

In the Matter of Penn Street Common, Penn, BucksDECISION

This reference relates to the question of the ownership of land known as Penn Street Common, being the land comprised in the Land Section of Register Unit No. VG.64 in the Register of Town or Village Greens maintained by the Bucks 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 Earl Howe and Penn Parish Council each claimed to be the freehold owner of the land in question ("the Register Unit") 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 Register Unit at Aylesbury on 21 February 1979.

At the hearing Mr P H Maitland, Solicitor, of the firm of Trower Still and Keeling appeared on behalf of Earl Howe and Penn Parish Council was represented by the Clerk, Mr A B Chappell.

1. As regards the documentary title of Earl Howe, I am satisfied that what I will refer to as the Curzon Settlement Properties vested in Earl Howe (then Viscount Curzon) by virtue of a conveyance and Vesting Deed dated 11 December 1957, ("the 1957 Deed"). The earlier history of the title shows that by a Vesting Deed dated 26 May 1926 ("the 1926 Vesting Deed") the Trustees of a Settlement made in 1883 declared there to be vested in the 4th Earl certain properties therein described (these properties I refer to in more detail below): then after the death of the 4th Earl there was a Vesting Assent dated 14 May 1929 ("the 1929 Vesting Assent") whereby the then Trustees of the Settlement as his special executors assented to the Vesting in the 5th Earl (as tenant for life) of the properties which were the subject of the 1926 Vesting Deed. The properties were also subject to a Compound Settlement consisting of a Resettlement of 1907 and subsequent documents: by a Deed of Discharge dated 19 October 1931 the Trustees of the 1883 Settlement declared that they were discharged from the trusts of that Settlement and by a Vesting Deed of the same date ("the 1931 Vesting Deed") the Trustees of the Compound Settlement declared that the properties which were the subject of the 1929 Vesting Assent were vested in the 5th Earl (as tenant for life of the Compound Settlement). Finally by the 1957 Deed the properties described in the First Schedule (which it was recited were included in the 1931 Deed), were conveyed by the 5th Earl to the then Viscount Curzon as tenant for life under a Settlement made on 28 August 1953 ("the Curzon Settlement Properties")

The Howe Estates included in the 1926 Vesting Deed and the 1957 Deed comprised large areas of land. The description of the relevant properties in the 1926 Vesting Deed is "the messuages farmhouses cottages and other buildings farms lands and property situate or arising in the parishes of Penn.....particulars where of are continued in the Third Schedule and which so far as capable of delineation are delineated on the plans....annexed and thereon coloured pink". The 1929 Vesting Assent and the 1931 Vesting Deed described the properties only by reference back to the description in the 1926 Vesting Deed. The 1957 Deed however contains its own description which (in the First Schedule) is "First the Manors or Lordships



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or reputed Manors or Lordships of Penn.....Thirdly all the singular the lands and properties situated in the parishes of Penn.....containing in the aggregate 2105.996 acres or thereabouts All which said premises are more particularly delineated on the plan annexed hereto and thereon coloured pink".

2. As stated above, I am satisfied as to the documentary title to Earl Howe to the Curzon Settlement Estates: the problem is to identify as included in those Estates the Register Unit. The same problem arises in respect of eight other Register Units in Penn the ownership of which has been referred for decision and are in the list for this hearing. Mr Maitland in relation to these cases where identification is not possible makes the general submission that land comprised in a manor is, in the absence ~~vested in the Lord of the Manor for the time being~~ *of evidence of transfer to another party, vested in the Lord of the Manor for the time being.*

3. The Register Unit in this case contains about $4\frac{1}{2}$ acres which are not, so far as I can see, identifiable as within the description in either the 1926 Vesting Deed, or the 1957 Deed, so that Mr Maitland would have to rely on the presumption in support of his client's claim.

Mr Chappell's evidence in support of the Parish Council's claim was to the following effect. Since 1929 the Register Unit has with other areas under the control of the Parish Council been regulated by its bye-laws, which are still in operation. During the last war the Parish Council was the authority which was dealt with on matters of requisitioning of the Register Unit: in November 1951 it was notified by the Ministry of Works of quittance by the latter from the site and there is a letter dated 24 February 1954 from the Minister of Housing with regard to payment to the Parish Council of the cost of resoration of the site. The Register Unit is used by the local cricket club: on it there is erected a war memorial which is maintained partly by the parish council, which also keeps the grass cut and controls the parking of vehicles. The Electricity Board has negotiated the grant of wayleaves with the parish council for which the parish council has received payment; and the County Council pays an annual nominal rent to the parish council for use of the Register Unit by the local school for sports and other activities.

On this evidence I am satisfied that a possessory title has been made out by the parish council and I shall accordingly direct the Bucks County Council, as registration authority, to register the parish council as owner of the Register Unit under S.8 (2) of the Act of 1965. I should add that had I not taken this view as to the parish council's possessory title, I would not have been satisfied that Earl Howe is the owner, since there was insufficient evidence that the Register Unit was part of a manor vested in Earl Howe by the 1957 Deed.

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

5 July

1979

L. J. Morris Smith
Commons Commissioner