



In the Matter of Burton Common, Longburton,
Dorset (No. 1)

DECISION

These disputes relate to the registration at Entry No. 6 in the Land Section and at Entries No. 1-13 in the Rights section of Register Unit No. CL 6 in the Register of Common Land maintained by the Dorset County Council. They are occasioned by (a) Objections No. 152, 135 and 136 made by Mr B T Sirelson and noted in the Register on 2 August 1971: (b) Objections No. 422, 423, 424, 425 and 426 made by Mr A L Hayward and noted in the Register on 2 August 1971.

I held a hearing for the purpose of inquiring into the disputes at Weymouth on 22 November 1979.

The two Objectors, Mr Sirelson and Mr Hayward appeared in person. A number of those claiming rights of common appeared in person or were represented, and Carn Vale Parish Council (the successor to Longburton Parish Council, on whose application the registration as common land was made) was represented by Mr F W Fairfax.

Mr Sirelson's Objection to the registration as common land is on the ground that the land is not common, and his Objections to the rights of common on the ground that the rights claimed do not exist. Mr Hayward's Objections to some of the rights are on varying grounds which are indicated below.

Burton Common is in the parish of Longburton and some 40 acres in area (in the Register the area is stated as 55.718 acres but I understand that this is incorrect). The registered rights are all rights to graze animals and the questions in issue in these disputes are as to the existence of these rights and in regard to some (if they exist) as to the number of animals which may be grazed. Mr Sirelson is provisionally registered as owner of the Common, but there is a dispute as to this the hearing of which has been adjourned.

I proceed now to consider the registered rights numbered below as they appear in the Register.

Right No. 1

This right to graze 20 animals was registered by Mr V M Crocker as attached to 44 acres of land at Longburton: the southern boundary of this land adjoins the northern boundary of the Common. About 5½ years ago 35 of the 44 acres were sold by Mr Crocker's successor to Mrs G Tilley, who was represented at the hearing by Mr G Tilley: the remaining 8 acres are, it appears, in the ownership of Mrs Ireland-Smith. The respective portions of the 44 acres owned by Mr Tilley and Mrs Ireland-Smith each include part of the southern boundary adjoining the Common.

Mr Tilley produced a Tithe Apportionment of 1844 in which Burton Common appeared as owned by "Landowners" and occupied by "Themselves". This seemed to me of little relevance to the question of the grazing rights registered by Mr Crocker. Mr Tilley



stated that the Conveyance of the 36 acres to Mrs Tilley included the wording "together with such grazing rights as do exist". In cross-examination by Mr Sirelson, Mr Tilley said that he did not know when the rights had been exercised by Mr Crocker, but there was a gateway on to the Common which was there when the 36 acres were purchased.

No evidence was given as to the exercise of the rights by Mr Crocker or his successors. Mr Hayward produced the minute book of the meetings of Commoners from April 1951 onwards. The first meeting was held on 28 April 1951 and it appears that the Common had then been de-requisitioned and the commoners present agreed to re-enter on May 1 1951. There is a list of seven commoners and the numbers of their stock entitled to graze as on 28 April 1951 ("the 1951 List"): Mr Crocker's name is not among them, but they include a Mr Sid Harris, listed for 4 cattle and 1 horse. The first time Mr Crocker's name appears in the Minute Book is as present at the Annual Meeting held on 29 April 1969. There is a second and later (though undated) list of commoners ("the Second List") in which Mr Crocker's name appears for 3 animals and Sidney Harris appears for 2 animals. The number of commoners in the Second List has increased to ten, but the aggregate number of animals entitled to be grazed is the same -54- as in the 1951 List.

At this point and before expressing a concluded view as to Right No. 1 it will be convenient to consider,

Right No. 4

This right - to graze 2 cattle - was registered by Sidney Harris as a right attached to Manor Dairy Farm, Longburton. Mr Samuel Harris represented Sidney Harris at the hearing; he himself had been at Longburton Farm as tenant for 42 years, and stated that Sidney Harris had bought Manor Dairy Farm about 1920 and had grazed each year from 1920 onwards, in about 1957 he had sold part of his farm land to Mr Crocker but retained the part identified in the plan accompanying his application to register and continued to exercise grazing rights until 1967/68.

