



COMMONS REGISTRATION ACT 1965

In the Matter of Elburton Commons, Brixton, Devon.

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. CL 119 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 244 made by Mr P. D. Blackmore and noted in the Register on 23 October 1970, Objection No. 196 made by Mr A G Blackmore and noted in the Register on 21 December 1970, Objection No. 242 made by Mr P D Blackmore and noted in the Register on 21 December 1970, and Objection No 275 made by Mr R Denford and also noted in the Register on 21 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Paignton on 25 January 1977. The hearing was attended by Mr E R Harris, the Chairman of the Plymstock and District Civic Society, the applicant for the registration, and Mr P D Blackmore.

Mr Harris informed me that he did not wish to support the registration in so far as it related to Ordnance Survey No. 3450 (formerly O.S. No. 145), which was the subject of the Objections made by Mr A G Blackmore and Mr Denford.

There being no rights registered in respect of any of the land comprised in the Register unit, the registration can only be confirmed if the land falls within the second limb of 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 Harris put in statutory declarations by eighteen elderly local residents, who spoke of using the land for recreational purposes and in some cases of gathering sticks. Although no question of the right to use the land for recreation arises in this case, the totality of these declarations enables me to find that the land has been open and uncultivated for many years past.

So far as the evidence adduced before me goes, the history of the land remaining in question begins with the Tithe Apportionment of 1843. It is there shown as consisting of a number of strips, each being described as "Part of Commons". It will be convenient to refer to these strips from north to south as A, B, C, D, E and F.

Strips A, B and D are the subject of Entry No. 2 in the Ownership section of the Register Unit made on the application of Miss Gladys Elizabeth Pearce. Although it is not conclusive evidence that Miss Pearce was the owner, the entry is supported by deeds produced by Mr T P S Thompson as successor in title to Miss Pearce. By an assent made 28 May 1949 between (1) Gladys Elizabeth Pearce, Julius Pearce and Albert Eagle Stedman as personal representatives of Elizabeth Little Pearce (2) G E Pearce and J W Pearce the strips in question were conveyed to Miss G E Pearce and Miss J W Pearce. Miss J W Pearce died on 1 March 1955, and Miss G E Pearce dies on 28 April 1973. By a conveyance made 28 August 1974 between (1) Lawrence Bon Spear and David Gordon Spear as personal representatives of Gladys Elizabeth Pearce (2) Thomas Peter Stuart Thompson the strips were conveyed to Mr Thompson.



Strip E was Lot 10 in the particulars of an auction sale to be held on 30 July 1931. It was then stated to be part of the property of Hele's Charity.

The western part of strip F was the subject of a conveyance made 4 December 1968 between (1) Arthur Bayfield Middleditch (2) Hubert James Hammick. The recitals of this conveyance refer to an indenture made 17 October 1906.

None of the persons so far mentioned appears to claim or to have claimed to be the lord of the manor in which the land is situate. The only suggestion (it can hardly be dignified by the title of evidence) regarding this aspect of the matter is a letter dated 15 December 1976 addressed to the Clerk of the County Council by Messrs Michelmore, Hughes & Wilbraham in their capacity as agents for the lord of the manor of Plympton, Lady (Elizabeth Marconi) Romilly, in which they stated that although it was appreciated that it was then too late for their client to register a claim to ownership of the freehold of the land in question, they would be pleased if the Clerk would take note of their client's interest.

This letter would be a wholly insufficient basis on which to find that any of the land in question is parcel of the manor of Plympton, even if it were not in conflict with the evidence relating to strips A, B, D, E and part of F.

On the evidence before me I am not satisfied that any of the land in question is now parcel of any manor. Therefore, although it has the physical characteristics of waste land, it does not fall within the only relevant limb of the definition of "common land" in section 22(1) of the Act of 1965.

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 14th day of February 1977

Chief Commons Commissioner