



COMMONS REGISTRATION ACT 1965

Reference Nos. 214/D/43 to 52
(inclusive)

In the Matter of Griggs Green, Holm Hills,
Holly Hills, Bramshott and Trotton, East
Hants D and Chichester D

DECISION

These disputes relate to the Registrations at Entry No. 1 in the Land Section and Entry Nos. 2, 9, 10, 11, 12, 18 and 21 in the Rights Section of Register Unit No. CL.90 in the Register of Common Land maintained by the Hampshire County Council and are occasioned by Objection Nos. OB 287, OB 289, OB 290, OB 296, OB 297, OB 298 all made by Mr K W G Webb and Mr Alfred Laphorn Blake and all noted in the Register on 28 October 1970 and by Objection OB 485 made by Mr K M Wood noted in the Register on 27 January 1971.

I held a hearing for the purpose of inquiring into these disputes at Chichester on the 16 and 17 December 1975.

The hearing was attended by Mr Roddis, counsel instructed by Messrs T Eggar & Son on behalf of Mr Wood, Mr Barlow of Messrs Blake Laphorn Rea & Williams on behalf of Mr Webb and Mr Blake, Captain Kenneth Harkness on behalf of the Bramshott Parish Council, Mrs Collan on behalf of Millard Parish Council and Mrs Ralph, Mr Weeks on behalf of the Hampshire County Council and Squadron Leader Burke, Mr Moss in person and Mr Slocum on his own behalf and on behalf of Mrs Nepham, and Mr Jones in person.

At the commencement of the hearing Mr Jones submitted that I had no jurisdiction to hear the two references 214/D/45 and 51 occasioned by Objections OB 287 and OB 485 being respectively a deemed objection and an objection to his application for common rights at Entry No. 12 in the Rights Section of the Register.

The background to the above-mentioned disputes require to be stated. This Unit No. CL.90 is owned as to part by Messrs A L Blake and K W G Webb (hereinafter referred to as the Trustees) who made objection OB 287; as to part by Mr K M Wood who made objection OB 487 and as to the remaining part by Mrs S H Davies. The land owned by Mrs Davies is the extreme northern part of CL.90 north of the road running east and west through Griggs Green and south of Griggs Green Farm. Mr Jones by his said Entry No. 12 only claimed rights over Mrs Davies's land and not over any land owned by the Trustees or Mr Wood.

Mr Jones by an application dated 5 December 1969 applied for rights of common over an area of approximately 5000 acres. Parts of this large area were comprised in existing Register Units and the course taken by the Registration Authority was to register Mr Jones's application in the Rights Sections of these Units. In the instant case the said Entry No. 12, and the remainder of the said 5000^{acres} was registered as Unit No. CL.330. The disputes occasioned by objections to Mr Jones's claim to rights over Unit No. CL.330 were heard by Mr Commissioner Baden Fuller on 23 and 24 July 1974 and his decision whereby he refused to confirm Mr Jones's Entry in the Rights Section of that Register is dated 9 August 1974. An appeal from that decision was heard by Megarry J whose judgment dismissing that appeal was given on 13 March 1975. In these circumstances Mr Jones's Entry in the Rights Section of Unit No. CL.330 has become void.



At the commencement of the hearing it was within my knowledge that Mr Jones had been concerned in the hearing before Mr Baden Fuller but I had not read the decision in that case or the judgment of Megarry J because for all I knew the facts of the case with which I had to deal might have been wholly different and I was concerned to confine the hearing before me to matters relevant to that hearing. It was only after Mr Jones had left the hearing that Mr Weeks explained to me the circumstances in which Mr Jones's Entry No. 12 came to be made, and that it was made as the result of the same application as that which has been disposed of insofar as it affected Unit No. CL.330.

When Mr Jones made his submission that I had no jurisdiction, as a result of an enquiry by me I ascertained from Mr Roddis and Mr Barlow that Mr Jones's rights application did not affect the lands owned by their respective clients but Mr Barlow informed me that it affected the land owned by Mrs Davies who was present at the hearing. At my request Mrs Davies explained to me that she had purchased her premises known as Frimstone ten years ago, that her solicitors did not register an objection because the legal executive concerned was taken ill and time ran out. Her solicitors in an endeavour to put the matter right wrote to Mr Jones and others who had claimed rights over her land who all withdrew their claims except Squadron Leader Burke and Mr Jones. Mr Jones demanded £300 to be paid within a few days.

