



In the Matter of piece of land containing 11.8 acres or thereabouts
known as part of Ilkley Moor

DECISION

This reference relates to the land above referred to being the land comprised in the Land Section of Register Unit No. CL.233 in the Register of Common Land maintained by the City of Bradford Metropolitan District Council ("the 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 I held a hearing, for the purpose of inquiring into the question of the ownership of the land, at Ilkley Town Hall on 15 March 1994.

The hearing was attended by the following persons:

- (a) Mr Dwyer, solicitor, representing the Council: and
- (b) Ms Rylands, of Cranswick Watson (solicitors) representing Peter John Dixon Marshall ("Mr Marshall").

The land in question in fact comprises 3 separate pieces of land, 2 of which ("the larger areas") appear from the Register Map to penetrate the southern part of the town of Ilkley and the third of which ("the western area") is a relatively small area lying some distance to the west of Ilkley.

The Council claimed ownership of the larger areas and the western area: Mr Marshall claimed ownership only of the western area.

The western area appears from sheets 131 and 132 of the Register Map to have the following features:

- (a) it extends to about 2 acres
- (b) it is a narrow triangle in shape, the apex being at the southern end and the shortest boundary ("the north boundary") running from the west in a north easterly direction.
- (c) a brook called Ramsgill runs due north from the middle of the north boundary
- (d) Hardwick House stands a few yards to the north west of the north boundary.

After the hearing I visited the western area. It is difficult to get to by car since the metalled road terminates about a mile to the west and access has to be gained over rough tracks. The area is uncultivated moorland with a stone wall marking the boundaries. No sheep or other animals were grazing the land when I saw it.

In support of the Council's claim, Mr Dwyer produced an indenture of conveyance dated 29 June 1893 and made between Andrew Montagu (1) M F Middleton and H Stourton (2) C M Middleton (3) and the Local Board of Health for the District of Ilkley (which I will hereafter in this Decision refer to as "the Board") (4). By the indenture there was conveyed to the Board "their successors and assigns" certain Manors and also "All those Moors called Ilkley and Hollinghall Moors with the waste lands belonging thereto situate within the said Manors....."



As mentioned above Mr Marshall's claim was limited to the western land and I turn now to consider this claim. Ms Rylands produced two conveyances namely:

- (i) A conveyance dated 12 May 1964 and made between The Tang Estates (1) and H D Crawford and M L Crawford (2); and
- (ii) A conveyance dated 28 March 1973 and made between H D Crawford and M L Crawford (1) and Mr Marshall (2)

After the hearing Cranswick Watson sent me (at my request) copies of two further conveyances namely:

- (iii) A conveyance dated 16 June 1919 and made between H Greenwood (1) and F A Aykroyd (2)
- (iv) A conveyance dated 8 October 1936 and made between Aykroyd (1) and The Tang Estates (2).

It is clear from the description in the 1919 conveyance that that document purported to include the western area. It is also clear from the terms of the 3 other conveyances that a title based on the 1919 conveyance would now be vested in Mr Marshall. The question arises whether the Council could establish a better title by reason of the 1893 conveyance (assuming any of the property thereby conveyed is now vested in the Council notwithstanding the considerations mentioned above). The answer to this question is in my view in the negative for the following reasons:

- (a) The 1919 conveyance contains a clear recital that H Greenwood was then "seised in fee simple free from incumbrances of "(inter alia) the western area
- (b) Applying the presumption "omnia rite esse acta" I ought to give effect to this recital unless it is shown by other evidence to be incorrect. The 1893 conveyance is the only such evidence but this is not conclusive for at least two reasons.
- (c) The first such reason is that during the 26 years which elapsed between the 1893 conveyance and the 1919 conveyance H Greenwood may have taken possession of the western area and thereby destroyed the Council's title and acquired title himself under the Real Property Limitation Act 1874. In fact this is by no means improbable bearing in mind the remoteness from Ilkley itself of this small barren piece of land and the lack of any usefulness of the land to the Council. (It appears from the 1893 conveyance that this part of Ilkley Moor formed part of the waste land of a manor, so a possessory title to the land itself could have been acquired by H Greenwood even though the rights of the commoners may not have been barred by his adverse possession - see Halsbury's Laws of England 4th ed. vol. 6 paras 636, 637; vol 28 para 771).
- (d) It is not wholly clear that any part of the western area was included in the 1893 conveyance. There is no reference to it in the deed itself. Reliance can therefore only be placed on the plan but this is far from satisfactory. First it contains no parcel numbers or measurements. Secondly it includes only part of the western area (roughly the eastern half) but there is no physical boundary on the land which indicates precisely which part was intended: any such boundary is an invisible line which could only be ascertained, (if at all) by a survey. Thirdly the parties to the 1893 deed do not place unqualified reliance on the plan - see the words in the parcels "But the boundaries shown on such plan are by way of description only the said Marmaduke Francis Middelton and Henry Stourton not guaranteeing the correctness thereof".



