



In the Matter of Redham, Stogursey,
West Somerset District, Somerset

DECISION

These disputes relate (1) to the registration at Entry No. 8 in the Rights Section of register unit No. CL 78 in the Register of Common Land maintained by the Somerset County Council occasioned by (a) Objection No. O/827 made by Mr I M Lang and noted in the Register on 23 August 1972 and (b) the conflicting registration at Entry No. 1 in the Rights Section of the same Register Unit (2) to the registration at Entry No. 1 in the Rights Section of the same Register Unit occasioned by the conflicting registration at Entry No. 8 in the Rights Section. I held a hearing for the purpose of inquiring into the dispute at Taunton on 9 May 1979. The hearing was attended by Mr N G Crouch on whose application the registration at Entry No. 8 was made, and by Mr I M Lang on whose application the registration at Entry No. 1 was made.

Mr Crouch's registration is of "a right of forshear of Doles" over the part of the land ("the Unit Land") comprised in this register unit being the part comprising Tithe Nos. 1647, 1648 and 1649 as marked E28, E29 and E30 on the Register Map. Mr Lang's registration is of a "right of forshear" on part of the Unit Land comprising Tithe Nos. 1508, 1509, 1626, 1633, 1638, 1641 and 1647 marked E2, E3, E12, E14, E19, E28 on the Register Map.

The conflict arises in regard to Tithe No. 1647 (E28) to which both parties claim a right of forshear, and the grounds of Mr Lang's Objection to Mr Crouch's Entry are "The right of forshear on Dole Tithe No. 1647 does not belong to the applicant at all. Alternatively my right of forshear is incorrectly stated as being on Tithe No. 1647 and should be Tithe No. 1645 for which no claim has been registered".

Although in other contexts (eg. grazing) two registrations of rights of common over the same land are not in conflict, forshear as locally understood is a right to take a crop of hay and as there is only one crop in each year, there cannot be more than one such right over the same piece of land. Both Mr Crouch and Mr Lang accepted that this is the position so that the question for my decision is which of them has the right of forshear over Tithe No. 1647. I should add that there was no suggestion that the different descriptions in Mr Crouch's registration (a right of forshear of Doles) and Mr Lang's registration (a right of forshear) indicated any difference in the kind of right each is claiming.

2. Mr Crouch's claim: In support of his claim Mr Crouch produced the documents listed in the First Schedule hereto. The Auction particulars (Document 1) included as Lot 16; Ord. No. Pt. 173, Tithe No. 1647, 1648, 1649, Description (of each) Forshear Dole, Area (total) 1 R. 17 $\frac{1}{2}$, Tithe Redemption Annuity £d, together with Right of Stockage, 17 bullocks and 34 sheep in Redham. The Vendor was a Mr R T Evered.

Document No. 2 is an examined abstract of title from which it appears that by a Conveyance dated 29 September 1943 R T Evered conveyed on sale to W D H Allen (inter alia) "All those pieces or parcels of land" (which are then identified as Tithe Nos. 1647, 1648 and 1649, and referred to under the heading 'Quality' as Dole),



together with the right of Pasture or Stockage for 17 bullocks and 34 sheep in Redham Stogursey. By a contract for sale dated 9 April 1956 (Document No. 3) W H D Allen agreed to sell to Mr Crouch for £200 the right of pasturage for 17 bullock and 34 sheep. This was followed by a Conveyance (Document No. 4) by which W H D Allen for a consideration of £225 conveyed to Mr Crouch "all those three pieces or parcels of land (identified as Tithe Nos. 1647, 1648 and 1649 as in Document No. 2)", together with the same right of pasture or stockage.

3. Mr Lang's claim: In support of his claim Mr Lang produced the documents listed in the Second Schedule hereto. Document No. 1 is a Conveyance on sale in 1926 by W R Triggol and his mortgagees to C Mackenzie of a number of properties in Stogursey identified by reference to the Tithe number and a plan. These include six forming part of Ordnance No. 173, one of which is Tithe No. 1647 (but not including 1648 or 1649): under the heading 'Name' these six are referred to as "In Redham (Forshears only of)". None of the other properties comprised in the Conveyance and identified by reference to Tithe numbers (more than 30 in all) has any reference to forshears.

Following Mr Mackenzie's death in 1957 there was an Assent dated 7 March 1958 (Document No. 2) by his Executors in favour of Mr Lang of the properties comprised in the Conveyance of 1926, without any further specific descriptions.

Document No. 3 is an examined abstract of the title of W R Triggol (the vendor in 1926 to C Mackenzie) to Stolford Farm. This includes a conveyance dated 25 October 1900 to a predecessor in title R R Rawlings of pieces of land identified by reference to Tithe numbers and including Tithe No. 1647: and subsequently a mortgage dated 21 July 1925 by W R Triggol of a number of these pieces of land, now described by reference not to Tithe Numbers but Ordnance Numbers - one is Ordnance No. Pt. 173 "In Redham Forshears only of" which I think clearly includes Tithe No. 1647. This is the first (chronologically) of the documents which I have seen in which 'Forshears' is referred to in regard to No. 1647.

Document No. 4 is a copy of what appears to be a list in 1900 of the various pieces of land owned by R R Rawlings in connection with Stolford Farm. The list includes Tithe No. 1647 described as 'dole' without any reference to forshears. Documents No. 5, 6 and 7 are tenancy agreements by which Mr Lang's predecessors in title let Stolford Farm and the pieces of land described in a Schedule to each Agreement.

