

10/16/96

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

the canal property.

MR. DARCY: Thank you.

THE COURT: Anything else?

MR. SCHNEIDER: No, Your Honor.

THE COURT: You are free to leave the courtroom subject to calling attorney's schedule.

(Witness excused.)

F R A N D U M A S, a witness called on behalf of the Defendant, after having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. SCHNEIDER:

Q State your full name?

A Francis Dumas.

Q How are you employed?

A I am the Yates County Historian.

Q How long have you worked in that capacity?

A I was appointed to the historian in May of this year.

Q Prior to that what did you do?

A I was the assistant to the Yates County Historian.

Q For how long did you hold that position?

A Since December of '87.

8960  
P E R M I T T E D  
C O C O B A Y O N N E  
N J 0 7 0 0 2 F O R M F E E D

1 Q Can you briefly describe for us your training  
2 and experience in reference to that position?

3 A I have a Bachelor's Degree in writing from  
4 Barnett College, Columbia University which is where I  
5 began to learn how to do research. Since then I have  
6 attended at least twice a year and often more than that  
7 numerous conferences, seminars, workshops, mostly on  
8 research methods and the last five years or so I have  
9 been concentrating on the use arrangements cataloging  
10 preservation of records.

11 Q Have you done any historical writings?

12 A Yes, I have.

13 Q Could you describe those to the Court, please?

14 A In 19 -- beginning in the 1980s, I am not sure  
15 of the exact date, I did a series of leaflets concerning  
16 mill sites and along the outlet trail that is to say  
17 along the Keuka Lake outlet between Penn Yan and Dresden  
18 and also on the canal itself and the old canal and the  
19 railroad. Then in 1990 I published, I had published a  
20 history of Yates County. I have also done a book for the  
21 Village of Penn Yan on its history, preservation  
22 district.

23 Q Now, are you familiar with the Dresden milling  
24 complex?

25 A Yes.

1 Q Can you briefly describe that to the Court?

2 A The site of Dresden was purchased as part of a  
3 very large tract of land, eight hundred and something  
4 acres from, basically as part of it was called the  
5 Livingston Tract because John Livingston was one of the  
6 partners, there was a speculation scheme and it consisted  
7 of some farm land which was sold off pretty quickly and  
8 then the owners, one of which was a man named Herman  
9 Bogart, a lawyer in Geneva. They established because it  
10 was on the mill stream which is the outlet they started  
11 building mills. They built a dam up where the street  
12 bridge is now and from that mill pond built back up  
13 behind the dam, they built several mills. The mills were  
14 there and all established there at least the main ones  
15 during the 1820s which is when they started to sell off  
16 lots in Dresden, it was surveyed and started to sell off  
17 lots.

18 Q I am going to refer you to Exhibit AA and ask  
19 you if that mill complex includes a flour mill?

20 (Exhibiting Exhibit AA to witness.)

21 A Yes, it did. (Witness referring to Exhibit  
22 AA.)

23 Q Could you point that out to the Court, please?

24 A Right here.

25 Q And that was, that fronted on what street?

1 A Seneca Street.

2 Q What did it front onto the south?

3 A By the time this map was made on the canal?

4 Q When it was originally built?

5 A There was just land back there, there was no,  
6 that was the mill was built at least ten years before the  
7 canal.

8 Q Now, I notice that there are two streams coming  
9 on the west side of the mill and one, is that what you  
10 found?

11 A Yes, those are the mills. The longer one is  
12 the raceway for the flouring mill and for some other  
13 mills and the little one was for a tannery. It is  
14 another raceway, mill race.

15 Q Now, I think we are all set on this for now.  
16 Wait a minute, there is one more thing. Is there  
17 also a warehouse on that property?

