COMMONS REGISTRATION ACT 1965

Reference No. 19/D/8

<u>In the Matter of Two pieces of land</u>

<u>adjacent to Southdown House,</u>

<u>Woolage Green, Womenswold, Kent.</u>

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.23 in the Register of Common Land maintained by the Kent County Council and is occasioned by Objection No.7 made by Mr. W.J.A. Cheeseman and noted in the Register on 22nd September 1969.

I held a hearing for the purpose of inquiring into the dispute at Canterbury on 15th November 1972. The hearing was attended by Mr. C.B.Croft, solicitor, for Mrs. W.K. Wood, who made the registration, and by Mr. N. Charlesworth, solicitor, for Mr. Cheeseman.

The grounds of objection were stated as follows:-

"The land referred to, being my property and registered with the "Tunbridge Wells District Land Registry".

This statement is so irrelevant as not to be a ground of objection at all.

At the beginning of the hearing Mr. Charlesworth asked to be allowed under regulation 26 of the Commons Commissioners Regulations 1971 to put forward as an additional ground of objection

"That the land is not common land".

This I allowed, though not without hesitation,for it seemed difficult to describe this ground as an "additional" ground when there was no existing ground to which it could be added. However, Mr. Croft very properly did not object to the application, thus enabling the matter to be fully argued.

The land in question consists of two portions separated by a road or track. The northernmost piece is triangular, has been fenced for many years, and is now or was formerly cultivated as a garden. The southernmost piece is quadrangular. Many years ago it had some pigstyes on it, and there was also a well from which residents in the neighbourhood drew water. Not being completely enclosed, children used to play on the land.

Mr. Croft very fairly said that he could not specify whether either piece of land fell within para.(a) or para.(b) of the definition of "common land" in section 22(1) of the Commons Registration Act 1965 as being either subject to rights of common or waste land of a manor, but he argued that the people of the area had long looked on this land as a common and that it was a common by repute.

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While I accept that Mrs. Wood and the local residents who were called
to give evidence on her behalf had a genuine belief that this was a common,
the basis of their belief seems to be summarized in two answers which
Mrs. Wood gave to Mr. Charlesworth in cross-examination. She said: "I
consider it common for everyone to go on", and then: "People should be
allowed to walk about for exercise or recreation or to play on it".

Unfortunately the belief of Mrs. Wood and her witnesses do not go to
the matters which have to be considered when deciding whether this land
is "common land" as defined in section 22(1) of the Act of 1965. There was
no evidence directed to showing that the land is either subject to rights
of common or waste land of a manor.

In these circumstances I cannot do other than refuse to confirm the
registration.

Mr. Charlesworth asked that if I should come to that conclusion I would
order Mrs. Wood to pay Mr. Cheeseman's costs. While I have every sympathy
with those who genuinely, if mistakenly, seek to uphold what they consider
to be local rights, I cannot regard this registration as other than frivolous.
Since Mrs. Wood was prepared to incur the expense of legal representation
in supporting her registration, it seems to be not unfair that she should
incur the normal penalty of an unsuccessful litigant. I shall therefore
order her to pay Mr. Cheeseman's costs to be taxed on County Court Scale 2.

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   **1st**   day of **December** 1972

Chief Commons Commissioner