



COMMONS REGISTRATION ACT 1965

Reference No 232/D/17

In the Matter of Redham, Stogursey,
West Somerset District, Somerset

DECISION

This dispute relates to the registration at Entry No 8 in the Rights Section of Register Unit No CL. 78 in the Register of Common Land maintained by the Somerset County Council and is occasioned by Objection No O/827 made by Mr I M Lang and noted in the Register on 23 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 29 November 1977. At the hearing Mr Norman George Crouch on whose application the registration was made, attended in person.

The registration is of a right "of forshear of Doles over the part of the land ("the Unit Land") comprised in this Register Unit, being the part comprising Tithe Nos 1647, 1648 and 1649 as marked E28, E29 and E30 on the Register map. The grounds of Objection are: "The right of forshear on Dole Tithe No 1647 does not belong to the applicant at all. Alternatively, my right of forshear is incorrectly stated as being on Tithe No 1647 and should be Tithe No 1645, for which no claim has been registered".

Mr Crouch in the course of his evidence produced the documents specified in the First Schedule hereto, the general effect of which was that his documents of title relating to the right registered at Entry No 8 included Tithe No 1647. He said (in effect):- He purchased the right in 1956 from Mr David Allen; at the same time he purchased stockage rights for 17 bullocks and 34 sheep (see Rights Section Entry No 4). The Unit Land is about 34 acres; he thought that each of the three Tithe Nos over which his right of forshear subsisted was about 1/12th of an acre. He let his forshear rights to Mr Perrett who had rights over the Unit Land (see Rights Section Entry No 6 and Ownership Section Entry No 1); in June Mr Perrett for haymaking mowed his (Mr Crouch's) Doles which adjoined those of Mr Perrett; it is easier to mow a larger area. From the resulting bales of hay, Mr Crouch collected his share, according to the total yield of the area mown by Mr Perrett; such share usually came to about 12 bales. The Unit Land was grazed from 1 August until 1 December with cattle and afterwards until 14 February with sheep.

Mr Lang, who resides in Banffshire sent to the office of the Commons Commissioners a letter dated 22 November 1977 saying in effect that he could not attend a hearing on 29 November 1977 but would attend on 2 December; and also a letter dated 23 November 1977 with which he enclosed the documents listed in the Second Schedule, saying in effect that Tithe No 1647 had consistently appeared in his Title Deeds.

On 1 December 1977 Mr Lang in person at Taunton applied to me to reopen the hearing which I had heard two days previously and referred me to regulation 21 of the Commons Commissioners Regulations 1971. He explained why he had not attended on



29 November, put forward various reasons for my reopening the hearing, and at my suggestion indicated at some length the evidence he could give if I decided to reopen the hearing there and then.

My decision on Mr Lang's application either has been or will be communicated to him by letter; stating its effect shortly it is that I refuse to give any final decision as to the reopening of the hearing on his application unless and until Mr Crouch and the County Council as registration authority have had an opportunity of making representations to me either for or against his application and that having regard (among other things) to what Mr Lang said to me on 1 December, on balance I consider that it will be more convenient to all concerned if I, without delaying the matter until I can give a final decision on Mr Lang's application, now give my decision on the dispute generally on the information which was available to me at the November hearing disregarding as far as I can what Mr Lang said to me subsequently. In the result I shall treat his application as being not only to reopen the hearing but also to set aside this decision. In the said letter I have given interlocutory directions as to the notices Mr Lang must give to Mr Crouch and to the County Council, if he desires to proceed with his application, and copies of this letter either have been or will be sent to Mr Crouch and to the County Council as registration authority.

Accordingly I now consider this matter on the basis of the information available to me at the November hearing.

The registration made at Rights Section Entry No 1 made on the application of Mr Lang is of a right of forshear on part of the Unit Land comprising Tithe Nos 1508, 1509, 1626, 1633, 1638, 1641 and 1647 as marked E2, E3, E12, E14, E19, E22 and E28 on the Register map. I reject the suggestion in the grounds of Objection that I should amend Entry No 1 by substituting Tithe No 1645 for Tithe No 1647. The reference which I am now considering relates only to an Objection to Entry No 8, and I have I think no jurisdiction in these proceedings to modify Entry No 1 in any way.

As to the other ground of Objection that a right of forshear on Tithe No 1647 does not belong to Mr Crouch:- Although neither the title deeds of Mr Crouch nor the title deeds of Mr Lang were produced, the documents listed in the First Schedule hereto indicate that this Tithe No 1647 was included in Mr Crouch's documents. Further I have his evidence that in respect of Tithe Nos which he believed belonged to him he had taken a share of the mowing. In the absence of any evidence to the contrary and as against an Objector who has not appeared, this is I think enough.

