



COMMONS REGISTRATION ACT 1965

Reference Nos 15/D/1
15/D/2
15/D/3
15/D/6

In the Matters of (1) Huntsham Hill and (2) the Old Quarry
both in Goodrich, Ross and Whitchurch R.D., Herefordshire

DECISION

Three of these four disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No CL.127 in the Register of Common Land maintained by the Herefordshire County Council and are occasioned (ref. D/1) by objection No 12 made by Major J H Vaughan and noted in the Register on 27 October 1969, (ref D/2) by Objection No 104 and made by Mr Noelwyn Williams and noted in the Register on 6 November 1972, and (ref. D/3) by Objection No 370 made by the Minister of Agriculture Fisheries and Food and noted in the Register on 8 November 1970. The remaining one of these disputes (ref D/6) relates to the registration at Entry No 1 in the Land Section of Register Unit No CL.129 in the said Register and is occasioned by Objection No 324 made by Major J H Vaughan and noted in the Register on 3 December 1970.

I held a hearing for the purpose of inquiring into these disputes at Hereford on 20 February 1973. The hearing was attended (1) by Mr B A J Radcliffe and Mr G C Lawrence (trustees of a settlement dated 4 February 1971 and made by Major J H Vaughan on the marriage of his elder son) who were represented by Mr J B Morrogh-Ryan land agent and surveyor employed by Messrs Frank Knight & Rutley Land Agents & Surveyors with an office at Hereford, (2) by the Minister of Agriculture Fisheries and Food who was represented by Mr W D Curnock, (3) by Alderman F W Green (Chairman of the Parish Council at the time when the application to register this land as common land was made on their behalf) in person and (4) by the Herefordshire County Council who were represented by Mr R B Barber. There was no attendance or representation of Mr N Williams; I received a letter dated 19 February 1973 from Herbert W Wilkes & Co Solicitors of Birmingham who were named as his solicitors in the said objection saying that they had unfortunately been unable to obtain any response to the letters they had sent to their client at the addresses he had left with them and that in the circumstances they were unable to arrange for his representation at the hearing. With the consent of all those attending, I heard all these disputes together.

Both registrations were made pursuant to applications dated 26 February 1963 and made by Goodrich Parish Council. The grounds of objection stated in Objections Nos 12 and 324 on behalf of Major J H Vaughan are "(CL.127) Huntsham Hill has been/ and (CL.129) This unit has been/ in the exclusive ownership of Courtfield Estate for a very long time. No previous mention has been received of common right, and this is disputed by the Estate". The grounds of objection stated in Objection No 104 made on behalf of Mr N Williams are "that such part of the land as is shown coloured pink on the plan annexed hereto was not common land at the date of registration but was vested for an estate in fee simple in Henry Cecil Freedy Bernard Gareth and Irene Alice Elizabeth Simms from whom I purchased the property in May 1969"; the plan annexed showed coloured pink a strip of land forming the most easterly part of the land comprised in Register Unit CL.127 and some land south of such part. The grounds of objection stated in Objection No.370 made on behalf of the Minister are "Plan attached showing the area covered by the Objection coloured green. The Objection is made on



the grounds that the land was not common land at the date of registration"; the plan attached showed coloured green the whole of the land comprised in the Register Unit CL.127.

In a letter dated 15 January 1973 Goodrich Parish Council stated to the Clerk of the Commons Commissioners that in respect of the applications above mentioned (CL.127 & CL.129) the Council now makes no claim whatsoever that the land in question is common land; however no application was made for a decision by consent under regulation 31 of the Commons Commissioners Regulations 1971 so such withdrawal does not make it unnecessary for me to hold the hearing. The County Council sent to the Clerk of the Commons Commissioners a copy of a letter they had received from Mr J P Ridge as "an owner of Huntsham Cottage" in which he stated (among other things) "over the last ten years, since owning the cottage" he and his father Mr D L Ridge before him "had enjoyed free access to all parts of Huntsham Hill that were unfarmed and unplanted by the forestry and wish to continue to do so."

