

GREELY ROAD EXTENTION

(INCLUDES PLEASANT VALLEY ROAD)

LENGTH: 7,775' (1.47 MILES)

WIDTH: 20'

NOTE: The roads now known as Greely Road Extension and Pleasant Valley Road are located in a rangeway - a strip of land four (4) rods wide running the length of the Town allowed on the original plan of the Town for roads and not included in the grants of land to the first settlers.

MARCH 1, 1788

To the freeholders and other Inhabitants of North Yarmouth: Gentlemen: At the request of William Rideout and others, we have viewed and think proper that the rangeway beginning at the Old Town line ( intersection of the abandoned section of Pleasant Valley Road and Orchard Road) and passing between Lots No. 94 and 95 (Parcel R8-36 is located in the original one-hundred (100) acre Lots 95 and 96) in the west division down Southeast as far as Lot No. 85 to where the rangeway has been opened (approximate intersection of Greely Road and Main Street) should be opened and become a Town Road and have laid out the same.

John Lewis, Joseph Staples - Selectmen

APRIL 15, 1788

Town Meeting Voted the above report accepted and recorded.

NOTE: Although earlier votes of the Town required that Greely Road be opened from Middle Road all the way across the rangeway to Orchard Road, there apparently were sections that were not in fact opened, as the following votes concern sections of the road included in the earlier votes.

JUNE 7, 1802

Town Meeting Voted that the rangeway form one-hundred (100) acre Lot No. 96 to the old town line be opened.

NOTE: This is the abandoned section of Pleasant Valley Road East of Orchard Road over Pig Hill.

NOVEMBER 6, 1812

To the Inhabitants of the Town of North Yarmouth in Town Meeting Assembled:

At the request of Eliphalet Greely and others, we have laid out for the use of said Town of North Yarmouth, the rangeway as follows, viz:

Beginning at the most Easterly corner of Lot No. 85 (approximate intersection of Greely Road and Main Street) near Jeremiah Prince's dwelling house and running Northwesterly to where the road has been opened.

Alfred Richardson, Jeremiah Buxton- Selectmen  
Recorded by Edward Russell, Town Clerk

NOVEMBER 12, 1812

Town Meeting Voted that the report of Selectmen opening a part of the rangeway near Jeremiah Prince's be accepted.

## UNDATED:

To the Inhabitants of the Town of North Yarmouth in Town Meeting assembled:

At the request of a number of said Inhabitants, we, the Subscribers, your Selectmen, you have made a small alteration in the Town Road on the third rangeway from Falmouth Line, and now ask leave to report the same.

Beginning at the Southerly sideline of said third rangeway, at the most Northerly corner of a piece of land Simeon Clough now owns in the hundred hundred acre Lot No. 88 in said North Yarmouth proprietors records (located on Greely Road Extension between Main Street and Bruce Hill Road), the same corner being the most Easterly corner of a piece of land one (Samuel Stowell) now owns in the said hundred acre lot from said corner to run South 32 degrees East 7 rods. Thence South 53 degrees East 16 Rods or until it fully enters into the aforesaid rangeway, said alteration to lay 4 rods wide on the Northeasterly side of the before mentioned courses and distance. In making said alteration we have taken off from Simeon Clough's land twenty-three (23) square rods (for plan, see original return on file). Damages to Simeon Clough, three dollars and fifty cents (\$3.50).

All of which is humbly submitted by:

Ammi R. Mitchell, David Prince - Selectmen

MAY 9, 1814

Town Meeting Voted that the report of the Selectmen altering the road near Simeon Clough's land be accepted. Damages to Simeon Clough (\$3.50). Also voted twenty (\$20.) dollars to make the road.

MARCH 3, 1854

Warrant, 18th Article: Request of John P. Farwell to see if the Town will repair the hill near his house.

MARCH 20, 1854

No action at Town Meeting reported on the 18th Article.

MARCH 3, 1855

Warrant, 14th Article: Request of John P. Farwell relative to the hill near his house and act thereon.

