



COMMONS REGISTRATION ACT 1965

Reference Nos. 214/D/1
214/D/2
214/D/3
214/D/4
214/D/5
214/D/6

In the Matter of about 1,480 acres of land
in Bordon and in surrounding parts of
Headley, Whitehill, Bramshott, Kingsley and
Selborne, Hampshire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL.330 in the Register of Common Land maintained by Hampshire County Council, and are occasioned (D/1 and D/4) by Objection No. OB.275 made by Mr. A.G.P. Whitfield and noted in the Register on 10 November 1970, (D/2 and D/5) by Objection No. OB.681 made by Mr A. Lawes and noted in the Register on 26 May 1972, and (D/3 and D/6) by Objection No. CB. 700 made by Courage Ltd., and noted in the Register on 14 August 1972.

I held a hearing for the purpose of inquiring into these disputes at Winchester on 23 and 24 July 1974. At the hearing, Mr Whitfield, Courage Limited, Hampshire County Council, East Hampshire District Council, Whitehill Parish Council and Headley Parish Council were represented by Mr N.C.H. Browne-Wilkinson Q.C. and Mr L.H. Hoffman of counsel (instructed by Lomer & Co Solicitors of 121, Ebury Street, London S.W.1). Mr D.C. Jones, in consequence of whose application the said Entries had been made, attended the hearing in person on the first day from the beginning until about 3.5 pm and on the second day from about 12.15 pm to 1.5 pm. The hearing was attended by numerous other persons who indicated either by addressing me formally or in some other way that they objected to the said Entries in the Register. Mr Lawes (as far as I know) did not attend and was not represented.

Mr Jones opened the proceedings by saying (among other things) that they were a farce contrived by the County Council as the principal member and by other persons and bodies, that the Commons Commissioners had no power either to arrange or to hold a hearing in relation to "settled" disputes, that his rights had become final under sections 7 and 10 of the Commons Registration Act 1965. He then handed me a writ of summons and said that in the circumstances paragraph (2) of regulation 13 of the Commons Commissioners Regulations 1971 (the paragraph empowers a Commissioner to alter the arrangements for a hearing) applied, because the hearing was not lawful, and therefore no decision by myself as a Commons Commissioner could be valid.



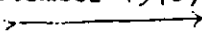
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Mr Browne-Wilkinson then described the land now provisionally registered, as containing about 1,480 acres and including 1,400 occupied houses, two schools, a gasworks, a cinema, two supermarkets, two cafes, a bank, various other shops, a post office, and a police station. Mr A.B. Donger (on behalf of a client), Mrs Faddy (for herself) and others indicated that there were many who were concerned with and who had only recently heard of the registrations. It was stated by Mr Dann, Secretary of the Hampshire Association of Parish Councils, that the County Council in a notice * dated 19 October 1970 had mistated the area comprised in this Register Unit (a printer's error; 3.450 acres instead of 3,450 acres); Mr Browne-Wilkinson said that what Mr Dann had said was factually correct, and that of course the County Council regretted it.

Mr Jones then continued his arguments as to the legality of the hearing. So that they can be understood, I summarise the Register as it now stands.

Entry No. 1 in the Rights Section was made pursuant to an application dated 5 December 1969 and made by Mr Jones on Form 9 (Application for the Registration of a Right of Common) appended to the Commons Registration (General) Regulations 1966. The right is in the application described as:- "ESTOVERS. TURBARY. PISCARY. GRAZING-TWO-HORSES-TWO GOATS-SIX GESE. SAND AND GRAVEL. GAME (IN SEASON) FLESH AND FOWL AQUARIAN"; as being over land shown on Plan A, a compact oval shaped area containing, as I scale the Plan, over 5,000 acres; and as being attached to "Silver Birches, Forest Road" being a building near the middle of the Plan A land, shown on Plan A1 and containing (as I scale the Plan A1) about 400 square feet. If the land shown on Plan A1 as held with the building is included, the land to which the right is attached would contain about 1/4 to 1/3 of an acre.

The Entry No. 1 in the Rights Section follows the application form closely, except that "game ... etc" is omitted; in the Land Section there is a note that Mr Jones claimed shooting rights. Entry No. 1 in the Land Section (before its amendment as below mentioned) describes land containing 3,450 acres. I was told that the remainder of the Plan A land, (being parts of Kingsley Common, Shortheath Common, The Warren and Slab, Woolmer Forest, Passfield Common, Hollywater Green and Broxhead Common) was comprised in other Register Units and I am not therefore concerned (except perhaps indirectly) with this remainder. The 3,450 acres originally comprised in this Register Unit is an irregular shaped area separated by and surrounding land never comprised in this Register Unit.

