



In the Matter of land known as Black Mixen,
Llanfihangel Nantmellan, Cascob and
Llanfihangel, Rhydithon

DECISION

This reference relates to the question of the ownership of land above mentioned being the land comprised in the Land Section of Register Unit No. CL 68 in the Register of Common Land maintained by the Powys 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 Mr and Mrs Hardwick and the Secretary of State for Wales on behalf of the Forestry Commission 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 Llandrindod Wells on 2 May 1984.

Mr T M Evans of Sydney G Thomas and Co, Solicitors of Bulth Wells appeared for Mr and Mrs Hardwicke and the Treasury Solicitor appeared for the Secretary of State for Wales.

The question of the ownership of this register unit had been the subject of a hearing on 5 June 1973 before H E Francis Esq QC., a Commons Commissioner and on that occasion ownership of the whole unit had been claimed by the then owners of Bach Farm, a predecessor in title of Mr and Mrs Hardwicke.

The evidence relied on was that in 1913 the owners of Bach Farm had sold that property for an estate in fee simple together with the exclusive right of grazing and pasture over the register unit then attached to the Farm and had reserved to himself the sole rights of shooting and burning heather and gorse on and over the unit.

Mrs Williams had acquired the Farm in 1956 and in 1964 had conveyed it to Trustees for her children. Between 1962 and 1973 Mr Williams and her successors in title had entered into an agreement with the Mid Wales Police Authority granting permission to erect a Radio Transmitter on the unit and had granted the local water board a right of way over the unit to the Transmitter. In respect of these grants the grantors received annual payments. The sporting rights were enjoyed by a Major Lewis and only he and the owners of Bach Farm and their tenants made any use of the unit.

The Commissioner held that the claimants failed to prove that their possession was adverse and that in any event the ~~then~~ acts or transactions relied on related to a period which began less than 12 years ago. He was not satisfied that any person was the owner of the land and it remained subject to protection under Section 9 of the Act of 1965. The decision is dated 23 July 1973.

Bach Farm and the right of grazing Black Mixen had been conveyed to Mr and Mrs Hardwicke in 1976.



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Mr Evans relied on the evidence given at the previous hearing and produced two wayleave agreements not mentioned at that hearing, one in favour of the Electricity Board allowing it to take a supply of electric power to the Transmitter and the other to the GPO allowing the laying of 1250 yards of underground cable and marker posts on Black Mixen. Both grants were made in 1964.

In 1981 the Hardwicks had entered into a fresh wayleave agreement with the Electricity Authority giving consent to a line of overhead cables to be laid underground.

All the agreements purported to be made by the grantors as owners of Black Mixen.

In 1976 the Hardwicks applied for and received a cash grant from the Ministry of Agriculture, Fisheries and Food towards the cost of putting up 3,000 yards of fencing round Black Mixen. The northern boundary of Black Mixen is fenced by the Forestry Commission and the completion of the new fencing resulted in the whole circumference being fenced.

Evidence in support was given by Mr Victor Basil Williams a son of Mrs Edith Williams and by Mr Hardwicke.

The annual wayleave income is about £26 and income from this source has been received by the owners of Bach Farm since 1964.

Mr Evans referred to Halsbury's Laws of England (4th Ed.) Vol. 28 para. 769 (last sentence) and Limitation Act 1980, Schedule 1, para. 8(4) and submitted that on the evidence his clients had proved their claim to ownership though he admitted that he could not yet rely on the fencing put up in 1976.

Before I deal with Mr Evans' submissions I should mention that the Secretary of State for Wales produced a conveyance dated 27 June 1975 made by John Thomas Edwards of the land adjoining the northern side of Black Mixen which included a small triangle of land included in the register unit and Mr Evans accepted that this triangle was owned by the Secretary of State.

When Bach Farm was first sold in 1913 and the Vendor reserved to himself the sporting rights over Black Mixen, he retained ownership of the fee simple of Black Mixen. I agree with Mr Francis that none of the wayleaves granted since 1962 defeat the rights of the ownership. Subject to the statutory powers of the grantees he would be entitled as owner to challenge their rights and subject to the Limitation Acts he would be entitled to claim payment of the owner's share of the wayleave.

It was not suggested that the sporting rights are no longer being ^{enjoyed} exercised as they were being enjoyed in 1973 and in my view, so long as the sporting rights are being enjoyed by Major Lewis or some one claiming under him, that person's claim to ownership of the fee simple is not defeated, notwithstanding the erection of the fencing in 1976.

On this evidence I am satisfied that the Secretary of State for Wales is the owner of the said triangle of land. I shall accordingly direct the ^{Powys} ~~Duned~~ County Council, as registration authority, to register him as the owner of the land under section 8(2) of the Act of 1965. I am not satisfied that any person is the owner of the



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remainder of the land which will therefore remain subject to protection under Section 9 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 23rd day of May 1984

George Hesketh
Commons Commissioner

*Amended in red
George Hesketh
12. vii. 84*