



In the Matter of Broadwell Common,  
Withington, Gloucestershire (No. 1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 100 in the Register of Common Land maintained by the former Gloucestershire County Council and is occasioned by Objection No. OB 11 made by Mr T C Owen and noted in the Register on 20 June 1969.

I held a hearing for the purpose of inquiring into the dispute at Gloucester on February 1977. The hearing was attended by Mr H L Walter, the Clerk of the Withington Parish Council, the applicant for the registration, and by Mr C R Mullings, solicitor, on behalf of the Objector.

The land comprised in the Register Unit was part of a piece of common land before it was allotted to Henry Elwes by the Inclosure Award made 17 July 1819 under the Withington Inclosure Act of 1813 (53 Geo. III, c.cxcv iii).

It appears that Mr Elwes fenced the major part of the land so allotted to him, but did not fence this part. Mr Walter argued that this showed that Mr Elwes was thereby abandoning his enclosure right in the remaining strip, i.e. that the subject of this dispute.

In my view, it is immaterial for the purposes of this case whether Mr Elwes abandoned this land. What does matter is that it ceased to be subject to rights of common when the Award came into effect. It would have been legally possible for fresh rights of common to have been subsequently acquired by prescription, but Mr Walter was unable to adduce evidence of this. Mr Walter said that this was waste land, but he was unable to adduce evidence that it was waste land of any manor - a possibility which would be excluded by the inclosure.

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

16<sup>th</sup>

day of

May

1977.

Chief Commons Commissioner