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MURDER AT THE DEXTER, MICHIGAN, PENINSULA MILLS DAM

By

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Thesis

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in

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## CHAPTER I

### INTRODUCTION

#### *The Murder of Deforest Phelps*

On the morning of May 2, 1845, the ways of the frontier clashed ferociously with the system of the market economy, resulting in the death of Deforest Phelps.<sup>1</sup> Twenty-three year old Deforest Phelps lived with his father, Isaiah Phelps on a family farm in Dexter, Michigan. Four miles east of the farm, Jesse Millerd and his son, George, had constructed a mill dam across the Huron River to power the Peninsula Mills. The dam had been “the theatre of much excitement” for the village for some years, for it caused the river to overflow onto Sayer Reeves’s chosen building site each spring.<sup>2</sup> As a consequence, many trees near his home rotted out and his family suffered from waterborne diseases.<sup>3</sup> Angered by the diurnal onslaught of the Huron River, Reeves had petitioned the courts in 1843, seeking legal redress from J. Millerd and Sons. He had filed a lawsuit and won damages against the Millerds, but they refused to pay his settlement. The case had been tied

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<sup>1</sup> Deforest Phelps’ Christian name was Alford Deforest Phelps; however, newspapers and local histories refer to him as “Deforest.”

<sup>2</sup> “The Dexter Murder,” *Ann Arbor Michigan Argus*, 7 May 1845, 2.

<sup>3</sup> Some prevalent waterborne diseases in Michigan at this time included diarrhea, Asiatic cholera, and malaria.

up in the appeals court for a year, and Reeves could wait no longer. On the night of May 1, 1845, Reeves, his wife's brother, Jonas Young, another relative, James Jacobus, and two friends set out to destroy the dam once and for all. Two weeks before the night of May 1, Reeves and his group had secretly trenched around the dam with the expectation that the spring rain would undermine the dam and wash it out. The rains had come and gone, but the dam had remained. Since the rain had failed to do the job, Reeves gathered his associates again, this time for a direct attack on the wood of the dam.

They arrived at the dam with their tools and "commenced operations."<sup>4</sup> Nearby, twenty Dexter citizens, including Deforest Phelps, stood ready on all sides to protect the Peninsula gristmill. Mills were among the first buildings constructed on the frontier, and they were essential to the rural economy. Water-powered saws cut logs into lumber, water powered grinders milled corn and wheat into flour, and water-powered looms made wool and cotton into cloth. Some settlers regarded mills as the means to uplift themselves from subsistence to commercial agricultural production. The water-powered machinery of the gristmill eliminated the backbreaking labor required by hand grinding. Mills made it possible for farmers to

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<sup>4</sup> Apparently, the men did not know quite how to dismantle a dam. Even firsthand observers found it difficult to ascertain exactly what they were doing; "The Dexter Murder," *Ann Arbor Michigan Argus*, 5 May 1845.

sell their surplus grain as flour for export.<sup>5</sup> Even for those who engaged in subsistence farming, mills were desirable. It was probably for these reasons that the citizens of Dexter came to protect the Peninsula Mills.

While Reeves's crew worked, the gristmill protectors waited for a prearranged signal to converge upon the demolition. Around midnight on Friday, May 2, 1845, they rushed forward to put a stop to the destruction. Deforest Phelps led the charge. Reeves had resolved to fire upon anyone who attempted to stop them. Reeves held by this resolve and shot into the crowd, hitting Phelps. A doctor was called to treat him, but Phelps died at the site. Reeves escaped into the dark and disposed of the gun in the mill race. However, the determined citizens followed him, and he was arrested before morning. The rest of the group supporting Reeves, except James Jacobus, was arrested at the mill. Jacobus escaped to his home in Lenawee County, but by the next week, he too was arrested. Only three of the men remained in custody two weeks later, but all were eventually released.<sup>6</sup>

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<sup>5</sup> Neil S. Forkey, "Damming the Dam: Ecology and Community in Ops Township, Upper Canada," *Canadian Historical Review* 68(79:1) March 1998: 68-69; Harry L. Watson, " 'The Common Rights of Mankind': Subsistence, Shad, and Commerce in the Early Republican South," *The Journal of American History* 83(1) June 1996: 13.

<sup>6</sup> The story was reconstructed from Samuel W. Beakes, *Past and Present of Washtenaw County Together with Biographical Sketches of Many of Its Prominent and Leading Citizens and Illustrious Dead* (Chicago: The S.J. Clarke Publishing Co., 1906), 781-782; "Atrocious Murder," *Ann Arbor Signal of Liberty*, 5 May 1845; *Ann Arbor Signal of Liberty*, 12 May 1845; "The Dexter Murder," *Ann Arbor Michigan Argus*, 7 May 1845; "Homicide at Dexter," *Ann Arbor Michigan State Journal*, 7 May 1845.

The Peninsula mill-dam was a symbol of economic development and modernization in Dexter, Michigan. The mill fortified a strong connection to the market, for it sold flour to patrons in New England, outside the local community.<sup>7</sup> The market brought with it a new culture and a new mode of living. Production for market fostered individualism and competitive pursuit of wealth.<sup>8</sup> The attack of the dam was symbolically the culmination of the market and court transformation in Dexter, Michigan. Reeves murdered Deforest Phelps in part out of the frustration of being trapped in a larger economic, legal, and cultural transformation occurring in southeastern Michigan. The market transformation shifted from people producing use values for subsistence to producing market commodity values for sale. Though other areas of the country experienced the throes of the market revolution in the early 19<sup>th</sup> century, this economic shift created profound cultural differences for Michigan citizens in the 1830s and 1840s.<sup>9</sup>

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<sup>7</sup> *History of Washtenaw County, Michigan; Together with Sketches of Its Cities, Villages, and Townships, Educational, Religious, Civil, Military, and Political History; Portraits of Prominent Persons, and Biographies of Representing Citizens, vol II* (Chicago: Chas C. Chapman & Co., 1881), 832. Reprinted by Genealogical Society of Washtenaw County, Mich., Inc. (Mt. Vernon, Indiana: Windmill Publications, Inc, 1990), 832.

<sup>8</sup> For more about the market transformation please see Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991).

<sup>9</sup> Martin Hershock, *The Paradox of Progress: Economic Change, Individual Enterprise, and Political Culture in Michigan, 1837-1878* (Athens, Ohio: Ohio University Press, 2003), 78.

## *Review of Literature*

The historiography of the market revolution is expansive. In *The Transformation of American Law, 1790-1860*, Morton Horwitz explained that by 1820, the United States embraced an entirely different legal strategy than the system inherited from the British. By 1820, the theory of law no longer required a set of eternal principles derived from natural law. In eighteenth-century Britain, common law was conceived as the permanent, revealed Law of God and nature. Common law doctrine was discovered; statutes were made.<sup>10</sup> In keeping with this theory, the American courts had relied on English court precedence as the best authority of common law. Then, in the wake of a Revolution against the British, around the turn of the century, the legitimacy of common law came under attack. Fearing tyranny from the arbitrary rule of judges, Americans began to demand the codification of all laws. According to the emerging legal theory, statutes could be created with the self-conscious goal of bringing about legal change.<sup>11</sup>

One of the most important changes within the new legal framework was the transformation of the concept of property. In the eighteenth century, property rights denoted a nearly absolute dominion over land, including the right to prevent a neighbor from conflicting with the quiet enjoyment of the land. This concept of

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<sup>10</sup> Morton Horwitz, *The Transformation of American Law, 1790-1860* (New York: Oxford University Press, 1992), 7.

<sup>11</sup> Horwitz, 30.

property effectually limited the landowner to the natural, agrarian use of the holding.<sup>12</sup> Two principal assumptions determined the common law approach to water rights during this time period. First, the law presupposed an inherent good in allowing water to flow as it naturally flowed. Any attempt to divert the water from its natural course was artificial and therefore wrong. Second, the ownership of the stream originated from the possession of the adjacent land; thus, denying a downstream or upstream landowner of the full privilege of the water was tantamount to unlawful injury to his property.<sup>13</sup> These guiding principles were incompatible with economic development. Horwitz has made the case that by the middle of the nineteenth century, American law had moved away from a common law understanding of property in which property was valued for its own sake. The courts began to view property as a productive asset – a commodity with an economic purpose. A more utilitarian theory of property was more conducive to the budding market.

The most vivid departure from the common law occurred in the Mill Acts. The Mill Acts created a procedure for compensating landowners when a small quantity of land was flooded by a mill dam. According to the 1795 Massachusetts statute, which Horwitz chose as representative of the Mills Acts of various states, a

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<sup>12</sup> Horwitz, 32-34.

<sup>13</sup> Horwitz, 35-36.



mill owner could freely raise a dam and flood the land of his neighbor, provided he compensated him with yearly damages. Mill owners argued that the act supplied the exclusive remedy for flooding lands.<sup>14</sup> The conflict between mill owners and agrarian landowners illustrated one of the most obvious tensions created in the market revolution.

Using Horwitz for background on the legal aspects of the emerging market, Charles Sellers offered a comprehensive account of the market transition in *The Market Revolution: Jacksonian America, 1815-1846*. From the beginning in America, cheap water transportation gave access to the world market in the port cities. But beyond navigable water, people produced predominantly for use rather than for sale.<sup>15</sup> According to Sellers, by 1815 the market revolution was traveling over land to initiate an economic, political, and cultural climate adapted to the industrial revolution. The world market expanded to meet a wider range of people throughout the country. Expanding from the port cities, more and more towns produced goods for interstate and international markets. As a result, commercial agriculture and mechanized factories flourished, while craftsmen and subsistence farmers were marginalized.<sup>16</sup> Though the transition did not occur overnight, the

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<sup>14</sup> Horwitz, 47-53.

<sup>15</sup> Sellers, 5.

<sup>16</sup> Sellers, 24-26.

changes were swift. Within a generation, the old ways of the self-sufficient farm were obsolete. Sellers claimed that by the 1830s and 1840s, the northeast as a whole embraced trade and specialization, creating an integrated market.<sup>17</sup> The market economy transformed more than just production; politics, religion, education, and law all bent to accommodate the market system.

Though largely agreeing with the thesis put forth in *The Market Transformation*, Martin Hershock challenged Charles Sellers's timeline for the market revolution. In *The Paradox of Progress: Economic Change, Individual Enterprise, and Political Culture in Michigan, 1837-1878*, Hershock charged, "Sellers mistakenly left his readers with the impression that the market revolution was over in the United States by about 1840."<sup>18</sup> More accurately, Michigan and other more remote regions of the country did not experience the transformation until the late 1840s and early 1850s. Responding to the turbulent times, Michigan citizens felt a ubiquitous sense of anxiety about the world. Though Hershock noted citizens occasionally struck out by physically attacking the most tangible manifestation of the change, he focused on the political solutions Michigan citizens created to cope with their dynamic lives. Two political parties emerged to represent the opposing impressions of market forces. Democrats resented the deterioration of traditional society and cherished the

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<sup>17</sup> Sellers, 20.

<sup>18</sup> Hershock, 78.

ability of individual families to provide for their basic needs independently.

Contrastingly, Whigs embraced the modern world of the market and self-oriented social order. Whigs viewed the emerging market economy as an opportunity for social mobility. The Whigs and the Democrats represented two sides of the debate over the desirability of progress.

While no historiographical tradition exists that speaks about the unique situation presented here, historians have brought forth numerous explanations for dam breaking in the nineteenth century. James Fickle, in "The People Versus Progress in the Old North West: Local Opposition to the Construction of the Wabash and Erie Canal," saw the nineteenth century as a time of optimism and expansion. He stated that the question whether technological and economic progress was good in itself was rarely raised. For this reason, Fickle perceived that the outbreaks of violence during the construction of the Wabash & Erie canals were unusual and against the general story of welcoming internal water improvements.<sup>19</sup>

In Southwestern Indiana, Clay County bordered the construction of the Wabash and Erie Canal in the 1840s. During the building project, the citizens and workers around the canal became increasingly concerned about the standing water created by the reservoirs and the serious health threats posed by Asiatic cholera and

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<sup>19</sup> James E. Fickle, "The 'People' Versus 'Progress' in the Old Northwest: Local Opposition to the Construction of the Wabash and Erie Canal," *Old Northwest* 8(4): 309-310.

malaria.<sup>20</sup> Fearing the bodies of standing water could be a menace to the health of the community, the people of Clay County attempted to appeal to the state legislature to prevent the company from building the canal line. When this failed, three attempts were made in 1854 to cut the embankment of the reservoir, allowing the water to drain out. The company was seriously inconvenienced by the attacks, for the violence delayed the canal from becoming operational for four months.<sup>21</sup> Fickle argued the attack of the dam represented an important value of the American frontier: "a man has a right to defend his life and property."<sup>22</sup> When the citizens of Clay County could not find satisfaction from the legal authorities, they took the law into their own hands to protect their way of life and their property. Though they faced new forces of technological change, they met new forces with old solutions.

