COMMONS REGISTRATION ACT 1965

Reference Nos. 29/D/45-51 (inclusive)

In the Matters of

Lands in the Parish of Checkendon known as

Checkendon Common
Duffields Common
Hayneswood Common
Pittmans Common
Pittmans Shaw
Nuthatch Common
Scots Common

Land in the Parishes of Checkendon and Stoke Row known as

Long Common

Lands in the Parish of Stoke Row known as

Public Pond on the Westside of Nettwood Lane (O.S. 15)
Woodland Strip Henley Road (O.S. 24)
Newnham Hill Common

Land in the Parish of Ipsden known as

Three Corner Common (part)
Berins Hill Common
Little Common
Ipsden Heath

Land in the Parish of Nuffield known as

Woodland Strip Nuffield Hill (O.S.61 & 64)
Nuffield Common

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.50 in the Register of Common Land maintained by the Oxfordshire County Council and are occasioned by Objection No. 6 made by Mr. M.J. Reade, Objection No. 9 made by the Forestry Commission, Objection No. 34 made by Passmore Brothers and by the registration in the Rights Section of the Register of grazing rights made on the application of Mr Garsed and Objection No. 92 by the Huntercombe Golf Club to the registration of the said grazing rights.

I held a hearing for the purpose of inquiring into all the disputes at Oxford on 30 October 1974. The hearing was attended by Mr Boyson representing the Stoke Row Village Association, Mr Chadwick counsel on behalf of Mr Reade, Mr Mallow on behalf of the Forestry Commission, Mr Passmore, Mr Riley who asked leave to appear notwithstanding that he had failed to register an objection within the prescribed time limit, Mr Stevenson of Messrs Slade Son and Taylor solicitors for Mr Garsed and Mr E.T. Coker of Herbert and Gowers solicitors for Huntercombe Golf Club.

I heard all the disputes together. Since I can give only one decision in respect of the registration of the land as Common Land, I have made an order under Regulation 12(2) of the Commons Commissioners Regulations 1971 that all the matters shall be consolidated.

The land comprised in the Register Unit No. CL.50 comprises some seventeen parcels of land dispersed over a relatively wide area. The evidence filed by Mr Boyson included maps with the respective parcels numbered 1 to 12 inclusive and lettered A, B, C, D and E. For the purpose of this decision I will refer to the respective parcels of land by their respective numbers on the said maps which are as follows:-

1.	Checkendon Common	Kipping Hill
2.	Checkendon Common ..... (Includes Pitmans Common, Hayneswood Common, Duffield Common and Pitmans Shaw)	Busgrove Lane
3.	Long Common	Judges Road
4.	Nuthatch Common	Judges Road
5.	Scots Common	Scots Farm, Checkendon
6.	Ipsden Heath	Nuffield Road
7.	Witheridge Hill Common	Henley Road
8.	Newnham Hill Common	English Lane
9.	Three Corner Common	Ipsden Heath
10.	Berins Hill Common	Berins Hill
11.	Little Common	Homer Lane
12.	Nuffield Common	Golf Course etc
A.	Public Pond	Nottwood Lane
B.	Woodland Strip by roadside	Henley Road
C.	Woodland Strip by roadside	Reading Road
D.	Woodland Strip by roadside	Nuffield Hill
E.	Grass strip extension and east end of village green	

The distinction between the numbered parcels and the lettered parcels is that the former are alleged to be common land by virtue of existing common rights and the latter are alleged to be common land as being manorial waste.

The onus of establishing that land is common land as defined by Section 22 of the Commons Registration Act 1925 lies upon those who register the land, and I therefore invited Mr Boyson to make good his claim that the registered land was in fact common land within the definition.

I must at this stage refer to the fact that Mr Boyson has no legal qualifications and he did not seek or obtain any qualified legal advice. He told me that he did seek advice on one or two points which he considered relevant from the Department of the Environment and one other source, but the replies which he received were confined to the questions which he raised and did nothing to enlighten him as to the onus which he would have to discharge at the hearing. Mr Boyson who was the spokesman for the Stoke Row Village Association must have been encouraged by the circumstance that several objectors withdrew their objections I have no doubt that Mr Boyson and his association in effecting and in seeking to support the registration were acting in good faith and it must be a matter for conjecture as to what evidence might have been available to support their case if they had had the benefit of legal advice.

In the event Mr Boyson adduced no evidence other than three affidavits by three aged deponents who have all died before the hearing. I admitted these three affidavits without objection from Mr Chadwick it being accepted that it would be for me to decide what was their probative value. The three affidavits are in identical terms and briefly the relevant passage is:-

> "I have tended cattle on these lands and have, with many other local residents taken pea and bean rods, faggots and brushwood and was not hindered in any way".

