



In the Matter of Maiden Down, Culmstock

DECISION

This dispute relates to the registrations at Entry No. CL 88 in the Land Section and at Entry Nos. 1-6 in the Rights Section of Register Unit No. CL 88 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 527 made by Mr F L Vincent and noted in the Register on 10 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 2 December 1981. The hearing was attended by Mr M R Rose of Messrs Clarke, Willmott and Clarke, Solicitors of Wellington who appeared for the Culmstock Parish Council the applicant in the Land Section and for the applicants at Entry Nos. 2, 3 and 4 in the Rights Section. No one appeared for the Objector. I heard evidence adduced on behalf of the applicants but before I had written my decision I received an application on 4 December 1981 which was dated 2 December, the date of the hearing, to hold a fresh hearing. I acceded to this request on certain terms as to costs which were accepted by the Objector.

The rehearing took place at Exeter on 13 April 1983. Mr Rose again appeared for the clients he had represented at the earlier hearing and Mr F J Woodward of Messrs Burd, Pearse, Prickman and Brown, Solicitors of Okehampton appeared for the Objector Mr M C Pipe, who had acquired the Common from Mr F L Vincent in March 1976.

Mr Rose produced a Deed made 6 October 1930 by Charles Collier, the then owner of Maiden Down, pursuant to the Law of Property Act, 1925, S.193. Records showed that in 1805, Maiden Down Common was 174 acres in extent. According to the Register made under the Commons Registration Act, 1965, the area today is 112 acres.

A survey made in 1650 showed that the Manor of Culmstock was let to the Sandford Family and that the tenants of the Manor had rights of pasture, turbary and liberty of tillage. Subsequently the Manor reverted from the Sandford family to the Dean and Chapter of Exeter Cathedral.

In an Indenture made in 1833 the Dean and Chapter gave leave to enclose 50 acres of the Common for an allotment with the consent of the majority in value of the Commoners.

On 14 January 1884 the Ecclesiastical Commissioners sold the Manor of Culmstock and Maiden Down Common to James Collier. A copy of the printed particulars of sale was produced in which the Common was described as Lot 7 of 107 acres and was stated not to be waste of the Manor.

The application for registration in the Land Section had been made by Culmstock Parish Council.



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Mr Gordon Stodart James, the applicant at Entry No. 2 in the Rights Section, said that he was 51 years old and he lived at Axon Farm, Culmstock. This farm was 66 acres and bordered on the Common. He had farmed there since 1958 having first come to the farm in 1947. While at Axon Farm he had not grazed any animals on the Common. From time to time he took dry sand for building or bedding. He also cut bracken and furze. His parents used to cut bracken but he could not say what their predecessors did.

Axon Farm is mentioned in the Deed of 1833. The area from which he used to take sand became unsuitable for that purpose owing to drilling by the owner.

In cross-examination Mr James said that he had not been approached by the Parish Council after 1965 to make an application to register the Common. He had received a letter from the Ministry of Agriculture, Fisheries and Food and had attended a meeting organised by the National Farmers Union. He had not put out cows to graze on the Common. He took bracken during 1958-60. His parents had taken bracken. There was no fencing on the Common to prevent cattle straying.

Mrs Tania Sheila Priscilla Stepney said that she and her husband Ronald Charles had purchased Snow Cottage from Mrs Winifred Esther Pillar in January 1978 together with the benefit of the rights of common the subject of a provisional registration made by the Vendor. Mrs Pillar had lived at Snow Cottage for about 60 years and had told the witness that she had kept cows on the Common.

Mr Josef Roppert said that he lived at The Firs, Maiden Down, which he had bought in 1961. He was a part-time smallholder and cheese-maker. At the beginning he put one cow on the Common. Later he made an arrangement with Mrs Pillar.

Mr Lewis Disney said that he bought Orelia House in 1963. He had never kept cattle on the Common. He was now retired.

Mr Rose also read Statutory Declarations by the following persons.

