New Jersey Court of Errors and Appeals.

The Reiglesville Delaware Bridge Company,
Plaintiffs in Error,

vs.

John D. Bloom and others,
Defendants in Error.

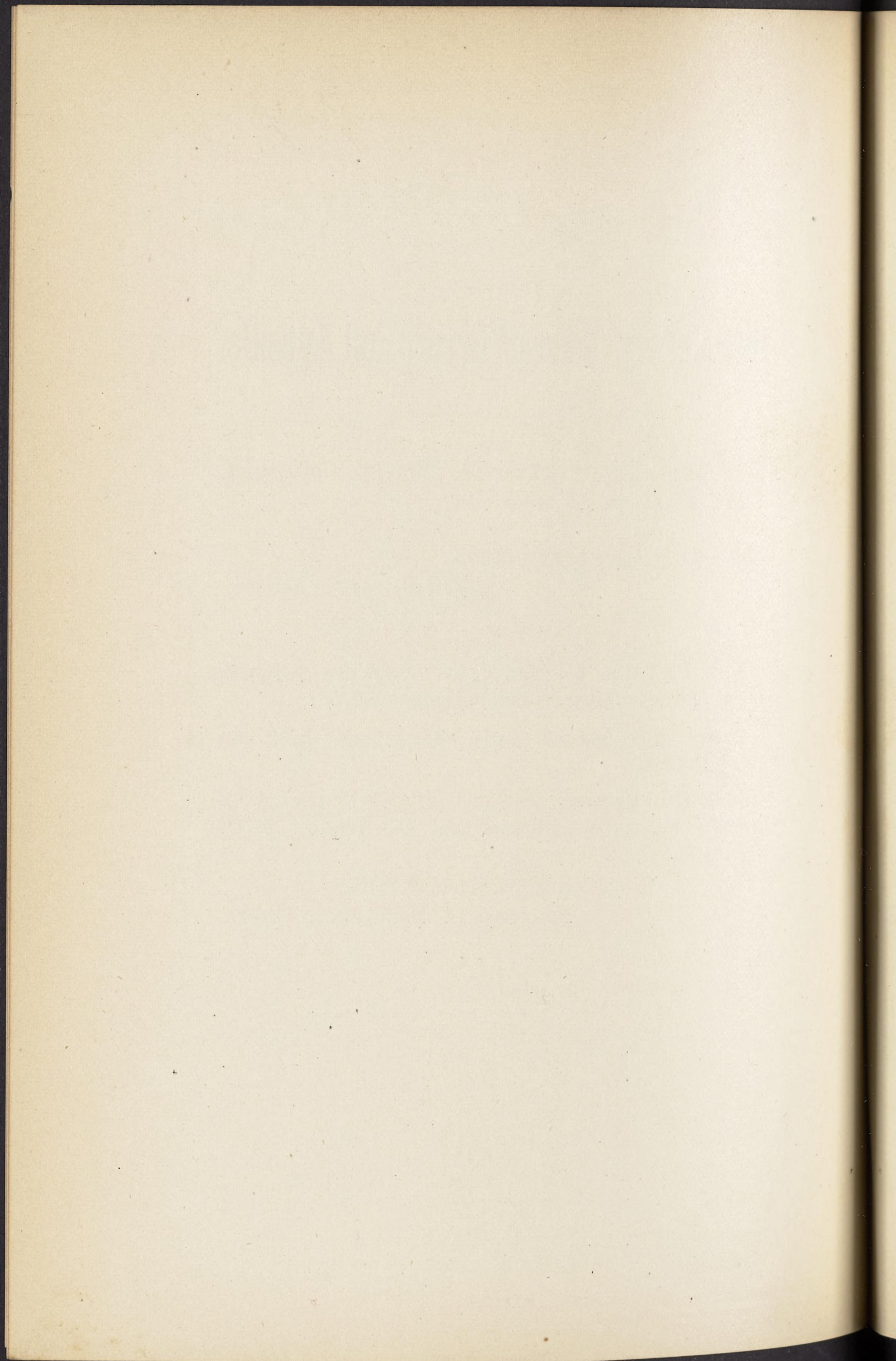
—o—

The Plaintiffs in Error rely upon the following points for a reversal of the judgment below :

First.—Because the Court charged the jury contrary to law.

Second.—Because the Court refused to charge the jury in conformity with law, and the request of the Plaintiffs.

J. G. SHIPMAN & SON,
Attorneys of Plaintiffs in Error.



WH Morrow

NEW JERSEY
COURT OF ERRORS AND APPEALS.

The Reiglesville Delaware Bridge Co. vs. John D. Bloom, et. als.	On Error.

Brief of Wm. H. Morrow, Att'y of Defendants in Error.

There are but two questions presented by the bill of exceptions in this case.

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of the premises was used as a foot path by persons approaching the bridge. Smith himself so using it. *Page* 11, *lines* 19–24.

The Company had nothing whatever to do with this possession. *See evidence of John L. Reigle, page* 11, *lines* 20–23.

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Wolfinger was there from 1842 to 1875. How can the Company claim possession through Wolfinger, and yet repudiate the terms by virtue of which he held ?

