



COMMONS REGISTRATION ACT 1965

Reference Nos. 232/D/49

232/D/50

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232/D/64

In the Matter of Ash Priors Common,
Ash Priors and Bishops Lydeard,
Taunton Deane District. SOMERSET

DECISION.

These 16 disputes relate to the registrations at Entry No. 1 in the Land section and at Entry Nos. 1, 2, 3, 4, 5 and 6 in the Rights section of Register Unit No. CL.73 in the Register of Common Land maintained by the Somerset County Council, and to the registration at Entry No. 1 in the Land section of Register Unit No. VG.21 in the Register of Town or Village Greens also maintained by the said Council, and are occasioned (D/58) by objection (dated 15 September 1970) No. O/168 (to Rights Entries 4, 5, and 6 of CL.73) made by Sir Jeremy John Fortescue Gales, Baronet, and noted in the Register on 21 April 1971; (D/60 and D/63) by objection (dated 28 September 1970) No. O/209 (to Land Entry 1 of VG.21) made by Somerset County Council and noted in the Register on 16 February 1971; (D/64, D/61, D/51, D/52, D/53, D/54, and D/55) by objections (all dated 18 September 1970) Nos. O/243 (to Land Entry 1 of VG.21 and referred as an objection to Land Entry 1 of CL.73) and Nos. O/244, O/245, O/246, O/247 and O/248 (to Rights Entries 2, 3, 4, 5 and 6 of CL.73) all made by Mrs. Eva Gardinia Borthwick-Norton and noted in the Register on 5 or 8 February 1971, (D/56) by objection (dated 30 September 1970) No. O/250 (to Rights Entry 1 of CL.73) made by Mr. Bryan John Williams and noted in the Register on 8 February 1971, (D/57) by objection (dated 30 September 1970) No. O/251 (to Rights Entry No. 1 of CL.73) made by Captain Antony St. John Webster and noted in the Register on 5 February 1971, (D/59) by objection (dated 27 July 1972) No. O/821 (to Rights Entry 6 of CL.73) also made by Captain Webster and noted in the Register on 4 September 1972, and (D/49, D/50 and D/62) by the conflicting registrations at Entry No. 1 of the Land section of VG.21, at Entry No. 1 of the Land section and at Entries Nos 1-5 of the Rights section of CL.73.

I held a hearing for the purpose of inquiring into these disputes at Taunton on 3 June 1975. At the hearing (1) Mrs. Borthwick-Norton (she made objection Nos. O/243, 244, 245, 246 and 248 and was also one of the applicants for Entry No. 1 in the Rights section), (2) Captain Webster (he made objection Nos O/251 and 821 and was also the applicant for Entry No. 2 in the Rights section) (3) Mr. B.J. Williams (he made objection No. O/250 & 821 and was also the applicant



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for Entry No.4. in the Rights section) were all represented by Mr. D.S. Rowell of Counsel instructed by Broomhead & Saul, Solicitors of Taunton, (4) The Commons, Open Spaces and Footpaths Preservation Society (their application in respect of the registration at Entry No.1. in the Land Section of CL.73 is noted in the Register) were represented by Mr. P.T. Jacobsen solicitor of Bircham & Co. Solicitors of London, and (5) Somerset County Council were represented by Mr. D.L. Edwards assistant solicitor in the office of the County Secretary of the County Council.

Mr. Rowell said that Mr. B.J. Williams is the executor of Mr. Charles Williams on whose application Entry No.4 in the Rights Section of CL.73 was made, Nobody appeared to support Entry No.1. in the Land Section of VG.21 made on the application of Mr. I.G.S. MacMullen, chairman of the Ash Priors Parish Meeting, or to support Entry Nos. 3 and 6 in the Rights Section made on the application of Mr. Michael Heal Clarke and Mr. Leslie Arthur Webber & Mrs. D. Webber respectively. Nobody appeared for Mr. Jack Wallace Bowring the other applicant for Entry No.1 in the Rights Section.

