



COMMONS REGISTRATION ACT 1965

Reference No. 215/U/12

In the Matter of Powick Hams,
Powick, Malvern Hills District,
Hereford and Worcester

DECISION

This reference relates to the question of the ownership of parts ("the Referred Land") of the land ("the Unit Land") which comprises a number of pieces together known as Powick Hams, Powick, Malvern Hills District, and which together make up the land comprised in the Land Section of Register Unit No. CL.77 in the Register of Common Land maintained by the Hereford and Worcester County Council. The Referred Land comprises the parts of the Unit Land 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 the Agent of the Croome Estate Trustees in a letter dated 7 October 1975 claimed ownership of "various unclaimed pieces" of the Referred Land, and Glaisyers, solicitors of Birmingham, on behalf of Mrs May Caroline Pooler in a letter dated 15 October 1975 set out a number of matters relating to O.S. Nos 427 and 427a, which their client put forward for consideration "as a desire to ensure that the state of these two pieces of land remained as they now are and have been for many years and that any claim to ownership should completely satisfy the Commissioner".

I held a hearing for the purpose of inquiring into the ownership of the Referred Land at Hereford on 27 January 1976. At the hearing Mr Edward Hugh Lee Rowcliffe and Lieutenant-Colonel Anthony Dudley Smith (the present Trustees of the Croome Estate) were represented by Mrs R J Mackworth solicitor with Gregory Rowcliffe & Co Solicitors of London, and Mrs M C Pooler was represented by her husband Mr G Pooler.

During the first part of the hearing, I considered a strip ("the Disputed Strip") which is about 300 yards long, and has a width varying between 5 and 15 yards. The south end of the Disputed Strip adjoins the main road from Powick (Worcester) to Upton-upon-Severn; the north end of the Disputed Strip adjoins the track running northwest from Flaxhouse Farm at the point where this track turns to the northeast. The Disputed Strip comprises the whole of O.S. No 427a and the whole or a greater part of O.S. No 427. The south part (about two thirds) of the Disputed Strip is a track which ends at the entrance gate of the house known as Pursers Orchard, occupied by Mr and Mrs Pooler; the north part (about one third) of the Disputed Strip is much overgrown with scrub and includes a low lying very damp area ("the Pond Area") which corresponds (a little more or less) with O.S.No.427a.



Mrs Mackworth referred me to a decision dated 25 November 1974 given upon a reference made under the 1965 Act ~~and made~~ by Mr Commissioner Settle QC, after a hearing on 13 November 1974 at which Mrs Pooler was represented by counsel, and contended that the claim of ownership which Mr Pooler was now making had been rejected by the Commissioner and could not therefore be made again. On behalf of Croome Estate Trustees, oral evidence was given by Mr J B Henderson who is now and has been since 1968 their Agent.

Mr Pooler after asking Mr Henderson a number of questions, said (among other things) that his wife claimed ownership up to the halfway line of the part of O.S. no.427 which adjoined the land she owned, by virtue of her ownership. He accepted that by reason of the 1974 decision she could not claim O.S. No.427a (the Pond Area).

Three days after the hearing I walked over the north part of the Disputed Strip.

In my opinion Mrs Pooler is not by the 1974 decision by law absolutely precluded from claiming ownership of the Disputed Strip. Such decision so far as it relates to ownership was merely that Entry No 3 in the Ownership Section of the Madresfield Estate Trustees should be modified as regards O.S. Nos 427 and 427a in view of the statement made on their behalf that their claim to the ownership of these O.S. Nos. had been made in error. Nevertheless Mrs Mackworth and Mr Pooler could in my opinion properly refer to what happened at the hearing on which the decision was made and to the decision itself as supporting the case of one and negating the case of the other. Further it is I think important that as a direct result of the decision the 59 Entries in the Rights Section of this Register Unit of rights to graze (in all but 4 cases over the whole of the Unit Land) have become final.