If his possession was that of the Company (which I do not concede,) then the Company cannot claim to have held adversely. Was that the character of his holding ? In *Leport v. Todd,* 3 *Vroom,* 131, the Supreme Court says ; "It is the existence of an intention to claim the fee, and the doing of some act indicative of such intention, which converts the occupation of land into an adverse possession. In *Cobb v. Davenport* 3 *Vroom, pp.* 385, 386, 387, Depue, J. says, "Adverse possession means an actual, visible and exclusive appropriation of the land, with the intention to claim title against the true owner. The possession must be actual, *hostile,* notorious, and where the entry is not under any deed or written title, *distinct or definite* in *extent.*

The rule deduced is, that there must have been an acquiescence on the part of the owner of the land in a claim which, on the part of the disseizor was intended to be *hostile,* and, in fact is hostile to his title, and it must appear that the possession or use which is claimed to be adverse, was such that the owner knew or might have known, that the disseizor intended to make title under it. *Page* 386–387.

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I submit that in any event the possession of Wolfinger, was not the possession of the Company. He was the hired servant of the Company. His occupation of the land was in no wise connected with his service or duty to the Company. It was for his own convenience. The Company had nothing to do with his wood pile. The Court might have told the jury that the Company could not claim through Wolfinger.

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not operate as an estoppel, nor will it be raised by intendment or implication from language susceptible of another interpretation.

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A declaration made to one man, cannot operate as an estoppel to another. *Idem* 865.

Clerks [illegible]

John L. Murphy, Printer, Trenton, N.

Court of Errors and Appeals.

The Rieglesville Delaware Bridge Company,
Plaintiff in Error,
and
John D. Bloom, John S. Bloom and Austin D. Bloom,
Defendants in Error.

WRIT OF ERROR.

[Filed June 27th, 1885.]

Warren Circuit Court of the ninth day of October, eighteen hundred and eighty-four.

WARREN COUNTY, *ss.*—John D. Bloom, John S. Bloom and Austin D. Bloom were summoned to answer The Rieglesville Delaware Bridge Company of a plea of trespass, and thereupon the plaintiff, by J. G. Shipman & Son, their attorneys, complain for that whereas the said defendants heretofore, to wit, on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-four, at the township of Pohatcong, in the county of Warren, and State of New Jersey, broke and entered the close of the said plaintiff, situated in the township of Pohatcong, in the county of Warren, and State of 10

New Jersey, bounded on the one side by lands of Benjamin Riegle; on another, by the public road leading from Rieglesville Phillipsburg; on another side, by the road leading to the ge over the Delaware river at Rieglesville aforesaid, and on her side by the lands of the said plaintiff, containing one of land, and then and there did throw a large number of rail poles and sticks upon the said land, and did build up a fence upon the said land, and did go thereon with horses, wagons and servants, and by themselves, and did tread down
10 the grass then and there growing, and did dig up the soil in the said close, and other wrongs and outrages to the plaintiff then and there did to their damage one hundred dollars; and, therefore, they bring their suit, &c.

J. G. SHIPMAN & SON,
Attorneys of Plaintiff.

To the Defendants:

Take notice that unless you appear and plead, answer or demur within thirty days after service of a copy of this declaration upon you, judgment will be entered against you.

20 Yours,

J. G. SHIPMAN & SON,
Attorneys.

And the said defendants, by Wm. H. Morrow, their attorney, come and defend the wrong and injury, when, &c., and say that the said plaintiff ought not to have or maintain its aforesaid action thereof against them, because they say that the said close in the said declaration mentioned, and in which, &c., now is and at the said time when, &c., was the close soil and freehold of one John M. Smith, and the said defendants, as the servants of the
30 said John M. Smith, and by his command, did, at the said time when, &c., commit the said several supposed trespasses in the said declaration mentioned in the said close, in which, &c., so being the close soil and freehold of the said John M. Smith, as they lawfully might for the cause aforesaid, which are the said several supposed trespasses whereof the said plaintiff hath above thereof complained against them. And this the said defendants are ready to verify, wherefore they pray judgment if the said

plaintiff ought to have or maintain its aforesaid action thereof against them, &c.

WM. H. MORROW,
Attorney of Defendants.

WARREN COUNTY, *ss.*—John D. Bloom, John S. Bloom and Austin D. Bloom, the defendants above named, being duly sworn according to law, on their oaths say, that the plea by them in this case pleaded and about to be filed, is not intended for the purpose of delay, and that affiants verily believe that they have a just and legal defense to said action on the merits of the case. 10

JOHN D. BLOOM,
JOHN S. BLOOM,
AUSTIN D. BLOOM.

Subscribed and sworn this 12th day of November, A. D. 1884, before me.

ABRAHAM SEIGLE,
Justice of the Peace.

And the said as to the plea of the said defendants by them above pleaded as to the said several trespasses in the said plea mentioned, and therein attempted to be justified, saith that the 20 said plaintiff, by reason of anything by the said defendant in the plea alleged, ought not to be barred from having and maintaining its aforesaid action thereof against the defendants, because it saith that the said close in the said declaration mentioned in which, &c., now is and at the said several times when, &c., was the close soil and freehold of the said plaintiff, and not the close soil and freehold of the said John M. Smith, in manner and form as the said defendants have above in their said plea alleged, and this the plaintiff prays may be inquired of by the country, &c.