Included in the Schedule in 1913 is 'Tithe No. 1647 Redham', in 1913 'Tithe Nos. 1633, 1638, 1641 and 1647 in Redham (Forshears only of)', and in 1954 'Ordnance No. Pt. 173 In Redham Forshear Only'.

4. The respective paper titles supporting the two claims in respect of Tithe No. 1647 are entirely independent of each other and considered in isolation appear to establish both claims. It being accepted that only one of the claims can be good, this means that a choice between the two has to be made on some ground which to me is far from obvious. One possibility is that No. 1647 came to be included in one of the titles by mistake, and some evidence that this happened is provided by a letter, a copy of which was produced by Mr Lang, written on 21 July 1943 by the Solicitors acting for Mr Evered in connection with the Auction Sale on 14 July 1943 at which Mr Allen (Mr Crouch's predecessor in title) purchased Lot No. 16 which included No. 1647. This letter was written to Tamlyn & Son, the Auctioneers, and from the letter it appears that No. 1647 was conveyed to Mr Evered in 1920 by the



Ecclesiastical Commissioners and then described as in the occupation of William Rich: that Mr Mackenzie (Mr Lang's predecessor in title) had written to the effect that Mr Pearce had been in occupation of No. 1647 for 30 years or more. The Solicitors' letter went on:- "It is clear therefore that in one of the two deeds a wrong title number has been inserted. Do you think you can assist us in any way in identifying the number described as 1647 which Mr Evered purchased.....". There is nothing before me to indicate that this question was ever resolved and the Auction Sale had apparently proceeded with No. 1647 included as part of Mr Evered's property: his Solicitors' letter does indicate that they had doubts about this, and certainly the three tenancy agreements (see paragraph 3 above) confirm occupation by the Pearces as tenants of Mr Rawlings and Mr Mackenzie (Mr Lang's predecessors) from 1913 onwards. On the other hand, Mr Crouch produced a letter from Mr Allen on 10 August 1968 which said "I cut the 3 Doles for my own use 1944 to 1949 inclusive, cut by Captain W R Hern 1950 to 1956 inclusive": however this may be, it is clear from the Solicitors letter of 1943 that they had doubts as to the correctness of the reference "No. 1647" in the occupation of William Rich" in the Conveyance of 1920 to Mr Evered.

5. There is a further comment to be made on the paper titles, though it was not raised at the hearing. In the 1943 Conveyance to Mr Allen, and the 1956 Conveyance by him to Mr Crouch which is conveyed is not rights of forshear but the piece of land Tithe No. 1647 described as Dole. I had no evidence before me of the local significance of the word Dole, but as is stated in Stroud's Judicial Dictionary quoting Co. Litts 4a, 343 b "the owner of a dole may have a freehold in the soil". Mr Crouch's title deeds may in themselves support a claim to ownership of the piece of land rather than to rights of forshear, and it is the latter with which I am concerned. On the other hand Mr Lang's title deeds at least from 1925 onwards do specifically refer to 'Forshears only' as the property being dealt with, not the land itself.

6. Apart from the paper titles, Mr Lang produced a copy of the entries in the Valuation List of the Drainage Board showing his name as occupier of No. 1647 in substitution for T Pearce. Mr Crouch pays a drainage rate, but in respect of his grazing rights (17 bullocks, 34 sheep), which are not in issue. From what I was told it appears that on the ground no conflict arises as the various forshear rights in the area, let under arrangements which work satisfactorily irrespective of the conflicting claim to entitlement, a position which leads me to doubt the practical significance of a decision on this particular conflict.

7. My conclusion on the evidence is that Mr Lang's claim is to be preferred. This title goes back to 1900: Mr Crouch's title on the documents produced starts in 1943, when Mr Allen bought from a Vendor, Mr Evered, in regard to whom there was the apparently unresolved doubt whether a mistake had not been made in the conveyance to him in 1920 of No. 1647, a doubt which is of course fortified by the existence of the earlier and independent title of Mr Lang's predecessors. Apart from this, there is the point referred to in paragraph 5 above. In the result I confirm the registration at Entry No. 1 in the Rights Section without modification, and confirm the registration at No. 8 with the modification that in the particulars "1647" and "E 28" be deleted.

The First Schedule

(Mr Crouch's Documents)

1. Particulars of Sale by Auction (Auctioneers Tamlyn & Son) on 14 July 1943



2. Abstract of Title of W H D Allen to land and premises at Stogursey
3. Contract for sale dated 9 April 1950 between (1) W H D Allen (2) N G Crouch
4. Conveyance on Sale dated 26 July 1956 between (1) W H D Allen (2) N G Crouch

The Second Schedule

(Mr Lang's Documents)

1. Conveyance dated 27 September 1926 between (1) W H Tamlyn (2) A M Triggol (3) A M Triggol and Another (4) W R Triggol (5) C Mackenzie
2. Assent dated 7 March 1958 (1) Executors of C Mackenzie (2) Ian M Lang
3. Abstract of Title of W R Triggol to Stolford Farm
4. Tenancy Agreement dated 30 September 1913 between (1) R R Rawlings (2) T Pearce and Another
5. Tenancy Agreement dated 3 December 1926 between (1) C Mackenzie (2) T Pearce
6. Tenancy Agreement dated 15 May 1954 between (1) C Mackenzie (2) H G Pearce

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 21st August 1979

L. J. Morris Smith

Commons Commissioner