

4267  
199 VA 630

# Record No. 4754

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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WALTER E. BRAUER, JR., ET AL.

v.

MARIUS E. ADAMS

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FROM THE CIRCUIT COURT OF HANOVER COUNTY

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## 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.

H. G. TURNER, Clerk.

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

199VA630









IN THE  
**Supreme Court of Appeals of Virginia**  
AT RICHMOND.

**Record No. 4754**

## VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 12th day of June, 1957.

WALTER E. BRAUER, JR., ET AL., Plaintiffs in Error,

*against*

MARIUS E. ADAMS,

### Defendant in Error.

From the Circuit Court of Hanover County.

Upon the petition of Walter E. Brauner, Jr., and Mabel T. Brauer a writ of error is awarded them to a judgment rendered by the Circuit Court of Hanover County on the 3rd day of January, 1957, in a certain proceeding then therein depending wherein Marius E. Adams was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, 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

\* \* \* \* \*

PETITION FOR ASCERTAINMENT OF BOUNDARY  
LINE.

To the Honorable Judge of the Circuit Court of Hanover County, Va.:

Your petitioner, Marius E. Adams, respectfully shows:

That he is possessed of a tract of land situated in Henry Magisterial District, Hanover County, Virginia, containing 360 acres known as the "Spring Hill" or "Old Adams" home-place, bounded on the north and northwest by the Watt farm, on the east by the "Turkey Hill" farm and on the south by the Chickahominy River, which property was owned by Joseph Adams, his grandfather, prior to 1865 and which, upon the death of Joseph Adams, passed under his will to the children of Joseph Adams and was acquired by your petitioner in the chancery suit, *Marius E. Adams v. Virginia Adams States, et al*, by deed from George E. Haw, Special Commissioner, dated October 10, 1949.

That Walter E. Brauer, Jr. and Mabel T. Brauer, husband and wife, are the owners of the "Turkey Hill" farm, which lies immediately on the east of the "Spring Hill" farm, and which they acquired by deed from Joseph Adams and others, said land originally owned by Joseph E. Adams, the grandfather of your complainant, and which was acquired by him in the year 1871 as containing 225 acres, from which there was sold off a part, reducing the acreage to 211 acres, which acreage the same has been taxed for many years.

page 2 } There has arisen a dispute between the said Walter E. Brauer, Jr. and Mabel T. Brauer, owners of the "Turkey Hill" farm, on the one hand, and your petitioner, Marius E. Adams, owner of the "Spring Hill" farm, on the other hand, as to the true boundary line between the "Turkey Hill" farm and the "Spring Hill" farm.

That your petitioner charges that the true line of division between said "Turkey Hill" and "Spring Hill" tracts is a line shown upon the annexed sketch which commences at an iron pipe on a ditch at its northern end and which runs in a straight line to the Chickahominy River at its southern end

and that the line which is claimed by the defendants, which commences at said iron pipe on the ditch and runs south 39° west and thence as shown on said plat to the Chickahominy River at a point 200 feet to the west of the first mentioned line, is not the correct or true line between said properties.

Your petitioner hereto annexes as "Exhibit A" with this petition the sketch aforesaid showing the two lines mentioned and prays that the court will, as provided by the Code of Virginia in such case made and provided, designate as and for the true line and boundary between the properties of your petitioner and of the defendants, the line as shown on said sketch which commences at an iron pipe on the ditch and runs in a straight line to the Chickahominy River at its northern end. Also he prays that Walter E. Brauer, Jr. and Mabel T. Brauer be impleaded as defendants.

MARIUS E. ADAMS.  
By GEO. E. HAW OF HAW & HAW.  
his attorney.

To Walter E. Brauer, Jr. & Mabel T. Brauer :

Take Notice: that I have on this 3rd day of November, 1950, filed the above petition in the Clerk's Office of the Circuit Court of Hanover County, Va.

MARIUS E. ADAMS.  
By GEO. E. HAW OF HAW & HAW.  
his attorney.

\* \* \* \* \*

(on back)

Filed Nov. 3, 1950.

Teste:

C. W. TAYLOR, Clerk.  
By F. A. TAYLOR, D. C.

Spring  
H. 11  
Farm

Iron pipe  
No. 10 brass

Iron  
pipe

Spring  
H. 11  
Farm

Iron  
pipe

BRICK

H. 11  
Farm

Iron pipe  
No. 10 brass

Iron pipe  
No. 10 brass

38 Acres  
in the  
Turkey  
H. 11  
Farm

1880 to 1885  
to the River

20'

Sub A

\* \* \* \* \*

page 7 }

\* \* \* \* \*

Filed Nov. 21, 1950.

Teste:

C. W. TAYLOR, Clerk.

ANSWER AND GROUNDS OF DEFENSE OF WALTER  
E. BRAUER, JR. AND MABEL T. BRAUER, TO  
A PETITION FOR ESTABLISHMENT OF BOUND-  
ARY LINE EXHIBITED AGAINST THEM BY  
MARIUS E. ADAMS.

These defendants, answering the petition of Marius E. Adams, state:

1. That they acquired title, as tenants by the entireties, with right of survivorship as at Common Law, to a tract of land in Henry District, Hanover County, Virginia, with the improvements thereon, containing Two Hundred Ninety-three (293) acres of land, more or less, by deed from Joseph Adams and Mabel R. Adams, his wife, and Andrew H. Adams and Marjorie I. Adams, his wife, by deed dated July 22, 1949 and duly recorded July 28, 1949 in the Clerk's Office of this Court.

2. Defendants are advised that the description used in the deed aforesaid was entirely in accord with a Plat of Survey, dated July 19, 1949, made by W. W. LaPrade & Bro. and that a copy thereof was attached to and made a part of the deed. An additional copy of this plat is hereto attached and made a part of this answer.

3. Defendants further state that they are advised that it is true that this property was formerly assessed on the land books of Hanover County as Two Hundred Eleven (211) acres and that when the surveyor was making the survey for them for the purpose of this purchase and for which they paid the



sum of Four Hundred Sixty-two and Thirty-Hun-  
 dredths Dollars (\$462.30), these defendants called  
 page 8 } attention to the fact, through their counsel, that the  
 assessment called for only Two Hundred Eleven (211) acres  
 of land and that likewise a former deed, described the prop-  
 erty as containing Two Hundred Eleven (211) acres, more or  
 less. Nevertheless the surveyor, after receiving this informa-  
 tion, wrote a letter to John C. Williams as counsel for the  
 defendants advising that Mr. Joseph Adams, a co-owner of  
 the property, had personally accompanied the surveyor and  
 indicated the actual lines which "were generally along lines  
 of occupation or marked lines." A copy of this letter is at-  
 tached hereto as a part hereof.

The defendants, therefore, having obtained this deed as  
 aforesaid with Plat of Survey attached and having had their  
 title examined by a practicing attorney and insured by the  
 Lawyer's Title Insurance Corporation, after settlement for  
 the property, took possession thereof and have since author-  
 ized the cutting of timber on a portion thereof. Defendants  
 are authorized and also believe that the lines shown on a  
 copy of the Plat of Survey hereto attached are the true  
 boundary lines of their property and that the petition of  
 Marius E. Adams is without merit. Nevertheless, this action  
 having been instituted, these defendants likewise pray a true  
 determination of their boundary line where coterminus with  
 Marius E. Adams.

And now having answered, the defendants pray to be hence  
 dismissed.

WALTER E. BRAUER, JR. and  
 MABEL T. BRAUER,  
 By Counsel.

J. C. WILLIAMS,  
 Counsel.

\* \* \* \* \*

page 15 }

\* \* \* \* \*

Filed May 24, '54.

L. M. B.

AMENDED PETITION FOR ESTABLISHMENT OF  
BOUNDARY LINES.

To the Honorable Leon M. Bazile, Judge of the Circuit  
Court of Hanover County:

Marius E. Adams, who is the owner of the Spring Hill Farm situated in Henry District, Hanover County, Virginia, has heretofore instituted a proceeding under the provisions of Section 8-837 of the Code of 1950 seeking the establishment of a boundary line between his property and the property of Walter E. Brauer, Jr. and Mabel T. Brauer, who are the owners of the farm known as Turkey Hill in Hanover County, both of said properties being located on the northern side of Chickahominy River near Grapevine Bridge.

At the time of the institution of said proceeding, due to the fact that it appeared that there was a considerable shortage in the acreage of Spring Hill owned by the plaintiff, and a considerable overage in the acreage of the Turkey Hill Farm owned by the defendants, as shown by a plat made by W. W. LaPrade and Bros., the plaintiff petitioner had William Hugh Redd, County Surveyor of Hanover County, run a line so as to include a sufficient amount of the excess overage of acreage in Turkey Hill into the boundaries of Spring Hill in order to give to Spring Hill its loss of acreage, and in said proceeding asked that the true boundary line between the properties be ascertained, and in said proceeding the defendants have filed an answer uniting in the prayer that the true boundary line be ascertained.

page 16 } Since the institution of said proceedings, upon a further search of the records of Hanover County for material bearing upon the true boundary line between the said properties, namely: Spring Hill and Turkey Hill, there was found in the Clerk's Office of Hanover County the Processioners Book which was a record of the ascertained boundary lines made by the Processioners who had been appointed by the Court to establish the boundary lines between the properties in Hanover County, Virginia, made necessary by the recent destruction of the records of Hanover County during the Civil War, and in said Processioners Book on pages 339 and 340 was found a description of the lines of the Spring Hill Farm as established by the Processioners in the presence of

Joseph Adams, its then owner, in which the line of division between it and the Turkey Hill tract was established.

In the same Processioners Report, and following the description of the line of division between Spring Hill and Turkey Hill Farms, the Processioners also set out the boundary lines of Turkey Hill, giving the same line as being the line of division between it and Spring Hill, all of which is shown by a copy of said Processioners Report hereto attached, to be read and considered as a part hereof, marked "Exhibit A".

Upon the information acquired from the Processioners Report and with the same before him, William Hugh Redd, Surveyor for Hanover County, has gone upon the ground in the presence of the representatives of the plaintiff and of the defendants, run the line of division between Turkey Hill and Spring Hill as shown on the Processioners Report aforesaid, and has made a plat thereof dated September 8, 1953, a blue print copy marked "Exhibit B" hereto filed and to be read and considered as a part of this petition.

WHEREFORE, your petitioner prays that he may file this, his amended petition, and that the Court will establish as the true boundary line between Spring Hill and Turkey Hill the line of division as laid down in the processioners  
 page 17 } Report and as shown by the plat of survey of William Hugh Redd last mentioned.

MARIUS E. ADAMS.

By GEO. E. HAW of HAW & HAW.  
 his attorney.

page 18 } EXHIBIT "A".

Transcript from Processioner's Report, 1867-1868

In the Clerk's Office, Circuit Court for Hanover County, Virginia.

Dec. 4th. Description & Marks of Corners &c.

	) Persons
	) Present
George Watts—	) J. C. McGhee
	) Dr. Gaines
	) & E. Kelley

Commencing at corner Dr. William F. Gaines & Mary A. Booze thence as line runs between him and Dr. Gaines to the Chickahominy thence down swamp to corner

between him and J. Adams Gum Pointers D. E. thence north west fore and aft thence black gum fore and aft, thence fore and aft broken top ash, thence force and aft white oak thence fore and aft holly, thence north west straight line to foot of hill, thence north to corner on swamp Boatswain (no line tree) thence up swamp to road leading to Gaines Mill to corner between McGhee Stewart & Adams (gum tree) thence side line on D. Stewart, thence fore and aft white oak, thence to where we commenced—

Dec. 5th.

Joseph Adams— ) Present  
 ) J. Adams

Commencing at maple stump below McClellan Bridge, thence up swamp to gum pointers G. Watts corner thence as Watts line runs to Boatswain Swamp, thence up swamp to corner, thence as Watt line runs thence east to fore and aft red oak on road leading from Gaines Mill to Barkers Mill, thence down road to pine stump corner on J. F. McGhee, thence fore and aft hickory thence fore and aft pine thence corner holly (near branch) thence as branch meanders to J. F. McGhee corner on Turkey Hill thence Black Gum, thence fore and aft sweet gum thence fore and aft sweet gum, thence fore and aft white oak, thence fore and aft gum thence corner (no marked tree) thence fore and aft gum thence to Maple Stump where we commenced.—

#### Description & Marks of corners &c

J. F. McGhee ) Present  
 ) Jos. Adams

Commencing at two dead black gum pointers to corner on branch between him & J. Adams thence east to corner pine thence north corner Sweet Gum, thence south east  
page 19 } fore and aft mulberry (dead) thence fore and aft  
dead mulberry thence sweet gum pointers to corner between him Parsley & Turkey Hill Estate thence north by east course fore and aft pine, thence fore and aft pine, thence across road to corner pine between him & Parsley, thence up swamp N. W to corner between him and McGhee (near road no marked tree) thence straight to road leading from Gaines' Mill to Barker's Mill, thence up road west to corner pine stump on road, thence south down private road to J. Adams to fore and aft pine, thence corner holly thence



south east as swamp meanders to corner where we commenced—

Description & Marks of corners &c

) Present  
 ) J. F. McGhee

Turkey Hill, no corner known

Commencing at gum pointers to corner on swamp between Turkey Hill & J. F. McGhee, thence as line runs between Turkey Hill & J. F. McGhee to gum pointers to corner between Turkey Hill & J. F. McGhee thence to old hedge row, thence South east to side line red oak on Turkey Hill thence corner at old house place (no marked tree) turn in line south, thence side line red oak thence fore and aft dead pine thence fore and aft poplar thence fore and aft sweet gum, thence fore and aft white oak thence fore and aft pine, thence fore and aft white oak thence to Chickahominy thence up Chickahominy to corner between Turkey Hill & J. Adams thence as line runs between Turkey Hill & J. Adams to corner where we commenced—

Persons present J. Adams & Wm. Martin

A Copy—Teste:

(Signed) C. W. Taylor, Clerk.  
 October 2nd 1951

page 20 }

\* \* \* \* \*

Filed May 24, 1954.

L. M. B.

ANSWER.

This day came the Defendants by counsel in reply to the Amended Petition for establishment of boundary lines tendered by the Complainant, with plat by William Hugh Redd, Surveyor, attached and for Answer thereto, answer and say:

1. That it is now impossible to adequately establish the line as indicated in the Processioner's Report filed shortly after

the War Between the States because of the non-existence of vital landmarks and particularly the trees which are either no longer existent or not subject to identification, and accordingly, such Report is immaterial and irrelevant.

