



COMMONS REGISTRATION ACT 1965

Reference Nos 221/D/4
221/D/5

In the Matter of Mill Hill,
Belton, Northwest Leicestershire
District, Leicestershire

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No VG. 23 in the Register of Town or Village Greens maintained by the Leicestershire County Council and are occasioned by Objection Nos 5 and 8 made by Mr Joseph Staley Warrington and Miss Eva Joyce Burton respectively and noted in the Register on 20 March 1970.

I held a hearing for the purpose of inquiring into the dispute at Leicester on 18 April 1977. At the hearing (1) Belton Parish Council on whose application the said registration was made, were represented by Mr W J Edward their chairman; (2) Mr Joseph Herbert Warrington and Miss Leonora Grace Warrington both of Micklin Farm, Belton, being the executors of Mr J S Warrington (he died 11 August 1975) were represented by Mr P J Tomlinson solicitor of Moss Toone and Deane Solicitors of Loughborough; and (3) Miss E J Burton was also represented by Mr P J Tomlinson, his firm as regards her acting as agents for Crane & Walton, Solicitors of Ashby-de-la-Zouche.

The land ("the Unit Land") comprised in this Register Unit is the same as or is included in that referred to in section 17 of the Belton Inclosure Act 1812 (52 Geo 3 cap 132):- "And be it further Enacted, That a certain Spot of Waste Land, called The Mill Hill, situate near the Village of Belton, shall be allotted to the Lord of the Manor of Belton in trust and to the intent that the same shall and may be for ever hereafter used and enjoyed for the Purpose of holding thereon the Public Fair which is annually kept at Belton aforesaid, and the beneficial Interest therein, subject to that Purpose, and to such public and private Roads and Rights of Way as shall remain over the same, shall belong to and be vested the Lord of the said Manor of Belton for the Time being, freed from all Tythes and Right of Common in or upon the same; and the Value of such beneficial Interest (if any) shall be adjudged by the said Commissioners, and be, and be deemed to be, in or towards Satisfaction of the Allotments to be made to the said Lord by virtue of this Act".

Note:- The Bill (copy marked "received on 19 Dec 1843 Tithe Com", produced at the hearing) which led to the Act, contains a section differently expressed but to much the same effect as that above quoted from the Act. I have verified the quotation from the bound volume of local Acts of Parliament (in Lincoln's Inn Library).



Mr Tomlinson contended (a preliminary point) that the above quoted section of the 1812 Act made it unnecessary to call evidence because under it, the Unit Land was waste land of a manor within the definition of "common land" in section 22 of the 1965 Act and could not therefore be within the definition of "a town or village green" in the same section; he referred to section 6(1)(c)(iii) of the Local Government Act 1894. I rejected this contention: (a) because in my view apart from the 1965 Act land may be both waste land of a manor and allotted for, or subject to customary rights to indulge in, sports and pastimes, and under the 1965 Act any such land is registrable as a town or village green and not registrable as common land; and (b) because in my view the 1812 Act does not clearly preclude the "Spot of Waste Land" mentioned being then or having since become within the words of the section 22 definition of a "town or village green". By the said subsection of the 1894 Act, the former powers of the overseers or of the churchwardens and overseers with regard to the holding or management of village greens were transferred to parish councils; it is not I think a necessary consequence that land subject to a customary right for the inhabitants of a locality to indulge in sports and pastimes must be and have been regulated by a parish council or before 1894 by their predecessors; the rights of inhabitants may be enforced independently of a parish council, see *Wyld v Silver* 1962 Ch 561, and 1963 Ch 244. Further it was not conceded that Belton Parish Council had never concerned itself with the Unit Land, so that any argument there may be under the 1894 Act cannot properly be regarded as a preliminary point.

