



COMMONS REGISTRATION ACT 1965

Reference No 220/D/89

In the Matter of the Fish Stones,
Kirkham, Fylde Borough, Lancashire

DECISION

This dispute relates to the registration at Entry No. 1 in the Ownership Section of Register Unit No. CL.263 in the Register of Common Land maintained by the Lancashire County Council and is occasioned by Objection No. 52 made by Kirkham Urban District Council and noted in the Register on 4 December 1970.

I held hearings for the purpose of inquiring into the dispute at Lancaster on 25 November 1976 and 5 May 1977 and at Preston on 25 January and 9 and 11 May 1978. At the 1976, 1977 and the first 1978 hearing I adjourned the proceedings without hearing any evidence or argument. At the second 1978 hearing Mr E G Sergeant on whose application the registration was made, was represented by Mr R A Sterling of counsel instructed by Baden Barnes and Nabb, Solicitors of Blackpool; and Kirkham Town Council (as successors in relation to this matter of the Urban District Council) were represented on 9 May by Mr M J Cartwright solicitor and on 11 May by Mr D B Forrest solicitor, both of Houghton Craven and Dicksons, Solicitors of Preston.

The land ("the Unit Land") in this Register Unit is a circular piece having a diameter of approximately 20 feet (perhaps less) situated on the south side of and within the Market Square of Kirkham; this Square is in the middle of the Town at the meeting point of Poulton Street (to the west), Preston Street (to the east), Freckleton Street (to the south) and Church Street (to the north). On and within the circumference of the Unit Land there are two stone structures ("the Fish Stones"), each being a number of horizontal stone slabs supported by vertical stone slabs and arranged in a half circumference of a circle, being at a convenient height (about 2 feet above the ground) for the display of fish or anything else not too large which might be offered for sale in a market.

The registration in the Land Section was also made on the application of Mr Sergeant and being undisputed became final on 1 August 1972. The now disputed registration in the Ownership Section relates to all the Unit Land. The grounds of the Objection (dated 23 September 1970) are: "That the person named as the applicant for registration was not entitled to apply in the capacity stated in the register as owner. The Kirkham Urban District Council own the land the subject of the registration".

In support of the registration oral evidence was given by Mr C A Plant, Mr D Muntz, Mr E G Sergeant himself, and Mr J C Holt, in the course of which the documents listed in the Schedule hereto were produced or referred to. Mr Sterling contended (in effect):- In 1287 by Royal Charter there was granted to the Abbott of Vale Royal a market every day on Thursday at his Manor of Kirkham. This Manor under a conveyance dated 23 November 1933 became vested in Mr Sergeant, and with it the right to hold the Market. The Unit Land is and was appurtenant to the Manor,



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it being part of the Market Square and being land in respect of which Mr Sergeant had for many years received stallage. Mr Sterling referred me to *Re Islington Market*, (1835) 3 Cl & F 513 and *Lockwood v. Wood* (1841, 1844 & 1845) —————> 6 QB 31. Alternatively Mr Sterling contended that Mr Sergeant had a good possessory title.

At the conclusion of the said oral evidence Mr Forrest said that the Council would not call any evidence and that they do not now maintain that they own the Unit Land. He contended (in effect):- For Mr Sergeant to establish his ownership he had to show that manorial rights exist. The Public Record Office copy of the Patent Rolls (1401 *Inspeximus* of the 1287 charter) should be disregarded because no modern English translation had been proved, as also the 1933 conveyance the original of which had not been produced. There was no proper evidence that it was part of the waste of the Manor. Broadly applying the best evidence rule, Mr Sergeant had not proved his title.

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

The copy 1933 conveyance produced appears to have been made photographically and to be a true copy of a conveyance duly made. Mr Plant, who qualified as a solicitor in 1925 (before then he had for 5 years been at the Bar) and who remembered his firm acting for the vendors (Mrs F M Penny and Mr F Jackson) in relation to the transaction, identified as his the copy signature attesting their execution, and said that he had no doubt that the copy produced was a genuine photo copy of the original. Mr Sergeant said that he did not know where the original was; he had searched all over the place; in 1964 he sold Carr Hill (the land described and expressly included in the 1933 conveyance) and the copy of the 1933 conveyance he produced was made shortly afterwards.

