



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/147 to 154

In the Matter of (1) Little Tenement,  
Big Tenement and Barn Meadow and (2)  
Bury Grounds, Richards Castle,  
Leominster District, Hereford and  
Worcester

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### DECISION

These disputes relate to the registrations specified in the First Schedule hereto in the Land and Rights Sections of Register Unit Nos CL. 119 and CL. 120 in the Register of Common Land maintained by Hereford and Worcester County Council, and are occasioned by the Objections made by Mrs E M Turner and Mr A G Frogatt as set out in such Schedule.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 28 and 29 January 1976. At the hearing (1) Bilbury Farm Limited as owners (in succession to Mrs Turner) of Bury Farm, which includes all the CL. 119 land and all except OS No 494 (the north part) of the CL. 120 land, and (2) Mr Albert George Frogatt and Mrs Harriet Frogatt as owners (in succession to Mr A G Frogatt) of Featherknowle Farm which includes the said OS No 494 were represented by Mr G Ryan of counsel instructed by Phillips & Co Solicitors of Ludlow, and (3) the following persons on whose applications Entries in the Rights Sections were made as summarised in the Second Schedule hereto, attended in person (in some cases for only part of the hearing): Mr A M Sparey, Mrs G M Price, Mr J Bradley, Mr L G Bayliss, Mr F Bradley, Mr T E Evans and Mr D A Bayliss. Mr Ryan handed me letters as specified in column 4 of the Second Schedule hereto which were written to his clients by or on behalf of the persons on whose application Entries in the Rights Section were made and which indicated that these persons did not now wish to support the registrations.

The land ("the CL. 119 Land") comprised in Register Unit No CL. 119 contains (according to the Register) 41.373 acres, and comprises three pieces: Little Tenement, (OS No 320 containing 6.540 acres), Big Tenement (OS No 378 containing 13.729 acres) and Barn Meadow (OS No 381 containing 21.104 acres). The land ("the CL. 120 Land") comprised in Register Unit No CL. 120, all called Bury Grounds contains (according to the Register) 81.75 acres, and was at the hearing treated as divided in two parts; the north part ("the Featherknowle Part") being the said OS No 494 (containing 27.014 acres, 26.439 acres) and the south part ("the Bury Grounds, Bury Farm part") being OS Nos 303, 312 and 314 together containing 54.736 acres.

All those concerned with the questions at issue at the 1976 hearing knew that on 12 December 1973 I had held a hearing at Hereford for the purpose of inquiring into a dispute relating to some land also part of Bury Farm a short distance south of the CL. 119 land, known as Shiel Meadow (CL. 121). In the course of that hearing evidence was given by Mr L G Bayliss about a meeting in May 1956 at which (so he then told me) a gentleman's agreement ("the 1956 Agreement")



was made between the two Mr Whittall's (representing Mrs Turner) the then owner of Bury Farm and a number of persons claiming rights of common over (1) Shiel Meadow (2) the CL. 119 land and (3) the CL. 120 Bury Farm Part). After that hearing I inspected all the land which was the subject of the 1956 Agreement, as set out in the decision dated 14 March 1974 which I gave about the dispute then under consideration. The evidence of the 1976 hearing was accordingly given on the basis that I was generally familiar with the lands I had inspected in 1973 and with what Mr Bayliss had then said (as recorded in my said decision) at the 1973 hearing.

The course of the 1976 proceedings was as follows:- In support of the Objections oral evidence was given (1) by Mrs Turner (her father Mr T Turner was the owner of Bury Farm: her husband took over the farming of it until his death in 1956 and after that it was run on her behalf by her brother or ?brothers, and (2) by Mr F B Whittall (brother of Mrs Turner). (A) Mr M A Sparey and (B) Mr D A Bayliss, because they could not attend after the first day of the hearing gave evidence next against the Objections. On the following day in support of the Objections oral evidence was given (3) by Mr V E Tudge (Bilbury Farm Limited is "his company" formed for the purpose of farming Bilbury Farm and Bury Farm), (4) by Mr G H Ricards consultant to Phillips & Co who produced the 1951 Sale Particulars of the Moor Park Estate, (5) by Mr H G Frogatt (he and his wife bought Featherknowle Farm in 1972 from his uncle Mr A G Frogatt and (6) by Mr T C Frogatt who was born in 1900, is the father of the previous witness and had known Featherknowle Farm since 1905. Finally oral evidence against the Objections was given (C) by Mr F Bradley and (D) by Mr L G Bayliss.

