



In the Matter of Walton Common, Walton-in-Gordano, Avon

DECISION

This dispute relates to the registrations at Entry Nos. 1 2 3 and 4 in the Rights Section of Register Unit No. CL.69 in the Register of Common Land maintained by the former Somerset County Council and is occasioned by Objection No. O/262 made by Sir William Milg, Bt and noted in the Register on 20 April 1971.

I held a hearing for the purpose of inquiring into the dispute at Weston-Super-mare on 17 October 1978. The hearing was attended by Mr G. Leather, Solicitor, on behalf of Mr A Elphick, the successor in title of Mr and Mrs A J Cole, the applicants for the registration at Entry No. 1, by Mr P R Sykes, Solicitor on behalf of Mr - Flower, the successor in title of Mr and Mrs C Cooper, the applicants for the registration at Entry No. 2 and Mr J Flower and Miss F J Herrington, the successors in title of Mrs R B B Virgo, the applicant for the registration at Entry No. 3, by Mr N W S Baker, the successor in title of Mr and Mrs J G Humphreys, the applicants for the registration at Entry No. 4, and by Mr A V Cheshire on behalf of the Objector.

In order to understand this case it is necessary to go back to the action of Virgo and others v Harford and others in the Queen's Bench Division (1892- v No.975). In that action the plaintiffs claimed damages for the disturbance of rights of common of pasture, estovers, and pannage over Walton Common attached to premises known as Parsonage Heys and Hillside. On 27 March 1893 Mathew J made a declaration that each of the plaintiffs was entitled to the rights of common claimed as appurtenant to the premises of which he was the owner over the whole of the land now comprised in the Register Unit.

It is not possible from the statement of claim in Virgo v Harford to identify with precision the premises to which the rights were appurtenant, but the Objector agreed that the premises to which the registered rights were claimed to be attached were formerly parts of the dominant tenements in Virgo v Harford.

The rights of pasture claimed in Virgo v Harford were not quantified, but were stated merely as being for all commonable cattle, donkeys, goats, and swine levant and couchant on each of the dominant tenements. Section 15 of the Commons Registrations Act 1965 makes it necessary to quantify these rights, and the only matter argued before me was the question of the quantification.

The parties at first approached the matter by attempting to assess the capacity of the common and apportioning that capacity. This was fundamentally unsound, the proper course being to apportion the rights attaching to the dominant tenements as they were in the 1890's. Since these dominant tenements cannot be precisely identified on the evidence before me, the only possible way of quantifying the rights of the applicants for the registrations is to determine how many animals each of their properties could support in accordance with the principles of levancy and couchancy.



In this task I have to rely on the evidence of Mr J Flower directed to the dominant tenements referred to in the registrations at Entry Nos 2 and 3. In the light of this evidence I have come to the conclusion that the proper quantification of commonable cattle (there being no evidence as to donkeys, goats, and swine) for each of the four registrations is as follows:-

- No. 1 - 1 cow or 1 horse or 4 sheep
- No. 2 - 4 cows or 4 horses or 16 sheep
- No. 3 - 2 cows or 2 horses or 8 sheep
- No. 4 - 4 cows or 4 horses or 16 sheep

Although there was no evidence as to the levancy and couchancy of swine, so that I am unable to quantify the right of grazing swine as required by section 15 of the Act of 1965, the declaration in Virgo v Harford included rights of pannage for all the swine levant couchant on the dominant tenements. Since section 15 of the Act of 1965 is confined to quantification of rights of grazing, it is, in my view, open to me to confirm the rights of pannage in Entry Nos 1 3 and 4 without quantification.

For these reasons I confirm the registrations with the following modifications, namely:-

- No.1 The deletion of the words and figures " 5 cattle, 3 donkeys, and 2 goats, and 15 swine" and the substitution of the words and figures "1 cow or 1 horse or 4 sheep" and the deletion of the words and figures"for 15 swine".
- No.2 The deletion of the words and figures "5 cattle 2 goats, 2 pigs, 20 sheep, and 50 poultry (hens)"and the substitution of the words and figures"or 4 cows or 16 sheep".
- No.3 The deletion of the words and figures "4 horses, 5 cattle, 2 goats, 2 pigs, 20 sheep, and 50 poultry (hens)"and the substitution of the words and figures "2 cows or 2 horses or 8 sheep"and the deletion of the words"for up to 20 pigs".
- No.4 The deletion of the words and figures"6 cattle, 5 ponies, 4 donkeys, 6 goats and 20 swine"and the substitution of the words and figures" 4 cows or 4 horses or 16 sheep" and the deletion of the words and figures"for 20 swine".

Both Mr Sykes and Mr Cheshire applied for orders for costs in favour of their respective clients.

In so far as I have modified the registrations, it can be said that the Objector has been successful. However, the grounds of objection were stated to be:-

"The common rights attached to the land comprised in column 5 of Registration Entry numbers 1, 2, 3 and 4, the animals quantified are those applicable to the combined area. The numbers must accordingly be apportioned between the four applicants for registration on an area basis".

The quantifications of the animals in the four registrations were not identical, so that the second part of the first sentence of these grounds was incorrect, and ~~and~~ the apportionment referred to in the second sentence was impossible. It does not appear that the Objector ever informed any of the applicants for the registrations what he considered to be the correct quantification of the rights. The applicants therefore did not know what case they had to meet. In these circumstances I have decided to make no order as to costs.



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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

14th

day of

November

1978

A handwritten signature in cursive script, which appears to read "J. G. Quinton", is written over a horizontal line.

Chief Commons Commissioner