



COMMONS REGISTRATION ACT 1965

Reference No. 213/D/191

In the Matter of Lower Cow Pasture, Shuthonger  
Common and Cowham, Twynning, Gloucestershire (No.9)

DECISION

This dispute relates to the registration at Entry No 7 in the Ownership Section of Register Unit No. CL.46 in the Register of Common Land maintained by the Gloucestershire County Council and is occasioned by the conflicting registrations at Entry Nos. 1 to 6 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Cheltenham on 28 and 29 March 1979 and at Watergate House, London, WC2 on 9 and 10 April 1979. The hearing was attended by Mr Martin Roth, of Counsel, on behalf of Mr B C Ball, the applicant for the registration, by Miss Sheila Cameron, of Counsel, on behalf of Mr E W Passey and Mr C E Passey, the applicants for the registration at Entry No 1, Mr V R Halling, the applicant for the registration at Entry No.4, and Mr G S Niblett, the applicant for the registration at Entry No. 5, by Mr Rhidian Ungeod-Thomas, of Counsel, on behalf of Mr T E Spry, the successor in title of Mr A E Spry, the applicant for the registration at Entry No. 3, and by Mr P C Davis, Solicitor, on behalf of Mr H J West, the applicant for the registration at Entry No. 2. There was no appearance by or on behalf of Mr A W Jones and Ms G E Jones, the applicants for the registration at Entry No. 6, since their interest has since been acquired by Mr Ball.

The registration relates to the whole of the land comprised in the Register Unit. So far as the part known as Shuthonger Common is concerned, the parties are agreed that Mr Ball is the owner. Mr Ball, for his part, has accepted that he is not the owner of the land the subject of the registrations at Entry Nos 2,4 and 5.

The land the ownership of which still remains to be considered consists of Lower Cow Pasture and parts of Cowham. Mr Ball claims to be the owner of these areas as lord of the manor of Twynning.

Mr Ball acquired the lordship of the manor from his father by a deed of gift made 16 February 1966 between (1) Charles Ball (2) Bryan Christopher Ball. Mr C Ball purchased the lordship from Bishop Maxwell-Gumbleton. The parcels of the conveyance made 20 March 1946 between (1) Bishop Maxwell Homfray Maxwell-Gumbleton (2) Charles Ball included all manorial rights attaching to the lordship in, over, and under the commons known as Bockeridge, Hillend, Showborough and Shuthonger Common and Ratley Green (including in particular 100 sheep pastures on Bockeridge Common) and all other rights, members, and appurtenances belonging to the manor as the same had been hitherto used and enjoyed by the vendor.

Bishop Maxwell-Gumbleton was the successor in title of Winchcombe Abbey. The somewhat complicated conveyancing history of the manor after the dissolution of the Abbey is summarized in my decision in In the Matter of Lower Cow Pasture, Shuthonger Common and Cowham, Twynning (No.3) (1979), Ref No. 213/D/185. So far as this case is concerned, the important point is that when Matthew Hale wrote his opinion and, no doubt, from a much earlier period Cowham formed part of the commonable land of the division of the manor known as Southrop and part of it was in the possession of the lord of the manor and the remainder held by five copyholders of the manor. Therefore, the freehold estate in Cowham then belonged to the lord of the manor, subject to the five copyhold estates and to the rights of the copyholders to graze 123 beasts on it during parts of each year.



There is no evidence <sup>to</sup> as which parts of Cowham were in the possession of the lord of the manor and which were held by the copyholders. By the time that the apportionment came to be made under the Tithe Act 1836 on 31 December 1842. Cowham was divided into strips in the ownership of a number of persons. Only one of these strips was then in the ownership of Helen Francis (sic) Maxwell, apparently the lady of the manor. For the reasons given in my decision in In the Matter of Lower Cow Pasture, Shuthonger Common and Cowham, Twynning (No. 5) (1979), Ref. No. 213/D/187, I have decided that this strip is in the ownership of Mr T E Spry. I can see no reason for holding that Mr Ball is entitled as lord of the manor to the freehold in any part of Cowham.

So far as Lower Cow Pasture is concerned, there is but little evidence concerning the freehold. The tithe apportionment award of 31 December 1842 is singularly uninformative for Lower Cow Pasture is grouped with other areas of common land, which are collectively described as in the ownership of "Various owners according to their respective rights". The land the subject of the registration at Entry No. 5 was conveyed to Mr Niblett by a conveyance made 10 April 1968 between (1) Harold Frederick Warner (2) George Stanley Niblett. Another part of Lower Cow Pasture with an area of 7a.2r.37p. was conveyed to Mr Alfred Jones by an indenture made 21 November 1919 between (1) Lucinda Badham (2) Alfred Jones. For what it is worth, it is stated on the plan annexed to that indenture that the adjoining land to the north belonged to the Rev. C H Martin's Trustees. The land conveyed by the indenture was conveyed to Mr Ball by a conveyance made 14 February 1972 made between (1) Maurice Henry Cook (2) Bryan Christopher Ball. There is also evidence of a number of conveyances of the first math of various parts of Lower Cow Pasture, but these first maths are merely profits à prendre carved out of the grazing rights over the land as recently as 1844, and the conveyances throw no light on the ownership of the freehold.

I have accordingly come to the conclusion that Mr Ball is not entitled as lord of the manor to the freehold interest in any part of Cowham or Lower Cow Pasture, any interest which former lords of the manor may have had in those areas having been long since alienated or enfranchised.

For these reasons I confirm the registration with the following modification, namely, the substitution in column 4. of particulars specifying Shuthonger Common and the area of 7a.2r.37p. conveyed to Mr Ball in 1972 for the whole of the land comprised in the Register Unit.

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

19<sup>th</sup>

day of

June

1979

  
Chief Commons Commissioner