The grounds stated in Objection No. OB.275 (Mr Whitfield: dated 1 September 1970) are:- "I am the present owner of the land shown edged green on the 

* Note:- Meaning I suppose Form 24, which a registration authority must publish under paragraph (2) of regulation 3 of Commons Registration (Objections and Maps) Regulations 1968, as amended by Commons Registration (Objections and Maps (Amendment) Regulations 1970.



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attached plan, which forms part of Register Unit No. CL.330. I object as follows:-
(a) To the provisional registration in the land section on the grounds that the land was not common land at the date of registration and (b) to the provisional registrations in the Rights Section on the grounds that the rights do not exist at all". The grounds stated in Objection No. OB.681 (Mr Lawes: dated 22 May 1972) are:- "The land is not common land nor do any rights of common exist in respect thereof". The grounds stated in Objection No. OB.700 (Courage Ltd: dated 28 July 1972) are:- "The Objector is the owner of the land hatched red on the attached plan, which forms part of the Register Unit No. CL.330. The objection is on the following grounds:- (a) as to the provisional registration in the Land Section that the land was not Common Land at the date of registration (b) as to the provisional registration in the Rights Section that the rights do not exist at all". All the said three objections were in paragraph 7 stated to refer to the land and rights section; but OB.275 (unique in this respect) in paragraph 5 includes the words "part" after the Register Unit number "CL.330".

In addition to the said three objections, 4 and 12 others are noted in the Land Section and Rights Section respectively, making altogether 14 other objections (two of the objections relate to both sections).

The Entry No. 2 in the Land Section dated 11 March 1974, records that Entry No. 1 has been amended so as "to exclude land the subject of resolved objections". This Entry is followed by another, setting out Entry No. 1 as it stands amended: "Various parcels of the land of about 1,480 acres in Bordon and the surrounding areas the Parishes of Headley, Whitehill, Bramshot, Kingsley and Selborne ... as shown coloured red ... on the Inset ... map ..." All the said 14 Objections are noted as "Resolved" Objection OB.275 (Mr Whitfield) and OB.700 (Courage Ltd) are noted as "resolved in part" and the lands mentioned in these two objections as owned by the Objectors are not included in this 1,480 acres red land. Objection OB.681 is not noted as being either "resolved" or as "resolved in part".

The references with which I am dealing are dated March 1974.

Mr Jones' arguments were (in effect):- His application for registration was regular made under section 4 of the 1965 Act. The 1968 Regulations (they were amended by the 1970 Regulations) prescribe that no objection shall be entertained unless made before 31 July 1972; see section 5(2) of the 1965 Act. All objections made before then were, Mr Jones said, "satisfied" before 31 July 1973 **; accordingly

** Note:- This is the date prescribed by the Commons Registration (Second Period References) Regulations 1973 for the purpose of sub-section (6) of section 5 of the 1965 Act.



after 31 July 1973 his registration had become final under section 7 of the 1965 Act. In respect of the lands of all the Objectors, he had withdrawn his claim that their lands should be included in the registration for which he had applied, and had so informed the County Council as registration authority. But the County Council, not having themselves made any objection before 31 July 1972 had, contrary to the purpose of the 1965 Act, selected the three Objections the subject of these proceedings, which they thought would benefit themselves, and with a view to avoiding certain proceedings now pending in the High Court, had wilfully and falsely referred them to the Commons Commissioners for adjudication.

Mr Jones referred me to paragraph (4) (b) of regulation 5 of the 1968 Regulations, showing that an objection could be to part of a registration. All the three Objections are, he said, part objections. He had offered to withdraw his rights over Mr Lawes' land and was prepared to put his withdrawal in writing. The County Council in a biased manner took over the three Objections, their motive being their own lack of objection power.

Mr Jones (adopting on this point an observation which had been volunteered by Mr Codgbrook) said that on any view there was no substance in the proceedings, because if anybody present at the hearing (there were very many present) wished the land he owned ("his cabbage patch" Mr Jones called it) to be outside the registration, he would arrange for it (the cabbage patch) to be withdrawn from the Register.

