



In the Matter of The Banks, Seagrave, Barrow Soar R.D., Leicestershire

DECISION

This reference relates to the question of the ownership of land known as The Banks, Seagrave, Barrow Soar Rural District being the land comprised in the Land Section of Register Unit No.VG.46 in the Register of Town or Village Greens maintained by the Leicestershire 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 Miss Gladys Evelyn Weston claimed to be the freehold owner of part of the land, and Mrs. Audrey Davis claimed that her husband Mr. George Davis was the owner of land answering the description "The Banks". No other person claimed to be the freehold owner of the land in question or 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 Leicester on 26 July 1975. At the hearing Seagrave Parish Council was represented by Mr. J. E. C. Hardy their chairman, Miss Weston was represented by Mr. C. P. Adkinson solicitor of Crane & Walton, Solicitors of Leicester, and Mrs. Davis was represented by Mr. R. F. Canner, solicitor of Myerson & Co. Solicitors of Leicester.

The land ("the Unit Land") comprised in this Register Unit contains a little more than 6 acres and is (apart from roads, tracks and paths) for the most part grass land; in a few places there are bushes, trees and scrub. The Unit Land is much up and down, and therefore appropriately called "The Banks"; however it is often also called "The Green".

Mrs. Davis gave evidence about the piece of land shown on the Register map as plot O.S. No.302 area .082 acres, apparently completely surrounded by the Unit Land. After some discussion, Mr. Canner stated on her behalf that it was clear that the land in which she was interested had not been registered, and that accordingly she withdraws any claim to the land in question in these proceedings. Accordingly in this decision, I need say no more about her claim.

The ownership claim of Miss Weston relates to a strip of land ("the Claimed Strip") about 15 feet wide (wider at its north and south ends), bounded on the east by lands ("the Corbey Leys lands") owned and occupied by Miss Weston under a conveyance dated 30 December 1948, and bounded on the west by the tarmac roadway which runs from King Street on the south to Mucklegate Lane on the north west and which forms the west boundary of the largest of the three pieces of land which together comprise the Unit Land. Miss Weston giving evidence explained that practically she is only concerned to obtain a right of access across the Claimed Strip for three dwellinghouses which she wishes to build on plot O.S. plot No.304 area .486 of an acre and for which she has a planning permission dated 13 July 1972.



jurisdiction under the 1965 Act on this reference is limited to determining the membership of the legal estate in fee simple, see section 22(2); I have no jurisdiction to determine whether the Unit Land is subject to a right of way. So if I determine that Miss Weston is not the owner, it does not follow that she has not got or could not obtain any right of way she needs. However, I accept the submission of Mr. Adkinson that he can in these proceedings properly put forward on behalf of Miss Weston an ownership claim, notwithstanding that my decision on it may leave other important questions unresolved.

Mr. Adkinson contended that the following deeds, being all documents of title held by Miss Weston, showed that the tarmac roadway is the western boundary of her land;—

- (i) An indenture dated 28 April 1838 by which three pieces of land containing together 8 acres and 28 perches were conveyed; one of them is therein described as "AND ALSO ALL that other close or parcel of ground ... containing four acres three roods and thirty six perches called or known by the name of Corby Lees ..." and the parcels of the indenture concluded with general words: "TOGETHER with all and singular appurtenances buildings ... commons ... easements privileges advantages ... and appurtenances whatsoever to the said messuage grounds and hereditaments belonging or in any wise appertaining or used and enjoyed therewith AND the reversion ...";
- (ii) An indenture dated 19 November 1910 by which was conveyed: "ALL THAT Messuage farm house or tenement and the farm buildings, yard, garden, orchard and paddock ~~to~~ to the same belonging and adjoining situate in and fronting to the Green in Seagrave ..." by recent admeasurement found to contain two roods and thirty three perches or thereabouts ALL which said premises are bounded on the North in part by the Village Road and in other part by other property belonging to the said Augustus Joseph Stonehouse, on the South by the Village Green, on the East by property belonging to Vincent Wells and on the West by the Village Road and were formerly in the occupation of ...";
- (iii) A conveyance dated 30 September 1942 by which three pieces of land delineated ("for identification purposes only") on the plan drawn thereon were conveyed; this plan is in all essential respects the same as the Register map, the plots so delineated being Nos. 303 and 304 edged blue, No. 309 edged green and No. 315 edged red; the description of the first of the three pieces of land thereby conveyed is therein the same as the description above quoted from the 1910 indenture. (iv) The said 1942 conveyance in which the land thereby conveyed is described as "ALL THOSE pieces or parcels of land messuage or dwelling house and buildings and other property particulars of which are set forth in the schedule hereunder written"; the schedule is in three columns headed "Ordnance Number", "Description" and "Decimal Area"; the numbers are 303, 304, 306, 309, 315, 315, 320 and 319 with a total area of 7.525; Nos. 303 and 304, being plots immediately to the east of the Claimed Strip, are described as "House buildings etc. .221" and "Orchard .486". The numbers 303 and 304 on the 1942 plan correspond with numbers 304 and 303 on the Register map; I assume that these numbers were in 1942 mistakenly interchanged.