In my opinion the original 1933 conveyance at the date of the hearing was truly lost, and the copy produced, which showed the original to have been duly executed, is a true copy. I conclude therefore that the copy has the same evidentiary value as the original.

The PRO copy of the 1401 *Inspeximus* is in Latin, and because I am ignorant of the writing of the period, to me it is or would without the help below mentioned, be illegible. However I have the English translations at page 18 of *Fishwick* (1874) and at page 372 of *Porter* (1876) and the typed Latin transcription and English translation of *Mrs Lockwood* (1978). As a general rule before any court or tribunal, the meaning of a document is a matter of law, to be decided by the court or tribunal without the help of any evidence. In my opinion the 1401 document is no exception to this rule; it is unthinkable that in 1287 or in 1401 any person could properly disregard a Royal Charter just because it was in Latin, and this *Inspeximus* is I think just as effective now. So Mr Sterling had no need to call evidence proving a translation, although he might properly, as he did, as part of his legal argument help me by providing one. With this help, I conclude that in 1287 there was a Royal Charter the effect of which was as Mr Sterling contended.

As to stallage, Mr Sergeant said (in effect):- There is a market in Kirkham on Thursdays and a 2 to 5 day fair in October. The marketeers come down and bring their own stalls, which they erect; after the market they leave them in a local store until the next Thursday. They pay, some £1 and some 75p, to the market superintendent Mr J Holt or to Mr Sanders who is his deputy; they give the sums taken



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to him (Mr Sergeant) afterwards; he got a chit and entered the sums (in the account book produced). He had done this ever since 1933 when he took over; there were a few stalls at that time; the Manor was sold with Carr Hill (described as 2 a. 2 r. 9 p.) a short distance south-east of the Market Square with "Important Manorial Rights", including "... the whole of the tolls from the Market Square, where there is accommodation for at least 30 stalls. The charge for the stalls would be about 1s. 6d. each per day, the Market being held on Friday in each week. There is at present very little Market in Kirkham as no attempt has been made to work the Market, and only one or perhaps two stalls are pitched on Market Day; but there is no doubt that with good organisation a good Market could be built up ...".

And Mr Holt said (in effect):- He is the market superintendent having being so appointed about 14 or 15 years ago by Mr Sergeant. He collected rents from the stalls in the Market Square. The Fish Stones were generally for light haberdashery and cloth remnants; they were renovated about 8 years ago and within the last 12 months. Those using the Fish Stones are charged (like the others); charges are £1, or 75p or 50p per day; he charged 75p per day for each "half moon" of the Fish Stones. When he started the charge was 10s. Od. or 7s. 6d.

The above statements of Mr Sergeant and Mr Holt are I think evidence that the Unit Land is appurtenant or reputed to be appurtenant to the Manor Mr Sergeant acquired under the 1933 conveyance. There is in law no reason why I should not act on such evidence notwithstanding that the Unit Land is not particularly mentioned in any document produced. But the Market Square (it surrounds the Unit Land) is mentioned in the above quoted particulars of sale (from the executors of R H Penny Esq.) and there are the rating documents relating to "Manorial Incidents including Market Square". While Mr Sergeant was giving evidence, Mr Forrest said that it was not in issue that Mr Sergeant had been collecting rents from the Market Square since he took over, and Mr Forrest asked no questions of Mr Holt. The distinction between tolls payable to the owner of a market and stallage payable to the owner of the soil on which the market is held, is elucidated in *Lockwood v Wood* supra; clearly the receipts described by the executors of Mr Penny, by Mr Sergeant and by Mr Holt are (notwithstanding the words they themselves use) in law stallage. I see no reason why I should not give full effect to the oral evidence of Mr Sergeant and Mr Holt find as I do that the Land is and has since sometime before 1933 appertained to or being reputed to appertain to the Manor of which he is the owner.

