



COMMONS REGISTRATION ACT 1965

Reference Nos. 268/D/187
268/D/188
268/D/189

In the Matter of four pieces of land in Preston
under Scar, Richmondshire D., North Yorkshire

DECISION

These three disputes relate to (1) the registration at Entry No. 1 in the Land Section of Register Unit No. CL.266 in the Register of Common Land maintained by the North Yorkshire County Council, (2) the registration at Entry No. 1 in the Ownership Section of the said Register Unit, and (3) the registration at Entry No. 2 in the said Ownership Section, and are respectively occasioned (1) by (reference D/187) Objection No.0249 made by Mr John Ulf Machell and Sir Henry Lawson-Tancred and noted in the Register on 26 November 1970, (2) by (reference D/188) the conflicting registration at the said Entry No. 2 in the Ownership Section, and (3) by (reference D/189) the conflicting registration at the said Entry No. 1 in the Ownership Section.

I held a hearing for the purpose of inquiring into the disputes at Richmond on 30 October 1974. At the hearing, (a) Mr Edmond Sergeant pursuant to whose application the said Entry No. 1 in the Land Section had been made attended in person (b) Mrs Antoinette Sergeant, who is provisionally registered at the said Entry No. 1 in the Ownership Section as owner of part of the land comprised in this Register Unit was represented by Mr Sergeant, her husband, (c) Mr Machell and Sir H. Lawson-Tancred, who in addition to being Objectors as above mentioned are provisionally registered at the said Entry No. 2 in the Ownership Section as owners of the whole of the said land, were represented by Mr J.H.N. Towers solicitor (assisted by Mr H.C. Wrigley articled clerk) of Grays Solicitors of York, and (d) the Rt. Hon. Richard William Algar (7th) Baron Bolton was also represented by Mr Towers. Mrs Christine Elizabeth Thompson wrote to the Office of the Commons Commissioners saying (in effect) that being the owner of Lilac Cottage as successor in title of Mrs Sergeant she did not wish to pursue the said Entries in the Register.

The land ("the Unit Land") comprised in this Register Unit is four pieces all in or near the centre of the Village:- (i) a piece ("the Penhill View Piece": being the most easterly of the four) situate between a building known as Penhill View (on the south) and the road through the Village (on the north); (2) a piece ("the Water Tap Piece"; the smallest piece of the four) situate where the said road forks and having at its west end a continuously flowing source of water; (iii) a piece ("the Disputed Piece") lying between the land held with Lilac Cottage (on the north) and the said road on the south); and (iv) a piece ("the West Piece", the most westerly of the four) about 30 or 40 yards northwest of the Disputed Piece. All the pieces are on their road side open and unfenced.



- 2 -

The part of the Unit Land of which Mrs Sergeant is provisionally registered as owner is the Disputed Piece. Mr Sergeant at the beginning of the hearing said that he and Mrs Sergeant were now only concerned with this piece.

Mr Towers in the course of his evidence, after explaining that the Bolton Estate, of which Lord Bolton is the tenant for life is now vested in Mr Machell and Sir H. Lawson-Tancred as trustees, produced: (i) a vesting assent dated 30 December 1946 by which lands (more than 2,750 acres in Preston-under-Scar, Redmire and Wensley, including much of the Village of Preston under Scar) were vested in N.A. Baron Bolton ("the 6th Baron"); (ii) probate of the will of 6th Baron (he died on 15 June 1963) granted on 25 May 1964 to Mr Machell and Sir H. Lawson-Tancred; (iii) a copy conveyance dated 17 October 1967 of Lilac Cottage by Mr Machell and Sir H. Lawson-Tancred to Mrs Sergeant; (iv) a copy of a conveyance dated 21 December 1971 of Lilac Cottage by Mrs Sergeant to Mrs Cook (then Miss P.M. Batty) and (v) a copy of a conveyance dated 19 April 1963 of Lilac Cottage by Mrs Cook to Mr R.W. and Mr E. Thompson.

Mr C.T. Waite who is and has been the Agent of Lord Bolton since 1963 (before then from 1948 he was sub-Agent of the 6th Baron in the course of his evidence said (in effect):- The Disputed Piece is included in the land coloured pink on the plan annexed to the 1946 conveyance, and in the land described in the Schedule thereto under the heading "Various" (indicating it was not let) as "72A. pt. Village Greens etc. 305"; it is also included in an Estate Map (which he produced) prepared in 1917 and based on the 1893 Ordnance Survey. The land adjoining the Disputed Piece on the north similarly coloured pink is, or includes the land which was conveyed to Mrs Sergeant by the 1967 conveyance. On this land there used to be a building which up to the outbreak of the 1939-45 war was used as a smithy; the blacksmith was tenant of the Estate and used the Disputed Piece for his business (shoeing horses). When the blacksmith's shop ceased to be used as such, it was let by the Estate to Mr G.R.H. Willis who used it along with the adjoining stable. In 1967 Mr Willis gave up his tenancy, with the result that Lilac Cottage could be conveyed with the old blacksmith's shop; the Disputed Piece is not (as is apparent from the plan annexed) included in the 1867 conveyance. After the conveyance Mr Sergeant commenced to carry on from Lilac Cottage the business of buying and selling motor cars and used the Disputed Piece for storing stock; on behalf of the Estate he (Mr Waite) complained to Mr Sergeant about this; but they disagreed.

