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Clerk, Supreme Court of Appeals

Richmond, Va.

Record No. 4968

**In the
Supreme Court of Appeals of Virginia
at Richmond**

VIVIAN S. LaDUE

v.

CLYDE J. CURRELL, ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. **SIZE AND TYPE.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4968

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 4th day of December, 1958.

VIVIAN S. LaDUE, Appellant,

against

CLYDE J. CURRELL, ET AL., Appellees.

From the Circuit Court of Fairfax County

Upon the petition of Vivian S. LaDue an appeal is awarded her from a final order entered by the Circuit Court of Fairfax County on the 17th day of July, 1958, in a certain chancery cause then therein depending wherein Clyde J. Currell and Dorothy Currell were plaintiffs and the petitioner was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

Filed in Circuit Court Clerk's Office May 3, 1957.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

BILL OF COMPLAINT.

To the Honorable Judges of said Court:

Your Complainants, Clyde J. Currell and Dorothy Currell, respectfully represent unto the Court as follows:

1. That the said Clyde J. Currell and Dorothy Currell, his wife, are the owners of a certain lot or parcel of land situated in Centreville Magisterial District, Fairfax County, Virginia, containing fifty-five (55) acres more or less, having been acquired by them by deed dated the 29th day of August, 1939, which said deed is recorded among the land records of Fairfax County, Virginia, in Liber P, No. 13, at page 504. A copy of said deed marked "Exhibit A" is attached hereto and asked to be taken and read as a part hereof.

2. That the Defendant, formerly known as Vivian S. Shaeffer, acquired certain lands adjoining Complainants' land by deed dated December 12, 1946, and recorded among the land records of Fairfax County, Virginia, in Deed Book 537, at page 192.

3. Your Complainants represent unto the Court that when they purchased and acquired their fifty-five acres as set forth and described in "Exhibit A" attached hereto, that they then entered upon the premises and assumed from their predecessors in title, actual, adverse, notorious, continuous and exclusive possession and control of the entire page 2 } premises under valid claim and color of title; that they and their predecessors in title, have farmed the same and paid the taxes thereon.

4. Your Complainants further represent unto the Court that the said Vivian S. LaDue, formerly known as Vivian S. Schaeffer, in, to-wit: the month of January, 1957, caused stakes to be set on the property owned by your Complainants and she, for the first time, advised your Complainants that she, said Defendant, was claiming title to a portion of Complainants' real estate acquired by and claimed by them

as aforesaid, said portion so claimed by said Vivian S. LaDue, consisting of approximately one acre.

5. Your Complainants are not advised of any claim or color of title to said one acre now so claimed by Defendant to be vested in Defendant, but to the contrary, Complainants now aver and charge that Defendant is without any valid claim or color of title to said one acre; that said one acre now claimed by Defendant has always been held by the Complainants and their predecessors in title in actual, adverse, hostile, open, notorious, continuous and exclusive possession and control under claim and color of title for a period of more than fifteen years; that the Complainants and their predecessors in title have always paid the taxes on the aforesaid one acre; that the Defendant and her predecessors in title, have never, until just recently, claimed any title in the aforesaid one acre; have never exerted any claim, dominion or use of the property and have never paid taxes on said one acre at any time.

WHEREFORE, your Complainants pray that the said Vivian S. LaDue may be made a party defendant to this Bill of Complaint and that proper process may issue to the said Vivian S. LaDue; that she be required to answer the allegations hereof, but not under oath, answer under oath being expressly waived; that the title of the said Clyde J. and Dorothy Currell in and to the said one acre of land may be quieted, established and confirmed; that the Court may declare and decree that all persons claiming title to the said land under or through the said Vivian S. LaDue page 3 } are barred to all right and interest to the said one acre of land; that the proper boundary between the lands of your Complainants and other lands of the Defendant may be established and confirmed, and; that your Complainants may have all such other, further and general relief as to equity may seem mete and the nature of this case may require.

And your Complainants will ever pray.

CLYDE J. CURRELL
DOROTHY CURRELL

ALEXANDER, KELLY & JENNINGS
By: H. WISE KELLY, JR.
Farr Building
Fairfax, Virginia
Counsel for Complainants.

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Filed Jun 4, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

ANSWER.

Comes now the defendant, by counsel, and in reply to the bill of complaint filed herein says as follows:

1. The defendant admits that complainants own a tract of land situated in Centerville Magisterial District, Fairfax County, Virginia, but neither admits nor denies the amount of acreage owned by complainants, and defendant specifically denies that complainants own all of the land described in the deed described in Paragraph One of the bill of complainant.

2. The defendant admits that she acquired the outstanding interest of Roy L. Schaeffer by the deed described in Paragraph Two of the bill of complaint, but defendant affirmatively alleges that she first acquired title to her land jointly with said Roy L. Schaeffer by deed dated February 22, 1926, recorded June 2, 1927, among the land records of Fairfax County, Virginia, in Liber A, No. 10, page 82.

3. Defendant denies each and every allegation of Paragraph Three of the bill of complaint insofar as such allegations apply to any part of the parcel of land now owned by complainant and which is described in a deed dated February 5, 1897 from Samuel Wells and Sarah J. Wells, his wife, to D. W. Mathers and recorded among the land records of Fairfax County, Virginia in Liber Y, No. 5, page 196, which said land is more particularly described in said deed as follows:

“Commencing at a stone on the public road leading from the Crouch School house to the Centerville and Manassas Road and on the West side of the road leading to Samuel Wells house; thence in a Westerly direction along said public road 285 feet to a stone: thence North 470 feet to a stone; thence at right angles and parallel with the first line 285 feet to a stone on the West side of the road leading

to Samuel Wells house; thence in a Southerly Direction along said road 470 feet to the beginning.”

4. Defendant denies putting stakes on complainant's property and affirmatively alleges that the stakes she placed were on her own property and on the boundary line between complainant's property and defendant's property. Defendant denies that for the first time in January, 1957, she claimed title to the property described in Paragraph Three hereof and affirmatively alleges that she has continuously claimed title thereto and exercised dominion over all of said property, including the area of approximately one acre claimed by complainants.

5. Defendant denies each and every allegation of Paragraph Five of the bill of complaint; and defendant affirmatively alleges that she, and her predecessors in title, have exercised continuous and exclusive possession and control over the property described in Paragraph Three hereof since prior to the year 1897. Defendant affirmatively alleges that complainants had notice of defendant's ownership of said property both through actual knowledge and by virtue of the following deeds and papers recorded among the land records of Fairfax County, Virginia.

(a) Deed dated May 10, 1907 from Thomas R. Keith, Special Commissioner in the suit of *Grigsby v. Grigsby*, and Samuel Wells to Sarah J. Wells recorded in Liber W, No. 6, page 575.

(b) Deed dated February 5, 1897 from Sarah J. Wells and Samuel Wells to D. W. Mathers recorded in Liber Y, No. 5, page 196.

(c) Deed dated February 22, 1926 from D. W. Mathers and Vallie D. Mathers, his wife, to Roy L. Schaeffer and Vivian S. Schaeffer recorded in Liber A, No. 10, page 82.

(d) Deed dated December 12, 1946 from Roy L. Schaeffer and Mabel M. Schaeffer, his wife, to Vivian S. Schaeffer recorded in Deed Book No. 537, page 192 (said Vivian S. Schaeffer being the same person as Vivian S. LaDue, the defendant in this cause).

(e) The suit of *Grigsby v. Grigsby* in suspended file No. 9.

WHEREFORE, defendant prays that this cause be dismissed and that she recover her costs expended herein.

VIVIAN S. LaDUE
By FRANK D. SWART
Counsel.

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Filed Jul. 9, 1958.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

STIPULATION.

Counsel for Complainants and counsel for Defendant does now stipulate as to the following facts:

1. That both Complainants' land and Defendant's land was originally a part of a tract of land that was owned by Alexander S. Grigsby.

2. A suit styled *Grigsby et al. v. Grigsby et al.* was filed by certain heirs and creditors of Alexander S. Grigsby to have said land sold, and a Commissioner of Sale was appointed by the Court to so sell said land.

3. By agreement dated June 29, 1891, and filed among the papers of said cause, but not recorded among the land records the Commissioner of Sale sold said land to Samuel Wells at \$6.50 per acre, payable \$100.00 at time of agreement; \$50.00 on January 1, 1892; \$100.00 on January 1, 1893; \$100.00 on January 1, 1894; and the balance on January 1, 1895; with interest on the unpaid balance from the date of the agreement.

4. By deed dated February 5, 1897, and recorded in Liber Y, No. 5, page 196, of the land records of Fairfax County Samuel Wells and Sarah Wells, his wife, conveyed unto D. W. Mathers a part of the Grigsby tract described as:

Commencing at a stone on the public road leading from the Crouch School house to the Centreville and Manassas Road and on the West side of the road leading to Samuel Wells house; thence in a Westerly direction along said public road 285 feet to a stone; thence North 470 feet to a stone; thence at right angles and parallel with the first line 285 feet to a stone on the West side of the road leading to Samuel Wells house; thence in a Southerly direction along said road 470 feet to the beginning, containing about 2 acres more or less.

page 18 } 5. The property described in Paragraph 4 above was subsequently, through several intermediary parties in the chain of title, conveyed to Defendant and has not been reconveyed by her.

6. By deed dated May 10, 1907, and recorded in Liber W No. 6, page 575 of said land records, the aforesaid Commissioner of Sale and Samuel Wells convey the entire Grigsby tract of 61 acres, 3 roods, and 20 poles of land unto Sarah J. Wells. This deed recites that the property had been sold to Samuel Wells under the proceedings in the aforesaid suit at \$6.50 per acre, that the purchase price has been paid in full; that Sarah J. Wells paid substantially all of the purchase price, and that Samuel Wells and Sarah J. Wells desire to vest title to said land in Sarah J. Wells.

This deed makes no reference to the conveyance from Samuel Wells to D. W. Mathers described in Paragraph 4 above nor does it except same from the description given.

7. By deed of trust dated March 26, 1912, and recorded in Liber M No. 7, page 35, of said land records said Sarah J. Wells conveyed the 61 acres, 3 roods, 23 poles described in Paragraph 6 above unto Thomas R. Keith, Trustee.

8. Charles Pickett was substituted as trustee under the deed of trust referred to in Paragraph 7 above and after a foreclosure sale conveyed unto Samuel Wells deed dated September 14, 1936, and recorded in Liber G No. 12, page 499, said 61 acres, 3 roods, 23 poles of land less and except the 2 acres conveyed to D. W. Mathers by deed recorded in Liber Y No. 5, page 196. (See Paragraph 4 hereof).

9. By deed dated August 24, 1939, recorded in Liber P No. 13, page 499 said Samuel Wells conveyed unto Dorothy

page 19 } Currell a tract of land referred to as being the same land acquired by him by deed from Charles Pickett, Substituted Trustee, dated September 14, 1936, and recorded in Liber G. No. 12, page 499, and described therein by metes and bounds as follows:

Beginning at a pipe located on the N side of the County Road leading from Clifton to the Centreville-Manassas Road (said pipe replacing a stake shown by Samuel Wells as the SW corner of the 30 acre lot owned formerly by William Mathers, now by Roy Shaeffer); thence with the 30 acre lot N 23° 45' E 1717.8 ft. to a cedar stake; thence again with the said 30 acre lot S 65° 18½' E 612.4 ft. to a cedar stake (said cedar stake replacing an old cedar stake in a pile of stones shown by Samuel Wells as one of the original corners); thence with Buell land, formerly Croson, N 38° 59' E 714.8 ft. to a cedar stake, corner to Will Brown, colored;

thence with Will Brown and continued with Henderson heirs, colored, N 56° 17½' W 887.5 ft. to a cedar stake; thence again with Henderson heirs N 83° 32' W 903. ft. to a large planted stone; thence with J. I. Breeden and continued with Griffith S 19° 22.2' W 1143.1 ft. to a marked walnut tree, an angle point in the West line of the tract; thence cutting through the Samuel Wells tract S 47° 11.2' E 255.1 ft. to a cedar stake; and S 34° 17.2' W 980.9 ft. to a cedar stake on the N side of the above mentioned County Road leading from Clifton to the Centreville-Manassas Road; thence with the said N side of the County Road S 46° 55' E 230.1 ft.; and S 64° 19.5' E 319.8 ft. to a pipe on the N side of the road and at the SW corner of Roy Shaeffer's 2.0 Acre lot; thence leaving the road and with the said 2.0 acre lot N 24° 14' E 470.0 ft. to a cedar stake; and S 64° 19½' E 158.4 ft. to a cedar stake on the W side of the private road to Samuel Wells house; thence with the West side of said private road S 24° 14' W. 470.0 ft. (passing through a cedar stake at 460.0 ft.) to the N side of the County Road leading from Clifton to the Centreville-Manassas Road; thence with the said N side of the County Road S 64° 19½' E 65.5 ft. to the place of beginning, containing 55.0 acres.

10. By deed dated August 29, 1939, and recorded in Liber P No. 13, page 504, of said land records said Dorothy Currell and husband conveyed the property described in Paragraph 9 above unto Complainants.

11. The Samuel Wells referred to in Paragraphs 8 and 9 hereof is the son of the Samuel Wells referred to in Paragraphs 3, 4, 6 and 7 hereof.

AGREED:

H. WISE KELLY, JR.
Counsel for Complainants.

FRANK D. SWART
Counsel for Defendant.

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STIPULATION.

It is further stipulated and agreed between Counsel for the Complainants and Counsel for the Defendant that the De-

pendant has always been assessed by the Commissioner of Revenue for "Two Acres of Land" every year since she held the property, except that the 1958 assessment now shows an assessment of Three acres of land.

AGREED:

H. WISE KELLY, JR.
Counsel for Complainants.

FRANK D. SWART
Counsel for Defendant.

Filed Jul. 9, 1958.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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FINAL ORDER.

This cause came on to be heard the 9th day of July, 1958 before the Court without a jury by consent of all parties, upon the Bill of Complaint filed by the Complainants; upon the process issued thereon and the grounds of defense and upon the answer filed by the Defendant; upon the stipulations entered into between Counsel for both parties; upon the testimony of the parties and their witnesses duly taken *ore tenus* in open Court, together with the exhibits filed therewith, and it appearing to the Court: That this cause has duly matured for hearing; that all parties in interest are properly before the Court; that the Court has jurisdiction of the parties and of the subject matter in controversy and was argued by Counsel; upon consideration of all of which, it is

ADJUDGED, ORDERED and DECREED as follows:

1. That the Complainants, Clyde J. Currell and Dorothy Currell, his wife, as joint tenants with the common law right of survivorship, have acquired by adverse possession a valid and complete title in fee simple to all of that parcel or strip of land that is enclosed within the wide black pen mark

on the attached plat made by R. J. Ratcliffe and M. W. Secord, Certified Land Surveyors, and dated May 10, 1958, said strip or parcel of land being more particularly described as follows:

Beginning at a point on the north side of State Route 658, said point being the southwest corner of the property now owned by Vivian S. LaDue (formerly Vivian S. Schaeffer) said point being N 65° 26' 50" W. of a pipe set 10 feet N. 24° 08' 00" E. of the point where the west side of the private road leading to Currell dwelling intersects with the north side of State Route 658; thence N. 65° 26' 50" W. 122.21 feet to a pipe; thence N. 23° 37' 20" E. 466.74 feet to a pipe; thence S. 64° 03' 40" E. 126.51 feet to a point; thence S. 24° 14' 00" W. (courses reversed from those shown on attached plat) 470.00 feet to the point of beginning.

page 22 } 2. That the costs of Court in this cause are assessed against the Defendant, Vivian S. LaDue.

To all of which action by the Court the Defendant by Counsel duly excepted.

Enter July 17th, 1958.

HARRY CARRICO, Judge.

* * * * *

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

Notice is hereby given that the Defendant is appealing this case to the Supreme Court of Appeals of Virginia from the decision of the Circuit Court of Fairfax County, Virginia, and said Defendant does now make the following assignment of error.

1. The decision of the Circuit Court of Fairfax County, Virginia and the Order entered herein on July 17, 1958, are

contrary to the law and evidence in that the Complainants failed to prove the elements of adverse possession.

VIVIAN S. LaDUE

By Counsel.

LEIGH, KINCHELOE & SWART

By FRANK D. SWART

Counsel for Defendant

P. O. Box 374

Fairfax, Virginia.

• • • • •

Fairfax, Virginia

Wednesday, July 9, 1958.

The above-entitled matter came on for hearing before the Honorable Harry Carrico, Judge of the Circuit Court, Fairfax County, Virginia, Fairfax County Court House, Fairfax, Virginia, commencing at 10:55 o'clock a. m., Wednesday July 9, 1958.

Appearances: On behalf of the complainants: H. Wise Kelly, Jr. Esq.

On behalf of the defendant: Frank D. Swart, Esq.

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PROCEEDINGS.

The Court: We will now take the case of Currell v. La Due. Let's swear all the witnesses in this case.

(Whereupon, thirteen prospective witnesses were duly sworn by the Clerk.)

The Court: Do you have a desire to have a ruling to exclude the witnesses?

Mr. Smith: No.

Mr. Swart: No. I do have two witnesses who are County employees, and I would like to have them go back to their jobs.

Mr. Kelly: Your Honor, we have stipulated that (handing documents to the Court) and we agreed to submit it to the Court. Both have been signed.

Clyde J. Currell.

The Court: All right.

Do you waive opening statements?

Mr. Smith: Yes, your Honor.

Mr. Swart: Yes, your Honor.

Thereupon

CLYDE J. CURRELL,
called as a witness by counsel for complainants and, having
first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Kelly:

Q. Will you state your name, please.
page 3 } A. Clyde Currell.

Q. That is Clyde J. Currell?

A. That is right.

Q. Where do you live, Mr. Currell?

A. Route 1, Centreville, Virginia. That would be geographically a location description.

Q. How long have you lived there, sir?

A. Since 1941.

Q. When in 1941, do you remember, sir?

A. February '41.

Q. February 1941?

A. February.

Q. Whereabouts, geographically, is that property located?

A. It would be two miles south of Centreville, Virginia, and about half a mile east of the junction of 28 and 658.

Q. Would that be on the road leading from Cratcher's School, Clifton, to the road leading from Centreville and Manassas?

A. Yes, I think that is the way it has been designated; the old Compton Road or old Clifton Road, I believe.

Q. You are living on the place that has been described as a fifty-five acre tract of land, described in Paragraph 9 of the stipulation entered herein?

A. Yes.

Q. And you have been living there since 1941?
page 4 } A. Yes.

Q. When did you buy the property, Mr. Currell?

A. As I recall, it was in August 1949.

Q. 1949?

A. Yes, sir.

Clyde J. Currell.

Q. That was after the war.

A. No, I am wrong there; it was in August 1939.

Q. August 1939?

A. That's right, August 1939.

Q. From whom did you buy that property?

A. Samuel Wells.

Q. I believe originally the property was purchased in Mrs. Currell's name. Is that right?

A. That is right.

Q. And the same piece of property subsequently was conveyed to the two of you?

A. That is right, yes, sir.

Q. Now, when you bought the land, what, if anything, did you do with it? What use did you make of it, if any?

A. Well, we started to—of course, we were living in town at the time, the District of Columbia, and we started to improve it, cutting the grass and planting trees—getting the thing in shape so it would look like someone lived there.

Q. Was there a house on it?

A. There was a house there, if you want to call page 5 } it a house; I expect it was a small two-room cabin, really.

Q. When you bought the land, did you have it surveyed?

A. Yes. The land had been surveyed before we bought it, or at the time of purchase it was surveyed.

Q. Who surveyed it?

A. As I recall, Mr. Howard Clark here in Fairfax.

Q. Did he put up any stakes or was it staked out?

A. Yes, there were stakes put around different corners, and as I recall it, the only place there wasn't a stake was designated as the old walnut tree that marked a point in the line or angle. That is the only point.

Q. Whereabouts was that?

A. That was on the west side of the tract of land, and at that point I never saw a stake. It was designated as a walnut tree.

Q. That is on the opposite side of your property from where the Schaeffer lot is?

A. That is right.

Q. When Mr. Clark surveyed it were there stakes placed at your corner that adjoined the Schaeffer lot?

A. Yes, there were.

Q. You say you got that land in 1939. Is that when it was surveyed?

Clyde J. Currell.

A. To the best of my knowledge, that was when it was surveyed.
 page 6 } Q. Did you improve the house that was on it or did you build one?

A. We lived in that house for awhile and then we started to add onto it. We had a basement dug and moved over around the basement and started to improve it gradually as we were able to.

Q. What, if anything, did you do to the fields of the premises?

A. We just kept them looking nice.

Q. Were they in a state of cultivation when you bought them?

A. No, there was just a plain field there.

Q. What did you do to it, if anything?

A. Kept it mowed down.

Mr. Kelly: Subject to being introduced later, do you object to using this map?

