


COURT OF ERRORS  APPEALS.

*EDWARD COOPER and
ABRAHAM S. HEWITT,
Appellants,*

and

*CHARLES MORRIS,
Appellee.*

*In Error to the
Passaic
Circuit Court.*

Points for Appellants.

First. The map overruled on page 32 of case, should have been admitted. It was a map obtained from the grantor to Cooper & Hewitt, showing the property as claimed by him about forty years before the trial.

Second. The certificate allowed in evidence on page 67 of state of the case, was no evidence.

Third. The deed mentioned on page 117, ought to have been admitted. It was evidence to show the boundaries of the lot of which Dennis Morris took possession.

12 Room 527. 544-6
Foules in Bond

Fourth. A refusal to charge as requested, on page 127, that there was no evidence of title by adverse possession to the "locus in quo."

15 *Norton* 52
Tronstedt on Real
Est. AD 1887

A naked trespasser cannot, by cutting hoop-poles or ties, oust the real owner, who has located his boundaries and continued to claim title and exercise acts of ownership continually.

Spencer 487.
Gayton & al on *Pho*

Fifth. The court erred in refusing to charge as requested on pages 128 and 129 of state of the case.

1 *Dutcher* 61
Empson on Giberson

Sixth. The court erred in refusing to charge as requested on pages 130 and 131, in the fifth request to charge.

4 *Dutcher* 101
Rowland & al on *Whd*
Wal.

Seventh. The court erred in refusing to charge as requested on page 131, in the sixth request. The defendant was estopped from denying that the spot he pointed out as the third corner was the third corner.

Poliff & Com.
absent.

Eighth. The court erred in calling the jury back and charging as stated on pages 134, 135 and 136 of the state of the case.

Ninth. The judgment below should be reversed because no verdict was rendered on the second issue, which was on the title.

There can be no Judg
legally until all
issues are decid

And also, because the defendant admitted he did the acts complained of, and set up as a defence that those acts gave him title by adverse possession, and the verdict was that the defendant was not guilty of committing said acts.

1 *Burke* Pr. x 201
203, 236.

And also, because no legal judgment could be entered on the verdict as rendered.

1 *Arch* Pr. 213

And because the said judgment is illegal and void.

1 *Lee Ray* 324

A. B. WOODRUFF,
Counsel for Appellants.

3 *Salkeld* 372


June 14th, 1886.

5 *Ohio R.* 227. 25

6 " 521

9 " 131

The verdict must be on all the issues in cases of assumption, or other acts to a strip

COURT OF ERRORS  APPEALS.

EDWARD COOPER and
ABRAHAM S. HEWITT,
Appellants,

and

CHARLES MORRIS,
Appellee.

*In Trespass.
In Error to the
Passaic
Circuit Court.*

Assignment of Errors.

Afterwards, that is to say, on the thirty-first day of December, A. D. eighteen hundred and eighty-five (as yet of the November Term of that year), before the Court of Errors and Appeals in the last resort in all causes of law, come the said Edward Cooper and Abraham S. Hewitt, by Absalom B. Woodruff, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving the judgment aforesaid, there is manifest error in this, to wit, for that by the bill of exceptions sealed by the Hon. Jonathan Dixon, one of the associate justices of the Supreme Court of Judicature of

the State of New Jersey, upon the trial of the issues joined between the said parties, it appears that the said justice on the trial of the said cause:

First. Admitted illegal evidence on behalf of the defendant below, Charles Morris.

Second. That he rejected and overruled legal evidence offered on said trial on behalf of the plaintiffs below, Edward Cooper and Abraham S. Hewitt.

Third. That he rejected and overruled as evidence a 10 map offered on behalf of plaintiffs below, got by their agent, Philip George, of Jacob M. Ryerson.

Fourth. That he admitted in evidence on said trial, on behalf of Charles Morris, a certificate dated October 5th, 1804, with survey recorded June 25th, 1811.

Fifth. That he overruled the claim of title under Dennis Morris, offered by plaintiffs below to show that possession was taken by Dennis Morris according to a deed to him from Martin I. Ryerson, dated June 22d, A. D. 1818.

Sixth. That the said justice refused to charge the jury as 20 requested to do in the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth requests made by counsel for the plaintiffs below.

Seventh. That the said justice, after refusing to charge as thus requested, charged as he did, in response to said requests.

Eighth. That the said justice charged the said jury as follows: "When a man goes on another man's land, that is an act of trespass. But if he goes upon the land committing these acts of trespass, as they may be called—for they 30 are acts of trespass until he has got good title—so frequently, so regularly, so continuously, that the jury are

satisfied he would not have performed them unless he had at least claimed to be the owner, that is one of the *criteria* by which you conclude that the acts have become the acts of an adverse possessor ;” and, also, “although he may not have put any buildings upon the property, although there may have been no fence around it, although he may have not lived upon it, nevertheless, these acts would give him title.”

Ninth. Because the said justice, in the absence of the plaintiffs below and their counsel, and without notice to any of them, called the jury from the jury-room into the court-room and charged them as stated in the state of the case from line 10 on page 134 to page 137. 10

Tenth. Because the jury did not find the issues submitted to them, and found a verdict of not guilty, when the acts charged were admitted to have been done by the defendant below, and judgment was given on said finding.

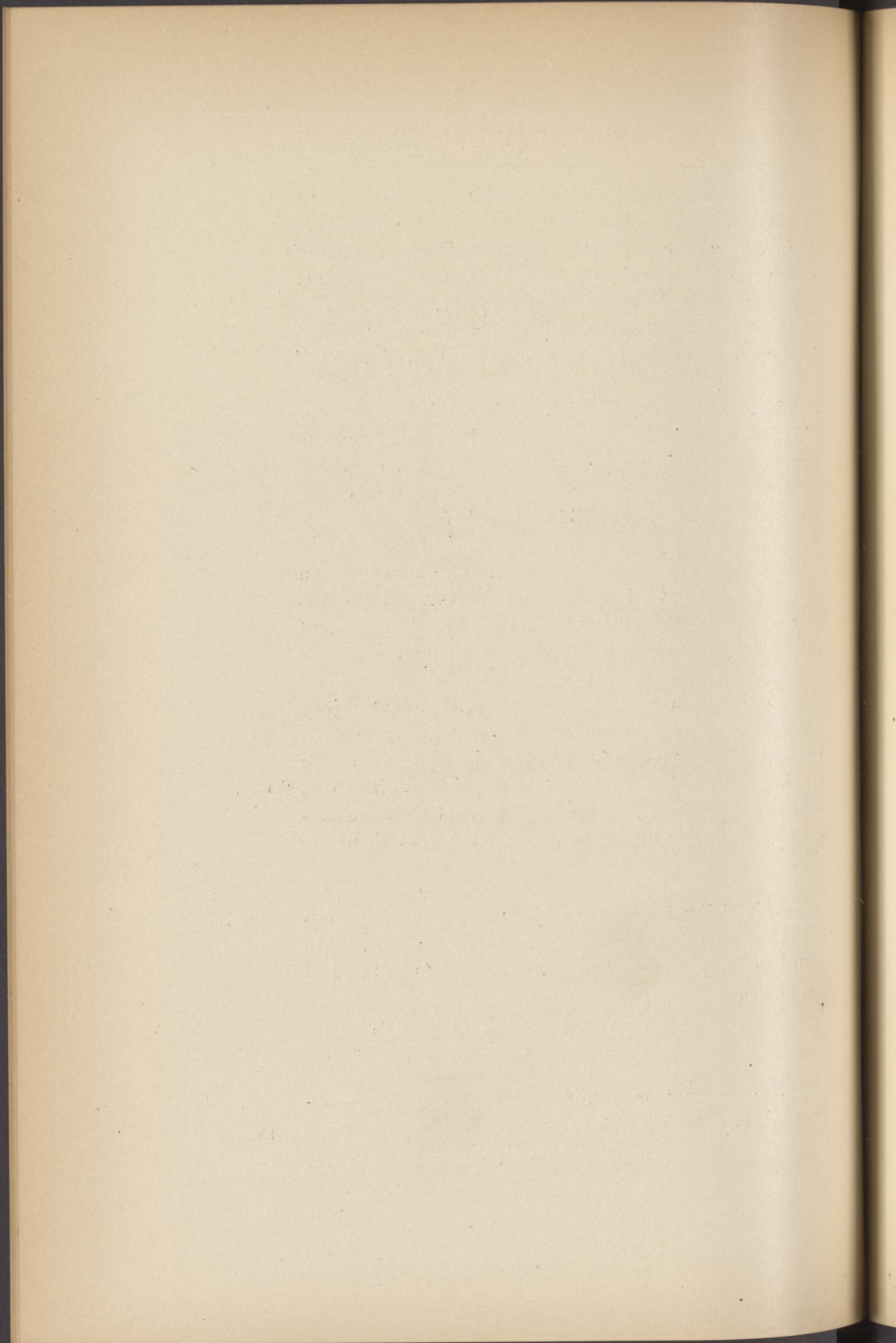
Eleventh. Because no verdict was rendered by the jury on the issue made by the defendant’s second plea, in which he admitted the acts of trespass charged to have been done by him, but justified them by pleading title in himself in 20 the *locus in quo*, and judgment was given for the defendant below without any verdict being rendered as to the title.

Twelfth. Because the entry of judgment for the defendant below, upon the verdict upon one of the issues submitted to the jury, is erroneous, and ought to be reversed and for nothing holden.

A. B. WOODRUFF,
Attorney for Appellants.

Service of copy of within assignment of errors acknowledged February 8th, 1886.

EUGFNE EMLEY,
Attorney.



COURT OF ERRORS AND APPEALS.

EDWARD COOPER et al.,
Plaintiff in Error. }
v. }
CHARLES MORRIS,
Defendant in Error. }

Points for Defendant in Error.

The plaintiff in error makes twelve assignments of error which we shall take up in order.

I.

The first assignment of error is only a general and indefinite statement of what is made particular and definite by the third ^{and fifth} assignment. It is bad for indefiniteness.

II.

The second assignment bears the same relation to the fourth assignment, and is also bad for indefiniteness.

There is no admission or exclusion of evidence to which these first two assignments can apply except the exclusion particularly complained of in the third ^{assignment} and the admission particularly complained of in the fourth assignment.

III.

This assignment complains of the exclusion of a certain map offered in evidence. All the evidence relating to this map is on page 32 of the book.

(1) No exception has been sealed to the ruling of the court. It is therefore waived.

Allaire v. Hartshorne, 1 Zab. pages 9, 665.

(2) Not the slightest ground was or can be alleged on which the map offered was admissible.

IV.

This assignment complains of the admission of a certificate dated October 5th, 1804, with survey recorded June 25th, 1811. Page 67.

(1) No exception was sealed to the ruling of the court.

(2) The objection was general, and no ground for excluding the record was stated or appears.

V.

Strictly speaking, this assignment is not supported by the facts. The court did not overrule an "offer to show that possession was taken by Dennis Morris according to a deed to him from Martin I. Ryerson, dated June 22d, 1818." The counsel of plaintiffs offered a deed of the above date and purport, and it was this deed that the court overruled. Printed book, page 117.

There was no claim of title to the *disputed* territory under Dennis Morris, and the deed could not have been evidence for the purpose of proving any such claim.

It is true the plaintiff's counsel stated that the deed was offered for the purpose of showing "that possession was taken by Dennis Morris according to his deed." But of what could he have proved possession by such deed? Certainly the land described therein, which embraced no part of the land in dispute, and by no means could the manner in which a stranger took possession of lands not in controversy have any bearing upon the question at issue in the trial, nor could it have affected, even remotely, the title of the defendant to the disputed territory.

VI.

This assignment covers six refusals to charge, to which exceptions were sealed.

(1) The first request was to charge the jury "that there is no evidence in the case which showed title by *adverse possession* to the premises on which the wood was cut by defendant, either in defendant or those under whom he claimed."

This the justice did decline to charge, and said there was "evidence upon that subject." Printed book, page 127. Was that true? See the testimony of the following witnesses:

Joseph Henderson, a witness for the plaintiff, pages 47, 48 and 49.

John McCall, a witness for the plaintiff, page 58, line 25.

Charles Morris, pages 69, 70, 71, 72, 73, 74, 75, 76, 86 and 93.

William Lovell, pages 95, 96, 97, 98, 100 and 101.

John Storms, page 107.

If, from the testimony of these witnesses, there is *any*

evidence of adverse possession, there is no error in the refusal to charge as requested.

More than this, if there is any evidence of *possession*, there is no error, for it was the province of the jury to determine whether such possession was adverse or not.

“Whether possession is adverse or not is a question for the jury.”

Den, *Penton v. Sinnickson*, 4 Hal. 149.

(2) This, the second request, was to charge the jury that to make out a title by adverse possession in the defendant, he must prove a “continued, open, visible and exclusive possession of land, marked by definite boundaries, either by a fence or some other visible designation of the lines, or defined by the description in his deed or deeds.”

This, it is true, the justice refused to charge, but it should be noticed under what condition of facts as disclosed by the testimony, the request was made and refused.

The defendant's adverse possession was under color of title to the land in dispute. During the whole period of his possession and of that of his ancestors under whom he claimed, both he and they supposed they held a valid, legal title to the disputed land, derived originally from John Stevens in 1812. They supposed that it was included in the description contained both in the Stevens survey of June 25th, 1811, and the deed from Stevens to Joshua Morris, dated March 28th, 1812, which constitute the basis of the defendant's title, and under which and from the date thereof the defendant and his ancestors have uninterruptedly held. The plaintiff owned lands adjoining on the north, but from 1853, when they, through Peter Cooper, acquired their title, they did not know where the partition line was until 1875. Printed book, page 59. During that time they never denied that the partition line was other than where the defendant supposed and claims it to be, nor had they asserted the least claim of title to any part of the disputed territory. Further

than this, Martin I. Ryerson and Jacob M. Ryerson, the prior owners of the plaintiff's title, for many years prior to 1853—from 1830 or 1835—had, by their acts, recognized the partition line to be that always claimed by the defendant; that is, a line running easterly from “a bed of stones on the top of a hill.” Printed book, pages 72 and 82. They had cut wood and timber on the land from the one side of such line, and the defendant, to their knowledge, had cut timber and wood on the land from the other side.

So that if, in the application of the rules of law, any distinction is to be made between *naked* adverse possession and adverse possession under color of title, the defendant should have the benefit of whatever advantage is possessed by the latter, and the question becomes one whether in order to make out a title by adverse possession under color of title, the defendant was required to prove that the land was marked by definite boundaries—either by a fence or some other visible designation of the lines.

Such is not the requirement of the law, as construed by the courts.

For instance—

“If two adjoining proprietors agree upon what shall constitute their division line, and each holds open, notorious and visible possession up to such line, or if one holds such possession up to such line, claiming it to be the true boundary, and the other takes no steps to disturb his possession, it is adverse, and the statute of limitations will apply.”

Tanner *v.* Kellogg, 49 Mo. 118.

“When an adverse possession is such that it may be *presumed* that the true owner had knowledge of it, (in this case such knowledge is *proved*) and acquiesced in it, &c., he will be barred, provided that the adverse possession has been continued for the requisite length of time.”

Key *v.* Jennings, 66 Mo. 365.

“Actual occupancy by residence, cultivation or enclosure, or the erection of permanent improvements, is not necessarily required.”

Foulke v. Bond, 12 Vr. 526, and cases there cited.
Saxton v. Hunt, Spen. 487.
Empson v. Giberson, 1 Dutch. 1.
McCreery v. Everding, 44 Cal. 246.

“Cutting timber upon *uninclosed wild* land may be such an occupancy as will constitute adverse possession.”

Clement v. Perry, 34 Iowa 564.

“Acts of ownership done upon the land, which are of such a nature as to manifest a notorious claim of property, and are continued for a period of twenty years without interruption or interference by the true owner, may, under the circumstances, and in the situation of the property, be sufficient evidence of an ouster and adverse possession to support a claim of title by adverse possession without any residence, cultivation or *enclosure*.”

Ewing v. Burnett, 11 Pet. 41.

(3) This request is manifestly without merit. See charge of court in response. Page 129.

(4) This request was in part granted. The court charged as requested with proper additions.

(5) This request is included in the second request above stated. The doctrine is fully discussed above.

(6) No discussion of this extraordinary request is deemed necessary. The defendant's alleged statement was fairly submitted to the jury as an admission of the defendant. Pages 119, 131 and 132. The idea that such admission, if made, created an estoppel, is dissipated by the slightest consideration of the necessary elements of an estoppel. The court stated the evidence as to this alleged admission most favorably to the plaintiffs, omitting to state that the defendant denied having made such a positive admission.

Page 75, line 20, and page 131, line 39, and page 132, line 1, &c.

VII.

This assignment is fully covered by the assignments above discussed.

VIII.

This assignment is based upon portions of the charge of the court to which no exception has been sealed. The assignment sets forth two portions of the charge, leaving out the intermediate portion. The first excerpted passage appears to have been excepted to (page 132, line 18, &c.), but the exception was not sealed.

The second excerpted passage was not even excepted to upon the trial. Putting the two passages together and leaving out the intermediate passage, grossly perverts the meaning of the latter.

The whole passage reads as follows, the part omitted in the assignment being in italics :

“ When a man goes upon another man’s land, that is an act of trespass. But if he goes upon the land committing these acts of trespass, as they may be called—for they are acts of trespass until he has got good title—so frequently, so regularly, so continuously, that the jury are satisfied he would not have performed them unless he had at least claimed to be the owner, that is one of the *criteria* by which you conclude that the acts have become the acts of an adverse possessor. *You look to see whether, through a period of twenty years continuously, he has treated the land as only an owner would treat it, used it for such purposes as only an owner would use it for, and whether he has done that continuously, regularly, as an owner would—notoriously, so that if there was another owner he would be presumed to have known it, although he may not have put any buildings*

upon the property, although there may have been no fence around it, although he may not have lived upon it, nevertheless, those acts would give him title."

The words "those acts" refer to the omitted part.

IX.

This assignment is based upon nothing in the record, and it should, we submit, be stricken out. If the court could consider the matter, the practice assailed is well settled. It is the duty of counsel to remain in court while the jury are deliberating. Courts cannot suspend business to look up lawyers who have voluntarily left while their cases are on trial.

X., XI. and XII.

The assignments object to the form of the verdict. The verdict was not guilty. The action was trespass for cutting trees. The court properly charged the jury that it was necessary for the plaintiffs, in order to make out their right of recovery, to prove title or possession. Page 119. Failing to prove such title or possession, what verdict, but "not guilty," would be proper?

NEW JERSEY, ss:—*The State of New Jersey to the*
[L.S.] *Circuit Court in and for the County*
 of Passaic:

10

GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain cause, which was in our said court between Edward Cooper and Abraham S. Hewitt, plaintiffs, and Charles Morris, defendant, in a certain action of trespass, as is said manifest hath intervened to the great damage of said Cooper and Hewitt, as is said. We being willing that the said errors, if any there be, should in due manner be corrected and full and 20 speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereon given, that without delay you distinctly and openly send under your seal the record and proceedings aforesaid, with all things concerning the same, to our Court of Errors and Appeals in the last resort in all causes, as heretofore on the thirty-first day of December instant, at Trenton, together with this our writ that the record and proceedings aforesaid being inspected, we may further 30 cause to be done thereon what of right and according to law ought to be done.

Witness, the Honorable Theodore Runyon, our Chancellor and President Judge of our said Court of Errors and Appeals in the last resort in all causes as heretofore, at Trenton, this twelfth day of December, A. D., eighteen hundred and eighty-five.

HENRY KELSEY,
Clerk

A. B. WOODRUFF, }
Attorney }

*Pleas before Passaic Circuit Court of the fourth day
of August, A. D., eighteen hundred
and seventy-nine.*

PASSAIC COUNTY, ss.

Charles Morris, the defendant in this suit, was summoned to answer to Edward Cooper and Abraham S. Hewitt, the plaintiffs therein, of a plea of trespass, &c. And thereupon the said plaintiffs by Absalom B. Woodruff, their Attorney, complain for that the said defendant
 10 on the first day of September, in the year of our Lord one thousand eight hundred and seventy-three, and on divers other days and times, between that day and the commencement of this suit to wit, at Pompton, in the county of Passaic, with force and arms, &c., broke and entered a certain close of the said plaintiffs situate in the township of Pompton, in the County of Passaic aforesaid, described as follows, to wit : lying west of what is known as the Rutherford line, and bounded on the north by the Shepherd pond and lands of said Edward Cooper and
 20 Abraham S. Hewitt ; westerly by what is known as the Great Ringwood tract ; southerly by lands of Charles Morris ; and easterly by lands of Charles Morris, and then and there cut down in said close and carried away two thousand trees, five hundred saplings, of the value of one thousand dollars, the said trees and saplings then and there being the property of the plaintiffs and of the value aforesaid, and converted and disposed of the said trees and saplings to the use of him the said defendant. And
 30 the said plaintiffs aforesaid, by their attorney aforesaid, also complain for that the said defendant on the first day of September A. D. eighteen hundred and seventy-three, and on divers other days and times between that day and the commencement of this suit at Pompton, in the County of Passaic, with force and arms, &c., broke and entered a certain other close of the plaintiffs, then and there situate, described as follows, to wit ; Abutting towards the north on the Shepherd Pond and lands of plaintiffs, abutting towards the west by lands known as the great Ringwood tract, abutting towards the south and east on lands of Charles Morris, and then and there

cut down, cut up and carried away two thousand trees, one thousand saplings and ten thousand hoop-poles of the said plaintiffs, then and there in said last mentioned close growing, and being of great value, to wit : of the value of one thousand dollars, and converted and disposed of the same to the use of him, the said defendant.

And other wrongs to the said plaintiffs the said defendant then and there did against the peace of this State and to the damage of the plaintiffs two thousand dollars, and thereupon they bring this suit, &c. 10

And the said defendant, by Tuttle & Griggs, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said supposed trespass above laid to his charge or any or either of them or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him. And of this he the said defendant puts himself upon the country &c.

And for a further plea in this behalf the said defendant by leave of the Court here for this purpose, first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the said closes in the said declaration mentioned and in which &c., now are and at the said several times when &c., were the closes, soil and freehold of the said defendant, wherefore the said defendant, in his own right at the said several times when &c. committed the said several supposed trespasses in the said declaration mentioned in the said closes in which &c., so being the closes, soil and freehold of the said defendant as he lawfully might for the cause aforesaid, which are the said several supposed trespasses, whereof the said plaintiffs have above thereof complained against him, and this the said defendant is ready to verify, whereof he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him. 20
30

And the said plaintiffs, as to the first plea of him the defendant above pleaded, and whereof he hath put himself upon the country doth the like, &c.

And the said plaintiffs, as to the second plea of the said defendant above pleaded, say that the said plaintiffs by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because they say 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 them, the said plaintiffs, and not the close, soil and freehold of him, the said defendant, in manner and form as he, the said defendant, hath above in his said second plea alleged. And this they, the said plaintiffs, pray may be enquired of by the Country, &c.

Therefore let a jury thereupon come before the Court here on the fourth Tuesday of September next, by whom, &c., who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the parties aforesaid at the same place.

At which day before the Court aforesaid at Paterson aforesaid come the said parties by their respective attorneys aforesaid, and the Jurors of the Jury whereof mention is within made, are respited between them from day to day until the fourth Tuesday of September, eighteen hundred and eighty-one.

