



COMMONS REGISTRATION ACT 1965

Reference No. 215/D/216

In the Matter of Climbing Jack Common,  
Richards Castle, Leominster District,  
Hereford and Worcester

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DECISION

This dispute relates to the registrations (10 in all) at Entry Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11 in the Rights Section of Register Unit No. CL.88 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No. 363 made by The Ministry of Agriculture, Fisheries and Food and noted in the Register on 17 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 28 January 1976. At the hearing (1) The Ministry of Agriculture, Fisheries and Food was represented by Mr F Mallows, barrister-at-law of their legal service, (2) Mr Harry Mantle on whose application (jointly with Mr John Henry Mantle) Entry No 4 was made was represented by Mr G H Ricards solicitor of Phillips & Co, Solicitors of Ludlow, (3) Bilbury Farms Ltd on whose application Entry No. 8 was made was also represented by Mr Ricards, (4) Mr John Bradley on whose application Entry No.3 was made attended in person, (5) Mr Francis Bradley on whose application Entry Nos 7 and 11 were made attended in person, and (6) the Hereford and Worcester County Council were represented by Mr B Chilton assistant solicitor in the County Secretary's Office.

Mr Ricards said that Bilbury Farms Ltd withdrew their application and that Mr Harry Mantle had disposed of his interest in the land benefitted by Entry No. 4 in favour of his son Mr John Henry Mantle, who Mr Ricards did not represent.

The land ("the Unit Land") comprised in this Register Unit is a crescent-shaped strip between  $1\frac{1}{4}$  and  $1\frac{1}{2}$  miles long, and extends (according to the Register) to 31 acres. The south part (between  $\frac{1}{2}$  and  $\frac{2}{3}$  of a mile long) is approximately on a north-south line and is for the most part narrow nowhere more than about 20 yards. The north part curves to the East becoming much wider and ending in a triangle, the northeast side of which is nearly half a mile long.

The registration in the Land Section was made on the application of Mr Richard Salwey, who is also registered as owner of all the Unit Land. These registrations being undisputed have become final. Entry Nos. 1 to 5 and 7 to 11 in the Rights Section are all of rights attached to farms or lands to graze various numbers of sheep (405 altogether) except that Entry No. 10 includes 10 cattle and 4 horses. Entry No. 12 which was made on the application of Mr C C Wait and which being undisputed has become final is of a right attached to Hays Park Farm to graze 65 sheep. There was some discussion (summarised below) about Entry No. 6 made on the application of Mr J C Hall.

The grounds stated in the Objection are: "That the rights claimed do not exist."



Oral evidence was given by Mr J Bradley of Rock Farm, by Mr F Bradley of Easter Bush, by Mr Humphrey Salwey on whose application (jointly with Mrs Hermione Salwey) Entry No. 2 in the Rights Section was made, and by Mr C C Wait. Mr Mallows produced a map showing that the Ministry or the Forestry Commission have leases or are owners of all the land adjoining the Unit Land (except the land adjoining a short length of the southwest boundary) and a conveyance dated 24 March 1940 by which T H Williams (Bewdley) Limited conveyed to the Ministry 525.104 acres forming part of the Hays Park Estate. I also received a letter dated 29.1.76 from Mr T E Evans of The Forge, Richards Castle.

Two days after the hearing, I walked the length of the Unit Land.

Mr J Bradley said (among other things): "It is on the deeds that there are common rights on all the commons in Richards Castle...I see no reason for producing the deeds because we have known it all our life...". Mr F Bradley said (among other things):- "On the deeds it does not state the name of any common...It is a little different from my brother's; it does not state woodlands; it just states "commons" or "pastures". He did not produce his deeds.

A conveyance by which land is expressed to be conveyed with a right of common particularly described may be evidence that the rights so described existed before the conveyance was made and that the grantee became entitled to it. But as a general rule, a conveyance by which land is expressed to be conveyed with rights of common, ways, privileges etc. appurtenant or belonging is not evidence that the rights so generally described existed before the conveyance was made or that the grantee became entitled to any such rights. So the evidentiary value of a deed can only be determined upon a careful consideration of all its terms, and of the circumstances (so far as ascertainable) in which it was made. Accordingly I can form no conclusion about the entitlement of Mr J and Mr F Bradley to rights of common from what they told me about their deeds.

