



COMMONS REGISTRATION ACT 1965

Reference No. 209/U/112

In the Matter of Aish Ridge, South Brent

DECISION

This reference relates to the question of the ownership of that part of the land comprised in the Land Section of Register Unit No. CL.60 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 or the Land Registration Acts as the owner. Title to part of the land has already been registered under the latter Acts.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Plymouth on 27 June 1989.

At the hearing Mr R Walter and Mr W J Edmonds appeared in person. The South Brent Parish Council were not represented at the hearing but handed to the Clerk a letter stating that no owner of the land had been traced or registered and asking the Commissioner to confer on them responsibility for the protection of the land against unlawful interference.

Mr Edmonds is the owner of Treeby Farm and other land to which finally registered rights of common are attached.

He gave evidence that when he purchased Treeby Farm in 1958 he and four other persons having rights on the common had to pay "tithe" in respect of Aish Ridge the unit land. He mentioned a Mr Andrews of North Park, Ugborough who then owned land which was subsequently sold by Mrs Mugridge to Mr Walter, J H Steer of Mann Aish, Mr R M Harley of Garfield House and C J P Mead of Bullhornstone Farm. Rights of common are finally registered in respect of all this land.

He also gave evidence of acts of ownership such as drainage work and manuring by the owner of some of these farms.

This evidence is too vague to satisfy me as to the ownership of this land but since tithe redemption annuity was payable in 1958 by the fee simple owner of the land it seemed to me quite possible that the ownership of the unit land was vested in the owners of those farms which had grazing rights over it. If it turned out that on 31 December 1925 the land was vested in more than four persons in undivided shares the fee simple would have vested in the Public Trustee under the transitional provisions of the Law of Property Act 1925.

When I pointed this out to Mr Edmonds he asked for and I granted an adjournment so that he could investigate the matter and if possible produce proper evidence of ownership.

That was on 27 June 1989. On 8 August 1989 the Clerk of the Commons Commissioners wrote to Mr Edmonds and Mr Walter asking what progress had been made. Mr Edmonds replied that some progress had been made but that it was likely to be some months before they were in a position to proceed.



On 26 December 1989 the Clerk wrote again and received the reply that the matter was in the hands of a solicitor. After further enquiries Mr Edmunds wrote on 6 March 1990 stating that the solicitor was Mr Cruwys of Messrs. Bevan Ashford of Tiverton.

On 12 March 1990 the Clerk of the Commons Commissioners wrote to Messrs. Bevan Ashford explaining the position and enclosing copies of the correspondence with Mr Edmunds.

Bevan Ashford replied on 16 March 1990 stating that they had advised "Mr Edmunds and his co-owners" that the Public Trustee held the legal estate of the common under the Law of Property Act 1925 Schedule I Parts (iv) and (v) and that they had asked the Public Trustee to vest the property in four new trustees and enable those trustees to come back to the Commons Commissioner with a request that he should register those new trustees as owners.

The Clerk of the Commons Commissioners replied stating that since the matter was now in the hands of solicitors the Commissioner would allow further time for investigation. The letter continued -

"You state that the land is vested in the Public Trustee. So far we have seen no evidence that this is so, though it may very well be the case.

If you can prove that the land is vested in the Public Trustee.... the Commissioner will direct the Registration Authority to register the Public Trustee as owner of the legal estate in fee simple. It will then be for you to show the Public Trustee that he holds it on trust for your clients".

On 21 March 1990 Bevan Ashford wrote thanking the Commissioner for giving further time and going on -

"The evidence in this case revolves around the payment by various landowners of tithe relating to this property. There are various other acts of ownership upon which our clients are going to rely as well. No actual evidence of 'ownership' exists apart from this as far as we are aware"

On 14 May 1990 the Clerk to the Commons Commissioners wrote asking whether there has been any further developments. On 17 May 1990 Bevan Ashford replied -

"Thank you for your letter of 14th May We heard substantively from the Public Trust Office on 23rd March and replied on 5th April, since when we have heard nothing. We have written again to the Public Trust Office hoping for a further response soon.

We enclose copies of correspondence".



The letter from the Public Trust Office contains the following words -

"The position of the Public Trustee depends on the facts of the case.

.....

If you wish to involve the Public Trustee I believe you are going to have to establish what the legal position was on 31 December 1925".

