



COMMONS REGISTRATION ACT 1965

Reference No. 29/D/4

In the Matter of The Old Ford,
Holcombe, Newington, Oxfordshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No. C.L.75 in the Register of Common Land maintained by the Oxfordshire County Council and is occasioned by Objection No.8 made by Mr. Ernest William Mabe Tuckwell and noted in the Register on 22nd May 1969.

I held a hearing for the purpose of inquiring into the dispute at Oxford on 5th and 6th June 1972. The hearing was attended by Mr. Farrow, Counsel for Sir John Rothenstein, the applicant for the Registration, and by Mr. Micklem, Counsel for Mr. Tuckwell.

In opening his case, Mr. Farrow said that the basis of the application was 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 of the manor of Holcombe. Some evidence was adduced which indicated that the land might well have been manorial waste until comparatively recently. It is, however, unnecessary for me to come to any conclusion on this matter, for I am satisfied that even if the land was manorial waste at some time, the evidence adduced on behalf of Mr. Tuckwell conclusively proved that it has not been manorial waste for over half a century.

Mr. Tuckwell's evidence consisted of three conveyances. By the first, dated 25th September 1911, Roger Fletcher Earle Lowndes-Stone-Norton and others conveyed to George Simmins the manor of Holcombe and certain land, including Holcombe Hill Farm, which included the land in question. By the second conveyance, dated 16th December 1911, George Simmins conveyed Holcombe Hill Farm, including the land in question, to Samuel Arthur Morley. By the third conveyance, dated 22nd January 1917, Mr. Morley conveyed Holcombe Hill Farm to Mr. Tuckwell.

Upon being apprised of these conveyances Mr. Farrow very properly conceded that the severance of the land in question from the lordship of the manor effected by the conveyance of 16th December 1911 deprived the land of any status it may have had as manorial waste, for, in addition to the physical characteristics of manorial waste enumerated by Watson B. in Att.-Gen. v. Hamner (1858), 27 L.J.Ch.837, it must also be parcel of a manor.

For these reasons I refuse to confirm the registration.

Mr. Micklem asked that Sir John Rothenstein should be ordered to pay Mr. Tuckwell's costs, since the conveyance of 16th December 1911 (but not that of 25th September 1911) had been produced to Sir John's solicitors before the hearing. While I am satisfied that in making the registration Sir John was acting in what he believed to be the interests of the public, or at least that portion of the public living in the neighbourhood, and not in furtherance of any private interest, I must take into account that the costs of the hearing could have been saved if the implication of the



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conveyance on 16th December 1911 of the alleged manorial waste without the lordship of the manor had been realized when it was produced for inspection. It is true that this is a somewhat recondite branch of the law, but even so it would not be fair for Mr. Tuckwell to have to bear all his costs incurred after the production of the conveyance. On the other hand, if both the 1911 conveyances had been produced to Sir John's solicitors, it would have become more immediately apparent what the true position was. I think that justice will be served by ordering Sir John to pay half Mr. Tuckwell's costs incurred after the production of the conveyance of 16th December 1911 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 14th day of July 1972

Chief Commons Commissioner