



COMMONS REGISTRATION ACT 1965

Reference No.34/D/29

In the Matter of Chippenhall Green
or Mill Green, Fressingfield,
East Suffolk (No.4).

DECISION

This dispute relates to the registration at Entry No.3 in the Rights Section of Register Unit No.C.L.29 in the Register of Common Land maintained by the East Suffolk County Council and is occasioned by Objection No.104 made by Messrs. Goram & Webster and noted in the Register on 30th September 1970.

All the persons entitled to be heard at the hearing of this dispute have agreed upon the terms of the decision to be given by me and have sent to the Clerk of the Commons Commissioners particulars of such terms signed by or on behalf of all such persons.

I am satisfied that there is no person who, if a hearing were held, would be entitled to be heard upon giving his name and address to me and satisfying me that he had succeeded to the interest, or part of the interest of any other person.

The particulars of the agreed terms were not produced until the hearing of the dispute, at which the Executors of George Thomas Hurren, deceased, who applied for the registration, were represented by their solicitor, Mr. M.G. Oglesby, and the Objectors were represented by their solicitor, Mr. G. Smith.

The land originally comprised in the Register Unit consists of six pieces of land with separate Ordnance Survey numbers, having a total area of 41.730 acres, in the centre of which there is a windmill. The application for the registration in the Land section of the Register Unit was made by the Fressingfield Parish Council on 21st September 1967. The application for the registration in the Rights section of the Register Unit was made by the Executors on 15th February 1968. The Objection was made on 30th September 1970.

On 14th October 1970 Mr. Smith's firm wrote to the Clerk of the County Council stating that when the Objection was lodged they had not had an opportunity of seeing their clients' title-deeds to ascertain the exact extent of their ownership and had therefore objected to the registration as a whole. Having seen the deeds, they requested that the Objection should be amended so as only to relate to the property shown on an accompanying plan. I have not seen a copy of this plan, but Mr. Smith informed me that it indicated the windmill and a small area of land round it, which has been excluded from the Land section of the Register Unit in pursuance of a consent dated 9th May 1973. By 14th October 1970 it was too late to amend the Objection and the County Council therefore took no action on the letter.

There the matter seems to have rested until 15th February 1973, when



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the Clerk of the Parish Council wrote to Mr. Smith's firm informing them that Ordnance No.90 had been registered in error and that the Council was prepared to withdraw the application in so far only as it related to Ordnance No.90. Ordnance No.90 comprises the windmill and its immediate curtilage, but not the whole of the land shown on the plan referred to in the letter of 14th October 1970.

So far as the Executors were concerned, all that they knew at this stage was that there was a note in the Land section of the Register Unit that the Objectors had objected to the whole of the registration, which Objection operated by virtue of section 5(7) of the Commons Registration Act 1965 as an Objection to the whole of the registration in the Rights section for which the Executors had applied. The Executors did not know and had no means of knowing that the Objectors did not wish to pursue their Objection in respect of any of the land in the Register Unit other than the very small area shown on the plan which had been sent to the Clerk of the County Council on 14th October 1970.

On 16th March 1973 the Clerk of the Commons Commissioners sent to each of the parties a notice that the matter had been set down in the list for hearing by me on 3rd May. On 20th March Mr. Smith's firm wrote to the Executors asking whether they were prepared to withdraw their application in respect of the Objectors' property. This letter was referred by the Executors to Mr. Oglesby's firm, who on 29th March wrote to Mr. Smith's firm asking to be put in the picture. On 30th March Mr. Smith's firm informed Mr. Oglesby's firm that their clients had lodged an Objection to the registration as a common in so far only as it related to the land which they owned and they enclosed a copy of the plan showing their clients' land edged in red as on the plan of 14th October 1970.

This, of course, was not correct. The Objection related to the whole of the land in the Register Unit, since the letter of 14th October 1970 had been ineffectual to amend the Objection. On 9th April 1973 Mr. Oglesby's firm wrote to the Clerk of the Commons Commissioners stating that the Executors did not claim any rights over the land edged red on the plan and so would not be attending the hearing. On 12th April the Clerk of the Commons Commissioners, who had received from the County Council, as registration authority, a copy of the Land section of the Register Unit with a note of the Objection which related to the whole and no copy of the letter of 14th October 1970 which ineffectually purported to amend the Objection, wrote to Mr. Oglesby's firm pointing out that the registration as common land was objected to in its entirety and that that Objection constituted an automatic Objection to the rights claimed by the Executors, adding that if the Objection were upheld the Executors' rights would be lost.

On 13th April Mr. Oglesby's firm sent a copy of the Clerk's letter of 12th April to Mr. Smith's firm, who replied on 16th April that the original Objection had been amended after a few days. On 18th April Mr. Smith's firm again wrote to Mr. Oglesby's firm enclosing a form of consent for the confirmation of the Executors' rights on the basis that the Objectors' land would be withdrawn from the Land section of the Register Unit. It is not surprising that on 25th April Mr. Oglesby's firm replied that, in view of



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the confusion which appeared to have arisen they preferred to attend the hearing.

On 17th April the Clerk to the Commons Commissioners wrote to Mr. Smith's firm explaining the procedure for dealing with all the disputes by consent. On 26th April Mr. Smith's firm wrote to Mr. Oglesby's firm explaining that they would be producing to me a consent asking me to refuse to confirm the land registration in so far as it related to the Executors' land and that then the rights registration could be confirmed in respect of the reduced Register Unit. On 27th April Mr. Oglesby's firm replied that they felt that they must attend the hearing in order to ensure that their clients' rights would be fully protected.

At the hearing Mr. Smith was not able to produce the consent in respect of the land registration because he was still awaiting its return with the signature of the Clerk of the Parish Council. I received this consent on 11th May and have given a decision in accordance with it. Mr. Smith also handed to me a document which he stated was a consent in respect of the rights registration. When I came to draft my decision I found that this document did not comply with regulation 31 of the Commons Commissioners Regulations 1971 because it was not signed on behalf of Mr. Smith's clients. This omission has subsequently been made good.

In these circumstances Mr. Oglesby applied for costs against the Objectors. Mr. Smith resisted this application on the grounds that the difficulties had arisen because the Parish Council mistakenly included the Objectors' land in their application for registration and that the County Council ought to have written to the Executors to inform them of the letter of 14th October 1970.

Clearly there has been considerable genuine misunderstanding in this case. I cannot, however, accede to the suggestion that the County Council was at fault in not sending to the Executors a copy of the letter of 14th October 1970. It was then too late to amend the Objection and if the Objectors did not wish to pursue it in its entirety it was for them to inform the Executors. Mr. Smith agreed that Mr. Oglesby's firm did not become fully aware of the position until April 1973.

It is hardly surprising that in view of the confusion which had arisen Mr. Oglesby's firm decided to attend the hearing in order to ensure that the Executors' rights were fully protected. However, while this was common prudence, I do not consider that there are any grounds upon which the Executors, who by that time knew that they had nothing to fear from the Objectors, could properly look to the Objectors for the payment of their costs. I therefore make no order as to costs in this matter.

I am willing to give a decision in accordance with the proposed terms and I accordingly confirm the registration.

Dated this 10th day of September 1973


Chief Commons Commissioner