



COMMONS REGISTRATION ACT 1965

Reference Nos. 15/D/30
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In the Matter of Backney Common, Sellack, South
Herefordshire D., Hereford and Worcester County

DECISION

These 26 disputes, the reference numbers of which are specified in the first column of the Schedule hereto, relate respectively to the registrations at the Entry Nos. specified in the second column of the said Schedule in the Rights Section of Register Unit No. CL.5 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned respectively by Objections the numbers of which are specified in the third column of the said Schedule, all of which Objections were made by Mr. Richard Stewart Howell and noted in the Register on 9 December 1970.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 12 December 1974. At the hearing Mr. R. Okell solicitor of Okell & Okell, Solicitors of Ross-on-Wye represented Mr. Howell (the said Objector) and Mr. J.A. Jones solicitor of Whatley Weston & Fox, Solicitors of Hereford represented such of the applicants for registration listed in the fourth column of the said Schedule as have against their name the letter "R" in the fifth column of the said Schedule.

On the day of the hearing I received a letter from Mrs. B.L.O. Howarth in which (a) writing on behalf of her father Mr. Richard G. Preece, she said (referring



I suppose to Entry No. 5 in the Register Section) that she could not substantiate the registered rights and in the circumstances she and he felt it best to relinquish them; and (b) writing on behalf of herself as successor in title of her late aunt Miss Marjorie L. Preece (referring I suppose to Entry No. 4 in the Rights Section) that she could find no documents or evidence of the registered rights, and again could only relinquish whatever rights are involved in this case.

The land comprised in this Register Unit extends to about $12\frac{1}{2}$ acres, and is situate in a bend in the river Wye on the right bank just above the Backney Railway Bridge (the railway is now disused). The Rights Section of this Register Unit contains 33 Entries of rights of common; of these Entries, 23 are for or include a right to graze, 26 include a right of piscary, 31 include a right to take or carry away gravel from the bed of the River Wye, and 4 include a right of estovers. The said 26 Objections are to the 26 Entries which include a right of piscary and are all in the same form, the grounds stated being: "(1) I own the freehold right of fishing in the River Wye abutting Backney Common. These rights were specifically conveyed to me in fee simple and my predecessors in title have held them without any interruption from any Commoners for many years. (2) I do not believe a right of piscary from Backney Common attaches to this particular property or to any property in Sellack or Foy, as no such rights have been exercised to my knowledge for the past forty years. (3) If it could be proved that right of piscary is attached to the property or any property in Sellack or Foy the right must be limited to take fish for the purpose only for use in those premises and not commercially for the purpose of sale". Having regard to the above quoted grounds of objection, my only or main concern is for the rights of piscary registered; at Entry No. 3 the right is specified as "right of common of piscary for one rod - the River Wye adjacent to the said register unit"; and at all the other 25 Entries the right is specified either as "right of common of piscary" or as "right of piscary".

Mr. Jones explained that the registrations were all supported by the Backney Common Freeholders, an association of which all the persons named in the third column of the said Schedule are or were members. Mr. D.W. Rudge who is and has been secretary of the Backney Common Freeholders since 1965, said of the persons so named that the following had since the application was made died namely: (Entry No.4) Mrs M.L. Preece, (Entry No.10) Mr. H.P. Edwards (he was succeeded by his daughter Mrs. Wynn Price), J.A. Entry No.18) Mr. R.A. Cole, and (Entry No. 21) Mr. P.G. Jones. Accordingly Mr. Jones at the hearing only represented the survivors.

It was agreed between Mr. Jones and Mr. Okell that I should hear all these references together.

In support of the registrations, evidence was given (1) by Mr. D.W. Rudge in the course of which he produced (a) the Minute Book of the meetings of the Backney Common Freeholders between 3 August 1931 and 7 May 1973, (b) three letters from Mr. Howell dated 19 August 1963 to Mr. P.G. Jones (Entry No.16) and dated 29 May



and 9 June 1964 to Mr. Whittal (at that time chairman and secretary of the Backney Common Freeholders); and (c) 1935 instructions to counsel containing a statement that the first record of the Common start with a minute book recording a meeting on 14 May 1892); (2) by Mr. H.S. Wood (Entry No. 6) who has since 1963 lived about $2\frac{1}{2}$ miles from Backney Common at Lower Green Common; and (3) by Mr. W.H. Williams (Entry No. 11) who has lived at Carthage Farm (at Foy, about $1\frac{1}{2}$ miles from Backney Common) since 1925 (when he was 8 years old).