30

J. G. SHIPMAN & SON,
Attorneys of Plaintiff.

Therefore, the sheriff of the county of Warren is commanded that he cause to come before the judge of our said Circuit Court, at Belvidere, in the county of Warren, on the fourth Tuesday

in April, eighteen hundred and eighty-five, twelve, &c., by whom, &c., the same day is given to the parties, &c., therefore, let the jurors of the jury, whereof mention is made, also come, who, to speak the truth of the matter within contained being chosen, tried and sworn, say upon their oaths that they find in favor of the defendants, and that the close in the said plaintiff's declaration mentioned and described, and in which, &c., was at the time of commencement of this suit, and at the time when the said several supposed trespasses were committed as aforesaid, 10 the close soil and freehold of the said defendants' plea is set out and alleged, and not the close soil and freehold of the said plaintiff in that behalf hath alleged. Thereupon the court doth order that judgment be entered in favor of the said defendants, and against the said plaintiff, with the defendants' costs of suit to be taxed.

Therefore, it is considered that the said plaintiff take nothing for his said suit against the said defendants, and that he in mercy prays, &c.; and it is further considered that the said defendants do recover against the said plaintiff the sum of eighty-eight dol- 20 lars and forty-six cents, for their costs and charges by them laid out and expended about their defense, and the court to them adjudged, and with their assent, &c.

Judgment entered May 9th, A. D. 1885.

State of New Jersey, County of Warren, *ss.*—I, Wm. L. Hoagland, clerk of the county of Warren, and of the several courts of record thereof, in obedience to the command of the within writ, do hereby certify and send to you, the honorable judges of the Court of Errors and Appeals, a true, full and correct transcript of the judgment, record and proceedings in the 30 foregoing cause, with all things touching and concerning the same, as fully as within I am commanded, as appears by the records.

In witness whereof I have hereunto set my hand and official seal, at Belvidere, this 27th day of June, A. D. 1885.

[L. S.] WM. L. HOAGLAND, Clerk.

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New Jersey, *ss.*—The State of New Jersey to the judge of the Circuit Court of the county of Warren, greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our said Circuit [L. S.] Court in and for the county of Warren, between The Rieglesville Delaware Bridge Company, plaintiffs, and John D. Bloom, John S. Bloom and Austin D. Bloom, defendants, in a plea of trespass, manifest error hath intervened to the great damage of the said The Rieglesville Delaware Bridge Company, as by their complaint we are informed. 10

We being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our judges of our Court of Errors and Appeals in the last resort in all causes, on the 27th day of June, A. D. 1885, together with this writ, that, the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the law ought to be done.

Witness Theodore Runyon, Esq., Chancellor and presiding 20 judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 6th day of June, 1885.

HENRY C. KELSEY,
Clerk.

J. G. SHIPMAN & SON,
Attorneys.

The answer of the judge of the Warren Circuit Court within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, I do hereby certify to the Court of Errors and Appeals in a certain 30 schedule to this writ annexed, as within I am commanded.

Witness my hand and seal this 27th day of June, 1885.

[L. S.]

M. BEASLEY,
Chief Justice.

STATE OF THE CASE.

[Filed August 22, 1885.]

This cause came on to be heard at a Circuit Court of the county of Warren, holden at Belvidere, in and for the said county, on the fourth Tuesday of April, A. D. 1885, before the Hon. Mercer Beasley, Chief Justice, and judge of said Warren Circuit Court, in the presence of Silas W. De Witt, and J. G. Shipman and George M. Shipman, of counsel with the plaintiffs, and Wm. H. Morrow and Chauncey M. Beasley, of counsel
10 with the defendants, upon the issue joined in the cause *pro ut* the same. A jury having been duly sworn and empaneled to try the said issue, the defendants claimed that as the issue was one of title only, they were entitled to have the affirmative of the said issue, and the Chief Justice awarded to them the affirmative of the said issue, and the defendants, to sustain the issue upon their part, offered in evidence two deeds, one from , commissioners, &c., to Wm. P. Smith, the father of John M. Smith, under whom the defendants justified, which deed was dated April, 1819, and recorded, according to law, in
20 Sussex county clerk's office, in April, 1819, which deed covered the land in dispute in this cause. The other deed was dated June 9th, 1852, from the widow and two of the heirs-at-law of Wm. P. Smith to the said John M. Smith, which conveyed all their right to the said lands. Also, another deed from all the heirs-at-law of said deceased, dated June 1st, 1866, releasing and conveying their interest in the same lands to the said John M. Smith. And the defendants then called as a witness John M. Smith, under whom the defendants claimed in the present case, who testified that he is the son of Wm. P. Smith, the grantee
30 named in the first deed of conveyance; that he had seen the deed in his father's possession, and he described the lands conveyed by the deed to his father, and the location of the Rieglesville Delaware bridge, and testified that the said deed contained and conveyed the strip of land in dispute; he also testified that his father, the said Wm. P. Smith, was in possession of all the said

