



COMMONS REGISTRATION ACT 1965

Reference No 233/U/96

In the Matter of Etching Hill
Recreation Ground, Cannock Chase
District, Staffordshire

DECISION

This reference relates to the question of the ownership of land known as Etching Hill Recreation Ground, Cannock Chase District, Staffordshire being the land comprised in the Land Section of Register Unit No VG. 33 in the Register of Town or Village Greens 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 the Commons, Open Spaces and Footpaths Preservation Society on whose application the registration was made, in a letter dated 20 December 1976 said that the land was allotted to the Churchwardens and Overseers of the Poor of the Parish of Rugeley in an Award made on 30 April 1885 for the inclosure of part of Cannock Chase lying within the Manor of Rugeley and the Parish of Rugeley. No person 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 Lichfield on 14 December 1977. At the hearing Mrs A M Walker attended as representing (1) Mr A L Rowley, (2) herself, Mrs Walker, (3) Mr Thomas Wigginton, (4) Mr Leonard Leech and (5) her husband Mr H A Walker, being the trustees of the charitable trust administered under a Scheme dated 12 June 1908 and made by the Charity Commissioners.

Mrs Walker in the course of her oral evidence produced: (1) the said 1908 Scheme, (2) an order dated 9 May 1941 and made by the Charity Commissioners, (3) a conveyance dated 18 September 1940 by which Mr A W Whitworth conveyed to himself and four others two pieces of land containing 3 roods 5 perches near to Etching Hill and having frontages on Bower Lane, (4) two conveyances dated 1 December 1934 and 11 June 1938 of the said two pieces of land to Mr Whitworth, (5) the minute books of the Trustees (a) from 1908 to 1962 and (b) from 1975 to date, and (6) the Trustees Account Book from 1908 to 1960.

The 1908 Scheme relates to "the Charity called or known as the Recreation Ground for the benefit of the Inhabitants of the Ancient Parish of Rugeley and neighbourhood...comprised in an Inclosure Award dated 30 July 1885". The Schedule to the 1908 Scheme, being a description of the then property of the Charity includes: "Piece of land situate in the Civil Parish of Brereton, numbered 1 on the Map attached to the above mentioned Inclosure Award: 16A. 3R. 34P.: In hand (grazing let for £1.5.0.)", and "Piece of land numbered 220 on the said Map and situate adjoining the last mentioned piece of land: 5A. OR. OP.: In hand". By the 1908 Scheme the lands therein comprised were vested in the Official Trustee of Charity Lands. By the 1941 Order the two pieces of land therein mentioned (being those comprised in the 1941 conveyance) were also vested in the Official Trustee of Charity Lands.



According to the Register map, the land ("the Unit Land") comprised in this Register Unit is in two pieces. Mrs Walker, who has been one of the Trustees for the last 6 years and is now their chairman, said (in effect):- The larger piece known as "The Hill", is open on its northwest and southwest sides to Bower Lane (a busy B road), and to the road (The Mount) which leads to Church Lane, and includes the high ground which rises up steeply from the road and is known as Etching Hill. The smaller piece known as the Recreation Ground, is on the other side of the road (The Mount), is comparatively flat and is inclosed. The present Trustees as provided by the 1908 Scheme are nominated three by the Rugeley Urban District Council (or Cannock Chase District Council as their successors), and two by Brereton Parish Council (now Brinley Heath Parish Council). They meet at least once a year (now more frequently) and they administered and managed both pieces. She believed the Trustees had ever since 1908 administered and managed the Unit Land. The Recreation Ground is mostly used by football clubs; to the top of The Hill is a pleasant walk; the land to the northeast and south is much built up.

Shortly after I had concluded the hearing, Mr H Watkiss who is a member of the Staffordshire County Council (for Rugeley No 2 Ward) and also a member of the Cannock Chase District Council (for the Etching Hill Ward) protested that the proceedings had not been properly advertised, because no notice of the proceedings had been placed on the land and in no way had the public been notified that there would be an enquiry about it; further the registration of the land had not been published. He had only heard of the proceedings about two weeks ago, casually at or after a committee meeting of the District Council. The public were concerned in that there had been proposals that the land should be used as a Fair Ground; about these there had been a public meeting and as a result of this and other public debate the idea had been dropped. He suggested that I should adjourn the proceedings.

Mrs Walker wished to explain the part taken by the Trustees in the matters mentioned by Mr Watkiss but I refuse to hear her, being of the opinion that in these proceedings I am concerned only to determine the ownership of the Unit Land and not concerned with its management so far as such management might throw light on its ownership). I refused to adjourn the proceedings as suggested by Mr Watkiss, saying I would give my reasons in my written decision.

Mr Watkiss' protest seems to me to raise two questions: (1) was this lack (if any) of the publishing of the registration of this land and/or of the ownership reference which I am now considering such a fundamental irregularity as to invalidate any decision I may give and deprive me of all jurisdiction in relation to the land until further publicity has been given; and (2) if not whether I ought, assuming I have jurisdiction to give a decision, in the exercise of my discretion adjourn the hearing as suggested.

