



COMMONS REGISTRATION ACT 1965

Reference No.37/U/40

In the Matter of Land off Main Road,
Lime Kiln Hill, South Chailey, East Sussex.

DECISION

This reference relates to the question of the ownership of land known as Land off Main Road, Lime Kiln Hill, South Chailey, being the part of the land comprised in the Land Section of Register Unit No.C.L.8 in the Register of Common Land maintained by the East Sussex 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 Mrs. V.G. Pattenden 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 Lewes on 30th November 1972.

At the hearing Mrs. Pattenden appeared in person. The hearing was also attended by Mr. W.I. Grantham, who claimed that he and not Mrs. Pattenden was the owner of the land the subject of this reference.

The land comprised in Register Unit No.C.L.8 consists of a long strip of land lying to the east of a road called Lime Kiln Hill. The major part of this strip consists of two comparatively wide pieces at the northern and southern ends connected by a very narrow strip only a few feet wide lying between two lines A - B and C - D on the register map. Mr. Grantham applied to be registered as the owner of the parts of the land lying north of the line A - B and south of the line C - D. There being no objection to this registration, it became final on 1st October 1970.

The narrow strip of land which is the subject of this reference lies between Lime Kiln Hill and the western boundary of land belonging to Mrs. Pattenden and described in her title deeds as "Orchard, buildings, etc", being Ordnance Survey No.385, with an area of 0.569 acres. Mrs. Pattenden produced three conveyances of her land dated 31st March 1944, 10th November 1964, and 3rd February 1966 respectively, the parcels in each of which, after describing in detail the land to be conveyed, contain the following words:-

"TOGETHER with such right title and interest (if any) as the Vendor
"may have in the roadside waste or grassland lying between the Western
"boundaries of the premises hereby conveyed and the main road subject
"to all rights of way or other rights existing thereover and hitherto
"enjoyed by any adjoining owner or other person or by any Local or
"other Authority".

These words are apt to describe the land the subject of this reference.



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The schedule of deeds referred to in the conveyance of 31st March 1944 indicates that in 1887 the owner of the land which now belongs to Mrs. Pattenden was the late Mr. Justice Grantham.

That is as far as Mrs. Pattenden's evidence takes the matter, but considerable further assistance is to be derived from documents in the possession of Mr. Grantham, who is a grandson of Mrs. Pattenden's predecessor in title, Mr. Justice Grantham.

It appears that Mrs. Pattenden's property was formerly part of a much larger estate, which was purchased by Mr. Justice Grantham in 1886. This estate was Lot 24 in the Particulars of Sale, being described as the "Manor of Balneath", which was stated to include common or waste lands (unenclosed) containing about 300 acres.

A copy of the 1873 edition of the Ordnance Survey map, which purports to have marked on it the boundary of the estate purchased by Mr. Justice Grantham, shows the topography of the area relevant to this reference substantially as it is to-day.

Going backwards in time, Mr. Grantham's next document was a "Plan of the Waste Land on the Balneath Manor", surveyed by J. Funnell in 1858. This plan shows coloured in green and described as "Common South of Chailey Swan" the two pieces of land of which Mr. Grantham's registration as owner has become final. Between these two pieces of land there is a piece of land left uncoloured, which I identify as comprising the present O.S. No. 385 and the land immediately to the west of it, on which is indicated a building which seems to be in the same position as the buildings shown on the 1873 and the modern Ordnance Maps on what is now O.S. No. 385. Since the 1858 plan only purports to show the waste land on the Balneath Manor, it does not indicate who was then the owner of the uncoloured land, but it was included within the boundary marked on the 1873 map in the possession of Mr. Grantham. The only other feature on the 1858 plan which appears to be relevant to these proceedings is that, while a road running from south to north is coterminous with the western boundary of the green land at its southern end, the road bears to the west as it proceeds northward, leaving a triangular area of uncoloured land between the green land and the road, having as its northern side the southern boundary of what is now O.S. No. 385 and the land the subject of this reference.

