

Information on Hamilton Ridge

This case (Joseph M. Lawton versus Reuben H. Fison) was appealed and sent to another court - which is the reason the records were not destroyed.

Page 1 - witness - Benjamin R. Bostwick (actually Bostick) (1791-1866) stated that he managed Hamilton Ridge for several years beginning in 1819 when the plantation was the estate of Capt. William Mauer (1754-1819). Benjamin Bostick was William Mauer's son-in-law, having married his daughter Jane Annette Mauer in 1819, several months before Capt. Mauer died. Benjamin Bostick also stated that Hamilton Ridge then went into the possession of Capt. Mauer's son Samuel Mauer (1807-1857) and then into the possession of W. M. Riley.

Pages 1 and 2 - witness - Edmund Martin (1794-1871) stated that Hamilton Ridge first belonged to the estate of Capt. William Mauer and then to Samuel Mauer, succeeded by William Riley.

(2)

Edmund Martin also was William Mauer's son-in-law, having married his daughter Mary Ann Mauer.

Page 2 - witness - William Morgandollar Riley stated that he was the owner of Hamilton Ridge from the spring of 1832 until the close of 1847, and the place was previously owned by Samuel Mauer. William Riley also was Capt. Mauer's son-in-law, having married his youngest daughter, Elizabeth, in 1829.

Page 3 - witness - William Francis Mauer (1816-1901) was the grandson of Capt. William Mauer, the son of Maj. John Seth Mauer (1785-1852) and the first cousin of William Morgandollar Riley through their mothers, who were Morgandollar sisters.

Page 4 - witness - Dr. Edward Riley was the brother of William M. Riley and the first cousin of William F. Mauer.

Westlaw.

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C
 JOSEPH M. LAWTON v. REUBEN H. TISON.
 S.C.App.Law 1859.

Court of Appeals of Law of South Carolina.
 JOSEPH M. LAWTON

v.
 REUBEN H. TISON.
 January Term, 1859.

Private Ways-Substitution-Dedication.

Where A. has acquired a legal right to the use of a road over B.'s land, a new road may, by parol agreement between them, be substituted for the old- the act of opening the new road by B. being a dedication of it to the use of A.

But if the old road had been abandoned before the new road was opened, then there could be no substitution.

West Headnotes

Easements 141 ↪48(6)

141 Easements

141II Extent of Right, Use, and Obstruction

141k46 Location

141k48 Ways

141k48(6) k. Change of Location.

Most Cited Cases

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new road was opened, then there could be no substitution.

*1 BEFORE MONRO, J., AT BEAUFORT, FALL TERM, 1858.

The report of his Honor, the presiding Judge, is as follows:

"This was an action on the case for an alleged obstruction by the defendant of a right of way of the plaintiff.

The proof was that the plaintiff was the owner of a tract of land in Beaufort District, called Hamilton Ridge, from which there extended an old road called the "Daniel's Ford Road," through and over lands of Major Maner and of the defendant to a public landing and public highway in the district.

Benjamin R. Bostwick said that he was now in his sixty-seventh year; that he had known Hamilton Ridge from the year 1819; managed the plantation for one or two years, beginning with 1819; that the Daniel's Ford Road then appeared to be an old road, and the only road leading to the plantation. The plantation, when **witness** managed it, was the estate of Mr. Wm. Maner, and it went into the possession of his son, Samuel Maner. *Riley* succeeded S. Maner, and **witness** thinks he, *Riley*, used the Road, but **witness** was not on it-*Joseph Lawton* succeeded *Riley*. The place has been planted every year, and **witness** knew of no other road to get out, except around by the Hudson's Ferry Road, fifteen or twenty miles around. In 1819, the old road was used to carry out cotton from the plantation. The **witness** could not say how old the road was, but, from appearance, it must have been ten or fifteen years old.

"The **witness**, on cross-examination, said: that he used the road on horseback, and cannot say he ever saw a wagon upon it; that there was another which the plaintiff could use, which passed through Maner's plantation into the Augusta Road, but this was a private road belonging to the Maners, and could only be used by their permission.

Edmund Martin said that he knew the Hamilton

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Ridge plantation over thirty years ago. No one planted it when he first knew it. It belonged first to the estate of Captain William Maner, and then to Samuel Maner. The Ridge and McPherson's place adjoining are out of the way, and there is no other way to get out but the road spoken of by Bostwick. Hamilton Ridge was planted by witness in 1825, '26 or '27. The road was used for carrying out produce, &c., thirty years ago, and used many years. It was the only way, except the Hudson's Ferry Road, which was over twenty miles and more out of the way. Samuel Maner had Hamilton Ridge after the time to which witness has spoken above, but he cannot say exactly when—a year or two after witness planted it—he used the road in the same way. Samuel Maner had no other road, and planted the Ridge seven or eight years. Riley succeeded Maner, and planted it many years; eight or nine years, and perhaps more.