Against the registrations :- (1) Mr. Jones produced a statutory declaration made on 10 December 1974 by Mr. Howell (he was unable to be present at the hearing by reason of illness); (2) Mr. Jones also produced the following documents of title relating to the fishing owned by Mr. Howell; (a) Particulars of Sale to be held by public auction on 24 July 1890 by direction of Lord Ashburton; (b) a lease dated 19 December 1894 the trustees of the same will, to H. Moreland; (c) a lease dated 2 February 1897 by the trustees of the will of W. Butler to the Marquis of Worcester and two others; and (d) a conveyance dated 11 March 1961 by Mr. R.T. Horton to Mr. Howell; (3) oral evidence was given by Mr. K.A. Abse who as a guest of Mr. Howell had since 1961 regularly fished ~~in~~ the River; (4) oral evidence was given by Mr. G.C. Gibbins who had been fishing Mr. Howell's water since 1967 and has managed his water for him for the last 3 years; and (5) oral evidence was given by Mr. G.J. Davis, formerly employed by the Wye River Authority and now by the Welsh National Water Development Authority from 1950 to 1961 as water bailiff of the River Wye below Monmouth and subsequently to the present day as water bailiff of the River above Monmouth to Howcapel.

Mr. Rudge said (in effect):- A number of land owners had attached to their lands, a right of grazing on the Common. These persons were the Backney Common Freeholders. They met annually. The business of the Committee was for the most part concerned with grazing; the Committee claimed that these who had a right of grazing also had a right of fishing in the River from the Common. The local belief that these rights of grazing (including the fishing) had long ago been granted by the Lord of the Manor to the owners of the lands.

Mr. Woods said (in effect):- On two occasions (in 1963 and/or 1964), he had fished in the River from the Common, sitting on the bank; he fished for coarse fish and caught nothing. On one of the occasions somebody told him to "clear off"; he (Mr. Woods) indicated (using a well understood metaphor) that he would not do so, and he continued to sit on the bank until he had finished.

Mr. Williams said (in effect):- During the years 1929 and 1930 he had fished in the River from the Common. At the time the fishing rights belonging to his father's farm were owned by a Mr. Moreland; he asked his bailiff, Mr. Sawcus for permission to fish; Mr. Sawcus said he was not authorised to give permission and suggested that he (Mr. Williams) fish from Backney Common which was owned not by Mr. Moreland, but by the Commoners. However, in 1931 Mr. Moreland gave the requested permission, and Mr. Williams had never since then fished from the Common.

In the 1890 Particulars, the description of Lot 15 (Ingestone Farm) "..... with this lot is sold all the Vendor's rights in the Ingestone Fishery in the River Wye as



far down as Backney Railway Bridge as the same are now let..." Mr. Okell made the point the fishery so described was for a considerable stretch of the River from both banks, so the Particulars show that the ownership of the fishing was not at that time necessarily the same as the ownership of the banks. The 1894 and 1897 leases describe the fishery demised in substantially the same way, as "ALL that separate fishery of the Lessors in the River Wye... called Ingestone or Ingestone Fishery and extending from ... down the said River to the common boundary of the Parish of Sellack (being part of Backney Common) and the Parish of Bridston... at a point where a certain brook or rivulet there running from Sellacks Marsh enters to the said river Wye ...". The 1961 Conveyance is of "ALL that separate and exclusive fishery in the River Wye extending upwards from Backney Railway Bridge ... which said fishery hereby conveyed is delineated on the plan annexed hereto and thereon coloured blue"; the plan shows coloured blue a stretch of the River (for its whole width) which includes all that part of the River which abutts on the Common.

Mr. Abse, Mr. Gibbins and Mr. Davis all said (in effect):- They frequently fished the part of the River, the fishing of which Mr. Howell had acquired under the 1961 Conveyance (Mr. Davis also went there in the course of his duties). They described in detail their activities. They said that they had never seen anybody, other than a person who had permission of Mr. Howell, fishing from the Common. The "brook or rivulet ... from Sellacks Marsh" is easily identifiable as the brook which now enters the River a little below Backney Railway Bridge.

In my opinion the evidence for the registrations is slight. Mr. Rudge did not say he had fished or had ever seen anybody fish from the Common. The fishing done by Mr. Woods and Mr. Williams is, I think, of little significance; even if Mr. Howell was never informed of Mr. Woods' two days fishing, it cannot be held against Mr. Howell that he took no action against Mr. Woods; Mr. Williams when he fished was not 3 more than ~~4~~ years of age, so similar consideration would apply to him. The evidence against the registrations is I think by comparison weighty. The 1890 Particulars, the 1894 and 1897 leases, and the 1961 Conveyance all proceed on the basis that there was a separate fishery on the stretch of the River by the Common, a basis inconsistent with anybody having a right of fishing from the Common. The evidence given by Mr. Abse, Mr. Gibbins and Mr. Davis satisfied me that there has not at any rate since 1961 been any fishing from the Common to any significant extent. On balance, I conclude evidence is against the River ever having been fished in exercise of rights of piscary as registered. Further although the registrations have been made by or, by arrangement with, the Backney Common Freeholders, in law each registration must be justified separately and as a distinct right attached to identifiable land; of any such rights there was (save as set out above) no evidence at all. For these reasons I conclude that all these objections succeed and that the rights of piscary as registered did not and do not exist.

