



COMMONS REGISTRATION ACT 1965

Reference Nos. 10/D/35
10/D/36
10/D/37

In the Matter of Norris Mill Moor and
Puddletown Common Heath, Puddletown, Dorset.

DECISION

These disputes relate to the registration at Entry No.101/2 in the Land Section of Register Unit No.C.L.101 in the Register of Common Land maintained by the Dorset County Council and are occasioned by Objection No.30 made by Mr. M.J. Dove, Objection No.153 made by the Executors of the late Mr. W.J. Brymer, and Objection No.242 made by the Minister of Agriculture, Fisheries and Food, and all noted in the Register on 11th May 1971.

I held a hearing for the purpose of inquiring into the disputes at Dorchester on 1st March 1973. The hearing was attended by Mr. Dove, who applied for the registration as Clerk to the Puddletown Parish Council and subsequently objected to it on the ground that certain houses should not have been included in the registration, Mr. L. Riddett, solicitor, for the Executors of the late Mr. W.J. Brymer, and Mr. F. Mallows of the Legal Department of the Forestry Commission on behalf of the Minister.

The land included in the Register Unit has an area of about 783 acres, of which about 610 acres were let to the Forestry Commission for 200 years by lease dated 30th April 1924. Before the hearing Mr. Dove wrote to the other Objectors stating that he did not propose to press for the confirmation of the registration of any of the land involved other than that occupied by the Forestry Commission. This disposed of Mr. Dove's own objection, leaving the other two objections outstanding in so far as they related to the 610 acres.

Mr. Dove contended that the land occupied by the Forestry Commission falls within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 because it is waste of the manor of Puddletown. It is clear that it is parcel of the manor of Puddletown because it was conveyed together with the lordship of the manor to a predecessor in title of the late Mr. W.J. Brymer on 8th June 1861. The question to be determined is, therefore, whether it satisfied the remainder of the definition of "waste ground of the manor" laid down by Watson B. in Att.-Gen. v. Hammer (1858), 272. 1.Ch.337, 840, by being "the open, uncultivated, and unoccupied lands or open lands other than the demesne lands of the manor".

The documentary history of the land now the subject of dispute begins with the tithe commutation agreement for the parish of Puddletown dated 4th December 1839. It is there stated:-

"The undermentioned Common and Heath Lands have never paid Vicarial
"Tithes in kind.



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"The Rights of Common therein are appendant or appurtenant to certain Estates and Land in the said Parish".

There then follows a list of five areas of land, of which the first is "Piddletown Heath and Common", which by the aid of the map attached to the apportionment I identify as including all the land now the subject of dispute. Later in the apportionment there is a heading "Tithe Free Lands", under which is included "Piddletown Common and Heath".

The next document is an estate map dated 1853, which shows the alterations made in the farms in the neighbourhood. This map shows the Heath divided among various tenants. Then comes the indenture of 8th June 1861 made between (1) Lucy Steward (2) Henry Brown and Henry Staniforth Patteson (3) Spencer Horatio Walpole and Reginald Walpole (4) Horatio William, Earl of Orford (5) John Brymer, Thomas Clements Parr, and the Rev. Evan Nepean. The plan annexed to this indenture shows the land now the subject of dispute as consisting of twenty-five parcels of a variety of sizes separated from each other by straight lines. It does not necessarily follow that these straight lines represented fences or hedges, but on the copy of the Ordnance Map annexed to the 1924 lease many of these lines are shown as the boundaries of parcels, the exceptions being in the centre of the Heath, where fourteen of the 1861 areas have been thrown into one 1924 parcel. The schedule to the 1861 indenture lists twenty-four of the twenty-five parcels as "Heath Piece", each in the occupation of a tenant, most of the tenants having two or more parcels, not always contiguous. The remaining parcel is described as "Common for the Poor", the occupier being stated as the Earl of Orford "(late Occupier now in hand)".

It would appear that at some time between 1839 and 1853 the rights of common became extinguished and that the lord of the manor parcelled out the land among his tenants, possibly in connection with the alteration of the farms shown on the map of 1853, though it may be that the poor of the parish had some rights in respect of the parcel described in the 1861 indenture as "Common for the poor". It is not, however, necessary to pursue this aspect of the matter, since no rights of common have been exercised within living memory and Mr. Dove does not allege that any such rights now exist.

It appears from the records of the Forestry Commission that about 550 acres of the land included in the 1924 lease was planted with trees between 1925 and 1929, the remainder being planted later. When the trees were planted the areas containing the young trees were fenced against rabbits. Now that the trees are established, there are no fences, and members of the public are permitted to walk along marked forest roads and tracks.

Mr. Dove contended that the absence of fences makes the land "open" and that it is "uncultivated" because forestry is not cultivation. Mr. Riddett contended that the planting of trees is cultivation and that the land now the subject of dispute therefore lacks one of the essential features of manorial waste. Mr. Mallows contended that the land is occupied



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by the Forestry Commission.

While there appears to be no direct authority on the point, it seems to me that, while it may be right to describe a naturally generated forest as uncultivated land, the planting of trees in the course of forestry is cultivation. It does not appear to me to be necessary that cultivation should take place at short intervals. All that is required is that the soil should be prepared for the process of planting. It cannot be material whether the crop in the production of which the preparation of the soil is the first step is an annual one or one which takes many years to mature. I feel fortified in this interpretation of the word "uncultivated" by the requirement in section 55 of the Tithe Act 1836 that a tithe apportionment should state whether land was "cultivated as arable, meadow, or pasture land, or as wood land

It also seems to me that Mr. Mallows is right in his contention that this land is occupied by the Forestry Commission. Any access which members of the public have is by permission of the Commission. There was produced to me a guide for walkers which makes it clear that access is restricted to roads and tracks specified by the Commission.

Finally, this land is excluded from Watson B.'s definition of "waste grounds of the manor" by being part of the demesne lands of the manor. The word "demesne" is not confined to land occupied by the lord of the manor, but include land let for terms of years. As Lord Lyndhurst, C.B. said in Att.-Gen. v Parsons (1832) 2 Cr.& J.279, 308, it is usual and correct to apply the word "demesne" to "the lands of a manor which the lord of the manor either actually has, or potentially may have, in propriis manibus". This has been the position of this land since as early as 1853, when it was let out in parcels to tenant farmers, and still is now that it is let as a whole to the Forestry Commission.

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 23rd day of March 1973


Chief Commons Commissioner