



In the Matter of Kingston North Common,  
Ringwood, Hampshire (NO.2)

DECISION

These disputes relate to the registrations at Entry Nos 1, 2, and 7 in the Rights Section of Register Unit No. CL.181 in the Register of Common Land maintained by the Hampshire County Council and are occasioned by Objection Nos. 337 and 338, both made by the Trustees of the Bisterne Estate Trust and noted in the Register on 6 and 7 October 1970 respectively.

I held a hearing for the purpose of inquiring into the dispute at Winchester on 21 March 1984. The hearing was attended by Mr M J Rose, of Counsel, on behalf of Mr W H Green, the applicant for the registration at Entry 2, and by Mr V. Chapman, of Counsel on behalf of the Objectors, who were also the applicants for the registration at Entry No. 7. I also heard representations by Mr H.G. Hockey on behalf of his mother, Mrs N.M. Hockey, one of the applicants for the registration at Entry No. 1.

Objection No. 338 is an objection to the entry in the Land section of the Register Unit and is to be treated as an objection to all the registrations in the Rights Section by virtue of section 5 (7) of the Commons Registration Act 1965. The grounds of the Objection are that part of the land comprised in the Register Unit was not common at the date of registration. For the reasons given in my decision in In the Matter of Kingston North Common, Ringwood (NO.1) (1984), Ref No. 214/D/103 I have confirmed the registration in the Land section with the exclusion of the land the subject of this Objection.

Objection No. 337 relates to the registration at Entry Nos 1 and 2 in the Rights Section of the Register Unit, and the grounds of objection in so far as they relate to the land still comprised in the Register Unit are:

- (a) That the applicants for the registrations were not entitled to apply in the capacity stated in the Register;
- and
- (b) That the rights do not exist at all.

The capacity stated in the Register in respect of the applicants for the registration at Entry No. 1 is "Joint Owners" and in respect of the applicant for the registration at Entry No 2 is "Owner". There was no evidence or argument in support of this ground.

The evidence and the arguments related to the existence of the rights. There were some rights of common over the land comprised in the Register Unit created by the award made in 1807 under the Ringwood Inclosure Act of 1807 (47 Geo.III, Sess.1, c.18) (Private; not printed) but the claimants do not derive any title under that award: any rights which they may have must have been acquired by prescription. The existence of the award rules out the possibility of common law prescription, leaving it to be considered whether there are good claims under either the Prescription Act 1832 or lost modern grant.

Mr Rose stated that he did not rely on the Prescription Act, so I am left to consider whether the evidence is sufficient to establish lost modern grants.



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The registration at Entry No 1 is of a right to graze 3 cows or heifers (2 animals for the whole year and 1 for six months) attached to a property called Brookhayes. Mrs Hockey and her brother Mr C.J. Rumbold bought the property in 1950. There was no mention of rights of common in their deeds, but they grazed two cows and two heifers on the Common between 1950 and 1971. Mrs Hockey and Mr Rumbold bought the property from Mr Gordon Southwell, and about 1946 or 1947 Mr Southwell purchased it from Mr Keith Wiseman. Mr Wiseman was there when Mr Robert Young, who was born in 1911, was a boy. Mr ~~Wilson~~ also had four fields adjoining Brookhayes. The evidence regarding the grazing activities of Mr Southwell and Mr Wiseman was somewhat conflicting, but on the balance of probabilities I find that shortly after he purchased Brookhayes Mr Southwell turned out about a dozen cattle, but was told by Mr A W Hashell of Kingston Nursery Farm, who had a right of grazing over the common under a tenancy agreement made in 1936, that he had no right to do so, whereupon he desisted, and I was not satisfied that Mr Wiseman had ever turned out cattle on other than isolated occasions.

The right registered at Entry No. 1 must therefore depend upon the grazing by Mrs Hockey and Mr Rumbold from 1950. There is no direct evidence of when in 1950 this grazing started. The conveyance to Mrs Hockey and Mr Rumbold was not produced, but Mrs Hockey's son said that he remembered that it was Michaelmas 1950. If this is correct, the period of user was just short of the twenty years necessary to support a presumption of a lost modern grant, since Objection No. 357 was dated 12 September 1970. I should be unwilling to decide the case on such a narrow margin without giving Mrs Hockey and Mr Rumbold a further opportunity to produce the conveyance, so that its exact date could be ascertained. I do not, however, consider this to be necessary, because the necessary period of twenty years had not elapsed at the date of the registration. While there is no clear authority on this point, it seems to have been assumed in In re Box Hill Common [1980] Ch.109 that the relevant date for the consideration of a disputed registration was the date of registration, and this is also indicated by section 10 of the Commons Registration Act 1965, which make the registration of a right of common conclusive evidence of the matter registered as at the date of registration. If this dispute had been determined at the date of the registration, I should certainly have refused to confirm the registration.

Mr Chapman also raised a further point. During the whole of the material period the land comprised in the Register Unit was settled land. It was held in Roberts and Lovell v. James (1905), 39 L.T.282 that in such a case a lost grant can only be assumed by proving the acquiescence of the person who has the inheritance either in remainder or reversion. In this case there was no such evidence, but Mr Rose argued that the agent or manager of the estate must have known of what was being done and that all interests in the estate were affected by his knowledge. I find myself unable to accept this argument. Although land agents are commonly regarded and indeed seem often to regard themselves as agents for "the estate", an agent must be the agent of a person, and that must be the person who is for the time being entitled to the possession of the estate. In the absence of evidence as to some special arrangements, I cannot regard the acquiescence of the agent as the acquiescence of anybody other than the person by whom he is employed.



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The registration at Entry No. 2 is of a right to graze cattle attached to a property called "Little Moorhouse". Mr Green has owned "Little Moorhouse" for the last ten years. "Little Moorhouse" is a bungalow built about eighteen years ago with about a quarter of an acre of garden. Mr Green has never put cattle on the Common. His predecessor, <sup>included</sup> in title, a Mr Sidney Purchase and his father, Mr Frank Purchase, who put cattle on the common as far back as 53 years ago. Mr Sidney Purchase rented other land in the vicinity from the owners of the Common and he also owned a small piece of land, but he kept his cattle in buildings at "Little Moorhouse". He had about three milking cows and two heifers. At some time after World War II Mr Sidney Purchase allowed a German to live at "Little Moorhouse" for about two years, and the German put two heifers on the Common. The house and buildings were demolished twenty years ago, being subsequently replaced by Mr Green's bungalow.

This registration is also affected by the same fatal difficulty as the registration at Entry No. 1. There is, however, the further difficulty that the alleged dominant tenement is not at present capable of supporting any cattle, and there is no evidence that it ever was. Mr Green produced a photograph showing some cattle and some buildings in the background. He said that the cattle belonged to Mr Purchase and that they were on the Common, adding that Mr Purchase had nowhere else to put them. Even if the grazing of cattle by Mr Purchase could found a right to graze, there is no evidence that such a right was appurtenant to "Little Moorhouse", and such evidence as there is indicates that any right which Mr Purchase might have acquired would have been a right in gross, for the alleged dominant tenement had no ~~capacity~~ for cattle to be levant and couchant.

The registration at Entry No. 7 is one of the subjects of Objection No. 556. This registration was made on the application of the Objectors. The Objectors are also registered in the Ownership section of the Register Unit as the owners of the whole of the land comprised in the Register Unit. In these circumstances Mr Chapman very properly informed me that he was instructed not to support the registration at Entry No. 7.

For these reasons I refuse to confirm all the registrations.

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

14th

day of

June

1984

Chief Commons Commissioner