

Clery Case

NEW-JERSEY
COURT OF ERRORS AND APPEALS.

MARY BELL,
Plaintiff in Error,
vs.
EDWARD GOUGH,
Defendant in Error.

*On writ of Error to Supreme
Court—In Trespass, &c.*

The record brought up by the writ of error in this case is as follows. With proper placita and warrants of attorney:—

The declaration is in the usual form in Trespass, for entering, cutting and carrying away the Grass, Corn, &c. of the Plaintiff upon the following close, viz: a certain close of the Plaintiff situate in the Township of Van Vorst, in the county of Hudson, and abutting on the north the lands of John B. Coles, Isaac U. Coles and William F. Coles (the devisees of John B. Coles, deceased); on the east by Hudson River, and other lands of the said John B. Coles, Isaac U. Coles and William F. Coles; on the south by the road, street or avenue commonly called Pavonia Avenue, and by the dock or wharf commonly called Coles' Dock; and on the west by the street or road commonly called Provost Street.

To this declaration, the Defendant filed the plea of *Liberum Tenementum*, and the Plaintiff his *Replication*, taking issue thereon.

State of the case, as agreed upon by the parties, viz:—

The defendant, to prove her title to the close in question in this cause, offered the following evidence:—

1. Survey from East Jersey proprietors. 21 May, 1803, is date of certificate for 53 $\frac{60}{100}$ acres, to Elisha Boudinot.
2. Deed, Elisha Boudinot to Nathaniel Budd; dated 2 January, 1804; acknowledged 29 August, 1805; recorded 5th October, 1829, in Bergen County clerk's office; consideration \$267 50. Deed in fee simple for same premises, covenant of seizin, of location, and right to grant, &c.
3. Exemplification of Deed, from Nathaniel Budd and Mary his wife, to Willis Hall, dated 1 October, 1835; acknowledged 1 Oct. 1835, recorded in Samuel Cassedy's office November 3,

1835; for same premises and two acres besides. Consideration \$25,000. Covenant of general warranty.

4. Mortgage—Willis Hall to Nathaniel Budd, dated 1 October, 1835, acknowledged same day; recorded 3 October 1835; to secure payment of \$21,000.

5. Exemplification of deed,—Willis Hall to New-Jersey Harbor Company, 31 May, 1837; acknowledged 3 June, 1837; recorded same day. Consideration \$120,733 33, for 53 $\frac{00}{100}$ acres, same as original premises.

6. Certified copy of act incorporating New-Jersey Harbor Company; 18 March, 1837.

7. Exemplification of proceedings, and decree of foreclosure in Chancery. Nathaniel Budd, administrator, and Benson Milledoler complainants, v. The New-Jersey Harbor Company, defendants. Bill filed 28 July, 1839; decree October 18, 1840. *Fi Fa*, for sale, &c. to Sheriff, tested, 7 January, 1841; returnable January 7, 1841; directed to Sheriff of Hudson County. (It appears by proceedings, that demurrer was filed by defendants, the New-Jersey Harbor Company.

8. Deed; Henry Newkirk, Sheriff of Hudson county, to Mary Bell, Defendant; dated 7 August, 1841; acknowledged same day; recorded same day; for premises specified in mortgage; consideration \$6,771.

9. Exemplified copy of Act of Legislature, 8th November, 1836, vesting in Nathaniel Budd all the title of the State, in tract surveyed to Elisha Boudinot, and by him conveyed to Budd. Release for \$1 of all the right of the State reserving jurisdiction and sovereignty of State.

I. *Samuel H. Berry, Esq.*—I live at Hackensack; I knew Nathaniel Budd; he resided in Harsimus; is dead; he died at Monackie, 3 miles south of Hackensack, at least five years ago; he left eleven or twelve children; can't remember all; Daniel, Nathaniel, John, Barnabas, Joseph; there were five or six daughters; Mrs. Bell, the defendant, is one, Charlotte, Mrs. Conklin she is living; I think there were two more, but I don't recollect their names; Mrs. Budd, in early part of life, lived in Harsimus, and kept tavern at Bull's Head, near Long Dock; I first knew him latter part of 1802; he kept a tavern, and erected this ferry, called Harsimus ferry, between New-Jersey and New-York; I know its location; was in the habit of crossing it; it was one of the ferries—not principal one—got up in opposition to Powles' Hook Ferry; I think it was in operation at least four years, perhaps longer; I remember crossing it in early part of 1806; I have recently made a survey of the localities Budd occupied when I knew him; this map was made by me from surveys made on the ground; I am surveyor; old ferry house, where ferry-master lived, is marked Cunningham's house; the foundation of the old ferry-house was visible at west corner of Cunningham's house; Cunningham's house occupied part of old foundation, greatest part of it