2. That even if it were possible to establish such Processioner's line, the same is no longer material or binding because of the adverse possession by the Defendants and their predecessors in title for many years beyond the statutory period, and because the line as shown on the plat by La-Prade, has been duly established and recognized by the abutting owners and their predecessors in title for more than Forty (40) years.

Respectfully,

WALTER E. BAUER, JR.  
MABEL T. BAUER  
By Counsel

WILLIAMS AND GWATHMEY  
JOHN C. WILLIAMS, p. d.

\* \* \* \* \*

page 46 } We the jury find for the defendant.

WILLIAM V. AYERS, Foreman.

\* \* \* \* \*

page 85 }

\* \* \* \* \*

Filed November 26, 1956.

L. M. B.

### OPINION OF THE COURT.

This is a controversy over the boundary line between Spring Hill and Turkey Hill, two very historic farms that were the scene of the great battles that began the series of battles known as the Seven Day's.

Turkey Hill which is owned by the defendants was assessed as 225 acres of land from 1818 when it stood in the name of

John Paul; was transferred in 1836 from John Paul to Edward H. Carter for life indicating that Carter had married John Paul's daughter. In 1840 it was transferred from Edward H. Carter and wife of Henrico County to John S. Atkinson as 225 acres. In 1845 this tract was described on the Land Book as being 20 miles southeast from the Court and adjoining the land of H. Watt and P. J. McGhee. In 1848 the reference to McGhee was dropped; in 1855 it was described as 225 acres known as Turkey Hill. The deed books and plat books of Hanover County were destroyed in April 1865 while stored in Richmond for safekeeping.

Therefore, the first deed of record to Turkey Hill is dated 10 October, 1865 and is from Rockwood C. Howe to page 86 } Thomas L. Pleasants and conveys Turkey Hill as containing 225 acres, more or less bounded on the west by the lands of Joseph Adams and Foster McGhee.

Through divers conveyances Turkey Hill described as "containing 210 acres be the same more or less," was conveyed to Joseph Adams.

Joseph Adams also owned Spring Hill Farm which he had acquired before the War of Secession.

Thus he became the owner of both tracts of land involved in this litigation.

He left a will dated 1884 which was probated 27 April 1885.

He devised all of his estate to his wife Kathleen E. Adams so long as she remained his widow, with remainder to his children. He left the following children:

1. James R. Adams
2. Thomas C. Adams
3. John Ewell Adams
4. Joseph C. Adams
5. Martha Alice Adams, and
6. Julia Kate Adams who married Gregory Turner.

Upon the death of Kathleen E. Adams each of the above children became the owner of a  $\frac{1}{6}$  undivided interest in Spring Hill and Turkey Hill plantations.

Thomas C. Adams by deed of 1 December, 1906 conveyed his  $\frac{1}{6}$  interest in this estate to his brother James page 87 } R. Adams. Martha Alice Adams died unmarried leaving a will probated 11 February, 1907 by which she devised her  $\frac{1}{6}$  interest in said property to her sister Julia Kate Adams later Mrs. Turner.

James R. Adams and wife by deed of 30 May, 1907 conveyed

his undivided  $2/6$  interest in Spring Hill in exchange for her  $2/6$  interest in Turkey Hill. He also granted to Mrs. Turner a right of way through the Turkey Hill Farm to "the McClellan Bridge."

This right of way passes through the Turkey Hill gate to the Public Road a few yards to the north of the Grape Vine Bridge which is referred to in several deeds recorded in the Clerk's Office of this Court as "the McClellan Bridge."

In the last cited deed James R. Adams described Spring Hill as follows: "The farm called Spring Hill situated in Henry District Hanover County, Virginia, near Cold Harbor, containing 365 acres, more or less, bounded on the north by the lands of William Hubbard, on the south by the Chickahominy Swamp; on the east by Turkey Hill farm and on the west by Springfield."

These conveyances gave to Mrs. Turner a total of  $4/6$ th or  $2/3$  of the interest in Spring Hill.

She died intestate and without issue and her interest in Spring Hill passed to her brother James R. Adams and the children of her deceased brothers subject to the curtesy interest of her husband Gregory Turner.

Joseph C. Adams and wife conveyed their  $1/6$  page 88 } interest in Spring Hill to Gregory Turner by deed of 23 March, 1910; and, John Ewell Adams and wife conveyed his  $1/6$  undivided interest in Spring Hill to Gregory Turner by deed of March, 1923.

These two deeds vested in Gregory Turner  $2/6$  or  $1/3$  of Spring Hill Farm.

He died circa 1948 leaving a will in which he devised his  $1/3$  interest in Spring Hill to Marius E. Adams and Robert C. Adams.

George E. Haw, as Special Commissioner in the suit of *Adams v. State et al* conveyed Spring Hill as containing 360 acres to Marius E. Adams by deed of 10 October, 1949.

Spring Hill Farm was acquired by Joseph Adams by deed from George W. Richardson serving commissioner for himself and William T. H. Pollard, Commissioners of this Court in the suit of *Thomas Melton, guardian v. Sarah E. Melton et al.* by deed dated 7 July, 1857. The property was described as follows: "Situated in the County of Hanover lying on the waters of the Chickahominy River containing 359  $3/4$  acres, 239 acres being a part of the said land after cutting off the dower for Martha Melton, the widow of Edward T. Melton, deceased and 120  $3/4$  acres being the dower of said Martha Melton, the said 359  $3/4$  acres being bounded and described



as follows: On the East by the land of the estate of Joseph McGhee called the "Old Tract"; on the south by the Chickahominy River, on the west by the lands of Hugh Watt, which are a part of Kidds Old tract and on the north by page 89 } the lands of Parsons Old Tract."

In the bill filed in the above suit E. F. 83 of this Court said tract is described as follows: "A tract of land in the County of Hanover lying on the waters of the Chickahominy River containing 359 acres 3 rods and 8 poles."

James R. Adams acquired the title to Turkey Hill by deeds from Thomas C. Adams and wife; from Julia Kate Turner and husband; from J. C. Adams and wife; and from John Ewell Adams, which conveyances are recorded in D. B.s. 49 p. 99; 49 p. 97; 50 p. 133 and 82 p. 60.

All of these deeds described Turkey Hill as 225 acres more or less except the deed from J. C. Adams and wife which described it as 265 acres and the deed from John Ewell Adams and wife which described it as 210 acres.

James R. Adams by his will probated 15 September, 1943 devised Turkey Hill to his wife for her life with power to sell with remainder at her death to his five children in equal shares:

1. Joseph Adams
2. May Ruth Burnett
3. James Mason Adams
4. Andrew H. Adams and
5. Martha Alice Adams.

The widow died in 1946 without having conveyed said property.

By deed of 12 October, 1948 Martha Alice Winn and husband, James Mason Adams and wife and Mary Ruth Burnett and husband conveyed to Joseph Adams and An- page 90 } drew Adams their interests in Turkey Hill containing "211 acres, more or less, describing its western boundary as abutting the Spring Hill Tract".

Joseph Adams and wife and Andrew H. Adams and wife by deed of 22 July, 1949 conveyed Turkey Hill to Walter E. Brauer, Jr. and Mabel E. Brauer according to a plat made by W. W. LaPrade & Bro. by metes and bounds and describes it as containing 293 acres more or less.

Marius E. Adams had his land surveyed and found that he had only 318 acres in place of his 360 acres while the Brauers had 293 acres instead of 225 acres.

The parties being unable to adjust this matter this suit resulted.

During its pendency counsel examined the Processioners Book which was ordered prepared by the County Court of Hanover after the destruction of the records of this County in the Richmond fire of April 1865.

In this book they found the Processioners report in which Spring Hill was described as follows: "Commencing at maple stump below McClellan bridge, thence up swamp to gum pointers G. Watt's corner, thence as Watt's line runs thence East to fore and aft red oak on road leading from Gaine's Mill to Barker's Mill, thence down road to pine stump corner to J. F. McGhee, thence fore and aft hickory, thence fore and aft pine; thence corner holly (near branch) thence as branch meanders to J. F. McGhee's corner on Turkey Hill; thence black gum; thence fore and aft sweet gum; thence fore and aft sweet gum; thence corner no marked tree, thence fore and aft gum; thence to maple stump where we commenced."

The Processioners' Report shows that J. Adams page 91 } was present when the processioners ran the above lines.

The processioners' report as to Turkey Hill says "no corner known" and then reads: "Commencing at gum pointers to corner on swamp between Turkey Hill and J. F. McGhee thence as line runs between Turkey Hill and J. F. McGhee to gum pointers to corner between Turkey Hill and J. F. McGhee, to old hedge row, thence south-east to side line red oak on Turkey Hill; thence corner at old house place (no marked tree) turn in line south, thence side line red oak, thence fore and aft dead pine; thence fore and aft poplar; thence fore and aft sweet gum; thence fore and aft white oak; thence fore and aft pine; thence fore and aft white oak thence to Chickahominy; thence up Chickahominy to corner between Turkey Hill and J. Adams thence as line runs between Turkey Hill and J. Adams to corner where we commenced." Persons present J. F. McGhee, J. Adams and Wm. Martin.

Before the War of Secession there was no bridge across the Chickahominy where the Grapevine Bridge is today. There was a ford there in the spring of 1862. General John Bankhead McGruder in his report of the Seven Days Battles says: "Having passed up the country on our retreat from the neighborhood of New Kent Court House I knew there was a road from Grapevine Ford where the enemy had afterwards constructed the bridge." (O R. Series I, pt. II, 663)

McClellan in his report says that at low water the Chickahominy could be forded at almost any point but that when

the water was high it could be crossed at only a few points where bridges had been constructed.

page 92 } The Confederates destroyed the bridges on the approach of the Union Army which had to rebuild them and they also constructed several other bridges. (1 O. R., part I, 25)

Among these bridges which were constructed across the Chickahominy by the Union forces was the Grapevine Bridge. Not only did they construct the bridge but the causeways that lead to the bridge.

The New Bridge over the Creighton Road was reconstructed, a number of pontoon bridges were also thrown across the river and an artillery bridge was but a mile or more to the west of the Grapevine Bridge near the Watt place where Fitz John Porter had his headquarters.

The highway Historical Marker at the Grapevine Bridge says "Here Sumner crossed the river to reinforce the part of McClellan's Army fighting at Fair Oaks 31 May, 1862. Here a part of Porter's force crossed in the night of 27 June, 1862 after the battle of Gaines Mill."

The Union Army as it retreated across the Chickahominy destroyed all of the bridges across that river which they had constructed and over which they retreated, so that on the morning of 28 June, 1862 there was not a bridge left between the New Bridge on the Creighton Road and Bottom Bridge on the New Kent-Williamsburg Road.

Stonewall Jackson had to rebuild the Grapevine Bridge before he could cross the Chickahominy which was in flood stage at the time. After some delay Captain C. R. Mason arrived with his negro navvies and shortly thereafter  
page 93 } the bridge was constructed over which Stonewall Jackson's forces crossed and the war in Hanover County was over for the time. (Lee's Lieutenants 561; II Henderson's Stonewall Jackson 47).

Why the Grapevine Bridge was called McClellan's bridge in Lower Hanover is unknown. But the fact is that it was so called in the processioner's report and it has been so referred to in several deeds conveying property in its vicinity including one of the deeds to Spring Hill. D. B. 49, p. 97.

The map in I Freeman's Lee's Lieutenants, p. 549 showing the Chickahominy River and the bridges used by the Confederate army shows only three bridges across that stream, the New Bridge which is on the Creighton Road, the Grapevine Bridge and Bottoms Bridge on the Williamsburg Road. The same is true of the map found on page 521 of the same volume showing the battlefield on the Hanover side.

The same appears from the map in II Freeman's Lee, 137. The map in Eckenrode's and Conrad's James Longstreet, p. 73 shows that the Grapevine Bridge was the only bridge across the Chickahominy in the vicinity of Cold Harbor with the exception of the New Bridge.

This bridge was first built by McClellan's army and this fact no doubt caused the people in that vicinity to refer to what we now call the Grapevine Bridge as the McClellan Bridge.

It is definitely certain that on 5 December 1867 when the Processioners Report was made that the only page 94 } bridge in existence at that time across the Chickahominy in the vicinity of Spring Hill and Turkey Hill was the Grapevine Bridge referred to in that Report as the McClellan Bridge. There was no other bridge across the Chickahominy in this vicinity that said Report could have referred to.

Both plats introduced by the parties to this litigation show that the only bridge across the Chickahominy in the vicinity of these two places Spring Hill and Turkey Hill is the Grapevine Bridge.

The LaPrade Plat recorded with the deed to the Brauers was made without reference to the Processioners' Report and gives to Turkey Hill which has been described from the earliest Land Book descriptions as containing 225 acres, an area of 293 acres. On the other hand Spring Hill which was described in the Deeds conveying it as 359 3/4 acres and in the bill in the suit of *Melton Gdn. v. Melton et al.* (E. F. 83, Hanover) as containing "359 acres 3 Roods and 8 poles" was found to contain on survey only 318 acres if the lines established by the LaPrade survey made 19 July, 1949 and shown on his plat are correct.

Mr. R. W. Wyson who made the survey for LaPrade testified that he had not heard of the Processioners' Report when he made his survey and that his line was not run in accordance with that report; that in his opinion no one could run the Processioners' line; that in making his survey there was no description by metes and bounds that on a part of the line he found some marked trees and the rest of the line was shown to him by Mr. Joseph Adams the then page 95 } owner.

After the Processioners' Report was found Marius Adams procured Mr. William Hugh Redd the County Surveyor to attempt to establish the lines of the two places in accordance with the Processioners' Book.



Mr. Redd testified that when the Processioners' Reports were found he was told to go and run the line in accordance with those reports. That in doing so he found an old fence line in the woods and swamp and that his plat had been made as near to the Processioners' Report as he could get it. That the remnants of the fence line ran from approximately the River on the line which he ran between Spring Hill and Turkey Hill; that continuity of the fence was gone but having been run along trees signs of it could be traced in the trees from the River at Grapevine Bridge to McGhee's Corner; that he had to hunt hard to find it, but that it could be found and that he found it; that it was a very old fence; and that he found signs of old fence on the road east of Grapevine Bridge.

