



COMMONS REGISTRATION ACT 1965

Reference No. 213/U/128

In the Matter of part of Upham Meadow and
Summer Leasow, Twynning

DECISION

This decision relates to the ownership of various parts of the land comprised in the land section of Register Unit No. CL.323 in the Register of Common Land maintained by the Gloucestershire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 or under the Land Registration Acts as the owner.

I held a hearing for the purpose of inquiring into the ownership of the land at Tewkesbury on 4 and 5 October 1988. At the hearing Mr R G Otter, solicitor of Moore, Brown and Dixons, Tewkesbury appeared for Sidney Charles Warner, Thomas Stanley Warner, Phyllis Laetitia Furley, John Phillip Holford McDougal, William Gordon Halling and Thomas Edward Spry; Mr D Bloxham, solicitor of Thomas and Badham, Tewkesbury appeared for Norman Harold Warner; Mr P C Davis solicitor of Davis, Foster and Finley, Malvern appeared for Oak Investments (Jersey) Limited and Mr G D Limbrick, solicitor, appeared for Gloucestershire County Council (as Registration Authority).

The areas which have been referred to me are clearly shown as white on the Supplemental Register Map.

A preliminary matter

There is, however, one preliminary matter concerning this map which was raised at the hearing and which must be cleared up before I go any further. The unit land consists of a flat meadow by the side of the river Avon. It is flooded every winter and so cannot be cultivated. No doubt partly for this reason it is still managed on the old strip system. It is divided up into a large number of strips separately owned, clearly marked on the ground, but never fenced. The owners have a right to mow their strips once only every year. From 12 August every year until 12 February in the following year the holders of rights of common in the meadow are allowed to graze their animals in common over the whole meadow. The owners of most but not all strips have this grazing right. Some of the parcels into which the land is divided are not strictly strip-shaped but I shall refer to them all as strips for the purposes of this decision.

Over most of the length of the meadow the strips run right across it from one side to the other more or less from east to west. At the north, however, the strips are divided into two by an L-shaped piece of land in the centre which for some reason which no one was able to explain is marked on the tithe map "The Parish of Ripple". Those strips which lie to the east of this land and run down to the River Avon are known as "water sharrows" while those which lie to the west of it are known as "land sharrows". A characteristic of these sharrows is that, unlike the other strips, ownership of them does not carry a right of grazing.



On the supplemental map each strip has a number. Most of these numbers are identical with the numbers allocated on the tithe map of 1842 for the Parish of Twynning. At the south of the map, however, for reasons into which I need not enter, the numbers of a few of the strips differ from those on the tithe map. Since it is the numbers on the tithe map which are referred to in most conveyances of the strips it is clearly desirable that the numbers on the supplemental map should be rectified to comply with those on the tithe map if that is possible. In this case I think it is possible for this reason.

In his decision, Reference No. 213/D/286-297 (No.2) dated 2 December 1980, which related to certain disputes occasioned by conflicting registrations in the ownership section of this Register Unit, Mr G.D.Squibb QC, then Chief Commons Commissioner, included the following paragraph -

"Miss Cameron also informed me that there were errors in the registrations at Entry Nos 7 and 10. In order to correct these errors, I confirm these registrations with the following modifications, namely, [then follows a modification to Entry No. 7 which is not relevant to the present question] and the deletion of '711' and the insertion of '713' after '712' in Entry No.10"

This modification was in due course made by the Registration Authority.

In fact there was no error in Entry No. 10 (which was made on the application of Geoffrey Graham Arnold) and which, as originally made, ran (as far as relevant) -

"The part of the land coloured golden brown and comprising Tithe Numbers 711, 712 as shown on the supplemental map."

That entry, it is now agreed, was correct in so far as it stated that Mr Arnold at the date of registration was the owner of the strips marked "711" and "712" on the supplemental map. It was wrong in so far as it described those numbers as "Tithe Numbers", the numbers of these two strips on the tithe map being 712 and 713 respectively.

