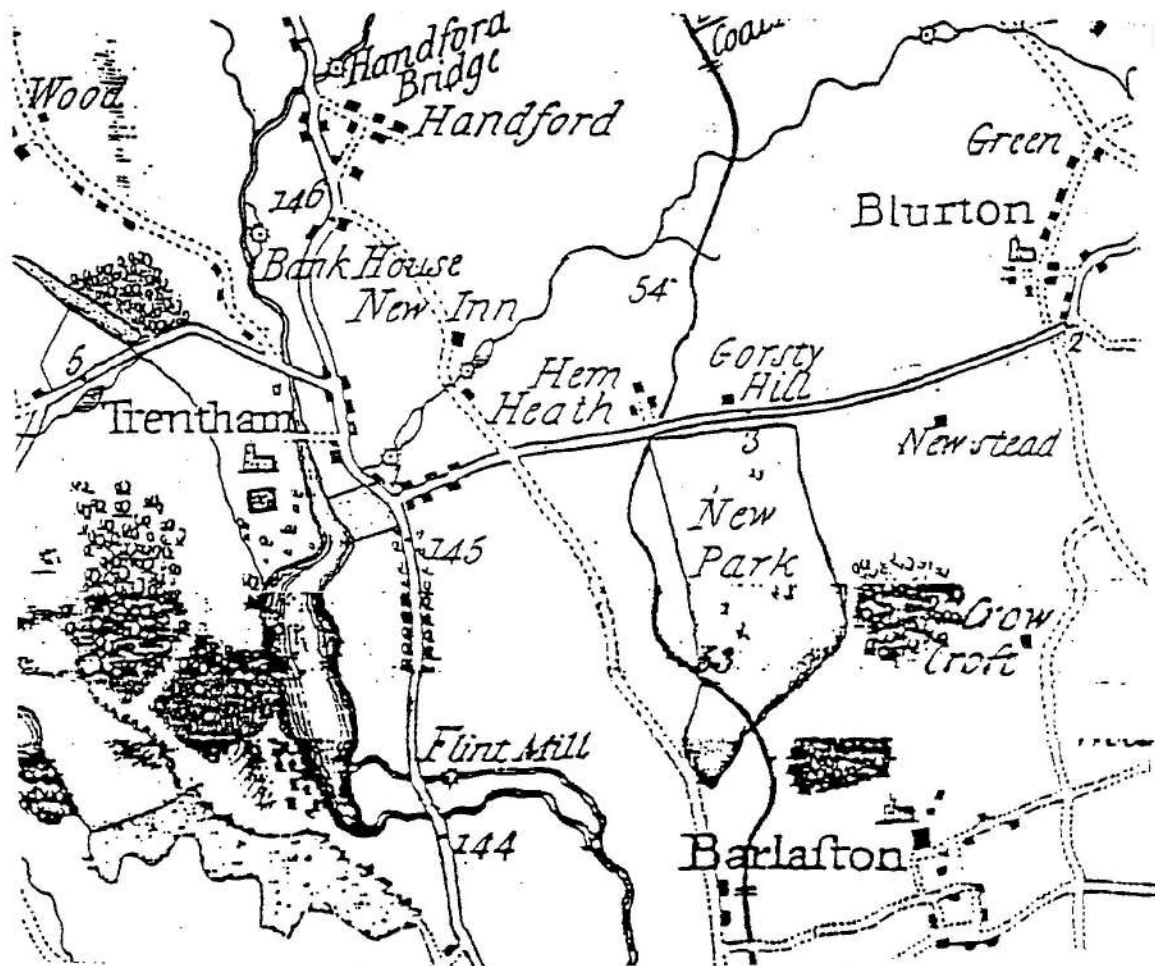


SOCIAL HISTORY WALKS 2011

Andrew Dobraszczyk

New Park and Hem Heath Wood



These notes have been produced for a history walk around Hem Heath Wood. The purpose of the walk is to show how the wood came into existence and how it was managed by the agents working for the Leveson-Gower family of Trentham Hall.

The extract from William Yates' Map of Staffordshire, above, shows the area around Hem Heath in 1775. The map clearly shows the boundary of the "New Park" on the south side of the road between Trentham and Longton. This area, originally known as the "Burnt Heath," was enclosed in 1752 by a park pale – a wooden fence – and improved by ditching and the planting of many new trees. A survey of the Barlaston estate made in 1763 shows that Lord Gower of Trentham Hall also rented 12 acres of land on the south side of the enclosed land from Thomas Mills of Barlaston Hall, for an extension to "his Park." The "New Park" had a relatively short existence as a landscape feature because other developments in the vicinity promoted the commercial exploitation of the land. The most important of these developments was the construction of the Trent and Mersey canal through this area in 1771-72. The new canal cut through the south west corner of the New Park. As the navigators approached Hem Heath from the south the road from Trentham to Meir was turnpiked in 1771, largely on the initiative of Earl Gower who was the largest mortgagee of the trust and whose agent, Thomas Horwood, played a prominent role in the management of its affairs. A few years' later the park was converted into a farm, "New Park Farm." This had probably occurred by 1784 when the first entries for labourers at New Park appear in Trentham parish register. New Park Farm is shown on the map on the next page.

[illegible]

H.Fulton, Map of part of the Trentham Estate, 1832.
Farm names and farm boundaries have been added.



NEW PARK FARM

The dotted line added to Fulton's map shows the boundary of New Park Farm. On the north side of the new farm, six acres of land, planted with trees next to the Longton Road, were retained by the estate along with a plantation in the centre of the farm occupying almost 5 acres. Other trees must have been cut down as new fields were formed. On the east the boundary of the new farm was co-terminus with the boundary of the former park, abutting onto Newstead Farm. On the south the boundary followed a stream which formed the boundary of the Trentham Hall and the Barlaston Hall estates as well as the boundary of Trentham parish and Barlaston parish. The cart road which runs south from the Longton Road and crosses the Trent and Mersey Canal is the original western boundary of the New Park. A new farmhouse was constructed between the cart road and the Trent and Mersey Canal. Other land between Barlaston Old Road and the canal was also added to the farm to create a substantial holding of 295 acres.

John Mills was probably the first tenant and he died at New Park in 1792, aged 69. Isaac Aston was in occupation by 1796, and his son Thomas Aston became the tenant shortly before 1820. James Loch, the able and energetic agent for the Marquis of Stafford, described the improvements made by the Aston family to New Park Farm in his *Account of the Improvements on the Estates of the Marquess of Stafford, in the Counties of Stafford and Salop, and on the Estate of Sutherland*, published in 1820:

NEW PARK. Mr Thomas Aston tenant, who has lately succeeded his father in this farm. The soil is very much inclined to wet, with a bad retentive subsoil. It is occupied in equal proportions as an arable and dairy farm; for the latter mode of occupation it is better suited. The land is fairly cultivated. Within the last two years much draining and ditching has been executed on this farm, and with excellent effect. In consequence of the great extent of draining required, the proprietor has assisted considerably where the fields were the wettest. The proportion of water-meadow is considerable. The buildings are brick, and tiled, and in excellent condition, and have been lately repaired.

In 1847 the construction of the railway line through Trentham by the North Staffordshire Railway Company, cut New Park Farm in two. James Loch recommended that New Park Farm should be reorganised. The area to the east and part of the area to the west of the railway line was taken in hand by the estate and replanted with trees. It was henceforth known as the "New Park Plantation." James Perkin, the tenant as New Park Farm since 1839 was served with notice to quit and a new tenant, George Cooper took over the reduced holding of 48 acres of land in 1849. His census return can be found on page 6. Thomas Llewellyn, a solicitor from the Potteries, was his successor in 1858. He was the first of a succession of professional men from the Potteries who occupied New Park Farm in the second half of the nineteenth century for whom farming was a mere sideline. He made various improvements to the large, three storey, Georgian farmhouse shown on the photograph above (taken in 1919). These included upgrading the cart road into a carriage drive and the construction of an ornamental entrance lodge by the main road in 1858-59. Thomas Llewellyn's census return for 1861 and that of George Griffin, the occupier of the entrance lodge, can be found on page 6.

NEW PARK PLANTATION

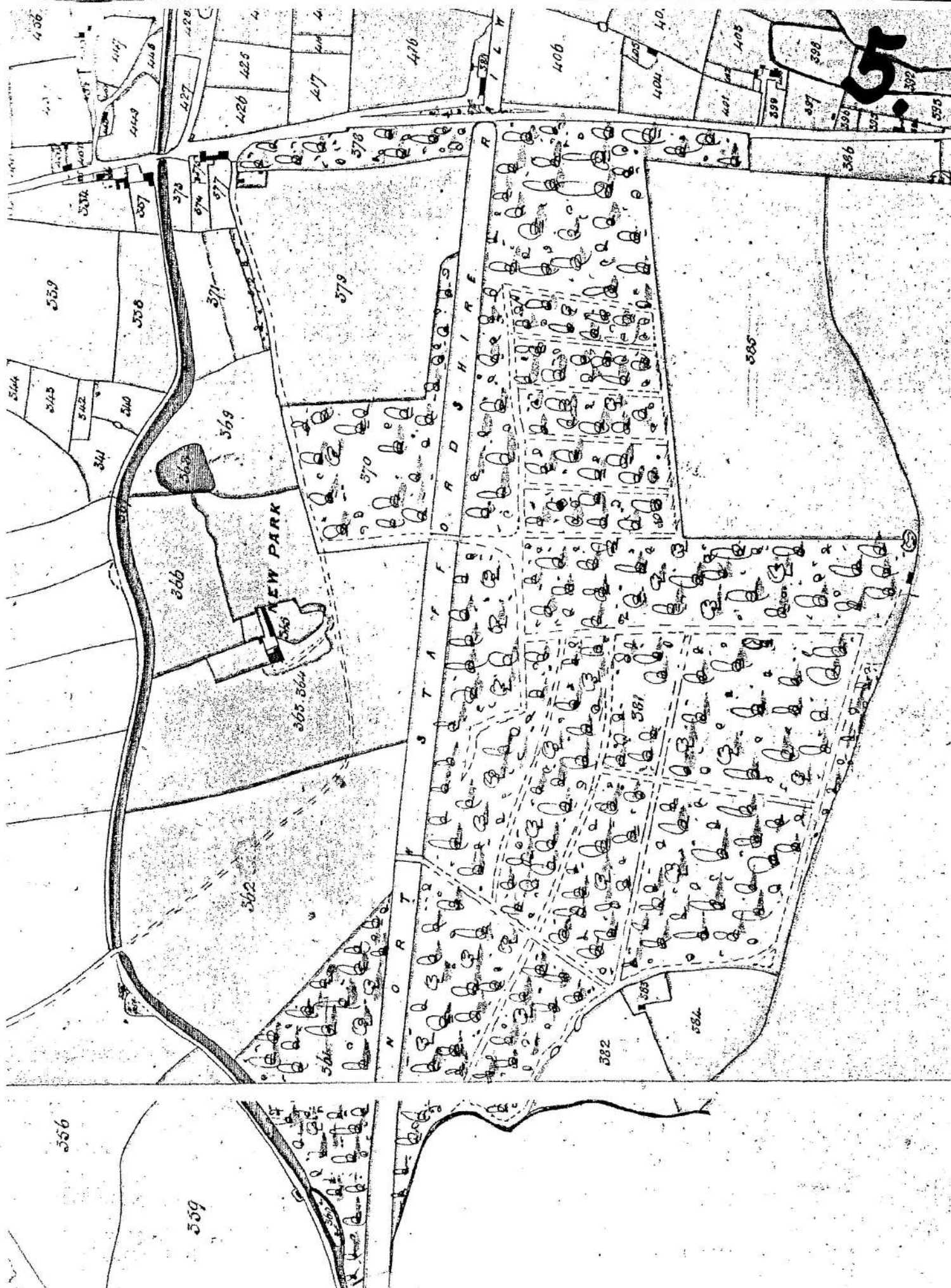
The new farm and the new plantation are shown on the map on the next page, part of a *Plan of Property belonging to his Grace the Duke of Sutherland in the Townships of Trentham, Hanchurch, Clayton, &c., 1859*, in Staffordshire Record Office. Below, are the relevant entries from the accompanying *Survey of the North Staffordshire Estates of the Duke of Sutherland, by Liddle Elliot, surveyor, Newcastle, 1859*.

