



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/375-382

In the Matter of Luppitt Common,
Hense Moor and Hartridge, Luppitt
East Devon District, Devon

DECISION

This dispute relates to the registration at Entry No. 11 in the Rights Section of Register Unit No. CL 41 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 632 made by Luppitt Commons Trustee Committee and noted in the Register on 10 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 18 July 1985. At the hearing (1) Luppitt Commons Trustees Committee were represented by Mr K M T Alton solicitor of Dunnings Solicitors of Honiton; (2) Mrs Gwendoline Rita Clark of Odle Cottage, Luppitt (postal address Uppotery), widow of Mr Charles Hugh Clark who applied for the said registration attended in person; and (3) Mrs Margaret Emily Sampson of Budget's Farm, Uppotery attended in person.

The land ("the Unit Land") in this Register Unit comprises 3 areas: (1) Luppitt Common being about 3 miles long on one or other or both sides of a nearly straight road for about $\frac{1}{2}$ rd of its length between 250 and 350 yards wide; (2) Hense Moor being a little under 2 miles long with a most irregular boundary so its width varies between about $\frac{1}{2}$ a mile and 100 yards; and (3) Hartridge being a little under $1\frac{1}{2}$ miles long with an average width of about $\frac{1}{2}$ of a mile and almost completely surrounding two smaller areas of farm land (not included in the registration) one being that hereinafter called "the Higher Odle Area" containing between 14 and 15 acres. The now disputed registration at Entry No. 11 was made on the application of Mr Charles Hugh Clark and is of rights "to graze 15 sheep (5 sheep = 1 beast) over the whole of the land comprised in this register unit; to take stone from that part of the land ... known as Hartridge" attached to "Odle Cottage ... comprising OS 225 ...". The grounds of Objection No. 632 are: "that the right does not exist at all". Originally there were 63 Rights Section registrations; of these one has been cancelled and others have been superceded or amended as appears at Entry Nos 64 to 80 in the Rights Section. In the Ownership Section Luppitt Commons Trustees (4 named persons) are registered as owners of all the Unit Land, and this registration being undisputed has become final. Pursuant to two decisions (Nos 1 and 2) both dated 18 April 1984 and made by Mr G D Squibb QC, Chief Commons Commissioner, the Land Section registration has become final and all the Right Section registrations except that at Entry No. 11 have become final with or without modification or become void. Confirmation of that at Entry No. 11 was by decision No. 2 refused, but upon a consideration of the documents specified in Part I of the Schedule hereto Mr Squibb (minute signed by him 21/1/85) reopened the hearing upon the application of Mr H C Clark. So at my July 1985 hearing all questions relating to the registrations applicable to the Unit Land except that at Entry No. 11 had been decided.



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At the beginning of the hearing Mr Alton said that it was not disputed that the April 1984 hearing as regards Entry No. 11 had been rightly reopened and that I must therefore deal with Objection No. 632.

In support of the registration oral evidence was given by Mrs G R Clark in the course of which she produced or referred to the documents specified in Part II of the Schedule hereto. She said (in effect):- Her husband the said Mr Charles Hugh Clark died 1 May 1985. They acquired Odle Cottage jointly under the 1960 conveyance (GRC/3). All she wanted at the moment was a right to graze 1 house cow. Her husband applied for the registration of the assumption that OS 225 contained about $\frac{1}{2}$ an acre, and because the rest of the land (meaning the said Higher Odle Area) had rights (for 14+ acres), OS 225 had rights as well. They had never exercised the rights registered but they applied for the registration to insure that they could exercise them if they wanted to. The house cow at the moment (July 1985) was at a farm in Corfe (near Taunton). Her husband had wanted to exercise the right for a pony, not realising that a pony was not "a beast"; but she did not want a right for a pony now (July 1985) only for a house cow. When they bought the land in April 1960, the particulars of sale (GRC/1) included the words:

"The property has grazing rights on Harts Ridge Common, close at hand" She owned the house and building marked on the Register Map (GRC/2) as by her indicated on my copy, but did not own a barn so marked, it being on the rest of the Higher Odle Area not belonging to her. She thought that "being in the middle of the common it would only be fair that she should have a right for one animal at least", her land being about $\frac{1}{2}$ an acre.

