



In the Matter of Part of the tract of land known  
as Kerrow Downs in the Parish of Blisland, Cornwall

DECISION

This reference relates to the question of the ownership of land known as Kerrow Downs in the Parish of Blisland being the part of the land comprised in the Land Section of Register Unit No. CL.184 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 (1) Mr William Leonard Greenaway and (2) The Trustees of the Molesworth - St. Aubyn Settled Estate claimed to be the freehold owners of parts of the land in question and Mr Wallace Morley Rowe 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 24 March 1987.

Mr Greenaway was represented by Mrs Lockyer of Messrs. Macmillans of Bodmin. The Trustees of the Molesworth - St. Aubyn Settled Estate appeared by their Estate Manager, Lt-Col. Sir John Arscott Molesworth - St. Aubyn. Mr Rowe represented the Blisland Commoners Association. Cornwall County Council, the registration authority, was represented by Mr M Wright, its commons registration officer.

Mr Greenaway's Claim

Mrs Lockyer on behalf of Mr Greenaway claimed ownership of the strip of land on the southern side of the unit land immediately to the north of Carwen.

The commons registration officer produced an enlarged plan of this area. Mrs Lockyer on behalf of Mr Greenaway expressed concern that the southern boundary of the common land as drawn on this plan shows Mr Greenaway's house and a triangular portion of his garden as being included in the common land.

Mrs Lockyer produced the original of a Conveyance dated 7th April 1956 between (1) John Menhinick and (2) Mr Greenaway, which included in the schedule of land thereby conveyed part of O.S. No. 943 described as House etc. and part of O.S. No. 944 described as Plantation. These two parcels are bracketed together and shown as having an estimated area of 0.500 acres.

A clear plan is annexed to this Conveyance. Although this plan is expressed to be by way of identification only, the only way of ascertaining which part of O.S. No. 943 was included in the property conveyed is to look at the plan. The impression which I get from perusing this plan is that the land conveyed to Mr Greenaway included the whole of O.S. No. 943, which alone comprises 0.733 acres; and that the house and garden are part of O.S. No. 944, and not O.S. No. 943.



I was told that there has been litigation in the County Court between the Commoners Association and Mr Greenaway, as a result of which Mr Greenaway had been ordered to remove (and had removed) a gate across the narrow neck at the northern end of O.S. No. 943 where this joins the rest of the common. Mr Rowe was concerned to see that Mr Greenaway did not seek to enclose any part of the common in respect of which he (Mr Greenaway) was applying to be registered as owner. I was assured that this was not Mr Greenaway's intention, so long as it was accepted that no part of his house or garden was included in the common. Mr Rowe said that he accepted this.

Lt-Col. Sir John Arscott Molesworth-St. Aubyn said that he was not concerned with O.S.943.

Mr Greenaway gave evidence that, save for the removal of the gate, all the boundary fences remained in the same position as when the property was conveyed to him thirty years ago.

On this evidence I am satisfied that (a) no part of Mr Greenaway's house or garden is included in the unit land; and (b) Mr Greenaway is the owner of such part of the unit land as is comprised in O.S.No.943.

The claim of the Trustees of the Molesworth-  
St. Aubyn Estate

Sir Arscott gave evidence by reading a written proof which he handed in, together with a plan showing three areas ownership of which he claimed on behalf of the Trustees. He also gave further oral evidence. He said that the three areas claimed were marked out by boundary stones on which certain lettering appeared. He claimed that the markings M X or M (f) on such stones indicated ownership by the Molesworth family of the land in the direction in which the markings faced. He did not know what the (f) stood for. He said that similar lettering appears on boundary stones on other commons, of which ownership by the Trustees had never been questioned. In particular he stated that there are boundary stones inscribed M X on part of Manor Common (CL.183) the ownership of which by the Trustees was confirmed by a Commons Commissioner at a previous hearing.

Mr Rowe gave evidence in support of what Sir Arscott said.

Sir Arscott produced no documentary evidence in support of the Trustees' claim, but said he would instruct his London Solicitors, Messrs. Macfarlanes, to send to the office of the Commons Commissioners the requisite documentary evidence of the title of the Trustees.

Since the hearing I have looked at the decision dated 22 February 1985 of Mr G D Squibb, then Chief Commons Commissioner, in respect of Manor Common (CL.183) to which Sir Arscott referred me. This contains no reference to boundary stones, but depended on the inclusion of the land in question in the parcels of the conveyance to the Trustees' predecessors in title. It is therefore of no assistance in the present case.



No problem arises in respect of area No. 2, where the boundaries of the land claimed by the Trustees correspond with those of the unclaimed land on the register map. As regards area No. 1 however a triangular portion of the land claimed by the Trustees lies to the south of the line marked A-B on register map No. 123. Wallace Morley Rowe and Margaret Mary Rowe are already finally registered as owners of the land lying to the south of this line A-B: see Entries No 5 and 7 in the ownership section. It follows that the Trustees are not entitled to be registered in respect of the part of area 1 lying to the south of the line A-B on register map 123.

