

POOLE v. HUSKINSON.(a) Exch. of Pleas. 1843.—There may be a dedication of a way to the public for a limited purpose, as for a footway, &c. ; but there cannot be a dedication to a limited part of the public, as to a parish. And such a partial dedication is simply void, and will not operate in law as a dedication to the whole public.—In order to constitute a dedication of a way to the public by the owner of the soil, there must be an intention so to dedicate, of which the user by the public is evidence, subject to be rebutted by contrary evidence of interruption by the owner.

[Approved, *Bermondsey Vestry v. Brown*, 1865, 35 Beav. 226 ; L. R. 1 Eq. 204. Referred to, *Mercer v. Woodgate*, 1869, L. R. 5 Q. B. 32 ; *Healey v. Batley Corporation*, 1875, L. R. 19 Eq. 388 ; *Vernon v. Vestry of St. James, Westminster*, 1880, 16 Ch. D. 455 ; *Mann v. Brodie*, 1885, 10 A. C. 386 ; *Abercrombie v. Fermoyle Town Commissioners*, [1900] 1 Ir. R. 313 ; *Neaverson v. Peterborough Rural Council*, [1901] 1 Ch. 22 ; *Farquhar v. Newbury Rural Council*, [1909] 1 Ch. 19 ; *Coates v. Herefordshire County Council*, [1909] 2 Ch. 591 ; *Central London Railway v. City of London Land Tax Commissioners*, [1911] 2 Ch. 481 ; *Folkestone Corporation v. Brockman*, [1914] A. C. 338.]

Trespass for breaking to pieces certain gates and posts of the plaintiff, and taking and carrying away the materials thereof. Pleas—first, not guilty ; secondly, as to breaking &c. one gate, and taking and carrying away the materials thereof, a justification under a right of public way, claimed generally for all the liege subjects &c., on foot, and with cattle and carriages ; thirdly, a justification under a right of private carriage-way for the defendant, as the occupier of a messuage and land in the parish of East Bridgeford, in the county of Nottingham, alleging an enjoyment thereof as of right and without interruption for 20 years next before the commencement of the action. To the second plea the plaintiff replied, traversing the right of way as therein alleged ; and new assigned also, that the defendant committed the trespasses in a greater degree, &c. than was necessary for using the way, and for other and different purposes, &c. There was a similar new assignment to the third plea.

(a) This case was decided in last Hilary Term, (Jan. 19), but was unavoidably postponed.

The defendant took issue on the replication, and, after relinquishing so much of the plea of not guilty as applied to the trespasses newly assigned, pleaded payment into Court of 10s. as to these trespasses, which the plaintiff accepted in satisfaction thereof.

At the trial, before Patteson, J., at the Summer Assizes for the county of Northampton, 1842, it appeared that this was an action brought by the plaintiff, who was the surveyor of the highways of the parish of East Bridgeford, in the county of Nottingham, for a trespass committed by the [828] defendant, a farmer in the same parish, in the user of an alleged public carriage-way, called Mill Close Lane, communicating with the Newark turnpike-road. The learned Judge ruled, after argument, that, upon these pleadings, the defendant was entitled to begin; and he accordingly called a great body of evidence to shew that the road in dispute (which by an award of certain commissioners under an act of Parliament for inclosing lands in the parish of East Bridgeford, made in the year 1801, was set out as a public bridge and drift, and private carriage-road, to be repaired by the owners of the adjoining lands) had been, since the award, used generally by the public; from which it was sought to infer a dedication of it to the public by the owner of the soil, whoever he might be. On the part of the plaintiff, it was alleged that this user had taken place, partly without the knowledge of the parties interested in retaining the road as a private carriage-road, and more recently under protest; that, since the date of the award, many persons had been turned back who had attempted to use it; that, at various times, notice-boards had also been affixed in the lane, (by whom it did not appear), cautioning persons against using it as a public carriage-road; and that, within the last twenty years, a gate had stood across it in the same situation as that which the plaintiff had put up and which was broken down by the defendant, and so continued for several years. It appeared, however, that a notion had existed that, under the award, all the parishioners of East Bridgeford had acquired a right to use the road, and some of them had accordingly remonstrated on several occasions with other persons, not parishioners, for using it. In the course of his summing up, the learned Judge stated to the jury, that it did not appear to whom the soil belonged; probably to the lord of the manor; but that, to whomsoever it belonged, the use of it by the public generally would be evidence of a dedication; and that a dedication to the inhabitants of the parish, and persons resorting to their houses, would be in effect a dedication to [829] the public at large. The jury having found a verdict for the defendant,

Whitehurst, in the following Michaelmas Term, obtained a rule nisi for a new trial, on two grounds: first, that the plaintiff ought to have been allowed to begin at the trial; and, secondly, that the learned Judge had misdirected the jury as to the effect of a partial dedication. Against this rule, in last Hilary Term (Jan. 19),

Hill shewed cause. The case was properly left to the jury by the learned Judge, and the verdict is in accordance with the weight of the evidence. The continued user by the public of a carriage-road over the locus in quo, since the award is abundantly sufficient to raise a presumption of the dedication to the public of such a road by the owner of the soil, whoever he might have been. [Lord Abinger, C. B. The objection is to that part of the summing up of the learned Judge in which he said that there would be a dedication to the public, if the owner intended to dedicate to a particular part of the public, as the inhabitants of a parish. It is quite correct to say that the owner cannot make a valid dedication to a part of the public; but is the consequence that which the learned Judge stated, namely, that it became a dedication to the public? In that the direction appears to be incorrect.] It must be admitted that that was erroneous. But this part of the summing up was quite immaterial, and the jury could not have been misled by it.

Whitehurst, (with whom was Waddington), in support of the rule. It was very material. The jury went out, and returned to ask the opinion of the learned Judge whether there had been a dedication; and he told them that they were to decide upon the fact, not himself; but if they thought the owner intended to give the use of the road to the inhabitants of the parish, it would amount to a dedication of the road to the public.

[830] LORD ABINGER, C. B. The direction may have had a great influence on the minds of the jury, and there must be a new trial. The user by the public with carriages, since the award, is no doubt evidence of a dedication by the owner to the public; and the notices which were fixed on posts, and which may be presumed to

have been done with the consent of the owner of the soil, are strong evidence to the contrary. The interruptions also by the overseers, who had the herbage, are very material in the case.

PARKE, B. I agree with my Lord. There may be a dedication to the public for a limited purpose, as for a footway, horse-way, or drift-way; but there cannot be a dedication to a limited part of the public. In that respect the direction of the learned Judge was quite correct; not so the alternative, that, as such a partial dedication was invalid in law, it would nevertheless operate, against the intention of the owner of the soil, in favour of the whole public. I think it would be merely void. In order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an intention to dedicate—there must be an *animus dedicandi*, of which the user by the public is evidence, and no more; and a single act of interruption by the owner is of much more weight, upon a question of intention, than many acts of enjoyment. As to the ownership of the soil, I do not apprehend that there is any difficulty. It remains in the lord of the manor, for that portion of the soil only is taken from him for which he receives compensation, and which is allotted to others.

ALDERSON, B., and GURNEY, B., concurred.

Rule absolute.^(a)

(a) The cause was tried again at the Summer Assizes, 1842, before Alderson, B., who ruled that the plaintiff was entitled to begin, and he obtained the verdict.