

1915-013

Nansemond Co (Suffolk)

Chancery Causes: John A. Milteer vs W.T. Newman

Wilkerson, Powell, Rives, McNeal, Mason, Beele, Bruce

OVERSIZE

Box 4

- 1 PLAT

Folder 1 of 2

This Deed, Made this 12th day of November in the year

one thousand nine hundred and four between Robert L. Wilkerson and Alice O. Wilkerson, his wife, of the County of Nansemond and State of Virginia,

.....of the first part, and
John A. Milteer, of the said County and state,

.....of the second part—

Witnesseth: That in consideration of the sum of Fifteen hundred (1500) Dollars

the said Robert L. Wilkerson and Alice O. Wilkerson, his wife

.....do.....grant unto the said
John A. Milteer, and his heirs and assigns, forever,

.....with GENERAL WARRANTY, all

that certain tract, piece or parcel of land, situate in Barrett's Neck, in Chuckatuck Magisterial District, in the County of Nansemond and State of Virginia, containing by survey one hundred and six and one half (106 1/2) acres, and bounded on the north by Chuckatuck Creek and the land of Charles B. Godwin, known as the J. E. King's Estate land; on the east by the lands of Charles B. Godwin (a part of the King land) and E. L. Johnson and other land of the said Robert L. Wilkerson; on the south by the land of B. M. Bruce, and a part of the old "Godwin tract, and by other land of said Robert L. Wilkerson; and on the west by the said Chuckatuck Creek and the land of B. M. Bruce,— a map of which land herein conveyed, showing the metes and bounds, made by B. P. Baker, November 15th 1901, is herewith filed and made a part of this deed, excepting from this conveyance that part of the land described on said map as containing 13.69 acres still owned by the said grantor, Robert L. Wilkerson.

The land herein conveyed is a part of the "Addison" and "saw mill" tracts of land conveyed from W. M. Brittain and wife to said R. L. Wilkerson by deed dated July 9, 1901, and recorded in D. B. No. 50, page 174, in the Clerk's Office of Nansemond County, which part of the "Addison " tract ~~land~~ herein conveyed is subject to the reservation made in conveyance of the said land from John Nix to William M. Brittain referred to in said deed *from* William M. Brittain to said R. L. Wilkerson.

The said grantors
covenant that they have the right to convey the said land to the grantee; that they have done
no act to encumber the said land; that the grantee shall have quiet possession of the said land, free from
all encumbrances, and that they, the said parties of the first part, will execute such
further assurances of the said land as may be requisite.

Witness the following signature S. and seal S.

Robt. L. Wilkerson

SEAL

Alice O. Wilkerson

SEAL

SEAL

STATE OF VIRGINIA.

County of Nansemond

To-wit:

I Lee Britt, a Commissioner in Chancery, of the Circuit Court for

~~the~~ the county aforesaid, in the State of Virginia, do certify that Robert L. Wilkerson and
Alice O. Wilkerson, his wife,

whose names are signed to the writing hereunto annexed, bearing date the 12th day of
November, 1904, have acknowledged the same before me in my
county aforesaid

Given under my hand this 12th day of November, 1904.

Lee Britt

Commissioner in Chancery.

MEMO.—To be acknowledged before a Justice, Notary, or Commissioner in Chancery.

My term of office expires _____ day of _____, 190_____.

VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County
the 14th day of November, 1904:
(with Plat attached)

This deed was presented, and, with the certificate annexed, admitted to record.

TESTE:

R. R. Smith, Clerk,

By S. M. Lawrence, D. C.

A Copy, exclusive of the plat, made this 23rd day of June, 1906.

Teste: R. R. Smith Clerk
By S. M. Lawrence D. C.

28

Deed of Bargain and Sale.

Robt L McKensen

To

John A Miller

Admitted to Record this.....day of

....., 190.....

Recorded D. B. 56 Page 663..

Examined and verified.

A Copy....., Clerk.

By....., D. C.

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Tax.....\$-----

Fce.....\$-----

\$-----

This Deed, Made this ninth day of July in the year

one thousand nine hundred and one between Mary S. Brittain and W. M.

Brittain, of Nansemond County, Virginia,

of the first part, and

R. L. Wilkerson, of said County and State,

of the second part—

Witnesseth: That in consideration of the sum of Twenty-five hundred

Dollars

the said parties of the first part

do grant unto the said

party of the second part

with GENERAL WARRANTY, all

that certain tract of land in Barrett's Neck in Nansemond County, Virginia, which was conveyed to William M. Brittain by the executors of John Nix, deceased, by deed recorded in the Clerk's Office of Nansemond County Court in D. B. No 36, page 455, and bounded and described as follows: "All that certain tract of land known as "Addison " farm, situated on Chuckatuck Creek in Chuckatuck Magisterial District, in Nansemond County Virginia, containing 82 acres, more or less, bounded on the North and West by said Creek, on the East by the lands of Elizabeth L. Johnson, and on the South by the lands of John Nix, deceased, together with all the rights, privileges and appurtenances belonging thereto, subject to the reservation made in the aforesaid deed, to which said deed reference is here made for a description of same. And being same land afterwards conveyed by said W. M. Brittain to Mary S. Brittain, by deed recorded in said Clerk's Office in D. B. No. 40, page 59.

Also all that certain tract of land in said Barrett's Neck, in Nansemond County, Virginia, containing eighty acres, more or less, adjoining the lands of Jas. E. King, W. T. Matthews, Margaret A. Godwin's estate, and Chuckatuck Creek, and being same land sold and conveyed to said W. M. Brittain by E. E. Holland, Special Commissioner, by deed duly recorded in Nansemond County Court Clerk's Office in Deed Book No. 36, on page 344, together with all and singular the improvements and appurtenances thereunto belonging.

And the said grantors reserve the crops on said land for the year 1901, and this conveyance is made subject to such reservation.

And the said R. L. Wilkerson hereby assumes as a part of the above named consideration the payment of two deeds of trust thereon, one securing bond for Five hundred dollars, in favor of Mrs. E. M. Corbell, and the other securing two bonds for Five hundred dollars each in favor of E. E. Holland, both of which said deeds are recorded in aforesaid Clerk's Office, and reference is hereby made to same for a description of the property conveyed to secure same, and when said debts so secured are due and payable.

And the said property is hereby conveyed subject to the liens of the aforesaid deeds of trust.

The said grantors

covenant that they ve the right to convey the said land to the grantee; that they ve done no act to encumber the said land; that the grantee shall have quiet possession of the said land, free from all encumbrances, and that they, the said part ies of the first part, will execute such further assurances of the said land as may be requisite.

Witness the following signature^s and seal^s.

W. M. Brittain



Mary S. Brittain



STATE OF VIRGINIA.

County of Nansemond

To-wit:

I Charles F. Pinner, a Justice of the Peace

for the county aforesaid, in the State of Virginia, do certify that Mary S. Brittain and W. M. Brittain

whose name^s are signed to the writing hereunto annexed, bearing date the 9th day of July, 1901, ha^{ve} acknowledged the same before me in my county aforesaid

Given under my hand this 17th day of July, 1901.
Charles F. Pinner, J. P.

MEMO.—To be acknowledged before a Justice, Notary, or Commissioner in Chancery.

My term of office expires..... day of..... 190.....

~~VIRGINIA~~: County of Nansemond, To-wit: Court
of the Clerk of the County, for the County of Nansemond
In the ~~Clerk's Office of the Circuit Court of~~ County
the 19th day of July, 1901:

This deed was presented, and, with the certificate.....annexed, admitted to record.

TESTE: A. P. Gomer, Deputy
for R. R. Smith....., Clerk,

A Copy, made this 23rd day of June, 1906. By D. C.
Teste: R. R. Smith Clerk
By M. Lawrence At.

16 6 5

Deed of Bargain and Sale.

Mary S Brittain
and hus^{to}

R L Wickensen

Admitted to Record this..... day of

....., 190.....

Recorded D. B. 50 Page 174

Examined and verified.
Copy

....., Clerk.

By....., D. C.

\$-----

Tax.....\$-----

Fee.....\$-----

\$-----

THIS DEED, Made this 15th day of September, in the year 1900, between John W. Nix and George W. Nix, of the City of New York, in the State of New York, executors of the last will and testament of John Nix, deceased, lately of said City and State, parties of the first part, and B.M. Bruce, of the County of Nansemond, in the State of Virginia, party of the second part,

W I T N E S S E T H:

That in consideration of the sum of five thousand dollars (\$5,000), of which the sum of two thousand dollars (\$2,000) has been paid in cash, receipt whereof is hereby acknowledged, and the balance of three thousand dollars (\$3,000) is secured by deed of trust of even date herewith, on the property hereby conveyed, the said John W. Nix and George W. Nix, executors as aforesaid, by virtue of the authority vested in them by the said last will and testament of the said John Nix, deceased, do grant and convey with special warranty unto the said B.M. Bruce all that certain tract, piece or parcel of land, which was conveyed to the said John Nix by Thomas Powell and Sarah A. Powell, his wife, by deed dated the 4th day of February, in the year 1887, and duly recorded in the Clerk's Office of the County Court of Nansemond County, in Deed Book 18, page 19. The said land being described in said deed as follows:

"All that certain tract, or parcel of land, lying in Barrett's Neck, Nansemond County, Virginia, containing by estimation 290 acres, more or less, adjoining the main road from Chuckatuck to Crittenden; and the lands of John D. Corbell, Senior, Peter McGowen and others, familiarly

known as the "Vesey Homestead". It being the same land which was conveyed to the said Thomas Powell by Jere Abbott, Trustee, for Thomas Firth and sons, by deed dated the 5th day of September, 1884, and duly recorded in the Clerk's Office of Nansemond County Court the 19th day of December 1884 (see Deed Book 14, page 20) together with all and singular the appurtenances belonging to the same." The said farm is now known as the "Redwood Farm". The said land is conveyed by the tract as a whole and not by the acre.

The grantors, however, reserve all crops on said farm, whether harvested, or now growing, and reserve the right to harvest and remove the same when they are matured.

The said grantors also grant and convey to the said B.M. Bruce all such right, title and interest in and to the wharf, and the land on which said wharf stands, or abuts, and the land adjacent to the same, necessary for the full use and enjoyment of said wharf; and all easement and right of way along the road over the said land as was reserved to the said grantors in a certain deed dated the 27th day of November, in the year 1895, from John W. Nix and George W. Nix, Executors as aforesaid, to W.M. Brittain, and duly recorded in said Clerk's Office in Deed Book 36, page 45.

Witness the following signatures and seals.

John W. Nix (SEAL)
Executor of the last will and testament
of John Nix, deceased.

George W. Nix (SEAL)
Executor of the last will and testament
of John Nix, deceased.



State of New York, }
County of New York, } ss.

I, **WILLIAM SOHMER**, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record DO HEREBY CERTIFY, that

has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of

with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the

day of

190

Clerk.



STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK, to-wit:-

I, James Forrest, a Notary Public
for the County of Kings, ^{in New York County} ~~Certificate filed~~, in the State aforesaid
do certify that John W. Nix, executor of the last will and
testament of John Nix, deceased, and George W. Nix, executor
of the last will and testament of John Nix, deceased, whose
names are signed to the writing above bearing date on the
15th day of September, in the year 1900, have acknowledged
the same before me in my County aforesaid.

Given under my hand and notarial seal this 19th day
of September, in the year 1900.

~~Notary Public.~~
James Forrest
NOTARY PUBLIC, KINGS COUNTY.
CERTIFICATE FILED IN
NEW YORK COUNTY.

In the Clerk's Office of Nassau and
County Court the 24th day of September 1900
This Deed was presented with the Certificates
annexed and admitted to record. The amount
of five dollars in revenue stamps affixed and
cancelled

Testi: A. L. Lomey Deputy
for R. R. Smith Clerk

"a"

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John W. Nix and George W. Nix,
Executors,
TO

B. M. Bruce.

DEED OF BARGAIN AND SALE.

Admitted to record the
24th day of September
1900

Recorded in D. B. 47
Page 195.

1900 Octo. 9th.
Examined & verified.
J. M. Lawrence D.C.

D. S. PHLEGAR,
LAW STENOGRAPHER,
CITIZENS' BANK BUILDING,
NORFOLK, VA.

Paid

Day 5.00
Fee 1.25
\$6.25

THIS CONTRACT, Made and entered into this 15th day of February, 1908, between John A. Milteer, of Nansemond County, Virginia, party of the first part, and B. M. Bruce, of Suffolk, Virginia, party of the second part.

WHEREAS, There was a dispute between the said John A. Milteer and B. M. Bruce over a right of way leading from the Bruce farm to the wharf on the Milteer farm, and whereas, said dispute was settled by suit in the Circuit Court of Nansemond County, and whereas, on the 13th day of May, 1907, a decree was entered by the Judge of the said court confirming the report of three commissioners, A. H. Brinkley, George W. Butts, and Charles B. Godwin, who surveyed and defined the right of way of the said B. M. Bruce over the land of the said John A. Milteer.

AND, WHEREAS, the said B. M. Bruce undertood and did repair and make a new right of way along the lines and survey made by the said commissioners and mentioned in said decree, and further erected a wire fence along the line of the said right of way ~~after~~ he had completed the said right of way. And whereas, the said John A. Milteer claims that the said B. M. Bruce has no right to erect said fence, and the said John A. Milteer has instituted suit to have the same removed.

NOW, THEREFORE, in consideration that the said suit is to be dismissed by the said John A. Milteer, and that with the further understanding that the dismissal of said suit and that the entering into this contract are not in any way to effect the interest of the said parties to this contract, nor to be taken as a waiver of any rights that the said parties now have, the said parties enter into the following agreement, to-wit:

That the said fence is to stand as it is now erected, and that there are to be three gates, one on the bridge, one in front of the path leading from the house of John A. Milteer to the bridge, and one at the end of the wharf. The gate on the bridge is to be built and kept in repairs at the expense of the said B. M. Bruce, the other two gates are to be built and kept in repairs by the said John A. Milteer. When the road is being used by the said B. M. Bruce the gate on the bridge is to be left unshut, and the other two gates are to be kept closed, and when the road is not in use by the said B. M. Bruce the gate on the bridge is to be closed.

Witness the following signatures and seals:

B. M. Bruce (Seal)

J. A. Milteer (Seal)

STATE OF VIRGINIA,
to-wit:
COUNTY OF NANSEMOND.

I, S. E. Everett, a Notary Public for the county aforesaid, in the State of Virginia, do certify that B. M. Bruce and John A. Milteer, whose names are signed to the writing hereunto annexed, bearing date the 15th day of February, 1908, have acknowledged the same before me in my county aforesaid. My term of office expires the 31st day of July, 1911.

Given under my hand this 15th day of February, 1908.

