



COMMONS REGISTRATION ACT 1965.

Reference No.17/D/3

In the Matter of Castle Green,
Kimbolton, St. Neots R.D.,
Huntingdon

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.VG.8 in the Register of Town or Village Greens maintained by the Huntingdon and Peterborough County Council and is occasioned by Objection No.1 made by the Governors of Kimbolton School and noted in the Register on 27 October 1969.

I held a hearing for the purpose of inquiring into the dispute at Huntingdon on 11 May 1973. The hearing was attended by Miss Florence Elizabeth Lilley in person and by the Governors of Kimbolton School who were represented by Mr. C. H. Lewis, the headmaster.

The registration was made pursuant to an application made by Miss Lilley and dated 14 May 1967. The grounds of Objection stated in the form dated 9 October 1969 are:- "The Green is private property owned by the Governors of Kimbolton School and it is denied that the Public have any right over it."

On behalf of the School evidence was given by Mr. Lewis orally (he has been headmaster of the School since 1947) and by Mr. B. J. Hellett in an affidavit sworn on 8 May 1973 (he has lived in Kimbolton all his life and has been clerk of the Parish Council since 1940). Miss Lilley (she is 93 years of age) gave evidence: as also did Mr. J. E. E. Rogers (to clear up a possible misunderstanding; he, as a social worker, was looking after Miss Lilley).

The land (the "Unit Land") comprised in this Register Unit contains (according to the Register) about 0.38 of an acre, and is bounded on the south east for the most part by the front wall (as I scale the map about 170 feet long) of the Gatehouse of Kimbolton Castle. Diagonally across the north east half of the Unit Land there is a road (not included in the Unit Land) leading from the High Street to an archway in the Gatehouse and thence to the grounds of the Castle and to the Castle itself. Since 1950, the Castle including the Gatehouse and the grounds have been and are now being used for educational purposes: Kimbolton School, a direct grant boys school having about 300 boarders and about 120 day boys.

Mr. Lewis produced a conveyance dated 22 June 1951 by which the Most Noble A. G. F. D. 10th Duke of Manchester with the concurrence of his Trustees and at the request of the Huntingdon County Council conveyed to the Governors of Kimbolton School about 50 acres of land including Kimbolton Castle, the Gatehouse and the Unit Land. Mr. Lewis said:- The conveyance followed a threat of a compulsory purchase order; the School had for many years been carried on elsewhere in Kimbolton; the School moved in on 30 June 1950 (before the conveyance). At that time the Unit Land was rough grass, neglected; subsequently the School has cut and maintained it and it is now a lawn. He produced a picture of the Unit Land which from the writing on the back signed "W. N. Tenny Curator of the Northampton Museum" (confirmed by its appearance), I conclude was painted about 1810.



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Miss Lilley who by reason of her age had difficulty in giving oral evidence handed me a number of documents which had been written or typed by her direction and which she asked me to accept as her evidence. She produced (among other documents) photographic post cards: one of the procession at the Memorial Service of H.M. King Edward 7, four of Coronation Day (H.M. King George 5), two of the Lovat Scouts (1914-18 war), one of the George Hotel (showing the north end of the Gatehouse) and two of the Unit Land and the Gatehouse (about the time it was acquired by the School).

Miss Lilley, as I understood her evidence, was in effect contending that from the use of the Unit Land as she described it, I should conclude that the inhabitants of Kimbolton had over it a customary right to indulge in sports and pastimes or had so indulged as of right for not less than 20 years, so that the Unit Land was in 1967 (the date of registration) a town or village green within the definition in section 22 of the 1965 Act.

To establish a customary right by usage, the usage relied on must have been "as of right", see Beckett v Lyons 1967 1 Ch. 449 and the cases cited. There was undisputed evidence that the inhabitants as below stated had indulged in pastimes on the Unit Land; so I am concerned to determine how much of this usage was as of right.

