



In the Matter of Nine Pieces of land in the
Parish of Naunton, Cotswold D

Supplemental Decision

On appeal from my decision in this matter (No. 1979 A 4617), Mr Justice Browne-Wilkins by the judgment given on 2 April 1979, held that I erred in law in not considering Mr and Mrs Aldens' title deeds prior to the conveyance to them dated 25 July 1967, and that the matter should be remitted to me.

I accordingly held an adjourned hearing in the schoolroom of the Congregational Chapel, Naunton on 23 October 1979. The adjourned hearing was attended by Mr and Mrs Alden, by Commander McNeile on behalf of the Parish Council and by Mr Limbrick on behalf of Gloucestershire County Council.

Mr and Mrs Alden produced a conveyance dated 4 June 1909, whereby G Collett and W Pearce conveyed to J Stratford:- "all that messuage or tenement known as Rock Cottage with garden and appurtenances thereunto belonging, situated on Louse Bank in the Parish of Naunton in the County of Gloucester containing thirteen perches or thereabouts formerly in the occupation of Joseph Smith afterwards of the said George Wragg and now occupied by the said John Stratford, which said premises are bounded on the North by the allotment land, on the South by the public street or highway and the East by the quarry and on the West by the property belonging to John Weir". Mr and Mrs Alden also produced an abstract of title which established that Rock Cottage remained in the ownership of the Stratford family until it was conveyed to Mr and Mrs Alden by the conveyance dated 25 July 1967 referred to in my decision dated 15 March 1978.

The property conveyed to Mr and Mrs Alden by the 1967 conveyance was:- "all that messuage or tenement known as Rock Cottage with the garden and appurtenances thereunto belonging in the Parish of Naunton in the County of Gloucester containing thirteen perches or thereabouts, all of which said property is for the purpose of identification only more particularly delineated on the plan annexed hereto and therein coloured red".

The land in dispute lies to the East of Rock Cottage and what I have to decide is whether or not the land in dispute was conveyed to John Stratford in 1909. If the land in dispute was not conveyed to John Stratford in 1909 then in the absence of any evidence that any person is the owner for the reasons given in my previous decision, I adhere to the view that the land in dispute is manorial waste.

What was conveyed to John Stratford was thirteen perches or thereabouts, an area which I calculate to be $393\frac{1}{2}$ square yards, which if it was square, would be 19.83 yards X 19.83 yards. Mrs Alden has not argued that an area of these dimensions could include the land in dispute; indeed in the course of the adjourned hearing she commented that it was a very small area.

The question which it falls to me to decide is whether in 1909 John Stratford acquired the disputed land. If he did acquire the disputed land, since he was not the Lord of the Manor, it was not then and would not now be "waste of a manor" and therefore not common land. If on the other hand, John Stratford did not acquire the disputed land in 1909, his successors could not convey that land to Mr and Mrs Alden and for the reasons given in my previous decision, I adhere to the view that in the absence of any valid claim to ownership it is manorial waste.



The thirteen perches conveyed to Mr and Mrs Alden in 1967, identified by the plan annexed to their conveyance, clearly does not include the disputed land and it follows that the land conveyed to John Stratford in 1909 did not include the disputed land. Even if there was no other evidence I am satisfied on the documentary evidence, namely the conveyances in 1909 and 1967, that John Stratford never owned the disputed land. Confirmation for this view is to be found in the oral evidence given by Miss D I Stratford, who said that neither her grandfather, the said John Stratford nor her father or her Aunt, who were his successors, ever claimed to own the disputed land.

By way of precaution I mention that I did, at the adjourned hearing, inquire if the quarry referred to in the 1909 conveyance could be identified. I was told that a minute in the records of the Naunton Baptist Chapel showed that the stone for the building of this chapel was taken from the said quarry. Immediately after the adjourned hearing I inspected the site.

There is not now a quarry on Louse Bank but in the area adjoining Rock Cottage there appears to have been some excavation in the distant past which is now unlike the rest of the bank completely overgrown with scrub and trees.

