



COMMONS REGISTRATION ACT 1965

Reference No.45/D/1

In the Matter of Youngs Square,  
Spofforth-with-Stockeld,  
Wetherby R.D., Yorkshire

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No.C.L.221 in the Register of Common Land maintained by the West Riding County Council and is occasioned by Objection No.86 made by Mr. J. L. S. Bailey and noted in the Register on 7 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Harrogate on 4 October 1972. The hearing was attended by the Spofforth-with-Stockeld Parish Council ("the Council"), who were represented by their clerk Mr. H. G. Duckett, and by Mr. Bailey, who was represented by Mr. J. H. Bryan, solicitor, of Messrs. Hepworth & Chadwick, solicitors of Leeds.

This Unit is approximately rectangular in shape, being bounded on the south-west by the made-up footpath of Castle Street (the main village street) and bounded on the north-west by Canby Lane (a narrower road leading to Church Hill). On the north-east its boundary (about 41 feet long) is the wall of what is or was the front garden of 30 Castle Street; on the south-east its boundary (about 38 feet long) is land belonging to 28 Castle Street.

This Unit was registered pursuant to an application dated 23 March 1968 and made by the Council. The grounds of objection were stated as follows:- "(i) In respect of the land hatched red on the attached plan:- that good title thereto has been conveyed to me (Mr. Bailey) in fee simple free from the rights of others. (ii) In respect of the land hatched red and green (a) that this land has been used by my predecessors in title for their exclusive use and benefit and I believe I have a possessory title to the land hatched green free from others' rights. (b) that no particulars of the precise common rights claimed have been supplied. (c) that if any common rights did ever exist (which is not admitted) they have now fallen into desuetude and are extinguished through non-user and/or the exhaustion of the product. (d) that if any right to hold a market did exist it is extinguished through non-user. (e) that any right to hold a market (which is not admitted) is not vested in the Spofforth-with-Stockeld Parish Council". The attached plan showed hatched red the south-east part of this Unit ("the Red Land") measuring 24 feet by 28 feet and showed hatched green the north-west part of this Unit, except the west corner which is on the plan rounded off, ("the Green Land") measuring 17 feet by 28 feet.

The dwelling-house 30 Castle Street was conveyed by Miss J. C. Gibson to Mr. Bailey by a conveyance ("the 1968 Conveyance") dated 20 September 1968. In October 1968 he commenced to build the wall which now stands on the north-west (Canby Lane) and the south-west (Castle Street) boundaries of this Unit. Shortly after the foundations had been put in, Mr. Bailey was told by an inhabitant that this Unit was registered as common land and his attention drawn to the public advertisement to this effect dated 28 September 1968. Nevertheless, he completed the wall as it now is, so that this Unit now appears to be a private yard or forecourt in front of the front garden of, and to belong to, 30 Castle Street.



-2-

At the opening of the hearing, Mr. Duckett, shortly outlined the Council's case, stating that until Mr. Bailey built the wall this Unit had for at least 60 years never been enclosed and never been owned by anybody.

The evidence on behalf of Mr. Bailey was as follows:- (i) The relevant parts of the "paper title" offered to Mr. Bailey when he purchased in 1968, being, a receipt dated 2 October 1930 for £15. paid by Miss M. Young (who died on 1 April 1949) "in settlement of the purchase price Old Butcher's Shop adjoining Saddler's Shop the property of Mr. C. Long", a statutory declaration made on 18 August 1949 by Mr. W. D. Young, (I was told since deceased) and a conveyance dated 29 November 1962 by Dr. M. H. Jones and Miss C. M. Young to Mrs. L. Crusher. (ii) A letter dated 15 August 1963 from Wetherby Rural District Council confirming that the Council did not object to a wall "along the boundary of this property". (iii) A letter dated 21 August, 1963 from the Highways & Bridges Department of the County Council stating that the Assistant County Surveyor would have no objection "to the proposal to build a wall in line with the boundary walls of the adjoining properties on each side" and then after discussing the "sight line" adding "it would be better to enclose only that portion of the land which did not come within the sight line and on that basis I would raise no objection to the proposed wall". (iv) The particulars of sale of the property as offered to Mr. Bailey when he purchased. (v) The 1968 conveyance. (vi) A statutory declaration made on the 2 October 1972 by Dr. H. M. Jones. (vii) A statutory declaration made on the 2 October 1972 by Miss J. C. Gibson, who lived at 30 Castle Street from 1963 to 1968 with Mrs. L. Crusher and who was her personal representative. And (viii) the oral evidence of Mr. Bailey himself.

