



COMMONS REGISTRATION ACT 1965

Reference Nos 232/D/192-200 inclusive

In the Matter of Areas of Land in the Berrow Vicinity comprising (1) Burnham and Berrow Golf Links also The Coastal Area to the North and Heron House Triangle (2) North Lane (3) Green Lane (4) Nettlefrith Lane (5) Berrow Wall (6) Part of Hurn Lane and Common (7) The Verges of Red Road (Bussome Lane) from the junction of Parsonage Lane and Barton Road, to the South, to The Junction of Ham Lane and Wick Road, to the North, in the Parish of Berrow all in Sedgemoor D. Somerset.

DECISION

These disputes relate to the Registration at Entry No.1 in the Land Section and Entry Nos 1.2 and 3 in the Rights Section of Register Unit CL 228 in the Register of Common Land maintained by the Somerset County Council and are occasioned by the conflicting Entry No.1 in the Land Section in the Land Section of Register Unit V9 89 in the Register of Town or Village greens, objections Nos O/780 and O/135 made by Mr & Mrs A.E. House respectively noted on the Register on 22 July 1971 and 9th February 1971, objections Nos O/185 and O/785 made by Mrs. A.E. Florence respectively noted on the Register on 22 July 1971 and 9th February 1971 objections Nos O/801 and O/789 made by the Burnham and Berrow Golf Club both noted on the Register on 6th September 1972 and objections Nos O/816 and O/817 made by Axbridge R.D.C. both noted on the Register on 6th September 1972.

I held a hearing for the purpose of inquiring into these disputes at Taunton on 20th May 1975.

There appeared at the hearing:-

Mr. Lock on behalf of the Sedgemoor District Council.  
Mr. Warner " " " " Berrow Parish Council  
Mr. Edwards " " " " Somerset County Council  
Mr. Lawson of Messrs. Pigot and Whitehouse, Solicitors for Mr & Mrs House.  
Mr. Hall of Messrs. Veale Jenson & Co. Solicitors for Mrs. Florence.  
Mr. Williams of Messrs. Alletson & Partners Solicitor for Mr. Frost.

Mr. Schiemann Counsel instructed by Messrs Gould & Swayne, Solicitors to the Burnham and Berrow Golf Club.

Messrs. A.G. Hicks & Sons, claimants to common rights did not appear to support their claim.



Mr. Williams accepted that the onus lay upon him to make good Mr. Frost's claim to common rights.

Mr. Williams first submission was to the effect that by virtue of Section 62(1) of the Law of Property Act 1925 there were deemed to be included in the conveyance dated 9th June 1920 where by Mead Farm was conveyed to his late father, common rights over the land in question. It is not necessary for me to refer to the complex history of Mead Farm and the land in question for the reason that Mr. Schiemann satisfied me and Mr Williams that on the 9th June 1920 and at all material times prior to that date both Mead Farm and the land in question were in common ownership so that on 9th June 1920 there could not have been any rights of common appurtenant to Mead Farm over the land in question. Faced with this insuperable obstacle Mr. Williams did not persist in his submission based on the conveyance dated 9th June 1920 and confined Mr. Frost's claim to a right to graze on the roads and ways hereafter mentioned. (Mr Frost's claim is in respect of Red Lane which is a public highway North Lane and Green Lane which are bridle ways, Berrow Wall which is a bridleway down to the Parish boundary and Nettlefrith Lane which is not shown on the definitive map as being subject to any public rights)

The major dispute on this part of the case was between Mr. Frost and Mr & Mrs House who own Unity Farm and the land on both sides of North Lane and also claim that they also own North Lane subject, of course, to its user as a bridleway.

Mr. Frost gave evidence and stated he and others grazed Ford Common which is at the eastern extremity of North Lane, Unity Farm being at the Western extremity and that he and others, who had not claimed, had used North Lane for grazing. He had never met Mr. House when looking after his sheep and Mr. House's predecessor a Mr. Harris had never complained about his sheep. He had driven down North Lane with a tractor and the lane was 25 to 30 yards wide at its widest parts and less than 10 yards wide at its narrowest parts. Part of the lane has been concreted and part stoned and Mr Frost spoke of the Police being unwilling to move gypsies because it was common land.

Mr. Raymond gave evidence and said he had had animals on Nettlefrith Road and that Red Road and Ford Common were the same thing.

Mr. Reason gave evidence; he had never owned any land. His father grazed from 1936; stock was always along Red Road and Green Lane since 1920.



Mr. Hicks who had rented Mr. Frost's 18 $\frac{1}{2}$  acre field said animals were in the lanes in the summer but not much in winter.

Mr. House said in his evidence that he had lived at Unity Farm for 30 years which he leased before purchasing it in 1957. He said sheep had never grazed North Lane but only strayed there and he turned them off. He had never seen Mr. Frost with his sheep on North Lane which he used every day and which he treated as an integral part of his farm. He had stoned the lane because this was essential for modern machinery. The County Council unloaded stone and asked for permission so to do. He had granted a wayleave to the Water Board. He had put a gate across the western end of the lane but the Parish Council said it was a bridleway and he had to take it down, which he did. In cross examination Mr. House confirmed that he herded sheep off North Lane.

As regards North Lane I am satisfied that Mr. House has done all in his power to prevent sheep grazing in that Lane. Whether or not he is the owner of the lane and whether or not if he is the owner, he is entitled to erect a gate which will not interfere with the right of the public to use the lane as a bridleway or matters which he may wish to litigate in the Courts.

I asked Mr. Frost whether he had ever deliberately turned his stock into North Lane or any other of the lanes or roads and he was unable to say that he had done so. The conclusion which I have arrived at on the evidence is that animals grazing on Ford Common and other land which their owners believe to be common land have strayed into the lanes and roads and that no one has ever claimed any right in the produce of the soil of these lanes and roads though it is of course the fact that straying animals will feed.

I am not prepared to encumber any title to North Lane which Mr. House may be able to establish on the evidence adduced before me nor am I prepared to constitute a right to graze on the verges of a public highway and thereby prejudice any steps that it may be thought necessary to take in the interests of public safety. Mr. Frost has failed to satisfy me that his stock have grazed any of the lanes or roads as of right and for this reason I refuse to confirm any of the rights claimed by Mr. Frost and it follows therefore that I must refuse to confirm the Entry No. 1 in the Land Section of the Register and the Entry Nos 1 2 and 3



in the Rights Section of the Register.

I am required by Regulation 30(1) of the Commons Commissions 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.

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At the conclusion of the hearing Mr. Schiemann made an application for costs. I am satisfied that the Golf Club used its best endeavours to clarify the situation with a view to avoiding the expense of a hearing and that responsibility for the failure of these endeavours is that of Mr Frost. Mr Williams spoke of some last minute endeavour to obtain Counsel's opinion and other advice but in the absence of an exchange of documents it seems to me that Counsel would not have had the relevant material to enable him to give sound advice, assuming as I do, that Mr Frost's claims were made bona fide, and it is relevant to mention that he had the moral support of the Parish Council it was in my view necessary for the Golf Club to prepare its case and only then would it have been apparent that Mr. Williams first submission was unsound. For these reasons I will order Mr Frost to pay the Golf Club's costs of attending the hearing with Counsel; Solicitor and witnesses on Scale 4.

I award no costs to any objectors other than the Golf Club. They could in my view have left the golf club, which had done all the work, to fight their battles for them.

Dated this 6<sup>th</sup> day of June 1975

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C. A. Little  
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Commons Commissioner.