while.

Quest. Were you ever on the low land of Mulford Carlile, 20 adjoining the upper part of the pond, while you were there working in the mill?

Ans. Frequently, sir.

Quest. Did you notice the low land adjoining the river?

Ans. Yes, sir.

Quest. About how much of it was flowed then by the waters of the pond?

Ans. I couldn't tell you how much there was flowed.

Quest. What kind of grass did it raise at that time?

Ans. The principal grass along the river was bog. 30

Quest. How many acres would you think—about one, two, three, four, or five?

Ans. I shouldn't think more than an acre or an acre and a half.

Quest. What was that land lying along the river worth at the time you went into possession of that mill?

Ans. Shouldn't think it worth more than ten dollars per acre; it was quite miry wet ground along the river; I was on it quite often—went up pretty often; have been on it when it was mowed, and along it when the grass was grow- 40 ing.

Quest. Did you go up that stream, while you lived there, up as far as Carlile's bridge?

Ans. Yes, a great many times in a boat; if water was down, we would find sand bars; pond filled up while I had the mill quite a good deal—it must have been the wash from the roads and creeks, and every other place, I suppose; in 1855, I was on this low meadow ground of Carlile adjoining the river a great many times—have not been on it since; I yesterday passed over what is called Carlile's bridge, at the upper end of the pond; the water was pretty high—I noticed it; I think it was above what you would call an ordinary stage of water; I went up along by the dam yesterday—passed by the end of the dam on my way up; I thought the water looked low to me—it was running over the fall piece under the cap—I should judge it was twelve or fourteen inches under the cap; the gates was out—I noticed them particularly.

Quest. Just describe the floodgates as they were when you were there?

20 *Ans.* The first tier of the gates was planks at the bottom, and then we sot boards on the top to make the rest of them; boards and all was not over two feet high while I used them; I did not raise my water as high as the rest of them has since I came away.

Quest. How near was the top of the gate to the cap?

Ans. I should judge it was about six inches; the cap is on the top of the gate-posts, and goes across over the tumble where the water falls.

Quest. If you went to lower permanently the water in that pond, what would you take down?

Ans. I would take out the gates.

Quest. I mean if you wish to lower the dam?

Ans. I don't know what I would do; if you would take off the fall piece it would lower it the thickness of that fall piece, and it would lower the water so much.

Quest. If you reduced the water in the pond nine inches, would it injure the value of the mill?

Ans. Yes; I should think it would be a great damage to it—couldn't tell how much exactly—should think it would
40 make one-third difference.

Cross-examination of *Wm. W. Dorland.*

Quest. You said that at the time of the conversation at Vanderveer's store, John Vandoren was there; are you sure about that?

Ans. I am certain of it.

Quest. What makes you recollect?

Ans. He was there at the time, and engaged in the conversation—not particularly in the conversation; he did not engage in the conversation at first, but afterwards he did; can't tell what he said—not particular—can't state it; what 10 made me recollect it was that the man said his hay was flooded, and I did not want to injure him; it kind of struck me as though I might have been to blame; the conversation about selling commenced by his saying his lands was all afloat; we talked about the selling of them to Cooper—I suggested it.

Quest. What did Mr. Vandoren say to that?

Ans. Don't recollect; Carlile spoke about the Hortons; I first told him that Cooper had bought of the Hortons—I had heard it talked of before in the store. 20

Quest. Wasn't Mr. Vandoren out part of the time?

Ans. I don't know—I think not.

Quest. Conversation in an ordinary tone or in an undertone?

Ans. Just as we are talking here—no concealment about it.

Quest. Didn't Mulford Carlile say there that he had made a bargain with Gen. Cooper about the land?

Ans. I don't recollect of his telling me that he had made a bargain—said he had mentioned to him about the water being on his land; he didn't say as he made any reply to him; 30 that was what he said the general hadn't paid any attention to.

Quest. When you told him that he ought to try and see the general, and make a bargain with him, did not Mr. Vandoren say he, Carlile, had agreed to let them raise that dam, if the general would pay him as much for the land as he paid the Hortons?

Ans. I don't recollect.

Quest. Didn't you hear anything of that kind said there?

Ans. I don't recollect—I might have heard it; Mr. Vandoren was at work at the mill; we were putting in new run 40

of stone and two new wheels; we didn't put in the second wheel just then, but did before we quit; this was in 1852; we finished them in 1853; we used the saw mill after these repairs.

Quest. Did you have water enough to drive four run of stone and the saw mill?

Ans. Yes, sir; I think it took about twice as much water to run four run of stone as it did to run two run of stone; the new wheel was placed just where the old wheel was—it was a breast-wheel, tight bucket; the water was let on the wheel at the same height as before; we never moved the fall piece—that was put on when Mr. Douglass was there—has never been altered; the same trunk from the pond supplies both wheels; while I was there, the road between the two bridges was not raised in any way—the road was filled up and raised a little after I went away; before I went there, I lived at Chester; don't know whether the road was raised between the bridges before I came there—think not in a good while; the arrangements for discharging the water at the floodgates and the tumble were the same when I left that they were when I came there—were not changed at all; while I was there, I never measured the length of the tumble of the dam, but should think it was sixteen feet; that is the length of the floodgates, I think; their height (or width) may be fourteen inches—I mean that of the regular permanent gates; I had three sets of gates; the top ones were mere boards, and when the water became high we would punch these out, and let them go down the river; the floodgates set on the fall piece, and the fall piece is on a level with the bottom plank of the floodgates; the distance from the fall piece to the bottom of the stone work on the outside of the dam is about seven or eight feet, I should think—I have never measured it; the general waste water from the pond passes under the bridge at the west end of the road; I don't recollect the length of the bridge—think it is considerably longer than the fall—that is the abutments and all—it looks so to me; the distance between the bridges is twenty paces, I should judge; at ordinary times, in first year I was there, we had a good deal of waste water; we was busy repairing, and didn't want to use it—only run the saw mill.

Quest. Didn't you have any more water after you put in the four run of stone than you had before?

Ans. I think not; I never saw the water, while I was there at an ordinary time of water, run over the road at the west end of the bridge; I have in a freshet seen it run over the cap piece, not at any other time while I was there.

Quest. You have given us the height of the regular flood-gates, and said you raised the height of the water above that by boards—how high in ordinary times did you use those boards?

10

Ans. To within five or six inches of the cap—that is we would do it in the night when we stopped; sometimes the pond would fill up, and sometimes it wouldn't; I went along yesterday by the dam; couldn't see the arrangements of the floodgates—water was low—don't know whether the mill was running—was not on that side.

Quest. What depth of water must you have in the flood-gate to give you head enough to run four run of stone?

Ans. Well, we can drive the mill with one floodgate—I think so; we used to put on a piece six or seven inches wide 20 when the water was low to let the water raise.

Quest. What depth of water is required in the flume to run four run of stone?

Ans. I declare I never measured it—six feet, I guess it was; I think the flume is lower than the pond was; I can't tell how near that would bring it to the top of the flume; I think that since I left they kept the water higher than when I was there.

Quest. How do they do that?

Ans. Put on more gates; part of the time I have seen it, 30 it was fourteen inches higher than when I was there; that was not in time of freshet, it was in an average of water; I think the dam on both sides of the floodgates is somewhat higher than the cap piece—on the west end I don't think it is any higher; we did quite a considerable work at the mill while I was there; most of the time after January, 1853, I kept the four run of stone going night and day; I didn't drive them all the time nights; I suppose I have been all over Mr. Carlile's ground—went principally along the river when I was fishing; couldn't tell how much there is of that 40

low ground—shouldn't think the marsh was over an acre and a half; I never looked how much the ground was injured; not all of the acre and a half was boggy in 1855, I think; I never was acquainted with this ground before I went there; I always tended the gates myself.

Quest. Were there or not complaints made by owners of the land much further up the stream than those of Mr. Carlile, (while you were there) of their lands being flowed by water? [Objected to.]

- 10 *Ans.* There might have been, but I don't recollect; I always thought it injured Mr. Carlile's meadow below the barn.

Re-examination.

Quest. Just give us the width of those boards you put in and took off at pleasure?

- Ans.* One board was, I think, about six inches wide, and t'other one was about four inches; I used them in low water—I put them on to save what water would otherwise be wasted; there was no waterfall except over the floodgates
20 unless it was high water; I have seen the water run two feet deep over the stone work at the west end of the bridge; the length of the stone work west of the floodgates may be sixty feet, and may be more; I have seen the water run over the cap, stone work and bridge—this was when I saw it running two feet high over the stone work; I think there is a space between the floodgates and the stone work where it is planked clear up to the cap—that is the case on each side of the floodgate; can't tell the distance from the floodgate to the stone work—shouldnt think it as much as eight or ten
30 feet—never measured it; think the cap is a trifle higher than the top of the planked space.

This examination here adjourned by consent of parties.

August 1st, 1862,—Examination resumed at my office in Morristown—parties and their solicitors present.

Re-examination of *Wm. W. Dorland* resumed.

Counsel for complainant shows to witness a wooden model of a dam, which he offers in evidence, and I have marked it *Exhibit 1* on part of complainant.

Quest. Is that or not an accurate representation of the dam at Mr. Cooper's mill, judging from the appearance of it?

Ans. Yes, sir.

Quest. The part in black in front of the dam consists of what?

Ans. Of stone.

Quest. What do you call the piece resting immediately on top of the black; what name do you give to the corresponding piece in the dam?

Ans. That's what I have referred to in my testimony as 10 the fall piece.

Quest. What do you call the piece immediately above the fall piece, and which in the model is marked with the figure 1?

Ans. I call that a cap piece.

Quest. What do you call these pieces, one of which is marked with the figure 4, and the other pieces like it?

Ans. We generally call them rafters—never heard of any other name.

Quest. What do you call the piece marked 5? 20

Ans. I call that the mudsill.

Quest. In the dam, *that* lies how far back from the face of the dam?

Ans. I should judge twelve or fourteen feet.

Quest. Have you been at the dam, and examined it recently?

Ans. Yes, I was at the dam some three or four weeks ago, and looked at it; it was since I was examined here before.

Quest. Is the fall piece in the dam now the same as it was then when you were the tenant of the mill? 30

Ans. Yes, sir, it is.

Quest. Are the upright posts between the fall piece and the cope piece the same, or different posts from what were there when you was tenant of the mill?

Ans. They are the same posts.

Quest. Is the fall piece now there the same, or a different piece of timber from what was there when you were tenant of the mill?

Ans. The same.

Quest. Are the floodgates now in the same place they were 40 then?

Ans. Yes, sir.

Quest. And of the same length (from east to west) now as they were then?

Ans. Yes, sir.

Quest. When you went there as tenant, was the space each side of the gates planked up to the cap piece, as represented in this model?

Ans. Yes, sir; it is so still; when I went to the mill as tenant, the spiles on the side of the dam (where the boards
10 in the model marked "6" are) were rotted away in some places, and the water leaked through there; I stopped up those places—put in cinder and dirt to stop them up; those spiles rested against the bank of stone and earth; the water that came out in that way leaked through the stone wall part of the dam.

Quest. Is this cap piece now any higher than it was when you was there as tenant?

Ans. No, sir.

Quest. Were these two pieces (marked "7" in the model)
20 then across the dam when you was tenant?

Ans. They wasn't on there.

Quest. How did you then go out to the floodgates when you were there?

Ans. We had to go out on the cap piece; I never measured the width of the floodgate that was in use while I was there.

Quest. Was there any new floodgate made while you were there as tenant of the mill?

Ans. Not any while I was there—I used the same ones all the while I was there, and left them there.

30 *Quest.* Did the gates then used fill all the space between the fall piece and the cap piece?

Ans. No, sir.

Quest. Did you use any means to fill that space?

Ans. Yes, sir; I put boards on the top of the gate; I had two sets of gates—a narrow pair—and I filled up all the space when I put both of them on.

Quest. When you had both of your gates on, how high would they raise the water?

Ans. They would raise it to the top of the cap.

40 *Quest.* Did you ever raise the water to the top of the cap by means of your gate while you was there?

Ans. Not very often.

Quest. Did you at all?

Ans. We might sometimes—I think I have seen it run over a little sometimes.

Quest. Who directed you, if anybody, as to when you should put in, or when you should take off your gates?

Ans. Nobody never directed me in the matter.

Quest. Did you ask anybody's permission as to when you should put them in, or when you should take them off?

Ans. No, sir.

10

Quest. Did you consult anything or anybody about putting them in or taking them off, except your own accommodation and convenience?

Ans. No, sir.

Quest. If by means of your boards you stopped all the space between the fall piece and the cap piece at night, and left them there until morning, and the mill stood still during the night, how high would the water be in the pond in the morning, as a general thing?

Ans. Well, it would be in the neighborhood of the top of 20 the cap.

Quest. What seasons of the year did you use those board gates, if any particular season, or did you use them at all seasons?

Ans. I used them all through the season, whenever we needed the water.

Quest. To drive the four run of stone, while you were there, did you have sufficient water?

Ans. Yes, sir.

Quest. Did the condition in which the stones were in reference to sharpness make any difference as to the quantity of water you needed in the pond?

Ans. Yes, sir; well, when the stones run smooth, of course we have to put more power to make them grind.

Quest. Could the four run of stone be driven without the pond full of water?

Ans. Not to advantage.

Quest. Did you keep the saw mill running too while you were there?

Ans. Well, the principal part of the time.

Quest. If the mill stones were not sharp and in first rate order, could they all be run without having the pond full of water?

Ans. I think not to advantage they couldn't; the pond wants to be pretty near full to run the four run of stone and the saw mill—I mean the water should be up near the cap piece; we regulate that by the gates—we keep the water up to it or on it—sometimes run over a little.

10 *Cross-examination resumed.*

Quest. Why didn't you raise the water all the time so as to run over the cap piece, if you needed so much water for the four run of stone?

Ans. Well, we didn't need it, and we didn't raise it up any higher.

Quest. What part of the time did you run four run of stone?

Ans. Well, the three last years I was there pretty much all the time.

20 *Quest.* What part of that time did you keep that space filled up so as to raise the water on the cap piece?

Ans. Well, I couldn't tell exactly hardly what time.

Quest. Half the time?

Ans. Yes, sir; perhaps more.

Quest. What proportion of that time did it run over the cap piece?

Ans. I never let it run over the cap piece a great deal, only in case of high water.

Quest. My question is this, what proportion of the time while you were there did the water run over the cap piece?

30 *Ans.* I couldn't tell anywheres near it.

Quest. Did you ever knowingly let it rise and run over the cap piece?

Ans. No great deal.

Quest. How much do you mean by a great deal—how many inches deep?

Ans. Well, I judge it might run over a couple of inches, sometimes in ordinary water before morning, or by morning.

Quest. In the day time, while you were driving the mill,

did you ever know the water to rise above that cap piece, except in a freshet, while you were there?

Ans. Yes, sir; some days when we wouldn't be doing so much—be repairing or something like that—it would run over.

Quest. Was that common or uncommon?

Ans. Well, it wasn't very common for me.

Quest. When you were driving the mill during the day time, did you ever know the water to rise above that cap piece, except in a freshet? 10

Ans. We most always drawed the head off during the day time; I have not known it to run over the cap piece, except in a freshet, when I was driving all the mill—I mean the four run of stone and the saw mill—but have known it when all the mill was not going.

Quest. How long would that continue when you were running the mill?

Ans. We would draw it off principally in the day time when we was running the mill; when there was more water than I wanted to use, I generally gave it vent under the 20 gate; the first set of gates that were there when I went there had a stem to them; the first set of gates were fourteen inches in width, I think, but won't be certain—never measured them.

Quest. What is the object of putting a floodgate in?

Ans. To accommodate the dam in time of high water.

Quest. What relation does the bottom of the floodgate bear to the bottom of the pond, if any?

Ans. Sometimes we put them at the bottom and sometimes at the top—when at the bottom we call them the 30 flumes; this was not put at the bottom; it depends on the location of the ground you have to build them on; I don't know how high the stone work under the floodgate is—never measured it.

Quest. When you went there, where did the water escape when the gates were shut down?

Ans. When there was a flood of water it went over the top of the cap—always did and always will.

Quest. Over the whole extent of the cap?

Ans. Yes, sir; I think that cap must be thirty to thirty- 40

six feet in length; the first set of gates did not fill up the space between the fall piece and the cap piece.

Quest. Why then did the water run over the cap piece?

Ans. There was more water than could run through the space; it might run over the cap piece in case of high water when all the gates were out.

Quest. When you put in your second set of gates, did you have a stem to them?

Ans. No, sir.

10 *Quest.* How did you raise them out?

Ans. We punched them out.

Quest. Do you mean every day?

Ans. No, sir; we generally punched them off when the water raised on us.

Quest. Do you mean when there was a freshet, and you wanted to give vent to it?

Ans. Yes, sir.

Quest. You put them there to raise the water, didn't you?

Ans. Yes, sir.

20 *Quest.* What proportion of the time did you keep them on?

Ans. Well, we had them on the principal part of the year—during the whole season when the water was about on an average.

Quest. Didn't you keep them on at all times except in case of a freshet—was not that your rule?

Ans. Yes, sir, except when the water was a little stiffer than we wanted it.

Quest. What was the width of the second set of gates?

30 *Ans.* I couldn't remember—generally left a vent above it—between it and the cap piece—of a couple of inches.

Quest. How wide was the space between the fall piece and the cap piece?

Ans. I never measured it—twenty or twenty-one inches.

Quest. Were the stems broke off at any time while you was there?

Ans. Not off the big gate—I don't recollect it.

Quest. How wide were the loose boards you put on top of second gate?

40 *Ans.* Well, I can't tell; I had two sets of boards; they

might have been four inches—they might have been less, but not far from that.

Quest. How much of the time did you keep those boards on top of the second set of gates?

Ans. I couldn't tell exactly; when the water got low we would put them on to raise it, at any time of the year, winter and summer.

Quest. You said in your principal examination, with reference to these boards, that you used them all through the seasons whenever you needed the water—do you or not 10 mean by that, that it was not your custom to use them except in times of freshet or high water?

Ans. Yes, sir.

Quest. What was the thickness of that cap piece?

Ans. I never measured it—I should judge it was seven or eight inches.

Quest. When is a pond said to be full?

Ans. When it runs over the top of this cap piece.

Quest. repeated—as to any pond?

Ans. The water must be up to the top of the dam. 20

Quest. What part of the dam—the whole of it?

Ans. We always have a tumble.

Quest. Is the pond then or not full when the water is up to the top of the tumble?

Ans. Yes, sir, it is.

Quest. What was the tumble of this dam when you first came there?

Ans. Well, the top of the cap piece, I suppose; there aint no tumble on that dam only the cap piece.

Quest. What is the tumble of a dam? 30

Ans. The place fixed for the water to pour over the top.

Quest. Is it or not the place where the water first pours over the dam—the lowest part of the dam?

Ans. It is the lowest part in the dam where the water tumbles over.

Quest. Was not the top of the floodgate which was there when you came there the lowest part of that dam?

Ans. There was a board in on top of that, that shut it up tight up to the cap piece, and that board had a stem on it; I never used that board to my recollection. 40

Quest. Was that any part of the permanent gate?

Ans. No, sir, only temporary.

Quest. When were the string pieces (No. "7" on model) put there?

Ans. I don't know—they were not there when I went away.

Quest. What is the head and what is the fall?

Ans. The head is from the bottom of the flume to the top of the water in the flume, and the fall is from the bottom of the flume to the bottom of the wheel.

10 *Quest.* How is the wheel placed with reference to the bottom of the flume?

Ans. The bottom of the wheel is about eight or nine feet from the bottom of the flume; the upper wheel is eighteen feet, and the water comes on a little above the centre of the wheel.

Quest. What is the difference between the trunk and the forebay?

Ans. They are practically the same thing; the trunk is where the water comes out of the pond, and the forebay is
20 where the water runs on to the wheel.

Quest. You try to get the water on the wheel as high as possible?

Ans. Yes, sir.

Quest. Is the bottom of the forebay then higher or lower than the bottom of the trunk?

Ans. Generally on a level; we may raise it a couple of inches for the gate to work on; generally put a bed piece down for the gate to work on.

Quest. Does the bottom of the trunk bear any relation to
30 the tumble?

Ans. No, sir.

Quest. Is this a model of the dam, or only of the part near the floodgates?

Ans. That part near the floodgates is a section of the dam; the stone work on each side of the cap piece is higher than the cap piece.

Quest. Does the top of the water in the flume ordinarily bear any relation to the height of the tumble?

Ans. Yes, sir; the tumble of the dam is built for our
40 accommodation, so as to keep the water in the trunk all

right; the height of the tumble controls the water in the trunk.

Quest. If you should then raise the water in the trunk, would it or not be necessary to raise the tumble of the dam the same amount?

Ans. Yes, sir.

Direct examination resumed.

Quest. You spoke about being two sets of gates besides the permanent gates—had either of your sets of gates stems to them?

10

Ans. No, sir; they were mere temporary boards without stems; besides mine, there were two permanent gates with stems to them.

Cross-examination resumed.

Quest. Do you know whether the gates that are now there fill up the space between the fall piece and the cap piece?

Ans. I think they do.

Direct examination resumed.

Quest. Did you assist in putting in the two additional run of stone that were put in that mill in 1852?

20

Ans. Yes, sir.

Quest. How long a time did the doing of that work occupy?

Ans. Well, I guess six months.

Quest. During that time, was Mulford Carlile at the mill?

Ans. Yes, sir.

Quest. Frequently or seldom?

Ans. Quite frequently he came down.

Mr. Little objects to this examination.

Quest. What was he doing there?

Ans. Don't know that he had any particular business.

30

Quest. Was he in the mill while the work was being done there?

Ans. Yes, sir.

Quest. Did he take notice of it—look at it?

Ans. I suppose he did.

Quest. Have any conversation about it?

Ans. I think he did—was talking about it—that we were

making improvements—a great many—spoke about it at the time—thought we were making a great improvement.

Quest. What did he say about it?

Ans. Well, I can't recollect exactly what he did say about it.

Quest. Find any fault about it?

Ans. No, sir; he seemed to be pleased to have it go up; that's the way he talked—can't tell how he expressed himself.

Quest. Did you ever hear him making objection to that
10 work, or finding fault about its being done?

Ans. He never did to me.

Quest. Or in your hearing?

Ans. No, sir.

Quest. At or about that time, did you hear him say anything about the general's putting up works on the west side of the river below the dam, and if so state what it was? [Objected to by Mr. Little, as not being a re-examination in any sense.]

Ans. I heard him talking about it frequently—I cannot
20 tell exactly what he did say; he spoke as though it would make a business place of it, and thought it would be a nice thing.

Quest. What kind of works was he talking about? [Objected to by Mr. Little.]

Ans. About a machine shop, foundry, and something like that.

Quest. Were they works that were designed to use water power to be driven with?

Ans. Yes, sir.

30 *Quest.* With whom was he having that conversation?

Ans. With all hands around the mill oftentimes.

Quest. Did these conversations take place at the mill?

Ans. Yes, sir.

Quest. While these additional run of stone were being put
in?

Ans. Yes, sir.

Cross-examination resumed.

Quest. Do I understand you that these conversations were at the time you were putting in the run of stone?

Ans. Yes, sir, at the time we was doing the work.

Quest. What work was it that he didn't find fault with or object to?

Ans. He didn't find fault with anything, that I know of.

Quest. You say he didn't find any fault with the work—what work do you mean?

Ans. When we were putting up the new water wheels.

Quest. In reference to the work that was talked about on the west side, can you tell what he said?

Ans. Don't recollect what he said, except so much as he 10 said, it would make a business place of it.

WM. W. DORLAND.

Sworn to and subscribed this 1st day of August, A. D. 1862, before me.

ALFRED MILLS, M. C.

John Vandoren, a witness produced on part of the complainant, being duly sworn, deposes as follows:

I live in the township of Chester; I was born in July, 1800; I think I was about six years old when my father moved into the township of Chester, and I have lived there 20 ever since; millwrighting and carpentering is my principal business; I commenced to work at the business when I was between sixteen and seventeen years old, and have worked at it more or less ever since; I know Gen. Cooper's mill—have known the mill property ever since I was a boy; Elias Howell was the owner of it when I first knew it—I believe his first name was Elias; he was O. R. Howell's father; when I first knew it, there was a saw mill and a common grist mill; there was a mill dam across the river.

Quest. How near was the spot where the present dam is 30 from the place where the dam was when you first knew the property?

Ans. I think it was the same place.

Quest. How near the site of the present saw mill did the old saw mill stand?

Ans. I think it is the same site; the present grist mill is not the same building as it was when I first knew the property; the present grist mill stands precisely on the same ground with the old grist mill, but I think it is a larger

building; the old mill was a frame building, I think the present one is a stone building; the turnpike crossed the pond where it now does when I first knew it; the present stone building was built in 1826—then the mill-house was built; old Nathan Cooper (the uncle of the general) was then the proprietor of the property; the machinery and works were put in that mill in 1827—I assisted in putting them in it; Mr. Henry Dorland was boss of the millwright work at the commencement of the work, and John Bunn
 10 finished it up; I do not know whether anything was done to the mill dam in 1826—did not work there then; there was work done to the dam in 1827—there was stone work put up similar to the black piece in the model, and a wood structure similar to the rest of the model, with the exception of the pieces marked No. 7 on model and the cap piece marked 1; don't think there was any cap piece on it then; I bossed that part of the work (putting in the dam) in 1827; at that time I put in a mudsill and rafters, as represented in the model; those rafters and mudsill have never been taken
 20 out since I put them in in 1827; these rafters were sheathed from the mudsill up to the fall piece in 1827, and are still so.

Quest. With what was the space under that sheathing filled?

Ans. Stone.

Quest. Anything else?

Ans. No, sir; I think not—no gravel put in—stone made fine with sledge-hammer.

Quest. You say that a cap piece, similar to that in model marked No. 1, was not put on in 1827, was such a piece
 30 afterwards put on, and if so, when and by whom?

Ans. I couldn't tell exactly what year it was, I think, however, it was the next year after the dam was built. Nathan Cooper called on me; there was a complaint that the mill didn't run strong enough, and he wanted me to raise it for him; I did so; we put on a cap, if I mistake not.

Quest. After that cap was put on in 1828, or about that time, was anything more done to raise the height of the dam prior to 1846?

Ans. Not that I know of.

40 *Quest.* Who did the work of millwrighting in and about the mill from 1828 to 1846?

Ans. I did it, sir; it was done under my directions.

Quest. How frequently were you at the mill during that period?

Ans. Well, there was something to be done there most every season; I got a large portion of my milling done there during that time.

Quest. From the time Nathan A. Cooper became the owner of that mill, did any one else than yourself do any millwright work at that mill up to 1846?

Ans. There was one small job, not a very small job either, 10 that some one else did; I don't recollect any other millwright work being done by any one but myself; a man from Sussex, named Fergus, did that job; I don't recollect how long ago that was—it was the first year that Mr. Douglass was there; Mr. Douglass was at the mill, had the mill at the time; the job was putting up a smut machine, and cogging some of the wheels in the wheel pit.

Quest. When was the present stone dam which stands to the west of the tumble dam put up?

Ans. I guess it has been there ever since I can remem- 20 ber—some of it was built higher in 1827; I don't know but that part of it was taken down to the foundation, and put up at that time; I think it was raised to its present height in 1827—I have no recollection of its being raised higher since that time.

Quest. Have you seen it raised, or any appearance of its being raised since 1827?

Ans. There was some stone off there, and some new stone were put on, or the old were put back; it might have been raised some right at the extreme end, right at the Nichols 30 road—I don't know that it was though; my impression is that water had run over there, and taken off some of the corner, and it was filled up again, and might have been raised; my impression is that it was raised a little to prevent the water from running over there again; no water runs over there except in time of freshet.

Quest. It has to run over the highway before it can reach there, doesn't it?

Ans. Yes, sir.

Quest. How much higher is that stone dam at the west 40 end than the cap piece?

Ans. It is not exactly level—the average height is twenty-one inches above cap piece; the stone dam near the cap piece is a little lower than it is beyond that—I measured it, and think the average is about twenty-one inches; can't tell how the west end is by itself—there is places in it which I think are twenty-one inches higher than the cap.

Quest. Will it average a foot?

Ans. More, I think.

Quest. What is the length of that dam from the west end
10 of the tumble dam?

Ans. I can't tell—have not measured it.

Quest. When was the stone dam which stands on the east side of the tumble dam raised to its present height—I mean between the tumble dam and the flume?

Ans. I think it was done in 1827.

Quest. Has anything been added to its height since that time?

Ans. Not that I know of.

Quest. How much higher is it than the cap of the tumble
20 dam?

Ans. Twenty-one inches or more on the east end, and still higher, I think, in the centre; this dam on east of tumble dam is a stone wall, laid up and graded back to the road; the face of the dam is about a rod and a half from the road—I never measured it; there is a little bare spot near a willow tree, where I have seen water standing, after a freshet or rain, between the road and the face of the dam; generally it is dry ground between the road and dam; that road has been the Washington turnpike ever since I can remember;
30 east of the flume the water does not run over the dam—sometimes it does; the turnpike lays between that and the pond.

Quest. Was the dam, as you raised it in 1828, or about that time, ever reduced in height?

Ans. Not that I know of.

Quest. Did you put in the present tumble dam that is now there?

Ans. Yes, sir.

Quest. How much higher, if any, is the present tumble
40 dam than the tumble dam that was there prior to 1846?

Ans. About nine inches; I made this model (*Exhibit 1* on part of complainant)—the scale of it is half an inch to a foot.

Quest. What is the length of the space between the two boards marked 6 on the model?

Ans. Thirty-six feet; the present tumble dam I put in in 1846—it was the first year that Mr. Douglass was there, and I think that was 1846.

Quest. Was the stone work represented by the *black* in the model increased in height at that time?

Ans. No, sir.

10

Quest. What was lying on top of the stone work when you began to put up the dam?

Ans. A sill; part of it was sound, the rest decayed—its thickness when new had been about ten inches, I think; in order to get this new piece in, and get these rafters dovetailed into it, we took a few stone right off of the top, so as to get it into the dovetails, and then when we got it fastened to the rafters we put the stones on again; we dovetailed to the same rafters that were put there in 1827—those rafters were not disturbed; the fall piece now there is not any higher than the old fall piece—it could not be when dovetailed to the same rafters. 20

Quest. What is the space between the fall piece marked in model No. 3, and the cap piece marked No. 1?

Ans. Twenty inches; I measured it not long since—on the day you were there; the cap piece (marked No. 1 on model) is nine inches in thickness.

Quest. Did you put any gates in there when you built this tumble dam?

Ans. Yes, sir; two, as represented in the model; they had 30 stems to them; their width was seventeen inches, I think; I assisted in making them; they were done under my directions, when I was personally present; I can't tell you how long those gates were used; I made another pair afterwards—can't tell exactly when; they are there now; Thomas Churchfield was tenant of mill when I made them; I think the gates I made in 1846 were in use when I made those that were put there when Churchfield was there; William Ammerman, I think, a man that worked for me, assisted me in making the last pair of gates put there when Churchfield 40

was there; one of the gates that was taken out when the new pair was put in got down stream, and one was around at the saw mill for some time; I measured the gates that were in use at the time we made the new ones—their width was seventeen inches; I put the cross pieces (marked 7 in model) on dam at the same time I built those last gates that Ammerman helped me build—I think it was the same time; Churchfield was there at the time; they were put on to go out to raise the gates; the width of the last gates I made
 10 was about twenty-two inches.

Quest. Before you put in these last gates, how did they fill up the space between the top of the gate and the cap piece?

Ans. By a board.

Quest. Did you see it stopped up that way by a board?

Ans. The first were put there by my direction.

Quest. After the gate was finished, and the work in use, did you see them use those boards?

Ans. Yes, sir.

Quest. Ever see the space stopped up entirely by them?

20 *Ans.* Yes, sir.

Quest. Before you put in the last gates, did you ever see the water running over the cap piece in an ordinary stage of water?

Ans. Yes, sir.

Quest. Frequently or seldom?

Ans. Frequently when those boards were on.

Quest. Why was that dam raised nine inches higher—what was the object?

Ans. We had been making considerable repairs in the
 30 mill, both grist mill and saw mill, and the general said he was going to put in two additional run of stone, and talked about building a machine shop and foundry on the west side, and I thought it was necessary to raise the water to make all the mills run as smart as they had run, and I advised him to raise it.

Quest. How many run of stone had been in the mill prior to that?

Ans. Two; the purpose was to increase it to four.

Quest. When you spoke to the general about raising the
 40 dam, what did he say to you, and you to him? [Objected to by Mr. Little.]

Ans. He said that might make trouble ; I said to him I didn't think it would injure any one without it was Mulford Carlile.

Quest. Did you examine the pond or river above the dam with a view to see whether it was likely to injure anybody ?

Ans. I had been up the river, and had examined it a couple of times. [All this evidence objected to by Mr. Little.]

I said to the general that I thought all it could injure was Mulford Carlile, and I didn't think it would injure him 10 much ; the general said to that what I have already said—he didn't know about that, it might make trouble.

Quest. At that time had you said anything to Mulford Carlile about raising the dam ?

Ans. No, sir.

Quest. Did you after that, and if so when and where ?

Ans. At the mill—before the dam was raised a short time ; only a few days after my talk with the general, I said to Carlile, we talked of raising that dam, and what if the water flows on to you ; he says, Cooper may flow what he's 20 a mind to on my whole farm, if he'll pay me as liberal as he did the Hortons.

Quest. Whereabouts by the mill was that conversation ?

Ans. I think it was right by the mill door.

Quest. Had you then raised the dam ?

Ans. No, sir ; the work wasn't done yet ; we had not put in any new water wheels nor new stones.

Quest. Do you recollect any further conversation with Carlile about the dam or the alterations at the mill at that time?

30

Ans. I don't recollect of any at that time.

Quest. Did you understand what Hortons Mr. Carlile referred to in his remark to you ?

Ans. The heirs of Caleb Horton.

Quest. Can you give their names ?

Ans. Isaiah, Daniel C., and Richard ; Mr. James Vanderveer was a son-in-law ; he used the word *Horton*, didn't say anything about Vanderveer ; I believe Mrs. Vanderveer is named Mary.

Quest. Did you afterwards communicate to Gen. Cooper 40

what you had said to Mr. Carlile, and what he had said to you, about raising the dam? [Objected to by Mr. Little.]

Ans. I sent for the general to come down; he came; I then stated to him what Mr. Carlile had said; he then said put it up.

Quest. How long was that after you had had this conversation with Mr. Carlile?

Ans. I think I sent word to him the next day.

Quest. Do you know what the general had paid the Hor-
10 tons for their land along there?

Ans. Of myself I don't know; Mr. Vanderveer said—
[Mr. Little here objects to anything Mr. Vanderveer said] or I understood him to say, \$40 an acre.

Quest. After the general told you you might put it up, did you see Mulford Carlile again before it was put up?

Ans. About the time it was put up, about a week or so after the general told me I might put it up; we were then working at the dam when he saw us; we were preparing the timbers now in the tumble dam.

20 *Quest.* Did you say anything to him then about the dam there, and if so what, and what did he say to you?

Ans. He asked me how much I was going to raise it; I told him I was going to raise it the thickness of that cap piece that is now on; I think, if I mistake not, I took a measure, and measured the stick at the time in his presence; he then answered Cooper was good enough.

Quest. Was the stick dressed out at that time?

Ans. Yes, sir.

Quest. Was there anybody working at it?

30 *Ans.* Yes, sir; myself and a hand I had with me; the thickness of the stick, as I measured it, was nine inches, I think; I think I took a square, and clapped it on the stick, and showed him what it was.

Quest. What time of year was that?

Ans. In the fall, don't recollect the month, think it was in October; I was at work at the mill long that fall; we had been building the trunk the fore part of the season—think we finished that in September, and then (from the way I made my charges in the book) I think we went away to an-
40 other place a couple of weeks, and then came back and put

this up; Mr. Mulford Carlile was frequently there and past there when we were at this work.

Quest. Did he at any time make any objection to your raising the dam, or say anything about making a difficulty about it if it was put up?

Ans. No, sir; I never heard him.

Quest. After that, in subsequent years, did you see Mr. Carlile at the mill?

Ans. Yes, sir; he got his milling done there; he was there and passing there frequently.

Quest. Was you there putting in the new run of stone and the water wheels?

Ans. Yes, sir; I guess we were there six months, can't tell exactly; Mr. Dorland was the tenant of the mill; Mulford Carlile was at the mill occasionally while we were at work; he was in the mill, and I suppose he knew generally what we was doing.

Quest. Did he talk with you, or you with him, about the alterations you were making there?

Ans. He talked frequently with me when we met; I don't remember exactly what he said—only he said Cooper ought to make some improvements there.

Quest. Did he say anything about Cooper's building a foundry and machine shop on the west side of the dam?

Ans. I don't recollect that he ever did.

Quest. Any complaint from Mr. Carlile about the dam or the water you were going to use there, during that season you were putting in the new run of stone and the new water wheels?

Ans. I don't recollect anything, only he said that matter had lain long enough, and Cooper and him must settle it; that was on or about the time we was fitting this new run of stone in—it was at the mill.

Quest. With whom did the conversation take place?

Ans. With me.

Quest. Tell us how it commenced, and what was said?

Ans. I don't recollect.

Quest. What matter did he refer to?

Ans. That was the observation he made to me—that it had laid long enough, and Cooper must settle it—or it was time to settle it, or words to that effect.

Quest. What drew out the remark?

Ans. I can't tell you, sir.

Quest. Were you present at the conversation between him and Mr. Dorland at or near Mr. Vanderveer's store, in which he spoke of the flowage of the land by the dam?

Ans. I was.

Quest. State what Mr. Carlile said in that conversation upon this subject of the flowage, and compensation for it?

Ans. I don't know how their conversation commenced; I
10 understood Mr. Carlile to say that Cooper might flow his whole farm, if he would pay him as liberal as he had the Hortons.

Quest. Was that conversation before or after the conversation between you and Mr. Carlile at the mill that you have just spoken of?

Ans. I think it was after.

Quest. Do you know what was the occasion of Mr. Carlile's being there at the time of this conversation with Dorland?

20 *Ans.* No, sir; Mr. Vanderveer's store is quite a place of resort in the evenings.

Quest. Did you have any conversation with Mr. Carlile about the dam or the damage to his land by the flowage?

Ans. I believe I did have something to say; I think I said to him that the general would pay him, or would buy his land; the conversation ended I believe there; I don't recollect anything further about it.

Quest. Did Mr. Carlile, in his lifetime, ever intimate to you, or in your hearing, that that dam had been raised with-
30 out his consent?

Ans. If he ever did, I don't remember it.

Quest. How long had you known that piece of meadow land of Mulford Carlile before you raised the dam in 1846?

Ans. I never knew much about it before 1846—I was on it in 1846.

Quest. What was that land worth at that time?

Ans. I don't know what it was worth—\$15 or \$20 per acre.

Quest. What kind of grass was growing on it then?

Ans. I thought a coarse kind of grass; it was mowed at
40 that time; some part of it that laid higher was better grass; I have been on the land a number of times since.

Quest. How much more is flowed now than had been flowed by the pond prior to the time you had been there?

Ans. Well, probably an acre, or an acre and a half; there was not any of it flowed, as I know of, before; I had not examined it before that.

Quest. Is that additional height of nine inches of any value to that mill?

Ans. I consider it at least one-third its value.

Quest. Could the four run of stone be driven, and the saw mill too, with that nine inches taken off? 10

Ans. Not at low time of water; they couldn't run at all—not all of them.

Quest. Have you examined that pond any in the last ten years?

Ans. Yes, sir.

Quest. Has it filled up any during that time?

Ans. I think it has a considerable—mostly on the west side, a short distance from the bridge—more, however I think, in the bushy part of it.

Quest. Are there any obstructions below, not far from 20 Carlile's bridge?

Ans. Yes, sir.

Quest. What is that filling up attributable to, in your opinion?

Ans. It appears to be brush and the like growing out into the channel, weeds, &c.

Quest. Is there any other cause for wetting Mrs. Carlile's land near the river than the dam?

Ans. I should suppose that if there was any other obstruction between the tumble dam and her meadow it would 30 cause her land to be overflowed.

Quest. Can you refer to any cause in the land itself?

Ans. There are some springs there; they lay along the bank where the ground begins to rise from the meadow; the land immediately along the river is low, and there is a small rise from the low land—and where this rise is the springs issue, and discharge themselves on the meadow ground.

Adjourned until Saturday, August 9th, 1862, ten A. M.

Wednesday, August 13th, 1862.

Examination of *John Vandoren* resumed.

Quest. How many of these springs have you noticed?

Ans. I saw three.

Quest. Were you ever present when the land which is flowed by the water was surveyed?

Ans. Yes, sir.

Quest. Who made the survey, and when was it done?

Ans. William Carey; it was 2d May, 1862, I think; no, 10 it was the 23d June, 1862.

Quest. Was you along with Mr. Carey last year, in September or August, when he made a survey?

Ans. I couldn't tell exactly when it was—whether it was this year or not—I was one of the chain bearers; the survey was made to ascertain how much land the general flowed.

Quest. Have you assisted Mr. Carey in making more than one survey?

Ans. I think not, sir.

Quest. Did his survey include or not all the land that was 20 flowed?

Ans. I thought it did, sir.

Quest. At the time you made that survey, how was the water at the tumble of the dam?

Ans. It was running over at the cap, if I mistake not; in the centre I think the water was about one and a quarter inches.

Quest. What was the height of the water in the river—the general condition of the river?

Ans. Something about ordinary, or a little below.

30 *Quest.* Did Mrs. Eliza Carlile apply to you at any time to see Gen. Cooper about this dam?

Ans. I think she did.

Quest. When was it, as near as you can tell?

Ans. I can't tell the time—I made no date of the time—must be two or three years ago.

Quest. Prior to her application to you to see the general, had the general said anything to you about seeing Mrs. Carlile?

Ans. No, sir—not that I recollect of.

40 *Quest.* What did she wish you to do or say about it?

Ans. Let me correct that as I go along; I won't say as

Mrs. Carlile called on me to speak about it—I think however she did, or Mr. John G. Crater called on me for her, and I think it was both; she said that Gen. Cooper was damaging her by flowing her lands, and wished me to call and see him about it; I said to her that she had better call and see him herself; I understood her to say that she had done so, and he appeared to be out of humor, and turned away and left her, and she thought abused her; she said she was poor and needy, and that had laid a long time.

Quest. How did she say he abused her?

10

Ans. She didn't say anything more about abuse than that; I don't recollect anything more at that time.

Quest. Did she say what she wanted the general to do about it, and if so what?

Ans. She said this matter had laid a good while, and she wanted it settled—she was needy, and had use for all her means.

Quest. Did you see the general about it after that, and if so what did you say to him?

Ans. I did see him; I merely stated to him, as near as I 20 recollect, what I have just said what Mrs. Carlile had said; however, before I saw the general, I think I saw Mrs. Carlile at Esquire Swayze's, and the substance of her conversation there was about the same; I am quite sure I saw her at Esquire Swayze's before I went to see the general.

Quest. What did the general say to you when you told him what she said to you?

Ans. He says, she has taken you as her man, and now I want you to go and see her as mine; I went.

Quest. What directions did he give you as to what you 30 should say and do?

Ans. I said to the general, I thought he had better go himself—I thought he could do his business better than I could do it for him; he says no, I want you to go—if I've abused her you won't; he then said something about a man being there at the time Mrs. Carlile was there, and he was not in very good humor—there was something wrong about a settlement.

Quest. What did he tell you to say to her?

Ans. He said he had been at Morristown to search the 40

records; he understood Mr. Carlile had made a will, and they couldn't find any on record; he wanted me to go over there and see if he had made a will, and if he had, to see whether she had a right to sell that land that he flowed, and if she had, to tell her that he would give her as much as any of her friends would say it was worth, or more; and if she had no right, to inquire of her what damage it was to her, and for me to go on to the meadow and see what damage I thought he was a doing her; I went to the meadow; when
 10 I came back from the meadow, I asked her what damage she thought it was; she said she couldn't tell; I then said to her not to name any sum; I were a going to do all I could to get the matter settled between them, but I might not succeed, or they might not settle, and she had better talk with her friends, and let him know what damage she thought it was to her.

Quest. At that interview did you say anything to her about the will, and if so what was said about the mill and her right to sell, if anything?

20 *Ans.* She said Mr. Carlile had left some writing—she didn't know whether it could be fairly called a will; then she said something about how it read, and she didn't know as she had a right to sell.

Quest. Did she show or read the paper to you?

Ans. No, sir, I think not; she offered to get it and let me see it, but I told her I did not know as it would make any difference about that.

Quest. Did you express any opinion to her, after you heard her statement, as to whether she could sell or not?

30 *Ans.* I think I did—told her I didn't think she could; this conversation about the will was before I talked with her about the damages.

Quest. After that, did you have another interview with her on the same subject, and if so, how long afterwards—where was it, and what was said?

Ans. She called at my place a short time afterwards, I can't tell how long, and said she thought the damage was \$30 a year, and that's the sum she wanted; I was quite un-
 40 well at the time she called; I don't recollect exactly what I said—think I told her she had better see the general about it; she requested me to do that for her.

Quest. Did she say whether or not she was willing to take \$30 a year?

Ans. She said that was what she wanted.

Quest. Did you have any further conversation at any other time on that subject, or were you present when any one else had any conversation with her on that subject?

Ans. I was there with the general and Mr. James Vanderveer; I don't recollect how long it was after she said that she wanted \$30—some time; the general and her had a talk about it, and she agreed, I thought, to take \$30, and he 10 agreed to give it to her—\$30 a year—I don't know as they named for what time; Mrs. Carlile said to me at her house, or said in this conversation to the general, that she didn't know as she could take anything for flowing before Mulford Carlile's death; the general wanted her to give him a lease for all that meadow; she said it wasn't worth anything to her.

Quest. How much of it was there?

Ans. Some five or six acres; the general said he thought it would be worth something to him, and wanted the privilege of fencing of it, and to take the fence off at the expi- 20 ration of the lease; she said that she had employed Mr. Little to do her business, and she wished to see him before she gave a lease; she didn't agree to give him one until she saw Mr. Little; then they agreed to meet her at Morristown, to fix the matter up; can't tell exactly the time they were to meet—it was soon after we was there; I don't know of any suit being commenced at that time—I had heard of none; I think it was the fore part of last season when we was there.

Quest. You say you were on the low land, and examined it—did you form any opinion as to the actual damages done 30 to the low land by the pond at that time?

Ans. I did.

Quest. What amount of annual damages was there to that land by reason of the pond, in your judgment?

Ans. Not more than \$20 or \$25; when I made this examination, I think it was just after mowing—think the meadow was mowed when we were on it.

Quest. Do you know whether parties came down to Morristown pursuant to the arrangement you have spoken of?

Ans. They did—I came along. 40

Quest. Was the lease made?

Ans. Not that I know of.

Quest. Did you hear Mrs. Carlile say why the lease was not made?

Ans. No, sir.

Quest. On the day you were here on that business, did you go ask Mrs. Carlile, at the request of Gen. Cooper, whether she was willing to make that lease or not?

Ans. The general requested me to go and see her, and
10 state to her that he was ready to do that business up, and that he was in a hurry, had other business to attend to, it was getting late, and she said to me she believed it was better for her to say no more to me, I was Cooper's man, and she didn't want to talk to me any further.

Quest. What did she say as to whether she was going to make the lease, or wasn't?

Ans. She didn't say to me, as I recollect of.

Quest. Did she say anything as to whether she wanted to see Gen. Cooper any more on that business, or not?

20 *Ans.* She said she would leave it with Mr. Little to settle; I had no further conversation with her after that on that subject at no time.

Cross-examination of *John Vandoren* by Mr. Little.

Quest. Was there a cap piece put on the dam in 1827 or 1828, when it was built?

Ans. My impression is there was.

Quest. Did it occupy the same position that the present one does?

Ans. About the same.

30 *Quest.* What was its size?

Ans. Rather heavier one way, not the other; I think it was heavier up and down; I think it was more than nine inches thick; it was put there as part of the dam; I suppose its length was the same as this one—I don't know the extreme length of this; I should suppose it was upwards of forty feet—don't know how much upwards of forty feet; it remained there until we put this present one there, I believe.

Quest. What became of it then?

40 *Ans.* We took it out, all of it; it became poor, and we took it all out.

Quest. Was it the top of the dam for its whole length?

Ans. I think it was, sir; there might have been stones laid on the extreme ends—can't tell for what distance, and wouldn't say there was.

Quest. Where did the west end of it lie, in reference to the west end of the present one?

Ans. About the same place; the stick was not so high as the present one—the present one is nine inches higher than the other, I think, sir.

Quest. Was there anything to control you in laying it just 10 nine inches higher; why do you think it is just nine inches higher?

Ans. No particular reason; the cap that's now on is nine inches higher—we just raised it nine inches higher.

Quest. What is the extreme length of the present cap?

Ans. I don't know, sir—can't say how far each end is over the tumble—I suppose it is about the same length with the old one; there was a floodgate in the dam that was built in 1827 or 1828, I think—I have very little doubt about that; I think there were gates on similar to those that are there 20 now, only longer—I think twelve feet longer.

Quest. What do you mean by twelve feet longer?

Ans. I don't mean to say that they were twelve feet longer.

Quest. What did you mean to say?

Ans. I meant to say they were longer than those there now—how much I can't say.

Quest. According to the best of your recollection, how much longer were the original gates than the present ones?

Ans. I should suppose it would make an opening of four feet more than there is at present, and it might be more. 30

Quest. How did you come to say, a few minutes ago, that they were twelve feet longer?

Ans. Well, I don't mean to say that at all; I am satisfied they are longer, but how much I can't say.

Quest. How wide were the original gates?

Ans. I couldn't tell you exactly—they came from the bottom, and lapped up on to the cap.

Quest. What was the space, at that time, between the cap and the fall piece?

Ans. It might have been ten inches—I can't tell—I don't 40 remember—I don't think it was as much quite as that.

Quest. How much do you think it was?

Ans. I can't tell you, Mr. Little, how much it was; well, I know about what the whole height was, and what the thickness of the cap was I don't know—it's a hard matter to recollect so far back every particular—I can't.

Quest. Over what did the water fall after that cap piece was put in—ordinarily?

Ans. If the gates were down it would fall over the cap.

Quest. What was the length of the tumble of the dam?

10 *Ans.* About thirty-six feet—same as it is now.

Quest. Was the dam on either end of the old cap piece higher than the cap piece?

Ans. Yes, sir; I don't know but it would average two and a half feet—it was considerable higher.

Quest. Did you ever know the water to stand between the turnpike and the face of the dam at an ordinary time of water?

Ans. No, sir.

Quest. Didn't the water use to stand and run over the stone part of the dam below the road?

20 *Ans.* I never saw it in an ordinary time of water that I recollect of.

Quest. Did you ever see it in time of freshet run over the dam between the east end of the floodgate and the tumble?

Ans. No, sir.

Quest. Did you ever see the road flooded between the two bridges?

Ans. Yes, sir.

Quest. Do you know how much that road has been raised?

30 *Ans.* I don't know anything about that, except Gen. Cooper put in a few loads of earth there between the bridges, or his men did; it was a number of years ago—couldn't tell exactly when—I should judge it was some six or seven years ago.

Quest. Where did they get the material from that they put on the road?

Ans. I don't know where—they drew gravel from several different places.

Quest. How high did you say you made your gates that you put in in 1846 or 1847?

Ans. I do not know.

40 *Quest.* What was the space at that time between your fall piece and the new cap piece?

Ans. Twenty inches; I want to say a word before I go any further; if I have made but two sets of gates there, the first set of gates was seventeen inches; if I have made any more than that, they may have been narrower; I have no recollection of making more than two sets; I know I have made two—I may have made three.

Quest. If you have made three, the first set was not so wide as seventeen inches?

Ans. I shouldn't think they was.

Quest. When did you make the last ones? 10

Ans. I have said, in my examination, that it was when Mr. Churchfield was there—I won't say positively it was; it was the latter part of his time, or the commencement of Mr. Vandoren's.

Quest. Didn't you make a set in 1846 or 1847?

Ans. Yes, sir; I think we did in 1846.

Quest. Didn't you make a set of gates in 1827 or 1828?

Ans. Yes, sir; but I am now talking about gates to the present time.

Quest. Since 1846? 20

Ans. Yes, sir.

Quest. Has any one suggested to you that you have made three sets?

Ans. No, sir.

Quest. Did you make the gates in 1846 or 1847 the same as the old gates—the same width?

Ans. No, sir; they were wider—can't tell how much wider they were than the old ones.

Quest. As near as you can tell?

Ans. In making those gates, when they lap upon the cap 30 piece we are not particular about it.

Quest. How much wider did you make them?

Ans. Well, sir, I couldn't tell you—I should suppose it might be three inches—it might be less.

Quest. Then if you raised the cap piece nine inches higher there would be an open space of six inches, wouldn't there?

Ans. I can't count it so.

Quest. Did the old gates that you took out in 1846 or 1847 fill up the space between the cap piece and the fall 40 piece?

Ans. I think they did, sir—quite sure they did.

Quest. How much wider were the gates that you put in in 1846 than the ones you took out?

Ans. I can't tell you, sir.

Quest. Tell us as nearly as you can?

Ans. I have already told you all I know about that; I suppose they were wider; I don't know that they were—and if you will give me an opportunity, I will explain the matter; they might have been three inches wider, as I said
10 before—I think they were wider, but how much I don't know.

Here adjourned for dinner.

Cross-examination resumed by Mr. Little.

Quest. How much did the old gates lap on the cap?

Ans. I can't tell you, sir.

Quest. How much is it usual to lap the gates on the cap?

Ans. A couple of inches.

Quest. Did you intend, in 1846, to raise the dam just the height of the cap piece?

20 *Ans.* Yes, sir.

Quest. Did that opening that you speak of over the gates extend the whole width of both gates?

Ans. Yes, sir.

Quest. How could you then, with that opening over the gates, raise the dam nine inches by putting the cap piece on it?

Ans. There were boards put on the top of those gates.

Quest. If your intention was to raise the dam nine inches, why didn't you close up that opening by making the gates
30 wider?

Ans. I didn't think that it was necessary at that time with the work we had to do—only in a dry time; there were only two run of stone in the mill.

Quest. Can you tell on what day of the week those gates were completed and closed?

Ans. No, sir.

Quest. Were they not closed first on Saturday night?

Ans. I can't tell you; don't recollect of Gen. Cooper's being there when they were first closed to fill up the pond.

Quest. Did you ever say to anybody that he was there?

Ans. I don't recollect that I ever did.

Quest. Did you ever tell John Carlile that he was?

Ans. If I did, I don't remember it, sir.

Quest. Did Gen. Cooper, when those gates were first closed for the purpose of raising the water, say to you that it would never do to leave them closed over Sunday, or anything to that effect?

Ans. I have no recollection of any such thing.

Quest. Did you tell James Vanderveer that he said so? 10

Ans. If I did, it has passed my memory—I don't think so—if I did, I have forgotten it.

Quest. Did you raise the water nine inches higher by your alterations in 1846?

Ans. That is what I think I done, sir—that is when the boards was on.

Quest. Only when the boards were on?

Ans. Yes, sir.

Quest. Did you change in any way the fall piece in 1846?

Ans. You mean that lower timber on the wall? I call 20 that the sill of the dam—I made that new.

Quest. Did it lay on the stones, or in or under the stones at that time?

Ans. It laid on the stones—the ends run under the abutments.

Quest. Do you mean to be understood that the rafters were dovetailed into the fall piece, as shown in your model?

Ans. Yes, sir.

Quest. Did the ends of the rafters show on the face of the dam as they show in the model? 30

Ans. I think so, sir.

Quest. Are you sure of that?

Ans. I think so.

Quest. Have no doubt about it?

Ans. I don't think there's much doubt about it.

Quest. How wide apart are the rafters?

Ans. A little over four feet I believe—the centres.

Quest. Did you take down any part of the stone wall, except at the ends, in order to get that sill in under the rafters? 40

Ans. A few of the top stone.

Quest. What supported the rafters in the meantime?

Ans. The stone work under them.

Quest. Had they been dovetailed in the first sill—how did you get them loose from it?

Ans. Pried them.

Quest. Upwards or downwards?

Ans. We put a crow-bar in between, and pried the sill down.

10 *Quest.* How did you get them into their place in the new sill that they were dovetailed in?

Ans. Cut gaines in the new sill, as they were in the old one—then the stones being out underneath, we shoved it in, and raised it up.

Quest. Did they fit into their place loosely or tight?

Ans. We intended to have them tight—I suppose they were so.

Quest. The rafters were supported by stone, and broken stone under, I understand you; you couldn't then pry them
20 down very well, could you?

Ans. You could not get them down without getting the stone out from under them.

Quest. Did you measure the height of the dam before you began to work at it?

Ans. I think that I did.

Quest. What did it measure?

Ans. It was just nine inches lower than this is anyhow; I can give you the height of it I guess. [Here witness refers to memorandum book]. It was about twenty inches above
30 the sill.

Quest. How much below the sill?

Ans. The sill was somewhere about ten inches thick; the whole height of the dam was about two and a half feet.

Quest. Does this sill lie at the bottom of the dam?

Ans. At the bottom of the wood structure.

Quest. My question was, what was the height of the dam at that time?

Ans. I meant to say I measured the wood structure, not the whole height.

40 *Quest.* When was the memorandum made which you just examined?

Ans. Well, somewhere about the time the dam was made; this was not—this is a copy—this has been made within a year.

Quest. Was it made from actual measurement at the time it was put in your book—recently?

Ans. Yes, sir.

Quest. Have you any memorandum of the measurement of the dam made in 1846?

Ans. I had it on some papers—I haven't them now.

Quest. Where are the papers?

10

Ans. That, sir, I don't know.

Quest. When did you last see them?

Ans. Not in some years—two or three years.

Quest. How many years?

Ans. I couldn't tell you exactly how long.

Quest. As near as you can?

Ans. It must be some two or three years.

Quest. What kind of papers was the memorandum on?

Ans. Nothing more than common loose papers.

Quest. Where was it when you saw it last?

20

Ans. In my tool-chest—or one of them.

Quest. Have you ever looked for it since?

Ans. Yes, sir, I have.

Quest. What was it made for?

Ans. At the request of Gen. Cooper.

Quest. What reason did he give for having you make it?

Ans. I don't recollect that he gave any.

Quest. Were there any other papers in that chest with it at the time you last saw it?

Ans. There was.

30

Quest. Are they gone too?

Ans. Yes, sir; several papers went with it.

Quest. At whose request did you make the last memorandum—the one you have referred to here?

Ans. No one's.

Quest. Did you measure the height of the stone work above the sill, at either end of it?

Ans. Not till recently—not at that time—I don't know that I did.

Quest. You can't tell, then, from any measurement you 40

made in 1846 or 1847, whether that part of the dam has been raised or not?

Ans. No, sir; not from measurement.

Quest. When was the ground filled in and graded from the face of the dam back to the road between the bridges?

Ans. That was there when I first remember the mill; old Nathan Cooper raised the wall higher, and graded it back in 1827.

Quest. Has it never been filled in since that between the
10 bridges?

Ans. Never to my recollection, only a little spot where it broke away by the flume.

Quest. Was there not a large amount of stone drawn there in 1846 or 1847 by Gen. Cooper?

Ans. He drew some stone at that time, but not for the purpose of raising that part of the dam, as I know of.

Quest. What repairs did you set out to do in 1846?

Ans. To build anew the running part of saw mill, penstock, &c., the trunk, flume, all necessary gates, fall pieces,
20 and tumble dam—that's all I recollect of.

Quest. What head and fall had you at that time?

Ans. I can't tell you that, sir.

Quest. What do you mean by head and fall?

Ans. All that's above the aperture, or place where the water is discharged on the wheel, we call the head, and all that's below we call fall.

Quest. Had they any more water at that time than was necessary to drive two run of stone?

Ans. Yes, sir.

30 *Quest.* How much more?

Ans. Well, when the water was a little more than ordinary, enough to drive the saw mill; I don't know but they had water enough for that ordinarily.

Quest. What change did you set out to make in the trunk?

Ans. It was a different kind of trunk; the old ones were bents (some call them gripes) set up on end, and then planked with planks running horizontally on the sides; we put the plank vertical, and dispensed with the gripes; that's the principal change in the trunk, I believe, sir.

40 *Quest.* Did you make any other change in the trunk than what you have mentioned?

Ans. I raised it higher.

Quest. How much higher?

Ans. Well, some—in the neighborhood of fifteen inches.

Quest. What was the object of that?

Ans. One was to get the water higher on the wheel, and we had it in contemplation to raise the dam—that's all I believe, sir.

Quest. What regulates the location of the trunk in building a dam or mill?

Ans. The height of the tumble dam.

Quest. What reference do they bear to each other?

Ans. The tumble controls the whole.

Quest. What do you mean by saying you raised the trunk—that you raised the bottom of the trunk fifteen inches up, or that you raised the depth of the water fifteen inches in the trunk?

Ans. I mean I raised the body of the trunk that much—put pieces under it.

Quest. What would be the effect if you raised the trunk that way, and didn't raise the tumble?

Ans. The trunk wouldn't fill, and we could not draw near as much water; I don't know that we would lose any power—I think we would gain; it's the surface water that does the work.

Quest. Your object then was, in changing the trunk, partly to increase the power of the mill?

Ans. Yes, sir.

Quest. To do that, then, you raised the trunk so as to raise the surface of the water in the trunk fifteen inches higher on the wheel?

Ans. No, sir; I didn't intend to raise the water that height.

Quest. How much did you intend to raise the surface of the water in the trunk on the wheel?

Ans. Nine inches.

Quest. How many buckets did you raise the water on the wheel?

Ans. I couldn't tell you that exactly, it's a curved surface; the higher you get on the wheel the less it takes to gain a bucket; I don't think it would amount to one—I could not tell without a drawing.

Quest. Before the alteration, was the water discharged above or below the centre of the wheel?

Ans. Above.

Quest. What is the width of the buckets on that wheel?

Ans. Some sixteen or seventeen inches; the position they are placed in, however, don't measure that perpendicular.

Quest. What is the width of a bucket?

Ans. The width of the board or plank that forms it.

Quest. How far are the buckets apart perpendicularly?

10 *Ans.* I don't understand your terms; the space on the wheel between the buckets is, I should judge, about fourteen inches.

Quest. Have you not said that you raised the water on the wheel two buckets at that time?

Ans. I don't think I ever did say that—I did do it.

Quest. Did you not tell John Carlile that you did?

Ans. I told Mr. John Carlile that I wanted to, or I think I told him so.

