



In the Matter of Port Meadow,
Oxford, Oxfordshire (No.1).

DECISION

This dispute relates to the registration at Entry No.28 in the Rights section of Register Unit No.CL 1 in the Register of Common Land maintained by the former Oxford County Borough Council and is occasioned by Objection No.5 made by Mr F.J.Cuddiford and noted in the Register on 12th August 1970.

I held a hearing for the purpose of inquiring into the dispute at Oxford on 9th October 1975. The hearing was attended by Mr E.T.Coker, solicitor, on behalf of Mr A.H.Holifield, the applicant for the registration, and by Mr J.Cole, solicitor, on behalf of the Objector.

Mr Holifield lives at 23 Middle Way, Summertown, Oxford. He is the owner of a property at 84 Godstow Road, Wolvercot, consisting of a shop in which he carries on business as a butcher, with a residential flat above, which is let to a tenant. 84 Godstow Road was built about 1936. Before that its site was part of a field which belonged to the late Mr Ernest Alden, who occupied it as part of his farm. Mr Alden was an Oxford butcher, but he lived in a house on his farm.

Mr Holifield has also registered as attached to 84 Godstow Road a right of common of pasture over Wolvercot Common, which is the subject of another dispute (Ref.No.229/D/3). It is agreed that if Mr Holifield is entitled to a right of common over Wolvercot Common he is entitled to the right over Port Meadow which is the subject of this registration. The ground of the Objection is that Mr Holifield is not entitled to a right of common over Wolvercot Common because he is not a resident householder in the parish of Wolvercot.

In support of Mr Holifield's case Mr Coker relied on printed copies of the following documents:-

1. Report dated 1st November 1822 by George Parsons Hester to the Committee appointed by the Common Council and by the body of the Freemen of the City of Oxford, for considering the propriety of stinting the Common in, and otherwise improving Port Meadow.
2. Judgment of Revising Barristers. Undated but after 1840 since there is a reference to the 1841 Law Journal.
3. Opinion of Sir John Campbell, Attorney General, dated 15th February 1836.
4. Case for the Opinion of Sir Frederick Pollock.



6. Acts of City Council, &c. from 16th June 1859 to 15th December 1862, relative to Port Meadow.

7. Case for the Opinion of Counsel undated, but after 15th December 1862.

Mr Hester stated that he had examined the books called the Vellum Books, which contained copies of the charters and other early records of the City, and the Common Council Books, commencing in 1527 and ending 1788, and had extracted everything relating to Port Meadow. For the purposes of this case it is only necessary to consider such of this material as relates to Wolvercote, most of it not being relevant as relating to the rights of the Freemen vis-à-vis the Corporation after the passing of the Municipal Corporations Act 1835.

To my mind, the value of Mr Hester's report lies in the citation of records, and I do not attach any importance to such expressions as "the rights of occupiers of land adjoining the meadow" (p.1), "the Proprietors of land in Wolvercote" (p.5) and "the Proprietors of Wolvercote" (p.6) in sentences which appear to originate from Mr Hester and not directly from the records which he had examined.

Mr Hester stated (p.6) that the former proprietors of Wolvercote were the Abbess and Convent of Godstow, who paid to the City Council a yearly rent of 6s. for the advantage gained by the intercommonage between Wolvercote Common and Port Meadow. Wolvercote passed to the Crown on the dissolution of the Convent, and, according to Mr Hester (p.7), the particulars of the estates dated 1541 in the Augmentation Office were very fully set out, but in only one of them was a right of common mentioned and that was a leasehold.

According to Mr Hester (p.6), the manors of Wolvercote and Godstow were granted on the dissolution of the monasteries to Dr Owen, the King's Physician. This passage in Mr Hester's report makes one way of accepting implicitly his account of any document which he did not quote verbatim, for it appears from W.H. Turner, Selections from the Records of the City of Oxford (1880), p.163 that the grant to Dr Owen comprised the manors of Wolvercote and Walton, the only mention of Godstow being that those manors had formerly belonged to the Abbey.

On 26th September 1553 evidence was taken by Commission in a suit in Chancery (Owen v. The Commonalty of Oxford) in which, according to Mr Hester (pp.6-7), three witnesses stated that a yearly sum of 6s paid to the City Council was paid by "the Wolvercote tenants" for their common in Port Meadow. Further light is shed on this by the abstract of the depositions of the witnesses printed in Appendix E. to Wood's City of Oxford (Oxford Historical Society), i.614-5. The point in issue was whether the Mayor and Burgesses of Oxford had a right to enclose a pasture called Cripsey or whether it was subject to rights of common as part of Port Meadow. The evidence material to the present case was as follows:-

1. Richard Valyns stated that the "inhabitants" of Wolvercote, Godstow, Binsey, and Midley had had common of pasture for their cattle in Cripsey during the whole of his life-time (he was 64) and that it was open and common as Port Meadow was. He also said that the "townships" of



Wolvercote, Godstow, Binsey, and Midley had always had common of pasture in Port Meadow.

