



In the Matter of Bilton Common, Rugby, Warwickshire.

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No CL 29 in the Register of Common Land maintained by the Warwickshire County Council and are occasioned by Objection No 35 made by Mr H P Dyer and Objection No 36 made by Mr D Richardson and both noted in the Register on 21 October 1970 and Objection No 39 made by the Trustees of Bilton Poor's Land and Other Charities and noted in the Register on 14 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Rugby on 15 June 1978. The hearing was attended by Mr A Matthews, a member of the Committee of the Bilton Allotment and Gardens Association, whose application was noted under section 4(4) of the Commons Registration Act 1965, Mr Vivian Chapman, of counsel, on behalf of the Trustees of Bilton's Poor's Land and Other Charities, Miss J J Dixon, solicitor, on behalf of the Rugby Borough Council, and Mr J Darling, Deputy County Secretary, on behalf of the County Council. There was no appearance by or on behalf of Mr F G W Lett, the applicant for the registration, Mr Dyer, and Mr Richardson. Mr Lett stated in a letter dated 14 June 1978 addressed to the Clerk of the Commons Commissioners that he was "withdrawing" his application.

The land comprised in the Register Unit forms part of an area of 42 acres which was allotted to and for the use of the poor of the town of Bilton by a decree of the Court of Chancery dated 10 July 1661. This decree was made in what appears to have been a collusive suit to confirm an inclosure by agreement.

By an Order of the Board of Charity Commissioners of England and Wales dated 8 January 1878 the area of 42 acres was vested in the Official Trustee of Charity Lands, but under the Scheme approved by the Order the land was to be managed by the Trustees. Part of the land has since been sold, including a part of the land comprised in the Register Unit, which was conveyed to the former Rugby Corporation in 1938, and a very small area, which was conveyed to the Scout Association Trust Corporation to be held on behalf of the 7th Bilton Rugby Scout Group in 1973.

The area sold in 1938 is now a recreation ground and the remainder of the land comprised in the Register Unit (with the exception of the very small area sold in 1973) is let by the Trustees as allotments.

There is no entry in the Rights section of the Register Unit, so that the land comprised in it can only fall within the definition of "common land" in section 22(1) of the Act of 1965 if it is waste land of a manor.

The decree of the Court of Chancery made in 1661 did not specifically deal with the fee simple interest in the 42 acres allotted to and for the use of the poor, so it is arguable that the fee simple remained in the lord of the manor, but if this was the case, the fee simple became severed from the lordship of the manor in or before 1878, when it was vested in the Official Trustee of Charity Lands. Such severance deprived the land of its status as waste land of the manor: see Lacey v Box Parish Council, (1978) unrep. Furthermore, none of the land is now waste land, i.e. open, uncultivated and unoccupied, within the definition laid down by Watson B in Att. - Gen. v. Hamner (1858) 27 L.J. Ch. 837.



For these reasons I refuse to confirm the registration.

Mr Chapman asked me to make an order for costs against the Association. Mr Matthews said that the Association's reason for applying for the registration was that out of the original 42 acres of allotment land only about 16 acres were left for cultivation, the remainder having been sold. Mistaken though the action of the Association has proved to be, I accept that it was bona fide thought that it would be in the interests of the local inhabitants for the land to be registered as common land and that this was the only reason for making the application. Mr Matthews said that the Association had been advised by a solicitor that there was a slight chance of success. While not without sympathy for the Trustees, who have had to incur expense in contesting what was in truth a hopeless claim, I do not consider that the conduct of the Association has been such as to justify my making an order for costs in a matter in which they had no proprietary interest.

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 23rd day of June 1978

CHIEF COMMONS COMMISSIONER