Township of Trentham

No	Tenant	Description	Quantity		
			A	R	P
361	In Hand	Plantation in New Park	8	2	27
370	Ditto	Ditto	7	3	28
372	Ditto	Ditto	0	1	13
378	Ditto	Plantation in Hem Heath	2	3	23
378a	Ditto	Ditto	0	0	31
381	Ditto	Plantation in New Park	98	3	04 *
387	Ditto	Plantation in Hem Heath	0	0	20
388	Ditto	Ditto	0	0	13
			<u>119</u>	<u>3</u>	<u>39</u>
• John Simcock, Cottage &c., 3 perches to be deducted					
382	Elizabeth Salt	Croft	2	3	25
383	Ditto	House and Garden	0	1	30
384	Ditto	Croft	<u>3</u>	<u>1</u>	<u>22</u>
			<u>6</u>	<u>2</u>	<u>37</u>
362	Thomas Llewellyn	Boat Horse Piece	19	2	30
363	Ditto	Wheat Close and Calf Croft	9	3	34
364	Ditto	Black Birch	8	2	00
365	Ditto	Messuage	2	0	24
366	Ditto	Horse Close	4	2	30
368	Ditto	Fish Pond	0	3	06
369	Ditto	Marl Field	<u>4</u>	<u>2</u>	<u>38</u>
			<u>50</u>	<u>2</u>	<u>02</u>
360	North Staffordshire	Lock House and Garden	0	1	11
367	Railway Company	Canal Towing Path &c	7	1	02
373	Ditto	Wharf at Hem Heath	0	2	00
380	Ditto	Railway	<u>10</u>	<u>2</u>	<u>13</u>
			<u>18</u>	<u>2</u>	<u>26</u>

The survey above records almost 120 acres of woodland in New Park. The greater part of this was on the east side of the railway line and here cart tracks were laid out on a grid-iron pattern to facilitate the exploitation of the woodland. Today, the principal access to the wood is directly off Trentham Road. Then, the principal access was from the west via a bridge over the railway line to the cart road through New Park Farm and past the entrance lodge to the turnpike road. This route had several advantages to the estate. It linked the plantations on both sides of the railway line. It also provided greater security for the game which was nurtured in the new plantation. Joseph Gorse, a gamekeeper, was already living in New Park by 1851, (see census return page 6) and his successor John Simcock, occupied what appears to be a new cottage in the plantation. (See the reference to "John Simcock, Cottage &c, 3 perches to be deducted" from No 381, above.) This cottage is easier to find on the map on page 10. It stood on the east edge of the New Park Plantation allowing a clear view towards Longton which was assumed to be the principal resort of poachers.

The new plantation also required the services of an estate woodman. The Salt family had been living in New Park since at least 1788, when the baptism of Jacob, son of Thomas & Alice Salt, *labr., New Park*, is recorded in Trentham parish register on the 28th of December. In 1816 there is an entry in Blurton parish register for the baptism of Abraham, son of Isaac and Elizabeth Salt. Elizabeth Salt, widow of Isaac, is occupying New Park Cottage in 1851 (See census return page 6. This cottage is shown in more detail on the Ordnance Survey map on page 9.) Her son, Abraham, worked as an agricultural labourer on several farms in the area before he became a brickmaker in Longton c.1851. By 1852 he had been appointed as woodman for the New Park Plantation and is living in New Park Cottage. His census return for 1861 and 1871 can be found on pages 6 and 7. He occupied this position for 27 years, until his death in 1879.



Plan of Property belonging to his Grace the Duke of Sutherland in the Townships of Trentham, Hanchurch, Clayton, &c., 1859 (Staffordshire Record Office)

NEW PARK IN THE 1851 CENSUS

New Park:

Joseph Gorse	Head	Married	26	Gamekeeper	Place of birth: Staffs, Stone
Elizabeth Gorse	Wife	Married	26		Staffs, Willenall
Sarah Gorse	Dau	Single	7	At Home	Staffs, Trentham
Alice Gorse	Dau	Single	6		Staffs, Trentham
Thomas Gorse	Son	Single	1		Staffs, Trentham

New Park Cottage:

Elizabeth Salt	Head	Widow	68	Employed in Agriculture	Staffs, Trentham
Joseph Salt	Son	Married	25	Under Usher Trentham Hall	Staffs, Trentham
Dorothy Salt	Dau-in-Law	Married	29		Staffs, Cheadle
George Salt	Son	Single	19	Shoemaker	Staffs, Barlaston
Hannah Davenall	Grand Dau	Single	10	Scholar	Staffs, Longton
William Salt	Grand Son	Single	1		Staffs, Trentham

New Park Farm:

George Cooper	Head	Married	61	Farmer 48 Acres employing /	1 Labourer Staffs, West Bromwich
Betty Cooper	Wife	Married	68		Staffs, Bloxwich
Dorothy Cooper	Dau	Single	27		Staffs, Stone
Jemima Cooper	Dau-in-Law	Widow	33	Annuitant	Cheshire, Wybunbury
George R Cooper	Grand Son	Single	4		Lancs, Warrington
Sarah H Cooper	Grand Dau	Single	2		Lancs, Warrington
Anne Beckett	Srvnt	Single	21	House Servant	Staffs, Brindley Ford
Vernon Pedley	Srvnt	Single	24	Agricultural Labourer	Staffs, Cheddleton

NEW PARK IN THE 1861 CENSUS

New Park:

John Simcock	Head	Married	38	Gamekeeper	Staffs, Ashley
Charlotte Simcock	Wife	Married	37		Staffs, Stone
John Simcock	Son	Single	14	Agricultural Labourer	Staffs, Barlaston
Elizabeth Simcock	Dau	Single	6		Staffs, Trentham
Samuel Simcock	Son	Single	3		Staffs, Trentham
William Simcock	Son	Single	11 months		Staffs, Trentham

New Park [Cottage]:

Abraham Salt	Head	Married	45	Woodman	Staffs, Trentham
Ann Salt	Wife	Married	45		Staffs, Cheadle
George Salt	Son	Single	12	Garden Labourer	Staffs, Barlaston
William Salt	Son	Single	10	Scholar	Staffs, Trentham
Joseph Do	Son	Single	8	Scholar	Staffs, Trentham
Ann Salt	Dau	Single	5	Scholar	Staffs, Trentham
Eliza Salt	Dau	Single	2		Staffs, Trentham

New Park [Farm]:

Thomas Llewellyn	Head	Married	47	Attorney and Solicitor	Staffs, Hanley
Frances M Llewellyn	Wife	Married	36		Middlesex, St Mary
Constance Llewellyn	Dau	Single	6		Staffs, Wolstanton
Thomas Llewellyn	Son	Single	4		Staffs, Wolstanton
Edith Llewellyn	Dau	Single	1		Staffs, Wolstanton
Alice Llewellyn	Dau	Single	8 months		Staffs, Trentham
Sarah Preece	Srvnt	Single	25	Cook	Salop, Cheslyn
Ann Redfern	Srvnt	Single	25	Nurse	Staffs, Talk o' th' Hill
Ann Peak	Srvnt	Single	21	Housemaid	Staffs, Stone
Eliza Blood	Srvnt	Single	17	Nurse	Staffs, Wolstanton

New Park [Entrance Lodge]:

George Griffin	Head	Married	42	Agricultural Labourer	Staffs, Uttoxeter
Maria Griffin	Wife	Married	36	Lodge Keeper	Staffs, Uttoxeter
Thomas Griffin	Son	Single	14	Scholar	Staffs, Uttoxeter
Elizabeth Griffin	Dau	Single	12	Scholar	Staffs, Leigh
Mary Griffin	Dau	Single	9	Scholar	Staffs, Leigh

1871 Census: New Park [Cottage]:

Abraham Salt	Head	Married	55	Woodman
Ann Salt	Wife	Married	54	
Thomas Salt	Son	Single	26	Labourer at Tilery
George Salt	Son	Single	22	Labourer at Tilery
William Salt	Son	Single	20	Labourer at Tilery
Joseph Salt	Son	Single	18	Labourer at Tilery
Eliza Salt	Dau	Single	12	Scholar

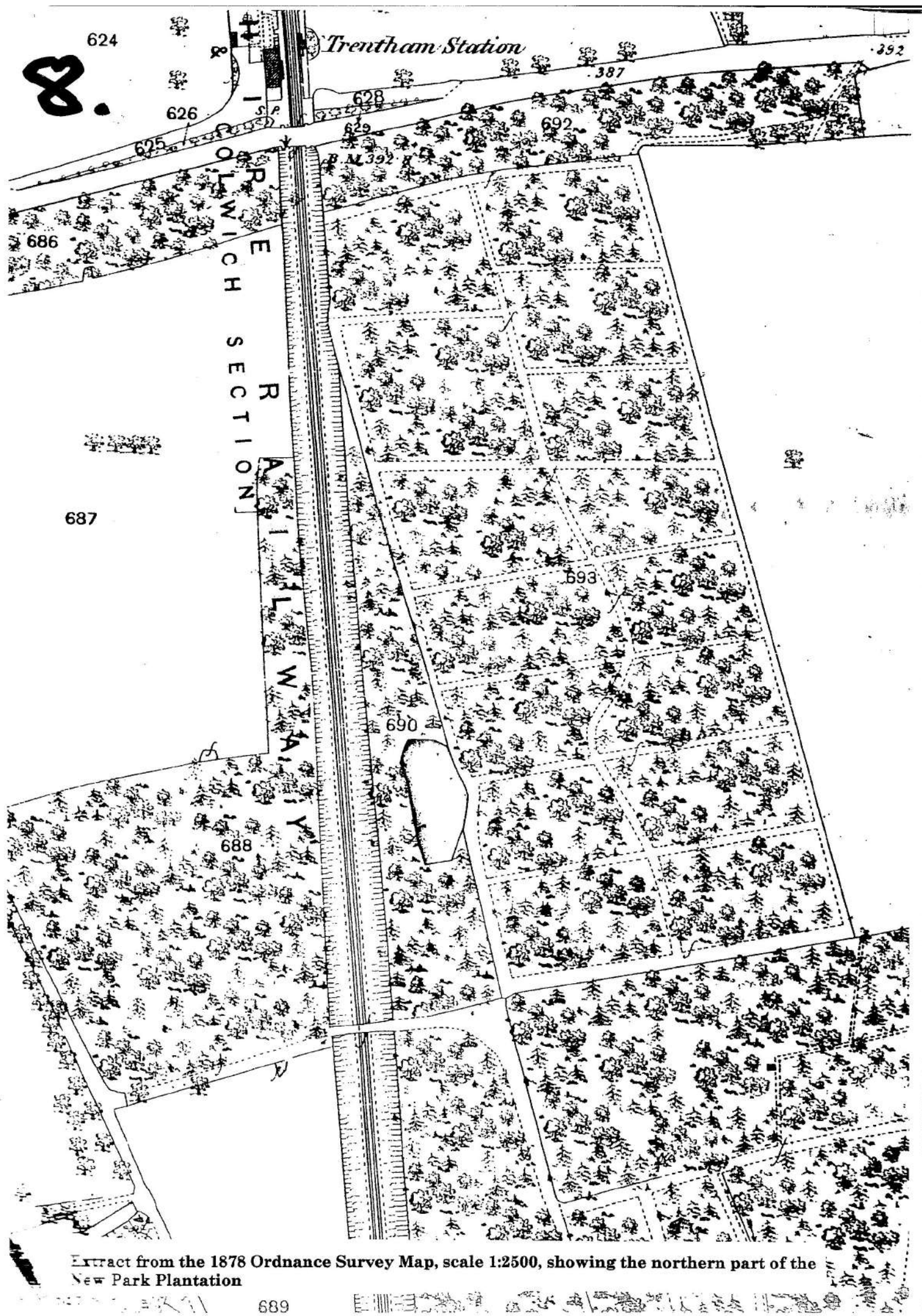
Staffs, Trentham
Staffs, Trentham
Staffs, Barlaston
Staffs, Barlaston
Staffs, Trentham
Staffs, Trentham
Staffs, Trentham

7.

