

1901-003

Nonsemond Co (Suffolk) Chancery Causes: Annie M. Eberwine vs Adam Milteer

Ames, Author, Sears, Jordan, Hargrove, Gas kins,
Brinkley, Capps, Warrington, Wright, Williamson,
Harrell

Plats (5) Folder 1 of 2

OVERSIZE

Box 3

- 1 Plat (exhibit X)

Annie M Eberwine
VS In Chancery
Abram Myleer

1900 March 16th Process issued returnable to
March Rules third Monday

" " 19. Process returned executed
on defendant

Bill filed and decree nisi
against said defendant.

" Apl 2. Decree nisi confirmed and cause
set for hearing

Eberwine

27

Müller

IN THE COUNTY COURT OF NANSEMOND COUNTY.

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF SAID COURT.

Your complainant, Annie M. Eberwine, respectfully complaining sheweth unto the Court the following case:

That on the 20th day of June, 1883, John W. Ames Sr. was, and for a number of years had been, the owner of a certain tract of land in Sleepy Hole Magisterial District, containing two hundred and fifty-three acres more or less, bounded by Bennetts Creek, the lands of W. J. Arthur and others; that on the said 20th day of June, 1883, the said John W. Ames Sr. and Martha A. Ames, his wife, conveyed to William T. Ames a certain part of the said tract of land, containing seventy-five acres, more or less, bounded by Bennetts Creek, a cove dividing said land from the land of W. J. Arthur, B. F. Ames and other lands of John W. Ames Sr., together with all and singular the appurtenances belonging to the same; that at the time of the said sale, and for a number of years prior thereto, there had been a way by necessity, appurtenant to the said tract of land, over the remaining lands of the said John W. Ames Sr. to the county road; that said way at the time of the said conveyance, was definitely fixed and located, and the said conveyance, although the same was not mentioned therein, included the said way, in view of the absolute necessity thereof; and being appurtenant to the said land, the grant of the said land passed the said right-of-way; that on the 6th day of April, 1886, the said William T. Ames conveyed to Mary V. Ames the said tract of land by deed duly recorded in Nansemond County Clerk's Office, and that at said time the said right-of-way was open, visible, apparent and had been continuously in use since the purchase of said land by said William T. Ames; that on the 22nd day of November, 1893, the remaining portion of said farm became by successive conveyances, the property of one Abram Milteer, by deed duly recorded, and that at the time of the said conveyance to him the said right-of-way was open, visible, apparent and had been continuously

ly in use for a long number of years; that being so apparent, open, visible and continuous the said Abram Milteer, when he became the purchaser thereof, purchased same subject to the burden of the right-of-way by necessity over same, and with reference to the condition of the property at the time of its purchase; that the said right-of-way, at the time of said purchase, had for a number of years been established, its location fixed by the dominant and servient owners of the said tract^s of land and was well known to the said Abram Milteer at the time of his purchase of one of said tracts; that on the 14th day of June, 1894, Mary V. Ames conveyed to Annie M. Eberwine the tract of land herein first described as having been sold to W. T. Ames, and at the time of the conveyance to said Annie M. Eberwine, the said right-of-way was visible, ~~open and~~ apparent; was the only way from the said land purchased by her to the county-road; and had been, as she well knew, in constant use for a great number of years, and passed, as the said Annie M. Eberwine assumed, as an incident to the said conveyance, to her, and as one of the appurtenances of the said land; that from said 14th day of June, 1894, until sometime in the late fall of 1899, the said Annie M. Eberwine used the said right-of-way, as she had a right to do, without hinderance or objection from the said Abram Milteer; that sometime during the fall of 1899 the said Abram Milteer, without notice to your complainant and without her consent, placed obstructions in and closed up the said right-of-way which had existed as hereinbefore stated, from the time when both of the aforesaid tracts of land belonged to a common owner, the said John W. Ames Sr.; that your complainant protested against the obstructions ^{being} placed in and closing up the said right-of-way to the said Abram Milteer, but without success; and that since that time your complainant, to her very great inconvenience and damage, has been forced to use another way over the lands of the said Abram Milteer, which the said Abram Milteer, recognizing the right of your said complainant to a right-of-way over his land from her farm to the county road, had offered to her in the place of the old one;

that your complainant, while she has used, under protest, the said new right-of-way, has never relinquished her right to the old one, and refused and still refuses to accept the said new right-of-way in the stead and place of said old right-of-way; that by reason of the action of the said Abram Milteer in placing obstructions in and closing up the said right-of-way your complainant has been very greatly damaged; that the said damage is a continuing one; and that the injury to your complainant, by reason of the wrongs aforesaid, cannot be compensated by a pecuniary sum and that any action at law cannot afford an adequate remedy for the said continuing injury.

Your complainant is advised and so alleges that the location of the said way, having been long fixed, established and acquiesced in, before the purchase by the said Milteer of the land over which it passes, and upon which it is a burden, that its location and course cannot now be changed without the consent and concurrence of your said complainant.

Your complainant is also advised that the said Abram Milteer had no right to place obstructions in or close up the said right-of-way without her consent, either express or implied, and that your complainant is entitled to have the same opened.

Your complainant is further advised that the said Abram Milteer has no right, as he has done, and is now doing, to forbid your said complainant to remove the obstructions placed by him in the said right-of-way, and thereby to lessen the damages and injury which she is continuously sustaining.

In tender consideration whereof and for as much as your complainant is remediless in the premises save by the aid of a court of equity where matters of this kind are alone and properly cognizable, your complainant prays that the said Abram Milteer may be made a party defendant to this bill and required to answer the same, but answer under oath is waived; that the said defendant, his agents and employees, may be enjoined and

restrained from continuing to obstruct the said right-of-way and from preventing and forbidding your complainant's free use thereof for the purpose of egress and ingress to and from her said farm; that the said defendant may be required forthwith to remove the said obstructions, to open up the said right-of-way, and to restore the same to the condition in which it was before said right-of-way was obstructed and closed up as aforesaid; that the Court may ascertain and decree compensation, so far as the same can be given, to the said complainant for being deprived of the use of said right-of-way; that proper process issue; that all proper orders may be made, and all proper inquiries directed, and that all such other, further, and general relief may be afforded your complainant, as the nature of her case may require, or to equity shall seem meet.

And your complainant will ever pray, &c.

E. E. Staceaud
R. W. Winters N. G.

Amie M. Eberwine

VIRGINIA, NANSEMOND COUNTY, To-wit:

This day personally appeared before me in my said county, _____
E. E. Staceaud, a Notary Public in and for said County and
State, *Amie M. Eberwine*, and made affidavit
that the statements in the foregoing bill are true to the best of his
knowledge, information and belief.

Given under my hand this 15th day of March, 1900.

E. E. Staceaud N.P.

The answer of Abram Milteer to the ^{Bill}~~file~~ of complaint exhibited against him in the Circuit Court of Nansemond County by Annie M. Eberwine.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complaintant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised it is material for him to answer, answering saith:-

it may be true that John W. Ames Sr. was in 1883 the owner of the tract of land mentioned in the bill containing some 253 acres more or less, and situated in the district, County and State mentioned. It may also be true that on the 20th day of June, 1883 the said John W. Ames Sr. conveyed a certain part of said land containing seventy five acres, more or less to W. T. Ames, and it may be true that on the 6th day of April, 1886, the said W. T. Ames conveyed said tract of 75 acres, more or less to May V. Ames.

And your defendant further says that the remaining portion of the said land did become his by deed from *Luxanna Caffo and* dated the *22* day of *Nov. 1893* and duly recorded. He also says that the tract now owned by him and the tract owned by the complaintant were formerly part and parcel of the same tract and belonged to the same common ancestor: and further that the tract of this defendant lies nearest to the County road, the tract of the complainant lying in the rear of his said tract. It is also true that for some time the complainant in order to reach the public county road has passed over and across the tract owned by this defendant. But this defendant denies that at the time of the conveyance from John W. Ames Sr. to W. T. Ames in 1883 and for a number of years prior thereto, that the right of way now claimed by the complainant was definitely fixed and located or that any particular right of way across the tract now owned by this defendant ^{was}~~was~~ definitely fixed and located, nor did the deed of conveyance at that time mention any such right of way. He further denies that at the time of the conveyance in April, 1896 from W. T. Ames to May V. Ames the right of way now claimed by the complainant was open,

visible and apparent or that it had been continuously in use since the purchase of the said land by said W. T. Ames. He further denies that at the time that your defendant came into possession of his said tract of land, the right of way now claimed by the complainant was open, visible and apparent or that it had been continuously in use for a number of years. He further denies that at the times of any of the conveyances aforesaid that any particular right of way was open, visible apparent and had been continuously in use over and across his said tract of land. On the contrary, this defendant says that since the said original tract of land of John W. Ames Sr. was divided into two different tracts, the owners or tenants of the tract now owned by the complainant have at different times used different ~~rights~~ of ways over and across the tract now owned by this defendant in going to and from the said County road according to the convenience of the respective owners of the two said tracts. This defendant further says that never at any time has permission been refused the owner or tenant of the tract farthest from the road to pass over or across the tract nearest the road by a convenient and accessible route. This defendant further says that he has never had any conversation whatever with the complainant Annie M. Eberwine concerning the said right of way, but that the whole difficulty has been brought about by her husband John G. Eberwine, who is probably her agent and manager in the premises.

after the severance of the original tract and
 Your defendant further says that some ~~seven or eight~~ years ago *after the complainant become seized of the said tract of land now owned by her* and *after this defendant become seized of his tract of land* her said husband John G. Eberwine was a tenant on and occupied the farm now owned by this defendant, and that during the time of such tenancy, *and after both complainant & defendant had become seized of their lands* he the said John G. Eberwine changed the location which had formerly been used as a right of way over said land and used another location as a right of way, said last mentioned right of way being some *feet* forty or fifty ~~yards~~ away from and East of the old right of way formerly used over said land: that since that said time no one has ever claimed or used the said old right of way. *the same having been expressly abandoned, discontinued and given up by* This defendant further says that, *said Complainant* since he came in possession of his said tract of land he has never forbidden or refused permission to the said complainant to pass over his land in going to the county road; that he has always tried to act in a

neighborly and friendly manner with her and her said husband in regard to the same: that the location of the way has been changed once or twice within the last few years by other persons in interest: that both of said tracts of land are situated in a section of the country where the "No fence" custom prevails; that the farmers and land owners travel down or across what is called hedge-row: that when the defendant came into ^{actual} possession of his tract a few years ago, he found that the way then being used by the said Eberwine (being the same that was located by John G. Eberwine when a tenant) went over his land in such a manner as to cause the same to wash and wear into gulleys which seriously interfered with the success of his farming operations and that in order to remedy this evil and to place his land in better shape for cultivation, he did remove or close up the said way that was then being temporarily used by said complainant, not for the purpose of interfering with any of the rights of the complainant or putting her to any inconvenience or trouble or causing her any damage whatever, but simply for the purpose above set forth, but before changing said location of way he made another way and opened up the same for the use convenience and enjoyment of the said complainant, giving her full, ample, complete and sufficient ingress and egress to and from her farm to said county road: that said right of way now opened up by him lies about ¹¹⁰ 300 yards distant and to the East of what the complainant terms the old and notorious way; that the said new way then opened by defendant is in every respect as good and suitable as any way heretofore used over said land, and as a matter of fact is much more convenient for the complainant.

While the complainant is a citizen and resident of Nansemonf County, most of her business ~~and trade~~ is transacted at Portsmouth and her post-office lies in the direction of Portsmouth from the point where the right of way now opened up for her, enters the county road and this present way puts her in said county road several hundred yards nearer the city of Portsmouth than the way formerly used. This defendant says that none of the ways which have been used across said farm was anything more than a narrow path down a hedge-row and that the present one is in every way more suitable, convenient and better adapted to the wants of the complainant than any heretofore used. This defendant

has offered to give the complainant a right of way across his land to the county road at the location now used, to make the same 18 or 20 feet wide and to make the complainant a deed for the same to be used as a right of way.

This defendant denies that the complainant has been in any manner or to any extent damaged or injured by the change made in the right of way across said land, but says that on the contrary, she has been in fact benefited thereby. This defendant denies all the charges in said bill except such as are herein specifically admitted to be true: and he appends hereto a diagram of the premises and ways mentioned which he marks appendix "A" and asks to be read and treated as a part of this answer, showing the location of the different ways over said land that have been used at different times. This defendant says that he only moved and changed the right of way because it became absolutely necessary for him to do so in order to protect his own land from washing and that in making the change he kept constantly in view the suitableness of the new location and the convenience of the complainant; that he endeavored to talk to the complainant's husband in reference to the matter, but the said John G. Eberwine got into a passion and refused to talk with your defendant over the matter and referred him to his attorney.

This defendant is informed and believes and therefore says that he has damaged no one by his actions in the premises: that even if the two tracts of land did belong to a common ancestor and have now become dominant and servient tracts respectively and even if the complainant is entitled to a right of way over his land, she is not entitled to her choice of a right of way and that all she could claim would be a proper, suitable and convenient right of way, having regard to the rights of the defendant as well as to her own rights: that he is willing and has always been willing to give her such a right of way. He further says that he is greatly damaged in his operations by the injunction that has heretofore granted in this cause, and he prays that the same may be speedily dissolved, and having fully answered he prays to be hence dismissed with his reasonable costs in this behalf expended and he will ever pray &c.

Abram Miller

Virginia: Nansemond County, to wit:

I, R. H. Rawles, a Notary Public for the County aforesaid in the State of Virginia, do certify that Abram Milteer whose name is signed to the above answer has this day appeared before me in my said County, *and made oath after being duly sworn* That all the facts stated in said answer as coming of his own knowledge are true; and that all such other facts as are obtained from knowledge or information derived from others, he believes to be true.

Given under my hand this 1 day of May 1900.

R. H. Rawles
N. P.

Eberwine's

N

Eberwine's Land

Milten's Land

Milten's

Way no. 1

Way no. 2

Way no. 3

Bridge

Gate

40

110 feet

County Road

Capps

S

A

W

Snake River

Palmer's

B
C
D

Answer.

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

Annie M. Eberwine

v.

Abram Milteer,

This cause came on again this day to be heard upon the papers formerly read and upon the report of Alexander Savage and Beverly P. Baker, Special Commissioners appointed under a decree rendered at the October term 1900, *this day filed* to which report no exceptions have been filed, and was argued by counsel.

On consideration whereof, the court doth approve, and confirm the said report, and doth adjudge, order and decree that a way ^{ten (10)} feet wide, *the center line of which begins on the County road at a spot 32.9 feet from the point where the bridge on Milteer's land reaches this road, and runs thence North 40° 20' West 6.1 feet to a stake on the* and located as designated on the map returned with the report of the said commissioners, be opened across the lands of the said Abram Milteer to the boundary line of the lands of Annie M. Eberwine, the said way being the old right-of-way across the said lands as determined by the said Special Commissioners. And the court doth further adjudge, order and decree that the cost of opening up said right-of-way shall be at the expense of the said *Annie M. Eberwine, and that it shall not be opened until the crops now on said land are removed.* And the court doth further adjudge, order and decree that *each* ~~the costs of this suit shall be borne equally by the parties.~~ *party to this cause shall pay his own cost.*

And there being nothing further to dispose of in this suit the court doth further order that the same be removed from the docket.

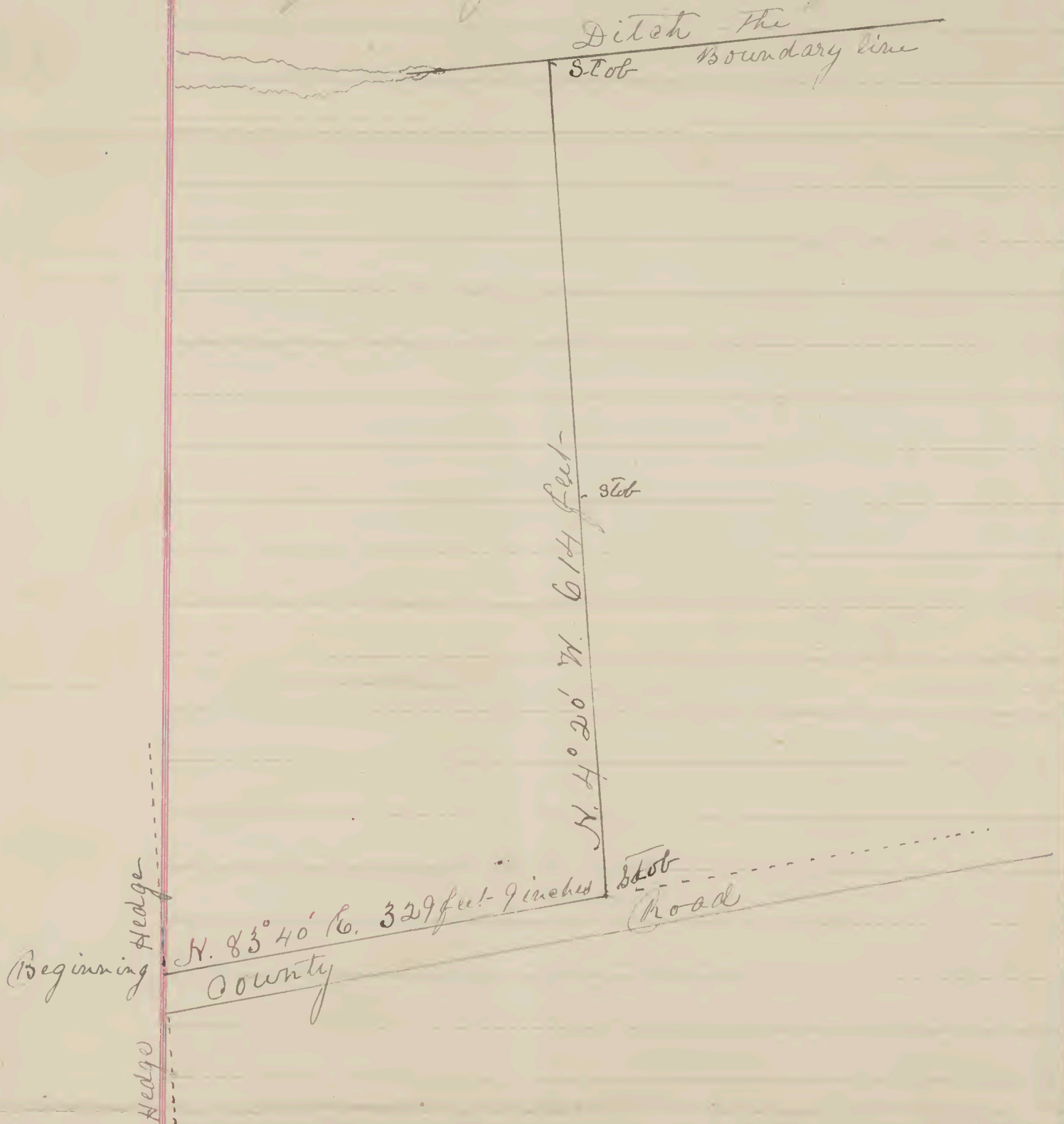
which is the boundary of Annie Eberwine's land.

To the Honorable Judge of the
Circuit Court of Randolph County

The undersigned Alexander Savage
and Beverly B. Baker Special Commis-
sioners appointed at the October term
of your Court; (a copy of said order
and decree is herewith annexed.)

beg leave to report to Court that
we went upon the lands of Abram
Miltner the defendant, on the 21st
day of March 1901. and laid out
the old road way, or original right-
of way across the lands of the said
Abram Miltner and marked out the
right-of way by driving a stake in the
ground on the ditch bank on the North
side of the County road over the middle
 sleeper of what is called the old bridge
and another about midway across the
lands and another on the ditch the bound-
ary line of Mrs Annie M. Eberwine.
and is described as follows, (Beginning
in the County road at the point where
the Hedge crosses the road and running
along the said County N. 83° 45' E. three
hundred and twenty nine (329) feet nine
(9) inches to the stake on the County road thence
N. 4° 20' W six hundred and fourteen (614)
feet to the ditch the boundary line of the

Said Mrs Annie M. Eberwine.
The following is the plat of the same.



All of which is respectfully Submitted

Alex. Savage

Beverley P. Baker

Special
Commissioners

N

Cherwin

Bridge

Miller

gate

Hedge Row #1

Hedge Row #2

Hedge Row #3

49

350

D

Cappa

S

County Road

1883- June 20
J. W. Ames
to
W. J. Ames

Eberwine



1886 Apr 6
W. J. Ames
to
Mary J. Ames

1894 June 14
Mary J. Ames
to
Eberwine

1883 Aug. 8,
Ames to
Griffin

1891. Mar. 26
Griffin to
Kern

1892 Aug. 8
Kern to Griffin

1893 Nov 22
Griffin to Miller

Miller

Road

Exhibit "A"

sent from

Jessie Copp
and John T. Copp
To

Abraham Miller.

The Oregonian
and belonging to
Abraham Miller
deceased
Recorded in B.R. 26
Page 688.

13
John G. Eberwine.

Phone No. 942-6. Bell.

Deanes, Va., Sept 12th 1899.

Mr A Mitchee

A. Home.

Dear Sir,

I received your message from your man ditching side the road, stating that you told him to tell me, I would have to travel on the new road side of the ditch to return home. In reply to same would say, I will use the new road purchased for me temporarily. I will also apply to the Court of Nansemond Co., Va. through my Attorney, to reestablish the old public road, and will force the case to the extent of the law, regardless of the cost. Very Respectfully,
J. G. Eberwine

"B"

Ann M. Eberwine,

vs. In Chancery.

Abram Milteer

This cause came on to be heard this ^{day} 15th day of October, 1900,
upon the bill and exhibits filed therewith; upon the answer of the
defendant and general replication thereto; upon the depositions filed
in the cause, and was argued by counsel; ^{On consideration whereof,} ~~whereupon~~ the court doth
adjudge, order and decree, that Alexander Savage and Beverly P. Baker
be and they ~~same~~ are hereby appointed special commissioners of this
court to go upon the lands of the defendant Abram Milteer and there
locate, define, ^{make a} describe and plat ^{of} the old and original right of way,
or road way which was upon the said lands of the defendant when he
became the purchaser thereof, and which lead from the County Road
to the boundry ^a ditch between the lands of the complainant and defend
ant, and that they report to court. And this cause is continued.

Edwin
W. B. Hancock,
Master.

Enter Octo. 20, 1900
Robert R. Hunt

Entered in Chancery
Order Book No 3
Page 331,

This case came on to be heard this 18th day of October, 1900,

Attest

as in presence.

Deputy

Mrs Annie M Eberwine

Y⁸
Abram Miltner

To B. D. Baker Com. & Surv.

March 21st 1901. Services rendered in the locating
of the old right-of way across the
lands of Abram Miltner under an
order of Court. and measurement and
map of the same \$7.50

Know All Men by These Presents, That we John G. Eberwine
and James E. Ames

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of Five hundred DOLLARS,
to the payment whereof, well and truly to be made according to law, we bind ourselves, our heirs,
executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or
right to discharge any liability to the Commonwealth arising under this bond, or by virtue of the
office, post or trust herein mentioned, with coupons detached from bonds of this State.

Sealed with our seals, and dated this 16th day of March in the year
of our Lord one thousand and nine hundred, and of the
foundation of the Commonwealth the one hundred and twenty fourth

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That ~~if the above bound~~ ^{Whereas an}
~~injunction is this day awarded the Complainant against the defendant~~
~~Abram Miltew on a bill in Chancery filed in the Clerk's Office of the Circuit~~
~~Court of Nansemon on a County injunction and restraining him his agents and~~
~~employees from obstructing or continuing to obstruct the old right of way~~
~~leading from the farm of the said Complainant over and across the~~
~~lands of the said defendant to the County road and being the old right~~
~~of way referred to in the Complainant's bill; and further enjoining~~
~~and restraining the said defendant from preventing and forbidding~~
~~the Complainant's free use thereof for the purpose of egress and ingress~~
~~to and from the said farm. But before the Complainant shall have the benefit~~
~~of this order she or some one for her shall have enter into a bond in the penalty~~
~~of \$500. with security approved by the Clerk of this Court payable to~~
~~and for the use of the Commonwealth of Virginia and conditioned to pay~~
~~shall faithfully discharge the duties of said office, post or trust, as~~
~~all such costs as may be awarded against the defendant Complainant~~
~~aforsaid, according to law, then the above obligation to be void, or else remain in full force and virtue.~~
~~and all such damages as may be incurred in case this~~

Executed in presence
of the Court

~~injunction shall be dissolved.~~

John G. Eberwine
J. E. Ames



In the Office of the Clerk of the Circuit Court

At a County Court

held for the county of Nansemond, ^{County} ~~at the~~

~~Courthouse thereof~~, on the 9th day of March, 1900:

The above bond was executed and acknowledged by the obligors (the security ~~justifying~~
on each ~~his~~ ^{as to} ~~his~~ ^{his} sufficiency), and ordered to be recorded.

Teste:

A. P. Gomen Clerk

A copy

Teste:

A. P. Gomen Clerk

John G. Cherwine
To Injunction
Bond
The Commonwealth.

1900
March 16th

Recorded in Official
Bond Book No 1
Page 195.

A Copy.

In the Circuit Court of Nansemond County, Nansemond County to-wit:
In Vacation

Annie M. Eberwine

v.

Abram Milteer

On motion of the complainant an injunction is awarded her enjoining and restraining the defendant Abram Milteer, his agents and employees, from obstructing or continuing to obstruct the old right of way leading from the farm of the said complainant over and across the lands of the said Defendant to the County Road, and being the ~~an~~ old right of way referred to in the Complainant's bill; and further enjoining and restraining said defendant from preventing and forbidding the complainant's free use thereof for the purpose of egress and ingress to and from her said farm. But before the complainant shall have the benefit of this order she or some one for her shall enter into bond in the penalty of \$500.—, with security approved by the Clerk of this Court, payable to the Commonwealth of Virginia, and conditioned to pay all such costs as may be awarded against the ~~party obtaining this order of injunction~~ ^{complainant}, and all such damages as may be incurred in case this injunction shall be dissolved.