Mr. Swart: No, subject to it being admitted later.

Mr. Kelly: Subject to the proper introduction by the surveyor, I would like to submit it now, for later authentication.

Mr. Swart: We are not objecting to anything on the plat being correct, subject only to it being properly admitted later.

The Court: We will mark it for identification as Complainant's Exhibit No. 1.

page 7 } (The plat referred to was marked Complainant's Exhibit No. 1 for identification.)

By Mr. Kelly:

Q. When you moved there, when you bought the property in 1939, was there a parcel of land on the southeast corner of this property that was owned by Mr. and Mrs. Schaeffer?

A. I believe so.

Q. Were they living there?

A. There was no building on any of the land down there in 1941—1939, I should say.

Q. There was no building there when you bought the land?

A. No, there was no building there at all.

Q. Has there been anyone that lived on that land since you bought it in 1939?

A. No, sir.

Clyde J. Currell.

Q. What is the nature of that lot, and can you describe that lot to the Court?

A. Well, it's just a piece of land there that has been allowed to grow up into brush up until last year. There was quite good sized pines on it, I believe, but it's covered with honeysuckle and all the different kinds of shrubs—I guess there is wild plum in there. And it is just like a typical piece of land in this part of the country that would be unattended and grown up with underbrush and pines.

page 8 } Q. Had it been fenced?

A. There was evidence of a fence when we went there.

Q. What evidence?

A. There was strands of barbed wire—it looked like three strands of barbed wire strung around trees and posts and—

Q. What sort of trees?

A. It was on three sides—on three sides this fence was.

Q. I make reference to the plat that has been made by R. J. Ratcliffe—M. W. Secord, dated May 10, 1958, which has been offered to the Court for identification, and ask you if you recognize what that purports to show?

A. I would say this would be a plat of this land in question. That is facing 658 here (indicating), and this area (indicating) looks well covered. It seems to be the cedar trees that are along the west side of this area.

Q. Are there cedar trees along the west side of that area?

A. Yes. I expect those cedar trees are between twenty and thirty feet high—some of them are.

Q. Are they in a straight line?

A. Very straight line.

Q. Are there any fence posts there?

A. One or two, I would say, as I recall.

page 9 } Q. Is that fence there now, Mr. Currell?

A. I didn't understand the question.

Q. Is that fence there now?

A. There are portions of it—remnants of a fence, I would say, evidently put up years ago and are embedded in the trees.

Q. When you came to that piece—when you bought it in 1939, what, if any, part of it did you cut the grass on or till or take possession of?

A. We didn't bother that piece of land at all at that time; it was quite heavily brushed, (indicating).

Q. What piece was that?

Clyde J. Currell.

A. I would say the shaded portion of it, we assumed no proprietary rights over it.

Q. Over what?

A. Over this piece of land that is in the woods here, shrubs, (indicating).

Q. Show Mr. Swart and the Court which area you are talking about.

A. I recognize this (indicating) by the corner here (indicating) next to Mr. Shaw, and we kept all this clipped and mowed.

Q. Let's go up here so the Judge can see what you say is "this."

A. We cleared this front here (indicating).

page 10 } Q. How far did you keep it cleared?

A. Whatever came here (indicating) someplace excluded this area in here (indicating) because shrubs always had been cleared.

Q. Who did you say that belonged to?

A. Roy Schaeffer.

Q. To what point do you show on this plat that is your line?

A. Just about along in here (indicating). There were stakes there where we cultivated up to.

Q. Is that line designated on the plat, that is offered for identification, as the line according to "Currell deed"?

A. Yes, sir.

Q. Was that line staked when you went there?

A. Yes.

Q. Are those stakes there now?

A. I don't believe those surveying stakes are there anymore.

Q. How long would you say they were there when you arrived?

A. Yes, they were there for some number of years, I imagine, because along our line here (indicating) I know there was a big metal pipe there, and on Route 658 there is another big metal pipe in the ground. I am sure both these stakes are there.

page 11 } Q. Were they driven in the ground at your survey?

A. I believe they were, yes sir.

Q. Now, then, after you had bought the land, or moved to it, did there ever come a time when you and your wife and Mrs. Schaeffer discussed those stakes that had been put in the ground by Mr. Clark?

Clyde J. Currell.

A. It seems to me, as I recall, the one time we were returning home—I believe it was on a weekend—

Q. Who is “we”?

A. Mrs. Currell and myself, and we saw Mrs. La Due and Mr. La Due at the lot, and I think we talked then about the stakes. As I recall, —

Q. Mrs. La Due is the former Mrs. Schaeffer, is that right?

A. That is what I understand, yes.

Q. When was that that you saw Mrs. La Due and Mr. La Due down at the lot?

A. When?

Q. Yes. Approximately, if you can remember.

A. Well, it was several years ago. I don't have any recollection of anything to relate it to except that it was several years ago, and we showed them the stakes at that time and it seemed to me, the impression I got, they changed our survey when we bought the place—changed the shape of that lot, giving more road frontage than what the old line fence was, and it came over there, as I recall, maybe twenty feet or more.

Q. In other words, Clark's survey was some twenty feet west of the fence line. Is that correct?

A. That's right.

Q. Did you show that to Mrs. La Due?

A. Yes, I am sure we talked about it.

Q. Do you recall what, if anything, was said?

A. The impression I get now, if my memory serves me right, she was elated because she had more road frontage than the old line of fence.

Q. Did she at that time claim any land further west of that peg?

A. No.

Q. Have you cultivated the land and plowed the land?

A. We have been cultivating it.

Q. When did you start cultivating it and keeping it cleared?

A. Almost immediately after we moved out there. I started to clip that front field and keep the pines down and we didn't have it fenced and it wasn't pastured and we just had to keep cutting it.

Q. Did you ever put any crops in it?

A. There was some time, as I recall, my neighbor across

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the road, Commander Yeomans, had his man put
page 13 } in crops there. If I recall, the first crop planted
was corn and it was followed with small grains
and later with something else. And that, as I recall, was right
after the war some time. The Commander was busy during
the war, and after that he started expanding his farm activ-
ities. He bought a lot of equipment and leased the land
around.

Q. Until then you had just clipped it. Did you keep the
hay?

A. No, I didn't keep the hay.

Q. How far, as shown on this plat, did you till the soil or
cultivate the land?

A. We tilled right up to this line here (indicating).

Q. That is the line that is designated as "Currell deed
line"?

A. According to the "Currell deed line," yes.

Q. Now, you said some years ago you had this discussion
with Mrs. La Due. At that time, was the land tilled up to that
line?

A. Yes, it was.

Q. Do you recall what, if anything, was in it?

A. Not at that particular time; I don't recall what was in
it. There is some sort of a rotation that farmers employ. I
know—

Q. Did Commander Yeomans—I believe you said his name
was—share crop it with you?

page 14 } A. No, we had an arrangement whereby he gave
us fresh vegetables. We were away from home a
great deal of the time and didn't have the time to put in the
garden, and he furnished us with fresh vegetables for keep-
ing it fertilized and keeping it—

Q. When was the first that you learned that Mrs. La Due
claimed any land past the point where those stakes had been
put in by Mr. Clark?

A. Well, returning home one night we found some evi-
dence that a survey had recently been made.

Q. When was that?

A. That was in the spring of 1957—last year, I expect.
And then, of course, we stopped there to get the mail and we
noticed a survey stake like a fairly recent one.

Q. Whereabouts did you notice that?

A. I know it's at the entrance of our lane. It was possibly
—this is the lane here (indicating) and we stopped there and
got the mail each night, and I noticed a survey stake. And

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then, I think, I went back and looked along the road and discovered another stake up there on the bank.

Q. Whereabouts? Can you show me on that plat where that stake was?

A. No, I don't see any recognition point. It seemed like, pacing it off, it was a number of feet beyond this row of trees here (indicating) or beyond this line here (indicating) that we always considered our line. It was a number of paces back there, but just how far it was now, I—

Q. Did you find any other pegs, Mr. Currell?

A. Yes, up the lane—up the lane there was another survey stake and it was right on the corner that had been established by Mr. Clark in his survey.

Q. I see.

Did you find any other pegs?

A. Not right then I didn't.

As I recall, in a couple of days or so—the first weekend—I looked around there and I discovered these pegs out here (indicating) in the field. There would be one left on the field on the northwest corner.

Q. Was that in the field that you had been tilling?

A. Yes, it was.

Q. How far?

A. One hundred feet or more out there.

Q. Did you know what those pegs were for?

A. No, I just assumed they were—a survey had been made when I discovered these pegs out there. I am familiar enough with survey making to realize that a survey had been made recently.

Of course, I hadn't seen Mrs. La Due or anyone. It wasn't too long after big posts were established on this point out here in the field—a big post that looked like a regular fence post and went along our lane, and there was nothing established down here at that time. I think Mrs. La Due wanted me to move my line over about three feet.

Q. After you came home and found these survey posts in the field, did there come a time that you discussed it with Mrs. La Due?

A. Well, as I recall, I believe Mrs. La Due was up to our house. Mr. and Mrs. La Due came up to our house, and I believe that is the first time.

Q. When was that, Mr. Currell?

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A. That must have been in the spring of—early in the spring of 1957.

Q. That is last year?

A. Last year.

Q. Was that after the survey had been made?

A. Yes, after the survey had been made.

Q. When they came up to your house what, if anything, transpired at that time, Mr. Currell?

A. I suppose we made her an offer to buy the property or trade.

Q. Was there any discussion about what these stakes represented out here?

A. (The witness made no response.)

Q. Did she say she owned the property that was staked out there?

page 17 } A. I imagine she did, I suppose she said she owned that property; her deed called for it.

Q. That is what she said?

A. I would mention that in our discussion. That is what she said, although I don't recall the exact words or anything like that. It was after we discovered these stakes, of course, that we knew she must have had the survey and claimed that land.

Q. Then, did you contact her or go to see her about it after you surmised that?

A. I don't recall that we did.

Q. How long after the stakes were there was it that she came to your house?

A. That I am uncertain of, but it was all a very short period. We were concerned about it and I know that there wasn't much time that elapsed.

Q. Do you remember what the conversation with Mrs. La Due was about when she came up after—had she ever been to your house before?

A. Yes, she had been up to our place before, in the years past, I believe.

Q. How many times, Mr. Currell?

A. I would say once or twice maybe.

Q. At the time she came up there, were you farming this?

page 18 } A. Yes, we were. I was trying to recall—oh, she came up to see us in the spring to ask me to move my land, and that is when we came up to see you. She asked me to set this line (indicating) over a few feet, which was one of the corners that was in the center of the

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lane and 658 down here (indicating). That was the occasion of her coming up there, as I recall.

Q. Then what happened? What was the rest of the conversation?

A. As I recall, we offered to trade her another building site for this piece of land. The land is rather—

Q. What is "this land"?

A. We are talking about here (indicating) the little corner lot here.

Q. Is that the area that has been shaded?

A. Yes, that is the area that has been shaded, it looks to me. It's not a very desirable building site; it was old and swampy like. We offered to trade this for a building site on the west or anything practically that you would get a nice view from. We offered a trade and, as I recall, the objection to that was it would cost too much to clear that building site because it was too heavy pulp wood.

Q. That is the building site on the west portion?

A. Yes. That is why she turned that offer down.

Q. When you saw those stakes and had this conversation with her in the spring of 1957, that was the first
page 19 } time that you were aware of the fact she claimed
the land past this line that Mr. Clark had staked
off?

A. Yes, sir, that was the first time I realized here claim extended beyond that.

Q. Had she been to your house at any interval between 1939, when you moved—that line, as I understand, had been staked off in 1939, is that right?

A. That is right.

Q. Had she seen those stakes, to your knowledge?

A. Not to my knowledge, no.

Q. Had you had any conversation with here about those stakes?

A. No, I didn't. We became acquainted with them several years after that.

Q. When was that?

A. I can't recall right now.

Q. Had you all been farming that land and keeping it clear?

A. Yes, keeping it clear and cultivating it.

Q. Had you been paying the taxes on it?

A. Yes, we paid the taxes on it.

Q. Did you all exercise control and dominion over it?

A. To the best of our ability, we did.

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Q. Who received the proceeds of the cultivation and what not; the beneffts?

page 20 } A. I think both parties did because—

Q. What both parties?

A. For instance, let's take Commander Yoemans, we did something for him and he did something for us. This was a barter, because I wasn't there in the daytime.

Q. Did you receive the benefit by virtue of the tillage of that soil?

A. We think he kept the field looking nice and fertilized it; we thought those were beneffts.

Q. Now, when, approximately,—I understand you can't tell me the exact date, but approximately when was it that you and Mrs. La Due had the conversation about Mr. Clark's stakes, or that she was happy with this frontage?

A. The best I can recall, it might be a year or so before 1957—the spring of 1957, when we noticed the stakes. Maybe it was a year before that that we had this talk or met them down on the road.

Q. Had anyone used this lot in here that is in the shaded area?

A. Yes. That had been planted into a garden. It had been planted into a garden one or two years by Mr. Roy Schaeffer's father, who lived in a house to the east of our tract; Mr. Roy Schaeffer.

Q. When was that, Mr. Currell?

A. I would say it was arond '53.

page 21 } Q. That he had a garden in there?

A. Yes.

Q. Was that garden inside or outside the perimeter designated on this plat as shaded?

A. As I recall, it was in this shaded area. He didn't use all of it, but he had a nice size garden in there.

Q. Did he come outside of that area that is shaded?

A. He was right inside. All within this old fence line here (indicating)—all within that.

Q. Other than that, has anyone ever used that lot since you have been there?

A. For the purpose of cultivating, no. No one has ever used it that I know of. After these stakes had been established last spring I did notice once or twice Mr. La Due chopping pines down.

Q. Which stakes?

A. After we had noticed this new stake here at our lane; this one along here (indicating).

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Q. You are pointing to a stake at the corner of your lane and Route 658?

A. Yes. And one along the road, 658, and this back here (indicating) in the field on the west side of the tract. And after we noticed that, as I say, last spring, I think I noticed Mr. La Due several times down there. And, let's see, there was a lad down there cutting pines—it was Mr. page 22 } Schaeffer's younger son, I believe.

Q. That was all last spring?

A. Yes.

Q. But from 1939 until last spring has anyone done anything on that lot other than Mr. Schaeffer using it for a garden?

A. No, sir, no one used it.

Q. Until last spring, had Mrs. La Due told you she claimed anything beyond that fence?

A. No, she never mentioned anything beyond that fence.

Q. Had you cultivated and used and exercised control over that land up to that fence—or up to the line that Mr. Clark established?

A. We used it up to the line that Mr. Clark had established. As I said, there was a twenty or twenty-five foot area clipped with the rest of the field to make it look better. We never clipped anything beyond that.

Q. The furthest point you established was the line established by Mr. Clark, is that correct?

A. That's right.

Q. You claimed that for how long, sir?

A. Since 1939.

Mr. Kelly: I believe that is all.

page 23 } CROSS EXAMINATION.

By Mr. Swart:

Q. Mr. Currell, point to the map where you said you saw Mr. La Due cutting pine trees.

A. It was in this shaded area, as I recall (indicating). This is a high area in here (indicating), and it is rather low in here (indicating). And these pines are here (indicating) on the road—quite high pines.

Q. This plat has been marked Complainant's Exhibit No. 1, and this area is covered by pines and honeysuckle (indicating). Is that true?

A. Present today?

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Q. Yes, right now?

A. Yes.

Q. How big are the stumps?

A. Oh, there are stumps in there ten inches in diameter.

Q. How many of them are there?

A. It extended from Route 658 and extended north, I would say, an area there of maybe fifty feet or more. That was heavily—quite heavily wooded.

Q. Are there any stumps back in here (indicating)?

A. Not in this area here (indicating).

Back in here (indicating) is mostly honeysuckle and wild plum and a few walnut trees.

Q. You don't contend that Mrs. Schaeffer had page 24 } a garden in this area covered with stumps, do you?

A. No. I say I recall the area covered by stumps maybe fifty or sixty feet in depth from this road, and from there on back, I would say it was a distance of 150 feet or more.

Q. Are we correct in saying the plat which you have offered is incorrect when it says "this area is covered by pine stumps and honeysuckle"?

A. Only partially so, because while the stumps were cut last spring the honeysuckle has been growing there for a number of years. She hadn't a garden there, I would say, for three or four years.

Q. It has been longer than that, hasn't it?

A. No, I wouldn't say it has.

Q. Do you mean all the honeysuckle has grown up in the last three or four years?

A. It must be if that is the way I recall it. I don't think there has been a garden there—

Q. Do you ever recall having a conversation with Mrs. Schaeffer—I don't mean the present Mrs. La Due, I mean Mrs. Schaeffer sitting back in the courtroom—about raising potatoes on this end (indicating), which is the northerly end of the La Due property?

A. No raising potatoes over there.

Q. Didn't you complain that Mrs. Schaeffer had her garden over on your property, over the northerly end page 25 } of the La Due property?

A. I can't recall the circumstances.

Q. Do you recall such a conversation?

A. Potatoe patch—no, I can't remember any conversation. I don't believe she planted any potatoes.

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Q. It could be I am using the wrong vegetable. Was there any crop that you claimed Mrs. La Due had too far to the north?

A. No, sir, I don't recall that because, as I recall it, the garden they did have was down in here (indicating), and the land up in here (indicating), and this (indicating) is all over-grown in wild plum and pines.

Q. This (indicating) was over-grown with pines?

A. Yes, the back part.

Q. How big were those pines?

A. They were something like, I think, ten or fifteen feet high.

Q. Do you mean pines ten or fifteen feet high had grown since there was a garden on that property?

A. No, that is not my contention at all, but what I am getting at is I don't recall any garden being back there because this is all over-grown back here (indicating). And, as I recall it, the garden was always down south of those pines.

Q. There was no garden to the rear of the La page 26 } Due property?

A. Not that I recall. As I recall the garden, it was down more, in the center part of the plot there.

Q. The rear portion is covered with pines ten or fifteen feet tall, and you never had any conversation with Mrs. Schaeffer about the garden being across your property, did you?

A. I don't recall any conversation.

Q. Didn't you tell the Court a few minutes ago that you cultivated this land from the westerly line up to the line according to the Currell deed?

A. Yes.

Q. How big are the pines in this area (indicating)?

A. Pretty big.

Q. They are pretty big, and you have never plowed that land, have you?

A. Not to the extremity of the west side, no.

Q. You were wrong when you told the Court you cultivated that, weren't you?

A. As I recall it, the pines have always been there and they come to this angle point in this line (indicating)—the wood does. We never cultivated those pines and never cut them, but when we speak of it we apply that area between those.

Q. Have you ever plowed any of this area?

A. It has all been plowed.

page 27 } Q. When?

A. I suppose Commander Yeomans when we—

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Q. Not suppose; what do you know?

A. He plowed it to put corn in there, so he had to plow it. Commander Yeomans at that time worked several people, and it could have been one or several people that plowed that land.

Q. Do you know Mr. Daniel Whitmer?

A. Yes.

Q. Is he sitting back there in the courtroom?

A. Yes.

Q. Did he ever plow it?

A. I am sure that he did.

Q. You are sure that he did?

A. One of the people that plowed it.

Q. What crop did you put in there?

A. I didn't put it; Commander Yeomans did.

Q. What crop did Commander Yeomans put in there?

A. As I recall it, he put corn in there.

Q. Did he pay you for the use of that land?

A. No, we had a barter agreement. We swapped things for his services.

Q. What services did you get for the use of that land?

A. It was put under cultivation, something that we were unable to do at the time; we didn't have the equipment. It was kept under cultivation and fertilized, and to us it made a much more presentable front field than to let it grow up.

Q. So that we are not mistaken, where do you mean the part that was cultivated?

A. From this angle here (indicating) of the line back.

Q. Did it extend all the way to the road boundary?

A. To the road boundary and over to our line here (indicating).

Q. Over to this line here (indicating)?

A. There was an oak tree that was formerly used, and that is the boundary of this wooded lot there (indicating).

Q. That is designated along Route 658, South 64, north 319.80 feet.

Is there a hill along this road somewhere?

A. A hill?

Q. Yes.

A. Coming up from our line here (indicating) there is an upgrade.

Q. All upgrade?

A. Yes.

Q. Where is the crest of the hill?

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A. The crest would be just to the west of our line. The crest of the hill would be along this here (indicating) a few feet west of this old line of trees here (indicating).

page 29 } Q. You mean a few feet west of the cedar trees?
A. Yes.

Q. Now, sir, I believe you mentioned there was an old fence here when you came?

A. Yes.

Q. Was it an old fence or merely a fence that had been cut down?

A. I couldn't say about that. I am not an expert, but here is what was there: Old rusted barbed wire, some old posts that had been partially burned, and this barbed wire embedded in these cedar trees. It had all the appearance to me of an old fence.

