

OCHONS REGISTRATION ACT 1965

Reference Nos 210/D/338 210/D/339 210/D/340

In the Matter of Cowgrove Common, Pamphill, Wimborne District, Dorset

## DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 and 3 in the Rights Section of Register Unit No. CL 59 in the Register of Common Land maintained by the Dorset County Council and are occasioned by Objection No. 343 made by Mr Henry John Ralph Bankes and Objection No. 451 made by the said Council and (both) noted in the Register on 19 February 1971.

I held a hearing for the purpose of inquiring into the disputes at Poole on 19 June 1980. At the hearing (1) the Ramblers Association an application by whom is noted in the Land Section, were represented by Mrs R Colyer who is their Dorset Footpaths Secretary; (2) Mr H J R Bankes was represented by Mrs R Mackworth solicitor consultant with Gregory Rowcliffe & Co, Solicitors of London; and (3) Dorset County Council were represented by Mr J W Fribence.

The land ("the Unit Land") in this Register Unit is according to the Register, a tract of about 7.70 acres. The Land Section registration was made on the application of Pamphill Parish Council and in addition to the said Ramblers Association application, there is a note of an application by Mr W J Lacy of Poplar Farm. At the Rights Section Entry Nos 1 and 3, there are registrations of a right of common (1) of pasture for 50 cattle, and (3) to graze 60 cattle, made on the application (as tenant) of (1) Mr W J Lacy and (3) Mr O A Chissell and Mr F T Chissell I have a letter dated 21 November 1979 from Solicitors acting for Mr W J Lacy saying that he withdraws his applications for the said registrations; and a letter dated 20 May 1980 from the County Secretary saying that the Council withdraw their objection. The grounds of Objection No. 343 (Mr Bankes) are: "That their are no Rights of Common exercisable over the land in this Register Unit".

Mrs Colyer in the course of her evidence produced: (i) a copy of the return made to the 1955-58 Royal Commission on Common Land by the Dorset County Agricultural Committee which included the following entry: "(item No.) 38, (description) Common Pamphill, (OS No.) 457 and 458, (Acreage) 10 (Type of Common) Manorial Waste, (nature of Common rights and extent used) unused, (Condition of land) Rushy wet (? waste); (remarks) there is some doubt whether this is a common"; (2) a copy of the OS map (1928 edition) 6" = 1 mile on which the Unit Land is described as "Cowgrove Common" and marked as marshy or furze; and (3) (from the County Archives) the Tithe Apportion Award for the Parish of Wimborne Minster confirmed on 2 September 1847 by the Tithe Commissioners in which among the tithable lands appears "2361. Cowgrove Common: Pasture: 10(A) 2 (R) 12 (P)" and in respect of this item in the column headed Landowners appears the word "Landowners (sic)" and in the column headed "Occupiers" appears the words "Sundry Occupiers (sic)"



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Mr E T Rhodes who is now and has been since 1977 joint Land Agent to Mr Bankes' Estate and before that was Assistant Agent from 1945 to 1972 to his father and from 1972 to 1977 to Mr E H Pratt, in the course of his evidence said (in effect):— The Estate is about 16,000 acres mostly in Purbeck, Dorset, some (about 7,000 acres) near Wimborne and a small area in Cumberland. Mr H J R Bankes is now and has been since about 1923 the owner of the Estate, and he understood that it has been in his family since before 1660. The Unit Land and the Farms around it are all included in the Estate. The tenants of these farms are Mr Chissell, Mr Lacy, Mr Calpin, Mr Hobbs, and Mr Whittle. Their tenancy agreements do not expressly include any grazing rights over the Unit Land, although all the tenants from time to time graze the Unit Land, and during any discussion as to the amount of the rents payable under their tenancies it was understood that some grazing over the Unit Land was included in the tenancy. The Estate "managed" the Unit Land and that they cleared water—courses, but renewed the culverts and replanted the trees as needed and generally. There was no grazing on the Unit Land otherwise than from the said farms.

Mrs Colyer's first contention was that notwithstanding no evidence was offered on behalf of those who had registered grazing rights I should find that such rights existed and that accordingly the Unit Land was within paragraph (a) of the 1965 Act section 22(1) the definition of common land being "land subject to rights of common". I have no evidence that either Mr Lacy or Messrs Chissell had grazed the Unit Land for a long enough period for me, on the assumption that their farms were in different ownerships to that of the Unit Land, to presume that they and/or their landlords had been granted the right they had registered. But even assuming that they had grazed the Unit Land for such a paried, the circumstance that the Unit Land was in the same ownership as these farms prevents me from any grazing for any such period presuming any now registrable right; in my opinion a right of common attached to land to be within the 1965 Act must be a right attached to land owned in fee simple by another person. This opinion is consistent with the 1965 Act definition of a right of common which in effect excludes a right held only under a tenancy agreement; and also consistent with the general principle of law that any right which arises as a result of things done by a tenant on land comprised in his tenancy enurs not only to him as the person who did them but also to his landlord, so that in the result the newly arisen right must be treated as included in his tenancy agreement. For this reason I reject Mrs Colyer's first contention.

Mrs Colyer's second contention was that the Unit Land was within paragraph (b) of the section 22(1) definition, as being "waste land of a manor". In my opinion the documents she produced are not evidence of this and it was not supported either by her oral evidence or by anything said on behalf of Mr Bankes; and Mr Rhodes evidence although not dealing distinctly with this point, so far as it went was against the contention. I therefore reject it. I receive that it was not at the hearing suggeste that the grounds of the Objection although apparently limited to paragraph (a) of the definition precluded me from finding against the second contention on the grounds that the objection made no mention of the land being not waste of a manor; if it had been so suggested I would have given leave to amend grounds in exercise of the powers conferred on me by regulation 26 of the Commons Commissioners Regulations 1971.



Mr Bankes and that Mr Webb, Mr Mitchell and Mr Cherrett are tenants of the Estate. In my fooder The 1965 Act so for sorit is concerned with rights of common attached to land owned by some person in fee simple Foreson the evidence of Mr Rhodes was against rights registered at these Entry Nos. The absence of any evidence in support of the rights, I conclude that the registration; should not have been made, and accordingly I refuse to confirm the registration; at the said Entry Nos 2, 3 and 5.

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 4/t - day of August - 1980.

a. a. Bode Julle

Commons Commissioner