

THE WOODSTOCK DISPATCH.
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CHARLES APPELEY & T. CARL L. KETCHUM.
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THE MILL ROAD.

Interesting Case Between Woolen Mill Company and Fred. Moore.

G. F. Gregory and Dr. Stockton General Opposing Litigants—Evidence in Favor of the Plaintiffs and Defendants—A Cloud of Witnesses.

Circuit Court opened at Upper Woodstock on Wednesday morning last, Judge Vanwart presiding. There was but one case, and it was one in which much interest was taken from a public as well as a legal point of view. It was an action brought by the Woodstock Woolen Mills Co. (Ltd) against Fred Moore, for an alleged obstructing of a public highway, and for trespass.

Allison T. Connell Q. C., and Dr. Stockton Q. C., St. John, appeared for the plaintiffs; Geo. F. Gregory, Q. C. and Frank B. Carvell for the defendant.

In empanelling the jury, objection was taken to C. P. Bull by the defence; to H. B. Smith and John Colter by the plaintiffs. The jury as sworn were:—Charles Gallop, Webster Ross, J. Y. Flemming, Harry Kirkpatrick, W. V. Benn, W. A. Gibson, Shepard Colwell.

Mr. Connell in opening for the plaintiffs said that on the first of February last the defendants obstructed the road in the rear of the Woolen Mills, running from King street, which the plaintiffs claim is a public road, and which they claim they had a right to travel over unobstructed whenever they chose. From the first of February until along in the month of May we claim that the defendants have obstructed the road by filling it up, to the limit of their line with logs, and that they had also blocked up the entrance to the road from the mill building, that not only did they block the road with logs, but also by placing a team across the road, preventing the plaintiffs from crossing. We claim that they are also trespassing on our lands. Defendants say that they did not obstruct the road, they deny that the road is a public road, and assert that land which we claim as ours does not belong to us. It is mainly in making our position that the road is a public road that this case hinges and we can prove that for upwards of fifty years this road was so used.

Some time was used in putting in evidence certain documents, a number of objections being raised by Mr. Gregory. Particular objection was taken to a certified copy of a deed of partition between John D. Beardsley and Tobias McLean. Mr. Gregory claimed that this deed was between lessees, that it had nothing in it to affect a contract between the owner in fee and the present lessees. The former lessees could not dedicate the road. In support of his contention Mr. Gregory quoted Wood vs. Veal.

After argument the judge allowed the deed to be put in, noting Mr. Gregory's objections.

The first witness called was James E. Drysdale, who stated that he erected the Hale building. He discovered a cedar post in one corner. To Mr. Gregory he said he did not know anything about the post, nor why it was there.

C. F. K. Dibblee was examined at some length as to a plan of the road which he had recently made.

Tobias McLean said that he came to Woodstock 45 years ago this month. He said: I worked first in the mill that Beardsley & Smith built. It was on the same site the present mill is about. I was in possession of the mill twelve or fourteen years. A road was used by the public, whilst I was there. I have always used the road whenever I wanted to do so. There never was any talk about using the road. Everyone used it as a matter of course.

To Mr. Gregory—I believe King street was given by Mr. English for a road the same fall I came here. I occupied a store on about the same site that the Hale building is. I occupied it about twenty years. Before the brick building now used by plaintiffs was put up, there were a house or two on its site. Mr. English had a store there. The present building was put up after the big fire over twenty years ago. At one stage the witness became impatient and remarked "I have nothing against Fred Moore. He never did anything to hurt me; but I think he has the wrong side of the question this time." (Suppressed Laughter.) All the time I occupied that property not a stick of timber was put upon any but the stream side of the road, that is until I hired a piece of land on the other side from Mr. English.

To Dr. Stockton. Riley's lot was behind Kelly's which faced on King street and the occupants of Riley's lot had to use this street for getting out. Anyone in town could use this road while I was there. I never piled a stick of lumber or any lumber on the north side of the road, nor did I ever know anyone else to do so. I made an arrangement with Mr. Grover who represented the English land a portion of which is that upon which the brick building now stands. Mr. Beardsley represented the mill property. I made the arrangement with Grover for a piece of land on which to pile lumber. From the erection of the brick building, he never knew of anyone piling logs between the road and the brick building.

Mr. Connell raised the question of the admissibility of hearing evidence, of old people, who had heard the opinion of persons, deceased, about old customs.

His Honor agreed that such evidence was admissible, but stated that the crucial point of the case was the custom of the owner of the land. The deeds of the lessees could not find the lessor, after said lessee's lease had expired.

Charles Bohorn.—I know where Woolen Mill's property is. The road was cut out by my uncles, named Riders. I remember the time that my uncles cut this road out. I was about three years old. Road has been used from that time to the present. This road was there before King street was made. I have lived here ever since the road was cut out. I am upwards of 75 years of age. I remember when the brick building was built. The river runs now as it did then.

Arthur McLean testified that he had hauled logs and manure over the road.