- (i) James Henry Haydon made on 27 November 1981
- (ii) Lillian Joyce Cosh made on 30 November 1981
- (iii) Lillian Joyce Cosh made on 21 December 1981
- (iv) Winifred Esther Pillar made on 7 December 1977.

Copies of these are attached to ^{the copy of} this decision. *to be sent to the Registration Authority*

Mr Woodward then called evidence for the Objector.

Mr J J Collier now living in Gloucestershire said that he was born at Furze House, Nicholashayne, Culmstock in 1918 and left there in 1971. His sister still lived in Nicholashayne. His uncle Charles Collier had been Lord of the Manor of Culmstock. There were always gipsies on the Common. He did not remember any cattle grazing on the Common. There was no fencing. He had never seen any cattle tethered on the Common or turf being cut or any signs of turf having been cut.



In cross-examination the witness agreed that the Common was not visible from Furze House. He used to pass the Common regularly every other day.

Mr David Albert Charles Pipe of Harvest Slade, Maiden Down, Burlescombe said that he had owned Harvest Slade for 10-12 years. He also owned Pond Farm and Tuskers Farm in Nicholashayne. He purchased the former in 1969 and the latter in 1966.

He occupied both farms. His main occupation was bookmaking and his place of business was Taunton. His son Martin Charles assisted him in running the farms. The son is a farmer and race-horse trainer.

Mr Vincent purchased Maiden Down from Miss Nancy Mildred Collier on 30 September 1966. The witness purchased Maiden Down on 16 March 1976 from Mr Vincent and it was conveyed into his son's name. During the negotiations for the purchase there were negotiations for the purchase of part of Maiden Down for the M5 Motorway. It was agreed that, though the whole of Maiden Down was conveyed to his son, any compensation payable by the Ministry should belong to Mr Vincent.

When he purchased Maiden Down he was not aware of the Deed of Declaration dated 6 October 1930 relating to Maiden Down. His son had revoked that Deed of Declaration on 7 April 1983.

Neither he nor his son used any part of Maiden Down at present. In the future he planned to construct a training area for horses and use the rest of the land for agriculture.

He had not seen any parishioner exercising common rights except Mr Roppert. This was after the building of the new Motorway. In 1975 cars were being dumped on the Common. The old Sandpits were levelled out when the Motorway was built. In 1970 Mr Roppert put three cows on the Common and the number increased later. After 1966 he was in the area daily.

If there had been cattle on the Common the fact would have been brought to his attention even if he had not seen them.

In cross-examination Mr Pipe said that until 1966 he was not aware of what happened on Maiden Down. He bought the Common because it was in sight of his two farms. There was good agricultural land around the Common. After his purchase he had stopped persons driving on to the Common and had turned off motorcyclists. On most working days he was in Taunton from lunch time onwards. He could not see the Common from inside his bungalow. The sandpits were mainly on the eastside of the Common.

Mr Michael Richard Bussell said that his age was 43. He had lived at Upcott Farm from 1950-64, in Nicholashayne from 1964-74 and since 1978 at Sampford Moor. Upcott Farm (150 acres) was the family farm. He owned 40 acres of farm land at Red Ball north of the Common and another 10 acres in Wellington, 5 miles away. He had known the Common intimately most of his life. He had ridden a pedal cycle in the sandpits and had never been turned off.



He had never contemplated registering a claim to common rights over Maiden Down. There was no mention of any such rights in his title deeds. Though not a Council member, he used to attend regularly meetings of Culmstock Parish Council. It had been suggested that villagers be encouraged to register common rights to defeat an application for planning permission by Mr Vincent. He knew nothing about common rights. He had never seen any cattle on the common. He was in the roads locally nearly every day.

In cross-examination Mr Bussell admitted that he had purchased his land at Red Ball after the date for registration had passed. He attended meetings of Culmstock Parish Council about seven times in each year. He was not aware that local Solicitors wrote to their clients explaining the provisions of the Commons Registration Act.

