



COMMONS REGISTRATION ACT 1965

Reference No 213/D/165-170

In the Matter of the Northern part of May Hill in
the parishes of Aston Ingham Herefordshire and Newent
Gloucestershire Forest of Dean D

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section, Entries 1-15 in the Rights Section and Entries 1 and 2 in the ownership section of Register Unit No.CL.50 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by Objection No. OB 63 made by R J Watkin and noted in the Register on 10 December 1970; Objection No. OB131 made by W H Huggins and noted in the Register on 15 December 1970 and the conflicting Entries Nos 1 and 2 in the ownership section.

I held a hearing for the purpose of inquiring into these disputes at Gloucester on 18 October 1978 and an adjourned hearing at Gloucester on 6 June 1979.

At the hearing in 1978 Mr W H Huggins appeared in person and Mr M D Poole, solicitor appeared for the Gloucestershire County Council.

Mr Watkins objection was to the effect that a very small triangle of land at the southern extremity of the unit land was part of a field owned by him and had been wrongly included. This was accepted by those who attended the hearing and I will modify the Entry in the Land Section so as to exclude this small parcel of land.

My Huggins objection was to the effect that OS No 457 the triangular strip of land or part of that strip had been wrongly included in the unit land.

Mr Huggins gave evidence that he took over the land in 1930, that it was then very rough and there was nothing but fern, it had been neglected by Mr Perkins who used it for nothing else but taking fern. He himself had grazed the land after clearing the fern and then ploughed it and planted potatoes in 1939. He then seeded the land with oat and grass seed and then in the middle of the 1939/45 war planted plum trees. When he was a boy there was a hedge all round the land which burnt in 1910. Since 1930 the land has been completely enclosed and no animals other than his own have ever grazed there.

This evidence was uncontradicted and was accepted by Mr Poole on behalf of the County Council who I understand are now the owners of the common.

I came to the conclusion that the land the subject of Mr Huggins objection was not common land, it was not subject to common rights and was not waste it had since 1930 been occupied, cultivated and had by 1939 been enclosed.

When I came to consider the Entries in the Rights Section it was manifest that if, I confirmed these Entries without modification the common would be substantially overgrazed and the Register would be meaningless as regards the quantum of animals entitled to graze. For this reason I adjourned the matter in order to give the commoners an opportunity to agree a viable scale of grazing.



At the adjourned hearing there appeared Miss Cole on behalf of the County Council deputising for Mr Poole who was unable to attend.

Mr Churcher Solicitor, who had been concerned on behalf of the proposed May Hill Commoners Association, Mr Hale who registered the land as common land and Mr O L Warren who applied to register the land as common land Mr W H Huggins, Mr D Huggins Mrs Fletcher Mr Watkins and Mr Boughton in person.

Mr Warren and Mr Hale said that they had been unable to attend the hearing in 1978 and that they did not agree to the exclusion of the land the subject of Mr Huggins objection. Neither Mr Hale nor Mr Warren claimed any common rights nor did they claim ownership, they said they were acting in the public interest. They having registered or applied to register the land were entitled to be heard and I recalled Mr W Huggins who gave evidence which did not materially differ from that which he had given at the hearing, in 1978.

Mr Warren cross-examined Mr Huggins, the tenor of his cross-examination was to the effect that the land in dispute was part of May Hill and that Mr Huggins had no title to that land which before it was enclosed had always been open to the public.

Neither Mr Churcher nor any commoner present at the hearing claimed any rights over the disputed land and Miss Cole on behalf of the County Council confirmed that the plum trees were still there and made no claim on behalf of the County Council.

Mr Hale and Mr Warren were either unable or unwilling to understand that the question and the only question which it fell to me to decide was whether or not the land had the status of common land and that if it was not common land as defined in the Act of 1965 I had no jurisdiction to consider who owned the disputed land.

No commoner claims any rights over the disputed land, it is occupied, cultivated and enclosed and is therefore not waste, and I am satisfied that the disputed land is not common land. In these circumstances I am not concerned with the question of ownership and I am careful to say no more than is necessary for the purpose of deciding the matter referred to me.

I turn now to the question of the quantification of the grazing rights. There are 15 Entries in the Rights Section Entry No 12 is withdrawn, and it is common ground that I must confirm the remaining 14 Entries with modifications as to quantum.