When Mr Jones had finished, Mr S.D. Musson (churchwarden of Headley), Mr C. Cotswold (chairman of Whitehill Parish Council) and others present attempted to obtain some clarification from Mr Jones as to his intentions.

At this stage in the proceedings, Mr Jones left saying he did not feel particularly well but was not asking for an adjournment.

On the first day after Mr Jones had left, and also on the second day, Mr Browne-Wilkinson on behalf of his clients put forward the oral and written evidence outlined below and contended that I should on such evidence conclude that I had jurisdiction and that in the exercise of such jurisdiction I should allow all three Objections and refuse to confirm the registrations.

On the second day Mr Jones again asked me to alter the arrangements for the hearing under Regulation 13 of the 1971 Regulations.

I will first deal with Mr Jones' claim that the hearing was illegal. What I say under this heading must be read as applying only to the jurisdiction of the Commons Commissioners under the 1965 Act and as to the extent of the obligations imposed by sub-section (6) of section 5 on a registration authority to refer matters to a Commissioner.



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The operative words of sub-section (6) are: "Where ... an objection is made, then unless the objection is withdrawn or the registration cancelled before ... (in this case 31 July 1973) ... the registration authority shall refer the matter ...". In my view, for the purposes of this sub-section, objections are all in the same position, and cannot in any way now relevant be divided into two classes one of which comprises those objections which relate to part only of the land comprised in the Register Unit. In my opinion, as long as any land is affected by an Entry in the Register, the existence of an unwithdrawn objection, however expressed, prevents the Entry which has been registered (or any part of the Entry) becoming final; so if for example, an objection is expressed to relate to one acre only out of 1,000 acres comprised in a registration, the registration of no part of the 1,000 acres can become final unless the objection has been withdrawn before 31 July 1973 or has been disposed of by a Commons Commissioner. Paragraph 4 of the 1968 Regulations provides in effect that if an objection relates to part only of the land comprised in the Register Unit, it must be accompanied by a plan defining the part; this provision has obvious administrative advantages; in my opinion it would be giving the Regulations a much larger effect than could possibly have been intended to deduce from it that sub-section (6) of section 5 operates one way if the objection is accompanied by a plan or can properly be considered as referring to part only of the land registered and in a different way if it is not accompanied by a plan or is expressed in general terms. In my opinion the "registration" referred to in sub-section (6) means the entry to which an objection has been made. An entry which has been made cannot at the mere request of the person on whose application it has been made, be treated as a number of entries relating to an equal number of parts into which he would like the land as originally registered to be divided. A registration authority on the request of a person on whose application an entry has been made in the register (certain consents may be requisite) may modify or cancel a registration, see regulation 12(7) of the Commons Registration (General) Regulations 1966 and regulation 8(1) of the 1968 Regulations. There is I think an essential difference between the "cancellation" and the "modification" of an entry. Any modification of an entry which leaves any land affected by it still on the register cannot in my opinion ever be regarded as having been "cancelled" within the meaning of sub-section (6) of section 5.

On the present question the most important word in sub-section (6) is "withdrawn" Section 7 of the Act contemplates that it will always be possible to date a withdrawal: apart from this, neither the Act nor any of the Regulations specifies how a withdrawal shall be made or proved, it being apparently assumed that the word has (as I think it has) a well understood meaning.

I see no reason why a withdrawal should be evidenced in any particular way. A statement by an authorised agent would be enough; the applicant for registration is not I think disqualified from being such an agent, although if he claims to be such, some inquiry may be necessary. It may be that an objector could either in the objection or in some other document made contemporaneously or subsequently indicate that if a certain piece of land with which he was concerned was removed from the register his objection could be treated as withdrawn, so that the registration authority could safely act on this indication if the land was so removed. However this may be, there is an essential difference between an



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objection being withdrawn (implying some act done by or with the authority of the objector) and an objection being satisfied (implying no more than that somebody else considers that the objector ought to withdraw his objection).

I reject Mr Jones' contention that each of the Objections made must be treated as relating to the land with which the Objector was concerned, and that as he Mr Jones had said that he would withdraw his application for registration as regards all the lands with which any Objector was concerned, all the Objections have been or must be treated as having been withdrawn. On this question as to ~~the~~ jurisdiction, I am I think only concerned to determine whether the Objections of Mr Whitfield, Mr Lawes and Courage Ltd have in fact been withdrawn and if so on what date.

