



In the Matter of Land known as River
Waveney (part), Bungay

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 166 in the Register of Common Land maintained by the former East 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 Outney Common Owners 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 Ipswich on 26 February 1980.

At the hearing Mr R Hughes of the firm of Sprake and Hughes, Solicitors, appeared on behalf of the Claimants. Mr I Gosling the registered holder of fishing rights was represented by Mr A G Strutt, but made no claim to ownership.

The Unit land is part of the bed of the River Waveney. The river to the north west of Bungay bends so as to surround most of a roughly circular area known as Outney Common, so that the Common adjoins the Unit land. This stretch of the river is non tidal and the middle is I understand the boundary between the riparian counties - Suffolk and Norfolk: the Unit land accordingly is the part of the bed on the Suffolk side, adjoining the Common.

The Claimants' case for ownership is based on their ownership of Outney Common coupled with the presumption that as riparian owners, they own the bed of the river usque ad medium filum i.e. the Unit land. Outney Common was itself provisionally registered as common land, but on 3 March 1979 Mr C A Settle, GC, Commons Commissioner, refused to confirm this registration (Reference No. 234/D/65-66-69). Although it was not necessary for the purposes of his Decision to find who was the owner of the Common, it was part of his Decision that the Common was not waste land of the manor and in so deciding he found that the Common was not in the ownership of the lord of the manor. This finding was based on the conclusion that the title of the Lord of the Manor was barred under the Limitation Acts: there was evidence that the commoners were in 1864 the owners of the soil, (I quote from the Decision) and "the fact of the matter is that the common owners by their agents the Fen Reeves have been in possession of the land since 1864 even if they were not then the owners the Common owners and they alone have been in receipt of the rents and profits".

By a Deed of Appointment dated 30 April 1937 Between (1) the Common Owners interested in more than one half of the Common (2) Arthur Nicols Wright and Others ("the Trustees") it was recited that immediately before 1 January 1926 the Common was vested in the Common Owners in 300 undivided shares as tenants in common and the Trustees pursuant to the power conferred by the Law of Property Act 1925 were appointed trustees of the Common, and it was declared that the Common should vest in them in fee simple upon the statutory trusts. Since 1937 the trustees for the



time being have leased parts of the Common to Bungay Urban District Council and fishing rights to the Cherry Tree Angling Club and have granted an easement to the East Anglian Water Company.

There have been changes in the trustees and as the result of a Deed of Appointment dated 6 August 1979 the present trustees are John E W Gibbs, Kathleen Bowerbank, Geoffrey Alexander and Nicolas De B Corbin. I am satisfied that they are the owners of Outney Common, and as riparian owners have title, by virtue of the presumption referred to above, to the Unit land.

I shall accordingly direct the Suffolk County Council, as registration authority, to register them as the 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

21 April

1980

L. J. Morris Smith

Commons Commissioner