THE SALE OF WOOD FROM NEW PARK PLANTATION

Sales of wood from the New Park Plantation and elsewhere on the Trentham estate are recorded in the account books now in Staffordshire Record Office. Not surprisingly, a large part of the sales was in the form of cratewood for use in the pottery industry. In some cases sales were made directly to pottery firms in Longton; in other cases to intermediaries. The entry below, in May and June 1873, for the sale of Cratewood from New Park and Cocknage, is made out to Samuel Emony, stationer and timber merchant of Market Street, Longton. As a result of the volume of sales to pottery manufacturers in Longton, a new access was created on the north east side of the New Park Plantation directly onto the turnpike road. (See Ordnance Survey map on page 8.)

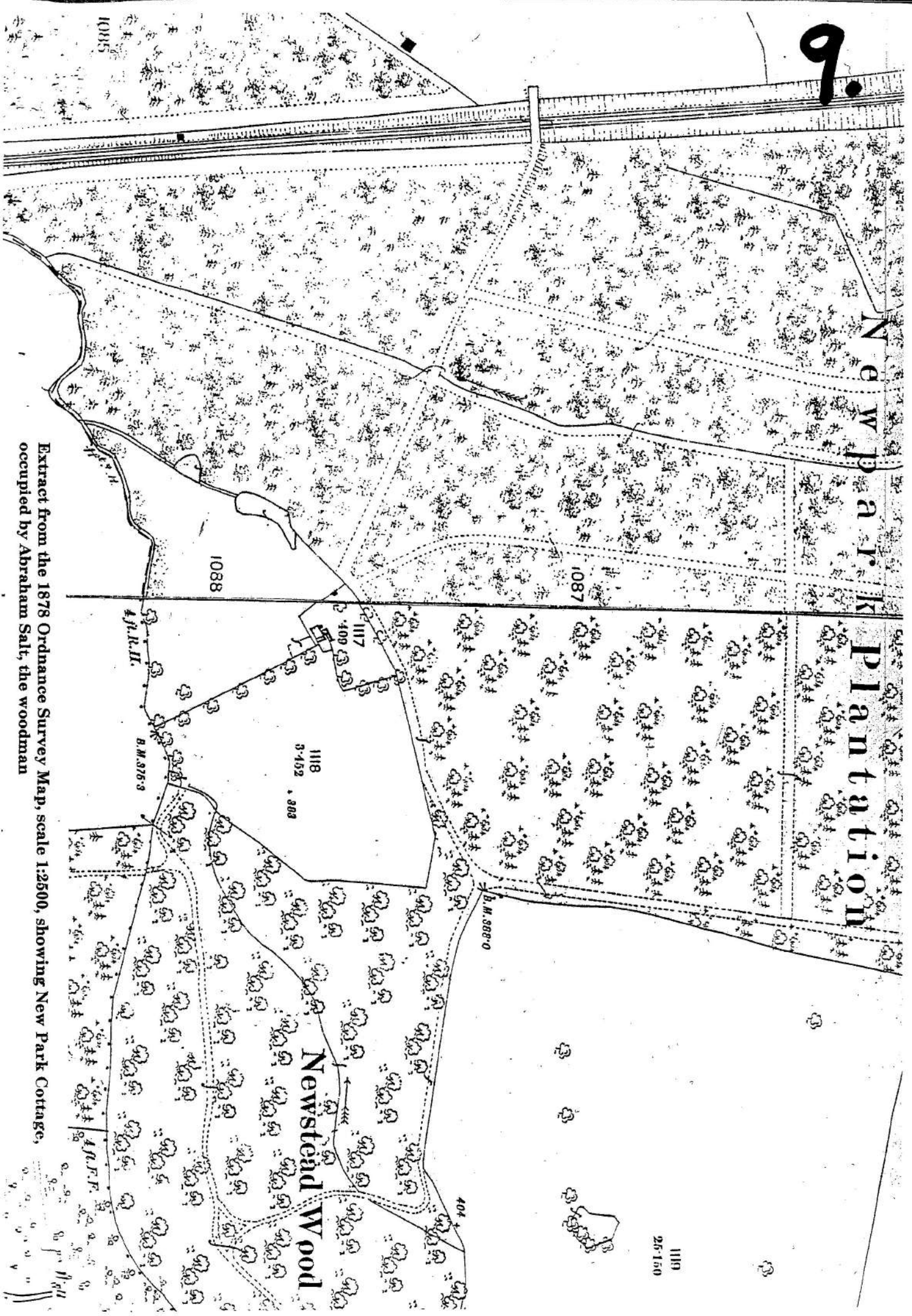
TRENTHAM WOODS AND PLANTATIONS ACCOUNT OF SALES, 1873									
Date	To whom Sold	Where Grown	Description	Quantity	Measure	Rate	£	s	d
1873									
	Brought Forward.			R. H. S.					65 9 0
May 14	Mr. Emony	New Park	Cratewood	1	1 1/2				
15				0	3				
16					4				
17					3				
18					1 1/2				
19				1	13 = 1 1/4				7 1/4
June 2		New Park		0	1				
3				2	2				
4				2	2				
5				4	0				
6				2	1				
7				4	0				
8				4					
9				4					
10				4					
11				4					
12				4					
13				2					
14		Cocknage		0	1				
15				4	0				
16				4					
17				2	1 1/2				
18				2	1				
19				0	2 1/2				
				44	15 1/4	5 1/4			02 11 9



Extract from the 1878 Ordnance Survey Map, scale 1:2500, showing the northern part of the New Park Plantation

9.

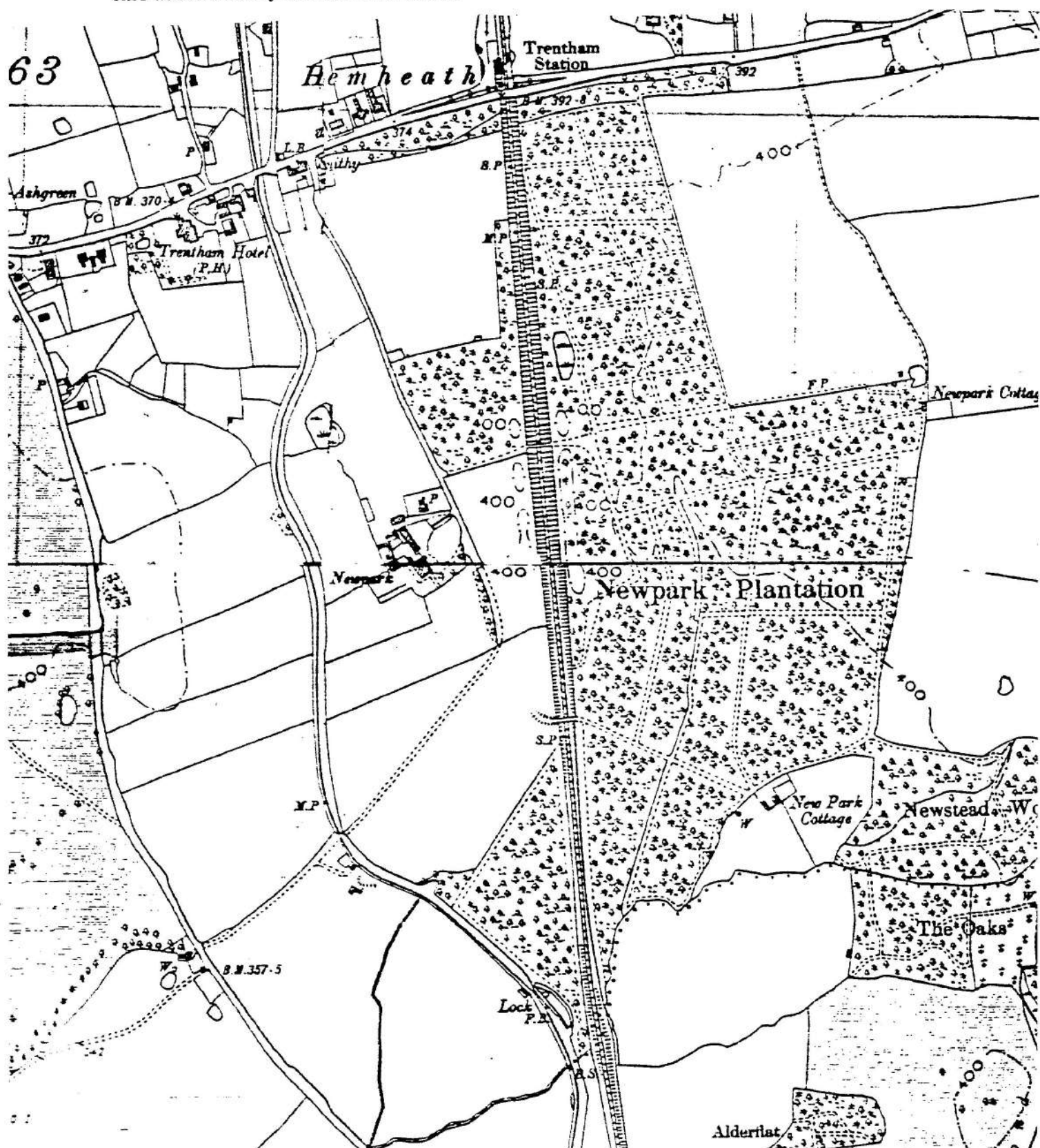
New Park Plantation



Extract from the 1878 Ordnance Survey Map, scale 1:2500, showing New Park Cottage, occupied by Abraham Salt, the woodman

THE BATTLE FOR THE RIGHT OF WAY ACROSS THE NEW PARK ESTATE

The extract from the second edition six inch Ordnance Survey Map (enlarged) below, shows New Park Farm and New Park Plantation in 1901. The cart road leading from Longton Road to New Park farmhouse which continues across the Trent and Mersey Canal and Barlaston Old Road in the direction of Tittensor is clearly marked on the map. Three years later Sarah Bennett, an active trade unionist and suffragette, organised a campaign to re-open what she argued was an ancient right of way down this cart road through New Park to Tittensor. On the next page is a brief biography of Sarah Bennett taken from *People of the Potteries*, edited by Dennis Stuart. This makes no mention of her campaign in Trentham, which received extensive coverage in the local press. The report, of her action in 1904 and the subsequent court case in 1905, which appeared in the *Staffordshire Advertiser*, is reproduced on pages 11 to 15. The Duke of Sutherland lost the first stage of the proceedings, but after an appeal heard by the Lord Chief Justice, the case was eventually decided in his favour.



BENNETT, Sarah (fl. 1893-1908), *trade unionist and suffragette*, Burslem.

SB was educated at Queen's College, London. In 1884 she started a co-operative society in the New Forest. She came to the Potteries about 1893, possibly as a result of a campaign by the Women's Trade Union League led by Gladys Tuckwell and was active in unionising women in the pottery industry.

With the support of the Potters' Union she was elected to the Burslem School Board in 1898 and 1901 and to the Burslem and Wolstanton Board of Guardians. A pamphlet attacking certain teachers was thought to have cost her the seat of the "token" woman when Burslem Education Committee was formed in 1903. The seat went to Mrs. Mary Alcock, widow of Dr. John Alcock.

SB was an active suffragette and campaigned with Christabel Pankhurst against the Liberal candidate in the North-West Staffs. by-election in July 1907. On 3 January 1908 she was arrested during a suffragette demonstration in London and sentenced to three weeks' imprisonment. She took advantage of The Qualification of Women (County and Borough Councils) Act 1907 to stand at the Burslem council elections in November 1907, again with union support, although there was some criticism of this because she had campaigned against the Liberals in the by-election. She called for the municipalisation of abattoirs and for the council to supply milk. She favoured federation. In May 1908 a distraint was levied upon her goods because of her refusal to pay rates on the grounds that women did not have the vote.

Burslem School Board minutes (HRL); Oldham; *Staffs. Sentinel* July 1907, November 1907, 30 January 1908, 19 February 1908, 26 February 1908.

