



DEVIZES COUNTY COURT – Monday
(Before C. F. D. Caillard, esq., Judge)

A MUSHROOM CASE

Edward Akerman v. Arthur Cleather and Edward Beauchamp:-

This was an action brought by the plaintiff, who is a farmer at Chirton. Against two boys, one of them the son of the Vicar of the parish (the Rev. G. E. Cleather), the other the son of Captain Beauchamp (who resides at the Manor House). To recover the value of a few mushrooms - three pints, it was said - which the boys had picked as they walked across Mr. Akerman's meadow one morning, on their way from bathing in the river. Mr. Akerman laid his damages at 10s. : viz. 5s. in the case of each defendant. Mr. Smith of Melksham appeared for the boys.

The plaintiff (Edward Akerman) said - I have, adjoining my rickyard and orchard at Chirton, and enclosed paddock where a large quantity of mushrooms grow, and which I take great care to preserve. To keep people from trespassing I put a notice board up, about half way down the ground, and a short distance from the hedgerow, giving notice that any one found trespassing would be prosecuted. About 7 o'clock in the evening on the 13th of September I saw a quantity of mushrooms growing in this ground, upon beds which I had had prepared for the purpose. Before I had had the meadow prepared no mushrooms grew there to any extent. When they began to grow in the summer I turned the cattle out that my might not injure them. At 6 o'clock the next morning the mushrooms were nearly all gone. I left them for the night with the intention of allowing them to grow larger. I should say there were about 3 pints there. The value of them I can't state exactly, because I have not been in the habit of selling them, I usually gave them away to my friends, and might have had presents in return. On missing them I made enquiries whether any one had been seen picking them, and I have a witness here who saw the defendants take them.

His Honor - Had you ever seen either of the defendants trespass there before? - No. In fact you have never seen them there yourself? - No.

Mr. Smith - Is there not a public footpath across this field?
Plaintiff - Yes.

Mr. Smith - With a gate at one end and a stile at the other? Yes. Where the notice board is put up, there is, I believe, an orchard with apples growing in it? - Yes. And was not this board put up to protect the apples?. No: it was put up to protect the mushrooms. The orchard is not my orchard.

His Honor - I understand you to say just now that the orchard as well as the rickyard was in your occupation?.

Plaintiff - There are two orchards: one belonging to me, the other to another gentleman. The notice board was put up about 2 yards out in my ground from the orchard, and something like 30 yards from the footpath.

Mr. Smith - Could any one following the footpath read the notice on the board? - Answer: I should think they could. I never tried it myself: but I should think a clear sighted man could read it. I had the notice board put up about a month before this happened. Mr. Smith : Well, you have told his Honor that for the preservation of these three pints of mushrooms, you stopt all cattle from coming into the field. Let me ask you, were there not cattle in the field on the 14th Sept.? - Answer : No. Mr. Smith : Were there not some sheep and colts there that very day?. - Answer : If there was, they must have strayed there out of the orchard. There is a gap in the orchard hedge, and they might have strayed through that. Mr. Smith - Then you won't undertake to say that there were no cattle there on the 14th. Do I understand you to say that you make regular beds in this field for the propagation of mushrooms? - Answer : Yes. At the fall of the year I have mahure raked together in heaps for the purpose . Mr. Smith: How large were those beds? Answer: Each was about 5 yards long, a foot and a half broad, and 6 inches deep. Mr. Smith : But do not mushrooms come up on the Wiltshire downs without any preparation? Answer : Not to much extent. Mr. Smith : Why, I think I am correct in saying that on the Wiltshire downs - without any preparation whatever - they may be picked by the sackfull. Is not this so? Answer : No. Mr. Smith : Has not this been an extraordinary year for mushrooms? Answer: Not in general. Mr. Smith : Why I have heard of their being carried about by the donkey load. However, just tell us what is the real damage you have sustained? Three pints of mushrooms, at 10s. ! Pretty good farming that?. Answer : I don't see that I can alter it. I consider that I have been put that much out of my way by losing them. They were worth a lot to me: because I make presents of them to my friends. Mr. Smith : Well, tell us how you make three pints of mushrooms come up to the value you have put upon them? Answer : Perhaps I may have put the damage a little too heavy, but I want to make an example of persons trespassing on my land.

His Honor - The action is brought for trespass as well as damage.

Mr. Smith - Tell us then how much damage you consider was done to your land by these two young gentlemen walking across it; because you have told us that the land was burnt up at the time? Answer : Well, I should put it at 5s. the damage and trespass together, because I can't tell whether they came in through a £shard" or went out through a "shard".

