



COMMONS REGISTRATION ACT 1965

Reference No.16/D/24

In the Matter of Hedges Wood Common,
Great Gaddesden, Hertfordshire (No.1)

DECISION

This dispute relates to the registration at Entry No.2 in the Rights Section of Register Unit No.C.L.3 in the Register of Common Land maintained by the Hertfordshire County Council and is occasioned by Objection No.6 made by Mr. John Simon and noted in the Register on 22nd November 1968.

I held a hearing for the purpose of inquiring into the dispute at Hertford on 18th January 1973. The hearing was attended by Mr. Richard Scott, of counsel, on behalf of the Objector. Before the hearing Messrs. Neve, Son & Co. applied by letter for an adjournment on the ground that Mr. S.F. Simmons, the applicant for the registration, would be prevented by illness from attending the hearing. The application was accompanied by a medical certificate. Messrs. Neve, Son and Co. stated that their instructions did not allow them to make the application personally, having regard to the question of costs. The Objector was unwilling to agree to the adjournment, and on being informed of this Messrs. Neve, Son & Co. submitted a statutory declaration made in 1969 by Mr. R.D. Hoar, one of the witnesses intended to be called on behalf of Mr. Simmons.

When the case was called Mr. Scott objected to the application for an adjournment. Since it was not stated that Mr. Simmons was an essential witness, I decided to inquire into the matter under section 6(1) of the Commons Registration Act 1965, but keeping in mind the possibility of adjourning the hearing should it subsequently appear to be necessary in the interests of Mr. Simmons so to do.

The Objector, Mr. John Simon, is registered as the owner of the whole of the land the subject of the reference. That registration, being undisputed, became final on 1st October 1970. While section 10 of the Act of 1965 does not make the registration conclusive evidence of Mr. Simon's ownership, it seems to me that as between Mr. Simon and Mr. Simmons I am entitled to proceed on the footing that Mr. Simon is the owner.

Mr. Simmons claims to be entitled to a right to graze 20 cows and 100 sheep and a right to take bracken and grass for bedding attached to Southings Farm, Gaddesden Row, Hemel Hempstead. Southings Farm lies to the north-west of and adjoining Hedges Wood Common.

Mr. Simon was unable to produce the conveyance on his purchase of Hedges Wood Common, but he said that a photo-copy of a conveyance from the Public Trustee dated 3rd October 1956 was a true copy of the conveyance to him. By this conveyance Mr. Simon became the owner not only of Hedges Wood Common, but also of Southings Farm, of which Mr. Simmons at that time held a yearly Michaelmas tenancy.

Mr. Scott raised no objection to the admission of Mr. Hoar's statutory



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declaration. Three generations of the Hoar family down to Mr. Hoar's father were tenants of Southings Farm down to 1923. Mr. Hoar's recollection goes back to 1903. He remembers going with workmen to cut bracken on the Common for bedding for cattle and tending his father's sheep on the Common. This was done every year from 1903 to 1923. Mr. Hoar and his father did not graze cattle on the Common regularly, but they took them over the Common from time to time to other parts of Southings Farm adjoining the Common. Mr. Hoar also remembers other persons grazing cattle and sheep and cutting bracken on the Common.

It may be that at some time there were rights of common over Hedges Wood Common attached to Southings Farm. However, by the time that Mr. Simon purchased in 1956 the Common and the Farm had come into common ownership.

It appears from para.8 of the Special Conditions of Sale forming part of the Particulars of Sale of the Beechwood Estate prepared for the sale in 1956, when Mr. Simon bought the Common and the Farm, this happened in or before 1926, but whenever it was, it extinguished any rights of common there may have been.

There is at present pending in the Chancery Division an action commenced in 1968, in which Mr. Simon is claiming an injunction restraining Mr. Simmons from trespassing on Hedges Wood Farm. By his Amended Defence and Counter-claim Mr. Simmons has alleged that he is entitled to exercise and enjoy certain rights of common, not expressed in identical terms with those under consideration in these proceedings, by prescription or alternatively by a lost grant. In my view, the fact that this action is pending does not inhibit me from fulfilling the duty imposed upon me by section 6(1) of the Act of 1965 of inquiring into the matter of the present reference and giving a decision upon it.

I have come to the conclusion that the unity of the ownership of Hedges Wood Common and Southings Farm is fatal to Mr. Simmons's claim to rights of common, and I therefore refuse to confirm the registration.

Mr. Scott applied for an order for costs. This seems to me to be a proper case for such an order. I shall therefore order Mr. Simmons to pay Mr. Simon's costs to be taxed on County Court Scale 4.

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 31st day of January 1973


Chief Commons Commissioner