

C. R. WINFIELD  
ATTORNEY-AT-LAW,  
BROADWAY, VA.

Nov. 11, 1937.

Hon. H. W. Bertram  
Harrisonburg, Va.

Dear Judge Bertram:

Re: Commonwealth v. Edward Rinker

Some time after 4 O'clock P. M. ,  
yesterday (Nov. 10, 1937) I received from Messrs. Conrad  
& Conrad, a letter enclosing me a carbon copy of a note of  
argument in the above entitled cause, which they advised they  
had, on the preceding day, handed to you . They also advised  
that you asked them to inform ~~us~~ that you would like to de-  
cide the case before the end of this week, and that if I  
wanted to file a reply you would like to have the same with-  
in the next day or two .

I am now enclosing to you (copy to  
Messrs. Conrad & Conrad ) a short note of argument to be  
treated as a reply to the note of Messrs. Conrad & Conrad .

If you will be in your court on Saturday  
morning, Nov. 13th, and would then be prepared to pass on the  
case, I would be pleased to be in attendance . I fix the  
date mentioned as being about the earliest day that would  
appear now to be practicable for the hearing . When you have  
received this would you kindly telephone me as to the occasion  
for my being in court on Saturday morning ?

Very truly yours,

*C. R. Winfield*  
C. R. Winfield

CRW:EK  
Enc.

Copy to Messrs. Conrad & Conrad .





COMMONWEALTH

VS.

EDWARD RINKER

REPLY NOTE IN BEHALF OF COMMONWEALTH

It having on the trial of this case been conceded by the Commonwealth - for the purpose of such trial only - that the defendant, Edward W. Rinker, was entitled to a right of way arising out of prescription, over the lands of the plaintiff, the main questions which are to be determined are :

(1) the right of the servient owner to erect gates across a right of way ;      (2) the inhibitions and penalties fixed by the law as to the breaking down or leaving open, without the owner's consent, any such gates .

Apart from the modern statutory provisions allowing the servient owner to erect and maintain gates across a right of way, it was well recognized at common law that the landowner enjoyed the right of erecting and maintaining gates at convenient and suitable places across a right of way extending through his lands, unless by a contract the owner of the easement was entitled to an open right of way .

As to the case in hearing the facts established in evidence bring it within the influence of the statutory provision Code of 1936, Section 2039 (26), which in terms provides that "any person owning land over which another or others have a private road or right of way, except where it is otherwise provided by contract, may erect gates across such roads or

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(1) The right of the servient owner to erect gates across a right of way;

(2) The limitations and penalties fixed by the law as to the breaking down or leaving open, without the owner's consent, any such gates.

Apart from the modern statutory provisions allowing the servient owner to erect and maintain gates across a right of way, it was well recognized at common law that the landowner enjoyed the right of erecting and maintaining gates at convenient and suitable places across a right of way extending through his lands, unless by a contract the owner of the easement was entitled to an open right of way.

As to the question of the facts established in evidence being it within the influence of the statutory provision Code of 1936, Section 2039 (26), which in terms provides that "any person owning land over which another or others have a private road or right of way, except where it is otherwise provided by contract, may erect gates across such road or



rights of way at all points at which fences extend to such roads on each side thereof."

This section was construed in Meadows vs. Meadows, 143 Va. 98, 129 S. E. 354, 355 .

Under the evidence adduced in the case in hearing the requirements which entitle the landowner to erect gates are met . That is to say, the plaintiff owns the land on both sides of the right of way so far as the same passes through his lands, and had fences extending on either side of the right of way to the gate which was erected by him .

Under subsection 27 of said Sect. 2039, there is provided a forfeiture of not less than one nor more than five dollars for the leaving open, without permission of the landowner , of any such gates .

By Code Sect. 4481, it is provided that if any person, without permission of the owner, pull down the fences of another and leave the same down, or without permission , open and leave open the gate of another xxxxxxxx he shall be fined not less than five nor more than twenty dollars .

By Sect. 4479, of the Code, a penalty is also provided for the unlawful, but not felonious, injury of any property of another - real or personal .

The fine of five dollars fixed by the Trial Justice was evidently imposed under the provisions of Sect. 4481 .

It would certainly appear that such fine should be enforced unless the defendant can establish that he had some unquestionable right to knock down and leave down the gate established by the complainant . And it is submitted that no such right in the defendant has been shown .

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The case of Supervisors vs. N. & W. R. R. Co., 119 Va. 763-773, 91 S. E. 124-133, deals with the question of the width that shall be provided and respected under the statute allowing a railway company to change the location of a public road, and does hold that the width of the user of an original road should control in the new road established in lieu of the old one .

The same principle might, perhaps, be applied to the rights acquired by user of a private right of way, but there is very slight and doubtful foundation, if any, for the contention that the gate which was erected by plaintiff cut off or deprived the defendant of the use of any part of the actual road bed which the defendant had at any time theretofore used .

It was established by undisputed evidence that very shortly before the time when the gate and fence connected with the same was knocked down and left open by the defendant, three loads of hay had been hauled through by Mr. Bowman, and in such operation neither the gate or the fence was disturbed; but even had the landowner, to some extent, encroached on the right of way claimed by defendant, it would be a dangerous doctrine to adopt that the defendant could by force and arms remove or demolish such obstructions . The safer plan, having a view to the peace and security of the community, would be to require the claimant of the right of way to seek relief in a court of equity .

The fact that the defendant made no effort to set up the fence or the gate after having knocked down the same indicates that he was acting through resentment and anger, and it might well be inferred from the experience of others that had a little more care been used in driving through the gate with the load of hay the post and connecting fencing would not have been knocked down .



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As further evidence of the attitude of mind of the Rinker family in regard to the right of way it must be remembered that after the gate and fencing had been knocked down by the defendant - probably on the next succeeding day - the heavy post of a gate which plaintiff had erected on the southerly side of his boundary line, where the right of way intersects the public road, was cut down by a female member of the Rinker family, for which act the plaintiff also sued out a trespass warrant against her; but which warrant was by the Trial Justice dismissed as was the warrant against a co-defendant with Edward Rinker; the Trial Justice being doubtless of the opinion that the mild fine of five dollars imposed on one of the defendants, would serve the purpose of quieting the complainant in the possession and lawful use of his property .

It is believed that the comments of counsel for defendants " as to Miller's attitude towards the witnesses who testified for the defendant in Trial Justice Court, and the manner in which he closed the road shows that he was not acting in good faith, but intended to provoke a controversy", are without substantial foundation . Mr. Miller denied, emphatically, making any such statements as were ~~attributed~~ attempted to be attributed to him, and on the whole the acts of the defendant and the other members of his family who were involved in the matter, more strongly suggest that the defendant intended to provoke a controversy than do any acts shown on the part of the plaintiff indicate that he was acting in malice .

Upon the whole, it is most earnestly submitted that it would be a dangerous and unwise course to reverse the finding of the learned Trial Justice as to the very mild penalty which he imposed on the defendant, Edward Rinker .



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Should he be permitted to go unrebuked for his unlawful act  
other unlawful acts on his part would be most likely to follow  
and provocation might be given that in the ordinary course of  
life would involve some of the parties in more serious diffi-  
culties than they are now confronted with .

Respectfully submitted ,

*C. R. Winfield, Jr.*

Copy to Conrad & Conrad .

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Respectfully submitted,

C. R. Wright

Copy to Conrad & Conrad.



COMMONWEALTH

VS.