MARCH 19, 1855

Town Meeting Voted to comply with John P. Farwell's request so far as to allow fifty (\$50.) dollars to be expended on the hill in the public highway near his house.

NOTE: According to the 1857 and 1871 Cumberland County Atlases, "J.P. Farwell" lived on the Greely Road Extension approximately midway between its intersection with Bruce Hill Road and its intersection with Main Street.

APRIL 29, 1887

Warrant, Article: To hear and act upon the request of Albert Rideout and others to discontinue the labor on the following parts of road District No. 12 - that part commencing at or near Lorenzo D. Farwell's house (Parcel R8-36) and ending at the road near Silas Russell's house (Orchard Rd); also the road from the corner near Simeon L. Clough's land to the house of L. Lawrenson ( the piece of road over Bruce Hill).

GREELY ROAD EXTENTION (Cont)

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MAY 10, 1887

Town Meeting Voted to discontinue the labor in Road District No. 12, commencing at or near the house of Lorenzo D. Farwell and ending at the road near Silas Russell's house; also from the corner near Simeon L. Clough's land to the house of L. Lawrensen.

MARCH 5, 1888

Town Meeting Voted that the Selectmen be instructed to return the labor to the part of road on which the labor has been discontinued from near Silas Russell's house to the Moses Thomes house and over what is known as Bruce Hill.

FEBRUARY 18, 1916

Warrant , 29th Article: To see if the Town will vote to do special work on Burnell Range Road and raise money for same.

MARCH 7, 1916

Town Meeting Voted to raise two hundred (\$200.) dollars for special work on Burnell Range Road.

NOTE: Burnell Range Road was the section of road now known as Greely Road Extension, where several Burnell's resided.

1948 ANNUAL REPORT

The Road Commissioner reported widening "the road starting at North Yarmouth line to Clayton Tame's on the Range Road, and also that shoulders were removed and the road was ditched and graveled.

NOTE: Clayton Tame lived on Greely Road Extention just East of the section of road now abandoned that passes over Bruce Hill Road. See deed of Ripley Burnell to Clayton Tame dated June 2, 1933, recorded at (Book 1912, Page 121.)

1950 ANNUAL REPORT

The Road Commissioner reported:

The unimproved roads fund was used on the Valley Road. Starting at Vaughan Sprague's, the road was widened and ditched and gravel was hauled to make it passable in the Spring as far as Victor Burnell's house.

NOTE: Victor Burnell's house in 1950, was the house now occupied by the Heinonen's. (See deed from Victor Burnell to the Heinonen's dated October 31, 1963, at Book 2786, Page 431.) Vaughan Sprague's house still stands at the Southeast intersection of Valley Road and Pleasant Valley Road. Valley Road used to include the piece of Bruce

Hill Road from Blanchard Road to the present Valley Road, plus Pleasant Valley Road from Valley Road to Orchard Road. In other words, Valley Road used to refer to the road running from Blanchard Road across Valley Road to Orchard Road.

#### 1952 ANNUAL REPORT

The Road Commissioner reported that a culvert was replaced on Greely Road Extention.

#### 1955 ANNUAL REPORT

The road Commissioner reported that shoulders were removed and the road was ditched and graveled from Stonwell's house to Ripley Burnell's house. NOTE:According to Fred Robinson, Ripley Burnell lived for many years on Greely Road Extention at the foot of Bruce Hill Road where the road now ends.

### GREELY ROAD EXTENTION

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MARCH 7, 1955

Town Meeting Defeated a motion for funds to surface and tar the road beginning at the Town Line near Route 9 to extend as far as money would permit.

MARCH 5, 1956

Town Meeting Defeated a motion for money to resurface and tar the strip rebuilt last fall.

#### 1957 ANNUAL REPORT

The Road Commissioner reported shoulders removed and the road ditched and graveled from Route 9 to Stowell's home.

#### 1958 ANNUAL REPORT

The road Commissioner reported the Greely Road Extention hill straightened and surfaced and tarred.

