



In the Matter of Flay Holt Common, Bury,
Cambridgeshire

DECISION

This reference relates to the question of the ownership of land known as Flay Holt Common, Bury, being the land comprised in the Land Section of Register Unit No. CL 91 in the Register of Common Land maintained by the Cambridgeshire 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 Dr W Hertzog claimed to be the freehold owner 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 Cambridge on 18 February 1982.

At the hearing I gave leave for Dr Hertzog to be represented by his wife.

The land the subject of the reference consists of a part of the sixth Private Carriage Road and Driftway set out under the Bury Inclosure Award made 13 June 1850 under the Bury Inclosure Act of 1844 (7 & 8 Vict. c. 1 (private)). The route of the relevant portion of the carriage road is described in the award as "Eastwardly in Flay Holt Common under the Homestead in Ramsey to Bury Brook". The map referred to in the award shows the land to the south of the carriage road with the words "Flay Holt" across it laid out as allotments. The land to the north appears not to have been the subject of the award.

Since the part of the carriage road which is the subject of these proceedings was set out "in Flay Holt Common", it appears that Flay Holt Common consisted of the allotments on the south side of the carriage road and the carriage road itself, ^{which were} ~~and~~ therefore in the same ownership. There is nothing in the parts of the award which were brought to my notice which related to the ownership of the part of the common which was set out as part of the carriage road.

The provisions of the General Inclosure Act of 1801 (41 Geo. III, c.109) were incorporated with the Act of 1844. In accordance with Section 11 of the Act of 1801 the grass and herbage arising on the carriage road belonged to and were the sole right of the proprietors of the lands and grounds next adjoining the road on either side thereof. In such a case no legal presumption can arise as to the ownership of the soil of the road, nor can the road be considered as part of the allotments of which it forms the boundary: the road remains in the same situation as before the inclosure; see R. v. Hatfield (Inhabitants) (1835), 4 A. & E.156.

It is recited in the Act of 1844 that Lady Olivia Bernard Sparrow was or claimed to be the lady of the manor of Bury-with-Hepmangrove. This was Olivia, the daughter of the 6th Duke of Manchester, though the name by which she is described is somewhat puzzling, since Bernard Sparrow was her mother's maiden name. However, her relationship to the Dukes of Manchester may be of some significance, as will appear hereafter.



Mr A D Hill of the County Record Office drew my attention to the allotments made to the lady of the manor for her right in the soil of the inclosed land. I do not, however, consider that this is relevant to this case, since the land forming the carriage road was not allotted to anyone else, so that Lady Olivia Bernard Sparrow was left with the land set out as the carriage road, the land to the south which she formerly owned having been divided in four allotments, for which she was compensated by the allotments made to her. The part of the land set out as the carriage road with which this case is concerned is thus the surviving part of Flag Holt Common.

The next evidence which was adduced at the hearing was a conveyance made 28 April 1971 between (1) Alexander Gordon Francis Drogo, Duke of Manchester (2) Peter John St Barbe Green and Leslie Heddon Salter (3) William Hertzog, by which the whole of the land in question was conveyed to Dr Hertzog. There is nothing to show how the title devolved from Lady Olivia Bernard Sparrow to the vendor, but the land had formed part of the Manchester Settled Estates for some time, having been the subject of a vesting deed made 3 December 1954 between (1) A G F D., Duke of Manchester (2) Edward Percy Lickfold, Alleyne Alfred Bardsley Yeatman, and Arthur James Robert Collins.

On this evidence I am satisfied that Dr Hertzog is the owner of the land, and I shall accordingly direct the Cambridgeshire County Council, as registration authority, to register him as the owner of the land under section 8(2) of the Act of 1965.

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

2nd

day of March

1982

Chief Commons Commissioner