EDWARD RINKER

It is the contention of the prosecutor, J. B. Miller's committee:

(a) That the defendant Rinker, is not entitled to any right of way across or through the lands of the prosecutor;

(b) That even should it be established that the defendant is by prescription or otherwise entitled to a right of way across the lands of the prosecutor the prosecutor has the right to erect and maintain gates across the right of way at all places where the lands and fencing of the prosecutor extend to the right of way on both sides thereof;

(c) That at the place where prosecutor established the gate with which the defendant is charged with pulling down and leaving open, the prosecutor owned the land on both sides of the alleged right of way, and <sup>had</sup> ~~xxx~~ fences ~~standing~~ extending to such gate on each side of the right of way .

For the right to erect and maintain gates prosecutor relies first, on the provisions of Sect. 2039 (26) of the Code of 1936, and on the general principles announced in Good vs. Petticrew, et al., ~~xxxxxxxxxxxxxx~~ 165 Va. 526, 183 S. E. 217, and cases cited . See also the latter part of the opinion of the court in Terry vs. Tinsley, 140 Va. 240, 124 S. E. 290 /

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the right of way on both sides thereof;

(c) That at the place where prosecutor established

the gate with which the defendant is charged with pulling down

and leaving open, the prosecutor owned the land on both sides of

the alleged right of way, and said fences extending

to such gate on each side of the right of way.

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the general principles announced in Good vs. Pettigrew, et al.,

188 Va. 526, 188 S. E. 217, and cases cited.

See also the latter part of the opinion of the court in Terry vs.

Timothy, 140 Va. 240, 184 S. E. 239.



The evidence fails to establish that the way asserted by the defendants was ever at any time a public highway, and also fails to establish that the defendants acquired by prescriptive use the right to pass over the lands of the prosecutor .

The principles announced and established in Gaines vs. Merryman, 95 Va. 660, and all subsequent Virginia cases bearing on the question are relied on by the prosecutor in support of this position. In respect to the claim of prescriptive right asserted by the defendant it must be borne in mind that the prosecutor, J. B. Miller, acquired title to his lands by a general warranty deed from T. J. Rinker in which no reservation or exceptance was made as to any roadway passing through the lands, so that at the least defendant could not tack on to his claim by prescription any rights that might have been acquired by defendant's father .

Should it be held that the defendant has the right arising by prescription to pass over the lands of the prosecutor such right would not, under the common law doctrine as to gates , prohibit the landowner from erecting and maintaining gates across the way . And in Virginia the right to erect and maintain such gates is especially provided by statute .



There is absolutely excluded by statute.

the way. And in addition the right to elect and maintain such  
right the defendant now electing and maintaining before  
light would not, under the common law doctrine as to the  
of classification to have over the hands of the prosecutor.

Justice says that the defendant was the light  
light that would have been admitted by defendant, a fact  
defendant could not look on as the right of classification and  
as to any lawful having through the hands, as that of the  
from L. 1. Under in which no reservation of exception was made  
which, admitted state to the hands of a general matter of  
defendant if what he chose in mind that the prosecutor, L. B.  
in respect to the claim of classification light was set by the  
position was left on by the prosecutor in which of this position.  
as L. 1. 1. and all appropriate rights were retained on the  
the defendant was admitted to have as defendant.  
the light to have over the hands of the prosecutor.  
light to establish that the defendant admitted by classification  
by the defendant was set at any time a right of light, and also  
the evidence that to establish that the way was set



STATUTES APPLICABLE ---

Code 1936, Sect. 2039 (26) Landowners may erect and maintain gates across private roads - Any persons owning land over which another or others have a private road or right of way, except where it is otherwise provided by contract, may erect gates across such road or right of way at all points at which fences extend to such roads on each side thereof .

Construed in *Meadows vs. Meadows*, 143 Va. 98, 129 S. E. 354 .

Held: This section contemplates that the person claiming the right to erect the gates shall own land on both sides of the road or right of way and have fences which extend to such road on each side thereof, and the burden is on the plaintiff to show that he is within the provisions of the statute .

*See also Perry v. Smiley, 140 Va. 240, 124 S. E. 290.*

→ Sect. 4481- Pulling down fences or leaving open gates - how punished -

If any person, without permission of the owner, pull down the fence of another and leave the same down, or without permission, open and leave open the gate of another or any gate across a public road established by order of the court , or if any person other than the owner or owners of land through which a line of railroad runs open and leave open a gate or any public or private crossing of the right of way of a railroad he shall be fined not less than five nor more than twenty dollars to be recovered before a Justice of the Peace .

*Hood v. Petticrew, et al., 165 Va. 526, 183 S. E. 217.*



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maintain gates across private roads - Any persons owning

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which fences extend to such roads on each side thereof.

Construed in Meadows vs. Meadows, 143 Va. 98, 129 S. E. 354.

Held: This section contemplates that the person claiming the right

to erect the gates shall own land on both sides of the road or

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side thereof, and the burden is on the plaintiff to show that

he is within the provisions of the statute.

Sec. 4481 - Pulling down fences or leaving open gates -

If any person, without permission of the owner, pull down the

fence of another and leave the same down, or without permission,

open and leave open the gate of another or any gate across a

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railroad runs open and leave open a gate or any public or private

crossing of the right of way of a railroad he shall be fined

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before a Justice of the Peace.



IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

VS

EDWARD RINKER

To the Honorable H. W. Bertram, Judge of said Court:

We hand to you herewith the papers in the above matter.

Upon further reflection, we have decided not to file a brief in this case.

In submitting the case to the court, however, we take the liberty of making brief comments on our client's defenses.

It is our contention that even though Miller may have had a right to maintain a gate at the place in question, that it was incumbent upon him to maintain such gate as would not interfere with the prescriptive rights of Rinker and others in this right of way. It has been clearly shown by the evidence that the use of the right of way had continued for a sufficient period and in such manner as to acquire a prescriptive right. There is no evidence that Rinker or his predecessors in title ever asked for any consent to use the road, and the use was continuous. The width of the right of way so acquired is to be determined by the extent of the user. *Supervisors vs N. & W. R. Co.*, 119 Va. 763, 773. It has been shown that the road in this instance was used, among other things, for hauling agricultural products by farm wagons. Miller, therefore, had no right to close the road in such a way as to interfere with the driving of a loaded farm wagon along the same. It is shown by the evidence that the so-called gate which was erected was not sufficiently wide to permit the proper passage of a loaded farm wagon, and this was the cause of the post being torn up. The evidence as to Miller's attitude towards the witnesses who testified for the defendant in Trial Justice Court, and the manner in which he closed the road shows that he was not acting in good faith but intended to provoke a controversy.



CONSTITUTIONAL

27

EDWARD HIGGINS

to the House of Commons. Mr. H. Mansfield, the  
member for the County of York, has been elected  
to the House of Commons.

He is a member of the House of Commons.

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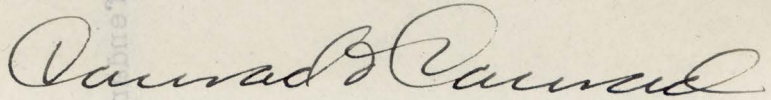
He is a member of the House of Commons.

He is a member of the House of Commons.



