



COMMONS REGISTRATION ACT 1965

Reference Nos 241/D/1 to 4 inclusive

In the Matter of Piece of land in the  
Imber Village Area, Imber, West  
Wiltshire D and Kennet D

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DECISION

These disputes relate to the registration at Entry No 1 in the Land Section and Entry No 1 in the Ownership Section of Register Unit No CL. 77 in the Register of Common Land maintained by the Wiltshire County Council and are occasioned by Objection Nos 11 and 12 both made by the Ministry of Defence and both noted in the Register on 11 October 1971 and Objection Nos 79 and 80 both made by the Church Commissioners for England and both noted in the Register on 6 September 1972.

I held a hearing for the purpose of inquiring into the dispute at Trowbridge on 28 June 1977.

The hearing was attended by Mr S J Sher counsel instructed by the Treasury Solicitor on behalf of the Ministry of Defence and by Mr O H Woodforde on behalf of the Church Commissioners.

When the hearing was called on shortly after 10.30 am Mrs Wheeler who made the Registration in both the Land Section and the Ownership Section was not present. In the absence of Mrs Wheeler to prove her ownership and to prove that the land was common land I refused to confirm both Registrations.

Mr Sher made an application for costs and copies of letters written on behalf of the Ministry of Defence to Mrs Wheeler over the period 2 December 1971 to 6 May 1975 inter alia endeavouring to arrange a meeting with Mrs Wheeler, setting out a list of conveyances on which it relied as establishing its ownership, asking for inspection of her title deeds, explaining the provisions of the Act of 1965 and suggesting that she should seek the advice of a solicitor. The only answer received from Mrs Wheeler was one dated 3 January 1972 to the effect that she was too busy to attend a meeting.

In these circumstances in the belief that Mrs Wheeler was not appearing to prove her case I awarded both the Ministry of Defence and the Church Commissioners their costs on Scale 4 with the Registrar's discretion.

At approximately 12 noon Mrs Wheeler accompanied by Mr A R Mitters who was concerned in another hearing and who Mrs Wheeler said would speak for her appeared and they said that they had been given a wrong address for the court at which the hearing was held and this accounted for their late arrival. There was substance in this complaint and Mrs Wheeler at one stage suggested that she had been deliberately misdirected, but I think she accepted that this was not the case when she appreciated that I found the same difficulty that she had found.

By the time that Mrs Wheeler and Mr Mitters appeared Mr Sher and Mr Woodforde had left. In these circumstances the course which I took was to invite Mrs Wheeler to tell me the grounds on which her claim to ownership was based and why she claimed the land was common land. The onus had Mrs Wheeler been present when the hearing



was called <sup>on</sup> would have been on her and if there had been any sign of her being able to discharge that onus I would of course have had to reopen the hearing.

I listened to Mrs Wheeler and to a lesser extent to Mr Mutten for more than an hour and endeavoured to ascertain whether Mrs Wheeler could make out any prima facie case which would support either of the Registrations.

I started with the claim to ownership and invited Mrs Wheeler to produce her title deeds but she had no such deeds, nor did she claim a prescriptive title. When asked by me why she claimed ownership she said the land was open and unenclosed and that she was making her claim on behalf of herself and other former inhabitants of the locality who had been wrongfully deprived of their use of this unenclosed land. She was under the mistaken impression that no one could own open unenclosed land and had by some curious process of logic come to the conclusion that the appropriate way to establish this unsound proposition was to claim ownership in a representative capacity for an undefined body of persons who would be entitled to use the land as common land. Mrs Wheeler's claim to ownership is clearly misconceived and I hope and believe that I convinced her that such is the case.

As regards the registration of the land as common land Mrs Wheeler did not appreciate that the only land which can be registered is common land as defined in the Act of 1965. There are no common rights entered in the Rights Section of the Register and Mrs Wheeler had never given any consideration to the question as to whether it was waste of a manor. Included in the registered land are the church, churchyard and vicarage and when I asked her how these lands could under any definition be common land she told me that she had been to see the Bishop of Salisbury.

I am satisfied that Mrs Wheeler has not even a prima facie case to support either of her registrations and that had she been present at the correct time Mr Sher and Mr Woodforde would have had no case to answer.

Mrs Wheeler has a deep seated sense of grievance and she mistrusts the Ministry of Defence which she said was why she did not answer their letters. The Ministry were at great pains to save costs and it is a matter for regret that their efforts were not successful. In these circumstances and in view of the fact that both Mrs Wheeler's Registrations were made without any foundations of either fact or law I see no reason to vary the order for costs made at the request of Mr Sher and Mr Woodforde.

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 28<sup>th</sup> day of July

1977

G. A. Little

Commons Commissioner