Mr Jones when addressing me attempted to elaborate his statement that the Objections had been "settled" and "satisfied". Mr Browne-Wilkinson submitted that I should not accept any statement from Mr Jones as to the Objections having been settled, satisfied or withdrawn unless Mr Jones gave evidence and could therefore be questioned. I asked Mr Jones if he would give evidence; his answer was to the effect that he stood by the law as upheld by the High Court in some proceedings to which he is a party and the subject matter of which is the registration under the 1965 Act now under consideration. Mr Jones did not suggest that any order had been made by the High Court in such proceedings as to the conduct of this inquiry. Although Mr Jones did not in terms say that he refused to give evidence, (so that he could be questioned), in my view he indicated quite clearly that he would not do so.

Mrs P. Davidson who is employed by the County Council in their Commons Registration Department in the course of her evidence produced the three files dealing with the Objections now under consideration and also four "withdrawals" dated 1.6.72., 24.7.72., 1.5.73., and 26.7.73, by which Mr Jones purported to withdraw his claim to rights of common over land comprised in the Objection Nos. which he specified.

As to the file dealing with Objection No. OB.681 (Mr Lawes):- There is nothing in his objection indicating his concern with any particular part of the 1,480 acres red land. His Solicitors in a letter dated 25 June 1973 "confirm that our client still wishes to continue with his objection". There are two letters and a plan all endorsed by Mr Jones as having been delivered to the H.C.C. on 30 July 1973; one of the letters is dated 20 July 1973 and is from the said Solicitors to Mr Jones: "We understand that you have seen our client and that you have agreed to withdraw your claim as to common rights over this land on production of a plan showing the property which he owns. A plan is enclosed showing our clients property edged in Red"; the other letter dated 21.7.73 and is from Mr Jones to the Commons Registration Authority, Winchester and includes:- "It is settled that Mr Lawes confines his objection to his own land ... and that I withdraw my claim to rights ... as outlined on the accompanying map ..."; the map is endorsed by Mr Jones "this is the map showing the ... area of Mr Lawes'



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objections ... He agreed on 19.7.73 that his objections were fully discharged by my disclaimer of rights over it". There is also a letter dated 2 August 1973 from the said Solicitors in which they refer to a call on that date at the County Council Office, enclose a letter dated 31 July 1973 signed by their client and a plan also signed by him and in which they said "the plan submitted to you by Mr Jones was not quite correct". There is also a copy manuscript letter dated 6.7.74 to "Commons Registration" and subscribed "A. Lawes" which includes:- "My Objection 681 never intended to apply to CL.330 in whole, but related only to my farm ... Mr D. Jones and I discussed the matter in late July 1973 and reached agreement. Mr D. Jones ... withdraws his claim over my land and I withdraw my Objection OB.681 ..."

The land described in the letter above quoted relating to Mr Lawes objection is included in the 1,480 acres red land (so it is still provisionally registered)

As to the file dealing with Objection OB.275 (Mr Whitfield):- There is a letter dated 27 July 1973 from his Solicitors confirming "that it seems that although there are discussions with the interested parties the discussions may well not be resolved before the end of the month, and therefore our client wishes to maintain the objections".

As to the file dealing with Objection OB.700 (Courage Ltd):- The objection is accompanied by a letter dated 28 July 1972 from their Solicitors: "... we enclose a formal objection as to the above registration so far as it relates hatched red on the plan attached to the form of objection".

Mr J.B. Driffield who is a Solicitor of the firm of Lomer & Co in his evidence said (in effect):- "In 1972 and early 1973 his firm acted for Builders Amalgamated Co Limited in the purchase of some land; early in 1973 he became aware of common rights over this land having been registered by Mr Jones. He saw Mr Jones with a view to negotiating a release of the land. Mr Jones offered a letter releasing the land from his right which could be processed by the registration authority. For this Mr Jones was paid £1,000 in bank notes; he asked that there should be no mention of a sum of money in the release and said he was not willing to give a receipt. He (Mr Driffield) got a letter (produced) dated 12.6.73 signed by Mr Jones and addressed to the Commons Registration Authority, Winchester withdrawing his claim over the land and asking them to amend the register by appropriate cancellation. He (Mr Driffield) took Mr Jones' letter to the County Council Commons Registration Office later that day and got a letter saying that the land would not be included in the final registration. In October and November of the same year on behalf of the same client he sought to negotiate with Mr Jones the release of other land (in the development plan for the village it would be developed first). Mr Jones put forward a figure of £25,000. Eventually he said he would accept £10,000 and the figure was agreed. However the transaction did not go through because he (Mr Driffield) advised his clients to insist on a formal deed of release from Mr Jones with a deduction of title; Mr Jones although frequently asked to produce documents of title had never done so.