Mr Brian John Jones said that he was aged 49 and lived at The Old Forge, Sampford Moor. He used to live at Maiden Down Cottages which his father owned. He had known Maiden Down all his life. He moved away from the area in 1968. The only beasts he had seen on Maiden Down were Mr Roppert's cows. The number varied from 1 to 3.

Cross-examined Mr Jones said that Mrs Cosh's goats did not go on the Common but on to land off the Common, but when he indicated the area where the goats went it was within the limits of the Common as shown on the Register Map. His grand-father had built Maiden Down Cafe. His mother used to go to the Cafe to help the grandfather. He married in 1968.

Mr Woodward made the following submissions:-

1. The application for registration made by the Parish Council was a shot in the dark.
2. The Indenture of 1833 could only avail Axon Farm.
3. In the absence of evidence that the rights had been exercised, they should be held to have been abandoned. No document since the 1833 Indenture indicated to which tenement the rights were appurtenant.
4. Maiden Down Common had been sold by the Lord of the Manor in 1966.

Dealing with the individual Entries in the Rights Section, he submitted that there was no evidence to support Entries Nos. 1 or 6. The claim by Mr James could not succeed on the grounds of prescription. The land which the Stepneys purchased from Mrs Pillar was not the dominant tenement OS. Nos. 4879, 5177, 5072 and 4668 in respect of which the application was made. The evidence in favour of the claim as shown on the register was thin.

Mr Rose submitted that the burden of proof that the rights of common enjoyed by Axon Farm had been abandoned was on the Objector and had not been discharged. In the case of Mrs Cosh's claim para. 598 of Volume VI of the 4th Edition of Halsbury's Laws of England was of assistance.

I can deal shortly with the application at Entry No. 5 registered by the late Mrs Pillar and supported at the hearing by Mrs Stepney, who produced a Conveyance dated 13 January 1978 from Mrs Pillar which related to Snow Cottage,



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part of parcel OS. No. 5576. This property is on the opposite side of the road to the area which Mrs Pillan registered as the dominant tenement.

With regard to the other applications, in my view, if on the evidence none of the applicants comes anywhere near to establishing a claim either under the Prescription Act 1832 or under a lost modern grant.

That however is not the end of the matter because the Survey carried out in 1650 on behalf of the owner of the Manor records that tenants had rights of pasturage on and liberty of sowing and letting the Commons (which included Maiden Down) and of taking marle.

I take note of the facts that Maiden Down is still unfenced. It was still a common in 1833 when rights of common were duly released over 50 acres to set up a Coal Charity and one of the signatory commoners occupied Axon Farm.

There was no evidence given on behalf of the Objector which in my view established abandonment and in my view these applications must succeed to the extent that they fall within the rights referred to in the Survey, namely:-

- Entry No. 1 To graze 5 units (NFU Scale)
- Entry No. 2 To graze 10 cows
- Entry No. 3 To graze 2 cattle
- Entry No. 4 To graze 4 goats
- Entry No. 6 To graze 1 stock unit (NFU Scale).

These rights are of course subject to the rule of levancy and couchancy and I give the Objector liberty to apply within 4 weeks of the dispatch to him of a copy of this decision to apply to reduce these numbers, *if so advised.*

respective costs of the days hearing
The rehearing of this application was made necessary by the failure of Mr Pipe to notify the Registration Authority that he had purchased the servient tenement from Mr Vincent. As a result the first hearing was ineffective and he must therefore pay to those parties who attended the hearing on 2 December 1981 to be taxed on County Council Scale, 2.

For these reasons I confirm the registration at Entry No. 1 in the Land Section and the applications at Entry Nos. 1-4 and 6 subject to the modifications I have already mentioned. The registration at Entry No. 5 in the Rights Section is not confirmed.

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

27th

day of

October

1983

George Haskett

Commons Commissioner