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COMMONS REGISTRATION ACT 1965

Reference Nos. 269/D/36-39

In the Matter of White Lane Pond, Four Doles and Clay Pits, Thorne and Stainforth, South Yorkshire (No. 1)

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 113 in the Register of Town or Village Greens maintained by the South Yorkshire Metropolitan County Council and are occasioned by Objection No. 850 made by the British Waterways Board, Northern Region and noted in the Register on 25 May 1971, Objection No. 1379 made by British Railways, Eastern Region and noted in the Register on 27 August 1971, Objection No. 2128 made by the former Thorne Rural District Council and noted in the Register on 20 October 1972 and the conflicting registration at Entry No. 3 in the Land Section of Register Unit No. CL 401 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Thorne on 13 February 1984. The hearing was attended by Mr David Rose, of Counsel, on behalf of the Stainforth Parish Council, whose application was noted under Section 4(4) of the Commons Registration Act 1965, Mr P M Stowe, Solicitor, on behalf of the Thorne Town (formerly Parish) Council, whose application was also noted under Section 4(4) of the Act of 1965, Mr Francis Radcliffe, of Counsel, on behalf of the Doncaster Metropolitan Borough Council, the successor authority of the former Thorne Rural District Council, Mr C Dunkley, the Principal Estate Officer of the British Waterways Board, and Mr J Gott, Chartered Surveyor, on behalf of the British Railways Board. There was no appearance by or on behalf of Mr W Bunting, the applicant for both the registration and the conflicting registration.

Mr Stowe did not adduce any evidence in support of the registration.

I gave leave to Mr David Owen, a friend of Mr Bunting, to play a tape recording made by Mr Bunting. This mostly consisted of adverse comment on the administration of the Act of 1965. It may have been intended to provide material for a newspaper reporter: it certainly provided me with no assistance at all. However, Mr Bunting did make one point to which I must give serious consideration.

Mr Bunting said that the registration had become final by virtue of Section 7 of the Act of 1965 because the objections to it had been made out of time. This offered a temptingly easy way of disposing of this and most, if not all, of hundreds of other references generated by applications made by Mr Bunting.

Mr Bunting's point, which was supported by Mr Rose, was founded on the fact that his application for the registration was made on 28 May 1968 during the first registration period as defined in regulation 5 of the Commons Registration (General) Regulations 1966, while all the objections were made during the second objection period, as defined in regulation 4 of the Commons Registration (Objections and Maps) Regulations 1968, as amended by regulation 3 of the Commons Registration (Objections and Mpas) (Amendment) Regulations 1970. In order to evaluate this point it is necessary to examine the 1966 and 1968 Regulations in some detail.

It is provided by regulation 5(1) of the 1966 Regulations that there shall be two periods during which applications for registrations may be made, called the first

registration period and the second registration period. The first registration period, which is the only material one for the present purpose, is defined by regulation 5(2) as beginning on 2 January 1967 and ending on 30 June 1968. Mr Bunting's application was not only made during this period, but was received during the period by the registration authority, then the former West Riding County Council, being receipt-stamped on 6 June 1968.

Having received the application, it became the duty of the County Council to dispose of it in the manner prescribed by regulation 9. The application had to be either accepted or rejected and, if accepted, as Mr Bunting's was, the County Council was required by regulation 9(6) to make a registration in respect thereof in the manner prescribed by regulation 19 and was further required not later than four weeks after the date of the registration to make information about it available to the public in the manner prescribed by regulation 11.

In the specimen forms of registrations set out in Schedule 2 to the 1966 Regulations the dates of the entries are in each case a few days after the dates of the relevant applications, but the Regulations prescribe no period after the receipt of an accepted application during which the consequential registration must be made. In this case the registration was not made until 24 March 1969. Although this was well after the first registration period as defined in regulation 5, I am unable to find that the County Council was in breach of the Regulations in allowing such a long time to elapse between the receipt of the application and the making of the registration. The expression "first registration period" is at first sight somewhat misleading, but when regulation 5 is read carefully it is apparent that "first registration period" is used subsequently as short-hand for the period beginning on 2 January 1967 and ending on 30 June 1968, being the first period during which applications for registrations could be made, and does not relate to a period during which any registration is to be made, there being no such period prescribed.

Turning to the 1968 Regulations, one finds no mention anywhere of the first or second registration periods. Regulation 4(1),(2), as amended, provides that there are to be two objection periods, called the first objection period and the second objection period, the first beginning on 1 October 1968 and ending on 30 September 1970, and the second beginning on 1 May 1970 and ending on 31 July 1972. Regulation 4(3) then goes on to provide that where a registration is made before 1 July 1968 an objection to it shall not be entertained unless it is made during the first objection period, and, where a registration is made after 30 June 1968 an objection to it shall not be entertained unless it is made during the second registration period. In this case the registration was made after 30 June 1968, and it therefore follows that the proper time for making an objection to it was during the second objection period. Mr Bunting's point involves construing the words "a registration is made before 1 July 1968" in regulation 4(3) as if they meant "an application for a registration is made before 1 July 1968". There is no canon of interpretation which would enable one to interpolate the words "an application for" into regulation 4(3). Equally, it is not possible to construe "a registration" in the 1968 Regulations as having the same meaning as "an application for a registration" in the 1966 Regulations. The word "registration" must bear the same meaning in both the 1966 Regulations and the 1968 Regulations, for "registration" appears in the Act of 1965, so that by virtue of section 31 of the Interpretation Act 1889 (now replaced by Section 11 of the Interpretation Act 1978), unless the contrary intention appears, it must bear the same meaning in each set of Regulations as it

bears in the Act. I can find no express or implied contrary intention in either set of Regulations, so it follows that "registration" in the 1968 Regulations must have the same meaning that it has in the 1966 Regulations, namely the meaning that it has in the Act. It is clear that in the 1966 Regulations"registration" does not mean "application for a regulation", so it is impossible to construe "registration" in regulation 4(3) of the 1968 Regulations as meaning "application for a registration".

