



In the Matter of Prestacott Common,
Ashwater, Torridge District, Devon

DECISION

This reference relates to the question of the ownership of land known as Prestacott Common, Ashwater, Torridge District being the land comprises in the Land Section of Register Unit No CL 21 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 Mr F W Pope (Rights Section Entry No 2 was made on his application) said (letter received 8 February 1979) that as far as he knew the Common had never been owned by one separate person but people who had land adjoining it had right to it for grazing; and Mrs J B Sawrey-Cookson said (letter of 3 April 1979) that the land was in the ownership of her father Mr C F C Luxmoore, and as far as she knew had never been disposed of. No other person claimed to be the freehold owner of the land in question or 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 Barnstaple on 11 May 1979. At the hearing (1) Mr C L W Warring (Rights Section Entry No 1 was made on his application) was represented by Mr J N Rowland Solicitor of Peter Peter & Son of Holsworthy, and (2) Mr S J Martyn (Rights Section Entry No 3 was made on his application) and (3) Mr R E V Beare (Rights Section Entry No 4 was made on his application) both attended in person.

Mr Warring in the course of his evidence produced; (1) an assent dated 4 November 1971 by himself as executor of the will of his mother Mrs P Warring (she died 20 June 1971) in favour of himself; (2) a conveyance dated 28 September 1927 by Mr S Cole to Mrs P Warring; and (3) a conveyance dated 23 November 1914 by Mr T Oliver to Mr S Cole. By these documents lands described as Over Priestacott and Dunscoth (in 1971 known as Priestacott) containing 21.151 acres (1914; 21a. 2r. 36p.) were expressly conveyed. The 1971 assent and the 1927 conveyance included "Together with all the estate and interest of the said Phoebe Warring (1927; of the Vendor) of and in Priestacott Common"; the 1924 conveyance included these words; "Together with the benefit of the general words supplied by the Conveyancing and Law of Property Act 1881 and expressly including the part or share undivided of the said Thomas Oliver of and in Priestacott Common".

Mr Warring who is 62 years of age, took over Priestacott from his father 28 years ago (his father took over from Mr Cole 52 years ago) said (in effect):- Apart from 2 or 3 telephone or electric poles, no use had ever been made of the Common except for grazing by the persons who had applied for the Rights Section Entry No 1 to 4 or their predecessors. Of the four holdings concerned, Priestcote is the smallest, and the grazing from it has been less than from the others.

Mr Beare said he could say nothing about ownership, but he had "rights" (meaning as registered). Mr Martyn said that he just had grazing rights like the others.



Mr Beare added that he had bought part of Mr Pope's land about 12 months ago and that *his land* (with additions bought from time to time) had been in his family since about 1400.

By Section 8 of the 1965 Act, I am on this reference concerned with "ownership, which by Section 22 is defined as meaning the "legal estate in the simple". By the Law of Property Act 1925 ownership of such an estate in undivided shares has been abolished, there having been substituted ownership by trustees upon the statutory trust for sale as by parts IV and V of the First Schedule to such Act provided. After some discussion as to the effect of this abolition in the course of which I mentioned the High Court decisions of re Cotherstone, reported in the Estates Gazette for 1 July 1961, Mr Rowland contended that I should on the evidence summarised above, particularly the words above quoted from the 1914 conveyance, conclude that Mr Warring is the owner of an undivided share in the land and that if I could not direct his ownership of such a share to be recorded in the register, I should infer that the legal estate was now vested in persons entitled to the rights registered (Mr Warring, Mr Pope, Mr Martyn and Mr Beare), and direct their registration accordingly.

Three days after the hearing I inspected the land. I found the parts near the two west entrances too wet for any progress but got a fair idea of its general appearance by walking a short distance over it starting at the south-east entrance. A small amount of rubbish had been deposited near this entrance; much of the land appeared to be very wet; although —→ there was a good deal of scrub, clearly it was of some value for grazing, as far as I could see, it was of no value for anything else.

I accept that in determining the ownership of the legal estate with which I am concerned I must first consider (apart from the 1925 Act the land is or would be held in undivided shares). The words above quoted from the 1971 assent and the 1927 conveyance being capable of referring only to rights of grazing such as have been registered, are in my opinion, of no relevance. Nor has in my view anything I saw on my inspection any relevance, except as explaining why Mr Warring did not mention any act of ownership apart from grazing. I know nothing as to how the poles came to be erected. The words above quoted from the 1914 conveyance are unsatisfactory, because (a) the size and nature of the undivided share therein mentioned not specified and I am therefore unable to deduce from these words whether ~~it~~ was related to the rights of Common as registered or what the other incidents were; (b) the words of the 1914 conveyance are not repeated in the 1927 conveyance or the 1971 assent; and (c) there is no evidence that anybody ever did anything on the land which would be necessarily associated with ownership in undivided shares. For this reason, and quite apart from anything I saw on my inspection, I am not satisfied that Mr Warring or anyone through whom he claims or anyone else ~~to~~ ever owned any undivided share of this land; or at least an undivided share which I can define with sufficient certainty to enable me to determine who the legal estate in the entirety became vested in 1925.

In the absence of any evidence of anyone other than Mr Warring (I attach no importance to the letter of Mrs Sawrey-Cookson), I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

TULN 17/11



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 21st — day of June — 1979

a. a. Baden Fuller

Commons Commissioner