



COMMONS REGISTRATION ACT 1965

Reference Nos. 212/D/173-176

In the Matter of Hunsdon Mead,
Roydon, Epping Forest D

DECISION

These disputes relate to the registrations in all three sections of Register Unit No. CL 121 in the Register of Common Land maintained by the Essex County Council. They are occasioned as to the Entries in the Land and Rights Sections by Objection No. 164 made by British Waterways Board and noted in the Register on 30 October 1970, and as to the Entries in the Ownership Section by the conflicting registrations at Entry No. 1 and Entry No. 2.

I held a hearing for the purpose of inquiring into the disputes at Chelmsford on 19 February 1981. The hearing was attended by Mr P C Findlay representing J and G Findlay: by Mr J D Clegg, Solicitor, appearing on behalf of D M Camp, M Camp and J D Camp: by Mr Lee, Solicitor, appearing on behalf of R G S Moncur: by Mr J Trenhaile, of Counsel, appearing on behalf of Lord Aldenham: and by Mrs S Blake, a member of and representing Roydon Parish Council.

The registration in the Land Section was made pursuant to the application by the Messrs Camp to register Entry No. 2 in the Rights Section. The other applicants for registration in the Rights Section were J and G Findlay (Entry No. 1), R G S Moncur (Entry No. 3), R J and EH Carter (Entries Nos. 4, 5, 6 and 7) and Lord Aldenham (Entry No. 8).

The British Waterways Board's Objection No. 164 relates to strips of land forming or adjoining the banks or towpaths of the waterway running through the land comprising the Register Unit ("the Unit land"). The ground of the Objection is that the rights do not extend over all the land over which they are stated to be exercisable and that the part of the Board's land coloured green on the plan attached to the Objection (ie. the strips) should be excluded. The Objection was accepted by the parties present or represented and I confirm the registration in the Land Section modified by excluding from the Unit land the strips to which the Objection relates: and I confirm the registrations in the Rights Section (subject to this exclusion).

Turning to the Ownership Section, the registration at Entry No. 2 was made by Lord Aldenham and is of ownership of the whole of the Unit land; the registration at Entry No. 1 was made by Roydon Parish Council and is of ownership of a small triangular area of approximately half an acre ("the A piece"). The dispute accordingly relates only to the A piece, and the claim by Lord Aldenham to ownership of the remainder of the Unit land is not directly in issue. The documents on which the claim is based in fact relate to the



Unit land as a whole. These documents were:-

- (1) Assent dated 27 November 1953 in favour of Walter Durant 4th Baron Aldenham by the personal representatives of Herbert Cokayne Baron Hunsdon
- (2) Probate dated 31 December 1969 of Will of 4th Baron Aldenham to Sir G C Gibbs
- (3) Probate dated 22 December 1975 of Will of Sir G C Gibbs to S C Gibbs and R G Gibbs
- (4) Conveyance dated 8 April 1980 by S C Gibbs and R G Gibbs to Hon. G H P Gibbs.

The Assent and the Conveyance were of Hunsdon Mead including the A piece.

Mrs Blake gave evidence and produced a written statement by the Parish Council. From the Tithe Map of 1844 it appears that the eastern section of Hunsdon Mead was divided into strips and that the A piece is marked as a separate plot numbered 606, stated to be in the ownership of Charles Phelips. The limits of the individual plots were marked by posts, some of which are still marked on the Register Map. The posts no longer exist, having rotted away or been removed.

The Parish Council's claim is based on a bequest by a Mr A J E Deacon who died in 1929/1930. In a document addressed to the Parish Council dated 20 March 1930 and signed by G W Deacon and Ernest Allen, stated to be the Executors of Mr Deacon, the Executors "hereby consent to the devise to you, Roydon Parish Council, of the freehold land the property of the deceased situate at Hunsdon Mead in the Parish of Roydon". In correspondence in January 1930 the Executors Solicitors stated that they had no title deeds of the land as Mr Deacon acquired it by devise under the Will of a friend: and they sent a copy extract from the Ordnance Map showing the land, which appears to be the A piece. In 1931 three posts were set up by the Parish Council to mark the corners of the plot.

