



COMMONS REGISTRATION ACT 1965

Reference No.20/D/2

In the Matter of land known as Pinfold.
Higham-with-West Close Booth, Burnley R.D..
Lancashire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.10 in the Register of Common Land maintained by the Lancashire County Council and is occasioned by Objection No.97 made by Hon. R.J. Assheton and noted in the Register on 4th December 1970.

I held a hearing for the purpose of inquiring into the dispute at Preston on 6th June 1970. The hearing was attended by the Lancashire County Council who were represented by their Assistant Solicitor, Mr. J.A. Strong. No other person attended.

Mr. Strong said: The land has been registered as common land pursuant to an application made by the Higham-with-West Close Booth Parish Council. The Objector has decided to withdraw his objection. However, a consent decision under regulation 31 is inappropriate because in this County there have been a number of registrations of pinfolds and the County Council is desirous of a ruling by a Commons Commissioner as to their registrability.

He also said:
In the Oxford English Dictionary "pinfold" is defined as:- "a place for confining stray or distrained cattle, horses, sheep etc.; in later use a fold for sheep, cattle, etc.". Sir Robert Hunter in his book Preservation of Open Spaces and Footpaths (? edition *) at page 391 says: "Most of the enactments against the straying of animals on highways authorised the impounding of such animals (see Highways Act Amendment 1864, sec.25: the Turnpike Acts Continuance Act 1872, sec.20: the Town Police Clauses Act 1847, sec.24). The animals may be impounded in the common pound of the parish or district or in such other place as may have been provided for the purpose; and under the Town Police Clauses Act 1847, the Urban Council may purchase land and erect a pound (sec.27)". It was said by Holt, C.J. in Vaspor v. Edwards (1701) 12 Mod. 658 at p.664:- "Common pounds did not exist at common law but existed by custom, tenure or by agreement among the inhabitants of a vill". For the present law as to animals straying on highways, see Highways 1959, section 135 as amended by the Highways Act 1971: This section refers to "the common pound" and is a statutory recognition that land may lawfully be so held. Against the registration of a pinfold under the 1965 Act:- section 22(1)(a) shows that land to be common land must be subject to rights of common; these are generally understood to be rights possessed by persons to take from another person's land, and in common with him, part of the land's natural product; there is no authority to suggest that a person who has had his animals impounded can take any of the natural products of the land on which the pound stands; in the majority of cases animals there would have to be

* Mr. Strong kindly gave me a copy of pages 387 to 394 of the book cited; but I was unable to trace them in the first edition 1896, which is the only one I have available.



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supplied with food from elsewhere. In favour of the registration of a pinfold under the 1965 Act:- it is possible that the land on which a pound has been built, was, when it was built, either land subject to rights of common or waste land of a manor not subject to rights of common. Mr. Strong referred also to Pratt on Highways (20th edition); the section dealing with "Straying of animals".

In a letter dated the 12th April 1971 from the Parish Council to the County Council a request was made that the verbal proof of the usage of the pinfold over many years from the oldest male inhabitant should be accepted.

I felt some difficulty in giving any ruling in the absence of any evidence (apart from the letter) about the particular circumstances of the land being dealt with. After a short adjournment to enable the County Council to consider the position, Mr. Strong told me that the Council did not wish to call evidence and would like me to give my decision on the matter as it then stood.

From the file I know no more than that the land is "known as pinfold" and is "as marked on the register map". I cannot, I think, accept the letter of the 12th April 1971 as equivalent to evidence from the resident named.

In the absence of any evidence, I cannot, I think, do more than say that I can imagine circumstances in which I think a pinfold or pound could properly be registered under the Act as common land, such as:-

(i) A person who has a right of common over land can distrain on cattle belonging to a stranger and trespassing damage feasant, see Hall v. Harding (1729) 4 Burr 2427 and Halsbury's Laws of England (3rd edition 1952) vol.1 page 678. Such a person (if he has a right to use a pound) can confine the distrained animal in it. In my view he (not the stranger who owned the animal) would be exercising a right of common over the land on which the pound was situated.

(ii) A pound surrounded by manorial waste and usable by commoners having rights in the waste might, I think, properly be regarded as appurtenant to or part of the manorial waste.

The material before me, while not proving that the land in question is "common land" as defined in the Act of 1965, does not preclude the possibility of its being such. Had there been no objection or had the objection been withdrawn while that course of action was still open to the Objector, the registration would have become final. I have a letter from the Objector's solicitors dated the 31st May 1972 and written to the Office of the Commons Commissioners stating that he has decided to withdraw his objection and enclosing letters signed on behalf of the Higham-with-West Close Booth Parish Council and the Burnley Rural District Council agreeing to an order being made for the registration of the land as common land.

For these reasons, I conclude it would be proper to confirm and accordingly I do confirm the registration without any modification.

I am required by regulation 30(1) of the Commons Commissioners Regulations



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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 2nd day of August 1972

a. a. Baden Fuller

Commons Commissioner