



COMMONS REGISTRATION ACT 1965

Reference No. 212/U/237

In the Matter of Shrub Hall Heath,
Tolleshunt D'Arcy, Maldon 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 69 in the Register of Common Land maintained by the Essex 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 A Birkin and Mr R A Birkin (2) Mr P Eaton claimed to be owners of the land in question ("the Unit land") 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 ~~Chelmsford on 1 December 1982~~, at which Mr R A Birkin and Mr P Eaton appeared. The Unit land is a narrow rectangular piece of heath land, the (long) N.E. boundary of which adjoins two fields forming part of Heath Farm, owned by the Birkins. The long S.W. boundary adjoins another field forming part of Heath Farm and a field forming part of Oak Farm, owned by Mr Eaton.

Mr R A Birkin and Mr Eaton gave evidence: for a number of years the two have kept the Unit land clear and tidy, removing rubbish and maintaining the hedges and a drainage ditch. Mr Eaton has looked after the S.E. section which adjoins his farm for the past 15 years: otherwise, for more than 30 years the whole area has been looked after by Mr Birkin and his father before him.

On this evidence of acts of ownership by the claimants over such a period I am satisfied that they are owners. It is clear that they co-operate without any difficulty in looking after the area. They are not concerned as to the specific form of ownership - joint or partitioned - and it seems to me that it would be more practicable, and consistent with the evidence, that ownership of the S.E. section be vested in Mr Eaton and of the remainder of the Unit land in Mr A Birkin and Mr R A Birkin.

I shall accordingly direct the Essex County Council, as registration authority, to register them as owners respectively of the two sections under section 8(2) 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 31 January 1983

L. J. Morris Smith
 Commons Commissioner