Miss Weston explained her claim by reference to a drawing recently made by Shakespeare, Turk and Graham. The north end of the Claimed Strip is overgrown with trees and bushes; at this end, between the Claimed Strip and plot 304 (formerly an orchard) there is a deep dyke; in about 1949 this was cleared by Italian prisoners of war; notwithstanding that it is coloured green on the drawing, the dyke, so Miss Weston



claimed, belongs to her. The dwellinghouse in which she has lived since 1949 is on plot 303; the front garden adjoins (there is an open iron fence with a gate) land (not claimed by Miss Weston) which is part of the Unit Land. The rest of the Corbey Leys Lands are for the most part rough pasture on which Miss Weston keeps racehorses. When Miss Weston first came the tarmac roadway was not made up as now (it is not a through motor road out of the Village).

On behalf of the Parish Council, evidence was given by Mr. G. J. Wells (he has lived in the Village all his life, is now aged 43 years, and has been a member of the Parish Council for 8 years) and by Mr. Hardy (he also has lived in the Village all his life, is now aged 53 years, was a member of the Parish Council from 1944 to 1967 and has been chairman since May 1973). From their earliest recollection the Parish Council annually by public notice called a public meeting of the Parish held on (or about) 1 March for the purpose of letting the grass on the banks and the other roads and lanes in the Parish; the chairman of the meeting acted as an auctioneer receiving bids for each parcel of grass; there was a burning candle with a pin, and the last bid before the pin fell out was considered legally binding; these meetings were discontinued in the early 1950s, because no bids were received, probably it was found that with the increasing motor traffic and higher wages, the grazing was not worth the cost of attending the cattle. The grass on the Unit Land was let as one parcel (as I understood without any special mention of the Claimed Strip) and such a letting was among the last. Mr. Hardy said (in effect):- As far back as he remembered the grass verge part of the Claimed Strip had always been there; the Claimed Strip had never been fenced off the roadway; when he was a boy there was access from the roadway to the orchard through the gate on the drawing marked "Position of former access"; the gate is there now, and although apparently not used, could be used.

After the hearing, I inspected the land, it having been agreed that I might do so unattended.

In my opinion the Claimed Strip was not included in any of the land expressly conveyed by any of the deeds produced. The 1948 conveyance is by reference to the Ordnance Survey numbers, and the Claimed Strip forms no part of the numbers expressly mentioned. The Claimed Strip is outside any land delineated on the 1942 plan; to determine the meaning of the words "Village Road" as used in the description in the 1942 conveyance, I must consider how a person well acquainted with the land in 1942 would have read the words in the context in which they were used in the 1942 conveyance; the roadway would then have appeared to be a well used motor or cart road track; the Claimed Strip would not then be aptly described either as a "yard" or "orchard" or "paddock" or by any other descriptive word used in the conveyance; the "Village Road" is treated as part of the northern boundary of the land edged blue (the road or track is not marked on the 1942 plan as going round this boundary, and it does not do so now); if "Village Road" was in the conveyance used as including only the made up part of the roadway or track, the 1942 plan and much of the rest of the description would be incorrect and ambiguous; if "Village Road" was used as including all land between the made up part of the roadway or track and the visible boundary of plots 303 and 304, then the 1943 plan and the rest of the description would be correct and unambiguous; of these two alternatives, I prefer the second. It may be that in 1910, a branch of the Village Road lead round the north of the Claimed Strip to plot 303 (the property of A. J. Stonehouse)