Finally, Mr. Grantham produced a document entitled "Boundaries of Balneath Manor". This records that the boundaries of the Manor were partly perambulated on 8th and 9th September 1845 and includes what purports to be a copy of the boundaries perambulated in 1829 and 1830 by eight named persons. This document shows that the southern boundary of the Manor was the river, along which the perambulators proceeded in a westerly direction as far as Bevernbridge, which lies to the south of the land in question in this reference, and at which the road running from south to north crosses the river. So far as this case is concerned the important words are those which follow:-

"then turning direct North past a Lime Kiln (the Kiln is in the Manor)
"then taking an Old Road for the Bounds to Pigs Easter Stream the Old
"Road is about halfway between the Turnpike Road and the Hedge of the



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"Balneath Farm then from the Stream the Old Road still the Bounds
"up to an Old Milestone opposite the Swan Inn ..."

I identify the lime kiln as being situate on the uncoloured land on the 1858 plan and on the modern O.S. No.385. I further identify the "Turnpike Road" as being the present Lime Kiln Hill and also as being the road shown on the 1858 plan. Finally, I identify the western boundary of the two pieces of land coloured green on the 1858 plan as being the eastern boundary of the "Old Road".

It seems to be a clear inference from this evidence that the land which is now O.S. No.385 was inclosed from the "Common South of Chailey Swan" by a lord of the Manor of Balneath in order to build a lime kiln at some time before 1858 and probably before 1829. The western boundary of this inclosure was the "Old Road", and when the present Lime Kiln Hill was constructed slightly to the west of the "Old Road" the site of the "Old Road" or part of that site lay between the present road and the present O.S. No.385 and is the land the subject of this reference.

The question to be resolved is whether the site or part of the site of the "Old Road" lying between O.S. No.385 and Lime Kiln Hill belongs to Mr. Grantham or to Mrs. Pattenden.

Mr. Grantham claims it as being part of the waste land of the Manor of Balneath, which was purchased by Mr. Justice Grantham with the lordship of the Manor in 1886 and was, with the lordship, excluded from the sale of the Balneath Estate by Mr. Grantham in 1943. Mr. Grantham informed me that his counterpart of this conveyance was destroyed by enemy action, but I have no hesitation in accepting as correct what he says as to its terms. Clearly Mr. Grantham, being the present lord of the Manor of Balneath, is the owner of the waste land of the Manor. I am satisfied on the evidence that O.S. No.385 was at some time before 1858 part of the waste land of the Manor. But when O.S. No.385 was part of the waste land of the Manor its western boundary was the "Old Road". The site of the "Old Road" was not within the boundary of the Manor and so formed no part of the waste land of the Manor. Nevertheless, applying the ordinary common law presumption regarding land adjoining a highway the lord of the Manor would be deemed, in the absence of evidence to the contrary, to be the owner of half of the width of the "Old Road" where it was coterminous with the boundary of the Manor.

I now turn to Mrs. Pattenden's claim. I infer from the position of its western boundary that O.S. No.385 was inclosed from the waste land of the Manor before the "Old Road" on which it abutted was replaced by the present Lime Kiln Hill. There is therefore a common law presumption that the ownership of half the width of the "Old Road" passed from the lord of the Manor to the purchaser of O.S. No.385. Since there is now nothing to show how wide the "Old Road" was at this point, this presumption does not enable one to define the western limit of the land which would belong to the owner of O.S. No.385 by virtue of this presumption. There is, however, another presumption which Mrs. Pattenden can pray in aid. That is that waste land adjoining a road belongs to the owner of the adjoining enclosed land: see Doe d. Pring v. Pearsey (1827), 7 B.& C.304. While this is a presumption which may be rebutted by evidence to the contrary (see Doe d. Harrison v.



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Hampson (1847), 4 C.B.267), there is no such rebutting evidence in this case. Since I have come to the conclusion that this strip of land is not, and never was part of the waste land of the Manor of Balneath, even though it must be presumed to have belonged at some time to the lord of the Manor, I can do no other than hold that it belongs to Mrs. Pattenden.

For these reasons I am satisfied that Mrs. Pattenden is the owner of the land, and I shall accordingly direct the East Sussex County Council, as registration authority, to register her 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 14th day of December 1972

Chief Commons Commissioner