In the Matter of Brockeridge Common, Twyning, Gloucestershire (No. 2)

DECISION

These disputes relate to the registrations at Entry Nos 1 to 28 in the Rights section of Register Unit No. CL 265 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by Objections Nos 0b 695 and 0b 580 made by Mr B C Ball and Objections Nos 0b. 730 to 0b. 746 made by Mr V R Halling and Mr T S Warner, and all noted in the Register on 8 January 1973.

I held a hearing for the purpose of inquiring into the dispute at Cheltenham on 25 and 26 November 1980. The hearing was attended by Mr E J Harcombe, the successor in title of Mr D C Harcombe, the applicant for the registration at Entry No. 1, Mr R S Hallmark, solicitor, on behalf of Mr C G Halling, the applicant for the registration at Entry No. 4, Mr J Forge, solicitor, on behalf of the executors of the late Mr F S Hawkes, the applicant for the registration at Entry No. 6, Miss Sheila Cameron, of counsel, on behalf of the other applicants for the registrations or their successors in title and Mr Ball, and by Mr R F W Ungoed-Thomas, of counsel, on behalf of Mr Halling and Mr Warner.

Miss Cameron was able to appear for applicants and for Mr Ball (who was also one of the applicants) because she was instructed not to pursue Mr Ball's Objection.

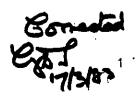
I was informed that it had been agreed that the registrations at Intry Nos 3, 7 and 21, should be confirmed and that the registrations at Entry Nos 1, 2, 19 and 25 should not be confirmed. It was additional to the should be confirmed with the following modifications namely, the deletion of the words "eight cuttle", "and thirty", and "and one horse"; the registration at Entry No. 16 should be confirmed with the following modification, namely, the deletion of the words "or one hundred sheep and twenty cattle"; The registration at Entry No. 22 should be confirmed with the following modification, namely, the substitution of "2½ cows" for "1 cow"; and the registration at Entry No. 25 should be confirmed with the following modifications, namely, the deletion of the words "and the right to graze a further 100 sheep from the 3rd May to the 31st October in every year" in column 4 and the words "as Io of the confirmed with modifications at Entry No. 15, 17, 18, a 20 should be confirmed with modifications. These agreed modifications were submitted to me in writing after the hearing.

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This left the registrations at Entry Hos 5 and 6 for my determination.

The registration at Entry No. 5 is of the right of pasture for 5 cows or 20 sheep at all times over the whole of the land comprised in the Register Unit attached to Twittocks Orchard as shown edged red on a supplemental map. The area edged red on the supplemental map consists of a strip of just under 2 ac. at the southern end of a larger area known as The Twittocks. The applicant for the registration was the late Mr H C Jordan, whose successors in title are Mr and Mrs R M Wilks.

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Mrs Dolman conveyed Twittocks Orchard to Mrs M A Dolman on 12 December 1968. Mrs Dolman conveyed it to Mr and Mrs B W Pain on 20 January 1972, and Mr and Mrs Pain conveyed it to Mr and Mrs Wilks on 6 June 1975. None of the conveyances contains any reference to a right of common attached to Twittocks Orchard, but any right to which Mr Jordan was entitled as owner of that land would have passed to Mr and Mrs Wilks by virtue of section 62 of the Law of Property Act 1925.

The conveyance of the land to Mr Jordan was not in evidence, but it appears from a covenant in a conveyance of a small area of land formerly part of Twittocks Orchard by Mr Jordan to the former Gloucestershire County Council, dated 30 May 1960, that Mr Jordan acquired the land from the Revd. P F Wigan by a conveyance dated 30 October 1946.

Mr Wigan owned and occupied a farm known as Puckrup Farm, of which The Twittocks formed a part. Mr L W Halling, who has known the area since the 1930's said that Mr Jordan bought The Twittocks when Mr Wigan sold his farm. Mr Halling's recollection was that Mr Wigan's livestock mostly consisted of pigs, and such cattle as he had were prize animals which did not go onto the Common. According to Mr Halling, Mr Jordan did not have any cows or sheep.

After hearing Mr Halling's evidence, Miss Cameron accepted that Mr Wigan had no right over the Common.

I therefore refuse to confirm the registration at Entry No. 5.

The registration at Entry No. 6 is of the right of pasture for 60 sheep at any time over the whole of the land comprised in the Register Unit attached to land called Duddage.

Mr Hawkes's right of common was the subject of an action in the Queen's Bench Division of the High Court - <u>Marmer</u> v. <u>Hawkes</u> (1956), unrep. The servient tenement then directly in issue was only a part of the land comprised in the Register Unit, which had been requisitioned, but the evidence related to Brookeridge Common as a whole, and the learned judge decided the case by reference to the rights possessed before the requisition, and just as if it had not taken place. The plaintiffs were a number of pasture-holders, concerning whose rights there was no question, and the defendants, who were the late Mr Hawkes and his father, claimed to be entitled by prescription to pasture sheep on the Common.

The learned judge held that the defendants had established a right to graze 30 sheep on the Common. There was no dispute before me as to this number in relation to breeding ewes. The matter upon which the parties were not agreed was the length of time that lambs could remain on the Common. The Objectors alleged that there was a local custom that lambs should cease to be treated as lambs on 1 August in each year, while Mrs Mawkes, the widow and executrix of Mr F S Hawkes, gave evidence that the practice on Duddage Farm had been to let the lambs run with the ewes until they were sold at Gloucester Barton Fair at Mr Ungoed-Thomas at first asked me to modify the the end of September. registration by reducing the number of sheep from 60 to 30 and adding the words "together with their followers until I August in each year", but later said that the Objectors would be content simply to have the number reduced. Mr Forge, on the other hand, asked for the number to remain at 60 so that the lambs could remain on the Common between 1 August and Gloucester Barton Fair.

In my view, it would not be right to leave the number of sheep at 60, for a registration in that form would cover 60 ewes all the year round with their lambs for part of the year. Nor do I consider that it would be right to insert into this registration any specific words about lambs. All the other registrations in the Register Unit are in the form "x sheep" simpliciter. It was accepted by both sides that a registration in that form includes the lambs I am far from satisfied on the evidence that there is by of the x sheep. local custom a fixed date on which lambs cease to be commonable. who has been a haywarden for nearly 20 years, said that a lamb becomes a sheep on 1 August, but he also said that while many lambs go to Honeybourne Fair on the first Wednesday in August, others go to later sales, the last being Gloucester Barton Fair, and Mrs Hawkes said that she had seen other people's lambs on the Common during August and September. The impression left on my mind is that the sheep farmers of Twyning manage their flocks in the ordinary course of good animal husbandry without being governed by any fixed date for removing lambs from the Common.

For these reasons I confirm the registration at Entry No. 6 with the following modification, namely, the substitution of "30" for "60". I confirm the registrations at Entry Nos 12, 14, 17, 17 18 and 20 with the agreed modifications, which will be incorporated in the notice of the final disposal of those registrations

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.

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Chief Commons Commissioner