



COMMONS REGISTRATION ACT 1965

Reference No. 52/U/38

In the Matter of The Old Racecourse,
Whitford, Holywell

DECISION

This reference relates to the question of the ownership of land known as The Old Racecourse, Whitford, Holywell being the land comprised in the Land Section of Register Unit No. CL.8 in the Register of Common Land maintained by the former Flintshire 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 Mostyn Estates Ltd., Jones & Tyson Ltd. and Mr and Mrs J. E. Davies and their son Mr J. R. Davies of Lower Stables Farm claimed to be the freehold owners of the land in question or parts thereof. 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 Mold on 8th April 1975.

Mr S. Christie, Solicitor, of the firm of Alson Stevens Batesons & Co. of Liverpool appeared for Mostyn Estates Ltd. Mr Armon Ellis, Solicitor, of the firm of Llewellyn Jones and Armon Ellis, Mold, appeared for Mr and Mrs J. E. Davies and their son Mr J. R. Davies. Mr Clement Jones, Solicitor, of the firm of Clement Jones & Co., Holywell, appeared for Jones & Tyson Ltd.

The land in question consists of the site of a disused Racecourse and is some 22 acres in extent. The land is bisected by a public road known as Babell Road, which runs in a north-south direction. Mr G. T. D. Hillier FRICS gave evidence on behalf of Mostyn Estates and produced an extract from the Ysceifiog Inclosure Award made pursuant to an Act passed in 1801. By this Award the land in question was allotted to Sir Thomas Mostyn Bt. for the sum of 1200, subject to its being kept open and uncultivated for use as a racecourse. There seems no reason to doubt that in the early part of the last century this land was frequently used for holding horse races, but it is equally clear that it has not been so used since before living memory, although I have a letter dated 4th April 1975 from the present Lord Mostyn in which he states that he and his father exercised their horses on the track between the years 1921 and 1939. I think that Lord Mostyn is referring to the track on the west side of Babell Road, because I was told by Mr Hillier that in 1912 Mostyn Estates Ltd. sold the racecourse on the east side of Babell Road. At the hearing before me, Mostyn Estates Ltd claimed ownership only of the racecourse to the west of Babell Road i.e. the land coloured yellow on the plan annexed to the conveyance dated 21st April 1921, by which the then Lord Mostyn conveyed Lower Stables Farm, consisting of some 164 acres, to one Abel Hughes in fee simple. Mr. Hughes was the father of the claimant, Mrs J. E. Davies.

I will, therefore, first deal with that part of the land in question which lies to the west of Babell Road. I am satisfied that, by virtue of the Inclosure Award, the freehold title was formerly vested in the successive owners of the Mostyn Estate. Mr and Mrs J. E. Davies and their son now claim ownership of this land on the ground of adverse possession over a period far exceeding the limitation period of 12 years. The question which I have to decide is whether this claim to a



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statutory title is well-founded. Mr Christie drew my attention to the well-known decision of Parke B. in Smith v Lloyd (1854) 9 c. 562, at p.572, that "There must be both absence of possession by the person who has the right, and actual possession by another ... to bring the case within the statute."

Mr and Mrs John Edward Davies and their son Joseph Ronald Davies gave oral evidence before me. Mr J. E. Davies told me that he frequently visited Lower Stables Farm, then farmed by his father-in-law Abel Hughes, before 1941, when the witness and his wife bought the farm. In the 1930's, the racecourse was largely overgrown with gorse and fern, although there were some patches of grass which were grazed by cattle and sheep belonging to Abel Hughes. The racecourse was not fenced off and was farmed as part and parcel of Stables Farm. In 1940 the southern part of the racecourse was ploughed and sown with oats by Abel Hughes. The witness himself harvested the crop for his father-in-law; Abel Hughes also used to cut the fern on the racecourse for use as bedding on Stables Farm. After buying the farm in November 1941, the witness and his wife went to live on the farm and the witness farmed Stables Farm until he retired in 1966. Throughout this period, the whole of the racecourse (except the part fenced in on the instructions of Lord Mostyn in 1959 as mentioned below) was ploughed and sown with crops from time to time, and was otherwise farmed as part of Stables Farm. This was done without objection from the then Lord Mostyn or anyone else.

This evidence was confirmed by Mrs J. E. Davies. Mr J. R. Davies testified that he has farmed Lower Stables Farm since his father's retirement in 1966 in much the same way as his father had done before him, and, in particular, cultivating or grazing the racecourse as part of Lower Stables Farm, without objection from anyone. He also stated that he received a way-leave rent from The Merseyside and North Wales Electricity Board in respect of 4 or 5 poles on the racecourse.

Mr Christie called two witnesses viz. Mr G. E. D. Hiller, the Secretary and Surveyor of Mostyn Estates Ltd; and Mr A. E. Stevens, who was employed by Mostyn Estates on forestry work. Mr Hiller was not in a position to challenge the evidence given by the Davies family, but he produced a Way-Leave Agreement dated 9th January 1975 made between Mostyn Estates Ltd and the Merseyside and North Wales Electricity Board, whereby the Merseyside and North Wales Electricity Board was given leave to erect an overhead line and one pole with stay over or at the north-western end of the racecourse. The Merseyside and North Wales Electricity Board at the same time paid back rent for some 13 years in respect of this facility.