lands at the time of his death, in 1823; left at his death three children: the witness, John M. Smith; Margaret Ann, who inter-married with Samuel Dillinger; and Christian, who married Samuel Delghart, and also the widow, Margaret Smith; and they all remained in possession of these lands till they conveyed to him, in June, 1852; that his two sisters by deed, dated June 9th, 1852, conveyed to him all their right, title and interest in the said lands; also, after the death of his mother, the heirs gave him another deed for the same land, for the purpose, as they supposed, of conveying the dower right of their said mother, which 10 deed is dated the 6th day of June, A. D. 1866; the witness further said that his mother lived on the premises during her lifetime, with some of the heirs-at-law of his father, and witness was in possession as owner. The defendants further called John D. Bloom, a son-in-law of John M. Smith, and proved by him the location of the land embraced in the said deeds of conveyance, and that they covered the *locus in quo*; the defendants then offered in evidence the said three deeds of conveyance *pro ut* the same, and rested the case on their part.

The plaintiffs, to support the issue on their part, proposed to 20 prove that the said John M. Smith and his two sisters and mother above named, as heirs-at-law and widow of the said Wm. P. Smith, conveyed, by deed, to the plaintiff the land in question, together with the other lands on which the bridge was built on the New Jersey side of the river; that the said deed of conveyance, after its delivery to the plaintiff, had been lost, and that the said plaintiff had held adverse possession of the said land for more than twenty years; and in order to maintain the issue on their part, the plaintiff called John L. Riegle, who, declaring himself conscientiously scrupulous of taking an oath, was duly 30 affirmed, and testified that he moved to Rieglesville in the year 1840; that he remembered when the Rieglesville bridge was built; the contractor took charge of the construction in 1836; the company took the bridge in 1838; the company had a deed for the property; I never saw it or read it; the deed is lost, and can't be found; I was the secretary and treasurer of the company from the year 1840 to the year 1880; my son, Benjamin Riegle, succeeded me as secretary and treasurer; I have always been a

director in the company; Christopher Fine was the treasurer and secretary before me; he had charge of the papers of the company; after his death his administrators brought the papers of the company, tied up in a sheepskin, and handed them to me; the deed was not among the papers; I have hunted for the deed; Judge Long was the president of the company, who has been dead over forty years, and I went to him to ascertain if he had it, and he did not have it; I did not see him hunt for it; and he hunted for it; we have never found the deed yet; Mr. John
10 M. Smith, the person under whom the defendants in this case claim, came to me in 1852, in the spring of the year some time, and told me that he was going to buy out his sisters' interest in his father's land, and wanted me to let him have the deed that he and his mother and sisters had made to the bridge company, so that he could trace out the lines of the company's land, so as not to include it in the deed his sisters were about to make to him; I told him I could not find the deed; that it was lost; that we had hunted all over and had not been able to find it; he then said that he would have the deed from his sisters made
20 from the description of land in his father's deed, but that he would see to it that it should be no detriment to the company; that was about all there was of that conversation; I had a further conversation with Mr. Smith in the year 1884; he said that he and his sisters had deeded to the company seventy-five feet from low-water mark out toward the road; and I said to him, "Why did you then stand by all these years and see the company build a toll house on the ground and use the land all the time, and say nothing about it?" And his answer was, "Well, John, I did not know where the lines and corners were."
30 The papers of the Bridge Company I received of the administrators of Fine were all together in one package, with a sheepskin wrapped around them. The plaintiffs further called Solomon Wolfinger, and proved by him that his father had been bridge-tender there for thirty-three years; that his father was toll collector from 1842 to 1875; that his father was dead; that he died in the year 1875; that his father built a bake-oven and chicken coop below the land in dispute—between that and the river; that the land in controversy was not fenced, but that his

father had always used it for a wood pile and had thrown his wood on this disputed patch of land sometimes clear down to the road—it crowded the road sometimes; that his father also had a hog-pen there, and had a garden, but he thought the pig-pen was below the disputed ground, the garden was south; that he thought Smith permitted his father to put the hog-pen on the land outside of that in dispute as well as the garden outside of the land in dispute; that his father had occupied this land in dispute with his wood pile ever since he was bridge-tender at the bridge until his death—more than forty years; father hauled his 10 own wood and threw it on this lot; it crowded down to the road; father had a chicken coop outside of it—the disputed property—put it there three years after we moved on the property, and it is there yet; it was four feet long and three feet wide; it is outside of the fence. The plaintiff further called Peter S. Budle, and proved by him that he was a surveyor and draughtsman; that he followed that occupation since the year 1848; that he had made the map here presented by the Bridge Company, at their request; that he had made it by actual measurement with tape line; he had no knowledge of the lines of the road or their 20 points, except as Ben. Riegle told him; he described the different parts of the map, that the space between the two parallel blue lines is the track of the middle of the public road, as Ben. Riegle told me, and that the star mark in the said place was the place where it was said there was an iron pin, corner of Mr. Benjamin Riegle's land. The map was offered in evidence (*pro ut* the same). The plaintiff further called as a witness Benjamin Riegle, who being duly sworn testified on being shown a deed from John M. Smith and Hannah A. Smith, his wife, to the said Benjamin Riegle, dated the 26th day of March, 1879, and 30 acknowledged on the 26th day of March, 1879, and recorded in the clerk's office of the county of Warren, on the 1st day of April, 1879, in Book 107 of Deeds, pages 403, &c.; that he was the grantee named in that deed of conveyance, and that he was now the owner of the land mentioned in the said deed; that he was present when the lines of said lands were run; he was not down at the river where they began; I can't answer where they started, nor whether J. M. Smith was present when they started; that

