



Reference No 32/U/71

## In the Matter of Coat Hay, Martock,

Somerset

DECISION

This reference relates to the question of the ownership of land known as Coat Hay being the land comprised in the Land Section of Register Unit No CL 205 in the Register of Common Land maintained by Somerset 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 Mr R Leach claimed to be the freehold owner of the land in question and a claim to ownership by the holders of rights of common was also made.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Taunton on 9 May 1979.

At the hearing Mr G Hart of the firm of Poole and Company, Solicitors, appeared on behalf of Mr Leach. Three rights holders were represented, Mr W H Burnett by Mr Bishop of the firm of Newman Prynter and Company, Solicitors, the personal representatives of M/S B M Salisbury deceased by Mr A R Walton of the firm of Clarke, Willmott and Clarke, Solicitors, and Mr J H Cobden by Mr Parnell-King of the firm of Poole and Company.

The land in question ("the Unit Land") was registered in consequence of an application to register rights. There are registrations of 8 rights, all of which are rights to graze cattle proportionately to the number (stated in the particulars) of leazes owned. The registration of the rights, which are not attached to any land, has become final, and three of the applicants are Mr Burnett, M/S Salisbury and Mr Cobden.

Mr Leach's claim to ownership was based on the submission that he is entitled to the Lordship of the Manor of Martock of which the Unit Land forms part, and in support of the claim a number of documents were put in:

- i. Wyndham Goodden, described as the Lord of the Manor and owner of the commonable lands in the Manor including the common pasture field called Coat Hay, devised to his son John Goodden all the lands which had descended on him (the Testator) on the death of his brother Robert, situate at (inter alia) Martock. The Testator died and his will was proved in 1839.
- ii. A Receipt dated 26 August 1858 signed on behalf of a committee of the commoners acknowledged receipt from the Bristol and Exeter Railway Company of £498. 15s as compensation for the extinction of the commonable rights in some three acres of Coat Hay. By a Conveyance dated 7 December 1859 John Goodden conveyed the three acres to the Railway Company.



iii. The next document is a Conveyance dated 2 October 1883 to John Leach. This was a conveyance on sale of the Manor or Lordship of Martock with the rights members and appurtenants thereof, certain chief rents payable in respect of the Manor and three specifically described pieces of land of some 7 acres, 3 acres and 31 perches respectively (none being part of Coat Hay). The Vendor was J R P Goodden the son of John Goodden: as appears from the Recitals to the Conveyance, in 1868 John Goodden had conveyed to trustees hereditaments which included the Manor or Lordship on trusts corresponding to those of his marriage settlement made in 1843: under those trusts, after the death in March 1883 of John Goodden, his son J R P Goodden was tenant for life and as such the Vendor in the Conveyance to John Leach. The subsequent title deduced is somewhat complex but it does I think show title in Mr R Leach, the present claimant, to property in Martock: the question is whether that property includes Coat Hay.

As to this

a. By a Mortgage dated 28 December 1883 John Leach mortgaged to Sarah Young the property conveyed to him in October 1883, the description in the Mortgage being the same as that in the October Conveyance (except that the word 'appurtenants' became 'appurtenances').

b. In 1886 the Mortgagee exercised her power of sale and by a Conveyance dated 29 September 1886 conveyed the property (described in the same language as the description in the Mortgage) to Walter Leach.

c. Walter Leach died in 1906, having by his Will devised on trusts (the construction of which was determined by the Court in 1912) "the Manor or Lordship of Martock with the appurtenances thereof" and the chief rents payable in respect thereof and his other freehold and leasehold properties. The effect of the trusts as determined by the Court in 1912, and in the events that happened, was that the freehold property was settled land on 1 January 1926 and the legal estate vested in Robert Leach, who was the father of Mr R Leach and whom I will refer to as "the Father".

d. In a Deed of Appointment dated 26 September 1949 of a new trustee of the Settlement created by Walter Leach's Will there is a recital that the real property now vested in the Father as tenant for life consists of the properties specified in the Second Schedule. These properties included properties at Martock, but not Coat Hay.

e. By a Vesting Deed dated 30 May 1952 the Trustees of the Settlement declared that the freehold property described in the Schedule was vested in the Father in fee simple. Again the described property included various properties at Martock but not Coat Hay.

f. The Father died on 24 January 1958 in Florida having, in the events which had happened, become absolutely entitled to the property subject to the trusts of Walter Leach's Will. By the Father's Will Mr R Leach was appointed sole Executor and given all the Father's real and personal estate absolutely. Mr R Leach was and is resident in Florida, and on 25 July 1958 letters of Administration with the Will annexed were granted to his attorney



Mr A H Lovegrove. By an Assent dated 27 January 1972 Mr Lovegrove assented to the vesting in Mr R Leach of the pieces of land situate in the Parish of Martock described in the Schedule, which did not include Coat Hay.

g. In an affidavit sworn by Mr Lovegrove on 4 May 1979 he states that his firm Newman Prynter and Company, Solicitors, acted on behalf of Walter Leach, the Father and Mr R Leach. He himself was concerned in the redemption of the chief rents conveyed by the Conveyance of 2 October 1883 (sub-para iii. above) and states that after their redemption there remained no freehold interest in the Father under that Conveyance save for the Lordship of the Manor of Martock and the rights associated therewith.

