



COMMONS REGISTRATION ACT 1965

Reference No.5/D/11

In the Matter of Knutsford Heath,
Knutsford, Cheshire (No.3)

DECISION

This dispute relates to the registration at Entry No.1 in the Rights Section of Register Unit No.C.L.39 in the Register of Common Land maintained by the Cheshire County Council and is occasioned by Objection No.10 made by Midland Bank Executor and Trustee Co.Ltd. and noted in the Register on 17th July 1969.

I held a hearing for the purpose of inquiring into the dispute at Chester on 16th May and 5th, 6th, 7th, 8th and 9th November and in London on 14th, 15th, 16th, 23rd and 26th November 1973. The hearing was attended by Mr. David Widdicombe, Q.C. and Mr. John Monckton, of counsel, for Nether Knutsford Freeholders, the applicants for the registration, and by Mr. Jeremiah Harman, Q.C. and Mr. Gerard Ryan, of counsel, for the Objectors.

I heard this dispute with the disputes relating to the ownership of the land the subject of this reference, and it is not necessary for me to set out again the epitome of the evidence contained in my decision relating to the consolidated disputes Nos.5/D/8 and 5/D/9.

There is a preliminary procedural difficulty with regard to this registration. The rights of common entered in the Register are stated to be "rights of estover, turbary and herbage", but the rights claimed in the application are described as "Common of Estovers, Turbary and Herbage (among other rights and privileges) as detailed in an Indenture dated 22nd October 1734".

It seems to me that an applicant ought not to be prejudiced by the failure of the Registration Authority to copy precisely the terms of his application. I shall therefore treat this registration as if it contained the reference in the application to the 1734 indenture. Applying the principle expressed in the maxim id certum est quod certum reddi potest, I shall further treat the registration as if it contained the following words taken from the indenture: "Common pasture for all and all manner of cattle without number levant and couchant upon the applicants' tenements every year and at all times of the year; the right or common of estovers following (to wit) free liberty at pleasure of digging for and getting clay and sand to be used in the rebuilding or reparation of any ancient building erected upon the applicants' tenements or any other necessary uses or purposes in or upon the same; and free liberty of getting ridging clods for securing and covering the ridges and tops of the ancient messuages and the buildings therewith belonging". I shall also treat the registration as if it contained in column 5 the following words taken from the indenture: "The several ancient messuages or tenements in the manor of Nether Knutsford".



So far as the right of common of pasture is concerned, the application, even when construed in this beneficial manner, did not state the number of animals to be entered in the Register or the numbers of animals of different classes to be so entered, as required by section 15(2) of the Commons Registration Act 1965. Furthermore, no evidence was adduced before me as to this matter. I shall therefore refuse to confirm the registration in so far as it relates to a right of common of pasture.

The parties to the indenture of 1734 were John Egerton, the lord of the manor of Nether Knutsford, and 109 named persons, who were stated to be seized in fee of messuages and tenements in the manor. Save that these messuages and tenements are described as "ancient", they are not further particularized. These freeholders were not all resident in Nether Knutsford: indeed only seventy-eight of them were so described. Since they were not necessarily owner-occupiers, it cannot be assumed that there were only 109 ancient messuages or tenements to which rights of common were appurtenant. The present successors in title of these persons may exceed 109. Alternatively, the accumulation of several freeholds in one hand may have reduced the number of persons entitled to rights of common below 109. The number of persons owning freehold property in the manor at the present time is stated to be of the order of 600, but it cannot be assumed that each of them is the owner of one of the "ancient" messuages or tenements to which rights of common are appurtenant.

Although it is not now possible to estimate the number of "ancient" messuages or tenements, it is at least certain that each of the burgage tenements has rights of common appurtenant to it. The only difficulty is to identify which of the freeholders on whose behalf the application for this registration was made are the owners of such burgage tenements.

