



## COMMONS REGISTRATION ACT 1965

Reference Nos. 231/D/32,33 &amp; 34

In the Matter of Wem Moss, Wem Rural  
North Shropshire D., Salop

DECISION

These disputes relate to the Entry No. 1 in the Land Section, Nos. 1, 2 and 3 in the Rights Section and No. 1 in the Ownership Section of Register Unit No. CL.18 in the Register of Common Land maintained by the Salop County Council and are occasioned by Objection No. O.108 made by Mr. E.W. Stokes and noted in the Register on 8th March 1971.

I held a hearing for the purpose of inquiring into these disputes at Shrewsbury on 9th April 1975. The hearing was attended by Mr. Bygott of Messrs. Henry Lee Bygott & Eccleston the solicitors for Mr. Hedley Stokes, the administrator of the estate of the late Mr. E.W. Stokes, Mr. D.J. Ormond of Messrs. Sprott, Stokes & Turnbull the solicitors for Baron Barnard, Mr. J.F.S. Newsome of Messrs. Gough Thomas & Scott the solicitors for Mr. Frank Hulson and Mr. A.J. Beare the clerk to the Wem Rural Parish Council.

The land was registered as common land in the Land Section of the Register by the Wem Rural Parish Council. Mr. Hulson, Mrs. D.E. Thelwell and Mr. R. Dickens have registered claims to rights of common; the last two claimants did not appear to support their claims. Baron Barnard has registered a claim to ownership and the late Mr. Stokes' objection to all these registrations is based on his claim that he is the owner of Wem Moss.

Mr. Ormond produced a tithe map of 1837 on which Wem Moss was identified as No. 2947 and an apportionment of Rent Charge in lieu of tithes in the Parish of Wem dated 6th November 1841 in which No. 2947, Wem Heath was shown as being in the ownership of the Duke of Cleveland as Lord of the Manor and I was told and it was not disputed that Lord Barnard is the direct descendent of the Lord of the Manor. In these circumstances Mr. Bygott accepted that any claim to ownership by Mr. Stokes must rest on Section 4 of the Limitation Act 1939.

Mr. William Hedley Stokes the son of the late E.W. Stokes gave evidence. He is the son of the late E.W. Stokes who died in 1974 aged 75 and the grandson of Samuel Stokes. Mr. Hedley Stokes was born in 1934 and he told me that Samuel Stokes took a tenancy of Top House Farm and No. 3 Wem Moss in 1899.

Mr. Stokes produced a plan on which are marked various fences erected on Wem Moss and Mr. Stokes has made notes on the plan giving details of the fences and the respective dates when they were erected and also as to work done to drains. Mr. Stokes said the plan was started in 1955 and that the notes on the plan were contemporaneous except that which referred to his grandfather.

Mr. Stokes also produced some notes made by him on various sheets of paper which I marked A to G inclusive. He said note A was probably made in 1961 in order to amplify



and explain the notes made on the plan; note D he said was an extract from his diary which he did not produce but which he said he would produce if required so to do. Notes E, F and G Mr. Hedley Stokes said were all originals. Mr. Stokes stated that he and his family and no one else had grazed the whole of Wem Moss during his whole life time, as far as he was aware no right had been granted but no rent had been paid or demanded.

I asked Mr. Stokes for what purpose he prepared the said plan and made the said notes and indicated that I might draw the inference that they were prepared to support a claim to ownership. I did not receive any satisfactory reply to this question and I do infer that the purpose of the said plan and the said notes was to support his claim to ownership.

In cross examination by Mr. Ormond and Mr. Newsome, Mr. Stokes admitted that he was in dispute with Mr. Hulson in 1964 when Mr. Hulson complained that he had no business erecting fences and burning Wem Moss and Mr. Hulson produced to Mr. Stokes a receipt for the rent of £5 per annum for the shooting rights over Wem Moss.

Mr. Hulson's evidence on this topic was that he leased the shooting rights in February or March 1963, that he has shot over Wem Moss four or five times and that on each occasion he had a shooting party.

There was no evidence that Mr. Stokes objected to the shooting - the dispute arose in 1964 as a result of Mr. Stokes burning on Wem Moss when the birds were hatching.