the lines were run by Mr. Abraham Seigle, a surveyor; that when the first course mentioned in the said deed was run John M. Smith, the grantor, was present at the end of the line in the road; they began to run the course down at the river, but I was not there; I saw the surveyor and Mr. Smith on the ground there, and Mr. Seigle, the surveyor, measured the line; I saw the corner fixed there in the middle of the road; it was fixed there by the surveyor, Mr. Seigle, in the presence of Mr. John M. Smith and myself; it was an iron pin driven in the ground;
10 it was driven in at the end of the first course—the point where the iron pin is driven; it is the middle of the public wagon track; I do not know the lines of the road as laid out; it is marked on the map as a star, right in a line marked on the map as B. Riegle's line, and directly in a line with the fence on the south side of the land in dispute, which fence was erected by the defendants shortly before the commencement of this suit; the iron pin was a large iron bolt; it was driven down hard into the ground, and is there yet; I saw it a few days ago; it is in the same place where Mr. Seigle drove it; it is covered over
20 now with dirt; I uncovered the dirt from it, and found it exactly in the same position it was when it was first driven in; I went to the house where Mr. Fine, the former secretary and treasurer of the company lived, to make search for the company's deed; Spencer Fine, a distant relative lives there now; he took me through the house; I searched in the garret and did not find any deed; I have no personal knowlege that the former secretary ever lived there; I never knew or saw him; I am the present secretary and treasurer of the Bridge Company, and have been for six years past, and have had the custody of the company's
30 books and papers; I have no deed of the company in my possession, and have never seen the deed that is spoken of at any time; part of the ground now in dispute has been covered by a wood-pile used by those who acted as toll-keepers for the Bridge Company; about one-half the ground has been used as a wood-pile, the other half as a foot-path by persons approaching the bridge; this ground was used as a wood-pile by Mr. Wolfinger as long as he lived there, then three months by some one else, then by Mr. Billis.

The plaintiffs also called William Edinger, who, being duly sworn, on his oath testified, that he was seventy-two years of age and lives at Rieglesville, and has done so for thirty years, where I now live; I remember this lot in dispute, on the road near the bridge, for thirty years; since I have known it the lower part of it was used as a path for persons to walk over as they approached the bridge; the other part of it was used by Mr. Wolfinger, the toll-keeper, as a wood-pile during the thirty years and upward; all the rest of the persons acting as toll-keepers since Wolfinger's death used it for their wood-pile. 10

John L. Riegle was recalled, and stated that it was in 1845 when the administrators of Fine handed over to him the papers of the company in the manner he has stated; that both of the administrators of Mr. Fine, the former secretary and treasurer, are dead; that Judge Long, the first president, and that all the original directors are dead, with the exception of the witness. The witness further testified to the use of the land in dispute for a wood-pile by Wolfinger and the other toll-keepers of the company since Wolfinger's death, and the use of the lower portion of it for a foot-path for persons going to the bridge to cross, and 20 that the company hired the toll-keeper and gave him so much a month and the toll-house; the company had nothing to do with this wood or place for wood, and John M. Smith used the path to cross; that the tract in dispute is about the one-thousandth part of an acre, and is about *twenty* feet square; that this land was the only land the toll-keepers could use for the purpose of keeping their wood; the said John M. Smith was told he must pay his foot toll when the trouble began.

The plaintiff then offered in evidence the deed from John M. Smith and wife to Benjamin Riegle, above referred to, *pro ut* the 30 same; also, the act of incorporation of the Rieglesville Delaware Bridge Company by the legislature of New Jersey and also of the State of Pennsylvania.

The defendants recalled John M. Smith, and he testified that Nicholas Wolfinger asked him for permission to put wood there. He asked me for permission to put the wood there on the premises in dispute; he asked me for permission to put it without designating any place, and I gave him permission; sometimes

the wood would be strung along a good ways, sometimes not so much.

And being cross-examined, he was asked whether he did not tell Jesse Riegle, the former president of the Bridge Company, that the company had a title eighty feet out from the abutments of the bridge and forty feet each way from the center of the bridge, and he said, in reply to said question, that he never said it. And he was further asked whether he remembered the conversation with Mr. Riegle, and he said he never told Mr. Riegle
10 that.

The defendants again rested.

The plaintiff recalled Solomon Wolfinger, who testified that he heard a conversation some years ago between Jesse Riegle, who is since dead, and who was then president of the company, and John M. Smith, and that Mr. Riegle, in that conversation, told Mr. Smith that the company owned eighty feet from the abutment out toward the road and forty feet each way from the center of the bridge, making eighty feet wide. And the witness was asked what Mr. Smith said in reply. The witness was then
20 told by the Court to tell all the conversation. Then the witness said he could not tell exactly what reply Mr. Smith made to it, whether he made any reply, nor what he said.