The evidence on behalf of the Council was as follows:- (i) The oral evidence of Mr. T. Roberts, who is 63 years of age and has lived all his life in the Village. (ii) The oral evidence of Mr. W. A. Smith, who has since 1968 been chairman of the Council, been since 1963 a member of the Council and lived in the Village since 1961. (iii) The oral evidence of Mr. H. G. Duckett, who is and has for the last four years been clerk of the Council and lived in the Village for the last seven years. (iv)- (xvi) 13 affidavits all sworn on 10 January 1970 and all in the same words (except for the deponent's period of residence at Spofforth, which varied between 60 and 75 years) by Mrs. M. Young, Miss M. Hill, Miss A. Drury, Mrs. H. Squires, Mr. A. W. Hill, Mr. J. W. Squires, Mr. J. W. Drury, Miss C. M. Young, Mrs. D. Bland, Mrs. A. K. Hill, Mr. D. M. R. Young, Mrs. F. Ridsdale and Mr. N. Ridsdale. And (xvii) a further affidavit by Miss C. M. Young sworn on the 3 October 1972.

I find that from as far back as the memory of any of the witnesses extended (say from about 1905) until October 1968 when Mr. Bailey built the wall, this Unit has been land over which any body could walk freely without finding anything to obstruct him and that members of the public did in fact so use it. This was I think established by the said 13 affidavits, the oral evidence of Mr. Roberts (whose evidence I accept) and confirmed by the 1949 Statutory Declaration of Mr. W. D. Young who said that in 1930 the red land was "left as an unenclosed open space". The above finding is sufficient to enable me to conclude that this Unit was from 1905 to 1968 "common land" within one of the ordinary meanings of these words.

However I am, I think, bound to give my decision in accordance with the definition of "common land" set out in section 22 of the Act which requires that it shall be (stating the effect of the definition shortly) either (i) "land subject to rights of common" or (ii) "waste land of a manor" not subject to such rights, but (iii) not "town or village green" and (iv) not "any land which forms part of a highway". In each of the said 13 affidavits the deponents state:- "Throughout such time (his or her period of residence) I have always regarded Young's Square (this



-3-

Unit) as being Common Land and have exercised full rights over it in common with the public at large accordingly." In my opinion I cannot properly read the said 13 affidavits as evidence that all the 13 deponents thought that this Unit came within the statutory definition; having regard to the oral evidence of Mr. Roberts and the way the case was presented on behalf of the Council, I infer (perhaps I might have done from the affidavits themselves) that the deponents were saying that the Unit was common land within the ordinary meaning of the words mentioned in the preceding paragraph of this decision coupling with it the idea that such use had been by the public as of right.

Of the four headings into which I have divided the statutory definition, I will first deal with that relating to "highway". When fences are put up with reference to a highway (here Castle Street and Canby Lane are highways), a rebuttable presumption of law arises that the highway extends to the whole space between the fences and is not confined to such parts as may have been made up; and for the purpose of this presumption, the fences must be taken to mark the limit of the highway unless there is something in the conditions of the road or the circumstances to the contrary. The principles of law applicable are stated by Mr. Justice Goff in Attorney-General v Beynon 1970 Ch.1. The old garden wall of 30 Castle Street, are I think fences within the meaning of the above mentioned presumption. *and the wall of 29 Castle Street*