Mr Jones objected to my hearing Mrs Davies on the ground that she was not an objector and was not entitled to be heard. While accepting that Mrs Davies was not entitled to be heard, I overruled Mr Jones's objection on the ground that I was entitled to hear any available evidence which would assist me to arrive at a correct decision.

Mr Jones thereupon asked that Mrs Davies give her evidence on oath and prove the correspondence to which she had referred and that he be given the opportunity to cross-examine her. At this stage Mr Weeks produced a copy of an affidavit sworn by Mr A Hobson on 17 September 1974 in an action in the Queen's Bench Division Jones v the Hampshire County Council, Order No. 74 J 5867 and the exhibit thereto ACH1 which was a bundle of the correspondence referred to by Mrs Davies.

Mrs Davies was duly sworn, repeated her evidence as set out above and identified the said correspondence. Mr Jones' cross-examination was not relevant to any issue which it falls to me to decide.

It is against this background that Mr Jones's submissions and his Entry No. 12 fall to be considered.

Mr Jones' submissions if I correctly understood them, were as follows:

- (1) That I had no jurisdiction by reason of the failure on the part of the Registration Authority to give him notices of the Objections OB 287 and OB 485 as required by section 5(4) of the Act of 1965 and Regulation 7 of the Commons Registration (Objections and Maps) Regulations 1968

and further and in the alternative

- (2) That since Mrs Davies had not registered an objection his claim to rights over her land was final and not provisional and that therefore the Registration Authority had no power to make and I had no jurisdiction to hear the References 214/D/45 and 51.



As to the first of these submissions I assume that, since Mr Weeks was present and did not dispute Mr Jones's allegation that no notices were given to him, that there was a procedural defect. In my view a procedural defect cannot deprive a commissioner of jurisdiction; if that were so an objector could be deprived of his statutory rights as the result of an oversight on the part of the Registration Authority. An applicant for rights is of course as much entitled to the benefit of the Statute as an objector and in my opinion the duty of a commissioner when faced with a procedural defect is to ensure that no person is prejudiced by that defect and if necessary to grant an adjournment for that purpose.

Mr Jones did not at the hearing apply for an adjournment though in correspondence with the office of the Commons Commissioners he had made two applications for an adjournment. In between these two applications I had at the request of Mr Jones issued summonses for the attendance at the hearing of witnesses required by him.

I reject Mr Jones's submission that failure to give notice to him of the objections deprived me of jurisdiction. I would if I had been asked so to do have considered an application made at the hearing for an adjournment on its merits.

As to the second of Mr Jones's submissions if I understood it correctly it is based on the assumption that only the owner of land can object to claims that it is common land and claims to rights over the land. No foundation for any such assumption is to be found in the Act of 1965 or any of the Regulations made thereunder.

Objection OB 287 is a deemed objection to Entry No. 12 and Objection OB 485 is an objection to the Entry in the Land Section and to specific Entries in the Rights Section including Entry No. 12. These objections have not been withdrawn and I am at a loss to understand how the Registration Authority could do otherwise than refer the disputes I am considering. It follows that if the disputes were validly referred, I must have jurisdiction to inquire into them. I accordingly reject Mr Jones's second submission and in doing so I rely upon the above-mentioned decision of Mr Baden Fuller and the judgment of Megarry J and I take the view that the judgment of Megarry J is binding on me and is clear authority when read together with Mr Baden Fuller's decision compelling me to reject Mr Jones' second submission.

When Mr Jones had concluded his submissions, I invited him to indicate to me, without prejudice to his pleas to the jurisdiction, the basis of his claims to rights under Entry No. 12 and warned him that if I were to come to the conclusion that I had jurisdiction I would in the absence of any indication that there was a prima facie case for the confirmation of his Entry No. 12 be bound to refuse to confirm that Entry. I asked Mr Jones if his claim to rights was founded on a paper title or prescription. Notwithstanding my inquiries and my warning Mr Jones did not see fit to inform me of the basis of his claim and left the hearing.