Although the charter transferring nineteen of the original thirty-eight burgages to Richard de Massy names the then owners, it does not state where the burgages were situated. Mrs. H.M. Stowell, the expert witness called on behalf of the Bank, conjectured that the burgages were situate in King Street (via regia). While this is highly probable, it cannot be assumed that both sides of King Street were completely lined with burgages, so that each of the properties in that street represents a burgage with rights of common appurtenant to it. There is, however, in my view, material for the identification of two of these burgages.

When giving her evidence, Mrs. Stowell produced abstracts of two collections of medieval charters relating to Nether Knutsford. Some of these charters are in the possession of Lt.Col. J.L.B. Leicester-Warren, of Tabley House, Knutsford, and some are in the John Rylands Library, Manchester. Although these abstracts would not have been admissible in evidence had there been any objection to them, there was no objection, and they were presumably produced by the Bank's witness so that I could derive from them any assistance which they might be capable of affording.

A number of the charters relate to burgages in Nether Knutsford. Generally the northern and southern boundaries are stated. In most cases these are the burgages on either side, but the information that a burgage



was the middle one of three is of no assistance in locating its position. There are, however, two exceptional cases in which it is possible to place the burgages in relation to identifiable boundaries.

Among the John Rylands Library charters is a deed of gift dated 8th February 1472 from Geoffrey Davy and Robert Leycestre to John Holden of a burgage in Nether Knutsford lying between a lane called Mynshullawne on the south and a burgage late of John Whitley on the north. This is clearly the property fronting onto King Street with a return frontage to the north side of the modern Minshull Street, which is shown on the 25" to the mile Ordnance Survey map as No.96 King Street.

The identification of the other burgage is less direct: it is to be found in two of Col. Leicester-Warren's charters. The first, dated 2nd April 1436, is a grant by John Munshull to John de Leycestre of a tenement situated between a lane (venellum) called Munshull lane and the messuage of Geoffrey le Massy, knight. The second, dated 12th April 1475 is a grant by Thomas Knottesford and Elizabeth his wife to Thomas Leycester of a burgage between the burgage of Geoffrey Mascy and Mynshull lane. The boundaries given in these charters show that they relate to the same property. It cannot, however, have been the property which was granted by the 1472 charter, since the adjoining burgage belonged to Geoffrey le Massy (or Mascy) both before and after 1472. This property must therefore have had Minshull Lane as its northern boundary and so can be identified with property shown as 94 King Street on the Ordnance Survey map.

There is no evidence that there has been any exercise of rights of common by the owners of these or any other properties for many years. Non-exercise of a right of common does not, however, operate to extinguish it. Non-exercise is merely evidence from which, if unexplained, it can be inferred that the right has been abandoned. In this case the Freeholders' minute books contain many assertions of the continued existence of their rights of common and, in my view, there can be no inference of abandonment in the face of these assertions. Indeed, Mr. Harman did not invite me to draw such an inference. He agreed that the rights of common were still extant, but no longer exercisable because not properly registered under the Act of 1965.

While the form of the registration leaves a lot to be desired, I have come to the conclusion that it is not a nullity, but is an inaccurate registration which is capable of modification. The registration purports to be made on behalf of all the Freeholders of Nether Knutsford. I find it impossible to believe that all of them are the owners of one or more of the ancient messuages referred to in the 1734 indenture. On the other hand, some of them must be the owners of such messuages. The fact that it is possible to identify two of the medieval burgages to which rights of common were attached by William de Tabley's charter is, in my view, sufficient to validate the registration.

For these reasons I confirm the registration with the following modifications:- namely, the substitution for the words: "The rights of estover, turbary and herbage" of the words: "The right or common of



estovers following (to wit) digging for and getting clay and sand to be used in the rebuilding or reparation of any ancient building erected upon the tenements mentioned in column 5 of this section of this Register Unit or any other necessary uses or purposes in or upon the same; and getting ridging clods for securing and covering the ridges and tops of the ancient messuages and the buildings thereunto belonging upon the said tenements", and by the substitution for the words: "Not attached" of the words: "Nos.94 and 96 King Street, Knutsford".

For the reasons stated in my decision in disputes Nos.5/D/8 and 5/D/9, I have made no order as to costs.

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 24th day of January 1974

Chief Commons Commissioner