Wm. M. Riley, who was examined by commission, said that he had been the owner of Hamilton Ridge from the spring of 1832 to the close of 1847. The place was previously owned by Samuel Maner. He knew the Daniel's Ford Road from 1828. It was a road leading from Hamilton Ridge through and over land of Clarkson, Mrs. C. Maner, estate of John Tison, R. H. Tison, estate of Wm. Maner, falling into the road to Para Chuckla landing—it was a carriage, horse and footway. It was an old road in 1828, had every appearance of being as old a road as any in the country. When witness first knew this road, there was a small field on the estate of John Tison's land, which had been enlarged by defendant as administrator of John Tyson, so as to take in a small portion of the road, thereby causing a slight error in the road; this was done, as witness was informed, by Samuel Maner, then the owner of Hamilton Ridge, with his permission. This did not hinder the continuous use of the road.

*2 There was no alteration of the way from witness's first acquaintance with it in 1828 until 1847. In 1847, there was a proposition made to witness by defendant to change a part of the old road so that it would run less through the centre of his lands, to which witness consented. The new part was staked out by defendant in person, and witness

had it made. During witness's occupation of the plantation, the repairs necessary to causeways, &c., were made of materials most convenient, and from appearances, this has been the custom of the former occupants. The late Samuel Maner had the free and uninterrupted use of the said old road, from the time of his coming into possession of the property, which was in the year of 1828, or before. The old road was known and recognized by all the neighborhood as the only road to Hamilton Ridge. It was a matter of public notoriety that the Daniel's Ford Road was the only carriage way leading from the Para Chuckla Road to Hamilton Ridge. This witness further says, that he considered his title to said old road as established by prescriptive right, that he never relinquished it, and that when he permitted the change in the old road to be made, the new part was in lieu of so much of the old.

On the cross-examination, the witness says, that he conveyed said plantation to the plaintiff in the year 1847 or '48 that he did not make a separate conveyance of a right of way to the plaintiff, nor refuse to do so. That he has no recollection of having said any thing relative to a way over defendant's land, nor did he say which way plaintiff was entitled to; he regarded the old road as the established road leading to and from Hamilton Ridge, and the new part as only a variation to accommodate defendant, and with the plantation he considered the right of way conveyed; that he remembers the plantation and road as far back as the time of Mr. Samuel Maner's taking possession, which was in 1827 or 1828. Witness owned the plantation fifteen years, and remembers it as far back as above stated, because he was intimate with the proprietor and used to visit him. The witness further says, that the defendant, Tyson, never conveyed to him a road through his lands; that he never proposed to purchase from defendant, nor did defendant ever refuse to sell to him any road or right of way; that he is not aware that defendant had any land over which said road passes, unless it be a narrow strip between the estate of Tison's land and the estate of Captain Wm. Maner's land, which was never obstructed, or the right of way over it disputed; witness never did purchase the right to pass over the lands now in dis-

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pute, and which forms a part of the old road; the heirs of John Tison voluntarily executed to witness a deed relinquishing the part of the road which had been inclosed by the defendant as administrator during their minority, and by their own personal act restored the road to its original shape. Witness used the new road from the time of its construction until his removal as a carriage and footway. The way by McKenzie's was used occasionally by permission only, when the causeways on this road were made impassible by high water. He says that he did use the old road and the new, as a way from his plantation to church, and to the court house; that he did repair the old road and made the new part of it, that he does not remember any threat on the part of the defendant, and never heard that his right to the new part or the old was by favor of the defendant. He further says, that there was a proposition, on the part of the defendant, to change that part of the old road, which ran over lands, formerly belonging to the estate of John Tison, and, subsequently, purchased by the defendant, beginning at a point where no one else would be affected and falling into the old road again. This was consented to by witness, and regarded as a variation only, and not affecting witness's right to the old road; as to requiring a deed from defendant, witness considered the right of way by the old road as beyond question, and that witness had no more right to demand a deed from defendant, than defendant had to demand one from witness, to secure his right of way from his plantation over lands formerly the estate of William Maner's, then witness's. Knows of no grant to any part of the old road; that he never abandoned said road. This witness inclosed a diagram, showing the road and the plantations through which it passed.

