

DESCRIPTION OF THE NORTON FAMILY WOODLOT

By James H. K. Norton

The Norton family wood lot on State Road is first identified by its present boundaries as Lot # 1 in the division of the Estate of Captain Samuel Look, who died in 1825, in a Division Deed of March 1, 1826, recorded in the Dukes County Registry of Deeds, Book 31, page 496. That Deed designated a single wood lot of 130 acres as a portion of a 200 acre parcel granted to Samuel Look through his marriage in 1769 to Margaret, youngest child of Abraham Chase, by 2 deeds conveyed by Abraham Chase's widow, Mercy, to Samuel Look on 11/6/1770 (Book 9, page 748) and on December 10, 1772 (Book 9, page 830).

This 130 acre wood lot was divided in 1826 into 4 shares. The westernmost of these shares, designated as Lot # 1, is recorded as extending 30 Rods along the county road to Holmes Hole to its south and abutting the lands of Abner Luce, Martin Luce and Lothrop Merry to the west. The boundary between the lands of Samuel Look and the Luces to the west (indicated as the line between Lot 53A 1 on the east and Lots 52 4 and 52 9 to the west on the Tisbury Assessment Maps), was established by a bequest made by Hannah Daggett (Governor Thomas Mayhew's favorite daughter) to her daughter, Martha Tupper, in 1688, according to the records of Dr. Charles Banks (recorded on a map of his researches, #134 in the Tisbury Map Files at the Martha's Vineyard Historical Society). Martha Tupper and her husband Thomas then conveyed her lands to Isaac Chase in 1692 (Book 1, page 187). There was not then, nor even to this day, any record of any deeded road, way, or passage, nor easement for passage, nor boundary of a sub division between the Look and the Luce lands across, abutting, or even near this 1688 boundary. It stands of record today as it was in the 17th century.

Isaac Chase conveyed the southernmost 200 acres of the land he had received from the Tupper to his son Jonathan Chase in 1711 (Book 3, page 475). Jonathan Chase sold this lot to William Swain in 1720 (Book 3, page 403), "clear from all intanglements or incumbrances whatsoever." Jonathan's brother, Abraham Chase bought this 200 acre lot back into the family in 1754 (Book 8, page 322) in a deed which declared the land "at all times hereafter shall be free and clear of and from all former gifts, grants, title encumbrances whatsoever."

The land to the west of the Tupper parcel was sold by Isaac Chase from a separate purchase in 1727, and by his widow, Mary Chase, in 1731, as a woodlot of 100 acres to Henry Luce (Book 5, page 198), to match an adjoining 100 acre parcel to the west sold by him to Henry Luce in 1718 (Book 3, page 506). Martin Luce, described as an abutter of Lot #1 in 1826, was a grandson of that Henry Luce (#13 in Banks genealogy). (Dr. Charles Banks records these 200 acres as filling all the space along the north side of the county road to Holmes Hole between the Look land and Savages Line, a line which was established in 1796 to divide the Township of Tisbury into east and west parishes to free those to its east from the tax levy to provide for the minister in the Town church. In 1897 it became the dividing line between Tisbury and West Tisbury.)

Lot # 1 is described as 28 acres in size in the 1826 Estate of Samuel Look division deed, and it was given to Captain Look's daughter Betsy, wife of James Davis. Lot # 2, a 36 acre lot next to Lot # 1, was given to another daughter, Rebecca, wife of Ephriam Allen. A portion of Lot

2 was sold by a Mr. Cleveland to Charles Smith in 1835 (Book 25, page 387) and the remainder by Samuel L. Allen to Charles Smith on December 14, 1848, (Book 32, page 472). A survey of this entire Lot #2, done in February, 1959, for the James and Findorak families, is recorded in Book 236, page 315. Lot # 3 was conveyed to Valentine Look, who immediately sold it to Thomas Cathcart in 1826 (Book 22, page 527). Lot # 4 was conveyed to Jeremiah Look, and was consolidated among his heirs by Susan Luce, who sold the lot to Dr. William Leach in 1886 (Book 76, page 366). There is no record in the 1826 Division Deed of any ways, rights of passage, easements, or other encumbrances on any of the 130 acre wood lot which was then divided and conveyed to these four children of Samuel Look.

James and Betsy Davis sold their Lot # 1 from the Samuel Look Estate in 1828 to Elisha Lambert, as recorded in Book 24, page 99. Their deed asserts their claim to clear title: that they "are lawfully seized in fee of the aforegranted premises, that they are free of all incumbrances. . . [and] will warrant and defend forever against the lawful claims and demands of all persons." There is no mention in this deed of any privileges or appurtenances which might compromise their warrant given at that time. In 1899, the heirs of Elisha Lambert sold this lot, described as 30 acres, to Bayes F. Norton, again "without any encumbrances." This deed, Book 100, page 264, makes reference to the "Deed of Captain Samuel Look."

