COMMONS REGISTRATION ACT 1965

Reference Nos. 33/D/2
33/D/3
33/D/4
33/D/5
33/D/6
33/D/7
33/D/8

In the matter of Doley Common, Gnosall, Stafford D., Staffordshire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 to 6 inclusive in the Rights Section of Register Unit No. CL 67 in the Register of Common Land maintained by the Staffordshire County Council and are occasioned by Objection No. 29 made by Mr. Alan Stobart Monckton and noted in the Register on 27 October 1970.

I held a hearing for the purpose of inquiring into these disputes at Stafford on 12 November 1974. At the hearing: (1) Mr. Monckton attended in person; (2) Gnosall Parish Council, pursuant to whose application the Entry in the Land Section had been made, were represented by Mrs D. Ingram, one of their members; (3) Mr. Alfred Leonard Hopkins on whose application Entry No. 2 in the Rights Section, had been made, attended in person; (4) Mr. John Henry James Silvester and Mrs Beryl Silvester, on whose application Entry No. 5 in the Rights Section, had been made were represented by Miss R. Burrows of counsel (instructed by Nowell Meller & Nowell, Solicitors of Stafford); and (6) Staffordshire County Council, as registration authority, were represented by Mr. C. T. Gray solicitor and Mr. B. Orgill principal administrative assistant, both of the County Clerk and Chief Executives Department. Mr. Hopkins said he had been asked by Mr. Richardson (one of the two persons on whose application Entry No. 3 in the Rights Section had been made) to say that he is sorry but he could not attend the hearing.

Mr. Gray said that Entry No. 6 in the Rights Section (made on the application of Mr. L. and Mrs G. M. Spooner) had been cancelled before 31 July 1973.

Entry No. 2 in the Rights Section is of rights attached to "The Hollies, Gnosall" "to graze 20 cows including heifers and calves, 10 pigs, 6 goats, 2 horses ... to take tree loppings, gorse, furze bushes or underwood, turf, peat or fish ... to shoot wild birds and animals over the whole of the land comprised in this register unit". Entry No. 5 in the Rights Section is of rights attached to "Faircroft, 2 Doley Common, Gnosall" "To graze 6 cows and 6 pigs ... of estovers and ... of pannage over the whole of the land comprised in this register unit". The grounds stated in Objection No. 29 (which relate to the Entry in the Land Section) are:- "That the land was not common land at the date of registration".

Oral evidence was given: (1) by Mr. Monckton who produced (a) a statutory declaration made on 3 January 1968 by Mr. D. A. Collenette (Estates Secretary to the Church Commissioners for England), (b) a conveyance dated 9 January 1968

(2)

by which the Church Commissioners for England conveyed to him (Mr. Monckton) all their estate and interest as Lords of the Manor of Gnosall in the soil of pieces of common or waste land unknown as Doley Common and Hollies Common (on the plan annexed thereto marked as containing 41.24 acres and 11.755 acres respectively) and (c) some correspondence he had with Mrs Alice Cooper (on whose application Entry No. 1 in the Rights Section had been made); (2) by Mrs Silvester who produced (a) a copy of a conveyance dated 24 July 1968 by which Mrs E. M. and Miss E. M. Dutton conveyed to Mr and (herself) Mrs Silvester a house and garden at Doley then known as No. 2 Home Cottages (now and in the Register called "2 Doley Common") and two gardens near the gravel pit adjoining Doley Common, (b) a letter dated 7 November 1968 from Miss E. M. Dutton to Mr. and (herself) Mrs Silvester, and (c) a statement dated December 1967 and signed by Mrs L. Buckley; (3) by Mr. T. Rhodes who is now 71 years old and who lived at No. 2 Home Cottages from 1931 to 1949 (he rented the property at first from Mr. William Hall and later from Mrs Dutton); (4) by Mr. Hopkins who is 74 years old and has lived at the Hollies since 1928 and who produced letters dated 19 April 1971 and 20 April 1972 from Mr. Monckton to himself; and (5) by Mrs Ingram who has lived in Gnosall since 1962 and been a member of the Parish Council for about 5 years.

Three days after the hearing, I inspected the land (and also Hollies Common), it having been agreed that I might do so unattended.