At which last mentioned day before the Court aforesaid at Paterson aforesaid come the said parties by their respective attorneys aforesaid and the Jurors of the Jury whereof mention is within made, also come who to speak the truth of the matters and things within contained being chosen, tried and sworn upon their oaths, say that the defendant is not guilty of the trespass, as alleged in plaintiffs' declaration.

Therefore it is considered that the said plaintiffs take nothing by their said action, and that the said defendant do gc.

Whereof, without day, &c.

And it is further considered by the Court here that the said defendant do recover against the said plaintiffs the sum of thirty-seven dollars and thirty-six cents for their costs and charges by them about their suit in this

behalf expended now here taxed, and by the Court here adjudged to them with their assent, according to the form of the statute in such case made and provided.

And that the said defendant have execution therefor if need be, &c.

Costs \$37.36.

Judgment signed, February 2nd, 1883.

JONATHAN DIXON,

Judge. 10

The Circuit Court of the County of Passaic does herewith in the Schedule annexed, send to the Court of Errors and Appeals the records and proceedings whereof mention is made in the foregoing writ of error, together with all things touching and concerning the same, as the said Circuit Court is in said writ commanded.

Witness, the seal of said Circuit Court
[L.S.] and the hand of the Clerk thereof, this six-
teenth day of December, A. D., 1885. 20

WM. M. SMITH,

Clerk.

fendant on the first day of September, in the year of our Lord one thousand eight hundred and seventy-three, and on divers other days and times between that day and the commencement of this suit, to wit, at Pompton, in the County of Passaic, with force and arms, &c., broke and entered a certain close of the said plaintiffs, situate in the Township of Pompton in the County of Passaic aforesaid described as follows, to wit ;

Lying west of what is known as the Rutherford line and bounded on the north by the Shepherd Pond and lands of said Edward Cooper and Abraham S. Hewitt ; westerly by what is known as the Great Ringwood tract ; southerly by lands of Charles Morris ; easterly by lands of Charles Morris ; and then and there cut down in said close and carried away two thousand trees and five hundred saplings of the value of one thousand dollars, the said trees and saplings then and there being the property of the plaintiffs, and of the value aforesaid, and converted and disposed of the said trees and saplings to the use of him, the said defendant. 20

And the said plaintiffs aforesaid, by their attorney aforesaid, also complain for that the said defendant on the first day of September, A. D. eighteen hundred and seventy-three, and on divers other days and times between that day and the commencement of this suit, at Pompton, in the County of Passaic, with force and arms, &c., broke and entered a certain other close of the plaintiffs, then and there situate, described as follows, to wit :

Abutting towards the north on the Shepherd Pond and lands of plaintiffs ; abutting towards the west by lands known as the Great Ringwood tract ; abutting towards the south and east on lands of Charles Morris ; and then and there cut down, cut up and carried away two thousand trees and one thousand saplings and ten thousand hoop poles of the said plaintiffs, then and there, in said last mentioned close growing, and being of great value, to wit ; of the value of one thousand dollars, and converted and disposed of the same to the use of him, the said defendant.

And other wrongs to the said plaintiffs, the said de-

fendant then and there did against the peace of this State and the damage of the plaintiffs two thousand dollars, and thereupon they bring their suit, &c.

And the said defendant, by Tuttle and Griggs, his attorneys, comes and defends the wrong and injury &c., and says :—That he is not guilty of the said supposed trespass above laid to his charge, or any or either of them or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him,
 10 And of this the said defendant puts himself upon the Country, &c.

And for a further plea in this behalf the said defendant, by leave of the Court here for this purpose, first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that the said close in the said declaration mentioned and in which, &c., now are
 20 and at the said several times when, &c., were the closes, soil and freehold of the said defendant, wherefore the said defendant in his own right at the said several times, when, &c., committed the said several supposed trespasses in the said declaration mentioned in the said closes in which, &c., so being the closes, soil and freehold of the said defendant as he lawfully might for the cause aforesaid, which are the said several supposed trespasses whereof the said plaintiffs have above thereof complained against him, and this the said defendant, is ready to verify,
 30 whereof he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him.

And the said plaintiffs come and say by their attorney aforesaid, as follows, to wit :

And the said plaintiffs as to the first plea of him, the defendant above pleaded and whereof he hath put himself upon the Country do the like, &c.

And the said plaintiffs as to the second plea of the said defendant, above pleaded say that the said plaintiffs by reason of anything by the said defendant in that plea alleged ought not to be barred from having and main-

taining their aforesaid action thereof against the said defendant because they say 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 them, the said plaintiffs, and not the close, soil and freehold of him, the said defendant, in manner and form as the said defendant hath above in his said second plea alleged.

And this they, the said plaintiffs pray may be inquired of by the Country, &c. 10

And afterwards, to wit ; at the Circuit Court, held in and for the County of Passaic, on the fourth Tuesday of September, A. D. eighteen hundred and eighty-one, (to which time the trial of the said issue had been by the said court continued) at Paterson in said County, before Jonathan Dixon, Judge of the said Court, came on to be tried, and the plaintiffs and defendant aforesaid, by their respective attorneys, came also before him, and the jurors of the jury summoned to try the said issue, being called also come, who to speak the truth of the matters aforesaid 20 being chosen, tried and sworn,—the following evidence was given on the part of the plaintiffs, and the following proceedings had, to wit :—

PASSAIC CO. CIRCUIT, N. J.

EDWARD COOPER, et al.

VS

CHARLES MORRIS.

10

Before Dixon, J.
and a Jury.

OCTOBER 6th, 1881.

APPEARANCES:

A. B. WOODRUFF for Plaintiff.

TUTTLE & GRIGGS, for Defendant.

Mr. Woodruff opens case for Plaintiff.

WILLIAM ROONE, sworn for the plaintiffs, testifies as
20 follows:

By Mr. Woodruff.

Q. Where do you live?

A. Morris County.

Q. What is your business?

A. Land surveyor.

Q. Did you ever make a map of the property up in Pompton for Cooper & Hewitt?

A. Yes sir.

Q. (Map being produced) What is that a map of?

30 A. It is a map of lands owned by Messrs Cooper & Hewitt and Charles Morris.

Objected to.

THE COURT:—It is not received in evidence of title.

THE WITNESS:—It is claimed to be owned by them.

Q. What is the scale?

A. Two chains to the inch.

Q. Where is the lot upon which it is claimed wood was cut?

A. The land in green represents the lot claimed by Mr. Morris; the land in purple represents the land claim-

ed by Messrs Cooper & Hewitt. The most cutting was done within the bounds of the dotted lines.

Q. Did you make an estimate of the quantity cut ?

A. No sir, I did not.

Q. How long have you known that property represented there ?

A. That claimed by Cooper & Hewitt.

Q. Yes; claimed by Cooper & Hewitt or those under whom they claim ?

A. The first I was ever on the property was in 1875. 10

Q. Who was in possession of it ?

A. I ran the line at that time for Messrs. Cooper & Hewitt.

CROSS EXAMINATION.

By Mr. Tuttle

Q. How much do you say was represented within the dotted lines as land on which cutting was done—the larger tract, how much was that ?

A. 3 acres and 31-100. The next was 1 acre and 20 23-100; and the next $\frac{1}{4}$ of an acre. Those batches were cut off pretty thoroughly.

Q. What do you mean by “pretty thoroughly ?”

A. I mean about everything that was worth anything, except small scraggling wood was cut off.

Q. Are there not upon the land upon which you say cutting was pretty thoroughly done, trees standing large enough for saw logs ?

A. I think not, sir.

Q. Did you go all over the ground which you say was 30 pretty thoroughly cut off ?

A. I did; those dotted lines are from actual survey; I went all around it.

Q. Did you see on that land which you say was cut over, an old stone wall which at one time seemed to have enclosed a small parcel of land ?

A. No sir, not in any of those parts cut over.

Q. Did you see such a wall anywhere on the land which you say is claimed by the plaintiffs between the two parcels which you say are claimed by Morris ?

A. I think there is an old stone wall, the remains of an old stone wall, near the southwest corner [referring to the map]. My impression is these are the remains of an old stone wall along here, at the southwest corner of this 25-acre tract. That is my recollection of it.

Q. On the pink tract?

A. Yes, and partly on the other.

Q. Are you sure it is all located on the pink tract, the ground enclosed by this old stone wall?

10 A. I don't know that there was any enclosure about it?

Q. Did you see something that looked like an old cellar?

A. No sir.

Q. Did not Mr. Morris point out to you an old cellar and the remains of an old wall, and didn't he state to you that was where his father was born?

A. He pointed out to me at one time the remains of an old house there or something of that kind. There was
20 no cellar, I don't think. It did not occur to me that there was. We were off a little distance. He said, "There my father was born, or something of that sort.

Q. You saw that?

A. Yes Sir.

Q. How long ago was that?

A. I think it was the time that I ran the line where he had been cutting the wood—the dotted lines.

Q. Can you tell where the remains of that old house were by referring to the map, and on which color?

30 A. I think it is just by the southwest corner where I marked it there.

Q. On which color?

A. I think the point he designated was on the pink, just a little off the other. I did not know whether it was true or not; I did not pay any attention to it when he was telling me.

Q. Your recollection is, it was on the property which you say is claimed by Cooper and Hewitt?

A. Yes.

Q. And near to the 25 acre tract, the tract marked

here and claimed by Morris ?

A. Yes. You asked me what date ; it was April, 1880. I think that was the last time I was there. I think that was the time he showed it to me. I am not positive about that.

Q. He told you that was where his father was born ?

A. Yes sir. I think he told me a Mr. Lovell of Paterson had come there and showed him that that was the spot. That is the way he told me of it. He didn't say ¹⁰ he *knew it* of his own knowledge.

Q. Do you know whether there was a curtilage at that point where he showed you and said his father was born there ; whether it was surrounded by the remains of an old stone wall or not ?

A. I did not notice the stone wall around it. Through the mountains there are a great many old clearings and old stone fences that have been thrown up and abandoned, and they are of so common occurrence that I seldom pay any attention to them. ²⁰

By the Court :

Q. Is that a hilly country there ?

A. That is all mountains, right out in the wilds—part of Ramapo Mountains.

JACOB H. BLAUVELT, sworn for plaintiff, examined by Mr. Woodruff :

Q. What is your occupation ?

30

A. I am clerk of the County of Passaic.

Q. Have you book K 3 of Deeds of Passaic County ?

A. Yes sir.

Book produced.

Plffs. counsel offer in evidence a deed from Ed. H. Miller and wife to Edward Cooper and Abram S. Hewitt, dated May 1st, 1868, and recorded May 13th, 1868, K 3, page 493.

Plffs. counsel offers in evidence a deed from the Trenton Iron Co. and Peter Cooper trustee, to Edward H. Miller, Ed. Cooper and Abram S. Hewitt, dated November 1st, 1861, recorded January 14th, 1862, page 23, book L 2.

10

Plff's counsel also offers in evidence a deed from Peter Cooper and wife to the Trenton Iron Co., dated March 27, 1857, recorded March 28, 1857, book A 2, 599.

Deed from Jacob M. Ryerson to Peter Cooper, dated August 1st, 1853, recorded September 1st, 1853, book T, 380.

20

Deed from Martin J. Ryerson to Peter Cooper, dated August 31st, 1853, recorded September 1st, 1853, book T, page 382.

Deed from Wm. S. Hogencamp, Sheriff to Peter Cooper dated Sept. 1st., 1853, recorded June 20th, 1854, book V, page 295.

Deed from Isaac I. Vanderbeck, Sheriff, to Martin J. Ryerson, dated Sept. 1st., 1853, recorded in book T, 360. [Counsel refers to description of the property on page 365.]

30

Deed from Andrew Bell to Martin I. Ryerson, dated May 23, 1812, and acknowledged on that date.

[The last deed referred to is objected to on the ground that it is a paper not recorded anywhere, and is produced by the defendant on call of the plaintiff, and there is nothing in the case which could make it possible evidence of title for the plaintiff.

The Court.—Do you claim, Mr. Woodruff, that the property in this deed embraces the property in suit ?

Plffs'. Counsel.—Yes sir.

The Court.—When an ancient deed like this, 70 years old, purporting to have been regularly executed and acknowledged, is produced on the call of the plaintiff by the defendants, I think it is admissible in evidence, and I will allow to be used.

10

Def't's Counsel excepts.

PHILIP R. GEORGE, sworn for plaintiff, testifies as follows :

By Mr. Woodruff.

Q. [Showing the witness deed from Andrew Bell to Martin I. Ryerson]. Did you ever see that before ?

A. I think I have seen that before.

20

Q. When ?

A. I can't tell exactly the date, but I think I saw this among a large amount of old deeds that had never been recorded when I took possession.

Q. When was that ?

A. I went to Ringwood September 20th, 1853; I boarded with Jacob M. Ryerson during the winter and through that time there were a great many old papers.

Q. Who had the deed when you saw it ?

A. Mr. Ryerson.

30

Q. How long was that after you went to Ringwood ?

A. I could not tell; I should suppose that winter.

Q; Was Jacob M. Ryerson the son of Martin I. Ryerson.

A. I suppose so.

Q. You understood him to be the son of Martin I. Ryerson ?

A. Yes sir.

CROSS EXAMINATION.

By Mr. Tuttle:

Q. What is your employment ?

A. Well, sir, I am employed as an agent at Ringwood.

Q. Of whom ?

A. Cooper & Hewitt.

10 Q. The plaintiffs in this case ?

A. Yes sir.

Q. When did you first go to Ringwood ?

A. I think it was the 20th of September, 1853.

Q. Have you lived there ever since ?

A. Yes sir.

Q. In whose employment were you at that time ?

A. I was in the employment of the Trenton Iron Co.,
at that time.

20 Q. With whom did you say you boarded ?

A. With Jacob M. Ryerson, the old gentleman.

Q. And you went to board with him when you first
went to Ringwood ?

A. I did, yes sir.

Q. How long did you board with him ?

A. I think I boarded with him till probably in March
or the first of April, till he moved away,

30 Q. How did you come to see any deed of Mr. Ryerson's. You say you saw a lot of old deeds ?

A. Simply because the old gentleman would be overhauling the papers and he would show me the deeds. He had a chest full of papers there and in taking out those papers he would say, "There is a deed that you ought to have." I told him the understanding was he was to gather them all together. Many times he came to Ringwood after he would be away and brought up old deeds.

Q. You say he had a chest full of papers ?

A. Of old papers.

Q. And on several occasions he overhauled them ?

A. Yes sir, very often.

Q. Did you examine all the papers in that chest ?

A. Oh, no.

Q. Did you examine any of them particularly ?

A. Yes sir, many of them. I got interested in them.

Q. Do you say you identify this paper as a paper he had at that time ?

A. I think I do, sir.

10

Q. How sure are you of it ?

A. I am almost positive.

Q. Can you name or describe any other paper that you saw in his possession ?

A. Yes sir; here are some. Here is a map that was with that deed when I saw it. [Map produced.] I have got some papers here now.

Q. You got some old deeds from him ?

A. Yes sir.

20

Q. Those you can identify because you have had them since.

A. I never looked at them till last night; I went to see if I could find anything.

Q. You can identify them now as papers that you got from him ?

A. Yes sir.

Q. Why didn't you get this paper from him ?

A. I can't tell you sir. In the first place I considered Mr. Ryerson was my superior when I went there; he was a gentleman in his own house, the property had hardly passed hands, the business had hardly been finished up.

30

Q. You got some deeds from him ?

A. I know I did. I am sorry to say many were burned up.

Q. The reason you did not get this was because he was your superior ?

A. No sir, I can't tell the reason why I did not get that paper.

. Are you willing to say upon your oath that you saw that paper in the possession of Jacob M. Ryerson ?

A. I think I did sir.

Q. That is all you will say about it ?

A. I am not positive about anything unless I see it.

Q. Did he say that you ought to have that paper ?

A. He did not say any one; among those papers there were many we ought to have and we got a great many
 10 and many we did not get. There were many papers we ought to have had at Ringwood which were in the Therapeutical College in Newark.

Q. Did you get those papers that you have in your pocket while you were boarding with him ?

A. No sir; it was when he was at Ringwood after that.

Q. Did you get any old deeds from him while you were boarding with him ?

A. Yes; and other papers; everything almost pertaining to the property.
 20

Q. When did you cease to board with him ?

A. The next spring in 1854. I think it was about the first of April in 1854 that he moved away.

Q. Where did he move to ?

A. I think it was to Little Falls.

Q. From the time you went to board with him till he left there in 1854 you got a good many papers from him
 30 pertaining to the Ringwood title ?

A. Yes sir; papers like that. There were a good many papers that were not recorded.

Q. What did you do with the papers you got ?

A. Most of them I put in the safe, those that I thought were of any value. Some of the old letters of Erskin, I think Mr. Hewitt has in his possession. But unfortunately everything in our safe was burned up. That is one reason, I think, why I got those papers the last time he was in Ringwood.

HENRY MC DANIELS sworn for plaintiff, testifies as follows:—

By Mr. Woodruff:—

Q. Are you Surrogate of this county?

A. Yes sir.

Q. Have you book A of wills?

A. Yes. (produced.)

Q. Is the will of Martin J. Ryerson recorded there?

A. Yes sir. 10

Q. On what page?

A. Commencing on page 11, book A of wills.

Q. What is the date of the will?

A. It was signed May 24th, 1833.

Plaintiffs' counsel reads the will in evidence.

Plaintiffs' counsel offers in evidence a certified copy of the return of the Proprietors²⁰ of East Jersey to Andrew Bell; date June 22nd, 1811.

JOHN O. RAUM, JR., sworn for plaintiffs, testifies as follows:—

By Mr. Woodruff:—

Q. Are you a clerk in the office of the Court of Chancery in this state?

A. Yes sir. 30

Q. Have you with you the proceedings in the case of Boyce and Adams against Isaac M. Ryerson and others?

A. Yes sir. (papers produced.)

All the papers are offered in evidence.

Defendant's counsel objects to the bill to foreclose, filed March 18th, 1851, on the ground that there is nothing to show that it is evidence in the case.

Objection overruled.

BENJAMIN ROOME. sworn for plaintiffs, testifies as follows:—

By Mr. Woodruff:—

Q. How old are you?

A. I am in my 83rd year.

10 Q. Did you know Martin J. Ryerson in his life time?

A. I did sir; I was well acquainted with him.

Q. Was Jacob M. Ryerson a son of his?

A. Yes sir.

Q. Whose son was Martin J. Ryerson?

A. He was the son of Jacob M. Ryerson.

Q. Did you ever see this return to Andrew Bell of this property?

[Showing the witness a paper.]

20 A. I don't know as I ever saw this return, I saw a copy of it.

Q. Can you point on the map, what property that embraced?

Objected to.

Q. Have you ever surveyed the tract yourself?

A. I helped survey it.

30 Q. You are an old surveyor?

A. Yes sir.

Q. Familiar with that ground up there?

A. Yes sir.

Q. If you can point out on that map what part of the property that return covers, I wish you would do so?

A. I can tell from the locations on the paper, the first course was north 13 degrees; east 44 chains; that is the first course.

By the Court:

Q. Is there anything by which you can tell it is the first course, or do you only know it is a line parallel with the first course?

A. It is supposed to be the first course of the Ringwood tract.

Q. How do you know that?

A. At the time we surveyed it we had the course.

Q. Which lot? 10

A. The lot in the survey.

Q. For the making of that map?

A. Yes sir.

Q. You helped make the map?

A. I helped survey the land before the map was made.

Q. Your son made the map from the survey that you helped to make?

A. Yes sir, the second course is 71 degrees; east 43²⁰ chains. The third is south 31 degrees and 30 minutes; west 52 chains and 50 links. The fourth course is north 78 degrees and 30 minutes; west 31 chains and 30 links. The fifth course is north 34 degrees; east 12 chains to the place of beginning. That embraces the whole tract of 134 48-100 acres.

By Mr. Woodruff.

Q. Have you been familiar with that Ringwood tract 30 for the last 30 years as a surveyor?

A. I have sir.

Q. Whereabouts is Shepherd's Pond with reference to that tract?

A. It lies up here (pointing it out on the map.)

Q. Did Andrew Bell ever have any property except the Shepherd's Pond lot?

A. I don't know that he had, I don't know whether he had or not.

CROSS EXAMINATION.

By Mr. Tuttle:

Q. Who was Andrew Bell?

A. Well, he was one of the Board of Proprietors, It was so said at the time.

Q. One of the board of East Jersey Proprietors?

10 A. Yes.

Q. Do you say in your experience as a surveyor that that lot is the only Bell lot in that region?

A. No.

Q. Weren't there a great many Bell lots in that region?

A. Andrew Bell was not a surveyor himself and Tunis Ryerson used to survey a great many lots and return them to Andrew Bell, he gave the title and Ryerson did the surveying.

20 Q. How many were there?

A. A great many about the country, I could not tell you, there was a 400 acre lot called the Bell lot but I never saw any paper.

Q. But there were a great many?

A. There were a great many located all over the country; whether there were any more located around there or not I don't know.

Q. Don't you know that Mr. Morris himself has a lot known as the Bell lot?

30 A. I guess he has.

Q. Have you no doubt about it?

A. No, I have no particular doubt about it. I couldn't tell exactly without I examined the papers. I have run all those lines but I have not got the papers here. I could not describe them particularly.

Q. Do you know as a surveyor if Charles Morris, this defendant having land adjoining this lot that you have described here?

A. He owns land adjoining, sir.

Q. And he owns land lying right within the lines of that lot?

A. Yes.

By the Court:—

Q. What led you to fix the beginning point in this Bell survey at the place which you have fixed it on that map?

A. It calls for a certain corner of the Ringwood tract, and we ran the Ringwood line all the way up to find the beginning corner of this lot. 10

Q. How did you identify the Ringwood tract?

A. That is a certain beginning place and we commenced there. It is called the Ringwood tract. There are some 6000 acres in it, and we went to the beginning corner and ran the lines in order to ascertain the beginning corner of this lot.

Q. Is that beginning corner of the Ringwood tract marked out in visible marks?

A. So many chains from the beginning of two streams 20 well established.

Q. Then from that beginning corner you found that one of the Ringwood tract which was referred to as the beginning point of the Bell survey?

A. Yes sir.

By Mr. Tuttle.

Q. This map shows that beginning point ?

A. Yes Sir. 30

Q. Do you know a man named David Storms, that owned a Bell lot up there ?

A. I guess so, I can't tell positively without looking at the papers.

Q. How many other Bell tracts have you known of in that neighborhood ?

A. I can't tell you that exactly unless I saw the papers.

Q. Tell as near as you can ?

A. I can't come anywhere near it.

Q. A dozen ?

A. I can't tell unless I examine the papers. If I looked at the papers I could tell.

Q. What was there at the beginning point of the great Ringwood tract as you ran it ?

A. A stake and a heap of stones.

Q. How large a heap of stones ?

A. I should judge about a sled load.

10 Q. What kind of a stake ?

A. I can't tell you what kind of wood it was, I don't recollect. that

Q. A stake driven into the ground?

A. Yes ; and the stones piled upon it.

Q. Do you know who put that heap of stones there ?

A. Yes sir.

Q. Who did it ?

20 A. I helped to put it there.

Q. Who put the stake there ?

A. I can't tell you ; some of the chain bearers or ax men.

Q. When did you do that ?

A. Well, at the time we run those lines, it is 4 or 5 years.

Q. It was after this controversy with Mr. Morris began to start up ?

30 A. No, it was done before that.

Q. Did'nt you know that there was some controversy existing at that time between Morris and Cooper & Hewett as to where their respective land lay ?

