



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/289
215/D/290
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In the Matter of Mill Moors,
Pembridge, Leominster District,
Hereford and Worcester

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry No 4 (since replaced by Entry No 7) and Entry No 5 in the Rights Section of Register Unit No CL. 141 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection Nos 302 and 351 made by Mr Vere Egerton Cotton, Mr Bertram Lyle Rathbone and Mr William Rathboen and noted in the Register on 26 November and 14 December 1970.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 8 February 1978. At the hearing (1) Mrs Alice Margaret Reid (she made the application resulting Rights Section Entry No 4) attended in person, (2) Mrs Gladys Davies (she made the application resulting in Rights Section Entry No 5) was represented by her son Mr Robert Bernard Davies, (3) Mr Robert Bernard Davies also attended on his own behalf as being entitled in succession to the Objectors Messrs V E Cotton, B L Rathbone and W Rathbone, and (4) Hereford and Worcester County Council as registration authority were represented by Mr G H Holman.

The registration in the Land Section is recorded as having been made "by the Registration authority without application". Mr Holman said: the registration was made in consequence of the applications for the registration of rights; the County Council were not supporting the Land Section (considered by itself apart from any Rights Section Entry which might be established).

The land ("the Unit Land") in this Register Unit contains (according to the Register) about 9½ acres; it is approximately triangular, being bounded on the northeast by the River Arrow, and on the south of Curl Brook (this joins the River at the east end of the Unit Land a short distance to the west of the road bridge over the River). New Mills farmhouse where Mrs Davies and Mr Davies live is a short distance to the northwest of the Unit Land being on the other side of the River.

The grounds of Objection No 301 are: "That the alleged right does not exist" (this Objection originally applied to Entry Nos 1, 2, 3, 4 and 5: of these Nos 1, 2 and 3 have been cancelled). The grounds of Objection No 351 are: "That the parcel is not common land at the date of registration". As to the Rights Section Entry No 5 made on the application of Mrs Davies:- The claim is of a right attached to New Mills Farm to graze (a) 8 cattle and (b) 30 sheep. I have a letter dated 7 January 1978 signed by her saying: "I wish to renounce my claims to graze "Mill Moors...", and this letter was at the hearing confirmed by Mr Davies.



The right as originally registered at Entry No 4 was to graze 2 cows or 7 sheep as soon as the last load of hay is removed and continue until 2 February each year. As replaced by Entry No 7 it is of a right to graze one cow or 3 sheep.

In support of this Entry oral evidence was given by Mrs Reid who has lived in the Parish for about 13 years and has been clerk to the Carpenters Trustees since about 1964 and on whose behalf Entry No 7 is recorded as having been made. She produced the Minute Book of Pembridge Parish Council for the years 1924 to 1954 and directed attention to the record of the meeting on 19 October 1937: "The matter of stock belonging to non-parishioners grazing on the Village Green, Long Meadow and Mill Moors was considered to be trespassing thereon. The chairman stating in his opinion the Council had no power to take action as regards the grazing on the Long Meadow and Mill Moors but they had control of the Village Green and could take proceedings against persons who had no right to turn their animals thereon"; and on 17 April 1944: "Mill Moors Fences: The bad condition of the above was again discussed and it was finally decided to leave the matter in abeyance"; and on 6 April 1959 about the replacement of a notice board on Mill Moors. She further relied on the circumstance that Mr W P and Mrs J Lloyd who were formerly tenants of the Unit Land limited their Objection (No 263 relating to Entry No 4) to the number of animals claimed (the amended registration at Entry No 7 conceded this Objection); Mr and Mrs Lloyd had in succession to Messrs Cotton, Rathbone and Rathbone ("the Rathbone Executors") become owners. As to the original rights registered, she understood Mr Williams of Townsend Farm was at one time a tenant of the land ("the Attached Land") to which the right is attached (in the application described as "Part of Low Meadow"), and he had before 1950 grazed the land but had stopped doing so following a dispute about the fishing rights.

Mr Davies in the course of his evidence said in effect:- He was born in 1936 and has lived at New Mills Farm since 1946. He bought the Unit Land from Mr and Mrs Lloyd (their solicitors in a letter dated 29 April 1974 to the County Council indicate that they had then recently purchased Mill Moors and Long Meadow and the solicitors for Mr Davies in a letter dated 4 September 1974 to the County Council indicate that Mr Davies had by then become the owner; in the Ownership Section Mr Davies is registered as owner with a note that the land has been registered under the Land Registration Act 1925 to 1936). Mr Davies said that he had never seen any Parishioner's stock on the Unit Land.

Two days after the hearing I walked over the Unit Land and over part of Long Meadow.

As indicated above, there was at the hearing a conflict between the evidence of Mrs Reid and Mr Davies. Mrs Reid in effect contended that I should disregard Mr Davies' evidence as the Minutes of the Parish Council were consistent only with there having been some grazing by Parishioners at some time and that Mr and Mrs Lloyd (whatever might be the objection of the Rathbone Executors) who as tenants must have known how the Unit Land was used never made any objection and apparently conceded a right such as now is registered at Entry No 7.

The appearance of the Unit Land and its situation relative to the Attached Land is much against the registration now in dispute. The Unit Land is isolated from the surrounding land by the River and the Brook. The only easy access to it is by a bridge over the River upon land apparently belonging to New Mills farm, and there is nothing to indicate that anyone from anywhere else could or would



ever want to graze it. The Attached Land is about half a mile to the east; although I did not walk so far (there was much snow and ice) it was apparent that for the Attached Land (according to the map it has an area of about half an acre) to have a right to graze one cow and 3 sheep on the Unit Land would be most extraordinary. Although there is no legal objection to such a right, and although I have not overlooked that Mr Davies produced little or no evidence against it, I consider that the evidence of Mrs Reid falls short of establishing the existence of any right so extraordinary. I conclude therefore that the right as registered at Entry No 7 does not exist.

I am unable to conclude from any evidence given by Mrs Reid that Mr and Mrs Lloyd when they were owners ever made any agreement with her or with the Carpenters Trustees which would bind Mr Davies as their successor in title to treat Objection Nos 302 and 351 as never having been made. In the absence of any evidence that the Unit Land could be the definition of "common land" in the 1965 Act, if it was not subject to any right of common, I conclude that it was not common land at the date of registration.

For the above reasons I refuse to confirm any of the three registrations which are now in dispute and which are the subject of these proceedings.

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 1st day of *March* — 1978

a.e. Basil Fulle

Commons Commissioner