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The land mentioned in Mr Jones' said letter dated 12.6.73 is not included in the 1480 acres red land (so it is not now registered).

Mr G.C. Atkins who is the manager of Rowag Building Construction Limited said (in effect):- He met Mr Jones being desirous of obtaining from him the release of his company's land from Mr Jones' registration: He paid Mr Jones £250 to obtain from him two letters (produced) signed by Mr Jones and dated 16 July 1973:- (a) "In consideration of releasing land at Hormoor Road, Bordon from the Register of Common Land, I hereby acknowledge receipt of the sum of £250"; and (b) to Commons Registration Authority, Winchester:- "This is to inform you that I hereby withdraw my claim to rights of common over certain land ... as shown ... on the accompanying map. Will you please amend the register to suit by appropriate cancellation".

The land mentioned in the said letters of 16 July 1973 is not included in the 1,480 acres red land (so it is not now registered).

Although the evidence of Mr Driffield and Mr Atkins may explain why Mr Browne-Wilkinson wished to question Mr Jones, it is not I think relevant to any issue I have to determine, and I have disregarded it when assessing Mr Jones' credibility. Quite apart from such evidence, from Mr Jones' attitude at the hearing, the arguments he then made, and his behaviour generally, I conclude that all his statements as to the said three Objections having been settled, satisfied or withdrawn (so far as such statements were intended by him to be statements of fact) are unreliable, except to the extent that they are supported by the evidence of some other person or by some document which was not written and could not have been induced by him.

As to Objections OB.275 and OB.700 (Mr Whitfield and Courage Ltd):- Counsel at the hearing on their behalf supported the Objections. Although it is possible that they might have been satisfied when they knew that the registration authority would at the request of Mr Jones certainly exclude from the Register the lands they own, there was, apart from Mr Jones' statement at the hearing, no evidence that either ever was so satisfied and no reason why either should not (as they both have) in the interest of all others interested in 1,480 acres red land prosecute or join with others in prosecuting their Objections to their full extent. I conclude that neither of these Objections has in fact ever been withdrawn.

As to Objection OB.681 (Mr Lawes):- No reasonable person in his position would withdraw his Objection unless he was at least satisfied that the land he owned would certainly be removed from the Register. At no time was Mr Jones without the consent of the registration authority in a position to compel its removal, and it has never in fact been removed. I do not accept anything which has been written by Mr Jones and which is contained in the above mentioned registration authority file dealing with this Objection, as showing that Mr Lawes withdrew his Objection, whether or not Mr Jones secured the removal of the land from the Register. Anything written by Mr Lawes to the contrary, was I think induced by Mr Jones. I conclude that this Objection too has in fact never been withdrawn.



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For the above reasons, all these references were properly made to me, and I have therefore under section 6 of the 1965 Act jurisdiction (which I would I think have if only one of the references was properly made) to confirm the registrations with or without modification or to refuse to confirm them.

I adhere to the decision which I made at the hearing not to exercise the power conferred on me by Regulation 13 of the 1971 Regulations to alter the arrangements. The ground put forward by Mr Jones on the second day, was that he had on that morning had a telephone conversation with the office of the Director of Public Prosecutions about this case.

The only evidence I have in favour of the registrations is the statutory declaration made on 4 December 1969 by Mr Jones in the form set out in the Appendix to the 1966 Regulations in which he said:- "I believe that I the applicant am entitled ... to apply for the registration ... of the right of common described ..." When I asked him whether he was willing to give evidence explaining this declaration, he said:- "I stand by the law, which has been upheld by the High Court of Justice (referring to the proceedings above mentioned)." Although he did not say so expressly, it was I think clear that he would not give evidence.

Mr Jones did not at the hearing give any indication of his reasons in 1969 for believing that he was entitled to the rights of common which he then caused to be registered, or that such rights now existed. He did however claim that as a result of the registrations he had somehow become entitled to the rights and that nobody could at the hearing properly seek to deprive him of them.

