



COMMONS REGISTRATION ACT 1965

Reference No.3/U/17

In the Matter of Southend Common,  
Turville, Wycombe R.D., Buckinghamshire

DECISION

This reference relates to the question of the ownership of part of the land known as Southend Common, Turville, Wycombe Rural District being the land comprised in the Land Section of Register Unit No.CL.142 in the Register of Common Land maintained by the Buckinghamshire County Council.

Following upon the public notice of this reference Lord Camoys claimed to be the freehold owner of all parts of the Common, and Turville Parish Council wrote saying in effect that the non-registration of his ownership of part was a mistake. No other person claimed to be the freehold owner or 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 Aylesbury on 27 November 1973. At the hearing the Rt. Hon. R. R. W. S. Lord Camoys D.L. was represented by Mr. T. C. T. Wright solicitor of Taylor & Humbert, Solicitors of Grays Inn, London, and Turville Parish Council were represented by Mr. H. H. J. Button their clerk.

At the beginning of the hearing there was some discussion as to the identity of the land in question. The land ("the Unit Land") comprised in this Register Unit contains according to the Register 4.94 acres and comprises three pieces: a triangular piece (much the largest of the three) on the east side of the road known as Drovers Lane and two other pieces (narrow strips much smaller than the triangular piece) on the west side of the said road, opposite the triangular piece. The two narrow strips could be described as roadside verges if they did not form part of the Common on the other side of the road. They are separated from each other by a private vehicular track (also a public footpath) leading to Stonor Park on the west. The Ownership Section of the Register shows that Lord Camoys was on 1 May 1970 provisionally registered as owner of "the land comprised in this Register Unit with the exception of the part lying on the west side of the U654 (Drovers Lane) and of the part lying south of the line lettered A-B on the Register Map". The land ("the South Piece") lying south of the said line is the south end and a very small part of, the triangular piece. The reference (form 37; dated 2 August 1972) under which these proceedings are held could be read as referring to me the question of the ownership of the part of the Unit Land of which Lord Camoys has been provisionally registered as owner and not (as might be expected) the part of which no person has been registered under section 4 of the Commons Registration Act 1965 as the owner. Mr. C. D. Durrant, administrative assistant of the County Council, said that the reference had been intended to refer the question of the ownership of the part of which no person has been registered under section 4 as the owner. It appearing that in none of the public advertisements of these proceedings has the part intended to be dealt with been precisely specified (so nobody can have been misled), at my suggestion Mr. Durrant (acting on behalf of the County



Council as registration authority) altered the reference so as to make it clear that the part of the Unit Land the ownership of which is in question is the part ("the Referred Part") which is west of Drovers Lane and which is south of the line lettered A-B on the Register map, and of which said part no person is registered under section 4 of the 1965 Act as the owner. So in the result it was agreed that I am only concerned with a small part of the Unit Land: comprising the South Piece and the two narrow strips above mentioned.

Mr. Wright for the purpose of proving the ownership of the Referred Part produced a deed dated 29 September 1927 and a deed dated 16 June 1938. By the 1927 deed (apparently made for the purpose of giving effect to the Settled Land Act 1925) it was declared that there were vested in the Rt. Hon. R. F. J. Lord Camoys in fee simple "ALL AND SINGULAR the hereditaments described in the Second Schedule to the Settlement of 1906 (except ...) which premises are more particularly described in the First Schedule and are delineated so far as the same are capable of delineation on the plan hereto annexed and thereon coloured red, yellow, purple, blue, brown and green, and all other if any the freehold hereditaments capable of being vested by this declaration which are now by any means subject to the Compound Settlement"; and the First Schedule was: "ALL THAT the Manor ... of Stonor ... ALL THOSE Manors of ... and also ALL THAT one fifth part of the Manor or Lordship of Turville otherwise Turfield, otherwise Turfield St. Albans and also ALL THAT ... (advowson etc.). By the 1938 deed which was expressed to be supplemental to the 1927 deed and to be made in accordance with section 7(5) of the Settled Land Act 1925, the Rt. Hon. R. F. J. Lord Camoys conveyed to Lord Camoys (the present claimant then and therein called the Hon. R. R. W. S. Stonor) "all the hereditaments comprised in the said vesting deed of 29 September 1927 except (a) ... (coloured pink) ..." On the plan annexed to the 1927 deed, the land to the west of the two narrow strips is coloured pink and the Unit Land is uncoloured.