Commander McNeille at my request sent to me and Mr and Mrs Alden a copy of the minute of the Baptist Chapel referred to above and that copy minute is annexed to this decision.

The minute makes plain what was ~~obvious~~ ^{eye} to the ~~age~~ that the stone for building the chapel was not taken from Louse Bank. The stone was required for road works which Mr and Mrs Alden have informed me in writing were never executed, and it appears that if in 1850 any stone was taken from Louse Bank, the churchwardens and overseers and surveyors of the highways in the year 1850 thought they were the owners of that stone. I see no reason to assume that the quarry referred to in the carefully drafted conveyance of 1909, was a figment of the imagination of the draftsmen of that conveyance and it can in my view only have been on that part of Louse Bank adjoining Rock Cottage on the East which differs in appearance from the rest of the bank and which is not overgrown.

There is no claim to ownership of the site of the quarry either by the parish or the highway authority and if stone was taken from Louse Bank, I must assume that it was taken by licence or without objection from the Lord of the Manor.

I do not base my decision on hearsay evidence and conjecture as to the state of the land 129 years ago, but since when the 1909 conveyance was produced. I thought it my duty to inquire about the quarry. I feel bound to state in this decision as the result of that enquiry.

I base my decision on the documentary evidence, confirmation for which is to be found in the oral evidence of Miss Stratford. The evidence as to the quarry, does no more than lend support for the view that John Stratford acquired no more land than the 13 perches delineated on the plan annexed to the 1967 conveyance.

For these reasons or for the reasons given in my previous decision I confirm the registration.

Mrs Alden at the adjourned hearing and in a letter to me subsequent to the adjourned hearing has asked that I keep all the information regarding her deeds, private and confidential. I explained to her at the adjourned hearing that if she put a document in evidence, the other party was entitled to see that document and that I would in my decision have to refer to the documents in order to give my reasons for arriving at that decision. I have done no more than quote the relevant



extracts essential for the purpose of this decision.

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 6th November

1979

G A Little

Commons Commissioner

For annexure to next page.

Extract from the minutes of the Naunton Baptist Chapel of 11th January 1850

Memorandum of an agreement entered into this eleventh day of Jan
 one thousand eight hundred and fifty, between the churchwardens and overseers
 and surveyors of the highways of the parish of Naunton, in the county of
 Gloucester~~XXXX~~, and the committee for building the Baptist Chapel, in the
 said parish of Naunton in the said county of Gloucester, as follows :- The said
 committee agree, at their own expense, to lower the hill in Naunton-street,
 adjoining the Chapel, what depth they may deem necessary, and shall have what
 stone they may require for their own use, leaving the road when finished on
 an inclined plane and eighteen feet wide at the bottom. The said committee
 are to have the use of the rubbish so far as they may require it and the
 residue to be left by the side of the road for the future use of the surveyor,
 and the said committee agree to complete the road so as to have a ten feet
 passage within one month from the time of commencement, and to remove all
 their stones and other materials by the month of July next; and also agree
 to pay the whole of the expense themselves that may be incurred, and not
 subject the parish to any expense whatever. Signed on behalf of the church-
 wardens and overseers: John Collett (Chairman) George Smith (Churchwarden)
 Samuel Griffin (Overseer) George Charles (Surveyor) Edward Burge (Overseer)
 George Richardson (Churchwarden); signed by their own hands on behalf of the
 Chapel committee: Robert Comely (Chairman) Rev. John Teall (Secretary) John
 Wood, Isaac Wood, Robert Hanks, Edward Wood, William Gorton, Richard Collett
 (Condicote) Richard Collett (Notgrove) John Hanks, William Hanks and
 R. Rowlands.

I certify that the above is a true copy
 of the Minutes of the Naunton Baptist Chapel
 of 11th-January 1850,

Neil A. McNeile

(Gdr. N.A. McNeile, Chairman Naunton Parish Council)