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COMMONS REGISTRATION ACT 1965

Reference No. 201/U/10

In the Matter of South-East Side of the Tring Road forming part of the Icknield Way Regulated Pasture, Dunstable, Bedfordshire.

DECISION

This reference relates to the question of the ownership of land on the South -East side of the Tring Road forming part of the Icknield Way Regulated Pasture, Dunstable, being the part of the land comprised in the Land Section of Register Unit No.CL.32 in the Register of Common Land maintained by the Bedfordshire 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 D Hodder, Mrs C Jackson, and Mrs G Neave claimed to be the freehold owners of parts of the land in question and 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 Luton on 26 November 1983. At the hearing the County Council was represented by Mr J A Kerce, Solicitor, the South Bedfordshire District Council by Mr G S Blakey, Solicitor, and Mrs Neave by Mr P Hylton, Solicitor, and Mr Hodder, Mr J Crome, Mr A G A Hayman, Mrs W E Koral and Mr A D Thorn appeared in person. There was no appearance by or on behalf of Mrs Jackson, but Mr Hodder handed to me copies of the title deeds of 37 Tring Road owned by Mrs Jackson and her husband.

The land the subject of the reference consists of a long strip on the south-east side of the Icknield Way (also known as Tring Road) in the former borough of Dunstable. Previously the land was in the parish of Totternhoe and formed part of the Commons which were regulated by a provisional order confirmed by the Regulation and Inclosure (Totternhoe) Provisional Orders Confirmation Act 1886 (49 Vict, c.xvi). By the award made under the provisional order on 14 January 1891 the land in question was made subject to a number of stints or rights of pasturage.

It appears from title deeds produced at the hearing that the land on the south-east side of the land the subject of the reference was laid out as a building estate in or before 1925 and sold off in plots, eash plot having a frontage of 50 feet or thereabouts. In the conveyance of each plot were included the grazing rights or stints belonging to the vendor over the small piece of regulated pasture lying between the plot and the Icknield Way.

Each of the claimants owns one of the plots so disposed of, and there was no material difference between the facts relating to the various plots.

Each of the plots now has a house built on it, and the only means of access to each of the houses is across the small piece of regulated pasture lying between it and the road. Clearly, this means of access has been used for a sufficient time for a right of way to have been acquired. This was admitted by Mr Blakey, but he argued that such a right of way was all that had been acquired by each of the owners. Each of the claimants, however, claimed to have acquired the freehold of the land.

The foundation of the claim to have acquired the freehold was in each case that the owner of each house had looked after the land in front of his plot as if it were his own and, in particular, had constructed a driveway and in some cases also a footpath across it.

I take the view that merely cutting the grass growing on land does not constitute adverse possession of the land. The position can be different when the land is physically interfered with as by the construction of a driveway or a footpath. Mr Blakey, however, submitted that such work was incidental to the exercise of a right of way and did not involve taking possession of the land.

Support for Mr Blakey's argument is to be found in Newcomon v. Coulson (1877), 5 Ch. D. 133, where it was held that the grantee of a right of way to land on which a house was subsequently built was entitled to construct a substantial roadway suitable for the purposes to which the land was in course of being applied. In this case, there was no grant of a right of way across the roadside strip by the original owner of the land which was laid out as a building estate. Indeed, the evidence indicates that he was in no position to do so. This is shown by the fact that he granted with each plot the grazing rights or stints belonging to him over the land between the plot and the road, for a man cannot be entitled to a right of common over his own land. This does not, however, exclude the possibility that the owner of the strip granted a right of way in each case. Since each plot could only be reached by crossing the roadside strip, it must be presumed as a fact that such crossing has been going on ever since the plot was conveyed by the developer. As a matter of law, the long enjoyment gives rise to a presumption ~~of law~~ that there was such a grant, and the effect of section 4 of the Prescription Act 1832 is to make that presumption now irrebuttable. But Section 4 of the Act of 1832 does not bring the right into existence at the end of the relative prescription period: the right must be presumed to have had a lawful origin at the time when it was first enjoyed.

I have therefore come to the conclusion that the owners of the houses fronting onto Tring ~~Point~~ Road or their predecessors in title were acting only in the exercise of their rights of way when they interfered with the surface of the roadside strip by constructing driveways and footpaths accross it.

On the evidence before me I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

Although this is not in accordance with the wishes of the frontagers who appeared at the hearing, it should not cause them any practical difficulty, since in a letter dated 9 November 1983 the Chief Executive and Clerk of the South Bedfordshire District Council stated that the Council in exercising their powers under Section 9 of the Act of 1965 would wish to see the status quo retained and would not wish to prevent any use of the land by local residents for normal access to their property, nor to prevent any satisfactory maintenance to grassed areas.

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 29th day of November 1983

Chief Commons Commissioner