

In the Matter of Boughton Common, BoughtonDECISION

This reference relates to the question of the ownership of the land above mentioned being the land comprised in the Land Section of Register Unit No. CL.16 in the Register of Common Land maintained by the Nottinghamshire 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 Mr Sidney Taylor 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 Nottingham on 30 October 1984 and 26 February 1985.

Mr D R G Napthine (of Counsel) instructed by Messrs. Tracey, Barlow, Furness and Co., Solicitors of Worksop appeared for Mr Taylor and Mrs K H Cole, Solicitor with Newark District Council appeared for Boughton Parish Council on the first day and Mr G T Harding, Solicitor with Newark District Council on the second day.

Mr Sidney Taylor the claimant said that he lived at New Ollerton Caravan Site, Boughton in a caravan. With him lived his wife and six children, three sons and three daughters whose ages ranged from 13-27. Mr Taylor said that his wife had had a miscarriage 3-4 years before the birth of their eldest child.

Mr Taylor said that his father was a gipsy and came from Wales. He had moved to Ollerton and had died there. When the witness first moved on to the common he brought with him a Thorneycroft Van towing a caravan. He had two towing vans, two mobile homes and a caravan in which his mother lived. At that time the ground was covered in gorse; now horses and goats grazed the ares. The two mobile homes are on concrete slabs and there are tarmac hard standings for 3 caravans. There is now a fenced off area used as a vegetable garden. He built a wooden structure to serve as a wash-house. There are no services on the site. He gets his water from a farm in a churn. There is cesspool sanitation

He had not left the site since he moved in. He now drew social security and his son had kept himself going with odd jobs.

In cross-examination Mr Taylor said that when he was at Ollerton he stayed only on the Common. He stayed there when the common was flooded. In 1960 a fair was held in the middle of the common. Since then there had been no fair on that part of the common. His caravans are on the side of the common which adjoins the water works.



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When he first moved on the common there was only one other caravan on the site and that belonged to his father. The remainder of the common was unoccupied.

About 13 years ago he ploughed up an area of the common to prevent other caravans being placed on it. Proceedings had been brought against him to remove his Vehicles, Caravans and Mobile Homes in 1971 and 1983. He gave evidence at the hearing in 1971 when he was represented by a Solicitor.

Once a year his mother used to take his children away to pick strawberries.

When he went on holiday to the seaside he always left the mobile homes on the common. He had not increased the size of the vegetable plot.

In re-examination the witness said that he ploughed up the whole area of the common except for that occupied by his vehicles, wash house, caravans and mobile homes.

Mr Allan Leonard Eastland Poppitt said that he lived at 33, Drysand Close, Ollerton. He was now a driver handyman, having retired from the police force in 1979. From 1960-1976 he was in the police force stationed at Ollerton in Boughton Police House.

It was in 1960 that he first got to know Mr Taylor who was then living on the common. There was 10 constables in the local force. He came to know the Taylor family socially. In 1960 there were about two caravans on the common.

In cross-examination the witness said that he started in Ollerton on the 15th February 1960. Mr Taylor did not move from the common.

There were others who stopped on the common but only for a short period. He did not remember the common flooding. He remembered the fencing being put up but not at any particular time. There were horses on the common in 1960.

He remembered that there was a problem with gipsies at the humped back bridge.

Mr James McGinley said that he was now aged 75 and had lived at 149, Whinney Lane Boughton since 1945. He had worked in the mines at Ollerton from 1945-1974.

He knew Mr Taylor very well having first met him in the late 1940's when the family used to camp on the common. The Taylors were established on the common in 1955. His (the witness) youngest child Andrew was born in 1950.



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In about 1955/6 he made the acquaintance of Mr Taylor's father to whom he used to talk about Strabane in Northern Ireland where the witness's father had lived. Andrew was handicapped and he used to take him for walks in the direction of Whinney Lane. Mr Taylor's children were particularly kind to Andrew.

The Taylor family was established on the common in 1955/6. It has been there ever since. Mr Taylor may have been away from time to time but only for short periods and never permanently. Mr Taylor lived on the site. The caravans came and went. Members of his family would come to the site for a time and then go away.

Some one ploughed up the land surrounding Mr Taylor's caravans Andrew used to collect horse manure from the caravan site for his Grandfather's garden. He remembered one very old horse.

In cross-examination the witness said that Mr Taylor's encampment was between the fence and the road leading to the waterworks. He did not remember seeing Mr Taylor at the site near the hump back bridge. He did not think that Mr Taylor's caravan could have been moved after 1955. There were about three caravans on the land in 1955 and there were never less than two caravans. He remembered the flooding but the caravans were not swimming. The road was 50 yards from the caravans.