A meeting of the proposed commoners association was held on 22 November 1978 and I was prior to the adjourned hearing provided with a copy of the minutes of that meeting.

These minutes reveal a certain measure of agreement viz:-

- (i) " That all the claims made for the original registrations were unrealistic".
- (ii) " That at the present time with the land uncleared and in its poor state 60 head was probably the maximum number that could be grazed there with the land properly cleared which the commoners would have to do the number would be approximately 200 head of sheep.
- (iii) That one beast (or as agreed at the hearing 1 horse) was the equivalent of 4 sheep

At the hearing in 1978 I suggested that small holdings should be entitled to minimum rights which would reflect their probable historic origin of enabling the owners to graze a "house cow" and/or horse.



At the meeting the chairman put to the meeting that small holdings should be entitled to graze 8 sheep or 2 beasts and that the remaining holdings should be entitled to graze one acre of common for each 5 acres of the respective holdings and that each acre of common should graze 2 sheep or put more simply each acre of a holding should carry the right to graze $2/5$ of a sheep.

This proposal was unacceptable to Mr D Huggins, Mr W Huggins and Mrs Fletcher who said they were the only persons currently grazing and it would seem overgrazing the common in its present condition and the alternative proposition was put that each commoner should have equal rights to graze an aggregate number of 20 sheep

Since the meeting failed to reach any agreement it falls to me to decide what modifications to the Entries in the rights section are appropriate.

Mr D Huggins, Mr W Huggins and Mrs Fletcher all spoke and they all felt a sense of grievance that the Act of 1965 had led to persons who had not recently exercised their rights now seeking to restrict their current grazing practice. They appeared to be under the impression that the ownership of land with grazing rights conferred the right to graze an unlimited number of animals whether the animals were kept on the land entitled to rights or other land and I was told of cases where the commoners had other lands and grazed all their animals on the common.

It was common ground that the common was not stinted.

I explained that in the absence of any stints the rights appurtenant to any holding must be limited to the number of animals which that holding can support. Mr Huggins said that an apportionment on this basis would be unfair to those currently grazing and invited me to give each commoner equal right, he said that would be fair. I pointed out that I had no power to force an agreement on the commoners but that my duty was to endeavour to ascertain their legal rights.

In the absence of any evidence as to the origin of the rights or as to the precise numbers each holding can sustain I must in my view presume that the rights are proportionate to the holding subject to the requirement that each holding is entitled to graze at least one beast or one horse.

I have revised the figures put to me by Mr Churcher at the hearing for the reason that Mr D Huggins has claimed under Entries 1 and 2 and I must treat each of these holdings as entitled to minimum rights as in Entries 14 and 15 each entitled to 8 sheep. These revisions to Entries 1, 2, 3 and 4 would work hardly on commoners with less land or only slightly more land than Mr D Huggins and Mrs Fletcher. The revised scale provided that no individual commoner other than Entries 14 and 15 shall be entitled to graze less than 16 sheep and provides for the grazing of 223. This figure is unrealistic at the present time, but if the association is formed and succeeds in improving the common on the assumption that not all the commoners will exercise their rights it will then provide a viable rate of stocking. The revisions I have made go some way to meeting the grievances of Mr D Huggins, Mrs Fletcher and Mr W Huggins.

My decision is therefore as follows:-

(1) I confirm the Entry in the land section modified by the exclusion of the land identified on the plan annexed to objection No. OB⁵ and the land OS No.457 identified on the plan annexed to objection No. OB131.



(2) I refuse to confirm Entry No 12 in the Rights Section.

(3) I confirm Entries Nos 1-11 and 13, 14 and 15 in the Rights Section modified in each case so as to confer the right to graze the numbers of sheep or their equivalent set opposite them respectively in lieu of the grazing rights claimed viz:

Entry No.	1	8 sheep and 3 pigs
" "	2	8 " " "
" "	3	8 " " "
" "	4	8 " " "
" "	5	16 "
" "	6	17 "
" "	7	15 "
" "	8	18 "
" "	9	54 "
" "	10	16 "
" "	11	16 "
" "	13	23 "
" "	14	8 "
" "	15	8 "

Four sheep are equivalent to 1 beast or one horse

(4) I confirm Entry No 2 in the Ownership Section as applicable to the modified Entry in the Land 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.

Dated this 31st day of July 1979

G. A. Little
Commons Commissioner