

~~bill of exceptions they will be certified to the Supreme Court by the judge under the rule made for such purpose.~~

The witness then identified the photographs one at a time and showed to the jury the directions in which the camera was looking when each photograph was taken and what part of the cutting it was.

The right of way was cut ^{and the trees cut from} on the lands described in the complaint, west of the road and between ^{it} Bayou Volante, ^{also called Fly Creek} There was a spring on the land sixty five feet from the road. Two large red oak trees about ten inches in diameter were cut that were shading the spring. I measured those trees. Down the swath cut along the right of way there were forty six oak trees, seven pine trees and down in the hollow there were twelve juniper trees. The oak trees were water oaks, live oak and some of them red oak. I think there were about nineteen water oaks. I measured them and made a memorandum at the time. This does not include the smaller trees of which I took no count. There was a particular part of my land described in the complaint that had a particular value.

This was two acres just to the south of the road leading from Fly Creek to Sea Cliff wharf; it was between that road and ^{the} William Patterson grant.

This particular value consisted in the lands having a pretty grove of trees. I was fixing it for a park. It is near the resident section at Sea Cliff; it is about eight hundred feet from Sea Cliff wharf. There is a knoll there and most all of those trees that I have described that were cut were on that knoll including all the oaks. The swath crosses the knoll diagonally. Looking toward preparing it for a park I had laborers clean out the undergrowth and the small trees and making it attractive. That particular piece of property was ^{so} much injured for park property by cutting the trees that it would now be useless to try and have ^{for such} it; there are only ^a few of the oak trees left. The swath went right through the park which was a high spot covered with oak trees.

After discovering that the trees had been cut I wrote a letter to the Home Telephone Company. The witness then identified the letter and his counsel read the same to the jury. *It was in words and figures as follows:*

Home Telephone Co.
Mobile, Ala.
Gentlemen:- Last summer Mr. Nixon, your representative, asked me for the

" Mobile, Ala. May 6, 1907

[Handwritten mark]

right of way over my land at Sea Cliff for your telephone line, and I agreed to give it free of cost to you on condition that the line was run over my land where designated by me. I went to Seacliff and met Mr. Nixon and we walked over the entire route across my forty acres of land east of Fly Creek, and Mr. Nixon accepted the route and I therefore gave him a written agreement to that effect.

Now I find that your representatives have violated that agreement with Mr. Nixon, and changed the course of the route south of the road leading from Seacliff wharf east. I therefore notify you that I have instructed my representative at Seacliff that if your employees attempt to erect posts on the route south of the road from Fly Creek east on my land, to have them arrested for trespass, and furthermore I propose to hold you liable for damages for ruining the oak and pine trees which your men have destroyed. You will therefore govern yourself accordingly, for I shall invoke the aid of the law to prevent you in going over that particular route, since I gave Mr. Nixon no ~~xxx~~ such permission.

Yours truly

J.B. Robertson "

After writing that letter I met and had a conversation first with Mr. Nixon and then with Mr. Brown, *representatives of the Home Telephone Company.* About three days after I wrote that letter, Mr. Nixon came to my office with Mr. Brown. He came to see me about that letter he said. I got after him and accused him of not doing what he had promised to do, in my giving him the right of way, and he said he was not at fault, that he had carried out his promise to me to the letter, that he was not to blame; that Mr. Brown was to blame. That he had showed Mr. Brown where to go, and I asked Mr. Brown what he went wrong for, and he said because he didn't think it would make any difference. I met Brown the next week at Seacliff, on this right of way, and Mr. Brown said he did not think those trees amounted to much, and I told him that it did, because it was the place I had intended for a park., and he said he didn't think they were worth much; and I said I expected to get paid for them, and that he had ~~ruined~~ ruined my park. Mr. Bryant came to my office a few days after to see me about the letter and I got after him for disregarding my right of way, telling him that I had been a friend of the Home Telephone Company and that he knew that I had been a friend of theirs and that I gave them the right of way free of cost, on the condition that they went right where I stipulated, east of that road, and that they had violated it and after a few words Mr. Bryant said to me " why we can run it over your house top and you cant stop us ." This was in my office.

Now after that conversation and the conversation with Mr. Brown further trees were cut on the south boundary line of my land. The line of the Home Telephone Company was then erected. They followed the original grant of the right of way after Mr. Pillans came to my office and asked if I was going to stop them from going over my land at all until the question of damage was settled. I said, no I would not ~~an~~ if they would go on the original right of way which I had granted, and this they did, and when they got to the south line of my land they ran their poles down just outside of a line of posts that marked my line and Mr. Barclay's line, I should say from a foot and a half to two feet south of those posts. The cross arms on the poles extended over my line. This was done after my letter was written and after my conversation with Mr. Brown. They cut trees off the right of way; four oaks, two pines, six juniper and a few bay trees that I didn't count. They cut all the trees for about fifteen feet back from my line. I measured those trees myself. One of the pines was fifty seven inches in circumference and the other was fifty five inches in circumference. The oak trees were from eight to eighteen inches. I had been offered two hundred dollars for that two acres before the cutting and I refused it. Before the cutting the land was more valuable for park purposes than any other purpose. It is not now more valuable for park purposes than it was, and is not as valuable for farm purposes as it would be for park purposes.

On cross examination he said, it is about four hundred feet from the nearest residence at Seacliff to the Seacliff road that runs back by the knoll and about eight hundred feet from there to the knoll so that the knoll is about twelve hundred feet from the nearest house, and Seacliff is on a high cliff or bluff which fronts the bay. South of Seacliff is Fly Creek and south of that is another bluff, there being a depression where this creek flows out. The bluff on which Seacliff is situated is 75 feet high and the bluff south of Fly Creek is sixty to seventy feet high. The knoll across

which the right of way was cut is about twenty feet above the creek.

The bluff is just a little east of north of the knoll, and is eighteen or twenty feet high, and southwest of the knoll is a swamp. The knoll is on the east of Fly Creek. During the summer months when people live at Seacliff the prevailing wind is mostly south, from south to southwest. On September 27th, 1906 there was a terrific hurricane which blew down some trees through that country. It blew down some of the pines on that knoll, but none of the oaks. When I went over the right of way nobody was with me but Mr. Nixon and he is now dead. No one was present when Mr. Bryant and I had our conversation. The conversation with Mr. Bryant was probably five or six days after I wrote the letter in evidence. I was not present when any of the cutting was done.

I value the difference in value between that property before the trees were cut off and since they were cut off between two and three hundred dollars; it is worth at least two hundred less; it is just ruined as a park.

Plaintiff then called as a witness HENRY MURRAY who said; I live at Volante back of Seacliff and am familiar with plaintiff's land including the tract described in the complaint. I saw trees being cut on that land in 1907.. I don't know all that was there, don't know their names. This was in the latter part of April or first of May 1907.. The trees were cut in a path. I saw only three people that I knew, one was a colored man named Charley Clayton who was cutting trees; another was Will Davis who was working for the Home Telephone Company. I had been knowing he was working for them quite a while, probably six or eight months.

The witness was then asked; "Did you ever work under him for the Bell Telephone--- for the Home Telephone Company?" Witness answered; "Why I worked half a day. We were dragging poles out of the swamp." Will Davis was there where the men were cutting, I think he was directing their actions.. I asked him did Mr. Robertson give him permis-

sion to cut through there--for the Home Telephone Company to cut through there, and he said he didnt know anything about it, that he was cutting according to orders, and I said no more. I saw what trees were cut and counted them. They were cut in a path straight through the woods on Mr. Robertson's lands. I counted fifty three trees in all. They ran all the way from eight to twelve or fifteen inches, and were oaks, juniper and pine trees; there were some cut that I did not count because I did not think it necessary. There is a road running from Seacliff wharf eastwardly through Mr. Robertson's lands crossing Fly Creek south of which is a strip of Mr. Robertson's land that I am familiar with. It gradually grows higher all the way east. There were a good many oaks and shade trees on that land. Where those oaks were cut it is a kind of knoll or hill like. There were more water oaks on that knoll than the surrounding country. The cut went over the knoll; running about northeast and southwest. The right of way as near as I can come at it is about 28 to 30 feet wide. I know the road that runs almost parallel with Fly Creek; north and south road, next east of Fly Creek. The right of way was first cut on the north side of the road and this is the cutting that crosses the knoll. Afterwards they cut on the east side of the road. They built the line down the path cut on the east side of the road. I know the north line of the de Periet grant which is marked by wooden stobs drove in the ground. The row runs east and west. The poles now erected there are nearly on the line. A few trees were cut north of that line of posts. I counted them; two pines, six juniper and four oaks. These trees were east of Fly Creek and west of the road. The third man I said I knew was Les Cramer. He was a member of the crowd working at the cutting under Mr. Davis. He was the foreman. I saw Mr. Brown over there one Sunday with Mr. Robertson.

