



COMMONS REGISTRATION ACT 1965

Reference No.14/D/12

In the Matter of Common Acre,Andover, Hampshire.DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.128 in the Register of Town or Village Greens maintained by the Hampshire County Council and is occasioned by Objection No.OB 157 made by the Andover Charity Trustees and noted in the Register on 13th May 1970.

I held a hearing for the purpose of inquiring into the dispute at Winchester on 25th October 1973. The hearing was attended by Mr.J.E.H. Spaul, the Secretary of the Andover Archaeological Society, which applied for the registration, and by Mr. J. Clark, the Clerk to the Andover Charity Trustees.

The expression "the Common Acre" as used in local documents comprises an area of 1a. 2r. 14p., having four almshouses erected upon part of it, but the land which is the subject of this dispute consists only of that part of "the Common Acre" which has no buildings erected upon it.

Mr. Spaul contended that the land in question fell within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 by being land on which the inhabitants of the town of Andover either have a customary right to indulge in lawful sports and pastimes or have so indulged as of right for not less than twenty years. It was contended by Mr.Clark that the use of the land for sports and pastimes did not date from time immemorial, i.e. from before 1189, but began in the year 1570, and that in so far as the inhabitants of Andover have indulged in sports and pastimes on the land in question they have not done so as of right, but as duly qualified beneficiaries of a charity.

Mr. Clark's contention is founded upon the Further Report of the Commissioners for Inquiring concerning Charities for the County of Southampton presented to the House of Commons in 1825 (Vol.14), where it is stated:-

"There are four tenements standing on a piece of ground called the Common Acre, repaired by the Charity Chamberlain out of the funds in his hands, and inhabited rent-free by poor widows of Andover, placed there as vacancies occur by that Officer, who also pays to each of them 2s 6d yearly at Christmas. The church tablet states that Catherine Hanson in 1570 gave the Common Acre for the recreation of the inhabitants of this town, and that the corporation built the four tenements upon it.

It appears from the corporation minute book that in the reign of Queen Elizabeth, a lease for 21 years of the Common Acre was granted



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to William Gold at the rent of 4s on condition that he should keep a pair of butts for men to shoot at, and permit all persons to take their pastime there.

This ground is now used as a place of recreation for the inhabitants of the town. No profit is derived from it."

While this report is admissible in evidence of the facts stated in it by virtue of section 36(2) of the Charities Act 1960, it is not conclusive evidence and must be considered in conjunction with any other available evidence.

Before turning to the other evidence, it should be observed that the statement as to the gift by Catherine Hanson in 1570 rests upon a church tablet. There is no evidence as to the author of the inscription upon this tablet or as to the source of his information, so that the probative value of the report is not high.

Mr. Spaul's researches have revealed further and earlier evidence regarding the Common Acre. This evidence consists of a series of counterpart leases of land described as the Common Acre granted by the Bailiff, Approved Men, and Burgesses of the Borough of Andover. The earliest of these was dated the Sunday next before Michaelmas 10 Edw. IV (23rd Sept. 1470). By it the land was let to Robert Maynard and Thomas Hode, subject to the lessees' covenant to permit "everyone of good governance and conversation to play at spears, arrows, and other games and to pass through the same in the day-time without any interruption".

After this there were the following leases:-

1515. To Thomas Alrede. Lessee's covenant to "make the butts".

1540. To Edmund Marten. Lessee's covenant to "make the butts as has been anciently accustomed".

1560. To William Golde. Leess's covenants to "kepe make and maynteyne one pair of butts there mete for men to shoote at" and to "suffer all manner of persons to come and goe in to and from the said premises to shote and have their pastyme there as it hath byn accustomed".

1561. To Richard Eyer. Lessee's covenants to "make and maynteyne from tyme to tyme during the terme aforesaid (21 years from Michaelmas) one paire of good and sufficient butts mete for men to shoote at in and upon the said grounds as ofte as nede shalbe", and to "suffer all and every person and persons to come and goe in to and from the said grounde and there to shoote and lawfully to play at all and every reasonable tyme and tymes during the said terme in manner and forme as they have byn accustomed to doo in tyme past".

The terms of the 1560 lease to William Golde are identical with those of the lease of "the reign of Queen Elizabeth" referred to in the 1825 Report. The lease to William Golde must have been terminated prematurely, since it was followed in 1561 by the lease to Richard Eyer, but it is material to



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notice that although the reference to it in the 1825 Report follows the account of the gift by Catherine Hanson in 1570, the lease was in fact ten years earlier.

The year 1570 seems to have had no significance in the history of the Common Acre, for on 16th November 1584 there was a lease to Edward Blunt subject to the lessee's covenant to "make repayre and mayntayne two sufficient butts meete for men to shoote at and to leave sufficient stiles and gates for persons to enter into and from the said Acre to shoot and use their other pastimes and to permit all manner of persons of the said town as well scholars and others to use their walkings meetings and other pastimes there". This was followed by later leases in similar terms.

