



COMMONS REGISTRATION ACT 1965

Reference No. 234/U/105

In the Matter of Lower Hightown Green,
Rattlesden, Suffolk

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 84 in the Register of Common Land maintained by the former West Suffolk 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 Mr David G Lee and Mr George P Lee claimed to be the freehold owners of the land in question ("the Unit Land") and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the Unit Land at Bury St Edmunds on 8 November 1979.

At the hearing, Mr M P M Prentice, Solicitor, appeared on behalf of the claimants, and Mr David G Lee gave evidence. The Unit land is a strip of grassland adjoining on the east farmland purchased by the claimants jointly in 1969, and on the west the roadway. It is separated from the farmland by a ditch and fence, which however still permit of easy access. The claimants have maintained a fence at the roadside and kept the land tidy and have from time to time parked machines on the land: no objection has been made by anyone. The machines can get on to the Unit land from the road or the claimants' land.

The conveyance to the claimants was not produced, (though I have since been sent a copy), and it was accepted that the Unit land was not specifically included in the parcels conveyed. Mr Prentice referred to the presumption that the owner of land adjoining a highway owns the soil of the highway up to the centre of the highway, but I do not think this helps since the Unit land does not form part of the highway. He also relied on the acts of the claimants as establishing a possessory title: but in my opinion the acts of user are not of such a nature as to amount to dispossession of an owner, nor indeed have they been exercised for the requisite period of twelve years. Mr Prentice's other submission was that the Conveyance impliedly included the Unit land. Where a strip of waste land intervenes between a highway and adjoining property, there is a presumption that the waste land belongs to the owner of that property and passes under a conveyance of it. (See Halsbury's Laws of England 3rd Ed. Vol. 19 P.67). This presumption is, in my view, applicable on the facts of this case and I am satisfied that the claimants are the owners of the Unit land. I shall accordingly direct the Suffolk County Council, as registration authority, to register them as owners under Section 8(2) of the Act of 1965.

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 8 January 1980

L. J. Morris Smith