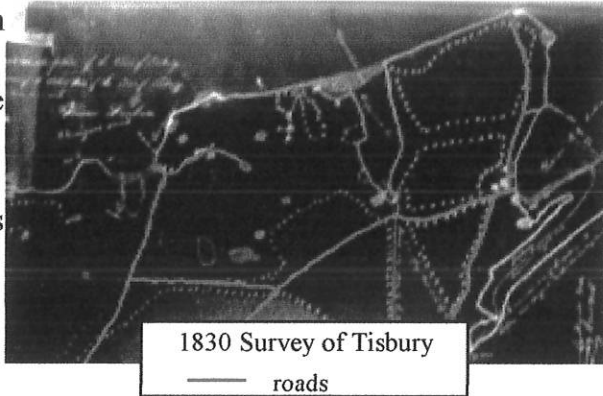
The Lambert Woodlot is recorded in the Probate Inventory of Bayes F. Norton (D2/131), who died on August 25, 1903. He left his Estate to his wife Annie and daughter Eugenia Kidder. Annie Norton died in 1925 intestate, and Eugenia Kidder in 1928. Eugenia Kidder left her entire Estate (D3/722) to her nephew, Bayes M. Norton. Bayes M. Norton died in 1967, leaving his Estate (D7/4138) to his wife, Mariette K. Norton. On January 7, 1983, Mariette K. Norton conveyed title to the Bayes F. Norton Woodlot on State Road to her grandchildren, Sarah Louisa Norton, James Bartholomew Norton, Heather MacDonald Norton, and Laura Presbrey Norton as joint tenants in common, recorded in the Dukes County Registry of Deeds Book 398 page 532.

In 1972, Mariette K. Norton received an inquiry from Kenneth Bilzerian, in anticipation of his purchase of a 8.74 acre parcel of land from John and Irene Faria (formerly land of Henry Luce), abutting the Norton family wood lot immediately to the west. Because this Faria property had no deeded access to the Massachusetts State Highway, he needed access to get utility services to it. In response to his concern to acquire legitimate access, Mariette K. Norton deeded to Kenneth and Lynne Bilzerian on February 18, 1972, (Book 295, page 453) a 7,669 sq ft triangular parcel on the southwest corner of the Norton wood lot, together with an agreement (Book 295 page 454-5) which gave the Bilzerians permission to use for vehicular access the private way which extended through the Norton woodlot, close to the triangular parcel sold to them, and across the Faria property, in exchange for his agreeing to provide access to any who were using that private way who requested it on a way which he would provide for himself across the triangular parcel which he then purchased when the private way which went through the Norton wood lot is closed off.

No other easements, rights of passage, or encumbrances have been granted on this wood lot by any of the recorded successors in title since its delineation as Lot #1 in the subdivision of Samuel Look's Estate in 1826 to the present day. Recognizing that portions of Lots #2,#3, and #4 have been taken to establish the present course of the Lambert's Cove Road as a public way,

it is also clear that no part of Lot #1 has ever been taken or set aside as a public way.

Several private ways have, over the course of years, been used, initially to access the few dwellings which were built among these woodlands in the 19th century, for access to farm fields and for the carting of fire wood. No such ways were drawn on early surveys of this part of the Island, which were done in 1790 and the other in 1830. Several such ways were drawn on the



Walling Map of the County of Dukes County in 1858, which show lanes to the farms of Benjamin Chase, Joseph Merry, and Shubael Weeks.

A deed to Emmanuel Joseph, a pilot, in 1812 (Book 17, page 428) conveys, in recognition of his payment of the debts of Henry Luce, late of Tisbury (d. 1769), a 12 acre lot which abuts on its north the cartway to Shubael Weeks land. The boundaries extended south to a marked white oak tree on its southeast corner before turning west to rejoin the cartpath which leads to, and around, the northwest corner of this property. There is no indication of any road or pathway along the south side of or through this lot at that time. In 1893 (Book 99, page 429), Joanna and William Luce conveyed a 13 acre lot of woodland with the same north, east and west boundaries to Malvina Brush. In this deed, which incorrectly assumed that what was conveyed was the entire 1812 lot of Emmanuel Joseph, the south boundary is described as abutting the land of Benjamin D. Crowell along the road to Mott's Hill and extending to the west to the land of Louisa Smith. A Plan of this woodland (Tisbury Plan # 37, by Francis Paul) based on this mistaken assumption was done for Joseph & Josephine Jokubaitis in 1972. In 1983, a second plan (Tisbury Plan #166, by Schofield Brothers for Robert J. Jokubaitis) was recorded to correct Plan #37, which recognized that what was conveyed was the northern portion of the 1812 Emmanuel Joseph lot, and reduced the parcel to 8 acres. In both plans the road along the southern boundary is identified as "Red Coat Hill Road (Road from Mott's Hill)."

The southern portion of the Emmanuel Joseph Lot was conveyed to Asa Luce in 1855 (Book 37, page 110), in which deed the northern boundary is described as along the road from Mott's Hill to Lambert's Cove. Asa Luce combined it with another lot to its south (Book 37, page 113) to form a 7 acre lot which he conveyed to Benjamin D. Crowell in 1858 (Book 38, page 197). This deed identifies a road (no name) on the north side of this property. A Plan of this property done by Hollis Smith in 1979 (Case File #123), designates that road also as "Red Coat Hill Road (Road from Mott's Hill)." Hollis Smith had previously submitted an Affidavit in 1970 declaring that Mott Hill lies in the vicinity of Lot #2 in the Samuel Look 1826 subdivision.

