



In the Matter of Draynes Common,
St. Neot Liskeard Caradon D

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL.130 in the Register of Common Land maintained by the Cornwall 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 Miss P M Childs claimed to be the freehold owner of the land in question ("the unit land"). 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 Bodmin on 15 October 1985.

At the hearing Mr D Lyon-Smith, solicitor, appeared on behalf of Miss Childs: There was no appearance by any other claimant.

Mr Lyon-Smith produced a copy (not complete) of Particulars and Conditions of sale in an auction in September 1920 of freehold properties in St. Martin-by-Looe and St. Neot. Lot 17 was a "valuable enclosure of land known as Draynes Common (in hand) and containing 193A 1R 29P." The plan attached to the particulars shows Draynes Common which was clearly the unit land. On the plan it adjoined Lot 14, a property known as Westerlake. The vendors' names do not appear but it is stated in the Conditions that they sell as trustees: and the title as regards all the Lots was to commence with Conveyances to the Bishop of Carlisle and Joseph Robert Diggle.

There is no evidence that the unit land (Draynes Common) was sold at the auction: but it appears that Westerlake was. Mr Lyon-Smith produced a photostat copy of a Conveyance of Westerlake dated 1 January 1921, in which the vendors were J F Childs and W H W Childs. From the recitals in this Conveyance it appears that ^{in 1907} these vendors have succeeded the Bishop of Carlisle and J R Diggle as trustees of a Settlement dated 3 December 1872 and that the Bishop and J R Diggle had purchased Westerlake in 1906 pursuant to a power contained in the Settlement. The settlement was made by Annie Childs (nee/Macrae) and other members of the Macrae family.

On this evidence it can, I think, be reasonably concluded that the unit land, like Westerlake, was in 1920 vested in J F and W H W Childs as trustees of the Settlement. There is however no evidence of any subsequent dealings with or devolution of the ownership of the unit land. Annie Childs died in 1912 and her will recited that by the Settlement she had a power of appointment of one half of the income of the trust funds in favour of her husband during his life: by her will she exercised the power in favour of her husband Christopher Childs. Apart from this, there is no evidence of what the trusts of the Settlement were or, accordingly, who ultimately became entitled to the trust funds.



Mr Lyon-Smith suggested that it would be reasonable to assume that the ultimate beneficiaries would be Annie Childs's children. She had one child, a son Christopher, born in 1891, who died in 1936 and left all his property to his wife Hermione. She died in 1974 and left all her property to her daughter Priscilla Margaret Childs, the present claimant. On the assumption which Mr Lyon-Smith invited me to make, it would follow that the claimant is now entitled to the unit land.

In an affidavit sworn on 10 October 1985 by Miss P M Childs, whose disability prevented her from attending the hearing, she states that at various times she had heard mention of Draynes Common as owned by her family. She understands that it was originally purchased by her grandmother (Annie Childs) either in her own name or in the names of the trustees of her marriage settlement. Despite enquiries of Miss P M Childs's father, and other solicitors no deeds have been found and it is suggested that they were possibly destroyed by enemy action. The affidavit further states that the claimant's mother's executor, a solicitor, does not recall Draynes Common having been mentioned as an asset in the free estate of either her father or her mother or in the marriage settlement, but has told her that it might have been thought to be worth so little as not to be worth mentioning.

Mr Ernest Arunel, giving evidence, told me that he was speaking for the commoners generally: they had always believed the unit land to be Childs property and that it now belonged to the claimant, and they would support her claim. None had ever heard of a claim to ownership by anyone else.

As mentioned above I would on the evidence find that in 1920 the unit land was vested in the trustees of the 1872 settlement. Before making a finding as to its present ownership, I am required by the 1965 Act section 8 (2) to be satisfied that a claimant is the owner. If further evidence became available it might show that the assumption that under the 1872 settlement the ultimate beneficiary was the only child of Annie Childs, and the belief of the family and the commoners that the unit land is Childs property and now in the ownership of the claimant, were justified. But in the absence of such evidence, I do not find it possible to make that assumption or share that belief to the extent of being satisfied as to her ownership. I should add that there would still be difficulties as to the legal (as opposed to the beneficial) ownership, in the absence of assents by the executors of either her father or her mother.



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Should further evidence to support this or any other claim become available, it will be possible for the County Council to refer the matter again to the Commons Commissioners. I should mention that since the hearing a possible claim by Colonel J T M Childs has been notified, but it appears that as yet evidence to support the claim is not available.

As matters now stand, I am not satisfied that any person is the owner of the unit land, and it 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

12 February

1986

A handwritten signature in cursive script that reads "L. J. Morris Smith".

Commons Commissioner