



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/143 to
145 inclusiveIn the Matter of Holdstone Down,
Combe Martin, North Devon District,
Devon

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL179 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 651 made by Mrs C J Collins and noted in the Register on 15 February 1971 and by Objections No. 1029 and No. 1050 made by Combe Martin Parish Council and Mr F R Roberts respectively and both noted in the Register on 11 September 1972.

I held a hearing for the purpose of inquiring into the disputes at Barnstaple on 24 March 1981. At the hearing (1) Mr Walter Lerwill and Mr Keith Walter Lerwill, being the son and grandson of Mr Walter Lerwill ("the Applicant", he died 1 December 1973) on whose application the said Land Section and Rights Section registrations were made, were represented by Mr C Verney, solicitor of Crosse Wyatt & Co, Solicitors of South Molton; (2) Combe Martin Parish Council were represented by Mr G Andrews one of their members; and (3) Mr Frederick William David Rowe Roberts (the said Objector) appeared in person.

The land ("the Unit Land") in this Register Unit is a tract the north side of which (a little over 1 mile) is the sea coast (HWMMT). Apart from the area between HWMMT and the foot of the cliff (steep so that this area is inaccessible from the landward side) the Unit Land is for the most part downland; it extends away from the sea for at least 2/3rds of a mile, and in some parts nearly 1 mile reaching in places (but no-where crossing) the road ("the Public Road") from Combe Martin via Hunters Inn to Lynton. Starting from the top of the cliff the land rises in one place to 1146 ft above sea level and then descends towards the Public Road. From the Unit Land as registered has been excluded a comparatively small rectangular area between 250 and 300 yards long and having an average width of about 100 yards.

The Right Section registration in dispute (there is none other) is of a right attached to Holdstone Farm (about 200 acres) to graze 500 sheep, and 20 cows and calves; Holdstone Farm adjoins the Unit Land on the south. The grounds of Objection No. 651 (by Mrs Collins to the Land Section registration) are: "the land edged red on the plan attached was not common land at the day of registration"; the plan as I read my copy (which is not very clear) shows a rectangular area about 175 yards by about 75 yards, joined to the Public Road by a narrow strip about 90 yards long. The grounds of Objection No. 1029 (by the Parish Council to the Rights Section registration) are that the right does not exist at all and should comprise fewer animals "the number as claimed is considered excessive". The grounds of Objection No. 1050 (by Mr Roberts to the Rights Section registration) are: "that the right does not exist at all or if it does that the right does not extend over all the land over which it is stated to be exercisable especially with regard to the land shown coloured on the plan attached"; the attached plan apparently based on an Award map, shows that the south part of the Unit Land (and also other lands on the other side of the Public Road) as divided into strips



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at right angles to the Public Road numbered 107 to 113, and further in parallel with the Public Road numbered 92 to 106 (those on the other side of the Public Road being otherwise numbered), and of these strips on the Unit Land side of the Road Nos 110 and 97 are coloured.

In support of the registration evidence was given by Mrs Kathleen Edytha Lerwill-Thomas (first cousin of the applicant born 1904) by statutory declaration made 19 June 1979, by Miss Muriel Lerwill (daughter of the Applicant born 1915) orally, by Mr Walter Lerwill (son of the Applicant born 1921) orally and by Mr Keith Walter Lerwill (grandson of the Applicant born 1956) orally. Evidence in support of or explaining the said Objections was given orally by Mr Roberts and Mr Andrews. Three days after the hearing I inspected the Unit Land, walking by myself along the track from the Public Road near the southeast corner of the Unit Land towards the sea, and also from the Public Road along the footpath starting near the Car Park to the summit; and also in a Landrover driven by Mr K R Lerwill along the track from the Public Road to the said excluded area and on foot across such area and beyond.

As throwing light on the history of the Unit Land before living memory Mr Andrews produced a copy of a map held by the Parish Council, apparently part of an Inclosure Award dated 29 April 1871, which showed that about one-third of the Unit Land had been thereby inclosed, being a part including the summit and extending to the Public Road and to Holdstone Farm approximately elliptical and corresponding to the elliptical area marked on the Register map by a thin black line; this copy map shows this area as divided into numerous allotments numbered 10-21, 22-38, 39-106 and 107-113. Mr Andrews also produced a copy of the 1843 Tithe map, of the OS map 1/2,500 of 1888, and a plan undated of "Freehold Land for Sale" prepared by H J E Brake by which the remainder of the Unit Land up to the top of the cliff was shown as divided into 143 parcels of which Nos 1-35 fronting on the Public Road were small, Nos 38-42 and 50-138 are about 1 acre and the others mostly about 7 to 10 acres with 4 between 12½ and 32 acres. On my inspection with the possible exception of a few areas near the Public Road and not of any significance in this case, there appeared to be no sign of any inclosure or development such as were apparently contemplated by the said Award map and the said Development Plan.

Mr Andrews said that the Award itself was not available, so at the hearing I could do no more than guess that the said elliptical area was somehow allotted by an Award made in 1871, that any rights of common then attached to the Holdstone Farm were then extinguished, and that as regards the rest of the Unit Land there was no reason why any rights which had in 1871 existed from time immemorial should not still be subsisting notwithstanding the Award.

