


No. 13999

Supreme Court of Illinois

Lavey

vs.

Jasper

71641  7

Copy of Records. Copy of Bill.

Wm. J. Lacey, in Washington Circuit Court, April
1860

Rudolph Jaeger, to the Honorable H. K. S.
O'Malley, judge of the judicial circuit
in the State of Illinois, presiding Holding Court in
Washington County, in said Circuit, in regular sitting.

Your Oration, Andrew J. Lacey a citizen of said County
lawfully complaining would most respectfully represent
that he is now, & has been for several years seized
in fee of the following real Estate, in said County to wit:
South West 1/4 of North East 1/4, & South East 1/4 of North West 1/4
of Section 27 T. 2 S. R. 2 W, which is enclosed in Callum

That one Rudolph Jaeger whom your Oration
in fact is the owner in fee of the North East 1/4 of North East 1/4 of said
Section 27 & in possession thereof. Your Oration could
further state, that at the time said lands were purchased
by your Oration, & at the time said land was purchased
by said Defendant & up to the time hereinafter men-
tioned, a stream of water did, & has been across
the land of said Defendant from near the South
West corner thereof across to near the North West Cor-
ner thereof in its natural Channel & course, thence
across other lands, not touching the land of your Oration.
That sometimes in the year 1857, said Defendant of his
own accord, & without your Oration being asked for
notice thereof to your Oration, dug a ditch to
run across the said land from the said lands from East
to West & crossed said ditch over the land of your Oration

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to run from East to West according to the said & thereupon
across the said lands of your Crator, thereby, & thereby
permanently upon the lands of your Crator, & that
your Crator has notified said defendant to fill up
said ditch and allow said water to run in and pursue
its said natural Channel & course as aforesaid but
said defendant refuses to comply with said notice
& persists in keeping said ditch & turning said water up-
on the lands of your Crator, that said ditch so constructed
& flowing said water thereby upon your Crator's lands
is a nuisance to your Crator, constructed & allowed
by said defendant against equity & justice & has already
expended & charged your Crator to a large sum of
money to the amount of \$1000.00 and as long as al-
lowed to exist it will be a continued cause of
injury & expense to your Crator & his heirs
& assigns, therefore as your Crator is entitled
to a adequate remedy at law, he prays that the People
will graciously order of subpoenaed day view, requiring
said defendant to appear & answer under oath
under oath, his oath being hereby expressly waived,
and that on final hearing of this Bill, your Honor
will order & decree that said defendant discontinue
said ditch, & allow said water to pursue
its natural Channel & course as aforesaid, & that said
defendant be perpetually enjoined from by ditching
or otherwise turning said water upon lands of
your Crator as aforesaid, that your Crator be allowed
costs & expenses justly due & to be paid & allowed by
said defendant, & that the flowing of said water upon

your orator's laud, & that your Honor will make such
other & further order as seems best in the premises
(thus ever ever pray) J. F. Lacey

Attorney & Counselor Solicitors

Copy of Summons

State of Illinois }
County of }
to the Sheriff of said County, greeting

We command you that you summon Rudolph Jasper
to be found in your County, to appear before the Circuit
Court of said County, on the first day of the next term there
to be holden at the Court House in Bushville on the
Monday next, to answer to a bill of complaint
filed in our said Circuit Court on the Chancery side there
of, against him, by Andrew J. Lacey et al. to have
aid for relief and further to do and receive what our
said Court may then and there consider in this behalf
and thereafter to be returned to our said Court, as the
law directs. Witness Henry H. Talbot Clerk of our said
Court and the judicial Seal thereof at Bushville

this 26th day of March A.D. 1860

H. H. Talbot Clerk

Copy of Summons filed by me,

in Chancery to above named

and the said defendant to said bill

and also return of said bill

Because the bill does not clearly show
that the estate was in issue, and that it is a
different from the original one, and said
bill does not show that the same is
in issue.

3^d Because it does not allege that it is a nuisance
cause a nuisance, but that the property is already used
for which an action at law lies

Receipt of answer Solicitor for Defdt,

Copy of Order

Circuit Court of Washington County, Maryland, April Term

Tuesday April 10th 1860

Andrew J. Sney, Vice to above mentioned & for Relief
vs
Rudolph Jasper & plaintiffs by Hosmer & Wallis his Solicitors
& the defendants by [unclear] his Solicitor
and on a Bill filed to answer Complaint filed by
[unclear] on Tuesday April 10th Defendant
to Bill filed (decrees) sustained & leave given to
answer Bill instant - answer filed & cause set
for hearing at the next term - Ordered that replication
be filed before taking testimony - Cause referred to Judge
Waller as special master to take testimony & cause con-
tinued

Copy of Answer

Rudolph Jasper, of the County of Washington, in and
for the County of [unclear] Court & Term 1860 In Chancery
vs
The said comes Rudolph Jasper and
Sney and denies the many errors and
improprieties in the Complaint and answers for answer
thereto the Respondent says that [unclear] the
[unclear] fee of the cause decreed in said Bill and has
been for a long space of time [unclear] years and true
It is that this Respondent is [unclear] of the said

as charged in said bill and has owned the same for a long
space of time to wit for fifteen years and true it is that
the said land is enclosed in cultivation as charged
But Respondent distinctly denies that at the time said
land was purchased by Compt. the Respondent that
there was a stream of water running across said land
of Respondent as charged in said bill or that at any
time since that a stream of water ran across the land
of Respondent as charged or in any other manner or but
charge the fact to be that there is no stream of water
now running across the land of Respondent nor has
there ever been since Respondent became the owner
of said land Respondent expressly denies that he
did in the year 1859 or at any other time plough or dig
or plough or dig any ditch or or across his or Respondent
land for the purpose or with the intention of turning a
stream of water from its natural channel or course or
that any ploughing or ditching dig water course or stream
of water was changed or caused to be changed from its nat
ural channel or course and by said Respondent or his agents
or by work or direction caused to leave its own natural Chan
nel and run in or upon the land of Complainant in any
other direction than its natural channel or course. But
the Respondent charges the fact to be that whatever water
now or at any time during the year 1859 ran upon or a
cross the lands of said Complainant does now run upon and
across said lands in the same natural course and channel
that it did before and at the time when Complainant pur
chased said land and that in no way or different channel
or course the Respondent or his agents or by work or direction

has been seriously & permanently injured by the change
of any water course either by artificial or natural means
since the said Complainant became the owner of said land
or that any water course or stream has been in any wise chan-
ged by ditches or ploughing from the natural course &
channel thereof Respondent denies that any ditch
made by Respondent since Complainant Respondent
because the owner of the Respondent's tract of land
has ever been or said he ever does or ever permits the water
to be run to the Complainant's lands & thereby injured or in any
wise impair the value the value thereof either permanently
or temporarily and having fully answered all the
allegations of said bill as Respondent is advised is material
to be made he prays to be discharged with reasonable
costs herein Expended &c

Securitate Statet & Under
Sol. per Deputat

Copy of Subpoena

State of Illinois ss The People of the State of Illinois to
the Sheriff or any Constable of said
County Greeting

That we do hereby command you to summon William Klingelau, as
only Robert Lang and David Anderson if found in your
county to appear before at my office in said
county at the hour of five o'clock A M to
appear and to speak in answer herein A. J.
Lang is Complainant and subject herein is defend-
ant on behalf of said Complainant and that you
shall not omit under the penalty of the law to
under my said and return the 20th day of May

1860

copy of Depositions of Compt & Witnesses
State of Illinois, of the Spring term 1860 Washington Circuit
Washington County, Court

Shirley J. Lacey vs Bell to abate stream and for Relief
continued to take Depositions

Depositions of Compt & Witnesses taken
before me at my office by Agreement

of the attorneys of Compt and Defs. The attorney of Compt
and Defs being present. William Kingston witness for Compt

interrogated by the attorney of Defs. Do you acquainted with
the lands Compt as a Def to this suit? Ans. I am acquainted

with Compt, not personally with Defs. But do you acquainted
with the lands mentioned in said Bill and the natural channel

of the stream of water running across said land of said Compt?
Ans. I am.

Where is it nearest as you can, where said stream enters
land of Defs and what direction after entering Defs land

and the course of the natural channel of said stream runs?
Ans. It runs in a southerly course on the East side about 15 or 20

feet north of Defs fence (runs about a north west course)
the land about where does said channel pass over land of Defs

Ans. About the south west corner of the NW 1/4 of said land
but I do not know of what size or how joining said

lands on the West. Who the Compt Andrew J Lacey
Ans. How long have you been acquainted with said land?

Ans. Since 1855. Is the land well or well cultivated?
Ans. It is well cultivated, but I do not understand it.

But how long have you been acquainted with said land?
Ans. Since 1855.

the course of this stream. ...
Q. What was the condition of the natural channel
of said stream, when you examined it? A. It was
obstructed in its natural course.

