



In the Matter of Sandford Mire, Warcop

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL.115 in the Register of Common Land maintained by the Cumbria 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, a claim to ownership of the land in question ("the unit land") was made by the Governors of the Foundation of Appleby Grammar School ("the School Governors").

I held a hearing for the purpose of inquiring into the ownership of the unit land at Keswick on 11 June 1985. At the hearing Mr G Harker, Solicitor, appeared on behalf of the School Governors: Mr C L Arnison, Solicitor, appeared on behalf of Mr K Fawcett: and Mrs Atkinson of Sandford Lodge Farm appeared in person.

(1) The unit land is an area of, according to the entries in the Register, some 16 hectares - 40 acres. It lies north of the village of Sandford on the southern boundary of the line of the original Eden Valley Railway line. Further to the west is a property called New Hall. According to a history of the locality written in 1777 by Nicholson and Benn, the School Governors purchased the demesne lands of New Hall in 1684. Mr Harker produced copies of records in the County archives of admittances in, it would appear, the Manor of Sandford, which were made by the School Governors. In one such admittance made on 5 November 1719 the tenant is described as holding under the Feoffees & Governors of the School. Another, made in 1853 at a meeting of the Feoffees of the School, was of a tenant to the customary part of a dwelling house called Pletts and a peat moss and half a peat moss in Sandford Moss containing approximately 1 acre 3 rods 30 perches; and the same dwelling house and 1½ peat mosses were the subject of (1) a later admittance of George Frankland made on 16 July 1918 at a meeting of the Governing Body of the School: (2) a Compensation Agreement dated 24 July 1936 between the Official Trustee of Charitable Lands, the School Governors and George Frankland, described as the ~~number~~ owner of the house and mosses formerly copyhold or customary of the Manor of Sandford. This was an agreement for the extinguishment of the manorial incidents affecting the property, and the Governors were referred to as the lords of the manor. The Agreement includes a recital to the effect that by a scheme in September 1891 the legal estate in the Manor was vested in the Official Trustee of Charity Lands in trust for the School.

owner



Mr Harker produced a copy of the Scheme which was made by the Charity Commissioners pursuant to the Endowed Schools Acts. Clause 18 of the Scheme vested the land and hereditaments of the School in the Official Trustee of Charity Lands, and provided for such vesting of all land and Hereditaments subsequently belonging to the School. The Schedule listed the then endowments of the School and included the New Hall property, customary lord's rents from lands in the Manor of Sandford and fines payable on admissions to customary tenements in the Manor. The listed endowments did not include any specific reference to land which can be identified as the unit land.

Mr Harker referred to an Inclosure Award of 1st June 1773 made pursuant to an Act of 1772. On the plan accompanying the Award an area marked Peat Mire, which corresponds to the unit land, is shown but does not appear to have been the subject of any Award. To the north, south and west of Peat Mire are areas designated by different letters of the alphabet including on the west three areas marked with the letter "M" on one of which is written "School Master of Appleby A93 R2 PO1". In the Nicholson and Benn History are references to various owners of Sandford Manor in the 15th and 16th centuries, and it is stated that in 1672 Sir Thomas Braithwaite sold to Andrew Wharton Sandford Manor and its waste lands, and that then Wharton sold the demesne and rents to a number of inhabitants and landowners.

The Book of Reference deposited in 1857 in connection with the proposed construction of the Eden Valley Railway shows, in regard to Sandford, the Trustees of Appleby (sic) School as owners of some fields and plantations adjacent or near to New Hall, and some 17 individuals as the owners of Sandford Mire, and there was a Conveyance in December 1862 to the Railway Company of apparently some small pieces of Sandford Mire by eleven of these individuals. Mr Harker told me that at the same time there was a Conveyance to the Company of another bit by the Governors. A copy plan, supplied by the British Rail Property Board, of land in Warcop acquired by the Railway Company at the time, shows small numbered areas adjoining the railway line and the respective owners. A narrow strip, numbered 66, on the north of the unit land is shown with "owners of Sandford Mire" as the conveying parties to the Conveyance of December 1862. Two areas to the west and extending to New Hall are numbered 61, and the owners are shown as the Governors of Appleby Grammar School, the Conveyance by them being also dated 31st December 1862.

At the conclusion of his evidence Mr Harker submitted that the issue of ownership was between (1) the School Governors (2) the inhabitants of the locality and (3) the commoners, and that the strongest claim was that of the Governors.

(2) Mr Fawcett and Mrs Atkinson are each registered with rights of grazing over the whole of the unit land, and in the case of Mrs Atkinson also with a right of turbary. There is a third registration of grazing rights by Messrs. Patterson, and it appears that their and Mr Fawcett's rights resulted from an apportionment between them of a right originally registered by Messrs. Watson in respect of High Green Farm,



-3-

which in 1969/ 1970 was sold by the Watsons, part to the Pattersons and part to Mr Fawcett.