MARCH 7, 1958

Town Meeting Voted money to tar the hill only and defeated a motion to tar the entire length.

#### 1963 ANNUAL REPORT

The Road Commissioner reported installing a forty-two (42"0 inch culvert.

#### 1968 ANNUAL REPORT

The Selectmen reported repairs to Greely Road Extention.

#### 1972 ANNUAL REPORT

The Road Commissioner reported that all or part of the road was tarred.

### ORAL HISTORY

Fred Robinson was Road Commissioner for the Western half of Town from 1925 to 1927. He continued to work on road crews after his

tenure as Road Commissioner and served as a Selectman in the 1940's and 1950's. In an interview at his home on May 8, 1978, he discussed the section of Greely Road Extention over Bruce Hill now abandoned and the section of Pleasant valley Road over Pig Hill now abandoned.

According to Fred Robinson, as long as Fred Porter out of the North Yarmouth Office was delivering the R.F.D. mail on horseback, the roads over Pig Hill and Bruce Hill were kept open for him. These sections were never much of a road -- really just paths for a horse and buggy. Once Fred Porter took up a Ford in the 1930's, he did not go over Pig Hill or Bruce Hill. Once in a great while, someone would enter the roads from the west in a Ford and coast down the hills as a short cut, but no one has ever attempted to go up the hills in a vehicle. By the 1940's, when Fred was a Selectman, he cannot remember any work at all being done on either of these sections of road.

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INSPECTION OF ABANDONED SECTIONS OF ROAD, MAY 8, 1978:

Both sections of road are ungraded, unimproved dirt with rock outcroppings and ledges that make the road impassable by motor vehicles except 4-wheel drive vehicles. Both sections of road are clear of vegetation and have no evidence of ever having been tarred or graveled.

CONCLUSION:

No evidence was found that these sections of road were ever formally discontinued. An attempt to discontinue labor on these sections in 1887 was reversed in 1888.

However, there does appear to be evidence of abandonment in excess of thirty (30) years. The thrust of Fred Robinson's statement is that with the advent of motor vehicles, maintenance of these sections of road which pass over steep, rocky hills ceased. His statement is consistent with the repair records which show that in 1950, Pleasant Valley Road was made passable only as far as the Heinoen's house, and in 1955, Greely Road Extention was being ditched and graveled only as far as Ripley Burnell's house to the East of Bruce Hill.

These cases were consolidated for trial by agreement of counsel. The case of Loon E. Burnell v. Richard P. Knight was heard with the exception of that portion of the amended complaint which concerns the prayer for reformation of a deed from Leon E. Burnell to Richard P. Knight, this issue to be tried at some later date.

Ripley F. Burnell and Elizabeth S. Burnell  
v. Richard P. Knight,  
Docket No. 68-839

The issue is whether or not the defendant violated the conditions of a deed of easement executed by the plaintiffs on July 16, 1965 by exceeding the flowage rights granted in the deed.

The defendant filed answer and counterclaim. The contention presented in the counterclaim is, in substance, that the plaintiffs deliberately, willfully and maliciously caused water to escape from defendant's pond by removing large amounts of gravel from the area on their land adjacent to defendant's pond, there by causing a drainage and seepage which may result in a lowering of the water level of the pond, making it impossible for the pond to function to accomplish the purposes of its creation. The pertinent conditions of the deed of easement are couched in the following language:

*"Said flowage rights are limited to the present height and area now flooded by the water impounded by the dam constructed by the Grantee on his land lying northwesterly of our land. The limits of said flowage are marked by iron pipes painted yellow and set at the waters edge on the property line on the northerly and southerly sides of said flowage and by two iron pipes painted yellow set at the waters edge on the easterly side of said flowage."*

*"Also hereby granting to the Grantee the right and easement to enter on the land of the Grantors adjacent to the flooded area for the sole purposes of damming any watercourses that may develop, natural or otherwise draining the water of said flowage in any other manner than through the spillways of Grantee dam."*