Accordingly, as now modified, Entry No. 10 is wrong. What probably happened was that Miss Cameron, knowing that Mr Arnold was the owner of the strips numbered "712" and "713" on the tithe map, assuming that they must be numbered the same on the supplemental map, thought that it was a mistake to refer to 711 and 712 in Entry No. 10. No doubt Mr Squibb thought the same.

That is a mistake which could perfectly easily be corrected under regulation 33 of the Commons Commissioners Regulations 1971 by simply striking out the words -

"and the deletion of '711' and the insertion of '713' after '712' in entry No. 10"



But that would leave the contradiction in several entries that the references to strip numbers, while correctly stated to be "as shown on the supplemental map", would not correspond with the numbers on the tithe map.

This can only be put right by altering the numbers on the supplemental map with certain consequential modifications in the registrations in the Ownership Section. Since these registrations are now final they have not been referred to me. Therefore I cannot modify them in this reference. The only way in which they can be altered is by correction of Mr Squibb's Decision and of the consequent notice under section 6(2) of the 1965 Act. It is clear to me that there is an error in that decision and that had the Commissioner been told the true facts he would have corrected it. Since the true facts have been drawn to my attention I can correct it. That being so, I think I have power to correct it in such a way as to bring order into the Register and thus to satisfy the expressed wishes of all concerned parties.

I therefore direct under regulation 29 that the proceedings which were before Mr Squibb under reference No. 213/D/286-297 shall be continued by myself and correct his decision of 2 December 1980 by adding in the 5th paragraph at the end after "Entry No. 10" the following words -

"with the consequential effect that in Entry No. 1 '715' shall be substituted for '714', in Entry No. 6 '714' shall be substituted for '713' and that the numbering of the strips on the Register Map shall be altered as follows -

<u>Present Strip Number</u> <u>shown on Supplemental Map</u>	<u>Number to be shown on</u> <u>Supplemental Map</u>
708	709
709	710
710	711
711	712
712	713
713	714
714	715
715	885 "

In the remainder of this decision I shall refer to the strips as if their numbers had been so altered and to the supplemental map as the "modified supplemental map".



Mr Sidney Charles Warner's claim

Mr Otter produced -

(1) a conveyance on sale dated 18 July 1929 whereby Sophia Jane Dee, Walter Frederick Dee and Joseph William Pritchard conveyed to Sidney Charles Warner the following strips on the map on the modified supplemental map -

710	719	819	
711	785	820	822
718	807	821	

together with no 806, title to which, being now registered under The Land Registration Acts, does not concern me,

(2) a conveyance on sale dated 1 October 1929 whereby Charles Glover conveyed to Sidney Charles Warner the following strip -

887

(3) a conveyance on sale dated 1 October 1929 whereby Charles Glover conveyed to George Frederick Warner land including the following strip -

746

Endorsed on that conveyance is a memorandum to the effect that this parcel was on 18 December 1951 conveyed by Harold Frederick Warner to Sidney Charles Warner. Mr Otter also produced a copy of the probate dated 16 January 1948 of George Frederick Warner's will granted to Harold Frederick Warner. On that evidence in spite of the fact that Mr Otter was unable to produce the conveyance to Sidney Charles Warner I am satisfied that Sidney Charles Warner is the owner of this parcel.

With regard to the following strips no paper title could be produced -

716	735	828.
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However Thomas Stanley Warner gave evidence, which I accept, that he is the son of Sidney Charles Warner, is 63 years old, has worked on the unit land all his working life and, as one of the two haywards, has a thorough knowledge of the ownership of the strips. These three strips have been mown by his father since 1948 (when the witness's grandfather George Frederick Warner died) without any licence from anyone else. He has since 1948 always regarded them as belonging to his father. On that evidence, in the absence of any other claim, I am satisfied that Sidney Charles Warner is the owner of these three strips also.