As an environmental historian, Theodore L. Steinberg noted human relations with the natural world changed as much as the relationships of people to each other with the rise of industrial capitalism.<sup>23</sup> In his article, "Dam-Breaking in the 19th-Century Merrimack Valley: Water, Social Conflict, and the Waltham-Lowell Mills" and book, *Nature Incorporated: Industrialization and the Waters of New England*,

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<sup>20</sup> Fickle, 312.

<sup>21</sup> Fickle, 318.

<sup>22</sup> Fickle, 319.

<sup>23</sup> Theodore L. Steinberg, "Dam-Breaking in the 19<sup>th</sup>-Century Merrimack Valley: Water, Social Conflict, and the Waltham-Lowell Mills," *Journal of Social History* 1990 24(1), 25.

Steinberg chronicled the efforts to control nature, in particular water, as an essential feature of industrial change.<sup>24</sup> By the 1840s, several mills were outstripping the available water supply in Lowell, Massachusetts. As a result, a battle for both navigation and waterpower ensued, especially during dry and drought years. The battle reached a dramatic climax when George Young tried to tear down the dam in September 1859 with an iron bar. Several weeks later, a group of about 50 men tore several pieces of plank off the dam with axes and bars before the sheriff stopped them.<sup>25</sup> Steinberg asserted that the violence against the dam reflected the tension and conflict over industrial change. Most of the men who attacked the dam were economically marginal.<sup>26</sup> The dam prevented the water from flowing freely, just as the men perceived their lives no longer flowed freely. Since the dam served as the primary structure for controlling the water above, the men struggled for the right to some measure of control over the natural world. Steinberg emphasized that the motive of the attackers had a economic basis: "Their attack on the dam may in part have been the product of economic frustration, of lives caught up in the larger capitalist transformation happening in the region – an economic shift that left them

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<sup>24</sup> Theodore Steinberg, *Nature Incorporated: Industrialization and the Waters of New England* (Cambridge: Cambridge University Press, 1991).

<sup>25</sup> Steinberg, "Dam-breaking," 26-27.

<sup>26</sup> Steinberg, "Dam-breaking," 39.

behind."<sup>27</sup> Steinberg supposed the attack of the dam was indicative of a social conflict over who would control and profit from the natural world.

In *Nature Incorporated*, Steinberg expanded on the idea of controlling the natural world. He claimed that the people of the nineteenth century experienced a dramatic shift from humans at the mercy of nature to nature at the mercy of humans. Humankind was no longer passive in its relations with nature.<sup>28</sup> For example, a dam was more than a mere apparatus for regulating water; it was also an attempt to control water and thus represented power over nature. When men sought to destroy the dam, they were "trying to reexert control over the region's most spectacular resource, and ultimately over their own lives."<sup>29</sup> By controlling the water, the company seemed to control nature and by extension the people still reliant on nature.

The same attitude towards controlling nature appeared in *Artificial River: The Erie Canal and the Paradox of Progress, 1817-1862* by Carol Sheriff. Sheriff described how nearly all New Yorkers believed that dams and canals embodied the triumph of art over nature. Creating rivers or faster rivers where they were needed denoted a celebration of human progress. These men believed that this progress was a

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<sup>27</sup> Steinberg, "Dam-breaking," 33.

<sup>28</sup> Steinberg, *Nature Incorporated*, 69.

<sup>29</sup> Steinberg, *Nature Incorporated*, 134.

divinely sanctioned, perfectibility of the natural world.<sup>30</sup> Sheriff followed the story of the Erie Canal from 1817 to 1862. The canal brought the commercial revolution to the wilderness of New York and quickly transformed the people living there into participants in the market system. By 1858, “without a second thought, farmers kept an anxious eye on the price of wheat in England and dressed their children in ready-made shirts.”<sup>31</sup> Even while the canal facilitated commercial exchange and modernization, it also created new conflicts. The Erie Canal inflicted property damage on people living along the artificial river. Although most farmers welcomed internal improvements, some farmers resisted the canal and the damage caused to their property, and they turned to the state government for compensation.<sup>32</sup> Throughout, Sheriff made it clear that the canal had few enemies, in the sense that most everyone agreed the canal was uplifting progress.

Harry L. Watson expanded upon the conflicts that arise over control of water resources. In “The Common Rights of Mankind: Subsistence, Shad, and Commerce in the Early Republican South,” Watson explained the problem created by a dam across the Edisto River to power Ferguson’s Mills. The dam inadvertently blocked the movement of rafts and fish on the river. By obstructing the path for rafts, the

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<sup>30</sup> Carol Sheriff, *The Artificial River: The Erie Canal and the Paradox of Progress, 1817-1862* (New York: Hill and Wang, 1996), 5, 27-28, and 32.

<sup>31</sup> Sheriff, 172.

<sup>32</sup> Sheriff, 80.

dam prevented other mill owners from floating their products to market.<sup>33</sup> However, for Ferguson Mills' neighbors, the main issue with the dam arose from fishery. Shad and herring played an important role in the diet of the laboring poor.<sup>34</sup> Watson contended that the damming of the southern river and the campaign to keep the river free of obstruction reflected a major transition in the southern economy: pioneer subsistence to slavery and the market.<sup>35</sup> Mills were a particularly pointed way for fisherman and marginalized farmers to show their apprehension of the advancing market. The mills denied them access to fish while they made flour, meal, and lumber for export and to feed a large population of slaves.<sup>36</sup> The mills directly encouraged the market transformation while thwarting the old way of life. Many petitioners claimed that fish were a gift from God to humans in general. Their language stressed that the community's rights to its food supply trumped the private rights of mill owners, for waterpower was not God-given.<sup>37</sup> In the end, the commercialization of fishing finished off the shad population; commercial fisherman were increasingly successful in monopolizing the annual run of shad and herring. By 1852, the rivers – once saturated with shad – were empty. Realistically, shad was

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<sup>33</sup> Watson, 13-15.

<sup>34</sup> Watson, 15.

<sup>35</sup> Watson, 13-17.

<sup>36</sup> Watson, 17-19.

<sup>37</sup> Watson, 28.



only available through the market economy.<sup>38</sup> The resistance to the dam paralleled the resistance to the market economy.

These transformations and the resistance to them were not limited to the United States. The people of the Ops Township in Upper Canada also viewed mills as an example of the harmful overindulgence of local capitalism. Neil Forkey described in “Damning the Dam: Ecology and Community in Ops Township, Upper Canada” the paradoxical place mills occupy in North American history. While such facilities were regarded as the means by which settlers uplifted themselves, they also were regarded as a threat to farming, fishing, and water flow.<sup>39</sup> When William Purdy constructed a dam on the Scugog River in 1833, 11,000 acres of Purdy’s agrarian neighbors’ land flooded out. The long period of flooding combined with high temperatures provided the ideal conditions for disease-carrying mosquitoes. Consequently, the citizens of the community rose up twice to bring to an end to the Purdy Mills. A mob attacked and destroyed part of the dam during the first riot in December 1841. The crowd insisted that Purdy’s mill was responsible for the deadly outbreak of malaria. When the first riot failed to put a stop to the mill dam operations, the crowd assembled again, this time with rifles, pitchforks, and axes. During the second riot, they completely destroyed the saw mill and the remainder of

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<sup>38</sup> Watson, 58-59.

<sup>39</sup> Forkey, 69-70.

the dam. Ops citizens proceeded to make sure the structure would not be resurrected.<sup>40</sup> Forkey found that the actions of the rioters did not reflect a popular disapproval of development, but instead indicated the citizens' belief that the mill was the sole source of mass illness. Forkey emphasized a simple motive for the dam-breaking: "citizens resorted to a very direct means to solve a very specific problem."<sup>41</sup> Significantly, the province never pressed charges against the rioters for destroying the dam, thus condoning their behavior. Unlike the previous sources mentioned here, Forkey downplayed the idea that the rioters actions were indicative of a cultural and economic transformation. Forkey described people simply sick of being sick, not seeking to hold onto their natural rights. Still Forkey admitted the destruction of a dam displayed the contradictory attitudes early North American settlers held about mills. They believed mills to be both beneficial and dangerous to their well-being, as a means of upliftment and as destroyer of the agrarian landscape.

The idea of development as a robber of nature's charms was also key in Frederic P. Fitts's "Water Rights in Rhode Island, 1790-1840: The Commodification of the Landscape." In Rhode Island, in the late eighteenth and early nineteenth centuries, few people had the inclination to view nature in intrinsic terms any

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<sup>40</sup> Forkey, 80-83.

<sup>41</sup> Forkey, 84.

longer. Fitts harkened back to Steinberg's view of nature in industrial capitalism. In fact, Fitts supposed the industrial revolution redefined the environment: "Nature was increasingly conceived as discrete bundles of commodities – of wood, land, and water."<sup>42</sup> Fitts defined the "intrinsic" worth of nature as an appreciation of nature without evaluating the use it might have for humans, as contrasted with an "instrumental" value of nature that focused on the utility of land and water for economic needs.<sup>43</sup> By shifting towards an instrumental view of nature, Rhode Island citizens increasingly focused on controlling nature much earlier than did the citizens in the old Northwest.

Far ahead of Michigan, Rhode Island transformed the conflict over water from a struggle between farmer and mill owner to a conflict between two mill owners. Beginning in the late eighteenth century, fish migration and flooded agrarian land were no longer issues in Rhode Island. Instead, mill owners fought amongst themselves, seeking a share of water for profit.<sup>44</sup> To illustrate this conflict between mill owners, Fitts described the attack of the Slater Mill in 1792. Moses Brown, a textile manufacturer, built a large dam to provide power for the Slater Mill textile factory and consequently deprived a grist mill a hundred yards upstream of

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<sup>42</sup> Frederic P. Fitts, "Water Rights in Rhode Island, 1790-1840: The Commodification of the Landscape," *Rhode Island History* 61 (2003): 28.

<sup>43</sup> Fitts, 27.

<sup>44</sup> Fitts, 33.

the full flow of the river. The owners of the downstream grist mill, Stephen and Benjamin Jenks, publicly protested and legally filed suit against Brown. When these methods of abating the dam proved ineffective, they physically attacked and partially demolished Brown's dam. By pleading a common law right to abate a nuisance, the Jenks brothers won the legal case. Yet Brown eventually rebuilt the dam, paving the way for industrial construction and limited agrarian retaliation.<sup>45</sup> Like the agrarian owners presented in other sources, the Jenks brothers tore down part of the Slater dam to protect their private property. However, the Jenks did not struggle for an agrarian competency. They wanted to profit from the market in the same way Brown did. Fitts believed that the overall success of industrialists over farmers and small mill owners reflected a "willing complicity" among farmers.<sup>46</sup> Farmers stood to gain from an economic system that increased the demand for farm production to feed workers, allowed easier transportation of goods to markets, and provided an opportunity for farm children to find nonagricultural jobs. Fitts argued that the transformation of the market was beneficial to both mill owners and farmers.

A review of the literature reveals that the disposition of the people of the nineteenth century was generally optimistic and welcoming of technological

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<sup>45</sup> Fitts, 29-30.

<sup>46</sup> Fitts, 30.

improvements. Contemporaries perceived canals, dams, and mills as a means of uplifting themselves from subsistence. These constructions represented divinely-sanctioned control over the natural world. Yet controlling nature also introduced new conflicts to frontier people. As Sheriff pointed out, controlling nature facilitated the introduction of the commercial revolution to the wilderness. Without canals, dams, and mills, the people living in more remote areas of the country could not have been brought into the market system. Additionally, water improvements often caused a myriad of unintended conflicts, including the conflicts resulting from the overflowing of water and the spread of disease.

Canals and dams often cause flooding and property damage to neighboring farms and land. Waterpower and canals also created deliberate and accidental stagnant pools. These pools of water commonly created the perfect conditions for the breeding of mosquitoes and disease. The victims of these offenses almost always attempted to find redress in the courts and legislature first. Only after the legal system failed to provide them with a solution did the victims of water improvements seek justice by abating the nuisance themselves. Because water innovations both harmed and supported agricultural and commercial production, they held a paradoxical place in North American history.