On cross examination he said; I am principally in Mr. Robertson's employ most of the time. I cant tell when it was I was hauling poles out of the swamp for Mr. Davis; it was probably a month or a month and a half before I saw the men cutting the trees. I worked as laborer for Mr. Davis who was foreman; he hired me. There are not

many oak trees left on the knoll. I cant say how many because I never took any particular count of them; I counted those that were down, but did not count those that were left. I suppose the knoll would cover about an acre and a half. It is oval in shape. I am not a surveyor. A little part of the ^{line} ~~land~~ that I said bounded the de Feriet grant runs through a swamp. Junipers grow in the swamp, and the juniper trees that I counted were in the swamp.

Plaintiff then called as a witness one Warren W. Worcester who stated, that he knew the land, ~~described in the complaint~~ having sold it to Mr. Robertson and that he himself formerly owned it and was in possession of it. There is a portion of that land more valuable than any other; that is a certain little piece down between a certain hollow and a spring branch.. I think this has a greater value than any other portion of the land. I should say this piece is about 800 yards from the bay at Seacliff wharf and is on a little rise of ground south of the road leading out from the wharf. This is the piece of property which was set apart as a park by Mr. Robertson. This place has particularly pretty trees on it. There are not more trees on that spot than the surrounding spots, because there are more trees at other places than that particular place and in some places they are larger. What gives it value is its position being near the road that goes to the wharf and across the creek and being located so that I think it would make a picnic ground or pleasure resort. There are two springs convenient to that picnic ground and as fine as there is in the county, that I know of. One of them I think is a few hundred feet off, and the other not quite so much. I never measured the distance, but they are not far off. This spot is inclined to be high with a gradual slope towards the east. It is a kind of knoll you might call it.. There were a few water oaks, a few live oaks and some black jacks on it, I guess there were other kinds but I am not sure of it. I never saw any men cutting the trees, but I saw them after they were cut down along the telephone line. The land was worth about fifty dollars an acre for

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four acres, the most valuable ^{part of the} four acres ^{was} this particular knoll which was about two acres or two and a half which we call the picnic ground. What the value was after the path was cut through the road I think would be only a matter of opinion. I would say that the right of way ^{across the park tract} at a guess would be thirty five or forty feet. I never measured it. Only saw it from a distance, a hundred ~~to~~ a hundred and fifty or two hundred feet as I would pass there coming from the Bay. Sea-cliff wharf is a landing place for bay boats.

On cross examination he said: There were not over seven residences along there at Seacliff. Mr. Robertson told me that he intended the place for a park and he had it partly cleared up, the lower limbs of the trees trimmed and some of the underbrush cleared up. There are a score of spots on Fly Creek no doubt that are suitable for use as a picnic ground. This was not the only spot of ground on the length of Fly Creek suitable for picnic grounds; there were plenty of others.

On re-direct examination he said; I know of no other spots as convenient to the wharf nor were there any other spots on Mr. Robertson's land as suitable. Volanta is a growing settlement and so is Seacliff.

Plaintiff then called as a witness John Murray who said on direct examination; I am a carpenter and live right back of Sea Cliff and know where Sea Cliff wharf is and where Mr. Bestor Robertson's land is, and know the character of the land and the little strip south of the Seacliff road. It is not exactly hilly but it is on a rise--on a hill, not as high as the other land back of that. The hill is woody and has springs convenient to it. The wood was pine, oak and ti-ti. The underbrush had been cut out and the trees trimmed on that knoll. The path was cut through the knoll in April, May or June 1907 I knew some of the people who were cutting and some I did not. I knew Will Davis and Warren Worcester. I saw Will Davis bossing the job.

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He told me he was working for the Home Telephone Company. I don't know any more than what he said. I was with Mr. Robertson twice when he took some photographs of the different trees that had been cut down. These trees were right over the spring or mighty near over it. One was a very large tree. That left the spring exposed to the sun. I measured the trees that were cut down and counted them. There were forty six oaks and seven pines. There were small trees cut but we never measured them at all. The large oaks that we measured were from four to eight inches. These trees are lying there yet. The telephone line now runs east of the road that runs north and south.

The witness ~~then~~ testified like the preceding ones as to the location of the poles along the south boundary line of the plaintiff's land and that trees were cut ~~around~~ ^{along on plaintiff's land.} that. He then said: I don't know how long they were cut after the first cutting of the right of way, but I know it was after they were notified not to cut. I saw the men cutting, but I cannot recollect when it was. I was bound to see them, because I passed through there every day.

On cross examination he said. I have lived at Fly Creek thirty-eight years, and am familiar with the banks of the creek ^{along its course} ~~where~~ ^{and down.} boats go up ~~the banks.~~ There are a great many little bluffs like places. I don't know of any that were suitable for picnic grounds. There may be picnic grounds, but they are not as good as Mr. Robertson's because the bluff is too high. There are other places along Fly Creek where people could picnic, but I have never seen them picnic there; nobody ever goes there because they cannot get up there handy. The creek is at certain times navigable by small boats well above that deep hole with the exception of when a norther comes and blows the water out of the bay, and those northerns don't blow the water out of the bay once in five years. Picnics are held in the summer time and the creek is navigable under all circumstances for about a mile and a half, from the mouth, with a small skiff. Robertson's picnic ground is not over a fifth or sixth of the distance ^{from the mouth} that can be navigated with a boat. There are very few places that you can go in there without fixing a road to get in from the boat to the high ~~water~~ ground.

I am doing Mr. Robertson's carpenter work when he has any to do. I work on the wharf and anywheres else around there. I have been a carpenter ever since I have been living there and doing whatever work I can do. My house is a little northeast ^{of} the deep hole. When I went to work I would ordinarily leave my house about 6:30 in the morning and I would get back in the afternoon, unless I was working at Seacliff or Valante, ^{when} ~~and~~ I would go back ^{for} ~~after~~ dinner. Before Mr. Robertson bought Seacliff there was only one house. Of course my daily business did not take me down the creek in a boat. The days that I was home ordinarily were Sundays. When I was with Mr. Robertson taking the photographs I just carried the camera for him. It was a tripod camera. It was held a reasonable distance from the trees --- some times he would stand off twenty five and some times fifty feet. When he was taking the one down the line I think he was 150 to 200 feet off. It just depends upon the observation he wanted to get on the read I suppose. The photographing was done on one trip and the measuring on another trip. There were three of us and we measured with a tape line measuring around the trees. We measured the trees at the place where they were cut off. I counted the trees while two of them did the measuring, I think my son was one and Smith was the other. Mr. Robertson himself did not measure them, personally; he took it down the figures. My son Henry Murray did the measuring. I would see Will Davis pretty near every [✓] day that they were cutting. It took the force over a month to cut through there; they were two months to my knowledge because they cut twice. There were two cuttings done. I don't know which cutting it was that Will Davis was doing ^{when he told} ~~because~~ ^{me} he was employed by the Home Telephone Company. Everybody knew he was boss of the job; everybody knew that in the whole country, around there. I cannot tell when Will Davis did the cutting because I do not recollect, and did not pay any attention to it as it did not concern me. I can't tell any more about it than that Will Davis told me he was working for the Home Telephone Company; I knew he was cutting for the Home Telephone Company and that is all I do know. He has

always been employed by the Home Telephone Company as boss of the job, putting out the wires around my place and everywhere else.

My idea ~~is~~ that he was working for the Home Telephone Company is not based upon what Davis told me ^{but on} what I understand to be the fact. I am satisfied Davis was working for the Home Telephone Company. My boys told me that he employed them to help cut the right of way down *there*. That is all I can tell you. I can not tell anything further than that. I know that he hired them to come in there and work. Davis was foreman of the job. I know he hired my boys to work on the job and that is all I do know. I don't know whether Davis told me that he was working for the Home Telephone Company or not, but I am satisfied because the boys told me he was there working and he was there putting up the wires. What I am certain is that Davis was foreman of the job and he hired my boys and that Davis and his gang cut the right of way. I don't remember whether Davis told me he was working for the Home Telephone Company or not. All I know is he was foreman for the Home Telephone Company and hired my boys to go there and cut. The knoll is about 150 feet from Fly Creek, a nice clean land running down to the water's edge. One could get out of the boat on to the bank of the creek there on the land without walking through the swamp. The prevailing summer wind is generally southwest.

In some spots down there in that country it is very hot out of the wind when the sun is shining. Anywhere in the creek out of the wind it is pretty hot. There is a tremendous high bluff just north of Rock Creek which flows into the Bay something over a mile ^{north} of Fly Creek, and there is just a break in the bluff where that creek runs out into the Bay, and then that bluff continues on down, and ~~then~~ Seacliff gets its name from being on that cliff, and then Fly Creek makes a hole in that bluff and then the bluff runs down and ^{Fairhope} ~~Seacliff~~ and Volante are built on it ~~x~~ south of Fly Creek, so there is fronting on Mobile Bay for four or five miles a cliff which gradually lessens from the north toward the south and there are two great gulleys in the ^{at} ~~the~~ cliffs, through which Rock and Fly Creeks run into the bay.