Mr. John M. Smith was then recalled by the defense, and testified that he never heard Jesse Riegle say that the company owned forty feet from the center and eighty feet out from the abutment toward the road. The witness said he was not down at the river bank when the surveyor run the line for Ben. Riegle's land, in 1879, and did not know where they began; Squire Seigle wrote the deed.

30 John D. Bloom, being recalled for the defendants, said, when they run that line, in March, 1879, the river was high, and they did not know what was low-water mark—they estimated it. Witness was present.

CHARGE TO THE JURY.

I shall say but a few words, gentlemen, upon the questions that you are called upon to decide. I intend merely to call your attention to the principal facts you are to pass upon, and to one or two questions of law. You understand that these Blooms have been sued by the Bridge Company in an action of trespass, in answer to which the defendants plead title in Mr. Smith. Their plea in this court is that Mr. Smith owns that tract, and under him the Blooms say they put up a fence. This tract in question was fenced and taken possession of by the Blooms. 10 Of course, in the first place, the burden of the proof is upon them, as they plead title to the premises. They are bound to show their title, and in order to do so they produce Mr. Smith's deed, and the deed from his father, and the release of the other members of the family to Mr. Smith; these deeds embrace this tract.

Now, without any doubt, if the case rested there, the defendants would here prove their case, for it is not disputed at all, the property did belong to those parties making these conveyances. But the case does not rest here; the plaintiff comes forward and 20 says, yes, Mr. Smith owned that tract, but we will show that the Bridge Company acquired title to the premises in dispute in one of two ways. First, we have a deed, or we had a deed that is lost, and that deed embraced the premises in dispute. In the second place, they say they have shown that they have held the premises in question for over twenty years adversely, and that thereby they have a title to it.

Now, if they have shown you either of these facts, they must succeed. They say they had a deed from Mr. Melick Smith and his sister. Of course, if they had a deed from Mr. Smith 30 that embraced this property, that ends it. If they held it adversely for twenty years, that gives them a title. Now, then, these are the two questions you are to decide. In the first place, there is a difficulty with regard to the premises embraced in that deed. That they had a deed from Smith for some property is not disputed. The Smiths seem to admit that for some land the

company got a title from Smith, and that was no doubt the lost deed. But the question is, did that lost deed embrace the land not only down to this tract, not only where the toll-house and the small houses stand here, but did it embrace the premises in dispute? How far did it extend? Did it take in the premises in dispute? On this point the plaintiff is bound to satisfy you. If they took such bad care of the deed to their property, they ought to satisfy people as to what their deed embraced. Now, when the company say the land in disqute is embraced in our
10 deed, but we lost that deed, why, of course, you can see they ought to make it clear what their deed embraced. That is what you are trying to find out now, whether that deed, which is lost, embraced this land, or only embraced up to this land, as defendants claim.

On this point in the first place they offered the evidence of Mr. Riegle to show that when Mr. Smith wanted to take a release he went to Mr. Riegle and said, my sister is going to release, and I want to throw out the land we have conveyed to the company; and Mr. Riegle said, the deed is lost. Then Mr.
20 Smith said, I will go by the old deed, but I won't interfere with the company's rights. But that does not solve anything. It does not seem to throw any light at all upon what you are looking for. The release that he took covered all this property, and the company's property, too. Therefore, you must come back to the question, "What is the property of the company?" You have now to settle exactly what those rights are, and so far as a paper title is concerned that depends on what was in that lost deed.

Then the next evidence upon the subject to show that this
30 property was embraced in the lost deed belonging to the company, is the expression in the deed from Mr. Smith to Mr. Benjamin Riegle. Mr. Smith was going to assign the land over here to Mr. Riegle in 1879, and in that deed he describes the land that he is going to convey to Mr. Riegle, "from a point forty feet distant from the center of the Bridge Company, thence by lands of the same." The plaintiffs insist that expression implies that it runs all the way to the road along the land of the company. The defendant says the line started at low-water

mark and ran along the company's line, and then they say there is nothing to show that the company owns to the center of the road, and that, therefore, the expression "thence by lands of the same," is only an expression used to indicate the general course run.

You will observe that the company had nothing to do with this conveyance. It cannot estop the defendant, but must only stand as an admission or a statement on the part of Mr. Smith. If the case rested on this statement alone, I should hold that it was altogether too indefinite to control the title to this land. 10 How much would it show that the company own? Would that expression, "thence by lands of the same," show that they owned all the land to the north? Upon this subject there is, however, the evidence of Mr. Wolfinger, He said he heard a conversation between Mr. Smith and Mr. Jesse Riegle, who was one of the directors of the company, some years ago, and he stated that in that conversation Mr. Riegle said that the company owned eighty feet from the abutment and forty feet each way.

Now, that, I believe, would take in the disputed property. If Mr. Wolfinger had gone on and said that such assertion was 20 assented to by Mr. Smith, why, you must have considered it quite conclusive. But Mr. Wolfinger said, "I cannot tell what answer, if any, Mr. Smith made to that." Mr. Smith, in his cross-examination, was asked by the counsel of the defendant whether he had ever said that the company had a title eighty feet out, forty feet each way, and he said, "No, I never said so." Then afterwards, when he was recalled, he was asked the question, "Do you remember the conversation with Mr. Riegle?" His reply was, "I never said that I do not remember any such conversation." All, therefore, that Wolfinger says is that this 30 title was alleged in Smith's presence, but he did not remember what answer was given. If Mr. Smith denied it, it amounts to nothing. If he was silent, it would amount to more, but if he assented, it would amount to a great deal.