Questioned by Mr Alton, Mrs Clark (among other things) said (in effect):- She agreed that the 1960 conveyance (GRC/3) said nothing about common rights, and that apart from the particulars (GRC/1) she had no documentary evidence of the common rights claimed although by word of mouth Mr and Mrs Havard did tell them (she and her husband) that there were common rights; they did not say what these rights were. She was not now sure where her husband got his information from when he applied for common rights but he obviously (she thought) got it from somewhere.

Mrs Clark added:- She did not want to encroach on any common rights, but there is so much grass on the lane, it does seem a shame it should not be used.

Next Mr Alton referred me to the Rights Section registration at Entry No. 22 made on the application of "Sampson Bros" of a right attached to Budgells Farm Uppottery comprising OS 154 ... "to graze 58 sheep (5 sheep = 1 beast) to cut bracken" over the whole of the Unit Land and to take stone from that part known as Hartridge: He said as originally registered the OS Nos to which the right was attached included 225, so that there was a conflict with the registration at Entry No. 11; this conflict was resolved (as appears in the register) 15/3/73 by removing "225" from Entry No. 22. He also made a number of other points about the case of the Luppitt Commons Trustees.

To understand the evidence which followed it should be noticed that the land to which the rights registered at Entry No. 22 are attached is therein described as Budgells Farm comprising 25 OS numbers therein specified, that five of these numbers being 165, 220, 226, 228, and 230 are the OS Nos of the Higher Odle Area above mentioned less the part of it (Odle Cottage being OS No. 225 containing .319 of an acre) owned by Mrs Clarke, that the twenty other numbers are those of land before 1959 known as Budgells Farm and that the witnesses generally used the words "Budgells Farm" as meaning the land so known before 1959.



Against the registration oral evidence was given by Mrs Margaret Emily Sampson, who is the widow of Mr B J Sampson who died 1 April 1982, in the course of which she produced the plan (LCT/1) specified in Part III of the Schedule hereto and said (in effect):- In 1960 or possibly 1959 her father in law Mr W Sampson who then owned Budgells Farm (situated to the east of the Higher Odle Area) bought the Higher Odle Farm land containing about 14 acres as shown in the plan (LCT/1) she produced (this plan shows all the Higher Odle Area above mentioned except OS 225 on which now stands Odle Cottage now owned by Mrs Clark). These lands are now farmed together with Budgells and they together contain about 81 acres. In 1958 when she came to Budgells, the Higher Odle Area (both the farm lands and the Odle Cottage land) were owned by Mr and Mrs Havard; and Budgells Farm was owned by her father-in-law. Mr and Mrs Havard tried to sell the whole (the Higher Odle Area including Odle Cottage) as a smallholding, but were unsuccessful; so her father-in-law offered to buy from them the farmlands (exclusive of Odle Cottage which is now owned by Mrs Clark) and they made a deal.

Mr Henry Lewis Haynes who has been secretary of the Luppitt Commons Trustees Committee since 1977 in the course of his evidence against the registration produced the 1827 document (LCT/2) specified in Part III of the Schedule hereto, and said (in effect):- The application of Mr C H Clark for permission to graze his pony (mentioned in paragraph 13 of his November 1984 affidavit) was rejected by the Trustees as not being in accordance with the said decision of Mr Squibb and because it was not their practice to grant a grazing right for a pony; he told the Trustees and they agreed that the word "beast" (in the registration) meant a bovine animal and did not include a pony. The commons which together make up the Unit Land have always been grazed in accordance with the list attached to the March 1827 letter (LCT/2) which (as appears in the letter: writer not named, but seemingly acting as agent for the Lady of the Manor) was