A. What I mean is, it was done before the alleged cutting was done ; there did not appear to be any controversy.

Q. Don't you know that before you placed that heap of stones there and put that stake there, that there was a dispute between Morris and Cooper & Hewett as to where the lines were ?

A. No sir.

Q. Hadn't you heard it?

A. No sir.

Q. When did you first hear that there was any dispute there between them?

A. After we run it, then I didn't hear there was any dispute.

Q. What led you to run that great Ringwood tract?

A. They wanted to know where *all their lines* lay and *io* where their lands lay. We not only ran those lines but *all the others* of the Ringwood tract. They did not know where they were.

Q. Who assisted you in running those lines?

A. My son William.

Q. What part of the work did you do?

A. I consulted with him, I generally carried a front flag.

Q. What did he do?

20

A. He carried the compass and took the courses and kept the field book.

Q. Those mountains are pretty full of iron, are they not?

A. Yes.

Q. There is a good deal of variation in places?

A. Yes, that is all so.

Q. There is a great deal of liability to make mistakes running with a compass?

30

A. There is some if you don't know how to run *mineral* lands.

Q. Can you run mineral lands with a compass and be certain of your courses?

A. Yes, if you know what the minerals are where you start from.

Q. How did you fix the point at which you made this heap of stones and set the stake?

A. We ran to it and fixed it.

Q. Where did you run from?

A. As I told you, we ran the Ringwood lines.

Q. I am talking now about the beginning. They had to start at some point to run the great Ringwood tract, as you call it, containing 6,000 acres. How did you find the point at which you piled up those stones and drove that stake?

A. By running from the Ringwood and Long Pond rivers, where they met.

¹⁰ Q. How wide are these rivers?

A. One of them is not very wide, the Ringwood river perhaps is two or three or four rods in different places and the Long Pond river the same.

Q. You started from the forks?

A. From the ash tree or stump of it in the forks of the river. That stump is there now.

Q. Have you got the old papers here?

A. No.

²⁰ Q. Do you remember how far you ran from the forks of the river to find the point where you piled up those stones?

A. I don't recollect exactly.

Q. Do you recollect what course you ran?

A. I guess it was three courses to get up there if I recollect right, and then it comes a straight course.

Q. Did you ever run these lines more than once?

A. Yes, twice.

³⁰ Q. When the first time?

A. Several years ago. I can't recollect exactly how long.

Q. Did you run all these lines?

A. No; I ran from the forks of the river up to the beginning of the Ringwood tract, 15 or 20 years ago.

Q. Now, when you ran that line 20 years ago did you fix a monument at the beginning point?

A. We did.

Q. When you ran it the last time did you put up another heap of stones?

A. That heap of stones was thrown away and we put up another one.

Q. Can you tell whether those two heaps of stones were at the same place?

A. I judge they were very near or quite. I think they were exactly in the same place according to the bearing of the chain.

Q. You have nothing else to judge by? 10

A. We have nothing else to judge by.

Q. How large a heap of stones did you put there the first time?

A. I don't recollect. It was quite small.

Q. How large were the stones that you piled up?

A. I don't recollect that either.

Q. But you do remember that you put up a monument?

A. Yes. 20

Q. Was that monument in the woods?

A. No.

Q. Was it in cleared land?

A. It was between the road and the river close to the road

Q. I understand you to say that there were 134 acres within the lines around here which you ran. [Referring to map.]

A. So says the return. 30

Q. You say you surveyed; don't you know whether within those lines there is that quantity?

A. I did not make it up. I never mapped it or made up the contents of it.

Q. Do you know whether that quantity is the actual quantity within those lines or whether it is that quantity less what Morris owns within the lines?

A. I don't know, I never mapped it.

RECESS.

Q. Have you found what you referred to as the beginning corner of the 6000 acre tract; you ran from there to the second corner, didn't you ?

A. Yes sir.

Q. What did you find there?

A. I don't recollect exactly.

10 Q. Did you put up a monument?

A. I rather guess not, I don't recollect exactly.

Q. You ran from there to what you call the third corner of the great tract?

A. Yes.

Q. Do you remember whether you found any monument there ?

A. I did not find any.

Q. Did you ever run entirely around the great tract as
20 you call it—the 6000 acre tract ?

A. I don't know that I ever did *run all the lines*.

Q. You don't know whether you could run that tract and make your survey close, or not ?

A. I don't know whether I ran the third line of that tract or not.

Q. You don't know whether you could run it and make the survey close or not ?

A. I ran *from the 4th corner* all the way around.

30 Q. Do you know whether you could run that tract according to the lines on paper and make the survey close?

A. We had a big arbitration on the closing lines. The closing line is only five chains and we closed it up *very nearly*. There is a mine hole there and it is all open, and the corner is right in the mine hole. It is very hard starting from there to get the closing line, we however ran it though. It is the closing line all but one, and we came out very close to it.

Q. What did you find at the end of the closing line all but one ?

A. It was right in the mine hole.

Q. You did not find a monument ?

A. No sir.

Q. You found a hole in the ground ?

A. Yes.

Q. Don't you know that this survey of the land in pink covers land belonging to other persons than Cooper & Hewitt ?

A. Covers a lot, I believe, that is deducted from the 10 survey belonging to Mr. Morris.

Q. I am speaking of the pink part. Don't you know that covers land belonging to others than Cooper & Hewitt ?

A. I do not.

Q. Haven't you stated that it covered 10 acres belonging to John Rutherford ?

A. I have not.

Q. Don't you know what it is ?

20

A. No.

Q. When you first run it didn't it cover 10 acres belonging to John Rutherford ?

A. Not that I know of.

Q. Are you familiar with the land represented on the lower part of the map ?

A. No, I am not familiar with it.

Q. Do you know where the house or cabin of John Morris stood, where there is a small cellar hole now ?

30

A. I do not know.

Q. Did you ever see it ?

A. No, sir ; I don't know as I did.

Q. Do you know where John Morris was born ?

A. I do not.

Q. He was the father of the defendant ?

A. I suppose so ; yes, sir. I don't know where he was born.

Q. Have you ever seen a stone wall near the corner of

this lot ?

A. Yes ; there are a stone wall and fence there, I think.

Q. Do you know whether or not it surrounds a small parcel of land ?

A. I do not know that, unless it covers the whole lot.

Q. Did you ever survey this lot of Mr. Morris ? [Referring to the 50-acre lot.]

10 A. Yes, I guess I did.

Q. You have surveyed that lot ?

A. I think I did, sir, to find laps.

Q. What did you find in regard to it ?

A. I don't know—only where the laps are.

Q. Do you mean us to understand that in running Morris's lot you did lap over on the pink lot ?

A. Yes, sir.

Q. Do you know how much ?

20 A. I do not.

Q. Do you know, according to this survey which is represented here on this map, how much land is actually contained in Morris's lower lot ?

A. I do not.

Q. Don't you know that running this survey for Cooper & Hewitt, as you did run it, and as it is mapped here, leaves Mr. Morris short 7 or 8 acres on this lot ?

A. I do not know that.

30 Q. Did you ever calculate the area of Morris's lower lot there ?

A. No.

Q. Can you calculate now the area of this lot which you gave us the courses and distances of this morning ? Can you do it here to-day ?

A. I have not made any calculation of it.

Q. Can you do it ?

A. I have got nothing to do it with.

Q. You could if you had your instruments ?

A. Yes.

Q. Can you do it without your instruments ?

A. Not accurately.

Q. Can you approximate the quantity ?

A. I have not got the book here.

Q. Can you tell whether the lines, as laid down there, do or not enclose more than 134 acres ?

A. Well, I don't know ; I have not got the calculation and I can't tell. 10

Q. In running these lines for Cooper & Hewitt haven't you changed some monuments ?

A. Yes ; we have seen some.

Q. Do you know how many ?

A. I don't know as I could tell you. There is one at the second corner of the big tract, and in running the lines we found a good many monuments.

Q. Isn't it a fact in running over these lots in the mountains there, that you find a good deal of difficulty in preventing them from laping ? 20

A. Yes; some of them do not come together.

Q. How long have you known Charles Morris ?

A. I couldn't tell, 20 or 25 years, may be 30.

Q. He has always lived up there ?

A. I suppose so. I never knew him to live in any other place.

Q. You knew his father ?

A. I don't know, I think I seen the old gentleman, but I am not certain. 30

RE-DIRECT.

Q. Did you say you altered the monuments ?

A. No sir. I said I had *seen* monuments. *He asked* me if I had *seen* monuments.

Q. Mr. Tuttle asked you if you had changed monuments, that is, altered them.

A. No, I did not.

Q. You said "Yes" before.

A. I did not understand him then.

Q. Can you tell me in whose handwriting that is ?
[showing the witness a paper.]

A. That is the handwriting of Tunis Ryerson on this side of the map.

Q. What was his business ?

A. Deputy surveyor for the eastern division of New
10 Jersey.

Q. Was he the man that made all the surveys ?

A. He made the principal ones that were returned to Andrew Bell.

Q. Do you know in whose handwriting the back of it is ?

A. I think that is the handwriting of Jacob M. Ryerson.

20 Q. How long has Tunis Ryerson been dead ?

A. I don't know as I know. He has been dead quite a while, 20 years or more, I can't tell exactly.

Paper shown (map) is offered in evidence.

Objected to.

PHILIP R. GEORGE, recalled by Mr. Woodruff testifies as follows :—

30 Q. Is that a map you got from Ryerson ?

(Referring to map shown last witness.)

A. I got it from Jacob M. Ryerson.

The objection is sustained and the map is not allowed in evidence.

To which decision the counsel for plaintiffs prays an exception, and the same is allowed accordingly and sealed.]

BENJAMINE ROONE, resuming the stand his examination was continued as follows :—

By the Court:—

Q. How large is that pond called the Shepherd's pond?

A. 40 or 50 acres.

Q. Does this tract which is laid out on that map cover all of the south end of the pond?

A. Pretty much all of it, yes sir. There is a little place that cuts off pretty much all the south end of the pond. I don't suppose there are more than 6 or 8 or 10 acres of the pond in the survey, may be more.

By Mr. Woodruff:

Q. Was there any difficulty in your ascertaining which was the beginning point of the great Ringwood tract?

A. No sir, no difficulty about that.

Q. Why could you find it without difficulty?

A. Because the beginning:— the old tree or the roots of it are there yet, as described in the old papers. 20

Objected to on the ground that the papers should be produced.

Q. Do you know as a matter of fact of your own knowledge that the point of the great Ringwood tract was an ash tree at the junction of the Ringwood and Long Pond rivers.

Objected to.

Q. What was the beginning point of the Ringwood tract? 30

A. I don't recollect now what was called for in the paper, whether it was a tree, or stone heap or what, but the description says it can be found by going down to the forks of the river. We went there and run from that ash tree that Peter Ryerson showed me more than 40 years ago, and I ran it from there for him. The stump of the tree is still there and some sprouts growing up around it.

Q. Did you ascertain by making that survey where the beginning point of the Ringwood tract was?

A. Yes sir.

Q. Was there any trouble about it ?

A. No sir.

Q. There were no minerals there ?

A. No sir. The last time but one that I ran it, was with a surveyor by the name of Demarest for Mr. Boyce, and we went there together and ran that line and were very particular to get the beginning corner of the Ring-
10 wood tract.

Q. That beginning point of the Ringwood tract, has that been a matter of notoriety where it is to surveyors for the last 40 years ?

A. They knew it was there somewhere, within a short distance. The only way to ascertain the point exactly was to run the lines up to the ash tree and get it. The fact was, I am told, that when the road was built along there, they destroyed the old corner.

20 Q. After you got that beginning point, did you have any difficulty in getting the next two corners, the second and third corners ?

Objected to on the ground that the witness should be asked what was done and let the court and jury decide whether he had difficulty.

Objection overruled.

30 A. No sir.

Q. And you say that from the fourth corner you have surveyed all the other courses ?

A. All the other courses around, yes sir.

Q. It is only the distance between the third and fourth corners that you have not run ?

A. Yes ; that I have not run. There are monuments at all other corners.

Q. You found them all ?

A. Yes sir.

Q. Can you tell the reason why you did not run the line between the third and fourth corners ?

A. I can't tell any particular reason, one is, I was not asked to do it, nobody seemed interested to have it run, consequently I did not run it.

Q. Do you know whether or not that line between the third and fourth corners is the division line between New York and New Jersey ? 10

A. It should be the division line between New York and New Jersey.

By Mr. Tuttle:—

Q. Do you mean to say that one of the lines of the great Ringwood tract is the line between New York and New Jersey ?

A. I don't know. It is supposed to be. It is pretty hard telling. It is a part of the way down, because we run from one of the old monuments on that line. 20

Q. On the New Jersey and New York line ?

A. Yes.

Q. When was that ?

A. The time we ran those lines.

Q. How long ago ?

A. 5 or 6 years ago.

Q. Are those monuments accurate on the line between New Jersey and New York.

Q. No, I don't think they are, you can't do one and run out the other—you can't hit it at the other monument. There are no two of them in a straight line, I have run 6 or 8 miles along the line and there are no two that come together. 30

Q. Do you know the reason why that is so ?

A. I suppose they were very careless running them originally. I suppose they ran from the top of one mountain to the other. It was done just after King Georges' reign and I suppose it was not half done.

Q. When you first run this course did you not go over on to Rutherford's ?

A. I don't know whether I did or not.

Q. Didn't you go back and change your starting point ?

A. Yes, because they thought they had made a mistake the first time.

Q. After running from this ash tree and coming to what you thought was the beginning point, you went
10 back and changed it ?

A. Yes sir, we chained it.

The Court :—(To the witness)—you say “chained” and he says “changed.”

Q. Didn't you change the starting point, alter it, take a new starting point ?

A. *Charles Morris* showed a stone heap there and said that was the corner of the o.d Ringwood tract, which
20 was a little east of where we made the corner and we started from there and ran it the second time.

Q. You did make some change from the point that you found when you first ran to find a starting point ?

A. Yes.

Q. How much change did you make.

A. I don't recollect, a short distance, 4 or 5 or 6 rods.

Q. What way ?

A. To the east. We came out a little west of where
30 he said was the old corner and showed a stone heap.

Q. The old corner of what ?

A. Of the Ringwood tract.

Q Which corner ?

A. The third.

Q. In running this line did you start from that old stone heap ?

A. It was the second time we run it.

By the Court :—

Q. Does this map show the tract as surveyed from the

corner which you found or does it show the tract as surveyed from the heap of stones which he pointed out?

A. From the heap of stones that he pointed out.

WM. ROONE recalled, further testifies as follows:—

By Mr. Woodruff:

38Q. There is in this return from Andrew Bell an exception, deducting a tract of 50 acres to return to Silas 10 Condit.—Do you know were that was?

A. I do.

Q. Please point it out.

A. [The witness indicates it on the map].

Q. Whom does that belong to?

A. To Cooper & Hewitt.

Q. I now call your attention to the south side of a pond of water known as the Shepherds' Pond: [reading from old deed] where is that lot? 20

A. That is a lot in the pink on the map.

Q. Does that description include that whole lot?

A. Yes sir.

Q. I now call your attention to a description in Martin I. Ryerson's will: "Also the Bell lots so called, and my lands at the Shepherd's Pond." Can you tell me what ground that was.

Objected to.

30

Q. Do you know what lot was reputed to be the Bell lot in 1833?

A. I do, sir.

Q. Do you know what lot was called the Bell lot in 1833?

Mr. Tuttle:—How old are you?

The Witness:—I was born in 1834.

The Court:—Then I don't suppose the witness can tell.

Q. I call your attention now to the description in the deed from Vanderbeck Sheriff conveying the title of Jacob M. Ryerson to Martin Jacob Ryerson (referring to the expression "also the Bell lot so called.") The deed was made in 1853. Do you know what was then reputed to be the Bell lot ?

Objected to.

Objections overruled.

10

Defendant excepts.

A. Not in 1853, no sir.

Q. Have you not by the investigation of records and old surveys become acquainted with what was the Bell lot ?

Objected to.

Objection sustained.

20 Q. As to the starting point of this tract of land in question on the map as you have made it, how did you get the starting point ?

A. I ran the second Ringwood line which is 154 chains, almost two miles long. We came out a little westerly of the stone heap called the third corner. Mr. Tidaback showed us where the corner was and *Mr. Morris agreed with him* and it was *accepted as being the true original third Ringwood corner* and then we commenced at the third corner.

30 Q. The corner that Mr Morris himself said was correct you took.

A. I never heard that Mr. Morris contradicted it since.

CROSS EXAMINATION.

By Mr. Tuttle:

Q. When you ran the first corner of this tract in question, did you run it by monument or compass ?

A. By monument.

Q. When you first ran it ?

A. No sir.

Q. When you first ran the second course of the Ringwood tract in order to find the beginning corner of this tract, how far from the point which you now say is the beginning corner of this tract, did you come out ?

A. I think it was 80 links.

Q. Which way ?

A. West, just on top of the hill.

Q. How far did it vary in a northerly or southerly direction from your beginning point ?

A. The length of a chain, or very nearly right.

Q. Didn't you, when you ran that course the first time, find yourself on what you regarded as Rutherford's land ?

A. There is no Rutherford's land there and never was.

Q. Not at the end of the first course ?

A. No.

Q. Not at the end of the second course of the pink lot on the map ?

40A. Yes. I did not put it on here because I did not think it would be called in question. There was a tract of 1200 and some odd acres located by John Rutherford, Charles Morris 103. It is older than the Ringwood Company's pink lot there. The Ringwood never pretended to claim that corner there.

Q. But there is some land included in this map which the Ringwood company did not pretend to claim ?

A. Yes, *that* little point, I believe.

Q. How much is there in that ?

A. 6 or 8 acres.

Q. By the Ringwood Co. you mean Cooper & Hewitt ?

A. Yes.

Q. As you ran that and plotted it, it covers about 10 acres of the Rutherford land ?

A. 6, 8 or 10 acres. We do not claim there is any trespass there.

Q. You do not claim that there is any trespass there?

A. No, sir.

Q. Have you any claim in this case of any sort, yourself?

A. No, sir, not at all.

Q. Did you ever run the lines of Mr. Morris's tract; the green tract below on the map?

A. I ran *these*. [Indicating.]

10 Q. Do you know whether Mr. Morris would have the quantity which that plot calls for with the survey, as you have made it, of the pink tract?

A. I never paid any attention to the calculation of Mr. Morris.

Q. [Repeated.]

A. I don't know anything about that. Whenever we find older lines we ran them. Here Mr. Morris's was the oldest and we run that down so as to get a correct line *here*. *Here* the Ringwood Company's line was the oldest, consequently we ran *here*.

Q. Why didn't you run Mr. Morris's tract?

A. I didn't know anything about it. The lines we were running were the oldest.

Q. How do you know that?

A. From the records.

Q. Is there a lap from Morris's tract on to the other?

A. Yes, sir.

30 *By Mr. Woodruff:—*

Q. You say that you saw from the record that this Ringwood tract was the oldest. Where did you see that?

A. I saw it on the record in the books at Perth Amboy.

Q. Did you go there on purpose to see it?

Objected to.

BENJAMIN ROONE, recalled, further testified as follows:—

Q. Did you ever do any surveying for Martin I. Ryerson ?

A. I have ; yes sir.

Q. With whom did you learn your profession ?

A. With Tunis Ryerson.

Q. You were with him for how many years ?

A. 6, 7 or 8 years ; I would go out with him more or less.

Q. Do you know what Martin I. Ryerson or Tunis Ryerson called the Bell lot ?

A. I do.

Q. Which was it ?

Objected to on the ground that the witness should state what they said, if it is admissible.

By the Court:—

20

Q. What did you ever hear Martin I. Ryerson say to identify the Bell lot ?

A. I never heard him say anything about it.

By Mr. Woodruff:—

Q. What did you ever hear Mr. Tunis Ryerson say about it ?

A. I have heard Tunis Ryerson say—

Objected to.

30

Q. I show you what purports to be a memorandum of a survey. Look at that and see if it refreshes your memory. [Showing book.]

Objected to.

Q. Did you make that survey in that book yourself ?

Objected to.

A. I made the division of that tract amongst the heirs at that time.

Q. What year was that ?

Objected to.

By the Court :—

Q. What is that book before you ?

A. A book of survey.

10 Q. Made by whom ?

A. Copied from the original that we have at home.

Q. Copied by whom ?

A. Some by William and some by me.

Q. Who copied that which you are looking at now ?

A. William.

Q. Did you ever examine it to see whether it was correctly copied ?

20 A. I did not. I suppose it was.

Q. What did you understand it to have been copied from ?

A. From the original of surveys drawn up by a surveyor, done many years ago, and certified.

*The Court :—*It is not competent.

Q. Did you make the division of that tract in 1833 ?

A. I made the division amongst the then owners.

Q. At that time which was the reputed Bell lot ?

30 Objected to.

Q. What did people generally understand, surveyors and others, and those who spoke of Bell lots up there, when they spoke of the Bell lot ?

Objected to.

By the Court :—

Q. When was that partition that you spoke of made ?

A. About 1832 or 1833.

Q. And it was a part of this tract of land ?

A. It lies off the Bell lot.

Q. Inside of this tract ?

A. No sir ; the Bell lot lies below that tract called the Bell lot, I think there are about 400 acres.

Q. What tract was then called the Bell lot ?

A. The tract of 400 acres that I was speaking of.

By Mr. Woodruff:—

Q. Where was it in reference to that property there 10 on the map ?

A. I should suppose it was a mile below that, or very near it, further south. It was called the Bell lot by the inhabitants in the neighborhood.

By the Court:—

Q. This 400 acre tract lying a mile south of this property ?

A. Yes.

20

By Mr. Woodruff:—

Q. What did the people generally call this tract of land represented by this pink here on the map ?

A. I don't know that I can answer you, I don't recollect of hearing particularly what they did call it.

By the Court:—

Q. Do you know who owned that 400 acres in 1833 which was known as the Bell lot ?

A. Jacob M. Ryerson, son of Martin I. Ryerson, pretended to own it and I surveyed a part of it for him about that time.

Q. Did Martin I. Ryerson ever own it ?

A. Yes sir ; There was a Martin I. Ryerson, and Martin J. perhaps you mix them, Martin I. was the father of Jacob M. and M. J. was the son of Jacob M.

Q. I am speaking of the father of Jacob M. Did he claim to own the Bell lot of 400 acres ?

A. He claimed to own it, and gave it to his son Jacob.

Q. How did he give it to him ?

A. I can't tell you. It was by will or some other way.

Q. When this partition was made, was Martin I. Ryerson dead ?

A. It was somewhere about that time, I could'nt tel^l exactly. He died in 1832 or 1833—but I am not positive.

Q. He made his will in 1833.

A. I ran this lot afterwards for Jacob M. Then
10 Martin I. was dead when I ran it for Jacob M.

Q. But you think that in the life time of Martin I. he owned this 400 acre tract ?

A. Yes.

Q. And that was called the Bell lot ?

A. Yes sir.

By Mr. Woodruff.—

Q. Do you know what Jacob M. Ryerson used to call this lot of his on Shepherd's Pond ?

20 A. I don't recollect exactly. I think he called it the Shepherd Pond lot, but I am not certain. I think that was so.

JOSEPH HENDERSON sworn for plaintiff ; testifies as follows :—

By Mr. Woodruff.—

30 Q. Did you ever work for Charles Morris ?

A. No sir.

Q. Did you ever cut wood for him ?

A. No sir.

Q. Did you ever cut railroad ties ?

A. Not for Mr. Morris.

Q. Did you ever cut wood on this disputed land ?

A. No sir.

Q. The land that Cooper & Hewitt and Mr. Morris have difficulty about ?

A. No sir ; never worked, I was on it only to look at the amount of damage that was done by Mr. Morris—that was all.

The last sentence in the answer is objected to and stricken out.

