



COMMONS REGISTRATION ACT 1965

Reference No 233/U/24

In the Matter of Whittington Hurst,
Whittington, Litchfield District,
Staffordshire

DECISION

This reference relates to the question of the ownership of land known as Whittington Hurst, Whittington, Litchfield District being the land comprised in the Land Section of Register Unit No CL. 71 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 Messrs Kinson by their solicitors in a letter dated 2 October 1975 claimed ownership of part, and Whittington Parish Council by their clerk in a letter dated 28 October 1975 claimed ownership of the whole of the land in question. No other person claimed to be the freehold owner of the land or 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 11 February 1976. At the hearing Mr Paul Kinson and Mr John Beresford Kinson were represented by Mr P D Wiseman solicitor of Rutherfords, Solicitors of Tamworth.

In support of their claim, Messrs Kinson relied on a affidavit sworn on 2 February 1976 by Mr F S Grundy and on the oral evidence of Mr P Kinson, in the course of which he produced a conveyance dated 14 December 1967 by which Mr J W Grundy and Mr F S Grundy conveyed to Mr H B Kinson, Mr J B Kinson and Mr P Kinson lands and buildings known as Whittington Hurst Farm and containing (according to the conveyance) 181 acres 33 perches. Two days after the hearing I inspected the land. On my return to London I received a letter dated 5 February 1976 from Whittington Parish Council in which their Clerk said that owing to unforeseen circumstances it was unlikely that they would be able to be represented at the hearing but "...they do not...have any real evidence to support their claim to ownership other than the fact that Whittington Hurst was allotted and awarded to the Parish of Whittington for all time to be used as a public quarry by the Parish subject to the right of the Public to use the land for games and other recreation under the terms of the Inclosure Award approved by the Inclosure Commissioners on 21 December 1882. It is the Parish Council's contention that this land was given for the benefit of the Parish of Whittington, and as the representatives of the residents of the Parish, the Parish Council should be the owners of the land".

The land ("the Unit Land") comprised in this Register Unit is in 8 pieces. One of these (the Main Piece) is very much larger than any of the others, is on the 6" OS marked as "Old Gravel Pit", and on the 25" OS map marked as containing 5.7 acres (including a pond); it is approximately triangular, being bounded on the west by the public motor road from Burton to Whittington, on the north by a metalled public motor road known as Broad Lane, and on the



southeast by a road or track ("the SE Road") which joins the said two roads, which is in places rough, and which provides access to the farmhouse and buildings of Whittington Hurst Farm. One of the other pieces is a very small triangular piece within the fork of the SE Road where it joins Broad Lane. The six other Pieces ("the Small Pieces") are also (compared to the Main Piece) very small, and are situated on the east side of the SE Road.

Messrs Kinson claim the ownership of the land marked A, B and C on the plan exhibited to the said affidavit. The A land comprises or includes three of the Small Pieces (my copy of the Register map is not very clear, maybe there are only five Small Pieces and the A land is two of them), being the area east of the SE Road in front of the principal entrance to the Farm and being surrounded on three sides by buildings or lands of the Farm. The B land is part of that one of the Small Pieces which adjoins Broad Lane, and comprises the south part of it, adjoining the SE Road. The C land is part of the Main Piece, being a narrow strip on the west side of the SE Road opposite the Farm buildings.

None of the A, B or C lands are included in the 1967 conveyance. Their ownership was claimed by adverse possession for the statutory period of 12 years. In considering this claim, I pay no attention to the February 1976 letter from the Parish Council, because Messrs Kinson had no opportunity of commenting on it. I give no decision (because I have under the 1965 Act no jurisdiction) as to there being a right of way (such as Mr Grundy in his affidavit and Mr Kinson in his oral evidence appeared to think important) over the SE Road; nevertheless in considering the ownership claim, I shall assume (as seems from its appearance very likely) that a right of way for all purposes over the SE Road does belong to the Farm.

As to the C land; Mr Grundy, whose father took a lease of the Farm in 1937 and who with his brother (also his mother) purchased it in 1957 and lived there until 1968 said, of the C land: "We parked farm implements and equipment for long periods until we required to use them. This area of land would have been used more or less continuously for this purpose throughout my period of being at the Farm". Mr Kinson said (in effect):- About 3 or 4 years ago, he did work on the SE Road, making it up as it now is from Broad Lane to the A land, and to a bungalow south of it. He had been led to believe that the Main Piece was a disused quarry; it is now about 8 or 10 feet below the level of the SE Road. They had continued to use the C land (in succession to the Grundy's) so that "there were always quite a number of implements standing on it". He described the A land as a strip about 5 or 6 yards wide from the SE Road, to where the land drops down.

