



COMMONS REGISTRATION ACT 1965

Reference No. 15/U/81

In the Matter of Doctors Pool, Staunton-on-Wye,
Leominster District, Hereford and Worcester

DECISION

This reference relates to the question of the ownership of land known as Doctors Pool (now drained and filled in), Staunton-on-Wye, Leominster District being the land comprised in the Land Section of Register Unit No. CL.176 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 the Group Parish Council of Staunton-on-Wye and District claimed to be the freehold owner of the land in question and 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 27 January 1976. At the hearing, the Parish Council were represented by Dr E W Malcomson, and the County Council were represented by Mr J Tulloch.

Dr Malcomson, who is now and has been for the last 40 years chairman of the Parish Council (it was formerly Staunton-on-Wye Parish Council), in the course of his evidence said (in effect):- The pool which was on the land, and used to be used by the people of the Village for watering horses, was filled in between 1952 and 1954. The land although a small area, has an amenity value to the Village; on it the Council has planted a few flowering shrubs. The Parish Council during his chairmanship, and, as appears from the Minute Book of the Parish Meetings and of the Parish Council from 1894 to 1964 always, have been much concerned with the Doctors Pool. He referred me to the following Entries in the book:- 17 July 1899 "as requested by the Parish Council, the District Council has fenced in the Doctors Pool..."; 23 September 1904, "The repair of the fence around the Doctors Pool. Stand over till next meeting"; 17 July 1911 "Fence round Doctors Pool...that the Clerk write to the District Council calling attention to the state of the fence and asking for immediate repairs to the same; carried unanimously"; 12 May 1932, 13 April and 11 May 1933, recording (in effect) the cleaning out of the Pool and the erection of a notice board by it; 17 April 1934 and 26 March 1935, fixing a notice board prohibiting the disposal of rubbish and considering a complaint about rubbish having been dumped; 6 March, 15 April, 14 November 1952, 31 March 1953 and 29 March and 7 May 1954, various Entries about the filling in and drainage of the Pool.

Dr Malcomson was questioned by Mr Tulloch about the possibility of the land being part of the public highway. There followed a discussion about the best way in the public interest of dealing with this land, in the course of which Mr Tulloch produced three plans which showed how the land had been affected by a recent road widening scheme. Mr Tulloch said he could offer no evidence of ownership,



apart from what might be inferred from the common law rules as to the ownership of highway land being presumed to belong to the owners of the adjoining land.

In view of section 21(2) of the 1965 Act, the registration of this land as common land is not conclusive that it is not highway, notwithstanding that the definition of common land in section 22 expressly "does not include land ...which is part of a highway". But whether or not this land is highway, I conclude from the evidence outlined above that it is a piece of land distinct from the adjoining lands and that the Parish Council are now in possession in such circumstances that it is practically certain that their possession will not be disturbed. Possession in such circumstances is equivalent to ownership.

For these reasons I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Hereford and Worcester County Council, as registration authority, to register the Staunton-on-Wye and District Group Parish Council as the owners 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 6th day of February 1976

a. a. Baden Fuller

Commons Commissioner