S. E. Everett
Notary Public.

Ex 1

John A. Ritter
B. M. Bruce

Contract.

John A. Milteer

vs.

In Chancery.

W. T. Newman.

This cause came on this day to be heard on the bill of the complainant, the answer of the defendant, the exhibits filed and the testimony taken by consent of all parties, and was argued by counsel.

On consideration whereof, the Court doth order, adjudge and decree that the fence heretofore erected by B. M. Bruce along the side of the right of way mentioned in the bill and answer, shall stand as it now is; that there shall be three gates, one on the bridge or causeway over the cove, one in front of the path leading from the house of John A. Milteer to the said bridge or causeway, and one at the end of the wharf. The gate on the bridge or causeway is to be built and kept in repair at the expense of the said W. T. Newman or his assigns and the other two gates are to be built and kept in repair by the said John A. Milteer, or his assigns.

When the said road or way is being used by the said W. T. Newman, or his servants, agents or assigns, the gate on the bridge or causeway is to be kept open by him and the other two gates are to be kept closed by the said John A. Milteer, or his assigns; and when the said road or way is not being used as aforesaid, then the gate on the bridge or causeway is to be kept closed by the said W. T. Newman, or his assigns. The said W. T. Newman or his assigns shall give the said John A. Milteer, or his family, notice when they are about to use the said roadway, and the said Milteer shall thereupon close his two said gates and keep his cattle and stock out of the said way or road; and the said W. T. Newman, or his assigns shall also give the said John A. Milteer notice when he has finished using the said way and is about to close said

This cause came

-2-

gate on said causeway, and thereupon the said John A. Mil-
tear shall be at liberty to open his two said gates and
let his cattle and stock out until again notified to close
said gates; that each party, plaintiff and defendant pay ~~each~~ *on his*
~~his own~~ *the* cost; and it appearing that nothing further re-
mains to be done in this cause, it is ordered that the
same be stricken from the docket.

Enter July 23, 1915
Jas. L. Moore.

Order Book No. 4-
Page 691

Order Book No. 4-
Page 691

John A. Milteer, complainant.

vs.

In Chancery.

W. T. Newman, defendant.

The demurrer and answer of the defendant, W. T. Newman, to a bill in chancery exhibited against him, in the Circuit Court of Nansemond County, by John A. Milteer. May term, 1914.

The defendant demurrs to the said bill and says that the same is not sufficient in law.

For answer to said bill of complaint this defendant reserving to himself the benefit of all just exceptions to said bill for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

That it is true so far as your defendant knows that the plaintiff is seized and possessed of the tract of land, situated in Nansemond County, and described in said bill; it is also true that the defendant is seized and possessed in fee simple of the tract of land or farm adjoining that of the complainant and that the dividing line between the two said tracts of land is something in the nature of a creek, over which there was once a bridge connecting the two said farms, with a right of way extending around the hillside of complainant's farm to a wharf located on said complainant's farm. This defendant further says that the said wharf and the said right of way mentioned in the bill are appurtenant to and belong to and constitute in fact a part of the farm of the defendant; that the said complainant John A. Milteer has no right, title or interest in or to said wharf or to any part of said right of way, although it is located on his land; that it is in no wise appurtenant to his said land;

There has never been any dispute as to the right of the owner of the farm now occupied by your defendant, to the said wharf or right of way to and from the same, but there was a dispute as to the proper location of this right of way over the complainant's land, which was settled in the suit of B. M. Bruce vs.

vs. John A. Milteer, alluded to in the complainant's bill.

This defendant says that these two farms once belonged to a common owner, to-wit: John Nix; that his heirs-at-law first disposed of the farm of the complainant, John A. Milteer, but in the deed of conveyance they specially reserved the said wharf and the right of way to the same, across the land of J. A. Milteer with the following language in the deed, to-wit: " except the wharf now built on Chuckatuck Creek, and the land on which said wharf stands or abuts and as much land adjacent to the said wharf as may be necessary for the full use and enjoyment of the said wharf, and also the full and absolute right of way across the land hereby conveyed to and from said wharf along the road now used."

The said complainant, John A. Milteer nor his ancestors, never had, or acquired any right, or title to this right of way, or any part thereof, but it was specially reserved for the use and benefit of the owner of the farm now owned and occupied by this defendant, W. T. Newman. In the chancery suit of Bruce vs. Milteer the court decided and decreed that the right of way should lead from the said bridge around the edge of the marsh, and should be put in order and prepared for use by said B. M. Bruce, at his own expense, that the said B. M. Bruce did put the said right of way in order for his own use at the expense of several hundred dollars. The defendant says it may be true that at one time there was a gate on said bridge, but if it be true, said gate was put there for the sole use, benefit and convenience of the owner of the farm now occupied by said defendant. That when the Executors of John Nix, the owner of the entire tract of land divided said tract of land and sold the part now belonging to the complainant, with the reservations aforesaid, the said two tracts of land became and were from that time on, in law, the dominant and the servient tracts respectively; that your defendant's farm became the dominant tract, and that the complainant's farm became the servient tract, and was sold and conveyed with a burden upon it, which it must always bear; that said bridge or gate was never intended to be and was not in fact built or used for the right or

right or the convenience of the said owner of the said servient tract, but was wholly established and maintained for the use and convenience of the dominant tract. This defendant further says that both of these said farms are now located in a territory of Nansemond County, in which the "no fence law" prevails, having been established as such under the provisions of the law of the State of Virginia; that by the provisions of said law and by custom it is the duty of all owners of cattle and other stock in that territory at the present time, and at the institution of this suit, and long before, to keep such cattle and other stock fenced in and confined on their own land, and that such stock is not permitted to run at large, and that no person in that territory is required to fence in or keep enclosed any part of their said lands for the benefit of their neighbors, or to keep out their neighbors' cattle or other stock; that the defendant fully observes and keeps this law; that the plaintiff does not keep the same, but violates it and allows his stock to run at large, contrary to law and the usage of said neighborhood. The defendant denies that he is required to keep or maintain the said gate mentioned in the bill in this cause, or to keep or maintain any gate or fence between the two said tracts of land; that in law, a gate is a part of a fence; that he is not required to do so by fence-viewers under the statute; or by any statute of the State of Virginia; or by any binding contract between himself or his ancestors, and the complainant or those under whom he claims; or by prescription. He further says that no right of way, division fence or any other easement can be acquired by prescription on land wholly owned by one person; he further says that both of these two said tracts of land were owned by one person less than twenty (20) years ago, to-wit: On the 27th day of November, 1895, when the Executors of said John Nix, owner of the entire tract of land, consisting of both of these farms, sold and conveyed the part now belonging to the complainant, John A. Milteer, subject to the reservations aforesaid. So then the complainant can claim no right by way of prescription nor can he claim any right

under the statute pertaining to fence-viewers; nor under any other statute of the State of Virginia. The defendant further says that even in a fence territory, in which all people are supposed to keep their lands enclosed with a lawful fence, the law does not require any person to keep a fence of any kind, it only defines what shall constitute a lawful fence, and deprives the person owning land who does not keep and maintain a lawful fence from the right to recover damages for trespass of cattle belonging to his neighbor that may come upon his land, by reason of the want of a legal fence. The defendant further says that even in a fence territory, where all people are supposed to keep their lands enclosed with a legal fence, if cattle stray upon the lands of another and commit damage, an action at law sounding in damages, will always lie for any trespass committed. Your defendant further says that in a "No fence territory", where these two farms are located, it is the duty of the complainant to keep his cattle and stock enclosed on his own land, and not to permit them to stray, so that they may go on the lands of any other person; but that even if it were true, (which it is not,) that this defendant was required to keep said gate in repair and thereby fence the cattle of the said complainant out, if this defendant failed to keep said gate in proper condition, and the complainant's cattle were allowed to escape, the said complainant would have against him a full and adequate remedy at law; that it is not alleged anywhere in the bill, and that if it were alleged it would not be true, that the said defendant is insolvent, because it is a fact that he is solvent, and able to pay any damage which might be assessed against him, and in favor of the complainant by virtue of the straying of any of the complainant's cattle for want of a proper gate on said bridge. Your defendant further says that as a matter of fact this defendant's cattle have never since he owned the farm, strayed over said bridge, through said gate, or on the lands of the complainant.

The defendant further says that the complainant has no right in law, or otherwise, to require him the defendant to keep or maintain said gate; that there is no necessity, or reason in law, or otherwise, why it should be kept or maintained, under present conditions.

This defendant further says that B. H. Bruce, under whom he claims, did enter into a contract with said John A. Milteer in reference to said gate, which said contract is now herewith filed, marked "Exhibit 1." and prayed to be read as a part of this answer. He further says that the said John A. Milteer has wilfully violated the terms of said contract, and broken the same, and that he, the complainant, appears in his bill have waived all rights under said contract. This defendant says that while he did not make said contract, yet as the person under whom he claims title to this land did make it, he is willing at all times to fully live up to, abide by and perform all the terms and conditions of the said contract, as long as the said John A. Milteer will do the same, but he says that the said John A. Milteer cannot violate and waive said contract, and at the same time claim under it. The defendant says that all the papers in the suit of Bruce vs. Milteer, lately pending in this court may be made a part of and read in connection with this answer.

The defendant further says that being in a "no fence territory" he keeps all of his stock strictly within the enclosure or pasture on his own land, so that they cannot stray through the said gate on the lands of John A. Milteer, or on the lands of any other person; he further says that the said John A. Milteer does not keep his stock enclosed on his own land, as he is required to do in a "no fence territory" but permits them to run at large. The defendant further says that the said John A. Milteer has suffered no damage and can suffer none of any consequence because he does not keep any stock but one cow, and has never kept, at any time since he owned the farm, more than two cows at the same time. The defendant further says that the valuable

marsh" claimed by the complainant, and the use of which he says he has been deprived by want of a gate consists of not more than one-quarter of an acre, and that at the highest estimate, it is not worth to exceed \$10.00 in fee simple, and that its annual value could not be more than \$1.00 under any circumstances. This is the marsh that lies around the aforesaid right of way, and on the west side of said bridge.

This defendant says that he himself has absolutely no use for this marsh, and without conceding that the complainant has any right to turn his cattle out, yet this defendant, to show his good faith and to obviate all future difficulty, offers here and now to buy the said quarter of an acre of marsh from the complainant, at any price which any three commissioners appointed by the court may say it is worth, and in fact he will pay double what any set of commissioners will say it is worth. He does this simply to try to keep the complainant from eternally making annoyance and trouble for this defendant. This defendant further says that the complainant in addition to the aforesaid marsh has about five acres of good marsh on the east side of said bridge, on which his cattle can always graze; that it is a much larger and better marsh than the quarter of an acre aforesaid, and the cattle of the complainant can graze on said five acres without any reference as to whether the said gate is kept open or shut. The said defendant says the complainant has harassed and annoyed him ever since he became the owner of this adjoining farm.

He further says that he, the defendant, ships annually from his said wharf and over this bridge at least 11,000 packages truck, and that he receives in return about 9,000 packages annually coming to his farm, and that to compel him to open and shut a gate on his own farm for the benefit only of John A. Milteer, would be to subject him to an enormous sacrifice and expense, without anybody in the world being benefitted thereby.

And having fully answered the defendant prays that he may be hence dismissed with his reasonable cost in this behalf expended.

He herewith appends as a part of his answer the chain of title to the farm of said complainant, and the farm of this defendant.

CHAIN OF TITLE.

JOHN NIX COMMON OWNER OF BOTH TRACTS UP TO NOVEMBER 27TH, 1895.

Nix Executors sold and conveyed the Milteer tract to Brittain, by deed dated November 27th, 1895, with the reservations and conditions set forth in said answer.

2.

Brittain sold and conveyed said Milteer farm to Wilkerson, by deed dated July 9th, 1901, with said reservations and conditions.

3.

Wilkerson sold said Milteer farm to Milteer by deed dated November 12th, 1904, subject to said reservations and conditions.

Nix heirs sold to Bruce the present Newman farm on the 15th of September, 1900.

2.

Bruce sold to Newman said farm on the ___ day of July 1902, both conveyances calling in specific terms for the wharf on the Milteer farm, and the right of way thereto.

VIRGINIA, HANOVER COUNTY, to-wit:

I, R. H. Rawles, a Notary Public, for the county aforesaid, in the State of Virginia, do certify that W. T. Newman, whose name is signed to the foregoing answer, has this day personally appeared before me, in my said county, and being duly sworn, made oath that the statements contained in said answer as coming of his own knowledge are true, and that all other statements therein contained as coming from knowledge or information derived from others, he believes to be true.

Given under my hand this 9th day of May, 1914.
My term of office expires on the 3d day of February, 1914.

Notary Public.

Coft.

Answer.

John A. Milteer, complainant,

vs.

In Chancery

W. T. Newman, defendant.

In the Circuit Court of Nansemond County, May term, 1914.

The defendant demurrs to the bill in this case and says the same is not sufficient in law for the following reasons:

1.

The plaintiff has a full, adequate and complete remedy at law for all the grievances if any, complained of in his said bill.

2.

Because the bill does not allege that the defendant is insolvent.

3.

Because the bill does not show why the gate mentioned therein was put on the bridge spoken of; nor that it was put therefor the benefit of the complainant or of any person under whom he claims; it simply alleges a certain gate was erected on a certain bridge, but does not state by whom or for whose benefit it was erected.

4.

The bill does not show what inconvenience or injury will result to the complainant by removal of the gate.

5.

The bill does not show why the cattle and stock of the complainant cannot graze upon any of the complainant's land if the complainant will keep proper enclosures.

6.

The bill in terms makes all the papers in the former cause of Bruce vs. Milteer, heretofore pending in the said court a part of this suit, and said papers show that the two tracts of land mentioned in the bill in this cause, to-wit: The Milteer tract, and the Newman tract belonged to a common ancestor less

than twenty (20) years ago, to-wit: On the 27th day of November, 1895, so that complainant can acquire no rights by prescription; said papers show that one tract of said land passed to the complainant and those under whom he claims with a burden, and because the servient tract; that the other tract passed to the defendant and those under whom he claims and became the dominant tract.

7.

Because if these two tracts of land mentioned in the bill both lay in fence territory the defendant would not be required to fence, unless the gate in question was required to be erected and maintained by fence-viewers, or under the statute; or by a valid and binding agreement between the owners of the two separate tracts of land; or by prescription. The bill does not show that it was required to be ^{erected} in either of the two first manners, and the bill shows on its face that it cannot be claimed now by the complainant by prescription.

8.

The bill does not allege that the agreement heretofore made between the said John A. Milteer and B. M. Bruce, under whom the defendant claims and holds has ever been cancelled nor that the complainant has kept his covenants and agreements stated therein.

