



In the Matter of Lanivet Village Green, Lanivet

DECISION

This dispute relates to the registration at Entries No. 1, 2 and 3 in the Ownership section of Register Unit No. VG 617 in the Register of Town or Village Greens maintained by the Cornwall County Council which conflict is between Entries Nos. 1 and 2 and is between Entries Nos. 2 and 3.

I held a hearing for the purpose of inquiring into the dispute at Bodmin on 28 October 1980. The hearing was attended by Mr Gill of the Registration Authority, by Mr J G Romany of Messrs Pethybridges, Solicitors of Bodmin for the applicants for registration at Entries Nos. 1 and 3 and by Mr B E Walton of Counsel instructed by Messrs Stephens and Scown, Solicitors of St Austell for Lanivet Parish Council the applicants for registration at Entry No. 2.

This dispute was heard by another Commissioner on 10 July 1979 when the Parish Council did not appear and was not represented and a decision given on 22 August 1979. After the Parish Council had claimed that notice of that hearing did not reach it the Commissioner decided to set aside his decision and to reopen the hearing at a place and date to be notified in due course.

The register unit consists of two parcels of land in the parish of Lanivet with an area of about 2.47 acres. One parcel is a small triangle of land lying to the north of the other and as to this there is no dispute. The other parcel comprising over 95% of the total area is roughly rectangular in shape with a short handle projecting from the south-eastern corner. The area in dispute is a small square in the extreme north western corner to which I shall refer as 'the disputed area'. The register plan shows six structures on the disputed area two of them being much larger than the remainder, the latter being all of much the same size.

The larger parcel is situated at a cross roads in the centre of the village of Lanivet where the North South A30 road which runs along the western edge of the unit, crosses a road which runs from West to East along the Northern edge. The eastern edge of the unit runs parallel to the wall of the school playground and at the south eastern corner there is a footpath leading to a highway. The Southern boundary follows what appears to be the line of a stream or ditch which runs West South West till it meets the A30 road. At the beginning of the century there was a disused saw pit in the unit, but this was subsequently culverted. In about 1930 the greater part of the unit was levelled but this did not include the disputed area.

I was shown an aerial photograph showing most of the unit including the disputed area. This was taken probably in the 1960s and shows the area which has been levelled - the southern part. By contrast the northern part has an uneven surface and is largely over grown with trees and shrubs and a stream runs through it close to the road. There was also evidence that the land rises as one goes South from the East West road towards the levelled area.

In about 1900 there were in the North West corner of the unit, two sheds and to the east of them a larger stone building with a timber top which was a Smithy. To the South of the two sheds there was a wooden hut with a flue pipe used by the postman.



The present garage was built on the site of the two huts and a large white-walled showroom has taken the place of the Smithy. In addition three new structures have been erected, a shop immediately to the north of the showroom, a small store room at the rear of the showroom and another small showroom between the garage and the shop. The photograph also shows three petrol pumps on the west side of the garage and adjoining the highway. Immediately to the South of the garage is a public shelter with lavatories. Along the north side of the garage there has been for many years a seat and the site is known as Fool's Corner. No one knows who put the seat there.

In February 1965 William Ray Tonkin entered into an agreement the Minister of Transport for the removal and reerection of the petrol pumps as part of a road-widening scheme. He surrendered to the Minister a strip of land adjoining the eastern side of the A30 road and received from the Minister a triangle of land adjoining the southern boundary of his property. In the aerial photograph the petrol pumps are still in their old position.

Mr Walton on behalf of the Parish Council submitted that the whole of the areas claimed in the plans attached to the application's registered at Entry Nos. 1 and 3 except the actual buildings formed part of the village green.

The following persons gave evidence on behalf of the Parish Council. Mr Hector Aubrey Grose aged 64 of Glablands, Rectory Road, Lanivet, a Weighbridge Clerk at a nearby quarry had lived in Lanivet all his life. He had resigned from the Parish Council in 1976 after 20 years service. He identified the village green from an old picture postcard (marked PC4 on the back). A stone building with a timber top was the blacksmith's shop and there were two sheds on what is now the site of the garage. He recognised the postman's hut and another shed which was a garage for a single car or trap.

The village green was used as a playground for children. The old saw pit in the middle was covered. The disused area had been fenced in the 1930's on the western and northern sides. The fence remained up for 18 months and even when it was there he could walk all round the buildings. There was a gate in the wall on the southern side of the school which gave access to the village green. As a child he and other children had always played in the disputed area and crossed over it at will.