The Land (the CL.73 Land) comprised in the Register Unit No. CL.73 contains according to the 1953 deed below mentioned 49a, 3r.16p. It is a grass land with some trees and scrub, open to tarmac roads which cross over it including a through road from Bishops Lydeard to the west, a road leading north to the village of Ash Priors, and a through road leading north to Coombe Florey. The Land ("the VG.21 Land") comprised in register unit VG.21 is the western part of the CL.73 land, being that (a little more or less) in the parish of Ash Priors, and containing about 23 acres. Mr. B.J. Williams is registered as owner (this registration is not disputed) in the Ownership Section of the whole of the CL.73 Land.

Mr. Edwards said of the VG.21 registration (in effect):- Ash Priors is a parish without a parish Council. He had spoken to Mr. MacMullen (Chairman of the Ash Priors Parish Meeting) and as a result had concluded that his application was based on a deed (Mr. Edwards produced it) dated 31 August 1953 by which Sir Jeremy J.F. Boles declared that section 193 of the Law Property Act 1955 should apply to the CL.73 land. He (Mr. Edwards) produced a letter dated 29 May 1975 by which Mr. MacMullen withdrew his application for the registration of Ash Priors Common as a village green, and a letter dated 31 May 1975 from the Clerk of the Bishops Lydeard Parish Council saying that they had no objection to such withdrawal; this Council is concerned because it is possible that a small part of the VG.21 Land may be in Bishops Lydeard.

All present at the hearing were agreed that I should refuse to confirm the VG.21 registration.

As to the CL.73 registrations, Mr. Rowell contended: (1) the Rights Entry No.1 (Mrs. Borthwick-Norton & Mr. Bowring) should be confirmed because the only Objections to it (O/244 by Mr. B.J. Williams and O/251 by Captain Webster) had been or were now by him as counsel for Mr. Williams and Captain Webster withdrawn; (2) the Rights Entry No.2. (Captain Webster) should be confirmed because the only Objection to it (O/244 by Mrs. Borthwick-Norton) was now by him as her counsel withdrawn; (3) the Rights Entry No.3 (Mr. Clarke) should not be confirmed because the Objection to it O/246 by Mrs. Borthwick-Norton was not withdrawn, and because Mr. Clarke was not present or represented to support it; (4) the Rights Entries No.4 and 5 (Mr. B.J. Williams, and Mr. C. Williams decd) should be confirmed because the Objections to it (O/162 by Sir Jeremy Bowles and O/245 and O/246 by Mrs. Borthwick-Norton) were withdrawn by him as Counsel for Mr. B.J. Williams to whom Sir Jeremy Boles has conveyed his rights and by him as counsel for Mrs. Borthwick-Norton; and (6) Entry No.6 (Mr. & Mrs. Webber) not be confirmed because the Objections to it (O/248 by Mrs. Borthwick-Norton and O/162 by Sir Jeremy J.F. Boles and O/821 by Captain Webster) were not withdrawn and Mr. & Mrs. Webber were neither present nor represented to support the Entry.



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Mr. Jacobsen said (in effect):- The Society had applied to register the CL.73 Land on the basis of the 1953 Deed. They were not interested in or concerned to argue any questions there might be as to the rights.

Mr. Edwards said that Objection O/209 by the County Council was to the VG.21 registration as regards the footpaths (they were considered by the Council to be highways), over the VG.land. If this Objection could be treated as being the CL.73 registration, the County Council would not wish to press it as such because the 1965 Act provides in effect that the registration of land as common land, shall not affect the highway position.

^{retired}
Captain Webster (H.M. Army/now a dairy farmer) in the course of his evidence said (in effect):- He acquired The Priory in 1950. The rights (Entry No.2) attached to it are "in his title deeds", being particularly mentioned in the 1913 Particulars of the Auction Sale of the Leftwick Estate; the description of lot 20 (The Priory) includes "such stockage rights on Ash Common as appertain to this lot." Although there is much bracken on the CL.73 land, the grass there, particularly in spring and summer, is worth mowing. He thought the 1913 Particulars to be the most authoritative document relating to the grazing rights over the CL.73. Land.

