



COMMONS REGISTRATION ACT 1965

Reference Nos. 213/D/38, 39 & 40

In the Matter of The Green,
Hampnett, Cotswold D

DECISION

This dispute relates to the registration at Entries Nos. 1 in the Land Section and Entries Nos. 1 to 5 inclusive in the Rights Section of Register Unit No CL. 113 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by Objection No OB65 made by Lt Col and Mrs Jenkins and noted in the Register on 8 October 1970 and the conflicting registration at Entry No 1 in the Land Section of Register Unit No VG. 46 in the Register of Town or Village Greens maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Gloucester on 13 October 1976. The hearing was attended by Mr Leckie, counsel, instructed by Messrs Gregory Rowcliffe on behalf of Lt Col and Mrs Jenkins and by Miss B P Bellamy an applicant for Rights under Entry No 5 and by Mr White in person a successor to part of the land in respect of which Lady Nicholls claimed rights under Entry No 2. The remaining three applicants for Rights did not appear.

As regards Ref No 213/D/40 I have given a decision in respect of Ref Nos 213/D/41, 42 and 43 whereby I refused to confirm the Entry at No 1 in the Land Section of Unit No VG. 46, and it remains therefore for me to consider Miss Bellamy's and Mr White's claims for rights and Lt Col and Mrs Jenkins' objections to these claims.

Miss Bellamy and Mr White both claim the right to collect wood and sticks for fuel and to pick water-cress from a stream which runs through the land in question.

Miss Bellamy in addition claims the right to graze one donkey and to take fish from the stream. I can deal shortly with these two claims by Miss Bellamy.

As regards the donkey the evidence as to this was that of Rachel Gould contained in a statement produced by Miss Bellamy that Fred Day, a former inhabitant of Miss Bellamy's cottage, had told her that he always used to let his donkey onto the land. This was before Rachel Gould came to live in the village in 1939. This hearsay evidence of the purported exercise of the alleged right is not such as to satisfy me of the existence of the right. Miss Bellamy told me that her understanding was that the donkey was a working donkey and it is possible and indeed probable that the donkey was not grazing as of right but was turned on to the land only when it was not working to enable it to "get the sun on its back" rather than remain in the stable.

As regards fishing, no one claimed ever to have seen a fish taken from the stream and I was told that it did not hold any fish.

There remain the claims to take firewood and water-cress.



Miss Bellamy stated that she picked up sticks for firewood whenever she was short of kindling wood and that she picked water-cress two or three times in each year. She relied very much on information given to her by Ivy Cook and produced an unsworn statement by Ivy Cook. Both Ivy Cook and Rachel Gould in their statements stated that they had collected twigs and firewood and picked water-cress and that other inhabitants had done likewise without interference.

Any claim to the alleged rights must be by prescription and in my view the limited evidence available to me is consistent with the inhabitants of the village collecting sticks and water-cress and believing that as inhabitants, as distinct from the owners of any particular properties they were in the absence of any interference entitled so to do. Neither Miss Bellamy nor Mr White led any evidence that their predecessors in title had as the owners of their respective properties exercised the alleged rights.

It is settled law that a fluctuating body of people, such as inhabitants, cannot prescribe for common rights: see Gatewards Case 6 Co Rep 59 (*fr*) and I am further of the opinion that the collecting of sticks and water-cress for which the owner of the land had no use was if it ever came to his notice tolerated by him and therefore the practice was permissive, and not such as could become a prescriptive right.

The case is in many respects similar to the case of Beckett v Lyons 1967 ch 447 in which the court of appeal held that the gathering of coal washed up on the beaches was attributable to tolerance.

For these reasons I refuse to confirm all the registrations.

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 22 day of October 1976

A. Little

Commons Commissioner