



COMMONS REGISTRATION ACT 1965

Reference No.20/U/20

In the Matter of Poors Land Allotments,
Allotment Road, Cadishead, Irlam U.D.,
Lancashire.

DECISION

This reference relates to the question of the ownership of land known as Poors Land Allotments, Allotment Road, Cadishead, Irlam Urban District, being the land comprised in the Land Section of Register Unit No.C.L.6 in the Register of Common Land maintained by the Lancashire 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 no person claimed to be the freehold owner of the land in question, but the Charity Commissioners claimed to have information as to its ownership sending to the Clerk to the Commons Commissioners an affidavit sworn on 12th June 1972 by Mr. J. C. Baylis, a Higher Executive Officer employed at their Northern office in Liverpool.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Preston on 21st June 1972.

At the hearing the Irlam Urban District Council ("the Council") were represented by Mr. J. Massey, their Chief Administrative Assistant; he submitted that the Council should be registered under the Act as owner. The Charity Commissioners were not represented; Mr. Baylis in paragraph 7 of his affidavit submitted that "the registration authority should be directed to register as owners..... the trustees for the poor of the ancient township of Barton-upon-Irwell".

Before dealing with these conflicting submissions, I should, I think, record that the Council and the Charity Commissioners appear to me to be agreed on nearly every matter of importance which was mentioned at the hearing. The facts set out in the affidavit of Mr. Baylis were accepted by Mr. Massey: indeed these facts were confirmed and amplified on many points by Mr. Massey as the Council was able to produce the original indentures, a complete copy of the 1856 Award (with map annexed) and a print of the 1897 Rules referred to in the affidavit or in the exhibits thereto. They agree that I should conclude (as I do) from their evidence that the land is held on charitable trusts for the poor of a locality situate in or around Irlam (they may differ as to the boundaries of the locality) and that the land is or ought to be vested in whoever now holds or is hereafter lawfully appointed to hold it on these charitable trusts.

The difference between the Council and the Charity Commissioners is, I think, as follows:- Mr. Baylis in paragraph 5 of his affidavit submits that the land is vested in the personal representative of the survivor of the persons who were the overseers and churchwardens on the 1st January 1926 (the commencement of the Law of Property Act 1925) of four parishes into which in 1895 the township of Barton-upon-Irwell had been split together with the churchwardens of the township, if any. The evidence of Mr. Massey included information about many local matters which were not mentioned by Mr. Baylis in his affidavit and about which I should expect the Charity Commissioners to have no information; Mr. Massey submitted that on his evidence I should conclude that the Council was now sole trustee of the charitable trusts and that the land was vested in the Council as such.



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Formally I could resolve this difference by adopting the form submitted in paragraph 7 of the affidavit, because if the Council is as Mr. Massey submits sole trustee, I would not by directing the registration authority to register "the trustee...", derogate from the Council's claim to be sole trustee. But if I am able to name the Council as owner I should, I think, reject this solution because in my view the Act contemplates that I shall, if I can, put the name of the owner in any direction I may give to the registration authority under section 8. I have not overlooked that the form submitted by Mr. Baylis accords with that adopted by the Chief Commissioner in his decisions dated 3rd March 1972 re Bodham 25/U/6, dated 23rd May 1972 re Poor Head 10/U/3 and dated 25th July 1972 re Manaton 9/U/10; but in all these cases, the evidence before the Chief Commissioner was insufficient when he made his decision to enable him to name the persons who were the owner trustees.

The land comprised in this Register Unit has an area of about 5 acres. Before 1968 it was divided into 70 allotment gardens, let as such; in February of that year 22 of these were grassed over and have since been used as a public open space; the remaining 48 are still let as allotments.

The land was as regards the greater part held in trust for the labouring poor of the Hamlet of Cadishead under an Inclosure Award dated 30th January 1856 and approved by the Inclosure Commissioners on 6th March 1856, and as regards the less part held on the same trust under two indentures dated 3rd May 1870. By the 1856 Award the allotment was made to "the churchwardens and overseers of the poor of the township of Barton-upon-Irwell". By the two indentures of 3rd May 1870 the land thereby conveyed was granted to persons therein described as "the churchwardens and overseers of the poor of the township of Barton-upon-Irwell"; each indenture containing a recital of other lands having been taken by the Cheshire Lines Committee for the purposes of their railway. Mr. Massey, who is 32 years of age, had lived in Irlam all his life, and been employed by the Council for the last 10 years, was able to identify the land in this Register Unit with the land held on trust for the labouring poor under the 1856 Award and the two 1870 indentures.

Rules for the Government of the Land at Cadishead Allotted to the Poor were revised at a meeting of the Trustees and Allotment Wardens held on 9th April 1897.

