

1854.
 Guelph
 v.
 Canada Co.

easterly part of the open space only, then I think that the weight of evidence is certainly against them; for, besides the maps, which are themselves strong evidence, there is the public declaration of Mr. Galt on the spot in 1827, when he spoke of the great advantage which so large a place as the whole open space would be to Guelph. Again, in accounting for the place being so large, he spoke of its intended use as a "cattle tryst." Dr. Dunlop also pointed out the whole open space as intended for a market-place; and in answer to a remark that it was a large space for a market-square, and that so much land would not be used for the purpose in England, he remarked that Guelph was going to be a large place; and Mr. Prior, another officer of the Company expressed himself similarly.

Judgment

The evidence of Mr. Tiffany is also material upon this point; for he it was who, as surveyor, had personal conferences with Mr. Galt as to the laying out of the town. He drew a plan or sketch which did not altogether meet Mr. Galt's approbation, and then, after receiving instructions from Mr. Galt, drew a map, which was approved of, and in accordance with which the town was laid out so far as that map shewed it laid out; and Mr. Tiffany's idea has always been that the market-place of Guelph comprehended the whole of the open space, and he says that he never heard it questioned until recently, when the Company were about to sell the westerly portion.

All this concurrent testimony discountenances the notion that there was any distinction between the easterly and westerly portions of the open space,—that is, between the easterly and that westerly of Huskinson and Wyndham streets. But the defendants contend that as to that westerly portion of the open space there was no *animus dedicandi*, without which there can be no dedication. They say in their answer that that portion has always been reserved and retained

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