



COMMONS REGISTRATION ACT 1965

Reference Nos. 9/D/6  
9/D/7

In the Matter of Prospect,  
South Tawton, Devon.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.58 in the Register of Town or Village Greens maintained by the Devon County Council and are respectively occasioned by Objection No.16 made by John Berry and noted in the Register on 21st March 1969 and by Objection No.37 made by the Devon County Surveyor and noted in the Register on 17th September 1969.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 19th July 1972. The hearing was attended by Mrs. E.B. Wonnacott, who made the registration, and by Mr. M. Butterfield, counsel for both objectors. Since I can give only one notice to the Registration Authority under section 6(2) of the Commons Registration Act 1965 in respect of the registration, I have before giving this decision made an order consolidating the two matters.

The land in question in these disputes is bounded by roads on its north and west sides. Until about seven years ago there were no fences on the road frontages.

Mrs. Wonnacott has known the land since 1889. From then until about 1897 she played on it with other children. In the early part of this period one Emmanuel Tucker, a wheelwright, kept wood on the land and had a sawpit there. Mr. Tucker was succeeded by one William Osborne, senior, a stonemason, who worked on blocks of stone. Mrs. Wonnacott said that she and the other children used to climb over Mr. Tucker's wood and Mr. Osborne's blocks of stone. It was, she said, an adventure playground. Mr. Osborne built a shed for himself on the south side of the land. A bus used to draw off the road on the west side to pick up passengers, and in wet weather Mr. Osborne allowed people to wait for the bus in his shed.

Mr. Ernest Tucker, who was born in 1897, a grandson of Mr. Emmanuel Tucker, also remembered playing with other children on the land in Mr. Osborne's time though Mr. Osborne used to order them off when he saw them. Mr. Ernest Tucker said that William Osborne, senior, died about 1909 and was succeeded by his son William Osborne, junior. The latter emigrated to Canada a few years after World War I, and the stonemason's business was carried on by one Bert Gratton.

The recollections of Mrs. Wonnacott and Mr. Ernest Tucker are corroborated by Mr. Berry's title deeds. By an indenture of 21st July 1925 William Osborne, stonemason (who must have been William Osborne, junior) conveyed to Bert Gratton, also a stonemason, the land the subject of these disputes together with a blacksmith's shop and a shed on the west side of the land. By a conveyance dated 7th August 1951 Mr. Gratton conveyed to Mr. Berry the shed on the west side of the land in question. On the plan annexed to this conveyance the land in question is described as "Stonemason's Yard" and has a row of sheds on its south side. Finally, Mr. Berry acquired the land the subject of this



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dispute from Mr. Gratton by a conveyance dated 3rd January 1958.

After purchasing the land Mr. Berry applied for planning permission to erect fences along the road frontages. After some negotiation, he agreed to sell to the County Council a strip along the road to the west for a bus stop, and with the purchase money he erected the present fence behind the bus stop and on the north side of the land.

It seems highly likely that this piece of land was at one time manorial waste and that the wheelwright was originally a trespasser. There is nothing to indicate how long he was there or in what circumstances he was succeeded by William Osborne, senior, but by the time William Osborne, junior, sold to Mr. Gratton in 1925 a squatter's title had been acquired. This, however, does nothing to support the registration of the land as a town or village green. The only evidence which is relevant to that matter is the evidence of Mrs. Wonnacott and Mr. Ernest Tucker about children playing there. This evidence does not go nearly far enough to bring the land within the definition of "town or village green" in section 22(1) of the Act of 1965. There is nothing to indicate that the children played on the land as of right. If I am right in my surmise that the land was formerly manorial waste, the children of the locality would have had no right to play on it, and after the wheelwright and the stonemasons squatted on it the children played there either (as in the case of Mrs. Wonnacott and her friends) with the consent of the squatter or (as in the case of Mr. Ernest Tucker and his friends) when the squatter was not present.

For these reasons I refuse to confirm the registration.

Mr. Butterfield asked that in the event of my deciding not to confirm the registration I should order Mrs. Wonnacott to pay the costs of the Objectors. While I recognise that it is a hardship that the Objectors and in particular Mr. Berry, who is a pensioner, should have been put to expense in this matter, I have to bear in mind that Mrs. Wonnacott was endeavouring to protect what she genuinely believed to be the right of the inhabitants of the locality and that she also is a pensioner. In these circumstances I have decided to make no order as to costs.

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 28<sup>th</sup> day of July 1972

Chief Commons Commissioner