was still visible ; the blue mark represents the outer extremity of what was Budd's ferry dock ; it was known as Budd's ferry ; he was ostensible owner ; I took observations, made map and calculations of 53 acre lot ; it was covered by water ; I had copies of the old deeds with me ; I run the high-water line from those copies ; I ascertained locality of two acres ; I have no doubt that the water line on map is the same called for in the fifty-three acre survey ; The fifty-three acres lie on each side of Budd's old ferry dock ; the survey was made in May, 1842 ; the lines on map indicate position of Long Dock ; the line marked on the map as the water line indicates the water line of the survey in 1802 ; the fifty-three acres are plotted on the map ; in 1842 a considerable of the fifty-three acres was filled up ; I cannot say how much (indicates by pencil mark how filled up) ; it had been filled up, I say, from appearance, five or six years or more ; Mrs. Bell requested me to view premises again ; after suit brought I run it again ; it was in 1842 or 1843, after this difficulty arose ; I saw grass had been cut ; it had been cut on both sides of water line on map ; it had been cut at different times, of two sides of line ; there was considerable cutting on the fifty-three acres ; I think more than an acre ; where the cutting was, was the land Mrs. Bell claims.

Cross-examined.—I think Cheevers was present, on part of plaintiff ; Gough was not there ; neither Gough nor Coles had anything to do with it ; I made survey at Mrs. Bell's request ; the survey extends 18 chains into the Bay ; it was all a flat, as I understood it to be originally ; there was no upland ; the filling in is all on the north side of the long dock ; I think it is filled in one-third of the way, from the old water line into the Bay, on the north side of the long dock ; Budd's ferry has ceased since 1806, as far as I remember ; I always understood the Coles built the long dock and filled in ; I think Budd was at Monackie before 1812 (was Sheriff from 13 to 16, and from 19 to 21) ; I was on the premises occasionally, particularly during my first term ; the old ferry-house was then standing, during my first term ; the remains of it were there, whether tenantable or not, can't say.

In making my survey at the upper end of road, there were remains of old fence and post holes, on the north side of road ; I found that corresponded with old line, allowing variation of $1\frac{3}{4}^{\circ}$ or $1\frac{1}{4}^{\circ}$; within 100 feet of old ferry stairs, I found remains of fence again ; I then commenced at beginning of survey on Van Vorst line (the old water line being entirely obliterated) ; on S. W. corner of that, reversed the courses, and found them to correspond ; the water line as I marked corresponds very well with the line of the river where it has not been disturbed ; I mean the part south of the long dock, where it has not been filled in ; there is an extensive flat in front of this property ; I have seen sometimes a good deal of it bare, perhaps one-third or more of the whole cove ; the cove commences considerably north of these premises ; I never run a straight line across the mouth of the river ; I did

not see Budd on the premises when I was there during my Sheriffalty in 1814, he was then at Monackie; I never saw Budd on the property after that; the ferry had been relinquished long before; I am not able to say whether it was the same season or the season after, when Mrs. Bell called on me to review my survey; it was one or the other; after 1814 I was there occasionally—went on an errand, and had no occasion to look at the memorandums.

In Chief.—The land north of the long dock was filled in beyond the water line.

Act of the Legislature of New-Jersey, 22d November, 1802.—Authority for commissioners to lay out road to dock, and for Budd to establish ferry.

The road I spoke of is the road authorized by that act, extending from Newark road down to ferry. The cutting of hay I saw when I went to make survey was on part of fifty-three acres. For two or three chains south of Cheever's buildings the water at ordinary tides in 1842 flowed west of water line as much as one-half a chain. Beyond that, going south to the Van Voorst line, the line runs at just about ordinary high water mark, as near as I could judge (I allowed 3' to the year variation) I think the shore north of the long dock corresponded pretty much in 1802 with the water line as laid down, according to my recollection of it. It was a good while ago. I never was on the land north of the dock.