In cross-examination Mrs Blake said that there was now no physical indication of the boundaries of the A piece nor had any use of the A piece been made by the Council: a farmer had had use of it for haymaking.

Mr D M Camp giving evidence said that he had been Pinder of the Mead since 1965 and had known it before then. At one time the land was lammas land, farmed by individuals who owned strips and who took the hay off their own strips, the whole being grazed communally after the hay crop was taken. Since the 1930s, the strip system had disappeared and the whole area was treated as one meadow. He said that about 20 years ago his father had been asked by the Parish Council to put up concrete posts on the A piece: the posts were supplied but not in fact put up, as this would interfere with haymaking. In about 1939 a Mr Corner was tenant of the meadow, holding from the Gibbs family, and since then there has always been a tenant.

I am not satisfied that on the evidence the claim of the Parish Council to own the A piece has been made out. Since 1930 the Council, not without reason, has believed that it owned the A piece but there is no acceptable



proof that Mr Deacon owned it nor, if he did, that the bequest was in fact of the A piece. The terms of the bequest are not known, nor does the Executors' consent describe the land and the basis for the statement in the solicitors correspondence that the land shown on the extract from the Ordnance Map was the land devised is unknown. Nor does it appear that since 1930, apart from the erection of posts which have now disappeared, there have ~~there~~ been any acts of ownership by the Parish Council in relation to the A piece. For these reasons I refuse to confirm the registration at Entry No. 1 in the Ownership Section.

As regards the claim by Lord Aldenham, the A piece was included in the property dealt with by the Assent and the Conveyance. It is true that in connection with neither transaction would there have been an investigation of title (the Conveyance was to a beneficiary, not a conveyance on sale): but there is the further material fact that since 1939 rent has been paid to the Gibbs family for the whole meadow, including the A piece, by a tenant. I should add that Mr Trenhaile also referred me to a Conveyance of 29 September 1908 by G E F Phelips and his trustees to Herbert Cokayne Gibbs of (inter alia) lammas lands forming part of Hunsdon Mead, particulars of which are set out in the Schedule and include No. 606.

I think therefore that the claim on behalf of Lord Aldenham is established. The registration at Entry No. 2 however, was made in 1970 by Antony Durant Baron Aldenham ("Antony"). The paper title deduced shows that following the death in 1969 of the 4th Baron Aldenham the property comprised in the Assent vested in his executor Sir G C Gibbs and was ultimately conveyed in 1980 to G H P Gibbs. I do not see that I can confirm the registration at Entry No. 2 in favour of Antony, in whom no title is shown to have existed in 1970 when the registration was made. It appears from the Recitals in the 1980 Conveyance that by virtue of an Assignment of 24 June 1975 made between (1) Antony and (2) G H P Gibbs the latter became entitled and it seems probable that the registration in 1970 in the name of Antony reflected his beneficial ownership and not the legal title which was in the 4th Baron's Executor. In the circumstances it appears that the appropriate course is to confirm the registration at Entry No. 2 with the modification that G H P Gibbs' name be substituted in Column 3 for that of Antony, and this I propose to do.

Mr Trenhaile made an application to challenge the Entries in the Rights Section. The only Objection to these rights before me was that of the British Waterways Board (No. 164) with which I have already dealt. There was no Objection by Mr Trenhaile's client and although Objection No. 164 was a general Objection to the rights, the ground of the Objection was limited to specified strips and was not to the existence or extent of the rights otherwise. It would be wrong, in my opinion, to allow a party not himself an Objector to pursue the Objection on grounds other than those specified in the Objection: accordingly I refused the application.



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 *30 March* 1981

L. J. Morris Smith

Commons Commissioner