



COMMONS REGISTRATION ACT 1965

Reference No. 233/U/19

In the Matter of Offley Marsh,
Adbaston, Stafford Borough,
Staffordshire.

DECISION

This reference relates to the question of the ownership of land known as Offley Marsh, Adbaston, Stafford Borough being the land comprised in the Land Section of Register Unit No CL60 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 Adbaston Parish Council claimed (letters of 1 and 7 November 1975 and 25 May 1976) ownership of the land in question and no other person claimed to have information as to its ownership. Additionally the Parish Council on whose application the registration was made claimed (letters of 13 November and 8 December 1975) that the registered land included OS No 122 (a pond) containing 0.357 acres (not shown on the Register Map as included) in addition to OS No. 120 containing 3.013 acres (being according to the register map all the registered land). Mr J D Hogan whose application for registration is noted on the Register made a similar claim (letter of 25 October 1976).

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Hanley, Stoke-on-Trent on 4 July 1978. At the hearing (1) Adbaston Parish Council were represented by Mr J A W James, solicitor of Hand Morgan & Owen, Solicitors of Stafford, and (2) Mr Benjamin William Barter of Marsh House Bishops Offley attended in person on his own behalf and as representing his wife Mrs Antoinette Yvonne Barter.

The land ("the Unit Land") in this Register Unit is irregularly shaped. Although apparently all one piece for the purposes of exposition, I divide it into two:- (1) an area (the Main Area) approximately triangular having for its north-east boundary (about 220 yds) the nearly straight edge of the public through road ("the Road") made up for ordinary motor traffic; and (2) an area ("the South Strip") which extends from the south corner of the Main Area along the south side of enclosed land ("Marsh Villa", being OS No 125 containing 0.685 of an acre) on which stands the house so called, to end at the Road about 80 yds from the south-east corner of the Main Area.

Mr Barter on behalf of himself and his wife claimed ownership of part of the Unit Land by reference to a plan attached to an agreement dated 20 May 1977 by which he and his wife purchased from Mrs M Bostock a dwelling house, outbuildings, garden and lands known as Marsh House edged red on the plan (altogether about $4\frac{1}{2}$ acres). This claim relates to land just within the west boundary of the Main Area which boundary is for about 150 yds a nearly straight edge and proceeds south along an irregular line apparently drawn so as to exclude from the Unit Land the outbuildings held with Marsh House. The claim is to three pieces on the Agreement plan hatched blue: (1) a strip ("the North Piece") being the land



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between the above mentioned edge and a vehicular track which is apparently the main access to Marsh House and which joins the Road at the north corner of the Unit Land; (2) a quarter circle ("the Middle Piece") which is about 10 yds across and little north of the said outbuildings, and (3) a slightly larger piece ("the South Piece") which is a little to the south of the said outbuildings.

On behalf of the Parish Council in support of their claim to all the Unit Land and against the claim of Mr and Mrs Barter, oral evidence was given (a) by Mr E F Reeves who is 60 years of age, has resided in the village of Adbaston since 1924, been a member of the Parish Council for 12 years is and has been for the last 7 years their chairman, (b) by Mr G Chell who has lived for 31 years at Marsh Farm (just south of the South Strip) and (c) by Mrs E Bull who has lived in Bishops Offley for 38 years. Mr Reeves produced: (1) an extract from the Bishops Offley Tithe Map of 1844 (held in the vestry of Adbaston Church) showing as "Waste" the Main Area (including the Pond), and also some land on which now stands some of the said Marsh House outbuildings and which is not part of the Unit Land, and (2) the Minute Book of Adbaston Parish Council from 1894 to 1953.

In support of his claim Mr Barter gave oral evidence by reference to the said May 1977 agreement and to a statement prepared, and on 4 July 1978 signed by himself. He produced a copy obtained from Mrs M R S Bostock of a printed consent dated 5 November 1964 by which Mr C P H Bostock consented the Midland Electricity Board erecting a pole. On my file I have a letter dated 27 June 1978 from solicitors of Mr and Mrs Barter which they said (among other things) that their clients' deeds were with the Britannia Building Society and hopefully they would have certified copies available for 4 July, and contended (in effect) that Mr and Mrs Barter own the legal estate in fee simple "They either have Paper Title to the land or a Title under and by virtue of usage (Statute of Limitations Act 1989)".

Three days after the hearing I inspected the Unit Land, particularly the parts adjoining Marsh House.

The greater part of the hearing was directed to the conflicting claims of the Parish Council and of Mr and Mrs Barter. Condition 6(i) on the back of the May 1977 agreement is:-

"The areas hatched blue on the said plan attached hereto have been finally registered as common land ... The Vendor believes that these said areas have always been occupied by her late husband the said C P H Bostock since she became a tenant of the property ... in 1939 and later as owner occupier from the date he purchased ... 21 January 1957 until his death on 28 September 1976, and after that date until the date hereof by the Vendor as owner occupier.... The Vendor will (if required by the Purchaser) make a statutory declaration in support of the above facts".



