



In the matter of land adjoining  
the River Dee north and south  
of Farndon Bridge, Farndon,  
Chester District, Cheshire

DECISION

This reference relates to the question of the ownership of land adjoining The River Dee north and south of Farndon Bridge, Farndon, Chester District being the land comprised in the Land Section of Register Unit No. CL 57 in the Register of Common Land maintained by the Cheshire 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 the Trustees of Miss J Barnston deceased claimed (letter of 7 October 1976 to the County Council from Denton Clark & Co) ownership 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 Chester on 4 June 1980. At the hearing Mr Philip Edmund Trevor Barnston, Mr Michael Anthony Tudor Trevor and Mr John Stanley Douglas (Trustees of the will of Miss J Barnston), on whose application the registration was made, were represented by Mr Maurice Kay of counsel instructed by Gaymon & Co., Solicitors of Chester.

The land ("the Unit Land") in this Register Unit is in two pieces, on opposite sides of the road over Farndon Bridge; they are easily accessible to each other either by crossing the road or going under the Bridge. Both pieces are on their southwest side bounded by the River; they together contain according to the Register, about 0.783 hectares (1.935 acres). One of them ("the South Piece") is about 600 yards long and is reasonably flat; near its northeast side is a steep cliff ("the Cliff") which is a natural barrier to any movement in that direction, although there are 2 or 3 places where it is possible on foot to get to the top of the Cliff without much difficulty.

In support of the ownership claim oral evidence was given by Mr P E T Barnston, in the course of which he produced the documents listed in the Schedule hereto. He said (in effect):- He was born in 1911, and is the tenant for life under the will of Miss J Barnston who was his great aunt. He "inherited" the Estate on her death in 1946 and has lived ever since at Crewe Hill (about a mile southeast of the Unit Land). He had been a member of the Parish Council for about 12 years; they assumed that the Unit Land was "common to everyone". He goes to the Unit Land at least once a year; it is used as a picnic site, and has been so used since before his time. The Water Board have a hut (a small brick building) there, from which they measure the level of the River; they put it there about 7 or 8 years ago and at the same time put a pipe underground between the hut and the River, for which pipe they paid his agent a nominal sum. In about 1978 the County Council developed the Unit Land by making a car park. There was a man who kept boats there and who kept the place



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tidy; he never paid rent; "he said he would keep the place tidy, so I did nothing"; this conversation was about 15 to 20 years ago; he was then elderly, and is since deceased; he must have been there most of his life. He (Mr Barnston) mentioned that he had some manorial documents and therefore knew something of the history of the Manor; but personally he had never done anything as Lord of the Manor of Farndon. Miss J Barnston, never told him she had done anything.

On the day after the hearing, I walked along the Unit Land and up the Cliff. The situation of the Unit Land between the River which flows just a few feet below and the Cliff which seems as it were to support and protect the Village (mostly on the land behind at the top), is remarkable. It is indeed as Mr Barnston implied a very attractive place. When I was there it was a fine evening and it was perhaps at its best. There were two families picnicking and bathing in the River. As an open space it is apparently a valuable amenity for the inhabitants of Farndon who live nearby and probably for many others who knowing of it park their car there for the purpose of picnicking or otherwise enjoying its natural beauty. The Unit Land does not include all the level area between the River and the bottom of the Cliff; along about half its length there are sheds or garages and three dwelling houses with lands apparently held therewith; one house called "The Boat House" now advertising a tea room, appeared to me to be at least 50 years old but not old enough to be marked on the 1727 map; the second house is less substantial and the third a wooden bungalow (Rockside). The wider part of the Unit Land extends up to the bottom of the Cliff and includes two areas on the Cliff side of the path or track which run the length of the South Piece; these areas are distinctly enclosed and on one there are 5 or 6 caravans with much surrounding land and on the other fewer caravans with also much surrounding land; the users of these two areas apparently intend to exclude the public in that one of them has a substantial gate across the entrance and the other a notice "Private".

Mr Kay contended as I understood him that the ownership of the Trustees was proved by the documents produced in that they showed them to be the owners of the Manor of Farndon and that I should infer from such documents and the other evidence that the Unit Land is now and at all relevant times has been waste land appurtenant to that Manor.

When documents are relied on as proof of ownership for an estate in fee simple, the most important are the most recent by which the land claimed has been dealt with for such an estate; in this case these documents are the 1930 assent, the 1952 assent and the 1975 appointment. These documents considered by themselves provide no such proof because none of them contain any words from which it is possible to conclude that either of the Unit Land or the Manor was intended to be thereby dealt with; neither the Unit land or the Manor is particularised in any of them.

