



In the Matter of Bonsley Common, Shillingstone,
Dorset (No.1)

DECISION

These disputes relate to the registration at Entry No.31 in the Land Section of Register Unit No.CL.7 in the Register of Common Land maintained by the Dorset County Council and are occasioned by Objection No.85 made by the Crown Estate Commissioners and by Objection No.417 made by the Forestry Commission for the Ministry of Agriculture, Fisheries and Food and both noted in the Register on 12th January 1970.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 6th January 1976. The hearing was attended by Mr R Colyer, the applicant for the registration, Mr J C Lane, the Chairman of the Shillingstone Parish Council, Mr J H Dean and Mr K Nelson, the applicants for the registration at Entry No.1 in the Rights Section of the Register Unit, by Mr Neil Butterfield, of Counsel, on behalf of the Crown Estate Commissioners and by Mr F Mallows, of Counsel, on behalf of the Ministry of Agriculture, Fisheries and Food. Mr A W Richards, Chartered Surveyor, informed me that Mr F G Martin, the successor in title of Mr H J Cox, who was a joint applicant with Mr Dean and Mr Nelson for the registration in the Rights Section of the Register Unit, did not wish to pursue the application.

Mr Dean and Mr Nelson are the owners of parts of a piece of land known as Colbourne Ground. This land was the subject of an indenture made 12th February 1802 between (1) Walter Goddard and (2) James Cox, whereby Walter Goddard conveyed to James Cox Colbourne Ground and another piece of land known as Hill's Foot (now owned by Mr Martin) together with leazes for four beasts on Bonsley Common. Colbourne Ground (and possibly also Hill's Foot) passed from James Cox to his widow and then to his son William Cox and from him to his son, Walter Henry Cox. The abstracts of the titles of both Mr Dean and Mr Nelson commence with the will of Walter Henry Cox dated 4th November 1887.

There is no mention of the leazes for four beasts in the conveyances to Mr Dean and Mr Nelson, but these are mentioned in the abstract of an indenture made 27th March 1913 between (1) William Walter Cox (2) William Worthy and Edward Neville Bewley.

This apparently clear line descent from the 1802 indenture down to Mr Dean and Mr Nelson is, however, put in doubt by an indenture made 17th July 1889 between (1) William Cox and (2) William Henry Berkeley, Viscount Portman. This recites that Mary Cox, widow, who died on 13th November 1860, left to her son, William Cox, leazes for four beasts on Bonsley Common, and by it William Cox conveyed these leazes to John Stratford Dugdāle and Henry Mills, the trustees of a settlement under which Lord Portman was tenant for life.



While it is not expressly stated in the 1889 indenture that the leazes for four beasts thereby conveyed were identical with those conveyed to James Cox by the 1802 indenture, I feel bound to find on the balance of probabilities that they were identical and that the mention of the leazes in the 1913 indenture was made per incuriam, the draftsman not having with the documents before him a counterpart of the 1889 indenture. I have therefore come to the conclusion that the 1913 indenture was ineffective to convey the four beast leazes to Mr Worthy and Mr Bewley.

In addition to the leazes for four beasts, Mr Dean and Mr Nelson also registered rights of turbary, rights of estovers, rights of soil, and rights to shoot rabbits and wild game over the whole of the land comprised in the Register Unit. There was no documentary evidence relating to these claims, with the exception of a string of general words in the indenture of 1802, which included the words "commons common of turbary". Such words do not, of course, import that any such rights existed, but only operated to pass such rights, if there were any. The oral evidence may be summarized as follows:-

Mr Dean, who had been in occupation of his property since 1952, could not recall having ever exercised any such rights over the land in question, but he said that rights of estovers and turbary were exercised by the inhabitants of Shillingstone and that one would expect to shoot rabbits on common land. Mr Nelson had also never exercised any rights over the land the subject of this dispute.

Mrs Colyer drew my attention to the Tithe Map and Apportionment of 1840, where the land in question is described as common pasture, with no owners' or occupiers' names inserted. Mrs Colyer argued that this showed that the land then fell within the legal category of waste land and that if there are no surviving rights of common, the registration can be supported on the ground that the land is waste land of a manor not subject to rights of common. The difficulty is, however, that the land is no longer in the ownership of the lord of the manor and so cannot be said to be parcel of the manor. Mrs Colyer sought to overcome this difficulty by relying on the definition of "waste land of a manor" in section 37 of the Commons Act 1876. While that definition can include land which is not parcel of a manor, it is a definition which is applicable only to the construction of the Act of 1876 and does not justify the interpretation of the words "waste land of a manor" in section 22(1) of the Commons Registration Act 1965 as including land which is not parcel of a manor.

It is clear that the land was at one time subject to a right to pasture four beasts, but that right was surrendered in 1889, and there is no evidence to support the other rights claimed by Mr Dean and Mr Nelson. It also appears from the Tithe Apportionment that the land was in 1840 subject to other rights of common, but no such rights have been registered under the Act of 1965. Furthermore the land is no longer waste land of a manor.

For these reasons I refuse to confirm the registration.



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 *25th* day of *February* 1976

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Chief Commons Commissioner