THE ACTION: FRIDAY, 26 AUGUST 1904

Extract from: *The Staffordshire Advertiser*, 27 August 1904

TRENTHAM.

PROTEST AGAINST THE CLOSING OF A ROAD.—A "demonstration" of a very active character was made at Trentham yesterday afternoon against the closing of a bye-road leading off the main road by the smithy between the railway station and the Trentham Hotel in the direction of New Park House and across the fields to Tittensor. An interested party justifies the action taken by a communication as follows:—"A number of residents in the neighbourhood of Trentham have been much roused by an effort, which is being made at the present time, to close an ancient and much-valued right-of-way from Trentham Station across fields in the direction of Tittensor. This path has not only a sentimental value to those who prefer fields to dusty roads. In the past it was used for business purposes, as a cart road to a lime-kiln, and also to the canal wharf from Longton way. There are few, if any, who are in the habit of going to Trentham from the Potteries who have not used this path frequently and the existence of the road, and also of the right-of-way over it, has been traced back 300 years." The erection of barriers and removal of stiles, with a notice of "No road; trespassers will be prosecuted; by order, Trentham Office," had given the occasion for this protest. For some time men have been on guard at various points to prevent people using the footpath. It is curious that the objectors do not appeal to the residents of Trentham, and at the time of writing we have not been able to ascertain the reasons claimed for the closing of the road. At three o'clock a party approached the barrier by the smithy, headed by Miss S. Benett (Burslem) and Mr. E. Massey (Fenton). There were also in the party the Rev. J. Griffin, Miss Griffin, Councillor W. H. Jackson (Hanley), Mr. W. Emery (Hanley Education Committee), Mr. R. Tams (Hanley), Mr. J. Beardmore, Mr. J. Tomkinson (Blastfurnacemen's Union), Mr. J. Thornton (Working Men's Club, Burslem), Miss Eardley (Tunstall), and Mr. J. Reeves (Burslem). Miss Benett, addressing a large number of spectators who had assembled, said they were there to re-open the ancient bridle road and footpath to Tittensor which had been closed during the last few weeks. She added "we are going to take the constitutional means of doing this by removing the barriers. I am willing to say that I take all responsibility in the matter on myself." Messrs. Thornton and Reeves, at the invitation of Miss Benett, then applied hammer and chisel and severed one of the links of the chain fastening the gate. Miss Benett led the way through followed by the other members of the party and the crowd of spectators. Another gate by the canal bridge was forced by cutting the chain, and the gate on the old road to Barlaston having been superseded by fixed oakum rails the supports of these were sawn through and the party passed onward. A contingent of police under Deputy Chief Constable Hill was present and walked in the rear of the protesters, but did not interfere, the proceedings being orderly throughout. Notices as to the privacy of the road were met with at frequent intervals along the route. The men in charge of the gates took the names of several of the party.

12. THE RIGHT-OF-WAY DISPUTE AT TRENTHAM.

THE DUKE OF SUTHERLAND v. BENNETT.

In this action the plaintiff claimed damages from the defendant, Miss S. Bennett, of Burslem, for wrongfully entering certain lands situate at Trentham, and pulling down, breaking, and removing certain gates and fences. An injunction was also asked for to restrain the defendant from the repetition or continuance of the wrongful acts complained of.

Mr. A. POWELL, K.C., and Mr. B. C. BROUGH were for the plaintiff and Mr. C. F. VACHELL, with Mr. G. C. LEWIS, were for the defendant.

Mr. BROUGH, in opening the pleadings, said the action was brought to recover damages for trespass upon the plaintiff's road and land and also for damage and injury to gates and fences thereon. The defendant, by her defence, denied the trespass and damage, and alleged that the road in question was a public highway.

Mr. POWELL, in opening the case, said that part of the Trentham estate, which was owned by the Duke of Sutherland, comprised the New Park House, which was let with 65 acres of land at a rental for the house of £175 and for the land of £120 per annum. The property lay to the south of Hem Heath, and between the Trent and Mersey Canal and the North Stafford Railway. The road in question led from Hem Heath on the north, southward past the New Park House or close to, the gardens being in front, and then continued through gates, turning in a south-westerly direction until another gate was reached, and then across the canal, on the other side of which there was a gate. The road led on to Yockerton, and there was a gate on the highway from Barlaston to Hanford. Anyone wishing to get from Yockerton to Hem Heath could go by this high road until he reached the highway from Newcastle to Longton, and then proceed in an easterly direction to the point where what was now said to be a private road joined the main road from Newcastle to Longton. This, according to the map, appeared to be as near a way in every respect as the one which was now said to be a highway, the only difference being some 180 yards. These lands had been in the family of the Duke of Sutherland for more than a century and a-half. Tracing back, it was found that from 1785, at least, they had been in strict settlement down to January 25, 1853. From that time they had been fee simple to the present Duke, but prior to that they were settled in the way in which large estates were settled for life with remainder over. The last settlement was a deed of October 20, 1884, and there was power in it—

His LORDSHIP.—Nothing really turns upon this title, I suppose, Mr. Vachell?

Mr. VACHELL.—Yes, there are periods when there was a person who had the freehold and who was capable of dedicating.

Mr. POWELL.—We won't trouble very much about that, because there is no expressed dedication suggested in this case, but I shall be able to prove that from 1785 to 1893 the lands were held in strict settlement.

His LORDSHIP.—That will be for me; it will not be for the jury. Therefore you can put the evidence as to this part of the case and need not trouble the jury further.

Mr. POWELL, continuing, said that Mr. George Menzies, the present agent of the Duke of Sutherland, had for many years been on the estate in some capacity or other before his appointment as agent, and his memory went back for more than forty years. He would be able to tell the jury how the property had been held during that time, and what had been done with regard to the road in question. There were estate plans showing that apparently the road was made between 1828 and 1830. Prior to 1845 New Park House was let as a farmhouse with 271 acres of land attached, but in 1846 that state of things ceased, part of the 271 acres being planted to form woods, and afterwards let to a neighbouring tenant, and the house and 65 acres being let for the purposes of a private dwelling-house. Ever since then it had been used as a private residence. Mr. Thomas Llewellyn became tenant in 1856, and one of his sons would describe the state of affairs in his father's time. In 1858 or the beginning of 1859 there was erected at the Hem Heath or north end of the road a lodge which was still in existence. A gate was put by the side of it, he (Mr. Powell) believed. A gate had been there before, but the lodge was erected, and what had been a mere occupation road for the farm was made into a drive as far as New Park House for the use of the tenant. At Lady-day, 1859, the lodge was turned over to the tenant as part of the holding, and a gardener had generally lived at the lodge since. The gates had been closed generally with a chain upon them or something of that kind to keep people out in the ordinary way in which one found a private road where there was a lodge attached. Mr. Llewellyn ceased to be tenant in 1867, and was succeeded by Mr. Barlow, who remained tenant until 1871, when he in turn was succeeded by Mr. Cooper, who remained until Lady-day, 1892. Mr. Cooper was dead, but his widow would be called to prove that this road was always regarded as a private road, and that if people were found on the road who should not be upon it remonstrances were made and in some cases they were turned back. Mr. Cooper was succeeded as tenant by Mr. Arthur Challinor, who held the position of town clerk of Hanley and various other offices, who was still the tenant, although his tenancy would expire at Lady-day next. The learned counsel incidentally mentioned that Mr. Challinor had recently suffered a very severe bereavement. Continuing, Mr. Powell said that the road was a mere occupation road until the drive was made to the house. The drive only went as far as the house, and onwards it was merely an occupation road. No one had suggested until recently that it was anything but a private road of the ordinary kind. It was now said, although there might not have been any express dedication, there had been a user by the public. From a user, as his Lordship would tell the jury, a dedication could sometimes be inferred. For instance, if it was a way which naturally led from one place to another and the landowner allowed persons to go along it, so as to form a way from one place to another, under those circumstances, after the lapse of considerable time, and all sorts and conditions of people making use of the road without remonstrance, then it might be inferred there had been a dedication, if there was someone who had power to dedicate. But no tenant had power to dedicate—no tenant for life had such power—and then it became a question for this Lordship as to settlement. The only people who had used the road, except occasional trespassers, had been the tenants on the Trentham estate, and it was necessary to point out how some tenants had by express permission been allowed at times to use part of the road at Yockerton Gate, where there were two cottages. In some times there was no water supply except a well situate in a field some distance along this road, and the tenants had express permission to go to the well and fetch water. But that would

not make the road a highway. It was quite clear that it had not been necessary for the tenants to get water of late, because water had been laid on to the cottages from the waterworks company's main; but while the permission was in vogue, in order to facilitate the tenants of the cottages, when it was necessary for them to fetch water, a wicket was put up so that they need not open the big gate opening on to the road. He (Mr. Powell) contended that from this no possible dedication of a highway could be suggested nor from an accumulation of things of that kind where one found express permission given. Similar permission to use the occupation road was given to the tenants of a limekiln and property known as Strongford Mill, which was on neighbouring land. He understood that in both instances there had been no need whatever for the use of the road for some time, because the limekiln ceased to be used in 1873, and the mill had not been used for some years. He should call evidence of tenants to prove that with the exception of those who had express permission no one had been allowed to use this road who had been found out. Of course, where one had a number of acres of land one could not always have people on the look-out for trespassers. It sometimes happened that when persons chose to walk along an occupation road they were not turned back, but, as had been said by one very celebrated judge not long ago—and his words had been quoted over and over again and quite recently in the House of Lords with great approval—it must not be inferred from the fact that because a man who had the right to turn people back or to refuse them permission to do something and did not exercise it that he relinquished that right. "It was extremely undesirable," said the learned judge, "that in a free country this should be so; juries would, of course, always consider it was undesirable that a landowner should be on good terms with those who were about him and with the public generally." If occasionally there were people who used a road or fished in a stream, and if the landowner happened to see them, and even saw them often, but thought "Well, I won't trouble the man, he is not doing me great harm," it must not be inferred from that that he was giving up his right. It would be a terrible thing if every landowner had to insist upon his rights, close his roads, lock his gates, and employ bailiffs to look after his fishing, and not allow his neighbours who were not in the same position as himself to have a certain amount of enjoyment. His friend (Mr. Vachell) relied entirely upon user, but there were a good many reasons why people should not be turned back, and there were people one would not like to turn back because it would be an unpleasant thing to do. It was for his friend to show that there had been this user of the road which undoubtedly started as an occupation road, which was an occupation road from New Park House to Yockerton, to entitle it to be claimed as a public highway. It was a strange thing, and one there would be some difficulty in getting over, that for thirty years there had been at the gate a notice board stating that the road was private. He was not sure that the words on it were not "Trespassers will be prosecuted," but the board was there at the present time; it had been painted and re-painted during the thirty years, and gave information to everybody who passed by. People might from time to time have walked into the woods close by, but if they had done so they had trespassed and had not been found out. The jury must not infer from this that there had been anything which had converted the road into a public highway.

His LORDSHIP.—Anything about repairs?

Mr. POWELL.—No repairs have ever been done by the parish or by a public authority. They have always been done privately. Continuing, the learned counsel alluded to the way in which Miss Bennett came into the case. Miss Bennett seemed to be a public-spirited lady who took upon herself to vindicate public rights, and he would tell the jury how Miss Bennett came, as she thought, to vindicate public rights in this instance. Owing to the fact that last year there was a very dry summer, instructions were given to men to keep a look-out to see no sparks came from the railway and set fire to the woods. It had also been found that people entered the woods without permission, and Mr. Menzies, the Duke's agent, said that under the circumstances it would be better to put chains on the gates, but anybody who wanted to get permission from the tenant to go into the woods could do so upon making reasonable request. Accordingly the gates were shut and a locked chain was put on. Thereupon Miss Bennett took upon herself to organize a raid. She did it in a proper way, and a number of people came down after notice given and they found the gates locked. The Duke's people were there, and saw what went on. Miss Bennett came with others, and before anything was done she made a speech saying she would take all the responsibility upon herself. She then called upon someone to break the chain, which was done, and the party went in at the Yockerton gate and across the fields, breaking open the gates one after the other. At the Yockerton end they sawed down the rails which had been put where the wicket was. Not very much damage was done, something about £1 in all, but it was the question of right that was in dispute. Miss Bennett said, "I have a perfect right, and you have no right whatever to lock me out. I am one of the public, and have a right to go through." The jury could understand that of late the population of the Potteries had very much increased, and a good many villas were to be seen about Trentham and Hem Heath. Therefore it became necessary to test this question at the present time. There would be no question so far as the Duke of Sutherland was concerned. Everybody knew that the Duke had allowed people to go into his Park and various other places, always on the assumption that his right was not questioned and that they had his permission to go in. Miss Bennett had, however, raised the question with regard to this particular road, and it was to be determined by that Court.

