



In the Matter of Billy Ground,  
Diggle, Oldham Borough, Greater  
Manchester

---

DECISION

This reference relates to the question of the ownership of land known as Billy Ground, Diggle, Oldham Borough (Formerly Saddleworth Urban District) being the land comprised in the Land Section of Register Unit No. CL. 614 in the Register of Common Land maintained by the Greater Manchester Metropolitan County Council (formerly West Riding 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. Rupert Harcourt Bradbury claimed to be the freehold owner of the land in question and Mr. William Buckley Bradbury in a letter dated 21 July 1973 said "The title to this ground is Back oth Lea on the Deeds. The owners are Mr. Rupert H. Bradbury, Mr. Wm B. Bradbury, Mr. Jack Bradbury." 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 Salford on 10 December 1975. At the hearing (1) Mr. R. H. Bradbury was represented by Mr. J. H. Ritson, solicitor of Rowntree & Ritson Solicitors of Oldham; (2) Mr. W. B. Bradbury attended part of the hearing in person; and (3) Mr. Daniel Crowther was represented by his daughter-in-law Mrs. Freda Crowther (wife of Mr. Harold Crowther).

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) 21.919 hectares (44.162 acres). It was registered in consequence of an application by Mr. J. W. Shaw to register a right (registered at Entry No. 1 in the Rights Section) attached to Diggle House to graze 35 cows or 35 heifers over the whole of the Unit Land.

Mr. Ritson produced the documents specified in the First Schedule hereto, being some of the documents of title relating to land of Mr. R. H. Bradbury at Diggle.

Mrs. F. Crowther who has lived in the village of Greenfield for the last 23 years (she was 21 years old when she came to the village) produced the documents specified in the Second Schedule hereto, being some of the documents of title relating to the Upperwood Estate owned by Mr. D. Crowther.

Mr. H. Crowther who is now aged 47 years and has lived 23½ years in Upperwood House, Greenfield, in the course of his evidence said (in effect):- The Unit Land is all walled round with dry stone walling, which is falling down in places; there is no gate; the usual entrance is from the northeast side about a quarter of a mile from the Huddersfield-Oldham road (A.62). They (meaning those who worked for him on the lands farmed from Upperwood House (which his father acquired under the 1952 conveyance) have for the last 23 years grazed sheep on the Unit Land. There is rough grass, but although there is no bracken there is a lot of rock. Sheep are grazed there all the year round. There is no sign on the Unit Land of any walls or former walls dividing it up into plots such as are delineated on the sketch map which was produced by Mr. Ritson and which is or may be a copy of part of the 1834 Award map.



As to the part of the Unit Land edged red on the sketch map produced by Mr Ritson:-

In my opinion this map although found among Mr R H Bradbury's documents of title is not any evidence of his ownership of the land on it edged red. However from the copy 1834 Award and the 1895 and 1952 conveyances produced by Mrs Crowther, I think it likely that evidence could if necessary be obtained that the map is a true copy of the relevant part of the 1834 Award map, and I shall therefore assume that the map is to this extent reliable.

In my opinion the words in the 1968 conveyance referring to the residuary devise in the will of Mr W Bent do not indicate that the land thereby conveyed included any land other than that within the description of the three cottages therein particularly described; the residuary devise was I think mentioned in the 1968 conveyance to connect the description of the 3 cottages thereby conveyed with the description of the land conveyed by the 1887 conveyance, and not for the purpose of conveying to Mr R H Bradbury in addition to the 3 cottages any other land which might have been devised by Mr W Bent.

So all I have in favour of the claim of Mr R H Bradbury is the 1844 conveyance which shows (on the assumption above mentioned) that the edged red land (plot B59) was then conveyed to Mr W Bent, and that I might therefore be able to conclude that he owned it at his death and that it therefore passed under the 1866 settlement made on the marriage of his daughter.

Against such conclusion, I have the 1895 plan and the 1895 and 1952 conveyances in which the edged red land is treated as being owned in no way different from the rest of the Upperwood lands. These conveyances are some evidence that Mr E Brook and Mr D Crowther successively became owners of the lands thereby expressed to be conveyed. Further, under the 1834 Award, the Unit Land was allotted to about 50 different persons in different plots, and each allottee was directed to fence some part of his plot. The present state of the Unit Land shows that this division of the Unit Land must always have been impractical and inconvenient, so that any allottee would be much tempted to sell his allotment to another allottee if he could. On this consideration I think it likely that Mr Bent sold plot B59 before he died. However this may be, there is no reason why I should not give full effect to the evidence of the 1895 and 1952 conveyances and conclude (as I do) that Mr D Crowther is now the owner of the edged red land (B59).

As to the claim of Mr W B Bradbury that the Unit Land is "Back oth Lea":-

I have no evidence identifying land so called with any part of the Unit Land. The 1844 conveyance includes a 1/60th share of "Back oth Lea"; this is not enough. I therefore reject this claim.