Q. In what way was it obstructed? A. By a pile
of straw placed in it. I think there was no real obstruction
the water.

Q. How far from the back land of depots, said
land is it to that obstruction in the stream? A. About
a half way across said land.

Q. State as near as you can how high said obstructions
were at the time you last saw it, calculating from
the bottom of the natural channel of said stream.
A. They have been a foot.

Q. If the water in passing along the natural
channel of said stream would or not flow upon the
land of Compelt? A. It might only flow in times
of floods, as the channel is not very deep, and the land
is low. I think the water that would ordinarily flow
along that stream would overflow the natural channel there
as to ~~it~~ flow upon Compelt land? A. It would
not, except at the north west corner of depots land, it might
because the land is very low.

Q. How near the north west corner of depots said land
does the natural channel of said stream pass out? A.
I cannot state exactly, it seems to me it is hard to tell.

Q. In what direction does the water of that stream
now pass from where the natural channel is obstructed
by the pile of straw? A. About due west until it
passes into Compelt land, then it takes a south west

by direction of course.

Q. 17. Do you know how the channel that now conducts the water of that stream in a westerly direction from the piles of straw was made? A. Yes. It from all appearances it must have been dug, but I do not know who dug it.

Q. 18. Was there any such channel there when you owned that land? A. No Sir.

Q. 19. How deep was it when you last examined it? A. About 2 feet I think.

Q. 20. How wide? A. About 12 feet.

Q. 21. How you examined said Campbell's land immediately back of said被告's land? A. I have.

Q. 22. From that examination, can you state whether said land is injured by the water running as it now does? A. Yes I think it is.

Q. 23. Does it injure any more than the 1/2 acre just lying immediately west of said land of被告's? A. I think it does.

Q. 24. How far does the present channel of said stream pass through the land of Campbell? A. It might be 1/2 of 1/2 or more or less.

Q. 25. Is not the injury permanent? A. It is permanent if the water is left running as it now does, but I do not state to what amount Campbell's land is damaged (objected to). A. About two hundred dollars.

Q. 27. State the value of the injured Campbell land & acres from said stream if it be washed deep & cleared, the west end.

Cost of drainage ...

Sub 1. Do I understand you to say that you entered the
records of land in 1842 on what is called the 1000 acres,
Sub 2. How long did you own it and how long did you live
on it? Ans. He did not live on it about one year -
owned it about one and a half years.

Sub 3. Did you ever have it surveyed? Ans. Did not
Sub 4. Do you now know the number of the piece of land
on which Cornet resides, or the number of the section
of township in which they lie? Ans. Do not.

Sub 5. How long has Dept. lived on the land on which he
now resides and who lived there before he did? Ans. I do
not know how long Dept. lived there - I think David Rice
lived there before him.

Sub 6. Have you or not had anything to do with or any-
thing to do with said land since you sold it? Ans. Not
anything that I know of - I have not been more than 20
at most on it during the 16 years since I sold it.

Sub 7. Then all you know of the corners of said lands
have you other persons? Ans. That is all I know about it.

Sub 8. Do I understand you to have said that the gully, since
you went from the straw pile or obstruction before I spoke
of before was 2 feet deep and 14 feet wide? And during so
long a time does that gully continue of that depth
and width its source, marked out in your answer
to the first question? I think it continues pretty nearly the
same until it runs out of Dept. farm a couple and
then it becomes larger, both deep and wide, in some
cases until it leaves a couple feet, it then passes un-
der a bridge by the St. Louis road.

Sub 9. Do you still have the land free from water?

those and are the dimensions of that bridge, but we do not
not say how long, but know it is but a small bridge
Small In answer to a question as to whether this
gully has been made or dug, Yes Yes

July 12 How long would it take one hand to dig such a
gully beginning at the straw pile and ending at the bridge
passing over ^{part of} the land and across the fields; and
how long that would take, without the knowledge of Couplet
the tenant who does it. (Objected to by Couplet. etc) Ans,
if he did it with a Spade, it would take a good
while, but with a plow he could do it in a short time
but not know if it was done with Couplet's knowledge
we cannot say whether it could be done without Couplet's
knowledge or not.

July 12 How near the gully does Couplet live? Ans
about 1/2 mile

July 12 How far from the living near that gully? If so how
far? Ans about 1/2 mile (Objected to by Couplet. etc) Ans the
tenant living about 1/2 of a mile from that gully at
present his name is James W. Couplet

July 12 Is there a cross fence where said gully enters
Couplet's land, and if so how long will it be there? Ans

Yes there is a fence there, I do not know how long since
it was there, not because the land is for sale since I
sold it.

July 15 Do you know when that stream or gully has been
changed as you call it? Ans we think it has been changed
do not know.

July 15 Can you swear upon your oath and knowledge
that it has not run where it is now for the last 10 years?

the same way.

Jan 17. Is this stream or gully a natural one, or is it a gully which you have been opening, a running stream of water or does it flow only when it rains, and only when it rains.

Jan 18. Can you swear that that gully was not worked out by the natural force of the water at some former rainy spell. But do not think it could have been done in that way.

Jan 19. Can you swear that the straw pile you speak of above was not just washed together. But I do not think it was. Is it not where the defuncted brick stacks yard? But I do not know.

Re-Examined by Comptrolr Atty

Q. Is the bridge you speak of in your Cross Examination a gully or is it across another one? A. This and another gully, in fact, run from and both run under the bridge. But I have paid straw pile down to where this gully joins the other one referred to in your last answer. Can you see any indication in the land, that it would cause the water to make or seek a natural channel there? A. No Sir, I think not.

Q. Describe the banks of this gully from the straw pile down? A. They are rather steep I think.

Q. Is it likely that straw piles in the original channel would take a great deal of work to give the water a straight way to make its cut its own way? A. No. By breaking a few up and well down, the water would find its way.

Q. Taking all these things into consideration, could or would not this gully have been easily made without complex machinery? A. Yes. It could through what fields or lands I think I have enough Comptrolr's out

no knowledge

Sub 6. Describe the appearance of the land in a north westerly direction from said straw pile in this. There appears to be a dip in it to near the north west corner of Deft's land then there is a piece of meadow.

Sub 7. Do there any channels north and west of the north west corner of Deft's said land (running in the direction of the meadow) you speak of. There is a small one for north and west from Deft's said land is about 200 or 300 yards where it appears like the head of a cotton branch.

William Kingston

Sub 8. Do you swear to before me this 12th day of June 1860

Isaac Hester Comin

Sub 9. Do you swear to before me this 12th day of June 1860

Sub 1. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

Sub 2. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

Sub 3. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

Sub 4. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

Sub 5. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

Sub 6. Do you know the parties Comin and Deft to this suit and the nature of the case acquainted with the Act of 1847 and Act of 1857 of sec 27 to 30, 50 in Washington County, Tennessee and

lies about 1/2 miles east of said Dept's land, runs nearly west
west, with zigzags through Mr. Deft's land, and then dep
land into East line, about 20 rods north of his house. There
nearly west about 100 or 150 yards. There nearly north west
a little more north than west through Dept's land, and passes
out a little east of the north west corner of Dept's land
and forms a channel on Mr. Jackson's land.

Q. How long have you known that stream or run? Ans. About 27 years.

Q. State whether or not the courses you have given is the
natural channel of that stream? Ans. I am confident they are.

Q. When you first saw it, was there any improvement
in Dept's land? Ans. Not any.

Q. How long since you saw it? Ans. Last Saturday.

Q. Was there or not any obstructions in the natural
channel of said stream then? Ans. There was.

Q. What was it? Ans. Straw, about 500 or 600 yds
long where it enters said Dept's land.

Q. How high is that straw, and how far down the
channel does it extend? Ans. About one foot high, and
down about 50 or 90 yards.

Q. How long has that straw been there? Ans. Not
more than a year or two.

Q. How you state what direction from that straw pile
the water now takes and where does it run to? Ans. About
west direction until it gets on to Camp's land, then when
there is much water, it spreads over the bank, and forms
two washes north and one west that flows on to Mr. Jackson's
land, that west forms a deep gully, on Camp's land on the
west end of Dept's land.

Q. Do you know that gully conducting the water to

Aug. 15

of the straw pile was made? In this I do, it was then only by means of a plow or Spade. I passed there in a day or two after it was ^{done}

But 18. When was that? ^{It is} About two years ago

But 19 Who was living on depts lands at that time? ^{Ans} Deft himself

But 20 How deep was that gully when you last saw it? ^{Ans}

Depth about 3 or 4 feet deep and about 8 or 9 feet wide

of near the straw pile and gradually becomes shallower and

deeper until it reaches Couplet's land, it is then quite

deep until it reaches Couplet's land, until it comes to the deep gully

at a spot of which is about 200 yards from the east line

of the lands.

