



COMMONS REGISTRATION ACT 1965

Reference Nos 212/U/83
to 87 inclusive

In the Matters of Burstead Common
land nearby and lands at the side
of Wiggins Lane, all in Basildon
District, Essex

DECISION

These five references relate to the question of the ownership of (1) lands at the side of Wiggins Lane, (2) Little Burstead Common (the greater part), (3) land near Little Burstead Common (to the north by Scott's Farm and Salmon's Farm), (4) Little Burstead Common (a small part at its north end), and (5) other lands at the side of Wiggins Lane, all in or near Little Burstead, Basildon District being the lands comprised in the Land Section of Register Unit (1) No. CL351, (2) No. CL105, (3) No. CL477, (4) No. 478, and No. CL479 in the Register of Common Land maintained by the Essex 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 (a) Strutt & Parker, Land Agents of Chelmsford on behalf of the Trustees of the Earl of Mexborough 1954 Settlement with a letter of 27 June 1978 sent a map of their clients Methley Estate, and said that they in the past owned the Cottage marked in the middle of the CL105 land (subsequently sold off to a private individual), and that they owned the farmland on both sides of Wiggins Lane, and have long since been using it; (b) Stephens Harwood Solicitors of London on behalf of the said Mexborough Trustees said (letter of 30 June 1978) that it is very likely that the Trustees would wish to claim ownership or other rights in relation to some or all of the lands and were at present investigating the deeds of the Estate which they hold; and (c) Lord Petre claimed (letter of 9 February 1979) ownership of all the lands. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Chelmsford on 20 and 22 February 1979. At the hearing (1) Dr D A Carswell of 25 Slayleigh Avenue, Sheffield, S10 3RA was represented by Mr C C Stevens of Friars, Herongate, Brentwood, CM13 3PN (he is concerned in Herongate & Ingraze Village Preservation Society); and (2) Mr R B Asplin (at Entry No. 1 in the Rights Section of Register Unit No. CL105 on his application is registered a right attached to land formerly part of the glebe to graze 6 sheep, or equivalent cow, bullock, horse or donkeys) was represented by his nephew Mr R T Asplin solicitor of Hallen Asplin Chance & Glenning Solicitors of Grays (he, his uncle and Mr A M Grazebrook are also concerned as trustees of the right). I was told that Lord Petre had been present on 20 February 1979, but left just before the hearing began.

In the Rights Section of all these Register Units has been registered on the application of the Trustees of the Earl of Mexborough (1954) Trust (being Lady Sarah Cumming-Bruce and Josephine Bertha Emily Countess of Mexborough) rights attached to Salmons, Hatches, Sudburys and Bullers Farms of estovers, of turbary, and to graze 20 cattle over all these lands (except part of the CL105 land) and over the lands in



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Register Unit No. VG77 and part of the land in Register Unit No. CL375 (with which I am not now concerned). Apart from the said registration against the CL105 land made on the application of Mr Asplin, there are no other Entries in the Rights Section of any of these Register Units, and all these Entries being undisputed, have become final.

Mr Stevens as I understood him, claimed that Mr Carswell is now Lord of the Manor of White Hall Botney, that all the lands with which I am now concerned are now and have for at least 150 years belonged or been appurtenant to this Manor, and that accordingly Dr Carswell is the owner of all of them. In support of this claim, he produced the documents specified in the Schedule hereto, and mentioned that he had seen: (a) the Tithe Award of 1833 (of a very late date so he said); (b) a scheme dated 17 August 1909 relating to Little Burstead Common with strips of land lying to the north-east thereof; and (c) the particulars of an auction held in 1919 at which Mr Crooks bought the 3 (?) Manors mentioned in the 1920 conveyance.

Notwithstanding that the title to the Manor for the period between the 1920 conveyance and the 1971 assent is somewhat incomplete, I will in this decision for the benefit of Dr Carswell assume that he has a good "paper title" to the Manor of White Hall Botney, and consider particularly whether the lands now in question belong or appertain to it.

Mr Stevens relied particularly on the following entries in the Court Rolls:- (a) 1829, a presentment that the waste of the Manor had been dug up; (b) 1830, a presentment that there had been an "encroachment" upon the Waste of the Manor at Wiglins Lane situate between Tye Common and Burstead Common and in front of land belonging to the Trustees of the Poor of Little Burstead; (c) 1835, a grant of part of the waste (? that encroached upon in 1830); (d) 1860, a presentment that 9 rods at the north end of Botley Common had been ploughed up (wrongly); (e) 1860, a presentment of an encroachment by taking turf and soil from Botley Common on the south side of the pond; (f) 1871, a record that J French was now the owner of what was formerly waste land Wiglins Lane; (g) 1878, a record of the death of J French as such owner; (h) 1904, (the last entry in the Rolls) a record that the steward had appointed a bailiff.