2. *Abijah Cheevers.*—I know C. C. Marsh of New-York. I have known him twelve or fifteen years. Know his handwriting. (Proves signature of Charles Marsh as witness.)

10. Willis Hall to Mary Bell, deed 24th February, 1843. Neither acknowledged nor recorded; consideration one dollar; quit-claim deed.

I know where the cutting, in controversy, was done. I saw a man cutting it. I was with Berry when he run line, before and after cutting. The cutting by Mrs. Bell was on the fifty-three acre plot. Mrs. Bell's men commenced cutting grass—mowed a large portion of it—she had men to take it away—Gough interfered, other men also—Mrs. Budd interfered and cut up to the line marked water line on Berry's map. Resistance was offered by Gough to her mowing and taking it away. Mrs. Bell took it off herself.

This land, according to best of my recollection, was part of seashore. The line marked by Berry as water line, according to my judgment, is about where old water line was, about two or three acres filled up outside.

Cross-examined.—It was five years ago last summer when defendant took grass. It was white clover red top, and appeared to be a mixture. I had a suit in chancery with three Messrs. Coles some years ago—discontinued now. I don't know who filled it in. I own no lots there, have no interest in it. To my recollection there was no cutting on that land by any body except Mrs. Bell about that time. Gough, that same season, afterwards cut up to

the line that Mrs. Bell cut to. He cut on the west, Mrs. Bell had cut on the east of the water line.

3. *Dr. John M. Cornelison*.—I have knowledge of the New-Jersey Harbor Company. I was secretary of the Company several months. It organized under the act by the appointment of President and Secretary. We had several meetings.

Cross-examined.—I kept the minutes of several meetings. I do not know where they are now. I had the book three or four months. The Company ceased holding meetings. Crash of 1837 followed. Company desisted from carrying on operations. I considered the minutes worthless paper; they got destroyed; I have not seen them in a long time. I looked for them this morning, not before. I did not know before that I was to be a witness. I did not look over ten or fifteen minutes for them; I found some old letters and some rough minutes of meetings, but the book I could not find. I do not know whether any body was appointed clerk after me or not. I never met with Company since summer of 1837, I think. Whether Company is still in existence I do not know; Samuel L. Southard was President. I received a communication from New-York committee—Waddell was one, Mr. Walter Rutherford (I think, but am not positive) was another. I don't think the Company ever took possession of any thing—land. The meetings I attended were preliminary. I think there was not (in money) one million subscribed, or one hundred thousand dollars paid in, within a year after the passage of the act. Fifty thousand was never expended within ten years, to my knowledge. The stock was subscribed, and if I mistake not, notes to the amount of the subscription were given. The Company never commenced operations at all (in making improvements) under the act, to my knowledge. I don't know what became of the notes—my impression is the treasurer took them. I took stock. I don't know what became of it—I never paid it. So far as I know, nothing was paid. Amount of my note was \$1000.

No statement, to my knowledge, was ever made by the President or Secretary showing the amount of land held by the Company.

In Chief.—I don't know (recollect) who the treasurer was, I think it was Mr. Waddell.

4. *William Rummell*.—I am son-in-law of Mrs. Bell; I was present at cutting of grass; know the premises; was once present when surveyed by Berry. I know the water line as surveyed by Berry. The cutting by Mrs. Bell was on the east side toward the water.

Cross-examined.—No cutting on the west side, to my knowledge. We cut up to the line on east side, and then stopped.

5. *Daniel Rummell*.—I was present with Berry when he made survey. I helped survey it once before the filling in was done. Do not recollect the year exactly; about fourteen or fifteen years ago. Richard Outwater first surveyed it; I carried chain. He surveyed it for Nathaniel Budd; Mr Outwater surveyed it twice. The third survey was by Berry. On the first survey there was no

filling in north of the long dock. They had begun filling in at second survey. It was between two and three years after first survey, that second was made. The third survey I spoke of was by Berry; this is map of that survey. I saw where the cutting was done. Mrs. Bell followed her line that we run from long dock up, and cut on the east side of it; where Mrs. Bell cut was all filled in; I saw them filling in; I saw Jacob Marselis filling in and Mr. Garrison—I think John Garrison; I think it was fourteen years ago, or along there; I can't tell exactly; I recollect seeing Willis Hall of New-York there, don't recollect the year; Mr. Hall was there when they were filling up; he went up to the persons who were filling in, forbid their filling in further. They were trespassing on his property. He had purchased of Budd, at that time at upper corner; this had just commenced, filled in perhaps eight feet. Below they had filled in about fifty feet out from shore; carts were at work. The cutting was done east of water line upon made land. I should judge there were nearly two acres filled in. The cutting was on that, according to my recollection. The water line as marked by Berry on his survey was the real water line.