*3 *William F. Maner* says, he is forty-two years old; he recollects the road since 1832; has travelled it frequently, and also within four or five months a portion of it; recognized it recently at the upper end, to a fence on the line of Tison, and then down the fence on the line to the new road. Riley used, occasionally, a road through the field of witness's father, when the travel on the other road was prevented by high water. He drove his stock, and

his negroes passed along the old road. There was once a small field at Little Boggy, across the old road, but there was a way round. Two years ago there was no fence, there were pines in the old field, not very large, but not particularly noticed by witness. Has been on the road since 1832, and recollects no field when he first knew it; recollects the field some ten or fifteen years ago. There is a graveyard near Little Boggy, and no obstruction on the road thence to Para Chuckla. The new road falls into Maner's Road, and then along it two hundred yards across a causeway into the Daniel's Ford Road, and thence to plaintiff's plantation. Riley, a few years before he left, constructed a causeway from Daniel's Ford, in the direction of the new road, this he afterwards abandoned and opened lower into Maner's road with consent of Maner. From Para Chuckla to Hamilton Ridge, the Daniel's Ford Road, passed first by John R. Bostwick, then by Stafford, Elizabeth Maner, R. H. Tison, estate of Wm. Tison, Clarkson, (John S. Maner's) then to Hamilton Ridge, and then to Gregories' beyond. Witness's father's field in 1835 or 1836 crossed Daniel's Ford Road at a corner, and a road was opened around it, the fence was not placed there to obstruct the road. A fence has been put across the road, for the purpose of watering cattle, within the last four or five years.

On the cross-examination, this witness said that he did not recollect Riley's using the Daniel's Ford Road since 1832. He described a road used by Riley from 1832 through his (witness's) father's. Witness's father first fixed the road, and Riley assisted in keeping it up, and used it. Does not remember to have seen Riley use the new road. There is now a fence across Daniel's Ford Road, near Maner's Road; has been kept there about five years; when he first traveled Daniel's Ford Road, it was a poor road, can't say there was any fence across it when he first knew it; has passed over it more than one hundred times; can't say if any one used the road continuously for ten years, or any one for twenty years. As between the two roads spoken of on each side of the new road, there is no great difference in distance to Para Chuckla. It was six months ago when witness examined the road.

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On re-examination, he says, when he first knew the Daniel's Ford Road, there was no other road for Samuel Maner or Riley. He travelled the road in 1835, on horseback. There was a fence across it in 1835 or 1836, and a field planted. He thinks he left the fence there in 1843.

*4 The old field is still there; the fence when first seen appeared to be one or two years old, the field was planted in cotton. Riley could not have used the road in 1835; he generally used the road through Maner's. There was a road around, turning out of the Daniel's Ford Road before getting to the fence; there were wagon tracks; but they quit it.

The testimony for the defence, was as follows: Seth S. Dupuis, says that he knows Hamilton ridge; knew Daniel's Ford Road in the Fall of 1831. It was used for Hamilton Ridge plantation in 1832; witness left in December, 1832, saw the road next in 1835. It was not then open. The estate of Tison had a field fence across the road; field fifteen or twenty acres. The estate of Tison was under the management of R. H. Tison. The field was planted in 1836, fence up, not removed in 1843. Riley lived part of the time at Hamilton Ridge, which he owned, used Clarkson's road, which is now the Maner Road, from 1835 to 1843; he describes it on the plat. Major Maner, in 1837, obstructed the Daniel's Ford Road. Being cross-examined, he says, he does not know that the fence was put there by permission of Maner. Does not know under what circumstances, nor what way to get out of Hamilton Ridge. The fence was six or seven hundred yards in length.

Dr. Edward Riley, says that he is the brother of William Riley of Georgia. Knows Hamilton Ridge; saw his brother on Hamilton Ridge, in 1835. The last time he saw him there was in 1844. On the last occasion he crossed Boggy Gut causeway in company with him. On their return from the plantation, his brother took him through a nearer way. He said to witness that he would take him over the Daniel's Ford Road, which road he said he could not keep up alone. He said he had permission given him to travel Clarkson's Road, which was not over Tison's land. On the Daniel's Ford Road, they caught a runaway negro, presently they came to a fence across the road; William Riley said this is Tison's fence;

witness held the negro, while his brother pulled the fence. William Riley put up the fence again. They went up and delivered the negro to Mr. Tison, and then returned to the road. They found a new clearing. They pulled another fence on their way to his brother's house. These fences enclosed a field, in December, 1835. The field was planted in that year. The fence appeared to be new. They rode through McKenzie's plantation, in 1844. They went through McKenzie's, through the Clarkson Road. Witness's brother made an agreement in 1844, with Major Maner, to make the causway on the Maner Road, and used McKenzie's Road in 1844.

