



In the Matter of Village Green,  
South Walsham, Blofield & Flegg R.D.,  
Norfolk

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DECISION

This reference relates to the question of the ownership of land known as Village Green, South Walsham, Blofield and Flegg Rural District being the land comprised in the Land Section of Register Unit No. VG.40 in the Register of Town or Village Greens maintained by the Norfolk 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 Miss Julia Frere 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 Norwich on 13 June 1973. The hearing was attended by Miss Frere who was represented by Mr. J. C. N. Kilner Solicitor of Hansell Stevenson and Co., Solicitors of Norwich and by South Walsham Parish Council who were represented by Mr. G. McDowen Gould, their chairman.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register map) 0.577 acres. On its north side, about (as I scale the map) 55 yards long, it is open to the road which runs east-west through the Village from Norwich via Panxworth to Acle; it is enclosed on its other three sides. Except for a chestnut tree, a much older oak tree (surrounded by a seat) and a Bus Shelter, it is grass land.

Miss Frere gave evidence:- She produced a deed dated 4 January 1965 by which her father Mr. Henry Bartle Jary Frere out of love and affection for his daughter conveyed to her (with two other properties) the Unit Land in fee simple; the deed contained a recital "the Grantor is seised in unincumbered fee simple of the property herein-after described"; the Unit Land was therein described by reference to the Ordnance Survey map and to an annexed plan; the deed contained no reference to the Unit Land being a village green or being otherwise subject to any customary rights. She is 31 years of age, and understood that the Unit Land had devolved on her father from her grandfather Sir Bartle Henry Temple Frere who died in 1953. She was happy that the Unit Land should be used as a recreation ground as long as she did not require it for anything else. She was not aware of any dedication (meaning official handing over) to the public of the Unit Land. She understood that in her grandfather's day the Unit Land was a paddock, and that he took down the fence so that the children might play there, and she had been happy to let it continue like that up to the present.

Miss Frere was questioned by Mr. Gould about things done by her father and grandfather. He suggested that on her father's 21st birthday there had been a ceremony on the Unit Land during which her father planted a chestnut tree there and her grandfather proclaimed publicly that the land should for all time be a village green for the use of the Village children. She knew that her father had planted on his 21st birthday (he was born in 1902) the chestnut tree (now growing there), but knew nothing of the other matters put to her. She had lived for many years at



Scoulton-(about 16 miles south west of Norwich; the Unit Land is about 9 miles north east of Norwich); although she had passed the Unit Land in a motor car, she last walked over it 10 years ago. She knew that the Village had used the Unit Land for a number of things but considered they did this by the courtesy of her father and herself.

After Miss Frere had given evidence, Mr. Kilner put in a statutory declaration made on 1 January 1965 by Mr. Frere, but the time having come for the midday adjournment I did not then read it.

After the adjournment, Mr. Gould outlined the case which would be made on behalf of the Council.

Mr. Kilner then made allegations against the Parish Council which, on my requesting him to summarise them for my record, he restated as follows:- "On behalf of Miss Frere I say this registration of the land as town or village green was made fraudulently by the Parish in 1968 in that the Parish Council knew that the Frere family were the owners, and if she had known that it had been registered, Miss Frere would have objected to it being registered as village green and also applied to be registered as owner".

I then asked Mr. Kilner whether Miss Frere intended to apply to the High Court for an order that the registration be struck out on the ground that she was induced by fraud to refrain from making an objection and adjourned the proceedings so that she could consider the question. As to this see section 14 (a) of the 1965 Act. On my resuming, Mr. Kilner stated that his client will not proceed to the High Court.

Mr. Gould then gave evidence. He had been a member and chairman of the Parish Council since 1972, when the membership of the Council had changed. He was born in 1911 and had lived in the parish since 1919. He had not been present at the 1923 ceremony; on the roof over the well there was a board recording that the land was for the Village children as a playground. He had not been concerned with the 1968 registration.

Mr. Frere, having arrived (in view of Mr. Gould's questions to Miss Frere, I understood she had been advised to ask her father to give evidence), it was agreed that he should give evidence next. He said (amongst other things):- His father Sir Bartle Frere was the owner of the South Walsham Estate, the bulk of which was sold in about 1936. His father in 1923 gave the Unit Land to him on his 21st birthday; there was a deed of gift. On the day he, his father, and various people staying in the house (South Walsham Hall) went to the Unit Land and he planted a chestnut tree (now growing there). That was all that happened. The Bus Shelter, now on the Unit Land, was erected by the W.V.S., (Mrs. Glendonning) in it there is a plaque in memory of his father (Sir Bartle Frere). He thought the deed of gift made by his father was with the deeds relating to the Estate. His father kept on giving him land here and there; he gave the Unit Land because he (Sir Bartle Frere) thought it was a useful nest egg. The Unit Land is now extremely valuable, being half an acre in the middle of the village; it is the best building site in the Village being worth a bit as building land. In 1931 he (Mr. Frere) ceased to live at South Walsham Hall, and until 1939 lived at Merton (about 30 miles away); and after soldiering during 1939-45 war, he returned to Scoulton where he has lived ever since. He avoided the Village



as much as he could as it was too full of memories.