That, if I may say so, puts the matter in a nutshell.

Despite a reminder nothing further was heard and on 16 July 1990 the Clerk of the Commons Commissioners wrote to Bevan Ashford saying that the case could not be further delayed to await the outcome of their correspondence with the Public Trustee. She went on to say - - -

"If you consider that you have evidence which will prove that on 31 December 1925 this land was owned in undivided shares by more than four persons the case will be set down for further hearing next time a Commissioner sits in the area.

If not, please let me know and the Commissioner will issue a decision to the effect that he is not satisfied that any person is the owner of the land".

The answer to this was that Mr Crwys was on holiday until 13 August. Further letters on 22 August and 2 October elicited no reply or even acknowledgment. A letter dated 24 October 1990 however brought a reply dated 22 November stating that -

"A deed of appointment of new trustees is being executed under paragraph 1(4)(iii) of Part IV of the Schedule of the Law of Property Act 1925. Once the document has been executed we would ask the Commissioner to confirm the new trustee as owner of the common for the purposes of the 1965 Act".

No such deed has ever been received but even if it had it would prove nothing since, for such an appointment to have any effect, it must first be proved that the land had vested in the Public Trustee and that the persons executing the deed were "interested in more than an undivided half of the land or the income thereof."

This was pointed out by the Clerk of the Commons Commissioners in a letter dated 13 December 1990 asking whether there was any evidence that this was the case and asking for a prompt reply.

That letter was not acknowledged and on 14 January 1991 the Clerk sent a further letter this time by recorded delivery with a copy to Mr Edmonds.



Further reminders brought a reply dated 22 April 1991 stating -

"We do wish to argue that the common belongs to our clients. We are not trying to argue that they can acquire ownership but they already enjoy ownership and need to declare that by appropriate trustee documents."

That letter was answered on 24 April 1991. Bevan Ashford were told that the case would be set down for hearing next time a Commissioner was sitting in the area.

There was no reply to that letter and it then became clear that there would be no other work for a Commissioner in that area in the foreseeable future and that if this case were to be heard further it would be necessary to incur the not inconsiderable expense of sending a Commissioner down specially to deal with it.

That being so on 13 June 1991 the Clerk to the Commons Commissioners wrote to Bevan Ashford pointing this out and asking them to confirm that they still wished to claim that their clients were the owners of the land. A reply was requested within 14 days but none was received until 24 July 1991 when Bevan Ashford wrote saying that they did wish to make this claim and suggesting that a hearing should be held at Exeter.

Since there was no indication that if a hearing were held the claimants would be able to produce any evidence the Clerk of the Commons Commissioners wrote again on 29 July 1991 asking for an assurance that if a hearing were held Bevan Ashford would attend and produce evidence. They were reminded that the records relating to tithe rentcharge are held at the Public Record Office. A copy of that office's information on Tithe Records was sent to them on 31 July.

No such assurance and indeed no reply to that letter has been received.

In an attempt to bring this matter to a conclusion I caused enquiries to be made at the Public Record Office. These revealed that the tithe map for the Parish of South Brent clearly showed the unit land as parcel Nos. 883 and 884. The schedule of apportionment, which is dated 27 March 1862, described parcel No. 883 as "Aish Ridge" and parcel No. 884 as "hedges" i.e. the land between the parallel lines on the south of the unit land. The area is given as 28a 1r 4p and 1r 24p respectively a total of 28a 2r 28p which corresponds fairly closely to the 29 acres referred to in the commons register. The difference is accounted for by the small part of the land title to which is already registered at the Land Registry and which is shown on the tithe map as parcel No. 882 area 1r 39p.

The owners of this land are recorded as -

"Buller John M.D [?]

Ryder John Cumming

Pearse William

Bidlake Christopher

Cumming John

Elliott John"



and the occupiers as "Pearse William and others". The state of cultivation is given as "pasturage"

Thus in 1862 there were six owners of this land held in undivided shares. In the absence of any other evidence I think it is reasonable to conclude on the balance of probabilities that on 1 January 1926 there were more than four:

That being so I am satisfied that on that date the land vested in the Public Trustee under part iv of the First Schedule to the Law of Property Act 1925.

I shall accordingly direct the Devon County Council as Registration Authority to register the Public Trustee as owner 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

17

day of

October

1991

Peter Lansdon-Davies

Chief Commons Commissioner