



COMMONS REGISTRATION ACT 1965

Reference No. 215/U/22

In the Matter of two pieces of land fronting
River Severn, Upton on Severn

DECISION

This reference relates to the question of the ownership of land above mentioned being the land now comprised in the Land Section of Register Unit No. CL 106 in the Register of Common Land maintained by the former Worcestershire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

This reference was originally heard by the late Mr C A Settle QC, at Worcester on 9 May 1979 when Mr G C Humphries of Messrs Moore and Dixon appeared for Upton on Severn Parish Council and Mr K R Harris appeared in person. The Parish Council claimed two small parcels of land which had been allotted to the Churchwardens and Overseers by an Award dated 28 August 1863 for public land places.

Mr Harris then claimed that the remainder of the land had been dedicated to the County Council subject to mooring rights and fishing rights for householders on the land opposite their respective houses. Neither Mr Harris nor the County Council claimed to be the owner of any part of such land.

In his decision dated 19 June 1979 Mr Settle upheld the claim of the Parish Council but was not satisfied that any person was the owner of the remainder of the land which therefore became subject to protection under S. 9. of the Commons Registration Act 1965. This decision was sent out on 23 July 1979.

After correspondence with solicitors acting for Mr Harris and a Mr N F Price, Mr Settle agreed that the hearing should be reopened.

I held the re-hearing at Worcester on 17 May 1982.

Mr P Jeremiah, an Assistant Solicitor, appeared for Malvern Hills District Council, Mr J D Schooling of Messrs Whatley, Weston and Fox, Solicitors of Worcester appeared for Mr K R Harris, Mr M Anderson of Messrs Harrison-Clark, Solicitors of Worcester appeared for Johns and Son Limited and Mr M G Owen appeared in person.

Mr Schooling produced a Deed of Dedication made on 17 March 1952 between Joseph Griffin of the one part and Worcestershire County Council of the other part under which he dedicated an area of land containing about 152 square yards to be added to and form part of the highway. The land was bounded at one end by the frontage of property owned and retained by Mr Griffin and at the other by the west bank of the River Severn. Mr Griffin reserved



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to himself a right of free mooring for light pleasure craft. Mr Griffin agreed if and when called upon to do so before the expiration of 21 years from his death that he or his personal representatives should at the expense of the Council convey to it his estate and interest in the land dedicated.

Mr Griffin died in 1964 and Mr Schooling produced documents which satisfied me that Mr Harris was the owner of the land formally owned by Mr Griffin including the land referred to in the Deed of Dedication subject to the rights of the County Council under that Deed. Mr Schooling made two submissions (i) that his client was for the purposes of the Commons Registration Act 1965 the owner of the land comprised in the Deed of Dedication which formed part of the Register Unit and (ii) that as that land was part of the highway I should make an order declaring that it was not common land so that it could be deregistered. There are two answers to the second submission. The first and perhaps technical answer is that the status of the Register Unit is not before me and I am concerned only with ownership. The second is that the status of the Register Unit as common land was determined by a decision of a Commons Commissioner which became final on 30 March 1976 and such decision is final and conclusive under S. 10 of the Commons Registration Act 1965. I am however satisfied that until the Worcestershire County Council or its successor in title calls for a conveyance, assuming that such right is still exercisable, Mr Harris is the owner.

The Deed of Dedication executed by Mr Griffin was one of several entered into by Worcestershire Council at that time with the owners of adjacent property. Mr Owen is the present owner of the Star Hotel which adjoins Mr Harris's property on its western side and Mr Owens property is bounded on its western side by property now owned by Johns and Son Limited, successors in title of Mr N F Price. I am satisfied that Mr Owen and Johns and Son Limited are each now the owners of that part of the registered unit which lies between the frontages of their respective properties and the River.

Mr Settle's finding in favour of Upton on Severn Parish Council was not challenged. On the evidence I am satisfied that Mr Harris, Mr Owen and Johns and Son Limited are the owners of that part of the land which lies between the norther frontages of their properties and the bank of the River Severn and I shall accordingly direct Hereford and Worcester County Council as registration authority to register the Parish Council, Mr Harris, Mr Owen and Johns and Son Limited as owners of a part of the land as already indicated. I am not satisfied that any person is the owner of the remainder of the land and it 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.

Dated this

23rd

day of

February

1983

George Harkett

Commons Commissioner