

In the Matter of Little Beach, Tweedmouth,
Northumberland

DECISION

This reference relates to the question of the ownership of land known as Little Beach, Tweedmouth, being the land comprised in the Land Section of Register Unit No. CL 3 in the Register of Common Land maintained by the Northumberland 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 the Berwick-upon-Tweed Borough Council claimed to be the freehold owner of the land in question, the Berwick Harbour Commissioners claimed to be the owner of part of the land, 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 Berwick-upon-Tweed on 23 June 1982.

At the hearing the Berwick-upon-Tweed Borough Council was represented by Mr A Brown, its Legal Assistant, the Berwick Harbour Commissioners by Mr J Healy, its Clerk, and Berwick Salmon Fisheries p.l.c. by Mr M G Esther, solicitor, and Mr R Boston appeared on behalf of R Boston and Sons Ltd.

The land the subject of the reference is bounded on its north side by the high water mark of ordinary tides and consists of three sections. The westernmost section was conveyed to the Berwick Harbour Commissioners by an indenture made 21 March 1914 between (1) The King's Most Excellent Majesty (2) George Granville Leveson Gower (3) The Berwick Harbour Commissioners.

A small part of the central section of the land in question was, with other adjoining land, conveyed to the former Berwick-upon-Tweed Corporation by a conveyance made 25 March 1927 between (1) The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (2) Two of the Commissioners of His Majesty's Treasury (3) The Mayor, Aldermen and Burgesses of Berwick-upon-Tweed, and was transferred to the present Borough Council by the Local Authorities (England) (Property etc.) Order 1973 (S.I. 1973 No. 1861).

This leaves for consideration the eastern section of the land. To the south of this land is a block of property, the western half of which belongs to Berwick Salmon Fisheries p.l.c. and the eastern half to R. Boston and Sons Ltd.

The land which now belongs to Berwick Salmon Fisheries p.l.c. and the land to the south of it were formerly copyhold of the Manor of Tweedmouth and Spittle, of which the Berwick-upon-Tweed Corporation (Freemen) Trustees were the lords. On 23 May 1864 Robert Boston and Jane his wife were admitted tenants to the lords of the manor of the whole of this copyhold land, which was described as being bounded on the north by the River Tweed. Robert Boston and his wife both died on 2 June 1891, and on 14 July 1891 his sons Peter Purves Boston and James Boston were admitted tenants to the lords of the manor of the copyhold tenement.

By an indenture made 20 March 1907 between (1) Peter Purves Boston and Mary Anne his wife (2) James Boston and Mary his wife (3) J Boston (4) Robert Lambert and Alexander Drysdale Wall the copyhold tenement was partitioned between Peter Purves Boston and James Boston, Peter Purves Boston taking the southern part and James Boston the northern part now the property of Berwick Salmon Fisheries p.l.c., that part being described, as the whole had been, as being bounded on the north by the River Tweed. On the plan drawn on the indenture this land is shown coloured pink, and on the uncoloured land to the north of it is the word "Foreshore".

The land allotted to James Boston must have been enfranchised on 1 January 1926 at the latest. It was conveyed by a conveyance made 26 April 1960 between (1) Maggie Neill Boyd (2) Berwick Salmon Fisheries Company Ltd. In the parcels of this conveyance the land is described as being "bounded on or towards the north or north-west by waste ground of the Lord of the Manor lying between the said land and the River Tweed". On the plan annexed to the conveyance the premises are shown edged in red and the high water mark of ordinary tides is shown as being some distance to the north, but not as far north as the northern boundary of the land the subject of the reference and coinciding in part with the southern boundary of that land.

The land belonging to R Boston and Sons Ltd was also formerly copyhold of the manor of Tweedmouth and Spittle. On 14 July 1891 Robert Boston, perhaps a son of the Robert Boston previously mentioned, was a admitted tenant to the Lords of the Manor of this land described as being bounded on the north by the Lords' Waste lying between it and the River Tweed. This land was enfranchised, and an agreement for the extinguishment of the manorial incidents affecting it was made on 22 April 1932 between (1) The Berwick-upon-Tweed Corporation (Freemen) Trustees (2) Robert Boston. Robert Boston died on 25 October 1932, having appointed his sons Robert Boston and Morton Boston and his daughter Maggie Neill Boyd to be the executors and trustees of his will.

