



In the Matter of (a) Heathgrove, Loggerheads, (b) land west of Church Road and (c) land east of Church Road, all in Ashley, Newcastle-under-Lyme Borough, Staffordshire

DECISION

This reference relates to the question of the ownership of (a) piece of land known as Heathgrove, Loggerheads, (b) a piece of land west of and adjoining Church Road a short distance north of where this road joins Lower Road, and (c) a piece of land east of and adjoining Church Road, south of where this road joins Wharmadine Lane, all in Ashley, Newcastle-under-Lyme Borough, such three pieces together being the land comprised in the Land Section of Register Unit No. CL 122 in the Register of Common Land maintained by the Staffordshire 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 (1) Ashley Parish Council on whose application the registration was made, claimed (letter of 5 February 1977) ownership of all the said three pieces; (2) Newcastle-under-Lyme Borough Council said (letter of 17 February 1977) that pieces (a) and (c) were claimed by the Parish Council under an Inclosure Award dated 18 February 1830 and piece (b) was claimed by Mr J Hammersley of White Farm, Church Road; and (3) Mr Hammersley said (letters dated 3 and 10 March 1977 written on his behalf by The National Farmers' Union) that although it was at first thought that piece (b) belongs to and was shown in the deeds of his mother Mrs Sarah Ellen Brown, neither she nor he claimed ownership of this or any other of the said pieces, that piece (b) used to be an old pit which was filled in a number of years ago and that since then he has enjoyed the use of a gateway adjacent to this filled in site through which he can drive his cattle, which gateway naturally he wishes to be allowed to continue to enjoy the use of. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

Mr Commons Commissioner Morris Smith held a hearing for the purpose of inquiring into the question of the ownership of the land at Stoke-on-Trent on 12 January 1979. There was no appearance at the hearing, but the Commissioner said (a representative of the Borough Council being present) that he would re-open the hearing on notification by Ashley Parish Council of a wish to produce evidence.

In a letter posted on 12 March 1979, Ashley Parish Council provided in some detail information about all the said pieces, and in another letter dated 12 March 1979 said that they were willing to relinquish their claim to ownership provided that the land in question was awarded to Staffordshire County Council for its future maintenance. Accordingly Mr Commissioner Morris Smith re-opened the hearing, and I held it at Stafford on 14 July 1981. At this hearing (1) Newcastle-under-Lyme Borough Council were represented by Mr C Pittard assistant solicitor with the Council, and (2) Ashley Parish Council were represented by Mrs A E Mills their chairman.

Mrs Mills who has lived in the Parish for 32 years, been a member of the Parish Council for 17 years and chairman since 1970, gave oral evidence in the course of which she produced (from the Borough Archives) the Ashley Inclosure Award dated 18 February 1830 (made under the Ashley Inclosure Act 1813, 53 Geo. 3 c.1v). After the hearing I inspected these three pieces of land.



I have no jurisdiction to award ownership to the County Council or anyone else merely because it might as regards future maintenance be expedient; my jurisdiction by section 8 of the 1965 Act is limited to saying whether I am or am not "satisfied" that any person is now the owner. The three pieces are some distance from each other, there is nothing in their appearance or situation to suggest that they are necessarily owned by the same person.

As to piece (a), Heathgrove, Loggerheads:-

This piece is approximately square with sides of about 70 yards. Access to it from the Market Drayton-Newcastle-under-Lyme Road (A53) is by a track about 120 yards long. The piece is uneven apparently having been at one time quarried; on it there are many trees and some scrub; it is crossed by numerous paths such as might have been made by young persons playing. Nearby on one side there are some newly built houses (Heath Avenue) and on the other side further development is in progress.

By the 1830 Award, allotment No. 58 (1 acre) on the map is allotted to the "Surveyors of the Highways for the Parish of Ashley for the time being" for the purpose of "getting stones and gravel for making and repairing the highways within the said Parish ...". Mrs Mills identified this allotment with this piece, and said that it was now used as a children's playground, it had always been considered by the Parish Council to be land which should be used for the benefit of the Parishioners and a barrier across the track had (to prevent dumping of rubbish) been put up by the Parish Council in October 1976.

