



COMMONS REGISTRATION ACT 1965

Reference Nos 220/D/66  
220/D/67  
220/D/68

In the Matter of The Penfold, The Well  
and The Green, Thurnham, Lancaster  
City, Lancaster

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DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No CL. 229 in the Register of Common Land maintained by the Lancashire County Council and are occasioned (D/66) by Objection No 14 made by British Waterways Board and noted in the Register on 4 December 1970, (D/67) by Objection No 123 made by Lancaster Port Commission and noted in the Register on 4 December 1970 and (D/68) by Objection No 152 made by Ashley Bending Company Limited and noted in the Register on 16 February 1971.

I held a hearing for the purpose of inquiring into the disputes at Lancaster on 23 November 1976. At the hearing (1) British Waterways Board were represented by Mr C Dunkley, Chartered Surveyor, their Estate Officer for the North of England and Scotland, (2) Lancaster Port Authority were represented by Mr R G Swainson solicitor of Swainson Son & Reynolds, Solicitors of Lancaster, and (3) Mr Thomas Edward Jackson on whose application the registration was made attended in person; additionally I had a copy petition (enclosed with the application for registration sent by Mr Jackson to the registration authority) signed by 90 residents of the Village of Glasson which stated the number of years which they had enjoyed the amenities of the land. There being, by reason of other business, no time for this case, I adjourned the proceedings.

I held the adjourned hearing at Lancaster on 3 May 1977; at this hearing (1) British Waterways Board and (2) Lancaster Port Authority were represented as before, (3) Ashley Bending Company Limited were also represented by Mr R G Swainson (his firm acting as agents for Blackhurst Parker & Yates Solicitors of Blackpool), and (4) Thurnham Parish Council were represented by Mr G Loxham their clerk. In a letter dated 25 April 1977, Mrs D L Jackson informed the Clerk of the Commons Commissioners that Mr T E Jackson died on 2 February 1977. At the hearing Mr Swainson produced a letter dated 4 April 1977 from Holden & Wilsons Solicitors of Lancaster saying (in effect) that understanding Mr Jackson had made various registrations concerning common land at Glasson Dock, they had discussed matters with the Executors who say that they have no wish to pursue the matter any further themselves.

At the 1977 hearing Mr Loxham said (in effect):- Mr Jackson had for about 40 years regarded local history as his lifework. He was a member of the Parish Council, and they at one time supported his application for this registration. However at this hearing, he (Mr Loxham) did not on behalf of the Parish Council contend that the land should remain registered as Common Land. Oral evidence



was then given by Mr C Dunkley (above named) and by Mr K H Docton who is and has been since 1967 chairman of the Lancaster Port Commission; they and Mr Swainson produced the documents below mentioned.

On the day after the hearing I inspected the land.

The land comprised in this Register Unit is in three pieces, all situate at or near the southwest corner of Glasson Dock. The largest (by Mr Jackson called the Penfold and on his plan marked "P") is by one of the gates of the Lock between the Dock and the Basin at the end of a branch of the Lancaster Canal. The north and east boundaries of this piece are the sides of the Dock and of the Lock; the south and west sides are a stone and iron bar fence separating it from the roadway which after crossing the Lock by a swing-bridge, divides, one road continuing by the side of the Lock and the other going straight ahead up Tithebarn Hill. The smallest piece (by Mr Jackson called "The foreground of the Well" (now disused) and on his plan marked "T") is a small triangular piece now appearing as part of the footpath by the side of the road opposite the southwest corner of the P Piece. The remaining piece (by Mr Jackson called "the Garden or Green", and on his plan marked "G") is a strip of land on the west side of Dock Road a little to the north of the northwest corner of the P piece and a little to the south of the Dock Road entrance of the Dalton's Arms; nearby on the west is the Port Commission Boat Park, there being a track between this Park and the G piece.

Objection No 14 (British Waterways Board) relates to the P piece and the T piece. Mr Dunkley said (in effect):- These two pieces are owned by the Board, having been purchased by their predecessors in title from the Lancaster Quay Commissioners under documents dated 3 February 1823 and 19 August 1825. He understood that there was no dispute as to the ownership of the Board. The P piece has always been adequately fenced off; part of it contains operational equipment attendant to the Lock (2 sets of sluices or paddle gears) and to the Swing Bridge (the windlass). For many years the land was used for the storing of coal by the Port Commissioners who paid an acknowledgement rent when they used it for this purpose; that it has been used for storage purposes is apparent because although the land is mainly grassed down, the timber (sleeper) base for the storage of coal is still clearly visible. The T piece is not fenced off from the public highway, and the Well (or the site of the Well) formerly there is now covered up; it was he believed formerly the water supply of the lock-keeper's house; there was a notice at one time prohibiting the parking of vehicles on the land; the Board permitted the Post Office to erect a telephone call box on it, but this box is now on another site.

Objection Nos 123 and 152 (Lancaster Port Commission and Ashley Bending Company Limited) relate to the north and south parts respectively of the G piece. Mr Docton produced a conveyance dated 1 December 1969 by which the Lancaster Port Commission acquired from the Ashley Bending Company Limited the north part of the G piece. Mr Swainson produced copies of the conveyances dated 16 June 1919, 28 November 1890 and 28 July 1961 under which Ashley Bending Company Limited traced their title from the London and Northwestern Railway Company (as successors of the Company of Proprietors of the Lancaster Canal Navigation) to 860 square yards of land being the G piece, and the land between it and Tithebarn Hill Road and the above mentioned track adjoining on the west.



On the south part of the G piece there is now a shop selling soft drinks, ice cream, souvenirs etc; apart from this it might perhaps be supposed that the G piece, the P piece and the T piece were all waste land but on my inspection I could find nothing to suggest that these pieces were ever "waste land of a manor" within the definition of "common land" in section 22 of the 1905 Act; on the contrary on appearance alone it seemed more likely that if they ever were waste land, they had become so as a consequence of the construction of the Canal and the Dock. The evidence I had at the hearing (as summarised above) all tended to show that none of these pieces had ever been common land in any part of the section 22 definition. In the absence of any evidence that they are now or were ever within the definition, I conclude that this registration was not properly made.

For the above reasons I refuse to confirm the 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 12<sup>th</sup> day of May —

1977

*a. a. Barber Fuller*

Commons Commissioner