COMMONS REGISTRATION ACT 1965

Reference Nos 241/D/56-60

In the Matter of Box Hill Common, Box, Wiltshire.

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. CL 67 in the Register of Common Land maintained by the Wiltshire County Council and are occasioned by Objection No. 6 made by Smith and Lacey Ltd and noted in the Register on 11 October 1971, Objection No. 77 made by Miss J M Page and noted in the Register on 6 September 1972, Objection No. 84 made by Mr G T Lacy and noted in the Register on 6 September 1972, Objection No 85 made by Mrs E M Green and noted in the Register on 6 September 1971, and Objection No. 86 also made by Mrs E M Green and noted in the Register on 6 September 1971.

I held a hearing for the purpose of inquiring into the dispute at Trowbridge on 10 December 1976. The hearing was attended by Mr B A Jones, solicitor, on behalf of the Box Parish Council, the applicant for the registration, and by Miss E. Hailst of Counsel, on behalf of Mr Lacy.

Mr Jones informed me that the Parish Council was not asking for the registration to be confirmed in so far as it related to the comparatively small areas which were the subject of Objections Nos. 6, 77, 85 and 86. This left for my consideration Objection No. 84, which related to most of the land comprised in the Register unit.

There is no entry in the Rights section of the Register Unit, so Mr Jones accepted that the decision of Goff J.(as he then was) in Central Electricity Generating Board v Clwyd County Council [1976] 1 W.L.R. 151 made it impossible for him to support the registration on the ground that the land in question is subject to rights of common. Mr Jones therefore contended that the land falls within the definition of "Common land" in section 22(1) of the Commons Registration Act 1965 by being waste land of a manor not subject to rights of common.

Mr Jones based his contention on the classic statement of Watson B.in Att. Gen. v. Hanmer (1858), 27 L.J. Ch. 837, at p.840:-

> "The true meaning of 'wastes', or 'waste lands', or 'waste grounds of the "manor' is the open, uncultivated, and unoccupied lands parcel of the manor "or open lands parcel of the manor other than the demesne lands of the manor".

Miss Hailstone accepted that the land in question is open and uncultivated and at present unoccupied. She relied on the fact that substantial parts of the land had been quarried at some time in the past as showing that the land had been occupied while the quarrying was taking place and so ceased to satisfy one of the requirements of Watson B.'s definition. There was, however, no evidence as to the persons who had carried out the quarrying. The mere fact that quarrying was carried out is consistent with its having been done either by the lord of the manor or by tenants of the manor entitled to rights of common in the soil, and I cannot regard it as being sufficient to prove that if the land was manorial waste before the quarrying, it necessarily lost that status when the quarrying took place.

I am therefore satisfied that this land is open, uncultivated and unoccupied, so that the only matter left for my consideration is whether it is parcel of a manor.

The earliest documentary evidence adduced before me was the tithe apportionment, in which the land in question (together with other neighbouring land) was numbered 387 and described as "Box Hill Quarries.Common". The owners are stated to be Edward Richard Northey and William Brook Northey, and in the column headed "Occupiers" appear the words "In Hand".

The next document in chronological order is an indenture made 10 July 1869 between (1) William Brook Northey (2) Edward Richard Northey (3) Lucy Northey (4) Robert Pictor. In this indenture it is recited that William Northey was the owner in fee simple of Tithe No. 387 and also lord of the manors of Box and Ditteridge; that he died on 18 January 1826; that his heir-at-law was his brother Edward Northey; that Edward Northey died in February 1828, leaving Edward Richard Northey as his eldest son and heir-at-law, and William Brook Northey as his second son, who became entitled for his life under the will of William Northey to the rents and profits of (inter alia)Tithe No. 387. It is further recited that Tithe No. 387 was formerly waste of the manor of Box. Certain parts of Tithe No. 387, described as "formerly part of certain common or waste land Numbered 387 on the Tithe Apportionment Map of the said parish of Box", were conveyed to Robert Pictor, and Robert Pictor released all his rights over other parts of Tithe No. 387.

Edward Richard Northey died on 21 December 1878 and William Brook Northey on 10 July 1880, whereupon George Willbraham Northey became entitled to the reversionary interest in certain unspecified manors, franchises, farms, messuages, lands and other hereditaments situate in the parishes of Box and Ditteridge under the will of his father, Edward Richard Northey.

William Brook Northey is described as "Lord of the Manors of Box, Ashley and Ditteridge" on his monument in Box Church, and George Wilbraham Northey, who died on 26 September 1932, is described in the same way on his tombstone in Ditteridge churchyard.

Meanwhile, by some family arrangement of which no direct evidence is forthcoming the parts of Tithe No.387 which now constitute the land the subject of this dispute had passed under a will made in 1877 of a testator who died in 1878 to the Rev. Edward William Northey, who died on 21 October 1914, under the terms of whose will the land in question passed to his eldest son, Maj.-Gen. Sir Edward North In 1924 Sir Edward Northey sold the land to Mr Frederick George Neate, who is Mr Lacy's predecessor in title. In the schedule to the conveyance dated 3 April 1924, which also included other land let to tenants, this land is described as "In Hand".

It is thus clear that Sir Edward Northey was not lord of the manor of Box when he sold the land the subject of this dispute in 1924. It further appears that although the land was in the same ownership as the lordship of the manor in 1869, the land and the lordship had become severed by the time that the unidentified testator died in 1878. Furthermore, it was stated that, although in the same ownership as the lordship of the manor, the land had then ceased to be waste of the manor.

