



COMMONS REGISTRATION ACT 1965.

Reference Nos. 14/D/49
 14/D/50
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 14/D/52
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 14/D/54
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 14/D/56
 14/D/57
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 14/D/63
 14/D/64
 14/D/65
 14/D/66
 14/D/67
 14/D/68
 14/D/69
 14/D/70

In the Matter of the Town Common, Coward's
 Marsh and Ogber, part in Christchurch
District and part in Hurn Parish, Dorset.

DECISION

These 22 disputes relate to the registrations at Entry no.1 in the Land Section and at Entries nos. 1, 8 to 11, and 13 to 19 inclusive in the Rights Section (such 11 Entries being summarised in the First Schedule hereto) of Register Unit No. CL.18 in the Register of Common Land maintained by the Dorset County Council and are occasioned by the Objections summarised in the Second Schedule hereto and noted in the Register as stated in such schedule.

I held a hearing for the purpose of inquiring into these disputes at Dorchester on 16 and 17 April 1975.

At the hearing: (1) Mr. Geoffrey Maxwell Goode, Mrs Margery Goode (she made Objection No.679), and Mrs Constance Joy Toone were represented by Mr J. M. Fulthorpe of counsel instructed by J. M. B. Turner and Co., solicitors of Bournemouth; (2) West Hampshire Water Company (they made Objection nos.121 and 122) were represented by Mr. J. R. Buchanan solicitor of Preston and Redman Solicitors of Bournemouth; (3) Mr. Graham File, Mr. Denis Bouchault and Mr. Jaques Labesse (they are the Trustees of the Meyrick Estate and made Objection no.339) and Major John Micklethwaite Mills (sole owner in possession of the Mills Estate; he made Objection no.340) were represented by Mr. J. D. Felton solicitor of Davis and Felton Solicitors of Salisbury; (4) Sopley Estate Limited (as successors in title of Sir Simon W. F. Benton-Jones who made Objection no.572) were represented by Mr R. W. Singleton, land agent employed by Savills of Wimbourne; (5) Mr. Bernard Thomas Sirelson on whose application Entry Nos. 10 and 11 in the Rights Section were made and who made Objection no.494, attended in person; (6) Mr. David John Hewitt attended in person on his own behalf and as representing



- 2 -

his son Mr. Peter John Hewitt (on their application Entries nos.17, 18 and 19 in the Rights Section were made); (7) Mr. Frank Donovan Lane of 2 Orchard Close, Christchurch attended in person and participated in the proceedings by asking some questions and by making various observations; (9) Mr. H. E. Burnett of 4 Stour Road, Christchurch attended in person as an active commoner and as a member of and on the committee of the Commoner's Association; and (10) Dorset County Council as registration authority were represented by Mr. L. I. Holly of the County Solicitors Department.

I have from Walters Vandercom & Hart a letter dated 11 April 1975 saying they would not be attending the hearing because all the disputes (meaning I think those arising out of Objections nos.137, 362-370, 372-378 & 382 made by Walters and Hart) had been resolved except that relating to the disused railway line (Objection no.137, D/50) the ownership of which land had passed to another person, and except that relating to Entry no.8 (Mr Briant D/58) about which they had written separate letters; and other letters indicating either that Objections made by Walters & Hart had been withdrawn or saying how they had been agreed. I also had a letter from Mr Briant (Entry no.8).

The land ("the Unit Land") comprised in this Register Unit is U-shaped adjoining an north-east of the built up area of Christchurch, now all in Dorset (formerly in Hampshire). It comprises or includes four areas known as Town Common, Cowards Marsh Belle Hayes, and Ogber. For the purpose of exposition, I divide the Unit Land into four pieces (being or corresponding with these four areas): (i) the Ogber Piece about 2/3rd of a mile long and about 400 yards wide, bounded on the east by the River Avon (on the other side of the River, are Sopley and Winton not far away on the north and east), on the south-east by an inclosed pasture called Belle Hayes (sometimes Bell Hayes) and containing about 10 acres; (ii) the Belle Hayes Piece that is the said pasture being the part of the Unit Land shown on the plan accompanying Objection no.679 and made by Mrs Margery Goode and thereon edged red; (iii) the Coward's Marsh Piece about 1/2 a mile long and about 400 yards wide and bounded on the north-east by the Belle Hayes Piece, on the east by the River Avon, and on the south-east by a line near the dismantled railway, dividing the Unit Land into two at its narrowest place at the south end of the U (it is not necessary for me to define this line precisely); and (iv) the Town Common Piece about 1 1/2 miles long and having a width varying between about 300 and 900 yards and being the west and remaining part of the Unit Land.

