



In the Matter of The Triangular Piece of Land at
Woollards Hill, Publow, Avon

DECISION

This reference relates to the question of the ownership of a triangular piece of land at Woollards Hill, Publow, being the land comprised in the Land Section of Register Unit No. CL.143 in the Register of Common Land maintained by the Avon 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 Mr B A C Hutchinson claimed to be the freehold owner of the land in question 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 Bath on 19 July 1983. I had held a previous hearing at which I was not satisfied that any person was the owner of the land in question. At the hearing on 19 July 1983 Mr Hutchinson was represented by Mr M Evans, of Counsel, and the Publow Parish Council by Mr L Coles, its Clerk.

Two sides of the land in question are bounded by roads, which meet at the apex of the triangle, and the third side is bounded by land which was purchased by Mr Hutchinson in 1965. In 1965 the triangle was divided from the land purchased by Mr Hutchinson by a wall, which was then more or less derelict, and there was no fence or hedge along the sides of the triangle adjoining the roads. The triangle was then overgrown with brambles and rubbish had been deposited on it.

About six months after purchasing the adjoining land Mr Hutchinson cleared away some of the rubbish and burnt off the vegetation. The burning was repeated at intervals between 1965 and 1967. In July 1969 Mr Hutchinson employed Brian Maggs Plant Ltd to clear away the remains of the wall and to grub out the footings. The wall was replaced by a fence to stop cows crossing over the triangle from getting into Mr Hutchinson's adjoining land. When this work was being done a strip about 12 to 20 ft wide was cleared in the triangle to make it easier to erect the fence. At the same time there was some levelling of what was described as "humps and bumps" in the triangle. Afterwards Mr Maggs delivered a load of topsoil to the triangle. Mr Hutchinson said that this topsoil was placed along the boundary where the wall had been.

At some time during the 1970's Mr Hutchinson demolished an old wooden building on his land near the boundary of the triangle and replaced it with a new building. A surface water drain from this building was laid in the triangle. The trench for this drain remained open for six months, and the concrete blocks for the new building were stored on the triangle.

Shortly afterwards, Mr Hutchinson enclosed the triangle with posts and a single strand of wire. This he was asked to remove by a representative of the Parish Council and he did so in order, as he put it, "to prevent further aggravation".



The land became covered with young trees and brambles and was used as a dump from time to time. It remained like this for many years until New Year's Day 1980, when Mr David Osborne and another man began to cut down the young trees and clear the brambles on the triangle. Mr Hutchinson told them to get off. The Clerk of the Parish Council and a member of the Council were summoned and work was suspended. There followed a conversation between Mr Hutchinson and Mr H J Wyatt, a member of the Parish Council, after which some trees and their stakes were delivered to Mr Hutchinson's property and were subsequently planted in the triangle by Mr Osborne on behalf of the Parish Council. Nothing was said about the ownership of the triangle at this stage, but the delivery of the trees and stakes and the subsequent planting were agreed between Mr Hutchinson and Mr Wyatt.

On 18 January 1980 Mr Hutchinson wrote a letter to the Chairman of the Parish Council, in which he said that he had been in consultation with "officials", whom he did not identify, regarding the land with a view to purchasing it. He then went on: "Recently I contacted Councillor Webb and asked him to see if I could purchase it; from what he tells me the matter is still under consideration

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"I propose asking the rightful owners to sell me part of this land. I will clear it, fence it and plant some young trees. The area which is left will be cleared and kept tidy, and I will arrange for a concrete seat to be placed there for public use".

In the course of his evidence Mr Hutchinson said that he had been in possession of the triangle since 1967. If so, he had acquired a possessory title by 1979, and this is inconsistent with what he was saying in his letter of 18 January 1980. In my view, Mr Hutchinson was right when he accepted in his letter that he had no title to the land. At various times he entered on the land, but he did not obtain continuous possession of it. His nearest approach to continuity was the construction and maintenance of the storm-water drain, but the most that Mr Hutchinson could acquire by this would be an easement for the passage of the water.

I have therefore come to the conclusion that, on the evidence before me, I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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 27th day of June

1983
[Signature]
Chief Commons Commissioner