



COMMONS REGISTRATION ACT 1965

Reference No 209/U/23

In the Matter of the Recreation
Field, Instow, North Devon District
Devon

DECISION

This reference relates to the question of the ownership of land containing (according to the Register) about 1 acre and known as the Recreation Field, Instow, North Devon District being the land comprised in the Land Section of Register Unit No VG. 92 in the Register of Town or Village Greens 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 the General Secretary of Commons, Open Spaces and Footpaths Preservation Society (the registration was made their application) informed the Clerk of the Commons Commissioners that the basis for the registration lies in an Award dated 11 March 1848 for the Inclosure of Instow Marsh (the part of the land so awarded taken later for a railway has been excluded); the Clerk of Instow Parish Council gave similar information adding that he had no knowledge of the ownership of the Parish thereby awarded ever having been disputed; and Mr W J Dark of The Information Bureau, Instow indicated that he could provide information about this matter. No other person claimed to be the freehold owner of the land in question or 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 15 November 1977. At the hearing Instow Parish Council were represented by Mr D Johns their chairman, and Mr Dark attended in person.

Mr Johns who was born in the Parish (1925), has lived there all his life (apart from war service), and has been a member of the Parish Council for 27 years, in the course of his evidence produced the Inclosure Award (with the map referred to in it) dated 11 March 1848 and now in the possession of the Parish Council. The Award recited a provisional order of the Inclosure Commissioners dated 7 January 1846 and the Annual Inclosure Act 1846 (9 Vict c.16), and included an allotment in these words: "unto the Churchwardens and Overseers of the Poor of the said parish of Instow all that piece or parcel of land numbered 117 on the said map containing two acres to be held by them and their successors in trust as a place of exercise and recreation for the inhabitants of the said parish and neighbourhood".

The land ("the Unit Land") comprised in this Register Unit is approximately a right angled triangle, its southeast and longest side being the fence of some railway land (the line from Barnstaple, closed to passenger traffic in about 1969, but still open for goods). The land ("the Allotted Land") numbered 117 on



the 1848 Award map is approximately rectangular, its northwest corner being the same as the northwest corner of the Unit Land. From a comparison of the Register map and the Award map, it is apparent that the railway was built after the 1848 Award was made and that as a result of the making of the railway the Allotted Land and a piece ("the Adjoining Piece") which adjoined it on the east and which was on the 1848 Award map numbered 118, have been divided by the railway land so that the Unit Land comprises the northeast part (about half) of the Allotted Land and a very small triangular area ("the Very Small Triangle"), being the northeast corner of the Adjoining Piece, and so that the Allotted Land is now made up of the Unit Land (except the Very Small Triangle), the railway strip and of some land southeast of the railway.

Mr Johns said (in effect):- The Unit Land is about half a mile from the main road (A 39). The Parish Council has for many years let it annually by tender; the proceeds are treated as part of the income of a charitable fund held by the Parish Council. He understood that in the late 1920's, the part of the Adjoining Piece which is southeast of the railway together with part of the Allotted Land southeast of the railway, which were then known as the Allotment Field, were sold by public auction. The Very Small Triangle had always appeared to be treated as part of the Recreation Field. and been

Mr Dark who was for 4 years a member of the Rural District Council and for 9 years a member of the Parish Council in the course of his evidence produced 2 files containing numerous documents which all related, so I understood, to the Allotted Land. I looked at some of them, including a letter sent to him from the Ministry of Agriculture which explained that in 1931 the greater part of the Adjoining Piece and the part of the Allotted Land southeast of the railway had been regularly conveyed to Mrs Christie. I also looked at tenders or copy of tenders made to the Parish Council for the grazing of the Unit Land.

Mr Johns in reply said that he understood that the regularity of the division of the Allotted Land had been investigated in 1967 and produced to me a copy of a letter dated 26 July 1967 sent by the Deputy District Auditor to Mr Dark in which under the heading "Exchange of land" it was said:- "Copies of two conveyances have been seen. From these and contemporary Council minutes, it seems clear that the triangular plot of land on which the bungalows stand, and which was formerly part of the Recreation Ground was conveyed to Christies together with the bulk of the allotment field as one transaction. The remaining small part of the allotment field was added to the Recreation Ground by a separate conveyance in which the Council as trustees for the allotments transferred the land to themselves in their capacity as managers of the Recreation Ground. This being the case, it would seem that the bungalow site was properly conveyed with appropriate consents for valuable consideration over 30 years ago and I can see no possible grounds for questioning the transaction now."

As I understood Mr Dark, his main contention was that the land comprised in this Register Unit should have comprised not only the Unit Land (that is the land actually registered on the application of Commons, Open Spaces and Footpaths Preservation Society) but also all the Allotted Land (that is it should have included not only some land southeast of the railway but also some land now used for railway purposes. I have no jurisdiction in these proceedings to consider any such contention; by the