



COMMONS REGISTRATION ACT 1965

Reference No. 216/U/104

In the Matter of Roadside Verges, Wormley West End,
Brickenden Liberty

DECISION

This reference relates to the question of the ownership of part of the land comprised in the Land Section of Register Unit No. CL.182 in the Register of Common Land maintained by the Hertfordshire 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 6th Marquess of Salisbury 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 St. Albans on 22 January 1991.

At the hearing Mr P J Neville, Solicitor, of Frere Cholmeley represented the 6th Marquess of Salisbury (claimant). The Registration Authority were not represented.

The unit land consists of a length of road running east and west at Wormley together with the roadside waste on either side. Such roadside waste is typical waste land of a manor and in default of any other owner belongs to the Lord of the Manor if he can be found.

Mr Neville contended that that part of the unit land which lay to the north of the road was part of the waste land of the Manor of Baas and that the 6th Marquess of Salisbury as the Lord of that Manor was the owner. No one opposed this claim.

This involves two questions:-

1. Is this land part of the waste of the Manor of Baas?
2. Who is the Lord of that Manor?

Is the land part of the waste of the Manor of Baas?

Mr Robin Hugh Harcourt-Williams gave evidence that he is and has been since 1972 the archivist to the Marquess of Salisbury. He produced the Court Book of the Manor of Baas. That book describes a Court of Survey held on 12 May 1873. There was a perambulation of the boundaries recorded in a written description and a map. Part of the description of the southern boundary of the Manor records that boundary as running:-

"along the Ditch between Wormley Wood and the Furzes into Wormley Wood Lane - then turn eastward along and follow the Lane to Holy Cross."

Comparison of this description with the map of the manor boundary in the court book, with the register map and with a modern 10,000 : 1 Ordnance Survey map convinces me that the southern boundary of the Manor runs along the road running along the unit land for the whole of its length. Assuming, as I must, that the boundary of the Manor runs along the centre of that road. It follows that the unit land to the north of that road, which is all roadside waste, lies within the Manor and since it has every appearance of being manorial waste belongs to the Lord of the Manor.



Who is the Lord of the Manor of Baas?

Mr Neville produced a vesting assent dated 27 February 1948 whereby among other land the lordship of the manor of Baas was vested in the 5th Marquess of Salisbury as tenant for life to be held on the trusts of a resettlement made in 1915.

The manor was, therefore, at that date settled land. Mr Neville at first contended that it had, during the lifetime of the 5th Marquess, ceased to be settled land by the exercise by the 5th Marquess of an overriding power of appointment thereby vesting the land in himself free of the trusts of the settlement. He was, however, unable to produce any evidence either that there was any such power in the 1915 resettlement (which was not put in evidence) or that any such power had ever been exercised.

This, however, seems to me to be irrelevant to the question which I have to answer.

Mr Neville produced Probate dated 28 March 1972 of the Will of the 5th Marquess who had died on 23 February 1972 which shows that that Will was proved and registered in the Principal Registry and that administration of all the estate which by law devolves to and vests in the personal representative was granted to the executors of that Will. There is no exclusion of settled land.

Since there is no suggestion that the 5th Marquess had disposed of the Lordship of the Manor of Baas this Probate is conclusive evidence that the legal estate in that Lordship vested in the executors whether or not it was settled land. If, as seems possible, it remained settled land at the death of the 5th Marquess the trustees of the settlement could, and perhaps should have applied for probate specially limited to the settled land under section 22 of the Administration of Estates Act 1925. Since they did not do so the executors in whom the land was vested would if it remained settled land have held the land subject to the trusts of the settlement and the provisions of section 23 of that Act would have taken effect.

But I am not concerned with any of that. I am only concerned with the legal estate in fee simple. Section 204 of the Law of Property Act 1925 precludes me from looking behind the Probate which is an order of the Court - see Re Bridgett and Hayes' Contract [1928] Ch 163.

That being so, I am satisfied that on the death of the 5th Marquess of Salisbury this Lordship vested in his executors.

These executors were -

- (1) The sixth Marquess of Salisbury
- (2) Richard Edward Osborne Cavendish

and

- (3) The Honourable Edward Christian David Cecil C H (generally known as Lord David Cecil).

No assent has been executed so the title remains in the executors.



A death certificate was produced showing that Richard Edward Osborn Cavendish died on 14 August 1972. No such certificate was produced in respect of Lord David Cecil but it is a matter of public knowledge that he is dead.

That being so I am satisfied that the Most Honourable Robert Edward Peter Cecil Sixth Marquess of Salisbury as sole surviving executor is the Lord of the Manor of Baas and as such is the owner of so much of the unit land as lies to the north of the road.

I shall accordingly direct the Hertfordshire County Council, as registration authority, to register him as the owner of that 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

24th

day of

January

1991

Peter Langdon-Davis

Chief Commons Commissioner