The remainder of the common was like virgin land. Part of it was used as a rubbish dump. The neighbourhood children played there. He remembered the Fair in 1960. The vegetable garden had been cultivated in the last 10 years. The fencing was put up about 5 years ago. After the surface was ploughed up in 1971 it was not possible to move caravans over the ploughed up area. Mr Taylor's father resented the ploughing.

Mr James Thomas Eley said he had lived at 129 Walesby Lane since 1964. Previously he had lived for 4½ years at 282, Walesby Lane. He was employed as a telephone operator at the Colliery. There was a shop at the rear of 282 Walesby Lane.

He met Mr Taylor's father before 1959 when he lived in Winner Lane - about 1957. Mr Taylor's parents made purchases at his shop, which was a general store. When he first went to the common there were two vans there and when he first met Mr Sidney Taylor he was living in one of them. The family never went off the site. The witness kept pigs and poultry at a site 3 miles from Ollerton and would pass the common nearly every day. The Taylor's never lived on any other site in Ollerton. He remembered Mr Taylor asking him about flowers. The witness was knowledgeable about flowers. Mr Taylor started cultivating flowers more than 10 years ago.



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Mr John George Stanley said that he was a retired miner living at 63, Poplar Street New Ollerton. He had been a stoker at the Waterworks for two years in about 1953. At that time no one was camped on the common.

He first knew Mr Taylor in about 1956. Mr Taylor used to come round the streets collecting scrap. he used to give him buckets of coal.

Mr Taylor's parent's were the first to move on to the common and he followed them 18 months to 2 years later. The witness never knew Mr Turner to move off the common after that. He had met Mr Taylor at Newark Market every Wednesday for the past 25 years.

In cross-examination he said that gypsies were moved on by the police when they were on the road side and causing obstruction. Mr Taylor used to go round the streets twice a week, or when specially requested to call.

Mr James Leslie Benson said that he had been living at 5 Manor Close Walesby since 1979. From 1974-1979 he had lived in Boughton near the Harrow Inn about 1¼ miles from the common. For 16 years before that he had lived in Boughton and for 10 years before that in Old Ollerton. He had known Mr Taylor for about 30 years when he (the witness) was living in Walesby. He lived on Boughton Common. He had never known Mr Taylor move away from the Common.

Mr Taylor's eldest son also called Sidney said that he lived at Ollerton Caravan Site and was 26-27 years old. He went to Ollerton Junior School when he was 7-8 and then to the Comprehensive. He had never been to Normanton-on-Trent School. he was born on the common. He remembered going strawberry-picking with his mother's mother.

That concluded the oral evidence for the claimant.

Mrs Cole for the Newark District Council then proposed to put in evidence by way of Statutory Declaration. I pointed out that such evidence was of little value if the deponents had not been cross-examined.

I adjourned the hearing to enable her to produce her witnesses.

At the resumed hearing Mr Harding appeared for the District Council.

Mrs Stella Marie Smedley of 5 Manor Close Boughton said that she had represented Ollerton in the Nottinghamshire County Council since 1977. She was familiar with the area, having lived there for the past 42 years. According to her recollection the Taylors began to live on the common on a more permanent basis in 1967/8.



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The area always had a history of gipsies coming and going but they had not stayed on the common. She was a Parish Councillor before she was elected to the County Council but she was not aware of the Taylors being on the common in the 1950s. Gypsies camped near the humped back bridge because they could water their horses in the river.

If Mr Taylor had been encamped permanently on the common she would have been aware of it and the Education Authorities would have put pressure on the parents to send their children to school.

In cross-examination Mrs Smedley said that in the late 60s when Mr Taylor's claim to be entitled to remain on the common was challenged, the Parish Council, to which she had been elected in 1961, was concerned to protect the water supply from pollution. In 1961 she lived in Sycamore Road, Ollerton, about ½ mile from the common.

The Parish Council had been concerned to move Mr Taylor away from his site on the common before 1971. The Parish Council was anxious to find an alternative site for gipsies. The evidence of witnesses who said that the Taylors had been there since 1955 showed that they did not recall that gipsies came and went. She knew that the site had been cleared of gorse and bushes. In 1955 the common was a favourite area for walking. It was near the confluence of two rivers and a scout camp. She recalled the County Court proceedings in 1971 and was as sure as she could be that the surface was ploughed up in 1971.

Mr John de Lacy said that he lived at 14 New Hill, Walesby, Newark and was a member of Ollerton District Council. He had known the Common for over 50 years and as a boy had played football on it. It was not correct that Mr Taylor had been on the common permanently since 1955. The witness had been elected to Southwell Rural District Council in 1960 and there was no one parked on the common at that time.

