



COMMONS REGISTRATION ACT 1965

Reference No.29/D/30

In the Matter of Russell's Water Common,
Pishill-with-Stonor, Oxfordshire (No.6).

DECISION

This dispute relates to the registration at Entry No.13 in the Rights Section of Register Unit No.C.L.69 in the Register of Common Land maintained by the Oxfordshire County Council and is occasioned by Objection No.22 made by Lord Camoys and noted in the Register on 18th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Oxford on 30th January 1974. The hearing was attended by Mr. H.P. Hillyer, solicitor, for Mrs. R. Rose, the applicant for the registration, and by Mr. J. Jopling, of counsel, for the Objectors.

The applicant is provisionally registered as the owner of (a) a right of estovers, and (b) a right of pasture for 10 head of cattle, attached to Beech Barn, Russell's Water. The particular right of estovers claimed is to take wood for domestic fuel (firebote) and peasticks and also some bracken.

There was evidence that Mrs. Rose's predecessors in title during the last 50 years had kept cattle and horses, which had been turned out on the land in question. Mrs. Rose, who purchased her property in 1958, has only kept horses. On this evidence I can only draw the inference that any right of pasturing cattle which Mrs. Rose may have had has been lost by abandonment. If there has been any right to pasture horses, I cannot deal with it, since no such right has been registered.

Mrs. Rose has cut bracken which she has used for bedding for her horses and there was evidence that bracken had been cut for this purpose by her predecessors in title.

There was also evidence, which I accept, from several persons who have lived in the immediate vicinity that from the beginning of the present century and, by inference, very much earlier bracken had been taken from the common by persons living in the nearby villages of Russell's Water and Maidensgrove. This taking of bracken was very extensive, being indulged in by all the inhabitants of the two villages.

On this evidence Mr. Jopling argued that the right of estovers claimed cannot exist in law, since it was held in Gateward's Case (1607), 6 Co.Rep.59b that there cannot be any right to a profit à prendre in a fluctuating body like the inhabitants of a particular place. If this evidence had stood alone, I should have felt bound by this decision to hold that the existence of no right of common had been proved and that the taking of bracken which has been proved could be explained by toleration on the part of the owner of the land. But the oral evidence summarized above does not stand alone. In the Rights Section of the Register Unit there are four registrations of rights of estovers over the land in question which have become final. By virtue of section 10 of the Commons Registration Act 1965 these registrations are conclusive



evidence, as at the dates of the registrations, that there were rights of common over the land in question attached to the four areas of land set out in column 5 of the Register Unit. The witnesses, however, drew no distinction between the persons exercising those rights and the other persons who took bracken from this land: they lumped them all together as inhabitants. Inhabitants they were, but some at least of them were taking wood, etc. not as inhabitants but as persons entitled to rights of common. Since it is therefore not possible to dismiss the evidence as being nothing more than evidence of the taking of bracken by inhabitants by toleration on the part of the landowner, it becomes necessary to consider whether in this particular case what has in fact happened is capable of that or some other explanation. There is no evidence that the owner of the land ever granted permission to an owner of Beech Barn to take bracken from this land. Mrs. Rose has been doing it as of right and there is no reason to believe that her predecessors in title did not also do it as of right. The evidence covers a period of more than sixty years. I find that a right of estovers attached to Beech Barn has either existed from time immemorial or has been acquired under the Prescription Act 1832.

For these reasons I confirm the registration with the following modification:- namely the deletion of the words "A right of pasture for 10 head of cattle".

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 March 1974

Chief Commons Commissioner