Under the Local Government Act 1894 the land (or most of the land) in a rural area formerly vested in surveyors of highways passed to the rural district councils thereby constituted. And by the Local Government Act 1929 most of the land held by such councils for highway purposes vested in the county council; including under section 118 quarry land "if desired". Nevertheless these Acts and other Acts relating to local government contain provisions relating to lands held for the benefit of a parish under which a parish council could become the owner. As between the Borough Council (as successors of the Rural District Council of this area) and Ashley Parish Council, Mrs Mills mentioned (by reference to the said March 1979 letter) a number of matters relating to Hook Gate Quarry also allotted to the Surveyors of Highways by the 1830 Award) as showing that the land so allotted was now considered to belong to the Parish Council. I need not I think consider these matters because Mr Pittard said that this Council did not claim ownership and no claim has been put forward by the County Council. It being clear that this piece is public land owned by one of the three Councils concerned, having regard to the improbability of this land having been desired by the County Council under section 118, I consider the concession of the Borough Council is enough. Accordingly I am satisfied that the Parish Council is the owner of piece (a), being Heathgrove.

As to piece (c), land by Church Road south of Wharmardine Lane:-

This piece is a strip about 100 yards wide on the east side of and adjoining Church Road. It is covered by grass, being mostly just above the level of the road, appearing as a wide roadside verge. On its east side it is bounded by, and by a steep bank separated from, a field OS No. 3385 which is at a considerably lower level. According to the OS map a building just to the south of the piece was a Smithy.



by the 1830 Award two public watering places are allotted as described in the schedule therein marked A and also delineated on the map. The Schedule describes one as by the road "ad", which Mrs Mills with the help of the name "Womberdine Lane" on the map, identified as being the north part of this piece; this piece as such is not delineated on the Award map, the identification therein being no more than the letters "ad".

Mr Pittard claimed that this piece was now vested in the Borough Council by the operation of section 124 of the Public Health Act 1936, by which:- "public pumps, wells, cisterns, reservoirs, conduits and other work used for the gratuitous supply of water to the inhabitants of any part of the district of a local authority shall vest in and be under the control of the authority ...".

The present appearance of this piece is against it being now a watering place. There is a pond just to the north of the junction with Eldertree Lane and another pond with near its south side a pump on the west side of Church Road opposite Wharmardine Lane junction; but the much lower level of OS 3385 suggests that water would be more likely to accumulate there than form a pond on this piece.

Mrs Mills said (in effect):- This piece is an area where water naturally gathers. The ponds to the north (above-mentioned) have not been registered under the 1955 Act, being on private land. Water flows down from them to the piece. When she first knew the piece there was a watering place there which could be used for cattle; at that time the domestic water supply to the village nearest the piece was a short distance away.

To reconcile the 1830 Award with the present appearance of the piece and what Mrs Mills can remember about it, I must make some inference as to its history. While realising that some local historian with access to documents not before me, may regard what I say as historically unsound, I infer that in 1830 and the years following, the carriageway of Church Road was narrower than now, that the slope down to what is now OS 3385 was not as steep as now, that the east side of the piece was then lower than now so that cattle could be watered from it by going from the north end near Wharmardine Lane to the south end near the Smithy; and I also infer that at some time (perhaps within the last 50 years) the piece was for the purpose of widening and strengthening the carriageway of Church Road levelled up to what it now is.

I am unable to infer that there ever was on this piece a pump or works such as are mentioned in section 124 of the 1936 Act. Although where there is a pump or other works, the section might perhaps apply to the land immediately surrounding it, it cannot in my view apply to a mere watering place having no such works. Such view seems to be consistent with *Smith v Archibald* 1880 5 AC 489 where the House of Lords considered a section of an Act applicable to Scotland identical with section 68 of the Public Health Act 1875, which section was replaced by section 124 of the 1936 Act; and see also Halsbury Laws of England, Volume 39 (1962) page 366.