Mills symbolized the market economy. As Watson described, mills denied access to fish and navigable streams while producing flour and lumber for export

and for slaves. Those who disapproved of economic development often targeted mills as a symbol of the market economy. Steinberg believed that on some level, the attack of the dam indicated a social conflict over who would control and profit from the natural world.

The conflict over water rights was not always or even usually about capitalist versus non-capitalist. Steinberg and Fitts both discovered violence against a dam often ensued between two mill owners. For instance, when several mills exhausted the available water supply, a downstream mill owner in Steinberg's analysis tried to take out a competing mill with a crow bar.

Many historians believe that the larger economic landscape explains the motivations of people who rioted against mills. Many of the people who attacked dams were economically marginal. They resented the deterioration of traditional society and the increasing difficulty of providing for the basic needs of their family independently. To them, the mill represented a physical expression of the capitalist transformation that left them behind.

Fickle understood the motivations of the people who physically attacked the dam slightly differently. He explained that the attack of the dam illustrated an important value of the frontier: a man has a right to defend his life and property. As explained by Horwitz, the common law provided that a landowner had the right to destroy a dam if the dam threatened his property. Even though, according to

Horwitz, the law was shifting to support economic activities, Fickle found that the people confronted with flooding and property damages met new challenges with old solutions. They continued to assert their rights, as they existed under the old common law system.

Like Fickle, Forkey downplayed the importance of the transformation of the market and law in his explanation of the violence against dams. In his account, Forkey insisted that the actions of the agrarian citizens who physically attacked the Purdy mills of Upper Canada did not reflect a popular disapproval of economic development. Instead, the citizens believed the mill was the sole cause of the malaria epidemic; thus, they destroyed it to rid the area of the threat. Forkey emphasized that the citizens of Ops Township attacked the mills to solve the very specific problem resulting from the dam's stagnant water.

The shift from valuing property for its own sake to valuing property for the role it played as an economic commodity implied a major shift. The resulting conflicts both between agrarian landholders and with mill owners can be explained as part of the larger market transformation in retrospect. However, the people in the historical moment probably interpreted their actions against mills in the manner Forkey described. The mill represented a specific problem – flooding, disease, outstripping the water supply – and destroying the dam was a specific solution. Still, the economic, legal, and cultural shifts are important background elements in

understanding how people perceived the problems created by water improvements  
and the solutions they sought to abate the problems.



CHAPTER 2  
THE VILLAGE OF DEXTER

In 1845, Dexter was the third largest settlement in Washtenaw County after Ann Arbor and Ypsilanti. Located nine miles west of Ann Arbor, the village boasted flourishing manufacturing and retail operations. However, Dexter still remained largely an agricultural community, with most of the residents devoted to agrarian pursuits. Samuel W. Dexter wanted to create an agricultural community to improve the interior of Michigan. He purchased the land in 1824 and platted the village of Dexter in 1830.

*Dexter's Patriarch*

Samuel Dexter was born in Boston in 1792. The tall, graceful man first came to Michigan in August 1824 to survey and purchase the land, and in 1826, he brought his family to live in the place that would become the village of Dexter. Even before he built a residence, Dexter built a dam across Mill Creek to run a sawmill and grist mill as the first structures in the village. By building these mills before any other constructions, Dexter displayed his priority to establish a thriving agricultural village and economy.

There is ample evidence that Dexter considered these mills and even his personal home as public buildings. Dexter freely allowed the use of his home as a

place of worship for as many as five denominations of Christian congregations, as well as a residence for the different preachers who came to Dexter to serve those congregations.<sup>1</sup> He also allowed his home to be the location for many public meetings including temperance societies, Anti-Masonic rallies, town meetings, and meetings to encourage settlement in Michigan. He was not alone; in the eighteenth century in the East and into the early nineteenth century in southeastern Michigan, farmers perceived waterpower exclusively as a public enterprise.<sup>2</sup> Dexter viewed the mills he constructed in the same spirit of community as he viewed his home.

Despite being the richest citizen and largest landowner of Dexter Village, Dexter “knew little, and cared less, about the ordinary methods, or indeed any method of merely making money.”<sup>3</sup> Instead, Dexter spent the majority of his time in public pursuits. He was a powerful speaker and engaged in social conversation with people throughout his village. By committing himself to the well-being of the citizens of Dexter, Samuel Dexter established himself as the patriarch of the village.

Dexter presented himself as the leader of the community by taking on many public positions. In 1826, he was appointed Chief Justice of the County Court. The same year, he established a post office in his home and became the first postmaster general of Dexter. He rode on horseback to Ann Arbor once a week to collect the

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<sup>1</sup> *History of Washtenaw County, Michigan*, 267.

<sup>2</sup> Fitts, 27-28.

<sup>3</sup> *History of Washtenaw County, Michigan*, 268.

mail for delivery.<sup>4</sup> Dexter wished to take care of his residents, so if the early settlers could not afford to pay the postage, he would collect only half the postage, and pay the rest himself.<sup>5</sup>

Dexter also dedicated himself to the cause of temperance. Judge Dexter promoted meetings advocating temperance, and he contributed financially to aid and assist the families of drunkards. As the patriarch of the community, Dexter believed it was his duty to “restore [its] intemperate members to a correct life.”<sup>6</sup> Dexter’s rhetoric provided more evidence that he saw himself as the patriarch of the village. When asked about his creed, he replied, “To believe in God and take care of the poor.”<sup>7</sup> When a local family was down on its luck, Dexter often employed them to work as servants in his home. Dexter hoped to be remembered for his tireless efforts to uplift the poor in his community. Upon Dexter’s death, the county history insisted, “All his feelings and opinions ran in favor of the poor, oppressed and suffering. He was their constant advocate.”<sup>8</sup> Dexter was a paternalistic leader with

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<sup>4</sup> *History of Washtenaw County, Michigan*, 267-268.

<sup>5</sup> Norma McAllister, *Judge Samuel William Dexter* (Dexter, Mich.: Thomson-Shore, Inc., 1989), 22.

<sup>6</sup> *History of Washtenaw County, Michigan*, 268.

<sup>7</sup> McAllister, 28.

<sup>8</sup> *History of Washtenaw County, Michigan*, 268.

both market desires and an older pre-capitalist mentality of civic duty and leadership.

Dexter believed that under his direction, the village of Dexter would grow into a thriving community. For this reason, he platted the roads wider than most other towns in Michigan, and he worked consistently to bring the railroad to Dexter. He deeded land to the Michigan Central Railroad for the purpose of laying track for the line. Years later, Dexter's daughter, Julia Dexter Stannard, recalled "sitting on the stile watching men chop down and dig out the trees and level the roadbed . . . They put down the strap rails right through our pear and apple orchard. It always made me kind of sad."<sup>9</sup> But for most other Dexter residents, sadness had dissipated by the time the first run of the train came to Dexter. An early resident of Dexter, Judge Crane remembered,

The 4<sup>th</sup> of July, 1841, was a day long to be remembered by the people of Dexter. Early in the morning of that day the people of the surrounding country came pouring into the village on foot, on horseback, in carriages and wagons, not only to celebrate the anniversary of the nation's birthday, but at the same time to celebrate the completion to our village of the Michigan central railroad . . . We had but a few minutes to wait before the shrill whistle of the iron horse was heard, and instantly the train came in its grandeur and

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<sup>9</sup> McAllister, 29.

majesty around the curve into full view, and thundered up to the depot, when the air was filled with loud huzzas and shouts of welcome, and everybody was happy.”<sup>10</sup>

Crane’s description of the first run of the train to Dexter shows that Dexter was open to progress and the market. The train was one of the greatest symbols of the market economy, and most of the citizens of Dexter embraced it.

The train also brought many new residents to Dexter, so by the 1850 census, the population of Dexter and its surrounding area reached 2,766 people.<sup>11</sup> Within the village limits of Dexter, 868 white people lived. Along with the thriving business center, the majority of the new residents were farmers. In 1850, there were 28,567 people and 182,510 acres of improved farmland in Washtenaw County. Wheat was the leading crop in the townships of Dexter and in the county as a whole; Washtenaw County farmers produced 528,042 bushels of wheat.<sup>12</sup> In addition, nearly every farm in Dexter produced some corn, oats, barley, and clover.<sup>13</sup> In Washtenaw County the leading crops produced in 1850 besides wheat included

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<sup>10</sup> *History of Washtenaw County, Michigan*, 835.

<sup>11</sup> United States Census Office, *The Seventh Census of the United States: 1850* (Washington: R. Armstrong, Public Printer, 1853), 896.

<sup>12</sup> Unfortunately, the 1850 Census did not record agricultural statistics for the individual township or cities, but some generalizations can be made from the numbers for Washtenaw County.

<sup>13</sup> James B. Parker, *A Brief History of Webster Township, 1833-1983* (Dexter, Michigan: Webster Township Historical Society, 1983.)

389,000 bushels of corn; 211,465 bushels of oats; 133,227 bushels of potatoes; and 42,000 bushels of buckwheat. Barley and clover were not as important crops in Washtenaw County as a whole; the 1850 Census recorded that the county's farms only produced 7,070 bushels of barley and 3,813 bushels of clover seeds. Apples were grown in orchards in the townships of Dexter and around Washtenaw County; countywide farms produced 14,746 bushels of produce from orchards. Most families in Washtenaw County kept some livestock. The census reported totals of 94,105 sheep, 16,911 swine, 5,670 horses, 4,378 oxen, and 17,960 cattle, including milk cows.<sup>14</sup> Sheep were normally a good indicator of market participation; there were only a little over three and a quarter sheep per person. Three sheep would not create very much wool or mutton for market participation. Clearly, Dexter and Washtenaw County were still agricultural communities. In Dexter, Michigan, the transition in the marketplace was not the transformation from agricultural to industrial. There was a transformation within the agricultural sector itself. While some market participation was taking place, Washtenaw County still produced in part for local and household consumption even as late as 1850.

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<sup>14</sup> Census Office, 1850, 900-908.

### *The Merchant of Dexter*

While most people made a living in agricultural pursuits, Jesse Millerd considered himself a merchant. Indeed, Millerd fit the model of the typical merchant. Sellers explained, “The [early 19<sup>th</sup> century] merchant was a general capitalist entrepreneur, not only sending out trading ventures but lending to local borrowers, financing retailers, speculating in urban real estate,” managing a general store, and operating several mills.<sup>15</sup> Millerd fit this description in every particular. He not only oversaw trading ventures with markets in the east, but he also lent to local borrowers, managed a store, and bought real estate, in addition to owning and operating the Peninsula Mills.

When Samuel Dexter ran the mills of Dexter, he did so, at least in part, to promote the communal interests of the agrarian community. Contrastingly, Millerd ran the mills for his own profit, increasingly selling the flour he milled to fulfill demand for food in the East.

Since he moved to Dexter in the fall of 1835, Millerd had been a target as an outsider in a heavily intermarried and interrelated community. As a new resident of Dexter, Millerd entered into partnership with Salmon Matthews and Edwin Bond.<sup>16</sup> In partnership, they established several business concerns including (in 1836) the

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<sup>15</sup> Sellers, 21.

<sup>16</sup> Matthews was Dexter’s second white resident after Judge Dexter.

building and operating of the Peninsula Mills. The mill was three and one half stories high and employed six men. At its peak, the mill's production capacity was less than 200 barrels of flour per day.<sup>17</sup> The partnership also managed a general store with "an extensive assortment of Drugs, Medicines, Groceries, Paints, Dye Stuffs, Provisions, &c."<sup>18</sup> The store accepted produce in lieu of cash for goods and services, and Millerd would continue to accept produce as payment for the length of his tenure in Dexter.

Until the summer of 1837, the partners managed the mills and the other aspects of the business without incident; however, in June 1837, Matthews filed a suit in the Washtenaw County Chancery court against Millerd, and obtained an injunction to prohibit Millerd from interfering in any way with the business. Millerd described, "This was followed by Matthews by taking from the *funds* of the firm \$3000 and appropriating \$2000 to his own use without my consent." Millerd insisted the only purpose of the suit was to deprive him of his rightful property, and represented

a preconcerted attack, on the part of Matthews and his adherents . . . the obvious design of all which was to ruin my character and prospects, and to

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<sup>17</sup> The mills produced 200 barrels a day in 1881, many years after the Millerds owned the facility. It is likely the mill produced far less in 1845. *History of Washtenaw County, Michigan*, 832; Frances Carolyn Gordenier, *The History of Dexter Michigan* (Dexter, Mich.: privately published, 1968), 8.

