COMMONS REGISTRATION ACT 1965

Reference Nos.29/D/5-13

In the Matter of Pixey Mead, Gosford and Water Eaton, and Yarnton or West Mead, Yarnton, Oxfordshire.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.71 in the Register of Common Land maintained by the Oxfordshire County Council and are occasioned by Objections Nos.43 and 48 made by William Arthur Baylis; Objections Nos.42 and 47 made by Mrs. Fanny Harris; Objections Nos.35 and 36 made by Robert Donovan Alec de la Mare; Objection No.44 made by David Edward Castle; Objection No.45 made by the Warden and Scholars of the House or College of Scholars of Merton in the University of Oxford; and Objection No.46 made by Miss Dorothy Haynes. Mr.de la Mare's objections were noted in the Register on 28th September 1970 and the remainder on 14th June 1971.

I held a hearing for the purpose of inquiring into all the disputes at Oxford on 6th and 7th June 1972. The hearing was attended by Mr.John Cole, solicitor for the Yarnton Parish Council, the applicant for the registration, and by Mr. G.C. Raffety, counsel for all the Objectors.

I heard all the disputes together. Since I can give only one decision in respect of the registration, I have made an order under regulation 12(2) of the Commons Commissioners Regulations 1971, dated 12th July 1972, that all the matters shall be consolidated.

The land the subject of these disputes consists of two lot meadows, known respectively as Pixey Mead and Yarnton or West Mead (hereafter called "West Mead"). Objections Nos.35, 47 and 48 relate to Pixey Mead and Objections Nos.36, 42, 43, 44, 45 and 46 relate to West Mead.

The Parish Council contends that both meadows fall within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being subject to rights of common of pasture. The Objectors deny the existence of any such rights. The facts relating to the two meadows are in some respects similar, but since there are differences it will be convenient to deal with them separately and with West Mead first.

For the purpose of taking the hay crop each year West Mead is divided into portions. The ownership of one portion, known as "Tydalls", remains constant, but the remainder of West Mead is divided into five divisions, each of thirteen strips, making 65 such strips in all. These strips are drawn for annually early in July. The drawing is carried out by the use of thirteen wooden balls, on each of which is painted a name, the names being: (1) William of Bladon; (2) Gilbert; (3) Waterey Molly; (4) Walter Geoffrey; (5) Boat; (6) Dunn; (7) White; (8) Parry; (9) Harry; (10) Bolton; (11) Freeman; (12) Green; and (13) Rothe. On the day of the drawing the balls are taken in a bag by one of the Meadsmen to the first strip of the first division,

where one ball is drawn from the bag. The person claiming to own the ball so drawn then cuts a few feet of the first strip. The bag, then containing the remaining twelve balls, is then taken to the second strip of the first division, where another ball is drawn and claimed, and the process is repeated to the thirteenth strip of the first division. Then all thirteen balls are returned to the bag and the process is repeated for each strip of the remaining five divisions. Each ball is reckoned as carrying 6 customary acres in West Mead, the strips being approximately equal in area. Some of the proprietors are accustomed to sell the grass for the year on their allotted strips. The ownership of some of the balls is divided into fractions. In such a case the division of the strip is settled by the Meadsmen. When the grass is sold by auction there can be such lots as "Three quarters of William of Bladon" and "Half of Waterey Molly".

There are two Meadsmen, elected by the proprietors in West Mead, who have the direction and management of the meadow. After the last Monday in August West Mead is stocked with cattle, but the Meadsmen claim and on occasions use the right either to ante-date or postpone the stocking for a week or so, according to circumstances. Only the proprietors of the balls (and not the owners of "Tydalls") may stock the meadow, and this right of stocking belongs to and is carried with the proprietorship. Each of the thirteen balls carries the right to put fourteen head of horned cattle or seven horses in West Mead. Each of these rights is notionally divided into fourteen "commons", and some of the commons are sold by their proprietors.

The position on Pixey Mead is not quite so simple, for the land the subject of the registration has to be considered in connection with other land which has not been registered under the Commons Registration Act 1965. This other land and the land the subject of the registration are collectively known as Pixey Mead, but it is convenient for the purposes of this decision to confine the name Pixey Mead to the land the subject of the registration. To the north-west of Pixey Mead in this narrower sense there is a large area of meadow, most of which belongs to the Duke of Marlborough and the remainder to Mr.de la Mare, while to the south-west there is a somewhat smaller area of meadow belonging to the personal representatives of Randal George Wise, deceased.

Until comparatively recently the mowing grass on Pixey Mead was divided into strips and drawn for annually in the same way as that on West Mead. However, some years ago the pattern of the strips in Pixey Mead was interfered with by the sale of part of it for the construction of the Oxford western bye-pass road. Since then it has been found simpler to sell the grass in one lot, the proceeds being divided among the proprietors by the auctioneers.