He testified that he ran from one point on Processioner's Report to another; that the old fence takes less than a straight line and that he found 61.2 acres between LaPrade's line and the old fence.

He further testified that LaPrade had commenced his line 1/4 mile up the Chickahominy River from the Grapevine Bridge.

On cross examination he testified that it was impossible to find the trees called for in the Processioners' Report as apparently they were gone; but there was no evidence that the road had been changed; that the fence line was determined from pieces of wire embedded in trees, and that he had followed the fence line as the approximate line between the two farms, and that he did not think anyone could get an accurate line between the two places; but that LaPrade's line was 1370 feet or *circa* 1/4 mile above the Bridge which was not the starting point called for in the Processioners' Report.

As a result of his survey Spring Hill was given 379.1 acres which left Turkey Hill containing 230 acres. This gives to Spring Hill an overage of approximately 20 acres and to Turkey Hill an overage of 5 acres from the Land Book acreages of the two tracts.

Spring Hill was originally a part of Pitman Kidd's estate whose seat was the Watt House so famous in history as Fitz John Porter's Headquarters during the Battle of Gaines Mill.

Mr. Redd further testified that no other true point could begin or stop between the two tracts than the point of beginning in the Processioners' Report.

That the line of fence found by him hit the road just east of the Bridge, 118 feet east of the Bridge.

That he could find no evidence that the road was ever changed and that it appeared that the Grapevine Bridge and the McClellan Bridge are in the same location.

page 97 } The plaintiff and his brothers Jacob L. Adams and Bryant Adams testified that they were the sons of John Ewell Adams who had been dead *circa* 23 years. That he had owned Spring Hill and that he had always said Spring Hill ran from the branch to the bridge and that the Bridge had always been in the same location.

Joseph Adams who owned Turkey Hill before it was sold to the defendant Brauer testified that the plaintiff told him he did not know where the line between the two places was; that the Processioners' Report was all new to him, and that while he owned the place there had never been any dispute about the line; and that one day they went out with Marius and his brother and that he blazed a tree at the swamp. He said that he took Marius to show him where they were going to put the line and that he told him he did not know where the line was.

That neither place had been surveyed before so far as he knew; and that no complaint came from Marius Adams until Brauer had his survey made.

That the remnants of the fence found by Redd was not the only fence in there as he had a fence for his cattle.

Andrew Adams, Joseph Adams' brother, testified to the meeting with Marius Adams and that he told them he did not know where the line was. He also testified that they had a dozen fences through the woods in dispute; but that there had never been a fence on the line since he could remember. He was 55 years of age.

Waddy Braxton testified that he cut timber on Turkey Hill in 1924, 1925 and 1926 "excusing the place going page 98 } to Grapevine Bridge."

Eddie Henry and Ray Blackburn had cut timber on Turkey Hill near Turner's and that he never objected.

B. M. Blackburn testified he was at the sale of Spring Hill to Marius Adams and that it was sold as was and no guarantee was given as to acreage.

R. W. Wysor was the surveyor for LaPrade & Bro. and made the survey for Brauer. He testified that he made the survey; that he had no description by *mets* and bounds. That he found various marked trees at the back and old mark in a beech and some wire and that Joseph Adams showed him the rest of the line.

He further testified that no one could run the Procession-

ers' Report although he had never seen it until the day of trial of this case; that Processioners did not carry a compass but only an axe and generally rode horseback.

He did say that he did not know of any other bridge in the vicinity than the Grapevine Bridge.

On cross examination he testified that he did not know of the Processioners' Report when he made his survey; and that his line was not run in accordance with the Processioners' Report.

Cliff McGhee aged 75 testified in rebuttal that he had farmed both Spring Hill and Turkey Hill and had raised cattle on Spring Hill; and that Gregory Turner had showed him the line between Spring Hill and Turkey Hill and told him that it ran from the Grapevine Bridge to the McGhee line.

He had never heard of the Processioners' Report.

Nowhere in any of the title deeds to Spring Hill and Turkey Hill was there any description mark, monument course or distance to show the location of the line between page 99 } the two places prior to the LaPrade Map. The only record evidence of the line was that given in the description found in the Processioners' Report which was necessarily binding on all parties since it showed in the report as to both Spring Hill and Turkey Hill the line of their common boundary.

The only identifiable monument in the Processioners' Report is the McClellan or Grapevine Bridge. All the evidence in the case—the testimony of both surveyors and of the witness is that there is no evidence that the location of the bridge has been changed. McClellan says in his report of the Seven Days Campaign that his engineers had to construct a great causeway for the approaches to the bridge and the present Battlefield Road follows the causeway constructed by the Union engineers. They could destroy the bridge but not the causeway.

This is a fixed and certain *mounument*. While a maple stump below the bridge after 89 years may have disappeared the bridge being fixed this cannot alter the line more than a few feet at the most.

Moreover, the Processioners' Report as to Turkey Hill shows that its boundary on the Chickahominy came below the corner between it and Spring Hill since that line after reaching the Chickahominy "ran up Chickahominy to corner between Turkey Hill and J. Adams" (Spring Hill) "thence as line runs between Turkey Hill and J. Adams to corner where we commenced."

Manifestly the LaPrade plat is worthless having been made without reference to the only fixed monument on the line in dispute. There can be no justification for beginning the line on the Chickahominy approximately 1/4 mile west of the only fixed monument on the line.

It is true that the LaPrade map was made without knowledge of the Processioners' Report but while this may excuse the error thereof it nevertheless remains an erroneous plat since it is elementary that a fixed monument can never be disregarded in the establishment of a boundary line.

"Every survey must be commenced at the beginning corner stated in the deed, unless to do so would destroy the grant." 4 Am. & Eng. Enc. of L. (2nd. Ed.) 762.

"All lands are supposed to be actually surveyed, and the presumed intention of the grant is to convey the land according to such actual survey. Consequently wherever natural monuments referred to in the description of a deed as marking the boundary can be found they fix the limits of the premises granted though they correspond neither with the courses and distances, nor with the quantity of the land given in the same description." 4 Am. & Eng. Enc. of L. (2nd. Ed.) 764-5. See *Fentress v. Pocahontas Club*, 108 Va. 155, 159, 60 S. E. 633 (1908).

Unfortunately all of the marked trees referred to in the Processioners' Report have disappeared during the 90 years that have elapsed since they were marked. Still more unfortunate is the fact that not a single course or distance appears in any of the deeds to either tract with the exception of the deed to Brauer which is based on the clearly erroneous map made by LaPrade.

The only monuments referred to in the Processioners' Report is the maple stump below McClellan's page 101 } (Grapevine) Bridge and Boatswain-Swamp; the road from Gaine's Mill to Barker's Mill and the branch that separates the McGhee tract (now Andrew Adams) from Spring Hill.

All of these are monuments but the only monument between Spring Hill and Turkey Hill is the McClellan or Grapevine Bridge.

In locating the starting point of this line the surveyor (Redd) did what was approved by the Court in *Scott v. Jesse*, 143 Va. 150, 156-7, 129 S. E. 333 (1925) where it is said: "Here as pointed out, the landmarks, with the exception of the ridge, are not in existence, and there is dispute as to and doubt

about the former location of all other natural objects. This being true, we quite agree with the trial court, in view of the law as applied to such a situation, that in locating the line on the ground the proper course was to locate as near as possible the starting point of the disputed line (the two poplars) and then follow the courses and distances of the Gabriel Jesse survey without departure therefrom. \* \* \*

There being no courses or distances given in any of the title papers from this point Redd followed the lines of the remains of an old fence which appeared to him to have been a line fence which brought him to a ditch and the branch referred to in the Processioners' Report.

Clearly there is no probative evidence to support the verdict of the jury.

La Prade's plat begins at a point approximately 1/4 mile west of the monument called for in the Processioners' Report as the starting point in the line.

Moreover, the verdict of the jury is fatally defective. It reads as follows:

"We the jury find for the defendant.

WM. V. AYRES, Foreman."

Code Sections 8-837 and 8-840.

This being a boundary controversy in which both parties pray that the true line between their places be established it was necessary for the jury in their verdict to fix the true boundary line between the two places.

For the above reasons the verdict of the jury will be set aside and there being no evidence to support the claim of the defendant a judgment will be entered for the plaintiff establishing the line run by Redd as the true boundary line between Spring Hill and Turkey Hill.

LEON M. BAZILE, Judge.

August 21, 1956.

page 103 }

\* \* \* \* \*

# ORDER SETTING ASIDE VERDICT OF JURY ENTERING JUDGMENT FOR PLAINTIFF.

This day came again the plaintiff and defendants by their attorneys, and the Court, having considered the arguments heretofore heard, upon the motion of the plaintiff to set aside the verdict of the jury heretofore rendered on the 8th day of September, 1955, and to enter judgment for the plaintiff, and having arrived at a conclusion thereon as is evidenced by the Court's written opinion filed in the papers of this suit, doth set aside the aforesaid verdict of the jury as contrary to the law and the evidence and as against the evidence; and in conformity with the motion of the plaintiff, doth enter judgment in favor of the plaintiff and doth ADJUDGE and ORDER that the true boundary line between the Spring Hill Farm of the plaintiff and the Turkey Hill Farm of the defendant is the line of division shown on the plat of survey of William Hugh Redd, Surveyor, dated September 8, 1953, and filed as Exhibit B with the amended petition of the plaintiff, as run by said Redd in conformity with the ProceSSIONERS' Report dated December 5, 1867, a copy of which is filed as Exhibit A with the amended petition of the plaintiff, and which said line as laid down on the survey of William Hugh Redd dated September 8, 1953, is designated as follows:

page 104 } Commencing at Station (10) on said plat at an iron pipe 3 feet from the corner in the branch, a corner with Turkey Hill; thence down the ditch 475 feet, more or less, to Station (11); thence along a calculated line and old fence line from Station (11) through Station (12) to Station (13); thence S. 4° 22' E. 1832.5 feet; thence S. 1° 10' 53" W. 275.9 feet to a holly at Station (14); thence S. 45° 43' 20" E. 251.75 feet to a gum at Station (15); thence S. 71° 28' 07" E. 660.08 feet to Station (16); thence S. 17° 54' E. 519.83 feet to Station (17); thence S. 29° 22' 45" E. 1362 feet across Battlefield Road to a point on the Chickahominy River below Grapevine Bridge, Station (1).

It is further ORDERED that a copy of this Order, together with the plat of William Hugh Redd dated September 8, 1953, be recorded in the current Deed Book in the Clerk's Office of this Court and indexed in the names of the parties, plaintiff and defendant, as required by law.

The attorneys for the defendants having indicated that they will desire to apply to the Supreme Court of Appeals

of Virginia for a writ of error and *supersedeas*, the Court doth suspend the operation of this judgment for a period of ninety (90) days provided the defendants shall within fifteen (15) days from the entry of this decree execute a suspending bond before the Clerk of this Court in the amount of \$500.00 with approved security.

Enter:

LEON M. BAZILE, Judge  
Hanover Circuit Court.

January 3, 1956.

\* \* \* \* \*

page 109 }

\* \* \* \* \*

Filed Mar. 1, 1957.

Teste:

F. A. TAYLOR, Clerk.  
By VIRGINIA W. JOHNSON,  
Dep. Clerk.

#### NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendants, Walter E. Brauer, Jr. and Mabel T. Brauer, by their Attorneys, hereby give notice, pursuant to the provisions of Section 4, Rule 5:1 of the rules of the Supreme Court of Appeals of Virginia, dated February 1, 1950, as amended, of their appeal from that certain final decree entered in the above styled cause on January 3, 1957, and that the said Walter E. Brauer, Jr. and Mabel T. Brauer will apply for an appeal therefrom.

Further, pursuant to the said rule, these defendants assign the following error:

1. That the Court erred in overruling motion of the defendants' Counsel to strike the evidence of the plaintiff on the ground that it was insufficient in law to support the claim of title by the plaintiff because it was encumbent upon the plain-

tiff to recover on the strength of his own title and to prove a complete legal title and right to possession, which he failed to do.

2. That the Court erred in giving instructions "1" and "2" of the plaintiff, as modified by the Court, because as to instruction "1" the Court told the jury that there was no description of the boundary between SPRING HILL and TURKEY HILL in the title papers; as to instruction "2" because the Court instructed the jury that the use of the boundary line between SPRING HILL and TURKEY HILL as laid down on the survey by W. W. LaPrade, makes SPRING HILL contain Three-hundred Eighteen (318) acres, "making a shortage therein of approximately Forty-two (42) acres," which is obvious error since this is predicated upon a finding that SPRING HILL must contain Three-hundred Sixty (360) acres and no such finding has been made by the Court of jury; and because the Court refused to give the defendants' instruction "that a plat not referred to in or made a part of the chain of title of the plaintiff or defendants, is not admissible in evidence as to the extent or location of the metes and bounds covered by the true title to the property."

3. That the Court erred in refusing to allow the witnesses for the defendants and particularly Joseph and Andrew Adams to testify as to the location of the boundary line between SPRING HILL AND TURKEY HILL, with reference to their recollection and experience from a lifetime upon the property, the instructions of their father and the location of trees and marked lines.

4. That the Court erred in ruling during the course of the trial that no division line between SPRING HILL and TURKEY HILL could be established except the line called for by the processioner's report, whereas the evidence conclusively showed that it was impossible to now establish such line.

5. That the Court erred in ruling that there is no fixed monument except the Grapevine Bridge, and in finding that the Grapevine Bridge is a point in the boundary line.

6. That the Court erred in setting aside the verdict of the jury as contrary to the law and evidence when the evidence submitted was adequate to support the verdict of the jury and the Court had ruled repeatedly during the trial that the evidence should be submitted to the jury.

7. That the Court erred in adjudging and ordering that the true boundary line between SPRING HILL and TURKEY HILL FARMS is the line of division shown on the plat of



survey by William Hugh Redd, Surveyor, dated page 111 } September 8, 1953, and alleged to be the processioner's line when the evidence warranted the jury in believing that it was now impossible to establish such a line and when it was the jury's function to find the true line from all the evidence even if the processioner's line could be established.

8. That the Court erred in finding (in its opinion, filed November 26, 1956) that the verdict of the jury is fatally defective relative to the fixing of the boundary line, when the transcript shows conclusively that the jury was confronted with two plats indicating the lines contended for by either side respectively, as well as another with colored markings indicating the lines contended for by each party, and found upon the basis of such plats and the Court's instructions, for the defendants. Such a finding under such circumstances conclusively fixes the boundary line, as the line contended for the defendants and as shown on the plat attached to their deed of conveyance.

