



COMMONS REGISTRATION ACT 1965

Reference Nos 203/D/122
to ~~129~~ inclusive
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In the Matter of Newton Longville
Common, Newton Longville, Aylesbury
District, Buckinghamshire

DECISION

These disputes relate to the registrations at Entry Nos 1, 2, 3 and 4 in the Ownership Section of Register Unit No. CL112 in the Register of Common Land maintained by the Buckinghamshire County Council and are occasioned by these registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Aylesbury on 17 March 1979. At the hearing (1) Messrs R E L Beddington, H C Beddington and O C D Berry (the registration at Entry No. 1 was made on their application), and (2) London Brick Company Ltd (the registration at Entry No. 2 was made on their application) were all represented by Mr R A Wallington of counsel on the instructions of J Garrard and Allen Solicitors of Olney. Mr Wallington said that he could speak for the Executors of Mr R W Skinner (the registration at Entry No. 4 was made on his application) by reason of a letter (produced) dated 6 March 1978 from Gerrard Neale Fennemore & Co Solicitors of Stony Stratford (Milton Keynes) to J Garrard & Allen which was headed "R W Skinner deceased; Newton Longville Common" and contained the words: "Please take this letter as our instructions to act for us in connection with the Newton Longville Common". On the application of Mr Wallington, I adjourned the proceedings.

I held the adjourned hearing at Aylesbury on 23 January 1979. At the hearing FH Newton Longville Town Council were represented by Lieutenant-Commander J Hastings-Strou the Town Mayor (present also was Mrs P Pierce the chairman of their Land Usage Committee). I was told that J Garrard & Allen had telephoned to say that owing to the weather (there had been a good deal of snow and there was much ice about) they were unable to be present.

According to the Register, the land ("the Unit Land") in this Register Unit contains about 60.37 acres. In the Rights Section there are 11 registrations of rights of grazing, all of which have (with some modification of what they were originally) become final. Column 4 of the Ownership Section registrations reads: "(Entry No. 1) The whole of the land comprised in this Register Unit (405/1687 ths interest); (Entry No. 2) The whole of the land comprised in this register unit jointly with other holders of common rights in proportion to the number of common rights held over the whole area comprised in this register unit; (Entry Nos 3 and 4) The whole of the land comprised in this register unit jointly with the other commoners". The forms of applications (CR No. 10) to some extent explain the intention of those who applied for these registrations in that Mr R L L Beddington and his co-applicants refer to "a fraction of common in respect of land the occupiers of which made claims under the Whaddon Chase Act 1841...", and Mr Bristow (managing director of London Brick Company Ltd) refers to the Inclosure Award for Whaddon Chase dated 23 October 1841 and Mr Skinner and Mr Peters make it clear that they do not claim otherwise than jointly with the other commoners.



The Town Council have under the Commons Commissioners Regulations 1971 no entitlement to be heard in an ownership dispute such as any of these, see regulation 19(3). But I have I think discretion to hear any person who attends.

Commander Hastings-Stroud produced a letter dated 8 August 1957 from E T Ray & Co Solicitors of Bletchley to the Parish Council, and some correspondence between the Parish Council and others relating to the Unit Land between 24 May 1956 and 14 January 1957 (about 21 letters and copy letters with some enclosures). From the said correspondence I infer that the Unit Land was during the 1939-45 war taken over by the Buckinghamshire (War) Agricultural Executive Committee who delivered up possession on 29 September 1956. With the August 1957 letter was an extract from the Whaddon Chase Award of 23 October 1844 (made under the Whaddon Inclosure Act 1841 (private); 4 & 5 Vict. c.23) from which it appeared that the Unit Land (therein intended to be called the Newton Longville Parochial or General Allotment of 60 acres) was allotted to the Commoners who then had rights of common appertaining to lands and messuages in Newton Longville as being the full equivalent for their rights of common in respect of the said lands and messuages.

Mr C D Durrant who was representing Buckinghamshire County Council as registration authority, produced the said Act and referred me particularly to sections XLII, XLIII and LXXIII; he also produced a letter of 6 December 1973 from the Department of the Environment (Ref. L64/250/187/1) relating to the Parish Council's rights to Newton Longville Common.

Commander Hastings-Stroud described the Unit Land, and Mrs Pearce described the 1978 proceedings of the Commons Management Committee on which she has been the representative of the Parish Council since 1977.

I have a number of letters written by J Garrard & Allen to the Clerk of the Commons Commissioners of which the last before the hearing is dated 16 November 1978 and encloses a letter dated 14 August 1978 by them to the Public Trustee in which they on behalf of the Commonholders Committee at Newton Longville in effect suggest that the land should be vested in the Public Trustee under paragraph 2 of Part V of the First Schedule to the Law of Property Act 1925.

By section 22 of the 1965 Act ownership is defined as meaning that of a "legal estate in fee simple". Since the Law of Property Act 1925, such an estate cannot be held in undivided shares, so all the registrations now in dispute are irregular. The High Court has decided that when commoners were under Sections 115, 116, and 130 of the Inclosure Act 1845 in undivided shares to the land over which they had rights of common, by the paragraph quoted in the said August 1978 letter the land vested in the Public Trustee, see re Cotherstone Moor reported in the Estates Gazette of 1 July 1961. In my opinion sections XLII and XLIII of the 1841 Act although not so clearly expressed as those of the 1845 Act, have the same effect, so that re Cotherstone is applicable. I conclude therefore that on the information available to me at the time of the hearing I should give a decision which would result in the Public Trustee being recorded in the Ownership Section as the owner of the Unit Land.

Since the hearing J Garrard & Allen in a letter dated 1 February 1979 repeated their application for an adjournment explaining that they proposed to produce at the hearing a letter dated 23 November 1978 from the Public Trustee which includes the words "It seems clear that the Common is indeed vested in the Public Trustee by virtue of paragraph 2 of Part V of the First Schedule to the Law of Property Act 1925". No useful purpose would be served by my adjourning the proceedings for the purpose of enabling J Garrard & Allen to contend that I should give a decision which I am



prepared to give as a result of what happened in their absence; particularly because (as I see it) nothing in this decision could prejudice any contention they may have as to the applicability of paragraph 1(4) of Part IV of the said Schedule or as to who are the persons beneficially entitled under the trusts applicable to the Unit Land. Even if J Garrard & Allen wish to address me on such matters, I would have no jurisdiction to determine them.

For the above reasons I confirm all the registrations at Entries Nos 1, 2, 3 and 4, with the modification that all of such registrations be consolidated into one Entry No. of which the only words in column 3 shall be "The Public Trustee, Kingsway, London, WC2B 6JX" and the only words in column 4 shall be "The Whole of the land comprised in the register unit". In case I have in this decision overlooked some matter which J Garrard & Allen would have said to me if I had adjourned the proceedings, I call their attention to the Commons Commissioners Regulation 1971, regulation 21 under which (stating its effect shortly) I have power to re-open the hearing and set aside this decision on such terms as I think fit.

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 13th — day of March — 1979

a. a. Baden Fuller

Commons Commissioner