In the Ownership Section the following are registered as owners of parts (mostly strips of varying sizes) of the Ogber piece: (Entry no.5) Mr. Charles William Noel Miles (executor of Sir George Meyrick Baronet) of 4 small strips shown on inset map A; (Entry no.6) "Trustees of the Meyrick Settled Estates" of numerous strips or pieces as shown on inset map B; (Entry no.7) West Hampshire Water Company of numerous strips or pieces as shown on inset map C. As to the remainder of the Unit Land (including so much of the Ogber piece as is not comprised in Entries nos. 5 and 6) but not including the Belle Hayes Piece the Hon. James Carleton Harris (commonly called the Viscount Fitzharris) is registered as the owner of all except six comparatively very small areas near the south-west corner of the Town Common Piece.

It was agreed that Mr Sirelson should give evidence first. He said (in effect):- The Unit Land includes three distinct pieces of land which owing to the accident to Mrs Temple (Entry no.1) applied (in good faith) for the same rights of common over



- 3 -

have been registered together; the rights are different; those over the Coward's Marsh Piece are of grazing only for part of the year (before 14 August and after 2 October), those over the Town Common Piece are of grazing, turbarry and taking gravel for all the year, and those over the Ogber Piece (this is owned in strips of which there are many) are only of grazing the aftermath (after 14 August). These rights have from time immemorial been controlled by a Commoner's Association. He is 65 years of age and has lived at his present address for nearly 36 years: he had exercised rights of common for over 20 years. Such rights were limited to residents in the Borough (the old Borough) of Christchurch; anybody living outside had no entitlement. The rights had been judicially recognised (Judge Armstrong in the County Court). The Association (or most of its members) thought there was no need to register the rights under the 1965 Act because (he thought) the Chairman had given the impression that he and the herdsman had done what was needed: having doubts, he (Mr. Sirelson) applied for the registrations made at Entries nos. 9, 10 and 11.

It became apparent that those present at the hearing were primarily concerned, not to dispute what Mr. Sirelson had said (most of what he said was confirmed by other evidence as recorded below), but to deal with other aspects of the registrations which affected them particularly, and which related to (among other parts of the Land before defined) a strip ("the Railway Strip") part (the line of the disused railway) of the Town Common Piece, ("the Reservoir Piece") another part (at the foot of St. Catherine's Hill) of the Town Common Piece, and a piece ("Little Ogber" part (adjoining the River) of the Ogber Piece. The Railway Strip is coloured green on the plan annexed to Objection no. Ob.137 and is (as I scale the plan) a little less than 2 miles long. The Reservoir Piece is edged red on the plan attached to Objection no. Ob.121 and is when compared with the rest of the Town Common Piece very small, being (similarly scaled) about 200 yards long (north - south) and between 30 and 10 yards wide. Little Ogber is edged green on the plan HWB 1 exhibited to an affidavit sworn on 16 April 1975 by Mr. H. W. Burry and coloured brown on maps produced by Mr. D. Milligan, and its north-west and west sides (away from the River) are (similarly scaled) about 250 yards and 300 yards long. I will deal with these aspects first.

Mr. Fulthorpe for Mr. G. M. and Mrs M. Goode was concerned to exclude from the registration Belle Hayes (Objection no. 679) and the Railway Strip (Objection no. 17) and called or put in evidence as follows:-

Mr. H. E. Perry who is now 70 years of age and who was steward of the Commoners Association from 1941 to 1948, in the course of his evidence said that the commoner's rights had never been exercised over the Belle Hayes Piece; it had always been fenced off, so that common animals could not get in (except when the posts were knocked down).

Mr. S. R. White, solicitor of J. W. B. Turner & Co. gave evidence to the following effect:- He had on behalf of Mr and Mrs Goode investigated the history of the Railway Strip which by a conveyance dated 20 June 1973 was conveyed to them by Viscount Fitzharris "subject to the rights (if any) of the commoners of the Borough of Christchurch". He produced a letter dated 3 November 1961 from the British Transport Commission enclosing a copy of a receipt dated 14 September 1860 by the Committee appointed by persons interested in the commons and commonable rights; and also a statutory declaration made on 5 March 1962 by Mr. J. H. C. Fulford say



- 4 -

that the British Transport Commission or their predecessors had been in possession for 50 years without any adverse claim.

Mr. J. T. Wallis in an affidavit sworn on 7 April 1975 said (in effect):- He was employed by the Malmesbury Estate between 1924 and 1971. The Railway Strip, when the British Transport Commission had no further use for it, was conveyed back to the Malmesbury Estate on 16 April 1962. Belle Hayes had been enclosed for the past 50 years and no persons had ever sought by forcing entry to exercise common rights over it.

Mr. Sirelson said he did not include either the Railway Strip or Belle Hayes in his claim.