As regards area No. 3 the land claimed by the Trustees does not include all the unclaimed land in this part of the register unit. Apart from the piece of land claimed by Mr Greenaway (which I have already dealt with) there are three other small parcels not claimed by the Trustees. These are:-

- (i) a strip of roadway or tract leading westward from the point marked with the letter F on register map 123;
- (ii) a triangular piece of land at the south-east corner of the register unit;
- (iii) a piece of land at the south-western tip of the register unit.

These three parcels remain unclaimed land.

Since writing the above part of this decision, a further letter from Sir Arcscott has been received at the office of the Commons Commissioners, in which he claims on behalf of the Trustees ownership of three additional areas of land. For convenience I shall number these Nos 4, 5 and 6.

No. 4 is the whole of the unit land east of the line marked M-L on register map No. 125.

No. 5 is the whole of the land north of the line marked O-N on the said map.

No. 6 is a strip of land lying between Nos. 4 and 5.

I am satisfied that areas 4 and 5 were included in the parcels to the Conveyance of the 11 April 1964 referred to above, and that the Trustees are entitled to be registered as owners thereof.

As regards area No. 6 however this strip of land falls outside the boundaries of the land comprised in this register unit, and I make no decision concerning the same.

#### Conclusion

On this evidence I am satisfied as follows:-

- (a) That William Leonard Greenaway of Higher Carwen, Blisland, Cornwall is the owner of the such part of the unit land as is comprised in O.S. No. 943;
- (b) That the Trustees of the Molesworth St. Aubyn Settled Estate are the owners of the whole of areas No. 2, 3, 4 and 5 referred to above and of such part of area No. 1 as lies to the north of the line marked A-B on register map No. 123.

I shall accordingly direct the Cornwall County Council as registration authority to register such persons respectively as owners of these parts of the register unit under section 8(2) of the Act of 1965. The rest of the unclaimed land comprised in this unit will remain subject to protection under section 9 of the Act.



Since the hearing I have also perused the ownership section of the register in respect of the present unit, and observe that a claim to ownership of all three areas now claimed (together with three other areas of the unit land) was provisionally registered by the then Trustees of the Molesworth St. Aubyn Settled Estate on the 24th July 1969; see Entry No. 2 in the ownership section. This claim was considered by a Commons Commissioner sitting at Truro on the 3rd and 4th July 1979. In a decision dated 6th November 1979 Mr Commissioner Baden Fuller concluded that in the absence of any evidence in support of the registration at Entry No. 2 (Molesworth St. Aubyn) this Entry was not properly made, and refused to confirm its registration.

Messrs. Macfarlanes have now supplied me with certified copies of the following documents:-

(i) Conveyance dated 11 April 1964 between (1) Sir John Molesworth St. Aubyn and (2) Guy Kemyel Molesworth St. Aubyn Alastair Rauthmell Macneal and John Valentine Balfour:

(ii) Deed of Appointment of New Trustee dated 22nd June 1984 between (1) said A R Macneal and J V Balfour and (2) Hon. Robin Michael Parker.

(iii) Deed of Retirement and Appointment of Trustees dated 27th February 1987 between (1) said A R Macneal and R M Parker (2) said J V Balfour and (3) Christopher Henry Woodbine Parish.

Messrs. Macfarlanes have also supplied me with a further plan showing the three areas of the unit land now claimed by the Molesworth St. Aubyn Trustees edged blue and hatched blue. A copy of this plan accompanies this decision. For convenience I have marked these three areas on the plan with the numbers 1, 2 and 3.

No. 1 is an area lying to the south of the line marked A-B on register map No. 125 (which shows the northern part of the register unit).

No. 2 is an area to the west of the line marked G-H to the south of the line H-J and the east of the line C-D on register map No. 123 (which shows the southern part of the register unit).

No. 3 is an area south of the line marked E-F on register map No. 123.

I am satisfied from a perusal of the plan to the Conveyance of the 11th April 1964 that all three areas now claimed were included in that Conveyance. It was not however a Conveyance on sale, but a voluntary Conveyance upon trust for sale. It contains no covenants for title, and it is unlikely that any examination of the grantor's title would have been made prior to its execution. Strictly speaking therefore it falls short of constituting a good root of title. However the documents for which an acknowledgement for production is given in the Fourth Schedule to that Conveyance indicate that the property has been in the Molesworth St. Aubyn family since before 1926, and this complied with Sir Arscott's evidence of even longer ownership by the family is sufficient to satisfy me of the title of the present Trustees to all three of the areas now claimed.



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

28<sup>th</sup>

day of

May

1987

Mati Roth

Commons Commissioner

