



COMMONS REGISTRATION ACT 1965

Reference No. 219/U/65

In the Matter of West Beach and Seasalter
Beach, Whitstable, Canterbury, Kent

DECISION

This reference relates to the question of the ownership of land known as West Beach and Seasalter Beach, Whitstable, Canterbury, being the part of the land comprised in the Land Section of Register Unit No. VG.126 in the Register of Town or Village Greens maintained by the Kent 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 Trustees of Fred Goldfinch, deceased, and Mr J W Buchanan claimed to be the freehold owners of parts 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 Maidstone on 7 June 1979. At the hearing the Goldfinch Trustees were represented by Mr P F Addis, Solicitor, and Mr Buchanan and Mrs A Wilks, the applicant for the registration, appeared in person.

The land comprised in the Register Unit is a narrow strip of land to the South of High Water Mark of medium tides. Near to the North-eastern extremity of this land there is shown on the Ordnance Survey Map on which the Register Map is based a swimming pool which is not comprised in the Register Unit. The site of this swimming pool and an area of adjoining land were conveyed to the late Mr F Goldfinch by an indenture made 2 May 1922 between (1) The Capital and Counties Bank Ltd (2) Leonard Arthur Stanley and Frederick Charles Kennish, two of the liquidators of the Bank (3) The Kentish Shipbuilding and Engineering Co. Ltd, (4) Arthur Octavius Nicholson (5) Fred Goldfinch. Mr Goldfinch died on 12 November 1956 and probate of his will was granted on 3 July 1957 to William Charles Harvey, William George Relton and Utrick Henry Burton Alexander. Mr Relton died on 28 January 1975.

Owing to the very small scale of the Register map it is impossible to determine with precision how much of the land conveyed to Mr Goldfinch in 1922 falls within the limits of the Register Unit. I am, however, satisfied on the evidence that Mr Harvey and Mr Alexander are the owners of so much of the land as falls within the limits of the Register Unit, and I shall accordingly direct the Kent County Council, as registration authority, to register them as the owners of so much of the land delineated on a plan to be annexed to my direction as is comprised within the Register Unit under Section 8 (2) of the Act of 1965.

By a conveyance made 20 January 1944 between (1) Una Evelyn Leicester (2) James Wardrop Buchanan there was conveyed to Mr Buchanan a house then known as "Rendezvous", but since known as "Seasalter Cottage" or 28 Admiralty Walk. The plan attached to this conveyance is a somewhat amateurish effort, but it appears to show the northern limit of the property conveyed as being the southern boundary of part of the land comprised in the Register Unit. It is therefore necessary to consider whether there is any extrinsic evidence that any part of the land comprised in the Register Unit belonged to Mr Buchanan's predecessors in title. If so, it would not be excluded from the conveyance by any deficiency in the plan, which is stated to be for the purposes of identification only.



-2-

The house now known as "Seasalter Cottage" was formerly known as 2 Seasalter Cliff Cottages and with the house on its western side, formerly known as 1 Seasalter Cliff Cottages, was the subject of a conveyance made 28 January 1924 between (1) Frederick John Oaten (2) Frederick John Skeffington. In this conveyance the premises were described as "abutting to the public road or way adjoining the Beach towards the North." This road had disappeared before the second world war and its site, in so far as it is now identifiable, comprised in the Register Unit.

Seasalter Cliff Cottages were the subject of an indenture made 12 May 1912 between (1) The Seasalter and Ham Oyster Fishery Co Ltd (2) F J Oaten, wherein with other buildings formerly used and known as Seasalter Coast Guard Station they were described as "abutting to the Public Road adjoining the Beach on the North". The plan drawn on this indenture shows the land conveyed coloured red. The land coloured red included a bank adjoining the road to the north. The northern edge of this bank, which existed until a flood in 1953, was about 20 feet to the north of the face of the present Sea Wall.

There is no description of the northern boundary of the property in an indenture made 23 September 1904 between (1) George Gardner and Worsfold Mowll (2) The Sea Salter and Ham Fishery Co Ltd, but it is stated that the hereditaments conveyed were "more particularly described and delineated in the plan drawn and coloured green and red on an Indenture dated 13 June 1861 being the conveyance of the reversion in the said hereditaments to the said George Austin". On this plan the land coloured green has on it a number of buildings coloured red. Also coloured red are roads to the north and south of the green land, but the colouring of the roads extends for a considerable distance to the east and west of the green land and a part of the Faversham and Herne Bay Railway is also coloured red, so little, if any, assistance is to be derived from this plan.

The land coloured green on the 1861 plan has on it the number 299. This number clearly refers back to the tithe apportionment award, where the property numbered 299 on the map referred to in the award is described as a house and garden having an area of 2a.1r.19p. and forming part of a blockade station in the ownership of the Commissioners of Her Majesty's Customs. The tithe map does not show the northern boundary of area 299, but Mr Buchanan, who is a fellow of the Royal Institute of British Architects, has worked out where the northern boundary would have to be for it and the other boundaries, which are clearly shown, to include an area of 2a.1r.19p.

In considering the boundaries of properties near the sea it has to be borne in mind that the mean high water mark varies over the years. In this case the present mean high water mark may well be different from what it was when the tithe map was prepared. It is, however, to be observed that there is no tithable land shown on that map to the north of 299. From this I draw the conclusion that the northern boundary of No. 299 was intended to be mean high water mark. If Mr Buchanan's calculation is correct (and I have no reason to doubt it), he has recovered the line of mean high water mark at the time of the tithe award. This lay slightly to the north of the road as shown on the tithe map. If the line of the road remained unchanged between the making of the tithe map and the indenture of 12 May 1912, the description of the northern boundary of the land as the public road or way adjoining



-3-

the beach was at variance with the evidence of the tithe map that the northern boundary was mean high water mark. There is, however, nothing in the documents to show it was intended to exclude from the various conveyances any land which had been included in tithe No. 299. The proper course therefore seems to be to regard the reference to the road as the boundary in the indenture of 12 May 1912 as a misdescription, which was repeated in the conveyance of 28 January 1924. This, in my view, is a case which falls within the principle commonly summarised in the maxim falsa demonstratio non nocet. It would not, however, in my view, be correct to plot the line of the mean high water mark recovered by Mr Buchanan on a modern map and say that it defines the present northern boundary of Mr Buchanan's property. That boundary is mean high water mark wherever it happens for the time being to be.

Since the land comprised in the Register Unit is stated to be located above high water mark of medium tides, it follows that I am satisfied that Mr Buchanan is the owner of the land to the north of his house which is comprised in the Register Unit. I shall accordingly direct the Kent County Council to register him as the owner of that part of the land under section 8 (2) of the Act of 1965.

In the absence of any evidence I am not satisfied that any person is the owner of the remainder of the land, and I shall accordingly direct the Kent County Council as registration authority, to register the Canterbury City Council as the owner of the remainder under section 8 (3) 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 this

26th

day of

June

1979

Chief Commons Commissioner