

In the Matter of Pont-y-Gwrhyd St. Davids

DECISION

This reference relates to the question of the ownership of land known as Part O.S.6440 being part of the land comprised in the Land Section of Register Unit No. CL.75 in the Register of Common Land maintained by the former Pembrokeshire 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 David Evan Salmon claimed to be the freehold owner of the land in question and William Ian Andrew Jamieson and Albert Vaughan Evans 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 Fishguard on 17 May 1994.

At the hearing Mr Salmon appeared in person, and he, Mr Jamieson and Mr Evans gave evidence upon oath. Mr W Lewis represented Dyfed County Council the Registration Authority.

As the result of a decision by Mr George Hesketh, Commons Commissioner given on 12 June 1984 Mr Salmon is registered as the owner of the land coloured yellow on the Register Plan (which includes the eastern part of O.S. 6440 as far as the line C-I) while the remainder of the land in this unit remains subject to protection under section 9 of the 1965 Act.

The land now claimed by Mr Salmon is the remainder, or western part, of O.S.6440 to the westward of C-I.

The Rights Section of the Register shows two entries, one to graze 10 cows on the whole of the land comprised in the Register Unit; the other, in favour of Martha Jane Salmon of Rose Cottage, Rhodiad (Mr Salmon's mother) is to graze 10 cattle over the part of the Register Unit between the red lines A-B and C-D, and E-F and G-H on the Register Map. Both these entries which were disputed became final on 20 November 1980.

The relevance of the latter entry is that the lines A-B and C-D include the bulk of O.S. 6440 (including a small part thereof already registered as in Mr Salmon's ownership).

I should observe at this juncture that under section 22(2) of the 1965 Act "ownership" in the Act refers to the ownership of a legal estate in fee simple in the land.

Mr Salmon's claimed title, in his written submission, begins with a conveyance dated 1 November 1919 made between Ernest J Martin (1) and Evan Williams (2): Evan Williams was Mr Salmon's grandfather. The original of such a document was not produced: what was produced was a photocopy of an examined abstract of title including what is described as "An Agreement" dated 1 November 1919, stamped 6d, and made between the above parties, whereby (inter alia) "for the personal convenience of the said E J Martin and E. Williams



Firstly the said E J Martin surrendered to the said E Williams:- The whole of Parc -y- Rhodiad and all the open space belonging to the same south of the River and to the side running between the mentioned field the south side of Parc -y- Rhodiad between it and the River". This was clearly an agreement under hand only and could not in law pass a legal estate in fee simple: whether it was intended to do more than create a personal licence in favour of Evan Williams I cannot tell: certainly, if it were an agreement for an exchange of lands there is no evidence that it was ever completed by a Deed of Exchange or Conveyance.

Evan Williams died on 25 May 1945, and Probate of his Will dated 5 May 1945 was granted to William Bowen and Thomas Williams out of the Carmarthen District Probate Registry on 25 October 1945: in his Will (an examined abstract of which was produced) he left to Martha Jane Salmon or her issue Rose Cottage and also "the fields known as Parc Bach, Parc -y- Rhodiad, Wryddgloddidd -y- Rhyfel, Parc Trugain Llath and the Testator's property at Gwryd Mawr".

An Assent was made by Evan Williams' Executors in favour of Mrs M J Salmon on 3 September 1946: this document was not produced at the hearing, but I infer from Mr Salmon's Statutory Declaration dated 4 June 1980, and the terms of a Conveyance dated 12 June 1980 by Martha Jane Salmon's Administrators to Mr Salmon (she having died on 20 October 1978 intestate) that no part of O.S.6440 was included in the Assent of 3 September 1946, since both the Statutory Declaration, and the Conveyance, relate to a possessory title said to have been acquired by Mrs Salmon to the eastern part of O.S.6440. Mr Salmon's present claim is to the effect that, by mistake, only that part of O.S.6440 was included in the Conveyance, whereas it was intended to include the whole of the enclosure, as being enclosure to which, by grazing cattle upon it, Mrs Salmon has acquired a possessory title.

The evidence of Mr A V Evans, who had lived in the area for all his 65 years was that (O.S.6440) was known in the neighbourhood to belong to Evan Williams and his family: his son Emanuel Williams grazed the land with cattle, as afterwards did Mrs Salmon, and Mr Salmon.

Mr Salmon's evidence was that he had grazed (O.S.6440) with cattle until the early 1980s, and that in 1992/93 he had arranged with Mr Jamieson to graze 10-15 of the latter's cattle on the land in order to prevent overgrowth and conserve the land, not for rent. Mr Jamieson confirmed the latter grazing, and said that in the 25 years he had lived in the area he had always understood (O.S.6440) to belong to Mr Salmon and his mother before him.

It is clear from what I have said above that there is no "paper title" to the legal estate in any part of O.S.6440; and that in 1980 the asserted possessory title only related to the eastern part of O.S.6440, most of which lies to the east of the line C-D. Under section 10 of the 1965 Act, the registration of Mrs Salmon's grazing rights over the part of O.S.6440 which lies between A-B and C-D on the Register Map (and therefore includes the bulk of the land which Mr Salmon now claims) is conclusive evidence as at the date of registration, that Rose Cottage only had grazing rights, as opposed to fee simple ownership, over that part of the land. Clearly, in my opinion, the exercise of a right of common over common land by the person entitled to the dominant tenement (i.e. Rose Cottage), cannot be regarded as evidence of adverse possession so as to create a possessory title to the fee simple in favour of the commoner.



(compare *Littledale v Liverpool College* 1900 Ch. 19CA). That part of O.S.6440 which lies to the west of the line A-B is separated from the remainder of the enclosure by a drain leading from the pond shown on the Register Map at B to the river at A: but there is no specific evidence that cattle lawfully grazed by Mrs Salmon and Mr Salmon east of A-B ever passed beyond the drain and took adverse possession of that triangle of land.

In these circumstances I am not satisfied that Mr Salmon, or any person, is the owner of a legal estate in fee simple in that part of O.S.6440 which lies to the west of the line C-I on the Register Map, 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

25th

day of

May

1994

Commons Commissioner