



COMMONS REGISTRATION ACT 1965

Reference Nos. 232/D/154 to 173

CL.63 and 289 and 290

and

CL.23 23/D/178 to 1885

In the Matters of Pieces of land east and south east of Crook Peak South of South Marsh Waterworks and south of Foxes Hole forming part of Compton Hill and Wavering Down and also Shute Shelve Hill Compton Bishop and Axbridge (CL.63)

and

In the Matters of Pieces of land known as Crooks Peak and Compton Bishop Hill Compton Bishop (CL.23)
Sedgemoor D.

DECISION

These disputes relate to all the registrations in the Rights Section of Register Unit Nos CL.63 and CL.23 in the Register of Common Land maintained by the Somerset County Council and are occasioned by the objections mentioned in my previous decisions dated 20 September 1976 and 13 June 1975 and the conflicting Entries No. 36 and Nos 7, 30 and 31 in the Rights Section of Unit No. CL.63 and the conflicting Entries 42 and 7. 32.36.37 in the Rights Section of No. CL.23.

I held an adjourned hearing for the purpose of inquiring into these disputes at Weston Super Mare on the 15 and 16 November 1978.

D J Bellaw of Messrs. Veale Benson, Co., appeared for the Compton Bishop Estate. L A Crown appeared for Ms Body and Mr Thorpe, Mr Gunn appeared on behalf of Mrs Gunn and D. Taylor Ms H R Capel Mr L E Smith Mr R W Tilley Miss Sandford and Mr D Clark and Mrs Searle Eaker appeared in person.

Mr Driver also attended on behalf of the Registration Authority and I am greatly indebted to him for the assistance he gave me.

These are two adjoining units open to each other and many applicants have applied to graze the same flocks of sheep or the same cattle over both units. In these circumstances the convenient course was to deal with both units at one hearing and it is also convenient to give one decision.

As the objections are based on various parcels of land having been wrongly included in the unit lands and when the case first came before me I came to the conclusion that all the objections were well founded other than objection Nos. 0/109 and 0/110 both made by the Somerset County Council. The County Council made these objections because to its knowledge the lands the subject thereof were inclosed. At the first hearing I had before me no evidence as to when the inclosures were made and for all I knew they might have been wrongfully and recently made. At the adjourned hearing I was told that these inclosures are of long standing and indeed that there have for many years been buildings on the land comprised therein and for this reason I sustain these two objections.



I therefore confirm the Entry in the Land Section modified by the exclusion therefrom of the land the subject of the objections.

The effect of the objections was to make all the Entries in the Rights Sections, provisional and it was apparent to me that if I confirmed all the Entries in the Rights Sections as they stood without modification as to the quantum of the animals for which grazing rights were claimed the common would be so substantially over grazed as to make the Rights Sections meaningless. For this reason I adjourned consideration of all the Entries in the Rights Sections in the hope that the commoners themselves would agree a viable scale of grazing and that at an adjourned hearing I would be able to modify the Entries so as to give effect to that scale.

No agreement was reached prior to the adjourned hearing and I was not told of any attempt having been made to reach any such agreement.

No objection was made either that rights did not exist or that the Rights claimed were excessive. This is a matter for regret. No consideration was given to the question as to whether or not the Rights Sections were realistic and by way of illustration when the Compton Bishop Estate, by far the largest commoner came to make it a conflicting application,

With those of its tenant farmers it claimed to graze 2200 sheep, 90 cattle, 40 pigs and 10 horses. This falls to be compared with the case put forward by the Estate at the adjourned hearing that 1500 sheep or their equivalent ^{was} the maximum number of animals the common can sustain.

The view which I take is that where the 'matter' of provisional registrations is referred to a Commissioner his duty is, so far as it lies within his power so to do, to achieve a realistic Rights Section and not to confirm without modification Entries which can have no practical affect and indeed which could be misleading to anyone searching the Register. All those who attended the hearing on the first day accepted that I should modify the rights Entries with a view to achieving a realistic Register so far as possible and only Mr Gunn who appeared on the second day on behalf of his wife suggested otherwise.

In these circumstances Mr Bellows first submission was that I should have regard to the exercise of grazing rights, he said only about six persons had in recent years exercised grazing rights, that many of the lands for which rights were claimed were of such small dimensions as to be incapable of supporting any animals and that I should refuse to confirm those Entries and he invited me to refuse to confirm Entries where the rights had not been exercised for 20 or 30 years on the footing that they had been abandoned.

I ruled against this submission first on the ground that I had adjourned to consideration only on the question of quantum and that in the absence of any objection to the existence of the Rights claims I had no power to refuse to confirm all the rights and secondly because in my view even if I had power I could not refuse to confirm an Entry without giving the applicant an opportunity to meet the case made against him.



having stated my view that the case must proceed on the footing that I would confirm all the Entries modified as appropriate.

In answer to a question by Mr Bellew I indicated that in other similar cases my approach had been first to ascertain in the light of expert evidence the number of animals the common could sustain, the "size of the cake", and then to determine into what slices the cake should be cut.