The Land ("The Unit Land") comprised in this Register Unit (as I scale the Register map) is about 1000 yards long from end to end, and on the average about 200 yards wide; Doley Brook flows from the northwest to the southeast along the northeast side of the Unit Land. For the most part, the Unit Land is only a few feet above the level of Doley Brook; a small part near the southwest side is a little (or not very much) higher. The adjoining land on the northeast and southwest slopes upwards, so that by contrast, the Unit Land appears very flat. It is for the most part covered with large tussocks of grass (due to the constant flooding) and it is therefore very laborious to walk over. At the northeast corner there is a single plank (? temporary) footbridge across the Brook; at about the middle of the northeast side there is a wide (newly constructed) bridge ("The Bridge"); there is no gate or other obstruction at either end on the Bridge. When I was there work was being done to the banks and bed of the Brook, so that the banks are steep; in the result the Brook is except at the Bridge a formidable obstruction to any crossing of Doley Brook by any but the most determined human beings and animals. For about 100 yards Doley Common adjoins (the Brook is between) land known as Hollies Common; a very irregular shaped piece of open grass and scrubland which extends in several directions on the northeast side of Doley Common: to go between the two Commons across the Bridge is easy for both human beings and animals. Compared with Doley Common, Hollies Common is hilly and dry and (except very near to the Brook) free from vegetation usually found on lands liable to flooding. From Plardwick on the

southwest there is a tarmacadam motor road to a point (Doley Gate) on the southwest side of Doley Common. From the through motor road from Gnosall on the south to Knightley on the north, there is a branch tarmacadam motor road to Hollies Common which (dividing in two places) leads to various houses and farms which surround Hollies Common; this branch motor road does not continue as far as the Bridge. From Doley Gate to the Bridge there is a footpath (marked on the Register map: when I was there it was nearly all soft and muddy), and there is a short length of track on the southwest side of Doley Common leading from Doley Gate to 2 Doley Common (house of Mr and Mrs Silvester).

In the 1968 declaration Mr. Collenette said (in effect) :- he believed the land shown on the plan annexed (being Doley Common, Hollies Common and Doley Brook as subsequently conveyed by the 1968 conveyance) to be "unenclosed waste or common land of the Manor of Gnosall"; the said Manor formed part of the Lichfield Bishopric Estates which in 1867 vested in the Ecclesiastical Commissioners under an Act of 1860; they and the Church Commissioners as their successors had received the rents and profits; and he was not aware of any claim adverse to their title. The lands in the 1968 declaration and in the 1968 conveyance described as Doley Common and Hollies Common are in now all relevant respects the same as the Doley Common and Hollies Common referred to in the applications and Entries referred to or contained in the Register (some small parts of Hollies Common may be included in some and excluded from others of the descriptions). By the conveyance the land was expressed to be conveyed "SUBJECT to all rights of common or other rights exercisable in respect of the said waste or common land".

Mr. Monckton who is a surveyor, a farmer and a professional forester, said (in effect) :- When he made his 1968 purchase the Agent of the Church Commissioners said that they had tried but failed to find anybody who had common rights: the purpose of their enquiry was the improvement of the Brook course, and they wished to obtain a contribution from anybody who claimed common rights; as to this, Mr. Monckton contended that a refusal by a commoner to own up in such circumstances was a denial of his title. Mr. Monckton understood that no common rights had purported to be exercised for grazing since 1949; he contended that this showed that the commoners had abandoned their title as well as denying it. He understood that in 1969, Quarter Sessions had considered the question whether the footpath from Doley Gate to the Bridge should in some way be converted into a bridle path; that during the proceedings someone stated that the path could not be both a public footpath and common land, and that the representative of the Parish Council having heard this statement said that the Parish Council had thereby elected against the whole of the 40 acres of Doley Common being common land. He understood that some land southeast of

that which is now under the 1965 Act registered as common land had sometime ago been inclosed (it became part of Plardwick Farm) and that the commoners acquiesced in this enclosure; he contended that this was evidence that the commoners regarded their common rights as of no value and had abandoned them. He had never seen any sheep, horses, pigs or other animals belonging to Mr & Mrs Silvester or any one else on Doley Common; they could not have a right of pannage because there have not within living memory been any beeches on the land. He understood that Mr. Liversage who owns adjoining land and who shoots over Doley Common, turned off anybody else who tried to shoot there without his permission.

Mrs Silvester said (in effect):- She had known the Unit Land for 30 years; it had always been used for grazing. When she and her husband bought 2 Doley Common in 1968, they intended to graze on the Unit Land and they had done so. They had grazed up to 10 cattle, and sows up to 6 with their litters; they had also grazed calves, goats, geese and sheep. The Unit Land had always been open and they had not been hindered in any way. The Unit Land was in part marsh but this did not stop grazing. They had taken wood from the Unit Land for firewood and peat for gardening. There are some oaks on or overhanging the Unit Land, and the pigs have had the acorns. Their animals had roamed over Hollies Common, because there had been no fence to stop them going across the bridge.

