



Reference No. 209/D/149

COMMONS REGISTRATION ACT 1965

In the Matter of Beaford Moor,
Beaford, Torrington District, Devon

CORRECTED DECISION

This dispute relates to the registration at Entry No. 3 in the Rights Section of Register Unit No. CL 24 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 1,110 made by the said Council and noted in the Register on 14 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Barnstaple on 11 May 1979. At the hearing (1) Devon County Council were represented by Mr P A J Browne, solicitor in their employ; (2) Mr Philip Louis Heard who is one of the five persons who applied for the registration (the others were Mr Robert Heard, Mr Charles Wickett, Mr John Jeffery and Mr Henry John Clemens) was represented by Mr J W Tucker solicitor of Boase and Cruwys, Solicitors of Great Torrington; and Mr Herbert George Heard of Stonehaze, Beaford, who is the son of Mr Robert Heard (one of the said applicants; he died August 1976) attended in person.

The land ("the Unit Land") in this Register Unit is an irregularly shaped area extending a little over $\frac{1}{2}$ a mile from north to south and having an average width of about $\frac{1}{3}$ rd of a mile; it is situated about 2 miles east of the Village of Beaford on the north side and at its southwest and southeast corners adjoining the B3220 road. There are 3 registrations in the Rights Section: at Entry No. 1 on the application of Mr C J Bennett of a right attached to Cuppers Piece to graze 8 cattle 90 ewes 3 pigs and litters 30 hens 10 geese over part (nearly all) the Unit Land; at Entry No. 2 on the application of Mr E W Underhill attached to land at Upcott Barton to graze 18 cattle 10 sheep, mare & foal over all the Unit Land (these 2 registrations being undisputed have become final); and at Entry No. 3 (that now disputed) on the application of the said five persons "Committee for and on behalf of the Beaford Moor Commoners" of a right "In gross" of "estovers: to graze 750 units as set out below over the whole of the Unit Land: 1 cow 1 unit; cattle under 1 year $\frac{1}{4}$ unit; cattle 1 to 2 years $\frac{1}{2}$ unit; cattle 2 to 3 years $\frac{3}{4}$ unit; 1 horse 1 unit; 1 pony, donkey or mule $\frac{1}{2}$ unit; 1 foal under 1 year $\frac{1}{4}$ unit; sheep under 1 year $\frac{1}{12}$ unit; sheep over 1 year $\frac{1}{6}$ unit; goats $\frac{1}{6}$ unit; pigs $\frac{1}{6}$ unit; poultry $\frac{1}{20}$ unit. In the Ownership Section is registered Sir Ralph Dolignon Furse as the owner of all the Unit Land (this registration being undisputed has become final). The grounds of objection are: "That the right does not exist as claimed".

Mr P L Heard who is 72 years of age and has lived in the Parish all his life gave oral evidence in the course of which he produced a copy of the Beaford Moor Compulsory Purchase Order 1952; oral evidence was also given by Mr H G Heard who is 43 years of age and by Mr H Spicer who apart from his service in the Royal Navy from 1941 to 1946 lived in the Parish from sometime before 1931 to 1976 and was for about 14 years (after the war) a member of the Parish Council. Mr Browne produced a letter dated 24 July 1973 from the Clerk of Beaford Parish Council to the County Council.



Mr P H Heard thought that the Unit Land was altogether about 100 acres; of this about $8\frac{1}{2}$ acres in the southeast is pasture "quite good", but the rest is rough, mostly furze and heather. As he first knew the Unit Land it was part of a much larger area ("the Old Area") known as Beaford Common, which Area then included the land ("the CP Land") subsequently compulsorily purchased under the 1952 Order and therein said to contain 117.234 acres; of this, OS pt 346 containing 67.500 acres (a strip about 1,200 yards long and about 300 yards wide) is on the west of the Unit Land (between it and the Village) and situated along and mostly to the north of the B3220 road; and the rest OS Nos 18, 19 and 30 containing 89.734 acres adjoins the Unit Land on its northwest side and extends to what is (or was) Roborough Common. During the 1939-1945 war, the Old Area was taken over by the War Agricultural Committee who then cultivated the CP Land and (?) a small part of the Unit Land; for this they paid yearly 10/- per acre amounting to about £47; the Committee negotiated with the Parish Council. After the 1952 Order there were advertisements for commoners; and a meeting of the commoners (or persons claiming to be such) attended by representatives of the Ministry was held; this meeting discussed the disposal of the £1,400 payable for compensation and elected a committee the members of which were the five applicants for the now disputed registration (Mr P H Heard was elected chairman). Committee were given to understand by the Ministry that they could dispose of the money either amongst the persons entitled to rights of common or for a recreation ground or in certain other ways specified. The Committee held a number of meetings but there was never any agreement by the Committee (or at the meeting which appointed the Committee) as to who were entitled to the rights of common; eventually the Committee about 2 or 3 years ago decided that the compensation money should be given to the parish (towards a fund for the erection of a new Parish Hall).

