



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/297
215/D/298

In the Matter of Big and Little Million,
Hampton Bishop, South Herefordshire
District, Hereford and Worcester

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 2, 3, 4, 5, 6, 8, 9 and 10 in the Rights Section of Register Unit No. CL100 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No. 306 made by Mr Leonard John Jones and noted in the Register on 28 November 1970.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 10, 11 and 12 February 1981. At the hearing (1) Mr L J Jones was represented by Mr D M Halpern, solicitor of Lambe Corner & Co, Solicitors of Hereford, (2) Hampton Bishop Commoners on whose application the Land Section registration was made, were represented by Mr S L Beaumont solicitor of Beaumont Smith and Davies, Solicitors of Hereford; and Mr Beaumont also represented other persons as stated in the fourth column of the First Schedule hereto who had made application for registration of rights of common or were for some other reason interested in the lands to which registered rights are attached, to the extent that such persons were not as members of the association known as "the Commoners" included in his representation of such association.

The course of the proceedings was: oral evidence in support of the Objection was given by Miss Rita Mary Paske who was born at Court Farm and lived there until 1955, by Mr L J Jones the Objector, by Mr Mark Thomas Lloyd who worked for him, when he was about 18 years old (born in 1946), and by Mr George Henry Matthews who has "always been going with Mr Jones ... regularly Sunday mornings and Saturday evenings in summer more or less since he bought 25 years ago"; and in support of the registrations was given by Mr Phillip James Rogers who in 1934 was born in Whitehall (Hampton Bishop) and has except for 3 years lived there ever since, by Mr Pryce Williams who first came to Hampton Bishop in 1960, being then about 50 years old he moved to The Lawns, by Mr Ivor Whittal Williams who has for some 30 years farmed Church Farm, by Mr Joseph Goodwin Layton who came to Court Farm in 1955 as tenant, became the owner in 1963 and who has since 1970 been Chairman of the Hampton Bishop Commoners, and by Mr Robert John Jennings who in 1977 became Secretary of the Hampton Bishop Commoners. In the course of this evidence the documents listed in the Second Schedule were produced.

On the day after the conclusion of the hearing, I inspected the land in question in the presence of Mr Jones, Mr Layton and Mr Jennings.

The Land ("the Unit Land") in this Register Unit is in the Register described as an area extending to about $6\frac{3}{4}$ acres and numbered 87, 88 and 94 on OS map (1904 edition) as marked with a green verge line on the Register map. This verge line shows the land as an island bounded on the west by the River Lugg (following a Z course) and on the east by Back Brook (nearly straight). On the other side of



the River is Hampton Meadow, a tract extending to about 55 acres, and being Register Unit No. CL98, in 1970 finally registered as Common land under the 1965 Act; on the Register map this CL98 land is shown as bounded on the west by the River Lugg so as to fit in with the east boundary of the Unit Land. The Unit Land and Hampton Meadow (CL98) are connected by a bridge ("the Million Bridge", suitable for agricultural vehicles and for the traffic of a bridle way).

I have the OS map (1929 edition 1/2,500) and I assume this map is in all relevant respects the same as that referred to (as above mentioned) in the Register. The Register map is apparently based on OS map 1/10,560. As a guide to the present appearance of the area now known as "the Million" (meaning the area between Back Brook and the River Lugg and north of a point about 150 yards south of the Million Bridge), both these maps are confusing: (a) in that on both the Unit Land is shown as having a narrow waist (like the figure 8) at a point where the Back Brook and the River Lugg are shown as coming close together, whereas in fact the Brook and the River do not where shown come together, there is no waist, and the River flows nearly straight towards the Million Bridge; and (b) in that OS No. 94 at the north end of the Million Area marked on the 1929 OS map as "osiers" is grass much like the adjoining part of the area.

That the River had changed its course and removed the waist was obvious during my inspection, because the old bed as outlined on the OS maps is clear enough (it is now not much lower than the surrounding land and covered with grass). At the hearing the change was treated as a diversion done artificially and Mr Lloyd when asked about it said that Mr Paske was responsible. During my inspection those present agreed that the diversion happened after 1900 and before 1940.