In cross-examination he said that his memory went back to the early 1920's when the surface of the village green was very rough. In 1930 an attempt was made to level the surface. The fence had been erected round the disputed area. The land behind the garage is higher than the site of the garage. In 1950 when work was done to improve the remainder of the village green no work was done on the disputed area. He admitted that in October 1968 the Clerk to the Parish Council had written to Mr and Mrs Arthur, offering an alternative site in exchange for their showroom and store with a view to clearing the village green of all buildings. The letter stated that, if this offer were not accepted, the Council would consider compulsory purchase. Work connected with the work of the Smithy was done on the footpath. The car park and the public convenience had been built by the District Council on land acquired from the Parish Council.



Mr William Thomas Henry Roberts <sup>who</sup> had lived for the whole of his life at 47, Truro Road, Lanivet directly opposite the disputed area, is a local government officer, and currently Chairman of the Parish Council and had been a member since 1956. He remembered cricket and football being played on the village green and he had spent much of his spare time on the village green when he was a boy. He had never been excluded from the village green nor to his knowledge had anybody else. He was free to go to and from the green whenever he wished. The concrete path covered the site of an earlier unmetalled path.

In cross-examination he said that the concrete posts which Mr W J Tonkin put up were not recognised as a boundary by the Parish Council. The timbers of the seat at Fool's Corner have been reviewed by the Parish Council. The occupiers of the garage had seen to the resurfacing of the path. He denied that the area adjacent to Fool's Corner and the Church Road side of the showroom had been paved and surfaced by the District Council under covenant with W R Tonkin until he was shown a Deed of Exchange dated 8 February 1965 between the Minister of Transport and W R Tonkin which contained such an obligation. He agreed that in 1961 the Parish Council had agreed to provide land for the road improvement.

Mrs Rita May aged 57 of 1, Belvedere, Exeter also owns a cottage No. 2, Riverside, Lanivet immediately opposite Fool's Corner. She had been born in Lanivet and had lived there until she was 25. She now spent 10-13 weeks in Lanivet each year. She produced a sketch map of the area which she had drawn herself and which I found clear and helpful. The path between the garage and the shop and showroom was used by children going to school. The other path between the shop and the shrubbery on the Church Road frontage was used by children going to children's corner or the games area. There are three bridges across the stream running parallel to Church Road but they could only be crossed in single file. Part of the fun of using the first path was having to climb up the bank to get to the playing field. Children at the school came to the village green to play although there was a playground in the school.

Mr George Edgar Lane, aged 72, of 7, Truro Road, Lanivet, came to Lanivet in 1912 and had lived there ever since. The area of the village green which was used for football practice was just outside the school wall. He did not remember the fencing being erected or the placing of the boundary stones. In addition I read Statutory Declarations made by Mrs Florence Hilda Matthews, Mrs Lucy May Hancock and Mrs Doris Ellen Trist, although they were not available for cross-examination.

For the applicants at Entry Nos. 1 and 3:- Mrs Drusilla Mary Tonkin of St Austell, the applicant at Entry No. 3 claimed to be the owner of a gagage and two showrooms. She was the widow of the late Mr W R Tonkin whom she had met first in 1939, since when she had been familiar with the village green and the surrounding area. In support of her claim she relied on the following documents.

- (i) Statutory Declaration of Walter Verram dated 2 March 1907
- (ii) An Indenture made 14 August 1915 between Samuel Honey Verram (1) and James Lobb (2)
- (iii) A Conveyance made 6 April 1944 between James Lobb (1) and Charles Vanderwolf (2)
- (iv) A Statutory Declaration of John Edwin Tonkin dated 3 July 1964
- (v) A Statutory Declaration of William Roay Tonkin dated 3 July 1964
- (vi) A Statutory Declaration of Leslie Crocker dated 3 July 1964.



The granite marker stones were put along what was agreed between Mr Downing for the Parish Council and Mr W J Tonkin (her father-in-law) as the boundary between their respective properties. There was nothing else to mark the boundary. Mr William Harvey aged 92 of 9 Town End, Bodmin, had known Lanivet for over 70 years. When he was 15-17 years old he had to go to Lanivet to collect sand. He used to see the buildings at the corner of the village green when he went through the village. Verlan and James Lobb used to shoe his horses. There were 2 or 3 sheds behind the Smithy. The Smith mended implements as well as shoeing horses. The village green was in front of the Smithy.

There were 2 or 3 ways of getting to the village green. He regarded the part in front of the blacksmith's shop as part of the village green.

Mr Reginald Charles Arthur of Fairhaven, Lanivet, the husband of Mrs Lilian Constance Arthur a daughter of the late W J Tonkin and one of the owners of the shop referred to in the application registered at Entry No. 1 also gave evidence.