Q. But you are basing that on the fact it was rusty and because it was down?

A. Partially, yes.

Q. Was there a single strand of that wire running from any post to another post, or from one tree to another tree?

A. Yes, between the trees it had been.

Q. Between the cedar trees?

A. Yes, almost in tack there. I believe it was a three-strand barbed wire, as I recall, that went between the trees. It was in tack.

Q. Is there any evidence of it at the present time?

A. I imagine there are evidences of it in photographs.

Q. Did you not build a fence along your easterly boundary?

A. Yes, we did offset it in fact.

page 30 } Q. Did you not build a fence along your westerly boundary?

A. Along the westerly boundary?

Q. I mean this area here (indicating)? Does Mr. Shaw live in this area?

A. Yes.

Q. Did you build a fence between him and your property?

A. No. Mr. Shaw did put up a board fence there; he offset it. He has a nice board fence.

Q. Mr. Shaw put that up?

A. Yes.

Q. Did you build any fence along the highway?

A. No.

Q. Did you ever put any fence at any part of the boundary of Mrs. La Due's property?

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A. Let me see—no, no fence was ever erected around the boundary of her property. Just along Mr. Schaeffer's when Mr. Schaeffer lived over there we put up a fence.

Q. What was the purpose in putting up that fence?

A. Oh, we wanted to plant some multiflora rose fence up there, and while it was quite a ways from the house we thought it would look nice, and we put this—this fence is called a mesh fence; sometimes referred to as chicken wire.

It is a very light fence, and we put it up there to
page 31 } protect the multiflora roses when they were small.

Q. How long is it?

A. I would say one hundred yards long, maybe.

Q. How far do you live from the La Due property?

A. I would say it's about four hundred yards; something like that.

Q. Roughly, 1,600 feet?

A. No, it wouldn't be that far. It would be more like 1,200 feet.

Q. Can you see your house from the La Due property?

A. Yes, you can see it. It is visible.

Q. You are sure of that?

A. Yes, it is. Of course, there are a lot of trees around our house. But you can see the house very plainly.

Q. Can you stand in your house and look out the window and see any of this property?

A. Indeed we can.

Q. How many years did you plow this area?

A. Well, I am trying to think back now when it was first put to the plow, and I think it was in '46 or '47 when it was first put to the plow.

Q. I didn't ask you when it was first plowed; I asked you how many years you plowed it?

A. Well, I would say between twelve and thirteen years.

Q. You mean twelve or thirteen separate years
page 32 } you plowed that land?

A. Well, I didn't understand the question; I'm sorry. It wasn't plowed every year.

Q. How many different years did you plow or had it plowed?

A. I believe about four years it was plowed—four different years.

Q. Approximately, over what period of time?

A. That would be between '46 and the last time it was plowed—maybe '52; somewhere around there. Between '46 and '52.

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Q. Did anyone other than Commander Yeomans ever plow the land?

A. Yes, we had a man plow that piece years ago, as I recall it. Let me see—we were putting a garden in way down there and he plowed a piece of land for us down there. That was probably in '42.

Q. Are any of the men that plowed it here today?

A. I only see Dan Whitmer. He is the only one that I know.

Mr. Swart: That is all I have.

RE-DIRECT EXAMINATION.

By Mr. Kelly:

Q. Mr. Currell, what portion of the land did you plow in 1942 for the garden?

page 33 } A. Of course, we just moved out there and we had rather big ideas about putting in a garden. It was a pretty good size piece of land, as I remember. A fellow plowed it.

Q. Can you designate it on this plat which has been introduced for identification, whereabouts that garden was?

A. It was along the lane here (indicating), as I recall.

Q. It was not way out here (indicating) on the front end?

A. Not on the front end, no, sir.

Mr. Kelly: That is all.

RE-CROSS EXAMINATION.

By Mr. Swart:

Q. My questions with regard to the plowing were directed to the frontage of the property toward the road. Would your answer still be the same?

A. Yes, that would still be the same.

Mr. Kelly. I didn't get that. What was that again?

Mr. Swart: I asked him about the front of the land along the road, and he said that is what his answers were directed to my questions.

Mr. Kelly: I am afraid I don't understand that question.

The Court: He questioned the witness about plowing—I assume we were talking about the land in dispute—when he spoke about putting a garden in there, and when you asked

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him he said he thought the land had been plowed
page 34 } in 1942 for a garden and it was to the rear of the
land. Mr. Swart stated to him his questions were
directed to the area down toward the road which we are concerned about, and asked him if his answer is still the same.

Mr. Kelly: In other words, he never plowed on the front of the road for the garden.

The Court: The way the testimony now stands, the testimony is the same as before; it was plowed down to the road.

FURTHER RE-DIRECT EXAMINATION.

By Mr. Kelly:

Q. Have you ever plowed any land down here on 658?

Mr. Swart: Your Honor, I move to strike that; the witness has stated his answer. I repeated my question so there would be no misunderstanding what land we are talking about, and now Mr. Kelly is asking the same thing trying to have him give a different answer.

The Court: Let's hear it.

By Mr. Kelly:

Q. Have you ever plowed any ground down here (indicating) on 658, to use as a garden?

A. No, sir, not on 658. No, sir.

Q. Why did you tell Mr. Swart you had?

A. What?

Q. Why did you tell Mr. Swart that you had plowed land
fronting on 658 for use as a garden?

page 35 } A. I didn't understand his question that way. I
was referring to the front field we used and when
the front field was plowed. That is the way I understood
the question, and not the question was the land down on 658.

Mr. Kelly: I don't have any further questions.

The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?

Mr. Kelly: Mr. Ratcliffe.

Thereupon.

R. JACKSON RATCLIFFE,
called as a witness by counsel for complainants and, having
been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Kelly:

Q. You were sworn, weren't you?

A. Yes.

Q. What is your name, please?

A. R. Jackson Ratcliffe.

Q. Where do you live, Mr. Ratcliffe?

A. Manassas.

Q. What is your occupation?

A. County surveyor for Prince William County.

Mr. Kelly: I understand Mr. Swart is willing to admit
his qualifications.

page 36 } Mr. Swart: As a surveyor.

By Mr. Kelly:

Q. Did you make a survey of the lands of Dorothy and
Clyde J. Currell, which is located in Centreville Magisterial
District, Fairfax County, Virginia?

A. Yes.

Q. There has been introduced for identification a plat
which you have signed and certified to be correct on the 10th
day of May 1958. Did you cause that plat to be made?

A. Yes, I made it myself.

Q. You made the plat yourself?

A. Yes.

Mr. Kelly: I now offer that plat in evidence.

The Court: Any objection?

Mr. Swart: I have no objection for the plat being offered
for what it shows.

The Court: It will be received.

(The plat referred to, previously marked Complainants'
Exhibit No. 1 for identification, was received in evidence.)

By Mr. Kelly:

Q. Mr. Ratcliffe, I wonder if you would explain to the
Court the purport or what the lines and markings on this
survey show or designate.

page 37 } A. Well, in order to do this survey without
doing the whole tract of land, we held onto a pipe

R. Jackson Ratcliffe.

that was found on the main road and—

Q. Would that be Route 658?

A. Yes. And the corner to the land of E. A. Poe, which was formerly Roy Schaeffer's, and the pipe was found there. The pipe that was found was 1,714 feet back; it was actually even behind Mr. Currell's house—the pipe shown here. That is the east line of the property, if you want to call it that.

We still had held from that and worked over according to several deeds they were put on, finding the pipes that were put in perhaps a year ago. I don't know when, but they were there. The pipe here (indicating) on the road—that is the nearest to the Currell house—has a post beside it. A pipe down here on the side of the road (indicating) has a cedar stake on that and covered up in brush now. The pipe out in the field has a post beside that, and—

Q. What sort of a post?

A. A post that is big and round.

Q. A fence post?

A. It looked like a fence post—a straight post. The pipe on the road was in clear view on the bank of the road, as I came down the top of that hill, roughly, somewhere in that area. It is easily seen; that pipe is sticking out of the ground that high (indicating).

page 38 } Then, we came in from the Currell deed; we drew in this (indicating) line. We did not find any corners whatsoever for that particular piece of land. I had designated a cross-hatched line, which seemed to be the area that was more grown up than the rest of it. The open land out here (indicating) had been clipped at one time or other, and that seemed like it had been left for several years at least. There were shrubs three feet high or more growing around, and they wouldn't get started in a year or two; they would have to have several years to get them growing.

Also, these cedar trees along—it would be the west side of this portion (indicating) did have pieces of fence wire stuck in them cedar trees.

Q. Were there any posts?

A. I didn't see any posts, except this post (indicating) and one here (indicating).

Mr. Swart: Let the record show he designated the corners of the property.

By Mr. Kelly:

Q. Were these stakes fairly recently planted?

R. Jackson Ratcliffe.

- A. I can't tell exactly. They weren't rotten.
- Q. I mean the pipes?
- A. The pipes were still shiny; they were not rusty. These (indicating) pipes were rusty.
- Q. Now, as I understand it, the area you have shaded with cross blue marks is the area that was untilled and rough, and inside the cedar trees there had been remnants of a fence?
- A. Yes. It seemed to be a fence line.
- Q. I see.
- Now, the line that you have designated as the Currell line in dark blue is some twenty feet or twenty-five feet—
- A. Roughly, twenty-five feet, yes.
- Q. —west of that fence line. Is that right?
- A. Yes.
- Q. And the pipes that you say were still shiny were some seventy-five or a hundred feet west of that. Is that right?
- A. Yes. It would be just about 120 feet, roughly, all the way through.
- Q. Now, did you refer to the deed from Samuel Wells and Sarah Wells, dated February 5, 1897?
- A. Yes, sir. I saw the deed, too.
- Q. You saw the deed?
- A. I have a copy of it.
- Q. Were you able to find any of the stones or pegs that were referred to in that deed?
- A. No, sir. What happened, I think, on the roadside the road has been widened and the stones were displaced there. If there were any in the field we never found them; they possibly have been dug out in cultivation.
- Q. But you found no stones?
- A. No, sir, we didn't find any.

Mr. Kelly: That is all.

CROSS EXAMINATION.

By Mr. Swart:

- Q. Mr. Ratcliffe, you referred to a deed Y 5; you said you had a description.
- A. Yes.
- Q. How much road frontage is described there?
- A. Two hundred and eight-five feet.
- Q. There is no doubt about that being in the deed?
- A. No; that is in the deed.

R. Jackson Ratcliffe.

Q. Can you locate the 285 feet on the plat?

A. It is shown as indicated here between the dotted lines, that much frontage.

Mr. Swart: Can he make an "X" on the plat?

Mr. Kelly: I notice, your Honor, the plat says something is designated in red.

By Mr. Swart:

Q. Would you designate the road frontage contained in the Mathers deed?

A. Suppose I take it this particular way, from here to here (indicating) and it says it went back 470 feet. Actually, from the pipes, we found the pipes were set at 280.61 feet, going back this way, they were not parallel lines. The page 41 } pipes go back 466.74 feet on the west side. On the east side it is 458 feet. From the pipes we found.

I think possibly what happened as far as the distance through—originally, this road was not quite as wide as it is now and it extended into the road frontage.

Q. That would account for the shortage in depth?

A. Yes.

Q. You say two sides were not parallel. Is there less than one degree difference?

A. Yes.

Q. Now, did you find any pipes at these corners (indicating) according to the Currell deed?

A. No, sir.

Q. Let the record show I am pointing to the ends of the line on the plat marked "line according to the Currell deed."

No markers or any kind at those points?

A. We didn't find any.

Let me say that a lot of people would actually drive a pipe down in the ground to keep it from tearing up a mowing machine. It is possible they were there, but we didn't find any.

Q. Did you find the old pines along the eastern boundary?

A. Yes.

Q. And along the La Due property in the driveway?

A. Yes, all four.

page 42 } Q. Where did you get your description for the Currell property?

A. We had that description from the survey that was made.

Q. Who made the survey?

R. Jackson Ratcliffe.

A. Mr. Clark.

Q. Then, you used Mr. Clark's description?

A. We used his description trying to put it together. And we also had a deed description in Deed Book A-10, Page 82, dated February 22, 1956, D. W. Mathers to Roy Schaeffer, in which it refers to this particular piece of property.

Q. This did not refer to the Currell property, did it?

A. No, sir.

Q. The only description you had of the Currell property was the Clark survey?

A. That is the one which I worked from. The deed is made up from that survey.

Q. Did you arrive at a description of this property by any other means other than using the Clark survey?

A. No.

Q. Now, do you have any explanation why the westerly boundary does not coincide with the fence?

A. No, sir, I do not.

Q. Did you check the boundary line on the ad-page 43 } joining property of the westerly side of the Currell property?

A. We weren't interested in—

Q. I asked you if you checked it?

A. No, we did not.

Q. Is it not true that there is a mistake in the Clark description?

Mr. Kelly: I would like for him to specify what mistake.

By Mr. Swart:

Q. Did you notice a mistake as far as this small area in here (indicating) is concerned?

I am speaking of any mistakes, but if you want to separate it in the disputed parcel and other properties, separate them.

A. We have actually no way to dispute Mr. Clark's line except where the deed calls for different distance and what was actually found between the pipes.

Q. The distance did not measure out between the pipes, did it?

A. No, sir.

Q. How much was it off?

A. About three feet.

Mr. Kelly: Three feet out of how many?

R. Jackson Ratcliffe.

The Witness: Seventeen hundred seventeen, what the deed calls for, and 1714.47 between the pipes.

By Mr. Swart:

Q. How about the distance from the southeast-
page 44 } ern corner to the southwestern corner?

A. That we put in because we only did this part of it trying to fit this thing together and find this stone.

Q. Did you check the distance along the southerly boundary?

A. The only thing we could do there was to go by the deed itself.

Q. Couldn't you have checked it in comparison with the adjoining property?

A. It wasn't necessary. We weren't interested in that side.

Q. If the westerly boundary does not go according to the Currell deed, go along the adjoining property, wouldn't that have some effect on the other part of the survey?

A. Before going any farther let me show you the plat of the whole thing. There is quite a lot of property in the rear. We found this pipe (indicating) and this pipe here (indicating), and we found there was a cedar stake back in there (indicating). We did not go any farther than that.

Q. Suppose this course on this Clark survey had been north 34 degrees, it would have been wrong?

A. Yes.

Q. Could not south 34 degrees be wrong if it does not come to the corner of the adjoining property at the southwesterly corner?

page 45 } A. Yes, it could be wrong; it is possible it could be.

Q. You made no check of that?

A. No, indeed. We knew it was on this side of the road (indicating); we knew it was this line here (indicating).

Q. Wouldn't it be more accurate to mark the La Due property on both sides rather than from one side only?

A. No, sir, for the simple reason it called for the description of this property to be along side of the private road to the dwelling.

Q. When was that written?

A. In 1897.

Q. Couldn't it be possible that the driveway had been shifted since 1897?

A. It could be.

R. Jackson Ratcliffe.

Q. In which case your starting point would be wrong for the La Due property?

A. Yes and no, for the simple reason there is no other way of producing—it is not tied down here any better.

Q. Suppose the Currell property—and I am speaking of the part to the west of the La Due property—could be shifted enough so the boundary along the La Due property and the Currell property would coincide, would that not make a difference?

A. It couldn't be shifted that much.

Q. The corner of the Currell property and the page 46 } corner of the adjoining property is off?

A. That happens to be the present road where that road might have been off, I don't know. Actually, as far as this goes, it says here there are two different descriptions even of the road. One was leading from Cratcher's school house, and if you go back further they have a different description of the road, Buster's school house and Centreville.

Mr. Swart: That is all.

RE-DIRECT EXAMINATION.

By Mr. Kelly:

Q. Mr. Swart said and pointed out the fact there was a discrepancy of three feet on the east line of the Currell property, the difference being between 1714.47 feet that you found, and the deed called for 1717 feet.

A. Yes.

Q. Is there not a discrepancy of approximately three feet on the lateral sides?

A. Yes.

Q. Of the La Due survey, too?

A. There is quite a big discrepancy of the acreage of the La Due—or the property they have enclosed in pipe. There is more than an acre difference.

Q. How much acreage does the original Mathers deed call for?

A. The original Mathers deed calls for two page 47 } acres, more or less.

Q. How many acres are enclosed by the La Due survey where you found those stakes set?

A. Three acres, just a fraction above.

R. Jackson Ratcliffe.

Q. You weren't able to find any of the markers for the Mathers' survey?

A. No, sir.

Mr. Kelly: That is all.

RE-CROSS EXAMINATION.

By Mr. Swart:

Q. Mr. Ratcliffe, how much acreage is in a parcel of land 285 feet by 470 feet, as described in the La Due deed?

A. I didn't multiply that; it is over three acres.

Q. The Mathers or La Due deed did call for a parcel which contained more than three acres?

A. That is very true, but more or less—

Mr. Swart: That is all.

Mr. Kelly: You may continue with your answer if you haven't finished.

Mr. Swart: I object to that.

The Court: Let him finish.

The Witness: I should say they do not miss more than a tenth, anyhow.

By Mr. Swart:

Q. Have you ever surveyed a piece of property page 48 } where the acreage computed was more than a tenth off?

A. We always make more or less, sir.

Q. Have you ever surveyed a piece of property and computed the acreage where it turned out to be more or less by more than one-tenth off?

A. It depends on the size; one-tenth of the whole area. That is what we try to get to.

Q. Have you ever done that?

A. When we do a survey we try to carry it out so actually it would—

Q. You are not answering my question. The question was, have you ever surveyed a piece of property and computed the acreage where it was more than one-tenth off that is called for in the deed?

A. Oh, yes, quite often.

Q. Quite often, have you not?

A. Yes.

Dorothy Currell.

Mr. Swart: That is all.

FURTHER RE-DIRECT EXAMINATION.

By Mr. Kelly:

Q. One-tenth of what?

A. One-tenth of the total acreage.

May I make a statement on this?

Mr. Swart: No, sir.

Mr. Kelly: I think he should be allowed to ex-
page 49 } plain his answer, if the Court please.

The Court: All right.

The Witness: At the time the surveys were made with the compass and chain the error was one foot in every three hundred running feet. The present day farm survey is one foot in 5,000 and normally the present day subdivision is one foot in 25,000 feet in error. So, there could be quite a bit of error if you take the old-fashioned method of surveying.

The Court: Do you want to excuse the witness?

Mr. Kelly: Yes.

The Court: You are excused.

(Witness excused.)

The Court: Who is your next witness?

Mr. Kelly: Mrs. Currell.

Thereupon,

DOROTHY CURRELL,

called as a witness by counsel for complainants and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Kelly:

Q. Will you tell the Court your name, please.

A. Dorothy Currell.

Q. Speak up so the Court can hear you. You are the wife
of Mr. Clyde Currell who testified earlier?

page 50 } A. Yes.

Q. You live on the tract of land that is described in the stipulation, and a copy of which is on this plat that has been offered in evidence as Complainants' Exhibit 1?

Dorothy Currell.

A. Yes.

Q. When did you move there?

A. In 1941.

Q. When did you buy it?

A. In 1939.

Q. Now, when you moved there, Mrs. Currell, what condition—what was the condition of the land?

A. The front field was open; on the other side were woods. Those woods are still there; the front field is still open. It is much the same as it was, except that it has been covered.

Q. Did you have a survey made when you moved there?

A. No, we didn't. Mr. Wells did; Mr. Wells from whom we bought the place.

Q. Was that survey staked out when you moved there?

A. Yes, it was.

Q. Who did that, do you know?

A. Mr. Clark. I don't know his full name.

Q. Do you know where Mr. Clark is today?

A. No, I don't.

Q. Now, I show you the plat that has been
page 51 } marked Complainants' Exhibit No. 1, and ask you
if you can recognize that or if it is familiar to you
(handing the exhibit to the witness)?

A. This plat, yes.

Q. Do you recognize it?

A. Yes.

Q. Would you tell the Court what you referred to as the open field in front.

A. Is this (indicating) supposed to be our western boundary?

Q. I am asking you if you can identify the plat?

A. Well, it is unfamiliar to me because this part (indicating)—this is our western corner; I am talking about this area (indicating) to the right of my hand as the open front field. That small area in here (indicating) is wooded.

Q. Now, you said there were woods on the other side of that open field or that cleared area. Where do the woods begin on the east side of that cleared field?

A. At this point here (indicating) and then it goes over here (indicating).

Q. You are designating, I believe—

A. The wooded area of La Due.

Q. You are designating the line that goes down the line of cedar trees?

Dorothy Currell.