On Redirect examination he said the spring is just north of the gully ~~shown on the map~~, which gully is north of the knoll.

Plaintiff then called as a witness Richard Murray who testified that he was familiar with Robertson's land and placed the knoll, stating that it was shaded with oak and may be a few pine trees. There was a right of way for a telephone line cut through the knoll. I saw men cutting it and knew the foreman, Will Davis; I do not know what his position was at the time that he was doing the cutting. I know the south boundary of Mr. Robertsons land; there is a line of posts that runs east and west. I cut trees along there just inside of his line. I was employed by Will Davis to do that cutting. Brown set the stakes that the telephone poles are now put up at along the southern boundary. I saw him setting them. I also saw Mr. Brown surveying a line through there. Davis and Brown were together when I was employed. They employed me to help cut the right of way and said it was for the Home Telephone Company. I know that prior to the time they employed me a trespass sign had been painted and put up on that land signed with Robertson's name. I think the sign was "No tree passing on this land". I had seen the sign myself. At the time that Brown and Davis employed me I told them there was a sign there and that I heard that Mr. Robertson was going to have everybody arrested that cut on that land and I told Brown that if he did, he would have to see me out of it, and he said, all right to go ahead, and then I cut some trees on Mr. Robertson's land at Mr. Davis' direction who showed me which trees to cut. There were twelve; four oaks, six juniper and two pines, this was along the posts on the south line.. The posts were within two feet of Mr. Robertson's land, and some of the arms I think extended over his land, and the right of way that I cut was partly on his land as were some of the trees cut. Some of the time Brown was ~~there~~ there while we were cutting this right of way and some time he

line

was not... The telephone ^{line} is now erected along the right of way that I have just described. This is the same telephone line that runs along Mr. Robertson's south boundary and then turns and goes north, east of the north and south road. The first cutting of the right of way was done in a north and south direction, west of the north and south road and the cutting along the south line was about one month after that I guess. The trees that were cut on the south line runs from eight to ten inches in circumference. Besides those which I named were a few Bay trees which I did not count.

On cross examination he said, I was on the land there when Davis employed me. He sent me word that he wanted me to work for him. They were then working south. This was on the cutting of the second north and south right of way, the one east of the road. I worked on it about two weeks, I reckon, I don't know exactly how long. When I started they were pretty well through Robertson's land. The time that I was hired was in the morning before they started to work. This was at the upper end of the Robertson's land at the beginning of the second cutting. The "no trespass" sign that I testified about was down at the little park. The place where I was employed and where I had my talk with Brown and Davis

was about a quarter of a mile from where ^{the} "no trespass" sign was. *There were woods between and you could not* ~~and you could~~ stand where I had that talk and see a ^{trespass} telephone sign down at the park. I saw only one sign, *The* one down at the park. I was at work when they were putting the poles down along the row of posts that ran east and west along the south boundary of Robertson's land. The only "no trespass" sign ^{and} that I saw when I was working down south across east and west was the sign at the park. I could see that sign when I was working on the south boundary. Juniper trees grow in swampy land and half of those that I counted on the south boundary grew in the swamp. About two thirds of the line running east and west was on high ground.

I think Davis was the man who sent for me and he and Brown hired me when I went to work. Both of them were there and both of them talked to me at the same time. They told me they wanted me to work on the line. Most of the talk was between me and Davis. I asked him if he wanted me and he said yes. Brown was there and he was talking too and I told them I had heard about this arresting scrape, and I told Brown that he would have to see me out if he had me arrested, and he said all right to go ahead. As far as I remember that was all that took place. Davis and Brown were standing together and I went up to them and asked Davis if they sent for me and he told me he wanted me to work for the telephone Company. That is as near as I can remember. Then I cut clean down the length of that property to the east of the road, and then came along across the row of posts. We were probably a week cutting north and south; I should say it was about a week and a half that I was cutting on the whole thing, north and south, east and west. I think I was paid in cash, when I knocked off, by Mr. Brown; I didn't sign anything.

Plaintiff then called as a witness Pink Smith who said on direct examination, that he knew Robertson's place and the knoll that had been testified about; that he cut the underbrush from that knoll and burned it up. that he was employed to clean the knoll out by Mr. Robertson by trimming the trees and cutting out the underbrush. I have seen that tract of land since the path was cut through. The trees are lying there where they were cut and the path is cut through the knoll kind of diagonal like. All of the trees in that path were cut out. There were shade trees on the knoll and some of these were cut. I went over and looked to see what was cut and counted forty six oaks. I counted big ones, nice shade trees.. That knoll is high and dry.

On cross examination he said, I think I cut out the underbrush and cleaned up the trees about 1905 or 1906. My broth-

er and I did it for Mr. Robertson; never cleaned it up except once. I have been working for Mr. Robertson off and on ever since he owned the property over there and started Seacliff, and Mr. Richard Murray had been working for him also-- all the Murrays had been working for him; the old man and the boys.

Plaintiff here rested his case.

Whereupon the defendant moved to strike out the plaintiff's evidence and to render a verdict for the defendant, on the ground that the action was in trespass for a direct wrong al-

leged to have been committed by the Home Telephone Company and the evidence wholly failed to show that the Home Telephone Company or its managing officers or directors had directed or in any way participated in the trespass.

Defendant then called as a witness H.W. Brown who testified that he remembered when the right of way was cut over Mr. Robertson's land in 1907 and at that time he was staking out the line for the Central Telephone Construction Company by whom witness was employed. That this company is a construction company that builds telephone plants about the country. Mr. Nixon took me and showed me the place where the spring is, the spring house at the north corner of Mr. Robertson's place, and that was the only place that I was supposed to miss, and in order to do that, I made two different surveys on the north side, in order to catch the right corner and I staid clear of that. That was all I was ever told to miss. Nixon told me that I could go over the land south of the creek and cautioned me to miss the spring house and said nothing else. I did miss the spring house and ran through the land in as direct line as I could. In staking out a line we stake it out to keep from cutting as many trees as we can. We go in the clear places and that is what I did in this case, to cut as few in trimming or cutting as I could.

I choose the line where the trees were sparsest. We were running south to connect with a line which had been built up to Fly Creek before the storm of 1906. The right of way from Mr. Robertson was not showed to me when I staked out the line and I knew nothing of its existence at that time. I knew that a right of way was gotten, but did not know its contents. I had not seen it or read it at that time nor at any time after the line was put up.. After the line was surveyed, that is laid out and surveyed I had nothing to do with the physical work of cutting the right of way and planting the poles. Will Davis had that in charge. He was foreman of the gang doing the work. He was doing it for the Central Telephone Construction Company.

I was born in Illinois and came here to Alabama from Danville, Illinois. I came to Baldwin County from Decatur, for the Construction Company; the Central Telephone Construction Company. We built a telephone line in Decatur, and also an exchange in Cullman and built it on through from Decatur to Birmingham. We built lines in north Alabama and then came down to Baldwin County, for the Central Telephone Construction Company, and also to do work in Mobile. The line for which the right of way was cut was built by the Central Telephone Construction Company. This was the company that furnished the money and did the constructing. It was the Central Telephone Construction Company that cut both rights of way. I know^e nothing of Mr. Robertson's objection to the cutting in the line in which it was first done, until after the cutting had been done. After that had been done I had a talk with Mr. Robertson as to where he wanted the line cut. This was over there on Robertson's property. He and I went over there together and Mr. Robertson showed me the place and that was the first time I ever knew it was so valuable.. He showed me the trees that were cut down, which had been done by the Construction Company, and he said, "I didn't care as to any place on this land that you went, with the exception of this one place., and for

then he showed me, for the first time that I knew, where he had showed Mr. Nixon. He and I went over the ground and he showed me where to cut the second time. He said if I had been fifty feet to the east of the knoll he would not have cared a cent. I don't believe that I know Richard Murray but I know the workman ^{an} who testified. I had a talk with one of the workmen when we started surveying the second line. He told me that Mr. Robertson had told him he was going to have any man that cut any more trees on there arrested, and I told him that I had seen Mr. Robertson and that he had given his permission to go the other way and if Mr. Robertson had any of these men arrested for doing any more trimming, the company would stand by him. That was after I had talked with Mr. Robertson and gone over the right of way with him. I never in any of my talks told any of those people that the Home Telephone Company were doing that work. I was not in the employ of any one except the Central Telephone ^{Construction} Company. I continued in their employ thereafter. Subsequently I left them and went to work elsewhere. The Central Telephone Construction Company had its head office at Waseon, ^{Ohio} ~~Ind.~~. It is a company engaged generally in building telephone lines wherever they may be hired to build them. I staid with that company until ^{it} ~~you~~ left Mobile. This was six months to a year after the cutting on Robertson's land. After Mr. Robertson said he felt aggrieved about the loss of those trees I went to look at the trees. I think this was the next week after they were cut. I went over the knoll. I don't know exactly the names of the trees, but they were what I thought little scrub oaks, and there may have been two or three pines in the bunch. They were not big tall trees. None of them I ~~can~~ think would exceed over thirty feet., they would not average that. The average would be about twenty feet high. The branches were very slender and few in number. The character of the foliage was not such as to thoroughly shade the property. The trees were not far apart so that each could spread out, but the trees were close together. The condition of the woods on the