Mr Jones argued that it was not necessary for him to prove the manorial history precisely and that it was sufficient for him to satisfy me that the land had been at some time waste of the manor and that it was still open and used by members of the public. In support of his argument Mr Jones relied upon the judgment of Foster J. in Re Yately Common, Hampshire (1976), unrep., where it was held that manorial waste which had been sold by the lords of a manor in 1891 was still "waste land of a manor" within the meaning of section 22(1)(b) of the Commons Registration Act 1965.

Miss Hailstone, on the other hand, argued that for land to be "waste land of a manor" for the purposes of the Act of 1965 it must satisfy all the requirements of the definition of Watson B. in Att. Gen. v. Hanmer, supra by being not only open, uncultivated, and unoccupied, but also parcel of the manor, that is to say owned by the lord of the manor. Miss Hailstone relied upon a passage in the judgment of Slade J. in Re Britford Common, Britford, Wiltshire (1976), unrep., in which he said:-

> "The land is parcel of the manor of Britford and, as the Commissioner "found, the land and the lordship have been in the same ownership during "the whole period of living memory."

Slade J.'s judgment was cited to Foster J., who said that it did not assist him on this point, because in the Britford Case the land there in question and the lordship of the manor had been in united ownership through the whole period of living memory. Slade J.'s observation on this point was therefore an obiter dictum. However, Foster J.'s decision on this point was also obiter, for he had decided that the land in the Yately Case fell within the first limb of the definition of "common land" in section 22(1) of the Act of 1965 because it was still subject to rights of common, and he only dealt with the question of manorial waste because it had been argued in the alternative.

I am therefore faced with conflicting obiter dicta by two judges of equal standing in the judicial hierarchy, and I am driven by necessity to state which I regard as the correct exposition of the law on this topic.

Having quoted the relevant passage from the judgment of Slade J., I turn to the judgment of Foster J., where he dealt with this matter as follows:-

> "..... after 1925 a manor has ceased to exist as a geographical entity. "But it has become an incorporeal hereditament, often referred to as a "reputed manor. It is said that where the lordship of the manor is divorced "from ownership of the land the waste cannot be of the manor, but in my "judgment there is no reason why Parliament in the 1965 Act intended that "land should cease to be registrable if it is not owned by the lord of the manor

It appears to me that the learned judge was correct in saying that a manor has now become a reputed manor. A reputed manor is one for which no court baron can be held because there are no longer sufficient freehold tenants owing suit of court: see Soane v. Ireland (1808), 10 East 259. Since all customary suits and services were abolished by the Law of Property Act 1922, which came into force on 1 January 1 it would appear that all manors are now reputed manors. Nevertheless, a reputed manor is something which has long been known to the law, and there is a considerable volume of authority about reputed manors. In particular, there is authority for saying that a reputed manor is a geographical entity, for the matter in dispute in Doe d. Molesworth v. Sleeman (1846), 1 Q.B. 298 was the boundary of a reputed manor. Furthermore, there can be waste of a reputed manor, for it was held in Doe d. Clayton v. Williams (1843), LL M.& W. 803 that a conveyance of a reputed manor did not pass the freehold interest of the grantor in the waste unless it

was specifically mentioned.

It was well settled that land which was severed from the manor ceased to be parcel of it: see R. v. Duchess of Buccleuch (1704), though sometimes erroneously dated 1702)[illegible] Although the Law of Property Act 1922 brought about far-reaching alterations in manorial law by the enfranchisement of copyholds and the extinguishment of manorial incidents, it did not abolish manors, which still continue to exist (albeit as reputed manors) subject to those alterations. There is nothing in the Act of 1922 which affects the status of manorial waste, and I can see no reason for construing the expression "waste land of a manor" in the definition of "common land" in section 22(1) of the Commons Registration Act 1965 in any way different from the meaning given to it in reported cases and in works of authority ranging over many centuries, that is to say waste land which is parcel of a manor. This is in accordance with the general rule for the construction of an expression used in a statute without definition. As Lord Truro said in Stephenson v. Higginson (1852), 3 H.L.C. 638, at p.686:-

> "In construing an Act of Parliament, I apprehend every word must be "understood according to the legal meaning, unless it shall appear from "the context that the legislature used it in a popular or more enlarged "sense".

Fry L.J. put the same rule in different words when he said in R. v. Commissioners of Income Tax (1888), 22 Q.B.D. 296, at pp.309 - 310:-

> "The words of a statute are to be taken in their primary, and not in their "secondary, signification. If, therefore, the words are popular ones they "should be taken in a popular sense, but if they are words of art they should "be prima facie taken in their technical sense. That was laid down by "Lord Wensleydale in Burton v. Reevell (1847), 16 M. & W. 307. where he says: "When the legislature uses technical language in its statutes, it is supposed "to attach to it its technical meaning, unless the contrary manifestly appears' "That rule is not, in my opinion, the less applicable when the words have a "distinct technical meaning and a vague popular one".

I do not know whether the expression "waste land of a manor" has any popular meaning, but it certainly has a technical one among lawyers, and I can see no reason why Parliament should be regarded as having used that expression in its technical sense in the 1965 Act or why Parliament should be regarded as having intended that land should be registrable as waste land of a manor when not owned by the lord of the manor. I therefore cannot accept Mr Jones's argument that "waste land of a manor" in section 22(1) of the 1965 Act includes all land which was at some time in the past, however remote, waste land of a manor.

The history of the land in question in this case is not entirely clear, but it is quite certain that it is not now in the ownership of the lord of the manor of Box and so, in my view, is no longer waste land of that manor.

For these reasons I refuse to confirm the registration.

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 17th day of January 1977

Chief Commons Commissioner