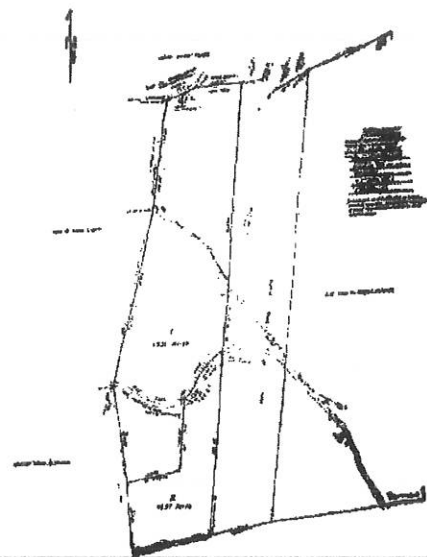
These two properties which were created as a subdivision of Emmanuel Joseph's 1812 purchase both abutt the Road to Shubael Weeks property to the west. This Weeks road was clearly identified in the 1812 deed (Book 17, page 423) as the deeded road of access both to his and to Shubael Weeks property, and would have conveyed these same rights to his subdivision. As the town center of the Township of Tisbury was then located where West Tisbury village is now, Shubael Week's preferred access would have been to the west along the Highway from

Holmes Hole to Tisbury, as this access road indicates, rather than to the east. Walling's 1858 Map indicates a number of private ways in this section, but they show little correspondence with surviving roads indicated in the deeds. For example, the Walling Map shows a road to the east of Shubael Weeks house, where my own researches indicate that not only his house but also his Path were farther to the northwest than indicated on that map. That road also extended beyond Shubael Weeks property, not to the south, but to the northeast, to Chappaquonsett, providing those few families who lived close to Rhoda's Pond with a way to get to the town center, now West Tisbury. (J. Merry's house, if it belonged to Matthew Merry, would have been farther to the northeast than indicated on the Walling Map. Much of the Walling Map roadways in this area have disappeared, if they ever existed.)



Detail of Walling Map, 1858
Superimposed on Assessors Map

The informal status of the road to Mott's Hill as a private way is further indicated by the 19th century descriptions of all of the properties between the two which abutt Shubael Week's Path (Shown on Plans #166 and #123) and the Samuel Look woodlot. All of them are in the lands of Henry Luce, extending north from the Shubael Cottle-Peter Luce subdivisions, 45 rods north of the highway from Holmes Hole to Tisbury, to the Shubael Weeks property road which provided them access. All of this land was conveyed during the mid 19th century by Henry Luce's grandsons, Martin and Grafton. None of their deeds identify any other road, and certainly not as a boundary, other than the way to Shubael Weeks. Surveys of these lots, done for Frederick W. Luce in 1982 and for Reinhold Muckle in 1985 are presented as evidence in Land Court Cases 41944A and 41228A, to establish that the survey of the Muckle properties done for David L. Paletsky in 1971 is incorrect, and that the property divisions based on this survey were not properly described or conveyed.



Survey of Muckle and other
Properties to the East - 1985

Reference is made on one such deed conveyed by Reinhold Muckle to David L. Paletsky on December 21, 1971, to "all rights in and over the traveled way through land of this grantor to the Massachusetts State Highway." There is nothing of record which would indicate that the grantor had any rights to the Highway, which he conveyed at that time to land which he did not own. It is also not clear what traveled way the grantor had in mind. It is clear, unlike his

neighbor, Kenneth Bilzerian, at that same time, that he never asked for nor received any prescriptive rights of access in or over any way through the Norton wood lot to the east, identified as Samuel Look Woodlot #1.

Other more recent plans and surveys of adjoining lands identify three informal, unnamed ways across the Norton wood lot. First, a "wood road," sometimes called the Ripley Field Way, passes through the northern portion of the woodlot. This "wood road" is located on a 1959 survey recorded in Book 236, page 315, but has been cut off from any access to the Lambert's Cove Road by stones blocking passage in the Mott Hill Development just to the east of the Norton wood lot. A second "wood road" located on the 1959 survey has been designated as Red Coat Hill Road or the Road to Mott's Hill on other surveys. It also has been closed off before 1977 by stones which block passage on this way to the Massachusetts State Highway. Whatever may have been the status of these "wood roads" as private ways before 1977, they are simply unavailable for any but foot or horseback passage today.

A third way, identified simply as a "travelled way" in the surveys of Muckle and Luce before the Land Court, may be the road described in a deed of 1905 (Book 112, page 62) for land west of the Shubael Weeks Path. This road is described as "to the farm of Benjamin Chase from Red Hill, so called, near the farm of Frederick W. Norton. " That farm lies to the south of the Massachusetts State Highway, directly across from the entrance of this third passage way in the southwest corner of the Norton wood lot. Any potential rights of access in and over this way were transferred to the triangular parcel of land conveyed to Kenneth Bilzerian out of the Norton wood lot by agreement of Kenneth Bilzerian with Mariette K. Norton on February 18, 1972.

