Court Case

Bendall, Jun., v. Goodfellow

Mr Butt and Mr Stone for the plaintiff. Mr Crowder and Mr Hodges for the defendant.

The plaintiff was described as a collar maker and the defendant a labourer, residing in adjoining cottages at Codford. Between those cottages was a gateway, the property of the plaintiff, but through which the defendant claimed a right of way.- The action was brought for a trespass, the defendant having broken the lock of the gateway.- The defendant justified his act, alledging his right.

Mr Butt said the trespass complained of was committed in March. The defendant contended that he, with former occupiers of his premises, had for a period of 20 years used the right of way: - but it was not merely a *user* that gave the right; it must be a *user* adversely and of right against the party whose land he used. It would however be found, that although he had occasionally used the way, it was by permission and that it had sometimes happened when permission had been asked it had been denied.

A man named Edmund Bye, who was in the employ of the plaintiff in 1829 and at different times since, stated that the key of the gateway was always kept at his master's and that no one ever passed through except persons belonging to his master. Or who had obtained his master's consent. There was a growing fence which divided defendant's garden from the plaintiff's property, - and this fence ran down to a pigstie, which was at the end of the house: there was no roadway out of this garden into his master's premises.- In his cross-examination, he said that defendant had no right of way through the gateway:- that the manure for his garden – the meat for his pig – and the pig itself must be taken through the kitchen of his own house:- he had no entrance to his garden but through his own house.

An old man, who occupied the defendant's premises 40 years ago, said he always took the pig through his kitchen for the stye and has many times taken a wheelbarrow through the house.

Thos. Collins never saw any other way to the garden, but through the house.

A young man named Long, who went as apprentice to plaintiff in 1839 and lived with him 7 years, recollected defendant applying for the key of the gates to carry a bucket of wash to the pig and telling him that his master would not allow the gates to be unlocked that night – upon which defendant carried the wash through the kitchen; that sometimes the key was granted to him and sometime denied.

Mr Crowder, for defendant, said he should show that there was no lock attempted to be put upon the gate until about 17 years ago, when the occupier of defendant's premises, threatened to knock it down and it was immediately opened; that from that period up to the time of the alledged trespass, there was not the slightest impediment to the defendant's passing and trespassing; that the right belonged to the house and was necessary to its convenient occupation.- His learned friend had said that the right must be against the will of the other party. This was not necessary. It was sufficient that he had the right and used it for a period of 20 years, whether agreeable to the other party or not.

John Speering, 67 years of age, has frequently seen the occupier of defendant's premises pass and repass the gate:- About 17 years ago old Bendall had a dispute with Alford, the then occupier and denied the key:- Alford said if he did not open the gates, he would break them down: upon which Bendall got the key and let him in.

Other witnesses proved that 30 years ago they took wagons through for the defendant's predecessor and at many other times subsequently; it was also shown that wagons had passed through for defendant.- Sometimes the gate was locked, at other times unlocked; but when the key was asked for , it was not denied.

Mr Butt having replied.

Mr Justice William, in summing up, said – By the pleadings, the defendant must make out to their satisfaction that he had enjoyed a right of cartway over those premises for a period of 20 years, previous to the commencement of this action. It must be made out, not that he had a right, but that he had enjoyed it. If he had the best right in the world and did not enjoy it, that would not do. On the other hand, if he had originally no right whatever, but had enjoyed it for 20 years, he could now claim it. Some of the evidence went to show that more than 20 years ago, he enjoyed that right; but that was of no consequence if it had since been discontinued. In one point of view, however, it might be material, in connection with the subsequent enjoyment, as showing that it had always been usual for the occupiers of the premises to go through the gates. If satisfied as regarded 20 years enjoyment, they would then have to say, whether the defendant enjoyed it permissively – if so, he failed to make out his plea.- It must be uninterruptedly and of *right* for a period of years.

The Jury returned a verdict for plaintiff.

[The whole of the property alluded to in the above action – the cottage of both plaintiff and defendant, with the gateway included – is not worth, we have been informed, any thing near the sum the cost of the suit is likely to amount to. It was one of the most trifling, tedious and uninteresting cases ever brought at an assizes. Yet for upwards of 8 hours, the most eminent counsel of the circuit – Mr Crowder (who, as an advocate, is second to no counsel at the English bar) on the one hand, and Mr Butt on the other, each with an able second or junior – were engaged, paying the most minute and unwearied attention to every fact elicited – exhibiting as much anxiety of interest of their respective clients and displaying as much ability, as if their entire fame or fortune depended on the result; and this may be stated to their honour. The Judge, too, throughout the whole of this long time exhibited unparalleled patience, not withstanding there were frequent contentions about very trifling matters. The case on each side was remarkably well got up; and never was case more stoutly or ably advocated. The defendant, it is stated, is a ruined man. Whether his ruin will be attributable more to his own obstinacy, or to that of the plaintiff, we are not aware.- They have both exhibited a strange predilection for law.]

(*Devizes and Wiltshire Gazette*, Thursday 19th August, 1847)