



COMMONS REGISTRATION ACT 1965

Reference No 15/D/4

In the Matter of Poor's Wood, Wigmore
Leominster & Wigmore R.D., Herefordshire

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL.71 in the Register of Common Land maintained by the Herefordshire County Council and is occasioned by Objection No 381 made by Mr Ransom and noted in the Register on 7 January 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 21 February 1973. The hearing was attended by Wigmore Parish Council who were represented by Mr S L Beaumont solicitor of Beaumont Smith and Davies Solicitors of Leominster and by Mr Peter Bayley Ransom who was represented by Mr D I Wade solicitor of Messrs Lamberts Solicitors of Malvern. Towards the end of the hearing Mr Beaumont in the circumstances below mentioned stated that he also appeared for 23 other persons.

The registration was made pursuant to an application made on 14 October 1967 by the Parish Council; an application made on 29 June 1968 by Mr J G Keely is noted in the Register. The grounds of objection stated in the form were: "The property is owned by me on the Chapel Farm side of the road as shown on enclosed map coloured red. That at the date of registration this land was not Common Land". In the Ownership Section of this Register Unit the Council were on 14 November 1967 (pursuant to an application also dated 14 October 1967) registered as owners of all the land ("the Unit Land") comprised in this Register Unit; this registration being undisputed became final on 1 October 1970.

~~At the hearing~~ Evidence was given by Mr Ransom (he acquired Chapel Farm under a conveyance dated 3 January 1958 and made by Mr L B Robinson; he relied also on a statutory declaration made on 4 November 1946 by Mr T Phillips and included among his documents of title). Miss E M Jancey who is the archivist of the Herefordshire County Council produced from the County Record Offices a copy (sealed on 11 December 1845 with the Tithe Commissioners Seal) of the Parish Tithe Apportionment Award dated 23 September 1845. Evidence was given on behalf of the Parish Council by Mr G H Williams (who is aged 76 years and has lived in the parish for 65 years), by Mr F Reynolds (who is aged 60 years and has lived in the parish for 55 years), by Mr R J Massey (who is aged 69 years and had lived in the parish for 49 years), by Mr R E Griffiths (who is aged 36 years and had lived in the parish all his life), by Mr Beaumont (he produced some correspondence passing in 1954 between his firm then acting for the Parish Council and Cooper Wooley & Co Solicitors then acting for Mr L B Robinson, who ~~he~~ acquired Chapel Farm under a conveyance dated 1 June 1948 and made by Mr T A Statham) and by Miss M H Champion (she is the clerk of the Parish Council).

Miss Champion in her evidence explained how she and Mr Massey (he confirmed this) had collected 23 signatures to a petition addressed to the Commissioner for Common Land protesting that the Poor's Wood is and always had been a common open freely to all villagers for various purposes and specifying (with some comments) the use made by each signatory of Poo's Wood. On objection being made by Mr Wade to the admissibility of this document as evidence, Mr Beaumont stated that he represented the persons ("the Petitioners") who had signed and that he could therefore on their behalf state that they as inhabitants supported the claim of the Parish Council: the Petitioners (some of them as above stated gave oral evidence at the hearing) are (1) Mr L Shapland,



(2) Mr J Keely, (3) Mr T Gurney, (4) Mr R J Massey, (5) Mr F Reynolds, (6) Mr G H Williams, (7) Mrs A Blackburn, (8) Mr R N Blackburn, (9) Mr W Compton, (10) Mr J Morris, (11) R Bengry, (12) Mr R Griffiths, (13) Miss M Champion, (14) Mrs E A Barrett, (15) Mr G L Edwards, (16) Miss E Davies, (17) Mr A J Young, (18) Mr W H Griffiths, (19) Mrs D E Preece, (20) Mrs G Mundy, (21) Mrs E M Hoskins, (22) Mr T K Phillips and (23) Mr W R Davies.

I inspected the Unit Land on 22 February 1973, it having been agreed that I might do so unattended.

The Unit Land contains about 4 acres and comprises two strips of land of approximately equal area, one on the north and the other ("the Disputed Area") on the south side of a road leading to Wigmore (more than a mile away). Each strip is about 850 yards long and extends from a junction with a road leading from Dickendale to Lingen on the west, to a point near a bridge over a stream on the east. Except for about 150 yards of grass land (apparently roadside verge) at its west end, each strip is rough land for the most part covered with brush wood and trees of various sizes. Chapel Farm and the land held with it are south of the Disputed Area; there are two gates providing access from the road across the Disputed Area to adjoining fields; main access from the highway to the farmhouse is elsewhere on the southwest.

Mr Ransom produced the said conveyances of 1948 and 1958 and also a conveyance dated 8 August 1946 by which Chapel Farm was conveyed to Mr T A Statham. By all these conveyances Chapel Farm containing 126.097 acres was conveyed as described in the Schedule. In the Schedule, the Disputed Area was in all the conveyances included in the land conveyed under the description: "638 pt: Rough & Woodland by Road. Est (area) 2,000.". In the said statutory declaration, Mr Phillips said that he had been tenant of Chapel Farm for twenty two years until 25 March 1946 and that during the whole period which he occupied the farm, he was in undisputed possession of "the whole of the lands belonging thereto and shown on the said plan", which plan included the Disputed Area in the Farm.

