



COMMONS REGISTRATION ACT 1965

Reference No. 219/U/105

In the Matter of Bodsham Green,
Elmsted, Kent

DECISION

This reference relates to the question of the ownership of land known as Bodsham Green, Elmsted, being the part of the land comprised in the Land Section of Register Unit No. VG 84 in the Register of Town or Village Greens maintained by the Kent County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Sir William Honywood, bt claimed to be the freehold owner of the land in question, and Ms E Fletcher claimed to have information as to the ownership of part of the land.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Maidstone on 19 May 1987.

At the hearing Mr F C Honywood, Sir William Honywood's executor, appeared in person, and the Elmsted Parish Council was represented by Mrs E Fletcher, its Chairman. I gave leave for Mrs Fletcher also to represent Mr R S Hogben.

The land the subject of the reference consists of strips along the sides of a road. Mr Hogben owns and occupies a house, known as Forge House, on the north side of the road. This property he acquired by a Conveyance made 17 October 1949 between (1) Amy Young and James Albert Young (2) Ralph Sydney Hogben. A very small triangle of the land so conveyed, used by Mr Hogben as part of his garden, forms part of the land the subject of the reference. It would appear that this small triangle was included in the Register Unit in error, but that error cannot be rectified in these proceedings.

Mr Honywood did not contest Mr Hogben's ownership of the small triangular area, but he claimed that the remainder of the land the subject of the reference was in the ownership of the late Sir William Honywood as lord of the Manor of Bodsham. There can be no doubt that the lordship of the manor was in the ownership of Sir William's predecessors in the baronetcy. This is clearly shown by the manorial records, which begin on 20 June 1733, when the court baron of Sir William Honywood, bt was held. The court baron of Sir Courtenay Honywood, bt was held on 20 September 1907.

In addition to the lordship of the manor of Bodsham, Sir Courtenay Honywood had a property of some 8500 acres, known as the Evington Estate. Sir Courtenay got into grave financial difficulties. From 1901 onwards he raised money by a series of mortgages. These only put off the evil day, which came on 24 June 1909, when by an indenture made between (1) Sir Courtenay John Honywood (2) Robert Percy Attenborough (3) Francis Denzil Edward, Baron Ashburton the Evington Estate was conveyed to Lord Ashburton.



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The only evidence of the 1909 indenture before me was its mention in the Schedule of an indenture made 5 April 1918 between (1) F D E ., Baron Ashburton (2) Harold James Body among Mr Hogben's title deeds. This does not show whether the parcels of the 1909 indenture included the lordship of the manor of Bodsham. Mr Honywood argued that in the absence of proof that the lordship of the manor was included in the sale of the Evington Estate to Lord Ashburton it must be assumed that the lordship of the manor and the ownership of the land the subject of the reference as waste land of the manor passed with the baronetcy to the late Sir William Honywood.

If the evidence above summarised stood above, there would be much force in Mr Honywood's argument, for it appears from the particulars of a sale held on 18 June 1935 that the principal mansion house known as Evington Place did not lie within the manor of Bodsham, but was subject to a quit rent payable to the Lord of the manor of Barton. However, this evidence does not stand alone. The records of the court baron of the manor of Bodsham are contained in a single volume covering the period 1733 to 1930. The next entry after that of the court of Sir Courtenay Honywood in 1907 is that of the court baron of Francis Denzil Edward, Baron Ashburton held on 3 July 1913, and the two further entries in the book are those of Lord Ashburton held on 14 August 1919 and 2 July 1925.

The records of these courts are clear evidence that Lord Ashburton acquired the lordship of the manor from Sir Courtenay Honywood either by the 1909 indenture or by a separate transaction. Even if there had been no courts held after 1907, the fact that Sir Courtenay Honywood parted with the possession of the manorial records would be evidence that he had parted with the lordship of the manor.

Mr Honywood argued that in those days lordships of manors did not have the high financial curiosity value which they have today and may well have been seen as irrelevant by a professional moneylender, such as Mr Attenborough. Mr Honywood also said that it was unlikely that Lord Ashburton would have been challenged if he had assumed the role of lord of the manor without formal transfer by deed once he owned the Evington Estate, particularly since Sir Courtenay Honywood and Sir William Honywood ceased to reside in the neighbourhood.

I find myself unable to assume on the evidence before me that Lord Ashburton assumed the role of lord of the manor without any legal title. The assumption which has to be made is exactly the opposite and is aptly stated in the Latin maxim omnia praesumuntur rite et solemniter esse acta. It would require very cogent evidence to contradict the evidence of the Court book. I cannot disregard it in the manner suggested by Mr Honywood.

On this evidence I am satisfied that Mr Hogben is the owner of a small part of the land, and I shall accordingly direct the Kent County Council, as registration authority, to register him as the owner of that part under section 8(2) of the Act 1965.

I am not satisfied that any person is the owner of the remainder of the land, and I shall accordingly direct the County Council to register the Elmsted Parish Council



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as the owner of that part under section 8(3) of the Act of 1965.

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

14~~th~~

day of

June

1983

Chief Commons Commissioner