



In the Matter of Tracts of River Banks, Sea Banks, Outmarshes, Creeks and Mud, River Welland, Fosdyke and Moulton, Lincolnshire (No 1)

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No CL 39 in the Register of Common Land maintained by the former Holland County Council and are occasioned by Objection No 28 made by W Dennis & Sons Ltd and noted in the Register on 14 July 1970, Objection No 41 made by the Crown Estate Commissioners and noted in the Register on 14 August 1970, Objection No 63 made by the former Welland and Nene River Authority and noted in the Register on 23 September 1970, Objection No 115 made by Mr D G Wilson and noted in the Register on 21 December 1970, Objection No 134 made by the former County Council and noted in the Register on 22 January 1971, Objection No 167 made by Mr Henry Tunnard and noted in the Register on 22 March 1971, Objection No 235 made by Mr E W Roythorne and Mr S R Coltman and noted in the Register on 6 September 1971, Objection No 241 made by Mr J Ward and Mr E W Roythorne and noted in the Register on 8 September 1971, Objection No 282 made by the former County Council (County Land Agent) and noted in the Register on 1 August 1972, and Objection No 309 made by Mr A H Hicks and noted in the Register on 1 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Spalding on 20 April 1978. The hearing was attended by Mr F G Stephenson, the applicant for the registration, Mr E Jowitt, Q.C. on behalf of W Dennis & Sons Ltd and Mr Ward (Mr Roythorne being deceased), Mr E J Sher, of counsel, on behalf of the Crown Estate Commissioners, Mr R J Moverley, of counsel, on behalf of the Anglia Water Authority, the successor of the former River Authority Mr A G Dyer, solicitor, on behalf of the Lincolnshire County Council, and Mr D M Thomas, solicitor, on behalf of Mr Tunnard. There was no appearance by or on behalf of the other Objectors.

There is no entry in the Rights section of the Register Unit, so any rights of common over this land which may have formerly existed are no longer exercisable by virtue of section 1(2)(b) of the Commons Registration Act 1965, and the land could only fall within the definition of "common land" in section 22(1) of that Act by being waste land of a manor. Mr Stephenson, however, did not contend that the land is waste land of a manor. He said that he applied for the registration with the intention of preserving a right of the public to go onto the land to gather samphire and mushrooms. Indeed, he said that he had applied for the registration of such a right, but on investigation it became clear that, while this may have been his intention, he had in fact only applied for one registration, namely that in the Land section of the Register Unit.

In the absence of any evidence to support the registration, I can only refuse to confirm it.

Mr Jowitt applied for orders for costs in favour of the Objectors whom he represented. Costs in proceedings under the Act of 1965 do not automatically follow the event. In a case in which an applicant has applied for a registration



in the genuine, even though mistaken, belief that he was thereby safeguarding the interests of the public it is not usual to award costs unless the applicant's conduct of the proceedings has been in some way worthy of censure. Mr Jowitt drew my attention to correspondence in which the Objectors' solicitors had on more than one occasion pointed out to Mr Stephenson that there was no such right as he claimed and warning him that the Objectors would apply for an order for costs against him if he proceeded with his application. Mr Stephenson did not reply to these letters, though he called at the solicitors' office on two occasions. He mistrusted the advice on the law which he received from the solicitors. His proper course would have been to have consulted his own solicitor, but it is understandable that he did not wish to incur expense in a matter in which he was claiming no personal interest beyond that of a member of the public. While I have every sympathy with the Objectors, who have incurred expense in resisting an application which was wholly misguided and ill-founded, Mr Stephenson appeared to me to have a genuine belief in the justice of his cause. Although that belief was mistaken, I cannot regard his action in supporting the registration as either frivolous or vexatious, and I have come to the conclusion that to order him to pay costs would be to penalize him for being rather stupid and muddle-headed. I therefore make no order as to costs.

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

7th

day of

June

1978.

CHIEF COMMONS COMMISSIONER