2. Robert Marten stated that Cripsey had been enclosed about 18 years previously by the Mayor and Burgesses without the assent of the lords of the townships of Wolvercote, Binsey, etc. and that the Abbess of Godstow and the "tenants" of Wolvercote had denied their right to do so.
3. Robert Henes stated that the "inhabitants" of Wolvercote and others that had common there had complained about the enclosure of Cripsey.

The Chancery suit was compromised by a deed dated 26th September 1562, by which, according to Mr Hester (p.7), "rights were confirmed to the Owners of Wolvercott, whose existence before were (sic) very doubtful".

On p.4 of his report Mr Hester mentioned that Port Meadow was mown in the Civil War, by an order of the Common Council, for the use of the King, there being orders to this effect in 1643 and two following years, but he gave no details of the transaction. However, the agreement for this mowing was printed in Vaughan Thomas, Account of the Nigh-March of King Charles the First from Oxford (1850), Appendix, pp.28-29. This document commences with the following recital:-

"Whereas a common meadow or common grownd called Portmeade and Woolvercott
"common lyeing neare Woolvercott in the Countie of Oxon is now and for
"many years now past hath beene used for a common pasture for the Citizens
"and Freemen of the Cittie of Oxon and the Tenants of Woolvercott in the
"said Countie".

The agreement was signed by the King, the Mayor and Bailiffs of Oxford, and 54 "Tenants and Commoners".

The next document cited by Mr Hester was a petition from the City to the House of Commons dated 6th April 1649, in which it is stated that the petitioners owned Port Meadow and "the village of Wolvercott" only common of pasture therein by reason of vicinage, and that their desire to enclose it had been hindered by "the inhabitants of Wolvercott".

Mr Hester said in his report (p.8):- "I consider the Council Books to be "the most important of the Documents I have examined", but he did not give quotations from any entries in those books relating to Wolvercot. He merely stated that there were "continual entries" expressing the wish of the Council to make an agreement with "the Proprietors of land in Wolvercott for surrendering their rights and taking a compensation in land for them". However, Mr Hester's brief summary can be supplemented from the volumes of Oxford Council Acts, published by the Oxford Historical Society. The entries to which Mr Hester referred are as follows:-



1. 21st August 1595. Agreed to "talke with Mr Owen of Godstowe to understand what porcion of Portmeadow he would be content to take for him and his tenants of Wolvercot in severaltie if the citie shall yeld unto a particion between them and Mr Owen".
2. 26th August 1614. Members of the Council appointed to confer with Mr George Owen of Godstow about his demands for the division of Port Meadow and how he can discharge the "inhabitants" of Binsey and Wolvercot from their claim of common there.
3. 7th September 1630. The Mayor and others are to discuss with Sir John Walter and the "freeholders and tenants" of Wolvercot the division of Port Meadow and find out from them how much of the meadow they would accept in lieu of their common.
4. 25th March 1645. Mr David Walter, lord of the manor of Wolvercot, being desirous to effect a division of Portmeadow with the City, certain were appointed to meet him.
5. 13th June 1651. The Mayor and others were requested to treat with Mr David Walter and the "freeholders" of Wolvercot concerning the division of Port Meadow so that the Oxford citizens may know and enjoy their right of common and the "Lord and freeholders" of Wolvercot may know theirs.

In their judgment the Revising Barristers tantalizingly state (p.15) that a deed had been drawn up between the Corporation and the "inhabitants" of Wolvercote, but they also state (p.16) that they had not seen it. Subsequently they refer to it (p.17) as the "transaction" with the "inhabitants" of Wolvercot. There is no other reference to this document.

I find nothing material to this case in the documents numbered 3 to 6 in the foregoing list.

The Case for the Opinion of Counsel (No.7) refers (p.31) to the rights of the "commoners and inhabitants of Wolvercot and Binsey", and it is stated (p.32) that a Mr Williams of Wolvercot, let "commons attached to his farm". It appears from Mr Hester's report (p.7) that Mr Williams was a leaseholder.

Mr Cole relied upon an entry in the minutes of a meeting of the Wolvercot Commoners Committee held on 19th November 1951. This states that a Mr Waine asked if he could be informed of the true definition of a commoner, to which the Chairman replied that it was then considered that every householder in the parish was termed a commoner. This entry is written on a piece of paper pasted over some other writing, which it obliterates. There appears to be no reason to doubt that this was done before the minutes were signed, and I shall accept it as a genuine expression of the revised view of the Chairman.

