



COMMONS REGISTRATION ACT 1965

Reference No. 16/U/58

In the Matter of verges on both sides of
the road from the Bull Inn to Street Farm,
Bovingdon, Dacorum District, Hertfordshire.

DECISION

This reference relates to the question of the ownership of land being verges on both sides of the road from the Bull Inn to Street Farm, Bovingdon, Dacorum District and being the land comprised in the Land Section of Register Unit No. CL207 in the Register of Common Land maintained by the Hertfordshire 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 the Rev. Sir John Halsey Bt. claimed (his solicitors' letter of 16 November 1972) that the ownership of the land in question was vested in him; no other person claimed to be the owner 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 Hertford on 6 June 1978. At the hearing (1) the Reverend Sir John Walter Brooke Halsey, Baronet and Mr Nicholas Guy Halsey were represented by Mr A H Hemsley solicitor of Halsey Lightly and Hemsley, Solicitors of London and Guildford, and (2) George Wimpey and Company Limited ("Wimpey") and Mr Richard Bryan Burgin were represented by Mr M Blackett-Ord of counsel instructed by Mr P Calcutt solicitor of Wimpey.

The land ("the Unit Land") in this Register Unit comprises two strips each about 2/3rds of a mile long and on opposite sides of the road (Chipperfield Road) which runs in continuation of the High Street, southeast out of Bovingdon.

Mr Blackett-Ord said that Wimpey have an option to purchase land owned by Mr Burgin and adjoining the Unit Land, and he produced a High Court writ issued on 31 May 1978 by which Wimpey in proceedings ("the 1978 Action") claim against Mr Halsey and Hertfordshire County Council a declaration that a piece of land ("the Blue Land") edged blue on the plan attached is highway. The Blue land is part of the south-western of the said two strips, being about 70 yds long and situate near to its north-west end. Mr Blackett-Ord applied that these proceedings (before me under the 1965 Act) be adjourned because they depend on the applicability of the presumptions: (a) that highway land extends up to the fences, and (b) that ownership of highway land (up to the middle line of the carriageway) is the same as that of the adjoining land, and so necessarily involve the same or similar questions to those arising in the 1978 Action, being questions which would ultimately have to be and which would more conveniently be, determined by the High Court.

At the hearing I refused this application and I now give (as I then said I would) my reasons. An adjournment might cause delay and inconvenience if the High Court in relation to any of the claims in the 1978 Action considers a Commons Commissioner to be a more convenient tribunal, see *Walker v Gee* 1973 1 WLR 111 and 742. Contra, my continuation of these 1965 Act proceedings is unlikely to delay the 1978 Action



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which at the date of the hearing was only a week old; and a decision on my part cannot inconvenience anyone, if this matter will in any event come before the High Court; if my decision is wrong the High Court, being a superior tribunal, can disregard it or correct it. It was not suggested that a Commons Commissioner will not, whatever the result of the High Court action, have to give a decision in these 1965 Act proceedings sometime, and the High Court may take the view that in these proceedings under the 1965 Act the relevant considerations are different from those applicable to the 1978 Action. I am therefore of the opinion that I ought to give my decision now notwithstanding that I shall lack the guidance which I might have if I delayed the proceedings till the High Court had given judgement in the 1978 Action.

Mr Hemsley opened by saying that the Manor of Hemel Hempstead has been in the Halsey family for many years. In support of the ownership claim of Mr N G Halsey oral evidence was given by Mr P A Turner, chartered surveyor of Rumball Sedgwick & Edwards chartered surveyors of St Albans who have acted as Agents for the Halsey family in relation to their land at Gaddesden (Mr Turner has been personally concerned since 1950); but they have not (so Mr Turner explained) been responsible before 1970 for the manorial wastes, because before then these matters were dealt with by Lovel Smeathman & Son, Solicitors of Hemel Hempstead. The present claim is to part only of the Unit Land as delineated on the plan produced (PAT/1); a piece ("the NW Red Land") about 130 yds long being the northwest part of the southern of the two strips which make up the Unit Land, and a piece ("the SE Red Land") about 400 yds long, being the southeast part of the said southern strip. No claim was made to the remainder of the Unit Land because it together with the land comprised in Register Unit No. CL206 (verges on the north side of the High Street) had passed to Hemel Hempstead Rural District Council under a conveyance made by the said Sir John Halsey and completed on 27 February 1974.

