



In the Matter of Pixey Mead, Gosford and Water Eaton, and
Yarnton or West Mead, Yarnton, Oxfordshire.

DECISION

This reference relates to the question of the ownership of land known as Pixey Mead, Gosford and Water Eaton, and Yarnton or West Mead, Yarnton being the land comprised in the Land Section of Register Unit No. CL/71 in the Register of Common Land maintained by the former Oxfordshire 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 Nature Conservancy Council and a number of clients of Messrs Darby and Son claimed to be the freehold owners 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 Oxford on 21st May 1976.

At the hearing Mr J Cole, solicitor, appeared for the Nature Conservancy Council and Mr G.W.F. Archer, solicitor, a partner in Messrs Darby and Son, appeared on behalf of his firm's clients. I also heard Mr R Wakefield, of Counsel, instructed by the Trustees of the Charles Wilson Charitable Foundation, lords of the manor of Yarnton, as amicus curiae. Mr W. Harper appeared in person, but he did not claim to be the owner of any of the land the subject of the reference, being only concerned that certain fishing rights should not be prejudiced by the proceedings.

The land the subject of the ~~reference~~ ^{reference} consists of two lot meadows, known respectively as Pixey Mead and Yarnton or West Mead (hereafter called "West Mead"). The facts relating to the two meadows are in some respects similar, but since there are differences it will be convenient to deal with them separately and with West Mead first.

For the purpose of taking the hay crop each year West Mead is divided into portions. The ownership of one portion, known as "Tydalls", remains constant, but the remainder of West Mead is divided into five divisions, each of thirteen strips, making 65 such strips in all. These strips are drawn for annually early in July. The drawing is carried out by the use of thirteen wooden balls, on each of which is painted a name, the names being: (1) William of Bladon; (2) Gilbert; (3) Waterly Molly; (4) Walter Geoffrey; (5) Boat; (6) Dunn; (7) White; (8) Parry; (9) Harry; (10) Bolton; (11) Freeman; (12) Green; and (13) Rothe. On the day of the drawing the balls are taken in a bag by one of the Meadsmen to the first strip of the first division, where one ball is drawn from the bag. The person claiming to own the ball so drawn then cuts a few feet of the first strip. The bag, now containing the remaining twelve balls, is then taken to the second strip of the first division, where another ball is drawn and claimed, and the process is repeated to the thirteenth strip of the first division. Then all thirteen balls are returned to the bag and the process is repeated for each strip of the remaining ~~four~~ divisions. Each ball is reckoned as carrying 6 customary acres in West Mead, the strips being approximately equal in area. Some of the proprietors are accustomed to sell the grass for the year on their allotted strips. The ownership of some of the balls is divided into fractions. In such a case the division of the strip is settled by



the Meadsmen. When the grass is sold by auction there can be such lots as "Three quarters of William of Bladon" and "Half of Waterey Molly".

The position on Pixey Mead is not quite as simple, for the land the subject of the registration has to be considered in connection with other land which has not been registered under the Commons Registration Act 1965. This other land and the land the subject of the registration are collectively known as Pixey Mead, but it is convenient for the purposes of this decision to confine the name Pixey Mead to the land the subject of the registration. To the north-west of Pixey Mead in this narrower sense there is a large area of meadow, most of which belongs to the Duke of Marlborough and the remainder to Mr R. D. A. de la Mare, while to the south-west there is a somewhat smaller area of meadow belonging to the personal representatives of Randal George Wise, deceased.

Until comparatively recently the mowing grass on Pixey Mead was divided into strips and drawn for annually in the same way as that on West Mead. However, in 1971 the pattern of the strips in Pixey Mead was interfered with by the sale of part of it for the construction of the Oxford western bye-pass road. Since then it has been found simpler to sell the grass in one lot, the proceeds being divided among the proprietors by the auctioneers.

There are somewhat complex rights of grazing after the hay crop in both meadows but it is not necessary to refer to them in detail in this decision, since I am solely concerned with the question of the ownership of the land.

I was referred to a most interesting paper by F. E. Farrer on lot meadows, including West Mead and Pixey Mead, which appeared in The Conveyancer in September 1936 (pp.53-61). The article is of value because it gives references to the cases in which the ownership in fee of lot meadows has been considered. There have been three, all within a few years of each other. The first was Anon. (1587), 4 Leon.43, where Gent B. said:

"Where many have Lot Meadow to be divided every year by lot, who shall have the grass of such an acre etc.. and so change every year according to lots, they have not any freehold therein but only vesturam".

This view was upheld by Manwood C.B. in Anon. (1588), Owen 37.