But 21 Is it not this ditch, conveying the water west

ward that straw pile, a source of irreparable injury and

nuisance to said Couplet and his heirs if left in its

present condition? ^{Ans} It is,

But 22 State to what extent if any, said Couplet is damaged

by said drain last above mentioned? ^{Ans} Well, I cannot

say more than a hundred and fifty dollars

of loss sustained by depts. ally

But 23 Do you wish to convey the idea in your opinion

above in chief, that the gully or drain you speak of, is a stream

of running water or only gullies with water in rainy or wet

times? ^{Ans} It runs only in rainy or wet times - It is not a

running stream.

But 24 Was there not a gully of which you ^{before} spoke running

back west through said Couplet's land, to the west line, to the

road now which there is a bridge, more than two years ago?

^{Ans} It never was there but perhaps for the spring, there is

that gully on the east side of the road.

No gullies in the land of Compt, situated in said hill, and
some on the east side are likely the stream of the water
little drain on the other piece which has been there for
years, which runs nearly heavy across that piece, and is
the drain before spoke of, as receiving the water of the
rain which runs from depts land, through Compt's other
piece.

Q. Is it not the slope of Compt's land, or that next depts
piece and piece of land, also, is a low level piece?
A. Yes, Is it not lower than depts piece west of it? A. No
The water inclines to run north and west. I cannot
say which is the lowest.

Q. What is that 100 acres worth? (Objected to by Compt)
A. Yes, I have ten dollars per acre.

Subscribed and sworn to by Jesse Lively
before me this 15th day of June 1860

Witness claimed to be T. A. C. Miller, Compt's
Dancer, Anderson witness for Compt, pro...

I have told you that the parties Compt and depts witness,
and that Compt, never saw depts until Saturday last.

Q. Is it not a gully situated with the drain in dispute between
the water, and the land on which it is situated? A. Yes, I
have been along it three or four times only.

Q. From that examination you would state what the nat
direction of that drain is, after it enters Compt's land? A. I
will not say a straight line, but the piece of channel I know
is too straight to have been the natural channel - it is as
straight as could lay off a surveyor.

Q. Did you see that drain per se, or by the water in it? A. I did

Q. State if the land of Couplet, where said drain enters it, is or not higher than the land of Deft, at said straw pile and in a N.W. direction from said straw? Ans. I think it is higher, as I observed deposits of straw and stuff on the banks on the west side of the furrows running north

Q. State whether this drain in its present condition is a source of any possible damage to said Couplet, so long as it is permitted to remain in its present condition? Ans. I believe it is a source of damage to said Couplet, to some extent, but that the damage to Couplet by it, under the present state of things, is not more than a few hundred dollars.

Cross Examined by Deft's Atty

Q. How long have you been in this country? Ans. I came to this State 18 months ago, and have been on said lands but twice that I recollect of.

Q. Who is the person who introduced you to the lands? Ans. D. S. Anderson, who introduced and knows to be before me this 19th day of June, 1864.

Q. How far is the land of Couplet from the land of Deft? Ans. It is about 15 miles, and is situated on the north side of the river.

Q. On the 13th of June, 1864, the parties Couplet and Deft with their attorneys met pursuant to a judgment, Robert M. Lacey witness for Couplet produced and showed

to the jury a map or plan of the lands of Couplet and Deft, and the jury returned a verdict in favor of Couplet.

Q. State if you are acquainted with the lands mentioned in Couplet's Bill of file, and if so, state the date of the same. Ans. I am acquainted with the lands mentioned in Couplet's Bill of file, and I am acquainted with the lands mentioned in Deft's Bill of file, and I am acquainted with the lands mentioned in the Bill of file of the 27th of Decr 57 D. S. R. 5 W. and I am acquainted with the lands mentioned in the Bill of file of the 27th of Decr 57 D. S. R. 5 W. and I am acquainted with the lands mentioned in the Bill of file of the 27th of Decr 57 D. S. R. 5 W. and I am acquainted with the lands mentioned in the Bill of file of the 27th of Decr 57 D. S. R. 5 W.

line of said Camp... NW 1/4 of said...
where said ditch crosses said little stream there are straw
and hay placed in said little stream so as to obstruct
the water and cause it to flow into said ditch. It ap-
pears like as if it had thrashed grain there or near there
and left the straw on the ground.

Sub 10. How the dimensions of said ditch as near as
you can find said straw piece to said Camp's land?

Sub 11. How deep is it? I recollect it is from about 1/2 feet
to 1 foot and from 1/2 foot to 6 or 10 inches deep.

Sub 12. How does it appear how was that ditch made?
It must have been spaded, or plow in the first instance
toward the water washed it out I suppose.

Sub 14. From the character of the ground would the water
ever have taken that course if no ditch had been made,
or is it? No, I should think not. In fact I know
it would not.

Sub 15. Look at this plan marked Ex 4, and state what
it is about a correct representation of the lands and
ditch and course thereof? Spoken of by you
in your answer above? Yes, I think it is as near

as could be made except that said ditch does not
appear to completely shut up, as in said plat,
it is only a narrow channel. It is a good representation
of the course of said ditch or main branch.

Sub 17. What does the line marked A, represent? It is the
line of the ditch as it runs from the
land to the ditch. It is a line on a small scale
and is not to be taken as a true representation
of the ditch as it runs from the land to the ditch.

Ans. It is intended to represent the low and high ground
but, extends too far East and not far enough West.
Qut 20. What lines are marked on the map, and what do they mark?
The low and high ground, etc. The lines marked a b
back lines are marked by me, but the last one marks a b
a more correct.

Qut 21. What kind of representation is plate marked Ex B,
and how is it to be an amplified copy of Ex A? Ans. It is
not an amplified copy, about the same.

Qut 22. What does mark b represent on each of those plates?
Ans. It represents the place where the branch again forms
the channel and marks out the land.

Qut 23. Did you ever ask deft Jasper, why he put that stream
and logs across that little stream? Ans. I did.

Qut 24. What did he say? Ans. He said he could not make
the water run in said ditch without he did it.

Qut 25. State if you know of Compt. regarding deft to quit
running the water by said ditch on his Compt's land.
Ans. I know he did.

Qut 26. How long before the commencement of this suit
did you receive the request 1859.

Ans. I received the water done after leaving said ditch
and Compt's land on Compt's land? Ans. Yes, it being
the water it runs through a well, West on the surface about
50 yards, where it reaches the quarry, where there used to be a quarry.

Qut 28. How much of a quarry was there, before the water
was turned there by said ditch? Ans. None at all, but
lower down there was a branch.

Qut 29. How much of a quarry is there ^{now} since the water is turned
there by this ditch? Ans. About 1/2 of a mile long and

21.

from 6 to 6 feet deep, and 10 feet wide.

Cross Examined by Deft. 11th

Int. 1. How long has the gully of which you last spoke existed?

Ans. It has been in progress of formation since 1850 I think.

Int. 2. On whose land does this gully pass, and how long has that person owned said land? Ans. Over said couplets,

for some time past, I think about 6 years - the
the space 10 years

Int. 3. What source was that gully fed from the year

1850 to 1851? Ans. It was fed from the same

source as it is now, but they run from a different direction

said Deft. and one Doelling in about 1850 plowed

furrows from said Deft's field, down towards said gully,

or in that direction

Int. 4. About this time, 1850, in wet times, was there not quite

a pond or portion of which lies on the E & corner of said

couplets land into the NW 1/4 of N 8 1/2 S 27 E, and was not

fed gully fed from that pond in proportion to the amount

of water on the ground? Ans. There was a pond there

at that time, but what portion of its water fed that gully

I know not.

Int. 5. In 1850, at the time Deft and said Doelling did the

work you speak of, was there a pond at W 1/4 of N 8 1/2 S 27 E

land? Ans. I think it was but am not certain of it.

Int. 6. Do you know how long has the water run as it

now runs through Deft's land on to couplets land? Ans.

I do not know ^{it} look when I was there last August, as if

it had been running there for two years, but the first

I know of it, was in the month of August

Int. 7. What do you mean when you say branches of stream

May 22.

do you mean constantly running streams, or streams that only run in wet seasons, &c. I mean both. But I think those branches you speak of in your examination, constantly running streams, &c. They are not they only run in wet times or seasons.

Re Examined by Comptrolr. City.

Q. What is the name and lot of the water from that Slashy ditch marked in such place. Ans. The ditch marked B. Shows its name lot.

Q. In your answer to Sub 3 Cross Examination you say that the gully was fed by the same branches but running in a different direction, now what branches are feeding said ditch fed said gully, if any marked on Ex. B. &c. does? Ans. Those marked on said plat Ex. B. - D & C, and B & E. Robert McLaury

Subscribed and sworn to before me this 13th day of June 1860 Isaac Miller Comr. Adjourned to 14th day of August 1860. By Consent of parties

in and 17th 1860.

Witness my hand and seal of office as above said, at the City of New York, this 13th day of June 1860.

