



COMMONS REGISTRATION ACT 1965

Reference No. 260/D/90-94

In the Matter of Westerleigh Common,
 Westerleigh, Gloucestershire

DECISION

These disputes relate to (1) the registration at Entry No. 1 in the Land Section and Entries No. 1 and 3 in the Rights Section of Register Unit No. G/CL 60 in the Register of Common Land maintained by the Avon County Council occasioned by Objection No. 56 made by Mr F R L Barnwell of British Rail and noted in the Register on 18 December 1970, (2) the registration at Entries No. 1 and 3 in the Rights Section occasioned by Objection Nos. 150 and No. 152 made by the Clerk to Westerleigh Parish Council and noted in the Register on 3 March 1971, (3) the registration at Entry No. 1 in the Ownership Section of the said Register Unit occasioned by Objection No. 57 made by Mr F R L Barnwell and noted in the Register on 16 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Bristol on 16 April 1980. The hearing was attended by Mr D S Young, Clerk to Westerleigh Parish Council, Mr G H Schofield of the Engineers Department of and representing British Rail, Mr G W G Berry representing Mrs Mary I Berry, and by Mr Joseph E Newman. The land in question ("the Unit land") was registered as Common Land on the application of Westerleigh Parish Council: Mrs Berry was the applicant for registration of Entry No. 1 in the Rights Section, and Mr Newman the applicant for registration of Entry No. 3. The Parish Council is provisionally registered as owner of the Unit Land.

The Objections by British Rail (nos. 0.56 and 0.57) relate to a small area of land ("the pink land") at the northern point of the Unit Land, the area being coloured pink on the plan attached to the Objections. Mr Schofield produced a Conveyance dated 12 May 1875 between (1) Henry Hugh Way and Another (2) Sir John Smyth (3) Richard Symes and Another (4) Midland Railway Company, by which land including the pink land was conveyed to the Railway Company. Mr Young did not oppose British Rail's claim to ownership of the pink land, nor did Mr Berry or Mr Newman resist Objection No. 0.56 and I confirm the registrations in the Land Section and the Ownership Section with the modification that the pink land be excluded from the Unit land.

Entry No. 1 in the Rights Section is a right to graze 8 cattle or horses and Entry No. 3 a right to graze 10 cattle: the ground of the Parish Council's Objection Nos. 150 and 152 is in each case that no rights over the land have existed or have been exercised since before the last war (1939).

Mr Berry in evidence said that his parents rented Rose Oak Farm (to which Entry No. 1 is claimed to be attached) from the Lord of the Manor from 1927 to 1954 when they purchased the Farm. He said that the title deeds contained no reference to rights of common, but that according to his mother, Mrs Mary Berry, cattle were put out regularly during the tenancy though there had been no grazing since the last war.



Entry No. 3 was registered by Mr Newman in respect of Box Hedge Farm of which his father was tenant of the Lord of the Manor from 1904 to 1919. His father purchased the farm in 1919: Mr Newman and his brother ran the farm from 1939 onwards: his father died in 1952 and after his mother's death in 1968 he succeeded to the property. Mr Newman sold the farm in 1971, having lived there for 67 years.

During his father's tenancy and ownership his cattle were registered on the Common on payment to the Hayward, the records being kept by the Lord of the Manor. Mr Newman himself registered cattle in one season before the Common was requisitioned for crop growing during the last war.

The Objection alleges that no rights over the land have been exercised since the last war, and this was not disputed. On the 16 November 1956 it was resolved at a Parish Meeting "that notwithstanding that the parishioners of the Parish of Westerleigh were the only persons who possessed common rights in respect of Westerleigh Common, such rights to be used by registering animals on the Common on payment of a charge decided by the Council, this Meeting authorises the Councilto let the grazing rights of the Common.....to a single body of persons..... at the highest price obtainable."

If the rights claimed did exist before the war, I would not on the evidence find that they had been abandoned. But I am not satisfied that the existence of the rights has been established: in both cases they were exercised by virtue of tenancies, and in the case of Box Hedge Farm after ownership was acquired payment was made for the exercise of the rights by registration, a circumstance which precludes acquisition by prescription. The evidence did not establish acquisition of the rights by any other means and in these circumstances I refuse to confirm their registration.

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

9 June

1980

L. J. Morris Smith

Commons Commissioner