

## COUNTY COURT.

C.T. December 27, 1902

WEDNESDAY.—Before His Honour Judge De Castro (deputy judge).

*Miss Mills v The Hants County Council.*—This was an action brought by Miss Mills, of Wolhayes, Christchurch against the County Council to recover damages for trespass and interference with her fishery rights at a salmon pool in the river Avon at Quartley's bridge.—Mr. Gerald Sanders, barrister, (instructed by Messrs. Davy and Jackson, of Ringwood) appeared for the plaintiff; and Mr. F. V. Barber, deputy-clerk to the County Council, for the defendants.—Mr. Sanders, in opening the case, said plaintiff was the owner of the bed of the river Avon from a point above Knapp mill to its junction with the river Stour, and also the owner of the bed of the combined waters to a point in the harbour which is defined by posts. The action was brought to recover damages owing to the County Council having deposited a quantity of bags of concrete and blocks of stone in the pool and rendering it quite useless to take fish therefrom. The County Council in 1899 proposed to widen the bridge, and the Clerk of the Council wrote plaintiff's solicitors stating that it was proposed to widen the bridge on the north side, and said that the rights of the owner would only be temporarily interfered with, Soon after operations began it came to the knowledge of plaintiff's solicitors, that not only were works going on the north side, but that stones and concrete were thrown in on the south side. It was stated it was necessary to do so in order preserve the foundations of the bridge. Defendants had given notice that they would rely on certain statutes beginning with an Act of Henry VIII. The trespass had been deliberate and continuous although complaints had been made from time to time. The claim was a moderate one, being based on such damage actually sustained by plaintiff by the loss of taking fish in the pool.—Mr. W. Jackson, solicitor, said he was agent for Miss Mills, and also previously for her father, the late Mr. John Mills, and they were owners of the fishery at Christchurch. The fishery commenced in the Avon at Alderbush, and went down to Claypool, where the waters of the Avon and Stour met, and thence down the harbour, where the exact spot was shown by posts. Mr. Mills purchased the fishery and the bed of the river in 1873.—Mr. Barber said that he intended to dispute possession and the title so far as the bed of the river was concerned.—Witness gave evidence of payments made acknowledging plaintiff's rights. He also produced probate of the will of Mr. John Mills, dated May 6, 1899, under which the plaintiff became the owner; also conveyances of previous owners as far back as 1856. Witness detailed the complaints of the trespass and the correspondence which had taken place between the parties since the commencement of the bridge widening. Writing in August, 1900, he claimed £40 as compensation for the loss of the pool, he now wanted £50. Cross-examined: He would not admit that the Run fishery returns were any proof of the value of Miss Mills' private fishery. The number of fish taken from a public fishery would depend upon the number of fishermen, and that number varied very much. He did not know that Miss Mills' private fishery was included in the 1901 return of 5,000; no returns, as far as he knew, were ever made by its owners. The late Mr. Mills sold to the railway company the bed of the river for their bridge, but retained the right of fishing. —In the course of some argument as to the points at issue, Mr. Sanders claimed for plaintiff ownership in the bed of the river. Mr. Barber said he should show that this was a tidal navigable river, the soil of which was vested in the Crown.—The Judge: The bed of the river was conveyed in fee so long ago as 1856.—Mr. Barber: But ten years further back the bed was not included, they knew then they had no right to it. The plaintiff had no title to prevent them doing the work. This was a bridge which had stood for 500 years at least, and he contended that it had a right of support against the bed of the river, and that whatever title the plaintiff might have to-day, could not affect

the right of defendants to support their bridge. They were a statutory authority, with very heavy liability to keep up the bridge.—His Honour said he could quite see that the case was of much more serious importance than appeared upon the face of it. The plaintiff felt that certain of her rights were jeopardised, while on the other hand, the matter was of great importance to the County Council whose rights might be questioned in connection with other bridges.—Mr. Jackson (to Mr. Barber): There is reserved in the title a right to a royal draught to the lord of the manor of Canford for one day a year. (To Mr. Sanders): They never let the bed of the river with the fishing. In the Common Pleas in 1871 Mr. Mills fully proved his title.—Mr. Frederick Tizzard, head fisherman, in the employ of Miss Mills, and previously to Mr. Mills, he had known the fishery since 1873. There were eleven salmon holes in the fishery on the Avon and twelve on the Stour. They did not net the pool now in question until May 1st in each year, when they caught salmon, salmon peel, and sea trout. The catch varied, but half-a-dozen fish at each netting was about the average. The value of the hole would not be less than £5 per annum. He had seen men mixing concrete on the town quay, putting it in bags, and depositing it in the bed of the river below the bridge. The pool commenced about eight or nine feet below the bridge, and extended for a distance of forty or fifty feet.—In cross-examination witness said he did not think any real salmon had been taken out of the pool since 1893. Of late years they had generally taken sea trout. He did not know exactly when the last salmon was taken, but salmon peel had been taken within six years of the commencement of the works at the bridge. He based his £5 estimate of the value on the takings extending over a number of years. He had not tried the hole for the last two years.—Mr. Sambrook Newlyn, secretary of the West Hants Water Company, said he had known the Avon since 1857, when his father came to Christchurch. They rented some fishing from Mr. Mills for at least sixteen years before Mr. Mills's death, they having the right to catch all fish except salmon. Mr. Walker, Mr. Compton. Mr. Mills, and Miss Mills had always had undisturbed possession of the fishery. In former years he had seen as many as seven salmon taken from the hole at one time. He had not seen more than two salmon, as distinguished from salmon trout, taken at a haul from the hole during the last eight or ten years, but he had seen salmon peel and trout taken out. Before the bags of concrete were put down he would gladly have given £5 per annum for the fish to be taken from the hole. In 1894 he himself took 97 sea trout out of the hole, fishing with a rod. The fish taken from the pool had been less than formerly, owing to its having been negligently fished. — Cross-examined: The present difficulty in connection with the pool was in getting the net out after it had been put down. He ascribed the hole to the scour from the arches of the bridge.—Mr. John E. Blizzard, A.M.I.C.E., F.S.I. (of the firm of Lemon and Blizzard), said he had reported on the best mode of strengthening the foundations of the bridge. For this purpose he sounded the pool, and found the bottom to be very rough, uneven and jagged. The wash from the bridge had brought about such a scour that the hole had receded towards the bridge, and one pillar was undermined about a foot. He considered the matter might be put right, and the pool brought back to its natural shape, by removing the greater portion of the concrete and adopting sheet piling and other measures.—Mr. George Pope, builder, of Christchurch, where he had been in business for forty-five years, said for twenty years he had been a member of the local Board of Conservators. He considered the scheme suggested by the last witness a feasible one for supporting the bridge. It would be necessary to take the concrete right out to make the pool fishable.—Mr. John Druitt, town clerk, of Christchurch, said the Town Council owned a house between Quartley's bridge and Waterloo bridge, on the north side of Bridge street, which they had owned for a great number of years. He produced the title deeds of a house in Bridge street, dating from the year 1305, and an index of the deeds prepared some years ago by a previous town clerk, in which

the house was described as been situated between the two great bridges.—The case was adjourned until Wednesday, December 31<sup>st</sup>, at Salisbury.