Mr Cole argued that Mr Hester's report was self-contradictory and that I ought therefore to ignore it. The minute of 19th November 1951 would then be



the only evidence before me, and on that I ought to hold, so Mr Cole argued, that Mr Holifield was not entitled to a right of common because he was not a householder in the parish of Wolvercot.

I do not consider that it would be right to sweep aside Mr Hester's report in this summary manner. It is necessary to look at it more critically than that. I agree with Mr Cole to the extent that in so far as Mr Hester expressed self-contradictory views those views afford me no assistance. However, as I have already stated, the value of Mr Hester's report lies in his citation of records and not in his expression of his own views. It is true that the records cited by Mr Hester are to some extent in conflict, but they are not conflicting statements by one person and so self-destructive. The evidence before me consists of each of the documents cited by Mr Hester, the later documents put in with Mr Hester's report, and the minute of 19th November 1951. My task is to evaluate this evidence and to decide in the light of it whether it is necessary to be resident in Wolvercot in order to be entitled to a right of common on Wolvercot Common and so to a right of common pur cause de vicinage on Port Meadow.

The persons entitled to rights of common are described in some documents as "inhabitants", and in others as "tenants", "freeholders", and "householders".

It does not seem to me that any assistance can be derived from considering which of the several expressions is used the most frequently. "Inhabitants" and "householders" I take to be synonymous. "Tenants" and "freeholders" could also be synonymous, for the words are used in a manorial context, and it was possible in law for there to be freehold tenants of a manor. If "tenants" also included copyholders, that meaning of the word is not now relevant, since all copyholds have long been enfranchised. The question in issue therefore resolves itself into a consideration of whether Mr Holifield is entitled to a right of common as a freeholder or disentitled because he is not an inhabitant.

In my view there is an insuperable legal difficulty in the way of holding that anyone living in Wolvercot is entitled to a right of common merely because he lives there. It was held in Gateward's Case (1607), 6 Co.Rep.59 that the inhabitants of a place, who are not a corporation, cannot prescribe for any right of common as having been enjoyed from time immemorial by them as inhabitants of that place, that kind of common being unknown to the law. It thus appears that the inhabitants of Wolvercot who enjoyed rights of common must have done so as tenants of the manor, either copyhold or freehold, and not as mere inhabitants. It may well have been that when the expression "inhabitants" was used all the tenants of the manor were in fact resident within the manor of Wolvercot, but their rights of common depended on their tenure and not upon their residence. The rights of common were attached to the land and not to the persons.

Mr Cole admitted that if Mr Holifield were a resident householder in Wolvercot he would be entitled to the right of common which he claims. In my view Mr Holifield is entitled to that right as a freeholder, and he has not lost his right by not being resident in Wolvercot.



At the end of his case Mr Cole made the alternative submission that any rights of common which Mr Alden may have had were abandoned when he sold his farm as a building estate. Although this ground was not stated in the Objection, I allowed Mr Cole to put it forward under regulation 26 of the Commons Commissioners Regulations 1971.

There is no reference to any right of common in the conveyance of 84 Godstow Road to Mr Holifield in 1965, and I am prepared to assume in the Objector's favour that there was none in the conveyance by Mr Alden to Mr Holifield's predecessor in title. I also assume, however, in the absence of evidence to the contrary, that the conveyance by Mr Alden did not contain any expression of an intention that the general words to be implied in the conveyance by virtue of section 62(1) ^{of the Law of Property Act 1925} should not be so implied. Therefore, any right of common appertaining to the land would pass with it. It appears from the conveyance to Mr Holifield that the farm was divided into plots by a Mr P.J.K.Frewin. In the absence of any express agreement to the contrary, as Mr Frewin sold off each of the plots any right of common of pasture appurtenant to the farm would be severed and, in the absence of any special circumstances, the right would be apportioned rateably between the plot sold and the land for the time being retained by Mr Frewin, see *White v. Taylor* (No.2), [1969] 1 Ch.160, at p.189, and the cases there cited, which go back to the sixteenth century.

Mr Cole adduced no evidence as to the circumstances in which Mr Alden disposed of his farm. There is, therefore, nothing to justify a finding that either Mr Alden or his purchaser, who may have been Mr Frewin or some intermediate purchaser, abandoned any of the rights appertaining to the farm and so prevented their subsequent devolution to the subsequent purchasers of the plots by the operation of section 62 of the Act of 1925.

For these reasons I confirm the registration.

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

12th

day of

January

1976

Chief Commons Commissioner