



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/90
215/D/91

In the Matter of Bibletts Common and
Bibletts Island, Hentland and Ballingham
Group, South Hereford District, Hereford
and Worcester

DECISION

These disputes relate to the registrations at Entry Nos 1 to 35 inclusive in the Rights Section of Register Unit No CL. 45 in the Register of Common Land maintained by the Hereford & Worcester County Council and are occasioned by Objection Nos 15 and 425 made by Mr T R Lunt on behalf of the Trustees of R N Lunt deceased and noted in the Register on 3 November 1969 and 6 January 1972.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 11 November 1976. At the hearing (1) Mr Thomas Randle Lunt and Mr Stanley Lunt (the Objectors) were represented by Mr D J Hubble solicitor of Evershed & Tomkinson, Solicitors of Birmingham; (2) Hentland and Ballingham Group Parish Council (their predecessors Hentland Parish Council applied for the Entry in the Land Section) were represented by Mr A G Baker their clerk; (3) Mr Baker also attended on his own behalf (he applied for Entry No 4 in the Rights Section) and as representing (4) Miss G Pember (she applied for Entry No 12); (5) Mr S W Harris, (6) Miss V M Cholmondeley, (7) Mr B A Curtis, (8) Mr F J and Mrs C H Ganderton and (9) Mr R G Biggs (on his own behalf and as representing his wife, Mrs A L Biggs) attended in person, they having applied for Entry Nos 1, 7, 11, 12, 27 and 33 respectively; and (10) Mr C C Eckley attended in person as occupier of 2 Brookside Cottages being the land to which the right at Entry No 13 (made on the application of Mr T W Price) is attached.

The land comprised in this Register Unit is in two pieces. One ("the Common Piece") comprises OS No 36 pt, a strip known as Bibletts Common, bounded on one side by the public road between Hoarwithy on the south and Carey and Ballingham on the north, and on the other side by the River Wye; the Common Piece includes the half of the bed of the River by OS No 36 pt. The other ("the Island Piece") comprises OS No 32, being a tract of grassland known as Bibletts Island containing (according to the Register map) 0.561 acres, and bounded on one side by the River and on the other side by shallow depressions normally covered with water from the River; the Island Piece includes the half of the bed of the River by the side of OS No 31. The Common Piece and the Island Piece together contain (according to the Register) 2 $\frac{1}{4}$ acres.

The rights registered are: "One rod to fish for salmon, trout and course fish in River Wye" and each is attached to some land in or near Hoarwithy; exceptionally the right registered as Entry No 16 includes a right to graze 2 cattle over Bibletts Common. Mrs E R Williams is registered as owner of OS No 32, expressly "excluding one half of the bed of the River Wye contiguous thereto."



The grounds of Objection Nos 15 and 425 are: "That Common Rights of Piscary do not extend over OS No 32 which is indicated on attached plan by cross-hatching in red". The land so cross-hatched is the land part of the Island Piece, and does not include any of the River Bed.

There have been sent to the Clerk of the Commons Commissioners requests that the Commons Commissioner do refuse to confirm the registration of rights of common of piscary over parcel no 32, such requests being signed on behalf of the Objectors and on behalf of Mr Williams (Entry No 20; request received July 1974) and on behalf of Mrs I C Foxley and Mr J R Simcox (Entry Nos 23 and 32; request received August 1976).

Mr Hubble said that the Objections were intended to extend to the whole of the Island Piece including the half of the River bed opposite OS No 32 and applied to amend the grounds of objection accordingly. He said that his clients for their title to the exclusive fishing relied on a conveyance dated 18 April 1929 by which such a right was conveyed to Mr R N Lunt and on a statutory declaration made on 18 April 1929 by Mr J B Parry in support of the title of the conveying parties (his sisters Miss K M Parry, Mrs I G Addis and Miss Q C Parry, being the daughters of Mr Burton Frederick Parry).

Mr Baker who came to the Village in 1912 (he is now aged 76) in the course of his evidence produced (1) a manuscript book entitled "A Survey and Valuation of... Hentland...under 6 & 7 Will 4 cap 96 (the Parochial Assessment Act 1836) by William Price...1841", and (2) a booklet being a collection of newspaper cuttings relating to the decision given by the House of Lords in 1911 in the case of Harris v Chesterfield (Earl) and Mrs Foster, (3) a statement dated 4 March 1976 signed by Mr N Owen and (4) a statement dated 10 November 1976 signed by Mr C T Owen. He said (in effect):- The Island Piece is in the middle of the part of the River Wye in 1911 considered by the House of Lords; in that case evidence was given and accepted that the inhabitants had fished in the River from time immemorial; he (the witness) thought that their right originated under a charter by King Henry 3 whereby the brinkers were granted these fishing rights in return for keeping the men ready to defend England against invasion from the west. He himself, from when he came to the Village until the year of the General Strike (1927), frequently fished from Bibletts Island and he was never asked to leave or to stop fishing. He knew at least a dozen other inhabitants who had since done this. Bibletts Island had always been locally reputed to be common land.

Mr C C Eckley who was born in 1911 and who resided at Rock Cottage which is about half a mile below the Island Piece, in the course of his evidence said (in effect):- As soon as he was old enough to start (about 1925) he fished from Bibletts Island continuously (apart from a period in the army) from 1939 up to 1952, after which he gave up because he joined an angling club offering better facilities.

Mrs A E Hoskyns in the course of her evidence said (in effect):- Her family had lived and owned land, including the Common Piece and the Island Piece for 298 years; in 1894 her grandmother sold it to the Parry family (mentioned in the 1928 conveyance).

