



In the Matter of Hinton Common, Dryham
and Hinton, Avon

DECISION

These disputes relate to the registration at Entry No. 1 in the Ownership section of Register Unit No. G/CL.80 in the Register of Common Land maintained by the Avon County Council and are occasioned by Objection No. Ob. 300 made by Mr P C Girdlestone and Objection No. Ob. 365 made by the Dryham and Hinton Parish Council and both noted in the Register on 16 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Bath on 20 July 1983. The hearing was attended by Mr J D B Milner, of Counsel, on behalf of Mr J R W Blathwayt, the applicant for the registration, and the Parish Council was represented by Mrs S. Rae, its Clerk. There was no appearance by or on behalf of Mr Girdlestone.

The whole of the land comprised in the registration is open, uncultivated, and unoccupied and is therefore waste land as defined by Watson B in Att. Gen v Hammer (1850), 27 L.J.Ch. 837. It therefore only remains to consider whether it is waste land of a manor.

There is among the archives of the Blathwayt family deposited in the Gloucestershire Record Office a plan dated 1795 by J Sturge. The legend of this plan is "Plan of the R^c and Waste adjoining at Hinton in the Parish of Dyrham and Hinton, Gloucestershire". This plan shows as waste the whole of the land comprised in the registration with the exception of a triangular area immediately to the east of the word "COMMON" on the modern Ordnance Survey Map, which is marked on the 1795 plan as "Chamber of Bristol". Although described simply as "Waste", on this plan, the eastern-most part of it is the subject of another plan by J Sturge, dated 1794, the legend of which is "Plan of a piece of Waste land in the manor of Derham and Hinton, Gloucestershire". From this I draw the inference that the whole of the land shown as "waste" on the 1795 plan was waste land of the manor of Dyrham and Hinton.

It appears from an affidavit by George Anstee of Hinton, Yeoman, sworn on 26 August 1794 that William Blathwayt was then lord of the manor and that he caused to be impounded any cattle found grazing and depasturing in the lanes by the sides of the roads within the manor.

I am satisfied on this evidence that, with the exception of the triangular area marked "Chamber of Bristol" on the 1795 plan, the whole of the land comprised in the registration was waste land of the manor of Dyrham and Hinton at the end of the eighteenth century. This, however, far from concludes the matter. I cannot confirm the registration unless I am satisfied that Mr Blathwayt is the present lord of the manor and that the land in question has not since been severed from the lordship of the manor.



In support of his claim Mr Blathwayt relies on a vesting assent made 25 April 1947 by the Rev. Francis Linley Blathwayt as the personal representative of Robert Wynter Blathwayt deceased. The parcels of this vesting assent are:-

"All the property described in the First Schedule hereto and also all other the properties rights and estates (if any) which ought to be vested by this Assent for an Estate in fee simple".

The relevant part of the First Schedule to the vesting assent is:-

"All that freehold estate known as the Dyrham Park Estate in the Parishes of Dyrham and Hinton and West Littleton in the County of Gloucestershire as the same is now more particularly described hereunder by reference to the Ordnance Survey Map and delineated by way of identification on the plan No. 1 annexed hereto and thereon coloured Pink and all interests estates and rights appurtenant or enjoyed therewith and also all that Advowson and right of presentation to the Rectory and Parish Church of Dyrham aforesaid".

The First Schedule contains thirty-three items under the heading "Woods and Wates", but none of these items comprises any of the land the subject of the registration, and none of that land is coloured Pink on the plan No. 1. There is no mention in the First Schedule of the lordship of any manor, so that the lordship of the manor of Dyrham and Hinton could only be included in the parcels of the vesting assent if it fell within the general words "All other the properties rights and estates (if any) which ought to be vested by this Assent for an Estate in fee simple". I am not satisfied that these general words are by themselves sufficient to convey the lordship of a manor of which nothing is known beyond the fact that it belonged at the end of the eighteenth century to a person of the same surname as the testator.

This being so, it is not possible to consider whether the land has since been severed from the lordship of the manor. Should subsequent research reveal who is the present lord of the manor, it would still be necessary to consider the question of the severance.

For these reasons I refuse to 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

29th

day of

July

1983

Chief Commons Commissioner