

vol. LXXVI
1882

COURT OF ERRORS AND APPEALS.

Between

RICHARD SHIVERS and RICHARD

L. SHIVERS,

Appellants,

and

CHARLES SHIVERS,

Respondent.

ON APPEAL

FROM

DECREE

10

IN CHANCERY.

Brief of Bergen & Bergen, Counsel of Appellants.

20

I.

There is no dispute in this case as to the existence of a right of way; but there is as to the nature and character of the way in question.

The respondent by his bill, filed in the Court of Chancery, claimed a right of way by *prescription* from his farm across the farm of his brother Richard, occupied by Richard L. Shivers, a son, the appellants, and obtained an injunction from the Court of Chancery, restraining appellants from erecting a gate in said way or lane.

10 The defendants answer in effect, admitting the existence of an easement, but denying that it arose by prescription, and stating that it arose from necessity on the division of the seizin of adjoining farms, and that from its nature and quality it is subject to reasonable gates; and that it is part of a by-road extending also across respondent's farm.

20 There is little or no conflict of testimony in the case. The way has existed across both farms to A, on map, since 1808; and of course across Richard's farm, since 1848, the time claimed in respondent's bill. In 1848 the father conveyed the one farm to Richard and the other to Jehu, reserving some back wood land to himself. Nothing was said in the deeds about the way and it is one *ex necessitate*. *with such qualities as are necessary only*

Blakely vs. Sharp, 1 Stock 9; 2 Stock 206. *3 Keub 419. 420*

Fetters vs. Humphreys, 4 C. E. Gr. 476. *Wash E + S (187) 257*

Stuyvesant v Woodruff 1 Zab 152

Baker v Frier 45 Maryland 337

30 Jehu in 1866 conveyed his farm to Charles, the respondent. Charles has only owned it since 1866, and the gate complained of was erected in 1876—ten years—not sufficient to establish a prescriptive right, even though he laid claim to same at the time of his getting title.

Jehu says, while he owned the place, that is, from 1848 till 1866, Richard had the right to erect the gate complained of; that it was the understanding between them that Richard could erect reasonable gates. Richard affirms this, and it is not denied in the case. There can then have been *no prescriptive right accruing*

against the appellants, even on the theory of respondent's case; for proof that the servient owner acquiesced in and conceded the adverse claim, is indispensable in proving title by adverse user. He must have notice of the claim; he must not dispute it; he must concede it; and an understanding or verbal agreement of the parties to the contrary, is sufficient to rebut the presumption of a grant; [REDACTED]

The burden of proof of prescriptive right, is on respondent. 10

Lehigh Valley R. R. Co. vs. McFarlan, 3, Stew. 181.

Powell vs. Bragg, 8, Gray, 441.

Bachelor vs. Wakefield, et al., 8, Cush, 249.

Calvin vs. Burnet, 17, Wend. 568.

Sargent vs. Ballard, 9, Pick. 251.

20

II

What this way was in 1848, at the time of the division of the place, it has ever since continued to be; nor can it be changed from the *qualities* it then had except by the agreement of the parties to it, or on due notice to the servient owner that a particular claim was accruing against him by prescription. Mere user or non-user, is not sufficient to change the *quality* of an established 30 easement. It is always presumed to continue as originally established. *with its necessary qualities only*

Johnson vs. Hyde, 6, Stew. 642 and 649.

Seymour vs. Lewis, 2, Beas. 439.

National Guaranty and Insurance Co v Donald 4 H & N 8

That the way was then, (1848) subject to gates, appears not only from the evidence of Richard, that that has always been one of its qualities, and is to-day, and of Jehu, that it was from 1848 to 1866, while he held title, and that Jehu is undenied; but, also, from the fact that no claim to the contrary was ever made till just before this suit was commenced and the gate complained of had then been submitted to without complaint, for two years; and from the fact that bars
 10 were some years before in almost the identical place of the gate complained of; and, also, that the gates in the balance of the way, that over Charles's land, have always been erected and changed at will.

20

III.

Use of way unchanged as to gates for twenty years has not been proved. It is too narrow a view to say that the question is whether a gate has been at the disputed point for twenty years. It is whether the way from Charles's to the road over Richard's land is subject to gates.

The way is claimed from 1848. The gate between Richard and Jehu was first erected in 1859; it was erected over a part of this way *because it swings entirely over Richard's land*. The gate in question was erected in
 30 1876. No prescriptive right could have been gained either in the last *seventeen* years, from 1859 to 1876, or the first *eleven* years, from 1848 to 1859, even if claimed to have been accruing. Of course, since the gate in question was erected no adverse right could be accruing.

Besides, the way thus brought in question by the bill, is but part of an agricultural way extending also over

3539 2576 2736

respondent's farm, the whole of which originated at the same moment and has continued to the present time. Respondent has freely erected gates in his part according to his necessities. The right to erect necessary gates is a quality that attaches as well to appellants' part. The way is all one—one in inception, one in occupancy, one in character and quality.

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IV.

The respondent, by his bill, concedes this to be a private way for agricultural purposes. Such a way, by law, is subject to necessary gates.

Bean vs. Coleman, 44, N. H. 539.

Huson vs. Young, 4, Lansing, (N. Y.) 63.

Maxwell vs. McAtee, 9, B, Monroe, (Ky.) 20.

Bakeman vs. Talbot, 31, N. Y. 366, (4 Tiff.)

Houper v Alderson 22 Iowa 162

Washington on Eas 195-

20

That the gate in question is a necessary gate, appears from the testimony of

Richard L. Shivers, p 20 and 21. 7. 18²² 36

Jehu Shivers, p 25 and 26.

Samuel G. Stone, p 28.

David Shivers, p 29.

Richard Shivers, p 36.

John C. Shreve p 14-23

30

No evidence contra

- from Charles having 3 inside gates within part of way

V.

Is not this a by-road? At least since private or by-roads are by statute subject to gates, how much more are private ways?

Rev. p 1001 § 30 and 31 : p 418 § 21 and 22.

Van Blarcorn vs. Frike, 5 Dutch 68 and 516.

N. J. COURT OF ERRORS AND APPEALS.

BETWEEN

CHARLES SHIVERS,

Respondent,

and

RICHARD SHIVERS,

and

RICHARD L. SHIVERS,

Appellants.

On Bill for Injunction.

Appeal from

Opinion of Chancellor.

POINT OF RESPONDENT.

The respondent, or those under whom he derives his title, have had the exclusive enjoyment of the leasehold adversely, since 1848, uninterruptedly without obstruction, and therefore, the legal presumption is, that the right was originally acquired by title.

Twenty years' use of a way is prima facie evidence of a prescriptive right.—Bouvier's Law Dic., and cases there cited.

Washb. on E. and S., p. 66.

Shreve vs. Voorhees. 2 Gr., ch. 25.

Hulme vs. Shreve. 3 Gr., ch. 116.

Shields vs. Arudt. 3 Gr., ch. 234.

The Society, &c., vs. Holsman. 1 Hals. ch. 126.

Stuyvesant vs. Woodruff. 1 Zab., 134.

Del. & Rar. Canal Co. vs. Wright. 1 Zab., 469.

Campbell vs. Smith. 3 Hals., 140.

Thorp vs. Cowan. Spencer, 311.

Earle vs. De Hart. 1 Bees., 280.

Lehigh V. R. R. vs. McFarlan. 3 Stewart, 184.

Palmer vs. Wright. 58 Ind., 486.

N. J. COURT OF ERRORS AND APPEALS.

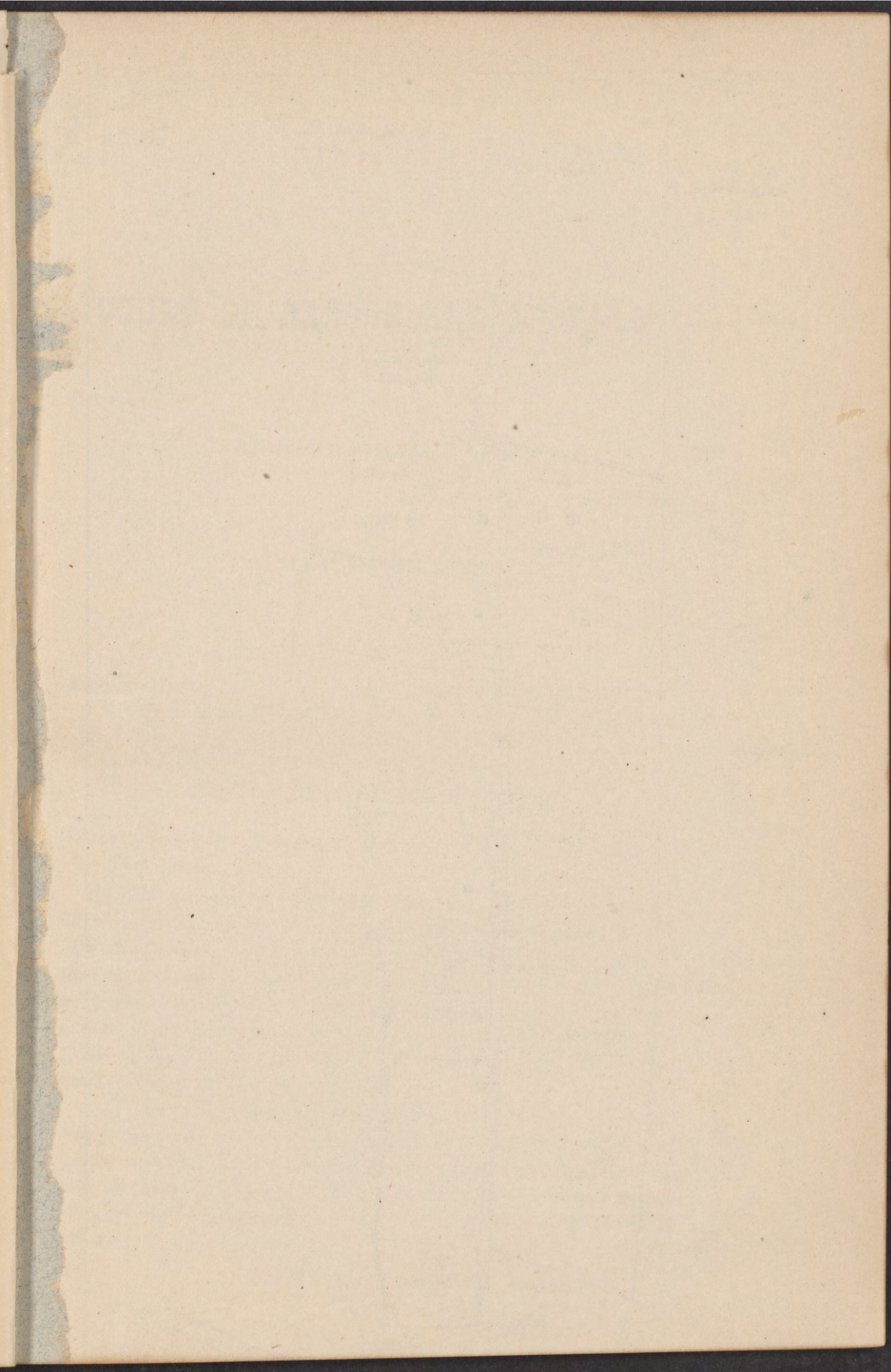
On Bill for Injunction.
Appeal from
Opinion of Chancellor
for.

Respondent,
CHARLES SHIVERS,
and
RICHARD SHIVERS,
and
RICHARD J. SHIVERS,
Appellants.