As to the Featherknowle Part:-

The grounds stated in Objection No 240 are:- "The land hatched black does belong to me. It is not common land and no one has claimed or exercised common rights over it..." The land so hatched is the Featherknowle Part.

Mr H G Frogatt who was born in 1932 said (in effect):- Featherknowle Farm before 1951 was part of the Moor Park Estate. The Farm had been farmed by the Frogatt family for many generations. He worked there until 1952 and again when he and his wife bought in 1972, but while he was away made periodic visits to his uncle's farm. The Featherknowle Part was always fallow as far as he could remember; he could not recall any animals ever having been in the field.

Mr T C Frogatt said (in effect):- As he first remembers (about 1909) he, his parents and his brother all lived at Featherknowle Farm, his father farming it. Before the 1914-18 war on the Featherknowle Part the Commoners had rights every third summer; but they went off when the corn was planted and stayed off until the corn was harvested. A small piece (about 1 acre in the far corner at the bottom) was fenced and ploughed up; the rest was good sward; the small piece was always planted with corn so that the Commoners always had to go (not only from the small piece but from the rest too). When the 1914-18 war broke out, the whole of the Featherknowle Part was ploughed up and the Estate made arrangements for the Commoners to use part of Burnt House Land (further down Park Lane). The Featherknowle Part has been more or less under plough ever



since (left fallow every third year); it has never gone back to a permanent sward. Mr Bayliss suggested to Mr T C Frogatt that after the 1914-18 war there was some grass on the Featherknowle Part because he played football as a boy and he remembered a patch of grass in one corner in the 1930's. But Mr Frogatt insisted that after the 1914-18 war the parts with grass were temporary lays and as a general thing it was all for growing corn.

I accept the evidence of Mr G C Frogatt. I suppose the common rights as recognised in 1909 over the Featherknowle Part must have been based on some custom for the Commoners to graze the land after the corn was harvested. The ploughing up of a part was a device tolerated I think only because the rights were in 1909 in process of being forgotten by all concerned. The arrangements effected by the needs of the 1914-18 war were enough to complete the process, and I conclude therefore that then or soon after, certainly long before the 1965 Act came into operation all these rights had been abandoned, at least as regards the Featherknowle Part. Accordingly in my opinion this Part should never have been registered under the Act.

As to the CL. 119 Land (Little Tenement, Big Tenement and Barn Meadow) and as to the remainder of the CL. 120 Land (Bury Grounds, Bury Farm part):-

Much of the hearing was taken up with considering what happened at the May 1956 meeting and whether the 1956 Agreement then made had any and if so what effect.

At the 1973 hearing, Mr L G Bayliss was the only witness who had been present at the May 1956 meeting, and he (as recorded in my decision dated 14 March 1974) told me what happened. At the 1976 hearing Mr Whittall who also had been present, described what happened: when the time came for cross examining him, Mr F Bradley (he also had been present) and Mr L G Bayliss instead of questioning Mr Whittall stated how their recollection of the meeting differed from what he had said. When Mr Bayliss and Mr Bradley in their turn were sworn to give evidence, they did not repeat what they had already said. So much of the 1976 hearing was informal, that I shall treat everything said by Mr Bayliss at both hearings and everything said by Mr F Bradley at the 1976 hearing as evidence which I can properly consider in reaching my decision.

Mr Whittall said (in effect):- He called the Commoners together for the May 1956 meeting. About a dozen came; there was a discussion. They (the Commoners) agreed to take Shiel Meadow all the year round and to take Little Tenement after lambing to the following Autumn. Although Mr Whittall did not say this, in the context in which he gave his evidence, I understood him to mean that the Commoners agreed in return that they would not graze Big Tenement, Barn Meadow or Bury Grounds, Bury Farm part, at all, and would not graze Little Tenement from the Autumn until after lambing.

Clearly the 1956 Agreement had some effect, because ever since, Big Tenement, Barn Meadow and Bury Grounds, Bury Farm part have been cultivated with the result that the productivity of the lands (for the benefit of Mr Tudge) has improved enormously; any such cultivation would have been impossible if any Commoner had grazed over these lands.



