



COMMONS REGISTRATION ACT 1965

Reference Nos 213/U/42
213/U/85

In the Matter of Box Greens
(1) south-east of and (2) north-west
of the road, Minchinhampton,
Stroud District, Gloucestershire

DECISION

These references relate to the question of the ownership of lands known as Box Greens (1) south-east of and (2) north-west of the road, Minchinhampton, Stroud District being the land comprised in the Land Section of Register Unit (1) No. CL375 in the Register of Common Land and (2) No. VG.133 in the Register of Town or Village Greens maintained by the Gloucestershire 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 no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the lands at Gloucester on 21 and 23 November 1978. At the hearings (1) The National Trust for Places of Historic Interest or Natural Beauty were represented by Mr W G Hopper legal executive with Winterbotham Bell and Gadsden Solicitors of Stroud, and (2) Minchinhampton Parish Council were represented by Mr R Mills one of their members. It was agreed that I proceed with the hearings notwithstanding that I am a member of the National Trust.

The lands ("the Unit Lands") in these two Register Units are on opposite sides of and open to one of the roads through Box. One of the lands ("the CL Land") contains (according to the Register) 0.125 of an acre, is south-east of the road, is mostly grassland (along the north-east side there is a small stream or ditch and it is crossed by a track providing access to houses), and slopes downwards to end at a public footpath running south-eastwards. The other ("the VG Land") contains 0.10 of an acre, is a triangular piece a little above the level of the road, is mostly grassland (more level than the CL Land) having on it an electricity pole, a public seat, and a waste paper bin), bounded on the north and south-west by tracks providing access to houses and to a public footpath which slopes steeply upwards towards the north. It was agreed that the evidence given at the first hearing (CL.375) should be treated as given at the second hearing (VG.133), and conversely.

Mr Hopper produced an agreement dated 29 October 1912 by which Mr H G Ricardo agreed to sell and the National Trust agreed to buy "all the estate right and interest of the Vendor as Lord of the Manor of Minchinhampton ... of to and in the soil of the Common or waste lands of the said Manor ... as the said Common or waste lands are more particularly delineated upon the plan hereto annexed and thereon coloured green ...". And also a conveyance dated 17 April 1913 by which Mr H G Ricardo with the concurrence of his mortgagees convey to the National Trust lands by a description similar to that above quoted from the agreement, save that it did not refer to any plan annexed (there was none) or to any other plan. The



agreement plan shows coloured green Minchinhampton Common, a very large area more than one mile long from a point near Pinfarthing and Box on the south to Houndscroft on the north, and about a mile wide between Amberley and Burley; and also so coloured numerous smaller pieces some about a mile away at Hyde or half a mile away near Ball Green including the Unit Lands which are comparatively minute and to which the nearest point of Minchinhampton Common is about 100 yards away in a direct line and much further by any track conveniently usable by vehicles, cattle or sheep.

In addition to this documentary evidence, oral evidence was given at both hearings by (1) Mr Hopper who lives in Box, (2) by Mr C W S Napier who has lived in Amberley for the last 22 years and who is the vice chairman of the National Trust's Local Committee of Management, (3) by Mr C R G Walker who was born in the Parish 67 years ago and who is and has for the last 32 years been clerk of the Parish Council, and (4) by Mr H W Gardner who was born in the parish 72 years ago, and was for 16 years (1944-1954 and 1961-1967) the Parish Council's representative on the National Trust Local Management Committee (? their committee for managing Minchinhampton Commons), and who also was an officer of the Commoners Committee responsible for local correspondence and cattle marking. Additionally evidence was given at the first hearing (5) by Mr R Mills who has resided in Minchinhampton for the last 15 years and is a member of the Parish Council but who conceded that others present had more local knowledge of these matters than himself. Mr Napier produced the notebook of the National Trust Local Committee drawing my attention to entries made in 1930, 1937 and 1938. Mr Gardner produced an invoice dated 31 May 1974 of the Royal Label Factory to the Parish Council relating to Notice plates costing £10.56p and an account dated 10 November 1975 by the County Council against the Parish Council for the provision and erection of posts for signs and litter bins at Box Village costing £21.95p.

