



COMMONS REGISTRATION ACT 1965

Reference No.31/D/31

In the Matter of Wheat Common.
Richards Castle, Salop (No.2).

DECISION

This dispute relates to the registrations at Entries Nos.1 to 11 in the Rights Section of Register Unit No.CL.43 in the Register of Common Land maintained by the former Salop County Council and is occasioned by Objection No.O.35 made by Mr.R.D.Bach and noted in the Register on 11th December 1970.

I held a hearing for the purpose of inquiring into the dispute at Shrewsbury on 12th June 1974. The hearing was attended by Mr.R.H.Green, solicitor, on behalf of Mr.J.Bradley and Mr.F.Bradley, applicants for the registration of rights of common over the land comprised in the Register Unit, by Mr.W.H.James, and Mr.Harry Mantle and Mr.J.H.Mantle, also applicants for the registration of rights of common, and by Mr.R.M.Purchas, of counsel, on behalf of the Objector. The other applicants for the registration of rights of common did not appear and were not represented.

The registrations applied for by the parties who appeared were supported on the ground that the land comprised in the Register Unit was subject to one or more of the following rights of common:-

Mr.J.Bradley: To graze 30 sheep

Mr.James: To graze 30 sheep

Mr.J.H.Mantle and Mr.H.Mantle: To graze 2 goats (tethered), 20 sheep, and 5 cattle

Mr.J.H.Mantle: To graze 2 goats (tethered), 10 sheep, and 2 cattle

Mr.F.Bradley: To graze 30 sheep, (Mr.F.Bradley had also applied for the registration of another right of grazing, but Mr.Green stated that that registration was not being supported).

Only Mr.J.Bradley and Mr.F.Bradley produced written evidence in support of their registrations. Mr.J.Bradley relied upon a conveyance of Rock Farm in the part of the parish of Richards Castle in Herefordshire to his father, dated 29th November 1950. The parcels of this conveyance included: "the commons rights of common and rights of pasturage and other commonable rights whatsoever in over and upon Richards Castle and Brightall Commons and in Richards Castle Woods in that part of the said parish of Richards Castle which lies in the said County of Hereford or elsewhere" in respect of the premises conveyed. If this conveyance relates to rights over the land comprised in the Register Unit, it can only be by virtue of the inclusion of the words "or elsewhere". In my view these words must be construed in the same way as what are known to conveyancers as "general words", namely as covering any



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rights which may exist, but not necessarily importing that any such rights do exist. The existence of the rights must therefore be proved by external evidence.

Mr.F.Bradley relied upon an indenture dated 25th March 1868, whereby his property, known as Easter Bush, also in the part of the parish of Richards Castle in Herefordshire, was conveyed together with (inter alia) all commons and common of pasture and of turbarry appertaining or accepted, reputed, deemed, taken, or known as part of the premises conveyed. Here again these general words did not prove the existence of any such rights, but only operate to convey any such rights which there may be.

The only other documentary evidence before me consisted of the title deeds of the Objector, who purchased the land comprised in the Register Unit on 2nd March 1966 subject to such commonable rights as were still subsisting and capable of being enforced.

Save in two exceptional cases, none of the claimants has ever had animals on the land in question. The first exception was that one day in 1961 Mr.F.Bradley took all the sheep from commons in the neighbourhood and drove them onto the land in question. This he did as a gesture, for the land is open to a main road and it would not be practicable to put sheep on it without the provision of cattle grids and gates. The other exception was that on one occasion some cattle strayed through a defective fence onto the land in question from some adjoining land owned by Mr.H.Mantle. Since the spring of 1967 the Objector has ploughed the land and taken crops off it. His immediate predecessor, the late Mr.R.Beesly, sometimes kept cattle on it and sometimes cut the grass for silage without interruption, save for the one occasion in 1961. Between February 1943 and March 1952 the land was requisitioned by the War Agricultural Executive Committee.

The name of the land indicates that it was at one time subject to rights of common. This is supported by Mr.H.Mantle's recollection of a conversation which his father had in 1899 with a Mr.Richard Betton, who asked him why he did not exercise his common rights, to which he replied that he was too busy. Mr.Mantle, senior, died in 1922, without ever having grazed animals on the land in question.

On this evidence I find myself quite unable to find that there are any rights of common in existence. I draw the inference from the evidence that such rights of common as there may have been had been abandoned long before Mr.F.Bradley made his gesture in 1961. I therefore refuse to confirm the registrations.

Both Mr.Green and Mr.Purchas applied for costs in the event of their respective clients being successful. Mr.Purchas included in his application the applicants for the registration of rights who did not appear, on the ground that there had been no intimation to the Objector before the hearing that the registrations for which they had applied would not be supported.



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I propose to deal with the costs by ordering the Objector's costs of this dispute to be paid by all the applicants in equal shares.

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 18th day of July 1974

J. D. Lamb
Chief Commons Commissioner