I understood that Mrs Mills while not against Mr Pittard's claim under the 1936 Act, wished if I was against him to claim ownership on behalf of the Parish Council. The 1830 Award said nothing about the ownership of the public watering places thereby allotted. The 1813 Act by section XXIX authorised the allotment of land "for public watering places and for getting stone and gravel for making and repairing Highways within the said Parish; which allotments or allotment ... ~~shall~~ shall forever thereafter be used by the Surveyors of the Highways within the said Parish for the time being and by the ~~freeholders~~ ^{lessees} of the said Manor and the freeholders of the said Parish and their respective tenants for the time being...; thus the Act runs



together watering places and quarries without giving any indication as to ownership." In my view the Act contemplates that the watering places shall be for the benefit of the parish generally and not merely for the persons who were interested in the lands by the Act directed to the enclosed. In *Dee v Hiley* (1830) B & C 885 and in *Dee v Terry* (1835) 4 A & E 274 at page 281 it was held that land "belonging" to a parish in the "popular sense of that expression" vested in the churchwarden and overseers of the parish which were incorporated by section 17 of the Poor Act 1819. I conclude therefore that whatever land was allotted as a watering place by the 1813 Award became vested for a legal estate in the church-wardens and overseers and is now owned by the Parish Council as their successors.

Having regard to the inference last set out as to the history of this piece, I am satisfied that all of it is now owned by the Parish Council.

As to piece (b), land west of Church Lane and north of its junction with Lower Lane:-

This piece is a strip on the west side of and open to one of the roads through the Village. On its roadside it is between 20 and 27 yards long. Except for a gate opposite to and about 7 yards away from the roadside, it is separated by hedges from the adjoining land (cultivated for ? vegetables and meadow). It is level with the road; there is some hardstanding enough for 2 motor cars; around this there is a grass area (approximately semicircular), and the remainder (near the hedges) is rough with some brambles and nettles. On it near the middle, not far from the road, is a bin (concrete cylinder about 3 feet in diameter and about 3 feet high) containing when I saw it some grit (possibly salt) intended I suppose for use on the nearby highway.

Mrs Mills said (in effect):- This piece is a "natural layby"; people wait for the bus there; cars stand there waiting for the bus and for children coming out of the School. The County Council use it for road surfacing materials, and their length-men attend to the hedge. When the house opposite was used as a surgery, (it is not now so used), visiting persons parked their cars there. The Parish Council arranged for the surfacing of part by the County Council because it had become muddy, and also arranged for the said bin to be placed there.

On the Award map, this piece is not distinctly delineated, and it is part of land by the Award allotted individually (ie not for any public purpose). Mr Hammersley during my inspection told me that as he first remembered this piece it was a watering place used by the surrounding "Estate and everybody passing by", and that it was filled up in about 1947.

As to this piece too, I must also make some inference as to its history, at the risk of some local historian being able to disprove it. I infer that the owner of the Estate when allowing the land to be used as a watering place and then allowing it to be filled up and then not including it in any sales when the Estate split up, must have thought it to be parish property, and that I ought therefore to presume in accordance with the legal principles above set out that this piece was at some time by a deed now lost granted to the Parish Council. I am therefore satisfied that this piece is now owned by the Parish Council.

I have no jurisdiction to determine whether Mr Hammersley has as he claims a right of way over this piece from the public highway to the gate; to this question, *if*



and the Parish Council cannot agree, ~~it~~ may have to be determined in the High Court or by some other tribunal having jurisdiction.

In accordance with the conclusions above set out I shall pursuant to section 8(2) of the Act 1965 direct Staffordshire County Council to register Ashley Parish Council as owner of the land (meaning all the said three pieces).

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 20th day of October — 1981

a a. Baden Fuller

Commons Commissioner