At this stage I knew nothing of the proceedings relating to Unit No. 330 and I did not appreciate that Entry No. 12 had been made in consequence of Mr Jones's "global" application which had been found to be misconceived by Mr Baden Fuller and Megarry J. It appears from Mr Hobson's affidavit referred to above that part of Mrs Davies's land lay within Unit CL.330 and part within Unit CL.90. Mr Jones's claim to rights over that part of Mrs Davies's land which was comprised in Unit No. CL.330 having become void I have no alternative but to refuse to confirm Mr Jones's Entry No. 12 which was made in consequence of the same application which gave rise to the Entry in the Register of CL.330 which is now void. I therefore refuse to confirm Entry No. 12.



For the sake of completeness I should mention that at one stage Mr Jones commenced to argue that Entry No. 12 was void on the ground that it was made fraudulantly by the Registration Authority. When I pointed out to Mr Jones that he could not invite me to confirm an Entry which he alleged was void he did not pursue the argument.

I turn now to the remaining disputes. Captain Kenneth Harkness who appeared on behalf of the Bramshott Parish Council produced an indenture dated 21 May 1870 whereby the Rev H S. Hawkins as consideration for the right to inclose a parcel of land over which there were rights of common including common of pasture granted the commoners entitled to such rights the same rights over another parcel of land now comprised in CL.90 and he also produced the sale particulars for the sale by the personal representative of the late Lord Justice Cotton on 10 July 1894 of the Forest Mere Estate. The said sale included 443 acres of freehold forest lands and water coloured green on the said plan which were stated to be subject to rights of common. A copy of the said plan is annexed to this decision. In the light of this evidence it was accepted by Mr Barlow and Mr Roddis that the land in question was common land and subject to rights of common in 1870. Mr Barlow on behalf of the Trustees did not press their objections indicating that they were concerned to fulfil their fiduciary duties and were content that I should confirm any entries which might be justified by the evidence. It therefore fell to Mr Roddis to contest the claims for rights.

The claimants for grazing rights (other than Mr Jones) were Mr Moss (Entry No. 2) Mr Nepham (Entry No. 3), Mr Slocum (Entry No. 7); Mrs Ralph (Entry No. 9) and Squadron Leader Burke (Entry No. 18).

Squadron Leader Burke in evidence stated that if there were any subsisting grazing rights appurtenant to his property, The Forge, he would wish to exercise these rights. He came to The Forge in 1961 and had never exercised any grazing rights. In cross-examination he said it was his belief that cattle had been housed in buildings on his land but that these buildings were no longer suitable for cattle and that one such building is now a house. He did not know during what periods cattle had been grazed or where they had been grazed.

Squadron Leader Burke produced documentary evidence consistent with the Indenture of 1870 and the sale particulars referred to above which established that the land in question was, and as will appear later in this decision in my view still is, common land. In these circumstances what I have to decide is whether any right of grazing which may at one time have been appurtenant to The Forge is still subsisting.

Mrs Mellish gave evidence on behalf of Squadron Leader Burke. She was born in 1902 and lived at Forge Cottage, now the Old Forge, with her parents, Mr and Mrs Well. She gave evidence of her parents having exercised rights of estovers and turbary and of others including Mrs Ralph having exercised rights of pasture. In cross-examination she stated that her father was a blacksmith, that he never put any cows on the common and that insofar as he grazed any animals he had a field at the back of the house which he used for that purpose.

Mr Orwen the tenant of the Deers Hut public house also gave evidence; he confirmed the status of the land as common land but gave no evidence as to the exercise of any grazing rights appurtenant to The Forge.



In the absence of any evidence of the exercise of grazing rights appurtenant to The Forge and the evidence of Mrs Mellish that no such rights were exercised in the early part of this century, coupled with Squadron Leader Burke's evidence as to the change in the character of his premises, I am forced to the conclusion that any such rights which may at one time have existed have been abandoned. Squadron Leader Burke gave evidence that he has and still does exercise his right of estovers and Mrs Davies has not contested this right.

In my view Unit No. CL.90 is all part of one common and the exercise of a right of common over any part of that common has the effect of preserving the right over the whole common. I mention this because evidence was given of a fire on part of the common owned by Mr Wood and Mr Roddis sought to establish that the right of estovers was lost as regards the land on which the fire took place. No evidence was given of any recent exercise of a right of turbary appurtenant to The Forge and Squadron Leader Burke did not press his claim.

