



COMMONS REGISTRATION ACT 1965

Reference No.21/U/26

In the Matter of The Flash,
Kegworth, Leicestershire.

DECISION

This reference relates to the question of the ownership of land known as The Flash, Kegworth, being the land comprised in the Land Section of Register Unit No.C.L.47 in the Register of Common Land 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 the British Waterways Board claimed to be the freehold owner of the land in question 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 Leicester on 11th October 1973.

At the hearing the Kegworth Parish Council appeared by Mr. R. Sibson, its Chairman, and the British Waterways Board was represented by Mr. C. Dunkley, its Assistant Estate Officer. For reasons which will be apparent hereafter, I observed that there was no appearance by or on behalf of the Rector of Kegworth.

The land the subject of this reference has an area of 0.610 acres. It lies open to a road known as Mill Lane to the west and was formerly bounded on the south side by a mill race, which has been filled in.

By the Inclosure Award dated 23rd April 1778, made under the Kegworth Inclosure Act (15 Geo.III, c.xxxiii) land described as the Flash, together with a much larger area on the other side of Mill Lane, was allotted to the Rev. John Willey, the Rector of Kegworth, and his successors.

By a deed of appointment and release dated 23rd October 1839, one John Rich conveyed to the Proprietors of the Navigation from the River Trent to the Town of Loughborough in the County of Leicester, with the mill race and land to the south of it, the mill and a narrow strip of land on the north side of the mill race. The narrow strip of land and the mill are together numbered 7 on the plan on the deed and described as "Mill Bank and Mill" with the total area stated as 0a.1r.2p. The strip of land is hereafter referred to as "the Mill Bank".

Whatever passed to the Proprietors of the Navigation by the deed of 23rd October 1839 was transferred to the Grand Union Canal Company by the Leicester Canals Purchase &c.Act 1931 (21 & 22 Geo.V. c.cvii) and from that Company to the British Transport Commission by the Transport Act 1947, Sch.3, Part II, and finally to the British Waterways Board by section 31(5) of the Transport Act 1962.



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The map referred to in the Inclosure Award shows the mill race, but does not show the Mill Bank separately. If regard were had solely to this map, it might appear that the whole of the land to the north of the mill race formed part of the allotment to the Rector and his successors. However, in the absence of any evidence that Mr. Willey or one of his successors conveyed the Mill Bank to Mr. Rich, I have come to the conclusion that the Mill Bank was at all material times in the same ownership as the mill and that the land described in the Award as the Flash did not include the Mill Bank.

After 1839 no evidence regarding the Flash or the Mill Bank was produced to me earlier than 12th July 1920, when it appears from the Parish Council Minute Book that it was agreed to let the Flash to a Mr. William Shepherd for £2 a year, no vehicles to be allowed, but children to be allowed to play on it. On 9th December 1921 the Clerk of the Parish Council was directed to instruct the police officer to remove van dwellers from the Flash. On 14th May 1922 a Mr. Jones was instructed to erect a post and notice-board on the Flash Ground: what was to be put on the notice-board does not appear, but it can be inferred that it was directed against the use of vans as dwellings. On 10th December 1928 it was agreed to let the Flash to Messrs. Bower Bros, contractors, for five years at £5 a year.

It does not appear what happened when Messrs. Bower Bros' lease expired in 1932, but Mr. Sibson stated that the Parish Council let the Flash for circuses, menageries, fairs, and the like until 1956, after which the demand ceased. Mr. Sibson also said that a notice-board which gave details of the tolls charged by the Parish Council disappeared about ten years ago. The Parish Council has kept the grass on the Flash and the Mill Bank mown down to the present time. During the present year the Parish Council has given permission for equipment used in local public works (including those of the Board) to be placed on the Flash temporarily.

There is no evidence that the British Waterways Board or its statutory predecessors has ever made any use of any part of the Flash or the Mill Bank, save in so far as the Mill Bank retained the water in the mill race before the race was filled in. Nevertheless, for some years the Board has maintained notice-boards on the Flash, apparently without any objection by the Parish Council. The earliest evidence of this is that two notice-boards with the time-honoured proclamation: "Trespassers will be prosecuted" were erected in pursuance of an order dated 24th October 1961. The westernmost of these notices was erected on or very near to the northern boundary of the 1839 strip, while the easternmost was well to the north of that strip, more or less midway between the northern and southern boundaries of the Flash. These notice-boards were replaced about the middle of 1962 by two which bore the following notice:-

"BRITISH WATERWAYS

"Any person or persons found
"parking or depositing litter
"or rubbish on this land will
"be prosecuted.

