



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/407
209/D/408

In the Matter of part (about 135 acres)
of Dean Moor in Dean Prior, South Hams
District, Devon

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 2 to 34 inclusive, 36, 37, 38 and 40 to 46 inclusive in the Rights Section of Register Unit No. CL180 in the Register of Common Lane maintained by the Devon County Council and are occasioned by Objections Nos 12 and 654 made by South West Devon Water Board and noted in the Register on 9 April 1969 and 30 November 1970 and by Objection No. 558 made by A J P Parkhurst and noted in the Register on 30 November.

I held a hearing for the purpose of inquiring into the dispute at Plymouth on 11 May 1984. At the hearing (1) South West Water Authority as successor of South West Devon Water Board was represented by Mrs F G Canning, solicitor employed by them; (2) Mr Arthur John Peter Parkhurst attended in person; (3) Lady Sylvia Rosalind Pleadwell Sayer on whose application with Sir Guy Bouchier Sayer the Rights Section registration at Entry No. 2 was made, attended in person and as representing him; (4) and (5) Sir James F Everle of The Village Farm, Holne as successor of Mr David Miller Scott on whose application the registration at Entry No. 3 was made, and Mrs Eleanor Nancy Smallwood on whose application the registration at Entry No. 36 was made, were represented by Lady Sayer; and (6) Mrs Francis Jill Jukes of 9 Grande Rue, Les Alluets Le Roi, 73580 Maule, France as successor of Mr Edwin Hopcroft Woodward and Mrs Isabella Aselin Woodward on whose application the registration at Entry No. 24 was made, was represented by Mr R W Lewis, solicitor of Woollcombe Watts & Co, Solicitors of Newton Abbot.

The land ("the Unit Land") in this Register Unit is a tract about 1 mile long bounded on the north by Abbots Way on the other side of which is another part of Dean Moor (in Register Unit No. CL162) and on the south-west by the line followed by the River Avon before the Avon Dam was built; much of the Avon Dam Reservoir is in the Unit Land. The grounds of objection No. 12 (expressed to be to the Land Section registration) are that the land coloured pink on the attached land was not common land at the date of registration; the land so coloured comprises the whole of the Unit Lane: by subsection (7) of section 5 of the Commons Registration Act 1965 the Objection is to be treated as an objection to all the Rights Section registrations. The grounds of Objections Nos. (a) 558 and (b) 654 (expressed to be to the Rights Section registrations (a) at Entry Nos. 2 and 3 and (b) at all the Entry Nos.) are that the rights do not exist.

The proceedings at the hearing were much simplified because two days before the hearing Mr P J R Michelmore chartered surveyor of Michelmore Hughes of Newton Abbot acting on behalf of Bennah Limited on whose application (with others) the Rights Section registrations at Entry Nos 6, 7, 8 and 9 informed me (after I had completed on that day other hearings) that Bennah Limited did not wish to pursue the registrations so that as far as they were concerned I could refuse to confirm them; and at the said hearing Lady Sayer and



Mr Lewis made a similar statement about the registrations at Entry Nos. 2, 3 and 36 and No. 24. So in the result at the hearing nobody present opposed Mrs Canning's contention that all the disputed registration should be avoided.

Additionally I have the following letters to the County Council in effect agreeing that the Unit Land was not subject to the rights of common as registered by the Signatories:- (1) dated 16/12/73 signed by Evelyn M Pearse-Gould (Entry No. 18), (2) dated 20 October 1970 signed by Lane-Joynt (Entry No. 21), (3) dated 22 April 69 signed on behalf of Messrs R G and A B Mortimore (Entry No. 28), dated 22/8/70 signed by S J and J H Dance (Entry Nos. 37 and 38), (5) dated 9 March 1970 signed by T D Beard (Entry No. 44) and (6) dated October 1970 signed by N C and K E Cooper (Entry No. 45).

In support of her contention, oral evidence was given by Mrs Canning in the course of which she produced (1) South Devon Water Order 1950 (1950 SI No. 1031) which among other things authorise the construction of Avon Reservoir; (2) a conveyance dated 22 March 1962 by the Rt Hon R F R Baron Churston with the concurrence of his trustees to South Devon Water Board of the Unit Land (with some comparatively very small pieces adjoining); (3) a map showing the Avon Dam and the Avon Dam Reservoir as they now are. She said (in effect):- As appears from the map, a large part of the Unit Land is now part of the Reservoir, and therefore under water. She could not say exactly how in 1962 the rights of common if any over the Unit Land had been extinguished although she had a document which extinguished them over the adjoining area; it was the normal practice in land of this kind was bought for rights of common to be extinguished.

I accept the contention of Mrs Canning that in the absence of any evidence or argument in support of the Rights Section registration I could on the concessions and agreements above mentioned and from the present use now being made the Unit Land ~~is not~~ concludes none was properly made.

In the absence of any evidence that the Unit Land was clearly now relevant time waste land of a manor within the definition of common land in section 22 of the 1965 Act my decision is that the Objection wholly succeed.

For these reasons I refuse to confirm the registrations.

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 12th — day of July —

1985

A. A. Baden Fuller

Commons Commissioner