Oral evidence was then given (1) by Mr L E Newbold who is 62 years old, has lived in the Village all his life, and been a member of the Parish Council since 1946, (2) by Miss L G Warrington, who was born in Belton in 1925 and has never left it for more than a few weeks and whose father Mr J S Warrington bought Horse Fair Farm in February 1936, and (3) by Mrs K M Renshaw who lived at Horse Fair Cottage from 1937 until her husband's death in 1973 and for 2 years afterwards. Miss Warrington in the course of her evidence produced: (1) an agreement dated 12-5-52 by which H Armstrong agreed "to pay the sum of Ten (?pounds) to J S Warrington Lord of the Manor of Belton for the Market Place Belton to hold pleasure Fair in accordance with the old Belton Fair rule..."; (2) a printed proclamation (see Schedule hereto); (3) a letter dated 21 May 1952 from the Leicestershire County Council, County Roads, Area Surveyor to Mr J Warrington about a pleasure Fair in Belton Market Place on 16 June 1952; (4) a conveyance dated 29 March 1966 by which the personal representatives of Mrs Annie Thompson (she died 24 September 1935) conveyed to Mr J S Warrington about 4 acres of land including the Unit Land therein described as being (or being part of) nos 324, 325 and 327; (each) "pasture", (together) "Fair Ground"; being 1r 23p, 1r 30p and 30p "together with all manorial rights and incidents of the Manor of Belton which had in any wise belonged to or have heretofore been enjoyed by the owner of the property hereby conveyed including all tolls arising therefrom but excepting... the joint right to present to certain benefices..."; (4) a conveyance dated 29 March 1966 by which Mr J S Warrington conveyed to Miss E J Burton the south part (about 450 square yards) of the Unit Land; and (5) probate dated 30 October 1970 by the will of Mr J S Warrington. Mr Edward produced an extract from the minutes of the meetings of the Parish Council 15-10-47 to 28-2-51.

The Unit Land contains (according to the Register map) 1.01 acres. It is crossed near its north boundary) by a Brook (on the OS map called Westmeadow Brook; Mr Newbold said he did not himself call it that). It is bounded on the east by Mill Lane which is now separated from it by a well kept and substantial hedge in the middle of which there is a gate (fixed shut when I saw it). It is bounded on the west



by the buildings and land apparently at one time enjoyed with a water mill (now disused) and by the bed of what was the mill race. The Unit Land is apparently divided by the Brook into two parts; the north part (much the smaller) is on foot only approachable (when I saw it, except by someone prepared to wade the Brook) from the adjoining land on the northwest; the south part is on foot easily approachable by going through or climbing over a gate on the south boundary from land open to Mill Lane in front of the Mill Buildings.

The Unit Land is uneven and unsuitable for football or cricket or any other sport or pastime as usually played by adults. It does not now appear to be public land. However before 1939, there was no hedge or other fence between it and Mill Lane, so that the public could have got on to it easily on foot with or without animals, at all points along the Lane. There was some dispute as to when and how the Unit Land came to be fenced against the Lane as it now is. For the purposes of this decision, the exact date is not I think of any consequence; I find that since 1946 there has been a hedge and/or a wire fence sufficient to keep cattle from straying off the Unit Land on to Mill Lane and sufficient to give to the Unit Land the appearance of being private land to which the public has no apparent right of access.

That a horse fair (meaning a place where horses are bought and sold) has been held on the Unit Land for time immemorial up to some time after the 1914-18 war, was if not actually expressed implicit in the oral evidence. Mr Newbold said (in effect):- In his time he had seen as many as 100 horses on the Unit Land. In the old days people came from the Welsh borders and from Lincolnshire; in the old days it was one of the most famous fairs in the Midlands; once a year Belton Fair Monday (about Whitsuntide). Miss Warrington said (in effect):- When her father in 1936 bought Horse Fair Farm he found the proclamation (see Schedule hereto) together with a bell in the pantry; annually he went to the Market place, rang the bell and proclaimed the Fair, in accordance with the proclamation he had found, substituting only his own name for that of Annie Thompson, the words "Horse Fair House", for Manor House (in the last line of the proclamation) and ending with "God Save the King" (instead of "God Save the Queen"). She understood that before he bought, the Fair was so proclaimed by the Town Crier. Horse Fair House includes a room around which there are seats suitable for a court (it is on the Register map called "Horse Fair Cottage", and a stone on it is so inscribed with the date "1882". Her father, although he took tolls from those using the market place for the purposes of a pleasure fair allowed the tolls for the use of the Unit Land to be taken by his tenants of Horse Fair Cottage. She could not remember seeing a fair (horse fair) being held on the Unit Land, but she thought there had been perhaps half a dozen in the beginning of her life. Mrs Renshaw said (in effect):- She remembered when she first came to Horse Fair Cottage seeing the horses being bought and sold on the Unit Land; Mr Warrington had told her husband and herself that the toll was one penny a leg so they had collected in respect of every horse 4d; this was only before the 1939-45 war; no horse (for sale) came there afterwards.

