



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/447-451

In the Matter of Tract of land called
Enclosure 225 Sutton Common, Wimborne D

DECISION

These disputes relate to (1) the registration at Entry No. 1/1 in the Land Section of Register Unit No. CL 141 in the Register of Common Land maintained by the Dorset County Council, to which there are three Objections No. 18, 366 and No. 1069, (2) the registration at Entry No. 1 in the Rights Section occasioned by Objection No. 324 made by Robert Thorne Ltd and by the three Objection Nos. 18, 366 and 1069. These Objections were made respectively by the Medlycott Trust, the Earl of Shaftesbury and the Misses Jackson and all the Objections were noted in the Register on 24 August 1972.

I held a hearing for the purpose of inquiring into the disputes at Poole on 28 October 1980. The hearing was attended by Mrs R Colyer, representing the Ramblers Association and by Mr C H Harrington of the firm of Withers, Solicitors appearing on behalf of the Medlycott Trust, the Earl of Shaftesbury and Robert Thorne Ltd ("Thorne"). Mr T H Butler, the applicant for registration of Entry No. 1 in the Rights Section appeared at a late stage in the hearing.

The land comprised in the Register Unit is of some 74 acres and was registered as Common Land on the application of the Ramblers Association. The Earl of Shaftesbury is provisionally registered as owner of two separate parts of the Unit land which are edged red on the Register Map, one at the west end ("the west part") which is called Sutton Common and the other ("the East part"), a strip further east forming part of what is called Sutton Holms: this Objection No. 366 is on the ground that the land (ie. the Unit land) or the part edged red was not common land at the date of registration. Mr Butler's registered right of common is claimed over a section of the west part only.

In November 1979 there was correspondence between Mr Butler's solicitors and the Earl of Shaftesbury's Solicitors and in reply to an inquiry of the latter whether Mr Butler intended to pursue his claim, Mr Butler's Solicitors wrote that no evidence would be produced. In the light of this and of the nonappearance of Mr Butler at the start of this hearing, it appeared that there was no case for confirming the registration of his right, and the hearing proceeded on the footing that, in the absence of any registered rights, the registration as common land could be upheld only if the land was waste land of a manor. Mrs Colyer contended that it was, and Mr ~~Harrington~~ ultimately appeared, as I understood, to give evidence on

Butler.



this question. I asked him whether he wished to support his claim to a right of common and he seemed uncertain and thought he had left this to his Solicitors in 1979. However, he told me that he turned cattle out to graze in the year 1928, but subsequently became tenant of part of Sutton Common. His evidence was inadequate to establish the rights he had registered as rights of common, though no doubt he has been exercising such rights as a tenant of Lord Shaftesbury. In these circumstances I refuse to confirm the registration in the Rights Section.

As regards the Objections to the registration in the Land Section:- (1) Objection No. 18 (Medlycott) related to a small piece of the Unit land, coloured green on the plan attached to the Objection. This Objection was accepted by Mrs Colyer, and I refuse to confirm the registration as regards this piece. (2) Objection No. 1069 relates to a plot of land forming part of Woodside Cottage. The Misses Jackson, did not appear but Mr Holly, of the Registration Authority told me that the Objection had been met by a modification in the area of the Unit land registered. No party present resisted this Objection and as regards this plot (coloured red on the plan attached to the Objection) if and so far as it is still included in the area registered, I refuse to confirm the registration.

This leaves for consideration Objection No. 366 which, as I have said, relates to two parts of the Unit land and which had resolved itself into the question whether these parts were or were not waste land of a manor - the manor of Sutton. Evidence was called or produced by Mr Harrington and Mrs Colyer, but eventually as regards the west part they reached an agreement to the effect that the registration should be confirmed as to a strip on its eastern side and not confirmed as to the remainder of it. The parties are to produce an agreed map showing the location of the strip and my decision is to confirm as to the strip and refuse to confirm as to the remainder.

I proceed to consider the evidence given in regard to the East part (Sutton Holms). This is a stretch of woodland and in a Tithe Map and Apportionment of 1843 it is included in 'Suttons Common including Road' of an area of some 63 acres which is described as coppice, to which there is no rent charge apportioned. On the evidence given by Mr Harrington and by Mr A V Burr, who has been in charge of the Estate Office since 1961, it is a strip of woodland which on the south adjoins the road at the western end of the strip and in the Estate *Terrace* of 1920 is listed as 'wood'. There are small trees and bushes to the south, which form a sort of boundary with the road but otherwise, apparently, no fence. Windfall trees have been sold but there is no programme of planting. On this evidence I find that the East part is open uncultivated and unoccupied and accordingly I confirm its registration.

In the result I confirm the registration at Entry No. 1/1 in the Land Section modified to exclude the areas which are the subject of Objection No. 18 and Objection No. 1069 (as regards the latter, so far as the area to which it relates is still included in the Unit land) and also to exclude the west part other than the strip to be shown on an agreed map: and I refuse to confirm



Entry No. 1 in the Rights Section.

Mr Harrington sought on behalf of Thorne to attack the entry in the Land Section. It appears that in 1951 Thorne purchased from the Shaftesbury Estate Company that part of the Register Unit which is not the subject of Lord Shaftesbury's (provisionally) registered ownership i.e. the part not edged red on the Register Map, which I will refer to as "the Thorne part". Thorne's Objection No. 324 was an objection only to the Rights, and did not take effect as an objection to the entry in the Land Section and accordingly Thorne was not a party entitled under Reg. 19(1) of the Commons Commissioners Regulations 1971 (S.1. 1971 No. 1727) to be heard on the disputes as to the registration of the land. What were referred to me in relation to the Land Section were the three disputes occasioned by Objection Nos. 18, 366 and 1069, which were not disputes in relation to the Thorne part. Mr Harrington submitted that there was jurisdiction to deal with the Entry in the land section because by virtue of the three objections, the matter before me comprised the Entry as a whole. This may be right, but having regard to the form of the references (which are as prescribed by the Regulations) I am not convinced that it is so: if it is, it still remains the fact that Thorne is not entitled to be heard. Quite apart from these considerations, and assuming I have jurisdiction, it would in my view be wrong to consider an objection of which parties entitled to be heard would have had no notice. For these reasons I reject the application by Thorne that I should consider an application to deal with a contention that the Thorne part is not common land.

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 13 November 1980

L. J. Morris Smith

Commons Commissioner