



COMMONS REGISTRATION ACT 1965

Reference No 20/U/80

In the Matter of land at Sabden Fold,
Goldshaw Booth, Pendle District,
Lancashire

DECISION

This reference relates to the question of the ownership of the part ("the Referred Land") hereinafter defined of land known as Cock Clough at Sabden Fold, Goldshaw Booth, Pendle District and being the land comprised in the Land Section of Register Unit No CL. 96 in the Register of Common Land maintained by the Lancashire County Council. The Referred Land means the part of the said land which is south of the line CD marked on the Register map and 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 solicitors for the Hon R J Assheton on whose application the Land Section registration was made, said (letter dated 11 April 1978 from Foysters of Manchester) that investigation had convinced them that their client is not the owner of any part of the land. No person claimed to be the freehold owner of the Referred Land and 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 Preston on 11 May 1978.

For the purposes of exposition, I divide the land ("the Unit Land") in this Register Unit containing (according to the Register) 1.23 hectares (about 3 acres) into three parts:- (1) The Referred Land as above defined, a strip about one fifth of the Unit Land; (2) the AB Part, the land within the line AB on the Register map and less than one twentieth of the Unit Land; and (3) the North Area, the remainder, an irregularly shaped piece surrounding the AB Part and a piece of land (not part of the Unit Land) about the same size as the AB Part.

At the hearing (1) Mr R W Taylor of Old House Farm (Entry No 1 in the Rights Section of rights attached to this farm to graze 2 cows and of estovers over all the Unit Land was made on his application as tenant) and his wife, Mrs A Taylor were represented by Mr R P Watkin solicitor of Charlesworth Wood & Brown, Solicitors of Skipton; (2) Mr John Lee of Sabden Fold Farm (Entry No 3 in the Rights Section of a right attached to this farm to graze 20 cattle over all the Unit Land except the AB Part was made on the application of his predecessor in title Simplex Hardware Limited, as also was Entry No 1 in the Ownership Section of their ownership of the AB Part) attended in person; and (3) Mr Roger James Moyle of Walden Cottage (Entry No 4 in the Rights Section of rights attached to this cottage to graze 3 geese, 2 head of cattle and 1 horse, of estovers and piscary over the AB Part and the Referred Land was made on the application of his predecessor in title Mr C McL Couch, as also was Entry No 2 in the Ownership Section of his ownership of the North Area) also attended in person.



Mr Taylor in the course of his evidence produced: (1) a conveyance dated 5 October 1972 by which Mrs E Coupe and others as personal representatives of Mrs E H Stephenson (she died July 1971) conveyed to Mr and Mrs Taylor Old House Farm, (2) (3) and (4) copies (apparently contemporary) of surrenders made to the manorial court on 15 October 1836, 1 May 1897 and 12 August 1924 and (5) an agreement dated 18 December 1939 made between Mr W H Stephenson and the Mayor Aldermen and Burgesses of the Borough of Nelson relating to the overhead electricity transmission line with one pole and one stay and applicances and (6) an abstract dated 1972 of the title of the personal representatives of Mrs Stephenson which included abstracts of the said surrenders, the probate of the will of Mr W H Stephenson (he died 1 January 1958), and of the will of Mrs E H Stephenson, and a statutory declaration made on 22 September 1972 by Mr Taylor.

The relevant words in the parcels of the 1972 conveyance (apart from those relating to Old House Farm containing 13a 2r 32p) are "SECONDLY (so far as the Vendors can and lawfully may grant the same) ALL THAT the Vendor's estate and interest in the strip of land lying between the property firstly hereinbefore described and the property thirdly hereinafter described AND THIRDLY (so far as the Vendors can and lawfully may grant the same) ALL THAT one third part of share of and in the allotment at Sabden aforesaid situate to the North of the property hereinbefore secondly described such secondly and thirdly described property containing in all (3 acres and 24 perches)." The annexed plan shows the property secondly described as being the Referred Land and the property thirdly described as being the North Area. The relevant words of the 1924 surrender are "and secondly all that one third part or share of and in the allotment situate at Sabden aforesaid containing three acres and twenty-four perches or thereabouts...as described...in the Schedule...and edged red and green on the plan endorsed. The Schedule includes "part of 150; one third share of waste containing 3 acres and 24 perches: 1.0.8." and the plan shows edged green the whole of the Unit Land except the AB Part. The 1924 surrender records that the lands were formerly known by the description following (here it sets out that from the 1836 surrender which was the same as that used in the 1897 surrender) but I need not I think for the purposes of this decision go back so far.