South of the Unit Land is Hanway Common, an area of grassland about  $1\frac{1}{2}$  miles long from its east to its southwest end, and in the middle (where it adjoins the Unit Land) about  $\frac{1}{4}$  of a mile wide. During the 1939-45 war Hanway Common was seeded. After the war, the Commoners spent money on it; it was ploughed, and was for about 4 years corn; it was then reseeded, treated with basic slag, and is now a good pasture. The grazing on it is regulated by a Committee (the Hanway Commoners Association); there are about 30 regular members and about 13 or 14 practising members who turn out on the Common. Mr Salwey said it is an extremely successfully run Common, as he knew, having had something to do with it and having seen other commons.

It was not disputed that Mr J and Mr F Bradley are members of the Hanway Commoners Association and graze on Hanway Common. In my opinion by showing that they have a right to graze on Hanway Common, they do not establish that they have a right to graze on every other piece of land in Richards Castle which is known as or could be described as a "common". I accept that it is possible for a number of pieces of land apparently distinct to be in law all one piece of land together forming one common, on which numerous persons may have a right to graze on every piece without any distinction; but in my view if such a situation is relied on it must be proved. I have not overlooked that in December 1973 when hearing another reference relating to land in Richards Castle, I was handed a translation of a grant made by Lord Mortimer dated by reference to the reign of King Edward I, by which was granted to the



Burgesses of Richards Castle and others common of pasture in Shulle Meadow and in his woods in Richards Castle and also house bote and hay bote in his woods. I am not persuaded by any evidence produced to me that the Unit Land and Hanway Common are part of a larger area over which all the inhabitants or alternatively all those having farms in Richards Castle have rights of common. Although there is now much woodland (apparently planted after the 1939/45 war) surrounding much of the Unit Land near Hanway Common, and I would expect there ~~to~~ always ~~be~~ some woodlands nearby, neither the Unit Land nor Hanway Common could now properly be described as "woods", and I see no reason for assuming that they could have been so described at the date of Lord Mortimer's grant.

Mr J Bradley said (in effect):- Sheep from Rock Farm had been put on Hanway Common because this common is the nearest. The sheep on Hanway Common used to travel from there onto the Unit Land; they were not "strays"; sheep are not stray when they go from one common to another. He had never put sheep on the Unit Land (ie deliberately taken them there) but his sheep just went on.

Mr F Bradley said (in effect):- He had never put sheep deliberately on the Unit Land; there was no need to (his sheep put on Hanway Common used to go there).

Mr Salwey said (in effect):- Hanway Common and the Unit Land were so close and so interlocking that the rights must be the same otherwise the equilibrium would be upset. The Unit Land would be much improved if treated in the same way as Hanway Common had been.

Mr Evans in his letter also suggested that the Unit Land could be treated the same way as Hanway Common and made into a good pasture to benefit all commoners.

Mr Wait said (in effect):- In 1936 he took over the tenancy of Hays Park Farm from his father, and in 1974 his son took over from him. During his time, from Hays Park Farm he cut fern and brought litter from the Unit Land and put sheep on it. Between the Farm and the Unit Land, there are two gates providing access. Nobody put sheep on the Unit Land except himself and except one person who put sheep on for one day in 1975. He was also a member of the Hanway Commoners Committee.

In the course of the hearing difficulties of watering sheep on the Unit Land were mentioned. If these difficulties could be overcome it may well be as suggested by Mr Salwey and Mr Evans that the grazing value of the Unit Land would be much higher if treated as Hanway Common has been treated. However this, expedient as it may be, provides no reason in law for my concluding that the rights over Hanway Common and the Unit Land must necessarily be the same.