On the day after the second hearing I inspected the Unit Lands.

The oral evidence was apparently directed to showing that the National Trust either had or had not concerned themselves or been concerned with the Unit Lands either at all or in circumstances when if they are and were owners might be expected. Although some of this evidence indicated the concern of the Parish Council with these lands it was not suggested that I could on it conclude that the Parish Council are the owners (only that the National Trust are not the owners). In relation to this oral evidence, some of it seemed to have been put forward without much if any prior consideration, (at any rate before the first hearing), so I record that as I understood Mr Hopper his main contention was that the 1912 agreement was by itself proof of ownership enough and that the information supplied orally was the result of the unexpected challenge by the Parish Council of this agreement and of the doubts I expressed during the first hearing about its cogency. So I will deal first with it.

Under the 1965 Act I am concerned on this reference with ownership of the legal estate in fee simple, see section 22; such ownership is usually established by production of conveyances (or series of conveyances) to the claimant (ultimately)



together with evidence that the claimant is in possession. The case of the National Trust is extraordinary in that they rely on the 1912 agreement and not on the 1913 conveyance made pursuant to it, which would in the ordinary way supersede the antecedent agreement as being the document more perfectly showing the intention of the parties, each having had an opportunity of reconsidering their position after the vendors title had been examined by the purchaser.

I reject the suggestion that the plan annexed to the 1912 agreement has any less evidentiary value because no signatures appear on the plan. Having no good reason to think otherwise, I conclude the 1912 agreement then produced was in all relevant respects in the same state and condition as regards the map annexed to it and otherwise as it was immediately after it was signed by the parties.

As to the evidentiary value in relation to the ownership claim of the National Trust of the 1912 agreement, the legal principle applicable is: "Ancient documents coming out of proper custody and purporting upon the face of them to show exercise of ownership, such as a lease or a licence, maybe given in evidence without proof of possession or payment of rent unto them, as being in themselves acts of ownership and proof of possession, see *Blandy-Jenkins v Dunraven* 1899 2 Ch. 121 per Lindley MR at page 126 and also a statement made by the Judges to and approved by the House of Lords in *Malcolmsen v O'Dea* (1863) 10 HLC 593 at page 614. Further a document signed by any person maybe treated as evidence of any fact recorded in the document see the Civil Evidence Act 1968.

The agreement contains this provision (not mentioned at the hearing): "The Vendor has at the special request of the Purchaser agreed to effect sale and conveyance of the property by reference to a plan, and it is believed by the parties hereto that the plan hereto annexed is correct but the Vendor does not guarantee the correctness of the same ... four coloured photographic copies of the same plan on indelible linen shall be supplied by the purchaser to the Vendor Solicitors at a charge of two shillings and six pence each".

It was not disputed that the National Trust are the owners of the large area called Minchinhampton Common on the said plan and have much concerned themselves with this area; and it maybe that the same can be said that many or all of the other pieces of land delineated on the plan. Nothing I say can read as casting any doubt upon the title of the National Trust to this common or these other pieces. I am concerned with the Unit Lands about which the same cannot (so it is claimed by the Parish Council be said, and to consider that the evidentiary value of the 1912 agreement by itself.

That both Mr Ricardo and the National Trust had in 1912 doubts about the ownership of some of the pieces of land shown on the plan is evident enough from the words above quoted from the agreement: ~~or which~~ would be unusual in an ordinary agreement for sale in which the vendor sell the land itself not merely all his ~~and owned~~ capacity (as Lord of the Manor) and contains no reference to what the purchasers believes the vendor owns. I cannot imagine what were the grounds on which the National Trust in 1912 believed that Mr Ricardo owned the Unit Lands nor can I imagine why they, having obtained a contract obliging Mr Ricardo to convey by reference to a plan,



did not in drawing the conveyance insist upon a plan. Mr Ricardo as Lord of the Manor may in 1912 himself or through his steward or other agents have formed a belief about Unit Lands: nevertheless he or his advisers must have had some doubts about some of the pieces of land he then sold. In my view the agreement is some evidence that the National Trust became the owner of the Unit Lands under the 1913 conveyance, but it is not cogent. The expression used in section 8 of the 1965 Act is "satisfied". If I have regard only to the present appearance of the Unit Lands and their relative position to Minchinhampton Common, of which I shall assume the National Trust undoubtedly became the owner under the conveyance, and to nothing else, I find the 1912 agreement unsatisfying; it seems to me that Unit Lands might be just the sort of pieces of land about which the parties who made the agreement at that time had doubts.