In cross-examination Mr de Lacey said that he first noticed that someone was living on the common some few years after 1960. Complaints were made. P C Colthrop (who came from Wales) was involved in the case. The witness's brother represented the Ward which included the common on the Southwell Rural District Council. The police were involved after the matter was discussed in the R D C. He was asked to give evidence at a hearing but the hearing was adjourned. The first gipsies came to stay on the common some time after 1960.

In re-examination the witness said that the RDC took proceedings against the gipsies camped on the common in about 1970.

Mrs Mildred Claire Birkbeck now living at 46, Forest Road, New Ollerton said that she had known the common since 1962 when she came to live at 175, Peter Smith's Drive opposite to the common.



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[Mrs Birbeck, marked the site of the house on the small scale map of the area on the left hand side of the agreed plan. It is on the west side of Walesby Lane and the last of the houses going north.] She was aware that the Taylor family was now living on the common. The family was not there in 1962. The Taylors were not then living on the common.

The family did not come until late 1964 or early 1965. Before then there were gypsies in the humped back bridge area. She came to New Ollerton from County Durham. Children used to play on the common each day. She moved from Peter Smith's Drive in 1982.

In cross-examination Mrs Birkbeck said she had been asked to give evidence on the previous night..

There were no caravans on the common until 1964. The common was a traditional stopping place for gypsies. Mr Taylor had no horses. The School records would show when Sidney and Adeline were admitted.

William Gordon Cunningham of Low Croft Weston Newark said that he had been Headmaster of Ollerton Junior School in Whinney Lane New Ollerton since January 1963. He produced the School Admission Register. In the register were recorded the name address and date of birth of every child which became a pupil at the School. The age range of children attending the School was 7+ -11

Entry No 1255 dated 27 October 1969 was Sidney Taylor, son of Sidney Taylor of Waterworks Caravan Site. The date of birth, as originally entered was 24 December 1959 which was altered subsequently on production of a birth certificate to 30 January 1958. The entry also included Normanton-on-Trent C of E as the School which he had last attended. This, it is now agreed, was not correct and the witness said that he had made the entry because Mrs Taylor who came with her two children said that she had come from Normanton.

Entry No. 1256 on the same date related to Adeline Delilah Taylor and her date of birth had been altered to 23 July 1959 on production of a birth certificate.

Both children were put into the remedial class.

The documentary evidence in addition to the School register and the agreed plan included the following.

1. A photostat copy of Particulars and Conditions of Sale ( to be held on 22 November 1938) of the Rufford Abbey Estate to be auctioned by Messrs. Knight, Frank and Rutley, Lot 125 related to the Vendor's interest in a Plot of Common Land (2a.0r.14p) described as "adjoining Boughton Pumping Station at the Northern end New-Ollerton sold to the Common-Rights thereover".
2. Copies of the Register relating to Register Unit No. CL.16. The Entry in the Land Section dated 8 February 1968 showed that it had



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been made on 8 February 1968 on an application made on 25 November 1967 by the Clerk to the Boughton Parish Council. The registration being undisputed became final on 1 October 1970. There were no registrations in either the Rights or Ownership Sections.

3. Notes of a Judgement dated 17 July 1971 in an action in Mansfield County Court Matter NO: 71 50325 Between Southwell RDC and Sydney Taylor (Senior) and Sydney (sic) Taylor (Junior). The Respondents are the present claimant and his father, I have not seen a copy of the document which initiated the proceedings but it appears from the judgment that it was a claim for possession.

The case first came on for hearing on 7 April 1971 and was adjourned to enable Mr Taylor (Junior) to be legally represented as he was unable to read. [I was informed by Mr Napthine that thereafter his client was represented by a Solicitor. The Solicitors who are instructing Mr Napthine did not act for Mr Taylor in the 1971 proceedings in the County Court].

The County Court Judge said that it appeared that the Taylor family including Mr Sidney Taylor's five children had been at Ollerton on the common for 4 years and Mr Taylor had said that the two elder children had been going to school regularly for 4 years and were making good progress as appeared from their reports. The three other children were also going to local schools.

In the Judge's view Mr Taylor was not an itinerant. He was a man who liked to live in the open air. His case needed special consideration what he needed was a piece of land where he could pitch his caravans, with planning permission.

The Judge said that if he made an order for possession the evils created would far outweigh the benefits to the community. The application was adjourned for six months to see what could be done.