It has been shown by the evidence that the post was accidentally pulled up by the road wagon in attempting to pass through the gate. The reason given by Rinker for failing to replace the post is that he did not think Miller had any right to maintain a gate at that place. As Rinker was acting under this bona fide belief, he had no criminal intent and consequently no crime was committed. In this respect the case is like the trespass case against A. M. Turner in which this court recently held that Turner was relieved from any criminal liability for cutting timber on a disputed portion of land as he was acting under a bona fide belief that he had title thereto.

Respectfully submitted,



Counsel for Edward Rinker



IN THE CIRCUIT COURT OF  
ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

vs

EDWARD RINKER

Note of Argument for Defendant

Respectfully submitted,

*Edward Rinker*

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the Gate. The reason given by Rinker for failing to replace the  
accidentally pulled up by the road wagon in attempting to pass through  
It has been shown by the evidence that the post was



Filing .20  
 Docket .25  
 Cont. 1.00  
 Sum. writ. 1.25  
 Cert. writ  
 attend. .75  
 Order. .50  
 Judge & Ct. .50  
 Court copy .50  
 Filing paper .25  
 5.20  
 1.25 58. Deft.

Clerk 6.45 ✓ + .55  
 Sheriff  
 \$ 2.00  
 2.50  
 4.50 4.50 ✓

A. L. Simon  
 Constable 1.20 ✓

J. L. Reid, J.P. 1.00 ✓

J. J. 2.00 ✓

Witnesses  
 C. coast 5.46

J. J. 5.25 10.71 ✓ - 1.80

Replead - \$2.35-

OCT 1937

## TRIAL JUSTICE COURT

Criminal DOCKET NO. 1751

Commonwealth

v.)

Edward Rinker Def  
Lawrence Rinker

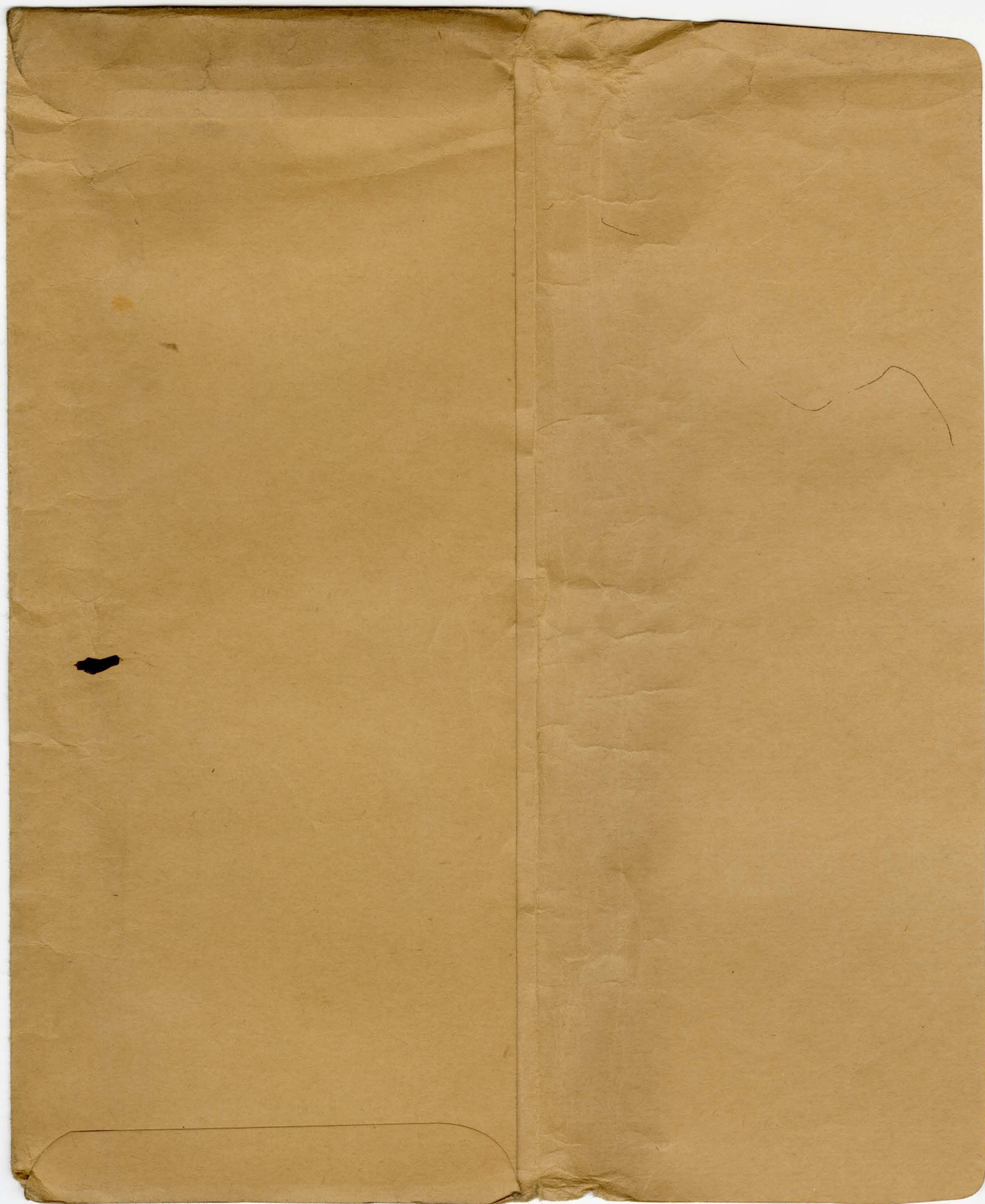
8/11/36

Aug. 14/36

On motion, account an  
 appeal is allowed to the  
 Circuit Court, Cash in Co.

H. H. H. H.  
 T. J.





C. R. WINFIELD  
ATTORNEY-AT-LAW,  
BROADWAY, VA.

October 21, 1937.

Mr. J. R. Switzer  
Clerk of Circuit Court  
Harrisonburg, Va.

Dear Sir:

Please make for me an attested copy of the deed referred to on enclosed memo; that is deed of 11th, January 1927 - Deed Book 137, page 456 - Thomas J. Rinker to Jacob B. Miller . It is not necessary to copy the certificate of acknowledgement or as to the admission to record . It will be sufficient just to note the date at which admitted .

I want to use the copy tomorrow - Friday - morning in trial of the case of Commonwealth vs. Edward Rinker .

Very truly yours,

*C. R. Winfield*  
C. R. Winfield *K.*

CRW:EK  
Enc.



C. R. WINFIELD  
ATTORNEY-AT-LAW  
BROADWAY, N.Y.

October 21, 1937.

Mr. J. H. Switzer  
Clerk of Circuit Court  
Harrisonburg, Va.

Dear Sir:

Please make for me an attested copy of the deed referred to on enclosed memo; that is deed of 11th January 1937 - Deed Book 137, page 456 - Thomas J. Hinkley to Jacob A. Miller. It is not necessary to copy the certificate of acknowledgment or as to the admission to record. It will be sufficient just to note the date at which admitted.

I want to use the copy tomorrow - Friday - morning in trial of the case of Commonwealth vs. Hinkley.

Very truly yours,

C. R. Winfield

CRW:BX  
Enc.

Com  
n  
Parker



Fencing on the lands of Miller, on the  
lines indicated by the letters A B, B C,  
& C D.

Gate stood across the track of the old road,  
in the line B C.

Deed of November 1, 1902 - W. B. 69, p. 202 -  
Lydia Pinker, wife of Thos. J. Pinker -  
Conveys to Thos. J. Pinker Tract No. 1,  
Containing 4 A. B. R. 29 poles.