<sup>18</sup> *Ann Arbor Michigan State Journal*, 20 Sept. 1838.



harass me into a settlement of the Chancery matter on such terms as the opposite party should prescribe. – Indeed, one of his friends was heard to remark, soon after the service of the injunction upon me, that in one year I should become so reduced that I would be obliged to sell out to Matthews at any price. It was supposed by him, and so stated in his bill, that I was without resources, except the property invested in the partnership, any use or present advantage of which I was deprived of by the injunction.<sup>19</sup>

Millerd countered by filing a similar injunction against Matthews in July 1837. They fought an ongoing court battle for the right to the management and the profits of the business until Matthews died in 1838. The suits were revived and continued by Matthews’s personal representative Norton Ramsdell.

In the original suit, Matthews charged Millerd with eight offenses. Among them, Matthews alleged that Millerd violated the partnership agreement by failing to provide his share of the capital and by using property of the firm for his own use. Matthews also contended that Millerd “violated the partnership agreement which stipulated for his attention to the business of the firm, by leaving Dexter and returning to the State of N.Y. in the winter of 1836.”<sup>20</sup> In Matthews’s view, to attend

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<sup>19</sup> *Ann Arbor Michigan Argus*, 29 November 1838.

<sup>20</sup> “Abstract of Bill and Answer and brief of Testimony,” *Jesse Millard v. Norton Randall and others*, 2<sup>nd</sup> Circuit Chancery Court, State of Michigan, Chancery Court Case Files 1834-1876, Box 7, Case 22 and 23, State Archives of Michigan.

to the business meant Millerd was obligated to stay within the limits of Dexter. Matthews believed Millerd should principally run and manage the store, and so by leaving Dexter, he was failing to perform his duties.<sup>21</sup> But Millerd believed “his attention to the business” required a wider setting. Millerd “had occasion to go to the State of N.Y. to . . . purchase a stock of goods for the firm, and that it was expressly agreed by . . . Matthews and Bond that he should do so, and that he did not thereby violate his agreement.”<sup>22</sup> Attending to business in New York was a new necessity of a merchant. Millerd knew he could make contacts and purchase products in New York, and that in the long run, the firm would benefit from the loss caused by his absence from the desk of the shop. This disagreement illustrated the different business mentalities held by the two men. According to Millerd’s view, long-distance trading and traveling were necessary and desirable aspects of maintaining a mercantile business venture. Matthews resented Millerd’s long-distance management of the businesses and expected Millerd to remain within the village limits of Dexter to keep an eye on the local store and customers.

In the bill to the Chancery court, Matthews and Bond admitted they were not acquainted with the mercantile business. They allowed Millerd to handle the mercantile aspect of the firm as he saw fit. Millerd recognized his partners’ lack of

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<sup>21</sup> “Abstract of Bill.”

<sup>22</sup> “Abstract of Bill.”

interest in the interstate market. He believed he was the only partner to understand the coming market economy. Millerd went so far as to claim “that Matthews [was] illiterate, and incompetent to carry on the business of the firm.”<sup>23</sup> Though Matthews was not illiterate,<sup>24</sup> he chose to attend exclusively to the local branches of the business. Matthews must have recognized the necessity of integrating the local market with the world market, for he did willingly enter into a partnership agreement with Millerd. Still, he left the mercantile and interstate trading up to Millerd. The contrast between the business styles of Millerd and Matthews would play an important role in the public spectacle to follow Matthews’s death.

After his death, Matthews’s family and friends did not let the matter rest within the courts. In November 1838, they called a Public Meeting to discuss “certain slanderous reports alleged to have been put in circulation by Jesse Millerd, affecting the character of his late partner Salmon H. Matthews.”<sup>25</sup> Letters printed in the paper testified that Millerd had made it known that Matthews was not a temperate man. Matthews’s physician, Cyril Nichols, remembered Millerd said

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<sup>23</sup> E. Burke Harrington, *Reports of Cases Determined in the Court of Chancery of the State of Michigan: 1836-1842* 2<sup>nd</sup> ed. Ed. Thomas M. Cooley (Chicago, Ill.: Callaghan & Co., 1882), 375, 379 and 382.

<sup>24</sup> The Salmon affidavit was written and signed by his own hand. “Affidavit of Salmon Matthews,” *Jesse Millard v. Norton Randall and others*, 2<sup>nd</sup> Circuit Chancery Court, State of Michigan, Chancery Court Case Files 1834-1876, Box 7, Case 22 and 23, State Archives of Michigan.

<sup>25</sup> “Public Meeting,” *Ann Arbor Michigan Argus*, November 15, 1838 and *Ann Arbor Michigan State Journal*, November 15, 1838.

Matthews used a “monstrous, MONSTROUS sight more [liquor] than any man in this village; and then alluded to his drinking fourth proof or first rate brandy, in the store of Millerd & Co. to excess.”<sup>26</sup> Other letters related similar information condemning Millerd as a slanderer. The result of the meeting was published in the major papers:

That the report put in circulation by Jesse Millerd that Salmon H. Matthews was a man given to hard drink, that he drank more brandy than any man in this place, and that he was dying with Delirium Tremens,<sup>27</sup> is a vile slander, and propagated under circumstance that fairly entitle him to the character of the slanderer.<sup>28</sup>

Practically every established male citizen of Dexter signed this resolution indicating his opposition to Millerd, including Deforest’s father, Isaiah Phelps. Although the evidence is spotty, it is likely Salmon Matthews was a heavy drinker. If Millerd were prone to spreading lies about Matthews regarding his intemperance, he probably would have done so while Matthews was alive and persecuting him in the courts. Additionally, Millerd would have been unlikely to attempt to spread a rumor via Matthews’s attending physician and his close friends who undoubtedly would know the truth. So we must conclude that Matthews was a heavy drinker

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<sup>26</sup> “Public Meeting.”

<sup>27</sup> Delirium tremens is a potentially fatal form of alcohol withdrawal.

<sup>28</sup> “Public Meeting.”

despite the public declaration to the contrary. Therefore, the public meeting could not be taken at face value. Since Matthews probably was a heavy drinker, the motivations of the participants of the meeting were not loyalty to Matthews. Instead, the public meeting could be seen as a personal attack of Millerd's market-oriented personality.

While the signers of the resolution of the public meeting asserted they did so "to protect the character of its members from causeless aspersions," it is more likely the resolution was printed out of frustration of Jesse Millerd's handling of the business. The encroaching market economy brought to the forefront conflicting interests: Matthews represented the community-oriented economy relying on the local population, while Millerd symbolized the self-oriented economy selling to distant consumers. The changes in the management of the business were subtle yet palpable. In 1845, the general store still accepted produce in place of cash, but advertisements for the store now ran in the papers with a thinly veiled threat: "Those indebted to J. Millerd & Sons, will please call and settle without delay with the subscribers, and save UNPLEASANT OCCURANCES."<sup>29</sup> In speaking out against Millerd and condemning him as a slanderer, the citizens of Dexter were

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<sup>29</sup> Interestingly, the ads appeared in the *Democratic Herald* instead of the Whig-leaning *Michigan State Journal* after the death of Salmon Matthews. This probably represents the *State Journal's* personal treatment of Millerd during the 'Public Meeting' incident, and not political affiliation of the J. Millerd or his business practices. The *State Journal* refused to print Millerd's response to the charges alleged by the "Public Meeting" or the letters defending his character. *Ann Arbor Democratic Herald*, 17 Feb. 1841.

denouncing a personality style that would succeed in the new marketplace but was a threat to the harmony of the older community ideal. The article derived from the public meeting described the deceased Matthews by “his benevolent and philanthropic disposition,” which “rendered him a valuable citizen, a worthy friend, and neighbor, and obtained for him the esteem of the whole community.”<sup>30</sup> The change in the management of the dam from “philanthropic” to “profit seeking” was jarring for the signers of the public declaration. When Matthews was alive, he could keep up the pre-industrial mindset, but when Matthews died, a part of the old paradigm died with him. Even though Dexter and other frontiersman remained, the old community-oriented ways were slipping away.

In 1845, Dexter was a village in transition. A decade previous, Dexter was a small agricultural community without many outlets to the outside market. The residents of Dexter produced most of the goods they required themselves. Then, in 1841, the train flooded the small community with goods and people from the East and Europe. Suddenly Dexter had a thriving business center, an accessible market for their produce and livestock, and the manufactured products from factories. Millerd was instrumental in bringing about this transformation. He traveled to the East to make contacts with merchants, sold manufactured products in his store, and helped sell agricultural produce to out-of-state markets. In this way, Millerd

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<sup>30</sup> “Public Meeting.”

threatened the harmony of the older community ideal that valued a communal self-sufficiency. By speaking out against Millerd, the signers of the resolution attempted to cling to an outdated value system. Reeves might have grasped the same sense of the old world slipping away when he avenged himself against the Peninsula dam. Millerd fit in well with the market system, and his ability to adjust to the market set him apart from his compatriots.

## CHAPTER 3

### THE MARKET TRANSFORMATION

Pre-market farm people's overriding priority was to maintain and reproduce the family's way of life.<sup>1</sup> This required more than mere survival; it required competency. Competency expressed a degree of well-being above subsistence but below abundance. The idea suggested "the possession of sufficient property to absorb the labors of a given family while providing it with something more than a mere subsistence. It meant, in brief, a degree of comfortable independence."<sup>2</sup> The notion was necessarily imprecise, for one man's comfort is another man's destitution. Still, most ordinary people strived for household independence. At the very least, competency required no one in the family would have to depend on others for work.<sup>3</sup>

Pre-market people perceived a great difference between trading within the community and long-distance trade. Even though most people in Dexter already traded their produce for goods and services in town, long-distance trade was threatening to some. Long-distance trading implied a dependence on merchants

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<sup>1</sup> Sellers, 13.

<sup>2</sup> Daniel Vickers, "Competency and Competition: Economic Culture in Early America," *The William and Mary Quarterly* (Jan. 1990), 3.

<sup>3</sup> Vickers, 25 and 28.



and creditors while local trade created a “communal self-sufficiency.”<sup>4</sup> No family was truly self-sufficient; pre-market families required a constant exchange of labor and commodities. Given the dearth of commodities in rural areas, neighborliness and local sharing were critical to survival in the remote areas of Michigan. Because cooperation between families was both indispensable and against the ethics of competency, “it had to be clothed in a self-conscious spirit of community.”<sup>5</sup> Settlers preserved the system of local exchange with neighborly gestures like gifts and offers of help. Yet outsiders often complained about the necessity of sharing with their neighbors. Caroline Kirkland mockingly described these “involuntary loans” when she first moved to the Dexter area in 1839:

Whoever comes into Michigan with nothing, will be sure to better his condition; but wo [sic] to him that brings with him anything . . . whether of money or mere household conveniences. To have them, and not be willing to share them in some sort with the whole community, is an unpardonable crime.”<sup>6</sup>

Kirkland’s neighbor did not even “ask a loan, but take it for granted . . . when he finds that you possess any thing which would contribute to his convenience, walks

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<sup>4</sup> Susan E. Gray, *The Yankee West: Community Life on the Michigan Frontier* (Chapel Hill: University of North Carolina Press, 1996), 78-79.

<sup>5</sup> Vickers, 27.

<sup>6</sup> Caroline Kirkland, *New Home, Who’ll Follow? Or Glimpses of Western Life* Ed. Sandra A. Zagarell (New Brunswick: Rutgers University Press, 1990), 67-68.

in with, 'Are you going to use your horses *to-day*?' if horses happen to be the thing he needs."<sup>7</sup> Kirkland felt involuntary loans violated her emotional claim and legal right to her possessions. Historian Lori Merish stated Kirkland wanted to show that "unless positive rights to private property are absolutely secured, material improvement will be neglected."<sup>8</sup> Economic progress was not possible without private property rights. The collective frontier economy threatened economic growth and material refinement.

Few regions experienced the transition to the market economy in as brief a time span as in Michigan. The railroad would make Michigan a crossroads between East and West, and, very quickly, Michigan went from a remote region to a center of a market activity.<sup>9</sup> The market offered farmers the chance to trade their goods with people outside the local community for cash. By selling their products instead of using what was produced within the family, wealth was more easily accumulated. More people could then afford the commodities that used to be traded between neighbors. Reeves got caught up in the transition. He could not afford to buy all the commodities his family required, and the paradigm whereby he could count on the benevolent aid of his neighbors was fast ending.