9. That the Court erred in receiving evidence submitted by the plaintiff and refusing evidence offered by the defendant as is indicated in the transcript of the evidence where objected and excepted to by Counsel for the defendants.

Signed

JOHN C. WILLIAMS  
ROBERT R. GWATHMEY, III  
Attorneys for the defendants,  
Walter E. Brauer, Jr. and Mabel  
T. Brauer.

\* \* \* \* \*

page 2 }

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Mr. Haw: Your Honor, before we make an opening statement in the case, we may want to refer to these. Both the plaintiff and defendants have agreed to their Chain of Title to be placed in evidence; they have been both written up, and we here tender them as a statement of the Chain of Title of both sides.

The Court: All right, pass them up and I will file them.

*Marius E. Adams.*

Mr. Haw: One is Turkey Hill and one is Spring Hill.

The Court: All right.

Mr. Williams: In addition to that, there is a plat which was drawn up by W. W. LaPrade, in which Mr. Haw and I have caused to be superimposed on certain other lines that will be later referred to by other instruments to be introduced, and which we are now handing the Court by agreement.

The Court: All right, sir.

(The document was handed to the Court.)

Mr. Williams: I want to add this: that that plat also indicates, among other lines, the alleged line that was drawn by Mr. Hugh Redd, I believe, purporting to be a line running the Processioner's line. We do not, by introducing that plat, agree that the Processioners' Report has any pertinence or is proper evidence in this case.

The Court: Which is the Processioners' line, the blue line?

Mr. Williams: The red line is the Processioners' line, sir. The blue line is the line describing or marking off the 38 acres that the plaintiff originally asked for in his original petition.

\* \* \* \* \*

page 5 }

\* \* \* \* \*

MARIUS E. ADAMS,  
called as a witness on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

\* \* \* \* \*

page 8 }

\* \* \* \* \*

*William H. Redd.*

Mr. Haw: Description of the deed: "That certain tract, piece or parcel of land, containing 360 acres, more or less, situated in Henry Magisterial District, Hanover County, Virginia, on the Chickahominy River, or Swamp, known as the Spring Hill Farm, or the old Adams' Home Place; bounded on the north and northwest by the Watt Farm; on the east by the Foster McGhee Tract and the Turkey Hill Tract; on the south by the Chickahominy River, and on the west by the Farm formerly owned by Axcel.

There is also conveyed to the party of the second page 9 } part as rights appurtenant to and running with the said Spring Hill Farm the following rights of way, to-wit:

1st: The right of way leading out from the Spring Hill Farm to the road leading to Cold Harbor;

2nd: The right of way from Spring Hill Farm through the lands formerly owned by James R. Adams, now deceased, and the Turkey Hill Tract out to McClellans Bridge, which is described in the deed of exchange between James R. Adams and wife and Julia Kate Turner, recorded in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 49, page 97 as follows: \* \* \* \* \*

It is not necessary to read that.

By Mr. Haw:

Q. So, that is the deed under which you got property?

A. Yes, sir.

\* \* \* \* \*

page 13 }

\* \* \* \* \*

WILLIAM H. REDD,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

\* \* \* \* \*

*William H. Redd.*

page 18 } DIRECT EXAMINATION.

By Mr. Haw:

page 20 } A. I went down and surveyed Spring Hill Farm.  
I made several trips, because I could not do it all at one time. I had to wait for the water to go down.

Q. In surveying Spring Hill Farm, did you first survey it up to the line that had been run by Mr. LaPrade on the Brauer plat?

A. Yes, sir; we just ran by it, because we had nothing else to go by.

Q. What acreage did you find was in Spring Hill at that time by using the line run by Mr. LaPrade for Mr. Brauer?

A. 318 acres.

Q. Did you then, after that time, at the request of Mr. Adams, run a line for the purpose of giving him approximately a shortage of 42 acres?

A. Yes, sir; I think we made it a little less than that. I never ran that line. That was just a line drawn on paper.

Q. You mean an estimated line?

A. Yes, sir.

Q. When you estimated the line, at how many acres did you estimate that line would give him?

A. I think we cut off just about 38 acres.

Q. Subsequent to that, were you advised that there had been found a Processioners' Report which would give  
page 21 } the boundaries of these properties and did you receive a copy of that report and make another survey of the property with that report before you?

A. Yes, sir. You wrote me and told me that you found this Processioners' Report, and to go down and find the lines according to the Processioners' Report, and it was quite a long time doing it, and I remember telling you I could not find anything. There was no distance on the Processioners' Report, of course, and no metes and bounds, and I looked around for a long time until, finally, I found this old fence.

Q. Just one minute. There has been filed as an exhibit with the amended petition in this case a plat which was completed by you on September 8, 1953. Is that the plat that you have in your hand there?

A. Yes, sir.

Mr. Haw: I would like to file as Exhibit W. H. R. the plat

*William H. Redd.*

which is filed with the amended petition. I do not see any use in putting two copies of the plat in evidence, Judge. Let Mr. Redd look at it and see if that is his plat.

The Court: Is it your amended plat?

The Witness: Yes, sir.

The Court: It will be—

page 22 } By Mr. Haw:

Q. Is that the plat that you made, Mr. Redd—

The Court: —P-2.

Q. (Continuing) —on September 8, 1953?

A. Yes, sir.

Q. Is that the plat of Spring Hill according to the Processioners' Report?

A. According to the Processioners' Report as near as I can make it.

Mr. Haw: That is the plat which I wish to file as Exhibit W. H. R. No. 1.

The Court: P-2.

\* \* \* \* \*

Q. Mr. Redd, will you just take it. As I read the Processioners' Report to you, will you show that plat to the Judge; just showing where you ran the line.

"Commencing at maple stump—", show them where the maple stump is.

A. These things are numbered. Number 1.

Q. Can you turn around the other way, because the jury wants to see that.

"Commencing at maple stump below McClellan page 23 } Bridge—"—show them that.

A. "Below McClellan Bridge," that's there (indicating).

Q. Thence up swamp to gum pointers G. Watts corner."

A. Here (indicating).

Q. "Thence as Watts line runs to Boatswain Swamp."

A. That long line, "Boatswain Swamp," up here (indicating).

Q. "Thence up swamp to corner."

A. That's that point there (indicating).

*William H. Redd.*

Q. "Thence as Watt line runs thence east to fore and aft red oak on road leading from Gaines Mill to Barkers Mill."

A. That's the old road right there (indicating).

Q. "Thence down road to pine stump corner on J. F. McGhee."

A. There (indicating).

Q. Now, then, it reads from that point on: "Thence fore and aft hickory thence fore and aft pine thence corner holly (near branch)."

A. Somewhere in here (indicating). Nobody knows where they are now.

Q. "Thence as branch meanders to J. F. McGhee corner on Turkey Hill."

page 24 } A. That's the branch and here is the corner (indicating).

Q. Now, Mr. Redd, right at that point, after you had "J. F. McGhee, thence fore and aft hickory thence fore and aft pine thence corner holly (near branch) thence as branch meanders to J. F. McGhee corner on Turkey Hill," will you please state just what you did, or found from where the "fore and aft pine thence corner holly (near branch)" is?

A. Well, it is impossible to run the Processioners' Report exactly, because you have no metes and bounds and no distance. You remember I wrote you—went down to the swamp and commenced looking around and found this new fence and even Mr. Adams did not know where it was and Mr. Adams' cousin, Mr. Weiser, said it wasn't there—he swore it wasn't there, because it was—they're all the same.

Q. The fence?

A. Through the trees.

Q. Is that before you get to the branch?

A. No, sir.

Q. It wasn't before you get to the branch?

A. That's between the branch and the river.

Q. I mean before the branch.

A. Another fence down there, a different fence.

Q. "Thence down road to pine stump corner on J. F. McGhee," that is where you got the corner of McGhee.  
page 25 } "Thence fore and aft hickory fore and aft pine  
thence corner holly (near branch)" and thence  
along the branch. Tell how you got from the McGhee point  
to the hickory?

A. Well, I just found that old fence and traced that old

*William H. Redd.*

fence as near as I could and made the same number of bends in there. There are two points that you can definitely—

Q. Here is what I am talking about: Where is the branch?

A. Here is the branch here (indicating).

The Court: He said two points.

A. That is the McGhee corner down here (indicating) and the other one is the point below Grapevine Bridge. You cannot tell definitely where, but just below it, but I ran the old fence out and it came out—

Q. Show the jury where the fence started and where it stopped.

A. You cannot see the fence up in here. There is no fence just sticking up except in the tress; the rest of it rotted off. It was there 50 or 60 years. Nobody showed me the fence. I found it myself. The other fence was a much newer fence.

Q. You found a fence running from the branch—

A. All the way from here to Grapevine Bridge (indicating). I traced that fence and I ran that fence—

page 26 } By the Court:

Q. Where is here?

A. The McGhee corner. It starts in below the McGhee corner.

Q. To Grapevine Bridge?

A. Yes, sir, and you have to hunt awfully hard to find it.

By Mr. Haw:

Q. You found traces of the old fence along the line that you have run from this point, which is here (indicating). What is that?

A. The McGhee corner.

Q. Down to a point below McClellan's Bridge? Well, now. Mr. Redd, is that, in your opinion as a certified surveyor, as near an accurate running of that line as can be had?

A. I don't know any other way you can run it any more accurately, because I don't know who put the fence, how long it was there, but evidently it was a very old fence. I imagine it was put on the property line or close to it.

page 27 } By the Court:

Q. Well, you say it was a very old fence?

*William H. Redd.*

A. Yes, sir.

Q. And it was somewhere near the two properties?

A. Well, that's what we don't know, where the properties are. Nobody seems to know.

Q. Well, the two properties adjoin; don't they?

A. Yes, sir.

Q. And this fence was there?

A. Yes, sir; it was in the vicinity where they said the properties joined.

The Court: Yes, sir; yes, sir.

By Mr. Haw:

Q. Well, Mr. Redd, then as I understand it, a definite point that you have ascertained from the Processioners' Report is at McGhee corner?

A. Yes, sir.

Q. And another definite line, according to the Processioners' Report, was a point below McClellan's Bridge on the Chickahominy?

A. We know below Grapevine Bridge, but not how far. That old fence came out just about Grapevine Bridge—on the road just above Grapevine Bridge—I mean it came out on the road east of Grapevine Bridge and when we run it straight on a course, it hit below Grapevine Bridge.

page 28 } Q. Did you coincide with the Processioners' Report?

A. That coincided with the Processioners' Report. In other words, that fence ran from one point on the Processioners' Report to the other.

Q. Except for that line of the old fence that you followed, you could have run a straight line from the McGhee corner to that point, and would it—

A. You could have run a thousand lines.

Q. A straight line would have taken in more of Turkey Hill, or less?

A. Would have taken in less.

Q. Then the line of the old fence takes in less from Turkey Hill than a straight line would?

A. Yes, sir.

Q. What does that acreage now measure in Spring Hill? How much does that add to Spring Hill?

A. That adds 61-2/10 acres.

Q. That makes 379-2/10 acres; doesn't it?



*William H. Redd.*

The Court: Sixty-two and what, and 2/10?  
Sixty-two and two-tenths?

Q. 379 and what?

A. And 2/10. 61-2/10 acres between the Brauer line and that old fence.

page 29 } Q. Mr. Redd, while you have the plat up there,  
I want to read to you the description of Turkey Hill.

“Commencing at gum pointers to corner on swamp between Turkey Hill and J. F. McGhee, thence as line runs between Turkey Hill and J. F. McGhee to gum pointers to corner between Turkey Hill and J. F. McGhee thence to old hedge row, thence South east to side line red oak on Turkey Hill thence corner at old house place (no marked tree) turn in line south, thence side line red oak thence fore and aft dead pine thence fore and aft poplar thence fore and aft sweet gum, thence fore and aft white oak thence fore and aft pine, thence fore and aft white oak thence to Chickahominy thence up Chickahominy to corner between Turkey Hill and J. Adams—”

Now, according to the Processioners' Report, where would that corner be.

A. That would be below Grapevine Bridge.

Q. “—thence as line runs between Turkey Hill and J. Adams to corner where we commenced.” Now where would that line be?

A. That would go from that point below Grapevine Bridge to the McGhee corner.

By the Court:

Q. As you say, that fence ran from that point?

A. All the way from the McGhee corner to the  
page 30 } Grapevine Bridge. It comes out on the road just  
east of Grapevine Bridge.

Q. You said something about that fence being in trees two feet thick?

A. Yes, sir.

Q. What kind of trees were those?

A. Well, some of them were beech trees, gum tree—beech trees, oak trees.

Q. Oak trees two feet thick?

A. I don't recall that. I have it on my field notes. I think the biggest was beech.

*William H. Redd.*

The Court: All right.

By Mr. Haw:

Q. Mr. Redd, does that line that Mr. LaPrade laid down on that plat, as being a boundary line, coincide in any respect with the Processioners' Report line between the properties?

A. At McGhee corner.

Q. Outside of that, does it coincide at all?

A. Apparently doesn't.

Q. Does it run to the McClellan, to the point below McClellan's Bridge?

A. It runs a quarter of a mile above McClellan's Bridge.

Q. You mean instead of coming down to this page 31 } point here (indicating), it runs—

A. 1370 feet above McClellan's Bridge.

Q. If the line that you have run is the correct line according to the Processioners' Report, then all of this land in between here is part of Spring Hill?

A. Yes, sir.

\* \* \* \* \*

### CROSS EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

page 32 }

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A. I never made any 38 acre plat. I drew a line indicating where 38 acres would go from Mr. LaPrade's line eastward.

Q. In other words, you were told to draw a plat that would give 38 acres, and so you just drew a line to do that; is that correct, sir?

A. No, I just—they wanted to know where the approximate amount of land that would make up the deficiency of Mr. Adams' place would go and I estimated where it would go.

Q. So you dropped the line off of that corner down to the Chickahominy Swamp so as to include 38 acres?

*William H. Redd.*

A. That is right.  
 page 33 } Q. That was purely an arbitrary line designed  
                   to include that amount of ground; was it not, sir?  
 A. That's right.