Robert R. Frenchie

To the Clerk of the Circuit Court of Nansemond County.

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *Abram Muelter*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the *Third* Monday in *March 1900*, to answer

a Bill in Chancery, exhibited against *him* in the said Court by *Annie M Eberwine*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *16th* day of *March*, 1900, in the 124th year of the Commonwealth.

A copy—Teste:

Teste:

CLERK.

CLERK.

In the Circuit Court of ^{Nansemond County} Nansemond County to wit
 In Vacation. ^{Archie M. Chewone}
 Abram M. Mullen

Memo. On motion of the Complainant an injunction is awarded her enjoining and restraining the defendant Abram Mullen his agents and employees from obstructing or continuing to obstruct the old right of way leading from the farm of the said Complainant over and across the lands of the said defendant to the County road and being the old right of way referred to in the Complainant's bill; and further enjoining and restraining said defendant from preventing and forbidding the Complainant to free use thereof for the purpose of egress and ingress to and from her said farm. But before the Complainant shall have the benefit of this order she or some one for her shall enter into bond in the penalty of \$500 with security approved by the Clerk of this Court payable to the Commonwealth of Virginia and conditioned to pay all such costs as may awarded against the Complainant and all such damages as may be incurred in case this injunction shall be dissolved.

Robert R. Prentiss

To the Clerk of the Circuit Court of Nansemond County

A Copy Test: A. P. Gomer Clerk

I A. P. Gomer Clerk of the Circuit Court of Nansemond County do hereby Certify that the bond required by the above injunction has been given with security deemed sufficient by me

March 16th 1900.

Test: A. P. Gomer Clerk

E. E. Holland	p. q.
A copy for	
Abram Mullen	
vs.	In Chancery.
1900	March Rules.
Third	Monday.
Nansemond Circuit Court.	
Process Book No. 21	
Page 192	

Entered that the 19th day of March 1900 by delivering a true copy of the within summons to Abram Mullen in person
 A. E. Nathan
 for Attorney at Law

Suffolk, Va. Sept. 22, 1900.

To A. H. Baker,

Sheriff of Hansemond County,

Greeting:-

You are hereby commanded to summon E. K. Raboy and Dr. William J. Jordan to appear before me at my office in the town of Suffolk, Va. on Wednesday, the 26th day of September, 1900 at 10 o'clock A. M. to testify and the truth to say on behalf of Abram Milteer in a certain suit in equity depending in the Circuit Court of Hansemond County wherein Annie E. Therwine is plaintiff and the said Abram Milteer is defendant, and this the said witness shall not omit in the penalty of \$20.

Given under my hand this 22nd day of September, 1900.

R. H. Rawles

Notary Public for Hansemond County.

I have executed the within summons
by serving a copy on each, W. I. Jordan
and E. K. Robey in person in my County
of Housewold this 24th day of September
1900.

Fees 40^c

Summons,

Circuit Court.

Tuesday after the Second Monday in
April and October.

HON. ROBERT R. PRENTIS, Judge.
AZRA P. GOMER, Clerk.

County Court.

Second Monday in each month.

HON. WILBUR J. KILBY, Judge.
ROBERT R. SMITH, Clerk.
E. F. HOLLAND, Commonwealth's Attorney.
ALEX. H. BAKER, Sheriff.
SYDNEY T. ELLIS, County Treasurer.
JOHN B. PINNER, Commissioner of Accounts.

Hamsemond County Clerks' Office.

Suffolk, Va., _____, 1_____

To A. P. Gomer, Clerk Circuit Court
Hamsemond County

Annice M. Ebermine

vs - Defendant
Abram Miller

Doors removed in Chancery & Pled
on 3rd Monday in March, 1900 -
E. E. Ireland, J.G.

Pay \$1.50

John W. Ormer & W. C. West Ormer.
20 Jun 1883 75 a. Bennett Creek, a cave
12-47- W. J. A. B. F. A. A. A. A.

1886 Apr 6 -

W. J. Ormer to May V. Ormer
16-350.

1884
Jun 14. May V. Ormer & Annie Oberlin
34-309

1893. 22. NW: A. Miller from John T. Coff
26-688

Coffin - from ? Henry Kim Aug 8. 92.
& date. SB 25. 668

(Leave 1 - NW 1 - 52 - NW 1 - 55 -)
John J. Griffin Turner & Henry Kim
25-668 - 26 March 1891

John W. Ormer & wife to
John J. Griffin Turner Aug 8-1883
No. 12-49

the highest bidder thereof.
 Upon calculation Ella V. Boring,
 Sallie G. Boring and Helen C. Boring
 the infant children were found
 to own one fifty fifth interest
 in said property in common it being
 the share of their deceased mother;
 Mary Boring $\frac{1}{45}$ - Maggie Boring $\frac{1}{45}$ -
 Lewis Boring $\frac{1}{45}$ - and Beverly Boring
 $\frac{1}{45}$ - but the said Beverly Boring
 had previously sold and conveyed
 her undivided interest in the same
 to her said sisters Mary and
 Maggie Boring. In the sale of
 1882 purchased by said parties
 so that Mary Boring acquired $\frac{17}{45}$ -
 Maggie Boring $\frac{17}{45}$ - and Lewis
 Boring $\frac{1}{45}$ - and they desire to
 have the deed made to them
 so that their respective interest
 in said property will be the
 same. The said purchasers have
 elected to, and have failed to
 give Commissioner the whole
 of the said purchase money.
 Your Commissioner reports that
 in his opinion the said sale

Eberwine

vs

Muttar

check from Eberwine

\$9.69

" " Muttar

969

\$19.38

A Plomer clerk 10 \$6.98

A H Baker Sheriff 10 90

Rev. P Baker Surv. 161 10

" " " " 589 10 7.50

Col Alex Savaye 10 2.50

17.88

Balfour's Tax

\$1.50

Costs

INSURE WITH THE
NORTH BRITISH & MERCANTILE
INSURANCE COMPANY,

OF LONDON AND EDINBURGH.

ESTABLISHED 1809.

Linn	6.88
------	------

Duke	.90
------	-----

Lox	1.50
-----	------

Baker Lox	7.50
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Song	2.00
------	------

	19.38
--	-------

	9.69
--	------

E. E. HOLLAND.

ATTORNEY AT LAW.

COMMONWEALTH'S ATTORNEY FOR NANSEMONO COUNTY.

OFFICES IN BOOTHE BUILDING.

SUFFOLK, VA.

Mr. A. P. Gomer,
Suffolk, Va.

Dear Sir:-

I enclose herewith John G. Eberwine's check for \$9.69 in payment of one half of the costs in the suit of Eberwine v. Milteer.

Yours very truly,

Dic. E. E. H.

May 9, 1901.

E. E. Holland

From Eberwine
\$9.69
" Milteer
9.69
19.38

31.88
15.00
216.88

31.88
16.50
415.38

6.98 csk
6.00 paid
15.00
15.00
7.50
2131.88
15.94

250
161
587

John G. Eberwine
\$9.69
6.98
2.71
2.90
7.61
Paid R. P. Baker

John G. Eberwine
\$9.69
5.89
3.80
2.50
1.30
Paid R. P. Baker

9.69
6.98
2.71
2.90
7.61
Paid R. P. Baker

750
161
589
161
950

The depositions of Abram Milteer, Lee Brinkley and others taken on this 30-th day of May, 1900 at the office of R. H. Rawles by consent of all parties, complainant and defendant to be read as evidence on behalf of Abram Milteer in a certain suit in equity now pending in the Circuit Court of Nansemond County, wherein Annie M. Eberwine is complainant and the said Abram Milteer is defendant.

Present:- E. E. Holland and R. W. Withers, Counsel for complainant.

R.H. Rawles, Counsel for Defendant.

Abram Milteer, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation, and do you know the parties to this suit?

Ans. Abram Milteer, 44 years, Nansemond County, Va., and I know the parties to this suit.

Q. 2- In what part of Nansemond County do you reside?

Ans. In Lower Parish.

Q. 3- Will you state what is the custom in that part of the country in regard to fences?

(question excepted to)

Ans. We have no fences down there.

Q. 4- Tell us the condition of your farm which is now in controversy, and the condition of the farm of Annie M. Eberwine which is now in controversy as to fences? (question excepted to)

Ans. Neither one of them are fenced at all.

Q. 5- Are any of the adjoining farms fenced? (question excepted to)

Ans. No.

Q. 6- Will you state in what manner the people living in that section reach the county roads from their residences?

Ans. They have hedge rows across their fields to the county roads.

Q. 7- Can you tell us anything as to the width of these hedge rows?

Ans. There is no particular width; they are generally very narrow.

Q. 8- Are these hedge rows as a rule kept fenced in?

Ans. No, they are not.

Q. 9- Have you with you a deed for your farm?

Ans. Yes, I have it, and herewith file the same, marked exhibit "A".

Q. 10- I notice that this deed was made on the 22nd day of November, 1893, and that it contains a clause stating that the farm was conveyed to you subject to a lease in favor of John G. Eberwine running from the first of November, '92 to the first of November, '95, you bought the land subject to that provision of course?

Ans. Yes.

Q. 11- Then while you received a deed for this land in November '93, when did you actually take physical possession of it?

Ans. I took physical possession of it in November, '95.

Q. 12- State whether or not the path or way now in controversy and which the complaintant charges you with having closed up was in existence at the time you bought the land?

Ans. It was not.

Q. 13- The bill states that the complainant received a deed for her farm on the 14th of June, 1894, was this path or way in existence at that time?

Ans. No.

Q. 14- Was there any path or way across your farm leading from the farm now occupied by Eberwine to the county road at the date of your purchase?

Ans. Yes, there was a way across there at the time I purchased it.

Q. 15- What has become of that path or way?

Ans. Eberwine closed it up and cultivated it.

Q. 16- Do you know at what time or period he closed it up?

Ans. In 1895.

Q. 17- Was he on the farm at that time?

Ans. Yes, he was working both places at that time.

Q. 18- When he closed it up in 1895, what other way did he then have to get from the Eberwine farm to the county road?

Ans. He made a new way across my farm.

Q. 19- How far was this new way which he made from the old way?

Ans. About 13 or 14 steps.

Q. 20- You have said that this new way was some 13 or 14 steps from the old way, is that about the distance all the way between them? (question excepted to as leading)

Ans. Yes.

Q. 21- What was the width of this new way which Eberwine made across your farm?

Ans. Not to exceed 8 feet if it was that; just wide enough for a cart to pass along the hedge row and not wide enough for people to pass when they met in their carts.

Q. 22- If people met on this path, what would be the result?

Ans. They could not pass each other without driving on my crops, and they just drove over them and tore them up as they went along.

Q. 23- State anything you may know in reference to the method in which this new way was fenced in?

Ans. It was not fenced in at all.

Q. 24- What other visible marks or boundaries did it have about it or on its sides?

Ans. There was nothing.

Q. 25- When you purchased this farm and received a deed for it, state what was said to you in regard to a right of way?

Ans. Nothing.

Q. 26- The bill charges that you have obstructed and closed up the right of way that Eberwine was using last year to cross your farm, state if you have closed up any right of way?

Ans. Yes, I closed up one way; I closed up the one that Eberwine made.

Q. 27- Do you mean the one that he made in 1895?

Ans. Yes.

Q. 28- State why you closed up that right of way?

Ans. I closed it up because it damaged my farm from very heavy rains which washed away my land and carried it right down in the branch, and it was so that no one could hardly travel there at all for heavy rains and the hedge row was narrow and people passing and repassing trampled on my crops.

Q. 29- Did you have any other reasons for closing it up?

Ans. None whatever.

Q. 30- You have stated that the people in that part of the county use hedge rows to reach the county roads, will you state when they commenced to use a hedge row for this purpose, and about how long they continue to use this particular hedge row?

Ans. They have no particular time to use it, they are frequently changed from one part of the field to another part. This is done in Nansemond county and also in Norfolk county. They make these changes because the hedge row grows up in weeds sometimes, and frequently they do it to square their cuts off; sometimes they want to move a cut somewhere and they do it for this purpose.

Q. 31- When did you close up the right of way?

Ans. In August, '99.

Q. 32- How did Eberwine then reach the county road from her farm?

Ans. I gave them a good right of way through my farm about 18 feet wide.

Q. 33- Have they ever used this right of way?

Ans. All the time from the first day I moved up to the present.

Q. 34- How far was this right of way from the one you closed up?

Ans. About 110 steps.

Q. 35- What is the nearest railroad station generally used by the complainant?

Ans. Deans; this is the one they use when they come to Suffolk by rail.

Q. 36- Will you now state which of these 2 ways, (I mean the one you closed up and the one you opened for her) puts them on the county road nearest to this railroad station?

Ans. The one that I made for her.

Q. 37- Which one of these 2 ways puts her on the road nearest to her post office?

Ans. The one that I made.

Q. 38- Do you know what is the market generally used by the complainant?

Ans. Portsmouth, I should judge, they seem to go there oftener than any where else.

Q. 39- Which one of these 2 ways puts her on the county road nearest to her market?

Ans. The new one that I made for her.

Q. 40- Will you state anything you may know of the comparative convenience of these 2 ways, I mean the one you closed and the one that you made -- convenience for the complainant.

Ans. The one I gave her is more convenient for her to go the the post office and to town, in fact it is more convenient in every way.

Q. 41- State the comparative conditions of these 2 paths?

Ans. The one I gave her is a much better way; it is level and there is not a wash in it. It is on good hard ground in my field where there is no chance for it to wash.

Q. 42- Will you state whether the change which you have made in the location of this path causes the Eberwine farm to be disfigured in any way?

Ans. Not at all, I think its a benefit to it.

Q. 43- You have stated that in 1895 Eberwine discontinued and closed up the old path across your farm; do you know who gave him the authority to do so?

Ans. I do not. It was my property, and I did not think any one had the authority to do so. I did not give it to him myself.

Q. 44- Why was it that you did not move this right of way until Aug. 1899?

Ans. Because that was the first year that I worked the place myself

in person. I had a tenant there and I did not go to the farm very often, but as soon as I moved there myself, I found it to my advantage to move the path as soon as I commenced to work. This was in August, '99.

Q. 45- State whether you ever spoke to any one before you changed the location of this way in regard to change of same?

Ans. I did, I spoke of moving it as soon as I got to work on the place and found it was convenient for me to move it.

Q. 46- Did you ever have a conversation with Eberwine in regard to moving it?

Ans. I did not. After I moved the path, I met him on the path and wanted to have a talk with him about why I moved the road, and he would not have anything to say to me and told me not to talk to him about it, so nothing else was said.

Q. 47- You have filed with your answer a map of the 2 farms and the different ways, is this map correct so far as you could make it?

Ans. Yes-sir.

Q. 48- The map shows that both these farms lie North of the county road, in which direction is Suffolk?

Ans. Suffolk is West and Portsmouth and Deans are East.

Cross Examined by Counsel for Complainant.

Q. 1- Did you examine the location of the 2 farms both Eberwine's and yours before you made your purchase?

Ans. I examined my farm but did not examine the Eberwine farm.

Q. 2- Did you notice that at the time of your purchase there was a right of way across your farm which was used by the parties living on the Eberwine farm?

Ans. I did.

Q. 3- Did you observe at the time you purchased your place that it was necessary for parties living on the Eberwine farm to have a right of way across your farm in order to reach the county

road?

Ans. I did, they had to have some way to get out of there.

Q. 4- Do I understand from your last answer to the last question that in order to get out to the county road it was necessary for them to have a way across your farm?

Ans. Certainly they had to have a way across there to get to the road.

Q. 5- Then at the time of your purchase there was an existing right of way across your place which you saw and which you knew was necessary in order for Eberwine to reach the county road?

Ans. Yes.

Q. 6- Is it true that you purchased your place, knowing when you did so that parties living on the Eberwine place must of necessity have a way across your farm?

Ans. Yes, they had to have a way out, of course.

Q. 7- Did you know at the time you purchased your place that both the farm that you now own and the farm that Eberwine owns formerly belonged to John W. Ames, Sr?

Ans. Yes.

Q. 8- Did you know at the time you made your purchase that a right of way across your farm to the county road had been used by parties living on the Eberwine farm ever since it was separated from your farm?

Ans. I did not.

Q. 9- In what other way did you suppose parties reached the county road from the Eberwine farm except through a right of way across your place?

Ans. They would either have to cross my farm or some body else's farm to reach the county road.

Q. 10- I understood you to say in answer to question in your examination in chief that there was a way across your farm at the time you purchased it and that you knew it, and that the right of way which existed at that time was afterwards closed up by Eberwine, is this true?

Ans. Yes.

Q. 11- Did he close it up after your purchase?

Ans. He did.

Q. 12- Did you object?

Ans. I knew nothing about it until it was closed.

Q. 13- How long was it closed up before you knew it?

Ans. I could n't state exactly how long, but it was only a short while.

Q. 14- Did you make any objection as soon as you did find it out?

Ans. I did not because he had control of the place.

Q. 15- Did you make any objection after his lease had expired?

Ans. I did n't go to him to make any objection, but I objected to it and moved it again myself in '99.

Q. 16- When did Eberwine move off of your place?

Ans. In '95.

Q. 17- Is it then ^{true} ~~thru~~ that you made no objection in person, either to Mr. Eberwine or to Mrs. Eberwine as to the closing up of the old right of way and that you acquiesced in same from 1895 to 1899?

Ans. I did not to either one of them, but I did not acquiesce.

Q. 18- Did you make any complaint either to Mr. or Mrs. Eberwine about the change of this right of way?

Ans. I did not.

Q. 19- Where was the old right of way located, I mean the right of way there at the time you purchased?

Ans. Down an old hedge row.

Q. 20- Did you make any objection to any body about the change of the old hedge row from way #1 to way # 2 as designated on the map?

Ans. I did not because I had nothing to do with it.

Q. 21- Was not your place under your entire control from the year '95 (end of the year) when Eberwine moved the way until 1899 when you changed the old right of way?

Ans. It was under my control thus far; I had a man there at work, and he would come to me for advice and I would give him advice in regard to working the farm. That was all the control I had over it, I was 5 or 6 miles from there. The man working the farm was on a salary and was not a tenant. I don't consid

er that I had full control of the farm until I moved there in person.

Q. 22- Then it is a fact that in 1895 Eberwine changed the old right of way across your place and at the same time the old hedge row across your place and made a new right of way and a new hedge row a short distance from the old one?

Ans. It is true he changed it, putting it some 13 or 14 steps from the old way.

Q. 23- And it is also a fact that you never complained to any body about this change?

Ans. I never complained to either Eberwine or to his wife.

Q. 24- You have stated in your examination in chief that the right of way made by you across your place is nearer her post-office and nearer her market; please examine the map and state if you did not mean by this to say that it comes out in the county road nearer to the station and that the distance from Eberwine's house to the county road is not changed?

Ans. I meant to say that it puts him in the county road nearer to these places, but that the distance from his house to this place is unchanged, but the distance to the county road is changed.

Q. 25- If Mr. Eberwine was coming to Suffolk or going to church or to Drivers, would he not come out in the county road nearer to these places by the old right of way?

Ans. That depends on what way he was coming to Suffolk, if he was going to drive to Suffolk, it would be a little closer to come out the old right of way, if he was coming on the train, it would be nearer to the station to come out the new path. He would be nearer to Drivers and church by coming out the old way.

Q. 26- Did you have any conversations with either of the Eberwines before closing up the old right of way and making the new one?

Ans. I did not.

Q. 27- Is it a fact then or not that you changed the old right of way # 2 to its present location to suit your convenience and without reference to whether the Eberwines' agreed or con-

sented to the change or not?

Ans. I moved it for my convenience and to keep from washing and damaging my land, and I never said anything to them about it.

Q. 28- You have stated in your examination in chief that they have since used the new right of way, did they not as soon as the old right of way was closed, make objection thereto?

Ans. Neither of them have ever opened their mouths to me about it.

Q. 29- Did they not write you a letter in which they made objection to same?

Ans. They did not, but he did write me a letter and I herewith file the same marked exhibit "B."

Q. 30- Did you open up this new right of way because you recognized their right to a way across your land from their farm?

Ans. Certainly I did.

Q. 31- You have stated in your examination in chief that so far as you know Eberwine had no authority to close up the old right of way #1?

Ans. I did.

Q. 32- What authority was it necessary for Eberwine to get in order to change the location of right of way # 1 to the location of right of way #2?

Ans. It was my land at that time.

Q. 33- But you have stated that while he had no authority to close it that you did not object to its change, please state why you did not object?

Ans. Simply because I had not moved on the farm and had not viewed the situation of my land and did not know how the land washed until I moved there myself, which was in fall 1898.

Q. 34- Why did you not change it back to where the old right of way # 1 was?

Ans. Simply because it damaged me less where I put it.

Q. 35- Did the # 2 way injure your land more than the # 1 way?

Ans. Yes, it did.

Q. 36- You state in your examination in chief, that Mr. Eberwine, then a tenant of yours on this land, changed the position of a

way and a hedge, how do you know that this change was made?

Ans. I saw with my own eyes that it had been moved; that the old way had been plowed up and cultivated and a new way made; there were traces of the old way there. I saw this in 1895.

Q. 37- Can you state why Eberwine altered this way?

Ans. I do not know.

Q. 38- After Eberwine had created way # 2 and used it, did you offer to fix or locate any other way across your land for him other than this # 2 way?

Ans. No, I did not because I did not move there until 1898, when I did make him a new way in '99.

Q. 39- Did not Mr. Eberwine, as your tenant, have a right to locate a way across your land?

Ans. I did n't give any right as a tenant.

Q. 40- As I understand your testimony, it amounts to this; that in 1895 Eberwine, while a tenant on this land altered an old and established way and created a new way known as # 2; that you made no objection, either to him or his wife as to this change, and allowed him to use it continuously, openly and visibly between 1895 and Aug. 1899; that about the last date to suit your own convenience and because you considered # 2 way injurious to you, you destroyed # 2 way and established # 3 way, are these not the facts?

Ans. These are the facts. I did not object during this time because I had not moved on my farm and did not know the situation of the land nor the damage it was doing me.

Q. 41- When, if you know, was right of way # 1 first located and established?

Ans. I do not know.

Re-examined.

Q. 1- You have stated that Eberwine changed this right of way # 1 and made right of way # 2 in 1895 and that you did not close up the same until 1899, please explain fully why you allowed him to use this right of way from '95 until '99?

(question excepted to because already asked and not a question of anything brought out in cross examination)

(to which counsel for defendant replies that it was brought out on cross examination by the witness being asked as to whether he acquiesced to this right of way # 2)

Ans. Simply because I had not viewed the situation of my farm until I moved there, then I found it necessary to move this path in my field where it did not damage me and this is why I moved it. I moved there in September, 1898 and moved the hedge row and road August, '99 after I had cultivated one crop.

And further this deponent saith not.

Signature waived by consent.

Lee Brinkley, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Lee Brinkley, 43 years, Nansemond County, farmer, and I know both the parties to this suit.

Q. 2- What custom prevails in your section of the country as to the fence question?

Ans. We have no fences at all; I know this because I live near the farms in controversy.

Q. 3- What kind of fences, if any, have you ever seen along any of these ways we have been talking about?

Ans. Neither of the ways spoken of have ever been fenced to my knowledge.

Q. 4- Did you ever occupy either of these farms, if so, which and when?

Ans. I have worked both of them, I staid on the Eberwine farm 9 years, I rented the other one while I was on the Eberwine farm.

Q. 5- Do you know anything of the old right of way # 1 across the Milteer farm?

Ans. Yes, I used it for 9 years.

Q. 6- Is that right of way now opened and being used?

Ans. No, it is closed up.

Q. 7- Who closed it up?

Ans. Mr. John Eberwine either closed it up himself or had it done.

Q. 8- When did he close it up?

Ans. He closed it up 5 years ago, or somewhere about 5.

Q. 9- Do you know why he closed it up?

Ans. He closed it up on account of washes I suppose. During big rains &c 1000 or more loads of dirt have been washed up I suppose.

Q. 10- How did he close it up?

Ans. He went there with his plow and plowed it up and put it into cultivation.

Q. 11- After he had closed up this way, how did he reach the county road?

Ans. Mr. Eberwine made a new way about 13 steps East from the old way. The old way is marked by old sleepers where there was a hollow ~~brush~~ *bridge*.

Q. 12- What was the width of this way which he made?

Ans. I suppose it was between 8 or 9 feet; just wide enough for a cart to go along.

Q. 13- What was the result if 2 carts met on this road?

Ans. It caused the produce growing by the way to be torn up or trodden down.

Q. 14- Do you know when this right of way # 2 was closed up?

Ans. I don't remember the date, but I think it was in '99.

Q. 15- Do you know why Milteer closed up this way?

Ans. This way that Eberwine made was about as bad as the old way # 1, I saw no difference in the 2, they were both on the hollow side of the hill and would both wash terribly.

Q. 16- When this way was closed up by Milteer, what other way was opened?

Ans. He opened him another way which I consider 10 times as good and there is not a wash in it.

Q. 17- You say you have lived on the Eberwine farm, state what would be the disadvantage in having to go out of this new way which Milteer opened?

Ans. There would be no disadvantage; it is a much better road specially after big rains.

Q. 18- Is it any further for him to reach the county road in coming the new way than coming the old way?

Ans. The new way gets to the county road about 110 yards further from Eberwine's house than the # 2 way.

Q. 19- Which of these routes puts Eberwine on the county road nearest to his post-office?

Ans. The new one puts him 110 yards nearer to his post office as well as I remember.

Q. 20- Which one puts him nearest to his market?

Ans. The new one, 110 yards nearer.

Q. 21- Which one of these ways puts him nearer to the railroad station?

Ans. The new one puts him 110 yds. nearer to the railroad station.

Q. 22- How do the farmers in that section usually get from their residences to the county road?

Ans. We all down there can't get enough land to work so travel down these narrow ways as narrow as we can get them.

Q. 23- Do you know and can you state whether it is the custom in that neighborhood to change the location of these ways from time to time?

Ans. Yes, I often change mine from time to time because I want to change my rows.

Q. 24- How far is the right of way which Milteer opened up for Eberwine from the way which he closed up?

Ans. I think about 110 yards.

