

19.

COMMONWEALTH OF MASSACHUSETTS

DUKES COUNTY, SS.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
SUPPLEMENTAL REGISTRATION
NO. 129925

7

Oct 28 3 51 PM '88
LAND COURT

FILED

_____)
HUGH C. TAYLOR and)
JEANNE S. TAYLOR,)
Plaintiffs)
)
vs.)
)
DAVID E. VANDERHOOP and)
EVELYN VANDERHOOP,)
Defendants)
_____)

AFFIDAVIT OF PHILIP J. NORTON, JR.

1. I am an attorney at law licensed to practice in the Commonwealth of Massachusetts and I maintain my law office at 26 Church Street in Edgartown.

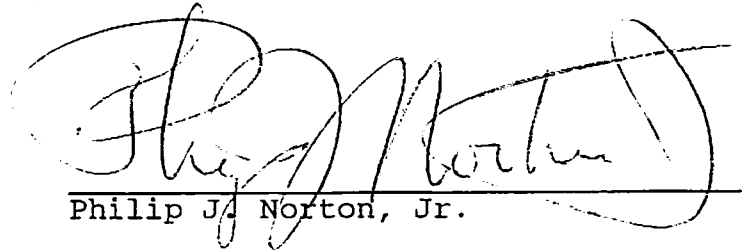
2. My legal specialty is, and for over 20 years has been, real estate law. I am also a land court examiner.

3. As a real estate lawyer on the island of Martha's Vineyard I am personally familiar with the problems of real estate in Gay Head. Specifically, at the time of the set off of lands in Gay Head no provision was made for access to many of the lots that were created. To deal with this problem, particularly in a community where many of the landowners over the years have been unsophisticated, I have always understood that land court registration decrees use standard phrases in the registration preserving to interested parties the right to prove an easement by necessity over registered land.

4. Attached to this affidavit are excerpts from land

registration case no. 39904 and an excerpt of the examiner's report in registration case no. 17763 which make reference to "the policy of the late Charles Thornton Davis.., in these Gay Head cases, to enter decrees subject to and with the benefit of rights of way legally existing."

Signed under pains and penalties of perjury this 27th day of October, 1988.



Philip J. Norton, Jr.

LAND COURT

MAR 27 1980

COMMONWEALTH OF MASSACHUSETTS

FILED

LAND COURT

IN THE MATTER OF
ALEXANDER D. FORGER, TRUSTEE

LAND REGISTRATION
CASE NO. 39904

RESPONDENT ANN WRIGHT'S RESPONSE TO
PETITIONER'S MOTION FOR PRODUCTION OF DOCUMENTS

In response to Petitioner's Motion for Production of Documents as allowed by the Court on February 27, 1980, Respondent Ann Wright submits the following:

(1) Memorandum Concerning Gay Head Property
Prepared by Russell Wright dated August 29, 1973.

This memorandum is in Ann Wright's possession and was delivered to her by her father, Russell Wright, in advance of his conveyance of the subject parcel to her--the subject parcel being Lot 595 in the Division of Indian Lands at Gay Head made by Commissioners appointed to make such division and also shown as Lot 595 on the plan on file with the Engineering Office of the Court in this case ("the plan"), which lot was conveyed by the said Russell Wright to Ann Wright by deed dated April 24, 1974 recorded in Dukes County Deeds Book 316, Page 461.

Reference is made in this memorandum to the existence of "the right of way legally" to the subject parcel. From the time she took title, therefore, Ann Wright has understood that she had a right of access to her parcel. Recognizing that "the dirt road" and the "vehicle tracks" shown on the plan on file in this case constitute the only means of access to her parcel, she filed her answer to the Petitioner's Registration Petition objecting to Petitioner's allegation that there are no rights in others in the said "dirt road" and "vehicle tracks." Ann Wright has reason to believe that she, through her predecessors in title, has an easement by necessity over these existing access routes. She is undertaking research by way of title examination and other inquiry on the issue of her right of access.

(2) Documents in Land Registration Case No. 17763
Relating to Lot 585.

Lot 585, which abuts Ann Wright's parcel, is now owned by the Petitioner. This lot was the subject of a land

registration petition that was consummated by the entry of a Registration Decree on October 1, 1941.

The title abstract in the aforesaid land registration case contains the following information.

As with Ann Wright's parcel, Lot 585 was established by a division of Indian common lands in the then new town of Gay Head by Commissioners duly appointed. The title examiner specifies that

An examination of the map prepared under the direction of the commissioners...discloses no road leading to or from this lot (Lot 585).

It is to be said, however, that the policy of the late Charles Thornton Davis was, in the Gay Head cases, to enter decrees subject to and with the benefit of rights of way legally existing. In all probability, Doctor King (the petitioner) and his abutters have ways leading to and from their properties. (emphasis added)

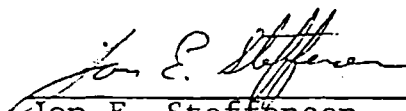
The registration decree in this case then states that "there is appurtenant to the land hereby registered any rights of way by necessity legally existing." //

There is a notation on the decree that counsel for Ralph Hornblower, the petitioner's predecessor in title to Lot 585, had read the decree and assented to its issuance.

