



## COMMONS REGISTRATION ACT 1965

Reference No. 220/U/8

In the Matter of, The Salt Marsh,  
Hambleton, Wyre Borough, Lancashire

DECISION

This reference relates to the question of the ownership of land known as The Salt Marsh, Hambleton, Wyre Borough being the land comprised in the Land Section of Register Unit No. CL 184 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.

Following upon the public notice of this reference Mrs Hilda Richardson claimed (letter dated 12 June 1981 written on her behalf by her son Mr John T Richardson) ownership of the part from Bunkers Hill to a point near Shard Bridge; and Hambleton Parish Council said (letter dated 23 June 1981) they would like the ownership vested in them. No other person claimed to be the freehold owner of the land in question 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 Preston on 25 November 1981. At the hearing Hambleton Parish Council were represented by Mr J J Pearlman Solicitor of Leeds; and Mrs Hilda Richardson and her son Mr John Threlfall Richardson were represented by Mr M W Turner solicitor of John Gibbs & Co, Solicitors of Preston.

The land ("the Unit Land") in this Register Unit is bounded on the west and south by the line of the High Water Mark of Medium Tides on the River Wyre, and comprises two strips: one about  $1\frac{1}{2}$  miles long extending from a point on Kiln Lane a little to the south of Wardleys Pool and northwest of Hambleton to Shard Bridge about  $\frac{3}{4}$  of a mile south of Hambleton (the Bridge carries the A585 road over the River); and the other about  $\frac{1}{2}$  a mile long extending southeast from the Bridge. About disputes relating to it, I held a hearing at Lancaster on 23 and 24 November 1976, and shortly afterwards walked over the Unit Land (my decision is dated 29 April 1977 under reference nos. 220/D/57-64). So at this 1981 hearing all concerned knew that I had some previous knowledge of the Unit Land.

In support of the claim of Mrs Richardson to be the owner of the part of the Unit Land mentioned in her letter, Mr Turner produced the documents specified in Part I of the Schedule hereto, and Mr J T Richardson gave oral evidence. In support of a claim by the Parish Council that they owned the whole of the Unit Land, or alternatively that Mrs Richardson did not own any of it, Mr Pearlman produced the documents specified in Part II of the Schedule hereto and oral evidence was given by Mr Thomas Swarbrick.

Mr Turner's first contention was that the ownership claimed by Mrs Richardson was proved by the 1948 conveyance, and as regards the plan mentioned in it referred me to Emmett on Title (17th edition 1978) pages 528, 529 and 534, Collector of Land Revenue v Hoalim (1977) 2 WLR 348, and Moreton v Routledge (1977) 121 Sol. J. 202;



and in relation to the inclusion of the land covered by tidal water to Emmet Supra page 542 Attorney General v Lonsdale (1868) LR 7 Eq 377 and Government of Penang v Beng Hong Oon (1971) 3 All ER 1163.

The "first" and "secondly" of the parcels of the 1948 conveyance both end with words showing that there is to be included all the estate interest and rights (if any) of the Vendors in the Salt Marsh and foreshore between the lands therein described and the River Wyre. The 1935 plan by reference to which the 1948 conveyance was made, although it includes all the land to the east and north of the part of the Unit Land claimed by Mrs Richardson, does not include any part of the Unit Land itself; but the descriptive words following "if any" are wide enough to include the part so claimed. A conveyance purporting upon the face of it to show exercise of ownership without proof of possession or of any act done under it, is some evidence of ownership, as being in itself an act of ownership and proof of possession; see the observations of Lindley MR in Blandy-Jenkins v Dunraven (1899) 2 Ch 121, quoting from Malcomson v O'Dea (1862) 10 H.L.C. 593; but as appeared from the said House of Lords case such a conveyance is not conclusive and its cogency depends on the other evidence. A conveyance on sale when the title is likely to have been fully investigated may be cogent evidence of the ownership of the grantee under it; no such cogency in my view attached to a conveyance of the interest "if any" of a grantor. The final registration of the Unit Land under the 1965 Act is some evidence that it is distinct from the adjoining land as regards ownership or otherwise; so it appeared when I walked over it. Any presumption there may be that a conveyance of land adjoining a river includes the foreshore up to the middle line of the river is inapplicable to the 1948 conveyance because the Unit Land is between River Wyre and the land edged red on the 1935 plan; further the 1948 conveyance expressly contemplates by its use of the words "if any" that the presumption may not be applicable. Under section 8 of the 1965 Act I have to be "satisfied"; a word meaning I think that any legally admissible evidence is not necessarily enough unless it is satisfactory. In my view the 1948 conveyance considered by itself is not satisfactory evidence of ownership of any part of the Unit Land.

Mr Turner's second contention was that the evidence of Mrs Richardson showed that ~~she~~ had been in possession at least of the part of the Unit Land north of Shard Point up to the north end of the adjoining strip ("the Objection Land") coloured purple on the Register map. He referred me to Emmet Supra pages 195, Cadifa Umma v Appn (1939) AC 136, Redhouse Farms v Catchpool 1977 Estates Gazette 244 at page 295, Wallis v Shell-Mex (1975) 1QB 94, Williams v Raferty (1958) 1QB 159 and Leigh v Jack (1879) 5 Ex. D. 264.

