



COMMONS REGISTRATION ACT 1965

Reference No.9/D/17

In the Matter of The Village Green,
Woodbury, Devon (No.1)

DECISION

This dispute relates to the registration at Entry No.1 in the Ownership Section of Register Unit No.VG 40 in the Register of Town or Village Greens maintained by the former Devon County Council and is occasioned by the conflicting registration at Entry No.2 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 22nd October 1974. The hearing was attended by Mr Harold Burnett, of counsel on behalf of the Woodbury Parish Council, the applicant for the registration at Entry No.1, and by Mr Graham Neville, of counsel, on behalf of Mr A.W. Miles, the applicant for the registration at Entry No.2.

The land comprised in the Register Unit is divided into two unequal portions by a footpath leading to the church, the smaller being to the north of the path. The land the subject of the registration at Entry No.1 consists of the whole of the land comprised in the Register Unit, while that the subject of the registration at Entry No.2 consists of a rectangular area at the eastern end of the portion to the north of the path. This area is bounded on its northern side by a building owned by Mr Miles and used by him for the purposes of a paint shop in connection with his garage business.

Neither the Parish Council nor Mr Miles has any documentary title to any part of the land comprised in the Register Unit. Each claims to have a possessory title - the Parish Council to the whole and Mr Miles to the portion the subject of the registration at Entry No.2 (hereafter called "the disputed land").

Mr Miles purchased his property and the goodwill of the business on 17th March 1960 from Mr R. Berry and Mrs M.L. Berry. Members of the Berry family had occupied the premises first as dealers in and repairers of agricultural implements and machinery and later as garage proprietors, from some time during the nineteenth century. The Berrys had made a habit of leaving implements and vehicles on the land to the north of the path (including the disputed land) which was bounded on the north by their property. Mr K.R. Somerfield, now aged 53, remembers that this was so when he was a child, but it appears from the minutes of the Parish Council, to be referred to later, that the Berrys and their landlord had some concern with the land between the path and their premises many years before Mr Somerfield was born.

The disputed land is bounded on the east by a road, access from which is obtained through a gateway adjoining Mr Miles's paint shop. Access to the



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rear of Mr Miles's premises and to a house formerly belonging to the Berrys, which was excluded from the sale to him, is obtained through this gateway and across the disputed land. This land has a surface of hardcore, which was laid to provide hard standing for the fair formerly held on the Green.

The first relevant entry in the Parish Council minute books is the following item in the agenda for the meeting held on 13th February 1895:-

"To further consider the continuing of the iron fence of the Village
"Green up to Mr Berry's gateway"

At the meeting it was resolved:-

"That the Fencing of Village Green be extended with gates to
"Mr E. Berry's buildings".

The matter came before the Council again at its meeting on 19th March 1895, when it was resolved that the following be entered in the minute book:-

"That Mr Chamier on behalf of The Hon. Mark Rolle agrees to the Fence &
"Gates as proposed by the Council, it being understood that their
"erection shall not be taken as an admission on the part of the Estate
"of the right of the Council to enclose the portion of the Green between
"the Church path and Mr Berry's premises or in derogation of the rights,
"whatever they may at present be, of the Public or of The Hon. Mark Rolle".

Mr Rolle was at that time Mr Berry's landlord, and his successors in title continued to own the premises until they were sold to Mr Berry and Mrs Berry in 1958. The fence referred to was to the south of the gateway on the eastern boundary of the disputed land.

The next relevant entry in the minute books is in the minutes of the meeting held on 8th October 1925, where it is recorded that:-

"The Clerk was instructed to write Mr Berry respecting The implements
"and machinery placed by him on The open space adjoining The Village
"Green in view of the danger to children and others as The Council
"repudiate all liability should any claim arise".

Shortly after Mr Miles purchased his property he began to have the centre of the premises rebuilt and being in consequence short of space, he began to place cars on the Green to the south of the path as well as on the land to the north. This gave rise to complaints to the Parish Council, which agreed at its meeting on 29th March 1960 "to write and ask Mr Miles to kindly keep within his limits when parking vehicles and machines". The Clerk to the Parish Council accordingly wrote to Mr Miles two days later:-

"I have been requested by my Council to ask if you will kindly be good
"enough to keep all your vehicles, which are parked on the edge of the
"Green, to within the limits of your boundary".



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Mr Miles explained in his reply about the rebuilding and stated that as soon as the new workshop was completed he anticipated "no difficulty in remaining within the limits of my boundary".

