



COMMONS REGISTRATION ACT 1965

Reference No.260/D/13
260/D/14

In the Matter of Wapley Common, Dodington,
Northavon District, Avon.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 and 2 in the Rights Section of Register Unit No.CL.215 in the Register of Common Land maintained by the Avon County Council and are occasioned by Objection No. Ob.47 made by Mr. John Anstey, Miss Kate Lloyd Anstey and Miss Catherine May Anstey and noted in the Register on 24th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Bristol on 18th and 19th March 1975. At the hearing (1) Miss K.L. and Miss C.M. Anstey were represented (Mr.J.Anstey died 28th August 1974) by Mr.D.Hawkins of Counsel instructed by Lyons Davidson & Co., Solicitors of Bristol, (2) Mr. David Brian Mazelin on whose application Entry No. 1 in the Rights Section was made, was represented by Mr. Anthony Michael Harris as a friend and (3) Mr. Hedley John Clifford on whose application Entry No. 2 in the Rights Section was made, attended in person.

The land ("the Unit Land") comprised in this Register Unit is divided into two parts by the public road ("the Through Road", a side road suitable for motors) which runs from the bottom of Wapley Hill (Wapley is further south) curves westwards across the Unit Land (Pool Farm is on the north side) and becomes Besom Lane (leading to Westerleigh on the east). The part ("the North Part") of the Unit Land north of the Through Road slopes up to the high ground on the east; a piece of it ("Wapley Bushes") is an area of dense scrub and trees for the most part impenetrable containing about $4\frac{1}{2}$ acres; the other pieces of the North Part are open grass land containing about $18\frac{1}{4}$ acres; across them runs a road (apparently private) providing access from the Through Road to Cliff Farm (on the high ground on the east). The other part ("the South Part") of the Unit Land South of the Through Road comprises an area ("the Allotment Gardens" marked as such on the O.S.Map) containing about $1\frac{1}{4}$ acres, and some roadside verges; these verges are narrow and in this matter unimportant; except where the context otherwise requires, in this decision I include them in the North Part.

The Unit Land is registered as Common Land in consequence of Mr. Mazelin's application for registration of rights. The rights registered at Entry Nos. 1 and 2 are attached (1) to No. 2 Wapley Rank and (2) to No. 4 Wapley Rank to graze (in each case) 2 cows or 2 horses or 1 horse and 1 cow for 6 months from May to October inclusive. The grounds stated in the Objection are: "that the land was not common land at the date of registration. That the rights claimed do not exist at all"



-2-

On behalf of the Misses Anstey oral evidence was given by: (1) Mr. J. Petch who is deputy clerk of Northavon District Council and who produced a conveyance dated 25 November 1919 by which Sir G.W.H. Codrington with the concurrence of his mortgagees and trustees conveyed the land now comprising Nos. 1 to 4 Wapley Rank and the land held therewith and also the Allotment Gardens to Chipping Sodbury Rural District Council (predecessors of Northavon District Council); (2) by Mr. J.K. Kirkland who is the area housing officer of the District Council and who produced (a) the counterpart tenancy agreement dated 20 November 1957 by which Sodbury Rural District Council let 2 Wapley Rank to Mr. Mazelin, (b) a copy letter dated 29 November 1966 by which the same Council offered a weekly tenancy of No. 4 Wapley Rank to Mr. Clifford (c) a plan of the land let under these tenancies, and (d) a lease dated 23rd June 1924 by which the Chipping Sodbury Rural District Council demised the Allotment Gardens to Wapley and Codrington Parish Council from 1920 for 99 years at a yearly rent of £1; (3) by Miss K.L. Anstey who has lived at Cliff Farm for the last 67 years (her father was tenant until he died in 1914) and who produced (a) a conveyance dated 11th December 1919 by which Sir G.W.H. Codrington with concurrence as aforesaid conveyed to Mrs. S. Anstey and Mr. J. Anstey the farm and lands known as Cliff Farm and Wapley Bushes comprising 128a.3p., (b) an abstract dated 1919 of the title to the settled estate of Sir G.W.H. Codrington, (c) particulars of sale (by auction) held on 10th July 1919 of the outlying portions of the Dodrington Estate, (d) the plan formerly attached to the said 1919 particulars; (4) by Mr. D.E. Leflaive managing clerk of Lyons Davidson & Co., who produced the original settlement dated 2nd February 1887 (being the root of title in the 1919 abstract); (5) by Mr. W.T.G. Baldwin who is now 79 years of age and who came to Wapley when he was 3 months old and who lived there for 30 years; and (b) by Mr. R.G. Warlock who is now aged 76 years and who went to school in Wapley and lived in the parish until 1933. Mr. Hawkins produced as written evidence on behalf of the Misses Anstey, (a) an extract from the Bishops copy of the tithe map of the parish of Wapley and Codrington certified 11.3.1975 by the Bristol County Archivist, and (b) the most recent Ordnance Survey Map 1/2500.

