



COMMONS REGISTRATION ACT 1965

Reference NO. 220/U/28

In the Matter of land known as the Salt Marshes in the
Parishes of Bolton-le-Sands and Warton

SECOND DECISION

This Decision is supplemental to my Decision dated 4th February 1988 relating to the question of the ownership of land known as the Salt Marshes in the Parishes of Bolton-le-Sands and Warton being the part of the land comprised in the Land Section of Register Unit No. CL.35 in the Register of Common Land maintained by the Lancashire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

As appears from that Decision I allowed Mr & Mrs Robertson time in which to apply for the hearing to be restored. On 8th March 1988 William Sturges & Co, Solicitors acting for Mr & Mrs Robertson wrote to the Clerk to the Commons Commissioners asking for that to be done.

I held a further hearing at Lancaster on 8th November 1988. At that hearing Mrs Cunliffe appeared on behalf of the Lancashire County Council as registration authority, Mr W D Molyneux of Whittle Robinson McDonald, Solicitors of Preston appeared for Bolton-le-Sands Parish Council, Mr P Oglethorpe of Oglethorpe, Sturton & Gillibrand, Solicitors of Lancaster appeared for Mr Thomas Mason and Mr Ian Robertson and Mrs Phyllis Muriel Robertson appeared in person.

As appears from my First Decision Mr & Mrs Robertson's claim to part of the unit land is founded upon a Conveyance on sale dated 14th November 1984. By this Conveyance two Vendors as trustees after conveying to Mr & Mrs Robertson several parcels of land "belonging to" or "situate at" Wild Duck Hall Bolton-le-Sands, conveyed to them "thirdly all that the estate and interest that the Trustees may have in the land and rights hereinafter mentioned namely a strip of land co-extensive with the land hereby conveyed at Wild Duck Hall aforesaid for a distance of 150 yards out to sea and being part of the marsh known as Bolton-le-Sands Marsh (which adjoins the land hereby conveyed and also Wild Duck Hall on the seaward side)..."

In my First Decision I pointed out the following matters which required to be dealt with if Mr & Mrs Robertson were to establish a claim to ownership of any part of the unit land :-

- (i) the strip of land claimed co-extensive with the land conveyed at Wild Duck Hall for a distance of 150 yards out to sea appeared to include land the ownership of which is already finally registered in the name of Geoffrey Curzon Harries and Richard Gallienne Swainson;
- (ii) the Conveyance of 1984 was not a sufficient root of title, and earlier deeds required to be produced;
- (iii) the Conveyance of 1984 was only in respect of such estate and interest as "the Trustees may have in the land", and further evidence, either by statutory declaration or orally, would be required to establish that the title which the Robertsons acquired is in fact a freehold title.



At or before the second hearing Mr & Mrs Robertson (or their Solicitors) produced the following further documents (I list them in reverse order):-

- (i) A Conveyance dated 9th October 1981 between (1) John Horace Edward Cousins (2) John Horace Edward Cousins and Shirley Anne Cousins (3) Shirley Anne Cousins and (4) Lady Margaret Carr Hall-Davies.
- (ii) A Conveyance dated 12th September 1974 between (1) Midland Bank Trust Company Limited, George Ronald Bargh Victor Thornber and William Stuart Oglethorpe and (2) John Horace Edward Cousins and Shirley Anne Cousins
- (iii) Office copy Probate dated 23rd August 1962 of the Will of William Bargh granted to Midland Bank Executor and Trustee Company George Ronald Bargh Victor Thornber and William Stuart Oglethorpe
- (iv) Office copy of a Consent Order made on the 8th April 1964 in the Chancery Division of the High Court in proceedings commenced by William Bargh and carried on by his personal representatives against James Alexander Brailsford as Defendant and Richard Gallienne Swainson and Geoffrey Curzon Harries as Third Parties.

The Conveyance of 1984 to Mr & Mrs Robertson was made by Lady Margaret Carr Hall-Davies and Shirley Anne Hewitt (formerly Cousins) and on the deeds listed above the title is carried back to the personal representatives of William Bargh. Nevertheless the conveyances of 1981 and 1974 do little to cure the defects referred to above, as the operative part of each of these conveyances repeats the same formula conveying only such estate and interest as the vendors may have in the strip of land 150 yards wide. Evidence is therefore required as to what interest the successive owners of the land at Wild Duck Hall had in the 150 yard wide strip.

