



COMMONS REGISTRATION ACT 1965

Reference No. 1/U/24

In the Matter of Gravel Pits, Wrestlingworth  
Biggleswade R.D., Bedfordshire

DECISION

This reference relates to the question of the ownership of land known as Gravel Pits, Wrestlingworth, Biggleswade Rural District being the land comprised in the Land Section of Register Unit No CL.46 in the Register of Common Land maintained by the Bedfordshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Mr Ernest John Woodcraft claimed to be the freehold owner of the land in question and Mr Harry Chessum and 20 other persons signed as owners of property and tenants of Wrestlingworth a paper declaring an interest in the land. No other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Bedford on 13 December 1972. The hearing was attended Mr Woodcraft ("the Claimant") who was represented by Mr W S Northey solicitor of Sharman and Trethewey Solicitors of Bedford, by Mr Chessum in person, by Wrestlingworth Parish Council who were represented by Mr S T Morris, the Assistant Secretary of the Bedfordshire Parish Councils Association and by the Bedfordshire County Council who were represented by Mr J A Kieran who is one of their staff.

It was agreed that this land was that allotted as a public stone gravel and mortar pit by an Award (produced to me from the County Records Office) dated 25 January 1804, the relevant words of the Award being:- "Do allot confirm and award as and for a public stone gravel and mortar pit to be used in common by the Proprietors of lands and estates in the parish of Wrestlingworth aforesaid and their Tenants as well for their own necessary uses as the repairs of the public and private roads in the said parish of Wrestlingworth ONE piece or parcel of land or ground containing two acres... AND we do hereby order and direct that the herbage growing and renewing in and upon the said piece or parcel of land or ground shall belong to the said Jacob John Whittington and the owners for the time being of his adjoining allotment". Earlier in the Award there is an allotment of a "private carriage horse and foot road and driftway... to the allotment set out as and for a public stone gravel and mortar pit which said last described private road we have set out and hereby award for the use of the Proprietors of land and estates in the parish of Wrestlingworth aforesaid and their tenants as the road to be by them used to and from the said stone gravel and mortar pits forever".

Mr Morthey explained that the Claimant could prove that he is the Lord of the Manor of Wrestlingworth; his claim was that this land appertained to the Manor; the legal estate in fee simple had not been allotted by the Award and so remained in the then Lord of the Manor to whom the Claimant was successor in title; alternatively the order as to the "herbage" above quoted was in effect an allotment of the estate in fee simple subject only to the rights of the "Proprietors ... and their Tenants" to take the stone and gravel.

Mr Chessum who is 65 years of age and has lived in the Village all his life and the



Claimant who is the owner of a farm which adjoins this land on the north and west and is known as "Manor Farm", gave evidence.

Mr Chessum in his evidence said: The land contains approximately two acres and is nearly square and is now fairly heavily timbered. The last time he saw stone dug from it in any quantity was forty years ago, by a local inhabitant to get stone to make up his private road. People from the village went there from time to time to take from it stone gravel, compost and leafmould (the stone he thought was not of much use).

The Claimant in his evidence produced an indenture dated 21 December 1917 by which Mr G E Smythe conveyed to Mr C Mayne the manor or lordship of Kendalls otherwise Wrestlingworth and land containing 320 acres 3 roods 16 perches known as Manor Farm; (b) an Assent dated 12 July 1943 by which Miss B J M Mayne assented to the said manor or lordship and the said land vesting in herself and (c) a conveyance dated 6 April 1970 by Mrs B J M Woodcraft of the said manor or lordship "with the rights members and appurtenances therewith and belonging" and the lands containing 313.665 acres and known as Manor Farm as described in the plan thereto annexed. The plan showed that the land comprised in this Register Unit was not included in the land thereby conveyed although the lands adjoining on the north and west were included. The Claimant said that Mrs J M Woodcraft was his step-mother (she married his father on 31 July 1961) and was the same person as Miss B J M Mayne who executed the assent in 1943; she was the surviving personal representative of her father Mr C Mayne who died on 29 January 1940 whose will was proved on 17 May 1940 and whose widow (the other personal representative) died on 16 February 1942. He always understood that Mr C Mayne before he purchased the farm in 1917, had rented it for some years previously. He had known his step-mother for many years before she married his father and had understood from her that the inhabitants had a right to take stone and gravel from this Unit Land and to preserve the right some had regularly done so using a wheelbarrow for the purpose.

