



## COMMONS REGISTRATION ACT 1965

Reference No. 15/U/103

In the Matter of land (in two pieces) near  
Gorsley Common, Linton, South Herefordshire D.,  
Hereford and Worcester County.

DECISION

This reference relates to the question of the ownership of land (in two pieces) extending to about 0.245 acres near Gorsley Common, Linton, South Herefordshire District being the land comprised in the Land Section of Register Unit No. CL 212 in the Register of Common Land maintained by the Hereford and Worcester 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 Mr. T.F. Harris claimed ownership of the land in question; no other person claimed to be the freehold owner of the land 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 Hereford on 11 December 1974. At the hearing, Linton Parish Council were represented by Mr. J.H. Pickles one of their members, and Mr. Thomas Frederick Harris and his wife Mrs. Margaret Gwendoline Harris were represented by Mr. A.M. Pettigrew solicitor of R. & C.B. Masefield, Solicitors of Ledbury.

Mr. G.H. Holman who was present as representing the County Council as registration authority, said that they had registered the land under the 1965 Act upon a consideration of the Parish Tithe Apportionment Award map.

The land ("the Unit Land") comprised in this Register Unit is in two pieces. One Piece ("the Larger Piece") is a triangular piece comprising nearly the whole of the Unit Land, situated on the north side of an S bend in the road (Quarry Lane) where the road crosses (by a bridge) a small stream ("the Brook"). The south part of the Larger Piece slopes from its south end and from the road down to the south bank of "the Brook"; the north part of the Larger Piece is a steep bank sloping down from the north side, then a vehicular track providing access to a house and land known as Brook Farm and then a steep slope down to the north bank of the Brook. The other piece ("the Smaller Piece"), in appearance road side verge, is comparatively very small and is situated on the same side of the road and to the south of the Larger Piece, being separated from it by a driveway leading to a dwelling house and to a rough track leading to what is now or was formerly a quarry further south.

Mr. Harris, who has lived at Brook Farm for the last 37 years said (in effect):-  
Brook Farm (the house and land) is now owned by his wife; before her it was owned by her father (Mr. Taylor) and before him, her grandfather. It is what was a quarry;



the track across the Larger Piece is the only access. In 1972, when the nearby motorway (M50) was being built, he bought some of the spoil and had it spread over the track (this cost about £200); before 1972 the track was narrower than now, there was where it leaves the road a sharp drop (now an easy slope). The post and iron rail fence on and extending either side of, the Bridge has been there some time (he would say since 1900). According to the deeds (his wife's), the boundary of Brook Farm is the northeast side of the Larger Piece. Before 1972 the Brook flooded, and the water could not get through the culvert, came over the road, and washed a six feet deep hole in the track; he filled this up and repaired (on his side of the Bridge) the bed of the Brook.

Mrs. Harris who has lived at Brook Farm all of her life (59 years) in the course of her evidence confirmed what her husband had said and added: before 1972 when a representative of the County Council came to look at the Unit Land, she had never heard it described as common land.

Mr. Pickles who has been a member of the Parish Council for 7 years and lived in the Parish for 9 years said (in effect):- The Parish Council comprises two villages namely, Linton and Gorsley. Gorsley had been much developed near the Unit Land, and the drainage arrangements for this development depend on the Brook. The Brook near the Unit Land is very liable to flood. Although he himself is not a Gorsley man, during a discussion in the Council about the Unit Land, the Gorsley representatives said they always understood that it was common land.

Two days after the hearing, I inspected the Unit Land. Having regard to the building development nearby, further up the Brook, its appearance must now be very different from what it was when the Tithe Apportionment Award was made. It could be described as a problem piece, because a person who was altogether free from any legal restrictions would I think find considerable difficulty in deciding how it could at a reasonable cost be tidied up and adapted to modern conditions for the benefit of everybody.

As I understood them, the substance of the matter as viewed by Mr & Mrs Harris is as follows:- They would like to make the north of the Brook part (the North Part) of the Larger Piece tidy, by keeping the track in order, and by planting out the slopes on either side of the track with flowers and so forth. It is not worth doing this if anybody can drive a motor car or lorry onto the track or can walk over the rest of the North Part as they please. So to tidy up the North Part some sort of gate barrier or fence is needed in continuation of the post and rail fence which now exists on and on either side of the Bridge. The North Part has been for many years waste and no local authority has ever done anything to it. Although it may be convenient to those living nearby and those going to the quarry on the south, that the North Part should remain open so that they can leave a car or lorry there and although it maybe convenient for passing motorists or lorry drivers as a casual layby, such uses of the Larger Piece are not legitimate uses of common land. The owner of the adjoining dwelling houses could (and they believe would) co-operate in tidying up similarly the south part of the Larger Piece. All this would much improve the appearance of the area for the benefit of everyone particularly if the Smaller Piece was tidied up at the same time .



-3-

On this reference I am concerned only with ownership. I cannot (as I think Mr & Mrs Harris would like me to) avoid the registration of the Unit Land as common land; such registration has become final; notwithstanding that they might have objected to it (they did not know of it in time), and I am bound by section 10 of the 1965 Act to assume that the Unit Land is within the section 22 definition of common land. Further: I have no power to direct the registration of Mr or Mrs Harris as owner because it may be expedient that the Unit Land should be tidied up as they propose. I have recorded their views, because I think they are worth consideration by those concerned: but the County Council or the Parish Council must not be taken to have accepted such views merely because neither Mr. Holman nor Mr. Pickles commented on them; on this reference, as to ownership there was no reason why they should.

As to ownership, Mr. Pettigrew contended that either Mr. Harris or Mrs. Harris had a possessory title. In my view their making up the track in 1972 cannot be regarded as an act of possession in exercise of ownership; it is equally referable to the right of way that Mrs Harris as owner and occupier of Brook Farm must have over the Larger Piece. Further: in my view the repair of the bed of the Brook by Mr. Harris is referable to his wife's ownership of Brook Farm rather than to any ownership of the Larger Piece. Any tidying up of the Larger Piece they have done in the past is not I think distinctive enough to establish any possessory title to the land. I conclude therefore that a possessory title has not been made out. It was not suggested (rightly, I think) that ownership by either Mr or Mrs Harris could be established under any other title. No evidence was offered by the Parish Council or anyone else as to ownership.

Accordingly, on the above considerations I am not satisfied that any person is the owner of the Unit Land and it will therefore be 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 12th day of February 1975

A. A. Baden Fuller

Commons Commissioner