



COMMONS REGISTRATION ACT 1965

Reference No. 9/U/6

In the Matter of Three Acres of Land,
Kentisbury, Devon

DECISION

This reference relates to the question of the ownership of three acres of land at Kentisbury, being the land comprised in the Land Section of Register Unit No.V.G.54 in the Register of Town or Village Greens 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 the Kentisbury Parish Council claimed to be the freehold owner of the land in question and 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 Barnstaple on 28th March 1972.

The Reverend Henry George Ayre, Chairman of the Kentisbury Parish Council, informed me that the land in question was allotted to the Churchwardens and Overseers of Kentisbury by an inclosure award in 1845 or 1846. Mr.Ayre did not produce the award, but such evidence as is available is consistent with what he said being correct. The inclosure of Kentisbury Down was authorised in 1846 by the Act 9 & 10 Vict.c.117. It is stated in the Report on the Endowed Charities of the County of Devon, which was ordered to be printed by the House of Commons in 1909 and is therefore admissible in evidence by virtue of section 36 (2)(b) of the Charities Act 1960, that a recreation ground in the parish of Kentisbury was allotted by an inclosure award. If, as Mr.Ayre stated, the allotment was to the Churchwardens and Overseers, their powers, duties and liabilities with respect to the recreation ground were transferred to the Parish Council by section 6(1)(c)(iii) of the Local Government Act 1894. Mr.Ayre produced the minute book of the Parish Council. This contains a number of items relating to the recreation ground. The first, dated 9th March 1896, shows that the Council was then in receipt of rent from the recreation ground. Mr.Ayre gave evidence that the Parish Council now sells the grazing and applies the money received for parochial purposes.

This evidence is consistent with the land's having been allotted to the Churchwardens and Overseers and with its having been transferred to the Parish Council by the Act of 1894. Indeed, the only other inference would be that the Parish Council has been receiving and applying money from property which does not belong to it. To draw that inference would be contrary to the principle conveniently expressed in the maxim omnia praesumuntur rite et solenniter esse acta: see Lee v. Johnstone (1869), L.R.1 Sc.& D. 426.

For these reasons I am satisfied that the Kentisbury Parish Council is the owner of the land, and I shall accordingly direct the Devon County Council, as registration authority, to register the Kentisbury Parish



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Council as the owner of the land.

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 *27th* day of April 1972

A handwritten signature in cursive script, appearing to read 'C. J. L. Smith', written over a horizontal line.

Chief Commons Commissioner