



COMMONS REGISTRATION ACT 1965

Reference No. 233/U/115

In the Matter of an area of land near to
Newfield Farm at Litley, Cheadle

DECISION

This reference relates to the question of the ownership of an area of land near to Newfield Farm at Litley, Cheadle being the land comprised in the Land Section of Register Unit No. CL.88 in the Register of Common Land maintained by the Staffordshire 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 (1) Cheadle Town Council and (2) Mr & Mrs J B Sykes claimed to be the freehold owners of the land in question and Mrs O Stephens and Mr C E Stephens 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 Stafford on 13th January 1988.

The hearing was attended by Mr B Orgill of Staffordshire County Council (the registration authority) Mr M Collis of Messrs. Blagg Son & Masefield Solicitors of Cheadle representing Cheadle Town Council Mrs J Smith (Clerk of Cheadle Town Council) Mr J B and Mrs J M Sykes Mrs Olive Stephens and Mr C E Stephens Mr D V Fawkes (County Archivist) and Mr B Craddock (Open Spaces Society).

This is an ownership inquiry relating to a small parcel of land a short distance to the west of Newfield Farm. It became finally registered as common land in October 1970, the registration having been made in 1968 on the application of Cheadle Parish Council. There are no rights registered, and there are no entries in the ownership section of the register.

A previous ownership inquiry in respect of this and other common land was held at Hanley on 4th July 1978. On that occasion Mr Commissioner Baden Fuller, in the absence of any evidence, was not satisfied that any person was the owner of the land, and it therefore remained subject to protection under section 9 of the Act of 1965.

In support of the claim by Cheadle Town Council Mr Collis called Mr D V Fawkes, the County Archivist, who produced the original of an Enclosure Award of 1831 made under the Cheadle Enclosure Act, 1809. He said that the unit land was allotment No. 164, and showed me the plot bearing that number on the plan annexed to the Award, where it is marked "Gravel". In the text of the Award, No. 164 is described as "one rood on Draycot Common bounded northeasterwardly and southeastwardly by No. 163, southwestwardly by Litley Road and northwestwardly by old inclosures". The operative part of the Award declares that this and other land has been allotted for the purpose of "digging for and getting of stone sand gravel and other materials for the making and repairing of the highways and other roads within the said Manor or Parish of Cheadle and for the use of proprietors of estates within the same Manor and Parish and their tenants for the time being". Questioned by me, Mr Fawkes agreed that there was no mention in the Award of the allotment being made in favour of the Surveyor of Highways, as is not unusual in such cases.



Mr Collis then called Mrs Jean Margaret Smith, who said that she had been Clerk to Cheadle Town Council since 1976. She produced the Minute Books of the Council going back to 1940, and I was referred to the following items in the Minutes:-

1/6/42. Land at Litley.

"The Clerk was instructed to write to Mr Shaw enquiring if he had fenced in the land at Litley Dale in accordance with the permission given to him by the Council and also whether any rent had been paid by him and on receipt of his reply the Clerk was instructed to call a meeting of the Highway Committee to discuss this matter."

16/9/42. Common Land.

"The Clerk reported the result of an interview he had had with Mr Shaw with reference to land at Litley Dale and it was decided to refer the matter to the Health and Highways Committee for consideration and to recommend the terms upon which the Council would be prepared to give the tenancy to him."

5/10/42. Health and Highways.

"The Committee then inspected the common land adjoining Mr Shaw's bungalow at Litley Dale and it was resolved to recommend to the Council that a tenancy agreement with Mr Shaw at the rent of 10/- per year should be entered into, Mr Shaw to put and maintain the necessary fencing round the land. After discussion it was decided to adopt the Minutes. The Clerk was instructed to write again to Mr Shaw"

7/12/42. Land at Litley Dale.

"The Clerk reported an offer from Mr J H Harris to purchase the piece of land at £10 he paying all the costs of the transaction. After some discussion it was decided that the ownership of the land should be retained by the Council."

7/6/43. Tenancy Agreement.

"The Clerk read out the Agreement with Mr T R Marrow with reference to the tenancy of the common land at Litley Dale which was approved and it was resolved that an agreement upon these terms should be entered into to retrospective from the 25th March 1943."

9/8/43. Common Land at Litley Dale.

"The Clerk produced the Tenancy Agreement of the Common Land at Litley Dale with Mr Marrow which was duly sealed and signed, also a letter from Mr Marrow offering to purchase the land. It was decided not to consider a sale."