From the above account it is clear that no public access has ever been granted on any ways which lie to the north of the Massachusetts State Highway between the Shubael Weeks Path and the Lambert's Cove Road, and especially upon the land of Sarah Louisa Norton, James Bartholomew Norton, Heather MacDonald Norton, and Laura Presbrey Norton, tenants in common of the Samuel Look Woodlot #1, held with clear title and free of all encumbrances since 1826. Nor has any easement or other prescriptive right ever been granted to any other parties than Kenneth and Lynne Bilzerian on February 18, 1972. The very necessity of conveying land and granting a right of access to the Bilzerians at that time for them to have utilities available to their property strongly indicates that the Norton family has no basis in either law or experience to allow trespass upon their property, nor to accept the presumption of prescriptive rights to any person to whom they have not granted them. The family clearly asserted their position publicly and uncontested on this property by a Sheriff's Posting duly executed on January 14 - 24, 2000, and recorded in Book 788, page 37 in the Dukes County Registry of Deeds.

James H. K. Norton, father of the owners and their agent, displayed a copy of the Sheriff's Posting Notice to Prevent Acquisition of Prescriptive Easement on a metal post at the eastern end of their ownership of the private "wood road" called Red Coat Hill Road until it was moved in October, 2001, before it was removed entirely in November, 2001. At that time, Christopher Crawford, their neighbor on Deer Hill Road, placed a gate across the way. After his gate was totally removed without a trace in mid November, James H. K. Norton called the Tisbury Police Department for advice on how to assert the Norton family ownership and privacy of this way. He was told by Officer Stoble to post the way with a sign and to block it.

In response, Mr. Norton attached signed Posted signs at both the east and west boundaries of the property, and blocked the way with the traditional method of indication entrance upon a private way, by a wooden bar attached at both ends to trees by a chain. (Before Main Street in Vineyard Haven became a public way in 1798, its was described as blocked by gates and bars between the holdings of the Chase family descendants all the way to West Chop.)

What will follow is a history of the encounters in which James H. K. Norton asserted to specific individuals adversely using the way its status as a private way and the necessity of asking for permission for its use, beginning on November 17, 1999, with Richard Lehman, electrical contractor, as he was approaching the Norton family wood lot with a backhoe, digging a trench down the center of the way; report of a cement truck on the way which led to notice to Geno Mazzaferro, contractor for the construction of a house for Mr. Larry Cannon, dated January 5, 2001, who subsequently stopped using the road; encounter with Mr. and Mrs. Cannon on the way on March 31, 2001, and subsequently with Mr. Cannon at the Tisbury Annual Town Meeting on April 10, 200; encounter with a mason on November 19, 2001, and report of conversations, following the closure of the so called Shubael Weeks Path and the consequent first use of the way for deliveries and workmen to properties on the Shubael Weeks Road, held by Christopher Crawford, Barney Zeitz, and Tom Cassella with Paul Munafò during October-December, 2001; and encounters with workmen employed in the house of Elaine Eugster on December 27 and 31, 2001, which culminated in the calling of Officer Little of the Tisbury Police Department to the location of the bar placed across the way on the eastern end of the Norton wood lot property around 9 AM on the morning of December 31, 2001.

In sum, any claim to other than private status for the "wood road" called Red Coat Hill Road is negated by all of the deeds which defined and described the woodlands identified as the Samuel Look Woodlot #1 from 1688 to the present.

Any claim for any easement or other prescriptive right to that way is also negated by none having been granted in any of the deeds of record to that property, all of which rather assert that the property is free of all encumbrances. And as all of the property divisions east of Shubael Weeks Road prior to 1985 were established prior to any documented recognition of the existence of Red Coat Hill Road as extending through the Samuel Look wood lots to establish property boundaries, no prescriptive rights of access were created by abutting to that way.

Any claim for historic adverse use of the way known as Red Coat Hill Road is negated by its closure as a passable way for vehicular traffic with boulders on Samuel Look Woodlot #2 before 1977.

The claim that all and any historic ways passing through the Norton Family wood lot are private ways and require permission for their use is asserted as a matter of record in the Agreement between Mariette K. Norton and Kenneth and Lynne Bilzerian on February 18, 1972, long before, and totally independent and unrelated to the instance of this suit. This claim is further asserted in public record by the Sheriff's Posting of the way through the Norton Family wood lot in January, 2000. It is further asserted by the posting and blocking of the way by James H. K. Norton in November, 2001.

Occasions of James H. K. Norton observing, hearing reports of, and responding to vehicles passing over the Norton wood lot portion of Red Coat Hill Road and conversations which ensued:

1. On or about November 17, 1999, with Richard Lehman, electrical contractor, as he was approaching the Norton family wood lot with a backhoe, digging a trench down the center of the way: As I had observed the approach of the trench down Red Coat Hill Road toward the Norton wood lot previously, I visited and talked in person with three attorneys: Ronald Rappaport, Esq., Robert McCarron, Esq. (both of whom had worked as counsel for the Bayes Norton Farm, Inc.), and Edward Coogan, Esq., (a Selectman of the Town, neighbor, and previously a colleague on the Tisbury School Committee). Of particular interest was the response of Mr. Coogan, who stated that he knew of the situation I was describing to him because he had been asked just the day before by Michael deBettencourt, a representative of Com Electric, whether Red Coat Hill Road was a public way. He told me that he stated to him in the strongest of terms that it was not and that the Town had no interest in having it become so. (This response became pertinent when Mr. Stiller reported to me in January, 2000, when I delivered to him copies of the Sheriff's Posting of the Norton wood lot to convey to the Plaintiff, that the Plaintiff had undertaken the placing of the cable down Red Coat Hill Road only after receiving assurances, "over 100 times," from Michael deBettencourt that it was legal for her to do so. Apparently, Mr. deBettencourt waited until November, 1999, to find out if there was any basis for the assurances he had been giving.) Upon the advice of all three attorneys, I interrupted Mr. Lehman at his backhoe work digging the trench in Red Coat Hill Road to tell him: "according to the three top land attorneys on the Island, you are trespassing." Mr. Lehman immediately called an attorney in New York City on his cell phone.