"BY ORDER"



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These latter boards are still in position, but now need repainting.

The Board owns a house to the east of the Flash and about ten years ago a drain and a water-pipe serving this house were laid through the part of the Flash to the south of the notice-boards.

The Board claims to have a possessory title to the portion of the Flash to the north of the Mill Bank and to the south of a line passing through the two notice-boards. There is no physical feature on the ground, apart from the notice-boards, by which the position of this line can be identified. The Board claims to be the owner of the Mill Bank by virtue of the deed of 23rd October 1839.

The Parish Council claims to have a possessory title to the whole of the land the subject of this reference, including the Mill Bank.

I am satisfied that in 1839 the Mill Bank became the property of the Board's statutory predecessors and that the remainder of the land the subject of this reference (i.e. the Flash properly so called) was the property of the Rector of Kegworth by virtue of the 1778 Award.

Neither the Board nor the Rector can have lost the ownership of their respective areas unless there has been adverse possession for a sufficient period to bar an action for the recovery of land. In the case of the Board this is the usual period of twelve years, but since the Rector is a spiritual corporation sole, the period is in his case thirty years by virtue of section 4(2) of the Limitation Act 1939. Neither period can begin to run until there is adverse possession of the land by some person. Putting the matter the other way round, neither can begin to run unless and until the true owner ceases to be in possession. To constitute dispossession, acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purposes for which he had a right to use it: see 24 Halsbury's Laws of England 252, and the authorities there cited.

In my view the taking of the rents and profits by the Parish Council, at first by way of rent from Mr. Shepherd and Messrs. Bower Bros. and later by way of tolls, constituted adverse possession. The land in respect of which these payments were taken is described in the relevant minutes of the Parish Council as "the Flash". While the whole of the land the subject of this reference is described as "the Flash" in the Register, I do not consider that it would be right, in the absence of evidence to that effect, to construe "the Flash" in the minute book in any different manner from that expression in the Inclosure Award. Where there is no evidence to the contrary, I take "the Flash" to mean the land to the north of, and excluding, the Mill Bank.

The evidence of such adverse possession of the Flash by the Parish Council extends from 1920 to 1956 and so exceeds the period of thirty years prescribed by section 4(2) of the Limitation Act 1939 in the case of land belonging to a spiritual corporation. I have therefore come to the conclusion



that any claim to the Flash by the Rector of Kegworth became statute-barred in 1950 at the latest, when his title was extinguished by virtue of section 16 of the Act of 1939. This appears to be the view taken by the Rector, since he has made no claim in these proceedings.

I turn now to consider the evidence regarding the Board and the Flash, again using that expression in the same sense as it is used in the Inclosure Award. I attach no importance in this context to the sewer and water-pipe serving the house belonging to the Board, for their existence is consistent with there being an easement and is therefore not sufficiently unequivocal to amount to adverse possession by the Board. In any case, however, the sewer and water-pipe have not been in existence for the twelve years necessary to bar any right of action under section 4(3) of the Act of 1939.

There is no evidence that the Board or its statutory predecessors had any concern with the Flash during the period between 1920 and 1956 when the Parish Council was in possession adverse to the Rector. That leaves for consideration the erection of the notice-boards by the Board in 1961 and 1962. While, so far as I am aware, there is no authority on this point, I would hesitate to hold that the erection of the notice-boards would in itself amount to adverse possession, but it is not necessary for me to decide this point, since the period of twelve years since the first erection of the boards had not expired when I inquired into the matter.

For these reasons I am satisfied that the British Waterways Board is the owner of the part of the land the subject of the reference which was conveyed to its statutory predecessors by the deed of 23rd October 1839, and that the Kegworth Parish Council is the owner of the remainder of the land the subject of the reference, and I shall accordingly direct the Leicestershire County Council, as registration authority, to register the Board and the Parish Council as the owners of the respective parts 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 29th day of November 1973

Chief Commons Commissioner