The statement of Mrs Buckley includes:- "I ... lived at ... No. 2 Doley Common from 1950 to 1963 ... We had all had the use of the Common as free grazing for our 10 cows and pigs ...".

The letter of Miss Dutton includes "... Re: William Hall (owner of No. 2) ... was a farmer ... he used to graze cattle on Doley Common ... his sister died in 1952 ... and Mr. Hall passed away some years before his sister so that it is going back some. There was a Mr. Rhodes who lived at No. 2 Home Cottages and following was Mr. Thomas Hodges who died suddenly there, → Mrs Buckley who you mentioned was his housekeeper. They grazed quite a number of cattle on the common ...".

The 1968 conveyance recites an assent dated 9 March 1955 made by Albert Dutton and Mrs Dutton in favour of Mrs Dutton and Miss Dutton.

Mr. Rhodes said (in effect):- While he was at 2 Home Cottages (1931-1949) he grazed two milking cows, calves, sows (and their litters) goats on the Unit Land. He always thought that anybody who lived "on the Common, really on it" had a right to turn animals onto the Unit Land; he was told this by his landlord when he first took his tenancy. There was an oak tree near the Cottage; his old sow had the acorns from it many a time. When before the war there was a shortage of coal, he used to dig up roots on the Unit Land.

After he left the Cottage (in 1949) Mr. Hodges and Mrs Buckley came there; they turned out 10-12 calves poultry and pigs onto the Unit Land. He remembered Mrs Buckley leaving in 1963; he did not live away from Doley Common until 1970. The marsh did not prevent grazing but the floods had got worse during the last few years. His cattle went over the Brook onto Hollies Common; in 1931 Hollies Common and the Unit Land were just as unenclosed as they are now; you could get from one to the other easily.

Mr. Hopkins said (in effect):- He has lived at the Hollies since 1928 when his father bought the property a small holding from Mr. Bratton. This small holding then included and still includes (a) land and buildings known as the Hollies southwest of the buildings marked on the Register map as "Hollies Farm", and (b) a strip of land north of the northeast corner of Hollies Common: the small holding from 1928 up to about 1946 also included a strip adjoining the northwest corner of the Unit Land. They used to keep cattle out on the Unit Land for the purpose of grazing, he remembered looking to see if they were alright before he went to school. He carried on with his father's practice and after the war when he was demobilised he bought some cattle himself and turned them out on to the Unit Land for grazing. Shortly afterwards in about 1947-48, Staffordshire Water Undertaking opened a pumping station at Top Hollies, with a result the road traffic increased, and the gate was left open, and it became impossible to carry on grazing cattle on the Unit Land and the Hollies because they could stray on to the public road. After 1947 he discontinued keeping cattle and kept instead on Hollies goats tethered and geese. He had done a certain amount of shooting on the unit land walking across it in all directions; Mr. Liversage who had seen him with a gun, never attempted to stop him.

The letter dated 19 April 1971 and written by Mr. Monckton was as follows:- "I have received a letter from the Staffordshire County Council asking whether we will be able to settle the outstanding problem of the claimed Common Rights at Doley and Hollies, Gnosall. I understand that you are represented by a solicitor, and I shall be pleased if you would be willing to authorise your solicitor to discuss the problems with me so that we can settle them ..... With regard to your claim for Hollies Common I would inform you that I do not dispute that you have Common Rights, but merely wish to ascertain those which you have claimed are correctly claimed, before admitting them". The letter of 28 April 1972 expressed regret that Mr. Hopkins had not replied.

Mrs Ingram said (in effect):- The Parish Council regarded the Unit Land as common land; as far as the present members of the Council are concerned, the Unit Land has certainly within living memory been an area available for common use for the public at large to enjoy at will. The Council most sericusly argue that it should remain as common land so as not to preclude future generations from enjoying the delights of an area of natural beauty. She had seen on the

Unit Land from 1962 to 1967 or 1968 cattle: also geese and ducks; after 1968 she did not now go there so frequently as formerly but had this summer seen calves (? stirks). The Parish Council had always accepted that people who lived on the common, (ie., lived in a house there) had a right to graze their animals. The animals turned out on Hollies Common could wander at will onto the Unit Land; they are separate in name being on either side of the Brook, but they are usually spoken of as all one.