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Washb. on R. and S., p. 66.
Shreve vs. Voorhees, 2 Gr. ch. 25.
Hulse vs. Shreve, 3 Gr. ch. 116.
Shields vs. Arndt, 3 Gr. ch. 234.
The Society, &c., vs. Holman, 1 Hals. ch. 126.
Stuyvesant vs. Woodruff, 1 Nab. 134.
Del. & Har. Canal Co. vs. Wright, 1 Nab. 469.
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Lehigh V. R. R. vs. McFarlan, 3 Stewart, 184.
Palmer vs. Wright, 58 Ind., 486.



Whiskey

Road

In Charge of Mr. J. P. ...

Charles Shivers ...

Land of General Deemy

Land of Richard Shivers

Land of Jas. Walters

40-a

R

Land of C Charles Shivers 8 1/2 acres nearly

Land of John C. Shreve

Land C

Land C 10 1/2 acres

Assessment paid ... by ...

Charles Shivers

Shivers

Land of Susan Humphreys

C

Orchard

Land of Charles Shivers

R

Land of Richard Shivers

Land of Richard Shivers

R

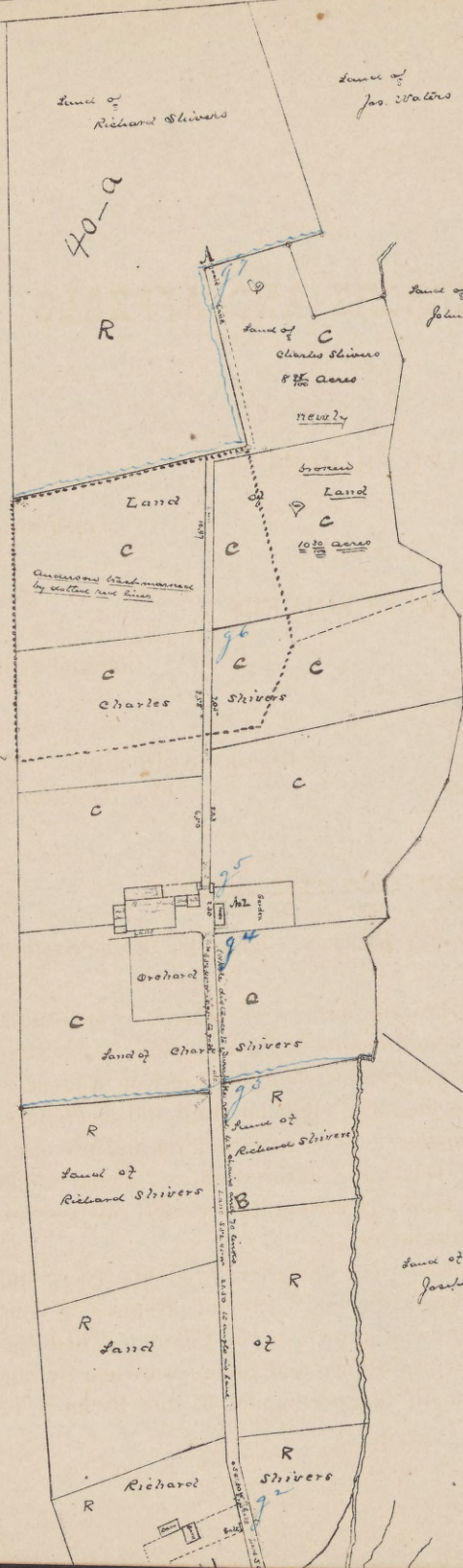
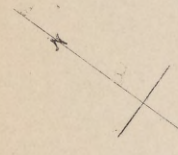
Land of

Land of Joseph Shivers

R

Richard Shivers

Shivers



See back of book
for Brief of Bergen + Bergen

COURT OF ERRORS AND APPEALS.

Between

RICHARD SHIVERS, et al., 10

Appellants.

and

CHARLES SHIVERS,

Respondent.

ALFRED HUGG,
For Respondents.

BERGEN & BERGEN,
For Appellants. 20

BILL OF COMPLAINT.

To the Honorable THEODORE RUNYON, Chancellor of the State of New Jersey.

Humbly complaining showeth unto your Honor, your orator, Charles Shivers, of the city and county of Philadelphia, in the State of Pennsylvania, that on or about the twenty-first day of August, in the year of our Lord one thousand eight hundred and forty-eight, 30 he became seized and possessed of a certain farm and premises, situate in the township of Delaware, in the county of Camden and State of New Jersey, containing forty-eight acres and thirty-seven hundredths of an acre, more or less.

And your orator further showeth that there is situate, lying and being, adjoining, and between the said farm and premises of your orator and the public highway known as the Camden, Ellisburg, and Marlton turnpike, a certain farm and premises owned by one Richard Shivers, and now in the occupancy of one Richard L. Shivers. 40

And your orator further shows that he and his tenant had and had been accustomed to have, a right to pass and repass by a certain way, or lane, to and from his farm, into, through, and over the farm and premises of the said Richard Shivers, unto and into the said the Camden, Ellisburg, and Marlton turnpike, the said way or lane being sixteen feet wide, which said way or lane now is, and hath for upwards of twenty years last past, been used by your orator, and the former owners and occupants of his said farm and premises, to pass and repass to and from his farm, with carriages
 10 and horses, cattle, etc., unto and into the said public highway or turnpike, and the same has been from time to time (excepting that part thereof between the farm of said Richard Shivers and said highway turnpike, which has been repaired and kept up at the joint expense of your orator and the said Richard Shivers), for upwards of twenty years last past, repaired at the expense of your orator and the former owners and occupants of your orator's said farm and premises.

And your orator further showeth that he ought now and at all times, to have the free use of the said way, or lane, for himself, his
 20 tenants, carriages and horses, etc.. from all let, interruption and hindrance whatsoever, but that the said Richard Shivers and Richard L. Shivers has erected, or caused to be erected, at the distance of about nine chains and fifty links from the entrance to said way or lane, on the said highway or turnpike, a gate, posts and fences, immediately upon and across the said way or lane, and intends and threatens to erect other gates, posts and fences across the same. And that, by the erection of said gate and gates, the said way is, and must necessarily and unavoidably be much
 30 obstructed, and rendered much less convenient to your orator and the occupants of his said farm, and to the damage and nuisance of your orator, and that your orator will not have the use and enjoyment of said way or lane, in so beneficial a manner as he has hitherto been accustomed to have. And that your orator or some other person or persons for him, hath frequently and in a friendly manner applied to the said Richard Shivers and Richard L. Shivers, and requested them to take down and remove said gate, posts and fences, and not to erect any other gates, posts and fences across said way or lane, and your orator well hoped that said Richard Shivers would have complied with such reasonable requests of your
 40 orator as in justice and equity he ought to have done. But now so

it is, may it please your Honor, that the said Richard Shivers and Richard L. combining and confederating with divers other persons at present unknown to your orator, but whose names when discovered, he prays may be herein inserted with proper and apt words, to charge them, as parties hereto, and contriving how to wrong, injure and aggrieve your orator in the premises, he the said Richard Shivers, absolutely refuses to comply with such reasonable requests, and pretends that he has the right to erect gates upon and across said way or lane; all which actings and pretences are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof and forasmuch as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, and without the assistance of this honorable Court where matters of this nature are particularly cognizable and relievable. 10

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were herein again repeated, and thereto particularly interrogated, paragraph by paragraph, and that the said defendants, their servants and workmen, may be restrained by the order and decree and writ of injunction of this honorable Court from creating any gate or gates, posts or fences, in or upon and across said way or lane, and may by the order and decree of this Court be compelled to take the gate, posts and fences now erected across said way or lane, by the said defendants, and that your orator may have such further and other relief in the premises as the nature of the case may require and shall be agreeable to equity and good conscience. 20 30

May it please your Honor, the premises considered to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable Court, to be directed to the said Richard Shivers and Richard L. Shivers and their confederates when discovered, their agents, workmen and servants restraining and enjoining them, and every of them in manner aforesaid; and also a writ of subpoena, issuing out of, and under the seal of this honorable Court, to be directed to the said defendants and their confederates, when discovered, commanding them and every of them, on a certain day 40

and under a certain penalty therein to be inserted, to be and appear before your Honor, in this honorable Court, then and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

ALFRED HUGG,

Solicitor of and Counsel with Complainant.

NEW JERSEY, {
10 CAMDEN COUNTY. } ss.

Charles Shivers

that the matters and things set forth in the above bill are true, and that the said Richard Shivers and Richard L. Shivers have erected, or caused to be erected, in and across the way or lane leading from the public highway known as the Camden, Ellisburg and Marlton turnpike, over the farm of said Richard Shivers to the farm and premises of this said Charles Shivers, in the township of Delaware, in said county and State, over and through which way or lane this said Charles Shivers has access to his said farm,
20 and that said Richard Shivers intends and threatens to erect other gates in and across said way or lane, and this further sayeth, that he, and the former owners of his said farm, has had the free and uninterrupted use of said way or lane for over twenty years last past.

Subscribed at Camden, this day of Sept., A. D. 1878, before me.

ANSWER.

30 The joint and several answer of Richard Shivers and Richard L. Shivers to the bill of complaint of Charles Shivers, complainant. These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint, contained for answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say (they admit that the complainant, Charles Shivers, is the
40 ware, county of Camden, and State of New Jersey, and that the

same contains the number of acres in said bill mentioned, but deny that he came possessed or owner of the same on or about the twenty-first day of August, eighteen hundred and forty-eight; and these defendants further admit that a part of the farm of the defendant, Richard Shivers, lies between the lands of the complainant and the Camden, Ellisburg, and Marlton turnpike, and that the same, together with the other portions of the farm of the defendant, Richard Shivers, is in the occupancy of the defendant, Richard L. Shivers; and these defendants further admit that there is a certain lane or by-road, a part of which passes over the premises of the defendant, Richard Shivers, by which the complainant has been accustomed for *many* years to pass from his property to the Camden, Ellisburg and Marlton turnpike; but deny that the complainant, or any of the former occupiers of the property now owned by him, have ever been put to any expense in the repairing of said part of said lane or by-road; and these defendants, further answering, deny that the said complainant ought now and at all times to have the free use of said lane or by-road for himself, his tenants, carriages and horses, etc., from all let, interruption, and hindrance whatsoever. And these defendants admit that about two years ago they did erect, or cause to be erected, a gate across the said lane at or about the place mentioned in the complainant's bill. And these defendants, further answering, deny that by the erection of said gate the said lane or by-road was, or is, in any wise obstructed or rendered less convenient to the said complainant or the occupants of his said farm. And these defendants deny that said lane or by-road is sixteen feet wide or any other uniform width. 10

But these defendants, further answering, charge the truth to be, that in the year eighteen hundred and eight, or about that time, one Isaac Shivers, the father of the complainant and of the defendant, Richard Shivers, became the owner of the farm of the defendant, Richard Shivers, shown by letter "R" on the map attached hereto, and forming a part of this answer; and also of a large portion of the farm of the complainant, shown on the map by letter "C," they forming one farm and having but one set of buildings, at the site now occupied by the buildings of Richard, marked on the map (No. 1), and at that time there existed a lane or by-road (a part of which is referred to in the bill of complaint), extending from the public road at or near where the Camden, Ellis- 20 40

burg and Marlton turnpike now is, over and across the lands now of the defendant, Richard Shivers, and the lands of the complainant, to the eastern extremity of said lane, as shown on said map and marked by the letter "A;" that said lane was used by said Isaac as an outlet to the public road, and as a means of conducting his cattle, and carting the products to and from the different parts of his said farm to the buildings thereon; that the said lane was there located at or near wherein the same now is and as shown on said map; the map having been slightly changed by the different
 10 owners of said lands, but the right to pass and repass from the main road aforesaid to the eastern extremity of said lane, marked "A" on said map, has till within a short time remained undisputed between the parties hereto, or those under whom they respectively claim, and that the same then had swinging gates at such places along the line thereof as suited the owner's convenience, and as became necessary for the cutting off or shutting up his cattle from or unto different portions of said farm.

