



In the Matter of Ally Pond, Miller's Lane,
Stanway, Essex.

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No CL 237 in the Register of Common Land maintained by the Essex County Council and are occasioned by Objection No 2 made by Mr H G W Booth and noted in the Register on 12 March 1970, Objection No. 53 made by Mr B E Sexton and noted in the Register on 29 October 1970, and Objection No. 98 made by Truman, Hanbury, Buxton & Co. Ltd and noted in the Register on 3 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Colchester on 16 March 1981. The hearing was attended by Mr C W H Bloor, solicitor, on behalf of Mr Booth, and Mr C Yemm, solicitor, on behalf of Mr and Mrs J W Cornish, the personal representatives of Mr Sexton, and I gave leave for the Stanway Parish Council, the applicant for the registration, to be represented by Mr H C Miller, its former Clerk.

Mr Miller said that the registration had been made because there had been difficulties with regard to drainage in the neighbourhood of the pond and it was desired to clear up the question of the ownership of the pond. Mr Miller said, however, that he could not put a case under either limb of the definition of "common land" in S.22 (1) of the Commons Registration Act 1965.

The question of ownership is not before me in these proceedings, and in the absence of any evidence that the pond falls within the definition of "common land", I can do no other than refuse to confirm the registration.

Mr Bloor asked for an order for costs. His firm sent a letter dated 9 March 1981, which Mr Miller received on 13 March, explaining the legal position very clearly and pointing out my jurisdiction as to costs. In my view, it was unreasonable of the Parish Council to persist in the application when it must have been clear that it had no case. I shall therefore order the Parish Council to pay to Mr Booth's costs on County Court Scale 3, and I shall make a similar order in respect of Mr and Mrs Cornish's costs.

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

30th

day of

March

1981

CHIEF COMMONS COMMISSIONER