



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/9:

In the Matter of Poundbury Camp,  
Dorchester, Dorset (No. 1)

## DECISION

This dispute relates to the registration at Entry No. 1 in the Rights section of Register Unit No. CL 11 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 415 made by H.R.H. Charles, Prince of Wales, Duke of Cornwall and noted in the Register on 30th April 1971.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 23rd April 1976. The hearing was attended by Mr R J Warren, the applicant for the registration, and by Mr R Purchas, of Counsel, on behalf of the Objector.

The land comprised in the Register Unit is situate in the Manor of Fordington and, with the exception of a very small part at the north-eastern corner, is the property of the Objector, who is Lord of the Manor. It is bounded on the north by the River Frome. On the north side of the river there is an area of land known as West Ward, also within the Manor of Fordington. To the north of West Ward and outside the manor lies the parish of Charminster.

The right of common applied for by Mr Warren is "to graze 6 head of stock from 5 August (dairy stock) or 15 August (dry stock) until the last day of February" and is claimed to be attached to certain land in the parish of Charminster.

The land comprised in the Register Unit is the western part of a much larger area, formerly known as Pummery, which was common land of the Manor of Fordington. No rights of common have been exercised by the tenants of the manor for many years, and if any such rights existed as late as the passing of the Commons Registration Act 1965, they have now ceased to be exercisable by the operation of section 1(2)(b) of that Act. The eastern part of Pummery has been sold and is now used for non-agricultural purposes. The western part has been fenced and let as part of Poundbury Farm to a succession of tenants since some time before 1877. West Ward was also common land of the Manor of Fordington, and it appears that formerly occupiers of land in the parish of Charminster had a right to intercommon on this land, for at a court held on 1st October 1855 the jury of the manor presented that the occupiers of land in the parish of Charminster stocked the West Ward in common with the tenants of the manor, which it was considered that they had no right to do since the inclosure of their own common. Whether the jury was right or not in so considering, I draw the inference that the occupiers of land in Charminster did not claim to have any right to stock Pummery.

Mr Warren is not a tenant of the manor and any right to graze on the land comprised in the Register Unit which he may have must have been acquired by prescription. Evidence directed to this was given by Mr Warren and Dr Fullerton, who has also registered a right of common over this land. Their evidence was that a Welsh pony



belonging to Mr Warren grazed this land for several months from the end of August in each of the years 1963, 1964 and 1965, and that Mr Warren kept a small bay pony there for four or five weeks in the late summer of 1973. Until Michaelmas 1965 the tenant of Poundbury Farm was Mr R H Childs. Mr Childs gave evidence that he never saw Mr Warren's pony on his land during his tenancy and that he had never heard of a right of common over it until the registrations were made by Mr Warren and Dr Fullerton. Mr Childs was succeeded as tenant by Mr H L Hawkins, who gave evidence that he had never seen any animals other than his own on the land.

The evidence about the small bay pony in 1973 is of no assistance to me, since that was after the dispute arose. Even if I were to accept the evidence of Mr Warren and Dr Fullerton in its entirety and to reject that of Mr Childs and Mr Hawkins, the evidence would be wholly insufficient to support a claim to a right of common by prescription either at common law or under the Prescription Act 1832. Furthermore, it would be impossible to presume a lost modern grant in this case because the alleged servient tenement was in the occupation of a tenant at all material times; see Pugh v. Savage, [1970] 2Q.B.373, at p.383.

For these reasons I refuse to confirm the registration. Mr Purchas applied for an order for costs in the event of the Objection being successful. Since Mr Warren was pursuing only his private interests in making the application, I can see no reason why he should not suffer the usual fate of unsuccessful litigants, and I shall make an order for costs to be taxed, if not agreed, on County Court Scale 4.

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, 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 24<sup>th</sup> day of May 1976

Chief Commons Commissioner