



In the Matter of Broadheath Common,
Broadheath, Malvern Hills District,
Hereford and Worcester.

DECISION.

This dispute relates to the registration at Entry No.1, No.2 and No.3 in the Rights Section of Register Unit No. CL.79 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No. 27 made by Mrs. Ruth Annie Horton and noted in the Register on 27 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 2 July 1975. At the hearing Mrs. Horton was represented by Mr. A.W. Budd, solicitor of Pugh, Fisher, Holyoake & Foster, Solicitors of Droitwich.

The land ("the Unit Land") comprised in this Register Unit is open grass land at Upper Broadheath, containing about 25 acres and being bounded on the northwest by the public motor road (Bell Lane) from Lower Broadheath to Cotheridge and on the south by the road from Worcester to Berrow Green. The Entries in the Rights Section are of rights to graze and were made on the application of (No.1) Mr. Reginald James Townsend, (No.2) Worcester Co-operative Society Limited, and (No.3) Mr. Frank Wise. Mrs. Horton is registered in the Ownership Section as the owner of all the Unit Land and this registration being undisputed has become final. The grounds stated in her Objection are: "That the rights do not exist at all". In a letter dated 6 May 1974 Hulme & Co, Solicitors of Worcester informed the Clerk of the Commons Commissioners that Mr. R.J. Townsend was then deceased and that they were not acting for his personal representatives. In a letter to me dated 6 June 1975, Mr. Wise asked me to excuse him for attending the hearing because he would be on holiday and said he could add little in support of his original application.

Mr. Budd said (in effect):- The Unit Land is part of the Vernon Estate now owned by Mrs. Horton. By a lease dated 4 February 1911 (he produced the counterpart), Sir Harry Foley Vernon Baronet demised to Worcester County Council for 30 years from 29 September 1909 at a yearly rent of £2 "all that open and now unenclosed space as lies within the parish of Saint John Bedwardine containing 19 acres commonly called Broadheath Common and numbered 82 on the O.S. map "for the purpose...that...it shall become and remain an open space for the free use of the public at large subject to such byelaws rules and regulations to secure the...proper control and enjoyment thereof by the public as may from time to time be prescribed by the Lessees". On 10 August 1926 the Minister of Agriculture and Fisheries approved a Scheme for the regulation under the Commons Act 1899 of Broadheath Common (it then comprised O.S. Nos 82 and 267, together about 25 acres). Byelaws were made under the Scheme on 3 September 1926. During the 1939-45 war, the Unit Land was ploughed up by the War Agricultural Committee. They ceased occupation under a notice dated 28 January 1956 and thereafter the Martley Rural District Council took the crop off and spent the proceeds for the benefit of the Unit Land, the arrangements being made by the Parish Council and a local Committee.



Mr. C.W. Jennings, of Evans Jennings & Talbot, Chartered Surveyors of Droitwich, who is now and has been for the last 13 years Agent for Mrs Horton, said (in effect):- He had known the Unit Land for the last 20 years. He had never seen any grazing; the practice has been for the hay crop to be sold by the Committee acting as described by Mr. Budd.

In the circumstances outlined above I had no particular evidence about the three Entries now in dispute. On the information given by me Mr. Budd and Mr. Jennings, it is unlikely that the applicants have the grazing rights they claim. I am not persuaded that I ought to delay my decision so as to enable them or those who could claim under them to offer evidence. I conclude therefore that the rights do not exist at all.

For these reasons I refuse to confirm these three registrations in the Rights Section. The Unit Land was registered in the Land Section as Common Land on the application of Martley Rural District Council; this registration being undisputed has become final and nothing in this decision will affect it.

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 21st — day of August 1975

a. a. Baden Fuller

Commons Commissioner.