



COMMONS REGISTRATION ACT 1965

Reference Nos 268/D/254  
268/D/255

In the Matter of The Village Green,  
Barton, Richmondshire District,  
North Yorkshire

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DECISION

These disputes relate to the registrations at Entry No 1 and at Entry No 2 in the Ownership Section of Register Unit No VG. 121 in the Register of Town or Village Greens maintained by the North Yorkshire County Council and are occasioned by the registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Richmond on 10 February 1977. At the hearing Edgar Lawson Limited on whose application Entry No 1 was made, were represented by Mr R W Hinks solicitor of Latimer, Hinks, Marsham & Little, Solicitors of Darlington, and Barton Parish Council on whose application Entry No 2 was made, were represented by Mr S N Walton solicitor of Stanley N Walton & Hardy, Solicitors of Darlington.

The land ("the Unit Land") comprised in this Register Unit is (as registered) in 17 Pieces. At a T junction on the Richmond-Darlington road which runs through the middle of the Village and is there called Silvergate (the motor traffic now mostly goes by the M road which is to the north), there is a Cross. Most of the Unit Land consists of open grass covered land on either side of the road which leads down from the Cross to a ford and footbridge over the River. One of these 17 pieces ("the Disputed Piece") is an L-shaped piece on the west side of the road from the Cross to the Ford; by this road it is about 150 yards long, and towards the middle widens out into a triangular grass area (with tracks over it) about 50 yards wide. The Disputed Piece is in part on the south side of the road which runs westward from the Cross; by this road it is about 30 yards long and about 6 yards wide. The land ("the Disputed Land") registered at Ownership Section Entry No 1 is the part of the Disputed Piece at the corner by the Cross; it includes all the Disputed Piece in front of a group of adjoining buildings ("the Smithy Buildings") which on the plan on the 1907 conveyance below mentioned were described (from north to south) as "Hen Run", "Blacksmith's Shop", "Cart Shed", and "Manure Pit", and which now appear to be a shed, a dwelling house or store (not now inhabited), a garage for a motor vehicle, and another garage for a motor vehicle. The Disputed Land also comprises a substantial area of the Disputed Piece around the corner by the Cross between the said Shed (formerly Hen Run) and the Cross and the road going westward from the Cross. The land registered at Ownership Section Entry No 2 comprises nearly all the Unit Land except some of the roads and tracks crossing it, and includes the whole of the Disputed Land.

Mr Hinks at the beginning of the hearing said he had a preliminary point:- Edgar Lawson Ltd's original application was for registration of ownership in the Village Green Register. As a result of information obtained by his solicitors while preparing for this hearing, he might be able to satisfy me not only that Edgar Lawson Limited own the Disputed Part but also that it is not a village green. Mr Hinks said it would be helpful if I would say whether this question could be put in issue.



I adhere to the opinion I expressed at the hearing that on this reference the validity of the registration of the Disputed Part in the Land Section of this Register Unit was not a question which I could determine on the references before me, but that evidence relevant to ownership would not at the hearing be inadmissible merely because it might also indicate that the registration in the Land Section might be invalid.

In support of Entry No 2 against Entry No 1, oral was given by Mr A Flowers who was born in 1937 just outside the Village, has always considered Barton to be "my Village" (he attended the school there), has been a member of the Parish Council since 1963 and is now their chairman. In the course of his evidence he produced: (1) a lease dated 4 July 1899 by which Messrs A Lucas and E Hutchinson pursuant to the will dated 8 January 1879 of Robert Henry Allan and a High Court Order dated 26 June 1898, "so far as they lawfully can and may" demised to the Barton Parish Council the Village Green situate at Barton "which said Green comprises several pieces of land marked with the word "Green" upon the plan hereon endorsed..." for 21 years from 21 November 1898; (2) a conveyance dated 2 July 1956 by which Sir R A Pease and Mr D E Braithwaite as personal representatives of Sir H F M Havelock-Allan (he became entitled under a vesting deed dated 5 October 1926 pursuant to a settlement) conveyed to the Parish Council of Barton "ALL THAT the estate right or interest (if any) of the Vendors in all or any of ALL THOSE pieces of land...known as the Village Green which is believed to consist of the several pieces of land containing...(1.850 acres)...shown coloured red on the plan hereto annexed"; (3) a copy of the memorial of the said 1926 vesting deed from the North Yorkshire Deeds Registry; (4) a bundle of extracts (28 June 1899 to 16 December 1969) from the Parish Council Minute Books; (5) a printed copy (23" x 17") of the Byelaws for the regulation of the Village Green of Barton made by the Parish Council on 15 February 1901 and allowed by the Local Government Board on 16 April 1901; (6) a copy of a conveyance dated 17 September 1907 with a plan showing the Smithy Buildings and land containing 1,227 square yards to the west, being the site of "Proposed New Institute"; (7) a "blown up copy (72" x 40") of the relevant part of the OS map 25" = 1 mile; (8) two coloured photographs (4½" x 3") of a tree (now cut down) formerly on the Disputed Part; and (9) a copy agreement (obtained from the North Eastern Electricity Board) dated 20 July 1935 as to the way leaves granted by Sir H S M Havelock-Allan to North-Eastern Electric Supply Company Limited.

