



COMMONS REGISTRATION ACT 1965

Reference No. 213/R/3

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1965

In the Matter of land at "Pleasant View" part of The Hudnalls,
St. Briavels

DECISION

REFERENCE

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No. 1 in the Land Section of Register Unit No. CL.333 in the Register of Common Land maintained by the Gloucester County Council.

NOTICE OF OBJECTION

The reference is occasioned by a Notice of Objection dated 16th July 1992 made by Mrs Barbara Anne Lambert ("the Objector") referred to a Commons Commissioner on 29th April 1993.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register unit edged in green on the plan to the Objection ("the Objection land").

REGISTRATION AS COMMON LAND

The Hudnalls containing 149.6 acres or thereabouts were registered as common land upon the application of St. Briavels Parish Council. The registration which was disputed became final on 1st August 1977 after a hearing before the then Chief Commons Commissioner Mr George Squibb. His Decision dated 16th May 1977 is of considerable historical interest.

RIGHTS ENTRIES

There is one subsisting entry in the Rights Section of the Register, viz Rights Entry No. 4 as amended by Rights Entry No.9. This comprises the Right to take timber and wood in the mature of estovers, herbage for 10 horses, 25 cows or beasts and 100 sheep and pannage for 30 pigs. The land to which these rights are attached comprises "The ancient messuages, lands, tenements, and buildings parcel of the Manor of St. Briavels". This amended entry also became final on the 1st August 1977 pursuant to the Decision of Chief Commons Commissioner George Squibb.

OWNERSHIP

An inquiry into the ownership of the Register unit was made before a Commons Commissioner, Mr George Hesketh, on 9th December 1980. Pursuant to his Decision dated 2nd April 1981 Brigadier John Charles Oswald Rooke Hopkinson was registered as owner of the whole of the land comprised in the Register unit excluding parcels Nos. 1067, 1070, 1103, 1126, 1131 and 1132 on the 1921 edition of the Ordnance Survey Map. The excluded parcels remained subject to protection under Section 9 of the 1965 Act.



HEARING

I held a hearing to inquire into the Objection at Gloucester on 5th July 1994 and I visited the site during the afternoon of the hearing.

ATTENDANCE AT HEARING

The hearing was attended by Mr Lawrence Jones of Counsel (instructed by Gisby Harrison Solicitors of Cheshunt) representing the Objector, the Objector in person, Mr C Lambert Mrs J M Lane Hon. Secretary, Hudnalls Wood Commoners' Association Mr Lane Mrs D Bird Major General J C O R Hopkinson C B and Mr Thomas (a Commoner).

WRITTEN REPRESENTATIONS

Written representations concerning the Objection were received by the Commons Commissioners from the following:-

- 1). Hudnalls Wood Commoners Association (Mrs J M Lane)
- (2) Major General Hopkinson
- (3) St. Briavels Parish Council

In addition Forest of Dean District Council wrote that it did not intend to make any representations.

OBJECTOR'S TITLE

By a Conveyance dated 22nd December 1960 Frederick John Dorrington (the Vendor) conveyed to the Objector

"ALL THAT ruined cottage with the gardens orchard and two pieces or parcels of woodland and three pieces or parcels of land containing in the whole about three and one half acres or thereabouts situate in the Parish of Saint Briavels at or near a place called the Hudnalls and bounded on the north by land now or formerly of William Barridge and on all other parts and sides thereof by land now or formerly of Mr Rooke with a bridle road going through the property towards Coedithel Wear All which said premises were formerly in the occupation of the Vendor".

This description of the property was copied almost verbatim from the previous Conveyance dated 12th August 1927, whereby Edward Price conveyed it to Frederick John Dorrington. The only difference is that the final words "formerly in the occupation of the Vendor" read in the earlier Conveyance "formerly in the occupation of Ruth Price but now of the Purchaser" i.e. Frederick John Dorrington.

IDENTIFICATION OF OBJECTOR'S LAND

Neither of the two Conveyances referred to above bears any plan and it is not easy to relate these descriptions to the land shown on the plan to the Objection. Using the O.S. Numbers on the 1921 Edition of the O S Map (which is the edition referred to in the Ownership section of the Commons Register) as I understand it the Objector claims ownership of:-

- (i) O.S. 1102. .117 acres. The Cottage and immediately surrounding area - not included in the Commons Registration.



- (ii) O.S. 1104 .384 acres. The enclosed garden in front (i.e. to the West) of the Cottage - also not included in the Commons Registration.
- (iii) O.S.1103 .513 acres
- (iv) O.S.1126 .383 acres
- (v) O.S.1127 1.509 acres

These five areas add up to less than 3 acres, rather than 3½ acres as stated in the conveyances. It may be that these measurements do not include the width of the bridle path which separates O S 1103 and 1126 from O S 1127.

THE SITE

What does not appear from any of the maps or the plans is that with the exception of an area around the Cottage the whole of the land is on a steep slope falling dramatically away towards the River to the South-west. Access to the Cottage is by way of the zig-zag track shown on the Objection plan which is now only negotiable on foot or in a four-wheel drive vehicle. The former owner, Mr Dorrington, had a horse. For my site visit Mr C Lambert borrowed a Land Rover. Even in this negotiating the track (particularly the ascent on our return journey) was not easy.