Mr. Felton for the Meyrick Trustees and Major Mills said he was concerned to support Objections nos. 339 and 340 as regards the Ogber Piece only and relied on the evidence of Mr. Burry given next (his said affidavit and orally before me) and the evidence of Mr. D. Milligan and Mr. W. L. Crabb given later in the hearing.

Mr Burry said (in effect):- He is 77 years of age; his father up to 1921 and there after he himself until 1935 was tenant of Staple Cross Farm which included Little Ogber; when he was a boy it was separately fenced from the rest of Ogber, his father grazed it all the year, and it was not subject to any common grazing. The fences now in position are in the same position as they were then. No commoner exercised rights of fishing either from Little Ogber or from the rest of the Ogber Piece.

Mr. Buchanan for West Hampshire Water Company was concerned to exclude from the registrations the Reservoir Piece and to vary the rights over the Ogber Piece as registered, and in support called Mr. P. B. Cox and Mr. T. E. Farwell.

Mr. Cox, who is the Deputy Secretary of the Water Company produced a statutory declaration made on 11 October 1956 by Mr. T. T. McArdle who had lived in Christchurch since 1880 and had ever since been actively concerned with the affairs of the Commoners ("the Burgesses of Christchurch"); Mr. McArdle said in effect:- In 1880 the commons were superintended by two stewards who were appointed by the commoners at a General Meeting held on 2 October every year. He had attended the meetings regularly. A commoner is a person residing within the Borough of Christchurch and such persons in order to qualify as commoners must be in a position to stable their animals within the old Borough during the parts of the year when grazing is not available. The common lands were Town Common (throughout the year), Coward's Marsh (21 May to 14 February), Ogber (12 August to 14 February) and Millham Mead (12 August to 14 February). The rights have been exercised continuously. Cattle can be grazed on Town Common, though in practice only cows have been grazed; on Coward's Marsh, Ogber and Millham Mead only cows and horses may be grazed.

Mr Cox also produced a conveyance dated 20 December 1926 by which the Earl of Malmesbury conveyed to the Water Company the site of St. Catherine's Reservoir, including the Reservoir Piece.

Mr. Farwell who is now and for the last five years has been the steward appointed by the Commoners Committee, produced the Minute Book of the Commoners for 1844 to 1965. This showed that at a meeting held on 2 October 1953, the Commoners approved a report of the Committee elected at the previous meeting setting out the things which the



- 5 -

Committee agreed were in accordance with ancient custom. The report (Mr. Farwell produced a copy) set out in detail the customary rights, the manner of their exercise under headings: Definition, Coward's Marsh, Ogber, Millhams. A commoner is defined as a tenant or occupier of residential property in the old Borough of Christchurch and the old Borough is defined by a map annexed based on a survey made in 1870. The respective rights over the three commons are stated in detail: Coward's Marsh open from between first Saturday in or 21 May until 12 August and re-opened from 2 October to 14 February; Ogber and Millhams from 12 August to 14 February; there is an elected committee.

Mr. Farwell also produced a statement by Mr. H. J. Ashby signed by him on 12 April 1975 and approved by Mr. D. J. Hewitt and Mr. T. E. Farwell as stewards of the commoners, (which statement Mr. Buchanan relied upon as being evidence by Mr. Ashby) to the effect that Mr Ashby had been associated with the affairs of the commoners since 1941 and since 1957 been chairman of the Commoners Management Committee defined commoner as an occupier of residential property in the old Borough of Christchurch and the boundaries of the old Borough as shown in Ordnance Survey map 1872 edition. Each commoner enjoys the following rights under the commoner's rules: (a) to graze animals on Town Common at any time of the year; to cut and take turf and peat from Town Common for consumption at a Commoner's own hearth; to collect and take dead wood from the Town Common; and to dig and take sand and gravel from Town Common for maintenance of a Commoner's own residence in the old Borough (b) to graze 12 cattle or six horses or donkeys on Ogber between 12 August and 14 February on part of Millhams Mead which lies south of Christchurch by-pass and at any time the part of Millhams Mead which lies north of Christchurch by-pass.

Mr. Buchanan contended that the Reservoir Piece should be excluded and that the Rights Entries at least as regards the Ogber Piece should be varied as regards Entry no.1 by deleting peat, Entry nos.8, 16 and 19 by limiting the grazing to from 12 August to 14 February, Entry no. 8 by deleting (additionally) piscary, and Entry no. 10 by deleting 24 yearling cows. He also contended that Entry nos.13, 14 and 15 should be deleted altogether because 1 Fairmile Road (13) and the Stables, 3 Fairmile Road (15) are not residential property, and Interlock Stables, Marsh Lane (14) are not in the Old Borough of Christchurch (these properties being the lands to which the rights are in the register stated to be attached).