knoll was such that I did not know I was in a wooded country at all, not to compare to what we had been cutting through. We had run the line from Blakely or Stapleton to Fairhope the distance being close to nineteen miles. Throughout that nineteen miles we ran through the same general sort of country as that which lies between Rock Creek and Fly Creek. The general character ~~of the~~ ^{was} condition ~~is~~ the same along the line until we get to ~~this~~ the point. At this point the other side of the knoll was sandy, and then on this side of the knoll is a gully and still this side of that there is another place where it goes into the swamp and then there is still another swamp. The knoll is between the gully and the swamp, and between that and the creek it is sandy. It was not overgrown with grass or anything of that sort. It was just medium woody. The bulk of the growth was shrub stuff. In some places I saw a butt probably ten inches in diameter, and then there was three or four little branches out of that,, the way the tree would go, something like the way they grow in swampy places, and grow out-- two or three trees would come from one stump. I believe the right of way was cut in May 1907. At that time the trees were in leaf. There was sunshiny weather when the cutting was done over that knoll.

Plaintiff then asked the witness; " Was it a cool shaded place, or not ? " The witness replied; " I almost suffocated all the while we were cutting through there. " You can stand in the swamp and see over this knoll. It is about the height of a man's head, or it may be ten feet high. The way I surveyed it was to stand in the swamp and look over to the gully beyond. The knoll is about seventy five feet square. It is not square but is roughly a circle in shape, but it is cut off square on the north side by the gully. I guess the diameter of the circle would be about one hundred feet. Those trees were not all grouped in the right of way, but they were evenly distributed over this knoll. I took the ⁿ ~~thinnest~~ [^] part of the trees I could find to run through. I did not in cutting the right of

way cut all the trees on Mr. Robertson's park place, but simply cut the width of the right of way. The right of way was fifteen feet in all. This place which I suppose Mr. Robertson calls his park is not over seventy five feet one way and one hundred feet the other. We ran across the narrowest way. We went mostly to the east side of it and did not go through the middle of it.

There is forty feet of the picnic ground left untouched, by the right of way. I could not swear to the exact measurement

of the width of the right of way, but I do not think the full width would exceed fifteen feet clear through. There was a

spring across the gully from the picnic ground, but there was not any in the picnic grounds. Subsequently I took Mr.

Aaron Moog and Mr. Hoyle to look at the property. This was a day or two after I saw Mr. Robertson I think. It was a bright day either in May or June. The sun was shining and it was warm.

It was about nine o'clock in the morning. There were mosquitoes there when I went through the first time. They were a pretty

good size. I think I was bitten by some, but I don't remember.

I went through there during the hours that picnic parties

would use such place I think. I took Mr. Hoyle and Mr. Moog to the place where Mr. Robertson said he was aggrieved by his trees being cut and I showed them the place and the land and we walked about over the place showing them the trees which had been cut.

Subsequent to that time I took photographs of that land. I don't think this was over three or four weeks at most, after the cutting. At that time Mr. Bryant was with me, and he and I drew a map of the lands. We put figures and arrows on that map to indicate the position of the camera and the direction it was pointed when each picture was taken, and numbered and identified the photographs.

At that time I was superintendent of construction. Mr. Nixon was the civil engineer. He died about three months before the trial. Witness then identified the photographs and stated that they ~~were~~ ^{showed the} true and correct state of affairs existing

They were all there, we put the stakes there and within the cutting gang came along, cutting the poles they cut the width of the cross arms and a little of the middle. The cross arms are 18 feet and six inches long.

X

at the time the pictures were taken and that they were fairly taken. ^{He then} went over them one by one with the jury showing how they were taken and explaining them. He then stated, I was not, at the time I staked off this line nor during the time the cutting was done, in the employ of the Home Telephone Company..

On cross examination he said; the cutting of the first right of way was done in May 1907 I think, and the second right of way was cut about a week or ten days after, and I was employed by the Central Telephone Construction Company. The Home Telephone Company now operates that line. I was instructed to go over there and build that line by the Central Telephone Construction Company. I got direct instructions from Mr. Bryant. He is now ^{and was then} manager of the Home Telephone Company. ~~He was at that time man-~~

~~ag.~~ The Central Telephone Construction Company is strictly a construction company. Telephone messages now pass over that wire operated by the Home Telephone Company. It was first operated under the Central Telephone Construction Company. I cant say how long.. You have got to get something in operation before you can dispose of it. I dont know whether the Central Telephone Construction Company was to keep it all the time or were building it to turn over to some one else. They dont tell me that.

At the time of the cutting I was employed by the Central Telephone Construction Company and not by the Home Telephone Company. My salary was paid some times by voucher and some times by pay roll. I collected the money at the Home Telephone Company's office in Mobile, some times in cash and some times by check. I never noticed how the check was signed. I did receive a check signed by the Central Telephone Construction Company for salary. While I was at work on these lines I never received a check signed by the Home Telephone Company for salary.

I don't know whether or not a check to me signed by Home Telephone Company
I saw Bester Robinson in Mobile after this right of way had

been cut. Mr. Nixon and I were together. I believe at that time I told Mr. Robertson that the Home Telephone Company did not cut

the right of way; I wouldn't say for sure; I don't remember the con-

versation. *I won't say that I believe that I told Mr. Robertson that the Home Telephone Company did not cut the right*
 Plaintiff then asked the witness; "Did you deny in any

way that the Home Telephone Co. cut that right of way at that time or in that conversation?" The defendant objected to the question as calling for irrelevant and immaterial testimony and because no declaration or failure of the witness to say anything at that time could bind the defendant company or have any effect on its right in the premises. The court overruled the objection and defendant duly excepted. The witness answered; "I don't think I did."

The time that Mr. Robertson and I went over the right of way after the first cutting he showed me where he had shown Mr. Nixon. Mr. Nixon was employed by the Central Telephone Construction and not by the Home Telephone Company. I don't remember Mr. Robertson telling me that he had given the right of way over that to the Home Telephone Company. He said he granted the right of way..

I don't know that he ever mentioned Home Telephone Company. I followed the route. I do not know that I told him what company I was representing at that time. The conversation in Mobile that I have spoken of between Nixon and Mr. Bestor Robertson and myself was at the Bienville Hotel corner. I do not remember Mr. Robertson telling me that I had violated the right of way given the Home Telephone Company. I told Mr. Robertson that if there was any mistake in trespassing there, it was not Mr. Nixon that it was me that made the mistake if there was any trespass-

ing on that line. The authority I had to cut was from Mr. Nixon as the right of way man who took me over the route and showed me the only place that I was to miss. Mr. Robertson told me that I could go ahead the way that he had given Mr. Nixon the right to cut on the land and he showed me the line and showed me down through this swamp along the line fence and said to go down this line fence. He told me that was what he had showed Mr. Nixon.

of way

X

I don't remember that he ever mentioned Mr. Barclay's land at all. He showed me the line fence and stood there and pointed down there to it. I was certain he did not tell me ^{simply} to go down the right of way to Barclay's land. I am not positive and cannot swear to the width of the right of way.

On redirect examination he said; It is the custom and practice of construction companies after a telephone line has been completed to test it before turning it over, and that custom was followed in this instance by the Central Telephone Construction Company. That was the operation of the line by the Central Telephone Construction Company to which I referred when I ~~said~~ ^{spoke of} the operation. That company does not operate exchanges nor lines permanently, but they have got to operate them in order to test them before turning the line over to the person for whom it was built. At neither of the interviews that I had with Mr. Robertson did he ask me by whom I was employed.

Defendant then called as a witness Will Davis who said that he remembered when the right of way was cut across Mr. Robertson's land in 1907, and that he was at the cutting as foreman for the Central Telephone Construction Company which was building a line from Mobile to Fairhope. I had charge of the gang that cut the right of way. I remember that part of Mr. Robertson's land that he calls his picnic ground or park. The right of way was fifteen feet from the centre on each side making it thirty feet wide as near as I could get at it. We were kind of in the east edge of the picnic ground with our right of way. I knew how to go by the stakes which were put down by Mr. Brown. I had no written right of way of any character, but just followed the stakes. Daily reports were made by the time keeper and I O-K'd each report by signing it. That report was made on stationery with the name printed on it. Those reports were turned in daily by me, so I kept none in my possession.

and have none now in my possession. Mr. Stapleton has a duplicate of them.

A paper which was subsequently introduced in evidence and will be hereinafter set out, was shown to the witness ^{and he identified it} and ~~the~~ ^{he} said ^{that the} signature contained thereon ~~at the time~~ was the witness' signature.