Cross examined by Counsel for Complainant.

Q. 1- When did you live on the place now owned by Mr. Eberwine?

Ans. I lived there 5 years ago, it will be 6 this coming fall. I lived there in 1894. I was three 9 years and went there in 1885.

Q. 2- ^{Was} ~~What~~ right of way # 1 across Mr. Milteer's farm in existence at that time?

Ans. Yes.

Q. 3- State how long it had been as then located, if you know?

Ans. Ever since I had been in the neighborhood about some 10 or 15 years I suppose. I don't know about the road before that time.

Q. 4- Had the right of way as then located been changed during these 15 years?

Ans. Not that I know of.

Q. 5- Do you know by whom that old right of way was located?

Ans. I suppose by Mr. John W. Ames or Mr. W. T. Ames.

Q. 6- Was that right of way there at the time John W. Ames sold the Eberwine land?

Ans. Yes.

Q. 7- Was that old right of way there during the whole time that W. T. Ames owned it?

Ans. As far as I know.

Q. 8- You have stated that Mr. Eberwine closed it up in 1895, how do you know?

Ans. I did not see him do it, but I passed the road and saw he had made a big change.

Q. 9- Did you notice whether the change was made the full length of the right of way across the farm now occupied by Mr. Milteer or simply at the road?

Ans. It was the whole length of the way.

Q. 10- It is a fact, is it not, that all roads and ways in your section are made as narrow as possible?

Ans. Yes.

Q. 11- And it is also a fact is it not, that ^{the} right of way across this farm was made narrow just like all other rights of way in that section?

Ans. Yes, I suppose so.

Q. 12- You stated in your examination in chief that in your opinion Eberwine closed the # 1 way because of the washing of the land, is this a fact?

Ans. Yes, I suppose he did, it is what I should have done.

Q. 13- Did you or not state that # 2 way washed also?

Ans. I did n't see any difference in the amount of washing in either road.

Q. 14- Then if # 2 road damaged the Milteer farm by washing, the # 1 road did so to an equal extent?

Ans. Yes, I did n't see any difference.

Q. 15- Then the change of # 1 road to # 2 road created no additional damage or injury to the Milteer property?

Ans. No additional damage that I know of.

Q. 16- If the location of this right of way damaged the farm by washing, why did n't you change the location during the 9 years

that you were there?

Ans. Because I had no right.

And further this deponent saith not. Signature waived by consent.

John T. Capps, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. John T. Capps, 48 years, Nansemond County, farmer and I know the parties to this suit.

Q. 2- Do you live in the neighborhood of these 2 farms of Eberwine and Milteer?

Ans. Yes, I live on the adjoining farm to Milteer.

Q. 3- What is the custom in your section in regard to fences?

Ans. Our custom is to have no fences.

Q. 4- How do the people in your section generally reach the county road from their residences?

Ans. They travel the hedge row any way they please. Where they have a lane they generally use that. I have 3 or 4 ways and I travel any of them I please.

Q. 5- Do you know anything of the old original path or way which was used over Milteer's farm by people living at the Eberwine farm?

Ans. I know there was a hedge row there when Mr. Ames left there.

Q. 6- How wide was it?

Ans. It was a cart path some 7 or 8 feet wide.

Q. 7- Was it fenced?

Ans. I have never known it to be fenced.

Q. 8- Is that old original way still open and in use?

Ans. No.

Q. 9- Do you know who closed it up?

Ans. No, I do not, positively, I think Mr. Eberwine changed it, but I don't know.

Q. 10- Do you know when he changed it?

Ans. No.

- Q. 11- Did he make another way when he changed it?
Ans. I think he did.
- Q. 12- What did he do with this old way when he made the new one?
Ans. I think he cultivated right across it. It is not there now, it is not in sight.
- Q. 13- How far is the new way which Eberwine made from the old way which he closed?
Ans. I don't know how far he changed it all the way, but I only know how far he changed it at the road; I should suppose somewhere about 30 or 40 feet.
- Q. 14- Have you ever traveled the way that Eberwine opened?
Ans. Yes.
- Q. 15- Have you ever traveled the old original way?
Ans. Yes.
- Q. 16- Were either of these ways wide enough for vehicles to meet and pass each other without going some little distance out in the field?
Ans. No, they were not wide enough for vehicles to pass.
- Q. 17- Do you know what was the result to the farm from the use of this path when there came hard rains?
Ans. They washed some, I have seen Mr. Brinkley when he lived there hauling something there to make repairs and I have seen Mr. Milteer and Mr. Eberwine doing the same thing.
- Q. 18- Is the way that Eberwine opened still in use or has that been closed?
Ans. No, it is closed.
- Q. 19- Who closed it?
Ans. I think Mr. Milteer closed it.
- Q. 20- Is there still a way that has been opened up for travel from the Eberwine farm across the Milteer farm to the county road?
Ans. Yes, there is a way.
- Q. 21- About how far is this from the way that Milteer closed?
Ans. I do not know positively, but I should guess about 100 yards.
- Q. 22- Have you ever traveled this new way?
Ans. I have.
- Q. 23- How does it compare with the way which Milteer obstructed as

far as its condition is concerned?

Ans. Well, it is a better road through Mr. Milteer's field than either one of the others that were closed.

Q. 24- Have you ever noticed whether this way is liable to wash?

Ans. I do not think it could wash possibly as bad as the other, because it is on a level piece of ground.

Q. 25- How about its convenience and accessibility for people living on the Eberwine farm?

Ans. That would depend upon the way the fellow wanted to go.

Q. 26- Suppose Mr. Eberwine wanted to go to Portsmouth or to Deans station or the post office, which one of these roads at the point where it enters the county road is nearest to Portsmouth?

Ans. The road which Mr. Milteer made.

Q. 27- Is it any further from his residence to Deans station or to Portsmouth over this new road than it was over the old way?

Ans. I should think not, if the map is correct. (witness here looks at the map and thinks it is very near right)

Q. 28- Do you know where Eberwine trades mostly?

Ans. No.

Q. 29- Do you know whether he trades more in Portsmouth or Suffolk?

Ans. I don't know, but I imagine he trades more in Portsmouth.

Cross Examined by Counsel for Complainant.

Q. 1- How long had the old right of way # 1 existed before it was changed?

Ans. The old right of way # 1 had been there as long as I can remember the farm.

Q. 2- Was it in use at the time Mr. Milteer purchased this farm?

Ans. Yes.

Q. 3- Was this right of way # 1 as wide as other rights of way down in that section?

Ans. I reckon it was about as wide as any cart path or hedge row that goes through a field. It was not as wide as the county road.

Q. 4- Is it not a fact that all ways down in your section are made as narrow as possible so that you may have as much of the land as possible to cultivate?

Ans. All drive ways are made narrow. Some of them cultivate the county road.

Q. 5- Did this particular right of way through Mr. Milteer's farm wash any more than the rights of way or hedge rows through your place?

Ans. I don't know. I did n't pay any attention to it. I have seen them hauling stuff in there but I don't know whether it washed any more than others.

Q. 6- You have stated in your examination in chief that the new road through Milteer's field is a better one than either of the others, how as to the way through Eberwine's field?

Ans. I don't know, Mr. Eberwine has hedge rows like the rest of them, and we all go down them.

Q. 7- When this new road # 2 was established by Mr. Eberwine, was it not plainly in view to all who chose to look?

Ans. Yes.

Q. 8- Did he not continue to use this # 2 road for a number of years after it had been established?

Ans. Yes, he used it but I do not know how long.

Q. 9- There was no secret about Eberwine using this road was there?

Ans. No.

Q. 10- Then would you not say that the use of this road (#2) was visible, notorious and continuous?

Ans. That is true. He used it continually until Mr. Milteer stopped it up.

Q. 11- When did Mr. Eberwine move from this Milteer farm?

Ans. He moved when the term of his lease was out in Nov. 1895.

Q. 12- Did Mr. Milteer then own and possess the land?

Ans. He bought it in 1893. Eberwine paid his rent for this farm to Milteer after Milteer had bought the farm from me and my wife; the lease being transferred to Milteer. Mr. Milteer did not live there, but he had charge of the farm and put a man there to work it.

- Q..13- The man who was put there by Mr Milteer worked the farm for Milteer, did he not?
- Ans. I suppose so, I don't know.
- Q. 14- When did Milteer actually go to live on the farm?
- Ans. About the summer of '97 or '98 I don't know which.
- Q..15- Did not Mr. Eberwine continue to use this # 2 way after Mr. Milteer went to live on the farm?
- Ans. He used it some after Mr. Milteer moved there, but I don't know how long.
- Q. 16- If a new road were run through a cultivated field where none had existed before, would it not be damage to the land?
- Ans. It might be an improvement, I don't know. If a crop was growing there at the time it might damage the crop.
- Q. 17- Do you know whether there was more wash on the # 2 than the # 1 road?
- Ans. No, I do not.
- Q. 18- Do you know whether or not the abandonment of # 2 road would prevent the wash complained of?
- Ans. The wash could be prevented by cultivating the land and filling it up, which would cost something.
- Q. 19- Which would be the most convenient road for a person living on the Eberwine farm to go West to Suffolk and other points, the # 2 or the # 3 way?
- Ans. The # 2 road because it would be just the distance between the # 2 and the # 3 roads on the public road, nearer.
- Q. 20- Which would be the most convenient road from Mr. Eberwine's house to reach Portsmouth, Deans station the postoffice or railroad?
- Ans. About the same.
- And further this deponent saith not.

S. F. Warrington, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. S. F. Warrington, 41 years, Nansemond County, farmer, and I know the parties to this suit.

Q. 2- State if you live in the neighborhood of the Eberwine and Milteer farms?

Ans. I live about 4 miles from them.

Q. 3- Are you acquainted with the locality in question?

Ans. Yes, I worked on them 2 years. It was all one farm when I worked there.

Q. 4- When you lived there, will you state how a person who lived on what is now the Eberwine farm reached the county road?

Ans. There was no one living there at that time except one or two people and they come out over a hedge that we used for the farm. This hedge row crossed the Milteer land.

Q. 5- Do you know anything of an old hedge row or cart path or way which had formerly been used by John W. Ames Sr. across this land?

Ans. Yes, this is the one I have just spoken of.

Q. 6- What was the width of this hedge row at that time?

Ans. It was wide enough for the passage of one vehicle and if we met on the road and had to turn out, we would drive on some of the growing crops.

Q. 7- Was this path or way fenced in?

Ans. No.

Q. 8- Will you please state the character of the surface of the land over which it passed on the Milteer farm?

Ans. There was a little wash where there used to be a bridge about the line between the Eberwine tract and the Milteer tract. I have seen it washed out there where the old bridge and ditch was and it was some trouble to keep in order.

Q. 9- Will you state whether the land over which this old way went was of an even or uneven character, level or unlevel?

Ans. As I remember there was only one unlevel place and that is the place that I spoke of.

- Q. 10- When did you leave there?
- Ans. I think I left there about '78 or '79.
- Q. 11- State whether or not this old track or way is still in use?
- Ans. I don't think it is; I don't know except what I have been told.
- Q. 12- State whether you have ever traveled over a second way that was said to have been opened by Mr. Eberwine? (question excepted to)
- Ans. I have traveled over every ^{one} that has ever been there.
- Q. 13- Do you know whether there has ever been more than one way across there at different times?
- Ans.. It has n't been changed much.
- Q. 14- Please state whether or not you have ever traveled over another way or path across this Milteer field?
- Ans. Yes.
- Q. 15- When?
- Ans. In March of this year.
- Q. 16- Please state about how far this way is from the old way?
- Ans. Somewhere from 100 to 120 yards I should think.
- Q. 17- What is the character of the surface of the land over which it passes?
- Ans. I think it is good level hard land without any wash or ravine or bottom in it.
- Q. 18- What ^{kind} ~~sought~~ of a road or cart way does it make?
- Ans. A first rate one; a right good way.
- Q. 19- Will you state how this new way compares with the old way as to condition and quality?
- Ans. I think it is a better road.
- Q. 20- Please state why you think it is a better road?
- Ans. Well, there is no wash at all and no ravine, and it is on more solid land.
- Q. 21- If you lived on the Eberwine farm which of these 2 ways would you prefer to travel in order to get to the county road?
- Ans. I think I should have to live at Eberwine's to find out.
- Q. 22- Will you state whether or not from a point of convenience it is as accessible to the Eberwine farm as the old way?
- Ans. As I see it, I don't see any difference. If I were going to

Norfolk, the new one would be preferable to me; if I were going to Deans station the new one would also be preferable to me.

Q. 23- Do you know whether there is already a hedge row on the Eberwine farm that leads across his land to this new way?

Ans. I came across there to the new way, and I came down a hedge row.

Q. 24- Can you tell us the nature of these hedge rows used by the farmers in that section in order to reach the county road, I mean to their permanency or otherwise?

Ans. We often change hedge rows.

Q. 25- State why you change them?

Ans. Sometimes to alter our cuts or plats of land; sometimes they get so foul with grass we change them and we often change them for different motives.

Q. 26- Do you know what market Mr. Eberwine mostly attends; Suffolk, Norfolk or Portsmouth?

Ans. I do not know his market.

Q. 27- When he is coming to Suffolk on the cars, at what station does he usually take the cars?

Ans. At Deans.

Q. 28- Which one of these 2 routes puts him in the county road nearest to Deans?

Ans. It is the same distance from his house, but the new way puts him in the county road nearer to Deans.

Q. 29- Which one of these 2 ways puts him in the county road nearer to Deans station, the new one or the old one?

Ans. The new one.

Q. 30- Can you tell us of any inconvenience that the use of this new way could put the owner of the Eberwine tract to?

Ans. If I want to go to Portsmouth there is no inconvenience at all. If I want to go to Suffolk and travel from Deans to Suffolk by rail there is no inconvenience at all. If I was going to Sabbath school or church the old road would probably give me 200 yards closer.

Cross Examined by Counsel for Complainant.

Q. 1- How many times have you been on the Eberwine farm since you left there in '78 or '79?

Ans. I don't know.

Q. 2- What have been your opportunities for observing whether there had been any change in the location of the ways since you lived on the place?

Ans. You notice that I have said in my examination in chief that the ways were so close together that I really did not notice the change. The 2 ways (old ways) were about 13 yards apart I have not traveled either many times.

Q. 3- Can you say of your own knowledge that any actual change was made in the 2 ways and if so can you say of your own knowledge whether such change extends across Milteer's entire length?

Ans. I told you I did not notice the change.

Q. 4- Then am I to understand that the change was so immaterial that it would require either close observation or to have your attention specially called to it in order to notice it?

Ans. No.

Q. 5- Why?

Ans. I was riding along attending to my business and I was not noticing for changes.

Q. 6- When did you first notice this change?

Ans. When my attention was called to it.

Q. 7- When was your attention called to it?

Ans. I don't remember. Perhaps in the last 60 or 90 days.

Q. 8- How did you decide that such change had been made when your attention was called to it?

Ans. By the sleepers and the old bridge work and the old ditch.

Q. 9- Are you prepared to say that there was a bridge at the place where this old right of way entered the road?

Ans. I told you I saw the sleepers where the old bridge was cut down when I was living there I don't remember the bridge.

Q. 10- Are you then prepared to say that where these sleepers were found was where the old right of way came out into the road?

Ans. It would be impossible for me to mark the spot. I knew there was an old hedge row there, I have traveled it many times. When you have changed a place from this to that it is hard for a man who has no interest to mark the spot.

Q. 11- Then do I understand from that answer that it is impossible for you to locate where the old right of way was?

Ans: If you put me on the farm and put me at the bridge where the wash was then I could tell where the old path was, but for me to be here in Suffolk and mark the spot I cannot do it.

Q. 12- Have you been to that bridge where the wash was for the purpose of ascertaining as a matter of fact where the old right of way was?

Ans. I have not.

Q. 13- Then am I to understand from your answers to the 2 last questions that you cannot locate the old right of way without going to that bridge, and that as a matter of fact you have not been there?

Ans. I refer to my above answers.

Q. 14- You have stated in answer to a question asked you on your examination in chief that you thought you would have to live at Eberwine's in order to find out to what extent he is inconvenienced by the change of ways; is it not a fact that it is only parties who have to travel these different ways constantly that are in position to tell properly about such inconveniences?

Ans. A man's business is sometimes affected in going to the county road but as far as inconveniencing Mr. Eberwine or any body else who lives on that farm traveling to Suffolk or Norfolk I don't see any inconvenience at all. This is traveling by the public road. The parties who live on the Eberwine farm can tell best of these conveniences or inconveniences.

Q. 15- Does not the old way lead him into the county road nearer to Suffolk, nearer to Drivers, to church, school-house, post-office and public wharf?

- Ans. If he travels by buggy to Suffolk the old road is nearer, if he don't have to go by the postoffice to get his mail.
- Q. 16- Do farmers in your section constantly change their hedge rows?
- Ans. I think so. I do.
- Q. 17- Is it any inconvenience to have your land so fixed that such hedge rows cannot be changed?
- Ans. I would not want mine so.
- Q. 18- Would you not consider it a damage to your farm to have your farm so; that is where hedge rows could not be changed?
- Ans. Yes.
- Q. 19- Would you not consider it a damage to your farm to have to maintain across it at your own expense along hedge rows or at other places 110 yards of right of way?
- Ans. I don't know that Mr. Eberwine has to do that.
- Q. 20- If Mr. Eberwine in fact had it to do, would it not be a damage to his farm?
- Ans. Mr. Eberwine already has a hedge row for this 110 yards, and if he did not have one he would have to have one. I don't see where the damage can be as this new road puts him nearer to Norfolk, nearer to Deans station and nearer to Portsmouth.
- Q. 21- Then is it or not a damage to be forced to maintain a hedge row at the same place a distance of 110 yards across your farm?
- Ans. There is 110 yards of hedge row one way and 110 yards another way, I don't see any difference.
- Q. 22- Then it is no expense to maintain a private way along a hedge row 110 yards across your feild?
- Ans. It might be made with no expense at all and it might be made with some. We pay very little attention to hedge rows.
- Q. 23- Is it a fact or not that on some of the public roads in your section there is not room to pass without driving in the field over crops planted on each side of the road? (question excepted to because wholly irrelevant)
- Ans. We sometimes plow out too far.
- Q. 24- Is it any greater burden on Milteer's farm to have a way where it was formerly located than where Milteer since located it?

- Ans. Milteer knows best about that. It is an inconvenience to a man to have to live behind ^{another} and it is a greater inconvenience to pass through another man's field when he does not want you.
- Q. 25- What is a hedge row?
- Ans. It is a cart way.
- Q. 26- Did the way which extended across the Milteer farm when you lived there wash materially?
- Ans. It washed some when I staid there.
- Q. 27- Does the way which Mr. Eberwine established wash any more than this old way?
- Ans. I don't know. I know very little about the way that Mr. Eberwine opened.
- Q. 28- When you lived on this farm, was there a bridge at the county road end of this old way?
- Ans. I do not remember the bridge.
- Q. 29- Can you state of your own knowledge whether the bridge at the Eberwine end of this way has ever been changed from where it was when you were there?
- Ans. I don't know.
- Q. 30- When did you first hear of any change in this road?
- Ans. Somewhere between 60 and 90 days I think.
- Q. 31- Where were you when you were told of this change?
- Ans. On the public road where I could see the sleepers.
- Q. 32- Were you taken over this ground and shown the deviation of the Eberwine road?
- Ans. I have spent several evenings with Mr. Milteer and we walked over his crops and the road was spoken of but was not pointed out.
- Q. 33- Then so far as you are concerned, you only know that the road has been changed because you have been told so and because of the sleepers mentioned in your testimony?
- Ans. That is what I have said.
- Q. 34- If in fact there had been any bridge at the county road end you would not know whether this road had been changed except by heresay, is this not a fact?

Ans. I only know it by heresay, as I told you before I don't remember any bridge being there. Mr. Ames did not keep his ditches cleaned out nicely.

And further this deponent saith not.

Frank Wright being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence occupation and do you know the parties to this suit?

Ans. Frank Wright, age 42, Nansemond County, Va. farmer, and I know the parties to this suit.

Q. 2- How far do you live from the 2 farms in controversy?

Ans. About 2 1/2 miles.

Q. 3- Will you state whether you are acquainted with any of the different ways that have been used by people living on the Eberwine farm to get to the county road ^{over} ~~from~~ the Milteer farm?

Ans. I know that within the last 15 or 18 years there have been 3 ways.

Q. 4- Do you know anything of the old original way which here is called way # 1?

Ans. I know that when Billy Ames lived on the place there was a way which was nearer to the gate than the way that was afterwards established by Mr. Eberwine.

Q. 5- Will you tell us what you may know in reference to the character of this way; I mean as to what kind of land it passed over?

Ans. The old original way was a path nearly North and South across land that was graded or had a grade running East and West or across the path.

Q. 6- What was the result of this; of having a path across such land?

Ans. It made the path up-hill and down.

Q. 7- State the result both to this path and to the land when rains came on account of its being in such a locality?

Ans. The grade being across the path, would naturally cause the water to cut across the road, making it bad for the road and the land too.

Q. 8- About how wide was this old way?

Ans. Any where from 12 to 15 feet I should guess.

Q. 9- Please state the nature and character as far as you may know of the land which way # 2 opened up by Eberwine or Brinkley crossed?

Ans. The character of the land must have been almost identical with way # 1, the only difference would be that way # 2 would cross the grade higher up and make the force of the water less and the road more level.

Q. 10- Have you ever seen or traveled way # 3 which is now being used and which was opened up by Milteer?

Ans. I have both seen and traveled it.

Q. 11- Tell us the character of the land over which it passes?

Ans. The new road goes over land very nearly level.

Q. 12- Do you know of anything along this new way that would cause it to wash? (question excepted to)

Ans. Level land does not wash.

Q. 13- Will you please state the comparative convenience to Eberwine of these 2 ways; I mean the new one now being used and the way # 2 which he formerly used?

Ans. Well, as a matter of convenience, it would depend in a measure as to where Mr. Eberwine was going. If he was going to the postoffice, Portsmouth or Norfolk, it would be more convenient to travel by the new way. If he were going across the creek by the draw bridge, it would increase the distance necessarily traveled by I suppose 50 or 60 or 70 yards. I don't suppose to give distances accurately.

Q. 14- State what damage has been caused to Eberwine by the opening up of this new road, and how much less his farm is worth today

than it was before the new way was opened?

Ans. I don't consider he has been done any damage in fact I had rather travel the new road than the old one.

Q. 15- If it be a fact that Mr. Eberwine would have to travel 110 years further across his land to reach this new road, state whether it is necessary for him to make a hedge row to travel this distance or not?

Ans. That would depend upon other circumstances; if there is a ditch on the line and he cultivates his land in a direction that would cross the ditch or cross ways the ditch, it would be positively necessary for him to leave a space at the end of the row to turn on, and this space would usually be wide enough for a cart path.

Q. 16- Do you know whether there is a ditch between these two farms or not?

(question excepted to for the reason that counsel for defendant first elicited what the witness answer would be before he asked the question)

Ans. Yes.

Cross Examined by Counsel for Complainant.

Q. 1- You have stated that you had rather travel the new road than the old one, how many times have you traveled either one of these roads?

Ans. The new road has only been there a short time, and I have only been over it once; the old road I have not been over a great deal, but enough to know the character of it.

Q. 2- Have you ever traveled the new road from the point where it enters Eberwine's farm to Eberwine's house?

Ans. No.

Q. 3- Please state how you can testify as to damage done to Eberwine or as to inconvenience to Eberwine unless you have been over the entire way and observed the location of the new way and the location of his land?

- Ans. As I stated in answer to a question asked me by Judge Rawles the convenience or inconvenience of this road would depend upon where Mr. Eberwine was going. In getting to the public road he must have a road on his own land before he gets to the Milteer place, and it would only be a matter of a distance from the old road or road # 2 to the new road going in one direction. That inconvenience supposing that he were traveling West would be counter balanced by the convenience of the new road supposing he were traveling East.
- Q. 4- You have stated that no damage has been caused to Eberwine by the opening up of the new road, upon what do you base your conclusions?
- Ans. The answer I have just given answers that question as fully as I am capable of answering it.
- Q. 5- Is it no damage to a farm to have to keep up across it 110 yards of right of way?
- Ans. If it be a fact that Mr. Eberwine is forced to build 110 yards of road that was not formerly necessary, then I would consider that he was damaged to amount that it costs him to keep it up, but in this case such is not the fact.
- Q. 6- Why is such not the fact in this case?
- Ans. Well, for the reason given in the answer to Judge Rawles's question that it would be necessary in cultivating this Eberwine land to leave vacant space and maintain a road along this ditch in the same direction that he now travels to get to this road.
- Q. 7- Is this ditch along the road between Milteer and Eberwine or along the line of the new right of way?
- Ans. It is along the line between the land and along the line of the right of way also.
- Q. 8- Are you familiar with the topography of the Eberwine land?
- Ans. Yes.
- Q. 9- How frequently have you been upon the Eberwine farm?
- Ans. I have never kept any record of the times.
- Q. 10- Explain fully how you know that way # 1 I mean the original way has been changed?

Ans. Way # 1 was the old way that was established there by W. T. Ames that was a short distance from the old gate of the old Ames homestead . # 2 is high enough up in the field going East on the county road to make it very easy to detect there has been a change. # 3 is still further and in a different part of the land entirely.

Q. 11- Is it very easy to detect that right of way # 1 has been changed its entire length across Milteer's farm?

Ans. It was easy to detect the change at the time of the change, but if you go there now to identify the spot where either road # 1 or # 2 was without some mark by which to mark the old position it would be hard to do unless a man lived on the land and knew.

Q. 12- Is there anything to mark the position of the two ways?

Ans. As to the exact position now of way # 1, I would answer no. Way # 2 can be identified by the old bridge timber at one end, and the head of the branch at the other end.

Q. 13- What designated first way # 1 as to the place where it entered the road?

Ans. Way # 1 when it was in existence needed no designation except the road itself; when the road way changed, a man with a very casual glance could see that there had been a change, and as I stated before the old bridge timbers are there now by which way # 2 can be marked.