After this encounter, we initiated the Sheriff's Postings of four properties along Red Coat Hill Road, and asked Mr. McCarron, on behalf of the owners of these four properties, to explore a possible settlement of this issue of trespass with the Plaintiff through Mr. Neal Stiller, a local Real Estate Agent who had been advising her on the disposition of her property.

2. I received a report in January 2001 from Walter Sheble, a neighbor on Deer Hill Road, that he had stopped a cement mixer traveling along Red Coat Hill Road between Shubael Weeks Path and Deer Hill Road, to ascertain that the truck was doing a job for Mr. Geno Mazzaferro on the Cannon Property to the west of the Norton wood lot. Mr. Mazzaferro was notified that this road is a private road, and he no longer used it. I then placed a sign on a metal stake along the side of Red Coat Hill Road at the eastern side of the Norton wood lot which contained the Notice to Prevent Acquisition of Prescriptive Easement signed by me as Agent for my children and the Certificate of Posting, with Book and Page of Recording in the Dukes County Registry of Deeds, by Linda Hanover, Deputy Sheriff. I returned frequently during



Red Coat Hill Road at Eastern Side of Norton Woodlot January 7, 2001

the following months to check on the sign.

3. On one such return, on March 31, 2001 I had an encounter with Mr. and Mrs. Cannon on the approach to Red Coat Hill Road from Deer Hill Road. Mr. Cannon asked if I would move my truck to allow him to get through. I asked him what prescriptive rights he thought he had in Deer Hill Road and Red Coat Hill Road, as both are private ways. Mrs. Cannon suggested that they used this way because it was a shortcut. I ended our conversation by suggesting that they consult with their attorney about just what rights they did in fact have. At that point they drove back out Deer Hill Road without traversing Red Coat Hill Road at all. Subsequently, Mr. Cannon, at the Tisbury Annual Town Meeting on April 10, 2001, sought me out, introduced himself, and apologized for their behavior on March 31.



4. Following the closure during the second week of November, 2001, of the so called Shubael Weeks Path by Ms. Simon and the consequent first use of the way for deliveries and workmen to properties on the Shubael Weeks Road, I had an encounter on November 19, 2001 with a mason working at the Elaine Eugster house who drove up to the backside of the gateway (i.e. from the Shubael Weeks Path side) late in the afternoon while I was attaching a bar across the way. I reported this encounter to Christopher Crawford, who had placed a gate across Red Coat Hill Road at the boundary between the Deer Hill Road way and the Norton wood lot earlier in the fall, which gate had been cut away and removed the previous week.

5 I had a number of encounters with workmen employed in the house of Elaine Eugster, specifically on December 27 and 31, 2001, which culminated in the calling of Officer Little of the Tisbury Police Department to the location of the bar placed across the way on the eastern end of the Norton wood lot property at 9 AM on the morning of December 31, 2001.



THE ROAD TO MOTT'S HILL
by James H. K. Norton

There are several questions related to the ancient way called the Road to Mott's Hill which are not clearly established by the record and need to be addressed. Which hill, for example, was called Mott's Hill in the 19th century deeds which name it? When did the road described as "to Mott's Hill" begin to be used? And was it, in fact, the same road that is now called Red Coat Hill Road?

There are other issues, such as when did the name Red Coat Hill Road get attached to the road of this name, and by whom? I can find no evidence of that name being used anywhere in this area before the middle of the 20th century. This designation would appear to be recent, so I will here deal only with that road known by its more common 19th century name: the Road to Mott's Hill.

There is also a question about whether there are any early sub-division boundaries along the present road called Red Coat Hill Road which might have presumed or created access to State Road. Here there is really no issue because the record is very clear. All of the lands which the road traversed east of the Shubael Weeks Path were owned in the 18th century by two individuals, 200 acres by Samuel Look to the east (Book 9, page 748 and Book 9, page 830), and 200 acres by Henry Luce to the west (Book 3, page 506), all abutting the highway from Holmes Hole to Tisbury (State Road) on the south. The boundary between their lands (indicated as the line between Lot 53A 1 on the east and Lots 52 4 and 52 9 to the west on the Tisbury Assessment Maps), was established by a bequest made by Hannah Daggett (Governor Thomas Mayhew's favorite daughter) to her daughter, Martha Tupper, in 1688, according to the records of Dr. Charles Banks (recorded on a map of his researches, #134 in the Tisbury Map Files at the Martha's Vineyard Historical Society). Martha Tupper and her husband Thomas then conveyed her lands to Isaac Chase in 1692 (Book 1, page 187). There was not then, nor even to this day, any record of any deeded road, way, or passage, nor easement for passage, nor boundary of a sub division between the Look and the Luce lands across, abutting, or even near this 1688 boundary. It stands of record today as it was in the 17th century.

Rather, what follows is a reconstruction, based on the evidence from relevant 18th and 19th century deeds, of when and where the road called the Road to Mott's Hill came to be, and to where it led.