Mr. Hawkins said *notwithstanding* → that the Allotment Gardens were included in the December 1919 conveyance, his clients made no claim to them, they having been conveyed to the District Council by the November 1919 conveyance. Mr. Kirkland said that his Council were not aware of any right of common over the North Part annexed Nos. 1-4 Wapley Rank and they claimed none. Miss Anstey said (in effect):- her father was tenant of Cliff Farm until his death in 1914, when the Farm was taken over by her elder brother; the North Part (of the Unit Land) had never been grazed except by or with the permission of her father or her elder brother; from Cliff Farm they had kept their own animals there and had also sold the grazing for a year by auction or private treaty. Mr. Baldwin said (in effect) that the Ansteys grazed the North Part but nobody else did, and that he had never heard of anyone claiming grazing rights over it. Mr. Warlock said before 1933 there were gates across the Through Road at the north east and south sides of the Unit Land.

On behalf of Mr. Mazelin, Mr. Harris handed me a statement of Claim to Right of Common pointing out that Mr. Mazelin and Mr. Clifford rested their claim to rights on four Items, being (stating their effect shortly):- Item 1, the 1840 Tithe Map gave all tithable land a number; on it the Unit Land was not numbered: in respect of this item a letter dated 12th February 1975 to Mr. Mazelin from the Bristol City Archivist is appended to the statement, together with an extract of part of the 1840 Tithe Award Map. Item 2, the notes attached to a letter dated 26th February 1975 to Miss B.D. Mazelin from the Gloucestershire County Archivist, recording that there was no



Inclosure Award for Wapley and Codrington, that he held the custumals of the manor of Wapley and Codrington dated 1653 and 1676, that the earlier custumal included:-

" All customarie tennaunts within the same mannor are to have.. Common of Pasture for their cattle upon all Commons within the same Mannor and that everie tennaunt shall... have... Thornes Frith and Fewell... from the sayd common to be used.. upon his sayde Tennement...

and that he held some old maps dated 1762 (manuscript), 1810 (manuscript) 1823-4 (Bryants), 1824 (Greenwood's), 1828-30 (.O.S. 1" 1st edition) and 1886 (O.S. 6" 1st edition) which showed the Unit Land and dated 1777 (Isaac Taylor's) which did not. Item 3, the above mentioned 1919 particulars showed Lot 11 Cliff Farm 128 acres as including "Woodland known as Wapley Bushes" and in the Schedule an item O.S.M.No.22.Description Common area 16.25.9 acres". Item 4, the public have had unrestricted access to this area of common land for the last 40 years until January 1975 when the soil owners decided to fence the land with barbed wire fencing.

Mr. Mazelin giving oral evidence in chief merely adopted the Statement of Claim and in cross-examination merely said that since he had lived at Wapley Rank he had never kept a cow or a horse and claimed no rights over the Allotment Gardens.

Mr.Clifford in the course of his oral evidence said (in effect):- He had been living for a long time in Wapley. He attended the hearing because he applied for common rights in 1968 so his children (a girl and a boy now aged 15 and 19 years) could have somewhere to play. He had always taken wood from Wapley Bushes although he had been stopped when coming from the wood by Miss Anstey's brother. He had never kept a horse or a cow since he lived at Wapley Rank. He claimed no rights of common over the Allotment Gardens.

Miss B.D.Mazelin (sister of Mr.Mazelin the applicant) handed me a written statement of her evidence, in which she said (among many other things):- She was born in 1928 in No.2 Wapley Rank. In her childhood and teenage days she had accompanied her mother and grandmother and gone to Wapley Bushes to collect the dry wood and take it to their dwelling. She had done the same for a Mrs Masters now deceased who lived at Wapley Hill. "On a number of occasions I have been approached by Mr.Sidney Anstey and have been threatend with prosecution". She came to support her brother's application as a tenant within the Manor of Wapley and Codrington to his legal and lawful rights of Common Pasture and Estovers.



-4-

Mr. G.G.Parker who was born in Wapley Rank in 1905 said (in effect):-
"when we lived there we used to play on the Common, football and cricket".
He broke ponies there for a Mr. Nicholas. This was 40 years ago. "The Ansteys were always on us for playing football on the Common and we were always asking them to take us to court but they never did. So we went on the next day and took no notice because we thought it was common".

On the day after the hearing I inspected the Unit Land.

As to the grazing rights registered in the Rights Section:-

After Mr. Baldwin had completed his oral evidence, Mr. Harris for Mr. Mazelin and Mr. Clifford for himself said that no evidence would be given to show that anybody from Wapley Rank had grazed cattle on the common. No evidence was given as to any grazing by horses. The rights registered were therefore not supported by any use of the Unit Land.

The 1653 Custumal only shows that there is now a "Common of Pasture" attached to the Wapley Rank land, if the Unit Land (or some part of it) was in 1653 a "Common within" The Manor, if the Wapley Rank land was then one of the "Customarie Tennants" and if the 1653 Common of Pasture still exists.

The open nature of the North Part (the fencing from the road appeared to be new), the modern maps which describe the North Part as "Wapley Common", and the Tithe Award which (so I will assume, in order to deal with Mr. Harris' arguments in substance; the Award was not produced) includes the North Part in the non-tithable land therein described as "Roads, Commons, and Waste Lands", all indicate that the North Part has been open land and was when the maps and Award were made within the description and are therefore some evidence that the North Part was in 1653 a common and that the rights then existing could still exist. But this evidence is not conclusive, and I must consider the contrary evidence.