That on or about the year eighteen hundred and forty-three the said Isaac — erected other buildings on said farm, now known
 20 as the buildings of the complainant, and marked on said map as No. 2, and at or about that time the said Isaac moved from the buildings now of the defendant, Richard, marked No. 1, into the buildings now of the complainant, marked No. 2, and at the same time the said Isaac divided the said farm into two parts or farms, the different portions marked on the map by the letter R constituting one farm, and those or a greater portion thereof marked on the map by the letter "C," constituting the other farm; the defendant, Richard, remaining in possession of the buildings No. 1, and in the occupancy of that part of the premises marked R," as the tenant
 30 of the said Isaac from that date to the year eighteen hundred and forty-eight, covering a period of about five years, and during the whole of said period the defendant, Richard, used that portion of said lane, westward of the buildings No. 1, occupied by him as an outlet to the main road, and that portion of said lane eastward of buildings No. 1, running across the lands thus occupied by said Isaac, for the purpose of conducting his cattle, and the necessary carting to and from the buildings to the different portions of the farm so occupied by him, and during the whole of said term the said Isaac exercised the privilege, and
 40 had swinging gates in that portion of said lane crossing the

premises occupied by him at such places as he desired, and the defendant, Richard Shivers, exercised the same privilege, and had swinging gates in that portion of said lane running across the premises so as aforesaid occupied by him.

That afterwards, to wit, on or about the twenty-first day of August, A. D. eighteen hundred and forty-eight, the said Isaac Shivers, by his deed dated on that day, conveyed to the said defendant, Richard Shivers, all that portion of his farm so divided, and so as aforesaid leased to said Richard Shivers, and designated on the map by the letter "R," a portion of which is situate on either 10 side of the remaining portion so as aforesaid occupied by himself, and by deed bearing date on the same day the said Isaac conveyed to one Jehu Shivers (a brother of the complainant, and the said defendant, Richard Shivers), all that portion of his said farm so, as aforesaid, occupied by himself, and not already sold to Richard, and designated on the map aforesaid by the letter "C;" that from that date up to the the twenty-fourth day of March, eighteen hundred and sixty-six, the said Jehu, and the defendant, Richard Shivers, together used said lane as the necessities of each one required, and they respectively exercised the privilege in such portions of the lane running across their lands of hanging swinging gates at such places therein as suited their convenience and interest. 20

That afterwards, on or about the twenty-fourth day of March, eighteen hundred and sixty-six, the said Jehu Shivers, by his deed dated on that day, conveyed to the complainant the lands so as aforesaid conveyed to him by said Isaac—and designated on said map by letter "C;" that the said lane was then open as designated on said map from the Camden, Ellisburg, and Marlton turnpike eastward to that point designated by the letter "A" in the 30 common use of the owners and occupants of the farm of the defendant, Richard Shivers, and the owners and occupants of the farm of the complainant, subject only to the right of each party to hang swinging gates in that portion of the lane passing through their respective lands.

And these defendants, in further answering, say that at the time of the purchase of the said property by the said complainant he had full notice of the right of each party to hang swinging gates in said lane as aforesaid, for at that time there were no less than six swinging gates in said lane, and since that time the said com- 40

plainant has exercised, and still exercises the right to hang swinging gates in that portion of the lane passing through the property so as aforesaid owned by him, and has changed the location of the swinging gates from the places they were in at the time he purchased the said property, and has put up said, and other gates in said lane.

And these defendants, further answering, say that they are dairymen, and of necessity have a large number of cattle on said farm, and it is frequently necessary during the grazing season to
 10 bring said cattle to the buildings three or more times a day for water and to be milked, and to prevent them from straying up said lane into the fields of defendants, and into the lands of the complainant, these defendants for their own protection, and to prevent injury to the complainant, and having a right to do so as they believe, did some two or three years ago erect said gates so complained of in the complainant's said bill.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they, or either of them, are charged in and by said bill of complaint, without this that there
 20 is any other matter, cause, or thing charged or contained in said bill material for them, or either of them, to make answer unto and not herein and hereby well and sufficiently answered, traversed, denied, avoided or confessed, is true to the knowledge and belief of these defendants.

All which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable Court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BERGEN & BERGEN,

30

Solicitors of and of Counsel with Defendants.

MAP.

STATE OF NEW JERSEY,

CAMDEN COUNTY.

Richard Shivers being duly sworn according to law, and Richard L. Shivers (alleging himself to be conscientiously scrupulous of taking an oath), being duly affirmed according to law, say,
 40 they relate to their, or either of their own acts, are true, and so

far as they relate to the acts of others they believe them to be true.

RICHARD SHIVERS.

R. LEVIS SHIVERS.

Sworn and subscribed at the county aforesaid this day of December, A. D. 1878, before me a Master in Chancery of New Jersey.

S. D. BERGEN.

REPLICATION.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the 10 said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is, and will be ready to aver and prove, as this honorable Court shall direct, and humbly prays, as in and by his said bill he has already prayed. 20

ALFRED HUGG,

Solicitor for and of Counsel with Complainant.

DEPOSITIONS.

Examination of witnesses in the above stated cause taken before Richard T. Miller, a Master and Examiner of this Court, at his office, No. 106 Market street, Camden, New Jersey, on Tuesday, January twenty-eighth, eighteen hundred and seventy-nine, at the hour of 10 o'clock, pursuant to notice hereunto annexed, with acknowledgment of service thereon indorsed, in the presence of 30 Alfred Hugg, Esq., solicitor of the complainant, and Martin V. Bergen, of the firm of Bergen & Bergen, solicitors of the defendants.

BENJAMIN SHIVERS, a witness produced on the part of the complainant, being duly sworn on his oath, saith: I am a half-brother of Charles and Richard Shivers; I am fifty-six years old. I know the farms of Richard and Charles Shivers; Richard's farm fronts on the Marlton pike, and part on Whiskey road, in Delaware township, Camden county; Charles' farm is situate between the two parts of Richard's farm. The farm of Charles Shivers is 40

reached from the Marlton pike through Richard's farm, by a lane; this lane is about twelve to fifteen feet wide, probably wider in some parts. There has been a lane there since I can remember, some forty-five years. There are no gates in the lane, except at the entrance from Marlton pike. The lane does not extend to the pike. The gate is right on the pike. I saw the lane in October last; there was a gate in the lane at that time, across the lane, about opposite Richard's barn, about one hundred and fifty yards from the Marlton pike. When I was a small boy there used to
 10 be bars at the end of the lane, where the lane entered the meadow, about one hundred yards from the Marlton pike, and about one hundred feet nearer the Marlton pike than where the gate now complained of now is. There has been no gate or bars in the lane, except at the Marlton pike, for over twenty years.

Cross-examined :

I have lived on these places, or parts of them. I lived in the house which Richard now owns. I was born there, and lived there until the year eighteen thirty-seven. My father, Isaac
 20 Shivers, owned the property at that time. He occupied it at that time. I lived with him. I never farmed this farm, I simply lived with my father. At the time I lived with my father on the farm that Richard now owns, he occupied both farms, except land that is known as the Anderson tract, and except some that has since been purchased by Richard of other parties. The part that Richard purchased is the part of Richard's farm that lays next to the Marlton pike. My father occupied this as one farm, with the two exceptions above named, that he did not own. Witness being
 30 says: As far as I am able to tell, that looks like the land in question, with the exception of the Anderson tract. That map shows all the land that my father used and occupied as one farm at the time I lived with my father in the house now owned by Richard. The Anderson tract is represented by the dotted lines. At the time I lived with my father on the property where Richard's buildings are, the buildings where Charles lives were not erected, except the barn, which was built just previous to the time I left, which was in eighteen thirty-seven. Up to the time I left this was occupied as one farm by my father. The lane then ran out from where the
 40 house now stands, about fifty yards from where the lane now is.

The lane, as represented on the map, shows about where the lane was at that time, as near as I can tell, from Richard's house out back on the farm ; if there have been any changes, they have been slight. The farm at that time was divided into fields and fenced, except the timber lands. The lane at that time was fenced, except that portion between the house and the Marlton pike. The lane fences were about as they are now, but the fields have been changed a little. The lane at that time only went a little beyond where Charles' house now is. My father, to reach the timber land, went across the field right along by what is now the Anderson 10 tract. There were no gates or bars in that lane, except what was at the end of it. Charles' buildings were built in eighteen forty-two. I lived there during the year forty-four. My father moved into the new buildings in forty-three. At the time my father lived in the new building, he occupied the part that Charles now owns, except the Anderson tract ; Richard occupied the balance of it. I don't think at that time Richard occupied the part of the farm that lies on Whiskey road.

BENJAMIN SHIVERS.

Sworn and subscribed before me this 28th day of January, 20
A. D. 1879. RICHARD T. MILLER, M. C. C.

CHARLES SHIVERS, Jr., a witness produced on the part of the complainant, being duly sworn on his oath, saith : I live in Camden. I am thirty-five years old. Charles Shivers, the complainant, is my father. Richard Shivers, the defendant, is my uncle. I know the respective farms of Charles and Richard Shivers. I have known them since I could remember—since eighteen hundred and fifty, I should judge. That map, Exhibit No. 1, of defendants, is, as near as I can recollect, an accurate map to 30 reach my father's farm by the lane represented on the map. There is a gate on the Marlton pike. There is another gate opposite the barn of Richard Shivers. The gate opposite the barn was put there about twenty months ago. There has been no gate at the barn since eighteen fifty-four until twenty months ago. This lane extends from the Marlton pike by father's house to the Anderson tract. The lane runs over the lands of my uncle Richard from the Marlton pike until it reaches the land of my father, beyond that it runs over the land of my father. The only way to reach my father's land is by this lane. I have had a conversation with 40

Richard Shivers, one of the defendants, in reference to the erection of this gate. He told me at the ferry, in Camden, within the last six months, that the gate was put there by Levis Shivers for his own convenience. I asked Richard if he had ordered the gate to be put there; he would not say yes or no, but that he, Richard, had a right to have that gate there, and if we did not settle soon he would put a dozen gates there, or a gate every hundred feet, and if he did so, it would detract fifty dollars an acre in the value of the farm. Nobody would buy father's farm, if he wanted to sell,
 10 with a lane full of gates. I was sent by my father to see Richard to know who ordered the gate put there. He asked me why our men did not shut the gate in dispute when they went through. I told him the reason was that my father ordered them not to. He said if he was there, and the gate was not shut after they went through, or promised to shut it, they would have to drive over his dead body before they got through. I know the handwriting of Richard L. Shivers. Witness shown two postal cards marked Exhibits A and B, on the part of the complainant, says: The writing on these postal cards is the handwriting of Richard L. Shivers.

20

Cross-examined:

My father has ninety-three acres. My uncle Richard has about ninety acres. I have lived where my father now owns. My brother, William A. Shivers, lives there now. I have gone out to the Whiskey road, from my father's buildings several ways, mostly through Joseph Walter's land, which adjoins my father's. I have gone out with a horse and wagon. I have gone out across my uncle Richard's land two different ways across the head land. There are two gates on Whiskey road on my uncle Richard's
 30 land.

Objected to as not proper cross-examination.