Evidence was then given on behalf of the Parish Council (1) by Mrs. E.M. Lilleystone who was born in 1905; started coming to South Walsham with her father in 1910 (weekends on the Broads), and from the early 1930's lived in a cottage adjoining the Green, (2) by Mr. J.H. Atkins who was born in 1931 and had lived on and off in the parish (apart from 12 years in the Navy) since 1936 or 1937, (3) by Mrs. P.M. Atkins who has lived in the Parish all her life (42 years) and has been a member of the Parish Council since 1968, and (4) by Mr. T. Bradford (by a written statement dated 12 June 1973; he did not attend the hearing) who lived in South Walsham from 1904 until 1937. They all described how on various occasions and in various ways the Unit Land had since 1923 been used for recreational purposes by the inhabitants (adults and children) of the Village. Mrs. Lilleystone remembered watching the chestnut tree being planted by Mr. Frere in 1923; after that a board was put up on or near the well, recording the land was a childrens playground. This board was there for many years but is not there now. Captain and Mrs. Glendenning were great friends of the Freres; it was through them that the Bus Shelter was erected in memory of Sir Bartle Frere; a plaque recording this was put in the Bus Shelter and this is there now. Mr. Bradford said (among other things):- "The hedge and gate were removed, the tree planted on the 21st birthday of Mr. H. Frere, and as I understood the ~~road~~ was then given by Sir Bartle Frere as a children playground...."

Mr. Kilner in his final address submitted that the registration of the Unit Land as a town or village green was void and mentioned two cases cited in the Empire Direct volume 34 page 351. I refused to hear him on this submission. The registration was made on 6 February 1968 and being undisputed became final on 1 October 1970. By section 10 of the 1965 Act, the registration is now conclusive evidence that on 6 February 1968 the Unit Land was a town or village green within the definition in section 22. I have no jurisdiction on this or any other reference to consider the validity of the registration; as to this I adhere to the views set out in my decisions dated 16 October 1972 re River Bank, Ropewalk reference 6/U/22 and dated 9 February 1973 re Three Corner Piece reference 28/U/35.

Mr. Kilner then submitted that Miss Frere is the owner of the Unit Land: Mr. Frere had been able to make the 1965 deed in her favour by virtue of the gift he said his father Sir Bartle Frere had made to him in 1923. On my expressing doubt whether any such gift had in fact ever been made in an appropriate deed, (Mr. Frere had when giving evidence often been vague and admitted that his memory was not as good as it had been), Mr. Kilner submitted alternatively that Mr. Frere had before 1965 a possessory title to the Unit Land, and I then read (for the first time) the declaration he had made on 1 January 1965; this declaration was in the form commonly used to establish a possessory title, being worded on the basis that Sir Bartle Frere until his death and thereafter Mr. Frere had been in possession or in receipt of the rents and profits of the Unit Land. In the further alternative Mr. Kilner submitted that Mr. Frere became entitled under the residuary devise in his favour contained in the will of Sir Bartle Frere, and he produced the probate of the will granted on 28 May 1953 to Mr. R. C. Williams, Mr. R.J. Preston and Mr. Frere.

After the hearing, under cover of a letter dated 15 June 1973, Hansell Stevenson & Co., sent to the office of the Commons Commissioners a photographic copy (certified by Mr. Kilner to be a correct copy) of an indenture dated 14 February 1965, with an explanation that



the deed had been found amongst papers at the Frere's house. In a letter dated 20 June 1973, the Parish Council were by my direction, asked if they agreed the copy indenture and to include in their reply the exact wording of the inscription in the Bus Shelter commemorating Sir Bartle Frere (being the plaque mentioned by Mr. Frere and Mrs. Lilleystone in their evidence: see above). There follows some correspondence the outcome of which was that Mr. Gould on behalf of the Parish Council agreed that the copy indenture was correct and Hansell, Stevenson & Co., on behalf of Miss Frere agreed that the inscription as stated by Mr. Gould was correct.