Mr Stevens said that the 1833 Award showed that the lands in question were then rentfree. I have no note or recollection of his saying anything about the 1909 scheme which could relate to ownership. He also said (in effect):- The 1919 particulars, which he had seen, comprised many lots, of which the last offered was the two Manors then bought by Mr Crooks (the other lots were of lands to the west of the lands now in question). The Misses Carswells who took under the 1971 Assent only knew that they were the owners of the Manor when he (Mr Stevens) told them (he said in 1972, but I think he meant before the 1971 Assent). He (Mr Stevens) had discovered their ownership in the course of his researches into the Manor of Foucher Heron within which was situated his own property. As far as he knew, neither Mr Carswell nor the Misses Carswell nor any of their predecessors since the 1920 conveyance had done anything to or on or about the lands now in question.



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So in relation to these lands, the above summarised entries in the Court Rolls are the only evidence I have that they are appurtenant to this Manor. Court Rolls are not conclusive of the matters recorded there. So even if I assume (as is perhaps likely) that Botney Common therein mentioned is the same as the CL105 land and that Wiglins Lane therein mentioned is the same as the CL351 and CL479 land, I have to balance the evidentiary value of these entries made more than 100 years ago against the contra-indications of there having been no mention of these lands in either the 1919 particulars or the 1920 conveyance or in any of the other post-1920 documents produced to me; of the ignorance of the persons who might as owners be reasonably supposed to know about them; and of the inactivity of Mr Crocks and every successor of his in relation to them. The important word in section 8 of the 1965 Act in relation to this present reference is "satisfied"; I find that the 1860 entries in the Court Rolls far from a satisfying support for an ownership claim made more than 100 years later by persons who have during the intervening period done nothing. Mr Stevens contended that they could do nothing because they did not know about their ownership and could not lose their ownership by doing nothing; I agree that they could not lose their ownership by doing nothing but on the question whether they have ever been owners their inactivity is against them. For the above reasons I am not satisfied that Dr Carswell is the owner of any of these lands as has been claimed by Mr Stevens on his behalf.

Mr Asplin made no claim of ownership. The Mexborough 1954 Trustees have made no claim, being I suppose satisfied with the rights of common which have been registered on their application. In the absence of any evidence that any other person could be the owner I am not satisfied that any person is the owner of the lands and they will therefore 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.

SCHEDULE

(Documents produced by Mr Stevens)

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| 1730-1904 | Leather bound manuscript book, being the Court Rolls of the Manor of White Hall Botney. |
| 8 October 1919 | Copy conveyance by Mrs E H M Lowndes with the concurrence of her trustees to Mr W Crooks of the Manors of (1) Foucher Heron, (2) White Hall Botney. |
| 17 April 1937 | Copy of a gift and grant by Arthur Porter to Harold Crust of the office of steward of "My Manors ... (Suffolk) and Manors of Foucher Heron and White Hall Botney both in the county of Essex." |



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- 1933-53
- 2 March 1971
- 12 and 15 December 1975
- 30 November 1976
- 1 December 1976
- Abstract of will death and probate of Miss Claire Anne Carswell (she died 4 August 1953).
- Copy assent which was recited, will and codicils of William Crooks ("the Testator"), his death on 19 August 1922, his seisin at his death of the Manors thereafter referred to and many other facts of family history intended to show that the Misses Carswell next mentioned were entitled, and by which National Westminster Bank Limited assented to the vesting in Miss D J Carswell, Miss J M Carswell and Miss V A Carswell of the Manors of ... (3) Foucher Heron (Essex), and (4) White Hall Botney (Essex) on trust for sale and on trust for themselves as tenants in common.
- Probate of the wills of Miss J M Carswell (she died 22 June 1975) and Miss D J Carswell (she died 29 October 1975).
- Copy assent by Miss V A Carswell to the vesting in herself to all the interests of the said Manor of Miss D J Carswell and Miss J M Carswell.
- Deed of Gift by Miss V A Carswell to Dr A T Carswell of the Manor of White Hall Botney.

Dated the 30th -

day of April - 1979

[Handwritten signature]

Commons Commissioner