First, where is Mott's Hill? There is a deed (Book 17, page 484) for land conveyed by Martin Luce to Shubael Weeks in 1812 (later a portion of a lot owned entirely by Shubael Weeks, between 1834 and 1872, when it was sold to Henry Bradley, (Book 58, page 306)), which designates "the Hill" as the site of a stake and stones to mark the SE corner of this lot. But there is no mention of a hill called Mott's as a landmark which would identify its location in any of the Henry Luce or Samuel Look subdivisions during the 19th century. The only assertion of its location is not until 1970, in an Affidavit (Book 312, page 295) by Hollis Smith, based on the name appearing in the Probate Inventory (D5, 1972) to designate (in parentheses) a woodland of 39 acres as part of the Estate of Charles Brown, who died in 1943. That Woodland is clearly Lot # 2 of the subdivision of Samuel Look's wood lot, laid out as a 36 acre parcel in the division deed of 1826 (Book 31, page 496). But no hill was named in that deed, nor in any deeds which

followed, from Samuel Look Allen (1849, Book 32, page 472) and Cleveland (1835, Book 25, page 387) to Charles Smith, nor in the division of his estate to Miriam Brown in 1882, (Book 70, page 135), nor even subsequently, in 1958, in the deed from George T. Tilton to the James and Findorak families (Book 234, page 492). That name was applied uniquely by the Appraisers to the lot in Charles Brown's Estate which had been clearly identified in the Charles Smith subdivision (Book 70, page 135) as the Samuel Look wood lot #2, to distinguish it from other wood lots, such as Woodland (Millicent Place), which had been identified twice in the Charles Smith subdivision (Book 70, page 135) not with Millicent, but as land from the Estate of Zachariah Smith acquired in 1822 (Book 82, page 477). Millicent Place is actually land to the east of Charles Smith's land, being the homestead lot of Abner Luce (1762-1819), whose wife, Millicent Norton Luce, gave that name to their place, although that name was not used as a deed indicator until the late 19th century. (Earlier it was designated as belonging to the heirs of Abner Luce.) I suspect that the name Mott Hill was applied by the Appraisers in the 1940s from those 19th century deeds which indicated a road pointing in that direction (i.e. to Mott's Hill), as a handy way of designating land that was in that same direction. (They probably did not know who Millicent was either.) The actual location of the hill known by the name of Mott is not established by the Charles Brown Probate Inventory, nor by any other document. Which hill actually bore that name remains an open question.

Also open to question is when a road leading to this hill was established. The earliest appearance of the name Mott Hill as indicating the direction of a road in this area is in a deed on June 25, 1855, (Book 37, page 110) from Emmanuel Joseph to Asa R. Luce (grandson of Abner Luce). The land conveyed is bounded by two roads, on the north by a road from Mott's Hill to Lambert's Cove, and on the southwest by a road of Shubael Weeks to the old rye field. On March 22, 1858, Asa R. Luce sold this lot to Benjamin Crowell (Book 38, page 197), together with another lot abutting it to the south, which he had acquired on June 23, 1855 from other heirs of Abner Luce and Emmanuel Joseph (Book 37, page 113). These two lots combined made into a single parcel of 7 acres. The same road is identified in this 1858 deed to Benjamin Crowell as establishing the northern boundary of this parcel, but it is not given any name. This property carried over intact in the Crowell/Mosher family into the 20th Century, and is recorded in the Tisbury Case File Plan #123, done by Hollis Smith in 1979. In this plan the road along its northern border is designated as "Red Coat Hill Road (Road from Mott's Hill)."

The deed of Emmanuel Joseph to Asa R. Luce in 1855 (Book 37, page 110) is the only subdivision along the course of Red Coat Hill Road east of Shubael Weeks Path in the 19th century which uses the existence of the road to Mott's Hill as a boundary. It is the subdivision of a 12 acre parcel of land which Emmanuel Joseph bought in 1812 (Book 17, page 428), conveyed by the widow of Henry Luce in recognition of his payment of debts of Henry Luce, who had died in 1769. This 1812 deed identifies the land as abutting a road, called "cartway to Shubael Weeks land," on the north and on the west. Its southeast boundary is marked by a white oak tree. There is no mention of any road running through or along the south of this property. As Emmanuel Joseph's sale in 1855 (Book 37, page 113) of a separate parcel of land to Asa R. Luce two days earlier than the lot to the north of the road indicates, his original 12 acre parcel extended to the south of where the Road to Mott's Hill turned out to be located. And no rights of access or prescription were identified or given, nor ever subsequently in the 19th century, over

the Road to Mott's Hill to the two parcels into which Emmanuel Joseph divided this land in 1855 along its course, nor to any of the lots to the east of them, because they had clearly stated access since 1812 along the "cartway to Shubael Weeks land," which both abutted.