\* \* \* \* \*

page 35 }

\* \* \* \* \*

A. It is impossible to run any line exactly by the Processioners' Report.

Q. In other words, the Processioners' Report does not contain any distances, does it?

A. No distance, no.

Q. It does not contain any compass course, does it?

A. No, sir.

Q. That Processioners' Report was made in 1867. That would be 90 years ago—'67.

\* \* \* \* \*

page 36 }

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This reads: "Commencing at maple stump below McClellan Bridge—" Do you know whether or not the McClellan Bridge and the Grapevine Bridge are one and the same thing?

A. I do not know whether they are in exactly the same place or not. I could not answer that. The Grapevine Bridge supplants the old McClellan Bridge.

\* \* \* \* \*

page 38 }

\* \* \* \* \*

Q. This is the road (indicating). If the McClellan Bridge and road were not in precisely the same location as the Grapevine Bridge, then that point would shift according to the

*William H. Redd.*

shifting of the bridge?

A. Certainly.

Q. Now, then it says: "Commencing at maple stump below McClellan Bridge, thence up swamp to gum pointers." Are those gum pointers still there?

A. I don't think so. If there are any of the original trees there, I can't find them.

Q. You don't think any of the original trees mentioned in the report are there?

A. Maybe they are, but not marked.

Q. Not so you can identify them as such?

A. No.

\* \* \* \* \*

page 39 }

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A. Yes, sir. The identifiable point is this corner (indicating); the old McGhee place, you know, see.

Q. Right above the ditch?

A. Yes, sir, and then it goes down the ditch.

Q. In other words, it is point No. 10 on the plat that you—

A. That's correct.

Q. (Continuing)—that you made up?

A. Yes, sir.

Q. You say that other than that point and the point down here below the bridge, there are no definite identifiable points; is that correct, sir?

A. No.

Q. Isn't it a fact that if the McClellan Bridge was not at the exact same point as the Grapevine Bridge, then this point down there on that road (indicating) might not be an exact point; isn't that correct, sir?

A. No, sir, it would not if the bridge changed, no, sir.

Q. If the bridge changes it might not be the same and you don't know whether the point of the bridge has changed or not; is that correct?

A. No, sir, I don't.

Q. All right, sir. Then we have only one possible point, which is this point marked "iron pipe three feet from corner in branch" at point No. 10 in your map; is that correct, sir?

page 40 }

*William H. Redd.*

A. Yes, sir.

Q. Looking over on Mr. LaPrade's map, on which your map is superimposed here by the red lines in part, I ask you if the point that you have just referred to as a positive point is the northwestern corner?

A. That's correct.

Q. Then we come down a defined line which is a ditch, do we not?

A. Yes, sir.

Q. On both maps?

A. Yes, sir.

Q. I mean that ditch is actually there.

A. Right.

Q. From that point, however, there are no definite defined lines. There is, however, according to your statement, I believe, some remnants of old fences down here (indicating) in the lower part?

A. That's right.

Q. Would you come on down here, sir. What kind of fences are these, what sort of remnants?

A. That's an old barbed wire fence. Some places it is a slick wire; in other words, before they made barbed wire.

Q. How long has barbed wire been made for page 41 } Hanover County, do you know?

A. No.

Q. Would you say 50 years?

A. I don't know.

Q. If we come on down here, following this line, and it says, "Old fence bent to avoid water holes." Is there any fence, actually, or—

A. No fence anywhere except in the trees.

Q. Just a little piece of wire in the trees?

A. Right through the middle of the trees.

Q. Do you know whether or not there are other remnants of wire in other trees scattered throughout this property down here?

A. I have been all through the place and I can't find any, except the one that—Mr. LaPrade has followed another fence.

Q. Mr. LaPrade followed another fence?

A. Yes, sir.

Q. There are some few remnants in trees scattered throughout this territory?

A. No.

Q. You don't recall that?

*William H. Redd.*

A. If they are there, I can't find them.

Q. You don't recall that. So, you said that you followed some remnants of old fences and some trees which page 42 } were along a different line from the one Mr. La-Prade followed, but also remnants of a fence along his line?

A. A fence standing there part of the way; his fence stops before it gets to the river.

Q. Where did you show this "old fence bent to avoid water holes"? Is that a deep section in there?

A. I imagine it is up to your waist or neck in there now.

Q. How do you know that the line should run along that straight line rather than following your fence?

A. Well, processioners only call for so many points on there. I have got the number of bends in the line the same as those.

Q. So that was the reason you appointed, because the Processioners' line called for a line just from there to the McClellan Bridge, which may or may not—

A. It was—apparently, the fence was—it was impossible to put a fence straight through there.

\* \* \* \* \*

page 43 }

\* \* \* \* \*

Q. You are not able to identify any single one of those trees?

A. I imagine the tree is gone.

Q. You imagine it is gone. It has been 90 years, approximately; is that correct, sir?

page 44 } A. Yes, sir.

Q. Were you directed in any respect as to where this line should be run by Mr. Marius Adams or his attorney?

A. No, sir, Mr. Adams was quite frank about it. He did not know, except generally.

Q. He told you he did not know where the line was; isn't that correct, sir?

A. That's right.

Q. How, Mr. Redd, with the Processioners' Report, referring only to one definite ascertainable point that you can positively identify, with the trees no longer being there or not being identifiable, with no courses being shown or re-

*William H. Redd.*

ferred to, with no distances being referred to, can you say as a surveyor that that plat is an accurate plat on which absolute reliance could be made as to these boundary lines between Turkey Hill and Spring Hill?

A. I don't think you can get any absolute accurate plat. That is what we are here for, to decide where it should be.

Q. You don't think we could get any absolutely accurate line?

A. No, sir.

o \* \* \* \*

### RE-DIRECT EXAMINATION.

By Mr. Haw:

Q. Mr. Redd, with reference to that plat of Mr. page 45 } LaPrade's, how far did you say that point that he gives as an end of the dividing line between the two farms, where it hits Chickahominy Swamp, is above McClellan's Bridge?

A. About a quarter mile, 1,370 feet.

Q. Could you possibly run a line, according to the Processioners' Report, which would go from that McGhee corner there to a point 1,370 feet above McClellan's Bridge?

A. Oh, yes, sir. You can run a thousand lines there in any direction.

Q. I mean could you run it in accordance with the Processioners' Report?

A. No, sir.

Q. Could a line, run by the Processioners' Report hit any point above McClellan's Bridge?

A. No, sir. According to the Processioners' Report it goes below McClellan Bridge.

Q. What two definite points have you got in that last part of the line between Turkey Hill and Spring Hill?

A. That's the McGhee corner and the point below McClellan Bridge.

Q. All right. Those are two definite lines, according to the Processioners' Report, aren't they?

A. Yes, sir.

Q. Would any line, that is a true boundary line page 46 } between Spring Hill and Turkey Hill, have to commence and start at those two points?

*William H. Redd.*

A. They would.

Q. Commence and stop at those two points?

A. They would.

Q. Could it, according to the Processioners' Report, commence at any other point or stop at any other point?

A. No, sir.

Q. In answer to Mr. Williams' questions, you said something about the fence wasn't run necessarily straighter on account of the water condition.

A. The last line shown on this plat—there is a water hole down there. I imagine you would get drowned if you went in there. Now, it was dry at that time. The fence bends around here, and places where the river washed up may be up to your neck, in your place, and nobody could run a fence in there. I figured the reason the man made such a bend in the fence there was to avoid that water hole (indicating).

Q. Where did that fence hit the road at McClellan's Bridge?

A. Just east of—It was a hundred and—let's see—74 feet east of the bridge.

Q. Mr. Redd, will you do some figuring there for me now, or before I go any further—

page 47 } A. Beg pardon. That is just one line I read off there. 74 feet plus 44 feet; it would be 118.

Q. Then if that fence extended across the road would it hit the river below or above McClellan's Bridge?

A. It would hit the river below Grapevine Bridge. There seems to be some argument whether Grapevine Bridge and McClellan Bridge is the same.

Q. Is there any evidence on the ground that the road which goes over Grapevine Bridge ever ran anywhere else?

A. I looked very carefully and I could not find any.

Q. As far as you know, the McClellan Bridge and the Grapevine Bridge are at the same location?

A. Yes, sir.

Q. Now will you do a little figuring for me. We understand that, according to the deeds, that the Spring Hill Farm was conveyed as 360 acres.

Do you want a pad?

A. I can use this.

Mr. Haw: Give him a pad there.

(A yellow pad was handed to the witness.)



*William H. Redd.*

Q. 360 acres, that's Spring Hill. According to your survey, after taking the LaPrade line as being the line between the properties, how many acres were in Spring page 48 } Hill ?

A. 318 acres.

Q. What is the difference between 360 and 318?

A. 42 acres.

Q. Minus 42 then, isn't it?

A. Yes, sir.

Q. Then Turkey Hill was conveyed as 211 acres, formally, and what does the LaPrade plat give? That is in the file with the papers there (indicating).

A. I have got it here, I think.

Q. That is in the papers there.

A. I've got it.

Mr. Haw: 293 acres, I think. Is that right, John?

Mr. Williams: Yes, sir.

By Mr. Haw:

Q. 293 acres?

A. 293 acres.

Q. How much overage is that?

A. 82 acres.

Q. How many acres are in the additional land that you find comes within the Processioners' Report?

A. 61-2/10 acres.

Q. Will you subtract that from the 82 acres.

A. 20-8/10.

Q. That leaves. Add 61-2/10 acres to the 318 page 49 } acres, what do you get?

A. 379-2/10.

Q. Then, as I understand from your plat there, that Adams would receive for Spring Hill 379-2/10 acres; is that correct?

A. That's correct.

Q. And adding the 20 on to the 211, how much would be left for Brauer?

A. 239-8/10—231-8/10, I mean.

Q. Mr. Redd, Mr. Williams wanted to know whether this was Spring Hill that you surveyed. The property that you surveyed for Mr. Marius Adams was shown to you as what name of the property?

*Marius E. Adams.*

A. Shown to me as Spring Hill.

Q. The description on the Processioners' Report, which I read as the land of Joseph Adams, that was a description of what place?

A. That was a description of Spring Hill, because the Chain of Title, as I read it—

Q. In other words, the description of the Processioners' Report was a description of Spring Hill, wasn't it?

A. Yes, sir.

\* \* \* \* \*

page 51 }

\* \* \* \* \*

MARIUS E. ADAMS,

recalled as a witness by and on behalf of the plaintiff, having been duly sworn, testified further as follows:

DIRECT EXAMINATION.

By Mr. Haw:

Q. Marius, were you with Mr. Redd when he ran this line down there?

A. Yes, sir.

Q. Have you examined the line that he ran to tell whether or not you could find the remnants of the old fence that he spoke of?

A. Yes, sir, the fence is there in the trees, you know. Rust has eaten up everything but in the trees.

Q. Your father was John Ewell Adams, wasn't he?

A. Yes, sir.

Q. He was the son of Mr. Joseph Adams who originally owned both Turkey Hill and Spring Hill?

A. That's right.

Q. He, at one time, had an interest in both places, didn't he?

A. That's right.

Q. When did he die?

A. He has been dead 23 years this October.

Q. Where did he live before his death?

*Marius E. Adams.*

A. On the place I am living on now.

Q. Where is that?

A. On the adjoining place to this property (indicating).

Q. Did he live on the upper part?

A. He owned a portion of the McGhee place, the upper end of the McGhee place, yes, sir.

Q. How far from this Turkey Hill and McGhee corner that we are talking about did he live; I mean in distance, about how far from that point to his house?

A. I reckon half a mile.

Q. Had you ever heard him make any mention of the boundary line between Spring Hill and Turkey Hill?

A. He always said it went from the branch to page 53 } the bridge.

Q. Did—

Mr. Williams: If Your Honor please, we object to hearsay.

Mr. Haw: Well, I think it is very well recognized as being proper evidence.

The Court: I think that it is proper.

By Mr. Haw:

Q. As far as you know has there ever been any change of the location of the point which was originally known as McClellan's Bridge and now Grapevine Bridge?

A. No, sir, it's been there ever since I can remember.

Q. How old are you?

A. 49.

Q. Did your father say whether it was a straight line or whether it went along the line of the fence or where; did he ever give you any idea?

A. He just said it was to go on a southeast course and went to the bridge. I have heard him say it hundreds of times.

Q. Who did he say that land, or did he say anything about who the land belonged to above the McClellan Bridge up to the Watt corner?

A. He said it belonged to the Hill Farm. That was owned at that time by my aunt and uncle.

page 54 } Q. Who owned it at that time?

A. Gregory Turner and Julia Kate Turner.

Mr. Haw: While Marius is on the stand, I would like to

*Marius E. Adams.*

present to the jury that Chain of Title, Judge, that we have there, if you will hand it to me.

The Court: Which one, Spring Hill or Turkey Hill?

Mr. Haw: Turkey.

The Court: I will pass you both of them.

Mr. Haw: All right. I would like to file as Exhibit—

The Court: It has been filed.

Mr. Haw: In other words, I would like to have it appear as having been presented by Marius Adams as an exhibit.

The Court: All right. It will be P-3.

(The Chain of Title was marked and received in evidence as Exhibit P-3.)

Mr. Haw: I will read it to the jury with the understanding that if there are any errors in it Mr. Williams will correct them and the errors will be called to the jury's attention. Is that all right now?

page 55 } Mr. Williams: I won't be able to call them to the jury's attention at this time, sir.

Mr. Haw: When you find errors.

Mr. Williams: I doubt if the Court would reconvene the jury for that. I can call it to the Court's attention.

Mr. Haw: "Chain of Title of Spring Hill Farm, Hanover County, Virginia.

1.

Will of Joseph Adams dated 1884; probated in the Circuit Court of Hanover County April 27, 1885.

Under terms of this will he devises to his wife, Kathleen E. Adams, all his property, real and personal, so long as she remains his widow with remainder to his children after the death of his wife, and upon the youngest child reaching 21 years.

Joseph Adams left the following children: James R. Adams, Thomas C. Adams, John Ewell Adams, Joseph C. Adams, Martha Alice Adams and Julia Kate Adams Turner.

Upon the death of Kathleen E. Adams, title to the aforesaid property vested in the above six children, each page 56 } of them receiving an undivided one-sixth interest.

## 2.

James R. Adams and wife by deed dated May 30, 1907, recorded April 31, 1907, in D. B. 49, page 97, aforesaid Clerk's Office, conveyed to Julia Kate Turner his undivided  $\frac{1}{6}$  interest in the Spring Hill property in exchange for her  $\frac{2}{6}$  interest in the Farm called Turkey Hill, and also he granted to Julia Kate Turner a right of way through the Turkey Hill Farm to McClelland Bridge.

