



Reference Nos: 209/U/57
209/U/32

In the Matter of
(1) Fremington Marsh and
(2) part of the Saltings
of the River Taw, Fremington,
North Devon District, Devon

DECISION

These references relate to the question of the ownership of lands known as (1) Fremington Marsh and (2) part of the Saltings of the River Taw, Fremington, North Devon District being the lands comprised in the Land Section of Register Unit (1) No. CL 170 and (2) No. CL 269 in the Register of Common Land maintained by the Devon 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 A W E Squire, H A Welch (Yelland) Limited claimed (their solicitor's letter of 22 January 1979) that they together with Messrs A J M Davis, Mr J Phillips and Mr J W Board were the beneficial owners of the lands in question, and in support of this claim produced copy documents most of which are hereinafter referred to; Mr A J M M Davis and Mr J P Phillips claimed (their solicitor's letter of 8 February 1979) 6/20ths of the lands and said that H A Welch (Yelland) Limited claimed 7/20ths; and Sticklepath Ratepayers' & Residents' Association said (their Secretary's letter of 6 February 1979) that the residents of the Sticklepath area of Barnstaple have used these saltings on a continuous basis for many centuries, but were not claiming ownership. No other person claimed to be the freehold owner of the lands or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Barnstaple on 10 May 1979. At the hearing Mr A J M M Davis, Mr J P Phillips and H A Welch (Yelland) Limited were represented by Mr M L L Firmin, solicitor of Chanter Burrington & Foster, Solicitors of Barnstaple; Mr A W E Squire was also represented by Mr Firmin, his firm in relation to him acting as agents for Montague Arthur and Skerratt, Solicitors of Barnstaple; Sticklepath Ratepayers' and Residents' Association were represented by Mr D G Rowe, Solicitor of Jeremy Ferguson and Co, Solicitors of Bideford; Mr Robert Richard Tucker on whose application the registration at the CL 170 Rights Section Entry No. 3 was made, was also represented by Mr Rowe, his firm in relation to him acting as agents for Brewer and Barns, Solicitors of Barnstaple; and Mr John William Board on whose application the registrations at the CL 269 Rights Section Entry No. 1 and at the CL 170 Rights Section Entry No. 2 were made, was represented by Mr C Trigg, Solicitor of S A Copp and Sons, Solicitors of Barnstaple. After some discussion as to the possibility of these lands being owned in undivided shares, nobody at the hearing objecting, I adjourned the proceedings.

I held the adjourned hearing at Barnstaple on 24 March 1981. At this hearing Fremington Parish Council were represented by Mr W F Gayton their chairman and Mr R V Harley their clerk; Mr A J M M Davis, Mr J P Phillips, Mr M L L Firmin, H A Welch (Yelland) Limited were represented by Mr R G O Hudson solicitor with Chanter Burrington & Foster (above-mentioned); Mr A W E Squire was also represented by Mr Hudson his firm in respect of this representation acting as agents for Montague Arthur and Partners, Solicitors of Barnstaple; and Sticklepath Residents' Association were represented by Mrs M Ludlam their secretary.



The land in the CL 170 registration is a strip a little under 2 miles long and for the most part between 250 and 300 yards wide bounded on the north by the River Taw (HWMT), and extending from Penhill Point on the west to a point on and for about half its length being bounded by the Railway line; in the Rights Section there are 3 registrations of rights of grazing. The land in the CL 269 registration is a strip a little under half a mile long and for the most part about 30 yards or less wide, bounded on the west by the River Taw (HWMT), and extending from Penhill Point on the north to a point about 200 yards north of the Railway on the south; in the Rights Section there is one registration of a right of grazing.

Mr Hudson claimed that Messrs A J M M Davis, J P Phillips and M L L Firmin ("the Claimants") are the owners of these lands as trustees of the statutory trusts for sale applicable to lands before the Law of Property Act 1925 held in undivided shares under appointments dated 22 September 1926 and 8 May 1979. The 1926 appointment recited that the lands therein described were before the Act vested as to 7/20ths in Miss E C Langdon, as to 6/20ths in Mr J L H Vellacott subject to annuities for Mrs and the two Misses Vellacott, and as to 7/20ths in Mr J Webb subject to a mortgage. By the 1979 appointment the Claimants were appointed trustees in the place of Mr J Webb, Mr J L H Vellacott and Mr S L Hancock who were appointed in 1926 and who had since died. In the appointments the lands were described as "... The Saltmarsh or Bickington Backs numbered 2420, 2421, pt 341, pt 343 on the Tithe Apportionment Map ... being the unenclosed portion on the river side of the Southern Railway ...".