In support of the claim oral evidence was also given by Mr N G Halsey in the course of which he produced: (1) probate of the will of Rt Hon Sir Thomas Frederick Halsey, Bt (he died 12 February 1927) granted to his son (the witness' great uncle) Sir Walter Johnston Halsey, Bt, (2) an assent dated 20 September 1929 by Sir W J Halsey in favour of himself, (3) probate of the will of Sir W J Halsey (he died 3 September 1950) granted to Sir Thomas Edgar Halsey, Bt and Mr William Edward Halsey, (4) an assent dated 20 February 1951 by them in favour of Sir T E Halsey (one of themselves), (5) probate of the will of Sir T E Halsey (he died 30 August 1970) granted to Sir John Halsey and Mr W E Halsey, (6) an assent dated 18 January 1971 by Sir John Halsey and Mr W E Halsey in favour of Sir John, and (7) a deed of gift dated 28 February 1974 by Sir John Halsey to Mr N G Halsey.

In support of the ownership claim by Mr R B Burgin, he gave oral evidence in the course of which he produced: (1) a conveyance dated 24 March 1932 by which Mr Richard Burgin conveyed to Mr Leonard Burgin part of Yew Tree Farm, OS Nos 313 pt, 334, 335, 336, 337, 338 and 370 as delineated on the plan drawn thereon, being (so far as now relevant) ~~planed~~ southwest of the Blue Land and of the NW Red Land; (2) a conveyance dated 28 December 1962 by which Mr Leonard Burgin conveyed to Mr R B Burgin land described in the plan annexed (being so far as now relevant) so much of the land southwest of the Blue Land as was comprised in the 1932 conveyance.



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In support of this claim there was produced also an extract from the Bovington Tithe map of 1837 made at Public Record Office by Miss C J Woodcock, a clerk with Mr Calcutt.

On the day after the hearing I inspected the Unit Land.

Most of the hearing was directed to ^{the} conflicting claims to the NW Red Land and to the Blue Land. As I read the maps produced, the former is a little longer than and includes all the latter.

It was not disputed that the made-up carriageway of Chipperfield Road is highway. I so find, this being obvious on my inspection; the Road is evidently of some local importance.

Mr Burgin ^{is not} was born in 1912 and has lived in Yew Tree Farm since he purchased in 1962 said (in effect):- His grandfather lived at the farm house; he was a builder and farmer; originally the farm was about 13 acres; parts were sold off for building. He (the witness) worked on the Farm since 1931; there was (as he remembered) always a builder's yard there; before 1962 he lived in a bungalow next door. His father also lived at the farm house. As to changes since he knew it: his grandfather did not have main drainage; the Road has been widened; the blacksmith's shop (shown on the OS map and also on the Tithe map plot 458a) has been pulled down (the site is part of the southern strip not claimed in these proceedings). It was not disputed that Mr Burgin now owns the land forming the south-west boundary of the Blue Land and on the oral evidence of Mr Burgin and the 1932 and 1962 conveyances he produced, I so find.

On the basis that the Blue Land is bounded on the north-east by highway and on the southwest by land of Mr Burgin, Mr Blackett-Ord argued that the ownership he claimed was established by the beforementioned two presumptions, and referred me to Attorney-General v Beynon 1970 1 Ch 1, particularly pages 12 and 13, and to Halsbury Laws of England (3rd edition) volume 19 (tit. Highways) paragraphs 96 et seq, particularly to paragraph 98 and Gross v West (1816) 7 Taunt. 39.

The definition of "common land" in the 1965 Act contains the words "does not include...any land which forms part of a highway" so the argument presupposes that the land claimed should not have been registered. The Act contemplates as regards ownership, a Commons Commissioner's jurisdiction shall be limited to land registered under the Act; it would I think be strange if I could pronounce on the ownership of highway land when the Act contains such a clear indication that such land is not to be treated as common land and stranger still if I could base a claim for ownership solely on a presumption applicable only to land which should not be registered at all. Mr Blackett-Ord argued that I should not be deterred when considering the ownership of the Unit Land by any such consideration, because although by section 10 registration under the Act of any land as common land is to be "conclusive evidence of the matters registered" this section is qualified by subsection (2) of section 21 by the words "shall not apply for the purpose of deciding whether any land forms part of a highway".