Deed of Sept. 13, 1904, W. B. 73, p. 253 -  
Eleanora & Mary Neff to Thos. J. Pinker -  
Conveys Tract No. 2, containing 1 A. 1 R. 4 ps.

Deed of Jan. 11, 1927, Thos. J. Pinker to  
Jacob B. Miller - Conveys the above tracts  
Nos. 1 & 2, which tracts adjoin.

No reservation of a right of way is found  
in either of the above mentioned deeds.



Remains on the lands of Miller on the  
line indicated by the letters A B C.

State Road across the track of the old road  
in the line B C.

Line of Miller on the line A B C.

Right of Miller on the line of J. W. Miller  
across to the line of J. W. Miller  
containing 4 A B C 2 1/2 acres.

Line of Miller on the line of J. W. Miller  
containing 13 1/2 acres 11 1/2 7 3/4 9 1/2 2 1/2 -  
containing 10 1/2 acres.

Line of Miller on the line of J. W. Miller  
containing 10 1/2 acres - containing the old  
road & a right of way is found  
in the line of the above mentioned Miller.



The Commonwealth of Virginia:

Rockingham County, to-wit:

To the Sheriff of said County:

WHEREAS, Casper C. Miller, Committee of J.B. Miller, has this day made information and complaint on oath to me, F. L. Reid, T. J. or J. P.

of the said County that Edward Rinker & Lawrence Rinker on the 17<sup>th</sup> day of July, 1936, in said County, did

unlawfully, but not feloniously, pull out of the ground and remove a gate post in the line of the fencing of the said J.B. Miller and did, without the consent of the complainant, leave open the fence which was supported by the said post which was removed

These are, therefore, in the name of the Commonwealth, to command you forthwith to summon the said

Edward Rinker & Lawrence Rinker to appear before the Trial Justice of the said County at Harrisburg Va, in the said County

on the 27<sup>th</sup> day of July, 1936, at the hour of 10 A M., of that day to, answer the said complaint and to be further dealt with according to law. And you are moreover, required to summon

Wm. Harry Haut - Mrs. Harry Haut - David E. Bowman - and Casper Miller

to appear at the same time and place, to testify as witnesses on behalf of the Commonwealth, touching the matter of the complaint. And have you then there this warrant with your return thereon. Given under my hand and seal, this

20<sup>th</sup> day of July, 1936.

F. L. Reid

T. J. or J. P.



Aug. 11, 1936  
 Lawrence Rinker  
 not guilty.  
 Edward Rinker  
 found guilty and  
 fined \$5.00

Fine	5.00
Warrant	1.00 ✓
T.)	2.00 ✓
cell.	1.25 ✓
diff	1.20 ✓
with cell.	1.75 x 3
mileage	4 / 7.00 ✓
	<u>\$ 17.45</u>

Hamilton Haas  
 T. J.

Packet 1937

Com<sup>th</sup> of Va.

vs. { MISDEMEANOR  
 SUMMONS

Edward Rinker &  
 Lawrence Rinker

Aug. 14/36

I Isaac T. Deavers,  
 Sheriff for Edward Rinker  
 in penalty \$25.00 on  
 recognizance (this is taken  
 for appeal to Circuit Court  
 of Rock<sup>2</sup> County,  
 Hamilton Haas, T. J.

Executed July 21, 1936 by depositing  
 a true & correct copy of the within  
 warrant to Edward Rinker and  
 Lawrence Rinker in person  
 A. S. Harrison  
 C. J. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Larry Lonty, Mrs. Larry

Lonty, David E. Bauman + Casper  
Miller

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at 9:30 o'clock, a. m., on the 17<sup>th</sup> day of Feb 19 37

to testify and the truth to say in behalf of the Commonwealth against

Edmond Rinker

who stands charged with and indicted for a ~~felony~~ misdemeanor.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 9<sup>th</sup>  
day of Feb 19 37, and in the 16<sup>th</sup> year of the Commonwealth.

J. Robert Switzer, Clerk



Feb 15

by delivering the a true copy of the

within Summons to Henry Henry and David E. Bowman

in person;

Clarence W. Hef  
Jas W. Bogle S.R.C.

That Finding Capt Miller at his  
usual place of abode, Executed Feb 15 -  
by delivering a true copy of this  
summon to Violet Miller his  
wife in person at said Capt Miller  
usual place of abode, Violet Miller  
being a member of his family above the  
age of 16 yrs, Clarence W. Hef,  
Jas W Bogle S.R.C.

#200

not finding

William Henry

at his usual

place of abode, Executed

Feb 13

by delivering a

true copy of this

summon to Henry Henry

his husband

in person, at said

William Henry

usual place of abode

Henry Henry

being a member of  
his family above the age of 16 years, and explaining the purpose thereof.

Clarence W. Hef

Jas W Bogle S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

George Crest

Timbernell

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at 9:30 o'clock, a. m., on the 22<sup>d</sup> day of Oct. 19 37 to testify and the truth to  
say in behalf of the Defendant in the prosecution of the Commonwealth against.....

Edw. Linker

who stands charged with and indicted for a felony misdemeanor.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 12<sup>th</sup>  
day of Oct. 19 37, and in the 16<sup>th</sup> year of the Commonwealth.

J. Robert Switzer, Clerk



Edw. Rinker

adp  
Com.

executed Oct 13, 1937 by delivering a true copy of the

within summons to

—In Person.

George Cris  
Lawrence Jeff Day  
Joe L. King & S. R. C.

18  
5  
13  
2  
26  
050  
13  
50  
80

1937  
Oct 22

Clk

FORM NO. 2

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon *Levy Lanty, Bessie Lanty*  
*W. H. Lantier, David Bowman, + C. G.*  
*Jumbo,*

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at 9:30 o'clock, a. m., on the *22<sup>d</sup>* day of *October* 19 *37*,  
to testify and the truth to say in behalf of the Commonwealth against

*Edward Renker*

who stands charged with and indicted for a felony misdemeanor.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the *18<sup>th</sup>*  
day of *Oct.* 19 *37*, and in the *1672* year of the Commonwealth.

*J. Robert Switzer*, Clerk



Clarence Huff Dept  
Jas W Boyle S, R, C.

Deputy for J.W. Bazzle, S.R.C.

Place of abode, Executed Oct 18 by delivering a

162  
28.9  
True copy of this Summons to Ora Hindman  
his daughter in person at said C. Y. Lumb

usual place of abode Orla Luskwood, being a member of  
his family above the age of 16 years, and explaining the purpose thereof.

Clarence Neff Dep  
J. W. Boyle & Co.

usual place of abode: Mrs. David Brown

his wife David Bauman in person at said

True copy of this document to Mrs David Bourne

place of abode, Executed Oct. 18. 1837 by delivering a

Nothing Daniel Burrhead at his usual



VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

COMMONWEALTH

-v-

EDWARD RINKER

Depositions

Deposition of George Crist, taken by consent, at 306 First National Bank Building, Harrisonburg, Virginia, on the 16th day of October, 1937, to be read as evidence on behalf of the Defendant in the trial of the above entitled proceeding in the Circuit Court of Rockingham County, Virginia.

PRESENT: George D. Conrad, Esq., attorney for Edward Rinker.

C. R. Winfield, Esq., attorney for the Commonwealth.

GEORGE H. CRIST,  
after being duly sworn, deposes and says:

Direct Examination

BY MR. CONRAD:

1-Q Mr. Crist, where do you live?