In cross-examination Mr Samuel Harris said that he believed that the allocation of grazing rights was based on acreage and that the commoners from 1951 onwards carried on the existing tradition.

On this evidence compared with that afforded by the Minute Book, I am of opinion that Mr Sidney Harris had acquired by prescription, grazing rights which entitled him to the right he registered, and accordingly I confirm the registration of Right No. 4.

Reverting to Right No. 1, it appears that Mr Crocker's claim to grazing rights derived from his acquisition in 1957 of part of Manor Dairy Farm, to which the rights attached by virtue of their continued exercise by its previous owner, Sidney Harris. In evidence given by Mr C H F Bird, the applicant in respect of Right No. 9 and an active member of the Commoners Association, he stated that when the commoners met after de-requisitioning of the Common, the allocation to each commoner was of the number of animals that was thought fair: the Commoners got on well together until Mr Crocker came on the scene after his purchase of part of Sidney Harris's land - he was allocated three animals and complained, saying that he should have had 20.



Although the evidence as to the right registered by Mr Crocker is, to say the least, somewhat disjointed, I think he did by his purchase from Sidney Harris acquire land with established grazing rights over the Common. Mr Sirelson's Objection to Right No. 1 accordingly does not succeed. Mr Hayward's Objection No. 422, is on the ground that the rights should be limited to 3 animals: no evidence was given to support a claim to graze 20 animals and the smaller number seems to accord better with the locally accepted practice and to indicate that there was an apportionment between the lands sold and retained by Sidney Harris of his right to graze 5 animals.

I shall accordingly confirm the registration of Right No. 1 with the modification that "3 animals" be substituted for "20 animals"

I should add that Mrs Ireland-Smith, as successor to part of the land to which the Right is attached, appeared at the hearing but had nothing to add to the evidence given by Mr Tilley.

Right No. 2 and Right No. 9

Right No. 2, registered on the application of Mr Hayward in respect of his property known as the Paddock, has a right to graze two horses. In evidence, Mr Hayward said that he bought the Paddock from Mr Bird in 1968 and continued to exercise the right without challenge from anyone for about five years. It appeared therefore that the right was based on derivation from Mr Bird as owner of the Paddock. Mr Bird is the applicant for registration of Right No. 9, a right in respect of his property known as Home Farm to graze 5 cattle. Mr Bird appeared in person and gave evidence. He has owned Home Farm for some 40 years and was the tenant of a further 65 acres belonging to the Digby estate, which he gave up about 1974. He grazed cattle on the Common for a number of years before the 1939-45 war - perhaps 4 to 6 in number. All stock had to leave the Common when it was requisitioned during the war, after which it was re-seeded and hay taken off by a Mr Rowland. The pre-war commoners heard nothing about getting back on to the Common and held the meeting in April 1951 and decided on the numbers each should put in. He exercised his rights as to cattle until about 1974, since when he has grazed one or two horses every year.

In cross-examination by Mr Sirelson, Mr Bird said that the Commoners did not claim or receive compensation for the requisition of the Common. He did not know whether a charge was made on the owner of the Common for the re-seeding: the Commoners used the Common both before and after the war - they did not know of or bother with the owner. The Commoners maintained the gates and fences.

In answer to Mr Robertson, the agent of Digby Estates, Mr Bird said that when he registered the right in 1968, five animals was the right number as he then had the 65 acres as tenant: now he thought this was probably too many and he would accept two.

I am satisfied on this evidence that Mr Bird's right has been made out and I shall confirm the registration. If he and the Digby Estate are agreed about a reduction in number, an apportionment of the five animals between Home Farm and the 65 acres and an application to the Registration Authority for an amendment of the Register to give effect to the apportionment may be a feasible course.

Reverting to Right No. 2, registered by Mr Hayward, it appears from the Minute Book that at the Annual Meeting of the Commoners in April 1962, Mr Bird reported that Mr Hayward had purchased some of his land in the Parish and that he (Mr Bird) was



prepared to recede by two his number of stock on the Common and it was agreed that Mr Hayward should be enrolled on the Commoners list and be entitled to put two head of stock on the Common. There is a consequential amendment to the 1951 list showing 6 cattle (instead of 6 cattle and 2 horses) for Mr Bird and 2 horses for Mr Hayward.

