



COMMONS REGISTRATION ACT 1965

Reference No 45/U/297

In the Matter of the Village Green,  
Airton, Craven District, North Yorkshire

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DECISION

This reference relates to the question of the ownership of six pieces of land being part of that known as the Village Green, Airton, Craven District and being the land comprised in the Land Section of Register Unit No CL. 507 in the Register of Common Land maintained by the North Yorkshire County Council (formerly West Riding 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 no person claimed to be the freehold owner of the pieces of land in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Skipton on 24 March 1976. At the hearing (1) Mr P Sharp chairman of Airton Parish Meeting attended in person; (2) Mr T Gledhill, Mrs D Gledhill (his wife) and Mrs D Ward (her mother) of Airton House were represented by Mr W Foster solicitor of Walker Charlesworth & Foster Solicitors of Skipton; and (3) Mr W Proctor was represented by Mr C Reeder solicitor of Charlesworth Wood & Brown Solicitors of Skipton.

On behalf of his clients Mr Foster claimed ownership of (1) part ("the Airton House Front Triangle"), (being the part) of the most easterly of the six CL. 507 pieces included in the land coloured pink and edged red on the plan annexed to the 1960 conveyance below mentioned and (2) part ("the Airton House Side Triangle") of another of the CL. 507 pieces (the piece west of Airton House and east of the road out of the Village leading south to the A65 Skipton road), such part being the area obtained by cutting off the east corner of such piece by a diagonal line drawn southwards from the southwest corner of Airton House.

On behalf of his client, Mr Reeder claimed ownership of part ("the Tatham House Strip") of another of the six CL. 507 pieces (being the piece on the south side of the road from the middle of the Village to Helliford), such part being the area obtained by cutting off so much of the piece as fronts on the land coloured pink on the plan endorsed on the 1961 conveyance below mentioned.

Mrs Gledhill in the course of her evidence produced a conveyance dated 16 December 1960 by which the personal representatives of Mr L A Edmonds (he died 13 June 1936) conveyed to Mr H Ward, Mrs D Ward, Mr T Gledhill and (herself) Mrs D Gledhill, the dwelling house known as Airton House "with the garden garage stable and other outbuildings thereto belonging..." and a croft or paddock "...which said property is for the purposes of identification delineated on the plan annexed hereto and thereon coloured pink and edged round with red..."



Mrs Gledhill after saying that Mr H. W. L. died about 10 years ago, described the land claimed on her behalf by reference to the 1960 conveyance plan and my copy of the Register map. The Airton House Front Triangle is a triangular piece of grassland in front of Airton House, now crossed by a drive, which is not as drawn on the Register map; such drive now leaves the metalled roadway on the west side of the Triangle and turns to the main gates of and on the north side of Airton House at the east corner of the Triangle. On the northeast side of the Airton House Side Triangle, there are two doors now used leading into the House and the appearance of a third door or gateway (now disused and blocked up) which formerly led to the garden and other lands at the back of the House. In front of one of the used doors, there is a flagged area of about 2 or 3 square yards (it seemed to me about 8 feet wide in front of the door and to extend about 4 feet away from the door). When asked by Mr Foster (with reference to the Airton House Side Triangle) who maintained the flagged stone and who looked after the grass, Mrs Gledhill said "We have", and when asked if anyone else had used the Triangle, she said "If anyone tried to park on it, we asked them to move and they have gone."

Mr Proctor in the course of his evidence produced a conveyance dated 3 December 1961 by Mr J. R. Preston to Mr M. G. Riley and a conveyance dated 3 February 1966 by him to Mr W. & Mrs J. Proctor. The parcels of the 1961 conveyance are: "First ALL THAT close of land situate...and being part of a field numbered 130 on the Ordnance Survey map And Secondly ALL THAT croft or shrubbery...which said properties...are for the purposes of identification only more particularly delineated on the plan endorsed hereon and thereon coloured pink. The parcels of the 1966 conveyance are essentially the same, being by reference to the plan on the 1961 conveyance and expressly including the dwelling house "erected on the said plots of land...and now known as Tatham House..." Mr Proctor said (in effect):- Mr Riley built the house. The Tatham House Strip is roadside verge separated from the land delineated on the 1961 conveyance plan by a stone wall about 4 feet high, broken in 2 places to provide a driveway and pathway to the House; his predecessor made the two openings and he (Mr Proctor) had enjoyed them since 1966.

Mr Sharp explained that the CL. 507 pieces, are only a part of the land known as the Village Green; the remaining part is now registered (under the 1965 Act) as Register Unit VG. 86; this part belongs to the Airton Parish Meeting. He said (in effect):- The Airton House Front Triangle has always been considered to be private land belonging to Airton House. The Parish Meeting have made their claim after considering a conveyance dated 24 October 1951 and made by All Souls College, Oxford, but he had no copy of this conveyance with him.