Some light is thrown on this question by the terms of the Consent Order of 8th April 1964. By that Order James Alexander Brailsford and Richard Gallienne Swainson and Geoffrey Curzon Harries acknowledged the title of the Executors of William Bargh to "the absolute Legal and Beneficial ownership of a strip of land forming part of Bolton-le-Sands Marsh and being a part thereof 150 yards in depth and co-extensive with and adjoining the lands of" the Executors.

It is clear from the terms of this Order that during the lifetime of William Bargh a dispute had arisen between him and the other parties to the action as to their respective claims to ownership of this part of the Bolton-le-Sands Marshes. Proceedings between them were commenced in 1962. William Bargh died in May of that year, and the proceedings were settled by his Executors two years later. Yet notwithstanding the acknowledgement contained in the Order of the title of William Bargh's Executors to the 150 yard strip, when in June 1968 Geoffrey Curzon Harries and William Gallienne Swainson came to register their claim to ownership of part of the Bolton-le-Sands Marshes in the Ownership section of the register, their application included an area which it seems to me encroached on the 150 yard strip. It would require a survey to ascertain the extent of such encroachment and it may be that on the sketch plan annexed to my First Decision I overestimated the extent. Nevertheless the Executors of William Bargh took no steps either to object to the registration by Harries and Swainson or to register themselves as owners of the 150 yard strip.



Mr Robertson was sworn and gave evidence that there were no markings on the ground to identify the boundary of the 150 yard strip. Mr Mason grazed sheep on the land. He had never seen cattle. Since he and his Wife had been in occupation of Wild Duck Hall they had used the land to move horses across it, and to walk their dogs. He did shoot, but not at birds. He was on the side of the birds, and was a member of the R.S.P.B. They had had sheep and would want to put sheep out on the Marshes, but probably not on the 150 yard strip. They were developing their property and would want to use the Marshes for grazing sheep. They had sufficient pasture for their horses. As a practical matter nobody stopped them from taking horses across the sands. They had 18 or 19 horses, mostly in livery. They take them on the sands from time to time. One gets motor-bikes on the sands, but the police re-act. People walk their dogs. Quite a lot of people arrive in cars and go walking. He wouldn't want to stop them.

Examined by Mr Oglethorpe, Mr Robertson agreed that there was a public footpath across the sands, open to the shore. That the Public don't stick to the footpath. There were a lot of people on Sundays.

Mr Oglethorpe said that he withdrew the objection which he had made on behalf of Mr Thomas Mason of Bolton Holmes Farm to the registration of Mr & Mrs Robertson as owners of the part of the land claimed by them. This objection was raised to protect Mr Mason's undocumented right of way along the track running from north to south along the eastern boundary of the land claimed by the Robertsons. This was the quickest way to Bolton Holmes Farm. It was a public footpath, but Mr Oglethorpe was now satisfied with Mr Mason's vehicular right of way along it to his farm. He therefore supported the Robertsons' claim to ownership of the strip which they claimed. The Mason family had been at Bolton Holmes since about 1923, and he was instructed that they had no notice of any other claims to the ownership of that strip.

Mr Molyneux on behalf of Bolton-le-Sands Parish Council submitted that the Council had laid claim to those parts of the register unit to which they could prove title. The Parish Council took the view that the parts of the register unit not dealt with in my First Decision would be better left in the protection of the Council. The Robertsons had not precluded the enjoyment of the land they claimed by anyone else. If the land remained in the protection of the Council, little would change.

Although the Council wished to adopt a neutral attitude, Mr Molyneux submitted that Mr & Mrs Robertson must prove their case. The Consent Order in the High Court action was binding only on the parties. The subsequent registration of Harries and Swainson which apparently included part of the 150 yard strip was a matter to be taken into account.

