



COMMONS REGISTRATION ACT 1965

Reference Nos: 236/D/328
236/D/329
236/D/330

In the Matter of Shalford Common
(part), Shalford, Guildford District,
Surrey

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 and 2 in the Right Section and at No. 1 in the Ownership Section of Register Unit No. CL 237 in the Register of Common Land maintained by the Surrey County Council and are occasioned by Objection No. 168 made by the said Council and noted in the Register on 1 September 1970 and by Objection No. 491 made by Guildford Rural District Council and noted in the Register on 15 February 1971.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 23 November 1979. At the hearing (1) Mrs P J Carr of Clifford House, Shalford, as successor of Sir Maurice Henry Parsons on whose application the registration at Right Section Entry No. 1 was made, was represented by her husband Mr John Carr; (2) Surrey County Council were represented by Mr B P Cotter, a principal solicitor with the Council; (3) Guildford Borough Council as successors of Guildford Rural District Council, who in addition to making Objection No. 491 were the applicants for the Land Section registration, were represented by Mr A H Pearson, assistant solicitor with the Council; and (4) Shalford Parish Council were represented by Mr D Gould their clerk.

The land ("the Unit Land") in this Register Unit is an irregularly shaped piece of land to the south of the Village being a little less than $\frac{1}{2}$ a mile long from north to south and about 500 yards wide from west to east. Another piece of ~~land~~ (Register Unit No. CL 252) also part of Shalford Common is east of and adjoins the Unit Land, the dividing boundary being the road known as (? leading to) Chislehurst Lane.

The registration at Right Section Entry No. 1 is of a right attached to Clifford House to graze 2 animals. The registration at Rights Section Entry No. 2 was made on the application of Mr Felix Donovan Fenston of rights attached to "The Title of the Lord of the Manor of Braboeuf and owner of St Catherine's Hill, Guildford" of "pasture for 180 cattle or horses and 500 sheep, pannage for 500 pigs, and of piscary estovers and turbary". The grounds of Objection No. 168 are: "That the land was not common land at the date of registration"; to the Objection are attached two plans showing verges of the main (A 201) and other roads which cross the Unit Land. The grounds of Objection No. 491 are: "That the person named as owner was, at the date of his registration as such, not the owner of the land"; the said person is Mr Fenston, who is in the Ownership Section register as owner of all the Unit Land.



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Mr Cotter said that the intention of Objection No. 168 was to object to the intrusion of highway land. After some discussion in the course of which a plan ("the Agreed Plan") showing coloured pink so much of the Unit Land as is or maybe highway was signed by Mr Cotter, Mr Pearson and Mr Gould, and it was agreed between them that the land so coloured should be removed from the Register to the extent that it now has a metalled surface suitable either for motor vehicles or for pedestrians.

In the absence of any objection by Mr Carr or Guildford Borough Council or any other person claiming under the persons who applied for the Rights Section registrations, I consider I should act on this agreement. Because the Rights Section Entry are only in question by reason of Objection No. 169, and but for it, they would have become final under section 7 of the 1965 Act, I consider I ought without requiring any evidence to treat them as properly made. Accordingly nobody at the hearing contending otherwise, I confirm the registration at Entry No. 1 in the Land Section ~~by~~ the modification that there be removed from the Register the land coloured pink on the said Agreed Plan to the extent that it now has a metalled surface suitable either for motor vehicles or for pedestrians, and I confirm the registrations at Entry Nos. 1 and 2 of the Rights Section without any modification save such as is necessarily consequential on the removal of the said land.

As to the Ownership Section registration, Mr Pearson who has been employed by the Council for the last 6 years, in the course of his evidence produced a copy of a conveyance dated 24 September 1979 (the original is with HM Land Registry) by which Mr S Morris as executor of Mr F D Fenston (he died 13 September 1970) conveyed to Guildford Borough Council first the Manor of Braboeuf or Braybiefie including the ruins of St Catherine's Church and the land which surrounds them, Secondly all Mr Fenston's commonable and other rights and Fourthly all his estate and interest in the land coloured green on the plan annexed 554/1/3 "Being the commons and/or wastelands known as part as Saint Catherine's Hill, Peasmarsh, Tilthams Green, Trunley Heath, Gosden Common and part of Shalford Common (all of which are parcel of the said Manor and are included in this conveyance as such) and ...". Mr Pearson said (in effect):- Before the conveyance was made, on behalf of his Council an investigation was made of documents in the Museum showing the extent of the Manor and also consideration was given to some very old perambulations which Mr Fenston's Executor was able to produce, and it was concluded that title was shown to all the land comprised in the 1979 conveyance particularly to the part of the Unit Land to the west of the line ("the Dividing Line") hereinafter defined, but no title was shown to the rest of the Unit Land or to any of the said CL 252 land.

On this evidence I conclude that the Borough Council as successors of Mr Fenston are entitled to the benefit of the Rights Section and Ownership Section registrations made by him, so there is no reason why ~~he~~ should not act on the result ~~of the title investigation~~ of the title investigation made by the Council without myself considering what they did. Accordingly I confirm the Ownership Section registration with the modification that for column four there be substituted such words (to be selected by Surrey County Council as registration authority) as will define by reference to such ~~map~~ ^{map} as they may choose to make, land to which this



Entry No. relates as being that to the west of a straight line (the above mentioned Dividing Line) from (on the north) the south end of the brick wall which forms the east side of Dagley Lane Bridge to (on the south) the north-west corner of the curtilage of No. 2 Rose Cottages.

Since the hearing I have received a letter dated 17 December 1979 from Shalford Parish Council in which it is said that negotiations have been current for some years on the provision of exchanged land for common taken for some smallish road improvements, and that these negotiations have not yet been finalised pending: (a) identification of suitable substitute land (now done and agreed) and (b) the necessary administrative arrangements following the Guildford Borough Council's recent completion of the purchase of the late Felix Fenston's interest in the land for which exchange was called for. The letter concludes with a request that my ruling be expressed as being without prejudice to any arrangements already in hand for providing exchange land for highway improvements already made.

I ~~do not~~ ^{need not} ~~think~~ ^{I think} qualify my decision ⁱⁿ the way suggested because in my view nothing in this decision can prevent full effect being given to the said arrangements in accordance with the provisions of section 13 of the 1965 Act and regulations 27 and 28 of the Commons Registration (General) Regulation 1966 as amended; it seems to me that this section and these regulations will be applicable to the circumstances envisaged in the said letter.

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 1st day of April 1980

a. a. Baden Fuller

Commons Commissioner