



In the Matter of Milford Common, Hartland

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DECISION

This reference relates to the question of the ownership of land above mentioned being the land comprised in the Land Section of Register Unit No. CL 94 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 several persons claimed to be the freehold owner of the land in question and 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 Barnstaple on 9 December 1983.

Mr P R Mole of Jeremy Ferguson and Co, Solicitors of Bideford, appeared for Mr Gifford, Mr John Britton and Mr George Heywood appeared in person and Mr C Peter of Messrs Peter, Peter and Sons, Solicitors of Launceston appeared for Mr W H Wadden-Martin. Mr Mole produced a large-scale map of the Common which was divided into three areas edged red, blue and green respectively. A copy of this map will be sent to the Registration Authority with this decision.

Mr Stanley Gifford who lived at Smithhole Farm said that in 1944 he and his brother John had purchased Milford Farm which abutted the Common. His brother died in 1979. The farm had been conveyed to them as joint tenants. They were partners. During the War that part of the Common, edged blue on the map, which adjoined Milford Farm was taken over by the War Agriculture Emergency Committee. The Committee cleared this land after the war and the witness and his brother occupied it and remained in possession continuously thereafter. They had since used this land for arable crops or had let it.

At the same time their neighbours Mr Heywood and Mr Britton had taken over the land edged blue and had used it as part of their farm. Both pieces of land had been fenced since 1953.

In cross-examination the witness said that the Emergency Committee did not fence either piece of land in 1941 when they were taken over. No fences were put up until 1953.

Mr Peter said that his client Mr William Hammersley Wadden-Martin claimed to be the owner of the whole of the Common as owner of the Manor of Stoke-alias-Hartland.

When I suggested that Mr Wadden-Martin might have lost his title to the two pieces of land edged red and blue, Mr Peter relied on the Law of Property Act, 1925 S.194.

This section provides (inter alia) that the erection of a fence whereby access to land which is subject to rights of common, is prevented or impeded is unlawful unless made with the consent of the Minister. There is a further provision allowing



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the local authority in the area, the lord of the manor or any other person interested in the Common ~~may~~<sup>to</sup> apply to the County Court for an order for the removal of the fence.

In my opinion the fencing of the areas edged red and blue in 1953 and the use of the land for arable crops amounted to a dispossession of Mr Wadden-Martin <sup>/ho</sup> as owner of the land with the result that he lost his right of action to recover the land. It does not follow from this that any one claiming to have the fences removed as a person owning rights of Common would not have a remedy. In this case however, I am concerned with a claim of ownership.

For these reasons I am satisfied that Mr Gifford is the owner of the land edged blue on the said map, that Mr Heywood and Mr Britton are the owners of the land edged red and that Mr Wadden-Martin is the owner of the land edged green.

I shall accordingly direct the Devon County Council, as registration authority, to register them respectively as the owners of such parts 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

21<sup>st</sup>

day of

December

1983

*George Barnwell*

Commons Commissioner