



COMMONS REGISTRATION ACT 1965

Reference No. 209/U/122

In the matter of part of Twitchen Common
and part of Anstey Money Common, West Anstey

DECISION

This reference relates to the question of the ownership of the land referred to above being the parts of the land comprised in the Land Section of Register Unit No. CL/143 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 (1) Mrs Diana Crystal Bassett and (2) Mr Oswald Philip John Weaver claimed to be the freehold owners of parts of the land in question and Mrs Christine Harrison 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 Barnstaple on 3rd April 1990.

The hearing was attended by Mr Peter Pugsley of Hole and Pugsley Solicitors of Tiverton representing Mrs D. C. Bassett, Mrs Burton, Clerk of West Anstey Parish Meeting Mr O. P. J. Weaver, Mrs D. C. Bassett (in person) and Mr Earl.

The land was registered as Common land upon the application of the West Anstey Parish Meeting.

There are 8 subsisting Entries in the Rights section of the register, relating to the grazing of sheep, cattle and horses or ponies.

There are 4 Entries in the Ownership section of the Register, which have become final.

This Register unit has been the subject of hearings before two previous Commons Commissioners and of litigation in the High Court and Court of Appeal. The most recent Decision was that of Mr Commons Commissioner Baden Fuller dated 26th November 1986, which runs to over 150 pages.

There are two ownership claims before me:-

1. Mrs D. C. Bassett of Twitchen Farm claims what Mr Baden Fuller describes at page 1 of his Decision as "the Twitchen Common Part".
2. Mr D. P. J. Weaver of Hill Farm claims the more or less crescent-shaped strip of land at the north-east extremity of the Register unit by Slade Bridge (which I shall refer to as "the Slade Bridge strip").

I heard Mr Weaver's claim first.

Mr Weaver is registered at Entry No. 2 in the Rights section of the Register with the right to graze 100 sheep over the whole of the land comprised in this Register unit. The land to which such rights are attached is shown edged red on the supplemental map bearing the number of that registration. Persusal of this map shows that land to comprise Ordnance Survey Numbers 446, 447 and 448. The Slade Bridge strip lies immediately to the south of O.S. Nos. 446 and 447. It is not included in the land edged red on the supplemental map.

Mr Weaver admitted that his title deeds to Hill Farm do not include the Slade Bridge strip. His claim to ownership of it is based on a possessory title.

Mr Weaver gave evidence that he came to Hill Farm in 1951. He started stocking it in 1952 and 1953. The Army had knocked the gates down, and the fences were not stock-proof. In 1964 cattle grids were put in by the County Council. He paid £400 towards the cost and the Ministry paid the rest.

Mr Weaver said that Slade Bridge was built late in the 19th Century to replace the ford. When the bridge was built the road was brought onto higher ground. It left this strip. The old road is used for surface drainage.

When the new road was built the Council fenced along the north side of it with iron railings, because of the steep drop onto the road.

About 1960 he was told by Mr Wade of North Devon District Council Highways Department to repair the railings, and so he did.

Between 1965 and 1970 the Council asked him to lop the trees overhanging the road to let the cattle lorries get by. This he did.

There is an old bank between the rest of his land and the strip but this has fallen down in places and is no longer stock proof. His sheep can go right up to the iron railings. Nobody else can put animals on the strip.

When the cattle grids were put in by the Council they repaired the wooden railings by the Bridge. Nobody else to his knowledge had ever used the strip for anything since he had been at Hill Farm.

Occasionally stray animals came in from the north. He drove them back onto the Common. The deer break down the fences.

He had discussed this strip with Mr J. W. J. Milton (who is registered in the Ownership section of the Register of the part of the Register unit known as Anstey Money Common lying immediately to the south). Mr Milton had said to him "why don't you have it". Mr Milton supported his claim. Unfortunately Mr Milton was unable to be at the hearing having broken some bones a week or two before falling off a ladder. The Council had washed their hands of the strip - they had fenced it off from the Common.

Mrs Burton on behalf of the Parish Meeting said that it had no contentions to put forward. Mr Milton was Chairman of the Parish Meeting and she confirmed that he personally supported Mr Weaver's claim.

Nobody present at the hearing opposed Mr Weaver's claim. In a letter dated 9th March 1990 Mrs Christine Harrison of Ringcombe Farm (wife of Mr H. M. J. Harrison who is registered at Entry No. 2 in the Ownership section as owner of part of West Anstey Common) wrote to the Clerk of the Commons Commissioners to the effect that the Slade Bridge strip was "part of Mr Philip Weaver's farm".

This case has been advertised in the usual way, and no other claimants to the Slade Bridge strip have come forward. I am therefore satisfied on the evidence summarised above that Mr Weaver has established a possessory title to the Slade Bridge strip.

