



COMMONS REGISTRATION ACT 1965

Reference No 15/U/1
15/U/2
15/U/3

In the Matters of (1) Whitmoorpool Common,
(2) Tillington Common (3) The Bird Pool,
all in Burghill, Hereford R.D., Herefordshire

DECISION

These references relate to the question of the ownership of lands known as (1) Whitmoorpool Common, (2) Tillington Common (3) The Bird Pool, all in Burghill, Hereford Rural District being the lands comprised in the Land Section of Register Unit Nos CL.20, CL.19 and CL.21 respectively in the Register of Common Land maintained by the Herefordshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of these references no person claimed to be the freehold owner of any of the lands in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Hereford on 20 February 1973. The hearing was attended by Burghill Parish Council who were represented by Mr R E Harris. He agreed that these references should be heard together save that the matters relating particularly to Whitmoorpool (or Whitmoore Pool) and Tillington Commons should be considered before matters relating particularly to the Bird Pool.

Evidence was given by Mr Harris who is and for the last three years has been chairman of the Parish Council, has been a member for the last 4 or 5 years and has lived in the Parish for the last ten years and by Mr A L Bishop who has lived in the Parish since 1929 (he was born in 1912), has been a member of the Parish Council for 35 years until last year and has been chairman for three years.

Mr Harris handed me a written statement (ten pages) of his evidence in which he said (stating the effect of the statement very shortly):- Whitmoore Pool Common is very boggy land, much of it is scrub, containing (Ordnance Survey) 1.784 acres. In the Rights Section of the Register Unit ~~was~~ registered a right to graze 4 head of cattle. Tillington Common is rough grassland with two road frontages containing (Ordnance Survey) 11.281 acres. In the Rights Section of this Register Unit are registered 11 rights of common comprising one right to cut gorse and various grazing rights for altogether 30 cattle, 30 sheep, one horse, 5 ponies and varying numbers of chicken, geese, ducks and turkeys. It appeared from the minute books of the Parish Council (the relevant entries were summarised in the statement; the earliest was of a meeting held on 4 December 1894) that the Council had on numerous occasions over the years been involved in the management and maintenance of the Commons, treating themselves as owners. Nobody had put forward any adverse claim.

A print was produced of a scheme made by the Rural District Council under the Commons Act 1899 for these and other commons (made on 25 January 1908 and approved by the Board of Agriculture & Fisheries on 10 May 1908). Also was produced byelaws pursuant to the scheme made on 16 May 1908 and approved on 23 July 1908. The Hereford Rural District Council by a resolution dated 3 October 1908 delegated their powers under the scheme and byelaws to the Parish Council.



Mr Bishop in his evidence confirmed the written statement handed to me by Mr Harris.

On the evidence outlined above I conclude that the Parish Council is in possession of these two Commons and that it is practically certain that their possession will not be disturbed. I infer from the absence of any ownership claim by the District Council that they do not claim that such possession should by reason of the resolution of 3 October 1908 be treated as being on behalf of the District Council. Possession with the practical certainty that it will not be disturbed is equivalent to ownership.

Mr Harris in the course of his evidence relating to the Bird Pool handed me a written statement, in which he said (stating its effect shortly):- About half the land is a pool and the rest is wasteland; together containing approximately $\frac{1}{3}$ rd of an acre. The land fronts on and is open to the main road through the Village. The Parish Council has been keeping it tidy for a number of years. It is opposite a house which used to be the Bird in Hand Public House; Mr Harris suggested that it should be assumed that the pool was a regular watering place for travellers, the humans refreshing themselves at 'The Bird in Hand and their horses and other animals refreshing themselves in "The Bird in Hand Pool"'.

Mr Bishop in his evidence confirmed the statement of Mr Dawson particularly that when the ponds on various farms dried up in times of drought, it was the normal thing to drive stock to the Bird Pool as this was a never failing supply; he, Mr Bishop remembered this happening in the 1930's. Keeping of the Bird Pool tidy had been generally done on a voluntary basis.

On the above evidence I can I think infer that this land is an ancient emergency water supply of the parish. Mr Harris in his statement said that it "is owned by nobody" meaning I think that nobody in the village claimed it. Although the evidence is slender, I conclude that this land always has been parish property and has accordingly devolved from the Churchwardens and Overseers of the parish on to the Parish Council by operation of law in accordance with the principles set out in my decision dated 15 March 1973 re Gravel Pits reference 1/U/24.

For the above reasons I am satisfied that the Parish Council is the owner of these lands and I shall accordingly direct the Herefordshire County Council as Registration authority to register Burghill Parish Council as the owner of the lands (CL.20, CL.19 and CL.21) under section 8(2) of the Act of 1965.

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 1973

A. A. Baden Fuller

Commons Commissioner