



In the Matter of Pieces of Land known as
Powick Hams Powick Malvern Hill D.,

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section (Reference No. 42/D/16) and at Entry Nos. 1-59 inclusive in the Rights Section (Reference No. 42/D/17) of Register Unit No. CL.77 in the Register of Common Land maintained by the former Worcestershire County Council and are occasioned by Objection No. 4 made by Mrs May Caroline Pooler and noted in the Register on 22 January 1969; and at Entry No. 3 in the Ownership Section of the Register occasioned by Objection No. 74 made by Mrs Pooler (Reference No. 42/D/18) and Objection No. 85 made by Colin Arthur Preece (Reference No. 42/D/19) and both noted in the Register on 23 May 1972. The objections made by Mrs Pooler are limited to the land O.S. 427A.

I held a hearing for the purpose of inquiring into these disputes at Worcester on 13 November 1974. The hearing was attended by Mr. McConville, Counsel instructed by Messrs. Glaisyers Solicitors of Birmingham representing Mrs Pooler, Mr. Duncan of Messrs. Whatley Weston and Fox, solicitors of Worcester on behalf of the Powick Commons Committee and the Madresfield Estate, Mr. Preece, in person Mr. Moss on behalf of the Severn and Trent Water Authority and Mr. Alexander for Messrs. Alec and Harry Rodgeman.

The land in question comprises O.S. Nos. 427 and 427A and is a strip of land running North and South adjoining land owned by Mrs Pooler and Mr. Preece on their Western boundaries.

Mr. Duncan at an early stage stated that the claim by the Madresfield Estate to ownership was made in error and that the land in question was once part of the Croome Estate and this was confirmed by Mr. Henderson the agent of the Croome Estate who was present. In these circumstances I must refuse to confirm the Entry No. 3 in the ownership section of the Register thus disposing of References 42/D/18 and 42/D/19.

as regards OS Nos 427 and 427A.

It remains therefore for me to consider Mrs Pooler's objection to the registration of the land as common land and the registration of common rights affecting the land.

Notwithstanding the fact that she has not registered any claim to ownership Mrs Pooler's objection is based on the contention that she is the owner of half of the strip of land adjoining her property down to the centre of the strip on the footing that the strip is a public or private way and that the conveyance to her carried with it the ownership of the soil down to the centre of the way.

In support of this contention Mrs Pooler's abstract of title was produced which abstracted a conveyance dated 10 August 1909 made between the trustees of the late W.E. Wall and Mr. Chance. The land thereby conveyed comprised the land on both sides of the land in question and was "for the better description thereof" delineated and coloured pink on the plan annexed thereto. Prima facie the Wall trustees did not convey the land in question to Mr. Chance and if the land in question had been a way one would have expected the land to have been described as being part of the land conveyed but subject to whatever rights of way may then have existed. On the 4 November 1921 Mr. Chance conveyed the whole of the land which he acquired under the 1909 conveyance to Mr. C.M. March. On 12 January 1925 Mr. March conveyed to Henry Iliffe the land now owned by Mrs. Pooler and Mr. Preece known as Pursers Orchard and on the plan annexed to this conveyance it is identified as Lot. 5. If half the land in dispute passed to the owners



of the land now owned by Mrs.Pooler and Mr.Preece it must have been in 1925 when it was not held in common ownership with the land on the other side of the land in question.

To complete the history of the title Mr. Iliffe conveyed Pursers Orchard to Lucy Hill on 26 May 1939. Lucy Hill conveyed Mr.Preece's land to him in 1963 and her personal representative conveyed Pursers Orchard to Mrs Pooler on 31 August 1964. It is at first sight difficult to appreciate the purpose of Mrs Poolers objection based as it is upon her contention that the land in question is a "way". The use to which the land is put would appear to be much the same whether it is a way or common land. However, during the course of the hearing it emerged that Mrs Pooler had in the past put forward the untenable claim that the land in question was a private access to Pursers Orchard and she may be hopeful that if her objection succeeds she will be able to establish her claim to the land as a private means of access to her property.

A Mr. Edmund Wilde gave evidence designed to support Mrs. Poolers objection but his evidence negatived the contention that the land in question was a way at any material time. He stated that at the North End of the land there was a gate and a fence and that the gate was kept locked. By this gate Mr.Chance who was a keen follower of hounds had caused to be erected a hunting gate which gave access to the land on the East Side of the land. There was also a gate at the South end of the strip of land which was locked by Mr. Finch an employee of Mr.Chance on the 26 December in each year. Much of the land in question at the North end is under water for most if not all of each year as is confirmed by all the maps which were produced and also by a recent photograph. Mr. Wilde stated that he believed that gravel was extracted from OS 427A when the house Wheatfields was built on the land to the West of the land in question and that such extraction was the cause of the pool of water OS 427A being known locally as "The Lake". Furthermore beyond the gate at the North end there was a copse which until fairly recent times was impenetrable. There was and still is a footpath running parallel to the land in question over the land on the West Side. Finally Mr.Wilde stated that he had always believed that persons using the land in question used it by express permission of the owners and that others used the footpath. The gates, the pool, the impenetrable copse and the parallel footpath are all indications that the land in question never was either a public or a private way and in my view therefore neither Mrs Pooler nor any of her predecessors in title ever acquired any title to any part of the land in question after it passed into separate ownership from the land to the West.

Mr.Hill who conveyed the property to Mrs Pooler and who lived at Pursers Orchard for thirty five years made a Statutory Declaration to the effect that the land in question has been used during that period without interruption or payment and that to the best of his knowledge was so used by his predecessors in title as of right. This evidence conflicts with that of Mr.Wilde and since Mr Hill was not available for cross-examination it has little if any probative value.

Mr. Henderson on behalf of the Croome Estate raised no objection to the registrations and in the absence of any objection other than that of Mrs Pooler which is without any foundation or merit I confirm the registration at Entry No.1 in the Land Section of the Register, and at Entry Nos.1-59 inclusive in the Rights Section of the Register, and at Entry No 3 in the Curtilage Section modified so as to exclude OS Nos 427 and 427 A. 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 25th November ~~day~~

1974 C A Fettle

Corrected under Regulation 33 of the Commons Commissioners Regulations C A Fettle 25.3.75

Commons Commissioner