Q. Are you acquainted with the parties to this suit? Ans. I am not very familiar with it.

Q. Are you acquainted with the lands mentioned in the Bill in this? Ans. I cannot tell the name of it, but know where the line that is the dispute is about.

Sub 5. State if you know how the water used to run across the tract of land that you Comptrolr? Ans. I cannot positively state it.

But 11. State according to your recollection. Ans. According to the best of my recollection the most of the water off that piece of land, came out at the north side of Jaspers land, where the fence used to stand, when he bought the place or about that time.

Q. Where did it then go to? Ans. I think it scattered some of the water out of the fence and run into a slash and run off to the west. I think that is the way it went, but I am not positive that was the only break or one let, but I have heard it was that one let. Q. And I suppose the old man Jackson, he forbid us to go on it yesterday? Ans. I am not familiarly acquainted with this ground, and you may know you been so acquainted? Ans. I need to pass it a good deal have not pass over it for much for the last 10 years.

But 8. How long was this run out let you speak of, and how far from Jaspers land to where it begins? Ans. Better ^{to show} than the old man Jackson and Louis Reed lived here it is right down the hollow.

Q. Do you know anything of a ditch across the south side of this land? Ans. There is a ditch on his land which had run north near the south line of his land, but I think it was the ditch that was there. Ans. Well I am not sure of it, but from the looks of the land there it would be reasonable it would strike the water. I see in couple fold, the water appears to have run down the south along some furrows. I think it would be a good one, and a good one channel, from the end of the ditch for some distance, I had not say how far it would run if it injure the land? Ans. I would suppose

...the direction couple said they had... until we...
...to get over... he passed... running any...

...where left

...this

...to

...A loose... where the...
...to be... and where both parties say is...
...from...
...I did...

...particularly by...
...particularly as I could...

...of your observation...

...and fall...
...than within...
...and gapers

...we find

...any part of

...depth

...your survey

of any natural channel.
 Q. Now, if there is any sign of a natural channel
 in the stream, it is not a natural channel, any
 more than from D to B, the same of the stream
 to B, it is a slight appearance of a channel. Some
 of the way is a narrow and across which I could dis-
 tinguish the appearance of a channel.

Q. Now, if it were a natural channel, it would fall on
 come to B and a large portion of it
 the south side of it would flow on to Jackson's land,
 but by the ditch it is all turned on Campbell's land.

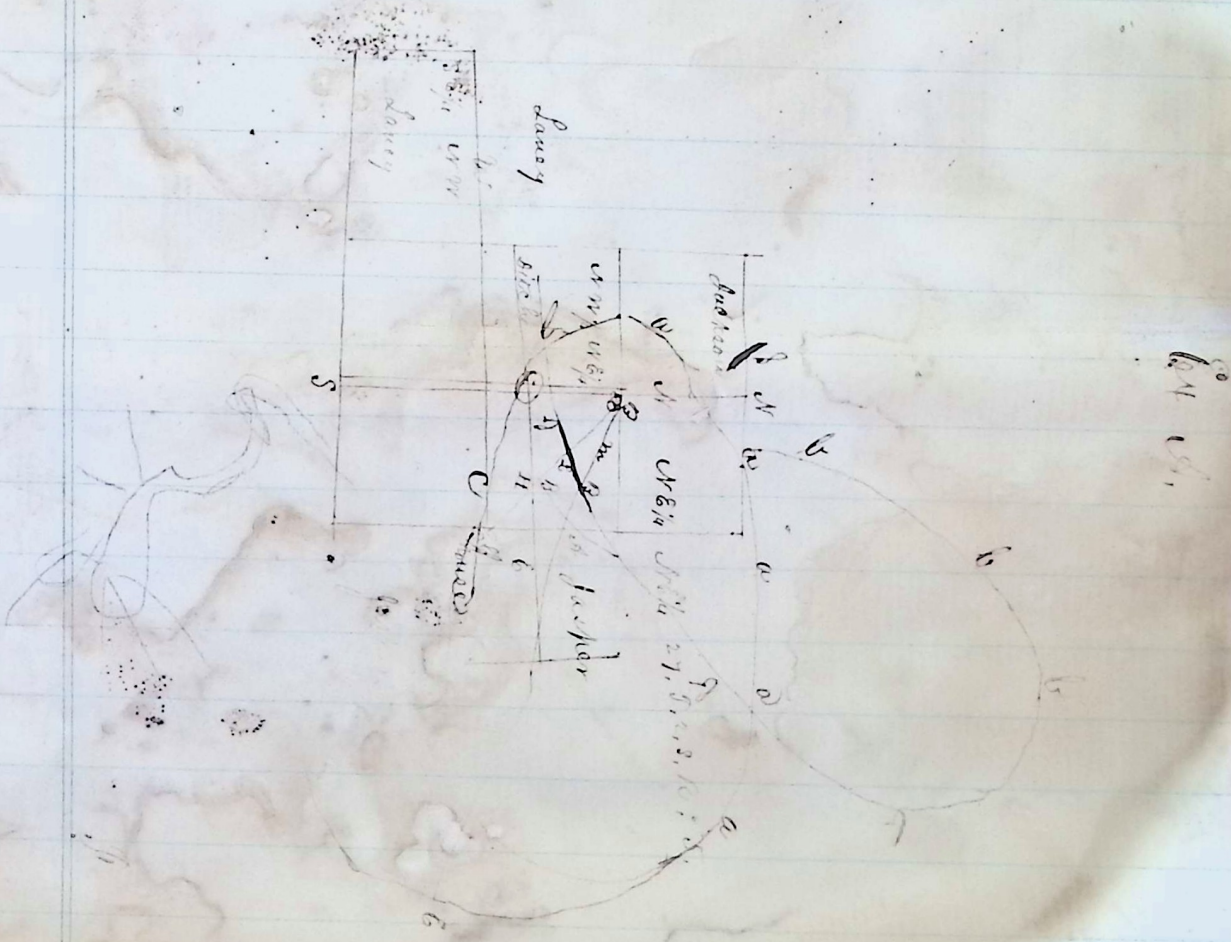
Q. Examined by Deft.

Q. What is the depth of the deepest part of the stream
 in or about B? A. In its present state the
 land being in cultivation, it has no distinct
 bank banks, going with either it runs left from the
 west side, I think it would rise from 5 to 8 inches
 but did not test it with the instruments.

Q. Are not the lands on which you made the
 in cultivation? A. They have
 in cultivation, and on which you made the
 in cultivation, it is difficult to say where the
 in cultivation is high? A. At the beginning
 of the stream, it is high, about 10 to 12 inches
 in cultivation, it would be difficult
 to say by the eye, where the channel was
 but the spot having asked you at the ground about A,
 when you now be kind enough to apply this question
 to the ground below, it is a new one as to that
 part of the ground, where the stream was made?

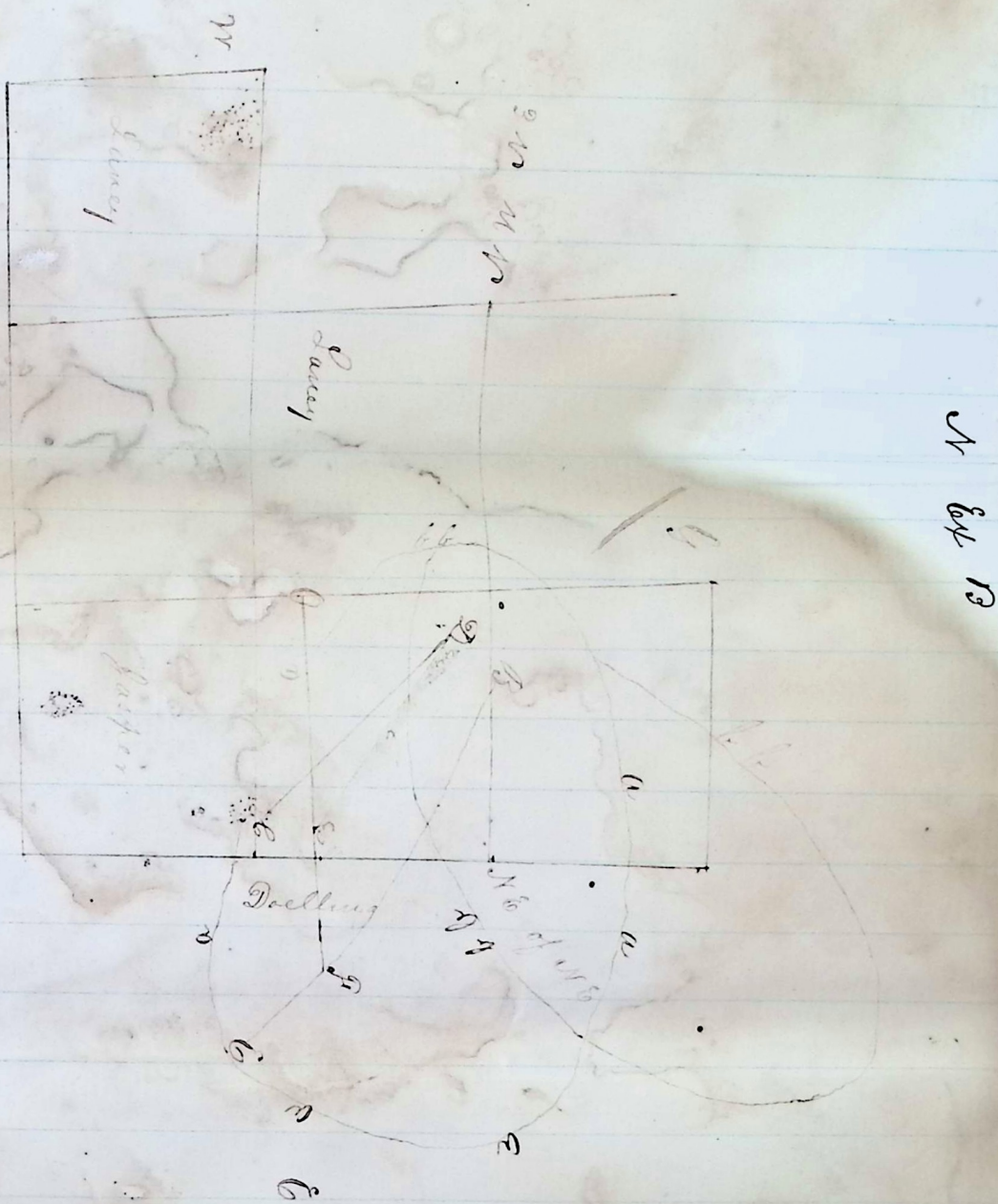
that the ... were
 by ...
 and ...
 by each ...
 as Exp. A
 and
 \$15.00
 Commr