In this deed James R. Adams describes Spring Hill as follows: The farm called Spring Hill situated in Henry Magisterial District, Hanover County, Virginia, near Cold Harbor, containing 365 acres, more or less, bounded on the north by the lands of William Hubbard; on the south by the Chickahominy Swamp; on the east by Turkey Hill Farm; and on the west by Springfield.

## 3.

Thomas C. Adams and wife by deed dated March 30, 1907, recorded August 15, 1907, in D. B. 52, page 451, aforesaid Clerk's Office, Conveyed to Julia Kate Turner all page 57 } of their  $\frac{1}{6}$  undivided interest in and to the Spring Hill Farm, as containing 365 acres.

## 4.

Martha Alice Adams died and by her will dated September 18, 1905, probated March 16, 1907, in W. B. 2, page 75, devised her  $\frac{1}{6}$  interest in Spring Hill Farm to Julia Kate Adams, who was afterwards Julia Kate Turner.

## 5.

Julia Kate Adams Turner received a  $\frac{1}{6}$  undivided interest in Spring Hill Farm from her father, Joseph C. Adams by will and  $\frac{3}{6}$  interest by the two deeds and will above mentioned, giving her a total of  $\frac{4}{6}$  or  $\frac{2}{3}$  interest in the property.

6.

Julia Kate Turner died intestate and the above property passed to her brother, James R. Adams, who was then living, and to the children of her deceased brothers subject to the curtesy right of Gregory Turner, her surviving husband.

7.

Joseph C. Adams and wife by deed dated November 5, 1908, recorded on March 23, 1910, in D. B. 52, page 449, conveyed his  $\frac{1}{6}$  undivided interest in Spring Hill Farm to Gregory Turner, the husband of Julia Kate Turner.

8.

John Ewell Adams and wife by deed dated August 12, 1918, recorded March 23, 1923, in D. B. 75, page 371, aforesaid Clerk's Office, conveyed to Gregory Turner his undivided  $\frac{1}{6}$  interest in Spring Hill Farm, as containing 365 acres.

9.

These two deeds vested in Gregory Turner  $\frac{2}{6}$  or  $\frac{1}{3}$  undivided interest in Spring Hill Farm.

10.

Gregory Turner died and by his last will and testament dated April 20, 1944, probated February 3, 1948, in W. B. 8, page 69, devised to Marius E. Adams and Robert C. Adams his undivided  $\frac{1}{3}$  interest in the Spring Hill Farm.

11.

In a suit under the style of Marius E. Adams page 59 } against Virginia Adams State and others in Circuit Court of Hanover County, the above property was sold for a partition and conveyed to Marius E. Adams as containing 360 acres. This deed was made by George H. Haw, Special Commissioner dated 10 October 1949, recorded 29 October 1949, in D. B. 136, page 65, Clerk's Office, Circuit Court of Hanover County, Virginia.

*Addendum.*

Spring Hill farm was acquired by Joseph Adams by deed from George W. Richardson, Surviving Commissioner for himself and William T. Pollard, Commissioners of the Circuit Court of Hanover County in the suit of *Thomas Melton, Guardian v. Sarah E. Melton and others* dated July 7, 1857 and recorded March 9, 1869, in D. B. 3, page 187. This deed conveyed the following property: "situated in the County of Hanover lying on the waters of the Chickahominy River containing 359-3/4 acres, 239 acres being a part of the said land after cutting off the dower for Martha Melton, the widow of Edward T. Melton, deceased, and 120-3/4 acres being the dower of said Martha Melton, and said 359-3/4 acres being bounded and described as follows: On the east by the land of the Estate of Joseph McGhee called "The Old page 60 } Tract;" on the south by Chickahominy River; on the west by the lands of Hugh Watt, which are a part of the Kidd's "Old Tract;" and on the north by the lands of Parson's "Old Tract."

Note: The records of Hanover were destroyed in 1865 and the above deed was recorded after the destruction of the records. The land books of Hanover County for the years commencing 1854 and extending through 1864 show the following with respect to the above property:

Edward Melton Estate—1854—360 acres

adjoining Sarah Watt

Edward Melton Estate—1858—360 acres adjoining Sarah Watt

Joseph Adams—1859—360 acres adjoining Watt—with notation "transferred from Edward Melton's Estate."

Joseph Adams—1860—360 acres adjoining Watt

Joseph Adams—1861—360 acres adjoining Watt

Joseph Adams—1862—360 acres adjoining Watt

Joseph Adams—1863—360 acres adjoining Watt

Joseph Adams—1864—360 acres adjoining Watt."

We submit that as the Chain of Title to Spring page 61 } Hill Farm, and ask that the deeds referred to there be considered in evidence if required to be filed for any purpose.

That is all.

*Marius E. Adams.*

CROSS EXAMINATION.

By Mr. Williams:

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page 63 }

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Q. All right, sir. It says, "Turkey Hill, which said tract is bounded and described as follows, to-wit: situate page 64 } lying and being in Henry Magisterial District, Hanover County, Virginia, immediately on the Chickahominy Swamp near Cold Harbor, containing 265 acres, more or less, and bounded by the Chickahominy Swamp—" and so forth.

A. I never heard that before.

Q. I didn't think that you had, sir, but that is what that deed says, "265 acres, more or less."

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page 65 }

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Q. In other words, Mr. Joe Adams and Andrew Adams have had plenty of opportunities to determine what the line was between Spring Hill and Turkey Hill, have they not?

A. Looks like they should have, yes, sir.

Q. All right, sir. Did Mr. Joe Adams and Mr. Andrew Adams sell this Turkey Hill property to Mr. Brauer before you bought the Spring Hill property?

A. Yes, sir, it was sold just before I bought the Spring Hill property.

Q. Do you recall walking the boundary of this property between Turkey Hill and Spring Hill with Mr. Joe Adams and possibly Mr. Andrew—I think both of them were present on a Sunday afternoon.

A. Sunday morning.

page 66 } Q. Was that before the survey was made by La-Prade's man or afterwards?



*Marius E. Adams.*

A. That was before.

Q. And you did walk the line with them?

A. I walked through the woods with them.

Q. Was the line pointed out by any of you at that time?

A. They wanted to chop a line and I told them they couldn't do it.

Q. Did they chop the trees at that time along the line?

A. They scarred one little tree, but I did not tell them to chop it.

Q. Did you make any complaint about it?

A. I couldn't make a complaint.

Q. Because you did not know where the line was yourself, did you?

A. And they didn't either.

Q. But they told you there was a line, and chopped a tree?

A. No, sir, they didn't tell me there was a line.

Q. They just chopped the tree for fun?

A. Just chopped the tree, and I told them that we couldn't decide any line until we had a surveyor.

Q. As a matter of fact, didn't you tell them that  
page 67 } you did not know where the line was?

A. Well, I didn't.

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page 71 }

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Q. This map was available to you before you bought the property and you had seen this map made for Brauer, hadn't you?

A. No.

Q. Brauer had bought this property two months before. Didn't you know he was having a survey made of the property?

A. No, sir, I didn't know it, but I suppose he did, sure.

Q. You did not know that Mr. Brauer had had a survey made of this property when you went there and bid on the Spring Hill property?

A. Yes, sir. I will take it back. I did know it.

\* \* \* \* \*

*Marius E. Adams.*

page 74 }

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Q. You knew that Mr. Brauer, before you settled for this property, had had his property surveyed, Turkey Hill; you knew that?

A. Yes, sir, I knew that.

Q. Did you have anyone make a survey of your property before you settled for it?

A. No, sir.

\* \* \* \* \*

page 87 }

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Q. Mr. Adams, had you made any effort to determine where this Brauer line was before you bought this Spring Hill property in between the time that the property was sold to Brauer and the time that you bought Spring Hill?

A. No, sir, because I didn't think I would be able to buy it.

Q. In other words, you—

A. I didn't expect I would ever own it.

Q. You were not interested enough to try to see the survey that Mr. Brauer had had made?

A. No, sir, because I didn't have time. It hadn't been but a few days, and I was sick and busy about my work and I had more on my hands than I could handle.

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page 88 }

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Q. Mr. Adams, by whom is your Spring Hill property bounded by other than the Turkey Hill tract?

A. That is bounded by Willie Hubbard and the Government property which is the upper end of the Watt property and the lower end of the Watt property by Dr. Randolph, and on

*Marius E. Adams.*

the eastside by the Turkey Hill tract and the McGhee tract, which belongs to Andrew Adams, and another part of the McGhee tract, which belonged to my father.

Q. What made you decide that this alleged deficiency came out of the Turkey Hill tract rather than out of these numerous other places?

A. Because the other lines speak for themselves.

Q. You never have been interested in any other lines, you were only interested in this Turkey Hill line?

A. Well, the line is there on the Watt side. There is a ditch there that deep (indicating) all the way down, and on the other side there is a creek.

Q. You say there has been no survey of your property before this one you had made after you bought the property; is that correct, sir, of Spring Hill?

A. Of Spring Hill?

Q. Yes, sir.

page 89 } A. No, there hasn't been.

Q. Has there been any survey made that you know of on the other surrounding properties?

A. Yes, sir.

Q. Of which ones, sir?

A. Well, the Watt place has been surveyed.

Q. Have you seen that survey?

A. Well, I have seen the plots of the—Dr. Randolph's plot and the Government's. Of course, they got their line marked with stones, and on the other side, my father's place, was surveyed. I was with them when they surveyed it and my uncle was, too, and there is no dispute about that side of the line.

Q. The only line you want to dispute, then, is the Turkey Hill line; the other lines you are satisfied with?

A. Because I knew it wasn't where it was supposed to be.

Q. That is what you told them when you went out there and walked the line; is that correct?

A. Yes, sir.

Q. As a matter of fact, I thought you said you didn't tell them; that you didn't say anything?

A. I didn't say anything.

Q. Make up your mind, Mr. Adams.

A. If they had known where it was they wouldn't have come after me.

*Jacob L. Adams.*

page 90 } Q. I thought you said you did not say anything?  
A. I told Mr. Redd the direction I thought it  
was, but I told him I did not know where it was. If you go  
in Chickahominy Swamp, you will say the same thing I did.

\* \* \* \* \*

page 93 }

\* \* \* \* \*

JACOB L. ADAMS,  
called as a witness by and on behalf of the plaintiff, first being  
duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

Q. Please state your name, age, residence and occupation?

A. Jacob L. Adams, dentist, 45.

Q. Where do you practice denistry, Doctor?

A. In Highland Springs.

Q. Who is your father?

A. Ewell Adams.

Q. John Ewell Adams?

A. John Ewell Adams.

Q. Were you born and raised down on Mr. Ewell Adams'  
farm?

page 94 } A. Yes, sir.

Q. Is that adjoining Spring Hill?

A. It is not—yes, sir, it adjoins Spring Hill.

Q. How long have you known the Spring Hill property?

A. Well, ever since I can remember.

Q. You have seen that Processioners' Report; I mean you  
have heard the Processioners' Report read?

A. Yes, sir.

Q. And you have seen the line that was laid down by Mr.  
Redd in accordance with the Processioners' Report?

A. Yes, sir.

Q. Did you ever hear your father make any statement in

*Jacob L. Adams.*

regard to the location of the line from McGhee's corner up there down towards the Chickahominy Swamp, and if so, what was that statement?

A. I have heard him say it started at McGhee's corner there at the end of the branch and followed an old fence below the McClellan, which is now the Grapevine Bridge.

Q. You mean to a point below the Grapevine Bridge?

A. Yes, sir, to a point below.

Q. In your time have you ever heard it being suggested that McClellan, now Grapevine Bridge, was ever moved from its present location anywhere else?

A. I never have heard of it being moved, no, sir.

page 95 } Mr. Haw: That is all, Doctor.

### CROSS EXAMINATION.

By Mr. Williams:

Q. Doctor, do you know where this McClellan Bridge was that the Processioners' Report referred to?

A. I don't remember the old McClellan Bridge, no, sir.

Q. You don't?

A. No.

Q. During your father's lifetime, did you ever hear him make any reference to any Processioners' Report?

A. Any Processioners' Report? No, sir, I have heard him make reference to the report.

Q. But not the Processioners'?

A. Not especially the Processioners' Report.

Q. As far as you know, your father did not know that any Processioners' Report existed, did he; as far as you know, you never heard to the contrary?

A. No, I did not.

\* \* \* \* \*

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\* \* \* \* \*

BRYANT ADAMS,  
called as a witness by and on behalf of the plaintiff, first being  
duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

Q. Are you Bryant Adams?

A. Yes, sir.

Q. How old are you, Mr. Adams?

A. Fifty-nine.

Q. Where do you live?

A. I live in Richmond.

Q. How long since you have moved from Hanover?

A. It has been quite a number of years.

Q. Where do you live in Richmond?

A. 112 North 26th Street.

Q. Who is your father?

A. J. E. Adams.

Q. John Ewell Adams?

A. Yes, sir.

Q. Were you raised on your father's place right near  
Spring Hill?

page 97 } A. Yes, sir.

Q. Did you ever hear your father make any reference to the location of the line between Turkey Hill and Spring Hill from McGhee's corner down to the Chickahominy?

A. Yes, sir.

Q. What statement did he ever make to you about it?

A. Well, I have been through there with him at times, and I had always heard him say that the old fence in there wasn't the line; that it was put there right many years before, or somewhere around the Civil War time, I guess.

Q. You mean a fence that is now claimed as the line by Mr. Brauer?

A. Was put there—

Mr. Williams: Did I understand him to say that the old fence was not the line?

Mr. Haw: I am asking the questions.

Mr. Williams: I would like for the—

The Court: May I have the court reporter read back that answer.

*Bryant Adams.*

Mr. Haw, Jr.: Let him get through.

Mr. Haw: Two old fences there—

He said an old fence was not the line.

The Witness: The fence that is now claimed as the line isn't the line. The old fence that they have been  
page 98 } speaking—through there is the line somewhere.  
Now, I do not know where it is at.

Mr. Williams: You do not know where it is at?

The Witness: No, I don't know it. But I can tell you why that other fence was put there—that is the line now. A man by the name of Holt rented the place from my grandfather, and all this beech and oak through there, and he allowed him to run this fence over in there for a hog pasture, and my father told me that. Also I heard my grandmother say so and two aunts, which were my father's sisters.