Conversed with his brother since the trial in Spring between Tison and Lawton for a trespass, and told him what he, witness, testified and what he intended to testify, and his brother said it was all right. Never spoke to him about the McKenzie Road. In 1847, his brother told him that he and Tison had agreed about a new road. Spoke to him of an agreement in 1847, but left no impression on witness's mind, whether the road was demanded as a right, or granted as a favor. Witness knew of this dispute about the right of way ever since 1852, the very year after the possession of Hamilton Ridge by Riley.

*5 *Cross-examined*.-The fence was across the Daniel's Ford Road in 1835.

John McKenzie says, that he knew the Daniel's Ford Road for fifteen years. He knew William Riley. Mr. Riley used in all that time the Clarkson or Maner Road; used it as long as he owned Hamilton Ridge. The Daniel's Ford Road was still blocked up in 1847 or 1848. Riley used the Road, through his mother's land, (the McKenzie Road,) by permission for ten years. Has seen a negro on foot, but no wagon on Daniel's Ford Road for fifteen years. Saw one of Riley's negroes on the Daniel's Ford Road once in that time. Saw Lawton use the Clarkson or Maner Road, one year after he owned Hamilton Ridge. Lawton improved the new road through Tison's, and used the Clarkson Road until then.

Col. John A. Tison says, he is the son of the defendant in this case. Knows the Daniel's Ford Road. Always since he knew it, up to 1852, it had a fence across it. Heard his father, in 1841 or 1842, tell

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Wm. Riley he should not use the Daniel's Ford Road. Said that if he, Riley, ever used that road, it would be over his, Tison's, dead body. The old fence across the Daniel's Ford Road was burned in 1852. There are no marks of use on the Daniel's Ford Road since 1852. Witness was not at home when the new road was opened. Saw track of new road laid out; does not know by whom. (Describes it on the plat.) Riley moved from Hamilton Ridge, in 1847. He, Riley, lived at Hamilton Ridge ever since witness could remember up to that time. He used the road through McKenzie's up to 1847. The new road was opened before Riley removed to Georgia. Witness's attention was called to the road in 1848. The road was cut before he saw it. The new road penetrates his father's woodlands. Has known his father to haul timber over it. Does not know who opened it. In 1848 witness was at Mr. Lawton's house. He, Lawton, wished to exchange some land with witness's father. They at that time conversed about the new road. He, Lawton, alluded to the new road, and said he had been authorized by Riley to offer seven hundred dollars for the road. Witness knows there is a public road near Lawton's plantation, Hamilton Ridge, and runs through part of his land. This road runs from the Augusta Road to Hutson Ferry Road, about one and a half miles from Augusta Road to Lawton's land. Mr. Lawton's house is within sight of this road. Difference of distance by this road with the Augusta, and then down to the Para Chuckla Road, and on to Mr. Lawton's summer house, on the Para Chuckla landing, and the lands claimed by Mr. Lawton is about, witness supposes, three and a half miles. But Martin's landing, on the Savannah river, is nearer to Mr. Lawton's, from Hamilton Ridge, than the Para Chuckla landing, and the new public road leads to Martin's landing. The old Daniel's Ford Road leads through unenclosed woodlands and except the small field of fifteen or twenty acres cleared up in 1835, there was no cleared land or enclosure on the road. The road is now completely overgrown in trees and under-brush. Some very large trees in this road. Could with difficulty ride through it on horseback. Witness's father purchased from the young Tisons when they became of age. (Mr. Tison's title deeds

here introduced.) One dated December 16, 1841, the other dated January 7, 1843.

*6 Record in *Tison v. Lawton*, Trespass, at Spring Term, 1858, (Verdict for the Plaintiff) was now introduced in evidence.

Copy Deeds from the young Tisons (James and Henry) conveying the old Daniel's Ford Road to Wm. Riley, were now introduced and admitted by the plaintiff, Mr. Lawton.

James Dupuis was in defendant's employ for seven years; left six years ago. Commenced in 1845 and left in 1852. The Daniel's Ford Road was then planted over. Saw no wagons, cart, &c., pass that way. They could not pass, but if they could, he would have forbidden it. Witness knows Mr. Lawton, the plaintiff, and saw him working the road across Maner's land, about a year after he left Tison's employ. Witness saw Mr. Lawton working the road on Maner's land, and he said to witness that "working a road gave a man a title."