The rights of grazing after the hay crop are somewhat complex. The "commons" are not equally divided among the proprietors of the balls, so that while each ball owner has fourteen commons in West Mead, he may have more or fewer or none at all in Pixey Mead. I was informed that the owners of the balls have no commons as such, but those who have commons have them by virtue of their title-deeds. Thus, for example, in 1966 Merton College conveyed to Mr.de la Mare three-quarters of Boat and half of Rothe and fourteen commons. The grazing rights of the owner of a common

in Pixey Mead are not limited to Pixey Mead itself, but extend over the adjoining land belonging to the Duke of Marlborough and Mr.de la Mare and the Wise representatives. On the other hand, the owner of a common can only exercise his right of grazing in alternate years. In the other years the owner of the Wise land is entitled to graze on Pixey Mead and on the land belonging to the Duke of Marlborough and Mr.de la Mare. Strangely enough, the Duke of Marlborough and Mr.de la Mare have no grazing rights in respect of their own land after they have taken their hay crops.

There was no dispute as to the facts or as to the existence of the rights of grazing over West Mead and Pixey Mead. The argument before me was directed to whether these rights of grazing are rights of common.

In considering this matter no assistance is to be derived from the nomenclature of the rights of grazing. That they are quantified as so many "commons" is entirely irrelevant. What has to be considered is whether they are rights of common in the legal sense.

Mr. Cole based his argument on the definition of a right of common given on Halsbury's Laws of England (3rd.edn), v.298 as a right, which one or more persons may have, to take or use some portion of that which another man's soil naturally produces. Mr. Cole adopted as part of his argument a most interesting paper by F.E. Farrer on lot meadows, including West Mead and Pixey Mead, which appeared in The Conveyancer in September 1936 ~~1936~~ (pp.53-61).

Mr. Raffety contended that there are no rights of common in West Mead, because nobody but the owners of the soil can exercise the rights of grazing. None of them is exercising any right over the land of another, for between them they are the absolute owners of the land. While the position in Pixey Mead is slightly different because the owner of the Wise land has a right of pasture in alternate years, Mr. Raffety argued that a right in one person cannot be a right of common: rights of common must be of a quasi-public nature, that is to say rights of public importance. This point, of course only arises if Mr. Raffety is right on his principal point, which covers Pixey Mead as well as West Mead.

Although Farrer's article mentions West Mead and Pixey Mead, there is no discussion of the point in issue in this case. The author merely baldly states that the respective proprietors have rights of common over the whole meadow when the hay has been cut. The article is of value because it gives references to the cases in which the ownership in fee of lot meadows has been considered. There have been three, all within a few years of each other. The first was Anon. (1587), 4 Leon.43, where Gent B. said:

"Where many have Lot Meadow to be divided every year by lot, who shall "have the grass of such an acre etc., and so change every year according "to lots, they have not any freehold therein but only vesturam".

This view was upheld by Manwood C.B. in Anon.(1588), Owen 37.

Both these decisions were in the Court of Exchequer. Four years later they were overruled by the Court of Queen's Bench in Welden v. Bridgewater (1592), Cro.Eliz.421, also reported less satisfactorily in Moore 302. The plaintiff

was a lot holder who alleged that the defendant had trespassed on his land. The plaintiff's counsel argued that his allotment gave him for the time a several estate in fee in the soil of his moveable acreage. The whole Court held that by the allotment it was the proper soil and freehold of him to whom it was allotted and that he could maintain his action of trespass quare clausum fregit. The principle laid down in Welden v. Bridgewater was followed by Sir Orlando Bridgman, the celebrated conveyancer, in his opinion given in 1657 on the lot meads in Aston and Coat, Oxfordshire, printed in Williams on Rights of Common, p.93.

It does not appear that in Welden v. Bridgewater there was any right of grazing after the hay on the strips had been cut. But the case is highly relevant to the present dispute because it is authority for the proposition that after the annual allotment each strip is owned in fee in severalty.

It therefore follows that in relation to each strip the owners of the other strips are exercising rights of grazing over land in respect of which they have at the time of exercising such rights no proprietary interest, even though some or all of them may by the luck of the draw have had such an interest in previous years.

I have therefore come to the conclusion that Mr. Raffety's argument on this point is unsustainable and that both West Mead and Pixey Mead are subject to rights of common. It is thus not necessary for me to give a decision on Mr. Raffety's second point relating to Pixey Mead. But, if I may permit myself an obiter dictum, there seems to be no authority for the proposition that a right of common cannot be enjoyed by one person. However, it seems that strictly the grazing rights enjoyed in alternate years by the owners of the Wise land are not rights of common, since in those years the owners of the strips are excluded from the grazing, but rights of sole pasture which, although not rights of common at common law, are brought within the ambit of the Act of 1965 by the extended definition of "rights of common" in section 22(1) of the Act.

For these reasons I 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 25th day of July 1972

[signature]

Chief Commons Commissioner