



Crime and Punishment

North Newnton

Alexander v. Jesse and Others – Trespass - 1824

Alexander v. Jesse and others – This was an action of trespass, for entering part of the plaintiff's land covered with water in the parish of Wilsford, and for several trespasses in May, 1823, on his free fishery, and several fishery there. The defendant, Jesse, justified the acts of the other defendants as his servants, and pleaded a right of free fishery, and of common fishery in himself, in respect of certain estates.

Mr. Serjt. Pell stated the plaintiff's claim to be in respect of his estate, situate at Manningford Bohun, in the parish of Wilsford, part of which was bounded by the river for a considerable distance, and he limited his claim of right of fishery to the extent of his land IN LENGTH, and up to the middle of the stream only, IN WIDTH, such being the common presumption of law until the contrary be shown; and he asked for nominal damages only, the object of the action being to establish the right of the plaintiff, as claimed, in exclusion of all other persons.

After a witness had proved one act, the trespasses were admitted by Mr. Gaselee, (the defendant's Counsel) and two witnesses on the part of the plaintiff then proved a prima facie case by the exercise of the right of fishery by the plaintiff, for more than 20 years; and by Mr. Hitchcock, a former occupier of the same land for a long period. The land on the opposite side of the river was proved to be in the parish of North Newnton, and to belong to William Fowle, esq. It appeared that the defendant has an estate in that parish, a small part of which adjoins the river, but not opposite Mr. Alexander's land, where the trespasses were committed.

Witnesses were then called on the part of the defendant to prove the exercise of the right of fishery by himself and other persons; but one of his witnesses, on cross-examination, admitted that Mr. Alexander, the plaintiff, had, on hearing the defendant's fishing there, desired the witness to forbid him; and that he had also, by the plaintiff's orders, forbidden other persons.

After an able reply from Mr. Serjt. Pell. (who did not think it necessary to call witnesses to rebut the defendants evidence) the learned Judge declared that the presumption of law was as laid down by the plaintiff's Counsel, but that special usage might alter that common presumption, so that one person might have the soil, & another an exclusive right of fishery, or a co-extensive right with the owner of the soil or others; and he left it to the Jury to consider, - 1st whether the plaintiff had proved the trespass on part of the river being his soil. 2d, whether the plaintiff had proved an EXCLUSIVE right of fishery up to the middle of the stream; or 3rd, whether the defendant had proved either an EXCLUSIVE right, or a right IN COMMON with others, to the fishery in question.

The Jury found a general verdict for the plaintiff, on all the points. Damages one shilling, which in this case carries the costs.

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