Mr. Wright said (rightly I think) that he could not suggest the the Referred Part should be deemed to be included in the land coloured pink so as to pass under the 1927 deed or so as to be excepted from the 1938 deed. He submitted that the Referred Part was in the Manor of Turville and was therefore vested in Lord Camoys because the two deeds showed him to be the owner of one fifth of the Manor; this one fifth was not excepted from the 1938 deed.

Mr. Button said that none in the parish would dispute that all the Unit Land (including the Referred Part) was "Camoys land"; on behalf of the Parish Council he offered no objection to Lord Camoys being registered as owner of the Referred Part, so that he would then be the registered owner of all the Unit Land.

A discussion ensued as to the absurdity in the particular circumstances of this case of the registered ownership of the Referred Part being different from that of the remaining more important and far larger part of the Unit Land. I understood that Lord Camoys (or those advising him) had not included the Referred Part in the application dated 22 July 1968 pursuant to which he had been registered as owner of the remaining part of the Unit Land, because such application was made at the same time as an application by him also dated 22 July 1968 that the Unit Land (described so as not to include the Referred Part) as common Land, and because he (or his advisers) did not know (there was no reason why he or they should) that the Parish Council had made an application dated 21 May 1968 pursuant to which the Unit Land (including the Referred Part) had been registered as common land.



In my opinion the two deeds do not show that Lord Camoys is the owner of the Referred Part. Even assuming that the Unit Land is a common appertaining, or reputed or known as part of the Manor of Turville (so that by section 62 of the Law of Property Act 1925, a conveyance of the Manor would be deemed to include the Unit Land), Lord Camoys would not by virtue of his ownership of one fifth of the Manor be the owner of the entirety of the Unit Land. Even assuming that a manor may properly be held by several persons in undivided shares, it is I think clear that since the Law of Property Act 1925, the legal estate in fee simple in the Unit Land cannot be owned in undivided shares. In these proceedings I am only concerned with such a legal estate, see section 22(2) of the 1965 Act.

It having been said that a mistake had been made and that I should somehow put the matter right, I inspected the Unit Land on 10 December to understand better the submissions made to me at the hearing. Fronting on or near to the Unit Land there is a public house (The Drover) and a number of dwelling houses, which are together known as Southend. The Unit Land is crossed by the road from Fawley to Northend, by a side road leading to some of the houses, and by tracks and paths; a substantial part of it is open grass land and the rest trees, bushes and scrub. The general appearance is attractive: a valuable amenity for those living at Southend. Although its appearance suggested that the whole or at least a substantial part of the Unit Land probably comes within the definition in the 1965 Act either of a "town or village green" or "common land", I found nothing pointing unambiguously either to including or to excluding the Referred Part from any such registration. The line lettered A-B on the Register map continues (approximately) the line on the east between O.S. plots 236 and 263; the two narrow strips (as already stated) are on the other side of the road. My inspection led me to no conclusion as to ownership.

By section 8 of the 1965 Act, I am required to say whether I am "satisfied that any person is the owner" of the Referred Part. I cannot I think deduce that Lord Camoys is the owner merely because his provisional registration under section 4 as owner of the remaining part of the Unit Land has (because there was no objection to it) by section 5 become final. Under the Commons Registration (General) Regulations 1966, a person may under these sections be finally registered as owner if he has made a statutory declaration that he believes he is entitled to apply for registration under the 1965 Act of a claim to the ownership, see Form 10. Because the procedure applicable to a section 4 registration differs from that applicable to a section 8 registration, it follows that an application which might have succeeded under one section may fail if made under the other, and that the fact that an ownership claim under section 4 if made would (because in all probability nobody would have objected to it), have succeeded cannot I think by itself and in the absence of any other evidence of ownership support a claim under section 8.

For the above reasons I conclude that I have no evidence that Lord Camoys is the owner of the Referred Part, and I am accordingly not satisfied that he or any other person is the owner of the Referred Part and it will therefore be subject to protection under section 9 of the 1965 Act.

The result will or may be that in due course the Referred Part will under section 1 of the 1965 Act vest in such person "as Parliament may hereafter determine". In the particular circumstances of this case, this result may appear to some to be an absurd consequence of an unfortunate mistake; it may be that the person so determined by



Parliament will be able somehow to remove or mitigate any absurdity there may be. In my view, I am not by the 1965 Act given any jurisdiction to consider this aspect of the matter.

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 10<sup>th</sup> day of January 1974.

a. a. Baden Fuller.

Commons Commissioner