



COMMONS REGISTRATION ACT 1965

Reference No 232/D/216-221

In the Matter of Langford Budville Common,
Somerset

DECISION

These disputes relate to the registrations at Entries Nos 1, 2, 3 and 4 in the Ownership section of Register Unit No CL 20 in the Register of Common Land maintained by the Somerset County Council and are occasioned by the conflict between the registration at Entry No 4 on the one hand and each of the registrations at Entries Nos 2, 3 and 3 on the other.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 10 May 1979. The hearing was attended by Mr W R Williams, Solicitor, of the firm of Dodson, Harding & Couch representing the personal representatives of Mr W C A Sanford (registered as owner under Entry No 4) and by Mr M R Rose, Solicitor, of the firm of Clarke, Willmott & Clarke, representing the persons (or their successors) registered as owners under Entries Nos 1, 2 and 3.

Mr Sanford, (Entry No 4) registered ownership to the whole of the common ("the Unit Land") except strips lying within boundary lines. He died in April 1974 and his will was proved on 26 February 1975. As to the other Entries, Entry No 1 relates to areas of land at the southern end of the Unit Land, the registered owner being James Cottrell & Sons (Langford) Ltd ("Cottrell") which owns Bere Farm adjoining the southern boundary of the Unit Land: Entry No 2 relates to areas in the northern section of the Unit Land, the registered owner being Mr J Tarr, who owns Leigh Farm adjoining the northern boundary of the Unit Land: and Entry No 3 relates to areas in the central and eastern sections of the Unit Land, part of whose eastern boundary adjoins Middle Hill Farm which is owned by Mr E M W Prescott, the successor to Mr H E J Brown (registered under Entry No 3 as owner of these areas).

Mr Sanford was the owner of a large estate known as The Chipley Park Estate which included the Unit Land. Mr Williams adduced as evidence of this ownership a Vesting Deed dated 17 February 1927 between E A Knight and others as trustees of a settlement of the one part and Mr Sanford of the other part, a Disentailing Deed dated 11 April 1929 between the same parties (which included a declaration by the trustees of discharge from the lands of the settlement) and a Mortgage dated 11 April 1929 by Mr Sanford to mortgagees. This Mortgage was paid off in February 1943 when the estate was sold by Mr Sanford to a company Fenchurch Nominees Ltd ("Fenchurch"): but this sale, or at least the Conveyance to Fenchurch, did not include the Unit Land. This evidence, Mr Williams submitted, (and in my view rightly) sufficiently established Mr Sanford's paper title to the Unit Land, and Mr Rose, for the 3 other claimants, did not contest this.



In June 1949 Fenchurch sold by auction property it had purchased from Mr Sanford. This property included Leigh Farm (Lot 1), Middle Hill Farm (Lot 4) and Bere Farm (Lot 23), and the purchasers were Mr Tarr (Leigh Farm), Mr Broom's father (Middle Hill Farm) and Mr Toogood (Bere Farm) who sold to Cottrell in 1959: all 3 purchasers were sitting tenants and had been tenants of Mr Sanford. The sale particulars of each Lot included the words "Also such rights and interests as the Vendor has in part of (the Unit Land indicated on a plan) are included in the sale subject to such other rights as are at present enjoyed in respect thereof". The respective parts of the Unit Land indicated were, for Leigh Farm the areas registered under Entry No 2 and for Middle Hill Farm those registered under Entry No 3: the copy of the plan which I saw is not complete but I am prepared to accept that the parts of the Unit Land indicated for Bere Farm were the areas registered under Entry No 1. In the Conditions of Sale, No 26 provided that "the Vendor and its predecessor in title enjoy certain rights over (the Unit Land) which, as far as is known, comprises the right of sporting, grazing and cutting wood for use upon the Estate. The title to those rights cannot be traced and seems to be lost in antiquity. No title thereto will be deduced but, so far as it is able, the Vendor will transfer such rights to Lots 1, 4, 6 and 23, in so far as they appertain to the portions of the (Unit Land) to be sold with such Lots".