The diversion being certainly before 1968 (the date of registration), there is or may be a nice question whether upon the registrations as they now stand the part of the Million Area which as a result of this diversion was transferred from the east to the west side of the River should be regarded as within CL98 or within CL100. I am not concerned with this question; for my purpose the relevance of the diversion is: whereas before it the Million Area could reasonably be regarded as being divided into at least two pieces the northern being the "Big Million" and the southern being the "Little Million", after the diversion if not at once, at any rate soon after, there had ceased to be any reason for treating the Unit Land as divided into two pieces as implied by the name "Big and Little Million" now appearing on the Register. Nevertheless at the hearing the name "Big and Little Million" was used both in questions to the witnesses and in their answers, although Mr Layton said he only knew the area as "the Million". I record therefore that it was not until my inspection that I realised that for many years there had not been and could not now be any practical distinction between the north and south parts of the Unit Land.

The 10 registrations in the CL100 Rights Section are identical with 10 of the registrations in the CL98 Rights Section. All these CL98 registrations have become final. At the hearing it was generally agreed that all the matters for my determination could be conveniently summarised in this question:- has the Million at all relevant times for grazing purposes been one common with the CL98 Hampton Meadow, or has it been a piece of land distinct from the CL98 Hampton Meadow.



On this question the documents produced favour the view that Little Million at least was always one common with CL 98 Hampton Meadow:- (A) The 1895 document includes an assertion that Hampton Bishop Common Lands "proper to Hampton Bishop Parish, which are as follows:- Hampton Meadow the piece of land inside the Million Bridge Nos 51 and 45, ... on the Tithe map of the above Parish". On the plan annexed to the 1956 declaration produced by Mr Lloyd I can identify No 51 with OS No 94 which is the south part of the Unit Land and No 45 with OS No 161 which according to the OS map was a wide lane (on the map 1.522 acres, in the course of my inspection called "the old access bridle path") running due south and then turning abruptly eastwards and joining the end of a track leading from the village (such path is now no longer distinct because the hedge has gone and people no longer use it, the present path takes a short cut). (B) The book which begins with the accounts for 1896 signed on 31 August 1896, ~~and~~ includes a record of a meeting of the Commoners on 22 July 1897 by which a committee was appointed and of a meeting of the Committee on 3 September 1897 at which it was proposed and seconded "that all stock turned on the Lower Million, be charged for the same as Hampton Meadow". Further there are entries in the book referring to "Meadows" (in the plural). (C) The inclusion of the Unit Land ~~and~~ the conveyance made in 1956 by the Church Commissioners to Mr Jones, their interest in Hampton Meadow, and its non-inclusion in the conveyance (not produced but I was told) by the Church Commissioners of Court Farm to Mr Layton. (d) The express grant in the 1965 conveyance of "right of pasturage with others upon certain Lammis Lands containing about one and one half acres called "The Mullion" situate adjoining Hampton Meadow ...".

The conveyance of the Unit Land to Mr Jones is dated 23 January 1956, but it appears from the record in the said 1895 book of a meeting of the Commoners in August 1955 ^{that} ~~that~~ they were disturbed by his claims. Mr Jones has lived at Tidnor Farm (north of and adjoining the north part of Hampton Meadow and some distance from the Million) since 1927, but only became concerned with the Million after his 1956 purchase or while it was in contemplation. Although he told me during my inspection that he was at school in Hampton Bishop and had some knowledge of the land between that village and Tidnor, he did not, as I understood him, suggest that his personal knowledge of what happened there before 1956 could be helpful to me. So as regards persons with personal knowledge of the use of the Million before 1956 I have only in some respects the conflicting evidence of Miss Paske, on the one hand and Mr Rogers and Mr I W Williams on the other. Miss Paske of before the 1956 period said (in effect) that her father who died in 1953 and who took over Court Farm in the early 1900s from his father, grazed cattle on Big and Little Million but she had never seen stock there belonging to anyone other than her father; ~~such~~ ^{such} stock coming ^{came} from Court Farm along the old access bridle path above mentioned (that is by going over the Brook Bridge and not going over the Million Bridge). Mr Rogers and Mr I W Williams said that (in effect) during the period they had known it and as they understood from others for long before the Million was common land like Hampton Meadow on the other side of the River.