Quest. When did you tell him that?

20 *Ans.* I think it was about the time I was doing that work.

Quest. Did you or not put some new buckets in that wheel in the year 1861?

Ans. I don't recollect about that; I didn't raise the wheel that much (two buckets), and I don't think I said so to any person.

Quest. Knowing the position and description of the wheel as you do, how much, in your opinion, would it require the water to be raised in the trunk to raise it two buckets on the wheel?

30 *Ans.* That I couldn't tell without drafting the trunk and wheel as it is—and what I should answer would be mere conjecture.

Quest. Give us the best opinion you can give?

Ans. Mr. Little, I can't tell anything about it, and I can only repeat what I have said—I am not very good at guessing.

Quest. Could you, in your opinion, raise the water two buckets on that wheel without raising it in the trunk as much as the space between the buckets?

40 *Ans.* I could.

Quest. How much did you expect to increase the power in that mill by the alterations you set out to make in that trunk and dam?

Ans. Sufficient to drive two additional run of stone.

Quest. Did you succeed in it?

Ans. I did.

Quest. What was the last of the different improvements you made there at that time, 1846?

Ans. I think the tumble dam was towards the last.

Quest. State the order in which the alterations were made, 10 as near as you can?

Ans. Well, we finished the trunk and flume, and saw mill, &c., and then put up the tumble, if my memory serves me right.

Quest. Had you made any repairs to those mills of any consequence from 1827 and 1828 to 1846?

Ans. I had made a number of alterations.

Quest. Do you recollect at what times?

Ans. No, sir.

Quest. You knew then, when you altered the flume or 20 trunk, that that alteration would make it necessary to raise the tumble dam—did you not?

Ans. Certainly.

Quest. How did you intend to raise that tumble dam at that time—did you ever have any other idea of raising it then by raising the cap?

Ans. I didn't.

Quest. Did Gen. Cooper, so far as you know?

Ans. I don't know that he had.

Quest. What kind of wood is that cap piece? 30

Ans. It's what we call a bastard black-oak.

Quest. Is it sawed or hewed?

Ans. Hewed.

Quest. Where did it come from?

Ans. Gen. Cooper's farm, where he lives—I mean the piece I put there in 1846.

Quest. Did you help get it from the woods?

Ans. Yes, sir.

Quest. How long was it on the ground before it was put in its place on the dam? 40

Ans. I can't tell you that—it wasn't a great while.

Quest. How long were you engaged in making those repairs in 1846?

Ans. I can't tell exactly how long.

Quest. State as near as you can?

Ans. I think we commenced in August, and quit in October, or somewhere about that time—I won't be positive.

Quest. Well then, how long before you got through, or how long before you commenced, or at what time was it that stick of timber was brought there?

10 *Ans.* I can't tell; we were getting a considerable of timber, and I can't tell exactly the time we got that particular stick.

Quest. Was it while you were making those repairs that you went up the river, and examined it a couple of times, to see what effect the raising of the water would have?

Ans. Soon after we commenced working at the mill—that's when I made the examination; the timber we got out at the general's place; we boarded there at his house.

20 *Quest.* Did you ever yourself level that stream with respect to its effect on the lands of Mrs. Carlile when the pond was full?

Ans. I have.

Quest. Did you ever do it before suit was commenced by Mrs. Carlile?

Ans. I don't know when the suit was commenced.

Quest. Did you ever do it before you heard the suit had been commenced?

30 *Ans.* I could not tell whether it was before or after, but I think it was before—I am quite sure it was before; it was before Mr. Southard's level.

Quest. You spoke of a conversation with Mulford Carlile at the mill while you were engaged in making repairs—where was you, where did you stand, when that conversation occurred—in what place?

Ans. I think we were near the mill door.

Quest. How long was it between that first conversation and the next one, when you showed him the stick of timber that you were going to put on the dam?

40 *Ans.* I can't tell exactly how long it was; the first conversation was about the time the work commenced at the mill,

and the last about the time we commenced working on the tumble—that's as near as I can recollect.

Quest. You said, in your principal examination, that that first conversation took place after you had been making considerable repairs in both grist mill and saw mill—is that true or not?

Ans. I think that that conversation took place before we took the old trunk down; we had prepared all our stuff, and done a considerable of work there before we took the old trunk down.

10

Quest. Had you then, or not, made any considerable repairs in the grist mill or saw mill when that conversation took place?

Ans. Well, we had prepared materials—I don't think we had tore anything down at that time; we had got all ready, so as to stop the mill as short a time as possible.

Quest. State that conversation with Mulford Carlile, as near as you can, word for word, as near as you can?

Ans. I think that I addressed him, and said to him that we talked of raising that dam—and what if it causes the 20 water to flow on you; he says, Cooper may flow what he is a mind to on my whole farm, if he will pay me as liberally as he did the Hortons; I guess that's the principal that was said at that time.

Quest. Was, or was not, the timber got out for that trunk with the intention of raising the water in the trunk higher than in the old one?

Ans. I don't know that it was; the timber would be the same, one way or the other, with a very small exception in length of a few sticks.

30

Quest. Did you build the whole trunk anew?

Ans. I did.

Quest. Did you extend the trunk up into the pond any further than the old one?

Ans. We call the part that goes into the pond the flume or forebay.

Quest. Did you build the forebay or flume anew?

Ans. Yes, sir.

Quest. Did you put that on the same level, in the same position with the old one, or did you raise it?

40

Ans. We put that down about where the old one was—didn't intend to raise or lower it.

Quest. Is there usually an offset where the flume and the trunk join each other, or not?

Ans. I always made an offset, and I never saw any but what had one.

Quest. Was there such an offset between the old trunk and flume at that mill?

Ans. There was an offset in the old one—not so great as
10 now.

Quest. How much was it?

Ans. I can't tell.

Quest. Tell as near as you can recollect?

Ans. It's only supposition—I have never measured it only at the time I done the work.

Quest. Can't you tell whether it was three inches, or six inches, or nine inches, or a foot?

Ans. I suppose it was more than a foot.

Quest. Which was the highest, the old trunk or the old
20 flume?

Ans. The trunk, of course.

Quest. Were you ever on this land of Mrs. Carlile that she claims to be injured by the dam or by the pond before 1846?

Ans. I have no recollection of being there but once.

Quest. When was that?

Ans. I think it was about the time we was building the new mill—in 1827 or 1826.

Quest. Were you ever there since 1826 or 1827 until you
30 went there at the request of Gen. Cooper to look at the damages?

Ans. I was on the land about the time we commenced building this trunk in 1846.

Quest. How came you to go there at that time?

Ans. I went up to see how much we could raise the dam, and not flow off of the general's land.

Quest. At whose suggestion did you go?

Ans. No one's.

Quest. What was the state of the water in the pond at the
40 time?

Ans. The pond was about full.

Quest. Run over the old cap piece?

Ans. I think it did, sir.

Quest. What part of Mulford Carlile's land did you go over?

Ans. On the lower end, the southwest end, where he flows.

Quest. How much of it did you walk over?

Ans. Well, I don't know exactly how much.

Quest. State as near as you can?

10

Ans. Probably two acres of it—I can't tell though how much.

Quest. What kind of land was it?

Ans. It looked very much as it does now; it had been mowed not long before.

Quest. Could you tell what kind of grass it had cut, whether good quality or not?

Ans. The extreme lower end and some little distance up from the river appeared to be part of it bog, and a part a coarse kind of grass that I never knew any name for; further up, and out from the river and along the bank of the river, the principal part appeared to be foul meadow.

Quest. You didn't think the land along there was worth much at that time?

Ans. The lower part I didn't consider very valuable.

Quest. How much of that meadow is there?

Ans. I can't tell how much there is.

Quest. How does it lie with reference to the dwelling house?

Ans. Nearly in an east direction—partially in front of it.

Quest. How much an acre was that land worth at that time along the river—all that you examined?

Ans. Some part of it I wouldn't have given \$10 an acre for, and some part of it might have been worth \$40.

Quest. How did it compare with the land that Gen. Cooper bought of the Hortons?

Ans. I should say it was worth the most—the land itself was worth more; there was considerable of wood on the Hortons tract.

Quest. I mean taking them as they stood?

40

Ans. I don't think there would be a great deal of difference, taking the wood into consideration.

Quest. Did or not the adding of two additional run of stone require an additional wheel?

Ans. Yes.

Quest. At the time you were there in 1846, did you see these three springs you speak of?

Ans. I did not.

Quest. How came you to notice the springs the last time
10 you were there?

Ans. I were on the ground, and came right upon them.

Quest. Do you think that the raising of that dam, or the existence of the dam, has any tendency to produce the obstructions in the stream or channel?

Ans. As far as the water flows back and destroys the current of the stream, it would have that effect.

Quest. In any conversation you ever had with Mrs. Carlile about this dam, or her damage caused by it, or in any conversation you ever had with Mulford Carlile subsequent
20 to the raising of the dam, did you ever intimate to either of them that the dam had been raised by his consent?

Ans. I don't know that I ever did with either.

Quest. Did you ever intimate to her that her husband was to take the same price for his land that was injured or flowed that Gen. Cooper paid the Hortons for their land?

Ans. I think I stated to her, at the time the general requested me to go there, what her husband, Mulford Carlile, had said; I wouldn't say positively that I did, but it strikes me that I did.

30 *Quest.* Is your memory very good?

Ans. I consider my memory pretty good on essentials, but on non-essentials I have a very poor memory.

Quest. You can't tell, however, whether it was this year or last year, or the year before that, William Carey made that survey when you was chain-bearer?

Ans. In thinking of that matter, I think it was last September—I won't say positively.

Quest. Are you sure it was not it 1860?

Ans. I would not say, sir, about that.

40 *Quest.* You said the general told you to say to her that he

would give her as much for her land as any of her friends would say it was worth—worth at what time?

Ans. It must have been about August, I think; why, worth at that time, I considered it.

Quest. When you and the general and James Vanderveer were there, and talked about \$30 per year, was not the offer which the general made conditional upon her giving him a lease for the meadow, and accepting that sum per year for the future?

Ans. I didn't consider it so at the time.

10

Quest. Did the general tell her that \$30 was too much?

Ans. He did at the commencement of their talk.

Quest. Were you and the general there before you were there with Vanderveer?

Ans. I don't remember being there with the general; we were by them, but I don't recollect our being in the house.

Quest. Were you ever there when the general proposed to leave the matter to arbitrators?

Ans. It strikes me, when I come to recollect, that we were there before—I won't say positively—but I recollect about 20 some talk about leaving it to men.

Quest. Who proposed it?

Ans. I couldn't say which, but I think it was the general.

Quest. Did Mrs. Carlile assent to it, or not?

Ans. I won't say positively whether they ever had that conversation about it, but I have some recollection of some such talk.

Quest. How much of the meadow did the general want to lease for the \$30 per year?

Ans. The whole, I understood.

30

Quest. How do you get at the annual damages, which you have estimated at \$20 to \$25?

Ans. By the amount of land he flows and what probably is saturated by the flow.

Quest. Do you mean the actual loss of the grass?

Ans. Well, I don't know as the grass would make that money—I don't think it would.

Quest. If the general had leased it, how could he have got to it without going through other lands of Mrs. Carlile?

Ans. He could not very well.

40

Quest. Would you be willing, for \$20 to \$25 per year, to have a piece of land like this, in front of your house, flowed with water at the will or pleasure of your neighbor, independent of any actual damage to the land itself?

Ans. I shouldn't put a very high estimate if there was no actual damage.

In answer to the question, read again by the master, witness says—I think I should.

Second direct examination by Mr. Vanatta.

10 *Quest.* Doesn't the north end of this strip which the general proposed to rent bound on the highway that runs from Carlile's bridge to the turnpike?

Ans. He was to have a privilege, in their talk, to have a passway in and out there—that's the way I understood it.

Quest. You say you were on that ground in 1826 or 1827, or about that time; what was the occasion of your going there at that time?

Ans. I went a fishing, I think.

20 *Quest.* How much higher is the bottom of the trunk which you put in in 1846 than the bottom of the old trunk which was then torn away?

Ans. I should say from a foot to fifteen inches—I don't know but all of that; I raised the top that, and I might have raised the bottom the same—think I did.

Quest. What was the object of raising higher the bottom of the trunk?

Ans. To put the water higher on the wheel.

30 *Quest.* How much higher up is the water now discharged on the wheel from the new trunk than it was from the old one?

Ans. Well, I should judge it was about fifteen or sixteen inches; I raised the fall piece that the bottom of the gate works on—made that higher than it was.

Quest. How much lower is the top of the aperture through which the water is discharged on to the wheel than the top of the cap on the tumble dam?

Ans. Something over four feet, I should think.

Quest. Suppose you were to raise the bottom of the aperture one foot higher than it is now, in other words, put the

water on the wheel one foot higher than it is now, what effect would it have on the mill?

Ans. It would make it run stronger.

Quest. Could you put it up a foot higher without increasing the height of the dam?

Ans. Certainly.

Quest. Why didn't you, at the time you made that aperture, make it higher than it is?

Ans. I wanted to do it, but the general thought we wouldn't draw so much water, and had better keep it down; 10 if the mill was mine, I would put it up a foot higher than it now is.

Quest. I suppose, after you had made the bottom of the new trunk twelve or fifteen inches higher than the bottom of the old one, you hadn't increased the height of the dam at all, would you have worked the saw mill and the two run of stone as well as before?

Ans. Better.

Quest. Why, then, did you want the additional height to the dam—for what purpose? 20

Ans. To drive the two run of stone and saw mill that were there and the two additional run of stone that the general talked of putting in; he talked also about putting in machinery on the opposite side.

Quest. How much higher are the sides of that trunk than the top of the dam?

Ans. Six or seven inches.

Quest. Why are they so much higher?

Ans. To keep the water from overflowing there and injuring the works. 30

Quest. Overflowing when?

Ans. In time of high water.

Quest. How much higher were the sides of the old trunk than the top of the old dam?

Ans. I don't recollect exactly how much, but very little, only two or three inches.

Quest. So that a slight rise in the stream set it flowing over the sides?

Ans. Yes, sir.

Quest. If I understand you, then, the water can be raised 40

on the wheel, that is, put on the wheel at a higher point of the wheel without raising the height of the dam?

Ans. Yes.

Quest. While you made the new trunk fifteen inches higher than the old trunk, did you raise the water in the new trunk fifteen inches higher than it had been in the old?

Ans. No, sir.

Second cross-examination by Mr. Little.

10 *Quest.* When you say you raised the trunk fifteen inches, do you mean that you raised the bottom or the top of the trunk fifteen inches?

Ans. I think both—I might not have raised the bottom quite so much.

Quest. Did you or did you not, according to your judgment now, raise the bottom of that trunk fifteen inches higher than the bottom of the old trunk, or about that?

Ans. Somewhere in that neighborhood, sir.

Quest. What does it stand on?

20 *Ans.* Principally stone pillars—there is one or two trusses.

Quest. What did the old one stand on?

Ans. The same.

Quest. Did you raise the stone piers any?

Ans. Yes, sir.

Upon reading over the examination to witness, he says, I do not mean to say I never measured the dam from the west end of the tumble dam—I have measured it twice, or rather assisted in measuring it twice—but when the question was asked me I did not have my notes with me, and couldn't
30 give the distance.

I also wish to correct my testimony in another respect. I have said, in my principal examination, that we were working at the dam when Mulford Carlile saw us; I mean to say we were working at the trunk at the time of the first conversation I had with him.

In my principal examination, I have estimated Mulford Carlile's land at \$15 or \$20 per acre; I mean that part of it that was flowed.

JOHN VANDOREN.

40 Sworn to and subscribed this 13th day of August, A. D. 1862, before me.

ALFRED MILLS, M. C.

ON PART OF COMPLAINANT.

[Filed October 19, 1863.]

I, Alfred Mills, a master and examiner of the Court of Chancery, certify that the following is the deposition of James H. Douglass, a witness on the part of complainant, taken by me, at my office in Morristown, N. J., on Saturday, the 26th day of September, A. D. 1863, pursuant to the order hereto annexed, made by me—it first appearing to me, by the affidavits hereto annexed, that service of notice of the taking of such examination had been duly made.

10

ALFRED MILLS.

James H. Douglass, a witness produced on the part of complainant, being duly sworn, on his oath says:

I am thirty-nine years old within a few days; I reside in Oskaloosa, Iowa, in the neighborhood of from 1200 to 1500 miles from here—have lived there seven years last May; I think it was the ninth day of this month that I left there; that is still my residence; I expect to leave Mendham on next Monday morning, and go from thence to New York, and thence home by way of the New Jersey Central rail- 20 road; prior to going to Iowa, I lived in this county—am a native of this county—my father now lives at Mendham; part of the time while here my business was that of a miller; I went, in the spring of 1845, to the mill of Nathan A. Cooper, on Black river, near Chester, and remained there, I think, until the spring of 1850; I cannot tell exactly when I left; I was there four or five years; I was there as tenant under Nathan A. Cooper; the first year I was there I had the mill with John Cook—after that my father came, and he and I were there four years, I think; I cannot be positive 30 now the exact time I was there with him; when I left, my father remained; while I was there there were repairs done to the flume and trunk of the mill; the first year I was there I repaired the old trunk myself; after that, the new trunk was put in—that was put in the second year I was there, and the first year my father was there, according to the best of my recollection; John Vandoren

was the boss at the millwrighting there that year; I lived in the house on the rock, the easterly side of the pond, and the north side of the road, after I was married; my marriage took place a few months after I went there; while living there, I knew Thomas M. Carlile; he lived in what I always understood to be the old homestead, on the west side of the Black river; the house he lived in was, I should judge, about half way between the river and the road, northwest of the mill pond.

- 10 *Quest.* That season that the flume was built, did you say anything to Mulford Carlile about raising the mill dam there at Cooper's mill—and if so, state what you said to him, and what he said to you, in the first conversation he had with you on that subject?

Ans. The first conversation I had with him I told him that Judge Cooper wished to raise his mill dam, and that in case he did so, and it should flow his land, the meadow there, whether he would sell it to Cooper, from the fact that the judge did not wish to raise the dam to his injury without consulting him to know if he would sell that part of the meadow; Mulford Carlile replied, that if he would pay him what he paid the Hortons for their land he might have it; that was about the sum of that conversation at that time—there might have been a few words more or less.

Quest. State how you came to speak to Mr. Carlile upon that subject?

Ans. I did so at Judge Cooper's request.

Quest. Had the new flume been put up when this conversation took place?

- 30 *Ans.* It had not.

Quest. Whereabouts did this first conversation take place?

Ans. I think it was at the mill door in front of the mill.

Quest. Had there been any talk between you and Gen. Cooper about his raising the dam prior to your speaking to Mr. Carlile?

Ans. Yes, sir.

Quest. Had there been any examination, prior to this talk you had with Mr. Carlile, of the stream above the dam, as to how high the water would flow by raising the dam the required height?

40

Ans. There had been no actual survey that I know of; but Mr. Cooper and myself, and I think John Vandoren, went up the stream, at about opposite this land of Mr. Carlile, for the purpose of viewing it or looking at it with reference to putting on a piece on the dam and raising the water.

Quest. How much was it desired to raise the dam at that time?

Ans. The judge talked of about nine inches.

Quest. How long before you had this conversation with Mr. Carlile of which you have spoken, was it that this examination took place?

Ans. I could not tell you the exact length of time, I think probably some two or three weeks—it may have been longer and it may have been shorter.

Quest. Had the height of the dam been raised at the time you had this first conversation with Carlile by having a cap piece put in the dam, or in any other way?

Ans. No, sir; not to my knowledge.

Quest. After you had had that conversation with Mr. Carlile, did you or not communicate to Gen. Cooper what Mr. Carlile had said?

Ans. I did.

Quest. What did Gen. Cooper say when you told him what Mr. Carlile had said? [Objected to by Mr. Little.]

Ans. He told me to go to Mr. Carlile, and tell him that he wished to raise his dam, and that he would give him for that portion of the meadow flowed by so raising the dam, or the whole of the meadow up to the ridge, what he gave the Hortons for their land, as he wanted to raise the dam; I went and saw Mr. Carlile, and told him that the judge would give him what he gave the Hortons for that land; when I said this to Mr. Carlile he was between the road and the grist mill in front of the saw mill.

Quest. State, as fully as you can, the conversation that took place between you and Mr. Carlile on this last mentioned occasion?

Ans. After I had stated to him the above conversation, that the judge would pay him what he paid the Hortons for their land, he replied that he could have it; I then told him that the judge would take it, and when he wanted the thing

settled, or the pay for it, that the judge was ready to pay him; Mr. Carlile replied that he or they would make that all right—that there would be no difficulty about the matter, but that he could go on and raise the dam; that is about the sum and substance of the conversation.

Quest. Did you communicate this last conversation to Gen. Cooper?

Ans. I did; it was but a few days afterwards.

Quest. Do you know whether Mr. Carlile knew the price
10 per acre that Gen. Cooper had paid the Hortons for their land on the east side of the pond?

Ans. I do not know to a certainty.

Quest. Did Mr. Carlile, in either one of those conversations, say anything as to the value of his land there along the river compared with the Horton land?

Ans. He said he thought it was worth as much or more than the Horton land.

Quest. Did he say anything as to whether the price paid the Hortons was a high or low price for the land?

20 *Ans.* He thought the price paid the Hortons for their land was a pretty good price.

Quest. Had the new flume been put up at the time of this last conversation with Mr. Carlile?

Ans. No, sir; it was put up some time after this; they were some time in putting up their trunks; it was during the same year; in the fall of that year the tumble dam was raised, I think; there was a stick put on the top of the wall or tumble dam—it was about nine inches thick.

Quest. Was Mr. Carlile seldom or frequently at that mill
30 that year and the other years while you were there?

Ans. He was a customer to that mill for most if not all the time I was there; he came when he wanted work done, and often when coming by he would stop.

Quest. Did he or not go by frequently when he didn't stop at the mill?

Ans. I have seen him go by without stopping.

Quest. After the height of the dam was increased, did or not the water in the pond, while you were there, ever get high enough to fall over the tumble of the dam?

40 *Ans.* That depends on what you call the tumble of the dam.

Quest. I mean over the top of the stick which you say was put on top of the dam?

Ans. The water, after having put on this stick about nine inches thick, did rise so as to run over that stick.

Quest. While you were there, did you ever hear Mulford Carlile make any objection to the raising of that dam?

Ans. Not to my knowledge.

Quest. While you were there at the mill, did you ever hear any complaint from him that he or his land was being injured by the dam?

10

Ans. I have no recollection of hearing Mr. Carlile make any complaint, at present.

Quest. At the time you had these conversations with Mr. Carlile of which you have spoken, was it known how much of his land would be flowed by the contemplated raising of the dam?

Ans. I do not think we knew exactly the amount, how much or how little.

Quest. What was the main object in view in raising the height of the dam?

20

Ans. To get a better head of water on the mill wheel.

Quest. For what purpose was a greater head of water desired?

Ans. To be enabled to drive more run of stone with the necessary machinery.

Quest. How many more run?

Ans. I believe the judge had talked of putting in two more run.

Quest. How many run were in when you went there?

Ans. Two; no more were added during my residence 30 there.

Quest. Would the height of the dam as it was when you first went there, drive four run of stone?

Ans. I don't think it would, sir—I have no idea it would.

Quest. Assuming that there are now four run of stone in that mill fit for use, how much, in your opinion, would it reduce the value of that mill to take nine inches off of the top of that dam, or, in other words, to lower the water in that pond nine inches?

Ans. If you should take off the nine inch stick from off 40

the tumble of that dam, it would reduce the value of the mill very materially; an inch of water on the top is worth more than an inch of water at the bottom, from the fact that there is more pressure on a full head than there is on a low head; that being so, it would reduce the value of the property by taking off nine inches very materially—in my own opinion it would be nearly one half—probably not one half.

Cross-examination by Mr. Little.

Quest. What do you mean by head, and what by fall?

- 10 *Ans.* The head, in my understanding of the matter, is that body of water above the top of the fall piece where it is discharged upon the wheel; the fall is the power obtained between the top of the fall piece and the surface of the water in the tail race at the bottom of the wheel.

Quest. Do you know what head of water you had when you went there?

Ans. Probably four and a half or five feet—I could not answer definitely—I don't remember.

Quest. What depth of water had you in the old flume?

- 20 *Ans.* I couldn't tell—don't remember; I should judge that the whole depth of the flume was about five feet.

Quest. What was the thickness of the fall piece in the old flume?

Ans. I couldn't tell—never measured it; they used at that mill what is called a breast wheel—some kind of wheel as is used now; I would not have wanted to discharge the water any higher than it was then upon the wheel that was there when I was there; the new wheel was not put in while I was there.

- 30 *Quest.* When you built the new flume, did you discharge the water any higher up the wheel than it was before?

Ans. It may have been, but I think not.

Quest. How much power would you have gained by raising the water in the pond nine inches, and discharging it upon the wheel seventeen inches higher than it was before?

Ans. I couldn't answer that opinion satisfactorily—I am not a millwright nor an engineer.

- 40 *Quest.* As you understood it, the object in raising the pond was to get an increased head of water upon the wheel, was it not?

Ans. Yes, sir, that was one of the objects.

Quest. Would you get any increased head by raising the water nine inches in the pond, and discharging it seventeen inches higher on the wheel?

Ans. I won't answer that question positively till I can see into it; I think at first sight that you would lose; my impression is that the water was not discharged any higher on the wheel after the repairs than it was before, though it might have been.

Quest. You are a practical miller—had you any more head 10 when you went there than to drive the two run of stone and the saw mill?

Ans. No, sir; not in ordinary times.

Quest. How near did the water in an ordinary time usually come to the top of the old flume?

Ans. I couldn't tell exactly—it appears to me it must have come within a foot of the top—probably it might have come higher than that; I have known the water to overflow the flume in the time of a big freshet.

Quest. How much more head do you need to drive four 20 run of stone than two?

Ans. I should think nearly as much again—not as much as that—but a considerable more; that depends upon the situation of the water and other things.

Quest. Where was the overflow of the dam when you went there?

Ans. Where it is now, on the lower end of the dam—on the further end of the bridge.

Quest. What was the width of that tumble?

Ans. About thirty-six feet; the tumble itself was about 30 level.

Quest. How much higher than the tumble was the dam on each side of it?

Ans. From two to two and a half feet, about—I mean after we put the new stick on.

Quest. What constituted the tumble of the dam?

Ans. The dam itself was stone, and on top of that was a wooden sill, which rested on the stone work; my impression is that the old sill was flatted on the top and bottom both; the old sill was taken out to make room for the new one 40 that was put on.

Quest. Have you ever seen it since that time?

Ans. I can't say that it was the identical stick; I saw one said to be the one, and in all probability it is the one, but I could not positively swear to it; it laid, I think, on the north side of Obadiah Howell's wagon-house—I saw it this morning—John D. G. Carlile showed it to me.

Quest. How were the old rafters fastened to the sill?

Ans. They were halved or dovetailed into the sill.

Quest. How did you put the new sill on with those rafters
10 there?

Ans. I don't think I helped lay the sill.

Quest. When you went there, did the water discharge itself over the whole distance of that tumble in high water when pond was full?

Ans. It did.

Quest. Was there any floodgate in that part of the dam?

Ans. Not what I would call a floodgate.

Quest. What was there?

Ans. There were some boards set up on the top of this
20 sill, kept to their places by pins in the sill, upright pins; the width of the boards were about seven inches.

Quest. Were the boards kept there all the time?

Ans. No, sir; the new sill was nine inches thick, and laid where the old one was; the sill itself was nine inches higher than the old one was; the new sill was made by raising the stone work under it nine inches higher than the old sill?

Quest. Was it nine inches above the sill, or nine inches above the boards?

Ans. Nine inches above the sill—it was raised so as to get
30 nine inches more of head.

Quest. Do you mean nine inches more of head than was given by the old sill, or nine inches more than was given by the boards?

Ans. By the old sill—that was the meaning I intended to convey.

Quest. What portion of the time were those boards kept there?

Ans. That depended upon the amount of work we had to do—upon the amount of power we wanted; that depended
40 upon the state of the water and the amount of work we had to do.

Quest. What frame work, if any, was there above the sill on that tumble dam—I speak now of the time after the new sill was put in?

Ans. That frame work consisted of several uprights framed into the sill, and extending to a cap running lengthwise with the dam.

Quest. Was there any such frame work upon the dam before the repairs were made?

Ans. Not that I have any recollection of—don't think there was.

Quest. Was there any such piece upon the old dam as there is now?

Ans. No, sir.

Quest. After this new sill was put in, and the repairs to that tumble dam completed, at the time you speak of, were the spaces between the uprights extending from the sill to the cap piece closed or open?

Ans. Not what I would call permanently closed—that is the whole space; I speak now during the time I was there.

Quest. Were any of those spaces permanently or entirely closed while you were there?

Ans. On each end of the sill there were boards in the spaces between the uprights, from the sill to the cap piece, but not reaching to the cap piece, and in the spaces near the centre of the sill were two gates, which were used to regulate the flow of the water, which were of the same height as the boards; these boards on either side of the gates may have run to the lower side of the cap piece, but my impression is they did not.

Quest. Did the water then, while you were there, discharge itself under or over the cap piece?

Ans. My recollection is now that when the gates were closed the water went over the boards, but under the cap piece, that is in ordinary times; that was done when the state of the water was such that we required more head; we closed the gates to obtain more head, but never suffered the gates to remain closed except when we were using the water, but had the gates up, and let the water pass over the sill.

Quest. What was the width of the gates that you used after the repairs were made?

Ans. About six or eight inches—about the same width as that of those we used on the old sill.

Quest. What proportion of time were those gates kept closed while you were there—habitually or only occasionally?

Ans. Only occasionally; I was at the dam this morning.

Quest. What is the tumble of the dam as it was this morning?

Ans. Why, with the gates closed as they were this morning, the cap piece must be the tumble of the dam.

10 *Quest.* Was the water running over the tumble this morning?

Ans. No, sir.

Quest. How near was the surface of the water to the top of the cap this morning?

Ans. Some twelve or fourteen inches.

Quest. Were you familiar with the water marks along that stream and pond while you were there?

Ans. I used to know some.

Quest. State what they were?

20 *Ans.* The wall between the two bridges—that is the bridge over the flume and the bridge over the tumble dam—was one; there was one point above the house on the rock I used to live in—that was the first turn of the stream on the east side of the pond—a point of the hill came down there to the water where we used to fish.

Quest. Did you notice either of those points this morning?

Ans. Yes, sir; my attention was called to them.

Quest. How did the height of water this morning compare with what it was in an ordinary time of water when you
30 lived there at those points?

Ans. There was more water this morning than there was in ordinary times when I lived there.

Quest. How much higher was it?

Ans. It was considerable higher than when I lived there—from eighteen inches to two feet—probably more and probably less—that would be my opinion.

Quest. Were you at any other point of the stream to-day, and if so at what point?

Ans. Yes, sir; at what is known as the big rock or deep
40 hole—that is above the first turn I have spoken of, and on

the east side of the pond; then I was on the west side of the stream, starting at Carlile's bridge, and in the walk down I was at two or three points; I measured the water at Carlile's bridge.

Quest. How much higher was it there, in your opinion, to-day, than it was in an ordinary height of water when you lived at the mill?

Ans. I measured from a stone projecting out of the abutment of the bridge to the surface of the water, as it was this morning, and found it fifteen inches from top of that stone 10 to top of the water; but whether that would be a proper place to measure from to ascertain the amount of depth of water caused by the closing up of this thing, as I found it this morning, I couldn't say.

Quest. Why did you measure from that projecting stone?

Ans. Because I had seen it dry while I lived there when the water was at what I called in ordinary state.

Quest. When you had these conversations you have spoken of with Mulford Carlile, did you tell him how much Gen. Cooper proposed to raise the dam? 20

Ans. I did—that he wanted to raise the dam nine inches by putting on the sill.

Re-examination by Mr. Vanatta.

Quest. Did you tell Mr. Carlile for what purpose the general wanted to raise the height of his dam nine inches?

Ans. I did.

Quest. What purpose did you tell him he had in view?

Ans. I told him that Mr. Cooper wanted to put in two more run of stone—that that was his intention—and that he wanted the additional head for that purpose, to increase the 30 power; I think I remarked that to Mr. Carlile at both the conversations.

Quest. Did you assist in doing the work at the dam in 1846, when it was raised?

Ans. I do not think that I assisted in putting in the sill—have no recollection that I did.

Quest. Did you assist in putting on any of the work that was put on the top of the sill?

Ans. I do not think that I did.

Witness being shown *Exhibit No. 1* on part of the complainant, and asked to look at stick marked No. 4, and the other sticks like it in the model—

Quest. Were the sticks which were in the dam in 1846, corresponding to these sticks in the model, changed from the position they then occupied?

Ans. I couldn't answer that question definitely, from the fact that I never noticed.

Quest. Were there any new sticks corresponding to them—
10 any new rafters put in the dam at that time?

Ans. As far as I can remember now, I think there was, but I won't say positively; I was not working on the wood work at that time, but I helped fill up, that is put some dirt in there after this wood work was done, and there might have been some new sticks in there and might not.

Quest. Had you examined the mill or dam since you moved away from the mill until this morning?

Ans. I think I was there once or twice after I moved away from the mill, but I think I never went there to examine the
20 property until this morning; I moved away from there in 1849 or 1850.

Quest. Did anybody ever call your attention to the dam after you moved away, or did you have occasion to look at it until this morning?

Ans. No, sir; I don't think I did.

Quest. The structure of the dam, as you described in your answers to Mr. Little's questions, was the structure as dam was made in 1846, was it?

Ans. According to the best of my recollection.

30 *Quest.* The dam as made then, in 1846, consisted of a sill on top of the stone work, with uprights mortised into that sill, and a cap piece put upon the top of those uprights, did it?

Ans. That was the frame work, as made at that time.

Quest. Is the frame work to-day on the dam the same kind of a frame work as was there then, when they finished the dam?

Ans. It was, as near as I can remember.

Quest. Is the frame work there to-day (by which I mean the sill, the uprights, and the cap,) the same which was put
40 there in 1846, as near as you can tell?

Ans. Yes, sir; it looks to me to be the same.

Quest. Are you clear and certain in your mind that the spaces between the west end of the gate and the west end of the dam (I mean the spaces between the sill and the cap) were not filled up before you left the mill as a tenant?

Ans. I will answer that as before—it is my opinion that the spaces in the west end were left open; but I may have got my impression from the boards on the old dam—I am not certain about it.

Quest. Are you clear and certain that the space between 10 the sill and the cap at the east end of the easterly gate was not all filled up by a board or plank before you left the mill as a tenant?

Ans. I would answer that just as I answered the last question about the west end.

Quest. If those spaces were only partly filled up with board or plank, can you give me any reason why they were filled up only part of the way, and not all the way?

Ans. I don't know as I can give you any reason.

Quest. If those spaces of which we have been speaking 20 were not to be filled up to the cap, can you give any reason why the cap was put up so high?

Ans. If I was the owner of the property, and wanted to go on there and raise the gates in high water as often as I used to go, I could give a reason for it—and it would be this; in answer to the question, as it is asked, I answer no.

Quest. After the work was done in the fall of 1846, what additional head of water did you then understand could be gained by the works that had been made that fall?

Ans. By leaving out these gates, in an ordinary time we 30 would get nine inches, as I understand.

Quest. repeated.

Ans. According to my recollection, it would be nine inches by the sill, and supposing these boards to be there according to my recollection, it would be seven inches more, that is if the boards were seven inches wide—they were from six to eight inches.

Quest. In the fall of 1846, then, you could have got all the head of water that you can get there now, if the spaces between the sill and the cap had been filled in so as to run 40 over the top of the cap?

Ans. Yes, sir.

Quest. Did you know of anything in the way of your filling up these spaces as much or as little as you saw fit?

Ans. We could have done it, but whether it would have been right or not I don't know; I don't know that there were any orders preventing us.

Quest. After the work was done, say in 1847 and 1848, did you have any greater head of water than you had before the work was done?

10 *Ans.* I think we did?

Quest. I understood you to say that the old sill which was taken out rested on a stone wall, am I correct?

Ans. That is my impression of it, sir.

Quest. Have you any knowledge or distinct recollection that that stone wall was built up any higher in 1846?

Ans. I think it was, sir.

Quest. Is it anything more than an impression?

Ans. I am under the impression that it was raised there, and I will give you my reason for it; the reason was we
20 were after more head of water, and I don't see how we would have got it by taking up one sill and putting another down in the same place—that's the only reason I can give, sir.

Quest. Can you tell who did the work of raising the height of the stone wall, if it was raised at all?

Ans. No, sir, I could not—that is at present I couldn't.

Quest. Are you right sure that the old dam which was taken off in 1846—I mean the wood work of the dam—did
30 not consist of a sill resting on the stone wall with uprights mortised into it, but those uprights nine inches shorter than the ones that are now there, and a cap piece on the top of those uprights similar to the cap piece now there?

Ans. I have no recollection of a frame work such as that described—there may have been one though.

Quest. I wish you to recollect whether the pins which you spoke of as having been driven into the timber to hold the boards were not driven into a cap piece which rested on the top of short uprights instead of resting on the stone wall?

Ans. I do not recollect that such was the case—it may
40 have been.

Quest. Would boards loosely set against pins driven in a sill resting on that stone wall have answered to keep back the body of water that pressed against them?

Ans. Not boards loosely set against the pins; but fixed as they was, and of the width they was, they answered for a while.

Quest. How far was the water this morning below the top of the cap piece?

Ans. Twelve or fourteen inches, I should judge; I don't think I measured it. 10

Quest. What was the water mark on the edge of the road near the bridge?

Ans. That was a stone wall—the top of the old wall was the mark—there has been some more stone put in since I was there; as far as I can remember, in an ordinary time when I lived there, the water came within some inches of the top of the wall—it's been some time—I don't remember how many.

Quest. How did the water stand this morning?

Ans. The old wall was covered, and water some distance 20 above it—didn't measure it.

Quest. Are you sure the wall has been raised?

Ans. Well, the old wall was there; I think the back of the wall next the road had been raised, leaving the old wall as an offset.

Quest. How high was the road above the water in the pond when you lived there?

Ans. I could not tell how high—it was some higher—it may have been over a foot, can't say.

Quest. If the water were now eighteen inches or two feet 30 higher in that pond then when you lived there, wouldn't it completely inundate the road between the bridges and all the space south of the road?

Ans. It would, in my opinion and from what I can recollect, cover the road between the bridges, supposing my idea of what was then the top of the road to be correct.

Quest. Taking the road as it was when you lived there, if you had added to the height of the water, as it then ordinarily stood in the pond, eighteen inches or two feet, wouldn't it have completely submerged the road between the two 40

bridges and the dry land immediately south of that part of the road?

Ans. I think it would, sir.

Quest. Has that road between the two bridges been raised throughout its whole length since you moved away from there?

Ans. I couldn't tell what has been done since I went away from there, but I should judge from its appearance this morning that it had.

10 *Quest.* How much, in your opinion, has it been raised in its whole length?

Ans. I could not give you a definite answer, from the fact that I did not measure it this morning; the water mark at the first turn in the stream above the house (which mark I have above spoken of) is a piece of land at the turn of the stream which we used to go across in fishing—but this morning most of it was covered with water, and we had to go round it; I made no measurements there this morning, nor did I make any measurements there when I lived
20 at the mill; in the next turn of the stream above that I have just spoken of is the big rock I referred to in my testimony as a water mark; there is a big rock lying on a flat rock, and projecting over it, the flat rock being under water; this morning the bottom of the big rock seemed to be farther under water than it used to be; this rock is at what we used to call the big hole; when I lived there, I knew of no fixed water mark on that rock—I judged by the general appearance; it was on the westerly abutment of the bridge towards Mulford Carlile's house that the stone was
30 from which I measured, as I stated this morning—it was the up-stream side of the abutment—it was a stone that projected out of the abutment—no one drew my attention to that this morning; Mr. J. D. G. Carlile, Charles Ming, and I think Spafford Dickerson, were there; when I used to live there I had been up the river and had seen it—I have stood on it under there, can't tell how often; I have been fishing there; I measured the water on it this morning, and the depth was about fifteen inches; I presume it was the damming up below that caused the water to be there; we started
40 at the bridge, and went down the stream towards the mill—did not follow the stream all the way down—we went to the

edge once or twice, or three times probably, in going down; in going down I saw occasionally some bushes in what seemed to me to be the channel as it was when I lived there; I did not go up to them; the first bushes that I noticed which I thought were obstructions were between the bridge and the lower end of what I call the Mulford Carlile meadow; Mr. J. D. G. Carlile took me to see the stick of timber said to be the old sill—it was lying near the north side of Obadiah Howell's wagon-house—I could't tell how long it was, may have been twelve, fifteen, or sixteen feet long—didn't 10 measure its length—don't remember whether we measured its thickness—I should judge it was dressed on two sides; there were holes in this stick—auger holes; stick looked to be pretty well decayed—didn't count the auger holes; there were some notches taken out of it—I think the notches were in the side, and the auger holes on the top; Mr. Obadiah Howell and Mr. Carlile were with me looking at the stick; I went up to the mill to-day at the request of Mrs. Carlile, in the first place; she came down to where I was on Thursday of this week; Mr. J. D. G. Carlile took me up this morn- 20 ing—he came for me—he was alone; he took me to his house; I think the first I saw Spafford Dickerson was at Carlile's bridge; the first I saw Mr. Ming was at his house; we (Mr. Carlile and I) stopped there on our way up—we went in and Mr. Ming came down to Mr. Carlile's; Mr. Ming said he would come down there; he went with us to the bridge from Mr. Carlile's house; no one else was with us in company at the bridge except us four; we were all at the mill together; these three gentlemen were there when I was examining the dam and the places about there; Mrs. Car- 30 lile was not there; I stopped at her house as I was going by, and spoke to her—didn't go in.

Quest. Did you understand what induced Mr. Ming and Mr. Dickerson to be there with Mr. Carlile in that examination this morning?

Ans. I heard no inducements held out to them.

Quest. Did you understand, from them or any of them, what motive they had in spending their time that way this morning?

Ans. I understood that they had some land that was flowed.

Quest. What had that to do with their presence there this morning?

Ans. If they had land flowed there they would probably be interested in knowing whether the dam caused it.

Quest. Did you understand from them, or any of them, that they had suits against Gen. Cooper for flowing their land?

- 10 *Ans.* I did from Mr. Carlile, that he had commenced some kind of proceedings; he said nothing about Mr. Ming or Mr. Dickerson having commenced suit—I understood they had not; when Mrs. Carlile came down to Vliet's mills to see me I think she was alone; Mr. J. D. G. Carlile is here this afternoon at the taking of this evidence.

Cross-examination resumed.

Quest. Did the water usually run over the cap, in an ordinary time of water while you lived there, when the gates were shut?

- 20 *Ans.* I do not think it did, sir.

Quest. Did you ever see it run over?

Ans. I have been trying to think since I have been sitting here whether I have or not, but I do not remember that I have—though I might.

Quest. At time of high water how did you get to the gates to raise them?

- Ans.* I think there was a stick that projected out from the cap piece towards the pond sustained by an upright, and my father and I put a plank on that reaching to the end of
30 the dam; the plank lay near the cap piece; I think the plank was a little higher than the cap piece; at the time I was there, I have no recollection of any such long timbers as are represented on this model, and marked 7; the boards that I have spoken of as used on the old cap and set against the pins, would, some of them, frequently be carried down by the water in high water; I did not notice the part of the dam towards Obadiah Howell's very closely to-day; I hadn't time to look at any of it very closely—I noticed it however;

there was an offset in it; I didn't observe how high the wall was above that offset; my father and I raised the bridge over the flume near the east end of dam while we were there; I knew Mahlon Ward in his lifetime; he employed us to raise the bridge; it was said he had charge of the turnpike road; I think Col. McCoury came down to examine it; I have known Mahlon Ward to raise that road between the bridges while we were there; he put in some dirt on the east end of the bridge over the flume; I am under the impression that he did not put any stones there. 10

Direct examination again resumed by Mr. Vanatta.

Quest. After the dam was raised in 1846, if the water in time of high water didn't run over the top of this cap piece, marked in model No. 1, why didn't you walk on the cap piece to the gates, and hoist them?

Ans. That was a pretty narrow piece to walk on, and rather a dangerous operation; I think there was more than a single plank put on above for us to walk on.

Quest. At the east end of the dam, didn't the ends of those plank rest on the side of the forebay corresponding to the 20 piece marked 6 in the model?

Ans. My impression is that they rested on the ground or on the stone wall, but I am not certain; my impression is that the end of the plank next the gate was the highest, they making a kind of inclined plane; when Mrs. Carlile came to see me at Vliet's mill on Thursday, she said Mr. J. D. G. Carlile had requested her to come, and would give her no peace till she had come for the purpose of taking me to the mill.

J. H. DOUGLASS. 30

Subscribed and sworn to, this 26th day of September, 1863, before me.

ALFRED MILLS, M. C.

By agreement of counsel, the above testimony is made part of the testimony in the cause, the same as if it had been taken in regular examination of witnesses upon legal notice, and is to be used in the same way, and the transmission of

the same to the clerk, and filing of the same in the manner required by statute is dispensed with.

September 28th, A. D. 1863.

JACOB VANATTA,
Solicitor of complainant.
THEO. LITTLE,
Solicitor of defendants.

To Alfred Mills, esq., one of the masters in the Court of Chancery of New Jersey.

- 10 Whereas James H. Douglass, of the state of Iowa, is now in this state, and is a material witness in the cause above stated, and is about to go out of this state, you are therefore requested to appoint such time and place as the case may require to take the deposition of said witness, and to cause notice to be given to the defendants, or their solicitor, Theodore Little, esq., to attend and be present at the taking thereof, and to put questions and to cross-examine, if he or they shall think fit.

Dated this 22d day of September, 1863.

20

NATHAN A. COOPER.

Morris county, ss.—Nathan A. Cooper, the complainant above named, being duly sworn, on his oath saith, that the facts above stated are true.

NATHAN A. COOPER.

Sworn and subscribed before me, 22d September, 1863.

ALFRED MILLS, M. C.

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- 30 New Jersey, ss.—Upon consideration of the circumstances of the case, in pursuance of the within application, I do appoint the hour of two and a half o'clock in the afternoon of Saturday, the 26th day of September, instant, at my office in Morristown, in the county of Morris, to take the deposition of the within named witness, James H. Douglass, and do direct that three days' notice thereof be given to Theodore Little, esq., solicitor of the defendants, to attend and be present at the taking thereof, and to put questions and to cross-examine, if he shall see fit.

Given under my hand, 22d September, 1863.

ALFRED MILLS, M. C.

Please take notice of the examination *de bene esse* of James H. Douglass, a witness on the part of the complainant, before me, at my office in Morristown, New Jersey, on Saturday, the 26th instant, at half-past two o'clock, P. M., at which time and place you are notified to be present at the taking thereof, and to put questions and to cross-examine, if you shall think fit.

Dated Morristown, September 22d, 1863.

ALFRED MILLS, *M. C.*

To the defendants, or whom it may concern.

10

Morris county, ss.—Jacob Vanatta, being duly sworn, on his oath saith: that in the forenoon of Wednesday, the 23d day of September, instant, he did deliver to Theodore Little, esq., a notice, of which the above is a true copy.

JACOB VANATTA.

Sworn and subscribed before me, September 26th, 1863.

H. C. PITNEY, *M. C.*

Morris county, ss.—Nathan A. Cooper, of said county, of full age, being duly sworn, on his oath saith: that on Wednesday, the 23d day of September, instant, at about eleven 20 o'clock in the forenoon, he did deliver to Eliza Carlile, personally, within named, a written notice, of which the within notice is a true copy.

NATHAN A. COOPER.

Sworn and subscribed before me, 26th September, 1863.

ALFRED MILLS, *M. C.*

ON PART OF DEFENDANTS.

[Filed October 19, 1863.]

Examination of witnesses, &c., on the part of the defendants, taken at my office, in Morristown, New Jersey, commencing Tuesday, September 29th, 1863.

Mr. Theodore Little appears for defendants.

Mr. Jacob Vanatta appears for complainant.

Notice of this examination admitted by Mr. Vanatta, solicitor of complainant.

10

ALFRED MILLS, M. C.

Peter Churchfield, a witness produced on part of defendants, being duly sworn, on his oath says :

I live at Chester, in this county ; I was acquainted with Thomas M. Carlile for the last five years before he died ; was frequently at his house during his last sickness ; I think he died in April, 1855.

Being shown paper marked *Exhibit 1* on part of defendants, he is asked—

Quest. Did you see Mr. Carlile execute that paper ?

20

Ans. Yes, sir ; I suppose I did ; I saw him execute the will ; that is my signature as a witness, and I suppose it to be the will ; Samuel Swayze and James A. Lusk were present, and I think John Carlile ; Lusk signed as a witness ; we both signed it there at the time in the presence of Mr. Carlile.

Quest. State the mode in which the paper was executed ?

Ans. I know the will was read to Mr. Carlile ; Esquire Swayze read it to him ; he acknowledged that it was right, and tried to sign it, and he wasn't able to hold a pen—appeared to be feeble, and requested Esquire Swayze to write his name for him ; Esquire Swayze then wrote his name ; I think Mr. Carlile took hold of the pen, and Esquire Swayze guided his hand, or assisted him, I think, in making the mark ; the esquire asked him if he acknowledged that to be his will, and he acknowledged it to be his will.

30

Quest. Was he at that time, in your opinion, of sound and disposing mind and memory?

Ans. I am not much of a judge—I think he was; I was with him a good deal during his sickness; he made a remark, as he made his will, that he wanted her to have the property, that is his wife.

Quest. Had you any doubt at the time of his understanding what he was doing?

Ans. No, sir; not any.

Quest. Had you any doubt at the time of his being able to understand how he had disposed of the property by the will?

Ans. I had not.

Cross-examination of *Peter Churchfield* by Mr. Vanatta.

Mr. Carlile lived only a few days after that paper was signed—don't think it was as much as a week

Re-examination by Mr. Little.

The will is in the handwriting of Esquire Swayze, who was a brother-in-law of Mr. Carlile; Swayze was in the habit of doing that kind of business in the neighborhood. 20

PETER CRURCHFIELD.

Sworn to and subscribed, this 29th day of September, before me.

ALFRED MILLS, *M. C.*

James Topping, a witness produced on the part of the defendants, being duly sworn, on his oath says:

I am fifty-four years old—live at Chester—am a mason; I have worked at Gen. Cooper's mill at Black river; at the time the trunk was put up, in about 1846, I raised some of the pillars on which the trunk stands, and some I put up new—I think one was nearly all new; the old trunk rested on stone pillars, and those are the pillars which I raised; the pillars were raised two feet—just two feet; I don't recollect the year; Mr. John Vandoren was head workman of the carpenters there at that time; the dam was raised at this time—Mr. Jonathan R. Axtell raised that; he is out at Michigan I believe; I don't recollect that I did any other

work at that time than to raise the piers; there are timbers under the trunk now—between it and the piers; those timbers were put there at the time the trunk was built; I think the two timbers make one foot four inches in thickness; I tended the saw mill before the repairs were made; in stepping from the saw mill to the trunk, we stepped downwards—don't recollect how much—I should think a foot or more; now the trunk is a little on a rise from the saw mill—can't tell how much.

10 Cross-examination by Mr. Vanatta.

I don't recollect the year I tended the saw mill—I tended several years in the winter season; I recollect tending it when Daniel Woodruff had the mill—don't recollect how long ago that was—a number of years ago—it is inside of twenty years, and over ten, I should think; at that time I lived close by the mill, in a house which John G. Crater now owns—lived three years, I think, in that house—don't recollect whether Woodruff had the mill all that time—he had it part of that time; I recollect when Nathan Cooper 20 (uncle of Gen. Cooper) died—don't remember how long ago it was; I wouldn't be positive as to whether Woodruff came to that mill as tenant immediately after Nathan Cooper's death—couldn't tell.

Quest. Is the saw mill which is now there the same building which was there when Woodruff had the mill?

Ans. The same building I believe; there has been some new foundation put under it for Mr. Cooper—couldn't tell when without looking at the charges; this foundation was put in since the new flume was built, I think; this new 30 foundation was put under the front part of the mill towards chester; I think the old foundation had fallen down or was out of repair; don't recollect that I put in new foundation under any more than the front part; I put in a new foundation under only a part of the front—I should think about the centre—it was where the logs are rolled in; I did not raise the saw mill any higher.

Quest. Were there any timbers between the bottom of the old trunk and the top of the stone piers?

Ans. Yes, sir, I think there was; I don't know how many there were—I know there were cross timbers, that is across

the trunk—don't know whether there was one lengthwise or not; those cross timbers were six inches thick—I measured one of them within a week—last week—it was in Obadiah Howell's wagon-house, in the upper part of the wagon-house; Mr. John D. G. Carlile took me there to show it to me—Mr. Carlile and I were alone; I rode down with Mr. Dickerson from Chester—not on purpose to see that stick—this was James S. Dickerson; he asked me to go down and see the pillars that were raised; Mr. Carlile came there to the mill while we were there; Mr. Ming was not there. 10

Quest. This stick that you have spoken of, had you ever seen it before?

Ans. I don't know that I had.

Quest. How do you know it had been under the old trunk?

Ans. I don't know positively, but I suppose it was from the way it had been pinned—it looked as though the plank had been pinned to it.

Quest. Could you tell from the stick whether it had been pinned to the side or bottom of the trunk?

Ans. I suppose to the bottom—there was a mortise hole in 20 each end.

Quest. Couldn't such a stick have come from some one else's mill as well as Gen. Cooper's?

Ans. It might.

Quest. If that stick came from Gen. Cooper's mill, can you tell us where it has been for the last seventeen years?

Ans. I cannot; Mr. Carlile told me that that stick was in the loft of Howell's wagon-house—I mean J. D. G. Carlile—I won't be positive whether he had ever spoken to me about it before that day—don't recollect; Mr. James S. Dickerson 30 had not spoken to me about it before that day nor Charles Ming; when I went to work on those piers the old flume had been torn away before I went there; I don't know who had torn it away—I suppose Mr. Vandoren or his hands; he was there to work when I went to work there; I did my work under Mr. Vandoren's direction, as to the height of the pier and other things; there was no other masons at the commencement of the piers—am not certain whether Mr. Axtell came there before the piers were done or not; he was sent for before I had them done; I went away as soon 40

as I got the piers done—went to Stephen I. Howell's; did not work any more at the mill that season as I recollect of—think not; don't recollect how long I was working at the mill that season—not many days—can't say whether over three days or not.

Quest. If Axtell came there before the piers were done, did he assist you at the piers until they were finished?

Ans. That I am not positive of; I was working as a boss mason at that time.

10 Re-examination by Mr. Little.

There is no mill on Black river above Gen. Cooper's mill; that stream is a very sluggish one; when I was at work, as I stated at Stephen I. Howell's, I passed back and forth by the mill while Axtell was working at the dam—suppose he was working there some three weeks; he was a boss mason; I think no one was at work with him.

Cross-examination resumed.

It was pretty late in the fall, getting to be cold weather.

Quest. Was Axtell working there as soon as you went to
20 Howell's?

Ans. Yes, or shortly after; it was getting cool weather when I put up the piers—the water was cold; the piers were built up before the new trunk was put on; I think all of them were built up before the trunk was put on—I am not positive; I think I built them all up, but am not positive as to that.

JAMES TOPPING, jun.

Sworn to and subscribed, this 29th day of September, 1863, before me.

30

ALFRED MILLS, *M. C.*

John Castner, a witness produced on part of defendants, being duly sworn, on his oath says:

I am thirty-eight or thirty-nine years old; I knew Thomas M. Carlile in his lifetime; I am acquainted with the meadow in front of his house—must have known it twenty or twenty-five years; I have always lived in Washington township, a mile and half from Black river mill; before the mill was re-

paired in 1846 or 1847, I remember there was a track on that meadow for training a colt—it was dry except one place, which was a little wet; John Carlile was training the colt to running; that meadow is now quite different from what it was at that time; the water is on it, and it is muddy and soft; I worked for Mulford Carlile in the summer seasons of 1848 and 1849, as near as I can remember; I have a deed, got the last year I worked there, and that is dated, I think, in 1849; as compared with what it was then, this meadow is considerably wetter; I oftentimes pass it; part of the time 10 it is under water when the stream is full of water and the gates all down.

Quest. Did you, at any time after these repairs were made to the mill, hear any conversation between Thomas M. Carlile and Nathan A. Cooper in relation to the damage done to Mr. Carlile's land by raising the water—if so, state all the conversation, as nearly as you can?

Ans. Well, I was with Mr. Carlile one certain time; we was going up the turnpike, and we met Mr. Cooper coming down towards Mr. Carlile's, and Mr. Carlile spoke to Mr. 20 Cooper something about the damage; I don't remember what he said to Mr. Cooper, but Mr. Cooper answered him back; he said, if the mill was no accommodation to the neighborhood, why he had better let it go down—that's all.

Quest. Did the general promise to settle the damages, or to come and see about it?

Ans. Well, I don't remember as to that—what was said afterwards.

Quest. Do you remember whether or not the general seemed to be in a good humor when spoken to by Mr. Carlile? [Objected to by Mr. Vanatta.] 30

Ans. I didn't hardly think that he was, from the way he spoke.

Cross-examination by Mr. Vanatta.

It must be in the neighborhood of nineteen or twenty years since I saw the colt trained on the meadow; I think it was towards fall that it was used as a track—can't give the month—think it was near the last of August or first of September; I never knew more than one colt to be trained

there; I never knew the meadow to be used as a track for training more than that one year; it was a sorrel colt that Mr. Carlile was training there—I guess it was called the Stephens stock; I think Mr. Carlile ran that colt that year in a race—I believe the race was held at the Cross-roads; I never knew or heard of Mr. Carlile running a race at the Cross-roads at any other year than that one; I believe Mr. Thomas B. Stout had a horse in that race—don't remember who else; there were other horses there; that was a circular
 10 track in the meadow—I believe it was called at that time a quarter track; it was out on the flat part of the meadow—in the lower meadow—nearer the river than the road; the track was not directly in front of the house—it was farther up stream; I believe it was all on the meadow; it come down pretty close to the river bank—don't recollect how far it was from river—a little ways.

Quest. Did you ever know that meadow before 1846?

Ans. Don't remember whether I have or not—helped mow it several times—helped mow it both the years I worked for
 20 Mr. Carlile—helped mow both of the meadows, the upper and lower part; on the lower meadow next the river we got wild grass and foul meadow, and sich mixed together; the grass there didn't use to be as coarse as it was that year; I never mowed it before as I remember, or had occasion to examine it particularly; when I lived there there was a slough run up in the lower meadow with brush; I suppose a wagon could have passed between the brush and the river—brush against the river at that time; the bunch of brush is
 in the meadow side, nearly in front of the house, not far
 30 from the river; I aint certain whether the conversation I have spoken of was while I was working at Mr. Carlile's at this time or afterwards.

Adjourned for dinner, until a quarter after two p. m.

After dinner, direct examination of *John Castner* resumed.

I mowed part of that meadow this summer—the bigger part of the meadow—the lower meadow, except next the river, where it was very muddy and wet—mowed it in August and first of September; in the morning there would be more water on than in the afternoon; we carted the grass off

with horse team; where the moist places was pitched it off; along the bank next the high ground I mowed a couple of swaths to drive over; didn't mow it on shares—I got the whole of it; didn't buy it—gathered it for litter and such like; it wasn't fit to feed anything—very coarse; wasn't down at the dam while I was mowing there; it was a time of low water, or I couldn't have got on there; don't remember being at the dam.

his
JOHN $\bowtie$ CASTNER, jun.
mark.

Sworn to and subscribed, this 29th day of September, A. 10 D. 1863, before me.

ALFRED MILLS, *M. C.*

David C. Horton, a witness produced on part of the defendants, being duly sworn, on his oath says:

I am forty-five years old about; I live in Chester; I was brought up in Chester, and have always lived there, about one-quarter of a mile from this Black river mill; my father's name was Caleb Horton; he owned lands adjoining Black river, on the north side of the pond—I mean on the side towards Chester; a part of those lands were sold to Gen. 20 Cooper after my father's death by the heirs, in 1845 I think; the other heirs (beside myself) were my two brothers and my brother-in-law; James Vanderveer is my brother-in-law; a considerable of the land which we sold to Gen. Cooper was drowned, and had been for several years; I know the meadow of Thomas M. Carlile opposite our lands; have crossed it a great many times; have known it since I have been big enough to know anything—it joined our farm, with the river between them.

Quest. How did that meadow compare in value with the 30 lands owned by your father, which you say were sold to Gen. Cooper in 1845, at the time of that sale? [Objected to by Mr. Vanatta.]

Ans. Well, I think theirs was worth a good deal the most at that time, because one of ours was entirely worthless from being drowned.

Quest. How much more, in your opinion, was it worth?

Ans. I aint much acquainted with that kind of land—I

never had any; one of our meadows wasn't worth anything at time of sale; I should think the Mulford Carlile meadow was worth as much again as the land we sold, taking the average; the one meadow of ours had been drowned (the principal part of it) ever since the present mill was built.

Quest. Do you know whether or not your father had claimed damages from the general for injury to that land? [Objected to by Mr. Vanatta.]

Ans. I suppose he had.

10 *Quest.* Was the price which the general paid you for the lands paid for the value of the land as it then was, or was it in part for the damage done to the land?

Ans. I don't remember distinctly.

Quest. You said you thought your father had claimed damages—had he ever received any, as far as you know of?

Ans. Not that I know of; I suppose he had not—for I think the land was put at so much, and then the interest was counted on it from the time he built the mill up to the time we sold the land; I think so, but am not positive;
20 that's the way I think the price was fixed for the land—think the general fixed the price himself.

Quest. Did the general tell you for what purpose he wished to buy the land at that time?

Ans. Yes, sir; he told so that I heard him; he told the reason why he wanted to get the land he hadn't drowned; part of the land lay up high; he wanted to raise his dam.

Quest. Did you hear him say how much he wanted to raise the dam?

Ans. I did; I think he said he wanted to raise it three
30 feet—I am not positive.

Quest. Did you hear him make any remark in reference to Mr. Carlile's land while standing on the opposite side of the stream to it?

Ans. I did; he said the opposite side had quite a bold bank.

Quest. Is the water or not higher now when the pond is full than it was when the pond was full before the alteration was made in 1846, and if higher, how much in your opinion?

40 *Ans.* It's higher of course, but how much I don't know—I have no permanent guide.

Quest. From your observation, how much higher is it?

Ans. I think it is about two feet.

Quest. Have you examined any marks recently that you were formerly acquainted with? [Objected to by Mr. Van-atta.]