Q. 14- Is way # 1 now marked by any old bridge timbers?

Ans. Not that I know of.

Q. 15- Was there at the time it was in existence any bridge there at the road?

Ans. I can't say positively, but I don't think there was any ditch there to cross.

Q. 16- Was it easy to detect by a casual glance that way # 2 was equally distant from way # 1 the entire distance across Milteer's farm?

Ans. No body can detect at a casual glance that any 2 lines, whether road-way or telegraph lines are equally distant across 2 fields.

Q. 17- Did you ever give it more than a casual glance for the purpose of telling whether way # 1 was equally distant from way # 2 the entire distance across the field?

Ans. No.

Q. 18- Then as I understand your testimony; while you testified that there has been a change from way # 1 to way # 2 at the road, you are not prepared to say that there has been a change from way # 1 to way # 2 at Eberwine's field?

Ans. My idea is that way # 1 was not exactly a strait road; it started from the public road running nearly strait and nearly North until it reached the branch which is the line between the 2 points; then curved East and crossed the branch at nearly the same place that # 2 originally did.

Q. 19- Then do I understand from your answer to that question that way # 2 at the point where it reaches Eberwine's farm is at the same place it was when way # 1 was in existence?

Ans. It is very near the same place; I cannot say positively it is at the same point.

Q. 20- Upon what do you base that statement?

Ans. I traveled on this old road at the time W. T. Ames occupied the farm now owned by Mr. Eberwine; as I remember in crossing this branch which is the line between the 2 places there is a considerable descent but when the # 2 road was established that was high enough up east to get out of that descent.

Q. 21- How many times have you ever traveled way # 2?

Ans. I never kept any record, I could n't say.

Q. 22- Have you ever been over it at all?

Ans. Yes.

Q. 23- Can you go upon the premises to-day and locate both ways; both # 1 and # 2?

Ans. I think I could come within a few feet of it.

Q. 24- Was # 2 a strait way from the county road to Eberwine's place?

Ans. Very nearly so.

Q. 25- Is it not possible that the way which you have been calling # 2 could have been way # 1 straightened, I mean by this

could it not be that at the Eberwine end of way # 1 the road instead of bending towards the East might have gone straight in a Northernly direction?

Ans. No, it is not the same road because this # 2 is further East where it enters the public road than I remember # 1 was.

Q. 26- If you were mistaken in believing that # 2 road crossed a bridge at the intersection of the county road and it was a fact that # 1 road crossed a bridge at this intersection, what would you then say?

Ans. Even if I am mistaken about the bridge, still the topography of the land and the distance from the gate of way # 2 as compared with way # 1 would be sufficient to show that there had been a change.

Q. 27- How do you know of this relative difference?

Ans. As I remember # 1 way it was nearly straight from the public road to this branch, and the fact that it turned here at the branch before it crossed, makes it necessary that another road established on the same lines and in the same direction crossing the same branch about where # 1 crosses makes it necessary that the point of entrance of the 2 roads into the public road must be some distance apart.

Q. 28- How do you know that way # 2 did not cross the ditch between Eberwine and Milteer to the West instead of to the East where # 1 way crosses the same ditch?

Ans. By the formation of the land.

Q. 29- In your cross examination you stated it as your opinion that Eberwine was not damaged because of this change in the ways because he had been compensated in convenience by the new way, please state if this compensating convenience of which you speak is in distance or the character of the roads?

Ans. Both.

Q. 30- You mean then, that the distance necessarily traveled by Eberwine over the new way in one direction is shorter than that traveled by him in the same direction over the old way, is this a fact?

Ans. No. I mean the distance along there in going either way would not be the object of inconvenience, but as I stated a while ago, in traveling East Mr. Eberwine had no further to go and he has a better road. In traveling West he has a little further to go and has a better road, therefore, in having no further to travel one way and having a better road would compensate him for the inconvenience of having to travel a little further and having a better road.

Q. 31- If this road which Mr. Eberwine must maintain on his own land were placed at these so called turning places of which you spoke in one of your previous answers, would it not be dangerous to make such a sharp turn into # 3 road at the point where the bridge crosses the ditch?

Ans. That would depend entirely as to whether or not he had a fool for a driver.

Q. 32- Is a fool more blind than a wise man?

Ans. That would depend on what he is doing.

And further this deponent saith not. Signature waived by consent.

Reps Williamson, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Reps Williamson, 45 years, Nansemond county, farmer and oyster-inspector, and I know the parties to this suit.

Q. 2- State whether you are acquainted with the 2 farms in controversy?

Ans. I am.

Q. 3- Did you know this land when both tracts belonged to John W. Ames?

Ans. I did.

Q. 4- What do you know of a path or way used by him to get from the Eberwine tract to the county road?

- Ans. There was a hedge row that went over the Milteer land to the county road.
- Q. 5- Was it fenced in?
- Ans. It was not.
- Q. 6- Is that hedge row now used?
- Ans. I do not know that it is.
- Q. 7- After this way ceased to be used, what way was next used?
- Ans. There was a little change a little further up, I don't know the exact distance.
- Q. 8- State whether or not this change extended all the way across the Milteer field?
- Ans. It did.
- Q. 9- State whether or not this way # 2 is now in use?
- Ans. It is not.
- Q. 10- What way is now being used for the purpose of going from the Eberwine farm to the county road?
- Ans. There is another way still further up about 100 or 110 yards from way # 2.
- Q. 11- State what was the nature or character of the ground over which both ways # 1 and # 2 passed?
- Ans. It was washy rolly ground.
- Q. 12- Do you know whether or not it is up or down hill?
- Ans. It is up and down both.
- Q. 13- Do you know what the result was or would be to this road or these roads # 1 and # 2 in rainy weather?
- Ans. I should think it would cause a good deal or right smart of wash.
- Q. 14- What is the character of the land over which the present road # 3 now passes?
- Ans. It is perfectly level, good hard solid ground all the way.
- Q. 15- Have you ever seen any washes on it?
- Ans. I have not.
- Q. 16- Do you know when way # 1 was abandoned?
- Ans. I do not.
- Q. 17- Do you know when way # 2 was closed up?
- Ans. I can't say exactly that I do.

Q. 18- State whether or not there is anything to indicate or was there anything to indicate the location of way # 1 at the time it was abandoned?

Ans. It would show from the travel of the hedge row.

Q. 19- State how you can tell that way # 1 was closed up and abandoned and way # 2 opened?

Ans. Way # 2 showed that there were some sleepers there where it crossed the bridge and entered into the county road.

Q. 20- Did you ever travel either or both of these roads; I mean # 1 and # 2 roads?

Ans. I have, but not in late years, but I have traveled frequently down the county road.

Q. 21- Have you ever traveled over way # 3, the new way.

Ans. I have.

Q. 22- State how this new way compares in general condition with either of the 2 old ways?

Ans. It is much better for traveling, I know. It is level.

Q. 23- What inconvenience, if any, is occasioned to Eberwine by having way # 2 closed and way # 3 opened.

Ans. If I lived at Eberwine's it would be an advantage to me in going to Suffolk or Deans station.

Q. 23- Do you know of any serious disadvantage it would be to him?

Ans. I can't see any.

Q. 24- If you lived on the Eberwine farm, please state from your general knowledge of the premises which of these 2 routes you would prefer to have?

Ans. I would prefer the new ~~route~~ road now open.

Q. 25- Tell us what a hedge row is?

Ans. It is a pass way we use on our farms in going to and fro.

Q. 26- Are they very costly to establish?

Ans. No, not very.

Q. 27- Are they costly to maintain?

Ans. Not at all.

Q. 28- Will you state whether or not according to the custom of your neighborhood these hedge rows are often changed from place to place?

Ans. They are sometimes.

Q. 29- Please state whether or not the farmers in that section of necessity have to keep hedge rows in order to reach the various parts of their farms?

Ans. Yes, they generally do.

Q. 30- If a farm were cultivated in plats or cuts in which the rows ran at right angles to a ditch, what kind of a turn space would have to be left, if any, at the end of the row?

Ans. We would have to have a few feet, about 8 feet.

Q. 31- State whether or not 8 feet is about wide enough for a hedge row or cart path?

Ans. Yes.

Cross Examined by Counsel for Complainant.

Q. 1- Please state what opportunities you have had for estimating the changes from way # 1 to way # 2?

Ans. Only by passing along the county road.

Q. 2- Was way # 2 a well defined way?

Ans. In my traveling it was merely a hedge row.

Q. 3- Were there any actual boundaries to this hedge row?

Ans. None that I know of.

Q. 4- When were you on way # 1 last?

Ans. I was on there sometime in March or April; I was just riding around looking at his crops.

Q. 5- Do you notice the changes in other hedge rows?

Ans. I frequently do, yes.

Q. 6- You stated in your examination in chief, that you knew way # 1 to be changed because of certain bridge timbers, was this bridge on way # 1 when it was in use?

Ans. I think not.

Q. 7- Was it on way # 2?

Ans. It must have been there because I saw the sleepers.

Q. 8- Then you know that # 2 road was where the sleepers are, how

do you know this?

Ans. You can tell from the looks of the land where the road was, even if the sleepers were not there.

Q. 9- Did you notice these sleepers, or were they called to your attention?

Ans. I noticed them myself.

Q. 10- Was way # 2 as injurious to the land as way # 1, I mean from washing?

Ans. I think about the same.

Q. 11- Which washes the more, plowed land, or a well packed hedge row?

Ans. Plowed land.

Q. 12- Excluding all other circumstances, would you not say, that so far as the wash is concerned, that Milteer had damaged his property more by plowing it than allowing way # 2 to remain?

Ans. I think not.

Q. 13- Why not.

Ans. It would wash worse by having a road there than by cultivating a crop; when you cultivate down to a hedge row, it will naturally wash worse than it would by cultivating right across the hedge row, because the hedge row will turn the water down to the ravine and cause it to wash more.

Q. 14- Do not the farmers in your section often change the position of their hedge rows?

Ans. Frequently.

Q. 15- Is this not made necessary by the change in the location of their crops?

Ans. Not necessarily.

Q. 16- Why do they often change them?

Ans. For various reasons.

Q. 17- If a man's farm was so situated that he had to continue hedge rows in the same position and could not change them, would this not be a disadvantage and damage to him?

Ans. I think not.

Q. 18- Is it not a fact that the farmers in this neighborhood cultivate as much land as they possibly can, leaving as little

waste as possible?

Ans. Yes.

Q. 19- If a farmer were compelled to open a road over good arable land where one had not previously existed, or to maintain a hedge row in the same position where he could before alter it at will, would this not be some damage to him?

Ans. I think so.

Q. 20- Was it a damage in your opinion to Mr. Milteer's farm to have a way through it?

Ans. I think so.

Q. 21- Would it not also be a damage to Mr. Eberwine's farm to have a way through it?

Ans. Mr. Eberwine had to have an out-let any way and I don't see where it would damage him at all.

Q. 22- If Mr. Eberwine by the use of way # 2 could reach the county road without the maintainance of any way through his own land, and were forced to use another way to reach the same county road^{and} by this 2nd way he was compelled to go 110 yards across his arable fields, is this not a damage to him?

Ans. The facts as assumed by your question are not true in this case in my opinion, but if they were true, then of course he would be damaged.

Q. 23- If by the use of # 2 way he could get to the county road by passing over 110 yards less of his own land, then by the use of # 3 road, would you not see he was damaged in this proportion?

Ans. There is something else to be taken into consideration; he would only have to go 110 yards further and his hedge row is already there, but if you assume that he has no hedge row, which however, is not a fact, then I should say that he was damaged relatively.

Q. 24- Was way # 1 changed until way # 2 was opened?

Ans. I can't say positively.

Q. 25- Can you state if way # 1 crosses the ditch between the Eberwine and Milteer farms at the same point that way # 2 does?

Ans. I think # 1 crosses a little further to the West.

Q. 26- Did you ever pass over way # 2?

Ans. No.

Q. 27- How do you know, then that these ways are not the same at this point?

Ans. I have been around Mr. Milteer's field and have crossed all 3 of the ways but did not go down the road.

Re-examined.

Q. 1- You have been asked whether you did not consider it a damage to have a way across your land, and you answered that you considered it a damage; did you mean by that to have a way for your own private use or a way for the public?

Ans. I meant a way for the public.

Q. 2- Do you know whether any body is claiming any right of way on Mr. Eberwine's land or not?

Ans. Not to my knowledge.

Q. 3- Do you know how he could be damaged by any way on his own land which he used only for his own purpose?

Ans. I do not.

And further this deponent saith not. Signature waived by consent.

W. N. Harrell, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. W. N. Harrell, 51 years, Nansemond county, farmer, and I know the parties to this suit.

Q. 2- Are you acquainted with these 3 ways across the Milteer land which we have been talking about in this case?

Ans. I have been down the old road when Mr. W. T. Ames lived there, but not recently.

Q. 3- Did you ever travel road # 2?

Ans. I don't know anything about your # 1 and your # 2 's but I know this; that the road which they have now is the only one that they have ever had to my knowledge that is worth a cent.

The others were nothing more than hog paths in my opinion.

Q. 4- Do you mean by this that the way now used which we call the new way is the better road of the 3?

Ans. I certainly do.

Q. 5- Why do you think so?

Ans. Because I traveled the old road coming down to Ames' when he lived there and it was nothing more than a hedge row. There is no comparison between this and the new way now being used.

Q. 6- Can you tell us how Eberwine is damaged by having to use this new route?

Ans. I can't think Eberwine is damaged a cent's worth.

Q. 7- If you lived on the Eberwine farm, which of these 2 ways would you prefer?

Ans. I should take the road ~~this~~ is now used, the new road and give him my check for \$50 for fixing it for me.

Q. 8- Then do you mean to say that you think the new road is worth \$50 more to Eberwine than the others.

Ans. I think Mr. Eberwine thinks so.

Q. 9- Which of these 2 routes or roads is the more even and level?

Ans. The new road is the road; the others were not level and would wash.

Cross Examined by Counsel for Complainant.

Q. 1- I understand from your answer to questions asked you on your direct examination that you know nothing practically about way # 2 and way # 1, and have not observed the 2 ways closely enough to state that there was any change?

Ans. I know about way # 1, I used to travel that in going to Mr. Ames'. I do not know anything about way # 2.

Q. 2- I now show you the map, on which it appears there is a way # 1 and also a way # 2, do I understand from your answers to questions already asked that you never knew anything about way # 2?

Ans. I don't know anything about that; I know the new road.

Q. 3- Then the only way that you have ever traveled in going from the road to Will Ames' place was either by way # 1 or way # 3?

Ans. I have simply traveled way # 1 and way # 3; I know nothing about the way # 2.

Q. 4- Do you know anything about the bridge at the county road?

Ans. I don't recollect anything about a bridge ever being there.

Q. 5- If the old way had been as well prepared and as well worked as the present new way, would it not have been a good road?

Ans. I do not think so.

Q. 6- Why.

Ans. Because it is in a decline and in a washy place and it would cost more to keep it up.

Q. 7- Was there any wash in the road except up in the branch near Eberwine's field?

Ans. The wash I am talking about was in Milteer's field.

Q. 8- Don't you think you would be in a better position to testify with reference to the damage and inconvenience to Eberwine if you lived on his place?

Ans. No.

Q. 9- Who would better know the damages and inconveniences by reason of a right of way through your land than yourself?

Ans. I am the man to know.

And further this deponent saith not. Signature waived by consent.

John W. Ames, Jr. being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. John W. Ames, Jr. 50 years, Suffolk, Va. Town sergeant, and I know the parties to this suit.

Q. 2- Did you ever reside on the 2 tracts of land now known as the Eberwine and Milteer tracts when they were both in one tract and owned by your father, John W. Ames, Sr.?

Ans. Yes, about 18 or 19 years, I think.

Q. 3- Do you know anything about a old way or path that was used in getting from the farm in the rear to the county road?

Ans. Yes, there has been a hedge row there ever since I knew it.

Q. 4- Have you been on this farm recently?

Ans. No, not in that part of it.

Q. 5- Do you know of your own knowledge whether this old hedge row has been closed up or not?

Ans. No, only from hearsay.

Q. 6- If this old hedge row had been closed up and a new way had been opened up 110 yards further towards Deans station or east, can you say from your knowledge of that land which would make the better way, the old hedge row or this new way 110 yards to the east?

Ans. I should think the new road if 110 yards to the East would be on more level land and the new road would be the better of the two.

Q. 7- Do you know whether land lying 110 yards to the east of this old hedge row is level land or not?

Ans. Yes, it is level land.

Q. 8- Did the old hedge row go over level land?

Ans. No, not all the way.

Q. 9- What was the character of the land over which it passed?

Ans. From the county road to near the dividing line it was level, but when it got near the dividing line there was a sink or bottom on the Eberwine side of the land and it was not level.

Q. 10- Do you know anything about a route which was said to have been opened up by Mr. Eberwine near to the old route?

Ans. I have heard of it, but I know nothing personally of it.

Cross Examined by Counsel for Complainant.

Q. 1- When were you last upon the premises?

Ans. I could n't say exactly, it has been sometime.

Q. 2- Have you ever traveled the new way?

Ans. I have never traveled the new way, but I know the lay of the land.

Q. 3- You refer in answer to question on your direct examination to a hedge row; was not this hedge row used as a right of way between the 2 farms before it was purchased by your brother, W. T. Ames and afterwards?

Ans. It was used as a hedge row to get to and from the different tracts of land.

Q. 4- Was it not a way used by parties living on the Eberwine farm in order to reach the county road?

Ans. Yes, there were tow hedge rows used for that purpose.

Q. 5- Where was the other one?

Ans. The other one was about 200 yards at the lane.

Q. 6- Nearer to the house or further from the house?

Ans. Further from the house.

Q. 7- How did parties living on the Eberwine farm reach it except by some way across the Milteer farm?

Ans. The only way they could reach it would be to take a boat or go through Ben Ames' land.

Q. 8- Do you know of your own knowledge whether this hedge row was ever changed?

Ans. No, I do not.

Q. 9- Was not a hedge row used to reach the Eberwine farm from the county road in use from the time you first knew the place until

you left there?

Ans. Yes, both of the hedge rows were about the same; some little changes were made.

Q. 10- Was there any hedge row except the one nearest the house which was a continuation of the way from the Eberwine residence to the county road?

Ans. Yes, there were 2 hedge rows used; it depended upon which way you were going.

Q. 11- Were both of these hedge rows in use during the time W. T. Ames occupied the farm?

Ans. They were.

Q. 12- Were both of these hedge rows in use at the time Mr. Milteer purchased his farm?

Ans. I do not know.

Q. 13- When was the second hedge row about which you have spoken, first closed?

Ans. It has never been closed to my knowledge.

Q. 14- Then so far as you know, at the time Mr. Milteer purchased his farm there were practically 2 ways by which parties living on the Eberwine farm could reach the county road across Mr. Milteer's farm?

Ans. Yes.

Q. 15- How could you designate the location of way # 1 or the hedge row as you call it, nearest to your father's residence?

Ans. I do not know that I could go there and tell you within 2 or 3 feet.

Q. 16- Were there any bridges over which you had to pass in driving along the old hedge row?

Ans. No.

Q. 17- You have stated in answer to questions asked you on your direct examination, that where the old hedge row was located was level from the county road to very near the dividing line between the Eberwine land and the Milteer land; would there have been any wash along this portion of the way?

Ans. Only the dividing line.

Q.18- Did this incline wash?

Ans. Yes.

Q. 19- To what extent?

Ans. He had to keep repairing it; I could not tell how often.

Q. 20- Did you have to repair this way more than any other way?

Ans. Yes.

Q. 21- Was this hedge row a straight line from the county road to the Eberwine farm?

Ans. Very nearly so.

Q. 22- Was there a curve to the East at right angles with the main road at a point where the road came near the ditch dividing the 2 farms?

Ans. I think not while I was there. There might have been some little bend there, but not right angles that I remember.

And further this deponent saith not. Signature waived by consent.

The depositions of John W. Ames Sr. and others, taken at the office of E. E. Holland, on the 1st day of June, 1900, to be read as evidence on behalf of the Complainant, in the chancery cause of Annie M. Eberwine vs. Abram Milteer, now pending in the Circuit Court of Nansemond County.

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PRESENT: E. E. Holland and R. W. Withers, Counsel for Complainant,
R. H. Rawles, Counsel for Defendant.

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John W. Ames Sr. being duly sworn deposes and says:

- Q. 1. What is your name, age, residence, and do you know the parties to this suit?
- A. John W. Ames Sr., 78 my last birthday, Norfolk, Gentleman, and know the parties to this suit.
- Q. 2. Do you know where the lands in controversy belonging to Annie M. Eberwine are located?
- A. I do.
- Q. 3. Please state if you know the former owners or owner of these two tracts of land.
- A. I was once the owner of both farms. Mr. Capps afterwards owned the Milteer farm and sold it to him. (Milteer). I gave the Eberwine farm to my son, Willie T. Ames and it was afterwards sold by him to his wife and Mrs. Ames afterwards sold it to Mrs. Eberwine.
- Q. 4. I now show you a map filed with the defendant's answer in this suit. Please state if you know when way No. 1, as shown on said map, was first located and established?
- A. I owned it for nearly fifty years and it was used before then as a pass-way between the two farms, and then after the family settled there it was used as a permanent way.
- Q. 5. Was way No. 1 established and in use at the time you gave the Eberwine land to your son, Willie T. Ames?
- A. It was.
- Q. 6. Please state whether or not it was essential for your son, Willie T. Ames, and for other parties who might live on the Eberwine land, to have a right-of-way across your lands in order to reach the County-road?
- A. There was no other way for them to get to the county-road except through that land.
- Q. 7. Please state if you know whether way No. 1 was used during the time the property was occupied by Willie T. Ames, your son?

A. It was.

Q.8. Please state whether or not it was intended at the time the deed was made by you to your son, Willie T. Ames, to include the right-of-way as then located leading from the farm which you gave him across your farm to the county-road?

A. I had no other contemplation at that time.

Q. 9. Did you or not at all times while he was in possession recognize his absolute right to use said way in order to reach the county-road?

A. I certainly did.

Q. 10. Do you know about when the tract of land now owned by Milteer was purchased by him?

A. It has been, I suppose, seven, eight or nine years.

Q. 11. Please state if you know whether at that time right-of-way No. 1 was in use, visible, open, and apparent, and had been continuously used for a long number of years?

A. It was then and had been for a long number of years.

Q. 12. Do you know when or by whom the location of way No. 1 was changed, and way No. 2 on the map opened and used?

A. I do not.

CROSS EXAMINATION.

Q. 13. Was this way No. 1 ever fenced in on both sides to your knowledge?

A. Never.

Q. 14. It has been testified here by several parties that it is a narrow cart path, only wide enough for one vehicle. Is that true?

A. Well, I think for the last few years it is, but I know when I lived there there was no trouble in passing.

Q. 15. Is it not a fact Mr. Ames of your knowledge that these lanes or ways that are now used by farmers in that neighborhood are not so well cared for and preserved as they formerly were in former years; and is it not also a fact that the truckers in that section pay more attention to the cultivation of their lands than they do to the beautifying and keeping in proper shape their lanes or ways?

A. They take better care of them now than they did in old times. It was no object then.

Q.16. Why was it no object then?

A. Land was cheaper and farmers not so much up to date, more careless.

- Q. 17. You have examined the map annexed to the answer. It is substantially correct is it not?
- A. Yes sir, I think it is practically correct.
- Q. 18. When you made a deed for this land to your son, Willie T. Ames, do you remember his asking you to give him in the deed a right-of way over this land to the County-road, and your replying to him that it was not necessary to do so, that the law would give him a right-of-way over this land?
- A. I have no recollection of it, but I believe today that if he had hinted such a thing I should have incorporated it in the deed, that very identical right.
- Q. 19. Have you not stated that if you had remained on that farm for some years longer that it was your intention to change the location of this way and to locate it in a different place in order to reach the county-road?
- A. I have no recollection of ever having such thing in contemplation.
- Q. 20. Have you ever travelled over the new way now being used which was opened by Mr. Milteer, and which is called on the map way No. 3?
- A. I have once only.
- Q. 21. When was that?
- A. I think it was about the middle of December, 1899.
- Q. 22. Did you not find this way across a piece of level, hard ground?
- A. Yes.
- Q. 23. Did it not appear to you to be equally as good as the old way or either of the other ways?
- A. Yes.
- Q. 24. Did you consider it a matter of any very great inconvenience to either Milteer or Eberwine to pass over this new way?
- A. After Eberwine gets to this new way there is no inconvenience. There is one inconvenience to Eberwine which is, it throws him 110 yards further travel from the bridge which is used mostly by him.
- Q. 25. Does it not in fact from the point where it puts him in the county road, put him nearer to Deans Station by 110 yards than the old way?
- A. That depends upon which way he goes after he gets to the county road. If he goes through Capps' farm, which is the way usually used, it puts him 110 feet out of the way.
- Q. 26. He has no right-of-way through Capps' farm has he?
- A. No sir, not that I know of.

RE-DIRECT EXAMINATION.

Q. 27.

While Eberwine has no right-of-way through Capps' farm to Deans Station, is it a fact or not that such way is usually used by Eberwine, Milteer and others in going to Deans?

A.

Yes.

Q. 28.

You have stated in your examination in chief that it is no inconvenience, that the new right-of-way No. 3 is no inconvenience to Eberwine when he reaches it. Is it or not a fact that it is an inconvenience to him before he reaches it?

A.

He has double the road to keep up to get to it as he did the other way.

James S. Author, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. James S. Author, 39 years, farmer, I live in Nansemond county, and I know the parties to this suit .

Q. 2- Are you familiar with the old right of way leading from Eberwine's land across the land of Milteer to the county road, if so, how long have you been, and what have been your opportunities for becoming familiar with the same?

Ans. Steady travel over there for the past 30 years, makes me familiar with the old right of way.

Q. 3- It is claimed by Mr. Milteer that sometime in '95 the old right of way was changed and a new one made by Eberwine, please state if such change was made, and if so, to what extent, and whether said change extends the full way across the Milteer land?