I further stated that in my experience where sheep, cattle and horses grazed on the common in most cases 5 sheep were regarded as the equivalent of 1 head of cattle or one horse or pony and one sheep was the equivalent of one goat. No one present at the hearing suggested any other equivalents.

F C Cross a Fellow of the Royal Institution of Chartered Surveyors gave evidence that he was a partner in the firm of J H Palmer and Sons and that he has been the agent for the Compton Bishop Estate for the past 15 years. He said that the stocking on the unit land (the common) for the years 1973/78 was as follows:

73/74	1450 ewes
74/75	1210 ewes
75/76	1150 ewes
76/77	600 ewes
77/78	600 ewes

He said that in the years 1975 to 1975/76 the common was greatly over stocked in particular by the late Mr Heal, Mr Dimmock and Mr Capel, who no longer graze the common. He further said that in recent years a maximum of 1500 sheep had been on the common and treating, as he did a lamb however young as a sheep, and taking the lambing rate at 1.125 per ewe. 1500 sheep was the equivalent of 675 ewes. Mr Cross gave it as his view that 1500 sheep was the appropriate stocking rate and he mentioned the need for cooperation in order to have a supply of water on the common and to burn so as to obtain a crop of grass in the spring.

There was no challenge to the evidence given by Mr Cross and the question then arose as to how "the cake" of 1500 sheep was to be cut.

I indicated that my provisional view was that the small holdings should each have the right to graze 5 sheep and 5 goats or 1 head of cattle or one horse or pony and that when it had been ascertained how many sheep would be required to meet the claims of the small holdings on this scale, the remainder of the 1500 sheep should be apportioned to the other claimants in proportion to the acreages of their respective lands.

In my experience there is frequently a weighting in favour of very small holdings which were entitled to rights for their domestic requirements, to keep a "house cow" or a horse, as distinct from farming requirements. Since I am compelled to proceed on the footing that every small holder has rights in my view those rights must at least entitle him to graze 1 cow or 1 horse.



was at once apparent to Mr Tilley and Miss Sandford that my suggested approach would cause them hardship and Mr Bellew agreed that this was the case. I indicated that it was not infrequent to find a weighting in favour of small farms but Mr Bellew, while he conceded that Mr Tilley and Miss Sandford could be hardly done by he felt unable to make an concession which would confer rights on their holdings in perpetuity. I am entitled to infer that while Mr Bellew rightly does not wish to concede rights to Mr Tilley and Miss Sandford's successors his clients will endeavour to do so on a year to year basis any meritorious claims to graze in excess of their strict entitlements.

At the course of the adjournment Mr Bellew produced a summary which he gave to me on the second day of the hearings of an apportionment acceptable to him.

His summary is as follows:

25 small holdings (25)		125 sheep
Frost	200 acres	233
Lovell	372 "	30
Gody	14.6 "	17
Sandford	13.6 "	16
Amesbury	196 "	218
Taylor	16 "	18
Tilley	5.6 "	6
Lukins	50 "	109
Winton Bishop Estate	660 "	732
		<u>1500</u>

On the second day Mr L A ^{Cross} who had during the adjournment availed himself of the opportunity to inspect the register put forward an alternative proposal viz:

That 25 small holders should have rights for	125 sheep
That 5 holdings of from 5 to 50 acres should have rights for	250 sheep
That holders of more than 50 acres should have rights for	1200 sheep
	<u>1500 sheep</u>

It must be mentioned that each of these alternative proposals is based on one false assumption. On the first day Mrs D. Taylor appeared and said she was the owner of Hill Farm comprising 90 acres. On the second day Mr Gunn appeared on behalf of his wife the applicant under entry No. 24 on CL.63 and said that the application was for 90 acres of which his wife had sold 16 acres to Mrs D. Taylor. Mr Bellew conceded on inspection of the plan attached to Mrs Gunns application on that it was for 90 acres and it follows, since I am not concerned with any apportionment between Mrs Gunn and Mrs D. Taylor that Mr Bellews summary is to be amended by inserting Mrs Gunn as an applicant for 90 acres in the place of Mrs D Taylor for 16 acres. Then again Mr ^{Cross} ~~Cross~~'s 5 holders of 5 to 50 acres are reduced to 4 and there would be 9 large holders.

There is the further point that Mr Bellews summary is based on 1.12 sheep for each acre of bye land and according to my calculation Mr Lukins 90 acres and Mrs Gunns 90 acres would entitle them to graze 101 sheep not 109 as stated in the case of Mr Lukins. If I adhere to the ratio of 1.12 sheep these alterations will involve an increase in the number of sheep from 1500 to 1577.



