



In the Matter of Smithmoor Common, Earl's Croome,
Hereford and Worcester (No 2)

DECISION

These disputes relate to the registrations at Entry Nos 1 - 19 (inclusive) in the Rights section of Register Unit No CL 32 in the Register of Common Land maintained by the former Worcestershire County Council and are occasioned by Objection No 5 made by Mrs D E Kember and noted in the Register on 1 August 1969. Objection No 53 made by the Earl's Croome Parish Council and noted in the Register on 29 October 1970, Objection Nos 75 to 83 (inclusive) made by the Parish Council and all noted in the Register on 23 March 1972, and Objection No. 93 made by the Parish Council and noted in the Register on 15 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 29 November 1977. The hearing was attended by Mr P C Davis, solicitor, on behalf of Miss K A F Wilton, the applicant for the registration at Entry No. 5, and Mr W J Tustin, the applicant for the registration at Entry No. 7, and by Mrs M J Paton, solicitor, on behalf of Mrs Kember. Mr Davis also appeared for the Parish Council, whose Objections do not relate to either Entry No. 5 or Entry No 7. There was no appearance by or on behalf of the applicants for any of the other registrations, but by a letter dated 18 November 1977, addressed to the Clerk of the Commons Commissioners, solicitors on behalf of Mr G F T Rimell and Mrs M R T Rimell, the applicants for the registration at Entry No. 6, stated that they wished to "withdraw" their application, and by letter dated 15 November 1977, addressed to the Clerk of the Commons Commissioners, solicitors on behalf of the Trustees of Mrs B K A Amphlett's Marriage Settlement, the applicants for the registrations at Entry No. 19, stated that they did not wish to pursue their registration.

The land comprised in the Register Unit consists of two parts, which have separate entries in the Land section of the Register Unit. Entry No. 1 is "The piece of land known as Smithmoor Common", and Entry No 2 is "The piece of land being a lane which connects Smithmoor Common to the Upton upon Severn to Pershore Road". Mrs Kember's Objection relates to all the registrations in the Rights section, but only so far as the lane is concerned, while the Parish Council's Objections relate to some of the registrations in toto.

The northern part of the lane lies in the parish of Hill Croome and the southern part in the parish of Earl's Croome. In my decision in In the Matter of Smithmoor Common, Earl's Croome (1977), Ref. No. 42/D/41 I held that there were no rights of common over the northern part of the lane and that the southern part was subject to the same rights as the land comprised in Entry No. 1 in the Land section. The northern part of the lane having accordingly been excluded from the Register Unit, it follows that no modification of any of the registrations in the Rights section is necessary to give effect to Mrs Kember's Objection.

Apart from Mrs Kember's Objection, there was no objection to any of the registrations at Entry Nos 2 to 9, (inclusive). As stated above, that at Entry No 6 has been "withdrawn", but since Mrs Kember's Objection was the only one



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that related to it, it seems proper to regard the "withdrawal" as indicating only a desire not to contest that Objection.

The Parish Council's Objections relate to the registrations at Entry Nos 1 and 10 to 19 (inclusive). The application in respect of Entry No 19 has been "withdrawn", and there was no evidence to support any of the registrations to which the Parish Council's Objections relate.

The Parish Council's Objections denied the existence of the rights registered at Entry Nos 1, 12, 15, 18 and 19 and were to the quantum of the rights registered at Entry Nos 10, 11, 13, 14, 16 and 17.

In the Objections relating to quantum it was stated that the rights ought to be so many "pastures", it being stated that "1 pasture = 1 beast". In the case of Entry Nos 10 and 17 it is stated that the rights should comprise $1\frac{3}{4}$ and $3\frac{1}{4}$ pastures respectively. Since section 15(1) of the Commons Registration Act 1965 requires a right to graze animals to be quantified as a definite number of animals, it is not possible to quantify the rights in "pastures". I shall therefore round up $1\frac{3}{4}$ pastures to 2 cattle and round down $3\frac{1}{4}$ pastures to 3 cattle.

In these circumstances I confirm the registrations at Entry Nos 2 to 9 (inclusive) without modification. I confirm the registrations at Entry Nos 10, 11, 13, 14, 16, and 17 with the substitution of the figures 2, 4, 4, 1, 1 and 3 for the figures 5, 30, 45, 5, 5, and 20 respectively, and I refuse to confirm the registrations at Entry Nos 1, 12, 15, 18, and 19.

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 20th day of December 1977

Chief Commons Commissioner