The first part of the definition in the 1965 Act of "Town or village green" is "land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality". I must first consider whether the 1812 Act or the Award made under it is such an allotment.



copy of or extract from the Award made under the 1812 Act was produced. In the 1893 return of the House of Commons of Awards held by the Board of Agriculture, there is no mention of any Award relating to Belton; nor is there any mention of any such Award in the 1904 return to the House of Commons of Awards then held by the Clerks of the Peace or by County Councils. Nevertheless I think I should for the purposes in these proceedings presume that an Award was made and that it contained an allotment in the exact words required by the above quoted section of the 1812 Act.

The 1812 Act uses the word "Fair" of which the meaning according to the Oxford English Dictionary (volume 4 1901) is "a periodical gathering of buyers and sellers in a place and at a time ordained by charter or statute or ancient custom (in many cases fairs are resorted to for pleasure seeking as well as for business; and in England it sometimes survives merely as gatherings for pleasure)..." In Theobald v Land (1929 Second Edition) "according to modern use a fair suggests public entertainment more than buying and selling", see page 36. In Wyld v Silver supra the meaning of the expression "fair or wake" is discussed at length and all the judges treated the word "fair" as meaning a place of buying and selling of merchandise, cattle or other commodities and a wake as a concourse for the purposes of pleasure.

In my opinion the word "Fair" in the Act of 1812 cannot properly be read as including indulgence in sports and pastimes, and accordingly in my opinion even assuming the Award made under the Act followed exactly the wording of the above quoted section, the Unit Land is not within the first part of the 1965 Act definition.

The second part of the 1965 Act definition of "town or village green" is: "Land... in which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes..." As already stated above, in my opinion there is nothing in the 1812 Act which precludes my finding that the Unit Land is subject to a customary right, and the circumstance that fairs for the buying and selling of merchandise have, particularly in the early part of this century, been associated with pleasure fairs opens the way to a finding of some such customary right.

As to the Unit Land being used for sports and pastimes, Mr Newbold said (in effect):- As a boy he played football and other sports on the Green; the Unit Land had always been known in the Village as "The Green". It was grassland. The market place in the Village is about $\frac{1}{4}$ of a mile to the south. At the same time as the horse fair, (one day officially) on the Unit Land, there was a pleasure fair (the day of the horse fair and one day at least afterwards) in the Market place. He understood that the Green was fenced off (1939-1946) to prevent cattle interfering with the traffic on the Mill Lane. Since 1942 he had not seen football played on the Green. Mrs Renshaw described how she remembered the quickset hedge being planted, and how the Unit Land had been used for agricultural purposes. The minute book records that at a special Parish Meeting held on 31-1-51 to discuss open spaces and footpaths:- "The matter of erecting fences on the Horse Fair was raised by Mr J Warrington & he stated that no person was kept off the hills; the fences were only erected to keep cattle off the road as Mr Renshaw had had two beasts injured by lorries".

For guidance as to how I should consider the conflicting evidence summarised above, as to the effect of an interruption or discontinuance of use, I have the observations of Jessel MR in Hamilton v Honey 1876 24 WR 663, and as to the effect of a small scale practice which might be tolerated because it did no harm, I have the observations of the Court of Appeal in Beckett v Lyons 1967 Ch 450.



