



In the Matter of Ledes Pond, Woolton,  
Merseyside

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No.VG.3 in the Register of Town or Village Greens maintained by the Merseyside County Council and is occasioned by Objection No. 2 made by the former Liverpool Corporation. and noted in the Register on 4 November 1968.

A hearing was held for the purpose of inquiring into the dispute at Liverpool on 24 June 1983. The hearing was attended by W G Richards, the applicant for the registration, P Rhodes, Solicitor, on behalf of the Liverpool City Council, and Mr V A Kay of the Conveyancing Department of the Merseyside County Council.

The land comprised in the Register Unit may be part of an area designated on a somewhat diagrammatic map of 1613 as "waste to get marle on". Be that as it may, the first definite evidence revealed by modern research is its appearance as a pond on Yates and Perry's map of the Environs of Liverpool, published in 1768. It is shown on the plan of the allotments in Great Woolton made in 1813 for the purposes of the Childwall, Great Woolton, and Little Woolton Inclosure Act of 1805 (45 Geo.III, c. cx), but was not allotted to anyone or for any purpose, being presumably left in the ownership of the lord of the manor as manorial waste.

In the tithe apportionment of the township of Much Woolton, made in 1843, the land is described as "Public Watering-Place and Pinfold" and the owners are stated to be "Freeholders of Much Woolton". Presumably the "Freeholders" were the freehold tenants of the Manor, but this statement as to ownership does not make legal sense, and it is inconsistent with the earlier and later evidence of ownership by the lord of the manor, while the description "Public Watering-Place and Pinfold" is consistent with ownership by the lord of the manor.

At this point it is convenient to observe that, since there is nothing in the Act of 1805 or the award of 1813 allotting the land for the exercise or recreation of the inhabitants of any locality, the land cannot fall within the first limb of the definition of "town or village green" in Section 22 (1) of the Commons Registration Act 1965. Furthermore, the description of the land in the tithe apportionment as Watering Place and Pinfold is incompatible with the existence of a customary right of the inhabitants of the locality to indulge in lawful sports and pastimes over it, so that it cannot fall within the second limb of the definition. It therefore only remains to consider whether the inhabitants of the locality have indulged in such sports and pastimes as of right for not less than twenty years so as to bring it within the remaining limb of the definition. Although the period of twenty years to be considered is that immediately preceding the Act of 1965 (see New Windsor Corporation v Mellor, (1975) Ch.380), the situation during that period cannot properly be understood without some knowledge of the history of the matter before and during the relevant period.



On 17 July 1856 the Local Board of Much Woolton was constituted. The Board's Minute Book shows that the Board soon began to take an interest in the condition of the Lodes. Negotiations with the Deputy Steward of the manor over the next five years came to a head on 1 December 1871, when it was recorded on the Court roll of the manor of Little Woolton that the Marquess of Salisbury, the lord of the manor, gave and granted to the Local Board the land known as the Lodes in the township of Much Woolton as the same was then fenced in by a wall and iron railings and partly used as a watering place for cattle and partly as a shrubbery and pleasure ground upon trust that the Local Board and their successors should for ever maintain and keep the premises as a watering place for cattle and shrubbery and pleasure ground for the use and benefit of the inhabitants of the township of Much Woolton. As a result of successive reorganisations of local government the land is now held by the Liverpool City Council.

The stipulations recorded in the court roll in 1871 were treated by the Marquess of Salisbury's successors as if they were restrictive covenants which could be released. Accordingly by an indenture made 1 May 1908 between (1) James Edward Hubert Gascoyne, Marquess of Salisbury (2) The Urban District Council of Much Woolton it was recited that the premises were no longer used nor suitable for use as a watering place for cattle and the Marquess released the land from the trust and restrictions declared and imposed in 1871 so far as might be necessary for giving effect to three provisions, namely; (1) the Council might erect a shelter and sanitary conveniences; (2) the Council might alter the shape of the pond and form it into an ornamental basin of water; and (3) the Council might lay out the residue of the land as an ornamental garden or pleasure ground for the use and benefit of the inhabitants of the township of Much Woolton.

There were further deeds of release in 1969 and 1979, but these are too late to be relevant to the consideration of the period of twenty years before the passing of the Act of 1965.

The evidence regarding that period of twenty years is somewhat scanty. I was provided with statutory declarations made by two persons aged 61 and one aged 82, who described how they played games on the land when they were children. These declarations related to periods well before 1945. There was also a similar declaration by a person born in 1933, whose childhood did not extend much after 1945. However, having regard to the terms of the 1871 and 1908 documents, it is probable that some inhabitants of Much Woolton played games on the land during the whole of the relevant twenty-year period. That, however, is not in itself enough to bring the land within the third limb of the definition of "town or village green" in section 22(1) of the Act of 1965. For that the playing of games must have been as of right.

The successive local authorities who have held the land since 1871 have all been statutory bodies whose only powers were those conferred on them by statute. In 1871 the Local Board of Much Woolton's only power with regard to pleasure grounds was that contained in Section 74 of the Public Health Act 1848, under which a local board could provide, maintain, layout, plant, and improve premises for the purposes of being used as public walks or pleasure grounds, and support or contribute towards any premises provided for such purpose by any person whensoever. This section was replaced by section 164 of the Public Health Act 1875, which also contained power to make byelaws for the regulation of any such public walk or pleasure ground. The local authority for the time being were then given further powers with regard to public walks and pleasure grounds by section 44 (1) of the Public Health Acts Amendment Act 1890,



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section 76 of the Public Health Acts Amendment Act 1907, and section 69 (1) of the Public Health Act 1925, including powers of letting, building, closing, and charging for admission, which are quite incompatable with a right of a limited class of persons to use the whole of the land at all times without any restriction.

For these reasons I refuse to confirm the registration.

I am required by regulations 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~~th~~ day of July 1983

Chief Commons Commissioner