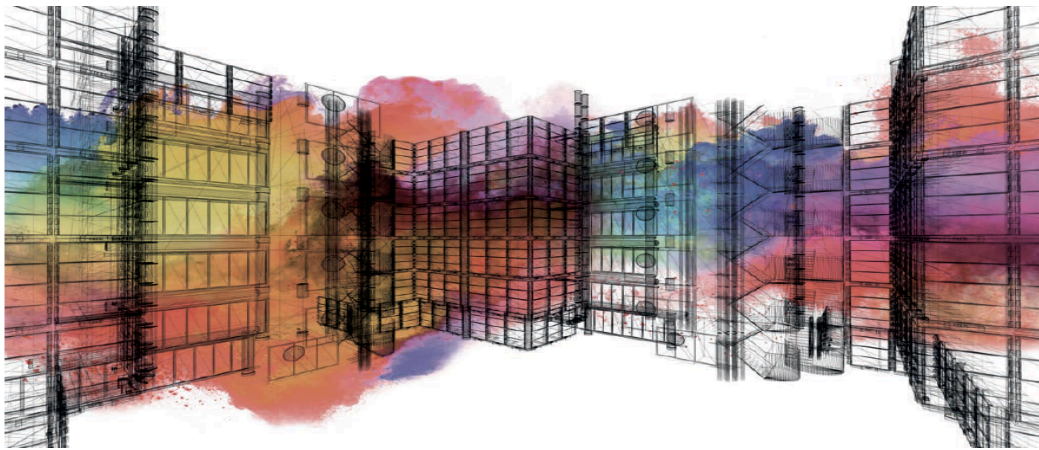


# THE PRINCIPLES OF LAND LAW

7 August 2020



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## *Collingwood King v The Incumbent of the Benefice of Newburn in the Diocese of Newcastle* [2019] UKUT 176 (LC)

This is a highly unusual adverse possession case. The question asked of the Upper Tribunal was whether the title-holders of a church were in adverse possession as against the title-holders to a burial vault *beneath* the church. This mattered because the owners of the church wished to sell it for development purposes before the building fell into such disrepair that it would move beyond any reasonable economic use. The paper title-holders to the vault were concerned that this would prevent further access to the burial chamber and would deprive them of their property rights.

In practical terms this case is not

particularly significant – it is unlikely that many cases of this sort will emerge in practice – but it is a very good example of the points made in chapter 6 about the fact-specific nature of adverse possession claims, and about the twin approaches of reasoning by analogy first, and then if that fails, reasoning from first principles.

### FACTS

In this case, rights had been specifically reserved for the Collingwood family to make use of the burial vault in a church in Dalton near Newcastle upon Tyne. Four members of the family were buried in the vault, most recently in 1940. Since 2004 the church had

been closed to public services, and locked to prevent members of the public entering the church for safety reasons. Members of the family had however made brief visits to the church after this date. No one had entered the vault since 1940. The question for the Tribunal, essentially, was whether the fact of locking the church and securing access against the general public was sufficient to constitute the taking of adverse possession of the vault as against the Collingwood family. The Tribunal held that it was not.

### DECISION

The Tribunal reasoned that adverse possession required that

This case relates to the discussion of the definition of adverse possession in chapter 6.

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the supposed adverse possessor in some sense be in possession of the disputed land. Since the owners of the church had never entered the vault nor, in effect, interacted with it in any way, they could not be said to be in possession of it. Similarly, since they had never tried to restrict access to the vault by the Collingwood family, nor could they be said to have an intention to possess it.

Per HHJ Hodge QC:

“The respondents cannot demonstrate physical possession of the vault because they have never entered it, or sought to exclude the descendants of the Collingwood family with the paper title to the vault from exercising any of the rights attaching to such paper ownership. Nor, in the light of the conduct of the second respondents and their agents, the Church Commissioners, in affording access to the interior of the church, and the terms of their correspondence with the appellants (summarised at paragraph 10 above), can the second respondents properly assert that they had the requisite intention to possess the vault to the exclusion of the owners with the true paper title”. [22]

The judge also emphasised the fact-sensitive nature of this (and indeed most if not all adverse possession situations):

“this case is particularly fact-sensitive and that its decision needs to be based on the particular factual circumstances of the land in question, taking account both of the particular nature of the use which could be expected to be made



## FACT SENSITIVITY AND ADVERSE POSSESSION

of the vault by a full owner (namely to put any human remains interred therein to rest, and keeping those remains undisturbed and well away from the rest of the world) and of the way that the respondents have actually dealt with the land in question (by controlling access to the church)”. [21]

To re-iterate therefore, whilst this case does not contain legal novelty particularly, it is still useful to be aware of both because of the possibility of reasoning by analogy in a future problem questions, but also because it represents additional authority for many of the key points in respect of adverse possession, particularly the meaning of intention to possess.