After the 1952 Order the Ministry sold the CP Land and it is now privately farmed. Compared with such land, the Unit Land is of little value for grazing or otherwise because unenclosed and too remote from the Village. It was not suggested at the hearing (rightly I think) that any use made of the Unit Land for grazing or otherwise after the War Agricultural Committee or their successors gave up possession in 1952 could have resulted in new rights which did not exist before the 1939/45 war. Further apart from the rights registered at Entries Nos 1 and 2 the Unit Land being unfenced against the public highways and remote from the Village, has since it was separated from the CP Land, been of little if any value. About its use before the 1939-45 war Mr P L Heard and Mr Spicer were asked very many questions.

Mr Heard said (in effect):- It was common land; my father said different parishioners used to stock it; it was rough grazing for cattle. Parishioners took away ferns and brackens for bedding, took away pea sticks, used it to shoot rabbits, and played games on it. His grandfather used to take peat from it. Any parishioner could graze but not many availed themselves of this right, because unless they lived near, the cattle were uncontrollable (they would wander along the roads). In the old days there were more smallholdings near the Old Area than there are now near the Unit Land and the traffic was then less.



Mr Spicer said (in effect):- His understanding as he had learned it from old people was that the rights of the Old Area went with "the homesteads" in the Parish he remembered seeing stock in the Old Area.

There was no evidence on which I could find that any of the applicants for this registration or indeed any other person had in any personal capacity a right of common over the Old Area, and Mr Tucker asked that if the registration would otherwise be lost he might have an adjournment to consider obtaining such evidence. Mr Browne said that the County Council in making the objection never wished to prevent any legally possible right being registered; objection was made because it was considered that the registration was defective because it did not define with sufficient precision the rights intended to be registered. In my opinion the registration in this respect is objectionable, so if I could not on the evidence put before me determine how it should be modified I would adjourn the proceedings as requested by Mr Tucker.

The Commoners Committee was I suppose constituted under the Land Clauses Consolidation Act 1845 section 99 et seq. (Now replaced by Schedule 4 of the Compulsory Purchase Act 1965); and I suppose the Ministry when advising the Committee as to the application of the money had in mind the Commons Rights Compensation Act 1882. I ought I think to presume that there is now subsisting over the Unit Land a right of common essentially in accordance with the registration as it now stands, because:- (1) the non-existence of any right at all over the CP Land is disproved by the payment of £1,400 in respect of the rights; and these rights must I think have also existed over the Unit Land; and (2) the persons entitled benefit the other Rights Section Entries Nos 1 and 2 and of the Ownership Section Entry have made no objection to the registration now disputed although its continued existence would be manifestly very prejudicial.

I cannot presume that the rights were for the inhabitants of the parish as individuals because as a general rule a right of common exercisable by the inhabitants of a locality or of any other fluctuating and indefinite body of persons is not recognised by law, see Gateward (1607) 6 Co. Rep. 59; but exceptionally a right of common may be held upon a charitable trust and a trust with the benefit of the inhabitants of a locality is charitable, see Goodman v Saltash (1832) 7 AC 633. In my opinion the proper inference to be drawn from the evidence summarised above is that the rights for which the compensation was paid, and therefore the right which was intended to be registered by this registration is a right of common subject to such a trust.

I conclude therefore that the evidence does show that the registration would be proper if it was modified by making it clear that the right registered is held upon a public charitable trust for the benefit of the locality and if the point raised in the 1973 letter can be dealt with.

It was suggested that the Parish Council should be a trustee of any such charitable trust and that any modification of the registration could mention this. A charitable trust is by law valid even although the trustees may be unknown or there may never have been any; if any inconvenience results from the lack of a trustee, the Charity Commissioners or the High Court have power to appoint trustees; it may be that if an application was made they would in this case appoint the Parish Council as trustees; however this may be the evidence before me in my view falls short of showing that the Parish Council are the trustees.

In the 1973 letter the Parish Council suggested that it was totally wrong for there to be 750 units in this registration because the Unit Land could never



have enough grass for this number of stock. This was agreed at the hearing and it was suggested that I reduce the figure to 100.

Because I can make the said modification and give effect to the last mentioned suggestion, there is no reason why the registration should be lost as feared by Mr Tucker. Accordingly I refuse his request for an adjournment.

With the above considerations in mind, with the agreement of Mr Browne and Mr Tucker, I confirm the registration with the modification that in column 4 the figure "100" be substituted for the figure "750" and that the following words be added to this column at the end: "Provided that the rights registered shall be exercised, and be held in trust, for the benefit of the inhabitants of the parish of Beaford."

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 June 1979

A A BADEN FULLER
Commons Commissioner

CORRECTED by inserting two new paragraphs marginally marked A and B.

Dated this 24th day of September 1979

a. a. Baden Fuller

Commons Commissioner