



COMMONS REGISTRATION ACT 1965

Reference No 26/U/43

In the Matter of land at Byfield,  
Daventry District, Northamptonshire

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DECISION

This reference relates to the question of the ownership of land at Byfield, Daventry District being the land comprised in the Land Section of Register Unit No VG. 61 in the Register of Town or Village Greens maintained by the Northamptonshire 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 Browne & Wells Solicitors of Northampton in a letter dated 20 July 1976 written to the County Council provided information about a possible claim by their client Mrs A B Merivale. No other person claimed to be the freehold owner of the land in question or 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 Northampton on 6 July 1977. At the hearing Mrs Ada Beatrice Merivale was represented by Mr C J Vaughan solicitor of Browne & Wells.

The land ("the Unit Land") comprised in this Register Unit is a piece of land ("the Triangle") approximately triangular with a comparatively narrow strip ("the Tongue") projecting from its northeast corner. The north side of the Triangle includes the front wall of the house "Farndon Cottage, No 8 The Green", and the front walls and doors of two garages adjoining to and belonging to this house. The southwest side of the Triangle is a public path ("the Boundary Path" ; it was contended that this path was wholly or partly a road) leading from the northwest (an open and central part of the Village where there is a public highway suitable for through vehicular traffic) to the southeast (Holy Cross Church by which there is another public highway suitable for vehicular traffic).

Mr C Ridgway who is Mrs Merivale's brother-in-law (he married her sister 30 years ago) gave oral evidence in the course of which he produced a photograph (4" x 2½") of Farndon Cottage which he dated as taken in about 1928, and a picture postcard which showed the Boundary Path, the buildings on the east side of the Triangle and (in the distance) the Church, and which may have been taken about the same time. As to the part of the Unit Land between Farndon Cottage and the Boundary Path Mr Ridgway said generally: "It has always been looked after by the Merivale family as far as my memory goes back". He particularised such family as follows: Mr Simeon Merivale who died 25 June 1959, his widow Mrs Cora Merivale who died 4 May 1969, their son Mr Kenneth James Merivale who died 7 August 1974, and his widow Mrs A B Merivale (the claimant).



Mr Vaughan produced (as being his clients documents) of title to Farndon Cottage): (1) a conveyance dated 28 November 1917 by Mr W C Bromley to Mrs L Coy, (2) a conveyance dated 23 June 1927 by Mrs L Coy to Mr Simeon Merivale, (3) an assent dated 9 October 1959 by Lloyds Bank Limited as his personal representative in favour of Mrs Cora Merivale, (4) an examined abstract dated 1975 of the title of Farndon Cottage which included the probate of the will of Mr J Merivale, (5) an assent dated 20 February 1976 by his personal representatives in favour of Mrs A B Merivale, and (6) an examined abstract dated 1969 of the title of the personal representatives of Mrs C Merivale which included the probate of the will of Mr S Merivale.

On behalf of Mrs A B Merivale, Mr Vaughan claimed ownership of the part ("the Claimed Part") of the Unit Land between Farndon Cottage and the Boundary Path on the grounds: (a) that the documents of title showed his ownership and/or (b) she and her predecessors in title have been in possession.

Two days after the hearing I inspected the Unit Land.

As to contention (a):- The parcels of the 1917 and 1927 conveyances (except for a few irrelevant words identical) are as follows:- "ALL that Messuage or Dwellinghouse known as Farndon Cottage together with the Wash House, Stable, Loft, Coalhouse, Pigstye and other outbuildings, Yard and Garden land thereto adjoining and belonging situate in Byfield...bounded on the North by a field or close of land...formerly known as Cussetts Close on the South by a building belonging to Byfield Causeway Trustees...on the East by a road leading from the Main Road to the Church at Byfield aforesaid and on the West by the said field or close of land...Together with the full right...with or without horses or other animals carts carriages or wagons to pass and repass over and along the Green leading from the public road through the gate adjacent to the said premises and thence over and along the field adjoining the said premises to the back of the said premises".

Mr Vaughan after calling attention to the mistaken use in the 1917 and the 1927 conveyances of the words "north, south, east, west" (clearly east, west, south, north were intended) contended that the south boundary of the land conveyed was: "the road leading from the Main Road to the Church" which he identified with the Boundary Path; the words "Garden land" used in the above quoted description included (so he contended) the part of the Unit Land in front of the Cottage and north of the Boundary Path.

