



COMMONS REGISTRATION ACT 1965

Reference No. 38/U/35

In the Matter of Three Corner Piece,
Westbourne, Chichester R.D.,
West Sussex.

DECISION

This reference relates to the question of the ownership of land known as Three Corner Piece, Westbourne, Chichester Rural District being the land comprised in the Land section of Register Unit No. CL.182 in the Register of Common Land maintained by the West Sussex 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 the Earl of Bessborough 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 Chichester on 9 January 1973. The hearing was attended by the Right Honourable Frederick Edward Neuflyze Earl of Bessborough ("the Claimant") who was represented by Mr. R.H.W. Marten of counsel instructed by Withers solicitors of 20 Essex Street, Strand, London.

On behalf of the Claimant, evidence was given by Mr. P.J. Davis who is a managing clerk employed by Withers and who on behalf of his employers (the Claimant's solicitors) is concerned with the Claimant's affairs, and by Mr. J. Rowe who is and has been ever since 1951 head forester on the Stansted Park Estate. This estate comprises about 2,900 acres, held with Stansted House, of which about 1,100 acres are forest.

Mr. Davis produced the following documents of title (all held by Withers on behalf of the Claimant):- (i) An indenture dated 11 August 1913 by which a "piece ... of Woodland known as Three Corner Piece containing ten acres two roods and twenty three perches ... lying to the North of Westbourne Common ..." was conveyed to Mr. G.C. Whitaker. (ii) An indenture dated 4 September 1924 by which the Stansted Park Estate expressly including Three Corner Piece (as conveyed by the said 1913 indenture) was conveyed by Mr. G.C. Whitaker at the request of the Right Honourable Vere Brabazon Earl of Bessborough ("the late Earl") to the Stansted Park Estate Company ("the Company"). (iii) A conveyance dated 26 January 1956 by which the Stansted Park Estate including Three Corner Piece was conveyed by the Company to the late Earl. (iv) Probate dated 17 April 1956 of the will (with a codicil) of the late Earl (he died on 10 March 1956) granted to the Claimant (his son) one of the executors. Mr. Davis said that the other executor had never proved the will and that the Claimant had never given or made any assent or conveyance in respect of any legal Estate in Three Corner Piece.

Mr. Rowe in his evidence identified the land comprised in this Register Unit with the Three Corner Piece as described in the documents of title. The vegetation on the land is mainly oak with some sweet chestnut and the remainder birch with possibly some few ash saplings; there are some open spaces mainly covered with bracken. Mr. Rowe has since 1951 been responsible for the maintenance of this land as being part of the Stansted Park Estate. In 1961, at the Claimant's expense the land was fenced around with a post three strand barbed wire fence, following complaints by the County Council of gypsies and of rubbish being deposited; six or seven lorry loads of rubbish



were taken away and the land cleared up. In 1951, when Mr. Rowe took over he was approached by a man who claimed the underwood as purchaser, but Mr. Rowe told him that as purchaser more than 2 years back, he could not take away any more; in the result no more was taken. As far as Mr. Rowe knew nobody (other than persons acting for the Claimant or the late Earl) has since 1951 exercised or claimed to exercise any rights over the land.

On the above evidence, I am satisfied that the Claimant is the owner of the land.

Mr. Marten asked Mr. Rowe whether pea sticks had ever been taken from the land. Upon my challenging the relevance of this question he referred me to the Rights Section of this Register Unit which contained an entry dated 19 June 1968 under the heading "Particulars of the Rights of Common..." as follows:- "To cut and take away pea sticks over the land..." and under the heading "Particulars of the land (if any) to which the right is attached" as follows:- "The right is not attached to any land but is held in gross by the inhabitants of the Parish of Westbourne." Mr. Marten said he wished to establish that the right so registered is not a right capable of registration and there is no evidence that any inhabitant has as of right ever cut or taken away pea sticks. This Section of the Register has no note of any objection to the registration and it was (as I understood) conceded that no objection had ever been made to the entry within the time prescribed by the section 5 of the Act by the Claimant or anyone else, so that in the result this entry became (although this does not happen to be recorded on my copy of the Register) final on 1 October 1970; see regulation 4 of the Commons Registration (Objections and Maps) Regulations 1968. It seems likely that the registration of this land in the Land Section was consequential on the registration in the Rights Section; the Land Section has no note of any now relevant objection, and the registration (as is recorded on my copy of the Register) became final on 17 December 1971. Mr. Marten, while conceding that sections 13 and 14 of the Act and Part V of the Commons Registration (General) Regulations 1966 did not expressly confer on a Commons Commissioner any jurisdiction to consider the point, submitted that I should if possible read the Act and Regulations as conferring jurisdiction, because it would be extraordinary if no such jurisdiction existed. He referred me to regulation 28 of the Commons Commissioners Regulations 1971, as showing that a Commons Commissioner could on a reference determine a preliminary point of law: the validity of the registration in the Rights Section was he submitted such a point.

In my opinion I have now no jurisdiction to consider the validity either of the entry in the Rights Section or of the entry in the Land Section. I adhere generally to my decision dated 16 October 1970 re River Bank, Ropewalk, reference 6/U/22 in which I dealt with a similar question. The jurisdiction of a Commons Commissioner to consider any rights of common which have been provisionally registered and land which has been provisionally registered as common land is I think by sections 5 and 6 of the Act limited to registrations to which an objection in accordance with the Act has been made (no such objection has been or can now be made by the Claimant); a Commons Commissioner has I think no jurisdiction in respect of a registration which has become (as these registrations have) final under section 7 of the Act. Regulation 29 of the 1971 Regulations refers I think only to points of law arising under a reference properly made and has no enlarging effect. For these reasons I refused to allow Mr. Rowe to give any detailed evidence about the taking of pea sticks from this land and I express no opinion as to his general remarks about this.



I should perhaps record that if I now have jurisdiction to consider the validity of the entries in the Rights Section and Land Section of this Register Unit, I should, having regard to the terms of reference to me (form 37) and of the public notice of the reference (form 38) given in this case consider that express notice of my intention to exercise this jurisdiction should be given to the registration authority and to every concerned authority, and also record that if the entries in the Rights Section, and in the Land Section were void, it would follow that I could not properly direct the West Sussex County Council to register the Claimant as owner.

As I am against the Claimant on the submissions made on his behalf as to the validity of the entries in the Rights Section and the Land Section, and am satisfied that he is the owner, I shall, in pursuance of section 8 (2) of the Act direct the West Sussex County Council as registration authority to register the Claimant, the Right Honourable Frederick Edward Neuflyze Earl of Bessborough 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 six 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

9th

day of

February

1973

A. A. Baden Fuller

Commons Commissioner