Mr Hewitt agreed that Entry no.19 (relating to Ogber) should be varied as Mr Buchanan contended and conceded that Entry no.18 (relating to Coward's Marsh) the grazing should be limited to from 21 May to 12 August.

Mr D. Milligan who has been Agent of the Meyrick Estate and of the Mills Estate for the last 6½ years and associated with the Meyrick Estate since 1950 and the Mills Estate since 1968, in the course of his evidence said (in effect):- Both Estates own strips in the part of the land he knew as "Ogber", meaning the Ogber Piece less Little Ogber (the Estates had no interest in the Coward's Marsh Piece or in the Town Common Piece). He believed that Ogber was subject to aftermath grazing and the Estates accepted this; but not Little Ogber over which common rights had not been practised. In the adjoining part of the River Avon, Major Mills had a several fishery. He (Mr Milligan) knew of no rights of turbary over Ogber. His understanding was that grazing rights were restricted to property in the Old Borough of Christchurch, from 12 August to 14 February. Subject to these rights, for the whole of the year, the strips owned by the Estates had been let as he mentioned. H



- 6 -

produced a map of the old Borough of Christchurch and a Conveyance dated 7 April 1864 to Mr. C. H. Mills and Mr. A. W. Arnold of Winkton Cottage (4 acres), the Wilderness (2½ acres) and Ogber Mead (9 acres) and the right of fishing in the River Avon; the plan showed Little Ogber as included in the Schedule of the lands conveyed.

Mr Crabb in an affidavit sworn on 14 April 1975 said (in effect):- Since 1945 he had been a tenant of Major Mills of 18.18 acres formerly let to Mr Preston under an agreement dated 29 September 1938, the plan attached to which included Little Ogber. He and his brother had grazed Little Ogber throughout the whole year as he understood Mr. Preston had.

Mr. Singleton (he represented Sopley Estates Limited) in a statement which he put in as his evidence said (in effect):- Messrs Savills had been the managing agents of Sopley Estates since 1963. The Estate included 13 areas which are part of the Ogber Piece. Since 1867 Sopley Estate had been owned by the Kemp-Welsh family; Mr. H. A. Kemp-Welsh inherited in 1939; in 1963 he transferred the estate to his nephew Sir Simon Benton-Jones. In 1974 he transferred the freehold (subject to a 99 year lease granted on the previous day) to the present owner Sopley Estates Limited. The 13 areas were let out as set out in the statement. The Estate recognised and accepted that the commoners of the Old Borough of Christchurch had a right to graze animals from 12 August to 14 February, but no other rights whatever. After reading his statement he said he accepted that Little Ogber should not be included in the registrations.

Mr Felton contended: All the evidence was against piscary and turbary. He adopted the contentions of Mr. Buchanan that the Ogber Piece less Little Ogber was subject to the rights of those in the old Borough of Christchurch, subject to such rights being properly regulated as regards the Ogber Piece, and Entry nos. 13, 14, and 15 (Interloc) should be deleted.

Mrs Stonestreet who was attending the hearing, provided me with a copy of a page of Marshall's Directory and Handbook for Christchurch (published 1913) which gave details of the rights over the commons much as above described.

After the hearing I walked round the Ogber Piece (it was too wet to cross over from it into Coward's Marsh from the north) and I also viewed Coward's Marsh from the south end of the Town Common Piece and walked the whole length of the Town Common Piece.

As regards the Parish list

In my opinion I have on the references made to me no jurisdiction to deal with this Section; although the grounds of Objection no.572 include a statement that Sir Simon Benton-Jones owns part of the Ogber Piece, paragraph 6 of the form limits the Objection to Rights; it is I suppose for this reason I have no reference about his ownership. Mr. Perry and Mr Burry, who said they owned pieces in Ogber, made no Objection. In a letter dated 10 June 1975 and sent to the Clerk of the Commons Commissioners, Mr. M.E.Newman as personal representative of Mr.A.E.Newman (he died on 19 September 1966) said he would like to register ownership of five pieces of land at Ogb being I suppose other parts of the Ogber Piece: but no Objection has been made as regards this ownership. Mr Milligan mentioned Mr Elliott, Mr Hopkins and Mr Wyndham as other owners on his list. It may be that the registration of Viscount Fitzharris as owner of parts of the Ogber Piece is a mistake. However this may be, on these reference.



- 7 -

I have I think no jurisdiction to direct any alteration of the Ownership Section so as to make it accord with the evidence about ownership given to me at the hearing. However in considering the other matters referred to me, I can I think properly have regard to the evidence as to ownership put before me in reaching my decision.