A technical legal problem arises in that Mr Weaver is already finally registered as having grazing rights over the whole of the Register unit, including the Slade Bridge strip, of which I am about to declare him to be the owner. Strictly speaking a person cannot have grazing rights over land of which he is the owner - such rights as he enjoys being enjoyed by him in his capacity as owner.

Mr Baden Fuller considered this problem at pages 87/88 of his Decision in respect of the claims of Messrs Harrison, Nicholls, Milton and Bassett both to be registered as owners of parts of the register unit and to have rights of common over the part owned by them. He resolved the problem by holding that owners of common land could have "quasi rights of grazing" over their own land. At pages 106/107 of his Decision he held that quasi-rights of common were registerable under the 1965 Act in the Rights section of the Register in the same way as other rights.

I shall therefore apply Mr Baden Fuller's reasoning to the case of Mr Weaver also, and hold that in addition to being owner of the Slade Bridge strip he has quasi-rights of grazing thereover.

I deal next with the claim of Mrs Bassett to the Twitchen Common Part. The title to this land (as it stood in 1986) was considered by Mr Baden Fuller in some detail: see the list of documents produced by or on behalf of Mr D. F. Bassett on pages 127 to 129 of his Decision. The Twitchen Common Part was identified as being Part of Ordnance Survey No. 308 measuring 6.569 acres. Twitchen Common had originally comprised a much larger area which had long since been enclosed. The 6.569 acres was the only part remaining unenclosed. It was open to the remainder of the Register unit along its western side.

Prior to the hearing before me, Mr Pugsley's firm had sent in to the Clerk of the Commons Commissioners an Epitome of the Title of Mrs D. C. Bassett to Twitchen Farm. This includes photocopies of the following documents:-

1st September 1961	Conveyance	(1) J F C Keep (2) W S Whitmore
16th May 1972	Conveyance	(1) Personal Representatives of W S Whitmore (2) W E and F J Hill
29th September 1981	Conveyance	(1) W E and F J Hill (2) C B and E D J George
30th November 1982	Conveyance	(1) C B and E D J George (2) D F and D C Bassett
26th February 1988	Deed	(1) D C Bassett (2) D F Bassett (3) D F and D C Bassett (4) Lloyds Bank Plc (5) C K Earl

I am satisfied that all these deeds included the Twitchen Common Part (being Part O.S. No. 308 having an acreage of 6.569 acres), and that the Deed of 1988 vested this in the sole ownership of Mrs D. C. Bassett. I should however observe that the first of these Conveyances (that of 1961) and also an earlier

Conveyance dated 15th April 1932 mentioned at page 128 of Mr Baden Fuller's Decision but not before me convey only such estate as was vested in the then vendors in the 6.569 acres. These conveyances did not therefore pass an absolute title in the Twitchen Common Part.

Mr Pugsley submitted that the Conveyance of 1972 was now a good root of title and passed an unqualified estate. He said that Mr Milton (who was registered as owner of the adjoining part of the Register unit to the west) supported Mrs Bassett's claim.

Mrs Burton said that the Parish Meeting supported the claim.

Mr Pugsley stated that his client had no knowledge of any other other person having claimed ownership of the Twitchen Common Part.

Mrs Bassett's predecessor in title to Twitchen Farm (including Part O.S. No. 308) was W S Whitmore (see the Conveyance of 1st September 1961). Mr Whitmore was registered in the Rights section of the Register with grazing rights attached to Twitchen Farm but expressly excluding (inter alia) Part O.S. 308. There is therefore no conflict between the land section and the Rights section of the Register. Originally the land over which Mr Whitmore claimed rights expressly excepted "that portion east of the track from Badlake Gate to Ridge Road" (a description which includes Part O.S. 308): see Rights Entry No. 1. In his Decision however Mr Baden Fuller modified this Rights entry (inter alia) by deleting these words in column 4 of the Register: see page 154 paragraph 1. The result is that Mrs Bassett as successor to Mr Whitmore is now entitled to registered rights over the Twitchen Common Part, of which I am about to declare her to be the owner.

As I have said above in the case of Mr Weaver's claim, strictly speaking a person cannot have grazing rights over land of which he is the owner. In his case also I shall apply Mr Baden Fuller's reasoning at pages 106/107 of his Decision, and hold that Mrs Bassett in addition to being owner of the Twitchen Common Part has quasi-rights of grazing thereover.

On this evidence I am satisfied that:

- (1) Mr Oswald Philip John Weaver is the owner of the part of the register unit which I have called "the Slade Bridge strip".
- (2) Mrs Diana Crystal Bassett is the owner of the part of the Register unit described by Mr Baden Fuller as "the Twitchen Common Part" being Part O.S No 308 comprising 6.569 acres.

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

11th

day of

April

1990

Mark Roth

Commons Commissioner