



COMMONS REGISTRATION ACT 1965

Reference No.25/D/12

In the Matter of Lord's Waste,Winterton-on-Sea, Norfolk.DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.47 in the Register of Common Land maintained by the Norfolk County Council and is occasioned by Objection No. 8B made by Ocean Estates Ltd and Temple Land and Securities Ltd and noted in the Register on 28th February 1969.

I held a hearing for the purpose of inquiring into the dispute at Norwich on 22nd June 1972. The hearing was attended by Mr. R.C. Killin, solicitor for the Winterton-on-Sea Parish Council, and by Mr. Colin Lamb, counsel for the Objector.

The objection does not relate to the whole of the land comprised in the register unit, but is confined to a rectangular piece on the western side hatched red on Plan II referred to in the objection and a triangular piece at the north-east corner coloured red on that plan. The land hatched red is alleged to be part of the adjoining highway, and the land coloured red is alleged to be owned by Ocean Estates Ltd and leased by them to Temple Land and Securities Ltd. At the outset of the hearing Mr. Lamb informed me that he did not intend to pursue the part of the objection relating to the highway. It therefore only remains to consider the triangular piece of land at the north-east corner.

Mr. Killin argued that the land in question fell within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being manorial waste. If the Objectors are correct in their allegation that Ocean Estates Ltd own the freehold of the triangular piece of land, that land cannot now be manorial waste unless Ocean Estates Ltd is the lord of the manor, as to which there is no evidence. However, it became apparent during the course of the hearing that there is some doubt (and also some local ill-feeling) about the extent of the land belonging to Ocean Estates Ltd. Having regard to the view which I have formed on the wider issue in the case, I have come to the conclusion that I need not pursue the question of ownership, which may fall to be dealt with in other proceedings.

At the beginning of the last century the triangular piece of land was part of a long tract of open uncultivated land lying between the village of Winterton and the sea. It seems highly likely, and for the purpose of these proceedings I shall assume, that it was manorial waste, the soil of which belonged to Edward, Earl Winterton, who was then lord of the manor of Winterton Earls and of Winterton, Mautby, Rogvilles, and Bramptons. I have no evidence as to which of these manors included the land in question, but that does not appear to be material for the present purpose.

In 1805 an Act (45 Geo.III, c.8 (local and personal to be judicially noticed)) was passed for the inclosure and allotment of (inter alia) the



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waste grounds in the parish of Winterton. By the inclosure award dated 7th November 1811 there was allotted to Earl Winterton a tract of the land lying between the village and the sea having an area of 111a. 3r. 1p. and including the triangular piece with which these proceedings are concerned.

Mr. Killin's argument is that the land which was manorial waste at the time of the award did not lose that character on being allotted to Earl Winterton, the lord of the manor, and that this is supported by the fact that the land has at all times within living memory been known as "Lord's Waste".

In order to see whether this argument is well-founded it is necessary to consider the provisions of the Act of 1805. Mr. Killin provided me with a photocopy of what purported to be a print of the Act, but comparison of this with the Act as printed by the King's Printer discloses that, as is so often the case with purported copies of local and personal Acts of that period, it is really a copy of the Bill before the numbers of the sections were inserted. Hence the necessity for the rule that the only printed copies of the Act which are admissible in evidence are those purporting to be printed by the King's or Queen's Printer: see Evidence Act 1845, s.3. I have therefore used a copy of the Act purporting to be printed by the King's Printer.

The Act requires the Commissioners to make allotments of parts of the commonable fen lands, commons, and waste grounds in the parish of Winterton for various purposes and then by section 16 requires them to allot the residue and remainder of such lands among the persons having rights of common or other rights or interests in, over, or upon them. It is thus clear that the Commissioners had to allot in some manner the whole of the manorial waste as it then existed.

Among the specific allotments which the Commissioners were required to make was one under section 15 of a seventeenth part of the commonable fen lands, commons, and waste grounds in the parish of Winterton to the lord or lords of any manor or manors in the parish, and it was provided by that section that such allotment should be a full compensation and recompense for the right of such lord or lords in and to the soil of the commonable fen lands, commons, and waste grounds.

Although, as Penrycuick J. (as he then was) pointed out in Booker v. James (1966), 19 P. & C.R. 525, at p. 529, the effect of each Inclosure Act or award depends upon its own particular terms, generally speaking, as the learned Judge observed at p.528, the scheme of most Inclosure Acts was to allocate commonland in severalty, with the consequence that the land ceased to be common land. This observation is equally applicable, mutatis mutandis, to manorial waste, which was normally dealt with, as in the Act of 1805 now under consideration, in exactly the same way as common land.

It is, therefore, necessary to consider whether the allotment of the manorial waste under the Act of 1805 had the usual effect of causing it to cease to be manorial waste. The meaning of allotting land under an Inclosure Act was stated by A.L. Smith L.J. in Simcoe v. Pethick [1898] 1 Q.B.555, at p.562, and cited with approval in Booker v. James, supra, as follows:-



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"..... what is the meaning of 'allotting' land under the Act as applied  
"to such an allotment as that in question? Does it mean only allotting  
"a right of turbary leaving the soil still in the lord? I do not think  
"so. I think the whole scheme of the Act is to take the soil out of  
"the lord, he being compensated in respect thereof, and to vest it in  
"the churchwardens and overseers in trust for the parish".

On this authority there can be no room for doubt that sixteen-seventeenths of the manorial waste in Winterton ceased in consequence of the award to be manorial waste, and on becoming vested in those to whom it was allotted it was legally indistinguishable from any other freehold land in the parish. Therefore the only question to be considered is whether that result was avoided in the case of the one-seventeenth of the waste which was allotted to the lord of the manor, who had previously been entitled to the soil as one of the incidents attaching to his lordship of the manor.

So far as I am aware, there is no authority on this point, but I have without hesitation come to the conclusion that the process of allotment involved a complete break with the past, and that the right of the lord of the manor in and to the soil of the waste grounds was extinguished and replaced by a new statutory title created by section 15 of the Act and the award.

It is perhaps not surprising in these circumstances that the part of the former waste which was allotted to the lord of the manor came to be popularly known as "Lord's Waste". I find myself unable to attach any legal significance to this nomenclature. The land continued to be waste in the sense of being open and uncultivated. It is hardly to be expected that the generality of the inhabitants of the locality, being unlearned in the law, would appreciate that it had ceased to possess one of the essential attributes of manorial waste, that of being parcel of the manor, that is to say being vested in the lord of the manor in his capacity as such. So far as they were concerned, it was waste land which belonged to the lord of the manor and so appropriately referred to as "Lord's Waste". But that, in my view, does not mean that in law it continued to be manorial waste.

If the view which I have formed of the effect of the Act of 1805 is correct, the subsequent history of the land is irrelevant.

For these reasons I confirm the registration with the following modification:- namely, the exclusion of the land coloured red on Plan II annexed to the objection.

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 3rd day of August 1972.

Chief Commons Commissioner