Defendant then offered in evidence the said report identified by the witness, which was in words and figures as follows:

CENTRAL TELEPHONE CONSTRUCTION CO.

Work Report		1907	
Men working at Mobile, Ala.			
Class	Saturday	Poles	Holes set framed
		dug	
Foreman	1	25ft.	2 2 2 6
Time keeper	1		
Lineman	2		
Groundman	6		
Team & driver	1		

MATERIAL USED

Cross-arms, 10 pin., complete No. 8
 Insulators---Pony ---- No. 16

REMARKS: 1 anchor hole dug 3 anchors set, 1 pole snaked
 1 groundman helped Brown stake out. Made 1 cut in at
 Mrs. Mary Stapleton's.

W.H. Davis,
 Foreman

At the time that I was employed by the Central Telephone Construction Company I was not employed by the Home Telephone Company. Mrs. Mary Stapleton's land mentioned in that report is three miles east of Daphne, some miles above this place of Mr. Robertson's where we were working south. I continued from that time working for the Central Telephone Construction Company until we reached Fairhope, being engaged in the same work for the same company during that time. When we went through Mr.

Robertson's land we made the same sort of report, both when we were on Mr. Robertson's land and when we were on the Volanta and other land over which we worked.

On cross examination he said; I have been in the telephone business about four years. I have been employed by the Eastern Shore Telephone Company. That company was managed by Mr. Bryant; I think so, I could not say for sure.

Plaintiff then asked the witness; "Do you know whether or not the Home Telephone -- they connected with the Home Telephone Company in Mobile ? "

Defendant objected to the question because it is irrelevant, immaterial and incompetent. The court overruled the objection and defendant excepted.

The witness then answered; " Yes sir. "

After the connection of that company was made with the exchange of the Home Telephone Company in Mobile, the line in Baldwin County was still managed by the Eastern Shore Telephone Company, the manager of which company was Dr. Mershon. After they sold out I think Mr. Bryant was the manager. I do not know to whom it was sold out. I have been continually working on that line on the Eastern Shore. After the Eastern Shore ^{Telephone Company} sold out my time came from the Home Telephone Company. This was just before the storm in 1906. My time continued to come from the Home Telephone Company up until the storm of 1906, in September.. The first pay day after that I think was on the third of October, and I think ✓ the pay came from the Home Telephone Company. The next pay day after October 3rd. 1906, I drew from the Central Telephone Construction Company. I think Mr. Bryant was manager of that. I am not now employed by any one. I have not been employed by the Home Telephone Company since we finished up., but since then I haven't done anything, only little odd jobs about one day at a time, ✓ since we finished that building. I was laid off when the construction was done on the line which passes over the Robertson land. Since that time I have worked for the Southern Bell

Telephone Company. I did some construction work for them and since I left the Bell I put in odd days with whichever company happens to need me. Since that time I have worked a few days at a time for the Home Telephone Company on that particular line. It is the Home Telephone Company's line that runs up and down through Mr. Robertson's place.

Defendant then called ORRIS STAPLETON who testified that he remembered the right of way cut through Mr. Robertson's land and that he was employed as time keeper for the gang that did the cutting and went through. I was employed by Mr. Bryant. The company that employed me was the Central Telephone Construction Company. As time keeper I paid the men with the Central Telephone Construction Company's money. The vouchers were written by the Central Telephone Construction Company and daily reports were made.

The witness was then handed the statement which was offered in evidence, and stated that it was O.K'd by Mr. Davis who was foreman of the same gang that he was time keeper of. Every day we made a report like that. I was with the gang every day and saw the ~~the~~ Robertson land through which they went, and I think I know the part that Mr. Robertson calls the park ground. The growth on that land consists of oak trees of different kinds,, a few hickory trees, little hickories, and different kind kinds of trees; the trees grew very slender. They did not have wide spreading branches; it was shaded pretty well by the trees because the trees were thick. After the right of way was cut there were lots of trees there. There are still lots of trees there. The picnic ground is still shaded with trees. The gang that went through cut down only the lesser part of the trees. I should say that the area of that knoll is about one and a half acres in a sort of circular place; one side of an acre square is 209 or 210 feet. If a line were drawn across ~~so~~ so as to make a diameter of that rough circle, that line would be ^{about as in the neighborhood of} 210 or two hundred and twenty feet. The right of way ran over on the edge of the knoll, not

through the middle of it. The bulk of the trees on the knoll were left standing.

I have lived in Baldwin County all my life and am familiar with values of land in that part of the country. I saw the land before it was cut and saw it after. I should not say its value was lessened by cutting of the right of way more than twelve or fifteen dollars at the outside. The land is worth just as much now as it was before the cutting I think. I don't think it would lessen the value if I wanted to buy it myself.

I would give as much for it. I don't know how the trees ran in size, I measured them, but they were small trees, no larger than four inches thick across the stump; I did not measure the circumference. I measured with a rule. I measured all the trees that were cut on the whole land both on the picnic ground and off of it. I made a memorandum personally of the thickness, made it on the ground as I measured it. This was probably two weeks after the cutting. I measured across the stump and then put down on the memorandum the size. The trees grew close together and were tall. I am familiar with the woods growing down through that part of Baldwin County. The woods on the knoll differ very little from the character of the woods about ^{not in} the swamp. It is all about the same woods, of the same general character on that knoll as the rest of the woods.

On cross examination he said: I am a brother in law of Mr. Bryant. I was not working for the Home Telephone Company at the time this cutting took place, but was working for the Central Telephone Construction Company. I never worked for the Home Telephone Company.

~~Plaintiffs~~ counsel then asked the witness: "Shortly after this first cutting on this right of way, didn't they go to the house of Mr. Graham at SeaCliff, and at that place have a conversation with Mr. Bestor Robertson here, and at the same time

purchase some telephone poles; junipers for telephone poles, and didn't you inform him at that time that you were working for the Home Telephone Company and that you were purchasing the poles for the Home Telephone Company and at that time he gave you a written order, which Mr. Bryant now has, giving you the permission to cut those junipers for the Home Telephone Company and not for any American or Central Telephone Company ? "

The witness answered : " It didnt say anything about the Home Telephone Company at all, and I didnt say anything about the Home Telephone Company. I have not the order with me, but delivered it to Mr. Bryant. If anything was said about the company I do not remember." I dont remember that Mr. Robertson as soon as I came up complained to me about the Home Telephone Company cutting down his trees different from the right of way which he had granted, and that I said that I had nothing to do with the cutting, but that I was only purchasing the poles for the Home Telephone Company. I dont remember that I did purchase poles that day. When I did so I represented the Central Telephone Construction Company. I have no recollection that I told Mr. Robertson I was purchasing them for the Home Telephone Company. I dont remember saying it. I wont say that I did or didnt, My memory is not clear on that point. He gave me an order and I took it to Mr. Bryant. I dont know whether there was any company mentioned on the order at all. He simply gave me an order for the poles. They were for no particular company. I could have sold them to the Bell Telephone Company, I suppose, if I had wanted to. Mr. Bryant I suppose paid for them; I didnt. I dont know who paid for them. I saw the line of posts between the Patterson and de ^{Grant} ~~the~~ grant. I was the time keeper of the construction gang that cut the right of way along that line of posts. Davis was foreman in charge of the construction gang. Telephone poles were placed on or near the line within a few inches of the posts my recollection is, and they were right in the middle of the right of way, I think about five feet was clear on each side of

making it

the right of way ^{making it} ten feet wide. I don't know whether that is the usual and customary width of rights of way for telephone companies in Baldwin County or not. There might have been some trees which leaned over the rights of way out over five feet from the centre of it. I think a couple of ^{oaks} ~~sums~~ that were dead leaned over and were cut away. I don't know how far those oaks were from the right of way; might have been ten feet. I think I measured every tree. I may have missed one. The average size was three inches, about. I don't remember the largest tree, it was probably ten inches. There might have been some pine trees that were a little larger before I got to this particular spot. I don't remember how many pine trees I measured. The largest pine tree I measured might have been twelve or fourteen inches, across the top of the stump.

I was time keeper for the Central Telephone Construction Company during the entire time they were cutting through Mr. Robertson's land and I was paid by the Central Telephone Construction Company's funds. I signed the voucher of the Central Telephone Company. The money was sent to ~~me~~ in cash to pay off the hands by Mr. Bryant; he sent me the money and the vouchers. Mr. Bryant was then manager of the Home Telephone Company and is now vice president and general manager of said company. He sent cash. All cash to pay the men. Each man had to sign his own voucher. I have none of those vouchers with me. I don't know anything about when the Central Telephone Construction Company turned over this line to the Home Telephone Company. I did not quit before they completed the line. I don't know when they turned that line over to the Home Telephone Company when they constructed it. It might have been June before we completed it. I don't know what took place. I did not continue with the Home Telephone Company right straight along. When the Central Construction Company completed this line they just turned it over. I was with them until the last. It may have been the last part of May or first part of June. I don't remember.