As to this:- There is much land which is crossed by highways and which can apart from the 1965 Act be properly described as common land; I have in mind particularly many wide open spaces which are crossed by unfenced public roads or bridleways and by numerous public footpaths; it would have been very burdensome to those who applied for the registration under the 1965 Act of such open spaces if the



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application had to be accompanied by a map which indicated which of the roads and paths (in some cases very numerous) were or might be highway. I know that some highway authorities relying on the said subsection made no objection to these registrations which have accordingly become final. So with some hesitation I accept Mr Blackett-Ord's contention that I ought not to reject his argument on the basis that Mr Burgin is in some way estopped from putting before me any argument based on the Unit Land being highway. Therefore the question remains whether the presumptions above-mentioned are rebutted.

There was no evidence before me of the public ever having used the Blue Land or of it ever having been made up by the highway authority. The 1837 Tithe map shows the blacksmith shop distinctly, but treats as one the now made-up carriageway and the Unit Land and marks it with other highway lands as "870"; the extract schedule produced this number is "Road & Greenways...." The 1932 conveyance plan which does not include any of the Unit Land in that thereby expressed to be conveyed, delineates the made-up carriageway by dotted lines and shows the blacksmith's shop; nearly all the Blue Land is marked by a dotted line apparently in joint with the blacksmith's shop. The 1972 conveyance plan although less carefully drawn is essentially the same. The writ plan (apparently based on a recent OS map) shows a pond at the north-west end of the NW Red Land. As to the grass formerly there, Mr Burgin said "we have mown the pit in front of the house", but he was not asked to give any details.

In these circumstances I have to consider whether either of the presumptions is rebutted by the circumstance that the Unit Land has been registered as common land under the 1965 Act. Mr Blackett-Ord, as I understood his argument, contended that subsection (2) of section 21 either enables me or requires me to consider Mr Burgin's claim as if the 1965 Act had never been passed, or at least as if the relevant parts of the Unit Land had never been registered under it. This seems to me to go too far. Subsection (2) of section 10 does not I think establish that the registration is not evidence of anything. The registration, although it may not be conclusive, is I think some evidence that the registered land is within the section 22 definition and accordingly is not highway. Apart from the 1965 Act, land may at the same time be subject to rights of common and be highway and also at the same time be waste land of a Manor and highway; so the registration at least suggests that the Unit Land even if it is highway is within the rest of the section 22 definition. Further the mere fact that the Unit Land and not the adjoining land has been registered is I think some evidence that the Unit Land and the adjoining land are for some estate or interest differently owned or subject to different incidents.

The two presumptions above-mentioned may be rebutted, see Halsbury ib. For example, the circumstance that the adjoining land is in the relevant conveyance distinctly described and with the alleged highway has been treated as waste land of a Manor are circumstances which may (with other considerations) rebut the presumptions, see Pryor v Petrie 1894 2 Ch 11; further as to these presumptions see Attorney-General v Beynon supra. I decline to treat the registrations as not being some rebutting evidence merely because neither the Parish Council nor anybody else other than Mr Halsey at the hearing claimed ownership. These proceedings are not I think analogous to an action by Mr Burgin claiming against a defendant; it may be that in any such action on the evidence given to me and the absence of any evidence by the defendant, he would succeed against him and get some relief. But under the



1965 Act there is no person whose position is in any way analogous to that of a defendant in an action; I am not satisfied as to the ownership, the land will vest under section 1 of the 1965 Act in such person as Parliament may hereunder determine, and by section 9 of the Act it will remain in the meantime under the protection of local authorities; although local authorities are under the Commons Commissioners Regulations 1971 entitled to be heard at these proceedings (presumably because of their possible interest under section 9) they are not I think in the position of a defaulting defendant merely because they did not themselves claim ownership.