Mr Arnison referred me to three 19th century works on the History and Topography of Cumberland. In the earliest of these, published in 1829, in a passage on Sandford it is stated that in 1591/2 the tenants were sold their tenements with respective proportions of the waste and that in 1671 the Braithwaite family sold to Andrew Wharton the manor of Sandford, and that the demesnes and rents were purchased from Wharton by the inhabitants and tenants, whose names were listed. A similar statement appears in two later works of 1860 and 1885, and had already appeared in the 1777 history referred to by Mr Harker.

Mr Fawcett's claim is to ownership not of the whole of the unit land but to two strips of it. He produced three Conveyances, the first dated 11th November 1886 to William Dalton of an estate of some one hundred acres called West Gate situate in the township of Sandford and also two allotments & parcels of land in Sandford Mire. The parcels were itemised in a Schedule and delineated with numbers on a plan; the two allotments appear in the Schedule numbered 108 and 109 and the plan shows them so numbered as strips running from NE to SW on the westerly part of Sandford Mire.

The second Conveyance dated 29 September 1906 is to William Dalton of a cottage of 1 acre 1 rood in Sandford together with two acres of turbarry allotment on Sandford Mire. There is no plan on this Conveyance.

Finally there is a Conveyance dated 2 March 1967 by Eleanor Markham and Mary E Lambert to Mr Fawcett of West Gate Farm of some 132 acres together with 2 allotments of peat moss in Sandford Mire and 2 acres of turbarry allotment in Sandford Mire. The property is itemised in a Schedule which includes the 2 allotments of peat moss but not the turbarry allotment. The Scheduled items are identified by their O S Map (1915) numbers and delineated on a plan, except that the peat moss allotments though given O S numbers in the Schedule are not delineated on the plan. The items in the Schedule include most of those in the Schedule to the 1866 Conveyance and are set not in the same order, with the two peat allotments at the end of the Schedules, and in neither given the acreage.

Mr Fawcett, giving evidence, said that he farmed at Sandford and when he acquired West Gate Farm he understood he was getting two strips on Sandford Mire. The Mire consists as to about one - third of grazing land and the rest of wet rushes. The two strips he claims are not physically separated from the remainder of the common or identifiable on the ground.



-4-

(3) Mrs Atkinson told me that she is the owner of Sandford Lodge Farm which has been in the family ownership for 54 years. On the evidence of the statements in the historical works she believes she may be the owner of the common or of part.

Conclusions

The evidence adduced by Mr Harker establishes in my opinion that the Governors are, and have since the early 18th century, been the Lords of the Manor of Sandford. As such they would, in the absence of evidence to the contrary, have a claim to ownership of any land which is waste land of the manor. There is no positive evidence that the unit land is or was such waste land or that it was regarded as owned by the Lord of the Manor; the Inclosure Award was, apparently, silent as to its ownership, nor did the 1891 Scheme include the unit land as a specific item in the Schedule of properties belonging to the School. Moreover there is evidence that, if the Unit was waste land or part of the demesnes of the Manor, its ownership had been transferred to a number of tenants or landowners; ~~APP~~ the historical works referred to above and their statements as to the purchase in 1671/1672 by such persons from Andrew Wharton. There is confirmation of this to be found in the deposited Book of Reference (1857) with its list of 17 individuals (not including the Governors): and, following this, in the 1862 Conveyance to the Railway Board of small pieces of Sandford Mire by individuals.

This evidence of multiple ownership does not in itself make clear whether such ownership was as tenants in common of the whole or as severalty owners each of a specific part of the land. But in regard to Mr Fawcett's claim, the 1886 Conveyance of West Gate to William Dalton with two allotments or parcels of land in Sandford Mire, identified on the plan, is in my view a Conveyance of the two strips of land and the subsequent Conveyance in 1967 to Mr Fawcett of West Gate Farm with two allotments of peat moss in Sandford Mire can only reasonably be construed as referring to the same two strips, although the plan on this Conveyance does not identify them. In my opinion therefore Mr Fawcett's ownership of the two strips is satisfactorily established.

Mrs Atkinson's belief that she is the owner of part of the unit land may not be without some historical basis, but there was no evidence adduced of the devolution of title to her or as to the identity of such part. In the result I am not satisfied that, except for Mr Fawcett, any person is the owner of the unit land.

I shall accordingly direct the Cumbria County Council, as registration authority, to register Mr Fawcett as the owner of the two strips (to the extent that they are within the boundaries of the unit land) under section 8 (2) of the Act of 1965: the rest of the unit land will remain subject to protection under section 9 of the Act.



-5-

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 13th day of August 1985

L. J. Morris Smith

Commons Commissioner.