His LORDSHIP referred to the question of title, and counsel agreed that this should be dealt with at a later stage.

The first witness called was Mr. George Menzies, who said he had been agent to the Duke of Sutherland since 1865. He lived near Trentham, and had a wide knowledge of the estate and immediate locality. Prior to 1846 New Park House was merely a farmhouse, and since then it had been let with about 65 acres of land as a private residence. There was a drive from the Trentham and Longton road up to New Park House. The road in question passed through fields to Yockerton, where it gave access to the woods. The road was not metalled; it was simply a cart road, with rough cart tracks across the turf. At the northern end there was a lodge and gate enclosing the road, which had been in existence since 1858. Prior to that year there was a field gate there. A few yards inside the gate there was a board with the word "Private" upon it, and this stood on the right of the road. He could not definitely fix the date when the board was erected, but to the best of his belief it had been there for thirty years continuously. Near the canal there was a limekiln, the use of which was discontinued in 1873. The tenants of the kiln had the specific right granted to them to use the road in question at both ends.

There were also on the estate Strongford mill (which was demolished in 1835) and farm, the tenants of which were allowed to use this particular road. At the Yockerton end were three cottages, which were converted into two about twenty years ago. A wicket gate was made in the fence about 16 or 18 years ago to give access for the tenants to a well near the occupation road, but when the wall was discontinued the wicket was taken away.

His LORDSHIP asked if any similar wicket was put in any of the gates up the road.

Witness.—None, except that there was a wicket put at the gate at Hem Heath.

Mr. VACHELL (cross-examining).—There is no question as to there being a well-defined road from the northern end of Hem Heath down to Yockerton?—There is a defined road—a carriage drive up to a certain distance—and then a rough cart track, which has been there during the whole of the time I can remember.

Going south from New Park House, is there a road which stands a little higher than the surrounding road?—Yes.

That is what I mean by a well-defined road—not metalled, but showing signs of use by carts?—Yes, certainly.

At the northern end the first gate used to stand nearer the Longton-road than it does now?—No, I don't think it does. I think it was a few yards further in.

Has there always been, so far as you remember, provision for persons entering at the Longton end by a sidegate?—There has been a wicket certainly.

And that is as far back as you can remember?—Yes.

Until the trespass of, I think, last August or September that wicket has never been blocked or fastened—is that so?—I can't answer as to how the wicket and gate have been used. They simply appeared to me to be a wicket or gate, but whether they were locked or not I can't say.

His LORDSHIP.—As far as you know, did you ever know them locked?—No, I don't know that I have ever found them locked.

Further questioned, witness said he had not observed whether one of the gates on the road closed automatically with a weight and chain. Witness's attention was next directed to a photograph of a stile on the left-hand side of a gate at the eastern end.

Mr. VACHELL.—Has not a board been nailed up and put there very recently?—Yes, as repair.

By the JUDGE.—There was one previously, which was taken away and restored.

Mr. VACHELL.—Was it to prevent people using it as a stile?—Certainly.

Witness admitted that the bars of the fencing showed considerable wear, showing that persons had climbed over. He had not observed a stone step there; a stone was lying on the ground, but it did not convey to his mind the idea of a step.

Replying to the Judge, Mr. VACHELL said the step was 2ft. 5in. between the posts and 15in. wide.

Witness was next questioned as to a space between a post and wall on the western side of the canal bridge, and said he believed people could squeeze through, and he had done so himself, but the post was meant to be sufficiently near the wall to prevent people getting through. About eight years ago he instructed a sub-tenant of Mr. Challinor to lock one of the gates. He had seen them locked, and they remained so except during the hunting season.

Mr. VACHELL.—Whatever space there was between the wall and the post, it is a fact that you had it boarded up?—It was done after this matter arose. I said, "Board it up, and let's have no more trouble with that."

That was done to prevent people passing through?—Certainly.

Witness admitted that a field gate with wicket at the Yockerton end was removed some time last year in order to prevent people passing along the road. A fence existed before the wicket, but no hunting gate.

Mr. VACHELL.—At the Yockerton end is there a cottage which provides tea to customers?—All the cottages at Trentham do.

Has it a board up announcing that fact to the public?—That is very likely.

Does that board face this road, which is in dispute?—Witness: I could not say.

Replying to the Judge, witness said the road from the first gate to the New Park House was fenced on both sides, and they were old fences as far as they went. There were no fences on either side from the second gate down to the canal, but he put up a temporary fence between the second and third gates about ten or twelve years ago. From the canal to the Yockerton end of the road there were old fences on both sides.

Mr. POWELL said his learned friend admitted that the defendant caused the acts to be done that were complained of, and therefore he need not call witnesses as to that.

Mr. A. P. LEWELLYN, solicitor, clerk to the Tunstall Urban District Council, said he remembered his father going to reside at New Park House in 1833. He continued to reside there until 1867. The entrance lodge at the northern end of the road was, witness believed, being built when his father went there. His father's bailiff lived at the lodge, and there was a gate across the road, opposite to the lodge. The gate was kept closed and the road was not used by the public.

Mr. BROUGH.—During the period you lived with your father was this road ever used by the public?—No, I should say not by any means.

Have you any recollection of any public user?—None at all; it was always looked upon by us as a private road.

Cross-examined.—Witness's recollection as to user of the road was very clear. He remembered his father using the road except persons going to New Park House on business or to the workmen's cottages, and people on the estate. The gates were not locked, and nobody, so far as he recollected, was ever stopped.

Mrs. Catherine Cooper, now resident in London, said she was the widow of Mr. Samuel Herbert Cooper, solicitor, and lived with him at New Park House from 1870 till 1891. Before her marriage she lived at Trentham Vicarage, and knew the locality in question slightly before she went to reside there. There was a notice at the lodge warning trespassers. About ten or fifteen yards inside the lodge there was a field gate, and the notice stood just inside this gate, next the gate-post. The path entered by the gate was not a public one, and she had herself turned strangers back.

His LORDSHIP.—Why did you turn them back?—Because I did not consider they had any right unless they were going to one of three houses—my own, the woodman's, or the gamekeeper's.

Witness, continuing, said she gave her governess and children, instructions as to turning back strangers on the road in question. The wicket gate at the lodge end of the drive was always locked. The notice board was erected by the Trentham estate men at her request, because she found trespassers coming—trippers and others.

Mr. POWELL.—Do you know a day called "Trentham Thursday"?—Yes, it is in Stoke Wakes week in August.

His LORDSHIP.—Is that when your cinematograph goes about, Mr. Powell? (Laughter.)

Mr. POWELL.—Very likely, my Lord; it was in Stoke or Hanley Wakes week. It is a holiday week.

His LORDSHIP.—A holiday day.

Mr. POWELL.—No, my Lord, it is a holiday week when people make excursions to Trentham. "Trentham Thursday" is an institution.

Witness, continuing, said she invariably instructed her bailiff on "Trentham Thursday" to stay at the lodge gate all day in order to prevent people going up the drive, and this instruction was given every year during her residence there.—Cross-examined: Witness never saw anyone use the side wicket at the lodge end to enter the drive; it was kept locked, and the only way was through the lodge gates. She could not name anyone she had prevented from using the road. She asked people certain questions, and if these were not answered satisfactorily she turned them back.—By the JUDGE: The notice board was put up four or five years after she went to live there, or perhaps longer. She had it put up because she did not think the drive was quite safe enough for her children. She never remembered any of the neighbours being turned back, but she admitted that some of the people she had turned back claimed the right to go through.

Mr. Charles D'Oryl Cooper, of the firm of Messrs. Ashley, Lumby, and Cooper, solicitors, London, and son of the last witness, said there was no public use of the drive while he lived at New Park House, except by people who were regarded as trespassers. Whenever he had found persons using the drive he always endeavoured to turn them back, and none of them ever, to his knowledge, claimed the right to go along the road. The persons, who sought to use the road were people coming from the Potteries, wishing to enjoy themselves. In cross-examination, witness admitted that as the drive led up to the house he was anxious to make it as private as possible.

Mr. VACHELL.—So that, whether there was a right to the public or not to go up, or use that road, you always tried to get them not to?—Yes, sir; but we did it on the basis of our belief that it was private.

Further questioned, witness said he first began to turn people back at the age of 11.—By the JUDGE: What he had said applied to the time when he was home for school holidays. He would undertake to say he had some 15 or 20 times turned back people who claimed the right to use the road; they were all entire strangers to him.

Mr. J. Edwards Heathcote, D.L., of Apedale Hall, said the late Mr. S. H. Cooper was his brother-in-law. He used to visit Mr. Cooper when the latter lived at New Park House, and had walked with him along the road in question. He remembered one occasion when Mr. Cooper turned a man back who was attempting to use the path from the lodge.—Cross-examined: Prior to 1872 he lived at Trentham and knew the district.

Mr. Arthur Challinor, solicitor, and town clerk of Hanley, said that he became tenant of New Park House in 1892, and his tenancy expired at Lady-day this year. When his occupation commenced there were no villas at the lodge end, in the Longton-road, and up to that time he did not find that there was any attempt to use his drive as a public footpath. The first attempts were made about 1897, when the villas were erected. The notice board, which bore the words "Trespassers will be prosecuted," faced the drive when he first went there; he had the board repainted and the word "Private" put on it. He had never turned anyone back, but he had informed people that it was a private road.—By the JUDGE: When he told them this, they replied that they were not aware it was private. He then let them proceed.—By Mr. BROUGH: To his recollection, not one of the persons stopped ever claimed the right to use it as a public footpath.

Mr. VACHELL.—Is it not a fact that the reputation of the road is that it is one which people have the right to walk upon?—I have heard a good deal about this case lately, but I have never heard people say that it was a public road before.

Since this action commenced you have heard that it is the general opinion that it is a public right of way?—I have heard as much on one side as the other.

Samuel Holdcroft, farmer, Old-road Farm, Barlaston, said he took the tenancy over six years ago from his father, who had been tenant under the Duke of Sutherland for many years. He had seen people coming from the north to Yockerton on the footpath on certain days in the week during the last few years, but as long as they shut the gates after them he had not interfered with them. He never knew the road to be used as a public road 20 years ago.

Ralph Mountford, farmer, Old Road Farm, Barlaston, deposed that since 1891 he had been tenant under Mr. Cooper and Mr. Challinor of some 50 or 60 acres of land. He occupied all the fields through which the cart-road went. Since 1891 he had kept the east gate on the New Park side of the canal locked, excepting in the hunting season. He had seen people on the road, but did not turn them back because he had no orders to do so. So long as his cattle were not interfered with it did not matter to him.

Samuel Fernyhough, retired farmer and postmaster of Little Madeley, said that from 1832 to 1838 he was bailiff to Mr. Cooper at New Park House. He used to stop, by order, people trespassing in the drive, and the majority turned back civilly, but some persisted in going on. Witness never used force in such cases. He was on duty for that purpose on "Trentham Thursday" from 8 a.m. to 8 p.m. every year.

Frederick Walklate, blacksmith, who had lived at Hem Heath for 20 years, said he had seen Mr. Cooper attempt to turn back persons using the drive. He had never heard the road claimed as a public right of way until Miss Bennett's agitation.

This concluded the case for the plaintiff.

After the luncheon interval, some legal argument ensued upon the question of title.

His LORDSHIP said it would complicate the matter to place plans and deeds before the jury. He would treat the case for the purposes of this issue as though it were an ordinary freeholder, and ask the jury to say whether they found there had been a dedication in fact. He gathered from what had been stated by counsel that the estate was last put into settlement in 1833.