*"The Grantee may, and shall remove the killed growth and brush from the flooded area."*

*"The Grantors waive any claims for damages that may arise by reason of the temporary escape of the waters of said flowage from natural causes, or from the"*

*spring freshet, and waive any claims for damages from wildlife that may be attracted by said flowage."*

Previous to July 16, 1965 the plaintiffs had instituted suit against this defendant for damages claimed to have been caused by defendant's pond overflowing property of the plaintiffs. On July 16, 1965 a settlement was made whereby the defendant paid the plaintiffs the sum of \$1300.00 for a release of all claims and the plaintiffs executed a deed granting the defendant a perpetual right to flow a portion of their land on certain terms and conditions. The deed set the limits of flowage as marked by iron pipes which were placed at the edge of the pond by the parties. The defendant was granted the right to enter on the land of the grantors adjacent to the flooded area for the sole purpose of damming any watercourses that might develop, naturally or otherwise, and for draining the water of said flowage in any other manner than through the spill ways of grantee's dam and , further, the grantors waived any claims for damages arising from temporary escape of waters from natural causes or from a spring freshet and for claims for damages from wildlife that may be attracted by the flowage. Both plaintiffs and defendant claim damages.

There was much testimony and evidence in the case based on the opinions of experts as to the effect of the water in the pond on that portion of the area adjacent to plaintiffs' gravel pit. The experts in their opinions did not agree as to what effect the pressure of the pond water would have, or is now having, on that portion of land which contains the pond between the gravel pit and the pond.

There appears to be some increase in the volume of water in the pond since the execution of the easement of flowage on July 16, 1965. The increase was gradual from 1966 to 1969 when it reached, in May of 1969, a height approximating 2 feet, 4 1/2 inches from the bottom of one of the pipes placed in the ground by the parties in 1965. Much of the increase was caused by beaver dams constructed in two or three places on

the edge of the pond which affected the height of the water to any appreciable degree.

Contention was made by the plaintiffs that the increase was caused by the defendant raising the height of the sluiceways in his dam.

I find that the beaver dams became a major factor in raising the height of the water. The testimony convinced me that the presence of the beavers in the pond was not from a deliberate act on the part of the defendant but they are there as a result of a normal and natural migration of the beavers.

The deed of easement contains the provision:

*"The grantors----waive any claims for damages from wildlife that may be attracted by said flowage."*

According to the allegations in the complaint, the plaintiffs have the burden of proving that any additional rise in the flowage beyond the pipes since July of 1965 was caused by the willful and malicious acts of the defendant and not brought about by the conditions which were waived in grantors' deed, such as spring freshets and activities of wildlife. There is some evidence that the beaver dams caused an increase in the flowage but to what extent is questionable due to the problem of proof.

I find no substantial evidence of probative force that the defendant willfully and maliciously acted in such manner that he was in violation of the terms of the flowage easement deed. In view of this finding of non-liability on the part of the defendant, it becomes unnecessary for the court to consider damages.

In considering the counterclaim of the defendant, I find that he is entitled to no damages. The plaintiffs are perpetually enjoined from removing gravel or, in any other manner, destroying the natural embankment of defendant's pond within a distance of 100 feet from the edge of the pond adjacent to plaintiffs' gravel pit.



Leon E. Burnell v. Richard P. Knight  
Superior Court Civil Action 68-838

This case was tried under a consolidation agreement along with Burnell, et al v. Knight, Docket No. 68-839 on the issue of damage to property of Leon Burnell by defendant Knight by the overflow of the Knight pond onto the Leon Burnell property. There was no flowage easement involved in this case. I find there was some overflowing of the Knight Pond on the Leon Burnell as a matter of fact and that Leon Burnell is entitled to the sum of \$78.67 damages.

Judgements in each case to be entered in accordance with the respective findings.

June 23, 1969.

Walter M. Tapley, Jr.

Justice, Supreme Judicial Court.