After the evidence was concluded, I was informed that Mr. Monckton had also made Objection No. 30 to the 6 Entries in the Rights Section (his Objection No. 29 was to the Entry in the Land Section), the grounds stated therein being:- "That the rights do not exist at all, or if they do exist they are inaccurately described". The disputes occasioned by this Objection No. 30 had not at the date of the hearing been referred to a Commons Commissioner by the County Council. Miss Burrows, on behalf of Mr and Mrs Silvester, Mr Hopkins and Mr Monckton were all agreed that I should dispose of the disputes occasioned by Objection No. 30 at the same time as those disputes which had been referred to me, thus saving them the expense of a further hearing. Mr. Gray on behalf of the registration authority agreed and there and then referred the disputes to me, (this reference has since been confirmed in the document dated 18 November 1974 and sent to the Clerk of the Commons Commissioners). Accordingly as between Mr and Mrs Silvester, Mr Hopkins and Mr Monckton, I give this decision on the basis that I deal with both Objections No. 29 and No. 30.

As to Objection No. 29 that the land was not common land :-

In Section 22 of the 1965 Act "common land" is defined as meaning "(a) land subject to rights of common ...; (b) waste land of a manor not subject to rights of common; but does not include ... any land which forms part of a highway". Even if none of the registrations in the Rights Section were properly made, the 1968 declaration and the 1968 conveyance show I think that the Unit Land was before the conveyance was made, waste land of a manor. In my opinion it did not cease to be so merely because the Church Commissioners conveyed their interest in it to Mr Monckton. For these reasons I conclude that this Objection fails.

As to the first part of Objection No. 30 that the rights do not exist at all :-

The factsupon which Mr. Monckton relied as showing that the commoners had denied their title, had abandoned their title, and regarded their rights as of no value were not within his personal knowledge. Even assuming that his statement as to these facts is in every respect correct, I am not persuaded that they support the results for which he contended. I see no reason why a person who owns rights of common should admit ownership and offer to pay for improving the Brook course;

I know of no regulation which requires a commoner to make such a contribution; and I understand that the course has been and is being improved by the Severn and Trent Regional Water Authority without any contribution. Mere non exercise of common rights does not establish abandonment see Tehidy v Norman, 1971 2 QB.528. Having regarded to the above quoted Section 22 definition, the statement made at Quarter Sessions that the footpath (a public footpath is a highway) could not be common land was correct; perhaps the line of the path should have been excluded from the registration (its inclusion is of no practical consequence, see Section 21 of the Act, so there is no need for me to give any direction → about it); but I see no reason for ascribing the statement to the rest of the Unit Land. The commoners by taking no action on an encroachment cannot be deemed to have released ~~all~~ their rights on the remainder.

I am satisfied that the Unit Land has been grazed, that acorns and wood from it have been eaten and taken for the benefit of No. 2 Doley Common as described in the evidence outlined above. While walking over the Unit Land, it seemed to me that . . between and around the tussocks, and a number of other parts where there were no tussocks, there was and could be worthwhile grazing, and accordingly I am not persuaded by anything Mr. Monckton said that there was no such grazing either because the land was marshy or because he never saw any animals there. From what I saw, and the history of the Unit Land deducable from the 1968 declaration and the 1968 conveyance it would I think be extraordinary if those who lived around Doley Gate had not done these things from time immemorial and I infer that they have always done so. Accordingly I reject the claim that the rights at Entry No. 5 do not exist at all.

Mr.Monckton both in his above quoted letter and in answer to a question from Mr.Hopkins, agreed that Mr.Hopkins had rights of common over Hollies Common. The contention of Mr.Hopkins was in effect simple: there was he said no difference between the Unit Land and Hollies Common. When walking over the Unit Land and Hollies Common, at many points I was struck by their difference; geologically they are quite different pieces of land; the present surface of the Unit Land appears to have been formed over the centuries by silt carried down by the Brook and deposited over it by flooding and possibly also by numerous changes in its course. But I am concerned with the differences if any directly relating to the exercise of rights of common. There are more dwellings around Hollies Common than there are around Doley Gate; and although there appears to have been recent building around Hollies Common, I infer that the surroundings of Hollies Common have always been more populated. On appearance alone, it would be surprising if animals grazing on Hollies Common had not strayed, and been encouraged to stray, onto the Unit Land; there has been a bridge between them since 1931 at least. I conclude that as regards rights of common the view put forward by Mrs. Ingram and Mr.Hopkins that the Unit Land and Hollies Common are one is correct. Accordingly I reject the claim that the rights of Entry No.2 do not exist at all.