A. Timberville.

2-Q You live right in Timberville?

A. Yes, sir.

3-Q How long have you lived in that neighborhood?

A. All my life; not in Timberville, but within two miles of Timberville.

4-Q What direction did you live from Timberville before?

A. Well, for eighteen years, I lived west.

5-Q What is your age now?

A. Sixty-six.

6-Q You are acquainted with Edward Rinker?

A. Yes, sir.



VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

COMMONWEALTH

-v-

EDWARD RINKER

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A. All my life; not in Timberville, but within two

miles of Timberville.

4-Q What direction did you live from Timberville before?

A. Well, for eighteen years, I lived west.

5-Q What is your age now?

A. Sixty-six.

6-Q You are acquainted with Edward Rinker?

A. Yes, sir.



7-Q You knew about the controversy between Rinker and Miller about some gate down there on the road, I mean some fence on the road?

A. Well, what I knew about it was what I heard over at the trial.

8-Q That was in the Trial Justice Court?

A. Yes, sir.

9-Q You testified as a witness there?

A. Yes, sir.

10-Q How long have you known that road on which this fence was erected?

A. Well, I've known it ever since I've known anything.

11-Q Where does that road begin and where does it end?

A. Well, it began at either place.

12-Q State what road it connects with.

A. It connects with the Rader's Church Road and the Miller Road.

13-Q Both of those roads lead into Timberville, do they not?

A. Yes, sir.

14-Q The Miller Road runs out of Timberville in a westerly direction and then curves around north and runs north, does it not?

A. Yes, it runs in a westerly direction and then it curves around northwest like and joins the Andrick Mill Road.

15-Q And the Rader's Church Road also runs out of Timberville and that road is north of the Miller Road, is it not?

A. Yes.

16-Q And it winds on around in a northerly direction after it leaves Timberville?

A. Northerly direction and then they connect up beyond--



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on the road?

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7-Q You knew about the controversy between Rinker and



17-Q (Interposing) Well, they are connected by the Andrick Mill Road, are they not?

A. Yes, it is connected.

18-Q Anyway, they both run into the Andrick Mill Road, do they not?

A. The Andrick Mill Road connects with this other Rader's Church Road that goes on to--I'll have to go around the way I have it drawed to show it to you.

19-Q Here is the Miller Road coming out there.

A. Yes, that is the Miller Road.

20-Q And it runs into the Andrick Mill Road right at that point as shown by your diagram?

A. Yes.

21-Q And here is the other road, Rader's Church Road, and that also connects with the same road?

A. Right here is Andrick Mill and these two roads connect here and go on to Mount Olive, north mountain road.

22-Q The Miller property is on the Miller Road before that road connects with the Andrick Mill Road, is it?

A. Yes, sir.

23-Q And the road on which this fence was erected goes in right next to the Miller property and runs across to the Rader's Church Road, does it not?

A. Yes, goes clean through.

24-Q And xxx on the way across there it passes the Neff land and land that you used to own down there and is now owned by Deavers?

A. Yes, sir.

25-Q How long have you known that road across there?

A. Well, I can remember it as far back as fifty years.

26-Q What use has been made of the road during that time?



17-Q (Interposing) Well, they are connected by the

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by Deavers?

A. Yes, sir.

25-Q How long have you known that road across there?

A. Well, I can remember it as far back as fifty years.

26-Q What use has been made of the road during that time?



A. It has been used by those people that had land in there to go to their farms, and, of course, some of the farmers used it in going through there when they went to fill silos but I only know that by what the witnesses said over at the trial.

27-Q What, if any, use did the public make of that road?

A. Well, that is what I mean. The public, or Hollar and some of the witnesses said they used to go through there and fill silos, lately, but it hasn't been used very much by the public lately because nobody but what has land in there uses it very much.

28-Q Has any use been made of it by people going to Rader's Church?

A. I couldn't tell you.

29-Q During the time you've known that road, has it been kept open?

A. As far back as I remember, it has.

30-Q Do you know how it was kept up, repaired?

A. It wasn't kept up very much.

31-Q Do you know who did repair it and keep it up?

A. Well, the people that owned the land in there would repair it and keep it up enough that they could get over it and get their crops out.

32-Q It was used generally by those people in there?

A. Yes, sir, I helped keep it up myself.

33-Q How long did you own that piece of land in there?

A. About five years. I don't know exactly.

34-Q Did you use this road to haul crops to and from?

A. Yes, sir.

35-Q Haul seed in and crops out?

A. Yes, sir.

36-Q Did you have any pasture land in there?

A. No, we farmed it all when we had it.



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A. Yes, sir.

36-Q Did you have any pasture land in there?

A. No, we farmed it all when we had it.



37-Q Ever been any gates down there on the Miller end?

BY MR. WINFIELD:

Questions as to the use of the road by the witness are objected to as irrelevant.

BY MR. CONRAD:

38-Q Was the same use made by people who owned adjoining land, which is now the Neff land?

A. What is that?

39-Q Did the people who owned the land adjoining you on that road make the same use of the road?

A. Sure. Mr. Rinker was farming it at the same time the fence was torn down.

40-Q Up to the time Miller fenced up the road, had there ever been any gate on it?

A. Not that I remember of.

41-Q This is a diagram which you have made of the location of this road?

A. Yes, it is a very crude one.

BY MR. CONRAD:

I'll mark a cross here in ink, with your approval, of the road that is in question. The rest of the diagram is in pencil and the part in ink shows the rest of the road in question.

WITNESS:

Yes, sir.

42-Q The part I have marked "XX" is where it was fenced off?

A. Yes, sir.

43-Q You lived within three-quarters of a mile from this land for some years, did you not?

A. Up until I was twenty-one years old.

BY MR. CONRAD:



37-Q Ever been any gates down there on the Miller end?

BY MR. WINFIELD:

Questions as to the use of the road by the witness are

objected to as irrelevant.

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WITNESS:

Yes, sir.

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A. Yes, sir.

43-Q You lived within three-quarters of a mile from

this land for some years, did you not?

A. Up until I was twenty-one years old.

BY MR. CONRAD:



BY MR. CONRAD:

I ask that this diagram be filed, marked as Exhibit for the Defendant.

MEMO: Thereupon, the diagram was marked and filed as "Exhibit, George H. Crist, No. A" to be read as a part of this evidence.

CROSS EXAMINATION

BY MR. WINFIELD:

1-X Mr. Crist, when did you last pass over this land which is claimed by the defendant, Rinker?

A. When did I last pass over it?

2-X Yes.

A. I don't remember.

3-X Can't you say approximately how many years since you last passed over it?

A. Well, if I sold the land about--we owned that land from about 1918 to about 1923, I think, and during that time I passed over it quite often; passed over it with my automobile during that time.

4-X The land that you say was owned by you, at that time, adjoined who?

A. It joined this road, laid along this road, and it joined Charlie Neff and John Hoover. Well, instead of Charlie Neff, it was Charlie Neff's aunt; John Hoover and Charlie Neff's aunt.

5-X The land which was owned by you was in what direction from the J. B. Miller land?

A. North.

6-X Did anybody have a tract lying between?

A. The Neffs owned a tract.

7-X The Neffs owned a tract between the J. B. Miller land and the land owned by you?

A. Yes, sir.



A. Yes, sir.

land and the land owned by you?

A-X The wells owned a tract between the J. B. Miller

A. The wells owned a tract.

A-X Did anybody have a tract lying between?

A. No, sir.

Now the J. B. Miller land?

