



COMMONS REGISTRATION ACT 1965

Reference No. 217/E/63

In the Matter of Bincombe Down Poor Lot,
Bincombe, Dorset.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 123 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 1002 made by Gonville and Caius College, Cambridge and noted in the Register on 9th August 1972.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 23 April 1976. The hearing was attended by Mr D E Cox, District Superintendent of the Ramblers Association (Wessex Area), the applicant for the registration, and by Mr P C Meule, of counsel, on behalf of the Objector. I gave leave to Mrs R Colyer to represent Mr Cox.

In the application the land claimed to be common land was described as follows:-

"Plot Numbered 84 on Map of Bincombe Inclosure award of 1827, 21 acres south side of Broadmayne Road (now inclosing and including Bincombe Clump and Bincombe Barn), having rights of ESTOVERS" and with regard to the plan submitted with the application it was stated :-

"Outline is approximate on this map but can be clearly defined on Inclosure Map".

The award referred to in the application was made on 30 April 1828 (not 1827) under the Bincombe Inclosure Act of 1824 (5 Geo. IV, c.12 (private)). All but a very small part of plot No. 84 falls within the outline on the plan submitted with the application, but the outline also comprises about 32 acres of land not forming part of plot No. 84. Mrs Colyer stated that it was not desired to support the registration of the southern part of the land within the outline but not comprised in plot No. 84, but that it was desired to support the registration of the remainder of the land within the outline and not comprised in plot No. 84 on the ground that it was waste land of a manor not subject to rights of common. I heard Mrs Colyer's submissions with regard to the land which she claimed to be waste land of the manor, but on further consideration I have come to the conclusion that I have no jurisdiction over this land, since the application related only to plot No. 84. It may, however, console Mr Cox to know that in my view nothing was lost by the way in which he worded his application, since even if I had had jurisdiction over the land not comprised in plot No. 84, I should not have held it to be waste land of a manor. There are no rights of common registered in the Rights Section of the Register Unit, so that the registration in the Land section could only be supported by reliance upon rights of common created under the Inclosure Act, which would not have ceased to be exercisable under section 1(2)(b) of the Commons Registration Act 1965, despite not having been registered.

By the award plot No. 84 was set out, allotted, and awarded unto and for the lords of the manor of Bincombe and the rector of the parishes of Bincombe and was vested in the lords of the manor and the rector for the time being for ever as trustees for the poor of the parish. The Commissioners also declared, ordered and directed that the plot



should be managed and the furze thereupon be taken and used by the poor of the parish in such quantities and manner and at such time or times in every year as the lords of the manor and the rector should from time to time order and appoint, but should not be fed or depastured by any cattle or sheep whatsoever.

Mr Moule called evidence directed to showing that the rights of the poor under the award had been either abandoned or extinguished. I have, however, come to the conclusion that it is not necessary for one to go into these matters. After consideration of the terms of the award, I find that no rights of common were created by it. The land was vested in the lords of the manor and the rector as trustees, and it follows that the poor are cestuis que trust and not persons entitled to rights of common. Indeed, it would not be legally possible for a fluctuating body of persons such as the poor of a parish to be entitled to rights of common: see Selby v. Robinson (1788), 2T.R.758, where it was held that the expression "poor householders" was too vague and uncertain to support a right of common of estovers. Such a right must be limited to identifiable houses, otherwise it is impossible to ascertain who is entitled to it, which is an essential feature of a right of common.

For these reasons I refuse to confirm the registration. Mr Moule made an application for costs in the event of the Objection being upheld. Since Mr Cox was not seeking any personal advantage in making the registration in good faith and does not appear to have acted in any way unreasonably in the conduct of the proceedings, I would not in the ordinary way have regarded this as a proper case for an award of costs. However, this is not the first case of its kind in Dorset. I refused to confirm the registration of a fuel allotment as common land in In the Matter of Poor Lot Common, Powerstock, Dorset (1972), Ref. No. 10/D/10. My decision in that case was included in a booklet published by the Commons, Open Spaces and Footpaths Preservation Society in October 1972. Reasonable diligence on the part of the Ramblers Association should have led to the conclusion that the present case was one which ought not to have been pursued. I shall therefore order that the Ramblers Association pay to Gonville and Caius College its costs to be taxed, if not agreed, on County Court Scale 4.

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 4th day of May 1976

Chief Commons Commissioner