Use of the Unit Land with the permission of the owner or his tenant cannot as a general rule be "as of right". The School are now and have since the 22nd June 1951 been the owners of the Unit Land under the 1951 conveyance. The evidence of ownership before then was:- The recital in the 1951 conveyance shows that the 10th Duke was then and had been since a vesting deed dated 30 December 1933 been estate owner in respect of the fee simple. Miss Lilley said that during the 1939-45 war the Castle was occupied by Queen Alexandras Nurses and that before then Lord Charles Montagu (he died 11 November 1939) lived in the Castle holding it under a 21 year lease having been there since the 1914-18 war. She produced a letter dated 3 May 1954 from the 10th Duke to herself in which he referred to the Castle having been "commandeered by the Government". She said that during the 1887 Jubilee celebrations which she remembered (she was only a child) she assumed that Mr. E. L. Welstead (the Squire) who lived at Kimbolton House, owned the Unit Land. I need not I think make any finding as to the estates and interests subsisting in the Unit Land before 1951, because I am satisfied that I shall do no injustice if I, for the purposes of this dispute, assume that the ownership and tenancy were as Miss Lilley stated.

It does not follow that the use made of the Unit Land by the inhabitants was as of right merely because they asked no one for permission. As to this, the observations made in Beckett v Lyons supra establish that to show that permission had never been asked or refused is very far from showing that the use made was as of right and that the question is whether the act was done by a person who believes himself to be exercising a right or was merely doing something which he was confident the owner would not stop but would tolerate because it did no harm, see pages 468, 469 and 475.

Mr. Lewis (whose evidence I accept) said:- The Unit Land has never since 1950 been used for sports and pastimes without his permission; which he gave 3 or 4 times for a concert by the Village Band (the people sitting on chairs) and 2 or 3 times (not recently) for a meet of the Oakley Hunt. In the early years, after the School moved in children played on the Unit Land, not in any organised way; they were turned off by the staff of the School, particularly by the Bursar who had an office in the Gatehouse.



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Mr. Hellett (whose evidence I accept) said:- He had always heard the Unit Land referred to as "Castle Green", never "the village green". Miss M. Carter, the agent of the Duke of Manchester, who owned the Castle, sometimes allowed children to play there, but when they became noisy while she was working there, she used to send them away. On one occasion she told the organiser of the annual Kimbolton Statute Fair that no side shows or other activities connected with the Fair should take place on the Unit Land. Nobody disputed her right to do these things. Until the School took over the Castle in 1950, the grass on the Unit Land was cut by the staff of the Duke's estate.

Miss Lilley produced a copy of a letter dated 10 November 1953 from the Commons Open Spaces & Footpaths Preservation Society to Mrs. Bradley (since deceased) from which it appeared that the Parish Council had after discussion decided to make no claim to right of village green in respect of the Unit Land, such rights as the public may have had in the past being by license. I understood that Mrs. Bradley, Miss Lilley and others had been indignant when the staff of the School turned children off the Unit Land and thought the Parish Council should take some action. However the letter indicates that responsible persons in Kimbolton at that time thought that the use of the Unit Land for games and a maypole had not been as of right.

Miss Lilley relied on a description written by Mr. Ingram for the School Magazine of the festivities on the Unit Land and elsewhere in Kimbolton on the occasion of the Jubilee of H.M. King George 5. Mr. Ingram mentioned that Lord Charles Montagu took a prominent and much appreciated part in the festivities and I infer from this that the use made of the Unit Land if not by his invitation was certainly with his permission.

Miss Lilley gave no detailed evidence as to the use of the Unit Land for the annual Statute Fair. I am under the impression that it was held in and around the High Street and not much if at all on the Unit Land, and that it has for some years been discontinued. However this may be, I am unable to make any finding about it which would provide any indication that any use of the Unit Land for this purpose was as of right.

I am not persuaded by the evidence of Miss Lilley that the use of the Unit Land for the 1887 Jubilee celebrations, for the 1910 Memorial procession, for the King George 5 Coronation celebrations and during the 1914-18 war by the band of the Lovat Scouts amounted to any more than the sort of use which an owner would tolerate as of course because it did no harm.

In the 1818 picture the Unit Land appears enclosed with a post and chain fence, indicating that it was then private land belonging to the Castle.

Miss Lilley's evidence as to the inferences which could properly be drawn from the things which she had seen and done in the past was by reason of her age confused and I do not accept it.

Upon a consideration of the matters set out above, I conclude that the use made of the Unit Land by the inhabitants of Kimbolton as described in the evidence, was not as of right and that accordingly, it is not within the section 22 definition. For these reasons I refuse to confirm the registration.



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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

8th

day of

August

1973.

a. a. Baden Fuller

Commons Commissioner