A-X The land which was owned by you was in what direction  
it was Charles Wells' land? John Hoover and Charles Wells' land?

Joined Charles Well and John Hoover. Well, instead of Charles Well,

A. If joined this road, that along this road, and if  
adjoined who?

A-X The land that you say was owned by you, at that time,  
that time.

passed over it quite often; passed over it with my automobile during  
from about 1918 to about 1923, I think, and during that time I

A. Well, if I sold the land about--we owned that land  
you last passed over it?

A-X Can't you say approximately how many years since

A. I don't remember.

A-X Yes.

A. When did I last pass over it?

which is claimed by the defendant, Mr. Clark?

A-X Mr. Clark, when did you last pass over this land  
BY MR. MINFIELD:

#### CROSS EXAMINATION

used as a part of this evidence.

as "Exhibit" George H. Clark, No. 11 to be  
MEMO: Therefore, the diagram was marked and filed

for the defendant.

I ask that this diagram be filed, marked as Exhibit

BY MR. COMBARD:



8-X How far was the tract that was owned by you from the outlet given by the lane to the Rader's Church Road?

A. You mean from the nearest point?

9-X From the nearest point of the land owned by you.

A. It would have been about 300 yards, I would say.

10-X How far would it have been to the nearest outlet that the lane would have afforded coming southward to the public road that you described as the Timberville-Andrick Mill Road?

A. Well, I would say 600 yards. No, 600 yards would have been half a mile, wouldn't it? I never stepped it but I'll leave it about that way. I'll say six hundred yards.

11-X Your nearest outlet to a public road would have been northward to the Rader's Church Road?

A. Yes, the nearest outlet of that road, but you see I come out of this other road, south, to come up to the orchard. If I would have come out here (indicating)--

12-X (Interposing) I'm asking you where the nearest outlet to the public road would be. I'm not asking you for an explanation, I'm asking you for the outlet to the nearest road.

A. Well, that is what I say, 300 yards to one end and 600 yards to the other, but to come out 300 yards throws me two miles off to where I want to go to the orchard. We hauled fodder and hay from the orchard.

13-X As I understand your diagram, this right of way which is claimed extended from what you described as the Timberville-Andrick Mill Road, first in a northerly direction through the lands of J. B. Miller, the lands of Neff, and the lands owned by you, and then eastward?

A. No, it goes west. It goes west from the Miller Road. It goes west from the Rader's Church Road.

14-X I'm asking you from the Timberville-Andrick Mill



8-X How far was the tract that was owned by you from

the outlet given by the lane to the Rader's Church Road?

A. You mean from the nearest point?

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If I would have come out here (indicating) --

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of J. B. Miller, the lands of Neff, and the lands owned by you, and

then eastward?

A. No, it goes west. It goes west from the Miller Road.

It goes west from the Rader's Church Road.

14-X I'm asking you from the Timberville-Andrick Mill



Road, if you'll just follow my question.

A. Well, it goest west from the Timberville Andrick Mill road.

15-X What is the general direction of the road described by you as the Timberville-Andrick Mill Road?

A. The Timberville-Andrick Mill Road?

16-X Yes.

A. It started out from Timberville south and then it turned west.

17-X I'm not speaking of every little turn but the general direction. Isn't the direction of that road, described by you as the Timberville-Andrick Mill Road, westward from Timberville?

A. Yes, sir, westward.

18-X Then this right of way or lane referred to by you goes off from that Andrick Mill Road practically at a right angle, does it not?

A. No, it goes--at a right angle? No, it goes just as near west, complete west at the other road as from Timberville, although I say it starts out south and turns west and they are both pert nearly in the same line.

19-X Where does that lane or claimed right of way abut on what you have described as the Timberville-Rader's Church Road?

A. Where does it what?

20-X Abut, come to, where does it come to the road, the public road which you have described as the Timberville-Rader's Church Road?

A. It goes to Mount Olive, to the mountain.

21-X What is the general direction of the road described by you as the Timberville-Rader's Church Road to Rader's Church?

A. When it starts out from Timberville, it starts out west and it gets out to the Neff place and it goes northeast, then



Road, if you'll just follow my question.

A. Well, it goes west from the Timberville Andrick

Mill road.

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by you as the Timberville-Andrick Mill Road?

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near west, complete west at the other end as from Timberville,

although I say it starts out south and turns west and they are both

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19-X Where does that lane or claimed right of way start

on what you have described as the Timberville-Rader's Church Road?

A. Where does it start?

20-X About, come to, where does it come to the road,

the public road which you have described as the Timberville-Rader's

Church Road?

A. It goes to Mount Olive, to the mountain.

21-X What is the general direction of the road described

by you as the Timberville-Rader's Church Road to Rader's Church?

A. When it starts out from Timberville, it starts out

west and it gets out to the Well place and it goes northeast, then



it turns again at the Hart place and goes west and continues with little turns directly west, just the same as the other two roads.

22-X Aren't you mistaken as to your directions?

A. Absolutely not.

23-X What is the general direction of the main street of Timberville?

A. The general direction of Timberville? Well, I guess it is about east and west. To stand at the railroad, I would say it runs directly west.

24-X That is, you mean to say from Timberville to Rader's Church the general direction would be west?

A. Part the way it would be west and part the way it would be directly north.

25-X Isn't the direction of that road from Timberville to Rader's Church north?

A. No, sir, absolutely not. Part of it is north and part of it is west, and really part of it is south. You see it turns (indicating direction with hand).

26-X Mr. Crist, how long since you have passed over the claimed right of way?

A. It must be; let's see, I think we owned the land from about '18 to '23 and I passed over it during that time and I don't remember whether I have since that time.

27-X You don't remember whether you passed over it since?

A. I don't remember.

28-X During the time when you owned the land, wasn't there a gate in the lines of Henry Neff where that lane came out on to the Timberville-Rader's Church Road?

A. Not that I know anything about.

29-X Didn't that line pass directly through the barnyard



it turns again at the Hart place and goes west and continues with little turns directly west, just the same as the other two roads.

22-X Aren't you mistaken as to your directions?

A. Absolutely not.

23-X What is the general direction of the main street

of Timberville?

A. The general direction of Timberville? Well, I guess

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to the Timberville-Rader's Church Road?

A. Not that I know anything about.

29-X Didn't that line pass directly through the barnyard



of Henry Neff?

A. No, it was a big wide space there down at the road. I guess it was forty yards wide but it never was closed up.

30-X You mean to say that his barnyard was left open?

A. No, his barnyard was fenced up with his barn.

31-X Isn't it a fact that further westward from where that lane reached the public road there was a gate in the lines of Henry Neff?

A. Not that I ever seen.

32-X That gate was so arranged that it would open into a field or been so arrange that it would shut off passage through the lane?

A. I don't remember anything about it.

33-X Do you know who, at the time when you owned the land referred to by you, owned the land on the easterly side of the southern extension of this lane?

A. On the easterly side?

34-X Yes.

A. I expect Kate Reamer owned it.

35-X Do you know who owned that land before Haun or the party referred to as "Kate Reamer", who was the widow of one Joseph Haun, was she not?

A. Yes, sir.

36-X Do you know who owned that land prior to the time when Haun obtained title to it?

A. Anderson Will or Anderson's wife. She got it from her father and I guess she owned it.

37-X Was there a barn or stable on the Anderson Will land at any time within your recollection?

A. Yes, sir, there was.

38-X Does your recollection reach to the time when



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A. On the easterly side?