In cross-examination by Mr Sirelson, Mr Hayward said that the allocation of stock to commoners was not made on any hard or fast rule. The Paddock does not actually adjoin the Common but lies opposite the western boundary: two of the gates are in actual use.

On this evidence I think Mr Hayward's right is sufficiently made out and I shall confirm the registration.

Right No. 3

This right was registered by R P Trevor and Mrs Ireland-Smith claimed to be his successor. She agreed however that this right is duplicated by Right No. 12 and that Right No. 3 should be cancelled. I should mention that the Right is the subject of Objection No. 423 by Mr Hayward as well as of Mr Sirelson's Objection.

Right No. 5

This right to graze 4 cattle and 1 horse was registered by G J Mapstone in respect of his property Manor Farm, and is now claimed by a Mrs Hodgkin who did not appear but who was represented by Mr Samuel Harris. Mr Mapstone's name does not appear in the 1951 list but was subsequently added in place of a Mr White for 4 cattle and 1 horse. Mr Harris said that Mrs Hodgkin bought Mr Mapstone's property about 10 years ago, that Mr Mapstone had cattle on the Common for 8-10 years before he sold to Mrs Hodgkin and that she may have exercised the right at first but not latterly. I can find no reference to Mrs Hodgkin in the Minute Book.

This evidence in my view is insufficient to establish the right now claimed by Mrs Hodgkin and I refuse to confirm the registration.

Right No. 6

This right to graze 2 horses was registered by Col. G D Young, who did not appear nor was he represented at the hearing. His name appears in the 1951 list and in the Second list, but in the absence of other evidence as to the right, its existence is not adequately established and I refuse to confirm the registration.

Right No. 7

This right to graze 6 cattle and 2 horses was registered by Mr H F Cuff in respect of his property Ryeclose Farm, part of which adjoins the northern boundary of the Common. Mr Cuff did not appear but was represented by Mr Samuel Harris who gave evidence that Mr Cuff had been in possession of Ryeclose Farm for over 40 years and had always had cattle on the common until about 4 years ago. Mr Cuff is on both the 1951 list and the Second list as entitled to graze 6 cattle and 2 horses. This evidence was not challenged by Mr Sirelson, and I shall confirm the registration of the right.

Right No. 8

This right to graze 20 cattle and 3 horses was registered by Mr Samuel Harris in respect of Longburton Farm. In the application he is described as 'owner', but in evidence he stated that he had been the tenant of the Digby estate since 1937. He had carried on the tradition of his predecessors and had regularly (apart from the requisition period) grazed about 20 cattle and 3 horses up to and including 1979.



He accepted that he had these grazing rights from the Digby estate. Mr Harris appears in both the 1951 list and the Second list in respect of the number of animals claimed. He said that the basis of his claim was 1 animal per 14 acres of his holding. This evidence was not seriously challenged, though Mr Robertson observed that the number claimed is now too many as some 42 acres of the Farm are no longer in Mr Harris's tenancy. However there is no formal Objection to the number, and I think a prescriptive right is established and the registration should be confirmed.

Right No. 10

Is a right to graze six cows registered by C Willcox in respect of a stretch of land adjoining the southern boundary of the Common. Mrs E H Gregory claims to be Mr Willcox's successor, and Mr Gillam, Solicitor, appeared at the hearing on her behalf. He stated that Mrs Gregory purchased Mr Willcox's land in June 1979, but there was no evidence given as to the existence of the rights registered by him, nor does his name appear in either the 1951 list or the Second list. In the absence of evidence of the right, I refuse to confirm its registration. In these circumstances, Objection No. 424 by Mr Hayward, which relates to the number of animals, does not call for further consideration.

