



## COMMONS REGISTRATION ACT 1965

Reference Nos 31/D/27  
31/D/29

In the Matter of Stapeley Common,  
Chirbury, South Shropshire District,  
Shropshire

DECISION

These disputes relate to the registration at Entry Nos 1 to 15 inclusive and 17 to 21 inclusive in the Right Section of Register Unit No. CL 80 in the Register of Common Land maintained by the Shropshire County Council and are occasioned by Objection No. O.110 made by Mr J R P Delves and noted in the Register on 25 January 1972 and by Objection No. O.268 made by the Stapeley Commoners Association and noted in the Register on 18 August 1972.

Mr G D Squibb QC, the Chief Commons Commissioner held a hearing for the purpose of inquiring into these disputes and into a dispute concerning the registration at Land Section Entry No. 1 occasioned by the said Objection No. O.110 (Mr Delves) and a dispute concerning the registration at Rights Section Entry No. 16 occasioned by Objection No. O.269 made by Stapeley Commoners Association and noted in the register on 18 August 1972.

The land ("the Unit Land") in this Register Unit contains about 448 acres. The grounds of Objection No. O.110 (Mr Delves) are: "the land shown edged red on the attached plan was not common land", the land so edged is a strip about 300 yards long from north to south, nowhere more than about 50 yards wide, and situated along and within the southeast boundary of the Unit Land. This Objection although expressed to be limited to the registration in the Land Section, must under subsection (7) of section 5 of the 1965 Act be treated as an objection to all the 21 registrations in the Rights Section. Objection Nos O.268 and O.269 (the Commoners Association) relate only to the registrations at Rights Section Entry No. 2 and No. 16, which were made on the application of Mr Harry Adams and Mr & Mrs Powell respectively.

As a result of the said 1974 hearing the Chief Commons Commissioner gave two decisions both dated 1 July 1974. By the first he confirmed the registration in the Land Section without any modification, rejecting for reasons therein set out Objection No. O.110 (Mr Delves). By the second (headed "Interim Decision") he concluded that the formula put forward by the Commoners Association was founded upon an unsound legal basis and that he could not therefore satisfactorily decide this case without the assistance of an assessor.

On 25 January 1979 Mr L J Morris Smith Commons Commissioner held the reopened hearing at Ludlow with an assessor Mr H D Pennington. At this hearing Mr H Adams was or the administrators of his estate (he was then or is now deceased) were represented by Mr W R Spanner, solicitor of Morgans, Solicitors of Ludlow, and Stapeley Commoners Association were represented by Major D J Brook their chairman; it appeared that further discussion might well produce an agreed compromise between them; Mr Spanner was not then in a position to adduce evidence on the matters which



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the Assessor indicated he would want to know before he could make a report, should the dispute not be settled; in these circumstances the Commissioner adjourned the hearing as regards the registration at Entry No. 2. The Commissioner continued the hearing as regards the registration at Entry No. 16 (Mr & Mrs Powell). By his decision dated 29 November 1979, given upon a consideration of a report dated 14 February 1979 made by the Assessor, he confirmed the registration at Entry No. 16 with the modification that for "100 sheep, 20 cattle and 15 pigs" in column 4 there be substituted "20 sheep or 4 cattle". By their Objection the Association had contended that the modification should be "19 sheep or 4 cattle".

I held the second reopened hearing at Shrewsbury on 24 February 1982. The Stapeley Commoners Association were represented by Major Brook (now their former chairman) as before.

The registration at Entry No. 2 is of a right attached to the land edged blue on a plan (being Lower Stapeley Farm) to graze 180 sheep, 24 cows or 15 horses. The figures suggested in Objection No. 268 are: "80 sheep only or 16 cows or horses".

I have a letter dated 21 February 1980 from Morgans saying that the administrators of the estate of Mr Adams have not been able to reach agreement with the Commoners Association; Major Brook confirmed that no agreement had been reached.

In the absence of any representation of the administrators, no evidence or argument was put before me in support of the numbers claimed by Mr Adams. However Major Brook conceded (as was accepted by the Chief Commissioner) that there is a grazing right of some kind attached to Lower Stapeley Farm. I see no reason for putting the public to the expense of asking the advice of the Assessor a second time, or of adjourning the hearing a third time to enable evidence to be presented. I have the stocking proposals (copy enclosed with the letter dated 16 January 1974 to Mr V L Powell from Mr M Stather group secretary of the National Farmers Union), which had been accepted at a meeting of the Stapeley Commoners and which were before the Chief Commissioner; in these proposals Stapeley Farm (H Adams) is stated to contain 122 acres, and the sheep allocation is 80 (or cattle - 1 beast to 5 sheep); as regards Mr Adams there is the explanation "8 acres 20 sheep, 114 acres 57 sheep, (added up) 77 sheep allowed". Notwithstanding the criticism of the Chief Commissioner that these proposals were erroneous because based on a formula depending on the capacity of the Unit Land, I can I think treat them as prima facie evidence of the comparative levancy and couchancy capacity of each of the farms to which registered rights are attached. I conclude from the Assessor's report as regards the registration at Entry No. 16 (Mr & Mrs Powell) that the error of law made by the Commoners Association and pointed out by the Chief Commissioner, practically made a difference of at the most 5 per cent (20 sheep instead of 19).

I consider I should in some way finalise the registration at Entry No. 2 although my decision must be somewhat arbitrary; the information summarised above is I think basis enough. My decision is that I confirm the registration at Right Section Entry No. 2 with the modification that for "180 sheep, 24 cows and 15 horses" in column 4 there be substituted "85 sheep, 17 cows or 15 horses".

As regards the other registrations in the Rights Section, Major Brook had assumed that as a result of the Chief Commissioner's first 1974 decision, these registrations had become final. Technically, this assumption is not correct, because the Chief Commissioner never confirmed them. However as I read his decision he only kept open.



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the possibility of modifying these other registrations because for the purpose of giving a proper decision as regards the registrations at Entry Nos 2 and 16, some such modification might be necessary. No such modification was suggested by the Assessor in his report, and the Commons Commissioner gave his decision about the registration at Entry No. 16 without mentioning any such possible modification.

I conclude that the said stocking proposals although based on an erroneous view of the law in fact produced an answer which was right or very nearly right, and that I have therefore evidence enough that all these other registrations which were made on the basis of these proposals should be treated as properly made. If Objection No. O.110 had never been made, all these registrations would have become final under section 7 of the 1965 Act, without any reference to a Commons Commissioner; the grounds of such objection in no way challenge these other registrations; I think I should produce the same result. Accordingly I confirm the registrations at Rights Section Entry Nos. 1, 3 to 15 inclusive and 17 to 21 inclusive without any modification.

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 26<sup>th</sup> ——— day of March ——— 1982

*a. a. Baden Fuller*

Commons Commissioner