



COMMONS REGISTRATION ACT 1965

Reference Nos 226/D/20
226/D/21
226/D/22
226/D/23

In the Matter of (2) The Second Allotment,
(3) The Third Allotment, (4) The Fourth
Allotment, and (5) The Fifth Allotment,
(2) partly in Nassington and partly in
Yarwell, (3) and (4) in Yarwell, and (5)
in Apethorpe, East Northamptonshire District,
Northamptonshire

DECISION

These four disputes relate to the registrations at Entry No. 1 in the Land Section of Register Unit (2) No. CL 37, (3) No. CL 33 (4) No. CL 39, and (5) No. CL 40 in the Register of Common Land maintained by the Northamptonshire County Council and are occasioned by Objection (2) No. 116 made by Mr B C Lock (on behalf of the administrators of J E Lock deceased), (3) No. 13 made by Mr Lancelot F Lock, (4) No. 47 made by Peterborough Quarries Ltd and (5) No. 18 made by the Rt Hon the Lord Brassey of Apethorpe and noted in the Register on (2) 8 August 1972, (3) 19 October 1970, (4) 7 December 1970 and (5) 19 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Northampton on 8 February 1979. At the hearing, (2) Mr Bernard Charles Lock was represented by Mr B Bentley, solicitor of Oxley & Coward Solicitors of Rotherham (Mrs S E Parrett as having a beneficial interest in the land was present); (3) Mr Lancelot Frederick Lock attended in person; (4) K S R International Limited of Sandiron House, Beauchief, Sheffield as successors in title of Peterborough Quarries Ltd were represented by Mr M E Haywood, clerk with Guichard & Co, Solicitors of Rotherham; and (5) William Tomkins Limited of Apethorpe, as successors in title of Lord Brassey were represented by Mr W D Harper one of their directors. Although the four lands in these Register Units are distinct, and each objection relates only to one of them, I held one hearing for all four disputes because all the registrations were made on the application of Nassington Parish Council (not represented at the hearing) and were based (so I understood) on allotments made by the Nassington Inclosure Award 1778 of lands for public stone and gravel pits, and because I understood the case of the objectors was or might be similar.

Mr B C Lock in the course of his evidence produced: (1) an abstract dated 1939 of the title of the personal representatives of Mr H H Mould to property in Nassington which commenced with an abstracted conveyance of 4 June 1912 to Matthew Henry Mould (he died 29 July 1939); (2) a conveyance dated 1 December 1939 by the said personal representatives of 61.945 acres of land to Mrs Ruby Kellham; and (3) a conveyance of 1 June 1943 buyer of the said 61.945 acres to Mr Joseph Eric Lock. Mr Lock said (in effect):- He was born in 1951 in Nassington and lived there until he was 21 years of age. His brother (Mr J E Lock) took over after his father died (1928), and from 1933 rented this land (the 61.945 acres) from Mr Mould. He (the witness) remembered minding cattle when he was a boy on the land adjoining the Second Allotment (the CL 37 land);



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it was then (as now) private and there was no question of any person going on it to extract stone or gravel. Part of the CL 37 land is a good place for pheasants (also good for rabbits with ferrets and 12 bore!); the rest of the CL 37 land is and always has been cultivated with the rest of the field.

Mr C J Perrett who has a BSc(Hon) in geology produced a geological section (approximately SE to NE) of the strata of the CL 37 land, showing the surrounding land as Lower Lincolnshire Limestone resting on Lower Estuarine Series Sands, and showing that the limestone on the CL 37 land has been worked out.

The said abstracted documents and conveyances so produced all included the CL 37 land and none contained any reference to it being a public quarry or gravel pit or contained anything suggesting that it was common land within the 1965 Act definition or was within any generally accepted meaning of the words: common land.

Mr Haywood in the course of his evidence produced: (1) an abstract dated 1965 of the title to OS No. 46 commencing with a conveyance dated 15 May 1936 to Henry Montgomery Dunkerley of 500 acres of land being the Old Sulehay Estate and including a conveyance dated 14 July 1965 by him to his wife Mrs E Dunkerley; (2) a conveyance dated 7 July 1966 by which she conveyed OS No. 46 (25A. 3R. 34P.) to Peterborough Quarries Ltd; and (3) a conveyance dated 2 February 1972 by them of the said 1966 conveyance land to Kingscliffe Super-Refractories Limited. He said that they had since changed their name to KSR International Limited.

The last mentioned abstracted documents and conveyances produced all included the CL 38 land and none of them contained any reference to it being a public quarry or gravel pit or containing anything suggesting that it could be within the 1965 Act definition of common land or within any other generally accepted meaning of the words.

Mr Harper said (in effect):- He had known the CL 40 land for the last 40 years. William Tomkins Limited are the private farming company and the lands of which the CL 40 land is part has been farmed by them since 1936 at first as tenants of Lord Brassey and since 1970 as owners; the conveyance was available although he had not got it with him. The CL 40 land is part of a 20 acre field; there is no good access to it from the road; it does not appear to be any different from the rest of the field it has always been like that.

Mr L F Lock in the course of his evidence produced a copy (certified on 1.2.79 by Sherrard & Coombe Solicitors of Cundle to be a true copy) of a conveyance dated 29 May 1916 by which Mr W F Woodford with the concurrence of mortgagees conveyed Manor Farm containing about 160A. 3R. 5P. to Mr James Frederick Lock; (2) a letter dated 2 February 1979 from the said solicitor; and (3) particulars of a sale by auction on 5 July 1916. Mr L F Lock who is 63 years of age said (in effect):- Mr J F Lock named in the 1916 conveyance is his father. The 160 acres he bought is part of one of the lots containing 250 acres specified in the said 1916 particulars he understood that Mr Woodford bought before the auction from Lord Brassey and subsequently sold 160 acres to his father. The CL 38 land is part of this 160 acres; it is separated from the road (a blind lane) by a concrete wall and access to it from the road is impracticable by reason of a hedge, rail fence and stone wall



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He understood the concrete wall was put up in 1910 by Lord Brassey. When he first knew the land it was ploughed along with the rest of the field although in places it was rather steep and was known as the stone pit; after they changed for ploughing from horses to tractors, ~~it was~~ left unploughed, because it was so steep and not for any other reason. Never since he was a boy had he heard of there being any stone there; he thought if there was any stone there by the time of the 1778 Award, it would have been used up very quickly; any such stone could not have lasted more than about 30 years.

Neither the 1916 particulars nor the 1916 conveyance referred to the CL 38 land as being a public quarry or gravel pit or contained anything to suggest that it could be within the 1965 Act definition of common land or within any other generally accepted meaning of these words.

In the absence of any evidence in support of the registrations, on the evidence summarised above, I conclude that all the stone (and gravel) made generally usable by the 1778 Award (the Award was available at the hearing although nobody referred to it) has long ago been got and that accordingly ~~by abandonment~~ or by reason of some other transaction which I ought to presume happened long ago although there is no evidence about it, and these lands ceased to be usable as in the Award contemplated. There was no evidence (or suggestion) that these lands could be rightly registered except as a consequence of the Award. Accordingly my decision if these registrations are not properly made. ~~These registrations are not properly made.~~ ^(That)

For these reasons I refuse to confirm the registrations.

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 27th —

day of February 1979
A. A. Boston Fuller

Commons Commissioner