



COMMONS REGISTRATION ACT 1965

Reference No. 209/U/123

In the Matter of parts of Buckfastleigh Moor, West Buckfastleigh

DECISION

This reference relates to the question of the ownership of parts of Buckfastleigh Moor West Buckfastleigh being the part of the land comprised in the Land Section of Register Unit No. CL.146 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) Cyril Pearse and (2) Russell John Reynolds Ashford claimed to be the freehold owners of parts of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Plymouth on 23rd January 1990.

The hearing was attended by Mr Pearse and Mr Ashford.

The land was registered as common land by the Registration Authority without any application. There are numerous entries in the Rights Section of the Register. There is one subsisting entry in the Ownership Section of the Register, in the name of George Shorland in respect of the greater part of the Register Unit.

There are three comparatively small areas of unclaimed land, the largest of these being claimed by Mr Pearse, and the other two by Mr Ashford.

Mr Pearse produced to me a Conveyance dated 9th January 1967 made between (1) Ben George Shorland and (2) Mr Pearse in respect of part of the Brook Manor Estate O.S.Nos. 159 and 160 comprising 17.105 acres. This corresponds with the part of the Register Unit of which Mr Pearse wishes to be registered as Owner. Mr Pearse told me that he had used this land before it was conveyed to him, and that he had enclosed it by putting in gates before 1965.

Mr Pearse is registered at Rights Entry No. 66 in respect of rights of turbary, to cut heath and bracken, to take sand and stone, and to graze 17 cattle or ponies or 85 sheep with their progeny over the whole of the land comprised in this Register Unit and CL.164. The land specified in column 5 of the register as being the land to which the rights are attached is the land formerly part of The Brook Manor Estate shown edged red on the supplemental map bearing the number of this registration. This land coincides precisely with the land of which Mr Pearse is now claiming to be registered as owner.

Where the same land is registered as part of the common and as part of the dominant land to which a right over that common is attached these registrations cannot both be right. They are in conflict with each other.

By regulation 7 of the Commons Commissioners Regulations 1971, where there is a conflict between two registrations each is to be treated for the purposes of sections 5(6), 6 and 7 of the 1965 Act as an objection to the other. It follows that the matter must be referred to a Commons Commissioner under section 5(6) of that Act and that neither registration becomes final until the Commissioner has



confirmed it under section 6(1) of that Act. Where there is a conflict such as this the Commissioner cannot confirm both registrations without modification. Either the land should be excluded from column 5 in the Rights Section or it should be excluded from registration in the Land Section.

The consequence of the existence of this outstanding conflict is that (in spite of what at present appears on the Register) neither the Land Section nor the Rights Section of this Register Unit has yet become final; and that until this conflict has been resolved the unclaimed land reference was premature.

Since the hearing I have discussed the matter with the Chief Commons Commissioner, and he agrees with me that owing to this outstanding conflict I have no jurisdiction to deal with this unclaimed land reference at the present stage. The conflict must first be referred to a Commons Commissioner. It will then be open to Mr Pearse to contend that the 17 acres which he claims should be excluded from the common altogether.

As to Mr Ashford's claim, this also will have to be deferred until the outstanding conflict has been resolved. For purposes of record however I note that Mr Ashford produced to me at the hearing the following documents:-

- (i) Original Conveyance dated 30th December 1914
- (ii) Copy Conveyance dated 22nd December 1938 made between (1) G M Michelmore Edith Tollit and H G Michlemore and (2) B G Shorland
- (iii) Original Conveyance 19th March 1980 and made between (1) B G Shorland and (2) Mr Ashford.

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

22nd

day of

March

1990

Mate Rott

Commons Commissioner