18 A Yes, actually two.

19 Q Can you show us it?

20 A There is one right here and then there was one  
21 built out on a dock into the lake.

22 Q And the mill race as shown is going to the  
23 lake?

24 A Yes.

25 Q Could you just point that out to the Court?

896D

P E N N S Y L V A N I A  
C O C K E N  
J U N I O N  
0 7 0 0 2  
F O R M  
F E E D

1 A Right there. (Witness indicating.)

2 Q And now, do you have information on that  
3 flouring mill?

4 A Yes, at least some information on it, yes.

5 Q What can you tell us about it?

6 A The mill was built in the 1820s, it shows up on  
7 various records including advertising in the newspaper  
8 and also on the census and so on. The census ~~was~~ that  
9 was taken in 1825 shows that mill there. It was a very  
10 large structure, it used the deeds, showed that it used  
11 ~~four~~ run of stone which means two sets of mill stones  
12 which ~~that~~ is a very large mill. Most of the mills in  
13 Dresden and elsewhere on the outlet I don't know of  
14 another that used that many, one or two would have been  
15 much more usual. It was built so that it stood up above  
16 Seneca Street, of course that was the entrance. Once the  
17 canal was surveyed and actually built there was another  
18 mill, a mill used that was built about 1831 by the bridge  
19 and so that took what was called custom work where a  
20 farmer would bring his milling, his corn or wheat,  
21 whatever into the mill for his own use. But the flouring  
22 mill was at that time used as a merchant mill. It was  
23 very much a larger and more profitable and I am sure  
24 enterprise than the other.

25 Q Now, once the canal was built what was the

1 relationship as best you can know between the north line  
2 of the canal and the south line of the mill property?

3 A In an analogy to other structures along the  
4 canal it would have been almost abutting such that the  
5 finished product which was packed in barrels would have  
6 been able to be lowered right into a canal boat.

7 Q So that it would be your understanding that the  
8 mill would have been right up to the property line or  
9 very close to it?

10 A Very close to it anyway.

11 Q Would it have been built onto the canal?

12 A Out over it?

13 Q Yes.

14 A Probably not. It is possible there is at least  
15 one cantilever warehouse, I am not aware of but I would  
16 doubt it.

17 Q I will show you the canal map which is Exhibit  
18 Z and ask you if that would indicate it was built up to  
19 the property line or --

20 A It looks like it.

21 Q And the location of that flour mill would have  
22 been at the intersection of the two races?

23 A Yes.

24 Q Now, just innocently we are talking about a  
25 prism of a canal, what is the prism of a canal?

1           A     The ditch, the actual waterway because of its  
2 shape so-called it was wider at the top than at the  
3 bottom.

4           Q     Not the actual width of the canal?

5           A     Of the canal property, no, just the waterway,  
6 the ditch.

7           Q     Now, looking at the <sup>Dam</sup> advance map, which is AA,  
8 and I notice that the race appears to go under the canal  
9 and then down to the flouring mill?

10          A     Yes.

11          Q     Tell me, was there any interchange of water  
12 between the canal and the outlet or the mill races?

13          A     No.

14          Q     Tell us about that.

15          A     When the state authorized, when the state  
16 authorized the building of the canal it was done by  
17 petition of the various people in the area who wanted to  
18 be able to ~~shift their~~ ship their goods out. Several  
19 options were discussed and proposed and the engineer who  
20 did the final surveying and engineering work for the  
21 canal discarded what he called a slack water canal, that  
22 is to say to build it right through the using the  
23 waterway or the outlet but have the damage, the potential  
24 damage that might be due to the milling interest. By the  
25 time the canal was surveyed it was twelve dams with all

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A The raceway when he went home Hutchison who was the engineer did his engineering report he mentioned that a culvert would have to be built so that the canal could cross that raceway and in fact the map which was done for his proposal shows the race ran underneath in a culvert.

Q Showing you the canal field notes which are Exhibit V, does that, what you just referred to, does that show on here?

A Yes, it does.

Q Could you point that out to the Court?

A Right here.

Q So from Penn Yan until Seneca Lake is there any interchange of water between the canal on one hand and the outlet and the mill race on the other?

A No.

Q So that the canal property then would belong to the state and the mill races would belong to the mills?

A Correct, yes.

1 Q Now, while we are on canals, there is a lock  
2 which is fairly close to Seneca Lake?

3 A Yes.

4 Q And the first lock from Seneca Lake?

5 A Yes.

6 Q Now, where was the water discharged from that  
7 lock when a boat was coming down the stream entered the  
8 lock and of course had to be lowered. Where was the  
9 discharge?

