



COMMONS REGISTRATION ACT 1965

Reference Nos.
 201/D/1 to 4 inclusive
 201/D/7 and 8
 201/D/27 to 30 inclusive
 201/D/32 to 35 inclusive

In the Matter of Land forming part of
Totternhoe Regulated Pastures at Tring Road (Icknield Way)
Dunstable

DECISION

These disputes relate to:-

Entry Nos. 1 and 2 in the Rights Section of Register Unit No. CL.10
 Entry No. 1 in the Rights Section of Register Unit No. CL.21
 Entry Nos. 1 to 17 (inclusive) in the Rights Section of Register Unit No. CL.32 and
 Entry Nos. 1 to 12 (inclusive) in the Rights Section of Register Unit No. CL.31 in
 the Register of Common Land maintained by the Bedfordshire County Council.

All the said entries relate to grazing rights over the land in question and the disputes are occasioned by Objection Nos. 18, 19, 20 and 21 made by the Bedfordshire County Council and noted in the Register on 28 May 1970 and Objection Nos. 24, 25, 26 and 27 made by the former Dunstable Corporation now the South Bedfordshire District Council and noted in the Register on 24 September 1970 and by the conflicting registrations between George Thomas Pratt and G.T. Pratt & Son (Totternhoe) Limited who claim rights over the whole of the land in question and the other applicants for registration who claim exclusive rights over the respective parts of the land in question adjoining their respective properties.

I held a hearing for the purpose of inquiring into these disputes at Bedford on 27 November 1974. The hearing was attended by Mr. Dickinson on behalf of the two above-mentioned Local Authorities, Mr. Osborne of Messrs. Benning Hoare and Drew solicitors on behalf of Mr. Pratt, Mrs. E.W. Koral and Mr. J.V. Crme. Mr. Keith Hodder did not attend but submitted his title deeds. In order to deal with the objections of the Local Authorities it is necessary to go back to the year 1890 when two of Her Majesty's Justices of the Peace on 22 May of that year certified that they had viewed certain Public Carriage Roads and Highways including the road then known as the Dunstable Road, which forms part of the land in question and that such roads had been sufficiently formed and completed. In 1891 there followed the Totternhoe Enclosure Award which allotted "all that part of a certain Public Carriage Road or Highway of the width of 40 feet called the Dunstable Road" and which also granted grazing rights over the Regulated Pasture "Icknield Way Ancient Public Highway". A scale map was attached to the award which discloses that the Icknield Way which included the Dunstable Road was of a width of 82.5 feet. No evidence was led as to the manner in which the Dunstable Road was "formed and completed" in the year 1890. The former Dunstable Road is now called Tring Road and has been adopted and made up by the highway authorities but I have no information as to when this occurred.



The argument advanced on behalf of the Local Authorities is that the whole of Icknield Way is a highway either by definition in the Inclosure award or on the footing that a highway includes the verges and that since Section 22 of the Commons Registration Act 1965 defines Common Land as not including any land which forms part of a highway the Icknield Way cannot be common land and therefore cannot be subject to rights of pasture. There is one fatal objection to this argument namely that the registration of the land in question as common land being undisputed has become final. The land on both sides of the Tring Road is now common land and there can therefore be no valid objection to the existence of grazing rights over that land and I accordingly reject the objections of the Local Authorities.

I turn now to the conflict between Mr. Pratt and his company and the other persons who have registered rights. Mr. Osborne produced a conveyance dated 24th March 1917 made between Earl Brownlow and George Edgar Pratt whereby Earl Brownlow conveyed to G.E. Pratt a proportion of 35 stints set out by the Totternhoe Inclosure Award over Icknield Way. There was also produced a conveyance dated 18th April 1922 made between the personal representatives of the late Earl Brownlow and Walter John Pratt which clearly shows that the rights of pasture set out by the Totternhoe Enclosure Award were rights over the Regulated Pastures apportioned by stints and that no individual entitled to stints had any right over any particular portion of the regulated pasture.

It is clear beyond doubt that as regards the conflict between Mr. Pratt and the other applicants for grazing rights that conflict falls to be resolved in favour of Mr. Pratt and I cannot confirm any registration which is limited to any particular part of the land in question.

I have considered whether it would be open to me to confirm the registrations of the rights which conflict with Mr. Pratt's application with modifications but have come to the conclusion that this course is not open to me.

By virtue of Section 15 of the Commons Registration Act 1965 it is imperative that a final registration of a right of pasture shall state the numbers of animals in relation to which the right shall be exercisable. The applicants for rights other than Mr. Pratt who is a farmer are all house owners whose houses have been built on land which was agricultural land in 1891, the date of the Enclosure Award. No doubt grazing rights were appurtenant to the land on which these houses were built but no evidence was led as to the quantification of those rights nor of the apportionment of those rights as between the various householders. Some applicants have not claimed rights in relation to any definite number of animals and no evidence was led which would entitle me to modify those provisional registrations by inserting any definite number of animals therein. Other applicants have claimed to pasture either one goat, or one sheep or one pony, but in these cases, no evidence was led to support those claims. If each householder were registered



as being entitled to graze one animal it seems to me, having regard to the fact that Mr. Pratt's claim is limited to six sheep that the aggregate number of animals would exceed the number in relation to which the right was exercisable when the land was agricultural land.

For these reasons I refuse to confirm

- (1) The Entry No.1 in the Rights Section of the Register Unit No. CL10.
- (2) The Entries Nos. 1 to 16 inclusive in the Rights Section of the Register Unit No. CL.
- (3) The Entries Nos. 1 to 11 inclusive in the Rights Section of the Register Unit No. CL.

and

I confirm

- (1) The Entry No.2 in the Rights Section of the Register Unit No. CL.10.
- (2) The Entry No.1 in the Rights Section of the Register Unit No. CL.21.
- (3) The Entry No.17 in the Rights Section of the Register Unit No. CL.32.
- (4) The Entry No.12 in the Rights Section of the Register Unit No. CL.31.

It is in my view appropriate that I should mention a point which though it was not relied upon by the Local Authorities or Mr. Pratt is in my view arguable, namely that any rights which were appurtenant to the land on which the houses were built were extinguished when that land was developed and ceased to be agricultural land: see Harris & Ryan on The Law Relating to Common Land 2-92 at p.76. Had it been necessary so to do I would have wished to hear argument on this point.

Finally, I wish to state that I have considerable sympathy with Mr. Hodder since the conveyance to him does in terms state that there were conveyed to him all the grazing rights or stints over the small piece of regulated pasture lying between his premises and the road. This was in my view a conveyancing error which as far as his title is concerned was initiated in a conveyance dated 12th December 1925. It may be that other householders have been similarly misled.

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

19th

day of

December

1974

C. A. Settle

Commons Commissioner