Ans. I have examined the sticks (in the roadside between the bridges) running out into the pond to which the hand-railing was braced; the water this morning was nine inches over one stick, and eight inches over the other; the water at the dam ran over all the way, except a little space on the 10 opposite side of the stream from the mill; I should think the thickness of those sticks was about eight inches—didn't measure them.

Quest. Before the dam was raised, were those sticks above or below the water at an ordinary time of water when the pond was full?

Ans. They was above the water.

Quest. How much above?

Ans. I should think from six to ten inches, perhaps a foot —never measured. 20

Quest. Were you ever in the habit of standing or sitting on them?

Ans. Yes, sir; I have sat on them many a time and fished.

Quest. Where were your feet when you set there and fished?

Ans. If the water was pretty well up up my feet would be in it.

Quest. Before the raising of the dam in 1846, did you ever know the water to run over the road at the west end of the 30 westerly bridge?

Ans. Yes; that was always the lowest part of the dam.

Quest. Was the stone work of the dam built up to the Hocklebarney road?

Ans. I think not quite.

Quest. Was it in time of freshet or ordinary water that you saw the water running over there?

Ans. In time of freshet.

Quest. After the dam was repaired in 1846, where did you live? 40

Ans. I moved down the road towards Hocklebarney in the fall of 1846; I frequently passed along that road during that fall and winter—for some time I passed there three or four times a day—I worked down there, and boarded home; after the dam was repaired, the water did not run over the westerly end except in a freshet; I can't tell whether it was that fall, or the fall before or the fall afterwards, there was a large heap of stone on each end of the tumble dam; the hands said they were drawn out of Mr. Obadiah Howell's
 10 woods—don't know whose teams drew them; they were pretty good sized stone—don't know what was done with them.

Quest. About how high is the road now above those sticks that project into the pond?

Ans. I never made any calculation.

Quest. Did you make any measurement at the west end of the westerly bridge—if so, state what it was?

Ans. I measured from what appeared to be the old dam; it was a straight wall that run along from the abutment of
 20 the bridge; the measurement was on the pond side of the road; the water stands nineteen or nineteen and a half inches above this wall.

Quest. Do you know the saw mill?

Ans. Yes.

Quest. Formerly, in going from the saw mill to the trunk, did you step upwards or downwards?

Ans. I think we stepped down—I don't remember how much of a step it was—now it is up quite a piece—it isn't very handy to tell; the sill of the door is gone; there are
 30 two marks of a sill there; from the lower mark to the top of the trunk, I should think it was eighteen inches—it may not be; I should think the two marks was about a foot apart, perhaps more; I don't know what time Woodruff had that saw mill—could tell by my book at home.

Quest. You say you have formerly frequently been over the meadow of Mrs. Carlile—have you been over or on it within a year past?

Ans. I have not within a year; I was by it last June a year ago; John Carlile was with me; the water at the dam was
 40 then either two inches below the cap, or two inches above it,

I am not certain which; I went there to see how much water there was on the meadow—I went at John's request; I did not cross the meadow—he went in it—there was too much water for me; the water came most up to the high land; John went around through it; the water on it was from two to ten inches deep; he went around with a pole, and stuck the pole down, and put his finger on it to show the height of the water, and then took his rule and measured it; he didn't go within twenty yards of the river—twenty to thirty; I saw him when he came out; he had been in up to his knees; 10 there was some holes he stepped into sometimes where he went a little deeper; I made no estimate of the average depth of water on the meadow at that time; there was no spot that he went on but what was wet; I don't know how much of the meadow there was that was not covered with water; all next the high ground was covered with water—I don't know how it was next the river.

Quest. If you owned that farm of Mrs. Carlile, for how much per year would you be willing to have that meadow flowed in that way at the will of another person? [Objected 20 to by Mr. Vanatta.]

Ans. I wouldn't want it of course; I aint much of a judge of that kind of land.

Quest. Would you have it for a hundred dollars a year? [Objected to as leading.]

Ans. I hardly know; I shouldn't want it at all.

Quest. If you lived in the house, and owned the farm, which would you prefer, to have it flowed constantly (that is made a pond of), or have it flowed, and then drawn off from time to time? 30

Ans. I should rather have it a pond all the time.

Quest. If you owned the property, and lived in the house, for how much would you convey to another party the right to flow that meadow at his pleasure? [Objected to by Mr. Vanatta.]

Ans. I don't know anything about it—couldn't make any estimate of it.

Quest. Would you do it for a small sum? [Objected to by Mr. Vanatta.]

Ans. No, I think not. 40

Quest. Would you consider it of little or great damage to the property? [Objected to as leading by Mr. Vanatta.]

Ans. Well, it's some damage of course—I don't know anything about how much.

Cross-examination of *David C. Horton* by Mr. Vanatta.

The price per acre allowed to me and my brothers by Gen. Cooper was forty-five dollars, if I remember right.

Quest. Is the amount you got for it truly expressed in the deed?

10 *Ans.* I do not remember; we conveyed nine acres, I think—don't know whether there was any fraction; it was some time ago.

Quest. If the amount paid is not truly and accurately expressed in the deed, can you give any reason why it was not correctly and truly stated in the deed?

Ans. I can't, of course; I didn't do any of the figuring; I think the general set the price, and asked if we was willing to take it; I suppose we accepted his price.

20 *Quest.* Didn't you think at the time you were getting a high price for the land, and more than it was really worth?

Ans. In the situation it was in I did; some of this land we conveyed him was timbered—I should think about two acres of it.

Quest. At what time and what places did the general say he wanted to raise his dam three feet?

30 *Ans.* Somewheres along the river that day, the day we were on the land I mean, when we were running out the land to make the conveyance to him; I don't know who else besides me heard the remark; I think my oldest brother, Isaiah Horton, was by; I am not certain whether it was along the river or in Vanderveer's house, but it was that day or about that time.

Quest. Are you certain he said he wanted to raise it three feet?

Ans. I would answer as I did before—I am not certain that he said three feet—I think he did.

Quest. Have you any distinct recollection of the height named by the general?

Ans. I suppose I haven't any more than I have told.

Quest. How did the intended height of the dam come to be the subject of conversation?

Ans. I can't tell, sir.

Quest. When, prior to this morning, did you last examine the sticks in the roadside running to the pond with reference to the height of water?

Ans. I don't know as I have ever examined them but once before to measure; I have noticed them frequently.

Quest. When before did you examine them to measure?

Ans. I think it was the 12th of June last a year ago; I 10 don't remember how deep the water was then.

Quest. When before June 1862 did you examine them?

Ans. I have always noticed that since the dam was raised they have been under water when the pond was full.

Quest. Did you give them much attention before the dam was raised?

Ans. Yes, I think so, a good deal more before than since; my attention before that was called to them when I was there a fishing; since that I haven't fished much; I fished up to about fifteen years ago. 20

Quest. Your estimate of the rise of water is all guess, is it not?

Ans. After you get below fifteen or sixteen inches it is.

Quest. Are those sticks the same ones you used to sit on to fish?

Ans. Yes, sir; the road across the pond was built before I was; I don't remember that there used to be a great many stumps about the foundation of that road—may have been a few on the lower side; there was a kind of a ditch there that I think had some stumps in—how many I don't know; 30 in June of last year Mr. J. D. G. Carlile asked me to go up the river with him; I don't remember who else was there at this time that I measured it; I believe Mr. Carlile asked me to measure it this morning; I did not come down with him this morning; I think it is the old wall of the road that I measured at the westerly end of the westerly bridge this morning—the road is the dam; this wall is on the upper side of the bridge—it's between the bridge and the place where the people used to drive down to water—there is no such place there now; the westerly bridge has been built 40

anew since 1846, can't tell you when ; George D. Emmons did it under the board of freeholders ; it was six or seven years ago—while Vanderveer had the mill at any rate ; last June a year ago I don't know what was the state of the water on the meadows above Carlile's bridge at that time ; I don't remember whether the stream was then full ; it's a season when it is not likely to be very full ; the ground was very dry ; I referred to the lower meadow when I spoke of seeing the water on it in June a year ago.

- 10 *Quest.* About what quantity of land in the lower meadow was covered with water at that time ?

Ans. I wasn't on the meadow, and don't know, except that John took a circle around, and wherever he went it was covered with water.

Quest. Do you think there was as much as an acre ?

Ans. I think there was twice that, but I don't know anything about it.

Quest. Before the year eighteen hundred and forty-six had you not seen that meadow covered with water ?

- 20 *Ans.* I don't know that I ever did ; I caught eels one night on that meadow when it rained like the deuce ; there was no water on the meadow then ; there was an eel-weir on it once opposite Mr. Carlile's house ; Thomas M. Carlile was with me helping catch those eels—that was in September or October, when we generally catch eels.

Quest. Prior to the year 1846, haven't you seen times when all the low lands on both sides of Black river, for a mile and a half above Cooper's mill, have been under water ?

- 30 *Ans.* I suppose likely there was ; I don't know as I have ever seen it, and don't know but I have ; that is considerably out of sight from where I have ever lived.

Quest. Then do I understand you to say that prior to the year 1846 you never saw Mulford Carlile's meadow, nor any of the meadows on either side of Carlile's bridge, covered with water ?

- Ans.* I don't remember ever seeing it, though I might, for it was very seldom that I see the river at any time prior to that time ; I remember when Black river was straightened and deepened above Carlile's bridge ; I think it's very likely
40 that the lands on each side of the stream, prior to that, were

overflowed regularly, but I lived some distance from there, and didn't see it; I helped in deepening Black river at the outlet above Carlile's bridge; I worked there under Caleb Fairelo and James Vanderveer; I worked about half way from the bridge up to the fording place; I suppose that fording place is about 100 yards from the bridge; the fording place is above Carlile's spring, which is a short distance above the bridge; I don't know how much the bed of the stream was lowered from the outlet to the fording place; I did but little of it; I worked for Fairelo and Vanderveer at 10 the finishing; they dug it six inches deeper than the man they had put out the work to had done; there was a good deal of dirt taken out; one of these subcontractors was Auble—don't remember his first name.

Re-examination of *David C. Horton*.

Quest. Do you recollect John Carlile's asking you, at the time you were at the meadow with him, whether you thought there was half an acre not covered with water?

Ans. I don't remember.

Quest. You say you don't know how many acres were 20 covered with water—did you form any opinion as to what proportion was covered with water, and what was not?

Ans. I don't know that I did.

Quest. What do you mean by saying that your estimate or your opinion of the rise of water below fifteen inches is a matter of guess?

Ans. I meant I couldn't tell anything certain about the rise except the fifteen or sixteen inches that I measured; I suppose Isaiah is in Canada now—he is there a good deal of the time; the bridge was to be raised when it was rebuilt by 30 Emmons; I think it was raised—I don't know how much; the road being filled in interferes with that watering place above the bridge.

Quest. Before the repairs of 1846, what was the top or tumble of the dam?

Ans. It was a round stick, I think—the top was rounding at all events; that stick laid on a stone wall; there was no such frame work as there is there now; there was too at one time; there was a small like concern fixed up in the middle, but nothing that went clear across.

Quest. Was that where the gates were? [Objected to as leading.]

Ans. Yes, sir.

Cross-examination resumed.

Quest. Please tell us, if you can, why they put gates on the top of this round stick, and then left both ends open?

Ans. I didn't say both ends were left open; there were three gates that shut the whole thing up, and there was a place to stand on in the centre to hoist the middle gate up;
10 now there are two gates there instead of three.

Quest. Who made this fix—these three gates?

Ans. I can't tell you—the one that built the dam I suppose.

Quest. When were they put there?

Ans. I don't know, sir; they were there as long back as I can remember; the bottom of these gates rested on the round stick I have spoken of, and the gate stems rested against the cap piece.

Quest. Do you mean to say that there were three gates there, amounting in their aggregate length to thirty-six feet?

20 *Ans.* I mean to say that there was, except a few feet on each end that was filled in with dirt; about all the space in this waste way that the water pressed against was these gates; these stems of the gates pressed against the same kind of a stick as the gates do now; that was the case as long as I can remember; there was a long while there were no gates there at all; don't know when they were first put in; there were gates there when Charles M. Thompson lived there—don't remember who first put the gates there; there were uprights on which the cap piece rested, I suppose.

30 *Quest.* What measurements did you ever make except those on the sticks that project into the pond?

Ans. None that I know of; the depth of the water on one stick was eight inches, and on the other nine inches.

Quest. Then the distance prior to 1846, between the top of those sticks and the top of the water as it then was, you guess at now, do you not?

Ans. I measured the water from the top of the stick there, the thickness of the stick is six or eight inches—that makes
40 certainly. fourteen or fifteen inches—and I can't tell further than that

Quest. Did you ever in your life measure the thickness of that stick?

Ans. No, sir.

Quest. Before the year 1846, did you ever measure the distance from that stick to the top of the water?

Ans. No, sir.

Direct examination again resumed.

Quest. You speak of three gates there—was there a stem to all of them, or only the middle one?

Ans. There was at first to two of them at any rate; I 10 mean by first, at least twenty-five years ago; I think there was a cap piece all the way across at that time; the gates did not reach up to the cap piece.

DAVID C. HORTON.

Sworn to and subscribed, this 29th day of September, A. D. 1863, before me.

ALFRED MILLS, *M. C.*

Abraham Emmons, a witness produced on part of the defendants, being duly sworn, on his oath says:

I live at Chester—am thirty-two years old; my business 20 is milling—am a millwright by trade; in 1854 and 1855 I worked at Gen. Cooper's mill, putting up the water wheel—built of the same size of the other one—the same kind of wheel; I think the water is let on the wheel at the same point; the wheel is just in the same position of the old wheel; the water strikes the wheel between two and three feet above the centre; there was a wheel built there a year or two years before—that drives two run of stone and some of the other gear—each wheel drives two run of stone; I can't tell exactly how much more head of water is required 30 to drive four run of stone than two—it's owing to the way the water is applied; these are both breast wheels; at the lower wheel they depend only on the weight of the water.

Quest. At what point is the water applied to this lower wheel?

Ans. I suppose at four or five feet above the centre; I don't think that wheel is set lower than the other.

Quest. How did you get the water so high upon it?

Ans. It runs from the main trunk in a round trunk around the first wheel; the opening of that round trunk is about fourteen inches higher than the flume, and about even with the fall piece of the first wheel.

Quest. How much would it require to raise the water in the trunk so as to raise it two buckets on the main wheel?

Ans. It would require thirty-four inches.

Quest. How long have you been acquainted with that pond?

10 *Ans.* Since 1853 I have worked there.

Quest. From your observation and knowledge of the pond, has the water been raised in the pond during that time, and if so, how much in your opinion? [Objected to by Mr. Vanatta.]

Ans. I don't think it has been raised any since 1853.

Quest. Have you known it longer than that time?

Ans. Not to recollect anything about it.

Quest. Are there any points about the pond, which you have known for a longer time, by which you can tell whether
20 the water has been raised?

Ans. No, sir, I don't think there are; didn't use to fish on any part of the pond.

Quest. I understood you to say to me to-day that the water had been raised since you have known it—did you say so or not?

Ans. No, sir, I did not.

Quest. Was the frame work of the dam all there as it is now when you built the wheel?

Ans. It was.

30 Cross-examination.

I was an apprentice when I worked at the mill under Mr. Vandoren, who was the boss of the job; he had the charge and direction of the whole work; I had been working at the trade then a little over a year—had been millwrighting pretty much all of that first year.

ABRAHAM EMMONS.

Subscribed and sworn to, this 29th day of September, 1863,
before me.

ALFRED MILLS, M. C.

During the foregoing examination of Peter Churchfield, solicitor of defendants offered in evidence a paper, purporting to be the last will of Thomas M. Carlile, which I marked *Exhibit 1* on part of the defendants.

At the close of the above examination of Abraham Emmons this examination was adjourned by consent, until tomorrow morning, at nine o'clock, at my office.

ALFRED MILLS.

Wednesday morning, September 30th, 1863.

Mrs. *Eliza Carlile*, a witness produced on part of the de- 10
fendants, being duly sworn, on her oath says:

I am one of the defendants in this case—am widow of Thomas M. Carlile—have lived on the farm where I now live for twenty-five years; my husband died on 7th April, 1855; he left five children, viz. Elias, Mary, John, Thomas M., and Nancy R; Elias and John are both in the army.

Quest. When you began to live on that place, what was the character of the grass on that meadow which it is now complained is damaged by the water?

Ans. It was good. 20

Quest. What was the condition of the meadow itself, as to being dry or wet?

Ans. It was dry, except in freshets.

Quest. Do you know what value your husband set upon that meadow, or how he estimated it in reference to the other parts of the farm? [Objected to by Mr. Vanatta.]

Ans. I heard him say he considered it the most valuable land he had.

Quest. Do you recollect when the repairs were made to the mill by Mr. Vandoren? 30

Ans. Yes, sir.

Quest. What difference, if any, has there been in the meadow since that time?

Ans. I think it is under water half of the time.

Quest. Do you know whether or not your husband complained of its being damaged in his lifetime? [Objected to by Mr. Vanatta.]

Ans. He did.

Quest. Were you ever with your husband when he spoke

to Gen. Cooper about the damages to his land? [Objected to.]

Ans. Yes, sir.

Quest. How long was that before his death, and where was it?

Ans. It was on the road leading from the mill to our place; I can't tell exactly how long it was before his death—not a great while; I can tell you who was with him—Nathan Seward was with Gen. Cooper.

10 *Quest.* Do you know whether that was the same spring your husband died, or the year before?

Ans. I think it was longer than a year before—I can't tell exactly.

Quest. How has the meadow been affected since your husband's death?

Ans. It is worthless.

Quest. What proportion of the time, in your opinion, has it been covered with water?

Ans. Half of the time, I should think.

20 *Quest.* Is the water kept upon it with any regularity, or is it let on or let off in the frequent changes of the stage of water?

Ans. It's on and off.

Quest. What kind of grass does the meadow produce now?

Ans. It isn't good for anything.

Quest. Have you made any use of the grass yourself, since your husband's death, for pasturage or other purposes?

Ans. No, sir; except to cover a hovel once.

Quest. Did you formerly pasture it in the spring?

Ans. Yes, sir.

30 *Quest.* Why don't you pasture it now in the spring?

Ans. I don't consider it safe to turn on it—it is miry in places.

Quest. When you formerly pastured in the early spring, did your husband mow it the same year?

Ans. Yes, sir.

Quest. You say you haven't used it since his death except to cover a hovel, what has been done with the grass that has grown upon it?

Ans. I have given it to men, to have it off the ground.

40 *Quest.* Who mowed it last year?

Ans. John Castner cut what he could of it; he did not get all the grass off—there was so much water on it, he couldn't do it.

Quest. Have you another meadow above this adjoining the stream?

Ans. Yes, sir.

Quest. For what purpose was that used formerly?

Ans. It was used for mowing; I mean the other lot below the bridge—there is no fence between the two.

Quest. How has that been affected by the rise of water? 10

Ans. About the same as the other; we don't use it.

Quest. Had you a pasture lot above the bridge adjoining the river?

Ans. Yes, sir.

Quest. How has that been affected by the rise of water?

Ans. We don't use it—can't use it.

Quest. Did you, after your husband's death, call upon Gen. Cooper in reference to the damages done to your husband's lands by the water—if so, state when you called, and what took place between you? 20

Ans. I did call—it was the same spring of my husband's death; I told him I had called on him to see about the meadow; he said if he damaged me he was willing to pay for it, but he didn't think he did much; he didn't remember of my husband's ever calling on him, and I referred to meeting him with Mr. Seward, and he said he didn't know but he did remember it; he said he would come up and see to it.

Quest. Did he come?

Ans. No, sir.

Quest. Did any one come for him? 30

Ans. Not at that time.

Quest. Did the general ever come to see you about it after that interview, and if so, how long afterwards did he first come?

Ans. He came with Thomas Churchfield; this was two or three years after the interview I have spoken of—can't tell exactly.

Quest. Had you or not, in the mean time, called his attention again to the damages?

Ans. I wrote him a line, and put it in the office, the Ches- 40

ter post-office; I suppose that is his post-office—that he gets his letters there.

Quest. When you reminded the general that your husband had spoke to him—[Waived.]

Quest. What took place when the general came there with Thomas Churchfield?

Ans. He said he thought the springs injured the meadow that were on the bank; he thought it wasn't injured very much; he didn't make me any offer; he did not ask me how
10 much I wanted; he was in a hurry, and said he hadn't time to attend to it then.

Quest. Did he come at any other time, or did any one come for him?

Ans. Mr. John Vandoren came.

Quest. What reason did he give, if any, for coming to see you?

Ans. He said he come at Mr. Cooper's request.

Quest. State what took place—if you please?

Ans. He told me to consult my friends, and see and make
20 up my mind what I would take, and to let him know the next week; I did so; I called on Mr. Vandoren the next week, and told him I would take thirty dollars.

Quest. You said he asked you to consult with your friends, and let him know what you would take, and you did so; whom did you consult with?

Ans. Nicholas Corwin and John G. Crater, and John D. G. Carlile.

Quest. Did they, any of them, advise you that thirty dollars a year was full compensation for the damage you sus-
30 tained, or did they advise you to take that, and not go to law with Gen. Cooper? [Objected to by Mr. Vanatta.]

Ans. Mr. Crater and Mr. Corwin advised me to take it rather than go to law, and Mr. Carlile told me to do as I was a mind to.

Quest. Was your offer to take thirty dollars to extend back to the time when the damage commenced, or only to extend to the time of your husband's death?

Ans. I was told I couldn't collect it any longer than I had been a widow.

40 *Quest.* Who told you that—who first suggested it to you?

Ans. I think Mr. Crater.

Quest. The question I intended to ask you was, whether the offer you made to Mr. Cooper was to take thirty dollars a year from the time of your husband's death, or from the time the damages commenced at the raising of the dam?

Ans. I offered to take it from the time of my husband's death, because I had been told I could not recover for anything further.

Quest. Did John Vandoren, when he came to see you, refer to any conversation he had with your husband in his lifetime about raising the dam? 10

Ans. I don't think he did.

Quest. Did he say whether or not your husband knew the dam was about to be raised, or mention any conversation he had with him, at or near the mill, at about the time the dam was being raised?

Ans. He spoke of calling to him once when he was passing; he said that my husband said to him, raise it, Cooper is able to pay for it, as near as I can recollect.

Quest. When did Mr. Cooper next come to see you, if at all, about these damages? 20

Ans. After he received a letter from you?

Quest. How did you know he had received the letter from me?

Ans. I think he told me himself.

Quest. Did he give any reasons for not having come before?

Ans. Yes, sir; he said he was waiting to see what the up river folks were doing—they were surveying their land, I think.

Quest. What took place between you at that time?

Ans. He wanted to learn how much I wanted; I told him 30 that I would take thirty dollars; he said he thought I asked him too much—he would be plain with me—asked what we should do next if we couldn't agree—if I was willing to leave it to men; I told him I was, and wanted it settled rather than have it in a difficulty; that's all, I believe.

Quest. Was any time fixed for leaving it to men?

Ans. The next week; Saturday, the same week, Mr. Cooper and Mr. Vandoren called on me again, and Mr. Vanderveer; Mr. Cooper wished to lease the land; he asked me if twenty-five dollars a year wouldn't do; I told him I didn't 40

think it would; I told him I would meet him here—that I wished to consult you (Mr. Little); I met him here; you did not advise me to do it.

Quest. Did you make any offer at that time to sell to Mr. Cooper the right to the land, so far as you had it—I mean at the time you met here?

Ans. I don't think I did.

Quest. Had he not wanted to buy the land?

Ans. He said he would rather buy it.

10 *Quest.* Did you ever fix a sum, or authorize me to fix a sum that you would take?

Ans. Yes, sir; fifteen hundred dollars was the sum fixed.

Quest. Did you fix a sum, or authorize me to fix it, that you would take, per year, for the right to flow the land in future?

Ans. I believe I did—one hundred dollars a year, I think.

Quest. Would you prefer to have the hundred dollars a year, or to have the land as it was before the dam was raised? [Objected to by Mr. Vanatta.]

20 *Ans.* I would rather have the land as it was.

Quest. Would you prefer to have the land as it was before the water was raised, or to have the fifteen hundred dollars, and have the water upon the land for the future, as it has been since your husband's death? [Objected to.]

Ans. I had rather have the land as it was.

Quest. If you had leased the land to Gen. Cooper, could he have got to it, if he wished to do so, except by going over your other lands?

Ans. Not to the lower meadow.

30 *Quest.* Has, or not, the health of your family been affected by the raising of the water upon that meadow? [Objected to by Mr. Vanatta.]

Ans. In 1856, 1857, and 1858 we all had the ague; the grass laid on the meadow at that time, and decayed there; I thought that was the cause.

Quest. Were you ever advised by any physician that that was the cause? [Objected to.]

Ans. I asked young Doct. Willet what I must do to get clear of them; he told me to go from that dead water.

40 *Quest.* Did you, in your husband's lifetime, ever hear of

any agreement or consent, on his part, to the raising of this dam? [Objected to by Mr. Vanatta.]

Ans. I did not.

Quest. In any of the conversations which you have had with Nathan A. Cooper, in reference to the raising of the water, did he ever say to you that your husband had given consent to the raising of the dam, or anything to that effect?

Ans. No, sir.

Quest. Did he ever say to you, or intimate to you in any way, that your husband had agreed to sell to him the land 10 which might be injured by the water, or any part of it, at the same price which he had paid the Horton heirs for their land?

Ans. No, sir.

Quest. Has he ever asked you to fulfil or perform any agreement in reference to that land which he alleged he had made with your husband?

Ans. No, sir.

Cross-examination of *Mrs. Carlile* by Mr. Vanatta.

Quest. Mrs. Carlile, did not Gen. Cooper, some two or 20 three years before you brought the suit against him, inquire of you whether you had right and power to sell any of the land which your husband had left, and how he had disposed of his land?

Ans. I think he did when Churchfield came with him.

Quest. Did he not, at or near that time, tell you he would like to buy all the land which was injured by his dam?

Ans. I think he did.

Quest. Did you not tell him that you could not sell for any longer time than your own life, or until your youngest child 30 came of age?

Ans. Yes, sir.

Quest. Did he not at that time, or a short time afterwards, tell you that authority could be got from the Chancellor by which the right of the children in the land he wanted to buy could be sold to him?

Ans. I think he did say something to that purpose.

Quest. Did he not say to you that, if that course was taken, he would bear the cost of the proceeding in the Court of Chancery?

Ans. Yes, sir.

Quest. Didn't you have some conversation with Esquire Swayze on that subject, Mrs. Carlile?

Ans. Not that I recollect of.

Quest. Do you not remember Esquire Swayze's telling you that he had had a conversation with me upon that subject, in which I told him that Gen. Cooper wanted to buy the land, and would do so, and pay for it whenever he could get title for it, and pay for it whenever he could get title for it, and if you or your family would make application to the Chancellor for authority to sell it, the general could get a title in that way, and would pay for it at once, or something to that effect?

Ans. I never remember no such conversation with Swayze—I don't think I ever heard of it before.

Quest. The general did want to lease your right for that land, did he not?

Ans. He did.

Quest. Did the general ever offer you the thirty dollars a year from the time of your husband's death before you brought the suit?

Ans. Mr. Vanderveer came there, but he didn't make any offer; I told him I had referred it to Mr. Little, and referred him to him.

Quest. Wasn't Mr. Vanderveer at your house to offer you a hundred and eighty dollars, after you had been to Morris-town and declined to execute the lease?

Ans. He was there.

Quest. What did he tell you he came for?

30 *Ans.* He came for Mr. Cooper—he did not tell me for what purpose.

Quest. Did he not tell you that Gen. Cooper had sent money by him to give to you, and that he had come for that purpose?

Ans. He did tell me, but not how much.

Quest. Did he tell you what the money was for?

Ans. I don't think he stated.

Quest. Did you know what it was for?

Ans. Yes, sir.

40 *Quest.* How did you learn what it was for?

Ans. I suppose no more than he told me he had come from Mr. Cooper.

Quest. Did he not tell you that he had brought the money to pay you for six years' damages done to the land by the water?

Ans. He did not state the facts—no, sir.

Quest. Did he ask for any lease at that time?

Ans. No, sir.

Quest. What did you tell him?

Ans. I told him to come and settle it with Mr. Little—it 10 had been referred to him.

Quest. Did you tell him you wouldn't receive any money?

Ans. I think I did.

Quest. Didn't he tell you he was there to pay it to you, if you would take it?

Ans. He said he come for that purpose—but I didn't see any money.

Quest. Wasn't the reason you didn't see any money because you refused to see it?

Ans. I refused to have anything more to do with it. 20

Quest. Who came there with Mr. Vanderveer?

Ans. He came alone.

Quest. How did he come to your house?

Ans. I think he come a horseback—I am not positive as to that.

Quest. Was the grass cut on the lower meadow those summers in which you say you had the ague?

Ans. No, sir.

Quest. No part of it was cut?

Ans. Mr. Budd cut some to cover a coal pit, but I can't 30 tell whether it was then or not; the grass has been cut during the last four years, I believe; my husband had some part of it cut every year in his life, what he could get of it; the last few years he cut some of it, and the rest laid on the ground; there is no fence between my upland and meadow land—there is no fence between what I call the upper and lower meadow—there was one some years ago; I can't tell how long it is since the fence was taken away, it was before my husband's death though.

Quest. Did not Gen. Cooper propose to you that, if you 40

would lease the meadow to him, he would furnish the rails, and fence it off from the upland?

Ans. He spoke about it; this pasture land of mine above the road is all bushes now; it is not fenced at present—formerly we had a fence there; it has never been ploughed since I knew it; it has never been mowed since I knew it; I can't tell how long it has been without a fence—some few years—we have no use of it now; I think it was fenced when my husband died.

10 *Quest.* You say they were surveying the lands above shortly before Gen. Cooper came to see you; who was making the survey?

Ans. Those that owned land above the bridge; Mr. Southard was doing the surveying I understood; I had nothing to do with getting Mr. Southard there to make that survey; I did not contribute anything towards paying him, nor agree to—I never was called on to.

Quest. At the time you came down here to see Mr. Little about the lease, were Mr. Charles Ming and John D. G.
20 Carlile and James S. Dickerson at Morristown the same day, or any of them?

Ans. Yes, sir; all three of them.

Quest. Were they at Mr. Little's office at same time you were?

Ans. Yes, sir.

Quest. Were they present when you and Mr. Little talked about your making a lease to Gen. Cooper?

Ans. Yes—part of the time.

Quest. Didn't those three gentlemen, against Mr. Little's
30 advice, and in the very face of it, advise you to make the lease to Gen. Cooper?

Ans. No, sir.

Quest. Are you right sure upon that point?

Ans. I am sure they did not, as I heard.

Quest. Which arrived at Mr. Little's office first, you or they?

Ans. I don't know.

Quest. Didn't you, after you had had that interview at Mr. Little's office that day, and here in Morristown, tell John
40 Vandoren and Samuel Swayze, or one of them, that you

didn't want to see Gen. Cooper at all, or have anything to say to him about the land, and wouldn't see him?

Ans. I think I said that I wished Mr. Little to do it.

Quest. Did not Mr. Swayze and Mr. Vandoren both tell you that day that the general wanted to see you about making an arrangement?

Ans. Mr. Vandoren, I think, told me so.

Quest. Didn't you, in your reply to Mr. Vandoren, decline to see the general?

Ans. I declined to go out to see him; I didn't say I 10 wouldn't see him—I don't recollect anything of that kind.

Quest. Were you asked to go out and see the general, and if so, who asked you to go, and where were you asked to go to?

Ans. I wasn't asked to go at all.

Quest. Wasn't the request made for you to give your consent to see the general?

Ans. I can't tell what Vandoren said to me; I felt confused; I told him finally that he was one of Cooper's men, and I didn't wish to talk to him. 20

Quest. What confused you?

Ans. I am not in the habit of doing public business; I felt as if I would like to have Mr. Little settle all difficulties—I didn't feel capable at that time of doing it.

Quest. Who was Nicholas Corwin, of whom you spoke?

Ans. I think his father's name was Joseph; he was not a relative of mine—had never lived on my farm; he had worked on the farm, for my husband and myself too, both before and after my husband's death, by the day latterly—I don't know but by the month before my husband's death, but 30 not since; he worked on the farm; he worked off and on for my husband a good many years before he died; he is dead, died two years ago, I think; I should think he was rising sixty years old when he died, but I don't know his age.

Quest. When were you married?

Ans. In 1838; I had never lived on this farm prior to my marriage—my husband had always lived there; John Castner got the grass off the meadow this year; John Castner got it off the year before, and also the year before that, and 40

I think he did the year before that ; no one else has ever had it that I know of ; he has had it four or five years.

Quest. You say that on one occasion when Gen. Cooper was at your house, you said to him that you wanted the matter settled—did you not on the same occasion say to him that Mr. Ming and Mr. John D. G. Carlile didn't want you to settle it, or advised you not to settle it, or words to that effect ?

Ans. John Carlile always advised me not to settle it for
10 that, but Mr. Ming never give me any advice.

Quest. Did John say what he would do in the way of assisting you if you had to have a suit ?

Ans. He said he would assist me—in coming with me I mean.

Quest. Didn't he propose to furnish you the money to carry on the suit ?

Ans. No, sir.

Quest. Before you commenced the suit against Gen. Cooper, did not Charles Ming, John D. G. Carlile, and James
20 S. Dickerson, or some two of them, or one of them, offer to let you have the money to carry on the suit against the general, if you would commence it ?

Ans. No, sir.

Quest. Haven't you stated in your answer that they did ?

Ans. No, sir, I don't think I have.

Quest. Nothing like it ?

Ans. If I have, I didn't understand the question.

Quest. Before Gen. Cooper raised his dam, did you ever see that lower meadow overflowed with water ?

30 *Ans.* Yes, in time of freshet.

Quest. Before that dam was raised, haven't you seen the low lands on both sides of Black river above Carlile's bridge overflowed ?

Ans. I don't know that I ever noticed them before the dam was raised—can't say I ever did.

Quest. How long is it since Gen. Cooper raised his dam ?

Ans. I suppose it is seventeen years, or near about that.

Quest. Did you notice any increase in the height of the water as soon as the dam was raised ?

40 *Ans.* I heard my husband complain of it soon after.

Quest. repeated.

Ans. Yes, sir.

Quest. Did you notice much increase the first year after it was raised, or only a little?

Ans. The water was up and down, has been growing worse every year.

Quest. Did it flow the meadow as much at any time the first year after it was raised as it did last year?

Ans. I don't know as I can answer that precisely, didn't take notice at the time; I had some one to look after the 10 meadows.

Quest. As long as your husband lived, I suppose you did not concern yourself much about the land or the water, did you?

Ans. Not so much as I have since.

Re-examination of *Mrs. Carlile* by Mr. Little.

Quest. You said that John advised you not to settle for that—for what do you mean?

Ans. For thirty dollars a year.

Quest. Did he, in the same conversation, say how much he 20 thought you ought to have per year? [Objected to.]

Ans. No, sir.

Quest. You were asked whether you were not informed by John Vandoren that Gen. Cooper wanted to see you at the time you were here in Morristown—was there any difficulty in the general's seeing you that day, or any other, if he had come where you was?

Ans. No, sir.

In answer to a question of Mr. Vanatta, witness here says: Elias was twenty-four years old the twentieth day of March 30 last; Mary was twenty-two, on the twenty-first day of last November; John was eighteen, the thirtieth day of last January; Thomas M. will be seventeen, on the twenty-ninth day of next November, and Nancy R. was thirteen, on the sixteenth day of this month.

Quest. by Mr. Vanatta: Before you commenced your suit against Gen. Cooper, did you tell Mr. Little that John Vandoren had told you that when he was about raising the dam, that your husband had told him to put up the dam—that Cooper was able to pay for it?

Ans. I think I did.

Quest. by Mr. Little: Are you sure you did?

Ans. I am not positive that I did—it is my impression that I did.

ELIZA CARLILE.

Sworn to and subscribed, this 30th day of September, A. D. 1863, before me.

ALFRED MILLS, *M. C.*

Here examination was adjourned for dinner until 2½ P. M.

10 After dinner—

Smith E. Hedges, a witness produced on part of the defendants, being duly sworn, on his oath says:

I live at Chester, am a physician, have been practising seven years, all the time in Chester; I am acquainted with the lands in the neighborhood of Black river somewhat; Black river is a sluggish stream, the country along its borders very flat; I know where Mrs. Carlile lives—I have been on the meadow in front of her house adjoining the river; I have never been the attending physician of Mrs. Carlile's
20 family—Doct. Willet has been—think he is a relative of Mrs. Carlile.

Quest. What would be the natural tendency of flooding that meadow in front of Mrs. Carlile's house on the health of a family occupying Mrs. Carlile's house? [Objected to by Mr. Vanatta.]

Ans. I should think it would make it unhealthy during some parts of the year.

Quest. What class of diseases would it tend to produce?

Ans. Fevers.

30 *Quest.* Since you have been practising there, do you know whether or not the family have been troubled with chills and fever?

Ans. I have heard that they have occasionally had chills and fever in that family.

Quest. Would the tendency to cause disease be increased or decreased by frequently drawing the water off, and exposing the land to the sun?

Ans. The tendency would be increased.

Quest. So far, then, as the health of the family is con-

cerned, it would be better to have it flowed all the time, in your opinion? [Objected to.]

Ans. It would.

Quest. Have you any knowledge of the value of the meadow lands along that river?

Ans. No, sir; I have not.

Quest. Did you know anything of this land before the water was raised upon it?

Ans. I did not.

Quest. Have you ever been over this meadow? 10

Ans. I have been over the lower meadow—I was over it yesterday, sir.

Quest. What was its condition then?

Ans. I should think one-third had some water standing on it, so as to prevent one from walking over it, and the rest was quite damp and moist—my feet felt quite damp from walking over it.

Quest. What was the state of the water at dam yesterday?

Ans. The water was as high as usual, I thought, yesterday; I didn't observe whether it run over the tumble dam; 20 I did not notice whether the gates were open or shut; no one was with me; I was there in the afternoon, about four o'clock; I do not know whether the mill was running; I did not stop to make an examination at the dam.

Cross-examination of *Smith E. Hedges* by Mr. Vanatta.

Quest. Do you know the bridge they call Budd's bridge, over Black river, in the road leading from Chester to Flinders?

Ans. Yes, sir.

Quest. What is the distance from there to Carlile's bridge, 30 as near as you can tell?

Ans. About a mile, I should suppose—it may be a mile and a half—couldn't say.

Quest. Is the stream from Budd's bridge to Carlile's bridge sluggish?

Ans. Yes, sir; it is not a very rapid stream anywhere.

Quest. You wouldn't call a stream sluggish that had a fall of over three feet to a mile?

Ans. No, sir; I don't know that I should.

Quest. Is all that low land adjoining Black river liable to produce fevers?

Ans. I should think so, under certain circumstances.

Quest. Which would be most likely to produce disease, low lands along the banks of a sluggish stream, where the lands were very little higher than the banks of the stream, and where the stream overflowed every time the water had a material raise, and settled in bogs and sloughs and such other depositaries for water as are found in such lands, and
10 then ran off slowly or escaped by evaporation, or land that was overflowed with fresh water every day, and exposed to the sun only for a few hours in each day?

Ans. I should think the lands first mentioned would be most likely to produce disease.

Quest. Is not fever and ague a disease often occurring in and about the village of Chester, where the lands are high and dry?

Ans. Very rarely—and then we trace it to some exposure, to miasma of some kind.

20 *Quest.* Does it not often occur on high land away from the water, when it has something the character of an epidemic?

Ans. It is said to occur occasionally on high land.

Quest. Can you say that persons living in Mrs. Carlile's house are any more exposed to fever than other persons would be living in a house equally near the river, but a mile further up?

Ans. I can't say, sir; there is no one lives equally near the river a mile up.

30 *Quest.* If land on the side or shore of a living spring is clear of water three or four hours in the afternoon, and then covered over with water during the night, and kept covered with fresh water until the next afternoon, do you consider that an unhealthy location?

Ans. I should for myself.

Quest. Wouldn't you consider a house within a few rods of a slow sluggish stream, and boggy land near the margin of the stream, quite as unhealthy?

40 *Ans.* Yes, sir; I wouldn't choose such a place to locate my residence; I never examined the lower meadow particularly before yesterday—had been over it; I should think

there were four or five acres there, and perhaps one-third of the meadow was so wet that you couldn't walk on it; there is a rim or bank between the high land and the meadow.

Quest. Did you observe any water oozing from that bank out on to the low land below?

Ans. No, sir; I walked the whole length of that bank up to the river, and I didn't notice any—there may have been though; I did not walk on the bank—I walked on the meadow; I walked within a few paces, perhaps, of the bank—I was alone; Mr. James S. Dickerson asked me if I 10 had ever observed that land particularly, and I said no; that was Monday evening of this week, I think; Mr. Dickerson said I had better go and look at it; I don't know that he gave any reason for saying so; don't know that he said I had better go and inform myself of the nature of the land; he knew I was coming here as a witness; Mr. John Carlile told Mr. Dickerson that I either was or would be subpoenaed—so Mr. Dickerson said; Mr. Dickerson did not come to my house—I met him at the post-office; I can't tell which introduced the subject—I have no recollection; of my own 20 knowledge, I do not know that any of Mrs. Carlile's family have had the fever and ague; I heard it at the time—don't remember who told me.

Quest. During the last seven years, haven't you frequently seen the low lands on both sides of Black river, between Budd's bridge and Carlile's bridge, overflowed with water?

Ans. Yes, sir.

Quest. Doesn't the water frequently continue on there for some considerable time?

Ans. Yes, sir; for some days.

Quest. Haven't you frequently seen the same thing above Budd's bridge?

Ans. I have seen it, but not so often.

Quest. Doesn't that overflow take place every time there is a heavy rain?

Ans. Not unless the river is pretty high previous to the rain, unless the rain is long continued.

Quest. Doesn't it always happen if a heavy rain comes on when the stream is up to its full average height previously?

Ans. Yes, if the rain continues a day or two.

SMITH E. HEDGES.

Subscribed and sworn to, this 30th day of September, A. D. 1863, before me.

ALFRED MILLS, *M. C.*

James Vanderveer, a witness produced on part of defendants, being duly sworn, on his oath says:

I live in Chester, in the village; I lived near the mill twenty-eight years, I believe; I went in 1832, and left in 10 1863, and was absent from there three years of that time; I had the mills two or three years ago; I left the mill in the spring of 1862, I think, and then had had it three years; I have made measurements about the mill, at the request of Mr. John Carlile, two years ago this last summer; I made measurements at the trunk and waste gates, &c.; I measured the sill of the tumble—the mudsill—it was nine inches thick; I measured the cap piece—it was nine and a half inches large; the space between the two was twenty-one inches, I think; the length of the gates was seven and 20 seven and a half feet—I mean by length as you measure crosswise the stream; I think the whole width of the tumble was thirty-two feet; I think the gates were open at that time; I think there were about thirteen inches of water on the sill at that time; I measured the distance between the abutments of the bridge—that's thirty-four and a half feet; between the bridges was some eighty-three feet; the bridge over the race was seventeen feet and three inches long; the water in the flume was two feet ten inches deeper than in the trunk; I think I measured the depth of the trunk—I 30 think it was six feet and eight inches—I don't know whether I measured inside or out; I think that was the length of the plank on outside, and not the depth of the water; the westerly bridge is higher than it used to be—I don't know how much—it is considerably higher; George Emmons built the last bridge, I think; John G. Crater built the one previous—it was repaired once or twice after he built it; I recollect when Mr. Douglass came to the mill.

Quest. At that time, what constituted the tumble of the dam?

Ans. I think it was what we call now the mud sill—that is, there was boards or small gates in the mud sill; when those boards or gates were on the sill, they constituted the tumble; I cannot say how wide those boards were.

Quest. Is the water any higher now, when the pond is full than it was when Mr. Douglass was there?

Ans. I should think so.

Quest. Have you any doubt about it?

Ans. No, sir; I have not.

Quest. In your opinion, how much higher is it—and from 10 your observation? [Objected to by Mr. Vanatta.]

Ans. Well, I should think perhaps two or three feet, from the appearance of it; I cannot say, however, as to its being that from the time Mr. Douglass was there—I can't specify the time; I was down there a great deal when they were raising the roads.

Quest. Is it that much higher than it was before the repairs in 1846, in your opinion?

Ans. I cannot say as to that—I cannot recollect.

Quest. You say it is that much higher—higher than it was 20 when?

Ans. Well, I should think it is all of that much higher since I knew the property; I have known the property since 1832; I know where this meadow of Mrs. Carlile's is—I have been on it a few times.

Quest. Do you know the value of that kind of land in that neighborhood?

Ans. I do not; I know the location of her house.

Quest. Would you or not consider it a serious objection to the house as a residence to have that meadow flowed day 30 after day? [Objected to by Mr. Vanatta.]

Ans. I should prefer it away if I owned the property, and wanted to live there.

Quest. repeated.

Ans. It would be an objection to me to live there—I should prefer it away of course.

Cross-examination of *James Vanderveer* by Mr. Vanatta.

Quest. Didn't you live for many years in a house as near to the pond as Mrs. Carlile's is?

Ans. Yes, sir—for twenty-five or twenty-six years—I think it is a little nearer; I was generally healthy myself; my family was generally sick; I don't know what caused it; I did not attribute the sickness in my family to the situation of the house—still I didn't know but the dampness might have an effect; I owned the property a part of the time I lived there—got it from my father-in-law's estate.

Quest. Ever since you have known Black river, haven't the low lands on both sides of that river, from Carlile's bridge
10 to Budd's bridge and above that, been frequently covered with water?

Ans. I have seen them covered with water, but not very frequently, because it was very seldom I ever travelled the road.

Quest. Was there any alteration made in the channel of that river between Budd's bridge and Carlile's bridge?

Ans. Yes, sir; there was a ditch cut through there; I can't say how far up the ditch was cut—it was from Carlile's bridge up, but I can't tell how far it extended, whether to
20 Budd's bridge or not—my impression is it went to the bridge.

Quest. Haven't you gone from one bridge to the other along the stream during the last thirty years?

Ans. I don't think I ever have; I took a subcontract for doing part of that work, from just above the Carlile bridge (it didn't quite come down to that bridge) up to near the mouth of Tanner's brook; the contract was to widen the outlet so that it should be twenty feet wide, and eighteen inches lower than near Tanner's brook; that was done, I believe, near enough at any rate, so that they received it; they
30 said it was rather scant, but near enough; I don't think we made any new channel—we straightened it some, I think; I think we took the contract of a man named Barney Mulford—a man named Auble was working with him; I think they had commenced a little at the job before we took it.

Quest. Then, when you got your job finished, the bottom of the river at the outlet near Carlile's bridge was eighteen inches lower than it had been when it was in its natural condition?

Ans. I cannot say as to that, whether we were to take out
40 eighteen inches, or there was to be eighteen inches fall

altogether—I think there was to be eighteen inches fall in the outlet.

Quest. How much did you lower the bottom of the river at the outlet?

Ans. I cannot tell you.

Quest. Tell as nearly as you can, according to the best of your remembrance and impression?

Ans. I couldn't get an impression upon it, it's so long ago; my impression is we may have taken off six or eight inches all through, but I can't tell. 10

Quest. What was the fall between Tanner's brook and the outlet when you began your work?

Ans. I don't recollect, sir; the object of our work was to increase the fall and widen the stream.

Quest. How much were you to increase the fall?

Ans. That I can't say—they wanted it eighteen inches fall there, but what it was before I commenced the work I can't say; that work was done over twenty years ago I should think, but I can't tell when; I had a partner in the matter, Caleb Fairclo. 20

Quest. Did you take any money at any time to Mrs. Carlile for Gen. Cooper?

Ans. I did—yes, sir; it must have been about two years ago; I think I took about one hundred and eighty dollars; he wanted me to take it there to pay Mrs. Carlile for damages done to her meadow, I think; I offered it to her—I had it in my hand, told her my business, told her what I came for; I did not ask her for or require her to give any receipt, I think; I presume I told her how much I had; she said she had put the business in the hands of Mr. Little, 30 and referred me to him; I presume she declined taking it of course, or else she would have taken it; I suppose she would not receive it of course, and that's the reason of my not giving it to her; she declined to receive it—told me to go to Mr. Little—said she had put the matter in his hands; Gen. Cooper did not take me over to Mrs. Carlile's at that time.

Quest. Before you went there with that money, had Mrs. Carlile asked you anything about her renting the meadow to Gen. Cooper, or talked with you about it? 40

Ans. I cannot tell; I was there once with Gen. Cooper and Mr. Vandoren, but whether it was previous to that I cannot say positively—my impression is that it was previous.

Quest. Do you remember Mrs. Carlile's telling you that John Vandoren had wanted her to talk with her friends, and then let him know how much she would be willing to take from Gen. Cooper for damage done to her land?

Ans. I do not recollect Mrs. Carlile telling me anything
10 about it—I recollect Mr. Vandoren telling me of it.

Quest. Did you ever see or hear of an agreement in writing, signed, or intended to be signed, by James S. Dickerson, John D. G. Carlile, and Charles Ming and Mrs. Eliza Carlile, or by part of them, to the effect that the parties to the agreement were to join together in assistance of each other in the prosecution of a suit or suits against Nathan A. Cooper for damages alleged to be occasioned by his mill dam, and if so when and where? [Objected to by Mr. Little.]

20 *Ans.* I have never seen any such agreement—I have heard some such thing as that talked of, but when or where I can't say.

Quest. Was you ever at Mr. Carlile's house when Charles Ming, or John D. G. Carlile, or James S. Dickerson asked her to make or sign any such agreement?

Ans. Not to my knowledge.

Quest. Whom did you hear talk about such an agreement?

Ans. I cannot say; I have heard something of the kind, but when or where I cannot tell.

30 *Quest.* What part of the cap piece did you measure where you found it nine and a half inches?

Ans. I cannot say positively, but I think it was four or five feet from the west end; I measured with a rule or square of some kind; I think Mr. John D. G. Carlile was with me at the time.

Quest. From what point on the dam did you measure to get only thirty-two feet as the length of the dam?

Ans. I think I measured between the two outer posts on each end—measured with a ten foot pole, I think.

40 *Quest.* Can you refer us to any one place about that pond

where the water at an ordinary height now is two or three feet higher than it was before the present tumble dam was put in—and if so, where is it?

Ans. As I stated before, I don't know as it has been raised that since the last tumble dam was put in, but since I have known the property, I think it has been raised that amount.

Quest. Before the present tumble dam was put in, you say there were gates on the mudsill of the old dam—how many were there?

10

Ans. I think there were two, at nearly the centre of the tumble; the bottom of those gates rested on the timber that lay on the stone—that's the way I think it was; I cannot say what was the width of those gates—perhaps eight inches—I never measured them; I think there was a plank at each end of those gates, between them and the ends of the dam; those planks must have rested on the same sill.

Quest. What was there at the top of the planks and gates to keep them in their place?

Ans. I do not recollect—I think there was some kind of 20 timber above, sir; I can't tell how that top stick was held up—my opinion is that there was braces against it.

Quest. Mr. Vanderveer, were there not upright posts between the sill and the top piece to support that top piece?

Ans. There might have been; I suppose there must have been something of that kind.

Quest. Did you ever go along the ridge of land that divides Mr. Carlile's meadow from the upland in company with Gen. Cooper?

Ans. Yes, sir; it was in the neighborhood of three years 30 ago—don't recollect the time.

Quest. Did you discover any water oozing out of the upland on to the low land?

Ans. I think I did.

Re-examination of *James Vanderveer* by Mr. Little.

The outlet spoken of is two or three hundred yards, or more, above Mrs. Carlile's meadow land; I was on the land with the general, at his request; the land was not flowed at that time—water was down.

Cross-examination resumed by Mr. Vanatta.

Mrs. Carlile has a lot adjoining the outlet spoken of, coming up to the river; her land extends clear to Tanner's brook on the west side; I think Gen. Cooper paid \$40 per acre for the land that he bought of the heirs of Caleb Horton on the east side of the pond.

JAMES VANDERVEER.

Sworn to and subscribed, this 30th day of September, A. D. 1863, before me.

10

ALFRED MILLS, *M. C.*

Daniel Budd, a witness produced on part of the defendants, being duly sworn, on his oath says:

I live at Chester; I have owned lands along Black river, about a mile above these lands of Mrs. Carlile, may-be a little less; that is a sluggish stream—land along its borders is low—the low land varies in width; Mr. Charles Ming's and Stephen Budd's lands are on the opposite side of the stream from my lands; I owned part of my land there from 1827 until I sold it about ten years ago, and a part I bought
20 about 1837, that I sold at same time with the other; the natural character of that low land is meadow—it is a muck soil—a part of it is occasionally flowed.

Quest. What did you value your meadow land at? [Objected to by Mr. Vanatta.]

Ans. That part of it which was occasionally flowed I considered worth \$100 per acre, attached to my farm; I think the occasional flowing was a benefit to that part which was flowed; that was a deep muck soil; the rest that was not flowed was a poor leaky soil, and worth hardly anything;
30 this latter was nearest to the high land.

Quest. Have you had any acquaintance with this land of Mrs. Carlile?

Ans. Very little, sir; I have been on it, I think I once mowed on it at a mowing frolic; I couldn't tell how long ago it was—should judge it was more than twenty years ago; I think the meadow then was dry.

Quest. Do you know of any reason why that land is not naturally as good as yours? [Objected to by Mr. Vanatta.]

Ans. I do not.

Quest. Would you or not, if it was dry, consider it a valuable part of her farm?

Ans. I should answer as I did before; I considered mine a valuable part of my farm; those meadows have always been subject to be flooded by freshet; whilst I owned that property, the time it took for the water to run off after a freshet varied; previous to the building of the ditch it took much longer; it generally run off in a few days after the ditch was dug—depended upon the quantity of water that fell.

10

Cross-examination of *Daniel Budd* by Mr. Vanatta.

I was living on my homestead property adjoining the river when I attended the hay frolic spoken of; it is about ten years since I moved away from there; the Carlile farm was owned at that time by Robert, John, and Thomas; the widow had it in possession; it was before Mulford's marriage, I think, but am not positive; I don't know that I can name any one who was at the frolic besides myself; I think the neighbors were there; I think Philander Dickerson was there; my impression is the whole neighborhood were there; 20 I think it was foul meadow and some wild grass—tolerable good fodder—few bogs; I remember that, because mine at that time was full of bogs; this frolic was before the ditch was dug, I should think, but I can't say; it was before I took the bogs off my meadow, at any rate; it is very likely that there was some bog hay cut at that frolic; there were some spots where there were more bogs than in others; I suppose it was at the usual time of mowing those meadows; I think we mowed them in July and August; those meadows were usually drier at that time of year than any other; a man 30 named Robinson owns the farm where I used to live; that ditch was dug from Budd's bridge to Carlile's bridge while I lived there on that farm; the act authorized the landholders from Carlile's bridge to Budd's bridge, I think; the outlet came down nearly to Carlile's bridge; ditching commenced at Budd's bridge; there were some spots that had been previously cleaned out, and perhaps some spots of the old channel cleaned out—it wasn't an entire new ditch.

Quest. Was the new ditch from Budd's bridge to Tanner's

brook as near a straight line as could be got through the low lands?

Ans. I suppose it was located as straight as was practicable taking into consideration the low ground; the old channel was crooked, exceedingly crooked, as much so as any one you could find.

Quest. Was the bottom of the new ditch made lower than the bottom of the old ditch?

Ans. Yes, as a general thing, much lower; there were many places in the old stream where the water flowed within a foot of the top—the bottom was within a foot or fifteen inches from the surface; I think the new ditch was meant to be twelve feet at the top, nine at the bottom, and three feet deep below the surface; on an average, that would give one foot nine inches difference; there were many curves and sand bars and holes in the old stream; I can't tell you the fall in the new ditch from Budd's bridge to Carlile's bridge; the distance between the two bridges is about one mile and a quarter on the stream—I think we measured it; since I have been here I have seen a receipt given in January, 1839, by the commissioners; I think the ditching must have been done in 1838; before the ditch was made, I should think the average width of the old channel was fifteen or twenty feet; in these curves it would widen out so at times it was twenty feet wide, and in other places it was quite narrow; you would need a pole to jump across it; after that ditch was made the water ran off much more rapidly; before the ditch was made, all my meadow of which I have spoken was bog—all the more valuable part of it; I got no grass off of it before the ditching except bog grass, and that was hardly fit to feed; I made this meadow after the ditch was dug; that ditch is dug mostly through what I call muck—occasionally you strike gravel and sand at depth of three feet; there are lands below mine where the gravel and sand run down to the river; there was no ditching done below Carlile's bridge—nothing done by way of cleaning it out that I am aware of; I am acquainted with Gen. Cooper's mill property at Black river.

Quest. What, in your opinion, is that mill property worth as it now is? [Objected to.]

Ans. I consider it worth from ten to twelve thousand dol-

lars, and suppose it couldn't be bought for that; I mean to say, that before the ditch was dug, and before I cleared my meadow, I got bog grass and some foul meadow grass off of it—the bog grass was poor, but the foul meadow grass was good; it is my impression that the meadow of Mrs. Carlile is not as good naturally as the meadow which I owned, and of which I have spoken.

DANIEL BUDD.

Sworn to and subscribed, this 30th day of September, A. D. 1863, before me.

10

ALFRED MILLS, *M. C.*

Adjourned until to-morrow (Thursday) morning at nine o'clock.

Thursday morning, October 1st, 1863, parties and counsel appear, and examination proceeds.

Doct. Samuel Willet, a witness produced on part of defendants, being duly sworn, on his oath says:

I am upwards of sixty-nine years old, and have been a practising physician since May, 1818; I have lived in Washington township for the last forty-eight years; my practice 20 has been an extensive one through that region; I have lived where I now live since 1843—in Washington township—it's a little over a mile from Cooper's mills; I am related by marriage to Mrs. Carlile—Mrs. Willet was a sister to Mulford Carlile; I am well acquainted with the Carlile homestead where Mrs. Carlile lives; I believe the farm is a good sized one; the dwelling house stands about ten or fifteen rods westerly of the creek—stands on the high ground—about twenty feet above the creek—over fifteen, and at least twenty feet—may be twenty feet; directly in front of the 30 house the strip of low land is narrow for a short distance, a few rods, then it takes a northeasterly direction (the stream I mean), and bends off from the upland, leaving the low land, a strip of it of three or four acres, up to the road that crosses the bridge; in my estimate I embrace both of the meadows below the bridge; above the bridge the stream pursues a northerly direction, and leaves a strip of about three or four acres of low land; there is more than three or four acres below the bridge; I haven't viewed the pond since

I have been called here—I speak from my knowledge obtained in passing along the road.

Quest. From your observation, in passing to and fro during the last twenty years, has the water of that pond been materially raised or not during that time? [Objected to.]

Ans. It has; one thing I have frequently noticed, there was a little pond made up the stream northeast of Mr. Carlile's house which I could see from the road for a number of years back; until within a few years past it has disappeared—
 10 it was used for an eel-basket or a fish-basket; I have often noticed above Carlile's bridge that the trees are decaying by the water flowing up against them, as I suppose; the water at the bridge appeared to be considerable deeper for this reason; the water flowed back from the creek along the road, and when the pond was down, and the pond drawed off for repairs, or something of the kind, as was frequently the case, the water all run off; this I have noticed for the past ten or fifteen years.

Quest. What kind of grass has grown upon that meadow
 20 of late years, as far as you can see it from the road?

Ans. In the bend of the river, where it comes down to near the high land, there is a corner that runs across, probably containing half an acre to an acre, that grows up with a kind of grass that I know nothing about, only it grows up very high, and Castner mows it for litter and manure—so he told me; that is the lower end of the meadow towards the house, in the bend of the river as it comes down from the high land; I was passing by Castner's, and I said to him, you calculate to keep poor horses, your hay is very poor; I saw the
 30 hay that he was drawing, and that is all I know about the quality of the grass.

Quest. In your frequent passing there for the last eight or ten years, have you noticed any smell coming up from that meadow?

Ans. I have.

Quest. In your opinion as a physician, would or not the frequently flooding of that meadow, and then the exposure of it to the sun, tend to render the dwelling house unhealthy? [Objected to.]

40 *Ans.* I believe it would.

Quest. What class of diseases would it tend to cause?

Ans. I believe it would cause remittents and intermittents and other diseases injurious to health; it is so agreed by the best writers and accords with my own observation.

Quest. Have you been the family physician of Mrs. Car-
lile for years past?

Ans. I have.

Quest. Have they had fever and ague?

Ans. They have; I can't say when it was—not within a year or two; it was previous to that time—might have been 10
slight attacks within that time.

Quest. Was that sickness continued through different years?

Ans. Yes; there were attacks of fever and ague in different years—more than lately.

Quest. Within the last year or two, has the water been kept more permanently on the land or not?

Ans. I don't know but what it has, nor that it has—can't say.

Quest. Which would be best for the health of the place, to 20
keep the meadow constantly flowed, or flowed and drained alternately, and exposed to the action of the sun?

Ans. Keeping it flowed, the malaria wouldn't be so apt to get afloat; the action of the sun upon the vegetable matter causes malaria.

Quest. At the time of the sickness of this family, did you trace it to any cause?

Ans. I did; I suppose it originated from the malaria or miasma that arose from the creek; I assigned that as a reason to the family at the time—told them if they would move 30
away from there, and go on the upland, they would get well quicker than if they remained there under my treatment.

Quest. Would or not, in your opinion, the flowing of that meadow materially affect the sale of the farm, if it should be offered for sale? [Objected to.]

Ans. I believe it would; the overflowing of the land, with the impurity of the water coming down, would together; the water of that stream is very impure at any rate; it comes down from the swamps above, two or three miles above the farm I suppose it is; there is hundreds of acres that is over- 40

flowed there, and when the water becomes low it drains off into this stream; the water on these flats above is stagnant; suppose the water is impure on these flats from Succasunny down.

Quest. If you wanted to buy that farm for yourself, would or not the flowing of the meadow be a serious objection to it? [Objected to by Mr. Vanatta.]

Ans. Why, if I should take a notion to purchase the farm, I should certainly want the buildings further away from the
10 creek.

Quest. With the buildings where they are, would the flowing of the meadow be or not a serious objection to your purchasing the farm? [Objected to.]

Ans. It would be an objection.

Quest. If you lived there, what would you consent to have that meadow flowed for per year, independent of the loss of the use of the lands? [Objected to.]

Ans. I don't know, sir, how to make an estimate in such a case.