In the early part of 1961 cars were still being parked on the south side of the path, and on 9th February 1961 the Clerk to the Council wrote to Mr Miles reminding him of the correspondence in 1960 and concluding: "Perhaps you will very kindly see that none of your vehicles are parked in the centre of the Green".

At the meeting of the Parish Council held on 25th July 1961 it was decided to provide parking space for 15 cars along the southern edge of the path with a removable fence should more space be required. Effect was given to this by erecting concrete posts linked by a chain on the south side of the area so designated as a parking space.

Two years later there were complaints about Mr Miles making use of the parking space, and on 26th June the Clerk to the Council wrote to Mr Miles as follows:-

"I have been requested by my Council to write and request you to remove all your vehicles from the public car park in the Green.

"Your cars and vehicles should be kept within your boundary".

Mr Miles seems not to have been very co-operative, for on 18th February 1964 the Chairman of the Parish Council was asked to see him. On 17th March 1964 the Chairman reported that Mr Miles had agreed to reduce his line of cars to one row as soon as possible, whereupon it was agreed to leave the matter over for the time being.

I am satisfied on this evidence, which was not contradicted by the oral evidence, that up to this stage the Parish Council had not questioned Mr Miles's right to use the land to the north of the path in the manner in which he and the Berrys before him had used it. The trouble had been caused entirely by the parking of cars to the south of the path. As Mr Stokes, the Chairman of the Parish Council, put it in his evidence, there was no problem until Mr Miles came. However, in October 1964 the Council became aware by enquiry from the Rolle Estate Office that the area sold to the Berrys in 1958 had not included any of the land between the buildings and the path and that there was no provision made in the conveyance permitting the purchasers to make use of the Village Green for parking cars. Thereafter the Council shifted its ground and contended that Mr Miles had no right to use the land between the path and his buildings.

On the evidence I have come to the conclusion that Mr Miles and the Berrys before him have used the disputed land for the purposes of their business for many years. There is no easement of parking vehicles and machinery known to the law, so that the only possible legal explanation of what has been done is that Mr Miles and the Berrys have been in possession of the land. That possession has not been unencumbered, for not only is the registration of the



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land as a town-or village green conclusive evidence that the inhabitants of the locality have rights over it by virtue of section 10 of the Commons Registration Act 1965, but in fact, as Mr Miles stated in evidence, part of the land has been cleared at fair-time. There also seems to be some not very clearly defined right of way from the gateway across the land to the part of the Green on the south side of the path. These rights, however, do not have the effect of preventing the nature of the enjoyment from being what the law regards as possession. That possession lasted long enough for the Berrys to have acquired a possessory title. That such a title was acquired by the Berrys would account for the fact that the disputed land was not included in the conveyance to Mr R. Berry and Mrs N.L. Berry in 1958. The disputed land was not expressly mentioned in the conveyance to Mr Miles in 1960. While it could be an interesting legal problem whether the latter conveyance had the effect of transferring the Berrys's possessory title to Mr Miles, I do not feel called upon to determine this point, since if he did not acquire the Berrys's title by the conveyance, Mr Miles has acquired a possessory title of his own by being in undisputed possession from 1960. I am therefore satisfied that the Parish Council is not the owner of the disputed land. So far as the rest of the land comprised in the Register Unit is concerned, there is some rather slender evidence that the Parish Council may have acquired a possessory title to the land to the south of the path, but since there is no contest about this land, I am prepared to hold that the Parish Council is the owner of it. However, the position with regard to the land to the north of the path and to the west of the disputed land is somewhat different. There was no evidence that the Parish Council had ever exercised control over this land and there was some evidence that it had been used by the Berrys in the same way as the disputed land. Mr Miles said that he had intended to apply to be registered as the owner of part of this land as well as of the disputed land, but that through an error on the part of the solicitors then acting for him (not the solicitors instructing Mr Neville) his application had been limited to the disputed land. As I see it, it would not be open to me to extend the registration at Entry No.2 to include any part of the land to the west of the disputed land, even if I were satisfied that Mr Miles had become the owner of it. If I were to express any view on that matter, it would be but an obiter dictum. I therefore do no more than say that I am not satisfied that the Parish Council is the owner of any of the land to the north of the path.

For these reasons I confirm the registration at Entry No.1 with the following modification, namely the exclusion of the land to the north of the path.

Since I shall confirm the conflicting registration without modification, the result will be that the land to the north of the path and to the west of the disputed land will have no person registered as its owner and will in due course have to be the subject of an unclaimed land reference under section 8 of the Act of 1965. I regret the necessity for this duplication of proceedings, but it seems to be technically unavoidable.

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 November 1974


Chief Commons Commissioner