9.

In a fence territory, that is in a territory under the general law, where all persons are supposed to fence their lands to keep out stock, the statute of Virginia does not require any person to fence his land; it only prescribes what shall be a lawful fence; and deprives the person who fails to keep and maintain a lawful fence of the privilege of collecting damages due by cattle who enter upon his land, for the reason that he has not kept a sufficient and legal fence.

10.

Because both of these tracts of land are now situated in no fence territory, to-wit: In the lower part of Chcuatuck District, between Chuckatuck and Crittenden, where all fences were abolished by proper authority many years ago, and where now

by custom, law and common consent no fences are required to be maintained, but all owners of stock are required to keep up their own stock.

Copy
Demmer.

TO THE HONORABLE JAMES L. MCLEMORE, JUDGE OF THE CIRCUIT COURT
FOR NANSEMOND COUNTY.

John A. Milteer.....Complainant.
vs. In Chancery.
W. T. Newman.....Defendant.

Your complainant, John A. Milteer, respectfully represents the following facts:

Your complainant says that he is the owner in fee simple of a certain tract of land situated in Nansemond County, Virginia, which land was sold and conveyed to him by Robert L. Wilkerson and wife by deed dated the 12th. day of November, 1900, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, in Deed Book 56, Page 663.

The said defendant, W. T. Newman, owns the farm adjoining that of your complainant, the division line between the two said tracts of land being a creek over which is a bridge, which bridge connects the farm of the said defendant with a right of way extending around the hill side of your complainant's farm to a wharf of the said defendant, which wharf is located on the land of your complainant. The rights in said right of way and wharf are not in dispute in this suit. The suit between B. M. Bruce and your complainant is herein referred to and the plats and papers in said suit are asked to be considered in connection with this bill.

After the suit between B. M. Bruce and your complainant above referred to was closed, the said B. M. Bruce and your complainant entered into a contract concerning the upkeep of a fence around said right of way and the said gate. The said contract is herewith filed, marked "Exhibit A", and asked to be read as a part of this bill. Your complainant further alleges that said contract was not conclusive in the establishment of the rights of the parties thereto, since, by the terms of said agreement, no rights were waived.

The said right of way for the use of said adjoining farm was established a number of years ago, to-wit, more than twenty years ago. At the time this right of way was established a gate was erected

on the bridge leading over the creek and connecting the said right of way with the said adjoining farm. This gate or bars has been maintained ever since the said right of way was established until January, 1914, at which time the said defendant removed the said gate and refuses to restore the same. The said defendant has been the owner of the said adjoining farm for four years and maintained the said gate for said length of time until January, 1914, aforesaid.

The removal of the said gate causes your complainant great inconvenience and irreparable injury. Your complainant has grazing ground around the said right of way and between the said right of way and the creek, which land he can not make use of without having his cattle stray off over the said bridge. The said defendant's action in removing the said gate deprives the said complainant of the free and full use of his own property, and thereby, causes your said complainant injury for which compensation can not be had in damages.

In view of the facts above stated, your complainant asks that the said defendant be restrained from further interference with your complainant's rights in the proper enjoyment of his property; that the said defendant be required to restore the said gate and to maintain the same as it has been maintained for more than twenty years.

In tender consideration whereof and forasmuch as your complainant is remediless in the premises save in a court of equity where alone such matters are properly cognizable, your complainant prays that said W. T. Newman be made a party defendant to this bill and required to answer the same, though not under oath, the oath being hereby expressly waived; that proper process issue; that a mandatory injunction be granted your complainant requiring the said defendant to restore the said gate referred to in this bill and to maintain the same for the purpose of ingress and egress so long as he shall receive the benefit of said bridge and right of way; that said injunction apply to and be made binding against the owners of said farm hereafter; that said injunction be made perpetual as aforesaid; and that all such other, further and general relief be afforded your complainant as the nature of his case may require or to equity shall seem meet. And your complainant will ever pray, etc.

John A. Miller - Complainant -

STATE OF VIRGINIA,

COUNTY OF NANSEMOND, TO-WIT:

John A. Milteer, the complainant named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

John A. Milteer
Complainant.

Taken, sworn to, and subscribed before me, S. E. Everett, a Notary Public of and for the county and state aforesaid, in my county aforesaid, this 14th day of April, 1914.

S. E. Everett N.P.

My term of office expires the 1st day of August, 1915.

John A. Miltner

VS. Bill in Chancery.

W. J. Newman

Filed April 20-1914
S. J. Parker,
D.C.

EVERETT & HUTTON

ATTORNEYS AT LAW

SUFFOLK, VA.

Everett & Hutton, P. U

John A. Miller

vs { In Chancery

W. S. Newman

Final decree entered
Jan 27 1913

Costs

Writ Ten

1.30

clerk

5.86

shy

.50

city.

1 5.00

22.86

John A. Miller

W. J. Newman

In Chancery.

This day came the defendant W. J. Newman and filed his answers to the Bill of the Complainant and asked leave of Court to file his answer to said Bill which was accordingly granted, and the answer accordingly filed -

Enter May 11, 1914
J. H. W. Lomen

Entered in Chancery
Order Book No. 4.
Page 641

Plaintiff's testimony.

J. A. Milteer:

Nineteen years ago bars there; Nix owned both places; there five years I was there; says he gave this right of way of 16 ft; he gave nothing, it was not his to give. The deed reserved it, and the court fixed the location.

Regards the contract binding-6

No fence territory- 6.

Two cattle-7-8.

1 acre marsh-8.

Will not fix price of marsh-9.

One cow trespassed-9.

Never paid any damages-9

Contract satisfactory-10.

Powell:

No bars when I first knew it-12.

Were there 19 years ago-12.

Just a couple of planks-13.

This was when Nix owned both places.

Rieves:

No fence territory for 29 years.

Each man keeps own stock up-16.

Defendant's testimony.

George McNeal:

No fence territory, Harry Bruce put gate there-2.

1/10 acre of marsh worth 50¢ a year -2.

15 acres of marsh on other side-3.

Owens two cattle generally -3.

Gate put there in 1906-4.

Never known bars to be there-4.

Saw mill there in 1880-4.

Hauled wood over there continually.

Milteer has not half dozen friends in the neighborhood-6.

Mason:

No fence territory-8.

L. R. McNeal:

One-quarter of acre of this marsh in dispute-9

This marsh in dispute can be fenced in for \$15

Gate would not keep hogs off-10.

No necessity for gate and no damage ever done-10

Bruce put gate there-10

There is nothing on this small marsh to graze-12.

I have hauled wood across there repeatedly and never saw any bars there-12.

Beale:

No fence territory-13

The marsh is not of much value, probably \$1.00 per year-14/

Never have heard of any damage being done by either party to the other by cattle-14.

W. T. Newman:

Kept my stock enclosed-16.

No damage has ever been done ^{by} the cattle of either-B

His calf came over on my land one time-16.

It came under wharf-16.

I have fence-Milt eer has no fence-17

Hogs can cross the cove at low water without reference to the gate-17.

The marsh consists of about a quatter of an acre of made land, made of saw dust-18.

It is worth not to exceed \$2.50 per year-18

Milteer can graze his cattle on other side, but will not-18.

I have seen cow and calf-19.

I carried 12635 packages-19.

This would require 2000 trips and counting the return trips would be 4000 to open and shut gate per annum-20.

The expense of opening and shutting that gate and the trouble would amount to two or three hundred dollars per year-20.

In a no fence territory we cannot put our cattle on a piece of land without fencing it.-26.

E. H. Newman:

Our cattle have been over there a few times but did no damage-30.

They can go over there by going down the main road and around just as well as by going through this gate if they got out of our enclosure-30.

L. R. McNeal, recalled:

Never saw any bars there-32.

Dennis built an old fence up there-32.

No bars-34.

-3-

O. W. Newman:

Never heard of any damage being done-36

J. A. Milteer, recalled:

Keep my cattle enclosed-19

H. E. Bruce;

Never knew any bars to be there, I put the
gate there-2-3.

JOHN A. MILTEER, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation and if you know the parties to this suit?

A. John A. Milteer, fifty-one years, Hanson County, farmer, and I know the parties to the suit.

Q. Mr. Milteer you are the complainant in a suit in which you have filed a bill of complaint alleging that you are the owner of a certain tract of land adjoining the farm of Mr. Newman; that the creek forms the boundary line between the two farms; that a right of way extends over your farm to a wharf, said wharf belonging to Mr. Newman; that about the center of said bridge at the head of said right of way until recently has stood a gate; that you have asked in this bill that the said defendant has taken away said gate and that he be required to replace and maintain the same?

A. Yes sir.

Q. Now Mr. Milteer, just state when you first knew these tracts of land, your relationship to the same and condition of the same as regards gates, wharf and right of way?

A. Well, nineteen years ago the second day of this month I moved on the place that Mr. Newman now owns. At that time both places was owned by Mr. John Nix of New York. When I went there nineteen years ago I found this bridge wharf and right of way, and a pair of iron bars across them. I lived on the place for five years and the bars was there during the five years that I was there, and was as I suppose put there for the purpose of keeping stock from going from one farm to the other, don't see what other purpose they should be there for. At the expiration of that five years I moved right across this move on the place that I am now at. There is a stream of water the dividing line between the two places and when I moved on this place Mr. B. M. Bruce bought the place that Mr. Newman is now on. We lived there peaceably for four or

five years, something like that, and he went to work then and wanted to change this right of way. He wanted to move the road that went around the stream where his wharf and bridge was built and come up right across my yard, right along by my door. We had a law suit over it. I should suppose that he got licked. I goes to work then and gives him the other old right of way around the shore and makes it a 16 ft. road. After he builds his road like he wanted to he goes to work then and puts a fence on the line in shore between my land and the road and shuts me out entirely from grazing grounds that I have got on the other side of the road. I entered suit then to move that fence, there was a compromise made between the parties, he gave me the privilege by a contract that was drawn up between us, he give me permission to cut his fence in two, the road along there I had been using myself. At the end of this bridge across the right of way from the road he puts a gate there, and then at the wharf, the contract said cut the fence in two and put another gate, that made two gates on the farm. I was to erect the gate on the fence and he was to put one on the center of this bridge. I was to keep the gate upon the fence and the said B. H. Bruce was to keep the the gate up on the bridge. While Mr. Bruce, while he was using this right of way he was to shut the gate on the fence and open the gate on the bridge, when not using the road he was to close the gate on the bridge and open the gate on the fence. About five years ago, four years ago this last past January Mr. Newman rented this place from Mr. Bruce. He found the gate on this bridge when he rented the place. About two years ago he buy the place He still finds the gate there. About a year ago as near as I can recollect, some time after trucking season was over, this old gate, the frame of it had worn out, him

Mr. Newman, or his boy or somebody there rebuilt the gate and hangs it right back where Mr. Bruce had it at.

In January, this past January he goes to work and tears up the bridge, plank bridge, and fills his drive way in with brush and dirt, and that is the time that he moved the gate. My gate stayed down somewhere around a month, and I asked Mr. Newman one day on the road when he was going to put that gate back and he said "when I get my road done." A few days after that I learned that he wasn't going to put it back. I havn't said anything to Mr. Newman about putting the gate back there since. Then I took the step that I am now pursuing.

Q. Now Mr. Hiltner, state whether or not when you first knew these tracts of land there was a wharf on the tract you now own?

A. Yes sir.

Q. State whether or not at that time there was a bridge across the stream separating the two tracts?

A. There was.

Q. State whether or not there was a gate or bars on that bridge at that time?

A. There was.

Q. Was the right of way, generally speaking ^{your} which is now in use over ~~that~~land to that wharf, in use at that time?

A. It was.

Q. Mr. Hiltner when you rented the farm that Mr. Newman now owns, state whether you had anything to do whatever with the farm that you now own?

A. No sir, I did not, I didn't rent that farm I worked it.

Q. When you worked that tract was the right of way across the farm you now own used for the purpose of getting to and from the wharf?

A. Yes Sir.

Q. So then as I understand you Mr. Milteer you were not acquainted with these two tracts of land before 19 years ago?

A. Yes I knew of the places, but I didn't know anything about the situation of them until about nineteen or twenty years ago.

Q. Now Mr. Milteer, does it or not cause you inconvenience to have that gate removed?

A. Why certainly, well if it hadn't caused me any inconvenience I wouldn't have bothered about going to this attempt to have the gate put back. I have got grazing grounds over on the other side of this 16 ft. road, marsh land that my cattle can't graze on when they have the opportunity of doing so.

Q. Mr. Milteer how much land do you own there in all?

A. 106 1/2 acres.

Q. State whether or not when you first bought this piece of land it was not understood that this gate was to be maintained at the head of this right of way?

A. I should suppose so, I found it there when I went there and supposed it was put there to remain there.

Q. When you worked this piece of land nineteen years ago, state whether or not according to your understanding the bars were there so that the right of way might be used and keep stock from going to and fro?

A. Yes.

Q. Mr. Milteer did you have any conversation with Mr. Newman in any way whatsoever before he bought the farm he now owns in regard to that gate?

A. Yes sir.

Q. What was the effect of that?

A. I told him exactly the trouble that Mr. Bruce and myself had had over the right of way, even showed him the contract between Mr. Bruce and myself.

Q. Has Mr. Newman made any objection to the maintenance of the gate until just recently when he took the gate down?

A. No sir, he has not.

Q. Now is there anything else that you want to add?

A. Don't know as there is anything more I can say, I have given it to you just like it is as near as I can, I don't know that there is anything more that I could say.

CROSS EXAMINATION.

Judge Rawles:

Q. You have spoken of a contract entered into between you and Mr. B. M. Bruce in reference to a certain gate. I hand you a paper marked Exhibit "1" and herewith filed. Look at it and see if it is the contract you speak of.

A. I think this is something about like it.

Q. Is it not in fact the exact contract?

A. There is something in the contract that I have that is not on that there.

Q. This is your signature to this contract is it not?

A. Yes sir, that is my signature I think.

Q. You acknowledged it before Mr. S. E. Everett as Notary Public did you not?

A. I did.

Q. There are no erasures of any kind in it are there?

A. No, I don't see nothing in this one.

Q. Is that contract now in force?

A. What do you mean by that?

Q. I mean just what I say, I cannot put it any plainer.

A. I say there is something on that contract that I have that is not on that one.

Q. I repeat the question, is that contract there now in force?

A. Well I don't exactly understand what you mean by that Judge.

Q. Is this contract now in force?

-6-

A. Well what do you mean by being in force?

Q. Is it still alive?

A. Well that is the question I am trying to get at now myself.

Q. Is the contract still alive?

A. Mr. Bruce is not alive.

Q. I repeat, is this contract between you and Mr. Bruce still binding between you?

A. Between me and Mr. Bruce? Well there can't be anything binding between Mr. Bruce and myself now I shouldn't think because he is gone.