Q. Did he have any men at work there ?

A. That is more than I can tell you.

Q. Did you see Mr. Morris there ?

10

A. I did.

Q. When was that ?

A. That was a year ago last April.

Q. What did you and he talk about ?

A. We talked about the trespass and the ownership of this property.

Q. Did he say whether he had had any men cutting on this ground ?

A. Yes sir.

20

Q. Who did he say they were ?

A. He did not say who they were. He said he had done some work and Mr. George's men had done some work. We sat down and had a talk.

Q. Did he go around with you to estimate the damage done ?

A. We did not estimate the damage then. I have been there since.

Q. What did you estimate the damage done at ?

30

Objected to.

Q. What did Mr. Morris say his men had cut ?

A. He said they had cut ties.

Q. Did he say how many ?

A. No sir.

Q. Who was there that day besides you and he ?

A. Mr. William Roone and a man by the name of Stormes and a man by the name of Rettner, I think.

There were one or two more that I don't remember particularly. They were hands of Mr. George sent there to assist Mr. Roone.

Q. You have testified as to all that Mr. Morris said about it to you, so far as you can remember ?

A. As far as his work was concerned, there was nothing definite as regards the amount of damage ; and I returned and told Mr. George. I was sent there for a specific purpose.

10

Objected to.

Q. Did you see the ties that were cut there ?

A. No sir ; they had been removed.

Q. He did not say how many ?

A. No sir.

Q. Did he say what proportion of the timber cut his men had cut, whether $\frac{1}{2}$ or $\frac{2}{3}$?

20 A. He said all the new stumps he had cut. The old ones that had been cut there, Mr. George's men had cut.

Q. Did you take a look at the new stumps ?

A. Not there.

Q. Did you afterwards ?

A. Yes sir.

Q. Look at the new stumps. What was the damage to that property so far as you could make it out ?

30

Objected to on the ground that the witness has not stated that he has any ability to state the damage.

Q. Are you acquainted with the value of wood ?

A. I think I am.

Q. Have you known the price of it up in that region for some time ?

A. For the last year and a half.

Q. Did you know the value of railroad ties at the time they were cut ?

A. I did not.

Q. That was about two years ago?

A. I was west at the time this damage was said to be done.

A. He did.

Q. He said so, didn't he ?

A. Yes.

Q. He distinctly claimed that ?

10

A. Yes sir.

Q. How long have you lived in that neighborhood ?

A. A number of years. I came with Mr. George.

Q. I want to know how many years you have lived there in that neighborhood ?

A. Well, I have been away part of the time.

Q. How long is it since you first went there ?

A. I came with Mr. George the next week after he took possession of Ringwood, in 1853.

20

Q. Did you know the father of Charles Morris ?

A. Yes sir ; I did.

Q. When you had this conversation there, did Charles Morris show you where his father was born ?

A. Yes sir.

Q. Was it on this disputed land ?

A. Yes sir.

Q. Did you see the old stone wall which he said surrounded the place ?

30

A. It is not a wall but it is the mark of a fence where there has been a fence and underpinned with stone. The marks are there.

Q. He told you that was where the fence was that surrounded the house where his father was born ?

A. Yes sir.

Q. How far up among these stumps that you say had been cut, was the place where he said his father was born ?

A. I think it was on the east side the lot a few rods from the road going from his place to the Shepherd Pond.

By the Court :—

Q. Do you understand this map ?

A. Yes.

Q. Just see if you can point out to us where these stumps stood and where the remains of this fence stood ?

A. [Referring to the map.] I should think it was some-
10 where in here, where the old place stood.

Q. Now, where were the stumps.

A. They were off to the south about 3 sides of the old house from the road running from Mr. Morris to Shepherd's Pond, then to a line that comes down the mountain and runs through *this* way.

Q. Supposing this black line to be the line between Cooper & Hewitt and Morris and this beginning lot to be Morris's lot, how far was it north of that line, if you can
20 tell, to where this old house was?

A. I can't tell accurately. It is not a quarter of a mile.

Q. But pretty near that?

A. Pretty near.

Q. What did Mr. Morris tell you about his father having lived there and about his house having been there?

A. When we came up to this place, I said, "Here are marks of an old settler"; and he said to me: "hold on, and I will tell you: there my father was born, on that
30 spot of ground", and Mr. Roone was running around those patches that were cut off and when he came up there Mr. Morris called his attention and the rest of the men and said he; "I am 68 years old and my father was born on this spot of ground before me and now they want to take it away from me.

Q. If Mr. Morris's land ran up so as to cover that old house place, how many of these new stumps do you think would be included on his land?

A. I can't tell anything about it because I don't know.

Q. Suppose that to be so, and his land ran up as high

as that it took in that old house-place, how many of those stumps would be taken in?

A. I can't tell you.

Q. A good many of them?

A. Quite a number of them.

Q. Most of them?

A. I don't know as there would.

Q. You can't tell how that was?

A. No sir, because I didn't give them any thought. ¹⁰
I went there to count those stumps. The smaller stumps we did not count, we only counted those that made ties, I went at Mr. George's suggestion to go there and count those stumps and estimate the damage.

Q. You say you found a place that looked as if an old settler had been there. What did you see?

A. I saw what I told you, a clear spot and part of a fence.

Q. Did you see an old cellar?

A. I don't recollect the cellar. I saw a mound that ²⁰
looked like an old chimney back.

Q. You thought there had been a house there?

A. Yes, I did, I think so yet.

RE-DIRECT.

Q. You do not know that any body did live in that house?

A. No sir.

Q. How long has Mr. Morris's father been dead? ³⁰

A. I don't know exactly, but I think he has been dead somewheres about 25 years.

JOHN STORMS, sworn for plaintiff, testifies as follows:—

By Mr. Woodruff.

Q. Were you ever employed to cut wood for Charles Morris?

A. Yes sir.

Q. Do you recollect the time when William Roone and Charles Morris and Mr. Henderson were up there where you did cut ?

A. I never cut there.

Q. Do you recollect the time when those three gentlemen were up there where you did cut wood ?

A. Yes sir.

10 Q. At the place that they looked at that day, had you been working ?

50A. Yes sir.

Q. There are three places marked on this map, two of them are on a wood-road; one is marked 1 and 23-100 of an acre, and one is $\frac{1}{4}$ of an acre. There is another tract further east marked 3 acres and 51-100. Did you cut on all those tracts?

Objected to as leading.

20

Q. Did you cut on any of those lots?

A. Not for Mr. Morris.

Q. Whom did you cut for?

A. I cut for Mr. George.

Q. When?

A. I can't tell exactly.

Q. Do you mean that you cut wood for Mr. George on those three little tracts ?

30 A. On one of them.

Q. Which one?

A. The one furthest east.

Q. Do you recollect whether this wood was cut by men that were said to be employed by Mr. Morris?

A. Not exactly.

Q. You say you know when those three men met there?

A. Yes sir.

Q. How long before that was it that you had cut on this tract of land for Mr. George?

A. I think it was two years before—somewhere along there.

Q. Did you make any account of these trees that had been freshly cut since you had cut there?

A. I never counted any of them, no sir.

Q. When you quitted cutting two years before that time, how did you leave the timber on those lots. Was it standing or cut down or in good shape or what?

A. Pretty good shape at that time.

10

Q. What does that mean?

A. Nothing much cut.

Q. What kind of timber grew on it?

A. Most all kinds, hickory and oak.

Q. Good size?

A. Some of it.

Q. How large were the trees?

A. From a foot down and some over.

Q. A foot in diameter?

20

A. Yes, and some less.

Q. Did you ever hear Mr. Morris say whether his men had cut there or not?

A. No sir, not that I recollect of.

CROSS-EXAMINATION.

By Mr. Tuttle.

Q. When was it that you were there and saw Mr. Henderson and Mr. Roone and Mr. Morris?

30

A. When they run out those little plots.

Q. Who were the men that you saw there?

A. Mr. Henderson and Mr. Roone and myself and Mr. Morris.

Q. What were you doing there then?

A. I was helping run it.

Q. Helping whom?

A. Mr. Roone.

Q. When was that?

A. I couldn't tell exactly; somewhere around two years ago.

Q. How long is it since you cut trees therefor Mr. George?

A. Between 3 or 4 years, I think.

Q. How many did you cut?

A. I don't recollect.

10 Q. Did anybody else at the same time cut there?

A. Yes sir.

Q. How many?

A. Three of us.

Q. How long did you cut?

A. Part of one day.

Q. Do you know how many trees you cut down?

A. No, sir.

Q. What did you cut them for?

20 A. For building timber.

Q. Did you see the remains of an old house that had stood there?

A. Yes sir.

Q. Can you tell by reference to this map whereabouts that was?

A. Yes sir.—[Indicates it on the map.]

Q. Which side of that road was that old house?

A. On the right hand side.

30 Q. And how far from the road?

A. Between 2 and 3 hundred yards.

Q. Off to the right?

A. Yes sir,

Q. Did you hear Mr. George say, or do you know where he claimed his line to be at the time he ran there?

A. Yes sir.

Q. How far south of that house did he claim his line to be?

Objected to.

Q. State whether any of those newly cut stumps were south of the old house lot ?

A. The majority of them are on the south side, to the best of my judgment.

Q. What proportion of them do you think ?

A. The majority.

Q. When you cut for Mr. George did you cut on land that lay south of the old house place ?

A. Yes sir.

Q. Where those new stumps were cut at the time you were running the line, how was that land at that time with regard to timber ? 10

A. Some part of it pretty well timbered, some was shrubby.

Q. How much where there had been trees newly cut, how much of the timber was cut off ?

A. I should say a good one-half, to the best of my judgment.

Q. You mean when you run those patches out ? 20

A. Yes sir.

Q. Do you know whether there are now upon those lots where those new stumps had been cut, the lots which Mr. Woodruff pointed out on the map—whether there are trees there fit for saw logs now ?

A. I don't hardly think there is.

Q. Were there when you were there running the line, trees standing on these lots, fit for saw logs or fit for ties ?

A. When we ran the patches out ? 30

Q. Yes.

A. I don't think there was.

RE-DIRECT.

Q. Did you help get out ties for Mr. Morris on any of this property in 1874 ?

A. Not on any of that tract.

Q. Did you work for him in 1873 or 1874 getting out ties ?

A. I got out ties for him not a great many years ago.

Q. I am talking about Mr. Morris?

A. I never got ties out for him that I recollect.

JAMES EMERSON, sworn for plaintiffs, testifies as follows:—

By Mr. Woodruff:—

10 Q. Did you help Charles Morris get out some railroad ties in 1873 or 1874?

A. On this same lot that they are talking about? No sir.

Q. What lot do think I am talking about?

A. Some of you talk about the east side of the road.

Q. Did you help get out ties for Mr. Morris in 1873 or 1874?

A. No sir, not that I recollect of.

20 Q. Have you ever helped him get any out since that time?

A. I don't recollect ever getting any ties out for him at all.

Q. Did you cut wood for him in 1873 and 1874?

A. I don't know but I did. It might be longer than that. I don't recollect how long ago.

Q. About how long ago do you think it was. Tell us as nearly as you can?

30 A. Six years to the best of my recollection. No, it is longer than that. It is about 9 or 10 years ago.

Q. You have not helped him cut any wood within 10 years?

A. Not that I recollect of.

Q. None within seven years?

A. No sir.

Q. Did you help make this survey that Mr. Roone made, running the lines laid down on that map?

A. No sir.

Q. You were not there at that time ?

A. No sir.

Q. You don't know anything about it ?

A. No sir.

Q. You don't know anything about this case, do you ?

A. No sir.

JOHN Mc CALL, sworn for plaintiff, testifies as follows:— 10

By Mr. Woodruff:—

Q. Did you ever work for Mr. Morris?

A. Yes sir.

Q. How did you begin?

A. I worked 20 years ago.

Q. In 1873 and 1874 did you help him get out any railroad ties?

A. No sir, not at that time.

Q. Have you since that time? 20

A. Yes sir.

Q. When?

A. About a year or a year and a half ago.

Q. Do you recollect the time Mr. Roone came up there to survey the lines?

A. I do not.

Q. Where did you take the ties to?

A. To Slotenburg, Erie Railway. 30

Q. That was not last summer ?

A. No sir.

Q. It was not summer before last?

A. It was winter before last.

Q. Do you recollect what month you began?

A. No sir.

Q. Do you recollect it was before New-Years.

A. It think it was.

Q. Was it in the woods east of that road?

Objected to.

Q. Have you looked at that map?

A. No sir.

Q. Will you tell us whereabouts, in your own way, that you cut these ties?

A. East of the road leading to Shepherd's Pond.

By the Court :—

Q. What kind of a road was it?

10 A. It was a laid road.

By Mr. Woodruff :—

Q. Just look at this map. Can you tell us in regard to that road leading to Shepherd's Pond were you cut ?

A. On this side of it.

Q. About how many days were you there ?

A. About one or two.

Q. How many men ?

20 A. Three of us.

Q. How many ties did you cut altogether ?

A. I don't know, really ; I should judge about 30 or

35.

Q. Was that all, do you think ?

A. That was all there was on the tract.

Q. Did you cut any wood that you did not cart off ?

A. No, sir.

Q. Did you cart off the wood that was left after you

30 got the ties out ?

A. No, sir.

Q. What did you do with it ?

A. Left it lie there.

Q. What you did was simply to get as many ties out of the trees as you could and let the balance remain ?

A. Yes, sir.

Q. On the tracts where you did cut, did you cut all the ties off that were fit for ties ?

A. No, sir; there is some tie timber there yet.

Q. Who were the other persons that helped you cut ?

A. David Storms.

Q. Who else ?

A. Wm. Docharty.

Q. Was Mr. Morris there ?

A. He came there once in a while.

Q. Who showed you where to cut ?

A. Mr. Morris.

Q. Do you know whether or not he knew at that time ¹⁰
that Cooper & Hewitt's men had been cutting on that ?

A. He did.

Q. How do you know that he knew that ?

A. He showed me the stumps where they had cut.

Q. Did you peel any bark while you were there ?

A. Nothing more than where we cut ties up.

Q. You peeled the bark off of the trees that you took
the ties off of ?

A. Not all of them. 20

Q. Do you know how many loads of bark you had?

A. There were no loads at all.

CROSS EXAMINATION.

By Mr. Tuttle:

Q. How much time did you say you spent cutting
there?

A. One or two days. 30

Q. Don't you know which?

A. I don't know which. We did not work altogether
on that patch.

Q. Do you know how many trees in all you cut?

A. I do not.

Q. Can't you tell about?

A. I could not.

Q. Who did you say helped you?

A. David Storms and Wm. Docharty.

Q. How long did they work?

A. The same length of time I did.

Q. You say Mr. Morris told you where to cut?

A. Yes.

Q. Did he tell you he owned the land?

A. He did.

Q. Did he tell you he had forbidden Cooper & Hewitt's
10 men to cut there?

A. He did.

Q. Did you see the remains of an old house that had
been there?

A. Yes, sir.

Q. How far from that did you cut?

A. We cut on the other side of it.

Q. Which side?

20 A. On the south side, and some right around it.

Q. What is your age?

A. 44.

Q. Did you know Charles Morris's father.

A. I did.

Q. Did you know of his having had this land in his
possession?

A. I never heard of anybody else owning it.

30 Q. Do you know of the old gentleman, the father of
Charles Morris, having it in his possession or doing any-
thing upon it?

A. Yes, it was always in his possession, as long as I
knew him.

Q. And for how many years was that?

Objected to as not cross-examination.

Objection sustained.

RE-DIRECT.

Q. How far was the place where you cut wood from the house where Charles Morris lives?

A. About a quarter of a mile.

PHILIP R. GEORGE, recalled for plaintiffs, testifies as follows: 10

By Mr. Woodruff:—

Q. Do you know this property laid down on that map in pink?

A. Yes, sir.

Q. When is the first that you knew of it?

A. The first I knew the boundary lines of the whole tract—the whole 184 acres—is when we made the survey. Before that I did not know where the boundary was. 20

Q. I want to know when you first knew of that tract of land—when you had anything to do with it?

A. The first I came there in 1853.

Q. What did you do as the agent of Cooper & Hewitt after that?

A. The first winter I came to Ringwood we cut ties along by the south side of Shepherd Pond and cut more or less ties and cord wood on this side of the tract for several years; and on this side (referring to map) we did not do anything, because I did not know where our lands were. I ³⁰ did not want to trespass on other people.

Q. Did you, before this wood was cut by Mr. Morris and his hands, did you cut wood on any part of that tract of land that is south of that green patch?

A. No, sir; not till after it was surveyed.

Q. You exercised control and possession of all the parts except that?

Objected to.

Q. Do you recollect the day that the count was made of the stumps?

A. Yes; I recollect the time.

Q. What was done that day?

A. Well, I did not go into the woods with the surveyors when they went in to run around. I went in to count the stumps that I thought would make ties and to count stumps that were cut on that tract?

10 Q. When you came to count the stumps which would make ties did you count any except those which had been freshly cut?

A. I think not sir.

Q. Do you recollect how many you made?

A. Something over 200.

Q. You have been accustomed to buying and selling wood?

A. Yes sir, for many years,

20 Q. Will you state to the jury the process of cutting timber for ties there. What effect it has on the balance of wood that is not taken?

A. If the timber is quite thick, that is, if the ties are quite plenty it generally destroys quite as much as where the timber is scattered.

Q. Do you know whether any bark was taken off the timber?

A. Mr. Morris's men were peeling the bark when I went in and asked them to stop cutting.

30 Q. You discovered them in the act of cutting?

A. Yes sir.

Q. When did you first find out that they were cutting?

A. I think it was in April a year ago, or April two years ago. Our suit has been put off so long that I forget.

Q. Do you know whether Mr. Morris knew before this cutting was done whether Cooper & Hewitt claimed this disputed tract?

A. Oh, yes.

Q. How do you know that?

A. Simply because on the left hand side the road that looks very narrow on the map there was a piece of timber there, and he said, they ought not to cut it till the lines were run over again, and we told him we were willing to furnish a surveyor and he furnish one, and they could run the lines. That was before the wood was cut.

Q. What did he say?

A. I don't know exactly. He simply said he owned it by possession, or something of that kind. He did not own it by any right of lines that I could find.

10

Q. Are you accustomed to buying and selling wood?

A. Yes, sir.

Q. In your judgment, what was the damage done to that land by the cutting of these fresh stumps that were counted?

Objected to.

Objections overruled.

20

A. There were a good many fine pieces of timber. I can't give an estimate of those little lots that have been marked off by the surveyor because parts of those have been cut off. The damage done to that tract upon that field of there would be fully \$350.

Q. How many trees did you count that had been newly cut?

A. I think I counted 262 or 267; somewhere about that, besides little ones. There were a great many hundred of these: and also ones as big as your leg, if you are not a very large man. Those trees are all knocked down.

30

Q. State to the jury how much, in your judgment those 267 trees were worth, without any reference to any damage done in the cutting?

A. The ties were worth 60 cents a piece.

Q. I am asking about the trees?

A. If there are two ties in each tree, and they are worth 60 cents apiece cost and 20 cents to get them there, that would be 80 cents a tree.

Q. Each of the 267 trees would be worth 80 cents?

A. I estimate the butts of them to be worth that.

Q. Did you allow anything for the making and cutting?

A. I allowed 20 cents for cutting and carting.

Q. Do you think the trees as they stood were worth 80 cents?

A. Yes sir;

Q. For what purpose could the little stuff as big as
10 your arm be used for?

A. It would be growing into timber while you were asleep.

Q. What do you think those were worth apiece ?

A. That is a hard matter to estimate.

Q. Can you imagine what they were cut for?

A. They were in the way; when a tree came down, they would fall.

Q. They were simply broken down ?

A. Yes.

20 Q. They were not for use ?

A. Not unless for fire wood.

Q. What you regarded as of value you counted 262 or 267 ?

A. I did not count them only as value. The timber rotting there now would be valuable if cleared up.

By Mr. Tuttle:

Q. How would Cooper & Hewitt, if they owned this
30 land, get these ties off, if they wanted to put them in the market ?

A. There is road enough there to take them to Slotenburg by the public highway.

Q. Wouldn't you have to take them over the mountain to get them to the road ?

A. No matter where you go up there, you have to go over a mountain.

Q. Wouldn't you have to cart it over a mountain to get to the public road, up a steep mountain ?

A. No, I don't think you would. When we get out

ties we put a horse to them and pull them up one at a time.

Q. Don't you know that timber up in that region has been heretofore sold by the acre ?

A. Yes sir.

Q. What has been and what was at that time the market price per acre for the timber such as was growing on that land ?

A. It all depends upon the location and growth of the timber. 10

Q. I ask you about that particular land and timber. What in your judgement according to the market price of such timber or such land was that timber worth per acre ?

A. The best timber on the land there, where it was in bulk was worth \$50 an acre.

Q. Isn't that a very large price ?

A. Not for the best part of that timber.

Q. I am talking about the whole of it.

A. Some parts of it:—but those lots that they surveyed²⁰ around there where the big timber was, it was certainly worth \$50 an acre.

Q. Here is a plot marked on th's map as 3 acres and 3-100. What do you say the timber on that tract was worth per acre ?

A. \$50.

Q. Here is another tract marked one acre and 23-100.

A. That was worth \$50 an acre too.

Q. Here is another little piece marked a quarter of an³⁰ acre.

A. That is worth fully as much in proportion.

Q. Then taking it together, if it had been cut off entirely clean it would have been worth \$50 an acre ?

A. Yes sir.

Q. Was there any more damage done to this land in cutting what was cut there, than would have been done if all the timber had been cut right off clean ?

A. I do not understand that.

Q. Suppose a man had bought the timber on that land, this land that I have called your attention to, and had cut off every thing clean, you say it would have been worth \$50 an acre ?

A. Yes sir.

Q. Was there any damage done to that land by the cutting of it, than would have been done if everything had been cleaned right off.

A. Pretty much everything is cleaned off.

¹⁰ Q. Do you mean to be understood that the damage to to that land was \$50 an acre ?

A. Yes, where the best timber was.

Q. All that was cut—is that what you mean to say ?

A. Yes sir.

Q. What is the range of prices of timber land per acre where the timber is sold in that neighborhood.

A. It depends on the location. In that neighborhood there is very little timber as large as Mr. Morris's timber.

²⁰ I don't know that there is another tract that had as large timber, unless on Rutherford's.

Q. What is the range of prices of the timber on timber land in that region:—what was it at that time ?

A. I don't know what it was at that time.

Q. For the last five or six years ?

A. Anything in the way of tie timber is very valuable for the last five or six years.

Q. Can't you give us the extremes ?

³⁰ A. From \$50 to \$100 an acre.

Q. Have you known timber on land to be sold over in that region at a price as high as \$100 an acre ?

A. Yes sir, I think I have.

Q. I understand you to say that where this timber was cut it was first class timber ?

A. Yes sir.

Q. And yet you put it at the very lowest figures that timber land sells at, from \$50 to \$10 ?

A. I say there is timber in that region that is worth

from \$100 to \$50 an acre. It depends on the location.