I shall accordingly direct the registration authority, under section 8(2) of the 1965 Act to register Sidney Charles Warner as the owner of the following strips on the modified supplemental map:-

710	719	807	822
711	735	819	828
716	746	820	867.
718	785	821	

The claim of Thomas Stanley Warner and Phyllis Lectitia Furley

Mr Otter produced -

(1) a conveyance on sale dated 31 September 1919 whereby Lucy Florence Wilson, Jessie Zillah Passey, Lucy Florence Tomlinson and Frederick Arthur Lewis Wilson conveyed to Arthur Gwynne Weaving (among other land) the following strips on Upham Common:-

845	851	742	727
846	858	741	717
850	758	740	-

(2) letters of administration dated 27 January 1945 of the estate of Thomas Gwynne Weaving granted to Millicent Annie Weaving and Gwendolen Annie Warner,

(3) an assent dated 17 November 1965 whereby Gwendolen Annie Warner described as the surviving personal representative of Thomas Gwynne Weaving assented to the vesting in herself and Phyllis Laetitia Furley of (among other land) the strips bearing the numbers set out above,

(4) probate of the will of Gwendolen Annie Warner dated 28 February 1990 reciting that she died on 23 November 1979. Phyllis Laetitia Furley thus became at that date sole owner of the legal estate in fee simple by survivorship.

On that evidence I am satisfied that Phyllis Laetitia Furley is the owner of the above parcels in fee simple and shall direct the registration authority to register her as owner of them under section 8(2) of the 1965 Act.

There is nothing to support the claim of Thomas Stanley Warner to be registered as a joint owner of in this land. Documents were put forward which suggest that he is entitled to an equitable interest in the proceeds of sale. But even if he is solely entitled to such an interest that does not of itself make him owner of the legal estate in fee simple which is all that I am concerned with under section 22(2) of the Act of 1965.

The claim of John Philip Holford McDougal and Irene Olwen May McDougal

Mr Otter produced -

(1) the probate of the will of Harold John McDougal dated 16 August 1985 and granted to John Philip Holford McDougal and John Oliver Dixon,



(2) an assent dated 15 April 1986 whereby John Philip Holford McDougal and John Oliver Dixon assented as personal representatives to the vesting of certain land in John Philip Holford McDougal and Irene May McDougal his wife. That land included the following strips which are part of the unit land

759 763.

This is clearly an inadequate paper title but Mr Otter supported it by the evidence of William Gordon Halling which I accept. He stated that he is 45 years old and a farmer and hayward of Upham Meadow. For at least 20 years before 1986 these two strips were listed in the name of Harold John McDougal. He and his father had for the whole of the period mown the strips each year and had paid Harold John McDougal for the right to do so.

On that evidence I am satisfied that Harold John McDougal at the time of his death was the owner of these two strips and that John Philip Holford McDougal and Irene May McDougal are the joint owners now. I shall accordingly direct the registration authority to register them as owners of that land under section 8(2) of the Act of 1965.

The claim of William Gordon Halling

Mr Otter produced a conveyance on sale dated 3 June 1977 whereby Dorothy Elizabeth Metcalfe and George Christopher Metcalfe conveyed to William Gordon Halling strips numbered 849 and 890 which are part of the unit land.

On that evidence I am satisfied that William Gordon Halling is the owner of these strips.

William Gordon Halling also claimed title numbers 788, 839 and 816.

As to 839 Mr Otter produced a conveyance on sale dated 22 May 1958 whereby Percy Harold Jones and Lucy Jones conveyed to Lionel Wilfred Halling land including a "land sharrow" numbered 839 on the tithe map. There is in fact a land sharrow and a water sharrow each numbered 839 on the modified supplemental map. William Gordon Halling is already finally registered as owner of the land sharrow. It is the water sharrow which has been referred to me as having no registered owner. This conveyance therefore is of no assistance.

As to 816 Mr Otter produced a registered land transfer on sale dated 26 January 1978 in the prescribed form whereby Geoffrey Graham Arnold transferred to William Gordon Halling part of the land in title number GR 3345. The land is described as including (among others) number 816 "being part of the land comprised in the title above mentioned". In fact strip number 816 never was registered land. What then is the effect of this purported transfer? It seems to me that this document, which is under seal, evinces a clear intention to convey no. 816 to William Gordon Halling and that the fact that the vendor mistakenly thought the land was registered land does not invalidate it as a conveyance. This conclusion is supported by the evidence referred to below.



