



COMMONS REGISTRATION ACT 1965

Reference No.210/D/31-33

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

DECISION

These disputes relate to the registration at Entry No. 32 in the Land Section of Register Unit No.CL.32 in the Register of Common Land maintained by the Dorset County Council and are occasioned by Objection No. 86 made by the Crown Estate Commissioners, by Objection No.298 made by Shillingstone Lime and Stone Co., Ltd, and by Objection No. 412 made by the Forestry Commission for the Ministry of Agriculture, Fisheries and Food, and all noted in the Register on 28th January 1971.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 6th January 1976. The hearing was attended by Mrs 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, by Mr L G Bailey, a director of Shillingstone Lime and Stone Co Ltd, 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 on Shillingstone Hill for as many sheep as had been usually kept and of right ought to be kept thereby the owners or occupiers of the lands conveyed or any part thereof for or in respect of the same. This I interpret as meaning the number of sheep levant and couchant on the lands conveyed. Mr Dean and Mr Norman quantified this as 200 sheep. 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.

Mr Dean and Mr Nelson have been the owners of their respective parts of Colbourne Ground since 1952 and 1950 respectively. Neither of them has ever kept sheep on Shillingstone Hill. It is not certain when sheep grazing on the Hill ceased, but it was long before Mr Dean and Mr Nelson purchased their properties, for Mr R. Cutler now aged 71½, who worked on the Portman Estate all his life, had never known of grazing on the Hill, which was fenced in the early 1930's to keep the rabbits in. This was corroborated by Mr Baily, who said that there had never been any grazing since his father started the Lime and Stone business in 1924. By the time that the Hill was purchased by the Ministry of Agriculture and Fisheries in 1949 it was scrub. About half of it was afforested, the planting being completed about 1962 without any



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complaint for anybody claiming to be entitled to rights of common. At the time of the sale the purchaser was informed that grazing had ceased about 56 years previously.

From this evidence I draw the inference that all rights of grazing annexed to Colbourne Ground had been abandoned before Mr Dean and Mr Nelson purchased their respective parts of that land.

In addition to the leazes for 200 sheep, Mr Dean and Mr Nelson also applied for the registration of rights of turbarry, 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 turbarry". 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 has been in occupation of his property since 1953, took turf on not more than two occasions about 1953, when he needed it to repair his lawn. This is irrelevant to his present claim, since a right of common of turbarry is a right to take turf for use as fuel and does not extend to taking turves covered with grass for the purpose of making and repairing grass plots in gardens. See Wilson v Willes (1806), 7 East 121. Mr Dean also took some beansticks on at least two occasions about six or seven years ago, and he said that rights of estovers and turbarry were exercised by the inhabitants of Shillingstone and that one would expect to shoot rabbits on common land, as he himself had done six or seven years ago before the rabbits became infected with mixamatoxis. Mr Nelson had occasionally collected leaf mould from the land in question.

This evidence seems to me to be more consistent with the good natured acquiescence of the landowner in the taking of what they wanted from the land by the inhabitants of Shillingstone generally than with the exercise by Mr Dean and Mr Nelson of rights of common attached to their properties.

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 sheep levant and couchant on Colbourne Ground, but that right had been abandoned long before Mr Dean and Mr Nelson purchased their respective parts of that land, and the evidence is insufficient 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.

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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

19~~th~~

day of

February

1976

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Chief Commons Commissioner