Q. Have you ever known timber land to be sold at \$20 an acre ?

A. Yes and not timber land but sprout land.

Q. Have you ever known timber land where it has been cut for ties, sold as low as \$20 an acre ?

A. It will depend on the location.

By the Court :—

Q. Have you ever known a case where timber on¹⁰ land was sold at \$20 for the purpose of having the timber cut into ties ?

A. Yes sir.

Q. Have you bought it as low as that ?

A. Yes, I bought a piece of Wm. Monks and paid more than \$20 an acre.

By Mr. Tuttle :—

Q. How low have you bought timber on timber land ? ²⁰

A. Very cheap, I couldn't tell you exactly.

Q. Haven't you said recently that you would sell sixty acres of that land for \$5 an acre ?

A. I think I said after the wood was off it, it was not worth \$5 an acre.

Q. Haven't you said recently that you would take \$5 an acre for 60 acres to straighten Mr. Morris's lines ?

A. No sir, I said it was not worth now over \$5 an acre with the wood cut off of it. I cannot say what we ³⁰ would take for it because I am an agent.

Q. Didn't you say to me that land such as that there, taking enough to straighten Mr. Morris's lines could be bought for \$5 an acre, just as it was ?

A. No sir.

Q. What price did you name ?

A. I did not ask any price, on the contrary I asked you to name the price. You asked me the value of it and I told you if the timber was off, it was only worth \$5 an acre.

Q. Is that land covered with timber ?

A. There are sprouts on it; very little large timber.

Q. Is there timber on this part ?

A. No sir, that is cut off.

Q. Who cut it off ?

A. Cooper & Hewitt cut off the west part.

RE-DIRECT.

10 Q. Since you have known that piece of land in pink
what has it been known as ?

A. Always known as Shepherd's Pond lot.

PLAINTIFFS REST.

The Court then adjourned to October 6th, 1881.

20

30

OCTOBER 6th, 1881.

MR. TUTTLE opens the case for deft. and offers in evidence survey of Richard Edsell dated June 18th, 1808.

Objected to on the ground that it does not ¹⁰ appear to have been registered.

Objection sustained.

Deft. excepts.

Certificate dated October 5th, 1804, with survey recorded June 25th, 1811, are offered in evidence by deft's counsel.

Objected to. 20

Objection overruled.

Plaintiff excepts.

Deft's counsel offers in evidence a deed from John Stephens to Joshua Morris, dated March 28th, 1812; acknowledged April 11th, 1812, and recorded in Bergen Co. Clerk's office October 21st, 1812, in Book H, pages 159 & 160.

Also offers in evidence, copy of will and probate of Joshua Morris, dated June 3rd, 1817; proved June 18, 1817.

Also offers in evidence, certified copy of will and probate of John Morris dated Oct. 24th, 1854; proved November 30th, 1854.

CHARLES MORRIS, defendant, sworn, testifies as follows :—

By Mr. Tuttle:—

Q. Where do you live ?

A. Ringwood, Pompton Township.

Q. How long have you lived there ?

A. All my days.

Q. What is your age ?

10 A. I was born in 1812, March 11th. Next March I will be 70 years old.

Q. How far is your residence from the nearest part of this piece of land which is in dispute in this case.

A. Well, I should say about five or six chains thereabouts. I don't know exactly to the inch.

Q. How long have you lived there on that tract ?

A. Well, I have lived there from the time I was 8 or 9 years old. We lived above on the Shepherd's Pond lot 20 and then built down there and moved there

Q. You lived at one time on the Shepherd's Pond lot ?

A. On the 34 acre lot.

Q. Is that called also the Shepherd's Pond lot ?

A. I don't know as there is any name. We call it the upper place.

Q. You called it just now the Shepherd's Pond lot ?

A. It is inside of that lot.

Q. When did your father die ?

30 A. He died November 18th, 1854.

Q. What was his name ?

A. John Morris.

Q. Where did he live during your recollection of him ?

A. I think I was 8 or 9 years old when I moved from that lot up there, the lot that lies in the Shepherd's Pond lot.

Q. Where did you move to ?

A. Down to where I now live.

Q. You lived with him as long as he lived ?

A. Yes sir, always.

Q. This lot in the Shepherd Pond lot is called the Condit lot, is it not ?

A. No sir.

Q. What is that called ?

A. The upper place. That is what we call it.

Q. You lived with your father till he died ?

A. I did, sir.

Q. Did you work with him ? 10

A. I worked under him till about 15 or 20 years to the best of my recollection, then I was a partner with him.

Q. Do you mean 15 or 20 years before he died ?

A. Yes sir.

Q. Partner in what ?

A. In the firm, in the lumber business.

Q. How long can you remember this lot which is laid down on this map and called the Shepherd Pond lot. 20
From what period of your life can you remember it ?

A. I can remember very well from the time when I was 9 or 10.

Q. You have a recollection of nearly 60 years ?

A. Yes sir.

Q. Will you state what you know of your father having been born upon this tract which is in dispute here, by reputation ?

Objected to. 30

Objection sustained.

Deft. excepts.

Q. What can you say as to there having been the remains of an old house and curtilage upon that disputed tract ?

A. There is a stone wall there now and there is a cellar. The stone wall is sunk down. I have eaten apples

and cherries from trees that were planted there. It is known as the cabin lot.

Q. Has it any name further than that?

A. Not that I know of.

Q. As to whose cabin it was?

Objected to.

The Court:—There is no objection to showing the
10 general name by which it was known, as a means of loca-
tion.

By the Court:—

Q. What was it known as?

A. It was known that my grandfather—

Q. What was that particular lot known as; how was it spoken of?

A. Nothing more than they called it the cabin lot where my father was born.

20 Q. How long have you known of those ruins, the sunken cellar and the stone wall and the cherry trees?

A. All my life. The cherry trees and apple trees; I had apples and cherries off of them till about 25 years ago.

Q. How long before that time had you apples and cherries by this cellar and stone wall?

A. I think I have eaten cherries and apples there from the time I was 10 or 15 years old. I don't recollect seeing the logs of the cabin.

30 Q. These cherry trees and apple trees were they inside or outside of this stone wall?

A. Inside.

Q. And the stone wall was how large around, embraced how large a piece of ground?

A. This stone wall was only on one side, it was on the west side.

Q. How long a wall was that?

A. I should say to the best of my knowledge a chain and a half, or two chains; only a small piece of ground.

Q. These trees were between that wall and the cabin?

A. No sir, they were in front of the cabin on the east side.

By Mr. Tuttle:

Q. How far from the cabin was the stone wall?

A. I should say about the length of across this room.

By the Court:—

Q. And how far from the front of the cabin were the trees? 10

A. I think they were as far as a chain or a chain and a half where the trees were.

Q. Was there anything there to indicate the northerly and southerly boundary of this curtilage?

A. Only on the west side was this wall and then the cleared land which was there, to where these cherry trees are standing.

Q. How large a patch of ground was cleared?

A. Well, to the best of my knowledge, I should say 20 about half an acre.

By Mr. Tuttle:

Q. What do you know of your father's possession of this tract of land which is in dispute in this case upon which it is said you cut trees; what do you know of his possession, occupation or use of that land during his life time?

A. He always cut timber there whenever he wanted it for building purposes, for fire wood or fencing, or the 30 like of that.

Q. Over what portion of the land did you know of his cutting timber. I will call your attention to that portion of the land which lies south of the line drawn across the map in an easterly direction from the beginning point of the Shepherd Pond tract?

A. There is a stone heap there.

Q. Take that part lying south of a line drawn across the Shepherd Pond lot, so called, over what portions of it did he cut timber to your knowledge?

A. All the way clean around up to that point of the green patch on the map.

Q. How many years ago can you say that you knew him to cut timber upon that land ?

A. He cut then on it, or I did, being a partner with him. I cut till he died.

Q. What is your earliest recollection, the earliest period of your recollection, of his cutting any timber upon any part of this ground in dispute, more particularly on
10 which you cut or about which you cut ?

A. As long as I can recollect I would say, to when I was 10 years of age. I always knew him to cut there.

Q. What did he cut on his land ?

A. Fire wood and building timber, just such as he would around home. He saved that part along there for the purpose of building timber, that is what he said.

Q. Do you know of any other person claiming any part of the Shepherd Pond tract and cutting wood on it
20 north of where your father cut in former years ?

A. Mr. Ryerson cut it off.

Q. Which Ryerson ?

A. Jacob M.

Q. How long ago can you remember Jacob M. Ryerson cutting wood on that lot ?

A. To the best of my knowledge I should say about 50 years.

Q. Will you state down to what time if any, he cut
30 timber or wood on that lot ?

A. He cut from that stone heap right up the pink tract there. He cut adjoining that 34 acre lot and about half way from that out.

Q. Who at that time owned the land on the east side of the tract on which Jacob M. Ryerson cut. Who owned the land on the east of that ?

A. John Rutherford.

Q. Who owns it now ?

A. I do, sir.

Q. How long have you owned it ?

A. I have owned it since the will of my father.

Q. Did your father own it at one time ?

A. Yes sir, he bought it from the heirs of John Ruth-
erford.

Q. Do you know how long ago ?

Objected to.

Q. Do you know whether or not your father claimed ¹⁰
to be the owner of this land while he lived, from this point
down and around here ? (Referring to map.)

Objected to.

Q. When was your father's practice in regard to cut-
ting timber during the years of your recollection as to
how often he went on this disputed tract and cut timber
and trees ?

A. At the time the New York & Erie Railroad was ²⁰
built, we cut off ties and bearing timber, at that time they
had bearing timber running lengthwise:

Q. When was that ?

A. I can't say exactly.

Q. How long before your father's death ?

A. Well, I should say in the neighborhood of 20 years,
sir. I can't say exactly.

By the Court:—

Q. Somewhere in the thirties ?

³⁰

A. I think it was about 35 or 40 years ago.

By Mr. Tuttle:

Q. What was your father's practice in your earliest
recollection of his cutting on the southern part of this lot
that portion which is in dispute now. What was his
practice, as to how often he went on the land and cut ?

A. The southern part he cut all his life, and coaled.

Q. How frequently ?

A. Pretty much every year till he cut it off.

70Q You have said that a part of this land—you pointed to where the 3 acre tract was laid out—your father saved for something. What was that for ?

A. For building timber he saved it, and always cut out of it more or less.

Q. For what pupose ?

A. For building a cow house; and timber was cut out there for the building of our own house, and then he cut in there and took out some hickory cord wood.

10 Q. State to the jury whether you cut any trees within the time for which you are sued in this case on any part of this tract in dispute north of the line drawn across from the stone heap ?

A. None at all, sir.

Q. I want to know whether you cut any further north than your father was accustomed to cut in his life time ?

A. No sir.

Q. You knew Jacob M. Ryerson well ?

20 A. I did, sir.

Q. Did you see him often ?

A. Yes sir, very often.

Q. How far back can you remember Jacob M. Ryerson ?

A. I recollect him all my days, ever since I can recollect anything. I lived about a mile from where his house is.

30 Q. Did you ever see him on that part of that Shepherd Pond lot on which he cut ?

A. I have.

Q. Frequently ?

A. Not very often. His agent Mr. Wessels is a man that was cn there often.

Q. Who directed the work that was done there for Ryerson ?

A. John Wessels.

Q. Did Mr. Ryerson or his agent so far as you know ever set up any claim against your father's or your cutting wood where you did cut it on that disputed tract.

Objected to.

By the Court:—

Q. Did he to your knowledg?

A. He never did.

By Mr. Tuttle:—

Q. Do you know whether Mr. Wessels, while he was the agent of Ryerson, knew where you and your father, or your father was cutting wood and timber? 10

A. He certainly did. He passed right by our house to take up wood; passed right over this land.

Q. Do you know the selling price of timber land in the mountains, and what it has been for years past?

A. Nothing more than what I have heard.

Q. Have you known of land being bought and sold?

A. I have known of my father's buying.

Q. Do you know the value of land up there?

A. I don't know anything more than what I have heard 20
Mr. George say.

Q. Haven't you known of tracts being sold?

A. I have heard of them being sold for \$4.50 an acre.

Q. How much land do you own up there as near as you can tell?

A. Somewheres about 400 acres?

Q. From your knowledge of the value of timber land, what do you say it is worth?

Objected to. on the ground that it does not appear the witness has any knowledge on the subject. 30

Objection sustained.

Q. Do you know for what wood is sold in that neighborhood?

A. No, sir; I don't know anything about it. I know my brother-in-law bought 170 acres, he said, for \$1250.

Objected to.

By the Court:—

Q. Did you know of the transaction when it occurred?

A. Yes; sir.

Q. Did you then know what price was being paid for the land?

A. Understood him to say \$1200.

By Mr. Tuttle:—

10 Q. Where was that land?

A. Southeast of this land here.

Q. How does it compare in quality with this land?

Objected to.

By the Court:—

Q. Do you know the land he bought?

A. Yes.

20 Q. What was the character of it?

A. The character of it when he bought it—it was only a year ago—was a nice young growth of timber on it, just so as to begin to cut ties.

By Mr. Tuttle:—

Q. You cut some timber and some trees on this land which is in dispute?

A. I had it cut; yes, sir.

30 Q. Do you know how much?

A. No; I do not. As to the quantity, that I do not know.

Q. You have seen what they have put on the map there?

A. Yes.

Q. Three acres and a fraction in one place?

A. Yes sir.

Q. And a quarter of an acre in another place?

A. Yes sir.

Q. Suppose that to be so; suppose that quantity to have been cut off just as it was cut, do you know how much of the timber was cut off on that part of the land?

A. I think I do.

Q. Supposing it now to be true that Cooper & Hewitt owned that land, and you did not; suppose you cut it there just as they laid it down on the map, and as they say—how much do you say the damage to that land would be—fair damage for all that you cut on the land that is in dispute? 10

A. I should say about \$50; that is, \$50 if they would be allowed to go with it over my land; but if they have got to carry it up the mountain, it would not be worth \$5. It is a very steep mountain; and on this very same land, where I have cut on, I came very nigh losing a horse drawing them down; it was likely to kill the horse, it was so steep.

Q. Mr. George is the agent for Cooper & Hewitt?

A. Yes sir. 20

Q. Do you know that as a fact?

A. I know he is and has been for many years.

Q. What have you heard him say as to the value of land up there?

Objected to as incompetent—

Objection sustained.

CROSS-EXAMINATION.

By Mr. Woodruff:— 30

Q. How long have you known that stone heap that you speak of?

A. I never knew it till they ran this line sir. There was none; they made it.

Q. Who made it?

A. Mr. Roone, I suppose. I didn't see him make it, but I suppose he did it.

Q. Then there was not any stone heap there that you pointed out as the third corner of the Ringwood tract?

A. No sir; there was nothing but a bed of stone that lay there for 4 or 5 rods.

Q. You did not point it out to them as the third corner of the Ringwood tract ?

A. No sir, they said so yesterday but I did not.

Q. Were you there when they made the survey to find out where the third corner of the Ringwood tract was ?

A. No sir, I was there when they run the line across.

10 Q. You did not know that they had run about two miles ?

A. I know they said they had run and come right through my wheat field and my meadows when my wheat was in head.

Q. You saw them do that ?

A. Yes sir.

Q. What did you say to them ?

A. I said I thought it was quite unneighborly in running
20 through my grass and grain and they were not nigh the Ringwood line.

Q. How do you know that ?

A. By what Martin Ryerson had run—this old tract of mine.

Q. Which Martin Ryerson ?

A. The son of Jacob M. Ryerson.

Q. Did they tell you what they were there for ?

A. For running what he said was the second sweep
30 survey af the Ringwood tract.

Q. The second line of the Ringwood tract ?

A. Yes sir.

Q. After that did you accompany them ?

A. I went with them the time when they run what they call the shepard's pond lot up to the pond.

Q. You have spoken of the time when you say they come through your wheat-field, when they said they were running the second line of the Ringwood tract ?

A. Yes.

Q. Did you go with them while they were running the line at that time?

A. Only from that stone heap.

Q. There was a stone heap when you got there?

A. No, sir.

Q. When you got to the stone heap it was not there?

A. No sir. I went there and showed them as near as I could, and told them there was a neighbor, and I went ¹⁰ and got him and he said that was as nigh the spot where my father had showed him.

Q. You followed them to a place where there was no stone heap?

A. I did.

Q. What place was that?

A. That place there where the stone heap now is.

Q. Did you point out that place to them as the third corner of the Ringwood tract? ²⁰

A. I did not any more than I suppose: it was near about it; but I never knew about any corner having been there and no stone heap, and there was not when they came there. That was the day they ran through my tract, and they ran again the next day, and then they ran and Tidaback came there and showed them this corner.

Q. How long have you known of the Ringwood tract?

A. It is said to be there 50 or 60 years.

Q. You have always known, since you know anything, ³⁰ that the Ringwood line was west of that road?

A. Not to that road, sir; and it is not there today.

Q. Not west of it?

A. Yes; it is west of it.

Q. You have known that the line here which came to that corner was west of the road?

A. I never knew by seeing any chain or anything carried on it in my lifetime, till this time they carried it on.

Q. Did you or your father or any of your ancestors, to your knowledge, ever have a deed or a return or anything else which took in land that any of them owned up to that road as far west as that?

A. The deed says beginning at the third corner and running 12 chains, and he supposed, and so did I, that that strip of land belonged to us. We always had cut there.

Q. What deed was that?

10 A. The deed to my Uncle Joshua?

Q. This deed (Stevens deed) says:—beginning at a heap of stones on the top of a hill on the second line of the Ringwood tract. Where is that? [Witness points it out.] And distant 12 chains on a course south 34 degrees and thence south 35 degrees and 40 minutes west. That makes out your beginning point?

A. Yes, sir; of the Stevens deed.

Q. That was what you and your father based your idea on that you owned that pink part?

20

Objected to.

Q. What part of the 34 acre tract did your father live upon, according to your earliest recollection?

A. I don't know as I can exactly tell.

Q. As nearly as you can remember?

A. I should say that it was about here, to the best of my knowledge. [Indicating on the map.]

Q. What kind of a house did he then live in?

30 A. A log house, sir.

Q. About how old would you think it was at that time?

A. I could not answer that; it was an old house. That is all I know about it.

Q. Did he live there till the time he died?

A. No, sir; he lived there about three or four years.

Q. You say he lived at a certain place, which you pointed out on the 34 acre tract when you first recollected anything?

A. Yes, sir.

Q. How old were you at that time?

A. I think when I left there, when they moved to the other house, I think we had lived there only four or five years.

Q. Don't you know where he lived when you were born?

A. I don't know as I do.

Q. Have you any brothers older than you?

A. No, sir; I am the oldest of the whole family. 10

Q. Do you know of any of your neighbors that are old enough to know where he lived when you were born?

A. I do not; I believe they are all dead, sir.

Q. Up to what year did your father live on the 34 acre tract?

A. I think he lived about three or four years there.

Q. Do you mean from the time you were born?

A. I think when he left there—to the best of my knowledge, I would not say certain—I was seven or eight years old. 20

By the Court :—

Q. At that time he had lived in that house three or four years?

A. Yes.

Q. And before that you don't recollect where he lived?

A. I don't recollect; but I can say this, I was not born there.

Q. Do you absolutely know you were not born there? 30

A. I think so from what they tell me.

By Mr. Woodruff:

Q. How do you know it?

A. Well, I have slight recollection, but a very slight recollection of moving there.

Q. Where did you move from?

A. From what was called middle forge.

Q. Where is that?

A. Morris County. I was born there.

Q. At this place where your father lived on that 34 acre tract was there a spring for the use of the house?

A. Yes sir.

Q. Was there a barn and outhouse?

A. I don't recollect of any barn at that time. I recollect of what they called a frame barrack.

Q. You have talked about the remains of a cabin on
10 what you have called the disputed tract. Those remains were on what kind of a locality?

A. A flat piece of ground.

Q. On the top of a high hill?

A. Yes sir.

Q. Is there any spring there?

A. Well, there is but it is filled up. Just on the other side there is a spring.

Q. How far from the cabin?

20 A. Maybe two chains.

Q. Which direction?

A. It would be about west I think to the best of my knowledge.

Q. It is filled up now?

A. Yes sir.

Q. When did you ever know of a spring there?

A. Oh, I knew of it up there from the time I was 15
years old up to the present time. The spring is all filled
30 up.

Q. A natural spring?

A. Yes.

Q. You never knew of any outbuilding there?

A. No sir.

Q. What time did you and your father go into partnership in the lumber business?

A. I was 34 or 35 when we went into partnership. I worked for him all my days but then he took me into partnership.

Q. That would be about the year 1834?

A. I suppose so.

Q. And you continued that up to the time of his death?

A. Yes sir.

Q. You say that up to the time of his death you and he used to cut over here and around here. [Referring to map.] Did you continue that after his death?

A. After he died ; yes sir.

Q. Up to the present time?

10

A. Yes sir.

Q. About how many loads of firewood do you think you have taken off in the last 6 or 7 years?

A. When I come to recollect, it was on the lower part for the last 6 or 7 years where I cut my firewood. I have taken off such as white oak for spokes or the like of that, off that other tract.

Q. How many white oaks during the last 6 or 7 years?

A. I could not say.

20

Q. You sold them, didn't you?

A. No sir; I kept them for my own use.

Q. You don't know how many you kept?

A. No sir. I have cut this on that tract where you name.

Q. About how many ties do you think you cut off there in the last 6 or 7 years?

A. I cannot say. I should say not as many as were cut off in my father's day.

30

Q. Whom did you sell them to?

A. To the N. Y. & Erie R. R. Co.

Q. How many did you sell them?

A. I don't know.

Q. Didn't you make out bills?

A. I have sold them as high as 2000 ties a year.

Q. Within seven years?

A. No sir.

Q. How many is the highest in seven years?

A. I think the highest I have sold to the New York and Erie Railroad Co.—I didn't get all the 2000 ties from that land.

Q. How many is the highest you have sold them in the seven years ?

A. I think the highest would run somewheres in the neighborhood of 500.

Q. What year was that ?

10 A. I don't know.

Q. Why not ?

A. Because I don't, I can't bear it in mind.

Q. Didn't you keep any account ?

A. No sir.

Q. Don't you keep a book ?

A. Yes, but not the account of ties.

Q. Don't you charge them with the ties on the book and credit them on the book when you get paid ?

20 A. No si., I don't know anything about books or accounts.

Q. This year when you cut 500 ties, where did you cut them ?

A. I got the bigger part of them off my own land, but I think I got a few on that strip.

Q. You mean the east side of the green part ? [Referring to map.]

A. Yes; but that was on my land, it was all my land anyway.

30 Q. You claim it is all your own ?

A. Yes; I claim I have got a deed to cover those three acres there.

Q. You spoke of a tract being called the upper place, which do you call the lower place, if any ?

A. Where I lived.

Q. Do you live on the 25 acre tract ?

A. No sir, it is not on that map. It is southwest.

Q. Did either you or your father to your knowledge

ever have a survey of those two lots there put down in green ?

Objected as not cross examination, and not in controversy.

Q. Was there any fence there upon that part that is laid down there in green ?

A. There is no fence.

By the Court :—

10

Q. Is the southwesterly corner of that pink tract on a hill or not ?

A. No, that is on a flat. It is a field I have there.

Q. Is it not on top of the hill ?

A. No sir, the stone heap is on the top of the hill that comes down adjoining my 34 acre lot that I live on. That is all cleared land.

