COMMONS REGISTRATION ACT 1965

Reference Nos. 214/D/9
214/D/10
214/D/11
214/D/12
214/D/13

In the Matter of Yateley Common in the Parishes of Yateley, Eversley, Hawley and Hartley Wintney, Hart District, Hampshire

FURTHER DECISION

This decision is supplemental to my decision in this matter dated 26 March 1975.

As then contemplated I held a further hearing for the purpose of dealing with the questions then left open, at London on 22 May 1975. At this hearing Mr. J.W. Mills Q.C., Mr. J. Bradburn, Mr. J.A.R. Finlay Q.C. and Mr. J.M.E. Byng of counsel represent the same persons as before and Mr. J. Weeks solicitor represented the Hampshire County Council as before, and on behalf of Yateley Parish Council made the submission below recorded.

As to Entry No. 25: Mr. Mills said (in effect):- Point of Objection (F) is applicable to so much of the land mentioned in column 5 as is within O.S. No. 212, an area less than half of that shown verged blue on the supplemental map mentioned in the column; accordingly the supplemental map should be appropriately altered, and the numbers mentioned in column 5 should (following the reasoning in my decision) be halved. To avoid fractional numbers, sheep numbers should be reduced to 2.

As to Entry No. 56, Mr. Mills said (in effect):- All the land now occupied and held with Quarry House was within 1871 Baily, and accordingly column 5 of this Entry should (following the reasoning of my decision) be altered so as to include a description of all this land in the form of words used in the other Entries. I have among my papers (given me I suppose by someone earlier in the proceedings) a map marked with a plot which is numbered 56 and which includes part of Cricket Hill Lane beginning near Quarry House and ending at Cricket Hill Road and includes also some of the verges to this Lane Mr. Mills said that he did not suggest that the land described in column 5 include any part of the Lane or of these verges.

In the absence of any contention that a modification on the lines outlined above would not give effect to the reasoning in my decision, I shall to the Rights Section in addition to modifications (i) and (ii) therein mentioned make the following modificati :- (iii) for the numbers (a) 2, (b) 2, (c) 2, (d) 12, (e) 24, and (f) 3 in column 4 of Entry No. 25 there shall be substituted the numbers (a) 1, (b) 1, (c) 1, (d) 6, (e) 12 (f) 2, the words "The part of" shall be inserted in column 5 before the words "Carolin Hall Lane..." and the supplemental map referred to in the said column shall be altered by removing from the land shown thereon verged blue so much of it as is within plot No 212 on the 1/2,500 O.S. map (1945 edition); and (iv) for the words "Held in Gross" in column 5 of Entry No. 56 there shall be substituted "Quarry House, Cricket Hill Lane, Yateley, Camberley, near Surrey, shown verged blue within the boundary on the supplemental map bearing the number of this registration", and the said supplemental map shall show verged blue thereon the dwelling house known as Quarry House, Cricket Hill Lane and land in 1974 occupied and held therewith, being plot No. 252 on the said

O.S. map.

Mr. Mills after pointing out that some of the persons he represented had been successful and some had failed, contended that Mr.Arnold should pay 80% of the costs of all these persons. Alternatively, if I would not combine the costs of all such persons in this way, he contended that Mr. Arnold should pay all the costs of such as of the said persons as had succeeded (including all the costs of Mr. Dodd and Mrs. Nuttall-Smith who, although they failed in part had so he said, succeeded in substance) and make no order as to costs of the other persons he represented.

Mr. Weeks said:- The County Council did not ask for costs. However he had been asked by Mr. Adams clerk of the Yateley Parish Council, to submit to me that Mr. Arnold should pay their costs.

As between Mr. Arnold and the persons represented by Mr. Mills, Mr. Finlay contended that I should make no order for costs; alternatively if I would not combine the costs of such persons together and if I intended to make any costs order against Mr. Arnold for the benefit of such of Mr. Mills' clients as had been successful, I should order his other clients to pay to Mr. Arnold his costs so far as attributable to the Entries made on their application. As regards all the other persons on whose application Entries had been made, Mr. Finlay contended that I should order them to pay to Mr. Arnold his costs so far as attributable to the Entries made on their applications, and alternatively or additionally as regards his costs attributable to Entries made by persons who wrote to the County Council letters saying they wished to withdraw, I should order the County Council (because they failed to inform Mr. Arnold or his solicitors that they had received such letters) to pay such costs.