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and it may be that then the dyke lead to a ditch on the north east; but in all relevant ~~ways~~, the land would I think then have appeared much as it did in 1942; notwithstanding that the description in the 1910 conveyance is unaided by any plan, I think the words "Village Road" were then used in the same sense as they were used in the 1942 conveyance. The description "ground ... called ... Corby Leys ..." in the 1823 indenture is not I think evidence of anything now relevant; the general words in the indenture were then common form, and in my view provide no evidence that the Claimed Strip was intended to be included.

Where an inclosed piece of land fronting on a highway is conveyed, there is a rebuttable presumption that the land between the adjoining inclosure and the middle line of the highway is impliedly included in the conveyance; but this presumption is or may be rebutted if the inclosure and the middle line communicate at both ends with open commons or other larger portions of land, see Grose v West (1816) 7 Taunton 39. Mr. Adkinson did not contend that the Claimed Strip impliedly belonged to Miss Weston under this presumption; rightly I think, because the circumstances are I think essentially similar to those considered in Grose v West supra. The Claimed Strip is part of the Unit Land, all of which I must by section 10 of the 1965 Act now presume to have been Village Green in 1968; the Claimed Strip communicates directly with the larger portions of the Unit Land situated on the north and on the south; it has no apparent north or south boundary, and I am unable to deduce from the evidence or from what I saw what such boundaries ought to be. Further Miss Weston in the course of her evidence, with great candour, said that she had not cultivated the grass verge because it did not belong to her, that she was concerned with access, and did not think she had ownership; her own view as to her legal position supports my conclusion as to the applicability of the presumption.

For the above reasons I am not satisfied that Miss Weston is the owner of any part of the Claimed Strip.

There is I think no need for me to consider the claim of the Parish Council to be the owner of the whole of the Unit Land in any detail, because if I am satisfied they are owners, I am by subsection (2) of section 8 of the 1965 Act obliged to direct their registration as owners, and if I am not satisfied that there is any owner (there is no other claimant) I am by subsection (3) of section 8 obliged to direct their registration as owners.

After the conclusion of this hearing, I held other hearings for the purpose of inquiring into the ownership of other grass lands in the Village which have been let annually as described by Mr. Wells and Mr. Hardy. As regards some of these grass lands by reason of the terms of the Seagrave Inclosure Award, I shall in my decision about them make a distinction between the ownership of the herbage on the land and the ownership of the land itself; but there is nothing in the Award which requires me to make any such a distinction in relation to the Unit Land.

The appearance of the Unit Land is consistent with it having always been parish property formerly vested in the churchwardens and overseers, and now vested in the Parish Council as their successors by operation of law. The letting of the grass shows that the Parish Council were in possession at least up to the 1950's; no one



has claimed against them, and I infer that they are still in possession. I conclude that they now have a possessory title.

For the above reasons I am satisfied that the Parish Council is the owner of the Unit Land and I shall accordingly direct the Leicestershire County Council as registration authority, to register Seagrave Parish Council as the owner of the land under section 8 (2) of the Act.

Whether Miss Weston is the owner of the dyke, is I think primarily a boundary question. It is not apparent whether the dyke is on the west boundary of plot 304 or is some distance from it; I have no drawings or measurements to enable me to express an opinion about this. I can do no more than say that if the dyke and any land east of it is part of the Unit Land, then my decision is applicable to it; but so far as the dyke or any such land is within plot 304, is therefore no part of the Unit Land, I am not concerned with it.

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

9th

day of

November

1973.

a. a. Baden Fuller

Commons Commissioner