Q. How large a hill is that on top of which that stone heap is ?

20

A. It is quite a hill.

Q. Does it run northerly ?

A. Yes sir, south and north.

Q. Suppose you should go about 12 chains to the north east of that would you be on a hill then or not. Is that point on a hill ?

A. No sir; that would be on a hill about even with that stone heap.

30

Q. And is (referring to map) the top of the hill.

A. About the same height.

By Mr. Woodruff :—

Q. You spoke of the remains of a cabin which you have known for a long time. When did you first know of those remains that you spoke of ?

A. I should say from the time I was 10 or 15 years old, always knew it.

Q. 60 years ago you knew ?

A. Yes sir.

Q. Did you know of anybody living in it ?

A. No sir, only from hearsay.

Q. When you first saw it there were no logs there ?

A. No sir; I think the bottom logs were there but I could not say for certain. I think they were.

Q. How many ?

A. Just the bottom logs.

10 Q. How long were they ?

A. I should say 16 or 18 feet.

Q. Do you remember ?

A. No sir.

Q. You don't know who drew away the logs that were there ?

A. No, sir; I don't.

Q. Do you say that Jacob M. Ryerson ever saw you cutting timber or wood of any kind along here ?

20 A. I think he did, sir.

Q. You think he did ?

A. I am positive he did, or his agent.

Q. Did or did not Jacob M. Ryerson ever see you cutting timber or wood here? [Referring to map.]

A. I think he did.

Q. When ?

30 A. I think he saw us cutting there about 45 or 50 years ago.

Q. Then your father was living ?

A. Yes, sir.

Q. Then he was not saving that up for timberland at that time ?

A. No, sir; we cut that all off, and we had none for such as fencing and building timber and saved that till we bought off the original tract.

Q. You think Jacob M. Ryerson saw you there ?

A. Yes.

Q. When he came there that day, how did he get there?

A. He generally came with a horse.

Q. What did he come on this tract for?

A. They were cutting wood.

Q. Who was cutting wood?

A. Jacob M. Ryerson's men. He had to pass over that to get there?

Q. What did he say to you when he saw you cutting there? ¹⁰

A. He said nothing.

Q. How do you know he said nothing?

A. If he had his eyes open he could not help seeing we were cutting.

Q. Was he in sight of you?

A. I think he was.

Q. What errand had he to bring him over in the woods?

A. He had no errand to bring him there; but he had an errand to bring him where his men were cutting wood to show them the line—Jacob M. Ryerson did. And he showed that to be the line. ²⁰

Q. Showed what?

A. He did not claim at all, and never cut.

Q. What did he do?

A. He showed the line to be from that first corner of mine, that ¹² chains to the stone heap on the hill.

Q. He showed the line to be there? [Referring to ³⁰ southwest corner on map.]

A. Yes.

By the Court:—

Q. What did he show to be the line?

A. The old Ringwood sweep survey.

Q. What did he show to be the old Ringwood sweep survey—what did he show on the ground?

A. Nothing; no more than from that old tract and corner of the old tract as the corner of this.

Q. What did he show to be that corner on the ground? Did he point out something on the ground?

A. He said that right along the brow of the hill was the line.

Q. Of what hill?

A. Up where that sweep survey runs.

Q. But on the ground what did he show? Did he show the brow of the hill to be the line?

10 A. Yes sir.

Q. What hill was he speaking of?

A. Where the stone heap is.

Q. Did he point to the stone heap?

A. No, sir; there was no stone heap.

Q. Was there a gathering of stones?

A. There was a bed of stones that would go over a space half as big as this room.

Q. Did he refer to that bed of stones?

20 A. He referred to that as the second Ringwood survey; that Martin Ryerson came there one time, somewhere about there; there was no stone heap, but somewhere about there he started and ran up to that corner [north-west corner]; but he did not strike that corner; he went west of it quite a distance. And, furthermore, when Mr. Roone ran that line, I was with him, when he ran from that third corner; when he ran up for that other corner that you see up there, he was going to run, I should say, to the best of my knowledge, about a point of his compass 30 pass 6 or 8 chains out of the way west.

Q. Jacob Ryerson told you Martin had run a line and came west of it.

A. He started and was said to run west of that.

Q. Where was Jacob M. Ryerson when he told you that?

A. I did not say that Jacob told me that.

Q. Jacob M. did not point out to you that corner?

A. No, sir.

Q. I thought you said he did?

A. I might have said so, but it was his son.

Q. When did he tell you that, how long ago?

A. Your papers would show. I should say about 8 or 10 years before he sold Ringwood to Cooper.

Q. Jacob M. was not there that day when Martin J. told you that?

A. No, sir.

Q. What time was it that Jacob M. was there and saw you cutting wood. 10

A. 45 years ago.

Q. Do you recollect who cut the wood off then?

A. I recollect that Jacob M. Ryerson was the owner of Ringwood at that time, and he had a man by the name of Wessels, who was his agent.

Q. Who were these men that cut the wood off for you and your father 45 years ago?

A. I could not say, but we had 10 or 15 hands to work. 20

Q. Give us the names of some of them.

A. There was one by the name of Dunks.

Q. What was his first name?

A. Well, there were two or three of them. I don't remember what their names were. They are darkies that lived at Ringwood.

Q. Are any of them alive yet?

A. I guess there are. 30

Q. Which one of them?

A. I think Sam Dunks is alive. I think he lives at Ringwood.

Q. Do you recollect any other names?

A. Wilson and Moore.

Q. What is Wilson's first name?

A. Tom.

Q. Where does he live?

A. I think he is in heaven or hope he is.

Q. If what you say is so, if you and your father or these men Dunks, Wilson etc. cut off all this 45 years ago, what did you say to Martin J. Ryerson when he pointed out that corner to you ?

A. They did not cut there.

Q. Where did they cut 45 years ago ?

A. [The witness points it out.]

Q. Do you recollect the time when Philip R. George came to you about having cut some wood on the east side
10 of this pink parcel on the map and you said to him you did not know but what it was your own land till after you had cut the timber ?

A. I don't recollect of saying such a thing to him. I recollect saying to him very definitely when he came there in the woods there that that land belonged to him.

Q. Didn't you say to him you did not know it did not belong to you till after you got the wood cut down.

A. No sir, I never did.

20 Q. Did you cut some there in 1874 ?

A. I have always cut along there, I suppose.

Q. In the east of the green parcels on the map.

A. I cut there to the best of my knowledge some 14
or 15 years.

Q. Did you cut some there in 1874 ?

A. I don't recollect of having any cut there.

Q. And you don't recollect of of having any conversation with Mr. George about it, within seven years ?

30 A. I never had any conversation with that gentleman about this till after they ran the line, then he told me he was going to cut over here on that lot and I told him if he did I would serve an injunction on him and he went there and stole 7 or 8 sticks from there.

Q. You did not serve the injunction did you ?

A. He did not cut any more, he stopped.

Q. You knew at that time if you had a dispute you could file a bill in chancery ?

The Court:—You had better not go into that.

Q. Hadn't you consulted counsel in this matter before 1874?

A. I think not.

Q. After this suit was brought, didn't you institute a comparison of the return made by Andrew Bell to Martin I. Ryerson and the one made to the Stevens', and find out that their survey was three days older than yours?

Objected to.

10

Q. Didn't you have the property surveyed and find out that your survey did not cover this disputed land?

Objected to.

Objection overruled.

A. Yes.

By the Court :—

Q. Did you find out your survey did not cover the disputed land? ²⁰

A. I found out it did not cover it.

By Mr. Woodruff :—

Q. Who surveyed it?

A. Mr. Paulus: John, I believe.

Q. Which deed covered it?

A. The Stevens deed, sir.

Q. John Stevens?

A. Yes.

30

Q. Have you done any coaling on this land south of those green spots on the map or east of them within 7 years?

A. No sir.

Q. Have you exercised any acts of ownership upon that property since your father died with the knowledge of The Trenton Iron Co., or Cooper & Hewitt, or Phillip R. George, their agent, except when these men cut on these different parcels in 1873?

A. Never knew of a line going through there or never heard of a line being there. There is a wedge coming in between my two lots—my father showed me.

Q. You never knew where the line was?

A. No sir, not of that. I never heard of it.

Q. You say you never cut any hickory wood north of the stone heap. What stone heap do you mean?

A. I mean the corner.

10 Q. The stone heap constituted the third corner?

A. That is what it goes by, I believe.

Q. How long have you known that stone heap?

A. Since they made it two or three years ago.

Q. How can you say that you never cut any north of it?

A. The reason why I can say it with a clear conscience is that Jacob M. Ryerson cut up to there.

Q. How could Jacob M. Ryerson cut up to the stone heap when you say there was not any stone heap?

20 A. Well I say there was not.

Q. How could Jacob M. Ryerson cut up to it?

A. Up to that spot or thereabouts.

By the Court :—

Q. Is that stone heap placed in what you speak of as being a bed of stones?

A. Yes, sir; right by the brow of the hill.

By Mr. Woodruff :—

30 Q. You spoke of a stone heap that you said would cover about half this room?

A. I said a bed of stones.

Q. How long have you known that?

A. Since they ran it.

Q. You never knew it before?

By the Court :—

Q. As a bed of stones. how long can you remember it?

A. As far as I can recollect.

Q. It is that bed of stones that is the third corner of the

Ringwood tract, as you understood?

A. Understood it to be so, sir.

Q. Did Mr. Rooney make a heap of stones in that bed of stones?

A. Yes, sir; I presume so; I was not there.

Q. You saw the heap afterwards?

A. Yes.

Q. And that is in the bed of stones?

A. Yes, sir. 10

Q. Whereabouts does Theodore Hath live, your brother-in-law?

A. At a place called Slotenburg, Rockland County, State of New York.

Q. How much of that land had he bought that had timber on it?

A. There is not much that is very large timber.

Q. Where is the property? 20

A. It is in Pompton Township.

Q. Whereabouts in Pompton?

A. It lays adjoining Mr. George's tract there. He can give you a better description of it than I can.

Q. He knows the tract, does he?

A. Yes sir.

Q. Can't you tell us so that we can identify it?

A. It lies on the other side of Storm's.

Q. Whom did Hath buy it of? 30

A. Bought it on a foreclosure of a mortgage of Henry Slote.

Q. Did he buy the timber or the land itself?

A. Bought the whole.

Q. Under the foreclosure of a mortgage at sheriff's sale?

A. No, it was not at sheriff's sale. He bought it of a man who had bought it at a sheriff's sale.

Q. And that man's name was what?

A. Henry Slote. I believe the truth of the matter is he got Griggs to buy it. That is the way I understand it. I guess he was not here himself.

Q. What is the reason you can't tell us how much wood you have taken off of this southern part of this tract and eastern part of it within the last 7 years?

A. Because I don't know.

Q. Don't you remember pretty near when this suit
10 was brought against you how much was taken?

A. I believe this suit has not been against me 7 years.

Q. You had cut shortly before that?

A. No, sir, not on this.

Q. There was some fresh stumps there when they ran it?

A. No, sir, I guess not.

Q. Do you recollect the day when some other persons were there and you pointed out which you had cut and
20 said your men had cut the fresh stumps?

A. No sir.

Q. You did not say to them that the fresh stumps your men had cut but that George's men had cut the the others?

A. Those that he stole, I showed them to the men that I had not cut them at all.

Q. That who stole?

A. Mr. George. The reason I say he stole them is
30 he took and cut them, and I forbid the men instantly and his son or clerk came out and asked his team drivers to fetch them and they wouldn't do it unless he was along; and when I was down to the committee they went there and stole them.

Q. You knew he was agent for Cooper & Hewitt?

A. Yes.

Q. You knew that Cooper & Hewitt claimed the land where the timber was cut?

A. I supposed that they claimed it and I claimed it, and I considered my title was better than theirs. I con-

sider it so yet.

Q. I want to know where George's men cut that wood?

A. Near that third corner about.

Q. And that was before you cut?

A. That was right after it.

Q. And therefore when your men to cutting there you knew that Cooper & Hewitt claimed that land and were exercising acts of ownership and possession by getting the timber out and had before that time? 10

A. I don't know, unless like he done when I took up the 26 acres of vacant land and he went on and thinking he would get possession—he might have done it that way for all I know.

Q. On what part of this tract of land did you come near loosing a horse?

A. Right there, (referring to the south west corner of the map.)

Q. It is hilly there? 20

A. Yes sir.

Q. And the remains of that old cabin were up on the hill?

A. Yes.

Q. Do you think you could drive a wagon up to the cabin?

A. My boy ran a pole through the hind wheels and came very near getting the horses killed.

Q. It was not a very desirable place for a residence? 30

A. Not very.

By the Court:—

Q. Is the cabin on the same hill that the bed of stones is on?

A. It lays down very near where the 3 acres are.

By Mr. Woodruff:—

Q. You say the cabin is on the hill and the bed of stones is on the hill. Is that the same hill?

A. Where the cabin is there is a flat place.

RE-DIRECT.

Q. Mr. Woodruff has questioned you about cutting in other places than those that Mr. George spoke of? Within the last 7 years have you cut any timber anywhere on this tract except the southern part or the eastern part of the pink tract?

10 A. I think I cut a few ties there. I have cut hoopoles off every year over the whole of it.

Q. Do you mean the whole tract. Point it out?

A. I have cut on the eastern and south eastern part of the pink tract. [Referring to the map.]

Q. Suppose that land covered with pink all to be the property of Cooper & Hewitt, what in your judgment is a fair and actual damage done by all that you have cut within the last seven years on that entire tract?

20 A. I couldn't answer that question. I don't think I have cut 50 ties on there. I might have.

Q. What is your judgment about it. Give the best estimate you can. Supposing it to be this land now; what is your estimate of the actual damage done by cutting all you have cut there within the last seven years?

A. Well, I should say \$50.

Q. You said that before?

A. Yes, and I say that again.

30 Q. Do you mean to include all that you have cut?

A. I meant it to include those spots there.

Q. Now you say you have cut other places not including those spots. I want to know whether it is any additional damage in your judgment, anything you have cut in 1876 on other places except those marked with dots?

A. I don't think I have to the amount of \$5.

By the Court:—

Q. Were hoopoles cut every year?

A. No sir; in my way of cutting sometimes I would not cut in 8 or 10 years. I did not cut small, I went for to get up to 14's, I think it pays better.

Q. You spoke of cutting hooppoles every year on the east of the green?

A. If I did, I did not mean it, not to the east.

Q. In your father's life time was he in the habit of cutting hooppoles on this property?

A. Yes, he cut the timber all off.

10.

Q. Do you mean off all the disputed property?

A. Yes I do, to one little piece that I have cut since that.

Q. Cutting off a timber is one thing and getting hooppoles another. Do you know whether he was in the habit of cutting hooppoles over this property during his life.

A. Yes, he cut it off sleek and clean and he had to wait till they grew up and then again cut them.

20.

Q. How large are saplings for hooppoles?

A. An inch at the lower end and they will run two inches and 2½ at the butt end.

Q. That would take how long a growth?

A. I think it would take in the neighborhood of 9 or 10 years.

By Mr. Tuttle:—

Q. There is one thing I do not quite understand. You said something about Jacob M. Ryerson pointing out some line. What was it he pointed out, if you can show it on the map, come and show it.

A. He said that from this corner (east corner) up to there was the line, but he never went upon it, that it was the second sweep survey.

Q. Did he ever say anything by which you understood him to mean that the line of the Shepherd's Pond lot was lower down than the point to where he cut; that it extended further south than the point which he cut on the west side of it?

A. He never did.

RE-CROSS.

Q. About how many hoopoles did you cut on this tract within 7 years ?

A. I don't think I cut 50.

Q. What was your object in coming there to get only 50 hoopoles ?

10 A. We go over a large tract sometimes gathering hoopoles and get but very few. On this spot here they don't grow because it is hilly.

Q. Who cut them for you ?

A. I guess my boys and that is all.

Q. Your sons ?

A. Yes.

Q. What are their names ?

A. One is John and the other is Andy.

20 Q. Are those the only two ?

A. That is all I have got, sir.

Q. Do you know how many days they were engaged ?

A. I do not. I did not keep account.

Q. You did not count the poles ?

A. No sir.

RE-DIRECT.

Q. What is this land that you own to the east of the
30 pink tract ?

A. Woodland.

Q. Did they cut hoopoles on that also ?

A. Yes sir.

Q. At the same time ?

A. Yes sir, and also over the vacant land where Philip stole the hoopoles.

WILLIAM LOVELL, sworn for defendant, testifies as follows:—

By Mr. Tuttle:—

Q. Where do you live ?

A. Paterson.

Q. What is your age ?

A. 85.

Q. Did you once live near John Morris's place at Ringwood ?

A. I lived there from the year 1800—I was 4 years old—till I was 16, on that very place what they call the Shepherd Pond place. Afterwards I lived very near till I was 29 years old. 10

Q. Did you know John Morris, the father of Charles ?

A. Very well.

Q. Did you know the old cabin so called ?

A. Always seen it with the logs falling down.

Q. What was that called ?

A. It was called the old cabin.

Q. Did you ever hear it spoken of as being anybody's cabin in particular ? 20

A. No sir, nobodys.

Q. Do you remember the line of the Condit lot ?

A. Yes.

Q. You have seen that map ?

A. Yes, but I don't exactly understand that map.

Q. But you remember the lot which is called the Condit lot ?

A. I have been shown the lot there. 30

Q. When you were a boy did you know the Condit lot ?

A. Oh, well.

Q. Do you know the southerly line of it ?

A. Yes.

Q. How far was this old cabin from that ?

A. Pretty near it.

Q. The length of this building ?

A. Pretty near that.

Q. Do you know who was in possession of the land and cut wood on it immediately south of the Condit lot ?

A. John Morris when he came there. Joshua was the first owner, he was his brother. He willed to John Morris and they cut wood there and nothing was said about it that I ever heard.

Q. Joshua Morris, the brother of John, cut wood ?

A. Yes sir.

10. Q. Do you know that yourself ?

A. Yes.

Q. Did he cut up to the Condit line ?

A. Yes, he cut along there beside it.

Q. How many years do you know of his cutting wood there, how many different years ?

A. I guess he cut there about the year 1814 and 1818.

Q. Do you know of his cutting more than once ?

20. A. I have seen him cut fire wood there.

Q. What did you do when you lived there ?

A. Farming; worked for him.

Q. Whom did you live with ?

A. My grandmother.

Q. Who was she ?

A. She was my grandmother.

Q. Whose widow or wife ?

A. The wife of Dennis Morris, my grandfather.

30. Q. Who was Dennis Morris ?

A. Do you mean his son or the old man ?

Q. The husband of your grandmother ?

A. He was the man.

Q. What relation was he to Charles Morris ?

A. He was the grandfather of Charles Morris.

Q. Whom did you live when you were a boy ?

A. I lived with my grandfather and grandmother and uncle Dennis, he lived with them too.

By the Court:—

Q. Dennis, Joshua and John were brothers ?

A. Yes.

Q. Their father was Dennis ?

A. Yes.

Q. And that Dennis was your Grandfather ?

A. Yes sir.

By Mr. Tuttle:—

Q. Have you been up there since you came here to
live ? 10

A. I go up there two or three times in the summer season since I have lived in Paterson. I go up to the Condit lot.

Q. For how many years have you been visiting there ?

A. About 5 or 6 since I have been in Paterson.

Q. What do you know about John Morris cutting there on the Condit lot ?

A. He cut there too.

Q. What do you know about Charles having cut there ? 20

A. I did not see him cut any there.

RECESS.

Q. You said this forenoon that you knew the Condit lot ?

A. Yes.

Q. Did you know it as long ago as when you lived up
there ? 30

A. Yes.

Q. Do you remember the south line of that lot ?

A. I do.

Q. And you knew where it was at that time ?

A. Yes, I can go to it now.

Q. Who was the first one of the Morris's that you knew of cutting wood immediately south of the Condit lot ?

A. Joshua.

Q. How long before he died, did you know him to cut wood on the lot immediately south of the Condit lot ?

A. Some few years. He died in 1817.

Q. About how many years did he cut wood there immediately south of the Condit lot ?

A. One or two years.

Q. After he died whom did you know to cut wood there ?

A. John his brother.

10 Q. Do you remember when John died ?

A. Yes sir.

Q. For how many years do you know of John cutting wood on that lot immediately south of the Condit lot ?

A. From 1817 to 1854. He lived there that time and cut timber for rails and fence, fire wood and things.

Q. For how many years ?

A. From the first beginning there till he died.

20 Q. What do you know about Charles Morris claiming possession of that property since his father died ?

A. He took possession right away after 1854, and he has been there in possession ever since.

Q. What have you known of his being on that lot immediately south of the Condit lot ?

A. I know there has been wood cut there. I never see him cut it, but I suppose he cut it, likely.

CROSS-EXAMINATION.

30 *By Mr. Woodruff:—*

Q. Did Joshua live on the lot that he cut wood on ?

A. Joshua Morris owned the spot where Charles Morris now lives and the same piece of ground on the other side, I believe.

Q. Joshua owned the lot where Charles Morris now lives ?

A. Yes, that is part of the London Co. tract.

Q. I thought you said Joshua Morris owned the lot where Charles lives ?

A. Yes.

Q. Was that the lot on which Joshua cut the wood ?

A. Yes. They all cut wood there. I remember his cutting rails there.

Q. That is on the lot where Joshua lived ?

A. The part in dispute there now, that little part.

Q. Which part is in dispute ?

A. On the south side of the Shepherd Pond lot. I understand there is a little piece in dispute at present. I have been shown where it was. 10

Q. Who showed you where it was ?

A. John Morris's father was born close by.

Q. You said somebody showed you what was in dispute ?

A. My grandfather and my uncle; they all of them told me where in that house called the old cabin he was born in.

Q. Had you any dispute about it then ?

A. There was no dispute about it then. 20

Q. He showed you what was in dispute, the land in dispute ?

A. His son John showed me.

Q. Whose son ?

A. Charles Morris' son. He showed me the land that was in dispute. I seen the very place; there was the old stones left there yet; it is all grown up where the old cabin was.

Q. You never saw John Morris in that cabin ? 30

A. No sir; I was told he was born there.

Q. The remains of the cabin you spoke of are on the hill; you can't drive up it ?

A. You can't hardly tell where it was for the trees.

Q. You could not drive up to it with a wagon; you never saw anybody drive up to it with a wagon ?

A. No sir.

Q. There is no road through, in there ?

A. There was a road in there for the old cabin.

Q. That went up to the cabin ?

A. Over the Shepherd Pond lot.

Q. Did you ever know a road to that cabin?

A. I did.

Q. Whom did you ever see drive there?

A. I have seen them drive there and draw out wood.

Q. From the cabin?

A. From the land close by it.

Q. Where was the south line of the Condit lot?

10 A. It was the south side of the Condit property.

Q. How did you know where the line was?

A. I seen it when they showed it to me when I was a boy.

Q. Who?

A. My old uncle Dennis Morris. He bought it from Condit. I seen the corners. I can go to that now.

Q. You know the Stevens lot?

20 A. That is a little lower down; that is on the south side too.

Q. This land that you understand from John Morris was the land in dispute, is between Stevens lot and the Condit lot?

A. It might constitute the Stevens lot. I thought it did.

96Q. Don't you know that the land that John Morris showed you was in dispute was the land between the Stevens lot and the Condit lot?

A. Yes sir.

30 *By the Court* :—

Q. John Morris showed to you some land as being the land in dispute?

A. Yes sir.

Q. Was that land which he showed you on the Condit lot or on the Stevens lot, or between the two?

A. I took it to be the little piece between the two.

By Mr. Woodruff :—

Q. You say that you know where the south line of the

Condit lot was?