Ans. If it has been changed at all, I don't know the fact except next to the main road there was a little difference, but at Eberwine's line I am confident it is at the same place it always was.

Q. 4- State what reasons, if any, you have for being so confident that there was no change near Eberwine's line and only a slight change at the county road?

Ans. From observation . If there had been any change there I think I would have known it.

Q. 5- Please state whether or not you were in the habit of using this right of way in going from your place to the county road, and whether you traveled such right of way just before and after such change was made?

Ans. I have traveled it every day, I don't know about any change. I traveled it the day before the road was plowed up.

Q. 6- I understood you to say in answer to first question asked you, that you had known of the old right of way across Mr. Milteer's farm for about 30 years, please state if you know, whether such right of way was at any time during that period used by

parties who desired to pass over Bennett's Creek?

Ans. I know this to be a fact; I could not recall seeing them on the road.

Q. 7- If any change whatever was made in the old right of way, was it such a change as might have been discovered by mere casual observation, or such as would hardly be noticable unless your attention was directly called to it?

Ans. Your strict attention would have to be called to notice the change.

Q. 8- Please state if you know, whether this right of way was or not just such an ordinary hedge row as is commonly used by farmers for the purpose of reaching different parts of their farms or not?

Ans. It was not; it was a lane to the Eberwine farm. An ordinary hedge row can be changed around at any time for your own convenience; a lane is considered permanent and is seldom changed at all. A lane is used for the general use of the house and farm; other roads are used for turning roads.

Q. 9- Please state if you can, if there was or not any rights at any time given by parties living on your present farm to use this way?

Ans. Yes, there were rights given there before I was born and since I was born and to me.

Q.10- Please state by whom such rights were given and if any objection was at any time made to your using such right of way?

Ans. Mr. John W. Ames -- Mrs. W. T. Ames -- Mrs. Mittie Ames -- Mr. Milteer -- Mr. Eberwine. All allowed me this privilege.

Q. 11- Are you familiar with the location of the recent way opened up by Mr. Milteer?

Ans. Yes.

Q.12- Please state if you know, whether it is as convenient for Eberwine as the old one, and also whether Eberwine is damaged or not by such change?

Ans. I don't think it as convenient, I should think he would be damaged in having an additional road on his farm and further

from the public road.

Q. 13- State if you know, how much additional road Eberwine is required to keep up across his farm in order to reach this new right of way?

Ans. About 500 yards of so called lane additional.

Q. 14- State how and to what extent Eberwine is damaged by having to keep up this additional way or lane through his farm in order to reach the county road?

Ans. Well, I could n't estimate the damage becuae I am a poor estimator, but I would n't like to have to keep it up.

Q. 15- It has been stated by some of the wirnesses that a hedge row along a ditch might be used by Eberwine for the purpose of reaching the new right of way; please state if this can be done to advantage?

Ans. I would regard that as a great inconvenience, a new road along this line ditch, it would make 3 sharp turns in his land, and I would reard it as objectionable for a lane if I could do otherwise.

Cross Examined by Counsel for Defendant.

Q. 1- Did I understand you to say that there was a little difference at the county road between the old right of way and the right of way which was said to have been opened by Mr. Eberwine?

Ans. There may have been but I consider the # 1 and the # 2 way one and the same.

Q. 2- If they were 30 or 40 feet apart or even 10 feet apart, would you still regard it as the same road?

Ans. Well, I don't think I would, if they were 30 or 40 feet apart, but a few feet in a crooked road does not amount to anything.

Q. 3- If they were 10 feet apart, would you still regard them as the same road?

Ans. I would not, because a road covers more than 10 feet.

Q. 4- If the northern side of one was more than 10 feet from the southern side of the other, would you still regard it as the same road?

Ans. I can't say; a road covers so much land.

Q. 5- If one road was 10 feet wide and another road was 10 feet wide and these 2 roads were 10 feet apart, would you consider it one and the same road?

Ans. It would be if it were a public county road.

Q. 6- Suppose one road were 30 feet and another running parallel with it was 30 feet wide, and these 2 roads were 10 feet apart, would you consider it one and the same way?

Ans. I would regard them 2 $1\frac{1}{3}$ roads if admitted so by the court.

Q. 7- What lead you to believe or think that there might have been a slight change made in these 2 ways to which your attention has been called at the point where they enter the county road?

Ans. I am not yet positive that there was any change, but there has been so much talk about the road I think I remember a stob on the outlet to the road that was a few feet further West than the outlet was before. Still I am not sure of that and I regard the roads as the same.

Q. 8- Was this stop at the intersection of either one of these roads with the county road?

Ans. I can't say about the spot, I have a feint recollection of it, but I am not sure.

Q. 9- Do you know by whom and for what purpose the stob was placed there?

Ans. I don't know by whom it was put there.

Q. 10- Did not this stob and its location cause you to observe that one of these roads was a few feet further West than the other?

Ans. There are no 2 paths there, they are all the same.

Q. 11- Before I understood you to say that on account of the stob being there you thought one of these ways was a few feet further West than it was before, did you not?

Ans. I think there was a stob there at the southern entrance of these 2 roads # 1 and # 2 that was a little further West.

Q. 12- Tell us as near as you can about how much further West?

Ans. It has been so long, I could n't say, but it was very near.

Q.13- Then that did make a difference of a few feet at the point where the county road was reached, did it not?

Ans. It may have, but I am not positive about the stob, and I still regard the # 1 and # 2 ways as the same. They are the same.

Q. 14- Did you not say that one of these stobs was a little further West than the other?

Ans. I don't know whether there were 1 or 2 stobs there, but if there were 2 they were East and West.

Q. 15- How far apart are these stobs?

Ans. I do not know.

Q.16- When this lane, as you call it, left the county road and crossed over the Milteer land and got up near the Eberwine line, did it not then cross a ravine or branch?

Ans. It crossed a ditch. The land is a fraction lower there but it is not a ravine. It goes into a ravine further down but not there, I mean the ditch not the road.

Q. 17- Did I understand you to say that you had been traveling this road or way 30 years.

Ans. Yes, I have been traveling it 30 years or more, but not every day.

Q. 18- Did I understand you to say you traveled it the day it was plowed up?

Ans. To the best of my recollection, I did. In fact I am sure I did.

Q. 19- What day was that?

Ans. I cannot tell.

Q. 20- Do you remember what year it was?

Ans. No I don't recollect what year it was. If I had time I could tell you, but I can't just now.

Q. 21- Do you know who was cultivating what is now known as the Milteer farm at the time it was plowed up?

Ans. Mr. Eberwine.

Q. 22- Then if I understand you, it was plowed up during Mr. Eberwine's tenancy?

Ans. That is right.

Q. 23- Do you know why Mr. Eberwine had it plowed up?

Ans. It was to make it passable. The road was neglected and he wanted to make the travel there better.

Q. 24- Did you have it plowed up all the way from the county road to his line or to the ditch or ravine on his line?

Ans. I could n't say positively about that.

Q. 25- Did you ever know this old way or lane as you call it, to have been plowed up before this time?

Ans. No, I can't recall any time it was plowed up before, but it might have been.

Q. 26- You never knew it to be plowed up before in the 30 years you have been traveling it, did you?

Ans. No, I never knew it to be plowed up North & South before, but pretty badly plowed up the other way by plows running into it.

Q. 27- How long had it been the case that it had been badly plowed up by plows running into it?

Ans. Mr. W. T. Ames and Brinkley who lived there, kept that road in fair shape but sometimes there would be a careless plowman who would run the plow into it.

Q. 28- About how wide was it at this time?

Ans. It was different widths; a man would work his road up and then the plowman would come back to it.

Q. 29- After Mr. Eberwine had plowed up this way, did he not then cross the ravine or ditch at the Northern end of it a little higher up than the old way?

Ans. To my recollection, he did not.

Q. 30- Did he not come out in the county road after he had plowed it up a few feet further to the East?

Ans. I am not sure that he did; I have a feint recollection, but I would not testify he did.

Q. 31- Did I understand you to say that it required very strict attention to see any change in this old way, if there was any?

Ans. If there was any.

Q. 32- Did any body at that time call your strict attention to it?

Ans. No.

Q. 33- Then might it not be a fact that when it was plowed up it could have been a few feet further East without your particularly observing it?

Ans. It is not changed outside the privileges of a lane.

Q. 34- What do you mean by the privileges of a lane?

Ans. You know you have more than 4 feet 10 inches in a lane.

Q. 35- How wide was this lane before it was plowed up by Eberwine?

Ans. I cannot remember how wide it was the day before or a month before.

Q. 36- How wide a space did Mr. Eberwine plow up for this lane?

Ans. He was liberal; I think he took about 16 feet.

Q. 37- When he plowed up the 16 feet in width and thus obliterated all traces of the old lane, might it not have been that he placed the way of travel a few feet further East without your observing it?

Ans. It was impossible for him to change it outside of the points of the road without my knowing it.

Q. 38- Why was it impossible, and how would you have known it if he had done so?

Ans. Common-sense would tell me. I knew it by the lane on his side, that was always supposed to go straight out; at times it might have crooked; at other times it was straightened as near the original way as possible.

Q. 39- Were there any monuments or land marks of any kind along this old way to mark and designate it across Mr. Milteer's field?

Ans. I don't know of any land marks specially across Mr. Milteer's field. I know of land marks over the general way.

Q. 40- What do you mean by the general way?

Ans. I mean all the way across Eberwine's field.

Q. 41- Then tell us what land marks there were after you entered the Milteer field from the Eberwine field and before you reach the county road?

Ans. Well, there was nothing in Milteer's field as I said just now, except general observation; the lane was supposed to be straight

out and when it got crooked it was straightened up as near as possible.

Q. 42- Was this way across Milteer's field fenced in or did it have palings on each side of it?

Ans. Nothing of that kind in Lower Parish roads.

Q. 43- Were there any old or large trees bordering it on either side to mark and designate it on Milteer's field?

Ans. Not any trees on Milteer's field.

Q. 44- I understood you to say that you had seen 100's of people traveling that way but never saw them on the road; what did you mean by that?

Ans. I did not say I had seen 100's of people; I said I had known hundreds of people to travel that way.

Q. 45- Is it not a fact that this way of which we are speaking is about the same as the ordinary ways in that section used in getting from their places to the county road?

Ans. This is not a county road; it was an established lane on a farm and not a hedge row.

Q. 46- Do you remember when Mr. John W. Ames Sr. owned both of these tracts?

Ans. Yes.

Q. 47- Is it not a fact that he put this lane there for his own convenience?

Ans. This Eberwine farm has nearly always been distinct from the main farm property; it had generally been rented out and this lane was an outlet for the tenants from my earliest recollections.

Q. 48- You mean for Mr. John W. Ames's tenants?

Ans. Yes.

Q. 49- Then this way was made by Mr. Ames for the use and convenience of himself and his tenants, was it not?

Ans. I think this lane was made about 75 years ago by a family of Benson's who owned property behind the Ames land.

Q. 50- I understood you to say that you were not quite 75 years old, but only 39 years old, how do you know what happened before you were born?

Ans. You asked me to suppose, and I have grounds to say that lane was put there 75 years ago.

Q. 51- Have you ever seen any public records in the Clerk's Office of this county or elsewhere or any deeds or any writings of any kind showing that this lane was established 75 years ago?

Ans. I have not seen them, but my father has. He was a familiar with such things as any man in the county.

Q. 52- How do you know that your father ever saw any such records?

Ans. I never heard him say anything about records, but he told me that Benson owned the property in the rear of the Eberwine farm.

Q. 53- Then you are not now testifying of your own personal knowledge what time this way was established but are testifying from hearsay, is this not so?

Ans. You requested me to suppose in this matter and this is supposition.

Q. 54- I understood you to say that rights were given you by Mr. John W. Ames, Mr. W. T. Ames, Mr. Milteer and others to cross over this Milteer land, now I ask you do you not really mean to say that they merely gave you the privilege of passing over it without giving you a legal right to pass over it?

Ans. I did not say legal right.

Q. 55- Do you mean that it was a mere privilege or was it a legal right?

Ans. You can't stop me from passing down your lane unless I am injuring you or your land.

(Counsel for complainant, to save time and not encumber the record with useless questions and answers, concedes that Mr. Milteer who is not expected to answer legal questions so far as the purpose of this suit is concerned is a mere licensee.)

Q. 56- I understood you to say that the new way opened up by Mr. Milteer was not so convenient as the farm way, is it not just as wide?

Ans. Yes, it is wider, I think, it looks like it.

Q. 57- Does it not pass over hard, level ground the entire distance?

Ans. Partly level and very hard at this time.

Q. 58- Does it not enter the county road at a point nearer to Deans Station?

Ans. Yes.

Q. 59- Is not Deans station the place where Mr. Eberwine takes the train whenever he comes to Suffolk?

Ans. He sometimes takes it at Deans and sometimes at Drivers. The price now is 20 cts. difference in favor of Drivers, and I think he will drive to Drivers now to save it.

Q. 60- Don't you know as a fact that he does take the cars at Deans much oftener than at Drivers, because it is much nearer to his residence?

Ans. I don't know.

Q. 61- Where did he take it today in coming to Suffolk?

Ans. Deans.

Q. 62- How far is Drivers from his residence?

Ans. I think about 4 3/4 miles.

Q. 63- How far is this new way from the old way?

Ans. I think it is about 110, 115 or 120 yards.

Q. 64- I understood you to say that Mr. Eberwine would have to keep up about 500 yards more way across his own land, if he were compelled to travel this new way, how do you make that, if the new way is only 120 yards from the old way?

Ans. Well, he would have to cut a new lane nearly from his house to tap the new road that Mr. Milteer has put across there; this is about 500 yards. He would have to put about 500 yards of new lane to tap the road that Mr. Milteer has put there.

Q. 65- Now, as a matter of fact, has n't he got a new lane across his field just to this place any way?

Ans. No.

Q. 66- What has he across there?

Ans. He has a hedge row that leads indirectly to it.

Q. 67- How much further does he have to travel over this hedge row in getting to the new way than he had to travel in getting to the old way?

Ans. About 500 yards.

Q. 68- How do you make this if they are only 120 yards apart?

- Ans. The old way that was on Eberwine's land will have to be kept up anyway, and about 500 yards of new way to tap Milteer's new road.
- Q. 69- Then commencing at Milteer's new road on Eberwine's line and traveling 500 yards West, where would the 500 yards put you?
- Ans. I can very near tell you exactly; one of these lanes is 360 yards and the other is 120.
- Q. 70- Now, which of these lanes is 360 yards long and between what 2 points do you measure this distance?
- Ans. I said the man would have to keep up about 500 yards of new lane; this is the best I can explain it.
- Q. 71- How does Mr. Eberwine get to the Western portion of his farm?
- Ans. Bennett's Creek is on the West.
- Q. 72- How does he reach Bennett's Creek?
- Ans. He would just drive to his wharf, about 50 yards.
- Q. 73- If he is going East from his house, how does he reach the Eastern portion of the farm which lies behind this new way?
- Ans. In various ways; around the branch; down his lane or he can cut across his field. Nothing is kept up specially for that.
- Q. 74- Has n't he hedge rows that will take him down to the eastern part of his farm?
- Ans. He has hedge rows, but not lanes.
- Q. 75- Explain the exact difference between the hedge row which he is now using to reach this new way and the lane which he formerly used to reach the old way?
- Ans. The lane is a permanent road for the farm; the hedge row is subject to much change at any time.
- Q. 76- Is there now at this time any visible difference between these two?
- Ans. Yes, the old way is partly shelled and it is a good road, and the hedge row is very sandy and disagreeable.
- Q. 77- Is the old way level across Eberwine's land?
- Ans. The entire way is perfectly level.
- Q. 78- You have said that in order to get to the new way Mr. Eber-

wine would have to make 3 short curves, could he not as a matter of fact, drive straight down from his residence across his farm to a point just opposite this new way and then make one sharp turn and go straight to it?

Ans. He could by driving down a sand bar and rising a sand hill and going across the ditch.

Q. 79- How many curves is he now making to reach the new way?

Ans. 3 curves.

Q. 80- Did he not have to make one of these curves to reach the old way?

Ans. He had to make a sharp turn, but neither of these present turns.

Q. 81- Then if I understand you, he only makes 3 more curves in getting to the new road than he would have to make in getting to the old road?

(This is admitted by counsel for complainant in order to save time)

Re-examined.

Q. 1- Please state whether or not, if you know, it was for the purpose of straightening the old way where it approaches the county road that Mr. Eberwine made a slight alteration of which you spoke in your testimony and of which you seem to be in some doubt?

Ans. I regard his purpose to straighten and to make a respectable lane to his residence.

Q. 2- To your knowledge, do you know whether there has ever been a serious wash along the line of this old road on Milteer's farm?

Ans. To my knowledge there has been no serious wash.

Q. 3- Does not a road way in a light sandy soil going over small hills or rises, wash more land than a old road well packed and containing oyster shells for a basis?

Ans. My experience is that it will wash more.

Q. 4- Is it a fact or not that the people in your neighborhood frequently plow up private ways running through their farms, and sometimes even county roads, for the purpose either of straightening them or else for the purpose of making them better roads or better paths by reason of their having been plowed into?

Ans. I have plowed both myself for the purpose of benefiting the roads.

Q. 5- Is it a damage to the farm or not to have hedge rows or paths so located on your farms as not to be able to change them?

Ans. I regard it as a serious damage.

And further this deponent saith not.

Henry Sears, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Henry Sears, 48 years, Nansemond County, laborer, and I know the parties to this suit.

Q. 2- Where do you live?

Ans. I have lived on J. W. Ames' farm for about 30 years.

Q. 3- How far is that from Mr. Eberwine's farm?

Ans. It is the same farm; I live on the part now owned by Eberwine.

Q. 4- Do you know anything of an old lane or road way leading from Mr. Eberwine's farm across Milteer's farm to the county road?

Ans. I do; I have been knowing it for the past 30 years.

Q. 5- Who has been using this old way?

Ans. It has been used by the public in going to points across the Creek and to Mr. Lee's store about 20 years ago. This was used before the bridge was put across the creek.

Q. 6- Please state whether this old road was changed from the place where it was when you first knew it?

Ans. Not to my knowing.

Q. 7- About how often do you have occasion to pass over this way?

Ans. I have occasion to pass over it sometimes every day.

Q. 8- Would you have noticed any change in the way if one had been made?

Ans. No-sir, I should not have noticed it, for I should have struck the same path if I had struck there at mid-night.

Q. 9- If this way had been moved from one place to another, would you have seen that it had been changed?

Ans. I should have thought so.

Q. 10- If it had been moved 40 feet all the way along from where it was when you first knew it, would you not have known that it had been changed?

Ans. It seems to me I should have noticed it if it had been changed all of the way there.

Q. 11- What is the custom as to straightening roads in your part of this county?

- Ans. The custom is to straighten them. It is done for the convenience of the farm in order to straighten the rows in his cuts.
- Q. 12- Do the farmers alter their lanes in this manner?
- Ans. That is only as to their own convenience about that. That is out of my line of business.
- Q. 13- Do you remember anything of an old bridge ever being on this right of way where it joins the county road?
- Ans. No, I don't remember any; I have plowed that old land over 20 years ago and I don't remember any bridge there as we drove out of this way into the county road.
- Q. 14- Was this way ever washed to any extent at its other end?
- Ans. There was a hard clay soil there ; it never made any wash there to give any trouble in cultivation to my knowing.
- Q. 15- Do you consider it any damage to Mr. Eberwine by having to travel this new road made by Mr. Milteer?
- Ans. Indeed I do, sir.
- Q. 16- Why do you consider him damaged?
- Ans. It throws him entirely out of his range in coming out of his farm.
- Q. 17- You mean, then that he must establish new ways over his land?
- Ans. Yes, he is bound to do it; for instance it cuts one of his cuts of land into; it would do that but he has to make a curve to get out of there.
- Q. 18- What is the character of the soil?
- Ans. It is sandy at the first curve in Eberwine's farm.
- Q. 19- Is it level or hilly along this way?
- Ans. It is hilly.
- Q. 20- What is the character of the old road on Eberwine's farm that he used to get to the Milteer farm?
- Ans. It is a good hard farm road. Oyster shells on it.
- Q. 21- Is it or not a fact that light, sandy, hilly land washes more than old hard, shell road?
- Ans. Of course it is bound to.
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Cross Examined by Counsel for Defendant.

Q. 1- Are you now in the employment of Mr. Eberwine?

Ans. I am.

Q. 2- How long have you been in his employment?

Ans. 2 years.

Q. 3- Did you formerly belong to John W. Ames?

Ans. No.

Q. 4- Who did you live with 30 years ago?

Ans. I lived with Mr. John W. Ames about 30 years ago.

Q. 5- Was not this old way made by Mr. Ames for the use and benefit of himself and his tenants?

Ans. I do not know.

Q. 6- Who kept it up?

Ans. Mr. Ames kept it up so far as I know.

Q. 7- Did you ever know this old way to be worked by the public county hands?

Ans. No, I never knew that.

Q. 8- Do you mean to say that Mr. Ames at his own expence kept this way in repair for the use of the public?

Ans. I did not say that, but it was kept up by Mr. Ames so far as I know.

Q. 9- Was it not kept up by Mr. Ames for himself and his tenants?

Ans. I am unprepared to say whether he did or did not.

Q. 10- Do you know who cultivated this farm, I mean the Milteer farm, in 1895?

Ans. No, I do not remember.

Q. 11- Do you know when Mr. Eberwine plowed up this old way?

Ans. I do not remember directly when he plowed it up but I was passing and repassing the farm.

Q. 12- Do you remember having seen in the year 1895 that it was plowed up?

No, I don't remember, though It might have been.

Q. 13- If it had been plowed up and you had been passing there constantly, would you not have known it?

Ans. I might not have noticed it; I mind might have been on something else.

Q. 14- Do you mean to say that after you had been traveling an old path for 30 years in its old condition, and then it could be plowed up and that you would travel it without observing it?

Ans. No, I did not say that.

Q. 15- Then if I understand you, you do not remember anything of its ever being plowed up?

Ans. No, not directly.

Q. 16- Well then, if it was plowed up all the way and you did not notice it, might it not be that when it was plowed up it was moved a few feet from where it formerly was, without your noticing it?

Ans. Yes, it might have been a few feet but not to my notice.

Q. 17- Then, can you swear positively that it has not been plowed at all?

Ans. I can swear that it has always been a public way ever since I knew it.

Q. 18- But I understood you to say that you do not remember its having been plowed up?

Ans. I don't remember it being plowed up, but I do remember it being a public way.

Q. 19- Well, then, if it could be plowed up without your noticing it, might not it also be changed a few feet without your noticing it?

(question and answer excepted to by counsel for complainant, because the question tends to impeach the witness and by proper rule he should be notified as to all of the points concerning the question; in this case it is insisted that counsel for defendant definitely state the number of feet in the so called change)

Ans. It might have been.

Q. 20- Don't you know as a matter of fact that it was changed so as to come out at the county road at a different place from what it formerly did?

Ans. No, I do not know that. From straightening the road, I could n't say whether it was moved a few feet either way or not.

Q. 21- Was this old road formerly a crooked road across the Milteer farm?

Ans. I could n't say positively about that because I was not interested enough to know.

Q. 22- At the point where this old road crosses the ravine between the Milteer tract and the Eberwine tractm did you not have to go up and down a hill formerly to go across there?

Ans. No.

Q. 23- Then do I understand you to say that it was perfectly level?

Ans. No, I do not mean to say it was perfectly level, but it was a good passable way.

Q. 24- What did it cross in getting from the Milteer farm to the Eberwine farm?

Ans. It crosses a ditch.

Q. 25- What is the width of this ditch?

Ans. I don't know.

Q. 26- Is not this ditch down in a low place?

Ans. I do not consider it a ravine.

Q. 27- Is not this ditch in a low place?

Ans. Yes, it is down in a sort of low place.

Q. 28- Do you know how low this place is?

Ans. I do not know how low it is.

Q. 29- It is lower than the other part of the land, is it not?

Ans. Yes, I think it is.

Q. 30- Do you know when Mr. Lee Brinkley cultivated this Eberwine farm?

Ans. Yes, I worked over there for him.

Q. 31- Don't you know, as a matter of fact, that he had to haul and fill up about the place where this bridge is?

Ans. No, I don't know it.

Q. 32- Do you pretend to say that you have never seen or noticed any wash whatever on any part of this old road?

Ans. No, I did not say that.

Q. 33- Have you not noticed that there is a wash on some part of this way?

Ans. No, I have never noticed any.

Q. 34- What is the damage to Mr. Eberwine in having to travel the new way?

Ans. I would not confine myself to say what the damage was, I cannot estimate it, it would be right hard for Mr. Eberwine himself to estimate it. He has lots of carts and hands to go the new way and lots of hauling.

Q. 35- Did he not have lots of carts and hands to go the old way?

Ans. Certainly.

Q. 36- Then what is the element of damage in having to travel the new way?

Ans. One of the elements is that it makes lots of difference in having to go 100 yards further.

Q. 37- You have said that Mr. Eberwine had across his field a hard shell road?

Ans. No, I did not say that; I said there were some shells on it.

Q. 38- Does not Mr. Eberwine still use that road with some shells on it?

Ans. Yes, he is using it now.

Q. 39- Does he not use it in reaching this new way?

Ans. No, he does not.

Q. 40- Where does he go to, then, when he uses this shell road?

Ans. It keeps on by that piece of road and goes on up to his hedge row which comes out to the public road.

Q. 41- Then do I understand you to say that he has a shell road there now that he does not use in getting to this new way?

Ans. I mean to say that same thing, but I do not call it a shell road.

Q. 42- How far is this new way from the old way?

Ans. I do not know.

And further this deponent saith not.

B. F. Ames, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. B. F. Ames, 38 years, Nansemond county, farmer, and I know the parties to this suit.

Q. 2- Are you familiar with the location of the Milteer and Eberwine farms?

Ans. Yes, I live on the adjoining farm to both of these farms.

Q. 3- Are you familiar with an old right of way leading across the Milteer farm from the county road to the Eberwine land, and if so, how long have you been familiar with it, and what have been your opportunities for becoming familiar with it?