There was no conflict between the evidence of Mr Chessum and the Claimant. It was agreed that I could on the evidence of the Claimant properly be satisfied (as I am) that he is the Lord of the Manor of Wrestlingworth and entitled as such to the appurtenances therewith belonging; so in substance I am only concerned to determine the legal effect of the Award.

The Wrestlingworth Inclosure Act 1801 (41 Geo. 3 chap 34) was not produced at the hearing but I have nevertheless since looked at it. The section dealing with stone, gravel and mortar is as follows:- "Be it further enacted that it shall and may be lawful to and for the said Commissioners and they are hereby authorised and required in case they shall think it advantageous for the Parties interested in the said Inclosure, but not otherwise, to set out and allot one or more Plot of Plots of the said Land and Ground, so hereby intended to be enclosed as aforesaid, as they shall think proper, not exceeding in the Whole Two Acres as and for public Stone Gravel and Mortar Pits with a convenient Road or Roads ~~to~~ and from the same, to be used in common by the Proprietors of Land and Estates in the Parish of Wrestlingworth aforesaid and their Tenants as well for their own necessary Uses as the repairs of the Public and Private Roads in the said Parish of Wrestlingworth; and that the Herbage growing and renewing in or upon the said Plot or Plots of Ground shall belong to such Person or Persons as the said Commissioners in and by their said Award, shall order or direct".

In my opinion the words relating to "herbage" above quoted from the 1804 Award and the 1801 Act did not grant to J J Whittington the legal estate in fee simple in the land: the words used are apt to describe a right to use land in a limited way (merely to take herbage) and inappropriate I think to describe the ample rights associated with absolute ownership.



The words relating to "a pit" or "pits" above quoted from the Award and the Act, contemplate I think a grant under which individuals would take as members of the public of a class of the public and not in exercise of any private right; the "Proprietors ... and their tenants" need not be persons formerly entitled to part of the 1860 acres in the Parish inclosed under the Act, they need only be a proprietor or tenant of land within the Parish; the description "public... pits" and the use of the pit for repairs of "public...roads" negative a grant of an estate or interest to individuals. I construe the Award as subjecting the land to a public charitable trust for the benefit of the Parish, and I construe the Act as authorising this.

But it is I think impossible from a consideration of the Act and the Award by themselves to reach any conclusion as to who under them became the owner of the estate in fee simple of the land. Neither the Act nor the Award contains any words such as were currently used for grants of such an estate.

In my view the uncertainty as to ownership resulting from the Act and the Award was removed by section 17 of the Poor Act 1819 (59 Geo 3 Chap 12) and the decisions of the Court as to the effect of such section. By the section the churchwarden and overseers of a parish were empowered to "accept take and hold in the nature of a body corporate for and on behalf of the parish all land belonging to the parish". In Doe v Hiley (1830) 10 B & C 885, Lord Tenterden C J held that this section had the effect of vesting in the churchwardens and overseers all land belonging to the parish, notwithstanding that the land was not acquired for purposes relating to the poor. This decision has since been treated as applicable to all land "belonging" to a parish in the "popular sense of that expression", see Doe v Terry (1835) 4 A & E 274 at page 281 and Haigh v West 1893 2 Q B 19 at page 31; this last case although distinguished on the facts was recognised as stating law still applicable in Wylde v Silver 1963 1 CB 243 at page 271. The words referred to in the preceding paragraphs of this decision show I think that the land was to belong to the parish in "the popular sense of that expression".

On the above considerations I conclude that the title of the Lord of the Manor to this land before 1804 was extinguished, if not by the 1801 Act and the 1804 Award, then at the latest by the Poor Relief Act 1819. Nothing having happened to divest the churchwardens and overseers, I conclude that the land is now vested in the Wrestlingworth Parish Council under the Overseers Order 1927 (S R & O 1927 No 55) made under the Rating Act of 1925. This conclusion accords with my decision given on facts essentially similar in re Goose Pool, reference 11/U/15 and dated 9 February 1973.

For the above reasons I am satisfied that the Parish Council is the owner of the land and I shall accordingly direct the Bedfordshire County Council, as registration authority, to register Wrestlingworth Parish Council as the owner of the land under section 8(2) of the Act of 1965.

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 15<sup>th</sup> day of March 1973

*a. a. Baden Fuller*

Commons Commissioner