Cross-examined.—The grass was cut in summer. I was there two or three months after. Both sides of the line had been cut then; I was not present when she cut. The only way I knew where she cut was by what my brother told me. They kept on filling up two or three weeks after Hall was there; I can't say how long they had been at it before. I went to carry chain for Berry first time at Budd's request, the second time at Bell's request. Budd was dead then. I can't tell the lapse of time between the two surveys by Berry; it might have been two or three years; I believe he has run the line three or four times. Budd and one of his sons were present when Berry first run. The second time I carried chain for Berry, Cheever was there. I think, twice he was there; Budd and son were there the last time. I think Outwater made a map—not sure. I do not remember his having a map there at second running. He had notice of line—field-book, and old deed specifying courses. It was Budd's old deed. Outwater lives at Polify, by boiling spring; he is living yet. Hall forbid Marselis and Garrison from filling up; he spoke to them. I think about one-third of what is now filled up, had been filled up then. Nothing in particular said; no reply made to Hall. Nathaniel Budd was with Hall. A written notice was read by Hall to them; do not recollect whether he delivered a copy.

In Chief.—The filling in was done when Berry run it.

The plaintiff to prove the issue above joined, on his part offered the following evidence:—

1. Patent from Philip Carteret for Bergen Township, 22d September, 1668.

Objection.—Charter is not acknowledged, nor any authority for Secretary of State to certify it from his office. Bounds begin at Mordavis's meadow up into Hudson's river. Defendant's certified

copy is up unto North river, bounded east by Hudson's river ; contains 11,520 acres English measure. Refers to map accompanying.

1. *Edward Coles.*—I compared certified copy with original on file.

Cross-examined.—I compared it with clerk ; he read the book and I looked on copy. The copy is correct ; the word is *into*, not *unto*, the North river. My attention was called to it at the time.

2. Deed of Trustees of Bergen, in the county of Bergen, to John B. Coles, dated 4th of February, 1804. Proved by Alexander C. McWhorter, 1st August, 1804 ; recorded in Bergen clerk's office, book S of deeds 43, 4, 1st August 1804.

3. Exemplification of power of attorney from Robert Kennedy and wife to Robert Watts, 7th May, 1803. Proved 7th May, 1803, before Thomas Cooper, Master in Chancery, New-York ; 1803, before Elisha Boudinot ; 23d July, 1803, by Thomas Cooper, subscribing witness. Recorded Aug. 1, 1803, in the Office of Secretary of State, book A 6 of deeds, p. 150.

4. Exemplification of power of attorney.—John Kennedy to Robert Watts ; dated 7th June, 1803 ; acknowledged 5th Sept. 1803 ; recorded book A 6 of deeds, 15th Oct. 1803.

5. Deed of John Kennedy, and Robert Kennedy and Jane his wife, by attorney Robert Watts, to John B. Coles, dated 4th February, 1804 ; proved 28th July, 1804 ; recorded 1st August, 1804, in clerk's office of Bergen.

6. Original will of John B. Coles, dated 11th January, 1826 ; proved in New-York.

2. Walter W. Townsend (being shown will) says, that is my signature ; I am one of subscribing witnesses ; I saw testator sign it and put seal to it. Other witnesses, to it were present and saw him sign it. The other witnesses are living, one on Long Island, and one in Illinois. The testator at the time publishing it as his will. Testator died 2d January, 1827.

Objection.—Will has not been admitted to probate in New-Jersey. It devises the property to John B. Coles, Isaac U. Coles and William F. Coles. Devise partly in trust, but legal estate in sons.

7. Certified copy of Act of Legislature of New-Jersey, passed 7th December, 1763, appointing commissioners to make partition of township of Bergen. Gives bounds.