10 A Downstream into the canal through the gate  
11 presumably through it and because they were opened up by  
12 hand you needed to discharge that water and that by  
13 gravity that is the easiest place for it to go right down  
14 into the downstream. So in this case since it is close  
15 almost into the lake --

16 Q Not through the stone walls into the sides into  
17 the mill race?

18 A Oh no.

19 Q And there would be no discharge of the mill  
20 race into the canal? ,

21 A No.

22 Q Wasn't one of these from a tannery, is there a  
23 tannery there?

24 A Yes, the smaller mill there was a tannery and  
25 at least four parts of it and the water from the race

1 into the tannery would have been used in the vats where  
2 tan bark was mixed with it and when the water came out of  
3 that process it would not be suitable to be used for  
4 anything, it was discharged and I am sure the flouring  
5 mill owners would have wanted to just pass that through  
6 as quickly as possible. They were obliged by their deed  
7 and their water rights to the tannery to allow that water  
8 to pass through the property. But they would certainly  
9 not have wanted it to stay there and the canal owners  
10 would certainly not either; the people using the canal  
11 would certainly not have wanted that stuff in the canal.

12 Q And would that be especially true if it were to  
13 come in at a lock?

14 A Oh yes, sure. There were all kinds of mills  
15 including saw mills. So that ~~is not~~ a mill race complex  
16 is not compatible with a canal where you are trying to  
17 have boating.

18 Q Now, I am going to show you Exhibit A and this  
19 is a deed, it's entry A of Exhibit -- excuse me, BB,  
20 which is the abstract, for the mill property, does that  
21 just take a second, does that make a reference to the  
22 tannery raceway should be down in that area?

23 THE COURT: What number?

24 MR. SCHNEIDER: BB, even try A in that.

25 THE COURT: Okay.

1           A     Yes, here it is. It's the conveyance of water  
2 rights subject to the right and privilege of keeping up  
3 and maintaining the pond and across the premises hereby  
4 conveying the tannery.

5           Q     Now, referring to Exhibit AA which is the  
6 ~~V~~vance map you have in front of you which would mean  
7 this tannery race as it comes down to the east would go  
8 through the flouring mill property?

9           A     Yes.

10          Q     One more question. Are you aware that this  
11 flouring mill property at one time was in the Birkett  
12 family?

13          A     Yes.

14          Q     And there is a name Ferend~~baugh~~ that comes in,  
15 Cornelia Ferend~~baugh~~, do you know her?

16          A     Yes, Henry Birkett's daughter.

17          Q     Henry or William?

18          A     Henry.

19               MR. SCHNEIDER: I just need one minute,

20               Your Honor.,

21          Q     Now, there came a time when the canal property  
22 passed to the railroad?

23          A     Yes.

24          Q     And was there any railroad established east of  
25 the main line that ran through Dresden? I don't think it

1 is pictured there.

2 A No. No, it did not go east although the sale  
3 of the canal property was in one piece originally to Penn  
4 Yan and New York Railroad but there was no actual track  
5 laid or anything east of the main lot.

6 Q They just got the prism and banks of the canal  
7 from one end to the other?

8 A Yes.

9 Q Were you ever aware of any conveyance from  
10 this, well, first from the Bogart and then Birkett  
11 flouring mill property over to the railroad?

12 A No.

13 MR. SCHNEIDER: Thank you, Your Honor.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. DARCY:

17 Q Ms. Dumas, in the course of your study did you  
18 make a study of the use made of the railroad by the  
19 railroad of the property acquired along the canal?

20 THE COURT: What map are you referring to?

21 MR. DARCY: I am referring to Exhibit W  
22 right now.

23 A I am sorry, say that again.

24 Q In the course of your study did you determine  
25 what use was made by the railroad of that portion of the

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

lake.

A No. I have no idea. I didn't in the course of my study I wasn't because I knew they hadn't built a railroad there so it wasn't.

Q You weren't interested in what it did do with that property?

A No, no, I am not a title abstracter.

Q I am glad you admit that. But were you ever down there yourself to view the property for any period of time where the railroad property joined the lake?

A No.

Q You don't know how many buildings were there, who they belonged to or anything?

A Not by personal examination, no. All I have seen are records for that particular place but it is private property.

Q Did you ever see the railroad maps of that area?

A There isn't one long railroad right of way map for that area, although it is in pieces in deed and so on. I may have seen it but I don't remember it.

Q And do you recall whether or not you saw any maps which showed cottages along the lake on the railroad property?

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. DARCY: Thank you very much.

THE COURT: Anything else, Mr. Schneider?

MR. SCHNEIDER: No, Your Honor.

THE COURT: That completes your testimony,  
watch your step.

(Witness excused.)

MR. SCHNEIDER: Your Honor, defense rests.

\* \* \* \* \*