Mr H G Lunt who is the brother of the Objector Mr T R Lunt, in the course of his evidence after producing the said 1929 conveyance to his father Mr R N Lunt and the said 1929 declaration, said (in effect):- He is 72 years of age and remembered his father purchasing the fishing in 1929. He, his two brothers and his sister had



exercised the fishing rights acquired by his father; in 1954 they had purchased the fishing from the bank opposite the Island Piece. They fished generally at weekends; he had for 14 years owned a cottage at Hoarwithy; they rented the fishing out for Tuesday and Wednesday. He himself during the season fished nearly every weekend. The water near the bank opposite the Island Piece was good for salmon (there is a deep pool), but the water of the Island Piece is full of weed. He had never seen anyone fish from there, and he thought it almost unfishable. In answer to questions by Mr Harris, he remembered that they put up a notice "PRIVATE FISHING T R LUNT" which "just went", and that they gave the coarse fishing to a club called the Bell Anglers.

As I told those present at the hearing, I had some knowledge of the Island Piece, because in December 1974, I inspected Ballingham Island (adjoining upstream) before giving my decision dated 20 December 1974 Ref 15/U/50.

I consider it just that these objections should extend to the whole of the Island Piece; it would be absurd in the circumstances here existing, if a person could fish the Island Piece from a boat but not from the land. Accordingly for the benefit of the Objectors, I exercise the power of amendment given to me by regulation 26 of the Commons Commissioners Regulations 1971.

The 1911 House of Lords case is very fully reported in the Law Reports, before Neville J at 1908 1 Ch 230, before Cozens Hardy MR and Buckley and Kennedy L JJ in the Court of Appeal at 1908 2 Ch 397 and before Loreburn LC, the Earl of Halsbury and Lords Ashbourne, Macnaghten, Gorell and Kinnear in the House of Lords at 1911 AC 623. Their Lordships held that certain freeholders in parishes adjoining the River Wye, who had been in the habit of fishing for centuries as of right and without interruption not merely for sport and pleasure but commercially in order to sell fish and make a living by it, had no right to do so, because a legal origin to such a right could not be presumed. In my opinion it is not open to me, as suggested by Mr Harris, either to treat this decision as erroneous or to treat the evidence before the Court in that case as providing evidence in this case of some right which the judges then concerned could have recognised if it had been claimed before them.

The rights registered at Entry Nos 1 to 35 in the Rights Section are different from those claimed before the House of Lords. They are over a much smaller stretch of river, are attached to particular pieces of land and are described altogether differently. I agree with Mr Harris that there is nothing in the House of Lords' decision which precludes me from finding that the rights so registered are established, but the decision does not help me to do this.

In the 1841 valuation, the Island Piece is included under the heading "Waste", and it may be that for this reason it is properly registered as common land under the 1965 Act; this registration in the Land Section has become final and I am not concerned with it. The 1841 valuation is not in my opinion any evidence that there were then any rights of fishing from the Island Piece such as are now provisionally registered. The evidence given in support of these fishing rights, orally by Mr Harris and by Mr Eckley and in writing by Messrs Owen, are of things done by them as inhabitants; in my opinion this evidence falls far short of establishing, and provides only a very small support for the existence of any such rights.

Against such evidence I have the 1929 conveyance, the 1929 declaration and the oral evidence of Mr Lunt as to what has been done by him and his family since 1929. It was suggested that the declaration is unsatisfactory because it is unlikely that the daughters of Mr F B Parry had ever personally fished in the River, or otherwise fished



off the Island Piece; it was also suggested that there was some local reputation that the Island Piece and Ballingham Island were common land in the sense that in old times (before living memory) barges from the River were moored there and goods were then loaded and unloaded from and to the nearby Road. In my opinion these considerations do not prevent the declaration and conveyance being weighty evidence that there was in 1929 fishing known as "The Old Harp Fishery" being an exclusive fishery as therein described; the circumstance that some of the water may have been practically unfishable does not I think detract from the value of the 1929 conveyance and declaration as evidence of the boundary of such fishing. Balancing such evidence and the evidence given by Mr Lunt of the things done by himself and his family, against the contrary evidence put before me at the hearing, I am satisfied that the rights of fishing as set out in the said Entries Nos 1 to 35 do not exist over the Island Piece.

For the above reasons my decision is that the Objections (amended as indicated above) succeed.

The Objections are not expressed to apply to the Common Piece, and Mr Lunt made it clear that he had no objection to there being fishing rights over and from this Piece as registered. If the Common Piece had been registered separately from the Island Piece, the rights registered at Entry Nos 1 to 35 in the Rights Section would have become final under section 7 of the 1965 Act without there ever having been any reference about them to a Commons Commissioner. Notwithstanding that I have had no evidence in support of such rights, I consider that I can and should by my decision produce the same result.

For the above reasons I confirm the registrations at Entry Nos 1 to 35 in the Rights Section with the modification that to the words in column 4 of each such registration there be added the words: "over that part of the registered land which is numbered pt 36 on the Ordnance Survey map and over that part of the registered land which consists of the bed of the River Wye by the side of the said part so numbered (such two parts together form the north piece of the registered land, for this purpose considered as divided into two pieces)"; such words in the case of Entry No 16 to be added at the end of paragraph 1 and in the case of all the other Entries to be added at the end of the words in the column.

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 November

1976

a. a. Arden Fuller

Commons Commissioner