As to the part of the Unit Land within that coloured green on the 1895 plan and within that edged red on the 1895 and 1952 conveyance plans:-

This part is irregularly-shaped, being (a little more or less) plot Nos. B17, 18, 31, 32, 33, 38, 47, 48, 53, 54, 57 and 59 on the said sketch map produced by Mr Ritson and making up altogether about three quarters of the Unit Land. There is no reason why I should not give full effect to the evidence provided as above stated by the 1895 and 1952 conveyances and conclude (as I do) that Mr Crowther is the owner.



As to the remainder of the Unit Land:-

This is either uncoloured on the 1895 plan and not included in that edged red in the 1895 and 1952 conveyance plans, or as regards plots 31 and 57 conveyed only to the extent of a share.

At the hearing it was suggested that the allottees under the 1834 Award must, in order to save themselves the expense of dividing the Unit Land by fences as directed by the Award, have somehow agreed to graze the Unit Land as owners in common. Mrs Crowther produced a declaration dated 21 April 1875 which indicated as regards other land that this is what had happened. However apart from any inference which may be drawn from the registration made by Mr J Shaw, I have no evidence of any such agreement was actually made in respect of the Unit Land.

It is possible that the rights registered on the application of Mr Shaw are historically derived from some predecessor in title of his owning one or more of the allotments made of the Unit Land by the 1834 Award. However this may be, in my opinion I can infer that he is for the present content to limit himself to the rights of common registered. On the undisputed evidence that the Unit Land has for many years and is now only grazed by Mr D Crowther and Mr Shaw, and from the ownership of Mr D Crowther (which I have as above stated concluded from his documents of title) of the greater part of the Unit Land, I can I think properly conclude (as I do) that he has a good possessory title to this remainder.

For the above reasons I am satisfied that Mr D Crowther is the owner of the land, and I shall accordingly direct the Greater Manchester County Council, as registration authority, to register Mr Daniel Crowther of Upperwood House, Greenfield, near Oldham 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.

#### FIRST SCHEDULE

(Documents produced on behalf of Mr R H Bradbury)

- (1) Conveyance dated 26 June 1968 by which Mr R H Bradbury, Mrs L Green and Mr T F Bradbury, being the only persons interested under the will of Mr W H Bradbury (he died on 12 September 1922) conveyed 3 cottages or dwelling houses at Harrop Green to Mr R H Bradbury
- (2) A conveyance dated 3 October 1887 which recited the title from the will dated 25 September 1851 of Mr W Bent (he died on 30 July 1854), including the settlement dated 14 April 1866 and made on the marriage of his daughter Mrs A Ramsden, and by which the land and the dwelling house with the cottages and grounds belonging "and other (if any) the hereditaments by the hereinbefore recited will of the said William Bent devised by the description of the testators freehold estate hereditaments and premises at Harrop Green in Saddleworth aforesaid" to Mr W H Bradbury



- (3) A conveyance dated 5 January 1844 by which there was conveyed (among other lands) "one undivided sixtieth part...of land called Back oth Lee formerly unenclosed" and the allotment of common by the Saddleworth Inclosure Award allotted to J & W Shepherd and therein described as "marked upon the said map lot B59...and which contain 25 acres 3 roods and 26 perches...".
- (4) An undated but apparently old sketch map of the Unit Land. On it part (about one third on the northeast) of the Unit Land is edged red and the remainder is shown as numerous plots numbered 42-58 inclusive (the northwest part) 25-37 inclusive (the southwest part) and 38, 39, 48 and 41 (the southeast and central part); some of the numbers are prefixed with the letter B. The edged red land is not numbered like the other plots, although it is overwritten in pencil (obviously after the map was made) "Qy B59"

SECOND SCHEDULE

(Documents produced on behalf of Mr D Crowther)

- (1) A copy of the Saddleworth Inclosure Award dated 8 March 1834 (but not including a copy of the map therein referred to)
- (2) A plan of the Ashway Gap and Upperwood Estate for sale by auction in 1895 showing lots 1 and 2
- (3) A conveyance dated 17 December 1895 by which there was conveyed to Mr Edward Brook "all that shooting estate known by the name of the "Upperwood Estate" ...all which said hereditaments...are believed to be...delineated on the plan ...coloured...and which said premises were...described...in the twenty schedules hereto..."
- (4) A conveyance dated 21 November 1952 by which Mr E W Brook conveyed to Mr D Crowther "all that estate hitherto a shooting estate but now used as sheep and other farm known by the name of "Upperwood Estate"...all which said property is believed to be...delineated on the plan attached hereto and edged red except that there are only two fifth parts or share in the two several plots of land marked on the said plan as...B31 one third part or share of the plot of land marked lot B57 on the said plan"

Dated this 23<sup>rd</sup> day of February 1976

a. a. Baden Fuller

Commons Commissioner