

[2018] UKFTT 576 (PC)

REF/ 2017/0037

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) JOHN DREVOR DICKINSON
(2) BRENDA DICKINSON

APPLICANTS

and

PETER RODNEY BLACKETT
DAVID SIMON GRAY
EDITH AVRIL ROPNER
DAVID ANTHONY COLLINGWOOD

RESPONDENT

Property Address: Land at Wycliffe, Ovington, Richmond

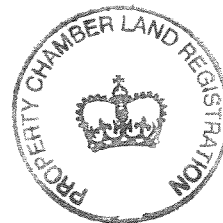
Title Number: DU309027 and DU351906

ORDER

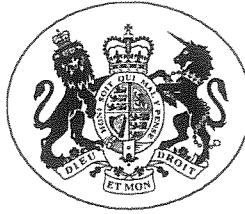
The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicants, John Drevor Dickinson and Brenda Dickinson to alter the register of title number DU309027 and DU351906.

Dated this 31st August 2018

Michael Michell



BY ORDER OF THE TRIBUNAL



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RESPONDENTS

Property Address: Land at Wycliffe, Ovington, Richmond

Title Number: DU309027 and DU351906

Before: Judge Michell

Sitting at: Darlington Magistrates Court

On: 24th July 2018

**Applicant Representation: Mr Charles Holland, counsel, instructed by Swinburne Maddison
Respondent Representation: Mr Stephen Fletcher, counsel, instructed by BHP Law**

DECISION

APPLICATION TO ALTER REGISTER – WHETHER RESPONDENT HAD GOOD PRE-REGISTRATION TITLE TO THE LAND – WHETHER APPLICANTS HAD GOOD PAPER TITLE TO THE LAND

1. Close to the banks of the river Tees just outside the village of Winston and across the river from the hamlet of Wycliffe is an area of woodland. Part of the area is given an enclosure number 171 on Ordnance Survey maps. I shall refer to the enclosure as “OS 171”. The Respondent trustees (“the Trustees”) are the registered proprietors of part of OS171. It is included in title number DU309027. The Applicants, Mr and Mrs Dickinson are the registered proprietors of adjoining land known as Low Barn Farm and registered under title number DU351906. Mr and Mrs Dickinson say that there is a mistake on the register. They say that they can show a pre-registration title to the part of OS 171 included in the Trustees’ title and that the Trustees should not have been registered as proprietors of that land. Mr and Mrs Dickinson applied to HM Land Registry to alter the register to remove that land from title DU309027 and to have it included in title number DU351906. The Trustees objected and the matter was referred to the Tribunal for determination.
2. I inspected the site in the company of counsel for both parties on the afternoon before the hearing. The land in issue is a steeply sloping area. Parts of it could be described as being like a cliff. It is entirely covered with trees. The northern boundary adjoins agricultural fields. The southern boundary adjoins a flat area forming the banks of the river. The exact location of the eastern and western boundaries is not clear on the ground. There is now a gate near to the western end of the northern boundary giving access to a very steep rough stone and earth staircase which leads to the southern boundary. The gate and the staircase were erected by Mr and Mrs Dickinson after the matter had been referred to the Tribunal.

The Registered Titles

3. The land registered under title number DU 309027 (of which the Trustees are the registered proprietors) includes part of the land shown on OS maps as OS 171. The eastern boundary of this area of land within the title is shown as being along a line to the west of the eastern boundary of the field adjoining the land on its northern side. The relevant boundary of the land registered under title number DU351906 (of which Mr and

Mrs Dickinson are the registered proprietors) is shown in the same place. The title plans are consistent. This is not a case in which the same area has been registered under more than one title.

