



In the Matter of land adjoining Caters Farm,  
Rattlesden, Suffolk

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 85 in the Register of Common Land maintained by the former West Suffolk 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 Executors of Henry N D Mahony claimed to be the freehold owners of the land in question ("the Unit land") 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 Bury St Edmunds on 8 November 1979.

At the hearing Mr M P M Prentice, Solicitor, appeared on behalf of the Claimants and Mr Richard H D Mahony, one of the Claimants, gave evidence. The Unit land is a strip of land adjoining to the north and east land forming part of Cater's Farm and to the south and west, the roadway. I was told that Cater's Farm had belonged to the family for many years and from the documents I have seen it appears that Cater's Farm, including the land adjoining the Unit land, became vested in Henry N D Mahony in 1957 and that the Claimants are his executors. These documents (or certified copies) included the following:- (a) Conveyance dated 8 October 1942, between Charles A Pike (1) and Richard H Edgar and Albert T Edgar (2). (b) Conveyance dated 1 December 1944 by Richard H Edgar to himself. (c) Assent dated 5 April 1956 by Personal Representatives of Richard H Edgar in favour of Helen Mary Mahony and Henry N D Mahony. (d) Conveyance dated 27 March 1957, between Helen Mary Mahony (1) and Henry N D Mahony (2). Mr Prentice did not submit that the Unit land was specifically included in any of the documents.

As appeared from the evidence of Mr R H D Mahony (who is aged 31 and has known the farm all his life), the Unit land has been used for purposes of access to the roadway and there is a track over the Unit land from the farmland to the roadway. The land has been kept tidy so as not to hang over the road. No objection has been raised by any other person to the farm's use of the Unit land, and no one else has maintained it. People do come on to the Unit land from the road, mainly to pick blackberries.

Mr Prentice's submissions were threefold: (1) He referred to the presumption of ownership of the soil of the highway by adjoining landowners. In the absence of evidence that the Unit land is part of the roadway, which in any event seems not to be the case, I do not think that the presumption is relevant to this case. (2) He relied on the acts in relation to the Unit Land as establishing a possessory title. In my opinion the acts described are insufficient to establish possession of the Unit land and dispossession of the owner. (3) He submitted that a Conveyance of the farmland would implicitly include the Unit land. Where a strip of waste land intervenes between a highway and adjoining property, there is a presumption that the waste land belongs to the owner of that property and passes under a conveyance of it (see Halsbury's Laws of England 3rd ed. Vol. 19 p. 67). This presumption on the facts of this case is, in my view, applicable to support the claim to ownership, and accordingly I shall direct the Suffolk County Council, as registration authority, to register Phillipa Palmer, Richard Henry Desmond Mahony and David Robert



Edgar Mahony (the Executors of Henry N D Mahony) as owners of the Unit land under Section 8(2) 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

9 January

1980

*L. J. Morris Smith*

Commons Commissioner