



COMMONS REGISTRATION ACT 1965

Reference No. 213/D/187

In the Matter of Lower Cow Pasture,
Shuthonger Common and Cowham Twynning,
Gloucestershire (No. 5)

DECISION

This dispute relates to the registration at Entry No 3 in the Ownership section of Register Unit No.CL.46 in the Register of Common Land maintained by the Gloucestershire County Council and is occasioned by the conflicting registration at Entry No 7 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Cheltenham on 28 and 29 March 1979, and at Watergate House, London WC2 on 9 and 10 April 1979. The hearing was attended by Mr Rhidian Ungeod-Thomas, of Counsel, on behalf of Mr T E Spry, the successor in title of Mr A E Spry, the applicant for the registration, and by Mr Martin Roth, of Counsel, on behalf of Mr B C Ball, the applicant for the conflicting registration.

The land the subject of the registration is a narrow strip in the part of the land comprised in the Register Unit known as Cowham. Mr A E Spry acquired his interest in this land by a conveyance of Churchend Farm made 29 September 1950 between (1) Robert Crichton Mitchell Cotts (2) Amos Edwin Spry. The premises were described as "the messuage tenement or farmhouse buildings and cottages and the several closes or parcels of ground and other hereditaments specified and described in the Schedule underwritten". In the Schedule the land the subject of the registration is described as "705 Part Lower Cowham Meadow (First Math) 3r.10 p".-705 being the number of the land in the tithe apportionment award. The area of this land was included in the addition of the total area of Churchend Farm. The inclusion of the words "First Math" in the description is the basis of Mr Roth's contention that Mr A E Spry was not the owner of the legal estate in fee simple in the land.

The words "First Math" were included in the parcels of a conveyance made 5 October 1940 between (1) Thomas Spry (2) Robert Crichton Mitchell Cotts and in those of an indenture made 26 February 1921 between (1) Rt.Rev.Maxwell Homfray Maxwell-Gumbleton, Bishop of Ballarat (2) Hannah Marian Smith. These ^{words} were not, however, included in the parcels of an indenture made 28 May 1908 made between (1) Isabella Matilda Gumbleton (2) Frederick John Partington, by which Churchend Farm was let to Mr Partington for a term of 14 years. The area of the land in question was included in the addition of the total area of Churchend Farm.

Viewing these documents in isolation, it would be possible to come to the conclusion that at some stage the owner of the freehold in Tithe No. 705 had decided to retain the freehold and to sell only the right to take the first crop of hay off the land. However, having regard to the conveyancing history of other strips of land in Cowham, summarized in my decision in In the Matter of Lower Cow Pasture, Shuthonger Common, and Cowham, Twynning (No.3) (1979) Ref.No. 213/D/185, I have come to the conclusion that this is another case in which the words "First Math" have been used to indicate that the land in question is subject to the existing commonable rights of pasturage between 12 August and 12 February, and that the freehold, subject to those rights, passed to Mr A E Spry.



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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 19th day of June 1979:

Chief Commons Commissioner