By Mr. Haw:

Q. Let me explain that to the jury here. Come over here. Here is the fence that Mr. Redd surveyed (indicating)?

A. Yes, sir.

Q. Here is another fence (indicating)?

A. And this is the fence that was run in there for a hog pasture and should not be included as a line (indicating).

Q. Is this old fence here that runs from McGhee's—

A. The old fence which comes—the way I understand it, comes to the point where this creek would be, would go on down in here (indicating), but, of course, I don't know that, you understand.

Q. The old fence that was claimed by the other side, the defendants, as being the line was run for a hog pasture for somebody else?

A. That was never intended to be for a line. It was for a hog pasture for a man by the name of Holt, sometime around the Civil War.

Q. Did your father ever make any statement to you in regard to the ownership of the land on the Chickahominy above the bridge as to who it belonged to?

A. He said the line was wrong. It run in on Spring Hill and it shouldn't and that old hog pasture was the cause of it.

Q. That was Spring Hill property?

\* \* \* \* \*

*Walter E. Brauer, Jr.*

CROSS EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

page 100 } Q. How long have Mr. Joseph and Andrew  
Adams and their father been occupying up to that  
line that you say was set by Mr. Holt?

A. Well, now, I couldn't tell you that.

Q. I mean has it been since you were a child?

A. It's been since before I was a child, I guess.

Q. Since before you were a child they have been occupying  
up to the line that you say was a fence strung there by Mr.  
Holt?

A. That's right.

Q. That being the line that was shown by Mr. LaPrade on  
his survey originally (indicating)?

A. This one would be the line here (indicating), running  
through that for the hog pasture. The other one was along  
in here somewhere (indicating).

\* \* \* \* \*

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\* \* \* \* \*

WALTER E. BRAUER, JR.,  
called by and on behalf of the defendants, first being duly  
sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

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\* \* \* \* \*



*Walter E. Brauer, Jr.*

Q. All right, sir. I hand you the original deed by which this property was conveyed to you, dated July 22, 1949, from Joseph Adams, Mabel Adams, his wife, Andrew Adams, Marjorie I. Adams, his wife and children, recorded in the Clerk's Office of the Court, Deed Book 135, page—it looks like 104, and ask you if this is the deed by which the property was conveyed to you, and if the plat was attached to the deed at that time?

A. Yes, sir.

Mr. Williams: And if you will file this in evidence—

The Witness: Yes, sir.

Mr. Williams: —as an exhibit.

The Witness: Yes, sir.

The Court: All right. This is D what?

So, this will be D-2.

(The deed was marked and received in evidence as Exhibit D-2.)

By Mr. Williams:

Q. Mr. Brauer, rather than to get you to read this whole descripton, I will just ask you if this deed referred to the property as containing 293 acres, more or less? page 104 } A. Yes, sir.

Q. And in accordance with a survey by W. W. LaPrade and Brother, dated July 19, 1949, attached?

A. That's right, yes, sir.

Q. Mr. Brauer, have you lived on this property since you bought it in 1949? Is that where you now reside?

A. That's right, yes, sir.

Q. Have you used and occupied this property since that time up to this line shown on the survey?

A. Yes, sir.

Q. Between Turkey Hill and Spring Hill (indicating)?

\* \* \* \* \*

page 108 } JOSEPH ADAMS,  
called as a witness by and on behalf of the de-  
fendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

Q. Are you the Mr. Joseph Adams that made a deed along with your wife and your brother, Andrew and his wife, to this Turkey Hill property?

A. Yes, sir.

Q. How long have you lived in Hanover County, Mr. Adams?

A. All my life.

Q. Are you any kin to Mr. Marius Adams?

A. First cousins.

Q. Who owned this Turkey Hill property when you first recollect it, sir?

A. It belonged to my grandfather and I guess it belonged to all the heirs at that time.

page 109 } Q. Will you talk to the jury, please, sir, so they  
can hear you. Your grandfather was still living  
when you were a child?

A. No, sir, I don't remember my grandfather. He was dead.

Q. Did your father own this property?

A. My father owned it, yes, sir.

Q. Have you ever been on this property with your father?

A. Hundreds of times, I would say.

Q. Did you ever walk the boundaries of this property with your father?

A. Yes, sir.

\* \* \* \* \*

Mr. Haw: Just one minute.

Your Honor, the only basis on which parol evidence may be introduced to establish boundaries is where there is a record of some boundary or mark or monument which is to be established and since there is not, and has not been shown to be in the title of the defendant in this case any mark or line or

*Joseph Adams.*

boundary which could be testified to, except the McGhee corner  
and the point below the McClellan Bridge, I sub-  
page 110 } mit that parol evidence is not admissible. You  
see, the only purpose of parol evidence is to estab-  
lish what the record title shows, and if there is nothing to be  
established, there cannot be any parol testimony.

Now in this case there is not, in the title papers of the Tur-  
key Hill property, one single mark, monument, tree, or what-  
not stated as a line between it and Spring Hill, and the only  
place there is any reference to anything is the Processioners'  
Report, and the only parol evidence that can be introduced  
here would be as to the establishment of the Processioners'  
Report and not for the purpose of establishing something  
other than what the Processioners' Report shows.

I am referring to *Vanover v. Hollyfield*, 145 Virginia 749,  
and other cases along the same line.

\* \* \* \* \*

page 111 }

\* \* \* \* \*

Mr. Haw: Mr. Joseph Adams, if he made any statement,  
couldn't have been making any statement with reference to  
this recent plat or plats, because that plat was not in existence  
and this parol evidence of Mr. James Adams, which is sought  
to be introduced here today because he is dead and cannot  
testify himself would have to apply to some mark, plat or  
mark at boundary.

\* \* \* \* \*

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o \* \* \* \*

Mr. Gwathmey: He never could establish that other line at  
all. McGhee corner was the only fixed point of any certainty.

The Court: And the Grapevine Bridge. He said there was  
no evidence that it had been changed.

Mr. Gwathmey: He did not know; he did not know how far  
up or down below it went.

*Joseph Adams.*

The Court can rule on it.

The Court: I don't think that you can introduce parol testimony to show that some line that is not referred to in the Chain of Title is admissible. I think that the parol testimony has to attempt to corroborate the Chain of Title.

Mr. Gwathmey: In other words, then, you are page 117 } ruling out any evidence that he can give about what his father told him about the bounds of the lines.

The Court: Unless he is going to testify about it in this Chain of Title.

You will have to show that they go to some point in this Chain of Title.

o \* \* \* \*

By Mr. Williams:

Q. Mr. Adams, this line that your father pointed out to you, was that up or down the Chickahominy River from what is shown on this plat as Grapevine Bridge?

A. This line right here—

Mr. Haw: Just a minute. I object to that question unless it is responsive to some question as to the location of the Processioners' line below McClellan's Bridge.

Mr. Williams: I have asked him, sir, to point out, if he could, whether or not his father told him that the page 118 } boundary line between these properties was up or down the Chickahominy River from the Grapevine Bridge.

I am tying that to definite monuments on the premises, and I submit that he can answer that question.

By the Court:

Q. Did he tell you whether it was above or below the Grapevine Bridge?

A. He didn't say. He showed me.

Q. Did he show you above or below the Grapevine Bridge?

A. Above the Grapevine Bridge.

The Court: I will have to exclude that because the Processioners' Report calls for it below the Grapevine Bridge.

o \* \* \* \*

*Joseph Adams.*

page 119 }

o \* \* \* \*

The Court: I will take judicial notice of the fact that McClellan Bridge and Grapevine Bridge is the same bridge.

Mr. Williams: We except to that; that is, to the Judge's statement that he takes judicial notice of the fact that the McClellan Bridge and the Grapevine Bridge are one and the same bridge.

o \* \* \* \*

page 121 }

o \* \* \* \*

The Court: It is a very historic bridge.

Mr. Williams: That is not the question, sir. The question is where this bridge was located.

The Court: It was built by McClellan's Army to enable his right wing to escape the trap that General Lee laid for him, which would have been sprung if Stonewall Jackson had gotten up in time.

The Witness: This report you talk about is all news to me. I never heard of it anywhere before this controversy, this Processioners' Report. There never has been any dispute about this line to my knowledge in my lifetime and we had no occasion for it.

page 122 } By Mr. Williams:

Q. Mr. Adams, prior to the sale of this property to Mr. Brauer, or prior to the survey of it, did you go out on a Sunday morning in the company with Mr. Marius Adams and, I believe, your brother, Andrew, to attempt to determine where this boundary line lay between Spring Hill and Turkey Hill?

A. I did. I understand it has always been a custom to know who is on your land.

\* \* \* \* \*

page 124 }

\* \* \* \* \*

*Joseph Adams.*

Q. Did you put any markings on the boundary line at that time?

A. Nowhere, but where it touched the swamp. I blazed a tree there that we said we—that's where it stopped and I just blazed that tree so that I could go back there again. I did not go down there with the intention of chopping no line.

Q. Was it in the presence of Marius?

A. Yes, sir, and my brother, Andrew, was there, too.

Q. Did Marius agree with you about this line where you chopped the tree?

A. He said he did not know anything about the line.

\* \* \* \* \*

page 126 }

\* \* \* \* \*

The Court: Mr. Williams, I think you are running right into this opinion of Judge Sims, or Judge Camp—  
page 127 } bell in Vanover against Hollyfield. I do not think he can testify that that line that LaPrade ran was the line pointed out to him by his father, because it does not conform to the known Chain of Title.

\* \* \* \* \*

By the Court:

Q. Were you with LaPrade when he made his survey?

A. A portion of the time. I went with him all  
page 128 } the way around the line, then he came back with his figuring. Yes, sir, I started out at the start of the line and went to the finish, because I was the only one that did know.

Q. And he ran the line where you pointed it out?

A. Yes, sir, where I known it to be.

\* \* \* \* \*

pages 129 & 130 }

\* \* \* \* \*

*Joseph Adams.*

By Mr. Williams:

Q. Mr. Adams, the line that was shown on the LaPrade map is along a line that you indicated to Mr. LaPrade, is it not?

A. Yes, sir.

\* \* \* \* \*

page 132 }

\* \* \* \* \*

The Court: It says it commences "at maple stump below McClellan Bridge." That is where it commences. Then when it comes to, when it gets over to Turkey Hill it begins at the McGhee corner on Turkey Hill and then it runs by various gums and sweet gums and black gums and white oaks and holly trees to the maple stump where it commenced.

\* \* \* \* \*

Mr. Williams: May I read to you from Bradshaw against Booth?

page 133 } "When plaintiff has never had actual or constructive possession of any part of the land in controversy in a proceeding under" Boundary Line Statute "to determine boundaries, he must show a complete legal title to the premises in order to recover."

They haven't done that in this case.

The Court: That is a question for the jury to say from the survey.

\* \* \* \* \*

page 134 }

\* \* \* \* \*

Q. The line you said that was surveyed for us, is that the one that begins up the creek thirteen hundred and some feet from the Grapevine Bridge, as shown on the map?

A. Yes, sir, we have always owned land—Sometime ago, several years ago, the State or the Government surveyed this ditch or Chickahominy River and my father paid, I think it was \$300.00 for that survey, and I don't believe he would

*Joseph Adams.*

have paid it for somebody else's land. We always owned land there.

Q. That was along the Chickahominy?

A. Yes, sir.

Q. And above the bridge?

A. I would say a quarter of a mile, yes, sir.

\* \* \* \*

page 135 }

\* \* \* \*

Mr. Haw: I would like to object again. It so happens that if they are relying on adverse possession, we had better send the jury out, I think, in this matter. I will have to object to any line of evidence along that line.

\* \* \* \*

Mr. Haw: Your Honor, adverse possession is not a defense in this case and cannot be a defense for the reason that Mr. James R. Adams was the owner of an interest in Turkey Hill and Mrs. Julia Kate Turner and himself were  
page 136 } also owners of interest of both of them through their grandfather. Each of them had an interest in Turkey Hill and in Spring Hill.

According to the chain of Title, which we have filed, James R. Adams conveyed his interest in Spring Hill to Julia Kate Turner, and she conveyed her interest in Turkey Hill to James R. Adams, whereby James R. Adams was a vendor and Julia Kate Turner was a vendee as far as Spring Hill was concerned, and he was a vendee and she was a vendor as far as Turkey Hill was concerned.

Julia Kate, as we used to call her, got three other interests in that property; one from her sister, Martha Alice Adams, and two from another one, from another brother, which gave her 4/6 interest in the Spring Hill property. She died intestate and at the time of her death, James R. Adams, who was Joe's father, was living and, therefore, he became one of her heirs at law, and as such, acquired an interest in the property.

Therefore, in the first instance, he could not claim—under



*Joseph Adams.*

the decisions in a good many Virginia cases, a  
page 137 } vendee cannot claim adversely against his vendor.

And in the case of his interest in Spring Hill which he conveyed to Julia Kate Turner, he could not claim adversely, and in addition to that, he and his children who succeeded him could not claim adversely because they were heirs at law of Julia Kate Turner, and also were cotenants of the property with Marius Adams and all the rest of the family, the Spring Hill property, because it was sold in a partition suit and all of them were parties.

Therefore, I say adverse possession does not apply.

I have the case here; *Chapman versus Chapman*, 91 Virginia 397. A recent case: 194 Virginia 662, at page 665, *Allen versus Powers*.

\* \* \* \* \*

page 138 }

\* \* \* \* \*

Mr. Williams: Did you all occupy this property up to the line indicated there by you and shown on the LaPrade map continuously from 1908 to '30?

The Witness: Well, ever since—I don't remember whether it was 1908 or not when my father bought it, but it has been a long time ago. It is practically as long as I can remember.

\* \* \* \* \*

page 141 }

\* \* \* \* \*

Mr. Haw: The whole question is this: James R. Adams was vendor and Mrs. Turner was vendee and, therefore, he could not claim adverse possession against her, or *vice versa*. If he is a vendee, he cannot claim against her as a vendor. *Chapman v. Chapman*, 91 Virginia 397, says this is a general rule.

The Court: When did it pass to Mr. James R. Adams?

Mr. Haw: In 1907 he exchanged with Julia Kate Turner, who was then Julia Kate Adams, and she lived until 1930, and when she died in 1930 he became a cotenant of the Spring Hill

*Joseph Adams.*

property with Marius Adams and the other mem-  
page 142 } bers of the family as heirs at large and, therefore,  
he could not claim against her.