The Trustees' Paper Title

4. The first issue to be determined is whether the Trustees had a good pre-registration title to the land in issue.
5. By an indenture dated 9th September 1912 made between Mrs EFM Chichester Constable and Colonel WGR Chichester Constable ("Colonel Chichester Constable") and RCJ Chichester Constable, Mrs Chichester Constable released the property set out in the schedule from a jointure charged on that land so that the property could be mortgaged. The schedule included land in the parish of Whorlton in the County of Durham, including part OS 171 and OS 288. The parts of these parcels included are stated to have a combined acreage of 4 acres. There was no plan to this indenture.
6. Colonel Chichester Constable and RCJ Chichester Constable then by an indenture dated 21st October 1912 mortgaged the land "more particularly described in the Second Schedule and delineated on the plan annexed" to the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy. The Second Schedule included in the parish of Whorlton parts of OS 171 and 288 with a combined area of "about" 4 acres. The plan shows coloured brown part of OS 171 with an area written on the plan for that part of 1.75 acres. The north-eastern boundary of the part of OS 171 coloured brown is shown as a straight line from the bank of the River Tees to the southern end of the hedge between OS 169 and OS 175
7. By an indenture dated 22nd October 1912 Colonel Chichester Constable and RCJ Chichester Constable conveyed to C French and RCJ Chichester Constable as trustees land including land particulars of which were set out in the fourth part of the schedule and "by way of further identification and not of restriction delineated in" the plan marked "9". The fourth part of the Schedule listed land "coloured blue on Plan No. 9" and included Part 171 and 288 with a combined acreage of "about" 4 acres. The plan shows coloured blue part of 171 with an area written on the plan for the part of 1.75 acres. The north-

eastern boundary of the part of OS 171 coloured blue is shown as a straight line from the bank of the River Tees to the southern end of the hedge between OS 169 and OS 175.

8. By a vesting deed dated 28th January 1926 the then trustees being RCJ Chichester Constable, CH Chichester and BM Eddis vested the land held by them in trust in Colonel Constable.
9. By a conveyance dated 12th April 1932 between (1) Colonel Chichester Constable (2) RCJ Chichester Constable, CH Chichester and BM Eddis (3) The Governors of the Bounty of Queen Anne for the Augmentation of The Maintenance of The Poor Clergy and (4) Charles Urie Peat, Colonel Chichester Constable conveyed to Charles Peat

“Secondly ALL THAT messuage or farmhouse with outbuildings and pieces or parcels of land known as Grafts Farm in the Parish of Whorlton in the County of Durham and comprising in the whole Forty acres three roods thirty six perches [40.975] or thereabouts and now in the occupation of George Atkins as tenant thereof including in the foregoing properties all boundary walls and fences all which said premises are more particularly described in the Third Schedule hereto and for the purposes of identification and not by way of restriction delineated on the plan annexed hereto and thereon surrounded by a red verge line.

The Third Schedule lists Ordnance Survey numbers “171 Part” and “288 Part”. These are bracketed together in the schedule and given a combined acreage of 4.000 acres. The plan shows within the red verge line part of OS 171. It is shown on the plan extending further east than the continuation of the boundary line between OS 169 and OS 175, the fields lying to the north.

10. On 20th May 1952 Charles Peat conveyed to Trustees “All and singular the Scheduled property”. The First Schedule is entitled “The Scheduled Property”. Under the sub-heading “Part 1” there appears the words “Shown in Plan No. 1 hereto and thereon coloured pink and yellow and surrounded by red verge lines”. Part 1 then goes on to list first Wycliffe Hall and

“also ALL THAT messuage or farmhouse with outbuildings and pieces or parcels of land known as Grafts Farm in the Parish of Whorlton in the County of Durham and comprising in the whole Forty acres three roods thirty six perches or thereabouts .. all which said premises are more particularly described in the Third Schedule to”

the 1932 Conveyance. The land described in the Third Schedule to the 1932 Conveyance includes part OS 171. The red edging on Plan Number 1 is not drawn to include any part of OS 171.

Mr and Mrs Dickinson's Paper Title

11. On 23rd November 1922 the executors of John Harrison Stanton conveyed to Frank Bell land described as "the Stubb House Estate" containing 962.849 acres and more particularly described in the First Schedule. The land conveyed was shown coloured red on the conveyance plan "for the purpose of identification only and not limitation". The First Schedule lists the parcels conveyed with an Ordnance Survey parcel number, a description and an area measurement. It includes under a heading "Plantations near Stubb House", "pt. 171" described as "River Banks (say)" and an area of 3.000 acres. The plan 1 shows coloured red part of OS 171 although the parcel number is not printed or written on the plan. The area coloured red is shown as being bound to the north by OS 175, to the east by OS pt 342 (the boundary between OS 171 and OS pt 342 not being shown) and OS169), and to the south and east by the river at the east end and by a further area of land not given an OS parcel number but adjoining the river. The western boundary is not clearly marked but the red colouring does not extend as far west as the point where the western boundary of OS 171 is shown on the Ordnance Survey map.

