



In the Matter of Kingsdown Common and Ashley
Green, Box, Wiltshire

DECISION

This dispute relates to the registrations at Entry Nos. 1 to 9 in the Rights Section of Register Unit No. CL 17 in the Register of Common Land maintained by the Wiltshire County Council and is occasioned by Objection No. 81 made by the Kingsdown Golf Club and noted in the Register on 6 September 1972.

I held a hearing for the purpose of inquiring into the dispute at Chippenham on 26 November 1981. The hearing was attended by Mr and Mrs R G Sims, the applicants for the registration at Entry No. 1, Miss M A Ford, the applicant for the registration at Entry No. 2, and Mr C Rawlins, of Counsel, on behalf of the Objector. There was no appearance by or on behalf of the applicants for the registrations at Entry Nos. 3 to 9, but the Clerk of the Commons Commissioners was informed by Messrs Cluttons, Chartered Surveyors, that the applicants for the registrations at Entry Nos. 3 to 8 did not wish to pursue their applications, and by Messrs Collins and Hughes, Solicitors, that the applicant for the registration at Entry No. 9 did not propose to be represented at the hearing.

The registration at Entry No. 1 is of grazing rights for 1 cow or 5 ewes and lambs or 1 pony attached to an area of land adjacent to the land comprised in the Register Unit. Mr Sims gave evidence, which was uncontradicted, that during the whole of the 24½ years that he has owned his land he has always kept two or three Shetland ponies and has tethered them for grazing on a small area adjacent to his property. For the first twelve or thirteen years he grazed some cows on the same land and since the mid-1960's until the present time he has occasionally grazed sheep there.

There can be no question here of a prescriptive right at common law, since during the 19th Century Mr Sims's land and the land comprised in the Register Unit were in the common ownership of members of the Northey family, who were lords of the Manor of Box. For the purposes of the Prescription Act 1832 the period of enjoyment as of right must have been before suit or action brought, and it is provided by Section 16(2) of the Commons Registration Act 1965 that an objection to a registration of a right of common is to be deemed to be such a suit or action. The Objection in this case was made on 21 July 1972, by which date Mr Sims had not been grazing on the land in question for long enough for him to have acquired a right under the Act of 1832. Similarly, there has not been enjoyment as of right for a sufficient period to found a presumption of a lost modern grant. I must therefore refuse to confirm the registration at Entry No. 1.

Miss Ford stated that she wished to relinquish her grazing rights and that she was only interested in safe-guarding a right of way, a note of which she wished to have made in the Register. Such a note was duly made on 18 April 1969. I therefore refuse to confirm the registration at Entry No. 2.

In the absence of any evidence to support them, I refuse to confirm the registrations at Entry Nos. 3 to 9.



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.

Dated this

2nd

day of

July

1982

Chief Commons Commissioner