



In the Matter of Coppet Hill, Goodrich and Welch Bicknor,  
Hereford and Worcester  
(No 14)

DECISION

This dispute relates to the registration at Entry No 21 in the Rights section of Register Unit No CL 126 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No 237 made by Capt W C Ashby and Mrs J C Ashby and noted in the Register on 3 August 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 16 February 1978. The hearing was attended by Mr A A Edwards, the applicant for the registration, and by Mr R Okell, solicitor, on behalf of the Objectors.

The registration is of a right to graze animals hitherto without limit by number or stints, levant or couchant in respect of (a) 2 horses or asses (b) 30 sheep (c) 2 goats (d) 50 head of mixed poultry; a right of turbary; and a right of estovers.

The grounds of the Objection are stated as follows:-

- "1. That the rights are not exercisable without limit by number or stints.
- "2. That the right is exercisable in respect of 20 sheep and not 30 sheep as claimed.
- "3. That there is no right for the applicant in respect of turbary or estovers as claimed save that a right to take pea and bean sticks of a circumference not exceeding 4 inches is admitted, for use only on the premises in respect of which the right is claimed".

At the hearing Mr Edwards stated that he accepted a restriction of his right of grazing to 1 horse or ass, 20 sheep, 2 goats, and 30 head of poultry and that he withdrew his claim to a right of turbary.

This leaves for consideration the extent of the right of estovers. Mr Edwards, who is now aged 63, has lived at the premises to which the right is claimed to be attached since he was aged 11. He gave evidence that during the whole time that he had lived at the premises he or his father had taken pea and bean sticks, wood for posts for fencing and clothes lines, and firewood and had not limited themselves to pea and bean sticks not exceeding 4 inches in circumference. He said that wood up to about 4½ inches in diameter had been taken.

Mr Okell said that a restriction to pea and bean sticks not exceeding 4 inches in circumference was a reasonable restriction. My jurisdiction, however, is not to consider what right it would be reasonable for Mr Edwards to have, but what right he has proved that he has. I accept Mr Edwards's evidence as being true. He has, therefore, proved a prescriptive right unless it can be said that the taking of the wood was surreptitious. It may be that the Objectors and their predecessors in title have not actually known of what Mr Edwards and his father have done. This, however, is not in itself an answer to Mr Edwards's case. The owners of the land, diligent in the protection of their interests, had during the last half-century plenty of opportunity of becoming aware of what Mr Edwards and his father were doing. In such circumstances the present owners cannot allege



that it was secret: see Union Lighterage Co. v. London Graving Dock Co. [1902] 2 Ch. 557, at p.571. I have therefore come to the conclusion that a right to take pea and bean sticks, wood for posts for fencing and clothes lines, and firewood not exceeding 4½ inches in diameter has been made out.

For these reasons I confirm the registration with the following modifications; namely the deletion of the words in column 4 and the substitution of the words:-

- "(a) Rights to graze 1 horse or ass, 20 sheep, 2 goats, and 30 head of poultry; and
- "(b) Rights to cut and take pea and bean sticks, wood for posts for fencing and clothes lines, and firewood, not exceeding 4½ inches in diameter over the whole of the land comprised in this register unit".

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

21<sup>st</sup>

day of

March

1978

CHIEF COMMONS COMMISSIONER