



In the Matter of The Hudnells, St Briavels,  
Gloucestershire (No. 2)

DECISION

This dispute relates to the registrations at Entry Nos 1 - 8 (inclusive) in the Rights section of Register Unit No. CL 333 in the Register of Common Land maintained by the former Gloucestershire County Council and is occasioned by Objections Nos. Ob 527 - Ob 534 (inclusive) made by Lt Col. J C O R Hopkinson and noted in the Register on 22 November 1972.

I held a hearing for the purpose of inquiring into the dispute at Gloucester on 10 and 11 February and at Watergate House, London, WC2 on 16 February 1977. The hearing was attended by Mr T Etherton, of counsel, on behalf of the St Briavels Parish Council, the applicant for the registration at Entry No. 2, the St Briavels Parochial Church Council, the applicant for the registration at Entry No. 3, and the Parishioners of the Parish of St Briavels, (a Corporation), the applicant for the registration at Entry No. 4, and by Mr J Bradburn, of counsel, on behalf of the Objector. Mr R G Gaunt, the applicant for the registration at Entry No. 1, Mr J B Bennett, the applicant for the registration at Entry No. 6, and Miss Marjorie Rachel Creswick, the applicant for the registration at Entry No. 8, appeared in person.

For the reasons given in my decision in In the Matter of The Hudnalls, St Briavels (No. 1) (1977), Ref. No. 213/D/1 I have come to the conclusion that the land comprised in the Register Unit is subject to rights of common of pasture and estovers appurtenant to the several ancient messuages, lands, tenements and buildings now or formerly parcel of the manor of St Briavels.

The rights for the registration of which each of Mr Etherton's three clients applied were the right to fell and take away trees and other rights to take timber and wood in the nature of estovers; herbage; and pannage, the right of herbage being claimed for 10 horses, 25 cows or beasts and 100 sheep and pannage for 30 pigs. It was stated that these rights were held in gross.

The three applications were intended to be alternatives.

I therefore refuse to confirm the registrations at Entry Nos 2 and 3 and I confirm the registration at Entry No. 4 with the following modifications, namely the deletion of the words "to fell and take away trees and other rights" and the substitution for the words "Right held in gross" the words "The ancient messuages, lands, tenements, and buildings parcel of the manor of St Briavels".

Mr Gaunt based his claim, which related to only part of the land comprised in the Register Unit, on prescription, but in my view his evidence was insufficient to support it. I therefore refuse to confirm the registration at Entry No. 1.

There being no evidence in support of the registration at Entry No. 5 (I was informed that the applicant had died), I refuse to confirm it.

Mr Bennett's claim was really as an inhabitant, but he said that he had applied for the registration of a right attached to Hudnalls Farm because he had been advised that inhabitants as such could not register. Mr Bennett's farm was part of the land conveyed to Mr G Rooke in 1827, so it follows that any rights of common then attached to it over the Hudnalls were extinguished by unity of possession. While it would



be possible in law for new rights to have become attached to the farm after it was sold off by Mr Rooke or one of his successors in title, it appears to me that the rather meagre evidence of user by Mr Bennett and his father was insufficient to sustain such a claim. I therefore refuse to confirm the registration at Entry No. 6.

There being no evidence in support of the registration at Entry No. 7, I refuse to confirm it.

Although the registration at Entry No. 8 is stated to be both attached to a property known as The Hollies and in gross, Miss Creswick stated that she was claiming as a parishioner. I therefore refuse to confirm this registration.

For the sake of clarity I should explain that the reason why I have not modified the description of the applicants in Entry No. 4 as "The Parishioners of the Parish of St Briavels (a Corporation)" is not because I consider that this is a case in which a lost Crown grant of rights of common to the inhabitants, thereby incorporating them, should be presumed, but because that is the way in which the application made by Miss Edmunds was worded. The operative parts of the Entry are the particulars of the rights and of the land to which they are attached. The name and address of the applicant is merely a statement of fact.

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 16<sup>th</sup> day of May 1977

Chief Commons Commissioner