In favour of the presumption being applicable to this Unit I have:- Mr. Roberts when he was young played there with other children; anyone coming from Castle Street to Canby Lane could (so he said) cross over it; he had parked his car there; in his earliest years before 1920 there was a village fair or feast which lasted for three days and was held for the most part on Manor Farm (on the opposite side of Castle Street) and "the overflow of stalls from the Farm was always put on" this Unit. Miss C. M. Young who owned the part of 30 Castle Street which was used as a Butcher's Shop from 1949 to 1962, who was for 10 years until 1961 a tenant of it and who visited her uncle Mr. W. D. Young during his occupation, in her affidavit said that this Unit was "used by inhabitants of the Village to walk round the corner between Canby Lane and Castle Street". Mr. Smith said that motor cars crossed the corner when coming out of Canby Lane to turn left into Castle Street. A photograph taken by the Objector shortly after he had acquired the property which showed from the absence of grass that the corner had been cut off by people walking or driving across. A photograph produced by Mr. Roberts showed the Saddler's shop as it appeared when he was a child. The statements in the said 13 affidavits.

The above considerations outweigh I think any indications against the applicability of the presumption contained in the letters and the paper title. The letter of the 15 August 1963 is not I think a consent by Wetherby Rural District Council to an obstruction in the highway and I reject the suggestion that I should presume, in the absence of any other evidence, that such letter was written after consultation with the Parish Council. The letter of 21 August 1963 does not I think show the County Council either had closed or intended to close any highway under its statutory powers; indeed the writer clearly thought that the portion within the sight line (most of the green land) should continue as highway verge. It was conceded that the Objector had no paper title at all to the green land: the part of this Unit which before the erection of the wall must I think have been more used by the public than any other part. Without knowing what acts of possession Mr. W. D. Young had in mind, I cannot infer that such acts were inconsistent with the public having rights over the red land, such as for walking round the corner as described by his niece, Miss C. M. Young, in her second affidavit.



-4-

The evidence by Dr. M. H. Jones that he parked his car on this Unit and told his patients that they could park there, seems to me to point either way: it is insufficient either by itself or with the paper title of Mr. Bailey to rebut the presumption above mentioned.

The south-west boundary of this Unit is in line with the boundaries of the other houses on either side; so as regards Castle Street this Unit is an "intake". But, quite apart from this Unit being as regards Canby Lane a corner site, the presumption is applicable to "intakes", see Attorney General v Beynon supra at pages 13 and 14.

On the foregoing considerations I conclude that this Unit is highway and is therefore outside the definition above referred to. Accordingly I refuse to confirm the registration.

There is, so Mr. Smith told me, a feeling in the Village that this land should be kept for the public. Although I can do nothing to give effect to this feeling, I record that in my view my decision will not prejudice any Court proceedings which might be taken to protect such rights as the public may have by reason of this Unit being highway.

The above observations are sufficient to dispose of this case. However, as the grounds of objection and the statutory definition refer to other aspects of this Unit which were discussed before me, I record my opinion on them.

From the appearance and situation of this land the probability of there being any "rights of common" at the date of registration is I think, having regard to the use made of this Unit as described to me, so small that I can properly find that there were then no such rights. But I do not base such finding on Mr. Bailey's paper title; ever assuming that he and his predecessors have been in possession of the red land, possession is not necessarily inconsistent with the existence of common rights.

From the situation and use made of this Unit as described to me I infer that it has never been cultivated, and before October 1968 was open land. Accordingly it can properly be described as waste land. A building known as "Manor Farm" is opposite this Unit; I was told that there is a building in the Village known or reputed to be an ancient Manor House; and I was shown particulars of the sale made on 30 April 1952 of a number of properties including 30 Castle Street by "The Charles Long Will Trust" which particulars included copyhold properties. On this information I cannot properly conclude that this Unit was ever parcel of any manor. Equally however, I have no information upon which I could properly conclude that this Unit was not at any relevant time parcel of any manor.

