



## COMMONS REGISTRATION ACT 1965

Reference No 215/D/309

In the Matter of Lucton Common  
Aymestrey, Leominster District,  
Hereford and Worcester County

DECISION

This dispute relates to the registration at Entry No 1 in the Ownership Section of Register Unit No CL 214 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No 473 made by Mr T Keith Vivian and noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 12 February 1981. At the hearing (1) Miss Sheila Mary Wenham on whose application the registration was made, attended in person; and (2) Yarpole Group Parish Council and (3) the Commoners Association for the Parish of Lucton were represented by Mr W D Turton, solicitor of Lloyd & Son, Solicitors of Leominster.

The land ("the Unit Land") in this Register Unit is OS No 854 containing 1.641 acres. The Land Section registration was made by the Registration Authority without application. The grounds of the Objection are: "This land is considered to be owned by the Commoners Association of the Parish of Lucton".

Miss Wenham produced copies of the following documents by which the title to a farmhouse and lands known as Hill Farm and containing 32 a. 2 r. 10 p. was regularly deduced commencing with a conveyance dated 22 November 1924 by Mr M C Lord (as owner of portions of the Croft Castle Estate) to Mr J Bufton, and continuing (in addition to a receipted mortgage and an abstract stating the death on 15 March 1941 of Mrs E A Frowley and a grant of letters of administration to her estate) with a conveyance dated 12 January 1933 by Mr J Bufton to Mrs E A Frowley, a conveyance dated 17 July 1943 by her personal representatives to Mr J L Hinton, a conveyance dated 2 February 1945 by him to Miss Wenham and a conveyance dated 25 July 1947 by her to herself and Miss Mary Elliott. The 1924 conveyance includes the words

"Together with (so far as the Vendor can lawfully convey the same) all such right title estate and interest (if any) as is now vested in the Vendor in respect of a piece of land coloured and edged green on the said plan hereto Subject nevertheless to all such common and other rights (if any) as may affect such piece of land coloured and edged green".

The above quoted words are repeated in the 1929 mortgage, and the 1933, 1943, 1945 and 1947 conveyances the plan referred to being in each case that on the 1924 conveyance but otherwise without any material alteration.

Miss Wenham in her written statement which she produced to me, said (in effect):- When she bought Hill Farm in 1944 and it was conveyed to her in 1945, she asked the solicitor who was then acting for her why a piece of land at the north west corner was marked in a different colour on the plan. At the time it was fenced



- 2 -

off with the rest of the farm from the adjoining woods. He said that there must have been common rights of some sort and advised to leave it as it was for a year, and then if no rights were exercised to cultivate it with the rest of the farm. It was then scrub and coppice. After a year or more during which there was no sign of common rights being exercised, she started to clear it, but a neighbour objected. It was discussed at a Lucton Parish Meeting and finally settled that the parish would receive money for the sale of firewood and that she should pay a few pounds a year to the parish to cultivate the ground as she saw fit. This she and her partner did until they let the farm in 1952; her tenant continued in the same way. To the best of her belief no common rights had been exercised in the 36 years that the ground had been in her possession.

After a short adjournment during which Mr Turton had an opportunity considering the documents produced by Miss Wenham, and had been able to discuss the matter with Mr Vivian, the Objection was withdrawn.

However, it appearing from the documents produced by Miss Wenham <sup>that</sup> (ever since the 1947 conveyance, not she alone was, but she and Miss Elliott were owners and accordingly to this extent the registration was mistaken, after some discussion it was agreed that the registration should be modified as hereinafter set out.

Accordingly in the circumstances outlined above, I confirm the registration with the modification that in column 3 after "Sheila Mary Wenham" and before "Brook Farm" there shall be inserted "and Mary Elliott both of".

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 1st — day of May — 1981.

a. a. Baden Fuller

Commons Commissioner