



COMMONS REGISTRATION ACT 1965

Reference No 21/U/53

In the Matter of The Playing Field,  
Hospital Lane, Blaby Parish, Blaby  
District, Leicestershire

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DECISION

This reference relates to the question of the ownership of land known as The Playing Field (south of and adjoining Hospital Lane) containing about 3.87 acres in Blaby Parish, Blaby District being the land comprised in the Land Section of Register Unit No CL. 6 in the Register of Common Land maintained by the Leicestershire 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 Clerk of Blaby Parish Council said (in effect) that he held the deeds of this land which would prove ownership by the Council, and Mr J M Pearson through his solicitors, said that he believed that owing to some error his property, No 8 Oaks Drive had been included in the Registration. No other person claimed to be the freehold owner of the land in question 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 Leicester on 20 July 1976. At the hearing (1) Blaby Parish Council were represented by Mr Cecil H Ward their clerk (he was being advised by Mr J E Liggins, solicitor of Sprigge Pollard & Co, Solicitors of Leicester), (2) Mr J M Pearson of 8 Oaks Drive was represented by Mr J R Williamson solicitor of Bray & Bray, Solicitors of Leicester, (3) Mr J F Greenlees of 4 Oaks Drive attended in person, and (4) Mr B L Tennant of 6 Oaks Drive also attended in person. Also present was Mrs K Gutteridge, who is a member of Blaby Parish Council.

At the beginning of the hearing, there was some discussion about the below mentioned alleged mistake. Next Mr Ward gave evidence in the course of which he produced a conveyance dated 2 September 1960 by which Mrs D L Godfrey and another as personal representatives of Mr W P Godfrey (he died 1 May 1959) conveyed to Rupert Estates Limited land containing about 9.230 acres together with the farm and outbuildings known as Oak Farm and comprising OS nos 167 part and 171 whole, and a conveyance dated 28 January 1965 by which Rupert Estates Limited by way of gift conveyed to the Parish Council the property "situated in Hospital Lane... an area of 3.9 acres or thereabouts..." and the plan showed the property as "Pt OS 171 3.90 acres or thereabouts".

The alleged mistake was said to be shown by these circumstances. One of the descriptions in the Land Section of this Register Unit is "as marked with a green verge line...on...the register map..."; the area ("the Green Verge Line Area") so marked, in part (less than 1/10th of the whole) comprises six pieces of land ("the Residential Pieces"), being the lands or part of the lands comprised in the following Title Nos registered at HM Land Registry under the Land Registration Acts 1925 and 1936; LT 29375 (part: being part of the road and pathway known as Oaks Drive), LT 44381 (whole: known as No 8 Oaks Drive, owned by Mr Pearson), LT 44050 (whole: No 6 Oaks Drive, owned by Mr Tennant), LT 43251 (whole: No 4 Oaks



Drive owned by Mr Greenlees), LT 43215 (part: ? No 2 Oaks Drive), and LT 43727 (part: in Chester Road). The remaining part ("the Playing Field Piece") of the Green Verge Line Area is grassland now used as a playing field. The Residential Pieces are made up of dwelling houses and their gardens (or parts of them) and of the public road and pathway in front of them or some of them; for this reason (so it was said) the Residential Pieces should not have been registered under the 1965 Act; there must have been a mistake which I should put right if I can.

I was referred to regulation 36 of the Commons Registration (General) Regulations 1966 which provides: "Where any clerical error or omission or error or omission of a like character is discovered in a register and can be corrected without either (a) increasing or diminishing the area of any land registered therein, or (b)...(c)...(d)...(e)..., the registration authority shall make the necessary correction..."

Clearly the alleged mistake if it cannot be remedied, may cause hardship to Mr Pearson, Mr Greenlees and Mr Tennant and also (as Mrs Gutteridge pointed out) to others interested under the Title Nos above set out.

So far as now relevant, there are two classes of mistake: (a) a mistake in substance, and (b) a mistake in description. The distinction between these two classes may be illustrated by the registration now under consideration. In the Land Section the land registered is described by three descriptions: (1) "called The Playing Field", (2) "containing 3.87 acres or thereabouts", and (3) "as marked with a green verge line within the boundary on...the register map". The Entry also contains a reference to application no 18 made by the Clerk of Blaby Parish Council, which may perhaps be an additional description, but as I have no copy of the application I shall disregard it.

