



In the Matter of The Old Quarry, Blackmoor Road,
Oxenhope, Bradford City Council

DECISION

This reference relates to the question of ownership of land known as The Old Quarry, Blackmoor Road, Oxenhope, Bradford City Council being the land comprised in the Land Section of Register Unit No. CL.583 in the Register of Common Land maintained by the former West Riding 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 Mr K M Barnall claimed to be the owner of part of the land and Mr F R Scholefield claimed to be the owner of the remainder. Mr Stirk claimed to be owner of the whole. 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 Bradford on 10 February 1981.

There had been a previous hearing held by Mr Commissioner C A Settle Q.C., on 26 January 1978 but the decision had been withdrawn because Mr Stirk had not received notice of that hearing.

Mr Barnall and Mr Scholefield appeared in person and Mr Digby of Counsel instructed by Messrs. A V Hammond and Co., Solicitors of Bradford appeared for Mr Stirk.

During the hearing Mr Digby conceded Mr Barnall's claim and after the hearing the Commissioners' office was informed that two small parts of the unit had been registered at the Land Registry and a note to this effect must now be made on the Register pursuant to section 12 (6) of the Commons Registration Act 1965.

Mr Digby said that his client's claim was to a possessory title.

Mr Ellison Stirk who is aged 40 and now lives at Easby near Colne in Lancashire said that his father and he first went on the land in 1943/4. Part of the land was in a reasonable condition, the remainder was moorland. His father put up some buildings on the land and kept stock on the land - cattle, pigs, goats and hens. His father did not pay rent to any one. He helped his father work on the land from 1950-1956/7. His father died in 1979.

His father stopped using the land in 1956/7. The supply of water had been interfered with and the need to carry water to the land made it impracticable to keep stock on it. He or his father continued to visit the land every 3-6 months. The buildings on the land were damaged by vandals. He had never seen any one else on the land other than hikers.

In cross-examination the witness said that there were some buildings on the land in 1945 and his father built extensions on to them. The land is fenced in part by other owners' boundary fences. A public road runs through the middle of the land, but the land is not otherwise fenced. The road is single track and is maintained by the local authority.



Mr Walter Toothill aged 38 who now lives in Keighley said that he had lived in Height Lane until 1963 Mr Ernest Stirk occupied the land when the witness was a boy. His occupation ended in 1955/6. After that no one occupied the land.

In cross-examination he said that the buildings were next to the delph hole.

Mrs May Toothill, the mother of the previous witness, had lived in Height Lane from 1938 to 1970. She knew Mr Ernest Stirk and remembered that he kept animals on the land for about ten years during the war and afterwards. She could not recall if there were buildings on the land. She knew Mr Ellison Stirk who was a friend of her son.

Mrs Clare Balderton said that she was born in Trough Lane about 15 minutes walk from the land. She left Trough Lane in 1945. As a girl she had been on the land and saw Mr Ernest Stirk's small-holding, she married in 1956.

In cross-examination the witness said that Mr Stirk kept cows, sheep, pigs and goats on the land.

Mr Scholefield produced documents of title under which he claimed to be Lord of the Manor of Oxenhope. The land had previously belonged to John Murgatroyd who had died in December 1944. He referred to the Oxenhope Enclosure Award of 1777 which included a Stone Quarry of just over 4 acres at the South western end of Black Moor.

I allowed Mr Stirk to be recalled and he said that the keeping of animals on the land stopped in 1956. His father ~~and he~~ owned other land near the land he claimed.

Mr Digby claimed that Mr Ernest Stirk had taken possession of the land in 1943 and had never abandoned possession.

He referred to *Treloar v Nute* 1976 I W L R. 1295 per Sir John Pennycuik at p.1299 G-J, to the 4th Edition of the Real Property by Nyanney & Wade at p. 1014 and to the 4th Edition of Williams in Title p. S71.

Mr Scholefield submitted that Mr Stirk had abandoned possession of the land 25 years ago. It would have been a simple matter to reconnect the water supply and in any event other animals had grazed on the land since Mr Stirk gave it up.

In my view Mr Stirk took possession of the land in 1943 or 1944 and acquired a possessory title shortly before he ceased to use the land in 1956. That possessory title could only be defeated by someone who himself went into possession and remained in possession for a further period of 12 years. There is no evidence that any person went into possession of the land for a sufficient period to defeat Mr Stirk's title.

On this evidence I am satisfied that Mr K M Burnall is the owner of the piece of land shown hatched red on the plan marked 'A' attached to his letter to the Commons Commissioner's dated 9 August 1973 and that Mr Ernest Stirk was the owner of the remainder of the land except for the two small pieces of land coloured Red and Blue on the plan marked 'B' title to which has been registered at the Land Registry and a note which must be made on the Register of Common Land pursuant to S. 12 (6) of the Commons Registration Act 1965.



196

-3-

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

5 April

1981

Ray Herdman

Commons Commissioner