The two gates on Whiskey road are about fifty yards apart. The most northerly gate has been locked up for six or eight years. The other one has been locked up since last August. The one opposite the lane has been locked last. I have been through that gate about three times since my father owned the place. There is a gate at the place marked on the map as letter A. That gate shuts off Richard's land from my father's. That used to be woods. In going from the house we went up the lane as it now is to letter
 40 A, then across my father's land, southeast to Joseph Walter's land,

then across his land to the Whiskey road. When my uncle Richard or Levis went up through the lane they went up the lane as it is now designated on the map to the letter A. There is a gate at the letter A. There is a gate on our land before you get to the gate at the house. There is a gate on either side of the house. There is a gate at the line fence between my uncle Richard and my father. The next gate is the gate in dispute. The next gate is at the Marlton pike. The gate at the Marlton pike has been there since I can remember. The gate in dispute has been there twenty months about. The gate on the line 10 between father and uncle Richard has been there since about eighteen fifty-four. The gates at the house, I always remember them. The next gate on the Anderson tract has been there since eighteen sixty-six or sixty-seven. The gate at letter A on map, I think, has been there since eighteen seventy-two or three; there were bars previous to that. Previous to the purchase of the Anderson tract, I don't know how they got to letter A. Prior to eighteen hundred and sixty-six my uncle Richard always objected to our crossing over to Whiskey road from letter A on map.

CHARLES SHIVERS, JR. 20

Sworn and subscribed before me this 28th day of January,
A. D. 1879.

RICHARD T. MILLER, M. C. C.

JOHN C. SHREVE, a witness produced on the part of the complainant, being duly sworn on his oath, saith: I reside in Delaware township, Camden county, on the Marlton turnpike. I am seventy-five years old. I know the respective farms of Richard and Charles Shivers. I know where they lay. I should say that map represents the farms. There is a lane marked out on the map. I moved in that neighborhood in eighteen fifty-four. The 30 lane has been there ever since. The lane runs from the Marlton pike up to Charles Shivers' house. The lane has been used by Richard and Charles Shivers. Richard Shivers uses the lane to get to his house, a short distance, and to his fields, up to Charles Shivers' line. Charles uses the lane to go to his own house. There is a gate on the Marlton pike, and one opposite Richard's barn. There is one between Charles' and Richard's line further up. The gate near Richard's barn was put up about two years ago next spring. There was no gate in the lane except the others I have spoken of since I moved there, until about two years ago. 40

Cross-examined :

Richard lived on his farm himself in fifty-four, when I moved in the neighborhood. I was not acquainted with these premises previous to my moving in the neighborhood.

Q. What is this farm chiefly used for ?

Objected to as irrelevant, and not proper cross-examination.

A. It is used for farming purposes chiefly, and a dairy. There are about forty head of cattle on Richard's farm. It is necessary to bring the cattle from the fields to the barnyard to be milked.
 10 When they are taken out to pasture they are taken up this lane. Charles Shivers uses his farm for the same purposes. Mr. Charles Shivers takes his cattle to pasture by this lane also. I think that lane is properly designated on this map. There is a gate at the letter A. When I came there in fifty-four, there was a gate at the Marlton pike; one at the line between the line of Richard and Charles; two at Charles' buildings. There was none at the Whiskey road in fifty-four. There were no bars there at that time. Lane above Charles' house up to the letter A was used by Charles to drive his cattle, and Richard used it some for the same purpose
 20 some few years ago. I think I have seen Richard's cattle driven up this lane some two years ago. I think Richard drove his cattle up this lane from the time he bought the land on the Whiskey road up to about two or three years ago. The gates on this lane were put on for their own particular purposes, I suppose. These gates are used to turn the cattle off in different places.

Counsel of complainant objects to all testimony in reference to lane above Charles Shivers' line, and lane up to the letter A; also as to all evidence as to use of gates from Richard's line to the letter A; also in reference to the uses of gates above Richard's
 30 line.

JOHN C. SHREVE.

Sworn and subscribed before me this 28th day of January,
 A. D. 1879.

RICHARD T. MILLER, M. C. C.

WILLIAM N. SHREVE, a witness produced on the part of the complainant, being duly sworn on his oath, saith: I reside in Delaware township, Camden county; I know the farms of Charles and Richard Shivers; I am past forty-three years old; I never did any work on the causeway between Richard Shivers and the Marlton pike; I have known Mr. Charles Shivers to haul dirt between
 40 Richard's barn and the Marlton pike, also between Richard's barn

and Charles' line. The gravel came from the land of Charles Shivers. I saw John G. Shivers working at the culvert across the little run between Richard Shivers' barn and the pike; I saw him paid some money after the work was done by Charles Shivers; I have known that lane since I moved down there with my father twenty odd years ago; there was a gate on the turnpike, and a fence on the left hand side going up the lane to Richard's house; when we moved down, there was no gate in the lane until you reached Charles Shivers' line; There is one now opposite Richard's barn; I don't know who put it there. 10

Cross-examined:

I moved down there in fifty-four with my father. It was between four or five years ago I saw John G. Shivers at work on the culvert; I was on the lane going to Mr. Charles Shivers' when I saw him; William lived on Mr. Charles Shivers' place at that time; I am certain he lived there; John Shivers is a mason and lives in Haddonfield; he did work for my father soon after we moved down; that is how I got acquainted with him; I saw the money paid at Charles Shivers' house, out in the yard; the carpenters 20 were there building a kitchen at Mr. Charles Shivers'; William Hoopes, a carpenter, saw him pay the money to John Shivers; did not see him pay money to any one else; they were putting up a new kitchen; there was foundation to the kitchen; I don't think there was any cellar under the kitchen; the kitchen was lathed and plastered; I don't know whether Charles Shivers took any receipt for the money; I saw John Shivers hand Charles Shivers a piece of paper; I don't know what was on it; I did not see it; I was not doing anything there; I had not been to work for him then; I don't 30 remember the day of the week or the year it was; I think it was after dinner; it was not the same day that I saw John Shivers at work on the causeway that I saw the money paid; I think it was some two or three weeks afterwards; the work on the kitchen was done after I saw John Shivers at work on the causeway; the kitchen was not completed at the time the money was paid; they were there after the money was paid.

W. N. SHREVE.

Sworn and subscribed before me, this 28th day of January,
A. D. 1879.

RICHARD T. MILLER, M. C. C. 40

WILLIAM A. SHIVERS, a witness produced on the part of the complainant, being duly sworn on his oath, saith: I am the son of Charles Shivers, the complainant; I live on his farm in Delaware township; I am thirty-eight years old; I have lived there since sixty-six, thirteen years next month. I have known the farm ever since my grandfather lived where I live; there was a gate at the turnpike; since I have known this farm the lane has been changed. The lane used to run out and made a turn and came out about one hundred feet from where it comes out now, near Camden. The

10 lane from Richard Shivers' house to father's line is the same as it always was. There is a gate now back of Richard's barn, about seven hundred feet from the turnpike; there is no gate after you leave that until you reach Charles Shivers' line. I never knew of any gate from the turnpike to father's line until within the last three years, when the gate in dispute was put up, excepting the gate at the turnpike. We passed in and out without interruption all that time until this gate was erected. We have been interrupted by having to open the gate when it was shut. When we were seen coming up, some one would come out and shut the gate, so

20 that we would have to get out and open it. There is quite a hill there; the gate is erected on top of the hill; the descent of the hill is on the side towards the turnpike. When we go in with a loaded wagon we have to stop to open the gate; it is a strain on the horses. Neither Richard Shivers or Richard L. Shivers have not told me why they put that gate there. I have tried to remove the gate this summer or the early part of the fall; I think it was the latter part of the summer; I had myself, three of my men, a carpenter and my father. I was opposed by Richard L. Shivers and his men, and some five or six darkeys who live on the opposite

30 side of the turnpike in a place called Trohtown; one had a dung-fork and two of the others had big clubs. Richard L. Shivers struck pap and me also; I took him by the throat and pushed him back against the fence. We found we could have removed the gate, but not without a breach of the peace; we did not do it.

Cross-examined:

No person ever shut the gate in my face. I have seen R. L. Shivers shut the gate when I was turning in the lane at the pike; I have seen his darkeys do it also; I don't remember when this

40 was. I have seen it done several times when we were approaching

the gate and not close to it. I can't say exactly when it was that I saw Richard L. Shivers shut the gate, but I saw him do it. I do not recollect who was with me, or that any one was with me. I saw Richard L. do that once or twice. I don't now recollect when it was, or the time of year. I have known it shut in the winter time when it was not necessary. I was coming with a load of manure. The second time I don't know whether I was in a carriage or had a load on. I had just turned in from the turnpike and was coming down the hill. One time I was out on the pike; I had not turned in. That was the time I had the load of manure. I remember I had on a load of manure. I don't remember whether any one was with me, or whether there was two teams, or whether I was alone. I have seen the gate shut a number of times; shut by his men. I have seen Minos Polk do it a number of times. I have seen other men of his shut it a number of times when the teams or carriages were approaching. The only names that I recollect shutting the gate is Richard L. and Polk. That gate stands on the top of the hill. I mean to say that the wagon has to stand down hill to stop to open the gate, and it makes a tight start for the horses. The load has to be held by the horses when you get out to open the gate; the traces are always tight. It was before this suit was commenced that I went to remove the gate. The first time the gate was taken up I assisted in taking it up. My three men and my father went down there and took the gate up. I did not see anything of Richard L. Shivers at that time. The gate was afterwards put back. I think it was about a week from the time we took it down first to the time we went to take it away the second time. I took about six men with me the last time I went to take it down, my three men, a carpenter, my father, and myself. Mr. Shreve was there; we met him near the gate. I don't know whether he knew we were going to take it down or not. We took a hatchet, an axe, a slash-bar, a long handle shovel, and a spade or two. We took a mule and cart to carry the tools, a rail and a block. When we got there we knocked off one or two slats. Richard L. and his men came there when we got there. We both got there about the same time. He had a man named Henry Polk, a man named Henry Slayer, a Dutchman, I don't know his name. As soon as the noise was made, those men came from Trothtown, some running and some walked. The noise was carried by the quarrelling. These men from Trothtown did no

say anything yet. The reason that we did not take the gate down was because they turned on us. These four men were not too much for us, but this Trohtown reserve might have been too much for us. I don't know whether we retreated in good order or not; we left and went home. I did not see any blood spilt. I don't know whether pap was hurt much; he did not get time to get hurt. I was not hurt; my shirt was torn. I don't know whether Richard L. Shivers was hurt or not. Richard L. stood his ground because I held him up against the fence; I choked him. His feelings were
10 hurt. He said he held the fort.

Re-examination in chief:

I have done about three-fourths of the repairing on the lane. I have worked on all parts of it. I found about three-fourths of the material; Richard L. did the other part. I did less on the causeway than on the other part.

Re-cross-examination:

This work was chiefly done from our line gate to the foot of the
20 hill. It was done part above his house and opposite to it. The reason I did this work on the lane was because the lane was almost impassible. I did not do any work I was not forced to. I never was paid for this work. No one employed me to do this; I did it for my own salvation; I wanted a good road.

WILLIAM A. SHIVERS.

Sworn and subscribed before me this 28th day of January,
A. D. 1879.

RICHARD T. MILLER, M. C. C.

CHARLES SHIVERS, a witness produced on the part of the com-
30 plainant, being duly sworn, on his oath saith: I am the complainant in this cause. I reside in the city of Philadelphia. I am sixty-four years old. I own a farm adjoining one of Richard Shivers, on the Marlton turnpike. I purchased it from Jehu Shivers. Witness shown paper marked Exhibit C, on part of complainant, witness said: That is the deed from Jehu Shivers and wife to me, dated March twenty-fourth, eighteen hundred and sixty-six, and recorded the same day in the clerk's office of Camden county, in Book 48 of Deeds, page 159, &c. Jehu Shivers purchased the property from Isaac Shivers, my father. Being shown
40 paper marked Exhibit D, on part of complainant: This is the deed

from Isaac Shivers and wife to Jehu Shivers, dated August twenty-first, eighteen forty-eight. Recorded February nineteenth, eighteen fifty-seven, Book No. 28 of Deeds, page 636. Exhibit No. 1, on part of defendants, appears to be a representation of Richard's farm and my own; seems like a map I had surveyed. There was a lane there in eighteen forty-eight, the date of Exhibit D, without any gates except the gate at the Marlton pike. There was no gate at my line in forty-eight. I don't know when that gate was put there. Jehu put the line gate there a few years after he bought it. There is the one opposite Richard's buildings, the one in dispute. 10 I think it was put there the latter part of seventy-six, to the best of my knowledge. We have repaired the lane whenever it got bad. I paid money to John Shivers for repairing the lane. John Shivers was at work for me. He said I must pay him for the repairs, and I paid him three dollars and a half in the presence of William Shreve. It was for work done on the culvert, between Richard Shivers' house and the turnpike. That lane is the only way by which I reach my house from the turnpike. There has been no interruption to passage along this lane since forty-eight, until the erection of this gate in dispute. My father originally 20 owned these farms, and divided them into two. There has always been a gate at the Marlton pike.