In my view those who attended the 1956 meeting would have had some difficulty in explaining with the precision a lawyer could reasonably expect who were entitled to the rights with which they were dealing and how and under what conditions such rights could be exercised. To her objections Mrs Turner annexed a statement which superficially bears some resemblance to an old document such as is often preserved among manorial records for the purpose of providing a permanent statement of the rights of the commoners. Mrs Turner explained that her statement was prepared by her solicitors, from what her husband had told her about the rights of the Commoners. I had no evidence as to where he got his information, and no evidence that anyone who had attended the 1956 meeting knew of any rules or regulations such as appear to have been summarised in her statements. In these circumstances in considering what happened at the meeting, I disregard Mrs Turner's statements, and approach the evidence about it on the basis that those who attended the meeting assumed that certain ancient grazing rights belonged to all the farm lands in the Parish, that the rights were exercisable in accordance with ancient custom (more or less known to those present) and that whatever might be the customs as regards the other lands, the grazing on Shiel Meadow was only from after 24 June until 2 February.

By deciding so to disregard Mrs Turner's statements, I must not be understood as criticising her or her solicitors. When they were prepared, she could properly be advised that she ought to set out the rights of the Commoners as she would at any hearing before a Commons Commissioner contend they were; and I feel little doubt that by doing this the length and therefore the cost of the proceedings before me have for the benefit of all concerned been much reduced.

Mr F Bradley contended (in effect) that the 1956 Agreement could not have any legal effect, because it was manifestly unfair to Commoners; how could the Commoners legally bind themselves not to graze at all such large pieces of land such as Big Tenement, Barn Meadow and Bury Grounds, Bury Farm part, (then of much value for grazing) in return for being allowed to do no more than graze for all the year (instead of for part of the year) the comparatively small and much less valuable Shiel Meadow.

I had very little evidence as to the extent of the actual exercise of the rights before 1956. The grazing described by Mr Sparey, Mr D A Bayliss and Mr F Bradley was I think little if anything much more than nominal; however I infer from what Mr L G Bayliss said that the grazing of these lands from Mapp's Place, which being a smallholding, never amounted to very much, was to the occupiers always important; from what I saw on my inspection, it was obvious that the rights were likely to be of much greater advantage to the occupiers of Mapp's Place than to any other person who had or might have rights. Those at the 1956 meeting may well have thought that the grazing rights with which they were dealing had become excessive, and were having regard to modern agricultural methods an unreasonable hindrance to the proper use of a large area of land for productive purposes. It is no advantage to any community if a large area of land capable of productive cultivation is left waste for grazing for the benefit of numerous persons who either do not want to or could not conveniently graze it.

I do not know what those present at the 1956 meeting thought, but I infer that among them were many who were well acquainted with the locality and understood what they were doing; there was no reason why they should not if they pleased take a broad view, and I am not persuaded that their actions were unreasonable to any extent which would justify me disregarding the 1956 Agreement on that ground.



The description given to me by Mr L G Bayliss as to what happened at the 1956 meeting was I think to the best of his recollection. But he did not contend for any conclusion on any particular aspect of these proceedings and was unwilling to make any concession, being content as I understood him to leave it to me to do for him the best I could. His attitude is I think understandable, for his position so it seems to me would puzzle many experienced lawyers. As I see it, it is, through no fault of his very difficult, in that these ancient rights are of more importance to him than to anyone else, and that the value of the rights to him is largely dependent on whether others who have a similar right ever exercise them (apparently they do not now do so very much if at all) in competition with him. These considerations are I think irrelevant when I have to consider whether the 1956 Agreement was legally binding; his difficult position existed before, and was not by it made worse.

Mr L G Bayliss insisted that he had observed the 1956 Agreement. He had at the meeting, so he said, suggested that it should be put in legal form, and was overruled by the majority. I think it likely that he had little choice but to accept the views of the majority, for a person who wished to exercise ancient rights belonging to a large number of persons will almost certainly be in practical difficulties if he does not go along with the others. I feel no doubt he agreed, and I think he was wise to do so. In my opinion there is no reason why such an Agreement which undoubtedly had much practical effect should not also have legal effect, and I so decide.

Mr Bradley said that at the 1956 meeting it was agreed that OS No 303 (about 12 acres being the eastern part of Bury Grounds, Bury Farm part) should be reseeded for the Commoners to graze; Mr Bayliss said that something was said at the 1956 meeting about reseeded. Mr Whittall said that something was said about reseeded Little Tenement (it was reseeded) but nothing about OS No 303. On this point, my conclusion is that whether or not in the course of the discussion something was said about OS No 303, the 1956 Agreement made no provision for it being different from the rest of Bury Grounds.

