



In the Matter of The Village Pond,
Oddington, Oxfordshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.17 in the Register of Common Land maintained by the Oxfordshire County Council and is occasioned by Objection No.52 made by Donald Victor Henry Price and noted in the Register on 17th June 1971.

I held a hearing for the purpose of inquiring into the dispute at Oxford on 6th June 1972. The hearing was attended by Mr. D.W. Dunn, the Chairman of the Oddington Parish Meeting, and by Mr. E.J. Yerbury, solicitor for Mr. Price.

The pond is not enclosed and there is evidence that inhabitants of Oddington have taken water from it over a period of many years. It may well be that the inhabitants have a right to take water from the pond, but such a right would not be a right of common. A right of common is a profit à prendre, but a right to take water is an easement: see Race v. Ward (1855), 4 E.& B. 702. There is also a further difficulty in that a right of common in gross in the inhabitants of a parish or township is unknown to the law: see Davies v. Williams (1851), 16 Q.B. 546, 539. It is only because it would not be a right of common that a right in the inhabitants to take water from the pond would be supportable, if the evidence justified it.

One of the witnesses, Mr. G.T.F.S. Franklin, who has lived in Oddington for 47 years, also spoke about cutting the trees round the pond and taking the wood. Mr.Dunn relied on this as being evidence of the existence of a right of common of estovers. There was, however, nothing to indicate that in taking the wood Mr. Franklin was purporting to be exercising any legal right; and there was no evidence that anybody else had ever taken wood from the land included in the registration.

For these 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 14th day of July 1972


Chief Commons Commissioner