Copy of Exp. A & B.



Exp. A

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Copy of Lot 12.

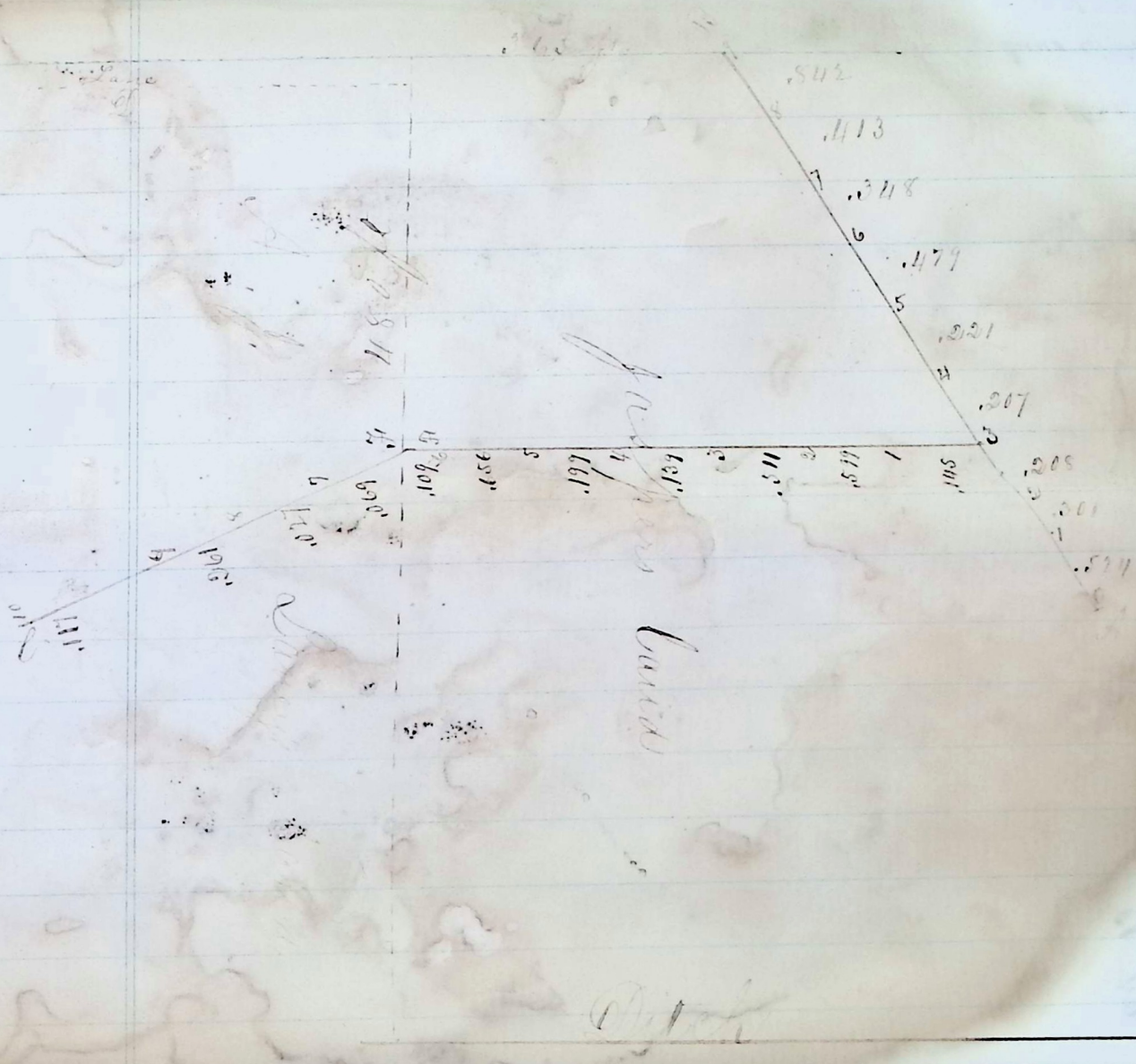
Notes explaining survey made for A. J. Lucy with new
 tape and level Aug 10th 1868.

Station 1, at the beginning of the line A. B. is three or
 four hundred feet from the ditch. The line A. B. runs N 30°
 W and is 500 feet long. The ditch on this line is 3 feet &
 1/2 wide and 1 foot deep. The distance between the ditch and
 the line is indicated by the numerical figures along the line,
 showing the feet in the ditch and the feet on the line.

Station 2 is on the line A. B. near the
 to the ditch. The distance between the ditch and the line is
 feet in the ditch and the feet on the line.

A line from this point measuring 1000 feet, S 5° West 1000 feet.
 The fall in this 1000 feet is $\frac{1174}{1000}$ of a foot. From station
 8 on this line to the point C is a line of 8 tenths of a foot.
 The point D is $\frac{152}{1000}$ of a foot lower than the point B.
 For Roots

John Jackson's land.



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Copy of Subpoenas

State of Illinois } ss. The People of the State of Illinois to the
 Washington County } Sheriff or any Constable of said County
 Greeting. You are hereby Command
 ed to summon Lewis W. Corning, Robert Mc Kennedy, David
 [unclear] and [unclear] to be and appear before me
 at my office in said County on the 1st day
 of July next at 10 o'clock in the forenoon to testify
 and the truth to of all or a case wherein [unclear] Lacey
 is plaintiff and [unclear] Jasper is defendant in behalf
 of said [unclear] and this you shall not excuse under
 penalty of the law. Given under my hand and
 seal of office this 25th day of June A.D. 1860

Isaac McLean Clerk of Court to take and

State of Illinois } ss. The People of the State of Illinois to
 Washington County } the Sheriff or any Constable of said County Greeting
 You are hereby Commanded to summon
 Mr. Groves, Peter McKisnow, John Jackson and Reuben [unclear]
 to be and appear before me at my office in [unclear]
 Washington County on the 2d day of August next at 10 o'clock
 in the forenoon to testify and the truth to speak in a
 case in which Susan J. Lacey is plaintiff and Rudolph
 Jasper is defendant in behalf of said [unclear] and this you
 shall not excuse under penalty of the law. Given under
 my hand and seal of office on the 25th day of June
 A.D. 1860. Isaac McLean Clerk of Court to take and

Copy of Depositions

State of Illinois ss. Of the County of Washington
 Washington County } Court held at [unclear] and [unclear]

Continued to take depositions

Depositions of defendants witnesses, taken before me at my office by agreement of the Attorneys of Compt and depts. The Attorney of Compt and depts being present

R. M. Kennedy, deposed and sworn

Sub 1st. Are you acquainted with the place Compt and depts. the site of the site of the place

Sub 2nd. Are you acquainted with the location and situation of Compt and depts lands described in the bill and also to wit of N. P. of Act, and Secs of Act of Sect. 27 and Secs of Act of Sect 57 of D. C. in Washington Territory and if you now long have you known them? Ans. I have known them ever since I recollect any of them and 15 years more or less.

