

## A Question of Right.

Mr. Askham and the Corporation.

### Interesting Proceedings.

BOROUGH MAGISTRATES

HAVE NO JURISDICTION.

At the Cambridge Borough Police Court this (Friday) morning, before Prof. Living in the chair and Mr. A. J. Clay, the adjourned case in which Albert Askham was summoned for wilfully injuring certain property of the Corporation, to wit, the soil of Midsummer Common on September 15th, again came on for hearing.

Mr. G. S. Todd prosecuted, and Mr. O. Papworth represented the defendant, who pleaded not guilty.

Mr. Todd said the case was adjourned on the last occasion because some of the justices were members of the Corporation. That question would not arise that morning. The proceedings were taken under the 15th Bye-law relating to commons in the borough of Cambridge, and that bye-law provided, amongst other things, that any person who so wilfully injured any property of the Corporation should be liable to a penalty of 40s. The facts of the case were these. Mr. Askham, by whom the defendant was employed, was the owner of certain property, which abutted upon Midsummer Common and Auckland-road, and was the building known as the circus. The boundary upon the Common side until recently was a large fence. The defendant, he had no doubt, acting under instructions from his employer, erected on the Common side of this boarding, a low fence, which enclosed a piece of land about 90ft. long and 3ft. wide, which the prosecution alleged was part of Midsummer Common, and which the defendant had no right to enclose. In doing this work, the defendant had sunk into the ground 14 posts, and had injured the surface of the Common to the amount of at least 5s. He would call, amongst other witnesses, the Borough Surveyor, who would produce a plan, which would show the position of the property and the piece of land which had been enclosed. He had no doubt the question would be raised by Mr. Papworth as to their Worship's jurisdiction, and would probably urge that their Worship's jurisdiction was ousted because of a question of right.

Mr. Edward Warham Harry, Surveyor for the borough of Cambridge, produced ordnance plans, showing the site in question, a tracing from the ordnance plan showing the encroachment, and a larger tracing showing the encroachment on a larger scale. These were inspected by the magistrates. In answer to Mr. Papworth, witness said the date of the maps was 1886.

Mr. Todd: Have you called attention to those old posts?

Witness: Yes, sir.

Mr. Todd: Perhaps you will describe what was done in the way of erecting this fence?

Witness: It is a wooden fence, close boarded, supported on about a dozen uprights—I think, really, 14 uprights.

And assuming the fence was removed, what would be the damage done in filling up the holes to make good the damage done—approximately?—About 5s.

Mr. Papworth: Are there some posts at the end of Auckland-road on the Common?—Iron posts, yes.

Do these extend some feet beyond the alleged encroachment on the Common—No.

Do they extend beyond the alleged encroachment at all?—No.

Have you taken any measurement? I am under the impression they do extend?—Oh, no.

You made no survey, and you won't say positively they don't extend a little beyond the alleged encroachment?—I say they do not extend.

Can you say whether the boundary of the property on the other side of Auckland-road, nearer to Cambridge, does not extend a little more on to the Common than this alleged encroachment?—It does.

Mr. Papworth: Some few feet.

The Chairman: That is the western side?

Witness: Yes.

Mr. Papworth: The premises next to the Circus on the eastern side—that fence, I think, stands a little further back than the alleged encroachment?

Witness: I suppose you mean the western side?

No: I have finished with the western side. The other side of Auckland-road.

I don't know the extent of Mr. Askham's property. If you will point out its extent I shall be able to answer you.

From the end of the Circus premises is not the wall of the next property not quite so far on the Common as the alleged encroachment?—No, it is not by about 3ft.

The Magistrates' Clerk: On the eastern side?

Mr. Papworth: Yes, on the eastern side. It is about the same width as the alleged encroachment. Are there two posts coming out from the fence on the Common close to Mr. Askham's property?—I have no doubt there are two, but I can't say for certain. I think there is one.

Is there another one a little further along? Altogether, I put it to you, there are three posts fixed in the Common holding up that fence?—That may be so.

You won't contradict it?—No.

Does the boundary next the Circus property extend on the Common quite as far or a little further than the alleged encroachment?—A little further.

It is obvious that a line drawn from the property on the western side of Auckland-road to the property beyond the Circus would extend beyond the alleged encroachment?—Yes.

Witness: I would like to qualify that statement. That is, measured in a direct line.

Mr. Papworth: Those old posts that Mr. Todd referred to, where are they supposed to be?

Witness: I think Mr. Todd did not say posts; I think he said post. There is a post hole and a broken post.

Where is that?—The broken post is about 20ft. from Auckland-road, in the centre of the encroachment.

What you say is this—there are signs of one post standing a little way in our encroachment?—That is so.

You have examined this alleged encroachment?—I have.

Is it not a fact that some of the original posts are still standing there?—Not that I am aware.

We say, Mr. Harry, we have mended this fence, and that, in doing it, it is exactly in its old place, some of the old posts having been utilised?—I don't think so.

How long have you been in Cambridge?—Twelve years.

Since you have been here, has not the fence in question been there in a more or less dilapidated condition the whole time?—I have no recollection of it.

Have you made any enquiries and ascertained that the fence has been there for over 30 years past?—I have not.

Do you say there was grass growing on this alleged encroachment?—I have no doubt there was.

Have you ever seen any there?—I have never made any observation.

Then I would rather take it you don't know, where would the question of 5s. damage come in?—In the restoration.

There would be no damage done in pulling up the poles and filling the holes with earth?—Yes there would; the soil would be disturbed.

But if the posts are taken out and the holes filled up with good soil, where would be the damage to the existing soil?—There would be no damage if they were filled up with good soil. The difficulty would be to do it.

It is possible?—I don't think so.

You say we have taken no soil of the Corporation away?—No.

Mr. Todd: The property on the eastern side was practically in a straight line with the bill-posting boarding?

Mr. Harry: It was.

So that this new fence stands out three feet from that?—It does.

At this point the Chairman said the magistrates would like to hear something on the question of right.

Mr. Todd submitted that the evidence did not show that the defendant had any reasonable grounds of belief that he was entitled to enclose the land. This new fence was 18 inches or two feet further on the Common than it was before.

Mr. Papworth: We are going to deny that.

John Pearce, similar in the employ of the Corporation, said he had held that position for 15 years. It was part of his duty to inspect from time to time Midsummer Common and other Commons in the borough. During the last 15 years he had known the boundaries of the part of Midsummer Common in question. On September 5th he saw the defendant at work on a fence at the bottom of Auckland-road. Defendant had since admitted to witness that he had erected the fence. There had been a rough railing on the Common, but not

teen posts had been put into the Common to keep this new fence up.

Mr. Todd: Have you known this part for 15 years?

Witness: Yes.

And there was no fence in the position of this new fence?—No.

No fence so far on the Common by 18 inches?—No.

The Chairman: The question is whether the fence is on the Common at all.

Mr. Papworth: Exactly.

The Chairman said the contention was that the fence was upon the property of the person who erected the fence. He thought it was a question for another Court.

Mr. Papworth: That is just what we say.

The magistrates retired, and, after a private consultation, the Chairman said the question was one which that Court could not decide, and they therefore dismissed the case.