20 *Quest.* Which would you prefer, if you lived there, to have that meadow flowed and drained at the will of another person, he paying you a hundred dollars a year for the privilege, or to have the meadow as it formerly was, affected only by freshets? [Objected to by Mr. Vanatta.]

Ans. It's a difficult question for me to answer, not knowing what it formerly produced, and not knowing what it might be made to produce.

Quest. Is that your whole answer?

Ans. I had rather leave it at that.

30 *Quest.* Did you ever hear Mulford Carlile, in his lifetime, complain of the water being raised upon this meadow? [Objected to.]

Ans. Yes.

Quest. Did you ever hear him complain that he couldn't get a settlement with Gen. Cooper? [Objected to.]

Ans. Yes, I did; up to a short time previous to his death he complained often to me, and a short time before his death he said he meant to see to the flowing of the land, and bring it to a close; don't remember whether he mentioned the
40 general—think he did—he said the general paid no attention to it.

Cross-examination of *Doct. Samuel Willet* by Mr. Vanatta.

Quest. How long is it since you last saw that eel-dam opposite the meadow northeast of the Carlile house?

Ans. I can't tell exactly—must be ten or twelve years; I have never made any measurements of water about that pond; my impressions are derived from casual observations as I was riding by—I had no other observations; I think the last time I ever walked those flats was some thirty years ago; I used to go over there shooting; since I quit that, I have never been over there since that I remember; and since I 10 broke my leg, some fourteen years ago, I haven't been down to the stream on the widow's land—I have only seen it as I passed the road; the bridge above the widow's house is now called Carlile's bridge—I mean the bridge over Black river and between the widow's house and John's house; I do not recollect whether that bridge used to be called Topping's bridge—I think it did; old Mr. Topping (James Topping's father) used to live where John Carlile now lives, many years ago, when I was first acquainted there; I remember when the ditch was digging from the outlet to Budd's bridge. 20

Quest. Since that raceway was made, have the lands on either side of it been in a healthier or unhealthier condition than they were before it was made—I mean healthier or unhealthier for persons who might live on those lands or near to them?

Ans. It was considered by the owners of the farms that they were benefited by the ditch, both in health and in the value of their lands.

Quest. What was and what now is your own opinion upon that subject, doctor? 30

Ans. My own opinion is that they were less liable to fever after the building of that ditch than they were before, that is less liable to remittents and intermittents; the last time I passed over there before the ditch was dug there was mud between the bogs so that you could hardly pass it in places; I haven't been there since the ditch was dug.

Quest. Give your reasons why you think the drainage of those low lands would remove the liability to fevers?

Ans. When the creek would rise, it would overflow this marsh from John Carlile's way up to Succasunny Plains, and 40

then the water would afterwards flow off and set free miasmata and malaria, which are generally considered by the best of writers injurious to health and the cause of disease; where a piece of ground is kept flowed constantly, the deeper the water is over that earth the less injurious are the effects that proceed from that space of ground, and the deeper the water the less miasmata is set afloat; when I first knew this farm of Mrs. Carlile the dwelling house was near where the present dwelling house stands.

- 10 *Quest.* If you had owned that farm thirty years ago, and then put up a dwelling house upon it for your own use, would you have placed it where the dwelling house now is?

Ans. Under the circumstances, at that day I think I should, on account of the well and other conveniences; I think it one of the most desirable locations on the farm.

Quest. Did you regard it as a healthy location thirty years ago?

Ans. As much so as any one in the neighborhood.

Quest. Explain what you mean by that expression?

- 20 *Ans.* At that day (thirty years ago) there were more cases of intermittents in almost all low situations than there is at the present day; it was seldom that there was intermittents on the hills away from these low situations, although once in a while you would meet with a case.

Quest. Then do you mean that that situation was as healthy as any of the situations on or along the low lands which bounded Black river?

Ans. I don't recollect that there was any difference along by Mr. Topping's and those living near creek; thirty years
30 ago the nearer the flats the more liable they were to disease.

68 *Quest.* Thirty years ago wasn't there more stagnant and disease breeding water coming down to and past the Carlile farm than there is now?

Ans. I believe there was; my reason I assigned some time back; I have always considered that ditch drained off the swamps above a considerable, and therefore there was less liability to fevers and disease of that kind.

Quest. As a general thing, is not the health of the people
40 living near to Black river, from Cooper's mill as far up the stream as your practice has extended, better now than it was thirty and thirty-five years ago?

Ans. As a general thing it is, sir, as to remittents and intermittents, all round the circle of eight or ten miles that I rode; in some places they have wholly disappeared; in the last few years I seldom met with intermittents or remittents in any of the valleys.

Quest. Which members of Mrs. Carlile's family have had the fever and ague within the last five years?

Ans. I do not recollect particularly more than Mrs. Carlile herself, and it may be Mary, but I am not positive—the children were complaining, but I don't recollect particularly; 10 I don't recollect of doing much for the children within the last five years; previous to that they were sick a considerable, but how much I can't recollect; this is a disease that is not considered dangerous, and I do not charge my mind with it.

Quest. Do you regard her children as sound healthy children or otherwise?

Ans. Generally speaking I have considered their constitutions as good and fair as other families; two of her sons are in the army; Mrs. Carlile is generally a woman of good constitution, but has been complaining a considerable for the 20 last few years—principally of chills and fever; I believe her children were all born and raised on this place where they now live; Mulford Carlile died of inflammation of the lungs, as near as I can recollect—there was pleura-pneumonia undoubtedly in the latter part of his illness; he was sick about two weeks—can't recollect exact number of days; Mulford Carlile had been, as far as I recollect, a man of general good health.

Re-examination by Mr. Little.

I know Mrs. Hurd, widow of David B.—she was at Mrs. 30 Carlile's a few years ago sick with intermittent fever—think this was more than once.

Quest. From your observations for the last few years, has there not been as much, or nearly as much water upon those low lands above Carlile's bridge as there was thirty years ago—I mean between Carlile's and Budd's bridge?

Ans. I believe there has, from what I can see from the road.

Cross-examination resumed by Mr. Vanatta.

I do not know whether Mrs. Hurd was a visitor at Mrs. Carlile's, or boarded there; she was there the better part of the summer, and, from circumstances, I suppose she lived with Mrs. Carlile; before she came there (how long I cannot tell you) she had been living some little distance north of Brooklyn pond at David B. Hurd's; don't know the distance from the pond—not very far—couldn't make an estimate.

Quest. Are not nearly all the people who live near Brooklyn pond, as a general thing, yellow from the effects of fever and ague?

Ans. Either from the effects of fever and ague or from their nature—living back among the rocks and stones, they look different from our people; as a general thing in the country near Brooklyn pond, when the pond is kept full the country is more healthy, but when the pond is drawn off they have more fever and ague.

Quest. by Mr. Little. When Mulford Carlile was talking about the damage to his land, did he ever say whether he was willing to sell his farm to Gen. Cooper, and if so on what terms he was willing to sell it?

Ans. I do not recollect that he did.

Quest. by Mr. Vanatta. You spoke of having noticed a smell, are you able to tell us whether that smell proceeded from Mrs. Carlile's meadow or some other point, and if you are able, please tell us how?

Ans. When I am passing low lands and empty ponds I generally notice such smells—that marshy smell—and at such time that I was sensible of this smell the flat was drained off, and I was fully convinced that it came from the flat; I have observed it in the daytime but more particularly in the evening; it would be more offensive after dark than in the middle of the day.

Quest. Which road were you travelling on then?

Ans. On the road from the turnpike to Charles Ming's, either passing or repassing by Mrs. Carlile's.

Quest. Do you mean on that road that goes near to Mrs. Carlile's house, and goes over that I have called Carlile's bridge?

Ans. I mean to say that it is in passing by these premises; there is a road that turns off within ten or fifteen rods north of Mrs. Carlile's house, and goes round west of the mead-

ows; sometimes I would go on one road, and sometimes on the other.

Quest. In passing over Budd's bridge, and in the vicinity of the lands near to Budd's bridge, have you experienced during the same period of time the same smell?

Ans. I think not—if any very trifling, so that I don't recollect noticing it.

SAMUEL WILLET.

Sworn to and subscribed, this 1st day of October, A. D. 1863, before me.

ALFRED MILLS, M. C. 10

Charles Ming, a witness produced on the part of the defendants, being duly sworn, on his oath says:

I live at Chester, about easterly from Cooper's mill on the line of Black river, about a mile, as you follow the creek, from the mill, and about one and a half miles from mill by the road; I have always lived at this same place—was born there; am fifty-four years old next March; I am a farmer; I own meadow land along the stream—on both sides of it; I have been on Mrs. Carlile's meadow land, it may be half a dozen times or more, in my 20 lifetime; I have raked hay on there twenty-five years ago, and I guess over that—think it was before Mulford Carlile's marriage; and I think I have raked hay since his marriage; I don't think there was any water on the meadow at that time—that it was dry clean down to the river, except up by the barn, where there was a wet spot a short distance from the river; I take it to be a spring there—just above the barn along the edge of the upland; I think, if I recollect, there was a very good quality of hay at that time, foul meadow and some wild grass, a mix- 30 ture, think it cut a pretty heavy burthen; I was over the meadow a few years ago—I think it was the time Southard was taking the level—was also over them when Mr. Valentine was taking the level; it must be five or six, or four or five years since Valentine was there; Southard was there some two or three years ago; I think at one time (Mr. Southard's) it was before mowing—and the other (Valentine's), it was in the fall; at the time Southard ran Mrs. Carlile's meadow was quite wet—I am mistaken, it was then a very dry time; I think it was quite wet when Valentine 40

ran—didn't recollect positively—think we took the level on the upland, did not go down to the river; I have not been down on the meadows at any other times for the last few years—know nothing more than I could see from road while riding back and forth; I pass along the road by these meadows most every week—not so much for the past two or three years; I used to get my milling done down in that neighborhood, and would pass there every week or twice a week, and sometimes oftener—did my trading at Vanderveer's store.

10 *Quest.* Did you notice those meadows of Mrs. Carlile in passing?

Ans. I have noticed frequently as far as I can see from the road; the orchard prevents seeing all over the meadows as you are travelling along; when I got within a few hundred yards of the dwelling I could see over the lower part of the meadow; I think the most of the times I have travelled that road for some years past I could see water from the road—I should think for ten or twelve years, if not longer; part of the time the meadow that I saw was completely covered—

20 that was in time of freshet; in ordinary times I saw it I should suppose the water was about half-leg deep—you could see the water, and the top of the grass above it; in the time of freshet you couldn't even see the top of the grass—it was all a pond; I should consider that the meadow has been very much damaged by the water in the last eight or ten years, so much so that I shouldn't consider it worth anything to me.

Quest. Would you or not consider that meadow an important part of Mrs. Carlile's farm, if you owned it, and it was not flowed with water?

30 *Ans.* I should.

Quest. What value do you put upon your own meadows up that stream? [Objected to by Mr. Vanatta.]

Ans. Well, sir, I wouldn't want to take \$100 an acre; I have got land that has been improved that I wouldn't want to take \$150 an acre; that is as it was eight or ten years ago; if you keep the water off of those low lands it's no trouble to keep them in meadow.

Quest. Do you know of any reason why the meadow lands of Mrs. Carlile are not naturally as good as yours, or susceptible of being made as good as yours, except the flowing from this pond?

40

Ans. I take it to be the same kind of soil—mucky—except a trifle that runs up towards Carlile's bridge—I consider that a little more gravel; but take all the lower part of her meadow, I consider it the same kind of soil as mine; except for the overflowing of it, I should think it could be made equally as good, provided the water was kept off; I think, before this ditch was cut, it used to cut a better quality of hay than mine.

Quest. About how many acres are there in her meadow below the bridge? 10

Ans. I should judge in the neighborhood of five or six acres; she has a large farm there—I think it used to be called over two hundred acres—think it didn't all lay in one body.

Quest. If you owned the farm, and lived in the dwelling house, for what sum per year would you be willing to have that meadow flowed and drained at the will of the owner of the mill?

Ans. I shouldn't want it there at any price if I owned the property; I should rather have a complete pond of it, have 20 it kept entirely under water, than have it in the situation it is in now.

Quest. Which would you prefer, if you owned the property, to have the meadow free from the water or to have it flowed as it now is, and to receive a hundred dollars a year for the privilege? [Objected to.]

Ans. I would rather take it and have it free from water, than take a hundred dollars a year and have it as it is—that wouldn't be any compensation at all to me.

Quest. Would the flowing of that meadow, in your opinion 30 or not, materially affect the saleable value of the property?

Ans. It would to me, it might not to others.

Quest. Have you noticed the trees along and above these meadows frequently?

Ans. Yes, sir; I have noticed those trees all along the edge of the meadow for the last four or five years—they are dying very much all along from the dam to some piece up the outlet.

Quest. Do you remember the eel-weir opposite Mrs. Carlile's meadow? 40

Ans. I do.

Quest. How long has that been gone?

Ans. Should think as much as fourteen or fifteen years, if not longer, since I recollect hearing the water tumble over the stone of the dam; have been there, don't recollect how long ago.

Quest. Do you know whether there is any current in the stream opposite the meadows when the mill is not running and the gates are shut down?

10 *Ans.* There is not now—there used to be quite a swift current above Carlile's bridge and quite a current below—think there is no current there at all now.

Quest. From your observation, can you tell whether the water has been raised in that pond materially since the repairs in 1846?

Ans. The water has been raised quite a good deal from some cause; as to my knowledge in regard to the raising of the dam, I know but very little about it; I recollect of the water in the tumble running through the whole space of that
20 tumble.

Quest. What was the tumble at that time?

Ans. I think it was a stick of timber—I am positive it was a stick of timber laid on to the tumble.

Quest. What did that stick of timber rest on?

Ans. On stone.

Quest. How much, according to your judgment and your observations, has the water been raised since these repairs in 1846?

Ans. I should think in the neighborhood of three feet—
30 not much odds one way or the other, from my observations.

Quest. When the pond is full, does it or not now back water up to the outlet?

Ans. I think it does; I went down there some two years ago, I guess, one Saturday evening; I asked Mr. Vanderveer if he was going to shut down the gates that night; he said he was—and I think it was in the afternoon; I told him my object, and asked him if he wouldn't let out all the water that he could, and I told him I wanted to put up a measurement; he said he would drive the mill till sundown or after-
40 wards, and I went up to the mouth of the outlet, and I put

in a stick there at the top of the level of the water, and before sunrise on Monday morning I got on to my horse and rode down to the dam, and I took a measurement from the top of the tumble down to the water, and I think it lacked three and a half inches of being up to the top of the tumble—I had a little memorandum, but forgot to fetch it this morning; then I went back to the mouth of the outlet, and I got my stick that I put in there, and took it home and measured it; the water had riz eight and a half or eight and three-quarter inches; Major Budd happened to be in my 10 house, or come to see me the same morning; he wanted to know where I had been so early in the morning, and I told him, and showed him my measurement—guess I was at the wagon-house taking my measurement at the same time he came up; that's the first of my measurement of anything about there; I wouldn't have had no idea that it would have raised that.

Quest. Do know anything about the raising of the road down near the mill?

Ans. I have seen them drawing in stone and dirt on the 20 west end of the westerly bridge—think I have seen them raising there on that side twice; this has been done within twelve or fourteen years; considerable quantity of earth and stones were put in—think one hundred loads were put there at least.

Quest. Has or not the road been raised for that westerly end of the bridge some distance up the hill along by Howell's house?

Ans. No, I don't think it has been raised any more there to the foot of the hill—hardly that. 30

Quest. You said, in your opinion, the flowing of that meadow would materially affect the saleable value of that farm—how much difference would you make if you wished to buy the farm? [Objected to.]

Ans. Well, if I wanted to buy that farm I wouldn't give so much for it by fifteen hundred dollars—I would make that difference, if not more; I had rather have that meadow completely under water when I couldn't see the soil—a complete pond; it would be a considerable nuisance to me to have the water there off and on as it is now. 40

Adjourned for dinner to two and a quarter o'clock P. M.

After dinner.

Cross-examination of *Charles Ming*.

Quest. Before the ditch was dug, how was your meadow land along Black river?

Ans. It was damaged a good deal by the stream—very muddy, miry, boggy.

Quest. What was your low land along the stream worth in 1833?

Ans. I didn't consider it worth a great deal—I shouldn't
10 consider it worth one half what it is at present.

Quest. Without the ditch, would it be worth \$30 an acre to-day—I mean that nearest the river?

Ans. I should consider some part of it worth that for
pasture—some part of it it would be impossible for
stock to get to, it was so miry; I mowed some part of
my land next the river before the ditch was made; the
quality of hay was very poor, coarse, principally bog—some
was better than others—some parts not worth cutting—in
some places you would have to carry it a quarter of a mile
20 before you could get it to the team—I have knowed them to
carry it out on the upland to spread it for to cure it.

Quest. Did you turn that land into meadow after the ditch was made?

Ans. A good part of it—improved some of it—some of
the farmers improved all of it; I put foul meadow on what
I cleared up—I had foul meadow and timothy there which
was allowed to produce three ton to the acre, but it has run
out since the water has been raised, within six or seven
years?

30 *Quest.* What lands adjoin your land on the south side on Black river?

Ans. I think Dickerson comes in with a little narrow strip down there—it used to belong to one Tappen, and think Dickerson comes next, and Mr. John Carlile adjoins that; I should think it was about a quarter of a mile, across Dickerson's land, from mine to John Carlile's.

Quest. Can you tell me how much higher the surface of Black river is at the southerly line of your farm than the tumble of Cooper's mill dam?

40 *Ans.* I don't know as I could answer that.

Quest. Did not Mr. Southard level it for you?

Ans. He took a level, but I can't recollect where; I think Southard made it out, but I couldn't; Mr. Southard was in our employ at that time; I wasn't with him when he took the level down the river.

Quest. Did not Mr. Southard furnish you with a statement in writing of the level he took from the dam up to Budd's bridge?

Ans. I don't know that he did to me; think he did to Mr. Carlile or Mr. Dickerson.

A paper writing, purporting to be a statement of the leveling made by Mr. Southard, 25th July, 1860, is here put in evidence by consent of both parties, and marked *Exhibit 2* on part of defendants; it is also understood by counsel, and they so agree, that the name "Wing" on that statement should be Ming, and refers to Charles Ming, the witness now under examination.

Quest. I see, by that statement, that the surface of the water at your lower line was fourteen and three-quarter inches higher than the mill dam—is that according to the fact, so far as you know?

20

Ans. It may be so, but I know nothing about how much it is—don't know that I ever heard it said—still I might.

Quest. Did you or not understand from Mr. Southard that your lower line was actually higher than the top of the tumble dam?

Ans. No, sir; I never spoke ten words to him in my life—never saw him since that time.

Quest. Do you claim that Gen. Cooper's mill dam causes water to flow back on your land?

Ans. I think that his mill dam destroys our outlet, and if the water can't get out it damages me.

Quest. You do not, then, insist that the dam at Cooper's mill could cause, by its own force, the water to rise as high as your land?

Ans. If you shut up this outlet, why the water soaks out in our meadows.

Quest. repeated.

Ans. Not unless the current of the water was stopped; if it didn't affect the outlet it couldn't affect me; if there was

a clear fall of eighteen inches, and the outlet wasn't stopped up, it couldn't affect me.

Quest. You have threatened to bring suit against Gen. Cooper for injury alleged to be caused to you lands by his mill dam?

Ans. Yes, sir; for injury done to the outlet at or near Carlile's bridge.

Quest. Were you present when David A. Douglass gave in his testimony?

10 *Ans.* No, sir; none of the time while he was giving his testimony; think I was here when Wilson Dorland gave his testimony—part of the time; I was here when John Vanderveer gave his testimony in this case—I think that was same time; I was present here at the taking of the testimony to-day, yesterday, and the day before.

Quest. Have you rendered any assistance in looking for witnesses in this case?

Ans. No, sir.

Quest. Have you gone to see any persons as to what they
20 knew about it?

Ans. No, sir.

Quest. Do you know anything of an agreement made, or proposed to be made, between yourself and John D. G. Carlile and James S. Dickerson and Mrs. Eliza Carlile, or any of the four named, by which the parties to the agreement were to assist each other in a prosecution or prosecutions against Nathan A. Cooper for injuries alleged to be done to their land by his mill dam?

Ans. There was an agreement talked of between Mr.
30 Dickerson and myself and Mr. Carlile, but the widow's name was not mentioned that I ever heard of I think; and I think likewise John Budd was talked of, but never put in—he owned land adjoining me on the opposite side of the river.

Quest. Was that agreement reduced to writing?

Ans. I have most forgot whether it was or not—I know it was talked of; I think it was not; I don't recollect that I ever signed it; it was talked of, but we thought we would have to take our suits in a different manner; there may have been one drawn up, but I think I never seen it.

40 *Quest.* Without reference to whether you signed it, was it not put in writing?

Ans. I won't be positivs about that; it was talked of pretty strong, and may have been put in writing; my impression is we found out we would have to work a little different from that plan, and dropped it; I think we thought we could put this matter into one suit, instead of having so many.

Quest. If that agreement was reduced to writing, who wrote it?

Ans. I think by Dickerson (James S.), if it was.

Quest. Were not you and John D. G. Carlile at Mrs. Eliza Carlile's house with an agreement of that kind reduced 10 to writing, and did not one or the other of you ask her to sign it?

Ans. Me and Mr. John Carlile were never in her house with a paper of that description—we were never there together on business of that kind.

Quest. Did either one of you, at any time or place, ask her to sign such a paper?

Ans. I don't know what he done—I never did—never spoke to her in regard to it.

Quest. About three years ago, do you remember being at 20 Mrs. Carlile's house, or near her house, at a time when John G. Crater was there?

Ans. No, sir; not near the house; we may have been together in the orchard when we were levelling—that's the nearest to the house we were ever together, I guess.

Quest. If such a paper was drawn up, can you tell us where it may be found now, or who has it?

Ans. If there was such a paper, I won't be positive as I ever see it—I think it must be in Mr. J. S. Dickerson's hands or Mr. Carlile's. 30

Quest. Are you right sure you never signed such a paper?

Ans. I won't be positive.

Quest. Who first proposed or started the idea of having such an agreement?

Ans. It must have been between us three—we was together frequently talking this matter over.

Quest. Which one of the three first suggested it?

Ans. I think Mr. Dickerson—won't be positive of it.

Quest. You say it was afterwards agreed to pursue another plan—what plan? 40

Ans. To each one commence his own suit.

Quest. Has Mr. Dickerson commenced his?

Ans. I think not, unless he has done it lately.

Quest. Have you commenced yours?

Ans. No, sir.

Quest. Mr. John D. G. Carlile began his nearly two years ago—didn't he?

Ans. Yes, sir.

Quest. Why haven't you commenced yours? [Objected to by Mr. Little.]

Ans. Well, if I answer that I will answer it in this way: I thought I would see how they would get along with this suit; I thought a year ago I would commence myself, and see if I couldn't get along faster.

Quest. Then you have been waiting the result of this suit, have you not?

Ans. As I told you before that is what I thought of.

Quest. If this suit should terminate adversely to Mrs. Carlile, you would regard the prospect of your suit less encouraging, would you not?

Ans. No, sir.

Quest. Why, then, have you waited to see the result of this suit?

Ans. I didn't think it would be worth while to have too many suits at once; I think my prospect at that outlet is just as good if the widow didn't recover anything, as it would have been before.

Quest. In what way or in what respect did you think it would be prejudicial to have too many suits pending at once?

30 *Ans.* I don't know as I can answer that.

Quest. What is the difficulty about answering it?

Ans. I don't know as I can state, sir, that.

Quest. What you want, I suppose, is to have Cooper's dam so much reduced that the water below the outlet will run away as freely and as quickly as it does from your land down to the outlet?

Ans. So that it won't affect the outlet; if it only gets away I don't care where it gets to if it don't affect the outlet.

40 *Quest.* Suppose they had dug for a mile above Budd's

bridge such a ditch as was dug below Budd's bridge, and the river below Budd's bridge had been left in its natural condition just as it was forty years ago, wouldn't the water have dammed up at the end of their ditch, and a considerable distance up it?

Ans. Of course it would; it wouldn't discharge it below as fast as it came down.

Quest. You say you used to go down in that direction to get your milling done—where did you get it done?

Ans. I used to get it done at Cooper's mill, when Dorland 10 was there and when Vanderveer was there, and when Douglass was there.

Quest. Have you ever seen the day when that meadow land of Mrs. Carlile was worth a hundred dollars an acre, that is when it would bring a hundred dollars an acre in market, or be worth a hundred dollars an acre in connection with the farm?

Ans. I should think it worth that to me, and more too, if I owned the farm, but not in the situation it is at present.

Quest. My question is not what the meadow would be 20 worth in such a condition as your meadow is now, but whether you could tell us any year when it was worth, as it then stood, \$100 an acre?

Ans. I should consider it to be worth that with the farm, not separate from it; if I had had that farm ten or twelve years ago I should think it was richly worth \$100 an acre, and more too.

Quest. In what year, as it then stood, was it worth \$100 an acre?

Ans. In Mulford Carlile's day.

30

Quest. Which year of his lifetime?

Ans. Until it was overflowed—don't recollect how long ago it was.

Quest. Was it worth \$100 an acre in the year eighteen hundred and forty-two?

Ans. I can't tell how long the water has been on that meadow, or I could answer your question very quick; the water may have been on twenty years, and may have been less; it has been overflowed by freshets ever since I can remember, but I consider those freshets no great damage to 40 the meadow, think they are an advantage sometimes.

Quest. Was it worth any more than \$100 before it was overflowed?

Ans. It would be to me, if I owned the property.

Quest. How much more?

Ans. I can't tell you exactly.

Quest. Fifty dollars?

Ans. Well, if I owned the property I wouldn't dispose of it—take it away from the farm—for a hundred and fifty dollars.

10 *Quest.* Would you dispose of it for two hundred dollars?

Ans. No, sir, I wouldn't sell it at any price; such a meadow as that is a great privilege to a farm like that; you pasture it all the fore part of the season, and mow it in the fall.

Quest. When was it that the tumble of the dam consisted of a stick of timber that rested immediately on the stone work?

Ans. I think it was in—I can't tell the year—but I think it was in the time Douglass was there—can't tell whether it was in old Douglass' time or his son's; I recollect the water
20 shooting over the whole length of the stick of timber that lay on the stone.

Quest. How long was the dam in that condition?

Ans. A number of years—couldn't tell how many; recollect for a number of years the water shooting over that tumble the whole space.

Quest. Were there no gates to the dam?

Ans. I think not at that time.

Quest. Do you mean to say that for a number of years before Mr. Douglass was there that there were no gates to that
30 dam by which they could raise or lower the water in that pond as their wants required?

Ans. I won't be certain whether it was in Mr. Douglass' time; it might have been when John L. Thompson was there; I know the water ran over the whole length of the tumble for some years—I often stopped and looked at it when I was going to the fulling mill.

Quest. Did you see the water running over the dam as you went and came from the fulling mill?

Ans. Yes, over the whole length of the tumble; it went
40 over very rapidly at high time of water.

Quest. When your position was in front or at the side of that fall of water, how could you tell what the structure of the dam under that fall was?

Ans. I have been on it when the water was low, and been down under it when the water was low oftentimes when the water didn't tumble over it.

Quest. Can you tell us of any other grist mill dam that was ever made that didn't have gates by which to regulate the height of the water in the pond as the necessities and convenience of the mill required?

10

Ans. There might have been a gate there at that time, but I think not; it's a good many years ago.

Quest. Prior to the year 1846 was there anything that led you to take any interest or concern in the construction of that mill dam, as to how it was made, or what it was made of?

Ans. No, sir; I don't know of anything; I used to be at the mill, and would walk out under the dam on the stones; I won't be positive about the gate at that time—there may have been a gate there, and down at the time, and the water 20 shooting over the gate.

Quest. You speak about putting a stick in the outlet, some three years ago, with a view of measurement, how was the water at the dam at the time you put that stick in?

Ans. The pond was all drawn out—it was very low—and I won't be certain but what they drained it out to fish it; I took a long stick, and drove it down strong, and then took my knife and cut a mark at the surface of the water, as it then was, on the stick; on Monday morning I found that the water was eight and a half inches (and I think eight and 30 three-quarter inches) above the notch I had made; my stick was driven at the lower part of the outlet, at its end, just opposite to where Mr. Carlile used to water.

Quest. Give us the best idea you can as to how far below the top of the tumble dam the water was on Saturday, when you drove that stick in the outlet?

Ans. I never took no measurement from the water; the pond was pretty much empty, if not quite, when I was there; my impression was that there was no water against the dam then, it was so low; the water must have been several feet 40 below the top of the tumble dam at any rate.

Quest. Was there any water in the pond more than the natural stream that Saturday afternoon?

Ans. I think, if my memory serves right, there was, but it was in low places, where it couldn't conveniently run off.

Quest. You state that you would think the saleable value of the farm would lose fifteen hundred dollars by the water on the meadow—just tell us what items and in what way you get at that fifteen hundred dollars?

Ans. I should consider by the overflowing of that meadow
10 and draining the water, and the raising the water, it makes it very unhealthy; I wouldn't have it on my farm for double the money.

Quest. In the estimate which you have given us, at what price per acre do you put the injured land?

Ans. I don't know as I could answer you that directly.

Quest. Did you make that estimate without allowing any specific valuation to the land per acre?

Ans. I should consider such a meadow as that on a farm
20 of mine would injure the sale of the property full fifteen hundred dollars.

Quest. repeated.

Ans. I think I put no specific valuation per acre on the land injured in making my estimate.

Quest. You made some allowance in that estimate for what you supposed would be the unhealthiness caused by the flowage, did you not?

Ans. Yes, sir.

Quest. What part of the fifteen hundred dollars do you allow for the danger to health from the flowage?

30 *Ans.* I haven't made any allowance for that at all; you wouldn't want, yourself, to move into a place like that, or buy property there at all; I should not want it to be so at all—should rather see it all a pond.

Quest. In your estimate you assume, do you not, that that flowage would injure the saleable value of the remaining part of the farm?

Ans. Of course it would.

Quest. In your estimate, how much per acre did you allow for depreciation to the other parts of the farm by reason of
40 the flowage?

Ans. I didn't make any calculation about it by the acre at all—made no such estimation by the acre.

Quest. Are your meadows (the low lands next the river) flowed any now?

Ans. Yes, sir; the water is standing on some part of it the bigger part of the year round, unless it is a very dry season as it is now; the first part of this season it was very wet; I should say these parts are flowed for six months in the year in ordinary years; this has been so for six, eight, or ten years.

CHARLES MING. 10

Subscribed and sworn to, this 1st day of October, 1863, before me.

ALFRED MILLS, *M. C.*

Solicitor of defendants offers in evidence a paper, purporting to be a copy of a letter from Theodore Little to Nathan A. Cooper, esq., dated July 26th, 1860, which I have marked *Exhibit 3* on part of the defendants.

It is agreed by counsel that this copy may be used in evidence in the same manner as the original letter, with the understanding that if the original is produced, it shall be 20 used in place of this copy.

Examination here adjourned until Monday morning, at nine o'clock, at same place.

ALFRED MILLS.

Monday morning, October 5th, 1863, examination resumed pursuant to adjournment, Mr. Little appearing for defendants, Mr. Vanatta for complainant.

John D. G. Carlile, a witness produced on the part of the defendants, being duly sworn, on his oath says:

I live at Chester, a half mile from Cooper's mill to go 30 across, and three-quarters of a mile to go by the road; will be fifty-one years old next November; I was brother to Thomas M. Carlile; I have known the lands now owned by Mrs. Eliza Carlile ever since I have any recollection of anything; I lived on there till 1830; I went away in 1830, returned in 1835, and lived there till 1842, in the spring; in the spring of 1843, moved on to the farm I now live on; I

mowed the meadows on Mrs. Carlile's farm five years while I was there—I pretended to own them; the hay that I cut was fair quality of grass, a mixture of foul meadow, red top, and timothy on the higher part, and some bog next the river; with the exception of a point nearly opposite the house that runs down the stream, (which is a little wet, springy, the springs coming from the upland,) the land was perfectly dry, unless there was a freshet; a little farther up the stream there is a little place in the meadow where there used to be
 10 a bunch of bushes, I think probably three rods from the stream; I frequently drove between that place of bushes and the stream, when I had occasion to in drawing hay; that's the condition of the low places at that time; I think the meadows have changed in quality since that time; there is something that grows there in the shape of grass as high as my head; I have frequently been on them for the last eight or ten years, and been along by the side of them; I once used that meadow for training a horse—that was in 1841; the meadow then was dry.

20 *Quest.* What has caused this change in the meadows since 1841?

Ans. From the raising of the mill dam.

Quest. Do you remember the repairs at the dam made since 1841 by John Vandoren?

Ans. I see them frequently at work—it was in 1846.

Quest. Were you there at the dam, or passing there while the repairs were being made?

Ans. I was.

30 *Quest.* Did you notice any raising of the water after those repairs were made, and if so, how soon after the repairs were completed?

Ans. I did, sir; I did, sir, after 1846—I noticed it on the meadow, the widow's meadow, then my brother's.

Quest. How has it been from that time on to the present time?

Ans. It's been on all the time, more or less, till 1854 or 1855, I think; as far as my observation goes, it has been a sheet of water for six months in the year; since 1854 and 1855 I have observed it very closely.

40 *Quest.* Did you ever hear your brother, in his lifetime,

complain of the raising of the water by this dam? [Objected to.]

Ans. I have, frequently.

Quest. Did you, during his life, ever hear of any agreement on his part to the raising of that dam? [Objected to.]

Ans. I never did, sir; to the best of my knowledge I never heard it till this suit was commenced.

Quest. Do you remember what constituted the tumble of the dam before the repairs in 1846?

Ans. Not particularly; the water did not interfere with 10 me, and I did not notice it particularly, with one exception—that was Mr. Douglass putting those pins in the stick which I suppose was the tumble, and put some boards against it—and I have noticed it frequently before 1846, when there was nothing there at all; there would be a temporary fixture, and when the water got up it would go away; as far as my recollection goes, I should judge there was something there part of the time.

Quest. How did they get across the dam, at that time, to remove the boards when they wanted to remove them? 20

Ans. I think, sir, when the water was high they pried them out with a crow-bar, and then the boards went down the river—and I have heard of men's falling over the dam, and I have heard of men's getting to them in a boat with a rope tied to the bridge—don't know whether it was so or not.

Quest. From the observation which you have made in the neighborhood of that pond, when it is just full, at an ordinary time of water, how much higher is the water now than it was prior to the repairs in 1846?

Ans. Well, sir, as near as I can come at it, I make it three 30 foot and four inches, as near as I can make it by measuring and observation.

Mr. Little here leaves, and Mr. Gage conducts examination on part of defendants.

Quest. Are there any water marks there from which you have formed your opinion?

Ans. Nothing more than rocks and trees and the land in general.

Quest. Is there any particular rock?

Ans. Yes, sir; there is one in particular right where the 40 head of the pond used to be, or very near it.

Quest. Is it a large rock?

Ans. It is, could not be moved about.

Quest. When the dam was full, before it was raised in 1846, did the water cover this rock?

Ans. It don't now—very nearly though.

Quest. How much higher upon the rock does the water strike now than it did in 1846?

Ans. From my measurement (I didn't want to exaggerate the thing), I make it three feet and a half.

10 *Quest.* When did you measure it?

Ans. I measured it last summer and last Friday—don't recollect the time—last summer a year ago went up in a boat.

Quest. Did you ever have any conversation with John Vandoren in relation to raising the water?

Ans. Well, sir, I don't think I have—I might possibly.

Quest. Have you ever measured the water in the flume?

Ans. Yes, sir.

Quest. When was it?

20 *Ans.* I think I measured it two years ago, and I measured it last Friday again; I lost the memorandum of the depth of the water when I measured it two years ago, and that induced me to measure it again on Friday; last Friday the depth of the water was seven feet—the pond wasn't full; I measured the height of the flume on Friday, made it seven feet and nine inches; I did not then measure the water in the trunk; the height of the trunk, inside, was five feet eight inches; I should judge that the trunk has been raised—I wouldn't want to come to a decision precisely how much;

30 I will give my opinion; it's very plainly to be seen where the stone were placed in the pillars at the time the old trunk was taken down; as for the timbers under the present trunk, they are of all thicknesses from eight to fourteen inches; the bottom of the trunk is two feet and ten inches higher than the bottom of the flume; I think the trunk has been raised two feet and ten inches—it is a larger trunk every way—bigger, heavier, and higher; the road runs through the pond, and the dam is below the road.

Quest. How much has the road been raised?

40 *Ans.* Well, sir, I should judge from three to four feet, in

my opinion; it was raised with stone and dirt; directly after the repairs were done at the mill, the road belonged to a turnpike company, and the next spring Mahlon Ward (I think) was overseer, and filled in between the bridges and at both ends of the two bridges; and on the west end he filled up on to the foot of the hill which is called Obadiah Howell's; there has been filling done there since that time—at different years they have drawn in more or less; this last spring a year ago Mr. Gulick was overseer, and he commenced at the bridge again, and filled it in, probably half way to the hill 10 again, and this summer he has carried it in up to the hill again—this was on the west end towards Howell's; I think Mr. Gulick has raised the centre of the road from one foot to eighteen inches; the bridge has been raised since 1846; I couldn't say how much—think it has been raised and rebuilt three times since 1846; I should think the centre of one bridge was eighteen inches higher than the road—the other bridge is flat, and that is higher than the road.

Quest. How much do you think the bridges have been raised since 1846?

20

Ans. Should think the west bridge has been raised nearly four feet—should judge the other one was certainly three feet higher.

Quest. Do you remember anything about an eel-weir that was opposite Mrs. Carlile's?

Ans. Yes, sir.

Quest. When did you last see it there?

Ans. The last I see it there, if my memory serves me, was in 1841 or 1842, about the time I helped build a barn—it has been gone from there since that time; I remember an eel- 30 weir standing lower down the river—the one that I saw lower down the river is not there now.

Quest. Why were they removed?

Ans. Why, sir, it don't look like putting one there now—it is a pond of water. You couldn't have an eel-weir there now.

Quest. After the raising of the dam in 1846, if the pond of water was full, would it cover where the eel-weirs were?

Ans. Why, in an ordinary time of water there was a great many places along that river about that eel-weir that a man 40

could wade the river with his boots on, and if they were tight he wouldn't wet his feet—I mean by the upper eel-weir—this was before the dam was raised; I think now it will trouble a stranger to tell where the channel was, unless it is a very dry time.

Quest. How much deeper is the water now at the upper eel-weir than it was before the dam was raised?

Ans. I don't know that I have been in the river at the point where the eel-weir stood since the water was raised.

10 *Quest.* How much deeper do you think it is?

Ans. A few rods below this eel-weir (perhaps fifteen or twenty rods); I have been in the river frequently since; I think, as near as I can judge, from a rock where I watered my horses five years, the water is about three feet deeper; this rock is opposite the widow's house.

Quest. How much of Mrs. Carlile's land is injured by raising this dam?

Ans. As near as I can judge there is about seven acres which I suppose is injured.

20 *Quest.* What would be the value of this land if the water was kept off?

Ans. Well, sir, when I owned it I considered it the most valuable part of the farm—I should think it worth a hundred dollars an acre.

Quest. Did you consider it worth a hundred dollars an acre before the dam was raised in 1846?

Ans. I did, sir.

Quest. What is it worth in its present condition?

Ans. I consider it a nuisance to the farm—I don't consider
30 it worth anything at all.

Quest. Does it affect the value of the farm independent of injuring the land itself?

Ans. I should think it did very materially.

Quest. How does it affect it—reduce its value?

Ans. Yes, sir.

Quest. How much, in your estimation, does it reduce the value of the farm? [Objected to.]

Ans. Well, sir, I wouldn't want it there at all; and in reference to the farm, I should suppose with some men it
40 would depreciate it half of the value of the farm.

Quest. What would the farm be worth if the water was kept off of the meadow? [Objected to.]

Ans. As for myself, if I owned the farm, I certainly would rather have the farm as it was formerly by fifteen hundred to two thousand dollars.

Quest. You think, then, that the farm is not worth as much now, by \$1500 to \$2000, as it was before the dam was raised in 1846? [Objected to.]

Ans. That's what I mean to say, sir.

Quest. Why has the raising of this dam or the flowing of 10 the meadow reduced the value of the whole farm?

Ans. My opinion is, by flooding this flat half the year, and the grass growing upon it such a burthen, and a good part of the time left on the ground, and decomposing there, that it tends to make the place unhealthy; that would be a serious objection to buying the farm.

Quest. How far is it from this meadow that's flowed to Mrs. Carlile's house?

Ans. Think, perhaps, it is twenty or twenty-five rods.

Quest. Did you ever hear her make any complaint about 20 the stench or smell arising from the decomposition of the vegetable matter there? [Objected to by Mr. Vanatta.]

Ans. I have, sir.

Quest. Have you ever heard her make any complaint more than once? [Objected to.]

Ans. Yes, sir.

Quest. Have you ever noticed it yourself?

Ans. I have, sir.

Quest. How much higher is the house in which Mrs. Carlile lives than this meadow?

30

Ans. I should judge about thirty feet.

Quest. How much would you have that meadow flowed as it has been for the last ten or fifteen years, for, if you owned it? [Objected to.]

Ans. I wouldn't have it flowed for a hundred dollars a year, independent of other considerations.

Quest. If you owned it, how much would you ask to convey the right to flow the meadow as it has been for the last ten years—that is, including everything, not only the damage to the meadow, but the damage to the farm generally?

40

Ans. Why, sir, I wouldn't have it there at all—you couldn't hire me to have it there at all; I wouldn't have it there for \$1500 to \$2000; I wouldn't sell it from the farm at all; I consider the meadow of great value to the farm—to any farm.

Quest. Why is it of great value to the farm?

Ans. It could be pastured a month earlier than any upland on the farm—I mean previous to the year 1846; after pasturing, we could cut a good burthen of hay off of it—that is 10 when I owned it.

Quest. Does the flowing of it render it unfit for pasture and meadow?

Ans. Yes, sir.

Quest. Have you at any time seen a stick of timber supposed to be a part of the sill taken from the old dam?

Ans. I have, sir; last summer, I didn't notice the time, I got a stick off of Mr. Nicholas' mill dam, just below the general's mill—it had lodged on the dam, the stick which I supposed went from Gen. Cooper's old dam; I took it from 20 there (Nicholas' dam) and brought it up as far as Mr. Howell's; I will give my reasons why I suppose this stick to be from the old dam; in the present dam the rafters are dove-tailed into the sill at the distance of four feet apart, and in this old stick the distances between the holes in it was four feet; it had been broken in two—the stick was round.

Quest. What did you do with it?

Ans. It is at Mr. Howell's now.

Quest. Why did you do so?

Ans. I thought it would be well to take care of the stick.

30 Cross-examination by Mr. Vanatta.

I pretended to own part of the farm owned now by Mrs. Carlile; I had no deed for it—we made a division of it; I afterwards sold out to my brother.

Quest. When did you and he make that division?

Ans. I think it was in 1836; I got the east end of the farm laying next to my line now—and I supposed it to be half of the farm; I think the general direction of the division line between my part of the farm and Mulford's ran from northwest to southeast; we both occupied the house—

it was on the land that fell to me; all of the river front, except at the southeasterly corner of the farm, was on my share; I think about thirty rods of Mulford's share bounded on the river; his was all upland except the point that joined the river; the lane that runs from the barn to the river was on my share; the division line ran about a rod south of the lane; I suppose I had the half of the farm; there was one hundred and thirty acres in that part of the farm that lies there; in Washington township there are forty acres in one tract, and there was formerly thirty acres in the other—some 10 has been sold from it.

Quest. Then you supposed you had in your share altogether, how many acres?

Ans. In the neighborhood of a hundred acres.

Quest. Was any part of the land in Washington put in your share?

Ans. I had half of the forty acre tract—and of the one hundred and thirty acre tract I had about half; I had about eighty-five acres altogether in both townships.

Quest. When did you sell your share to your brother? 20

Ans. I sold to him, I think, sir, in 1841 or 1842; I made a deed to him.

Quest. What did you get for what you conveyed to him?

Ans. I think he gave me two thousand dollars; land wasn't considered worth as much then as it is now; my farm I gave three thousand dollars for, and I wouldn't take eight thousand now.

Quest. Was there any of the land in your share of that farm which you conveyed to your brother at that time more valuable than this meadow land along the river? 30

Ans. I think not, sir—none as much so.

Quest. Was there any such land in your brother's share as this meadow land?

Ans. No, sir; no such land in the part he owned, except the point in front of the barn I spoke of; there was in that, perhaps, one half to three-quarters of an acre; this is not exactly flat—there is a little descent from the upland to the river.

Quest. Were there any buildings on your brother's share

when you divided, and if so what? [Objected to by Mr. Gage.]

Ans. Yes, half of the barn.

Quest. While you lived ther, ewhat quantity of hay per acre did you get off of that low land? [Objected to by Mr. Gage.]

Ans. I think there was acres upon it that I got two ton from, and there was some where I didn't get near so much; I recollect one year of putting up two stacks on the meadow and
10 filling a wagon house that stood in the forks of the road, one of which leads from Mrs. Carlile to me, and the other goes round northwest of my place, on the other side of the stream.

Quest. How many acres of that meadow yielded two ton per acre of hay?

Ans. As far as I can judge there was half of it.

Quest. Which half was that?

Ans. Where the heaviest grass grows now (or whatever you may call it, I don't call it grass).

20 *Quest.* Whereabouts is that?

Ans. It is on the lower end of the lower meadow—it would take three-quarters of that meadow, and take the upper meadow, from one end to the other, as far up as my bridge, except the knoll.

Quest. Who helped you cut, cure, and gather that hay those five years?

Ans. I wouldn't pretend to tell you positively, but I can tell you some of them that worked for me through the summer season—Aaron Roberts worked for me one summer, and
30 I think Andrew Ammerman worked for me one summer; I think Nicholas Corwin helped me cut it a couple of years; I think John G. Crater helped me cut it one year.

Quest. Are there not springs breaking out at a number of places on the rise between the upland and the low land, discharging the water from the upland on to the low land? [Objected to by Mr. Gage.]

Ans. Not to my knowledge, nor never was, from one end to the other, except in front of the house, which I have spoken of heretofore.

40 *Quest.* Before the dam was raised in 1846, did you or your

brother, or any one for either of you, ever go to Cooper's mill to get them to raise the gates in the dam, so that the grass or hay could be got off of the meadow?

Ans. I can't tell you what he done, sir, only from hearsay, but I went myself to ask Mr. Douglass, and asked him to raise the gates, and let the water off of me; this was after the dam was raised.

Quest. repeated.

Ans. I never heard anything of the kind before the dam was raised; I never did anything of the kind myself. 10

Quest. How much of the meadow is now actually covered with water, when the pond is full, in an ordinary stage of water?

Ans. As far as my judgment goes, there is not an acre that is not covered in an ordinary stage of water.

Quest. How many acres are actually covered with water when the pond is full in an ordinary stage of water?

Ans. I should judge about five acres; there is some in the pasture lot that is covered at the same time; I never seen the land run—it is merely my opinion. 20

Quest. Do you take in what is in the pasture lot to make up the five acres?

Ans. I do, sir.

Quest. By the pasture lot, you mean the lot on the west side of the river above the bridge?

Ans. I do, sir.

Quest. Do you mean to be understood that flowage is caused wholly and entirely by the dam?

Ans. I do, sir.

Quest. Haven't you frequently said that the obstructions 30 in the stream were so great that it made very little difference whether the gates in the dam were up or down?

Ans. I never said it in my life; have said frequently I thought it made but very little difference whether they were there or not, for the water of the channel is very near the level of the bank in any ordinary time of water—and for six months in the year it is all overflowed; they skate on it in the winter; I think Mr. Carey asked me last winter about those gates—I said it was immaterial in the winter whether they were raised or not. 40

Quest. In the summer time, and on more than one occasion, have you not said that there was so much obstruction in the river that there was little or no use in raising the gates at the dam?

Ans. Not to my knowledge, sir; I have talked to Mr. Vanderveer frequently and to others that I thought those gates wouldn't carry off a quarter of the water in a high time; the gates are down all the time except in a time of freshet; I have frequently seen them for three months at a
10 time when both would be up from two to three inches, and this was high time of water; and this last summer a year ago I seen them up, perhaps from June to July, a month right along; I have seen the water run over the road three times during that month while the gates were up.

Quest. Have you not repeatedly said that obstructions in the river above the dam caused the water to stand, and prevented it flowing off?

Ans. I have never said so; but I have repeatedly said that I thought they had nothing at all to do with the flowing of
20 the land, because I thought it was nothing but a mill pond from Gen. Cooper's mill to my bridge; there is trees on the banks two feet over that are dead—and one that is two foot over at the base, and stands on the west bank of the outlet, is dead.

Quest. What do you mean by saying that they had nothing to do with the flowing—what do you mean by they? [Objected to.]

Ans. I mean the brush and mud that is settled all along there in the bed of the river—perhaps three feet deep in
30 places; that's the present situation of the river from the mill dam to my bridge; it ain't as it used to be—not at all.

Quest. Then, if I understand you, your idea is that that accumulation of mud and brush is no obstacle to the flowing of the water, and has nothing to do with the raising of the water on Mrs. Carlile's land?

Ans. Yes, sir; I have said repeatedly that you might as well have it filled up with mud and brush as with water; I couldn't see that it made any difference with the channel whatever; in my opinion, that filling up with mud and
40 brush has nothing to do with the flowage of Mrs. Carlile's

land; from my measurements, I find that the water at my bridge, in an ordinary time of water, stands two feet higher than it used to; I watered my horses right at that point where I made my measurement for ten or eleven years after I moved on my present place.

Quest. If you take a ten quart pail, and pour eight quarts of water into it, the pail will hold all the water, won't it?

Ans. I should think it would, sir.

Quest. Suppose you empty the pail, and then fill it three-fourths full of mud, and then pour in your eight quarts of 10 water, what will become of the water—will it stay in the pail or run over?

Ans. It would naturally run out.

Quest. If, then, the old channel of that river along Mrs. Carlile's land has been filled three feet in thickness with mud and other obstructions (brush, &c.), how is it possible to prevent the descending water from overflowing her land?

Ans. I suppose it would naturally overflow—but those obstructions wouldn't keep the water there six months or nine months in the year—it would evaporate, if no other way; I 20 have seen that stream raise four feet at my place, and I think when it gets up two feet it will cover a thousand acres of land above me.

Quest. If those obstructions will delay or hold back the water one day or six hours, can you give us any reason why it must do it continuously for six months, if they are not removed?

Ans. Not any, sir; for I think the water lays there six months in succession and longer, off and on.

Quest. Has there not been a dam at Cooper's mill as long 30 as you can remember?

Ans. There has.

Quest. Were these obstructions in the stream which we have been speaking of opposite to Mrs. Carlile's land at the time you sold to your brother?

Ans. They were not, except the eel-weir; and there was two places between my bridge and the eel-weir—one opposite the point of land that divides the meadow, at which there was a very swift current; I could walk across there at any ordinary time with my boots on without wetting my 40

feet; there was another place, perhaps thirty rods above this, where the current was very swift—I could hear the water run before I got to the river, perhaps two rods off; I know every part of the river between my bridge and the dam, have traversed it perhaps a hundred times; I have fished the river also from Saccasunny Plains to my place—I mean to say that I have travelled in the bed of the river a number of times.

Adjourned for dinner till half-past two o'clock P. M.

10 Afternoon.—Cross-examination continued.

Quest. Can you tell us when the work of widening, straightening, and deepening Black river, from Budd's bridge to Carlile's bridge, was completed?

Ans. I think I can very nearly—it was in 1837 or 1838; it was completed the same year it was commenced; my land adjoins the outlet on the east side; I should think my line on the river is somewhere near a half a mile—helped clean it once; Mr. James S. Dickerson's land lies next to mine up the stream; I should judge his line on the river is about one
20 hundred rods; I have a lot next above James S. Dickerson, containing about thirty acres, but this does not run to the river; when it was sold to me the front on the river was reserved; Elijah Dickerson owns next to James S. Dickerson on the river, a lot of four or five acres; Elijah Dickerson's line on the river is some thirty or forty rods.

Quest. Whose land comes next to Elijah Dickerson on the river?

Ans. Charles Ming's; his line does not extend to Budd's bridge by, I think, one hundred and fifty rods; Stephen
30 Budd comes next on east side of the river.

Quest. After that ditch, was your low land next the river any freer from water than it was before it was dug?

Ans. It was; I bogged off the upper end of it completely to the bank of the river; there is some on the lower end that I didn't bog—and the reason that I didn't bog it was that there was so much water on to it after the dam was raised that I couldn't do it; where I did bog I cut as good hay as ever I drewed in the barn—foul meadow as high as my breast; I burnt my bogs there on the ground—spread

the ashes there on the land; have not measured the ground at all next the river.

Quest. Are your meadows now as good as they were in 1845?

Ans. I consider twenty acres of my low land worthless, and worse than worthless; it is dangerous to turn on it—I have lost two critters there within five years; the land that I bogged off, if any man will drive a team on it within a hundred and fifty yards of the river I will give him the land.

Quest. Did you make the meadows near the river, or had they been bogged off and made into meadow when you 10 bought them?

Ans. I made them, sir; I commenced at them in 1844; I did not get the bogs all burnt the first season that I cut them off—finished the next season; the streams got all filled up with water the first season—it was late when I begun, and so I didn't get done till the next season; I seeded down my meadow next the river in 1845, probably in September; I had a crop of grass there the next year after I seeded it—a very good yield, but not as good as it was the next year; it was better the second year; I should think I got a ton and a 20 half an acre the second year I mowed it; I haven't mowed this ground in ten years; I think the yield was equally as good the third year as the second; the fourth year it wasn't the half as good—it was growing up with bog coming in again; the fifth year I didn't mow it all—it was mowed by some other folks; it begun to get a pretty good yield of bog grass after I quit; they didn't drive below the ditch—what they cut they carried off; they mired the horses twice above the ditch where I formerly had ploughed.

Quest. When was the last time those meadows were mowed, 30 either by yourself or some one else?

Ans. It was mowed down to the ditch this year—and the man who mowed it next the ditch told me he worked in the water up to his knees, and carried the hay off on poles.

Quest. Have those meadows been mowed by you or somebody else every year since 1850?

Ans. Yes, sir; the part between the ditch and the river has not been mowed for the last five or six years, and the bogs are as large as they used to be, nearly.

Quest. Do you think there was any more water on your 40

meadows the last year you mowed it yourself, which was 1851, than there was the second year you mowed it?

Ans. Yes, sir; there was more water, and that was the reason I stopped mowing it—and a great deal more now than there was then, as much again.

Quest. Has, then, the water on your meadow been increasing every year since 1851?

Ans. Yes, sir; from 1846 to 1854 it appeared to be about the same thing—getting a little worse, if anything; from 10 1854 to the present time, as far as my observation goes, that land of mine now in question, and James S. Dickerson's and others adjoining, is a sheet of water six months in the year, as near as I can judge; I can see it while setting in my house, and every time I am on the road from Ming's towards my house; I think I can see over fifty acres of land when setting in my house, perhaps sixty, that is covered by water.

Quest. Haven't you seen your lands adjoining the river, and Dickerson's and Ming's, covered with water when Cooper's mill pond was drawn down, and the water two feet 20 or more below the top of his tumble dam?

Ans. I never have; I have never seen the water drawn off of that pond since 1846; you can't draw it off; I never seen a dam like it in my life.

Quest. Haven't you seen the water standing on your land next the river, and Dickerson's, when the water at Cooper's dam was two feet or more below the top of the dam?

Ans. I have, sir; but I have never seen that mill pond drawn down to that height, since the repairs in 1846, for six hours at a time.

30 *Quest.* You said you didn't believe they could draw the water out of that pond—tell us why you think so?

Ans. There is not a gate nowhere about the premises, that I have ever seen, that raises to let the water off of the bottom of the pond.

Quest. Do you know an oak tree on the east side of the river, nearly opposite the mouth of Tanner's brook, that was marked by Judge Valentine when he was levelling there?

Ans. I do; probably saw him mark it.

Quest. Have you measured the water at that point frequently 40 quently since the judge made that mark?

Ans. I have; for perhaps three years past.

Quest. How frequently in the course of a year?

Ans. I think every day for a week—one week in particular when the judge was very busy along the river, and called my attention to it.

Quest. Have you not measured it very frequently, and at different seasons of the year?

Ans. I think I have, sir.

Quest. Have you, at the time of making those measurements at the tree, measured the water at the dam, and taken 10 the distance of the surface of the water from the tumble?

Ans. I have, sir; and more particularly on a rock that is on the widow's land.

Quest. Haven't you frequently found the water at that tree as much as twelve, eighteen, and twenty-four inches higher than the top of the general's tumble dam?

Ans. I have, sir; I paid more particular attention to the water raising and falling this summer a year ago—it was at the time those gates were up when the general was operating around there, and told me at the time that the gates 20 didn't keep the water there; and there was more rain fell that summer than I ever seen in that season of the year before in my life, to my recollection.

Quest. How much higher than the top of Cooper's tumble dam have you seen the water at that oak tree?

Ans. I think, sir, I have seen it three feet higher in a freshet.

Quest. Haven't you seen it eighteen and twenty-four inches higher than the top of the dam not in a time of freshet?

Ans. I have not, sir, never since I have been on the farm; 30 I did not calculate the measurements at that time would amount to anything, the water was so high.

Quest. Give us the first dates of your measurements at the pin-oak tree that you have a measurement of?

Ans. June 6th, A. D. 1862.

Quest. You then found the water how much below the mark on the tree?

Ans. At that time the water was running over the cap, and the water was eighteen inches below the mark on the tree; don't know what was the depth of the water on the 40

cap, perhaps three or four inches; think the gates were up.

Quest. Give us date of next measurement at that tree?

Ans. June 8th, 1862; the water was seven inches higher than it was at my measurement on the 6th; I did not measure from the mark on the tree at that time; at this second measurement the water was running over the cap—can't tell how much—it was probably from two to three, or four inches—I couldn't tell you; I think the gates were up—how far I can't tell you; the whole flat was flooded with water
 10 all the way up as high as I could see—all the way from Car-lile's bridge to Budd's bridge, and I don't doubt to Succa-sunny Plains; my next measurement was June 18th, 1862; then the water was there nineteen inches higher than it was on the 6th June—it had rained very hard, and there was a great freshet; I don't know that I went down to the dam at the time of the last measurement; I think at this last measurement the water was not above Valentine's mark on the tree.

Quest. Did you make any measurement at that tree, of
 20 which you have any memorandum, after 18th June, 1862?

Ans. I don't think I did, sir, at that tree; I have here a memorandum that, from the 19th June to 23d June, the water fell three inches at the pin-oak tree; it rained the evening of 23d June, and in morning of 24th I found it six inches higher at the tree than it was the night before; I was not at the dam on the 23d June nor on the 24th June; I gave up the idea of making an exact calculation; on the 27th June I found the water at the tree the same as it was on the 24th June—it was then running over the cap—can't
 30 tell how much—it was the evening when I was there—the gates were up; from 28th June to 30th June it was running over the cap; the 30th the water was four inches lower than it was on 27th June; on 2d July it rained as hard as I ever seen it rain in my life; after the month of June, I have recorded here no measurements made at that pin-oak tree; I have those made at other places.

Quest. Did you make measurements at that tree after that time without making memorandums of them? [Objected to.]

40 *Ans.* I did, sir.

Quest. Why did you not make memorandums of them?
[Objected to.]

Ans. My attention was called more particularly to points on the widow's land.

Quest. Is that the only reason you stopped recording your measurements at the pin-oak tree?

Ans. I think it is, sir; I didn't want too much on my mind at once.

Quest. You found spots on the widow's land the measurement of which interested you more than the measurements you made at the tree? [Objected to by Mr. Gage.] 10

Ans. Yes, sir; that's the way I meant to convey my idea.

Quest. Whereabouts on that meadow was that track you had to train the colt on?

Ans. It came within a few rods of this slough that has been spoken of, where the bushes were, perhaps three rods from those bushes; it extended a little on the high land—a little, two or three rods; it was a quarter track, as we thought; on the east side of the track next the river, I think, I came within a rod of the river; think the diameter of the track was fifty or sixty paces—oh, yes—it was nearer a hundred; I never measured the track at all; there is a ridge of land between the two meadows; this track was on the lower meadow, thirty or forty paces from that ridge; the track was a little longer one way than the other—not exactly a true circle; I think the most southerly point of the track was some six or eight rods from the river; I think it was in August or September, 1841, that I had that track there. 20

Quest. Can you give us any positive statement as to how the tumble dam was constituted and constructed prior to the 30 year 1846?

Ans. No further than I have, sir; there was nothing to draw my attention to it prior to 1846, though I seen it nearly every day—sometimes two or three times a day; sometimes the high water would wash away all that was on the top of the tumble.

Quest. When was that? [Objected to by Mr. Gage.]

Ans. I don't know.

Quest. What was the efficient height of the old dam which was there in 1846, and for several years prior to 1846? 40

Ans. I think about five feet six inches, including the stick on the top—should judge it was that—never measured the old dam—never saw it measured—I have played on it frequently when the water was down.

Quest. Could they draw the water out of the pond any better prior to 1846 than they can now?

Ans. I think they could, sir.

Quest. How did they do it?

Ans. Why, sir, the present trunk is two foot and ten
10 inches higher than the bottom of the flume, and the old one, I think, was level with the flume, and the trunk is the lowest place they can get the water out; there is no floodgate in the dam, and never was; the floodgate at the trunk is, I should think, three feet square—perhaps wider one way than the other—and you can't draw the water out of that gate down to the natural stream as they formerly did.

Quest. Are you right sure that the bottom of the old flume was level with the bottom of the old trunk?

Ans. No further than this—from what the mason says, he
20 raised the stone, and from the present appearances where he commenced on the old pillars (which is plain to be seen), and from being planked up across the front of the flume—and I have never seen the pond drawn since 1846 down to the natural stream, as they formerly did draw it—and from my measurements along the stream and my own observations, I am as positive about that as about anything; I know well where the stream used to be drawn to—you could see the natural stream down in that pond for perhaps six hundred yards farther than now.

30 *Quest.* Was there any floodgate in the old flume?

Ans. I can't tell you—I think not.

Quest. Was there any floodgate in the old trunk?

Ans. I can't tell you; I am positive they couldn't get in the flume.

Quest. Have you any recollection of a floodgate in the old trunk?

Ans. I have not, sir.

Quest. Do you know whether the bottom of the present flume was put any lower down than the bottom of the natu-
40 ral bed of the river—and if so, how much lower?