On the 1810 Map, the 1823-24 map and the 1828-30 map, the North Part is marked as "Wapley Bushes". The Tithe Map includes with the North Part a large area (both on the copy produced by Mr. Hawkins numbered "330"; the copy produced by Mr. Harris differs slightly and is I infer from its appearance not so like the original) between Wychwell Farm and the Church which is now inclosed. The 1919 Particulars and the December 1919 Conveyance although describing the North Part (or part of it) as "common" treat it as land in no relevant way different from the rest of Cliff Farm. The 1887 Indenture includes an item " Wapley Common Land (inclosed); Pasture:17.l. 32a" among the other items now known as Cliff Farm. This and two similar items indicate that Wapley Common had then been inclosed.

Accessibility of land to a public road may not be an indication of a common: there are many private pastures crossed by gated public roads: Mr. Warlock so described the North Part before 1933, see above.



-5-

Nobody within living memory has grazed the North Part in a way which could be ascribed to a "Common of Pasture" such as is mentioned in the 1673 Custumal.

Mr. Kirkland dated the four cottages now on the Wapley Rank ~~part~~^{land} as having been built after 1800 (they were originally constructed as eight dwellings). If there were ever grazing rights for customary tenants of this manor, it would be extraordinary if the Wapley Rank land was the only holding of this kind near the Unit Land.

In my opinion the 1887 Conveyance, the 1919 Particulars and the two 1919 Conveyances, show that before 1919, the Unit Land and the Wapley Rank Land were both in the same ownership, and indicate that no right of common (as ordinarily understood) could then have existed over one part for the benefit of another part.

I have about the Manor and its extent and customs no evidence at all save as may be inferred from the matters above mentioned. I do not accept the view set out in the Statement of Claim that persons who "are residential parishioners in the ~~parish~~ and dwellings formerly of the Manor" necessarily come within the scope of the Custumal.

Balancing the evidence for and against the applicability of the 1653 Custumal to the Unit Land and to the Wapley Rank Land, I conclude that it either never was or had by 1968 ceased to be applicable.

My decision is therefore that the rights as now registered in the Rights Section did not at any now relevant time exist at all and that accordingly the registrations should not have been made.

Some of the evidence given by Mr. Clifford, Miss B.D. Mazelin and Mr. Perkins appeared to have been intended to support the Entry in the Land Section on the ground that even if nobody had any right to graze over the Unit Land, some persons at least had a right to take sticks from Wapley Bushes and the public at least had a right to use the North Part for fresh air and exercise. I need not consider whether I could have regard to the wording of the applications of Mr. Mazelin and Mr. Clifford, without injustice to the Misses Anstey give some effect to this evidence, because I am satisfied that I should give none. The things said by these witnesses to have been done on the North Part were (as they said) objected to the time by the Ansteys, and could not therefore be regarded as done as of right so as in law to be allowable as a basis for a presumption of a grant now lost or of a customary right. Further the evidence of these witnesses did not I think show a use for a long enough period or with sufficient continuity to support any such presumption.

My decision is therefore that the Entry in the Land Section was not supported either by the rights claimed or by any other matter mentioned in the 1965 Act Definition of common land, and accordingly the Unit Land was not common land at the date of registration.



-6-

For the above reasons I refuse to confirm any of the registrations which have been referred to me.

Mr. Hawkins in support of a claim for costs produced copy letters dated 23rd January 1975 to Mr. Mazelin and Mr. Clifford asking them to say what evidence they had of the existence of the rights they claimed and warning them that an order for costs against them would at this hearing be asked for. *These letters were not answered.*

It may be that if Mr. Mazelin and Mr. Clifford had some good reason for thinking that by applying for these registrations and resisting the Objection to them they were serving some public interest, I would exonerate them, notwithstanding their lack of success, from liability for the costs of these proceedings. But I am unable to find any such reason. Mr. Mazelin neither personally nor through Mr. Harris said why he applied for his registration.

The documents referred to in the Statement of Claim were all obtained after the January 1975 letter; although Mr. Mazelin (or those helping him) may have thought that these documents supported his case, they provided no grounds for his thinking that an investigation would serve any useful public purpose. I can think of no section of the public who Mr. Mazelin could in these proceedings be regarded as representing. As a general rule an Entry in the Rights Section can only benefit the applicant: in this case, I cannot treat Mr. Mazelin when making his application as actuated by any public interest.

Mr. Clifford, although he was when giving evidence more informative than Mr. Mazelin, is I think in no better position.

Considering all the information I had at the hearing, I consider that Mr. Mazelin and Mr. Clifford should pay the costs incurred in these proceedings by the Misses Anstey and I shall so order with a direction that they be taxed on Scale 3/ ^{only} presented by the County Court Rules 1936 as amended.

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 21st —

day of August

1975.

a. a. Baden Fuller

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Commons Commissioner