The failure to recognize that Emmanuel Joseph's land extended as far south along Shubael Weeks' cartpath as it did is probably the cause of Tisbury Case File Plan # 37, done in 1972 by Francis Paul, in which the surveyor attempted to place the entire 12 acres of the 1812 lot north of Red Coat Hill Road, and thus extended it farther to the east than the deeds allowed. This assumption led to an entirely mistaken laying out of the so called Charles Allen lot to the east of Emmanuel Joseph's lot in a survey done of that property by Dean Swift in 1971, which forms the basis of the Tisbury Assessment Map 52 location of lot #8. This 1971 survey became the basis of conveyance of several parcels and even the construction of a house, now derelict, together with the conveyance of rights of access to and on land which the then owner of the Charles Allen land, Reinhold Muckle, did not own. This accumulation of errors has led to a Land Court Case #41944A, which hopefully will soon be resolved by returning the Charles Allen lot to its original location. This Land Court Case is based upon a subsequent Tisbury Case File Plan # 166, done by Schofield Brothers in 1983, which corrects the error of Plan # 37, by reducing the portion of Emmanuel Joseph's 1812 lot north of the Road to Mott's Hill to 8 acres.

There are two other designations of the road called "to Mott's Hill" as it crosses Shubael Weeks Path used during the 19th century, or soon after. Both of these descriptions are important, because both reveal that their users did not assert that this road extended to the east beyond the properties of Henry Luce into the lands of Samuel Look. The first is in a deed in 1857, in which George Weeks, a clergyman, conveys to Thomas H. Smith, a mariner, a 10 acre parcel of land which is abutted on all four of its sides by a road. Two of these roads we have given the names Mott Hill Road and Shubael Weeks Path, though neither are designated in this 1857 deed by these names. Shubael Weeks Path is indicated by the name of its abutter to the east, Asa Luce, who had purchased the lower section of Emmanuel Joseph's lot along Shubael Weeks Path in 1855. The northern corner of this 10 acre lot conveyed in 1857 is at the "Cross Roads" of this Path with another road. The description of the extension of this other road to the northeast out of this intersection is designated as "the road leading from the homestead of Henry Luce."

Henry Luce's homestead was conveyed after his death to Thomas and Mary Cottle, who in turn conveyed it to Abner Luce in 1790 (Book 12, page 439). We know the location of this lot, as it is described in that deed as lying along the Road from Holmes Hole to Tisbury (the present Massachusetts State Highway), and abutting on its east the land of Samuel Look. It therefore had its own access to the Highway and did not need to have any access to its east into the Samuel Look wood lots. And any road leading to it from the west would not have crossed any of the lands of Samuel Look to the east. It may be safe to assume that members of the Henry Luce family, if a road from his homestead crossed Shubael Weeks Path, used it as a way to get to Lambert's Cove, which they might have had occasion to do. Samuel Look's family, on the other hand, was not around. He moved with many of his family to Maine during the great migration of the 1790's, and his house was moved to the foot of Grove Avenue in Holmes Hole. There was no one there in his woodlands to go to Lambert's Cove by this or any other way. What is clear is that when his daughter Betsy Davis came to sell her share of his woodland to

Elisha Lambert in 1828 (Book 24, page 99), she was adamant that the land was “free of all incumbrances,” and that she and her husband “will warrant and defend forever against the lawful claims and demands of all persons.” (The Norton family in its suit, as the present bearers of this title, is simply sustaining, to the best of its ability, this warrant and defense.)

Another possibility for the origin of a path in this area is Emmanuel Joseph. His home, according to his deeds and the Walling Map of 1858, was on the south side of the Road from Holmes Hole to Tisbury, not far from where the present Lambert’s Cove Road joins the State Highway. As he earned his living as a pilot, he may have had good reason to get to Lambert’s Cove to get a jump on Holmes Hole pilots as approaching ships coming down the sound would pass there first. The origin of Red Coat Hill Road may have been his way of getting from his house to Lambert’s Cove. But his mode of transport, as his contemporary, Mayhew Norton, asserted with such conviction, would have been by foot. (Mayhew Norton prided himself on walking from Boston to New Bedford on his return from runs to that city, and getting there faster than the stage coach, which had to stop for meals and a change of horses.) Emmanuel Joseph’s interest in the lands he purchased out of the Henry Luce holdings during the early years of the 19th century may have resulted from such walking. But we cannot be certain that he ever walked through any of the Samuel Look wood lots on a regular basis. It may rather have been that his walking through Abner Luce’s homestead made him aware that Henry Luce had some residual debts which he felt called upon to pay. All of this is pure conjecture, which follows from the fact that we simply do not have any clear documented evidence. What we do know is that someone in 1857 thought that if you went to the right off of Shubael Weeks Path onto the other road at the Cross Roads, you would end up in Henry Luce’s back yard. Such would suggest the possible existence of such a road as early as the mid 18th century, when Henry Luce lived there. Or the origin of the road may have been the right of passage which Abner Luce got across the property immediately to the north of this homestead lot to a well when he received title to this lot in 1790 (Book 12, page 439). Neither of these possibilities helps, however, to establish the present course, and therefore the origin, of Red Coat Hill Road.

The course of the Road to Mott’s Hill to Henry Luce’s house is further suggested by the conveyance of another property, on the northwest corner of the crossing of the road with Shubael Weeks Path, in 1905, (Book 112, page 62). In this deed this road is described as the way “to the farm of Benjamin Chase (to the west) from Red Hill, so called, near the farm of Frederick W. Norton.” Frederick W. Norton’s farm was located on the south side of State Road, directly across from the earlier homestead of Henry and Abner Luce, to the west of the Samuel Look wood lots. (Frederick W. Norton also owned the Luce homestead lot across the street at that time.) It is not clear whether Red Hill and Mott Hill are two names for the same hill. But at the beginning of the 20th century, someone abutting the road did not associate it with the name of Mott Hill. And again, its qualifying terms identifies it on the Henry Luce side of the 1688 boundary line, not as crossing over onto the Samuel Look side. So the question remains: if it is not the same as Red Hill, near the farm of Frederick W. Norton, where is Mott’s Hill?