Ans. No further than this, I heard Mr. Vandoren say that the bottom plank in the old flume were never disturbed, and John G. Crater says he knows all about it, and I have heard him say the same thing—that's all I know about it.

Quest. Isn't your estimate as to the increased height of the water drawn chiefly from your observations of the water on the trees, and rock, and other marks along the pond and stream?

Ans. It is not—it is from observations and measurements together.

10

Quest. Measurements at what places?

Ans. I have measured the dam on the west end next to Nicholas' road, and at a rock not far from Mr. Howell's house, where I have swum a hundred times, and at a rock opposite the widow's house (as near as may be).

Quest. When did you make the first of these measurements?

Ans. I measured the dam last summer—that's the first.

Quest. Who was that man that floated down stream in trying to get the boards off the dam?

Ans. Abraham Emmons was in the boat—the witness that 20 was sworn; a man named Nunn fell over—George Swayze also fell over; think Nunn fell over when Mr. Vanderveer was there; Swayze was working for Dorland at the time he fell over; they were trying to get the gates up when they slipped over; at the time Swayze was there there was no stems to the gates; Swayze was working at the mill at the time; I did not have anything to do with raising the road about the dam; the raising of the road I have spoken of from my measurements and observation.

Quest. Did you measure the raising of the road between 30 the bridges?

Ans. No further than the water that was on the sticks that run over the pond on the old road, and on which sticks the handrailing was fastened by braces.

Quest. What became of the stones in the dam of the upper eel-weir of which you have spoken?

Ans. I don't know as I have been to that point in upwards of ten years; I think it is very probable they lay there yet, the principal part of them covered with mud, I suppose; the other eel-weir was perhaps 100 rods from this; can't tell 40

when it was last used; I have crossed at that point; the rocks there come nearly together.

Quest. When did you last see the lower eel-weir?

Ans. I won't pretend to state any time, sir—but it was there twenty years ago, I think; I have crossed the river there frequently before 1846, by laying a rail over the rocks—there was no eel-weir there then.

Quest. Has the dam at lower eel-weir been there within thirty years?

10 *Ans.* I don't pretend to tell you, sir; the eel-weir was gone long before the water was up; I crossed there frequently while I owned the farm prior to 1846.

Quest. What improvements have been made to the widow's homestead since you sold out your share of it to your brother?
[Objected to by Mr. Gage.]

Ans. There has been a wagon-house put upon it—the land has been limed, and I think it produces, yearly, three times as much grain as it did before.

Quest. I suppose you have never discovered any such
20 stench arising from your meadows as you have arising from the widow's meadows?

Ans. I do, sir—and I think it will be ten times worse.

Quest. Is there such stench from any lands above yours on Black river?

Ans. I can't tell you, sir.

Quest. You have brought a suit against Gen. Cooper for injury alleged to be caused to your land by his dam?

Ans. I believe I have, sir.

Quest. When was it commenced?

30 *Ans.* I think, sir, it's about four years ago.

Quest. Why have you not brought it to trial prior to this?
[Objected to by Mr. Gage.]

Ans. Perhaps that's as well known to myself.

Quest. Do you decline to tell why? [Objected to by Mr. Gage.]

Ans. I can tell you if you wish; I don't know as it concerns the case at all; if it's proper for me to answer I will; I refer to my counsel whether it is or not; the widow wanted me to assist her some, and I thought it would be as well to
40 have some decision on her case; I thought it was enough on my mind at once.

Quest. You are letting yours rest, then, to see the result of hers, are you not?

Ans. To see the decision of this case in the Court of Chancery.

Quest. I suppose, if this case should go against the widow, you would regard the success of your case as more promising than if it went in her favor, would you not?

Ans. As regards that, I don't think it makes any difference as regards me.

Quest. Why, then, do you let yours rest until hers is decided? [Objected to by Mr. Gage.] 10

Ans. I think that I have answered enough to give you to understand, and I don't care to say anything more on that matter.

Quest. Have you taken in charge this suit on behalf of Mrs. Carlile, and undertaken to assist her in carrying it through? [Objected to by Mr. Gage.]

Ans. I have in a manner—she had no one to attend to it for her.

Quest. Have you entered into any written agreement with 20 her on the subject, or she with you? [Objected to.]

Ans. I have not, sir.

Quest. Was you here when Mr. Ming was examined?

Ans. I was—yes, sir.

Quest. Did you hear the questions that I put to him about the written agreement between you and him and Mr. Dickerson?

Ans. I did, sir.

Quest. Tell us what you know about such an agreement as I asked him about? [Objected to by Mr. Gage.] 30

Ans. There was such an instrument of writing got up as Mr. Ming testified to.

Quest. Where is it now?

Ans. I can't tell you, sir.

Quest. Where was it when you last knew its whereabouts?

Ans. I couldn't tell you where it is lodged.

Quest. Who had it when you last knew where it was?

Ans. I had it myself, sir.

Quest. What did you do with it?

Ans. I can't tell you; I considered it of little consequence 40 where it went to.

Quest. Who signed it? [Objected to.]

Ans. There were several signed it; Mr. James S. Dickerson signed it—I signed it myself—and I think Mr. Ming signed it—and I think both Peter and James Larrison signed it—I think Gilbert Woodhull signed it—I think Samuel White signed it—and I am not positive whether any one else signed it or not—they might have; I think I took the paper to these persons who signed it; I am not positive who drew it; I never asked Mrs. Eliza Carlile to sign it—never
10 offered it to her.

Quest. Can you tell me where I can find that paper now?

Ans. I cannot, sir; I think perhaps it would trouble you to find it.

Quest. Why do you think it would?

Ans. I think it very likely it was destroyed, but I don't know—I am sure I have not got it.

Quest. Do you think James S. Dickerson has it?

Ans. I can't tell you, sir—I think not.

Quest. Why do you think not?

20 *Ans.* I can't tell you—only I should not think he would have kept it, if it had lodged in his hands; we did not consider it good for anything.

Quest. Please state the terms of that agreement as fully as you can?

Ans. I couldn't state anything about it; I didn't charge my mind with it, and I couldn't state a word correctly as I know of.

Quest. Can't you tell what the agreement was about? [Objected to by Mr. Gage.]

30 *Ans.* I suppose the intent was to see if we couldn't get that mill dam pulled down.

Quest. What were the persons who signed that paper to do in order to bring about that end? [Objected to by Mr. Gage.]

Ans. I answer just as I did before, that I suppose it was to pull the mill dam down; I decline to answer anything more to that question or on that subject.

Quest. What part of the expenses of this suit are to be borne by you?

40 *Ans.* I have no knowledge of that ever being brought into conversation whatever.

Quest. What part of the expenses of this suit do you expect to bear? [Objected to by Mr. Gage.]

Ans. Not a dollar, sir.

Quest. What compensation are you to have for your time, trouble, and expenses in attending to this suit?

Ans. I don't expect to receive a penny, but think I will be out of pocket.

Quest. Considerable or a little?

Ans. I can tell better when the suit is through.

Quest. You have been present on every occasion when 10 witnesses have been examined, have you not?

Ans. I believe I have, sir, and expect to be hereafter, if I keep well.

Quest. You have spent considerable time in looking after and going to see witnesses in this case?

Ans. I have, sir, and expect to spend more.

Quest. If you did not suppose that your land was injured by this dam, would you feel or take as much interest in this suit as you do now? [Objected to by Mr. Gage.]

Ans. I think probably I should.

20

Quest. If the widow, by means of her suit, should get Cooper's dam reduced, that would answer your purpose, so that you wouldn't need to go on any further with your suit, would it not? [Objected to by Mr. Gage.]

Ans. Let that result as it will, if I live long enough, I calculate to put my own through.

Quest. You do not suppose, do you, that if the widow, by means of her suit, should get Cooper's dam reduced, that you would hereafter be any-ways benefited by the reduction of the dam brought about in that way?

30

Ans. I do suppose that I would be benefited a great deal; I think the water would discharge from my land freely, instead of laying there six months in the year, if you put the dam down where it was before he raised it.

Quest. How much do you think Cooper's dam ought to be reduced to relieve your land of the water?

Ans. Just as I have sworn to—I suppose about forty inches—that's as near as I could get at it by measurement and observations; I think then, if the whole flat was under in the summer season, it would discharge from my land in two days. 40

Quest. When was it that it discharged from your land in two days?

Ans. From the time I went on the place till 1846; the summer of 1847 the water didn't discharge from the meadow as it did before; I didn't observe the water in the fall of 1846 as I did in 1847 and on.

Quest. If Cooper's dam were reduced nine inches, and no more, do you think that would relieve your land of the water?

Ans. I think not at all—it would make no difference on 10 my land that you could discover.

Quest. What is the distance from Carlile's bridge up to where your meadow land begins?

Ans. I should judge it's about fifty rods—I have never measured it; my meadow lands come nearly down to the mouth of Tanner's brook; when I first went on the place I mowed some grass down within five rods of the mouth of Tanner's brook.

Quest. How are your meadows in a dry time in the summer now, as a general thing?

20 *Ans.* Well, sir, as near as my memory serves me, it was seven years ago this summer; the wells were all dry that ever get dry, and springs likewise, and I think it was about as dry a time as I have ever seen; and over my meadow, where I ploughed the ground when I seeded it down, my horses mired, and I stripped the harness off to get the horses off.

Quest. How far from the river was that miring?

Ans. I should judge about thirty rods.

Quest. Is the land there higher or lower, where this miring 30 was, than it is at the water's edge?

Ans. I should judge about the same—perhaps an inch or two difference.

Quest. Have you a saw mill on your ground above those meadows?

Ans. I have, sir.

Quest. How far from Black river?

Ans. Perhaps five hundred yards—it's some distance up in the woods, among the rocks—it is directly above these meadows; I have something like a goose pond there—there 40 is some thirty feet fall for the water to get on the wheel—it's as lively a running mill as I ever see run.

Quest. When did you make the dam for that pond?

Ans. About five years ago—has not been dammed before, that I know of; I think the stream on which this mill is called Hazelbrook—it's a very small stream.

Re-examination of *John D. G. Carlile* by Mr. Gage.

Quest. Is your saw mill on higher ground than the meadows?

Ans. I should think it was, sir—it's up among the rocks—probably fifteen or twenty feet higher—couldn't make an estimate of it—perhaps more; Hazelbrook empties into 10 Black river on my premises.

Quest. Does the water in that pond in any way affect the water on the meadows?

Ans. Not in the least, according to the best of my knowledge.

Quest. You say you built the dam there about five years ago?

Ans. Yes, sir.

Quest. Has there been any more water standing on your meadows, or Mrs. Carlile's, since that time than there was 20 before?

Ans. I should think not, sir.

Quest. You spoke of the deposits of mud and growth of brush in the channel, how was it before the dam was raised in 1846?

Ans. It was not there, sir.

Quest. Do you think if this channel was clear of this deposit of mud, &c., that your meadows would be flowed?

Ans. I don't think that would benefit my land a morsel, if the mud was cleared, and the dam remained as it is; if 30 the channel was cleared of the mud and the brush, I do not think it would clear off the water from my lands so long as the dam remains the same—perhaps it wouldn't stand there quite as long in a dry time.

Quest. Was the pond full in the fall of 1844, and did it flow your meadows so as to prevent you from burning your bogs that season?

Ans. I suppose the pond was full; I don't know about that; but in the fall of the year the stream generally gets

up; in burning bogs, when they once get wet I don't think they would get dry enough to burn under a month; I don't know but they froze before we attempted to burn them that year; it was not because the water was on the meadow that I didn't burn the bogs—the bogs were wet.

Quest. Were your meadows in 1844 or 1845 flowed by this pond?

Ans. They were not, sir, in the least, I think.

Quest. Were they materially affected until the dam was raised in the year 1846?

Ans. Not at all, sir; I never attributed anything to the dam until the dam was raised—I could ditch my land and clear it.

Quest. Whereabouts is this upper eel-weir?

Ans. It is nearly opposite to the widow's house.

Quest. Was it covered by water before the dam was raised in 1846?

Ans. It would be in a freshet—whole flat would be flowed in a freshet.

20 *Quest.* How has it been since the dam was raised in 1846?

Ans. As far as my judgment goes, it is a sheet of water for six months of the year—you could row a boat over it anywhere for half of the summer certainly.

Quest. You spoke of a handrailing on the bridge, how far was that above the water before the dam was raised?
[Waived.]

Ans. The sticks running towards the pond from the road, and to which the handrailing was braced, was, I should suppose, from two to three feet above the water when the old
30 dam was there; they are now under the water whenever the pond is full; it is very seldom that you can see them out of the water; the water upon them is about seven or eight inches when the pond is full; this road is thirty-eight feet in width; as near as I can judge, it is about half a mile or three-quarters from the bridge here to Mrs. Carlile's meadow; I do not know how much higher the notch on the pin-oak tree is than the top of the dam.

Quest. You have said that, on the 23d day of June, 1862, the water was raised three inches at the pin-oak, now I want
40 to know what you measured from, or what you measured on?

Ans. Why, sir, I had measured before from that notch to the water, and then I measured, and I found the water had raised three inches.

Quest. Do you mean to say that at any time you saw the water above that notch on the pin-oak tree?

Ans. No, sir; I measured the water at the rock near O. R. Howell's about one year ago this summer, and also last Friday; the water on Friday last, at this rock, was near three feet higher than I supposed it should be—it was five inches below the cap at this time; there are two rocks, the one resting on the other, and the under one projects out into the river. 10

Quest. Did you ever notice this rock when the pond was full of water prior to the raising of the pond in 1846?

Ans. I have, sir; I have swum there a hundred times, and sat on this offset; in an ordinary time of water you could see both of the rocks from the road without going to them—you could see under the one.

Quest. How much deeper is the water at that rock now than it used to be before the dam was raised? 20

Ans. From my observation from the bank opposite, and from the land on the west side of the pond, I think that on last Friday that it was all of three feet higher than it used to be, and at this time the water was five inches below the cap; the west bank opposite the rock was in ordinary times, when I used to swim there (prior to 1846), eighteen inches higher than the surface of the stream, as I should judge, and on Friday I rowed over this land of Howell's on the west side of the pond in a boat, and had a man with me; I think we rowed to the bank, at three different points, where the bank is perhaps thirty feet high, and could have rowed the whole distance down by the bank if it hadn't been for the bushes; as near as we could judge, we were about two-thirds of the way from the dam to the widow Carlile's barn—and I think on Friday last all the streams were very low; my well is low, and others complain of the same thing; we measured the water at different points as we moved over the meadow, and found it from one to two feet deep at different places; this rock projecting into the river, of which I have spoken, is, I should judge, a hundred yards from the mill dam; on 40

18th June last, I also made measurements at a rock in the middle of the river opposite the widow's dwelling house; the water at the dam was two feet below the cap at night; on the rock, on the top of it, I found the water four inches deep; on the next morning, before sunrise, I went to the mill, and I found the water had raised ten inches at the cap, then I went to the rock, and found that the water had raised precisely ten inches on the rock; I pulled off my clothes to get to the rock; I seen that rock twice and three times a day
 10 when I watered my cattle there before the dam was raised in 1846, and as near as I can judge, that rock would lay in an ordinary time at least a foot above the water.

Quest. Did you ever, prior to 1846, see that rock covered with water?

Ans. Yes, sir, in time of freshet, when it would be flowed all over the flat.

Adjourned, by consent, till to-morrow morning, at eight o'clock.

Tuesday morning, October 6th.

20 *Quest.* by Mr. Gage. Are you acting as agent for the widow in this matter? [Objected to by Mr. Vanatta.]

Ans. I have never been employed by her—I suppose I am her agent—I act for her.

Quest. Do you mean to say that you have never been employed by her, or she has never agreed to pay you anything?

Ans. She has never agreed to pay me anything; the stick that is at Mr. Howell's is the same one which I showed to James H. Douglass.

Witness says here, I desire to say that once I called Mr.
 30 Vandoren's attention to the trunk at the time he was working at the water wheel putting in some new buckets; this was about three years ago; I asked him if he could tell me how much higher he put the water on this wheel than it went on the old wheel; he said it discharged now on this wheel two or three buckets higher than it did on the old one.

Mr. Vanatta objected to the giving of this last testimony before it was given.

JOHN D. G. CARLILE.

Subscribed and sworn before me, this 6th day of October,
 40 A. D. 1863.

ALFRED MILLS, M. C.

ON PART OF COMPLAINANT.

[Filed February 9, 1864.]

Examination of witnesses, &c., taken at my office in Morristown, New Jersey, on Monday, the ninth day of November, A. D. 1863, before me, pursuant to notice given by complainant.

Notice admitted by solicitor of defendants.

J. Vanatta appears for complainant, Theodore Little for defendants.

ALFRED MILLS, *M. C.*

John G. Crater, a witness produced on part of the com- 10
plainant, being duly sworn, on his oath says:

I am in my fifty-first year; I live in Chester township, by Cooper's mill, about 75 to 100 yards from it; I have lived where I now do twenty-six years last spring; prior to that I lived one year above Chester cross-roads.

Quest. Did you have any knowledge of the lands between Cooper's mill and Budd's bridge, along Black river, prior to your moving to the mill?

Ans. Very little.

Quest. Had you fished and hunted along the river between 20
those two points before you moved to the mill?

Ans. I never fished nor gunned on it but very little; I used to gun above Budd's bridge, away on up the river though.

Quest. When you moved to the mill, what tenant had the mill?

Ans. David Woodruff.

Quest. What kind of a tumble dam was there when you moved there in 1837?

Ans. There was a tumble exactly like this one here (refer- 30
ring to model marked *Exhibit No. 1* on part of complainant), with the exception of the gates.

Quest. Describe the old tumble dam, and explain your description by reference to that model, beginning at the top of the stone work?

Ans. There was what we call a mudsill on the stone work,

the same as the piece marked 3; I cannot tell you the thickness of it, never measured it, unless I judge from the putting in of the present one by those rafter pieces; I helped put in the present one, and helped shove it under the end of some of those rafters (marked 4 in model), and some of the rafters were broken off at the end; I also helped put the cap piece on present dam (marked in model 1); in the old dam, the posts in the sill were not as high as those which are there now (posts marked in model 2).

- 10 *Quest.* In the old dam, was there such a cap piece as this one marked No. 1?

Ans. There was.

Quest. What was the length of the posts or uprights (corresponding to those marked 2) in the old dam?

Ans. Never measured them—I cannot tell; they were not quite as high as those.

Quest. As near as you can judge from recollection, how much shorter were the old posts than those now in the dam?

- Ans.* I cannot say how much shorter; those are some 20 the larger than the old ones—probably some six to eight inches.

Quest. Was any part of the space between the sill resting on the stone and the cap piece in the old dam planked up, so as to prevent the water running between the cap piece and the sill?

Ans. There was some three or four feet at each end, as near as I can recollect.

Quest. Did it or not fill up all the space between the two timbers?

- 30 *Ans.* Where it was, it did.

Quest. Were there any floodgates in the old dam?

Ans. There was two.

Quest. Did you ever help hoist them, or take them out, or help put them in?

Ans. I have a number of times.

Quest. Do you remember the building of the present tumble dam?

Ans. Yes, sir.

Quest. Who was the boss workman?

- 40 *Ans.* John Vandoren.

Quest. Did you assist in putting in the timbers of the present tumble dam?

Ans. I did—those heavy timbers, the cap piece, and sill, and posts; at same time a man named Peter Stryker, and I think a man named Reeves, and another man working for Mr. Vandoren (whom I did not know) assisted in the work; Vandoren himself was there.

Quest. Were there rafters in the old dam corresponding to the pieces marked 4 in this model?

Ans. There was.

10

Quest. Can you tell when those rafter pieces were put in the old dam?

Ans. I cannot tell; they were there when we put in these new timbers; they were there in the dam when I removed to the mill; the same ones are there yet.

Quest. Has their position ever been changed since you have lived there?

Ans. They have not—never been changed, except the water wearing off the ends of some of them; they cannot be got at without taking up the covering (or gravelling) of 20 the whole dam.

Quest. Was the position of those rafters moved, that is, was their bed raised higher, or in any way changed when the new dam was put in?

Ans. They were not changed at the day I helped put in those timbers (mudsill, cap piece, &c.) nor at any other time, to my knowledge; they could not be without taking off the covering or gravelling of the dam.

Quest. Was the sheathing or gravelling which covers these rafters taken up or disturbed when this new dam was put in? 30

Ans. It was not.

Quest. Could it have been done without your discovering it, living where you did?

Ans. It could not, unless it was done in my absence some time from home.

Quest. Could you or not then have seen if it had been done, if it were done while you were away?

Ans. I could.

Quest. How did you get in a new sill on the top of the stones when it was put in?

40

Ans. We first pried out the old one—it went out in some two or three pieces—and then rolled up the new sill up some timbers that were set inclined from the stream up to the wall, and shoved the sill under the rafters.

Quest. When the new dam was finished, was the stone work under the sill any higher than the stone work had been under the old sill—in other words, was the stone wall raised any higher than the old wall?

Ans. It was not—we shoved it in on the same stones that 10 the ends of the old sill rested on; some places that had washed out in the middle we chinked up—I helped do it myself after we put the timber on.

Quest. When the old dam was there, did or not the water use to run over the top of the old cap piece?

Ans. It did; in a fresh or heavy rain it would run over the cap piece.

Quest. Has the height of that tumble dam been in any manner increased since it was put in at the time you assisted in putting it in?

20 *Ans.* This tumble has not; these pieces (marked 7 in model) have been put there since to walk on in getting to those gates.

Quest. Were these spaces between the sill and cap pieces planked up in 1846—I mean the spaces at each end of the gates?

Ans. They were planked up at the time that work was put there—I don't recollect exactly the year the work was done.

30 *Quest.* Has or not this dam been within your sight almost every day of the twenty-six years in which you have lived where you now do?

Ans. I always see it whenever I step out of my door—it is in sight from my house.

Quest. Has the dam between the tumble dam and the flume been raised or altered since you have lived where you now do?

Ans. Not to my knowledge—there may have been a few stones laid on to it to level it up—I think there was a few stones laid on it—not a great many.

40 *Quest.* Was the general height of that part of the dam at

all increased, or were these stones which were put on put there in place of some stones which had been knocked or thrown off?

Ans. Some places were higher than others in that dam; some places had been broken out, and I suppose the stones were put there to level it up; I don't know how the stones were got out—I don't know anything about that; I never saw any stone drawn there for the purpose of putting them on; there was some stone and gravel put against the dam above this stone work.

10

Quest. Where were the stones which were put on there got from?

Ans. I cannot tell you, sir; there was but very few at any rate to level it up.

Quest. Since you have lived there, were there any stone ever drawn there for the purpose of putting on the dam?

Ans. Not that I know of, except for backing up and filling in against the dam with gravel and small stone; there was a few drawn to fill up where the wall was bursted away near the forebay—this was about the time this trunk was built; that's all I know of ever being drawn there for a wall.

Quest. Has or not, then, the average height of that part of the dam (between the waste weir and the forebay) been increased since you moved there?

Ans. None at all, with the exception of levelling up this wall—it is more level than it used to be.

Quest. As to the stone wall west of the tumble dam (towards the Hacklebarney road), is that stone wall any higher now than it was when you moved there, and if any part of it is, which part?

30

Ans. The part of the dam adjoining the west end of the tumble is just as it was when I moved there; the other part of that dam has been repaired, stone put there; the fur end washed away—it was undermined, and the water throwed it down—I mean the end right adjoining the Hacklebarney road—and some stones were hauled and laid on to level that up also towards this tumble dam again; these repairs were done some time ago—some twelve or fifteen years ago, probably.

Quest. Did or not the water that washed that stone wall 40

down cross the road that leads to German Valley before it reached the wall?

Ans. It did.

Quest. How much of the wall next the west end of the tumble dam is now as it was when you moved there?

Ans. Some fifteen or twenty feet—in the neighborhood of that—then it sloped off to this road.

Quest. Is the road, say half way between the two bridges, higher or lower than the top of the stone dam immediately
10 to the south of the road?

Ans. The road is lower—quite some.

Quest. About how much lower?

Ans. In the centre I should say the road was a foot or eighteen inches lower—all of eighteen inches I should think; the water would always cover that road some foot deep or more in a fresh, but never cover this dam—I never saw it run over that; I have seen that road between the two bridges covered with water before the tumble dam was raised—saw it so covered very frequently.

20 *Quest.* Did you ever know a time when the road between the two bridges was not lower than the stone dam to the south of it?

Ans. I never did.

Quest. Since you have lived where you now do, has the road between the two bridges (not including the abutments of the bridges) been raised, and if so when, by whom, and how much?

Ans. It was raised some several years ago, I cannot just tell the time, by Mahlon Ward repairing it for the turnpike
30 company; I helped him do it; it was raised some four or five inches I suppose.

Quest. Has it been raised more than that once?

Ans. Not that I know of there.

Quest. Could it have been raised any appreciable height without your noticing it?

Ans. It could not to any amount; there might have been some little dirt drawn there to cover those stones, on account of the water washing it off of the road, but not to any amount.

Quest. Is the flume which is now there higher or lower
40 than the old flume, or is the one now there higher than the one there when you moved there?

Ans. The one there now is higher than the old one, I mean the trunk that leads to the mill; the forebay is just the same as it was, no higher or no lower; by the forebay, I mean that which passes the water from the pond into the trunk.

Quest. Has there been a new forebay put in there since you have been there?

Ans. There has not—no new forebay; it rests upon timbers at the bottom, and these timbers are laid on a rock, a large rock which has been blasted out, and stone laid up for this purpose on the back side, I suppose; the front part rests 10 right on the large rock; the flume has never been altered, except by putting in two new bents near where it joins on to the trunk, since I lived there; the flume remains in same bed that it did—neither higher nor lower; I do not know how much higher the present trunk is than the old one.

Quest. Did you know Thomas M. Carlile in his lifetime?

Ans. I did—I have known him ever since he was a small schoolboy up to time of his death.

Quest. Did he, in his lifetime, request you to go with him to Gen. Cooper's? 20

Ans. He did; I went with him.

Quest. How long was that before his death, as nearly as you can tell?

Ans. I cannot tell exactly the time—I think a couple or three years probably, or a shorter time.

Quest. Did he tell you what he was going to see the general for at that time?

Ans. He did.

Quest. What was it? [Objected to by Mr. Little.]

Ans. To settle with the general about drowning this 30 land—this meadow.

Quest. At the time you went with him, did he tell you in what way he wanted to settle with the general, or was willing to settle with him, for drowning his land, and if so, state what he said upon that subject? [Objected to by Mr. Little.]

Ans. He said that he wanted Mr. Cooper either to pay him for that land that he drowned, or to pay him the damage for it—that he wouldn't let it lay so any longer.

Quest. Did he state to you at that time how much he 40

thought the land was worth; or how much he wanted for it? [Objected to by Mr. Little.]

Ans. He did not.

Quest. Did he, at any time prior to that, state to you what he was willing to take for it? [Objected to.]

Ans. After Gen. Cooper had bought the Hortons' land up the river, he would sell him his drowned land, or his whole farm, at the same price he paid the Hortons.

Quest. Did you hear him say that more than once?

10 *Ans.* I never did; I frequently heard him say that he thought the Hortons got a good price for their land.

Quest. As you and he were going to Gen. Cooper's on the occasion you have spoken of, did he say anything about what damages he ought to have if he was paid for the damages instead of selling the lands, and if so, state what he said on that subject? [Objected to by Mr. Little.]

Ans. He did not state anything to me about what he thought he ought to have till I asked him what he thought he ought to have per year as damages; he then replied, he
20 didn't know, and asked me what I thought he ought to have a year; I told him that I didn't hardly know, and I asked him if he didn't think that \$25 or \$30 would pay him for the hay, the fodder hay he ought to get there, and he said he didn't know, and that was the end of the conversation.

Quest. Did you and he go to the general's house that day?

Ans. We did; we did not see the general, he was not at home; his people told us he had gone to Morristown; Carlile spoke to me that day to go with him some other time; I told him I would, but never did.

30 Adjourned for dinner, to half-past two P. M.

Half-past two P. M. parties and counsel meet.

Witness says, I have measured the length of the tumble dam—it is thirty-six feet in the clear from one side of the wasteway to the other, between the two pieces marked 6 in the model; the length of the posts on which the cap rests is about twenty-one inches; from the sill to the top of the cap piece is thirty inches, and the cap piece is nine inches thick; I made the measurement the last time this morning.

Quest. Prior to this new dam being put in, did or not the

water ever run over the road west of the most westerly bridge?

Ans. It did.

Quest. Frequently or seldom?

Ans. Very frequently—whenever there was any high water.

Quest. Do you, at and about the bridges, perceive the depth of water to be much increased from what it was before the dam was raised, and if any, about how much?

Ans. If the gates are down and the dam full, it is deeper right by the far bridge and along the road—it is quite some 10 deeper—can't tell how much—perhaps a foot when the dam is full, may-be a little more than a foot.

Quest. Is the increase of water there as much as two, or two and a half, or three feet?

Ans. It is not, sir.

Quest. If the water there were three feet higher than it was before the dam was raised, what effect would the water have on the road between the bridges and that piece of ground that lies directly south of it, between it and the stone wall?

20

Ans. It would cover that road between the bridges, also on the east side of the bridge towards the mill house, and the west road on the west side, and flow up to this bank between the bridges pretty well up the bank towards the wall.

Quest. Has the road between the bridges since the dam was raised been any more frequently covered with water than it was before the dam was raised?

Ans. Well, I don't know as it has; the road has been raised there some; before it was raised it used to flow as frequently over the road as it does now.

30

Quest. Do you know Mrs. Carlile's meadow between the river and the house?

Ans. I do.

Quest. Have you been on it frequently or seldom?

Ans. I have been over it very frequently; I first knew this meadow when I moved to Cooper's mill, and have known it from that time on.

Quest. Did you ever help mow it, and if so how often?

Ans. I did help mow it, some three seasons I believe, not over four, at any rate.

40

Quest. Who was the occupant of the farm at that time?

Ans. Mulford Carlile, I think; I don't know that I ever mowed it for him and his brother John—I charged the mowing to John Mulford; I never mowed or helped mow the meadow after the general raised his dam.

Quest. What quantity of hay did it yield when you assisted in mowing it?

Ans. I can hardly tell the quantity; I helped draw it once, and stacked it for Mulford—there were two small stacks off
 10 of it; I think I built one stack that we put three loads in, and topped it off with wild grass from near the river, and in the other stack I put two loads and a little more; all the hay that was got there that season was put in those stacks, I believe; I did not help draw any anywhere else off of the meadow; we drew one load, I think, off of the upper meadow, and put it into these stacks—this was what we cut off of the upper end of the upper meadow; the lower end of the upper meadow was not cut, it was boggy; the loads were pretty reasonable loads, probably twelve to fourteen
 20 hundred in a load of this loose hay out of the meadow; the hay was some wild hay, a little fine bogs like—and there was some that resembled the red-top grass, and made very good hay—and there was some water timothy in amongst it; I think there was no foul meadow in it; I never heard it called foul meadow at that time—it's what we call water grass—is quite a good quality of hay.

Quest. What would be the value of a ton of such hay as you got off of that meadow compared with good timothy hay?

Ans. I wouldn't want to give for such wet meadow hay
 30 more than half the price that I would for upland timothy hay.

Quest. Did you ever see any hay cut on that low meadow that was, in your judgment, worth more than half what first quality timothy hay would be worth?

Ans. The upper end of the lower meadow was a better quality of hay than it was at the lower end at that time; a ton of that hay would have been worth more than half of what a ton of timothy hay would have been worth; the lower part of the meadow was not worth so much.

Quest. What proportion of the meadow produced hay that
 40 was not worth over half of the value of good timothy?

Ans. About half of the whole meadows, upper and lower.

Quest. Was there a difference in the yield of that meadow in the different years you mowed it, or was it pretty much the same each year?

Ans. I can't say that there was any difference, to my knowledge.

Quest. Was there any part of the upper meadow that wasn't mowed, and if so where was that part situate, and how much was there that was not mowed?

Ans. It was the lower end of the upper meadow immediately at the bend of the river—about a quarter or half an acre—probably half an acre.

Quest. What made that unfit for cutting?

Ans. The wash of the river, and its being more boggy.

Quest. At that time was there any part of the lower meadow which was not mowed, and which was not fit to mow—and if there was any, how much was there, and whereabouts was it?

Ans. It was the lower end of the lower meadow—a low place where the water oozed in from the river; there was a small piece around the brush that we did not cut except to top off with—perhaps there was half an acre of it.

Quest. Was there any part of the lower meadow which you did cut that was boggy, or had bog grass in it?

Ans. Yes, we cut a little that was quite boggy joining this half acre; the whole meadow had more or less of this boggy bog grass in it, except the knolls—where was a better quality of this water timothy.

Quest. How was the ground in the lower part of that lower meadow, generally solid and free from water or otherwise?

Ans. It is kind of sour wet land; there was one place that was watery, except in the driest time of the summer; the whole meadow land, except those knolls, was more or less wet—was unfit for plough land—you couldn't use it for that.

Quest. Is any part of that meadow kept wet by water from any other place than the river?

Ans. Yes, there is—the end next to widow Carlile's house, towards her barn; along the high land there are springs, and the water oozing out; it is springy on the ridge

that divides the upper and the lower land—right adjoining the lane that leads from the barn.

Quest. For what distance along that ridge is it springy?

Ans. Some seventy-five or eighty yards from this lane fence up along the orchard towards the upper end of the meadow, between the high land and the low land.

Quest. Where does that water go to—towards the river or from it?

Ans. Towards the river.

10 *Quest.* Does it flow on the surface or ooze through the ground?

Ans. Both; in the spring of the year some part of it flows on the surface, and it oozes through the ground at other times.

Quest. What, in your judgment, was that meadow land worth an acre at the time you mowed it—say the last year you mowed on it?

Ans. I declare I hardly know—it depends on circumstances; I wouldn't want to give a great deal for such land as
20 that—it might be worth more to others; I wouldn't give twenty-five dollars an acre for that or any other low land of that kind; I have got some land of this kind—boggy—it cost me \$10 and some cents an acre, and is poor property; I was brought up on a farm, at work—have owned a farm some eighteen or nineteen years.

Quest. Have you since the year 1846 been over this meadow land of Mrs. Carlile, and if so, has it been seldom or frequently?

Ans. I have frequently.

30 *Quest.* For the last ten years, how has the grass which has grown on that meadow compared in quantity with the grass that grew there in the seasons when you mowed it?

Ans. The quantity has been full as much or more than when I mowed it—the quality is not so good.

Quest. About how much of that meadow is flowed by water kept back by the dam when the stream is in an ordinary condition and the pond full—I mean actually covered with water, so that you can see it with the eye on the surface?

40 *Ans.* When the pond is full, running over this present

cap piece now on the tumble dam in an ordinary water, it would cover two-thirds of the lower meadow and a little more, I think; I have saw it in a high time of water pretty much all covered before and since the raising of the dam.

Quest. About how much of the lower meadow would be covered with water when the water was in an ordinary condition and the pond full before the dam was raised?

Ans. The lower end of this meadow, where the slough was, perhaps one acre.

Quest. How much is contained in the upper and lower 10 meadow together?

Ans. I suppose about four or four and a half acres—may-be a little more—I never measured it; the upper meadow is long and narrow.

Quest. How much do you think there is in the lower meadow?

Ans. I always called it from two and a half to three acres, by looking at it; I always considered there was about an acre or an acre and a half, probably a little less, and perhaps a little more.

20

Quest. Do the upper and lower meadows which you have been speaking about lay south of the road that runs from the Carlile bridge?

Ans. They do.

Quest. Do you know a strip of land lying on the upper side of that road along the river lying unfenced?

Ans. I do.

Quest. What use was made of that land when you first moved into that neighborhood?

Ans. Nothing more than to run cattle on; it was very 30 bushy ever since I have lived there; I think it was fenced when I first moved there; I never knew it to be ploughed nor mowed since I have lived there; a small part of it down next to the river was affected by the water when I moved there in a high time of water; I remember when the channel of Black river was straightened between Budd's bridge and Carlile's bridge; a ditch was cut—it is not straight yet; I helped in making the ditch and the outlet both; the outlet commences a little way above the bridge; it must be some twenty years ago that this work was done—I can't tell ex- 40

actly ; I think I had lately moved where I now live when the work was completed.

Quest. From the outlet up to Tanner's brook was the bed of the river lowered much—and if so, about how much ?

Ans. It was widened and lowered both ; at the upper end, I think it was lowered a foot to eighteen inches, but I cannot tell—it is only guess-work.

Quest. Has the making of that new channel for Black river produced any effect on the mill pond—and if so what ?

10 *Ans.* It has ; it has filled in the pond and stream all the way up to what we call the upper big rocks ; these rocks are down below the widow Carlile's place, right at the head of the mill pond, on the east side of the river on the Horton place.

Quest. Above that has it produced any effect—between those rocks and the Carlile bridge ?

Ans. It has filled the river in some places with sand and dirt, and at the upper end of the widow Carlile's meadow, that strikes nearest the river, is a bold bank each side of
20 river, and a narrow place in the river—there it is grown up with brush, and is or has been (and I suppose is yet) filled up very much with rails and one thing and another ; it is quite shut up there with old rails, brush, some dirt, and one thing and another washing in ; this prevents the water very much from escaping in a high time—it spreads over widow Carlile's, and John Carlile's and the Hortons' ; I have been through this place some four or five weeks ago, in a boat.

Quest. In the last fifteen years, what depth of accumulation has taken place in that pond, in sand bars, &c., accord-
30 ing to your judgment ?

Ans. In some places more than others—from a foot to, in some places, four feet—sand, muck, &c., comes down the channel ; it is filled in very much at these rocks at the head of the pond, as much as three feet on the side next the main channel ; the channel has got very narrow now.

Quest. Since you moved near that mill, have you been up and down that river considerably ?

Ans. I have.

Quest. Have you ever detected any offensive smell along
40 the river at places above Carlile's bridge ?

Ans. I have.

Quest. How far up?

Ans. All the way up—clear above Budd's bridge.

Quest. Was that before or since the dam was raised?

Ans. Both, sir.

Quest. Is there more or less of that below Carlile's bridge than above it?

Ans. It's about the same, sir; there is not so much at the pond since the dam was raised; I live up on a high bank, within about fifteen paces of the pond—on the east side of 10 the pond.

Quest. How has been the health around the pond since the dam was raised, compared with what it was before?

Ans. I have heard no complaint of it being any worse since the dam was raised, as to health on that account; some years ago—it was before the raising of this dam—there was considerable of fever and ague there—I had it myself, and my family, and Mr. Nichols' folks; I have not had it since nor heard of any one, to my knowledge, having it just about the place.

20

Quest. Did Mrs. Carlile at any time ask you what yearly damages you thought she ought to ask Gen. Cooper for the injury to her meadow land? [Objected to by Mr. Little.]

Ans. She did.

Quest. Did she say how she came to be making the inquiry—what had led her to make it?

Ans. She did not to me at that time.

Quest. Did you tell her how much you thought she ought to have? [Objected to by Mr. Little.]

Ans. I did.

30

Quest. What sum was it?

Ans. I told her to take twenty-five dollars, and if he wouldn't give her that, to take twenty, and settle it with him; she made no reply to it.

Quest. Had Gen. Cooper, at that time, said a word to you about the matter, or any one in his behalf?

Ans. He had not—no one in his behalf to my knowledge; Mr. Vandoren and me had some conversation about it; she had called on me prior to this to get the matter settled with Mr. Cooper, and to collect the damages for her; I had called 40

to see Gen. Cooper twice, and did not see him—he was gone from home; I requested Mr. Vandoren to say to him that he should call up and see the widow, and it could be easily settled I thought, and Mrs. Carlile told me afterwards that Mr. Cooper had called to see her, and she was going to Mr. Swayze's to get Mr. Swayze to go with her there, or to bring Gen. Cooper up to his place to aid her in settling of it; I believe that was the last I had to do with the settlement of it, or advised her anything about it.

- 10 *Quest.* Did she ever tell you whether or not she had been asked to sign or join in an agreement with James S. Dickerson, and John D. G. Carlile, and Charles Ming and others, to carry on a prosecution against Gen. Cooper for damages alleged to arise from his mill dam? [Objected to by Mr. Little.]

Ans. She did.

Quest. What did she tell you about that? [Objected to by Mr. Little.]

- Ans.* She told me that Mr. Dickerson, Mr. Carlile, and
20 Mr. Ming had requested her to sign a paper with them all, to bring up this prosecution here against Gen. Cooper here; I advised her not to do it—to go upon her own hook—because I said to her, I thought her case was sure enough—not to be afraid of the expense of it.

Quest. Did she tell you whether Charles Ming and Spafford Dickerson, and John Carlile favored her settling with Cooper, or opposed it?

Ans. She didn't say anything about that.

- Quest.* Do you know from what she said, or in any other
30 manner, whether Charles Ming and Spafford Dickerson, and John D. G. Carlile, or any of them, offered her money to carry on the suit against Gen. Cooper? [Objected to by Mr. Little.]

Ans. I do not.

Cross-examination of *John G. Crater* by Mr. Little.

- It was some four years ago, probably between four and five years ago, that Mrs. Carlile called on me to aid her in settling the damages; I never saw Gen. Cooper in reference to it for her; I did not leave word at his house for what purpose I called there.
40

Quest. Why did you call on Mr. Vandoren?

Ans. He was at work building a house for Gen. Cooper there by the mill; I told him that I had been there twice and did not see the general, and wished him to tell the general to call up, to save me the trouble of going again; I told John Vandoren, because he was going right back and forth at least every couple of nights and saw the general.

Quest. Wasn't it because he was in Gen. Cooper's employ?

Ans. It was not.

Quest. Did he pass Gen. Cooper's at all in going home? 10

Ans. He did not.

Quest. When you told Mrs. Carlile to take twenty-five dollars, and if he wouldn't give that, to take twenty, and settle it, did you do so because you thought that was her full damages, or did you do so because you thought it was better for her to take that than to have an expensive lawsuit with the general?

Ans. On both accounts, sir; twenty-five dollars I thought was the value, and I thought she had better take twenty than go into a lawsuit. 20

Quest. Had you been on that land after Mr. Carlile's death, and previous to this attempt at settlement, to make any examination of the land?

Ans. Not to make any examination of it; I had been on it, but not to make an examination.

Quest. For what purpose had you been on it?

Ans. For the purpose of gunning and trapping along the river.

Quest. At what seasons of the year?

Ans. Both in the summer season and winter season, after 30 his (Carlile's) death.

Quest. Did you find any more water there than you used to find?

Ans. Sometimes I did; at this lower end, at all times I found more than in his life, before the dam was raised; I live near the dam, may-be a hundred yards from it.

Quest. What makes it more healthy there now than it was before the dam was raised?

Ans. I consider it on account of that herbage and stuff on the ground being covered with water. 40

Quest. The pond, you say, is filled up very much since the ditch was dug—do you think the average depth of water since that filling up is greater or less than it used to be in the pond?

Ans. Immediately at the road and dam it is deeper—farther up it is not so deep; I mean it is deeper by the dam near the road, for perhaps four or five paces back of the dam; above that the pond is not as deep as it used to be—that is for the last four or five years; I don't think the amount of
10 water in the pond is any greater than it used to be; I think it held quite as much before the dam was raised as it does now.

Quest. Can you tell, then, how it is that they now drive four run of stone when they used to be able to drive only two?

Ans. Formerly there was but two run there to drive; latterly they have had on four and another wheel; they require more water to be drawn from the pond to drive four than they did to drive two; the surface water spreads further, and
20 that gives them the same quantity they had before.

Quest. Will you explain to me how the same quantity of water is now made to drive four run of stone as was required to drive two before the dam was raised?

Ans. They have more head of water in the trunk than they had before the dam was raised.

Quest. How much more head of water?

Ans. Probably about a foot, may-be a little more, and may-be not quite so much.

Quest. How much more water, in quantity, does it take to
30 drive four run of stone than two? [Objected to by Mr. Vanatta.]

Ans. I don't think that the two lower run take as much water as the two upper ones—I mean you could drive the four without doubling the amount of water; the lower run of stone are smaller, and the water strikes the wheel higher.

Quest. If there is no more water in the pond than there used to be, and there is four run of stone in the mill, and the pond has filled up, as you say, with mud and sand, how do you account for the fact, that the bed of the pond is less
40 frequently exposed to the sun than it used to be?

Ans. By this foot, or whatever it is, of surface water; the bed of the stream is shut up a considerably—it is very narrow, and forms the channel of the pond, and that is what is filled—and the channel is very crooked; these large rocks on the Horton side, at head of pond, are about one hundred and fifty yards from Mrs. Carlile's lands on the west side of the river.

Quest. Has that accumulation that you speak of, that filling up of the pond, increased more or less rapidly within the last ten years than before? 10

Ans. More rapidly within a few years, I think much more rapidly.

Quest. Would you or not have supposed that that would have been more rapid immediately after the opening of the ditch than twenty years afterwards?

Ans. I would not suppose that the pond would fill up immediately after the opening of the ditch, in from three to five years, as it has within the last two years, on the account that the ditch then was clean and banks firm—it kept itself clean—it has now caved in, burrowed out by the muskrats 20 more or less, and the large body of water that remains upon all this flat towards the Plains in a heavy fresh, with the pressure upon this loose dirt remaining in this ditch, drives it into the pond.

Quest. You say that when the pond is full two-thirds of the lower meadow would be covered with water—how much would the upper meadow be affected by it?

Ans. But very little—it would be affected a little at the lower end of the upper meadow.

Quest. Where does your land lie that you say is like this 30 of Mrs. Carlile?

Ans. It lies on the Fox-hill road, southwest from Cooper's mill.

Quest. Is it the same kind of land with all this low land along Black river?

Ans. It's low wet land, exactly as this land is along Black river—wet and boggy.

Quest. You said, in your principal examination, that you have some of this kind of land costing you \$10.05 per acre

—do you mean to say that it is, either in quality or value, equal to the land along Black river?

Ans. I would as lief own the same that I do own as any I have seen along Black river that is wet and boggy, either before or since the raising of the dam.

Quest. Do you think it is equal in value to John Carlile's land along this river, or Charles Ming's along this river, or the land that used to belong to Daniel Budd?

Ans. I think it's just the same value to me as any of that
10 land, if I should own it.

Quest. How much do you value yours at now?

Ans. I don't value that wet land worth ten dollars an acre to me now—it never has been.

Quest. Have either or both of the bridges across this dam been raised since your recollection?

Ans. They have both of them twice—once I raised them both myself; that was some twenty years ago that I raised the one; I built a new bridge there and raised it; I raised it while Horton and Swayze were keeping store there at
20 Cooper's mill—this was the west bridge; the other bridge I raised a few years afterwards; I put in new abutments and new bearers, and planked it; the bridge I built was built before the raising of the dam, I think; the other one (which I repaired) was probably since the raising of the dam; George D. Emmons raised them since that; I never knew either of them raised by a man named Apgar; I don't know that he raised the abutments—he put in a new middle bent; I never knew of Gen. Cooper's drawing any earth on the road between the bridges.

30 *Quest.* Who helped you make the measurements at the dam?

Ans. I measured it two or three times—I measured it last this morning—then George Grey helped me—he stood by me.

Quest. How soon after Gen. Cooper had bought the Horton property was it that you and Mr. Carlile went to see him about settling for the damages?

Ans. I think it was some time—cannot tell how long exactly.

Quest. How long was it before Mr. Carlile's death?

40 *Ans.* Well, a couple of years or a little more—can't tell.

Quest. Is the water in the trunk now deeper or not so deep as it was before the trunk was changed when the pond is full?

Ans. It's deeper, sir; I am sure it is deeper than it was in the old trunk.

Quest. How much?

Ans. Probably about four inches; this trunk is not full when the dam is full; the trunk itself is eight inches deeper than the old one was up to the cap piece; I made the old trunk (by my measurement) four feet and ten inches in 10 depth—I measured on the post and allowed for the thickness of the plank which was at bottom of old trunk; I made the new trunk (in my measurement) five feet eight inches; the water, when the pond was full, lacked four inches from filling this trunk.

Quest. Was the old trunk planked up all the way to the top of the posts?

Ans. There were some planks off on the top toward the mill; in an ordinary time of water, if the mills were not running, the water would run over the land side of the old 20 flume at these places where the planks were off; those planks were off from ten inches to a foot in width—some places not so much; I have seen boards tacked along there; when those boards and plank were on I have seen the water in the flume nearly or quite up to the top.

Adjourned until 7 p. m.

Seven p. m.—Cross-examination resumed.

I was called on by Mr. Vandoren to help put up those timbers at the time the dam was repaired; I was working for no one in particular; he asked me to help them as a 30 neighbor—his strength was not sufficient to handle them; I was probably there four hours—worked till we got those heavy timbers up; there were two long gates in the old dam; they took the whole space, except the two ends where it was planked, I should judge; each gate was fourteen feet long when I went there; I should judge the gates were ten inches or more wide—they didn't quite shut it up to the cap piece—left a little space above them; they were kept in their place by a post in the centre and a post at each end;

they were raised by a stem in the centre, and a crow-bar over a stick of timber, at the time I went there, till the stems gave out by raising and working at them; then in a fresh of water, when Mr. Douglass was there, I have went many a time and helped pry them out—get at one end and pry them out—and then when the fresh was over have helped carry them back again.

Quest. Were the same gates there when Mr. Douglass went there that were there when you moved there?

10 *Ans.* Yes, sir; and I guess for one or two years after Douglass went there.

Quest. Mr. Vandoren did not put in new gates then when he made the repairs in 1846?

Ans. Yes, sir, he did, the same ones that are there now—the same gateways that are there now; I can't say that the same stems are there, or even the same planks in the gates as those which Vandoren put there in 1846; the gates now are of the same width and length as those Vandoren put in; the gates that Vandoren put in closed up the whole space
20 between the sill and the cap.

Quest. After those repairs then, what constituted the tumble of the dam when the pond was full so that the water flowed over?

Ans. This cap piece, when the gates were down.

Quest. Did the pond, after those repairs, generally fill after those repairs were made?

Ans. Not unless we had rain or something of that kind—or if they was not running the mill—then it would be filled; if they are not running the mill nor the saw mill it will
30 now fill in course of a day or two; when they are running only two run of stone it will fill up in course of a couple of days.

Quest. Won't it fill up in one night so as to run over the cap?

Ans. No, sir; not if they have been running both mills, in a common time of water.

Quest. Have the mills been running pretty regularly for the past month?

Ans. I have not saw the whole four run of stone running
40 for the past month, or perhaps two months—sometimes I

have seen three run running part of the day; in running two run, or three, and the saw mill, it will run the pond right down, so that they have to stop the saw mill.

Quest. How has the water been at the dam for the last month?

Ans. Some mornings it will be full, and some not.

Quest. Have we had much of a freshet within the last month?

Ans. Yes; we had a pretty heavy rain last Saturday a week ago—it raised the river—it wan't what I call a freshet; there has been nothing that I consider a freshet within a 10 month.

Quest. Before these repairs in 1846, were these spaces between the sill and the cap-piece planked up as they are now?

Ans. No, sir, they wasn't; the smallest ones at each end were planked, that is the spaces of three or four feet at each end of the dam; the rest of the spaces were gateways until the post in the centre and the cap piece were carried away; then they put in new posts and a new cap piece and made three gateways—having three gates instead of two; there was a platform built at the central part of the dam out to- 20
wards the pond, on which we stood when we raised the gates—and to get to the platform we put a plank from the bank to the platform, and when the plank wasn't here we had to walk on the cap piece.

Quest. Before the repairs spoken of, did the water, when the pond was full at an ordinary time of water, discharge itself over or under the cap piece?

Ans. It discharged under the cap piece over the gates; the gates didn't quite come up to the cap piece?

Quest. You speak of the water being eight to ten or 30 twelve inches deeper than it used to be—have you any water marks you judge by?

Ans. I have; it's a rock at the end of Gen. Cooper's house, right by the pond; as it used to be, when the pond was up to the height of those gates in an ordinary time of water, the water came just up to the top of the rock, just left it bare; now that stone is covered, when the dam is full, with a foot of water, or a little more, when the water is oozing over the cap piece of the present dam.

Quest. How much deeper than one foot is the water upon 40 the rock?

Ans. I drew my attention to it about a week ago—the dam was just full—I supposed it about a foot then; I couldn't get to it to measure it—I was on the rocks on the shore, five or six feet from it?

Quest. Have you ever measured the water on the rock?

Ans. No, sir.

Quest. Have you any other watermarks there?

Ans. None about the dam.

Quest. Have you any watermarks about the pond that you
10 have examined?

Ans. I have—what we call the swimming rocks; they are about half way up the pond, on Mr. Horton's side of the stream, on the east side; there are two large rocks there—the rocks are above the deep hole; I have never measured the water there, except from the marks upon the rocks when the dam is filled; I never measured it; I judge from the marks when the dam is filled and when the water is down; when the water is down, so as to be a little below the cap piece, it is about a foot lower on the rock than when it is
20 just oozing over the cap piece.

Quest. How did you understand this dam to be raised?

Ans. By the alterations of those posts and this cap piece, making the posts longer.

Quest. Did you understand at the time how much longer they were than the old ones?

Ans. I did not; the bottom of the old forebay was not on a level with the old trunk; the old trunk stood above the bottom of the forebay some eighteen or twenty inches, probably more; I never measured it—but I went up from the
30 forebay into the trunk many a time; I got my information from measuring the old ranger pieces that run under the old trunk and rested upon the outside sill at the bottom of the forebay, and the ties that went around the old trunk—supposing those ties to be six inches deep, running across those ranger pieces to place the bottom of the flume upon, and two inches depth of plank on the top of them.

Quest. When did you make all these measurements and this calculation?

Ans. Some year ago, or probably more; Mr. Carlile called
40 on me to go down the river below the mill with him to look

at some old timbers there that we supposed came from under this old trunk, and around the old trunk as girths to hold it together—that's one time; he then referred me to some of the same kind of timbers that he had carried up to Obadiah Howell's wagon-house; I measured them also, and put the size of them down at that time; I have measured those down the river since; I went to them this morning, and I went to the wagon-house this morning and measured the same lot again; I found them the same size I had marked them to be before; the other ranger pieces I have measured 10 at different times—once last week, on Monday or Tuesday morning; I measured them again this morning; those long timbers that run under the old trunk, from the forebay to the mill, I call ranger pieces.

Quest. Will the measurements of the timbers which you have made enable you to determine how much higher the bottom of the trunk was than the bottom of the forebay, and if so, tell us how much it was?

Ans. Yes, sir; if those timbers they found down the river should be the same timbers that were under the old trunk, 20 it will make the old trunk at least eighteen inches higher than the bottom timber of the forebay.

Quest. Have you that calculation?

Ans. I have the measurements—I made the calculation as I sat here.

Quest. State the mode by which you make the calculation and arrive at that result?

Ans. I measured the ranger pieces at ten inches, the cross ties under the trunk six inches, plank in bottom of trunk two inches, making it eighteen inches from the timber under the forebay up to the offset in the old trunk, providing those timbers which I saw down the river and at the wagon-house are the same ones that came out of the old trunk. 30

Quest. In this calculation you assume, do you not, that what you call the ranger pieces were level with the bottom of the forebay?

Ans. Yes; the bottom of the ranger pieces rested upon the same timber that constituted the bottom of the forebay.

Quest. Do you know whether that was so or not?

Ans. Yes, sir; for I helped take them off—one of them; 40

that was at the time they took down the old trunk to put up this one; John Vandoren and, I think, a man named Reeve, and I think Stryker, helped at this work; some of the rest of the ranger pieces they had thrown off before I got there; the rafters of the dam do not touch the sill now—one of them comes up to it; they are worn off by some means; I don't know that any of them were cut off at time the new sill was put in; some of them were rotted off at the time; some were sticking out at the time; there were notches or
 10 ship-laps cut in the new sill for the rafters.

Quest. Did you take down any part of that stone dam to get that sill on?

Ans. We took some few stone that seemed to hinder us from shoving it in, and some was out under this old sill, broken out in places by water or some other means.

Re-examination by Mr. Vanatta.

Quest. Do you know whether the old timbers, which you have spoken about having measured, ever formed any part of the trunk of that mill of Gen. Cooper?

20 *Ans.* I do.

Quest. How do you know that fact—I mean as to those that you found down the river or in Howell's barn?

Ans. Only the ranger pieces I know to be the pieces under the old trunk; there were some five of those which were made into bearers, and are now under the present trunk.

Quest. Whereabouts down the river did you see the timbers that you measured?

Ans. Down back of the mill—down a waste way that goes from this present trunk, and that used to go from the old
 30 trunk; I found them probably thirty or forty yards from the old trunk way; Mr. John D. G. Carlile pointed them out to me about a year ago; I did not know they were there until he showed them to me; there were there what I should call some cross ties, some pieces of decayed posts with the ends off, and a cap piece over the top of these posts.

Quest. How many pieces in all did you see at this place down the river?

Ans. Some four or five pieces and part pieces together.

40 *Quest.* Can you say that they had ever been in the trunk that was torn down in 1846?

Ans. I can't.

Quest. Can you say whether the trunk at that mill hadn't been repaired and ever built anew several times during the hundred years that elapsed prior to 1846?

Ans. I can't say.

Quest. Who first showed you the old timbers in Mr. Howell's wagon-house?

Ans. Mr. John Carlile; I had never seen those timbers before to my knowledge, unless they were in that old trunk; I don't know of my own knowledge how they got into 10 Howell's wagon-house.

Quest. Did you ever measure the depth of the water in the old trunk?

Ans. I did not.

Quest. Did you ever see it measured by any one else?

Ans. I did not.

Quest. Is, then, your statement here, as to what was the depth of the water in the old trunk, a conclusion that you draw from measuring the old timbers you found down the river and in Mr. Howell's wagon-house?

20

Ans. That's the only way.

Quest. Since Black river was straightened between Carlile's bridge and Budd's bridge, has the channel above Budd's bridge been straightened and deepened?

Ans. I don't know anything about that.

Quest. Have there been since the ditch was cut, of which you have spoken, many side ditches cut from the meadow lands running into the main ditch?

Ans. There have been.

Quest. Have they contributed in any degree to furnish 30 matter and sand for this pond?

Ans. I suppose they would discharge into the main ditch.

[All this part of the examination objected to by Mr. Little, as not being proper re-examination.]

Quest. Are or not the banks of those side ditches being undermined and falling into the ditches?

Ans. More or less, sir.

Quest. Is there any sediment or sand settling in the outlet of main ditch?

Ans. Not any, except where a timber is lodged across where the eel-weir was about in the centre of the outlet.

Quest. When those old long gates were in, that you have spoken of, which left a space between the cap piece and the top of the gates, did they ever put loose boards on the top of the gates to fill up that space?

Ans. I have saw boards there, either upon the long ones or upon the three short ones that were afterwards put there—I think it was upon the three short ones.

- 10 *Quest.* You say that the dam was raised by increasing the length of these posts, and that you saw some of the old posts there when the new dam was made—about how much longer, as near as you can judge, were the new posts then put in there than the old ones?

Ans. Some six or eight inches—can't tell positively.

Quest. Last spring did you see the water drawn down at the dam for a period of something like ten days, and observe during that time how the water was above the Carlile bridge? [Objected to by Mr. Little.]

- 20 *Ans.* I did see the gates all up from Saturday till the next Tuesday week; there was water over those meadows—Mr. John Carlile's, Mr. Dickerson's, Mr. Waters', and Mr. Creger's—you could see it from the highway; at this time the water was some fifteen or sixteen inches from the top of the cap—it was running over the sill some five or six inches.

Cross-examination resumed by Mr. Little.

Quest. What is your business?

- Ans.* I practise law a little, writing for other people a little, doing any kind of business that they see fit to call on me to
30 do for them, gunning some, fishing some, and attending to my farm.

Quest. Are you in the employ of Gen. Cooper in this case, to hunt up evidence for him, or in any other way?

Ans. I am not in his employ to hunt up any evidence for him; I have been called in by Mr. Cooper to view this water, and have waited on him.

Quest. How long since you were called in by him to view the water first?

Ans. Some two years ago and upwards, I think.

Quest. Have you been in his employ in that respect since that time?

Ans. At two or three times I went, at his request, up the river here to examine that water, and helped survey the land with Mr. Carey in the widow's meadow, which this water flowed over.

Quest. Are you or not under pecuniary obligations to him, and if so to what amount?

Ans. I am, sir, indebted to General Cooper in amount of one thousand dollars. 10

Quest. When was that debt contracted?

Ans. Last spring, sir, I think in March.

Quest. Was it for money lent?

Ans. Yes, sir.

Quest. How secured?

Ans. By a mortgage.

Quest. by Mr. Vanatta. On a farm worth how much more than the mortgage?

Ans. Well, some two thousand five hundred, or three thousand dollars more, sir. 20

Quest. by Mr. Vanatta. Did Gen. Cooper ever say anything to you about noticing the water until after Mrs. Carlile had commenced her suit against him in the Supreme Court?

Ans. I don't know what time she commenced it; I think not, because he said that she had prosecuted him.

JOHN G. CRATER.

Subscribed this 10th day of November, A. D. 1863, before me.

ALFRED MILLS, M. C. 30

Tuesday morning, November 10th—parties and counsel appear.

Solicitor for complainant offers in evidence a paper purporting to be a deed from Elias Hudson and John Cooper, administrators of Elias Howell, deceased, to Nathan Cooper, dated 30th April, 1825, R. R. 195, 196, 197, 198, and 199, which I have marked *Exhibit 2* on part of complainant.

A paper purporting to be a certified copy of the will of Nathan Cooper, deceased, dated 4th November, 1818, and a

codicil to the same, dated 11th February, 1828, and a second codicil, dated 12th March, 1834—certificate of surrogate, dated 25th April, 1834, which paper I have marked *Exhibit 3* on part of complainant.

A paper purporting to be a grant from Obadiah R. Howell to Nathan A. Cooper, dated May 10th, 1841, recorded in N. 5, pages 155 and 156, acknowledged 15th March, 1857, which I have marked *Exhibit 4* on part of the complainant.

A paper purporting to be a deed from Julia Horton, Isaiah
 10 Horton, Richard T. Horton, David C. Horton, and Elizabeth C. his wife, and James Vanderveer and Miriam his wife, to Nathan A. Cooper, dated 24th November, 1845, recorded on 25th November 1845, in Morris Records of Deeds, in G. 4, pages 376, &c., which I have marked *Exhibit 5* on part of the complainant.