Q. Do you consider that it is no longer binding because Mr. Bruce is dead?

A. No sir.

Q. Then do you consider that it is binding or that it is not binding between you and Mr. Bruce's successor and assignee?

A. I should think it would be binding.

Q. Then you regard it as such?

A. Yes sir/

Q. Who first put those bars on the bridge?

A. Now that I couldn't tell you, it was before my knowledge of the place.

Q. When they were first put there do you know whether that territory in which these two farms lie was then a "no fence territory"?

A. I can't tell you that.

Q. Both of these farms now lie in a "no fence territory" do they not?

A. Yes sir.

Q. How long have they been in such territory?

A. I have just told you I didn't remember when the fence law was in the place.

Q. They have been in "no fence territory" ever since you have owned your present farm have they not?

A. Yes sir.

Q. Do you know for whose benefit those bars or that gate was first erected?

A. No, I do not.

Q. Then you cannot say whether it was erected to keep stock on what is known as the Newman farm from going on what is now the Milteer farm or whether it was erected to keep stock on what is now the Milteer farm from going on what is now the Newman farm, do you?

A. I cannot to save my life.

Q. Both of these farms belonged then to one and the same person did they not?

A. They certainly did.

Q. Whose land was this gate on?

A. It was on mine.

Q. Why was it on yours?

A. Simply because it was on the dividing line between the two places and this road leading from the Milteer farm to the wharf has been nothing more than a right of way, a privilege.

Q. This bridge on which this gate was erected was the bridge over the cove you speak of was it not?

A. Yes.

Q. And this cove was the dividing line between the two farms?

A. Yes sir.

Q. On what part of the bridge was this gate?

A. It was on the center of the bridge.

Q. Then how do you make it out it was on your land any more than it was on the land of Mr. Bruce?

A. Well it was on the dividing line between the two places and my land must have run to the center of this bridge, that being the dividing line.

Q. How many cattle do you now own?

A. I have only got two at present.

Q. How many did you own last year?

A. I had two, three and four at different times, about four is what I usually keep, keep just enough for my own use.

Q. How long did you ever have as many as four cattle at one time since you owned this farm?

A. Well I couldn't tell you just how long I had four at the time because I was selling and getting clear of them.

Q. Is it not a fact that you usually keep about two cattle?

A. That is about my usual number, yes sir.

Q. Standing on your land and looking across the bridge toward the Newman farm you own, if I understand you, a small piece of marsh which would then be on your right, is that correct?

A. Yes sir.

Q. You also own a piece of marsh which would be on the left, from that position do you not?

A. Certainly, yes sir.

Q. Which is the largest of these two marshes?

A. Well the one on the right is the largest that I have got enclosed.

Q. Which is the larger that is not enclosed.

A. Well I don't know as there is a very little difference.

Q. How much grazing ground have you on the marsh between the bridge and the wharf?

A. Well I suppose there is somewhere around about an acre.

Q. Is it not a fact that there is not there to exceed one-fourth of an acre on which cattle could graze to any advantage?

A. I think there is over a quarter of an acre, right smart, yes sir.

Q. Is it not a fact that on the other side of the bridge ^{are} three or four acres which can be fenced in and on which your cattle could graze?

A. No sir, there is not three or four acres over there that can be fenced for cattle to graze on.

Q. The fence as built and erected by Mr. Bruce after the suit to which you have alluded was arranged in such a manner as your cattle could go on the marsh on the left hand side could they not?

A. Yes, they could go on a portion of it.

Q. And that would be regardless of whether the gate was open or shut?

A. Yes, they could go there regardless of the gate.

Q. How much do you consider that one acre of marsh between the bridge and the wharf worth?

A. I am not considering the value of that at all Judge, I am considering what belongs to me, I want the privilege of what I pay taxes on and what I own.

Q. Please state by items the exact damage in dollars and cents that you have sustained by trespassing of cattle either your own cattle leaving your farm and going over on ~~xxxxx~~ somebody else, or somebody else's cattle coming on your land on account of this gate being kept open.

A. Well I have had right smart trouble with one of my cows going over on Mr. Milteer's place since he took that gate down, I had to send over there not long ago and my son went after this young cow and I think he found her in Mr. Newman's stable or lot, she was shut up and couldn't come home.

Q. You have never been called on to pay any damage on account of your cattle going through this gate when left open and trespassing on anybody's land have you?

A. No.

Q. Tell us how often any one else's cattle has passed through this gate and trespassed on your land?

A. Why Mr. Milteer's cattle, he has got a young one like I have, he comes over there most any time on this marsh land, across the road, have often seen him over there.

Q. Have you ever spoken to him about ^{him} coming over there?

A. On one occasion.

Q. What damage did he do you on that occasion?

A. Why he didn't do any so far as damaging anything at all, only he were on my marsh grazing.

Q. Does not Mr. Milteer keep his stock enclosed in a "no fence territory?"

A. It don't look to me like he keeps them enclosed, I have seen his cows over there on several occasions, and I have seen his horses, a couple of young colts, I have seen them over there.

Q. When your cow that you have spoken of that you found over in ^{Newman's} ~~Milteer's~~ field, lot or stable by your son, do you know whether she went through this open gate or whether she went across the cove when the tide was out?

A. I certainly do, she went over this bridge, through this gate.

Q. Did you see her go over?

A. no, but I saw her tracks where she did go through.

Q. Did not Mr. Newman on one occasion previous to this take up one of your cattle that had come over on his land through this bridge and send it back to you?

A. No sir, did I know nothing about it.

RE-CROSS EXAMINATION.

By Mr. Hutton:

Q. Mr. Milteer state whether or not the terms of that contract as you understand it, executed by you and just submitted by Judge Dewles, are satisfactory to you?

A. Yes that was satisfactory with me.

Q. Now Mr. Milteer, you say that there is something over a quarter of an acre of grazing marsh on the right hand side of the right of way looking toward Mr. Newman's farm?

A. Yes sir.

Q. Now state whether or not your stock can graze on either side of that right of way without fear of their going over the bridge, if the gate is down?

A. As the case now stands they can't graze.

And further this deponent saith not.

Signature waived by consent.

V. W. POWELL, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. V. W. Powell, 54 years, Crittenden, carpenter, and I know the parties.

Q. Mr. Powell you are familiar are you not with the two tracts of land in question?

A. Yes sir.

Q. How long have you known these tracts of land Mr. Powell?

A. Well I have been knowing them about twenty-seven or eight years, somewhere along there.

Q. State whether or not your father ever owned either of these tracts?

A. Yes sir.

Q. Which one?

A. The Veasey farm, the one Mr. Newman owns.

Q. Was that about twenty-six or seven years ago?

A. Yes sir.

Q. From whom did your father buy that place?

A. Mr. Veasey.

Q. To whom did he sell it?

A. Mr. Nix.

Q. At the time your father owned what is now the Newman farm, Mr. Powell, who owned what is now the Milteer farm?

A. Well I don't know who owned that, but Mr. John Gray

~~lived there~~ Q. State whether or not Mr. Powell, at the time ~~you first~~ ~~remember~~ ~~this place~~ ~~there~~ ~~was~~ ~~a~~ ~~bridge~~ ~~across~~ ~~the~~ stream forming the dividing line between the two places?

A. Well there has been a bridge and bars across there about

nineteen years to my knowledge.

Q. Do I understand you to say that that that when you first knew it there was no bridge and no bars?

A. No sir, none when I first knew it.

Q. State Mr. Powell whether or not at that time there was a wharf?

A. No sir, there wasn't any wharf.

Q. State whether or not so far as you know there was any roadway on the adjoining tract for the benefit of the tract your father owned?

A. No sir.

Q. Now Mr. Powell you just testified that to your knowledge nineteen years the bridge, bars or gate have been there?

A. Yes sir.

Q. Who owned the place then?

A. Mr. Hix owned it.

Q. At that time was there a wharf on the adjoining tract?

A. Yes sir.

Q. Mr. Powell did you state whether or not you repaired the bridge and built a gate there?

A. Yes sir, Mr. Bruce hired me to go there and put a new bridge and new gate.

Q. State whether or not just previous to that there were ~~old~~ bars on the old bridge?

A. Yes sir.

Q. State whether or not these bars were situated about the center of the bridge?

A. Yes sir.

CROSS-EXAMINATION.

By Judge Rawles:

Q. If I understand you, when your father owned what is now the Newman farm, you do not know who owned the adjoining farm on which Mr. Hiltner now lives?

A. No sir, I do not, I know who lived there, but I don't know who owned it.

Q. And at that time there was no wharf, no bridge and no gate between the two farms?

A. No sir.

Q. Then the first time you knew of a bridge and of bars on it was when Mr. John Nix owned it?

A. Yes sir.

Q. He owned both of these farms did he not?

A. Yes sir.

Q. Do you know for whose benefit he built these bars?

A. No sir, being as he owned then both I reckon he built them for his own benefit.

Q. You say you built this gate for Mr. Bruce after he bought the farm?

A. Yes sir.

Q. What kind of bars were there before you built the gate?

A. Just a couple of planks across there.

Q. Were they up or down?

A. They were up whenever I saw them.

Q. Would these two planks keep hogs from going either way?

A. No sir.

Q. Do you know ^{why} when the bars were put there?

A. No sir, some protection or another.

Q. Do you remember stating at the store or Mr. Bud Johnson some time during the past summer in the presence of Mr. Scott Mr. Ed Bagnall and Mr. Bud Johnson, that you made this gate for Mr. Bruce and that there was none there before?

A. No gate, no sir, there were bars.

And further this deponent saith not.

Signature waived by consent.

J. P. RIVES, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. J. P. Rives, 65 years, Crittenden, Va., farmer, and I know the parties to this suit.

Q. Mr. Rives, how long have you known these two tracts of land?

A. I have been in Virginia 29 years, and knew them right away.

Q. Mr. Rives who owned the land when you first knew it?

A. Mr. Powell's father owned the Newman farm now.

Q. Do you know who owned the adjoining tract at that time?

A. Yes sir, it was owned by a man in Petersburg, by the name of Meachen, John Gray was the renter.

Q. Mr. Rives at that time was there a bridge across the stream between the two tracts?

A. No sir.

Q. Did you know the land when Capt Nix owned it?

A. Yes sir, my brother lived there the first twelve months he bought it.

Q. Was there a bridge there then?

A. No sir, he put it there/

Q. What do you mean by he?

A. John Nix.

Q. Do you remember Mr. Rives when he put it there?

A. No sir, not the year.

Q. About how long Mr. Rives as near as you can remember, has that bridge been there?

A. Why I reckon sir, I am not positive, some where about twenty-four or five years, twentyfour anyhow I guess.

Q. About how long has the gate or barn been there?

A. Well the first time I ever crossed the bridge the barn were on it.

Q. Was there a wharf on the adjoining tract at that time?

A. No sir, Mr. Nix built the wharf when he built the bridge

Q. So at that time I understood you to say Mr. Nix owned the whole thing?

A. I know he bought the Vessey farm that Mr. Newman lives on first, and he bought the farm that Mr. Milteer owns later on.

Q. Did he build the wharf after he bought the Hiltner farm?

A. I don't know sir, I couldn't say when he built the wharf, before or after he bought it, but he hadn't owned it very long before he built it.

Q. Was there any passage so far as you know to and from the two places before he bought it?

A. Not by vehicles, couldn't get across the cove until the bridge was built.

CROSS-EXAMINATION.

By Judge Rawles:

Q. If I understand you when you first knew these two tracts of land there was no wharf or bridge on them. Am I right?

A. That is my understanding of it, sir.

Q. And that after Mr. Nix came into possession of both of these farms he then built the wharf. Is that correct?

A. I said I didn't know ^{whether} ~~when~~ he built the wharf before he bought that Hiltner place or not, know he owned the other place a few years before and then afterwards bought this other place, no I am not positive whether he built it before or after he bought the Hiltner place. I know he built the wharf. I wouldn't like to say that.

Q. But you do state that the bridge was not built and the bars erected until after the wharf was built?

A. That is my understanding of it.

Q. There was really no necessity of a bridge or gate until the party owning what is now known as the Hiltner farm wished to get to the wharf. Is that right?

A. No sir, because there was no wharf there, I should think not. Mr. Nix built that wharf on account of having that property there.

Q. Then if I understand you, the party who first put the gate or bars there and the bridge, did so for his own convenience so that he could get to his wharf which he had built. Is that right?

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A. Judge I do not know who put the bars there. I know they were there because in going there I had to put them down and put them back, but the bars were not there until the wharf was built. Who put them there and why I do not know.

Q. And the bridge was not built until after the wharf was built?

A. Suppose they was both built at the same time, the wharf wouldn't have done any good unless the bridge had been there.

Q. That is a "no fence territory" in which these two farms are located is it not?

A. Yes sir.

Q. How long has it been such?

A. Right in our section I found it so when I came twenty-nine years ago. But now mind you each party has to keep his own stock within his own grounds.

Q. In a "no fence country" I understand by your last remark every man is supposed to keep his own stock enclosed.

And further this deponent saith not.

Signature waived by consent.

Virginia, City of Suffolk, to-wit:

I, Mary V. Andrews, a Notary Public for the City of Suffolk, do certify that the foregoing depositions of John A. Hiltner, V. G. Howell and J. B. Riven, were duly taken, sworn to and subscribed before me, at the office of H. H. Hawles, in Suffolk, Virginia, between the hours of 8 A. M. and 6 P. M. on the 19th day of September, 1914, as stated in the caption hereof.

Given under my hand this 19th day of September, 1914.

Mary V. Andrews
Notary Public.

GEORGE MCNEAL, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation and if you know the parties to this suit?

A. George McNeal, 75 years, Nansemond County, farmer, I know the parties to the suit.

Q. How far do you live from the Newman farm and the Milteer farm?

A. Well not over 400 or 500 yards from the Newman farm.

Q. How long have you been living in that neighborhood?

A. Since 1866.

Q. Please state whether the two farms now owned by the plaintiff and defendant in this case, and which we will designate as the Newman farm and the Milteer farm are on a "no fence country?"

