



In the Matter of pieces of land on both sides of roadway running past Church and Rectory leading to Manor House, Barcheston, Warwickshire

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### DECISION

This reference relates to the question of the ownership of pieces of land on both sides of the roadway running past the Church and Rectory leading to the Manor House, Barcheston, being the land comprised in the Land Section of Register Unit No. VG 96 in the Register of Town or Village Greens maintained by the Warwickshire 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 R W More claimed to be the freehold owner of the part 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 Stratford-on-Avon on 3 February 1982.

At the hearing Mr More appeared in person. Mr More is the owner of the former rectory at Barcheston, which was conveyed to him by a Conveyance made 22 November 1952 between (1) Joseph Norman Wickes (2) Richard Westray More. There is no plan on this conveyance, but reference is made in it to the plan on a conveyance made 5 May 1947 between (1) Rev. William Edward Felix Walters (2) The Governors of the Bounty of Queen Anne (3) J N Wickes. The property shown on that plan is bounded on the east and south by parts of the land the subject of the reference. Further to the east and the south is the carriageway of a public highway.

Mr More based his claim to a part of the land on the presumption that the owner of land adjoining a highway is the owner of the soil as far as the centre of the highway. For that presumption to apply in this case it would be necessary for the land lying between Mr More's property and the carriageway to be part of the highway. There is, of course, a presumption that a highway extends to the hedges or fences on either side, and it is not unknown for highways to have quite wide verges. On the other hand, this presumption is rebuttable.

The land which Mr More claims having been registered as a town or village green and that registration having become final, the registration is by virtue of Section 10 of the Act of 1965 conclusive evidence that the land is a town or village green as defined in Section 22 (1) of the Act. The definition of "town or village green" differs from that of "common land" in the same sub-section in that highway land is not excluded from the former definition, while it is excluded from the latter.

The key to the reason for the non-exclusion of highway land from the definition of "Town or village green" is to be found in the law relating to highways. A highway is in essence a right of members of the public to pass and repass along a piece of land. It does not necessarily involve the making of a hard roadway. If the land in question is bounded by hedges or fences, there is a presumption



that the owner dedicated the whole width as a highway, thus giving passengers the right to choose a route along the part for the time being most easily passable. However, the only use which can be made of land which has been dedicated as a highway is to pass and repass along it: see Harrison v Duke of Rutland [1893] 1 Q.B. 142. It would therefore be impossible for the inhabitants of the locality to acquire a right to indulge in lawful sports and pastimes on the land so as to bring it within the definition of "town or village green" in the Act of 1965. It therefore follows that the land in question in this case cannot be part of the highway, and that the highway is confined to the carriageway, which is not included in the registration. Since the land which Mr More claims is not part of the highway, the presumption on which he relies can have no application.

This, however is not the end of the matter so far as Mr More is concerned. About 15 to 20 years ago the drive leading to his house across the land registered as a town or village green was in a bad state of repair. Mr More thereupon made it up and has since kept it in repair. By placing stones and other material on this strip of land Mr More took possession of it, and he has now remained in possession for a sufficient length of time to have acquired a possessory title to it.

On the evidence before me I am satisfied that Mr More is the owner of the strip of land forming his drive, and I shall accordingly direct the Warwickshire County Council, as registration authority, to register him as the owner of that strip of land under section 8(2) of the Act of 1965.

In the absence of any further evidence I am not satisfied that any person is the owner of the remainder of the land in question and I shall accordingly direct the County Council to register.

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

16<sup>th</sup>

day of

February

1962

Chief Commons Commissioner