



Case No: HC 000095

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th April 2001

Before:

THE HONOURABLE MR JUSTICE EHERTON

Robinson Webster (Holdings) Limited

Claimant

- and -

(1) Colin Edward Agombar

Defendants

(2) Sandra Catherine Agombar

Mr D Hodge QC and Mr I Partridge (instructed by Manches & Co Solicitors for the
Claimant)

Miss K Holland (instructed by Clarks Solicitors for the Defendants)

**JUDGMENT: APPROVED BY THE COURT FOR
HANDING DOWN (SUBJECT TO EDITORIAL
CORRECTIONS)**

Judgment approved by the court for handing down
(subject to editorial corrections)

Robinson Webster (Holdings) Ltd-v-Colin Agombar & ors

45. Tithe maps are admissible in evidence to prove the existence of a highway: Kent County Council v. Loughlin [1975] 234 EG 681. Roads generally, whether public or private, were not titheable, and so tithe maps are generally relevant only to proving the existence of a road at a particular time rather than its status. Mr. Hodge Q.C. also sought to undermine the evidential value of the 1875 tithe map and schedule by pointing out that none of the properties surrounding the Blue Land were shown as titheable, so there would have been no need on the part of anyone to concentrate on the true status of the Blue Land. In my judgment, the fact that the Blue Land was not titheable and the further fact that the land surrounding the Blue Land was not titheable do not undermine the importance of the 1875 map and schedule to the issue I have to decide. The map and schedule clearly show the Blue land was then in the occupation of the parish officers. It is that fact, rather than the issue of whether the Blue Land or the surrounding land were titheable, that is significant. In this connection, it must be borne in mind that tithe maps are public documents and that the Commissioners, under whose authority and control the tithe map was prepared, had power to examine witnesses on oath.
46. The next documents on which the Defendants rely are a map and schedule prepared pursuant to the Finance (1909 -10) Act 1910. The 1910 Act provided for the levying of a duty on the incremental value of land, called increment value duty. The Board of Inland Revenue was to ascertain the site value of all land in the United Kingdom as at 30th April 1909. Commissioners were to undertake a provisional evaluation of the land, which they were to serve on the

owner of the land. The 1910 Act provided for the owner to give notice of objection to the provisional valuation. Valuation offices were set up throughout the country, and a land valuation office was appointed to each income tax parish. Between 1910 and the repeal of the Act in 1920 the whole country was surveyed in this way. Mr Alan Harbour, the rights of way officer of Wiltshire County Council for the northern half of the County and who was formerly the Land Charges officer of the Council, gave evidence of the painstaking detail with which the land was valued pursuant to the 1910 Act. Although Mr. Harbour is not qualified as a lawyer or a surveyor, he has considerable practical expertise on issues relating to public rights of way and the proof of their existence. I found his evidence helpful. He emphasised that the effect of the arrangements made under the Act was that local people with local knowledge undertook the valuation and conducted the detailed consultation with the owner of the land. He described how the valuation involved the most comprehensive record of land ever undertaken and became known as "the Second Domesday". The 1910 Act contains specific provision for reducing the gross value of land to take account of any public rights of way or public rights of user, as well as easements. Importantly, the Act contained criminal sanctions for falsification of evidence. The 1910 Finance Act map and schedule show the Blue Land, as also Thickwood Lane and other principal roads in the area, as untaxed public roads.

47. The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. It would have been in the interest of the owner of the Blue Land to acknowledge that the

Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Land was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority. In the circumstances, whether or not the Commissioners consulted with officers of the Rural District Council about the status of the Blue Land, I see no reason to infer, as I was urged to do by Mr Hodge QC, that the designation of the Blue Land on the 1910 Finance Act plan and schedule was simply a mistake.

48. The Claimant seeks to rely upon a number of factors to counter the strong inference, to be drawn from the 1875 documents and the 1910 Finance Act documents, that the Blue Land was then a public highway maintainable at the public expense. The Claimant points to the fact that a roadway off Thickwood Lane and to the east of the Blue Land, which Mr Hodge QC called the "eastern branch", was also shown as not subject to tithe in 1875 and as an untaxed public road in the 1910 Finance Act documents. That eastern branch was subsequently built upon and has disappeared. I do not consider that safe conclusions can be drawn from the history of the eastern branch, which has no