COMMONS REGISTRATION ACT 1965 Reference No 210/D/202

In the Matter of About 655 acres of Land,
Portland, Weymouth and Portland,
Dorset (No. 2)

DECISION

This dispute relates to the registration at Entry No. 2 in the Rights section of Register Unit No. CL 2 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection Nos 11, 34, 38, 40, 43, 48, 52, 95, 215, 253, 364, and 478 made by various objectors whose names are set out in my decision in In the Matter of About 655 acres of Land, Portland, Weymouth and Portland (No. 1) (1976), Ref. Nos 210/D/190 - 201 and noted in the Register on the dates there mentioned.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 21, 22 and 23 September 1976. The hearing was attended by Mr N Butterfield, of counsel, on behalf of the Commoners and Court Leet of the Island and Royal Manor of Portland, the applicants for the registration.

None of the objectors objects to the registration of rights of common over the land remaining comprised in the Register Unit after my confirmation of it with the modifications set out in my decision referred to above.

There is, therefore, no reason so far as the objectors are concerned why I should not confirm this registration.

The registration is, however, unusual in two respects. Firstly, the applicants are described as "Commoners and Court Leet of the Island and Royal Manor of Portland" Secondly, the land to which the registered rights are alleged to be attached is the same as the land over which the rights are alleged to be exercisable. The description of "Commoners and Court Leet" not only fails to identify the persons applying for the registration, but a court leet is not a legal person and cannot do anything out of session. I have, however, come to the conclusion that I have no power to clarify the matter by amending the particulars in column 3 of the registration. When the former Dorset County Council accepted the application for the registration, it became its duty under reg. 9(6) of the Commons Registration (General) Regulations 1966 (1966 S.I. No. 1471) to make a registration in respect of that application. That registration had, by virtue of reg. 4(7), to include particulars of the persons on whose application the right were registered. While it may be that the application could have been rejected under reg. 9(4), once the application was accepted the only possible course was to copy into the Register the particulars of the applicants contained in the application. This was done. It was a statement of fact, and I cannot now say that some other persons were the applicants. The entry in column 3 must, therefore, stand without modification.

As I see it, the position is different with regard to the description in Column 5 of the land to which the rights are attached. Had no objection been made to the registration, it would have become final in the form in which it was made by virtue of section 7 of the Commons Registration Act 1965 notwithstanding that such a registration would have been nonsensical. However, since there were objections, I have jurisdiction over the whole of the registration. It is accepted by all

parties that the persons who are entitled to rights of common over the land comprised in the Register Unit are owners of freehold land in the Island of Portland and that such rights are attached to their respective parcels of land. When I pointed this out to Mr Butterfield he suggested that there should be substituted for the entry in column 5 the whole of the Island of Portland save and except that part of the Island registered as common land. This appeared to me to be legally unexceptional, and I was willing to modify the registration accordingly. However, since the hearing Mr Butterfield's instructing solicitors have furnished the Clerk of the Commons Commissioners with a list of the 39 properties to which the rights are attached and the numbers of cattle allocated to each property. This is a much more satisfactory way of dealing with the registration, since it does not increase the burden on the servient tenement. I shall modify the registration in accordance with the particulars set out in the list.