For the reasons given above I confirm Squadron Leader Burke's Entry at No. 10 modified so as to be limited to a right of estovers.

Mr Slocum gave evidence that he had collected fallen timber for firewood and had cut standing timber for fencing; he gave no evidence that he had exercised any rights of pasture or turbary or pannage. He also represented Mrs Mepham and stated that her situation was in all respects similar to his own.

In these circumstances I confirm Mr Slocum's Entry No. 7 and Mrs Mepham's Entry No. 3 modified in each case so as to be limited to a right of estovers.

Mr Phillips did not appear to support his claim to rights at Entry No. 11 and I refuse to confirm that Entry.

Mrs Lucy Ralph now aged 95 was represented by Mrs Gollan who produced a statutory declaration made by Mrs Ralph. Her statement is to the effect that she and her late husband who died in 1962 exercised rights of pasture and estovers and I was told that it was when she was about 86 years of age that she ceased to keep any animals because at that advanced age she could no longer care for them. Mrs Mellish in her evidence and Mr Jackson in his evidence confirmed that Mrs Ralph grazed animals on the common. Mrs Ralph has no intention of abandoning her rights and I was told by Mrs Gollan that she hopes that her nephew a Mr Gilliard, to whom she has devised her property by her will, will go into possession and exercise these rights.

Mrs Ralph's statutory declaration is consistent with her Entry at No. 9 and I confirm that Entry.

In confirming Mrs Ralph's Entry I have not overlooked Mr Wood's evidence that he has not seen any animals being grazed over his land from 1960 when he acquired Old Thorns Farm. The common comprises some 443 acres. Mrs Ralph's two cows may well have been overlooked by him, or may have been on the Trustees' land, or he may have forgotten them since Mrs Ralph has not kept any animals for about the last nine years. The evidence of Mr Wood and Mr A A Gauntlett and Marjorie Helene Eum all by statutory declarations does not in my view of necessity conflict with that of Mrs Ralph and in accepting the evidence of Mrs Ralph I do not intend to cast any reflection on the integrity of Mr Wood and his two said witnesses.



Mr Moss of Holme Hills Farm gave evidence that he had lived there since he was born in 1929 and that his family had lived there since 1890; his claim to graze as regards quantification was, he said, based on figures passed down in the family since 1890. He said his father had 18 beasts in 1944/45 and he produced sale particulars which confirmed this evidence. In 1951 his father operated a milk round but the Ministry then imposed a regulation which involved the installation of cooling equipment. The milk round did not justify this expense and Mr Moss's father retained only 4 cattle and reared and sold calves. Since 1971 Mr Moss's father has had one cow and one steer.

Mr Moss stated in cross-examination that no pigs had been grazed south of the road and he did not in fact give any evidence of pigs having been kept at Holme Hills Farm. Mr Oram in his evidence did recollect "father Moss" having cut bracken and turf. The conclusion which I have reached on the evidence as to Holme Hills Farm is that I should confirm the Entry at No. 2 modified so as to be limited to (1) A right to graze 6 cattle, (2) A right of estovers and (3) A right to cut and take bracken after the 1st September in each year.

To sum up.

I confirm the Entry at No. 1 in the Land Section of the Register if and so far as may be necessary modified so as to be limited to the land identified as being confirmed in Unit CL.90 on the plan annexed to this decision.
I confirm the Entry at No. 2 in the Rights Section modified so as to be limited to (1) A right to graze 6 cattle (2) A right of estovers and (3) A right to cut and take bracken after the 1st September in each year.
I confirm the Entry at No. 9 in the Rights Section of the Register.
I confirm the Entry at No. 10 in the Rights Section of the Register modified so as to be limited to a right of estovers.
I confirm the Entry at No. 13 in the Rights Section modified so as to be limited to a right of estovers.
I confirm the Entry at No. 21 in the Rights Section modified so as to be limited to a right of estovers.
I refuse to confirm the Entry at No. 11 in the Rights 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 28th day of January 1976

C. A. F. H.

Commons Commissioner