



In the Matter of East Side of River Upton upon  
Severn, Malvern Hills D.

DECISION

This reference relates to the question of the ownership of land known as East Side of River Upton upon Severn, Malvern Hills D being the part of the land comprised in the land section of Register Unit N<sup>o</sup>.VG.46 in the Register of Town or Village Greens maintained by the former Worcestershire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Mr and Mrs N L Harris claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Worcester on 9 May 1979.

Mr David Stenbridge, counsel, instructed by Messrs. Cutler and Hallmark appeared for Mr and Mrs Harris and Mr G C Humphries of Messrs. Moore Brown and Dixon appeared for the Upton upon Severn Parish Council.

Mr Harris acquired his premises, Bridge House, by a conveyance from a Mr Statham, dated 20 July 1977 and these premises adjoin the Unit Land VG.46, which is finally registered as a Village Green, on the North. The Green runs down from Bridge House to the River Severn.

Mr Stenbridge, on behalf of Mr Harris did not and in my view could not claim a title to the Green under the conveyance dated 20 July 1977. Mr Harris however, caused researches to be made in to the earlier title which led him to believe that his premises and the Green, were conveyed as one holding to Samuel Richards Checketts, by a conveyance dated 24 June 1880 and that if such was the case, the Green was vested in a Miss White and he thereupon procured Miss White to convey to him all her interest in the Green by a conveyance dated 15 December 1977.

Part of the Green is registered under freehold title No. WR709 at H M Land Registry and Mr Stenbridge accepts that he cannot claim title to this land and limits his claim to the remainder of the Green.

Mr Humphries on behalf of the Upton on Severn Parish Council, does not claim to own the Green, but in the absence of any other claim to ownership, if Mr Harris is not the owner, the Parish Council will be registered pursuant the Section 8 (3) of the Act of 1965.

The onus of proving his title lies upon Mr Harris and he relies upon the parcels in the conveyance of 1880 viz:-

"All that Messuage Tenement or Dwellinghouse with the yard garden land and outbuilding thereunto adjoining and belonging situate in the Parish of Upton upon Severn in the County of Worcester near the bridge over the river Severn formerly in the occupation of .....and upon parts of which said premises on Limekilm and Kilnhouse



formerly stood and which said premises extended from the occupation road leading towards the Brickworks unto the river Severn, together with....."

This conveyance was made before the Conveyancing Act 1881 and I attach no importance to any of the words following "together with" in this or any previous conveyances, as being merely consistent with the practice of conveyancers at that time so as to ensure that the purchaser acquired the full benefit of the land and rights appurtenant thereto conveyancers inserted details of appurtenant land and rights which might or might not exist.

Mr Stembridge relied on the word "land" and the words "extended from an occupation road leading towards the Brickworks unto the river Severn". His submission was that on their true construction it defined the land as extending from the occupation road to the river Severn, and he says the land which was not house yard garden or outbuildings must be the Green which runs from the house to the river.

Mr Humphries on the other hand contends that the words quoted above on their true construction mean no more than that the land conveyed had as its northern boundary the road running towards the Brickworks unto the river, as indeed it did.

On any view the wording of the parcels in the 1880 conveyance is ambiguous, in that it failed to fix the East and West boundaries. Some light is thrown upon this difficult question by the earlier documents of title and maps produced at the hearing starting with a conveyance by lease and release in 1811 whereby the land was conveyed to Samuel Thorne, the parcels being:- "all that Limekiln of him the said William Proctor with the Kilnhouse coal yard and all the other premises thereto belonging situate in the parish of Upton upon Severn near the bridge over the river Severn.....together with etc.

Samuel Thorne died and letters of administration with his will annexed were granted to his widow Sarah Thorne in 1841 and she was in occupation of her late husband's land identified on the Tithe Plan 1843 as No. 40 and in the accompanying schedule Sarah Thorne was shown as being liable for the Tithe in respect of No. 40. The Tithe Plan shows the Limekiln etc and also that the land enjoyed therewith did at that time, extend to a small frontage on the river Severn. Plots 41 and 42 were described as "roads water and wastes" and the major part, if not the whole of what is now the Green appears to have been comprised in No. 41.

Sarah Thorne having died, by a conveyance dated 13 May 1847, the land was conveyed to Samuel Thorne Junior which conveyance recited that the Limekiln had been taken down by Samuel Thorne who had erected "a Messuage or Dwellinghouse and other buildings upon or near the site thereof" and the parcels therein were in the following terms:- all that piece or parcel of land on part of which the said Limekiln and a Kilnhouse formerly stood and other parts of which was formerly occupied as a coal yard, situate in the parish of Upton - Upon - Severn near the bridge over the river Severn..... formerly in the occupation of Samuel Thorne deceased, together with etc.

Pausing at this stage it is in my view clear that what Samuel Thorne Junior acquired was the land No. 40 on the Tithe Map formerly in the possession of Samuel Thorne deceased.



