



Commons Registration Act 1965

Reference Nos 213/D/63-65

In the Matter of Nine pieces of land
in the Parish of Naunton, Cotswold D

DECISION

These disputes relate to the Entry at No 1 in the Land Section of Register Unit No CL 241 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by objection No OB 132 made by Mr D Bryne and noted in the Register on 18 January 1971, Objection No OB 434 made by the Gloucestershire County Council and noted in the Register on 8 August 1972 and objection No 694 made by Mr and Mrs Alden and noted in the Register on 2 October 1972.

I held a hearing for the ^{Purpose} ~~purpose~~ of inquiring into these disputes at Cheltenham on 7 February 1978 which was attended by Mr E R Nutbourne on behalf of Mr Bryne, Mr P A Harris on behalf of the Gloucestershire County Council, Mr and Mrs Alden in person and Mrs M A Smith of Messrs Rickerbys on behalf of Naunton Parish Council.

Each of the three objections is to a part of the land comprised in this Register Unit and Mrs Smith accepted that Objections Nos OB 132 and OB 434 were well founded and that the lands identified on the plans annexed to these objections should be excluded from the Registration.

The objection made by Mr and Mrs Alden was strenuously argued by them and equally strenuously contested by Mrs Smith on behalf of the Parish Council who registered the land as Common Land.

Subsequent to the hearing I have received a letter dated 13 February 1978 asking me to defer giving my decision on the ground that they have in contemplation proceedings for the purpose of establishing their ownership or alternatively for fraud. I find myself unable to accede to Mr and Mrs Alden's request to defer giving this decision for the following reasons.

(1) The question which it falls to me to decide is whether or not the land the subject of their objection is or is not common land. Even if the land is owned by Mr and Mrs Alden it may still be common land and if it is common land the question of ownership will fall to be decided on a further reference to a Commons Commissioner when Mr & Mrs Alden will have an opportunity to establish their claim to ownership.

(2) In the course of the hearing when I asked to see the conveyance of Rock Cottage to Mr and Mrs Alden they at first failed to produce that conveyance but late in the day they did produce it. The conveyance dated 25 July 1976 made between the Executors of Daisy Stratford and Mr and Mrs Alden had a plan annexed thereto on an extract from the relevant OS map and I was able to see at a glance that Mr and Mrs Alden had no paper title to the disputed land.



3. Faced with the lack of a paper title Mr and Mrs Alden envisaged proceedings for rectification of the said conveyance which they allege should have comprised the disputed land. Even if proceedings for rectification are open to Mr and Mrs Alden at this late stage in the light of the evidence given by Miss Stratford whose family occupied Rock Cottage from 1901 to 1967 and acquired it in 1901 that they never claimed to own or occupy the disputed land it seems to me improbable in the extreme that the vendors to Mr and Mrs Alden could make a title to the disputed land and that for this reason the conveyance can not be rectified.

4. There are no entries in the rights section of the register and this is one of those rare cases where in the absence of any entry in the ownership section if the land is common land it should be subject to protection under Section 9 and the Act of 1965 with all convenient speed.

Having given my reasons for rejecting Mr and Mrs Alden's application for this decision to be deferred I proceed to deal with the hearing before me.

As stated above the question I have to decide is whether or not the land is common land as defined in Section 22(1) of the Act of 1965. In the absence of any entries in the Rights Section it can only be common land if it is waste land of a manor within the meaning to be attributed to these words in the context of Section 22. Foresaid

Mr and Mrs Alden contentions on this aspect of the case were that the disputed land had always been occupied by the owners of Rock Cottage and that it had been planted with fruit trees.

Miss D I Stratford gave evidence on behalf of the Parish Council. She said she was aged 88 and had lived at Naunton all her life. She knew Rock Cottage; it was built in 1828, her grandfather rented it in 1901 and bought it in 1909 and sold it in 1957. Her father lived there until 1920. After the death of her grandfather her father and her aunt were joint owners and in 1960 her aunt became the sole owner. She used to visit her aunt almost daily. She said the boundary between Rock Cottage and the disputed land was a stone wall and that she never regarded the disputed land as part of Rock Cottage and that years ago it was more or less a childrens playground and there were paths across the land. Her grandfather did not need the disputed land as he had two or three allotments. She said there was one apple tree on the land which she believed was a seedling and which had one or two apples.