Mr L G Bayliss said of the 1956 Agreement: "Either party could let us go back to the old arrangements" (ie that the agreement was revocable). Mr Whittall when asked whether it was "a temporary agreement which could be terminated at any time by Mrs Turner or the Commoners", said in effect that nothing so precise had been agreed. Mrs Turner when asked a similar question by Mr Bayliss, said "That is quite right - yes I think it is".

Mrs Turner was not present at the 1956 meeting, but I have no difficulty in inferring that those present thought that a similar meeting could vary the Agreement then made. Mr Ryan at the conclusion of the hearing formally on behalf of Bilbury Farm Limited and of Mr and Mrs Frogatt and their successors as owners of Bury Farm and Featherknowle Farm declared that provided that there was no appeal from my decision they would not seek to exercise any power they might have under the 1956 Agreement to terminate it by notice and that they agreed that under the 1956 Agreement the rights registered against Shiel Meadow may be exercised at all times of the year. So I am left to consider whether the 1956 Agreement could be revoked unilaterally by the Commoners. Whether or not it could ever have been revoked by all the Commoners, I am not persuaded that any one of them without the concurrence of the others could do so; any such revocation by one would I think have been quite outside what anybody present at the 1956 meeting could have contemplated. Having regard to what has since 1956 been done on the lands with which the 1956 Agreement was concerned, to the registrations made under the 1965 Act in relation to Shiel Meadow, to the documents signed by the Commoners and produced to me at the hearing, it is I



think unrealistic to suppose that there could ever now be a meeting of the Commoners such as was held in May 1956 at which they would purport to revoke the 1956 Agreement. Notwithstanding Mrs Turner's evidence, I am not persuaded by anything said by Mr Bayliss that the 1956 Agreement was unilaterally revocable by the Commoners; but even assuming that it was, I conclude that any such right of revocation there may have been, has now been abandoned.

As to grazing Little Tenement after lambing, at the conclusion of the hearing there was some discussion in the course of which Mr Ryan suggested that this grazing could be exercised from 1 May until 28 February and conceded on behalf of Bilbury Farm Limited that the right as registered at Entry 14 would not be exercised. This suggestion and concession being generally favourable to the Commoners, I need not I think consider any conflict there may be between the witnesses as to what was said at the 1956 meeting about the lambing period.

Having concluded that the 1956 Agreement <sup>had</sup> legal effect as set out above, I need not consider the evidence which was directed to showing that if the Agreement had no legal effect, the rights of common as so registered ~~had~~ never existed or could not now exist.

There was some discussion as to how the Rights Section of the Register should stand as regards Little Tenement, having regard to the fact that some but not all of those who had made applications for Entry were agreeable to their registrations being cancelled. Mr Ryan said that those he represented, would not object (if I considered that the 1956 Agreement is binding) to my confirming the registrations in the CL. 119 Land Section with the modification that all except Little Tenement be removed and confirming all the Entries (except No 14) in the CL. 119 Rights Section with the modification that grazing be from 1 May to 28 February, and to my refusing to confirm any of the CL. 120 Entries. Mr L G Bayliss although not agreeing, did not suggest that I should do otherwise. If I do this, the numbers of animals mentioned in the CL. 119 Rights Section will be unrealistic; nevertheless it not having been suggested that I should for this reason alter these numbers, and it being obviously undesirable that I should prolong the hearing unless it was absolutely necessary, I consider that I should deal with the CL. 119 Rights Section in the way which appeared to be unobjectionable. However in case those concerned on reflection consider that the number of animals specified in such registrations may give rise to difficulties, which could be avoided by some of the applicants withdrawing their registration or by some agreement, I give liberty to apply as hereinafter mentioned. Any such application should in the first instance be made in writing to the Clerk of the Commons Commissioners.

For the reasons set out above, I refuse to confirm the registration at Entry No 1 in the Land Section and Entries Nos 1 and 2 and 4 to 25 inclusive in the Rights Section of Register Unit No CL. 120, I confirm the registration at Entry No 1 in the Land Section of Register Unit No CL. 119 with the modification that there be removed from the Register all the land therein described except the land known as Little Tenement and being OS No 320, I refuse to confirm Entry No 14 in the Rights Section of the said Register Unit and I confirm Entry Nos 1, 2, 3, 5 to 13 inclusive and 15 to 28 inclusive in the Rights Section of the said Register Unit with the modification that after the words "to graze" in column 4 of each of such Entries the following words be inserted; "from 1 May in any year until 28 February in the following year"; and I give any person who attended the hearing and any person who was entitled to be heard at the hearing liberty to apply as regards the Entries in the CL. 119 Rights Section within 6 weeks from the date on which notice of this decision is sent to him.