This evidence does not assert any right nor does it suggest that any right was appurtenant to any land. The reference to "other local residents" far from proving the existence of common rights suggests to me that this may well be a case in which privileges have been enjoyed by virtue of mere tolerance. Mr Boyson adduced no other evidence to support the existence of common rights and no evidence that any land was waste of the manor.

In these circumstances I have no alternative but to refuse to confirm the registration insofar as it relates to parcels of land which are the subject of disputes and I will deal with these first.

Ref. No. 29/D/45 is occasioned by Objection No. 6 relates to the parcels Nos. 4, 5, 9 and 10 and I accordingly refuse to confirm the registration of these parcels. I should mention that prior to the hearing Mr Boyson had abandoned his claim for the registration of Nos. 9 and 10.

Ref No. 29/D/46 is occasioned by Objection No. 9 and relates to the parcel No. 3 and I accordingly refuse to confirm the registration of this parcel.

Ref No. 29/D/47 is occasioned by Objection No. 34 made by Messrs Passmore Brothers which relates to the parcel lettered D. It was agreed at the hearing that I should refuse to confirm the registration of parts of this parcel viz. (1) the land to the east of the road or path leading from Woodlands to Ambrose Farm and (2) the land comprised in No. 3265 on the O.S. map of 1966 but that I should confirm the registration of the remainder of this parcel.

Before dealing with the remaining parcels of land and the remaining reference Nos. 29/D/48 to 51 inclusive it will be convenient to deal with Mr J.M. Riley who had not registered an objection but applied to be heard pursuant to Regulation 23(5) of the Commons Commissioners Regulations 1971. I acceded to Mr Riley's application and his evidence was that he had acquired Kit Green part of parcel No. 6 by a conveyance made the 30 November 1972 made between Lily Beatrice Owen of the one part and the said J.M. Riley and Mrs A.R. Riley on the other part. The date of the said conveyance was subsequent to the last date on which objections were capable of being registered.

Mr Riley further produced an affidavit sworn by the Vendor to him, Mrs Owen who deposed to the fact that she had owned the whole of the property conveyed to Mr Riley since the year 1936 and that since the year 1930, no one as far as she was aware, had exercised any rights of common over the property.

Mr Boyson submitted that since Mr Riley had not registered an objection within the time limited for that purpose the registration as regards his land was final. I reject this submission. While an undisputed registration becomes final by virtue of Section 7(1) of the Commons Registration Act 1965 that section does not provide that any part of a registration which is not the subject of an objection shall become final by operation of law. It therefore falls to me to deal with Mr Riley's land on the evidence given at the hearing and since Mr Boyson adduced no evidence of the existence of any common rights and Mr Riley adduced evidence that no such rights had been exercised since the year 1930, I am in my view compelled not to confirm the registration as regards any land in the ownership of Mr Riley which said land is identified in the said conveyance dated 30 November 1972.

I now turn to the parcel of land No. 12 in respect of which L.A.H. Garsed and J. Garsed have registered a right to pasture 180 sheep over part of that land known as Goose Common alleged to be attached to Ambrose Farm. The whole of the parcel of land No. 12 is in the ownership of Huntercombe Golf Club and is used as a golf course. The Golf Club appeared by Mr E.T. Coker of Messrs Herbert & Gowers solicitors of Bicester and Mr Garsed appeared by Mr I. Stevenson of Messrs Slade Son & Taylor solicitors of Wallingford. The Golf Club have objected to the registration of the alleged grazing rights. Mr Stevenson produced the conveyance to L.A.H. and J. Garsed of Ambrose Farm and by that conveyance the alleged grazing rights were conveyed to them. Mr Coker conceded that if the alleged grazing rights were still subsisting he had no valid objection, his case was that the grazing rights had been abandoned and this was disputed by Mr Stevenson. All

the reference Nos. 29/D/48 to 51 turn upon what decision I arrive at as to whether or not these grazing rights have been abandoned.

Mr Coker called three witnesses viz. Thomas Streak who was the groundsman at the Golf Club during the period 1916 to 1971 except for an interval attributable to war service during the first world war, Mr P.M. Armitage who has been a member of the Club since 1920 and a member of the Committee since 1964 and Mr Fisher the Club Secretary since 8 April 1974, but who had played on the course as a visitor on occasions dating back to the mid 1930's.

