



There was no evidence as to the origin of these stockage rights. All that can be said is that they were in existence as early as 1776, when the earliest surviving minute book relating to them begins. Prima facie a man cannot be entitled to a right of common over his own land, and since the registration of the rights of common is by virtue of section 10 of the Commons Registration Act 1965 conclusive evidence of the existence of the rights as at the date of registration, that would exclude each of the persons entitled to the rights from the ownership of the land. However, it is possible that the land may be a regulated pasture the soil of which is vested in stint-holders. There is, however, no evidence of any act, award, or agreement under which such vesting may have been made. I cannot assume that the land is such a regulated pasture merely because a number of persons have grazing rights in gross over it; see Rigg v. Earl of Lowdale (1857), 1 H.& N.923. On the evidence before me all that I can say is that I am not satisfied that the applicants are the owners of the land.

For these reasons I refuse to confirm the registration.

I must add that even if evidence is subsequently discovered that the land is a regulated pasture vested in the owners of the stockage rights, it would not be possible to confirm the registration without modification, since in those circumstances the land would be vested in the Public Trustee by virtue of para. 1(4) of Part IV of the First Schedule to the Law of Property Act 1925.

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

22nd

day of

July

1983

Chief Commons Commissioner



**In the Matter of North Ham, Goose Marsh,
Catsford Common and Wall Common, Stogursey
and Otterhampton, Somerset (No. 1)**

DECISION

This dispute relates to the registration at Entry No. 1 in the Ownership Section of Register Unit No. CL 84 in the Register of Common Land maintained by the Somerset County Council and is occasioned by the conflicting registration at Entry No. 2 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 28 June 1983. The hearing was attended by Mr J M Lang and Mr F J House, two of the applicants for the registration, in person. There was no appearance by or on behalf of the applicants for the conflicting registration.

The registration is of eleven persons as the owners of the whole of the land comprised in the Register Unit. The conflicting registration is of Mr R W Quayle and Mr R H S Ashton as the owners of the same land.

It appears that what was originally intended was that Mr Quayle and Mr Ashton should join with the other eleven applicants in a single application for the registration of the ownership in common of the whole of the land, but Mr Quayle and Mr Ashton did not live in the district, so that when the application came to be made a separate form was sent to them to complete. The result was that the former Somerset County Council, as registration authority, received two applications for the ownership of the same land and had no alternative but to make two entries in the Ownership Section of the Register Unit. Subsequently Mr House purchased from Mr Quayle and Mr Ashton their interest in the land.

It appears from a letter of Messrs Willmett and Co, Solicitors, dated 27 June 1983, that Mr Quayle and Mr Ashton were trustees and that the succeeding trustees would agree to the transfer to Mr House of the conflicting registration.

The course of action suggested by Messrs Willmett and Co would not resolve the conflict. All that I can say is that there is no evidence to support the conflicting registration.

It is superficially attractive for me to say that since the conflicting registration cannot be confirmed, the conflict is resolved and the registration must be confirmed. It has however been held by Walton J. in In re Sutton Common, Wimborne, (1982) 1 W.L.R. 647 that it is not right for a Commons Commissioner to treat a dispute arising under the Commons Registration Act 1965 as if it were a lis inter partes, his duty being to inquire into the whole matter.

The eleven applicants for the registration and the applicants for the conflicting registration also applied for the registration of varying numbers of what were described as stockage rights, each right being quantified as the right to stock with 20 sheep usually from 1 April to 31 December with the precise dates being controlled annually by the Hayward for the 44 rights involved. These rights were stated to be held in gross and, being undisputed, have become final.