Chas. W. Raymond was the first witness examined on Wednesday morning. He said:—There was a road where mill street now is before there was any mill or any mill privilege. I remember the time when there was but one building on this side of the Meduxnakik. There was no street beyond where Mill street now is, where what is now called King street runs. Mill street was a continuation of what is now King street from Main street to the river. The Rileys had no entrance on King street. Their entrance was into the mill road. The road was used generally by the public, and was much more used in winter than in summer, and was much used by the inhabitants of Northampton. My knowledge of that road as a public road goes back for sixty years. That is prior to the time of any leases. The extension of King street was not a public road.

To Mr. Gregory—I am 77 years old tomorrow. I can remember back to the time when I was four years old. Mr. Gregory then produced a deed dated 13th August 1829, showing a lease of this property. Witness said he would not say there was no lease in face of that evidence. Was employed at the mill by Messrs. Beardsley and Smith, and afterwards by Tobias McLean, whom he fixed a crank in 1856. I built a couple of bateaux for McLean some few years after this. I used the road going to the mill almost from my childhood. I do not remember having business with the mill for the past fifteen years. It is my impression that mill road was another road than the extension of what is King street.

To Dr. Stockton—This road has been in use for sixty years I can remember. Mill road along the brick building is the same as it always was.

Chas. Beardsley said he lived on a lot bordering on mill road from 1855 to 1862 or 1863. He used the mill road, and he could remember long before that, that the public used the road for any and every purpose. I knew of tow boats hauling their loads up that road. When I ran a tow boat, loads were hauled up that road. I remember the loads from two steamboats, at least, being hauled over that road.

William F. Dibblee.—Have lived in Woodstock for about 60 years. I am 87 years of age. I operated the mill from 1846 to 1851. It was a public way from the time I came as long as I had anything to do with it. I knew of the use of the mill from 1836. While I operated the mill I never had any objection to anyone using the road.


John Riley was born in Nova Scotia. My father leased a lot on mill road, as it was called, from Richard English. I was six or seven years old. I am now at least seventy. I had no entrance from my house except mill road. I lived in Woodstock up to 1848 on those premises. There was a cedar post in front of a blacksmith shop. There was a cedar post put there after the big fire, by Mr. Beardsley and Jimmy Grover. It was down a good depth. Have been back and forth all these years. When I was a boy it was used by the public in winter and also in summer. Anyone who wished used the road for any purpose. In the winter, mill road was used more than what is now King street.

To Mr. Gregory—When I was living there, Walter Bedell ran the mill. Worked for Mr. McLean just before the big fire. They hauled goods up this road in summer which had arrived in tow boats.

(Continued on Fourth Page.)

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A Scheme of Preferential Trade.

The Colonist and the Exporter of London, Eng., has "reason to believe that when Parliament re-assembles it will be made clear that a scheme of preferential trading has been elaborated, and that next year's budget will be framed upon entirely new lines as regards import duties. It does not follow that the changes will be of any drastic character; indeed, the belief is gaining ground that the desired end will be achieved with the minimum of fiscal change and with very trifling modification of our so-called free-trade policy. According to our contemporary, the most concrete proposal looking towards preferential trade that has yet been laid before the public is that of Mr. J. G. Colmer, who holds an official position in the office of the High Commissioner for Canada. Mr. Colmer's proposition is that the United Kingdom shall extend to the colonies and India preferential treatment in the matter of customs by imposing small specific duties on nineteen articles imported from foreign countries, equal to 3 per cent. ad valorem, similar imports from the colonies and India remaining duty free, as at present. The value of these specific imports is somewhat near £85,000,000 or £86,000,000, at 3 per cent. duty on which would realize roughly two and three quarter millions; whilst the similar imports from the colonies and India, which would still come into England free approximate to £45,000,000. To compensate the British consumer of these imported articles, Mr. Colmer proposes to reduce the import duty upon tea, coffee and cocoa by one-half, absorbing £2,000,000 of the sum raised as above shown.

"Under such a scheme," says The Colonist and Exporter, "there would be practically little or no sacrifice on the part of the buying public, for the expectation is naturally that the 3 per cent. equivalent preference would soon turn the balance of trade in four of the colonies. We should buy less from foreign countries and more from our own people; the taxation would fall in this way upon the foreigner; whilst the millions at home would directly benefit by the reduced duty upon articles of everyday, or what one may even term twice-a-day consumption. This is admittedly a compromise, calculated to avoid wounding the susceptibilities of the out-and-out free trader. There is a powerful body of the thinkers who would—and when the time comes doubtless will—urge that the principal involved should be carried to its ultimate end. Why, they ask, tax £85,000,000 worth of produce, and still permit other £85,000,000 worth of manufactured imports to enter free? Why not treat all foreign imports alike, and, by raising £5,000,000 from customs in this direction, altogether remove the taxes upon tea, coffee, chicory, cocoa and dried fruits? It must be admitted that, from the logician's point of view, they have weight on their side of the argument. But logic and expediency but rarely run hand in hand in this world, and it will be well if the first steps in the desired direction can be achieved without unnecessary friction."—Toronto World.

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