As I understood Miss Paske, basing herself on her life at Court Farm with her father before his death, she is of the opinion that the Unit Land was up to 1956 part of Court Farm, and consequentially not part of (CL 98) Hampton Meadow. Unavoidably I must consider the reliability of this opinion.

It appears from the 1895 book that her father was well acquainted with those concerned with the grazing of Hampton Meadow. The book which



appears to have been regularly kept up from 1895 to 1980 shows: up to 1954 there was a hayward; tolls were regularly collected to cover his wages, such tolls being paid by the Commoners, the payments by Mr Paske being generally larger than those paid by anyone else; after having been hayward for many years, he was in 1933 appointed chairman and continued as such until replaced by Mr I Rogers in 1951; he signed the book annually during his chairmanship and his name appears frequently. I find it difficult to suppose that he knew nothing of the reference in it above quoted to Little Million being part of the "Common Lands".

Imagining the Unit Land as it must have appeared before the River was diverted, the access bridle path (delineated on the OS map 1/2500) and Little Million (OS No 94) would from the point of view of those bringing animals from the south (the majority) for grazing Hampton Meadow have been a necessary part of the Common, and I find it difficult to see how Little Million could then have not been considered as part of it, even although it is separated from the rest of Hampton Meadow by Million Bridge.

I do not regard either this Bridge or the gates on it as being significant. The existence of the public bridle path and of the Commoners' rights, make it likely that these gates were always easily openable and often left open. The gates for anyone who put animals on Hampton Meadow would have helped him to collect the animals when he wished to take them off.

Of all the farms with an entitlement to graze on Hampton Meadow, Court Farm is the nearest, and is the only farm from which animals could be put on without using the whole length of the old access bridle path. Being the nearest, it may well be that Mr Paske could and (as was suggested at the hearing) probably would put his animals on first and put them on the Million being the most convenient for him; so that other commoners coming afterwards would put their animals first on the east side of the River (so as not to compete with Mr Paske's animals). So it may well be that Miss Paske might never see or not remember seeing any animals on the Million not belonging to her father.

It is unfortunate that it was not until after Miss Paske had completed her evidence and had hurried away to another appointment, ~~but~~^{if} anyone at the hearing mentioned the diversion of the River; so she never explained how the gates she mentioned as having been between the Big Million and the Little Million could have operated after the diversion. Whether or not Mr Paske (as Mr Jones said) diverted the river, it must when it happened have been obvious to Mr Paske and also to all the other persons concerned with grazing Hampton Meadow, that it would be no longer practicable to treat Little Million that was and the part of Hampton Meadow that ^{by the diversion} was transferred from ^{the} east to the west side of the River, any differently ^{from} on Big Million (OS No 87).

Miss Paske said she was surprised that Big Million were not included in Court Farm when it was let after her father's death and subsequently sold. The explanation may be that neither Mr Paske nor anyone else concerned with the Court Farm considered that the Million was a part of Court Farm.

Although Miss Paske impressed me as trying to be as helpful as she could, she was not I think before she left ~~in~~ⁱⁿ 1955 or even at the date of the hearing much concerned to consider whether the Million Area was or was not for grazing purposes part of



Hampton Meadow. Having regard to the considerations above mentioned, I can I think without reflecting in any way on her personally say that I consider her opinion as to the Million Area not been part of Hampton Meadow for grazing purposes to be unreliable. Mr Rogers and Mr I W Williams were more concerned than she was with the grazing position, and their evidence was more consistent with the documents produced and the probabilities to be inferred from the present appearance of the land. Accordingly as regards before the 1956 period I prefer their evidence to hers.

I now consider the events after 1955 when Mr Jones became concerned with the Unit Land. His Objection is dated 23 September 1970, so events after 1970 are irrelevant except so far as they can throw light on what happened before.