There is a further respect in which the registration appears at first sight to require modification. The fifth item in the particulars in column 4 is "The right to quarry, dig, and remove stone and pebble". This item is, in my view, inconsistent with the terms of a Royal Warrant dated 17 September 1952. By this Warrant Her Majesty The Queen, as Lady of the Royal Manor and Island of Portland, gave and granted to the inhabitants of the Island full and free licence and authority to dig, raise, and take stone within the commons of the Island as by custom and ancient usage they had theretofore digged, raised, and taken the same in and upon the said commons (with certain small exceptions there specified). As is recited in the Warrant, a duty of twelve (old) pence for every ton of stone digged, raised, and taken within the commons is payable to Her Majesty as Lady of the Manor, out of which the inhabitants are allowed to keep nine (old) pence in consideration of the damage done to the herbage. It is recited that a similar warrant was issued on 14 Ju 1841. The earliest document in the series of grants was a warrant under the Signet and Sign Manual granted by Charles II on 3 November 1665, which provided that 9d. out of every 12d. was to be received and retained for the sole use and benefit of the inhabitants, but does not contain any grant to the inhabitants to take stone. I have no evidence as to the terms of any grant made by James II or William and Mary, but Queen Anne by letters under the Privy Seal dated 29 November 1708 renewed the grant of 9d out of every 12d to the inhabitants. Queen Anne's grant is recited in that of George I, dated 23 December 1715, also by letters under the Privy Seal, which appears to be the first to contain in addition a grant to the inhabitants of the right to dig, raise, and take stone within the commons of the Island, though it purports not to be an innovation by adding the words "as by Customs and Constant Usage they have heartofore Digged Raised and Taken the Same". Such a warrant is regarded as operative only during the life of the grantor, so the 1962 Warrant contains a provision acquitting, releasing, and discharging of and from any account or accounts to be made or rendered to Her Majesty by reason of their having digged, raised, and taken stone or for or by reason of the receiving, taking, or keeping of the nine pence out of every twelve pence per ton at anytime after the demise of King George VI and the date of the Warrant.

The right to quarry granted by the Royal Warrant is a right for the inhabitants in gross not attached to any land and being limited in time to the life of the grantor, is not a right of common known to the law.

Although it is stated in the grants by George I and by the present Queen, and probably also in the grants by the intervening monarchs, that the inhabitants have enjoyed the right to quarry in the commons by custom and ancient usage, this statement is not borne out by the evidence regarding the customs of the manor.

These customs are set out in a series of presentments made by the homage at the court baron and court of the manor together with the court of survey held on 20 May 1846. They presented that all stone exported from the commons or commonable wastes paid 12d. a ton, a moiety of which belonged to the lord or lady and the other moiety to the tenants and that by ancient grants and also by one from Queen Victoria (presumably that issued on 14 July 1841) they had 3d. per ton out of the Queen's moiety. It appears from a further reference to Queen Victoria's grant that the inhabitants were mentioned in it as well as the tenants. The homage further presented that all the tenants, and persons belonging to the parish employed by them had had time out of mind a right to open and work what quarries they pleased in the commons or commonable lands. This presentment was a repetition of that made in 1718 that ".... the tenants have had time out of mind a right to open what quarries they please in any of the commons".

The right of the tenants to quarry referred to in the presentments of 1718 and 1846 was clearly a right of common. In my view this right was not extinguished by the grant to the inhabitants in the Royal Warrant of 1952 or in any earlier warrant. While the grant to the inhabitants in 1952 may have had the effect of reducing the amount of stone available for the tenants, I am satisfied that the tenants'right to quarry as tenents still exists and has not been replaced by a right to quarry as inhabitants. There are two rights to quarry, one being a right of common and one not. The right of common has therefore been properly registered.

Finally, it appears to me to be necessary to modify the sixth item in the particulars in column 4. This is: "The right to gather green fuel and dry fuel." This is not a duplication of the right of estovers included in the third item, as appears from the following presentments of the homage at the court leet with view of frankpledge and court of the Island and Manor held on 31 May 1800:-

> "We do order that no Person or Persons whatsoever within this Manor shall "be suffered to gather any Green Fuel commonly known as Clotts or Cow Dung "in nay of our Commons of Worth or Wares on pain of Three Shillings and "Fourpence.
>
> "We do order that no Person or Persons whatsoever within this Manor shall be "suffered to gather any Dry Fuel commonly called clotts in any of our Commons "of Worth or Wares before the 24th day of June next on pain of Amercement".

As it stands, the second of these presentments tells us no more than that the dry fuel season had closed by 31 May and would open again on 24 June. There was, however, a presentment in similar terms (except that it did not explain the meaning of dry fuel) at the court held on 15 December 1783. This shows that the dry fuel season had closed by that date. It seems to me that the only reasonable inference to draw from these entries is that the dry fuel season opens on 24 June (Midsummer Day) and closes on 29 September (Michaelmas Day).

For these reasons I confirm the registration with the following modifications, namely, the deletion of the words in columns 4 and 5 and the substitution of particulars of the rights attached to each of the 39 properties comprised in the list submitted by Mr Butterfield's instructing solicitors.

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 17th day of March 1977.

Chief Commons Commissioner