William Gordon Halling gave evidence which was unchallenged and which I accept that since at least 1958 (when the witness left school) his father had always treated No. 839 (water sharrow) and No. 788 as his own and had mown them every year. He had himself since 1978 always treated No. 816 as his own and mown it every year.

On that evidence I am satisfied that William Gordon Halling is the owner of strip No. 816.

As to strip No. 839 (water sharrow) and 788 I am satisfied that at the death of Lionel Wilfred Halling in 1985 they were owned by him.

Mr Otter produced the probate of Lionel Wilfred Halling's will dated 26 March 1986 granted to Geoffrey Charles Humphries and William Gordon Halling. I am satisfied therefore that they are the present fee simple owners of those two strips.

I shall accordingly direct the registration authority to register as owners under section 8(2) of the Act of 1965 -

- (1) William Gordon Halling of numbers 816, 849 and 890
- (2) Geoffrey Charles Humphries)
William Gordon Halling) jointly of numbers 839 (water sharrow)
and 788.

The claim of Norman Harold Warner

Mr Bloxham produced -

- (1) a conveyance on sale dated 8 January 1932 whereby Eleanor Jane Gosling conveyed to Benjamin Thomas Fletcher who in his turn conveyed to Harold Frederick Warner land including -

"...All that the first math of a piece of meadow land being two land sharrowes in and near to the tip of Upham Meadow in the parish of Twyning aforesaid and containing two roods and two perches or thereabouts and numbered 852 on the Tithe plan for the parish of Twyning."

- (2) Probate of the will of Harold Frederick Warner dated 22 April 1980 and granted to Norman Harold Warner and Charles Hickling Warner.
- (3) An assent dated 2 September 1980 whereby Norman Harold Warner and Charles Hickling Warner vested in Alice Mary Warner land including the first math in parcel no. 852 described in the same words as above.
- (4) Probate of the will of Alice Mary Warner dated 19 July 1983 and granted to Norman Harold Warner and Charles Hickling Warner.



(5) An assent dated 20 June 1984 whereby Norman Harold Warner and Charles Hickling Warner vested in Norman Harold Warner land including-

"All that first math of a piece of meadow land being two land sharrows situate in and near to the top of Upham Meadow in the parish of Twynning aforesaid".

Although there is no reference to the area or to the tithe number in this last assent it is I think clear that it must mean parcel No. 852. Norman Harold Warner has, therefore, a clear title to the "first math" of that land. But what does this mean? It seems that a right of first math or prima tonsura may be simply a right to take the first hay crop from someone else's land. That is to say a mere profit à prendre not carrying with it the freehold. Mr Bloxham argued however, that in the present case it could only mean the freehold, subject as that was to rights of common after the hay has been got in.

In support of the argument he pointed out that the first of the documents of title listed in the acknowledgement and undertaking contained in the conveyance of 8 January 1932 referred to above is a conveyance dated 30 September 1907 between Frederick Harold Jones and Charles Alfred Jones (1) and John Henry Gosling (2). Mr Buxton produced an abstract of that conveyance which conveys among other land -

"All that piece of meadow land being two land sharrows situate in and near the top of Upham Meadow in the parish of Twynning afsd. contg. 2r 3p or thereabouts then in the occupation of the sd E. Chamberlain and Nod. 852 on the Tithe Plan".

that is to say the parcel was conveyed as freehold land without any reference to "first math". Also abstracted was the assent dated 1 January 1929 whereby the personal representatives of John Henry Gosling vested this land in Eleanor Jane Gosling, the vendor on the 1932 conveyance referred to above. The description of the parcel in that assent, as abstracted, is in the same terms as that in the 1907 conveyance. There is no mention of "first math".