The placing and leaving of things (vehicles) on a strip of land much as described by Mr Grundy and Mr Kinson, was considered in *Copeland v Greenhalf* 1952 Ch 488, and the court held that a right to do this could not constitute an easement known to the law. In the course of his judgment Upjohn J said: "It is virtually a claim to possession...to the exclusion of the owner...; to succeed this claim must amount to a successful claim of possession by reason of long adverse possession". This case although not exactly in point is I think a useful guide as to how I should regard the evidence in this case.



When I inspected the Unit Land, there were indeed many implements scattered over the land on the west side of the SE Road, but as to any C land, I was quite unable to see where its boundary could be fixed. The top edge of the former gravel excavations is in many places indistinct, and there is no observable south or north end of any such strip. In my opinion the C land except as a drawing on the exhibit plan, has no distinct existence as part of the Main Piece. The owner of the Main Piece (whoever he may be) against whom I must try and find some adverse possession has no obvious use for his land. In my opinion the occupiers of the farm by leaving implements and equipment on this roadside verge (the alleged C land is at least 50 yards long) for the purposes of the farm, cannot sensibly be regarded as taking adverse possession of any definite land. Possession to be adverse of part of an owner's land, must I think be of a part capable of recognition by the owner allegedly dispossessed. The use of the Main Piece by leaving implements and equipment on it, as I understand the evidence having regard to the present appearance of the Unit Land is too uncertain to amount to a taking of possession of any part of it.

I cannot attach weight to Mr Grundy's general statement at the end of his affidavit that the land "has been treated as belonging to the Whittington Hurst farm"; in the 1967 conveyance, it was not so treated.

For the above reasons, I conclude that there has been no adverse possession of the C land or any of the land west of the SE Road.

As to the A land, Mr Grundy said "On this land we habitually each year constructed a hay rick. Under at least part of this land can be found the remnants of a brick floor which must at one time have belonged to an outbuilding attached to the farm". Mr Kinson of it said that they had stored 50 tons of fertilizer on it. The A land appears to belong to the Farm, and is I think distinct enough. I conclude therefore that to it a possessory title has been proved.

As to the B land, Mr Grundy said "We often used to stand farm vehicles and equipment for periods and also drove over this land the cattle to our fields on the opposite side of Broad Lane". Of it Mr Kinson: "We have never used it for any particular purpose, but there is a tarmac driveway into the field".

I am not concerned to determine whether (as seems very likely) there is a right of way over the B land belonging to the Farm. Evidence which might support the existence of a right of way cannot by itself establish ownership. I have no evidence that Messrs Kinson are or ever have been in possession of the B land; and from my inspection, I see no reason for inferring that they ever were. I conclude therefore that a possessory title to it has not been proved.

As to the claim of the Parish Council in their February 1976 letter to the remainder of the Unit Land:- If there was an allotment such as the Clerk describes, it is both possible and likely that the owners (eg the churchwardens and overseers, or alternatively the highway surveyors) were defined, and that their successors in title (eg the Parish Council or the District Council) could be determined. But in the absence of any evidence about the Award or its contents, I can reach no conclusion about any such ownership.



For the reasons above set out, I am satisfied that Mr J B and Mr P Kinson (the other party to the 1967 conveyance Mr K B Kinson died August 1970) are the owners of the A land, and I shall accordingly under section 8(2) of the 1965 Act direct Staffordshire County Council as registration authority to register Mr John Beresford Kinson and Mr Paul Kinson as the owners of the A land which I shall in my direction define as being the Pieces which are east of the road or track being the east or southeast boundary of the largest of the 8 (or 7) Pieces which together make up the land comprised in this Register Unit, which are south of a straight line obtained by joining on the (6" = 1 mile) Register map the "g" of "Whittington Hurst" to the "L" of "Broad Lane" and which are north of a straight line obtained by joining on the said map the "s" of "Whittington Hurst" to "Hurst Farm".

In the absence of evidence, I am not satisfied that any person is the owner of the other Pieces which together make up the Unit Land, and they will therefore be subject to protection under section 9 of the 1965 Act.

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.

It would perhaps be unfortunate if the Parish Council lost the ownership of the remaining Pieces merely because "due to unforeseen circumstances" they were unable to be represented at the hearing. Accordingly I draw attention to regulation 21 of the 1971 Regulations under which a Commons Commissioner may in certain circumstances reopen the hearing and set aside this my decision if satisfied that the Parish Council had sufficient reason for their absence.

Dated this 2nd day of July — 1976

A. A. Austin Fuller

Commons Commissioner