Early on in his evidence Mr Jones said in effect that he had never known any person exercise rights over Big and Little Million, and that apart from animals of his, none other had grazed there unless the gate (on the Million Bridge) was left open or they walked through the River (as is possible in the late summer when the River is low). His claim was (as I understood it) that because nobody other than himself had since 1956 grazed or attempted to graze the Unit Land, I should therefore infer that those who registered rights either knew or had agreed that they had no rights or somehow had abandoned any rights they may at any time have supposed they had.

Against my drawing any such inference at the hearing much was made (rightly I think) of the circumstances relating to a fence which Mr Jones erected some time before 1955 across Hampton Meadow effectively separating about one-third of it on the north from the remaining two-thirds on the south. The line of the fence was shown to me during my inspection. The 1895 book contains a copy of a letter dated 15 September 1965 sent by the Secretary of the Commoners to Mr Jones saying that they at a meeting had unanimously decided to ask him to remove the fence within 7 days and that upon his failure to do so the commoners would remove it at 9.30 am on September 27 claiming that the fence infringes the commoners rights of grazing during the commonable period. To this letter Mr Jones' solicitors replied (23 September 1965) warning that any attempt to remove the fence would be resisted and legal proceedings taken against those concerned afterwards. To this the Secretary of the Commoners replied (24 ~~letters~~ ^{September}) that the fence would be removed. It was in fact removed in the presence of a policeman and of a large number of commoners and the material (barbed wire) thrown onto the farmland of Mr Jones. No legal proceedings followed and no attempt has since been made by Mr Jones to re-erect the fence.

The 1895 book, beginning with the record of the annual meeting held on 9 August 1955 contains many references to claims made by or activities of Mr Jones which the Commoners thought objectionable. I find therefore that the 1965 fence episode was no sudden affair but the culmination of differences over a long period.

Against this background of differences I find there was never any agreement expressed or implied between Mr Jones and those who applied for registration about the rights over the Unit Land being no longer exerciseable and that none of such persons ever abandoned any right they supposed themselves to have.



As to whether any such person exercised rights over the Unit Land after Mr Jones became concerned, the case against him was: the right was over the Unit Land and (CL 98) Hampton Meadow considered as one common so that the right could be exercised by putting animals on any part of this one common, particularly either by putting them on the Unit Land or on the east side of Million Bridge; as a person having a right could and often would choose to exercise such a right by putting animals on the east side of the Bridge because there the grass might be better and the animals already on the Unit Land might be so numerous as to make it obviously advantageous to put other animals on the other side of the Bridge; and that it was reasonable to suppose that the Bridge Gates would be opened often enough and for long enough periods for the animals naturally to cross the Bridge as they pleased.

Against this case Mr Jones suggested that the Bridge Gates would only be open occasionally by reason of carelessness by fishermen and those using the bridle path. I consider his evidence about this and as to his never having seen animals other than his own on the Unit Land to be unreliable.

I also consider his evidence about never having turned off the Unit Land animals which were not his own to be unreliable. Other witnesses said the animals they had put on or expected to find on the Unit Land had been found by them on the east side of the Bridge; I find they were so found because Mr Jones or someone on his behalf had put them on the east side of the Bridge. Being of the opinion that his evidence is unreliable because those who found their animals unexpectedly on the east side of the River could never be certain how they got there, I am unable to say how often Mr Jones' activities obstructed persons intending to exercise their rights over the Unit Land.

In my opinion this obstruction by Mr Jones cannot in any now relevant sense be regarded as an interruption of the exercise of rights by those who now claim them, not only because those obstructed never knew for certain that he was the cause of the animals ~~not~~ being on the Unit Land ~~but~~ also because it would I think be unjust for those claiming rights to give any effect for the benefit of Mr Jones to evidence of his which I consider unreliable.