It was contended on behalf of the National Trust that the Unit Lands must be considered as in the same ownership of Minchinhampton Common because the cattle (or some of them) belonging to those who had rights of common thereon also grazed the Unit Lands. The cattle so grazed might and probably often did stray was obvious enough on my inspection both from the situation of the cattle grids I saw, from the way the gardens of the houses are fenced against the road and from a notice on a gate leading ~~into~~ the CL.325 land. ~~However~~ I am not persuaded that any grazier having a right of common on Minchinhampton Common would except for the purpose of keeping down the grass, ever put cattle onto the Unit Lands; however this may be, no graziers have registered rights of common over Minchinhampton Common, have registered any right of common over the Unit Land (the Right Section is blank). In my opinion the activities of these animals do not in any way support the claim of the National Trust.

The notebook produced by Mr Napier contained three entries said to be relevant: (1) 3 October 1930 application by the post office to erect 6 poles at Box was agreed subject to approval as to their position ...; (2) 15 October 1937 a proposal by Stroud Rural District Council to place a water tank in Box Green to stand 3 ft above the ground was considered and it was decided to recommend that such tanks should be placed entirely below ground; and (3) 24 February 1939 reference to an application by the post office for "a similar kiosk at Box" authority was given consent "on the same conditions". As to (1), the only possibly relevant poles I could see were two both on the south-east side of the road and apparently just outside (one a little to the north and one a little to the south) to the CL.375 land, although it maybe (the plan is not very clear) one of them is just within. As to (2) I could see no sign of and there was no evidence about any water tank either above or below ground. As to (3) the only telephone kiosk anywhere near is on the south-east side of the road a short distance to the north of the CL.375 land. There was no evidence that the National Trust had received any wayleave payment in respect of any of the above matters.

The following matters were mentioned in evidence as having been done upon the Unit Lands either by the Parish Council or by someone about whom there was no evidence:-
(a) the erection of the seat now there on the VG.133 land "THIS SEAT WAS GIVEN BY THE PEOPLE OF BOX TO COMMEMORATE THE CORONATION OF HM QUEEN ELIZABETH II JUNE 1953";



- 5 -

(b) a waste paper bin or box attached to a pole near such seat; (c) a pole carrying electric wires (apparently erected by the Midland Electricity Board) (Mr Gardner said in about 1935); (d) the construction by the County Council of a kerb between the Units Lands and the made up carriageway; and (e) the construction by the County Council of a culvert under the road to take the water which forms the before mentioned stream on the CL.325 land. Additionally I noticed during my inspection on the CL.325 land (f) a tree enclosed in a protective wire fence and (g) a public footpath notice.

As regards matters mentioned in the preceding paragraphs I accept that the National Trust having regard to their constitution could have no reason for objecting to any of them, so even if they were not consulted (there was no evidence that they were concerned in any way) these things could not be adverse to their title. But the question I have to consider is not whether assuming the National Trust are the owners they have been dispossessed by anyone, but whether they are the owners; of their ownership their inactivity is no evidence at all. The 1930, 1937, 1939 activities recorded in the notebook in the absence of any evidence that they were followed up by payment of wayleave rents or otherwise, are I think of no significance.

Having regard to the above considerations, I am not satisfied that the National Trust are the owners of either of the Unit Lands as they claim. In the absence of any evidence that any other person could be the owner, I am not satisfied that any person is the owner of either of these lands and I shall accordingly direct Gloucestershire County Council as registration authority to register Minchinhampton Parish Council as the owner of the VG.133 land under section 8(2) of the Act of 1965 and CL.325 land will remain subject to protection under section 9 of the Act.

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.

Dates this 22nd day of February 1979.

A. A. Breen

Commons Commissioner