The land ("the Tract") comprised in Register Unit No CL.127, extends to 42 acres and comprises the greater part of the northern side of Huntsham Hill. It is an irregularly shaped piece, roughly crescent shaped, situate within a loop of the River Wye being bounded both on the east and on the west by the River, bounded on the north by comparatively flat agricultural land (within the northern part of the loop) and bounded on the south by the remaining (and mostly much higher) part of Huntsham Hill. The Hill is just to the north of the Symonds Yat Rock (a famous and much visited place) and is part of the same area of high ground; this area is (as are also most of the adjoining lands near this River) of outstanding natural beauty, and as such attractive to holiday makers. The Tract is crossed by a public road ("the County Road") leading over a bridge from the village of Goodrich (the other side of the River) on the north to the Yat Rock car park and the nearby houses and beyond on the south. The Tract is for the most part very rough, in places steep and rocky; the Forestry Commissioners recently for forestry purposes built (or started to build) a metalled private road leading eastwards from the County Road which runs (or will run when completed) the length of the Tract (except the part on the east which slopes steeply down to the River) and beyond on the south-east.

The land ("the Quarry Piece") comprised in Register Unit No CL.129 extends to 0.1 of an acre and is a triangular piece of land abutting on and open to the County Road and situated a little to the south of the Tract. It appears to be a worked out part of what was formerly a small quarry; it is reasonably level therefore tempting to any motor car driver wishing to leave his car off the County Road while he walks around and enjoys the scenery.

Mr Barber produced from the County Archives a Tithe Apportionment Award for the Parish of Goodrich dated 4 May 1841 and sealed by the Tithe Commissioners on 5 June 1841. The "waste" treated in the Award as not tithable amounted (exclusive of water and roads) to 283 acres. The Quarry Piece was described as "705. Common:---. 18.", and the western and greater part of the Tract as "678. Huntsholme Hill: 34.3.15."; the remainder of the Tract was described as a number of small pieces in various occupations (and therefore tithable) numbered between 646 and 668 b.

Mr Curnock produced a lease dated 10 April 1962 by which Major J H Vaughan (with the concurrence of his Trustees) demised unto the Minister 137 acres of land for 999 years; the terms of the lease show that the parties intended the lands to be used for forestry purposes. The Tract except a small piece on the west was part



of the land therein described as: O.S. Nos 201 & 202; 31.838 and 16.120 (acres). The Quarry Piece was part of the land therein described as O.S. No 214: 3.623 (acres). Mr Curnock also produced a recently prepared map showing the part of the Track (the west end) not included in the lease and the land or some of the land mentioned in the objection made by Mr Williams (so far as it was part of the Tract) as included in the lease.

Mr I A Falconer who until his recent retirement was head forester employed by the Forestry Commissioner in the Forest of Dean and who was from 1954 to 1961 in charge of forestry operations at the High-meadow woods of the Forest gave evidence which I have summarised below.

Mr Morrigh Ryan in the course of his evidence produced a Principle Vesting Deed dated 10 August 1926 by which it was declared that 1479 acres of land ("the Courtfield Estate") in Welsh Bicknor, Goodrich, Ruardean and Eastdean were vested in Major C J Vaughan and a (conveyance dated 4 February 1971 by which Major J H Vaughan conveyed upwards of 800 acres of land (part of the estates known as the Courtfield Estate) to Mr Radcliffe and Mr Lawrence. From the Second Schedule (referred to in the acknowledgment for production of deeds) to the 1971 Conveyance, it appears that Major J H Vaughan derives title from Major C J Vaughan under an assent dated 5 April 1950.

Alderman Green who is a member of the County Council and of the District Council in the course of his evidence said that he had been the tenant of Huntsham Court Farm from 1932 to 1970 and had therefore been well able to observe how the Tract was used. He had been a member of the Parish Council for over 20 years before 1971 and had been their chairman when the Tract and the Quarry Piece were registered as common land under the 1965 Act. The application for registration had been based on the description in the 1841 Award.

