

COMMONS REGISTRATION ACT 1965

Reference No. 213/U/58

In the Matter of The Strand, Westbury-on-Severn, in the County of Gloucester

DECISION

This reference relates to the question of the ownership of land known as The Strand, Westbury-on-Severn being the part of the land comprised in the Land Section of Register Unit No. VG 75 in the Register of Town or Village Greens maintained by the Gloucestershire 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 two persons 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 Gloucester on 28 April 1981.

Mr B E Jellie of Messrs Haines and Summer, Solicitors of Gloucester appeared for Mr F C Larkham and Mr Harman of Messrs Treasures, Solicitors of Gloucester appeared for Miss E M Hart. Mr Gibbons of Wellington and Clifford, Solicitors of Gloucester appeared for the Westbury-on-Severn Parish Council and Mr W Hardy (Secretary) appeared for the Severn Estuary Fishermen's Association. Mrs James appeared for the Registration Authority.

This reference came before the late Mr C A Settle Q.C., Commons Commissioner, on 19 October 1978 when it was adjourned to enable Mr J N James, a Chartered Surveyor who was acting for Mr Larkham, to examine his client's title deeds to check his claim to the land.

There had been proceedings in the County Court between Mr James and Mr Larkham over the former's fees and Mr James was asserting a lieu over the title deeds.

Although Mr Jellie said in opening that his client claimed ownership of the whole of the unit that what might be described as 'the toe' a triangle of land at the western end of the unit terminating at the of Severn Mill had passed to a predecessor in title of Miss Hart by a Conveyance made on 3 May 1920 pursuant to an Order of the Charity Commission sealed on 7 November 1919 and this Mr Jellie conceded.

That Conveyance was expressed to convey to the Purchaser 10 acres and eight percheof land 'more particularly described in the Schedule hereto and for the purpose of identification only and not by way of grant delineated and coloured pink on the plan endorsed person'.

در میر معمد



- 2 -

The first item in the Schedule is Plot No. 1125 Meadow, 7 acres 1 rood. A comparison of the relevant Edition of the Ordnance Survey Map (2nd Edition) with the Register Plan shows that the whole of the Register Unit was then part of OS No. 1125 the area of which is shown as 7.252 acres. When one looks at the plan only the toe is shown coloured pink and the remainder of the Unit is shown as being in the occupation of M W Colchester Wemyss Esq. In passing, the Conveyance refers to all the land described in the Schedule as being 'now in the occupation of M W Colchester Wemyss Esq as tenant thereof.

Mr Jellie had not seen this document before the hearing and at his request I adjourned the hearing for 48 hours to consider the effect (if any) of the discrepancy between the Schedule and the Plan and to study the authorities.

When the hearing was resumed Mr Jellie submitted that on the true construction of the 1920 Conveyance the parcels did not include any part of the Register Unit except the toe. He referred to Emmet on Title 17th Ed at p.534 and to 1978 3 All E R 436. This construction was necessary to establish Mr Larcombe's proper title. By a Conveyance on Sale made the 19 March 1945 between Sir M F E Colchester Wemyss and Mrs S W Colchester Wemyss the Vendor conveyed to the Purchaser part of OS No. 1125 described as a small strip of land near River Bank at Severn Mill 'approx. 1.000 acres'.

Evidence was then called on the issue whether Mr Larkham had acquired a possessory title.

Mr Larkham said that he was 42 years of age and had lived at Severn Mill for the past 7 years. Previously he had lived at Strand since 1959. When he was 15 he occasionally worked for Eddie Fry a previous owner of the Mill. He would cross the Register Unit by the road shown on the map by a single dotted line. The road was 11' 6" wide and capable of carrying lorry traffic. The surface was firm but one part used to flood on the spring tides. In 1962 he put a fence across the access road to keep animals out of his garden. He grazed his cattle on the N.W. side of the Unit from the gate to the end of the toe. The ditch is 5' 6" wide. Eddie Fry kept 150 hens on the land to the North of the Mill. In November 1970 the Planning Authority required improvement of the access road as a condition of granting permission for other improvements.

Miss Hart told him in 1970 that she thought Mr Colchester Wemyss had owned the land comprised in the Unit. He then went to see Mrs Colchester Wemyss. She had retained land to enable her to vote in Westbury. The Conveyance to him was then put through: there was a map but it was loose and not bound up with the Conveyance.