CHARLES SHIVERS.

Sworn and subscribed before me, this 28th day of January,
A. D. 1879.

RICHARD T. MILLER, M. C. C.

Complainant here closes his testimony.

30.

DEFENDANT'S TESTIMONY.

Examination resumed February 19th, A. D. 1879, 10 o'clock A. M.; in the presence of the respective counsel of the parties pursuant to notice hereunto annexed, with service thereon acknowledged.

RICHARD L. SHIVERS, a witness produced on the part of the defendants, being duly sworn, on his oath, saith; I am one of the defendants in this suit; I reside on the farm of Richard Shivers, my father; he is the other defendant in this suit. I am thirty-two years old. This farm is situate on the Marlton pike, Delaware township, Camden county. Forty acres lies back of uncle Charles; 40

on Whiskey road. I was born there; have lived there ever since. Witness shown Exhibit No. 1 of the defendants, said: That map represents the part lying next to the lane and the part next to the Whiskey road; it represents all the land lying on the lane in which the gate in question is situate. I occupy my father's farm now as his tenant; I have been his tenant since the fall of seventy. At the time I took the place the part marked on the map as Charles Shivers was occupied by William Shivers, the son of Charles Shivers. The map represents the lane as it was when I
10 moved there from the Marlton pike up to near where the first gate above the buildings of Charles Shivers now is; it then bore to the right to the woodland; it then continued along the woods and along what was formerly the Anderson tract to the letter A. At the time I took the farm, in the fall of seventy, there was a gate at the Marlton pike, a gate on the lane between father and uncle Charlie, and a gate on each side of Charles' house, then a gate at the corner where the lane reached the woods. There was at that time at the letter A a pair of bars; there is where the lane ended. The whole lane was used for the purpose of the two farms; Charles
20 used it to get to his farm, and we used it to get to the forty acres. Above Charles' house I used the lane in getting to and from our fields, driving our stock; we raised produce up there, and carted the produce down the lane. I think the lane was changed in seventy-three, above where the gate first above Charles' building now is, as now designated on the map. The gate was moved from the corner of the woods and put over where it now is. Charles Shivers made that change. When it was changed, it was changed to run over another piece of his land; I think it is about one hundred and fifty to two hundred yards from where the gate used
30 to be at the woods to where it is now. Our use of it was not interrupted at that time. From the time it was changed, we travelled the way it is on the map. That is the only gate that has been changed on Charles' land during the time I have farmed my father's place. There is an angle in the lane between father and uncle Charles, as shown on the map, at the line gate between the buildings; this gate swings towards the Marlton pike. When this gate is open it swings over Richard's land. This gate was put there to keep the cattle from passing up the lane from our land to Charles' land. The land I occupy I use for farming and dairy
40 purposes; I keep from thirty to thirty-four cattle for dairy pur-

poses; the gate in dispute is opposite the buildings of Richard Shivers, about where it is shown on the map. I put that gate there in September, seventy-six. It was taken down after I put it there by Charles and William Shivers, with one or two other men; it was two years after I put it there that they took it down; it was September ninth, seventy-eight; it was replaced by me the next day. I put that gate there to keep our cows from going up the lane, in bringing them or turning them from the yard. In the summer season we would turn them in the meadow next to the pike to water, then on bringing them to the farm we can shut that gate, and we can drive them into the yard without their running up the lane a half a mile. We water the cattle all the time at the run by the Marlton pike. In the summer season we milk the cows early in the morning—at two o'clock; after milking them they are left in the yard until about four o'clock, when they are turned out to water or go to the field. About noon they are taken to the buildings and put in the stable, and, if they are in a field where there is no water, they are taken to the brook. When they are at the brook the gate at the buildings is of this use to us—by shutting the gate a boy or man can drive them right into the yard; before it was put there we very often had to jump over the fence and run to head them off, or station a man there to stop them; by the assistance of this gate one man can handle the cattle; without we would have to have some one to assist, or have a boy run up the lane to get the cattle back again; the line gate is too far off to answer the same purpose; the line gate is not usually closed when the occupants of Charles' place go through it, but is closed when we come to go through it. The gate in dispute stands on near about level ground; a loaded wagon standing at the gate, the horses would not have to hold it, it would stand of its own accord. I should think there is about a fall of one foot in fifty towards the pike at the gate. The land at the line gate is nearly on the level. The descent, if any, is towards the Marlton pike. I have never used this gate for the purpose of annoying the parties that live on Charles' place. I think I have shut it on one or two occasions, and on leaving the gate I have seen them coming. I never shut the gate for the purpose of annoying them—to compel them to open it. None of my men, by my orders, ever did it. Charles' gates have been closed when we were coming with our teams. That has occurred whenever we have gone up there; the last two years they

would perhaps be open when we would go up, but we would find them closed on our return. I have been within two hundred yards of the gate and had it shut. Complaints have been made to me by my men that the same thing had occurred to them. My orders to my men about the gates was always to leave the gates as they found them. Exhibit B, on part of the complainant, being shown witness, witness says: That refers to the gate on the Whiskey road and the gate at letter A on the map. It does not refer in any way to the gate in dispute. I had gates on the Whiskey road. At that
 10 time Charles had been using those gates to go out on Whiskey road across our fields. The reason I said I would explain why I would close those gates was: On Saturday afternoon Charles' cows were found in my corn-field, through which they passed, and they were driven out, though the gate was found open and the cows in the corn. That is the reason that I locked the gates—that I found his cows in the corn; and on Sunday evening I found the gate at the Whiskey road open about five minutes after William A. Shivers had gone through. The gates at the Whiskey road did not remain locked as I had left them; they were broken open. I think
 20 Charles Shivers, the complainant, told me he did it; he wished a notice from father at that time if we wished them to stop using that road. Exhibit A, on part of complainant, being shown witness, witness says: That refers to the gate in dispute.

Counsel for complainant objects to all the above testimony in reference to the lane from the house of the complainant to the letter A on the map.

Cross-examined:

The forty-acre tract is a part of the farm of my father, Richard
 30 Shivers. Charles Shiver's land lays between the forty acres and my father's land. The forty-acre tract and the part on the Marlton pike don't join. In order to reach the forty-acre tract, I have to go over the land of Charles Shivers. We have been in the habit of pasturing cattle on the land between the Marlton pike and the line gate. The gate in dispute was placed there in September, 1876. From 1870 to the time I put up the gate in dispute, I considered it necessary to put a gate there, and did not do so, for the reason—I don't know of any other reason than that it was one of the things that never got done. I was refused by Charles Shivers,
 40 or his tenants, the right to drive cattle over Charles Shivers' land,

beyond his house, to the forty-acre tract. That is not the reason that I erected the gate in dispute; I never saw a gate there before; I have threatened to put other gates on the lane for the reason that I could not make satisfactory arrangements to travel to the upper fields; and also to remove a part of the lane fence above, next to our last field, and hang a gate at letter B, where our fence cuts the lane. I don't know that I ever threatened to change the course of the lane, over to the Hampton line; I did say that if I had my way I would do it. The reason I can't have my way is because I don't own the land. I had my way about the disputed 10 gate.

Re-examined-in-chief:

The threats spoken of, of moving the fence and putting up others, is showed by Exhibit A, on part of complainant; I don't think I made any other threats about it.

R. L. SHIVERS.

Sworn and subscribed before me this 19th day of February,
A. D. 1879.

RICHARD T. MILLER, M. C. C.

20

JEHU SHIVERS, a witness produced on the part of the defendants, being duly sworn, on his oath says: I reside in Virginia. I am passed fifty-seven years old. I am a half brother to Charles Shivers, the complainant, I am the same relation to Richard Shivers, one of the defendants. My father's name was Isaac Shivers. My father first lived on the farm where Richard Shivers now owns. He occupied a part of that which is now Richard's and a part of that now occupied by Charles. When he lived where Richard now owns, he occupied all that part shown on the map as Richard's lands and other lands. He did not own that part as 30 shown as Charles' land, known as the Anderson tract included in the red dotted lines on the map. At that time my father got with his teams and cattle to the upper part of his land by a lane. The lane was about where it now is on the map, except there was no lane in the field next below the Anderson tract. We got to the woodland, the upper land, through the fields to the Anderson tract, then along the Anderson tract by the woods to the upper land. My father afterwards erected buildings on the site where Charles' buildings now are, first a barn and afterwards the other 40 buildings. I don't remember when that was. I lived with my

father and Richard at that time. At the time the buildings were being built I lived with my father. My father moved into these new buildings. I moved with him and lived there with him. At the time my father occupied the new buildings, Richard had that part between what is now the line of Charles and the Marlton pike. He had no other land at that time that belonged to father. My father had the balance excepting the Anderson tract. At that time the forty acres on Whiskey road, and the upper part of what is now Charles', was timber land. At that time there were build-
 10 ings on the Anderson tract. The parties on the Anderson tract at that time had a way out through Hampton's, and a way through the woods to Whiskey road. They did sometimes come down through the lane as shown on the map. My father sold the cleared land above the line fence to me. He sold the lower part to Richard, and the forty-acre tract on the Whiskey road that the timber had lately been cleared off. When the timber was cut off the forty-acre tract, the majority of it was brought along the lane as laid down on the map, except along the Anderson tract, to the Marlton pike. The two parts on the map marked C and D were
 20 in timber, and my father retained them. Richard reached the forty-acre tract by that lane along the Anderson tract around it, and so on to the tract. Then, when Richard wished to go to the forty-acre tract, he passed over the lands that I had purchased of my father, and partly over the lands that my father had retained. When I purchased this land, there was nothing said about the right of way of Richard to the forty-acre tract. I knew the lane was there; that father had occupied that part, and Richard had used it. I supposed that Richard, at the time I purchased, had a right to go up there. Richard always did use it while I lived there
 30 without any objection from me.

Q. Did your father understand that Richard had the right of way across his land to the forty-acre field at the time he conveyed the property to you?

Objected to by Mr. Hugg.

A There was nothing said between the parties. There never was any conversation either between my father and myself or Richard and myself about it. My father widened the road by cutting off a strip of timber along the fence along the Anderson tract. It was done in order to improve the road. The object might have
 40 been in hauling hay. The trees would pull the hay off. I had no

land above. It was done entirely for Richard's benefit. I afterwards purchased the Anderson tract. I bought it in three pieces. The route of the lane was changed soon after I purchased the first Anderson tract. It ran up over the land I purchased, and then out to father's land, where the old lane was. I think, in order to make no notch in the field, I purchased about the width of the lane. I never doubted the right of Richard to cross there. I had no disposition to prevent him. There was a gate at that time where the lane then ran into father's land. I think the gate was joint between Richard and myself. Over my land I exercised the 10 right of putting gates where I wanted them.

Q. Did you understand that Richard had the same right to hang gates in the land running across his land, that you had in the part of the lane running across your land?

Objected to.

