



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/119

In the Matter of West Ward Common, Bradford  
Peeverell and Charminster, Dorset. (No. 1)

## DECISION

This dispute relates to the registration at Entry No. 52 in the Land section of Register Unit No. CL 52 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No.12 made by Mr R H Childs, Mrs M K Childs, and Mrs E H Hawkins and noted in the Register on 11 December 1969.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 3 August 1976. The hearing was attended by Mr H Kirk, solicitor, on behalf of Mr C R B Bailey and Mrs M Bailey, the applicants for the registration, and by Mr H E F Lock, solicitor, on behalf of the Objectors.

The land comprised in the Register Unit has an area of about 25.5 acres. It is divided into two approximately equal areas by a ditch. The area to the west of the ditch was coloured blue on an agreed plan produced at the hearing and the area to the east was coloured red. It will be convenient to refer to these areas respectively as "the blue land" and "the red land".

The grounds of the Objection are that none of the land comprised in the Register Unit was common land at the date of the registration, but at the hearing the controversy was limited to the blue land, which is the property of the Objectors.

The land comprised in the Register Unit lies at the western end of a large tract of land known as West Ward Common, the remainder of which is for technical reasons, comprised in other Register Units. It was contended by the Objectors that the blue land is not part of West Ward Common.

The earliest mention of the Common to which I was referred is in a survey of the manor of Fordington made in 1607, where it is stated that: "There is a greate large meade within the manor called the West Ward ..... In all which meade the customary tenants have the common of pasture of the aftershare for all manner of cattle." In the description of the bounds of the manor in this survey the West Ward is stated to extend towards the west "unto a place commonly called Wolves Were or Wolves Hays at the west part of a ground called Abbots Ham where there runneth out a little lake out of a great stream and so as that little lake runneth the gronde within the manor or lordship of Fordington do lie in the south side of the same lake eastward." Unfortunately the place-names mentioned in this part of the survey do not appear on the Ordnance Survey maps. I can therefore obtain no direct assistance from this survey as to the western boundary of the common, though when re-read in the light of the oral evidence it appears to become intelligible.

The next document put in evidence was the Tithe Award dated 31 December 1839 for the parish of Charminster, part of which parish lies within the manor of Fordington. The eastern part of the blue land is clearly shown on the attached map with the number 349 and is described in the award as "In West Ward Mead". Looked at in isolation, this would seem to indicate that this part of the blue land at least was comprised in the "greate large mead" in which, according to the survey of 1607, all the customary tenants had commons pasture of the aftershare. However, the western part of the rec



land, shown on the map with the number 348, is described in the award as "In West Ward Foreshare and Stock in Common", and there are other parts of the red land further to the east similarly described. Neither 348 nor 349 was then in the ownership of the lord of the manor. The description of the blue land as "In West Ward Mead" Simplicitor seems to indicate that it differed in some way from the red land, though in what way is not clear, for the words "Stock in Common" are as consistent with the red land having a right of common attached to it as with that land being subject to rights of common.

The eastern part of the blue land was the subject of an indenture made 21 September 1919 between (1) The Warden and Scholars Clerks of St Mary College of Winchester (2) Alfred Pope, in which it is stated to be known as Bromsham Mead and the red land is described as the Charminster Meadow. The eastern part of the blue land was conveyed with all rights of common of pasture in the Charminster Meadow belonging, attached or appurtenant to or enjoyed with it. The indenture contains no reference to any rights of common to which the land conveyed may have been subject.

The rest of the evidence was oral. There is no dispute that there has been a fence on the blue land adjoining the ditch during the whole period of over fifty years covered by the recollection of the witnesses and that the fence has had in it a gap about 8 feet wide, which could be closed by strands of wire. About 1962 the blue land was purchased by Mr Childs, who renewed the fence, but retained the gap. The conflict of evidence relates to the use made of the gap.

Although he has only owned the blue land since about 1962, Mr Childs knew the locus in quo for many years before that. About 1921 he became the tenant of Poundbury Farm, which has rights of common over West Ward Common. Mr Childs stated that when he was at Poundbury Farm he exercised these rights, but never to the west of the fence. There were cattle on the blue land, but Mr Childs stated that he thought that they belonged to a Mr Willey, who was the tenant of the blue land. Mr Childs said that since he purchased the blue land he has opened the gap in order to let his cattle onto the red land in the exercise of his right of common, but that he had never seen the cattle of other people on his land, apart from the cattle of a Mr Lock, which used the gap by a mutual arrangement between Mr Childs and Mr Lock.