Before completion there was correspondence at the end of 1949 with Fenchurch's solicitors from which it appeared that when Fenchurch purchased from Mr Sanford it was understood that his only interest in the Unit Land was certain manorial interests the title to which could not be traced, but there was a written undertaking by Mr Sanford to transfer to Fenchurch such manorial rights (if any) as may exist in respect of the Unit Land. It was further stated by Fenchurch's solicitors that it was understood that the whole of his interest in the Unit Land was included in the sale to Fenchurch, and that they had written to Mr Sanford's solicitors that if it could be proved that he is the freeholder then Fenchurch were entitled to have the freehold conveyed to them. It does not appear that there has been any transfer by Mr Sanford of any manorial rights over the Unit Land or of the Unit Land itself. Fenchurch's title to the estate was registered under the Land Registration Acts: and it appears that in the Deed of Transfer by Fenchurch of Middle Hill Farm there was included "the rights so far as the Vendor can grant the same of sporting, grazing and cutting wood upon (the part of the Unit Land shown on the plan)", and no doubt there was a similar provision in the transfers of the other 2 Lots. These rights, it would appear, were not registered under the Land Registration Acts, being over-riding interests.

It has apparently never been established that Fenchurch had an enforceable right to claim ownership of the Unit Land or any part of it, and in the evidence relating to the circumstances of the acquisition by Fenchurch and its subsequent sale of the different farms, I can find nothing which operated to divest ownership of the Unit Land from Mr Sanford or to effect any transfer of ownership to Fenchurch or its purchasers.

Mr Rose who produced the documents, or evidence of the documents, referred to in paragraph 4 above, did not contend that they established the claims to ownership of his clients, but submitted that Fenchurch had always understood that if Mr Sanford had rights over the Unit Land they would be assigned and his ownership should have been transferred to Fenchurch. That is not, I think, a conclusion which I could properly reach on the material available: even if I did, there would still be missing



the steps necessary to effect a transfer of ownership ultimately to Mr Rose's clients. Mr Rose sought however to found his clients' claims on the acquisition of a possessory title. As regards Leigh Farm, Mr Tarr gave evidence as to his purchase from Fenchurch in 1949 and said that it was explained that there were shooting, grazing and cutting rights over the common. A scheme for the regulation of the common by Wellington Rural District Council was made under the Commons Act 1899, and they - his wife and himself - the joint owners of Leigh Farm, "were in it as owners of the soil of the common". He produced letters written in October and November 1949 from a firm of Land Agents asking for his permission to allow Mr Sanford to continue to shoot over the common, which permission Mr Tarr apparently refused: it should be observed that in the earlier of the letters dated 10 October 1949, the writers said that they were writing to ask Mr Tarr "as an owner of common rights". In 1951-1953 when the Army made use of the common, they asked his permission to make a layby at a point in the area of the Unit Land of which he claims ownership, and he signed a form of consent. By a Deed dated 2 March 1978 he and his wife granted to a Mr and Mrs Symons a right to lay water pipes along a line on the area of the Unit Land he claims. He also said that he had exercised shooting rights over their side of the common since 1949, and had not known Mr Sanford to exercise any shooting or other rights.

Mr J T Cottrell gave evidence in regard to Bere Farm, which Cottrell purchased from Mr Toogood in 1959. In answer to the question whether anyone had treated Cottrell as owners of part of the soil of the common, he said only in 1962/1963 when Wellington Rural District Council required them to remove a dangerous tree. Since the purchase of Bere Farm in 1959, he had shot over the common and had not known Mr Sanford to shoot over any part of the land, or take wood, or pasture cattle.

Finally, in relation to Middle Hill Farm Mr T J Prescott, who purchased the farm from Mr Broom in 1970, said that he always thought the purchase included the soil of the area of the Unit Land he claimed. He had never seen Mr Sanford exercising any rights over the common.

In the case of none of the 3 claimants is the evidence, in my opinion, adequate to establish a title by adverse possession. There are registered rights - grazing, shooting, estovers and turbarry - in respect of each of their farms over the whole of the Unit Land which have become final; and in the somewhat puzzling circumstances as to what possibly should have been included in the sale by Mr Sanford to Fenchurch and by Fenchurch to its purchasers, I think it is understandable that the ownership claims under Entries 1, 2 and 3 were registered. But in the result those claims have not, in my view, been established and I refuse to confirm the registrations and confirm the registration at Entry No 4.

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

21st

day of

August

1979.

L. J. Morris Smith

Commons Commissioner