



COMMONS REGISTRATION ACT 1965

Reference No 209/U/12

In the Matter of land in front
of St Thomas' Church, Kentisbury,
North Devon District, Devon

DECISION

This reference relates to the question of the ownership of land in 3 pieces at the junction of Bayclose Lane and Furzepark Lane in front of St Thomas' Church, Kentisbury, North Devon District being the land comprised in the Land Section of Register Unit No VG. 74 in the Register of Town or Village Greens of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

The County Council in a letter dated 5 December 1973 claimed ownership of part of the land in question as having been farmed by their tenants of an adjoining small holding, or alternatively of part or all the land as being part of the Parish roads. Following upon public notice of this reference the Clerk of Kentisbury Parish Council in a letter dated 29 April 1977 said that the land was Parish property which had been transferred to the Council by the Vestry under the Local Government Act 1894; and the County Council in a letter dated 5 October 1977 said they would not oppose the application of the Parish Council to be registered as the owner of the land. No other person claimed to be the freehold owner of the land or 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 Barnstaple on 15 November 1977. At the hearing Kentisbury Parish Council were represented by the Rev H G Ayre, who is Rector of Kentisbury and their chairman.

Mr Ayre in the course of his evidence produced: (1) the Kentisbury Vestry Book from 1860 to 1879, which recorded that at a meeting held on 22 July 1867 they accepted a tender "for draining the church yard" and "also do what further work is required with regard to the carrying forward the drain along through the church path under the direction of the churchwardens"; (2) an extract from the Kentisbury Tithe map of 1840 on which the land comprised in this Register Unit and the now adjoining roadways are all coloured pink and unnumbered; and (3) the Parish Council Minute Book which records that at a meeting on 15 April 1895 the Council decided that they had no power to act on a complaint as to the pathway leading to the Church, the road being in the hands of the District Council.

Mr Ayre who has been the incumbent for the last 31 years (before he held office at East Down) said (in effect):- The 3 pieces, together about $\frac{1}{4}$ of an acre, are all grassland, separated by roads, being byroads (the Village is scattered). The drain referred to in the 1867 minute runs in a westerly direction parallel with the road adjacent to a conifer tree planted by the late Mr Francis Toms in connection with the Jubilee of HM Queen Victoria. The well on the land, from



which water is drawn for the churchyard, has been repaired and maintained by the Parish Council; it is not otherwise used. Over the years people from time to time leave agricultural implements on the land, but these have been removed after complaints. At one time one of the pieces was farmed with the adjoining land on the south; on this piece now stands the War Memorial; the tenant cut back the hedge so there is only a bank showing the boundary, and in the result this War Memorial piece is part of the rest of the registered land.

Mr E W Tebboth who is the clerk of the Parish Council said that in 1973 the Parish Council spent £212 clearing the Green of brambles and dead trees and in 1968 cleared the stream which runs through the land.

In the particular circumstances of this case, it may not matter whether I am satisfied as to the ownership now claimed by the Parish Council, because if I was not so satisfied, there being no evidence that any other person could be the owner, I would be required by subsection (3) of section 8 of the 1965 Act to direct the registration of the Parish Council as the owner. Although the ownership evidence summarised above is slight, I consider that I can from it conclude that for many years the land has been reputed to be Parish property which is now by operation of law owned by the Parish Council as successors of the Vestry. For this reason I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Devon County Council, as registration authority, to register Kentisbury Parish Council as the owner of the 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 this 8th day of December 1977

a. a. Baden Fuller

Commons Commissioner