



COMMONS REGISTRATION ACT 1965

Reference Nos: 209/D/394
209/D/395In the Matter of Houndtor Down, Manaton,
Teignbridge District, Devon

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 11 inclusive in the Rights Section of Register Unit No. 107^{CL} in the Register of Common Land maintained by the Devon County Council and are occasioned by (1) Objection No. 544 (Land Section) made by Mrs Mary Elizabeth Sibylla French and Mr Charles Claude Whitley and noted in the Register on 30 November 1970; (2) Objection No. 596 (Land Section) made by Mr Robert Cyril Longsdon, the said Mrs M E S French and the said Mr C C Whitley and noted in the Register on 18 December 1970; (3) and (4) Objections Nos 597 and 598 (Rights Section No. 2 and Nos 1, 3 and 4) made by the said Messrs R C Longsdon, M E S French and C C Whitley and noted in the Register on 21 December 1970; and (5) and (6) Objection Nos 1044 and 1045 (Rights Section Nos 6 and 11 and Nos 5, 9 and 10) made by the said Mr R C Longsdon and noted in the Register on 11 September 1972.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 13 March 1984. At the hearing (1) the said Mrs M E S French and Mr C C Whitley were and Mr Anthony Leonard Cullen of Leighon, Manaton as successor of the said Mr R G Longsdon was, represented by Mr C Thomas solicitor with Harold Michelmore & Co, Solicitors of Newton Abbot; (2) Mr R W Perkins as successor of Mr George Dick Hart on whose application the Rights Section at Entry No. 5 was made, attended in person; (3) Mrs Jane Gillian Beeson on whose application the Rights Section registration at Entry No. 11 was made, was represented by her husband Mr Christopher William Restarick Beeson; and (4) Manaton Parish Council were represented by Miss M E Bindloss their chairman. Also present was Lady S R P Sayer of Cator, Widecombe-in-the-Moor.

The land ("the Unit Land") in this Register Unit is a tract of about 196 acres; Swallerton Gate is near its northwest corner; the road from there southwards towards Ashburton is its west boundary; the road from there northeastwards crosses the Unit Land near its north boundary; on and around the highest point on the Unit Land stand a group of rocks of fantastic shape which from almost any point of view greatly add to the beauty of the landscape, and which are for tourists and others a memorable site visit or a pleasurable scramble. There are in the Rights Section 11 subsisting registrations. In the Ownership Section, the said R C Longsdon, M E S French and C C Whitley are registered (being undisputed, finally) as owners. The grounds of Land Section Objection No. 544 are:- "that the land was not common land at the date of registration. Houndtor Down CL 107 is and always has been private property. It is jointly owned by M E S French, Great Houndtor; C C Whitley, Hedge Barton; and R C Longsdon, Leighon. At no time has any other person had grazing rights on this down. We attach a letter from the Manaton Council Chairman unreservedly withdrawing the original registration which was made in error & without the knowledge or consent of the above owners". The grounds of Objection No. 596 are simply that the Unit Land "was not common land at the date of registration". The grounds of Objections Nos 597, 598, 1044 and 1048 are that the rights either do not exist at all and/or should comprise fewer animals.



At the beginning of the hearing Mr Thomas said he would contend that the Unit Land was not common land, Mr Perkins said that as successor of Mr G D Hart he did not claim right over it, and Lady Sayer observed that from the public point of view my decision could be an absolute disaster.

In the course of his oral evidence Mr A L Cullen produced the documents specified in Part I of the Schedule hereto. He said (in effect):- He and his wife Mrs Audrey Dorothy Cullen in 1978 bought from Mr R C Longsdon the Leighon Estate consisting of a farm and tenanted lands to the east of the Unit Land. This Estate included a half share of the Unit Land. The other shares are one quarter now owned by Mrs M E French and Mrs Moreton, and one quarter now owned by Mr C C Whitley. The Unit Land is administered by Trustees of which he (the witness) was one. From his knowledge since 1978, nobody (except the share owners) had stocked or claimed any right to graze over, the Unit Land or to exercise any right of turbarry or estovers. The Unit Land is completely fenced in the sense that notwithstanding there is a public road crossing it from Swallerton Gate eastwards near to and within its north boundary and it is open to a public road from Swallerton Gate southwards, stock are kept within it by the fences on the north and west sides of these roads and by the cattle grids at or near the northeast and southwest corners of the Unit Land; elsewhere (on its east and south sides) the Unit Land is fenced from adjoining farm lands.

Mr A Brown who is 76 years of age said (ALC/1, in effect):- He used to work for his father who was tenant of Leighon Farm from 1926 to 1933. On Houndtor Downs they shared the grazing with Mr Mortimore the then tenant of Great Houndtor Farm. At that time there were gates at the Swallerton and Holwell ends. Others except by permission did not graze.

Mr Mortimore who is 80 years of age said (ALC/2, in effect):- From before he was born his parents and after his father's death his mother first alone and later with his brother were tenants of Great Houndtor Farm. He left there in 1938. The Unit Land was grazed from Leighon and Great Houndtor Farms only, except in the circumstances he mentioned.