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<sup>7</sup> Kirkland, 68.

<sup>8</sup> Lori Merish, "'The Hand of Refined Taste' in the Frontier Landscape: Caroline Kirkland's *A New Home, Who'll Follow?* And the Feminization of American Consumerism," *American Quarterly* 45(4) Dec. 1993: 504.

<sup>9</sup> Hershock, x and 78.

CHAPTER 4  
RIGHTS OF A SQUATTER

Sayer Reeves and his family first came to Michigan in 1836 from Cayuga County, New York. They followed Sayer's brother, Phillip Reeves, who first bought land from the government in 1825, and moved to Dexter, Michigan, in 1834. By the time Sayer joined Phillip, Phillip owned more than 500 acres in and around Dexter.<sup>1</sup> Phillip had made a name for himself in Dexter: he was a Deacon of the Congregational Webster Church and a delegate at the Whig Convention for Washtenaw County in 1837 and 1838.<sup>2</sup> Sayer may have expected to find similar prosperity in Michigan, but he did not have the same success as his brother.

Sayer Reeves purchased land from Judge Dexter for one hundred and fifty dollars on credit on October 25, 1836. The land was situated within the village of Dexter on lot eight, in block eight between Second and Third Street. Reeves built and operated a tavern on the site. Two years later, he had yet to repay his debt. While his brother bought and paid for his land during Michigan's boom time, Sayer moved to Michigan just in time for the Depression of 1837. A drain of gold and

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<sup>1</sup> Paul R. Peck, *Landsmen of Washtenaw County: An Atlas and Plat of the First Land Owners of Washtenaw County Michigan*, Liberty Town Press, 1986.

<sup>2</sup> Howell Taylor, "Stone House of an Early Settler," *Dexter Leader*, October 1946, *Ann Arbor Michigan State Journal*, October 26, 1837, and September 6, 1838.

silver specie from American banks caused depreciation of bank notes and the collapse of businesses.<sup>3</sup> As a result, Sayer could not come up with the cash payment to make good on his debt. Sayer was not the only small land owner affected by Michigan's financial crisis. Caroline Kirkland commented, "Helpless ruin has been the consequence in numerous instances, and every day adds new names to the list . . . The distress among the poorer class of farmers which was the immediate consequence of . . . bank failures, was indescribable."<sup>4</sup> On October 6, 1838, Reeves's creditor, Judge Dexter, foreclosed on Sayer's modest farm and tavern. His land was sold at public auction.<sup>5</sup>

After being forced from his first Dexter home, it is likely Sayer stayed with Phillip on his 240-acre farm in Webster Township. Then, on January 1, 1840, Sayer moved onto the unoccupied timbered land neighboring Phillip Reeves's farm.<sup>6</sup> Though he held no title or official claim to the land in section 30 of Webster Township, Sayer Reeves built a modest home and moved his family to the deserted

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<sup>3</sup> Willis F. Dunbar and George S. May, *Michigan: A History of the Wolverine State 3<sup>rd</sup> ed.* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1995), 230.

<sup>4</sup> Kirkland, 122 and 126.

<sup>5</sup> "Mortgage Sale," *Ann Arbor Michigan State Journal*, October 4, 1838.

<sup>6</sup> "Complaint," 18 Dec. 1843, *Sayre Reeves v. Jesse Millerd and George Millerd*, Washtenaw Circuit Court, State of Michigan, Records of the 4th Circuit Court for Washtenaw County, 1828-1876, Box 86, Case 703, State Archives of Michigan.

acreage owned by Judge Samuel Dexter.<sup>7</sup> Reeves even paid taxes on the land in 1840. The column for acres was left blank, but the value of the tract was assessed at \$350. Reeves had no personal estate, so his total state, county, and township taxes was \$3.35.<sup>8</sup> By paying taxes on the land, Reeves was asserting his entitlement to the land. The tax collector probably left the acreage of the land blank because he was unclear how to record the boundaries of the land Reeves claimed.

Reeves would soon learn the land was necessarily deserted; for much of the year, a significant portion of the land flooded with at least two feet of water. The property lay along the banks of the Huron River; less than a mile up river, a dam created a mill race to power the Peninsula Mills. The mill dam caused the water of the river to “overflow and drown” the land.<sup>9</sup> Having anticipated this eventuality, Judge Dexter had kept the land free of tenants and licensed the area to the Millerds for flooding.<sup>10</sup> Millerd had a legal right to the use of the land. There was no record of any arrangement between Reeves and Dexter to occupy the land. Yet there was no evidence Judge Dexter attempted to move Reeves off his land. Perhaps as the

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<sup>7</sup> Judge Dexter purchased the land from the federal government March 24, 1826. However, in the time before the trial, the land had ambiguous ownership. Judge Dexter testified he owned the land, but the Supreme Court of Michigan deemed, “Nothing is proved upon this subject.” Suffice it to say, Reeves was not the legal owner. *Millerd et al. v. Reeves*. 1 Mich. 107; 1848 Mich. LEXIS 16 January Term, 1848.

<sup>8</sup> *Tax Assessment Rolls, Washtenaw County, 1837-1871, Record 55-22, State Archives of Michigan.*

<sup>9</sup> “Complaint”, 18 Dec. 1843.

<sup>10</sup> *Millerd et al. v. Reeves.*

patriarch of the community, Judge Dexter took pity on the Reeves family and allowed them to stay on his land without charge. Dexter tried to split the difference between civic duty and market interest. Though he foreclosed on Reeves's tavern in town, he might have offered Reeves and his family farmland as compensation.

Reeves believed by his labor and his time, he had a claim to the peaceful enjoyment of the property regardless of his squatter status. Before 1862, all authorized methods of settling land required the owner's permission before settling. Those people who chose to settle without the permission of the landowner were trespassers: squatters. Even though Congress refused to acknowledge the rights of squatters, insisting they had "settled without authority" and that "any hardships to which they may be exposed are chargeable only to their own indiscretion,"<sup>11</sup> local custom often defended squatters' rights.<sup>12</sup>

The practice of squatting on the land in America began in the English settlements before Independence. Even though these pioneers settled on the land without authority and without title, each colony eventually granted squatters some protection or compensation for the improvements they made on the land. From this colonial practice, the squatter secured a protected status at least in the minds of the common people. The act of squatting became seen as a demonstration of a

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<sup>11</sup> Douglas R. Picht, "The American Squatter and Federal Land Policy," *Journal of the West* 72 (1975): 72-74.

<sup>12</sup> John Mack Faragher, *Sugar Creek: Life on the Illinois Prairie* (New Haven: Yale University Press, 1986), 54-55.

democratic agrarian principle that all men have a natural right to waste land.<sup>13</sup> In May 1830, “An Act to Grant Preemption Rights to Settle on the Public Lands” finally legislated the practice already carried out by local associations. Preemption was the right of an actual settler to purchase a tract of public land before others from the government. The law granted every squatter the legal right to preempt from forty to one hundred and sixty acres of land at minimum price from the government before the lands came up for sale at auction. Since the squatters already had associations in place to protect their homesteads from the threat of sale at public auction, the law had little practical benefit. Still, by granting the right of preemption to the unauthorized settlers, Congress helped to strengthen the status of the squatter.

Settlers often acted together to shield persons without title to the land from legal seizure. Custom allowed any settler to squat for a term, provided he “improved” the land by farming. Reverend Alfred Brunson traveled the frontier and encountered several squatters on federal land. His conversation with one of these squatters illustrates this principle:

But suppose when the land comes into market a man should bid upon one of your claims: how are you going to prevent him? “Why it is agreed by all the settlers in the whole country to have a man present at the sale from each settlement, with our names and the numbers of claims, and when the tract is

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<sup>13</sup> Picht, 72.

announced for sale he will declare it to be a claim and the claimant will bid the government price of \$1.25 – and if any man bid against him he is to be knocked down and dragged out of the house.” But if he still persists and buys your claim, what will you do? “Why I’ll kill him; and by agreement of the settlers, I am to be protected and if tried, no settler dare, if on the jury find a verdict of guilty against me.”<sup>14</sup>

Even before Congress condoned preemption rights, it was already the general practice amongst the settlers. In 1836, when the question of the rights of squatters came before Congress, Senator Walker announced, “Sirs, our glorious Anglo-Saxon ancestry, the pilgrims who landed at Plymouth Rock, the early settlers at James Town, were squatters . . . Daniel Boone was a squatter . . . Christopher Columbus was a squatter.”<sup>15</sup> When viewed in this light, squatting seemed American and honorable. Many of the early settlers must have viewed squatting in this light.

Even though Reeves’s land was owned by Judge Dexter and not the government, he still borrowed from the gains of squatters on government land. Because squatters on government land had achieved much legitimacy in the eyes of fellow settlers and in the law, Reeves’s claim to the land he squatted on was legitimated by extension. The land did not legally belong to the government, but as

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<sup>14</sup> Picht, 75.

<sup>15</sup> Picht, 77.



with government lands, the land was without productive use until Reeves improved it.

Additionally, squatters could gain the rights to remain on the land if they managed to hold on to it for a period of time. Before the nineteenth century, under the English Common Law doctrine of prescription, it was possible to gain a legal interest in water merely by occupancy. The doctrine was invoked and sanctioned in the New England courts until mid-century.<sup>16</sup> In the 1890s, Michigan legally recognized the common law of prescription for water rights. Even without express permission from the landowner or the government, a dam owner could acquire the right to flood land upstream by prescription. If the upstream owner failed to challenge the flooding for fifteen years, the dam owner attained the right to continue to flood. On the other hand, the right of prescription to flood was lost if the dam was not used for 15 years.<sup>17</sup> Though neither party in case of *Reeves v. Millerd* attempted to invoke the doctrine of prescription, that mere occupancy gave the occupier rights to the land spoke to the rights of squatters. Whether water or people squatted on the land, the common law provided protection against legal encroachments long before the rights were legislated. Millerd did not need to call upon the doctrine of prescription to legitimize his claim to the land his dam flooded.

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<sup>16</sup> Steinberg, *Nature Incorporated*, 143-144.

<sup>17</sup> John A. Braden, "Dam Law in Michigan," *Michigan Bar Journal* 1989 68(1) 41.

He had a firm contract with Judge Dexter to flood the land, and Reeves was a mere occupier.

Within a year, Reeves realized profitably farming the land would be impossible given the continual cycle of flooding. The trees had been “made worse, damaged and destroyed, and his timbered land [had] become spongy, rotten & impassible . . . during the time aforesaid [he had] been prevented from clearing & cultivating his said timbered land.”<sup>18</sup> The flooding created swamp-like conditions – the perfect conditions for mosquitoes and disease. His family became continually ill. Some of the land must have remained dry, since Reeves was able to build a house and reap enough crops to prevent starvation. Yet, like the residents along the Erie Canal, “the land covered by water [was] not the only loss to the country, but thousands of acres adjacent thereto remain uncultivated, and men are forced to abandon their farms in order to save their lives” due to the ominous health conditions.<sup>19</sup> The river water seemed to swiftly and conveniently carry away whatever waste products people generated, and settlers quickly exploited this capacity. Given this practice, it was not surprising that the river water rapidly decreased in quality and cleanliness.<sup>20</sup> While it is impossible to know exactly what

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<sup>18</sup> “Complaint,” 18 Dec. 1843.

<sup>19</sup> Forkey, 317.

<sup>20</sup> Steinberg, *Nature Incorporated*, 205.

disease bred in the stagnant water, the most common diseases in the area in the mid-1800s were dysentery, Asiatic cholera, and malaria.

New Yorkers along the Erie Canal too invoked an argument against stagnant water in the name of public health. The Canal bordering their land also created diseased stagnant pools and the locals complained about their bouts with fever and ague.<sup>21</sup> In the nineteenth century, the *Plasmodium vivax* species of malaria was widespread in the mill ponds, canal run-off, and other pools of water in the mid-west. Marked by severe illness and low mortality, the pathogen spread to settlers in Michigan by mosquitoes.<sup>22</sup> The connection between swampy, low-lying lands and malaria was commonly known at the time, but settlers mistakenly believed the putrid vapor rising off the water caused the disease. Malaria meant literally “bad air.”<sup>23</sup> The mill ponds created by the dam fostered mosquito breeding grounds and worsened the spread of the disease. Reeves’s family possibly suffered from this species of malaria.

