

DISPUTE AS TO A TOWING-PATH.—John Embry, Wm. Stephens, and James Howells, were charged with having, on the 12th inst., wilfully and maliciously destroyed a certain amount of garden plants, the property of Robt. Parry. All the defendants were bargemen on the river Wye. The damage was alleged to have been done on an island in the river rented by the plaintiff. The case involves considerable public interest, at least as far as the navigation of the Wye at this place is concerned. Through the island in question there is a towing-path, which it was asserted the plaintiff had broken up, so that the defendants could not tow their barge without treading the potatoes, said to be damaged to the value of 6d. Mr. George appeared for the defendants, and suggested that the Bench had better select one of the defendants, and examine witnesses in reference to the charge against him, and if they convicted him the evidence would be the same against the others.—The Bench consented.—Robert Parry was then called, and stated that he rented an island below Wye-bridge, on the left side of the river; it is planted with potatoes, broad beans, and kidney beans; saw the defendant Embry and two others on the island among the potatoes; there was damage then done; has laid the damage at 6d.; Embry was the nearest to the river side, and did not do so much damage as the other two; is not sure which did the damage, but it was one of the three.—Cross-examined by Mr. George: I cannot swear it was Embry who did the damage; I have had the island for the last two years, and some years before that I had it for seven years; between these two periods it was rented by Thomas Davies; when he had it he did not leave a towing path through it for the bargemen; I will swear it is not a constant practice to go through that island to tow the barges, at least through the part where the potatoes are, but I admit there is a right of way through the gravel; I do not know that Embry has been in the constant habit of crossing the island; I do swear that where the men were they had no right to be; I did take a man named Knight with me to judge how much damage had been done; I have not got Knight here to-day; he did not tell me that the men had only been among the potatoes to clear the rope of the barge.—No other witnesses were examined for the complainant.—Mr. George then addressed the Bench, remarking that, although he appeared for the defendants in this case, still it was not in order to exempt them from payment of the damage, if any had been done, but upon a much broader principle. The damage was laid at 6d., and it would have been much easier for the defendants at once to pay the sixpence than appear in Court to-day. The result of this case was of the greatest importance to the towns of Monmouth, Chepstow, Ross, and Hereford, and to all who were concerned in the navigation of the river Wye. The complainant attempted no less a thing than to render the navigation of the Wye impracticable by stopping the towing-paths. If Mr. Parry could at his pleasure prevent the bargemen from entering the island he rented, he could thereby entirely prevent barges from being towed up the river. He claimed a right for the bargemen to enter the island, and should be able to bring forward witnesses to prove that this right had always been enjoyed without interruption. This was a question of right, to decide which the Magistrates had no jurisdiction. He was therefore fully prepared to have the matter tried in a superior Court, whenever Mr. Parry was disposed to bring it forward. Having referred to several Acts which bore on his view of the case, Mr. George called Benj. Hyam, who said he was a managing clerk for Mr. Swift; had known the island in question for 40 years; during which time he had had to do with barges navigating the river Wye, and had seen many persons hauling the lines on the gravel and the lower part of the island; had seen bargemen a great number of times on the island; when there was much water in the river it was necessary to go on the island.—The witness was cross-examined by Mr. Parry, but his statement was only a repetition of what he had before stated.—Mr. George Watkins, timber-merchant, stated that he had on the 12th instant a barge brought up the river by four men, which number was the proper complement to that barge; had known the island in question for 30 years; it was necessary for persons who had to tow barges to go on the island, especially when the water was high, otherwise they would be to their knees in water. Cross-examined: The line that day went fast in the kidney bean sticks; there was always a path through the middle of the island; I can bring witnesses to prove that there has been a path through this island for forty years. By the Mayor: The tonnage of the barge was

years. By the Mayor: The tonnage of the barge was registered at 18 tons.—George Davies, the captain of the barge, deposed that he had navigated the river for the last 20 years; the men on the day in question took the usual path through the island; there was then a path through it, and he had always seen a path through it. Cross-examined: 6 men would be the proper complement to the barge; the men were bound to go on the island to clear the line; if there had been 20 men to the barge they must go on the island.—George Morgan, a captain of one of Mr. Swift's barges, deposed that he had been on the river for 33 years; had frequently towed through the island, and had never been hindered; when Thomas Davies had the island he left a path through it, which is now broken up; the path was within 20 or 30 yards of the bottom, and it turned around the sides.—Joseph Jeremy, who had been a bargeman for 20 years, gave similar evidence; and Wm. Stephens, who had been navigating the river for 40 years, stated that on the day in question no more damage had been done than was necessary to clear the line; the island was planted so close to the river that no path was left, and the sand along the bank had been taken away, so that the water was deeper than it had been. In cross-examination, this witness told the complainant that he had sold the sand, and that the money had found its way to his pocket, which,

however, the complainant denied.—James Saunders gave similar testimony to the foregoing witnesses. The Magistrates, having retired to consult, returned and said that they had decided to adjourn the case in order to have time to go and view the island.—Mr. George, having acquiesced in this, said that, as he contended that the Magistrates had no jurisdiction in the case, he was fully prepared to have the matter tried in a superior Court, and in reference to the defendant Embry, lest Parry should think he had a poor man to deal with, he would put down any sum of money equal to what Mr. Parry would put down, to have the case tried.

Hereford Times - Saturday 29 July 1854

Image © THE BRITISH LIBRARY BOARD. ALL RIGHTS RESERVED.

#### MONMOUTH.

THE TOWING-PATH THROUGH THE ISLAND NEAR WYE-BRIDGE.—On Tuesday the borough Magistrates, J. Powles, Esq., Alderman Probyn, and the Rev. W. P. Lendon, gave their decision in this case, which (as we reported last week) had been adjourned at a previous sitting. Robert Parry had charged John Embry and others, bargemen, with having destroyed certain garden plants on the island, which he rented, and the damage was laid at 6d. The decision of the case involved a point of great public interest, inasmuch as, if damage could be recovered, those who navigate the river lose their assumed right of towing through the island. The Magistrates now announced that they dismissed the case. Mr. J. G. George, who had watched the case for the defendant, applied for costs, remarking that the Magistrates had dismissed the case not upon any technical grounds, but upon its merits. As therefore Parry had brought a frivolous charge against his clients, he thought they were entitled to costs, in support of which application he read a clause in 11 and 12 Vic. c. 43. It was possible that the defendants, who were poor people, might not have had the assistance of an attorney on this occasion, and being ignorant of the law, and unable to make a proper defence, might probably be convicted and compelled to pay the penalty, either out of their pockets, or by imprisonment. Under those circumstances he trusted the Bench would allow the costs of an attorney.—The Bench had hoped Mr. George would not apply for costs, and refused the application.—The complainant, who said he supposed he should have to carry the case into another court, was ordered to pay 11s., the cost of hearing the case.

Hereford Times - Saturday 05 August 1854

Image © THE BRITISH LIBRARY BOARD. ALL RIGHTS RESERVED.

pameladeans