Ans. I have been knowing it for about 25 years, though I have been living on that farm for nearly 4 years.

Q. 4- It is claimed by Mr. Milteer that sometime in 1895 the old right of way was changed and a new one made, please state if such change has been made, and if so, to what extent?

Ans. I don't know that there was a change, I don't know that there was not; I always looked upon it as the same road.

Q. 5- If the old right of way had been changed some 12 or 13 steps from its old location across the entire length of Mr. Milteer's field, would you have noticed it or not?

Ans. I do not know that I would, passing along the road.

Q. 6- Are there any land marks by which you could designate the location of the old right of way?

Ans. There are no land marks except the path.

Q. 7- Are you familiar with the location of the right of way recently opened by Mr. Milteer?

Ans. Yes.

Q. 8- State if it is as convenient for Mr. Eberwine as the old way?

Ans. No, I think not; I know it is not as convenient.

Q. 9- Why?

Ans. Well, it puts him from 100 to 120 yards further from the main road.

Q. 10- Please state if Mr. Eberwine is required to use the new right of way made by Mr. Milteer, whether or not he will be damaged there by?

Ans. He is bound to be damaged when you put him further from the main road.

Q. 11- Is it or not any damage to a farm to be required to keep up additional rights of way or ways across it?

Ans. Yes, to be required to keep them up it would be.

Q. 12- Please state whether or not it is a damage to a farm to be compelled to keep up hedge rows in the same position all the time without having the privilege of altering them at will?

Ans. Yes.

Q. 13- Can you state whether or not there was any considerable wash on Mr. Milteer's land along the line of the old road way, and because of such roadway?

Ans. I never knew of any considerable wash.

Q. 14- Do you know the character of the land on Mr. Eberwine's farm over which he is now compelled to go by reason of this new way opened by Milteer?

Ans. I know the character of the land over which he is now traveling.

Q. 15- State whether or not this land is light and sandy and if same is roilly?

Ans. His farm is somewhat roilly all over.

Q. 16- Please state the character of the old road which was on Eberwine's farm?

Ans. It has been there a pretty long time; it is hard and kinder roilly. I don't remember whether there are any shells on it or not. There may be some on it.

Q. 17- Which of these 2 ways on Eberwine's farm is more likely to be damaged by washing?

Ans. The new way would wash more.

Q. 18- Can you state whether or not there was ever a bridge on the old road at the point where it enters the county road?

Ans. None that I ever knew of.

Q. 19- Is it or not a fact that parties would have been forced to have noticed very closely in order to have ascertained any change made in the rights of way, if in fact any such change was ever made?

Ans. I would think so.

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Cross Examined by Counsel for Defendant.

Q. 1- Have you ever seen any sign or any old sleepers or anything indicating a bridge at the end of any of these ways?

Ans. I think there is a bridge at the end of the new road. I have never seen any sign of a bridge or sleepers where the old way came out or within 40 feet of it.

Q. 2- Have you noticed any wash on the way on Eberwine's land that he is now using?

Ans. No.

Q. 3- When did you last travel over this way across Eberwine's land?

Ans. I was over there yesterday.

Q. 4- When did you last travel over the new way across Milteer's land?

Ans. Yesterday.

Q. 5- Is it not a fact that it is a wider road than the old one was?

Ans. I think it is a wider road.

Q. 6- Does it not pass across Milteer's land where the land is even and nearly level and hard?

Ans. Yes.

Q. 7- Did it not in fact strike you on yesterday as being equally as good if not a better road than the old one was?

Ans. Yes, it is a better road..

Q. 8- I understood you to say that it is only about 120 yards removed from the old road?

Ans. Yes, I think it is about 100 or 120 yards.

Q. 9- Then he would only have to travel about 120 yards further on his own land to reach it, would he not?

Ans. Yes, this is true in order to reach the main road.

Q. 10- You have said that you thought it would be a damage to a farm to be required to keep a hedge row on it in the same place all the time, would it not be equally as much damage to be required to keep a lane in the same place all the time?
(question and answer excepted to as being irrelevant and also because its tendency is to answer a proposition of law in this case.)

Ans. Yes.

Q. 11- Is it not a fact that in your community where land is valuable and where the "No-fence" custom prevails that you travel hedge rows or narrow paths to get from one part of your farm to another or from your farm to the county road?

Ans. Yes, we travel hedge rows to get about the farm. Most of the farms have lanes leading to the county road.

Q. 12- Do you know any other item of damage it would be to Mr. Eberwine except the fact that he would have to travel 100 or 120 yards further to reach the county road?

Ans. Well, to bring the lane straight from Eberwine's house to the new Milteer way would cause a wash on Eberwine's land.

Q. 13- But the way which Mr. Eberwine is now using as a matter of fact to get to this new road does not pass over land that would cause a wash, does it?

Ans. I think not.

Q. 14- Then do you know of any reason why he should change the way he is now using to get to the new way, and adopt one which would bring him straight in front of it?

Ans. It would save turns.

Q. 15- If he is going to Deans station by the county road, does not this new way put him in the road a little nearer to Deans Station?

Ans. When he comes out at the store, it puts him a mile nearer.

Q. 16- How did you and Mr. Eberwine come to Suffolk to-day?

Ans. We came on the train from Dean's Station.

Q. 17- This is Mr. Eberwine's post-office, is it not?

Ans. I think it is.

Re-examined.

Q. 1- Is it a fact or not that Mr. Eberwine in going to Deans from his house most always goes through a drive way across Mr. John T. Capp's farm? (question and answer excepted to as being leading)

Ans. I think so.

Q. 2- Do you consider the old way across Milteer's farm as a hedge row or a lane?

Ans. Both a hedge row and a lane; a hedge row for his farm and a lane for Eberwine's farm.

RE-CROSS-EXAMINED.

Q. 1- You have spoken about Mr. Eberwine going to Dean's station by some drive way across Mr. Capp's land, does he travel this drive way as a matter of right in himself or simply by the commission of Mr. Capps?

Ans. I don't know.

And further this deponent saith not. Signature waived by consent.

Mr. J. E. Ames, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. J. E. Ames, 43 years, Nansemond county, farmer, and I know the parties to this suit.

Q. 2- Please state if you are familiar with the location of the Eberwine and Milteer farms?

Ans. Yes.

Q. 3- About how far do you live from these farms?

Ans. My farm joins Mr. Eberwine's farm; our houses are about one mile apart.

Q. 4- Are you familiar with a old right of way which lead across the Milteer farm from the county road to Eberwine's farm?

Ans. The same old way has been there as far as I can remember for about 25 years.

Q. 5- What shace, if any, so far as you know, has ever been made on this old right of way?

Ans. None that I know of.

Q. 6- Are you familiar with the location of the new right of way recently made by Mr. Milteer?

Ans. Yes.

Q. 7- Please state, if you know, whether such right of way is as convenient for Mr. Eberwine as the old one?

Ans. No, I think not.

Q. 8- Please state if you can, whether or not Mr. Eberwine is damaged in case he should be required to continue to use the new right of way located by Mr. Milteer?

Ans. Yes.

Q. 9- State as fully as you can in what way he is damaged and in what way inconvenienced?

Ans. He is damaged because he has a longer way to go; he has 120 yards more to go in order to tap the new road and in a sand bottom.

Q. 10- Is it or not any damage to a farm to have a hedge row through it so located that it cannot be changed?

Ans. I should think so.

Q. 11- Please state whether or not private paths and sometimes public roads are plowed up in your section for the purpose of straightening same?

Ans. Yes.

Cross Examined by Counsel for Defendant

Q. 1- Do you know whether at this time Mr. Eberwine has on his farm any hedge rows so arranged that he cannot change them?

Ans. I do not know.

Q. 2- Do you know of any reason why he cannot now change his hedge row at pleasure as well as he formerly could?

Ans. I should think he could change them if he wanted to.

Q. 3- When is the last time that you traveled over this new way?

Ans. Yesterday.

Q. 4- Did you see anything the matter with it?

Ans. Across Milteer's farm it is all right; across Eberwine's there are crooks in it.

Q. 5- In going over this new way yesterday, did you go up to Mr. Eberwine's residence?

Ans. Yes.

Q. 6- Well, in the way that you actually traveled over the Eberwine farm to get there, did you have to go over a sand bottom?

Ans. No.

Q. 7- Then if I understand you, you would only have to go over this sand bottom if he tried to arrange his way so as to have but one crook, is that correct?

Ans. Yes, that is correct.

Q. 8- Do you know of any reason or necessity why he should not continue to travel the way that you traveled yesterday?

Ans. I should think it was a pretty tough way; he has to make 3 turns right along side of the ditch and short turns.

Q. 9- When did you last travel the old way?

Ans. I could not tell you.

Q. 10- Do you remember when Mr. Eberwine plowed up the old way?

Ans. No I do not.

Q. 11- Then you were ^{not} traveling it about that time. ?

Ans. I might not have been along there that day, I did n't see him plow it up, I do not know that he did plow it up.

Q. 12- If he had plowed it up all the way from the road to his line, would you have known it?

Ans. If I had taken notice, I suppose I should have known.

Q. 13- Do you not think it possible, that if it had been plowed up and the location changed, that you might not have observed it?

Ans. If he had put it 40 feet further I might have noticed it, but I don't think it has ever been changed 40 feet further.

I don't think there has been any change.

Q. 14- What was the character of the end of the old way about the place where it passed from the Milteer land to the Eberwine land?

Ans. It was hard clay soil.

Q. 15- Was it not some little lower about this place than it was across the field?

Ans. Yes, somewhat lower.

Q. 16- Would not the fact that it was even a little lower cause the water during heavy rains to take that route and have a tendency to make a wash?

Ans. I don't think it would wash the path half as quickly as if it were cultivated. I have never seen any wash there.

Q. 17- Would not that depend upon which way the rows ran?

Ans. It does not make much difference.

Q. 18- Does your farm lie in such a direction that you now have to use the way, or that you formerly had to use the old way to reach the county road?

Ans. No.

Q. 19- Then is it not a fact that you have not had much occasion to use either of these ways?

Ans. I never have much occasion unless I go down to see Mr. Eberwine; sometimes I go to Mr. Author's and go through there.

Q. 20- How often did you pass through there in the year 1895?

Ans. I could not tell.

Q. 21- Did you pass there then as much as once a month?

Ans. I cannot recollect.

Q. 22- Then if you did not, might it not be true that this old way was plowed up and thus obliterated, or might have been changed a short distance without your really observing it?

Ans. It would depend upon how far that distance would be. I don't think it has ever been changed.

Q. 23- When it was plowed up could you swear on your oath that it was not changed?

Ans. Yes, I could swear it was not changed entirely out of its bed.

Q. 24- On what land marks or any evidence would you base your last

statement?

Ans. Nothing except by the road that goes through there.

Q. 25- But if the road had been plowed up and obliterated, and you could not see the road, how would you then tell?

Ans. There would be no way to tell.

Q. 26- What relation are you and Mr. Eberwine?

Ans. I married his sister.

Re-Examined.

Q. 1- Did you ever see this old road across Milteer's farm ever plowed up and totally obliterated so that you could not tell its position?

Ans. No, I have not.

Q. 2- Did the old road through Milteer's farm cause any considerable wash to his farm?

Ans. I have never seen any wash.

Q. 3- From your knowledge of this land, please state whether that old road way, in the position it formerly occupied, would wash or cause to be washed, any considerable portion of Milteer's field?

Ans. I have never known any wash to be there.

And further this deponent saith not.
be consent.

Signature waived

The depositions of Dr. William T. Jordan and others taken by consent of all parties at the office of R. H. Rawles, in Suffolk, Virginia, on the 26th day of September, 1900, to be read as evidence on behalf of the defendant in a certain suit in equity pending in the Circuit Court of Nansemond County, wherein Annie M. Eberwine is complainant and Abram Milteer is defendant.

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PRESENT: E. E. Holland, for complainant,
R. H. Rawles for defendant.

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Dr. W. T. Jordan being first duly sworn, deposes and says as follows:

Q.1. Please state your name, age, residence, occupation, and do you know the parties to this suit?

A. W. T. Jordan, 65 nearly, Nansemond County, near Driver, I know the parties to this suit, I am a physician.

Q.2. Are you acquainted with the two farms mentioned in this case belonging respectively to Eberwine and Milteer?

A. Yes sir, I have known them for fifty years.

Q.3. I understand you to say you are a physician. Will you please state whether or not, or what advantages of travel over this section of the country this particular occupation gave you?

A. It gave me an opportunity of noticing the paths and by-ways.

Q.4. Have you ever noticed any of the ways or roads which have been used in crossing from the Eberwine farm over to the Milteer farm to get to the county road?

Yes, I have known the different ways.

Q.5. Will you state whether or not any of these ways have ever been fenced in or walled in in any way. If not, the general character as to the boundaries.

(Question excepted to as leading and as being irrelevant.)

(Question withdrawn)

Q.6. Will you please state the general character as to boundaries of these ways?

A. Why, the road, or the way leading from the new public road across Milteer's land to Eberwine's land and the whole tract of land of Eberwine's, not only to his house but the whole tract, has been nothing but a common hedge row for the last twenty years.

Q.7. Do you ot not remember anything about what is called the old original way which went across Milteer's field to the Eberwine farm when Mr. John Wesley Ames owned both places?

A. This pass way that I spoke of is the one when Mr. John Wesley Ames owned it was a hedge row. The original pass way to that land fifty years ago , the land that Mr. Eberwine now owns, or
Q.8. a greater portion of it, which then belonged to James Bidgood, was about 250 yards from the one Mr. Milteer now has; but for the last twenty years the other road that I spoke of just now has been used.

Q.9. I now show you a map or plat of the land and ways over the Milteer land, filed with the answer in this case, and designated on the map as way #1, way #2 and way #3. Please look at this map and see if you can identify any of these ways.

A. I can identify way #1 as the first way.

Q.10. Do you know whether that way #1 is still in use or not?

(Question excepted to as leading)

A. It has been changed.

Q.11. Can you state about how far, or about what distance it was changed from its original bed?

A. I judge about 12 or 13 yards.

Q.12. How do you know and why do you state that it has been changed 12 or 13 yards?

A. I know from the head of the branch that comes up it has been moved higher up. It was very close to the head of the branch at first. I have ridden along there often when the bushes at the head of the branch would drag in my buggy.

Q.13. Did you notice any change at the place where the two ways, #1 and #2, entered the county road?

(Question excepted to as leading.)

A. Yes sir.

Q.14. Will you state how far across Milteer's farm this change extended?

A. The change extended clear across.

Q.15. Then do I understand you to say that this road was changed somewhere in the neighborhood of 13 yards of the way from the county road to Eberwine's farm?

(Question excepted to)

A. It appeared to me so.

Q.16. What was the nature, or topography, of the land at the place where way #1 crossed from the Milteer farm to the Eberwine farm

A. Rolling and washy. There was a gradual decent from both sides that is, both sides of the Milteer land.

Q.17. Will you state whather or not you have ever noticed any wash at the place of crøssing?

(Question excepted to)

A. Yes, I have noticed that shells had to be put in to stop the washes.

Q.18. Will you state what is the nature or topography of the land at the place where the way opened up by Mr. Eberwine 13 yards distant across from the Milteer farm to his farm?

A. Well, that was washed out there too, just in the same way.

Q.18. What way is now used in getting from Mr. Eberwine's farm over Milteer's farm to the county road?

A. Mr. Milteer has opened a road higher up. I would judge, well, 100 yards probably, or a little over. That is on level land and there is no wash that I can observe.

Q.19. Have you ever travelled over this new way?

Yes, I have been over it.

(Question excepted to as leading)

Q.20 Will you state which of these ways is the better way of getting to the Eberwine farm?

(Question excepted to as irrelevant)

A. Well, I think, if it must be left to my judgment, I think the way Mr. Milteer opened from the farm, as I have been jostled pretty bad by going out the #1 way, and this way of Mr. Milteer's seems to be a very nice, level road, and has sufficient width to pass any one on the way very easily, whereas, I know in the other one I have had to go over crops in order to pass. I do not know what condition it is in now.

Q.21. Which one of these ways enteres the county road nearest Deans Station?

(Question excepted to)

A. #3. that is going by the public road.

Q.22. Have you ever travelled over the new way now designated as #3 across Mr. Eberwine's farm in order to reach his house?

A. I have not.

Q.23. State what inconvenience Mr. Eberwine, if any, is put to by having to travel this new way #3.

A. The only inconvenience that I know of would be to make one or two turns and travel a little more on his own land. That is all the inconvenience I can see.

Q.24. Do you know the topography of his land? That is, Eberwine's land?

A. Well, I know most of the land, probably the eastern portion of it; I am not thoroughly acquainted with it, for I have not been over there for a great many years. I have forgotten. ** Except next to the creek it is fairly level land; next to this bottom there is a little roll.

Q.25. Do I understand you to say that you knew when Mr. John Wesley Ames Sr. owned both of these farms?

A. Yes sir.

Q.26. Will you state whether or not you have heard this common owner of both these farms make any statement with reference to the right of way across the Milteer land?

(Question excepted to as seeking to elicit hearsay, and for the further reason that no notice was given to John W. Ames Sr., the common owner of both farms, when he testified, and his testimony would be contradicted or impeached.)

(To which counsel for defendant replies that this question is only asked in reference to a statement made by Mr. John W. Ames, and without any idea of impeaching what he says.)

(Counsel for ~~xxxxxxx~~ plaintiff replies that this being true is the best evidence that the question is inadmissible.)

A. Yes, less than two months ago. He stated to me that he wished he had given his son, William, a legal right of way.

Q.27. (Answer excepted to for the reason that the statement made is hearsay, and for the further reason that the plaintiff, Eberwine, and also his son, had a legal right by necessity across said farm.)

Q.27. I understood you in the first part of your testimony to say, that you remember many years ago that there was still another way several hundred yards distant from the way here mentioned leading from the county road to what is now the Eberwine farm or a portion of the Eberwine farm. Do you mean that that was a different way from either of these ways on the map marked #1, #2, and #3.

(Question excepted to for the reason that it seeks irrelevant testimony, there being no controversy, as admitted by defendant's answer, with reference to any other way than those designated on the map filed with said answer.)

Q. Yes, there was another way which was altogether different from these three ways.

(Answer excepted to for above reasons.)

Q.28. Will you state whether that other old way was much travelled?

(Question excepted to for above reasons.)

A. Only as a private way out to the public road.

CROSS EXAMINATION.

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- Q. 29. How long have you known way #1 as designated on the alleged map of defendant's?
- A. About twenty years.
- Q. 30th. Was way #1, to your knowledge, located as designated on the map for twenty years prior to the purchase of the Milteer farm by him?
- A. I do not say that it was prior to that. Yes sir, about twenty years prior to his purchase.
- Q. 31. Was that way, during these twenty years, in continuous use by parties going from the Eberwine farm to the county road?
- A. Yes sir, as far as I know it was, that was the only one I could travel.
- Q. 32. Was there, during that time any other means of access to or from the Eberwine farm to the county road.
- A. I can tell you what is heresay, but I don't know positively. I have heard parties say that they went around here by the hedge and sometimes from the gate by the hedge running at right angles going East and crossed at this same #1.
- Q. 33. Did you, during these twenty years ever use any other way in going to the Eberwine farm except the way designated as #1?
- A. No sir.
- Q. 34. Was way #1 used at the time the Eberwine farm was owned by W. T. Ames and afterwards by his wife?
- A. Yes.
- Q. 34. Was way #1, during the time of their ownership, opened and visible so that everybody could see that it was the way from the county road to the Eberwine farm?
- A. So far as I know it was sir.
- Q. 35. Was way #1 opened visibly and in existence at the time Milteer purchased his farm?
- A. I can say in regard to that fact, the last time I went along there before his purchase was to attend J. Lee Brinkley's family.
- Q. 36. Can you tell ~~whether~~^{when} #1 was changed to way #2, if such change has been made?
- A. I don't know sir, but it was changed since I attended J. Lee Brinkley's family.
- Q. 37. According to your personal observation and personal knowledge can you state with reference to what you have heard, if there has been a change from way #1 to way #2?

A. Yes, I can say of my personal knowledge, for I have examined it

Q.38. ~~When~~, and for what purpose was this examination made by you?

A. Probably, I don't know the exact date, about a month, I recon, about a month ago. Mr. Milteer asked me if I knew the way, if I was thoroughly acquainted with the way, I told him I thought I was, and I made examination and I remember the exact spot where this hedge row crossed ~~at~~ at the head of the branch.

Q.39. Do you mean to say that the entire way from the county road across the field of Eberwine's farm was changed?

A. It was a direct line from the change as far as I would see with my eye, it was where a bridge had been on the public road.

Q.40. Did both ways enter Eberwine's farm at the same point or at different points?

A. At different points.

Q.41. Was there any bridge on the county road at the point at which either way No. 1 or way No. 2 entered.

A. There must have been one, I think at #2, I don't think there was any bridge at #1, at least for several years back anyway. There may have been a bridge put there. I know for years that there was no bridge there at #1. Now, there was a ditch dug along there, and there may have been a bridge there, I am not sure, but there were sleepers at one or the other.

Q.42. I understood you to say in your examination in chief that Eberwine's farm has been nothing but a common hedge row for twenty years. Please state what you mean by this so that your statement may be better understood?

A. I state this: Before William T. Ames owned this place we are speaking of led from the now public road. It was not a public road then; it led just in the direction of #1 across the Eberwine land and went very near directly down to that point of the creek. There were some tenant houses down there and I had to go down there several times to see sick persons; in fact I went right down where he lives now.

Q.43. Was way #2 which it is alleged was changed by Mr. Eberwine, any more rocky and washy than the old way #1?

A. Well no, I don't know, but it might have been a little higher up the hill on one side.

Q.44. You stated in your examination in chief that you noticed shells had been put down to prevent washing. Where were these shells put?

A. They crossed the ditch or branch separating Mr. Eberwine's and Mr. Milteer's farms.

Q.45. Have you been on Eberwine's farm since the new way opened by Mr. Milteer has been in use?

A. I have not, but have been very close.

Q.45. Is it any inconvenience to a farmer to have to maintain a hedge row at the same place all the time on his farm?

A. That depends upon circumstances. It depends upon the location of the hedge row.

Q.46. Is not a hedge row or way next to a ditch spt to be washy?

A. Yes sir.

Q.48. Does not Eberwine have to use a hedge row or way next to a ditch in order to reach his house from the new road opened by Milteer?

A. That is altogether with him. Mr. Holland, altogether. It seems to me if I were in his place, (but he knows his own business best), I would run an avenue straight from my house and then strike off at right angles and strike this road.

Q.49. Is the map which shows a straight course from Eberwine's farm 110 yards to the ~~xxx~~ new way opened by Mr. Milteer, the correct way and the way now being used by Eberwine?

A. I don't know whether it is or not. I dont know whether he used it as a correct way or not. I dont know whether it is a correct way or not.

Q.50. Do you not think it a difficult matter for any man who does not live on a farm to give any fair estimate of the convenience or inconvenience of having to use certain ways or hedge rows across his farm in order to reach the county road?

A. Yes, I think it would be rather a difficult matter to give his judgment in regard to it.

Q.51. Is not Eberwine then, in your judgment, better able to testify as to the conveniences and inconveniences of the ways across his farm to reach the new way opened by Mr. Milteer than anybody else.

A. Of course he knows his conveniences and inconveniences better than anyone else.

Further this deponent saith not.

Signatures waived by consent.

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J. E. Knight being duly sworn deposes and says, as follows:

Q.52. State your name, age, residence, occupation, and do you know the parties to this suit?

A. J. E. Knight, 33, Driver, mail carrier, I know the parties to this suit.

Q.53. How long have you been mail carrier?

A. About six years.

Q.54. Do you know the Eberwine farm and the Milteer farm spoken of in this case?

A. Yes sir.

Q.55. Why is it that you know of these farms?

A. No more than I passed through. I know the difference in the farms.

Q.56. How often did you pass through?

A. Twice a day.

Q.57. How long have you been passing through twice a day?

A. I have been passing through twice a day for three years, soon will be four.

Q.58. Have you ever seen, or do you know anything of the old way across the Milteer farm?

A. Yes sir.

Q.59. Do you know whether it was ever changed or not?

A. Yes sir, it was changed.

(Question excepted to as leading.)

Q.60. How far was it changed from its original bed or location?

(Question excepted to.)

A. About 12 or 13 yards.

Q.61. Why do you know that it was changed?

A. Because I drove by there and saw the hands were plowing it up.

Q.62. State what you said in regard to plowing it up.

(Question excepted to for the reason that statements may have been made by other parties than those mentioned and would be irrelevant.)

A. I spoke to Mr. Eberwine's hands and said: You are changing the road? and they said, yes.

(Answer excepted to for the reason that it elicits statements from parties who are in no way interested in the result of this cause and are not parties there to.)

Q.63. State how far across Milteer's farm this road bed was changed?

A. I really don't know, I think about--- I could not exactly tell to save my life, I never travelled it but once in my life.

Q.64. Come here and let me show you on the map.
(Witness is here shown map and counsel explains what he means by the question.)

A. I only stepped it off, and I do not know the distance.

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CROSS EXAMINATION BY COMPLAINANT'S COUNSEL.

Q.65. Were you carrying mail at the time this change was made by Eberwine?

A. I was not.

Q.66. How long before or after did you commence carrying mail?

