



COMMONS REGISTRATION ACT 1965

Reference No. 32/D/19

In the Matter of the Pound Compton
Dando, Bathavon R.D. Somerset

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. C.L.136 in the Register of Common Land maintained by the Somerset County Council and is occasioned by Objection No. O/155 made by the Somerset County Council and noted in the Register on 15 February, 1971.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 5 and 7 December 1972. The hearing was attended by the Somerset County Council ("the County") who were represented on the first day by Mr. Rolt (he then asked for an adjournment) and on the second day by Mr. J.K. Whitcutt, solicitors employed by the County.

The registration was made on the application of the Compton Dando Parish Council ("the Parish"). The grounds of objection were stated as follows:- "The land was not common land at the date of registration".

Mr. Whitcutt handed me a letter dated 8 November 1972 written by the Parish to the County, and containing the following statement, made with reference to the land comprised in this Unit:- "It has always been referred to in the village as the village pound"; Mr. Whitcutt said that I could accept this statement.

Mr. Whitcutt in his evidence said: He had, in the course of his employment by the Council (such employment began in August 1972) inspected the land. It is a small piece; the longer of its two parallel sides being about 20 feet and its width being about 10 or 15 feet. When he inspected it, it was overgrown with grass and brambles. Its north west boundary is open to a public roadway (a County road); its south west boundary is a hedge; its east boundary is a stream; its north east boundary is open to adjoining grass land in front of the near by Village Hall (this boundary is not defined on the ground except by the circumstance that the grass in front of the Village Hall is tidier than that on the land comprised in this Unit).

Mr. Whitcutt on behalf of the County submitted:- The effect of the County's objection is to put on the Parish the burden of proving that the land is common land within the definition in section 22 of the 1965 Act. Provisional registration under the Act of a right of common provides no evidence at all of the existence of such right, see observations of Megarry J in Cooke v Amey 1972 1 W.L.R. 1310 at page 1312; these observations apply to registration of land as common land; the Parish have provided no such proof.

Mr. Whitcutt explained: The County had made a number of objections to registration to keep the Register free from anomalous and irregular registrations; such objections had only been made after an inspection of the land made on behalf of the County; as a result many anomalous and irregular registrations had been withdrawn from the Register. The Objection made in this case was one of the objections made for this purpose. Nobody had claimed ownership of the land; it is near the Village Hall which belongs to the Parish and if the Parish want to exercise ownership and control over the land, a practical way of doing this would be for the Parish to enter into possession of it, treating it as part of the Village Hall land, so that in the result the Parish would in due course acquire a title to it by possession.



I cannot, I think treat the County's laudable purpose in making the Objection as providing any evidence that the land is not common land. Neither its small area nor its appearance as described by Mr Whitcutt is inconsistent with it being common land.

I understand that the County has no property interest in the land or in any nearby land which could be adversely affected by the registration. It was not suggested that any disadvantage to the public or any section of the public could result from the registration. Having regard to section 9 of the Act (under which common land without any registered owner falls under the protection of local authorities), the public will I think benefit by this land being registered more effectively and more quickly than they would be by the Parish entering into possession of it and waiting until they had acquired a possessory title under the Limitation Act 1939.

Upon the above consideration I conclude that the Objection of the County, although correct in form, is without foundation. Nevertheless, so the County contend, the Parish has not proved their case; as to this:-

In my opinion a pound may be common land within the definition in Section 22 of the Act; on this point, I follow my own decision dated 2 August 1972, in re Pinfold, Higham - with West Close Booth, reference 20/D/2; reported in the Decisions of the Commons Commissioners published October 1972 by the Commons, Open Spaces and Footpaths Preservation Society at page 33. In favour of this land being properly registerable as common land, I have a copy of the statutory declaration made on 16 June 1968 by Mr L.S. Coles in support of the application for registration: to the effect that having read the notes on the application form (which include a note as to the meaning of "common land") he believes "that the land... is common land". I have also the accepted statement made on behalf of the Parish and quoted above (giving some amplification of the statutory declaration): and also the appearance of the land which at least suggests that it may be common land.

However this evidence lacks detail and cogency. So the question arises whether I should (as was in effect contended by the County) merely because the County had made an objection, adjourn the case to enable the Parish to produce if they can more evidence (e.g. a witness or witnesses who can state detailed facts about the history of the land) from which I can decide whether or not the land is common land within the definition in section 22 of the 1965 Act; with the consequence that if the Parish do not produce any such evidence, I must then refuse to confirm the registration.

This question is I think a matter of procedure. It is not dealt with expressly either by the 1965 Act or any regulations made under it; so by regulation 18 of the Commons Commissioners Regulations 1971, I have a discretion; to be exercised, I think, having regard to any comparable situations expressly dealt with by the Act or by the Regulations or by the rules and practices of the Courts. By section 7 of the Act, a provisional registration if not objected to, becomes final with the consequences set out in sections 9 and 10; that these consequences follow merely from an application for registration supported by no more evidence than a statutory declaration (such as has been made in this case by Mr Coles) shows I think that there is no basic reason why I should not produce the like consequences on like evidence. Regulation 29 of the 1971 Regulations provides that in certain circumstances an objector shall be precluded from relying upon grounds not stated in his objection; this shows I think that if it appears that the stated grounds are without foundation, a registration may be confirmed without hearing any evidence directed against grounds which have not been stated. Order 14 of the Rules of the Supreme Court shows I think that there is no principle entitling a defendant merely on his statement that he has a defence, in all cases to insist that a plaintiff before he obtains judgement shall.



prove his case in detail.

Upon the above considerations I reject the County's claim that I shall now call upon the Parish to provide more evidence; in my view I should accept the evidence above referred to, slender although it may be, that this land is common land, unless the County ask for an adjournment to consider whether they can discover some new matter which would show that their objection has some foundation.

By adopting this procedure, I am not I think acting contrary to the observations of Megarry J. cited to me. He was concerned with the evidence proposed to be adduced in the High Court upon a motion for an interlocutory injunction; not with the procedure to be adopted at a hearing by a Commissioner under the 1965 Act. The statutory declaration of Mr Coles, the accepted statement, and the appearance of the land are I think some evidence upon which I can, for the reasons stated above act, if I (as I do) think fit.

During the discussion as to the various courses open to me, Mr. Whitcutt said that he did not on behalf of the County ask for an adjournment; he asked me to give a final decision on this matter as it stood at the hearing.

Accordingly, for the above reasons, I confirm the registration without modification.

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 2nd day of February 1973

a a Barden Fuller

Commons Commissioner