William George Herbert aged 74 also gave evidence on behalf of the Parish Council. He had lived at Naunton since he was aged 14 and went to school there. He habitually climbed up and down the bank of which the disputed land forms part and had no recollection of any apple trees.

Mrs Alden at my invitation cross examined Miss Stratford and put to her questions about the apple tree which she said had in one year produced 12 lbs of apples which she picked. This cross examination was inconclusive, as there was a great deal of ill feeling between Miss Stratford and Mrs Alden in particular about



an incident relating to a fence put up by Mr and Mrs Alden which resulted in an intervention by the local constable.

Miss Stratford and Mrs Alden could not agree about anything.

Mr John Bolton who is not a local resident gave evidence for Mr and Mrs Alden that he had in 1967 helped Mr and Mrs Alden to clear the garden of Rock Cottage and also the disputed land and that apple trees, sloe trees, lilac trees and one or two diseased plum trees had been cut down and burnt on the disputed land.

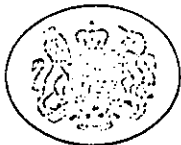
In view of the conflict of evidence I offered to inspect the land, an offer promptly accepted by Mrs Smith, and I accordingly did view the land, which is a steep bank to the East of Rock Cottage and bounded on the South by a road. In the course of the hearing Mrs Alden alleged that school children could not go up and down this steep bank. Notwithstanding, the many years that have passed since I was at school I found no difficulty in walking to the top along a bank where the grass had been worn by pedestrians. On the top of the bank at the West end is the village school which was closed in 1969. Mr and Mrs Alden, recently erected a two strand wire fence along the South and North sides and also running North and South which I assume was intended to define the West boundary of the disputed land. How they arrived at a decision as to where the West boundary of the disputed land was situated is shrouded in mystery. I saw the apple tree referred to in the evidence; in the month of February I would not have recognised it as such, it looked no different from the other saplings and scrub growing on part of the land, the remainder being rough grass such as is usually found on waste hill sides. Not only could I see no evidence of the land having been planted with fruit trees but this steep piece of ground seemed to me quite unsuited for that purpose, more particularly when one bears in mind that it was unenclosed on three sides and in close proximity to the village school. A small patch had been dug up by Mr and Mrs Aldern as I was told at the hearing for growing vegetables. This Mr Alden told me at the hearing took place in 1971.

The wire fence is not substantial and is in places on the ground.

This land looks like waste and in my view is waste and I accept the evidence of Miss Stratford and Mr Herbert, the evidence at the hearing did not disclose any person with a title which could enable him or her to bring an action for trespass and it is for this reason that I take the view that it should be under protection as soon as possible.

On the evidence law at the hearing I have come to the conclusion that insofar as Mr and Mrs Alden seek to enclose the land and cultivate it and occupy it for their own exclusive use their actions are wrongful and cannot have the effect of depriving the land of its character of waste as it undoubtedly was at the date of the Registration in January 1969.

Mrs Smith produced at the hearing a copy ^{extract} contract from the 1965 Edition of the Victoria History of the Counties of England Volume 6 relating to Naunton. This extract states that in the year 1608 Giles Venfield and John Collett were Lords of the Manor of Naunton and goes on to trace the histories of the Venfield moiety and the Collett moiety. The disputed land is situate



between the church and the Manor house and I am in my view entitled to presume that it was, even if it is not now, parcel of the manor of Naunton.

It is relevant to refer to a decision (as yet not reported) relating to Box Hill of Foster J on an appeal from the Chief Commissioner George Joubert QC where the land in question (about 10 acres) was farmed by the Respondent to the appeal half for growing crops and the rest let for grazing and was not in the ownership of the Lord of the Manor. Foster J decided that the land was common land.

Following this decision as I am bound to do I am satisfied that the disputed land is common land whether or not it is owned by Mr and Mrs Alden I have reached no conclusion on the question of ownership which is not before me save that Mr and Mrs Alden's title deeds as shown to me at the hearing did not disclose that they have a paper title.

For the reasons stated above I confirm the Entry at No 1 in the land Section modified by the exclusion therefrom of the lands the subject of objections Nos OB 132 and OB 134

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 of 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

15th

day of

March

1978

G. A. L. M.

Commons Commissioners