



COMMONS REGISTRATION ACT 1965

Reference No.30/U/12

In the Matter of the Recreation Ground,
Seaton, Uppingham R.D., Rutland

DECISION

This reference relates to the question of the ownership of land known as the Recreation Ground (adjoining the Glaston Road), Seaton, Uppingham Rural District being the land comprised in the Land Section of Register Unit No.VG.21 in the Register of Town or Village Greens maintained by the Rutland 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. Gerald Williams Clarke 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 Oakham on 9 May 1973. The hearing was attended by Mr. Clarke who was represented by Mr. T. H. Edwards solicitor of Kelham & Sons, Solicitors of Stamford.

The land ("the Unit Land") comprised in this Register Unit is in the Register described as extending to 2.108 acres and as having been awarded "to the Parish by Inclosure Award dated 13 September 1858".

Mr. Clarke gave oral evidence in the course of which he produced the following documents:- (i) a conveyance dated 29 July 1938, (ii) particulars with plan and conditions of sale of the Fineshade Estate offered for sale by auction on 29 July 1937 with which was incorporated an agreement dated 5 April 1938 for the purchase of Lot 3 by Mr. A. A. Clarke, (iii) an abstract dated 1938 of the title of the Special Executor of Mr. G. E. Monckton to land known as the Fineshade Estate and (iv) an extract from an Inclosure Award dated 13 September 1858.

The said 1938 abstract commenced with an examined abstract of an indenture dated 30 May 1856 by which the Manor of Fineshade, the Mansion House Fineshade Abbey and all lands belonging to Mr. G. Monckton in the parish of Fineshade and (among other hereditaments) all the manors and lands belonging to Mr. G. Monckton situate in (among numerous other places) Seaton were conveyed to the use of Mr. Edward Henry Cradock Monckton for life and after his decease to the uses as in the said indenture set out.

The extract from the Award was as follows:- "And I ... do hereby set out allot and award unto the Said Edward Henry Cradock Monckton who hath consented to receive the same in part of his Allotments and to his heirs and assigns all that piece or parcel of land No.II on the said Map containing Two Acres to be held by him and his heirs and assigns subject to the obligation of preserving the surface thereof in good condition and of permitting such land to be at all times used as a place for Exercise and Recreation for the inhabitants of the Said Parish of Seaton and Neighbourhood ..."

In the said 1937-38 particulars, Lot 3 was described as Manor Farm containing 211 acres 3 roods 11 poles and including the farm house and certain lands and cottages



the description included these words:- "The Manor or Reputed Manor of Seaton including the right to graze the Recreation Ground Ordnance Survey No.110 containing 2 Acres 0 Roods 17 Perches together with the other rights and benefits accruing therefrom (if any) and subject to all liabilities that there may be".

By paragraph 1 of the said 1938 conveyance Manor Farm containing 212 acres 1 rood 20 perches was conveyed by the Executors of Mr. G. E. Monckton to Mr. A. A. Clarke in fee simple. Paragraph 2 was as follows:- "... the Vendors ... hereby (so far as they are able to do so) convey unto the Purchaser ALL that Manor or reputed Manor of Seaton ... Together with the rights and benefits accruing therefrom including the right to graze the Recreation Ground at Seaton aforesaid (being No.110 on the Ordnance Survey Plan) TO HOLD unto the Purchaser in fee simple subject to all liabilities (if any) in respect thereof".

Neither the abstract, nor the particulars nor the conveyance contain any mention of the 1858 Award or (save as aforesaid) any particular description of the Recreation Ground.

Mr. Clarke, who is now 39 years of age said:- From as far back as he could remember his father Mr. A. A. Clarke was the owner of Manor Farm and grazed a few stock on the Unit Land and took the hay crop. He assisted his father on the farm and ultimately in 1959 his father took him into partnership. Under the will of his father (he died on 18 January 1963) he became entitled to Manor Farm and the Recreation Ground subject to his mother Mrs. P.M. Clarke (she died on 16 April 1973) receiving a rent during her life. After his fathers death, he continued to put stock on the Unit Land and take the hay crop. His father had never had any claim from anyone which disputed his ownership of the Unit Land, and he Mr. Clarke after his fathers death never received any adverse claim, although in July 1969 when his solicitors wrote to a person in the village who had been burning rubbish on the Unit Land his solicitors received a reply indicating that he Mr. Clarke might not be the owner.

In the course of the hearing Miss A. Davis who is a Planning Assistant employed by the County Council and who was attending the hearing as representing them as registration authority, arranged for the production from the County Archives of the original Inclosure Award; Mr. Clarke identified the Unit Land with the land delineated on the map annexed to the original Award thereon No."II". The recital in the Award showed that it related to "Open Commonable Fields and waste Land of Seaton in the parish of Seaton" and it appears from it that Mr. Edward Henry Cradock Monckton was the Lord of the Manor and as such received other allotments of land in addition to the allotment above quoted.

In my opinion under the allotment above quoted Mr. E. H. C. Monckton took an estate in fee simple. The allotment is I think essentially the same as that considered in Attorney-General v Meyrick 1893 A.C.1 in which it was held that the Lord of the Manor under the allotment made in wording similar to that quoted above became entitled as owner of the soil. A provisional order dated 24 June 1854 for the inclosure of land at Seaton was authorised by the Second Annual Inclosure Act 1855 (18 and 19 Vict. cap.61) and I may assume that the said 1858 Award was in accordance with this Order.

In my opinion, Mr. E. H. C. Monckton took the land allotted to him subject to the same uses and purposes as were applicable to the lands (all subject to the 1856 indenture) in respect of which the allotment was made, see Inclosure Act 1845 section 93. Accordingly the land devolved along with the other lands within the said 1938 Abstract on the Special Executors of Mr. G. E. Monckton.



In my opinion the whole interest in the land of the Special Executors passes under the said 1938 conveyance. By section 62 of the Law of Property Act the conveyance of a Manor shall be deemed to include with the Manor all pastures ... and the ground and soil thereon to the manor appertaining or reputed to appertain or at the time of the conveyance occupied or enjoyed with the same or reputed or known as part parcel or member thereof. The above quoted extract on the said 1937-38 particulars and from the 1938 conveyance show I think (at least as between the parties) that the right to graze the Recreation Ground was occupied or enjoyed or known as part of the Manor of Seaton.

Mr. Clarke at the hearing was unable to produce any copy of the grant of probate of the will of his father Mr. A. A. Clarke and stated that his father's surviving Executor Mr. R. Murray has not yet made any assent or conveyance in his favour. I agreed to postpone my decision so he could obtain such an assent and prove the grant.

Since the hearing, Kelham & Sons have sent to the Clerk of the Commons Commissioners a copy of the grant (it is dated 28 June 1963 and made to Mrs. P. M. Clarke and Mr. R. Murray) and of an assent dated 1 May 1973 by which Mr. R. Murray as surviving executor assented to the vesting in Mr. Clarke of Manor Farm including "the right and all the interest of Mr. A. A. Clarke in or over the Recreation Field at Seaton ..."

On the evidence outlined above, I am satisfied that Mr. Clarke is the owner of the Unit Land and I shall accordingly direct the Rutland County Council as registration authority to register Mr. Gerald Williams Clarke of Manor Farm, Seaton, Uppingham, Rutland as the owner of the land under section 8(2) 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 21st day of June 1973

a. a. Baden Fuller,

Commons Commissioners