



COMMONS REGISTRATION ACT 1965

Reference Nos.38/D/43-48

In the Matter of The Beach and Adjacent Land,
Selsey, West Sussex.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.9 in the Register of Common Land maintained by the West Sussex County Council and are occasioned by Objection No.144 made by The League of Friends of Normansfield, Objection No.145 made by Mr.Eric Humphries, Objection No.146 made by Mr. E.W.Allen, Objection No.147 made by Mrs.Blanche Prescott, and Objection No.148 made by Mr.Henry Brinton, all noted in the Register on 25th September 1970 and Objection No.149 made by the London Building and Development Trust Ltd and noted in the Register on 5th October 1970.

I held a hearing for the purpose of inquiring into the dispute at Chichester on 5th July 1973. The hearing was attended by Mr.Ritchie, of counsel, on behalf of the Selsey Parish Council, the applicant for the registration, and by Miss Cameron, of counsel, on behalf of the Objectors.

The land the subject of the reference is covered with shingle and is bounded on the south-east side by high water mark of ordinary tides. There was formerly grass on the land, but by the time that the application for the registration was made in 1967 the grass had been reduced to a strip 10 ft wide at the western end and tapering to nothing. The western part of the land is now used as a car park. There is no objection in respect of this part, but my duty is to inquire into the whole registration and I can find no reason for drawing any distinction between the parts of the land in respect of which objections have been made and the remainder.

It was sought to support the registration on the ground that the land is subject to rights of common. The only witness was Mr. A.E.Mason, the Clerk of the Parish Council, who has known the land in question since 1927. Mr.Mason said that he believed that it was subject to rights to take fish, turf, seaweed and shingle and to use it for camping, picnicking and what he described as "other sports and pastimes common to maritime parishes".

The latter group of uses does not comprise any right of common known to the law. If there is a right of fishing from land above high water mark, that is not a right of common, since the fish must be on the land below high water mark, except possibly during extraordinary tides. Likewise, any seaweed taken from land above high water mark must have been washed there during extraordinary tides. While seaweed so cast ashore is the property of the owner of the soil on which it is cast (see Hamilton v. Att.Gen.(1880), 5 L.R. Ir.555,575), I know of no authority for the possible existence of a right of common to take such seaweed. However, it is not necessary to form a concluded view on this point for the purposes of this case, and I shall proceed on the basis that such a right is capable of existence.



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Mr. Mason said that seaweed, turf and shingle had been taken from this land. He presumed that they had been taken as of right, since nobody objected. He was, however, unable to identify any person who had done this taking as of right. He said that it had been done by local people and visitors, and when asked to define the local people, he said that they were people living in the part of the village near the land in question. This is insufficient evidence to prove a right of common. It was decided as long ago as Gateward's Case (1607), 6 Co.Rep.59b that there cannot be a right to a profit à prendre in a fluctuating body like the inhabitants of a particular place.

For these reasons I refuse to confirm the registration.

Miss Cameron applied for an order for costs against the Parish Council. I have come to the conclusion that the application, though mistaken, cannot properly be described as frivolous, and that the conduct of the proceedings by the Parish Council has not increased the Objectors' costs. I therefore make no order as to costs.

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 26th day of July 1973


Chief Commons Commissioner