A. Yes. I erected the lane gate between what is now the line between Richard and Charles. I can't fix the date; I think it was perhaps between fifty-seven and sixty. The gate was intended to be put on the line between Richard and myself. The posts standing on the line. The gate, when it is open, swings down the 20 lane over Richard's land. The gate in dispute I consider useful.

This last objected to.

I think that if there had been a gate there, there would have been no necessity for a gate at the line between Richard and Charles. I put up the line gate because the cattle from below would come up into the lane and hook each other against the fence. I had a light wire fence and they broke it. I put up that gate to protect myself from the cattle below. The gate would facilitate getting cattle from the fields to the water, and from the water to the yard. This gate would save considerable trouble in 30 driving cattle. In bringing cattle from the water to the yard they would frequently stray up the lane and cause trouble to get them into the yard. During the whole time I owned this property Richard Shivers had the uninterrupted right to use this lane with his wagons and cattle, so far as I was concerned.

This last objected to as irrelevant and illegal.

During the whole of the time I lived there Mr. Richard Shivers used the lane for the purpose of driving his cattle and carting the produce to and from his buildings to the forty-acre tract. There used to be a pair of bars at the lower end of the lane, between 40

Charles' line and the Marlton pike. They were opposite the fence at the lower end of Richard's orchard. They were about seventy-five yards from the gate in dispute; two hundred feet at least.

Counsel for complainant objected to all evidence in reference to the lane from the line between Richard Shivers' land to letter A and Whiskey road.

Cross examined:

- I bought the property I speak of in forty-eight. I sold to my
 10 brother Charles Shivers. There was no gates across the lane during the time I owned this land, except the one at the Marlton pike and the one I put at the line between Charles Shivers' line and the Marlton pike. There were no others, except what I have named, when I purchased from my father. There was a necessity for the disputed gate as well as the one at the line. It is nearer from the Anderson tract to the Whiskey road than from the Anderson tract to the Marlton pike. From the time I purchased to the time I sold, there was no interruption in the use of this lane above Charles Shivers' buildings across Charles Shivers' land.
 20 When I owned it I allowed Mr. Richard Shivers the privilege of going across my land. Before I purchased the land of Richard and Charles Shivers, all belonged to my father, and this lane was there. When I purchased the Anderson tract the road was changed, and I allowed Richard to go over that. Cattle can be driven along a road where there are no fences without getting off the road, if there is help enough. When I owned this property I did work on the lane between the line of Charles Shivers and the Marlton pike.

30 *Re-examined in chief:*

I said I allowed Mr. Richard the privilege of going through that lane the whole time I lived there. Mr. Richard Shivers allowed me the same privilege to cross his land that I allowed him. There was nothing said at the time I purchased about my right to cross Richard's land. I understood at the time I purchased that I had a right to go across Richard's land to the pike. I understood that Richard had the same right to cross my land that I had across his.

- 40 Objected to all testimony in reference to understandings of this witness.

Mr. Charles Shivers lived on the farm with his father up to the time he went to learn a trade. He was frequently out there during the time he was learning his trade. He was out there, while I lived there, frequently. The lane was there at the times he used to be there. He could not help knowing that Richard was using that lane at the time he purchased of me.

Re-cross-examined :

I knew my father owned these two farms, and that my father used this lane for his own convenience, over his own land, and I 10 suppose that Charles Shivers knew the same thing.

Re-examined in chief :

Charles Shivers has known and been conversant with this land since he was a boy.

JEHU SHIVERS.

Sworn and subscribed before me this 19th day of February, A. D. 1879.

RICHARD T. MILLER, M. C. C.

Examination adjourned by consent to Thursday, February 27th, A. D. 1879, 10 A. M.

20

Thursday, February 27th, A. D. 1879, 10 A. M. Examination resumed in the presence of the respective counsel of the parties.

SAMUEL G. STONE, a witness produced on the part of the defendant, being duly sworn, saith : I reside at Mount Ephraim, Camden county, New Jersey. I am forty-two years old. I know Mr. Charles Shivers. I know Richard Shivers. I have been employed by Mr. Richard Shivers. I was employed by Richard Shivers in fifty-four ; commenced April tenth. I was there until fifty-seven, January. He was then living where his son, Levis 30 Shivers now lives, on the Marlton pike. I worked on the farm and drove his milk wagon. When I first went there he owned where his residence was, and the forty acres on Whiskey road. The lane on the map represents about where it ran then, as near as I can recollect Jehu Shivers occupied the land between Richard's and the forty-acre tract on Whiskey road. At that time that I was there, there was a gate on the Marlton pike. The next gate was right at the yard by Jehu's house. There was another gate on the opposite side of the yard at Jehu's buildings, there was two gates there. There was a pair of bars where the 40

lane turned into the woods, I think. The gate in dispute was not there then. I know where the line gate between Richard and Charles is, it was not there then. There was no gate there when I left Mr. Shivers employ in fifty-seven. I am a farmer. I should say there would be great use for the gate in dispute. The use of that gate there is useful in driving the cattle, and turning them from the barnyard and keeping them from going all over the farm.

10 *Cross-examined:*

Q. Would it not be inconvenient to the owner or occupant of Charles Shivers' farm to have to pass through and open and shut three or four gates along that lane?

A. It is impossible for me to answer the question.

Re-examination in chief:

When I said I could not answer the question, I meant I could not answer by yes or no. SAMUEL G. STONE.

Sworn and subscribed before me this 27th day of February,
20 A. D. 1879. RICHARD T. MILLER, M. C. C.

DAVID SHIVERS, a witness produced on the part of the defendants, being duly sworn on his oath, saith: I live near Woodbury, Gloucester county, New Jersey. I am fifty-three years old. I know Charles Shivers, the complainant; I am a half brother to him. I know Richard Shivers, one of the defendants. He is also my half brother. We are all sons of Isaac Shivers. I was born where Levis Shivers now lives, on what is now Richard's property. My father owned all that is shown on the map except the Anderson tract. He sold part of the property to Richard Shivers and
30 part to Jehu Shivers. He sold that part on the Marlton pike, designated as Richard's, and the forty-acre tract on Whiskey road, and the intermediate part, with the exception to the Anderson tract, and the woodland, to Jehu. My father, in order to reach the forty-acre tract, he passed up the lane about where it now is, to the Anderson tract, then up the Anderson tract to the forty-acre tract. When my father sold this land to Richard and Jehu, this lane was there up to the Anderson tract, the balance of it was not fenced. After the purchase by Richard, he continued to use
40 the lane up to the forty-acre tract, the same as my father had been

using it before. Jehu used the other part of the lane to get out to the Marlton pike, and he continued to use it the same as his father did before the sale. So far as I know the respective owners have been using that lane ever since. I lived on the place the majority of my life up to sixty-one. After my father sold the place I lived with Jehu. At the time I lived there there was a gate at the Marlton pike on the lane. I know where the line gate now is. I can't tell exactly the year when that gate was put there, either in fifty-eight or fifty-nine. I think I assisted in putting that gate there, but am not confident enough to swear to it. 10
The two gates on each side of Charles' buildings were there then. At the time I last lived there there was a gate at the line where the lane emptied into the Wood's road. The gate in dispute was not there in my time. This gate is useful to keep the cattle from going up the lane when they are turned into the meadows. This gate in my opinion is useful and advantageous to the occupants of Richard's lands.

Objected to.

I am a farmer.

20

Cross-examined:

I don't think the disputed gate would have been as useful twenty years ago as it is now. I should say any fool would know that any gate would be inconvenient to a lazy man to get out and open a gate.

Q. Would it be useful for you to have the privilege to take a ten dollar note out of Charles Shivers' pocket whenever you thought it necessary to have it?

Objected to.

A. Yes, it would be useful to me.

30

Mr. Hugg objects to all the testimony of the two preceding witnesses in reference to the lane above the line gate.

Re-examined in chief:

The reason that I said the disputed gate would not have been useful twenty years ago as now, was because the fences have been shifted, and there were not near as many cattle kept there as now.

Re-cross-examined:

There is a barnyard gate that enters into the little lane and 40

another that enters the barnyard. These barnyard gates have nothing to do with going up and down the lane.

DAVID SHIVERS.

Sworn and subscribed before me, this 27th day of Febuary,
A. D. 1879. RICHARD T. MILLER, M. C. C.

Examination adjourned by consent of counsel to Thursday,
March 6th, A. D. 1879, 10 A. M.

- 10 Thursday, March 6th, A. D. 1879, 10 A. M., examination continued in the presence of the respective counsel of the parties.

JOHN G. SHIVERS, a witness produced on the part of the defendant, being duly affirmed, saith : I live in Haddonfield, Camden county. My business used to be bricklayer and plasterer ; I am now in no business. I am acquainted with Mr. Charles Shivers, the complainant in this suit ; he is my cousin. I know Richard Shivers ; he is also a cousin of mine. I have done work for Mr. Charles Shivers on his farm ; it was plastering, bricklaying and I
20 laid a few stones. I know where the bridge is on the lane as you come out by Richard's house ; I built that bridge there ; Richard Shivers paid me for it. I don't recollect that Charles Shivers ever paid me or employed me to do anything on it. I rebuilt it for Richard after it was first built ; it settled and I rebuilt it. When I was paid for the work I did for Charles he paid me in his office in Philadelphia. I never did any other work for Mr. Charles Shivers that I remember of except the work at the buildings, and which he paid me for in Philadelphia. Richard Shivers paid me for the rebuilding of the bridge. I don't recollect that Charles
30 had anything to do with the bridge at all.

Cross-examined :

Mr. Charles Shivers paid me for the work I done at his house, and I built cisterns for him at the barn. I can't tell whether he paid all the money to me in Philadelphia or not. I can't tell how much money he paid me ; it has been so long ago. I can't tell what my price was for plastering ; we go in so many places ; I can't remember, it has been so long ago. I can't remember that Charles had anything to do with the bridge ; maybe he can
40 remember better that I do. I don't remember that Richard told

me that he found the materials, and Charles was to pay for the labor. I was not subpoenaed here.

Re-examination in chief:

When I done the work of the house there was some work done on the main building. The work in the main building was done by the day, the rest by contract. When I went to get my money at Charles' drug store, corner of Seventh and Spruce streets, Philadelphia, Charles was out; I found his son Charles there. I asked if his father would soon be in; he said he did not know when he would be in, and asked me for my bill, and said I will pay it, and he paid me then, and I receipted the bill. I left and came back, and found Charles there, his son having given him the bill; Charles complained about my charging him for that extra work. I told him he need not pay it without he pleased, as I would give it to him if he wished. I offered him the money back; he would not take it; I then left. When I built that bridge, I think Jehu Shivers lived where Charles now owns. When I rebuilt the bridge, I think Jehu lived there still. I have never done any work on the bridge after I rebuilt the bridge; if I did, I don't remember it. 10

Re-cross-examined:

The extra work I did was in the main building. I walled up the fire-places and put registers in, and plastered it after it was walled up. This I charged him extra for as it was not in the contract. Mr. Hurley was not present when he paid me the bill. I know William N. Shreve. I don't remember seeing Bill Shreve there about the time I finished the work. I don't remember Mr. Shivers paying me three dollars and a half. The main building there was blistering in the plastering, and his wife, Mrs. Shivers, asked me when we got our job done, if I would not cut them out and point them up for her, and I told her I would. We finished the other work about eleven o'clock, and I said yes; it would take but a little bit to do it. So I got the white coat and plaster, and went to do it myself. I partly finished it, when Charles said that would do it. That is not what I charged extra for. I suppose I gave him a receipt on the bill. I don't know that I did this. 30

JOHN G. SHIVERS. 40

Affirmed and subscribed before me this 6th day of March,
A. D. 1879. RICHARD T. MILLER, M. C. C.