Mr Henderson in the course of his evidence produced: (1) a map (endorsed "probable date 1648") of all the land in the "Manor of Powyke belonging to Lord Coventry, (2) a Terrier apparently compiled by reference to the numbers on the 1648 map, (3) an abstract of title (the deeds abstracted were available at the hearing) under which the title to the Croome Estate was regularly traced from a settlement dated 15 September 1921 and made by G W 9th Earl of Coventry and his eldest son Mr G W Coventry (Viscount Deerhurst) through a series of vesting deeds to Mr E H L Rowcliffe and Lieutenant Colonel A D Smith, the estate being described in the 1926 vesting deed as including an agricultural estate consisting of 8 farms, 20 small holdings, 9 cottages, and several small woods at Powick containing 1,781 a.O.r.33p; and (4) a deed dated 21 December 1924 by which the 9th Earl confirmed the title of the Estate Trustees to "All that the said Manor of Powick...". Mr Henderson said (in effect):- The 1648 map and the Terrier were from the Estate Archives. He is the Steward of the Manor, and as such acts on behalf of the freeholders at the Court Baron which is held annually; at the Court, the Commons Committee make presentments about the Common Land (meaning the Unit Land); about the use of the land there is a set of rules.

In the Terrier, included among "the Wastes" is an item "16. Lane leading from Bircham Meadow to the Pole and Gennet Tree. 6A OR OOP". On the 1648 map, strips coloured as lanes, roads etc are variously numbered and the number "16" appears at several places. The Pole and the Gennet Tree are places locally known and marked on modern maps, west of the Disputed Strip; Mr Henderson identified Bircham Meadow as being a meadow some distance to the northeast of the Disputed Strip.



Mr Pooler contended that the Disputed Strip was not part of number 16 on the 1648 map or of the land given this number in the Terrier, because none of the numbers "16" on the 1648 map were actually written on the land now said to be the Disputed Strip and because the easier way between the Pole and Gennet Tree and Bircham Meadow must in 1648 have been as it is now from the main road along Beauchamp Road, then left along the track by Flaxhouse Farm and then right at the north end of the Disputed Strip. Clearly (as is apparent from the map) the Disputed Strip would be a straighter route; however the Pond area is such that nobody would now drive a vehicle across it and there must be many occasions when it would be unattractive for pedestrians. Nevertheless I reject this contention because it would not I think, have been inappropriate in 1648 to use the word "Lane" as a short description of what is now Beauchamp Road, the said track, and the Disputed Strip, and from the general appearance of the 1648 map I conclude that the numbers 16 on it were intended to refer to strips of land which included the Disputed Strip. I also reject Mr Pooler's contention that because the roads and lanes on the 1648 map do not exactly correspond with the Disputed Strip and the main road as they now are, I should treat this part of the Waste described in the Terrier and in the 1648 map as having somehow disappeared; in my view the proper inference is that any adjustment of the boundary made since 1648, was made without any intention of changing the ownership or status of the lands bounded, so that as regards any question which I have to consider the Disputed Strip is part of the Lane numbered "16" on the 1648 map and in the Terrier.

Mr Pooler did not produce to me any of the documents which had on behalf of his wife been produced at the 1974 hearing or any of the documents mentioned in her solicitor's 1975 letter; indeed on her behalf he gave no evidence at all, apart from asking me to read the 1974 decision and obtaining answers from Mr Henderson to various questions (mostly relating to the appearance of the Disputed Strip and to the nearby public footpaths).

The 1974 proceedings were in part occasioned by an objection made by Mrs Pooler to the registered ownership of the Madresfield Estate Trustees; the grounds stated in her objection were that she owned the part of the Disputed Strip which Mr Pooler on her behalf before me claimed she is the owner (i.e. the part of O.S. Nos. 427 and 427a up to the halfway line fronting on Pursers Orchard). Although the 1974 decision was that the ownership registration of the Madresfield Estate Trustees should be modified by excluding O.S. Nos. 427 and 427a (so Mrs Pooler got what she in her objection asked for), it is clear that the Commissioner made this modification for reasons which had nothing to do with the grounds of her objection; so I cannot treat the decision as in any way establishing Mrs Pooler's ownership claim merely because her objection in a sense succeeded. Further the Commissioner when he considers another objection made by Mrs Pooler (it was to the inclusion of O.S. No. 427a in the Land Section of the Register), clearly indicated that he rejected the contention then made on her behalf that she had some interest in O.S. Nos. 427 and 427a. On the information given to me on this part of the case (which was not as much as that given to the Commissioner at the 1974 hearing) I find myself in entire agreement with what he said.