12. By a deed of gift dated 6th June 1946 Frank Bell conveyed to Anthony, John and Elizabeth Bell "All the freehold property situate in the County of Durham and more particularly described in the First Part of the Schedule hereto". The land was described in the First Part of the Schedule as

"the freehold messuages farms lands and hereditaments known as lthe Stubb House Estate and containing in the whole an area of 961.603 acres or thereabouts and with the property described in the Second Part of the Schedule hereto (which property has been disposed of by the grantor) more particularly described in the First Schedule"

to the 1922 Conveyance and delineated on plan 1 on that conveyance. The Second Part did not include any part of OS171. The deed of gift therefore conveyed the part of OS171 that had been conveyed to Frank Bell by the 1922 Conveyance.

13. By a conveyance dated 4th March 1955 Anthony, John and Elizabeth Bell conveyed to James Tunstall and Ella Sykes

“All those pieces of land situate at or near Winston in the said County of Durham containing in area 260.645 acres or thereabouts and more particularly delineated upon the plan Numbered One annexed hereto and thereon coloured round with red Together with the farmhouse and other buildings erected on part thereof which said premises are known as Low Barn Farm and of which further particulars are specified in the Schedule hereto ...”.

The Schedule contains only a listing of the 1922 Conveyance and the 1946 Conveyance. The plan shows within the red edging OS 171 extending further to the west than the area of OS 171 shown on the plan to the 1922 Conveyance.

14. James Tunstall and Ella Sykes on 12th February 1960 conveyed into Ella Sykes’s sole name the property described in the schedule thereto. The schedule described the land as

“containing in area 260.645 acres or thereabouts and more particularly delineated and coloured red”

on the plan to the 1955 Conveyance.

15. On 20th August 1960 Ella Sykes conveyed to LW Evans (Holdings) Ltd.

“All That the freehold property known as Low Barn Farm Winston in the said County of Durham containing 260.675 acres or thereabouts and being more particularly described in the First Schedule hereto”.

The Schedule described the property conveyed as being “more particularly specified in Part II of this Schedule” and as being shown and edged red on the plan to the 1955 Conveyance. Part II lists OS parcel numbers with acreages. In the list is “Pt 171” with an acreage of 3.000 acres.

16. By a conveyance dated 31st March 1966 LW Evans (Holdings) Ltd, acting by its liquidator, Mr R Jennings conveyed to Lawrence Evans

“Secondly All That freehold farm known as Low Barn Farm ...which is more particularly described in the Second Schedule hereto”.

The Second Schedule is in identical terms to the Schedule to the conveyance of 20th August 1960.

17. The executors of the estate of Lawrence Evans executed a conveyance to the Applicants, Mr and Mrs Dickinson dated 12th June 1981. The conveyance conveyed to Mr and Mrs Dickinson

“All Those closes or parcels of land situate at or near Winston in the said County of Durham containing an area of Two Hundred and Twenty Four acres or thereabouts which said closes or parcels of land are for the purpose of identification only shown edged blue on the plan annexed hereto (the Ordnance Survey numbers and acreages being set out in the Second Schedule hereto)”.

Listed in the Second Schedule is OS No. 171 described as “wood” and with a given acreage of 4.980 acres.

18. The title documents do not show that the executors of Lawrence Evans had any title to the whole of OS No. 171. What was conveyed to Lawrence Evans and to his predecessors in title going back as far as the 1922 Conveyance was part of OS171 with an acreage of 3 acres and not 4.980 acres.