Right No. 11

Is a right to graze 10 cattle and 2 horses registered by G M Argles, J B R Ashley and T S Bartlett in respect of West Hall Estate, part of which adjoins the eastern boundary of the Common. The three applicants are described in the application form as Executors of Mrs M G Eccles. Mrs Ireland-Smith, who appeared in person, claimed to be the successor and said that her uncle bought the estate in 1925 and after that cattle and horses were grazed. The estate passed to her in 1968 but no cattle were grazed because of the possibility of infection to her herd. There is no entry in either the 1951 list or the Second list corresponding to this right, which is objected to both by Mr Sirelson and Mr Hayward (Objection No. 425). In my opinion the evidence is insufficient to establish the existence of the right, which I refuse to confirm.

Right No. 12

Is a right to graze two horses registered by Col. and Mrs Ireland-Smith in respect of fields lying partly to the north and partly to the south of the Common. This is the right which, it was agreed, duplicated Right No. 3 which was registered by R P Trevor some 18 months before the registration of Right No. 12. Mrs Ireland-Smith stated that she and her husband purchased the fields in 1967/8 from Mr Trevor and believed that he had always exercised the rights, and since the purchase they had kept horses on the fields and turned them out to graze on the Common. Mr Trevor's name appears in the 1951 list for "(2) 3 horses" and in the Second list for 2. This evidence was not challenged by Mr Sirelson and upon the whole I think it sufficiently establishes the right, but that a modification is required. Mr Trevor's right was registered in respect of fields lying to the north but not to the south of the common, and since Right No. 12 derives from the Trevor right, the particulars of the land to which the right is attached (column 5 of Entry No. 12) should be modified by deleting the south-lying fields viz. 355, 356 and 358. I confirm the registration subject to this modification.

Right No. 13

This right to depasture 39 animals was registered by Mr K S D W Digby in respect of the Digby estate - a large area of land lying to the north and west of the Common. In part of the application form the following appears "The right of common is not known but is assumed to be for the depasturing of cattle in favour of owners of land 'adjoining' the common. The number of animals is not known for certain but the numbers claimed are as shown against each holding in part 6 below". Part 6



contains the numbers in respect of five pieces of land - Land let to owner of Spring House, Longburton Farm, Land let to C F H Bird, Land let to C Willcox, and land in hand at Holmest. The first four of these appear to duplicate Rights No. 6, 8, 9 and 10.

Mr Robertson, the Agent of the Digby Estate, appeared but did not adduce evidence in support of the claimed right. The existence of the right is the subject of Objection No. 426 by Mr Hayward as well as of Mr Sirelson's Objection and in the absence of evidence to support it, I shall refuse to confirm the right. It may be that rights registered by tenants of the estate (see eg. Right No. 8) will endure for the benefit of the freeholder, but this was not submitted at the hearing nor was evidence directed to this point adduced.

In regard to Mr Sirelson's Objection to the Rights, I did not find it easy to follow the different points he sought to make. It appeared from his questions that he considered the allocation of commoners rights made in 1951 was arbitrary and without foundation, but on the evidence I was satisfied that rights of common had been exercised before and up to the outbreak of war and that the 1951 list was a genuine and reasonably accurate attempt to list rights believed to exist, though not in every case have I been satisfied on the evidence as a whole that the subsequently registered rights should be confirmed. The Minute Book shows that since 1951 there has been a continued and realistic approach by the commoners to the regulation of the Common and the exercise of rights, and there was no evidence of any attempted interference with this state of affairs, except that in about 1957 there was some interruption of the exercise of rights as the result of the claim by a lady to have acquired the produce of the common for her ponies.

Mr Sirelson was persistent in questioning whether the claimed rights were 'true' rights of common, but he did not explain in what sense he was using this expression or what distinction he was seeking to draw. He also challenged Mr Robertson's estimate that with correct management the Common could in the summer sustain 120 cattle, and said that it could not maintain more than two per acre, ie. 80 in all.

As I am confirming some of the rights of common it follows that the registration as common land will be confirmed. To summarise my decision as to the different rights (a) Rights No. 2, 4, 7, 8 and 9 are confirmed without modification. (b) Rights No. 1 and 12 are confirmed with the modifications indicated above. (c) Rights No. 3, 5, 6, 10, 11 and 13 are not confirmed.

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

14 February

1980

L. Morris Smith
Commons Commissioner