Mr. POWELL.—In 1833 there was a disentail.

Mr. VACHELL said he gathered from what his learned friend had said that he had deeds in Court establishing a title of the Duke's predecessors in this property from 1704, and that since 1738 the property had been in strict settlement. On January 15, 1830, there was a disentail by the third Duke, the father of the present Duke, and a re-settlement on January 17 of the same year.

His LORDSHIP said the important point to know was what the jury thought about the question of user, and they need not delay the case by dealing with the question of title now. It was a point which, after all, he should not deal with at those Assizes. If anything turned upon the impossibility of dedication being implied Mr. Powell could argue it, and if Mr. Vachel contended that there was a period during which there might have been such dedication it could be dealt with afterwards.

Mr. VACHELL then addressed the jury for the defence. He said he proposed to call a number of witnesses, who would testify from their experience of the road that there had been a user of it, without any interruption whatever, for many years back, and that also from the common reputation of the road in the neighbourhood it had always been regarded as one over which the public had a right to walk on foot. The defendant was not contending for any right for public use of the road for horses and vehicles. All the defence set up was that from the two points—in the north where the lodge gate was situated to the south or Yockerton end—the public had, as far back as the memory of living man, been accustomed to use it at their will, without anyone asserting that they were trespassers.

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If he made out a case of this kind, and if the jury were of opinion that the road had been so frequently and generally used by the public until the user had grown as it were into a right, then they were entitled to say there had been such constant and uninterrupted user that they were of opinion that what had been done had been done with the consent of the owner. The jury would also be entitled to infer, although there was no deed to show dedication, that the owner in fee had in fact dedicated a right of way over the road to the public. He put it to the jury that if there was a public right to use the road as a footpath, the mere fact that the tenants of New Park House, who after all had in themselves no right to dedicate, objected to people passing by, claimed the road as a private one, and turned back people who knew no better, did not rob the public of the right that already existed. One could understand how objectionable it would be to the tenants of New Park House to see people passing close to their residence and streaming down the road; but if there was a right the public were at liberty to exercise it. There was no evidence of persons being turned back other than those who were entire strangers to the locality or who were utterly ignorant as to whether there was a public right of way or not. Here there was unquestionably what might be called a physical road, but the question was "Had the public a right of way over it?" He submitted that the existence of a wicket-gate at the north end favoured the assumption of provision having been made for foot passengers. The fact of there having been a notice-board put up at that end was not at all conclusive, because the jury knew that the placing of it was not the voluntary act of the landowner himself, who alone had the power to dedicate, but the act of the tenant and of the lady whose only desire was to exclude the vulgar public and render her residence as private as possible. The notice was put there to warn the public that they had no right to trespass off the footpath either to the right or to the left. He put it to the jury that the stiles and gates were provided for the use of pedestrians, that the gates were locked merely with the object of interfering and preventing traffic by horses and vehicles, and that there was no thought at all of interfering with the rights of foot passengers, because at that time the noble plaintiff in that action and those before him had recognized the advantage and comfort which this road was to the public, and they had dedicated it to the public. It was only because of recent troubles that somebody, possibly not the Duke of Sutherland himself and possibly not his agent, but more likely those who looked after the estate, thought that the public ought to be restrained in this manner. It was not until August last that it was considered for the first time that the public really had no right in the matter. Dedication was a matter of presumption as to the intention of the person who owned the freehold to allow the public to use it or not. As far as later years were concerned, he (Mr. Vachell) took it that that person was the noble plaintiff, the Duke of Sutherland, who had, at any rate since the death of the late Duke, been the freeholder, and who had it within his power during that time to dedicate the road to the public if he were so minded. During that period he should show that there had been extensive use of this footroad, and such use as to warrant the jury in coming to the conclusion that the present Duke did intend to dedicate it. His learned friend had not called the Duke to say that he had no such intention. He had no doubt that his learned friend had good reasons for so doing, but he (Mr. Vachell) thought he was entitled to say that if the Duke desired the jury to come to the conclusion that he never intended to dedicate, surely, humble as they were, his Grace might have taken the trouble to come and let the jury know his mind upon the matter instead of leaving counsel to attempt to make it out by mere argument.

Evidence was then called, the first witness being Mr. Alexander Scrivener, architect and surveyor, of Hanley, who stated that he had made an examination of the locality in question. Speaking of the gate at the northerly end, leading into the drive, he said there was a lock on the carriage gate, but there was no lock on the small wicket gate there, and never had been so far as one could see; it had an ordinary latch. The lock on the carriage gate had been closed by a strip on the face of the gate. The second gate was fitted with a wire rope and a weight to prevent it from standing open. From that gate to the canal bridge the road was apparently a well-formed road, being raised above the surrounding ground to a height of as much as 18 inches. It appeared to be a well-bottomed road, because, although overgrown with grass for some distance, it was a road which had been well used without the ground having been cut into very much.

His LORDSHIP.—But you have not found any metal upon it?—I have not.

Witness further stated that at the canal bridge east gate the bars of what had been called the stile showed marks of having been worn away by treading on them. A stone at the base had been used as a step, and also showed signs of wear. He had examined the gate on the west side of the canal. At the Yockerton end there was a gate to swing both ways as a carriage gate, and there were indications that a wicket had also existed there.

Thomas Stanley, aged 50, of Hanley, said he knew the road in question when he lived in Anchor road, Longton. He had known it altogether about forty years. When at Longton he used to visit his uncle at Tittensor, and his father took him there when he was only eight years old. From the smithy he used to walk past the New Park House and come out on the old Barlaston road, passing over the canal.

Mr. LEWIS.—Have you passed down that road often?—Many a time; it used to be my way on courting nights. (Laughter.)

Witness had seen many people along the road, and had never heard of anybody being stopped. He had never been turned back, and he always looked upon the road as a public one.

Mr. POWELL (cross-examining).—Nobody would think of turning your father off that road, I suppose?—No; nor anybody else. (Laughter.)

Why?—Because it was a public road.

Witness added a remark to the effect that his courting days were the sweetest days of his life.

Mr. POWELL.—You would not want to go off the public road at that time?—Oh, no; we weren't particular at that time. (Laughter, in which the judge joined.)

They would not have thought of turning you off when you were courting your young woman there?—No, certainly not.

Joseph Brough, farmer, Cobridge, aged 32, said he had walked along the road in question scores of times when he was a youth and up to the time when he was forty years old. No one ever tried to turn him back. The road was used by foot passengers, and was looked upon as a nice country walk.

John Sneyd, brick and tile manufacturer, Barford, deposed to having known the road 33 or 34 years, and to having walked along it without interruption. He had seen scores of people use the road, and he had been with parties of thirty or forty along it.

Thomas Deaville, gardener and nurseryman, said he formerly lived at Tittensor, and had known the road for thirty years from boyhood. He had used the road to go to Longton two or three times a month for forty years, and had never been stopped or turned back. Witness caused some laughter by declaring with emphasis that "the road always was a public footpath and always would be."

William Sharman, joiner, spoke to having known the road forty years. He first knew it when he lived with his father at New-castle. Witness used the road when going to visit his grandfather at Tittensor, and had never been told to turn back.—By the JUDGE: He had met people on the road going both ways.

Mr. William Stonier Yates, architect, Grove-place, Shelton, said that he had used the road perhaps half a dozen times a year for about 20 years. He was fond of watching bird life, and he produced a notebook showing various dates that he had used the road, and made notes upon his observations while doing so during 1894, 1897, 1901, 1902, and 1903. He had never been turned back, and never had any idea that he was trespassing. The road had the reputation of being a public road.

Mr. Job Thomas Clarke, builder and contractor, Hanley, said he had known the road for 35 or 36 years, and had used it five or six times a year as a pleasure walk for the purpose of going from Trentham Station to the monument, to Tittensor, and to Stone. While using the road he had met Mr. Challinor, and had not been interfered with even then.

Similar evidence was given by William Brough, aged 70, formerly under-gardener at Trentham; Job Haywood, aged 69, formerly living at Tittensor, and employed at Trentham Gardens; Charles Cobden, beerhouse-keeper, Hanley; Thomas Haynes, aged 70, and William Woolley, aged 73.

William Elliott, who was coachman to Mr. Challinor at New Park House in 1903, said he constantly saw people using the road while he was there, and he had no orders to stop them.—Joseph Lloyd, aged 67, working at Shelton Lodge, said he had used the road for 44 years.

At this stage his LORDSHIP suggested that it would be a very good thing if the jury could see the place so as to better appreciate the evidence.

Mr. POWELL.—I maintain that they should see it.

His LORDSHIP.—If I was going to deal with the case I should like to see the place. I don't know if the jury think they would like to.

Replying to the Judge, Mr. VACHELL said he had ten more witnesses to call.

The jury agreed they would like to inspect the *locus in quo*, and arrangements were accordingly made for them to do so the following day, Mr. Hill for the plaintiff and Mr. Scrivener for the defendant being appointed to represent the parties.

The case was adjourned till Thursday, the Court rising at 4.10 p.m.

THE TRENTHAM RIGHT-OF-WAY CASE.

The hearing of the action "The Duke of Sutherland v. Benett" was resumed, the evidence for the defence being continued.

The first witness called was Frederick Pointon, sagg-maker, of Shelton, who said he had been in the habit of using this road for pleasure and for pigeon-flying during the past 34 years. He lived at Etruria when he first used the road. He had never been stopped or turned back, and had never asked permission to go there. He had met people on the road.

John Brunt, collier, Shelton, aged 54, said he had known the road for over 30 years, and had very frequently used it up to the last three years for pleasure. He had seen hundreds of people on the road at times.

Roland Tams, confectioner, Lichfield-street, Hanley, spoke to having known the road 25 years, and used it frequently during the past nine years. Cross-examined: He had met Mr. Challinor often on the road.—By the JUDGE: Mr. Challinor never told him it was a private way.

William Hayes, beerhouse-keeper, Hanley, declared that he had known the road a generation.

His LORDSHIP.—That is for 25 years.

Witness.—No, 33 years, my Lord.

His LORDSHIP.—That is more than a generation.

Witness.—You will find it is 33 in the dictionary, my Lord. (Laughter.) He added that he had used the road for pleasure without permission, and had never been stopped.

Herbert Emery, journeyman baker, Hanley, said he had known the road for 25 years, and it was frequently used by people who went to Trentham on Sundays. Cross-examined: It was the only recreation Pottery people practically had.

Mr. POWELL.—I suppose the Duke allows people to go about the Trentham estate a good deal?—As far as this road is concerned, I have looked upon this particular road as a matter of right.

Replying to the JUDGE, witness said he had gone with parties along the road, and had never been stopped until last August.

Similar evidence was given by Andrew Trow, potter's placer, Thomas Berry, labourer, Joseph Tinsley, collier, and William Barker, sagg-maker, all of Shelton, who deposed that they had frequently used the road for periods varying from 30 to 40 years, and had never been turned back.

The Rev. Wm. Lansdell, of Wolstanton, said he had known this road since 1836, and had often used it in the summer time. Parties from his church had used the road on the way from Trentham Station to the monument, entering at the Hem Heath end and returning the same way. He had never asked permission to use the road, and nobody had ever interfered with witness or the parties he had accompanied.

Albert H. Byles, engineer, Burslem, deposed that he had known the road 30 years, and had never been stopped or interfered with in the slightest when using it until last August.

This concluded the case for the defence.

Mr. VACHELL, in addressing the jury on Miss Benett's behalf, said his task had been lightened because he understood that the jury had had the advantage of seeing this particular road. They would doubtless have noticed that there was a physical road commencing at the north end running past the New Park House, and joining the main road again at the Yockerton end. He was sure they had not to hunt for it, or get anybody to point it out. He submitted that the real question was—Were the public allowed by the persons who used the freehold of this place to pass along uninterruptedly such a continual number of years as to fairly lead to the conclusion that there was an intention to allow the public to do it as a matter of right? The evidence he had called showed that what the witnesses had done had been the assertion of a perfect right and without having permission. He argued that the enjoyment which had been exercised for so long and so continuously and to such an extent went to establish that the right of the public had indeed become a right in law. The fact that the road happened to run through the Duke's Park did not in any way affect the public right. Under the circumstances he confidently appealed to the jury to say that they had no doubt that in their mind there had been such an extensive user over a considerable period of time as to justify them in saying that there was an intention in the freeholder to dedicate this road to the use of the public.