As to (2) above, I am in this reference concerned only with ownership; the circumstance that some person might, if he had known of the hearing, have attended and then attempted to tell me something about some proposed use of the land is irrelevant, because I should have refused to hear him on any such matter. Mr Watkiss said (in effect) that he knew of no person who would if he had known of the hearing have been likely to attend for the purpose of claiming ownership. The evidence in support of the ownership claim put forward by Mrs Walker is well documented, and it is unlikely that any evidence pointing to a conclusion contrary to that which her evidence supported could be produced. An adjournment would put the Trustees

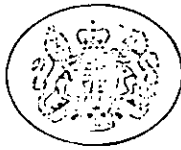


to the trouble and expense of having to give their evidence again, possibly to another Commons Commissioner. Under regulation 21 of the Commons Commissioners Regulations 1971 I can on the application of either the County Council, the District Council or the Parish Council reopen the hearing and set aside my decision if I am satisfied there was sufficient reason for their absence; quite apart from this regulation, the High Court have a general jurisdiction to set aside a decision in a variety of circumstances in which it may be just to do so, and a Commons Commissioner may have a similar jurisdiction at any rate in simple cases or where there is an agreement between all concerned. Balancing as best I can the conflicting considerations set out above, the scale I think tips against an adjournment of the proceedings if I have jurisdiction to give a decision now.

As to (1) above, so far as it relates to the absence of any publicity of the registration:- The registration was made on 14 January 1969. By section 5 of the 1965 Act the registration authority is required to give such notices and take such other steps as may be prescribed for informing the public...", by section 7 in the absence of an Objection the registration becomes final. I have no reason to suppose that the County Council as registration authority did not comply with section 5, but even if they did not I have no jurisdiction on this reference to consider any such question for the reasons set out in my decision dated 16 October 1970 re River Bank, Ropewalk, Ref 6/U/22 and 9 February 1973 re Three Corner Piece, Ref 38/U/35. However the High Court has jurisdiction to consider such a question and did so in *Smith v East Sussex*, shortly reported in *The Times Newspaper* of 20 July 1977; in that case the High Court declared that the registration then under consideration had not become final. In this case, in the absence of any pending application to the High Court for any similar declaration, I consider that I should assume that the registration has become final and the County Council became obliged under section 8 of the Act to make a reference to a Commons Commissioner as to the ownership of the land (being the reference I am now considering).

As to (1) above so far as it relates to any publicity about the reference:- The reference in this case is dated 25 November 1974. By regulation 11 of the said 1971 Regulations the registration authority (the County Council) are required to display a notice as therein mentioned and to cause such notice to be published in one or more local newspapers circulating "in the area in which the land is situated" and to send a copy of the notice to the Clerk of the Commons Commissioners. The notice so sent is dated 28 January 1977 and relates to 60 references having reference numbers 233/U/38 to 233/U/97 including "Etching Hill Recreation Ground, Rugeley, VG. 33". I have no reason to suppose that the County Council did not comply with the regulation, and I consider that I assume that they have done so.

As to (1) above so far as it relates to the hearing on 14 December 1977:- There is nothing in the 1971 Regulations requiring that the notice of the hearing shall be placed on the land, but regulation 15 requires that a Commons Commissioner who has arranged a hearing for the purpose of inquiring into the question of the ownership of any unclaimed land shall cause a notice giving particulars of the hearing to be published in one or more local newspapers circulating in the area in which the land is situated. As to this I have been informed that on my behalf all the 17 cases listed for hearing before me at Lichfield on 13 and 14 December 1977 were advertised collectively in the following newspapers: Cannock Advertiser on Friday 11 November 1977, *The County Express* and *Dudley Mercury* on 11 and 18 November 1977, the *Lichfield Mercury* on 11 November 1977 and *Rugeley Mercury* on 18 November 1977, and I have been supplied with a copy of the relevant page of the *Rugeley Mercury*. At the hearing on 14 December 1977, I had insufficient information about these advertisements, to discuss their sufficiency with Mr Watkiss, ~~but having~~



but having regard to what he then said and to what I have since discovered, I consider that no prima facie case has been established for my further investigating the advertisement position in Lichfield in the presence of Mrs Walker and Mr Watkiss.

Further as regards (1) above generally, I have no jurisdiction to determine whether the conditions precedent to my giving a decision have been fulfilled; any such question in the absence of agreement must be determined by the High Court. If a prima facie case had been established against my jurisdiction, as a general rule I would give no decision until the question had been tested in the High Court; but in the circumstances set out above, I think it more convenient for everyone concerned if I give a decision, leaving → anyone who wishes to raise any question of jurisdiction to apply to the High Court to have my decision set aside.

For the above reasons I refuse to adjourn the proceedings.

On the evidence of Mrs Walker summarised above, I conclude that nearly all the Unit Land was by the 1948 Scheme and the remainder was by the 1941 Order vested in the Official Trustee of Charity Lands and is therefore now by the operation of sections 3 and 48 of the Charities Act of 1960 vested in the Official Custodian for Charities unless it has under some order of the Charity Commissioners become divested. In the absence of any evidence of any such order ever having been made, I am satisfied that the Official Custodian for Charities is the owner of the Unit Land and I shall accordingly direct the Staffordshire County Council, as registration authority, to register the Official Custodian for Charities 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 12th day of January — 1978

a. a. Barker Fidler

Commons Commissioner