By the 1923 indenture, Sir Bartle Frere in consideration of £10 conveyed the Unit Land (therein described as "The Hall Pightle") to Mr. Frere in fee simple. The inscription in the Bus Shelter is:- "THE SITE OF THIS SHELTER WAS GIVEN IN MEMORY OF SIR BARTLE HENRY TEMPLE FRERE OF SOUTH WALSHAM HALL".

Under sub-section (2) of Section 8 of the 1965 Act, I have to decide whether I am "satisfied that any person is the owner". By sub-section (3) if I am not so satisfied, I am required to direct the registration of the Parish Council as owner.

On the evidence I conclude that at the beginning of 1923 Sir Bartle Frere owned South Walsham Hall and other land including the Unit Land.

Mr. Gould in his opening statement emphasised that Sir Bartle Frere was well respected by all parishioners, and after explaining why the Unit Land had been registered, stated that the Parish Council were not trying to establish that Miss Frere was not the owner. I reject the suggestion that this statement was evidence enough of the ownership of Miss Frere. I regard it as no more than an indication that the Parish Council would not (and they did not) make any case under sub-section (2); not that they would not claim under sub-section (3). Further the statement was made by Mr. Gould before Mr. Milner on behalf of Miss Frere made the allegation of fraud set out above, and I think I can in considering ownership under sub-section (2) properly have regard to any evidence which emerged, notwithstanding that it may have been led primarily in answer to this allegation.

I do not accept the 1965 Statutory declaration made by Mr. Frere. Although before 1965 he may as owner have been entitled to possession and to receive the rents and profits, I deduce from his oral evidence that after 1931 he was never in actual possession and that there never were any rents and profits. He said that in relation to the Unit Land he had no agent. The statement in the declaration that he had been in possession and in receipt of the rent and profits is therefore misleading. The declaration was never put to Mr. Frere while he was giving evidence, so I do not in these proceedings treat the making of the statutory declaration as reflecting adversely on him or on anyone else.

I do not accept the will of Sir Bartle Frere as evidence of the ownership of Mr. Frere after 1953. I am concerned with the legal estate in fee simple, see section 22 (2) of the 1965 Act; no assent by the Executors of Sir Bartle Frere was produced.

I do not accept the statement of Mr. Frere that the use of the Unit Land was "at my discretion", as evidence of any relevant fact. As regards the use of the land for recreational purposes, he never did anything from which any inhabitant of the village would infer that the use being made of it was at his discretion,



or from which I could infer that such use was not "as of right". Mr. Frere believing himself to be the owner of the Unit Land may also have believed that it necessarily followed that any use made of it by anybody else was at his discretion, but such belief has I think no relevance. He explained that by "at my discretion", he had in mind that any widening of the road and the making of any footpath across the land would require his consent. But I have no evidence about any road widening or path making from which I could infer that he was ever in actual possession as owner.

I do not accept the statement of Miss Frere that the use of the Unit Land by the inhabitants of the Village was by the courtesy of her father and herself as evidence of any relevant fact. On this point I take the same view of her evidence as I take of her father's evidence about such use being at his discretion. When questioned by Mr. Gould, she said that Major Broughton used to ring up and asked if buses might be parked there, and that in 1966 she sold part as a telephone exchange; but she gave me no information about these matters on which I could base any finding supporting her claim to ownership or any inference as to the use made of the Unit Land for recreational purposes. Apart from the 1965 deed produced by her, none of her evidence in my view supported her claim.

The Parish Council have I think never been in possession of the Unit Land. Its use for recreational purposes by the inhabitants of the Village has been in exercise of the right which it was thought (the registration shows may be rightly; I am not now concerned to say whether it was) had been granted by Sir Bartle Frere; I cannot treat such use as amounting to the taking possession of the Unit Land by any person adverse to the title of the true owner, so as to result in the extinction of his or her title under the Limitation Act 1939.

So as regards all the Unit Land except the site of the Bus Shelter, all I have is the ownership in 1923 of Sir Bartle Frere, his execution of the 1923 indenture and the execution by Mr. Frere of the 1965 deed. Miss Frere's legal ownership under the indenture and deed cannot be prejudicially affected by the circumstance that for many years neither she nor Mr. Frere have been in possession of the land. I conclude therefore that she is now the owner of this part of the Unit Land. My conclusion must not be read as determining that she as owner of this part of the Unit Land can sell it free from the rights of the inhabitants of the Village in the way which her father, according to his evidence thought when he made the 1965 deed, would be possible.