He referred to Statutory Declarations by the following:

- (a) S. H Honey dated 18 July 1968
- (b) Leslie Crocker dated 3 July 1964
- (c) John Edwin Tonkin dated 3 July 1964
- (d) William Ray Tonkin dated 3 July 1964

and an Assent in Favour of Lilian C Arthur and Marian E Turner made on 10 October 1961 by the Executors of the late W J Tonkin.

Mr Arthur remembered the fencing being erected and said that it remained up for 18 months. When part of the village green was levelled ~~as~~ work was done on the disputed area, Mr W J Tonkin himself put in the marker stones along the boundary of the property. The witness also referred to the plan on a Tree Preservation Order made by the County Council on 7 February 1969 which shows a boundary indicated by a broken line separating the land formerly owned by the late W J Tonkin from the rest of the village green. The fence separated the shops from the village green.

Mr Walton submitted that the whole area was and remained a village green except when there were buildings. Putting buildings on part of the village green did not amount to adverse possession of the land between the buildings even if the surface was metalled unless the metalling was adverse to the purpose of a village green.

The case against the Parish Council depended on three points.

1. Fencing. The evidence was not satisfactory. It appeared that at some time a person fenced in what he thought was the village green. The fencing was taken down fairly soon after it had been erected.
2. Granite Posts. He accepted that they were put down along the ~~line~~ line of the boundary of the land then claimed by W J Tonkin, but that did not amount to adverse possession.
3. Deeds. The 1907 Statutory Declaration contains no reference to the plan which is not attached to it. Even if the plan had been attached to the original Declaration when it was made, it is only an indication of what he thought he had. There is no sufficient adverse possession to found a title to the land between the building's. No part of the village green can be lost unless a title by adverse possession is established.



Mr Romany submitted that on the evidence his clients had succeeded in establishing a possessory title to the full area which each of them claimed. There was evidence that his clients had maintained the land between the buildings. Whatever work was done to the rest of the village green, nothing was done to the area claimed by Mr W J Tonkin unless it was done by him. The Parish Council clearly accepted that Mrs Arthur was the owner of the land she claimed when the Secretary wrote the letter in 1968 seeking to acquire the land. The disputed area had always been treated as being separate from the rest of the village green; see for example the map attached to the Tree Preservation Order.

The Deed of Exchange showed that the Minister was satisfied that Mr W R Tonkin had a good title to the land which he conveyed by way of exchange.

Although Mr Walton's ~~clients~~ start with the advantage that the designation of the Register Unit as a Village Green has become final and cannot be challenged, he does in my view put his case too high by assuming that the fact that the designation has become final has any bearing on the question of ownership. This is a separate question and in trying to find a solution to the question of who is the owner of any part of a village green, the fact that its designation for the purpose of the Commons Registration Act 1965 is of no consequence.

In my opinion in acquiring a possessory title to the buildings, which Mr Walton does not challenge, Mr Romany's clients acquired a similar title to the adjacent land which was either used for those businesses for example because work was carried out in the surrounding area eg. the Smithy or because the lane provided access for customers. Although the fencing did not remain up for very long the concrete markers were left undisturbed. No one other than Mr W J Tonkin ever did any work on the disputed area.

For these reasons advanced by Mr Romany and also for the reasons set out in the decision of Mr Commissioner Morris Smith, I am satisfied that Mrs Arthur and Mrs Turner succeed in establishing their claim to ownership of the area referred to in their application and I therefore confirm the registration at Entry No. 1.

I am also satisfied that Mr W J Tonkin acquired a possessory title in his lifetime to the whole of the area claimed in the application provisionally registered at Entry No. 3 and I confirm the Registration. The original applicant Mr W R Tonkin died in 1971 and his interest in this claim is now vested in Drusilla Mary Tonkin and Mrs Margaret Rose Jane by an Assent made on 2 June 1975.

With regard to the remainder of the Registration Unit as I have already indicated designation as a Village Green even though final does not affect the ~~jurisdiction~~ of ownership. There is some evidence eg. the levelling of part of the area in 1930 that the Parish Council has looked after the remainder of the unit and in the absence of any other claim to ownership I feel able to find that the Parish Council has established ownership of the remainder of the unit. I shall therefore confirm the Registration at Entry No. 2 with the modification that the disputed area is excluded.

On the question of costs Mr Walton conceded that if his client's claim failed, the other applicants were entitled to receive <sup>their</sup> costs of the previous hearing in 1979 at which the Parish Council was not represented. I therefore order the



Parish Council to pay the costs of the other parties of that earlier hearing to be taxed on County Court Scale 4 (if not agreed). I make no order as to any other costs.

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

17<sup>th</sup>

day of

March

1981

Commons Commissioner