Both these decisions were in the Court of Exchequer. Four years later they were overruled by the Court of Queen's Bench in Welden v. Bridgewater (1592), Cro.Eliz.421, also reported less satisfactorily in Moore 302. The plaintiff was a lot holder who alleged that the defendant had trespassed on his land. The plaintiff's counsel argued that his allotment gave him for the time a several estate in fee in the soil of his moveable acreage. The whole Court held that by the allotment it was the proper soil and freehold of him to whom it was allotted and that he could maintain his action of trespass quare clausum fregit. The principle laid down in Welden v. Bridgewater was followed by Sir Orlando Bridgman, the celebrated conveyancer, in his opinion given in 1657 on the lot meads in Aston and Coat, Oxfordshire, printed in Williams on Rights of Common, p.93. Welden v. Bridgewater is highly relevant to the present dispute because it is authority for the proposition that after the annual allotment each strip is owned in fee in severalty.

It therefore follows that in relation to each strip after the hay crop the owners of the other strips are exercising rights of grazing over land in respect of which they



have at the time of exercising such rights no proprietary interest, even though some or all of them may by the luck of the draw have had such an interest in previous years.

It has been customary to refer to either the drawn acreages or the rights or both as "mowths" or "men's mowths, it being suggested that a mowth was the area which a man could mow by himself in a certain length of daylight. This expression is used in some conveyances. In others the expression "customary acres" is used and in some both, but in all cases the parcels are identified by the names of the relevant balls.

Evidence was adduced that the interests represented by the balls are at present in the ownerships of the following persons:-

IN PIXEY MEAD

1. The Nature Conservancy Council: Harry and Watery Molly.
2. Mr William Arthur Baylis: One quarter of Bolton and one quarter of Boat.
3. Mr Robert Donovan Alec de la Mare: Three Quarters of Bolton, three quarters of Boat Dunn, Freeman, Gilbert, Green, Parry, Rothe, Walter Geoffrey, and William of Bladon.
4. Mr Edward Harris and Miss Gladys Murial Harris: White.

IN WEST MEAD

1. Mr W. A. Baylis: One quarter of Rothe and one half of Watery Molly.
2. Mr David Edward Castle: Harry and one half of Watery Molly.
3. Mr R. D. A. de la Mare: Boat, Bolton, Dunn, Freeman, Gilbert, three quarters of Rothe, and one quarter of William of Bladon.
4. Mr E. Harris and Miss G. M. Harris; White
5. Mr William Emberliss Haynes and Miss Dorothy Sarah Haynes (Personal Representative of Annie Sarah Haynes, deceased): Parry, Walter Geoffrey, and three quarters of William of Bladon.
6. Mr Stanley Reginald John Woodall: Green.

Evidence was also adduced that Mr de la Mare is the owner of the "Tydalls" in both Pixey Mead and West Mead.

The parts of the land comprised in the Register Unit represented by the balls are identifiable by reference to the results of the last drawings - in the case of West Mead in July 1975 and in the case of Pixey Mead before the sale of the land for the bye-pass road in 1971. It would be possible to plot these parts on a plan, but as Mr Archer pointed out, this would be a difficult and possibly expensive surveying operation, and in the case of West Mead of only transient utility. Mr Wakefield argued that since this had not been done, so that there was no evidence before me as to the location of the parts at present owned by each owner, I ought to say that I am not satisfied that any person is the owner of any of the land comprised in the Register Unit (with the exception of the "Tydalls"), so that it will remain subject to protection under section 9 of the Act of 1965.



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I cannot accept Mr Wakefield's contention, for I am satisfied that ~~between them~~ the persons above-named own between them the whole of the land comprised in the Register Unit. I am therefore left with the task of deciding how to direct the registration authority to register those persons, as I am required to do by section 8(2) of the Act of 1965. To set out the names and addresses of the persons to be registered in column 3 of the Ownership section of the Register Unit is simple enough: the difficulty is to decide what particulars of the land to which each registration applies are to be inserted in column 4 of that section. Clearly lot meadows were not in the contemplation of the draftsman of the Commons Registration (General) Regulations 1966, which prescribed the form of the Ownership section. I have come to the conclusion that the only satisfactory way of dealing with this matter is to set out in column 4 the parcels of the conveyances to the owners with documentary titles. This will necessitate more entries than there are owners, since some owners own several parts of the land under different titles. Mr Baylis has no documentary title to one quarter of Boat in Pixey Mead, but evidence was given by Mr Edward Harris, the senior meadsman, which satisfied me that Mr Baylis has a possessory title to this part of the land which can be described in the same manner as the part of Pixey Mead (one quarter of Bolton) to which he has a documentary title.

I shall accordingly direct the Oxfordshire County Council, as registration authority, to register the above-named persons as the owners of their respective parts of the land under section 8(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 2nd day of July 1976.

Chief Commons Commissioner