



COMMONS REGISTRATION ACT 1965

Reference No.32/U/27

In the Matter of The Tynning,
Freshford, Bathavon R.D.,
Somerset

DECISION

This reference relates to the question of the ownership of land known as The Tynning, Freshford, Bathavon Rural District being the land comprised in the Land Section of Register Unit No.V.G.1 in the Register of Town or Village Greens maintained by the 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 no person claimed to be the freehold owner of the land in question and no 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 Taunton on 5 December 1972. The hearing was attended by Mr. George Ernest Macdonald.

Mr. Macdonald in his evidence produced: (i) an indenture dated 11 February 1924 by which this land except the land ("the War Memorial piece") described in the Appendix hereto, was conveyed to Mr. G. E. Baker in fee simple; (ii) probate of the Will of Mr. G. E. Baker (he died on 19 March 1924) granted on 15 August 1924 to Mr. H. G. A. Baker; (iii) a copy of the Will (annexed to the said probate) by which the testator devised any lands at Freshford to which he might be entitled to his elder son the said Mr. H. G. A. Baker; and (iv) probate of the Will of the said Mr. H. G. A. Baker (he died on 2 May 1959) granted on 15 July 1959 to himself (Mr. Macdonald).

Mr. Macdonald said:- He had not given or made any assent or conveyance in respect of any legal estate in any part of this Unit. On the War Memorial piece there now stands the Village War Memorial, this piece being as described in the Appendix hereto. This Unit consists (as appears from the Register map) of two pieces of land separated by a carriage way. The northern of these two pieces less the War Memorial piece, is surrounded for the most part by a stone wall and for the remaining part by a post and wire fence; it is now in the occupation of a tenant farmer who pays rent for it to John Weeks & Co. as agents for him (Mr. Macdonald). The southern of these two pieces is open land for the most part very steep; a tree has been planted there; two seats have been placed there for the convenience of the Village. No person is now in occupation of it, adversely to the title of Mr. Macdonald under the indenture of 11 February 1924.

On the evidence outlined above, I am satisfied that Mr. Macdonald is the owner of this Unit except the War Memorial piece. As to the ownership of this, I had no evidence and am therefore not satisfied that any person is the owner of it. Accordingly I shall direct the Somerset County Council as registration authority in pursuance of section 8(2) of the Act of 1965 to register Mr. George Ernest Macdonald of 4 Queens Square, Bath as the owner of the land comprised in



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the land section of this Unit except the land described in the Appendix hereto, and pursuance to Section 8(3) of the Act to register Freshford Parish Council as the owner of the land described in the Appendix hereto.

I record a point made by Mr. Macdonald in his evidence. In the Register this Unit is described as "... containing 3.472 acres or thereabouts (less an area of approximately 0.699 acres on which stands the school timber class room) ... as marked with a green verge line ... on ... the Register Map ...". Mr. Macdonald explained that the green verge line includes an area on which the School now stands and that part of this area, comprising about 0.24 acres, was conveyed by him as executor of Mr. H. G. A. Baker to the County Council, to provide more land for the School. The plan drawn on the said indenture of 11 February 1924 shows the land which was then used for the School (apparently plots 109 and 309 on the Ordnance Map 1903 edition), being land which was not thereby conveyed. Mr. Macdonald assumes that the area of 0.699 acres excepted from this Unit (as above mentioned) comprises the land in 1924 so used for the School together with the 0.24 acres which he conveyed to the County Council, and he does not therefore claim ownership of this excepted area. In this decision following the assumption of Mr. Macdonald, I have construed the Register as not including any land now used for the School.

I also record that before the hearing the County Council provided me with a copy of an indenture dated 16 February 1924 by which Mr. G. E. Baker covenanted with the persons named in the first Schedule thereto that he his heirs and assigns would not do or permit or suffer to be done upon the land therein specified (apparently the same land as was conveyed by the said indenture of 11 February 1924) in contravention of the stipulations therein set out. Mr. Macdonald produced the counterpart of this indenture of 16 February 1924 which he held as successor in title of Mr. G. E. Baker, and submitted it had no relevance because these proceedings relate only to the "ownership" of the land. I accept this submission because by Section 22(2) of the Act of 1965 it is provided that "References in this Act to the ownership and the owner of any land are references to the ownership of a legal estate in fee simple in any land and to the person holding that estate, ..." In my view nothing in this decision affects any right which any person may have under the covenant by Mr. G. E. Baker contained in the said indenture of 16 February 1924.

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.

APPENDIX

The piece of land which forms part of the land comprised in the Land Section of this Register Unit, which is situated at the south west corner of the northern of the two pieces in which the said land on the Register map appears to be divided, on which there is now a War Memorial, and which is bounded by a post and wire fence (the area thereby enclosed is said to be approximately 16 square yards).

Dated this

18th

day of

December

1972

A. A. Baden Fuller