The evidence of Mr Streak was that there were sheep on the golf course in the year 1930 from Ewelme Park and also during the 1939/45 war. These last mentioned sheep came from Turners Court at the invitation of the Club for the purpose of keeping the grass down when no labour was available for that purpose. These last mentioned sheep numbered 300 to 400 and were accompanied by a shepherd to keep them off the putting greens. Since 1945 there have been no sheep on the golf course and there have not, since 1916 been any sheep from Ambrose Farm on the course.

The evidence of Mr Armitage did not add to or conflict with Mr Streak's evidence.

Mr Garsed gave evidence that he has owned Ambrose Farm since 1966 and that he was the tenant of that farm during the period 1961 to 1966. The previous owner of Ambrose Farm was his father-in-law Mr Huxley. Mr Huxley did during some period which Mr Garsed was unable to specify own approximately 40 sheep but he could not say that they were ever grazed on the golf course. Mr Garsed stated that Mr Huxley did consider exercising the grazing rights on the golf course and that notwithstanding that in recent years no sheep had been maintained there Ambrose Farm was suitable for sheep. Mr Garsed had been at the nearby farm Upper House Farm, Nuffield since 1946.

Mr Garsed's present attitude is that while he has no present intention of exercising the grazing rights he wishes to maintain them as in his view they add to the value of his farm. He conceded that if the grazing rights were exercised the sheep would have to be accompanied by a shepherd but he said that this would not render the exercise of the rights uneconomic as the shepherd could be otherwise employed when the rights were not being exercised. Neither Mr Coker nor Mr Stevenson cited any authority.

A concise statement of the law is to be found in the judgement of Buckley L.J. in the recent case of Tehidy Minerals v. Norman 1971 2Q.B. 528 at P. 553 in the following terms:-

> "Abandonment of an easement or profit à prendre can only we think be treated as having taken place where the person entitled to it had demonstrated a fixed intention never at any time thereafter to assert the right himself or to attempt to transmit it to anyone else".

The facts of that case were very special and the alleged abandonment was not attributable to non-user but an arrangement made between those who claimed the rights and the owner of the land.

In the instant case from as far back as 1916 no sheep from Ambrose Farm have been grazed on the golf course and in my view the grazing rights must be presumed to have

been abandoned long before the conveyance to Mr Garsed in 1966: see the Law relating to Common Land Harris & Ryan at P. 74. The alleged right has not been exercised for nearly 60 years and in my view it has been lost by "long negligence". For this reason I refuse to confirm the registration No. 1 in the Rights Section of the Register.

The Huntercombe Golf Club has not made any objection to the Entry No. 1 in the Land Section of the Register and Mr Coker did not address any argument to me as to whether even if he succeeded in his objection to Mr Garsed's Rights registration the land would nevertheless be common land. In these circumstances I must exercise my discretion whether or not to confirm the registration of Parcel No. 12 as common land. In the absence of any evidence that the land is common land and having regard to the fact that the Golf Club is registered as the undisputed owner of the land in the Ownership Section of the Register I refuse to confirm the Entry No. 1 in the Land Section of the Register as regards Parcel No. 12.

It remains to consider the parcels of land numbered 1, 2, 7, 8 and 11 and lettered A,B,C and E. I am not asked to confirm the parcels lettered C and E and I accordingly refuse to confirm the registration as regards these two parcels.

As regards the remaining parcels the situation is that there is no evidence that these parcels satisfy the definition of common land in Section 22 of the Act but they are not subject to any objections. There are two factors which in my view I can take into account namely that two objectors one of whom is the owner of part of the land in question withdrew their objections and also the circumstance that Mr Garsed's objection disclosed that there had in the past been common rights over at least one part of the land in existence. Against this background I am entitled to assume that everybody concerned is content that parcels 1, 2, 7, 8, 11, A and B shall be registered as common land and in the exercise of my discretion I confirm the registration as regards these parcels.

In taking this course I am supported by the decision of Chief Commissioner Squibb in the case of West Hanney Village Green Reference No. 2/D/1.

Finally I have to deal with an application for costs made by Mr Chadwick. Mr Chadwick accepted the bona fides of Mr Boyson but his submission was that Mr Boyson had been warned that the registration of parcels 3, 4, 9 and 10 could not be confirmed and that an application for costs would be made if the registration was not confirmed, and that his client had been put to needless expense by reason of Mr Boyson's failure to make a thorough appreciation of the situation at that stage. There is substance in Mr Chadwick's submission. In my view it is right that I should make an order for costs so as to indicate the obligation which rests upon these who effect registrations to satisfy themselves that they can discharge the onus which lies upon them once they appreciate that the registration is the subject of objection. I therefore award Mr Reade costs on Scale 2.

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 21st day of November 1974

C A Settle

Commons Commissioner