



COMMONS REGISTRATION ACT 1965

Reference No. 15/U/50

In the Matter of Ballingham Island, Ballingham
and Hentland, South Herefordshire D., Hereford
and Worcester County

DECISION

This reference relates to the question of the ownership of land known as Ballingham Island (extending to about $2\frac{1}{4}$ acres), Ballingham and Hentland, South Herefordshire District (formerly Ross and Whitchurch Rural District) being the land comprised in the Land Section of Register Unit No. CL.26 in the Register of Common Land maintained by the Hereford and Worcester County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference no person claimed to be the freehold owners of the land in question. Solicitors wrote on the instructions of Mr. V.A. Watkins saying that the Island belongs to the Parish of Ballingham; his reasons were set out in their letter and repeated by Mr. Watkins himself when giving evidence at the hearing; no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Hereford on 10 December 1974. At the hearing Mr. V.A. Watkins was represented by Mr. W.J. Howells Davies solicitor of T.A. Matthews & Co. Solicitors of Hereford. The following persons (among others) attended in person:- Mr. A.G. Baker who is clerk of the Hentland and Ballingham Group Parish Council (formed in 1974; before then there was no parish council for Ballingham), Mr. E.C. Jackson who has lived in the Village of Ballingham for the last 30 years, and Mrs. E.R. Williams on whose application a right of common has been registered in the Rights Section of this Register Unit.

Mr. V.A. Watkins who will be 73 years of age in February 1975, who has resided in Ballingham for over 50 years and on whose application a right of common has been registered in the Rights Section of this Register Unit, gave evidence. Three days after the hearing, I walked over the land.

The land ("the Unit Land") comprised in this Register Unit is in two pieces. One piece ("the Larger Piece") is grass land on the northwest bank of the River Wye about a mile above the Bridge at Hoarwithy, and includes the adjoining bed of the River up to the middle line; the Larger Piece is not now an island; because it is surrounded by a depression (the part of this on the northwest side contains water), it is easy to infer that it must in former days have been an island; now it can be grazed easily with the adjoining meadows (there is no dividing fence) on the northeast and southwest. The other piece ("the Smaller Piece": an area about $1/20$ th of the Larger Piece) is between the Larger Piece and the road which leads from Hoarwithy to Carey and Ballingham; the Smaller Piece is rough scrub land, fenced in.



Mr. Watkins said (in effect):- For the 50 years he had known the Unit Land, it was always known as Ballingham Island, and as belonging to the Parish. It had been given to the Parish by Henry of Monmouth for the use of the Crofters, Farmers and Brinkers (men who lived close to the River) who had a right to cut stakes from the withy trees growing thereon and of free fishing from the part of the Island which fronts on the River Wye. This history of Ballingham Island has been handed down from generation to generation; he had been told it by his father who said that he had it from his father. The gift was in return for the help given to the King in his wars by the men (bowmen) of the Village. The Unit Land used to be an island but there had been silting up between it and the mainland. For the purpose of getting stakes, those entitled had a right of way with a horse and cart from the road to the Larger Piece across the meadow on the northeast side of the Smaller Piece. About 45 years ago, there was a barbed wire fence around the Larger Piece (to prevent cattle straying off it onto the mainland; there is now no such fence). Since Mrs. Williams bought the Meadow adjoining the Unit Land on the northeast (approximately 1968), many of the trees from which stakes used to be cut have been felled. About 6 or 7 years ago, a notice was put up on the Unit Land stating that it was private property and that the fishing belonged to a fishing club (a Birmingham club named on the notice); after about 8 weeks, he (Mr. Watkins) suggested to the chairman of the Parish Meeting that the notice was illegal and should be taken down; the chairman agreed to take it down and he did so.

I conclude from the evidence of Mr. Watkins (which was not in any way challenged by those present at the hearing) that the Unit Land has always belonged to the Parish in the popular sense of that expression. The legal position of land so belonging, was considered in Doe v Hiley (1830) 10 B & C 885, and Doe v Terry (1835) 4 A & E 274; in these cases it was decided (in effect) that section 17 of the Poor Relief Act 1819 by which the churchwardens and overseers of a parish were empowered to accept take and hold in the nature of a body corporate for and on behalf of the parish all lands belonging to the parish, was applicable to all land belonging to the parish in the "popular sense of that expression" and notwithstanding that the land might not have been acquired for purposes relating to the poor. These 1830 and 1835 cases, although distinguished on the facts, were recognised as stating law still applicable in Haigh v West (1893) 2 QB 19 at page 31; see also Wylde v Silver (1963) 1 Ch 243 at page 271. On these legal considerations, I also conclude that the Unit Land under the 1819 Act became vested in the churchwardens and overseers; and ~~nothing~~ ^{according} having happened to divest the churchwardens and overseers, ~~it is~~ is now vested in the Parish Council as their successors either under the Local Government Act 1894 sections 6 and 67, or under the Overseers Order 1927 made under the Rating Act 1925.

For the above reasons, I am satisfied that the Parish Council is the owner of the Unit Land, and I shall accordingly direct the Hereford and Worcester County Council, as registration authority to register Hentland and Ballingham Group Parish Council as the owner of the land under section 8(2) of the Act of 1965.



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 20th day of December 1974

a. a. Baden Fuller.

Commons Commissioner