ORAL EVIDENCE

Evidence was given by:-

- (i) Mrs D Bird
- (ii) The Objector
- (iii) General Hopkinson
- (iv) Mr Thomas

MRS BIRD'S EVIDENCE

Mrs Bird was taken through her Statutory Declaration dated 14th July 1992. She was the daughter of John Frederick Dorrington. Her father bought the ruined cottage and renovated it. She was born in 1931 and lived at the cottage until she married in July 1949. Her parents continued to live there until 1957. She frequently visited them there. The whole of the land shown on the Objection plan was occupied and enjoyed by her parents. They grew their own vegetables and kept chickens ducks and geese. Part of the land was used to graze their horse and a few goats. Identifying the specific parts of the land used for various purposes, O.S. 1102 (on the 1921 Edition of the O.S.Map) was garden, 1104 was orchard and paddock, the pigs were in the corner of 1103 nearest the cottage, the shed for the pony was in the southern corner of 1126, and the southern part of 1127 was also used for grazing the pony. Much of 1127 was copse, the northern part being covered with rocks. As children they played over all the land on both sides of the bridleway. The goats were tethered, but sometimes they roamed. There was a dry-stone wall surrounding the cottage. They made gaps in the wall for footpaths to the rest of the land. They put poles across the gap to keep the pony in.

Cross-examined by General Hopkinson, Mrs Bird agreed that her father had commoners rights and that he exercised those rights. Asked how Mr Price came by the land, Mrs Bird said that she didn't know Mr Price.



THE OBJECTOR'S EVIDENCE

Mrs Lambert was taken through her Statutory Declaration dated 16th July 1992 and added a few other matters. As her knowledge of the property only goes back to 1960 I do not consider it necessary for me to set out her evidence here.

MAJOR GENERAL HOPKINSON'S SUBMISSIONS

In his written representation dated 27th April 1993 Major General Hopkinson wrote as follows:-

"I write to dispute the claim made by Barbara Anne Lambert of Pleasant View, that all the land shown on the map attached to her claim has, since 5th August 1945, been part of the garden of the dwelling house Pleasant View.

Part of the land in compartment 4338 belongs to me and is in my possession. That part was also considered by the Commons Commissioner in a Appeal which took place when the land was first put forward for registration. At that time, I was the objector but accepted the ruling by the Commissioner that the land in question, was part of the Old Royal Manor of St. Briavels, and that those able to show residence in a dwelling, which existed and was within the Royal Manor before its transfer to the Rooke family, would be entitled to rights of herbage, pannage and estovers.

To declare that the relevant part of O.S. 4338 has, since 1945 been part of the garden of Pleasant View is patently false. The house has been a ruin in recent years and at no time has the so-called garden been fenced, delineated, or maintained, to my certain knowledge since I inherited the land in 1956."

The part of O.S. 4338 on the current edition of the Ordnance Survey Map which is being referred to is O S 1127 on the 1921 edition. This is the parcel of land to the east of the bridlepath, and is part of the land in respect of which General Hopkinson is registered as owner in the Commons Register. General Hopkinson said he was not concerned with the land on the west of the bridlepath.

The land had been purchased by his family from the Crown in the 1700s. His grand-father had allowed Mr Price, the old post-master, the use of the Cottage. Mrs Dorrington had pointed out that her husband was a commoner. Certainly since 1956 the piece of land east of the bridlepath has not been enclosed. It has been treated in the same way as the rest of the Hudnalls over which the commoners have rights.

MR THOMAS'S EVIDENCE

Mr Thomas said that he was a commoner. He had known the land for upwards of 55 years. He had exercised common rights over the land east of the bridlepath and over part of the land west of the bridlepath. The Dorrington family exercised their rights over the land as commoners. There was a small garden at the Cottage. He didn't agree that any of the land was cultivated. There were fruit trees in front of the house. The rest of the land was used as common. He knew Mr Price very well. The rights he exercised included cutting wood for hedge laying, cutting oak for posts, beech and cordwood. This was both before and after 1945.



LEGAL SUBMISSIONS

Mr Lawrence Jones referred me to all the relevant reported cases. viz: Re 1-4 White Row Cottages, Beverley 1991 3WRL 229. Cresstock Investments v Commons Commissioner 1992 1WLR 1088. Re land at Freshfields 1993 66 P. & C.R.9 Sir Richard Storey v Commons Commissioner 1993 66 P. & C.R.206. Re Land at Moor Edge Farm, Flass Vale 5th May 1994. He made a series of submissions based on these authorities.

SITE VISIT

As indicated above, much of the Objection land is on an extremely steep slope. The greater part of it is densely over-grown woodland. The trees pointed out to me included lime birch beech ash and oak. The bridlepath and access track are bounded with the remains of ancient dry stone walls. It was said that the cottage had probably once been a charcoal burners cottage. I saw another ruin of a similar building higher up the track, and I was told there were others in the vicinity. There were the overgrown remains of dry stone walls running in several directions. I did not endeavour to trace out the boundaries of the Objection land, owing to the steepness of the site and the density of the undergrowth.

SITE OF SPECIAL SCIENTIFIC INTEREST

I was told that the land in respect of which General Hopkinson is registered as owner (including O.S.1127) had been designated as a Site of Special Scientific Interest.

FINDINGS

Having regard to the authorities cited to me by Mr Lawrence Jones there is just sufficient evidence to satisfy me that since 5th August 1945 the part of the Objection land lying to the West of the bridlepath has been ancillary to the dwellinghouse known as Pleasant View within the extended meaning which has been placed by those authorities on the words of sub-sections (2) and (3) of Section 1 of the 1989 Act. As to the part of the Objection land lying to the east of the bridlepath I accept the submission made by General Hopkinson, who is registered in the Commons Register as owner of that land, that any user Mr Dorrington made of this land was in exercise of his rights as a commoner. I find as a fact that this part of the land was incapable by its nature of forming part of a garden even within the extended meaning of the word "garden" to be derived from the authorities.

CONCLUSION

On that evidence I consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the part of the Objection land lying to the west of the bridlepath (but not as to any other part of the Objection land).



APPEAL

I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 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

21st

day of

July

1994

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Chief Commons Commissioner