



In the Matter of piece of land in the
parishes of Abinger, Wotton, Ockley and Shere
known as waste lands of the manors of Wotton
Abinger, Paddington Dean and Paddington
Pembroke

DECISION

This reference relates to the question of the ownership of land described above being the parts of the land comprised in the Land section of Register Unit No. CL.50 in the Register of Common Land maintained by the Surrey County Council of which no person is registered as owner under section 4 of the Commons Registration Act 1965 or under the Land Registration Acts.

Following upon the public notice of this reference Mr John P M H Evelyn claimed to be the freehold owner of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 21 May 1986.

At the hearing Mr A J Sydney, Solicitor, appeared on behalf of Mr John Evelyn ("John"); and Miss J Cooksey, Solicitor, appeared on behalf of Mr D Boxall.

The land comprised in CL.50 consists of small and separate strips of land in an area extending from south to north for about four miles. A number of small sections of the land are registered freehold under the Land Registration Acts, and the ownership of these is not therefore a matter for my decision. There are no rights of common registered, so that the registration of the land as common land, which has become final, must be taken to establish that it is manorial waste; and this is indicated by the description above, which appears in the Land Section of the Register.

The paper title adduced in support of Mr Evelyn's claim starts with a Vesting Deed dated 8 March 1926 made between A O C Chichester and Others (the Trustees) (1) and Cecil J A Evelyn ("Cecil") (2). This Deed recited that under the will dated 28 January 1908, William J Evelyn who died in June 1908, and other documents and matters therein referred to, the hereditaments then subject to the trusts of the will stood settled on trusts under which Cecil was tenant for life; and the Trustees declared that the fee simple in the property was vested in Cecil. Following upon an Order of the High Court made in 1965 under the Variation of Trusts Act 1958 there was a Conveyance and Vesting Deed dated 9 August 1965 made between Cecil (1) the then Trustees (2) John (3), and by this Deed Cecil conveyed the property to John on the trusts of a newly created Settlement, he being the person



having the powers of a tenant for life. Finally by a Deed of Discharge dated 17 May 1976 the surviving trustee of the Settlement pursuant to S.17 Settled Land Act 1925 declared himself discharged from the trusts of the Settlement

The paper title, in my opinion, supports John's claim to ownership of the land subject to the trusts of the 1908 will, but there was nothing in the documents of title to identify what that land was, and in particular whether it included all or any of the CL.50 Land. On this question Mr P A C Trower FRICS of the firm of King and Chasemore, Managing Agents of the Evelyn estate, gave evidence. He produced two plans marked respectively "A.1" and "B" which together depict all the pieces of land comprised in CL.50, except the small sections registered under the Land Registration Acts. He told me that all these pieces are shown on the Evelyn Estate map of 1908, except for two pieces shown separately on a plan he produced marked "A.2".

Manor Court Rolls and other records of the Evelyn Estate over the 18th 19th and early 20th centuries and relating, inter alia, to the manors of Abinger, Paddington and Wotton and to land in the parishes of Abinger, Wotton, Paddington Shere and Dorking have been seen and examined by the Surrey County Archivist and, I gather, deposited in the Surrey Record Office; a letter to this effect dated 29 November 1962 from the County Archivist was produced. There have been recent sales by the Claimant of small sections of CL.50 which may not yet have been finally registered under the Land Registration Acts, and such sections are not included in Mr Evelyn's claim.

I must refer again to the two pieces of CL.50 shown on plan A2 and not included in the 1908 estate map. These pieces are verges, the one ("the NS piece") running along Mole Street from north at Cox corner to south near Parkland Farm, and the other ("the WE piece") running from Heathfield Wood for a short distance eastwards. The pieces include verges fronting either Manor lands subject to quit rents or former Demesne lands, and over one small section of the WE piece there are wayleaves granted for electricity lines (1961) and a telegraph line (1966) by the Steward of the Manor of Wotton. In both pieces however there are short strips for which there is no such evidence of title.

Miss Cooksey appearing for Mr Boxall told me that he is concerned only with a small area shown coloured yellow on plan B, which is a plan of the most northerly piece of CL.50, consisting of verges running from north to south down Mile's Hill on the western side of Upfolds Farm. This yellow area is the subject of proceedings in the Guildford County Court between Mr Evelyn and Mr Boxall, in which the latter is claiming ownership by adverse possession.



Both parties, I understood, were content to await the outcome of these proceedings and this decision is not therefore dealing with the ownership of the yellow area.

The parts of CL.50 whose ownership is the subject of the decision do not include (a) the pieces which are registered freehold under the Land Registration Acts or the subject of any application for such registration, (b) other pieces, if any, which Mr Evelyn has sold and do not fall within (a), and (c) the yellow area. As to the remainder of CL.50 on the evidence I am satisfied that Mr John Evelyn is the owner and I shall accordingly direct the Surrey County Council as registration authority, to register him as the owner 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 this decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

10th

day of

July

1986

H. J. Morris Smith

Commons Commissioner