A. They are in a "no fence territory."

Q. How long has that been a "no fence territory?"

A. Since 1884, in the spring of the year.

Q. Was it so declared by a vote of the people of that neighborhood?

A. Of course I was not present at the time, I was on the water but it was voted to that effect.

Q. It has been in effect since that time?

A. Ever since that time.

Q. Now then, are the people living in that territory supposed to keep their own stock enclosed?

A. Yes sir.

Q. Do they do so, so far as you know?

A. Always has since the "no fence law"

Q. Do you know anything of a roadway that leads from the Newman farm to the wharf on the Milteer farm over a cove?

A. Yes, I know all about that.

Q. There was a bridge and gate thereon that cove at one time was there not?

A. At one time yessir, the bridge has been there all the time, some sort of a bridge, and the gate later on.

Q. Do you know about when the gate was put there?

A. In 1906.

Q. Who put it there?

A. Harry Bruce, for his own accommodation.

Q. What was on that bridge before the gate was put there?

A. Nothing.

Q. Do you ~~know~~ remember when Mr. Dennis operated a saw mill down near where the wharf is, on the Milteer farm?

A. I do, but I can't recollect the date.

Q. Do you know whether or not Mr. Dennis at that time, put up any bars, or fence or anything down there?

A. None whatever.

Q. Do you know about how many acres of Marsh Mr. Milteer owns, lying between this roadway of Mr. Newman's and the cove?

Q. I don't suppose there is a tenth of an acre.

Q. How much marsh grass does it produce per year?

A. Well you wouldn't cut a wheelbarrow load with a pair of scissors in twelve months.

Q. What would you consider that piece of marsh worth as a whole?

A. I couldn't consider it worth anything.

Q. How much per annum would it be worth if bought for grazing purposes, to a man who had cattle?

A. Well, I don't suppose it would worth 50¢ a year.

Q. Does Mr. Milteer own any other marsh on his farm?

A. Yes sir, he does.

Q. Where does it lie?

A. Right down there from the line between Mr. Newman and him. This here creek divides the farms.

Q. Does it lie on the other side of that roadway as you cross the bridge?

A. No, none of it.

Q. When you cross the bridge ~~taking~~ looking from the Newman farm to the wharf on the Milteer farm is the little piece of marsh you speak of on the left hand side?

A. It is.

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Q. Is the larger marsh on the right hand side?

A. It is.

Q. How many acres would you say is in that larger marsh?

A. Well I should reckon it would be about fifteen, that is a rough judgment.

Q. What prevents Mr. Milteer from using that larger marsh for grazing his cattle?

A. I don't know unless it is obstinacy.

Q. Do you know of any reason or anything that would prevent him from using the larger marsh if he wanted to do so?

A. None at all, none whatever.

Q. How many cattle does Mr. Milteer usually keep?

A. I don't know, he may keep a cow or two and a calf.

CROSS-EXAMINATION.

By Mr. Hutton:

Q. Mr. McNeal, you say you have known these two farms since 1885?

A. No, I didn't say any such a thing.

Q. When did you say?

A. 1884.

Q. Who owned the farms at that time?

A. Mr. Nix, John Nix, of New York.

Q. He owned both places did he?

A. He owned both places.

Q. Where were you living then?

A. Right where I am living now.

Q. Where are you living now?

A. Right opposite the farms where the main road divides it.

Q. Have you lived there from that time until the present?

A. Yes, certainly.

Q. Do I understand you to say that you remember exactly when that gate was put on that bridge?

A. I do.

Q. What year?

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A. 1906.

Q. What month was it?

A. I don't know the month, I didn't keep tally of my neighbors work.

Q. You kept tally in this case pretty well didn't you?

A. I was hurt in that year and I will never forget it.

Q. Did I understand you to say that you have never known any bars to be across that bridge?

A. No, no bars.

Q. If there had been any bars there you would have known it would you not?

A. Yes, I would. We bought our slab wood from Mr. Dennis he sold it so cheap, and we hauled our slab wood across there and there was no bars there. There is the boy that hauled the slab wood and my other boys did the same thing and there were no bars there.

Q. When were you hauling that slab wood?

A. We hauled that slab wood during the time that the saw mill was there, I do not keep dates of that kind.

Q. Was the saw mill there Mr. McNeal in 1906?

A. No sir, the saw mill was there in '80.

Q. Well now Mr. McNeal, did you haul any slab wood across that place before the year 1906?

A. Yes sir, I did.

Q. But you found no bars there?

A. No.

Q. Did you haul any slab wood across there in 1900?

A. No.

Q. Where were you hauling that slab wood to?

A. To my house.

Q. Now do I understand you to testify that you went across that bridge frequently at various times when you had business from the time that Mr. Dennis run his saw mill there until 1906, and that you will say that during that time there were no bars there?

A. Yes that is my testimony.

Q. If there were any bars there during that time you would have known it?

A. Certainly.

Q. You lived close to the place did you, where you would have occasion to observe that place every day or two?

A. Well yes, no, not as close as that.

Q. You know Mr. Rives do you?

A. I do.

Q. If he were to come here and testify that bars were there what would you say?

A. I would say it was not so.

Q. Do you know Mr. Powell up there?

A. Oh, yes.

Q. Well if he were to testify that he was perfectly familiar with that place at that time, and that the bars were there, that he had seen the bars, and that he, himself had taken those bars down, and he himself built that gate you are talking about.

A. What year?

Q. The very gate that was put there when Mr. Bruce owned the place. What would you say about it?

A. I would say it wasn't so.

Q. You haven't much confidence in your neighbors?

A. Not much in Mr. Powell.

Q. Have you any confidence in Mr. Rives?

A. Oh yes, I have confidence in him.

Q. Now Mr. McNeal I understood you to testify that in that marsh on the right hand side of the right of way as you approach the Newman farm, there is not more than one-tenth of an acre. Is that correct?

A. Yes, as near as I can judge.

Q. Mr. McNeal, about how long is that stretch of marsh, about how many yards would you say?

A. Well it might be a hundred yards.

Q. About how wide would you say?

A. About twenty-seven feet.

Q. And yet you say there is no more than a tenth of an acre?

A. Yes sir, but it don't run all the way like that, it runs a little distance that way and then it runs off to nothing.

Q. You testified that Mr. Bruce put that gate there in 1906 for his own accommodation?

A. Yes sir.

Q. How do you know the reason he put it there?

A. Because Milteer's cow got out and went over on Bruce's land.

Q. No fence county wasn't it?

A. No fence country.

Q. He didn't have to fence against Milteer's cow?

A. He did it for his own convenience.

Q. I understood you to testify that on this marsh land, that in a year's time according to your best opinion, you couldn't cut a wheelbarrow load?

A. Yes, I will help you out, just about.

Q. I understand then that it would produce in a year no more than a wheelbarrow load?

A. Yes that is my honest opinion.

Q. Mr. McNeal, you feel a little bitter toward Mr. Milteer in this matter?

A. No, I do not, I like John Milteer just as well as I ever did, but you cant live in peace with him, or anybody else. I don't believe he has got a half dozen friends in Barrett's Neck.

Q. Are you his friend?

A. I am his friend as far as he is mñne.

Q. You are one of that half dozen friends are you?

A. Yes.

RE -DIRECT EXAMINATION.

Judge Rawles:

Q. Now Mr. McNeal you have testified that the small piece of marsh was about 100 yards long and on an average of about 27 feet wide. About how much of that would be good grazing ground?

A. Well, I tell you Judge I cant form an estimate. It would support a goat.

Q. What would be the character of the soil of the balance of it?

A. It would be nothing but marsh.

Q. What kind of marsh?

A. Soft marsh. Part of it wouldn't bear your weight.

Q. Was it of such a character that cattle could graze on it?

A. A little around the edge, yes.

Q. How long have you known Mr. Newman?

A. Well I reckon I have known Mr. Newman about 28 years, 25 years anyway.

Q. State what kind of a neighbor he is?

A. A good one.

Q. What kind of a neighbor is Mr. Milteer?

A. Very disagreeable.

Q. Why do you say so?

A. Well I havn't had any direct quarrel with him, but he has always been huffed up like a toad.

RE-CROSS EXAMINATION.

By Mr. Hutton:-

Q. Did you ever testify in a suit brought by Mr. Bruce against Mr. Milteer to establish a right of way?

A. I did.

Q. You testified about where that right of way was located did you?

And further this deponent saith not.

A. I did.

Q. Did the court agree with you? Signature waived by consent.

A. I dont know anything about the court.

W. E. MASON, being duly affirmed, deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. W. E. Mason, 56 years, Nansemond County, about $\frac{1}{2}$ mile of these farms, oysterman, and I know the parties.

Q. Are these two farms known as the Milteer farm and the Newman farm in a "no fence country"?

A. Yes sir.

Q. Do you know how long it has been such?

A. I have been living in the place, in the county there, and in the neck, I was there when it was put to a vote, and the fences taken away, but what date I can't remember.

Q. Since it was declared a "no fence country" the people there have observed it as such have they not?

A. Why I think so, yes, so far as I know.

Q. Each man is supposed to keep his own stock enclosed, is that right?

A. Why yes, I think so, it is my business to fence against my own stock, and that is what the law I believe says, I have no stock myself.

Q. Do you know where this little piece of marsh is that lies between the roadway which leads from the bridge to the wharf and the cove?

A. I know about where it is at, yes sir, it is right in my home place and I am very intimate with both places, but it has been I reckon about two or three years since I have been on either farm, and I don't remember nary thing in the world about the location of it, I know I don't think it is a very large place.

And further this deponent saith not.

Signature waived by consent.

L. R. McNEAL, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. L. R. McNeal, 28 years, lower part of Nansemond County, oystering in the winter and farming in the summer, I know the parties.

Q. How far do you live from these two farms, known as the Milteer farm and the Newman farm?

A. Well Mr. Newman's farm is just the opposite side of the road from our farm, and Mr. Milteer it adjoins Mr. Newman's farm on the back side.

Q. How long have you been living there?

A. Well I was born there on that place.

Q. Been living there ever since?

A. No sir, I went away in 1908 and stayed three years and come back and I have been there ever since 1911.

Q. Do you know about how many cattle Mr. John Milteer usually keeps?

A. Well, yes sir, from about about two, is as many as I have known him to keep, and a calf maybe, but about two grown cows is as many as I have ever known him to keep.

Q. Do you know anything about this little piece of marsh that lies between the roadway which leads from the bridge to the wharf and the cove?

A. Yes sir, know a little something about it.

Q. About how many acres of grazing land does it contain?

A. Well I should judge to my best estimation that there is not over a quarter of an acre.

Q. How much would you consider it worth as grazing ground?

A. Worthless as grazing ground.

Q. How much is it worth as grazing property?

A. Nothing in my estimation.

Q. Does Mr. Milteer own some other grazing marsh on the other side of that cove?

A. Yes he has other marsh, good solid marsh above the bridge.

Q. About how many acres is there in that piece?

A. Well it is in such an odd shape it would be hard to get at it, but not less than three.

Q. Do you know of any reason why Mr. Milteer's cattle could not graze on this three acres of marsh?

A. There is one reason, he has got them fenced back off of a part of it.

Q. If he were to remove his fence could they graze on it?

A. Yes sir.

Q. About how much in your opinion would it cost to put a fence from the end of the bridge around the causeway to the wharf?

A. In the neighborhood of \$15.

Q. If there were a gate on the bridge would it prevent hogs from passing the cove at low water, to go from one of these farms to the other?

A. No sir.

Q. Have you ever known of Mr. Newman's cattle doing any damage by trespassing on Mr. Milteer's farm?

A. I never heard of it, never knew of any, no sir.

Q. Have you ever known Mr. Milteer to lose any cattle on account of the gate on the bridge not being shut?

A. No sir.

Q. Have you ever known Mr. Milteer to be put to any loss or damage in any way on account of the gate on the bridge not being kept shut?

A. No sir.

Q. What necessity is there for keeping the gate on the bridge shut?

A. None whatever.

Q. Do you know when the gate on the bridge was put there?

A. Yes sir, it was put there when Mr. Bruce owned the place, I can't tell you the exact date.

Q. Did Mr. Bruce have it put there?

A. Yes sir.

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Q. What was on the bridge before the gate was put there?

A. Well there was two bridges put there. The first bridge that was put there didn't have ~~anything on it~~ anything on it, but about the second I can't say whether there was anything on it or not. I hauled across the first one that was there.

CROSS EXAMINATION.

By Mr. Hutton:

Q. You are Captain McNeal's son are you not?

A. Yes, one of them.

Q. Did you help build that fence around the roadway that Judge was ~~xxx~~ speaking of?

A. No sir.

Q. I believe you spoke of what the fence cost did you not?

A. No sir, I did not.

Q. I understood you to testify that you regarded the little strip of marsh land as worthless?

A. I did.

Q. Do you know whether or not any of Mr. Milteer's cattle have grazed over there at all?

A. I can't say, I have never seen any of them on it.

Q. You think if they had been on there you would have known it?

A. I would have known it if I had been there and seen them.

Q. You testified that you didn't know of any trespass done on Mr. Milteer's place by Mr. Newman's cattle?

A. I did.

Q. They could have done so however without your knowledge couldn't they?

A. I suppose I would have heard of it, there has been such a row kicked up over it.

Q. Do you keep up with all the little things that happen on these two farms just because you live in the neighborhood?

A.

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A. I do not. You can't help but know them.

Q. Well are you testifying to things that you have heard or to things that you know?

A. What I testified to I know to be so.

Q. If Mr. Milteer testified that his cows did go over there and did graze on that marsh land, would you be prepared to deny it?

A. I wouldn't contradict it.

Q. If the cows did go over there and did graze on that land would you consider it worth a little something?

A. There is nothing there to graze.

Q. If they did go over there and did graze on that land wouldn't you consider it worth a little something?

A. Well I guess it would worth a little something for them to kill time on,

Q. Are you prepared to testify Mr. McNeal that you never saw any bars across that bridge?

A. No sir, I never have.

Q. Yet you have crossed that bridge time and time again ever since you were a child, both the old and the new?

A. Yes.

Q. And never on the old or the new have you ever seen bars?

A. No sir I have not

Q. Do you remember when the old bridge was repaired or the new one built?

A. Which one are you speaking of?

Q. Do you know Mr. Powell?

A. Yes sir.

Q. Mr. Powell may have told you that he built one bridge that was put there. Do you know whether he helped to build one bridge that was put there or not?

A. I knew that he worked for Mr. Bruce at the time it was put there.

Q. Which bridge was that, the last bridge put there or not?

A. That was the bridge that Bruce put there.

Q. About how long has that gate been there Mr. McNeal?

A. Well I couldn't say for certain, I couldn't give the date of the year, but I know this much, I know that I was mighty intimate with Mr. Bruce, and hauled through his place from the steamboat wharf to our house, and there wasn't any gate on that bridge until Mr. Bruce put it there.

Q. How old are you now Mr. McNeal?

A. 28 years old the 10th day of August.

Q. Do you remember when the wharf was built on the Milteer place?

A. Which one have you reference to, Mr. Milteer's dock or Mr. Newman's dock? I can't give you the date but I remember when the steamboat company put one there, there has been one put there besides the one Mr. Nix put there.

