



In the Matter of West Bank, Crowland, Lincolnshire (No 1)

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No CL 48 in the Register of Common Land maintained by the former Holland County Council and are occasioned by Objection No 103 made by the former Deeping Fen, Spalding and Pinchbeck Internal Drainage Board and noted in the Register on 16 December 1970, and Objection No 194 made by the former Welland and Nene River Authority and noted in the Register on 10 May 1971.

I held a hearing for the purpose of inquiring into the dispute at Spalding on 18 April 1978. The hearing was attended by Dr D G Teall, the applicant for the registration, Mr R J Moverley, of Counsel, on behalf of the Anglia Water Authority, the successor of the former River Authority, and by Mr C P Bennett, solicitor, on behalf of the Welland and Deepings Internal Drainage Board, the successor of the former Internal Drainage Board.

In August 1974 Dr Teall agreed with the Water Authority that approximately half the land comprised in the Register Unit should be excluded from it. However, the Objection of the former Internal Drainage Board related to the whole of the land comprised in the Register Unit, so that it was not possible for me to deal with the matter by consent. It appeared at the hearing that of the land which the Water Authority was content to leave within the Register Unit, the present Internal Drainage Board was concerned only with a strip comprising the New River. Mr Bennett stated that drainage rates were being paid in respect of some or all of the rest of the land which the Water Authority was content to leave within the Register Unit. The 25" to the mile Ordnance Survey map indicates that this land was marsh at the time of the survey. Dr Teall said that it was still in that condition when he applied for the registration, but that it is now arable land and has been such for the last four or five years. It having been held in Central Electricity Generating Board v. Clwyd County Council, [1976] 1 W.L.R. 151 that a Commons Commissioner must have regard to the facts at the date of the hearing, even though they may differ from those at the date of the registration, I am driven to the conclusion that, whatever may formerly have been the position, this land, being now cultivated, no longer falls within the definition of "waste land" laid down by Watson B. in Att.-Gen. v Hanmer (1858), 27 L.J.Ch.837. There being no entry in the Rights section of the Register Unit, it follows that I must confirm the registration. Both Mr Moverley and Mr Bennett applied for orders for costs in favour of their respective clients. I do not regard this as a proper case for orders for 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

5th

day of

July

1978


CHIEF COMMONS COMMISSIONER