"... estimate of the number of Sheep which each occupier of Lands, claiming a right of Common over the Westes (sic) and Commons within the Parish of Luppitt, is entitled in respect of such Lands, who turn out to depasture upon the said Commons --- Five sheep to be deemed equal to one Beast. This estimate has been made at my request by ... in pursuance of the intention already announced to you by my Letter of the 29th April last, that, on the part of Mrs Bernard the Lady of the Manor, I was about to make an apportionment of the several rights of Common of the respective occupiers, to prevent for the future the very unfair mode of Stocking the Commons, which has prevailed for many years past. It has been framed with the most strict attention to fairness and impartiality and I hope it will meet your approbation. The number of sheep set down in this Estimate against such Estate will be considered for the future as the quantity which each occupier is entitled to turn out upon the Commons and such means as the law allows will be adopted for the future, to prevent that quantity *being* exceeded".

And so it has been. The part of the list (or "Estimate") relevant to Entry Nos. 11 and 22 is:

"William Osborn:	Notley's Odell:	50"
"Josias Warren:	Spurtham:	80"
"Same	: Warren's Odell:	8"
"Same	: Snooks	: 2"

By legend and word of mouth (meaning locally) Odle smallholding (meaning the Higher Odle Area above mentioned at one time wholly owned by Messrs Havard) and Budgells Farm (as in 1958 owned by Mr W Sampson) are "Warren's Odell" and "Notley's Odell" mentioned in the list; so that at the date of registration (1967) Budgells (it then included all the Higher Odle Area except OS 225 owned by Mr G H Clark) was entitled to graze



58 sheep (or one fifth of that number of beasts). The Trustees rejected the less than $\frac{1}{2}$ of an acre being Mr Clark's land because they do not accept there could be a right for so small an area. No registration has been made for such a small area; of the lands to which rights of grazing registered were attached the smallest is that at Beacon known as Wrens (a house and land of about 1 acre) of a right to graze geese (no animals) and Trotwood Cottage (land containing more than an acre) of a right to graze 2 sheep (see Entry Nos 28 and 59).

Against the registration oral evidence was also given by Mr Arthur Francis William Blackmore of Mohuns Ottery Farm who is and has been since 1968 chairman of Luppitt Commons Committee and has lived all his life (75 years) in the Parish in the course of which he said (in effect):- The owners of the Higher Odle Area have never exercised rights in respect of the Cottage either before or after it was split and no application had been made to the Committee to apportion the rights as a result of the split. The smaller areas of land to which registered rights are attached comprise Wren Cottage of Miss Barnard (Entry No. 28 to graze geese and to take turf and wood, cut bracken and take sand and stone), Trotwood Cottage of Mr Hardwick (Entry No. 59 as modified 6/5/71 and 26/1/73, estovers and to graze 2 sheep) and some to which the rights attached are not of grazing, for example Turf House (see Entry Nos 29 and 57); the Trotwood Cottage land (the smallest area to which a right to graze animals is attached) is just in excess of 1 acre. None of the Luppitt Commoners graze horses or ponies (there are no registrations of a right to graze any such animals unless "1 beast" may properly, as claimed by Mrs Clark, be read as including a pony). He thought that there had been no ponies since 1939-45 when the War Agricultural Committee cultivated part of the Unit Land. The Trustees have a register of those entitled to rights of common and they number about 60; they can cut turf and take stone and firewood but there is only one registration of wood being that made by Miss Barnard (No. 29).

On the day after the hearing I inspected the land in front of Odle Cottage, on my way observing the locality of Budgells Farm House and buildings, and afterwards walking up the footpath to the Unit Land from next to the Cottage up to the road along the ridge. Subsequently I motored the full length of the north south road which crosses Hartridge (seeing much of this part) along the road through Luppitt northward to the west of the part of the Unit Land known as Hense Moor (seeing very little of it) and then going southwards along the road from Jack's House and southwards along the road access the part of the Unit Land known as Luppitt Common (seeing quite a lot of it).