Mr A Jocelyn an employee of the Forestry Commissioners gave evidence at a late stage in the inquiry for the purpose of dealing with a point then arising about the Quarry Piece.

As regards the Tract, Alderman Green said that he was glad as a business man and a farmer that this land had been made of some use by the Forestry Commission; but he did not want the Tract to be enclosed; in present times, more open places were wanted for the enjoyment of people and the Tract was very suitable for this. Mr Curnock explained that on this aspect of the matter there may be little difference; for some years past the Forestry Commissioners had been much concerned to obtain from members of the public their interest in and support for their forestry operations; the practical difficulty was to reconcile Commissioners desire to do this and at the same time protect young plantations from damage. Notwithstanding that there may be little difference between the Minister and Alderman Green as to the most advantageous way of using the Tract in the future I must decide whether it is or not within the definition of "common land" as set out in section 22 of the 1965 Act.

As to the Tract being "land subject to rights of common ..." within paragraph (a) of the definition:-

Alderman Green said that in former times many persons living in or around Huntsham Hill had grazed animals on the Tract; by 1932 grazing by animals other than goats ceased because the cottages where these persons used to live ceased to be occupied about the same time many of the goats which had been put out for grazing, became wild and multiplied so much as to be a general nuisance. In or about →



1937 a hunt was organised, the wild goats slaughtered and the nuisance abated. Since the 1939-45 war no one had grazed or attempted to graze animals on the Tract. The description of the Tract in the 1841 Award and the grazing before 1932 as described by Alderman Green indicates that some person may have had some right of common over the Tract or some part of it. The description of the Tract in the 1926 Deed, and the absence of any grazing since 1945 indicate the contrary.

I find that the Tract has not at any relevant time been subject to any right of common, first because on balance I infer that the grazing described by Alderman Green was not as of right, and secondly because to find that a right of common existed, I must I think be able to specify at least in a general way, what person or in respect of what land the right was exercisable, in respect of what animals and upon what conditions; on the evidence before me, I can give no such specification. A right for all the inhabitants of a village or parish to graze land is not recognised by law except in circumstances which are exceptional and of which there was in this case no evidence.

As to the Tract being "waste land of a manor" within paragraph (b) of the definition:-

Alderman Green said that there was (and indeed may now be) a Manor of Goodrich and contended that because the 1841 Award described part of the Tract as "waste" and because the Award dealt with the Parish of Goodrich, I should conclude that the Tract at least to the extent it was so described was a waste of the manor of Goodrich.

Mr Curnock contended that the evidence showed that the Tract was not "open" and was not "uncultivated" within the meaning of these words in the definition of "waste" set out in judgment of Watson B. in Attorney-General v Hammer (1858) 27 L.J. Ch. 837; alternatively that there was no sufficient evidence that the Tract was part of a Manor.

As to the Tract being "open":- Where it is crossed by the County Road, it is for the most part steep rock, so that at many points a person walking at right angles to the Road would go no more than a few inches unless he was prepared to undertake a formidable climb. But across the entrance to the recently constructed private road, there is now a single bar which can be left open to let vehicles through or shut and padlocked against vehicles; I infer that at this point the Tract is and always has been open to pedestrians and free from any natural obstruction to vehicles. The land under consideration in Attorney General v Hammer supra was part of the sea shore or estuary of the River Dee between high and low water mark called "White Sands"; it would I think be reading too much into the use by Watson B. of the word "open", if I treated his judgment as establishing that rugged and steep cliffs are not "waste", merely because the only highway providing access runs along the foot of the cliffs. The Tract is I think "waste" except so far as it ceased to be such as a result of the planting effected by the Forestry Commissioners.