I am concerned to determine the meaning of the 1917 and the 1927 conveyances as they would be read by a locally well informed person walking over the Unit Land in 1917 and 1927. From the present registration under the 1965 Act of the Unit Land as a town or village green and from the 1927 photographs, I infer that it would then have appeared to be an open space on which local inhabitants could (with or without other similar land) indulge in lawful sports and pastimes. From the present appearance of the land and the photographs, I infer that the part of the Unit Land in front of Farndon Cottage would not then have appeared to belong to the Cottage any more (possibly less) than it does now. I suppose the well informed person would no doubt notice that the draftsmen of the conveyances



had mistaken the points of the compass and that in relation to the Unit Land some constrained meaning must be given to some of the words he used: either "Garden land...belonging" to the Cottage must be constrained to include some part of the Unit Land which could not (it being a village green) in any ordinary sense of the word be garden land belonging to the Cottage or the words "road leading from the Main Road to Byfield Church" must be constrained to mean something wider than the well made up rather wide public footpath which now forms the Boundary Path. Against reading the words "Garden land...belonging" in a wider sense, the grant of a way "over and along the Green leading from the Public Road through the gate adjacent to the said premises" ——— indicates that the draftsman thought that some land appropriately called "the Green" in front of the Cottage was not included in the conveyance (the gate referred to must I think have been at or near the now existing gate which is a little to the east of the Cottage garage doors). Further if any part of the Unit Land was "Garden land" in 1917 or 1927, how would the well informed person have determined the boundary of such part; although the west boundary of such part might sensibly be a straight line at right angles to the front wall of the Cottage (starting at the west corner), the east boundary could not sensibly be such a straight line (starting at the east corner and assuming that the Cottage then included the two garages), because such an east boundary would be manifestly unfair to the owners of the building on the east of the Unit Land; alternatively the east boundary might be taken to be the middle line of the granted right of way (a line perhaps corresponding more or less with the middle line, a quarter circle, of the now existing track leading from the Boundary Path to the garages of Farndon Cottage).

Whatever may be the boundary of the part of the Unit Land now claimed on behalf of Mrs Merivale, in my opinion a well informed person who in 1917 and 1927 considered the conveyances having regard to the then appearance of the Unit Land would conclude (I think with little hesitation) that no part of the Unit Land was intended to be conveyed by either of them. For this reason I reject contention (a).

As to contention (b):- As a matter of law a person can I think acquire a possessory title to part of a village green notwithstanding that the title he so acquires will be subject to the recreational rights of the local inhabitants. But to acquire such a title there must be possession; in my opinion a person who owns a house fronting on a village green does not take possession in any now relevant sense merely by "looking after" the part in front of his house. When I inspected the Unit Land the footpath which leads from the front door of the Cottage to the Boundary Path appeared to be well made up and the grass on either side of the path appeared to be tidily cut, on the west side to a line a little beyond the corner of the Cottage and on the east side to the vehicular track leading to the two garages. Mr Ridgway gave no details as to how the Merivales had "looked after" the Claimed Part, except to say that they "kept it up" and "it is cut weekly and mown like a lawn". I cannot from his evidence conclude that the Merivales ever did any more than keep it up as it now appears. The work they did may have contributed to the present attractive appearance of the Cottage and of the part of the Unit Land in front of it; but by keeping it tidy in this way, they did not in my opinion take possession of any part of the Unit Land and in any relevant sense. Accordingly I reject contention (b).



At the hearing mention was made of a decision dated 2 November 1972 and given by myself in relation to disputes as to whether the Unit Land was or was not properly registered under the 1965 Act as a town or village green; my decision was against the objections one of which was by Mr K J Merivale. I have in this decision so far considered only the evidence put before me at the July 1977 hearing. Having since reread my 1972 decision, I record (as I think will be obvious from the decision) that if I had treated the evidence given before me in 1972 as given in these 1977 proceedings, my decision would have been the same.

At the hearing no person other than Mrs Merivale claimed ownership of any part of the Unit Land. However I have since received letters dated 7 and 22 July 1977 from Mrs W Haynes of 9 The Green in which she says (among other things) that she and her husband wish to be represented at the hearing and to produce their deeds. There is nothing in her letter to indicate that she or her husband would if I reopened the hearing and at Northampton heard oral evidence from them and considered any deeds or other documents they might produce, I should in the end find that they owned some part of the Unit Land. On the contrary the information put before me by Mr Haynes in the 1972 proceedings and summarised in my said 1972 decision, indicates that it is unlikely that they would satisfy me as to their ownership. Accordingly I shall take no action on Mrs Haynes' letters.

For the above reasons I am not satisfied that any person is the owner of the Unit Land or any part of it. By subsection (3) of section 8 of the 1965 Act if I am not so satisfied I am required to direct and accordingly I do direct the ~~Northampton~~ County Council as registration authority to register Byfield Parish Council as the owner of the Unit Land.

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 this 5<sup>th</sup> day of August —

1977

*a a Baden Fuller*

Commons Commissioner

*Corrected on page 4 by substituting  
Northamptonshire for Northampton*

*a a Baden Fuller*

*25 October 1977*