The defendant then called as a witness WILLIAM DRYER who said on direct examination; I have a wharf at Daphne on the Eastern Shore of Mobile Bay, and freight comes over that wharf from the boats. I operated that wharf during the time that the telephone line was being constructed from above Daphne down to Fairhope. Material used in the construction of that ~~wharf~~^{line} was handled over my wharf. It was consigned to the Central Telephone Construction Company I think.

On cross examination he said; he was not personally acquainted with Mr. Robertson's land and knew nothing of the ~~gang~~^{land} down there.

Defendant then called as a witness Aaron Moog who testified as follows: I have been an inhabitant of Baldwin County for about twenty two years and know Mr. Robertson's land just above Fly Creek on the Eastern Shore of Mobile Bay. I know that part of it over which a right of way was cut in 1907. I saw it. I went up and looked at that land. I have traded ^{a good deal} in lands in Baldwin County. ~~I have traded a good deal in lands in Baldwin County.~~ I am acquainted with the value of Baldwin County lands in some places, and I examined this land of Mr. Robertson's and I don't think it was diminished or lessened in value by the cutting over it of the right of way.

On cross examination he said; In my judgment the land south of the road leading from the bridge on Fly Creek, at Worcester's, if it was intended to be converted into a pleasure or picnic resort or park, would not be lessened in value by the cutting away of the shade trees. I am not an expert; I say that I have traded some. Sometimes you may cut trees down and enhance the value of the property because it will give the other trees a chance to spread out. I don't know that the cut-

^{a path}
 ting or ~~these~~ twenty eight feet wide would decrease the value ,
 and I don't know ^{that} it increases the value. The trees that were
 cut down had very little value in my judgment; I suppose about
 fifty cents a tree. I am not a stockholder nor an officer
 or interested in any way or shape in the Home Telephone Company
 and never have been.

On re-direct examination he said: When I went up to
 the land I saw the trees that had been cut; there were some left
 standing. I went there on a pretty warm day; It was hot. It was
 either the last of May or first of June. The prevailing wind
 in summer on the Eastern Shore is southwest.

Defendant then called as a witness one P. A. Parker
 who testified as follows: That he knew Mr. Robertson's land and
 lived just south ^{on the land} next adjoining, ~~the land~~ called Volanta. I know
 where the road runs over Mr. Robertson's property. It runs from
 the head of Seacliff ^{wharf} ~~property~~ back to Mr. Warren Worcester's
 place, and I know where the south boundary line of the Patter-
 son grant is. as I ran the line myself. I know where the tele-
 phone line runs, and am familiar with the property between ~~my~~ ^{my}
 property, Fly Creek, Worcester's road, and that right of way. I
 remember when there was a right of way cut through that proper-
 ty. This was in the spring of 1907. I don't remember the month.
 It was cut by people who were building a telephone line through
 there. I knew that same property before a right of way was cut
 through and have been familiar with it since. What is called
 the park or picnic ground is a little sand knoll, I don't think
 over one half acre in extent out of the water, about one hundred
 feet from the creek and is separated from the creek by a swamp
 and is not conveniently accessible to boating parties. You could
 not get to it by boat except at very high water. You have to go
 up and around. I am familiar with the land that borders Fly
 Creek on both sides. This little knoll is probably the least

suitable for picnic grounds or pleasure place or anything of it
^{of any of Mr. Robertson's land.}
 that sort, I would not consider any of Mr. Robertson's land in

that neighborhood suitable for a picnic ground. It is low and
 the south winds can't get to it, and it is mostly swamp anyway. ✓

There has always been mosquitoes down in that swamp. Some days
 they bite in the day time. It depends on the weather. take a
 sultry day and they will bite more, and that is what we call a
 mosquitory hole. I am probably as familiar as any one with lands
 in that locality, but I have not bought or sold lands in that
 neighborhood.

It was then admitted that the ^{witness} ~~plaintiff~~ was familiar
 with values, and the witness stated, that he would not consider the
 value of the knoll or picnic ground as lessened at all by the cut-
 ting of the right of way across it. At that time witness was
 engaged in the saw milling business and ^{he} manufactured ^{some} ~~at~~ cross arms.
 I sold three shipments I think to the Central Telephone Construc-
 tion Company of Toledo, Ohio.. Two or three shipments were sent
 to Mobile, I can't recollect which, and at the time that this line
 was constructed they drew the arms from my mill and used them on
 this line until my mill was burned. Some of their arms were burned.

^{Central}
 The ~~Southern~~ Telephone & Construction Company bought the arms
 from my mill until my mill burned. It was burned during April
 1907 and some of their arms were burned at the mill at that time.

I am a surveyor and engineer and am familiar with the general
 topography of that country.

On cross examination he said: In answer to the ques-
 tion of whether he was friendly or unfriendly with the plaintiff,
 Why I don't know that I have anything against Mr. Robertson, or he
 me, personally. I don't know what we should have. There is no un-
 friendliness between us. I own the land immediately south of Mr.
 Robertsons.

Defendant then called as a witness W.H. Bryant
 who said; I remember when a right of way was obtained over

Mr. Robertson's land in Baldwin County and am familiar with his land. I know what company cut that right of way. It was the Central Telephone Construction Company which is a company engaged in the construction of telephone lines and exchanges. Its principal business is building--construction. It is located in another state and does construction work all over the United States.

Its present headquarters are at ^{Wauseon,} ~~Warsaw~~, Ohio. It is the company that constructed the telephone line and cut the right of way over Mr. Robertson's land. My connection with that company consisted of an agreement with them to look after their affairs, handle their funds and direct their work. I was at that time connected with the Home Telephone Company. My handling of the funds of the Central Telephone ^{Construction} ~~Company~~ and looking after their affairs had nothing to do with my duties as manager of the Home Telephone Company. The Home Telephone Company did not pay me anything for what I did for the Central Telephone Construction Company. The Central Telephone Construction Company paid me as its agent for what I did for it. I held two jobs at the same time. I held a job for the Central Telephone Construction Company as their local agent. That was simply while they were doing work down in this country. I disbursed practically all the funds for the Central Telephone Construction Company that were disbursed in this section. These funds were furnished by the Central Construction Company. The Home Telephone Company did not have anything to do with those funds. I employed the construction force. I employed them for the Home Telephone Company in the operation of its plant in Mobile, and for the Central Telephone Construction Company, engaged in construction work at Mobile. When the Central Construction Company was building the line down through Baldwin County, a part of which crosses Mr. Robertson's land, ~~or the Company had a right of way over his land.~~ I employed persons for the Central Telephone Construction Company. I employed Mr. Orrie Stapleton and Will Davis who have testified here. The Home Telephone Company had nothing to do with their employment.

Telephone

The Central Construction Company did not build that line for the Home Telephone Company, but for J.C. Monteith. The Home Telephone Company now owns that line having bought it from Mr. Monteith. The Home Telephone Company had nothing whatever to do with the building of that line. At the time the line was being built Mr. Monteith told me what he expected to do with the line. I can't tell what the Home Telephone Company expected to do because it is managed by its directors ^{as} ~~as~~ as to its expectations. I don't remember the exact date that the Home Telephone Company got the line, but it was some time after the cutting, probably six months or a year.

After the witness had testified that he could not tell what the home Telephone expected to do because it was managed by its directors ^{as} ~~as~~ as to the expectations, the defendant asked the witness:

"What did Mr. Monteith tell you that he expected to do with the line?"

Plaintiff objected to the question and the court did not overrule, but withheld his ruling on the condition of the evidence then existing.

The witness then testified as above set out, and after he had testified that it was six months or a year after Robertson's land was cut through that the Home Telephone Company got the line, the plaintiff renewed his objection to the question hereinabove set out, the court sustained the objection and defendant excepted.

The Home Telephone Company did not buy the right of way from Mr. Robertson. It was bought by the Central Construction Company; the Central Telephone Construction ^{Company} ~~Company~~ bought all the rights of way in Baldwin County. The individual who got the rights of way, acting for that corporation, was first Mr. Crockett Stapleton and later Mr. Henry Nixon. Mr. Henry Nixon was representing the Central Telephone Construction Company. The custom and practice of the Central Telephone Construction Company in obtaining rights of way, were to obtain them in the name of the company that it expected to sell to. That practice was followed in this in-

stance and likewise in all of the counties north of Mobile between Birmingham and Mobile; they obtained rights of way for a portion of the distance out of Mobile in the name of the Home Telephone Company, and for a great distance in the name of the Long Distance Telephone and Telegraph Company, but the rights of way were obtained by the Central Telephone Construction Company; and that was the practice pursued here in Baldwin.