Gentlemen, you are trying to find out whether that property was embraced in that lost deed. Now, I leave that to you. You must make up your own minds as to a matter of fact. In the second place, I want you to distinctly understand with regard

to this so-called adverse possession. The jury must understand that if a man holds property openly and in an undisturbed way, holding it as the apparent owner, holding himself out in such a way that his action and manner of holding would indicate that he kept it as his own, if he holds it in that way for twenty years, the law is that he cannot be disturbed. If any one ever intends to dispute it, it is presumed he will do so within twenty years. Now, in this case, all there is, is the fact that Mr. Wolfinger, the toll-gate keeper, put his wood there, and it is claimed that 10 in the doing of that act he represented the company. But if he represented the company in that respect, why, when he went and asked permission, if you believe the testimony of Mr. Smith, that he gave permission to Wolfinger to put his wood there, it would seem that he represented the company, and that would not be an adverse holding at all. If you say to a man, here, you may use this property, why, he or his heirs might hold it for hundreds of years without acquiring it. There could not be an adverse holding arising under permission. My charge is distinctly, that if Wolfinger was holding by permission of Smith, 20 it was not an adverse holding, it was permission of Smith. But if you find that that was not so, and that the company was holding it or any part of it adversely as owners for over twenty years, why, then, the title will be in the company. If you find for the plaintiff, you will assess the damages merely nominally, six cents, they only want to settle the title.

Mr. Shipman requested the Court to charge that Mr. Smith is bound by the recital in the deed to Benjamin Riegle, and as that line is established and brings the property in dispute within the line thus established, he is estopped from denying it and shows 30 title in the company.

2d. That the company is not estopped by anything said by their agent, Mr. Wolfinger, not brought home to their knowledge and assented to by them.

The Court refused to charge on the above points except as charged, and the plaintiff prayed a bill of exceptions, and the same are sealed.

M. BEASLEY, [SEAL.]
Chief Justice.

EXCEPTIONS.

Mr. Shipman excepted,

1st. To all that part of the charge which holds that if Wolfinger asked permission to put his wood on the ground in dispute, the holding is not adverse.

2d. To all that part of the charge which relates to the line between Benjamin Riegle and Smith, and all said on that point. And said bills of exceptions are sealed.

M. BEASLEY, [SEAL.]
Chief Justice. 10

ASSIGNMENT OF ERRORS.

[Filed November 17th, 1885.]

Afterwards, that is to say, on the day of , in the year of our Lord one thousand eight hundred and eighty-five, comes The Rieglesville Delaware Bridge Company, by J. G. Shipman & Son, its attorneys, and says, that in the record and proceedings aforesaid, and also in the verdict and judgment aforesaid, there is manifest error, in this, to wit: That judgment was rendered in favor of the defendants in error, when in truth and in fact judgment should have been rendered for the 20 plaintiff in error.

There is also error in this, that the justice who tried the said cause charged the jury, among other things, that "the next evidence upon this subject to show that this property was embraced in the lost deed belonging to the company, is the expression in the deed from Mr. Smith to Mr. Benjamin Riegle. Mr. Smith was going to assign the land over here to Mr. Riegle in 1879, and in that deed he describes the land he is going to convey to Mr. Riegle, 'from a point forty feet distant from the center of the Bridge Company, thence by the land of the same.' The 30 plaintiffs insist that the expression implies that it runs all the way to the road, along the land of the company. The defendant says the line started at low-water mark and runs along the

company's line; and then they say there is nothing to show that the company owns to the center of the road, and that, therefore, the expression 'thence by lands of the same,' is only an expression used to indicate the general course run. You will observe that the company had nothing to do with that conveyance; but it must only stand as an admission or statement of Mr. Smith. It cannot estop the defendant. If the case rested on this statement alone, I should hold that it was altogether too indefinite to control the title to this land. How much would it show that 10 the company owned? Would that expression, 'thence by lands of the same,' show that they owned all the land to the north? Upon this subject there is, however, the evidence of Mr. Wolfinger. He said he heard a conversation between Mr. Smith and Mr. Riegle, who was one of the directors of the company, some years ago, and he stated that in that conversation Mr. Riegle said that the company owned eighty feet from the abutments and forty feet each way. Now, that, I believe, would take in the disputed property. If Mr. Wolfinger had gone on and said that such assertion was assented to by Mr. Smith, why, if all must have 20 considered it quite conclusive? But Mr. Wolfinger said, I cannot tell what answer, if any, Mr. Smith made to that. Mr. Smith, in his cross-examination, was asked by the counsel whether he had ever said that the company had a title eighty feet out and forty feet each way, and he said, No, I never said so. Then afterwards, when he was recalled, he was asked the question, 'Do you remember the conversation with Mr. Riegle?' His reply was, I never said that 'I do not remember any such conversation.' All that Mr. Wolfinger says is that this title was alleged in Smith's presence, but he did not remember what answer 30 was given. If Mr. Smith denies it, it amounts to nothing. If he was silent, it would amount to more, but if he assented to it, it would amount to a great deal. Gentlemen, you are trying to find out whether that property was embraced in that lost deed. Now, I leave that to you. You must make up your minds as to a matter of fact," which charge was illegal and erroneous and misled the jury.