which hereditaments were expressed to be "more particularly delineated on the plan marked "A" annexed to these presents and thereon edged round with pink. But the boundaries shown on such plan are by way of description only the said Marmaduke Francis Middleton and Henry Stourton not guaranteeing the correctness thereof". The habendum in relation to this and certain other property comprised in the indenture is "TO HOLD all the said premises unto and to the use of the Local Board their successors and assigns".

From an examination of the plan marked A I am satisfied that the larger areas were included in the land conveyed by the indenture.

The plan also suggests that much of the western area was so included, namely that part thereof lying to the east of a line projected southwards from Ramsgill. For the plan shows that part edged pink and further identification points named on the plan are Hardwick House and Ramsgill.

As to the devolution of the Board's title, Mr Dwyer submitted that by virtue of the Local Government Act 1894 the Board became the Ilkley Urban District Council and the Board's assets were transferred to that Council: that by virtue of the Local Government Act 1972 the powers of the U D C became vested in the Council: and that by virtue of Article 16 of the Local Authorities (England) Property etc Order 1973 (1973 No. 1861) the property of the U D C became vested in the Council.

I accept the submission that, on the basis that title was vested in the U D C, it would have been transferred to the Council - see in particular the reference in Schedule 4 (page 43) of the 1973 Order to "..... the Council of any other urban district" as the transferor authority and "The Council of the district in which the area of the district is comprised" as the transferee authority. But I do not accept the submission as to the effect of the 1894 Act. This was not available at the hearing and it was not therefore possible to consider it until later. But I have now looked at it and certain other other statutes and the position appears to be as follows:

- (a) The Board was established pursuant to the Public Health Act 1848
- (b) By the Public Health Act 1872 England and Wales was divided into "sanitary districts", "urban sanitary authorities" were established (section 4) the powers and functions previously exercised by the Boards established under the 1848 Act were transferred to those authorities (section 7) and by section 9 the property previously vested in the Boards was transferred to the authorities.
- (c) So far as relevant to this case the only effect of the 1894 Act was to re-name the former "urban sanitary authorities" as "urban district councils" - see section 21(1).

Against this background it is not easy to see what the effect was of the 1893 conveyance to the Board. For all its "powers, rights, duties, capacities, liabilities and obligations" had many years previously been transferred to the urban sanitary authority established by the 1872 Act - see section 7. Moreover since the property subject to the 1893 conveyance was not vested in the Board when section 9 of the 1872 Act came into force it would not have been vested in the authority by that section and I can find no other statutory provision which would have effected such vesting. I am not therefore satisfied that any of such property is now vested in the Council and propose to dismiss its claim unless it avails itself of the liberty to apply given at the end of this Decision.



(e) Conversely the whole of the western area is very clearly included in the 4 conveyances produced on behalf of Mr Marshall listed in paragraphs (i) to (iv) above. The plans state the numbers (444 and 34) of the plots comprised in the area and their measurements (1.435 and .669 acres respectively) and these particulars are also contained in schedules to the conveyances. The numbers and areas of adjoining plots are also given - eg. 443 (1.303 acres) and 445 (1.898 acres). Hardwick House and its outbuildings and curtilage are also clearly shown. The plans are on a considerably larger scale than the 1893 plan.

(f) At the hearing Mr Dwyer said he could not produce any other evidence in support of the Council's claim and he had no submissions to make in answer to Mr Marshall's claim.

On this evidence I am satisfied that Peter John Dixon Marshall is the owner of the western area and I shall accordingly direct the Bradford Metropolitan District Council, as registration authority, to register him as the owner of that area under Section 8(2) of the Act of 1965. But I am not at present satisfied that any person is the owner of the larger areas and they will therefore remain subject to protection under Section 9 of the Act of 1965 unless within 3 months from today's date the Council applies in writing to the Clerk of the Commissioners asking that a further hearing be held for the purpose of considering its claim that it has acquired title to these areas: and I give liberty to the Council to make such application.

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

6th

day of

April

1994

Commons Commissioner