



COMMONS REGISTRATION ACT 1965

Reference Nos.31/D/27-29

In the Matter of Stapeley Common,
Chirbury, Salop (No.2).

INTERIM DECISION

These disputes relate to the registration at Entries Nos.1 to 21 in the Rights Section of Register Unit No.CL.80 in the Register of Common Land maintained by the former Salop County Council and are occasioned by Objection No.O.110 made by Mr.J.R.P.Delves and noted in the Register on 25th January 1972 and by Objections Nos.268 and 269 made by the Stapeley Commoners Association and both noted in the Register on 18th August 1972. The Objections of the Stapeley Commoners Association relate only to Entries Nos.2 and 16.

I held a hearing for the purpose of inquiring into the disputes at Shrewsbury on 12th June 1974. The hearing was attended by Mr.John Gittins, solicitor, on behalf of Mr.V.Ll.Powell and Mrs.A.E.Powell, the applicants for the registration at Entry No.16, Mr.H.Adams, the applicant for the registration at Entry No.2, and by Major D.J.Brook, the Chairman of the Stapeley Commoners Association. Mr.Delves did not appear and was not represented.

Mr.Delves's Objection related only to a strip of land at the eastern extremity of the land comprised in the Register Unit. For the reasons stated in my decision in In the Matter of Stapeley Common, Chirbury, Salop (No.1) (1974), 31/D/26, I have come to the conclusion that any rights which may exist are exercisable over the whole of the land comprised in the Register Unit.

I turn now to the Objections made by the Stapeley Commoners Association. The basis of these Objections is not that Mr.and Mrs.Powell and Mr.Adams are not entitled to rights of common, but that they have claimed rights in excess of those to which they are entitled.

Mr.and Mrs.Powell claim to be entitled to graze 100 sheep, 20 cattle, and 15 pigs over the land comprised in the Register Unit. Mr.Adams claims to be entitled to graze 180 sheep, 24 cows, and 15 horses. The Association says that Mr.and Mrs.Powell are entitled to graze only 19 sheep or (40) cattle, and Mr.Adams only 80 sheep or 16 cows.

It does not appear that the rights of grazing on Stapeley Common have ever been limited by definite numbers. The impression left on my mind by the evidence is that such commoners as wished to exercise their rights turned out as many animals as they wished from time to time and that none of them ever objected to what others did. However, when section 15 of the Commons Registration Act 1965 made it necessary for the numbers of animals to be entered in the Register to be stated in the applications for registration, a meeting was held on 24th May 1967 to endeavour to agree upon these numbers. At this meeting it was agreed that the total capacity of the Common was



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700 sheep. This total was then allocated among the commoners on the basis of the acreage of the dominant tenements, but according to a formula which gave a higher figure for smaller tenements. Thus a tenant of 1 ac. was allotted 5 sheep, but one of 8 ac. was allotted only 20. On this formula Mr. and Mrs. Powell's 7 ac. holding would have 19 sheep and Mr. Adams with his 122 ac. would have 80 sheep. All these figures were convertible into cattle on the basis of one beast to 5 sheep. All the persons entitled to rights, with the exception of Mr. and Mrs. Powell and Mr. Adams, accepted this formula and applied for the registration of their rights accordingly.

The Association had no power of coercion and there is no evidence that Mr. and Mrs. Powell and Mr. Adams ever agreed in advance to be bound by the outcome of the meeting held on 24th May 1967. They were acting within their rights in applying for the registration of larger numbers of animals than those allocated to them by the Association. My task is to ascertain what is the correct number of animals to be registered in each case.

No assistance is to be derived from the deeds relating to the respective holdings. Mr. and Mrs. Powell's holding was conveyed to them in 1968 with "such rights of depasturage on Stapeley Hill as has hitherto been enjoyed in respect of the property conveyed and has been exercised by the present and former owners and occupiers." Mr. and Mrs. Powell quantified their claim by reference to a count made by Mr. Powell of the stock kept by the previous owner when he found 100 ewes with followers, pigs and other stock. Mr. Adams bought his property in 1963. He did not produce the conveyance, but he quantified his claim by reference to a statement by his vendor that the commoners at that time had agreed that he could turn out 180 sheep, 24 cows, and 15 horses.

In my view the formula put forward by the Commoners Association is founded upon an unsound legal basis. It starts from the carrying capacity of the Common, but it is well-settled law that rights of pasture for an undefined number of animals have to be quantified by reference to the animals which the commoner's tenement is capable of maintaining during the winter or, as it is frequently put, the animals levant and couchant. The total number of animals which all the commoners are entitled to turn out onto a common is not related to the carrying capacity of the common and may in some cases exceed it, as was the case in Robertson v. Hartopp (1889), 43 Ch.D.484, at p.494, 516.

I have come to the conclusion that I cannot satisfactorily decide this case without the assistance of an assessor appointed under section 17(2) of the Act of 1965. It may be that this statement of the principle to be applied will enable the parties to settle their differences so that I can give a decision by consent, but failing that I shall re-open the proceedings with an assessor when I am next sitting in Shrewsbury.

Dated this 1st day of July 1974


Chief Commons Commissioner