There is also error in this, that the Court, among other things, charged the jury, "I want you to understand well in regard to this so-called adverse possession. Now, in this case, all there is

is the fact that Mr. Wolfinger, the toll-gate keeper, put his wood there, and it is claimed that in the doing of that act he represented the company. But if he represented the company in that respect, why, when he went and asked permission, if you believe the testimony of Mr. Smith, that he gave permission to Wolfinger to put his wood there, it would seem that he represented the company, and that would not be an adverse holding at all. If you say to a man, here, you may use this property, why, he or his heirs might hold it for hundreds of years without acquiring it. There could not be an adverse holding arising under permission. My charge distinctly is, that if Mr. Wolfinger was holding by permission of Smith, it was not an adverse holding, it was only permission of Smith," which charge was erroneous and illegal. 10

There is also error in this, that the Court refused to charge the jury as requested by the plaintiff, that "Mr. Smith is bound by the recitals in his deed to Benjamin Riegle, and as that line is established and brings the property in dispute within the line thus established, he is estopped from denying it, and that line shows title in the company," which refusal of the Court was contrary to law. 20

There is also error in this, that the said Court refused to charge the jury as requested by the plaintiff's counsel, that "the company is not estopped by anything said by their agent, Mr. Wolfinger, not brought home to their knowledge and assented to by them," which refusal was contrary to law.

There is also error in this, that the Court charged the jury contrary to law.

There is also error in this, that the Court refused to charge the jury according to law. 30

Wherefore, the said The Rieglesville Delaware Bridge Company prays that the judgment aforesaid, by reason of the errors aforesaid, and of other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden, and the said company may be restored in all things they have lost on occasion of the said judgment. And that the defendants in error may rejoin to the assignment of errors.

J. G. SHIPMAN & SON,

Attorneys for the Plaintiffs in Error.

JOINDER IN ERROR.

EXHIBITS.

PLAINTIFF'S EXHIBITS.

1. Map.
2. Charter of company.

3. WARRANTY DEED.

THIS INDENTURE, made the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and seventy-nine, between John M. Smith and Hannah A. Smith, his wife,
10 of the township of Greenwich, in the county of Warren and State of New Jersey, of the first part, and Benjamin Riegel, also of the township of Greenwich, in the county of Warren and State of New Jersey, of the second part:

Witnesseth, that the said party of the first part, for and in consideration of three hundred and fifty dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully
20 satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, all that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Greenwich, in the county of Warren and State of New Jersey aforesaid, butted and bounded as follows: Beginning at low-water mark on the bank of the river Delaware, forty feet below the center of the Riegelsville Dela-
30 ware bridge, thence by land of the same (1) north, seventy-six and three-quarter degrees east, one chain and seventy-one links

to a corner in the middle of the public road leading to Riegel's Mills; thence down said road (2) south, twenty-one degrees east, two chains and ten links to a corner in said road; thence by land of said Riegel (3) south, eighty-three and a half degrees west, one chain and ninety-three links to a corner at low-water mark on the bank of the said Delaware river; thence up said Delaware river its several courses and distance to the place of beginning—containing thirty-seven hundredths of an acre of land, be the same more or less, it being a part of the same premises which was conveyed to the said John M. Smith by indenture 10 of deed, dated the ninth day of June, A. D. 1852, and recorded in the county clerk's office of Warren, in book of deeds, vol. 68, on page 615, &c. Reference being thereto had will more fully and at large appear.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: To 20 have and to hold, all and singular the above-described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said John M. Smith and Hannah A., his wife, do, for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that they, the said John M. Smith and Hannah A., his wife, the true, lawful and right owners of all and singular the above described land and premises, and of every part and 30 parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

And also, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid; and also, that they, the said John M. Smith and Hannah A., his wife, will warrant, secure, and forever defend the said land and premises unto the said Benjamin Riegel, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

10 IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN M. SMITH, [L. S.]
H. A. SMITH. [L. S.]

Signed, sealed and delivered in the presence of
ABR'M SEIGLE.

INDORSEMENTS.

STATE OF NEW JERSEY, COUNTY OF WARREN, *ss.*—Be it remembered, that on this twenty-sixth day of March, in the 20 year of our Lord one thousand eight hundred and seventy-nine, before me, the subscriber, a commissioner to take the acknowledgments and proof of deeds, &c., in said county, personally appeared John M. Smith and Hannah A., his wife, who, I am satisfied, are the grantors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Hannah A., wife of the said John M. Smith, 30 being by me privately examined, separate and apart from her husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

ABR'M SEIGLE,
Commissioner.

John M. Smith and wife to Benjamin Riegel. Dated, , 187 . Received in the clerk's office of the county of Warren on the 1st day of April, A. D. 1879, at o'clock in the noon, and recorded in Book 107 of Deeds for said county, on pages 403, &c.

JAMES E. MOON,
Clerk.

DEFENDANTS' EXHIBITS.

Deeds of John M. Smith.