



## COMMONS REGISTRATION ACT 1965

Reference Nos. 42/D/34 to 40  
(inclusive)

In the Matter of Dunstall Common, Earls Croome  
Malvern Hills D.,

DECISION

These disputes relate as regards Reference Nos. 42/D/35 to 40 (inclusive) to the conflicting registrations at Entries Nos. 1, 2 and 3 in the ownership section of Register Unit No. CL.31, in the Register of Common Land maintained by the former Worcestershire County Council and as regards Reference No. 42/D/34 to the registration at Entry No. 17 in the Rights Section of the said Register occasioned by Objection No. 93 made by the Earls Croome Parish Council and noted in the Register on 15 August 1972.

I held a hearing for the purpose of inquiring into these disputes at Worcester on 14 November 1974. The Earls Croome Parish Council appeared by Mr P.C. Davis of Foster and Finlay Solicitors of Malvern; the Trustees of the Marriage Settlement of the late Mrs B.A. Amphlett appeared by Mr S.G. Brown of Messrs Payne Hicks Beach & Co solicitors of London and the Trustees of the Croome Estate appeared by Mr Henderson.

By Entry No. 1 in the Ownership Section of the Register the Earls Croome Parish Council claimed ownership of the whole of the land in question and by Entry No. 2 the Amphlett Trustees claimed ownership of the whole of the land in question. By Entry No. 3 the Croome Estate Trustees claimed ownership of only a small strip of land hatched red on the register map.

The Amphlett Trustees claim to ownership is based on their contention that the Lordship of the Manor is vested in them and acts of ownership exercised by the Lord (or Lady) of the Manor for the time being.

Mr Brown proved to my satisfaction that the Lordship of the Manor was vested in the Amphlett Trustees. Mr Davis under instructions made no admission but when invited by me to indicate any reason why I should not accept the evidence on this point as conclusive was not able to give any such reason.

It is convenient to indicate at this stage the basis on which Mr Davis claimed ownership on behalf of the Earls Croome Parish Council. He produced a Tithe Apportionment Award dated 23 November 1838 in which Dunstall Common identified as No. 184 was stated to be in the ownership and in the occupation of the Parish. On this date the Rev. Dunn was the Lord of the Manor, the Rector in the Parish and as appeared from the said Tithe Apportionment Award a land owner. While I accept Mr Brown's submission that a tithe commutation award is not conclusive evidence for all purposes in the instant case, bearing in mind the several capacities in which the Rev. Dunn was an interested party the award is in my view very strong evidence that Dunstall Common was in 1838 in the ownership of the Parish. Mr Davis proved that in 1870 and 1907 the Lord of the Manor had registered



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with the Parish  $1\frac{3}{4}$  pastures and  $5\frac{1}{2}$  pastures respectively in respect of Dunstall Common and submitted that these registrations were inconsistent with Dunstall Common being in the ownership of the Lord of the Manor. I do not accept this submission. The Lord of the Manors right to graze on land subject to rights of common is limited to grazing which will not interfere with the rights of the commoners and in my view no inference can be drawn from the circumstance that other land owned by the Lord of the Manor is stinted. Mr Davis produced from the custody of the Parish books commencing in 1907 recording the respective stints to which the respective properties in the Parish were entitled and stated that in 1916 a committee was appointed to manage Dunstall Common. No doubt the action taken in 1907 was pursuant to a scheme for the Regulation of the Common approved by the Board of Agriculture and Fisheries on 21 March 1905 pursuant to the Commons Act 1899. While the Scheme conferred wide powers on the council it expressly provided that nothing in the Scheme was to prejudice or affect any right of the person entitled as the Lord of the Manor or otherwise to the soil of the Common. Naturally Mr Brown placed reliance on this provision in the Scheme. Lastly Mr W.J. Tustin aged 97 who had lived in the parish for 43 years and been a member of the Commons Committee for 40 years gave evidence that he had always regarded the Parish Council as the owner of the Common, that the Committee was responsible for seeing that the Regulations were observed and that the Common was not over stocked. He stated that the War Agricultural Committee approached him and that the Council received compensation in respect of its user during the war.

Miss Leila Blanche Amphlett gave evidence that her late mother, the former Lady of the Manor received 1/- per annum from the Midlands Electricity Board under a way leave agreement dated 2 July 1957 which she produced; that her mother had received compensation in respect of the user of the Common during the war; that her mother had cut down some trees at the request of a parishoner; that Col. Osbert Smith, who had been a churchwarden, a member of the Parish Council and a Trustee of the Croome Estate always referred to her mother as the owner of the Common and the Lady of the Manor; and that her late father had deposited the Court Rolls with the local authority.

The evidence relating to events subsequent to 1907 is consistent with the Council having acted pursuant to the powers conferred upon them by the Scheme and cannot in my view be relied upon as establishing ownership. In the result therefore my decision must depend upon what weight I attach to the Tithe Apportionment of 1838.

In my view if the Rev. Dunn had claimed ownership of the land as Lord of the Manor subsequent to 1838 he would, to put it no higher, have been in considerable difficulty when faced with the Award and his successors can be in no better position. I find some support for attaching the weight which I do attach to the Award in the case of Knight v. David 1971 1WLR 1671. Not only is the Award persuasive evidence that the Parish was the owner of the Common in 1838 but Mr Davis produced a minute from the custody of the Parish which revealed that the Parish was in 1870 accepting responsibility for the stintage on the Common though the precise effect of this minute was obscure. On the other hand the evidence of Miss Amphlett did not disclose any activity on the part of the Lord of the Manor save as the result of approaches by third parties who may well have shared what in my view was the honest but mistaken belief that the Common was part of the Manor. I therefore refuse to confirm the Entry No. 2 in the Ownership Section of the Register.



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At the hearing Mr Davis did not contest the Croome Estates claim to ownership of the land claimed by Entry No. 3 in the Ownership Section and I accordingly confirm that registration and confirm the Entry No. 1 in the Ownership Section modified so as to exclude the land which is the subject of Entry No. 3.

As regards Reference No. 42/D/34 no argument was addressed to me in support of the Amphlett Trustees claim to grazing rights and I assume that such claim was registered as being consequential on the claim to ownership. I accordingly refuse to confirm Entry No. 17 in the Rights Section of the Register.

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 29<sup>th</sup> day of November 1974

C. A. Settle

Commons Commissioner