

RIDDELL, J.:—The land in question was patented in 1848 to Ralph Hackney, and in the grant the land is described as running to the water's edge; it was then, in 1861, conveyed to W. J. Palmer, and in 1863 conveyed by him to William Wilson. The will of William Wilson was registered in 1877, bequeathing and devising all his estate, real and personal, to trustees named, to be by them sold and converted into money to be divided amongst the testator's children as the trustees should think fit and proper, with power to the trustees to sell by private contract or by auction. The testator died in 1877; and the trustees named are his son-in-law, J. M. Fraser, the testator's wife, and his brother, Robert Wilson.

In 1886, one Cunningham was in possession of the property, having a grain warehouse for collecting and storing the grain he bought in his business of grain buyer and an old dock for shipping the same—the warehouse being right down on the beach between the bottom of a hill and the water.

The plaintiff bought the property from Cunningham, but, searching the registry office, found that it belonged to William Wilson's estate. He then went to see Mr. M. Wilson, K.C., brother of William Wilson, who advised him to write to Dr. Wilson, son of William Wilson. He did so, and, after seeing Mr. M. Wilson again, went to see Cunningham and with him went to Nathaniel Mills, then a practising solicitor in Ridgetown, and had "a quit-claim deed, or whatever it was, drawn up" by Mills "for the property." The plaintiff then paid Cunningham \$220, and "it was left then with Mills to get the title straightened out on the register and to get the Wilson heirs to sign off." "All the deeds and papers were left with Mills." At the trial, His Honour said: "I want to have the record shewing that the evidence you propose to give is justified by the facts. Evidence was given of such search for the "quit-claim deed, or whatever it was," as would justify parol evidence being given of the contents of the document; but no such evidence of the contents was offered or given at the trial as is at all definite—the nearest being, on cross-examination, that it was "an agreement or counterclaim . . . a bargain to sell anyway."

The plaintiff went into possession of the property, tore down the warehouse, and took it away, even to the foundation; but left the dock standing—he sold timber, lumber, and stones of the building.

In 1888, the property was about to be sold for taxes in arrear for 1885, 1886, and 1887, and the plaintiff paid the back