19. Counsel for Mr and Mrs Dickinson referred me on instructions to a deed dated 12th April 1956 made between James Tunstall and Ella Sykes and Charles Peat. The deed is a grant of fishing rights in the River Tees for a term of 5 years at a rent together with the grant of a right of way over Low Barn Farm for the purpose of exercising the fishing rights. It is said that the plan with the deed shows the whole of OS parcel 171 in the ownership of the grantors, Mr Tunstall and Ms Sykes. The sole purpose of the plan as referred to in paragraph 1 of the deed is to show the area of river in which the right to fish is granted. The deed does not state that the plan shows the land within the ownership of the grantors and save to the extent that it implicitly shows the area of river in which the grantors own the fishing, the deed cannot be read as indicating that the plan shows land owned by the grantors. It is not of assistance in determining whether the Applicants had a good paper title to the land in issue.

Witness Evidence

20. Evidence was given by both Mr and Mrs Dickinson and by Mr Hoskins-Abrahall, Mr Jonathan Usher and Mr Edward Peat for the Respondents. None of their evidence was relevant to the question of construction of the title deeds. Due to the clear view I have formed on that question, it is not necessary for me to consider the witness evidence here.

Reasoning

21. Part of OS 171 with an area of 1.75 acres was conveyed to Charles Peat by the conveyance dated 12th April 1932 by Colonel Chichester Constable. Title had been vested in Colonel Chichester Constable prior to the date of that conveyance. There is no evidence that Charles Peat conveyed away that part of OS 171 at any time prior to his executing the conveyance dated 20th May 1952. The conveyance dated 20th May 1952 was a conveyance of the land described in the Third Schedule to the 1932 conveyance. The more particular description of the land conveyed is that to be found in the Third Schedule to the 1932 Conveyance. In as much as there is a conflict between the description in that schedule (which includes part of OS 171) and the plan to the 1955 Conveyance (which does not show any part of OS 171 within the red edging), the particular description in words should prevail.
22. The executors of John Stanton did not convey to Frank Bell the whole of OS 171 by the conveyance dated 23rd November 1922. They conveyed a part having an area of 3 acres. The plan to the conveyance can be looked at for the purpose of identifying the area conveyed. It indicates that the area conveyed did not extend to the western boundary of OS 171. Frank Bell then conveyed by way of gift by the conveyance dated 6th June 1946 what he still retained of the land that had been conveyed to him in 1922. No conveyance has been produced to show that any land was conveyed to Anthony, John and Elizabeth Bell other than the conveyance dated 6th June 1946. All that they could have conveyed by the conveyance dated 4th March 1955 was what had been conveyed to them in 1946. There is an apparent internal conflict in the description of the land purported to be conveyed by the conveyance of 4th March 1955 in that the plan on which the land conveyed is said to be “more particularly delineated” is drawn to include the whole of OS 171 whereas the further description refers to the conveyances of 23rd November 1922 and 6th June 1946, which conveyances included part only of OS 171. Having regard to the contents of the 1922 and 1946 conveyances and the fact that only those conveyances are referred to in the schedule to the 1955 conveyance, I conclude that on its true construction the 1955 conveyance conveyed only that part of OS 171 that had been conveyed by the 1922 and 1946 conveyances.

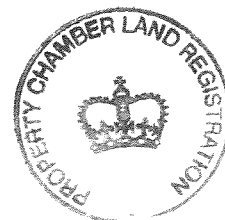
23. The conveyances dated 12th February 1960, 20th August 1960 and 31st March 1966 conveyed only what had been conveyed by the conveyance of 4th March 1955.
24. The conveyance to Mr and Mrs Dickinson dated 12th June 1981 purported to convey the whole of OS 171 with a stated acreage of 4.980 acres but it was not effective to do so because the vendors, the executors of the estate of Lawrence Evans had title only to part of OS 171 measuring 3 acres since that was all that had been conveyed to Lawrence Evans.

Conclusions

25. Mr and Mrs Dickinson's application to alter the register to remove part OS 171 from title number DU309027 and to add it to title number DU351906 should be cancelled. The Trustees have shown that they had a good pre-registration title to the land in question. The Applicants have not shown a good paper title to it. There is no mistake on the register to be corrected by alteration of the register.
26. My preliminary view is that Mr and Mrs Dickinson must pay the Trustees' costs of the proceedings to be assessed on the standard basis. Their application has not been successful and it is just that they pay the costs. Any party who wishes to submit that some other order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 14th September 2018.

DATED this 31st August 2018

Michael Mitchell



BY ORDER OF THE TRIBUNAL