- A. I commenced in '91 for myself and drove two years. Then I drove for another man by the name of Griffin. Then I stopped and commenced again. I went to driving four years ago this coming June.
- Q.67. If you were driving the mail at the time of this alleged change^{not} how happened you to notice the change at the time it was made?
- A. Because I drove by there.
- Q.68. Did you stop and notice what was being done?
- A. No sir, but I slacked up and spoke to the hands; I knew the hands, but I did not stop.
- Q.69. Did you step it off at that time and find the distance from the old road to the new?
- A. No sir, not at that time, I did not.
- Q.69. When did you step it off?
- A. I really don't know, I reckon it has been a year ago.
- Q.70. How did you know a year ago where the old road was?
- A. I could tell by the sleepers.
- Q.71. Were there any sleepers or any bridge where the right of way #1 entered the county road?
- A. There were sleepers there, but about the bridge I could not tell you, but the sleepers were there to show for themselves.
- Q.72. Are the sleepers there now?
- A. Yes sir.
- Q.73. Did you notice that the way #1 had been changed entirely across Milteer's farm?
- A. O yes sir.
- Q.74. To what extent had it been changed at the other end where it enters Eberwine's farm?
- A. I could not tell you about the other end.
- Q.75. Had it been changed any at all?
- A. I could not tell you anything about the other end. I never travelled that piece of road but once in my life. All I know is, it was at the county road.
- Q.76. Then you are not prepared to state that the way has been change at all where it enters Eberwine's fird?
- A. No sir, I am not..
- Q.77. Who was plowing up the road?
- A. I could not tell you to save my life, but one of his hands.
- Q.78. Do you know that they were Eberwine's hands?
- A. They were working his team.

Q.79. Was Mr. Eberwine present?

A. No sir.

Q.80 Then you did not see Mr. Eberwine at all that day?

A. I don't really remember whether I did or not.

Q.81. He was certainly not present was he, at the time you had the conversation ~~you~~ with the party whom you thought to be Eberwine's hand.

A. No sir, he was not there.

Further this deponent saith not.

Signatures waived by consent.

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E. K. Raby being first duly sworn deposes and says:

Q. 82. Please state your name, age, residence, occupation, and do you know the parties to this suit?

A. E. K. Raby, 40, Deans Station, in Nansemond County, Va. merchant and farmer and know the parties to this suit.

Q.83. Are you acquainted with the Eberwine and Milteer farms spoken of in this case ?

A. Yes sir, to a certain extent, not thoroughly.

Q.84. How far are they from Deans?

A. About two miles.

Q.85. Do you know where Mr. Eberwine's Postoffice is?

A. Yes Sir, Deans .

(Question excepted to as irrelevant)

Q86. Please state what you may know, if anything, of the old way ~~that~~ leading across the Milteer farm from Eberwine's to the county road ~~that~~ was in use at the time that Eberwine came in possession of his farm?

A. Well, I know the old original right of way that was through there in 1888 and 1899. At that time there was an old hedge row and an old gate. About sixty or seventy yards from this old gate there was a right of way to the left, turning direct at left angles, to the Ames place, (now Eberwines.)

Q.87 What was about the width of this way?

A. I suppose that way would not exceed 12 feet, something like that.

- Q.88. Do you know anything of the topography of the place where this old way crossed from the Milteer farm to the Eberwine farm?
- A. Some of the land at that date was right bad, it was washy, often that had to haul in through old man Ames' after big rains.
- Q.89. State if this old way is now open?
- A. No sir, it is not.
- Q.90. When was it closed?
- A. I don't know the date.
- Q.91. After it was closed what other way was used?
- A. I never measured the distance, but I have heard witnesses here today say a way was opened about 12 or 13 yards from the old way. I think they are about right, but I never measured it.
- Q. 92. Do I understand you then to say that this second way was somewhere in the neighborhood of 12 or 13 yards from the first one?
- A. Yes sir, east of way #1,
- Q.93. Commencing at the county road how far across Milteer's field did this change continue?
- A. Well, that cut of land there is about (not measured now) is ~~aka~~ about 160 or 175 yards across to the now Eberwine land. The change was the whole distance across Milteer's field up to the Eberwine land.
- Q.94. Can you state about how far apart these two ways were at the point where they reach Eberwine's farm?
- A. They seem to run parallel, something like that. I never measured either end.
- Q.95. Then were they about as far apart at one end of them as they were at the other?
- (Question excepted to)
- A. Apparently.
- Q.96. What was the nature of the land where way #2 crossed at Eberwine's line?
- A. At the point of beginning on the county road the land seemed to be about the same. Where the Eberwine land joins to the Eberwine land, not quite so level as at the beginning. It is the #2 road. Where the old road went, if I can get you to understand it, the first road, it used to be, I don't think it is as much so now as it used to be, it used to be very washy; going east, on both sides of that property on the Milteer side and on the Eberwine side, going east, you would come in contact with very level ground, consequently the old road run through where it was very washy, or more so that the second one, if possible, I think.
- Q.97. What caused you to know that way #1 had been closed up and way #2 had been opened?
- A. Well, just simply like anybody else would pass a place and see the change made. So far as I can recall I was very well acquainted with the old way, I was through there many a time.

Q.98. Is way #2 now being used?

A. I think that is closed.

Q.99. Do you know anything of way #3 that is now being used?

A. Yes, I see it there.

Q.100. Have you ever travelled it?

A. Not #3. So far as I can see from the county road, it runs parallel with #2 across Milteer's ground.

Q.101. Which of these roads appear to be the wider, #3 or the other?

(Question excepted to as asking for an opinion.)

A. I have not noticed that. Both the second and third looked to be very nice roads across there. The one Eberwine fixed was a nice road and so was the other one, the new one, they both looked something alike. As to the distance I don't know.

Q.102. Which one of these roads at the point where it enters the county road puts Mr. Eberwine nearest his postoffice?

(Question excepted to as being irrelevant.)

A. The distance from the second road to the third is the difference in the distance. The last road puts him nearest by the difference in the second and third roads..

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CROSS EXAMINATION BY PLAINTIFF'S COUNSEL.

Q.103. Did I understand you to say in your examination in chief that way #2 was the most level land, and less washy than way #1 by reason of its being more level than way #1?

A. Yes sir.

Q.104. Do I understand from your answer that there would be less liability to damage to the Milteer farm by washing if way #2 were used instead of way #1?

A. Yes sir, to both farms, but more so to Mr. Eberwine's farm is my impression.

Q.105. Then if I understand your answer to this question the alleged change of way #1 to way #2 was an advantage to both farms. Am I right?

A. Yes sir, you are right, and to get clear of all the washes, ~~any~~ in my opinion. I think road #3 rids both farms of all washes. If I was at Mr. Eberwine's, leaving there, I don't know that any of these roads would suit me so far as my wishes are concerned, but I am basing what I say simply upon the property.

~~Q.105.~~

Q.106. Is it any burden on a farm to have to keep up across it an additional right of way?

A. Every thing additional, if there is any expense attached to it at all, is certainly an additional expense.

Q.107. Would not Mr. Eberwine, in order to reach the way #3, be required to maintain an additional right of way across his place?

In other words, would he not be forced to have a longer way across his place in order to reach way #3 than he would be forced to have in order to reach way #2?

A. He would have the same distance on his place to drive as the distance from way # 2 to way # 3.

Q.108. In other words, if I understand you correctly, Eberwine would have to keep up a right of way across his farm in addition to the one reaching #2 the distance between #2 and #3?

A. Yes sir with this exception, I don't know whether it would be across or parallel, but there is a distance between the two let it be across or parallel, to reach the county road. Because his house sits west and he would go east and the #3 road is the difference between #2 and #3 further for him to drive. The ~~distance~~ distance from his house to reach the county road let him come as he may, would be the difference between #2 and #3.

Q.109. Is it any burden on a farm^{er} to be required to keep a way or road across it all the time at the same place?

A. Yes sir, I would consider that just this way, it is a burden to us to keep anything. How it burdens I won't say. There is more or less burden to all roads.

Q.110. If Eberwine was required under the law to keep way #2 in proper repair and condition what damage would that way be to Mr. Milteer?

A. You have asked me too hard a question, I don't know.

Q. 111. If Eberwine was required under the law, to keep his right of way to the road in good condition would way #1 or way #2 be more damage to the Milteer farm?

A. I would think way #2 would damage the Milteer farm and the Eberwine farm also.

Q.112. In your judgment is not Eberwine, who lives on the Eberwine farm, in a better position to give a fair estimate of the convenience and inconvenience resulting to him from the use of these several ways?

A. I would think he ought to know best which is the most convenient for him. As to taking up and basing my opinion on the value of the property, I differ. To be honest, the further you move it up the better it is for both farms, in reason, that is to get clear of the washes.

Q.113. Are you positive that way #1 was changed the entire distance across the field when way #2 was opened?

A. I did not measure either end but I think I am positive. It was changed all the way across Milteer's firlle, I am confident of that. I have travelled the #2 road, but the #3 road I never travelled.

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REDIRECT EXAMINATION.

Q.114. You have stated in your cross examination that perhaps Mr. Eberwine, living on his farm, is in a better position to judge of the inconveniences than an outsider. Is it not equally true

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that Milteer, residing on his farm is in a better position to know of the conveniences and inconveniences resulting from the right of way over it than any outsider?

A. Yes sir.

Q .115. Is it not a fact that most farmers have private ways from their residences to all parts of their farms?

(Question excepted to)

A. Yes sir, but he has to make them, the most of our farmers down there have all got right of ways across their farms in different directions.

Further this deponent saith not.

Signatures waived by consent.

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Depositions of complainants in case Eberwine vs. Milteer.

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Dr. L. Hargrove being duly sworn deposes and says, as follows:

- Q.1. Please state your name, age, residence, occupation, and do you know the parties to this suit?
- A. L. Hargrove, 32, Nansemond County, Physician, and know the parties to this suit.
- Q.2. State what you know, if anything, with reference to the old right of way that went from the county road across the farm now owned by Milteer to the farm now owned by Eberwine before the farm now owned by Milteer was purchased by him?
- A. Well, I only know the right of way was there as far back as I can remember, of course I don't know exactly how long that is, but I remember as far back as when Mr. Ames lived there, the former owner before Eberwine, and the right of way was there then, the old road was there, that is the one I travelled then and have travelled since, up to recently since the road was moved.
- Q.3. State whether or not the right of way to which you have just referred was in existence at the time Milteer purchased his farm and was being used at that time?
- A. Yes, sir, it was.
- Q.4. State what changes, if any, have been made in that old right of way since Milteer's purchase of his farm?
- A. No material change to my knowledge.
- Q.5. State if you have had a frequent occasion to use the old right of way?
- A. I had frequent occasions for five or six years.
- Q.6. Is that old right of way now in use or not?
- A. No sir, I think not.
- Q.7. What way is now being used by Eberwine to reach the county road?
- A. A new way that has been opened a short distance from there. It is a way leading to Eberwine's farm across Milteer's farm I judge from 100 to 125 yards from where the old right of way was running parallel with the right of way.
- Q.8. State if you can whether, in your judgment, Eberwine is damaged or inconvenienced by having to use this new right of way, and if so, to what extent?
- A. Yes sir, I think he is inconvenienced. I would say the inconvenience would amount to a good deal in the course of a lifetime, or even a few years.
- Q.9. What, in your opinion, constitutes the damage or inconvenience to Eberwine?
- A. Well, it puts him a little further from the places that he has to reach, from the Postoffice church, etc. He has to keep up more road, the road is not as straight to his house, and it would be a considerable inconvenience to me a dark night to go over the new road in turning those sharp turns.

Q.10. Which of the two ways, the present way or the one known as #2 way gave Eberwine the more arable land on account of road ways?

A. I think No. 2 would give him a little the most.

Q.11. Would it be any practical inconvenience to Milteer by opening way #2 or way #1?

A. I should think not.

Q.12. Would it or not be simply granting a right of way across an open field without fences?

A. It would be very little trouble.

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CROSS EXAMINATION BY DEFENDANT'S COUNSEL.

Q. 13. Have any of these different ways across the farm ever been fenced to your personal knowledge?

A. No sir.

Q.14. Is it not a fact that most farmers in that section have these ways to get to the county road from their residences which consist of narrow ways without fences?

A. They get to the county road without fences, yes sir, there are no fences used.

Q.15. Were there any trees, walls, or other visible land-marks to mark the boundaries of this old way across?

A. None that I know of except it is so near the branch that you could very easily tell by this branch whether you were further from it or closer to it.

Q.16. Is it not a fact that this old way formerly travelled was a very narrow way, only wide enough for one vehicle?

A. No sir, I think not, I think I have passed people in there.

Q.17. Do you remember ever passing anybody on that way when the land on either side or each side was in cultivation?

A. Both sides were in cultivation I think.

Q.18. Did it not necessitate, in turning out to pass a party on that way, travel over the ends of the rows of the crops?

A. No sir, I don't think we were necessitated to travel over the crops.

Q.19. Do you remember when Mr. Milteer purchased the farm?

A. I do thereabouts, I don't know exactly. I suppose about five years ago.

Q.20. Did I understand you to say you travelled this old path before he purchased the farm?

A/ Yes sir.

Q.21. And have you travelled it since until the last new way was constructed?

- A. Yes sir.
- Q.22. Did you have occasion to travel it frequently from the time he purchased it up to last year?
- A. Yes sir.
- Q.23. Could you undertake to say that the old way was never in any manner interfered with, as to its location, by Eberwine?
- A. As I have said before, it was not materially interfered with. I remember some little change being made down at the bridge, it seems to me, between Eberwine's and Milteer's farm. I don't think the main road through Milteer's farm was materially changed.
- Q.24. Do you remember that old right of way having ever been plowed up?
- A. It seems to me I do, but I think it was because—Yes, I do remember, but I think the road was plowed up simply to make it a better road because it had gotten so rough.
- Q.25. Do you remember whether it was plowed up all the way across Milteer's farm or not?
- A. I don't remember that.
- Q.26. When it was plowed up was not the entire road bed obliterated?
- A. It could not be obliterated very well Judge.
- Q.27. Might it not have been changed, when it was plowed up, a few feet from its original location, either East or West without your observing it unless your attention had been particularly called to it?
- A. It is possible, but I don't think it was.
- Q.28. Do you know why it was changed at the point where the two fields meet?
- A. I think it was a very bad place to bridge and it may have been, possibly, to have gotten a better bridge site. I don't know that.
- Q.29. About how far was it moved at that point?
- A. I could not say, it certainly was not a great deal.
- Q.30. Is it not a fact that there is a low place, or ravine, or ditch whichever you may call it, at the point where this old road way left the Milteer farm and went over into the Eberwine farm.
- A. There is a ravine or low place there, yes sir. I think it is some lower there where the two meet, in other words, on the line.
- Q.31. Did not the land at that point seem to have the character of being rolly or washy?
- A. I think it did, right there.
- Q.32. Did you ever notice that oyster shells were put there in order to prevent these washes?
- A. No sir, Eberwine had grown grass to prevent washes on his side.

Q.32. Have you ever travelled the new way now open Doctor?

A. Yes sir.

Q.34. Is not this new way wider than the old way across Milteer's farm?

A. It may be a little, though it looks wider because it is a new way. Usually an old path you don't notice it much except from wheel to wheel, the new one you would notice.

Q.35. It is not across level, hard ground all the way over Milteer's field?

A. Yes sir, I think so.

Q.36. Is it not equally as good a way over Milteer's field as the old way?

A. Yes sir, so far as the road is concerned.

Q.37. I understood you to say in answer to a question in your examination in chief as to whether Milteer had been damaged or inconvenienced, that you thought he had been inconvenienced to the extent of having a little further to go on his own land in order to reach this new way. Is that the only way he is inconvenienced so far as you know?

A. Well, yes sir, having further to go it delays him in getting to his places of business and points that he wants to reach.

Q.38. I understood you to say that the new way which he is now using was not a straight, direct way to his house. I now call your attention to the map and ask if it is not a fact that the old way was not a direct way to his house?

A. I should say that the old way is a more direct way than the new one to his house.

Q.39. In using the old way did he not leave his house going East and travel about 400 yards and then turn off to the right coming down across his own field and strike directly into the old way?

A. Yes sir.

Q.40. Is there not already then a lane from his house going East to the extent of about 400 yards.

A. Yes sir.

Q.41. Does not this lane or hedge row at this point extend still further East across his farm?

A. I should call the first 400 yards the main lane and the remainder a hedge row. There is a hedge row that extends further but I don't know just how far the hedge row goes..

Q.42. Then if Eberwine is compelled to travel a little further to reach a point directly in front of the new way, he only has to travel about 110 yards further does he not?

A. It would be somewhere about 110 or 120 yards.

Q.43. The distance from this point opposite the new right of way down to Milteer's farm is no further than the distance from the end of the old lane down to where it strikes Milteer's farm, is it?

A. No sir.

- Q.44. Then the only inconvenience would be not keeping up any more distance going North or South, but only in keeping up from 110 to 120 yards going East and West. Is that not true?
- A. The distance would be the same. The inconvenience so far as that road is concerned would be little but I don't think it would be a very good place for the road.
- Q.45. While he would have to open up a new way from the point on his land, opposite the new road, on Milteer's land and would thus lose the arable land in that new way, would he not at the same time gain the arable land in the old way which has been closed?
- A. It would be the same as it is right now, certainly.
- Q.46. Then the only arable land which he would lose by this change would be the 110 or 120 yards from the point where his old lane formerly starts to the point where he is now compelled to come to, would it not?
- A. Yes sir.
- Q.47. When a lane is already open, as I understand Mr. Eberwine's is, and cleared, and without fences, is it much trouble to establish a new way across the field to the point where it would reach road #3?
- A. The trouble would not be in opening up the road.
- Q.48. Then what would be the trouble or expense?
- A. I think this would be a much heavier road here, it is a much heavier place and Eberwine's hauling over it would be a great deal of trouble to him.
- Q.49. Have you ever travelled the exact route that he has now to travel to reach this new road?
- A. Yes sir.
- Q.50. Then is it not a fact that in leaving his house he travels the first 400 yards the same old way that he formerly travelled then travels in still a straighter direction 100 yards further to a point on the map marked "A", then makes a right angle to the South coming down to Milteer's land at the point marked "C" on the new map and then makes another right angle and travels 10 yards to reach road #3?
- A. Yes sir.
- Q.51. Is not this way which he is now travelling a broad, good, hard way?
- A. With the exception of the sharp turns.
- Q.52. Is it better, in your opinion, than the way would be from point "B" on the map to way #3?
- A. I suppose it is. There is a very large bridge, and it is very bad to make the sharp turns; this makes the present road from point "B" to the new road very heavy. In comparing the two roads I don't know which would be the better.
- Q.53. Does not this new road #3 put Eberwine in the county road nearer to Deans Station than the old way provided he travels down the county road to Deans Station?
- A. O yes sir, but he loses in travel on the North side of the road what he makes up on the county road.

REDIRECT EXAMINATION.

Q.54. Do you know what route Mr. Eberwine takes in reaching Deans Station, the county road or a hedge row through Mr. John Capps' field?

A. Through Mr. Capps' field.

Q.55. Which is nearer from Eberwine's house to Deans Station the route by the #3 way or the #2 way?

A. The #2 is nearer.

Q.56. State whether or not you would consider it material damage to a farm to have three hedge rows upon that farm which could not be changed but must remain in a fixed and permanent position regardless of the convenience derived from moving them, to the owner of the land?

A. Yes, it would be to a truck farm.

Q.57. State if you know whether as a matter of fact, Eberwine will not be required to keep up way #2 or ~~whether~~ way #1 across his farm in order to prevent serious washes.

Yes sir.

Q.58.

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RE-CROSS EXAMINATION.

Q.58. What is the topography of way #2 across Eberwine's farm?

A. It is a washy piece of land but it is in such condition now that it will not wash.

Q.59. State the topography of the way on the map from "A" to "C"?

A. It is higher land, not so washy.

Q.60. Then as a matter of fact is it not a better way than road #2 for that very reason?

(Question and answer objected to because it is not new matter. The same point was covered in cross examination.)

Q.61. It is a better way, but I would rather have it to cultivate than to cultivate way #2.

Q.61. Mr. Eberwine had one one hedge row to keep up going the old route, did he not?

A. Yes.

Q.62. Is it not a fact then that in going the new route instead of having three hedge rows to keep up he only has what might be called one hedge row with two right angles in it?

A. He has one hedge row if you choose to call it so.

Q.63. Is it not a fact from this map that Eberwine only has to keep up from 110 to 120 yards of extra hedge row?

(Question excepted to)

A. Yes sir.

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RE-REDIRECT EXAMINATION.

Q.64. Is the map to which Judge Rawles has called your attention showing the location of the two farms and the location of the three ways, a correct map?

A. I don't know whether it is exactly correct or not?

Further this deponent saith not.

Mr. L. F. Ames being first duly sworn deposes and says:

- Q.1. State your name, age residence, occupation, and do you know the parties to this suit?
- A. L. F. Ames, 31, Nansemond County, merchant, and know the parties to this suit.
- Q.2. How far do you live from the farms of Eberwine and Milteer?
- A. I live about one mile from Milteer.
- Q.3. What relation are you to Mr. John Wesley Ames?
- A. I am his nephew.
- Q.4. Are you familiar with the old right of way beginning on the county road about 220 yards East of Bennetts Creek across lands which are now owned by Milteer and any of Eberwine's land?
- A. Yes sir.
- Q.5. For how long have you known this road?
- A. I don't know---I suppose---I have been going there all my life--twenty years or possibly longer.
- Q.6. Did this road cross the lands now owned by Milteer before and at the time of the purchase of the land by Milteer?
- A. Yes sir.
- Q.7. Do you know of any change in this road across Milteer's land?
- A. Well, I know about the time Eberwine fixed the road up there, but there was no practical change in it. If there was any change in it you would not notice it unless you notice very particularly.
- Q.8. Who occupied the Milteer land at the time Eberwine fixed up this road?
- A. I think Milteer owned it at the time.
- Q.9. Do you know when Mr. Milteer went into possession of the land? I mean when he went there to live?
- A. I don't know exactly. It has been five or six years ago since he went in possession of it, but he has lived there only about two years.
- Q.10. Would you consider the change in the old road made by Eberwine, if any, a damage to Milteer's farm?
- A. No sir, I would not.
- Q.11. Do you know why Eberwine plowed up the old road way #1?
- A. I suppose he did it to make a better road.
- Q.12. Do you know whether Eberwine owned the land he now lives on at that time?
- A. Yes sir, I think so.

Q.13. Was the old road way #1 a perfectly straight road or not?

A. It was straight from Eberwine's farm out to the old road. I don't think it was perfectly straight, but very near straight. There might have been some little turns in it but I would call it a straight road.

Q.14. At the ditch end of road way #1 as compared with the same portion of road way #2 please state if there was any difference in the capacity for washing, if so to what extent?

A. I don't know that there was any difference.

Q.15. Would you consider Mr. Eberwine damaged in having to travel the way now opened to him and having to maintain hedge rows, lanes, etc. which he now travels, and also having to maintain road #2 across his farm to prevent washing that part of his field?

(Question excepted to in the first place because it is leading in every particular, and because it practically states everything the witness is expected to answer.)

A. Yes sir, I think it is. I would rather have the farm with road way #2 than to have it with road way #3.

Q.16. Have you ever travelled to Eberwine's farm by road way #3?

A. Yes sir.

Q.17. Please state the condition of that road way from the county road to Eberwine's house?

A. Well, it is a fairly good road the way you have to go with the exception of these turns--sharp turns-- you have to make. Of course it is further and there is a ditch on the side of this road way No. 3. across Eberwine's farm.

Q.18. Please state whether or not it is dangerous to drive along this road way #3 at or near point "D" on the map, and state your reasons.

A. Well, a careful driver, of course, can get over there all right but there would be some danger of a dark night because you have to make the sharp turns, and there is a bridge, and also a deep ditch at point "D".

Q.19. State if you know whether Eberwine, in order to prevent washing will or not be required to keep up way #2.

A. Yes sir he will have to keep that up.

(Question excepted to because it is leading.)

Q.20. What necessity, if any, will there be for keeping up road way #2 notwithstanding the opening of way #3 by Milteer?

A. On account of washing.

Q.21. If way #3 is extended across Eberwine's farm from point "D" to point "B" what inconvenience to Eberwine by reason of deep sand or otherwise, will result?

(Question excepted to because it is leading and the answer is suggested in the question.)

A. To make that road straight it would be in sand bottom which, of course would make it very inconvenient for heavy hauling.

Q.22. State whether Eberwine's farm is more or less valuable with road way #2 or road way #3?

A. It is more valuable with road way #2.

Q.23. State fully your reasons therefor?

A. Well sir, this road puts him nearer his church, Postoffice, school, County Seat, and puts him nearer to the other farms he cultivates.

Q.34. What expense, if any, would result to Milteer from having to re-open way #2 across his place?

A. It would'nt amount to much, if any, it would not take any more land.

Q.25. State whether or not in heavy hauling it is inconvenient to truckers especially to have to use either a way with sharp turns or a way through heavy sand?

(Question excepted to as leading.)

A. Yes sir, it is very inconvenient for them.

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CROSS EXAMINATION.

Q.26. Is it not a fact that Mr. Eberwine has a landing on the rear of his farm to which he hauls most of his farm produce for shipment?

A. Yes sir.

Q.27. Then is it not true that he does not have to bring a great deal of it over any of these ways that we have been talking of, over #1 or #2 to the county road?

A. I think he carries most of it to his landing on the rear of his farm, at the same time, in travelling this road #3 which is on the opposite side of his farm that would bring him down to this sandy bottom, and he is necessitated to bring right much of his stuff over that sandy bottom to reach his wharf because he has to go that way.

Q. 28. In reference to this sandy bottom of which you have been speaking, is it not a fact that it is now in cultivation by Eberwine

A. Yes sir.

Q.29 Then it is not so sandy but what he can plow it and cultivate it?

A. No sir, those people never turn out any land, they cultivate it all.

Q.30 I understood you to say in answer to a question propounded on your examination in chief that Eberwine plowed up the old way and if he made any difference in its location you would not notice it unless you notice it particularly. Would not this be true if he had put it only a few feet from its original location

A. Yes sir.

Q.31. Do you not think that in plowing up this lane that his object was to atraighten same ?

(Question excepted to)

A. I don't know.

Q.32. Then do you not know why he plowed it up?

A. As I have said before I think he did it to make it a better road.

Q.33. Dr. Jordan and quite a number of other witnesses in this case have stated that as a matter of fact that this road was plowed up and was changed a few feet from the old road bed or location. Are you prepared to say positively that it was not so changed a few feet?

(Question excepted to. Dr. Jordan, in his testimony states the number of feet in his judgment the road was changed.