8. Commission issued out of Supreme Court, directed to Robert V. Tibbs and — Gould, of London, to examine Clerk in Department in State. Produces confirmation of a patent granted by Robert Hunter, by Queen Ann, and by act of Legislature of New-Jersey, confirming powers and giving additional power, and incorporating trustees ; passed 2d February, 1713 ; assented to 16th July, 1713, at Burlington.

Gov. Vroom suggests that this act was disallowed by the crown.

3. *Stephen Garrison.*—I knew John B. Coles ; I live at Harsimus, have lived there since 1820 ; have been away a number of

years, from 1823 to 1831 ; I was first at Harsimus in 1818 ; know the property in dispute, where the grass was cut, since 1818 My father came into possession of Coles's property in the winter of 1819-20 as a tenant to John B. Coles ; he continued in possession till my return to Harsimus in 1831, as tenant. Since 1831 my brother and I have been in possession ; my brother and I leased to Gough probably seven years ago.

I know something of the cutting of the grass by Mrs. Bell while Gough was in possession, can't tell the year ; I was there on the ground after the grass was cut and before it was carried away ; it was cut pretty much on the main land while I was tenant under Coles. I was employed to do filling up in Cove ; the Coles employed me—John and his brothers ; it was commenced in April, 1836 ; we continued working for nearly two years. The work was done where the grass was cut between April and November of that year ; it was done by the 10th November at any rate ; I did work by contract 124,407 cubic yards was first contract. ; it amounted to over \$12,000 ; this was part of the land now in dispute ; the whole cost of work then, including building the dock, was about \$28,000.

The filling in and wharfing was outside of line of high water mark I received my pay while contract was progressing and when done ; the whole was settled. My father's tenancy included all Coles's property, except five or six acres now in dispute, where grass was cut ; my father never had that ; my brother and I had it afterwards ; John B. Coles had let it at the the time my father leased it, and the tenants let from one to another. The people at work at the long dock occupied that ; they held under Coles. The long dock was partly built when I came to the place in 1818 ; the wood work was built, and it was partially filled in ; I think Coles had people at work carting in dirt at that time ; they did not complete it as far as the crib work was built ; father generally had oversight of dock—care of it. The dock is 1,200 or 1,300 feet long and 80 feet wide. Since my brother and I have been in possession we have been in possession of long dock so far as that we had a charge of it. After you get out into the river, it is extended up the river in form of an L two or three hundred feet up the river, and ten or twelve feet wide ; the dock was used. The people landed there with any thing they chose, I never receiving any pay for it ; it was originally crib work. In 1836, we rebuilt it with a solid stone wall outside ; the wood work was then pretty much gone down to the water. My brother and I came in possession of five or six acre lot, including premises in dispute, in 1836, after it had been excavated ; Mr. Edes I think occupied it as gardening ground immediately before us, this was before it was excavated ; he worked as close as he could to the shore ; when my father was there he had no use for the water ; it was principally used ; my brother and I used it in the same way ; Mr Haff was there before Edes, as Coles's tenant ; he used ground for gardening ; they raised truck for New-York ; they took it sometimes in their boat to New-York.

I have seen the land bare at low tide to end of long dock, and sometimes beyond the end of long dock.

Cross-examined.—Edes & Haff occupied land bounded on shore; tide ebbed and flowed where this made land now is; they were small sailing vessels, flat-bottomed, in which the manure was brought; carry 100 loads; they came in both north and south of the long dock; have had them to come in north, and seen others too.

IV. *Uriah Haff.*—I live in Newark; knew John B. Coles; knew his property at Harsimus; I moved on part of it 5th April, 1817; I occupied a house a little north (200 yards perhaps) of long dock; I hired of John B. Coles; I remained tenant under him two years; I was employed by Coles on dock; helped build dock when I first went there; I followed gardening, and occupied all ground from long dock to Hoboken causeway along shore; I erected a fence, from corner of dock up to the road that run up to Traphagen house, near Cunningham house; I used dock occasionally; went from there with small boats; they were fastened at dock; several persons beside me worked at dock; they lived in neighborhood; Staggs lived in one of Coles' houses; Cunningham succeeded me; John and Patrick, both dead; they leased of John B. Coles; I was a tenant one year under Cunningham, after my two years expired; Patrick Cunningham built the Cunningham house, after my two years were out; I occupied land and meadows, 100 acres or over; I paid \$250 a year; the Cunninghams were there three or four years; I think Garrison came next; I don't remember Edes; I have seen tide flow down to end of dock; have walked out and picked up oysters; dock joins on to channel; have seen it all bare, from end of dock to Jersey City and Hoboken, on both sides; ordinary tides would be about half way along dock.

