



In the Matter of Coed Moor Common,  
Much Dewchurch

DECISION

This dispute relates to the registration at Entry Nos. 2 and 3 in the Rights Section of Register Unit No. CL 104 in the Register of Common Land maintained by the former Herefordshire County Council and is occasioned by Objection 267 made by D C Winney and Mrs G M Dale and noted in the Register on 25 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 16 February 1982. The hearing was attended by Mr S Beaumont of Messrs Beaumont, Smith and Davies, Solicitors of Hereford for Mr A W Lawrence the applicant at Entry No. 2 and Mr D M Halpern of Messrs Lambe, Corner and Co, Solicitors of Hereford for the Objectors. Shortly before the hearing Mr R Smith the applicant at Entry No. 3 withdrew his application.

Mr Beaumont called the following witnesses:

Mr Raymond Harris said that he was aged 62 and now lived at Marsh Cottage, Heaton Bishop. He was born at Rose Cottage in 1920 and lived there with his parents until 1940 when he enlisted in the RAF. He returned to live at Rose Cottage in 1946 on demobilisation and stayed there until 1948 when he ~~married~~<sup>married</sup> and went to live elsewhere. His mother continued to live there until 1962 and the cottage was demolished in 1966. His parents owned the cottage and 3½ acres of paddock and rented a 13 acre field near the railway. His parents used the field and paddock until 1958 as grazing land and for hay. They kept two cows and 2-3 calves. His father was a carpenter. In the summer the cattle were driven to the Common each day to graze. No one ever tried to prevent this. Mr Winney came to Coed Moor Farm in 1925. He never stopped there and he used the Common as well. His parents did not use the Common for grazing after 1940. There was a lot of gorse and furze on the Common and parts of it flooded in winter.

Some persons used the Common occasionally for grazing 1 or 2 horses. —————

His parents would call the police who would move them on. Two donkeys would graze on the Common from time to time for quite long periods. Another person had two horses which grazed on the Common. They were not often disturbed.

In cross-examination the witness said that his knowledge of what went on on the Common ended in 1942. His father rented the 13 acres from the Patteshall Estate. There was no public way from the 13 acres to the Common. The only way was through his mother's property Rose Cottage and the 3½ acres. I understood they made some yearly payment for the Common.

In re-examination he said that his parents paid £4 a year for the 13 acre field and had the use of the Common. In 1946 his mother had no animals; she had sublet her rights.

Mr Alfred William Lawrence said that he was 76 years of age. He purchased Moorfield Farm in 1949/50 and Home Farm in 1978. Previously he had been a tenant. He had animals at both farms.



In March 1961 he purchased Coed Moor Meadow. Previously this land had been grazed by a tenant with the Common. Then ~~he~~ took it over. ~~He~~ grazed the Meadow but not the Common though ~~he~~ had been told by Mr Dance, my vendor, that ~~he~~ had the right to graze the Common. Mr Dance died two years after the sale.

He allowed Mr Winney to turn his cows for a temporary period on the Common but he told him that he would want the grazing back later.

Later he approached Mr Winney's son who said he had bought the Common. He had known the Common for 65 years and no stock from Mr Winney's farm had previously grazed on the Common.

The witness had 12-14 cattle but no sheep. 50 years ago a Mr Phillips had 50-60 sheep on the Common but no cattle. Mr Winney had no beasts on the Common before he bought it. He disputed Mr Winney's purchase of the Common because he believed he could not buy it. He paid Mr Dance £28 rent.

In cross-examination the witness said that his agreement with Mr Dance was verbal. Weaver and Greaves were previous tenants. He (the witness) bought the Meadow with the same rights as he had when he was a tenant. Since 1961 he had not put animals on the Common.

Mr Brian Edward Lawmece, a son of the previous witness said he was aged 45 and had moved to Moorfield Farm in 1940 when he was 4. He continued to live at Moorfield Farm until 1977. He knew Coed Moor Meadow but they did not use the Common. Mr Winney Senior asked his father if he was going to use the Common. His father replied 'Not at the present moment'. Two years after registration his father was told that Winney had bought the Common.

Mr Beaumont produced two conveyances.

1. A Conveyance made the 2nd February 1950 between Colonel Pateshall's Executors of the one part and Frederick Herbert Dance of the other part, whereby the Executors conveyed to Mr Dance 13.015 acres of land known as Coed Moor Meadow described in the First Schedule as 'now in the occupation of Mrs A Harris as tenant thereof'.

In Clause 2 of the Conveyance the Purchaser as the owner of the adjoining property known as Coedmoor conveyed and released to the Vendors all the rights (if any) of grazing or otherwise appurtenant to Coedmoor whether by custom or agreement or otherwise in or over the adjoining land from the Vendors known as Coedmoor Common and numbered 45 and 46 on the OS. Map.