Mr Lang in his letter of 23 November 1977, although not expressly, impliedly contends that the registration at Entry No 8 cannot be confirmed with the inclusion of Tithe No 1627 as long as the registration at Entry No 1 made on his application includes the same number; indeed at the end of his letter he expressly asks me to confirm his registration.

As to the possible conflict between the registrations at Entry Nos 1 and 8 if they both include Tithe No 1627, I observe that the copy of the Register on my file shows that in the Rights Section a note, which was made on 13 October 1970: "The registration at Entry No 8 above is in conflict with the registration at Entry No 1 above and each of those registrations is accordingly to be treated as an Objection to the other to the extent of the conflict". The papers in the office of the Commons Commissioners show that in or before December 1973 the County Council as



registration authority sent to the Clerk two references to a Commons Commissioner of the disputes to the registrations at Entry No 1 and 8 occasioned by these registrations being in conflict, and that in a letter dated 13 December 1973 the then Clerk suggested to the County Council that there might in fact be no conflict at all. From the absence of any further documents in the office relating to any possible outstanding disputes relating to any such conflict, I suppose that the County Council must have accepted this suggestion.

Two registrations in a Rights Section are not in conflict merely because each is of an alleged right of common either over the whole or over the same part of the land comprised in the Register Unit; there are many such grazing rights and it is easy to think other rights of common over the same piece of land which no one could sensibly suggest were in conflict. However as regards the right of forshear I have this advantage over those who dealt with this matter in 1973 as outlined above, because on 7 and 8 October 1976 I held a hearing for the purpose of inquiring into disputes relating to Wick Moor (land which adjoins Redham) and then heard a considerable body of evidence relating to rights of forshear as locally understood, and it seems to me that it is perhaps arguable that the registrations at Entry Nos 1 and 8 are in fact in conflict.

No such argument was at the November hearing put forward by Mr Crouch, rightly I think because in these proceedings I could not on his application modify in any way the registrations made on the application of Mr Lang at Entry No 1. If Mr Lang had been present at the November hearing, he would have had no need of a reference based on any alleged conflict between the two registrations, because by virtue of his Objection it would have been open to him to contend that Entry No 8 should never have been made. At the hearing there was no evidence that the right of forshear referred to in these Entries was such that it could not exist simultaneously over the same part of the Unit Land. In these circumstances I disregard this possible argument; if either Mr Crouch or Mr Lang wish to contend that the references which in 1973 the County Council were persuaded to withdraw should be treated as having been made, this is a matter which they must I think take up outside these proceedings.

If (as both Mr Crouch and Mr Lang appear to be alleging) it be the case that for many years Tithe No 1647 has appeared in the title deeds of both of them and that both of them have for many years believed that their rights of forshear extended to such Tithe No and if as a result of such belief no practical inconvenience has ever resulted, at present I incline to the view that no practical inconvenience will result from both Entry No 1 and Entry No 8 remaining as they now stand.

Whether or not I am right in suspecting that the outcome of the questions discussed in this decision are of no practical consequence to anyone, my decision is: for the reasons set out above I confirm the registration at Entry No 8 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.

FIRST SCHEDULE

(Documents produced by Mr Crouch)

- | | | |
|-----|-------------------|-----------------------------------------------------------------------------|
| (1) | 5 September 1968 | Letter from Risdon & Co to D Allen |
| (2) | 10 August 1968 | Letter from W D H Allen to N Crouch |
| (3) | 11 September 1968 | Letter from D Allen to Norman (Mr Crouch) |
| (4) | 13 October 1973 | Letter from K W Giles (Collector of Stockland Drainage Board) to N G Crouch |
| (5) | 30 November 1967 | Stockland Drainage Board demand note for rates sent to N G Crouch |
| (6) | 20 March 1968 | Receipt attached to above |

SECOND SCHEDULE

(Documents enclosed with Mr Lang's letter of 23.xi.77)

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|-----|--------------|-----------------------------------------------------------|
| (1) | 29 June 1968 | Copy letter from ... (Mr Lang) to Mr Crouch |
| (2) | 21 July 1943 | Copy letter from Risdon Hosegood & Weston to Tamlyn & Son |
| (3) | 1926 | Extract from First Schedule of conveyance |
| (4) | - | Extract from "old map" showing Redham |

Dated this 18th day of *January* — 1978

a. a. Baden Fuller

Commons Commissioner