In support of Entry No 1 oral evidence was given by Mr E Lawson who is managing director of Edgar Lawson Limited and by Mr William Brown who is aged 54 years and who is the eldest son of Mr Robert Brown, the Blacksmith of Barton from 1920 until (or until shortly before) his death on 31 August 1965. Mr Lawson in the course of his evidence produced: (1) a conveyance dated 28 July 1966 by which Mrs A J Brown (the widow and sole administrator of the estate of Mr Robert Brown) conveyed the Smithy Buildings to Edgar Lawson Limited; (2) a conveyance dated 14 December 1954 by which Sir R A Pease and Mr D E Braithwaite conveyed to Mr Robert Brown the Smith Buildings (this conveyance recited the death of Mr R H Allan, on 28 October 1879, the settlement created by his will, and the death of Sir H S M Havelock-Allan on 28 October 1953; and (3) an abstract of the letters of administration to the estate of Mr Robert Brown.

On the day after the hearing I inspected the Disputed Land and much of the Unit Land nearby.



The main contention of Mr Hinks on behalf of Edgar Lawson Limited ("the Company") was (in effect) that they had become owners of at least part of the Disputed Land because the Company and their predecessor in title Mr Robert Brown had since 14 September 1954 (the date of the conveyance to him of the Smithy Buildings) been in possession of the strip on which vehicles and farm implements had been left from time to time and of which the surface had been strengthened. He referred me to Wallis v Shell-Mex (1974) 1 All E R 575, 1975 1QB 94.

Mr Hinks called the part so-called "the Area of Hard Standing", an appellation somewhat tendentious because there is no area capable of being marked out now which could throughout the whole period from 1954 up to today have always been sensibly so called. Now, there is a strip, part of the Disputed Land, in front of the Smithy Buildings which could appropriately be described as an area of hard standing: this area is about 27 feet wide (so Mr Lawson estimated), is bounded on the west by the front line of the Smithy Buildings and the line obtained by producing such line towards the edge of the road which runs westward from the Cross and is bounded on the east by a narrow grass strip between it and the edge of the road which runs southwards from the Cross. This area now appears to be convenient for the parking of vehicles by persons who have business in the Village and to be incidentally convenient for vehicular access to the Smithy Buildings, particularly the two garages. But before the death of Mr Robert Brown, there was no such area; it was not disputed that at time there was a much smaller area which comprised or included a track providing vehicular access to the Smithy Buildings from the road to the north, and on which one vehicle was left from time to time. The dispute was as to the extent of this area and as to the acts of possession (if any) done by Mr Robert Brown in relation to it.

I need not I think mention Mr Lawson's evidence as to the use made by the Company of the land in front of the Smithy Buildings after their 1966 purchase, as it is clear that such use even if it amounted to taking possession, was not for a long enough period to establish the ownership of the Company unless it could be regarded in some way as in continuation of some possession by Mr Robert Brown. So as regards the main contention, all I am concerned with is the area which existed as above mentioned in the time of Mr Robert Brown.

Mr Flowers who attended in the School in the Village said (in effect):- As a boy he frequently watched Mr Brown shoeing horses inside the Smithy Building. There was a rain water tub and a grind-stone outside within 2 or 3 feet of the doorway which Mr Brown used, but apart from this, his activities did not spread to the Village Green (outside the building) at all. Burn Brothers have for many years carried on a haulage from the Village and are constantly in need of places on which they can leave their vehicles; for many years the Parish Council have received rent from them and from others for leaving vehicles on the Green.