There has been no objection to the other rights registered. If the registrations had not included rights of piscary they would have been undisputed and become final under the 1965 Act without any need for them to be referred to a Commons Commissioner. In my opinion I may as regards these other rights produce the same result without requiring the rights to be established by evidence.

Accordingly for these reasons I confirm the registrations described in the Schedule hereto (a) with the modification in Entry No. 3, the words "Right of common of piscary



for one rod - the River Wye adjacent to the said register unit" shall be deleted and in all the other 25 Entries, the words "Right of common of piscary" or (as maybe) "Right of piscary" shall be deleted and (b) with a further modification as regards all 26 Entries, the paragraph numbering shall be altered as maybe appropriate having regard to the said deletions.

Mr. Okell asked for costs. After some discussion as to whether I could order the Backney Common Freeholders as such to pay costs, he asked for an order against Mr. D.W. Rudge in respect of the proceedings occasioned by Objection No. 335 to Entry No. 13. I shall make this order, and I shall direct that the costs be taxed according to scale 3 prescribed by the County Court Rules 1936 as amended. Mr. Rudge was (so I understood) nominated as the person against whom a costs order should be made because as secretary of the Backney Common Freeholders he had been more concerned than some of the others in these registrations and not with any intention of reflecting adversely on him personally.

I am required by Regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision has been erroneous in point of law within six weeks of the date in which notice of the decision is sent to him require me to state a case for the decision of The High Court.

SCHEDULE

Reference Number	Entry Number	Objection Number	Name of Applicant	Representation	Land to which right is attached
D/30	3	325	Gerald Edgar Perkins	R	Manor Farm
D/31	4	326	Marjorie Lydia Preece	-	Ross Maye, Picts Cross Post Office
D/32	5	327	Richard George Preece	-	West View - Upper Grove
D/33	6	328	Harry Stanley Wood	R	Tally Ho, Sellack
D/34	7	329	Christine Alice Rarity	R	Greystones, Lower Grove Common
D/35	8	330	Thomas William Hope	R	Land on Green Lane
D/36	9	331	Harry Edward Rudge	R	Whitehouse Farm
D/37	10	332	Harold Pryce Edwards	-	Land adjacent to Sellack



D/38	11	333	(A) William Hedley Williams	R	Land adjacent to and in close proximity to River Wye
			(B) Leslie James Williams	R	
			(C) Elsie Ann Williams	-	
D/39	12	334	Issac James Skyrme	R	Land at Lower Grove Common
D/40	13	335	David William Rudge	R	Land at Baysham
D/41	14	336	Ernest Pryse Chapman Whittal	R	Land at Backney
D/42	15	337	Phillip Charles Rudge	R	A small plot in Sellack Marsh
D/43	16	338	Ernest Pryse Chapman Whittal	R	Land at Sidonia
D/44	17	339	Ernest Pryse Chapman Whittal	R	Land at Strangford
D/45	18	340	(A) Reginald Arthur Cole	-	Plot of land opposite Fawley Chapel
			(B) John Reginald Cole	R	
			(C) Elizabeth Mary Cole and	-	
			(D) Barbara Ada Cole	-	
D/46	19	341	Charles Duncan Skinner	R	Land at Strangford End
D/47	20	342	Stephen Robert Davies	R	May College Picts Cross
D/48	21	343	Percy Gilbert Jones	-	Holly Cottage
D/49	22	344	William Henry Davies	R	Flesance, Picts Cross
D/50	23	345	Roy Augustine Baynham	R	Rose Cottage
D/51	24	346	Harold Michael Partridge	R	Upper Pengethley Farm



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D/52	25	347	Man of Ross Limited	R	Land, OS Nos. 39, 41, 62, 85, 86, 211, 227, 228 and 292
D/53	26	348	Emma Catherine Gaze	R	Caradoc Farm and Glebe Farm
D/54	28	349	Dennis William Gwilliam	R	Southlands
D/55	31	350	Gordon Richard Banfield	R	Elm Cottage

Dated this *12th* day of *February* 1975

a. a. Boden Jones

Commons Commissioner