In so far as Mr Child's evidence related to the period before he purchased the blue land, it was contradicted by the evidence of several witnesses called by Mr Kirk. Mr H. A Miles has been a commoner since 1924. He said that Mr Willey's fence was made of barbed wire. It was put up in the spring and opened at the beginning of August. If Mr Willey did not open it, the commoners cut the wire. Beyond that there was no obstruction so far as a place known as Cuckoo Pound, but since Mr Childs replaced the barbed wire fence with a sheep fence. Mr Miles's cattle have not grazed beyond the fence.

Mr J G W Miles, who has also been a commoner since 1924, gave similar evidence of his cattle going up as far as Cuckoo Pound without any objection from Mr Willey or either of his two predecessors in the occupation of the blue land. Miss O A Miles, who looked after the cattle from her brothers' farm during World War II, also said that there was no obstruction to cattle getting up to Cuckoo Pound and that horses stayed up by Cuckoo Pound a lot, since the grazing there was good.

Mr R J Warren, who is 60 and has known Slade's Farm all his life, said that the commoners' animals went up to Cuckoo Pound, where the grazing was better, until Mr Childs bought the blue land.



Similar evidence was given by two witnesses who have no rights of common in West Ward. Mr E W Francis worked between 1922 and 1937 for a farmer at Charminster Farm who had rights of common. He said that the commoners' cattle went up towards Cuckoo Pound without any obstruction and that Mr Harvey, who was then the occupier of the blue land, or his sons opened the gap in the fence to let his cattle out onto the red land and the other cattle into the blue land. Mr H D Godge farmed at Charminster Farm from 1937 to 1948. He also said that Mr Harvey used to open the gap in the fence from August to November and that cattle could then run from Cuckoo Pound to Dorchester.

Faced with this conflict of evidence between Mr Childs and the other witnesses, I have come to the conclusion that Mr Childs's recollection is at fault and that until he acquired the blue land it was grazed by the commoners' animals as far as Cuckoo Pound. Two witnesses, Mr Bailey and Dr W Fullerton, gave evidence that their animals had grazed on the blue land after Mr Childs became the owner, but in view of the unanimous evidence of all the other witnesses it would appear that these were isolated instances which may have been due to failure on the part of Mr Childs or his employees to keep the gap in the fence stock-proof. I do not, however, attach any importance to this aspect of the matter, since total non-exercise of grazing right since Mr Childs bought the blue land would not be sufficient to enable me to find that those rights had been abandoned.

The evidence of Mr Kirk's witnesses that the commoners' cattle had grazed as far west as Cuckoo Pound makes it possible to understand the description of the western boundary of the West Ward in the 1607 survey. Cuckoo Pound is now dry land and was so as far back as 1839, when it was described in the Tithe Award as "meadow". However, its name indicates that it was formerly covered with water. In a manorial context the word "pound" usually means a place in which stray animals are impounded, but "pound" can mean a place used for the storage of water. The Oxford English Dictionary includes among several meanings of "pound": "A body of water held up or confined by a dam or the like". Hence the use of "pound" to mean a length of canal between two locks. Cuckoo Pound adjoins the south side of the northern branch of the River Frome and is shown on the tithe map as surrounded by water with a watercourse leading to the southern branch of the river. It is also worthy of notice that the parish boundary between Charminster on the north and Bradford Peverell on the south, which generally follows the northern branch of the river, at this point leaves the river and goes round the outside of Cuckoo Pound, indicating that this was originally the course of the river and that Cuckoo Pound was formed when the river was diverted into its present course. I have therefore come to the conclusion that in 1607 Cuckoo Pound was covered with water and was the "little lake out of a great stream", i.e. the northern branch of the river, referred to in the 1607 survey as the western limit of the West Ward and of the manor of Fordington.

It therefore follows that the blue land as far west as Cuckoo Pound was part of the common land of the manor of Fordington known as the West Ward described in the 1607 survey. It was still described as "In West Ward" in the Tithe Award of 1839. Although it was described as Bromham Mead in the 1912 indenture, I cannot regard that fact as evidence that the rights of common had been extinguished by that date. West Ward is a name applied to a large area in several different ownerships and is not inconsistent with various parts having their own names. This is shown by the 1607 survey, in which the western part of West Ward is called Abbots Ham. In my view the blue land as far west as Cuckoo Pound is part of the original West Ward and that the rights of common over it have never been extinguished.



For these reasons I confirm the registration with the following modification, namely, the exclusion of Cuckoo Pound and the land to the west thereof.

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 *29th* day of *Sept* 1976.

Chief Commons Commissioner