Mr W Brown who was born in 1922 said (in effect):- His father Mr Robert Brown as a blacksmith was tenant and later owner of the Smithy Buildings from 1920. His business was a general smith: horseshoeing and farm implement repairs (including before the 1939-45 war some wheelwrighting). The work for which the Smithy Building was not large enough, eg wheelwrighting and repairs to some farm implements had to be carried out outside the Buildings. He produced two



photographs, which he dated about 1930 and slightly later, of his father and others standing in front of the Smithy Buildings with implements leaning against and near the wall behind him. After he became the owner his business declined because of his age. "If anyone parked in front and stopped his access to the Buildings he would request them to leave. Burn Brothers so parked: (to this) he never objected but he would have done so if they had stopped his access to the Smithy; he wanted at all times free access. I understood from my father verbally that a request had been made by the Parish Council to Burn Brothers (for payment) for parking of the vehicles in front of the Blacksmith's Shop; my father stated that if Burn Brothers paid the Council, they, Burn Brothers, would have to remove their vehicle meaning that he did not consider Burn Brothers should make any payment to the Council. "He received a payment himself; a very small sum (there were good relations between them) in the region of 5/-, something like that. (When did this happen?) I can only guess that; he purchased the land in 1954; I would say 5 years later; I don't know whether it continued to the date of my father's death; there was only one time when I discussed this with my father. So for how long and for how much Burn Brothers paid I would not like to say. (As regards anybody else?) People parked there... he would clear them off if...no access to the premises..."

It was contended that Mr Brown's evidence showed that his father Mr Robert Brown was in possession of an area of hard standing by having repaired implements on it and having received rent for it.

Although the 1899 lease and the 1956 conveyance are on the basis that the granting party might not be able to make title, they are both on the basis that all the Disputed Piece was part of the land known as the Village Green. In my opinion at all material times the Disputed Piece including the land in front of the Smithy Buildings (whether it be described as hard standing or track) was reputed to be and appeared to be (as indeed it now appears) to be part of the large area of adjoining open land known as "the Village Green".

I feel some doubt whether Mr W Brown's account of what his father on one occasion told him about rent received by him from Burn Brothers is legally admissible evidence on any relevant issue in this case. However this may be, I am not persuaded that from what he said Burn Brothers never paid rent to the Parish Council for leaving vehicles on the Green including the vehicle which they from time to time left in front of the Smithy Buildings (a place which must have been convenient for them as their premises were on the opposite side of the road). Mr W Brown in the course of his evidence used the word "access" not only as above recorded but on other occasions as describing his father's attitude towards the land in front of the Smithy Buildings; it is I think clear that Mr Robert Brown had an interest in such land, at least to the extent of a right of way for the purpose of the Smithy Buildings. Pedestrian access to the Smithy Buildings is now and at all relevant times has always been easy in any direction over any part of the Disputed Piece. Vehicular access by reason of the slope of the land is now and was at all relevant times only practicable from the road on the north side of the Disputed Piece. From the evidence of Mr W Brown I conclude that his father never considered himself to be the owner of any land in front of the Smithy Buildings or to be in possession of any such land; if he had considered the land in this way, Mr W Brown would not I think have used the word "access" so repeatedly as he did.



Mr Robert Brown was for 12 years a member of the Parish Council, and he must I think have known that the Parish Council in 1956 took a conveyance of the Green including the land in front of the Smithy Buildings and were tenants before then; he would also have known Burn Brothers were paying rent to the Parish Council for leaving vehicles on the Green. Obviously if Burn Brothers left a vehicle on the track in front of and leading to the Smithy Buildings, they could not justify their interference with the access to which Mr Robert Brown was entitled by any payment made by them to the Parish Council, and he might well consider himself entitled to some monetary compensation for interference with his access; however this may be I am not persuaded by the statement of Mr W Brown of his one conversation with his father about this matter that he was for any significant period, —→ if at all, receiving rent from Burn Brothers in respect of the vehicle they from time to time left in front of the Smithy Buildings. Further I had no evidence that the manner in which Burn Brothers left a vehicle in front of the Smithy Buildings was such that it could properly be regarded as a taking of possession of the land on which the vehicle was left.