**JENSEN·BAIRD  
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July 16, 2009

William R. Shane, Town Manager  
Town of Cumberland  
290 Tuttle Road  
Cumberland, Maine 04021

***Re: Knights Pond***

Dear Bill:

We did check at the Registry of Deeds to see if the original decree referenced in the one from 1969 that you forwarded me was recorded and it was not. However, we did find the underlying easement between the Burnells and the Knights and I enclose it herewith.

Please let me know if you need anything further in this regard.

Very truly yours,

  
Kenneth M. Cole III

KMC/lts  
Enclosure

~ Over 50 Years of Service ~

# Know all Men by these Presents, That

we, Ripley F. Burnell and Elizabeth S. Burnell, of Cumberland in the County of Cumberland and State of Maine in consideration of one dollar and other valuable consideration paid by

Richard P. Knight of Falmouth in said County of Cumberland

the receipt whereof we do hereby acknowledge, do hereby remise, release, bargain, sell and convey, and forever quit-claim unto the said

Richard P. Knight and his heirs and assigns forever, the perpetual right and easement to flow a portion of our land located northeasterly of Greely Road Extension, so called, in the Town of Cumberland.

Said flowage rights are limited to the present height and area now flooded by the water impounded by the dam constructed by the Grantee on his land lying north-westerly of our land. The limits of said flowage are marked by iron pipes painted yellow and set at the waters edge on the property line on the northerly and south-erly sides of said flowage and by two iron pipes painted yellow set at the waters edge on the easterly side of said flowage.

Also hereby granting to the Grantee the right and easement to enter on other land of the Grantors adjacent to the flooded area for the sole purpose of damming any watercourses that may develop, natural or otherwise, draining the water of said flowage in any other manner than through the spillways of Grantees dam.

The Grantee may, and shall remove the killed growth and brush from the flooded area.

The Grantors waive any claims for damages that may arise by reason of the temporary escape of the waters of said flowage from natural causes, or from the spring freshet, and waive any claims for damages from wildlife that may be attracted by said flowage.

The premises flowed are a portion of the same conveyed to Ripley F. Burnell by Fred E. Burnell, et al. by deed dated October 26, 1943 and recorded in Cumberland County Registry of Deeds in Book 1742 Page 21, and by deed of Minnie M. Burnell, Guardian of Kathleen C. Burnell et al, dated February 12, 1944 and recorded in said Registry of Deeds in Book 1742 Page 20, and are a part of the same conveyed to the Grantors as joint tenants by Harry P. Sweetser by deed dated November 20, 1951 and recorded in Book 2055 Page 471.

To Have and to Hold the same, together with all the privileges and appurtenances thereunto belonging, to the said

Richard P. Knight, his

heirs and assigns forever. And we do covenant with the said Grantee his heirs and assigns, that we will warrant and forever defend the premises to the said Grantee his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under us.

In Witness Whereof, we, the said Ripley F. Burnell and Elizabeth S. Burnell, being husband and wife,

joining in this deed as Grantors, and relinquishing and conveying all rights by descent and all other rights in the above described premises, have hereunto set our hands and seals this SIXTY-FIVE day of July in the year of our Lord one thousand nine hundred and sixty-five.

Signed, Sealed and Delivered in presence of

*Robert J. Cram*  
to hold

*Ripley F. Burnell*  
*Elizabeth S. Burnell*

State of Maine, Cumberland ss.

Personally appeared the above named

Ripley F. Burnell and Elizabeth S. Burnell

and acknowledged the foregoing instrument to be their free act and deed.

Before me,

*Robert J. Cram*

NOTARY PUBLIC  
JUSTICE OF THE PEACE.

STATE OF MAINE, CUMBERLAND COUNTY, SS.

Received JUL 21 1965

in BOOK 2909

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Attest:

*Samuel R. Taylor*

REGISTRY OF DEEDS

at 11 o'clock 25 M., and recorded

Register.

Burnell  
&

to

Knight

-  
Q C