Somehow, Reeves managed to live on the land for three years despite the hardships. However, each passing year he grew more frustrated with the constant flooding, until, at the end of 1843, Reeves sued Jesse and George Millerd for \$1000 for trespass. He wanted to assert his traditional rights as an occupant of land he had

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<sup>21</sup> Sheriff, 93.

<sup>22</sup> Forkey, 70-84.

<sup>23</sup> Fickle, 309-328.

cleared and improved. He already lost his land once; he did not wish to lose it again.

## CHAPTER 5

### THE LAWS OF WATERPOWER

Given all the waterways in Michigan, it was not surprising that many dams were built to generate waterpower. According to the pre-market conception of property, the “natural” flow of the river was paramount. Eighteenth century legal doctrine argued that land owners were limited to the natural, agrarian use of their property.<sup>1</sup> Before the nineteenth century, the common law averred, *Aqua currit et debet currere, ut currere solebat*.<sup>2</sup> The doctrine was premised on the inherent good of allowing water to flow as God had designed. The common law was critical of any obstruction to the natural path of the river; any interference was perceived as an attempt to change the natural order of the world.<sup>3</sup> If applied consistently, the natural flow rule would prohibit almost any use of the water resource.<sup>4</sup>

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<sup>1</sup> Horwitz, 32-34.

<sup>2</sup> Water flows and ought to flow, as it has customarily flowed.

<sup>3</sup> Horwitz, 35.

<sup>4</sup> Steinberg, *Nature Incorporated*, 141.

*History of Waterpower in Michigan*

In 1824, the territory of Michigan adopted the Massachusetts Act of 1795, the first statutory law in Michigan for the support and regulation of mills.<sup>5</sup> The act declared, “The erection and support of mills . . . ought not to be discouraged by many doubts and disputes” created under the common law.<sup>6</sup> The act provided some “special provisions . . . relative to flowing adjacent lands, and relative to mills.” It permitted an owner of a mill to raise a dam, even if the action flooded the land of his neighbor, as long as he compensated him by paying yearly damages. The act deemed

That if any person shall sustain damages in his lands, by their being flowed . . . he may complain to the county court of the county wherein the lands so flowed shall be situated, and the said court shall issue a warrant to the sheriff of the county . . . directing him to summon and empanel a jury of twelve good and lawful men, which shall be sworn to make a true and faithful appraisal of the yearly damages done to the complainant by so

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<sup>5</sup> John M. Gould, *A Treatise on the Law of Waters, Including Riparian Rights and Public and Private Rights in Waters Tidal and Inland*, 2<sup>nd</sup> ed. (Chicago: Callaghan and Company, 1891), 877.

<sup>6</sup> “An Act for the Support and Regulation of Mills,” *Laws of the Territory of Michigan Embracing All Laws Enacted by the Legislative Authority of the Territory, from 1806-1830, Which Are Not Included in Vol. 1* vol II (Lansing, W.S. George & Co., State Printers and Binders, 1874), 192-195.

flowing his lands.” The verdict of the jury “shall be a sufficient bar to any action to be brought for any such damages.<sup>7</sup>

The mill owner needed not seek the court’s permission in advance of erecting a mill, and the act provided the exclusive remedy for flooding of lands in the collection of a monetary sum.

As a result, the Massachusetts statute denied three important alternatives to the injured party previously granted under the common law. First, the plaintiff had to prove actual injury in economic terms to recover damages; the jury appraised the value of the land when determining the amount of the annual payment. If no financial hardship resulted from the flooding, the annual amount could be nothing. In the customary understanding of trespass, the plaintiff was not required to prove actual injury. Trespass was not limited to an unauthorized entry onto someone’s property in person, but extended to entry of odors or water as well. Any use of the property without the owner’s permission was unlawful by this understanding regardless of the actual damage to the value of the holding. The Massachusetts Act invalidated that common law understanding of trespass. The second form of relief allowed an affected landowner to tear down the dam himself. Under common law, neighbors could enforce their property rights by removing the cause of the damage to their property. If the interference to the natural flow of the stream was wrongful,

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<sup>7</sup> “An Act for the Support and Regulation of Mills,” 192-195.

the injured person could lawfully resort to self-help without seeking out the courts for redress. Alternatively, the injured party may under common law construct an embankment to hold back the excess water, even if this action harmed the initial purpose of the dam. These forms of self-help relief were prohibited under the act. Finally, the act prevented the possibility of an injunction against the mill owner to permanently prevent him from operating the dam in a manner that flooded his neighbor's land.<sup>8</sup> The riparian owner could only sue for damages against his property; he could not prevent nor halt the mill owner from flooding his lands. By this process, a mill owner could effectively purchase the land of his neighbors against their will.

By 1828, the Massachusetts Act proved to be ineffective in the Michigan Territory. If any proceedings were ever filed under the 1824 law, no records remain.<sup>9</sup> The courts refused to uphold the act, and instead judges yielded to the common law procedures for flooding. Therefore, the portions of the Massachusetts Act of 1824 relating to flooding or the remedies for flooding were repealed.<sup>10</sup> As amended, the act only regulated the repairing and rebuilding of a mill operated by

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<sup>8</sup> Horwitz, 47-48.

<sup>9</sup> *Martin Ryerson v. Harrison J. Brown*. 35 Mich. 333; 1877 Mich LEXIS 16, Jan. 9, 1877.

<sup>10</sup> "An Act to Repeal a Part of the Act Entitled "An Act for the Support and Regulation of Mills," *Laws of the Territory of Michigan Embracing All Laws Enacted by the Legislative Authority of the Territory, from 1806-1830, Which Are Not Included in Vol. 1 Vol II* (Lansing, W.S. George & Co., State Printers and Binders, 1874), 699.



wind or water and commanded every miller to weigh corn, grain, and meal to and from the mill. Thus, in 1845, when Reeves sued the J. Millerd and Son Company for trespass, there were no statutes on the books to regulate mill-dam flooding or the remedies for it.

However, there were two other laws related to the construction and operation of dams worth consideration. “An Act to Construct Dams and Improve the Navigation of Certain Rivers” became law on March 28, 1836, in the state of Michigan.<sup>11</sup> The act authorized and empowered nine individuals from nine counties to build nine dams across the waters of the Shiawassee, St. Joseph, Kalamazoo, Grand, Looking Glass, and Huron Rivers. Though there is no reason to think the provisions provided for these government-sponsored dams would be applicable towards privately owned dams, the conditions imposed on the dam owners provide an interesting view of a contemporary vision of the rights and responsibilities of the dam owners.

The act declared, “Any person or persons who shall destroy or in any wise injure either or any of the aforesaid locks or dams, shall be deemed to have committed a trespass against the said owners or owners thereof, and shall be liable accordingly . . . and on conviction, be punished by fine or imprisonment, in the

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<sup>11</sup> “An Act to Construct Dams and Improve the Navigation of Certain Rivers,” *Acts of the Legislature of the State of Michigan, Passed at the First and Extra Sessions, of 1835 and 1836* (Detroit: J.S. Bagg, Printer to the Legislature, 1857), 105-109.

discretion of the court.”<sup>12</sup> This section of the act conflicts with the common law right to abate a dam if the structure caused damage or hardship to one’s property. Yet the act did not abandon the concrete property rights of the neighbors of the dams to be constructed. The act emphasized, “Nothing herein contained shall be construed to authorize any or either of the aforesaid persons named in this act, or their heirs or assigns, to enter upon or flow the lands of any other person or persons, without the consent of the such persons.”<sup>13</sup> The act assumed that it was wrongful to obstruct the water of a stream so as to cause the water to back up and flood the lands of others. Even under government sponsorship, dam owners were not permitted to flood the property of others.

The second law relevant to this study originated from the case of *Calvin C. White v. William Forbes* in the Chancery Court of Michigan. As the earliest Michigan case involving an action for flooding of lands caused by a dam blocking the natural flow of the river, *White v. Forbes* established the precedence for cases involving lands flooded by a dam.<sup>14</sup> The case confirmed a riparian land owner’s claim to obtain an injunction against a mill owner who would damage his property by flooding. In

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<sup>12</sup> Mich. Laws, 1836.

<sup>13</sup> Mich. Laws, 1836.

<sup>14</sup> William J. Pierce, *Water Resources and the Law: Studies Prepared by the Legislative Research Center, University of Michigan Law School and Contributions of Participants in the Tenth Annual Summer Institute of the Law School, Held on September 4-6, 1957* (Ann Arbor: University of Michigan Law School, 1958), 492.

*White v. Forbes*, “A perpetual injunction was granted to prevent the erection of a dam, which would have flooded the lands of the complainant, on the grounds of injury to the property and the probability that disease would be generated by the overflowing of the water.”<sup>15</sup> The typical common law remedy for flooding a neighbor’s property was an injunction against the dam owner. In his opinion, the Chancellor used common law language and concepts to support his decision. The Chancellor asserted, “All the complainant asks is to be protected in the enjoyment of property, about the title to which there is no dispute.”<sup>16</sup> Based on the case law established in *White v. Forbes*, most Michigan courts assumed that it was wrongful to cause waters to back up and flood the land of others without license or permission.<sup>17</sup> In keeping with the common law idea of property, the Chancellor further decided, “the extent of the injury . . . is of no very great importance. Every man has a right to the enjoyment of his property undisturbed by another, and to be protected in that enjoyment. The Court will not . . . be governed by dollars and cents.”<sup>18</sup> The case law went against every assumption of the Massachusetts Act regarding flooding

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<sup>15</sup> *Michigan Digest* vol 14 (St. Paul, Minn.: West Publishing Co. 1963), *Waters & Water Courses*, 62.

<sup>16</sup> Henry N. Walker, *Reports of Cases Argued and Determined in the Court of Chancery of the State of Michigan: 1842-1845* 2d ed., annotated by Marshall D. Ewell (Chicago: Callaghan & Company, 1878), 114-117.

<sup>17</sup> *Pierce*, 492.

<sup>18</sup> *Walker*, 116-117.

caused by a dam. The dollar value of the damages did not determine the legality or the damages paid to the injured landowner; injunction was the remedy sought and won to prevent flooding. Additionally, the *White v. Forbes* case made the Michigan court's position on erecting dams clear: flooding property against the will of the land owner was unacceptable. In the same year, Reeves took his case to the County Circuit Court, and the same principles of common law were upheld. Even though the title to the property was in dispute, the jury believed in the common law ideas asserted by the Chancellor in the *White v. Forbes* case.

#### *Reeves's County Court Battle*

In his complaint to the county court, Reeves alleged Millerd and Son owned and operated the dam "minding and contriving to injure" him and to "deprive him of the benefit of his said timbered land."<sup>19</sup> He did not mention the land had flooded every year for the four years preceding his taking possession of the property, nor the benefits and productive purposes of the dam. Instead, Reeves emphasized that the natural course of the Huron River was being obstructed and the harms caused to his property.

Reeves's case rested on the idea of the natural course of the river being supreme and that each man was entitled to "absolute dominion" over his land.

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<sup>19</sup> "Complaint," 18 Dec. 1843.

English Common Law dictated property owners had the right to prevent neighbors from conflicting with their own quiet enjoyment of their farm for its own sake.<sup>20</sup>

Reeves stressed that the land “would not have been overflowed and drowned as aforesaid, had the Huron River been permitted to run its *natural* channel, and had not its *natural* course and current been obstructed and impeded by means of the said mill-dam.”<sup>21</sup> Reeves argued because the flooding of his property was unnatural and interrupted the natural flow of the Huron River, common law was on his side. He believed because the flow of the river was not allowed to travel its “natural” path, it was not acceptable. But the Millerds had a conflicting view of property in question. Since Reeves had no title or official claim to the land, the Millerds believed that he had no cause for complaint. Judge Dexter, the deed holder of the land, licensed it to the Millerds for development. The Millerds believed since Reeves inhabited the property without authority and held no title or rental agreement to the property, he could not seek damages for flooding. Reeves’s case overlapped both modes of conceptualizing property ownership in Michigan courts. The first ideology exalted the natural, agrarian uses of land; the second promoted the contractual, manufacturing purposes of land.

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<sup>20</sup> Horwitz, 36.

<sup>21</sup> “Complaint,” 18 Dec. 1843. Emphasis added.