Q. Do you remember the circumstances when Mr. Nix put the wharf there?

A. I can't say that I do.

Q. Then you don't know whether the bridge was put across the cove at the same time the wharf was put there or not do you?

A. No sir, I can't say that it was.

And further this deponent saith not.

Signature waived by consent.

T. H. BEALE, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. T. H. Beale, 52 years, Nansemond County, oysterman, follow the water for a living, and I know the parties.

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

A. Well I live right near to Mr. Milteer's farm, he is between me and Mr. Newman, but I live somewhere between, maybe three-quarters of a mile from the wharf.

Q. How long have you lived that near?

A. Somewheres about twelve or fourteen years.

Q. Are those two farms in a "no fence territory?"

A. Y
es.

Q. Then the people in that section are supposed each man to keep his own stock enclosed?

A. I should suppose so.

Q. Have you ever travelled over the bridge which crosses the cove between these two farms?

A. Well sometimes I have occasion to go around there probably two or three times a year, but not^a regular pass-way through there, I have been there though.

Q. Do you remember about when the gate was put on that bridge?

A. No sir, I don't I know there was a gate on the bridge but I don't recollect when it was put there.

Q. Do you know about how many cattle Mr. Milteer usually keeps?

A. Well from passing I think about two is about what he usually keeps.

Q. Did you ever notice the little piece of marsh that lies between the cove and this roadway that leads from the bridge to the wharf?

A. Yes there is a little strip of marsh between the cove and the road.

Q. Would you consider it valuable grazing ~~ground~~ marsh?

A. No sir, I shouldn't consider it very valuable.

Q. How much do you think it would be worth for grazing purposes per year?

A. Well I would like to explain just one thing here Judge. Of course I haven't did any farming in about thirty years, I have been following the water, but if I had to rent this piece of marsh for grazing I should think \$1.00 would be about all it would be worth.

Q. Did you ever hear of Mr. Newman's cattle doing any damage by trespassing on Mr. Milteer's land, since you have lived down there?

A. I have not heard of any damage.

Q. Did you ever hear of any damage done to Mr. Newman by Mr. Milteer's cattle going over on his land?

A. No sir I havn't heard of any damage done to him.

Mr. Hutton:

Both of above questions objected to.

CROSS-EXAMINATION.

By Mr. Hutton:

Q. Mr. Beale, if you owned that little marsh you would like the privilege of using it if you chose, whether it was worth much ~~for~~ grazing ground or not?

A. No, I wouldn't object to having the use of it, but still it affords very little grass.

Q. Now are you prepared to say Mr. Beale that there were no bars across that bridge before the gate was put there or not?

A. Well I wouldn't like to say either way, I didn't have no regular business there and what was done I didn't know.

And further this deponent saith not.

Signature waived by consent.

W. T. NEWMAN, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. W. T. Newman, 49 years, Nansemond County, farmer, I know the parties, I am the defendant.

Q. You purchased the farm in question on which you lived from Mr. B. M. Bruce did you not?

A. I did.

Q. That fact is shown by your deed is it not?

A. Yes sir.

Q. You purchased it with all the rights and privileges to the wharf and the road leading to the wharf as stated in the deed did you not?

A. I did.

Q. You live in a "no fence territory"?

A. Yes.

Q. Do you keep your stock enclosed?

A. Yes sir.

Q. Has Mr. Milteer ever presented any bill of damages for damage done by trespassing of your animals on his land?

A. He has not.

Q. Have you ever heard of any of your stock of any kind passing over this bridge and doing Mr. John A. Milteer one penny's worth of damage?

A. I never have.

Q. If they had done so is it likely you would have heard of it?

A. I think so.

Q. State on how many occasions any of Mr. Milteers stock has crossed the bridge and come on your premises since you have been there?

A. Well last spring the calf came through the gate, the wind blew it open. She went back and did not do any harm. There was no objection.

Q. Did you make any complaint of this fact or present any bill to Mr. Milteer for damages?

A. Why no, certainly not.

Q. Mr. Milteer if I remember correctly has stated in his deposition that on one occasion he found one of his cows enclosed in your lot or stable. Tell what you may know about that.

A. That is a fact.

Q. How came the cattle there?

A. Well at low water the calf came out of the field, now you understand there is a fence between Mr. Milteer and I around the edge of the road, and the calf did not come through this fence gate but come under the wharf at low water, and of course came on over to the farm, did no damage, was just simply walking around there and I put her up in the stable, I have two cows, and you know mules and colts will kill calves and for protection of the calf, not having time to drive it back I just turned it in the gate and put it in the stable.

Q. Did you notify Mr. Milteer that his cow was there?

A. I did not. There was a crowd of children that had got milk from my house, and I asked them to tell Mr. Milteer when they went back through there. Whether they told him or not I don't know, but his son came over that evening inquired for the calf and took it home.

Q. Then you simply put the calf up to protect it?

A. I did, as I would have had to have done my own.

Q. But you did not put him up for any damage at all?

A. No sir.

Q. You did not make any claim for damages did you?

A. None at all, I have never made any claim.

Q. Do you know whether Mr. Milteer keeps his cattle enclosed on his premises or not?

A. Mr. Milteer has no fence, I have a fence between Mr. Milteer and I, around the edge of the road, and I keep the fence up. Mr. Milteer has no fence.

Q. How many cattle does Mr. Milteer usually keep?

A. So far as I know two, since I have been there and the calves.

Q. As this farm is in a no fence territory, if he does not keep his stock enclosed is there anything to prevent his stock from going from his house to the public road?

A. Yes, he has a fence around the east side of his yard, and I have a fence down the west side of the yard that touches the wharf. There is nothing except my fence.

Q. Will you please state whether hogs at low water can cross the cove over which this bridge runs between the two farms, from one farm to the other?

A. Yes, hogs will cross the cove.

Q. Then a gate on the bridge would not prevent the passage of hogs?

A. No.

Q. About how many acres of marsh, grazing marsh lies between your roadway leading from the end of the bridge to your wharf

and the cove?

A. Well, we think about a quarter of an acre of made land there that cattle could graze on.

Q. Why do you call it made land?

A. Because the saw dust was dumped from the mill around the edge of the marsh.

Q. Have you ever seen any value to it as a grazing marsh?

A. Yes, it is some more now than a year or two ago.

Q. How much would you consider it worth per year for grazing purposes?

A. Why it is worth very little, I would consider it worth \$2.50 an acre would be about as much as we could rent a marsh for. I would be glad to rent mine for \$2.50 a year.

Q. Now is it not a fact that Mr. Milteer has on the other side of this roadway two or three acres of good marsh?

A. Yes.

Q. Does he permit his cattle to graze on that portion of it?

A. No, it is not fenced.

Q. If he were so anxious to have his cattle graze on this quarter of an acre, why could he not arrange his fence so that they might graze on the three acres to which he has free access?

A. It is no reason at all, I suppose he doesn't need it.

Q. He could use this three acres if he desired to do so could he not?

A. Certainly, ten or fifteen I suppose.

Q. And yet he does not graze his cattle on it?

A. No.

Q. Will you please state whether you are responsible as far as financial matters are concerned to pay any bill of damage which your cattle might do on Mr. Milteer's land if they should trespass over there?

A. Yes I could do so, and would do so willingly if a bill was presented that was correct.

Q. How many horses do you support and keep on your farm?

A. We have eight there this year.

Q. What do you consider the value of all of your chattel property?

A. Well I suppose something like \$2000 or \$2500, enough to pay any damage that any one cow could do.

Q. How many cows do you keep?

A. One only, I have a calf.

I'll call attention here Judge and Mr. Hutton the value of this little piece of marsh. I am not contending for the marsh, I have nothing to do with it, I am not cutting Mr. Milteer out of it. Mr. Milteer has a perfect right to fence and put his cattle over there, it has never been questioned.

Q. How much would it cost Mr. Milteer to run a fence from the end of the bridge to the wharf, I mean ~~on the side next to the cove?~~

A. About \$15, I suppose I could put a fence there for \$15.

Q. Would that be such a fence as would keep cattle back?

A. Yes.

Q. Would you consider that little piece of marsh, if it were yours worth enough to go to the expense of fencing it?

A. No sir.

Q. Mr. Newman are you a trucker?

A. Yes I raise some trucks.

Q. Do you constantly use your wharf which lies on the Milteer farm and your roadway to the same in the transaction of your truck business?

A. Yes, we use it most all the year.

Q. Can you tell me about how many packages you hauled over that bridge to your wharf last year?

A. I can give you some idea, or I have the books here and can point out each item if you prefer.

Q. Then refer to your book and tell me how many packages you hauled from your farm to this wharf over this bridge during the year 1913.

A. Witness refers to his book and answers as follows: 12,635.

Q. Did this represent the packages that you shipped from your farm?

A. Yes.

Q. Can you tell me approximately about how many trips you would have to make one way to haul these packages?

A. Something like 2000.

Q. And as you would have to return each time that would make 4000 trips per annum, is that right?

A. Yes.

Q. In addition to the hauling you did from your farm to the wharf, state whether you were compelled in the management of your farming operations to haul from the wharf to the farm?

A. All these empties had to be brought back, together with fertilizer, something like 600 sacks of fertilizer per annum.

Q. About how many trips approximately would you have to make to do that hauling from your wharf to the farm?

A. When I said about 2000 trips just now I included all the hauling one way.

Q. What inconvenience would it put you to if you were required to get down and open and shut the gate at each one of these 4000 trips?

A. Well that would be quite an inconvenience, but we were never required Judge to open and shut the gate each trip. If I had to open and shut the gate each trip, no man would do it for less than two or three hundred dollars per year.

Q. Then you would certainly say, if that is true, that your damage would be at least \$100 per year if you were required to open and shut the gate each trip?

A. Yes, we wouldn't have the gate in the way and annoyed by the gate as it has been for \$100 a year.

Q. Mr. Bruce had formerly entered into a written contract with Mr. Milteer in reference to the gate on the bridge, and to the opening and shutting of the same. You have nothing to do with that contract have you?

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A. Nothing whatever.

Q. When Mr. Bruce sold you that farm he did not sell it subject to any such contract did he?

A. Not at all, clear and unhampered.

Q. In your answer to the bill in this case you have alluded to that contract and stated that you were still willing to carry it out if Mr. Milteer would do so. Since he did not do what have you to say about it now? Do you withdraw or or still stick to it?

A. I withdraw it.

Q. Mr. Milteer has no legal right to any part of the roadway has he?

A. No, no legal right.

Q. This road so far as you read was built for the absolute and sole use of your farm was it not?

A. Yes sir.

Q. Do you know when the gate was put on the bridge?

A. No sir, I do not, just from hearsay.

CROSS EXAMINATION.

By Mr. Hutton:-

Q. How long have you owned that land Mr. Newman?

A. Two years last July.

Q. How long were you lessee of that land?

A. Two years.

Q. When you leased the land you found the gate there did you not Mr. Newman?

A. Yes sir.

Q. When you leased the land you knew of the contract in existence between Mr. Bruce and Mr. Milteer did you not?

A. No sir, I knew nothing about it, there was nothing said about it.

Q. Did you ever have a conversation with Mr. Milteer in regard to shutting the gate, etc., before you bought the land?

A. No sir, not before. Possibly he had mentioned such contract. Now I did know the fact that there was a contract between he and Mr. Bruce.

Q. Did you at that time Mr. Newman make any complaint at all at the gate resting on that bridge?

A. No sir, never made any complaint.

Q. You did say that it would be perfectly satisfactory with you did you not?

A. I told Mr. Milteer that as long as he was satisfied we would let it remain as it was, although I didn't feel under any obligations.

Q. During the two years that you leased this land you allowed the gate to stand there did you not?

A. Yes sir.

Q. When you tore down the gate Mr. Newman did you have any conversation then with Mr. Milteer, in any way, shape or form?

A. Not a word, nothing sir.

Q. Mr. Newman, what was your purpose in removing the gate?

A. The bridge was down, it wasn't safe to haul across and when I took the bridge down I took the gate down, that was plain. When I removed the bridge I put a dirt road there. I have a fence around my road that keeps Mr. Milteers cattle off of my land, it keeps them out of my road, and from coming over home, and before I took this gate down I did up the fence, put in new posts and did it up enough to keep anything out, and then I removed the bridge and put the dirt road there.

Q. This then was the same fence was it not that Mr. Bruce had built there?

A. Yes.

Q. You found the fence there, and found the bridge and found the gate over the bridge there?

A. Yes.

Q. I understood you to say that you knew also the arrangement entered into by Mr. Bruce and Mr. Milteer in regard to the three gates?

A. Possibly Milteer told me that there was a contract. Mr. Bruce told me he had forgotten it if there was one.

Mr. Milteer said that he had one, and he demanded of me and my boys more than once that we shut them gates whenever we were through hauling. When we went down on the wharf we were to drive his cattle back in the yard, shut his two gates. When we were through hauling we were to open his two gates and shut ours.

Q. You were to do that during the time that you were hauling?

A. That was whenever we used it, he said that was law and we had it to do; that he had it in writing and demand that, and ~~this~~ his cattle was exposed then to my wharf, when I left anything on the wharf of course his cows could go out there, and it necessitated my making a little gate to put at the foot of my wharf, and that necessitated my keeping four gates, but I didn't complain.

Q. You testified that Mr. Milteer's calf got in your premises some time ago, and that was on account of the gate having blown open?

A. Yes.

Q. Well Mr. Newman that gate would have served some good purpose in that particular instance wouldn't it?

A. That was his little yard gate.

Q. This contract provided that Mr. ^{Bruce} ~~XXXXXX~~ was to keep those gates?

A. But Mr. Milteer demands of my boys and I that we keep his gates, and we have done it for four years.

Q. You had no objection to that contract did you Mr. Newman?

A. Well of course I objected to it, because it was a great inconvenience, but to keep neighborly, of course I was told when I went there that I would have to be very careful, and I did this, not because I felt it a duty, being in a no fence territory, I only did it to keep in peace, whatever Mr. Milteer said.

Q.

Q. Now Mr. Newman, did you tear down your gate to keep in peace?

A. Yes sir.

Q. Did you think that was the best thing to do?

A. Tear down the gate? I had to, ~~blaxbridge~~ that was a necessity because I took the ~~gate down~~ bridge down.

I'll answer it this way: I already told you why I didn't put the gate back. As I said before the wind blew the gate open and the calf had been out, I knew that Mr. Milteer didn't want his calf out, and I simply ~~stuck~~ two little stobs down each side of the gate, one about an inch long, and the other about a half or three quarters of an inch long, to keep the wind from blowing the gate open. A few days after that I met Mr. Milteer in the road, he stopped me and said "well this is as good a place as anywhere."

