



In the Matter of The Common, Little Wilbraham,
Cambridgeshire

DECISION

This reference relates to the question of the ownership of land known as The Common, Little Wilbraham, being the land comprised in the Land Section of Register Unit No. CL 5 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 the Little Wilbraham Parish Council and Dr G Simpson, claimed to be the freehold owners of the land in question, and Mr K C Davison 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 the Parish Council was represented by Mr E W Wells, one of its members.

Mr Wells adopted as his argument a statement by Mr K C Davison, the Chairman of the Parish Council, who was out of the country. Mr Davison said that the case for the Parish Council rested on common custom. There is, however, no common custom that a Parish Council is the owner of the common land in the parish: if there were, the task of the Commons Commissioners would be greatly simplified. Mr Davison also referred to the decision in In the Matter of The Common, Great Wilbraham (1975), Ref. No. 204/D/12, in which I confirmed the registration of the ownership by the Great Wilbraham Parish Council. That case is however, of no value as precedent in this case, since I gave the decision by consent under regulation 31 of the Commons Commissioners Regulations 1971 (SI. 1971 No. 1727).

Turning now to the evidence, the land the subject of the reference was assigned, set out, and allotted under the Little Wilbraham Inclosure Award made in 1801 under the Little Wilbraham Inclosure Act of 1796 (37 Geo. III, c. 89 (private)) for the use of the occupiers of such cottages only as are resident within the parish of Little Wilbraham who are not owners of land within the parish. The Inclosure Commissioners further ordered and directed that every cottager entitled to common rights in Little Wilbraham and not occupying more than 20 ac. of land there should and might at all times of the year, except from 2 February to 12 May, depasture one cow or two yearling calves on the allotment.

Some light is thrown on this provision in the Award by the preamble to the section of the Act under which it was made. This preamble is "AND WHEREAS it would be a great Benefit to the Occupiers of Cottages in Little Wilbraham aforesaid, and of Toftsteads, for which Common Rights shall be proved, the Owners of which shall be disposed to rebuild them, to have a certain Quantity of Commonable Ground or Common in Little Wilbraham aforesaid allotted to them, in Part of their respective Allotments, in Lieu of Common Rights".



Before proceeding I should observe that a toftstead is land on which a cottage formerly stood. Since the section refers only to toftsteads the owners of which were disposed to rebuild them, so bringing them back into the category of cottages, the Inclosure Commissioners referred only to cottages in the award.

The general principle upon which inclosure acts were drafted was that every owner of land entitled to rights of common in the land to be inclosed was allotted in lieu of those rights a part of the inclosed land. In the case of a cottage the amount of land to be allotted in lieu of the rights of common might be so small as to be useless for grazing, so the object of this section of the Little Wilbraham Act was to provide a piece of the land subject to inclosure on which the occupiers of all the cottages could graze their animals together.

The award did not, however, attach a right to graze on this allotment to each cottage, but gives a personal right to each occupier resident in the parish and not occupying more than 20 ac. of land there. The number of persons entitled to graze on the allotment is therefore subject to fluctuation by non-residence or the occupation for more than 20 ac. in the parish.

There are cases in which persons entitled to rights of common can be the joint owners of the soil of the common. In my view, however, this is not such a case, for the persons entitled to graze their animals on the allotment are not the owners of the cottages, but a fluctuating body of such of the occupiers of the cottages as have from time to time the necessary qualifications.

Since the award does not make any provision as to the ownership of the allotment, it remained in the ownership of the previous owner, presumably the then lord of the manor. There is no evidence as to who is the present successor in title of the pre-inclosure owner of the allotment, so I can only say that on the evidence before me I am not satisfied that any person is the owner of the land, and it will remain subject to protection under section 9 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

3rd

day of

March

1982

Chief Commons Commissioner