As regards the second part of Objection No. 30 that the rights are inaccurately described:-

I understood from Mr. Monckton that by this part of his Objection he had two purposes:- (A) As owner of the land he wanted to know the nature and extent of the rights claimed; the registrations did not, as they should, give him this knowledge. And (B) He wanted at the hearing to be able to make any point which might be capable of being made on the evidence then given.

As to (A):- In this from some points of view there is considerable substance. Mr. Monckton explained that he purchased the Unit Land and Hollies Common as a speculation because he thought that he could (and he would like to) put them to some productive use, either for farming or for forestry; for example the Unit Land might be ploughed and/or grazed (in different years) and soforth. Walking over the Unit Land, it seemed to me likely that the works now being done by the Water Authority to the Brook might reduce the flooding of the Unit Land, so that it might become possible at no great expense to convert it into valuable pasture land. Mr.Monckton explained how he had tried to buy out some of those who had claimed rights of common and had been successful in the case of Mrs. Cooper (as was apparent from the correspondence he produced). Notwithstanding that the Parish Council and possibly others may not share Mr. Monckton's ideas, there is much force in his claim that it would be in the interest of everybody if the rights over the Unit Land were defined with precision. This claim is in my opinion not an objection to the registrations, but an objection to the law about common land, which recognises that a right of common may be valid, although in some respects not precisely defined, and which on this point has been criticised, (see for example, the 1958 Report of the Royal Commission on Common Land). I am concerned only with registration under the 1965 Act. Mr and Mrs Silvester and Mr.Hopkins, having a right of grazing animals which was "not limited by number" within the meaning of Section 15, whereby the notes to form 9 Schedule I to the Commons Registration (General) Regulations 1966, required to state the number of animals which they believed themselves entitled to graze. In my opinion they have done all the Act and the Regulations require them to do; to anybody well acquainted with the Unit Land, the general nature of the rights intended to be registered, is I think evident enough; they need not I think do any more.

As to (B):- Regulation 26 of the Commons Commissioners Regulations 1971 provides (stating its effect shortly) that a person who has made an objection shall not be entitled to rely on any ground not stated in his objection unless the Commons Commissioner thinks it otherwise. A general claim to make every possible objection is not I think a ground within the meaning of this rule. Although in some cases it may be impossible or practically difficult to frame a ground of objection otherwise than in general terms, this is not I think such a case; the general nature of the rights of common claimed over the Unit Land under the registration would I think be obvious enough to anybody who knew the Unit Land

and if any criticism was to be made one should I think have been stated precisely. Accordingly, I shall not consider the evidence given to me in detail to see if there are any gaps in it; both under the regulations, and as a matter of reasonable inference, I conclude what these witnesses described as having been done has in fact been done from time immemorial.

Accordingly, I reject the claim that the rights registered are inaccurately described.

For the above reasons I confirm the registration at Entry No. 1 in the Land Section without any modification and confirm the registration at Entries No. 2 and No. 5 in the rights section without any modification. I cannot I think deal now with the registrations at Entries Nos. 1,3 and 4; the applicants for these registrations could because Objection No. 30 had not been referred, properly conclude they had no need to attend the hearing; I cannot in their absence investigate whether their non attendance was in fact a result of any such conclusion. Such considerations apply I think also to the registration at Entry No. 6; the letters from Mrs Cooper produced by Mr Monckton, although indicating that she is not now much concerned with this registration, do not I think authorise Mr. Monckton on her behalf to agree to my disposing of Objection No. 30 in her absence. There will therefore have to be a further hearing to deal with these four Entries (unless those concerned can reach some agreement which can be dealt with without a hearing under Regulation 31).

As submitted by Miss Burrows I shall order Mr. Monckton to pay Mr and Mrs Silvester the costs incurred by them in respect of these proceedings and I shall direct that such costs shall be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended. Mr. Hopkins said that he did not ask for costs. I have no note or recollection of Mrs Ingram saying anything about costs; although I am grateful for the help she gave at the hearing, as regards the Parish Council, it was I think in the public interest that the hearing should be held; in my view their expenses if any of these proceedings should be paid out of their general funds.

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 case for the decision of the High Court.

Dated this 24th day of February 1975

a. a. Baden Fuller

Commons Commissioner