Jesse and George Millerd articulated in their plea to the court that they believed they had a right to flood the property by the virtues of productive use and legal contract. The Millerds' defense in the case rested on Reeves's unlawful occupancy of the land. Millerds' attorney emphasized that the Reeves family, "ought not at any . . . time to have had or enjoyed, nor ought be still to have or enjoy the benefit or advantage" of the land. Further, J. Millerd and Son declared, that they [had] full and perfect right so to do erected and kept up a Mill Dam in the aforesaid town of Webster across the said Huron River which at this said times . . . without the knowledge and against the will of the said Defendants caused the water of said river to overflow & drown a portion of the said timbered land for a short space of time.<sup>22</sup>

By this declaration, the Millerds asserted their legal right by contract to own and operate the mill and denied the charge they overflowed the land merely out of malicious intentions against Reeves. Evidence suggests despite the Millerds' confidence in their legal standing, they knew they faced an uphill battle, for it was not contract alone that determined jury outcomes. Reeves had claim to sympathy as a squatter on "waste land." Legal title was not considered the sole tool of

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<sup>22</sup> "Plea," 1 Feb. 1844, *Sayre Reeves v. Jesse Millerd and George Millerd*, Washtenaw Circuit Court, State of Michigan, Records of the 4<sup>th</sup> Circuit Court for Washtenaw County, 1828-1876, Box 86, Case 703, State Archives of Michigan.

ownership. Reeves had made improvements on the land, and thus according to the common customs, he was entitled to diligence and compensation.<sup>23</sup>

Tuesday Morning, Christmas Eve, 1844, a year after Reeves first filed a complaint against the owners of the Peninsula Mills, the jury proclaimed Jesse and George Millerd guilty of trespass against Reeves. The panel assessed damages in the amount of two hundred and fifty dollars.<sup>24</sup> The jury clung to the pre-market model of law and justice. Agrarian interests trumped manufacturing concerns. Reeves did not own the homestead by “color of title” but in the eyes of the jury by his labor and his improvements to the land he earned the rights to it. Occupancy of the farm was sufficient to entitle the plaintiff to recover damages. Indeed the judge overseeing the case, Alphaeus Felch, directed the jury that Reeves need only prove occupancy of the land, not ownership. In addition, the jury would not consider the license to flood the land agented by Judge Dexter binding. Since Judge Dexter did not live on the land nor work the land himself, the jury found he did not have the authority to license the land for mill dam flooding. Again, Judge Felch sanctioned this view, guiding the jury to disregard Dexter’s testimony.<sup>25</sup>

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<sup>23</sup> “Plea,” 1 Feb. 1844.

<sup>24</sup> Journal of the Cir. Court for the County of Washtenaw, State of Michigan, Calendar C, No. 705, *Sayre Reeves v. Jesse Millerd & George Millerd*, Records of the 22nd Circuit Court for Washtenaw County, 1827-1880, vol. 18, State Archives of Michigan.

<sup>25</sup> *Millerd et al. v. Reeves*.

### *Court Transformation in Michigan?*

In 1851, a few years after the *Millerd et al v. Reeves* trial, a new statute was enacted regarding the construction of dams whereby dams could be erected only on navigable streams with the permission of the county board of supervisors. The act also created the board of supervisors for this and other purposes. Before 1851, one desiring to build a dam could simply do so. However, Section 21 and 22 of Act No. 156 decided that, "Every such board of supervisors shall have power, within their respective counties, to permit or prohibit the construction or maintenance of any dam or bridge, over or across any navigable steam." And it required,

whenever any person or persons, or any incorporation shall wish to construct a dam across any such stream . . . such person or persons, or corporation, shall present to the board of supervisors . . . a petition praying for leave to construct such dam, and setting forth the purpose, location, height and description of such dam.<sup>26</sup>

After a hearing, the board had the power to grant or refuse the request of the petition. Yet there was a crucial condition to the board's power. The board shall allow a dam to be constructed, only "*Provided*, That nothing in this act contained

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<sup>26</sup> "An Act to Define the Powers and Duties of the Board of Supervisors of the Several Counties, and to Confer upon Them Certain Local, Administrative and Legislative Powers" No. 156 *Acts of the Legislature of the State of Michigan Passed at the Annual and Extra Sessions of 1851 Together with the Revised Constitution and an Appendix Containing the State Treasurer's Annual Report, &c.* (Lansing: R.W. Ingals, State Printer, 1851), 231-241.



shall be construed as giving to such a board of supervisors any power to grant the right to any person or person or corporation, to flow, or in any manner to injure the lands of any person or persons, by or in consequence of constructing such dam."<sup>27</sup>

The statute continued to endorse the right of a riparian owner to the water flow and prevent the flooding of the land upstream.

In 1865 in Michigan, the legislature began to actively support industrialization, and the needs of manufacturing started to take precedence over farmers' property rights. During the regular session of the Michigan Legislature in 1865, Act No. 304, called "An Act to Encourage the Erection and Support of Water Power Manufactories," echoed many of the ideas originally legalized in the Massachusetts Act more than forty years before. The 1865 act provided for any person wishing to build a dam that flowed or would flow land belonging to any other person. If the dam owner could not negotiate a voluntary agreement with the over-flowed land owners, he had an opportunity to petition the circuit court to obtain the legal permission to flow such land. Instead of decision by jury or judge, the act provided that

The judgment shall be rendered thereon . . . by a committee of three judicious, disinterested freeholders of the county, to be appointed by the circuit court of the country, at such time and place, and with such notice to

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<sup>27</sup> "An Act to Define the Powers and Duties of the Board of Supervisors," 231-241.

those interested as the circuit court shall order; if such committee shall be of opinion that the flowing such land in the manner proposed is or will be for public use, they shall establish the height to which such dam may be built or kept, and thereby the water raised . . . and shall assess the sum to be paid to the respondent by the petitioners for the right to flow such land according to their report, and make return of their doings to the court, and in estimating the damages they shall take into account any damage occasioned to any other land of the respondent . . . and said court shall add fifty per cent to said sum as the sum to be paid for such right to flow such land.<sup>28</sup>

Like the Massachusetts Act in 1824, the act provided the receipt of damages as the exclusive remedy for overflowed lands. Section 5 of the Act declared that the procedure laid out by the act “shall be final and conclusive in the matter . . . and give the petitioner, his heirs and assigns forever, the right to keep up such dam according to the manner established.”<sup>29</sup> The act legitimized itself under the constitution by requiring that land claimed under the act was put to a “public use.” However, the committee was at liberty to find *any* use of water-power for the purposes of

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<sup>28</sup> “An Act to Encourage the Erection and Support of Water Power Manufactories,” No 304, *Acts of the Legislature of the State of Michigan Passed at the Regular Session of 1865, with an Appendix Containing Certified Statements of Boards of Supervisors, relative to the Erection of New Townships; also, State Treasurer’s Annual Report for the Year 1864* (Lansing: John A. Kerr & Co, 1865), 651-654.

<sup>29</sup> “An Act to Encourage the Erection and Support of Water Power Manufactories,” 651-653.

manufacture to be a “public use.”<sup>30</sup> The adoption of the act of 1865 “was not preceded by public discussions presenting its necessity, as would naturally have been expected when so great a change in the policy of the law was to be inaugurated.”<sup>31</sup> No discernable instigating events occurred immediately before the enactment of the act. In fact, the demand for water was steadily decreasing in favor of other modes of energy. To take the act at face value, the legislatures simply wished to encourage and support waterpower.

Then, in 1877, the 1865 act as amended was held unconstitutional and void.<sup>32</sup> Concurring Justice J. Campbell explained, “Any ruling which would now uphold the enforced servitude of private property to water mills would be in direct opposition to . . . the constitution.”<sup>33</sup> Chief Justice J. Cooley stated the reasons for declaring the statute unconstitutional: “It will scarcely be claimed that any single branch of industry is dependent, for either its establishment or support, upon the appropriation of property against the will of the owner in order to obtain water

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<sup>30</sup> *Ryerson v. Brown*, 1877.

<sup>31</sup> *Ryerson v. Brown*, 1877.

<sup>32</sup> In 1871, the proviso that the court need add fifty percent to the amount of the damages actually assessed by the committee was repealed. The owner of the dam only owed the flooded landowner the actual financial damage accrued. In 1873, the act was amended again to secure people with disabilities, non-residents, and minors special provisions in the statute, but the principles of the act remained essentially unchanged.

<sup>33</sup> *Ryerson v. Brown*, 1877.

power.”<sup>34</sup> The statute provided no restrictions upon the function of the mill-dams constructed under the act, even though only those concerns designated as a ‘public use’ justified the seizing of private property under the Michigan Constitution. Under the statute, any manufacturing concerns might be designated as a ‘public use’ by the committee, but the Supreme Court of Michigan decided that this method was not a legitimate test of the public interest. Chief Justice Cooley made clear that the act constituted “a stretch of governmental power . . . more harmful than beneficial. It would under any circumstances be pushing the authority of government to extreme limits; and unless the reasons for it were imperative, would be likely to lead to abuses rather than tend to the promotion of the general interest.”<sup>35</sup> Moreover, the Chief Justice rationalized that since no statutes regulating the overflow of lands of this kind were needed in the forty years between the repeal of the 1824 act and the 1865 act, the law was not needed. He articulated, “The neglect for more than forty years to pass any other act of like character afford weighty evidence that whatever necessity might have been supposed to exist for such legislation in very early days, had wholly passed way in a very brief period.” Upon the nullification of the 1865 Act, relief in most of the Michigan cases involving flooding without the permission

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<sup>34</sup> *Ryerson v. Brown*, 1877.

<sup>35</sup> *Ryerson v. Brown*, 1877.

of the landowner was again “discretionary with the court.”<sup>36</sup> Two distinct remedies were again available to those whose land was flooded: damages for the harm done or an injunction against maintaining the structures causing the flooding.

The transformation in law mentioned in Horwitz did not take place in Michigan. Horwitz described the right to property transformed from a “static agrarian conception” entitling the landowner to undisturbed enjoyment of the land to a “dynamic instrumental” view of property that emphasized productive use and development.<sup>37</sup> Horwitz argued the Mill Acts, like the Massachusetts Mill Act, created a procedure for compensating landowners when property was flooded. Moreover, Horwitz insisted the Mill Acts became the exclusive remedy for flooding, effectively nullifying all alternatives.<sup>38</sup> Horwitz used the Mill Acts as an example of the transformation of American law, in which the legislature and the courts began to actively support development and industrial production.

Such support did not occur in Michigan. There were two failed attempts to transform the law in Michigan. In 1824 and 1865, the legislature implemented bills that purported to authorize any mill owner to flow the lands of other person by paying an annual compensation. However, these bills were ineffective. The appeal and voiding of the bills reflected the attitude of Michigan citizens and judges that no

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<sup>36</sup> Pierce, 505.

<sup>37</sup> Horwitz, 30-32.

<sup>38</sup> Horwitz, 47-48.

compulsory flowage was necessary or permissible.<sup>39</sup> Even during the periods when the bills were technically in effect, judges largely ignored the procedures for flooding outlined in them. In Michigan, no one had the right to obstruct the flow of water or flood the lands of riparian owners upstream. The dam owner had violated the upstream owner's rights unless the injured person had granted the dam owner permission.<sup>40</sup> In the case of *Millerd v. Reeves*, Millerd only attained the right to flood the land per an express grant acquired from the landowner. Michigan legal theory eluded the transformation of American law concerning dam rights. Michigan courts continued to view riparian owners as entitled to the benefits of the land, regardless of its productive capacity.

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<sup>39</sup> *Ryerson v. Brown*, 1877.

<sup>40</sup> Braden, 40-41.

## CHAPTER 6

### REEVES'S BATTLE AGAINST THE MARKET TRANSFORMATION

The Millerds spoke the truth, when they appealed the decision of the county court: "The verdict is against both law and evidence."<sup>1</sup> Since Millerd and his son held a license to flood the property, they had a legal right to flood it, no matter who moved onto the property. According to the new market system, contract and production were the final word. The Millerds filed for appeal on that basis. The case brought to the forefront the competing interests of the market revolution: squatters' concerns for farming against the economic interests of millers. The appeals court agreed to hear the case, but the wheels of justice turn slowly. They would have to wait three years for the court transformation to catch up with them.

Reeves did not content himself with just legal resistance to the dam. According to the common law, a farmer claiming damage to land could legally "abate the nuisance himself," even to the extent of tearing down the dam.<sup>2</sup> Even the Michigan Supreme Court validated the common law right to remove an unlawfully erected dam. In 1888, Judge Morse of the Michigan Supreme Court opined in

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<sup>1</sup> "Motion for a New Trial," Dec. 26, 1844, *Sayre Reeves v. Jesse Millerd and George Millerd*, Washtenaw Circuit Court, State of Michigan, Records of the 4th Circuit Court for Washtenaw County, 1828-1876, Box 86, Case 703, State Archives of Michigan.

