



In the Matter of The Sheepwash, Walsgrave
in the City of Coventry

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. 1 in the Register of Common Land maintained by the former Warwickshire County Council and is occasioned by Objection No. O.1 and O.2 made by Mr W V Wakefield and Mr T S Beaty respectively and noted in the Register on 18 and 28 July 1972 respectively.

I held a hearing for the purpose of inquiring into the dispute at ~~Coventry on 3~~ ~~November 1981~~. The hearing was attended by Mr A Mander of Messrs Mander, Hadley and Co, Solicitors of Coventry appearing for the personal representatives of the late Mrs Vera Gwendoline Gulliver, the applicant and Miss Sheila Cameron of Counsel instructed by Messrs Norton, Rose, Botterell and Roche, Solicitors of London appearing for both objectors.

In opening Mr Mander observed that the land was described in the application as 'Sheepwash, now filled in and hurdles removed'. Before any evidence was called Miss Cameron submitted that as there were no registrations in the Rights Section the land could only be registered as Common Land if it were waste land of a manor not subject to rights of common. Any evidence showing that rights of common had been enjoyed was therefore inadmissible because it was irrelevant. See the decision of Goff J in C.E.G.B. v Clwyd CC 1976 1 W L R 151. Mr Mander endeavoured to defeat this submission by arguing that the application in the Land Section was by reason of its wording to be constrained as an application in the Rights Section. He also referred to Mercer v Denne (1905) 2 Ch 538.

In my judgement it is not possible to distinguish the judgment of Goff J and I accordingly ruled that evidence of any alleged enjoyment was inadmissible. It was however still open to Mr Mander to endeavour to establish that the land was waste land of the Manor.

Mr Mander then called Mr George Mack Dobson Booth, Assistant Archivist to the former Warwickshire County Council who produced the original of an Enclosure Award of 28 February 1757. In cross-examination Mr Booth said he was not familiar with the history of Sowe nor did he know where Sowe Common was. The object of the Enclosure Act was to set out plots which would become privately owned. The Craven Family owned a large part of the neighbourhood.

The right to use the sheepwash stemmed from the Enclosure Award. In 1834 the Register Unit was part of the highway. In 1889 the Sheepwash land was shown as open and unfenced to the highway.

In the plan prepared as part of the Particulars of Sale of the Coombe Abbey Estate in 1923 OS. No. 57 the Register Unit is described as Roadway and part of Lot 27, which was conveyed to the Wakefield Trustees on 19 May 1924 by the fifth Earl of Craven as tenant for life.

Mrs Ena Margaret Ashman of 15 Golf Lane, Whitnash near Leamington Spa, the daughter of the late Mrs Gulliver said that her family had lived in Walsgrave for several generations. She remembered the Sheepwalk in the 1930's when she was at the Village



School. The Headmaster took her class to the top of a hill and said that large areas of the surrounding land had been common land. The Sheepwalk had remained common land thanks to the Church.

The Sheepwalk land had always been open to the road. On the eastern side was a brook, but no fence or hedge. There was a hedge and fence on the southern side. On the northern side there was a hedge on the other side of the road. She produced a coloured print of a photograph she had taken in 1972, looking east from the village side of the bridge and taken at a point about 180 yards from the apex of the triangle.

In cross-examination she said that she knew Tom Beaty. His family had been tenants of Walsgrave Hill Farm for many years. She had never seen Beaty's sheep or cattle on the Sheepwalk. Her parents were not farmers. Earl Craven received some land and he commuted the tithe. Lord Craven formerly owned this farm, but it was farmed by a tenant. The Sheepwash was last used to my knowledge in 1941 and was filled in the 1960's. The local authority took down the old bridge. Earl Craven retained the estate until 1930 and owned the lordship of the manor.

Evidence was then given on behalf of the objectors. Mr Tom Snow^dallen Beaty said he was the tenant of Walsgrave Hill Farm. His father had been tenant before him. The witness was born in 1926 and his father died in 1942. The witness used to help his father on the farm when he was old enough to do so. When he was owning the farm, he used the Sheepwalk for feeding cattle, he had a milking herd. The tenancy included the fields to the north of the Sheepwalk. His father also kept cattle.

There was a gate up by the Vicarage, known as Red Lane Gate, to prevent sheep straying into the village. Mr Beaty was responsible for it and later moved it down to the site of the present gate which is at the western end of the register unit. He put up the Notice 'Private Land' which appears in the photograph produced by Mrs Ashman. When he was a child there was a brick sheep wash on the Register Unit which was used once a year in May to cleanse the fleeces of grease. The owner of the sheep had to come to Hill Farm to collect the dipping irons and the flood gate. The owners had to pay his father (1/- perscore). After his father's death he took over the tenancy jointly with his mother and brothers.

Sheepwashing ceased during the last war and was never resumed. The brick structure was broken up in about 1966. The old bridge was taken down by the drainage authority and replaced. The roadway is a bridle path.

In cross-examination Mr Beaty admitted that he had put the cattlegrid across the road as shown on the left of the said photograph. There is a gate at the side which is never locked. This was done in 1966 and the gate was put in first. His father kept the dip clean and maintained the irons. Payment could have been for these services and not for the right to use the dip. The fields on the east side of the Brook are not fenced.

Mr John James Denis Neal (aged 77) said that his farm adjoined Hill Farm on two sides. He left school in 1914. The gate by the Vicarage was there in 1910. The Sheepwash was grazed by Beaty's cattle.

The land was enclosed for the purpose of Mr Beaty's Farm.



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Miss Cameron submitted that to be waste of the Manor the land must be in the ownership of the Lord of the Manor at the date of registration and the land had ceased to be in the ownership of the Lord of the Manor when it was sold off in 1924. Miss Cameron relied on Box Parish Council v Lacey (1980) Ch 109.

Miss Cameron further submitted that a right of sheepwash was not a right of common.

Mr Mander submitted that on its true construction the application for registration in the Land Section was also an application for registration in the Rights Sections and registrations made in both the Land and Rights Section.

I have seen the original application which is headed 'Application for the registration of land as common land' and in my judgment it cannot be construed so as to include any other form of registration.

I am further of the view that the land was not at the date of registration waste land of a manor as it had been sold off in 1924.

I am therefore against the applicant on the two main arguments, on the first because of the Clwyd case and on the second because of the decision in Box Parish Council v Lacey. (1980) Ch 109.

A further point raised by Miss Cameron that the right claimed was not a right of common, was not fully argued but had it been necessary to reach a decision I would have upheld Miss Cameron's contention.

At the conclusion of the argument, I was asked by Miss Cameron in the event of the application failing to award costs to the objectors and she supported her application with some correspondence between the parties' solicitors beginning on 14 October 1981, in which in the first case generally and in the second case for specific reasons, the applicants were told they could not succeed and were invited to throw in the sponge.

The object of the Commons Registration Act 1965 was to secure the registration of all commons, rights of common, and the ownership of commons. The purpose of the Act might not have been achieved if those who genuinely believed in the propriety of their application had been deterred from coming forward through fear of being mulcted in costs.

In my view costs should not be awarded against an unsuccessful party merely because he has lost unless there has been unreasonable conduct, which is not in my view the case here. I therefore make no order as to costs.

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

30th

day of

November

1981

George H. M. etc.
Commons Commissioner