The witness had brought 3.000 tons of material on to the Unit to make up the road and no one had challenged him. He had moored boats thereall his life. He had had the deeds and the plan relating to his property some time before March 1973 when he was discussing a proposal to give the Council land for a Car-Park. Previous owners of the Mill used to pick the pears from trees on the Unit from 1948-1958.

Only persons living at the Mill used the track for grazing.

ر میکندستان نیستان



- 3 -

Mr Oliver Frederick Wayman who now lived at Westbury-on-Severn said that he had ceased to live at Severn Mill in 1924 but his parents continued to live there until 1950. His father picked the pears from trees growing on the Unit and kept pigs on the Unit.

In cross-examination he said that the pigs had the run of the whole Unit. He had often heard his parents say that the Colchester Wemyss family owned the land edged green on the plan (the Unit). His parents rented the Unit. They went into possession in 1918 and paid rent to the Colchester Wemyss family until 1950 when his mother died.

Mr Ivor Howell Smith of Elton Court Farm, Westbury-on-Severn said that his wife's maiden name was Hill and her grandfather bought Severn Mill in 1948.

Miss Elfrida May Hart, who also claimed ownership, said that she remembered her father buying four pieces of land from the Colchester Wemyss family. These four pieces became part of Mayes Hill Farm and were let as part of that farm to a Mr M J Neal. Her father bought the Farm from her uncle in 1932 and Mr King was the first tenant followed by Mr Neal. Her father believed he owned OS. 1125 down to the River's edge. Part of the land in the Register Unit was not let because it was believed to be Common Land.

This part was not fenced off. How father never intended to abandon ownership.

Father did not know for certain who owned this land. In about 1949 my lev
father went to see the Solicitors to Mrs Colchester Wemyss, who said that the
land was his. From then on we sold the pears from the trees on that land.

In cross-examination Miss Hart admitted that the original purchaser in 1920 Sidney Hart was her greatuncle and her father became the owner of the land on the uncle's death. The land standing on the toe of the land had been let to Mr Fay.

Mr William Hardy of Bullo Pitt Newnham said he was familiar with the area in dispute. He began going to Severn Mill in 1918 when he was a boy of 8 to see Mr D F Wayman. There was no fencing round the land in dispute and cattle put on it could stray to other areas. In 1962 he was employed to take stone to the area to build an embankment. There was no fence in 1971.

In cross-examination the witness said he had never seen pigs on the land and the gate had only been in position for the last 6 years.

Mr Michael Lionel Evans of Lusworth said that he was born in Strand house and lived there until 1964 when he married. He was a ground farm labourer at Nags Hill Farm when Mr Neal was tenant. Cattle from the farm grazed over the whole of OS No. 1125. There was no obstruction to prevent cattle going on the land adjacent to the river. A fence was built which ran from the Mill in a SE direction.

Mr Hawmood submitted that its true confluence in whole of OS No. 1125 passed under the 1920 Conveyance and could not therefore have passed under the



1945 Conveyance to Mrs Colchester Wemyss. There had been no possession adverse to Miss Hart as the whole of OS No. 1125 had been let as part of Mayes Farm.

Mr Jellie submitted that even if he failed on the construction of the 1920 Conveyance and the whole of OS No. 1125 passed under it, the Hart family had made no use of the land and his clients predecessors in title had required such a title.

Until shortly after the hearing began Mr Jellie believed that there was a of OS No. 1125 which was not included in the 1920 Conveyance and which therefore pass to Mrs Colchester Wemyss in 1945 and subsequently in 1971 from her to Mr Larkham.

In my judgment the wording of the Schedule to the 1920 Conveyance is intended to convey the whole of OS No. 1125, (i) because the abbreviation (Part) or (Pt) is not used and (ii) because the area of the OS No. as shown in the Schedule corresponds with the area shown on the Map.

Both parties tried to establish a possessory title and claimed payment of rent but I found the evidence vague and unconvincing.

On this evidence I am satisfied that Miss Elfrida May Hart is the owner of the land, and I shall accordingly direct the Gloucestershire 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 465

day of June

1981

Commons Commissioner