



COMMONS REGISTRATION ACT 1965

Reference No. 25/U/1

In the Matter of Etling Green,
East Dereham, Norfolk (No.1)

DECISION

This reference relates to the question of the ownership of land known as Etling Green, East Dereham, numbered 418, 419 and 472 on the Ordnance Survey Map of the parish, being the land comprised in the Land Section of Register Unit No. C.L.8 in the Register of Common Land maintained by the Norfolk 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, Mr. John Howlett Dixon of Grange Farm, Etling Green, and the East Dereham Urban District Council each claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Norwich on 24th February 1972.

The ownership of Etling Green is claimed by the East Dereham Urban District Council as lord of the manor of East Dereham of the Queen, the lordship of which was conveyed to the Council on 18th March 1966. The parcels of the conveyance are confined to the lordship of the manor, but the conveyance would by virtue of s.62(3) of the Law of Property Act 1925 be deemed to include any wastes in the ownership of the vendors. Prima facie the vendors were entitled to the soil of all waste lands within the manor: see Doe d. Dunraven v. Williams (1836), 7 J. & P. 332.

The first matter to be considered is whether Etling Green is parcel of the manor of East Dereham of the Queen, for it appears from the East Dereham Inclosure Act, passed in 1812 (52 Geo. III, c. xxxv) that, in addition to the manor of East Dereham of the Queen, there are two other manors in the parish of East Dereham. No direct evidence that Etling Green lies within the manor of East Dereham of the Queen was produced to me, but it appears from a survey of that manor made in 1277, a copy of which is printed in Blomefield's History of Norfolk, v. 1181-2, that the manor then included "Estlingeegreen". A statement in a county history concerning facts of a private or local nature is, of course, not admissible in evidence: see Evans v. Getting (1834), 6 C. & P. 586. This, however, is not a statement by the author of the history, but what purports to be a copy or more probably a translation of the Latin original of an ancient document. Were there an issue between the parties as to this matter, I should have required better proof of the contents of this document or some evidence that it is no longer in existence, but since it was not contended on behalf of Mr. Dixon that Etling Green does not form part of the manor of East Dereham of the Queen, I do not feel justified in requiring that costs should be incurred on this point.

The survey of 1277 does not, however, conclude the matter. S.21 of the Inclosure Act empowered the Inclosure Commissioners to make allotments of



-2-

land to the lords of the three manors in the parish in lieu of their rights in the soil of the wastes of their respective manors, but by s.27 of the Act Etling Green was excluded from the provisions of the Act relating to allotments. Although s.27 does not so provide in so many words, I construe it as excepting Etling Green from the provisions of s.21. If this were not so, the lord of the manor would have lost his right to the soil without any provision being made for a successor in title. It therefore appears that the Inclosure Act did nothing to impair the ownership of the lord of the manor of the soil of Etling Green.

However, the ownership of the waste of a manor, like that of any other land, can be lost by adverse possession. Mr. Dixon claims that this is such a case and that he has acquired a title which is good against that of the lord of the manor.

In order to understand Mr. Dixon's position it is necessary to go back to the East Dereham Inclosure Award made on 16th March 1815 under the Act of 1812. The Commissioners determined that there should be sixteen rights of common over and upon Etling Green. This determination related to the whole of Etling Green and not merely to the land in question in this reference. Four of these rights were allotted to John Nelson and four to John Eastoe and Reuben Eastoe. These eight rights passed to William Buck and Joseph Smith Buck, who on 14th December 1841 conveyed them with certain land to Israel Neal. On 22nd April 1919 Charles Morgate, a solicitor in East Dereham, made a statutory declaration that Israel Neal had been in undisturbed possession of various parcels of land, including the portion of Etling Green in question in this reference, "or of the right over part thereof".

After divers mesne assignments there was conveyed to Mr. Dixon the property which had belonged to Israel Neal, including "exclusive rights of grazing" over the portion of Etling Green now in question. Mr. Dixon gave evidence that after his purchase he had used the land in question for pasturing up to 20 head of cattle, putting them on in the morning and taking them off at night. Sometimes, but not every year, he cut the grass for hay. He also manured and limed the land. Mr. Dixon last had cattle on the land about four years ago and he ceased the liming and manuring some time before that. About five years ago a car breaker living nearby started using the land for the purposes of his trade and Mr. Dixon found that he could not go on using the land for grazing.

It seems clear that up to five years ago Mr. Dixon was in possession of the land and that his possession was good against all the world except any person who could show a good title: see Asher v. Whitlock (1865), L.R.1 Q.B.1. The question to be determined is therefore, whether Mr. Dixon succeeded in ousting for 12 years the Urban District Council or its predecessors in title as lord of the manor of possession of the land which prima facie belonged to the lord of the manor.

It was contended by Mr. Dixon's solicitor that Mr. Dixon had exceeded the rights originally allotted to Nelson and the two Eastoes in that he



-3-

had pastured cattle in excess of the number allotted and had also limed and manured the land. I do not regard either of these actions as adverse to the owner of the soil. Grazing cattle was something which Mr. Dixon was entitled to do as against the lord of the manor by virtue of the Inclosure Award. If he grazed more cattle than he was entitled to graze it might have been that the lord of the manor could have brought an action against him for a surcharge of the common, but the lord of the manor would still have been obliged to allow him to continue to put cattle on the common. Liming and manuring the land was intended to improve the grazing and did not injuriously affect the interests of the lord of the manor. It did not constitute an encroachment adverse to the lord, since it did not prevent the lord exercising any of his rights as owner of the soil. I find that Mr. Dixon did not acquire a possessory title against the lord of the manor.

For these reasons I am satisfied that the East Dereham Urban District Council is the owner of the land, and I shall accordingly direct the Norfolk County Council, as registration authority, to register the East Dereham Urban District Council as the owner of the land.

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 3rd day of March 1972

Chief Commons Commissioner