A. That is right here (indicating). On the other page 52 } side of our line is also trees intermittent.

Q. When you moved there what part of this did you all start cultivating or assumed control of it?

A. The first two years or so we just cut all of the open parts to keep it neat.

Q. To what line to the east?

A. To here (indicating).

Q. Do you know what that line designates?

A. Wait a minute—I'm so near-sighted I can't see.

Q. Do you have your glasses in your pocketbook?

A. This (indicating) is the line, Mr. Kelly.

Q. What line is that?

A. This (indicating) is the line that our deed calls for, and this (indicating) is the area that we have been planting.

Q. How did you determine that line?

A. It was determined by survey stakes, as far as I know.

Q. Did you see the survey stakes?

A. Yes, for many years, and I suppose in cultivating the tractor or the equipment that went in there probably tore them down, or somehow they disappeared because we haven't seen them for several years.

Q. How many years would you say?

A. Three or four, perhaps.

page 53 } Q. Now, you say when you went in there you cleared those fields and kept them clipped?

A. Yes.

Q. Who clipped them for you?

A. We got anybody that we could. If any of the neighbors had machinery they rented out or were willing to let us use, we would make deals that way. Or we would do it ourselves by borrowing a tractor.

Q. You would do it yourself by borrowing a tractor?

A. Yes.

Q. When you moved in there in 1941, and when you bought it in 1939, was this property, that is designated in the shaded area of the plat, occupied?

A. No, never has been.

Q. Has it ever been used?

A. Never, except as a garden. As my husband pointed out, there is a small area in here (indicating) she used as a garden.

Q. Whereabouts are you designating that area?

A. I'm sorry, I can't designate it absolutely because I never paid too much attention. I know it is an area off the

Dorothy Currell.

road; it is not anywhere in the first half, it is somewhere in the last—in here (indicating) somewhere.

Mr. Kelly: She is designating in the last third of the shaded portion.

page 54 } By Mr. Kelly:

Q. Has the line or area between you and what is called the La Due property ever been discernible? Can you see that line?

A. Very readily. You can see it from our house; it is obvious. From the road, it is not obvious because the land comes up from the road, but our house lies on a rise and you can look and see the property very definitely.

Q. I have in my hand some pictures, Mrs. Currell. Did you take those pictures (handing the photographs to the witness)?

A. Yes, I did.

Q. Do you recall when they were taken?

A. We have taken them over a period of years. In fact, some of them probably date back a number of years, but there are two, at least, recent ones and they all show the same thing. They all show a slightly different color in vegetation which indicates there was no seeding done in that area.

Q. You are referring to the area between the line of cedar trees and the line according to the Currell deed. Is that correct?

A. That is right.

Q. You have never seen it there?

A. No.

page 55 } Q. Mrs. Currell, I have here a series of pictures that apparently show the area in question. You said before, I believe, you took these pictures?

A. Yes.

Q. I show you the picture which we will offer as Complainants' Exhibit 2, and ask you if you took that picture (handing the photograph to the witness)?

A. Yes, I did.

Q. Can you tell the Court what it shows or what that purports to show?

A. It shows the line of trees—cedar trees on which there was a fence line and a post.

Q. That is a fence post?

A. Yes.

Dorothy Currell.

Q. Can you point out on Complainants' Exhibit 1 whereabouts that line is?

A. Right along here (indicating).

Q. That is a portion of that line?

A. That is right.

Q. That portion of the west line of the shaded area—

A. That is right.

Q. —on the plat?

A. That is right.

Mr. Swart: Let's number them so they don't get mixed up.

The Court: That will be No. 2.

page 56 } (The photograph referred to was marked Complainants' Exhibit No. 2 for identification.)

By Mr. Kelly:

Q. I offer you another picture—

The Court: On No. 2, where would the road be?

The Witness: You mean the main highway, is this (indicating) way. The house is back up there (indicating).

By Mr. Kelly:

Q. Mrs. Currell, I offer you what will be Complainants' Exhibit No. 3, and ask you if you will tell the Court what that is (handing the photograph to the witness)?

A. This is a photo of the same fence line and the same cedar trees. It shows some of the wires still in existence.

Q. When was that taken?

A. In 1957.

(The photograph referred to was marked Complainants' Exhibit No. 3 for identification.)

By Mr. Kelly:

Q. I offer you another photograph which will be marked Complainants' Exhibit 4, and ask you if you can identify that (handing the photograph to the witness)?

A. This is the same line of trees and it shows the same—
not the same fence, but the same line of fencing.
page 57 } It is a fence nailed to a tree.

Q. Whereabouts on the plat is that located?

A. That is also in the row of cedar trees.

Q. This is a picture of a different tree?

Dorothy Currell.

A. Yes. There are two or three different trees I took all with wire on them.

(The photograph referred to was marked Complainants' Exhibit No. 4 for identification.)

By Mr. Kelly:

Q. I offer you a photograph which would be No 5 (handing the photograph to the witness.)

A. This is another one in the same row. As you can see, they all have fencing nailed to the trees. It's been there many years ago because it's growing right into the trees.

(The photograph referred to was marked Complainants' Exhibit No. 5 for identification.)

By Mr. Kelly:

Q. I offer you a picture that will be marked Complainants' Exhibit No. 6, and ask you to tell the Court what that is (handing the photograph to the witness)?

A. This is a picture taken from our house, from the lawn, and it shows very distinctly the area that is designated as the La Due area. It shows, by a difference in the page 58 } coloring of the vegetation, the strip between her wooded area and what we believe to be ours, by our deed.

Q. I want you to come here and point where Mr. Swart and the Judge can see. Point out to them first the shaded area on the plat.

A. That is this strip here (indicating) has a different color. Here (indicating) is ours; that is the La Due (indicating).

(The photograph referred to was marked Complainants' Exhibit No. 6 for identification.)

By Mr. Kelly:

Q. I show you what will be Complainants' Exhibit No. 7, and ask you what that purports to show (handing the photograph to the witness)?

A. That is similar.

Q. When was Complainants' Exhibit No. 6 taken?

A. Which is six?

Q. The one the Judge has taken.

A. This was taken in '55.

Dorothy Currell.

This is the same view or similar view.

The Court: That is your driveway here (indicating)?

The Witness: Yes.

The Court: And this (indicating) is the La Due wooded area?

page 59 } The Witness: Yes.

By Mr. Kelly:

Q. How long has that condition existed that is shown in that picture? How long have those lines been discernible like that?

A. As far as I can remember. Even though we have cut the grass in that strip to keep it neat, it is obvious there has been no weeding; the coloration has always been different. It's different right now.

(The photograph referred to was marked Complainants' Exhibit No. 7 for identification.)

By Mr. Kelly:

Q. I show you what will be Complainants' Exhibit No. 8, and ask you what that is (handing the photograph to the witness)?

A. This view is from the highway along the strip next to the wooded area designated as La Due, and that also shows a difference in the coloration of the vegetation. You can see the foreground is different.

Q. What area on that plat have you all cultivated and used since you bought the land?

A. What area?

Q. Yes, on this plat?

A. All that has been in the open field; that would include everything except this (indicating) little strip of page 60 } woods here and goes all the way back.

Q. The woods on the west side of your property?

A. Yes, and there is a little open place here (indicating) up to back in here (indicating); we keep that cut, but back in there (indicating), it's wooded again.

So, it's only this front area here (indicating) and then back of the house about three to five acres is open and cultivated.

(The photograph referred to was marked Complainants' Exhibit No. 8 for identification.)

Dorothy Currell.

By Mr. Kelly:

Q. Referring to the front, what portion of this front have you claimed and assumed control over and cultivated?

A. From here (indicating)—well, we assumed control from here to here (indicating), but we have cultivated from here to here (indicating).

Q. You all claimed those woods, too?

A. That's right, absolutely.

Q. And you have designated, I believe, the area on the plat shown as the line designated by Currell deed on over to the west boundary?

A. Yes, the boundary of Willard Shaw.

Q. How long have you claimed that?

A. Since 1939; August.

page 61 } Q. I believe you said after Mr. Clark had made his survey those pipe stakes that he put in there were visible for sometime, is that right?

A. Yes, they were.

Q. For how long, would you say?

A. I would say for many years. Let's see, that is almost twenty years. I would say fifteen years.

Q. Did there ever come a time when you had a discussion with Mrs. La Due about your boundary between her property and yours?

A. Yes, sir, in a casual way several times. The first time was shortly after we bought the place and she came up and talked to us and told us she was very happy that our deed gave her more road frontage than she thought she had.

Q. When did she tell you that, Mrs. Currell?

A. Shortly after we bought it—perhaps, '40, '41.

Q. Had you all moved out there when she told you that?

A. That I don't recall. I think we had; I think we were there.

Q. Did anyone live on this property?

A. No.

The Wellses were there until January of 1940. We let them stay there.

Q. Stay on your property?

A. Yes.

page 62 } Q. That is in the house that you and Mr. Currell took over?

A. Yes.

Q. Did anyone live on Mrs. La Due's property?

A. No, never.

Dorothy Currell.

Q. Did she ever visit or come out there?

A. If she did it was when we weren't there, because my husband and I are not home during the day; we don't know what goes on.

Q. She had this conversation with you, you say?

A. She came up to the house this night and talked to us; it was a friendly conversation.

Q. Did she at that time lay any claim to any land beyond the Clark line?

A. She said she was happy that our deed gave her that much more. There wasn't any discussion about any other property.

Q. When is the first time any question about that line ever came up, Mrs. Currell?

A. March 1957. She came up there with her husband, Mr. La Due, and another man whom I can't identify, and told us immediately that we have to move our line, that she had her place surveyed and her survey called for part of our land.

Q. Had the survey been made then?

A. Yes.

page 63 } Q. Were those stakes visible from that survey?

A. Yes, we had seen them for several days.

Q. Whereabouts on the plat are those stakes? Could you point out that area?

A. This (indicating) is probably where the post was; a big fence post.

Q. Who put that fence post in?

A. We didn't see who did it, but we expect Mr. La Due did it.

Q. What does that mark show (indicating)?

A. That mark is the area they claim beyond this line here (indicating), that we claim is our line. That is overlapped.

Q. When do you say is the first time they laid any claim to that area between the Clark line and the—

A. March 1957.

Q. March 1957?

A. Yes.

Q. Until that time did you have any idea that anyone else claimed the land?

A. None whatsoever. It was a shock.

Q. How many times between 1941 and sometime when you had the first discussion with Mrs. La Due in 1955 or '56, when

Dorothy Currell.

she told you of this new survey—how many times did you see her?

page 64 } A. Do you mean at out house?

Q. Yes, on those premises?

A. We spoke to her, perhaps, twice.

Q. Whereabouts?

A. Once down at the road, and probably twice altogether up at the house. That includes the time in March 1957.

Q. Did she at that time make any objection to those stakes?

A. No.

Q. Were you at that time cultivating those fields, using those fields?

A. Yes.

Mr. Kelly: I don't have any further questions.

CROSS EXAMINATION.

By Mr. Swart:

Q. Mrs. Currell, do you contend that the line of cedar trees with the old fence on it is the boundary line of Mrs. La Due's property?

A. No, I don't contend that.

Q. What reason do you show the old fence? What are you trying to tell the Court by that?

A. I thought it might be of interest because Mrs. La Due told us she thought that our deed gave her more property along the road that she thought she had.

Q. Am I correct that your opinion is that Mrs. page 65 } La Due owns more than what might be assumed the natural boundary of the cedar trees?

A. Yes, I would say she owns up to here (indicating).

Q. Didn't you go to Mrs. La Due the first year that you bought this property, in Washington, D. C., and try to buy this land?

A. Yes, uh-hum.

Q. A moment ago you said the first contact was when she came to your house?

A. No, I don't think you understood the question Mr. Kelly put to me. The question he asked was when we first realized she was laying claim to this land? And I said the first time we saw her in 1957. Is that what you referred to?

Dorothy Currell.

Q. Mr. Kelly asked you if you had a conversation with Mrs. La Due about this property and you said the first conversation was when Mrs. La Due came to your house about 1941.

The Court: The question related to at the house or on the premises.

Mr. Swart: That was later. He did ask that question later.

By Mr. Swart:

Q. You did go in 1939 about buying the property, didn't you?

A. Go in 1939 about buying the property? I don't know whether it was 1939. It could have been any other page 66 } year; we did talk to her about it.

Q. When was the next occasion that you talked to Mrs. La Due about any of this land?

A. That was the time she came up to our place.

Q. When was that, approximately?

A. Probably 1941. Maybe even 1940; it was shortly after we bought the place.

Q. When was the next time you had any contact with her about the property?

A. It was casual so I don't remember too much about it. I remember what was said, but I don't remember when it was. It was probably several years ago. We were down at the road here and we were looking for this pipe that had been at our corner and we never found it.

Q. Didn't you and Mr. Currell get into an argument about where the boundary was?

A. Yes, I believe we did, as all husbands and wives do.

Q. So you couldn't agree at that time where it was?

A. That was about five or six feet.

Q. The driveway that you use has not changed?

A. No, it was just a mud hole when we came there and it's in the same place.

Q. During the first ten years that you lived there, didn't you contact Mrs. La Due several times trying to buy her land?

page 67 } A. Once we went to Washington, D. C. to see her. I believe I wrote her a letter once.

Q. That was the only contact you made?

A. That is right.

J. R. Eagle.

Q. You deny that one of the occasion that she told you how much land she had?

A. That was in March 1957.

Q. You deny that she informed you how much frontage she had before that?

A. Yes.

Mr. Swart: That is all.

The Witness: She never told us before March 1957.

Mr. Kelly: I don't have any further questions.

The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?

Mr. Kelly: Mr. Eagle.

The Court: How long will it take?

Mr. Kelly: I suppose the same amount of time as Mrs. Currell took.

Thereupon,

J. R. EAGLE,

called as a witness by counsel for complainants and, having been previously sworn, was examined and testified as follows:

page 68: } **DIRECT EXAMINATION.**

By Mr. Kelly:

Q. Tell the Court your name, please.

A. J. R. Eagle.

Q. Where do you live?

A. Route 616, near Bull Run, Fairfax County.

Q. How long have you lived there, Mr. Eagle?

A. Since 1937.

Q. What do you do, sir?

A. Farmer.

Q. Do you know Mr. and Mrs. Currell?

A. Yes, sir.

Q. How long have you known them, sir?

A. I have known them practically ever since they moved out there. I believe they said they moved in '41. It was soon after that I met them: I don't recall the exact date.

Q. How did you happen to know them?

J. R. Eagle.

A. Well, we attended the same church that they attended. I knew him through church worship services.

Q. Did you know him before he went to that church?

A. I possibly did. I'm sure that I must have, because the church, as I remember, put on a campaign trying to recruit new members and he was on my list, and evidently, I am sure, I did know him before that.

Q. Did you go to see him about joining the
page 69 } church?

A. Yes.

Q. Where did you go to see him, Mr. Eagle?

A. Yes, at the home.

Q. That piece of property where he lives now?

A. Yes.

Q. When you went there—at the time that you went there were you familiar with that piece of property?

A. No, sir. I didn't know anything other than I heard he bought it and, of course, I didn't question how much land he owned or know anything about it.

Q. Are you familiar with the area in the southwest corner of the driveway and 658?

A. No, sir, not the southwest. I don't think I am. I don't know what you have reference to, but I don't know of—

Q. I show you a copy of a plat which has been marked Complainants' Exhibit No. 1 (handing the plat to the witness).

A. Yes, I see this.

Q. Do you recognize it?

A. Yes, I recognize that. That is what you had reference to, the southwest corner (indicating).

Q. Do you see 658 along here (indicating)?

A. Yes.

Q. Show us where his driveway is, if you can, sir?

A. I don't have my glasses, but I imagine this is it (indicating). I imagine it is right here (indicating)
page 70 } somewheres.

Mr. Kelly: He is designating the driveway.

By Mr. Kelly:

Q. The area I have reference to is a shaded area in that corner (indicating).

A. This area (indicating). I was under the impression

J. R. Eagle.

he did own land farther over here (indicating). As I say, I don't know where—

Q. Farther where?

A. To the east. Don't he own land on the other side of the driveway?

Q. Yes.

A. That is what I thought you had reference to, the south-east corner. I knew he did have some land here (indicating).

Q. You were referring to the east of the driveway?

A. Yes.

Q. I have reference to the shaded area. Are you familiar with that area?

A. Yes.

Q. What is the nature of that area?

A. I am not too familiar with it. I remember seeing this area in here (indicating) and I did work this piece of land in here, mowed it and made the hay on it. And I do remember this corner (indicating), it wasn't under page 71 } cultivation and there was a line of trees here (indicating) and this was more or less covered, (indicating).

Q. The shaded area?

A. Yes. And, as I remember, I mowed this across the driveway up to the house and done this side (indicating), all this front area, that was cleared. And, to my recollection, there was just a little bit of timber swamp land in here (indicating). The rest of this area, as I recall, brought it down to the road.

Q. How close did you mow to that wooded area?

A. To my recollection, we mowed right up to it.

Q. Up to the wooded area?

A. Yes.

Q. Whose hay were you mowing?

A. Mr. Currell's.

Q. When was that, do you remember?

A. I don't know definitely. It was around 1950.

Q. Around 1950?

A. It could have been before that or shortly after.

Q. Now, Mr. Eagle, had the property that you were mowing over there then been cultivated or mowed before you had mowed it?

A. I don't know about mowing it; there was evidence it was cultivated. I could see evidence of some corn rows there

J. R. Eagle.

and small grain. I mowed Lespedeza.
page 72 } Q. Was it new Lespedeza?

A. Lespedeza is new each year; it's not just an annual plant.

Q. You couldn't tell if it was the first mowing or not?

A. No, I don't know if it was the first mowing or not.

Q. Did you visit the Currell's before you mowed?

A. Yes, I had.

Q. For how long?

A. We had been there a number of years—four or five years, I imagine.

Q. How often would you visit him?

A. Well, that's not clear in my mind. They were over our home and we visited them different times, not too often, probably once a month or maybe couple times—sometimes every week or so.

Q. When did you first start visiting back and forth, going from one house to the other?

A. I imagine it was around 1942 or '43, along in there.

Q. At that time, was this area that you mowed being mowed or used at that time?

A. It was being cleared up and kept in a respectable sort of shape.

Q. Were you able—

A. I don't remember when it was first tilled.

Q. Were you able to discern the line between
page 73 } the Currell's—

A. I imagine you could. There wasn't a question in my mind about the different lines; I don't know about that. All I know is the fact I did mow this field here (indicating).

Q. During the time that you visited the Currells and mowed that field, did anyone claim title to that field other than Mr. Currell?

A. Not to my knowledge.

Q. Have you heard of anyone other than Mr. Currell offering that they own that?

A. Are you speaking of this field here (indicating)?

Q. This front field that you mowed?

A. No.

Q. Did anyone ever fuss at you, jump at you or get after you for mowing it?

A. No, sir.

Q. Somebody had been mowing it before you?

J. R. Eagle.

A. I don't know about how long, but it had been farmed. There was evidence it had been farmed.

Q. Before you went there?

A. Yes.

Q. Do you know whether Commander Yeomans—do you know Commander Yeomans?

A. Yes, sir.

Q. I believe he has moved?

page 74 } A. Yes.

Q. Do you know whether he farmed it?

A. I couldn't say that he did. I don't know who did the farming. I do know it was farmed.

Mr. Kelly: That is all.

CROSS EXAMINATION.

By Mr. Swart:

Q. Mr. Able—

A. Eagle.

Q. Oh, Eagle.

Mr. Eagle, did I understand you to say that Commander Yeomans has moved?

A. Yes.

Q. Do you know where he moved to?

A. I know where he did move from there, but I don't know where he is now.

Q. You don't know where he is now?

A. About six miles out of Orange where he moved.

Q. You don't know where he is now?

A. No, sir.

Q. Did I understand you to say you mowed this only once?

A. That's right.

Q. When was that?

A. Around '50, I don't know it exact.

page 75 } Q. Did Mr. or Mrs. Currell tell you where to mow?

A. Yes, they told me to mow this field down here (indicating).

Q. They didn't point out any specific boundary, they just said, "Mow the field"?

A. They didn't point out every detail, but I was supposed to mow the field covered with Lespedeza.

Q. All the way from the pines to the row of cedar trees?

J. R. Eagle.

A. Yes, that's right.

Q. Did you know Mrs. La Due before today?

A. No.

Q. How long did you take to mow that field?

A. Well, I imagine it was three days to complete the job.

Q. Did you see Mrs. La Due during that time?

A. Not to my knowledge.

Q. Is there any evidence of any fence or other boundary lines that was there at the time you mowed this between the cedar trees and the pine trees?