There was never any fence in front of the Smithy Buildings, and I am not persuaded that Mr Robert Brown merely because he repaired outside the Smithy Buildings those implements which were too large to be repaired inside, took possession of the part of the Green on which his customers left them.

For the above reasons I conclude that Mr Robert Brown, although there was almost certainly appurtenant to the Smithy Buildings a general right of way across the Disputed Land, was never in possession, in any now relevant sense of any part of it. Accordingly I reject the main contention. In my opinion the question of law discussed in *Wallis v Shell-Mex* does not arise; see *Treloar v Nute* 1977 1 All ER 230.

I reject the suggestion that the 1966 conveyance provided some support for Entry No 1, because by it the Smithy Buildings were conveyed "TOGETHER with such interest (if any) as the Vendor may have in that part of the Village Green of Barton aforesaid which adjoins the property hereinbefore described and for the purposes of identification only more particularly delineated by the said plan annexed hereto and thereon coloured green". The land so coloured ("the 1964 Conveyance Land") is that part of the land which lies directly between the Smithy Buildings and the road. It was not included in the 1954 conveyance. There was no evidence that the Vendor (Mrs A J Brown) ever had any interest in the 1966 Conveyance Land other than a right of access appurtenant to the Smithy Buildings.

Alternatively in support of Entry No 1 it was suggested that Wing Commander Vaux as chairman of the Parish Council had in March 1967 on their behalf admitted that Edgar Lawson Limited were the owners of 11 feet 6 inches in front of the Smithy Buildings. Reference was made to a minute of a meeting of the Parish Council on 14 March 1967:- "Mr Vaux reported that he had a discussion with Mr Lawson with reference to the frontage of the former Blacksmith's Shop. Mr Vaux said that 11 foot 6 inches in front of the Shop was sold to Mr Lawson and that Mr Lawson proposed to erect a petrol filling station on the site of the Blacksmith's Shop. Mr Vaux presented the plans of the proposed filling station. The Council agreed that Barton did not need a filling station. Furthermore the Council were not prepared to give permission for access and standing for vehicles on land which is in their possession..."



Of this conversation Mr Lawson said: "I met Wing Commander Vaux one morning when he was out on his horse. I was anxious to know what my rights were, so we could put in a planning permission for a filling station. It may have been at his house, maybe he was at the roadside, that is the best I can remember. Wing Commander Vaux said that he contended that we own 11 foot 6 inches from the building. My reaction was that I could not get on cars, I asked him because he was chairman of the Parish Council and was looking after their rights. He invited me to go and see him any time. He was and is a very approachable man.

Wing Commander Vaux did not give evidence; I was told that he could remember nothing of the incident. It was suggested that the above quoted Parish Council minute provides support for Mr Lawson's account of the conversation. Wing Commander Vaux has been chairman of the Parish Council since 1946 and must have been aware that in 1956 The Green had been conveyed to the Parish Council. I cannot imagine how he could ever have thought 11 foot 6 inches in front of the Smithy Buildings had been sold to Mr Lawson except from information provided by Mr Lawson. Although the 1967 minute is not very happily expressed, this is I think its proper meaning. Mr Lawson when he described this conversation, seemed to me uncertain about what he was saying; I am not satisfied that Wing Commander Vaux ever volunteered (as Mr Lawson apparently wanted me to think) an opinion which he, Wing Commander Vaux, had reached quite independently of anything Mr Lawson had said to him, that the Smithy Buildings and 11 foot 6 inches in front of them were both in the same ownership.

In my opinion the evidence of Mr Flowers and the documents produced by him established that the whole of the Disputed Piece is now and always has been part of the pieces of land locally known as The Green, and that the Parish Council are the owners of all such pieces. My conclusion is therefore that the ownership claim at Entry No 1 has been disproved and the ownership claim at Entry No 2 has been proved.

For the above reasons I refuse to confirm the registration at Entry No 1 and confirm the registration at Entry No 2 without any modification.

Mr Walton asked for costs. These disputes are not occasioned by the 1965 Act, and would even if the Act had not been passed, have had to be resolved in some way, in the absence of agreement by the High Court. There is no reason why costs should not follow my decision in accordance with the principle applied by the High Court. Accordingly, I shall order Edgar Lawson Limited to pay Barton Parish Council the costs incurred by them in respect of these proceedings and I shall direct that such costs be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 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 13<sup>th</sup> day of May -

1977

a. a. Baird Fuller

Commons Commissioner