The 1960 conveyance if it had included an express grant of "grazing rights on Hart Ridge Common" following the words of the Particulars would have been some evidence that such right was then attached to Odle Cottage thereby conveyed, the conveyance being in law an act of possession, see *Blandy-Jenkins v Dunraven* 1899 2 Ch 121. Particulars not followed by a conveyance are not such evidence; indeed the non-inclusion of any such grant indicates if any thing that those acting for Mr and Mrs Havard some how persuaded those acting for Mr and Mrs Clark that they had no title to make such a grant. So in my opinion the Particulars do not help Mrs Clark. On the evidence of Mrs Sampson, I think it not unlikely (I need make no finding about this) that the Particulars were originally drafted for the whole of the Higher Odle Area and were adapted for the purposes of the offer to Mr and Mrs Clark by someone who overlooked the possibility that all the grazing rights mentioned in it had previously been conveyed to Mr W Sampson.



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I accept the evidence of Mr Haynes and Mr Blackmore as to the basis on which the Unit Land has been grazed since 1827. Mr C H Clark may as Mrs Clark thought, had some information leading him to suppose that he could properly claim a right to graze 15 sheep or 3 beasts over the whole of the Unit Land, but having no evidence about such information, I can do nothing about it.

It may be that as a general rule when land is divided into two parts, the grazing rights attached to it should be divided proportionately to the areas of the parts; but there is no rule of law requiring such an apportionment in every case contrary to anything which may have been agreed or might be implied from the circumstances. In the absence of any evidence of any express agreement, I infer from the evidence of Mr Haynes and Mr Blackmore that the proper apportionment of any rights attached to the Higher Odle Area on the split would be all the rights to be attached to the part taken by Mr W Sampson and no rights fractional or otherwise to the part taken by Mr and Mrs Clark. While not overlooking that in some parts of England fractional stints are commonly recognised, I reject the suggestion made by Mrs Clark that I should infer otherwise because Mr and Mrs Havard told her and Mr C H Clark that "there were common rights".

For these reasons my decision is that the registration so far as it includes a right to graze was not properly made either as it now stands, or as it might be modified by being limited to a pony or to one cow, or by being limited to some fractional animal obtained by dividing the "8" of Warren's Odell proportionately to the areas ½ and 14. In the absence of any evidence or arguments in support of the registration of the right "to take stone" my decision is that it too was not properly made. For these reasons I refuse to confirm the said registration at Right Section Entry No. 11.

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 set to him, require me to state a case for the decision of the High Court.



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SCHEDULE
(Documents)

Part I: on application to reopen
1984 hearing

2 and 10 October
and 30 November 1984

Letters from Mossop & Whitham, Solicitors for
Mr Charles Hugh Clark.

29 November 1984

Affidavit by Mr C H Clark setting out matters on which he submitted he had sufficient reason for his absence at the April 1984 hearing with Exhibits CHC/1 being the Agents Particulars of Higher Odle Farm, and CHC/2 and CHC/3 being letters of 20 and 25 March 1984 from Dunnings, Solicitors of Honiton for Luppitt Commoners Trustees Committee.

Part II: at 1985 hearing by
Mrs G R Clark

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| GRC/1 | undated | Particulars of Sale of Taylor & Co, Auctioneers and Estate Agents of "Higher Odle Farm" including under Remarks the words "The property has grazing rights on Harts Ridge Common close at hand": (the same as the said exhibit CHC/1). |
| GRC/2 | -- | Copy Register map marked by witness to show extent of land now occupied by her with Odle Cottage. |
| GRC/3 | 22 April
1960 | Conveyance by Kenneth Mathias Havard and Doreen Havard to C H and G R Clark of land etc "formerly known as Odle Cottages and now known as Higher Odle Farm comprising OS No. 225 and containing according thereto .319 of an acre". |

Part III: at 1985 hearing on behalf of
Luppitt Common Trustees

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|-------|------------|--|
| LCT/1 | -- | Plan showing land bought by Mr William Sampson in 1960 (? 1959) from Mr K M Havard being or including OS Nos 165, 220, 226, 228 and 240. |
| LCT/2 | March 1827 | Form of letter to the owners and occupiers of land within the parish of Luppitt with list of "Occupiers", "Estates" and "sheep". |

Dated this 27th -

day of

January -

1986

A. A. Baden Fuller

Commons Commissioner