My general conclusion is therefore that before 1956 the Unit Land was reputed to have been and was by all concerned treated as part of the common land over which various persons in Hampton Bishop enjoyed rights of grazing in every way identical with those they enjoyed over (CL 98) Hampton Meadow, and that after 1955 nothing was done and nothing happened that could amount to an abandonment or variation of such rights or cast any doubt on their continued existence. The position is therefore that these rights are now and have at all relevant times existed, and accordingly the Unit Land is within the 1965 Act definition of "common land" with the result that the objection "that the land was not common land at the date of registration" fails.

For the above reasons I confirm the registrations now in dispute without any modification.

Mr Beaumont asked for some costs. In my opinion the general rule usually followed in the High Court that costs should follow the event is not applicable to proceedings



under the 1965 Act before a Commons Commissioner; under the Act and the regulations made under it persons may have to make applications and make objections without having time to investigate their position; before any reference can be made to a Commons Commissioner a period of time must elapse during which the applicants and the objectors can discuss; and even then persons attending a hearing may excusably be taken by surprise. So a person is not at risk merely because he makes an objection which does not succeed before a Commons Commissioner.

Nevertheless under section 17 of the 1965 Act a Commons Commissioner is given a discretion as to costs, intended I think to be exercised when by reason of something special about the proceedings it would be just.

Mr Jones under the 1956 conveyance acquired land of an extraordinary kind. Quite legitimately he could try to make the best of his acquisition. Although there could be no legal objection to a person farming Tidnor House Farm having an exclusive right to graze the Million, the circumstance that Hampton Meadow which was obviously common land and which after the 1965 fence episode above described Mr Jones must have realised and accepted ~~there~~ was such, coupled with the circumstances that the Million and Tidnor House Farm are on ~~the~~ opposite sides ^{with} Hampton Meadow, made any such right extraordinary and any claim to it ~~might be likely~~ to provoke opposition. From the 1965 episode and the way Mr Jones conducted the proceedings before me, I conclude that those who applied for the registrations rightly concluded that any discussions with him would be unlikely to be productive. The circumstance much stressed at the hearing that he had limed Hampton Meadow and that if he owned the Million free from common rights he could greatly increase its agricultural value, could not I think exonerate him from paying some regard to other persons' rights. In my view these proceedings are comparable to proceedings commenced in the High Court, in that they ~~were~~ in effect ~~substitutes~~ for proceedings which would if there had been no Commons Registration Act 1965 have at some time to be taken in the High Court. Accordingly I consider I ought as regards costs exceptionally to the ^{general} rule applicable to proceedings under the 1965 Act, apply the rule generally applicable as above mentioned to proceedings in the High Court, and make an order for costs against Mr Jones.

As to the form ~~D~~ of the order, the position is complicated because the Hampton Bishop Commoners are unincorporated and no rules were produced about their meetings or constitution. In the 1895 book the meetings are described as being of the "Commoners"; although continuously they have had a chairman and at the beginning a hayward and lately a secretary, there are no rules providing for this. In my view the confused nature of the constitution of the "Commoners" provides no good reason why I should not make an order for costs for their benefit. I accept the suggestion made by Mr Beaumont that my order should formally be in favour of their Chairman and Secretary who were primarily responsible for instructing Beaumont Smith and Davies to act. Accordingly I shall order Mr Jones to pay to Mr J G Layton and Mr R J Jennings as respectively Chairman and Secretary of the association which has met annually for the purpose of regulating the grazing on Hampton Meadow under the name of "the Commoners of Hampton Bishop" or of some such name, the costs incurred by the said association in respect of these proceedings and I shall direct that such costs shall be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended with the modification that such costs do include the costs



of anything done by Beaumont Smith and Davies in or about these proceedings for any person who applied for any of the Rights Section registrations in these proceedings disputed or for any person where since the registration succeeded to such rights ~~as~~ with the further modifications that the Registrar may exercise any discretion which under the said County Court Rules or otherwise that may be exercised by the Court.

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.