However Mr Kay claimed (rightly I think) that if the Unit Land has been owned by Sir Harry Barnston Baronet at the date of his death (23 February 1929) it would under the 1930 assent, the 1952 assent and the 1975 appointment have passed to the Trustees by the operation of the general words expressly or impliedly contained in these documents. But the 1930 assent considered by itself casts some doubt on such 1929 ownership of either the Unit Land or the Manor because it contains a detailed description of the extensive Estate thereby dealt with and includes a plan, and it would be extraordinary if the Unit Land which although perhaps not profitable must then be of some importance, was not mentioned expressly merely because Miss J Barnston or the persons in this matter acting for her were careless.



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It may be that from the copy of the 1888 conveyance and the 1902 instructions to counsel I could infer that in 1902 Sir Harry Barnston had under the 1892 conveyance become the owner of the Manor but the non production of the original of the 1888 conveyance and the non production of either the original or any copy of the 1892 conveyance casts doubts on the inference in that an inability without good reason (none was suggested) to produce the title deeds to claimed land is some evidence that the land has been disposed of in a manner inconsistent with the claim.

The 1735 map describes the Unit Land and (as I read the map) also the nearby land up to the bottom of the Cliff as "Shuteing Bulls Comm.: 3.0.03" but I cannot (Mr Kay did not suggest that I could) draw any relevant inference from this map.

The 1888 conveyance includes general words "And also all lands tenements rents reversions services woods waters commons and other hereditaments with the appurtenances to the said Manor or Lordship belonging used or appertaining Together with all manner of Courts Leet View of Frank Pledge ..."; these words in my opinion are no evidence that there was at the time of the conveyance any common or other land within them, see *Baring v Abingdon* 1892 2 Ch. 374 at page 388; indeed the consideration expressed in the 1888 conveyance and the 1902 instructions to counsel suggests that many of these general words had no content at all.

Mr Kay contended that the 1902 letter was enough, because Mr Barnston had said that he could think of no other land in Farndon other than the Unit Land which in 1902 could have been described as "the Common". In my opinion to read the letter as evidence by the writer, who was concerned only with a shed that the Unit Land (nearly 2 acres) was then part of the waste land of the Manor goes beyond what could have been his intention; the letter is headed "Croydon" and there is nothing to show the writer had any knowledge of the locality; it is unlikely that he being concerned only with a shed and the payment of sixpence would give the letter much consideration. The letter does not come within the class of documents by law treated as acts of possession and therefore evidence of ownership because by it no conveyance or disposition of the Unit Land is made. Although it refers to land on which a shed was erected, it is at least doubtful whether Mr Barnston who was born some time after the letter was written can give legally admissible evidence as to what the words "the Common" meant in 1902.

Mr Kay also contended as I understood him that the Unit Land must be treated as being in 1968 (the date of registration) waste land of the Manor of Farndon, therefore as having been such in 1888, because otherwise the registration could not properly have become final. In my opinion it would be reading too much into section 10 of the 1965 Act in these section 8 proceedings, to treat the finality of the registration as evidence that the land belongs to whoever is the Lord of the Manor which bears the same name as the parish in which the land is situated; many registrations have been made and have never been objected to because the land was within the popular meaning of the word "common".

I now consider whether the Trustees have been proved to be in possession of the Unit Land; because if they are in possession and if (as Mr Barnston said in his evidence) he believes they own under the 1930 assent, 1952 assent and the 1975 appointment, such documents are, although there is no particular mention in them of the Unit Land, some evidence that they are the owners in fee simple.



