



COMMONS REGISTRATION ACT 1965

Reference No.5/D/4

In the Matter of Hatchmere,
Norley, Cheshire (No.1)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.10 in the Register of Common Land maintained by the Cheshire County Council and is occasioned by Objection No.4 made by Mrs. H.C. Ingram, Mr. C.C. Posnett, and Mr. H.W. Burrell, and noted in the Register on 2nd January 1969.

I held a hearing for the purpose of inquiring into the dispute at Chester on 15th May 1973. The hearing was attended by Mr. F. Blain, the Clerk of the Norley Parish Council, which applied for the registration, and by Mr. J. Fitzhugh, Q.C. for the Objectors.

Mr. Blain based his case for the existence of a right of common upon an inclosure award made on 17th December 1819 under an Act for inclosing the Forest of Delamere passed in 1812 (52 Geo.III c. cxxvi). This Act was amended by two Acts passed in 1814 and 1818, but the provisions of the amending Acts have no relevance to the present case. There was produced to me a copy of what purported to be the Act of 1812, but with the sections unnumbered, which indicates that the document is a copy of the Bill. For the purposes of this decision I have used a copy of the Act as printed by the King's Printer with the sections numbered.

Although there is some discrepancy between the map referred to in the inclosure award and the register map, it appears that the registration is intended to comprise most of the land numbered 72 on the award map. This land is described in the award as "Hatchen Mere and Fishpool" and it was allotted to Sir John Grey Egerton, Bt. with all the fish therein and the right of fishing of and in the pools and all other liberties and privileges enjoyed therewith at the time of the passing of the Act of 1812 as required by section 32 of the Act. It appears from recitals in the Act and the award that Sir John Grey Egerton had previously held this land with all the fish therein and the right of fishing of and in the pools under a lease for lives granted by the Crown to Philip Egerton on 10th November 1777.

After the award of 1819 there is a gap in the evidence adduced before me until an indenture dated 18th September 1919 made between (1) Sir Philip Henry Brian Grey Egerton; (2) Oswald Mosley Leigh and John Cullimore; and (3) Robert Harold Posnett, whereby certain land was conveyed to Mr. Posnett. It appears from the plan drawn on the indenture that the land comprised in this indenture included the whole of the land shown on the register map. The conveyance is not stated to be subject to any rights of other persons. There is also a statutory declaration, made jointly by John Cullimore and Frank Richmond on 13th September 1919, that the land conveyed had been in the possession of the vendor, who had been in receipt of the rents and profits since 1st September 1891.



For many years the land conveyed to Mr. Posnett has been let to angling clubs.

Mr. Blain relied upon the words "right of fishing" in the Act and the award to support his contention that this land is subject to a right of common of piscary. I find myself unable to construe these words in this way. They were clearly carried forward into the Act and the award from the 1777 lease. In the lease they were words of grant, making it clear that the right of fishing was included in the demise. I construe them as having a corresponding meaning in the award. This is quite different from the creation of a right of common of piscary, which is a right exercisable over the land of another. Here the right of fishing is one exercisable by the owner over his own land.

I heard this case at the same time as a dispute (No.5/D/5) arising out of the registration by Mr. J.L. Fitton of a right of common of piscary over the land the subject of this dispute. Mr. Fitton said that he had fished from the bank since 1939 without objection from anybody, at first when he lived in Runcorn, 8 miles away, and more recently while living in Norley, and that he did not trespass on the rights of the members of the angling club, who fished from boats. However, Mr. Fitton very frankly said that he was putting forward the rights of the inhabitants of Norley and that he did not claim to be more entitled than anyone else. This brings the matter firmly within the decision in Gateward's Case (1607), 6 Co-Rep 59b, where it was held that there cannot be a right to a profit à prendre in a fluctuating body like the inhabitants of a particular place.

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 25th day of June 1973


Chief Commons Commissioner