Ann Wright's parcel (Lot 595) abuts said Lot 585. The two lots are similarly situated with, we assume, similar title histories. Taking note of the aforementioned references to rights of way by necessity legally existing, and to the fact that the "dirt road" and "vehicle tracks" referred to in Petitioner's registration petition are the only existing means of access to Ann Wright's parcel, she again avers that she has reason to believe that she, through her predecessors in title, has an easement by necessity over these existing access routes.

Respectfully submitted,

Ann Wright
By her attorney,



Jon E. Steffensen
Goodhue, Colt & Steffensen
73 Tremont Street
Boston, MA 02108

LAND COURT

Certificate of Opinion.

Pursuant to Section 37, Chapter 185, of the General Laws, I herewith file as my report an abstract of the title to the land described in petition No. 17763. In my opinion the petitioner has "a good title as alleged, and proper for registration."

The title of said land is subject to
Restrictions, see Sheet No.

- Easements, " " " See memoranda sheets A and B.
- Party walls, " " "
- Debts of, " " "
- Legacies, " " "
- Mortgages, " " "
- Attachments, " " "
- Liens, " " "

Lease, Dower, or Life Estate, etc.

There is appurtenant to said land certain rights and privileges, see Sheet Nos A and B.

Boundaries on streets and ways run (to the *middle* or *side* lines, so far as appears by the deeds of locus)
See Sheet No.

For other comments, see Sheet Nos A and B.

If citation is issued in this case I recommend that, *in addition to the parties named in said petition* notice be given to the parties named on the other side of this sheet.

Note: This list of persons, if any, should include, without comment here, except as the blank provides, parties having any possible adverse interest with their present residences, if known to the Examiner, or as the residence given, if any, in the instrument abstracted on the sheet referred to as showing the par interest. Any comments on other sheets than this showing possible adverse interests will necessarily be looked by the Recorder in issuing the citation, unless mentioned here.

My examination ends 21 October 1940 Alver L. Bradley Examiner.

Ref
2550

ARTHUR W. DAVIS
ATTORNEY-AT-LAW
EDGARTOWN
MASSACHUSETTS

November 8, 1940

Recorder of the Land Court
Court House
Pemberton Square
Boston, Massachusetts

Dear Sir: In re: Petition of Stanley King,
No. 17763.

In the above entitled matter I desire to further reply to your communication of October 22. With reference to any ways to and from the petitioner's land.

The lot sought to be registered is Lot 585 upon the south shore of Gay Head. It is part of the set off of Indian Lands. As I understand it Judge Davis had a "stock clause" which he used in all these cases of registration at Gay Head. In looking over the report of the Commissioners who made the set off of lots, I cannot seem to find any provision for rights of way. I would suggest that Mr. Cummings look up some of Judge Davis' old cases with the idea of using the same form of decree.

Very truly yours,

Arthur W. Davis

P.S. This stock clause relating to rights of way. Names and addresses of abutters would be impossible.

Land Court

Memoranda

--John Prospere Vanderhoop died on the 13th of November 1914 (Sheets 2, 3) leaving two sons and a grand-daughter then a minor. It is to be noticed that there are two separate proceedings in the Probate Court in this estate. I cannot say why this was. In neither estate is there an account or file. The Court may desire a "tax waiver" to be obtained from the Commissioner.

---In 1925 (Sheets 4, 5) the sons and the grand-daughter, then, I am informed of age, sold locus to Stanley King, now President of Amherst College.

---The land borders on the Atlantic and registration should be subject to public rights.

--An examination of the map prepared under the direction of the commission under the Act of 1870, discloses no road leading to or from this lot.

* --It is to be said however, that the policy of the late Charles Thornton Davis was, in these Gay Head cases, to enter decrees subject to and with the benefit of rights of way legally existing. In all probability, Doctor King and his abutters have ways leading to and from their properties.

--Lot 586 is said to be in the heirs of Lydia C. Mingo. There is no probate of Lydia, but I am informed that Lydia Smalley of Gay Head is the heir. No doubt, counsel for the petitioner can furnish fuller information.

Land Court

Memoranda

--Chapter 42 of the Resolves of 1863 provided, substantially, that the treasurer of the "district of Marshpee" should determine boundary lines between individual owners, and the boundary line between the common lands and the individual owners adjoining the common lands in the "Indian District of Gay Head".

--Chapter 67 of the Resolves of 1866 provided, substantially, that the report of Charles Marston should be confirmed and the book of titles prepared by him as commissioner be deposited in the local Registry of Deeds.

--Chapter 213 of the Acts of 1870 abolished the "district of Gay Head" and incorporated its territory into the Town of Gay Head. Section 6 of the Act provided, after petition, that the local Judge of Probate should appoint commissioners to divide etc the common lands in the new Town.

--It is also to be noted that Chapter 67 of the Resolves of 1866 also provided for the appointment by the Governor of a commissioner to complete the examination and determination of questions of title under the 1863 Resolve not passed upon by the Commissioner acting under it etc.

--From a record in the Registry of Deeds in the report of the commissioner acting under the 1866 Resolve it would appear that John Prospere Vanderhoop a sea-man, residing in Gay Head and there born, had a wife Abby ANN Corson, and that his date of birth was the 26th of March 1845.

---Under the report of the Commissioners appointed under the Act of 1870, it appears that lot 585 was drawn by Vanderhoop.