Mr. Finlay referred me to a note about costs in Halsbury's Laws of England (4th editic 1974) para. 608. The rules there stated, which appear to have come from page 1127 (not page 305) of 1923W.L.C, may, particularly in cases where the Hearing is short and simple, be a useful guide, however, I am not, I think, obliged to treat these rules as if they were included in subsection (3) of section 18 of the 1965 Act.

As regards the persons who supported the 21 Entries which I have confirmed with the modifications (i) and(iv) only, they should I think, notwithstanding the modifications, be treated as being wholly successful in these proceedings; the modifications make very little if any substantial difference to the Entries as originally made. Having regard to all the evidence and information given and the submissions made, to me at the October-December hearing and at this May hearing, I consider that Mr. Arnold should pay all the costs of all these persons.

Mr. Dodd and Mrs. Nuttal-Smith, on whose application Entry No.1 and Entry No.25 were made, have failed in part and succeeded in part. Having regard to the evidence and information given and the submissions made to me about these Entries, and the time taken with the submissions on which Mr. Arnold has (as I have decided) wholly failed, I consider that Mr. Arnold should pay 2/3rds (two thirds) of the costs incurred by Mr. Dodd and 9/10th nine tenths) of the costs incurred by Mrs. Nuttal-Smi

per

Mr. and Mrs. Salamon, on whose application Entry No. 33 was made, at an early stage of the proceedings indicated through Mr. Mills that they would not support this Entry. I consider that their liability for costs should be no more than that of the other persons named in the First Schedule to my Decision, and therein marked "Defence". As to these persons see below.

Captain and Mrs. Seaman on whose application Entry No. 27 was made and who were also represented by Mr. Mills, wholly failed. He kept their claim open to the very end of the proceedings in the hope (as I understood) that deeds might be found showing that they owned their land in succession to some copyholder. In my view the costs of Mr. Arnold were not appreciably, if at all, increased by Captain and Mrs. Seaman standing by in this way. Considering as best I can how far the costs incurred by all those instructing Mr Mills can be regarded as properly attributable to the claim of Captain and Mrs. Seaman and how far the costs incurred by Mr. Arnold in respect of all the Entries can be regarded as properly attributable to Entry No.27, and bearing in mind that a high proportion of the costs so attributable was occasioned by questions which I decided against Mr. Arnold and balancing as best as I can these costs against the costs attributable to the questio which I have decided for Mr. Arnold, I conclude that I should make no order as to any of his attributable costs.

Under paragraph 19(1) of the 1971 Regulations, Yateley Parish Council were entitled to be heard in these proceedings, Although their production of the 1951 conveyance and the observations of Mr. Adams in the course of the proceedings have been helpful I consider that there is no good reason why Mr. Arnold should pay any part of their costs.

As to the costs claimed against the persons not represented by Mr. Mills on whose application were made the remaining 24 of the 25 Entries which I have not confirmed:

The Scheme of the 1965 Act and the Regulations made under it, is that after an objection has been made to an application for an Entry in the Register and before the resulting dispute can be referred to a Commons Commissioner there shall be a period for discussion; if during the period agreement is reached, the registration authority may alter the registration; if no agreement is reached before the end of the period, a reference to a Commons Commissioner is (apart from rule 31 of the 1971 Regulations) unavoidable. In my opinion a person who makes an application for registration under the Act does not as a general rule put himself at risk as to costs merely by making the application, certainly if he makes the application in good faith and on reasonable grounds; his grounds may I think be reasonable notwithstanding that no detailed consideration has been given to the evidence which might have to be called to support the Entry should it be disputed and be referred to a Commons Commissioner. In this case to anyone reasonably acquainted with local history and with the appearance of the Unit Land it would I think have been obvious that many persons owning the land north of the Unit Land must have a right of common over it. I cannot conclude from any evidence and information given to me, that any of the persons responsible for these 24 Entries had not grounds enough on which to make an application.

The information if any which I have of what happened during the discussion period between these persons and those representing Air Vice Marshall Bennett and Mr. Arnold has not persuaded me that these persons were responsible for there being a public inquiry. There is no suggestion in Objection No.304 that some of the rights registered were (as I have decided) properly registered, and there was no evidence that those representing Air Vice Marshall Bennett and Mr. Arnold ever suggested within the discussion period that that might be the legal position. On the reasoning set out in my decision, it is likely that many of these persons have rights over the Unit Land, which could at the hearing have successfully been supported if they had thought it worth while.