A. Where do you refer to?

Q. You know where the row of cedar trees is?

A. Yes.

Q. And to the west of that there is some pine?

A. Over here (indicating).

Q. Was there, at the time you mowed this, any page 76 } evidence of any boundary line between the two?

A. Not to my knowledge. If I remember correctly, I think we took machinery here (indicating) in the corner of this lot.

Q. You said there was evidence of corn rows?

A. Yes.

Q. Was this over the whole field?

A. I don't know. Lespedeza was over the whole field and evidently it had been farmed.

Q. You don't remember whether the corn field had been on a particular area or spread out over the tract?

A. It was evidently over the field here. Mr. Currell,—when he came to ask me to mow it, I wasn't in need of any hay at the time and I wasn't too much interested, and I thought it was the custom that you give a share in your farming. And he said his object in mowing was to clean it up and keep it in a nice condition and I could have the hay, and that appealed to me. That is about as far as I can tell you.

Q. Are you familiar with what happened to that land since then and what happened a few years before that?

A. No, sir.

Q. You don't know whether it was farmed or not?

A. No, except—

Q. What you saw?

A. That's right.

page 77 } Mr. Swart: That is all.

Aubrey A. Graves.

RE-DIRECT EXAMINATION.

By Mr. Kelly:

Q. I understood you to say you had been visiting the Currells some time around 1942?

A. I imagine it was around that time; shortly after they were there. I think I met Mrs. Currell—if my memory serves me right, I think I met her in Manassas Hardware Store, and that was shortly after. At that time there wasn't any folks in that particular area.

Q. You visited from that time?

A. Yes, shortly after that.

Q. In going there you would notice whether that field was kept up or not?

A. I talked to Mr. Currell at different times and he spoke about wanting to keep it in a nice way, to keep it cleared, and he wasn't too interested in crops, but he wanted to keep his land in a nice condition.

Mr. Kelly: That is all.

The Court: Step down.

(Witness excused.)

The Court: We will recess for lunch until 2:00 o'clock.

(Whereupon, at 12:55 o'clock p. m., a recess was taken until 2:00 o'clock p. m., this day.)

page 78 } AFTERNOON SESSION.

2:05 p. m.

The Court: Who is your next witness?

Mr. Kelly: Mr. Graves.

Thereupon,

AUBREY A. GRAVES,

called as a witness by counsel for complainants and, having been previously sworn, was examined and testified as follows:

Aubrey A. Graves.

DIRECT EXAMINATION.

By Mr. Kelly:

Q. Would you tell the Court your name, please?

A. Aubrey A. Graves.

Q. Where do you live, Mr. Graves?

A. Route 1, Centreville, Virginia.

Q. With reference to the Currell property, where do you live?

A. Directly opposite Route 658.

Q. Straight across the road from it?

A. South of it—south of the Currells.

Q. How long have you lived there?

A. I moved there in December 1950.

Q. That is your first knowledge of the property when you moved there?

A. Yes.

Q. How long have you known the Currells?

page 79 } A. I think we met them very early in 1951; maybe February or March.

Q. Of 1951?

A. Yes.

Q. Do you know Mr. and Mrs. Schaeffer—I mean Mr. and Mrs. La Due?

A. Yes, I had the pleasure of meeting Mr. and Mrs. La Due for the first time last summer; I think the early part of the summer.

Q. Now, I show you what has been marked as a copy of Complainants' Exhibit No. 1, and ask you if you can tell what that is if you can recognize it (handing the plat to the witness)?

A. Yes, I think I recognize this.

Q. Do you recognize Route 658 down here (indicating)?

A. Yes.

Q. Could you show us on this plat where the Currell house would be, generally?

A. Back up in here (indicating) quite a ways.

Q. And where is the driveway to their house?

A. The driveway would be down this lane (indicating).

Q. Now, are you familiar with the property that is owned by Mrs. La Due?

A. Yes. This little tract here (indicating) was pointed out to me being owned by Mrs. La Due—by Mr. Cur-

page 80 }

Q. That was pointed out to you?

Aubrey A. Graves.

A. This little tract here in the corner (indicating).

Q. When you moved out there in 1950, what condition—what shape was the land across the road from you in?

A. This area was grown up (indicating).

Q. You are referring now to the shaded area on the map?

A. Correct. And had a very deep lot of honeysuckle and pine trees on it, and cedar trees on it and a few stumps. It was a wooded and unattended area, it would appear to me.

This area (indicating) from the forest over here (indicating) was an open field.

Q. Who used that field or exercised dominion over that field?

A. To the best of my knowledge, Mr. and Mrs. Currell.

Q. Did they use the field?

A. Yes, on three different occasions they made arrangements with me to have me farm that field, to cut hay off of it, which I use for my livestock.

Q. And when you moved there did it appear to have been farmed?

A. This portion (indicating) from the woods over to this far area (indicating), obviously, had been farmed.

Mr. Swart: Did he say it had or had not?

The Witness: It had been. And it appeared page 81 } to be farmed recently.

By Mr. Kelly:

Q. Now, were there any discernible lines or fence between the grown up area and that field?

A. Yes, there was what might have been a line of cedar trees, and on two of these cedar trees I noticed a strand on rusted barbed wire, some of which was lying on the ground and some of which was embedded in the trees.

There obviously had been a fence there because portions of the barbed wire fence were there.

Q. Did there come a time or did you ever subsequently observe any surveying around there?

A. One day last summer I drove into my driveway and noticed two people over in this area (indicating).

Q. You are referring to the shaded area?

A. That is right. They turned and smiled at me and I got out of my car and went over to pass the time of day. I didn't recognize them right out and they introduced themselves as Mr. and Mrs. La Due. They said they were cleaning up the

Aubrey A. Graves.

area here and thinking of building a house on it to live in. They said, we own this land here we are working on," and they pointed out to a stick out there and also—

Q. Whereabouts on that plat would that stick be?

A. I would say it would reach over quite a ways toward this wooded area (indicating). I should say about page 82 } half way over to that wooded area.

Q. Could it possibly be that line there (indicating)?

A. Yes, it could very easily be that line.

Q. Were there stakes set?

A. Two wooden stakes, I would say, about three feet high or so.

Q. Until that time had there ever been any stakes in that field?

A. I never did. They are brand new. In fact, Mrs. La Due said, "We had this surveyed and we own over to those stakes." I was surprised because I thought Mr. Currell owned that, and Mr. La Due spoke up to me when I replied and he said so does he and, "Wouldn't you think a man as intelligent as Mr. Currell would know what he is buying before he put good money out for it." I didn't see any point in pursuing that matter any further. If it was owned by new people we were going to have new neighbors maybe.

Q. Did they apparently know, prior to this survey, that their land extended over there?

A. I wouldn't have any way of knowing that. All I recall is the statement that "We had it surveyed and we own it all the way over to those stakes."

Q. Who made that statement?

A. Mrs. La Due, I believe.

Q. From 1950 until the time you saw Mr. and page 83 } Mrs. La Due on the property, did anyone ever live on it?

A. No. There is no building on it.

Q. Did anyone use it?

A. I never seen anybody on it.

Q. Until the day in question when you had the conversation with Mr. and Mrs. La Due, did you ever hear of anyone other than the Currells claiming title to that land in there?

A. No.

Q. How often had you worked it or tilled it?

A. In 1953 Mr. Currell came over and asked me if I would be interested in cutting the hay off his field; I said I would. At that time I had about forty head of cattle and a couple of

Aubrey A. Graves.

horses and I needed hay. So we made the arrangement that I was to cut the hay off his field in front of his house all the way down to 658, and also a three-acre tract behind his house. And I cut the hay and put it in my barn and my animals ate it.

The following year—let's see, 1953, '54 and '55. We have had the same arrangement three years in a row and I cut the hay and put it in my barn and fed it.

Q. Did you cultivate or did you cut right up to this line of cedar trees, or cultivate this land up to those?

A. I would say within a couple of feet of this line (indicating), although it's pointed out to me by the Currells some area outside of that line—a small area—was indicated to me it didn't belong to them but it had been their page 84 } custom to keep it clipped so it wouldn't be an eyesore.

Q. At the time they asked you to cut it they pointed out to you the fact they didn't own it?

A. She said there was a small strip along side this shaded area that didn't belong to them but to somebody else. I didn't know to whom, but they usually kept it clipped.

Q. Could you see that strip or had that strip received any less attention?

A. Yes, it wasn't a farmed strip. It wasn't as tillable as the other, nor as free of growth other than the hay; Lespedeza. It's a more tangled area.

Mr. Kelly: That is all.

CROSS EXAMINATION.

By Mr. Swart:

Q. Was there Lespedeza on the strip adjacent to the cedar trees?

A. On this I wouldn't say there was any appreciable amount of Lespedeza there. At the time I cut it, it was in the spring of the year and it wasn't very high. I don't recall seeing an appreciable amount of Lespedeza; it was mostly out here in front (indicating).

Q. How about within this area (indicating)?

A. There would have been—I presume there would have been some amount of Lespedeza there. It scatters; it seeds itself all over.

page 85 } Q. Would you say it was less in this area (indicating), referring to the boundary to the left, one acre west?

Herman L. Courson.

A. No, it was scattered out in patches. It didn't appear to be planted.

Q. Do you say it did not appear to be planted?

A. Not particularly. It may have been blown there from an adjacent field. It may have been planted a long time ago and continued to reseed itself, as does a certain number of hardy plants that seed themselves.

Q. How many years did you cut that field?

A. I cut that field in 1953, '54 and '55.

Q. At any time since you have been living in this area, had this portion along the road been plowed?

A. No, not to my knowledge; I would have known.

Q. Since December 1950, has this field been plowed?

A. No.

Q. Living directly across the road you couldn't help but notice it?

A. No, if that field had been plowed I would have known it.

Mr. Swart: That is all.

Mr. Kelly: That is all.

The Court: Step down.

(Witness excused.)

page 86 } The Court: Who is your next witness?
Mr. Kelly: I rest.
Mr. Swart: I would like to call Mr. Courson.

Thereupon,

HERMAN L. COURSON,
called as a witness by counsel for defendant and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. Would you state your name, please.

A. Herman L. Courson.

Q. What is your occupation?

A. Certified land surveyor.

Q. How long have you been a certified land surveyor?

A. Since 1945.

Herman L. Courson.

Q. Are you licensed in the State of Virginia?

A. I am.

Mr. Kelly: I will stipulate Mr. Courson's qualifications.

By Mr. Swart:

Q. Did you have occasion to prepare a survey of the property located in Centreville District of Vivian La Due, also known as Vivian Schaeffer?

A. Yes, I did.

Q. Do you have a plat of that with you?

A. Yes, sir, I do.

Mr. Swart: May I have the Currell Exhibit plat.

page 87 } By Mr. Swart:

Q. That is the plat of the La Due or Schaeffer property?

A. Yes, as I found it in the record.

Q. From what did you make this?

A. This was staked from the description contained in Liber Y 5, page 196 of the Land Records of Fairfax County.

Q. Now, have you seen this (handing document to the witness)?

A. No, sir, I haven't.

Q. Would you examine it and see if you can tell what it purports to be.

A. This would seem to be an overlap of deeds.

Q. Can you locate on this, which has been marked Complainants' Exhibit No. 1, the property which is shown on the plat that you have in your left hand?

A. Yes. This northerly line and dotted line extending back to the road is approximately the plat that I made.

Mr. Swart: I would like to offer this in evidence as Defendant's Exhibit No. 1.

The Court: Any objection?

Mr. Kelly: No objection.

The Court: It will be received.

(The plat referred to was marked Defendant's Exhibit No. 1 for identification and received in evidence.)

Herman L. Courson.

page 88 } By Mr. Swart:

Q. Did you place markers of some kind at the corners of that property?

A. Yes, I placed three pipes on the corners. I found in place the northeasterly corner as well as the pipe that would be in this corner here (indicating).

Q. You found this pipe (indicating) at the northeast and which other one?

A. The one shown here as being on the line.

Q. Which would be the southeast?

A. Yes, the southeast corner.

Q. Do you happen to know where the hill crest of the road is in relation to the La Due property?

A. No, I'm sorry, I don't recall that.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. How did you happen to make the survey, Mr. Courson?

A. Mrs. La Due called me to stake out the property and make a plat. She was intending to build a house on the lot.

Q. Did she furnish you with a description?

A. She gave me a deed book and the page where I could find it.

Q. That was back at what place?

A. There were two of them: One was Deed page 89 } Book 507, which is entered in Liber Y 5.

Q. That is where you found the metes and bounds of the description?

A. In Deed Book Y 5.

Q. Would that have been a deed from Samuel Wells and Sarah Wells to D. W. Mathers, dated February 5, 1897?

A. Yes, sir.

Q. Is that the first or only description that you found?

A. No, sir there was another one in Deed Book 587 at Page 192. between Roy L. Schaeffer and Mabel M. Schaeffer, his wife, to Vivian S. Schaeffer, which refers to Liber Y 5 for further description.

Q. It never trusted in that book; it refers to the description in Y 5?

A. 587 is correct.

Herman L. Courson.

Q. Did you, when you surveyed that property, find any of the stones referred to in the description at Y 5?

A. No, sir.

Q. You found none of the markers?

A. I found *and* iron pipe on the side of the lane, but I found no stones at all.

Q. You found there were no iron pipes referred to in the 1897 deed, were there?

A. No.

page 90 } Q. They were only referring to stones?

A. That is right.

Q. When you went to the property you found iron pipes there and you went from those pipes, is that right?

A. Yes, sir.

Q. When you surveyed the La Due land, did you notice any fence line or old fence line between their property and—between where you started and what you determined to be their westerly line?

A. No, sir, there is no evidence on the westerly line at all.

Q. There is no evidence at the westerly line of what, sir?

A. Of the La Due property.

Q. Now, what is the nature of the easterly portion of the La Due property?

A. It's on the westerly side of the driveway to the former Wells' house, and I found those two pipes on the side approximately the same distance from the center line off that road.

Q. What I have reference to is the shaded area on Complainants' Exhibit No. 1. Was that area grown up?

A. Yes, it is.

Q. It was grown up?

A. More or less wooded.

page 91 } Q. How far was that wooded along there?

A. About a hundred and thirty-five, forty feet,

I believe.

Q. And then did there appear to be an old fence line there?

A. No, sir, I didn't see any definite evidence of an old fence line. There are some trees there.

Q. Were there any wires there?

A. I don't recall seeing any wire. There could have been.

Q. Did you look for them?

A. We had looked only at the road and on the back line.

Herman L. Courson.

Q. You were unable to find the stones, were you not?

A. That is correct.

Q. Did you look for any fence lines?

A. We looked for anything along those lines as we re-produced the deed.

Q. The deed refers, after the metes and bounds, to a tract containing two acres?

A. That is right.

Q. And after you surveyed it you found the metes and bounds contained something over three acres?

A. I found that out before I surveyed it. The computation in the deed book itself will show that.

Q. When you got out there and found no stones, page 92 } did you look for any sort of fence lines?

A. Yes, sir.

Q. Within the two acres?

A. Yes, sir.

Q. Did you find an old fence line within that two-acre tract?

A. No, sir, I didn't.

Q. You didn't find a row of cedar trees?

A. There was a row of cedar trees there, but they were not regular enough to my notion to be a fence line.

Q. Did you notice any trees with barbed wire on them like these (handing photographs to the witness)?

A. No, I wasn't looking on the interior; I was looking on the perimeter.

Q. I see.

Have you referred to a survey of Mr. Clark's?

A. No, sir, I didn't have that survey.

Q. Have you ever seen the metes and bounds description?

A. No, sir.

Mr. Kelly: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Swart:

Q. Mr. Courson, is it unusual for you to be unable to find stones referred to in a 1897, or older, deed?

A. No, sir.

page 93 } Q. Were there some other objects mentioned in that description which you could ascertain the location of that?

A. Yes, sir. The driveway was there, and as I mentioned

Oscia Mathers.

before, the two pipes on the west side of the driveway extended to the road, reproduced the length of the lines called for on that particular side of the deed.

Mr. Swart: That is all.

The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?

Mr. Swart: Oscia Mathers.

Thereupon,

OSCIA MATHERS,

called as a witness by counsel for defendant and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. Would you state your name and address, please.

A. Oscia Mathers, Clifton, Virginia.

Q. Are you familiar with the location of the tract of land involved in this suit?

A. Yes, I have known it for quite a number of years.

Q. Did you ever have occasion to go there with Mrs. La Due?

A. Yes.

page 94 } Q. Approximately, when was that?

A. Around twenty years ago.

Q. And when you arrived at the property, was there any object there which upset Mrs. La Due?

A. Yes, she went to cut a fence down.

Q. Can you tell us roughly the location of this fence?

A. Well, it was along the driveway and down the road or up the road, whatever you want to say.

Q. What did Mrs. La Due do?

A. She cut the fence down.

Mr. Swart: That is all.

Oscia Mathers.

CROSS EXAMINATION.

By Mr. Kelly:

Q. Mrs. Mathers, when did you go down there?

A. Around twenty years ago.

Q. Had the Currells bought their piece of property?

A. No, it was in '38.

Q. It was before the Currells bought that piece of property?

A. That's right, absolutely.

Q. Now, have you seen this map (handing the plat to the witness)?

A. Oh, no, I haven't seen it.

Q. This purports to be a map of the part of the Currell property, and a map of—

page 95 } Mr. Swart: May I interrupt? I see Mr. Simmons has left the courtroom. I wanted him for a witness.

Mr. Kelly: Yes; you better get him then.

By Mr. Kelly:

Q. This purports to be a map—or a plat of part of the Currell property, the road leading to the Currell house and the old Cratcher's School House Road, and it also purports to show a portion of the property which Mrs. La Due says is hers and the property the Currells say is theirs, and what not.

Now, when you were there in 1938, what was the condition of that lot?

A. I paid no attention to that; I wasn't concerned.

Q. Was it grown up?

A. I don't remember at all. I was only concerned about the fence she was going to cut—that she did cut down.

Q. How much land did she own down there?

A. Whatever she claims she owns.

Q. You don't know how much she claims?

A. Was it three acres, more or less—something like that.

Q. I am asking you.

A. Well, I don't know enough about the land to know how much she owns; I wasn't concerned about that. I only went with her to cut the fence down.

Oscia Mathers.

page 96 } Q. Do you know who put the fence there?
 A. She told me he put it there—her uncle.
 Q. Mr. Wells, her uncle?

A. Yes.

Q. Mr. Wells is the man who conveyed the Currells their property?

A. What was the question?

Q. Mr. Wells is the man—

A. Yes, that's right.

Q. Now, on the west side of the property what was that fence attached to? Were there fence posts and trees?

A. Posts mostly, I believe.

Q. Posts mostly?

A. I believe. I paid very little—that was some twenty years ago.

The Court: Make sure she knows what the west side of the property is.

By Mr. Kelly:

Q. Was it being done on the property to the west or between Mrs. La Due's property and Sam Wells' property? What was being done with that front field?

A. I didn't pay any attention to that.

Q. Was it cleared?

A. I don't recall that at all.

Q. All you know is that you went there some twenty years ago and saw her tear a fence down?

page 97 } A. That is right.

The Court: I want to be sure I understand you. Did you say it was down the lane and up the road?

The Witness: Along 658. Is that the number?

The Court: Yes.

Did you see it go off 658 at a right angle or some angle on up the lane?

The Witness: We were up from the lane; I saw it from that.

The Court: If you look at this plat here, and this (indicating) is the lane up here, and this (indicating) is the road down here. You saw the fence along the lane?

The Witness: We were parked about three lengths of a car from the highway.

The Court: You saw the fence along the road here (indicating)?

Waverly Mathers.

The Witness: Yes.

The Court: Did you see a fence here (indicating) anywhere?

The Witness: No.

Mr. Kelly: You designated the west portion of that along here (indicating)?

The Court: The line of cedars on Exhibit 1 approximates it.

(Witness excused).

page 98 } The Court: Who is your next witness?
Mr. Swart: Mr. Mathers.

Thereupon,

WAVERLY MATHERS,

called as a witness by counsel for defendant and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. State your name and address, please.

A. Waverly Mathers, Clifton Station.

Q. You are the husband of the lady who just testified?

A. Yes, sir.

Q. Did you go with her on the occasion she talked about?

A. Yes, I drove the car.

Q. What did you see Mrs. La Due do on that occasion?

A. We went up and parked the car in the lane and she got a pair of wire pliers and started cutting the fence. We were about three car lengths in the driveway and she cut the fence from the corner up to the road between the posts. She cut it with a pair of pliers.

Q. Do you know whether or not there was any fence through any part of the Wells' tract, which would be along near the row of cedar trees shown there (indicating)?

A. I didn't pay any attention to it. We weren't interested in that. We drove her up there and I didn't pay
page 99 } any attention to the fence; I know it was up the road because she was cutting it up there.

Q. You don't know whether she cut any there or not?

A. No.

Q. Approximately when was this?

Waverly Mathers.