This finding together with the 1933 conveyance is enough to support the now disputed Ownership registrations. I need not I think express any opinion as to Mr Sergeant's ownership of the market franchise or of the rest of the Market Square; it may be that he can trace his title through Mr R W Penny (he died 14 August 1931), Mr H L Birley (he died 4 January 1920), Mr J L Birley (the grantee under the 1872 conveyance), and the Dean and Chapter of the Cathedral Church of Christ, Oxford of the King's Foundation (the Royal grantee of 1546); this is a larger question affecting matters to which none of the oral evidence was particularly directed depending on a consideration of a number of documents which I consider as a Commons Commissioner I should not unnecessarily volunteer an opinion.

The reasons set out above, I confirm the registration without any modification.



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Mr Sterling asked for costs. Under the 1965 Act persons may have to make applications for, and objections to, registrations without any opportunity of fully investigating the evidence available to their possible opponents or even to themselves; the mere circumstance that an objection fails at a hearing before a Commons Commissioner is in my opinion not enough to justify an order for costs. The situation and peculiar nature of the Unit Land is such that its ownership must be of considerable public interest. I consider the Town Council acted reasonably in requiring Mr Sergeant to prove his case. On these considerations, I do not think fit to make any order of costs.

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.

SCHEDULE
(documents)

-	-	Recent photograph (3" x 3") of Unit Land.
EGS/1	21 January 1287 2 July 1401	PRO extract (certified 5.5.78.) of Patent Rolls; Inspeximus 2 H.4. of charter of 15.Ed.1.
EGS/2	23 November 1933	Copy conveyance by Mrs F M Penny and Mr F Jackson to Mr Sergeant of "The Manor ... of Kirkham ..." and the dwellinghouse "Carr Hill with the stables ..."
EGS/3	13 October 1964	Conveyance by Mr Sergeant to Liptrot & Caplan Limited of Carr Hill.
EGS/4	1933	Abstract of title of Mrs F M Penny and F Jackson Esq to the Manor of Kirkham and land at Carr Hill and Pinfold (commencing with a conveyance dated 11 September 1920).
EGS/5	14 April 1977 3 May 1978	Receipts for £21.13 and £20.83 endorsed on rent demands on Mr E G Sergeant in respect of "Manorial Incidents including Market Square".
EGS/6	13 May 1950	Photograph of Unit Land (showing lamp-post in middle).
-	1949	Printed book (Preston/octavo): Kirkham in Amounderness by R Cunliffe Shaw.
-	1876	Printed book (Fleetwood and Blackpool octavo): History of the Fylde of Lancashire by John Porter.



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- EGS/7 14 June 1636 Copy lease by Dean and Chapter of Christchurch to Thomas Clifton.
- 1874 Printed book (Manchester for Chetham Society; small quarto): District of Kirkham by Henry Fishwick.
- EGS/8 1949 Copy map of Manor of Kirkham from the Ordnance Survey of 1845 being page 70 of Kirkham in Amounderness (supra).
- EGS/9 16 October 1872 Photo copy of conveyance by Dean and Chapter of Christchurch Oxford to Mr T L Birley of the Manor of Kirkham and of closes of land and wind corn mill, Kirkham.
- EGS/10 1546 Extract from pages 333 to 338 of printed book of Christchurch Library Oxford being a translation of a Royal Grant del. Westm. 11 Dec 38 H.8. to Cathedral of Christ of (among many other lands etc) the Manor and Rectory of Kirkham and the advowson of the vicarage.
- EGS/11 1959 Housing Rent Account Book.
- EGS/12 10 May 1978 Transcription by Mrs F W Lockwood of Inspeximus of 2 H.4.
- EGS/13 ditto Translation by Mrs F W Lockwood of above transcription.
- EGS/14 - Extract (page 1347) from Kelly's Handbook of Entry 14 Sergeant, Edward Geoffrey.
- EGS/15 undated
(? 1933) For sale by private Treaty of Carr Hill, Kirkham with important Manorial Rights (exors of R H Penny Esq).

Dated this 20th day of September 1978.

John A. Bannister

Commons Commissioner.