But even if any of those persons could not have supported the Entry for which he was responsible, his inactivity did not materially affect the course of the proceedings. A public inquiry of some kind was unavoidable by him; I need not I think consider what order for costs I might have made against these persons if noone else had applied for any Entries in the Rights Section to be made.

On the considerations outlined above, I conclude that Mr. Arnold should not receive any costs from the persons responsible for these 23 Entries.

In my opinion the County Council as registration authority was never under any duty to inform Mr. Arnold that they had received letters from which it might be inferred that a person who had applied for an Entry in the Rights Section to be made, wished it to be avoided, or that as regards any Entry it was likely that no one would at the Public Inquiry appear to support it. Further in my view, even if the County Council had sent copies to Mr. Arnold copies of any such letters which they had received (none were particularly relied on), the course of the proceedings would not have been significantly different. In my opinion there is no reason why the County Council should make any contribution to Mr. Arnold's co

If I directed a taxation and payment of costs exactly as outlined above, to determine the amount payable, the work done and expenses incurred by Gouldens in these proceedings would have to be apportioned between their clients according to their respective entitlements under my direction and also apportioned between the work and expenses done and incurred in respect of the Objection of Air-Vice Marshal Bennett, and in respect of the other two Objections. Bills involving such apportionments would be difficult to draw and would if disputed involve the County Court Register in difficult questions as to the purpose and effect of the various things done in these proceedings. I consider therefore that I should as suggested by Mr. Mills instead of any such exact direction, order payment of a percentage of all the costs incurred in these proceedings by all the clients of these Solicitors provided that I am satisfied that the resulting amount payable will not exceed that which would result from an exact direction; although under such an order Mr. Arnold would appear to be paying for costs for which he should not be liable, this will not be the result in substance. Upon a consideration of all that has happened in these proceedings I am satisfied that the 20% proposed by Mr. Mills is not excessive. Payment should be made to Gouldens; it will then be for them to account for the monies they receive in accordance with the terms expressed or implied on which they have agreed to act for all of their clients as regards all aspects of these proceedings.

For the above reasons I shall order Mr. Arnold to pay to Gouldens 80% of the costs incurred in respect of these proceedings by all the persons represented by Mr. Mills at the hearing, and I shall direct such costs to be taxed according to scale 4 prescribed by the County Court Rules 1936 as amended with the modifications that the Registrar (a) shall have a discretion as to all items under which the said Rules such discretion can be conferred on him by the Court, (b) shall consider the proceedings fit for both leading and junior counsel; and (c) shall as regards Mr. J. Giles include in his costs all costs incurred by Miss. E. Giles deceased in respect of these proceedings.

When preparing this decision I noticed that I have omitted expressly to state in the last paragraph of my March decision whether I did or did not confirm Entry No.73. In accordance with rule 33 of the 1971 Regulations, I correct this error and also some other errors of less importance (many pointed out to me by Mr. Mills during the May hearing) as set forth in the Schedule hereto.

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 High Court.

SCHEDULE
(Clerical errors in decision dated 26 March 1975)

Page 7 lines 1 and 2:- "recently erected" should be between "substantial" and "wire fence".
Page 11 lines, 13, 19, 20 and 31; "1575" should be "1567"
Page 11 line 43, - insert "amount of evidence" after "minimum"
Page 12 line 33; - "Cessna" should be "Cessna" and "Wichiter" should be "Wichita"
Page 15 4 lines from the bottom of page;- delete "at"
Page 17 line 12 "right to common" should be "right of common"
Page 22 line 4:- "in the deed" should be "indeed"
Page 27 fourth paragraph: "1871" in both places should be "1891".
Page 30 three lines from bottom of page :- at the end of the line, delete "that"
Page 31 line 20:- delete "with"
Page 32 lines 16 and 22:- delete "that".
Page 35 line 24:- for "30 and 35" substitute "50, 55 and 73"
Page 35 3 lines from bottom:- "...(1971 edition) and before the number (a) 40..." should read "... 1931 edition) and" and for the numbers (a) 40..." and in the next line delete "nos.".

Dated this 13th day of June 1975

a. a. Baden Fuller

Commons Commissioner.