



In the Matter of Coney Cuthill Common,
Cradley, Hereford and Worcester

DECISION

This dispute relates to the registrations at Entry Nos 1 and 3 in the Rights section of Register Unit No CL 102 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No 411 made by Mrs M A Higgins and noted in the Register on 3 December 1971.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 1 and 2 December 1977. The hearing was attended by Mr P C Davis, solicitor, on behalf of Mr G E Evans, the applicant for the registration at Entry No 3. There was no appearance by or on behalf of Mrs G E H Tustin, the applicant for the registration at Entry No 1.

The land comprised in the Register Unit is totally overgrown, with some trees on it. It is described as "common" in the tithe apportionment award of 1841. Although this indicates that the land was then subject to some right or rights of common, it is not evidence of the existence of the rights claimed by either of the applicants. Such rights must be proved by specific evidence.

Mr Evans is the owner of a cottage and garden with an area of 0.251 acres, the northern boundary of which adjoins the land comprised in the Register Unit. This was conveyed to Mr Evans by a conveyance made 16 November 1955 between (1) John David Lambourn (2) George Edward Evans and Wolstan Derek Evans. The parcels of this conveyance include (only so far as the Vendor had the power to grant the same) all rights of common and commonable rights whatsoever to the property conveyed belonging or appertaining upon or over (*inter alia*) the land comprised in this Register Unit. This property was formerly part of a larger property having an area of 1a. 1r. 1p., which was conveyed with the same words regarding rights of common and commonable rights by an indenture dated 22 May 1940. The title goes back to an indenture dated 22 May 1920, in which there is no mention of rights of common and commonable rights. Since he purchased his property Mr Evans has taken bracken and fallen wood from the land in question without asking permission from anyone. However, Mr B A Higgins, the husband of the Objector, who purchased the property in 1954, and Mr A J Goodwin, her farm bailiff, had never seen Mr Evans doing this, and there was no evidence that his predecessors in title had ever done so.

I am not satisfied on this evidence that Mr Evans has acquired a prescriptive right to take bracken or wood and I therefore refuse to confirm the 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.

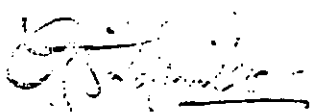
Dated this

23rd

day of

January

1978.


Chief Commons Commissioner