



In the Matter of the tract of land (149.5 acres) known as part of Esgair Saeson in the Parish of Caron Uwch Clawdd

DECISION

This reference relates to the question of the ownership of the above mentioned land being the land comprised in the Land Section of Register Unit No. CL.150 in the Register of Common Land maintained by the Dyfed 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 two firms of solicitors, namely Morris Lloyd of Carmarthen and Morris Bates & Godwin of Aberystwyth gave notice that their respective clients wished to be heard on the question of ownership of the land in question and I held a hearing for the purpose of inquiring into the question at Aberystwyth on 16 June 1994.

The hearing was attended by Mr Denys Evans of Morris Bates & Godwin for the Earl of Lisburne and Mr W J Lewis of Dyfed County Council, the registration authority but due to an oversight Morris Lloyd omitted to attend. Subsequently Morris Lloyd asked that the matter be re-heard and upon their giving the undertaking as to costs mentioned at the end of this Decision, a further hearing took place at Aberystwyth on 7 June 1995.

At the further hearing Mr Denys Evans again appeared for Lord Lisburne, Mr John Lewis of Morris Lloyd appeared for David Vaughan Lloyd, Hannah Jane Lloyd and Emrys Benjamin Lloyd and Mr W J Lewis again attended on behalf of the Dyfed County Council.

Mr John Lewis submitted that the land is now vested in Hannah Jane Lloyd and Emrys Benjamin Lloyd by virtue of the following deeds of which he produced copies:

- (a) a conveyance dated 18 July 1924 and made between the Earl of Lisburne (1) F S Cokayne and A Gibbs (2) and E S Lloyd and E Lloyd (3):
- (b) a deed of gift dated 28 November 1966 and made between E Lloyd (1) and D V Lloyd and T J Lloyd (2):
- (c) a conveyance dated 11 August 1975 and made between T J Lloyd (1) D V Lloyd (2) H J Lloyd (3) and D V Lloyd (4) and
- (d) a deed of gift dated 24 June 1988 and made between D V Lloyd (1) D V Lloyd and H J Lloyd (2) and E B Lloyd (3).

It appears and was not disputed that the land is the last item in the First Schedule to the 1924 conveyance namely: "Tithe No. 2250 Sheepwalk 170.8 acres". But Mr Evans contended that the effect of this was to convey merely a "sheepwalk" over that land - an incorporeal hereditament - and not the land itself.



Mr Evans told me that his firm has acted for the Lisburne Settled Estates in Dyfed for many years and he was given special responsibility for them by his father shortly after qualifying in 1950. The Estate papers have been in the possession of his firm since 1947. Mr Evans is therefore familiar with the Estate and its administration since that time.

Mr Evans said that the settled estates had for very many years included various farms in the locality and also the waste of which the land in question forms part. Among these farms was Old Abbey Farm, comprising the buildings and land particularised in the First Schedule to the 1924 Conveyance by reference to numbers on the O S Map and stated therein to have a total area of 202.494 acres.

Mr Evans said that the various farms enjoyed rights of grazing over the waste. But instead of being exercisable in common the rights of each farm were attached to a particular part of the waste. Mr Evans produced an extract from the O S Map showing part of Old Abbey Farm at the extreme north west corner and the land in question some distance away at the eastern edge, bounded by the R Towey on its eastern boundary and by streams at its northern and southern boundaries respectively. On this extract Mr. Evans has written details of various sporting and other rights and minerals reserved in relation to various parts of the waste and on the land now in question has written "Old Abbey see copy conveyance of 18 July 1924"

Mr Evans cited the headnote from A-G v Reveley and others (1868) in the Court of Exchequer as authority for the proposition that "a practice prevails in various parts of Wales for the tenants of particular farms who have rights of common on the waste lands in the principality to set apart and to appropriate to themselves by common consent, or acquiescence for the purposes of sheep pasture and in lieu of the exercise of a general right of common, that portion of the common or waste land which lies contiguous to, or which can most conveniently be depastured with their respective farms. The pieces of common so set apart are called "sheepwalks" and it is the practice of farmers to accustom their sheep, by tethering or fettering them for a short time, to depasture only on the "sheepwalk" belonging to the farm on which the sheep so depastured are levant and couchant". Mr Evans relied especially on a footnote to the report which mentions an argument by counsel in the case to the effect that "the right to a sheepwalk is well understood in Wales and is never considered as involving the claim of title to the soil". Sheepwalks are also considered in Gadsden's Law of Common paras 3.108 et seq. to which Mr Evans referred me.

Mr Evans submitted that in the above circumstances it was clear that the land was the part of the waste over which the tenants of Abbey Farm had the right of sheepwalk down to the 1924 conveyance and that the conveyance merely conveyed the farm itself and the right of sheepwalk appurtenant to it: leaving the freehold in the land as part of the Lisburne Settled Estates.

In the light of the above authorities and evidence I accept that in 1924 there was appurtenant to Abbey Farm a right of sheepwalk over the land which could have been conveyed as a separate incorporeal hereditament.



But whether it was so conveyed is a matter of construction of the 1924 conveyance. Having considered that document and the submissions made at the hearing I conclude that in fact it operated as a conveyance of the land itself, for the following reasons:

(a) So far as relevant the parcels consisted simply of "the hereditaments and premises described in the first schedule hereto". There is no mention of rights or other incorporeal hereditaments

(b) The reference in that Schedule to "sheepwalk" is therefore prima facie to be construed as the land itself:

(c) The inclusion of that land with the land comprised in Abbey Farm, without any distinction made as to the rights therein conveyed, fortifies that construction:

(d) The second recital to the conveyance is to the effect that the parties had agreed for the sale of "the fee simple in possession" of the "hereditaments hereinafter described" which, in my view, resolves any ambiguity there might otherwise be.

I would add that I am satisfied that the documents mentioned above subsequent to the 1924 conveyance show a devolution of the title to H J Lloyd and E B Lloyd.

I shall accordingly direct the Dyfed County Council, as registration authority, to register Hannah Jane Lloyd and Emrys Benjamin Lloyd as the owners of the land under section 8(2) of the Act of 1965.

Pursuant to the undertaking mentioned in the third paragraph of this Decision and to section 17(4) of the Commons Registration Act 1965 I hereby order Morris Lloyd to pay Lord Lisburne's costs of the hearing held on 7 June 1995 such costs to be taxed (if not agreed) as mentioned in the said section 17(4).

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.

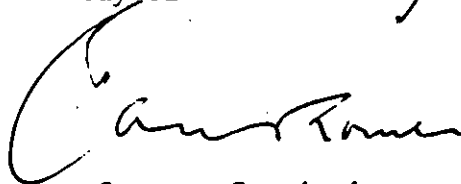
Dated this

5th

day of

July

1995



Commons Commissioner