The County Council, the District Council and the two Parish Councils are each a "concerned authority" with sub-paragraph (b) of paragraph (1) of regulation 19 of the 1971 Regulations, and are therefore entitled to be heard on the Objections made by Mr Whitfield, Mr Lawes and Courage Ltd., and notwithstanding that none of them (the Councils) have made any objection under Section 5 of the 1965 Act. Although the primary purpose of the sub-paragraph may have been to entitle a concerned authority to support a registration which might by reason of some deficiency in the applicants' evidence be lost, a concerned authority may in my opinion under the sub-paragraph oppose a registration which they think should never have been made. Their right to do this is not affected by the circumstance that the Objector may (as Mr Lawes has) neglect or refuse at the hearing to support his Objection. This is not the first occasion on which a concerned authority has opposed a registration.

Even if I am mistaken in thinking that Mr Lawes has not now withdrawn his Objection, he did not I think withdraw it before 31 July 1973, after which day the registration authority became obliged to refer it to a Commons Commissioner. On a first reading sections 6 and 7 of the 1965 Act conflict, because under section 6 a Commons Commissioner may refuse to confirm a registration with the result it becomes void and under section 7 the withdrawal of the last or only objection to a registration (the section contains no time limit) results in the registration becoming final. The sections on this point must be reconciled somehow. In my opinion the proper reconciliation is to read section 7 as inapplicable to any withdrawal made after the end of the period prescribed for the purpose of sub-section (6) of section 5.



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There is no regulation making an objection dependent for its validity on the objector having an interest in the land comprised in the register unit. The circumstance that Mr Whitfield and Courage Limited in their Objections mentioned the land they owned, does not automatically limit their objections to that land. Paragraph 9 of the Notes which are with (but detachable from) every objection form and which are set out in the Schedule to the 1968 Regulations suggest words which would limit an objection to part of the land; these words were not adopted in any of the three objections now under consideration. All of them are in general terms and in my opinion they put in question the registration as regards the whole of the 1,480 acres red land now comprised in this Register Unit CL.330.

The evidence put in by Mr Browne-Wilkinson relating to the whole was therefore in my opinion properly put in. It was to the following effect:-

Mr C.A. Campbell who is the Principal Planning Officer of the East Hampshire District Council produced a plan he had prepared showing the present use of the 1,480 acres red land and its surroundings as follows:

| <u>LAND USE</u> | <u>AREA IN ACRES</u> | <u>AREA AS % OF 1,480 acres</u> |
|---|----------------------|-------------------------------------|
| Residential (inc. caravan sites, and sites under construction) | 394.8 | 26.68% |
| Shopping | 4.4 | 0.30% |
| Industrial | 19.5 | 1.32% |
| Civic and Cultural Uses (including Car Parks and Schools) | 34.4 | 2.32% |
| Surface mineral workings | 5.0 | 0.33% |
| Sewage Works | 3.1 | 0.21% |
| Gas Works | 0.3 | 0.02% |
| Public Open Spaces (incl. golf course allotments and playing fields) | 40.4 | 2.73% |
| Managed Woodland | 223.0 | 15.06% |
| Agriculture | 508.2 | 34.34% |
| Unused Land | 246.7 | 16.67% |

Oral evidence was also given by the following:- Mr R.J. Miller, Mr G.N. Prideaux, Mr J.J. Marsh, Mr F.H. Payne, Mr R.J. Cunningham, Mr G. Puttick, Mr H.D. Lindsley, Mr R.H.K. Gardner, Mr J.H. Ellis and Mr E. Giles. *Affidavits* (19 in all) by the following ^{were} read:- Mr G.W. Bone, Mr A.P. Connolly, Mrs D.C. Smith, Mrs V. Kemp



