



In the Matter of Cow Lane, Adlingfleet, Humberside.

DECISION

This reference relates to the question of the ownership of land known as Cow Lane, Adlingfleet, being the land comprised in the Land Section of Register Unit No. CL 441 in the Register of Common Land maintained by the former West Riding of Yorkshire 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 the Co-operative Wholesale Society Ltd and the Twin Rivers Parish Council each claimed to be the freehold owner of the land in question, the Vicar of Whitgift with Adlingfleet claimed to be the freehold owner of 1 acre of it, and the Trent River Authority claimed to be the freehold owner of a drain passing through it.

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 Hull on 22 and 23 March 1977.

At the hearing the Co-operative Wholesale Society Ltd was represented by Mr I Leeming, of counsel, the Twin Rivers Parish Council by Mr R. Sterling, of counsel, and the Vicar of Whitgift with Adlingfleet by Mr R T M Sherman. There was no appearance on behalf of the Severn-Trent Water Authority, the successor to the Trent River Authority, but before the hearing its Clerk sent a letter to the Clerk of the Commons Commissioners stating that he was instructed to withdraw the claim made by the former River Authority, provided that the owners of the land acknowledged all statutory rights and rights as successors to the Hatfield Chase Corporation which his Authority have in respect of the watercourses known as Cow Lane Drain and the Adlingfleet Drain which adjoin the land the subject of the reference. I have no jurisdiction in relation to these watercourses and my decision on this reference cannot prejudice the rights of the Water Authority.

The land the subject of the reference is a long somewhat irregularly shaped area connecting two lanes. By the Adlingfleet, Fockerby, and Haldenby Inclosure Act 1767 (7 Geo. III, c.xci) it was enacted that the lane or parcel of ground called the Cow Lane should be used and enjoyed by the respective owners of messuages and cottages in Adlingfleet as a stinted pasture in such manner and proportions and under such regulations as the Commissioners appointed by the Act, or any of them, should in their award direct and appoint. By the award dated 14 June 1769 the Commissioners awarded that Cow Lane should be stocked and depastured with horses, beasts and pigs by the respective owners according to the number and proportions set out, each owner to have a certain number of beasts and the same number of pigs, the horse being equal to one beast. Many of the numbers contain fractions of beasts and pigs, several being two-thirds of one beast and two-thirds of one pig, including two-thirds of one beast and two-thirds of one pig to the Vicar of Adlingfleet and his successors. Although beasts and pigs were apportioned to each owner, one beast and one pig seem always to have been regarded as one unit and subsequent dealings were made in such units, usually described as cattlegates or cow gaits.



By 1917 the majority of the units had become united in the ownership of Mr J E L Empson, then living at St Leonard's on Sea, Sussex. By an indenture made 27 March 1917 between (1) James Empson Lister Empson (2) The Co-operative Wholesale Society Ltd (hereafter referred to as "the C.W.S.")- Mr Empson conveyed what were described as "Thirty seven Cattlegates or rights of pasturage for horses or cattle over land known as Cow Lane in the Township of Adlingfleet out of the total number of forty four and one sixth like Cattlegates (forty six and a half actually used and enjoyed) authorised by the Adlingfleet Enclosure Award". Mr Empson also conveyed a large area of land shown edged blue on the annexed map. Cow Lane is shown on this map, but it is not edged blue.

The fractions of cattlegates could only be exercised if the owners sold to others or combined to let them to farmers in such a way as to get fractions adding up to complete units in the same hands. This was done by private arrangement, but the general administration was in the hands of a meeting of the owners and their tenants held annually. The date chosen for this meeting was after the coming into operation of the Local Government Act 1894 the same as that for the Adlingfleet Parish Meeting, which it immediately followed. Usually the same people attended both meetings and until 1908 both sets of minutes were entered in the Parish Meeting Minute Book. After 1908 there was a separate minute book. Nevertheless, despite this juxtaposition each meeting was held separately. The funds available being very limited, money for repairs to gates, fences, etc, cleaning out the ponds, and cutting the thistles, and for paying the grassman who looked after these matters was raised by creating extra gaits, which were let.