The substance of the contention put forward by Mr J and Mr F Bradley is: as they first remembered the Unit Land and Hanway Common, there was not (as there is now) any fence separating them, so that sheep could go from one to the other; they were therefore then one common, and accordingly, notwithstanding this fence and notwithstanding the treatment which Hanway Common has since the 1939-45 war received, they should now be treated as one common. The circumstance that the Unit Land and Hanway Common are on maps differently named and were by all at the hearing called by different names, is an indication that they are different. From their relative positions as shown on the map, at the end of the hearing my conclusion was that the Unit Land and Hanway Common are not, in any now relevant sense, one piece of land. When going to the Unit Land, I walked across Hanway Common (there was then a very cold wind and neither were at their best); what I



then saw confirmed the conclusion I had already reached. Doing my best to imagine what the Unit Land and "anway Common must have looked like when Mr J and Mr F Bradley first knew them, I concluded also that they then were different pieces of land. I accept that some sheep put on Hanway Common would have at some time gone on to the Unit Land; but in my view most of the sheep put on Hanway Common would have remained there. I am not persuaded that these two pieces of land are subject to the same rights of common merely because a sheep put on Hanway Common which was found on the Unit Land would not locally be regarded as a "stray" in that its owner would not be treated as a wrong doer.

Accordingly I reject the contention made by Mr J and Mr F Bradley, and conclude that the rights registered on their application do not exist. In the absence of any supporting evidence I make the same finding as regards the rights registered at the other Entries now in question.

For the above reasons I refuse to confirm the registrations.

As regards Entry No. 6, in the course of the hearing I was given some information by Mr Mallows, Mr Chilton and Mr Hall. Objection No. 363 as originally made applied not only to the Entries the subject of the reference I am now considering but also to Entry No. 6. Any withdrawal of the Objection as regards Entry No. 6 by the Ministry was on the basis that the Entry was no longer subsisting. The person in the office of the County Council who wrote in the Register that Entry No. 6 being undisputed had become final, overlooked the information then available to the Council that Mr Hall had withdrawn his registration. Mr Hall said that in 1971 there was a possibility that he was moving to Hereford; if in the meantime the Ministry withdrew the Objection, he would ask that the rights would remain.

By section 6 of the 1965 Act a Commons Commissioner is required to inquire into "any matter" which has been referred by a registration authority to him "under section 5 of this Act"; section 5 specifies ~~the~~ Objections which may be so referred. In my view I cannot properly express an opinion about an Objection which has not been referred to me by the registration authority. The only reference I have (dated 31 May 1974) referred to a Commons Commissioner "the dispute as to the registration at Entry Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11...occasioned by Objection No. 363..."; clearly this reference does not include any dispute arising out of Entry No. 6. It may be that if the dispute as to this Entry occasioned by this Objection were referred to me I should have to express an opinion about the questions discussed at the hearing and summarised briefly (perhaps not altogether accurately) above; but I decline to give any indication now as to the course which I shall take if any such reference is made.

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 20<sup>th</sup> day of February ————— 1976

*a. a. Barker Feller*

Commons Commissioner



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/217  
215/D/218

In the Matter of Common Wood, Aymestrey  
and Lucton, Leominster District, Hereford  
and Worcester

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1, 2, 3 and 4 in the Rights Section of Register Unit No CL. 172 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No 460 made by the Minister of Agriculture, Fisheries and Food and noted in the Register on 25 July 1972.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 10 November 1976. At the hearing Mr W D Turton solicitor of Lloyd & Son, Solicitors of Leominster attended on his own behalf (the Entry in the Land Section was made on his application) and as representing Mr G Withnall (he was one of the applicants for Entry Nos 1, 2 and 3 in the Rights Section), as representing Mr B Wilson (he was the only other applicant for the said Entry Nos 1 and 2), as representing Mr J A Rutledge (he is the only other applicant for the said Entry No 3) and as representing Mrs K V Gardiner (she was the sole applicant for Entry No 4 in the Rights Section); and Mr F Mallows solicitor attended as representing the Minister of Agriculture, Fisheries and Food.

The grounds of objection are: "The land was not common land at the date of registration. No common rights existed at the date of registration".

Mr Turton and Mr Mallows both requested me to refuse to confirm the registrations. Before the hearing there had been sent to the office of the Commons Commissioners a similar request signed on behalf of (among others) the County Council, Leominster District Council, Aymestrey Parish Council and Lucton Parish Council. There is no reason why I should not give effect to this request. Accordingly I refuse to confirm the registrations.

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 16<sup>th</sup> — day of November 1976

a. a. Basil Fuller

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Commons Commissioner