A. Yes; what they showed me then. It is all cut off and altered.

Q. Was that line there when John showed you this land in dispute?

A. Yes.

Q. What marked the line at that time?

A. Where the house was, is adjoining the Condit lot, right in the land now in dispute.

10

Q. Was the cabin you spoke of, as far south as the south side of the Condit lot?

A. It was on the south line.

Q. Right on it?

A. Close by it.

Q. Was it south of the south Condit line?

A. Yes sir.

Q. You have spoken of the remains of the cabin and you have spoken of the south line of the Condit lot. Which was the furthest south?

20

A. Where the old cabin was is very near the Condit line.

Q. Very near the south line?

A. Yes sir.

Q. Was it on the Condit line?

A. It was not. It was off of it.

Q. Was it south of the Condit lot?

A. Yes sir.

Q. Wasn't it west of it?

30

A. No; it could not be west of and south both.

Q. Where did Joshua Morris live when he cut wood on that strip?

A. Joshua Morris lived up at the Condit house where we all lived together; and we went down very near half a mile down on his farm.

Q. Did Joshua live on the Condit lot then?

A. Yes; he never was married, He was a bachelor.

Q. How many acres has the Condit lot?

A. I don't know; I think some 50. I always thought it was 60; they say it was only 50.

Q. What was north of the line in dispute ?

A. Yes sir.

Q. At the time Joshua cut that wood did he or your uncle Dennis own the Condit lot ?

A. Uncle Dennis owned it.

Q. And while Dennis lived there Joshua cut wood on
10 this land in dispute ?

A. He bought this property where Charles now lives.

Q. Where did Dennis live ?

A. He lived on the Condit lot. They were both old bachelors and lived together. They lived with their grandmother and they had a female servant there.

Q. Where you a bachelor at that time.

A. Yes, a young bachelor.

Q. The Condit lot was not fenced in ?

20 A. Not all around.

Q. Didn't have any fence on the south line ?

A. Not in my time. It did afterwards. In 1820 or
1825 they cut it off.

Q. Cut what off ?

A. Cut their timber off.

Q. Off what ?

A. Off the Condit lot.

30 Q. Where did John Morris live from 1817 to 1854 ?

A. He lived on the Condit lot in the house at Shepherd's Pond.

Q. How did you know whether the wood they cut was cut on the Condit lot, or on this strip between the Condit lot and the the Stevens ?

A. I know where the line was and I know it was cut out of the Condit lot. I have seen since where they cut on this other lot.

Q. What kind of a line was it that separated this Condit lot from the other ?

A. Just as the survey was made, I seen the corners when I was young.

A. I never measured it; it looked to me as if it was very near the line.

Q. About how wide, 100 yards ?

A. Something like that.

Q. You say in your chief examination that you knew them to cut off that lot and you never heard any complaint ?

A. I never did. 10

Q. Didn't you think that was strange that you didn't hear any complaint, when they cut on this strip ?

A. No, I didn't think anything strange about that because I thought they own it; I thought it was on the Steven's lot. I guess it is yet. I didn't know how they cut it off.

Q. You don't know where the line of the Stevens' lot was ?

A. I always thought it joined it, that the Stevens' lot²⁰ joined the Condit lot. It appears now they have run a little point up in there.

By the Court :—

Q. What did you do then ?

A. I thought the Steven's lot joined the Condit lot.

Q. And this cabin you thought was on what lot ?

A. On the Steven's lot.

By Mr. Woodruff :— 30

Q. Where would you go if you went from the remains of where that cabin was to find the north-west corner of the Steven's lot ?

A. It would be somewhere near the road.

Q. Would you go west ?

A. The north-west corner would be above where Charles lives now.

Q. Starting from the remains of this cabin ?

A. I would go right out west.

Q. How far ?

A. How far do you want me to go.

Q. Just according to the truth of it.

A. I would go three or four hundred yards, I would go to the road to come to the house.

Q. What was to mark the line or the corner of the Steven's lot ?

A. They had stone heaps in different places.

10 Q. Had they a stone heap at the northwest corner ?

A. I don't know about that particularly.

Q. Was there a stone heap at the northeast corner of the Stevens lot ?

A. I don't recollect exactly. I always thought it run to the London co's line. but it seems it did not quite.

Q. Do you remember the southeast corner of the Condit lot ?

A. Yes.

20 Q. Had that a stone heap ?

A. Yes, right in the corner of the fence now.

Q. Where was the fence ?

A. There was a little hill between that and the road.

Q. You are sure there was a stone heap there in the fence ?

A. Yes; by the fence. I see there has been one put up lately there.

30 Q. When you knew it 30 or 40 years ago, was there a stone-heap at the south east corner of the Condit lot ?

A. There was a corner of the fence on the line as near as possible.

Q. On which line did they put the fence ?

A. In the Condit lot corner on the southeast corner.

Q. Do you say that 30 years ago there was a fence there and is yet ?

A. Yes.

Q. 30 years ago at the southwest corner was there a fence there ?

A. Yes.

By the Court :—

Q. You have talked about an old road. Which way from that road was the cabin? How far away from the road?

A. About 300 yards [Points it out on the map.]

JOHN STORMS, recalled for defendant, testifies as follows:— 10

By Mr. Tuttle:—

Q. What is your business?

A. Small farmer.

Q. Do you own a farm?

A. Not exactly own it; it was left from my father.

Q. Whereabouts is it?

A. Ringwood.

Q. How far from Charles Morris?

20

A. $\frac{1}{4}$ of a mile, one part of it.

Q. How long have you lived there?

A. About 20 years.

Q. Do you know the lot called the Stevens lot?

A. I do not exactly.

Q. Does your line join land of Charles Morris?

A. Yes sir.

Q. Do you know what land it joins?

30

A. I don't know the name of it.

Q. Do you know the size of Morris's lot that your land joins?

A. No sir.

Q. Do you know the value of the wood growing on land up there in the mountains per acre?

A. Well, there is a good deal of a difference, some is worth more than others.

Q. Have you known of its being sold?

A. Nothing more than what I have heard.

Q. From information ?

A. Yes sir.

Q. Do you know this lot in dispute ?

A. I think I do.

Q. Did you ever go over it and assist in running the lines ?

A. Yes sir.

10 Q. How long ago ?

A. Two or three years ago.

Q. How long have you known that lot ?

A. Ever since I have known anything.

Q. Have you known it since the timber was cut off during the last 5 or 6 years ?

A. Yes.

Q. What is your opinion of the value of the wood per acre on that land before it was cut off ?

20 A. Before any of it was cut off ?

Q. Yes.

A. To the best of my opinion, about \$20 an acre, taking everything clean.

Q. Was any of that land cut off clean. State whether only part of the timber was cut ?

A. Only a part.

Q. What do you think was left standing ?

A. I think about half.

30 Q. What would you say, if you were the owner of that land and it had been cut off just as it was, what would you say was a fair damage to that property per acre ?

A. The land without the wood.

Q. The damage done to the land by taking off the wood, including the value of the wood as it was standing on the land ?

A. \$10 to \$12.

Q. Have you been acquainted with that for 20 years ?

A. Yes sir.

Q. How much more than that ?

A. About ten more.

Q. 30 years ?

A. Yes sir.

Q. Do you know who has claimed to be the owner of it during that time ?

A. Always said to belong to John Morris.

Q. Since his death who was it claimed by ? 10

A. Charles Morris.

Q. Did you know John Morris ?

A. Yes sir.

Q. Do you know of his exercising any acts of ownership of that land by cutting on it ?

A. I don't know as I ever did.

Q. Have you known Charles Morris to ?

A. Yes sir.

Q. For how long ? 02

A. Well for 20 years.

Q. What kind of timber grew on that land before it was cut ?

A. Hickory, oak and chestnut. He has all kinds.

CROSS-EXAMINATION.

By Mr. Woodruff:—

Q. When you talk of damage that was done to this³⁰ land do you include all the land from which timber was cut ?

A. No sir.

Q. You spoke of \$10 or \$12 per acre and you included in that all that was cut;—do you mean that ?

A. I mean in those patches that were surveyed there.

Q. Point out on the map the places where you know wood was cut for Mr. Morris ?

A. I never see no one cut it. I helped survey two or

three of these patches.

Q. You helped Mr. Roone ?

A. Yes sir.

Q. Don't you know that what was surveyed was simply the place where it was all cut off ?

A. No sir.

Q. Every big stick of timber cut off ?

A. No sir.

10 Q. What was the object of surveying these particular pieces ?

Objected to.—

Objection sustained.

Q. Don't you know that wood was cut outside of what you surveyed ?

A. Yes sir.

Q. How far outside from what you surveyed ?

A. On the disputed lot ?

20 Q. On any part of that land that is marked there on that map in pink.

A. I don't know.

Q. Don't you know that wood was cut on the east side of that green spot, the east part (referring to map) any time within five or six years ?

A. I don't know.

30 Q. Don't you know that you yourself cut east of this green place laid down there on that map and that you told Mr. George yesterday that the reason you didn't testify to it on our side when you were sworn was because you were not asked ?

The Court :—Do you know what land is meant by those green plats on the map ?

The Witness :—No sir.

Q. Did you cut any ties east of that road that goes from Charles Morris's to Shepherd's Pond, the right hand side as you go to the pond outside of these three places that were surveyed ?

A. No sir; I don't believe I ever cut a tie there.

A. No sir; I don't believe I ever cut a tie there.

Q. Did you cut any kind of wood ?

A. Nothing more than what I said yesterday, a few sticks for Mr. George.

JOHN MCCALL, recalled for defendant, testifies as follows:—

By Mr. Tuttle:—

10

Q. Where do you live ?

A. On Theodore Hath's farm, brother-in-law to Charles Morris.

Q. How far from this disputed piece of ground ?

A. Two miles.

Q. How long have you lived there in that neighborhood ?

A. Six years.

Q. Where did you live before that ?

20

A. The next farm to him.

Q. How long have you lived in Pompton Township ?

A. Six years.

Q. Where did you live before that ?

A. Rockland County.

Q. What has been your business since you have been grown up ?

A. Driving team and farmer.

Q. Have you an opinion as to the value of wood land³⁰ up there at Ringwood ?

A. Well, sometimes.

Q. Do you know this land in dispute ?

A. Yes sir.

Q. What is the value of the wood without the land ?

Objected to on the ground that the witness has not been shown to know the value of wood in that neighborhood and does not know what was cut off.

The Court.—Do you know anything about the value of wood land about there ?

The Witness.—\$25 or 30.

Q. What is the value of the land with the wood and all on such land as that ?

A. I suppose that was the question you asked me before.

Q. I asked you what was the value of the wood without the land ?

A. Well, I don't know really, it is a bad place to get it out.

Q. What is the difficulty ?

A. Well, it is rough to take it up the mountain and rough to fetch it out through the hollow.

Q. How long have you known that tract in dispute ?

A. Two years.

Q. Did you ever work on it ?

A. I did.

Q. Do you know those patches that were surveyed out there as having been cut on ?

A. I do.

Q. What did you have to do with the survey ?

A. Nothing.

Q. Wern't you there ?

A. No sir.

Q. When those ties were cut were all the trees cut off ?

A. No sir.

Q. What proportion was left ?

A. About half the timber.

Q. What in your judgement—suppose that not to be Mr. Morris's land—would be the damage done per acre to that land cutting off what was cut off ?

A. Not over \$10 per acre.

JOHN W. PULIS, sworn for defendant, testifies as follows:—

A. My impression is it was not worth more than \$20 per acre with the wood on.

Q. What in your judgment would be the value of the wood, to sell the wood off and keep the land ?

By Mr. Tuttle:—

Q. Where do you live ?

A. West Milford.

Q. How far from Charles Morris's place ?

A. 7 or 8 miles. 10

Q. How long have you lived in West Milford ?

A. All my life.

Q. How old are you ?

A. I am in my 67th year.

Q. Are you acquainted pretty extensively with the lay of the land in question in this case ?

A. I have been only within four or five years.

Q. You know the land in dispute here ? 20

A. Yes sir.

Q. When did you first see it ?

A. I think it was about two years ago—if I remember. I have not put down the date.

Q. Have you some acquaintance with the value of wood land up in that part of the country ?

A. I don't know the value of it down there, but in our neighborhood it sold for— 30

Objected to.

*The Court:—*Can you think of anything makes it worth as much or more than land by you ?

*The Witness:—*I don't think it is worth quite as much down here ?

Objection overruled.

Q. What is your judgment as to the value per acre of this land in controversy in this case with the wood on ?

A. I don't think it would exceed \$15 an acre, perhaps not that.

Q. To take everything off clean ?

A. Yes.

CROSS-EXAMINATION.

By Mr. Woodruff:—

Q. Your idea is that land up in that part of Passaic
10 County is only worth \$5 an acre ?

A. After the timber is cut off.

Q. Do you know of any farms that have been sold for
\$5 an acre that have been cleared ?

A. No, I mean mountain land, I did not mean farming
land.

Q. None of this land that has been cut on is fit for
farming ?

A. No sir, only there is a little plateau where that old
house stood—perhaps half an acre.

20 Q. After you have cut the large timber off of a piece
of ground what is the small timber worth ?

A. I estimated the value of the wood altogether at \$15
an acre.

Q. After you have cut the wood off that is fit for ties
the balance is not worth anything is it—you would have
to wait 15 or 20 years for it to grow ?

A. There was some timber left on.

Q. Did you see this land before the wood was cut off?

30 A. No sir.

DEFENDANT RESTS.

PHILIP R. GEORGE, recalled for plaintiff, testifies as follows:—

By Mr. Woodruff:—

Q. Did you have some conversation with Mr. Morris about some wood he cut on the green part there [Referring to the map] in 1874 ?

A. Yes sir.

Q. What was it ?

A. When we were making the survey, I did not know ¹⁰ where the lines of the land belonging to Cooper & Hewitt were; consequently we could not—

Objected to.

By the Court:—

Q. What was the conversation between you and Mr. Morris in reference to wood he had cut in 1874 on the east side; east of the Condit lot ?

A. When we were surveying there I asked Mr. Morris whether there was not a very large growth of timber ²⁰ between the two lots, the two lines—and he cut it off I think in 1874 and the wood was carried—

[Objected to.]

—He said then when he cut that timber he did not know but what he owned the land, that in his father's day his father would not allow him to cut that timber off; and he supposed he was keeping it there to build a house on the Condit lot, provided, it should be divided among the boys, or heirs, or children, or something of that kind; that ³⁰ was the intention but he did not know where his lines were, and supposed that was their land. That was the language.

CROSS-EXAMINATION.

Q. What was the first thing you said to Mr. Morris about cutting wood at that time ?

A. I asked him when he cut that timber whether he did not know that was not his wood.

Q. Where were you when you said that to him ?

A. Right on the ground running that line; the east line of that tract. I asked whether he did not know when he cut that wood, that big timber, whether he did not know
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that that timber belonged to Cooper & Hewitt. He said he did not. I asked some other questions and he said in his father's day his father did not allow him to cut that timber off, and he supposed it was left there, supposing it was their land, so if they wanted to build on those lots
10 they would have that timber. That is the language he used.

WM. ROONE, recalled for plaintiff, further testified as follows:—

By Mr. Woodruff:—

[Showing the witness a deed] I want you to point out according to that description where the beginning of the Steven's lot is?

20 A. The beginning of it is laid down on the ground as 12 chains on the second line of the Ringwood tract.

By the Court:—

Q. Is that line the same course as the second course of the Ringwood tract?

A. Yes, indentically, allowing a little for variation, I took the record from the record at Perth Amboy.

Q. What is described as being the second course of the Ringwood tract?

30 A. North 38 degrees east, 154 chains, in 1764; the date of the location.

Q. Do you recollect the character of the ground at this point southeast?

A. There is low ground and meadow ground, and is tillable, and as we come up the ground keeps rising till just below the road there is quite an ascent; it is a slope of a hill and still continues to slope up. There is a sort of a ledge along the east side and this road runs through a valley and there is quite a hill to get to that stone heap, possibly as high as this ceiling.

By the Court:—

Q. I want to call your attention while you are at the map to the description in the survey of the Steven's tract. It begins at a heap of stones on the top of a hill in the second line of the Ringwood Furnace tract. How would you locate that, does that not indicate that the top of the hill is not the end of the Ringwood course ?

A. It does indicate so there.

Q. Taking the features of the ground then where ¹⁰ would you say was the beginning point of the Steven's lot, a heap of stones on the top of a hill in the second course of the Ringwood Furnace tract, and distant 12 chains on a course, south 34 degrees west from the third course thereof ?

A. If there were no qualification at all in regard to that description we should certainly go to the top of that hill; but when we get the qualification of 12 chains from the first corner. 02

Q. You are supposing that you found the third course?

A. Yes but there is no question about that.

Q. You cannot say that in 1764 they chained accurately. Is there anything in the description of the second course of the Ringwood tract refers you to any prominent natural object ?

A. No sir; after a certain date the Board of Proprietors positively forbade the deputy surveyors making any points except the beginning courses. 30

Q. You mean, there is no natural object referred to in the second course of the Ringwood tract ?

A. No sir.

Q. In any of those surveys that we have referred to in this case is there any prominent natural object referred to except in the Steven's survey which refer to the heap of stones at the top of this hill ?

A. Not in any of these surveys in evidence:—there are others outside.

Q. Mr. Morris talked about a bed of stones as being at the place where you put a heap of stones. Do you recollect of a heap of stones ?

A. Yes sir, it is the drippings down at that ledge.

Q. Are there any signs of a heap of stones on the top of the hill ?

A. No sir, not any.

Q. Is there any other tops of a hill in that neighborhood that can be referred to in this Stevens tract, except that point you mentioned there ?

A. I omitted to state after you get up here, there is a sort of level plateau and there is a second rise. It is not well defined hill.

Q. Is it such a thing as you, as a surveyor, would describe as the top of a hill ?

A. No sir.

By Mr. Woodruff:—

Q. Was there such a point ?

A. My first actual knowledge of those lands dates to 1875.

Q. And you then proceeded to find the corner by a survey of the tract and not by any reported fixture on the ground itself that was reported to be the corner ?

A. We proceeded as we found it and surveyed the tract carefully and measured it, and I found no stone heap because I did not look in the right place, Mr. Tidaback came down and showed us that third corner.

Q. Did you know the beginning point of the Ringwood tract.

A. Yes.

Q. How long have you known that ?

A. Some 10 years.

Pl'ffs counsel offers in evidence a deed made June 22, 1818, between Martin I. Ryerson and Dennis Morris.

Objected to.

Q. Do you call that the top of a hill ? [Referring to map.]

X
Q. Was there such a point ?

A. My first actual knowledge of those lands dates to 1875.

Q. You then proceeded to find a corner of the survey of the tract and not by any reputed feature of the ground itself that was reputed to be the corner ?

A. We proceeded as we found it and surveyed the tract carefully and measured it and found no stone heap, because I did not look in the right place, and Mr. Titebach came down and showed us the third corner.

Q. Did you know the beginning point of the Ringwood tract ?

A. Yes.

Q. How long have you known that ?

A. Some ten years.

Q. There is in evidence a deed made June 22nd, 1818, between Martin I. Ryerson and Denis Morris.

Objected to.

Plaintiff's counsel offers the deed to show that possession was taken by Denis Morris according to his deed.

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A The top of the hill covers a number of acres.

Q. What has been the reputation in the neighborhood and amongst surveyors for the last 30 years of where the third corner of the Ringwood tract was ?

Objected to on the ground that some foundation must be laid before the question is asked.

Objection sustained on the ground that there is no claim of title under Dennis Morris. ¹⁰

To which decision counsel for plaintiffs excepts, and the exception is allowed and sealed accordingly

JONATHAN DIXON, Judge.

[LS.] 20

Plaintiff excepts.

Q. When you made that survey of the 34 acre lot what did you take as the basis at survey ?

Objected to as not evidence in the case and not rebuttal.

Objection sustained. 30

Q. Do you recollect the day you went through the wheat field with Charles Morris ?

A. I do sir.

Q. Did he that day point out to you any heap of stones ?

Objected to on the ground that he has testified on that subject.

Objection overruled.

A. I don't think I said Mr. Morris pointed out a heap of stones to me at any time, I said he concurred in the statement as to a heap that Mr. Tidaback pointed out.

By the Court:—

Q. Was that the day you went through the wheat field?

A. I am not sure as to that.

¹⁰ *By Mr. Woodruff:—*

Q. Was that the heap in the bed of stones that has been spoken of?

A. I am not sure as to that.

Testimony Closed.

20

Counsel then sums up the case.

MR. TUTTLE for DEFENDANT.

MR. WOODRUFF for PLAINTIFFS.

30

EDWARD COOPER

et al

vs

CHARLES MORRIS

JUDGE DIXON'S CHARGE TO THE JURY. 10

GENTLEMAN OF THE JURY:—

This is an action for trespass brought by Messrs Cooper & Hewitt against Charles Morris for alleged trespass upon land in this county. The defendant, in his plea, denies having committed the trespass complained of, and also sets up that he was the owner of the land upon which the alleged trespasses were committed. The first plea; the denial of the trespass committed, that is of doing the acts complained of, is substantially abandoned on the trial.

In order to make not their right of recovery, it is necessary for the plaintiffs to satisfy you over and above the defendant's admission of the acts complained of, that they had title, or at best possession of the property on which those acts were committed. The plaintiffs do not claim that they had actual possession aside from their title to the land, and that that title drew with it the possession.