The relevant words in section 8 of the Act are "satisfied that any person is the owner" and by subsection (2) of section 22 owner is used in the sense of "ownership of legal estate in fee simple". In my opinion the word "satisfied" implies a higher standard of ~~importance~~ ^{importance} than might be accepted by a court in proceedings against a defaulting defendant. For example: in any action a plaintiff in possession of land is presumed to be the owner, and succeeds at least against a person in default; but in my opinion, notwithstanding ~~that~~ such a presumption, should not properly be "satisfied" as to a person's ownership merely because he gave evidence that at the time of the hearing he was in possession; to be so satisfied some additional evidence (eg the production of a conveyance in fee simple) would be requisite to explain away the possibility of this presumption being rebutted (eg that the person is only a tenant). In the same way, even if a registration under the 1965 Act would not in an action be sufficient to rebut the above-mentioned presumptions, the possibility of the presumptions being inapplicable ~~would~~ I think ~~be~~ established by the registrations.

For the above reasons, I am not satisfied that Mr Burgin is the owner of the Blue Land which he claims ~~being~~ ^{relying} on these two presumptions.

To prevent any misunderstanding I record that I do not think that the registration of land under the 1965 Act conclusively rebuts the two presumptions, although I find it difficult to imagine a case in which the presumptions could ever help an ownership claimant. It often happens in relation to land registered under the 1965 Act that some parts situate between a made-up public highway and a boundary fence is claimed by the owner of the adjoining land because his documents of title include land up to the carriageway and/or because there is evidence that he has acquired a possessory title by acts of ownership over the part; such claimants are helped by their ownership of the adjoining land, but they prove their case I think not by showing that the two highway presumptions above-mentioned cannot be rebutted but in the ordinary way by their documents, their possessory acts and the surrounding circumstances.

Apart from the evidence of Mr Burgin about the grass (he said no-one from the Halsey Estate had ever mown it) the evidence for or against the ownership of Mr N G Halsey was distinct that offered by Mr Blackett-Ord. For the purposes of exposition, it is convenient to consider the evidence as to the ownership of the Manor of Hemel Hempstead, for that as to the NW and SE Red Land being, or reputed to be, part of the waste land of the Manor.

The built-up area now called Hemel Hempstead is about 2 miles to the north-east of the Unit Land.

If Sir T F Halsey at his death in 1927 owned the Manor, I am satisfied by the documents produced that it passed to Mr N G Halsey. Although no general assent by his personal representatives was produced, there is a memorandum on the 1927



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probate that Sir W J Halsey on 20 January 1928 assented in favour of himself to "all the real and leasehold Estates" of the Testator, and these words would be enough to include the Manor.

No evidence was offered to the Manor having been or reputed to have been in the Halsey family for many years as Mr Hemsley said in opening, but he gave me to understand that there was something to this effect in a local history.

I reject the contention that the 1929 assent is evidence that Sir T F Halsey was owner of this or any other Manor; the parcels are "all and so much of the said Sir Thomas Frederick Halsey's real estate as is enfranchised land subject to the manorial incidents and rights of the Lord of the Manor remaining unextinguished". These words are, in my opinion, inappropriate to pass and do not pass the ownership of any Manor; further the endorsement indicates that the assent may have been concerned with land in the Manor of Flamstead.

Parcels of the 1951 and 1971 assents both expressly include "the Manor or reputed Manor of Hemel Hempstead" and are therefore some evidence of the ~~position~~^{reputed} of the testators. But as evidence of ownership is being made by personal representatives in favour of one of themselves in circumstances in which the title of the Manor would in the ordinary way not have been investigated, *the assent is not evidence of the title of the Manor.*

Mr N G Halsey gave no evidence that he, or any of his predecessors had personally ever done anything as Lord of the Manor.

As to the NW and SE Red Land together with the CL206 Land being part of the waste of the said Manor, it was argued the following matters spoken to by Mr Turner owed the reputed ownership of Sir T E Halsey and Sir John Halsey:- the 1970 persons owning land adjoining nearby wastelands and wanting access, accepted conveyances of parts; he produced a map (PAT/2) identifying the land so conveyed to Hadland, Harding and Jefferson (referring I suppose to the conveyances noted on the 1951 assent as being of "parts of the Hemel Hempstead Manorial Waste at Newhouse Road" dated 1 January 1970 to John Hadland (Photographic Instrumentation) Limited, dated 20 February 1970 to Frank Arthur Harding and Violet Ethel Harding and 28 August 1970 to Keith Edmund Jefferson). Further there was the above-mentioned 1974 conveyance by Sir John Halsey to Hemel Hempstead Rural District Council. And there was a map in his (Mr Turner's) office showing the waste land of the Manor as they were when Rumball Sedgwick & Edwards took over in 1970 from Lovel Smeathman & Son. As to the 1970 conveyances, land shown on the map (PAT/2) are more than $\frac{1}{4}$ mile from the northwest end of the Unit Land and at the other end of the High Street beyond Halfway House (PH) in Hempstead Lane. None of the conveyances were produced, nor was any evidence given of the title offered on behalf of Sir T E Halsey. A map (PAT/2) says "Sold to Hadland", "Sold such right as Sir Thomas has to Harding 1970" and "ditto to Jefferson 1970".