Mrs Smith then produced the original counterpart of an Agreement dated 9th August 1943 between the Parish Council of Cheadle of the one part and Thomas Richard Marrow of the other part whereby the Council demised to Mr Marrow the unit land (as identified on the plan annexed thereto) from the 25th March 1943 until determined at the end of the first or any subsequent month by either party giving to the other not less than one months notification at the yearly rent of ten shillings. Mr Collis drew my attention to clause 3 (b) of that Agreement, which provides that the non-payment of rent for any length of time should not entitle the tenant to possession of the demised premises under any Statute of Limitation.



Mrs Smith then produced an extract from the Council's books of account showing an entry in the year 1965/1966 of receipt from R Marrow of Land Rent of £1-10-0. This was the last entry she could find in the books of any payment by Mr Marrow.

I questioned Mrs Smith about the reference in the Minutes to the Highways Committee of the Council, pointing out that Parish Councils are not and never have been highway authorities. Mrs Smith said that the Council did have a highways committee, which reported on the state of the roads to the County Council. In answer to a further question from me, Mrs Smith said there was no record of material from the unit land being used for repair of the roads, although there was a substantial hole in the land until Mr Sykes filled it in. Others in Court confirmed this.

Mr C E Stephens was sworn and gave evidence that he owned land to the north of the unit land and his mother Mrs Olive Stephens owned adjoining land to the west of his land. These two plots were separated by the right of way which continued over the unit land to the road. Mr Stephens said that he had lived there 20 years; that there was a hole in the unit land until Mr Sykes filled it in about 10 years ago; that Mr T R Marrow had a son; that the land had always been common land; that before Mr Sykes came it was not used for anything. Cross-examined by Mr Collis, Mr Stephens said that the unit land was a deep depression, with rough woodland and grass. Questioned by Mr Sykes, Mr Stephens agreed that there had been rubbish on the land, and that it was very rough with brambles.

Mr Sykes was sworn and said that he had purchased "Wayside" which adjoins the unit land on its western side on the 26th August 1977 from Reginald Roy Marrow. Mr Marrow was a chimney sweep and mechanical engineer. There was a substantial pile of soot on the unit land in 1977; some still remains. The land was a hazard. He had the opportunity to acquire sand and put it in the depression. He hired a J C B and levelled the land. He grassed about two-thirds of the area, leaving more than sufficient room for the right of way. He continued to improve the land and made a flower bed. He put up a washing line and planted a hedge-row two or three yards from the lane. He had converted an unattractive depression into an attractive garden. It was not fenced except for the hedge in front. There was a natural barrier of trees between it and the right of way. The public right of way was used extensively in summer. The first intimation he received that the land was not his was in about October 1984, when he received a letter from Solicitors acting for the Council. He had continued to use the land as if it were his own. Nobody had come onto the land without his invitation since August 1977.

Mr Sykes produced the Conveyance of 26th August 1977. Cross-examined by Mr Collis, he conceded that the unit land was not included in that Conveyance. Mr Collis then put to him a letter dated 19th December 1984 from Eric Whitehead & Co, Solicitors (acting for Mr and Mrs Sykes) to Mr Collis's firm, but I ruled this out of order as the relevant paragraph begins with the words "Without prejudice". Mr Sykes said that he had tried to trace Mr Reginald Roy Marrow, but without success. He said that Mr Marrow appeared to have been using the land as a store area or tip.



Mr Collis submitted that in 1943 the Town Council considered themselves to be the owners of the unit land. They received rent for it from 1943 until 1966. Any other title there might have been before that was extinguished under the limitation acts; they do not have to show that they have been in possession ever since. He referred to the non-payment of rent provisions in clause 3 (b) of the Tenancy Agreement. What happened after 1966 was that soot and bits of lorries were dumped on the land. There was no clear evidence that the Council had been dispossessed; and no continuous adverse possession against them for the past 12 years.

Although I feel considerable sympathy for Mr Sykes, who has cared for and improved the land for upwards of 10 years, whilst the Council stood by without asserting their rights until October 1984 or thereabouts, there is no sufficient evidence before me of any acts prior to the Conveyance of "Wayside" to Mr Sykes in August 1977 on which a title to the unit land by adverse possession for upwards of 12 years can be established by him.

I therefore reach the conclusion that Cheadle Town Council remains the owner of the land, and I shall accordingly direct the Staffordshire County Council as registration authority, to register it as the owner 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

23rd

day of

February

1988

Commons Commissioner