Nathan A. Cooper, the complainant, a witness produced on part of complainant, being duly sworn, on his oath says:

I am about sixty years old; I have known the mill property on Black river which I now own ever since I can re-
 20 member; there was a mill and dam there when I first knew it; I think my uncle took possession of that mill property in the spring of 1825—took possession as owner; he occupied it as owner till he died, which I think was in April, 1834; I then went into possession under his will, and I and my tenants have had possession of it ever since; I have claimed it all that while as owner, without any question as to my title that I ever heard of.

Quest. After your uncle bought it, was there any alteration made in the mill or mill dam, and if so, what were the alter-
 30 ations or improvements?

Ans. In 1826 he repaired the saw mill, put up a new trunk, or enough of it to run the saw mill, tore down the old frame mill, and built a new stone mill, the same that is there now, except the wheel-house—that is, he put up the walls and put on the roof that season; the next season he went on and finished off the grist mill with two run of stone and the machinery necessary for them, finished up the trunk and dam sufficient to drive them, as was supposed.

Quest. Just state what was done to the dam in 1827, and
 40 how it was left that year?

Ans. The flume that lets the water through out of the pond into the trunk was put in the year before; the stone work under this tumble dam (pointing to the model) we put in as it is now in the fall of 1827, if I mistake not; there was an old dam of stone from the flume to the east end of the tumble dam, and also an old dam of stone from the west end of the tumble dam to the bank towards Obadiah Howell's; we raised that stone work, if I am not mistaken, late in the fall of 1827 as high as it is now, and backed it in with gravel, small stones, &c., so that we thought it would 10 answer for the present—and whether the same kind of structure (as is now on the dam) was then put on the sill or not, I am not certain, or whether pins were put in the sill, and planks put against them, I won't be certain; however, directly after that, the next year, something like the present wood structure was put there—not as high as this; these pieces (marked 7 in model) were not there then; there were posts put in back of the centre of the dam, and I think on them a kind of a structure on which we stood to hoist the gates, and we got to that structure on a plank that ran across 20 to the ground dam on the east side; this is the way it was fixed then, I think.

Quest. When was the stone wall which now stands between the tumble dam and the forebay built?

Ans. The old dam of stone was there in that same place always as long as I can remember, but we raised it in 1827 (if I aint mistaken) as high as it is now; in 1846, I think, there was a new flume, or a part of a new flume put in—and to put in that there had to be a part of that stone wall taken down, and that had to be put up since when the flume was 30 completed; it was taken down aslant from the top to the bottom of the flume—don't know the exact distance; taken down aslant, so the wall wouldn't tumble down; I think not more than fifteen feet, or thereabouts, was taken off on the top; there was no work done on that wall in 1846, that I recollect of, but to fill up that gap; there might have been a few stones replaced that were tumbled off by people going over it to the muskrat traps, but I don't think the height of the dam was raised any; if it was, I have forgotten.

Quest. In 1827 did you have anything to do with raising 40

the stone wall between the tumble dam and the forebay, and if so, what?

Ans. I was there while it was raising, seen to it, and helped do the work; I helped put in the stone with my own hands.

Quest. What part of the time were you at or about the mill at the time those repairs were going on in 1827?

Ans. Well, I was there a considerable—more at the work of the dam than at the work inside of the mill; the mill-
10 wrights were doing their work, and I had one team or more at work at the dam.

Quest. Were you there in 1827, when they built the stone wall over which the water was made to fall?

Ans. I was the most of the time.

Quest. Did you assist in laying it up?

Ans. I did, sir.

Quest. What was put upon the top of the wall that season for the water to run over?

Ans. A stick similar to this (marked 3 in the model), if I
20 mistake not.

Quest. Is the stone wall which is there now, and on which the sill corresponding to this rests, higher or lower, or of the same height as the stone wall was left in 1827, when you had finished it?

Ans. It is the same height it was left in 1827, according to my recollection.

Quest. So far as you know, and according to your belief, has that stone wall (under the tumble dam) been increased in height since 1827?

30 *Ans.* It has not that I recollect of, and I don't believe it has.

Quest. When were the pieces now in the dam (corresponding to those marked 4 in model), which we have called rafters, put in?

Ans. Pieces like these, which you call rafters, were put in in 1827, when this stone wall was built, and a stick put on like that sill (marked 3 in model).

Quest. Did you assist in putting them in?

Ans. I think I did.

40 *Quest.* Are the ones there now the same that were put in then?

Ans. They are, sir, to the best of my knoweledge.

Quest. Have they been raised any since 1827?

Ans. Not as I know of.

Quest. Who did the wood work of the dam in 1827?

Ans. John Vandoren was the boss, and I don't know as I remember who the other men was; I think Ichabod Dorland was one of the millwrights, and Hiram Kimmons was another; I think Vandoren was the boss.

Quest. After the wood part of the dam, similar to the frame work of the present dam, was put there, was or not 10 the space between the sill and the cap piece filled up?

Ans. It was at each end for a ways, I think—I don't remember how far; gates were in the rest of the space.

Quest. What was the horizontal length of those gates?

Ans. I don't remember—probably from eight to twelve feet; I think there were two of them.

Quest. Was there any vacant space between the top of those gates and the cap piece?

Ans. I don't remember particularly about that, but I think there was.

20

Quest. Was that space always open, or sometimes closed and sometimes open—and if closed how?

Ans. Sometimes closed with a piece of board set on the top of the gates and against the upright posts.

Quest. How were those boards put on and taken off—I mean what was the rule or guide as to putting them on and taking them off?

Ans. I suppose a man would take them in his hand and put them on; they were put on for to raise the water, whenever the miller saw fit to do it; at low water they were generally used, I suppose, to raise the water.

Quest. The cap piece on the old dam was put on in what year, general?

Ans. I think about 1828, directly after the work was done in 1827, or it may have been put on in 1827, directly after the work was done; it was found that the boards put there wouldn't answer.

Quest. How long did the frame dam, as put up in 1827 or 1828, continue there?

Ans. That, or one similar to it, was kept there until we 40 repaired it in 1846.

Quest. Have you any recollection of its ever being taken away or torn away between its erection and 1846?

Ans. I have not.

Quest. What was the height of that tumble dam compared with the one that is now there?

Ans. The old one was not as high as the one we put there in 1846 by about the width of the present cap piece.

Quest. How was the old dam used, from 1827 till 1846, or rather how were the mills used during that period?

10 *Ans.* For grinding of grain and sawing of logs.

Quest. Was the mill kept in constant use?

Ans. It was, except it wanted some little repairing—it had to stand still of course then.

Quest. While your uncle owned the mill property, did you or not assist him in his business and in the care and management of his property—I mean your uncle Nathan Cooper?

Ans. I did.

Quest. Did you have the oversight, for him, of this mill property during that period, either in whole or in part?

20 *Ans.* In part.

Quest. From 1827 till 1846 was there any restriction, so far as you knew or heard of, to your using the water according to the will and pleasure of the owners of the mill and its occupants, so far as it could be used and controlled by the dam which was then there?

Ans. None that I know of.

Quest. Has there been since that time?

Ans. There has been none that I know of, except these prosecutions attempted.

30 *Quest.* How did you come to increase the height of that tumble dam in 1846—I mean what originated the idea?

Ans. We wanted to put in two more run of new stone in the mill, and we talked of building other machinery below the west bridge (next to Obadiah Howell's) to be drove by water power; and Mr. Vandoren (a boss millwright) said it could not be done unless we raised the dam.

Quest. Who suggested raising the dam—did it originate with you, or was it suggested to you?

Ans. John Vandoren suggested it to me.

40 *Quest.* Before you concluded to raise the dam, did you do

anything to ascertain how Thomas M. Carlile would act in the event of the increased height of the dam causing water to flow back on to his land?

Ans. I told John Vandoren to ask him what he would say if we raised the dam and flowed any of his land, what he would say and do about it, both—and I think I told Harvey Douglass to ask him too; Mr. Vandoren told me that he had seen him, and told him what we wanted to do, and Mr. Vandoren told me Mulford Carlile said, if we flowed any of his land, and I would pay him as much per acre as I paid the 10 Hortons for land I bought just below him, that I might raise the dam and flow the meadow or his whole farm; that's the way I understood him.

[Before this answer was given, Mr. Little objected to testimony of any conversations had by witness, except with Thomas M. Carlile; and also, before the answer was written, objected to testimony of any conversation between witness and Mr. Vandoren—and also objected to any parol evidence of any agreement as to the flowing.]

Quest. Did Mr. James H. Douglass inform you, or not, as 20 to what Mr. Carlile had said to him? [Objected to by Mr. Little.]

Ans. He did.

Quest. What did he say Mr. Carlile had said to him? [Objected to by Mr. Little.]

Ans. I understood Mr. Douglass to say the same—if I would pay him per acre as much as I did the Mr. Hortons, that I might raise the dam and flow as much land as I wanted to.

Quest. Did you or not direct Mr. Douglass to give any 30 answer to Mr. Carlile as to what you would do—as to whether you would take the land? [Objected to by Mr. Little.]

Ans. I told Mr. Douglass to tell Mr. Carlile that I would do it.

Quest. When was it you told Mr. Douglass that, with reference to the time he communicated to you, what Mr. Carlile offered?

Ans. At the time he told me what Carlile said.

Quest. Did Mr. Douglass inform you whether he had complied with your request?

Ans. I think he did.

Quest. What part of the season was it that you gave these directions to Mr. Vandoren and Mr. Douglass?

Ans. Well, I don't remember; it was while we was getting ready for this work—some time in the summer I think it was.

Quest. Was it after or before the old trunk had been taken down?

Ans. I don't remember as to that—but it was before we
10 had made any move as to putting up the new works; we might have had some of the timber prepared, but it was before we had prepared it for raising the dam.

Quest. At what place did Mr. Douglass inform you that Mr. Carlile consented to your raising the dam, and you told Mr. Douglass to tell him you would accept his proposition?

Ans. I think it was near the spring between the mill and Vanderveer's store.

Quest. At the time the bill was drawn in this case, did you remember having sent Mr. Douglass to Mr. Carlile, and what
20 had passed between yourself and Mr. Douglass on this subject?

Ans. I did not.

Quest. What brought it to your recollection?

Ans. I was in Mendham some month or more ago, and Mr. Douglass came to me, and I wanted to know if he knew anything about the transactions there—and I asked him if he ever heard Mulford say anything, and he told me what I have just said—then I remembered it.

Quest. Mr. Douglass was your tenant in 1864, was he not?

30 *Ans.* Yes, sir; I think his father and he were both there.

Quest. When you gave your direction or consent to the raising of the height of the tumble dam in 1846, did you or not understand and believe that you had the consent of Thomas M. Carlile to the raising of the dam, and that, if it should flow any of his land, he would convey it to you for forty dollars an acre? [Objected to by Mr. Little, as leading.]

Ans. I did.

Quest. Did you suppose there was any doubt or uncertainty about it? [Objected to by Mr. Little, as leading.]

40 *Ans.* I did not.

Quest. Suppose you had not received the consent of Thomas M. Carlile that you should increase the height of your dam, what would you have done as to the height of the dam? [Objected to by Mr. Little.]

Ans. I would not have consented to have raised it.

Quest. Did his consent to raise it, and to sell you so much of his land as might be flowed by the raising in any way influence you in raising the height of the dam and in putting the additional machinery into your mill—and if so in what way did it influence you?

10

Ans. It did influence me to do it—because I thought I had the right to raise the dam and flow his land by the consent I understood him to give, by paying him forty dollars an acre, without any further trouble or difficulty.

Quest. Did you at that time know whether the addition to the height of the dam would flow his land more than it had been previously flowed?

Ans. I thought it would.

Quest. Much or little?

Ans. I didn't think it would a great deal.

20

Quest. What opinion did Vandoren express as to whether it would flow him much or little, or any?

Ans. I think his opinion was that we might flow him some—not a great deal.

Quest. What addition was made to the height of the dam in 1846—the tumble dam?

Ans. The present cap piece that is there now—about nine inches thick, I think it is; I don't remember whether I was there at that mill in 1846 at the time the frame work of the dam was raised and put in; I live about three miles from 30 the mill.

Quest. How was the increased height attained?

Ans. By raising those parts I believe—lengthening them; (parts are marked 2 in model).

Quest. Are you aware of the height having been increased over nine inches, or have you any reason to suspect or believe its having been increased over nine inches?

Ans. That is what Mr. Vandoren said he wanted to raise it, and I have no reason to believe that he raised it any more than that.

40

Quest. Has it been raised at all since 1846?

Ans. Not to my knowledge, sir.

Quest. Have you any reason to suspect or believe that it has?

Ans. I have not.

Quest. What was the cost of the improvements you made in your mill in 1846 and afterwards, until you got it complete as it is now—putting in a new wheel, two run of stone, &c., as it is now, as near as you can tell? [Objected to by
10 Mr. Little.]

Ans. I didn't keep any accurate account of it—I suppose it to be about two thousand dollars—I mean the putting in that trunk and all of it—that's a mere guess.

Quest. What injury would it do to your mill property, in your opinion, to deprive you of the nine inches gained by the raising in 1846?

Ans. Well, I can't hardly tell; I should suppose near one half—perhaps quite.

Quest. What do you estimate the mill property to be worth?

20 *Ans.* I can't hardly tell; I have got several other sites for machinery to be driven by water, and taking into consideration the scarcity of labor, that we must have and do have, and the need of machinery to do the work, I can hardly tell what it is worth.

Quest. Did you hear Daniel Budd's estimate given here in evidence?

Ans. I either heard or understood it was \$10,000 or \$12,000.

Quest. Is that estimate too high or too low, according to your estimate of its value?

30 *Ans.* I don't think it's any too high.

Quest. What's the highest offer you ever had for the property?

Ans. I think I have been asked if I would take \$12,000 for it; that was a number of years ago—may-be seven or eight years ago—may-be not so much.

Quest. Did you refuse \$12,000 at that time?

Ans. Well, I didn't say I would take it.

Quest. In the nine years which ensued between the raising of your dam and the death of Thomas M. Carlile, did he ever
40 say or intimate to you that your dam had been wrongfully

raised, or raised without his consent? [Objected to by Mr. Little.]

Ans. He never did.

Quest. How often, if at all, did he ever say anything to you about his land being injured by the raising of the dam?

Ans. I think he spoke to me once about it—only once, if I remember right, sir.

Quest. When and where was that?

Ans. I think it was near the end of the road that comes out from his place to the Washington turnpike beyond the 10 mill.

Quest. How were you there, and how was he there?

Ans. I think he was afoot, if I mistake not—I rather think I must have been in a wagon—I rode in a wagon then generally; I don't remember that there was anybody with Mr. Carlile—still there might have been; I can't tell how long this was before his death, but I think not a great while.

Quest. State what he said to you, and what you said to him, as nearly as you can now recollect?

Ans. I think he said that the raising of the dam had 20 flowed some of his meadow; there was but few words passed between us; he said he would like to have me pay for the land I flowed; I told him I would do so, and I don't remember whether there was anything more said or not—if there was I do not remember it.

Quest. Anything said about your going to see the land?

Ans. I don't remember—there might have been.

Quest. Why didn't you attend to it in Mr. Carlile's lifetime, and have the matter settled up with him?

Ans. I don't think that he spoke of it as wanting it at- 30 tended to immediately, and I having so much business to attend to, it got neglected—I can't tell any other reason.

Quest. From what he said, did you get the idea that he was seriously or much injured by the flowage? [Objected to.]

Ans. There was but few words said—and from what was said I didn't understand it was of any great importance.

Quest. Did you ever hear, before the commencement of this suit, that he and John G. Crater had ever been to see you about the land?

Ans. I never did, that I recollect of.

Quest. Were you aware that his land was injured by your dam until he spoke to you at the time you have mentioned?

Ans. I was not.

Quest. When did Mrs. Carlile first speak to you about the land after her husband's death, as far as you remember?

Ans. I don't remember how long it was after her husband's death—I can't remember.

Quest. Did you go there to see the land after she drew your attention to it?

10 *Ans.* I did.

Quest. How long was that after she spoke to you first about it, as near as you can tell?

Ans. It was some time—I can't tell how long.

Quest. Who went with you?

Ans. I don't remember whether it was Tommy Churchfield or John Vandoren.

Quest. At the first time you went there, did you examine the land—the meadow?

Ans. I think I did.

20 *Quest.* Did you make any estimate of what the real injury was?

Ans. From what I could see, I thought there was about an acre, or an acre and a half, perhaps an acre and a half, that was injured by the water; I am not certain but what she called on me, and we had some conversation about it, and she requested me to come and see her about it, but I being full of business, did not do it right away; and then she either sent me a line about it, or she called on Mr. Vandoren, I am not certain which; at any rate I understood
30 from him that she had called upon him, and I then sent him to look at the land, and see her (if I am not mistaken), and see what could be done about it; whether I went before Vandoren or after him I am not certain.

Quest. How long have you known that meadow?

Ans. I can't tell that; I have went ducking down the river, probably twenty years ago, right along by the edge of the meadow.

Quest. What estimate do you place on such land as that low land, as to the value of it?

40 *Ans.* Well, I suppose such land is worth \$25 to \$30 an acre.

Quest. Before the dam was raised, what was such land worth?

Ans. I shouldn't think it was worth any more.

Quest. Do you own any such land along Black river?

Ans. Well, I own some river meadow, which I suppose to be about such land; it's laying above Budd's bridge; I have probably fifteen acres there, and may-be twenty acres—it is a part of a 140 or 150 acre farm; this fifteen or twenty acres is that part of the farm lying next the river.

Quest. Do you know any reason why your land next the 10 river is not naturally as good as this of Mrs. Carlile's?

Ans. I do not.

Quest. Is there any difference between it and the other lands below your farm adjoining the river?

Ans. I don't know that there is—still there may be; there are places in mine that are not as valuable as others—lower, more sour.

Quest. Is Black river in its natural condition along your low land there, or has it been ditched and straightened?

Ans. In its natural condition, except a few rods between 20 Gilbert Woodhull and me, (he cut a ditch upon the line); the old river used to be the line between him and me, and he cut a ditch straightening the river for a little way between us, and cutting off an elbow; and at the upper end of my land there has an old ditch been cut that cut off a couple of small islands off of my land, and straightened the river a little; the rest of the way the river is in its natural channel.

Quest. What kind of grass is produced on that meadow of yours? [Objected to by Mr. Little.]

Ans. Bog grass generally on the main body of the mead- 30 ow; and on these small islands, one has coarse grass and rose bushes, and the other a coarse kind of water grass.

Adjourned for dinner, until half-past two P. M.

Half-past two P. M.—Examination resumed.

Quest. by Mr. Vanatta. At the time you examined Mrs. Carlile's meadow, what sum annually did you think would be a compensation for all the damage done to that low land by back-water?

Ans. Well, I thought twenty dollars would be a fair price for all the damage that the back-water from my dam done. 40

Quest. Have you, at any time, when spoken to by Mrs. Carlile about the injury to her land, refused to make her compensation?

Ans. I have not, that I recollect of, sir.

Quest. Long before she commenced her suit, did you or not make efforts to get her to make you a title to the land which was injured for a just and reasonable compensation?

Ans. I think I did, sir.

Quest. Were those efforts sincere or feigned?

10 *Ans.* Sincere.

Quest. Have you ever been asked by Mrs. Carlile, or by any one for her, to pay her for damages done to the land in the lifetime of her husband?

Ans. I don't think Mrs. Carlile ever asked me to do that; how far Mr. Little's letter that he sent to me comprehended that, I am not able to answer; I refer to the letter, of which a copy has been put in evidence.

Quest. Have you ever raised the road between the two bridges at the dam?

20 *Ans.* I have not the travelling track, to my knowledge; I hardly know what they would call the road.

Quest. Has the travelled track ever been raised by your orders or your authority?

Ans. I have no recollection of any such thing.

Quest. South of the travelled track, between it and the stone wall, did you have any dirt put in?

Ans. There was a hole between the travelling track and the gravel back of the stone wall, which I had filled up.

Quest. Has the travelled track of the road between the
30 two bridges, exclusive of the abutments of the bridges, been raised since 1846, and if so by whom and how much?

Ans. I think it has been raised a few inches; I don't know who done it—I rather think it was Mahlon Ward or his hands; it was raised probably four or five inches, may-be not so much, and may be a little more.

Quest. Has your mill pond and the channel of the river through the mill pond and above the mill pond filled up any since 1846, and if so to what extent?

Ans. It has filled up a considerable since 1846, and it
40 filled up before 1846.

Quest. How long has that filling in been going on?

Ans. Ever since the cutting of the ditch, I think.

Quest. Have you observed it from time to time since the ditch was cut?

Ans. Yes, sir, in latter years more than before.

Quest. How far up do those obstructions extend?

Ans. The obstructions of mud and sand—I don't know that they are any further up than the big rocks at the head of my pond; they may be, but I haven't noticed it.

Quest. Can you give us any idea of the thickness or quantity of the sand and dirt that have settled there? 10

Ans. The sand and dirt at the chain of rocks that reaches across near the head of the pond is a large and heavy embankment—it is up to the top of the water in an ordinary time of water—how deep I can't say—and it fills the channel pretty nearly full; on coming down with a boat, the appearance all the way down the pond is filling up, filling up; when we stand in the road at the dam, there is a place in the pond a little above the dam, partly west of where Carey lives, where the weeds appear to be growing up as if the 20 filling up was near or at the surface of the water.

Quest. At the rocks near the head of the pond of which you have spoken, do or not the obstructions extend clear across the channel?

Ans. I think they do very near.

Quest. If you drew a straight line across the river from the most southerly corner of Mrs. Carlile's farm on the river, how far would these obstructions of which you speak be below the line, if below it at all?

Ans. I suppose in the neighborhood of one hundred yards 30—probably more and probably less; I could not tell exactly.

Quest. Can you remember when those obstructions near these rocks were not there?

Ans. Well, I did not notice them till within some ten or fifteen years, and then not as much as they are now.

Quest. What would be the depth of water where those obstructions are, if they were taken out?

Ans. In the channel of the river, at an ordinary time of water, I suppose from two to three feet; I have no means of

knowing—only guess at it; it would vary in places—be deeper in some places than in others.

Quest. Can you now row a boat over those obstructions in an ordinary stage of water?

Ans. With some difficulty you can get along one edge.

Quest. Do you know anything about an obstruction in the river, nearly opposite Mrs. Carlile's meadow, and below the Carlile bridge?

Ans. I do.

10 *Quest.* Just describe it, and what effect it has had?

Ans. It is a narrow place in the river where the brush has grown up and in the river, and obstructs the free running of the water, catches rails, and grass or leaves, anything that comes down in the water, and causes the water to flow out of the natural channel into Mrs. Carlile's upper meadow, and I am told out on the other side; this obstruction extends clear across the stream of brush, &c.; there is some water runs in the stream; in high water it throws the water out very much; if the water is down low, I suppose the most of
20 it would work through.

Quest. Does it extend across straight or diagonally?

Ans. I never noticed particularly to say—it's across the river so as to obstruct the water.

Quest. How long since that obstruction first made its appearance?

Ans. The brush on each side of the river have been there ever since I can remember, but not in the river, so as to throw the water out, until within four or five years, may-be not so long; there is brush most of the way along the stream
30 from these obstructions of which I have been speaking to the head of the pond; on the Horton side there is brush all the way almost—on the meadow side I don't think there is; I don't know that there are any other obstructions between this place and head of pond without it is the brush.

Quest. Tell us, or give us the reasons why you think the making of the ditch above there is the cause of the filling in of the pond and of the obstructions in the river?

Ans. It let the water run off more rapidly, which washed down the sand and muck, and the muskrats got to work in
40 the banks, and burrowed out the sand and muck in the

channel, and loosened it—and a freshet would come and carry it down into my pond; that's what I think is the reason.

Quest. Since 1846, has or not the channel of Black river been straightened above Budd's bridge, and if so how far? [Objected to by Mr. Little.]

Ans. Since the first ditch (between Budd's and Carlile's bridge) was cut, it has—I guess from one half to three-quarters of a mile, and may-be a mile.

Quest. Does it start where the previous ditching stops at Budd's bridge? 10

Ans. Yes, sir, I think it does, or the old channel might have been straight a little way above Budd's bridge.

Quest. With a view to fix the time when that ditching was done, I will ask you whether it was done before or after Nathan A. C. Seward came to Morristown to study law?

Ans. I don't remember as to that; Nathan A. C. Seward drew up the remonstrance I presented to the legislature against it, but whether it was before or after he came here to study law I don't remember; before the ditch was made the parties about to make it applied to the legislature for power; against that I remonstrated, and Nathan A. C. Seward drew the remonstrance. 20

Quest. Did they fail in getting an act?

Ans. I think they did, sir.

Quest. Was the ditch made afterwards without the authority of an act—each proprietor making it on or along his own land?

[To all the examination on this subject Mr. Little objects, as irrelevant to the case.]

Ans. That's the way I understood it was done. 30

Quest. Do you remember whether or not N. A. C. Seward was practising law here in Morristown at the time he prepared that remonstrance?

Ans. I do not.

Quest. Did you remonstrate, as to that application, more than once?

Ans. I think not.

Cross-examination by Mr. Little.

Quest. Do you think that your dam had anything to do with causing your pond to be filled up? 40

Ans. I suppose it has some.

Quest. Is there any of that deposit that you speak of found below your dam?

Ans. I don't know about that.

Quest. Is it anything unusual for mill ponds to fill up gradually?

Ans. I suppose that more or less wash goes down into them; it depends a considerable on the rapidity of the stream and the kind of soil it runs through.

10 *Quest.* Does the water flow over the road between the two bridges now as frequently as it did fifteen years ago?

Ans. That will depend altogether upon the amount of water that comes down.

Quest. repeated.

Ans. I don't know; I suppose that would depend upon the frequency of high water.

Quest. How often do you pass that road, upon an average, between the bridges?

Ans. Oh, I can't tell—not very frequently; I cross it whenever my business calls me; I do not go to the mill very
20 frequently, not as often as I had ought to go there.

Quest. Did the water, or not, fifteen years ago, and prior to that time, frequently stand upon that road in time of high water?

Ans. To the best of my remembrance, in the time of high water and freshets, it always come up on that road—I mean to say ever since we have had anything to do with mill property.

Quest. Have you ever seen the water of the pond upon that road since the road was raised by Mahlon Ward?

30 *Ans.* In high water I have seen the water on that road, between the two bridges, since Mahlon Ward raised the road, if I am not mistaken.

Quest. On what occasion was that?

Ans. I don't remember particularly.

Quest. More than once—if so, how often?

Ans. I think I have—I haven't been there every freshet; I should think I have seen it three or four times; it may have been water that rained there; I was not there myself
40 in freshets, but gave my men directions to hoist the gates in

such times, and let the water down ; I see the water on the road, and supposed it come from overflowing.

Quest. If I understand you correctly, then, you did not know whether the water which you saw there was rain water or pond water—am I correct?

Ans. I can't say which it was.

Quest. When was the last time you have reference to of seeing it there—how long ago?

Ans. Well, I couldn't tell—within a year, or two or three, I suppose. 10

Quest. Was it within three years?

Ans. I think it was.

Quest. Was it within two years?

Ans. Well, I can't say with regard to that.

Quest. Have you heard from anybody that that road between the bridges had been flowed by the ponds at any time within two or three years past, and if so, from whom?

Ans. I think in the spring of 1861 there was a very heavy rain and freshet, and I understood from some one (I can't tell whom) that it was all over the road there by the mill 20 dam; and I think it ran across the road this side of the bridge, and cut away the ground between my house and the bridge; and we went and carted dirt and stone, and filled up where it had been washed away—and I think it is higher ground there now than it is between the bridges.

Quest. Have there or not been a good many freshets in that river in the last ten or fifteen years?

Ans. I suppose there has.

Quest. If, then, you raised your dam nine inches in 1846, would you or not expect the road to be flooded much more 30 frequently than before the dam was raised, if the road itself was only raised four or five inches?

Ans. I would, provided the gates were not hoisted to let off the water as fast as it come down.

Quest. Did you not always hoist the gates, or try to do so, when there was a freshet before the dam was raised?

Ans. That was my direction; whether it was done or not I can't tell—think it likely it was done sometimes, and sometimes not.

Quest. Is the opening by which the surplus water is now 40

vented larger or smaller than it was before the dam was raised?

Ans. The surplus water runs off (when there is water enough to run over the dam) over the cap and through the gates.

Quest. My question is, whether the opening by which you seek to let off the surplus water is greater or less than it was before the dam was raised in 1846?

Ans. The length of the cap that the water tumbles over is
10 the same; the size of the gates I do not know, but I presume it is about the same.

Quest. Over what did the water tumble before the repairs in 1846?

Ans. A cap, and through the gates that was there.

Quest. Was there no opening under the cap through which the water poured?

Ans. Yes, sir.

Quest. What was the width and length of that opening?

Ans. I don't know; I think it likely it was twenty to
20 twenty-four feet long; can't tell the width—I never measured it.

Quest. What was the width to the best of your recollection—the width of the opening below the cap through which the water poured?

Ans. I couldn't tell, sir.

Quest. Is there any such opening now below that cap?

Ans. There is an opening there below the cap where the present gates is.

Quest. Do you mean that the water pours over the gates
30 and under the cap?

Ans. No, sir; there is an opening where the gates are hoisted; you can make an opening by hoisting the gates.

Quest. Is that the kind of opening you spoke of a moment ago, when I asked you if there was not an opening before 1846 through which the water poured under the cap?

Ans. I meant where the gates made it, when they were took away, certainly—I meant that made an opening.

Quest. Was there not before 1846 an opening between the
40 top of the gates and the cap, through which the water poured when the pond was full?

Ans. There was, if the boards were not in that were sometimes put in to shut up this space.

Quest. Was it customary for the water to flow over the cap piece?

Ans. In time of high water and freshets.

Quest. Only in freshets?

Ans. I suppose it would flow over the cap piece at any time that the mill was not running sufficient to consume the water?

Quest. Would it do so when those loose boards were not 10 put on top of the gates?

Ans. I don't suppose it would.

Quest. Was there any part of that dam before 1846 which was lower than that cap piece?

Ans. I think not, sir—unless at one time at one end, where a freshet washed a hole next to the fulling mill road.

Quest. Did not the water uniformly, in time of high water, run over the road at the westerly end of the westerly bridge until the stone work at that point was raised by Jonathan R. Axtell?

20

Ans. I don't remember that Jonathan R. Axtell ever laid any stone work on that part of the dam at all—if he did I have forgot it; the water used to run over beyond the fur bridge over the road, and run through the stone work; the back of the dam was not gravelled up to the top of the stone—it was gravelled up in 1847, but it got wore down.

Quest. Previous to 1846, did not the water very frequently run over that point in time of high water?

Ans. I suppose it did, sir.

Quest. Before it could run through the stones making the 30 face of the dam, did it not necessarily run over the road?

Ans. It did.

Quest. Which, then, in your opinion, constituted the dam at that point, the road or the stone work, or both?

Ans. Both.

Quest. If Mr. Axtell did not lay up that stone work, who did?

Ans. I don't remember of anybody.

Quest. Has that part of the dam, then, never been raised since 1846?

40

Ans. I don't remember that the front stone wall has, except where the water washed a hole through next to the Nichols road; I think there was a hole washed through there, and I had it laid up; I don't know who done it; that might have been laid a trifle higher, and it might not—I couldn't say.

Quest. My question was, whether the dam at that point had been raised—I mean at the westerly end of the westerly bridge?

Ans. The stone work from the westerly end of the westerly
10 bridge has not been raised, I think—I have no recollection of it; but we did draw some stone and gravel, and backed in behind that wall where it had washed away by water running over that road and through the stone wall.

Quest. Is that all that has been done to that part of the dam since 1846?

Ans. There has been some gravel drawed, if I remember right, at the westerly end of the tumble dam where holes had washed through; there was considerable of a hole between the travelling road that went from the westerly bridge
20 to Nichols' fulling mill and the dam, and I had the stone and gravel drawed, and filled up that hole, to keep the water from settling there and softening the dam; that freshet in 1861 cut a hole through the dam on westerly side of the tumble dam, and I sent my men there and repaired it up.

Quest. Was that hollow always there from the time the dam was built?

Ans. I think it was.

Quest. How deep was it?

Ans. I can't tell—it wasn't very deep—enough to hold
30 considerable of water.

Quest. Has the road leading from the westerly end of the bridge been raised since 1846?

Ans. Yes, sir, for, I should think, three rods from the end of bridge, may-be further; I don't know who raised it—the overseer of the road, I suppose; I can't tell how much it has been raised—I suppose a foot; I never measured it; if I aint mistaken, in time of freshet the people going from Vanderveer's store, walking down the Nichols road, would walk on the wall of the dam, from the westerly end of the tumble
40 dam to the Nichols road, to get rid of the mud and water

that the freshet would cause in the road ; between the bridges they would walk upon my dam ; my impression is that the people went in at the log way at saw mill, crossed the trunk, and followed the stone dam to the tumble dam, and then crossed there by my fixtures, or else went up and crossed the bridge, and then came down again, and followed my stone dam to the highway, to get rid of the mud and water in the highway ; this was the case frequently, I think, since 1846.

Quest. Have you known that to be so since the road between the bridges and beyond the westerly bridge have been 10 raised ?

Ans. My impression is that that was done since this little raise between the bridges, but I don't know as it has been done since the road at westerly end of the bridge was raised, for I think it's high enough to carry them out of mud and water ; I think the raising at this westerly end of the bridge took place last spring ; the abutments of the bridges were raised before.

Quest. Was it not in 1847 that this great freshet that you speak of took place, when the people crossed your dam, and 20 before Mahlon Ward raised the road ?

Ans. The freshet that I am speaking of was in 1861, in the spring, I think in April.

Quest. Will you name any person who at that time crossed that dam in the way you speak of on account of the freshet?

Ans. No, I don't know that I can ; I have seen people cross it in that way after freshets, but I can't tell who they were—don't remember.

Quest. When did you ever see them cross it in that way in time of freshet ?

30

Ans. I can't name any particular time.

Quest. How many years ago ?

Ans. I can't name any particular time—within five years I am certain ; I made no date nor memorandum—I never expected to be called on to state it.

Quest. Could that road have been flooded in the manner you speak of without it being known to the persons living in its immediate neighborhood and to the tenants of your mill ?

Ans. I think not.

Quest. Did you ever examine the road between the bridges for the purpose of seeing how much it has been raised?

Ans. I did not—it is only supposition what I have said.

Quest. Have you examined any water marks about that pond to see how much the water has been raised in the pond?

Ans. I don't know that I have.

Quest. When you say the tumble dam has only been raised nine inches, do you mean to be understood that no change
10 has been made in any part of your dam by which the water is raised more than nine inches in the pond, and that, in your opinion, the water in the pond is not, when the pond is full, more than nine inches higher than before your repairs in 1846?

Ans. I mean to say that the talk between Mr. Vandoren and me, and the directions I gave him, was only to raise that tumble dam nine inches; I do not think that he did raise it more than nine inches; I trusted to what he told me he would do, and did so; with regard to the flume and trunk,
20 I can't say whether there was a new flume made, or only part of a new flume, nor whether it was made any higher or is of same height of the old one; the trunk, I understood him to say, he put higher, how much I don't know—I never measured it; if what raising he done to the trunk raised the pond, why so be it, but I don't think it did; I think the height of the tumble dam regulates the height of the water in the pond.

Quest. Is that your whole answer to the question?

Ans. I don't know that I can give any other.

30 *Quest.* Did Jonathan R. Axtell do any mason work for you at the dam in 1846, and if so at what part of the dam?

Ans. I don't remember that he done any work for me in 1846 at that dam, or ever done any work for me at that dam, unless it was the laying up of what stone wall was taken out of each side of that flume of the dam, in order to put in a new flume, or make what repairs was done to it; he may have done that—but I don't remember who done it; he may have helped lay up or repair the pillars that the old trunk stood on—I had forgotten all about it until Topping swore
40 here he worked at it; Mr. Vandoren was the boss there, and

kept the accounts, and I didn't charge my mind with the men who did work there.

Quest. When you were about making your repairs in 1846, did Mr. Vandoren tell you it would be advantageous to raise the dam, or that you could not drive two more run of stone without raising it?

Ans. I think he said we couldn't drive the two more run of stone without raising it; that's my recollection of it now.

Quest. What was the object of your repairs in 1846?

Ans. The first necessary repairs was to put in a new trunk—the old trunk was worn out—and to put in a new tumble dam; I think that was worn out, or we considered it best to repair it, or put in a new one, and put in more run of stone in the mill; when the mill house was built we thought it was big enough for three run of stone, but when Vandoren came to measure it, he found it was big enough for four, and he told me we couldn't run the four run of stone to advantage without raising the dam; but we didn't talk of putting in the two run of stone that season, if I remember right. 20

Quest. Why did you not go and see Mulford Carlile yourself?

Ans. I had Mr. Vandoren there as foreman, a man that I had full confidence in, and he suggested the necessity of raising the dam, and I thought he knowed as well how to talk to Mulford Carlile as I did, and was willing to trust him to do it, I had plenty of business to attend to—more than I could see to.

Quest. When you met Mulford Carlile, did he say nothing to you about paying him for the damage done to his land? 30

Ans. He might have used the word damage—but I think he wanted me to pay him for the land flowed; the word damage might have been used in the conversation—there was not much said.

Quest. Will you state, as particularly as you can, what he said to you just as he said it, and the reply you made, just as you made it?

Ans. I don't know as I can state it any otherwise than I did to Mr. Vanatta this forenoon; we met, and I don't remember why I come to stop, whether I stopped or he stopped 40 me I don't remember; but he said that he thought my mill

dam flowed some of his meadow, and he would like to have pay for his land, as near as I can recollect; I told him, if I flowed his land, I wanted to buy it, and I would pay him for it, if I recollect correctly; I don't know as there was any more conversation passed, or but what there was; I don't know what made the meeting so short, unless my horses wouldn't stand, or he wanted to go somewhere; I don't remember anything more about it.

Quest. Did you expect him, after that conversation, to
10 make you out a deed for the land without any further negotiation or interview?

Ans. No, I did not.

Quest. Was nothing said about your coming there to see the land or the damage?

Ans. I don't remember there was.

Quest. Did he tell you whether the damage done to him wasn't of much consequence—that he didn't care whether you came to see him or not?

Ans. He did not; the manner he spoke—from that I did
20 not understand that he wished it to be done immediately.

Quest. He gave you the impression, I suppose, that he didn't care much about it, whether you did it or not—didn't he?

Ans. No, sir; he did not.

Quest. How long was this before his death?

Ans. I don't remember how long it was; it might have been in the fall before the March in which he died, or it might have been a year before he died—can't say how long.

Quest. Do you mean to be understood that you were so
30 full of business that you never had time to go and see Mr. Carlile in reference to this matter after he spoke to you?

Ans. No, I don't mean to say that—I mean to say that I had and have a good deal of business, and it was neglected.

Quest. Did you ever go to see Mrs. Carlile in reference to it, until after you got my letter in July, 1860?

Ans. I think I did, sir; I can't tell how long before that; I kept no memorandum—can't tell the time I did go.

Quest. Do you mean to say that you had so much business on hand that you never had time to attend to this mat-
40 ter with Mrs. Carlile from the time of her husband's death till this suit was brought?

Ans. No, I do not.

Quest. You said you thought \$20 would be a fair price for the damage that the back-water from your dam did to her land—do you mean to convey the impression that the land is injured from any other cause than the water from your dam, and if so, from what cause?

Ans. I think the land is injured by the water springing out from the bank near the orchard, where the back-water from my dam don't injure it.

Quest. What becomes of the water from those springs on 10 the side-hill?

Ans. Part of it stays on the ground, and part soaks in, I suppose.

Re-examination by Mr. Vanatta.

Quest. When your pond is now just full of water, so that it will just run over the tumble of the dam, how much higher is the water in the pond than it was in 1845, when the water just ran over the cap piece of the dam that was there then?

Ans. I suppose nine inches.

Quest. Do you know of any change or any alteration in 20 any part of your dam since 1846, by which more than nine inches of additional water could be got, when the pond was just full, to the running over point?

Ans. I don't know that I do.

Quest. You spoke about persons, since the year 1846, having gone from Vanderveer's store to the Nichols (or fulling mill) road, in time of freshet, by walking on your dam near the edge of the stone wall, was that done in time of freshet prior to the year 1846?

Ans. I don't know particularly—I presume it was. 30

Quest. Did the water, after 1846, run over the road west of the westerly bridge, except in time of very high water or a freshet?

Ans. I think not.

Quest. When the stone wall, making the face of the dam west of the tumble dam was laid up in 1827, was it filled in back of it with earth or gravel, or anything of that kind?

Ans. It was.

Quest. How near to the top of the wall did the filling come?

Ans. At the tumble dam, I think, it was to the top of the wall, but not so near the top next the far end next the Nichols road—and there was not so much of the gravel at that end next the Nichols road; it was late in the season when we worked there, in December or January, I think; afterwards the gravel and stone got washed away from the top at that end.

NATHAN A. COOPER.

Sworn and subscribed, this 10th day of November, A. D. 10 1863, before me.

ALFRED MILLS, *M. C.*

Examination adjourned, by consent, until nine o'clock to-morrow morning.

Wednesday morning, November 11th, 1863, the above named counsel appear, and the examination proceeds.

William S. Carey, being a witness produced on part of complainant, being duly sworn, on his oath says:

I live at Cooper's mills, near Chester; I am tenant of the mill—have been there since April 1st, 1862; I can't tell
20 exactly when my acquaintance with that mill property began; I was there, I think, in the fall of 1859, to do a little levelling about the dam—that was the first I knew about the dam and mill; the next time I was there was, I think, in August 1860—I was then there levelling and surveying up the meadows; I think you (Mr. Vanatta), Mr. Cooper, and the chain-bearers were there at that time; there was no surveying and levelling done that day in Mrs. Carlile's meadow; I think
that day we went up to Budd's bridge, and came down the river in a boat, two or three of us, as far down as Mr. Car-
30 lile's bridge.

Quest. Just tell us shortly how the channel was between those two points? [Objected to by Mr. Little.]

Ans. I made a little minute of it: from Budd's bridge to a cross bridge of Mr. Charles Ming's there was little or no obstruction; about fifty yards below the Ming's cross bridge was a sand bar; about 150 yards further down was another sand bar four or five rods in length; about one-third the way
down the Larrison farm (now belonging to Ming) there was

a large amount of sand filling the stream about half the way across, and in places even with the surface of the water; about 100 yards further down was a short bar, upon which the boat stuck fast; forty yards below John D. G. Carlile's upper line was a sand bar, on which the water was about five inches deep; this sand bar was, I think, clear across the river; a short distance above Mr. Carlile's stone house was a stick of timber sunk across the river, the water flowing over it about six inches; we stopped at Carlile's bridge.

Quest. Have you ever gone in a boat from Carlile's bridge 10 down to Cooper's mill dam, and if so, when and who were with you?

Ans. I have—the 22d April, 1863—in company with John G. Crater and David W. Dellicker.

Quest. State how you found the channel there? [Objected to by Mr. Little.]

Ans. Below the bridge near the curve in the upper meadow were two obstructions across the river—I mean Mrs. Carlile's upper meadow—caused by brush lopping into the river, and rails and grass floating against it; the lower obstruction came up to the surface of the water fully, and caused the water to back up; we had considerable difficulty in getting the boat over it.

Quest. Did you observe what effect that obstruction had upon the banks of the river just above it?

Ans. The water was running out on both sides above it; it was flowing out of the river into a ditch which runs from the river towards the bars on the road which leads from the bridge to Mrs. Carlile's house—not far from the bridge; I should think that ditch was pretty nearly at right angles to 20 the river.

Quest. How far above the obstruction is the mouth of that ditch?

Ans. I should think about eighty yards—I didn't note the distance particularly.

Quest. How is the bank of the river between the obstructions and the mouth of the ditch on the west side?

Ans. Level, flat; I didn't notice any embankment; a short distance above this obstruction the water was flowing out along the side of the river for some three rods. 40

Quest. What became of the water which was backed up in that ditch which you have been speaking of?

Ans. It flowed over the south bank of the ditch, passing over Mrs. Carlile's upper meadow into the river again; there was considerable of water at that time that went in this way.

Quest. If that obstruction had been removed, would that water have gone up the ditch, and out on the upper meadow?

[All this examination objected to by Mr. Little.]

Ans. I can hardly say whether it would all have gone in 10 the river or not, but presume there would have been much less on the land.

Quest. When did you first see the water flowing out from that ditch?

Ans. I can't say that I ever saw it flowing there previous to last April, 6th April; I was passing there; my attention had been previously called to it, but I didn't go to see it.

Quest. When was your attention first called to it?

Ans. I went there with Mr. John D. G. Carlile, I think it was in August, 1862; I did not go down into the water— 20 was unwell, and did not want to get wet.

Quest. How far below the bridge are these obstructions you have been speaking of?

Ans. I can't say; it was at the first turn below the bridge in the upper meadow.

Quest. In going down the river with Dellicker and Crater, what else did you find below these obstructions? [Objected to by Mr. Little.]

Ans. I found nothing until we come to the turn in the lower meadow; there was a tree top or sapling fell across, 30 the top of it being in the river; there were not many limbs to it; we broke off some of the limbs, and passed by.

Quest. Was there any accumulation of sand and sediment at and about that?

Ans. No sand; there was some drift stuff against it, which we loosened in passing the boat by; this was at least 200 yards, I should think, (by the curve of the river) below the other obstructions of which I spoke before; thence we passed right along down—no other obstructions in the water; below the rocks, where the banks come close together, there 40 was sand accumulated—quite a body of sand there; we passed the boat around it.

Quest. By saying you found no obstructions between these several points, do you mean that there was no sediment settled on the bottom of the river, or that you met nothing that obstructed the progress of your boat?

Ans. I mean there was nothing that arrested the progress of the boat.

Quest. From the rocks you have spoken of down to the dam, was there much or little filling in of the pond?

Ans. I don't know that I am able to answer that, for I have been there only two years—but the space for water in 10 the pond is pretty well filled up.

Quest. Since you have been living there, have you discovered any increase in accumulation of the sand at any point in the vicinity of your house, and if so, state where? [Objected to by Mr. Little.]

Ans. I can't say that I have noticed any accumulation of sand; I have noticed the weeds in the pond this year more than last—but that may be owing to my having kept the water down more.

Quest. Has the road between the two bridges been raised 20 any since you have been there?

Ans. I believe not—not that I know of.

Quest. Has the road west of the westerly bridge been raised any since you have been there, and if so how often and how much each time?

Ans. It has been raised once, west of the west bridge, seven inches and an eighth.

Quest. How did you arrive at the height of the raising?

Ans. By an engineering level and rod; the road district filled up that road; it was by orders of the overseer of the 30 road.

Quest. Before that raising of seven and one-eighth inches was done, which was the highest, the top of the tumble dam or the road at the west end of the westerly bridge, and if there was any difference, what was it?

Ans. The road was the highest by three inches and seven-eighths.

Quest. When did you make that level?

Ans. In latter part of August this year, I think.

Quest. Do you know an oak tree with a notch in it on the 40

easterly bank of the river near Tanner's brook, where the notch is said to have been made by Judge Valentine?

Ans. I do.

Quest. Who pointed out to you that tree and notch?

Ans. I don't recollect who pointed it out to me the first time; I was with Mr. Southard (Henry, I think,) when he made the level; then we noticed it; I think this was in July, 1860.

Quest. Did Mr. Southard take the height of the notch in
10 the tree above the tumble dam on that occasion?

Ans. I think he did.

Quest. Since you have been living at Cooper's mill have you measured the distance from that notch to the water, and if so state the several times when, the distance, at each time, from the notch to the water, and the condition of the water at the tumble dam on each occasion of your measurement?
[Objected to by Mr. Little.]

Ans. I was there June 6th, 1862; the water was fourteen inches below the notch on the tree, and the water was then
20 just at the bottom of the cap, nine inches from the top; I was again at the tree June 7th, 1862; the water was fifteen and three-quarter inches below the notch, and was two inches below the bottom of the cap at the dam, eleven inches below the top of the cap; I was there again the next day (June 8th); water was then fifteen inches below the notch, and three-quarters of an inch below the bottom of cap at dam, or nine and three-quarter inches below the top of the cap.

Quest. What was the general condition of the stream at the time of making the measurement you have spoken of?

30 *Ans.* It occurs to me there had been a rain.

Quest. Had the gates been drawn up, and if so, for how long a time had they been up?

Ans. They had been drawn up—can't say for how long; I have made it a point at all times to keep the gates up as much as I could without detriment to the mill, and let the water flow off.

Quest. State such other measurements as you made at the tree?

Ans. August 10th, 1863, in the morning, the water was
40 one and three-quarter inches below the top of cap at dam,

and thirty-two inches and a half below the notch on the tree; then the gates had been up from July 30th to August 9th; I shut the gates August 9th, and on the morning of the 10th August I made this measurement; the stream was then rather low, and that caused me to shut the gates—the want of water; Saturday morning, October 10th, 1863, the water was trickling over the tumble of the dam (gates were shut) and was twenty-nine inches below the notch on the oak tree.

Quest. What was the general condition of the stream at 10 time of this last measurement?

Ans. I think it was pretty well up at the time.

Quest. In April last, were the gates drawn up continuously for any considerable length of time—and if so, from what time to what time? [Objected to by Mr. Little.]

Ans. I raised them Saturday morning, April 4th, 1863; they were up (as far as I could keep them up) until the 27th April; the boys, I presume, who wanted to fish below would shut them down; as soon as I found that out, I would raise them again; they were shut down twice, I think, in this pe- 20
riod; can't tell how long they were down—they were not down for any length of time—not as much as half a day, I think; it was during that twenty-three days that I came down with John G. Crater and Mr. Dellicker, as I have stated—it was on the 22d April, I think; on that day (22d April) the water was fifteen inches below the top of the cap at the dam, and twenty-one inches and a half below the notch on the oak tree.

Quest. During that twenty-three days, did the water run 30
over the dam at all?

Ans. I don't think it did; I have no entry here—though I am not able to say it did not.

Quest. During that period of twenty-three days, as a general thing, how did the water stand at the dam with reference to the top of the cap piece?

Ans. As a general thing, it was down—I raised the gates clear up.

Quest. Down how much, as a general thing, during that time?

Ans. My impression is it stood below the base of the cap. 40

Quest. Did Mr. John D. G. Carlile ever say anything to you in reference to whether the gates at the dam controlled water up the stream, and if anything, state what he said, and when and where it was? [Objected to by Mr. Little.]

Ans. He did; he came to me—I think it was at the mill or thereabouts—and asked me if I would raise the gates so as to let the water off of his swamp, that he might have some pasture there; I told him I would do so, and I did do so; at different times the boys or some persons would shut them
10 down; a few evenings afterwards I met him in Mr. Vander-
veer's store, and I stated to him that I was not able to keep the gates up all the time, as the boys or some persons would shut them down; he then stated that he didn't suppose it made much difference whether they were up or down, as there was so much obstructions in the river; this was in latter part of April, 1862; I presume the swamp he owned, and wanted to pasture, are above Mrs. Carlile's on Black river; he said his meadows or his swamp—I don't know which word he used.

20 *Quest.* From the 4th to 27th April, 1863, was there any freshet or any heavy rain?

Ans. I think there was a pretty heavy rain prior to the 4th April; as to the period inquired about, I do not know.

Quest. What was the general character of the weather during the month of April and the first part of May in this year—wet or dry? [Objected to.]

Ans. I have no recollection about it.

Quest. How did the oats and the grass appear this season up till the middle of May or the early part of June—were
30 they or not suffering from the general want of rain in all this region and in the county of Warren? [Objected to by Mr. Little.]

Ans. I am not able to answer that—I was not in the farming business.

Quest. On the day Crater and Dellicker and you came down the river in a boat, were the meadows between Carlile's bridge and Budd's bridge generally free of water or covered with water?

Ans. I think there was water on the meadows.

40 *Quest.* Have you seen the grass that grows on that meadow of Mrs. Carlile?

Ans. I was there about a month ago—can't give the exact date—with Nathan Cooper, and saw the grass that was left there; most of it had been removed.

Quest. Was that which was left there worth cutting, in your judgment?

Ans. I thought it was.

Quest. Did you cut similar grass this year, or have it cut? [Objected to.]

Ans. I did; I was to give one half the grass for the getting it. 10

Quest. Would you have cut Mrs. Carlile's meadow for the half if you had had a chance? [Objected to by Mr. Little.]

Ans. I would.

Quest. What use would you make of the hay?

Ans. Put in the yard for the cattle, and let them pick out what they would of it; it would be valuable for what the cattle would get out of it to eat and for manure.

Quest. Did you ever make a survey of Mrs. Carlile's meadow, or any part of it, and if so, when and what?

Ans. I did, September '3d, 1861, of the land that was 20 flowed by water.

Quest. What did you make the outer line of your survey on the land side?

Ans. Wherever we could by sticking our heel down in the ground find water, there we surveyed to.

Quest. The water on the surface did not come up to the outer line of your survey?

Ans. Not quite; no, sir.

Quest. What was the guide of the outer line of your survey? 30

Ans. By finding water coming up in the ground where we made a hole with the heel.

Quest. How was the water in the pond on that day—I speak with reference to the cap of the dam?

Ans. At the point from which Southard levelled—I mean where he started his level on the cap of the dam—the water was three-quarters of an inch deep; I think this was on Monday; I had been there a day or two previous, and the pond was not quite full, and I went back and left it until the water should come up to the top of the tumble; I began 40

this survey at the edge of the river (at the turn of the river), at the lower end of Mrs. Carlile's lower meadow.

Quest. Give us the courses and distances of your survey?

Ans. (1) north, 71° E., 1 chain 14 links; (2) north, 80° E., 2 chains; (3) north, $62\frac{1}{2}^{\circ}$ E., 85 links; (4) north, $82\frac{1}{2}^{\circ}$ E., 79 links; (5) north, $76\frac{1}{2}^{\circ}$ E., 1.61; (6) south, $20\frac{1}{2}^{\circ}$ E., 61 links; (7) south, $39\frac{1}{2}^{\circ}$ west, 96 links; (8) south, $41\frac{1}{2}^{\circ}$ E., 1 chain; (9) north, $83\frac{1}{2}^{\circ}$ E., 1.60, to the river, containing two acres and eighty-two hundredths; I also surveyed the injured land in the upper meadow; I began at the water's edge of the river, and run (1) north, $26\frac{3}{4}^{\circ}$ west, 49 links; (2) north, 43° east, thirty-three links; (3) north, 61° east, 1.90; (4) south, 17° west, 1.04; (5) south, $52\frac{1}{2}^{\circ}$ west, 1.13, to the river, containing thirteen hundredths of an acre.

Quest. At the time you made that survey, was there any water backed into that ditch which runs across the upper meadow which you have spoken about this morning?

Ans. I think there was not.

Quest. At that time did you see any signs of water having
20 flowed over the side of that ditch out over the upper meadow?

Ans. I did not.

Quest. Coming back to your survey of the lower meadow, how near had the land been ploughed to the line of your survey which you gave us above?

Ans. I can't give you the exact distance, but in some places it was quite close to it.

Quest. Define what you mean by quite close to it?

Ans. From recollection, I should think it would be some twelve feet from it—in some places not quite so near, and
30 in others a little nearer.

Quest. Did you discover anything like a rim between the upland and the lowland?

Ans. There was a little rim of land caused by ploughing down, throwing the furrow to that repeatedly; from that the land descended towards the river.

Quest. Between the line of your survey and the line where the ploughed land had extended to, what was the nature and quality of the land?

Ans. At the lower end, where I started, the land was rather
40 wet—the further up I got there was less inclination to be springy.

Quest. Where did that wetness come from?

Adjourned, by consent, until half-past two P. M.

Afternoon, parties and counsel met.

Ans. to last question. I think it comes from little springs issuing out of the ground.

Quest. For what length along the rim of the upland, in the lower meadow, is it of that springy nature, starting from where you started your survey?

Ans. I am not able to say; I can't fix any limit to it; but it was springy along where we started as well as down by 10 the barn—the road leading from the main road down.

Quest. Starting at the base of the upland, where you started your survey, and going along the base of the upland, what proportion of that lower meadow is springy?

Ans. I should think, to the best of my recollection, one-third of it, or near that.

Quest. Is there a similar rim at the upper meadow between the upland and low land?

Ans. There is.

Quest. Along the base of that rim, is it dry or springy? 20

Ans. Spongy.

Quest. What is that springiness caused by?

Ans. The same cause I suppose, the water issuing from the edge of the upland—it is wet.

Quest. What proportion of that rim in the upper meadow between the upper and low land is springy?

Ans. I am unable to fix any exact limit to it, but I should suppose a chain at least.

Quest. Have you now any memorandum of the distance between the line of your survey and the base of the rim between the up and low land of the upper meadow, and if so state it?

Ans. I have; from the first stake that I drove as high water mark, at a distance of 1 chain and 32 links, the elevation was five feet—I mean from the point on the low land where I began to survey, 1 chain and 32 links towards the high land, brought me to a point five feet higher than the starting point.

Quest. Did that 1 chain and 32 links terminate at the base of the rim or on the top of the rim?

Ans. I think it was on the top of the rim.

Quest. Was that ascent of five feet made by a gradual rise between the two points, or was the rise mainly towards the end of that line?

Ans. It was mainly towards the end of the line furthest from the water.

Quest. Suppose you had stopped at the end of one chain, about how much higher would that point have been than the one you started from?

10 *Ans.* I can't answer that with any accuracy, for it's some time since I was on the ground; I think at end of one chain it would have been about two feet higher.

Quest. Now go to your second station, and give us the distance from it to the rim between the upland and low land?

Ans. Eighty-five links—two feet four inches elevation; I think I terminated all these cross lines on the top of the rim; from my third station, the distance was forty links, elevation was one foot six inches and five-tenths; from my fourth station, distance was fifty-nine links, elevation one foot and five-
20 tenths of an inch; from fifth station, distance fifty-eight links, elevation one foot one inch; from sixth station, distance thirty-seven links, elevation one foot two inches and five-tenths; at the curve of the river at the upper end of the meadow the ground was nine inches above the water; I believe that is the point where my survey of the lower meadow strikes the river.

Quest. Did you make a map, to be appended to the bill filed in this cause?

30 *Ans.* I did—from the surveys that I have testified here to to-day; I did not keep any copy of that map; I can't tell why, unless it would have took some little time to make it; it was made out in something of a hurry.

Quest. Did you do any other surveying for the purpose of making that map?

Ans. I did; I commenced at the forks of the road west of the bridge, and ran along the water's edge, or wet ground rather, on the west side of the stream up to Mr. Carlile's bridge; I think we measured above Carlile's bridge—I don't recollect how far up; I went to Mr. Carlile's line adjoining
40 Dickerson's land; I did not measure the distance from Car-

lile's bridge up to Tanner's brook, on the west side—I did on the east side, along the river, and on up the river until I came to the line between Dickerson and Carlile.

Quest. How did you get the courses and distances on the east side of the pond, as marked on your map?

Ans. From the road east of the bridges to the second corner of a tract conveyed by the heirs of Horton to Nathan Cooper, by my own survey, and from there on by a copy of the title from the heirs of Horton to Nathan A. Cooper.

Quest. Was the map you made marked, as to courses and 10 distances and in other respects, truly according to your survey and the title papers you had?

Ans. Yes, sir; according to the best of my knowledge it was intended to be.

Cross-examination of *W. S. Carey* by Mr. Little.

Quest. In marking on your map the boundaries of the pond along the land formerly owned by Mr. Horton, were you guided by the courses and distances of the deed you have referred to?

Ans. I was guided by them, as I copied them out. 20

Quest. What was your object in making the survey on the westerly side of the pond?

Ans. In order to get the boundaries of the wet land, I believe.

Quest. Is the distance across the dam correctly marked on your map?

Ans. I believe it to be—I measured it.

Quest. Did you endeavor to lay down the pond upon that map correctly as to its size?

Ans. I did. 30

Quest. You made your survey on the easterly side of the pond up to the Horton land—why didn't you go on with your survey there?

Ans. I know no other reason than that Gen. Cooper had the survey (the courses and distances), and I didn't think it necessary to do it.

Quest. Do you know whether or not a part of that Horton tract is embraced within the boundaries of the pond, and covered by its waters?

Ans. I suppose it is.

Quest. Do you know how much of it is?

Ans. I do not.

Quest. Do the outside boundary lines, then, of the Horton tract constitute the boundary lines of the pond, as you have laid it down on your map?

Ans. It does not; this map is not intended to show it.

Quest. What lines upon your map designate the pond?

Ans. The blue.

10 *Quest.* Only the blue lines?

Ans. I think the blue lines on the map I made represented the water; I endeavored to get the blue lines as near to the red lines as the water was by the actual survey.

Quest. What do the outside lines of your map represent?

Ans. The survey that I made, together with the Horton survey.

Quest. What was your object in making that survey around the pond?

Ans. To make a map.

20 *Quest.* A map of what?

Ans. The actual standing water, in which was included some of the wet land.

Quest. What part of your map, then, shows the actual standing water at the time of your survey?

Ans. The blue part of it shows the water.

Quest. Does the blue part of it show the water as you found it at the time of your survey?

Ans. I think it does.

Quest. Was it at a wet or dry time in the season when you
30 made your survey?

Ans. It occurs to me it was rather dry.

Quest. Was it not very dry?

Ans. I can't say.

Quest. Can you tell us by what scale your map was made?

Ans. I should think about two and a half chains to the inch.

Quest. Will you tell, if you please, so that we can show upon the map where the point of rocks is?

Ans. It is along the ninth course in the Horton deed (which is N. $50\frac{1}{4}^{\circ}$ W.); (Horton deed is marked *Exhibit 5* on
40 part of complainant); there are rocks on both sides of the stream.

Quest. How far do the rocks extend out from the easterly shore into the stream?

Ans. That I don't know; I have measured the space between the rocks—it was twenty-six links.

Quest. Do they project above the water?

Ans. Yes, sir; the space for the water is twenty-six links; there is some small vacancies between the rocks that the water runs in—it isn't shut off exclusive.

Quest. How far up the stream did the still water extend the day of your survey? 10

Ans. August 21st, 1861, I made the survey from the dam up to Mrs. Carlile's farm and on up to John D. G. Carlile's farm; I cannot tell how far (at that time) the still water extended up the stream.

Quest. How was the water at the dam that day?

Ans. I don't recollect.

Quest. Is the stream wider or narrower above this point of rocks than it is below it?

Ans. I think it is wider.

Quest. Very much wider or not? 20

Ans. I can't say as to that—I think it is considerable wider.

Quest. How much wider is the stream opposite the Horton tract above the point of rocks than the space between the rocks?

Ans. I can't tell the proportions—I should think it as wide again—that's my impression.

Quest. When the dam is just full, is or not the water of the pond backed up above that point of rocks so as to make standing water there?