Consequent to his dispute Mr. Stokes went to his solicitors who wrote to Mr. Hulson but did not communicate with Lord Barnard.

In these circumstances Mr. Ormond submitted that the receipt of rent for the shooting rights was an act of taking possession and that whatever Mr. Stokes may have done he was not in exclusive possession of Wem Moss to the exclusion of Lord Barnard. In my view no less important is the exercise of the shooting rights by Mr. Hulson in 1963 without any objection by Mr. Stokes. It is relevant to bear in mind that subject to encroachments by Mr. Stokes Wem Moss was open unenclosed common land and Lord Barnard was and is content that it shall so remain. The sporting rights belonged to Lord Barnard and the exercise of those rights either by himself or his shooting tenant was in those circumstances, short of removing Mr. Stokes' fences, one of the few methods available to him of establishing his ownership. It is clear beyond doubt that Lord Barnard never discontinued or intended to discontinue his possession of Wem Moss and the question which I have to decide is whether in the circumstances set out above Mr. Stokes has dispossessed Lord Barnard of Wem Moss or of any and if so what part of Wem Moss. Mr. Stokes, when he erected his fences, may have intended to secure for himself the exclusive right to graze on the enclosed land or he may have intended to dispossess the owner of the land. Mr. Stokes has not registered any rights of common as an alternative to his claim to ownership and I must for this reason as well as his conduct assume his intention has at all material times been to dispossess the true owner.

In my view when Lord Barnard granted Mr. Hulson the right to shoot and accepted rent he was exercising his right as owner and was in possession of the only rent payable and as from that date, time ceased to run in favour of Mr. Stokes. Alternatively, if I be wrong as to this, I am of the opinion that time ceased to run in the autumn of 1963 when Mr. Hulson exercised the shooting rights on the land.



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As in my opinion time under the statute ceased to run in 1963 and as the earliest date on which Mr. Stokes erected any fence was 1955 I take the view that Lord Barnard had not been dispossessed for the requisite twelve year period. Some support for this view is to be found in the case of Williams Brothers Direct Supply Ltd. v Raffery 1958 1QB 159.

The only evidence as to Mr. Stokes' grandfather's fence being hearsay and imprecise I cannot accept that evidence as adequate for the purpose of dispossessing the true owner.

For these reasons I confirm the Entry No. 1 in the Ownership Section of the Register and the Entry No. 1 in the Land Section of the Register.

Mr. Hulson gave evidence as to his claim to graze 50 sheep, 50 cattle and 50 pigs over the whole of Wem Moss. He acquired Northwood Farm including No. 2 Wem Moss on 13th November 1958. His evidence can be summarised by saying that until recently - about 1967 the grazing was confined to 2 Wem Moss which was occupied by his employees who grazed a few cattle and some pigs. Recently from about 1967 Mr. Hulson has grazed his own cattle which might have been as many as 100 on the 2 acres adjoining 2 Wem Moss for periods of about two weeks at a time. This evidence clearly does not support the substantial claim made by Mr. Hulson and in cross examination he expressed the view that he had heard that Wem Moss was common ground and there for all. Mr. Hulson stated that in 1958 there were gate posts on which he later hung a new gate leading from No. 2 Wem Moss to Wem Moss.

Since I reject Mr. Stokes' objection there is no valid objection to Mr. Hulson's registration which is provisional and I have therefore a discretion as to whether or not to confirm it with or without modification.

In my view I should confirm Mr. Hulson's registration modified so as to restrict it to the number of animals which 2 Wem Moss will support. Mr. Hulson regards the major part of Wem Moss as unsafe and unsuitable for grazing. In the absence of any more detailed evidence than that at one time there were at 2 Wem Moss on 7½ acres pigs and a few cattle, On the footing that 2 cattle to the acre would be reasonable I confirm Mr. Hulson's registration modified so as to be restricted to 15 cattle and 6 pigs. I refuse to confirm Entries Nos. 1 and 3 in the Rights Section of the Register in the absence of any evidence.

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

21<sup>st</sup>

day of

April

1975

Commons Commissioner