As regards the Land Section:-

On the evidence outlined above, I conclude that the Railway Strip, the Reservoir Piece, Belle Hayes, and Little Ogber should not have been registered. The Railway Strip and the Reservoir Piece are particularly dealt with in Objection nos. 121 and 137; I decide therefore that these Objections succeed. The Belle Hayes Piece is only expressly mentioned in Objection No.679, (endorsed as not applicable to First Period Registrations) and Little Ogber is not dealt with expressly in any Objections nevertheless I have I think jurisdiction to deal with the Belle Hayes Piece and Little Ogber because in my view any objection to a registration in the Land Section puts the registration in question as regards all the land registered, notwithstanding that the ground of objection may be limited to one particular part of it; rule 26 c the 1971 Regulations which enable me to allow addition grounds of objection, confirm my view. Nothing stated in any grounds of objection limits my jurisdiction to deal with the whole registration. Nobody at the hearing objected to the removal of the Belle Hayes Piece and Little Ogber from the registration, and indeed some expressly agreed being satisfied on the evidence that their inclusion was a mistake, I shall rectify the Entry in exercise of the jurisdiction which I think I have.

As to the Entries in the Rights Section:-

Walters, Vandercom & Hart (acting I assume on behalf of Walters & Hart who made Objection nos.137 and 364 to 378.) in their letters of 3 & 11 April 1975 suggest in effect that I should under regulation 31 of the 1971 Regulations give a decision without a hearing in accordance with an agreement reached between them and Dr. Cantl (Entry no.16) and Interlock (Entries nos. 13,14,15); the agreements submitted are inconsistent with other Objections which were before me at the hearing on 16 & 17 April 1975, and accordingly even if time had permitted I would not before such hearing have given, and will not now give an ante-dated decision as contemplated by the regulation. In their letter dated 25 September 1975 Walters Vandercom & Hart again referring to regulation 31 in effect suggest I should give a decision as regards Entries nos.13,14,15 in accordance with a new agreement reached between them and Interlock; in my opinion the regulation is not applicable (dealing as it does with decisions without a hearing) because I have already held and completed a hearing.

Walters Vandercom & Hart in their letters dated 17 & 27 March 1975 state that they have withdrawn their Objections to Entry no.1 (Mrs Temple) and to Entries nos.17, 18 & 19 (Mr Sirelson) and in a letter dated 11 April 1975 suggest that Entry no.8 (Mr Briant) should not be confirmed for the reasons therein stated. I have no certain information as to the interest of Walters & Hart in the Unit Land when they made their Objections and it may be that they were acting on behalf of undisclosed principals. Mr Sirelson produced a letter from Messrs. Walters, Vandercom & Hart saying the opposition to his objection was withdrawn after consultation with Lord Fitzharris, so it may be that Walters & Hart made their Objections on his behalf or on behalf of the trustees of some trust in which he was interested. However this may be, although their letters are a helpful indication of the sort of agreement which Walters & Hart or their successors in title or undisclosed principals are prepared to make, I cannot I think decide this case in accordance with the suggesti



- 8 -

set out in these letters unless such suggestions accord with the evidence which at the hearing I consider I ought to accept.

Mr. Briant (Entry no.8) in his letter asks: "that he shall be given common rights for grazing one pony if ever he requires it and also the rights to shoot and fish from the common land and that these rights if granted do not involve me in any expense expect perhaps a small annual fee for these claims, if I so wish I can relinquish my common rights if it would involve me in expenditure beyond my means".

As regards the rights registered over the Ogber Piece (less Little Ogber):-

X I accept the evidence of Mr. Sirelson, Mr. McArdle and Mr. Farwell that ~~the~~ ^{the} Ogber ^{Piece} is and from time immemorial has been subject to rights as they describe; I conclude therefore that Objection no.122 (West Hampshire Water Company) succeeds and that Entry should be modified in accordance with this evidence. There is nothing in the Entries to indicate that the rights registered are exercisable as owners or tenants of residential land in the Old Borough of Christchurch along with all other persons having a like right. However anyone acquainted with local history would realise that the entries were intended to relate to immemorial rights, and I reject therefore the objection that the rights claimed do not exist at all. Nevertheless the Register should I think be clear to persons not acquainted with local history, and I shall therefore modify each entry so that it will identify the rights registered with the immemorial rights described in the evidence.

→ I shall also modify the entries where necessary, so that the numbers and kinds of animals specified do not exceed the 12 cattle or 6 horses or donkeys or mules mentioned in the evidence and so that the grazing is limited to from 12 August to 14 February, but I shall not increase the registered numbers merely because the immemorial rights described to me would or might have allowed the applicant more. The evidence is against any commoner having a right of piscary, and on the evidence and appearance (as regards the Ogber Piece) I reject the claims to turbary, estovers and taking sand and gravel.