The first question therefore, for you, is whether they had title to the land in controversy. They set up title under what is called a survey from the Proprietors of East Jersey made to Andrew Bell in the year 1811, and they show conveyances and devises by which whatever title Andrew Bell got under that survey has passed to and is now owned by the plaintiffs. Hence arises the first and

most important question in the case:—What land did Andrew Bell get title to? The land to which he got title is described as lying in the Township of Pompton, in the County of Bergen, (now Passaic) in the eastern division of the state of New Jersey, “beginning at a stake and heap of stones, with several saplings marked facing the same; standing on a mountain, between Daniel Storms and Joshua Morris, being the third corner of the Ringwood great tract” That is the beginning point, the rest is comparatively easy, because this survey goes on and gives the lines both in distance and direction with such reasonable accuracy that we can substantially get at where the land is. Nobody pretends that at this date, that heap of stones, or those saplings can be indentified. This is a description made in 1811, and the heap of stones and the saplings marked facing the same have either been destroyed or they have been lost to human recollection. Then it goes on to say:—“standing on a mountain between David Storms and Joshua Morris,” Mr. Roone, the surveyor, tell us that there is here northwest of the property in question and west of the lines shown on the map, a rising ground which might be called a mountain, marked on the map by the pencil lines of the surveyor. The parties all agree that the beginning point was somewhere in that vicinity, so that that mountain enables us to some extent to locate it. Then it is further described as being the third corner of the Ringwood great tract. Mr. Roone tells us that the Ringwood great tract is a tract of some 6,000 acres and that its beginning point is ascertained by going to the forks of the Ringwood and Long Pond rivers and there finding a chestnut tree and then going from that chestnut tree in a certain direction about a mile—76 chains, and that the end of that 76 chains is the first corner of the Ringwood tract. He says that you then go in a certain direction for a distance of between one and two miles and you come to the second corner; going in a certain other direction for about two miles you come to a third corner. The direction you should take and the distance you should travel, he says, are ascertained from a survey made in the year 1764, 120 years ago; and he says, further, that in those olden times,

the instruments by which the direction and distance were ascertained, were not so accurate as they are in these days. If those distances and directions were exactly given, and there was no room for variation, then Mr. Roone says he could ascertain with precision this third corner, because the instruments of to-day are accurate, and Mr. Roone and his father are conceded to be skilled in their profession. They can with their instruments, lay down with precision a designated line both as to its course and its distance; but if the original measurements 120 years 10 ago were subject to errors, we should have no means of getting rid of that error and Mr Roone therefore concedes that the effort to ascertain a designated point to day by surveys extending over four or five miles in length, made and recorded 120 years since, is liable to result in mistake and not only is the inaccuracy of instruments used in the older time to be considered, but the ground is mineral ground where the needle of the compass is liable to variation, and the ground is hilly where measurements of length are less easy. Not- 20 withstanding the skill of the present day can eliminate both of these elements of mistake, yet whether the skill and care of those older times would result in getting rid of those errors is a question much more serious. By pursuing the route laid out in that old survey of 1764 and those old distances, Mr. Roone says that they brought him out to a place somewhere on, or near this rising ground, and he was led to the establishing of the point which he has taken as the third corner by what Mr. Tid- 30 back said to him with regard to a heap of stones. If Mr. Roone has been able through his surveying to find exactly the point which the surveyor in 1764, fixed upon as the third corner of the Ringwood tract, then it is here at the southwesterly corner of this large tract, and the property which Andrew Bell got by that old survey of 1811 is the largest tract laid down on this map, and it embraces the piece of ground upon which the acts which are complained of as trespasses were committed. But you have seen there are elements of mistakes, the exact extent of which we cannot determine; but for the purpose of

ascertaining old lines it is admissible to look at other ancient and contemporaneous conveyances, and see whether they throw any light upon the thing we are seeking to find out, we have another survey produced here by the defendant recorded three days after the Bell survey, which also undertakes to give us the third corner of the Ringwood tract. The Bell survey was made by Tunis Ryerson, a deputy surveyor at the eastern division of New Jersey. The other survey to which I am
¹⁰ about to call your attention was made by Richard Edsell who was also a deputy surveyor at the eastern division of the state of New Jersey. Tunis Ryerson describes the corner as being upon the mountain. Edsell describes his tract as beginning at a heap of stones on the top of a hill in the second line of the Ringwood Furnace tract, if we believe him, we know the top of the hill is in the second line of the Ringwood tract; he then goes on to say that the top of the hill, or the heap of stones on the top of the hill is distant 12 chains on a course south 34 degrees
²⁰ west from the third corner of the Ringwood tract. If we can find the top of the hill that he was talking about, and then will measure 12 chains in a direction north 34 degrees east from that top of the hill, or the heap of stones on the top of the hill, we will have what Mr. Edsell thought was the third corner of the Ringwood tract. According to Tunis Ryerson the third corner is on the mountain. If we rely upon Mr. Edsell's survey and find the top of the hill, we have about reached the end of inquiry. Mr. Roone says that point marked by him with pencil as lying a
³⁰ little northwest of the elbow in the westerly lines of this large tract, is the only point which a surveyor would describe as the top of the hill, measuring from that point 12 chains in a course north 34 degrees east, it would bring us as to the third corner of the Ringwood tract, according to Edsell's survey, and that is upon the mountain which is where Mr. Ryerson says it is. Mr. Ryerson does not say it is on the top of a hill, but he says it is on a mountain. Mr. Edsell says it is 12 chains away from the top of a hill, in a direction north 34 degrees east. If you take that to be the third corner of the Ringwood tract

then this property in dispute does not lie in the Bell survey. This southwesterly corner would be moved up to that place on the top of the hill and the Bell survey would have the southerly boundary across there starting at the top of the hill and running parallel with the southerly line of the large tract on the map. It is said that cannot be so, because that would make the Bell tract exclude part of this ground which is actually included by its boundaries but is excepted from the conveyance to Bell. We do not know whether that is so or not, because we have not in evidence the means by which that plot was laid out and it may be for all we know, if we move this southerly line of the Bell tract 12 chains in a northerly direction, we must also move the southerly line of this excepted tract in the same direction, and so the whole plot would be carried further to the southeast.

If the third corner of the Ringwood tract is as plotted on this map, then the property in dispute is in the Bell survey. If the third corner is 12 chains north 34 degrees east from this top of the hill, then this property is not in the Bell survey and the plaintiffs have no claim of title of it. Bearing up on this question you have the testimony of Mr. Roone in reference to the admission by Mr. Morris, Mr. Roone says that when he was there to make a survey Mr. Tidaback said in reference to this point, Mr. Tidaback said this elbow in the westerly lines was the third corner. That is some evidence against Mr Morris. If Mr. Morris knew where the third corner was, that would be strong evidence against him. If he was only giving his notion about it, or his opinion about it, of course the evidence is is not so strong, Mr. Morris, perhaps might be mistaken about it as well as anybody else.

If the property in dispute did not lie within the Bell survey, that ends the case ; because the plaintiffs claim no title except what they got under the Bell survey. But if you think this property is within the Bell survey, then we come to another inquiry. The defendant says that even if Mr. Bell in 1811 did get a good title to that piece of ground, nevertheless he and his ancestors have since that time acquired a good title from what is called

“adverse possession.” In that claim he appeals to a rule of law which is; that if a man has adverse possession of a piece of ground for twenty years continually, then that property is just as much his as if he had a deed to give him title. The defendant claims that even if this land did lie in the Bell survey, he and his ancestors have had adverse possession for more than twenty years before this suit was brought. You have heard the evidence in reference to what acts he claims to have given him possession, on the part of himself and his ancestors. You heard what has been said in reference to cutting off ties, hoopoles, firewood, spoke wood, and gathering apples and cherries. The facts are fresh in your memory, and I will only undertake to give you the principles of law according to which you shall determine whether he and his ancestors had adverse possession. I will not endeavor to give you those principles in any better way than they have been laid down by the Court of Errors and Appeals of this state, the highest tribunal in the state, at the November Term, 1879. I will read from the report of the opinion delivered in the Court of Errors and Appeals by Mr Justice Depew, and published in 12 Vroom, page 545. He says. “The principles on which the doctrine of title by adverse possession rests, are well settled. The possession must be actual and exclusive—adverse and hostile,” that is to say, if the owner says to a possessor. “I will let you hold it for a time,” and on the strength of that the possessor continues in possession. He must be able to say, I am not there by your permission, but I am there because I claim to have a right to be there. The possession must be hostile and adverse “it must be visible or notorious, “continued and uninterrupted. Notoriety of the adverse “claim under which it is held, is a necessary consistant of “title by adverse possessor, and therefore the occupation or “possession must be of that nature, that the real owner is “presumed to have known that there was a possession “adverse to his title, under which it was intended to make title against him.” You see it does not say that the real owner must have known it; because he may have been a 100 miles away from the land and so not have

seen any of the acts of possession or ownership which the claimant exercises. But those acts must be notorious so that if he did come upon the land, he would be able to perceive that some one was in possession making claim against him." A party relying upon title derived from "such a source must prove possession in himself, or in those under whom he claims, of such a character as is calculated to inform the true owner of the nature and purpose of the possession to which the lands are subjected. The question whether possession has been held adversely, continuously for a period of twenty years with the required notoriety, is one of fact for the jury. Ordinarily it is said that as a matter of evidence possession which is open and visible, is required. But nevertheless, actual occupancy by residence, cultivation or enclosure, or the erection of permanent improvements is not necessarily required. Acts of ownership done upon the land which are of such a nature as to manifest a notorious claim of property, and are continued for the period of twenty years, without interruption or interference by the true owner, may, under the circumstances and in the situation of the property, be sufficient evidence of an ouster, and of an adverse possession to support a claim of title by adverse possession, without any residence, cultivation or enclosure * * * * Suppose a tract of woodland profitable only for coaling purposes, openly cut over year after year, or an unenclosed space, adapted for docks and wharves, used for such purposes, could any rational doubt be entertained of the nature of the possession or character of the acts of ownership exercised over the premises by the disseizor? Would any one venture the suggestion that such a possession was not a possession, such as would be regarded as an adverse possession within the meaning of the law, without residence, or cultivation, or enclosure of an adjacent parcel of the same tract. Occasional acts of trespass, extending over a period of twenty years, will not give title" * * * * Possession to give title must be hostile to the title of the real owner, and actual, exclusive, continued and uninterrupted for the period of twenty years, with such notoriety in the

“adverse enjoyment, as that the true owner is presumed to know that title by that means, is being acquired against him.”

Now what is meant by an act of trespass? When a man goes upon another man's land, that is an act of trespass. But if he goes upon the land committing these acts of trespass—as they may be called,—for they are acts of trespass until he has got good title,—so frequently, so regularly, so continuously, that the jury are satisfied he would
 10 not have performed them unless he had at least claimed to be the owner, that is one of the criteria by which you conclude that the acts have become the acts of an adverse possessor. You look to see whether through a period of twenty years continuously, he has treated the land as only an owner would treat it, used it for such purposes as only an owner would use it for, and whether he has done that continuously, regularly, as an owner would,—notoriously, so that if there was another owner, he would be presumed to have known it. Although he may not
 20 have put any buildings upon the property, although there may have been no fence around it, although he may not have lived upon it, nevertheless, those acts would give him title. If you see that for twenty years, he and his ancestors, or those under whom he claims, have notoriously, openly and without interference, used the property as an owner would have used it, that would give him title.

Now, whether the acts which the defendant and those under whom he claims were of that character or not, is a question for you. I have given you the legal rules to be
 30 applied. If you think that by those means the defendant has got title against plaintiffs, notwithstanding the Bell survey, then of course that is the end of the case. If you come to the conclusion that this land lies in the Bell survey, and that the defendant has not got title by adverse possession, then he is guilty of the trespass complained of. As to the damages he should pay, that is a question exclusively for you. He should bring such damages as will compensate the plaintiffs for the injury done to the land. How much less was the land worth after he had performed his trespass, than it was before he performed

it? How much were those trees worth which he cut down? worth as they stood upon the ground? How much were the ties, hoopoles, stakes and firewood that he cut down worth? Then deduct from that the cost of getting them out. You apply those methods that you think the evidence is clearest upon, and upon whatever amount of damages you find, he would be entitled to interest from the time the trespass was committed, up to the present time.

10

It has been said that you are to give beyond that, vindictive damages.

The law does not as a rule favor vindictive damages; and where a man commits trespass upon land upon the belief—mistaken it may be, that the land is his,—and this is merely wild land, so that no harm is done to anybody's feelings—there is no element out of which to make a case for vindictive damages; and I do not suppose you will come to the conclusion that in this case, Mr. Morris²⁰ was acting under a wilful desire to trespass upon his neighbors. You possibly will conclude that he meant to cut only what was on his own land. If you think he did not have any bad motive about it, and did not hurt anybody's feelings, it is not a case for vindictive damages. If you think he was acting maliciously and spitefully, and wished to injure the feelings of the plaintiffs you may give vindictive damages.

Plaintiffs' counsel requests the Court to³⁰ charge the jury as follows:—

I. That there is no evidence in this case which shows any title by adverse possession to the premises on which the wood was cut by defendant, in the defendant or those under whom he claims.

The Court:—I decline to charge that. There is evidence upon that subject. The jury will say whether it is satisfactory or not.

To which decision and refusal the counsel of plaintiffs prays an exception, which is allowed and sealed accordingly

JONATHAN DIXON, Judge.

[LS.]

10 II. That to make out a title by adverse possession in defendant, the defendant must prove a continual, open, visible and exclusive possession of land marked by definite boundaries, either by a fence or some other visible designation of the lines as defined by the description in his deed or deeds, and that no such possession of the *locus in quo* has been proved in this case.

The Court:—It is true that no such possession has
20 been proved in this case, but I decline to charge that it is necessary to prove “a continued, open, visible and exclusive possession of land marked by definite boundaries either by a fence or some other visible designation of the lines, or defined by the description in his deed or deeds.” When a man sets up title by adverse possession, he gets just as much as he has taken possession of. It not necessary that at every moment he should have his foot or his servants’ foot on each particular spot of ground, but look
30 to see over what tract his acts of adverse possession extended. It is not necessary that the boundaries should be indicated by a fence, or be laid out by any deed or deeds.

To which decision and refusal to charge the counsel for plaintiffs’ excepts, as well as to the matter charged, in response to said request, and prays a bill of exceptions thereto, which is allowed and sealed accordingly,

JONATHAN DIXON, Judge.

[LS.]

III. That under the return to Andrew Bell and the deed from Andrew Bell to Martin I. Ryerson, and the latter's will to Jacob M. Ryerson, if Bell, while he had the title, or Martin I. Ryerson while he had it; or Jacob M. Ryerson while he had the title, entered upon any part of this Shepherd Pond tract, that, in point of law, was an entry according to the description in the return upon the whole tract.

10

The Court:—The meaning of that is, that if during this alleged adverse possession, Mr. Bell or his grantees down to the plaintiffs had possession of any part of this tract, that gave possession of the whole. I decline to charge that. It would give them possession of the whole, except so far as the adverse possession of Mr. Morris and those under whom he claims excluded them. So far as ²⁰ Morris's actual, adverse possession ousted Mr. Bell and his grantees, so far their deed did not give them possession. The legal possession prevails till an actual possession steps in and puts an end to it. But when the conflict is between the actual and legal possession, the actual possession prevails. If I am the owner of a house and that house is empty, the laws would say I am in possession of it because I am the owner. But if you go in and take actual possession of the house, the law no longer says that I am in possession. I may be in possession of the ³⁰ barn, but you are in possession of the house, and my legal possession has to give way to your actual possession. So here, they might have been in actual possession of part of the tract, and if nobody else was in actual possession of any other part of the tract, then their actual possession of part, with their title, would give them legal possession of the whole. But if somebody else was in actual possession of part of the tract that their deed covered, then legal possession would give way just so far as the actual possession pushed it off.

To which refusal and declination to charge as requested and to the matter charged in answer to that request, the counsel for plaintiffs prays a bill of exception, which is allowed and sealed accordingly

JONATHANN DIXON, Judge

[LS.]

10

IV. That if the returns to Andrew Bell after the registry thereof, vested the right to the possession, and that that legal title draws to it the constructive possession of the whole tract.

The Court:—If the Bell survey covered this property
 20 it then gave the right to the possession to Mr. Bell and his grantees, and that right of possession draws to it the constructive possession of the whole tract, but only until that constructive possession is ousted by somebody else's actual possession, the actual possession always prevails when there is any conflict.

30

And the counsel for plaintiffs except to the said Courts declining to charge, as requested in the 4th request to charge as stated and to the charge as given in response to said request, and prays a bill of exception which is allowed.

JONATHAN DIXON, Judge.

[LS.]

V. That, as the defendant has shown no deeds covering by its description the places in which the wood was cut, the defendant in

order to make out a title to any part of it, must have shown in evidence that he had fenced such parts in, or otherwise staked or defined its lines.

The Court:—Whether the defendant has shown any deed covering it or not will depend upon where the third corner of the Ringwood tract is situated. If the third corner is 12 chains north 34 degrees east of this top of the hill, the defendant shows a paper title to this property.¹⁰ But even if he does not show a paper title, he is not bound to show that he had fenced in such portion as he cut over, or that he staked or defined its lines by some visible marks.

The counsel for plaintiffs except to the refusal and omission to charge, as requested in said 5th request, and to the charge as given in response to said request, and prays a bill²⁰ of exception, which is allowed and sealed accordingly.

JONATHAN DIXON, Judge.

[LS.]

VI. That if the defendant concurred with Mr. Tidaback when he pointed out the heap of stones to Mr. Roone as the third corner of³⁰ the Ringwood tract, he is estopped from denying that it is the true third corner, unless he shows by evidence that some other point is the true third corner, or shows that he was under some mistake when he so concurred with Mr. Tidaback.

The Court:—I decline to charge you that he is estopped by that, it, at most, is a mere admission which is evidence against him. If you think he was right in the

admission, that establishes the corner. If you think he was mistaken about it, you override his admission for the sake of the truth.

10 The counsel for plaintiffs except to the refusal and omission of the Court to charge, as requested in said sixth request, and to the charge as given in response to said sixth request, and prays a bill of exception thereto, which is allowed and sealed accordingly.

JONATHAN DIXON, Judge.

[LS.]

20 Plaintiffs excepts to so much of the charge as instructs the jury that if a man goes upon land committing acts of trespass so frequently and regularly, that the jury are satisfied he would not have performed them unless he had at least claimed to be the owner, that is one of the criterions by which they might conclude he had title, or whatever was said on the subject.

30 Plaintiffs' counsel excepts to that part of the charge which laid down the rule of damages, and to the failure of the court to charge that the jury should embrace vindictive damages in that verdict.

Plaintiffs' counsel excepts to the refusal of the Court to the the first, second, and third requests as requested, and to what the Court charged in reference to the third request, to that part where the Court said that it was not necessary that a person in adverse possession should put any mark or visible sign on the lines: also where the Court said that during

the alleged adverse possession, Mr. Bell or his grantees down to the plaintiffs had possession except as far as the adverse possession of Mr. Morris and those under whom he claims excluded them, or whatever was said on that subject.

Plaintiffs' counsel excepts to the refusal of the Court to charge the 4th request as requested, and to the statement in regard to it, 10 that the Bell survey of it covers the premises draws to it the constructive possession until ousted by actual possession.

Plaintiffs counsel excepts to the refusal of the Court to charge the 5th request, and to that which the Court said in reference to it, that it would depend upon whether the third corner is in one place, or the other, as indicated on the map, and to the state- 20 ment that the defendant was not bound to fence or otherwise define the lines.

Plaintiff's counsel excepts to the refusal of the Court to charge the 6th proposition as requested.

The jury returned to the court room and the foreman said:—We have not agreed on the position of the third 30 corner of the Ringwood tract.

A Juror:—We ask the court to give us some definite information as to where the third corner should be located

The Court:—That is the very question that is submitted to your determination.

A Juror:—The jury seemed to think the Judge might give us some definite information, and that is the reason we came out.

The Court:—I cannot locate that point for you. That is a question of fact that you must determine for these parties. I gave you all the light I could on the inquiry this morning, and if there be any more light you may suggest, which I can properly throw upon it I will do so, but the determination of the matter must be with you.

A Juror:—We know of nothing else, sir.

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The jury retired and not having agreed before the adjournment of court, they were called into court and received further instructions as follows:—

The Court:—The point is to ascertain if you can, the third corner of the Ringwood tract. We have two descriptions of that corner, one in the Bell survey which was made by Tunis Ryerson, a deputy surveyor of the proprietors, and the other in the Stevens' survey, that was
20 made by Richard Edsell, another deputy surveyor of the proprietors. These surveys were recorded within three days of each other, and probably were made about the same time.

The Bell survey says that the third corner was on the mountain between David Storms and Joshua Morris's, where there was a stake and a heap of stones with several saplings. The parties all agree that the third corner is somewhere in this neighborhood, and Mr. Roone, the surveyor, says that the only mountain in that
30 neighborhood, is this near the westerly lines on the map. If that be so, according to this survey made by Tunis Ryerson, this third corner is somewhere on that mountain. Mr. Roone, says that the third corner of that Ringwood tract is described in the survey of the tract which was made in 1764, and if that description is accurate and should now be accurately run just exactly as it was surveyed in 1764, it would bring the surveyor correctly to the third corner. But the surveyor says the surveys of those olden times were not correct, that their instruments

were not accurate as they are now. If the old survey was inaccurate and the present one is accurate, then the present survey would not come to the same point that the old survey reached on the corner. Now, in order to get at the third corner by survey, Mr. Roone tells us, you begin at the fork of the Ringwood and Long Pond rivers at a chestnut tree there, and then you must measure about a mile to get to the beginning point of the Ringwood tract. The surveyor in 1764 says you must measure 76 chains. If he made a mistake you cannot find out where the end of his line is. But if he did not make a mistake, Mr. Roone says he can find the end of the 76 chains. Then you have to go nearly two miles in order to get to the second corner of the Ringwood tract. The same question arises as to this line, whether the old survey was accurate; and then to get to the end of the second course you have to go over still another line, a distance in all of about five miles, to find the third corner of the Ringwood tract, The question is whether the jury thinks that a survey made with exactness now comes out at just the same point at which the survey made in 1764 came out. If you believe that, then Mr. Roone tells you this elbow in the westerly lines on the map is the third corner of the Ringwood tract according to that survey, and the property described in the Bell survey is this property which is in pink. That is one way of getting at the third corner of the Ringwood tract. The element of mistakes is this old survey of five miles long. Mr. Edsell, the surveyor, undertook to describe the third corner of the Ringwood tract and he says in the Stevens' survey it was 12 chains away from the top of a hill and 12 chains in a certain direction, namely a course north 34 degrees east. We asked Mr. Roone where the top of the hill was and he said about here, a little northwest of a hill. I think Mr. Morris said it was about here in the same place, now, Mr. Edsell said the end of the second course of the Ringwood tract or the third corner of the Ringwood tract which is the same thing, was 12 chains from that in a direction north 34 degrees east, which would make the third corner here according to Mr.

Edsell's survey made in 1811. If Mr. Roone is right in saying that is the top of the hill, and Mr. Edsell was right in 1811 in his location of the third corner of the Ringwood tract, then the third corner is 12 chains north 34 degrees east of this place indicated as the top of the hill, and if that be so, then in order to determine what property is described in the Bell survey, you have to imagine the southwesterly corner of the large tract on the map moved up to the top of the hill. That would leave out the disputed territory from the Bell survey. In determining the third corner of the Ringwood tract, you select between those two which you think most likely to enable a surveyor to get at the third corner, if he starts five miles away from here and measures five miles around, or is he most likely to reach it if he starts at the top of the hill and measure 800 feet.

A Juror:—We would like to have some information as to what rights Charles Morris would have under his father.

The Court:—He acquired the rights of his father, by his father's will. Whatever rights his father had acquired by adverse possession, or whatever adverse possession his father had or exercised, would be transferred to Charles Morris by his father's will. It is the same for all the purposes of adverse possession if the man who had begun the adverse possession, were now here defending in Charles Morris's place, or if his brother who willed the property to his father were here. The death of the master does not destroy the possession, if he devised his right to his descendant, and his descendant continued in possession.

And thereupon the jury again retired and came into court again, and said that they have agreed upon their verdict, and by their foreman say that they find the defendant not guilty, and so say they all, &c.

And thereupon, afterwards, to wit:—on the second day of February, A. D. eighteen hundred and eighty-three, it was ordered and adjudged by said Circuit Court, that judgment final be entered on said verdict in form of the defendant for costs to be taxed. 10

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The foregoing was presented to me so long after the trial, that I am unable to certify as to its accuracy. I have signed the bills of exception solely, because of the annexed stipulation of the attorneys, dated November
20 18th, 1885.

November 23rd, 1885.

JONATHAN DIXON, Judge.

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We, hereby agree that the foregoing, shall be returned with the writ of error, to be issued in the foregoing case, as the exception, &c., with the certified record, and with said record shall constitute the state of the case, upon which the case in the Court of Errors and Appeals shall be argued, November 18th. 1885.

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A. B. WOODRUFF,
Attorney for Plaintiffs, Cooper & Hewitt.

EUGENE EMLEY,
Attorney for Defendant, Charles Morris.

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Filed November 23rd, 1885.

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WM. M. SMITH, Clerk.

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