As to the Tract being "uncultivated":- Mr Falconer described in a general way how young trees were in 1965 and 1966 planted on most of the Tract. I was supplied with a map outlining these plantations: "DF.1967, BeP68 and JL.P67"; on this map the most easterly part, the most westerly part (both by the River) and a strip along the south boundary (the highest part) of the Tract are shown as "Scrub". Within the planted area there were patches where planting was impossible because the ground was too steep or too rocky or because it was otherwise impracticable or uneconomic to plant. The word "uncultivated" does not appear in the 1965 Act; although the judgment of Watson B. is relevant and helpful, it would I think be wrong to treat his definition of "waste" given in 1858 as if it was set out in the 1965 Act. Land may continue to be waste notwithstanding that some trees are planted on it and land may cease to be waste if trees are cultivated on all of it. The evidence of Mr Falconer was not sufficiently detailed to enable me to make a finding as to what parts of the Tract on 21 March 1968 (the date of registration) were or were not "waste". He was not questioned about



details; rightly I think, because without these details I have enough evidence to determine the question next mentioned.

As to all or any part of the Tract comprising the whole or any part of a piece of land properly described as "waste land of a manor":- The evidence of Mr Falconer and the 1926 Deed are on this point much against the contention of Alderman Green. The forestry activities described by Mr Falconer were all done without any realisation that the Tract or the part of it described in the 1841 Award as "waste", was a piece of land separate from the other land comprised in the 1962 lease, and I infer that there was not when the lease was negotiated and Mr Falconer first examined the Tract carefully, any land distinctive from the surrounding region and appearing to be or to have ever been waste land of a manor. In the 1926 Deed, the greater part of the Tract is described as "202: Huntsham Hill: 35.388 (acres)" and is included without any difference or distinction in the 414.878 acres headed "25: Huntsham Court: Tenant Messrs A & C Herbert"; the rest of the Tract, except a piece (perhaps a little more or less), the same as that mentioned in the objection of Mr Williams, is described as (being part of) "201 Elliots Wood 16.120 (acres)" and "Part 188: Ditto 0.119 (acres)" and is included in the 215.982 acres headed "52. Woodlands, Quarries Roadways etc.: Tenant Major C J Vaughan". By the 1926 Deed there was conveyed (in addition to the 1479.570 acres described in detail) "ALL THOSE the Manors ... of Ruardean and Welsh Bicknor ... with all rights and privileges appurtenant thereto ..."; the deed recites that the lands therein mentioned were settled by a settlement dated 2 March 1898 and made by Mr F B Vaughan.

From the 1926 Deed, I infer that it never occurred to any one concerned in making it that any part of the Tract was waste land of any manor. There is no mention in it of the Manor of Goodrich. The "Waste Land" and the "Waste and Woods" therein said to have an area of .181 (acre), .862 acres and 1.098 acres are headed particularly 24, 40 and 50, indicating that the "etc" in the heading 52 above quoted should not be read as including "waste".

As regards so much of the Tract as in the Award described as "waste" and is also comprised in the 1926 Deed (the greater part of the Tract), balancing the inferences which can be drawn from the 1841 Award against the inferences that can be drawn from the evidence of Mr Falconer and from the 1926 Deed, and bearing in mind the surrounding circumstances as they appeared at the hearing, I consider that the latter inferences are far stronger than the former and accordingly conclude that this part of the Tract has not at any time been waste land of a manor.

I reach the same conclusion as regards the remaining two parts of the Tract. As to the remaining part comprised in the 1926 Deed because there is no contrary inference to be drawn from the 1841 Award. As to the remaining part described in the 1841 Award, because it is there described as then being in various occupations and it could not therefore then have been waste; notwithstanding the absence of evidence on behalf of Mr Williams, having regard to the evidence of Mr Falconer and the circumstances generally I cannot imagine any event having happened by which such land could have since 1841 become waste land of a manor.

The Quarry Piece had not yet been planted with trees by the Forestry Commissioners. Mr Jocelyn explained that although about six cars could easily be driven and left on part of it, driving off again might be dangerous; the County Road near the Quarry Piece is narrow and in summer there is so much traffic that the Police arrange for it to be alternatively one way and then the other way, only; a driver on the Quarry Piece forgetting this might drive his car away in the wrong direction leading to a head on collision. However this may be, on this reference I must determine whether the Quarry Piece is within the definition of "common land" in section 22 of the 1965 Act.