The Rights Section is a register of rights, not a register of all the conditions under which the rights can be exercised. Accordingly provided the Register sufficiently identifies the rights (as I think it will with the modifications outlined above), it is not necessary for it to contain any of the regulations set out in the 1952 Report or otherwise referred to in the evidence.

At the hearing no person suggested that the rights were not valid in law or should not under the 1965 Act be registered. In law the inhabitants of a locality as such may have rights as were described in evidence before me under a charitable trust see Goodman v Saltash (1882) 7 A.C. 633 and re Christchurch Inclosure (1888) 38 Ch.D.520 (on appeal Attorney General v Nevrick 1893 A.C.1); the legal considerations discussed in the 1888 case were very similar to those which arise here and the land discussed was also in Christchurch. Although these rights may not be rights of common within the meaning of these words as most frequently used, they can sensibly be so described and may I think therefore properly be registered under the Act; a somewhat similar question has arisen under the Act in relation to the rights of freemen, see my decision re North Meadow, Sudbury dated 27 November 1974, reference no. 35/D/14 - 27. In the alternative, it may be that the rights registered, notwithstanding that those giving evidence did not support them on this ground, may be properly regarded as attached to particular properties, see De la Warr v Miles



- 9 -

(1881) 17 Ch.D. 535. However, even if the legal position of the rights be doubtful, I should not I think in the absence of opposition, put the applicants at risk of losing their rights by the operation of section 1 (2) of the 1965 Act.

Objections nos. 339 and 340 (Meyrick Trustees and Major Mills), no. 494 (Mr Sirelson) and no. 572 (Sir Simon Benton-Jones) all put the Rights Entries in question to some extent. I reject these objections so far as they allege that the rights do not exist at all (at the hearing it was not suggested I should give the Objections such a large effect, except as regards nos. 13, 14, and 15), I accept them (making such amendments as may be necessary under rule 26 of the 1971 Regulations) so that the Objections (as was agreed at the hearing) should have effect in accordance with the evidence outlined above.

As regards the rights registered over the Coward's Marsh Piece:-

The evidence was all to the effect that apart from the limiting dates and slightly different regulations, this Piece is in all relevant respects the same as the Ogber Piece. It appears (at a distance) to be much the same, being reasonably flat grass land by the side of the River; the differences in the dates may perhaps be explained by it being further down the river and differently drained. Objection no. 494 to Entry no. 1 was not supported by anything Mr. Sirelson said, although he did say that he had spoken to Mrs Temple and she accepted his views.

All the information I have was to the effect that the commencement dates should be a the latest 21 May and the finishing date should be 14 February; the 1952 report and Entries nos. 1 and 2 (Mrs Temple and Mr Sirelson) contemplate closure from 12 August to 2 October. I consider I should accept the 1952 Report, although I shall disregard (as being not worth recording in the register) ^{the} special provision in it for opening the Marsh after the first Saturday in May.

In the absence of evidence, I reject the registration of piscary, turbary, estovers and taking sand and gravel.

Subject to the above, my decision is that the Coward's Marsh registrations should be modified as outlined above in respect of the Ogber Piece.

As regards the rights registered over the Town Common Piece:-

In some respects the position of this Piece was at the hearing left vague.

Its appearance, its gradients (much of the west part forms the lower slopes of St. Catherine's Hill), its soil, its vegetation (for the most part very rough heath bracken, bushes and ^{some} trees) are all different from the Ogber Piece and the Coward's Marsh Piece. There is no obvious reason why the rights of common should be identical or even similar. On appearance alone, it is both possible and likely that rights of turbary, estovers, and taking sand and gravel have been exercised.

The 1953 Report does not mention Town Common. Mr Perry said he had never exercised rights on Town Common. Mr. McArdle mentions it limiting the grazing to "cows" (for the other Commons he says only "cows and horses"). Mr Ashby mentions "animals and also" turf ... peat ... dead wood ... and sand and gravel ... for the maintenance of a commoner's own residence" Mr Sirelson who is the only registered commoner who gave evidence registered grazing for horses, donkeys, goats and cows, and also estovers



-10 -

turbary and a right to take sand and gravel.

But notwithstanding the vagueness of the evidence in support, I have in favour of these Entries the fact that nobody attended the hearing to object, that the Objections of Walters and Hart have by letter been withdrawn as regards Entries nos. 1, 17, 18 and 19, and sought to be compromised as regards Entries no. 16 on the basis of a right to graze 3 horses or cattle and turbary, and that Mr. Sirelson produced a letter dated 27 March 1975 from Walters Vandercom and Hart saying in effect that the objection of Walters and Hart had been withdrawn on the instructions of Lord Fitzharris (the registered owner). Their letter of 11 April 1975 (objecting to the claim of Mr Briant) argues among other things that he has no rights because 29 Barrack Road has been demolished, the writer apparently accepting that there are rights of common over all the Unit Land for persons resident in the Old Borough of Christchurch.