34-X Yes.

A. I expect Kate Reamer owned it.

35-X Do you know who owned that land before Hann or the

party referred to as "Kate Reamer", who was the widow of one Joseph

Hann, was she not?

A. Yes, sir.

36-X Do you know who owned that land prior to the time

when Hann obtained title to it?

A. Anderson Will or Anderson's wife. She got it from

her father and I guess she owned it.

37-X Was there a barn or stable on the Anderson Will

land at any time within your recollection?

A. Yes, sir, there was.

38-X Does your recollection reach to the time when



Anderson Will owned the land or when Haun owned it?

A. The barn was put on there when Anderson Will owned it, I think.

39-X The barn was put on it but was there, during the time when Anderson--that Haun owned it--in fact, it remains there yet, doesn't it?

A. Yes, it is there yet. Well, I say it is there yet, but I haven't been up there for a long while.

40-X About how far east of the lane is that barn or stable situated?

A. How far east of the road?

41-X Yes, or to the right we'll say?

A. No, it ain't to the right. It is to the left. Well, it depends on which way you are going.

42-X If you were going northward through the lane, how far to your right would that barn be?

A. Well, it would have to be a guess--200 yards.

43-X Isn't it a fact that for many years there was a gateway in the lane at a point almost due west from this barn that you have referred to?

A. Not that I ever remember. The lane came in--the lane went north. The lane came in or down at the creek east of the Miller place. Let's see. East of where the lane went out through it, the road that we are talking about to the Haun barn--I remember that gate down there.

44-X Just where was the gate that you say you remember?

A. Well, it was about a hundred yards east of this road that goes through there.

45-X A hundred yards?

A. I can show you on this map (indicating diagram).

46-X Start first on the Timberville-Andrick Mill Road.



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That is where I'm speaking of. Where is that on your plat?

A. Right here is where Casper Miller lived (indicating). Right in here would be that barn. Right here is where that gate was, probably two hundred yards or a hundred yards. It was Haun's gate but that was on the Miller Road.

47-X My question referred to a gate on that lane. You say you don't recollect a gate?

A. There was none there that I ever seen since I knowd the road.

48-X Don't you know, Mr. Crist, that in recent years that lane, particularly that part of it that extends eastwardly so as to reach the Timberville-Rader's Church Road, has been grown up in bruch so that it would have been impractical to pass over it with teams?

A. I don't know how its been since we sold the land.

49-X As a matter of fact--

A. (Interposing) It might have been as early as '21 when we sold the land. You can get the record over here and find out.

49-X (Con't) As a matter of fact, the owner of this land through which this lane passes, just left it open for the convenience of the general public, isn't that true, and for their own use?

A. No, it was a public road ever since I knowed it and it was an open road ever since I knowed it.

50-X What is your authority for describing that as a public road?

A. Well, I've always heard old people say it all my life and I know it never was closed. That is what my authority is.

51-X Have you ever known it to be worked by the road supervisors or commissioners?



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 51-X Have you ever known it to be worked by the road

supervisors or commissioners?



A. I suppose it was.

52-X I'm not asking you what you suppose. I'm asking you what you know of your personal knowledge.

A. I say, I suppose it was.

53-X But I'm not asking you what you suppose. I'm asking you what you know. I know I've helped work it a ready.

A. I know I've helped work it a ready.

54-X You've helped work it?

A. Yes, sir, I helped work it during the time I had that land there and I helped during the time I worked for Barney Getz, when I was going on fifteen or sixteen years old.

55-X You and some of your neighbors united in working that road, is that true?

A. I don't know about that. I was paid for working when I worked it except the time I owned it. I worked it for my own use then.

BY MR. WINFIELD:

I think that is all.

BY MR. CONRAD:

Do you waive your signature to this deposition?

A. Yes, sir.

And further this deponent saith not.

Signature waived.

BY MR. WINFIELD:

It is stipulated and agreed that the Defendant, Edward Rinker, admits that he did commit the acts charged in the certain warrant issued on the 20th day of July, 1936, by F. L. Reid, a Justice of Peace, of Rockingham County, on a warrant sworn out by Casper C. Miller, Committee of J. D. Miller, against the said Edward Rinker.



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BY MR. CONRAD:

We, of course, are not going to agree to that stipulation as that would be equivalent to a plea of "guilty" to the warrant.

BY MR. WINFIELD:

You may add this: Except as the said Edward Rinker does not admit that the acts charged in the said warrant were unlawfully done by him.

BY MR. CONRAD:

We'll admit that a wagon driven by someone employed by Edward Rinker was driven through this space and pulled up a post and that the fencing across the road was removed and was not put back.

BY MR. WINFIELD:

That is all that warrant shows.

BY MR. CONRAD:

We don't admit the right of Miller to maintain a fence across there nor do we admit that it was a lawful gate.

BY MR. WINFIELD:

I understand that that question is open to you as a defense.

I want the stipulation as there except that the defendant does not admit that his acts were unlawful.

Isn't it a fact that barbed wire, or whatever constituted the gate, was such that it could be opened and swung around such that you could pass through?

BY MR. RINKER:

It was tied up there and I don't call that no gate.

BY MR. WINFIELD:

If you don't agree to the facts charged in the warrant, I won't agree for the deposition to go in.

BY MR. CONRAD:

Add to that stipulation that the stipulation is without



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prejudice to our right to maintain our defenses, first, that Miller had no right to close up the road by a fence or gate, and, second, that the gate he put across the road did not constitute a lawful gate.

BY MR. WINFIELD:

I think we can agree to that.

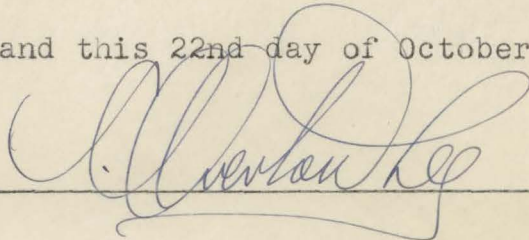
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STATE OF VIRGINIA

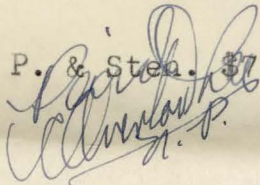
COUNTY OF ROCKINGHAM, TO-WIT:

I, C. Overton Lee, a Notary Public for the County aforesaid in the State of Virginia, whose commission expires on the 18th day of March, 1939, do certify that the foregoing deposition of George H. Crist was taken and sworn to before me and by me reduced to typewriting at the time and place and for the purpose mentioned in the caption thereto.

Given under my hand this 22nd day of October, 1937.

  
\_\_\_\_\_  
N.P.

N. P. & Sec. \$7.00

  
N.P.