I says "for what" and he says "what right ~~did you have to~~ ~~XXXX~~

~~XXXX~~ had you to stob my gate down so I couldn't get out of it?"

I said I didn't do any such thing. Then I told him the circumstances about the calf coming and going over. I says I knew you didn't want your calf over there.

Q. What do you mean by stobbing the gate?

A. Just a little stob to keep the wind from blowing the gate open, it didn't ~~bbstruct~~ obstruct the passing through the gate at all.

Q. The calf did go through that gate and return?

A. Certainly, nobody didn't care. Mr. Milteer says to me: I want you to tend to your own business, I am tired of you interfering with my business. I says: "Thank you Mr. Milteer, I'll attend to my business hereafter, because I have not been doing it, so I didn't put the gate back, and I have never spoken to Mr. Milteer about it from that day to this.

Q. Now Mr. Milteer you had a great many conversations with Mr. Milteer from time to time during all these years did you not?

A. No sir, very few.

Q. Do you remember the other conversations as distinctly as you

remember that one?

A. Yes sir.

Q. I suppose all the time Mr. Milteer was making demands of you, and all the time you were trying to promote peace?

A. I was.

Q. The truth of the matter is that Mr. Milteer has been the aggressor in the whole affair, and because of feeling in the matter, engendered in you by Mr. Milteer you didn't put the gate back?

A. Not for any bitter feeling at all, but for right and wrong. I didn't consider it ~~was~~ necessary, and have not since I have been living on the place. One fence is all that we are required to keep to keep stock off.

Q. Didn't you testify a minute ago that this conversation was partly the cause of your not replacing the gate?

A. Certainly I did.

Q. Then it is a matter of feeling is it Mr. Newman?

A. No sir, it is right and wrong.

Q. When I asked you for your reason for not replacing the gate after you had taken it down, you said that it was because of a certain conversation (which you have just given in evidence.) Had it not been for that conversation I presume you would have replaced the gate?

A. You presume wrong.

Q. Then that was not the reason Mr. Newman?

A. It was partly, and partly for right and wrong.

Q. Do you think if that gate was there it would be of any benefit at all to Mr. Milteer?

A. No sir, only it would be a double protection for his cattle.

Q. Isn't that a benefit?

A. No sir, it is not necessary.

Q. If the gate is not there isn't it likely that his cattle would get over the dirt road on to your place.?

A. Certainly, if you were to open the gate and turn them out of his pasture, his yard.

Q. If his cattle are free to use the little strip of land we have just spoken of wouldn't there be a likelihood at all times of their crossing this road?

A. Mr. Hutton, in a no fence country we can't put our cattle on a piece of ground without a fence around it.

Q. As the situation is now if Mr. Milteer's cattle are free to cross the right of way on to the little strip of land in question, would there not be a likelihood at all times of his cattle crossing your dirt road on to your land?

A. Certainly.

Q. Did you ever speak to Mr. Milteer of the inconvenience of shutting these gates because of the amount of trips that you had to take to the wharf?

A. No sir, since the first year I was there I have had very little conversation with Mr. Milteer, simply because he is a man that is irritable and gets mad and swears whenever we talk, and I have avoided these conversations, and have never had them unless I was forced into it.

Q. You don't care to talk with people that swear now and then?

A. Not if they abuse me.

Q. Do you do any more travelling across that right of way so far as you know?

A. I never knew anything about Mr. Bruce, I never was on the farm before I bargained to go there.

Q. However it is the very same farm that he lived on is it?

A. Yes.

RE-DIRECT EXAMINATION.

By Judge Rawles:

Q. You live as you have stated in a no fence country?

A. Yes.

Q. If Mr. Milteer desires his cattle to graze on the little strip of land, being in a no fence country, is it not his duty to enclase them on that land?

A. I feel so.

Q. Suppose he had a little strip of land that came over on the main county road going to Chuckatuck that he wanted his cattle to graze on. If he did not enclose it and put them in there to graze, they would get out anywhere they pleased wouldn't they, and go on any of the neighbor's land, would they not?

A. They would.

Q. Then If I understand you, in a no fence country a man is supposed to keep his cattle enclosed on any part of his farm on which he desires to keep them?

A. It is with one exception Judge. Mr. Milteer does not have to keep a fence around his yard or pasture. I am compeled to keep a fence around his pasture. He is the only man I know that is exempt.

Q. You mean that you do keep the fence that Mr. Bruce built on one side of that roadway which belongs to you?

A. Yes.

Q. Something has been said about this gate being on the dividing line between you and Mr. Milteer. Conceding that to be true, Milteer has never owned and does not now own any right or title whatever to any part of the roadway does he?

A. He does not, I consider.

Q. Is it not a fact that all the deeds to these tracts of land show that the roadway, the entire roadway that leads from your farm to the wharf on Milteer's farm is, every inch of it for the absolute use and benefit of your farm?

A. Yes.

Q. Do not the deeds show that when Mr. Milteer purchased this farm he knew that he was buying it with that burden upon it?

A. He did, the three deeds show it.

Q. You say you had nothing in the world to do with the contract between Bruce and Milteer?

A. Nothing whatever.

Q. You say that when you bought the farm from Mr. Bruce you knew nothing about any such contract?

A. Nothing.

Q. When you had the talk with Mr. Milteer in reference to the trouble about the gates was that after you had bought the farm?

A. Yes sir, February 23d, 1913.

Q. Do you know of any obligation in law or by contract by which you should even keep up the fence that Bruce built on the Milteer side of that road?

A. No sir, I only do it as accommodation. I would state this; Mr. Milteer here objects to my cattle walking down that road or my colts, the road to the wharf. Now I feel Judge and Mr. Hutton, that I would have as much right to object to Mr. Milteer's cattle walking on my road and on my wharf, pillaging in my stuff as Mr. Milteer has to mine simply walking up there

Q. If Mr. Milteer kept his cattle properly enclosed as he is required to do in a no fence country they could not even get into the road could they?

A. No sir.

Q. And the fact that they do sometimes get in the road shows that he does not keep them properly enclosed as he should do?

A. Yes sir.

Q. Is it a fact that everybody else in that no fence country shall and must keep their stock enclosed to keep them from ~~going~~ trespassing on other people's land, and that Mr. Milteer alone has the privilege of turning his cattle out to go anywhere they please?

A. Only man I know.

Q. And he demands that to keep his cattle off your land, that you must fence his cattle out?

A. With two fences, one won't do.

And further this deponent saith not.

Signature waived by consent.

E. H. NEWMAN, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation, and if you know the parties to this suit.

A. E. H. Newman, 20 years, Nansemond County,
I know the parties, I am the son of the defendant.

Q. Do you live with your father?

A. I do not at the present.

Q. When did you live with him?

A. I have up until about a month ago.

Q. How many cows does Mr. Milteer own?

A. I am not prepared to answer that question Judge, he generally keeps from one to two cows and possibly two calves.

Q. Has his cattle ever trespassed on your father's land and done any damage over there?

A. Never done any damage that I know of, but his cows has been over a few times.

Q. Have you ever heard of your father's cattle crossing through this gate on the bridge and going on Mr. Milteer's land?

A. I have known them to go across the bridge, but whether they got on Mr. Milteer's land I am not prepared to say, they got on the right of way.

Q. Do you know anything about the little piece of marsh that lies between the roadway and the cove?

A. Yes sir.

Q. What is it ~~xxx~~ worth as a grazing marsh?

A. I don't know Judge, I am not prepared to answer that, it would be worth but a very little to me.

Q. Is it not a fact that Mr. Milteer owns on the other side of this roadway a marsh of three or four acres?

A. Yes it is.

Q. Do you know whether he uses that for grazing purposes or not?

A. He uses a small portion of it.

Q. Why doesn't he use all of it.

A. Because he hasn't any need for it I suppose.

Q. What trouble have you had with Mr. Milteer in reference to the opening and shutting of those gates?

A. Well he just quarreled a little bit some time, and abused me a little and my father for not attending to them properly.

Q. Has he demanded that you both turn his cattle on this marsh in the morning and drive them back at night?

A. He demands when we haul that we are to open the gate on the bridge, drive his cattle back in his yard and shut his gates.

Q. What salary does Mr. Milteer pay you for being his cattle-boy?

A. None at all.

Q. He is not a crippled man is he?

A. No sir.

Q. Do you know of any reason why Mr. Milteer can't look after his own cattle?

A. No sir.

Q. Do you know of any contract that either you or your father is under which requires either of you to drive Mr. Milteer's cattle back on his land?

A. I don't.

CROSS EXAMINATION.

By Mr. Hutton:

Q. Did I understand you to say that cattle had crossed the bridge and wharf along the right of way?

A. My father's cattle, yes.

Q. They are likely to do that at any time are they not?

A. If they gets out of our yard or out of the pasture they will stray over, but they could go out to the main road as much as they would down there.

Q. If there were a gate it would be right much protection in keeping the cattle from crossing the bridge and walking along the said right of way would it not?

A. They couldn't get through if it was a ~~fence~~ gate and if the farm was fenced they couldn't get in the main road.

Q. I wish you would state again just what remarks in regard to driving the cattle Mr. Milteer has made to you?

A. He just told me where the line was, and impressed upon me was when I started, matters not what time of day it was, that I was to arrange the gates like I have said, open the one on the bridge, drive his cattle in, and shut his gates, and when we are through open his two gates and shut the one on the bridge, and that left whatever we have on the wharf exposed to his cows.

RE-DIRECT EXAMINATION.

By Judge Rawles:

Q. Your father keeps his cattle enclosed?

A. He tries to.

Q. Does your father have to keep a gate in a no fence country to keep his cattle from going off down the main county road and getting on any neighbor's land?

A. No sir, he does not.

Q. Then why should he keep a gate on the bridge to keep them from going on Mr. Milteer's land?

A. Well that is what we are trying to decide now, it is unnecessary it seems to me.

Q. If he keeps his cattle enclosed or tries to do so on his own land, and it is only by some accident they get out of the enclosure, then they could go either on Mr. Milteer's land or anybody else's land?

A. Yes sir.

Q. And if Mr. Milteer kept his cattle enclosed as he is supposed to do in a no fence country, it would only be in case of accident when they might get out of the enclosure, that they could come on your father's land would it not?

A. Yes sir.

Q. In either event, if your father kept his cattle enclosed and if Mr. Milteer kept his cattle enclosed, as both of them are supposed to do in a no fence country, none of the cattle, unless they escaped could ever reach this gate could they?

A. No sir.

Q. And therefore there would be no necessity for a gate there?

A. No sir.

L. R. McNEAL, being recalled, deposes and says as follows:

Q. Did you have occasion to haul wood or anything for your father over the bridge that we were talking about before Mr.

Bruce ever had a gate put on the bridge?

A. Yes sir;

Q. Will you please state whether at that time there were any bars or anything on the bridge?

A. No sir, there was nothing on the bridge at that time.

Q. Do you remember about the time when Mr. Bruce had the gate put up.

A. I can remember when they, Mr. Bruce and Mr. Milteer had trouble, and he Bruce put the gate there before they settled it.

Q. And up to that time I understood you to say you had used that bridge repeatedly and found no gate or anything on it?

A. No sir.

Q. Were there any bars across the bridge?

A. No sir.

Q. Have you ever seen any bars at any time across the bridge?

A. No sir, I have not.

Q. Do you remember about when Mr. Dennis operated a saw mill down there?

A. I remember when the saw mill was there.

Q. Was there any fence of any kind around what is now known as the Milteer farm at that time?

A. Yes there was a fence built around that lower part there

just above the bridge, out of saw mill strips.

Q. That was on the Milteer farm however was it?

A. Yes.

Q. Do you recall whether Mr. Dennis at any time had any planks or bars put up on that farm to keep his mules in or out when he was operating there?

A. Yes sir, he did.

Q. What days of the week did he keep such bars on there?

A. Why the only time I remember of his having them up was on Sunday when the team was turned loose to rest, grazing over the pasture.

CROSS EXAMINATION.

By Mr. Hutton.

Q. You say that you remember do you, the condition of affairs as regards that gate and fence on the other side of the bridge, etc., during the time that Mr. Dennis operated a saw mill?

A. I remember what was there when Mr. Dennis was there.

Q. About how long ago has that been to the best of your recollection?

A. Well I couldn't swear to the dates.

Q. About how long ago has it been?

A. It was between '95 and '98.

Q. Well suppose then it was in 1895, that would be nineteen years ago wouldn't it?

A. Yes sir.

Q. At that time there^{fore} you were about nine years old?

A. According to the date I gave you I must have been about nine years old, but I told you I couldn't swear to any dates.

Q. And you remember positively that at that time on certain days there were bars kept there by Mr. Dennis?

A. I didn't say that I remembered that there were bars kept there on certain days, I said that there was a fence above the bridge, I didn't say whether it was kept open or shut, but were bars put there to keep Mr. Dennis' mules in the pasture

when they were not at work.

Q. How often did you find bars there?

A. As often as I went over there?

Q. Every time then during that time that you had occasion to go by there you found bars?

A. I didn't find bars that I had to open.

Q. What sort of bars did you find?

A. Did I say I found bars?

Q. What were you doing at that time?

A. Going to school, working on my father's farm at different times between school hours, and if you must know, stealing strawberries off of different places around there to eat.

Q. How do you know who kept those bars across there?

A. I know who owned the land, and I know who had the right to keep them there?

Q. ~~Dennis~~ Who owned the land?

A. Dennis or Nix one of the two, Dennis was located on it.

Q. You don't know which one owned the land?

A. No sir.

Q. Well then you don't know which one put the bars there?

A. I didn't say there was any bars there, get that part settled.

Q. Now do you mean to testify that you never saw any bars there?

A. I said there was a fence around the hill just above the bridge.

Q. Do you mean to say whether there were any bars there or not?

A. No sir, I never saw any bars there at all.

Q. Now didn't you say a minute ago that there were no bars there that you had to put up?

A. I did not.

Q. Then all you remember about those days when you stole strawberries is that there was a fence there on one side?

A. It was a fence above the bridge.

Q. Who built that fence?

A. That I can't answer.

Q. You don't know what it was there for do you?

A. It was there to keep team in and hauling saw mill logs.

Q. What was there to keep the team from crossing the bridge?

A. The fence I just spoke of.

Q. Was there a fence on the bridge?

A. No.

Q. Well what was there to keep the team from crossing the bridge?

A. The fence I just spoke of.

RE-DIRECT EXAMINATION.

By Judge Rawles:

Q. If I understand you, in order to clear the matter up, you never saw any bars of any kind on the bridge?

A. No sir.

Q. And the fence or bars or whatever you may call it that you did see that were put up there probably to keep Mr. Dennis' team in were up on the field?