JOSEPH L. SHIVERS, a witness produced on the part of defend-
ants, being duly sworn on his oath, saith: I reside in Camden. I
am seventy-two years old. Isaac Shivers was my father. I am
acquainted with Charles Shivers, the complainant in this suit, and
Richard Shivers, the defendants; they are my brothers. I went
to live on the farm when I was about two years old, where
10 Richard's buildings now are on the Marlton pike. I lived there
up to the year thirty-five, about twenty-six years. My father
occupied all the farm represented on the map except the Ander-
son tract. He reached the back part of his farm from his build-
ings by the lane. The lane, as represented on the map, is about
the same as it used to be. There is not much change in it. When
I left in thirty-five, there was no other buildings except Richard's
buildings. There were other buildings afterwards put there
where Charles' buildings now are. My father put those buildings
there. I was often out there after father built these buildings; he
20 soon after he built the buildings moved, and occupied the build-
ings. At that time the buildings were built on each side of the
lane; the same as appears on the map. My father put up gates
near the buildings, about the same as represented on the map. My
father afterwards sold this property; one part to Richard and the
other to Jehu. Richard took the part next to the Marlton tract,
up to what is Charles' line on the map, and the forty-acre tract
next to the Whiskey road. Jehu took the intermediate part, ex-
cept the Anderson tract, and the two wood lots marked C and D
on the map. At that time the lane was about where it now is;
30 there is not much change. Jehu, previous to purchasing, had been
living on this land. At that time this lane had been in common
use between them. There was always a gate at the Marlton pike.
There was, at that time, a pair of bars at the end of the lane,
about seventy-five yards nearer the pike than where Richard's
buildings are. Those bars were just on the brow of the hill where
the lane emptied into the meadow. They were there all the time
I lived there. The next gates were at the place where Charles'
buildings now are. Richard Shivers and I cut off, of what is
called the forty-acre tract, the timber. Part of the timber was
40 carted down the lane, and part on to Whiskey road, to the Mount

Holly ferry. The only way to get to the forty-acre tract, except by the lane, is to go around up Champion's lane to Whiskey road, an increased distance of two miles.

Cross-examined:

These bars I have spoken of were put there before I can recollect. They were always there during the twenty-six years I was there. I don't know of any year that the bars were not there. There was no time while I lived there that these bars were not there. There are no bars there now. These bars were there 10 when I hauled wood along there. They were not always put up, they sometime laid on the fence. There was no gate where this gate is now twenty years ago. It used to be customary for a man that owns a farm to go where he pleases on it, and drive over it, but not over my neighbor when they were not willing.

Re-examined:

It was a customary thing for Richard to pass over what is now Charles' property to the forty-acre tract. It has been customary for those who owned the property to regulate the putting up of 20 gates and fences across the lane in that part owned by each. It was a customary thing for my father to exercise that privilege. When he conveyed the property the lane was there with the gates, and he conveyed the same without restrictions so far as I know.

Mr. Hugg objects to all testimony in reference to the lane above Charles Shivers' line.

Re-cross-examined:

I was not subpoenaed here as a witness.

J. L. SHIVERS. 30

Sworn and subscribed before me this 6th day of March, 1879.

RICHARD T. MILLER, M. C. C.

Examination adjourned by consent of counsel, to Thursday, March 13th, A. D. 1879, 10 A. M.

Examination resumed in the presence of the respective counsel of the parties, March 13, A. D. 1879, 10 A. M.

RICHARD SHIVERS, a witness produced on the part of defend- 40

ants, being duly affirmed, saith: I am one of the defendants in this suit. I am sixty-eight years old. I am acquainted with Charles Shivers, the complainant in this suit. He is a brother of mine. I know where Richard L. Shivers, the other defendant, lives. He lives at the old homestead. I am the owner of the place where he lives. My father, Isaac Shivers, formerly owned this place. He occupied the buildings where Richard L. Shivers now lives, until eighteen thirty-seven. He owned all that is on the map except the Anderson tract, with other lands. I was born
 10 in that house. I never lived anywhere else until I came to Camden in the fall of eighteen hundred and seventy. The map shows about where the lane ran from the Marlton pike up to the letter A. All the time my father lived there, at that time, eighteen hundred and thirty-seven, there was a gate at the Marlton pike, and always has been since I knew anything about the place. There was a pair of bars at the point where the lane empties into the meadow. The next bars were at corner of the woods above where Charles' buildings now are. In eighteen hundred and thirty-seven my father moved to Haddonfield, where he lived six
 20 years, and I farmed the place. In forty-two my father built the buildings where Charles' buildings now are. The house he built on one side of the lane, and the barn on the other, the lane ran between the buildings. He put gates on each side of his yard, as represented on the map. At that time father farmed the part that Charles now owns, and I farmed the balance. The forty acres were in timber. My brother and myself bought the timber and cleared it off. My father lived where Charles' buildings are at the time we cut the timber off the forty-acre tract. Most of the timber was carted down the lane, through the land now occupied
 30 by Charles, by his buildings, to the Marlton pike, to the creek. My father, in the spring of forty-eight, moved to Haddonfield again, and my brother Jehu took the place, and farmed the property now owned by Charles. In that year Jehu and I bought father out. Jehu took the part that Charles now owns, as shown on the map, except the Anderson tract, and the two wood lots marked C and D. I took the part on the Marlton pike, and the forty acres on Whiskey road. At the time this conveyance took place to Jehu and myself, the lane ran about the same as is now represented on the map. To get to the forty-acre tract from my build-
 40 ings, I went up this lane. Jehu got out to the Marlton pike by

this lane through me. When Jehu bought this land he knew of the existence of this lane. He knew I had been using it up prior to the time we bought. Jehu lived there until the spring of sixty-seven. I passed up this lane through all the time he lived there; he passed out all that time through my land to the Marlton pike. The gate along the edge of the woods was put there by Jehu. I paid for it. There never was any dispute between Jehu and myself about where Jehu should put gates on his own land. I considered that Jehu had the right to erect gates on his own land wherever he pleased, and I had the same right on my land, but there was nothing said 10 about it. There was never anything said by my father, Jehu, or myself about the rights in this lane. At the time Jehu and I purchased, the lane started upon my land from the Marlton pike, then ran over Jehu, up to where the lane emptied into the wood, then along the Anderson tract, along the edge of the woods, over father's to the letter A shown on the map. My father, to facilitate my getting to the forty-acre tract, cut a strip of woods off so that I could cart hay from the forty-acre tract along the lane.

This was after Jehu and I purchased. After Jehu purchased a piece of the Anderson tract, the route of the lane was changed, and 20 run straight up through that part he had purchased to where the other land of Anderson then was, and then out to father's woods. Jehu purchased more land than what he really wanted for the purpose of straightening the lane and make the fences straight. The extra part he purchased was just the width of the lane, for the purpose of the lane; and where the lane went into father's woods was where the gate was put by Jehu, and paid for by me. This lane has been used since I can remember, and since Jehu bought, and since I bought, and has been used in common by all the owners of land bordering on it. There have been no obstructions 30 along the lane through Charles' land, except the gates; there never have been any obstructions on the lane from Charles' line to the Marlton pike, except the gates I have put there. During the time Jehu lived there he never claimed any right to obstruct the lane, except by the gates he put there. I had the same rights over Jehu's land that Jehu exercised over my land. The line gate is on the line between Charles and me, and the gate swings over my line, and can't be opened in any other way without changing the gate. Jehu put that gate there; I think it was in fifty-nine. I lived on my place when it was put there. It was put there for the 40

purpose of turning the cattle—keep his cattle from going down and mine from going up. There never was any dispute between Jehu and myself about his putting that gate there. I know where the gate in dispute is—opposite the edge of my barn in the lane, and about where it is shown on the map. I did not put this gate there; I think it was put there in September, seventy-six; it is a useful gate in driving the cattle to water. There are thirty odd cattle kept on this place. We milk twice a day—at two o'clock in the morning and at noon. Just below this gate

10 the cattle are brought to water from most all the fields on the place. This gate is useful in keeping the cattle from going up the lane when they are brought to water or to be driven in the barnyard. If I did not have this gate it would take two persons to drive the cattle into the barnyard. With the gate a boy can do it. The cattle sometimes go in the water, and while you are getting them out the others will be up the lane to Charles'. Charles Shivers, Jr., called on me at the ferry about the gates that Lev. locked on Whiskey road. I never made a threat to him that I would put up a gate every hundred yards. We did not say any-

20 thing about the disputed gate, except that he said Lev. shut the gate in his face, and I told him I did not believe it.

Mr. Hugg objects to all testimony in reference to the lane above Charles Shivers' line.

Cross-examined:

If I thought it necessary to put a gate a hundred yards from this one, I would not put it there. I think I have a right to put a gate on that lane wherever I please, if I think it necessary. This land is mine over which this lane passes. A man has a right to do

30 what he pleases with his own, if he don't injure his neighbor. I found out that a gate was useful there where the disputed one is before September, seventy-six, but did not put it there because I was too poor. I don't know what it cost to put it there. That is the reason I don't put gates over the rest of the farm instead of bars—on account of cost. Don't think it cost one hundred dollars. It would not cost ten dollars. Since the time I can remember there never was any gate where the disputed gate is up to September, seventy-six, when the disputed gate was erected.

Re-examination in chief:

40 The bars I have spoken of at the foot of the lane was used for

the same purpose as this gate in dispute. At the time those bars were there, there was no outlet from the barn to the lane, except below the bars; now the outlet is above where that place was, and below where the gate is, and the gate now answers the same purpose that the bars did then. There could not happen such a necessity that there would need bars or gates every hundred feet. I claim that I have the right to erect gates wherever I think it necessary and useful. No one ever disputed this right until this dispute arose. There was no dispute about the bars at the time they were there.

RICHARD SHIVERS. 10

Affirmed and subscribed before me this 13th day of March,
A. D. 1879.

RICHARD T. MILLER, M. C. C.

Examination adjourned by consent of counsel to April 16th,
1879, 10 A. M.

April 16th, 1879, 10 A. M., examination resumed in the presence of the respective counsel of the parties.

JAMES K. JOHNSON, a witness produced on the part of the 20
defendant, being duly sworn on his oath, saith: I live in Home-
steadville, Camden county. I know Mr. Richard Shivers; I know
Mr. Jehu Shivers, and am slightly acquainted with Mr. Charles
Shivers. I have worked for Richard Shivers. I went to work for
him in fifty-eight in April of that year; it was the twenty-sixth day
of the month. I moved in his tenant house on Whiskey road. His
farm was in two parts, one part was on Whiskey road and the
other on Marlton pike. The house I moved into was on a part of
his land on Whiskey road. Jehu Shivers at that time owned and
occupied the land between these two parts. I knew Isaac Shivers, 30
the father of these men. I got from where I lived to where
Richard Shivers lived through the lane by Jehu Shivers' house. I
worked for Richard Shivers that time four years. I generally
went through this lane to and from work twice a day. I know
where the line fence was at that time between Jehu's land and
Richard's land, nearest the Marlton pike. At the time I moved
there, there was no gate on the line. I think that gate was put
there the next year after I moved there. I remember seeing David
Shivers working on it. David was working for his brother Jehu 40

Shivers. I think at that time I was at work at the line fence, but am not positive about that.

His
JAMES K. \times JOHNSON.
mark.

Sworn and subscribed before me this 16th day of April,
A. D. 1879. RICHARD T. MILLER, M. C. C.

RICHARD L. SHIVERS recalled on the part of defendant. My grandfather retained a part of the wood lots marked C and D, on
10 Exhibit No. 1, on part of defendants, up to the time of his death. He sold a part of it to Charles before his death. He owned it all at the time Jehu Shivers left there. There was twenty acres of timber. He lived in Haddonfield up to the time of his death. He got his firewood from this woodland. In carting his firewood he went out the lane from the Marlton pike; I remember his carting some, he had one horse and carted it himself while he was able. Father carted it after my grandfather disposed of his horse, and after I took the farm I hauled him some. I think Isaac Shivers died in seventy-two, I am not certain. It was after Charles bought
20 of Jehu that he died.

