



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/167
209/D/168

In the Matter of Marshes or Saltings
of about 20 acres, Fremington,
North Devon District, Devon.

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 267 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No 931 made by Barnstaple Borough Council and noted in the Register on 17 August 1971.

I held a hearing for the purpose of inquiring into the dispute at Barnstaple on 10 May 1979. At the hearing: (1) Barnstaple Town Council were represented by Mr W Turner their clerk; (2) North Devon District Council were represented by Mr J Bradley, the Solicitor to the Council; (3) Mr Robert Richard Tucker (the registration at Rights Section Entry No 1 was made on his application) was represented by Mr D G Rowe, solicitor of Jeremy Ferguson & Co, Solicitors of Bideford as agents for Brewer & Barnes, Solicitors of Barnstaple; (4) Mr John William Board (the registration at Rights Section Entry No 2 was made on his application) was represented by Mr G J Triggs, solicitor with S A Copp & Sons, Solicitors of Barnstaple; (5) Sticklepath Ratepayers' & Residents Association (an unincorporated association) were also represented by Mr D G Rowe (on the instructions of their Secretary who had written a letter dated 17 March 1979 to a Member of Parliament about this case); and (6) Mr William John Dark who resides in Instow attended in person.

The grounds of Objection are: - "(1) That the land was not common land at the date of registration, (2) That the land never has been common land, (3) That the land is totally unsuited to be common land, (4) That no rights of common exist or ever have existed over or in the land".

The Association's 1979 letter was primarily concerned with expediting this hearing for the reason (among others) that several of their members had enjoyed access to the River via these saltings and that "these rights are now being denied by reason of the tipping and development on this land".

Mr Rowe pointed out that the rights registered on the application of Mr Tucker (to graze 1000 sheep) was not only over the land in this Register Unit but also over the land in Register Unit No CL 170, and said that the said CL 170 land is a much larger Unit, and in respect of it, the right has in the absence of opposition become final. The right registered on the application of Mr Board (to graze 100 sheep) is similar, save that it is over part of the land in this Register Unit and over the land in Register Unit No CL269 (as well as that in Register Unit No 170).



Mr Bradley said that although his Council were the successors of the Objectors, he had been unable to ascertain the reason why they lodged the Objection, and that owing to the recent elections he had been unable to obtain instructions from his Council as to whether they wished or did not wish now to support the Objection.

Mr Turner said that his Council take the view that the saltings are common land and therefore they do not wish to support the objection, and would if they were in a position to do so withdraw it.

Mr Dark said (in effect) that he would like to know whether my decision would interfere with wild fowling rights.

I said at the hearing to avoid Mr Bradley's difficulty, I would give the District Council liberty to apply to reopen the hearing by making written application to the Clerk of the Commons Commissioners before 7 July, such application to indicate the nature of the evidence which would be offered and a copy of it to be sent to the Town Council; I also said that in default of such application I would give a decision on the information put before me at the hearing (10 May 1979).

The District Council have made no such application. But for the Objection, the now disputed registrations would have become final by the operation of Section 7 of the 1965 Act, and without imposing on Mr Tucker or Mr Board any obligation to provide evidence (apart from the statutory declarations made by them in support of their applications) to prove their rights; the circumstance that no-one at the hearing supported the Objection provides one reason why I should produce the same result, without any such imposition. The support of the Town Council provides another reason. On this reference I have no jurisdiction to deal with any question there may be about access to the River or about wild fowling, so, although the Association and Mr Dark may be (I understood they are) favourable to these registrations, their attitude is I think, irrelevant. In the absence of any contentions against the registrations, the two reasons above mentioned are, I think, enough. Accordingly I confirm the registrations without any modification.

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 19th day of July 1979

A. A. Baden Fuller

.....
Commons Commissioner