

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

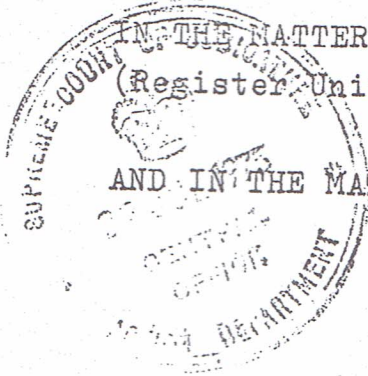
Case No.

GROUP B

22nd July 1975

IN THE MATTER of Broxhead Common, Whitehill, Hampshire  
(Register Unit CL. 147)

AND IN THE MATTER of The Commons Registration Act 1965



TAKE NOTICE that the High Court of Justice, Chancery Division at the Royal Courts of Justice, Strand, London, WC2A 2LL will be moved at the expiration of 7 days from the service upon you of this Notice or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Appellant ANTHONY GARY PETER WHITFIELD :

(i) for a decision as to the questions of law set out in the case stated by the Chief Commons Commissioner in the above matter and in particular for a decision that the Chief Commons Commissioner erred in law in confirming the registration of rights of common so far as they effected the land owned by the said Mr. Whitfield lying to the east of the Sleaford/Lindford road;

(ii) an order that the register of common land be amended accordingly by deleting the said land and by amending the rights of common as registered to exclude any reference to the said land;

(iii) such order as to payment of the costs of and incidental to this appeal as the Court may think just;

(iv) further or other relief

AND FURTHER TAKE NOTICE that the grounds of this appeal are that the decision of the Chief Commons Commissioner in so far as it affected the Appellant's said land was erroneous in law:

P A R T I C U L A R S

1. The decision of the Chief Commons Commissioner in relation to Claim No. 1 was unreasonable and not supported by

the evidence in that:-

- (1) There was no evidence upon which the Commissioner could reasonably have concluded (at page 6 of his said decision) that rights of common over all or any specific part of the registered unit attached either to all the tenements mentioned in the survey of 1636 or to any specific tenement there mentioned
- (2) There was no evidence that there were after 1637 any rights of pasturage, rights in the soil or any other rights appurtenant to or enjoyed with any tenement over the land now comprised in the registered unit
- (3) There was no evidence upon which the Chief Commissioner could reasonably have identified the holding the subject of Claim No. 1 with any of the land or tenements mentioned in the survey of 1636 or on which he could reasonably have concluded (on page 7 of his decision) that such holding was part of the manor of Broxhead at that time or any other time
- (4) There was no evidence that any rights over the registered unit or any part of it were ever granted or enjoyed under the leases relating to the said holding referred to on page 7 of the decision and in particular there was no evidence that the relevant lessors had at any material time any interest in the part of the registered unit east of the Sleaford-Lindford Road ("the Eastern part") which would have entitled them to grant any such right over it
- (5) The Chief Commissioner erred in law in holding that any rights over the Eastern part passed with a conveyance of the said holding dated 30th November 1929 (referred to on page 7 of his decision) in view of the absence of any evidence:-

- (a) that the grantor under the said conveyance had any interest in the Eastern part at the date of the said conveyance; and

(b) that any right over the Eastern part was ever created or reserved by or for the benefit of the said grantor or his predecessors in title

(6) The Chief Commissioner erred in law in holding that any rights could pass under a lease in the absence of express words relating thereto

2. The decision of the Chief Commissioner in relation to Claim No. 12 was unreasonable and not supported by the evidence in that:-

(1) There was no evidence upon which the Chief Commissioner could reasonably have concluded (on page 11 of the decision) that any rights or quasi-rights were enjoyed with the holding the subject of the said claim at the date of the conveyance to Mr. Sotnick on 5th January 1948

(2) In particular:-

(a) the evidence of Mr. White referred to on page 11 of the decision related to the grazing of cattle on areas of land not within the registered unit;

(b) there was no evidence that cattle (from the said holding) were grazed on any part of the registered unit at any time between 1912 and the date of such conveyance

(3) Further and in any event the Chief Commissioner erred in law in holding that any such rights over the Eastern part could pass by virtue of the said conveyance in view of the fact that the said holding was in the ownership and possession of the owner of the Eastern part at the date of such conveyance

(4) If, which is not admitted any cattle from the said holding were grazed on any part of the common at or before the time of such conveyance, the nature and extent of such use was not sufficiently clear or precise to pass as a right of common by virtue of section 62 of the Law of Property Act 1925

(5) Further and in any event any such alleged right of common would have been extinguished on the conveyance to Mr. Sotnick of part of the alleged common

3. In relation to both the said Claims No. 1 and 12 the Chief Commissioner erred in law on page 15 of the decision by adopting for the purposes of registration the measure of levancy and couchancy without any evidence that the rights allegedly enjoyed were by grant or usage so limited

4. In the premises the Appellant's said land is not subject to rights of common and is wrongly included in the register of common land

DATED the 22nd day of July 1975

Stones Parker & Co

Solicitors for the above-named Appellant A.G.P. Whitfield whose address for service is 26/27 Farringdon Street, London, EC4A 4AQ

- TO the (1) Chief Commons Commissioner of Watergate House, 15 York Buildings, Adelphi, London, WC2N 6LB
- and (2) The Hampshire County Council of The Castle, Winchester, SO23 8UJ
- and (3) The Ministry of Defence whose address for service is that of the Treasury Solicitor of Matthew Parker Street, London, SW1
- and (4) David Innes Hadfield of Mellow Farm, Dockenfield, Farnham, Surrey
- and (5) Amey Gravel Limited of Lower Wootten, Boar's Hill, Oxford
- and (6) A.G. Jeffree (Male) of The Bungalow, Trottsford Farm, Headley, Hants
- and (7) Ernest Alexander Connell of Lindford Bridge House, Lindford, Hants
- and (8) Gladys Barbara Wallesley Nicholson (Married woman) of Amberwood, Headley Fields, Headley, Hants
- and (9) Laura Emily Bicknell (Married woman) of Hazel Cottage, Chase Road, Lindford Bordon, Hants
- and (10) Fiona Rosemary Diana Cooke (Married woman) of Trottsford Farm, Headley, Hants

- and (11) Kingsley Strawberries Limited of Headley Mill Farm, Bordon, Hants
- and (12) Leonard Hope Atkins of Chase Farm, Lindford, Bordon, Hants
- and (13) Patricia Margaret Elphinstone Barnard (Widow) of Picketts Hill Farm, Headley, Hants
- and (14) Mr. and Mrs. Grinsley of Apple Tree Cottage, Headley, Hants
- and (15) John Harry Ellis and Peter George Ellis both of Headley Mill, Bordon, Hants
- and (16) J. Ellis & Sons (Bordon) Limited of Headley Mill Bordon, Hants
- and (17) Joan Hunter Jackson (Married woman) of Lynton Dene, Headley, Hants
- and (18) Kristiana Maria Blackwell (Married woman) of Lindford Farm, Lindford, Bordon, Hants
- and (19) D.J.D. Youles (Married woman) of Watermeadow Farm, Lindford, Bordon, Hants
- and (20) M. Heather (Spinster) of Blacksmith's Shop, Chase Road, Lindford, Bordon, Hants
- and (21) John Conway of Five Acres, Chase Road, Lindford, Bordon, Hants
- and (22) Commodore J.S. Rawlins of Wey House, Standford Lane, Lindford, Bordon, Hants
- and (23) William H. Kerridge of Hatch House Farm, Lindford, Bordon, Hants