<sup>2</sup> Steinberg, "Dam-Breaking," 37.

the case of *Dorcas A. Winchell v. William Clark* that “the unlawful flowing of land by the erection of a dam, and the consequent injury to the water-privileges of the land-owner, is a nuisance, which he has the right to abate by the removal of the dam.”<sup>3</sup> Winchell sued Clark for damages to Winchell’s stone dam used to dam up the waters of the Kalamazoo River for manufacturing purposes. Clark tore down and destroyed the dam to prevent the structure from continuing to flood his property. Self-help was only lawful where the dam destroyed was illegally constructed or maintained. If the dam in question was legitimately and legally erected and upheld, the riparian neighbor had no right to demolish it. In addition, it was essential for the “measures which the injured person takes to be reasonable in their nature.”<sup>4</sup> In the case of *Winchell v. Clark*, Clark provided ample notice to the dam owner before tearing down the dam and attempts were made to settle the situation without resorting to destruction. Though the case took place forty years after Reeves attempted to tear down Millerd’s dam, the *Winchell v. Clark* decision proved the common law idea of “abating a nuisance” was present in Michigan.

With this justification in mind, Reeves concluded he would end the flooding himself. Though he wanted to bring down the dam, he only managed to kill Phelps before he was arrested. After his citizens’ arrest, Reeves was brought before a

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<sup>3</sup> *Dorcas A. Winchell v. William Clark*. 68 Mich. 64; 35 N.W. 907; 1888 Mich. LEXIS 982, January 5, 1888.

<sup>4</sup> Pierce, 511.



Justice of the Peace for due process before being held on charges of trespass, destruction of property, and murder. It was clear by the reaction of all involved that the case touched on a very personal subject. At the arraignment, the lawyers did not restrict their comments to the case at hand; instead, they shouted at each other about personal issues. The *State Journal* described,

Some scenes were enacted at the examination of Reeves, which are too common in our courts of all grades; we allude to the squabbles and personal abuse of lawyers . . . It is the imperious duty of the court, whether a judge of the Supreme Court (sic) or a justice of the peace to compel the lawyers to confine themselves to the business before them; and the law invests them with ample power for this purpose. They should command a proper respect for common decency. They have power to imprison or contempts; and much of the personal abuse of lawyers that we have seen our courts quietly listen to, is as clear a contempt of court as throwing rotten eggs at the Bench.<sup>5</sup>

Reeves provided an opportunity for the representative of the court to vent their dissatisfaction with a world in transition. Reeves's culpability in the property damage and the murder was questionable to people that held very different worldviews: those who embraced the emergence of the market economy and those who resisted it.

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<sup>5</sup> "Disorder in the Courts," *Ann Arbor Michigan State Journal*, 7 May 1845.

Even though the courts did not officially condone attacking Phelps or the offending dam, it is significant that no charges were brought against Reeves or his supporters for attempting to destroy the dam or for the murder of Phelps. The party remained in jail only a few weeks before they were released without a trial. It was understandable why Reeves never stood trial for his actions. Even under the most liberal understanding of the self-help remedy available to the injured party, the dam must be a “wrongful interference with the legally protected drainage patterns.”<sup>6</sup> Reeves did not own the land, and the dam was not operating illegally, so Reeves actions, even under the common law, were improper. Yet Reeves had cause to believe the dam was wrongful. The county court had granted his demand for a financial settlement, and thus they validated his position on the land.

It was unlikely that distaste for Phelps was the cause of leniency towards Reeves. A letter to the *Argus* editor proclaimed, “Mr. Phelps was a young man of much promise and sterling worth, and his untimely loss is much deplored by the community.”<sup>7</sup> Deforest Phelps was a member of the Phelps family – a prominent family in Dexter at the time. His father was among the first white settlers to Dexter. So, Deforest Phelps was not a day-laborer drifter whose death might go unnoticed.

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<sup>6</sup> Pierce, 505.

<sup>7</sup> *Ann Arbor Michigan Argus*, 5 May 1845.

Instead, the justice system might have decided they did not have much of a case against Reeves.

By dim light of the last quarter moon, a shot was fired from a group towards a group.<sup>8</sup> The gun lay deep underwater at the bottom of the mill race. Given the moods and conditions of the times, it would be difficult to prove an intention of wrongdoing to a jury. Juries would be likely to sympathetic to Reeves. Reeves was still a sympathetic figure, trying to make his way during the transition to the market economy. Basically, Reeves's actions were not a flagrant violation of public norms sufficient to warrant a trial. In the early to mid 1800s, charges were rarely brought against the perpetrators of dam breakings. Thus, in effect the public condoned their behavior.<sup>9</sup> In fact, murderers were rarely convicted and imprisoned in Michigan State Prison. Between 1839-1845, only nine people were incarcerated for murder in the state.<sup>10</sup>

The Millerds were mute in the historical record regarding the May 1<sup>st</sup> attack on the Peninsula dam; however, many mill owners and trustees found attacks on their water structures aggravating. Thomas Dowling, the Resident Trustee of the Wabash Canal in Terre Haute, Indiana, had similar trouble with obstructionist

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<sup>8</sup> Fred Espenak, "Phases of the Moon: 1801-1900," NASA available online at <<http://sunearth.gsfc.nasa.gov/eclipse/phase/phases1801.html>>.

<sup>9</sup> Forkey, 84.

<sup>10</sup> "The State Prison," *Ann Arbor Michigan Argus* 18 June 1845.

attempting to break dams along the Canal. He expressed the difficulty in bringing those responsible for the destruction to trial; "It being the lawless act of a few desperate men, makes it still more provoking. We can withstand the attacks of the elements, and submit to what Heaven decrees, but it is very hard to guard against the midnight depredations of bad men, urged on by a delusion having nothing but delusion to rest upon."<sup>11</sup> Jesse and George Millerd might have had a similar reaction to the attack against their mill, but unlike most mill owners of the time, they had the support of a strong contingent of the community who came to their aid without pay.

At the end of 1847, the Michigan Supreme Court made their own ruling on the trespass case. Unlike the jury in the county court, the Supreme Court followed the modern legal procedure in claiming mere occupation of the land was not sufficient to bring suit against the mill dam owners. The Supreme Court asserted, "R.[eeves] could not sustain his action without showing title in himself to the land flowed, or that he entered and took possession of the tract by color of a paper title."<sup>12</sup> Though the court did not find Judge Dexter conclusively the tract owner, there was no doubt Reeves was not the legal owner of the flooded lands. Judge Wing of the Supreme Court of Michigan clarified his position:

**Comment [MSOffice1]:** Wrong word.

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<sup>11</sup> Dowling to Butler, 29 June 1854, Wabash and Erie Canal Trustees Letter Book, 1 December 1853-12 June 1857, Wabash & Erie Canal Records as cited in Fickle, 319.

<sup>12</sup> *Millerd et al. v. Reeves*.

Had the defendant a paper title, whether good or bad, if he entered by color of it, plaintiffs might be called upon to show their right beyond a mere possession; but such is not the case here. It is manifest a mere intruder or occupier cannot claim, as in this case, for an injury to the inheritance, without showing he had an interest in it to be affected by plaintiffs' acts.<sup>13</sup>

Two years after Reeves physically attacked the dam, he lost the fight against the market and legal revolution. In the years between moving onto the land and the final court decision, Reeves went from a legitimate resident to a “mere intruder.” Customary rights had no jurisdiction in the Supreme Court of Michigan. Judge Wing made it clear that his decision reflected *law*, not custom. He asserted;

Upon an examination of the charge of the judge, and applying to it the principles of *law* which we have gathered or deduced from the cases I have cited, I am of the opinion that the court erred in rejecting the offered evidence of Mr. Dexter. That the court erred in its instructions to the jury that ‘proof of occupancy and possession of the premises by defendant during the time in question, would be sufficient to sustain the allegation.’<sup>14</sup>

Reeves was granted a “*venire de novo*” meaning a new trial, but he did not pursue the case any further. He gave into the new paradigm. By 1850, he had moved to

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<sup>13</sup> *Millerd et al. v. Reeves.*

<sup>14</sup> *Millerd et al. v. Reeves.*

London, Michigan, in Monroe County where he managed a hotel at least until 1860. Then, in time for the 1870 census, Sayer Reeves, the man who fought the Peninsula mill with every legal and physical resource in his possession, opened the Reeves Saw Mill.

Jesse Millerd ran his mill with a son until 1855, then he sold the mill and rights to operate it to Beal, Marble, and Williams. The mill remained in operation until 1888. The building finally collapsed in 1910.<sup>15</sup> When the mill closed, one resident remarked, this was “the hardest blow ever struck Dexter.”<sup>16</sup> Jesse retired to a very comfortable life in Milwaukee, Wisconsin. In the 1860 census, he lived with his wife and two servants.

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<sup>15</sup> *History of Washtenaw County, Michigan*, 832.

<sup>16</sup> Mrs. Joseph McAllister, Mrs. Harold Sias, Frances Gordenier, and Trese Gordenier, *Dexter Area Sesquicentennial, 1824-1974: A Trail Through Time 150 Years: A Brief History of the Dexter Area* (Dexter, Mich.: Thomas-Shore, 1974).

## CHAPTER 7

### CONCLUSION

This account of Reeves's attack of the Peninsula mill dam adds to the expansive scholarship about dam-breaking in the nineteenth century. Though generally economic and technological improvements were welcomed by the people of the nineteenth century, violence against dams and mills were an important exception. Reeves matched the model of the economically marginalized agrarian, riparian landowner. A mill – the great symbol of the market economy – flooded out his farm. While impeding his ability to eke out a subsistence or competence for his family, the mill created flour for sale in the east. Reeves attacked the mill both as the destroyer of his farm and as a destructive force in his life. An economic shift had left him behind.

Of course, Reeves did not have a strong claim to the farm. Even if Dexter made it clear to him orally that he could stay on the land without charge, Reeves must have known the land was licensed for flooding. The land flooded out in the spring for years before Reeves moved his family onto the land. Without a title or even a lease to the property, Reeves rested his claim to the land on the same foundation as did squatters on federal land. He argued the time he spent and the improvements he made to the formerly unproductive landscape gave him the right to enjoyment of the farm.

In the county jury trial, Reeves won the case against Millerd for damages to the land he claimed. The jury clung to the pre-market model of property ownership. Reeves did not own the homestead by title, but in the eyes of the jury, by his labor and his improvements to the land he earned the rights to it.

The Millerds filed for appeal because they held a license to flood the property. According to the market legal system, the contract was the final word. Because Michigan's law had not permanently shifted as in Horwitz's Massachusetts, Jesse Millerd knew he had to gain permission from the owner of the land before building a dam that would flood it. The Supreme Court of Michigan ruled in favor of the Millerds because the J. Millerd and Son company attained the right to flood the land from the legal owner. Reeves's residency and improvements on the property were irrelevant in the ultimate legal decision.

During the three years between the county court and the appeals court decision, Reeves became impatient with the justice system. According to the common law, a farmer could legally tear down a bothersome dam himself. With this justification in mind, Reeves concluded he would end the flooding himself. Though he wanted to bring down the dam, he only managed to kill Phelps before he was arrested. Reeves's extreme measures for ridding himself of the dam were not unique. Reeves's case is representative of the conflicts that arose during the transition to the market economy. Across the country, riparian dam owners and



farmers took up arms against the cause and the symbol of their discontentment. The dam existed as the actual cause of the misfortune and as the symbol of forces outside of their control.

While Reeves was a fairly typical dam resistor, Millerd was not a typical dam owner. Even though the townspeople personally disliked Jesse Millerd, he had the support of a strong contingent of the community who came to his aid without pay. Most Dexter residents supported technological improvements, even as they retained sympathy for people like Reeves. Millerd brought prosperity to Dexter. He helped create the market for Dexter's wheat and produce, and he brought from the marketplace merchandise to sell in his store. Millerd's supporters believed the J. Millerd and Co. made Dexter a better place to be.

The Peninsula mill-dam was a symbol of economic modernization in Dexter. The mill made it possible for settlers to uplift themselves to commercial agricultural production. Reeves did not produce enough surplus to justify the move from subsistence to commercial agriculture. To Reeves, the mill only made his land spongy and waterlogged and his family sick and worn down. Reeves attacked the dam in an attempt to regain control over the river and, he hoped, over his own life.