The contour map of Tisbury indicates two hills to the east of Shubael Weeks Path which rise over 100 feet above sea level. One of them (Hill A), which may be the Hill identified as the site of a corner bound in a deed of Martin Luce in 1812 (Book 17, page 484), lies directly across the path of Red Coat Hill Road. If a prominent hill was used to designate the direction in which

the road was going from Shubael Weeks Path, this would be that hill. The road is going straight for it. The road now takes an S curve to the left to its north side to get around it. If the road originally went to Henry Luce's back yard, its easiest course would have been to go the other way, past the south side of this hill, which, though suspect, is indicated by its layout on the Walling Map of 1858. In either case, the road would be identified as lying entirely within the lands of Henry Luce. The other hill (B) in this area lies off to the north of the course of Red Coat Hill Road. It also begins in the Luce lands, but is of much greater girth, and extends north and to the east across both Lots #1 and #2 of the Samuel Look wood lots.

The Red Hill identified in the 1905 deed would appear to be the name of the closer hill (A), as it is both prominent and much closer to both the farm on the south and the additional lands of Frederick W. Norton on the north side of State Road. One would have to ignore its existence in order to describe the more remote Hill (B) in that way.

Could the hill called Red Hill in 1905 also have been known as Mott's Hill in the 19th century? Based on the evidence we have, here is a plausible suggestion that such could have been the case. Most of the land of the Henry Luce Estate which abutted the land of Samuel Look across the 1688 boundary went to his grandson, Martin Luce, identified in numerous deeds during the 1st half of the 19th century. The dialect common on the Island during the 19th century shared with Boston the dropping of the letter "r," as in a poem written by my great aunt in the late 19th century about the heroines of the Liberty Pole (during the Revolutionary War), which rhymed the name "Maria" with the word "fire." Martin Luce's name, if it was said without the "r," would have been pronounced "Mattin." The distribution of Henry Luce's properties among his heirs appears to have been a little casual, as evidenced by the number of heirs who appear on 1850 deeds of Luce properties. (The sale of a 4 acre lot on the road from the highway to Tisbury to Timothy Chase's farm had 37 signators, Book 38, page 319). Some of these properties were designated among the family by the first names of their owners, as, for example, Millicent Place. The prominent hill which stood in the middle of Martin -- hear "Mattin" -- Luce's claim, could easily have been called Mattin's Hill. The conversion in the vernacular from Mattin to Mott by those who did not know Martin is highly conjectural. But it is conceivable and as legitimate as any of the other conjectures made possible by the lack of any decisive evidence in establishing the names and locations of the landmarks and ways which were created informally over the years among the many wood lots in this area. Many ways were informally created or relocated as the need for fire wood in Island homes in town increased during the second half of the 19th century, as is evidenced by a geodetic survey done of Tisbury in 1896 (in the Tisbury Map Files at the Martha's Vineyard Historical Society).

If, in fact, Mott's Hill and Red Hill were two names of the same hill (A), (designated by Martin Luce in 1812 as "the Hill"), then all of the designations of the road to it become the same, as referring to a single road which may have been used by the Luce family even since the mid 18th century. Identifying the hill in this way also confirms the document evidence that no way is in any deed identified as crossing over the 1688 boundary from the Luce lands into the Samuel Look lands.

The resolution of the two questions raised at the beginning is thus as follows:

1. Mott's Hill, in spite of its being referenced in the Estate Inventory of Charles Brown, is most likely to be the hill designated as Hill A on the contour map attached, and therefore lies

entirely on the western side of the 1688 boundary between the Luce and the Look lands. Its designation cannot therefore be used to assert that Red Coat Hill Road provided any access beyond Mott's Hill and thus into the lands of Samuel Look. And, 2, as there is no record even of the existence of Red Coat Hill Road along its present course before 1950, there is no evidence of when it began to be used as a way.

All of this documentary evidence also makes clear that any road both to and beyond Mott's Hill has always been a private way. It is not in any way, formally or otherwise, acknowledged in any deeds, nor in any recorded plans or surveys before 1950, of the properties between the Emmanuel Joseph property abutting Shubael Weeks Path and the wood lots of Samuel Look. All deeds relating to the Charles Allen property abutting to the east of the Emanuel Joseph and Asa Luce/Benjamin Crowell properties (Book 39, page 562, Book 209, page 285, Book 219, page 343, and Book 272, page 117), and the Bradley property to the east of the Allen property (Book 20, page 30, Book 25, page 69, Book 58, page 306), both of which extend to the north and to the south of the present way, do not identify or describe any way passing through these properties. They do acknowledge the north boundary of these properties as along the road which abuts the properties of Shubael Weeks or his Estate, which provides them access. And it is also clear that no easements or rights of passage or other prescriptive rights have ever been granted, nor can they be established by historic adverse use on the Samuel Look wood lots.