Mr. Nixon was employed by the Central Telephone Construction Company and was not employed by the Home Telephone Company. After that first right of way was cut ^I ~~did have~~ ^{had} a conversation with Mr. J. B. Robertson in his office. I don't think anybody else was present. His stenographer might have been there. To the best of my recollection there were just us two. I received the letter from plaintiff which has been introduced in evidence and called on Mr. Robertson and stated that I was sorry to learn that any cutting or any rights of way had been cut across his land different from that he had intended should be cut, and that if we had injured him in any way I was there to apologize for it, and likewise to pay him such ~~monetary~~ damages as was reasonably done to his property, if any. ~~I was then speaking for the Central Telephone Construction Company.~~ At that time the line had not been completed by the ~~said~~ Central Telephone Construction Company and it did not at that time belong to the Home Telephone Company. It was something over six months or a year after this before the Home Telephone Company had anything to do with the line or obtained possession or control of it. Mr. Robertson at this conversation kept saying to me what he was entitled to under the law; that the law allowed him ten dollars a tree etc., and I told him that I didn't come there to talk what he was entitled to under the law, that I came to him as he complained of being injured, with a view of settling the matter; that we didn't care to have any trouble and I was exactly in the same position he would be if he accidentally trod on a man's foot and hurt him.

I was there to apologize for the injury and we wanted to do all that was within reason to repair the injury, to pay him for his injury, and he kept on telling me what he was entitled to by law and so I finally told him if he wanted to talk law, he would have to talk to the lawyers. I told him I only came there to settle the matter amicably and that the only way to settle what he was entitled to would be to send some disinterested parties to look at the land, which I did, sending Mr. A. Moog and Mr. George Hoyle. That was the substance of the conversation. He kept asking me to make him an offer, but I stated that he was the injured party and therefore in a better position to state the amount of the injury done, and all that I could get out of him was that he was entitled to ten dollars a tree, and that he had something like sixty or anyway it figured up to two or three hundred dollars, and he said he would meet us half way, five dollars a tree, and he said would we make him an offer, and I told him I didn't know the land didn't know the nature of the cutting, and he insisted that we make him an offer, and I said suppose we make you an offer of twenty five dollars, and he got mad and said something about its being a ridiculous amount, and then it was that I told him that the only way I could determine anything about the value was to send two men, whom I thought would be fair and who knew the land, and let me know ^{if} any deterioration had taken place by this cutting in a place where it should have been. I did not say anything in that conversation to Mr. Robertson that "we could run through your land and over your house top, if we wanted to and you couldn't stop us". I did not say anything like that, or anything that in the remotest way resembles that. Since that time I have not had any other conversation with Mr. Robertson about this, and ~~never~~ ^{never} at any time have I made Mr. Robertson any such statement. I heard what Mr. Robertson said on direct examination about that statement to him, and I did not say that to Mr. Robertson and nothing that could be construed to that meaning.

I did not direct the gang that did the cutting on

Mr. Robertson's land, nor did I have anything to do with the way they actually performed their work.

In answer to a request to state his entire connection with the physical work of constructing this line the witness said;

I employed, as I stated, Mr. Crockett Stapleton to see the owners of the land and get from the owner^s a right of way from a point, beginning at Blakely and running out nine miles east, and from there south along the coast; to get the rights of way from the various property owners, and try and get it in as direct a line as possible, along the roads as near as possible, making as many cut offs as he in his judgment could, (he was a civil engineer) that would be advantageous in building the line. He then was to take the superintendent of the construction company and show him the right of way. Mr. Stapleton drew a right of way which described the land which this proposed line was to go through ~~and~~ for a certain portion of the distance. I don't know how long he was employed, but subsequently we employed Mr. Nixon on the work. By "we" I mean the Central Telephone Construction Company. I, acting for them, employed each of these gentlemen to procure these rights of way from the various property owners.

and Then Mr. Nixon made a map. He took all the rights of way and made a map, with the approximate location, and went with the superintendent of Construction and showed him about where this line was to go, and the superintendent of construction was under Mr. Nixon's instructions. I was not present over there, nor did I go over and direct the work; I staid in Mobile all the time. I did not direct the gang to cut at any other place than the right of way that Mr. Robertson had given; on the contrary they were instructed to cut by Mr. Nixon's directions along the right of way he had procured. The superintendent who went along and set the stakes was directed to go by Mr. Nixon's right of way.

The foreman of the gang set his poles where the stakes were.

I directed Stapleton and then afterwards Nixon, to get the rights of way, and Nixon went over the rights of way with the superintendent

and I directed the superintendent to stick his stakes which indicated the line which was to be followed as shown by Nixon, and the foreman of the gang put the poles where the stakes were. I did not direct my men at any time to cut anywhere other than the right of way either on Mr. Robertson's land or anybody else's.

At that time I was vice president and general manager of the Home Telephone Company. The business of the Home Telephone Company is operating telephone exchanges. The Home Telephone Company does only minor construction in the way of repairing their lines, and making extensions in Mobile and in Baldwin County if there are any extensions of lines. The Home Telephone Company was at that time strictly an operating company. I had by reason of my office the actual control and management of the affairs of the Home Telephone Company under the directors who primarily have charge of the company; I was the executive officer of the company. The board of directors manage the affairs of the company. The board of directors of the company did not give me any instructions with reference to what I should do in this construction work over there. After the cutting was done and I had seen Mr. Robertson I went over the land itself. I saw this park or picnic ground that I have heard so much about. I would call it a ^{sandy} point or knoll. It is bounded on the south by a swamp, ~~and~~ on the north by a gully, and on the west by the swamp of Fly Creek. It gradually slopes back to the hill. The growth is what we call swamp oak, or little spindling oaks that run up twenty five or thirty feet and are two or three inches in diameter and the limbs point up--no spreading limbs to it. It is about such trees as I am in the habit of seeing called black jack; about that size of oak trees, and down in the swamp part there was a few juniper trees. The forest covering the lands was not of materially different character from the forest of the surrounding kind of like soil, except that there was an oak thicket on this point. There was a little thicker growth there than ~~there was~~ on the land just north of it. There is a little road between the gully and the picnic ground proper. Just north of the road is the

gully. The knoll is bounded on two sides by a swamp and on the west side by the gully. It is some distance from Fly Creek proper. Fly Creek and Bayou Volante are the same thing. After Mr. Robertson had objected, stating that the cutting had not followed the right of way, I instructed both Mr. Nixon and Mr. Brown to see Mr. Robertson and find out from him wherein they had gotten off of the right of way, and to try and get the matter straightened out with him in an amicable way, if possible. That is the same Brown that testified here. Mr. Nixon is dead. I asked them to go and ascertain from Mr. Robertson whether or not he wished to debar the construction of the line along the right of way as originally granted, and if it would be permissible for them to go ahead with the construction along the line of the right of way, on the line as stated he had shown Mr. Nixon. I examined the trees that were cut, but did not count them. I did make photographs. This was two or three weeks after the cutting. That was the same set of photographs about which Mr. Brown testified. Mr. Brown and I went over there together. Those photographs were fair pictures of the condition of affairs that existed when the photographs were taken.

On cross examination he said: I saw the rights of way that were taken and knew they were being taken in the name of the Home Telephone Company of which I was Vice president and general manager. The conversation that I had with Mr. Robertson about which I have testified, in response to the letter in evidence, was in response to a letter written to the Home Telephone Company. Messrs. Pillans, Hanaw & Pillans, of which Mr. Palmer Pillans is a member, is the firm which represents ^S the Home Telephone Company as its attorneys.

Before the trial commenced, the plaintiff served upon the defendant a notice to produce certain paper writings among which was mentioned a letter dated June 7th. addressed to the Home Telephone Company and signed by J. Bestor Robertson. When this point was reached in the testimony of the witness Mr. Bryant

plaintiff moved the court to require the defendant to produce the said letter. The defendant objected to the production of the letter on the ground that the letter was not relevant or material to the issues and in support of its objection submitted the letter to the examination of the court. The court overruled the objection after examination of the letter, and required the defendant to produce the letter. *To this defendant duly excepted.* The defendant ~~thereupon~~ *there*

produced the said letter of June 7th. and handed to plaintiff's counsel who thereupon handed the letter to the witness and asked him if he received that letter from the plaintiff, to which he replied, that he thought that the letter was received. The witness then said that Messrs. Pillans, Hanaw & Pillans were the attorneys for the Home Telephone Company and authorized to act for them.

When I gave the substance of the conversation with Robertson (just above testified about), I tried to recite the conversation as best I could. At that time plaintiff most emphatically did not say that he would consent to my appointing a man and his appointing a man, because I would have jumped at that proposition. I did not say in that conversation that I would have to consult the directors of the Home Telephone Company. I don't remember telling Mr. Robertson that the Central Telephone Construction Company had anything to do with the right of way. I do not remember whether I did or not. It was no secret that the Central Telephone Construction Company was doing the work. I received letters addressed to the Home Telephone Company. I think I know the difference between Black Jack and water oak. All little oaks look alike to me. The trees that were cut there were these scaly barks with big leaves shaped about like the ace of clubs.