V. *Robert C. Bacot.*—I am Surveyor; I know the premises; [exhibits map, and shows position of survey of ordinary and extreme low water mark, and bounds of Coles property, and bounds of lot described in narr. as locus in quo; the map was made in 1840. Map offered in evidence, to show situation of premises.

Cross-examined.—I never made a survey of the Coles' property by the Trustees' deed; by running round the property as called for and described in deed, if the lines are run into the Hudson river, the last course cannot intersect the line between Jersey City and Harsimus, (that line runs nearly north and south, or nearly parallel with the course of the river); if you run the last course along the shore of the cove, or on the ordinary high water, it will intersect the line.

In Chief.—The sheet of water is called the Cove, or Harsimus Bay; there has been some dispute about the line between Jersey City and Harsimus; it has never been accurately defined below the line of South 8th Street; by running down the shore of the Cove you reach the beginning point of the survey, without running the last course called for, provided the beginning point is on or at the shore of the cove; if the beginning point is not at the Cove, then

the last line of the deed must still be run to reach the beginning corner.

Cross-examined.—The old line of Jersey City ran further west than the present; the present line was settled between the Jersey Associates and Mr. Van Vorst; I should say the property on Cove was bounded by Cove and River both.

In Chief.—In common conversation the River is distinguished from the Cove; I never heard the cove called York Bay.

VI. *Thomas Vermilye.*—I knew John B. Coles and Nathaniel Budd; Budd never lived on the property in the house by the long dock within my memory; he had possession of the two acres, as I understood, under the law or act of 1802: I know of Budd living a tenant to Kennedy, for the Kennedy farm or Harsimus property; do not remember when he removed to Monackie; I know the fifty-three acres, and where grass was cut (points out premises on map); grass was cut on lot 85 as marked on this map of Pavonia, made by Mangin, city surveyor, in 1804, October; I moved to Harsimus in 1813, soon after they commenced building long dock; I think in 1814 or 1815; the filling in is all on the north side of long dock—none on the south side; there was anciently a creek, that ran northerly till it crossed the main road to Powles Hook, and then turned easterly to the river. This cut off the north point, projecting from Jersey City into Harsimus Bay on the south side. The ditch was afterwards filled up. There was a dispute respecting that ditch was the boundary, and it threw the north point into Harsimus or Van Vorst. I do not remember the post spoken of as the beginning point in Trustees' deeds, standing in line between Powles Hook and Harsimus; I have known Cove since 1801; generally called Cove; only navigable for boats; channel is considerably beyond end of long dock; have heard Budd say he claimed under Kennedy; Jarvis made an improvement on Cove, he built a block, intending to communicate with blocks 84 and 85, at a cost of \$3,500, about 700 or 800 feet in the River, within the fifty-three acre tract; it was in 1806, I think; Jarvis made an agreement with Bergen people for \$15,000 and with John and Robert Kennedy for same premises; that title has gone into Coles' hands; Jarvis purchased for himself, but deed was taken to Coles, and by subsequent arrangement the title was perfected in Coles.

VII. *Ellis Dunn.*—I am a surveyor; reside in Newark, and city surveyor in Newark; (map of Jersey City, Harsimus and Pavonia exhibited,) he is asked to look at map, to satisfy description in Trustees' deed. I am not acquainted with the localities.

Bacot recalled.—Running down the margin of the Cove, as the defendants propose, would make but one course after the lines of the deed strike the Cove, whereas there should be three.

The whole sheet of water is one Cove, known as Harsimus Bay. From point at Jersey City to point at Hoboken the distance is 52.20; that line is about parallel with course of river—the channel of river would about correspond with line; the main

channel is about 250 feet beyond that; the long dock is built from the most projecting headland; the long dock on south side is 1,300 feet; that headland is 1,550 from channel; the deepest part of cove is 2,400 feet—not quite one-half mile—in depth; the whole of it at lowest tide is bare below long dock. Hudson River is one mile wide.