The land now belonging to R Boston and Sons Ltd was conveyed to Mrs Boyd by a conveyance made 9 April 1934 between (1) Robert Boston, Morton Boston and Maggie Neill Boyd (2) R Boston, M Boston and Elizabeth Morton Cairns (3) R Boston, M Boston, M N Boyd, E M Cairns, Jane Hume Smith Purves Hogg, Annie Thompson, and Peter Purves Boston (4) M N Boyd. Mrs Boyd conveyed it by a conveyance made 8 June 1954 between (1) M N Boyd (2) R Boston and Robert Boston the younger carrying on in partnership the trade or business of fish merchants and curers under the style or firm of "R. Boston & Sons Ltd" duly registered with the Registrar of Limited Partnerships. In the parcels of each of these conveyances the premises are described as being bounded by the Lord's Waste lying between the property and the River Tweed.

From these documents it appears that during the middle of the nineteenth century the property the subject of the various transactions abutted on the foreshore of the River Tweed and that by the end of the century the high water mark of ordinary tides had retreated northwards, leaving dry land between the property and the river. By the time that the land the subject of the reference was registered as common land the high water mark of ordinary tides had retreated still further northwards, so that the common land is all above high water mark. Part of the common land lies to the south of what is shown as high water mark on the 1960 conveyance plan, but none of it extends as far south as the land belonging to Berwick Salmon Fisheries p.l.c. and R Boston and Sons Ltd.

The general rule is that where property is bounded by the foreshore, i.e. the land between high and low water marks, of the sea or a tidal river and the high water mark gradually moves away from the property the new dry land accrues to the owner of the property. This rule applies in all cases, including that where the property is parcel of a manor. In such a case the new land accrues to the lord of the manor, but if the property was a copyhold tenement, the land which accreted to the lord as freehold was subject to the copyhold interest of the tenant of the land to which it had been added: See per Farwell J. in Mercer v. Denne [1904] 2 Ch. 534, at p. 560.

Applying this rule to the present case, such land as had accreted during the lifetime of the Robert Boston who was admitted as tenant in 1864 became part of his copyhold tenement. This was the tenement to which Peter Purves Boston and James Boston were admitted tenants in 1891 and which was the subject of the partition in 1907. The partition indenture provided that Robert Lambert and Alexander Drysdale Wall should at a court to be held for the manor surrender the land coloured pink on the plan into the hands of the lords and pray the lords that James Boston might be admitted the tenant of the lords of that land to be held by him according to the custom of the manor. The terms of the admission of James Boston are not before me, but the parcels ought to have been in exactly the same terms as those of the surrender made by Lambert and Wall: see Hayward v Raw (1861), 6 H & N 308. Thereafter there is no further evidence until we get to the conveyance of 1960, in which instead of the northern boundary being stated to be the River Tweed, it is described as waste ground of the lord of the manor between the land and the River Tweed. It is difficult to understand how land which had become part of a copyhold tenement by accretion could subsequently have become waste ground of the lord of the manor, but it does not appear to me that it is necessary for the purposes of this case to attempt to solve that problem. Berwick Salmon Fisheries p.l.c. is claiming under the conveyance of 1960. The parcels of that conveyance and the plan annexed to it exclude land to the south of the River Tweed. It may be that it was incorrect to describe that land as waste ground of the lord of the manor, but false demonstratio non nocet, and it is quite clear what that land was. It may also be that that land formed part of the enfranchised copyhold tenement and had passed into the ownership of Mrs Boyd, but if that was the case she did not convey it to Berwick Salmon Fisheries p.l.c. and it remained in her ownership.

In the case of the land belonging to R Boston and Son Ltd there is no direct evidence that there was ever a copyhold tenement described as being bounded on the north by the River Tweed, though it seems highly likely that there was such a tenement which, like that immediately to the west, had increased in area by accretion. It may be that the steward of the manor did not have the rule enunciated by Farwell J. in Mercer v. Denne in mind when he drafted the admission of Robert Boston to this tenement on 14 July 1891, although that decision was but giving judicial approval to a pre-existing rule. However, without knowing more of what took place at the sitting of the court, it would be unfair to accuse the steward of failing to observe that rule and the then thirty-year-old decision in Hayward v Raw. R Boston & Sons Ltd are now claiming under the conveyance of 1954, and this conveyance, like that of 1960, clearly excludes the land to the south of the river, including that which is the subject of this reference.



On this evidence I am satisfied that the Berwick Harbour Commissioners and the Berwick Borough Council are the owners of parts of the land, and I shall accordingly direct the Northumberland County Council, as registration authority to register them as the owners of those parts under section 8(2) of the Act of 1965.

In the absence of any further evidence I am not satisfied that any person is the owner of the remainder of the 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.

Dated this 23 day of August 1982

[Handwritten signature]

Chief Commons Commissioner