



COMMONS REGISTRATION ACT 1965

Reference No 203/U/39

In the Matter of Stump Well,
Marsh Gibbon, Aylesbury Vale
District, Buckinghamshire

DECISION

This reference relates to the question of the ownership of land containing about 0.02 of an acre known as Stump Well, Marsh Gibbon, Aylesbury Vale District being the land comprised in the Land Section of Register Unit No CL. 269 in the Register of Common Land maintained by the Surrey 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 no person claimed to be the freehold owner of the land in question and no 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 Aylesbury on 5 October 1977. At the hearing the Ewelme Almshouse Trustees were represented by Mr R D Stoddart surveyor of King & Chasemore Chartered Surveyors of Chilton, Aylesbury.

Mr Stoddart gave oral evidence. He produced : (1) a copy of a scheme dated 23 June 1953 and made by the Charity Commissioners for the regulation of the Charity called the Almshouse of Ewelme (otherwise God's House in Ewelme) in the County of Oxford regulated by a High Court Scheme dated 5 May 1860, a Charity Commission Scheme dated 19 August 1873 and an Endowed Schools Acts Scheme dated 8 August 1899; and (2) and (3) copy schemes dated 15 April 1969 and 31 March 1966 and made by the Charity Commissioners for regulating the said Charity (varying the 1953 Scheme). After the hearing I inspected the land.

According to the Register map the land ("the Unit Land") comprised in this Register Unit is about 10 yards square, → is in the middle of a field OS No 235 containing 8.140 acres and is situate a little to the north of a group of houses which are called "The College" and which are north of and not far away from St Mary's Church. The Unit Land appears to be a well which has been → neglected and become dilapidated. The well hole is now filled up with stones and is not more than a foot deep; there is a wooden spindle and an old chain which looks as if it was at one time used to get water from the well, and accordingly suggests that it was formerly much deeper. The well is protected by a stone semicircular structure, now dilapidated, which is about 8 feet high and may at one time have been higher. There are some bushes (about 12 feet high) and some brambles. The whole was apparently at one time surrounded with a post and board fence with a gateway, but now there is only a gatepost and the remains of some of the posts and boards.



The 1953 Scheme shows that the property of the Charity then comprised an Estate in Marsh Gibbon of about 1500 acres, including Manor Farm containing 304.426 acres let yearly to F A Benfield at a rent of £423-7-0, some other Estates in Hampshire, Wiltshire and Oxfordshire and some investments; and shows also the land was vested in the corporation known by the name of The Two Chaplains and Thirteen Poor Men of Ewelme in the County of Oxford and that the Trustees included the Regius Professor of Medicine in the University of Oxford, ex officio.

Mr Stoddart said (in effect):- His firm had managed the Estate since 1963 and he had been with the firm for 10 years. He was instructed to appear by Sir Richard Doll the Regius Professor and the present chairman of the Trustees. The Charity is very ancient, dating from the 14th century having been founded by Alice Countess of Suffolk who endowed almshouses at Ewelme near Watlington in Oxfordshire. Their Marsh Gibbon Estate was divided into five farms and various Village properties; OS no 235 in which the Unit Land is situated forms part of Manor Farm, now let to Mr E D Benfield. He understood that Stump Well was built in the 18th century as the Village water supply, and various pipes were laid from the well to the Village to provide the Village with its first piped water system. The Trustees had no objection to the Unit Land being registered as common land, although they do claim the ownership as OS no 235 forms part of their Estate and is now let as above stated. The Charity had no title deeds for the Manor Farm or for the major part of their other lands, because of the antiquity of their ownership.

The claim of the Trustees raises questions of some difficulty because by section 124 of the Public Health Act 1936 (re-enacting section 64 of the Public Health Act 1875), all public pumps wells cisterns reservoirs conduits and other works used for the gratuitous supply of water to the inhabitants of any part of the district of a local authority shall vest in and be under the control of that authority; so it seems likely that much of the Unit Land was at one time vested in Buckingham Rural District Council or their predecessors, and would at any rate if the well was still being used, be now vested in Aylesbury Vale District Council as their successors. A possible reading of section 124 is that if the works ceased to be used for the gratuitous supply of water to the inhabitants, the ownership of the local authority ceases, as would be the case if highway land ceased to be a highway, see *Tithe v Runcorn* 1954 1 Ch 383 and the cases cited.

In the absence of any ownership claim or evidence by the District Council or the Parish Council, I infer from the evidence summarised above and from the present appearance of the Unit Land that the well originated under some grant by the Charity for the benefit of the inhabitants, that such grant did not pass the ownership other than that consequent on the 1875 and 1936 Acts, and that the well being now disused, the ownership has reverted to the Charity. Even if the inhabitants of Marsh Gibbon ~~still~~ have and have always had a right to use the water from this well, the Parish Council would not as a result necessarily become the owners of the land, see *Stoke v Price* 1899 1 Ch 277. If the site is (as I would suppose) of some local historic interest, perhaps the District Council, the Parish Council and the Charity can reach some agreement as to its preservation as a memorial of life in the Village as it was. However this may be I consider I ought to give effect to my conclusion as set out above.



For the above reasons I am satisfied that the Charity are the owners of the Unit Land, and I shall accordingly under section 8(2) of the Act of 1965 direct Buckinghamshire County Council to register as the owners The Two Chaplains and Thirteen Poor Men of Ewelme in the County of Oxford, being the corporation mentioned in the Scheme approved on 23 June 1953 by the Charity Commissioners for the administration of the Charity called the Almhouse of Ewelme (otherwise called God's House in Ewelme) in the County of Oxford.

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 8th day of November - 1977

a. a. Baden Fuller

Commons Commissioner