It is admitted that the several title papers offered by Plaintiff apply to the tract claimed by Coles.

Original map indicating bounds and limits of township of Bergen, location of several patents and grants and the several partitions of the common land made by Charles Clinton, William Donaldson, Azariah Dunham, John Berrian, Abraham C. Clark, jun. and Jacob Spicer, commissioners appointed by legislature to divide common lands of Bergen. Filed 2nd of March, 1765, in clerk's office of the county of Bergen, under act of 4th October, 1764.

Robert Gilchrist.—I am clerk of Hudson. These are maps and this field-book made by commissioners under act of 4th October, 1764, deposited in my office under an act of last legislature. Field-book, p. 59. Tract in possession of Capt. Archibald Kennedy, at Harsimus, considered no part of town of Bergen—West India farm.

Objected that these commissioners had no authority to decide what constituted the common lands of Bergen.

Williamson.—This survey is referred to in the trustees' deed to Coles.

Field-book, p. 5, description of lot No. 6 on the map.

Field-book, p. 7, grant from Carteret to Abraham Isaacsen Plank.

Andrew Clerk.—I am a surveyor—one of the city surveyors of Jersey City. I have seen description of property in deed from Bergen to John B. Coles. I made map of Jersey City marked A. Map produced. Colored part of map represents map and deed to Coles. States that proper course is, after striking Cove, to run down shore of Cove, and that by running out into the river as proposed by plaintiff course will never strike Jersey City and Harsimus line as called for. I am acquainted with locations about Jersey City and Harsimus; that part of water lying between Jersey City and Hoboken I should call Hudson river or York bay. It is sometimes called Cove, sometimes river.

Cross-examined.—I divide the Cove into two in following courses, two courses on the Cove, a point from one to ten feet I should say was near.

Joseph F. Bridges.—Am surveyor; reside in Brooklyn; one of the city surveyors of New-York; am acquainted with localities about Jersey City; have been for twenty years; my attention was called to the description in deeds, now offered, years ago; I examined them particularly; I made a map of the Coles property agreeably to the freeholders' deed and the Kennedy deed. Map A is a correct map, according to the description of those old deeds

runs round it; you cannot reach division line between Harsimus and Jersey City by running into the river.

C. I made map of the patent of Paulus Hook from field-book, there numbered 5; in accordance with grant from Carteret to Plank.

D. I made also map of No. 6. in field-book of Commissioners, the deed from Kennedy to Coles, called for 403 acres. The map, as made according to survey, contains 416 or 417 acres. By calculation the area of Mangin's survey contains that. That contains no land under water in the Hudson river, may include water in small ditch.

Cross-examined.—The 416 or 417 includes all the patents excepted out by the Commissioners; it includes patents marked in the map of Commissioners No. 4, 3, 7, 8, and 9, 1 Neville, 465, 467; table of expired acts, &c. relates to deed, a certified copy of which was produced by plaintiff.

The foregoing is agreed upon as the state of the case, in this cause
 WALTER RUTHERFURD, *Attorney for Plaintiff.*
 PETER BENTLEY, *Attorney for Defendant.*

And now at this day, to wit, the first Tuesday in January, in the year of our Lord eighteen hundred and forty-nine, before our said Supreme Court, at Trenton aforesaid, come the parties aforesaid by their respective attorneys aforesaid. And because our said Supreme Court now here are not yet advised what Judgment to give of and upon the premises, day is therefore given to the parties aforesaid before our said Court at Trenton aforesaid, until the first Tuesday in October, in the year of our Lord eighteen hundred and fifty, to hear the judgment of the said Court thereupon; at which day, before our said Court at Trenton aforesaid, come as well the said Edward Gough as the said Mary Bell, by their respective attorneys aforesaid; and hereupon, all and singular, the premises aforesaid being seen, and by the said court now here fully understood and mature deliberation being thereupon had:

It is considered that the close, soil and freehold in question in this cause is the close, soil and freehold of the said Edward Gough: and it is further considered that the said Edward Gough do recover against the said Mary Bell his damages, by reason of the trespass by him above complained of, to the amount of six cents; and dollars and cents for his costs and charges by the Court; now here adjudged to him, and with his assent. Judgment signed this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty.

HENRY W. GREEN.

A true copy.

J WILSON, *Clerk.*

Charles Webb