This Unit was not registered as a town or village green. On behalf of Mr. Bailey it was claimed that it was not such. I cannot infer from the evidence of Mr. Roberts of the use made of it before 1920 for the annual village feast or fair that it should have been so registered. I need not I think pursue this aspect of the case.

The paper title of Mr. Bailey must in relation to this dispute be construed in the light of the appearance of the land to which it applied when such title was offered to him. So construed it provided no evidence that this Unit was free from public rights; the possibility of there being such rights must have been obvious to anyone who inspected the land and who had knowledge of the above mentioned



-5-

presumption of law relating to the extent of a highway.

This Unit has not been used for the exclusive use of Mr. Bailey and his predecessors in title; members of the public have used it as outlined above.

The front rooms at least, of 30 Castle Street have for many years before 1930 been used as a Saddler's shop and as a Butcher's shop. Otherwise there was no evidence before me that any person ever had a right to hold a market on this Unit.

Mr. Bryan submitted to me that I should order the Council to pay the costs incurred by Mr. Bailey of these proceedings because:- (i) the Council had in March 1968 wrongly registered the land as common land (ii) the Council in letter dated 18 October 1968 had wrongly stated that this Unit was part of an ancient market and (iii) in letters dated 5 December 1968, 11 February 1969, 17 October 1969 and 26 April 1971 Mr. Bailey's solicitors had set out their client's case with sufficient clarity to enable the Council to see that they had no prospect of succeeding. Mr. Bryan also submitted that my finding that this Unit was highway was irrelevant and that as nobody either on behalf of his client or on behalf of the Council has contended that it was, such finding should not affect any discretion I had as to the costs.

A person who applies to register land under the Act as common land in good faith is not, I think, at risk as to costs merely by having made such application; whether such a person is at risk depends on the circumstances subsequent to the application.

I reject the submission of the Council that they can be exonerated from costs merely because at a Parish meeting a strong feeling was expressed in favour of the Objection's being opposed.

This dispute in substance relates to the wall erected by Mr. Bailey in October 1968; the erection and continued existence of this wall since then was, in view of my finding that this Unit is a highway, unlawful. Although by section 21 of the Act a decision by me to confirm the registration would not have the effect of determining for all purposes that this Unit does not form part of a highway, this section does not, in my view, prevent me from considering on a reference such as I now have whether the land is part of a highway; not being a highway is part of the definition in the Act of "common land". Holding an inquiry under the Act as to the applicability of this definition, I have, therefore, jurisdiction to come to a conclusion about the highway position whether or not any party attending asks me to do so. Having reached the conclusion that this Unit is part of a highway, I can, I think, properly act on such conclusion when exercising the discretion conferred on me as to costs. Having regard to the above considerations, I decline to direct the Council to pay any of the costs incurred by Mr. Bailey in these proceedings.

Even if the above considerations were inapplicable, I would decline to direct the Council to pay any of these costs because paragraph (i) of Mr. Bailey's grounds of objection relate only to the Red Land and the first sentence of subparagraph (a) of paragraph (ii) is I find incorrect in fact. These defects in the case put forward by him, in my opinion justified the Council insisting that the validity of the registration should be determined at a public hearing such as I held.



-6-

From one point of view, the Council have in these proceedings been successful because Mr. Bailey has as between himself and the Council failed to establish the lawfulness of the wall which he erected in 1968: the only point in these proceedings which is likely to be of any consequence to him. However I cannot, I think, properly order him to pay the costs of the Council; although the burden to which this Unit is subject by reason of its being a part of a highway may practically be greater than the burden to which it would have been subject if it had been merely common land, there is a difference between these two burdens which I cannot disregard. Having regard to these considerations, I decline to direct Mr. Bailey to pay any of the costs incurred by the Council in these proceedings.

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 for the decision of the High Court.

Dated this 1<sup>st</sup> day of December 1972.

a. a. Baden Fuller

Commons Commissioner