When looking at the Unit Land, I could easily imagine how in the past it had been used as a horse fair; any such use would have been inconsistent with it being during the horse fair used by the local inhabitants for sports and pastimes; indeed Mr Newbold remembered the pleasure fair as being in the market place (much more convenient so it now appears). Some persons selling horses would I suppose have walked or trotted them from the Unit Land along Mill Lane in the direction of the market place; some sellers would perhaps have sold horses in the market place; some buyers and sellers would have patronised the amusements provided by the pleasure fair. Nevertheless the pleasure fair as an activity of the local inhabitants and the horse fair as a congregation of buyers and sellers were not in my opinion so much one institution that I must necessarily treat the Unit Land and the market place as one piece of land, all subject both to a fair franchise and a recreational customary right. My conclusion is that the amusement fair never became associated with the Unit Land to any extent which can properly be regarded as significant on any question I have to decide.

The unevenness of the Unit Land and the Brook ^{are} such as to attract children; I have no difficulty in accepting that children before 1939 frequently played there as described by Mr Newbold. There was no evidence that there was ever any adult recreational activity on the Unit Land, and indeed it is not suitable for any sport as usually played in an organised way by adults. Whatever Mr Warrington may have said at the 1951 Parish Meeting, the hedge planted has diminished the use formerly made of the Unit Land by children; although there have been protests, no inhabitant has done anything.

Balancing the conflicting evidence as best I can, my conclusion is that no recreational use as of right was proved, and that children's activities such as sledging, kicking a ball about, fishing in the Brook and paddling in the Brook were not enough on which to base a finding that the Unit Land is subject to a customary right of recreation.

For the above reasons I refuse to confirm the registration.

Mr Edward said that the Parish Council regarded the Unit Land as an amenity which the Village had always enjoyed and which was something which they should try and keep. I express no opinion as to whether the Parish Council or any of the inhabitants of the Village can because the Unit Land is under the 1812 Act subject to a trust to hold a Public Fair, have some such rights to preserve it as an amenity as were recognised in *Wyld v Silver* supra; this is not a matter within my jurisdiction as a Commons Commissioner. Mr Tomlinson claimed that Mr Warrington as Lord of the Manor was entitled to the tolls from the Fair and was therefore (as I understood him) also entitled to the franchise; although I have in this decision mentioned some of the evidence about these tolls so as to provide the necessary background, I record that I make no finding as to this evidence, and in particular make no finding as to whether Mr Warrington, when he read the proclamation set out in the Schedule hereto was accurately stating the law. These questions and the question raised by Mr Edward as to whether Mr Warrington had any right permanently to discontinue the Fair, are all outside my jurisdiction.

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.



SCHEDULE

Annie Thompson, (Widow) Lady of the Manor of Belton, Doth hereby give notice, that there is a Fair to be kept within the Town and Manor of Belton, for the buying and selling of all manner of Cattle, Wares, and Merchandize. And that it is not lawful for any person to use any unlawful buying and selling within this Fair, but without forestalling, engrossing, or regrating this day, and to-morrow, and no longer, upon pain of forfeiting double the value of that which shall be sold to exchanged. And also doth hereby require all persons resorting to this Fair to keep just Weights and Measures, and strictly charge all manner of persons to keep her Majesty's peace. And also doth require all persons who shall buy, sell, or exchange any Horse, Mare, Gelding, Colt, or Filly, to take notice, that it is not lawful to put them to sale, but between ten o'clock in the forenoon of the same day and sun setting, and that in open Fair only, being driven or led there, for the space of one hour at the least, paying the just Toll, bringing them to the Toll-book, that the Officer there attending may enter their names and surnames, mystery, and dwelling-place, of every Buyer, Seller, and Voucher, and the colour, and one special mark of every Horse, Mare, Gelding, Colt, or Filly, so sold or exchanged. And if any Buyer, Seller, Voucher, or Toll-taker do to the contrary forfeits Five Pounds and the sale void, and if the Horse, Mare, Gelding, Colt, or Filly be thief-stolen, the property remains unaltered. And that it is not lawful to buy any Cows, Calves, Steers, Heifers, or Runts, but in the open Fair only, upon pain of forfeiting double the value. And also if any controversy arise between party and party, touching any bargain or contract, for any Cattle, Wares, or Merchandize, the party aggrieved may right himself before the Steward of the Fair in the Court of Pie-poudre at the Manor House in Belton.

BELTON FAIR to be proclaimed the Monday after Trinity Week.

God Save the Queen

Dated this 30th day of May —

1977

a. a. Baden Fuller

Commons Commissioner