



COMMONS REGISTRATION ACT 1965

Reference No. 15/D/70

In the Matter of Forty Common, Eaton
Bishop, South Herefordshire D.,
Hereford and Worcester County.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.67 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No. 382 made by Mrs. W.A.A. Read and noted in the Register (she being therein called Mrs. Mary Sarah Read) on 7 January 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 11 December 1974. At the hearing Eaton Bishop Parish Council were represented by Mrs. M. Craddock one of their members and Mr. Richard David Roy Lively attended in person. In a letter dated 8 June 1973, David Allen & Carver Solicitors of Hereford notified the County Land Agent that their clients Mr. Richard Pryse Whittal and his wife Mrs. Phyllis Teresa Whittal, and Mr. John Philip Whittal and his wife Mrs. Gwendoline Edith Whittal had purchased the land CL. 67 Forty Common from Mrs. M.S. Read and were then the owners; in a letter dated 10 December 1974 the same Solicitors notified my clerk that their clients Mr. R.P. and Mrs. P.T. Whittal are no longer interested in this land having disposed of it to Mr. R.D.R. Lively in about June 1973.

The grounds stated in the Objection are:- "At the date of registration, this land was not common land". The Rights Section and the Ownership Section of this Register Unit are blank.

The land ("the Unit Land") comprised in this Register Unit is a strip containing (according to the Register) about $1\frac{1}{4}$ acres tapering to a point at its south-west end and bounded on its north-west side (between 250 and 300 yards long) by the road from Eaton Bishop. Near its north-east side (about 70 yards long) it is crossed by a cart track which leads through a gate on the road side of the Unit Land to a point (about 50 yards away) where the north-east side and the south-east side meet and where there is another gate. The part (the greater part) southwest of the cart track is wooded with scrub; there is a ditch along the southeast side which flows northeast to the inner gate. Around the track it is more open, having apparently been used by farm vehicles.

Mrs. Craddock who has lived in the Parish for 23 years, who in 1955 wrote a Village History and who has been a member of the Parish Council for about 7 years, said (in effect) :- The Unit Land ~~comprised in this Register Unit~~ has always been



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called "Forty Common". She had seen The Tithe map, and on it the Unit Land is plainly shown. The adjoining farm, Lane Head Farm was formerly owned by Mrs. Read and before her, by her father Mr. Hellyer (he died about 1960-65). Mr. Hamilton who was farm manager for Mr. Hellyer and for a time for his daughter, in the course of a conversation said he was sorry that the Unit Land was common, as they were unable to clear it of vermin; it was used by the Farm, which was otherwise very tidy in all respects, as a dumping ground; the stone from a knocked down farm house was put there. Before Mr. Hellyer, the Farm was owned by Sir Joseph Pulley and after him by Sir Charles Pulley; the Village tradition is that one of them (Sir Joseph or Sir Charles) having had trouble with gypsies asked the Parish for and was by them given permission to fence the Unit Land so that the gypsies could not get in and in return he would give needy Villagers bread and assistance in money; the last gift under this charity was in about 1939; Sir Charles died in about 1945. The Unit Land is now grown up woodland, mixed beech and chestnut; there is an old hedge between the road and the Unit Land which had been there the whole of her time. In parts it is boggy; the ditch on the southeast side is practically a stream. She had never seen anybody doing anything to the Unit Land. The Parish Council were concerned with the Unit Land; it was a small area, well wooded, which should be left as an environmental asset, as it had been for at least 50 years.

Mr. Lively in the course of his evidence ^{said} (in effect):- He bought Lane Head Farm in May 1973 from the Whittal Brothers and the sale was completed in November 1973; his solicitors assured him that his title was 100%; possibly (so his solicitor said) the Unit Land may have been considered 100 years ago on old maps to be known as common land, but the fact that it had been fenced in his opinion showed that the Parish Council had missed the boat by about 20 to 30 years. He (Mr. Lively) described the Unit Land and what he had done to it since he was there. He did not produce his documents of title relating to Lane Head Farm or any other document.

Two days after the hearing, I inspected the Unit Land, it having been agreed that I might do so unattended.

I accept the evidence of Mrs. Craddock. In the absence of documents, I can form no conclusion about Mr. Lively's title. I pay no attention to the matters set out in his letter dated 11 January 1965 and sent (after the hearing) to the Office of the Commons Commissioners; to do otherwise would be unfair to the Parish Council; and I refuse to reopen the hearing to enable Mr. Lively to put these matters in evidence, he having at the hearing declined an offer of an adjournment. So I have to determine whether, on the evidence of Mrs. Craddock and on the basis that Mr. Lively has no title at all to the Unit Land, I can properly conclude that it is within the definition in Section 22 of the 1965 Act which (so far as relevant) reads:- "common land means (a) land subject to rights of common...; (b) waste land of a manor not subject to rights of common but does not include any land which forms part of a highway".

I have no evidence that anybody ever exercised any right of common over the Unit Land. Its situation, some distance from the Village, makes it unlikely that it



is subject to any such right. I cannot I think merely because Mrs. Craddock said it was always "treated as common land" infer that there was ever any such right. I conclude therefore that the Unit Land is not within paragraph (a) of the Section 22 definition.

The hedge between the Unit Land and the road, although not very high (between 3 and 4 feet), and not in all places continuous, appeared to have been planted and effectively to prevent the Unit Land being properly described as "open" or as "unfenced". The hedge appeared to have been planted some years ago, and Mrs. Craddock said it had been there all her time. I have no information about any other land in the neighborhood which could be waste land of a manor or indeed any information about any local manor. It does not follow from Mr. Lively's absence of title that the Unit Land is waste land of a manor; there are other possibilities. The charitable arrangement made between the Parish and Sir Joseph or Sir Charles Pulley, suggest that at that time it was not thought to be waste land of a manor. Although it may be that the Unit Land could with advantage be preserved for the public, I cannot for that reason conclude that it is now waste land of a manor, so as to bring it within the scope of the 1965 Act; I am not concerned to say whether it could be protected under some other Act. Accordingly not without some regret, I conclude that the ~~Unit~~ Land is not within paragraph (b) of the definition.

For these reasons I refuse to confirm the registration. In view of some statements in a letter which Mr. Lively in November 1974 sent to the Clerk of the Commons Commissioners, I record that in my view the Parish Council acted reasonably when they applied for this 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 11th day of February 1975

a. a. Baden Fuller

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Commons Commissioner