"There is a graveyard near the Daniel's Ford Road and road leading from Daniel's Ford Road to graveyard. Must travel the Daniel's Ford road to get to it, about one hundred and fifty yards from the road; the graveyard is a private one and belongs to the Tison family.

Richard Davis says he lives in St. Peter's Parish, near Hamilton Ridge, and is well acquainted with all the roads. His place joins Hamilton Ridge. Witness knows the new public road from the Augusta Road to the Savannah River, in the direction of Hudson's Ferry. It runs partly through Hamilton Ridge. From Lawton's through new road, about one mile and a half. The boats on the river consider Martin's Landing good.

The Hudson Ferry Road new and unfinished. To reach this road Mr. Lawton would have to go over his land in a lane between witness's land and Mr. Lawton. Witness is not certain that Lawton's land is on the Hudson Ferry Road, but thinks so.

Mr. Stafford was directed, as overseer, by Mr. Riley, to cut a road from Riley's plantation, Hamilton Ridge, to another road near Hamilton Ridge, about one hundred yards.

William Johnson knows the Daniel Ford Road. Went over it with Colonel Tison lately; old road

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hardly visible; trees in the road and in the field. The road appears long abandoned, about fifteen or twenty years. Large trees outside of the old road, saplings in the road. Forms his judgment from logs, &c., across the road, and want of signs of road.

John McKenzie, recalled, testifies that Mr. Riley used the Clarkson and McKenzie Road for carrying produce to market in 1847.

IN REPLY.

Clarkson and McKenzie, road private and used by consent.

I charged the jury that a right of way could not be prescribed for over uninclosed lands by use; that this seemed to me not a way by necessity; that in my opinion the new road was not a mere deviation from the old road, but in fact a separate road, and if the jury came to the same conclusion from the evidence, then the new road could only be substituted for the old, by grant, and could not *be acquired by parol*. The jury found for the defendant."

*7 The plaintiff appealed, and now moved this Court for a new trial on the grounds:

1. Because it is respectfully submitted that his Honor erred in charging the jury that the plaintiff could not acquire a right of way by prescription over uninclosed lands.

2. Because his Honor erred in charging the jury that the new part of the road was not a mere deviation from the old, but a substituted road.

3. Because his Honor erred in charging the jury that the plaintiff could only acquire a title to the new part of the road by grant, and not by parol.

4. Because the substitution of the new part of the road for the old, was the act of the defendant, and to allow him to take advantage of it, is a fraud upon the plaintiff.

5. Because his Honor erred in charging the jury that the plaintiff had not a way by necessity.

Fickling, for appellant, cited *Jeter vs. Mann*, 2 Hill, 644; *Smith vs. Kinard*, 2 Hill, 642.

De Treville and Pope, contra.

The opinion of the Court was delivered by O'NEALL, J.

In this case the judge below tells us that he did not say to the jury, "that a right of way could not be prescribed for over uninclosed land by use." It seems that the report was drawn by the appellant's counsel, and presented to the judge for signature, when he had no opportunity of examining it. Hence the error in stating his charge escaped his observation. His charge was, that "a right of way over uninclosed lands could only be prescribed for by showing an *adverse* use." This statement of the law was right, and has the sanction of all our cases from *Smith vs. Kinard*, 2 Hill, 642. This, however, does not mean more than that some act showing that the way was claimed by the party in his own right, as where the road was cut out in the beginning, or where it was occasionally worked upon, besides being used.

The law being laid down correctly to the jury, the facts as to the use of the Daniel's Ford Road were to be passed upon by them both as to the prescription, and also, as to the abandonment of it. We understand from the judge below, that the contest really was as to the new road, and that the Daniel's Ford Road was conceded to have been abandoned.

Looked at in that way, I have no difficulty in the case. For then the new road could not have been substituted. If, however, the Daniel's Ford Road had been one for which the plaintiff's right by prescription existed and the new road had been substituted for it, I would have supported the plaintiff's right to it, without any writing, For the act of opening it, I would have regarded as a dedication to the use of the plaintiff, instead of the old way.

But it is unnecessary to further pursue this matter. The Daniel's Ford Road *not existing* there could be no substitute.

The motion is dismissed.

WARDLAW, WITHERS, WHITNER and GLOVER, JJ., concurred.