Sub 3rd. Do you know whether any channels or ditches enter the depts said lands, if so state where they enter, and what their natural course or direction has been and is now, and where in their natural course they leave the said lands? Ans. A branch enters depts said lands near the corner of same in a NW direction to about the middle of said tract, where it spreads out in a NW direction and runs more or less leaves the said land all along from the NW corner of said tract to about half the length of said tract. It then runs out about 100 yards south of said NW corner the West side of depts said land and the East side of Compt's said land is low and wet - used to be considered by of a dried pond.

Sub 4th. In what direction the water of that pond did run when ever flooded by said stream? Ans. The water of said

thinks, run out at the NW corner of the NW 1/4 of 27th Sect 27
of Couplet's land above described, and runs in a SW
direction through the SE 1/4 of the NW 1/4 Couplet's land
above described. At the SW corner of the last des-
cribed there is a considerable gully, has been
formed by a spring & recent

alterations. Has there been any material alterations have taken
place in these channels or branches. Ans. Geo. Gas-
per has dug a ditch through his land above described
near the south side, west to said Couplet's land, where
there is a gully, but the water don't run in it - runs
west to 60 or 100 yards - the pond or flat land above
referred to then it takes out in a SW direction to the
natural channel where there is a gully now - and
it need to be.

Q. 6. By the alterations of Gasper above spoken of
does the water of said branch run over more of said
Couplet's land, than it did before said alterations
were made, and if so how much more? Ans. It runs
about 100 yards in length - it spreads out considerable
before it reaches the pond or flat land.

Q. 7. If a ditch was cut from the west end of that cut
by Gasper and through said Couplet's land, to the gully
running in the SW corner of said SE 1/4 of NW 1/4 Sect 27
above referred to, would it or not, be of benefit to Couplet as
well as deep, by draining that pond or flat land (Obje-
cted to by Couplet) thus, if thought it would not bene-
fit Couplet.

Ans. 8. Has Couplet been damaged by the alterations made
in said branch by Gasper, and if so how much? Ans. It has

though he has been damaged by it so far, but I would not like to say that he would not be damaged if it has been a run to Couplet, because it has no but considerable of good soil on his land which was much needed.

Q. 2. State if you know whether that gully or branch was stopped up last year, and if so, at what place and by whom? Ans. It was stopped up, that is the gully running from said pond into Couplet's land in several places and I know who did it, but suppose it was Lancy Couplet or some one for him.

Cross Examined by Couplet.

Q. 1. Did you ever examine the ground north of the top of N. 27, and the NW. of N. 27 of lot 27 aforesaid? Ans. I have been all over it time and again.

Q. 2. State whether there are any gullies or branches in that tract and if so in what direction do they run? Ans. There is no branch in the tract north of said N. 27 land - there is a branch north of said Couplet's land - it runs in a cross section.

Q. 3. How far north of Couplet's land is it to where you say the gully runs? Ans. It runs a regular gully and I can't say how far north of it there is a low place there.

Q. 4. You examined a part of the most of the land that runs on the west side of Dept's and the East side of Couplet's land runs off in a cross section, through Couplet's land, state in what direction the balance runs? Ans. I think it runs north.

Q. 5. Do you know where the branch you say enters Dept's land a little north of the E. corner takes its rise? Ans. Near

the north side of the S. 1/2 of the N. 1/2 of Sect 26 T. 2. S. R. 1. W. 1. N. 1. E. of the
meadow

Q. But from where it strikes deeps land to the NW corner of
his tract; and on to the branch you refer to, in answer
to Q. 2. Can you not perceive a dip in the land similar
to that which you observed to accompany the course
of that pond from its source to where it enters deeps land?
A. Yes, I think there is a rise on the north side of
deeps land.

Q. Does the water in this pond turn the water in a westerly di-
rection? A. Yes, it turns it in a southerly direction.

Q. Does not the low land after passing that rise turn
again in a north west direction? A. No, the low
break of land goes directly north, to the branch above
referred to - the most of the water from that pond or low land
runs SW through Camp's land - I don't know that any
of the water from that pond runs north out of Camp's
land, but I believe it does.

Q. Do you know anything of a straw pile on deeps land
placed in the natural channel of said branch, at the East
end of the ditch you spoke of? A. I do not - never
saw any there.

Q. Is it not that turning of that branch out of its natu-
ral channel, calculated to be a source of irreparable
injury to said branch? A. Yes, it will do much
harm if it is not made to turn into some other direction.
Q. What is the difference in the size and appearance
of the stream running in a NW direction through Camp's
land and deeps land, and the latter and upper, when they come into

and there is a good deal of difference - little cranes and
reeds in a good deal larger
but the N. of that branch is the natural outlet of their water
passing into said deep sand, at the least side, are not the
sources of their and little mud cranes about equidistant from
where they come together. They are

These things have what was now or produced in by compact
in the mud and of way, but fall, it is I do not,
Litt 15 did you see anything grow on it this summer, and
if so what was it? I did, plenty of weeds and a few
bunches of wheat, R. Mc Kennedy

Subscribed and sworn to before me this 1st day of
August 1860, Justice of the Peace for 1 day Isaac Miller County

L. W. Leslie produced and sworn

Sub 1st. Are you acquainted with the parties concerned
left to this suit - their lands described as said piece of
land and you know about them, as to branches, drains, quays
and other things? I am acquainted with the parties
concerned since 1837 about 23 years, kept about 10 years
with the land and their lands mentioned in the bill
will know their location and situation I know where the
land is and where the drains have been on their lands 23 years
there is a drain running from near the N. corner of
the land to the N. corner thereof where it
is a considerable size 10 or 15 acres - the pond
was on both sides and completely covered about a little more
than 1000 - in wet times when said pond overflowed it
run out in the direction - that was the natural chan-
nel of said drain, There was a ditch cut on or near
the East line of said land and extended from said drain

but is partly filled up again, the water not flowing the
way - also a ditch cut near the middle of Dept's land, west
ward from towards said Campbell's land - there is a consider-
ably gully formed near the sea corner of Campbell's land
that if the water on Dept's land were running west
and down the ditch through Campbell's land, it would surely
run into Campbell's and not into Dept's - their low
water level the ditching down by Dept. has been a bene-
fit to Campbell rather than an injury.

Q. Can it be drained by Campbell?
A. It can be drained this distance you speak of running
NW through Campbell's land, been impassable by teams
a horse & cart for years.

Q. What is the character of the ground east and west of said
pond? A. I think it is a little higher.

Q. In a N.W. direction from that pond, is there not a
line in the land indicating the continuance of that drain, the same
as S.E. of said pond? A. Yes. After you pass over the ridge
there are other ponds and drains leading in a N.W. direction
which run off in that N.W. direction, when they overflow.

Q. Is that drainage ridge perceptible to the eye? A. Scarcely so.

Q. What is the length of that branch in the water Dept's
land? A. About a mile.

Q. How long since the ditch was made in the base end of
Dept's land you speak of, towards Dept's? A. About 9 years.

Q. How wide is that ditch? A. About 10 feet.

Q. How far will it hold water deep? A. I can not
tell for sure, but think perhaps it extended over a line
of 50 or 60 acres.

Q. What is the character of the soil in the north of Dept's

land. Mrs. Low and put it to my nose in what it used to be. It can all be cultivated that

July 9. Have you been on Collyer's land since this ditch was cut by Dept. ^{said} land leading west from said branch? Mrs. I have,

but is. Does that ditch extend west to Campbell's said lands?

Mrs. I do not know. I think the ditch does not, but there are furrows plowed from said ditch west to said gully,

and I have a hot question the water from that ditch takes when it leaves Dept. ^{said} land. I think it spreads out some

and runs in said furrows to the west of said gully.

July 11. Does any of it run south? Mrs. I do not know, I have not been there in a long time when there was much water from a long time.

July 13. Can you state anything very definitely there as to whether Campbell has been damaged by said ditching or not? Mrs. I can not say, but think he has not been damaged, for the reason that the land seems now to be ~~dry~~ ^{wet} and dry when it was wet before said ditching.

July 14. If the ditch you speak of remaining open on Dept. land was enclosed, how far south of said pond could it get? Mrs. I do not know, but think it could reach the pond, and I think the pond used to be,

and I think the ditch in the furrows you speak of drains the water from the pond.

July 15. How does the ditch in the furrows you speak of drain the water from the pond? Mrs. The ditch in the furrows, that is keeps the water from running into the pond.

July 16. What was planted on Campbell's said land adjoining Dept. said land on the west? Mrs. I do not know.

July 17. What was the prospect for a crop in its last fall? Mrs. Very good. I believe.

Subscribed and sworn to before me this 1st day of Aug. 1860. Witness my hand and seal of office.

David Kennedy produced and sworn.