Mr Bellows summary has in the case of the large holders combined several Entries in one ownership, and in particular the conflicting claims at Entries 5 27 30 and 31 on CL.63 which conflict with Entry 36. I did at an early stage in the hearing say that in the case of conflicting registrations made by a tenant and an owner I thought that the convenient course was for the registration to be that of the owner. What I had in mind at the time was two registrations each for the same land and I overlooked the fact ^{that} Entry 36 sought to combine several registrations. Mr Bellows summary seeks to combine not only Entries 5 7 30 and 31 but also Entry No. 35 and other Entries relating to lands which the Compton Bishop Estate has acquired since registration. I was also asked whether a small holder who does not exercise his rights can permit another commoner to exercise those rights. In my view all the rights with which I am concerned are appurtenant to the lands for which they are claimed and must be exercised from these lands, see Harris and Ryan, The Law Relating to common land at ph.39 and 40 where rights appurtenant and rights in grass are distinguished. The Compton Bishop Estate comprises several farms and Compton House and Cottages etc. In my view I must treat the Bishop Compton Estate in the same way as all the other commoners and not provide it with a "pool" of rights which it can apportion among its farms at its discretion. The probability is that many of the small holders will not exercise their rights and it will be open to the commoners who do exercise their rights to agree as to how, if at all, they will avail themselves of any shortfall in the stocking rate. In my view the Compton Bishop Estate and Mr W H Amesbury must be similarly situated and if one of their holdings does not exercise its rights they should not be free to pass those rights to another holding. Mr Bellow did forecast the formation of a Commoners Committee and such a Committee will be able to deal with any rights which are not exercised and will no doubt give favourable consideration to any ^{cases} of hardship.

I am unable to accept Mr Grams proposal, my duty is to ascertain what rights exist and not to arbitrate as to what would be a fair selection in current circumstances which may differ from those which have prevailed in the past and those which may prevail in future. There is no evidence or principle which would entitle me to adapt Mr Grams proposal and in point of fact it is open to attack on the ground that it is not even fair; why should Mr Tilley's 5.6 acres carry rights for 50 sheep where Mr Lovells 27.2 acres carry the same rights and ^{Miss} *n. n. n.* 4.6 acres carry rights for only 5 sheep?

I propose to deal with this case in the way in which I suggested and in principle accepted by Mr Bellow.

I will confirm all the Entries in the Rights Sections of the Registers other than Entry 36 on CL.63 and Entry 42 on CL.23 and all the Entries which I confirm will be modified so as to provide that small holdings shall have the minimum right to graze 5 sheep or 5 goats or 1 head of cattle or 1 horse or pony and so as to provide that the remaining holdings shall be entitled to graze 1.12 sheep or their equivalent for each acre for which the rights are claimed.



ced as I am with no objection to the rights I justify this decision on the grounds that the rights of the small holdings must be presumed to be for domestic use to enable the holders to keep at least one house cow or one horse and that levancy and couchancy would in the absence of evidence to the contrary be proportionate to the size of the remaining holdings and that levancy and couchancy being impracticable it would result in a very substantial overgrazing of the common. I must presume that the common has been sensibly grazed in proportion to the holdings of the farmers.

I am conscious that my decision will result in an increase in the figure which Mr Cross said was the maximum number of animals which the common can sustain by about 60 but bearing in mind Mr Cross' evidence that the current rate of grazing is 600 ewes and not 675 ewes which he says the common will sustain and the probability that any small holders will not exercise their rights I believe that this decision will provide for a viable rate of stocking.

Mr Bell did not provide me with the acreages of the Compton Bishop Estate holdings and Mr W H Arnesburys holdings and I must ask him to provide me with the correct apportionments of these holdings in order that I may give a direction to the Registration Authority.

Entries on both CL.63 and CL.23 claiming rights for the same land will entitle such commoners to graze the animals they are entitled to graze over either or both of such units but so that not more than such number of animals shall be grazed at any one time.

The modified rights which I confirm are as follows:-

CL.63

Entries No. 1 7 9 11 12 18 20 21 22 23 25 26 28 29 33 38 and 39 are small holdings and will carry the right to graze 5 sheep or 5 goats 1 head of cattle or 1 horse or pony.

Entry No. 2 (200 acres) will carry the right to graze 200 sheep or their equivalent

Entry No. 8 (27.206 acres) will carry the right to graze 30 sheep or their equivalent

Entry No. 10 (12.177 acres) will carry the right to graze 13 sheep or their equivalent

Entry No. 13 (13.607 acres) will carry the right to graze 16 sheep or their equivalent

Entry No. 24 (20 acres) will carry the right to graze 101 sheep or their equivalent

Entry No. 32 (5.6 acres) will carry the right to graze 6 sheep or their equivalent

Entry No. 34 (20 acres) will carry the right to graze 101 sheep or their equivalent

Entries Nos. 14 15 16 and 17 together comprise 196 acres in the ownership of W H Arnesbury and will carry the rights to graze 218 sheep or their equivalent to be apportioned in proportion to acreage among these Entries.

Entries Nos. 3 4 5 6 27 30 31 35 and 37 are now owned by the Compton Bishop Estate and comprise 660 acres and will carry the right to graze 738 sheep or their equivalent to be apportioned according to the respective acreages among the holdings.

CL.23

Entries Nos. 1 2 14 21 23 29 31 45 and 46 are all small holdings and will be modified so as to carry the right to graze 5 sheep or 5 goats and 1 head of cattle or 1 horse or pony.

The remaining Entries on this unit are the same as Entries on CL.63 and will be modified accordingly.



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.

ated this 6th

day of December

1978

G. A. Little

Commons Commissioner