Ans. I suppose it is—I have no doubt of it. 30

Here this examination was adjourned, by consent of parties, until to-morrow (Thursday) morning, until nine o'clock.

Thursday morning, November 12.

Cross-examination resumed by Mr. Little.

Quest. What proportion of the Horton lot lying above the point of rocks is covered by water when the pond is full?

Ans. I am not able to say.

Quest. Tell as near as you can?

Ans. I cannot; in passing down the stream in a boat, I

marked where the water flowed out on the land, and marked it on the map to the best of my judgment.

Quest. What is the character of that Horton lot above that point of rocks?

Ans. It is flat.

Quest. How deep was the water in the stream above the point of rocks when you went down in the boat?

Ans. I did not measure it, but I should think two feet and a half.

10 *Quest.* What was the depth of water at that time at the Carlile bridge, as near as you can recollect?

Ans. I should think there was not much difference in it from what it was down there; I did not measure it at either place.

Quest. What is the distance from that point of rocks to the bridge, by the course of the river, as near as you can give it, Mr. Carey?

Ans. About a half a mile.

20 *Quest.* Is the river between those points straight or very serpentine?

Ans. Serpentine—considerably so.

Quest. What is the character of the bank of the river above the Horton tract, on each side, up to the Carlile bridge?

Ans. On the east side the land rises from the river—on the west, it is quite flat.

Quest. How near was the water up to the westerly bank of the river between these points (point of rocks and bridge) when you went down the river in April last?

Ans. At that ditch below the bridge it was running out
30 freely; at a little further, at an obstruction, there was a spot, I should think three rods wide, where it was flowing off to the west over Mrs. Carlile's meadow, and a little also to the east, passing around through the bushes into the river again; I think the water was pretty well up to the westerly bank through Mrs. Carlile's meadow; along through Mrs. Carlile's meadow the bank is steep down—meadow comes up to the river; below that the bank is more sloping off—considerably sloping; I cannot tell how near to the top of the westerly bank the water was—I did not measure it.

40 *Quest.* Was that a time of high water or not?

Ans. It occurs to me that about the first of April there had been considerable of rain; I then raised the gates, and kept them up until after we come down the river; as to whether there had been much rain between those times I don't know—I think not.

Quest. What was the state of the water in the pond at that time below the point of rocks?

Ans. As to the point of rocks I cannot answer, but it was fifteen inches below the top of the cap at the dam, measuring at the tumble at the point where Mr. Southard commenced his levelling. 10

Quest. Were you driving your mill that day?

Ans. Yes, I believe so; I can't say that I was running the saw mill.

Quest. Driving all four run of stone?

Ans. Three of them, I think.

Quest. And had you been driving the mill during all the month of April prior to this voyage?

Ans. I had.

Quest. How long had this trip been in contemplation before you entered upon it? 20

Ans. Perhaps fifteen minutes.

Quest. You spoke of a sand bar near this point of rocks, how near to it is it?

Ans. I think it commenced three or four rods below it—and I should think it extended down the river five or six rods; it extends quite well out into the river, two-thirds of the way across.

Quest. Does it extend into the natural channel of the stream? 30

Ans. I went towards the west shore; I don't know where the natural channel may have been.

Quest. How near did that sand bar come to the surface that day?

Ans. At points, I should think, within two or three inches of the surface, and at others not so near.

Quest. Between the sand bar and the western shore, where you passed, how wide was the stream, as compared with the width of the stream at the point of rocks?

Ans. I am not able to give any definite answer to that; 40

the water spread out on both sides—out on to the sand bar on one side, and out into the bushes on the other.

Quest. Was the water at the lower obstruction you have spoken of, opposite Mrs. Carlile's land, any higher above the obstruction than below it, in the channel of the stream?

Ans. It was.

Quest. How much higher?

Ans. We thought it to be about three inches.

Quest. Was there more of a current at that point than in
10 the stream above or below?

Ans. There was a little rippling through at the kind of dam that was there; I think Crater and I stepped out of the boat, and put one foot on the rail or pole, and lifted the boat over; I rather think we each had one foot in the boat and one out—think that was the case with myself at least; I think, at one time, I stood on the pole with both feet; it was not solid then to the bottom of the stream—it yielded some—I felt it yield; the water that passed there passed under, through, and over that obstruction; we lifted the
20 boat on to it, and pressed it down.

Quest. Did the water run over it when you came to it, or was it above the surface of the water?

Ans. I think it was running over it some.

Quest. Why didn't you try to run your boat on it without getting out?

Ans. We did try.

Quest. Did you examine the obstruction?

Ans. I did not.

Quest. Would there have been any difficulty in your ex-
30 amining it, to see what its character was, and what obstruction it presented to the water?

Ans. We looked at it sufficient to see that it was a pole or rail, catching fast in the bushes at the ends on the opposite sides of the stream, against which weeds and other things had floated, causing the water, as we thought, to raise or stand about three inches; it did not require much of an examination to see that.

Quest. I wish you would mark for me (on this, my copy of your map,) the points where the obstruction spoken of is,
40 and the point where the ditch which you spoke of, as where the water flowed up, is?

Ans. Witness here says he can't do it with exact accuracy—but he marks for that obstruction the mark A, and for the ditch the dotted line running from B.

Quest. Could you tell whether it was a pole or a rail?

Ans. I think it was a pole; I can't give the length of it—long enough to reach across the stream—fifteen or eighteen feet, I should think.

Quest. What is the character of the bank on each side of that obstruction, between it and the bridge?

Ans. The banks are low; the water ran out on both sides 10 of the stream.

Quest. How far up the ditch did the back-water extend at that time?

Ans. I did not go out to see.

Quest. You said the water was flowing over the banks three rods or more—did you run the banks of the river or the banks of the ditch?

Ans. The banks of the river—for two or three rods.

Quest. Did the water from the river cover both banks of that ditch?

20

Ans. It filled the ditch, and ran over the south bank at one point that I saw.

Quest. You said that you could not tell whether all the water would have gone down the river or not, if that obstruction had been removed—why can't you tell?

Ans. I can hardly answer that; I did not measure the water, velocity, and so on; it certainly would have been much less; whether it would have taken it all, I am not able to say.

Quest. Was there any water upon Mrs. Carlile's lower 30 meadow that day as you passed?

Ans. There was some.

Quest. At what point?

Ans. Where it is marked blue upon this map.

Quest. Where did that water come from, so far as you could judge at that time?

Ans. From out of the stream; I knew of no other place.

Quest. From what part of the stream did it come?

Ans. It was standing back from that part of the stream opposite her land.

40

Quest. At the time you were with Mr. John Carlile at this meadow, in 1862, did John go over these low grounds in your presence?

Ans. He did.

Quest. What was the condition of the land at that time?

Ans. There appeared to be water on it.

Quest. Much or little?

Ans. There was considerable, sir.

Quest. Did you see him wade around in it at different
10 points?

Ans. I could hear him stepping in water.

Quest. Had you any means that day of forming an opinion of the depth of the water?

Ans. I had—by sticks that he carried in his hand, and would stick down in the ground, and bring to me; the sticks were wet from four to six inches on the average, I believe.

Quest. Did you keep a memorandum of the measurement?

Ans. I did not; I thought I had until I come to look for them at Mr. Carlile's suggestion—I intended to have done it.

20 *Quest.* Were not the measurements varying from four to twenty inches, Mr. Carey, on that low meadow?

Ans. On the meadow part they varied from four to six inches, but when he came down to the slough he measured twenty inches.

Quest. How near was he to the bank of the stream in his measurements—the nearest?

Ans. At the nearest point down by the slough he was not far from the stream; at the other points I cannot give the distances—they were inside of any high water line.

30 *Quest.* Did he not ask you at one time if he was within forty yards from the river, and you replied that he was not?

Ans. It rather occurs to me that he did ask the question; I think I answered that he was not.

Quest. Was he not there at what you call the slough?

Ans. I really am not able to say where he was.

Quest. Do you recollect his asking you to note the particulars of that examination?

Ans. I believe I do, sir; and I thought I had done so until he called my attention to it lately, and I looked for my
40 memorandum, and couldn't find it.

Quest. Do you know what the condition of the water was at the dam that day?

Ans. I do not; I do not know whether the gates were open or shut.

Quest. Where was the turn in the river where that tree-top was?

Ans. It was at or about the Horton line (marked on Mr. Little's copy of map C), where that line strikes the river at end of twelfth course.

Quest. Which way did the top lie?

10

Ans. It had fallen from Cooper's side, from the Horton tract.

Quest. When did you take your level by which you ascertained that the road at the westerly end of the bridge was three and seven-eighths inches higher than the tumble dam?

Ans. I think it was in latter part of August last.

Quest. Was that after or before the last raising?

Ans. Immediately after the raising; we levelled to a point near the middle of the road beyond the bridge; it has not been raised more than once since I have been at the bridge; I believe the abutment of the west bridge has been raised 20 last year, and continued this year.

Quest. How far did that raising of the abutment extend from the bridge into the road last year?

Ans. I should think a little over three rods, to guess at it.

Quest. Was the point that you levelled to within those three rods?

Ans. No, sir; the point to which I levelled this season was on what was raised this year.

Quest. Will you make it with a dot on this map, as near as you can?

30

Witness here marks it by dot on the map, in the road leading to German Valley.

I did not measure this point from the westerly end of the bridge—I should think a little over four rods.

Quest. How do you account for the remarkable difference between the comparative heights of the water at the dam and at that oak tree, at the different times at which you took the measurements?

Ans. I suppose the different elevations at the tree is caused

by the rains, the water flowing in from the country above, and at the dam, by the raising or shutting of the gates.

Quest. Don't you think that the lowering or removal of that dam would produce any effect upon the water at the tree?

Ans. The best answer I know how to give to that is, that when the water was running one and three-quarters of an inch over the dam, it was standing water on Mrs. Carlile's meadow.

Quest. repeated.

10 *Ans.* I can't say that I do, with the stream as it is.

Quest. What do you mean by "the stream as it is?"

Ans. I mean to say that if the dam was taken down, and the stream cleared out, it would have a better chance to flow off.

Quest. repeated.

Ans. With its crooks, its narrowness, and its impediments.

Quest. By impediments, do you mean the obstructions you have mentioned in your testimony, and if not, what do you mean?

20 *Ans.* That's what I mean, and the other obstacles; I take it that the sand bar below the rock is one obstruction; widen the stream, deepen it, and take away the obstructions, and it would make a difference in the water at the tree—but to lower the dam, and leave the stream as it is, I do not think would affect the water at the tree.

Quest. What was the state of the water in the pond and stream from 30th July to 9th August last?

Ans. I don't recollect.

Quest. What was your object in keeping your gates up
30 during that time?

Ans. To lower the pond, and give the people above the advantage of it, if there was any to be had.

Quest. Were the gates up to their whole height during that time, so far as you could keep them up?

Ans. I think they were.

Quest. Was the mill being used during the same time?

Ans. To a certain extent.

Quest. You say, on 9th August the stream was low—can you give us any idea of how low it was at the dam?

40 *Ans.* I can't tell—it became necessary for us to shut down the gates to use the mill.

Quest. Did it at that time (when you shut down the gates) run over the sill of the tumble dam?

Ans. Yes, it ran over the mudsill, but I can't tell the depth; it was necessary to have the water for the use of the mill.

Quest. What was the state of the water at the dam on 30th July, when you raised your gates?

Ans. I can't tell from my recollection; I don't think it ran over the cap piece; I was going away from home, and I wanted the water kept down. 10

Quest. How long had your gates been shut and closed when you made your measurement on 10th August?

Ans. I don't recollect what time on the 9th they were closed; I made my measurement at the tree on the morning of the tenth.

Quest. How long does it take for this pond to fill up, after it has been drawn down so that the water just runs over the sill—to fill up so that the water reaches the top of the cap piece?

Ans. I should think it would fill up, in an ordinary stream, 20 in six hours.

Quest. How much, in running your mill all day, do you usually lower the water when the pond is full in the morning?

Ans. That's very indefinite; I think in running the mill for some weeks past, after running the mill all day, the pond is very nearly as full as in the morning; the stream is very nearly sufficient to carry it.

Quest. Was the mill run during the 9th August, after you closed the gates?

Ans. I believe it was. 30

Quest. You say that at the time you made your survey of Mrs. Carlile's meadow, the water was three-quarters of an inch deep on the cap, on the point from which Mr. Southard levelled, and that it did not back the water into this ditch upon Mrs. Carlile's land, and that the day you and Dellicker came down the stream the water was fifteen inches below the top of the cap, and yet backed water into that ditch—how do you explain that?

Ans. In the first place, when the pond was full, three-quarters of an inch above the cap, the water did not flow 40

into the ditch; at the other time I had raised the gates, and let the water out of the pond, and that there was more water than did get into the pond.

Quest. But you say that during that twenty-three days, so far as you knew, there had been no heavy rains—where then did the water come from?

Ans. It came from the tributaries of the stream, I suppose.

Quest. What was the state of the water at the dam when you made the survey? [Waived.]

10 *Quest.* Had it been very dry for a long time prior to your survey of Mrs. Carlile's meadow on 3d September, 1861, or not?

Ans. I can't say.

Quest. Do you recollect Mr. Day (who drives Budd's forge) coming to you upon the meadow while you were engaged in making that survey?

Ans. I do; he wanted the gates hoisted, to let the water down, so that he could run his forge.

Quest. Do you recollect any conversation with him as to
20 its being remarkably dry?

Ans. I do not recollect any conversation that took place.

Re-examination by Mr. Vanatta.

Quest. Did you make the survey on 3d September, 1861, because the stream was in a favorable condition, or because I was hurrying you and Gen. Cooper to give me that map?

Ans. I know you was in a hurry for the map; I know nothing about its being made because the stream was in a favorable condition.

Quest. Did you hear anything about having the survey
30 made until you was told that I wanted you to make the map?

Ans. I can't say that I did, excepting once, when Gen. Cooper remarked to me that he would have to have a survey and map made—that you wanted it done.

Quest. At which time was there most water on Mr. Carlile's meadow—on 3d September, 1861, when you made the survey, or on 22d April, 1863, when you and Crater and Dellicker came down the river in a boat?

Ans. There was much more water on the upper meadow on April 22d, 1863—it was then covered; my impression is

there was much less in the lower meadow on 22d April, 1863, than there was when I made the survey on 3d September, 1861.

Quest. In August, 1862, when you and Mr. Carlile were along the meadows on the occasion spoken of by you, did you draw Mr. Carlile's attention to the obstructions in the river or channel, and say anything to him about it, and if so what?

Ans. I can't say that I did; I asked him where he thought that water come from.

10

Quest. Mr. Carey, is the channel from Carlile's bridge to Cooper's dam wider or narrower than the channel of the river from that same bridge to Budd's bridge?

Ans. There are parts of it that are wider, and some parts, I think, full as narrow.

Quest. Which is the straightest?

Ans. From the pin-oak tree to Budd's bridge is much the straightest.

Quest. What is the fall from Budd's bridge to Carlile's bridge?

20

Ans. I don't know without reference to Southard's level.

WILLIAM S. CAREY.

Sworn to and subscribed, this 12th day of November, A. D. 1863, before me.

ALFRED MILLS, *M. C.*

John Roberts, a witness produced on part of the complainant, being duly sworn, on his oath says:

I am about eighty-two years old, I guess, as near as I can tell; I live on Schooley's mountain, just above Flanders; I always lived close by the Carliles, near Cooper's mills—30 was born and brought up there; my father's name was Richard Roberts; my father lived by Carliles, owned a farm there; he lived there a great many years, and my mother lived there, and my brother lived there; I forget the man's name who now owns the farm my father lived on—I know the man; my brother, Amos Roberts, owned it before this man lived there; I used to own some of it, and I sold my share to Amos.

Quest. Do you know the farm on which a man named Waters lives? [Objected to by Mr. Little.]

40

Ans. I don't know the man.

Quest. Do you know the farm where widow Eliza Carlile now lives?

Ans. Yes, I know it well—worked there a great deal; the farm my father used to live on is not more than a quarter of a mile from her farm—it's just up the river; my brother's farm joined hers.

Quest. Who lived on the Mrs. Carlile's farm when you first knew that farm?

- 10 *Ans.* Old Grandaddy Carlile—we used to call him Uncle Robert Carlile—I worked for him years and years; after Robert Carlile died, John and Mulford Carlile's father lived there till he died; John and Mulford's father was named John—he died when John and Mulford were little boys; after Mulford's father died, his mother carried it on for some years, till the boys got big enough, and then they carried it on; can't tell how long exactly they carried it on.

Quest. Did you work on that farm for Mulford Carlile's father, and if so, much or little?

- 20 *Ans.* I did, before these boys were born, long ago; old John would hire me for six and eight months; I worked for him, off and on, a dozen years, I suppose—ever since I was big enough to drive a team.

Quest. After old John Carlile died, did you work on the farm for his widow, and if so, how much?

Ans. Yes; she hired me right away for half a month; I worked off and on every year, and did all their shoemaking; I worked for the boys too—they couldn't think of doing their mowing without having me.

- 30 *Quest.* After Mulford Carlile took the farm, did you work on the farm for him?

Ans. Yes; I worked for him—mowed for him and did all kinds of work for him; towards the last I didn't work quite so much; it is some years since I worked on that farm—can't tell how long—it must be fourteen or fifteen years since I worked there much; don't think I have worked there since I got my foot cut—I went to Pompton Plains after that for a while; I guess it was fourteen or fifteen years ago since I got my foot cut—it may be more—can't tell exactly.

- 40 *Quest.* Do you know the low land next the river on the

Carlile farm, lying on the east side of the house—in front of the house?

Ans. Yes; I have mowed all over it.

Quest. How often have you mowed on that?

Ans. I can't tell you—it's a good many times; I have mowed over it and helped mow all their meadows.

Quest. As many as a dozen times?

Ans. I should think I had; I used to mow whilst the old man was living most every year; two seasons I worked for him for six or eight months.

10

Quest. Did there used to be any water on that meadow?

Ans. There would at the lower end of it sometimes; and if it was anything of a wet time there would be some water all over it, the lower end and the upper end.

Quest. How often would there be water on the lower and upper meadow?

Ans. Every time there came a rain—every wet time.

Quest. Was any part of it miry then?

Ans. There wasn't a great deal of that very miry; the lower end was a little miry—not but you could drive a team 20 over it.

Quest. Was any of it boggy then?

Ans. The lower end of it was boggy.

Quest. About how much of it was boggy?

Ans. There might have been half an acre of it that was boggy—worse than the other part.

Quest. Did you use to mow the whole meadow, or was there some part of it you didn't mow?

Ans. There was some part of it in one corner that we didn't mow, except to mow it to top off a stack sometimes; 30 I can remember that very well.

Quest. What kind of grass did you use to cut there?

Ans. Well, it was kind of wild grass.

Quest. Did it make as good hay as timothy?

Ans. No; it didn't make as good hay as timothy.

Quest. How much of that hay would it take to be worth a ton of good timothy hay?

Ans. I should think a ton of good timothy hay would be worth as much again as that—wild hay you know.

Quest. About how much hay did you used to get off of 40 that meadow land?

Ans. I couldn't tell you exactly how much; we used to sometimes put up a couple of little stacks; it has been so long ago that I can't tell.

Quest. Did you stack it all?

Ans. Yes; we would stack it all down there before the door, I remember.

Quest. Did you put what you cut on the upper meadow into those stacks?

Ans. No; I don't remember ever putting what we cut on
10 the upper meadow in those stacks; what we cut on the flats we used to stack down there.

Quest. Did you stack all that was cut along the river?

Ans. All we cut along the river we commonly stacked down there; I couldn't tell you how much exactly was in those stacks—sometimes we put it all in one; I shouldn't think there were more than three or four acres in the whole of it.

Quest. Did the water ever come on the meadow there when you were cutting the grass?

20 *Ans.* It would if there come a rain—would be wet; but it didn't stay on a great while there.

Quest. In time of high water, was there much or little water on this Carlike meadow?

Ans. In high water it would be all under water—most of it.

Quest. Did they cut any hay on their farm except what they cut on this low meadow?

Ans. Oh yes—two or three meadows they had—I have mowed over the whole of them; there was an old meadow back of the house.

30 *Quest.* Where did they put the hay which they got off of the meadow back of the house?

Ans. We commonly put it in the barn and wagon-house.

Quest. Why didn't they put the hay which was cut on the low meadow next the river into the barn and wagon-house?

Ans. They didn't put the wild hay up there; they put it down by the river—stacked it; the good hay they put in the barn.

Quest. What was that low meadow land worth an acre
20 to by Mr. Little.] twenty or twenty-five years ago, as it then was? [Objected

Ans. It might have been worth \$10 or \$15 an acre—I should have thought it a good price at that time.

Cross-examination by Mr. Little.

The land there along the river was not as boggy as that further up the river—the lower end of it was boggy and rough; I know where Charles Ming lives and John Carlile; have mowed all along up there, and have poled off hay off of it.

Quest. At that time you speak of which was the best, this land of Mrs. Carlile or the land where John Carlile and 10 Charles Ming live now?

Ans. I aint so much acquainted with Ming's meadow; know John Carlile's—have mowed over it a great many times; at that time the wet and mud on what John now owns was so deep (pointing to above his knees) I had to jump from bog to bog—and we poled off what we mowed.

Quest. Do you know the land that Daniel Budd formerly owned along the river?

Ans. I know the land along the river better than any of them—used to mow all over it. 20

Quest. At the time you have been speaking of, how did the land now owned by Mrs. Carlile compare with this land of Budd's?

Ans. I expect hers was worth a little the most—an acre or two of it.

Quest. Where did you live when Black river was straightened by being ditched?

Ans. I lived up by Doct. Willet's, I think; that's thirty years ago, I think—more than twenty.

Quest. How long have you lived up by Flanders, where 30 you live now?

Ans. Some eight years, as near as I can tell.

Quest. Where did you live before that?

Ans. I was some years at my son's on Pompton Plains.

Quest. How long were you at your son's at Pompton Plains?

Ans. As much as five or six years—may-be more.

Quest. Where did you live before that?

Ans. At Flanders, a year or two at Richard Howell's.

Quest. How long did you live at Richard Howell's?

Ans. I was there two summers, I believe—two years—worked for him in the summer.

Quest. Where did you live or work before you went to Howell's?

Ans. I lived up above Doct. Willet's for twenty years, about and until my wife died, and then I went to Richard Howell's; I owned a piece of land by Doct. Willet's.

Quest. Can you tell what year your wife died?

Ans. I can't tell exactly now.

10 *Quest.* Who was her doctor in her last sickness?

Ans. Dr. Willet.

Quest. Do you ever remember John Carlile training a colt on the low ground in front of the house?

Ans. I remember his having a colt.

Quest. Did you ever do any work on those meadows after John had that colt—was training that colt?

Ans. I couldn't say whether I did or not; I have, too, I guess; the last mowing I ever did there was for Doct. Willet, in company with Doct. Willet.

20 *Quest.* Did you ever mow upon that meadow since the main ditch was dug to straighten the river?

Ans. Yes; I have mowed on those meadows since they altered that ditch.

Quest. Whom did you mow for?

Ans. I guess I mowed on Carlile's meadow since the ditch was cut; I have mowed up the stream; I mowed there a great deal before John's father died.

Quest. Are you sure that Eliphalet Willet mowed on this Carlile meadow with you?

30 *Ans.* He was there all day with us, and I thought he mowed; he slipped down to the still, and got a quart of whiskey for us.

Quest. About how old was Eliphalet Willet at that time?

Ans. I suppose he began to think himself a young man—may-be twenty, for what I know.

Quest. Do you recollect the time when John D. G. Carlile owned these weadows?

Ans. I can remember the time when he drove it on a year or two.

40 *Quest.* Did you ever mow on that low meadow after the

division of the land between the Carlile boys that you have spoken of?

Ans. Likely I have mowed for John and Mulford—I don't remember so much about that; I remember mowing for their father; I can't tell you what year I was born in, nor do I remember when I was born.

his
JOHN  ROBERTS.
mark.

Sworn to and subscribed, this 11th day of November, 1863, before me.

ALFRED MILLS, *M. C.* 10

The foregoing deposition of John Roberts was taken and subscribed before me on the 11th day of November, by consent of the counsel of both complainant and defendants, after the examination of William S. Carey was commenced, and before his examination was concluded.

ALFRED MILLS, *M. C.*

William J. Topping, a witness produced on part of complainant, being duly sworn, on his oath says:

I live in Chester township, have lived there pretty much since I was ten or twelve years old; I am a little past sixty-six years old.

Quest. Have you been acquainted with Black river and the lands adjoining it, from Cooper's mill upwards, for a considerable length of time, and if so, how long?

Ans. Since about 1820.

Quest. Have you been along that part of the stream a good deal or a little during that period?

Ans. Quite a good deal.

Quest. Almost every year?

Ans. Several times a year—very near the whole of the 30 stream.

Quest. How long have you known that part of Mrs. Eliza Carlile's farm that lies along the river?

Ans. About since 1820.

Quest. Did you know that place when John Carlile, the father of Mulford Carlile, lived there?

Ans. I didn't know so much about it then—I was a boy then.

Quest. From the year 1820 to the year 1850, were you or not frequently on that part of Mrs. Carlile's farm nearest the river?

Ans. I was from two to three, and sometimes five times a season.

Quest. At what part of the season would you be there?

Ans. Spring, summer, and fall.

Quest. From 1820 to 1845, a period of twenty-five years, how was that low land, as to having water on it?

10 *Ans.* Ever since I have been acquainted with it there was a slough on the lower part of the meadow, which generally had some water on it when the river was very low; the upper part there was very little on, unless the water was high, till lately.

Quest. From 1820 to 1845, how were those meadows whenever there came a rain or rise in the river?

Ans. When there came a fresh, pretty much all the meadows was under water except some high ones.

Quest. From 1820 to 1845, what kind of grass grew on this Carlile meadow?

20 *Ans.* Some part of it was what we call bog, some foul meadow grass.

Quest. Any other kind?

Ans. I don't know that there was.

Quest. What quantity of grass was produced there, a large or small, or moderate quantity?

Ans. The lower meadow turned out a pretty good burthen; the upper meadow, some part of it, equally as good.

Quest. What proportion, as to value, would the hay cut on that meadow have to good timothy hay?

30 *Ans.* That's rather a hard question—but I should suppose it would be about one quarter, probably a little over.

Quest. Do you mean that one ton of good timothy hay would be worth four tons of that kind of hay?

Ans. Not quite four tons—very near it though.

Quest. Twenty or twenty-five years ago what, in your opinion, was that meadow land of Mrs. Carlile's worth?

Ans. Well, I should suppose it would be worth about twenty dollars an acre.

Quest. Do you mean that is an average—taking all that
40 low land?

Ans. Well, I think likely it would fetch that at that time.

Quest. Twenty and thirty years ago, was the whole meadow mowed, or only part of it?

Ans. As long ago as that I don't recollect particularly, but I have never seen the upper part of it mowed to my recollection—I mean some part of the upper part.

Quest. By the upper part, do you mean that part nearest the bridge and along the road which runs from the bridge—and if not there, where?

Ans. The upper corner next to the bridge. 10

Quest. What kind of grass grew on that corner?

Ans. There was some little that I called blue grass, and weeds mostly.

Quest. Between the upland and the low land is the ground dry or springy?

Ans. The lower end of the lower meadow (for a considerable way up, I can't say how far,) it is considerable springy; in the spring of the year at the lower end of the upper meadow the water oozes out a little.

Cross-examination of *Topping* by Mr. Little. 20

I don't recollect ever seeing potatoes growing on the upper corner of the meadow lot I spoke of; I heard part of Mr. Carey's examination this morning.

Quest. Do you know that point that he described in the river where the obstruction is across—the pole?

Ans. Yes, sir; I think the pole is part of the old bridge—I think it has been there ever since the new bridge has been built; that has been built several years—don't remember how many; there was another piece of timber there before the new bridge was built—a shorter and larger piece; that last named piece was about eleven foot; it is probably fifteen years, about, since I first saw that; the bushes on that part of the river do not come very near together, not within fifteen feet perhaps; the tops of the bushes reach over the water—some of the lower branches reach in the river; the channel there is a pretty good width.

WM. J. TOPPING.

Sworn to and subscribed, this 12th day of November, 1863, before me.

ALFRED MILLS, M. C. 40

Stephen Budd, a witness produced on part of the complainant, being duly sworn, on his oath says:

I live at Chester, within a quarter of a mile of Black river; my farm runs to the stream—on both sides of the stream as it now is; my land lays southwest of the road that goes from Flanders to Chester, joins up to Budd's bridge; it extends below Budd's bridge for betwixt eighty and ninety rods; as I go down the river on the east side, I come to Charles Ming's land next to mine; I have owned this farm
10 since the death of my father—that has been about fifteen years; I was born and brought up on that farm; I am forty-nine years old; I have worked, ever since I was large enough to work, on that farm.

Quest. Is there or not, on the low lands of your farm along the river, a smell discernible, such as is found to arise from low wet lands on which vegetable matter decomposes?

Ans. Always I have noticed more or less of the smell, in morning and evening, in passing in the summer season.

Quest. Is there more or less of that now than there was
20 formerly?

Ans. I have never noticed any difference, sir—all about one thing.

Quest. Have you ever discovered that smell on any other place on Black river except on your farm?

Ans. I always have found it one thing whenever I have crossed the stream anywhere along.

Quest. Have you found that injurious to the health of those living in that vicinity?

Ans. I never thought of such a thing; I have always con-
30 sidered our settlement as healthy as any.

Quest. Do you remember when the large ditch was cut from Budd's bridge down to the outlet below Tanner's brook?

Ans. Yes, sir.

Quest. Was there a similar ditch cut above Budd's bridge, and if so, for what distance?

Ans. Yes, sir; there was one cut for, I should think, over a hundred rods, or one hundred and twenty-five.

Quest. Which ditch was made first?

Ans. The one below Budd's bridge.

40 *Quest.* About how long ago was that ditch made above the bridge?

Ans. I should think about twenty years, as near as I could judge.

Quest. Before the ditch was cut from Budd's bridge down to the outlet near Carlile's bridge, and when Black river, along there, was in its natural condition, what were those low lands worth an acre?

Ans. Well, they wasn't worth over ten dollars an acre.

Quest. If they have since that acquired any greater value, what is that increased value owing to?

Ans. To the draining of the meadow and the cultivation 10 that has been done on there since the ditch was opened.

Quest. Without that ditch, or some other means of drainage equally effectual, could those low lands be made worth more than ten dollars an acre?

[Mr. Little here objects to all evidence as to the lands above the mouth of the outlet.]

Ans. Take them in the state they was before that ditch was cut they could not—not without getting the drainage.

STEPHEN BUDD.

Sworn to and subscribed, this 12th day of November, 1863, 20 before me.

ALFRED MILLS, *M. C.*

Abraham D. Hall, a witness produced on part of the complainant, being duly sworn, on his oath says:

I live in Mud street road, about half a mile from Washington turnpike, in Washington township, Morris county; I am sixty-two years, or will be on first of next December; I have frequently been on the farm where the widow Eliza Carlile lives—have worked on it; Robert Carlile was carrying on the farm when I first worked on it; I helped Robert 30 in his hay and his corn—picking stone too; I worked for Mulford Carlile, and some for Mr. John D. G. Carlile, on that farm; I have helped mow the low land in front of the house next the river—I think I mowed there when I worked for Robert; I mowed there when I worked for Mulford.

Quest. About how many seasons did you help mow that low land?

Ans. Why, off and on, as near as I can remember anything about it, it must have been ten or twelve year.

Quest. Have you ever mowed on that ground since Mulford Carlile died?

Ans. No, sir; I don't remember that I have.

Quest. Did you ever help stack the hay that was cut on that low land?

Ans. I did, one season that I remember of; we made a couple of stacks that season off of it; I won't say for sartin, but I think we put about three load in a stack.

Quest. When was the best grass cut there, and the largest quantity, the first year you mowed there, or the last year?

Ans. Well, I couldn't say—I am kind of forgetful, and couldn't say—don't remember whether there was much difference in it or not.

Quest. What kind or sort of grass did you cut on that low land of Carlile's?

Ans. Well, it was different kinds—the principal part was wild grass.

Quest. Cut any bog grass there?

Ans. That's what I call wild grass.

20 *Quest.* Was there any foul meadow grass there?

Ans. There was, sir; there was what they told me was foul meadow for a year or two, and then it kind of got out like.

Quest. Who told you it was foul meadow?

Ans. John Roberts mowed with me then, and said that was the grass they called foul meadow.

Quest. How much of it was there?

Ans. I couldn't say; it was kind of spread out over the meadow in places, and in some places there wasn't any; I
30 wasn't acquainted with that kind of grass; they telled me that was what they called foul meadow.

Quest. Did they tell you how it came to be there, or how long it had been there? [Objected to.]

Ans. I don't remember his telling me how long it had been there; he said it hadn't been there a great while; I don't remember seeing it there but a year or two.

Quest. Was there anything said as to where it had come from—and if so, what? [Objected to by Mr. Little.]

Ans. They imagined it had washed down from the upper
40 meadows somewhere.

Quest. Who said he thought it had washed down from the upper meadows?

Ans. John Roberts.

Quest. Any one else?

Ans. Not that I remember of.

Quest. Did you hear Robert Carlile say anything as to how he thought that foul meadow grass had got into the meadow—and if so, what? [Objected to by Mr. Little.]

Ans. No, sir; this was some time after Robert's death, when Mulford had it; I had never seen this foul meadow grass there until the time of this conversation with Roberts; he and I was mowing there.

Quest. How was the lower part of the lower meadow, as to dryness, when you and Roberts and Robert Carlile mowed there?

Ans. When we mowed there, some seasons it would be dry like, and some seasons it would be wet.

Quest. In the wet seasons, how did you get the hay or grass off?

Ans. There was one place there where we carried it off 20 with a fork.

Quest. How much of the hay gathered on that Carlile meadow, when you mowed there, ought a man to give for a ton of good timothy hay, so as to make the trade even in value?

Ans. Well, I should say we ought to give as much again.

Quest. When you mowed there, was the ridge between the upland and the low land dry or wet?

Ans. Part of it was dry and part of it was wet; in front of the house it was wet, from the river up a piece along the 30 ridge.

Quest. How far along the ridge did that wet land extend?

Ans. As near as I can remember, it must have been from fifty to seventy-five yards.

Quest. What made it wet there?

Ans. It was springy about there, so far as I could take notice or see.

Quest. Was there any slough anywhere there?

Ans. There was; it was right in front of the house, at the lower end of the meadow.

Quest. Along about the time you and John Roberts used to mow that low land, what was it worth an acre, Mr. Hall?

Ans. I don't consider myself much of a judge of land in that way, but I wouldn't have been willing to give over twenty to twenty-five dollars an acre for it.

Quest. Do you own some land?

Ans. Yes, sir, a little—somewhere in the neighborhood of sixteen acres; it's where I live now; it's a little over a mile and a half, close on to two miles, from where I live
10 now to Cooper's mill; I have lived where I now do for about twelve year.

Cross-examination of *Hall* by Mr. Little.

I don't remember that I have mowed upon this land since I have lived where I do now; before I lived there I lived with my mother-in-law close by there; I can't remember whether I have mowed in this meadow since I have lived where I now do or not; I have mowed this meadow upon shares—I can't tell how long ago that was.

Quest. Was it in Robert Carlile's lifetime that you and
20 John Roberts mowed there?

Ans. I don't remember whether John Roberts helped mow there or not.

Quest. Where did you live when you and John Roberts mowed there?

Ans. At my mother-in-law's; it must have been twenty years that I lived with my mother-in-law.

Quest. How long after Robert's death was it that you and John Roberts mowed there, and he talked about the foul meadow?

30 *Ans.* I couldn't say for certain—it might have been five or six years.

Re-examination of *Hall* by Mr. Vanatta.

When I cut on shares on this meadow I got half of the hay for cutting it—the other half Mulford Carlile got; I took my part, and they had to see to theirs; I got half for cutting and curing it; each party carted their own half; I cut pretty much all the lower meadow when I cut it on shares; what was cut on the upper meadow that year I guess

Mulford cut himself; I took my half in three loads—jags like; I had two horses; they wasn't much of a load; it was pretty much of a hill to come up, and I had a light kind of a team; I do not think I had more than a ton altogether.

ABRAHAM D. HALL.

Sworn to and subscribed, this 12th day of November, 1863, before me.

ALFRED MILLS, *M. C.*

Counsel for complainant here offers in evidence paper purporting to be a certified copy of a deed from John D. G. 10 Carlile to Thomas M. Carlile, dated March 4th, 1841, and recorded in Morris County Records of Deeds, Book X 3, pages 273 and 274, which I have marked *Exhibit 6* on part of the complainant.

ALFRED MILLS.

November 12th, 1863.

ON PART OF COMPLAINANT.

Examination in this cause on part of complainant, taken before me at my office in Morristown, New Jersey, on Thursday, the third day of December, eighteen hundred and sixty-three, pursuant to notice by solicitor of complainant, due service of which is admitted by solicitor of defendants. Mr. Vanatta appears for complainant, and Mr. Little for defendants.

ALFRED MILLS.

James F. Drake, a witness produced on part of complainant, being duly sworn, on his oath says:

I live in the township of Chester, Morris county, on the Deacon Haines farm, not over a quarter of a mile from Cooper's mill, I think; I will be fifty-six years old next July; I was married in 1841, on 4th January following president 30 Harrison's election; I went to keeping house betwixt my marriage and spring—I lived with my brother-in-law, William Vandoren, near Hacklebarney forge; I lived with him,

I think, three years—two or three years; while I lived there I worked for William Vandoren one year; after that I worked by the day.

Quest. While you lived there with Vandoren, did you work any for Mulford Carlile?

Ans. I think not, sir—not at that time.

Quest. Did you work for Mulford Carlile?

Ans. I did.

Quest. How long ago is it since you first worked for him?

10 *Ans.* That I couldn't tell exactly—it's some time ago—fifteen or sixteen years ago at any rate—I won't be positive as to the time I mowed for him.

Quest. Did you ever mow the meadow or low ground next the river, and in front of the house?

Ans. I did—yes, sir; I helped to mow it, I think, not more than twice; I can't tell whether I mowed it two seasons running or missed a season; I mowed it twice; my memory is not very good; Mulford Carlile hired and paid me.

20 *Quest.* How was that low land, wet or dry when you mowed there?

Ans. It was wet.

Quest. Did you or not get in the mud?

Ans. There was some places that was muddy, quite wet, boggy—some places was better.

Quest. Were you or not in any way annoyed with the wet or mud in mowing?

Ans. Of course it was not very annoying in warm weather; you could mow anywhere in a brook if you were a mind to; in some places it was muddy, nasty.

30 *Quest.* How was the ground where the low land joined up to the upland—wet or dry?

Ans. At the bottom of the upland it appears to me to be springy on the margin—the water oozes out of the bank.

Quest. What kind of grass did you find to cut on that low land?

Ans. It was such grass as generally grows in wet places—wild grass and a few bogs on a part of it next the water—near the eel-weir dam; I don't know exactly the quality of hay, but I considered it a poor quality.

40 *Quest.* For what use was the hay, which was cut between the upland and the river, fit?

Ans. I don't know as I could answer that directly; it was fit for a good many uses; it was fit for manure and for bedding, and the cattle would pick a good deal out of it.

Quest. Was it fit for horse feed?

Ans. No, sir; I should judge not; I am speaking of the low lands; there was some good hay on the upland as there was in the country.

Quest. What share of that grass that was cut on the low land would you have wanted to cut and cure it?

Ans. I couldn't hardly tell that; I would hardly want it 10 at all, unless I had some other with it; I considered it about as good as no feed; it was good for bedding and so on.

Quest. How many tons of that kind of hay would it take to make one ton of good timothy hay in worth?

Ans. I couldn't tell anything about that.

Quest. Where was the hay which was cut on that low land put after it was cured?

Ans. I think it was sometimes stacked on the ground—I am not certain—I think I have seen it stacked there.

Quest. Did you ever mow, or help mow, the upper end of 20 that low land near the bridge?

Ans. I can't say for certain—I think I have—I presume I helped mow the whole meadow all the way up; I have never mowed on it since Mulford Carlile's death; I remember an eel-weir that used to be in the river nearly in front of the house; I helped move it up the stream, up to John Carlile's, or above there—above the bridge.

Quest. How did you come to do that?

Ans. I don't know as I could state exactly, but I was helping there to dig that river out, and Tunis (Anthony) Auble 30 helped me move it; it was either Mulford or John Carlile's team that we used—loaded the eel-weir on to the sled, and carted it up; I won't be positive as to Mulford Carlile's being there—I think he did help us though; that was before I was married that we moved the eel-weir—four years before 1840; I think Mr. John Carlile didn't own his present place then, David Smith lived there then, and boarded the hands.

Quest. Is there any difficulty in telling where the low land stops and the high land begins?

Ans. No, sir; I think not.

Quest. What is there there?

Ans. Nothing that I know of—the low land is low sour land, and the other is upland; I have an idea that springs proceed from the bank, but I don't know how that is.

Quest. Is there or not any sudden rise in the ground where the low land stops and the upland begins?

Ans. I think there is—I won't say positively.

Cross-examination by Mr. Little.

I sometimes work by the day—and I cobble shoes, make
10 axe handles, bottom chairs, and do everything and anything most; I am a blacksmith by trade, but I don't follow it; I couldn't tell how long it is since I have been on this meadow land—guess not over six months; I go up and down there frequently fishing or hunting; I have been in the habit of passing there frequently pretty near as long as I have lived.

Quest. Can you tell whether there is any more water or any less water usually on that low ground of Mrs. Carlile for several years past than there used to be?

Ans. No, sir; I can't tell that; that I don't know.

20 *Quest.* Did you ever know any other eel-weir in the river opposite Mrs. Carlile's land since you helped remove one, about 1836 or 1837?

Ans. No, sir; I never knowed any other opposite her land.

Quest. Can you tell whether the water in the pond is any higher than it used to be?

Ans. No, sir; I know it is some higher than it was when I was a boy, but whether it is any higher lately I couldn't tell.

30 *Quest.* How long after you moved that eel-weir was it that you mowed on this land?

Ans. It must have been nine or ten years after it; I was a young man when I moved the eel-weir; when I mowed there it was some time before Mulford's death—can't tell how long.

JAMES F. DRAKE.

Sworn and subscribed, this 3d day of December, 1863,
before me.

ALFRED MILLS, *M. C.*

David W. Dellicker, a witness produced on part of complainant, being duly sworn, on his oath says:

I was at Gen. Cooper's mill pond on the 23d of April, 1863; I measured the water running over the mudsill of Gen. Cooper's mill dam; the water was fifteen inches below the top of the tumble dam; the gates were up; the cap piece of the tumble dam was nine inches thick; the length of the tumble, where the water run over, was fourteen feet in the clear; the tumble is on the side next to Obadiah Howell's house; the length of the tumble dam over the 10 cap piece is thirty-five feet ten inches; the span of the bridge just above, through which the water passes, is thirty-four feet six inches; from there I went to Carlile's bridge; the surface of the water was twenty-one and a half inches below the bottom of a notch in an oak tree above the bridge nearly opposite Tanner's brook—this was the tree that was said to have been marked by Judge Valentine; I got in a boat, and went up to Dickerson's meadow—found the stream full and Dickerson's meadow under water—nothing but the tops of the bogs to be seen; John 20 Carlile's meadow, below Dickerson's, was in the same state; I found the stream from six to eight inches higher than the banks of the ditch that forms the channel of the stream; the ditch was in one place about 200 yards above Tanner's brook (where there stands a white-birch tree) fourteen feet between the tops of the banks; a short distance below Carlile's bridge the water was running out of the stream over the upper part of the meadow of Mrs. Carlile; the stream was obstructed with brush, bushes, rails, and other stuff, and we had trouble to get through with a boat; these obstruc- 30 tions were in the stream below, where the water was turned off and run over Mrs. Carlile's upper meadow; we had a good deal of trouble in getting through the obstructions with the boat; Carey, and I think Crater, got out and helped push the boat along; we found the lower part of Mrs. Carlile's lower meadow quite dry, so that we walked over it; the obstructions spoken of were above her lower meadow; from Mrs. Carlile's lower meadow down the stream was quite clear to the mill—had no trouble to get along with the boat; I don't think I went to the tumble dam when I re- 40

turned; I don't think we were over two or three hours gone; we landed near Gen. Cooper's new house on east side of the pond; there I got into a wagon with Gen. Cooper, and went to a bridge on Flanders road (called Budd's bridge); as we left the mill, we drove on the road across the dam, across the two bridges; I noticed no change in the water at the bridges from the time I measured at the dam, as I have stated; the gates were up; I don't think there could have been any change; at Budd's bridge we found the stream full, within
 10 three or four inches of the tops of the banks; there was water on the meadows above the bridge as far as I could see up, I think; I could see a current in the stream, and saw from the road the meadows below the bridge, and saw the water standing on them; I think this day was Wednesday; there had been a rain on the Thursday preceding—a pretty heavy rain; on this occasion John G. Crater, William S. Carey, and Gen. Cooper were with me; I had never examined the stream from Budd's bridge to the pond before—never was on it with a boat before, nor had my attention called to
 20 it; I live six miles from the mill, I think.

Cross-examination by Mr. Little.

I did not measure the depth of the ditch at the place where, as I have stated, I measured its width, and found it to be fourteen feet; the sides of ditch were a little sloping there; I can't tell the difference in width between the bottom and top of the ditch; I measured this ditch while we were stopped by the water poles that form the fence across the stream; the water was not passing out on to Mrs. Car-
 30 lile's upper meadow nor lower meadow below the obstructions of which I have spoken.

Quest. You said you found the lower part of her lower meadow quite dry—do you mean it was really dry?

Ans. I consider it low wet land—but I mean there was no water standing on the surface, or but very little; we got out of the boat shortly after we passed the obstructions, and walked all the way down the lower meadow.

Quest. How far did you walk from the shore?

Ans. We walked around over the meadow a considerable—perhaps went thirty or forty yards from the stream; this
 40 was a wet time, and the surface of the ground was soft.

Quest. Was it, in your opinion at that time, sufficiently dry to pasture cattle with safety or not?

Ans. Yes; I shouldn't have been afraid to turn cattle on it; the gates at the dam were up when I came there that day; I think that the gates being up for the two or three hours that we were gone would make very little difference in the amount of water in the pond, judging from the amount of water at that time and the fullness of the stream; I couldn't tell how much higher the water was above and at the obstructions than it was below—I have no means of 10 knowing—I did not level it.

Quest. Was it any higher?

Ans. I don't know; I did not level it; the obstructions projected above the surface of the water.

Quest. Would you or not consider low land like this of Mrs. Carlile's of great value to her farm, if the water was kept off of it, so that it could be pastured?

Ans. Certainly I would.

Quest. Considering the water was so low at the dam, and the gates hoisted, how did you account for the great amount 20 of water standing on the meadows above Carlile's bridge?

Ans. I accounted for it from the obstructions in the river, the sluggishness of the stream, and the fullness of the streams—the earth was very full of water at that time.

Quest. Do you refer to any other obstruction in the stream than the one you have mentioned?

Ans. The stream has got a good many brush and bushes in it, which would naturally make the water go off slower; I think they all had an effect.

DANIEL W. DELICKER. 30

Sworn to and subscribed, this 3d day of December, A. D. 1863, before me.

ALFRED MILLS, *M. C.*

Adjourned by consent for dinner.

Afternoon.

Daniel Woodruff, a witness produced on part of the complainant, being duly sworn, on his oath says:

I live now in the township of Mendham; I am about sixty-two years old; I occupied, as tenant, Gen. Cooper's

mill on Black river about four years and six months continuously; I left there 1st April, 1839; I had it on shares with Nathan A. Cooper; I personally tended the mill.

Quest. When you was there, what was the lower part of the tumble dam—what was it made of?

Ans. Below the mudsill it was a stone wall; a stick of timber lay on that stone wall.

Quest. Was there any timber directly above the stick of timber lying on the stone?

10 *Ans.* There was.

Quest. How was it kept up?

Ans. Posts framed into the mudsill, and framed in the timber above the mudsill; there was posts enough to support three gates.

Quest. Did you ever measure the length of those posts?

Ans. I did not; I should think, from my recollection, the height of those posts would be about two or two and a half feet; there were gates in the dam—three gates; they were made of heavy plank, two inches thick; I never measured
20 the perpendicular height of those gates.

Quest. What was their height, according to the best of your present recollection?

Ans. About twelve or thirteen, or fourteen inches; from twelve to fifteen inches; I could not correctly say the thickness of the mudsill when I was there; it might have been six, eight, or ten inches; the bottom of the gates rested on the mudsill that formed the tumble; there were stems to those gates; I think that when those gates were in and down they extended clear across the width of the tumble;
30 that was the condition of the dam all the while I was there; I was at the dam yesterday; I observed yesterday the stone work forming the foundation of the dam.

Quest. Did it or not appear to have been altered since you were using the mill?

Ans. It did not appear to me as though it had been altered; I did not yesterday observe particularly the mudsill at the dam; I see it; the water was tumbling over it yesterday pretty severely, and I didn't have much of a chance to look at the mudsill; when I left there in 1839 the trunk
40 and flume was in a pretty bad condition, leaking considerably, pretty near worn out.

Quest. When you worked at the mill, by what means did you regulate the supply of water?

Ans. By opening or shutting the floodgates.

Quest. Was there anything to control you in the opening and closing of the floodgates except your own will and wishes?

Ans. No, sir; I never knew of anything; I was required by the lease to hoist them when the water was high—except for that, I raised them and put them down as suited my convenience.

Quest. While you lived there, did you ever see the road 10 between the two bridges covered with water?

Ans. I think I did; I don't think there has anything been done with the stone wall on each side of the tumble dam since I was there—I don't think it has been raised or lowered—it seems to me to be about as it was when I was there.

Cross-examination by Mr. Little.

I have not been there before yesterday to examine it since I left in 1839.

Quest. You said the water was running over the sill yesterday—how could you see the stone wall under it? 20

Ans. The water was running over the cap piece, and there was quite a space under the water where I could see the wall—and I thought it had not been changed since I left there; that is merely my opinion; when I was there, I suppose the gates wasn't shut a quarter of the time; while I was there, the trunk was so that we could fill it to its height; its sides were not equal in height—it was not boarded up on the west side; there was a space between the cap piece of the trunk and the planking on the upper side of the west end of the trunk of from four to eight inches; I do not 30 know what the depth of the flume was—I never measured it; I don't know what head and fall we had at the time—I believe I knew at the time, but I have forgot; the cap pieces (or gripes) on the top of the flume were three or four, or five inches thick—never measured them.

Quest. What was the cap piece at the tumble dam used for while you were there?

Ans. It was used to hold those posts, and it was sometimes used to pry those gates over when we raised the gates.

Quest. When your pond was full, so that it just ran over the top of the gates, how far did it backwater—how far up the stream?

Ans. I never went up to see.

Quest. Could you see from the dam how far it backed water?

Ans. No.

Quest. Were complaints made by owners of lands up the stream of backwater from the pond?

10 *Ans.* I don't remember that any was.

Quest. Is the water any higher there now than it was when you were there?

Ans. I think it is.

Re-examination of *David Woodruff* by Mr. Vanatta.

Quest. About how much higher did you take it to be?

Ans. I couldn't tell; it was higher; it seemed to me to be somewhere in the neighborhood of a foot higher than it was when I was there—it's a long time since I was there; the water ran over the cap of the tumble dam about two inches
20 yesterday, when I was there.

Quest. About how much higher is the top of the present trunk than the top of the old trunk which was there when you lived there?

Ans. Well, some twelve or fifteen inches; it's possible I might vary five or six inches—may-be more; it's a long time since I was there.

Quest. Was there any mark at the saw mill door on the west side of the saw mill, from which you could get any idea of how much the trunk had been raised?

30 *Ans.* There was a door on the back side of the saw mill where we stepped out to go on to the trunk; there were mortises in the frame of the door where the sill had gone in; according to that, I should think that the trunk was a foot or eighteen inches higher.

Quest. Do you remember how near the top the old trunk came to the door sill in the saw mill?

Ans. The only way I have to tell is this: in going out of the saw mill to the trunk, you would step over that sill and step down a little on to the top of the trunk—it was a very

short step—you stepped over the sill, and your foot would go down a little to reach the trunk; there is no sill in there now; there is a similar cut for a door sill above the one that was used when I was there; I measured the distance yesterday between those two sills—I have forgotten what it was—it was some four or five inches; the top of the present trunk goes a little above the upper cut in the door-frame.

Quest. Did you notice whether a door, hung with reference to a sill fitted in the upper cut, would swing clear of the trunk when swinging out? 10

Ans. I don't think they have been particular to fit the door to the sill—the door was open, and swung clear of the trunk.

Second cross-examination by Mr. Little.

Quest. Is there any door at all there now?

Ans. I don't know; the door was open.

Quest. When you stepped over the old sill, how much did your foot go down to reach the old trunk?

Ans. Well, two inches—it may be three, and it may be four—I can't tell exactly. 20

Quest. May it not have been six inches?

Ans. I don't think it was.

DAVID WOODRUFF.

Sworn to and subscribed, this 3d day of December, 1863, before me.

ALFRED MILLS, M. C.

☞ See page

Ruben Carlile, a witness produced on part of the complainant, being duly sworn, on his oath says:

I live in Chester township, Morris county; my farm joins 30 Eliza Carlile's farm—it is rather west of hers; I was born where I now live, and have always lived there; I am now past seventy years old, am near seventy-one—be seventy-one next May; Mulford Carlile's father and my father were brothers; Mulford's father was named John; John Carlile, at the time of his death, lived where Eliza Carlile now does—he always lived there; after he died, his widow (Mulford's

- mother) drove on the farm for a great many years ; after that her sons drove it on, Mulford and John ; Mulford continued to live on that farm until he died ; I have mowed on the low land in front of the brick house where the widow now lives ; I have mowed there at frolics—half a day, and I don't know but a whole day, at a time ; I think I have mowed there when Mulford Carlile's father lived there ; I was twenty-one or twenty-two years old when he died—no, I was older—I was about twenty-four years old—it was same year
- 10 I was married ; I think I mowed there while Mulford's mother was living on the farm, and after her husband's death ; I don't know whether I mowed there or not after Mulford got to driving on the farm—I might and I might not ; I have not mowed there, or any where else much, within twenty years.

Quest. What kind of grass did you use to cut on that low land in front of the brick house ?

Ans. Well, some part of it was pretty coarse along the river—coarse grass—some folks calls it bog grass.

- 20 *Quest.* What was the other part that was cut on the low meadow ?

Ans. It was rather a finer grass—it was all coarse grass ; it wasn't timothy—it was a mixed up water grass—it was a little better quality than right close to the river ; I don't hardly know what foul meadow grass is—I don't think I ever see there what they call foul meadow—it was a good many kinds of grass there.

Quest. Did it produce a heavy or a light burthen of grass ?

- Ans.* Well, it used to cut a pretty good swath—what we
- 30 call a pretty good burthen, I think.

Quest. Which part of the meadow cut the largest quantity—the heaviest burthen ?

Ans. It was heaviest next the river—it was coarser ; the river curves around the lot ; I think it was the heaviest where it was the coarsest ; after that hay was cut and dried they generally stacked it up on the high part of the lot near the orchard.

Quest. When you used to mow there, did you ever see those meadows in those years covered with water ?

- 40 *Ans.* A part I have mowed when it was covered with

water, and a part when it was dry; it was generally pretty wet towards the river—in one place it was never dry—it was springy and wet above it—this was right in front of the house—I think it was springy along there.

Quest. When the hay was standing in cock on those meadows, twenty, thirty, and forty years ago, did you ever see the meadows covered with water?

Ans. In a high time of water I have seen them all under water—in a wet time, a freshet—particular times.

Quest. Have you seen it in that condition when the cocks 10 of hay were standing on the meadow?

Ans. I have seen in freshets and high water the widow's meadow, and all the meadows above there, covered with water when the cocks of hay were standing there.

Quest. How many tons of the kind of hay you used to cut on the meadow that belongs to Mrs. Carlile, next the river, would it take to be worth a ton of good timothy hay, in your opinion?

Ans. Well, I couldn't say how many tons; I had rather have a ton of timothy hay than to have two of that, anyhow. 20

Quest. When you used to mow that low land, was it worth any more than other portions of that same farm, in your opinion?

Ans. They have some land that was worth a great deal more, in my opinion.

Quest. Has the widow any meadow west of the house on Tanner's brook?

Ans. There used to be a meadow; they used to mow it at the same time I mowed on the river.

Quest. What is that used for now?

30

Ans. They pasture it now.

Quest. Is it fit to mow now?

Ans. Not much.

Quest. Why not?

Ans. The bushes have grown up since they pastured it—it got so poor they couldn't mow it any more, I guess.

Quest. Did the grass run out?

Ans. It doesn't grow; they used to cut large quantity of hay on it.

Cross-examination by Mr. Little.

The place that I have spoken of as always wet was right in front of the house, and ran from the bank by the barn down to the river—or I suppose so; it was wet down to the river; I don't know whether Mulford Carlile's father used the hay off of that meadow for his horses—we all used to—we didn't have so much upland meadow then—it was considered our best meadow at that time.

RUBEN CARLILE.

- 10 Sworn and subscribed, this 9th day of December, 1863, before me.

ALFRED MILLS, *M. C.*

Thomas Churchfield, a witness produced on part of complainant, being duly sworn, on his oath says:

I was tenant of Nathan A. Cooper's mill on Black river—was there three years; I went there as tenant in April, 1856.

Quest. While you were living there at the mill, did you ever go with Gen. Nathan A. Cooper to see Mrs. Eliza Carlile?

- 20 *Ans.* Yes, sir; I went once only; we went in 1858, in August or September, can't tell exactly the time—it was in the summer.

Quest. Did the general make any request of or proposition to Mrs. Carlile after you got there?

Ans. Yes, sir; he proposed to buy the land which was watered by the river.

Quest. What did Mrs. Carlile say to that? [Objected to by Mr. Little.]

Ans. Well, she said that she couldn't give him a title.

- 30 *Quest.* Why—what reason did she give, if any?

Ans. On account of her children not being of age.

Quest. Did she make any other objection to or give him any other reason why she couldn't give him a title?

Ans. I don't remember of any other objection why she wouldn't give him a title.

Quest. Did you, at or about that time, examine the meadow to see how much it was flowed by the pond?

Ans. Well, I believe I did.

Quest. How much did you think was flowed?

Ans. At that time I did not think much was flowed by the pond—as near as I can tell, not over an acre at that time.

Cross-examination by Mr. Little.

Quest. Was there any more of it flowed after that time?

Ans. It depends upon the quantity of water—the freshet; I think there was not at an ordinary time of water; it wasn't, if the water was in the same position it was in when I was there that day; I think the water was not running over the cap of the tumble dam that day I was there; I don't think 10 the water lacked over an inch and a half of the top—somewhere in that neighborhood.

Quest. You said there was not over an acre flowed at that time—do you mean that the water did not at that time cover over an acre?

Ans. Yes, sir.

Quest. How came you and the general to go there that day?

Ans. He asked me to go with him; he did not say whether Mrs. Carlile had sent for him, or whether she had com- 20 plained, if I remember right.

Quest. Tell us, as nearly as you can, the conversation which took place between the general and Mrs. Carlile at that interview—what each one said?

Ans. I don't know as I could tell the words that passed between them, but the principal errand was to —; he proposed to buy this land, and she refused; I believe he said to her that he would like to buy that land.

Quest. What land did he say he would like to buy?

Ans. The land joining the river that lay right in front of 30 the house, at the foot of the orchard.

Quest. How much was there of the land which he said he wished to buy?

Ans. I don't think there was any number of acres mentioned.

Quest. Did you know at the time how much he wanted to buy?

Ans. No, sir; I believe not.

Quest. Don't you know whether he wanted the whole of the meadow, or only the acre that was flowed?

Ans. I believe I can't say as to that.

Quest. Did not the general tell her what it was he wished to buy?

Ans. Well, it was that land adjoining the river in front of the house—all or a part—I can't say about that.

Quest. What price did he offer her for it?

Ans. I don't know as there was anything said about the
10 price by the acre; I don't know as he offered any price.

Quest. What reason did he give for wanting to buy it—what reason did he give her?

Ans. I don't know that he gave her any reason; while I was tenant at the mill, I think I have crossed the stream opposite Mrs. Carlile's land with John G. Crater; I think I did more than once—can't tell how often; I rather guess when we went there the first time we was gunning; I don't think I had any other object at that time than gunning; I rather guess the water in the stream, where we crossed it,
20 was then in the neighborhood of two foot, if I can remember right; I afterwards crossed the stream there with Crater; I rather guess the water was about the same depth when I crossed there with him—it might have varied some; I don't think I ever crossed there with him in time of freshet; I don't think the general gave me any reason for asking me to go with him to Mrs. Carlile's that day; I don't think that, at that time, he asked me to remember what had taken place.

THOS. CHURCHFIELD.

30 Sworn to and subscribed, this 9th day of December, 1863, before me.

ALFRED MILLS, M. C.

ON PART OF COMPLAINANT.

[Filed February 9, 1864.]

Examination of witnesses on part of complainant, taken at my office by consent, January 9th, 1864.

Mr. Vanatta appearing for complainant.

Mr. George Gage for defendants.

ALFRED MILLS, M. C.

Peter H. Stryker, a witness produced on part of the complainant, being duly sworn, on his oath says:

I live a little above Chester; I was forty-seven years old 10 on 8th October last; I am a carpenter—that's the business I follow generally; I worked at Gen. Cooper's mill on Black river in 1846; I helped put up a new trunk, helped fix the tumble dam, and helped in a considerable of work about there; John Vandoren was boss; I commenced on 5th September, 1846, and I quit 29th December, 1846, as I see by my book; the most of the time between those two dates I was at work there—some of the time I was at home; I believe Jonathan R. Axtell was there at that time, and done some work; he laid up some stone, where it had been torn 20 out, to put in a new trunk next the mill, and laid up a few on the end next the Nichols road; I think he did something at the stone piers which support the trunk—and I don't know as he did; they were laid up at the time.

Quest. When you went there to work in September, how was the stone wall between the tumble dam and the flume—a straight even faced wall, or a wall with an offset in it?

Ans. Well, sir, there were an offset in it.

Quest. Had you seen that stone wall before you went there to work?

Ans. I had seen it a good many times, sir.

Quest. About how far back does the upper part of that wall set back from the lower part?