As regards the site of the Bus Shelter, the position is different. The Bus Shelter is such that its erection cannot be ascribed to any recreational rights which the inhabitants of the Village may have; its erection would be unlawful without the consent of the site owner. Mrs. Lilleystone's statement (mentioned above) about the cooperation of the Freres in the erection of the Bus Shelter in memory of Sir Bartle Frere, was not challenged, and is consistent with what Mr. Frere in his evidence said about the plaque. I infer that Mr. Frere authorised the erection of the Bus Shelter and the placing of a plaque in it inscribed as it now is.

The inscription on the plaque: "The site of this Shelter was given..." relates to the ownership of the site. It is inconsistent with the conclusion I have reached as regards the other part of the Unit Land from the 1923 ownership of Sir Bartle Frere the 1923 indenture and the 1965 deed. Although I do not know to whom or how the site was given, the inscription is some evidence that Miss Frere is not now the owner. It may be that when the Bus Shelter was erected the site



was conveyed to trustees; it may be that the legal estate in fee simple remained in Mr. Frere, he holding it on some trust permitting its present use: there are other possibilities. Miss Frere claims ownership, and it is I think for her to explain the position resulting from the conduct of her predecessor in title; she has not done this. Under section 8 (2) of the 1965 Act, I am required to say whether I am "satisfied" as to the ownership of any person. By reason of the inscription I am not satisfied that Miss Frere is the owner.

It was not suggested that I should be satisfied as to the ownership of any other person. However I record (as an alternative ground for this part of my decision) that Miss Frere is I think estopped by the inscription in the Bus Shelter from claiming to be the owner of the site.

Summarising the whole case, for the reasons set out above, I am satisfied that Miss Frere is the owner of all the Unit Land, except the site of the Bus Shelter, and I shall accordingly direct the Norfolk County Council as registration authority to register Miss Julia Frere of Halfway House, Scoulton, Norfolk, as the owner of this part of the Unit Land under section 8(2) of the Act; but I am not satisfied that any person is the owner of the site of the Bus Shelter and I shall accordingly direct the Norfolk County Council as registration authority to register South Walsham Parish Council as the owner of this part of the Unit Land under section 8(3) of the 1965 Act.

As above stated in the course of the proceedings Miss Frere (through Mr. Kilner) alleged that the Parish Council had been fraudulent. Being of the opinion that such allegation ought never to have been made, in justice to those who may be concerned, I record my reasons as follows:-

That there were in 1960 reasonable grounds for thinking that the Unit Land was land on which the inhabitants of South Walsham had indulged in lawful sports and pastimes as of right for not less than 20 years was I think proved. I accept without qualification the evidence of Mr. Gould, Mrs. Lilleystone, Mr. Atkins, Mrs. Atkins and Mr. Bradford.

I do not accept the evidence of Mr. Frere that "there was no dedication" by his father of the Unit Land as a playground for children, if by that he intended to suggest that his father never so conducted himself as to lead the inhabitants of the Village to believe that they and their children could use the Unit Land for recreational purposes as of right. Mr. Frere in his evidence said that his father told him that it was nice for the children to play on the Unit Land and that he had previously had the fence removed so children could play; he remembered his father's agent (Mr. Shepherd) saying that the well (formerly used by the adjoining cottage) ought to be roofed over, because it was dangerous (somebody might fall down the well). Both Mr. Frere and his father must have known about the notice board on the well. Having regard to the situation of the Unit Land in the centre of the Village, nobody could sensibly think that the Unit Land if open as a playground for children was not also open for recreational purposes by adults.

No evidence was offered as to how the registration procedure followed by the Parish Council in this case, would or ought to have been different if all those concerned on behalf of the Parish Council had at all times realised that the "Frere family" were owners. There was no evidence that the Parish Council before the hearing knew anything about the 1923 indenture or the 1965 deed, or had any reason for thinking that Mr. Frere or Miss Frere would wish to object to the registration.



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Miss Frere and Mr. Frere did not in their evidence say that they or either of them believed they had been defrauded by the Parish Council as alleged by Mr. Kilner on her behalf, or say anything from which, even if I accepted all their evidence without qualification (which I do not), I could find any such fraud.

In my view the allegation of fraud never had any foundation.

The letters written after the hearing with reference to the 1923 indenture and the Bus Shelter inscription by Mr. Gould and Hansell Stevenson & Co., in addition to saying that the indenture and inscription were agreed, contained submissions and allegations of fact which may not have been made at the hearing. As neither has had an opportunity of commenting on the submissions and allegations so made by the other, to avoid any misunderstanding, I record that in reaching my decision I have disregarded these submissions and allegations.

I am required by regulation 3C(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 this

5<sup>th</sup>

day of October 1973

a. a. Baden Fuller.

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Commons Commissioner