Sub 1st Are you acquainted with the parties Compt and ... and with the suit. Their lands are situated in this Rice ... and situated in a chain of ... drains branches ... parties, have known ... are known to ... but could not give the numbers thereof. I heard the testimony of L. M. ... about ... the particulars about the branches ... ditches and gullies on said lands ... as well as the low flat places in the ... lands; the gully on the ... part of the ... of ... said Compt's land ... of the said ... land ... through said ...

above, that it was fixed up, because it was impossible when the fixing up commenced there was a log in it with many boards or planks - this was done last fall before the wheat was sown in the field. said Compt said the East half and one ... Young the West half of said land with wheat last fall. Compt said that part of said land which ... said ... flat land,

... on his said land as ... of by said ... injured or benefited said Compt? Ans. I think rather benefited than injured him.

Answers returned by Compt.

Sub 2nd How said ... by said ... branch ... of its natural channel or course. Ans. I do not think he ... but it did not ... any more water ...

run on it before.

Q. At the place where you say the log and boards were, in this gully, how deep was it from there up to the mouth of the ditch in said ^{Said} depths, lands? A. At the place where the log and boards were, it was about 2 feet higher up than so deep - the log and boards were where the two gulches meet.

Q. How deep was the other gully, which you call the natural channel? A. This gully is quite so deep as that running from depth ditches, which said gully was formed by furrows run there before Coupl's land was entered, 10 or 10 years ago.

Q. Was this gully from depth ditches so deep as to prevent growing it with wheat or rice? A. I consider it was.

Q. Do you consider farming land benefited by the ^{increasing} number of impassable ditches on it? A. I could not consider it benefited by running too many ditches through it.

Q. Do you know whether the ditch came down to Coupl's land? A. It comes to the fence between Coupl's and depth - as far as how deep furrows in the line, which it is near the line between the ditch and furrow was made before.

Q. How long ago was this ditch cut? A. I think it was cut about 8 or 9 years ago.

Q. Do you know anything of a ditch running in this branch of the course of the river? A. I know of a ditch running in the north line of depth - see the north line of depth.

Q. How long ago was the last mentioned ditch cut? A. I think 8 or 9 years - this one was cut, I think before the other one was cut.

Q. How long since you entered the natural channel?

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Q. How long have you known these lands? A. About 15 years

Q. State if you know whether any ditch or branch runs across Deft's land on to Couplet's said land and if so how long has it been there? A. There is a water course on Deft's land, running west on to Couplet's said land - has been there for 2 or 3 years

Q. What does the water of that branch go to after it gets to Couplet's land? A. It runs into Couplet's said land into Little Mud Creek below

Q. State if the water has not flown in a direct line through said Couplet's 40 acre tract, into Little Mud Creek, ever since you were acquainted with that land? A. It has flown there for at least 10 or 15 years

Q. Do you know if any of the branches or gullies on Couplet's said land having been filled up, and if so when and by whom? A. One of the branches that was the natural branch that comes out of Deft's field and flows west, was stopped, or filled up, on Couplet's land and turned south this was done about a year ago - I did not see any one do it but saw Couplet and his hand working in the place that turned

Q. How long has Couplet said he was west of Deft's land? A. It has been there for 2 or 3 years

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Q. How long has Couplet said he was west of Deft's land? A. It has been there for 2 or 3 years

the same as that you refer to in your examination in chief as having been there 3 or 10 years? *Ans.* It is.

Subscribed and sworn to before me $\frac{3}{2}$ William Greer on this 20th day of July 1850. Wm. Greer Justice of the Peace, Miller Court.

John L. Jackson produced and swore that 1st (the gate) is guaranteed with the parties Compt and Deft to the said and their lands described in said Bill? *Ans.* I have never known said lands for last 10 years.

Q. Now state if you have been told that water has run across the said lands of Deft and Compt, as it now runs. *Ans.* It has run since ever since the spring of 1850, after there made a ditch for it to run in, through which it has flown ever since.

Q. Now what direction it takes after it reaches Compt and Deft's land? *Ans.* It runs west about 500 yards and then takes a few directions.

Q. How long has it been since you heard of Compt, complaining of the water flowing on his land as it now does.

Ans. I heard Compt's brother Robert speak of it several years ago, soon after Compt, Compt and Deft's lands were surveyed and divided up.

Q. Is Robert's land next west of said lands? *Ans.* Yes, though they tell me it is lower - it is about 1/2 mile long and 1/4 mile wide. Compt's said 40 acre pond which extends to Deft's said land and half way through Compt's, now there is a branch of the same into said lands.

Q. Now state if you know of any of the gulches or branches on Compt's said land have been filled up if so what part, when and by whom? *Ans.* It was filled up with dirt, the same

Page 7

two gullees at the present a log was put across, and boards
and straw put in to stop the water - this was done
but failed by Campbell's see if he work at it.

Q. Has the ditching of Dept. land injured or benefi-
cial to the land? A. Campbell said land
would rather have it
than the water.

Q. How is the land of Campbell injured or
beneficial? A. Campbell said that the
land of Dept. was washed from the side of Dept. land
and is now a bar. He would not say that.

Q. Is not the price you speak of about 1000
acres without the aid of the gully washed from the
land? A. Yes. It is.

Q. How you then state how Campbell can be in respect
of cutting a second ditch through the land? A. He
is not satisfied by it because it runs the water straight
through instead of turning round as before.

Q. How far is the road that you speak of as being
in Campbell's land? A. It is about 1/2
way across the land to the back part of Campbell's
land.

Q. How far is the road from the present one? A. There is
no road from the present one to the back part of it to
where the road is now. There are
no other roads there. It is a flat bottom and runs
off into the water.

Q. How far is the road from the present one? A. There is
about 1/2 of a mile from the present one to the back part of it.
364

Remedy arrived by Dept

But 1st Is there still a pond there, or do you speak of
used to be a pond there. There used to be a pond near
the house there now. John C Jackson

Subscribed and sworn to before me on this 2 day of Aug
1860. Thomas G. Jones, County Clerk, Miller's Cove,

for Abraham Jackson and sworn
to me in presence of the parties Couper and
left to the land and then found access to the said Piece
and the ground was given passing over the same. Now, I
say - have known the land about 10 years - have
known it as passing through Couper's land for
about 10 years - it runs only about half way through
the 1/2nd no other tract of said Couper - it has gone
DANGER since I first knew it - did not know anything
about a ditch or hole or any kind of ditch last spring
crossed by a fence by Couper.

But 2nd Do you know anything about the pond spoken of
by Mr Jackson above - I know there was one there
at one time but any way let find that pond that
is or was the water run out there, that is a course of a pipe
run but it is a hole out out that way, however, I
would not be better than,

But 3rd Does that ditch you speak of
run in any way from the house. Well Sir, I do not know
any way from any drainage in said ditch
ditch is out and runs out of the house. I saw
ditch pass out of the house about 75 or 80 yards
from the East line of the lot.

But 4th How far did it run from the house.

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Jul 6. At the place where the draw was placed, did you observe
a channel or drain leading to the NW from the SE? And us,
there was the appearance of a drain there leading
in that direction.

July 7. How long ago did you see it, how long since
you were there? Ans. I do not
know, but I think this 40 acre tract of
land was water with it, and produced
out of a swamp. I think I saw water in it.

July 8. How long ago did you see it?
Ans. When did the pond you speak of, find an outlet? And
I think mostly in some direction, through the draw
and process I spoke of before. Peter McChesney
subscribed and went to before me on this 2 day of
July 8. Miss Blain for day. I did not come.

James Mc Holt produced and deposed
July 10. A report was made to the judges Couper and
to the suit, and their lands mentioned in said Bill and
the pond spoken of by the witnesses adjoining them on said
land, and how the parties and said land and said pond.

July 12. Where was that pond put out? Ans. I have
seen it run out in a very quiet way, through a
small hole, do not know, but it runs out in another direction
at the place where you saw the three pieces of which you
speak, but I have seen it run out in another direction
but I have you heard of other instances of a ditch
cut on a piece of land, and if I know long have you heard that
ditch? Ans. I have heard that of it have known that
ditch was made it has, but I could not say how long
it has been, has been since I have seen it.

but how far north did that pond extend? And a little south of the north line of Campbell's said land - could not state how far

But was there any outlet in a NW direction from that pond? Yes there was

But which was the larger stream running NW or that running SW from that pond? Yes the SW would have that running SW

But at the time you last observed that outlet to the NW direction was there any appearance of a gully within 200 yards of that pond? Yes I think there was but I could not say how much nearer

But when you last saw that NW outlet could you not easily perceive a depression in the land and trace the outlet of a hollow running in a NW direction from the edge of the pond? Yes I could see a kind of a sagg in the ground that ran up that way, but I could not say whether it ran into the pond or not

But did you ever observe that pond receiving water from the East and South from the south side of the creek at the line of Campbell's land and run north along the line into the pond?

But did you ever spread out from the pond? And did you ever spread out but I see the signs of it have

But did you ever see the water from its natural source? I do not know

But on the 10th day of Aug 1860, James C. ... the ... I ...