Ans. I can't tell exactly—never measured it—I should suppose some six or eight inches—it is quite an offset; I cannot tell you how high the back part of the offset was

when I went there to work, probably from two to two and a half to three feet; I do not know how long it had been so prior to my going there to work; I could not tell how long I had noticed it to be so; once when I was going down to the mill was the first time I ever discovered the offset there; I went to the mill, and from there down to the eel-weir that was below the dam; I think I climbed down the stone wall not far from the flume; this was prior to 1846, but how long I can't recollect; I think Axtell came there to work in 1846, 10 about the time I went there to work—whether he was there before I went I don't recollect.

Quest. Was the height of the stone wall between the tumble dam and the flume raised, in 1846, by Jonathan R. Axtell or anybody else, except the little part adjoining the flume?

Ans. No, sir; not all the way along it wasn't.

Quest. For what part of the distance was it laid up?

Ans. Where we took out to put in the new flume; that part was laid up; we had to have room to work; we had to 20 take off at the bottom of the flume and slope off, so that the stone wouldn't tumble down; that was the extent to which the wall was laid up—it was taken out so that we had room to work around the tumble; that part of the stone wall next the tumble dam was not raised in height, I think; I can't say positively whether the stone wall next the tumble dam on the west side was raised in height; I think that was about the same height as the other side; the stone wall next to the Nichols road was lower than the wall next the tumble dam, and Axtell raised that some; it was raised, and I think Ax- 30 tell done the work; the stone wall next the flume was torn out after I went there to work; I think we all turned in and helped tear it out.

Quest. Did you or not, at that time, notice the shelf of the offset between the flume and the floodgates?

Ans. O yes, sir; I noticed it; I helped put in the tumble dam in 1846; I think the stone work under the lower sill of the tumble dam was not raised any higher than it had been before.

Quest. Was the frame work of the new tumble dam made, 40 or intended to be made higher than the frame work of the old tumble dam was, and if so, how much about?

Ans. It was talked at that time nine inches.

Quest. Was that what you understood at the time as the height it was raised?

Ans. Yes, sir.

Cross-examination of *Peter H. Stryker* by Mr. Gage.

I have a memorandum of the time I commenced working for Mr. Cooper in 1846; I took it from my books in which I charged the work at the time; I took it from my book a week or two ago; I have worked for Gen. Cooper at the mill at other times than the one I have mentioned here; I 10 worked there after 1846; I don't recollect what year—a year or two afterwards; I have a charge of that in my book; I have no memorandum of that here; I worked there pretty much all the time between 5th September, 1846, and 29th December, 1846; I was there more than half of the time—more than two-thirds of the time I should think; I was home a few days; I couldn't tell you whether Mr. Axtell was there at work when I went there to work; I think the first time I ever discovered any offset in the wall was when I went down to the eel-weir; that might have been a year or 20 two or three years before I went there to work in 1846; the first time I saw it I should think the wall of the offset was about the same height it is now; I should judge it is from two to three feet; I never measured it; I think that offset at that time extended the whole distance between the tumble dam and the flume.

Quest. Did you notice it in particular at that time?

Ans. I noticed there was an offset, but I didn't notice it all the way in particular, because I didn't go along to view; the wall on the west end extended at that time up to the 30 Nichols road—I mean it did in 1846, when I worked there; I don't know its height when I went there to work; the wall between the tumble dam and the flume was not raised all the way along, so as to make it higher, by Mr. Axtell in 1846; there might have been some places where he put in a few stone to level it up.

Quest. Are you positive that he didn't lay up the whole of it, from flume to tumble dam, while you was there?

Ans. He didn't lay it all the way up; there was very little

work done on that part; I don't recollect whether Axtell quit work there before or after we did; I should think, though, that he quit work there some time before we did.

Quest. The knowledge that you have of this offset in this wall, is it the result of your own examination or conversations you have had with other people?

Ans. My own examination; I went and looked at it myself; I haven't been on it in some time; I paced the distance between the flume and the tumble dam, and I think it is
10 about twenty-seven paces; we took out enough to let us put in the new flume—probably at the top we took off four feet, and then sloped down to the bottom.

Quest. Do you mean to say that that was the only part of the dam that was raised?

Ans. No, sir; it was raised on the west side of the tumble dam; next the flume it wasn't raised only to make it level with the rest; Mr. Vandoren took one of the old posts, and measured off nine inches between the bed-piece and the cap; he called several up to see it measured; I don't know why
20 he called them up to see it measured.

Quest. Do you know, of your own knowledge, whether that was all it was raised?

Ans. I couldn't say; that was what I understood it—that was the talk around there; I couldn't say whether it was raised more or less.

Re-examination by Mr. Vanatta.

I do not know what was the thickness of the wall between the tumble dam and the flume—it was not very thick—it was faced on one side, and then run off behind; it might
30 have been two foot thick.

Quest. Did you, in 1846, while you were working there at the mill or at the dam, see or hear anything that led you to suspect or believe that that tumble dam was raised more than nine inches?

Ans. No, sir; that was the general talk while we were there at work.

To Mr. Gage.—*Quest.* by Mr. Gage. Did you, in 1846, while you were at work at the dam or the mill, see any teams drawing gravel and stone?

Ans. There was some dirt hauled there at the time—it was put in betwixt the road and the dam; there was some holes that the water stood in, and it was kind of levelled up; I don't recollect whether or not there were any stones hauled; that was not my business, and I didn't pay much attention to it.

Quest. Have you any information, other than what you have gained from other people, that the tumble dam was raised only nine inches?

Ans. I will say as I said before; I have also heard others 10 say it was raised.

Quest. by Mr. Vanatta.—Did you help do the work of putting in the tumble dam?

Ans. Yes, sir.

Quest. by Mr. Gage.—What part of the work did you do?

Ans. Any part that was set for me to do; I don't recollect that I laid out any of the work or made any of the measurements; I was not the boss.

PETER H. STRYKER.

Sworn to and subscribed, this 9th day of January, A. D. 20 1864, before me.

ALFRED MILLS, *M. C.*

Nathan Bowman, a witness produced on part of the complainant, being duly sworn, on his oath says:

I was born 18th April, 1799; I live in the township of Chester; I have worked for Gen. Cooper—at one time for seven years right straight along—worked no where else; this seven years was before he began to build his stone mill and afterwards; at the time the stone mill was built, the property belonged to Nathan Cooper, the uncle of com- 30 plainant; I was married, I think, in 1827; at that time I was working for Mr. Cooper; I think I got married the same summer in which the stone mill was built—in 1826 or 1827; I did work there at the mill dam when the new mill was being built in 1826 or 1827; I worked on the stone wall then, between the tumble and the flume; the stone wall between the tumble and the flume was raised higher then; there was a dam there before we did any work there at all.

Quest. Now tell us how the stone wall was put on in 1827?

Ans. The new dam was built back from the face of the old dam, so that a man might stand on there and work—in some places eighteen inches and in some places not so wide; it was drawn straight; the old dam was bulged out in places; I suppose it was made about the same height it is now, as near as I can tell.

Quest. Before that work was done of which you are speaking, was there any such shelf or offset in that wall?

- 10 *Ans.* No, sir; the wall was then laid up from the flume to the tumbling dam; it was raised on the west side of the tumble, towards the Nichols road; it was built about on a level all the way through.

Quest. Was the wall which you put on in 1826 or 1827, west of the tumble dam, laid even with the face of the old wall, or set back from the face of the old wall?

Ans. I don't recollect there being any old wall there, for it appears to me it was all washed out.

Quest. Had there been previously?

- 20 *Ans.* There had—you could see spots of it; we came right up to the Nichols road with the stone wall; I helped draw the stone for laying up the dam in 1826 or 1827—there were other teams.

Quest. Did you help lay up the wall?

- Ans.* I don't recollect doing much at that, for I was with the team; I might have helped lay up a few stone; the wall was laid up while the stones were being drawn; several worked at laying up the stones in the wall; Gen. Cooper was there; he was there amongst them, and I suppose he
30 did help lay it.

Quest. Have you any doubt as to the fact that the wall which was laid up in 1826 or 1827 was set back from the face of the old wall?

- Ans.* No, sir; that was the fact—it was set back; what I know it by, I have walked on to it; I remember there was an elm bush, and I took my knife and cut that out of the way; I worked for Gen. Cooper for more than a year after that wall was laid up; I worked about the mill whenever it was necessary; after that there hasn't been a year but what
40 I have been by that mill time and again; since the mill was

built, I have lived two years in the township of Mendham—otherways always in the township of Chester; I have been at the mill dam lately; I have been there a couple of times, to look at it, in six or eight weeks past.

Quest. Is the stone wall between the tumble dam and the flume any way different from what it was twenty-five years ago—and if different, state in what respect?

Ans. I don't see as it is, only except where it was laid up by the flume, where it had been laid up anew; I think it is all of the same height as in 1827. 10

Quest. How can you discover that the wall next the flume has been laid up since the other part?

Ans. That next to the flume is not covered with moss as the other is—it looks as though it had been newer done.

Quest. Is the difference in the wall in that respect easy or difficult to be seen?

Ans. It is easy to be seen.

Quest. Do you mean that there are more moss and time marks on the wall lying on the top of the shelf than on that part of the wall next the flume? 20

Ans. Yes, there is more moss.

Quest. Between the year 1827 and the year 1846, were you or not frequently at that mill dam?

Ans. No, sir.

Quest. Were you or not frequently at the mill during that period?

Ans. No, sir; I frequently passed by there; my business didn't call me to stop there.

Quest. Every time you cross Black river there, this stone wall is in sight from the road? 30

Ans. Yes, sir.

Quest. How often have you crossed Black river on that road near the dam since 1827?

Ans. Oh, I couldn't begin to tell; this last few years, while I was driving team for John Nesbitt, I used to cross there quite a good many times.

Quest. Has there been a year since 1827 that you haven't passed on that road by that dam?

Ans. No, sir; there has not been a year, that I know of, but what I have passed along that road; for the last seven 40

or eight years I have been past there may-be twenty times a year, and perhaps sometimes not so much; I have worked for Gen. Cooper. off and on, about two years after his mill was built, and since that I haven't worked for him.

Cross-examination by Mr. Gage.

I worked at the mill all the time the dam was being built in 1827, for I drove one of Cooper's teams; I didn't work on the farm any of the time while the mill was being built; I just attended to his team while the mill was building, cart-
10 ing lime, and sand, and stone.

Quest. Wasn't the new dam that you set on top of the old wall put back more than eighteen inches from the face of the old wall?

Ans. In some places it might have been, and in some places it was not so far; there was space enough for the workmen to stand on—then in some places it wouldn't be quite so wide; I don't think either the old wall or the offset has been changed in height since 1827; it looks about the same thing; I don't think the wall west of the tumble dam
20 towards the Nichols road has been changed since then, except you can see where it has been washed out and built up again; I won't pretend to say anything about whether the wall west of the tumble dam and to the Nichols road is higher or not now than it was in 1827; I did not measure the height of this offset at the time it was built; I did not measure the height of the old dam at that time; I have not measured the height of the old dam or the offset since that time.

Quest. Then how do you know that the wall was as high
30 in 1827 as it is now?

Ans. If anybody had half an eye, and would go and look at the stone, they could tell by the moss on to it that it wasn't all laid up at one time.

Quest. I suppose the offset is covered just as thickly with moss as the old dam, isn't it?

Ans. I don't think it is, for it hasn't been there so long to be covered.

Quest. Were you ever on that dam, or at that dam, for the purpose of making an examination, from the year 1826 or
40 1827 till the fall of 1863?

Ans. I have been twice this fall; those are the only times I have been there to examine it.

Quest. Then I suppose you come to the conclusion that the wall hasn't been raised, from the moss on the stones?

Ans. I don't think it has.

Quest. Was there anything else that you saw about that dam, except the moss on the offset and the old dam, that led you to believe that the dam had not been raised?

Ans. I think not—all I could see was that it had been made new next the flume, and had been put in next the 10 Nichols road, where it had been washed out.

Quest. Do you know, of your own knowledge, whether it was ever washed out by the Nichols road?

Ans. Not of my own knowledge, only by the looks of it—from which I believe it has been washed out.

Quest. Do you know, of your own knowledge, whether the dam next the flume has been repaired?

Ans. That I can't say.

Quest. When did you commence driving team for Mr. Nesbitt?

20

Ans. I have had two heats at it; the last time I commenced the 23d of last March.

Quest. What did you do with his team?

Ans. Well, I have been to Morristown, to Caldwell, Newark, Rockaway, Pine brook, Schooley's mountain.

Quest. Did you have a load?

Ans. I did; sometimes wheat, indian, and flour.

Quest. Did you take a load to Schooley's mountain?

Ans. I went after a load of rye to Mr. Dellicker's.

Quest. In going from Mr. Nesbitt's to Schooley's mountain 30 would you pass this mill?

Ans. Yes, sir.

Quest. How many times have you been past there with Mr. Nesbitt's team?

Ans. A good many times; I had two or three brothers-in-law, and I used to get Nesbitt's team and go over; never went to Schooley's mountain for a load with Nesbitt's team but once, and that I have mentioned; I had a covered wagon when I went with the team; I generally had a top buggy when I went visiting.

40

Quest. Then, when you have passed this mill, you haven't been in a condition to observe the dam, have you?

Ans. Well, I think I have passed by there often enough to see if anything had been done there—to see if any alteration had been made anyhow.

Quest. Do you think the road has ever been raised there between the bridges since 1827?

Ans. I don't know whether it has or not; the road is not as high as the bridges is—that I know.

10

NATHAN BOWMAN.

Sworn and subscribed, this 9th day of January, 1864, before me.

ALFRED MILLS, M. C.

George Gray, a witness produced on the part of the complainant, being duly sworn, on his oath says:

I live in Chester township; I have measured the distance between the tumble dam and the flume at Gen. Cooper's mill—it is 98 feet and 3 inches; the distance from the west end of the tumble dam to the end of the wall at the Nichols road is 54 feet; the length of the tumble dam across the stream is 35 feet and 6 inches; that is the space the water flows through; I measured the height of the wall above the offset between the tumble and the flume—it is between two feet and a half and two feet ten inches; I measured at three or four places.

Quest. Did you ascertain how much higher the stone wall on either side of the tumble dam is than the top of the tumble dam?

Ans. Just twenty-two inches—I measured it; I drew a line across from one side of the tumble dam to the other, and then sighted it—it was as near straight as could be; I measured that this morning, and I made the height of the wall above the tumble dam twenty-two inches; I think that was a correct measurement.

Quest. Have you examined the face of the stone wall between the tumble and the flume, and if there is any difference between the different parts, state what it is?

Ans. I noticed that there was a good deal more moss on the old dam than there was upon the offset, except next the flume, and there was not so much.

40

Quest. Has the wall above the offset next the flume as much moss up it as the rest of the offset?

Ans. No, sir; it hasn't as much there next to the flume; I should judge it was pretty easy to discover that difference.

Cross-examination by Mr. Gage.

Quest. Can you discover any moss at all on the offset of the wall next the tumble dam?

Ans. Yes, sir; I think there is; I won't be positive that there is moss close up to the tumble dam; I don't know when the wall west of the tumble dam was built, nor when 10 the wall above the offset was built; I was not acquainted with these premises in 1846, except as I had been through there frequently; I did not know the mill or dam in 1846; I never knew much about them until last fall a year ago, when I moved there near the mill.

GEORGE GRAY.

Sworn to and subscribed, this 9th day of January, 1864, before me.

ALFRED MILLS, *M. C.*

ON PART OF DEFENDANT.

20

[Filed February 9, 1864.]

Examination of witnesses, &c., taken at my office in Morristown, New Jersey, on Tuesday the eighth day of December, eighteen hundred and sixty-three, pursuant to notice given by solicitor of defendants to solicitor of complainant, due service of which is acknowledged by solicitor of complainant.—Theodore Little, esq., appears for defendants, J. Vanatta, esq., for complainant.

ALFRED MILLS, *M. C.*

Roswell Day, a witness produced on part of the defendants, being duly sworn, on his oath says:

30

I live at Hacklebarney, in the township of Chester, Morris county; I am sixty years old; I am in the iron business—

- drive a forge and a rolling mill—I drive them for Major Budd; I have lived there seven years on 1st May last; I have been acquainted for that length of time with Black river stream; I was at the stream one time when William S. Carey was making preparations to survey; I did not stay; I first saw him at the dam at the mill; my impression is that this was two years ago this last fall—it may be three; Mr. John Vandoren, Gen. Cooper, and William H. Seward were with him; I went with them to Mrs. Carlile's meadow; it
- 10 was then a very dry time, that is the water was very low in the stream, and that was the reason of my being there; if I recollect right, it was Monday morning, and the water was very low in the stream, and didn't come down fast enough—we wanted to work; I went up to the mill to see why the water didn't come down; I got up there, and found that they hadn't drawn their gates that morning for the purpose of letting their pond fill up; the water had got running over the tumble of the dam, and Mr. Vandoren measured the depth of the water on the plate, and then they told me (Mr.
- 20 Cooper told me, I think,) that as soon as they could stick their stakes up there they might draw the gates and start the mill; I went up with them for the purpose of knowing how soon we could draw the gates, and then I could come back and tell the miller; when we got up to Mrs. Carlile's meadow, the water had commenced setting in some on the meadow; they went and stuck their stakes as far as the water had oozed up—it seemed to ooze up—it did not run over the banks at that time; while I was there they wasn't ready to
- 30 draw the gates, and we went further up—and when we come back, we found the water had oozed still farther back; they then set their stakes again; they moved their stakes once or twice, and after they got them as far as they thought the water was coming up, they said we might raise the gates, and I went down, and Mr. Seward went down with me; I did not stay to see the surveying; I can't say how long it had been dry at this time; it was dry, and that was my reason for going up; they had kept the water back longer than usual, I suppose for the purpose of making this survey; I have been on the meadow once since that—it was last
- 40 week, and my impression is it was Wednesday; we had then a good supply of water—did not notice how the water

was then at the dam; the stream was full, plenty of water for business, more than we used; it was not high water—not what we call a freshet; I went down to the bank of the stream in the meadow; the stream overrun the bank in one place that I saw; I think that was on the upper meadow; I was on the lower meadow; I know but little about the obstructions in the stream; I don't know as I could tell how much of the upper meadow was covered with water—did not notice that particularly; I am not much of a farmer—I have had some acquaintance with land of this 10 kind.

Quest. From your knowledge of land of this character, would you or not consider this land valuable, if the pond water were kept off of it?

Ans. If you take land of that kind, sir, and there is not too much water on it, it makes the best meadow—it is safer than upland meadow.

Cross-examination by Mr. Vanatta.

I went up there last week, at the request of Mr. John D. G. Carlile—at least he spoke to me about coming down here, 20 and I wanted to go up there before I came down here; Mr. Carlile went with me; if such land has too much water on it, it sours the grass, and the meadow is not so good; there was another man with me besides Mr. Carlile last week—I think his name was Waters; he had a gun with him.

ROSWELL DAY.

Sworn to and subscribed, this 8th day of December, 1863, before me.

ALFRED MILLS, *M. C.*

Adjourned by consent, until two and a half P. M.

30

Two and a half P. M. examination resumed pursuant to adjournment.

Eliphalet C. Willet, a witness produced on part of the defendants, being duly sworn, on his oath says:

I was forty-five years old last September; I live in German Valley, Morris county—have always lived there; I am the son of Doct. Samuel Willet; Mrs. Eliza Carlile's husband

was my uncle; I am acquainted with her farm—have known it ever since I can recollect—ever since I was five or six years old; I have been on it frequently; I used to be frequently on the meadow land adjoining the river when they were at work on it; I was on it 13th November last; John D. G. Carlile was with me; I went there to see if it was now as it was when I used to be on it; I found it altogether different from what I ever saw it before, though I haven't been on it for some years before; it is different in the quality of
 10 grass—it has coarse water grass—some had been cut off, and some stood there.

Quest. How was the surface of the ground as to being wet or dry?

Ans. It was wet.

Quest. More or less so than formerly?

Ans. More so than formerly.

Quest. Was the difference slight or very marked?

Ans. Very marked, sir.

Quest. Was the difference in the quality of the grass slight
 20 or great? [Objected to by Mr. Vanatta.]

Ans. It was great.

Quest. Did the water on that day cover the surface of the ground?

Ans. No, sir; the stream was low; I didn't think it was full to the top of the banks; at the dam the water was an inch and a half below the cap that the water tumbles over.

Quest. Was any part of the meadow covered with water?

Ans. Yes, sir; the low places had water in.

Quest. You have known this farm a long time—would you
 30 or not consider this meadow an important part of it, if the water of the pond should be kept off of it as it formerly was?
 [Objected to by Mr. Vanatta.]

Ans. Yes, sir.

Quest. Do you know of any reason why it should not produce as good grass, and be as valuable as the low land along the stream owned by John Carlile and Charles Ming; and that formerly owned by Major Budd?

Ans. I do not.

Quest. What difference in the value of the farm would you
 40 make between having that meadow subject to be flowed only

by freshets, or having it flowed as it is now flowed by the pond whenever it is full?

Ans. I should think the meadow would be worth just as much as any other part of the farm.

Quest. Have you passed this land frequently during the last several years?

Ans. I have; I have been a practising physician, and am so now.

Quest. What proportion of the time, for several years past, has that meadow been covered with water, according to your 10 observation?

Ans. Well, whenever the pond is full the meadow is covered—nearly the whole of it—there are some few knolls that are not covered.

Quest. Have you made any experiments to see how much the depth of water has been increased in that pond?

Ans. Yes, sir.

Quest. State what they were, and the result of your examination?

Ans. I was on the pond 13th November last, and I mea- 20
sured the depth of the water in some twenty places, and found the average depth of the water twenty-five and a half inches, that is, the depth of the water was twenty-four inches, and the water was one and a half inches below the cap of the dam; I measured around in different parts, where years ago I used to be, and the ground was dry; I was then around there fishing, as we boys were in the habit of doing; these are the points at which I found the water at that depth; when I made my measurements on 13th November, John Carlile was with me; when I used to be there as a boy, fish- 30
ing, the ground at these points was higher than the stream—from ten to twelve inches higher; it might have been higher at some points and lower at others.

Quest. Would you or not, as a physician, consider the alternate flowing and draining of this meadow land in front of the house injurious to the health of the place? [Objected to by Mr. Vanatta.]

Ans. I should.

Cross-examination by Mr. Vanatta.

Quest. Do you consider land which is frequently overflowed, and on which the water stands until it stagnates, and is only removed as it is evaporated by the sun and wind, conducive to health?

Ans. No, sir; I think it is injurious to health.

Quest. Is it as injurious to health as land which is flowed with fresh water every eight or ten hours, and where the living water stands a great part of the time?

- 10 *Ans.* I consider it more injurious—though both are injurious; I commenced the practice of physic in 1842; prior to that I was pursuing the study of medicine for three years; I have had nothing to do with mowing grass on Mrs. Carlile's low land since I commenced the practice of physic, nor before; I have raked hay there, but never mowed there; I have raked hay there before I began the practice of medicine, but never since; I think it was before I began to read medicine that I raked hay there; I can't tell how many seasons I raked hay there—probably a dozen—it may be more—I can't
- 20 tell; I used to be at my uncle's a great deal, and when I was there they would put me to work; I would sometimes be there two, three, or four weeks at a stretch; when I raked there, I think old Johnny Roberts worked there, and I think a black man named Charles Doty; I think I recollect raking hay there when they had a man named John Larrison who mowed there; my uncles used to go up and cut there.

- Quest.* You stated that you had not prior to the 13th November been on Mrs. Carlile's meadow for a good many years—how long was it prior to that that you had last been
- 30 on it?

Ans. Probably fifteen years—may-be less, but I don't recollect it.

Quest. In the summer time, can you see from the highway how much of Mrs. Carlile's low land is covered by water?

Ans. Yes, sir.

Quest. Can you before the grass is cut?

- Ans.* No, sir; there are some places that you could see when the water covered the grass—other places you could not, except you could tell from the color of the grass where
- 40 the water was.

Quest. Did you ever measure the depth of water in or about that pond before the month of November last?

Ans. No, sir; I never did.

Quest. Tell us the places at which you made your measurements on 13th November as accurately as you can?

Ans. I commenced at the mouth of the little brook, near Obadiah Howell's, that empties into the pond; I measured there, and from there up to the chain of rocks, and then crossed over to the other side and measured there.

Quest. Were your measurements in the stream or along 10 the shore?

Ans. They were from the shore to the stream; we didn't measure in the stream—measured on the side of the stream; you can tell where the stream is by the sand; we would measure up to what I supposed to be the banks of the stream; we were in the stream with a boat; you could tell the stream by the sand and the depth of water; the place of my first measurement is, I should judge, 150 to 200 yards from where the road crosses the dam, if you go by the stream; I did not measure the depth of water in the stream. 20

Quest. Why didn't you measure the depth of water in the stream?

Ans. We didn't want to measure that; we measured on what was dry ground when I used to run over it; in the stream the water was, I presume, three or four feet or five feet deep above the mouth of this brook; at the mouth of this brook the water was not over two and a half or three feet—below it the water was much deeper; my measurements went up the stream to what is called the chain of rocks—that is where the rocks come close together and the 30 stream is very narrow; I measured one place above the rocks, on the left as I went up, and one on the left, as I came down; I should think the measurement above the rocks that I made on the left was about six feet from the channel, and my other measurement above the rocks, made as I came down, was about four feet from the channel.

Quest. For a considerable distance, as much as fifty yards at least, above that chain of rocks, are not the bushes on either side of the channel so thick that you cannot get a boat through them or to either side of the channel? 40

Ans. There are some places where you can get a boat in, and some places where you cannot—where we measured were places where we could get the boat in; I should judge the river bed, above the chain of rocks, is some eighteen or twenty feet wide—you can hardly tell how wide it is, for the bushes hanging over make it seem narrower than it is; that chain of rocks is below Mrs. Carlile's land.

Quest. The place there where the ground used to be dry, that you now find covered by water, is on the west side of
10 the pond from the chain of rocks down to the brook that you have spoken of?

Ans. I measured on both sides, but more on the west.

Quest. When was the last time that you passed over the ground on the west side of the pond within the space last referred to, and found the ground dry at places where you found twenty-four inches of water on 13th November?

Ans. I can't tell exactly when it was—somewhere between 1830—1835; but one place that I measured above the chain of rocks was in 1844.

20 *Quest.* How was the water at the dam between 1830 and 1835, when you found dry land at the places where you measured below the chain of rocks on the west side?

Ans. At that time the water at the dam ran over the side of the flume; I don't know how it stood then at the dam—I think it may have run over the tumble dam next to How-ell's, but I don't know how that was—I never measured it.

Quest. What was the occasion of your being there in 1830 to 1835 on the west side of the pond at the places you have spoken of?

30 *Ans.* I used in the summer time be at my uncle's, and we would go down there to swim—down to what we called the big rock; we used in the summer to go and get grapes, when grapes were ripe.

Quest. Was your attention at that time in any way directed to the height of water at the dam?

Ans. No, sir; not at all.

Quest. You say that in 1844 you were on one of the points you measured, which is above the point of rocks—at that time how high was the water at the dam?

40 *Ans.* I don't know; I went there a fishing with hook and

line, and that's the way I know this place—it was a good hole to fish in.

Quest. Do you think the pond is any more filled with sand and mud and other obstructions than it was in 1830—1835?

Ans. I should think it would be filled up some; any pond would naturally fill up.

Quest. Have you examined Cooper's pond so as to say from observation whether it has filled up much or little for the last twenty years?

Ans. Yes, sir; there is a good deal more mud in it than 10 there was twenty years ago; I have observed it frequently when I have been passing when the pond was drawn off; my father owns a farm on Black river, up towards the plains—should judge it was some six or seven, probably eight miles, from Cooper's mill, but I can't tell the distance; I should think it was over four miles.

Re-examination by Mr. Little.

There was not an eel-weir at this point of rocks, or near there, in 1844; I can recollect one being there, but I could not have been over five or six years old when I was in it; 20 the big rock that I spoke of is on the east side of the pond; we used to go down on the west side, and swim across to the big rock; I think that in November last, when I measured at a point above the rocks, at which I was in 1844, the water was twenty-two inches deep, and at the point on the other side of the stream it was twenty-four inches.

Quest. How far up, with reference to this point of rocks, did the still or back water of the pond extend in 1830—1835, at the time you speak of?

Ans. There was quite a current at the mouth of this brook 30 I have spoken of.

Second cross-examination by Mr. Vanatta.

Quest. Do you mean to be understood that in 1835 the dam then at Cooper's mill would not cause back water at the mouth of that brook?

Ans. There was quite a current at the mouth of that brook when I was swimming there, and that was between 1830 and 1835.

Second re-examination by Mr. Little.

There was a current at the point of rocks—there did not appear to be much back water there.

ELIPHALET C. WILLET.

Sworn to and subscribed, this 9th day of December, 1863, before me.

ALFRED MILLS, *M. C.*

Joseph Budd, a witness produced on part of the defendants, being duly sworn, on his oath says:

10 I am forty-five, either the eleventh of this last October or the eleventh of the previous October; my business is farming, and I make a little apple jack; I live in Chester township, about two miles from Cooper's mill; my farm joins Black river on one side of it; I know this farm of Mrs. Carlile—I have known it about twenty years; I was on it last Saturday—went with John Carlile to see how the water was there and in the river; there was considerable of water on the meadow—considerable part was covered—some places not so deep as others?

20 *Quest.* Could you tell whether the water came from the pond or not?

Ans. I should think it did come from back water on the lower end—that is, I didn't see any current of the water running off; I speak now of the lower meadow; I saw but one spring, and that was a little east of the barn; that day the water in the pond ran over the tumble of the dam about three inches; the banks of the stream were nearly filled with water up as far as the Carlile bridge; I measured the water at some four, five, or six places in the meadow along the
30 river—it averaged from six to seven inches from one and a half to two rods from the river; I did not measure the distance from the river.

Quest. As a farmer, what value would you place on this meadow, in connection with this farm, if the water of the pond could be kept off of it?

Ans. I shouldn't want it at all with the water on it.

Quest. repeated. [Objected to.]

Ans. I suppose as much as any other meadow land or any part of the farm.

Quest. Would you or not consider it of great value to the farm if you owned the farm, and could have the water kept off? [Objected to.]

Ans. I should.

Quest. If you wanted to buy the farm, or if you owned it, what difference would you make between having that meadow without the pond of water, and having it flowed whenever the pond was full, or the owner of the mill chose to flow it? [Objected to by Mr. Vanatta.]

Ans. I should make a pretty big difference if I had to live 10 there, and there was dead water standing on it.

Quest. repeated.

Ans. I would make considerable difference for that; I suppose some men wouldn't make as much as I would; it's a hard thing to get at the difference; I should make \$1000 or \$1500 difference, if I was going to buy the farm, if dead water was going to stand on it; I shouldn't want it at all; I live too close the river now; at the time I was there last week it was neither a wet nor dry time—the water was about of an average height.

20

Cross-examination by Mr. Vanatta.

Quest. Does stagnant water stand on Mrs. Carlile's meadow?

Ans. Some parts of it—by the color of it.

Quest. Tell us on what parts of the meadow that stagnant water stands?

Ans. There is a streak runs up opposite the barn, or a little east of the barn; it runs up seventy to seventy-five yards, perhaps, from the river—suppose it comes out of the river, from the looks.

Quest. Do you mean the place that has been called the 30 slough in the lower meadow?

Ans. It's what I call back water ground; it's all blue—a scum over the top—the grass is dead; I didn't measure how deep the water is in that.

Quest. Is there any ground above water between this place, which you speak of as containing stagnant water, and the pond?

Ans. There is little knolls into it—I guess there is one small knoll in the upper meadow and one in the lower; it

would wet your boot soles now; I don't know how it is at other times—that is in the lower meadow.

Quest. Is there anything to prevent the water in the pond from flowing into this place where you say the stagnant water was, and if so what is it?

Ans. Not in the lower meadow, as I see; the land there is a little lower; the water runs up in high times, and then it can't get off when the water falls; that's the way I took it.

Quest. On the day when you were there last, did not the
10 water from the pond run into this place where you say this stagnant water was, and wasn't that the place where you say you thought you saw back water?

Ans. I didn't see anything running in there; above there, out of the river, it overflowed; I thought it had backwatered in there when the water was a little higher than it is now.

Quest. If you had put a light boat on to the water that you call stagnant, couldn't you have rowed the boat right out into the river or pond through water all the way?

Ans. No, sir; not last Saturday.

20 *Quest.* What was in the way to prevent?

Ans. There wasn't water enough.

Quest. Would you have come to ground that was clear above water?

Ans. I suppose the water was perhaps two inches deep over the ground, but it was not deep enough to row a boat.

Quest. If you stepped into the middle of this place where there was stagnant water, and had gone from there towards the middle of the river, walking where you saw the most water, would not the whole distance have been covered with

30 water?

Ans. I don't know whether the water passed out at the lower end—I can't tell.

Quest. repeated.

Ans. Perhaps there was some water on it all the way—I can't say.

Quest. Is there a lane coming from the barn down to the river?

Ans. Yes, sir; I couldn't tell how far from the mouth of that lane this slough begins, perhaps it is some three or four
40 rods, may be one, two, or three rods—didn't observe close enough to tell.

Quest. How wide is that slough next the river?

Ans. The stagnant water is not near the river; it runs down towards the river nearly to a point—I can't tell how wide that point is.

Quest. Can you tell how long that slough has been there where you saw the stagnant water?

Ans. No, sir.

Quest. Why do you call the water you saw there stagnant?

Ans. Because it laid there some parts of the year, and couldn't get off; perhaps I had been on the meadow last a 10 year before that.

Quest. Can you tell how long the water which you thought was stagnant had been there?

Ans. No, sir.

Quest. How much ground did this stagnant water cover?

Ans. I should think perhaps an acre, as near as I could guess at it.

Quest. How close did it come to the ridge between the upland and low land?

Ans. Within perhaps a rod; I think it came within a rod 20 of that ridge; it's a very steep bank; I did not measure it, only guessed at it.

Quest. Was all the water you saw standing on the meadow apparently stagnant?

Ans. No, sir; there was some next the river that was not stagnant; there was water on the upper meadow; that did not look stagnant; I did not smell of the water on the lower meadow that I called stagnant when I was there on Saturday; I did not dip any of it up; I did not stir it with a stick or a board.

30

Quest. What was its color?

Ans. A kind of bluish cast, with a white skim over it in places.

Quest. Was there any ice on it?

Ans. In places there were—different places; it was not floating ice; there was a little ice next the river; I was there in the afternoon, or about noon; it had not frozen very hard the night before.

Quest. Were not the roads, on Saturday morning, frozen so hard that the wagons made no impression on them?

40

Ans. I don't know as to Saturday morning—I did not drive.

Quest. Didn't the roads remain frozen all day Saturday?

Ans. I don't know but what they did; but I don't compare the roads with that Black river mud.

Quest. If that slough had dead stagnant water standing in it last Friday night, can you give us any reason why it didn't freeze up, so as to be entirely covered with ice on Saturday?

Ans. I suppose the night wasn't cold enough; that water don't freeze like water laying right in the middle of the road;

10 you can't freeze up Black river in one night.

Quest. Where did the water which was on the upper meadow come from, as you thought when you were there?

Ans. I supposed it came from the river, from the appearance of things—couldn't tell from what point of the river—whether it was backed up from the dam or not.

Quest. What do you consider a fair price for that farm of Mrs. Carlile, taking it as a whole, per acre?

Ans. The way lands sell, I should think it was worth from \$50 to \$75—someway along there; it's a good farm; I am
20 speaking now of present prices.

Quest. Did you buy a farm lately on the same side of the river?

Ans. Yes, sir; I think I purchased in February or March last; it was within a year; it was at public sale—an executor's or administrator's sale; I got 98 acres; there was a pretty good house on it—outbuildings were poor; I gave thirty-one hundred and twenty-five dollars for that farm; it's a short mile from this farm to Mrs. Carlile's; my farm adjoins the river.

30 *Quest.* Is that farm of Mrs. Carlile's any better than yours? [Objected to by Mr. Little.]

Ans. Yes, sir; if it wasn't it wouldn't be very good.

Quest. Suppose there is no dead or stagnant water standing on Mrs. Carlile's meadow, but that all the water that is there is living water, and changed so often that it can't get stagnant, how much then would you take off of the value of her farm on account of the three or four acres that may be flowed with water?

Ans. Well, I should think it would be worth \$100 an acre,
40 if you had it dry so as to cut grass.

Quest. How near is your house to Black river?

Ans. Between one half and three-quarters of a mile; I own two farms on Black river; I do not live on the place I bought last winter; I live further up the stream than that—the next house; both places run down to Black river; it has been pretty sickly at my place a good part of the time; my family has been sick; I have had the agers, fevers, and chills; I have lived there fifteen or sixteen years this spring.

Quest. Were you asked to sign a paper to prosecute Gen. Cooper for his mill dam? 10

Ans. No, sir; I wasn't asked to; I see such a paper—I couldn't tell where I see it—I wouldn't say for certain that I seed it; I seed it or heerd of it—couldn't tell where, nor couldn't swear I wasn't asked to sign it; I couldn't say that I didn't sign it; it's a good while ago.

Quest. Do you think that your land adjoining Black river would be benefited if Cooper's mill dam were taken away?

Ans. Well, I suppose it would; if you get an outlet, it must take off the water.

Quest. I suppose you had rather have it taken down than 20 to remain as it is—would you not?

Ans. Of course; that is, I would rather have the water off, if you could get it off; I couldn't tell you what my length of line on Black river is—I think it is half a mile or more—couldn't tell; as you go down the river towards Cooper's pond, along the river, the first man is Daniel Budd, the next I don't know what the man's name is, it was sold a short time ago (Cregor did own it); the next is Foster Waters, and the next is the widow Carlile.

Re-examination by Mr. Little. 30

I can't say whether or not the health of my place has been better or worse for the last few years; my health is better since I got rid of the ager, which was four or five years ago; at my own place it is more unhealthy for the last ten years than it was before, and it is so along the river.

JOSEPH BUDD.

Sworn to and subscribed, this 9th day of December, 1863, before me.

ALFRED MILLS, *M. C.*

Adjourned, by consent, until to-morrow morning, at ten o'clock.

Wednesday morning, December 9th, 1863.

Parties and counsel met pursuant to adjournment.

No witnesses being produced by defendants, the complainant produced two witnesses, Ruben Carlile and Thomas Churchfield, who were examined, and whose testimony will be found with the other testimony of the complainant, where for convenience' sake, and by consent of counsel of both parties, I have placed at pages

 See page.

- 10 Examination adjourned, on December 9th, by consent of parties, until Friday afternoon, December 11th, at two and a half P. M.

December 11th, 1863.—Parties and counsel appear pursuant to adjournment.

Jonathan R. Axtell, a witness produced on part of the defendants, being duly sworn, on his oath says :

- I live in Livingston county, Michigan ; I removed to Michigan about fourteen or fifteen years ago, I think ; before that time I lived in Chester township, in this county ; I
20 worked as a mason—that was my trade ; my age now is fifty-one ; I worked as a mason at Gen. Cooper's mill dam at Black river.

Quest. State when the work was done, and what you did?

- Ans.* I think, in the fall of 1846, I done some stone work for Mr. Cooper there, at his mill ; I think the first work was near the flume—I am not positive whether the first work I done was adjoining the flume, or whether it was building some pillars for the trunk to rest upon ; I think I worked at both ; in connection with that, I laid a job of stone work on
30 the top of the old dam ; it was all along at the same time.

Quest. Tell us, as fully as you can, what work you did on the top of the old dam ?

Ans. I think it was raising the stone work above where it was when we commenced to work up to where it now stands.

Quest. How much did you raise that stone work above the old dam ?

Ans. Well, my impression is that the height from where we commenced was about three feet and a half; the top of the old dam was irregular, higher in some places than others; it was also out of line on the face—had bulged out in some places.

Quest. Do you mean that you raised the stone work of the dam three and a half feet?

Ans. Take the general measurement, I do; in some places it wouldn't be so high as in others?

Quest. What part of the dam did you raise? 10

Ans. I think we raised the whole length, that is to say, I think each side of the tumble; and I couldn't say positively whether we increased the height of the highest parts of the old wall or not; I can't say how much we increased the height; I think we did increase the height of it all a little—think it was all raised.

Quest. Which part of the dam was so uneven?

Ans. The part between the bridges.

Quest. What was the average height of that old dam above the old tumble? 20

Ans. It's a difficult matter for me to tell—but, as I said before, the dam between the two bridges was a good deal higher than it was anywhere else; I can't tell satisfactorily how much higher it was there, on an average, than the old tumble.

Quest. How much, according to your recollection, did you raise the stone work between the bridges upon an average?

Ans. Well, it would be a difficult matter to tell, for where we commenced near the flume we commenced at the bottom; the old stone work was taken out; as we got up 30 higher, filling up the space that had been torn away from the old wall when they rebuilt the flume, the wall grew wider till we got to the top of the old work that is there now.

Quest. Did you build that part of the wall any higher than the old dam?

Ans. Yes, sir.

Quest. What do you mean, then, by the "old work which is there now," in your previous answer?

Ans. By the old work, I meant the top of the dam before 40 we commenced raising it?

Quest. What designates the top of that old dam now?

Ans. The line of the new work; the face of the old wall was irregular, crooked in some places, it would bulge out quite a good deal; when we commenced our new work we intended to have our new work straight, and there would be quite a shelf along there, in some places more than others—it shows for itself.

Quest. Now the question recurs, how much did you raise the stone work between the bridges upon an average?

10 *Ans.* I should think two feet.

Quest. How wide was the stone work of that old dam between the bridges—how thick?

Ans. I could not tell.

Quest. Was the unevenness of which you speak directly over the face of the dam, or did it extend back the full thickness of the wall towards the pond?

Ans. There was not much regularity about it; in some places there is now quite a shelf where the new work has been put on, and in other places the new work was put on
20 directly over the old work; the new work shows for itself on the dam.

Quest. How much did you raise the stone work next the flume?

Ans. I don't know that I ever measured the height there from the bottom; I began to measure from the top of the old work, from this shelf that I spoke of.

Quest. How much did you raise it above that shelf?

Ans. I think three feet and a half.

Quest. Does that shelf or offset, wherever it is seen, show
30 the height of the old stone wall or not?

Ans. It does.

Quest. You say you raised the stone work west of the tumble, how much did you raise it?

Ans. I think about three feet and a half.

Quest. Was that or not, prior to that time, the lowest part of the dam, except the tumble?

Ans. I think it was.

Quest. Did you do anything towards putting in the new mudsill of the tumble?

40 *Ans.* I did not put that sill in; I think all I done was to underpin it with stone.

Quest. According to your recollection, was that sill raised higher than the old one or not?

Ans. My impression is that it was some higher, from the fact of my underpinning it, but I won't be positive.

Quest. Was the road at the east end of the easterly bridge raised at that time?

Ans. I think it was.

Quest. Tell us what you know about the raising of that road, or any experiment made in reference to that road?

Ans. After this sill was put on the tumble dam, there was 10 a plank put upon the top of that timber (at least this is my impression) to see how much the road would have to be raised at the east end of the bridge to stop the water from running across; I couldn't say how wide that plank was—to the best of my recollection it was about eight inches—it may have been a little more.

Quest. When the plank was set upon the sill, did the water run over the road at the east end of the bridge or not?

Ans. My impression is that Mr. Cooper found it necessary to raise the road there a little—that when the water would 20 run over that plank, it would be likely to run across the road into the saw mill.

Quest. While the stone work of this dam was being raised by you, was anything being done to fill up the space between it and the pond, and if so what?

Ans. I think the teams were to work drawing in stone and gravel.

Quest. Can you tell whether the road between the bridges was raised at that time, or has been raised since?

Ans. The road has been raised, sir; but I couldn't say 30 what was done to the road between the bridges at that time.

Quest. Have you examined it recently?

Ans. Not so much between the bridges as beyond; I was over the ground between the bridges, but I did not notice so much there as I did on the west side.

Quest. How much, in your opinion, has the road been raised between the bridges and west of them, since the stone dam was raised by you?

Ans. Well, it will be supposition, mere guess work, probably two feet; that would be my impression. 40

Cross-examination.

Quest. Did you come on for the purpose of being a witness in this cause?

Ans. That was one object; we also came on to make a visit, my wife and myself.

Quest. Who wrote you requesting you to come as a witness?

Ans. My brother-in-law, John D. G. Carlile.

Quest. Offering to pay your expenses if you would come, 10 I suppose?

Ans. In part—not wholly.

Quest. Who is to defray the other part?

Ans. Well, part I have to defray myself.

Quest. Is anybody else besides yourself and Mr. John Carlile to contribute to that purpose?

Ans. No one—not to my own expenses.

Quest. To your wife's?

Ans. Yes; her father and brother were to pay hers; John D. G. Carlile and I married sisters?

20 *Quest.* What year was it that you moved from the state of New Jersey, 1846, 1847, or 1848?

Ans. I don't know that I can tell until I look at some figures—I think in 1847, in September; I have been back to Chester township since then once before this time; I think that was about six or seven years ago—in the winter; I was past Cooper's mill at that time; I don't recollect stopping and going into the mill—I hardly think I did; I think I was employed at the general's mill at work, in the fall of 1846, about two weeks; I think I commenced in last of September,

30 and I think I worked there last in November; I think it must have been more than two weeks that I worked there then, probably nearer three; I don't think of any masons that worked there with me—don't recollect any other than myself; I don't know that I can tell all the millwrights that were employed there—the main man was John Vandoren, and I think there were two others working with him; I couldn't say whether there were any carpenters working there at that time besides the millwrights; there were some other men working there; they were all under Mr. Van-
40 doren—he had the oversight of this repairing; I don't recol-

lect of any other man being there to assist me in laying up the stone wall—some of Mr. Cooper's men may have helped me, when it was necessary, to lay or raise heavy stones—couldn't recollect whether any man was employed purposely to assist me; I think Mr. Douglass was the miller at that time, the two Douglasses, old Mr. Douglass and his son.

Quest. When you went there to work, was the stone wall next the flume torn out, or was it torn out after you went there?

Ans. I think it was torn out when I went there—enough 10 of it to get in the timbers of the flume.

Quest. When you went there to work, how much higher, if any, was the stone wall adjoining the tumble dam, at the east end of the tumble dam, than the frame work of the tumble dam?

Ans. That would be altogether a supposition, because it is on the east side of the tumble dam that this irregular wall was; my impression is that it was higher; I think it was higher half way between the tumble dam and the flume than it was at the flume. 20

Quest. Between the tumble dam and the flume, when you went there to work in the fall of 1846, were there or not a good many stones thrown off of, or fallen off of the top of the wall?

Ans. Well, it may have been so—I know it was very uneven; whether stones had been thrown off, or it had never been built up, I can't say.

Quest. Can you undertake to say with certainty that you made the highest points in that wall, between the tumble dam and the flume, any higher? 30

Ans. Well, my impression is that I did.

Quest. Are you clear in your recollection as to that matter?

Ans. I am not; I am not positive; that, however, is my impression; I think, too, that the work shows for itself that it was put up higher than the highest points of the old dam.

Quest. Is that the reason that you have the impression that the highest points of the wall were raised?

Ans. Yes; I am governed by that as much as by positive recollection; there is a vast difference in the appearance of

the old wall and what was put on at that time—in the appearance of the stone and of the work.

Quest. Can you tell us whether or not that wall, which from appearance looks to be the oldest is not the old wall, as it stood in 1827, when it was repaired, and as it had stood prior to 1827?

Ans. I couldn't tell; I never did any work at that dam before 1846, that I can recollect of; we were at the dam a few moments last evening, and again this morning, when we
10 started on our way; John Carlile went with me there.

Quest. Can you say that the shelf in the stone wall, or what you have described as a shelf, and particularly that part of it in the middle, and next the tumble dam, was not there in 1846, before you did a stroke of work?

Ans. That shelf was there at the bottom of the offset—it was the top of the old wall, and I commenced and laid up the new wall on top of it; the shelf was formed by my setting the new wall back.

Quest. When you went there to work in 1846, were there
20 not stones then lying on what you now call the bottom of the shelf, and forming part of the wall?

Ans. I think not, sir.

Quest. Will you be sure of it?

Ans. Yes, I think I am safe in saying I am sure.

Quest. Did you get below that dam, and look at the face of the wall standing below the dam—I mean to-day and yesterday?

Ans. Yes, sir, I did; I went along the whole length of the wall between the flume and the tumble; I didn't examine it
30 very closely next to the tumble.

Quest. Have the stones forming the wall next the flume which you laid up become covered with moss on their faces?

Ans. No, sir; there is none on them I think; there is a difference between their appearance and the stone in the old wall.

Quest. Now, sir, from the middle of that stone wall to the tumble dam, are not the faces of seven-eighths of the stones in the wall, above what is called the shelf, covered with moss, and different entirely in their appearance from those
40 in the wall adjoining the flume?

Ans. I think not.

Quest. Are you positive upon that point also?

Ans. I think I am.

Quest. Had the tumble dam been put in as it now is when you laid up that wall?

Ans. With the exception of that frame work.

Quest. repeated.

Ans. Not wholly.

Quest. What part of it was in when you finished your work on that wall?

10

Ans. That bottom timber—the timber that rests upon the top of the stone work; I think, too, that those two timbers above (marked in model 1 and 2) were also there; I finished the work at the dam in November, I think; the stone wall west of the tumble dam was somewhat irregular—highest, I think, near the tumble dam.

Quest. Hadn't there been a part of that westerly wall next the Nichols road torn down by a freshet?

Ans. Well, I couldn't say; my impression is that that was the lowest part of the wall excepting the tumble dam; I don't think there was very much wall next the Nichols road—it runs right up against the road; there was an angle between the wall, as it comes up to the Nichols road and the wall along that road; the wall is not high there.

Quest. Between the tumble dam and the flume, do you mean to be understood that you added two feet in height to the highest points of that dam?

Ans. No; I don't think I said so.

Quest. How much, if anything, did you add to the highest parts of the dam between the tumble dam and the flume?

30

Ans. My impression is it was raised on the highest parts, but how much I could not say.

Quest. What guide, if any, did you have as to the height to which that wall was to be carried?

Ans. I suppose I went according to the directions of my employer; I don't remember what those directions were as to height.

Quest. Who gave you the directions you had as to the height of that wall?

Ans. I couldn't say whether it was Mr. Cooper or Mr. Vandoren. 40

Quest. Did you follow the directions you got either from the one or the other?

Ans. I suppose so.

Quest. You say there was a plank put on, where was that plank put?

Ans. Upon the top of the timber that lay on the top of the wall of the tumble dam; I think this plank was put on about the time we got the stone work up; my impression is it was in November, it may have been October; I couldn't
10 say whether it was Mr. Douglass or one of the millwrights or carpenters that were at work there that put on that plank.

Quest. Wasn't it put on the top of the timber over which the water tumbles?

Ans. It was put upon the bed piece that lay upon the stone; there was no difficulty in getting it on the bed piece when those posts were there; they would hold the plank there.

Quest. Why didn't they put on a plank wide enough to fill up the whole space between the sill and the cap piece?

20 *Ans.* I could not tell; my impression is that there was some filling up of the road at the easterly end of the easterly bridge while I was at work there; I don't recollect who did the filling; Mr. Cooper's men—I don't know but one was named Cramer, Alfred Cramer—one's name may have been Shangle perhaps; I think they worked for Mr. Cooper while I was there; I don't recollect how much filling was done there.

Quest. Can you say that there was ever a load of dirt or stones put on that road east of the bridge, or west of it, or
30 between the two bridges, by Nathan A. Cooper, or by his direction, or on his account, in any way, while you worked there, or at any other time?

Ans. I am certain I can't say who authorized them to do it.

Quest. You say you guess the road between the bridges has been raised about two feet, why do you guess two feet?

Ans. Why, from what I can recollect of the height of the water then, and the height of it now—the height of the water and the height of the road.

40 *Quest.* When you and John Carlile were at the stone wall,

between the tumble dam and the flume, yesterday or this morning, was Mr. Carlile able to tell which part of the wall had been laid up in 1846, and which had been laid up before that?

Ans. He didn't say anything about it.

Quest. Do you think he noticed or saw the difference in the appearance of the stones that you refer to?

Ans. I don't know that he did.

Quest. Didn't you say something to him about it?

Ans. No; perhaps I did—I won't be positive; I simply took the rule, and measured for my own satisfaction.

Quest. That difference in the appearance of the stone work couldn't have been very clear to be seen to any one, could it?

Ans. I think so; any one that's used to stone work would notice it; some wouldn't.

Re-examination by Mr. Little.

I am not certain but what James Topping assisted some at the piers at the trunk, and I can't say that he did, I am not positive; I think I worked at the piers some; I think I did some levelling up for the timbers.

JONATHAN R. AXTELL.

Sworn to and subscribed, this 11th day of December, 1863,
before me.

ALFRED MILLS, M. C.

Exhibits.

EXHIBIT 5.

Deed of heirs of Caleb Horton, jun., to Nathan A. Cooper.

This indenture, made the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and forty-five, between Julia Horton, Isaiah Horton, Richard T. Horton, David C. Horton, and Elizabeth C. his wife, and James Vanderveer and Miriam his wife, of the township of Chester, county of Morris, and state of New Jersey, of the
 10 first part, and Nathan A. Cooper, of the township, county, and state aforesaid, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of three hundred and fifty-seven dollars and sixty cents, money of the United States, to them in hand well and truly paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part therewith fully satisfied, contented, and paid, have
 20 and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm to the said party of the second part, his heirs and assigns for ever, all that tract or lot of land in the township of Chester, county of Morris, and state of New Jersey, lying on Black river, above the mills now owned by the said Nathan A. Cooper, butted and bounded as follows: thence first beginning at the centre of Black river, in a line of lands of Elizabeth Doty and the heirs of Caleb Horton; thence (1) north, thirty-five degrees east, seventy-five links, to a chestnut tree and stones in said
 30 line marked for a corner; thence (2) north, seventy-nine degrees and forty-five minutes west, three chains and twenty-eight links, to a red-oak tree and three rocks for a corner; thence (3) north, forty-eight degrees west, two chains and twenty links, to the top of four large rocks, the highest rocks; thence (4) north, eleven degrees east, one chain and sixty-six links, to a rock on the top of two rocks, near the

bank of the river; thence (5) north, fifty-five degrees and thirty minutes east, four chains and ten links, to a chestnut tree for a corner; thence (6) north, eighteen degrees and fifteen minutes east, four chains and six links, to a chestnut tree for a corner; thence (7) north, twenty degrees and thirty minutes west, five chains and twenty-eight links, to a stone heap for a corner; thence (8) north, sixty-eight degrees and thirty minutes west, two chains and eighty-two links, to a black-oak tree for a corner; thence (9) north, fifty degrees and fifteen minutes west, one chain and four links, to a 10 chestnut tree for a corner, by the side of a ledge of rocks; thence (10) north, thirty-one degrees and forty minutes east, six chains and twenty-three links, to two pin-oak trees for a corner; thence (11) north, thirty-five degrees and fifteen minutes east, three chains and seventy-five links, to a maple tree for a corner, near the bank of said river; thence (12) north, twelve degrees and fifteen minutes west, forty-three links, to the centre of said river; thence (13) north, fifty-eight degrees and thirty minutes west, five chains and forty links, along the centre of the river; thence (14) south, eighty-one de- 20 grees west, fifty links, along the centre of said river; thence (15) south, forty-three degrees and forty-five minutes west, two chains and twenty-seven links, along the centre of said river; thence (16) south, eighteen degrees and thirty minutes west, one chain, along the centre of said river; thence (17) south, thirteen degrees and forty-five minutes east, four chains, along the centre of said river; thence (18) south, thirty-one degrees west, one chain and thirty-one links, along the centre of said river; thence (19) south, nine degrees west, four chains and twenty links, along the centre of 30 said river; thence (20) down the said river, the several courses and windings thereof, to the place of beginning, containing eight acres and ninety-four hundredths of an acre of land, be the same more or less.

EXHIBIT 6.

Deed of John D. G. Carlile to Thomas M. Carlile.

This indenture, made the fourth day of March, one thousand eight hundred and forty-one, between John D. G. Carlile, of Chester, in the county of Morris, and state of New Jersey, of the first part, Thomas M. Carlile, of the same place, of the second part, witnesseth that the said John D. G. Carlile, for the consideration of two thousand five hundred dollars, lawful money of the United States, the receipt
10 whereof is hereby acknowledged, have and by these presents do grant, bargain, sell, and convey unto the said Thomas M. Carlile, and to his heirs and assigns, the one half of the farm, tract, or parcel of land now occupied by the said parties, and known as the homestead of our father, John Carlile, deceased, also the one half part of a certain tract or parcel of woodland lying and being in the township of Washington, in the county of Morris, and state of New Jersey, adjoining lands of Reuben Carlile and Amos Roberts, said to contain forty acres, also the one half of one other tract of
20 land, in the township of Washington, county of Morris, and state of New Jersey, adjoining lands of Richard Stilwell and Samuel Swayze, said to contain thirty acres, together with the rights, privileges, and appurtenances thereof.

EXHIBIT 2.

On part of defendants.

List of points examined by me, 25th July, 1860, above Gen. Nathan A. Cooper's mill dam, near Chester, Morris county, N. J., with their elevations in relation to the combing of the said dam.

	Feet.	Inch.	
Height of dam (approximately),	8	1	
Depth of water in flume,	7	2	
Surface of water below top of flume,	1	1	
“ “ “ in pond, below combing of dam,		9	
“ “ “ at foot of lane on Mrs. Carlile's,		8½	below 10
Bottom of river “ “ “ “ “ “ “ 3 ft. 5 inch. to	2	9	“
Surface of meadow opposite Mrs. Carlile's house,		3	“
“ “ “ about 200 feet below Carlile's bridge,		9½	above
“ “ “ “ 100 “ “ “ “	2	5	“
“ “ water at “ “ “		3¾	below
“ “ “ “ outlet,		3½	“
Bottom of river about 20 feet below outlet,	1	11	“
“ “ “ at “ “	2	1	“
“ “ “ “ “ “	2	3	“
“ “ “ “ “ “	2	6	“ 20
Surface of water in spring near “ “		3½	above
“ “ “ “ river near spring,		3	below
Cut (by Valentine) on pin-oak near Tanner's brook,	4	1½	above
Surface of water at “ “ “ “ “		2¼	below
Bottom of river 30 or 35 feet above pin-oak,	1	7	“
Surface of water at lower end of Carlile's meadow,		2	above
“ “ meadow at lower end of Carlile's meadow,	1	9½	“
“ “ water in river opposite Mr. Waters,		4	“
“ “ “ “ ditch from spring, about 100 ft. from river,	1	3¾	“
Depth “ “ “ “ “ “ “ “ “ “ “		4¾	“ 30
Surface of meadow by “ “ “ “ “ “ “ “	2	1½	“
“ “ water in large ditch from Dickerson's line, about 200 feet from latter point,		11½	“
Surface of upper end of Carlile's meadow, about 100 ft. from river,	2	3	“
Surface of “ “ “ “ “ 2d field from river,	2	2	“
“ “ Dickerson's meadow near fence of Carlile's 2d field,	2	1	“
“ “ water in river at line of Carlile and Dickerson,		11	“
Bottom of river “ “ “ “ “ “		8	below
Surface of Dickerson's meadow, at line of Carlile and Dickerson, 100 ft. from river,	1	11	above 40
Surface of Dickerson's meadow near his upper line, 150 ft. from river,	2	10	“

	Feet.	Inch.	
Surface of Dickerson's meadow near his upper line, 350 ft. from river,	2	1½	above
Surface of water at Dickerson's upper line,	1	1½	"
Bottom of river " " " "		8¼	below
Surface of water in river at Wing's lower line,	1	2¾	above
" " meadow near Black river bridge,	5	1¾	"
" " water at " " "	2	11¼	"
Bottom of river " " " "	1	2	"

Decree of Dismissal.

[Filed April 20, 1865.]

This cause coming on to be heard at a regular term of the Court of Chancery, held at the state house in the city of Trenton, before the Chancellor, in the presence of Jacob Vanatta, of counsel with the complainant, and Theodore Little, of counsel with the defendants, and the pleadings, depositions, exhibits, and proofs having been read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise 10 thereon, and it appearing to the Chancellor that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint—

It is, on this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-five, ordered, adjudged, and decreed, that the complainant's said bill be and the same is hereby dismissed, and the injunction heretofore issued in the cause be dissolved with costs.

HENRY W. GREEN, C.

Appeal.

20

[Filed April 25, 1865.]

The complainant hereby appeals from all and every part of the final decree made in this court in the cause above stated, bearing date the twentieth day of April, eighteen hundred and sixty-five, to the Court of Errors and Appeals.

Dated April 25th, 1865.

JACOB VANATTA,

Solicitor and of counsel with complainant.

I conceive that there is good cause for appeal in the above stated cause.

30

JACOB VANATTA,

Of counsel.

Petition of Appeal.

[Filed June 16, 1865.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

NATHAN A. COOPER, appellant,

and

ELIZA CARLILE, *et als.*, appellees. }*On bill, &c.**To the Honorable the Court of Errors and Appeals of the State
of New Jersey.*

- 10 The humble petition of Nathan A. Cooper, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by the Honorable Henry W. Green, Chancellor of New Jersey, bearing date the twentieth day of April, in the year eighteen hundred and sixty-five, wherein your petitioner was complainant, and the said Eliza Carlile and others were defendants, in this respect, that the said decree adjudges that your petitioner is not entitled to the relief prayed for in his bill of complaint in said cause, or any part thereof, that the injunction theretofore granted in said cause should be dissolved, and that your petitioner's bill of complaint should be dismissed with costs.

And your petitioner humbly appeals from all and every part of said decree, upon the ground that the same is erroneous, for that your petitioner is entitled to the relief prayed for in his said bill of complaint, or some part thereof.

- Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the
30 premises as to this honorable court shall seem meet.

Dated May 15th, 1865.

JACOB VANATTA,

Solicitor and of counsel with the appellant.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

The answer of Eliza Carlile to the petition of appeal of Nathan A. Cooper, appellant.

This respondent, not admitting all or any of the matters or things to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says, that she believes it to be true that such decree as is complained of was made by the Court of Chancery, as in the said petition of appeal is mentioned and set forth; but as to the date, 10 substance, and extent thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced.

And this respondent humbly conceives and is advised that the decree in the matters complained of in said petition of appeal is correct and just, and according to law and the proofs in said matter, and therefore humbly prays that said decree may be affirmed, and the said appeal may be dismissed with costs.

THEO. LITTLE,

Solicitor for and of counsel with appellees. 20

A true copy.

W. S. JOHNSON.

JACOB VAN ALSTAY

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