Produced at the hearing were: (1) the said appointments (1926 certified copy and original 1979); (2) an epitome of the title of Messrs A J M M Davis and J P Phillips as trustees of a conveyance dated 18 March 1968 made by Miss W E Holland and Miss H M Holland as settlers of Woolmers and other lands at Bickington, such epitome including a copy of the said 1968 conveyance which expressly included 6/20ths as described in the 1926 appointment, and of a conveyance dated 13 September 1929 by which Mr J C H Vellacott conveyed to Mr Fred Holland (he died 22 May 1951) Long Close containing about 3a 3r 11p and the said 6/20ths; (3) an epitome of the title of H A Welch (Yelland) Limited to Penhill containing about 37.765 acres) which included copies of a conveyance dated 15 February 1968 to them by Mr A Bridgman, and of a conveyance dated 15 October 1964 to him by the personal representatives of Mr S J Hancock (he died 24 June 1964), which expressly included 7/20ths of Bickington Backs being OS Nos 1383 and 1369; and also an abstract of a conveyance dated 29 September 1926 to Mr S L Hancock by Miss E C Langdon of the said 7/20ths; (4) an epitome of the title Mr A W E Squire to 2 fields containing about 17.531 acres at Penhill Point which included a copy of an assent dated 21 January 1976 in favour of him by the personal representatives of Mr C T Petherbridge (he died 20 July 1972) and of a conveyance dated 28 September 1932 to Mr W H Petherbridge by the personal representatives of Mr J Webb (he died 10 June 1931), both of which expressly included 3/20ths of Saltings round Penhill Point; and (5) a copy of an order of partition dated 27 March 1905 made by the Board of Agriculture and Fisheries relating to nearby lands adjoining and south of the Railway.

In support of the claim, oral evidence was given by Miss H M Holland who after referring to the said 1968 conveyance made by herself said that her father Mr Frederick Holland who in 1909 became a Mr J A Vellacott tenant of Woolmers, ~~and~~ always shared the proceeds of sale of the Swards or Turves cut from the Saltings with the Frost Family and the late Samuel Hancock and this sharing had continued until about 1950. And also in support of the claim oral evidence was given by



Mr A W E Squire who remembered that his uncle Mr C D Petherbridge until he retired in 1955 and before him his uncle Mr W H Petherbridge to his death in 1933 and before him Mr J Webb until his death in 1951 had enjoyed 3/20ths, had shared the proceeds of sale of the Swards and Turves as described by Miss Holland; he also explained what had happened to the remaining 4/20ths ~~and Mr Webb owned by~~.

By Section 22 of the 1965 Act "ownership" ~~was~~ defined as "ownership of a legal estate in fee simple", so I am not concerned ~~in~~ investigating detail, title to the 7/20ths, 7/20ths and 6/20ths beneficial interests, although such title is ~~as~~ as Mr Hudson (rightly I think) contended relevant to explain the 1926 and 1979 appointments. From the documents produced as set out above and the oral evidence of Miss Holland, Mr Squire I am ~~able~~ able to identify these CL 170 and CL 269 lands with those described in the 1926 and 1979 appointments and conclude that the Claimants have proved their ownership, even although at the hearing no evidence was offered about the Fremington Tithe Apportionment Award. After the hearing I inspected this Award (it is dated 1842) in the Public Records Office at Kew; on the very large map referred to in it I was able to identify the CL 170 and CL 269 lands as part of that thereon numbered 2421, and it may be of interest if I record that ~~every~~ the Award this Tithe No. appears with others under a heading "Common to various Estates" indicating that at that time these lands were considered (as they are now) to be held in undivided shares.

Accordingly upon the evidence and considerations above set out I am satisfied that the Claimants are the owners of the lands and I shall accordingly direct the Devon County Council as registration authority to register Mr Alfred John Michael Maidlow Davis of Court Dolton, Devon and Mr John Poynder Phillips and Mr Mark Lloyd Lawrence Firmin both of Bridge Chambers, Barnstaple, Devon as the owners of the land 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 7th — day of July — 1981.

a. a. Baden Fuller

Commons Commissioner