Durrington

Court Case

POWNEY v. KIRBY AND OTHERS

THE ASSIZES – WESTERN CIRCUIT

At Devizes, on Thursday and Friday, before Mr Justice Day and a special jury, the case of "Powney v. Kirby and others" was heard. Lord Coleridge, Q.C., Mr Seton, and Mr Weatherby appeared for the plaintiff; Mr Clavell Salter and Mr Ricketts for the defendant.

The action was brought to recover damages for the wrongful cutting down of certain trees. The plaintiff was a trainer of racehorses, and in the year 1897 bought certain property and a house, with racing stables attached, situated at Durrington, in Wiltshire. The defendant Kirby was the bursar and steward of Winchester College.

The case lasted a very considerable time, and involved the consideration of several deeds. It was shown by the plaintiff that a portion of the land was freehold which he had purchased, and that the remainder of it was copyhold. The other defendants were the warden and scholars of Winchester, and they stated that the land on which the trespass was alleged to have been committed was part of land which had been purchased by William of Wykeham, and had been ever since in the possession of the college. A great deal turned on the way in which the plans had been drawn, and the surveyors on either side pointed out numerous discrepancies in the area of the land delineated on the various plans. An enclosure award of 1823 was put in evidence, and it was admitted that if the land was copyhold it belonged to the defendants, but that if it was freehold it belonged to the plaintiff. When the plaintiff purchased his estate in 1897 part of his land was copyhold subject to the life of one Baker, who died in 1899. It was shown that the plaintiff was admitted to certain copyholds; but the defendants' contention was that by the plan by which the plaintiff purchased the land in question was not conveyed, and that his copyholds extended to another direction. The area of the land in dispute was only 3 roods 13 perches, but in it grew three very fine elm trees, which were cut down by order of the defendants in the spring last year. It was shown by the plaintiff's witnesses that the size of these elms was up to 80ft. in height, that they afforded a shelter to the house, that similar tress could not be grown under 100 years, and that the value of them was not mere timber value, but that something extra should be awarded him. The defendants' witnesses, when called, stated that after careful measurements, both from the ordinance survey and other plans and from personal survey, it was quite clear that the trees did not grow on any land

which came by conveyance or admission to the plaintiff, but that his property came up only to an imaginary line in an undivided close of land; further that the value of the trees had been greatly exaggerated, as quite sufficient trees for shelter purposes had been left on the estate.

His Lordship summed up, and said that the sole point for the jury was to decide whether the plaintiff by the plan in his purchase deed had established his right to the trees, for the other lands had nothing to do with the case.

The jury, after a very long deliberation, returned a verdict for £10 for the plaintiff, and his Lordship gave judgment accordingly, but reserved the question as to the plaintiff's getting any costs to be argued on a future occasion.

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