A. Approximately twenty years ago.

Q. You don't know the exact date?

A. No, I don't.

Q. Did you take Mrs. La Due there for that specific purpose?

A. Yes.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. Was Mr. Wells living there at the time you were there?

A. Mr. Sam Wells, yes.

Q. That was before the Currells had bought the property or moved in?

A. Yes, he was still living in it—Mr. Wells.

Q. Do you remember what shape this land was in that Mrs. La Due then owned?

A. No, I didn't pay any attention to it. We were more interested in taking her up there and she cut the fence.

Q. Why did she cut the fence along this road?
page 100 } Did she tell you?

A. No. She wanted to cut it and started cutting it.

Q. Could you show us on the plat where she cut the fence? This (indicating) is the driveway that goes up to Sam Wells' house.

A. She started cutting the fence there (indicating) and around the corner and back up the road.

Q. She didn't turn the other corner, did she?

A. She went up 658.

Q. She didn't tell you why she was doing this?

A. She said her uncle fenced it in and she didn't want it fenced. And she said he had no business putting a fence there on her property, and she cut it down.

Q. She didn't have any discussion with Mr. Sam Wells about that, did she?

A. No, not that I know of.

Q. Not while you were there?

A. No.

Q. Do you know when the Currells moved there?

A. No, I don't.

Q. Have you been by there at any time in the last twenty years?

Ethel Schaeffer.

A. Yes, I go by quite often.

Q. Have you seen these fields in here or the front field down in front of the Currells' house worked or clipped?

A. No, I never paid any attention to it; I page 101 } wasn't interested. I was just driving by.

Q. Did you ever notice that the field in front of the house or out in here (indicating) was kept in cultivation, at least, to the extent of being clipped or mowed, and this (indicating) was grown up in pines?

A. All I know there was weeds in it. I never seen it in cultivation that I can remember.

Q. You never saw any difference in this field out in here (indicating) that was clipped and the corner lot?

A. It was a little cleaner. There wasn't much difference in it.

Q. You never saw corn in it?

A. I don't remember seeing corn in it.

Mr. Kelly: That is all.

Mr. Swart: That is all.

The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?

Mr. Swart: Mrs. Schaeffer.

Thereupon,

ETHEL SCHAEFFER,

called as a witness by counsel for defendant and, having been previously sworn, was examined and testified as follows:

page 102 } DIRECT EXAMINATION.

By Mr. Swart:

Q. Would you tell the Court your name and address, please.

A. Ethel Schaeffer, 556 Centreville Road, Manassas, Virginia.

Q. Are you familiar with the location of the La Due and Currell property?

A. Very much familiar with it.

Q. Did you use to live in that area?

A. Yes, I did, right across from it.

Ethel Schaeffer.

Q. See if you can orient yourself with this plat and tell us where you lived (handing the plat to the witness).

The Court: I think you can tell her where the driveway is and the road.

Mr. Swart: This (indicating) is the road, 658, and this (indicating) is the driveway to the Currell house, and this (indicating) is the disputed piece.

The Witness: My stepson, Roy Schaeffer, had a home over here (indicating) which used to be the old Mathers property, and this was Dave Mathers' place.

Q. How long did you live there?

A. I lived there from '47 until '54.

Q. During that time, did you make any use of Mrs. La Due's property?

page 103 } A. Yes, I did.

Q. For what purpose?

A. Well, I had corn in the piece over here (indicating) extending to the road, in '49.

Q. Now, did you raise some things on there along the driveway?

A. Some pines were right here (indicating) and then there was a clear spot here (indicating); I had a garden there. And down here (indicating) was the old honeysuckle and sinkhole. And I had it cleared up and had potatoes and tomatoes and things like that here (indicating).

Q. Did Mr. Currell complain to you about that?

A. That was in '48, and I had—he was coming down the driveway and Mr. Schaeffer, my husband who is dead now, was there digging potatoes and I was coming back from the basement where I had carried some potatoes to be put in the basement, and he spoke to Mr. Schaeffer and said, "You have planted your potatoes too far up this way," and I said, "This is Mrs. Schaeffer's property"—which is Mrs. La Due now. And he said, "Well, you got it up this way too far. Her land extends up the other way, toward the pines, toward the Manassas Road."

Q. He said it extends toward Manassas Road?

A. Yes.

Q. And after he told you that, where did you put the garden the following year?

page 104 } A. I put my garden up in here (indicating) and still had a little bit here (indicating) further

Ethel Schaeffer.

down, and I used some further down here (indicating). Then, I put this in corn over here (indicating).

Q. Now, you are pointing in this area (indicating). Do you see this shaded area and here is the row of cedar trees (indicating).

A. Yes. I had corn out towards Manassas Road.

Q. From the cedar trees?

A. Yes.

Q. Can you tell approximately how much corn you had in there?

A. I couldn't exactly say; I didn't measure it. But I know it was over a hundred feet there; I know.

Q. That was plainly visible to the Currells?

A. Yes, they knew it. Me and my little boys cut the corn ourselves.

Q. Did the Currells say anything to you?

A. No, they never mentioned it.

Q. Did you get permission from Mrs. La Due to plant there?

A. Yes.

Q. What year was that?

A. It was in '49 I had it over there.

Q. I believe you stated you lived on this prop-
page 105 } erty until—

A. I lived over my stepson's place which used to be Mrs. La Due's ex-husband. That makes her my daughter-in-law.

Q. You lived there until when?

A. In '54; my husband died in '53.

Q. Up to the time you lived there, during the time the Currells owned the property, how many times was this tract of land along the road plowed?

A. I never had seen it plowed but the one time, and when I first moved there the whole thing was in little cedar trees two or three feet, and little pine bushes and things.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. You said you moved over to the property that Roy Schaeffer had in 1947?

A. Yes. On September 6; school started September 4 and I moved there two days after school started. I had five children in school at the time.

Ethel Schaeffer.

Q. How far would your house be from this driveway?

A. Well, I don't know exactly, but there is—Mr. Currell owns a piece of land beyond his driveway and between Roy Schaeffer's house, which is Mr. Poe's now. He owned a piece of land there beyond this driveway.

Q. This line going up here (indicating)?

page 106 }

A. Yes.

Q. That is the east line of the Currell property?

A. Yes.

Q. Now, the driveway is over in here (indicating).

A. This must be his piece he owns here (indicating).

Q. Would you go across here (indicating)?

A. I lived there, and until Mr. Currell complained not to go there, then we had to come up this piece of land, up here (indicating), which was in front of Mr. Graves' driveway and used to be Captain Yeomans. We cut across there and—

Q. Did you climb up the bank?

A. There was a low place there which tractors and things could go up, yes.

Q. Were there any pine trees?

A. Yes, sir, it was in tall pines here (indicating), and Mrs. La Due's stepson—Mr. La Due's son by his first wife—cut the pines off and also gave me the wood to burn.

Q. When did he cut those pines off?

A. Let's see—I burned the wood the winter before last, and he cut them off in the fall.

Q. When?

A. I couldn't—I have been living where I am living one winter—where I am living at 556 Centreville Road—and it was the winter before that I burned these pine trees.

Q. They didn't cut the pine trees until the
page 107 } winter of 1956, is that right?

A. I guess it is, because I had moved away then and I was living at Mrs. La Due's sister's place then.

Q. There weren't any trees there in 1947 when you worked there?

A. No, I didn't work by the pine trees. I worked here (indicating) from the pine trees—here (indicating) was the pine trees and the cleared up spot here (indicating).

Q. You were pointing generally to the map.

Do you recall where there was apparently an old fence row that went down the west side of that garden plot?

A. Yes, attached to an old cedar tree and a pear tree.

Ethel Schaeffer.

Q. Would that picture there show you what it looked like (handing the photograph to the witness)?

A. Now, that isn't cedar trees over there.

Q. That is Roy Schaeffer's house (indicating)?

A. Yes. That's what I say, that's not the cedar trees I'm referring to now. The line I'm referring to now is one over here (indicating) between Centreville Road and Manassas Road, and over here (indicating) is the line you are looking at here.

Q. You say these trees—

A. I say there was a big cedar tree there and also a pear tree, because I made preserves off the pears.

Q. Where was the big cedar tree and the pear tree?

A. The big cedar trees are up this way (indicating) and one big cedar tree here (indicating) and a bunch of pines right next to the road, and there was a cleared up place in here (indicating) and that is where I had a garden. And down here (indicating) was the old honeysuckle where the old homestead used to be of Mrs. Mathers and then she became Mrs. Schaeffer and now she is Mrs. La Due. She was born there and stayed there.

Q. Did you say, Mrs. Schaeffer, that Mrs. La Due's home place was here?

A. Along in here (indicating)—I don't know how this map runs; I never did pay any attention to the map. I am going beyond it. I don't understand the map.

Q. Are you familiar with the old fence line that went along the west boundary of that property?

A. There was a small fence there, but it was low on the ground. Part of it was down and some of it was still tacked to the trees and some of it was down.

Q. Would that be a picture of that (handing a photograph to the witness)?

A. I couldn't tell you; I don't remember. Actually, I remember stepping over it and going over it when we planted the corn crops.

Q. You say you put corn in there?

A. Yes, I did.

page 109 } Q. You had a garden in there (indicating). This wasn't grown up?

A. There was pines next to the road and went towards Manassas Road, and back here a little ways (indicating) was a cleared up spot where I had also watermelon and rosners and fruit.

Ethel Schaeffer.

Q. How far up the driveway did you run the garden?

A. You see, after they had this cleared up space here (indicating) and there was rose bushes and there was plum trees and everything there, and also a small sinkhole and then—

Q. You said a while ago the sinkhole was up there (indicating).

A. I thought you had the place here (indicating); this was including the pines—this all was pines. I was thinking this (indicating) is Mrs. La Due's property. Is this it?

Q. Well, this is up until now what has been grown up in pines?

A. Well, she extends so far up Mr. Currell's driveway; I know that because she has right smart over two acres of land there.

Q. How much?

A. I couldn't say exactly how much, but I know one way it's four hundred and some feet.

Q. How do you know that?

page 110 } A. Because my stepson told me.

Q. When did he tell you?

A. Several years ago. And also my husband, now deceased, was her father-in-law at one time.

Q. When did he tell you?

A. He told me she had right smart—quite a bit over two acres.

Q. If I told you her deed didn't call for but two acres, what would you say?

A. I can only say what I have been told years ago that it was over two acres.

Q. How much did she have within the confines of her fence when you worked it?

A. I couldn't say exactly either, because I never asked about it. I left it up to my husband; he was getting permission from his daughter-in-law to use the land at the time and therefore he knew where the boundary was. I never paid any attention.

Q. You say Mr. Currell told you that you were over too far?

A. He was coming up this driveway here, coming from work, and he said I was over on his line.

Q. Whereabouts?

A. That is up his driveway; up above these honeysuckles and things. I cleared up a piece and put it in
 page 111 } potatoes and things and he said I was over too far.

Ethel Schaeffer.

Q. Do you mean that you cleared it?

A. No, I didn't clear the honeysuckles. They had sumac spurs and things like that, because I thought her land extended further up that way and not too far (indicating). I don't know exactly how much, but she owned right smart land on Manassas Road, but they never told me how much.

Q. Why did you go up this way (indicating)?

A. My husband thought that was hers as well as this.

Q. I think you said you knew of a line of cedar trees where the fence was down along here (indicating)?

A. You know, years ago it was that people fenced orchards off where they did not fence the rest of the land too much.

Q. I am talking about the line of cedar trees that the survey points out and this picture was taken of it. Do you recall when you had a garden in there, Mrs. Schaeffer?

A. I can't place the picture, that's the trouble with me.

Q. Is that a picture of the house that you were living in?

A. Yes.

Q. That would have to be taken from the west of that house to look like that, wouldn't it?

A. Well, I know for one thing, when I moved
page 112 } the land wasn't grown from Manassas Road. It
didn't look like it had been tended.

Q. That was in 1947?

A. Yes.

Q. It had grown after that?

A. Because there were small trees along there—cedar bushes.

Q. When was it cleared up?

A. To my knowledge, the first time it was cleared up was when I wanted to put in this corn over here, which was in '49, and Captain Yeomans plowed the same piece of land for Mr. Currell, his share of the land. I put this piece of Mrs. La Due's in corn.

Q. Did Commander Yeomans plow it?

A. No, I didn't have Yeomans; Daniel Whitmer, who was boarding with me, he plowed this piece of land up for me.

Q. Whereabouts is that piece of land?

A. On Manassas Road there, out from the pines. The pine trees were standing at the time and we plowed toward Manassas, over the crest of the hill.

Q. How far down there?

A. I couldn't say exactly, because at the time I wasn't estimating it.

Q. How much land did you cultivate?

Ethel Schaeffer.

A. I would say I had over two shock rows of corn.

Q. How did you know how far down that way page 113 } to go?

A. Well, there was a small stake setting there; I don't know who put it up, and I didn't go beyond that stake.

Q. What kind of a stake was it?

A. It looked like an old broom handle or something.

Q. How did you know how far this way to go?

A. I went up as far as where Mr. Currell—I was on that land before.

Q. How far to the west of those cedar trees and that broken down fence were you when you put in that corn?

A. I couldn't say exactly. I had over two shock rows of corn.

Q. What kind of corn did you put in there?

A. Field corn.

Q. Two shock rows of field corn?

A. Yes.

Q. Do you know what kind of field corn?

A. No.

Q. What plow did you use to work that field?

A. I told you, my—he is my son-in-law now.

Q. Who is that?

A. Daniel Whitmer. He didn't have any equipment but I asked him would he plow this piece of ground for me, and then he got it up from the man he was employed by.

Q. And your story is that Mr. and Mrs. Currell page 114 } saw you put corn in—about two shock rows—and you don't know how far down this side to the west of the cedar trees you went. Is that what you are saying?

A. I put it in because there is corn right there in that piece of land.

Q. I will ask you again: Did you put in two shock rows of corn to the west of that cedar fence line?

A. Out toward Manassas Road, that is west? I'm not familiar with the west and south or anything like that; I don't pay that much attention to it. That is west down toward Manassas Road from the pines? That is west, isn't it?

Q. I am referring to this plat, Mrs. Schaeffer, it shows everything until—you say that was grown up somewhat? You said part of it was grown up?

A. I ought to know, we ate the stuff that was growing on the land.

Ethel Schaeffer.

Q. It shows everything until you said there was a fence line that went down there.

A. There was a fence along there; I stepped over it time after time to go over there when we cut the corn.

Q. Now, that is what I am getting at—

A. But I don't know whether it was tacked someplace to the trees or whether it was all stretched up or not. I don't recall.

Q. Well, Mrs. Schaeffer, was there a fence line page 115 } down to the end of the driveway or private road leading up to the Currells?

A. In some places, but not all.

Q. Was there a fence over on the other side of that line?

A. I don't understand what you mean.

Q. Well, you say in some places there was a fence along the Currells' driveway.

A. Well, it looked like it had been, but it was down in some places, yes.

Q. Now, on the other side going across the property that Mrs. La Due owns, to the far side of it, was there a fence over there?

A. There was in some places, yes, but not straightened out.

Q. And you went across that fence and planted corn?

A. Well, it had been broken; that was the old orchard fence.

Q. You went across that fence and planted corn?

A. Well, after Mr. Currell, himself, told us that was Mrs. La Due's land over there, yes.

Q. You say you went across that second fence and planted corn?

A. I had to come up the road and come around. I went along there to come across; I had to come up the road to come through.

page 116 } Q. When you went around and went through, were you on the far side of that second fence from your house?

A. Yes, I guess I was.

Q. Who cleared that land in there for you?

A. Well, some of the bushes, myself and my little boys.

Q. You and the little boys cleared all of that land?

A. Not all of it; cleared enough to plant corn.

Q. How much corn?

A. I said over two shock rows.

Q. And you got Dan Whitmer to plow it?

A. Yes.

Ethel Schaeffer.

Q. Who sowed it for you?

A. Daniel Whitmer.

Q. And Mr. Currell stood there and didn't say anything?

A. No, he didn't stand there; he didn't say a word about me using it. He said it was Mrs. La Due's property when he was up there.

Q. What did he say about the property?

A. He said up to Manassas Road, and he said that was her land.

Q. Can you show the Court on this map where you planted this corn?

A. What?

Q. Can you show the Court on this map where you planted that corn?

page 117 } A. One thing that bothers me; I am not familiar with it. I never went very far in school and I can't read too much on the map.

Q. You planted the corn just one year?

A. In '49, yes.

Q. Why didn't you plant it after that?

A. My husband was sick and unable, and the children were in school and I was unable to attend to it.

Q. And you lived there until 1954?

A. My husband died in '53.

Q. You lived there until 1954?

A. Yes.

Q. Was this ground over here (indicating) up to those cedars worked by Mr. Currell from 1948 until 1954?

A. Not all the way up; part of it.

Q. Did he work in any part that you put the corn in?

A. Not to my knowledge.

Q. He never worked the part that you put the corn in?

A. Not unless he used it since '54.

Q. But you are sure that he never clipped or cut hay on that piece of property where you put the corn in, in 1950, '51, '52 and '53?

A. He never, to my knowledge, no, sir.

Q. Have you ever seen Mr. Eagle mowing this hay or cutting this hay?

page 118 } A. Further down, but I never saw him on this piece of land where I put the corn in.

Q. Did you ever see any of Mr. Graves men cutting hay along there where you put the corn in?

A. I don't recall whether Mr. Graves was cutting. I don't

Ethel Schaeffer.

recall because at the time he moved there and everything my husband was sick, and I don't recall.

Q. Do you recall a row of cedars that went down here (indicating)?

A. No.

Mr. Kelly: That is all.

RE-DIRECT EXAMINATION.

By Mr. Swart:

Q. Mrs. Schaeffer, how big an area are these two shock rows?

A. Sixteen hills of corn to the shock and therefore it's over two—about three foot between corn.

Q. Are you familiar with part of the La Due property known as the orchard?

A. Yes, that's where I had a garden.

Q. Was the orchard ever fenced, to your knowledge, separately from any of the rest of the land?

A. It had a little piece of fence there, yes.

Q. To your knowledge, was that fence supposed to be around the orchard or around the La Due property 119 } erty?

A. Around the orchard.

Q. How far in distance would you say you went toward Manassas Road from the orchard? If you don't know in feet point out some object in or out of the courtroom that you can point to.

A. A right smart ways; I plowed up to the top of the hill there on the La Due property; almost, but not quite.

Q. By "right smart ways" what do you mean? Can you point out some object?

A. I don't know anything too much about things like that. I know I tended a piece of land there because Mrs. La Due was my daughter-in-law at times.

Q. Did the rows run parallel from the road or away from the road?

A. They run the length.

Q. Away from the road?

A. Yes.

Q. Do you have any idea how many rows of corn you had?

A. Well, I would say about thirty-six.

Q. About thirty-six rows of corn?

A. Yes.

Ethel Schaeffer.

Q. Could you give us some indication of how far apart the rows were? Would you indicate with your hands.

A. Something like that (indicating).

Mr. Swart: That is all.

page 120 } RE-CROSS EXAMINATION.

By Mr. Kelly:

Q. Mrs. Schaeffer, do you recognize that picture (handing the photograph to the witness)?

A. No, I don't.

Q. This picture was taken from up at the Currells' house looking down their field. There is Mr. Graves' house here (indicating). Do you recognize it now?

A. No.

How long ago was this picture taken?

Q. April 1955 is the date on it.

A. That was taken after I moved away from there. I moved away in '54.

Q. That was a year. Has it changed that much in a year?

A. Well, it's very like the area, but I don't know exactly where it was taken.

Q. You wouldn't be able to point out on that picture where you planted your corn, would you?

A. No, I couldn't.

Q. You don't know how much corn you planted?

A. I just told you.

Q. How much seed corn did you buy?

A. I couldn't say exactly.

Q. You don't know how much seed corn you bought and you don't know how much land you planted. How did you decide what to do?

A. Well, I will tell you to be exact. Mr. Yeomans gave me enough seed corn to plant enough corn.

Q. Captain Yeomans gave you enough seed corn to plant?

A. Yes. I don't know exactly how much corn he gave me.

Q. Commander Yeomans gave it to you?

A. And he also gave me the fertilizer, and Daniel Whitmer was employed by Captain Yeomans at the time and in the afternoons after he got out from what he was doing for Mr. Yeomans, he would let him use the tractor and things to plant my niece of corn. He quit work about 4:00 or 5:00 o'clock in the afternoon and there was a lot of daylight in the summertime.

Nora Buckley.

Mr. Kelly: That is all.
The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?
Mr. Swart: Mrs. Buckley.

Thereupon,

NORA BUCKLEY,
called as a witness by counsel for defendant and, having been
previously sworn, was examined and testified as follows:

page 122 } DIRECT EXAMINATION.