Mr E. Willis, who has lived in the Village all his life (67 years) in the course of his evidence said (in effect):- His brother was a smallholder who used the stable above mentioned to store his implements; he was the tenant of the blacksmith's shop as described by Mr Waite; but the Disputed Piece was not part of his tenancy. He knew the Disputed Piece; his grandfather was the blacksmith; the Disputed Piece has never been fenced round from the road; nevertheless it has never been locally considered to be common land. The Disputed Piece was subject to rights of way from the road to the stable, to the blacksmith's shop and to Lilac Cottage, but nobody had rights of common over it. He understood that Lord Bolton was the owner, and knew that Lord Bolton was Lord of the Manors of Preston, Wensley, Redmire and Castle-Bolton.



- 3 -

Mr Sergeant in the course of his evidence said in effect:- When his wife purchased Lilac Cottage (in 1967), the Disputed Piece was not being used, otherwise than as a rubbish dump; it was an eyesore. He and his wife planted daffodils and flowers on it and planted trees on the outside of the wall of what was the blacksmith shop (the shop itself was pulled down, or rather it fell down). It is common land, because "any land which remains unfenced and with no restrictions as to entry or exit or for use by the public in a period of time becomes common land." If it is decided in these proceedings that Mrs Sergeant is the owner of the Disputed Piece, she will present it to the Village.

The documents produced and the oral evidence outlined above show I think that in 1967 Mr Machell and Sir H. Lawson-Tancred were the owners of the Disputed Piece and that such ownership still continues unless their title has by reason of some dispossession been extinguished by the Limitation Act 1939. I need not I think resolve the conflict between the evidence of Mr Waite and that of Mr Sergeant as to the extent and nature of the use made of the Disputed Piece by Mr and Mrs Sergeant between 1967 and 1971, because it is I think clear that neither Mr nor Mrs Sergeant ever did anything on the Disputed Piece before 1967 when they acquired Lilac Cottage or after 1971 when they sold it. Accordingly neither of them could have been in possession of the Disputed Piece for long enough to dispossess and extinguish the title of Mr Machell and Sir H. Lawson-Tancred.

As to the Disputed Piece being common land, I am bound by the definition in section 22 of the 1965 Act under which (stating its effect shortly) common land must (A) not be highway, and must be either (B) subject to rights of common or (C) waste land of the Manor.

The situation of the Disputed Piece is such that it is unlikely to be subject to rights of common and I accept Mr Willis' view that there are no such rights.

In my opinion the circumstance that the Disputed Land has been open and unfenced, indicates, so far as this circumstance indicates any relevant legal conclusion, that the Disputed Piece is part of the highway in accordance with the presumption applicable to roadside verges, see Attorney General v. Beynon 1970 1 Ch. 1. There was no evidence of there being any accepted or reputed waste land of any Manor of which the Disputed Piece could be part; its situation in or near the inhabited part of the Village is an indication against it being any such waste land. I cannot I think merely because nobody at the hearing suggested that the Disputed Land is highway, treat the circumstance that it is open and unfenced as indicating that it is waste land of a manor rather than highway.

From the history of the Disputed Piece given me by Mr Waite and Mr Willis, I conclude that it was up to 1939 open land fronting onto the Village Smithy, which can properly be considered as having been held up to then with and as part of the smithy, and that nothing happened after 1939 to bring it within the section 22 definition.

Accordingly I conclude that the Disputed Piece is not properly registered as common land.



- 4 -

As to the other three pieces which are part of the Unit Land:- Mr Sergeant said that his application to register them as common land was made while he was chairman of the Parish Council and pursuant to a resolution passed by them. He resigned from the chairmanship when he moved from the parish and in the circumstances he did not wish to support the registrations.

Mr Waite, in the course of his evidence described the Penhill View Piece and the West Piece. They are both coloured pink on the 1946 plan above mentioned; the Disputed Piece and the West Piece are similarly included under the above mentioned heading "Various"; Penhill View Piece however is in the Schedule to the 1946 vesting assent included in land therein described under the heading "Tenant A".

In my opinion there are no relevant differences between the evidence relating to Penhill View Piece and the West Piece and that relating to the Disputed Piece, and accordingly I conclude that neither the Penhill View Piece nor the West Piece is ~~common land~~ properly registered as common land.

The Water Tap Piece is not coloured pink on the 1946 plan above mentioned in the Schedule to the 1946 vesting assent. Mr Waite said (in effect): A continuous flow of water is maintained by the Estate. No charge is made by the Estate to those who use it. He thought that this tap was an old village water supply.

A right to take water from the land of another although recognised by law is not properly described as right of common, see Race v. Ward (1855) 4E & B.702. It may be that the right is vested in the Parish Council under section 124 of the Public Health Act 1936. It may be also that the land on which ^{this is} situate is part of the highway in accordance with the presumption above mentioned. Whatever may be its precise legal position, upon a consideration similar to those which as above stated I consider to be applicable to the other parts of the Unit Land I conclude that ^{the} Water Tap is not within the section 22 definition, and accordingly it is not properly registered as common land.

For the reasons set out above, I refuse to confirm the registration at Entry No. 1 in the Land Section of this Register Unit. My decision as to the Land Section renders it unnecessary for me to give any decision as regards to the Ownership Section, because by section 6(3) of the 1965 Act where the registration of any land as common land is cancelled the registration authority shall also cancel the registration of any person as the owner thereof. I should record that although in the course of determining whether the Unit Land is common land, I had to express opinions as to its ownership and as to the possibility of it being highway, as a result of my conclusion that it is not common land, these opinions have under the 1965 Act no effect.

I am required by regulation 30(1) of the Commons Commissioner 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

January

1975

A. A. Borden Fuller

Commons Commissioner.