



COMMONS REGISTRATION ACT 1965

Reference Nos. 238/D/115 - 116

In the Matter of Hamley Common, Fernhurst,
West Sussex (NO.2)

DECISION

These disputes relate to the registration at Entry No 1 in the Rights Section of Register Unit No. CL.33 in the Register of Common Land maintained by the West Sussex County Council and are occasioned by Objection No. 126 made by the former County Surveyor and noted in the Register on 8 December 1970, and Objection No. 115 made by the Cowdray Trust Ltd and noted in the Register on 1st June 1970.

I held a hearing for the purpose of inquiring into the dispute at Chichester on 20 June 1979. The hearing was attended by Mr L D Parry, the successor in title of Mrs E D Lecky, the applicant for the registration, Mrs G Frankland, the Commons Registration Officer of the West Sussex County Council, and Mr R Stafford, the Assistant Agent of the Cowdray Trust Ltd.

Mrs Frankland informed me that the County Council did not wish to pursue Objection No. 126.

The registration is of rights to graze 1 horse and 1 cow throughout the year, to cut and take bracken, and to cut and take underwood and dead wood attached to a property known as The Forge.

The Forge is surrounded by the land comprised in the Register Unit. It was formerly the property of the Cowdray Trust Ltd. By a conveyance made 5 December 1949 between (1) The Cowdray Trust Ltd and John Lister Walsh (2) Ralph Ralph the property was conveyed to Mrs Lecky's predecessor in title. The parcels of the conveyance consist solely of land and buildings, together with a right of way which is not relevant to these proceedings, and there is no reference to any other rights attached to the premises. It is therefore necessary to consider whether the rights in the registration, or any of them, passed on the conveyance by virtue of Section 62 (2) of the Law of Property Act 1925.

Section 62 (2) of the Act of 1925 provides that a conveyance of land, having buildings on it, is deemed to include and operates to convey with the land and buildings all rights appertaining or reputed to appertain to the land and buildings conveyed or at the time of the conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or buildings, or any of them, or any part thereof.

The Cowdray Trust Ltd is registered in the Ownership Section of the Register Unit as the owner of the whole of the land comprised in the Register Unit with the exception of a very small area, and that registration, being undisputed, became final on 17 December 1971. It therefore follows that at the time of the conveyance of 1949 there was no right of common over most of the land comprised in the Register Unit attached to The Forge, since both properties were in the same ownership, so that it is necessary to consider whether at the time of the conveyance the rights set out in the registration or any of them, were demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to The Forge.