A. No sir.

Q.34. You have stated that would be but little expense to Milteer to re-open road way #2 across his farm. Is it not equally true that is is but little expense in dollars and cents to Eberwine to open a way across his farm from the way he already has to bring him to this new way which has been opened.

A. So far as the expense goes, yes.

Further this deponent saith not.

J. Richard Gaskins being duly sworn deposes and says, as follows:

Q.1. State your name, age residence, occupation and do you know the parties to this suit.

A. J. R. Gaskins, 50, Nansemond County, I know the parties to this suit.

Q.2. I now show you a map giving the location of Eberwine's farm and Milteer's farm and the several rights of way in controversy in this suit. Please state if the map is correct so far as you know?

A. I guess it is right.

Q.3. There are designated on the map two rights of way one is way #1 and the other is way #2. Please state all that you may know with reference to these two rights of way?

A. Well, #1 road has been there ever since I can recollect. I do not remember anything about any but the old way, if there has been any change it is so slight it is hardly perceivable.

Q.5. Do you know where way #3 opened by Mr. Milteer is?

A. Yes.

Q.6. Please state whether or not, in your judgment, Eberwine would be damaged by being forced to use way #3?

A. Yes, of course he is bound to be.

Q.7. In what way would he be damaged?

A. It throws him further from the churches, from the court house from the public road and postoffice.

Q.8. Please state whether or not, in your judgment, the closing of the old right of way by Milteer renders Eberwine's farm less or more valuable.

A. Less valuable I think.

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CROSS EXAMINATION.

Q.9. What is the family relation between you and Mr. Eberwine?

A. He married my daughter.

Q.10. How far do you reside from this farm?

A. About a mile from Mr. Milteer's.

Q.11. Did you ever travel over way #3? That is, the new way?

A. Yes sir.

Q.12. Is it not a good, wide, hard, level road over Milteer's farm?

A. Yes, a fairly good road when I travelled it last.

Q.13a. In going to this new way to Eberwine's house did you not have to go over sandy bottoms in his (Eberwine's) field?

- A. Yes sir, a small one.
- Q. 14. Do you know the distance between way #3 and what is known as the old way
- A. I don't know, I suppose about 100 or 125 yards, somewhere along there.
- Q.15. Do you remember the time Eberwine plowed up the old way across Milteer's farm?
- A. Yes sir.
- Q.16. Were you present when the plowing was done?
- A. I was not.
- Q.17. How long had it been done when you noticed it had been plowed up.
- A. A few days.
- Q.18. That was while Eberwine was a tenant on Milteer's farm was it not?
- A. Yes.
- Q.19. Is it not possible that when this way was plowed up that it might have been changed a few feet from this road bed?
- A. Probably so, but hardly perceptible.
- Q.20. If it had been changed a few feet what would cause you to notice it unless your attention was called particularly to it?
- A. If it had been of course I was bound to notice it. If it had been changed I could have told from the direction it bore to the branch.
- Q.21. Did you ever notice particularly the point where this old way entered the county road?
- A. Yes sir.
- Q.22. Is it not a fact that today at the point where this old original road way entered the county road there are the remains of some old sleepers which indicate where a bridge was once placed
- A. I don't remember of ever seeing any sleepers along there.
- Q.23. Was there anything at the end of this road where it entered the county road to mark or designate the spot?
- A. No sir, not particularly, I don't remember.
- Q.24. Do you not remember any stob being there at the end of this way?
- A. I don't know particularly, of course there might have been one there but I think it must have rotted down. I don't remember it.

Further this deponent saith not.

Mr. J. G. Eberwine being first duly sworn deposes and says:

Q.1. State your name, age, residence, occupation, and do you know the parties to this suit?

A. J. G. Eberwine, 28, Nansemond County, farmer. I know the parties to this suit.

Q.2. Who owns the farm upon which you now live?

A. My wife, Annie M. Eberwine.

Q.3. Will you please file as Exhibits in this case her deed to the same?

(Witness here filed Exhibits marked "EE" which are made a part of the record in this case.)

Q.4. Did you ever reside upon the farm now owned by Mr. Milteer?

A. I lived there from the 8th. of November 1892 until February 1894.

Q.5. When you werethere as a tenant did the old road way known here as #1 exist upon this land?

A. It did.

Q.6. Please state what improvements, alterations, or changes you made in this way, your reasons therefor and when it was done?

A. This road, like all others I have ever seen or known, from constant use gets very crooked, and this being a fact with this road, sometime in February or March 1895 I plowed the road up simply to atraighten and make a better road. I had a road 15 feet in width and it was as good as any piece of road in the State of Virginia not shelled, when Mr. Milteer took charge.

Q.7. Was it your intention when you plowed up this old road to alter its position?

A. None whatever, simply to straighten and make a better road, as I usually do everywhere I have ever been.

Q.8. Why did thid road become crooked?

A. From constant use and heavy hauling.

Q.9. Are there any protection on the sides of these roads to prevent the furrows from ehtering upon them? I mean ditches or fences, etc.

A. None whatever.

"10. Please state how close in your section of the county it is customary for the farmers to plow to these roads?

A. Some people go into the wheel track and across them, and others a respectable distance.

Q.11. Do I understand you to say or mean by heavy hauling and constant use that such roads become crooked by reason of the plows entering into them?

A. Where people plow into or so near the road they will get out of shape much quicker than if they were not plowed so near but they will naturally crook anyway.

- Q.12. I here show you map marked Exhibit "X". Please state if that is a correct map of the land or roads here in dispute?
- A. It is to the best of my knowledge and judgment.
- Q.13. Who made that map?
- A. I.
- Q.14. Wh-at meand did you use to fix the distances on it?
- A. Part by actual measurement and part by guess. Travelling over the land so many thousand times I could hardly make a mistake.
- Q.15. When you moved upon the land which you now occupy where was the road upon which you travelled to reach the county rad?
- A. It was as near #1 marked here as it is possible to tell without stone marks.
- Q.16. After you moved off the Milteer farm who then occupied it?
- A. A man by the name of Harrell.
- Q.17. How did Mr. Harrell occupy it, as owner or tenant?
- A. As a hireling of Mr. Milteer I suppose.
- Q.18. Who then owned the land? Milteer's farm I mean.
- A. Milteer.
- Q.19. At that time was road #2 opened and being used?
- A. It was.
- Q.20. For how long have you been using road #2?
- A. From February or March 1895, to the 14th day of September 1899.
- Q.21. Why did you cease using road #2 in September 1899?
- A. On the 14th day of September, 1899, I crossed road #2 on a mowing machine going to my father's to cut a piece of hay, in the morning; when I crossed there was a colored man ditching side the road; I was notified by the colored man to travel over road #3; when I came back I travelled over road #3 prepared by Mr. Milteer for my use under protest, and road #2 there was a ditch cut across when I returned.
- Q.22. What, if anything, was ever said by Milteer to you about this change?
- A. Nothing whatever in any way, shape, or form.
- Q.23. What objection, if any, was ever made by Milteer to your using way #2 before #3 was opened?
- A. None whatever, in words.
- Q.24. Did you exercise any choice in the selection of road #3? Were you ever consulted as to where that new road should be?
- A. None whatever, I was compelled to go there or drive my horse across a ditch without any bridge.
- Q.25. Did Milteer ever complain to you that #1 had been changed before the institution of this suit?
- A. Never.

- Q.26. Did Milteer ever request you to return to road #1, or did he offer to re-establish road #1 for your use?
- A. He never did.
- Q.27. What is the dividing line between your farm and Milteer's farm?
- A. A deep ditch, six feet deep in some places.
- Q.28. Please state the mobility of the soil on road #2 at the point of this ditch?
- A. I have never known it to be a serious wash there.
- Q.29. Please state the difference, if any, in the bharacter of the soil on the ditch on Milteer's land between way #2 and way #1?
- A. None whatever.
- Q.30. What is the relative width between road #2 and road #3?
- A. Road #2 when my term expired on the Milteer farm was 15 feet wide by actual measurement. When Milteer took charge he plowed into the wheel track every time he plowed a crop, therefore, after he had charge, road #2 was only four feet 10 1/2 inches in width and road #3 is perhaps 15 feet in width. I have never measured road #3.
- Q.31. Did road #2 suit you as a passage way to the county road?
- A. It suited me better than it is possible, and more convenient than any other way can possibly be.
- Q.32. Why is road #2 better than road #3 for the purposes of your farm?
- A. Because it is a better road, a straighter road, having only one angle from my house and it puts me in the county road nearer to the to the nearest Postoffice, public wharf, Express Office County Seat, Churches etc.
- Q.33. Do you farm any other lands than those of your wife?
- A. I do.
- (Question objected to because it is irrelevant.)
- Q.34. Where is this land?
- A. I cultivate one small piece known as a part of the "Laycock" place belonging to the American Fertilizer Co. and I also cultivate a large farm known as "Fruitland" farm owned by Kirm and Griffin.
- Q.35. Please state in what direction this land lies from your farm ~~xx~~ and indicate as near as may be its position on the map?
- A. It lies in a South course in the rear of John Capps.'
- Q.36. Upon what road do you travel to reach this land?
- A. I travel across John T. Capps' field, a public thoroughfare, used by the public generally a gr at deal more that the county road around by the Jew Store. This road is markes "F" on the map.
- Q.37. State which is the more convenient in reaching thoes farms, #2 way or #3 way from your house?
- A. #2 is considerable nearer.

Q.38. How frequently do you visit these farms?

A. I, or my employees travel on an average of ten times a day which causes me to travel to reach #3 464 1/2 miles a year more than I had to travel on road #2.

Q.39. Please state the character of the land between point "B" and road #3?

A. A portion of that land is level, but the North end of it goes into deep sandy bottom which washes very bad, and there is a deep wash at the identical spot this very moment.

Q.40. What kind of road could be made between point "A" and point "B"?

A. Impossible to ever make a good road without elevating it perhaps 4 or 5 feet, which would cost thousands of dollars.

Q.41. What has become of road way #2 on that land?

A. It is at the identical spot where it has always been.

Q.42. Why did you not plow up this road?

A. It took me a good while and gave me lots of work to stop the washes on this road. They are fixed so at the present that no amount of water can possibly break through them, therefore I am compelled, whether I use this as a public way or not, to keep this road to protect my land from washes.

Q.43. What is used to prevent these washes?

A. Wire-grass, shells, rocks etc.

Q.44. What borders on the 10 yards of road between point "B" and point "C" on the South side?

A. A ditch between 5 and 6 feet deep at the bridge.

Q.45. In passing from road #3 upon your land how do you cross this ditch?

A. I have to cross on a bridge and turn short to the left which is very dangerous, especially in the trucking business, as we haul heavy loads, therefore the driver does not ride on his cart, and as a matter of fact team will take a short cut and unless the driver is very close to the cart they are very likely to get into the deep ditch, and at night it is almost impassible without getting out and feeling your way across the ditch.

Q.46. What guards the bridge and ditch at this point?

A. Nothing.

Q.47. Is it or not a damage to a farm to be required to maintain three pieces of hedge row at fixed and permanent places which cannot be changed at will?

A. It is a serious damage, and my opponent in this suit must consider it as being such a damage that road way #3 should not stay there.

Q.48. What is the difference in the damage to the Milteer farm between road #3 and road #2, if any?

Q.49. None whatever, road #2 is much more convenient for the Milteer farm than road #3 for the simple fact that to haul stuff from Milteer's land adjoining me over road #3 he has to haul it up a considerable hill either way he may haul it.

50. Q. When you resided upon the Milteer farm do ^{you} know in any particular how road #2 would be more injurious to you than road #3?

A. It never showed in any way, shape or form inconvenience or injury to the land during my three years of cultivation.

Q.51. Which will wash the more, road #3 or road #2 on the Milteer farm?

A. I have never known either to wash so that it would give you much of a jolt in riding in a buggy. Road #3 is side of a deep ditch and when it becomes wet is is right mirey; water stands on it all the time during a wet spell.

Q.52. Why did you close way #1, if such be a fact?

A. I have never closed way #1.

Q.53. In regard to time, how soon after you had plowed up way #1 was way #2 created or made?

A. Immediately.

Q.54. Why did you put down way #2 immediately?

A. Because I simply plowed up way #1 to make a better road and not to change it.

Q.55. Did you have any intention of abandoning way #1?

A. None whatever.

(Question excepted to.)

Q.56. Who resided on the Eberwine farm when way #1 was plowed up by you.

A. I.

Q.57. If no way had been opened by you in place of way #1 how could the occupants of the Eberwine farm have gotten to the county road?

A. Only by having faith and walking across the creek.

Q.58. To what extent, if any, has the Eberwine farm been rendered less valuable by the closing of way #2 and the opening of way #1?

A. I consider that it is damaged to the extent of \$1000.00, and the day the court decides that road way #3v must stay there

and anybody in the United States will meet me in Suffolk the day after the court decides that it must stay there we will fix the papers and he can take the farm for \$1000.00 less.

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CROSS EXAMINATION.

Q.59. As to the last proposition that you made, have you consulted your wife about it?

A. Has that anything to do with this case?

(Question excepted to)

- Q.60. Above question repeated.
- A. Yes.
- Q.61. When did you consult her about this proposition to sell the farm at \$1000.00 less?
- A. At different times.
- Q.62. State the times and places?
- A. It is not necessary to state the exact spot nor the exact moment such words were said as it is simply our business and no one else's.
- Q.63. I understood you to say that this old road #1 was on this farm when you went there. Is this true?
- A. It is.
- Q.64. I understood you to say that you plowed it up in 1895 in order to straighten and make it a better road. Is that true?
- A. It is.
- Q.65. Were you at that time a tenant on the farm? The Milteer farm?
- A. I was.
- Q.66. Milteer at that time owned the farm, did he not?
- A. He did so far as I know.
- Q.67. Did you ever speak to him about plowing up this old way?
- A. I did not.
- Q.68. What authority then did you have for interfering with this road or for attempting to straighten it?
- A. The authority that a tenant has by renting land.
- Q.69. Is that the only authority you had?
- A. I suppose so as it did not necessitate any authority to plow it up or to do anything else with it.
- Q.70. I understood you to say that when you plowed it up you made it a way 15 feet wide. How wide was it before you plowed it up?
- A. It was somewhere between 10 and 15 feet.
- Q.71. I do not exactly understand you when you say a way or road becomes crooked from constant use. Will you please explain this?
- A. Perhaps if you will leave the City and go on a farm long enough you will see very plainly how such a thing is a fact.
- Q.72. At or about the time that Milteer closed way #2 did he not approach you and endeavor to have a conversation with you in reference to the same.
- A. No sir, he did not.
- Q.73. Did he not meet you in the county road on or about that time and say that he wanted to talk with you about his obstructing way #2?

A. No sir, he did not. I saw Mr. Milteer, I was on road #3 and he was in his field, and he met me with very abrupt words, and started to say something about the change of the road. Knowing as I did the immense amount of malice that Milteer had against me I simply referred him to my attorney in regards to the matter.

Q.73. How do you know that Mr. Milteer had any malice against you?

(Question excepted to as irrelevant)

A. By actions, and shunning me, and refusing to speak to me.

Q.74. Did he have any more malice against you than you had against him

((Question and any answer excepted to as this is not an action of slander.))

A. I have not any myself against any man of the face of the green earth. I would do Mr. Milteer a favor today as the first man as quick as anybody on earth.

Q.75. In speaking of travelling to and from the other farms which you are now renting, you figure at 10 times per day, you figure that you would have to travel 464 extra miles per year on account of having to go over way #3. In making this calculation did you not put it on the basis of reaching those places by going through Mr. John Capps' field?

A. I bases the calculation on going through a public thoroughfare used by the public generally across John T. Capps' farm.

Q.76. Do you mean to say that you have a legal right to cross Mr. Capps' field with or without his permission?

(Question excepted to as being irrelevant.)

A. I have as long as it is a public thoroughfare used by the public generally.

Q.77. If Mr. Capps were to obstruct this right of way across his farm so as to render it impossible for you to pass over his farm, how then would you reach your Postoffice at Deans Station from the point where you now enter the county road, by going East or West?

A. I would likely go East.

Q.78. Likely going East does not as a matter of fact way #3 put you in the county road 110 yards nearer to Dean Station going East by the county road than the old way puts you?

A. It does.

Q.79. How did you come to Suffolk today?

A. I came on the train from Deans.

Q.80. Do you not generally come on the train from Deans when coming to Suffolk?

A. As a rule. I seldom cometo Suffolk.

Q.81. Is Suffolk your market or Portsmouth?

A. I don't market at either place.

Q.82. Then is it not a fact that as a rule coming to Suffolk by rail that this way #3 would put you in the county road 110 yards nearer to Deans Station by the county road than the old way puts you.

A. Yes sir.

Q.83. When you are going to Portsmouth by the county road which one of these ways way #3 or way #2 puts you in the county road sooner, going to Portsmouth?

A. Road #3.

Q.84. Now in reference to the sandy bottom which you say Milteer's farm at the place where you would be compelled to cross it if you come out so as to make only one angle in reaching the new way, is it not a fact that you have that now in cultivation?

A. I have with the exception of the wash, which is in direct point with road #3.

Q.85. I now call your attention to the map marked Exhibit "X". You have a lane from your house 400 yards along to the right angle that you first turn, have you not?

A. Yes.

Q.86. Is there not a hedge row which is a continuation of this lane to the point marked "A" on the map?

A. Yes.

Q.87. Does not this same hedge row extend in a straight line or thereabouts, further across your farm in an Easterly direction?

A. Yes it is a slight angle.

Q.88. What is the cost to you at present to maintain this hedge row?

A. If I were compelled to keep it there I would consider the cost serious.

Q.89. How long have you had it there?

A. Since I have had the farm.

Q.90/ Has the cost been serious in that time?

A. It has not.

Q.91. As a matter of fact is it not already there for the convenience of your farm?

A. It is, but if I were compelled to use it to get to the county road and do all of the travelling for the farm over it it would cost me right much to keep it in good condition.

Q.92. You use this hedge row across your farm as a drive way for farm purposes do you not?

A. I do.

Q.93. It has never cost you anything like \$1000.00 to maintain it up to the present time from point "A" to point "B" has it?

A. From point "A" to point "B" has ~~it~~ never been elevated and there has never been a road from point "B" to point "D"; therefore, it is impossible for it to have cost \$1000.00 before it is fixed.

Q.94. You have never seen any necessity so far for elevating it have you?

A. I have never been compelled to tap road #3 yet.

Q.95. Did I understand you to say that the old way across your farm the tap road #2, you would be compelled to maintain in order to prevent washing?

A. That is a fact.

Q.96. Then why would it not be equally true that if you had an established way at point "B" it would prevent that sand bottom from washing more than the cultivation of it prevents it from washing?

A. Because the sandy bottom at point "B" is a big sandy bottom and the road to tap #2 there is no sand.

Q.97. Is it a fact that on an average 7/8 of your produce is hauled from your farm to your wharf instead of being hauled to the public wharf?

A. Trucks grown on the ~~home~~ ^{home} farm, but I have all heavy hauling from the other farms such as corn, fodder, wood, fertilizers and various other heavy things. ~~hauled to the public wharf~~

Q.98. Which one of these wharves do you generally use in shipping produce grown on the rented farms you have spoken of?

A. I use a wharf on the creek on Mr. W. J. Wrights' place that Mr. J. F. Weber now cultivates.

Q.99. To reach this wharf you do not have to cross the Milteer land at all do you?

A. I do not.

Q.100. Then you have very little use for either one of these ways for getting your produce raised on these farms to either of these wharves?

A. I have a little stuff that does not justify the boat's running for and I have to travel over road #3 to get to the public wharf which is a considerable damage to my team.

Q.101. Do you not have most of your fertilizers which you purchase delivered on your private wharf?

A. Most of it.

Q.102. Then they do not have to be hauled over way #3 do they?

A. It does when I carry it to the other farms from the home farm

Q.103. Do you not have the fertilizer used on the other farms delivered generally at the Wright wharf?

A. Some I do and some I do not.

Q.104. Since you have stated that you were compelled to keep up way #2 as it runs across your farm could you not, in leaving your residence for the the county road travel down your old land to way #2, thence down way #2 to the ditch, thence make you a hedge row along the ditch to the Point "D" opposite way #3?

A. Certainly I could. I could cross the creek if they build me a bridge across there.

- Q.105. In conducting your farm operations on the farm on which you live do your rows run North and South or East and West?
- A. East and West.
- Q.106. What then would be the expense in making a track 10 feet wide along this ditch from the southern part of way #2 to point "D" on the map?
- A. So far as the expense is concerned it would be comparatively trifling.
- Q.107. When you plowed up this way #1 did you not in addition to wishing to make it a straight and better way also have in view the fact that you desired to bring it out so as to give you a straight way across your farm to the county road?
- A. The way across my farm was no straighter than the way across Milteer's farm, therefore plowing up both straightened both.
- Q.108. Does not this way #2 on the map cross this ditch or ravine between you and Milteer at a point a little further East than the old original road ditch crossed it?
- A. Not to exceed six feet.
- Q.109. Was there not a ravine there which in heavy rains caused the land to wash?
- A. No sir, a big ditch ever since I can remember it. There is no ravine.
- Q.110. Is not the land where the way #2 crosses from Milteer's land to your land lower than it is any other part of the way?
- A. Very little. There is a decent both ways from about the middle of Milteer's farm where road #2 used to cross.
- Q.111. Have you ever known a good deal of hauling to be done to repair the washes at the point indicated?
- A. Only at the bridge where the ditch caves very easily and I had to go to a big expense to wall the ditch up on both sides to get a good bridge to stand. This was done once the first year I took charge, and the second time when the road was plowed up I walled it twice.
- Q.112. Is it not a fact when you plowed up road #1 and opened road #2 that where it entered the county road that it entered it a few feet further East than the old way #1 did?
- A. Not to exceed 10 feet by actual measurement.
- Q.113. Fix your attention now at the exact point where road #2 entered the county road on the date that Milteer closed it up. Are there not some thirty or forty feet to the West of this point on the county road some old sleepers indicating that there was once a bridge there which lead to way #1?
- A. I have been travelling by and over road #1 for the past 12 or 15 years. I have never known or heard of a bridge being anywhere along there. There are some suspicious sleepers that must have been manufactured there or grew in the ground as people 75 years old and lived on the place for over 50 years never heard of the bridge being there at the point designated. Those sleepers were never perceptible until a ditch was cut by Milteer on the North side of the county road.

Q.114. About how far are these sleepers to the West of the point where way #2 enters the county road?

A. I have no idea I have never measured it.

Q.115. You have said something about the danger arising from having to make the sharp turns to get on this bridge at the end of road #3. Did you ever have any serious accident there?

A. Not to myself but a cart belonging to Mrs. E. V. Lee came very near having a serious accident at the bridge with a load of potatoes.

Q.116. Can you say whether or not this was not the fault or carelessness of the driver?

A. Not altogether as he had a load and could not ride on his cart therefore he was excusable for making such a short turn.

Further this deponent saith not.

Mr. W. B. Gaskins being duly sworn deposes and says, as follows

Q.1. State your name, age residence, occupation and do you know the parties to this suit?

A. W. B. Gaskins, 40, Nansemond County, farmer and know the parties to this suit.

Q.2. State if you know the location of the old right of way across the farms now belonging to Eberwine and Milteer?

A. I think I know it pretty well.

Q.3. State if you know what changes, if any, have been made in the old right of way since the purchase of the farm by Milteer?

A. I know of none.

Q.4. State whether or not you are familiar with the location of way #3, the new way opened by Milteer?

A. Yes, I know where that is.

Q.5. State whether or Mr. Eberwine is in any way damaged or inconvenienced by being forced to use way #3 instead of way #2 heretofore used by him, and if so to what extent?

A. In playing with children you can amuse them with most anything but in dealing with men there is no small business about it, especially when any change is made, so that they can be understood. The old road as it stood was given by the owner of the property, the original owner, and I therefore considered it a road, a public road, as much as any highway and I don't see what right any man would have to change a public highway it matters not how much to his interest. The road that was changed I consider was in the best place, ~~xxxxxx~~ the wider a road is in reason the easier it is to keep in order. It was necessary to fill in the road with brick bats and other things whereas in changing a road, land being thought something of in that section of the country would necessarily, being a very narrow road as you all know, would be harder to keep in order than a wider road.

I consider Eberwine is damaged by having to use the new way instead of the old way.

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Cross Examination.

Q.6. You do not mean to say that this old way across the Milteer farm is a public county road?

A. Yes sir.

Q.7. Did you ever know the public hands to work on it under the direction of supervision of an overseer?

A. No.

Q.8. Do you know whether it was ever accepted by the county court and adopted as a county road or not?

A. No I don't know it to that extent.

Q.9. Then you only consider it a public road because the people in that neighborhood were permitted to travel over it?

A. Yes, and again when a road is once given it is usually given by the owner of the property.

Q.10. Who gave this road?

A. John Wesley Ames Sr.

Q.11. How did he give it?

A. I don't know.

He did not give it by deed did he?

A. I don't know that he did.

Q.12. Were you ever present when he ever made any dedication of it to the public?

A. I was not.

Q.13. Do you know when this way was plowed up by Eberwine?

A. I can't say that I do.

Q.14. Where were you living at that time?

A. I was living on Newman's Point.

Q.15. When it was plowed up you could not say could you whether it was put a few feet to the East or West of the old road?

A. No, I could not say, it was never changed enough for me to detect it.

Q.16. Did you ever have occasion to go there and make an examination and satisfy yourself as to whether it might not have been moved a few feet further to the East.

A. No

Q.17. Then if I understand you you have never observed this road except ~~at~~ in a casual manner?

A. Well I know it was almost in a straight line. It was never changed that I know of. As he crossed the bridge the boundary line between the two farms you had to rise a little hill and there was a big wash. He may have changed it a little to the right, but if he did he did not have as much road as the law allowed him for that would allow him 24 feet.

Q.18. Have you ever travelled the new way opened by Milteer?

A. Yes sir.

Q.19. Is not this new way at least 15 feet wide?

A. It is now.

Further this deponent saith not.

J.O. Arthur
North

"Ex" "X"

