



COMMONS REGISTRATION ACT 1965

Reference No.241/D/29

In the Matter of Britford Green,
Britford, Wiltshire (No.1)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.CL 60 in the Register of Common Land maintained by the former Wiltshire County Council and is occasioned by Objection No.68 made by Mr J.S.Whittle and noted in the Register on 23rd June 1972.

I held a hearing for the purpose of inquiring into the dispute at Salisbury on 26th February 1975. The hearing was attended by Commander J.D.Lamb, the Clerk of the Britford Parish Council, the applicant for the registration, and by Mr Jonathan Fulthorpe, of counsel, on behalf of the Objector.

The land the subject of this reference was conveyed by the Objector to his son, Mr J.S.Whittle, junior, together with the lordship of the manor of Britford on 9th August 1974. The land and the lordship of the manor have been in the same ownership during the whole period of living memory. The Britford Estate was formerly owned by members of the Jervoise family of Herriard Park, Hampshire, the last of the family to own it being the late Major F.H.T.Jervoise, who inherited it in 1903 and held it until his death in 1959. In 1963 the Estate was sold, the last lot in the particulars of sale being the lordship of the manor and this land, which was offered "subject to such rights of common as may exist thereover". The Estate was sold as a whole to the Ashdale Land and Property Co.Ltd, which conveyed the lordship of the manor and this land, together with other property, to the Objector on 31st January 1963.

The land in question has lain open to the adjoining roads during the whole period of living memory. In the Tithe Apportionment Award of 1840 it is described as "Common". There is no other early documentary evidence. By agreement, a letter from the widow of the late Major Jervoise was read at the hearing. Mrs Jervoise stated that certain inhabitants put their livestock to graze on the land without permission from the owner, and that she could remember that Mr Gilbert at the Old Bakery was one, and after him a Mr Hazel, who assisted Mr Gilbert when the latter became old. Mrs Jervoise's letter was corroborated by the oral evidence of Mr Tom Hazel, who said that he had put seven to ten cattle on the land for four years from 1960 without applying for permission. Mr Hazel also remembered that Mr W.T.Gilbert and his father before him turned out cattle on this land. Mr Hazel and the Gilberts were tenants of Major Jervoise, and Mr Hazel gave up his tenancy when the Objector purchased.

Commander Lamb contended that Mr Hazel and Mr Gilbert had acquired rights of common of pasture in gross by prescription. It is, of course, not possible to acquire such a right in gross under the Prescription Act 1832, so that Commander Lamb was thrown back on prescription at common law. By the nature of the case there can be no question of user from time immemorial, so that it only remains to consider lost modern grant. The legal fiction of a lost



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modern grant is only a way of explaining facts which are otherwise inexplicable. In my view the grazing by Mr Hazel and the Gilberts without objection from their landlord does not require any more explanation than the good-natured toleration of the landlord, who was no doubt glad to have the grass kept down at no trouble to himself. This view of the facts is borne out by a written statement of Mr Gilbert, which was put in by Commander Lamb with Mr Fulthorpe's agreement. Mr Gilbert refers to grazing by several other residents in Britford, adding: "The Jervoise family, who owned the whole village, looked upon the Green as free to the whole village, but insisted on the cottagers keeping it tidy".

While I am therefore not satisfied that this land is now subject to rights of common, it remains to be considered whether the registration is supportable on the ground that the land is waste land of a manor not subject to rights of common.

It appears to me that this land falls squarely within the definition of manorial waste laid down by Watson B. in Att.-Gen. v. Hammer (1858), 27 L.J.Ch. 837, ~~at~~ p840, where he said:

"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 --- other than the demesne lands of the manor".

Mr Fulthorpe contended that this land was not waste land of the manor of Britford, because manorial waste must either be subject to rights of common or have ceased to be subject to such rights. In support of this contention Mr Fulthorpe cited the definition of "waste land of a manor" in section 37 of the Commons Act 1876. That definition was, however, only a definition for the purposes of that Act. It does not, in my view, invalidate the generality of Watson B.'s definition.

Mr Fulthorpe also relied upon evidence given by the Objector that during his period of ownership of the land he had sometimes cut the grass for hay or silage. In my view this did not constitute occupation or cultivation which would deprive the land of its status as manorial waste. Merely taking the natural produce of a piece of waste land does not make it cease to be waste.

On the evidence before me I have come to the conclusion that this land is waste land of the manor of Britford and not subject to rights of common.

For these reasons I 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 20th day of March 1975

Chief Commons Commissioner