This state of affairs continued until 1964, after which grazing in Cow Lane ceased. By that time all the gaits were in the ownership of the C.W.S. and four others, one of whom was the Vicar with his two-thirds of a gait. In 1966 the C.W.S. purchased the rights of three owners, leaving the Vicar's two-thirds of a gait outstanding, as it still is. There was a balance of between £50 and £60 in the gait-owners' bank account. The account was closed and the balance was applied towards the cost of drainage works on the land.

Since 1966 the C.W.S. has treated all the land comprised in the Register Unit as if it were its own property. The first move was to fence off approximately one-third of it at the western end. This part of the land was then levelled with a bulldozer. The hedge between this part of the land and the land to the south in the ownership of the C.W.S. was removed and the ditch alongside it filled up. A tile drainage system was put in and a hard-core road constructed along the northern boundary with the agreement of the Vicar's tenant, who was able to use the road for access to adjoining land which he farmed. This western area was ploughed shortly afterwards and has been farmed as arable land by the C.W.S. ever since. The land in the centre of the Register Unit has been levelled and ploughed and was put back to grass in 1975. The remainder of the land has been bulldozed this winter with a view to ploughing it before re-seeding.

The Parish Council was not formed until 1974, and Mr Sterling said that it was not claiming the ownership of the land, but only resisting the claim made by the C.W.S.

Mr Leeming argued that I ought to find that the C.W.S. had obtained a possessory title to the land by having been in undisputed possession since it purchased the 7 gaits from Mr Empson in 1917. It does not appear to me that the C.W.S. went into possession of the land at that stage. Grazing it was not possession adverse to the true owner. It was not possession at all, but only the exercise of a right to a profit à prendre. Furthermore, the fact that the C.W.S. purchased all the gaits except the two-thirds of a gait belonging to the Vicar is, in my view, equally



no indication that the C.W.S. owns the land, and the position of the C.W.S. would be no stronger even if it also owned the Vicar's two-thirds of a gait. The C.W.S. case must stand or fall on its possession of the land since 1966, although, as Mr Sterling pointed out, the C.W.S. can only really be said to have been in possession of the eastern part of the land for more than a minimal period.

Mr Leeming accepted that the C.W.S. has not acquired a possessory title which it could force upon an unwilling purchaser under an open contract, but he argued that that is not the test to be applied in proceedings under section 8 of the Commons Registration Act 1965. It is provided by section 22(2) of that Act that references in the Act to the ownership and the owner of any land are references to the ownership of a legal estate in fee simple in the land and to the person holding that estate. Mr Leeming argued that all that is required to satisfy such a reference is a good holding title, which he said depends on possession from which ownership can be inferred and which is unlikely to be disturbed, although it may not be unimpeachable. He said that the essence of ownership is possession which is likely to continue because it has continued long enough to make any other claim unlikely. This, so Mr Leeming argued, would be sufficient to secure a first registration with a possessory title under the Land Registration Act 1925 and, since such registration would suffice to exclude the land from the ambit of sections 1 (3) and 8 of the Act of 1965, a Commons Commissioner ought not to require any higher standard of proof of ownership in the case of land which has not been so registered.

While I appreciate the force of Mr Leeming's argument that land registered with a possessory title is excluded from the ambit of sections 1(3) and 8 of the Act of 1965, I find myself unable to accept that a Commons Commissioner need do no more than satisfy himself that unregistered land could have been registered. Section 6 of the Act of 1925 lays down the effect of first registration with a possessory title. It does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first proprietor, and subsisting or capable of arising at the time of registration of that proprietor. Land held on such a title could only be sold at its full market value if the vendor paid the premium on an indemnity policy. It may be that in the circumstances of this case such a premium would be small, but to envisage a premium, however small, would be to read into section 22(2) of the Act of 1965 words which are not there. In my view in the absence of a good root of title, a person claiming to be an owner in proceedings under the Act of 1965 must show that he has a title gained by the operation of the Limitation Act 1939.

For these reasons I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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

16~~th~~

day of

May

1977

Chief Commons Commissioner