

The Parish of Chertsey have included in a Rate lately made, all the Plantations within the Parish, against which a Notice of Appeal has been given. -

A Copy of the Case submitted to Mr. Marryat respecting the liability of the property in question to be rated and his Opinion thereon is on the Minutes of the Proceeding at the Vestry (herewith left) and altho' the inclination of his Opinion is that plantations of this description ought not to be rated, still, the Parish are resolved to try the question, and if decided against them at the Sessions, to get a Case if possible for the Opinion of the Court of Kings Bench. -

We find on enquiry that neighbouring parishes have been for a long time past in the habit of appraising Plantations of this description to the poor rate, which Appraisments have been paid without any appeal whatever, and those persons who go along with the Parish in support of the Rate in question argue that plantations of the description of Trees which would hereafter if permitted become

George Skinner

John Smith

James

of

George Skinner
James
John Smith

Timber both with reference to age and girth are nevertheless until they arrive at the one period or the other to be treated as Salable Underwoods, and therefore liable to be rated.

You are requested to peruse the case Aubrey v. Fisher 10 East. 455. and to give the subject your best consideration (as the Parish are resolved to obtain a judicial decision) with a view of directing our further Enquiries - and to point out what sort of Evidence we should be prepared with, on the hearing of the Appeal.

I am certainly inclined to think that these plantations will be considered as not coming within the description of "salable underwoods", and therefore not subject to be rated. It is however a question of much doubt and very fit to be brought under the consideration of the Court of King's Bench.

It appears to me that the whole will depend on the meaning to be attached to the term "Underwoods". For if this term is applicable (as I think it may fairly be contended it is) to all trees under the growth of 20 years, I think the receipts of thinnings and the actual sale of part of the thinnings of the forest trees, will be sufficient to bring them within the meaning of the word "Salable".

Forest trees under 20 years growth come under the denomination of "Lylea edua" which is not strictly synonymous with "Underwoods" is nearly so; and such trees if planted in a

nursery and sold for transplanting - Gibbs v. Bybourn Cro. Car. 526 - Jon. 416. 1. Pol. 637 - Grant v. Hedding & Ball Hard. 300 - or if cut down within the 20 years Co. Litt. 53. a. Foster v. Dennard Cro. Eliz. 1. Ford v. Raithes 4. M. & L. 132. clearly pay together, but that certainly is not conclusive.

It is evident also from the judgment of Lord Hardwicke in Walter v. Foyon Dub. 130 that the term "Underwoods" is not confined to that species of wood only which actually grows from stubbs, and I do not know why it must necessarily be confined to that species of wood which might grow from stubbs.

The necessary evidence on the part of the parish will be but trifling, if any is requisite for by the form of the notice the Appellant ought to begin. They should however be prepared to show the allowance & publication of the rate that the Appellant is in possession of the lands, the mode in which they are planted - the sale of part as thinnings - the necessary removal of others, and the probable profits arising from them at the proper period of thinning. If any general evidence can be given as to their being considered by competent persons "Underwoods" that would be very material, and it may be as well to prove the general custom of rating them by the rate books, tho' I think that would not have much weight vid Aubrey v. Fisher 10 East 457.

J. Turton

Inner Temple

April 5th 1820