Sometime after the hearing I inspected the Award at the Public Record Office at Kew. It is dated 29 April 1871 and was confirmed by the Inclosure Commissioners on 4 May 1871, the map produced at the hearing being apparently correct; I found nothing in the Award to suggest that it had any effect on any part of the Unit Land except the elliptical area above-mentioned. I give this decision on the ^{register} basis that as regards this part at least the right of common ~~is not~~ can only be established under the Prescription Act 1832 or under a grant such as may be presumed to have been made in accordance with the law set out in the judgment in *Tehidy v Norman* 1971 2QB 528.



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Of the grazing on the Unit Land from Holdstone Farm:- Miss M Lerwill said (in effect) that although her father the Applicant only acquired the freehold in 1958 he had for many years previously farmed there in succession to his father and to his grandfather; and except for a short period of about 12 months just before he died when the farm was farmed by Mr Richard Clogg, such farming had been continued by his son and grandson, therefore always by members of the family; and that the family had always put sheep and cattle out on the Unit Land. The oral evidence of Mr W and Mr F W Lerwill (son and grandson) was to the same effect. I have no reason for not accepting the declaration of Mrs Lerwill-Thomas and concluding that the grazing described by the witnesses who gave oral evidence before me had originated before 1915.

I have no note or recollection of anything being said at the hearing about Objection No. 651 by Mrs Collins who gives her address as Moorcroft; letters sent to her there by the Clerk of the Commons Commissioners have been returned marked "gone away"; Mr Andrews mentioned that Moorcroft is now occupied by Mr Jeffery. There is no other Objection to the Land Section registration. Mr Andrews said (in effect):- Holdstone Down in spite of its apparent history of enclosure is not enclosed and for the most part never has been; in appearance it has what the average reasonable person would consider to be the look of open common land and its use is consistent with that appearance; the Parish Council would wish to see it remain available as recreation land for those taking air and exercise; apart from grazing and use by tourists taking air and exercise, the only use known was an occasional use by a religious group who regarded the Hill as one of the five Holy Hills of the World. I conclude that the continued registration of the Unit Land in the Land Section might serve some useful public purpose; so in the absence of any evidence in support of Objection No. 651, my decision is that whatever may be the fate of the Rights Section registration, the Land Section registration was properly made.

As to the general attitude of the Parish Council, Mr Andrews said that over the years since the 1965 Act, they had attempted to find the owners of the various numbered plots, but very few had come to light; they would wish to see Holdstone Down remain available for use as casual grazing for farmers, and had no wish to deprive any active owner or indeed any proper owner of his land; and that they were concerned to discover who are now the owners of the Unit Land (they themselves had acquired a plot of about 2 acres under deed of gift dated 9 December 1976). In the Ownership Section of this Register Unit is recorded the ownership of Mr W G Smallridge of a part near the old quarry (now a car park) and of the National Trust of 5 other parts each being 1, 2 or 3 of the strips shown on the Award map. To the Parish Council (so Mr Andrews said) "it appears self evident that the ownership of most of the land is lost in antiquity, and even where the ownership is known, the land is to all intents and purposes abandoned by its owners".

Mr Roberts who is now 74 years of age and came to Combe Martin when he was 3 years old and has lived there ever since apart from his school years till 1924 and periods in the Royal Air Force in 1936-1937 and from 1939-1946, said in effect that he was the owner of the two strips referred to in Objection No. 1050 and knew nothing of persons exercising grazing rights over his land and therefore did not wish his ownership to be interfered with.



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Nothing was said either by Mr Andrews or Mr Roberts providing any good reason why I should not give full effect to the evidence in support of the registered grazing right as summarized above. The appearance of the Unit Land is against any exclusion from the land over which such right extends of the two strips mentioned in Objection No. 1050 and Mr Roberts provided me with no good reason for excluding them; as regards him my decision is that Objection No. X 1050 wholly fails. On appearance alone and in the absence of any contrary evidence, I see no reason for limiting the grazing right to any particular part of the Unit Land or for reducing the number of animals claimed; so my decision is that the Rights Section registration was properly made and that Objection No. 1029 wholly fails.

It may be that time has shown that the 1871 Award in relation to the Unit Land has been as country planning a failure, in that one of the rights of common which probably then existed has under the 1965 Act reappeared; nevertheless from the Award it appears that there were in 1871 numerous rights of turbary and other rights, and because these have not been registered under the 1965 Act, the 1871 Award has at least to this extent been a success. As to the Parish Council ownership problems so much stressed by Mr Andrews, the Commons Commissioners have no jurisdiction under the 1965 Act merely because it is expedient to vest the Unit Land as the Parish Council suggest either in the Exmoor Park Authority or in the Parish Council, or to provide that the power of management shall vest in the Parish Council or in anyone else. However I ~~decide~~^{decide} that in due course other in proceedings, under section 8 of the 1965 Act, a Commons Commissioner will or may have to consider whether he is satisfied as to the ownership of that part of the Unit Land of which no person is under the 1965 Act registered as owner. I cannot in this decision anticipate what may happen in these section 8 proceedings.

For the reasons and upon the evidence set out above, I confirm both the registrations without any modification.

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 25th — day of August — 1981

a. a. Bada Fuller

Commons Commissioner