



COMMONS REGISTRATION ACT 1965

Reference No 15/U/87

In the Matter of Kiln Tumps,
Great Doward, Whitchurch, South
Herefordshire District, Hereford
and Worcester

DECISION

This reference relates to the question of the ownership of the land known as Kiln Tumps, at the summit of Great Doward, Whitchurch, South Herefordshire District being the land comprised in the Land Section of Register Unit No CL. 193 in the Register of Common Land maintained by the Hereford and Worcester 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 Mrs L Cronin (through her solicitors) claimed to be the owner of the land in question; 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 Hereford on 19 July 1977. At the hearing, Mr John Cronin was represented by Mr J M Davies solicitor of T A Matthews & Co Solicitors of Hereford.

The land ("the Unit Land") comprised in this Register Unit according to the Register map contains a little more than 2½ acres being the greater part of OS plot no 243 marked as containing 2.758 acres. It includes or is near to the summit of Great Doward (661 feet). The registration in the Land Section was made on the application of Whitchurch Parish Council. In the Rights Section there are two Entries each of rights to graze 10 sheep, of estovers and of stone and lime attached to (1) Lone Tower and (2) Whitchurch House, these Entries having been made respectively on the application (1) of Mrs E and Mr J Simmonds and (2) of Mr H Garratt Adams.

Mr J Cronin in the course of his evidence produced: (1) a conveyance dated 6 May 1939 by which Mrs B W Morgan conveyed to Mr W J Thorne the dwelling house known as Mount View erected by Mr G Moon (he died on 6 March 1938) together with the lands therein described and for the purpose of identification coloured pink on the plan drawn thereon; (2) a conveyance dated 10 September 1948 by which Mr Thorne conveyed the same premises by substantially the same description to Mr I Cronin (father of the witness); (3) an assent dated 8 May 1972 by which Mrs L Cronin as personal representative of Mr I Cronin (he died 14 December 1971) assented to the vesting of the said premises in herself; and (4) an assent dated 30 November 1976 by which Mr J Cronin (the witness) as personal representative of Mrs L Cronin (she died 4 January 1976) assented to the vesting of the said premises in himself.



Mr J Cronin who has lived at Mount View since 1955 said (in effect):- He understood that the Unit Land (? with other land) had been designated as an Area of Outstanding Natural Beauty. It is of botanical interest. It is secluded and therefore little visited. He thought the name "Kiln Tumps" was because the land was undulating with many bumps and tumps due to former stone workings; these workings were long ago abandoned, probably in favour of workings lower down the hill (on the southwest). As to the rights of common registered, since he had known the Unit Land, they had as far as he knew never been exercised; nor had he known of the Unit Land being grazed in any way.

As to Mr Cronin's ownership claim, Mr Davies on his behalf relied on the plan drawn on the 1939 conveyance (the 1948 conveyance and the 1972 and the 1976 assents were by reference to this plan). The land coloured pink on this plan includes about four fifths (perhaps a little more) of the Unit Land, but clearly does not include the whole. The part ("the Excluded Triangle") excluded is an area approximately triangular, one side of which is the north boundary (or most of the north boundary) of the Unit Land. As to the Excluded Triangle, Mr Cronin said (in effect):- From the northwest corner of the Unit Land to its most easterly point (not far from the northeast corner) there is a clearly visible track ("the Vehicular Track") suitable for vehicles which enters the Unit Land from the southwest and which after passing across the Unit Land near its north boundary, goes on to land on the east and also (for a short distance) to the south. The south side of the Excluded Triangle is a footpath also clearly visible ("the Boundary Footpath") which branches off the Vehicular Track near the northwest corner of the Unit Land and ends at the east boundary of the Unit Land, a short distance south of the Vehicular Track (as I scale the Register map this distance is about 20 yards).

The parcels of the 1939 conveyance are complicated in that (among other things) they divide the land conveyed into several parts and refer to the Tithe map (of which no copy was produced); further they include the words "And also so far as the said...Morgan legally can or may convey the same or any part thereof the unenclosed land adjoining the Upper Road there". From Mr Cronin's description of the land now enjoyed by him, I conclude that "the unenclosed land" mentioned was or included the part of the Unit Land coloured pink on the plan drawn thereon, so that the 1939 conveyance indicates that at the time those concerned were doubtful about Mrs Morgan's title to it. The 1948 conveyance contains similar words, indicating a similar doubt at the time about Mr Thorne's title.

Notwithstanding the doubts apparently felt by those concerned with the 1939 and the 1948 conveyances, and notwithstanding the absence of any evidence that any person claiming under these conveyances had ever done anything to or been concerned in any way with the Unit Land, I consider that in the circumstances outlined above, I ought to treat the two conveyances as evidence of the ownership of Mrs Grant and Mr Thorne of the part of the Unit Land coloured pink on the 1939 conveyance plan. I am therefore satisfied that Mr Cronin as their successor in title is the owner of this part, and I shall accordingly under section 8(2) of the Act of 1965 direct the Hereford and Worcester County Council as registration authority to register Mr John Cronin of Mount View, Symonds Yat, near Ross on Wye as the owner of the part of the land comprised in this Register Unit which being about four fifths of the whole, is south of the Boundary Path as defined in this decision.



For the reasons set out above, I am not satisfied that Mr Cronin is the owner of the remaining part (north of the Boundary Footpath) of the Unit Land. In the absence of any evidence that any other person could be the owner, I am not satisfied that any person is the owner of this part, and it will therefore remain subject to protection under section 9 of the Act of 1965.

I feel uncertain whether the description of the Unit Land in this decision is in all respects accurate, because I understand its appearance to be somewhat unusual and Mr Cronin may have had some difficulty in describing it; perhaps I should at the hearing have offered to inspect it. Because the Unit Land may be of some local importance, I give to Mr Cronin and any other person who was entitled to be heard in these proceedings liberty to apply as to any amendment which ought to be made in this decision, and I will if need be inspect the land at the next convenient opportunity. Any such application should be made within 42 days of this decision being sent to the person concerned or to his solicitors, by letter addressed to the Clerk of the Commons Commissioners.

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 30th day of September 1977

a. a. Baden Fuller

Commons Commissioner