



COMMONS REGISTRATION ACT 1965

Reference No.19/D/9

In the Matter of River Common,Dover, Kent.DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.71 in the Register of Common Land maintained by the Kent County Council and is occasioned by Objection No.14 made by the Vicar and Churchwardens of the Parish of River and noted in the Register on 5th May 1970.

I held a hearing for the purpose of inquiring into the dispute at Canterbury on 15th November 1972. The hearing was attended by Mrs. M. Dixon, who made the registration, and by Mr. Carnwath, of counsel, for the Objectors.

The land the subject of this reference has an area of about 6 acres. It is approached at its eastern end by way of a road known as Common Lane. It is named "The Common" on the modern Ordnance Survey Map and is so named on various maps produced to me, including the Ordnance Survey Map of 1862. While it is utterly unsafe to regard the name of a piece of land as any guide to whether it falls within the definitions of "common land" or "town or village green" in section 22(1) of the Commons Registration Act 1965, such a name often reflects the legal status of the land at some time in the past. For an example of this one need look no further than In the Matter of Lord's Waste, Winterton-on-Sea (1972), 25/D/12, where land which had once been manorial waste had retained its name for over a century and a half after it had ceased to be such. Nevertheless, for the purposes of this decision I am prepared to assume, as in fact appears to have been the case, that this land was at one time a common and had been such from time immemorial.

Taking that as a starting point, in 1807 an Act (47 Geo.III, sess.2, c.31, (private, not printed) was passed for the inclosure of land in the parish of River.

Neither party produced a copy of this Act, although one could have been obtained from the original Act in the House of Lords Record Office. It does not, however, appear from the very brief summary printed in the 1807 annual volume of the Statutes that there was anything abnormal about this Act, and I am going to assume for the purposes of this decision that it contained the common-form provisions which were usually included in Inclosure Acts at that period. Fortunately there is a quotation from the Act in the Report of the Charity Commissioners on the charities of the parish of River, a certified copy of which was furnished to me by the Commissioners.

According to the Report, the Act provided (inter alia) that it should be lawful for the Inclosure Commissioners to allot to the Rector, Churchwardens and Overseers of the Poor of the parish of River for the use of the cottagers and persons assessed to the poor rate for the parish at less than £6 a year all or any part of the common or waste ground called River Common and also any part not exceeding 3 ac. of the common or waste grounds called River Minnis.



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The Award made in pursuance of this Act was not produced to me and it was said that it could not be found after an exhaustive search. However, it is stated in the Report of the Commissioners that it appeared from the accounts in the office of the Board of Charity Commissioners that the land allotted consisted of River Common containing 6a. Or. 4p. and River Minnis containing 2a. 2r. 28p., the former being let to Filmer Phipps at £5.11.1 per annum and the latter to Edward Pitcher at £3.6.0 per annum. The net income was stated to be divided amongst the cottagers in part payment of the Christmas poor rate, with some variations in favour of widows and the aged.

Although the Inclosure Map is not available, these two pieces of land are clearly shown on the Tithe Map for the parish. Only the larger piece is the subject of this reference, the smaller piece being the subject of Reference No.19/D/10.

Evidence was given by Mr. R.R.O. Barwick, one of the Churchwardens of River, that at the present time no rent is received for River Common, only River Minnis being now let. Mr. Barwick produced an agreement dated 20th May 1937, whereby the Vicar and Churchwardens granted to Mr. John Robson a licence to erect a gate at the rear of his premises giving access to the Poor Lands otherwise known as River Common for the purpose of going on foot to and from the gate giving access to Common Lane.

The fact that this land was allotted by the Inclosure Commissioners for the use of the poor leaves me in no doubt that the Act contained the usual provisions whereby all rights of common were extinguished and the Commissioners were empowered to allot all the commons and wastes in the manner authorised by the Act. In such a case it is impossible for any land in the manor to satisfy the definition of "common land" in section 22(1) of the Commons Registration Act 1965, because it cannot be subject to rights of common nor can it any longer be waste land of a manor: cf. Booker v. James (1968), 112 Sol.Jo.421.

For these reasons I 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

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day of

January 1973

Chief Commons Commissioner