



COMMONS REGISTRATION ACT 1965

Reference No. 209/U/124

In the Matter of parts of Okehampton Common, Okehampton Hamlets

## DECISION

This reference relates to the question of the ownership of parts of Okehampton Common, Okehampton Hamlets being the parts of the land comprised in the Land Section of Register Unit No. CL.155 in the Register of Common Land maintained by the Devon 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) Herbert Hugh Whitley and (2) Okehampton Hamlets Parish Council claimed to be the freehold owners of parts of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Plymouth on 23rd January 1990.

The hearing was attended by Mr W J L Heard (Chairman of Okehampton Hamlets Parish Council) and Mr P Bailey of Burd Pearse, Solicitors of Okehampton representing Mr Whitley and the Parish Council.

The land was registered as common land by the Registration Authority without any application. There are numerous entries in the Rights Section of the Register. There are three entries in the Ownership Section.

There are two comparatively small areas of unclaimed land. One, to the south-west of the buildings of Moorgate Farm, is claimed by Mr Whitley. The other, a long strip with an L shaped tip to the south of Meldon Quarry, is claimed as to the tip only by the Parish Council.

On behalf of Mr Whitley Mr Bailey produced to me the original of a Conveyance dated 28th September 1935 between (1) R W Seldon and H C Brown and (2) William Whitley in respect of Moorgate Farm containing some 53½ acres delineated in pink on the plan annexed thereto. On this plan the land now claimed by Mr Whitley can clearly be identified as parts of O.S. Nos. 1253, 1254 and 1255. Mr Bailey also produced to me an office copy Probate granted on 16th October 1957 to Lloyds Bank Limited as Executors of the Will of William Whitley, and a Conveyance dated 25th March 1959 between (1) Lloyds Bank Limited and (2) Mr Whitley in respect of property including the 53½ acres of Moorgate Farm.

Mr Whitley is registered at Entry No. 67 in the Rights Section of the Register in respect of the right to graze 500 breeding ewes and their followers over the whole of the land in this Register Unit and CL.135 and 164. The land specified in column 5 of the Register as being the land to which this right is attached is Moorgate Farm, Okehampton including O.S. Nos. 1254 and Part 1255 (i.e. part of the land of which Mr Whitley is now claiming to be registered as owner). O.S.No.1253 is not specified, but it appears to me that this has been mis-transcribed as 1258, an O.S. number which does not appear in the title deeds of Moorgate Farm.



Where the same land is registered as part of the common and as part of the dominant land to which a right over that common is attached the registrations cannot both be right. They are in conflict with each other.

By regulation 7 of the Commons Commissioners Regulations 1971, where there is a conflict between two registrations each is to be treated for the purposes of sections 5(6), 6 and 7 of the 1965 Act as an objection to the other. It follows that the matter must be referred to a Commons Commissioner under section 5(6) of that Act and that neither registration becomes final until the Commissioner has confirmed it under section 6(1) of that Act. Where there is a conflict such as this the Commissioner cannot confirm both registrations without modification. Either the land should be excluded from column 5 in the Rights Section or it should be excluded from registration in the Land Section.

The consequence of the existence of this outstanding conflict is that (in spite of what at present appears on the Register) neither the land section nor the Rights Section of this Register Unit has yet become final; and that until this conflict has been resolved the unclaimed land reference was premature.

Since the hearing I have discussed the matter with the Chief Commons Commissioner, and he agrees with me that owing to this outstanding conflict I have no jurisdiction to deal with this unclaimed land reference at the present stage. The conflict must first be referred to a Commons Commissioner. It will then be open to Mr Whitley (if he so wishes) to submit that the land of which he is claiming to be registered as owner should be excluded from the common altogether.

As to the claim by the Parish Council, this will also have to be deferred until the outstanding conflict has been resolved. For purposes of record however I note that Mr Bailey (on behalf of the Parish Council) produced the following documents to me at the hearing:-

- (i) Epitome of Title to land situate near Meldon Quarry, Okehampton Hamlets including certified copies of Conveyances dated 8th July 1948, 14th February 1964 and 5th March 1984.
- (ii) The original of the Conveyance dated 5th March 1984 between (1) E.C.C. Quarries Limited and (2) the Parish Council.

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 22<sup>nd</sup> day of March 1990

M. K. Potts

Commons Commissioner