Mr Stevens' evidence was confined to work which he carried out on the racecourse in 1959 on the instructions of Lord Mostyn. It appears that the disused Grand Stand at the north-western end of the racecourse was then in a dilapidated and dangerous condition and Lord Mostyn, taking the view that it was his responsibility, gave instructions for it to be fenced in. This was done by Mr Stevens and another workman. Shortly before this, as appeared from evidence given by Mr J. E. Davies in cross-examination, Mr Davies had asked Lord Mostyn for permission to use the Grand Stand as a shippon, but this was refused.

Reliance was also placed by Mr Christie on the terms of a Deed of Gift dated 10th November 1969, by which Mr and Mrs J.E. Davies made a gift of a one-third share in the farm to their son. The site of the old racecourse was not included in this Deed of



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Gift. This Deed was drafted by the Davies' then Solicitor, Mr Clement Jones, on the basis of the Conveyance of 1st November 1941 from Abel Hughes to the Davies, which itself did not include the site of the old racecourse. I infer that Mr Clement Jones was either not fully informed by his clients of the facts relating to the use and occupation of the racecourse as described in evidence before me, or that, if he was so informed, Mr Clement Jones took the view that his clients could not claim a statutory title. In either event, I do not regard the omission of the site of the racecourse from the Deed of Giff as being in any way decisive of the matter.

I am satisfied that the evidence before me established beyond doubt that from 1930 or thereabouts down to the present time the site of the old racecourse (excepting the Grand Stand) to the west of Babell Road has been continuously used and occupied by the successive owners of Lower Stables Farm and has been farmed by them as part and parcel of that farm. In my view, such user and occupation constituted ~~adverse~~ and adverse possession of the site by the owners of Lower Stables Farm. Except as to the fencing of the Grand Stand and the refusal of Lord Mostyn to allow it to be used as a shippon, there was no formal or admissible evidence before me that the present Lord Mostyn or his father or Mostyn Estates Ltd had made any use of the site during the period 1930 - 1975.

I conclude, therefore, that Mr and Mrs J. E. Davies and their son Mr J. R. Davies have established a statutory title to such part of the land in question as lies to the west of Babell Road, except the Grand Stand and the land fenced in by Lord Mostyn in 1950 which still belongs to Mostyn Estates Ltd.

I now turn to the part of the old racecourse which lies to the east of Babell Road. Mr Clement Jones, Solicitor, of the firm of Messrs. Clement Jones & Co. of Holywell, appeared for Jones and Tyson Ltd., which claimed ownership of so much of this part of the racecourse as was comprised in a Conveyance dated 14th November 1970 made between Evelyn Mary Stanley and others (as Vendors) of the one part and Jones & Tyson Ltd. (as Purchaser) of the other part. Mr Clement Jones produced this Conveyance, which conveyed to Jones and Tyson Ltd. several parcels of land including the northern part of the racecourse on the east side of Babell Road i.e. that part which extends from Babell Road to the fence erected on the racecourse opposite the northern boundary of C.B.7650 on the Register Map. I am satisfied that, by virtue of this Conveyance, Jones & Tyson Ltd are now the owners of this part of the racecourse.

As regards the remainder of the racecourse to the east of Babell Road, no claim to its ownership was made before me.

At the hearing there was handed to me a Statutory Declaration declared by Mr. Alexander Dick Griffiths of Fantasaph Farm, from which it appears that Mr Griffiths claims to have a right of way over part of the racecourse to the east of Babell Road. I have no jurisdiction to decide whether Mr Griffiths is so entitled or not; but my decision is entirely without prejudice to Mr Griffiths' right of way (if any).

Accordingly, I am satisfied

1) that Mr and Mrs J. E. Davies and ~~Mr J. E. Davis~~ and Mr J. R. Davies are the owners of so much of the land in question as is situate to the west of Babell Road, except as mentioned at (2) below; and I shall accordingly direct the Clwyd County Council as registration authority to register them as such owners under section 8(2) of the Act of 1965.



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- (2) that Mostyn Estates Ltd. is the owner of the Grand Stand (disused) and the land enclosed therewith in 1959; and I shall accordingly direct the Clwyd County Council as registration authority to register it as such owner under the said section 8(2).
- (3) that Jones and Tyson Ltd. is the owner of so much of the land in question as lies to the east of Babel Road between that road and the fence opposite the northern boundary of O.S. 7650 on the Register Map; and I shall accordingly direct the Clwyd County Council as registration authority to register it as such owner under the said section 8(2).

In the absence of any evidence, I am not satisfied that any person is the owner of the remainder of the land in question, and it will therefore remain subject to protection under section 9 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 15th day of October 1975

A. E. Francis

Commons Commissioner