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On the 2 December 1850, Samuel Thorn Junior mortgaged this land to Thomas Holland described in the Deed as: "all that Messuage Tenement or Dwellinghouse with the yard garden land and outbuildings thereunto adjoining and belonging situate near the bridge over the river Severn late in the occupation of the said Samuel Thorn but now the said Richard Bell as tenant upon part of which said premises a limekiln and kilnhouse formerly stood extend from an occupation road leading towards the Brickworks unto the river Severn, together with etc

It is to be observed that the words which I have underlined and upon which Mr Stembridge relies, were first introduced on to the title by Samuel Thorn Junior, as mortgagor. It may be that the land did at that date extend to the river and that No. 40 on the Tithe Map was still intact, but he could not give his mortgagor a title to more land than he acquired in 1847, viz the land formerly in the occupation of Samuel Thorn, deceased.

Samuel Thorn defaulted and Thomas Holland in the exercise of his power of sale sold the land by auction to William Winterbottom, the conveyance being dated 29 September 1962, the parcels being as in the mortgage.

By a conveyance dated 24 June 1963 William Winterbottom re-sold the land to Thomas Holland and his personal representative F Rea and E Twycross by the above mentioned conveyance conveyed to R Checketts.

Meanwhile in 1863 there was an enclosure award whereby sale allotment No. 5 was allotted to James Shepperd, coal merchant. I find it difficult to reconcile the map on the inclosure award with the Tithe Map. It appears that when the inclosure map was prepared, the Limekiln had already been demolished and the new house is shown at the North West corner of the land as to which there is no dispute. Sale allotment No.5 adjoins No. 40 on the Tithe Map on the east and it is possible that it included part of No.40 on the Tithe Map. This difficulty is now of no practical importance, the boundary between the Green and Mr Harris land and sale allotment No. 5, which I was told is now an orchard is not in dispute. There was produced in 1889 a Parish Map on which the Green is shown as No. 213 comprising 0.370 of an acre and the land then undoubtedly owned by Mr Checketts with Bridgehouse is shown as a separate enclosure.

On 12 March 1908, Mr Checketts conveyed to W S Jenkins the parcels in that conveyance being "all that Messuage Tenement of Dwellinghouse with the yard garden land and outbuildings there unto adjoining and belonging.....situate near the bridge over the river Severn". This land became vested in Violet Gwendoline White who conveyed it to J C Statham on 3 December 1968 and in that conveyance with a plan attached she described that land as that acquired by Checketts in 1908. At the time of that conveyance, Miss White made a statutory declaration that Bridgehouse had an easement to drain on to the Green.

It is difficult to reconcile the three maps referred to above but I have come to the clear conclusion that the only land which could in 1977 have been in the ownership of Miss White is land which was comprised in No. 40 on the Tithe Map and which was not comprised in sale allotment No.5 on the inclosure map. It is clear beyond doubt that the major part, if not the whole of the Green is on No. 41 on the Tithe Map, and it would appear that Samuel Thorn encroached on No.41 when he built his house.



The boundaries as shown on the Parish Map of 1888 have not been questioned for nearly a hundred years and having considered the documentary evidence, I have come to the conclusion that Mr Stembridge has failed to prove that Miss White had any interest in the Green which she could convey to Mr Harris. Even if there is a small corner on the bank of the river Severn which is not now part of the adjoining property, it is so small as to be of no practical significance. What is clear beyond doubt is that the land immediately facing Bridgehouse No. 213 on the Parish Map is not now in the ownership of Mr Harris. For the better understanding of this decision I annex hereto marked A a copy of the relevant extract from the tithe map and marked B a copy of the relevant extract from the Inclosure Map.

I have not overlooked Mr Stembridge's submission that the coal yard mentioned in the conveyance was on the river bank, where the coal was unloaded. This may have been the case when the Limekiln was in operation as No. 40 on the Tithe Map, did go down to the river or it may have been a coal yard adjoining the Limekiln. The river frontage of No. 40 was remote from the bridge. The drainage on to the Green is consistent with an easement which is all Miss White claimed in her statutory declaration.

Miss White made two contradictory statutory declarations one produced by Mr Stembridge and one by Mr Humphries. She is aged and not well enough to give evidence at the hearing and I ignore these statutory declarations.

Mr Commissioner, Baden Fuller, held a hearing on 2 July 1975 as the result of which he decided to confirm the Entry in the Land Section. Mr Harris had no interest at the date of that hearing. The evidence given would not be evidence against him and I therefore have not given any consideration to the decision of Mr Baden Fuller. Finally I must mention that the original bridge over the river Severn has been demolished and a new bridge built further upstream. There had been some consequential alteration in the roads and surroundings of the land in question.

For these reasons I am not satisfied that any person is the owner of that part of the land not registered at H M Land Registry and I shall direct the Hereford and Worcester County Council as registration authority to register Upton-upon-Severn as the owner of such land under Section 8 (3) of the Act of 1965.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated

31<sup>st</sup>

1979

July

*G. A. Lett*

Commons Commissioner