



In the Matter of the tract of about 17.5 acres called
Middle Halves in the Parish of Corfe Castel, Dorset

DECISION

This dispute relates to the registration at Entry No. 37 in the Land section of Register Unit No. CL 37 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 141 made by Mrs K B Shirt. Objection No. 328 made by the Trustees of Corfe Castle Estate, Objection No. 429 made by E J R Bankes Esq, and all noted in the Register on 5 August 1971; and to the registration at Entry No. 1 in the Ownership section of the said Register Unit No. CL 37 occasioned by Objection No. 1035 made by H R J Bankes Esq. There is also a deemed dispute as to the registration at Entry No. 1 in the Rights section of the Register Unit No. CL 37 in the Register of Common Land occasioned by the said three objections.

I held a hearing for the purpose of inquiring into the dispute at Poole on 10 July 1980. The hearing was attended by the following. Mr R N Broome appeared on behalf of the Corfe Castle Parish Council and Mr Brown who had made an application in the Rights section. Mr Pitt of May, May and Merriman, Solicitors, London, and Mr Palmer of Gregory, Rowcliffe and Co, Solicitors, London, represented Corfe Castle Estates and Mr Bankes respectively and Mr Humble-Smith of Neville-Jones and Howie, Solicitors of Wareham represented Mrs Shirt.

Before the hearing Mr Bankes objection to Mrs Shirt's registration in the Ownership section in respect of the piece of land shown edged red on the plan annexed to her objection No. 141 had been withdrawn.

Mr Broome produced the following documents:-

- 1 A copy of a Report of the Charity Commissioners dated 1835 which referred to a Tenement comprising "two tenements on the West side of East Street, Corfe Castle, with two small gardens and four beast leazes let to J White and Thomas Roe; and the fore-shore of half an acre in a common field, called Middle Halves, let to S Jenkin".
- 2 A photocopy of the original will (dated 8 January 1714) of John Benfield the Elder of Corfe Castle containing a devise of the messuage in which he lived with a garden and a plot of ground in a Common Field called the Middle halves thereto belonging and adjoining with the appurtenances thereto belonging.
- 3 A Conveyance made the 24 September 1921 between the tenant for life and Trustees of the Calcraft Estate and Charles Jeffries relating to two plots of land both less than half an acre ~~one~~ in Middle Halves and ~~one~~ in East Halves. In October 1962 the plot in the Middle Halves was subsequently conveyed to Leslie Ernest Sheasby and the other plot was conveyed to Mr and Mrs Flowerday, who subsequently conveyed it to the Dorset County Council, and it now forms part of the School playing field.

Mr Broome produced an affidavit of Rupert George Matthews sworn on 17 January 1974. Mr Matthews, who is now 87 years of age, came to Corfe Castle in 1915 on his appointment as headmaster of the Church of England School. He went to live at Hill View, 144 East Street, where he still resides. After service in the Army he returned to Corfe Castle in 1919 and remained Headmaster until he retired in 1946.

Mr Matthews never had any rights of Common personally but he remembered others exercising such rights on Corfe Castle Common and the Halves ever since 1915. He refers to the appointment of Head Wardens by the Bankes Estate and the Bond Estate and gives the names of the two Wardens at the date when he first went to Corfe Castle.



He then describes the system of managing the Halves in the following terms.

I can remember that every year on Lady Day the Hay Warden locked the gates leading to the Halves and the people with beast leazes had to move their beasts to the Common. The Hay Wardens opened the gates to the Halves on Michaelmas Day and the beasts were allowed back then when they grazed untethered. When I first moved to Corfe Castle there were no fences on Middle Halves. However, the Halves have now been fenced by Mr Jack Moss and he grazes them. I can remember that the Halves were divided into lawns which were individually marked by stones and some of them are still there at the present time. The holder of each lawn had the right to mow his lawn after the growing season. Only those lawn holders who had beasts leazes on the Halves had the right to mow the grass.

Two strips of the Middle Halves have been fenced off, first by Mr Stockley and then by Mr Seager and they are used for grazing pigs and chickens.

Mr Paul Anthony Brown of Eastgate, 116 East Street, Corfe Castle gave evidence that he had purchased Eastgate in 1948 and had lived there ever since. During the whole of this period he had exercised rights of common, cutting the grass on his lawn in the Summer and pasturing 2 horses or 4 cows in Winter. The gates leading to Middle Halve were locked from 6 April to 16 September and were open for the rest of the year. The gates leading to Corfe Common were open from 6 April to 16 September and closed for the remainder of the year. ci

Mr Brown agreed that Mrs Shirt's plot was fenced when he came to Corfe in 1948. He did not ask any one's permission to graze his horses on Middle Halves. He was a member of the Corfe Castle Commons Committee, meetings of which used to be convened by the Agent to the Bankes Estate.

Mr Spiller the Chairman of Corfe Castle Charities said that the Trustees of the Almshouses owned two Lawnds on Middle Halves which were let out together under the rights that went with them. There was a discussion on the proposal to register the Halves as common land.

In cross examination he agreed that the matter of registering rights had been overlooked. He could not remember when Mrs Shirt purchased her plot. She was a daughter of Mr Stockley. The owner of a Lawnd had a run on the Corfe Commons.

Mr J Barrow an employee of Messrs Humberts Chartered Surveyors called on behalf of the Corfe Castle Estates said that the rights of grazing the Halves arose by agreement between agricultural tenants. No rights of commons were mentioned in any tenancy agreement.

Mr Pitt submitted that a tenant could not create rights binding on his landlord.

Mr Palmer submitted that only owners were involved in the right of foreshore. Were the rights claimed a convenient arrangement or something in the nature of a right of common. It appeared that any owner of a strip could opt out of the arrangement. The OS Map showed that one Lawnd in Middle Halves was enclosed in 1901.

Mr Broome conceded that Mrs Shirt's land had been fenced in probably since 1950.



Non-user did not amount to abandonment of a right of common it was only material as evidence of an intention to abandon.

There was no evidence to support the suggestion that the rights of grazing on the Halves arose out of some mutual arrangement. In the case of the Almshouses Trustees failure to register in the Rights Section was not due to lack of belief in the existence of the right of grazing.

The evidence in favour of registration is strongest in the case of Middle Halves and that evidence has not been challenged. The objectors main attack was that the arrangement as to Winter grazing was a private or informal arrangement which did not create and was not intended to create any legal rights. I am unable to accept that view in spite of the occasional fencing in of an individual Lawnd. In my view this right of common was of long standing and continued down to the date of the application for registration.

Mrs Shirt's land has been fenced in for 40 years or more and must be excluded, as Mr Broome, rightly, in my view, conceded.

For these reasons I ~~refuse~~ confirm the registrations in the Land Section and in the Rights Section with the following modification namely, the exclusion of the area shown edged red on the plan accompanying Objection No. 141.

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

8th

day of

September

1980

Levy H. H. H. H.

Commons Commissioner