Mr Taylor said that he had been a tenant of Old House Farm since 1957 and that at that time and ever since there had always been a fence along the line CD marked on the Register map. He had grazed land south of this fence with cattle as if it was his own and this had never been queried.

Mr Lee in the course of his evidence said that he was a director and one of the shareholders of Simplex Hardwares Ltd a family company now in liquidation and that he did not claim ownership of the Referred Land. He pointed out that although there was a fence near the line CD on the Register map which divided the Unit Land into 2 parts as described by Mr Taylor, such fence was in fact a little to the south of the barn marked on the Register map and not as thereon delineated.

On the day after the hearing I inspected the Unit Land.

In relation to the ownership of the Referred Land the documents produced are a little obscure. Under the 1924 surrender Mr W H Stephenson apparently took no more than a one third share; under the 1972 conveyance, Mr and Mrs Taylor were expressed to take "all the Vendor's estate". Although the 1972 words are consistent with the doubt as to whether the personal representatives of Mrs E H Stephenson had any interest at all in the Referred Land, they are also consistent with a doubt as to whether she had any greater interest than a one third



share. Having regard to the 1972 declaration made by Mr Taylor, I see no reason for not giving full effect to the 1924 surrender and concluding (as I do) that Mr & Mrs Taylor are under the 1972 conveyance at least entitled to a one third share of the Referred Land.

In considering whether they may be entitled to the whole, I record my impression when I inspected the Unit Land. The Referred Land for the greater part is roadside verge to the road which leads to Old House Farm on the south and to Lower Lane Farm a short distance to the west (there the road ceases to be made up); the rest of the Referred Land is roadside verge of the road leading only to Old House Farm. The North Area is very different, being of a varied nature, some of it sloping steeply downwards to a gully along which flows a stream marked on the Register map. Considering all the Unit Land (with or without the AB Part) as it might have been in the past —→ as one piece, it seemed likely that it was at one time owned, if not by the Lord of the Manor, by those who used it (that is the owners of the nearby lands) in undivided shares. It also seemed likely that any such ownership would have been inconvenient and that it would always have been better, if it could be so arranged (eg by placing a fence such as now exists near the line CD), that those of Old House Farm should own the Referred Land and the other undivided shareholders should own the North Area.

In the context of this appearance I have an unusual conflict in the documents produced in relation to the ownership of the North Area. On the one hand I have Mr Couch's registration under the 1965 Act as owner; on the other hand I have the 1924 surrender and the 1972 conveyance which both treat the North Area as being for at least a third share —→ successively in the ownership of Mr W H Stephenson, Mrs E H Stephenson, her personal representatives and Mr & Mrs Taylor. Mr Moyle at the hearing offered no explanation of this conflict; there was no reason why he should because he did not claim the Referred Land and his predecessor in title Mr Couch in relation to the North Area had as regards ownership done all he could under the 1965 Act. But I think I can treat Mr Couch's registration as at least indicating that some such arrangement as the appearance of the Unit Land suggested might be convenient, was at some time agreed by all concerned.

In the above circumstances I shall presume (as I think I am entitled to do) that in some way and at some time during or before the ownership of Mrs E H Stephenson those who were formerly entitled to the two third share of the Referred Land not comprised in the 1924 surrender gave up their shares to her with the result that Mr & Mrs Taylor have now become the owners of the whole —→ under the Limitation Act 1939.

On the above considerations I am satisfied that Mr & Mrs Taylor are the owners of the Referred Land and I shall accordingly direct the Lancashire County Council as registration authority to register Mr Ronald Walter Taylor and Mrs Amy Taylor both of Old House Farm, Sabden Fold, Fence, near Burnley as the owners 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 28th day of June

1978

a a *Barbara Jellie*

Commons Commissioner