By Mr. Swart:

Q. Tell the Court your name and address, please.

A. Nora Buckley, Centreville, Virginia.

Q. Did you once live in the vicinity of this La Due and Currell property?

A. Yes, I did. I was born just about a hundred and fifty yards from Mr. and Mrs. Currell's house.

Q. When were you born?

A. 1904.

Q. You lived there until when?

A. Until I was twelve years old.

Q. Was part of the La Due property an orchard?

A. Yes, it was.

Q. Can you remember when that was productive as an orchard?

A. I do, because I stayed there as much as I did at home.

Q. Was it fenced at that time?

A. Yes. There was a fence around the orchard, and Uncle David had a corn field that was toward Manassas.

Q. Who is Uncle David?

A. He was Mrs. La Due's father, D. W. Mathers.

Q. Did Mr. Mathers farm that strip of land to the west of the orchard?

page 123 } A. Every year.

Q. Approximately how far to the west of the orchard did he farm it?

A. I would say about two—I would say two hundred and some feet. I didn't step it off or anything; I know it's two

Nora Buckley.

hundred and some feet, anyway, because I went through it every day.

Q. Since you moved away, have you been by the property occasionally?

A. Yes, sir, I have.

Q. How frequently do you go by?

A. Now?

Q. Particularly from 1939 up to the present time.

A. We used to go by that way every Sunday. We used to go fishing and go to the woods.

Q. Are you familiar with the Currell land?

A. Yes. That was my grandmother's place; I have been over every inch of it.

Q. How many times since 1939 has part of the Currell land along the road been plowed?

A. To my knowledge, I have never seen it plowed but the one time that Mrs. Schaeffer had corn in it.

Q. Was the Currell land plowed the same in corn that year?

A. I couldn't say. I didn't notice that part
page 124 } because we used to pass by the road.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. Mrs. Buckley, you say you were born in this area?

A. Yes, it was about 150 yards from Mr. Currell's house. My house was—their house is on the left-hand side of the land going in, and my father's house was on the right-hand side.

Q. I show you Complainants' Exhibit No. 1 (handing the plat to the witness.) This (indicating) is the road to Manassas coming out there at the shopping place, and there (indicating) is the Currells' driveway. Do you recognize that?

A. I certainly do.

Q. Now, I believe the Currells' house is up in here (indicating).

A. Yes, and my father's house is on the right; in through here (indicating).

Q. When did you quit living there?

A. I lived there until I was twelve, but I didn't quit living there because I staved with my grandmother at the time and I was down at Vivian's mother's and father's everyday.

Q. When did you quit going back there everyday?

Nora Buckley.

A. That would be hard to say, because I was back and forth until I was, say, a girl about seventeen or page 125 } eighteen years old, until I married and moved away.

Q. When did you get married and move away?

A. I got married when I was eighteen years old.

Q. About what year was that?

The Court: She already testified she was born in 1904.

By Mr. Kelly:

Q. Then, you moved away from there around 1922?

A. Yes.

Q. When did you quit going back down there or quit visiting the place?

A. I can't say. I went back all the time; I never quit going.

Q. You haven't been there since the Currells have been there?

A. Yes, I have been there since the Currells have been there.

Q. When did you visit the actual land, not passing by?

A. There was no sense in my visiting the land. I have been through the road by the land if that's what—

Q. Was there ever a house on that shaded area (indicating)?

A. Yes, the house burned down.

Q. When did that happen?

A. Roughly—I couldn't tell you. I know I was down with Vivian and they were preparing to move and I page 126 } helped to clean when they were moving, and in the meantime the house burned down.

Q. Was that before you were married?

A. Before I was married.

Q. Before 1922?

A. Yes.

Q. No one lived on this piece of property before then?

A. No, because there was no house there then.

Q. Did they continue to cultivate it or use it?

A. It has been used.

Q. For what?

A. Mrs. Schaeffer had a garden and she planted corn on the other side.

Q. Was that the only time, when Mrs. Schaeffer had the corn planted?

Nora Buckley.

A. Uncle Dave, do you mean?

Q. Yes.

A. When he was farming there, he had corn in this piece over here (indicating).

Q. Was that before the house burned down?

A. Yes.

Q. That would have been before 1922, wouldn't it?

A. Yes.

Q. Between 1922 and the time that Mrs. Schaeffer was talking about, did anybody ever use the land?
page 127 } A. I can't say right off because I never went all the time.

Q. You didn't go down there enough to know whether they were using it or not?

A. I couldn't say whether it was used all the time, but I know it was used since then.

Q. Do you know whether Mr. Currell was using that land?

A. I never saw Mr. Currell use that land.

Q. You never saw Mrs. Schaeffer plant the corn?

A. I saw the corn there and I knew it was Mrs. Schaeffer's.

Q. Did you ever see Mr. Currell's hay cut?

A. No, sir.

Q. Mr. Currell's property is right beyond that.

A. I couldn't say what Mr. Currell did. I didn't stay there long enough to see.

Q. Did you stay there long enough to see what Mrs. Schaeffer had?

A. I have been down there when Mrs. Schaeffer had the corn in.

Q. How could you observe what Mrs. Schaeffer had there and not observe what the Currells had?

A. I knew Mrs. Schaeffer had a garden in there.

Q. She had a garden in corn?

A. Yes.

page 128 } Q. How much corn?

A. I couldn't tell you how much corn. It was over the hill from where the orchard fence is, Manassas Road.

Q. You don't know how much corn she had in there?

A. How was I to know; I didn't stop and go to look.

Mr. Kelly: That is all.

The Court: Step down.

(Witness excused.)

John W. Ferguson.

The Court: Call another witness.

Thereupon,

JOHN W. FERGUSON,
called as a witness by counsel for defendant and, having been
previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. Tell the Court your name and address, please.

A. Residence address?

Q. Yes.

A. John W. Ferguson, Clifton, Virginia.

Q. What is your occupation?

A. Supervisor of Assessments, Fairfax County.

Q. As such, is all of the land in Fairfax County assessed
by you or under your supervision?

A. It is.

Q. It has been stipulated that the La Due land
page 129 } in question today has been assessed as two acres
up until 1958 when the assessment was changed
to three acres and a fraction. Can you tell us your policy
with regard to assessing land by acreage? Do you determine
the amount of acreage?

A. One of my duties is to check all the transfers of prop-
erty. The members of my staff read the description of the
metes and bounds, and oftentimes a piece of property will
give a certain number of feet on one side and another number
up the other side, and the deed will wind up saying it is ten
acres, more or less, for example.

We assess by the number of acres given. We do not com-
pute the number of feet to check to see if the number of
acres is correct.

Q. Then, if a piece of property in Fairfax County had
metes and bounds description of 285 feet by 470, which in
fact would contain slightly over three acres, but ended up in
the description by saying two acres, more or less, how do you
carry it on the assessment rolls?

A. Two acres.

Mr. Swart: That is all.

John W. Ferguson.

CROSS EXAMINATION.

By Mr. Kelly:

Q. Do you know how the assessment books carried the assessment on the Schaeffer land?

A. Yes, I do.

page 130 } Q. How did it carry the assessment?

A. Two acres.

Q. Now, did there come a time when you changed it to three acres?

A. January 1958 we did.

Q. Why?

A. Due to a new survey.

Q. That is put on the record?

A. Yes.

Q. Who advised you on that?

A. The records of the Clerk of the Court.

Q. In other words, there was never any advice given to your office on this land, that you are aware of, that the land was changed to three acres until last year?

A. We picked it up from the records of the Clerk of the Court.

Q. That record would have been for the year 1957, is that right?

A. That's right, put the record down.

Q. You don't know how they happened to put it in, how it was put on the record as three acres last year, do you?

A. The reference we had on it was a new survey; that is the only reference we had.

Q. When was that reference made?

page 131 } A. My appraisal card says the deed was re-corded with plat during 1957 of the new survey.

Q. Was the deed recorded?

A. The abstract had who wrote that.

Q. As far as your records reveal no one down there claimed three acres of land until last year, did they?

A. As far as any records are concerned, up until 1958 it was two acres.

Mr. Kelly: That is all.

Daniel Whitmer.

RE-DIRECT EXAMINATION.

By Mr. Swart:

Q. Mr. Ferguson, is it uncommon for you to discover discrepancies now and then on your tax records?

A. We frequently do.

Mr. Swart: That is all.

The Court: Step down.

(Witness excused.)

The Court: Who is your next witness?

Mr. Swart: Mr. Daniel Whitmer.

Thereupon,

DANIEL WHITMER,

was called as a witness by counsel for defendant and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. Tell the Court your name and address, page 132 } please.

A. Daniel Whitmer, Manassas, Virginia.

Q. Where were you living in 1948 and '49?

A. Well, I was boarding with Mrs. Schaeffer at that time.

Q. Which Mrs. Schaeffer is that?

A. Mrs. Ethel Schaeffer.

Q. Now, did you have occasion to do some farming for her in 1948?

A. Yes, I did.

Q. I mean in 1949?

A. Yes, I did.

Q. Can you tell us where this land you farmed is?

A. This land runs from the orchard fence toward Route 28.

Q. The orchard fence of whose property?

A. Vivian La Due.

Q. In which direction?

Daniel Whitmer.

A. Toward Manassas Road.

Q. And approximately how far to the orchard fence did it go?

A. I didn't attempt to measure it. I would say two hundred feet.

Q. You plowed the land?

A. Yes, I did.

Q. What else did you do in connection with page 133 } raising the crop for her?

A. What did I do?

Q. Did you do anything else in connection with raising the crop?

A. I plowed the garden.

Q. Did you plant the crop?

A. I planted the corn.

Q. Did you plow it after it came up?

A. Yes, I did.

Q. Did you help harvest it?

A. No, I didn't.

Q. The corn was plainly visible to anyone passing along the Currell driveway?

A. You mean to look at it?

Q. Yes.

A. Yes, if they wanted to.

Q. Mr. Currell never said anything to you about planting or working the corn, did he?

A. No, sir.

Q. You didn't go to him for permission?

A. No, sir.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. What do you do, Mr. Whitmer?

page 134 } A. I run the bulldozer for the Fairfax County School Board.

Q. How long have you lived up here in this area?

A. Well, I have been living here thirty years.

Q. In the area where this land is?

A. I don't know. I went—I moved down there and went boarding with Mrs. Schaeffer in 1947, about the time she moved down there.

Q. Who else lived there?

Daniel Whitmer.

- A. Mrs. Schaeffer, and I boarded there with her.
 Q. What did you do for a living?
 A. I worked for Captain Yeomans on the farm.
 Q. Were you full-time employed?
 A. Yes, sir.
 Q. You moved there in 1947?
 A. Yes, sir.
 Q. Just you and Mrs. Schaeffer?
 A. Well, all the children and her husband.
 Q. That is somebody else.
 A. Mrs. Ethel Schaeffer.
 Q. All I want to know is who moved down there?
 A. Mrs. Ethel Schaeffer—she was Mrs. Ethel Homer Schaeffer; her husband was living when I started boarding there.
 Q. Did he move there when you all moved
 page 135 } there?
 A. Yes.
 Q. And the children moved down there?
 A. Yes, sir.
 Q. And you worked for Mr. Yeomans?
 A. Not at the first time. It was about a year after I moved down there that I started working for Mr. Yeomans.
 Q. It was a year after you moved there that you started working for Mr. Yeomans?
 A. Yes, sir.
 Q. Full-time?
 A. Yes, sir.
 Q. Do you remember what time of year you started working for Mr. Yeomans?
 A. That was in '48. I can't recall what month or day, but I know it was in 1948.
 Q. Do you remember what you started doing?
 A. Farming, milking cows, feeding hogs and chickens.
 Q. The house that you all moved into had belonged to Roy Schaeffer, didn't it?
 A. That's right.
 Q. And it was across the Currell's driveway?
 A. That's right.
 Q. Now, I show you a plat which has been marked Complainants' Exhibit No. 1, and ask you if this is Route 658 along here (indicating), (handing the plat to the
 page 136 } witness)? Do you see this (indicating)?
 A. Yes.

Daniel Whitmer.

Q. And this (indicating) is a private road that goes back up to the Currell's house?

A. That's right.

And this (indicating) is a row of cedar trees running down there. And I plowed practically 200 feet from here (indicating) towards Route 28, which is Manassas Road.

Q. You plowed 200 feet. Did you plow any more?

A. I plowed the whole field.

Q. Who did you plow the whole field for?

A. Plowed it for Mr. Yeomans. He is the one who rented the place from—

Q. Mr. Yeomans rented it from Mr. Currell?

A. That's right.

Q. And you plowed the field for Mr. Yeomans?

A. That's right.

Q. Did Mr. Currell show you where to plow?

A. No, sir.

Q. Who showed you?

A. Mr. Yeomans.

Q. Where did he show you to plow?

A. He showed me—you see, he told me the line was about 200 feet from, you know, the old row of cedar trees toward Manassas Road.

page 137 } Q. Mr. Yeomans told you that?

A. Mr. Yeomans—that's the man I was working for.

Q. That's where you plowed?

A. That's where I plowed.

Q. When you plowed for Mr. Yeomans what sort of a line—did you leave any land by Mr. Currell's land?

A. Yes, I left about, I would say, five foot; just a little strip.

Q. A strip of grass?

A. Yes.

Q. Did you have any trouble plowing that ground?

A. There was right lot of little cedars and old, dead stumps and rocks and broom sage, and the broom sage was a foot high.

Q. Did it all look the same?

A. Yes.

Q. How did you determine where that line was?

A. By Mr. Yeomans.

Q. And you left a strip about five feet wide between the two?

A. Yes.

Daniel Whitmer.

Q. How long did it take you to plant it for the Currells?

A. I didn't plant for the Currells.

Q. For Mr. Yeomans?

page 138 } A. How long it took me—about a day to plant
the corn.

Q. I want you to show us there on this map where the corn field was that you planted for Mr. Yeomans.

A. It went about 200 feet from this row of cedars (indicating) toward Manassas Road, and from there over to the pines and all over.

Q. I want you to show me on that map—

Mr. Swart: Mr. Kelly, I object to showing it that way on the map, because the references he has designated are not on the map.

The Witness: I can take you out there and show you it.

By Mr. Kelly:

Q. You went all the way up this side (indicating) along here for Mr. Yeomans?

A. Yes.

Q. Did you go over in here (indicating)?

A. Yes.

Q. Over to the driveway?

A. And up to the house.

Q. What you are telling the Court is—did you leave any grass plot along the north edge?

A. I left about the same width, a five-foot strip, so I could plant the corn and turn around.

Q. When did you plow the strip for Mrs. Schaeffer?

page 139 } A. I plowed it two evenings after I plowed the
field.

Q. Two evenings. Did it take you two evenings to plow it?

A. It was two evenings before I got to plow it.

Q. In other words, you plowed that at an entirely different time?

A. Yes.

Q. You worked it?

A. Yes.

Q. How much corn did you put in there?

A. I planted a bushel.

Q. You planted sixty pounds of corn?

A. I drilled the corn.

Daniel Whitmer.

Q. You drilled it?

A. Yes, sir.

Q. What were they using the corn for?

A. I don't know. All they asked me to do, if I would plant it. I didn't ask if they wanted it drilled or dropped or what.

Q. Did you hear Mrs. Schaeffer say she had that corn three feet between the hills?

A. Yes.

Q. How do you drill it three feet between the hills?

A. (The witness made no response.)

Q. How do you drill corn three feet between the hills?

A. We didn't drill it between the hills.

page 140 } Q. You drilled that corn?

A. Sure.

Q. Three feet between the hills?

A. I don't know; I never measured it.

Q. How did you drill corn in hills, Mr. Whitmer?

A. I didn't drill corn in hills; I drilled the corn and I didn't check the corn. You see, when you check corn you drop it in hills and you got a space, but I didn't check it. That's what is called drilling corn.

Q. You used a corn planter, not a drill?

A. A corn planter.

Q. You planted?

A. Yes, sir.

Q. Do you know who asked Mr. Yeomans to use that piece of land?

A. Mr. Schaeffer.

Q. Mr. Schaeffer asked Mr. Yeomans?

A. He asked Mr. Schaeffer about plowing—Mr. Schaeffer asked Mr. Yeomans about plowing this piece up, and Mr. Yeomans said it was perfectly all right with him if I would do it. He said it was all right with him and he could use his tractor and plow it. Mr. Schaeffer come and asked me what I would charge him to plow that piece up for him, and I said, "Mr. Schaeffer, I wouldn't charge you a penny; give me whatever you want." He took some off the board for it.

page 141 } Q. Where did you get the corn?

A. Mr. Schaeffer bought the corn from Mr. Yeomans.

Q. What about the fertilizer?

A. He bought the fertilizer from Mr. Yeomans.

Q. You used that to plant from that?

Daniel Whitmer.

A. Yes, I planted his corn the same time I planted the corn in Currell's field.

Q. The Currells would have seen that corn if it was planted west of that fence, wouldn't they?

A. Sure.

Q. You lived there from 1948 on, did you not?

A. I lived there from 1947 until about '54.

Q. And during that time did you plant anything else in that field?

A. No, sir.

Q. During that time did Mr. Currell, Mr. Yeomans, Mr. Graves, and Mr. Eagle plant anything in that field?

A. Do you mean the piece or the whole field?

Q. In the piece you say you put the corn in?

A. No, sir.

Q. That piece has never been used since?

A. When I sowed the grass in the field. you know, that Mr. Yeomans got, and I sowed the grass on that piece, too.

Q. You sowed the grass on the piece that you had the corn?

page 142 } A. Yes.

Q. Who did you do it for?

A. Oh, I did that on my own accord.

Q. Do you know whose grass it was and who furnished the fertilizer?

A. Mr. Yeomans.

Q. He paid for it?

A. Yes, sir.

Q. And then you sowed that one piece together and Mr. Yeomans didn't complain about you sowing the grass on someone else's place?

A. No, sir.

Q. Did Mr. Yeomans cut that grass?

A. No, sir.

Q. Did he ever have it cut?

A. No, sir.

Q. Never been cut by Mr. Yeomans?

A. No, sir.

Q. Has anyone ever cut that grass?

A. I don't know. I quit Mr. Yeomans then and I don't know.

Q. When is "then"?

A. I quit Mr. Yeomans in '50. That's when he sold the place.

Daniel Whitmer.

page 143 } Q. You never worked for Mr. Graves?
 A. No, sir.
 Q. But you lived there right next door to the
 place?

A. Yes, sir.

Q. Do you know whether Mr. Currell, Mr. Grapes or
 Mr. Eagle cut the grass?

A. That I can't swear.

Q. You drive by there everyday, don't you?

A. Yes, sir.

Q. Would you say, Mr. Whitmer, whether the grass was
 high or whether it was clipped?

A. It's been cut.

Q. It has been cut?

A. Yes, sir.

Q. The Schaeffers never used that land any more?

A. I don't know.

Q. If you were living there in the house, you would have
 known it?

A. Yes, but I got married and I left.

Q. You said you left in '54.

A. Yes.

Q. Mrs. Schaeffer left in '54?

A. That's right.

Q. From the time you sowed that corn there until 1954
 when you left, did Mrs. Schaeffer ever use that land?

A. She never used it; not that I know of.

page 144 } Q. The only time was when you put a bushel of
 corn in there?

A. Yes, sir, that's the only time I know.

Q. You put a bushel of corn to the acre; is that what
 you are telling this Court?

A. Yes, sir.

Mr. Kelly: That is all.

RE-DIRECT EXAMINATION.

By Mr. Swart:

Q. Mr. Whitmer, when you said you asked Mr. Yeomans if
 it would be all right to plant this corn, did you mean as far
 as where the La Due property was concerned, to get per-
 mission to do it since you were working for Mr. Yeomans?

A. How do you mean that; break it down.

Daniel Whitmer.

Q. For whom were you planting the corn next to the orchard?

A. I was planting it for Mrs. Schaeffer,—Mrs. Ethel Schaeffer.

Q. Did you plant during working hours when you should have been working for Mr. Yeomans?

A. No, sir.

The Court: You planted it the same time you planted the rest of the field. Didn't you say that on direct examination?

The Witness: (The witness made no response.)

The Court: Didn't you say on direct examination page 145 } nation when you planted, you planted it at the same time?

The Witness: I planted the grass.

The Court: Didn't you say when you planted the corn, in the balance of the field that you planted it in the Schaeffer land at the same time?

Didn't you say that?

The Witness: I can't recall.

The Court: Which did you do in fact?

The Witness: I planted the corn in the field that day, and that night after my quitting time I planted the corn for Mrs. Schaeffer.

Mr. Swart: That is all I have.

RE-CROSS EXAMINATION.

