



Reference No 215/D/292

COMMONS REGISTRATION ACT 1965

In the Matter of Kings Caple Common,
Kings Caple, South Herefordshire District
Hereford and Worcester.

DECISION

This dispute relates to the registrations at Entry Nos 6 and 11 in the Rights Section of Register Unit No CL 158 in the Register of Common Land maintained by the Hereford and Worcester County Council, and is occasioned by Objection No 28 made by Mr R A Brandram Jones and noted in the Register on 28 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 11 January 1979. At the hearing (1) Mr J I Brooke on whose application the registration at Entry No 6 was made, and (2) Mr R A Brandram Jones on whose application the Land Section registration was made and also the said Objector, both attended in person.

The land (the "Unit Land") in this Register Unit (according to the Register) extends to about 4.166 acres and is in 2 pieces both bounded on the west by the River Wye and one ("the North Piece") north of and adjoining the road leading to Hoarwithy Bridge and contains about 1.433 acres, and the other ("the South Piece") south of and adjoining the said road and containing about 2.733 acres. In the Rights Section there are 11 registrations at Entry Nos 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, and 14 of rights to graze and rights to fish or of piscary all attached to various lands in Kings Caple (9 pieces are specified at Entry No 6), and all these registrations being undisputed have become final. The registration at Entry No 6 is of a right attached to "the Court Land" (specified by reference to OS Nos 219, 195, 196 and 215) to graze 5 cattle, of piscary, one rod to fish for salmon, trout and coarse fish in the River Wye; and the registration at Entry No 11 (made on the application of the Rev E H Moseley owner of the Glebe at Kings Caple) attached to "the Glebe" (specified by reference to OS No 162) to graze 3 cattle, 12 sheep, 2 pigs or 2 goats, of piscary, one rod to fish for salmon, trout and coarse fish in the River Wye". The grounds of Objection (so far as relevant to the Entries now disputed) are: "The rights on the common ... are restricted to the residents of Kings Caple. For the purposes of the Act, the right is attached to the domicile of the residents in order to maintain permanence of the rights. In the case of Entry Nos 6 and 11, there are no domiciles on the OS Nos quoted".

The oral evidence of Mr Brooke was to the following effect:- The Court Land mentioned in Entry No 6 is about 60 acres; he bought it in 1966 with the intention of at sometime putting a house on it; it was then part of Court Farm, which he does not own. The Court Land is some distance from the Unit Land. He is and has been for the last 30 years a resident of Kings Caple. The Unit Land is not in fact divided by the road because it is possible to go under the road between the 2 pieces. It is now a wilderness. Between the years 1950 and 1960, he kept it tidy by grazing it from adjoining land of which he was the tenant.



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The oral evidence of Mr Brandram Jones was to the following effect:- He had lived in the Parish since 1948 (he is now 46) and his father before him. Before he made the registration (Land Section), he consulted the various old people in the Parish to confirm his knowledge of the right; the rights of grazing and fishing were open and unstinted to all householders in the Parish and not restricted to landowners or landholders even. The last person to exercise a right of grazing (this was prior to 1950) was a cottage with a very small area of land; since 1950 Mr Brooke when he occupied the adjacent land did with his cattle graze it between 1950 and 1960 as he said. There is no dispute that Mr Brooke is the owner of the Court Land; but he is a tenant of Lower Penault (his residence). The Objection is based on the fact that there is no residence on the Court Land or on the Globe Land specified in Entry Nos 6 and 11; consequently there can be no residence attached to the rights.

The 11 registrations which have become final are all in a form applicable to rights of grazing and fishing appurtenant to land and exercisable without reference to residents. Mr Brooke and Mr Brandram Jones (who are chairman and vice-chairman of the Parish Council) discussed the effect of these registrations:- They appear to permit a person who stays for a weekend on the land mentioned to fish the River, and it may be that some persons have bought cottages just to do this without any intention of residing; so in the result residents entitled under the customary right are prejudiced. Further it would be in the public interest if the Unit Land could be tidied up and improved for the benefit of those entitled to use it and of the locality generally; but this is difficult so long as the legal position is obscure.

By section 10 of the 1965 Act, the 11 registrations which are now final are "conclusive evidence of the matters registered at the date of registration". But it may be that because the description in the Register of the rights does not accord with what they were before 1965 thought to be, the registration has somehow changed the rights. Alternatively it may be that the registrations should be read as recording the rights as they were and not as a comprehensive statement of how the rights can be exercised in all circumstances. In my view I ought to express an opinion as to the effect of these registrations, not only because they have become final and outside the jurisdiction of the Commons Commissioners, but also because those entitled to the rights have had no opportunity of expressing their views.

In my view I must limit myself to the registrations now in dispute. Mr Brooke contended that although there is now no house on the Court Land, the registration at Entry No 6 should be maintained because he might erect a house there.

In relation to this Entry No, I must I think either (a) read it as meaning what it says (a right of grazing and fishing appurtenant to the Court Land) and consider whether it is supported by the evidence of Mr Brooke; or (b) read it as meaning a right for residents to graze and fish such as Mr Brandram Jones said existed by custom and consider whether it is supported by his evidence. As to (a), Mr Brooke's evidence did not within the legal principles applicable establish the existence of such a right because the use he described himself as having made of the land was for too short a period and was not from the Court Land. As to (b), for the reasons given by Mr Brandram Jones the right claimed was not within the custom as he understood it. I cannot I think alter Mr Brandram Jones' evidence merely because in Mr Brooke's



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circumstances the result is somewhat capricious. It may be that the legal position of the Unit Land is as a result of the now final registrations unsatisfactory, but this is I think a consequence of section 10 of the 1965 Act and the circumstance ~~that~~ ~~see~~ under it registrations which are irregular may merely because no one has objected to them become subject to the statutory presumption; whatever may be its effect in this case, I cannot so it seems to ~~be~~ deal with the registration at Entry No 6 otherwise than in accordance with the legal principle which I consider to be applicable on the evidence put before me.

The registration at Entry No 11 is not in any relevant respect different from that at No 6. The Rev E H Moseley did not appear and was not represented so I have no evidence in support of his registration. I consider I should deal with it in the same way as Entry No 6.

Upon the considerations outlined above I conclude that these registrations were not properly made, and accordingly I refuse to confirm them.

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 12th day of February 1979

a. a. *Baron*

Commons Commissioner