

IN THE ROYAL COURT OF JUSTICE  
(HERITAGE DIVISION)

79/5

Between	Giselle Emily La Neveu, widow of Emile Blatter	PLAINTIFF
And	Richard Greenwell	DEFENDANT

JUDGMENT

DEPUTY BAILIFF: The genesis of this case is that the land on which both properties, that is to say No. 6 Devon Avenue and No. 7 Devon Avenue, were constructed was owned at the time of their construction by the St. Clement's Housing Association Limited. Now we think the true position to be this. First of all the Association sold No. 6 Devon Avenue to a Mr. Arthur Edmund Noel, the predecessor in title of the defendant and when the predecessor in title, Mr. Noel, saw the property there were no divisions between it and No. 7 and accordingly he planted a hedge. We think that is clear from the evidence of Miss Noel, but he planted it, we think, inside his own boundary and sufficiently inside it so that it wouldn't obtrude on to his neighbour's and then we find that in October No. 7 Devon Avenue was sold to Dr. and Mrs. Elworthy, the predecessors in title of the plaintiff. Now in their title they had given the following rights: "avec la mitoyenneté des pignon, mur, banc d'arbustes ou clôture de l'Est et de l'Ouest et la propriété de la clôture du Nord sans relief". Well now we think that is a piece of insufficient and ambiguous drafting but we think what probably happened is that the doctor and his wife looked at the property and saw there was a hedge and assumed it was that hedge of which they were given the party-ownership and from then onwards we are satisfied that both parties, that is that both predecessors in title rather, the Noels and then the other people, Mr. Connelly and then indeed Miss Ena Lihou and Miss Muriel Edith Lihou and the others, accepted that that hedge was in fact a party hedge. Now we are upheld by that view also because when we examined the property this morning we saw that at the entrance to No. 7 were two posts. If one stands in the garden of No. 7 and looks towards the north there was a post to the right of the entrance and a post to the left. That to the left of the entrance clearly was along the middle of where the hedge had been because it is obscured in one of the photographs which was produced to us and we therefore think that the placing of that entrance on the left in a line with the hedge supports the view that all the respective owners of each property thought, albeit perhaps mistakenly that the hedge was a

party hedge. Now when the defendant bought his property in March 1972 we think the position to be is that, as he told us, that he accepted the figures given to him by his solicitor. We do not know whether the property was actually measured at that time and we express no views as to whether it ought to have been but clearly in Mr. Greenwell's title unlike that of the title of 7 Devon Avenue there are clear measurements so that it would have been possible to ascertain precisely where the boundaries lie as indeed it was later established when Mr. Greenwell decided to extend his property, whereupon he obtained plans drawn by Mr. Davis of Breakwell & Davis and it became clear through drawings those plans where the contract boundaries were and it was not till then, we think, that Mr. Greenwell discovered that in fact the hedge had been planted inside his contract boundaries. However by that time it was too late because the Court is satisfied that Mrs. Blattner and her predecessors in title had been in possession of some land which had formerly belonged to or which was described as belonging to in the title of No. 6 Devon Avenue for the necessary forty years so as to set up a title of "possession quadragénaire". Now we are not satisfied however that they were in possession of all the land they are claiming and we say this for this reason. The parties have told us that ~~they have agreed, that~~ they are agreed rather that the hedge was planted some two feet three inches from the centre of the contract boundary. Now Mrs. Blattner told us that the hedge was three foot wide or thirty-six inches and we are not satisfied that the mere clipping of the hedge if indeed it was done by persons on her side necessarily meant that she and her predecessors in title were in possession of what I will call her half of the hedge and therefore if one deducts, if one assumes rather that some eighteen inches of the hedge would be taken as the party hedge and that would leave eighteen inches from two foot three leaving "possession quadragénaire" to be exercised over some nine inches. We think it right to find that in fact Mrs. Blattner and her predecessors in title exercised possession over some nine inches of land for the requisite period of time. Now we did debate whether it would be right to order the porch to be pulled down because it is clear from the line which we saw extended that even with the nine inches not applying the (whole of the width claimed the porch or the line to be) found belonging to Mrs. Blattner goes through at least part of the porch and we do appreciate that an order to pull it down would cause hardship to the defendant. However we observe that the defendant would appear to have gone on building the porch even after he had been warned as a result of Mr. Gould writing to his solicitor

that he ought not to do so and therefore to some extent he's the author of his own misfortunes. If we had been free to say that the porch should remain and reward damages in lieu we might have done so but we think we are not free to do so. We think in the light of the decision, albeit under appeal, the decision of the Royal Court in *Félard Investments Limited and The Trustees of the Church of Our Lady Queen of the Universe* reported in *Jersey Judgments*, 1979, at page 19, we have no option but to make the following order. First, that part of the porch that encroaches upon what we have found now to be Mrs. Blattner's land, that is to say up to nine inches West of the north-south boundary line will be demolished. Secondly, boundary stones will be placed along the new alignment at each end. Thirdly, a party wall will be built to the specifications to be agreed between the parties but we think it right that Mrs. Blattner should pay only half of Mr. Whyte's estimate for the erection, which had been agreed for the erection of the original replacement boundary wall in 1976 and Mr. Greenwell should pay the rest. Fourthly, there will be the necessary rectification recorded in the Public Registry of our judgment so that the titles between 6 and 7 Devon Avenue will now be rectified and recorded properly and fifthly, Mrs. Blattner will have her costs.