Cross-examined :

The lane of which I speak extends from the Marlton pike through my father's land and Charles' land to the letter A, on the map.

Q. Did not you and your father voluntarily abandon that lane last fall?

A. Well, we stopped going there, as we were annoyed with their shutting the gates on us. I did not tell Charles Shivers, Sr., that we would never want to use that lane any more. There is a log and a stump near the disputed gate; I put them there; this
30 last fall is a year I think—I am not certain; they might have been put there last spring; I put them there out of the way; they were less in the way there than anywhere else; I dug up the tree in the field; it was a walnut tree, and I thought the log would be worth more to saw into lumber than it would be for a gate post, and then we could load it aboard of the wagon very handily if needed. There is room on the place for it. There is a hundred and twenty acres of it. I had no idea that it would frighten horses.

Re-examined in chief:

40 It has been customary to put wood and logs along this lane. I

think there is, or was a short time ago, wood piled up in the lane near Charles' house. I think there has been wood there in the lane nearly ever since he owned the place. I should not think this log and stump is a scare-crow to a horse. My horses are not afraid of them; I never saw any of Charles' horses afraid them, or frightened by them. I had no intention of frightening any one's horses when I put the log and stump in the lane. I never had any trouble about them until after the commencement of this suit. The log and stump were there before the suit was commenced. They are there yet. I never had any orders to remove them. I have 10 not used this lane from Charles' line to the forty-acre tract since last year after harvest, eighteen seventy-eight. The reason I did not use it was because we were annoyed by them shutting the gate on us. They hooked the gates, and had locked the gates on us before. I do not consider it as voluntary that we discontinued the use of that lane. Their interference and annoyance is the reason why we are not still using the lane.

R LEVIS SHIVERS.

Sworn and subscribed before me, this 16th day of April,
A. D. 1879.

RICHARD T. MILLER, M. C. C. 20

Defendants offer deed, Isaac Anderson and wife to Jehu Shivers, dated April thirteenth, eighteen hundred and fifty-three. Recorded in the clerk's office of Camden county, in Book R of deeds, page 180, etc. Marked Exhibit on part of defendants.

30

Exhibit A on part of complainant.

R. T. MILLER, M. C. C.

"Charles Shivers, corner 7th and Spruce streets, Phila.

"COOPER'S CREEK, N. J., Sept. 10, 1878.

"To Charles Shivers, Sr.—Sir: I have replaced gate on lane and mean to keep it there, and unless you come to me soon and try to make some satisfactory arrangement by which we can travel to our upper fields, shall remove a part of lane fence and hang another gate.

"R. LEVIS SHIVERS." 40

Exhibit B on part of complainant.

R. T. MILLER, M. C. C.

"Mr. Charles Shivers, Sr., cor. 7th and Spruce streets, Phila.

"I would like to see you the first time you are over. I expect to lock the gates up this morn. Will explain when I see you.

"Aug. 12, 1878. Your nephew, R. L. S."

Exhibit C on part of complainant.

R. T. MILLER, M. C. C.

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Exhibit D on part of complainant.

R. T. MILLER, M. C. C.

Exhibit on part of the defendant.

R. T. MILLER, M. C. C.

OPINION OF THE CHANCELLOR.

20

Isaac Shivers, in 1848, was the owner of a tract of land, a farm, in Delaware township, Camden county, fronting on the Marlton turnpike. There were two sets of buildings upon it, one near, and the other back, from the turnpike. In that year he sold and conveyed part of the farm (the front) with one set of the buildings, to his son Richard, and the rear, with the other set of buildings, to his son Jehu. The latter occupied his property until 1866, when he sold and conveyed it to his brother Charles, the complainant. From the time of the conveyances by the father to Jehu and

30 Richard (1848), Jehu and Charles, as successive owners of the rear property, used, for a way between those premises and the turnpike, a lane which, before then, was used for that purpose by their father, who, when he sold to Jehu, occupied the rear set of buildings. That lane was, as it still is, the only way between the complainant's property and the turnpike. From the division line between the two properties and the turnpike, it is on Richard's property. At the division line Jehu erected a gate, as he says, somewhere between 1857 and 1860.

While the father occupied the property, there was, and ever

40 since has been, at the mouth of the lane at the turnpike, but, until

September, 1876, there was no gate or other obstruction in the lane between that gate and the gate at the division line. At that date, Richard L. Shivers, (son of Richard) who occupied his father's property, placed a gate across the lane at the barn on that property, and about one-third of the distance between the two gates just mentioned. The reason given for putting the gate is, that thus the driving of cattle through the lane, into Richard Shivers's barnyard was facilitated. The complainant being unable, without a breach of the peace, to remove that gate, filed his bill for an injunction to protect him in the enjoyment of his easement. 10

The existence of the easement is not denied, and it is proved by the testimony on the part of the defendants, as well as that advanced by the complainant. The bill states that the lane or road has been, for upwards of twenty years, used by the complainant, and the former owners and occupants of his farm and premises, to pass and repass to and from his farm, with carriages, horses, cattle, &c., and that he ought now and at all times to have the free use of the lane for himself, his tenants, carriages, horses, &c. The answer admits the existence of the lane, and that the complainant has been accustomed for many years to pass by it 20 from his property to the turnpike.

It appears, clearly and unquestionably, that from August, 1848, to September, 1876, a period of over twenty-eight years, the complainant and his grantor enjoyed the free and unobstructed use of the lane between the division line and the gate at the junction of the lane with the turnpike, as appurtenant to the complainant's farm, and that it was their only way to the turnpike. It also appears that at the latter date, the defendants, without the complainant's consent and against his will, erected the gate complained of, and subsequently maintained it by an exhibition of 30 forcible and violent resistance of the complainant, when he attempted to remove it. The gate is, manifestly, from the evidence, a nuisance. It is at the top of a hill which descends to the turnpike, and it is especially annoying to be compelled to stop with a loaded wagon to open it in going up, and, in such case, it causes a special strain on the horses to start the wagon again.

William A. Shivers, a son of the complainant, testifies that, at times, although the gate was open when the complainant's people 40

entered the lane to go up, some one would come out and shut it so as to compel them to stop and open it.

The complainant's title, by prescription, to the free and unobstructed use of the way (except as to the gate at the turnpike) at the time of the erection of the gate complained of, is established beyond a peradventure. A right of way, acquired by prescription, is commensurate with, and measured by the use, and the owner of the land has no right to do anything which will hinder or obstruct such use. The complainant, therefore, is entitled to
 10 the aid of this Court in the premises, to secure to him lawful enjoyment of the easement, free from the obstruction of any gate between the gate at the division line and that at the turnpike.

The injunction will be made perpetual, with costs.

FINAL DECREE.

This cause, coming on to be heard at the last (October) term of
 20 the Court of Chancery, held at the State House in the city of Trenton, in the presence of Alfred Hugg, of counsel with the complainant, and Martin V. Bergen, of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint, it is on this first day of June, in the year of our Lord
 one thousand eight hundred and eighty, by Theodore Runyon,
 30 Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that the said defendants, their servants, agents and workmen do from henceforth and forever, absolutely desist and refrain from erecting any gate or gates, posts or fences in or upon and across a certain way or lane to and from the farm of the complainant, into,
 through and over the farm and premises of the defendant, Richard Shivers, unto and into the Camden, Ellisburg and Marlton turnpike, in the county of Camden (the said way or lane being sixteen
 40 feet wide), from the gate at the division line between the farms of

the said complainant and the said defendant, Richard Shivers, and the gate at the said turnpike. And it is further ordered, adjudged and decreed that the said defendants do forthwith take down and remove the gate, posts and fences now erected across said way or lane by the said defendants, at the barn on the farm of said defendant, Richard Shivers, at the distance of about nine chains and fifty links from the entrance to said way or lane on the said turnpike. And it is further ordered, adjudged and decreed that the defendants pay to the complainant the costs of this suit to be taxed, and that execution issue therefor according to the practice of this Court. 10

THEODORE RUNYON, C.

A true copy :

H. PETTIT, Clerk.

APPEAL.

The defendants hereby appeal from the final decree made in this 20 Court in the above stated cause, adjudging and decreeing that the said defendants, their servants, agents and workmen do from henceforth and forever absolutely desist and refrain from erecting any gate or gates, posts or fences in or upon and across a certain way or lane to and from the farm of the complainant, into, through and over the farm and premises of the defendant, Richard Shivers, unto and into the Camden, Ellisburg and Marlton turnpike, in the county of Camden, from the gate at the division line between the farms of the said complainant and the said defendant, Richard Shivers, and the gate at the said turnpike; and the further decree that the said 30 defendants do forthwith take down and remove the gate, posts and fences now erected across said way or lane by the said defendants, at the barn on the farm of said defendant, Richard Shivers, &c., &c.; and the further decree that the defendants pay to complainant his costs, &c., to the Court of Errors and Appeals in the last resort in all cases.

We concur there is good cause for appeal in the above stated cause.

Dated June 8th, 1880.

BERGEN & BERGEN,

Solicitors for and of counsel with defendants. 40

PETITION OF APPEAL.

To the Honorable, the Court of Errors and Appeals, in the last resort in all cases.

The humble petition of Richard Shivers and Richard L. Shivers, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the first day of June, eighteen
 10 hundred and eighty, wherein Charles Shivers was complainant and your petitioners were defendants, in this respect, to wit: that the said decree adjudges that "the said defendants, their servants, agents and workmen do from henceforth and forever absolutely desist and refrain from erecting any gate or gates, posts or fences in or upon and across a certain way or lane to and from the farm of the complainant into, through and over the farm and premises of the defendant, Richard Shivers, unto and into the Camden, Ellisburg and Marlton turnpike, in the county of Camden (the said way or lane being sixteen feet wide), from the gate at the division line
 20 between the farms of the said complainant and the said defendant, Richard Shivers, and the gate at the said turnpike; and it is further ordered, adjudged and decreed that the said defendants do forthwith take down and remove the gate, posts and fences now erected across said way or lane by the said defendants at the barn, on the farm of said defendant, Richard Shivers, at the distance of about nine chains and fifty links from the entrance to said way or lane, on the said turnpike; and it is further ordered, adjudged and decreed that the defendants pay to the complainant the costs of this suit to be taxed, and that execution," &c.

30 And your petitioners humbly appeal from the decree of the Chancellor, as aforesaid, upon the grounds that the same is erroneous, for that petitioners, their servants, agents and workmen ought not in equity and good conscience from henceforth and forever be ordered, adjudged and decreed absolutely to desist and refrain from erecting any gate or gates, posts or fences, in or upon and across a certain way or lane to and from the farm of the complainant into and through and over the farm and premises of petitioner, Richard Shivers, unto and into the Camden, Ellisburg and Marlton turnpike, in the county of Camden, &c., from the gate
 40 at the division line between the farms of the said complainant and

petitioner, Richard Shivers, and the gate at the said turnpike, and that petitioners ought not to be decreed to take down and remove the gate, posts and fences now erected across said way or lane by your petitioners, &c., and that complainant ought not to have any of the relief decreed by the said Chancellor in the cause aforesaid.

Your petitioner therefore pray that the said decree of the said Chancellor may be set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

BERGEN & BERGEN, 10
Solicitors of Appellant.

ANSWER TO PETITION OF APPEAL.

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent not acknowledging all or any of the matters 20
which in the said petition of appeal are contained to be true, for answer thereunto, nevertheless, says and admits, that a decree was on the day of last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition as is therein reinstated. But as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

ALFRED HUGG, 30
Solicitor and of Counsel with Respondent.