On this evidence I find that the Lordship of the Manor and the Unit Land were vested in 1859 in John Goodden, and that the Lordship of the Manor has devolved on Mr R Leach. In none of the documents of title after 1859 is there any reference to Coat Hay (which is a sizeable field of some 96 acres) whilst other lands at Martock of much smaller area are separately and specifically described. Mr Hart's submission was that the Unit Land passed with the Lordship as waste land of the manor. It is arguable that the Conveyance of October 1883 which included the Lordship of the Manor carried with it the Unit Land: see Section 6(4) Conveyancing Act 1881 - now Section 62(4) Law of Property Act 1925. This may indeed be so, but it assumes that Coat Hay was continuing to appertain to the Manor in 1883. In none of the documents mentioned above relating to transactions involving the Lordship of the Manor and specifically described items of property at Martock is there any reference to Coat Hay, so that the last specific reference to Coat Hay is in 1859: nor, on the evidence, were there any acts by the Father or Mr R Leach in relation to Coat Hay indicative of ownership or interest in the property. It is moreover of some significance that Mr Lovegrove in his affidavit states that after the redemption of the chief rents there remained no freehold interest in the Father under the 1883 Conveyance save for the Lordship of the Manor and the rights associated therewith.

In the result I am not able to say that I am satisfied that the ownership of the Unit Land is vested in Mr Leach.

The claim to ownership by rights holders was made by Mr Walton and Mr Bishop. This claim was based on the proposition that the evidence established that for many years the Unit Land had been managed by the rights holders to the exclusion of the Lord of the Manor and a title by adverse possession had been acquired.

The evidence put in by Mr Hart indicated the system or practice of grazing by reference to the holding of leases. It appears from the Coat Hay minute book of lease-holders meetings that as far back as 1700 the number of leases (which regulates the number of animals that may be grazed) was 155 - the same number as the aggregate of the leases mentioned in the registered rights. Rules for stocking Coat Hay appear in the Minute Book for 1770. Mr J H Cobden in his evidence contained in an affidavit sworn on 8 May 1979 said that there has been a regular lease owners meeting in April of each year to decide the grazing rules for the year eg the date for turning out the cattle on to the field - he had always regarded the ownership of a beast lease as merely the right to pasture cattle, not ownership. Mr Cobden was called for cross-examination, in the course of which he stated that he had rotovated and seeded part of the Unit Land at his own expense, that the local Drainage Board drains the land regularly and he pays his share of the drainage rates, that the lease-owners have cleared nettles and thistles, and that the Lord of the Manor has never been brought into the management and has not interfered or shown any interest.



Mr Walton produced the Tithe Book for 1842 in which Coat Hay is described as pasture land, with the columns for the names of the owners and occupiers left blank: also an 1823 Map of the Parish which showed Coat Hay as pasture land. By an Indenture dated 3 June 1858 there was a grant and conveyance to the purchaser of five leazes, in which they were described as "in a common pasture ground or field called Coat Hay situate in the parish of Martock", but without any reference to the Manor of Martock or the Lord of the Manor. By an Indenture dated 19 October 1921 there was a conveyance on sale to Mr F G Salisbury of all those Beast Leazes for 12½ beasts (being the equivalent in area of 7 acres 25 perches) to go feed and pasture in the Common Field called Coat Hay in the Parish of Martock. Mr P W G Salisbury gave evidence. His family has been associated with Coat Hay for at least 100 years; they no longer graze cattle but let the leazes (the late M/S Salisbury is registered with grazing rights in respect of 33 leazes) and have for a number of years - more than 12 - paid drainage rates, with no contribution from the Lord of the Manor. The leaseholders have, without reference to the Lord of the Manor, managed the land, repaired fences and cleared nettles and thistles, and compensation was paid to them by the Gas Board for disturbance of the surface in connection with North Sea Gas.

Both Mr Hart and Mr Walton suggested that lease-holding is a type of cattle-gate holding, but, be this as it may, the claim by the rights holders to ownership was not (nor, in my opinion, on the evidence, could it successfully have been) based on any claim to ownership of the soil in severalty by reference to the nature of their rights. The claim was to ownership by adverse possession, but in my view their management of and acts in relation to the Unit Land are referable to their grazing rights and cannot be regarded as adverse possession: see *Thomas v Thomas* 2 K & J 79 at p 83. Accordingly I do not find their claim to ownership substantiated.

In these circumstances and, in the absence of any evidence of ownership in any other person, I am not satisfied that any person is the owner of the Unit Land, which 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 26<sup>th</sup> day of August 1979

*C. J. Morris Smith*  
Commons Commissioner