



In the Matter of Oldwood Common comprising O.S. Field Nos. 933,
934 & 978, Tenbury Leominster D.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 17 inclusive in the Rights section of Register Unit No. CL.6 in the Register of Common Land maintained by the former Worcestershire County Council and are occasioned by Objection No. 10 made by Mr. W.L. Arnett and noted in the Register on 17th July 1969.

I held a hearing for the purpose of inquiring into the disputes at Worcester on 28th January 1975.

There appeared:-

Mr. J.A. Weston, solicitor for the Leominster District Council, Mr. T.F. Higginson of Messrs. Norris and Miles solicitor for all the claimants for grazing rights other than Mr. G.W. Welton (Entry No. 12) and the Objector Mr. W.L. Arnett in person.

Mr. Arnett's registration in the ownership section of the Register as the owner of the land in question is undisputed and final. By his objection he objects to the registration of the land as Common Land and the registrations of all rights of grazing. It was accepted by Mr. Weston and Mr. Higginson that the burden of establishing that Mr. Arnett's land was Common Land and subject to rights of common lay upon them.

The land in question is a regulated common by virtue of a Scheme approved on 5th March 1926 under the Commons Act 1899. Mr. Weston accepted that the circumstances that the land is a regulated common would not necessarily bring the land within the definition of Common Land in the Commons Registration Act 1965 and that my decision could not in any way affect the said Scheme and indicated that in the absence of "rights of common" he would not seek to support the Entry in the Land Section of the Register.

In view of the course which the hearing took it is not necessary for me to refer to the troubled history of this land. Mr. J.H.H. Oliver and Mr. John Thomas Jordan gave evidence on behalf of the individuals who claimed grazing rights. In the course of his evidence Mr. Jordan produced the sale particulars issued on behalf of Mr. Arnett for the purpose of the sale by him at auction on 11th June 1968 of Manor Farm. These sale particulars contained three references to Common Rights one of which was in the following terms:-



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"Common Rights

The Farm is sold together with all such rights as the Vendor has always enjoyed over Oldwood Common an area of about 71 acres which was ploughed up during World War II and which was then reclaimed"

Manor Farm was not sold at the auction but was sold by private treaty immediately thereafter to Mr.Parkin and three sub-purchasers of whom Mr.Jordan was one. When faced with these sale particulars Mr.Arnett agreed that it was not open to him to contend that the land is not subject to common rights and he admitted that he had sold all his common rights. He stated that the purpose of his objection was to achieve " law and order" on the common.

Mr.Jordan told me that in his view Oldwood Common was capable of sustaining approximately 300 sheep and this estimate was later confirmed by Mr. Jay and accepted by Mr.Higginson. The grazing rights claimed in the aggregate are for 939 sheep. There was no documentary evidence as to the quantification of any of the grazing rights claimed. In these circumstances I indicated to Mr.Higginson that I would refuse to confirm grazing rights over the common for more animals than it could sustain and enquired whether the claimants could reach agreement as to the apportionment of the rights to graze the 300 sheep which the common could sustain so as to enable me to confirm the Entries modified in accordance with that agreement by consent. Mr. Higginson held out no hope that the applicants would be able to reach agreement and pressed me to confirm the Entries with such modifications as I might think fit. In the absence of any evidence as to the quantification of the rights claimed it was clearly neither possible nor within my powers to arrive at any decision as to quantification but I suggested that the quantification of the rights might be or be presumed to be proportionate to the respective areas of the lands to which they are appurtenant. Following upon this suggestion Mr.Higginson informed me that he was instructed that fifteen out of the seventeen claimants would accept the apportionment of the rights among them on the basis of one sheep for each acre of land to which the rights are appurtenant, a ewe with her lambs to be one sheep until 30th September in the year in which the lamb is born and five sheep to be the equivalent of one beast or one horse subject to the provision that no claimant should have the right to graze more than 50 sheep and claimants holding less than 10 acres shall have the right to graze ten sheep.

In view of the large measure of agreement and no known dissent and the view which I take that where there are common rights but no evidence as to their quantification I am entitled to presume that the quantification is in proportion to the area of the lands to which they are appurtenant I feel able to confirm not only the registration at Entry No. 1 in the Land Section of the Register but also the registration at the Entry, Nos 1 to 17 inclusive in the Rights Section of the Register modified so as to give effect to the scale set out above viz.

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Entry No. 1 confers the right to graze 10 sheep or ewes with their lambs or their equivalent.

Entry No.	2	"	"	"	"	"	12	"	"	"	"	"	"	"	"
"	"	3	"	"	"	"	27	"	"	"	"	"	"	"	"
"	"	4	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	5	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	6	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	7	"	"	"	"	37	"	"	"	"	"	"	"	"
"	"	8	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	9	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	10	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	11	"	"	"	"	50	"	"	"	"	"	"	"	"
"	"	12	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	13	"	"	"	"	12	"	"	"	"	"	"	"	"
"	"	14	"	"	"	"	20	"	"	"	"	"	"	"	"
"	"	15	"	"	"	"	45	"	"	"	"	"	"	"	"
"	"	16	"	"	"	"	10	"	"	"	"	"	"	"	"
"	"	17	"	"	"	"	29	"	"	"	"	"	"	"	"

Five sheep or ewes are the equivalent of one beast or one horse. A lamb shall be so regarded until 30th September in the year in which it is born.

Mr. Higginson made an application for costs but since it was apparent that the applicants could not reach agreement without a hearing and since it is essential to restrict the rights to those which the common can sustain I make no order as to costs. Mr. Arnetts objection has enabled me to confirm the rights with modifications which will prevent the common from being over grazed and avoid the dissensions which are likely to arise if the common is over grazed.

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 10th day of February

1975

C. A. Settle

Commons Commissioner