As a result of the 1974 decision all the registrations have become final; so by section 10 of the 1965 Act, the inclusion of the Disputed Strip in the Land Section is now conclusive evidence that it is within the definition of common



land in section 22 and the inclusion of the rights of grazing set out in the Rights Section is now conclusive evidence that such rights exist over the Unit Land including the Disputed Strip. On a consideration of the Register itself and of the appearance of the Disputed Strip, I find it difficult to imagine how it could be in any ownership other than that of the Lord of the Manor or his successors in title.

There is no reason why I should not give full effect to the evidence of Mr Henderson and to the documents produced by him, and I am accordingly satisfied that the Croome Estate Trustees are the owners of the whole of the Disputed Strip.

During the second part of the hearing, I considered two pieces of land ("the Exchanged Pieces"), both part of the Referred Land and both part of O.S. No. 753, one having an acreage of 0.794 and the other having an acreage of 0.531. The Exchanged Pieces are south of and near to the River Teme, being part of the pieces of the Unit Land which are not far from Temeside Cottage (marked on the Register map, a short distance southwest of the junction of the Rivers Severn and Teme). The Exchanged Pieces both adjoin land of which the Croome Estate Trustees are at Entry No. 2 in the Ownership Section the registered owners.

Mrs Mackworth said that the Exchanged Pieces (with other land) were by a deed of exchange dated 26 November 1973 conveyed by Mr G N and Mrs C M Maley to Mr Rowcliffe and Mr F R P Barker (the then Trustees of the Croome Estate) and that those concerned with the Exchanged Pieces mistakenly assumed that they were comprised in the ownership registration at Entry No. 1 of the Ownership Section made pursuant to an application dated 1 May 1968 by Mr H T Tooby (he was Mrs Maley's father). Mrs Mackworth produced the said deed of exchange and epitomes of the title of Mr G N Maley (a conveyance dated 27 September 1919 to Mr H T Tooby who died on 14 January 1971, and an assent dated 13 January 1972 by his executors).

On the above information, I am satisfied that the Croome Estate Trustees are the owners of the Exchanged Pieces.

On the information now before me I am not clear whether there may not be some part of O.S. No. 427 which is not within but is north of the Disputed Strip (as above defined). Entry No. 3 in the Ownership Section pursuant to the 1974 decision has been modified by excluding the whole of O.S. No. 427. Because Mr Henderson at the hearing on a map which he produced to me, drew a line across O.S. No. 427 to indicate (as I understood him) the north boundary of the land claimed by the Estate, I shall in my direction use such line as indicating the north boundary of the land, the Trustees ownership of which he has I think by his evidence established.

In accordance with the conclusions as to ownership set out above, I shall under section 8(2) of the Act of 1965 direct the Hereford and Worcester County Council as registration authority to register Mr Edward Hugh Lee Rowcliffe of 41 Bedford Row, London WC1 and Lieutenant Colonel Anthony Dudley Smith of Woolley Green, Bradford on Avon, Wilts (the Trustees of the Croome Estate) as the owners of the following parts of the land comprised in this Register Unit of which no person is now registered under section 4 of the Act as the owner, that is to say,



(1) O.S. No. 427a and the part of O.S. No. 427 which is south of the line obtained by producing in a straight line and in a west-south-west direction the line of the north-north-west boundary of O.S. No. 426; (2) part of O.S. No. 753, having an acreage of 0.794; and (3) another part of O.S. No. 753, having an acreage of 0.531.

In the absence of any evidence, I am not satisfied that any person is the owner of the remaining pieces which together form the Referred Land, and they will therefore remain subject to protection under section 9 of the 1965 Act.

In case I have misunderstood the claims made to the part of O.S. No. 427 which is not within but is north of the Disputed Strip, I give the Croome Trustees liberty to apply to this part within 42 days from the date on which notice of this decision is sent to them; any such application should in the first instance be made in writing to the Clerk of the Commons Commissioners.

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 February 1976

a. a. Barton Fuller

Commons Commissioner