Mr. B.J. Williams (a farmer) in the course of his evidence said (in effect):- He had lived in the Village since 1939. He acquired Park Farm in 1957; he had been a tenant before that. The Rights (Entry No.4) attached to it were mentioned in the 1913 Particulars; Park Farm was lot 23 and was therein described as having "stockage rights" in the same way as lot 20. In 1972 he sold Park Farm to Mrs. Borthwick-Norton (conveyance dated 29 November 1972) and included in the sale such stockage rights as were appertaining. In July 1970 he purchased the CL.73 Land from Sir Jeremy Boles. The rights (Entry No.1) were attached to Hopkins Farm; this was lot 21 in the 1913 Particulars and was described "with stockage rights" as above. The 1913 particulars included a special condition of sale/title to the stockage rights included in lots 18,19,20,21,22 and 23 shall consist of a statutory declaration by Mr. C.R. Peart that such rights have been exercised by the tenants of the premises comprised in such lots for 18 years upwards prior to the date of the sale." The vendor is not named in the Particulars, but he thought it was Sir Wroth Acland Lethbridge. As regards the rights claimed by Mr. Clarke (Entry No.3) as attached to Ballifants Farm; this farm now includes about 50 or 60 acres which at one time formed part of a farm which was lot 18 in the 1913 Particulars and which was therein said to be 148 acres; Ballifants, as now held, included lands not within any of the lots described in the 1913 Particulars as having appertaining stockage rights. He thought that Mr. Clarke's claim for herbage up to 50 dairy cattle and 20 young cattle was excessive if regard was had to the numbers claimed in Entries 1, 2, 4 and 5; he suggested 25 cows and 15 young cattle. The registration in this Entry No.3 of estovers was not justified, those who had stockage did not take fern. As regards the rights claimed by Mr. & Mrs Webber Entry No.6, as attached to Pitpear Farm being lot 52 in the 1913 Particulars, there is no mention in the Particulars of stockage rights in respect of such lot.

I am not I think obliged merely because neither Mr. Clarke nor Mr & Mrs. Webber were present or represented at the hearing to make every possible presumption against them without regard to the evidence given. On the evidence outlined above I conclude that the CL.73 Land has for many years been regarded as subject to stockage rights, meaning rights of grazing and that such rights are exercised by the owners of the lots which in the 1913 Particulars were described as having them. As to the number of animals mentioned in the Entries, those specified in Entries Nos 1, 2, 4 and 5 appear to have been estimated



independently, so they are not consistent with each of the farms having stockage rights having equal rights; however it appears to me that Mrs. Borthwick-Norton, Captain Webster and Mr. B.J. Williams could be regarded as representative of all the persons interested, with their agreement and in the absence of any contrary view I conclude that I can properly confirm these registrations as they now stand.

As regards Entry No.3, the grounds of Objection O/245 are: "That the claim, if admitted, would be limited to such numbers of beasts as would, with other admitted claims, not exceed the total number which could reasonably be depastured on the common at any one time. The claim in respect of estovers is questioned". On the evidence outlined above, I see no reason for treating this Objection as a claim that Mr. Clarke has no rights at all, merely because he has not attended the hearing. I conclude that I should do no more than modify the Entry to give effect to Mr. Williams' view as to what he thought it should be. As regards Entry No.6, the grounds of Objection O/821 are:- "I question the validity of any rights that fall on Ash Common with regards to Pitpear Farm"; on the evidence summarised above I conclude that this objection succeeds.

For the above reasons I refuse to confirm the registration at Entry No. 1 in the Land Section of Register Unit No. VG.21, I confirm the registration at Entry No.1 in the Land Section and Entries Nos. 1, 4 and 5 in the Rights Section of Register Unit No. CL.73 without any modification, I confirm the registration at Entry No. 3 in the said Rights Section with the modification that in column 4 for the words "to 50 dairy cattle and 20 young cattle and also a right of estovers" shall be substituted "25 cows and 15 young cattle", and I refuse to confirm the registration at Entry No.6 in the Rights Section.

In my view there is no good reason why I should (as was at one stage suggested at the hearing) make an order against Mr. McMullen that he pay part of the costs of these proceedings.

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 of which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 23rd — day of July — 1975.

a. a. Baden Fuller.

Commons Commissioner.

corrected by inserting "2,"
in the third paragraph from
the end
a. a. Baden Fuller.
21 August 1975.