Mr Reeves said (in affect):- The Bostocks never claimed the North, Middle, and South Pieces until October 1976. The North Piece has never been fenced against the common. The now existing fence of the Middle and South Pieces against the Unit Land (that of the South Piece has a gap of about 10 ft in it where the track crosses) were put up about October 1976 after Mr Bostock's death. Before that all the pieces were part of the Common. Mr Chell's evidence about the fences was to the same effect, he explained that the North Piece was always impossible to use "it just grows rubbish ... there is a little bit of brash".

Mr Barter who did not have any personal knowledge of the Pieces before his 1977 purchase in his statement included a summary of what Mrs. Bostock had told him when he visited her (she is now over 80 years of age and in poor health) on the Sunday before the hearing. He did not produce any of his documents of title or any copies or abstracts of them. The more important parts of his summary were as follows:- "The boundaries had then (1939 when she first moved to Marsh House as tenant) as they are now, clearly defined by the red edging to my contract plan ...; until (the 1977 sale) ... those boundaries, hedges and ditches and fences had for the main part been undisturbed. She and her husband had occupied the whole of the land contracted in red edging to the contract plan without any adverse claim whatsoever ... she had always used the whole of the land, particularly those areas cross-hatched in blue ...". The summary includes a description of an episode in 1939 when a bull demolished part of a brick building used as a stable or cow shed on the North Piece.

The only claim distinctly made by Mr Barter in his statement is: "I hold paper title ...". The 1977 agreement and the 1964 consent are not enough to establish such a title. Of his having any other paper title there was no evidence at all. As to the claim by "usage" expressly made in the June 1978 letter and impliedly made by Mr Barter at the hearing, I have only his summary of what Mrs Bostock told him. In a court of law his summary would be inadmissible as hearsay. However in case I am not bound by hearsay rules, I record that having looked at the land, I consider his summary unreliable in that I am not clear as to which of the said Pieces or as to which of their boundaries, hedges and ditches Mrs Bostock was referring, or as to the manner in which she and her husband were thought by her to have occupied each of the Pieces.

Mr Barter suggested that I should myself visit Mrs Bostock at her house and invite her there and then to give evidence. I could not properly do this without giving the Parish Council an opportunity of being represented; this would involve them in some trouble and expense. Further public expense would be incurred if I extended my time in Shropshire for this purpose. Mr Barter if he wished to rely on Mrs Bostock's evidence should I think before or shortly after the completion of the 1977 agreement have obtained from her the declaration which she was under the above quoted condition obliged to make. Having regard to what I saw at my inspection, I feel confident that any evidence she would have given to me personally would when considered with the other evidence I had at the hearing have not been enough to satisfy me of the ownership of Mr and Mrs Barter. Upon these considerations, I refuse Mr Barter's suggestion.



In the absence of any evidence other than that above mentioned, I reject Mr Barter's claim to a title by usage. There was no suggestion that he or his wife had any other sort of title.

Nobody at the hearing disputed the Parish Council's claim to own the rest of the Unit Land. Mr Reeves identified it (or at least the Main Area) as being the same as or as being far the greater part of, the land in the Minute Book called and locally known as "The Marsh", and the land on the Tithe map shown as waste. I infer from the Minute Book that it has always belonged (as the Main Area now appears to belong) to the parish within the popular meaning of these words, and that I ought therefore to conclude that the Parish Council own it as successors in title of the churchwardens and overseers; see *DOE v Hiley* (1830) 10 B&C 885, *DOE v Terry* (1835) 4 A&E 274 at page 281, and *Wylde v Silver* 1963 1 Ch 243 at page 271. (Doe)

The part of the Main Area east of the track is much overgrown with trees and scrub. The North Piece west of the track as far as the hedge along the west boundary is rough vegetation without any trees or scrub; but having regard to the present appearance of the hedge, I conclude that it and the remainder of the Main Area are one piece of land in the same ownership. The Middle Piece, the South Piece and the South Strip all appear to be with the Main Area one piece of land in one ownership.

From the above considerations I am satisfied that the Parish Council are the owners of the Unit Land, and I shall accordingly direct the Staffordshire County Council as registration authority to register Adbaston Parish Council as the owners of the land under section 8(2) of the Act of 1965.

As to the non inclusion of OS No. 122 (the pond) within the green verge line on the Register map:- I have no jurisdiction on this reference (or as far as I know on any other reference which has been or could be made to me) to direct the County Council as registration authority to amend the map. All I can say is that in the Register the land appears to have a double description: (1) land known as Offley Marsh, and (2) as marked with a green verge line; and that the evidence given to me was that description (1) included the pond. It is I think for the County Council to determine whether in accordance with the rules of law conveniently summarised in the maxim *falsa demonstratio non nocet*, they can properly conclude that description (2) is an error which ought to be rejected in favour of description (1); so that they can (possibly after first communicating with the owners of Marsh Villa) on the application of the Parish Council alter the register map the exercise of the power conferred on them by regulation 36 of the Commons Registration (General) Regulations 1966.

If the legal position be (I have no jurisdiction to determine this question) that the registration on its true construction now includes OS No. 122 (pond), then I record that I am satisfied that the Parish Council are owners of it because in my view the whole of the registered land can properly be regarded as one piece of common land all in one ownership.



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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 27th day of November 1978

a a. Baker-Fisher

Commons Commissioner