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.

FIRST SCHEDULE

<u>File</u>	<u>Entry in dispute</u>	<u>Occasioned by</u>
215/D/147	No 1 in the Land Section of CL. 119	Objection No 384 by Mrs Turner noted in the Register on 1 December 1971
215/D/148	Nos 1 to 3 & 5 to 28 in the Rights Section of CL. 119	Ditto
215/D/149	Nos 1, 2 and 3 in the Rights Section of CL. 119	Objection No 387 by Mrs Turner and noted in the Register on 28 January 1971
215/D/150	No 1 in the Land Section of CL. 120	Objection No 240 by Mr Frogatt noted in the Register on 18 November 1970
215/D/151	No 1 in the Land Section of CL. 120	Objection No 385 by Mrs Turner noted in the Register on 19 November 1970
215/D/152	Entry Nos 1 & 2, 4 to 25 inclusive in the Rights Section of CL. 120	The said Objection No 240
215/D/153	Ditto	The said Objection No 385
215/D/154	Entry Nos 1, 2 and 4 in the Rights Section of CL. 120	Objection No 386 by Mrs Turner and noted in the Register on 1 February 1971

SECOND SCHEDULE

(Entries in the Rights Section)

Note: CL. 119 = Little Tenement, Big Tenement and Barn Meadow; CL. 120 = Bury Grounds. The registration in both Land Sections were made on the application of Richards Castle Parish Council.

<u>Applicant</u>	<u>CL. 119</u> <u>Entry No</u>	<u>CL. 120</u> <u>Entry No</u>	<u>Remarks</u>
Mr Alfred Morris Sparey	1	1	Attended in person
Mrs Cecilia Mary Price	2	2	Attended in person
Mr Glyn Barrymore - Goodwin (with Mr Keith Goodwin)	3	5	Letter dated 7 January 1976 from Glyn B Goodwin for himself and D K Goodwin; they wish to withdraw



Mr John Bradley	5	4	Attended in person
Mr Sidney James - Randle and Mr - William George Randle	6	11	
Mr Leslie Gordon Bayliss	7	-	Attended in person
Mr Francis Bradley	8 & 9	22	Attended in person
Mr John Henry Mantle and Mr Harry Mantle	10	15 ) ) )	Letter dated 19 December 1975 from H Mantle; disposed of farm in 1971
Mr John Henry Mantle	11	16 )	
Mrs Evelyn Sarah Tedstone	12	8	Letter dated 8 January 1976 from Mr W S Cadwallader; land registered in name of Mrs E S Tedstone
Mary Dorothea Wait	13	10	Letter dated 15 January 1976: wish to disclaim letter dated 14 January 1976 to G H Marker & Sons Solicitors of London, Mrs M D Wait does not wish to pursue her claim
Bilbury Farm Limited	14	13	Represented by Mr Gerald Ryan of counsel instructed by Phillips & Co, Solicitors of Ludlow
Mr William Rowland Cadwallader	15	7	Letter dated 8 January 1976 from Mr W S Cadwallader: no longer any interest in land registered in name of W R Cadwallader
Mr Cecil Edward Good and Mrs Mary Harriet Good	16	6	
Mr Robert William B	17	18	
Mr Spencer James Davies	18	19	Letter dated 14 January 1976 for G H Morgan & Sons, Solicitors of Ludlow. Mr S J Davies does not intend to pursue his claim
Mr Geoffrey Thomas	19	9	Letter dated 7 January 1976: do not wish to pursue claim
Mrs Mary Winifred Uttley	20	20	Letter dated 13 January (?1976) ? have no interest
Mr Thomas Edward Evans	21	24	Attended in person
Mr David Alan Bayliss	22	17	Attended in person





Mr John Graham Harris	23	14	
Mrs Doris Ivy Fuller	24	-	
Mr James Thomas George	25	12	
Mr David Edward James	26	25	Letter dated 26 January 1976 from his solicitors G H Morgan & Son of Ludlow: does not wish to pursue his claim; also personal letter dated 22 January 1976
Mr William Horace James	27	-	
Mr Norman Llewellyn Evans	28	-	
Mr John Hayward Cook and Mrs Marian Arlotta Cook	-	21	

Dated this 2nd day of

July—

1976

*a. a. Baden Fuller*

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Commons Commissioner