

In the Matter of Smithwood Common and
Winterford Heath (part), Cranleigh, Surrey.

DECISION

This reference relates to the question of the ownership of land known as Smithwood Common and Winterford Heath (part), Cranleigh, being the part of the land comprised in the Land Section of Register Unit No. CL51 in the Register of Common Land maintained by the Surrey 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 J P M H Evelyn claimed to be the freehold owner 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 Guildford on 14 December 1979.

At the hearing I gave leave for Mr Evelyn to be represented by his agent, Mr P A C Trower. The matter was adjourned and the hearing resumed in London on 24 March 1982, when Mr Evelyn was represented by Mr P Droop, solicitor.

Mr Evelyn claims to be the owner of the land the subject of the reference by virtue of being the lord of the manor of Westland.

The manor of Westland was purchased by George Evelyn in or after 1601, but it is not necessary to trace Mr J P M H Evelyn's title as far back as that. For the purposes of these proceedings it is sufficient to go back to the will of William John Evelyn, proved on 7 August 1908, by which he devised (inter alia) his freehold manors to the uses and subject to the powers and provisions therein declared. By a vesting deed dated 8 March 1926 the then trustees of that will, having regard to the provisions of the Settled Land Act 1925, vested in Cecil John Alvin Evelyn all the settled property subject to the limitations or trusts of the will. By a conveyance dated 9 August 1965 there was conveyed to Mr J P M H Evelyn all the property declared to have been vested in C J A Evelyn by virtue of the vesting deed of 8 March 1926 with certain exceptions which are not material for the purposes of these proceedings. That the manors which were devised by W J Evelyn's will included that of Westland is proved by the fact that the documents relating to the Evelyn Estate deposited in the Surrey County Record Office include the court rolls of the manor of Westland from 1725 to 1925.

The land the subject of the reference falls within the classic definition of "waste land" enunciated by Watson, B. in Att. Gen. v Hanmer (1858), 27 L.J. Ch. 637, and that it is parcel of the manor of Westland is shown by the plan attached to articles of agreement made 1 January 1846 between William John Evelyn and Henry Drummond regarding the manors of Westland and Albury.

Mr J P M Evelyn is in receipt of payments for grants of an easement, a grazing licence, and several annual licences of sporting rights and wayleaves over the land in question.

On this evidence I am ~~not~~ satisfied that Mr J P M H Evelyn is the owner of the land, and I shall accordingly direct the Surrey County Council, as registration authority, to register him as the owner 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

6th

day of

April

1982

[Handwritten signature]

Chief Commons Commissioner