



COMMONS REGISTRATION ACT 1965

Reference No. 9/D/5

In the Matter of The Triangle otherwise
The Green, Doddiscombsleigh, Devon

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No. V.G.49 in the Register of Town or Village Greens maintained by the Devon County Council and is occasioned by Objection No.842 made by the Clerk of the County Council and noted in the Register on 2nd February 1971.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 12th April 1972. The hearing was attended by the Chairman and Vice-Chairman of the Doddiscombsleigh Parish Meeting and by Mr. P.A. Brown, Assistant County Solicitor.

There was produced in evidence the minute book of the Parish Meeting, from which it appears that on 3rd May 1897 it was considered what steps should be taken to celebrate the Diamond Jubilee of Queen Victoria. It was then resolved that a scheme by which the road should be diverted in front of the New Inn and the waste spot thus gained railed and planted be approved, and that the Chairman of the Parish Meeting be commissioned to obtain the sanction of the Rural District Council. After examining the map attached to the tithe apportionment of the parish and the ordnance map (1905 edn), I am satisfied that the "waste spot" referred to in the minute book is the land the subject of this reference.

The land in question is surrounded by an iron fence with a gate in it. There stands on it a triangular stone marked "VRI 1897", together with a war memorial for the 1914-1918 War, a flagstaff and a notice board. The grass is kept cut and a fir tree and a silver birch are growing on the land.

Evidence was given by Mr. D.A. Allison, the Vice-Chairman of the Parish Meeting, that the gate is always open and that children walk and run on the grass. This, he suggested, was indulging in lawful sports and pastimes.

Mr. Brown, on behalf of the objector, argued that the land does not fall within the definition of town or village green in section 22(1) of the Act of 1965. He suggested that this is really a case in which trees were planted in the highway and guards or fences for the protection of the trees were erected under section 43 of the Public Health Acts Amendment Act 1890. This section, however, was not applicable in a rural district (see section 50), and such a power could not have been exercised in the parish of Doddiscombsleigh until the coming into operation of section 82 of the Highways Act 1959.

I regret to have to hold that the Parish Meeting demonstrated their loyalty in 1897 in an entirely unlawful manner, whether or not the Rural District Council purported to sanction it. It is clear from the entry in the minute book that the piece of land in question was part of the highway. The only lawful way in which the highway could have been diverted at that



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time was by obtaining an order of Quarter Sessions for that purpose under the Highway Act 1835. There is no evidence that this was done. The common law rule is "once a highway always a highway". The erection of the fence and the other acts of the Parish Meeting were a nuisance: see Turner v. Ringwood Highway Board (1870), L.R.9 Eq.418. The only right which can exist over a highway is the right of the public to pass and repass. Even if children have been indulging in lawful sports and pastimes on this land since 1897, it is not possible in law for them to have done so as of right. This land therefore cannot fall within the definition of "town or village green" in section 22(1) of the Act of 1965. It may be that with the consent of the County Council the present physical state of this land could be regularized under section 273 of the Local Government Act 1933 and section 82(4) of the Highways Act 1959, but so far as these proceedings are concerned I can do no other than 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 21st day of April 1972

Chief Commons Commissioner