In 1910 the House of Commons was presented with a Report made for the County of Lancaster to the Charity Commissioners by their Assistant Commissioner; Mr. Baylis in his affidavit exhibited a copy extract ("the Report Extract") headed "Cadishead Allotment Land" which referred to the land I am now considering and which sets out in some detail the history before 1910 of the Charity as above summarised.

The Report Extract contains the following paragraph:-

"In 1895 the ancient township of Barton-upon-Irwell became split up into the four civil parishes of Eccles, Barton Moss, Davyhulme, and Irlam, and the overseers of the last-mentioned parish thereupon called upon the old overseers to transfer to them the funds in their possession. The old overseers having referred the matter to the Charity Commissioners, the Commissioners informed the overseers of Irlam that in their opinion the overseers of all four divisions together with the churchwardens, if any, of the township of Barton-upon-Irwell were the trustees of the Charity, and that the proper course was to transfer the cash to the Official Trustees of Charitable Funds. Before, however, this decision was given the old overseers had paid the money into the Adelphi Bank Limited at Cadishead (now the Lancashire and Yorkshire Bank Limited), to the credit of "The



Overseers of Irlam" (the new civil parish), in the name of James Andrew, the assistant overseer, and in spite of the decision the overseers of Irlam have continued to keep the management in their own hands but exercise it through two "allotment wardens," being inhabitants of Cadishead, appointed by them in accordance with the 108th section of the Act of 1845 above mentioned."

By an indenture dated 13th July 1914 to which the parties of the first part were five individuals therein called "the Allotment Wardens of the Allotment" thereafter mentioned it was witnessed that the Allotment Wardens in pursuance of the Small Holdings and Allotments Act 1908 and with the sanction of the Board of Agriculture and Fisheries testified by their official seal being thereunto affixed did transfer to the Council as Sanitary Authority for the district within which the hamlet of Cadishead was situate the management of the said Allotment.

The investments held for the Charity as being or representing those mentioned in the Report Extract now stand and have for many years stood in the name of the Council.

According to the Records of the Council, after the 1914 indenture no warden was appointed and the Council then started and has ever since allocated the allotments and collected the rents; this for the last 10 years being within Mr. Massey's own knowledge. In recent years it has been more and more difficult to allocate allotments, it being easier now to obtain what was formerly grown and people have easier leisure interests than before.

In 1968 the Council considered using some of the allotments as an open space; an inquiry of the Charity Commissioners resulted in the Council being passed on to the Minister of Housing and Local Government. With a letter dated 5th March 1968 (produced to me) in pursuance of his power under section 22(1)(b) of the Land Settlement Facilities Act 1919 and section 8 of the Allotments Act 1925 he consented to the appropriation of part of the land for public open space purposes.

Mr. Massey had no knowledge of the persons who would (as mentioned in paragraph 5 of the affidavit) be the overseers and churchwardens on the 1st January 1926 (commencement of the Law of Property Act 1925); there were no persons so far as he knew who would now fulfill the description "The Trustees for the Poor of the Ancient Township of Barton-upon-Irwell".

On the evidence before me, I find that ever since 1895 the Council or their predecessors the overseers of Irlam have been in possession of the land and controlled and managed it as owners holding it on the charitable trusts above mentioned, that such possession and control has been in good faith and has resulted in the land being used in accordance with or as far as practicable and as near as may be in accordance with such trusts, that the opinion ("the 1895 opinion") of the Charity Commissioners mentioned in the Report Extract would, as to the trustees have been most inconvenient practically to implement because the land would have come under the control of overseers and churchwardens of parishes who were only remotely concerned with the subject matter of the trusts, that neither the Charity Commissioners nor any other authority took any proceedings to implement the 1895 opinion and in particular no action by or on the relation of the Attorney General for this purpose was ever commenced, that such lack of proceedings was in the events which happened beneficial to the Charity because they would have involved the Charity in trouble and expense quite disproportionate to the practical advantage to anyone. In these circumstances I should, I think, conclude that the de facto trusteeship of the Council since 1895 has been regularised de jure. Accordingly on the evidence before me I presume that shortly after 1910 when the 1895 opinion was reported to the House of Commons, an order which has since been lost, was made appointing the



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Council to be sole trustee of this Charity or alternatively a letter which has been lost was written on behalf of the Attorney General recording that he had no objection to the Council acting as sole trustee. On such presumption the land would, I think, have vested in the Council under the transitional provision of the Law of Property Act 1925 mentioned in the affidavit of Mr. Baylis and is still so vested.

For these reasons I am satisfied that the Council is the owner of the land, and I shall accordingly direct the Lancashire County Council as registration authority to register Irlam Urban District Council as the owner of the land. As above appears this direction is on the basis that the land is held by the Council on charitable trusts; it is not, I think, appropriate that I should direct the registration authority to note this; this is a matter for the Council, see regulation 23 of the Commons Registration (General) Regulations 1966.

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 11th day of October 1972

A. A. Baden Fuller

Commons Commissioner