

## ASHDOWN FOREST

### OPINION

1. By the Ashdown Forest Act 1974 provision was made for the common lands known as Ashdown Forest. The Act incorporated conservators of Ashdown Forest.
2. Certain conservators were appointed and certain conservators elected. Definitions of each category were set out in section 2 of the Act. The elected category meant those persons holding the office of conservator by virtue of section 7 of the Act.
3. Section 7 of the Act provided for an election of five persons by the commoners to be held at a meeting in March 1975. Thereafter a sequence is secured by section 7(6) demanding an election of one person to take the place of the elected conservator going out of office on 31 March in any given year to be held by the conservators at a meeting in March.
4. Section 7A of the Act (inserted by the East Sussex Act 1981) makes provision for the manner of electing conservators. A procedure is provided for publicity and nomination. Section 7A (2) provides that the majority of the commoners exercising their right at a meeting to vote shall elect the elected conservators.
5. Further, schedule 1 of the Act (as amended by the 1981 Act) enables votes to be given personally and by post. These provisions are all consistent with one commoner having one vote. If it were otherwise one would, for example, have expected different provision about ballot papers.
6. The commoners within the Act means those persons entitled to rights of common and commoner means any one of the commoners. A right of common is dependent on ownership of land. Hence, it is possible to acquire rights of common from two or more parcels of land.

7. Section 14 provides that schedule 1 is to have effect with respect to voting and meetings of commoners. Paragraph 1 of the schedule provides that the votes of the commoners are to be calculated on the basis of the number of votes cast; each of the commoners may have only one vote irrespective of the acreage of the properties in respect of which the commoners are entitled to exercise rights of common upon the forest.
8. Certain points can be noted. First, the reference to votes being calculated upon a given basis reveals that Parliament was aware of various bases upon which votes could be calculated. In other words votes could have been calculated on, for example, the basis of one vote per five acres. Second, the basis determined was one vote however many acres one owned. If a commoner has a holding of a hundred acres and another commoner a holding of ten acres, each has but one vote.
9. The question that arises is whether the practice of allowing commoners who have more than one property to have more than one vote is consistent with the Act. If it is inconsistent with the Act the fact the practice has been followed in neither here nor there; the only proper practice is that given by the Act. If such a practice is inconsistent with the law and, hence, unlawful it does not follow that past elections are bad. The manner of election may have been illegitimate but the elections until set aside are presumed, as administrative acts are until set aside, to be lawful. Plainly time can come to protect elections for judicial review is required to be brought without delay. It is, of course, unsatisfactory now the matter has been clarified to persist with the practice and it is undesirable for there to be a continuing bone of contention. Accordingly, for a recent election a voluntary course of stepping down and providing for another election may be thought preferable to there being a continuing sore or a risk of litigation.
10. On the basis proposed if a commoner had 100 acres and divided it into strips with very narrow boundaries between each strip he could accumulate a large number of votes in circumstances when if he had but one holding he would have but one vote. In other words the provision at paragraph 1 of the schedule is consistent with commoners having but one vote.
11. Paragraph 3 of the schedule provides that where property is owned by more than one person only one of those persons is entitled to vote. It will be remembered the real property can be held by 4 people. This provision also tends to support the proposition that no commoner can vote more than once.
12. Accordingly and in CONCLUSION I consider the Act does not give any commoner more than one vote. Property gives an entitlement to vote but that entitlement is to vote in circumstances when each commoner has a vote not an entitlement to multiple votes when one commoner deriving rights of common from a number of sources. The crucial question is whether someone has rights of common not how many acres or holdings he or she has.

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