Mr Molyneux produced a copy of a private Act of Parliament entitled The Bolton-le-Sands and Warton Land Reclamation Act, 1874. He referred me to section 26 of that Act, but said that I should read this in the context of the Act as a whole. He observed that the origin of the reference to a 150 yard wide strip appeared to be contained in that section.



The relevant part of section 26 reads as follows :-

"And whereas on the deposited plan the "shore" is marked by a line therein described as the "high-water mark ordinary spring tides," and the owners of the lands abutting on the said shore in the townships of Slyne with Hest, Bolton-le-Sands, and Carnforth respectively claimed to be entitled to portions of the said lands and sands as being their respective lands, although now subject to being overflowed by the sea: Therefore, as full satisfaction and compensation in respect of such claims, and of all other claims by such owners to compensation for the extinguishment of their rights of foreshore or frontage, there shall be assigned to such owners respectively, in proportion to the extent of their respective frontages, so much of the reclaimed lands and sands as immediately adjoins their respective lands abutting as aforesaid, and as lies within a line drawn parallel with the shore line at a distance of one hundred and fifty yards seawards from the shore line; and, subject to the provisions hereinafter contained in this section, the lands so adjoining as aforesaid shall vest in the same persons, for the same estates, and to the same uses, and on the same trusts (if any) as the respective lands to which they adjoin as aforesaid.....".

Under this Act the owners of land abutting on the shore became entitled to the reclaimed land immediately adjoining their land up to an imaginary line drawn 150 yards from the shore. This is a very different thing from saying that they thereby became entitled to the land immediately adjoining their land for a distance of 150 yards from the boundary of land. No copy of "the deposited plan" was available, and without reference to that it is impossible to say whether the land assigned by section 26 of the Act of 1874 was greater or less in extent than that now claimed by the Robertsons.

Doubts about the extent of land held under an old title are normally resolved by looking at the extent of the land of which possession is taken and which is subsequently occupied under that title. It would seem that under the Act of 1874 the owners of land abutting the shore became entitled to take possession of the adjoining land up to the line drawn 150 yards from the shore. There was no evidence before me as to where the shore line lay in 1874 and no evidence as to whether possession of any land was taken consequent upon the provisions of the Act.

What is clear is that the land now claimed by the Robertsons was never enclosed by their predecessors in title, nor was its extent marked out by boundary posts or stones or other markers such as are commonly used to identify ownership of land which remains unenclosed because other persons have rights over it.

Mr Robertson's evidence was that since he and his Wife purchased Wild Duck Hall in November 1984 they had used the land to move horses across it, and to walk their dogs. But they made precisely the same use of other parts of the surrounding marshes; and they allowed other people to use the land they claimed in similar ways.



Not being satisfied with the evidence of user given by Mr Robertson, I allowed him time in which to put in a sworn statement by his predecessor in title, Mr J H E Cousins, who (with his Wife) purchased Wild Duck Hall in September 1974 and sold it in October 1981.

After some delay, I was provided with a Statutory Declaration by Mr Cousins, sworn on 25th November 1988, the relevant paragraphs of which read as follows:-

- " 4. During such time as I owned the interest in the said strip of land I used the same for the purposes of crossing from my property Wild Duck Hall to the sands for the purposes of the horses belonging to my racing stable and I further had consent from the Royal Society for the Protection of Birds also to cross land which I understood was owned by them
5. Also during such time as I owned the interest in the said land this was used from time to time by members of the public for the purposes of recreational walking and for exercising their dogs".

This evidence does not carry the matter any further. Mr Cousins does not claim to have exercised any rights beyond taking horses across the land; and he allowed other persons to use the land without interference from him.

The evidence of Mr Robertson and Mr Cousins does not satisfy me that the Robertsons or their predecessors in title have ever performed sufficient acts of possession to support a claim for ownership. The paper title alone is defective, and the defects are not cured by any satisfactory evidence of acts of possession.

On this evidence I am not satisfied that Mr & Mrs Ian Robertson are the owners of any part of the unclaimed land. Subject as provided in my Decision dated 4th February 1988 the remainder of the unclaimed land will therefore 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

27th

day of

January

1989

Mark Roberts

Commons Commissioner