



In the Matter of the land to the West of the
A134 Road adjoining Allotment Gardens,
Long Melford, Suffolk

DECISION

This reference relates to the question of the ownership of land to the West of the A134 Road adjoining Allotment Gardens, Long Melford, being the part of the land comprised in the Land Section of Register Unit No. CL.104 in the Register of Common Land maintained by the 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 Sir Richard Hyde Parker and the Administrators of the late C D B Starkie Bence each claimed to be the freehold owner of the land in question 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 land at Ipswich on 19 February 1985 in accordance with a judgment of Mr Justice Walton made on 15 July 1983. At the hearing Sir Richard Hyde Parker was represented by Mr P N Petchey, of counsel, and Miss A M Ross, the surviving Administratrix of the late Mr Starkie Bence, by Mr J Warren, Solicitor.

The land the subject of the reference is a long narrow strip on the West side of the part of the Bury St Edmunds-Sudbury Road (A134) known as High Street, Long Melford. On its Eastern side it is open to the road and on its Western side it is bounded by a hedge. Beyond the hedge is land used as allotments.

An inspection of the locus in quo showed that it might well have been regarded as part of the highway and so outwith the definition of "Common Land" in Section 22(1) of the Act of 1965. However, the registration as common land, having been undisputed, has become final and is therefore by virtue of Section 10 of the Act conclusive evidence of the matters registered, as at the date of registration, and there was no suggestion that there has been any material change since the date of registration. Since there is no entry in the Rights Section of the Register Unit, the land can only fall within the definition of "Common Land" in S.22 (1) (b) as waste land of a manor not subject to rights of Common.

Miss Ross's claim to the ownership of the land is based upon a vesting deed made 5 February 1929 between (1) Edward Starkie Bence and Edmond Starkie Ross (2) E S Bence. The parcels of this deed include three manors or lordships or reputed manors or lordships and lands and hereditaments in the parish of Long Melford which are more particularly described in the Second Part of the Second Schedule and are delineated and coloured green on the plan thereto annexed.



-2-

The relevant entry in the Schedule, under the heading "Cottages and Gardens", is OS No. 419 with an area of 3a.3r.29p., described as "allotments". The plan annexed to the deed is based on an Ordnance Survey Map and shows coloured green not only OS No. 419, but also the land the subject of the reference.

In my view, upon a proper construction of the deed the plan was intended to do no more than indicate the position of the land described in the Second Part of the Second Schedule and in so far as it relates to land not so described it is of no effect. I was shown several editions of the Ordnance Survey map, and on all of them the eastern boundary of OS No. 419 is shown as a solid black line, indicating a fence or a hedge, with the land in question to the east of OS No. 419. I have therefore come to the conclusion that this land is not included in the Second Part of the Second Schedule to the 1929 deed. Furthermore, there was no evidence that the land was waste land of any of the three manors included in the parcels of that deed.

This, however, is not conclusive evidence that the land in question is not in the ownership of Miss Ross. As already stated, the registration of the land as common land is conclusive evidence that it is waste land of a manor, albeit on the evidence so far referred to an unidentified manor. It is, therefore, necessary to have in mind that there is a presumption as between the lord of that so far unidentified manor and Miss Ross as the owner of the adjoining close that a strip of waste land adjoining a highway and half the soil of the roadway belongs to Miss Ross: see 21 Halsbury's Laws of England (4th Edn), paragraph 97 and the cases there cited. Of the authorities, it is sufficient to cite Quain J. in Gery v. Redman (1875), 1Q.B.D 161, at p.172, where he said: "Prima facie open pieces of land by the sides of a highway belong to the owner of the adjoining land". But this is not an irrebuttable presumption. It can be rebutted by proving an act of ownership by the lord of the manor (see per Littledale J. in Doe d. Pring v. Pearsey (1827), 7B & C 304, at p.308), so it is necessary to go on to consider the evidence regarding the manor of which the strip is waste land.

In order to prove that the strip is waste land of the manor of Long Melford, Mr Petchey adduced several ancient maps of the manor of Long Melford, the earliest of them being dated 1580. After inspecting these maps, I have come to the conclusion that they do not show more than that the road which is now the A134 was the western boundary of the manor and do not throw any clear light on the exact line of the boundary. There is, however, among the estate muniments a more modern map which deals specifically with this point. The base used for this map is the Ordnance Survey Map published in 1885, so presumably the map was prepared before the next edition of the Ordnance Survey appeared in 1904. Unfortunately, the section of the map including the land the subject of the reference is missing.



-3-

but on an adjoining sheet showing the section of the road to the north the land on either side of the road is coloured yellow and on it in red is written "Skirting of turnpike road on either side belongs to Melford Hall Estate".

At first sight, the wording on the estate map is very cogent. It is, however, not a statement of fact, but a statement of the opinion of the maker of the map on a matter of law, and I cannot regard it as adding to the facts upon which I have to form my own view of the legal position.

Giving my best attention to all the facts adduced on both sides, I have come to the conclusion that there is no or not sufficient evidence to rebut the presumption that the strip of land between the roadway and OS No. 419 belongs to the owner of OS No. 419.

I am accordingly satisfied that Miss Ross is the owner of the land, and I shall accordingly direct the Suffolk County Council, as the Registration Authority, to register her as the owner of the land 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 to state a case for the decision of the High Court.

Dated this

27th

day of February 1985

Commons Commissioner