Mr Richardson who had lived all his life (born 1929) at Bank House said that his parents were tenants from February 1927 until they bought in 1948, that his father farmed the land until about 18 years ago when he retired and that he (the witness) was before then employed by his father and afterwards became tenant. To evaluate his evidence I must refer particularly to the line ("the Dividing Line") being the south boundary of the Objection Land. A public footpath runs along the Unit Land for its whole length including the part from Bunkers Hill to Shard Bridge. Across this path there is now a fence near Pegs Pool (to the north) and also a fence ("the Disputed Fence") a short distance south of the Dividing Line; both these fences have stiles for pedestrians. The Parish Council in 1978 objected (PC/2) to the Disputed Fence. It was erected by Mr Richardson (the witness) (so he said



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with some hesitation) ~~about~~ 7 or 8 years ago but he could not say whether it was more than 12 years. Before he erected it there was a fence along the Dividing Line. He removed the fence from the Dividing Line to where it now is "to make it easier to control the cattle on the Salt Marsh".

Notwithstanding Mr Richardson's vagueness about the date when he moved the fence, from the way he gave evidence about this, I find that the move was in about 1975 certainly less than 12 years ago. It may be that after 1975 the Disputed Fence somehow put Mrs Richardson in possession of the part of the Unit Land between it and the fence near Pegs Pool; because cattle straying from the Objection Land would be fenced in by these 2 fences. But such possession would not be long enough to give her a title under the Limitation Act 1939, so I am concerned to consider the alleged possession of Mrs Richardson (with Mr Richardson during his lifetime) between 1948 and 1975.

At that time as now, the relevant worthwhile grazing of the Unit Land from Bank House was the part west of the Objection Land. During much of this time there was a fence between this part and the Objection Land and all the time the boundary between this part and the Objection Land was distinct. There was a stile at least up to 1940 across the fence at the north boundary of the Objection Land and another across the fence along the Dividing Line; perhaps the public footpath then ran along the Objection Land and not along the nearby part of the Unit Land. I accept that cattle from Bank House may have and perhaps probably did cross over the Objection Land and go onto the Unit Land, but this does not of itself amount to a taking of possession. In my opinion before 1975 nothing was done on Bank House Farm which could amount either to putting on of cattle onto the Unit Land with the intention of exercising grazing rights or with the intention of taking possession of it. All that happened was that cattle from Bank House strayed across the Objection Land onto the Unit Land because the fence was out of repair, and those at Bank House did not choose to stop such straying by repairing the fence. The true owner would not I think be dispossessed by cattle from Bank House being on the Unit Land in such circumstances.

In the course of his evidence Mr Richardson said that 2 or 3 years ago he was approached by the Parish Council as to whether they could erect a (post fora) life-belt and two members of the Parish Council and he agreed that they could put a life-belt on the land on condition that no further action was taken as regards the fence to which they objected. Quite apart from whether any such agreement would be enforceable by reason of section 40 of the Law of Property Act 1925, I am not satisfied that the Parish Council ever agreed with Mrs Richardson (her son being her agent) anything which would now preclude them from objecting to the Disputed Fence.

For the above reasons I am not satisfied that Mrs Richardson is owner of the part of the Unit Land which she claims.

Mr Swarbrick who was a member of the Parish Council from 1967 to 1979 described how he had attempted to find out something of the history of the Unit Land in the Lancashire Record Office at Preston and said he had concluded that at one time perhaps many years ago the Unit Land and the adjoining land was part of the old Manor of Hambleton owned by the Weld Family.



It was not suggested that these researches in any way showed the recent devolution of the ownership of this Manor even assuming that it was undoubtedly at one time owned by this Family. Although it is possible under the 1980 conveyance the Parish Council may in due course establish a possessory title, at present they have (Succ.) none. Accordingly I am not satisfied they are the owners.

At the hearing no person other than Mrs Richardson and the Parish Council made any ownership claim. However I record after the hearing a letter dated 2 March 1982 has been received from Vincent Collinson and Co., Solicitors of Blackpool acting on behalf of Mr J B Howarth and his wife and son of Great Eccleston near Preston asking whether the hearing could be re-opened and saying that there is very clear and unequivocal evidence of their clients' ownership of part of the Unit Land (a part near Peg's Pool) and suggesting that if I give a decision without their clients being given an opportunity of being heard grave injustice can result. In my view no such injustice can result because the exercise by me of any jurisdiction I may have to re-open the hearing would not be affected by my giving this decision (if I decide to re-open the hearing I can as may be necessary set aside this decision). Accordingly my decision is: on the evidence put before me at the 1981 hearing I am not satisfied that any person is the owner of the Unit Land and it 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.

SCHEDULE  
(documents produced)

Part I : on behalf of Mrs Richardson

JTR/1	13 May 1948	Conveyance by Mr J W Huddart and Mr J W Cardwell to Mr Tom Richardson and Mrs Hilda Richardson of (1) Bank Farm containing 102 a. 1 r. 8 p. and (2) adjoining pieces of land containing 6 a. 13 p., 1 a. 3 r. 29 p. and 4 a. 1 r. and 21 p. as described in the First Schedule and delineated on the plan endorsed on a conveyance dated 28 October 1935.
JTR/2	1948	Supplementary abstract of title to Bank Farm, containing copy of the said 1935 plan.



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## Part II : on behalf of the Parish Council

- PC/1            10 July 1970            Copy objection made by Mrs Richardson to registration of land formerly but not now in this Register Unit with map attached (map shows some land as that now coloured purple on Register map).
- PC/2            8 July 1978            Copy letter by Parish Clerk to J Richardson about a fence.
- PC/3            20 August 1980            Conveyance by Sir Joseph William Weld to the Parish Council of Hambleton of such estate and interest as he had in the land in this Register Unit.
- PC/4            23 March 1972            Letter from Colonel J L Weld to Mr T Swarbrick.
- PC/5            20 March 1972            Letter from Mr T Swarbrick (as member of the Parish Council) to Colonel J L Weld.

Dated the 27<sup>th</sup> —

day of April — 1982

*a. a. B. Fuller*

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Commons Commissioner