



In the Matter of a piece of land called
The Mill, in the parish of Cubert.

DECISION

This reference relates to the question of the ownership of land known as The Mill in the parish of Cubert in the County of Cornwall being the land comprised in the Land Section of Register Unit No. CL.542 in the Register of Common Land maintained by the Cornwall 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 Mr Adam J Coad claimed to be the freehold owner of the greater part of the land in question and Mrs Mary Florence Sanders and Mr Peter Gavin Farquharson Oliver claimed to be the freehold owners of the remainder of the land and Mr R.L.B. Spencer 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 Bodmin on 24 March 1987.

Cornwall County Council appeared by Mr M Wright, its Commons Registration Officer.

Mr A.J. Coad was represented by Mr T.H.Rouse of Messrs. Frank & Caffin of Truro, Mrs Sanders and Mr Oliver by Mr M J Hender of Messrs.Tozers of Dawlish, and Mr Spencer appeared in person.

This reference relates to a strip of land running along the north-east bank of the stream. There are no rights registered, and it is described in several of the deeds as "Wastrel". From the information supplied by Mr Spencer in an interesting letter dated the 28th August 1986 to the Clerk of the Commons Commissioners setting out the historical background (which he confirmed at the hearing) I reached the conclusion that the land was waste land of the Manor of Ellenglaze.

As evidence of the title of Mr A J Coad to the greater part of the land Mr Rouse produced a number of documents, including:-

- (i) A certified copy of a Conveyance dated 9th December 1970 between (1) Obed Scott Phillips and Margaret Phillips and (2) John Coad;
- (ii) The original of a Deed of Gift dated 3rd December 1986 between (1) John Coad and (2) Adam John Coad;
- (iii) A copy of the plan to a Conveyance dated 25th December 1915 between (1) Frederick Nalder and Henry Williams Hockin and (2) William Phillips (being the plan referred to in the parcels clause in the Conveyance of 9th December 1970).

The Deed of Gift contained an acknowledgement for production of various documents including the Conveyances of 1970 and 1915.



The copy of the plan to the 1915 Conveyance produced by Mr Rouse was of poor quality and it was difficult precisely to identify the unit land thereon. Mr Spencer however produced a much clearer plan, being an extract from the 1907 Edition of the Ordnance Survey Map. From this I deduced that the unit land corresponds with O.S. No.436, shown thereon as having an area of 5.261 acres.

The Conveyance of 1970 (which was a conveyance on sale) expressly includes in the Schedule of land thereby conveyed part of O.S. No. 436 comprising 5.050 acres. This document is a sufficient root of title to the part of the unit land claimed by Mr A J Coad. The Deed of Gift of 1986, whereby John Coad passed part of the land comprised in the 1970 Conveyance to Mr A J Coad, refers to entirely different Ordnance Survey numbers taken from a more up-to-date edition of the Ordnance Survey Map. I am however satisfied that the part of the unit land claimed by Mr A J Coad was vested in him by the Deed of Gift.

Deducting the 5.050 acres of former O.S. No. 436 to which Mr A J Coad has thus made title from the total of 5.261 acres of O.S.No. 436 to which the unit land corresponds leaves over a small parcel of 0.211 acres. This is at the extreme northern tip of the unit land.

Mr Hender on behalf of Mrs Sanders and Mr Oliver contended that this small parcel ought to have been included in Register Unit No. CL.652, in respect of which his clients were already registered as the owners. Whilst sympathising with this proposition, I was unable to accept it. Mr Hender then produced a Conveyance dated 13th February 1969 between (1) Maurice George Hanks and (2) Mrs Sanders and Mr Oliver, which expressly includes in its parcels clause part of O.S.No. 436, and this number also appears on the plan annexed thereto at the southernmost tip of the land thereby conveyed.

The Conveyance of 1969 was a conveyance on sale, and I am satisfied that it provides sufficient evidence of the title of Mrs Sanders and Mr Oliver to the outstanding 0.211 acres (or thereabouts) of former O.S.No.436. The precise boundary between this parcel and the remainder of the unit land is however ill-defined on the plan to that conveyance.

Mr Oliver stated that on the ground the boundary is clearly defined by a post and wire fence, and that it had been undisputed since Mrs Sanders and he had acquired the land in 1969. This was not challenged by anyone else present at the hearing.

On this evidence I am satisfied that:-

(i) Mr A J Coad is the owner of the unit land with the exception of the parcel at the extreme northern tip thereof comprising 0.211 acres or thereabouts;

(ii) Mrs Sanders and Mr Oliver are the owners of the said parcel comprising 0.211 acres or thereabouts.



-3-

I shall accordingly direct Cornwall County Council as registration authority to register:-

(i) Adam John Coad of Trelaske Cubert Newquay Cornwall as the owner of the unit land with the exception of the said parcel at the extreme northern tip thereof comprising 0.211 acres or thereabouts;

(ii) Mary Florence Sanders and Peter Gavin Farquharson Oliver both of High Creek Salcombe Regis Sidmouth Devon as the owners of the said parcel comprising 0.211 acres or thereabouts;

under section 8(2) of the Act of 1965.

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 13th day of April 1987

COMMONS COMMISSIONER