Miss Bindloss said (in effect PC/1):- The Parish Council's main interest lies in the changes which could occur if the Unit Land and other Register Units in the Parish were to be deregistered and became liable to fencing and other agricultural improvements; Manaton lies amidst stretches of open moorland and its character and amenities could thereby be altered. Unfortunately some of the Parish records relevant, including the minutes books covering the period prior to 1975 have been missing for at least 3 years despite all efforts to trace them.

The grounds of the Objections put all the registrations wholly in question. The burden of proving the registrations falls on those wishing to maintain them, see re Sutton 1982 1WLR 647 at page 656 and Corpus Christi v Gloucester 1983 1QB 360 at page 379. There was no evidence that the Unit Land was subject to any of the rights of common registered. As to it possibly being waste land of a manor within paragraph (b) of the definition of common land in subsection (1) of section 22 of the 1965 Act, there was no evidence of any manorial connection which the Court in re Box 1980 CL109 considered essential.



The evidence of Mr Cullen is open to the criticism that he did not produce the documents of title relating to the ownership in shares of the Unit Land to which he referred, and the fencing position although not showing that it is or was waste land of a manor, is not inconsistent with it having been such at one time. Nevertheless, if I have regard only to the evidence put before me at the hearing, I conclude that none of the registrations was properly made.

I understood the above recorded observation of Lady Sayer as a hint that the public might be benefitted if the Land Section registration at least remained; they might I suppose benefit from the applicability of section 194 of the Law Property Act 1925, and if the law is amended in accordance with the recommendations of the 1954 Royal Commission on Common land. Otherwise the Parish Council offered no evidence or argument to support the public interest, and Mr Thomas relied on a letter from a previous chairman (ALC/10).

That the general public cannot acquire by user a right to visit a public monument or other object of interest upon private property was established in *Attorney-General v Antrobus* 1905 2 Ch 188, the monument then under consideration being Stonehenge. Although the stones on the Unit Land are different from Stonehenge, the legal position is analagous. Under the 1965 Act I have to "inquire" into disputes, a wider conception than a trial, see *Corpus Christi v Gloucester* supra at page 367. So Mr Cullen having been asked to amplify his answers as above summarised, said (in effect):- From his recollection of the documents relating to and what he had been told about the Unit Land, its ownership had originally been held by one Estate. Then more than 100 years ago the Leighon Estate had been split off and a half share of the Unit Land went with it, the other half remaining with the Great Houndtor Estate. In 1968 this other half was split between Mr C C Whitley and Mrs French. The earliest document of title he had was a conveyance dated 1902 by which the Reverend Wolfe conveyed the Leighon Estate to Mr Washington Singer.

Where persons own grazeable land in undivided shares it is possible that each of them have a separate right of grazing over the entirety so as to bring the land within the 1965 Act section 22 definition of "common land", see re Cotherstone 1961 Estates Gazette vol 179, and the section of the Inclosure Act 1845 therein mentioned. But it is also possible that any grazing by an owner of a share was as such owner and so he has no separate right of common and the land is outside the definition, see re Accrington, Decision of the Commons Commissioners selected by High Campbell (1972) page 15. On the information I have, I favour as regards the Unit Lane the latter possibility. However this may be, I am in my view not required by the 1965 Act to call upon the present owners of the Unit Land to meet a case which was not at the hearing put by anyone.

So my decision is as I above concluded. Which decision is I think in accordance with the law as it now stands. Whether it is a disaster and whether the history since 1905 of Stonehenge is any guide to the future Houndtor, I leave to others.

On the above considerations I refuse to confirm the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 to 11 inclusive in the Rights Section.

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.



SCHEDULE
(documents produced)

Part I: by Mr Cullen

ALC/1	7 March 1984	Affidavit of Arthur Brown of Lower Burn, Bickington.
ALC/2	12 March 1984	Statement signed by Harold Mortimore, Staddicombe, Holne.
ALC/3	10 March 1984	Withdrawal of Entry No. 10 signed by Nigel Baverstock as the present freehold owner of Wingstone Manor.
ALC/4	9 March 1984	Withdrawal of Entry No. 10 signed by T W Corkery as the freeholder of Wingstone Farm.
ALC/5	10 March 1984	Withdrawal of Entry No. 1 signed by William Hugh Whitley as executor of William Wallace Whitley of Holwell Farm.
ALC/6	7 March 1984	Withdrawal of Entry No. 2 signed by Maurice H Ratallick as sole owner of Bagtor Barton.
ALC/7	6 March 1984	Withdrawal of Entry No. 3 signed by William Roy Greenaway as owner of Vogwell Farm.
ALC/8	30 June 1944	Certificate of local search from Newton Abbot RDC.
ALC/9	--	Map showing Leighon Estate as tenanted.
ALC/10	10.12.69	Letter from R V Hugo (as chairman of Manaton Parish Council) to Mrs French withdrawing registration of Houndtor Down as common land.

Part II: by Miss Bindloss

PC/1	--	Statement to Commons Commissioner by Parish Council.
------	----	--

Dated the 23rd day of August 1984

A. A. Baden Fuller

Commons Commissioner