A. They were above the road that led across the bridge up the hill.

Q. They were on the farm however that now belongs to Mr. Milteer?

A. Yes sir.

Q. And if I understand that enclosed the mules on that farm?

A. Yes sir.

RE-CROSS EXAMINATION.

Q. Wasn't that fence that you are speaking of up there above Mr. Milteer's house?

A. No sir. There was a fence there to keep team from going out on that side. The fence I speak of was about twenty-five feet from the bridge.

And further this deponent saith not.

Signature waived by consent.

O. W. NEWMAN, being duly sworn deposes and says as follows:-

Q. State your name, age, residence, occupation, and if you know the parties to this suit?

A. O. W. Newman, 21 years, Nansemond County, farmer, and I know the parties.

Q. You are the son of the defendant are you not?

A. Yes sir.

Q. How many cattle does Mr. Milteer keep?

A. All I have ever known him to keep was two cows and possibly some calves.

Q. Did these cattle ever do your father's adjoining farm any damage?

A. No sir.

Q. Have you ever heard Mr. Milteer complain of any damage that your father's cattle has done him?

A. No sir, I have not.

Q. Are you acquainted with about where this gate was on the bridge that we are speaking of?

A. Yes sir.

Q. Your father took it down at the time that he took the whole bridge down, did he not?

A. Yes sir.

Q. At that time he simply built a dirt road or causeway over the creek, is that right?

A. Yes sir.

Q. What condition was the gate in before he took it down?

A. When we used it it stayed open and when we didn't use it we closed it.

Q. Does your father do a great deal of hauling there during the truck season?

A. Yes sir.

And further this deponent saith not.

Signature waived by consent.

Taken October 3d, 1914.

JOHN A. MILTEER, being recalled deposes and says as follows:

Q. Mr. Milteer it was testified to here by one of the witnesses, I believe it was Mr. Newman's son that you had demanded of them when they used that place they should drive your cattle somewhere. Did you ever demand of them that they drive your cattle anywhere?

A. Never did in my life, never made any demand along that line whatever.

Q. As to the fence on the upper side of the right of way, state whether or not you ever brought a suit to have that fence removed?

A. I did.

Q. By whom was that fence built?

A. B. M. Bruce.

Q. State whether or not that ended in a compromise ~~and~~ providing for the number of gates referred to?

A. Yes it did.

Q. Mr. Milteer you heard Mr. McNeal testify as to that fence Mr. Dennis built?

A. I did.

Q. Do you know anything about that fence?

A. The fence was there when I moved on the place, that Mr. Newman now claims to keep up, nineteen years ago, and as near as I can get at it it must be somewhere around one hundred and fifty yards up in my field.

Q. Mr. Milteer it has been testified to here by several witnesses that there were no bars on that bridge, and that in the memory of the witnesses there never have been bars there? What have you to say about this?

A. I say there were bars there, nineteen years ago, the 2d day of September, I moved on the farm that Mr. Newman is now on, and there was bars on that bridge, I lived there five year. These bars was kept up. I travelled back and forth there I reckon as much as anybody else right in the neighborhood,

Whenever I went through there I got out of my buggy, pulled the bars down and put them up, and this fence that was referred to a while ago just above the bridge was there at that time, up above where my house is now, and there was a pair of bars there that ~~kept~~ led out into my field that is now, and in this enclosure the bars across the bridge was the only preventative to keep horses, cows, mules or whatever the stock might be from crossing over on Mr. Newman's place, and on the fence above my house there was a pair of bars there to keep them out of the field that I now own.

Q. Was Mr. Dennis operating a saw mill there when you moved there nineteen years ago?

A. Yes sir.

Q. State whether or not those bars were constantly kept there until the bridge was repaired and the gate put in their place?

A. They were.

Q. You lived did you on the place during that time?

A. I lived right on the place.

Q. You had occasion did you not to cross every day or so, or every few days or quite often ~~did you not~~ during that time?

A. I went across there nearly every day in the year, sometime through the day.

Q. As a matter of fact Mr. Milteer, isn't it true that that cove separates your estate from the estate of Mr. Newman completely?

A. It is the dividing line between the two farms.

Q. Isn't it a fact that the only way that stock could get from one to the other directly would be either to cross that cove or across that bridge or dirt road as it is now?

A. Yes.

CROSS EXAMINATION.

By Judge Rawles:-

Q. How many acres are in your farm?

A. One hundred and six acres and a half.

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Q. Where do you keep your stock or cattle enclosed on your farm?

A. In my yard, I call it my yard, it is where my house is.

Q. Is that the only enclosure you have provided for them?

A. Yes sir.

Q. You know it is your duty, in a no fence country to keep your own cattle enclosed do you not?

A. Well that is what I do.

Q. Then if you keep your cattle enclosed ~~in~~ near the house as you have stated how do they get down to the bridge?

A. Why they go down there and go through those gates over on this piece of marsh land we have spoken of.

Q. How do they get out of the enclose that you have spoken of?

A. Well when I went on this place where I am now, these bars across that bridge was the only protection to keep them from off Mr. Newman's place, the bars was there and the gate was put there, and that was the only protection, and in fact all that I have ever known there until Mr. Bruce went to work and put that fence around there.

Q. Do you not know Mr. Milteer in a no fence country, it is your duty to keep your own stock up and enclosed so that they can not run on anybody else's land?

A. That is what I have been doing.

Q. Then how do you make it out that it is Mr. Milteer's duty to keep the division fence up?

A. I havn't said it was Mr. Newman's duty to keep up any division fence, there is no division fence. That gate on this line between us is the division to keep stock from one farm to the other. That was what the gate was put there for.

Q. But in a no fence country every man has a right to enclose his own stock on any part of his farm that he wishes to does he not?

A. I should judge so.

Q. Then if Mr. ~~Milt~~ Newman keeps his cattle enclosed on some part of his own farm, that is his lookout?

A. Well I should judge so.

Q. Would that not be the only duty that would be upon him in a no fence country, to keep his cattle enclosed at some place where they could not ~~get~~ go at large?

A. Well he hasn't done that since he has been there where is is at

Q. Well I am assuming that he had done it. Does your farm extend all the way up to the main county road, I mean the road that leads by your place to Crittenden?

A. No.

Q. Who lies between your farm and the county road?

A. Well J. T. Johnson, he lives above me; and a colored village above me.

Q. Is there any division fence between you and the land of J. T. Johnson?

A. No.

Q. Then your cattle unless you keep them enclosed would or could go right on J. T. Johnson's land could they not?

A. I have got a pasture, my pasture fence runs between me and Johnson.

Q. You claim then it is your privilege to have your cattle graze on this little piece of marsh that lies between the roadway running from the bridge to the wharf, and the cove?

A. Well it is mine and I should judge that I should have some free access or privilege to it.

Q. That is true, it is absolutely true, but if you put your cattle there is it not your duty to enclose your cattle on it as much as it would be on any other part of your land?

A. I should think not in that case, because I couldn't well do it.

RE-DIRECT EXAMINATION.

By Mr. Hutton:

Q. Mr. Milteer isn't it true that if you chose you could enclose one-third of your property, if you chose you could enclose two-thirds of your property or if you chose you could enclose all?

A. Why certainly.

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Q. Is there any law in your district that dicatates to you whether or not you shall enclose your cattle?

A. I have never heard of any.

RE-CROSS EXAMINATION.

By Judge Rawles:

Q. Conceding everything you have said in your last answer to be absolutely true, which indeed it is, as every man has a right to enclose, in a no fence country as much of his land as he desires, you do not claim that it follows that you can make your neighbor enclose for you?

A. Well that is something I havn't tried to do sir.

Q. But you are trying to make Mr. Newman keep a gate for you are you not?

A. No sir I am not trying to make Mr. Newman keep anything more than he found on that place when he rented and bought it.

And further this deponent saith not.

Signature waived by consent.

TAKEN NOVEMBER 17TH, 1914.

H. B. BRUCE, being duly sworn deposes and says as follows:

Q. State your name, age, residence, occupation and if you know the parties to this suit?

A. H. B. Bruce, 33 years, Suffolk and Ocean View, merchant, I know the parties to the suit.

Q. State whether you lived at any time on the Newman farm while it was owned by your father, B. M. Bruce?

A. I think it, if I am not mistaken, was bought in 1901, but any way I went off to school that year, and before it was bought, Mr. J. W. Martin, the man that had charge of both of the Dix farms, he carried me over and showed me this place and got after to get papa to buy it, and I went away to school, and when I come home I told papa about it and in the meantime Mr. Martin come up and he got after me to get my father to buy it, and my father bought it, and I lived there with cousin Pressly Brothers, he was the man that worked there, my father bought it for him.

Q. How long was it after your father purchased the farm before you went there to live?

A. Well Judge, I came home from school like this summer and I would go down there and help cousin Press out, about two years before I went down there.

Q. If I understand you Mr. Press Brothers was your father's first tenant?

A. Yes.

Q. Will you please state if you know whether or not when your father purchased the farm there were any gates or bars or any sign of either on the bridge which leads over the cove between the Newman farm and the Hiltceer farm?

A. Well before father bought the place, Mr. Martin carried us over and showed us what was supposed to be the right of way, but it didn't say, the deed reads as you will find, it is written, "and a right of way to the wharf that belongs to the

farm", it is written, "for the benefit of the farm."

When we went over to look over it there was nothing but a plain bridge, there wasn't any balances on either side, and no bars that I saw, and there was nothing said about either when the place was sold.

Q. Was there any gate there?

A. No gate at all.

Q. Who first caused a gate to be erected there?

A. I put it there myself. I was the first one that put a gate there across the bridge.

Q. Who built the gate for you?

A. I think Mr. Powell, if I am not mistaken, Mr. Powell or Anderson one, I think I put Mr. Powell to work on the bridge first.

Q. And you say that there was no sort of bars on the place?

A. No sir, not when father bought the place or when it was shown to us.

Q. For whose benefit did you have this gate erected there?

A. I had it put there myself, and I had these balances on each side of the bridge for the protection of my team, I had some mules that were very shy, and I thought it best to have a railing on each side of the bridge, and I had the gate put up to keep my stock from going over on Hiltner, and he knows it, but he is a man that I don't think you will ever get it out of him.

CROSS EXAMINATION.

Mr. Everett:

Q. Mr. Bruce were you acquainted with the farm before you thought of buying it?

A. Well I used to go down there every summer, I used to visit Mr. and Mrs. Martin every summer, I used to go down there and stay with them a month at the time.

Q. Where did they live then?

A. They lived on the Nix farm, on the Nansenond side.

Q. Was Mr. Martin at that time working the farm that your father purchased?

A. He was working both, he was working on the one he was on and the other one too.

Q. Can you say now that you remember noticing this drive-way and this bridge over this cove?

A. That I do not remember.

Q. I am asking now did you ever take notice of it at all?

A. Certainly, had to notice it in crossing.

Q. At that time was it used to haul stuff to the wharf?

A. Yes sir.

Q. Do you know then whether there was any bars, gates or anything there?

A. There wasn't anything there when father bought it, and there wasn't anything said about it.

Q. I am not speaking about it when your father bought it, but do you know whether there were any bars there or not some years before your father bought it?

A. No sir, I do not, I was never on there over once before he bought it.

Q. What did you put there-bars or a gate?

A. I put a gate.

Q. Several of the witnesses here have said that there were some bars there before Mr. Bruce purchased the farm, and some after. ^{to} What have you say about that--are they correct or not?

A. I didn't build any bars myself, and I do not know anything about any, I built a gate there to keep my stock from running over on his land.

Q. Mr. Bruce you and Mr. Miltner used the cove as a fence between you, a division fence between you?

A. Well I don't know about that part, all I know we had a right

of way to the wharf, the wharf belonged to us and we had a way to get to it, so far as the line, I don't know whether you could call that a line or not.

A. I am not talking about a line anyway, but didn't you and Mr. Milteer use this cove as a fence between you?

A. Well I put a gate there on this place to keep my stock from going over that bridge on him.

Q. But didn't you and Mr. Milteer use this cove there as a division fence?

A. No sir, I didn't use it as a division fence, I had a perfect right to go over it.

Q. If this did not act as a fence between you why should you put up a gate over the bridge for the protection of your own stock?

A. I had a right to go anywhere my feed called for. It was a no fence country.

Q. Mr. Bruce the answer that you gave is not in reply to my question at all. When you built the gate over this bridge, didn't this gate and the cove running between you and Mr. Milteer keep your stock from going over on Mr. Milteer's land and keep his stock from coming over on your land?

A. Now on the other hand Mr. Everett, it is this, if you have got a cove running between you and myself and that is the line of division between us this cove which is supposed to be the line, why cattle might not cross it, and where there is a bridge over it they might walk over it.

Q. I repeat the same question which can be answered "Yes" or "no". When you built the gate over this bridge, didn't this gate and the cove running between you and Mr. Milteer keep your stock from going over on Mr. Milteer's land and keep his stock from coming over on your land?

A. I put up this bridge to haul over to and from my tract to the wharf.

Q. I repeat my question which can be answered "yes" or "no!" When you built the gate over this bridge, didn't this gate and the cove running between you and Mr. Milteer keep your stock from going over on Mr. Milteer's land and keep his from going over on your land?

A. Why certainly it did that, it kept my stock from going over on his land and his from coming over on my land, but he did not have any right to keep that gate shut.

Q. And you kept that gate there during the time that your father owned the land?

A. While I was there I did.

Q. Well didn't you stay there until it was sold?

A. I stayed there about seven years, when I left there my father rented it to Mr. Newman who afterwards bought it.

Q. How many years did he rent it?

A. I think he rented for one year and rented the next.

Q. Did this gate remain there until Mr. Newman bought it?

A. Well the gate was on the bridge when I left.

Q. Do you know whether the gate was there at the time Mr. Newman bought it?

A. Well it was there when he rented it.

Q. You know it was there when he rented it, but you don't know it was there when he bought it?

A. Why I didn't go on the place twice after it was rented.

RE-DIRECT EXAMINATION.

Q. Mr. Bruce both of these farms were at that time in what is known as "no fence territory" were they not?

A. Yes sir.

Q. Was it not a fact that in a "no fence territory" every man is supposed to keep his stock fenced in?

Mr. Everett: Question objected to because it is a legal question.

A. I had a big pen fenced in that I kept my stock on, but in the fall of the year when we didn't have much work I turned the horses out in the field and let them run about.

Q. And at that time then you put the gate there to keep your stock from going across the bridge?

A. That is right.

And further this deponent saith not.

Signature waived by consent.

PLAT SHOWING

Location of proposed right
of way across the Lands of
John A Milteer to B.M. Bruces
Wharf Located on Chuckatuck Creek
Nansemond County Virginia.

Scale 40' = 1" Mch 25th 1907.
Variation 4° 21' West

RH Brinkley
Surveyor