As to the 1974 conveyance Mr Turner said that the representatives of the Rural District Council were anxious to buy, and "asked us to convey it", but certain areas of roadside wastes were excluded, because "it was thought that certain of these areas could have a development value in the future". Again I have no evidence of the title offered by Sir John Halsey, although Mr Turner said that the Council accepted that it had always been Manorial waste and that was the basis of the discussion.



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As to the map of the waste lands:- Mr Turner said that when he took over from Lovell Smeatham & Son they handed over certain plans, what they believed to be the wastes of the Manor; although Mr Blackett-Ord waved any objection to the originals not being produced my difficulty is that I am not clear what the originals looked like. I understood from Mr Turner, the plans so handed over consisted of a number of OS sheets on which the waste lands were marked, being the Unit Land, CL206 land, a strip to the southeast (the registered unit No. CL208) and the Newhouse Road lands above-mentioned; clearly the plans in his office are ~~no~~ no sense historic documents. In my opinion such plans even if he had produced them, not having any indication on them as to the basis on which they were made cannot be regarded as evidence of any value as to the extent of the waste lands of the Manor of Hemel Hempstead.

Although the 1951 and 1971 assents and the 1974 conveyance to the Council may be some evidence of Mr Halsey's ownership of the NW and SE Red Land, it is in my view very slight. Neither the original nor any copy of the 1974 conveyance was produced and no claim was made by the Council under it; the lands so conveyed are in an important part of a built-up area of Bovington, and an undoubted owner would be able to exercise influence over development; the Council may have taken such title as Sir John Halsey had, not because they thought he was the owner but because it was in the public interest.

Mr Hemsley argued that I should be satisfied with the probates and assents even although they did not mention the NW or SE Red Land, because documents of such a character are commonly accepted on sales of land as evidence of ownership. This argument holds as regards land of which a vendor is in possession and to which he can deliver possession on completion; but it is I think of little weight when, as is the case here, relevant land is unenclosed roadside verge which it is practically difficult to possess in any ordinary sense of this word.

Finally Mr Hemsley referred me to a letter dated 19 September 1958 signed by Mr N H Ward of Lovell Smeatham & Son and written to Sir T E Halsey in which he said: "There is therefore quite clear evidence of your title of Lord of the Manors of Hemel Hempstead and Great Gaddesden" and "there are still a few pieces of manorial waste at Bovington appertaining to this manor". However there is nothing in the letter which indicates that the writer, basing his conclusions, may have had evidence which is not now before me.

The circumstances of the Unit Land is by section 10 of the 1965 Act deemed because it has been finally registered to be "waste land of a manor" not I think evidence that it is part of the Manor of Hemel Hempstead; although such Manor may have included land in Bovington I see no reason to conclude that all waste lands in Bovington were necessarily waste of the same Manor; many Manors are not co-extensive with parish boundaries and their lands may be mixed.

Generally what I have said above in relation to the claim of Mr Burgin as to the word "satisfied" in section 8 of the 1965 Act is I think applicable also to the claim of Mr Halsey. Although matters summarised above may be some evidence of his ownership, they seem to me to add up to so little that I find myself not satisfied that he is the owner of any part of the NW or SE Red Land.



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There was no attendance on behalf of either Bovingdon Parish Council or Dacorum District Council, so no claim was made under the 1974 conveyance mentioned by Mr Turner. There was no evidence of the ownership of any other person. On the above considerations I am therefore not satisfied that any person is the owner of the Unit 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 at the High Court.

Dated this 23rd day of August — 1978.

a. a. Bacon Fuller

Commons Commissioner.