



In the Matter of Benjamin at The Chains,
Exmoor, Somerset (No. 1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 157 in the Register of Common Land maintained by the Somerset County Council and is occasioned by Objection No. O/281 made by the former Somerset County Council and noted in the Register on 8 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 28 June 1983. The hearing was attended by Mr R W Morgan, Solicitor, on behalf of Mr O J Sanders, the applicant for the registration in the Rights Section of the Register Unit, Miss L F Bentley, Solicitor, on behalf of Mr K Chugg, an objector to the registration in the Rights Section, and Mr M J Boon, Solicitor, on behalf of the Somerset County Council.

Objection No. O/281 relates to only a very small triangle of land, and Mr Morgan informed me that he was instructed to agree to the exclusion of that part of the land comprised in the Register Unit.

So far as the major part of the land is concerned, there was no evidence that it is waste land of any manor, so it can only fall within the definition of "common land" in Section 22(1) of the Commons Registration Act 1965 if it is subject to a right of common. The only registration in the Rights Section of the Register Unit is that applied for by Mr Sanders, namely, the right to graze up to 150 sheep, 18 ponies, and 30 cattle attached to South Stock Farm.

There was no evidence that any right of common is mentioned in the title deeds of South Stock Farm, and Mr Sanders's claim is based on prescription.

The land comprised in the Register Unit (with the exception of the small triangular area the subject of Objection No. O/281) is bounded on the north by land known as Ilkerton Common, which is subject to a final registration of a right of common attached to South Stock Farm. The boundary between the two Register Units is the boundary between the parishes of Lynton and Exmoor and also the boundary between the counties of Devon and Somerset.

The land to the south, the subject of the reference, was conveyed to Mr Chugg by a conveyance made 12 July 1972 between (1) Shirley May Chugg (2) Kingsley Chugg. In the parcels of this conveyance the land in question is described as "all that allotment and enclosed part of Ilkerton Common" and in the Schedule to the conveyance it is described as "Exmoor Allotment an enclosed part of Ilkerton Common".

Mrs S M Chugg was the personal representative of Mr Ivor Frederick Chugg, who died on 6 July 1965, and she assented to the vesting of the land in question in herself by an assent dated 1 June 1967, in the Schedule to which the land is described as "all that allotment and unenclosed part of Ilkerton Common". The difference between this description and that in the conveyance of 12 July 1972 is due to the fact that at some time after 1 June and before 31 December 1967 a fence had been erected along the line of the parish and county boundary.



The land is described in the same way in the parcels of a conveyance made 2 December 1960 between (1) Bernard Chugg (2) J F Chugg, and in the Schedule to that conveyance it is described as "Exmoor allotment an unenclosed part of Ilkerton Common". The land is also described in the same way in the corresponding parts of a conveyance made 29 September 1958 between (1) Lionel Thomas Skinner (2) B Chugg and of a conveyance made 5 July 1958 made between (1) The Public Trustee (2) L T Skinner. The Public Trustee was the executor of Sam Slater, who died on 10 August 1957, having acquired the land by an indenture made 20 June 1905 between (1) Dame Frances Gertrude Carew (2) Sir Henry Palk Carew (3) Henry Tireman Mackenzie and George Hawkins Hext (4) George Cobley Smyth Richards, and Frederick Russell Fox (5) S Slater, in the Schedule to which the land was described as "Exmoor Allotment", the occupier being stated to be W Burnell. The description "Exmoor Allotment" may indicate that the land was part of that allotted under the Exmoor Forest Inclosure Act of 1815 (55 Geo. III c.138), but it does not seem to be necessary to pursue this aspect of the matter

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At all material times before 1967, Parish and County boundary was marked only by boundary stones and animals grazing on the land to the north could and did also graze on the land to the south. Mr Sanders remembered his father's animals grazing in this way about 50 years ago. However until 1943 the elder Mr Sanders was a tenant of Mr Slater and as such had grazing rights over the land in question. A similar tenancy was then granted to Mr Skinner, who held it until he purchased the freehold from Mr Slater's executor in 1958. Therefore, any grazing by the animals of the elder Mr Sanders before 1943 was attributable to the exercise of his rights under his tenancy agreement and so was not adverse to the interests of the owner of the land. After the tenancy expired any grazing of animals from South Stoke Farm was adverse to the interests of the successive owners of the land, who appear to have acquiesced in it until 1967.

In or shortly before 1967 a Mr Bowen bought East Ilkerton Farm and started keeping Galloway cattle on Ilkerton Common. These cattle, like those of Mr Sanders, had free access to the land comprised in the Register Unit. A dispute arose between Mrs Chugg and Mr Bowen, as a result of which the land in question was fenced in 1967 to prevent Mr Bowen's cattle running over it. This would also have the effect of keeping the animals from South Stoke Farm off the land.

Mr Sanders did not complain to Mrs Chugg about the erection of the fence. He said that the fence was not effective and that his animals continued to graze on the land in question. However, evidence was given by Mr C F Bennett, a former employee of Mrs Chugg, that the fence remained stock-proof until 1976, but that animals did get through and that he turned stray stock off. Some of this stray stock belonged to Mr Sanders and some to other people. In so far as there is conflict between the evidence of Mr Sanders and that of Mr Bennett, I find that the fence was not literally stock-proof, but that it was erected to keep out animals from the north, that it was generally successful, and that Mr Sanders's animals were either kept off or turned off the land without any objection on his part.

My finding with regard to the fence does not, however, conclude the matter. Even if the erection of the fence cannot be regarded as an interruption within the meaning of the Prescription Act 1832 of the actual enjoyment of the right claimed by Mr Sanders, the making of the objection to the registration in the Rights Section by Mr K Chugg on 30 June 1972 is by virtue of Section 16 (2) of the Commons Registration Act 1965 to be deemed to be such a suit or action as is referred to in section 4 of the Act of 1832.



It therefore follows that a right of grazing attached to South Stoke Farm was only enjoyed from 1943 until 1972 at the latest and so not for the period of 30 years required by the Act of 1832.

For these reasons I refuse to confirm the registration.

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

27th

day of

July

1983

Chief Commons Commissioner