Plaintiff's counsel then showed the witness *the* two letters written and signed by the law firm of Pillans, Hanaw & Pillans *and hereinafter set out,* to Mr. Robertson and asked the witness if Mr. Pillans was authorized to write those letters for the Home Telephone Company. The

witness replied: Mr. Pillans' authority consists^{ed} in this; I stated to Mr. Pillans the relation of the Central Telephone Construction Company and the Home Telephone Company and the matter in its entirety and turned it over to him for attention, and therefore I judge that he had authority to write those letters. I also explained to Mr. Pillans that the Central Telephone Construction Company would pay the sum of money mentioned in the letter to settle the matter. The whole matter was placed in his hands to adjust amicably if possible, and if not to defend the suit if brought; so he had authority to write those letters. These rights of way were taken for the Central Telephone Construction Company and ~~did~~ not belong to the Home Telephone Company, and ~~==~~ were not taken by the Home Telephone Company for itself. Mr. Nixon and Mr. Stapleton were not acting for the Home Telephone Company in taking ^{those} ~~that~~ rights of way. In getting the rights of way I was representing the Central Telephone Construction Company, as was the case also in the correspondence before me (referring to the letters mentioned above). In taking the right of way I was representing the Central Telephone Construction Company which paid the right-of-way-man's salary. It was procured in the name of the Home Telephone Company and paid for by the Central Telephone Construction Company, if any consideration was given. The man that took the right of way was not acting for and on behalf of the Home Telephone Company. When I instructed the workmen I did not act as manager of the Home Telephone Company to instruct them where to put the right of way. The superintendent knew that I was the contracting agent of the Central Telephone Construction Company. I don't think I ever saw that document, the Robertson ~~Wright~~ right of way, until after I got the first letter from Mr. Robertson. It was the custom for Mr. Nixon to retain all those rights of way in his possession until he made up his map from them. I don't know that I had that right of way. The map was not made up, nor the telephone line run for the Home Telephone Company, and the Home Telephone Company had nothing to

do with the building of this right of way. Mr. Monteith conferred with me as to the propriety of disposing of this line to the Home Telephone Company, and I stated to him that I thought the probabilities were very good. It was first the intention to build these lines in Baldwin County for the Long Distance Telephone and Telegraph Company in Alabama. Mr. Monteith had built a system of lines from Ohio. It was the intention that these rights of way should be gotten in the name of the Long Distance Telephone and Telegraph Company, but afterwards it was decided that they should be gotten in the name of the Home Telephone Company; that it would better, if the Home Telephone Company saw fit to purchase them, ^{that} the rights of way ~~would~~ be procured in their name, and Mr. Monteith purchased the physical property of the Eastern Shore Telephone Company from Dr. Mershon and let the contract to the Central Construction Telephone Company for procuring new rights of way, and the rebuilding of the entire system with the purpose when completed of disposing of it to the Home Telephone Company, and it was in my opinion a good property for the Home Telephone Company to own, and I so advised them Home Telephone Company. I stated to Mr. Monteith that I thought the probabilities more than favorable, that if this line were established it would be bought by the Home Telephone Company, by the directors of that company. A portion of the rights of way in Baldwin County were taken in contemplation of the Home Telephone Company purchase. This applies to the right of way through Mr. Robertson's land as it was then the opinion of both Mr. Monteith and I that the Home Telephone Company would purchase the line when completed. The right of way was not obtained by the Central Telephone Construction Company for the Home Telephone Company. It was a private investment of Mr. Monteith's and was owned by him for some time. I made no profit out of the sale of the line to the Home Telephone Company. I don't know whether Mr. Monteith intended to make a profit out of it or not. I was not concerned in the profit.

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On redirect examination the witness said: Mr. Robertson did not ask me when I was talking with him, what concern was doing the construction work. My serving as local manager of the Central Telephone Construction Company did not conflict in any way with my duties as Vice president and general manager of the Home Telephone Company, nor were the two inconsistent in any manner.

The defendant then closed his case.

✓ The plaintiff then ^{introduced} ~~presented~~ in evidence letter written by Messrs. Pillans, Hanaw & Pillans to ^{Mw.} Charles L. Bromberg which letter was in words and figures as follows:

" Nov. 20th. 1907

Charles L. Bromberg, Esq.,
Mobile, Ala.

Dear Sir:-

We have your esteemed favor of yesterday notifying us that Mr. J. B. Robertson had turned over to you for attention his claim against the Home Telephone Company for an alleged trespass upon certain lands of Mr. Robertson in Baldwin Co. We note that you suggest the taking up of the matter for adjustment without suit if that be practicable. Replying thereto we have to say, that while we absolutely disclaim and deny any responsibility whatever on behalf of our client and are prepared to establish our position if need be in court, yet the policy of the Home Telephone Company has ever been to avoid litigation and make friends if that be practicable, and we are ready to make to you the same proposition that we have made to Mr. Robertson, said proposition being made wholly without prejudice and for the purpose of composition, that is to say, we offer to pay you fifty dollars in full settlement, satisfaction and release of any and all claims that Mr. Robertson may have against the Home Tel. Co. growing out of the said alleged trespass. We regard this as a very liberal offer and it is our ultimatum not made for the purpose of having a counter proposition, but to be accepted or rejected as your client may deem best.

Very truly yours

Pillans, Hanaw & Pillans "

✓ Plaintiff then ^{introduced} ~~presented~~ in evidence letter of Pillans, Hanaw & Pillans to J. Bestor Robertson which letter was in words and figures as follows:

" June 21st. 1907

J. B. Robertson Esq.,
57 St. Joseph Street
City

Dear Sir:-

We have your favor of the 7th. inst. addressed to the Home

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Telephone Company, a copy of which was sent to us. The original has also been handed us by the Telephone Co. Our earlier reply has been prevented by the writer's engagements in court.

Replying to the matters contained in your said letter, we have to say that the Home Telephone Company is unable to agree to meet your views as to the amount of the damages and we shall have to adjust our differences in court. We have to say however that we see no reason why this adjustment should not take place in a friendly spirit and without any feeling.

As to the cutting west of the road instead of east of the road, as stated in the right of way, according to your letter, we have to say that our client advises us that this was done with your permission as you stated that you were indifferent as to whether the line should run east or west of the road.

Very truly yours

Dictated by P.P.

Pillans, Hanaw & Pillans "

The plaintiff then again took the stand in his own behalf and testified on direct examination; That Mr. Bryant said in the conversation had between Mr. Robertson and Mr. Bryant, that he would have to consult the directors of the Home Telephone Company, and that if he says that he did not so state, then Mr. Bryant's statement is not correct.

Thereupon the plaintiff closed his case.

The foregoing was all the evidence in the case.

The jury returned a verdict for the plaintiff and assessed his damages at two hundred and fifty dollars.

Thereupon the defendant made a motion for a new trial which motion was in words and figures as follows:

" J. Bestor Robertson	" J. Baldwin Circuit Court
Plaintiff	
vs	
Home Telephone Company	
Defendant	

Comes the defendant and moves the court to set aside the verdict rendered by the jury in this cause and grant a new trial, and for ground of such motion says:

1. The verdict is contrary to the evidence.
2. The verdict is so opposed to the evidence as to shock the conscience.
3. The verdict is contrary to the facts in the case.

4. The verdict is not supported by the evidence.
5. The verdict is excessive in amount.
6. The verdict is insufficient in form to support a judgment.
7. The jury disregarded defendant's given charge numbered "12".

Pillans, Hanaw & Pillans".

Endorsed on this is the following:-

Service accepted Mch. 25th. 1909

Frank S. Stone

R.H. Smith

Atty. for Pltiff. "

The court, after hearing argument on the motion, stated that he would grant the motion unless the plaintiff would consent to a reduction of his verdict to one hundred and fifty dollars. The plaintiff thereupon consented to a reduction of his verdict to one hundred and fifty dollars, and upon his so stating in open court, the court announced that, as a verdict for one hundred and fifty dollars, the verdict would stand and that he denied and refused the motion for a new trial, and defendant duly excepted.

Wherefore defendant now tenders this its bill of exceptions ^{the said} in ~~such~~ case, and prays that the same may be signed and certified as such which is now accordingly done by the Honorable Samuel B. Browne, Judge of the Circuit Court of Baldwin County Alabama, on this the ^{6th} day of ^{Sept} ~~June~~ A.D. 1909, the said day being within the time allowed by law for filing bill of exceptions and being also within the time fixed by the court ^{in term time} for filing bill of exceptions ~~in term time~~ upon motion of the defendant.

Samuel B. Browne

Judge of the Circuit Court of
Baldwin County, Alabama

*The above Bill of Exceptions
appears to be fair.
R.H. Smith*

Received of
the
State of
Ohio

Presented June 11, 1909
By
J. C. [unclear]

Filed in my office Sept 13th 1909,
J. C. [unclear]