While, as is my duty, I have considered the relevant regulations with care and in detail, I find it somewhat surprising the Mr Bunting should have taken the point, since he referred me in writing to Note 4 in C.R. Form 26. This note is as follows:-

> "If the registration you wish to object to was made before 1 July 1968 your "objection, properly completed and signed, must reach the registration "authority between 1 October 1968 and 30 September 1970. If the registration "you wish to object to was made after 30 June 1968 your objection must reach "the registration authority between 1 May 1970 and 31 July 1972. (A "registration is 'made' on the date when it is entered in the register, ie. "the date appearing in the left hand column of the register sheet)"

This note appears to me to sum up the position admirably, and I can only assume that Mr Bunting must have misread it or misunderstood it.

I have therefore regretfully come to the conclusion that the objections were not made out of time, and I must apply myself to the task of hearing and determining a large number of disputes arising out of Mr Bunting's registrations.

Mr Rose based his case on the third limb of the definition of "town or village green" in Section 22(1) of the Act of 1965, namely, that the land comprised in the Register Unit is land on which the inhabitants of the locality have indulged in lawful sports and pastimes as of right for not less than twenty years, such period of twenty years being said by Lord Denning M.R. and Brightman L.J. obiter in New Windsor Corporation v. Mellor, (1975) Ch. 380, at pp 391, 396 to be that before the passing of the Act of 1965 on 5 August 1965.

Mr Rose called a number of witnesses, and Mr Owen volunteered to give evidence under regulation 23(5) of the Commons Commissioners Regulations 1971. Not all the witnesses covered the whole of the relevant period of twenty, nor, in my view, was it necessary that each of them should have done so. I have to make a composite finding of fact from he totality of the evidence.

The land comprised in the Register Unit is situate on the north and south sides of the Stainforth and Keadby Canal immediately to the west of the railway line some distance to the south of Thorne North Station. The evidence relating to the two areas was not identical, so it is necessary to consider them separately.

There was evidence of the following activities on the land to the south of the Canal at various times during the period between 1945 and 1965:-

(1) Unaccompanied local children playing, picnicing, fishing in a pond, collecting bullrushes, and picking mushrooms;

(2) Local children accompanied by adults, playing, gathering blackberries, and studying fish and plant life;

(3) Local adults picnicing, taking dogs for walks, and fishing in the pond.

Evidence was also given by Mr T Hodgkinson that members of a Stainforth Karate Club had carried on training exercises on this land, but I have disregarded this evidence, since it related only to the last thirteen years since Mr Hodgkinson went to live in Stainforth.

Although it might be difficult to describe any of these activities as "sports", I find no difficulty in regarding them as "pastimes". However, in order to fall within the third limb of the definition of "town or village green" on which Mr Rose relied such pastimes must have been indulged in "as of right". "As of right" is not, of course, the same as "by right". The expression "as of right" has long been used by lawyers to describe the enjoyment of an easement or a profit à prendre which can ripen by prescription into a right. This is often described as "nec vi, nec clam, nec precario". Indulgence in sports and pastimes on land as of right for not less than twenty years does not ripen into a right: it is merely a qualification for registration in the register of town or village greens. Nevertheless, I can see no reason for regarding "as of right" in the definition of "town or village green" as having a meaning different from that understood by lawyers for many centuries. As Harman L.J. said in Alfred F Beckett Ltd v. Lyons, (1967) Ch. 449, at p. 469, the authorities seem to show that when the law talks of something being done as of right it means that the person doing it believes himself to be exercising a right.

On the evidence I am satisfied that the activities described by the witnesses were indulged in "as of right" in the technical sense of that expression. As I remarked in In the Matter of the Village Green, Waddingham, Lincolnshire (1972), Ref. No. 24/D/3, it is perhaps somewhat artificial to consider whether young children played "as of right", for it is extremely unlikely that such a jurisprudential question ever entered their heads. Nevertheless, I am satisfied, as I was satisfied in that case, that the unaccompanied children regarded the land as being there for those who wished to play on it without asking anyone's permission. In this case, there is also the evidence of adults indulging in pastimes on the land and taking children there for that purpose. There was no evidence to indicate that they thought that they were trespassing.

The land on the north side of the Canal also has a pond in it. The pond belongs to Mr J C Harrison, who asked any members of the public whom he saw on it to leave, and he instructed his foreman to do the same. So far as the rest of the land on the north side is concerned, the evidence was minimal. Mr A J Peterson said that he had been there bird-watching and that he had seen unidentified people walking there, while Mrs E Leggatt said that she had seen unidentified people fishing in the Canal from the bank, but she did not know the land before eighteen years ago. I am not satisfied on this evidence that the inhabitants of the locality have indulged in lawful sports and pastimes as of right on the land on the north side of the Canal for the requisite period.

For these reasons I confirm the registration with the following modification, namely, the exclusion of the land on the north side of the Stainforth and Keadby Canal.

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 30th day of March 1984

Chief Commons Commissioner