TURN OVER FOR
FIRST SCHEDULE

FIRST SCHEDULE

Entry No. (99 No.)	Applicant and land to which right is attached	Right	Representation at hearing
1 (3)	Mr Edgar Trevor Samuel Watts of The Dell (tenant) OS Nos 128, 127, 210 and 214	Graze 35 sheep, 2 mares and their foals or 4 cattle	Mr Beaumont represented Mr J Dyke of The Dell, Hampton Bishop who has succeeded to part (at least) of the land, Mr Watts having left
2 (2)	Mr Ivor Whittal-Williams of Church Farm (owner) Church Farm comprising OS Nos 239, 238, 243	Graze from date declared open until following 2 February. 5 cattle or 10 sheep or 5 horses	Represented by Mr Beaumont
3 (4)	Mr J G Layton of Court Farm (owner) Court Farm OS Nos 83, 84 etc etc	Graze 30 sheep or 8 cattle	Mr Layton was represented by Mr Beaumont
4 (5)	W E Bowen & P Williams of The Lawns (owners) The Lawns OS Nos 264 etc	Graze from August 2 to February 2 10 cattle or 40 sheep	Mr J G Layton as successor of part of the land represented by Mr Beaumont
5 (6)	Richard Herbert Bowes Hutton and Rosemary Eliot Hutton of Church Villa (owners) Church Villa OS No. 183	Graze from end of grass mowing about August to 2 February 10 cattle, 75 sheep	Represented by Mr Beaumont
6 (7)	Richard Herbert Bowes Hutton and Rosemary Eliot Hutton of The Elms (owners) The Elms OS Nos 170, 171, 172, 174, 176 and 177	Graze from end of grass mowing about August until 2 February 10 cattle, 75 sheep	Represented by Mr Beaumont



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FIRST SCHEDULE (Continued)

CL100 Entry No. (CL99 No.)	Applicant and land to which right is attached	Right	Representation at hearing
8 (12)	Evelyn Mary Edwards and Mary Anne Edwards of Lower House (owner and tenant) Lower House OS Nos 265, 266 etc etc	Graze 70 cattle, 150 sheep, 10 horses	
9 (13)	Ivor James Lewis Rogers of White Hall Lodge (owner) Colcombe Farm, com- prising OS Nos 145, 280 etc etc	Graze from date Commoners decide on opening after hay removed to 2 February 20 cattle, 50 sheep	Mr I J L Rogers died 24 November 1979. Mr Beaumont rep- resented his widow Mrs Mary Rogers and his son Mr Philip James Rogers
10 (14)	Whitehall Farm (Hampton Bishop) Ltd (owner) Whitehall Farm OS Nos 220, 221 etc etc	Graze from date Commoners decide on opening after hay removed to 2 February 50 cattle, 100 sheep	Represented by Mr Beaumont

TURN OVER for
SECOND SCHEDULE



SECOND SCHEDULE
(documents produced)

Part I: on behalf of Objector

23 January 1956

Conveyance by the Church Commissions of England to Mr L J Jones of 50a. 2r. 36p. described by reference to Tithe map numbers "subject to all rights of Common ways waters lights and other easements (if any) affecting the same".

3 February 1956

Statutory declaration by Mr F J Ball with plan annexed showing Tithe numbers mentioned in conveyance.

Part II: on behalf of Applicants for Registration

27 October 1895

Copy (from County Record Office) statement signed by 36 persons and headed "Persons interested in the Common Rights of Hampton Bishop will hold a Public Meeting in the Iron Room on Monday the second day of September 1895".

23 September 1965

Letter from Lambe Carless & Capel, Solicitors, Hereford to Mr T J Richards written on behalf of Mr L J Jones about removal of fence.

24 September 1965

Copy letter sent by F J Richards in reply.

29 September 1965

Conveyance by Ivor James Lewis Rogers to Whitehall Farms (Hampton Bishop) Ltd of 398.624 acres including Whitehall.

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Statement by Mr Pryce Williams.

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Statement by Mr Ivor Whittal Williams.

1895 to date

Quarto bound manuscript book (9 $\frac{1}{2}$ " x 7 $\frac{1}{2}$ ") being a record of meetings of Hampton Bishop "Commoners" and the accounts of the Hayward.

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Extracts from the said book.

Dated this 26th —

day of August — 1981

a. a. Baden Fuller

Commons Commissioner