Mr. POWELL cited the case of "Stone v. Jackson" in "Pratt on Highway Law," in which there was the following passage:—"Where there was evidence that many persons were in the habit of going diagonally across the defendant's garden for the purpose of making a short cut from a street to the main road, and the defendant swore that they had no right to go there, and that he had repeatedly sent persons back, the Court held that there was no evidence for the jury of a public footway."

His LORDSHIP said it was a different case altogether to the present one; there was nothing whatever in the passage quoted.

Mr. POWELL added that there was a later case in the House of Lords, and the JUDGE said he would peruse it.

Mr. POWELL, in his address on behalf of the Duke of Sutherland, commented upon the fact that the jury had not seen the lady who had been good enough to champion the rights of the democracy in this matter. Miss Bennett was no doubt a very public spirited woman, but he thought they would like to have seen her and known why she of all persons was contesting this right with the Duke. It was a strange thing that this should have happened in these days, because there were such bodies as District Councils which were formed under a somewhat recent Act of Parliament, and one of their statutory duties was to preserve the rights of the public over public footways and public ways, and they might apply money from the local rates for the purpose. He would like to have known and to have had the opportunity of asking Miss Bennett how it came about that this championship was taken up not by a public body but by herself.

His LORDSHIP.—I shall be obliged to tell the jury those points have nothing whatever to do with the case. Anyone is perfectly entitled to take action if they thought there was a public right. The question of what other people might have done has nothing to do with the case.

Mr. POWELL said he quite agreed that anybody might champion a right, but he would like to know whether Miss Bennett did or did not apply to the District Council, and he suggested that the reason the Council were not there championing the rights of the public was because it was so well known in the district that the public had not a right to use the road. The question was—Had the person who had the power dedicated? He asked the jury to consider the road itself, and argued that it was not a necessary way. Formerly, it was a farm occupation road throughout, with the usual farm gates here and there. He contended that the fact of the lodge having existed since 1858 without protest, and the notice-board having been up for 30 years, pointed distinctly to one thing—viz., that it was a private road. Unquestionably there had been a user of this road, and so apparently there had been of a great part of the Trentham estate. The Duke and his predecessors had not been selfish, and said "Nobody but my own people shall go through." Long might such a feeling as that exist. They did not want any of the aristocracy that existed in France before the Revolution. He could not help thinking that it was not altogether the best thing in the world to champion the democracy and to pit them against men who happened to be landowners last week should befall them. Fight for a right over this and lose perhaps a good many privileges. Let the jury not suppose that persons who did not always interfere necessarily dedicated. There was no doubt that people had used this road, but the question was whether there had ever been a challenge. No one had been called to say, "I was there, and I challenged the right of the tenant." How had this matter come about? There was the well-known hospitality of the Duke, who did not wish to exclude people, and secondly there was the evidence that for a very considerable part of this time—from 1850 down to 1885—the flint mill and the wharf were used, and there were carts going either way along the road by express permission of the tenant. Long before 1846 down to 1873 the limekiln was also being used, and carting took place. Obviously, if people saw the carts going to and fro it might indicate to them that it was a public road, and the user might gradually increase until now it was claimed as a right instead of a privilege. The learned counsel maintained that he had called a strong body of evidence in support of his case, and quoted a remark by a learned judge that "one single act of interruption by the owner is of much more weight upon the question of intention to dedicate than many acts of enjoyment." The evidence he had called showed many more than the one act of interruption, and they were simply sufficient to show that this was not a highway. There was the cogent evidence that upon "Trentham Thursday" a man was stationed at a gate to warn people and prevent people from going along the road. Counsel went on to point out that railway companies and others closed their private thoroughfares once every year to assert their rights against the public.

His LORDSHIP said that if counsel had got anything of that kind in this case it was a different thing. The evidence of Mrs. Cooper was that she stationed a man at the gate because such crowds of people tried to get into her drive that she did not think it was nice for her children.

Mr. POWELL, continuing, said nothing could be more melancholy than that landowners should have to do that which one judge after another had said it would be a most unfortunate thing for the public to ever happen. He thought that, however continuous or lengthy the indulgence might have been, the jury ought to be warned against extracting out of it an inference prejudicial to the persons who had granted the indulgence.

His LORDSHIP, in summing up, said he did not agree with the view of the law that had just been presented by counsel for the defence. The question which arose in this case was whether, although there was no express evidence of dedication, there might have been such user with the knowledge of the people who could have interfered with it, as would justify the jury in finding that there had been in fact a dedication or user by the public as amounted to a dedication. There was no evidence of actual dedication in the sense that the Duke or his agents laid down a footpath or allowed a road to be laid down along which the public were invited to go, leaving the footpath to be established. He asked the jury to disregard what Mr. Powell had said upon the points that the action was not taken up or defended by the District Council, and that the defendant had not been called. Unless Miss Bennett had gone along the road in question in years gone by she could not have been called. The jury had not to decide upon what they saw the previous day when they inspected the road, but it was their duty to carefully weigh the evidence with reference to the *status quo*. He advised them not to attempt to decide the issue by any one special fact in the case unless it was conclusive of there being or not being a right of way.

If the user was such as was known to the Duke's representatives, and if the jury came to the conclusion that it satisfied them that there had been a right of way exercised by the public for 30 or 40 years without let or hindrance, it would be sufficient for them to form the conclusion that there had been a dedication. It was a remarkable thing that not only the 25 witnesses for the defence had never been turned back or interfered with, but there was no evidence of any neighbour or person knowing the country being turned back by Mrs. Cooper or the other tenants. If there was a strong belief by the Duke's representatives that there was no right of way for foot passengers on the road, and when the people from Trentham Station began to come, not one or two at a time, but in tens and twenties, one would have thought that some active steps would have been taken to let people know that they had not the right to use the road. It was not, however, because they had neglected to take the best or the extreme course that they had lost the power to prevent people going through. The jury must take the facts into consideration, and say whether they found there was a right of way for foot passengers through this road from one end to another, meeting thereby a right of way which would be acquired by dedication of the footpath for that purpose, such dedication consisting in long-continued user to the knowledge of the persons who were managing the affairs of the Duke, and without any attempt being made to interfere with it or to prevent the right being acquired. If, on the other hand, the jury thought that all this was reconcilable with mere permission by the people in occupation of the land, then it would be within their power to say that there was no right of way.

The jury retired at a quarter-past twelve to consider their verdict, and returned shortly before half-past two o'clock.

Asked if they were agreed, the FOREMAN handed a paper to the JUDGE.

His LORDSHIP.—I cannot possibly say that that is sufficient by itself. You must only take that in consideration with other matters. You had better go back and consider it again. That thing by itself would not be sufficient. I have no doubt that if you talk it over you will be able to come to some conclusion—it is better to have it settled one way or the other.

The jury again retired, and returned about five minutes later with the following finding:—"The jury are strongly of opinion that it was never intended by the owner to be a public footpath, but the public have acquired the right by long usage."

His LORDSHIP.—I think I had better take this finding; it is not altogether satisfactory, but you (meaning counsel) must make what you can of it. To the Jury: Is that the most you can get to, gentlemen?

The FOREMAN.—Yes, my Lord.

His LORDSHIP.—It is no good sending you back again, I suppose?

The FOREMAN.—No, my Lord. (Laughter.)

His LORDSHIP.—You have talked it over carefully, have you?

The FOREMAN.—Yes, we have.

His LORDSHIP.—Very well, then. I will take that verdict. You can go, gentlemen.

Mr. POWELL submitted that the verdict given, wholly irrespective of the point of law reserved as to whether there was a person who could dedicate, entitled the plaintiff to judgment in his favour. There must be dedication, and it could only be by intention which might be inferred from certain things of which user was sometimes one, but the jury had expressly negatived intention, and therefore user went to nothing. The learned counsel cited various authorities in support of his contention, and argued that where land was in strict settlement there was never any person capable of dedicating.

His LORDSHIP.—Do you mean that there has been no acquisition but it is what I may call an implied dedication as against lands in settlement?

Mr. POWELL.—Most certainly, and it has been so laid down. First of all, you must have the freeholder—the owner of fee simple, and there is never an owner of fee simple where land is in strict settlement.

His LORDSHIP said he thought that if this settled land point was going to be seriously argued he must hear further argument upon it.

Mr. POWELL.—It will most certainly be argued.

His LORDSHIP.—Of course, you will go to the Court of Appeal. I am against you on the finding of the jury, but I will state my reasons whenever you like, and reserve the Settled Lands Act point, which can be either argued before me or taken to the Court of Appeal.

In giving judgment, his LORDSHIP said that upon the finding of the jury he formed the conclusion at once, and Mr. Powell had not removed it by argument, that it amounted to a finding for the defendant. As he understood it, the first part of the jury's answer was that they thought that the owners of the Sutherland estate never intended to allow a footpath to be created. That was what he understood them to mean—not that they had done anything which negatived the presumption to be drawn, but that it was never intended by the owners of the estate to be a public footpath—i.e., if they had been on the spot, knowing what was going on, they would have done all they could to prevent it, but the public had acquired the right by long usage. He understood that to mean that in the jury's opinion, in which he must say respectfully he entirely concurred, the long usage which had been established was sufficient to imply what could be called a public dedication in law which followed from long usage. He did not think that mere interruption by a tenant would be sufficient to prevent user from which dedication could be inferred—i.e., the acquisition of the right by long usage. He had come to the conclusion that upon this finding of the jury, the right being acquired by long usage, did supply what was necessary in order to make an ordinary owner in fee have his estate subject to a public right of way. His LORDSHIP added that all he said was, of course, subject to further consideration by men who were wiser than he on such matters. He would postpone argument upon the matter and hear it as early as he could in London. He would give judgment for the defendant, subject to the question of the point of law, which might lead to judgment the other way, being argued elsewhere.

Mr. VACHELL.—Might I say as to the point of law that whilst admitting all the title deeds, it is not an admitted fact that this property has always been held in strict settlement?

His LORDSHIP.—I have not forgotten that point because you called my attention to a certain period, but I think at present know whether that will be sufficient assuming Mr. Powell is right.

Mr. VACHELL.—Any break, according to the authorities, if only for a day or two, is quite sufficient.

Mr. POWELL observed that that was a matter they would have some difficulty with. He asked if his Lordship would enlarge the time allowed for moving for a new trial but the JUDGE said it was not necessary where there was no formal judgment given.

The hearing of the case then concluded.

THE SALE OF THE TRENTHAM HALL ESTATE

16. In 1905 The Duke of Sutherland left Trentham Hall. The Hall was demolished in 1911. The first major sale of land took place in 1914. The outbreak of the First World War halted the disposal of land and the greater part of the estate was offered for sale at the King's Hall, Stoke-on-Trent, in 1919. At Hem Heath this included New Park Farm (Lot 204), the New Park Plantation (Lots 208 & 244) and Lot 245, the cottage occupied by William Horrobin, the woodman. Sale particulars for these properties can be found on the next 3 pages. Part of the auction map showing the area around New Park is reproduced below.

After 1919 huge changes took place in the wood and its vicinity. They included the construction of a new colliery at Hem Heath on the opposite side of Trentham Road in the 1920s. (See hand-out on Hem Heath Colliery.) It is sufficient here to note that the expansion of production after the nationalisation of the mines in 1947 was accompanied by the construction of a large electricity sub station in Hem Heath Wood which also facilitated the development of the adjacent Newstead Trading Estate. The decline of the wood in the twentieth century has been accompanied by the demolition of the gamekeeper's cottage and the woodman's cottage as well as the removal of the two bridges over the railway line which linked the east and west sides of the New Park Estate. Nevertheless, enough remains in the twenty first century to get some sense of the New Park Plantation during its most productive period between 1848 and 1914.

New Park, Trentham.

LOT 204.