It is I think past all belief that Mrs Gosling in 1932, having recently inherited the freehold in these two land sharrows, the only use of which to her was the rent she could obtain for the right to mow them, should sell that right to someone else as a profit à prendre while retaining for herself the freehold which would have been of no use whatever. For these reasons I think the conveyance of 8 January 1932 and the subsequent conveyances referred to above were intended to and did convey the freehold of title number 852.

This conclusion is strengthened by the fact that ownership of these "land sharrows" does not carry with it a right to graze the meadow in common after it is thrown open to the commoners on 12 August of each year. Since by custom the owner is only entitled to mow the land once, a right of "first math" is, in practice, all the freeholder has. That being so it is not perhaps surprising that the conveyancer should have wished to make this clear to the purchaser. The words which he chose ("first math") were perhaps puzzling to an outsider but they seem to be regularly used in this area and are probably well understood there.



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In so deciding I have followed and, I hope not unduly extended the reasoning of Mr Squibb in his decision of 19 June 1979 Reference No. 213/D/175-184 (No.2) relating to conflicting registrations in the neighbouring CL.46 where he held, for similar reasons, that a conveyance which referred in a "remarks" column to "First Math Only: subject to existing commonable rights of pasturage between 12 August and 12 February in every year" nevertheless took effect to convey the freehold.

Accordingly I am satisfied that Norman Harold Warner is the owner of strip number 852 on the modified supplemental map and shall direct the registration authority to register him as the owner of that land under section 2 of the Act of 1965.

The claim of Thomas Edward Spry

The ownership of the greater part of strip No. 729 on the modified supplemental map is finally registered in the name of Thomas Edward Spry. Forming part of that strip at the western end, however, is a small elongated rectangle of land the ownership of which is not registered and which has accordingly been referred to me.

Mr Otter could produce no paper title to this small piece of land but it is inherently unlikely that its ownership should have become separated from that of the rest of the parcel. Mr Spry gave evidence which I accept that he is 62 years old that he has known strip No. 729 since 1951 and since then has mown it at first for his father and then, since 1977, for himself. He has always mown the whole of the strip as shown on the map including the small rectangle.

On that evidence I am satisfied that Thomas Edward Spry is the owner of this land and shall accordingly direct the registration authority to register him as the owner of it under section 8(2) of the Act of 1965.

The claim of Oak Investments (Jersey) Limited

This company claims ownership of strips numbers 715, 724, 725 together with the L-shaped unnumbered piece of land at the north of the unit land which is marked on the modified supplemental map "The Parish of Ripple". I shall refer to these four parcels together as "the land claimed". Mr Davis produced -

- (1) a conveyance on sale dated 28 January 1892 whereby the land claimed together with other land was conveyed to George Lloyd Foster Harter,
- (2) a conveyance on sale dated 1 December 1900 whereby George Lloyd Foster Harter conveyed the land claimed together with other land to Percy Frederick Wigan,
- (3) probate of the will of Percy Frederick Wigan dated 28 February 1950 and granted to Katherine Ethelreda Barnard, Ruth Damaris Wigan and Phillipa Mary Deloraine Wigan,

amended under regulation 33

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(4) an assent dated 1 February 1955 whereby these three vested the land claimed in themselves,

(5) a deed of appointment of a new trustee dated 11 March 1974, reciting that Ruth Damaris Wigan died on 1 July 1971 whereby Katherine Ethelreda Barnard retired and the land claimed was vested in Phillipa Mary Deloraine Wigan and Francis William Wigan Barnard as trustees,

(6) a conveyance on sale dated 17 February 1986 reciting that Phillipa Mary Deloraine Wigan had died on 26 August 1980, appointing as new trustee Margaret Renee Barnard and conveying the first math of the land claimed to Oak Investments (Jersey) Limited, whose registered office is at La Motte Chambers, St. Helier, Jersey.

On that evidence I am satisfied that that company are the owners of the land claimed. I shall accordingly direct the registration authority to register them as owners under section 8(2) of the Act of 1965.

Strip No. 842 was also referred to me. Since, however, no claim to ownership of this land has been made it will remain subject to protection under section 9 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

7th

day of

June

1984

Robin Lamman-Davies

Chief Commons Commissioner