



In the Matter of Colloway and Overton Marshes,  
Overton, Lancashire.

DECISION

This reference relates to the question of the ownership of land known as Colloway and Overton Marshes, Overton, being the land comprised in the Land Section of Register Unit No CL 193 in the Register of Common Land maintained by the former Lancashire 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 Her Majesty the Queen in right of Her Duchy of Lancaster claimed to be the freehold owner of the land in question and no other person claimed 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 Lancaster on 28 February 1978.

At the hearing Miss Sheila Cameron, of counsel, appeared on behalf of the Duchy of Lancaster. I also heard the Rev. C G Bellamy, Vicar of Overton, and Mr Cyril Pearson, a local resident. Mr M Gillibrand, solicitor, appeared on behalf of Mr H Bargh, but it appeared that none of Mr Bargh's land was comprised in the Register Unit.

The land comprised in the Register Unit lies to the west and north of the River Lune. Its eastern and southern boundary is Low Water Mark of Ordinary Tides, and its western boundary is formed mostly of earth banks and stone walls on the adjoining owners' lands.

The line of the earth banks and stone walls was until the middle years of the nineteenth century High Water Mark of Ordinary Tides. In or shortly after 1862 the Lancaster Quay Commissioners constructed training walls in the channel of the river to the south of the land in question with the object of making a clearer course for the river and improving Glasson Dock on the south side of the estuary. The formation and direction of the training walls, however, produced quite a different effect from what had been intended, directing the channel across the estuary so that it touched the hard land on the east side of the river, with the result that a marsh gradually grew up on the west side of the channel. The present position is that the western half of the land is now above High Water Mark of Ordinary Tides, while the eastern half lies between High and Low Water Marks.

The land bounding the land comprised in the Register Unit on the west lies within the manor of Overton. There is no evidence as to whether the foreshore was ever granted by the Crown to a lord of the manor of Overton, but this is a matter of no present importance, for the manor passed by inheritance to the Duchy, so that the foreshore belonged to the Duchy either as parcel of the manor or by virtue of the general law relating to foreshore in the County Palatine of Lancashire.



Reference No 2070/52

In 1630 the manor of Overton was alienated by the Duchy. There is nothing to indicate that the alienation included the adjoining foreshore, but there appears to have been some doubt about the matter, for the Tithe Apportionment of 1844 × states that the ownership of the major part was disputed and describes the occupiers as the Overseers of the Poor or the Lords of the Manor or T F Brockholes. A small part to the south was stated to have been in the ownership of the Lords of the Manor in "16 Chas", it not being stated whether Charles I or Charles II was intended. There is no evidence as to who were the lords of the Manor in 1844 or in 16 Charles I or 16 Charles II.

In this state of confusion it would be sufficient to say that in the absence of evidence of the alienation of the foreshore it must be presumed to have been vested in the Duchy in accordance with the general law relating to foreshore. The fact that half of it has ceased to be foreshore as a result of the construction of the training walls and not by natural accretion will not have had any adverse effect on the Duchy's title: see Att. Gen. of Southern Nigeria v. John Holt and Company (Liverpool) Ltd [1915] A.C. 599, 615. There is, however, evidence that even if the original foreshore (including the land which is now marsh) was alienated, it has been subsequently reacquired by the Duchy.

During the present century it has been assumed by those managing the estates of the Duchy that this land is Duchy property, and there is no evidence that this assumption has ever been challenged.

From 1936 until the present time the shooting rights have been let. Electricity wayleaves were granted in 1940 and 1970. An easement for water pipes was granted in 1949. A part of what is now the foreshore has been let to a sailing club since 1973. The rents and other annual payments under these transactions have been received by the Duchy.

Even if the Duchy had no title to this land before 1936, the subsequent events are sufficient to show that the Duchy has been in undisputed possession of the rents and profits of the land and has so acquired a possessory title to it.

On this evidence I am satisfied that Her Majesty in right of Her Duchy of Lancaster is the owner of the land, and I shall accordingly direct the Lancashire County Council, as registration authority, to register Her Majesty in such right as the owner of the land under section 3(2) 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 25<sup>th</sup> day of April 1978

CHIEF COMMONS COMMISSIONER