There was no evidence that any person has ever exercised any right of grazing or other right of common over the Quarry Piece; from a consideration of what it now looks like, I infer that no person is ever likely to have done so; accordingly I conclude that it has not at any now relevant time been subject to any right of common. In the 1926 Deed Quarry Piece is described as "part 199: Quarry: .130 (acres)"; and is included in the 215.982 acres of land (above mentioned) headed "52: Woodlands, Quarries, Roadways Etc". Upon like considerations to those set out above in relation to the Tract, I conclude that the Quarry Piece has not at any now relevant time been waste land of a manor.

For the reasons set out above I refuse to confirm either of the two registrations which have been referred to me.

Noted in the Register is a claim by Donald Lionel Ridge to "the right of access and egress on foot and with vehicles to and from his property known as Huntsham Cottage." I express no opinion as to this claim or as to any other claim (not dealt with above) mentioned in the said letter of Mr J P Ridge because these claims are not the subject of these references to me.

Since the hearing, the County Council have sent me a letter dated 1 March 1973 enclosing a "Catalogue" stating: "Alderman Green has obtained this from a Goodrich Parishioner and is anxious that page 5 should be drawn to your attention, as he considers it reinforces his contention that Huntsham is and always has been Common or Waste". I have given my decision as set out above without regard to this Catalogue and letter because it would be unjust to the Objectors ~~that~~ did otherwise without hearing them again.

However as this case may be of some local interest, I will now suppose the Catalogue and letter to have been sent in support of an application to me to call upon the Objectors to show cause why the hearing should not be reopened because new evidence has since become available.

The Catalogue comprises Particulars, Plan and Condition of Sale of Goodrich Castle; the Ancient Manor of Goodrich with 299 acres of common; also picturesque properties on the River Wye comprising 24 cottages at Goodrich, a house, land and cottages at Whitchurch, 7 cottage holdings at Longgrove and the Advowson of Longgrove. The Catalogue advertises an auction to be held on 4 December 1919, said to be "By order of Mrs E F Bosanquet". Page 5 of the Catalogue shows as included in lot 1 (for the most part "the noble ruins of Goodrich Castle") "the Lordship of the Ancient Manor of Goodrich or Goodrich Castle with all its rights and privileges (if any) will be included in the sale of the Castle together with Manor Rights over COPPET HILL COMMON of some 264 acres lying principally to the south of the Village ... also the Manor Rights over HUNTSHAM HILL COMMON of about 35 Acres the whole comprising an excellent little rough shoot The shooting over the common is let till February 1920 ...".

If any part of the Huntsham Hill Common mentioned in the Catalogue is the same as the Tract, the Catalogue is completely inconsistent with the 1926 Deed which shows the whole of the Tract (with the exception of the part mentioned in the objection of Mr Williams) as having been comprised in a settlement made by Mr F B Vuaghan in 1898, and as having at some time before 1926 devolved on Major C J Vaughan, and without any suggestion that the Tract had anything to do with the Manor of Goodrich or with Goodrich Castle or with anybody named Mrs E F Bosanquet. My guess is that the Huntsham Hill Common mentioned in the Catalogue is somewhere outside any land comprised in the 1926 Deed. However this may be, if at a further hearing the Catalogue was produced by a Goodrich Parishioner, I would consider the inferences to be drawn from the 1926 Deed far stronger than any inferences which could be drawn



from the Catalogue; the 1926 Deed is as a document of title in the custody of the successors of Mr C J Vaughan; he was able by granting the 1962 lease to give possession of the Tract to the Minister who then took and still is in possession. Accordingly on the basis supposed, I refuse to take any action as a result of having seen the Catalogue.

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 21st day of May 1973

a. a. Baden Fuller

Commons Commissioner