As to (a), a mistake in substance:- If all the three above set out descriptions all describe the Residential Pieces and the Playing Field Piece, then clearly the land registered comprises all these Pieces, and regulation 36 cannot be used to exclude the Residential Pieces, because such an exclusion would diminish the area of the "land registered therein". If this be the position, and if (as I understand is the case) no Objection has been made to the registration within the time allowed by the Regulations, then I as a Commons Commissioner have no jurisdiction on this reference or on any other reference to correct the mistake, and on this point I adhere to what I said in my decision dated 16 October 1972 re River Bank, Rope Walk, reference 6/U/22, and dated 9 February 1973, re Three Corner Piece, reference 38/U/35. This will not be the only case in which persons who knew nothing of a registration under the 1965 Act may have suffered hardship by failing to make any objection within the period allowed; this is I think a matter for Parliament.

As to (b), a mistake in description:- Description (3) clearly includes both the Residential Pieces and the Playing Field Piece, but if descriptions (1) and (2) correctly describe the Playing Field Piece and do not correctly describe the Residential Pieces and the Playing Field Piece, then the registration is ambiguous. In such circumstances the registration is not void, but the extent of the land registered therein must be determined having regard to the principles of law associated with the legal maxim: "Falsa demonstratio non nocet"; it is necessary to determine which of the conflicting descriptions is right and which is false. Any such determination is always difficult and must be made on a consideration of such evidence as is in accordance with the said legal principles properly admissible; there is no rule that if one of the descriptions is by reference to a map, it is to be preferred to any other description with which it may be in conflict.



The information put before me at the hearing indicated that descriptions (1) and (2) were applicable only to the Playing Field Piece and could not sensibly be applied to the Residential Pieces and the Playing Field Piece, so I am inclined to the view that the legal maxim above mentioned here applies and description (3) should be rejected, so that in the result the land registered in the Register is the Playing Field Piece only and the area would not within the meaning of regulation 36 be diminished if the green verge line on the Register map were redrawn so as to exclude the Residential Pieces, and thus save an uninformed person the trouble of having to discover for himself the applicability of the maxim.

However under regulation 36, it is for the County Council to take any necessary action. At the hearing I understood that nobody has yet requested the County Council, having regard to the principles of law above referred to, to alter the Register map under regulation 36. I have no jurisdiction to direct them what they should do under the regulation; I can do no more than hope that what I have said above about the different kinds of mistake may be helpful, if any such request is ever made to them.

Further I have in the particular circumstances of this case no need in order to exercise the jurisdiction conferred on me by section 8 of the 1965 Act to determine whether the Residential Pieces are within the land registered, because I have under section 8 of the Act to determine the ownership of land which is not registered under the Land Registration Acts 1925 and 1936 and it is clear that the Residential Pieces are so registered.

As regards the ownership of the Playing Field Piece (being the only part of the land not so registered), Mr Ward said in effect:- The 1965 conveyance described the land given as containing 3.90 acres; and when applying for the registration he deducted .03 of an acre, being a small area of land which was taken to improve the flow line of the brook. The effective donor under the 1965 conveyance was Viscountess Hall. On the Playing Field Piece there is a football pitch which is regularly used by three teams. The Parish Council are in possession under the 1965 conveyance.

On the 1960 and 1965 conveyances and on the oral evidence of Mr Ward, I am satisfied that the Parish Council are the owners of the Playing Field Piece and I shall accordingly direct the Leicestershire County Council as registration authority under section 8(2) of the Act of 1965 to register Blaby Parish Council as the owner of the land comprised in this Register Unit except such part thereof (if any) as is registered at HM Land Registry under the Title Nos above set out. I shall use the words "if any" in my direction, so that it will be effective whether or not the Residential Pieces can properly be regarded as comprised within this Register Unit.

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 4<sup>th</sup> - day of August ————— 1976

A. A. Baden Fuller

Commons Commissioner