



In the Matter of Russell's Water Common,  
Pishill-with-Stonor, Oxfordshire (No.8).

DECISION

This dispute relates to the registration at Entry No.15 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.21 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. D.G. Lang, solicitor, for Mr. F.A. Hunt, 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 herbage, (b) a right of estovers, (c) a right of turbary, and (d) a right of pannage, attached to Nuttall's Farm, Maidensgrove. The particular right of estovers claimed is to take wood for domestic fuel (firebote) and peasticks and also some bracken.

There was no evidence to support the claims to rights of turbary and pannage.

So far as the claimed right of herbage is concerned, Mr. Hunt's evidence was that he has cut grass for hay on the land in question since he bought his farm in 1958, but that previous owners of the farm did not do this, but turned out cattle and sheep. I cannot find that a right of herbage is proved by this evidence.

Since Mr. Hunt bought his farm he has cut wood for firing and peasticks and on one occasion he cut wood to repair a cart. Mr. Hunt believed that he had a right so to do and no one has ever sought to stop him.

Although Mr. Hunt could only speak about the period since 1958 there was 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 wood had been taken from the common by persons living in the nearby villages of Russell's Water and Maidensgrove. This taking of wood 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 wood 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 these rights and the other persons who took wood from this land: they lumped them all together as inhabitants. Inhabitants they were, but some at least of them were taking wood 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 wood 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 Nuttall's Farm to take wood from this land. Mr. Hunt has been doing it as of right and there is no reason to believe that his 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 Nuttall's Farm 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 Herbage", "A right of Turbary", and "A right of Pannage".

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