Although on appearance alone, I incline to the view that the Town Common Piece could well qualify for registration under the 1965 Act as waste land of a manor, having regard to the absence of any contrary contention at the hearing, and bearing in mind that if the rights registered had not been objected to they would have all become final under the 1965 Act without any modification at all, I conclude that I should confirm the rights of grazing, turbary, estovers, and of taking sand and gravel, determining how such rights ought to have been registered as best I can on the evidence I have.

Doing this, I consider that the grazing on the Town Common Piece should be limited to cattle the number being not more than 6 (as registered by Mr Sirelson), that turbary, estovers and taking sand and gravel should be limited to use for or in the commoner's residence, that piscary (not appropriate land not near the river) should be disallowed and that in all other respects registrations should be in accordance with the principals which I am adopting, as set out above, in relation to the Ogber Piece and the Coward's Marsh Piece.

In the result:- I shall exclude Interlock altogether notwithstanding that under the September 1975 agreement they limit their rights to the Town Common Piece, because they do not qualify under the immemorial rights, being the only rights of which I have any evidence. I shall not exclude Mr Briant altogether because his house has been or may have been demolished; I am concerned with the position when the registration was made, and his rights being residential will not be exercisable while he has no residence in the Old Borough of Christchurch; but I shall limit his right to grazing to 1 pony in accordance with his letter not accede to his request for a right of fishing or shooting. Notwithstanding the absence of any representation of Dr. Cantlie at the hearing, I shall treat his entry in the same way as the others'; I shall disregard the agreement made in April 1975 between him and Walters and Hart because it appears to have been made on the basis that it would be approved by me under regulation 31, and not having given this approval I must I think regard it as void.

For the above reasons I confirm Entry no.1 in the Land Section with the modification that there be removed from the Register (a) the land formerly used as a railway as delineated on the plan annexed to Objection no.137 and (b) the land being part of that being used as a reservoir edged red on the plan annexed to Objection no.121 and (c) the land known as Belle Hayes edged red on the plan annexed to Objection no.679 and (d) the land known as Little Ogber edged green on exhibit H/B 1 to the

a plan being



- 11 -

said →affidavit → of Mr Burry (to the notice I am by section 6 of the 1965 Act required to send to the registration authority I shall annexe a copy of this plan). I confirm Entries nos. 1, 8, 9, 10, 11, 16, 17, 18, and 19 in the Rights Section with the modification that for the words in column 4 of the Register there shall be substituted the words in the Third Schedule hereto. I refuse to confirm Entry nos. 13, 14 and 15 in the Rights Section.

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.

FIRST SCHEDULE

(Rights provisionally registered)

<u>Entry No.</u>	<u>Applicant</u>	<u>Description</u>
1	Mrs Jessie Marguerite Temple	Take peat Graze Over all Unit Land
8	Mr Courtney Richard Garth Briant	Graze Piscary Over all Unit Land
9	Mr Bernard Thomas Sirelson	Graze Over part E of Unit Land (Coward's Marsh)
10	Mr Bernard Thomas Sirelson	Graze Over part D of the Unit Land (the Ggber Piece)
11	Mr Bernard Thomas Sirelson	1. Graze 2. Estovers 3. Turbary 4. Dig and take sand and gravel Over part C of the Unit Land (near all the Town Common Piece)
13	Interlock Weatherseal Company Limited	Graze Over all the Unit Land (attached to 1 Farimile Road)
14	Interlock Weatherseal Company Limited	Graze Over all the Unit Land (attached to Interlock Stables, Marsh Lane)



- 12 -

15	Interlock Weatherseal Company Limited	Graze Over all the Unit Land (attached to the stables, 3 Fairmile Road)
16	Dr. J. Cantlie	1. Graze 2. Turbary 3. Dig and take sand Over all the Unit Land
17	Mr David John Hewitt and Mr Peter John Hewitt	1. Turbary 2. Estovers Over part D of the Unit Land (nearly all the Town Common Piece)
18	Mr David John Hewitt and Mr Peter John Hewitt	Graze Over part H of Unit Land (Coward Marsh)
19	Mr David John Hewitt and Mr Peter John Hewitt	Graze Over part I of the Unit Land (the Ogber Piece)

Times:-

Entry no. 1:- Town Common all year; Coward's Marsh 21 May to 12 August and 2 October to 14 February; Ogber 12 August to 14 February.