By Mr. Kelly:

Q. You said you plowed it two days later.

A. Yes, I plowed—

Q. Did you work that field you plowed two days after?

A. Where?

Q. The property that Mr. Yeomans had gotten from Currell?

A. Well, no, because it took me about two days to plow that field.

Q. When you finished plowing, Mr. Yeomans had you work that field everyday?

A. Yes, I got it ready.

Q. You didn't plow the piece you say you page 146 } plowed for Mrs. Schaeffer until two days later?

A. I plowed it at night after quitting time.

Q. Mr. Yeomans field was two days ahead of that other one?

Vivian S. La Due.

A. That's right.

Q. How did you plow that, both at the same time then?

A. In the evenings I worked for Mrs. Schaeffer, after I quit.

Mr. Kelly: That is all.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Swart: Mrs. La Due, please.

Thereupon,

VIVIAN S. LA DUE

was called as a witness by counsel for defendant and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Swart:

Q. Tell the Court your name and address, please.

A. Vivian S. Schaeffer La Due.

Q. You are the one who owns the land that is the subject of this suit?

A. Yes, I am.

Q. Is Samuel Wells related to you?

page 147 } A. He is my uncle.

Q. Did there come a time when he did something to the fence on this land?

A. Yes, he did. He fenced this land in in 1938.

Q. And what did you do about that?

A. I went up there and cut it down.

Q. That was the occasion when Mr. Mathers told us about it?

A. That was when Oscia and Waverly Mathers came on the train to Clifton and they came to the door and took me to this piece of land and I cut the fence down. He fenced it in and advertised it for sale.

Q. Can you tell the Court where the fence was when you cut it down?

A. The fence went by the Wellses' driveway, which is now

Vivian S. La Due.

the Currells' driveway, and it was up 658 highway toward Manassas and Centreville highway.

Q. Was there ever a fence around—other than that fence—part of your land?

A. The old orchard was fenced in. In those days the people fenced their orchards, and the old orchard was fenced in separate, and there still remains some signs of fencing.

Q. Was the boundary of the orchard the row of cedar trees?

A. Yes, that is correct.

page 148 } Q. I believe you were born there in the vicinity of this property?

A. Yes, I was.

Q. How long did you live there?

A. I lived there until 1916.

Q. Now, did there come a time when you had some discussion with the Currells—either of them—regarding your property?

A. Yes, in 1938. Mr. and Mrs. Currell came to Washington to my apartment and said that they had bought this parcel of land from Samuel Wells, Jr., and he had told them I owned a little strip of land there, and she said, "Possibly two acres," and I said, "Well, it is more than two acres, Mrs. Currell; it is 470 by 285 feet." She said, "Yes, we have been to the Court House and looked that up and learned that it does belong to you and we would like to buy it."

Q. Now, there was no doubt about her being informed that you had 285 feet frontage to the lot?

A. It had been discussed many times.

Q. Were there other occasions when you had discussions with her—by the way, on that visit in Washington, was Mr. Currell along?

A. Yes.

Q. Did he hear the discussion?

A. Yes.

page 149 } Q. Were there other discussions that you had?

A. When I met Mrs. Currell at my sister's at a birthday party she quickly asked me if I had decided to sell her that land and I told her I had not, it was not for sale and if I ever decided to sell it I would give her first choice.

Q. Did there come a time when you prepared to put a building on this property?

A. Yes.

Vivian S. La Due.

Q. Where is that in relation to the disputed acre?

A. Well, I knew exactly where these lines were because I was born and raised there and I knew just about exactly where they were, and I tried to tell Mr. and Mrs. Currell where they were but they wouldn't listen to me. And I drew him a small plat—I have it in my pocketbook—very similar to the one the surveyor drew up.

And I took this out and showed it to Mr. and Mrs. Currell and Mr. Currell said, "Oh, there is nothing to that, that was drawn by a \$4,000-a-year man." I said, "I will have the land surveyed and then there will be no more arguments about it." So Mrs. Currell said to me, "Vivian, don't go to the bother of having it surveyed, let Clyde step it off." I said, "No, there has been too much stepping off now and we will survey it so that we will be sure. That is the only way I will prove to you where it is."

Q. When did this conversation take place with page 150 } regard to this piece of paper?

A. This was in 1940 and—this was about 1956.

Q. You, of course, have not lived in this area of the property since 1916?

A. I lived at Clifton twice since then.

Q. You have not lived in the immediate vicinity?

A. No, not in the immediate vicinity.

Q. What have you done since the Currells purchased this property to exercise dominion over the tract of three acres, and particularly the disputed acre?

A. Well, I let my father-in-law and stepmother-in-law cultivate it and I was out there very often to see that no one else did cultivate it and so no one else claim it in any shape or form, and to my knowledge they never did. They never told me if they did anything to it; they never let on about it. They never fenced it; they fenced the other side.

Q. Did you do any clearing of the property?

A. Slightly, not a whole lot. Do you mean of the piece in question?

Q. Yes.

A. Of the piece in question, no, Mrs. Schaeffer had that in corn.

Q. Did you ever have occasion to go there and see anybody else doing anything to the property?

A. No, sir, if there was ever anything done, I page 151 } never knew about it.

Q. Did you ever do any grading or excavating in connection with the building?

Vivian S. La Due.

A. Yes, I cut a driveway in on this land and we put in a hole that you dig for this inspection of cess pools and then Mr. Simmons was cutting grass on this land—that is when he got the tractor caught in one of the holes.

Q. When was Mr. Simmons cutting the grass?

A. I went up there one day—that was in about 1957, I guess it was—and Mr. Simmons was cutting grass, so I went over to him and asked him if he knew he was cutting grass on my ground and he said, no, he didn't, and I said, "You are Mr. Simmons and I didn't give you permission to do that."

Mr. Kelly: That is purely hearsay.

By Mr. Swart:

Q. When you found Mr. Simmons cutting the grass on your property, did you tell him to stop?

A. I told him to stop and I said to stop right that minute, and he said—

Q. You can't tell what he said.

A. He did stop.

Q. Did you subsequently give him permission to cut the grass on your land?

A. Yes, I did. He said he needed it for his cattle.

Q. Did you see Mrs. Schaeffer's corn growing page 152 } on this land?

A. Yes, I did.

Q. Was it on the disputed acre?

A. It was on the part in question, yes, sir. That was in 1938—1949, I'm sorry.

Mr. Swart: That is all.

CROSS EXAMINATION.

By Mr. Kelly:

Q. When did you find out Mr. Wells advertised this property for sale?

A. In—let me see. He advertised that in about 1936-37. He ran it for quite some time.

Q. That is when he put the fence up around?

A. Yes.

Q. Where did the fence that Mr. Wells put up go? Can you show me on this plat?

A. It went up Mrs. Currell's driveway and up the roadway 285 feet, and on down toward Willard Shaw's.

Vivian S. La Due.

Q. Did it stop down here (indicating)?

A. No, it went on to this corner (indicating), because the rest of this land—it's probably fenced in, I don't recall exactly whether that was or not, but he fenced the front in.

Q. He fenced in the front and this side (indicating) down along the road?

page 153 } A. Yes. He particularly fenced my land because he said he could not sell his land with that piece of land there, that it ruined the sale of his property.

Q. Which piece of land?

A. The piece of land that I own. And he fenced that in to make a better impression.

Q. He just ran down this corner (indicating) and here (indicating). He didn't fence you in?

A. Yes, he did. He fenced me in with his land.

Q. And you cut it down here (indicating) and here (indicating)?

A. Yes.

Q. Do you mean to tell me that he was going to sell his land and yours?

A. Yes.

Q. Did he tell you he owned that land?

A. No, he knew he didn't. He didn't say he owned it; he said it made a better impression to have my land fenced in with his, because when my land was separate, people wouldn't buy the rest of his land unless they could also buy this piece of land. I told Mrs. Currell that when she came to Washington to buy.

Q. Didn't he fence the north side?

A. He fenced the driveway and the roadway and left them under the impression this was only a small strip
page 154 } of land in here and easily bought.

Q. He left just a small strip of land?

A. Yes.

Q. Do you know that he left them with that impression?

A. I assume from what Mrs. Currell said—

Q. When?

A. When she came to my apartment.

Q. In 1938?

A. Yes.

Q. They actually didn't buy that until 1939.

A. I'm sorry, 1939 Mrs. Currell came to my apartment.

Q. She told you at that time she thought this was a strip of land that—

Vivian S. La Due.

A. She left me with the impression that this strip was less than an acre, and I said, "No, Mrs. Currell, it is more than two acres."

Q. You said it was more than two acres. You knew at the time she thought it was less?

A. I assumed from her conversation she was under the impression it was less land than it actually was and I wanted to make it clear to her exactly how many feet there were in that land.

Q. Do you know whether they cleared that land and used it between 1939 and now?

A. 1939 is the only time that Mr. Currell cultivated any of his land to this highway.

Q. In 1939?

A. Well, 1949 is the only year. And he only did that after Daniel Whitmer plowed this up for Mrs. Schaeffer.

Q. You mean he didn't plow his side until Daniel Whitmer plowed for Mrs. Schaeffer?

A. Captain Yeomans met me on the highway—

Mr. Kelly: I am going to object to any hearsay testimony.

The Court: Sustained.

By Mr. Kelly:

Q. You say after he plowed this up for Mrs. Schaeffer, you said I believe, he then plowed this land?

A. This piece of land for Mr. Currell was plowed first, but Captain Yeomans had spoken to me about this piece of land, and as he was plowing for the Currells he was going to also plow this for Mrs. Schaeffer.

Q. Did he plow it?

A. Daniel Whitmer plowed it.

Q. You saw the corn in there?

A. I did.

Q. And you saw the corn in the Currells' part?

A. I did.

Q. After that corn went in there what was done with those lands?

A. What was done with it?

page 156 } Q. Yes.

A. Mrs. Schaeffer and her two little boys cut the corn off of this part of the land (indicating). They got quite a bit of corn; I don't know how much.

Vivian S. La Due.

Q. After the corn had been taken off, Mrs. La Due, what was done with this piece of land?

A. It was left just as it is, and to this day there are still some stubbles of corn stalks in that land there when we put the driveway in there.

Q. You mean this piece of property from 200 feet?

A. I mean this piece of property from the cedar trees across.

Q. It has had nothing done to it since then?

A. Mr. Simmons cut the grass after, yes.

Q. That is the only thing that has been cut?

A. Yes.

Q. Nothing was planted on it?

A. No.

Q. And it hadn't been cut until Mr. Simmons cut it?

A. Yes.

Q. That was last year?

A. That was three years ago.

Q. It was three years ago when Mr. Simmons cut it?

A. Let me see—well, it has been about two or three years ago, yes.

page 157 } Q. And that was the only time that land was cultivated?

A. To my knowlegde that was the only time. If it was ever cultivated any other time I didn't know about it. I certainly would have objected to it.

Q. Did you go visit Mrs. Schaeffer while she was living there?

A. Yes.

Q. You went by there periodically?

A. Yes. I went there many, many times, and I went to see who did cultivate and where.

Q. You say it was not cultivated at all?

A. It was the only time I ever knew it to be cultivated, which was in 1949.

Q. You say that the grass has not been clipped or cut?

A. Yes, the grass has been cut; only when Mr. Simmons cut it.

Q. Commander Yeomans never worked it?

A. Not mine; he worked Mr. Currell's.

Q. Commander Yeomans went 200 feet of that fence line, is that right?

A. I guess he did; he never cultivated mine.

Q. How about Mr. Graves?

Vivian S. La Due.

A. Mr. Graves never cut mine, to my knowledge. If he did he did it when I didn't know it.

Q. Do you mean to tell me that this area from page 158 } the cedar trees to where you claim to be your line, this has grown up more than the Currells has?

A. The Currells' land is in grass and all the grass on mine is what has blown over from the Currells' land onto mine.

Q. You say the Currells never cultivated or had anything done to this land?

A. Not to my knowledge.

Q. And you say this strip of land between the line designated as the line according to the Currell deed and the line you claim to be yours, that you can see the difference between this piece of property and the Currell property?

A. Yes.

Q. Do you recognize that picture, Mrs. La Due (handing the photograph to the witness)?

A. It looks like where my husband and son had a ball diamond out there, but I am not sure.

Q. This was taken from the Currells' front porch, and there is Mr. Graves' house back here (indicating). Do you recognize that? Do you see a light strip?

A. Yes, I see it; it is not clear enough to tell whose house it is.

Q. But you say you can see a line?

A. Yes, definitely.

Q. Two hundred feet west of those cedar trees?

A. Yes, you can see it plainly.

page 159 } Q. You knew in 1939 that Mr. and Mrs. Currell owned more land there than you did?

A. No, I didn't know; I knew they didn't.

Q. You knew they thought they did?

A. No, they didn't think they did, because when they came to Washington in 1938 I made it clear to them, as I am making it clear to you, this definitely was my land.

Q. What was?

A. The 470 by 285 feet.

Q. That isn't in your deed.

A. I bought the land from my father and it is in my father's deed.

Q. You bought the land from your father?

A. He didn't give it to me; he sold it to me.

Q. To you and your husband?

Vivian S. La Due.

A. That's right.

Q. And that doesn't call for metes and bounds?

A. It refers to the same deed that does have metes and bounds.

Q. Did you refer to it?

A. Yes.

Q. Did you have someone do the title for you?

A. Yes.

Q. No one told you that the metes and bounds was more than two acres?

page 160 } A. Well, 470 by 285 feet is more than two acres.

Q. Why did you wait until 1957 to correct the land records down here as to that three acres?

A. Because I was on the books and I thought it wasn't necessary. I asked Mr. Kincheloe about it and he said, "Vivian, what is on these books is correct; you don't have to worry about it."

Q. Why did you correct the amount of the acreage?

A. Mr. and Mrs. Currell were not convinced where the line was, so I had it surveyed to be sure to convince them.

Q. Then, they have been claiming it, haven't they?

A. They have been working up to that, yes.

Mr. Kelly: That is all.

The Court: Step down.

(Witness excused.)

Mr. Swart: I want to offer in evidence the deed recorded in Liber X No. 5, Page 76. This is one deed which we omitted from the stipulation which have the two acres from the deed of trust but did not accept the two-acre piece.

The Court: Do you object to that?

Mr. Kelly: No. I can't object to the record. It is on the record.

The Court: It will be received.

(The deed referred to was marked Defendant's Exhibit No. 2 for identification and received in evidence.)

page 161 } The Court: Who is your next witness?

Mr. Swart: That is our case.

Mr. Kelly: I would like to call Mr. Graves as a rebuttal witness.

Aubrey A. Graves.

Thereupon,

AUBREY A. GRAVES,
was recalled in rebuttal by counsel for complainants and,
having been previously sworn, testified further as follows:

DIRECT EXAMINATION.

By Mr. Kelly:

Q. Do you, of your own knowledge, know anything about
what Mr. Yeomans did on any of that Currell land?

A. When we moved there Captain Yeomans told me—

Mr. Swart: I object to what Captain Yeomans told him.
The Court: Sustained.

By Mr. Kelly:

Q. You didn't see him do anything?

A. I did not see Captain Yeomans work any of the land
because I didn't move there until he moved out.

Q. You moved there in 1950?

A. Correct.

Q. At that time did you notice the land across the road
from you?

A. Naturally, yes.

Q. Referring to Complainants' Exhibit No. 1,
page 162 } was there any line or any ridge in the field or any-
thing that would have shown there had been a
break or two corn fields in there in 1949?

A. Not that—

Mr. Swart: I object. He already testified that there
was nothing there to indicate any boundary line at all. This
is in rebuttal now.

The Court: I don't think he testified in relation to a break
between two corn fields.

Objection overruled.

By Mr. Kelly:

Q. Was there any line that you ever saw some two hundred
feet from this old fence line that indicated those fields had
ever been used for anything except the same operation?

A. It looked like one piece of land of identical nature.

Q. When you plowed or baled in there, did you come across
any ridge or indentation in that land where there might have

Aubrey A. Graves.

been a five-foot strip between corn fields when this was cultivated?

A. No.

Q. As far as you were able to ascertain, from 1950 to this day, was there any difference or any line plainly visible?

A. It looks like one field up to here (indicating).

The Court: Up to where?

The Witness: Up to this (indicating) old page 163 } fence line of cedar trees bounding this shaded area.

By Mr. Kelly:

Q. Now, I believe that Mrs. Schaeffer testified she didn't know whether you worked the Currells' field.

A. I heard her say, to the best of her knowledge she didn't know whether I had or not.

Q. Did you, anytime between 1950 and 1954, work those fields?

Mr. Swart: I object, your Honor.

The Court: He said he did.

By Mr. Kelly:

Q. Who helped you?

A. On one of those years Mrs. Schaeffer's son, William, helped me work the tractor and mow the field.

Mr. Swart: That is still not rebuttal. There is no testimony that anybody helped him.

The Court: I assume this is in rebuttal to her saying that as far as she knew Mr. Graves had not worked the property.

Mr. Swart: The fact that somebody helped Mr. Graves to do what he said he did is not rebuttal to Mrs. La Due's statement.

The Court: If he connects it up all right, if he doesn't it will not be admissible.

Mr. Kelly: It was my understanding that Mrs. Schaeffer who lived in Roy Schaeffer's house said she page 164 } didn't know anything about this man ever working that field.

The Court: That is correct. The mere fact her son helped Mr. Graves doesn't prove that she did know. I am

Aubrey A. Graves.

going to permit Mr. Graves to testify, but it would have to be connected up to her to be of weight in this case.

By Mr. Kelly:

Q. Was it apparent to anybody using that road, driving along that road, that the field was being cultivated clear to those trees or that fence line?

A. I don't understand.

Q. Was it apparent to anyone driving by the Currells' place—would it have been apparent to anyone driving by there, using that road, that that field in front of the Currell house was being cultivated or used?

A. Anybody with normal eyesight would have noticed the field was being used at the time, after it had been cut.

Q. Even when it hasn't been cut, is it grown full of weeds and sumacs and scrub pines and small cedars?

A. The large field?

Q. Yes.

A. I have never seen it full of sumac. It has always been full of timothy and Lespedeza. If I understand your question, you are asking me whether a person driving along that road would notice it had been cut or harvested the hay.

It would be impossible if one looked over in the page 165 } field not to notice the field was cut. It was three or four feet high in places when I cut it.

Mr. Kelly: That is all.

CROSS EXAMINATION.

By Mr. Swart:

Q. Mr. Graves, when did you move to this property?

A. December 1950.

Q. That was well over a year after the corn had been harvested in 1949?

A. I know nothing about any corn.

Q. You didn't see this property at all in 1949 when this corn crop was there?

A. I didn't see it in '49.

Q. And the whole field was in grass or some sort when you moved there?

A. When I moved there it was in grass.

Q. That included both, the remainder of the Currells' property and the disputed acre, did it not?

Dorothy Currell.

A. Yes, that disputed acre looked like the rest of it, and it was all in grass.

Mr. Swart: That is all.

The Court: Step down.

(Witness excused.)

Mr. Kelly: I would like to call Mrs. Currell.

page 166 } Thereupon,

DOROTHY CURRELL,
was recalled in rebuttal by counsel for complainants and, having been previously sworn, testified further as follows:

DIRECT EXAMINATION.

By Mr. Kelly:

Q. Mrs. Currell, do you remember when Mrs. Schaeffer lived over in Roy Schaeffer's house?

A. Yes, I do.

Q. Was there ever a time when she had a corn field in front of you or anywhere west of that cedar line?

A. Never.

Q. Who put that field of corn in there?

A. Mr. Yeomans.

Q. Who did the work for Mr. Yeomans?

A. Danny.

Q. Danny did it?

A. Yes.

Q. When he plowed that field, did he leave a five-foot strip?

A. No, there was no occasion for it.

Q. Did he leave it?

A. No.

Q. It was plowed as one contiguous piece?

A. Yes.

page 167 } Q. Did Mrs. Schaeffer get any corn off there?

A. Not that I know of, unless Mr. Yeomans gave it to her.

Q. Now, when you talked to Mrs. La Due in Washington, did you talk to Mrs. La Due in Washington in 1939?

A. We talked to her in Washington, but I don't remember the year it was.

Dorothy Currell.

Q. Did she at that time tell you the metes and bounds of that piece of property?

A. No, absolutely not.

Q. Has she ever told you what they were?

A. No, not until March 1957.

Q. When you came there in 1939, was there a fence running across the piece of property?

A. No, sir.

Mr. Kelly: I don't have any further questions.

Mr. Swart: No questions.

The Court: Step down.

(Witness excused.)

Mr. Kelly: I rest.

The Court: Any further testimony?

Mr. Swart: No, your Honor.

The Court: We will take a short recess before we hear your arguments.

(A recess was taken.)

page 168 } The Court: Do you want to have the arguments reported?

Mr. Kelly: No.

Mr. Swart: No.

(Thereupon, at 5:00 o'clock p. m., counsel presented their arguments to the Court, which were not reported.)

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A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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