Unfortunately the counterparts of these leases cannot now be found, and the evidence as to their existence and their terms has to be sought in a manuscript report on the archives of Andover made by one W.T.H. Titheridge in 1837. While Mr. Titheridge's report has, of course, less probative value than the original documents would have had, his standard of accuracy can be estimated from the happy survival of an original counterpart lease of the Common Acre to Humphrey Paynter dated 14th September 1660. While this document, being later than 1570, does not in itself directly bear upon the primary issue in this case, the fact that its terms agree with those contained in the section of Mr. Titheridge's report relating to it indicates that reliance can be placed upon that report as accurately setting out the terms of the missing documents.

Faced with this conflict between the 1825 Report in so far as it relates to the gift by Catherine Hanson in 1570 and Mr. Titheridge's report in so far as it shows that the Common Acre belonged to the Bailiff, Approved Men and Burgesses long before 1570, I have no hesitation in rejecting the story of Catherine Hanson's gift. It was not the origin of the use of the Common Acre for lawful sports and pastimes. That use, I find on the evidence, existed from time immemorial.

The mere use of the land for lawful sports and pastimes is not, however, sufficient in itself to prove Mr. Spaul's case. It must also be shown that the user has been by the inhabitants of an area defined by reference to the limits of some recognised division of land, such as a town: see Co.Litt.110b.

It is therefore necessary next to consider the evidence regarding the persons who have used the Common Acre for lawful sports and pastimes. The 1470 lease refers to "everyone of good governance and conversation"; the 1560 lease refers to "all manner of persons"; and the 1561 lease refers to "men" and to "every person and persons". Had this been the only evidence on this aspect of the case, I might have felt bound to hold that it was too indefinite to describe a class of persons who would be entitled to the benefit of a legal custom. However, the 1584 lease refers to "all manner of persons of the said town as well scholars and others". In addition, there was a lease dated 23rd September 1650 to Alexander Cooper with a lessee's covenant not to hinder "the youth of the Town of Andover aforesaid nor others to walke,



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bowle or make use of other disports and lawfull recreations as formerly they have done", and the last lease in the series covered by Mr. Titheridge's report is one dated 30th March 1786 to Thomas Griffith with the reservation of a liberty for "the Inhabitants and others to walk and recreate themselves as usual".

Since the leases containing the more general descriptions of the persons indulging in lawful sports and pastimes on this land form part of the same series as those which specify the inhabitants of the town of Andover, it seems to me that this is a case for the application of the rule of construction summarised in the maxim Verba generalia restringuntur ad habilitatem rei: see West London Rly Co. v. London & North Western Rly Co. (1851), 11 C.B.254, per Parke B. at p.356. Even if persons not living in Andover have from time to time indulged in lawful sports and pastimes on this land, I find on the evidence that the inhabitants of the town of Andover have done so from time immemorial.

This does not entirely conclude the matter. It must also be established that the user by the inhabitants has been as of right. In my view the fact that the Bailiff, Approved Men, and Burgesses leased the land subject to such user is evidence that such user was as of right, for no prudent landlord would reduce the rent at which he could let his property by imposing upon his tenant an obligation to allow the property to be used by persons who had no legal right to do so. The facts of this case are indistinguishable in essentials from those of In the Matter of Bachelors' Acre, New Windsor, Berkshire (1972), No.2/D/2. For the reasons stated in my decision in that case, I find that there was a grant of the Common Acre to the Bailiff, Approved Men, and Burgesses by the Crown before the time of legal memory, with a condition in that grant that the inhabitants of the town should enjoy this right, which as a matter of fact the evidence tells me they have enjoyed from time immemorial. It is in the exercise of this right and not as the beneficiaries of a charity that the inhabitants of Andover have indulged in lawful sports and pastimes on this land.

It was no doubt the statement in the 1825 Report that Catherine Hanson gave the Common Acre for the recreation of the inhabitants of the town which led to the inclusion of the Common Acre in the land which was vested in the Official Trustee of Charity Lands by cl.2 of the Scheme for the administration of the municipal charities of Andover made by the Board of Charity Commissioners on 13th June 1893. The Common Acre is now part of the endowment of the Consolidated Almshouses and Pension Charity, which is one of the thirteen charities which are administered and managed under the title of The Andover Charities under a Scheme made by the Charity Commissioners on 9th March 1962. In my view there is nothing in these and the other schemes relating to the charities of Andover which relieves the Common Acre of the burden of the rights of the inhabitants of Andover to which it has been subject from time immemorial.

For these reasons I confirm the registration.

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 19<sup>th</sup> day of December 1973

A handwritten signature in dark ink, appearing to read 'G. L. Quibb', written in a cursive style.

Chief Commons Commissioner