Entry no. 2:- Coward's Marsh:- 2 May to 12 August and 2 October to 14 February

Entry no.10:(Ogber):- 12 August to 14 February

Other entries:- No time restrictions.

SECOND SCHEDULE

(Objections)

Ob. No.	File Reference No.	Objector and when noted in the register	Grounds
121	D/49 D/70	West Hampshire Water Company 1 & 9 October 1969	St. Catherine's Hill reservoir land (part of Town Common Piece) not common land.



- 13 -

Ob. No.	File Reference No.	Objector and when noted in the register	Grounds
122	D/49 D/69	West Hampshire Water Company 4 & 8 October 1969	(1) Pasturage over Ogber Piece (or parts of it) limited to 12 August to 14 February. (2) Pasturage only exercisable by a limited no. of persons.
137	D/50	Walters and Hart 16 December 1969	Dismantled railway strip (part of Town Common Piece) not common land.
339	D/52	Sir George D. E. T. G. Meyrick & Trustees of Meyrick Settled Estate 20 November 1970	All Entries in rights sections (1) applicants not entitled to apply (2) rights do not exist
340	D/55	Major J. M. Mills	All Entries in rights section. (1) applicants not entitled to apply (2) rights do not exist.
364 to 370 inclusive	D/58 to D/62	Walters and Hart 8 & 9 December 1970	As to Entries nos. 19, 18, 17, 16, 15, 14 & 13 The rights do not exist at all
372 to 378 inclusive	D/61 to D/58	Walters & Hart 8 December 1970	Entries nos. 11, 10, 9 & 8 The rights do not exist at all.
382	D/57	Walters and Hart 4 December 1970	Entry no. 1 The rights do not exist at all
494	D/56	Mr Bernard Thomas Sirelson	Rights Section entry No.1 "that the Rights marked (2) and (3) have never existed on Coward's Marsh.
572	D/54	Sir Simon Warley Frederick Benton-Jones 12 February 1972	(1) Objector owns strips (part of Ogber Piece) (2) Rights limited to cattle and horses from 12 August to 14 February. (3) Exercisable by limited no. of persons.
679	D/51	Mrs Margery Goode 28 April 1972	The Belle Hayes Piece is not common land and no rights of common exist over it.



- 14 -

THIRD SCHEDULEEntry No.1 Mrs Temple

The following rights as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable:

(1) over the part of the land comprised in this register unit known as Town Common to cut and take peat for use in the commoner's residence, (2) over the part of the said land known as Coward's Marsh to graze two horses from 21 May to 12 August and from 2 October to 14 February and (3) over the part of the land known as Ogber to graze 2 horses from 12 August to 14 February.

Entry No.8 Mr Briant

The following rights as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable:

(1) over the part of the land comprised in this register unit known as Ogber to graze 1 horse (or pony) from 12 August to 14 February, and (2) over the part of the said land known as Coward's Marsh to graze 1 horse (or pony) from 21 May to 12 August and from 2 October to 14 February.

Entry No.9 Mr Sirelson

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Coward's Marsh to graze 6 horses or 12 cows or six donkeys from 2 May to 12 August and from 2 October to 14 February.

Entry No.10 Mr Sirelson

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Ogber to graze 6 horses or 12 cows or six donkeys from 12 August to 14 February.

Entry No. 11 Mr Sirelson

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Town Common to graze 6 cows and of estovers, turbarry and of digging and taking sand and gravel for use for or in the commoner's residence.



- 15 -

Entry No. 16 Dr Cantlie

The following rights as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable:

(1) over the part of the land comprised in this register unit known as Coward's Marsh to graze 6 horses or 12 cows from 21 May to 12 August and from 2 October to 14 February

(2) over the part of the land comprised in this register unit known as Ogber to graze 6 horses or 12 cattle from 12 August to 14 February; and (3) over the part of the said land known as Town Common to graze 6 cattle and turbarry and to dig and take sand and gravel for use for or in the commoner's residence.

Entry No. 17 Messrs. Hewitt

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Town Common of turbarry and estovers for use for or in the commoner's residence.

Entry No. 18 Messrs. Hewitt

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Coward's Marsh to graze one horse from 21 May to 12 August and from 2 October to 14 February.

Entry No. 19 Messrs. Hewitt

The following right as exercised from time immemorial by the owners or tenants of residential land in the Old Borough of Christchurch along with all persons entitled to like rights and under the conditions and regulations immemorially applicable over the part of the land comprised in this register unit known as Ogber to graze one horse from 12 August to 14 February.

Dated the 23rd day of October 1975

a. a. Baden Fuller

Commons Commissioner

Corrected on page 8 by substituting "for the words on line 9" "that little
Ogber" towards "that the Ogber Piece"
Dated (4th day) November 1975. a. a. Baden Fuller