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Mr E.A. Irvine, Mr L.S.T. Mills, Mr W. Harris, Mrs D. Fullick, Mr M. Casey, Mrs N.G. Cannon, Mr E.W. Rooney, Mr W. Taylor, Mr G.W. Woods, Mr E.J. Holden, Mr A.C. Arnold, Miss N.R.K. Knox, Mr V.J. Knowles, Miss P.M. Lee and Mr R. Bone. Oral evidence (not put in by Mr Browne-Wilkinson) was also given by Mr A.D. Donger under regulation 23 (5) of the 1971 Regulations. All this oral and affidavit evidence was to the effect that the witness having some knowledge of some part of the 1,480 acres red land said that such part was not while he or she knew it the subject of any right or any claim to any right of common. Some of the witnesses described how Mr Jones' father, Mr H.H. Jones (he died on 13 September 1952) had for many years lived at Silver Birches, and had up to the 1939-45 war from a pony and cart sold fish around the district; they added that he had not exercised or claimed to exercise any right of common. The affidavits were generally to the same effect as the oral evidence although they related to other parts of the 1,480 acres red land and extended over different periods and added some details. Mr Jones was not present when they were read, and I record that if a formal order had been asked for under regulation 22 of the 1971 Regulations, I would have made it.

In my opinion all this evidence establishes that Mr Jones could not have ^{by prescription} acquired a title to the rights he registered by such rights having been taken and enjoyed either by himself or by either of his parents, or by anyone else.

Some of the evidence above referred to, was directed to showing that Mrs F.H. Jones (the widow of Mr H.H. Jones) was the owner of Silver Birches. The Rights Section of the Register is a register of, rights of common, not of the owner of rights of common. Accordingly I do not, even if Mr Jones was not, and his mother was, the owner of Silver Birches when he made the application, attach any significance to any mistake he may have made about this.

As to the possible existence of "historic" rights of common, Mr Browne-Wilkinson produced the Woolmer Forest Act 1855, 18 & 19 Vict. c. xlvi, and Mr D.F. Lamb who is the Archivist at the Hampshire Record Office in Winchester gave evidence. Mr Lamb produced the Woolmer Forest Award dated 7 June 1857 and the map dated 1856 therein referred to, the (second) Woolmer Forest Award dated 27 January 1866 with map undated (examined and approved 1864) therein referred to and the Headley Inclosure Award dated 23 February 1859 with the two maps (A and B) therein referred to. He also produced the following tithe rent charge apportionment awards (the County Record Office is also the Winchester Diocesan Record Office) with the maps therein referred to, the Selborne Parish Award dated 30 September 1843, the Kingsley Parish Award dated 30 September 1843, the Bramshott Parish Award dated 30 September 1846 and the Headley Parish Award dated 30 September 1847. Mr Lamb also produced a modern map which he had coloured to show how the awards treated the land comprised in this Register Unit (the 1,480 acres red land CL.330). The greater part (including Silver Birches and the land around it) was inclosed by one or other of the Woolmer Forest Awards and all rights of common then existing were extinguished. ^{Inclosure} The part which was shown in the Tithe Awards as non-tithable common land was inclosed by the Headley Award and the rights of common then existing were extinguished. The remaining part (apart from highways)



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was shown in the Tithe Awards as being occupied and tithable. Mr Lamb contended (rightly I think) that such parts would not then have been subject to rights of common.

On the evidence outlined above, I find that the rights of common registered by Mr Jones do not ^{exist} and never have existed at all. The registration of the 1,480 acres red land in the Land Section was made in consequence of the rights of common claimed by Mr Jones; no other person has registered or claimed rights of common over the land, and the evidence outlined above shows that for many years there have been none. I find therefore that the land is not now and was not at the date of registration common land.

For the above reasons, I refuse to confirm either Entry No. 1 in the Land Section or Entry No. 1 in the Rights Section of this Register Unit. And I shall order Mr Jones to pay to (1) Mr Whitfield (2) Courage Limited (3) Hampshire County Council (4) East Hampshire District Council (5) Whitehill Parish Council and (6) Headley Parish Council the costs incurred by them in respect of these proceedings and I shall direct that such costs be taxed according to Scale 4 prescribed by the County Court Rules 1936 as amended with the modification that the Registrar shall have a discretion as to all items which under the said Rules such discretion can be conferred on him by the Court and that he shall consider the proceedings fit for both leading and junior counsel.

In my opinion, the allegations made by Mr Jones at the hearing against the County Council as to the proceedings being a farce, as to the references being wilfully false and as to bias in dealing with his requests are without any foundation, and should never have been made. The registration made by Mr Jones is I think nonsense and it was in the public interest that the County Council, the District Council and any Parish Councils affected should co-operate (as they have done) in obtaining a decision under the 1965 Act which would avoid the registration as soon as possible.

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 9th day of August 1974

a. a. Baden Fuller

Commons Commissioner