Of Miss J Barnston having ever done anything on or in relation to the Unit Land, there was no evidence at all. Apart from a pipe put under the Unit Land by the Water Board the only things done on the Unit Land by anyone which were mentioned at the hearing, were the recent activities of the County Council. According to their letter of 17 March 1978 they then had under consideration its development "as a managed landscape picnic area with car parking facilities for 24 cars" and hoped "that this development will improve this recreational facility and halt the present deterioration of the area"; according to their letter of 13 March 1979 they were then intending to start work on "the Farndon Riverside in about 2/3 months time". I infer that the well made car park which is now visible was then constructed at the expense of the County Council. The correspondence shows (i) that the County Council considered an agreement reached on 11 April 1978 held on the site between representatives of the Farndon Parish Council and certain County authorities that the car parking facilities should be increased by 17 making a total of 41 car park spaces; (ii) that the County Council before proceeding asked if the Trustees had any "objections" or "comments"; and (iii) that Denton Clark & Co on behalf of the Trustees said (letter of 5 May 1978) that they did not wish to object to the revised proposal but their basic objection is that "you are providing too many car parking spaces for the picnic area available"; in the result the larger car park for 41 cars has not been made. In my opinion the acts of the County Council cannot be regarded as supporting the ownership claim of the Trustees; having received a letter dated 7 October 1976 from Denton Clark & Co in which ownership on their behalf was claimed based on they being "the Lords of the Manor", the County Council were acting with reasonable prudence in trying to discover whether the Trustees had any objection or comment and giving effect as far as they could to such objections as they might make; the substance of the matter was the County Council was spending public money which would be subject to a considerable risk of being wasted if Farndon Riverside was in any ordinary sense in the fee simple ownership of the Trustees. Even allowing for the fact that the Unit Land as described at the hearing could not be possessed in any ordinary sense of this word, in my view, a nominal payment received from the Water Board and the conversation between Mr Barnston and the man who kept boats are not enough to attribute possession to him or his Trustees.

My conclusion as to possession was confirmed by what I saw on my inspection. The two caravan areas above described which together form a significant and important part of the Unit Land appear to be distinct pieces of land in the possession of whoever was responsible for putting the caravans there. The absence at the hearing of any explanation or mention of these two areas raises doubt as to the possession of the Trustees because any prudent owner would take some steps to protect the land from such activities either by stopping them or by regularising them in some way. Further although I understood that the piece of the Unit Land north of the road adjoins part of the Estate owned by the Trustees it would be unrealistic to regard the Unit Land including the South Piece as apparently part of the Estate.

By section 8 of the 1965 Act I am required to say whether I am "satisfied" as to ownership. Having regard to the considerations above mentioned and particularly the peculiarities of the documents produced and the above mentioned doubts I found when I inspected the land that the evidence which I had received at the hearing failed to satisfy me as to the Trustees' ownership. I record that Mr Barnston left me with the impression that the Trustees put forward the claim because they believed it to be a good one and that it would be in the public interest that they should be the owners. Mr Barnston having explained the reasons



for his belief I can without reflecting at all on his credibility differ from him on the legal grounds above set out. As to the public interest, it may be that the powers conferred on the Parish Council and other local authorities under section 9 of the 1965 Act will be enough to enable this Riverside land to be preserved as Mr Barnston wished. However this may be the absence of any evidence that any person other than the Trustees could be the owners, I am not satisfied that any person is the owner of the Unit Land, and it will therefore remain subject to protection under section 9 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.

#### SCHEDULE

(Documents produced by Mr Barnston)

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|-----------------|--|
| 4 June 1980     | Statutory declaration made by himself just before the hearing.<br><br>Plan of Unit Land based on OS map 1/2500.  |
| 1735            | Map of Crew Domain and also other tenements in ... Farndon ... for P Egerton Esq by Wm Williams.   |
| 1 November 1888 | Copy conveyance by the Ecclesiastical Commissioners for England to Mrs Mary Emma Barnston of the Manor or Lordship of Farndon.   |
| 24 April 1902   | Case for the opinion of counsel with his opinion dated 30 April 1902 endorsed thereon.   |
| 5 June 1902     | Letter from Chas Davies to Harry Barnston "Lord of the Manor of Farndon" agreeing to pay an annual acknowledgement of sixpence for allowing "the shed recently erected by me on the Common".                           |
| 11 March 1930   | Vesting assent by Miss Joanna Barnston Mr E M Parker-Jervis, and Mr A Matheson as executor of Sir Harry Barnston (he died 22 February 1929) in favour of Miss J Barnston as tenant for life under her will.            |
| 1 July 1952     | Assent by Messrs C W G Hastings Wheeler and F R Bulkeley as executors of Miss J Barnston (she died 2 June 1946) in favour of Messrs F R Bulkeley, P E T Barnston, and R E France-Mayhurst upon the trusts of her will. |



27 March 1975

Appointment by Mr P E T Barnston of Mr M A T Trevor and Mr J S Douglas as Trustees in the place of Mr F R Bulkeley and Mr R E France-Hayhurst who died 27 October 1964 and 7 February 1975.

31 January 1968 to  
23 April 1980

Letters to and from Denton Clark & Co, Chartered Surveyors of Chester with reference to the Unit Land.

Dated the 14<sup>th</sup> — day of October — 1980

*A. A. Baden Fuller*

Commons Commissioner