



COMMONS REGISTRATION ACT 1965

Reference No. 212/U/200

In the Matter of Stebbing Green,
Stebbing, Uttlesford District, Essex

DECISION

This reference relates to the question of the ownership of land known as Stebbing Green, Stebbing, Uttlesford District being the land comprised in the Land Section of Register Unit No. VG 161 in the Register of Town or Village Greens 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 (1) Stebbing Parish Council claimed (letter of 7 August 1980) ownership under a conveyance dated 16 March 1951 and made by the Rt Hon Algernon George de Vere Earl of Essex to the Parish Council; (2) Mrs Alice Harrap of Tile House, Stebbing said (her Solicitors' letter dated 24 September 1980) that she owned property known as Tile House under a conveyance dated 13 April 1959 (by Mr B V Henderson) and was most anxious that any part of her property is not the subject matter of inquiry but if it was she sought a decision that the area coloured brown on her conveyance is her property; (3) Mr and Mrs C S McLagan said (their Agents' letter of 29 September 1980) that they owned seven acres of OS (1897) plots No. 595 together with the hedges and ditches which bound it, and also owned plot No. 596 together with its hedges and ditches, and that they claimed a right of way on to and access from Stebbing Green; and (4) Mrs Rogowski said (her Agents' letter of 29 September 1980) that she owned part of OS (1897) No. 595 together with its hedges and ditches. No other person claimed to be the freehold owner of the land in question or 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 Chelmsford on 29 January 1981. At the hearing (1) Stebbing Parish Council were represented by Dr C H Going their chairman; (2) Mr Clive Steward McLagan and Mrs Zilpha Florence McLagan both of Unity Garage, Brentwood Road, Felsted were represented by Mr P C Fox surveyor with Fox Allen & Pascoe, Chartered Structural Engineers, Incorporated Surveyors and Valuers and Agricultural Installation Consultants of Saffron Walden; and (3) Mrs Daphne Moira Rogowski of Burnt House, Stebbing Green was also represented by Mr P C Fox.

In the reference the land in this Register Unit is described as "lying northeast of the road running from Tilehouse Farm to Burnthouse Farm and extending south from that road from a point opposite Burnthouse Farm towards Stebbinggreen Farm and to Old Ryes". In the Land Section of this Register Unit it is more shortly described as set out below and is therein said to comprise 4.5 hectares (11.119 acres).

At the commencement of the hearing after Dr Going had described the part of the register land with which he thought Mrs Harrap might be concerned, Mr Fox said that his clients were concerned only with (1) the position and ownership of the hedges and ditches, and (2) rights of way across the registered land.



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Dr Going who has resided in the Parish since 1953 and been a member of the Parish Council for about 18 years and their chairman for about 14 years, in the course of his oral evidence produced the said 1951 conveyance. By it the Earl of Essex after reciting that as Lord of the Manor he was seised in fee simple of the common or waste lands of the said Manor known as Stebbing Green as the same was delineated and coloured red on the plan annexed conveyed the same to the Parish Council. Dr Going said (in effect):- The land ("the Unit Land") in this Register Unit is grass land; fairly rough grass which the Parish Council have kept cut. The Unit Land is used by the inhabitants for informal recreations, especially by those who live adjacent. The Council has over the years done some tree planting and looked after the appearance.

Dr Going was questioned by Mr Fox about the roads and tracks across the Unit Land and also about the hedges and ditches.

As to the roads and tracks:- On this reference made under section 8 of the 1955 Act I am concerned only with the "ownership" of the Unit Land; in section 22 of the Act, "ownership" is defined as meaning ownership of the legal estate in fee simple. So I have no jurisdiction to determine whether Mr and Mrs McLagan and Mrs Rogowski have rights of way such as were claimed on their behalf by Mr Fox. However I draw their attention to regulation 24 of the Commons Registration (General) Regulations 1966 which empower the County Council as registration authority on suitable application to note such a claim on the Register.

Apart from the hedges and ditches ("the disputable hedges and ditches") mentioned by Mr Fox, the ownership position is as follows:- The land coloured red on the plan annexed to the 1951 conveyance is not significantly different from that edged green on the Register map; and none such land is included in that described in the 1959 conveyance and thereby conveyed to Mrs Harrap (then and therein called Mrs Foyle) except a small strip which is coloured brown on one of the plans annexed thereto and thereby conveyed for "the estate right or interest (if any) of" Mr Henderson. Dr Going said that this strip is the entrance way of Tile House. In the absence of any evidence contradicting the 1951 conveyance plan, I consider that the interest taken by Mrs Harrap in this strip is not greater than a right of way, and that I can therefore give full effect to the documentary and oral evidence of Dr Going and be satisfied that the Parish Council are the owners of all the land by the 1951 conveyance expressed to be conveyed. I need not I think consider too closely the acts of possession of the Parish Council because if I was not so satisfied, I should be obliged by subsection (3) of the said section 8 to direct the registration of the Parish Council as owners.

As to the disputable hedges and ditches:- If they are included in the Land Section of this Register Unit described, then the question who is the owner does arise and on this reference I have jurisdiction to direct the registration as owner of whoever I am satisfied is the owner of the disputable hedges and ditches. But on the assumption that they are included, the question whether they ought to have been included does not arise on this reference and I have no jurisdiction to direct their exclusion; the registration in the Land Section being undisputed has become final; if in due time Mr and Mrs McLagan and Mrs Rogowski made objection to the registrations in the Land Section on the grounds that the disputable hedges and ditches were not part of the land properly registerable as



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as a town or village green, then a Commons Commissioner on a reference made under section 5 of the 1965 Act would have had jurisdiction to consider the question to exclude or include expressly the disputable hedges and ditches; but they have made no such objection and are now out of time. The Land Section registration as it now stands is of land described as "the piece of land called Stebbing Green... as marked with a green verge line inside the boundary on ... the register map..."; the map is on the scale 6" = 1 mile and (as is not unusual) gives no indication as to whether or not the registered land includes any of the hedges or ditches on its boundary. The land section registration having become final any question as to the extent of the land register is I think a matter for the High Court or any other Court having jurisdiction; in my view I have no jurisdiction on this reference or on any other reference which could now be made to a Commons Commissioner to consider it.

Mr Fox, although he had with him a number of documents relating to the lands of Mr and Mrs McLagan and Mrs Rogowski, conceded that none of them provided any evidence about the ownership of the disputable hedges and ditches. ~~Subject to~~ *the hearing the only* question ~~discussed~~ *discussed* is whether I should adjourn the proceedings so that such evidence could be obtained. Although I could *perhaps on* a reference such as this, determine the ownership of the disputable hedges and ditches on the assumption that they were included in the registration, I ought not I think to adjourn the proceedings in the absence of some information indicating that they might be so included. After some discussion it seemed likely that ~~the~~ *by* case of Mr and Mrs McLagan and ~~of~~ Mrs Rogowski ~~might~~ *could* make ~~use~~ *use* as to *they* owning the disputable hedges and ditches, depended on evidence which would also support their case ~~at the extent of the~~ land registered in the Land Section did not extend to such disputable hedges and ditches. If this was so, no useful purpose would be served by my adjourning the proceedings, because by not adjourning them I would not prejudice the ownership position of Mr and Mrs McLagan and Mrs Rogowski. I understood that Mr Fox accepted this conclusion; but however this may be in the absence of any information indicating that it might be wrong I refuse to adjourn the proceeding and give my decision on the evidence of Dr Going summarised above.

On this evidence I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Essex County Council, as registration authority, to register Stebbing Parish Council as the owners 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 16th — day of March — 1981

a. a. Baden Fuller

Commons Commissioner