2. A Conveyance made the 3rd March 1961 between Mrs Dance (the said Frederick Herbert Dance having died in or before 1959) and Mr A W Lawrence of the property comprised in the 1950 Conveyance and a further .610 acres part of OS. No. 30. This additional piece of land had been conveyed to the Vendor's husband by Mr Harris in 1945.

Mr Halpern then called evidence for the Objectors.

Mr Donald Clifford Winney said he was aged 50, said he lived at Coed Moor Farm of which he was joint owner with his sister and co-Objector Mrs Gale. This farm



included Register Unit CL 104. His father had purchased the Farm in 1950 from Colonel Pateshall's executors and the Conveyance included CL 104 subject to rights of common (if any) over Coed Moor.

According to a Particulars of Sale prepared in 1916 a copy of which was produced OS. No. 46 was for sale subject to manorial and other rights (if any) and part of it was stated to be let to Mr Harris and the remainder with other land to Mr J Williams.

He had registered the application in the Rights Section on advice after he had made the application in the Ownership Section.

He had lived at Coed Moor Farm all his life. His father had been tenant of the farm from 1925 until he purchased the freehold in 1950. Mrs Harris used to graze 3-4 cattle on OS. 46. Mr Harris also had a tenancy of CL 104 which continued until 1950. He did not remember any one putting beasts on the Common apart from Mrs Harris and she gave up using the Common for grazing when she gave up her cattle in 1941/2. Mr Glead came in for 4 years. Mr Weaver came in 1950.

Mrs Harris sublet to Glead and Weaver, her tenancy of part of OS. No. 46 and they had 4-5 beasts grazing. The register unit had been fenced since 1925 and probably before that date.

In cross-examination Mr Winney said that Glead came in in 1942 and Weaver came in about 3 years after he left.

When ~~he~~ was about 14 ~~his~~ father told ~~he~~ that Harris had sublet. He did not remember the gypsies or the blind man or the man with the donkeys (mentioned by Mr Raymond Harris). He remembered the bombs. Mr Lawrence never grazed on the Common.

In cross-examination he agreed that Mr Lawrence had said that they (the Winneys) could not have bought the Common.

The following documents were produced in addition to the Particulars of Sale.

1. The Conveyance to Colonel (then Major) Patershall of Winnal Court Farm and Coed Moor Farm then stated to be occupied by E J Phillips and J Williams respectively. Coed Moor (OS. No. 46) was expressed to be subject to all common rights (if any) other than those (if any) of the Vendor either as Beneficial Owner or as Lord of the Manor of Kilpeck and Much Dewchurch and in the Schedule part of OS. 46 was said to be occupied by Mr A Harris.

2. The Conveyance made on 2 February 1950, the same day as the Conveyance to Mr Dance by Colonel Pateshall's executors to Mr Winney's father of Coed Moor Farm. The Conveyance was subject in the case of OS. No. 46 known as Coed Moor to all common rights (if any) other than those (if any) previously vested in Thomas Raymond Symons either as Beneficial Owner or as Lord of the Manor of Kilpeck and Much Dewchurch

The Register Unit is part of OS. No. 46 and may well have been the part that was let to Mr J Williams in 1916.



Mr Lawrence's claim in the Rights Section is on the basis that the rights are attached to Coed Moor Meadow, which at the date of the Conveyance to Mr Dance were occupied by Mrs Harris as a tenant. Neither Mrs Harris nor any person claiming as her sub-tenant could in my opinion have acquired rights of grazing against property owned by her landlord, while her tenancy subsisted. Any user on which Mr Lawrence could rely to support his claim could not therefore begin before 2 February 1950 and in Mr Lawrence's admission it must have ceased in 1961 as he has never used the Common for grazing.

I do not regard the reference to Common rights in the Conveyance to Mr Winney as giving support to Mr Lawrence's claim. In my view they were put in by the draftsman *ex abundante cautela* because they appeared in the 1916 Conveyance.

In any event in view of Mr Winney's evidence about the fencing of the Register Unit I am not satisfied that the Register Unit was grazed by any one other than the Winneys after 1925.

On this basis Mr Lawrence's claim must fail. If I am wrong in ~~the~~ <sup>my</sup> conclusion, then the evidence in my view does not establish any right to graze sheep and in the case of cattle more than the 4 beasts Mrs Harris grazed.

For these reasons I refuse to confirm either registration.

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

4<sup>th</sup> 1982

day of

May

1982

*George Henkel*

Commons Commissioner