Mr Ransom when cross-examined candidly agreed that he had always known the Unit Land as "Poors Wood" and that before he purchased Chapel Farm, Mr Robinson (his Vendor) when showing him over told him that the poor of the village had over the Unit Land some ancient right to cut pea sticks and firewood for their own consumption. He (Mr Ransom) had from a distance since seen people cutting sticks in the Disputed Area but had made no protest about this considering what he saw unobjectionable.

Mr Williams, Mr Reynolds, Mr Massey, Mr Griffiths in their evidence described how they had (as had others from the Parish) taken sticks from the Unit Land.

The substance of the dispute appears to me to be as follows:- Mr Ransom would if he lawfully could clear the Disputed Area, convert it (or most of it) into grassland and incorporate it in his adjoining fields. There is nothing in the said 1946, 1948 or 1958 conveyances, or in the said statutory declaration to suggest that he does not own the Disputed Area in the same ample manner as he owns the farmhouse and the fields of Chapel Farm. Although not evident from the plan, it was evident when I inspected the land, that such a clearance or conversion by reason of the unevenness of the ground would not be easy and indeed might so it seemed to me be expensive. With the knowledge that the Disputed Area might be in different ownership from Chapel Farm, I could see that the ditch and banks at the eastern end of the Disputed Area might have been made years ago to mark a boundary; the hedge at the western end obviously provides a possible boundary; in much of a long stretch in the middle (where the land between the farmhouse



and the Disputed Area is much overgrown), there is no (or no obvious) boundary. Mr Ransom has during his ownership done nothing on the Disputed Area, and except so far as his possession of the adjoining fields can in law be ascribed to the Disputed Area, he has I think never been in possession of it. Nevertheless if he was successful in these proceedings the Disputed Area might under some such conversion as he suggested be used much more advantageously than now. For many years many of the inhabitants of the Parish have gathered sticks and fuel from the Unit Land. During the agricultural depression of the 1920s, many were able with this fuel and by catching rabbits on the Unit Land to mitigate some of the hardships of poverty. Wigmore is now a substantial village appearing to have recently increased its population as a result of new housing; if all the inhabitants of the Parish with any sort of regularity came (the distance from the Village is more than a mile) to the Unit Land to take sticks in the way some inhabitants have done in the past, their activities would quickly be destructive of all the trees and brushwood; there was no evidence that any such numbers had ever done or wanted to do this. No rights of common have been registered under the 1965 Act, so that any rights which the inhabitants of any of them may have had in the past, are now no longer exercisable. If the Parish Council are successful in this dispute, they will as a result of the Act have the advantages of ownership and be subject to the obligations consequent on the land being registered as common land subject to no rights of common. I cannot imagine how these obligations could in the circumstances as here exist benefit the inhabitants of the Parish in any significant way; but the advantages of ownership (at least an addition to the capital resources of the Parish) may be considerable: as owner the Council can permit inhabitants to gather sticks as they have done in the past.

I neither can or wish to express any opinion as to the social expediency of either the Parish Council or Mr Ransom being successful in this dispute. The 1965 Act if applicable will I think do something to clear away the legal complexities mentioned at the hearing. The applicability of the Act (the only matter which I am concerned to determine) depends on whether the Unit Land was on 14 October 1967 (the date of registration) subject to at least one right of common; if there then existed one right of common, it is irrelevant that as a result of the Act such right of common may have since ceased to be exercisable.

Towards the end of the hearing after the conclusion of the evidence, Mr Ransom through Mr Wade conceded (very properly I think) that rights as described in the evidence of the Parish Council did exist. Mr Williams, Mr Reynolds, Mr Massey and Mr Griffiths evidently considered that the cutting of the sticks which they described was lawful because it was done by persons residing in the Parish. There are or may be legal difficulties in the way of my finding that a right depending on residence in the Parish is here established. However if an individual and his predecessors in title, as owners and occupiers of a particular house have for a sufficiently long time taken for the purposes of the house sticks from the land of another, such individual may be presumed to have somehow acquired a right to take such sticks for himself as such owner and occupier, notwithstanding that he and his predecessors in title when taking the sticks thought they were entitled to do so because they resided in a village or parish and notwithstanding that a large number of other persons so residing may in respect of their ownership and occupation of other houses be entitled to similar rights; see De la Warr v Miles (1881) 17 Ch. D 535.

I accept the submission that the said conveyances and statutory declaration are some evidence that the Disputed Area is not subject to any right of common. But I must I think balance such evidence against the contrary evidence indicating that such a right does exist. On balance and having regard to the legal considerations mentioned in the preceding paragraph, I find that the Unit Land was on 14 October 1967 subject to a right to cut sticks for their own consumption on and for the purpose of



their land for the owners and occupiers of Whitehouse Farm (Mr Williams used to live there) of Stanton House (Mr Reynolds now lives there) and Queens House (Mr Massey now lives there). This finding is all that I need to make for the purpose of disposing of this dispute.

For the above reasons I confirm the registration without modification.

I record that I have reached my decision without regard to the facts stated in the Petition. The first opportunity Mr Ransom or his advisers had of considering the Petition was at a late stage in the hearing; it would I think be unjust if I had as against him, any regard to what is therein set out.

While I feel sympathy for Mr Ransom for having got involved in this dispute by putting forward an objection which upon a consideration of his documents of title alone would appear to be well founded, I cannot I think for that reason, he being the loser in these proceedings refuse to give effect to the claim of the Parish Council that I should order him to pay their costs. I shall make such order accordingly, the costs to be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended. I make no order as to the costs of the Petitioners.

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 7th day of May 1973

a.a. Baden Fuller.

Commons Commissioner