



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

DECISION

This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No. CL 5 in the Register of Common Land maintained by the Wiltshire County Council and is occasioned by Objection No 17 made by Mr P K L Danks and noted in the Register on 19 April 1971.

I held a hearing for the purpose of inquiring into the dispute at Salisbury on 11 October 1979. The hearing was attended by Mrs D Hawes, a member of the Whiteparish Parish Council, the applicant for the registration, Mr S F Stevens, the applicant for the registration at Entry No 1 in the Rights section of the Register Unit, and Mr P Lloyd, solicitor, on behalf of the Objector.

It will be convenient first to consider whether the land comprised in the Register Unit or any part of it is subject to the rights of common registered at Entry No 1 in the Rights section of the Register Unit. These rights are grazing rights in respect of 8 beasts and their young and also the right to take tree loppings or underwood attached to Yew Tree Farm, Whiteparish. It is not stated in the Register over which land the rights are exercisable, but it appears from Mr Steven's application that he was alleging that he was entitled to rights over the whole of the land comprised in the Register Unit. Mr Stevens stated that he did not wish to support the registration in so far as it related to the right to take tree loppings or underwood...

In 1940 the land comprised in the Register Unit and Yew Tree Farm formed part of an estate extending to about 1,689 ac., known as Cowesfield, including the lordships or reputed lordships of the manors of Cowesfield, Esturney and Cowesfield Lovereys or Loveraz. In the particulars of sale of the whole estate by auction on 14 March 1940 Yew Tree Farm was Lot 21, it being stated that "Certain Grazing Rights over Cowesfield Green, for eight beasts and their young, are attached to this holding." Cowesfield Green with the manors was Lot 20, it being stated:-

"The Green lies in the centre of the Cowesfield Estate and is subject to certain Grazing Rights exercised by the Commons..... the Green is sold subject to any rights Commoners or the General Public may have thereon".

The plan referred to in the particulars shows that a narrow strip of land at the northern extremity of the Register Unit was not included in Lot 20, but formed part of several other lots. There is also a small area on the south side of the Register Unit which did not form part of Lot 20. It will be necessary to refer to these areas later in this decision.

Although it is not so stated in the particulars of sale, it appears from land certificates produced by Mr Lloyd that the vendors were Lincoln Land Company (Hungerford) Ltd and that Lots 20 and 21 were not sold at the auction in 1940.

These two lots together with nine other lots, extending to about 133 ac, including the two lordships or reputed lordships, were the subject of further particulars of sale for an auction on 20 May 1941. In these particulars Yew Tree Farm was Lot 5 and Cowesfield Green, with the manors, was Lot 11. The particulars relating to both lots included statements regarding grazing rights in exactly the same wording as those in the 1940 particulars.



In the copy of the 1941 particulars belonging to Mr Stevens the word "SOLD" is written across Lot 11 (Covesfield Green). Mr Stevens said that this meant that it was sold before the auction. This seems to have been the case, since it appears from the land certificate relating to the greater part of it that it was transferred by Lincoln Land Company (Hungerton) Ltd to Alexander Newman Howard by a transfer dated 30 May 1941, only ten days after the date of the auction.

Mr Stevens has no written title to the right which he claims nor has he grazed any animals on the Green since he purchased Yew Tree Farm in 1957. He relies solely on the statements as to the right in the 1940 and 1941 particulars of sale.

At the time of the sale Yew Tree Farm was a freehold property belonging to the Lord of the manor. No right of common could have existed at that time, for the lord of the manor could not have a right of common over Covesfield Green, of which it was the owner. Consequently, if I am precluded from having regard to the circumstances of the auction sale, there seems to me to be difficulty in saying that the conveyance of Yew Tree Farm passed any grazing right.

The only evidence regarding the auction sale is that contained in the particulars of sale. I do not have before me the memoranda signed by the purchasers at the auction or the subsequent conveyances. Indeed, I do not even know that Yew Tree Farm was purchased at the auction, while it seems probable that Covesfield Green was sold before the auction. I have therefore to consider what, if any, assistance can be derived from the particulars of sale.

Adopting and adapting the words of Buckley J. (as he then was) in White v. Taylor (No 2), [1969] 1 Ch. 160, at p.176, where similarly worded particulars of sale were under consideration, it seems manifest from what I have referred to in the 1941 particulars of sale that Lincoln Land Company (Hungerton) Ltd intended that the purchaser of Yew Tree Farm should acquire with that farm the right to graze 8 beasts and their young on Covesfield Green, and that it intended that the purchaser of Covesfield Green should acquire it subject to such right. The question is whether the sales were affected and eventually completed in such a way that this intention was carried out.

In the absence of any evidence that the conveyance of Yew Tree Farm contained a grant of the right to graze 8 beasts and their young, Mr Stevens can only succeed if he can rely on the general words to be implied in the conveyance by virtue of s.62 of the Law of Property Act 1925. Since Lot 5 in the 1941 particulars of sale included the farmhouse and farm buildings, the relevant part of s.62 is sub-s(2), by which a conveyance of land, having houses or other buildings thereon, is deemed to include and operates to convey (inter alia) all rights and advantages whatsoever appertaining or reputed to appertain to the property conveyed or, at the time of the conveyance devised, occupied or enjoyed with or known as part or parcel or appurtenant to the property conveyed.

