



In the Matter of The Meadows (part)
Stamford, Lincolnshire (NO.1)

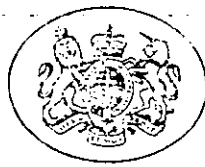
DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No.VG.11 in the Register of Town or Village Greens maintained by the Lincolnshire County Council and are occasioned by the conflicting registrations at Entry No 1 in the Land Section of Register Unit No.CL.3 in the Register of Common Land maintained by the Council and at Entry No 1 in the Rights Section of that Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Grantham on 23 June 1981. The hearing was attended by Mr A Scholes, the Chairman of the Freemen of the Borough of Stamford, the applicants for the conflicting registrations. There was no appearance on behalf of the successor authority of the former Stamford Corporation, the applicant for the registration.

For the reasons given in my decision in In the Matter of Stamford Freemen's Common (No. 1) (1981), Ref. No. 222/D/7 I am satisfied that the land comprised in the Register Unit is a "town or village green" as defined in S.22 (1) of the Commons Registration Act 1965. I therefore confirm the registration. Although this dispenses of the conflicting registrations so far as this registration is concerned, it is necessary to give further consideration to the conflicting registration at Entry No 1 in the Rights Section of Register Unit No.CL.3, since that registration is to be deemed to have been also made in the Rights Section of this Register Unit by virtue of reg. 14 of the Commons Registration (General) Regulations 1966, and on the cancellation of the registration of the land in Register Unit No. CL 3 it will become the duty of the County Council, as registration authority, to transfer from the Register of Common Land to the Register of Town or Village Greens, Entry No. 1 in the Rights Section of Register Unit No. CL 3 which is deemed to have been made in the Rights Section of this Register Unit. I must, however, point out that there has been an irregularity in the registration. The land was registered in the Register of Town or Village Greens on 2 February 1968 pursuant to the application of the former Stamford Corporation made on 1 February 1968. The application for the registration of the Freemen's rights was not made until 10 April 1968. Since the land over which the rights were claimed to be exercisable was by that date already registered as a town or village green, the rights over it should have been registered in the Register of Town or Village Greens, see note 9(b) to Form 9 in Schedule 1 to the Act of 1965. The application for the registration of the rights did not make it necessary to register the land in the Register of Common Land. The registration authority had power so to register the land under S. 4 (2)(a) of the Act of 1965, but if they had exercised that power, the rights registered in the Register of Town or Village Greens would have been deemed to be registered in the Register of Common Land and not vice versa. The registration authority did not, however, exercise its power under S. 4 (2)(a) of the Act of 1965, but purported to carry out its duty under S. 4 (2)(b) to register land in a case where it registered rights over it, which duty was non-existent because the land had already been registered in the Register of Town or Village Greens.

Turning from the technicalities to the merits of the registration of the Freemen's rights, the award made under S. 4 of the Stamford Inclosure Act 1871 (34 Vict., c.xxxiv) provided (inter alia) as follows:-



1. That the Freeman's Trustees shall and may from time to time determine whether the whole or any part of the Freeman's lands shall be laid for a crop of hay, such crop of hay to be sold under the direction of the Trustees and the money so produced expended as there directed.
2. That when the Freeman's lands or any part thereof are not laid for hay and after the hay is cut and gathered the Freeman's lands shall be occupied and used as a common for depasturing the stock of the Freeman entitled to the benefit of the Act of 1871 subject to such regulations for the due and proper stocking of the same as may from time to time be made by the Trustees.
3. That the Trustees may regulate the number of cattle, horses, or sheep to be run on the lands by each Freeman entitled to stock and also regulate the payments, if any, to be made by each Freeman in respect of the rates, taxes, and other expenses incident to the beneficial occupation and maintenance of the land.

The registration at Entry No. 1 in the Rights Section of Register Unit No. CL 3 is of the right or rights present and future of the Freeman, established by the Act of 1871 and the award.

Although it is stated in the award that the Freeman's lands shall be occupied and used "as a common for depasturing the stock of the Freeman", I have come to the conclusion that the rights to which the Freeman are entitled under the Act and the award are not rights which can be registered under the Commons Registration Act 1965.

It is an essential feature of a right to graze animals registered under the Act that it should be quantified, and an application for the registration of such a right was therefore required by S. 14 (2) of the Act to state the number of animals to be entered in the register. The application for the registration at Entry No. 1 in the Rights Section of Register Unit stated: "The number of animals to be depastured is to be regulated by the Freeman's Trustees". Not only did this not comply with the requirements of S. 14 (2), but it appears to me that if I were to attempt to make good the defect in the application by modifying the registration, I should be abrogating the statutory power of the Trustees to regulate the number of animals to be run on the land by each freeman entitled to stock.

Turning from what seems to me to be the fatal impossibility of effecting a registration in accordance with the requirements of the Act of 1965, I do not consider that the Freeman's rights are rights of common under the general law relating to such rights. In the first place, a right of common is a profit à prendre exercisable irrespective of the consent or concurrence of the owner of the land. Here the land is in the ownership of the Trustees and they can decide to exclude the Freeman's rights during part of the year by laying the land for a crop of hay, while during the time when the rights are exercisable the number of animals to be run on the land by each Freeman entitled to stock is decided by the Trustees. There is also the further difficulty that the Freeman are a fluctuating body of persons, and it was decided in Gateward's Case (1607) 6 Co. Rep. 59b that such a body of persons cannot be entitled to a right of common.

I shall therefore not confirm the entry in the Rights Section which is deemed to have been or should have been made. It is right, however, that I should point out that this



in no way affects the rights to which the Freemen are entitled under the Act of 1871 and the award made under it. Those rights remain. All that I have decided is that they are not rights which are capable of registration under 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

9~~th~~

day of

July

1981

G. P. L. Quirk

Chief Commons Commissioner