On 5 April 1976 (after the hearing) I inspected the land.

As to the Airton House Front Triangle:- The relevant word in the 1966 conveyance is "garden". It is perhaps stretching the ordinary meaning of this word to read it as including this Triangle; however the plan on the 1966 conveyance clearly includes it, and from its appearance as described by Mrs Gledhill, I conclude that the Triangle is included in the land by the conveyance expressed to be conveyed, and that its ownership is as claimed by Mr Foster.

As to the Airton House Side Triangle:- It was not suggested that this Triangle was by the 1960 conveyance expressed to be conveyed and there was no evidence as to how it had been used before 1960. I was not at the hearing persuaded by anything





said by Mrs Gledhill that she and the other claimants are now or ever have been since 1960 in possession of this Triangle; the things done by them on it, seem to me to amount to no more than might be expected from persons who had a right of way over this common land or who wished to do their share of maintaining its pleasant appearance for the benefit of everyone. Accordingly I was not at the hearing satisfied as to the ownership claimed.

As regards the Tatham House Strip:- This was not either by the 1961 conveyance or by the 1966 conveyance expressly conveyed. However Mr Reeder contended that Mr Proctor's ownership should be presumed under the in law well-established presumptions that in the absence of evidence to the contrary where a highway such as the Hellifield Road, runs between walls, the right of public passage is not confined to the made up part of the road but extends right up to the walls and that a conveyance of land abutting on a highway is presumed to include so much of the highway as lies between the front fence of the land conveyed and the middle line of the made up part of the highway. If the Tatham House Strip had not been registered as common land under the 1965 Act and if I had jurisdiction in the circumstances to determine its ownership, it may be that I would have concluded (in accordance with these presumptions) that the Strip was highway and passed under the 1961 and 1966 conveyances. But the Strip was registered under the 1965 Act and the definitions in such Act provide that "common land" does not "include...any land which forms part of a highway", see section 22; accordingly if the Strip is highway, it should not have been registered and I would have no jurisdiction with regard to it. I am aware that there have been many registrations under the 1965 Act as common land of land crossed by roads, tracks and footpaths which are highway and which have in the registration been disregarded; the exclusion from the registration of a large area of land of every road, track or footpath crossing it which is or might be a highway would be very laborious, and I think the Act contemplates that such an exclusion need not always be effected, see subsection (2) of section 21. However I cannot I think, in exercise of the jurisdiction conferred on me by the 1965 Act to determine ownership of land which is not highway, give effect to an ownership claim which is based on the land being highway and on no other evidence at all. Mr Proctor said nothing at the hearing from which I could conclude that he, if the presumptions relied on by Mr Reeder are inapplicable, could be the owner. Accordingly I was not at the hearing satisfied as to ownership.

Before I inspected the land, it seemed to me that I might because the evidence given by Mrs Gledhill and Mr Proctor was so short, have overlooked some point in their favour which might be apparent when I understood better what they were talking about. As their solicitors agreed that I might make my inspection unattended, it would be unfair to treat anything I saw as adverse to their claims. Accordingly I say no more than having walked over the land, the CL. 507 pieces and the VG. 36 together appear to be an area of public land, and that although it may be that the dividing line between the part of such public land which has been registered as VG. 36 and the part which has been registered as CL. 507 has been drawn arbitrarily, and although there appear to have been since the registration some realigning of the made up part of the highway as regards some of the more westerly CL. 507 pieces, nevertheless I see no reason for supposing that the Tatham House Strip is not common land properly within the section 22 definition which excludes highway, and no reason for treating the Airton House Side Piece as privately owned land. Accordingly, the conclusions I reached at the hearing about this Strip and this Piece were confirmed. And I should add that the conclusion I reached at the hearing about the Airton House Front Piece was also confirmed by what I saw.



For the above reasons I am satisfied that Mr Foster's clients are the owners of the Airton House Front Strip and I shall accordingly under section 8(2) of the Act of 1965 direct North Yorkshire County Council as registration authority to register Mrs Dorothy Ward, Mr Trevor Gledhill and Mrs Dorothy Gledhill all of Airton House, Airton as the owners of that part of one of the six pieces of land comprised in this Register Unit which is within the area coloured pink and edged red on the plan annexed to the 1960 conveyance and I shall in my direction to the Council annex a copy of such plan.

In the absence of any evidence that any person other than those represented by Mr Foster and Mr Reeder could be the owner of any other part of the CL. 507 pieces, and having regard to my conclusion set out above about their claims, I am not satisfied that any person is (save as aforesaid) the owner of the said six pieces, and they will therefore (save as aforesaid) be subject to protection under section 9 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 10<sup>th</sup> — day of August —

1976

a. a. Baden Fuller

Commons Commissioner