The Court: He did not become the sole owner of Spring Hill then.

Mr. Haw: What did you say?

The Court: He did not become the sole owner of Spring Hill then.

Mr. Haw: Who do you mean, Mr.—

The Court: James R.

Mr. Haw: James R. became the sole owner of Turkey Hill from conveyances from other people, but got 2/6 or 1/6 from Julia Turner, and my contention is according to *Chapman v. Chapman*.

The Court: Where is that Chain of Title to Turkey Hill?

Mr. Haw: You have it over there, I think.

The Court: James R. Adams got this property in 1907 to 1924 from the various other Adamses. That is Turkey Hill. And he died in 1943. Is that when he died, in 1943?

The Witness: Yes, sir, I think so.

Mr. Haw: And you say Julia Kate Turner died in 1930?

The Witness: I thought it was 1930.

page 143 } The Court: I do not think there could be any  
adverse possession between 1907 and the time of  
his death in 1943. There has not been 15 years elapsed since  
1943, so there cannot be any adverse possession.

Mr. Williams: I said that the period would be between 1907 and 1930, when Julia Kate and her husband owned it, and when Andrew and Joseph owned Turkey Hill.

The Court: Yes, sir, but, you see, he had conveyed his interests in Spring Hill to her and she conveyed her interests in Turkey Hill to him, and I do not think either one, as long as they live, could claim adversely against the other. He did not die until 1943. He couldn't have claimed adversely against her as long as he lived, and there hasn't been any 15 years elapsed since 1943. There is no chance to claim adverse possession.

I sustain the objection.

\* \* \* \* \*

page 146 }

\* \* \* \* \*

*Joseph Adams.*

By the Court:

Q. What did he say?

A. Well, he said he didn't know where the line was and that was all, I guess, concerning the line. He said he didn't know where it was.

\* \* \* \* \*

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\* \* \* \* \*

The Court: No, the true line is for the jury to decide.

\* \* \* \* \*

page 148 }

\* \* \* \* \*

Q. When Turner sold the timber off of his place, he cut up to there and stopped, and is that along the line you pointed out on this day?

A. That's along the line.

Q. And that's the same line shown on that plat?

A. Yes, sir.

\* \* \* \* \*

page 149 }

\* \* \* \* \*

A. For our cattle, not for a line. Fences all through here (indicating) and has been all through here in lots of places and this fence here (indicating) was the line fence.

\* \* \* \* \*

page 151 }

\* \* \* \* \*

ANDREW ADAMS,

called as a witness by and on behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

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\* \* \* \* \*

Q. Mr. Andrew Adams, were you present when Mr. Joseph Adams took your cousin, Marius, and showed him this boundary line between these two properties on a Sunday?

A. Yes, sir.

Q. Did Mr. Marius Adams make any objection to that line at the time?

A. No, sir. If he did I didn't hear it.

Q. Did he claim to know the true line himself?

A. He said he didn't know where the line was. As far as he knew, that was the line that we was on.

Q. That was the line that later was shown on that map of LaPrade's?

A. Yes, sir.

\* \* \* \* \*

page 155 }

A. Well, I don't know of any line but the one that we went around.

Mr. Haw: Just one second. I object to that.

By Mr. Williams:

Q. Is there anything else that you can say from your own personal experience and knowledge that will throw any light on this examination?

Mr. Haw: Mr. Andrew Adams, I would like to call your attention to the fact that the Court said you could not testify to anything with reference to the line, except the Processioners' line.

Mr. Williams: Address your remarks to the Court and not to our witness.

The Court: I do not think he can establish any line except the line called for by the Processioners' Report.

\* \* \* \* \*

*Waddey Braxton—Eddie Henry.*

page 158 }           WADDEY BRAXTON,  
                  called as a witness by and on behalf of the de-  
fendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\*           \*           \*           \*           \*

page 160 }

\*           \*           \*           \*           \*

Q. Mr. Turner, did he ever come down there while you were cutting in there?

A. Yes, sir, he come down once or twice?

Q. Did he ever object to your cutting in there?

A. No.

\*           \*           \*           \*           \*

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\*           \*           \*           \*           \*

                                  EDDIE HENRY,  
called as a witness by and on behalf of the defendant, first  
being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\*           \*           \*           \*           \*

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\*           \*           \*           \*           \*

Q. Did you ever cut timber in there up above the Grapevine Bridge to the west of it here shown on this Processioner map up in this part (indicating)?

*Ray Blackburn—B. M. Barrett Blackburn.*

A. Where Mr.—

Q. Yes, sir, toward Mr. Turner's line.

A. Yes.

Q. Did Mr. Turner—

A. Several times.

Q. Did he ever raise any question about your all cutting over this line?

\* \* \* \* \*

page 163 } RAY BLACKBURN,  
called as a witness by and on behalf of the de-  
fendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

Q. Was that timber cut up above here northwestwardly from this Grapevine Bridge on any occasion?

A. Yes, sir.

Q. Up in this swampy land?

page 164 } A. Yes, sir.

Q. Up towards Turner's line?

A. Right up to Turner's line.

Q. Did you ever see any of them coming out there?

A. Two or three times a week.

Q. Did they ever dispute the line, a point up to which you were cutting?

A. No, sir.

\* \* \* \* \*

B. M. BARRETT BLACKBURN,  
called as a witness by and on behalf of the defendant, first  
being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

*Mabel R. Adams.*

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\* \* \* \* \*

Q. Was any question asked about the acreage at the time?

A. No, sir.

Q. You don't remember?

A. There wasn't no acreage. Mr. Haw said he was selling it as it was. He said no acreage.

Q. He said he wouldn't guarantee any acreage?

A. He would not.

Q. Do you remember his exact language?

A. No, I can't say, but he didn't sell it as no acreage at all; no amount of acres.

Q. Just sold it as a unit, a tract?

A. Yes, sir.

\* \* \* \* \*

page 166 } MRS. MABEL R. ADAMS,  
 called as a witness by and on behalf of the de-  
 fendant, first being duly sworn, testified as follows:

## DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

page 167 }

\* \* \* \* \*

Q. Did your husband, Joe, bring Marius back with him?

A. Yes, sir. Marius was very often at our house. We were—at that time we were very good friends, and my husband fixed his tables and anything. We came in that day about three o'clock. It was hot and I had lunch already. I said, "Marius, come on and eat dinner. You don't have to go back home, and eat dinner with us." He washed his hands. He said, "I am so tired. I didn't know that it was such a long ways around there." He said, "I didn't know where the line was and I am so glad that we went around there today." They were his very words, so help me.

*R. W. Wysor.*

page 168 }

\* \* \* \* \*

R. W. WYSOR,

called as a witness on behalf of the defendant, first being duly sworn, testified as follows:

page 169 } DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

page 171 }

\* \* \* \* \*

Q. *Where* there monuments there along these lines?

A. Around here there were various marked trees and such iron pipes, as I have set—I set on those lines.

Q. You followed the marked trees. When you go around here on this line (indicating), was there any fence?

A. It was fenced.

Q. This is a point which is not disputed right here (indicating). Will you trace that line on down there, sir?

A. We came upon old wire.

Q. Old wire?

page 172 } A. Along there and when we—now, this wire place out along near here (indicating) and takes up again in here, the old wire is in this beech.

Q. The old wire is in that beech?

A. Yes, sir.

Q. From this point on, you were shown the line by Mr. Adams from his recollection?

A. Shown this tree here (indicating) to past a line through that elm to the river.

Q. So you drew this straight line on down to the river and marked the tree?

A. And later marked it.

\* \* \* \* \*

page 173 }

\* \* \* \* \*



*R. W. Wysor.*

Q. Could you, as a surveyor of many years experience, have run a line from that Processioners' Report down here from the report and the alleged monuments with any degree of accuracy at that time?

A. Can't anybody run it.

\* \* \* \* \*

page 174 }

\* \* \* \* \*

Q. I will ask you, as an expert surveyor, these Processioners' lines, in general, are they generally reputed by the surveying profession to denote any particular degree of accuracy, or can they usually be run with any accuracy?

A. I have never seen but one besides this one and it gave no distance or no directions. I don't know how they could—how a surveyor or anybody else could follow it. They went out there and chopped trees in 1867, and they didn't say how far, and in many cases they didn't say which direction.

\* \* \* \* \*

page 175 }

\* \* \* \* \*

### CROSS EXAMINATION.

By Mr. Haw:

Q. Mr. Wysor, at the time you ran that line you didn't know anything about the Processioners' Report?

A. I had never heard of it and I had never seen but one Processioners' Report before.

\* \* \* \* \*

page 177 }

\* \* \* \* \*

*R. W. Wysor.*

Q. Now, if you ran a line from the McGhee corner down to that maple below McClellan's Bridge, it couldn't be the line that you ran, could it?

A. Unless it comes down the side of the river, no.

Q. Then your line was not run in accordance with the Processioners' Report?

A. It was run where I was shown.

Q. I know that, but I am not—it was not run in accordance with the Processioners' Report?

A. Well, let's read the Processioners' Report.  
page 178 } "Commencing at maple stump—"

Q. Let me read it and you follow.

Mr. Williams: Let him read it.

A. "Commencing at maple stump below McClellan's Bridge, thence up swamp to gum pointers G. Watts corner." Well, now, where is "up swamp"? It would look to me up here. There is Watts corner right here. "Thence as Watt line runs—God knows; it doesn't say east or west, north or south. "Thence as Watt line runs—" Well, somebody—God knows where Watt line runs.

Q. Everybody knows Watt line runs up here to Boatswain Swamp.

The Court: That is a very historical place.

By Mr. Haw:

Q. Here's Boatswain Swamp, that's all well-known.

A. "Up swamp to corner—"

The Court: They say that swamp ran red with blood during the Gaines Mill Battle.

A. Thence as Watt line runs thence east to fore and aft red oak on road leading from Gaines Mill to Barkers Mill, thence —"

Mr. Williams: None of that line is in dispute so far.

A. "Down road to pine stump corner on J. F. McGhee—" no distance—"thence fore and aft hickory thence fore and aft pine thence corner holly (near branch) thence as branch meanders—" There is your branch to J. F. McGhee  
page 179 } corner on Turkey Hill.

*Oscar Burnett.*

By Mr. Haw:

Q. Even I would have sense enough to go around that line.

A. "Thence as branch meanders—" All right, it doesn't say following the ditch. "Thence Black Gum, thence fore and aft sweet gum—"

### RE-DIRECT EXAMINATION.

By Mr. Williams:

Q. Did you see any black gum down there that you could identify?

The Court: Everybody admits there is nothing down there to identify.

By Mr. Williams:

Q. "Thence as branch meanders to J. F. McGhee corner on Turkey Hill thence Black Gum, thence fore and aft sweet gum thence fore and aft gum thence corner (no marked tree) thence fore and aft gum thence to Maple Stump where we commenced."

A. I—

Q. Where was that?

A. I presume it was below McClellan Bridge, if that's McClellan Bridge.

Q. Could you, under the Processioners' Report, run the line that you ran?  
page 180 } A. I didn't have any.

\* \* \* \* \*

### OSCAR BURNETT,

called as a witness by and on behalf of the defendant, first having been duly sworn, testified as follows:

### DIRECT EXAMINATION.

By Mr. Williams:

\* \* \* \* \*

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Q. Were you present on the occasion when Mr. Haw offered this Spring Hill property for sale?

*Cliff McGhee.*

A. Yes, sir.

Q. Was any statement or announcement made there by him with regard to the acreage in the place?

A. Yes, sir, he got up and said, "Gentlemen—" said, "This place will be sold like it is, with no certain quantity of acres."

\* \* \* \* \*

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\* \* \* \* \*

CLIFF MCGHEE,

called as a witness by and on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

Q. You are Cliff McGhee?

A. Yes, sir.

Q. How old are you?

A. Seventy-five years old.

Q. Where were you born and raised?

A. Hanover Court House.

Q. What place?

A. I don't know the place I was born—lived in so many houses.

Q. Were you familiar with the Spring Hill and Turkey Hill farms?

A. Yes, sir.

Q. Did you ever go on those farms with anybody on the Turkey Hill property?

A. I went with Mr. Turner there. I used to raise some cattle.

page 188 } Q. When was that?

A. Just about five, six years before he died.

Q. Gregory Turner?

A. Yes, sir.

Q. One of his owners?

A. Raised cattle.

Q. He is dead now?

A. He is dead about 40 years.

\* \* \* \* \*

*Cliff McGhee.*

Q. Did Mr. Gregory Turner ever show you any line as being the boundary between Spring Hill and Turkey Hill?

A. Yes, sir.

page 189 } Q. Please tell the jury whether or not the line  
that he showed you ended at a point below or  
above the McClellan Bridge?

\* \* \* \* \*

Q. Did he show you a point below or above the bridge?

A. Run down to the Grapevine Bridge, that's what he called it, and right up towards that hill to McGhee's.

Q. From Grapevine Bridge to McGhee's?

A. Over that ditch, what you call Watt's place, and back to Chickahominy Swamp and it wasn't a pine or a tree cut in there. It was walnut trees all down in there. He said he didn't know—I think walnut trees down in there;  
page 190 } weren't a pine or oak or nothing cut in there;  
been in water up that deep looking for cattle (indicating).

\* \* \* \* \*

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\* \* \* \* \*

The Court: I think the matter is one for the jury, rather than for the Court.

I couldn't say, in view of the Processioners' Report, that Redd's line is wrong as a matter of law.

I think it is for the jury to say whether it is right or not. It would certainly seem that that LaPrade line is not in accordance with the Processioners' Report.

I think I will let the jury have it.

\* \* \* \* \*

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\* \* \* \* \*

The Court: Let these two plats go to the jury.

Mr. Haw: There are none in evidence except the Redd plat. The other is not evidence.

Mr. Williams: Put in by agreement.

Mr. Haw: Just to demonstrate what they were claiming. They are not evidence.

The Court: The jury, I think, should have the right to examine the two plats.

\* \* \* \* \*

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\* \* \* \* \*

The Court: I think I will let them have both plats. Of course, you will have to fix the line in the verdict, decide which said line is correct.

Mr. Williams: If they find for the defendants they do not have to fix any.

The Court: If you find for the plaintiff, then you will fix the line according to the Redd—

Mr. Haw: It so happens that the defendant asked him to have them establish a boundary line and they cannot find for him as long as they have no line.

The Court: You fix whichever line is the true line between the two properties.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

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