S.62 of the Act of 1925 is a re-enactment of s.6 of the Law of Property and Conveyancing Act 1881. Mr Lloyd relied on the fact that in White v. Taylor (No. 2) Buckley, J. held that s.6 of the Act of 1881 did not operate to convey grazing rights mentioned in particulars of sale. It would not, however, be right to reject Mr Stevens's claim without considering why Buckley, J. held as he did.



It was argued before him by counsel for the plaintiffs that the sale particulars in that case constituted an admission against the vendor, which was binding on the defendants as his successors, that the sheep rights mentioned in the particulars were part and parcel of the land sold. As Buckley, J. pointed out at p. 186, the validity of such an argument depended on the proper interpretation of the references to sheep rights in the particulars.

In White v. Taylor (No 2) it was stated in the particulars of each lot: "This lot carries x sheep rights on Martin Down". Counsel for the plaintiffs said that this was expressed as being, and was in truth, a statement of fact. Counsel for the defendants, on the other side, said that the phrase merely constituted part of the description of what was offered for sale, and so was in the nature of a promissory statement or a statement of intention. Buckley, J. came to the conclusion that the latter sense was the more appropriate, adding: ^{"at least"} ~~in case the~~ phrase is ambiguous".

In my view, the facts of this case differ in material respects from those of White v. Taylor (No. 2). In that case the lotting of the various lots sold at the auction sale did not coincide with the pre-existing holdings; that is to say, the boundaries and consequently the areas and identities of the farms were changed to a significant extent: see p. 165. Here Yew Tree Farm was let to a Mr Gritt on a Michaelmas tenancy and was not a lot specially constituted for the purposes of the sale. Here the references to the grazing rights were in the form of statements of fact. In the particulars relating to Yew Tree Farm it is stated "Certain Grazing Rights are attached to this Holding", and in the particulars relating to Cowesfield Green it is stated that it "is subject to certain Grazing Rights exercised by the Commoners". In other words, the particulars contained statements of fact as to the then position, and not merely statements of future intention.

It therefore appears to me that White v. Taylor (No. 2) is to be distinguished from the present case and that, applying the test laid down by Buckley, J. in that case, I am bound to hold that the right to graze 8 beasts and their young on Lot 11 passed on the conveyance in 1941 by virtue of s.62(2) of the Law of Property Act 1962. There being no evidence that that right has ever been abandoned, it has passed to Mr Stevens through his predecessors in title through a series of similar conveyances containing the same implied words.

It is now necessary to consider the parts of the land comprised in the Register Unit which were not included in Lot 20 in the 1940 particulars of sale and Lot 11 in the 1941 particulars of sale. These areas formed parts of several lots. The area on the north side of Lot 20 formed parts of Lots 5, 6, 7, 24, 25, and 26 in the 1940 particulars, and the area on the south side of Lot 20 formed part of Lot 18 in those particulars. It would appear that Lots, 5, 6, 7, 18, 24, 25, and 26 were sold before the 1941 particulars were drawn up, since none of them appears in those particulars.

In the particulars of Lot 5 it is stated: "Included is also the Vendor's right in the strip of Cowesfield Green lying between the Cottage and the Main Road, but this is subject to any rights which Commoners or others may have over it". There are similar statements in the particulars of Lots 6, 7, 18, 24, 25, and 26.

These statements are in marked contrast to the statement in the particulars of Lot 20 that the land comprised in that lot "is subject to certain Grazing Rights exercised by the Commoners". I find myself unable to construe the statements



relating to Lots 5, 6, 7, 18, 24, 25, and 26 as statements that these were rights attached to Yew Tree Farm which were being exercised over any of these lots.

This does not entirely conclude the matter, for land which is not subject to rights of common can fall within the definition of "common land" in s.22(1) of the Commons Registration Act 1965 by being waste land of a manor. It did not appear from the evidence that the physical condition of what I may call the peripheral land is such as make it properly describable as waste land. However, for land to be waste land of a manor for the purposes of the Act of 1965 it must be in the ownership of the lord of the manor: see In re Box Hill Common [1979] 2 W.L.R.177. It seems probable that the whole of the peripheral land had been sold before the 1941 particulars of sale were drafted, but if it and the lordships of the manors were still in the same ownership in 1941, it became severed from the lordships when Lot 11 in the 1941 particulars of sale was sold. Be that as it may, the relevant land certificate shows that the lordships have been registered as incorporeal hereditaments and changed hands for nominal considerations of £5 in 1947, 1948 and 1964.

I am therefore satisfied that the only part of the land comprised in the Register Unit which falls within the definition of "common land" in the Act of 1965 is that over which Mr Stevens has a right of common.

The remainder not being subject to any right of common, it can only fall within the definition of "common land" if it is waste land of a manor, which it is not.

For these reasons I confirm the registration with the following modifications:- namely the exclusion of the land which formed parts of Lots 5, 6, 7, 18, 24, 25, and 26 in the 1940 particulars of sale.

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

2nd

day of

November 1979

CHIEF COMMONS COMMISSIONER