The well-known and highly desirable

RESIDENTIAL PROPERTY

known as

“NEW PARK,”

consisting of

Large and conveniently arranged three storey House, having a direct Southerly aspect and possessing extensive and very pretty views, Pleasure Grounds, Tennis Lawn, Kitchen Garden, Stabling, Garage, Farm Buildings, Two excellent Cottages, the whole situated in the centre of an Area of approximately 50 Acres of well wooded and Park like Pasture.

THE HOUSE is approached by carriage drive, entrance to which is obtained from the Main Road leading from Trentham to Longton and immediately adjacent to Trentham Railway Station.

THE HOUSE—Brick-built and Tiled—contains on the Ground Floor :—

Vestibule Entrance, Corridor, opening from which are Drawing Room, 30ft. x 18ft., Dining Room, 20ft. x 15ft., Smoke Room and Ante Room.

2 W.C.'s.

Kitchen, Scullery, Larder, Dairy, Butler's Pantry.

Servant's W.C.

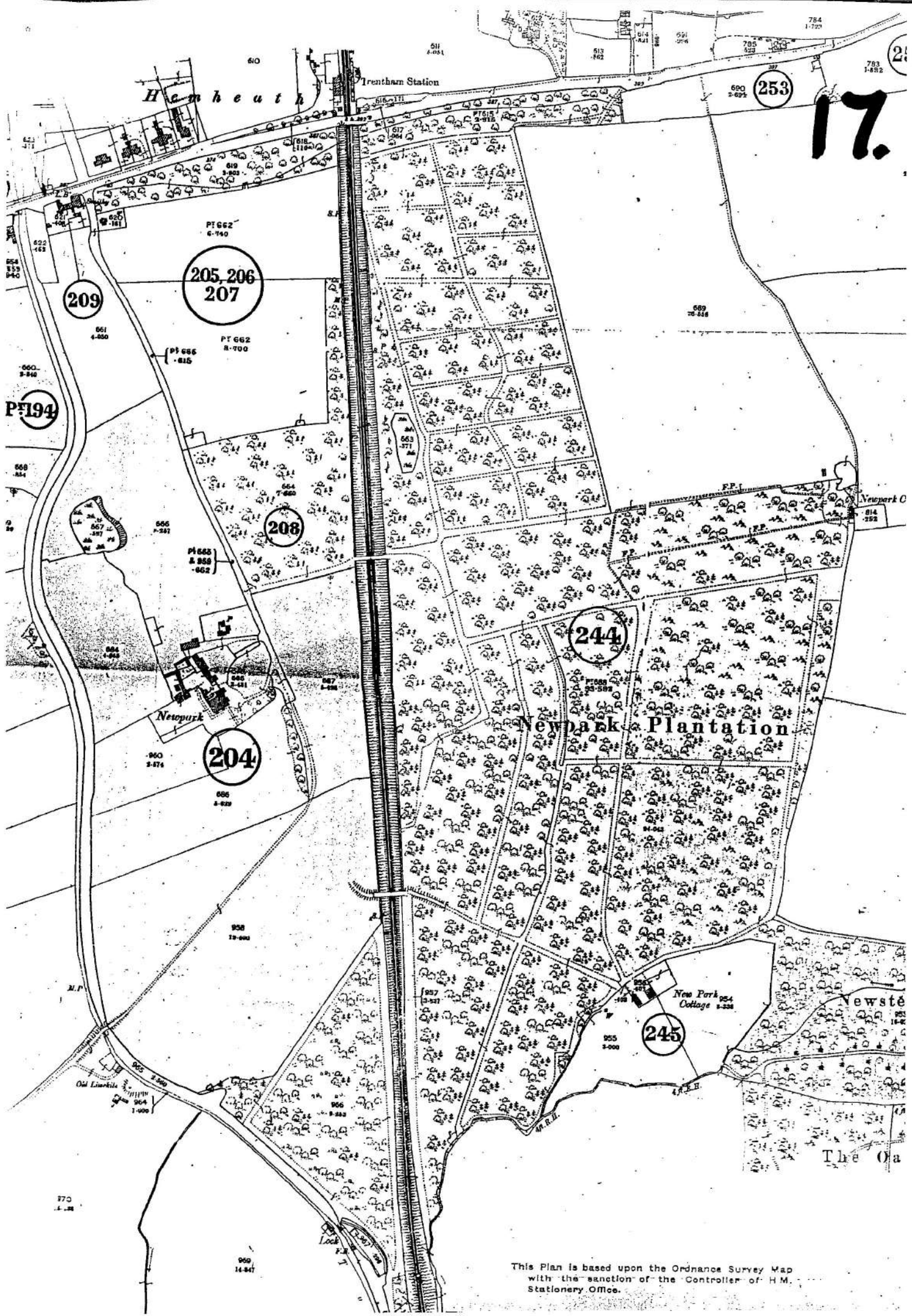
On the First Floor are Four Bedrooms, one of which is 23ft. x 15ft., and another 21ft. x 15ft., Two Dressing Rooms, Bath Room and W.C.

On the Second Floor are Landing and Passages connected with five Bedrooms, Sewing Room, Box Room, Linen Room, Front and Back Staircases.

Good Cellaring.

Opening on to Court Yard are Coal House, Stick House, Knife House, Ash Pit and Stoke Hole for heating apparatus.

Dairy, Bakehouse and Laundry.



17.

This Plan is based upon the Ordnance Survey Map with the sanction of the Controller of H.M. Stationery Office.

LOT 204—*continued.*

THE FARM BUILDINGS consist of Cow House with tying for 12, having Fodder Passage and with Granary over, Cow House with tying for 6; with Lofting over and Hay Bay to the rear.

2-Stall Hackney Stable, Range of three Loose Boxes, 2-Bay Cart Shed, Turnip House and Engine House, Corn Store, Tool House, Fold Yard with Lying Sheds, enclosed manure Yard, 2 Pig Sties, 2 Poultry Houses, Garage with Lofting over.

**Three-Bay Hay Barn, iron built with wood wall plates,
45ft. x 24ft.**

E.C.

Gas and Water are laid on to the Premises.

THE TWO COTTAGES—Brick-built and Tiled—situate immediately adjacent to the Premises each have Porch and contain Front and Back Entrance Lobbies, Sitting Room, Kitchen, Pantry, Store Closet, Landing and three Bedrooms.
Opening on to Enclosed Yards are in each case; Wash House, Coal House and E.C.

THE PASTURES are all old turfs of first class quality, well watered, and afford abundance of excellent herbage.

Tenant :—Mr. J. C. BAILEY.

Present Apportioned Annual Rental £190 Os. Od.

Outgoings—Land Tax £2 2s. 1d.

Notice to quit has been given, which will expire with 25th March, 1920.

THE TIMBER has been measured up and valued at controlled price of £105 0 0.

SCHEDULE.						AREA.	AREA.		
Parish of Trentham.						ACRES.	A.	R.	P.
NO. ON PLAN.									
Pt. 665 & 959	Drive ..	..	..	..	..	.662			
666	Pasture	..	..	..	..	8.257			
667	Old Pool	..	..	..	..	.597			
684	Pasture	..	..	..	..	4.665			
685	House, Grounds, Cottages, etc.	..	..	..	..	3.431			
686	Pasture	..	..	..	..	5.629			
687	"	..	..	..	..	5.426			
958	"	..	..	..	..	19.400			
960	"	..	..	..	..	2.574			
						<hr/> 50.641	50	2	23

Right of Cartway is reserved to the Owner and Occupier of Premises at present in the occupation of Mr. Wm. Horrobin, situate to the south of the New Park Plantation, from Bridge crossing the North Staffordshire Railway therefrom across Field No. 958 on Ordnance Plan, and to Bridge crossing canal on westerly side of same Field.

Right of Cartway from Plantation No. 664, scheduled as Lot 208, is reserved to the Owner and Occupier thereof over Carriage Drive belonging to this Lot; the Owner and Occupier of Lot 208 to be responsible for all damage incidental to such User.

Right of Cartway is reserved from Canal Bridge abutting on Field No. 958 and forming part of this Lot to Plantation No. 966 on Ordnance Plan; the Owner and Occupier thereof to have such right of User to the same extent as heretofore, and to be responsible for all damage incidental to such User.

Right of Cartway is reserved to the Owner and Occupier of this Lot over carriage drive situate on westerly boundary of Lots 205, 206, 207.

N.B.—The whole of above reservations as hitherto used and enjoyed.

LOT 208.

Part of New Park Plantation

19.

mostly matured Timber and mainly Spruce, Oak, Ash and Underwood,

This plantation is bounded on its easterly side by the North Stafford Railway, and on the three remaining sides by the New Park Property.

Tenant:—IN HAND.

Gross Rateable Value £2 17s. 6d.

Outgoings:—Land Tax 1s. 1d.

Immediate possession can be given.

SCHEDULE.

Parish of Trentham.					AREA.	AREA.
NO. ON PLAN.					ACRES.	A. R. P.
664	Plantation	..	..	..	7.660	7 2 26

Right of Way is reserved to the Owner and Occupier of this plantation over carriage drive leading from New Park to the adjacent High Road, scheduled with Lots 204, 205, 206 and 207, and at present occupied by Mr. J. C. Bailey.

New Park, Trentham.

LOT 244.

THE REMAINING PORTION OF

The New Park Plantation

together with

“THE NEWSTEAD WOOD,”

An extensive Area of valuable Mixed Timber, mostly matured, mainly Spruce, Oak, Ash, Larch and Underwood.

This Wood possesses extensive frontage to the Main Road leading from Trentham to Longton, is immediately adjacent to the Trentham Railway Station, and is bounded on its Westerly side by the North Staffordshire Railway.

Tenant:—IN HAND.

Gross Rateable Value £42 6s. 9d.

Outgoings: Land Tax, Trentham ... 14s. 2d. } 15s. 2d.
„ Blurton .. 1s.

Immediate possession can be given.

SCHEDULE.

Parish of Trentham.					AREA.	AREA.
No. ON PLAN.					ACRES.	A. R. P.
Pt. 615	Pt. New Park Wood...				2.915	
663	Pool ... ..				.371	
Pt. 688	Pt. New Park Wood...				93.592	
953	Newstead Wood				16.022	
					112.900	112 3 24

Right of Cartway through this wood is reserved to the Owner and Occupier of Lot 245, in the direction of bridge crossing the North Staffordshire Railway opening on to Field No. 958 Ordnance Survey and forming part of New Park.

20.

New Park, Trentham.

LOT 245.

Highly desirable and very compact

SMALL HOLDING

situate in the neighbourhood of New Park.

The premises consist of

Dwelling House, very prettily situated and in an extremely sequestered position, Out-Offices, Out-Buildings, and Two Crofts of old Turf: the whole having an Area of 6 Acres.

THE HOUSE contains entrance Lobby, Sitting Room, Kitchen, Scullery, Dairy, Pantry, Landing, 4 Bedrooms, Coal House, Pigstye, E. C.

THE OUT-BUILDINGS—brick built and tiled except where otherwise stated—consist of Cow House with tying for 8, having Fodder Passage and with Lofting over, Calf Kit, Pig Box, Chaff House and Hay Bay; the latter three items timber built and tiled.

THE CROFTS OF PASTURE LAND are situate immediately surrounding the house and buildings.

Good Garden.

Water is obtained from well on the premises.

Tenant:—MR. WILLIAM HORROBIN.

Present Yearly Rent £14 0s. 0d.

Outgoings:—Land Tax, 2s. 11d.

Notice to quit has been given, which will expire with 25th March, 1920.

SCHEDULE.

Parish of Trentham.

No. ON PLAN.	DESCRIPTION.	AREA. ACRES.	AREA. A. R. P.
954	Pasture	3.336	
955	Ditto	3.000	
956	House, Building, etc.	0.408	
		<hr/> 6.739	
			<hr/> 6 2 38

Right of Cartway is reserved to the Owner and Occupier of this Lot through the New Park Plantation scheduled with Lot 244, and therefrom across New Park, Lot 204, in the direction of Bridge Crossing the Trent and Mersey Canal, and thereafter by occupation Road leading across Field 970 on Ordnance Plan, at present in the tenancy of MR. JOSEPH MOUNTFORD, to the Barlaston Old Road.

This as hitherto used and enjoyed.