Aug 18 1860

Parties met pursuant to adjournment, Parties and their
Attorneys present. Plaintiff Lucy declared and sworn
that she had no recollection of the parties to this suit
at the time she was present in the place? Ans I am.
The defendant's attorney in response, deposed, made the depositions
on the 11th of August 1859.

Q. Who were the land men who were of the
said land? A. I do not know the name of any one, and
nothing was said at the time.

Q. State if the furrows there were in a
direction across that the cut was and on that no of your
and if so did he obtain your permission? Ans The
furrows across the corner of said land was and
was to mine. I gave him permission to do so.

Q. How long did he own that no after that? A. About
30 years at least.

Q. State whether the water runs in the direction or per
pendicular to the furrows to which you owned said land.

Ans. In fact, perpendicular.

Q. To whom did you sell said land? A. To said Compt.

Q. How long has said land been in your possession, entered
into your possession, and what date?

Ans. I do not know the date when said furrows were
made, but I know that the water runs in the
direction of the furrows. I do not know that the furrows are open now
or not, but I have not passed through them for several years.

Verdict returned by Compt.

Q. How long has said land been in your possession?

Q. How long since you saw this ditch? A. Not long
ditched know of there, was several furrows drawn up
I do not know that there is any ditch upon these now - it
has been there three years and it was there last
but I do not know that it did defect in the last year
I do not put that into the old channel to turn the water
into this ditch, but I do not know whether he did
or not.

Q. Do you know whether said defect worked on said
ditch in the last year or not? A. I do not.

Q. What was the source of the water on said Defect land
before said furrows were made? A. It run from
Jasper's land into a pond or cask - then a part run
out to W. and a part ^{out} to the ditch.

Q. Where was the main source of water? A. It was
where the headest body of water runs.

Q. Where did the headest body of water in that part
run from? A. From what is called the straggly branch

Q. Which runs from the Defect land of Jasper
on right? A. It used to run that way when the
land was owned by the Defect.

Q. How much of the Defect land runs out of course to 40
feet of water? A. It runs out of course to a flat

Q. How much of the Defect land runs out of course to 40
feet of water? A. It runs out of course to a flat
Q. How much of the Defect land runs out of course to 40
feet of water? A. It runs out of course to a flat

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feet of water? A. It runs out of course to a flat
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feet of water? A. It runs out of course to a flat
Q. How much of the Defect land runs out of course to 40
feet of water? A. It runs out of course to a flat

Robt Lively
witness

Miller

Q. Now what you know of anything about flat land or
 wash or pond on said land, where it is located, where it
 has its out let or out lets? Ans. I have the impression
 of water said land and the E. corner of Couper's said land
 is a low level place or wash, standing there.

Q. Does any water run through Couper's
 land to the place?
 Ans. I have seen it.

Q. Do you know a branch of the
 river that runs through Couper's
 land?
 Ans. I have seen it.

Q. Do you know of any water running
 across the said land to said marshy place?
 Ans. I do not.

Q. Does not that Arroyo branch
 run across the said land into said
 marsh?
 Ans. I do not know of it.

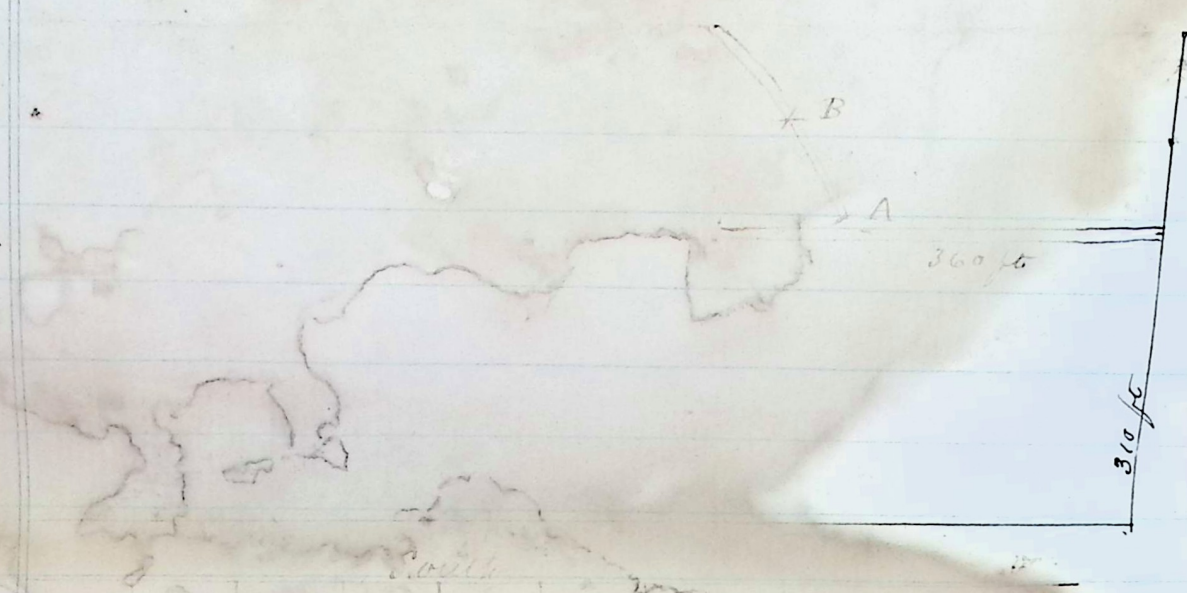
Q. Did not this marshy place
 contain some fresh water
 land?
 Ans. I don't think it did, but might
 have done so in a wet time - it was a kind of a pond
 in the corner of the field - when I know it.

Q. Did you ever hear of a
 pond or marshy place in
 the said land?
 Ans. I did not.

Q. Which is the best
 place to locate a
 house?
 Ans. I don't
 know. I don't know of any
 place where a house
 could be built.

Q. Do you know any
 about a ditch being
 made across the
 land on the south side
 of the marsh?
 Ans. I don't know.

Q. Have you been
 there lately?
 Ans. I have not.



	Chick	B.S.	F.C.	Price	Fall	Old	Price
A.					0.00		0.00
B.		3.20	3.50		.50		.30
C.		3.70	4.20		1.10		1.40
per rod	D.	3.30	4.60		0.50		2.70
	F.	2.30	4.50		2.20		4.90
	gate	4.50	4.70		.20		5.10
	F.	4.70	5.10		4.0		5.50
							course point
		27.10	27.20				
			23.70				
	roof		5.50				

Superior Court - Washington County Illinois, September Term, Monday September 10th 1835

Andrew J. Sawyer, Petitioner to abate a nuisance & for Relief

vs. Joseph K. Parker & On Monday September 10th 1835 the
 complaint by and through his Solicitor
 and the defendant, by and through his Solicitor, the motions
 have been taken upon deposition, and now on Monday
 September 10th 1835 this cause is set down for hearing on Monday
 morning of next week. And now on Monday September
 10th 1835 this cause is heard. Cause dismissed as
 in Defendant's favor to which plaintiff at the time
 excepts. Motion for new trial, not admitted.

every day... in 30 days from date hereof in the sum of \$75.00... according to law. Bill of exceptions to be signed in duplicate and made part of the record.

State of Illinois, I, John A. Brown, Clerk of the Circuit Court for the County of Cook, do hereby certify that the foregoing is a true and correct copy of the records of the above entitled cause including all and every paper on file in said cause from the bill to the final decree, and appears by the original on file of Record in my office that the Depositions copied in this copy of Record, are truly and correctly copied and contain all the evidence offered or heard in this cause as well for the plaintiffs as the Defendants, that the foregoing is a full and perfect transcript of all the papers and exhibits in this cause on file in my office.

Given Under my hand and office Seal at my office in Chicago on the 11th day of November 1885
John A. Brown, Clerk

This is a true copy of the records

Page 27 Assignment of Errors.

1st. The Court erred in not granting Plaintiff in Error, in this cause, the relief prayed for in the Bill in this cause, and assigning the following:-
The Court erred in refusing to grant the relief in this cause prayed for in the Bill in this cause.

2nd. The Court erred in refusing to assess to Plaintiff damages stated in the Bill.

3rd. The Court erred in dismissing the Bill in this cause, and entering a decree against Plaintiff in Error for costs.

4th. The Court erred in overruling Plaintiff in Error's motion for a new trial.

Amos Watts 114, for Plaintiff in Error
Should now consider the land left by L. Campbell & Stokes, his attys & friends in error, and says there is no manifest Error in said record for which the cause should be reversed. There is no Error in the record and the cause should stand as is. L. Campbell & Stokes

Mrs. J. Lancy

Lancy

R. Jasper Jasper

1899

Filed August 30-1865

A. Johnston Clerk

Paid by John R

Allen sup \$9.00

Paid \$5.00 Nov. 1861

A. Johnston Clerk