I have not heard anything more about that application. This is not perhaps surprising considering the upheaval in local government resulting from the coming into force of the Local Government Act 1972.

4 On 29 June 1976 Newark District Council made an Order prohibiting the stationing of caravans for the purpose of human habitation on the common.

5. In 1977 Mr Commissioner Baden Fuller held a hearing in Nottingham for the purpose of determining for the purposes of the Act of 1965 who was the owner of the common. In his decision dated 1 February 1977, no one having attended the hearing, he declared himself not satisfied that any person was the owner of the common which therefore remained subject to protection under section 9 of the Act of 1965.

6. On 13 April 1983 Newark District Council applied in Mansfield County Court for an order for possession of the common against Mr Taylor relying on Section 9 of the Act of 1965. The application was supported by an affidavit of Alexander Clark MacLaren sworn on that date.



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To this claim Mr Taylor filed a Defence supported by an affidavit in which he claimed to have lived on the common since 1953 without licence or consent. In paragraph 3 of his affidavit he swears that he was given no permission to go on the land. On 25 May 1983 the case was adjourned pending a decision as to ownership by the Commons Commissioner.

The evidence given by the two sides differs on one essential point namely the length of time during which Mr Taylor and his family have lived permanently on the common. According to Mr Taylor and those who gave evidence in support of his claim Mr Taylor began to live permanently on the common at some time between 1953 and 1960, the year of the Fair. Mr Taylor and Mr Benson support 1953 and the other witnesses give later dates.

According to the witnesses called on behalf of the District Council Mrs Birkbeck who lived on the otherside of the road from the common said not before 1964 probably late 1964 or early 1965. Mr de Lacey said 'some few years after 1960' Mrs Smedley said she thought 1967-8. Mrs Birkbeck said there were no caravans on the common in 1962 and the other two said the same but the date was 1960.

I gained the same impression from the evidence as the County Court Judge in 1971 that Mr Taylor was popular with his neighbours none of whom resented his presence or his way of life. The Judge said that Mr Taylor was not itinerant but he liked an open-air life. Mr Taylor said that he wished to stay in the area for the sake of his children's education. In 1971 he had five children at School the two elder ones who went to Ollerton Junior School in October 1969 had in the meantime moved on to the Comprehensive School. The Judge found that Mr Taylor had lived in Ollerton for the last four years, i.e. from 1967. If Mr Taylor had then claimed as he does in 1985 that he had lived permanently in Ollerton since 1953 or even since before 1960 that would have made his case even stronger.

Apart from Mrs Smedley no witness has given any reason for the pressure that arose at some time shortly before the proceedings in 1971 were started, to have Mr Taylor and his family removed from the common. Mrs Smedley mentioned anxiety about purity of the water supply. But if Mr Taylor's story is true one might have expected this type of reaction to have manifested itself earlier. It is not the kind of public reaction that would occur so long as the visits to the common by Mr Taylor or other gypsies were for short periods. This type of protest would arise when the inhabitants realised that Mr Taylor and his family intended to remain on the common for good. When they decided that something had to be done about it they would go their representatives on the local authorities, such as the parish and rural district councils. I must not be taken as saying that all the witnesses who gave evidence for Mr Taylor were trying to deceive me, but in my view they were not in a position to be certain that Mr Taylor and his family never left the site.





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Furthermore and in spite of the impression Mr Taylor gave to the County Court Judge there was no evidence that either of the two children who were registered at Ollerton Junior School in October 1969 had ever been to school before. At that time Sidney was 11 year 10 months and Adeline 10 years 3 months. The age range of the School was 7+ -11 years and both children were put in the remedial class.

For whatever reason Mr Taylor never attempted to set up a claim based on adverse possession in 1971. If he tried to establish that he had begun to live permanently on the common before 1967 as he did before me, he did not succeed. The Judge in the 1971 case referred to a batch of several sheets of signatures from the inhabitants of Ollerton in support of Mr Taylor. The length of time that Mr Taylor and his family had made the common their only homewas clearly in issue in the case, but the Judge found that this had been the case only since 1967.

On the evidence adduced in this case I am not persuaded that Mr Taylor had made the common his permanent home before 1967. I am further of opinion that the time he has spent on the common after 1971 cannot improve his claim to have acquired a title by adverse possession.

Until someone comes forward and establishes a title through a purchaser at the sale in 1938 I am not satisfied that any person is the owner of the common. It will therefore remain subject to protection under section 9 of the Act of 1965.

If Mr Taylor is in receipt of Legal Aid I give him liberty to apply for any order he may require for taxation of his costs.

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

19th

day of

March

1985

George Hetherington

~~Chief~~ Commons Commissioner