MR. Smith - I believe the Rev. Mr. Cleather is your vicar?. Answer : Yes. And the young gentleman is the son of your vicar? Answer: Yes. And I believe you are not on very cordial terms with your vicar? Answer : I don't know : I have no reason to be otherwise. I respect him as a parson. Mr. Smith - Your farm yard adjoins the churchyard, does it not? Answer: No : rickyard does. Mr. Smith - And some time this year did not the Vicar and Churchwardens alter the wall of the Churchyard?

His Honour - I really do not see that an anterior dispute has anything to do with the case.

Mr. Smith - I think, if your Honor will allow me to proceed, you will see that it does bear materially upon the animus with which this action is brought.

His Honor - There may have been animus, but at present I have no evidence that a trespass has been committed.

Mr. Smith (to plaintiff) - Did not Mr. Cleather and the Churchwardens consider it their duty to summon you before the magistrates for damaging that wall?

His Honor - Supposing he was summoned before the magistrates, how does that touch the case?

Mr. Smith thought it did. [To plaintiff] : You were fined by the magistrates, were you not? Plaintiff : I shan't have anything to say about that. Mr. Smith : Did you not abuse Mr. Cleather in the public streets of Devizes after the decision of the magistrates?. Plaintiff : No. Mr. Smith: I shall call Mr. Cleather to show that you did. And have you not since that time entirely absented yourself from Mr. Cleather's church?

His Honor - Pray, Mr. Smith, has that anything to do with such an action as this?

Mr. Smith said if this action were being tried at *Nisi Prius* the animus would be taken into consideration; but he would not pursue the examination.

Charles Hampshire (a little boy "going into 14") was then called. He said as he was going up Mr. Akerman's rickyard, about half past five o'clock in the morning on the 14th Sept., he saw Arthur Cleather and Capt. Beauchamp's son getting mushrooms in Mr. Akerman's paddock. He was about 30 yards from them, which he first saw them, and he stood and watched them for several minutes, until they go to within about 20 yards of him. He then went milking. Had never seen them there before.

Cross-examined: - Master Cleather had a dark straw hat on, which he took off and filled with mushrooms. - [This was denied. Neither of the boys had a straw hat on. One (Cleather) wore a Marlborough College skull cap; the other a Scotch cap.]

This was the plaintiff's case.

Mr. Smith said on the part of Capt. Beauchamp and the Rev. Mr. Cleather, whom he represented, as the parents of the two defendants, he was quite ready to admit that on the morning of the 14th of Sept. the two young gentlemen did commit the great offence of picking two or three mushrooms out of Mr. Akerman's field. They had, as usual, gone to bathe in a neighbouring river: and on their return, as they passed over the regular beaten track across the field, they did pick some mushrooms (two dozen altogether), which were growing about 3 or 4 yards out of the path. This was the head and front of their offence; and there were few boys who would not have done the same thing. In his opinion Mr. Akerman would have adopted a more neighbourly course if he had gone to Capt. Beauchamp, with whom he had never had the slightest misunderstanding, and complained to him, instead of bringing the matter into Court. Had he done so, Capt. Beauchamp would at once have expressed his regret that his son should have taken anything belonging to Mr. Akerman, and would have taken good care that Mr. Akerman should not be annoyed in a similar way again.

Mr. Smith then called Arthur Cleather, an intelligent looking little fellow, who, in answer to questions put to him, gave an honest, straightforward account of the proceedings. He said, he and Capt. Beauchamp's son had been to the river to bathe, and in returning along the footpath through Mr. Akerman's field they noticed some mushrooms by the side of the path, which they picked and put into the cap he was wearing [a little "Marlborough College cap"]. They did not pick the cap full. He carried the cap in his hand. And when he got home he counted the mushrooms, and found that he had about two dozen. He certainly did not want to rob Mr. Akerman of them, and would not have taken them had he thought he was doing so.

Mr. Akerman - The mushrooms I missed were 30 yards from the path.

Arthur Cleather - The mushrooms we picked were not more than 3 or 4 yards from the path. I saw the notice board, and had read it a week before. It was 32 yards from the path, about a yard from the orchard hedge.

Edward Beauchamp, the other defendant, admitted having taken the mushrooms, but like Arthur Cleather disclaimed an intention or wish to injure Mr. Akerman in any way.

Mr. Akerman said he had no animosity against the lads. He should have summoned any one he had caught trespassing. He should not have brought it to this Court if his expenses had been paid.

Capt. Beauchamp - You never gave me the opportunity to do so.

His Honor - I must say it is a very slight case of trespass. And as far as regards anything like dishonesty, nothing of the kind was intended - certainly not. The only question for me to consider is, a trespass having been committed, accompanied by an indiscretion, what damages I ought to give. Looking at all

the circumstances, it seems to me that merely nominal damages meet the case; and if 1s. Is paid by each defendant it will, I think, be quite sufficient.

[In addition to this, there were however costs to be paid, which, with other legal expenses, will put Mr. Cleather and Capt. Beauchamp to as much as £3 expense].

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