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TIMBERVILLE



Clear  
road



Church



Podles X

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X  
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miller

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S

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Roaders Church Road

Orchard Road

Mountain Road

Miller's Land

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neft Land

neft Land

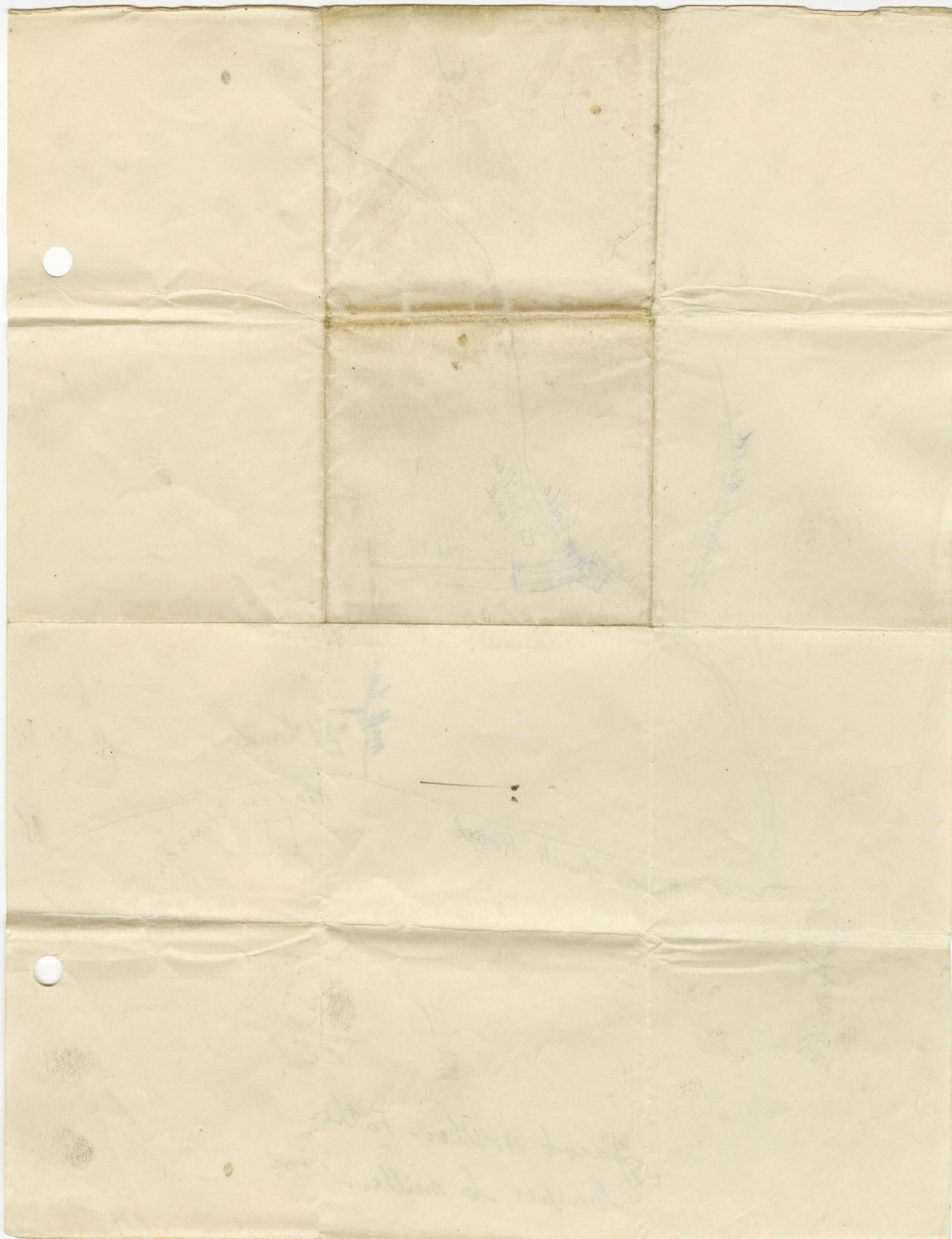
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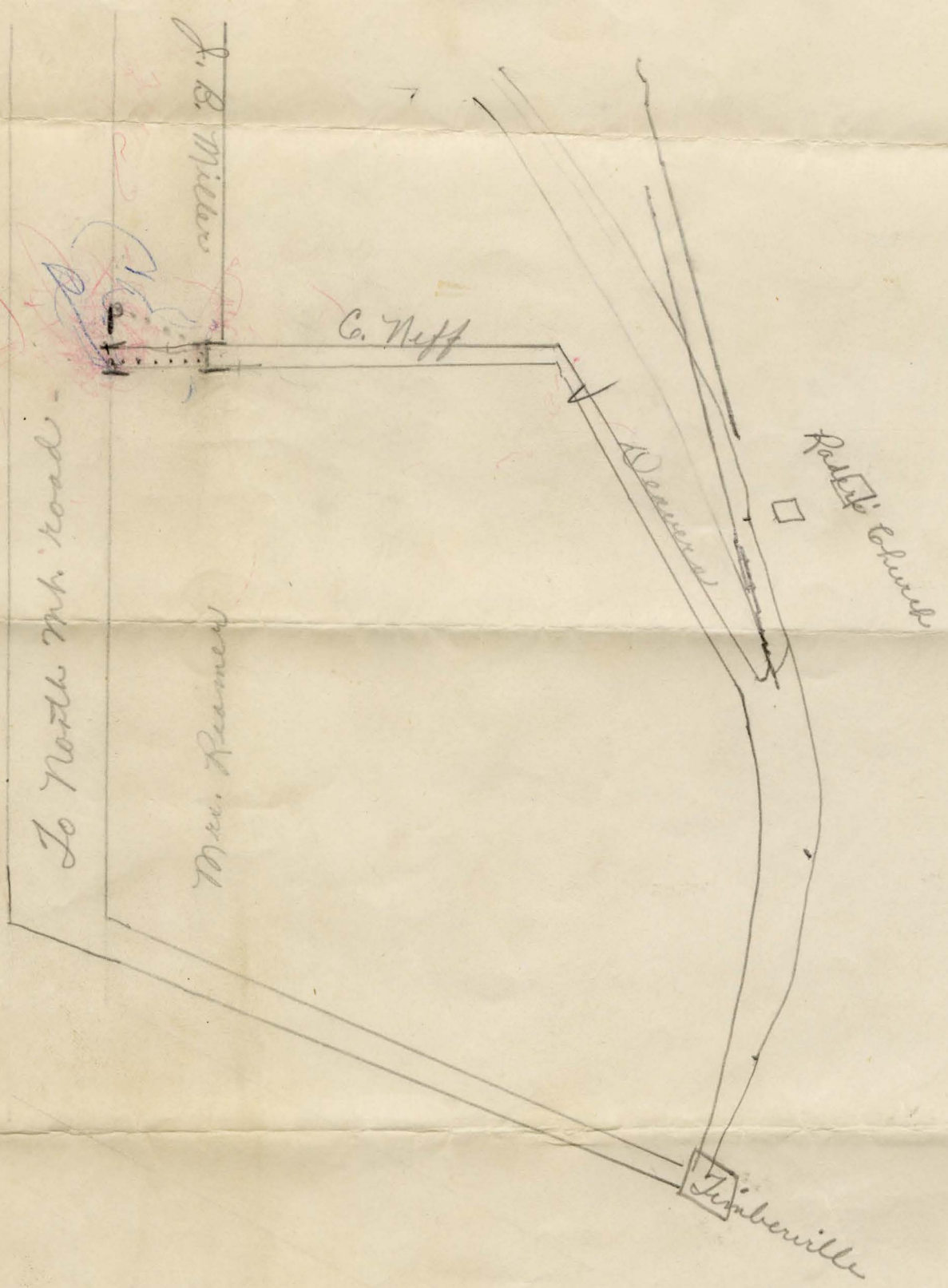
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Jacob Miller - Father  
Casper C Miller - Son











Com<sup>th</sup>

v.

Verville Rinkles +

Others





PLAT  
OF  
THOMAS J. RINKER  
LAND

C. G. Trumbo. surv.  
July 28, 1936.  
scale: 5 Pos = 1"



