



Reference Nos 209/D/419
209/D/420

In the Matter of part of Hamel Down
and part of Bonehill Down (Manor of
Widecombe) in Widecombe-in-the-Moor,
Teignbridge District, Devon

DECISION

These disputes relate to the registrations at Entry Nos 8 to 12 inclusive, 26, 27, 33, 38 to 55 inclusive, 58, 59, 60 (replaced by Nos 81 and 82), 64, 67, 71 and 72 in the Rights Section and Nos 1 and 2 in the Ownership Section of Register Unit No. CL68 in the Register Common Land maintained by the Devon County Council and are occasioned as regards the Rights Section registrations by Objections Nos 238 and 239 made by Mrs M Barnett and noted in the Register on 19 and 26 October 1970, by Objections Nos 465 and 466 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 8 and 12 February 1971 and by Objection No. 878 and made by Mr J Zab and noted in the Register on 13 November 1970, and as regards the Ownership Section registrations by them being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 11 and 13 April 1984. At the hearing: (1) Mr Patrick Wrayford Coaker as successor with Mrs Edith Patricia Coaker of Mrs Margaret Rosalind Barnett who made the said Objections Nos 238 and 239 and who applied for the Ownership Section registration at Entry No. 1, and as applicant with Mrs E P Coaker for the Rights Section registration at Entry Nos 36 and 37, attended in person on his behalf and as representing Mrs E P Coaker; (2) the Attorney-General for the Duchy of Cornwall who made the said Objections Nos 465 and 466 and applied for the Ownership Section registration at Entry No. 2, was represented by Mr C Sturmer, the Land Agent for their Dartmoor Estate; (3) Lady Sylvia Rosalind Pleadwell Sayer who with Vice-Admiral Sir Guy Bouchier Sayer applied for the Rights Section registration at Entry No. 11 attended in person on her own behalf and as representing him; (4) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the Rights Section registration at Entry No. 12 was also represented by Lady S R P Sayer; (5) Mrs Eleanor Nancy Smallwood who applied for the Rights Section registration at Entry No. 58 was also represented by Lady S R P Sayer; and (6) Mrs Mary Miranda Russell as successor of Mr Kenneth Johnson who applied for the Rights Section registration at Entry No. 67 was represented by Mr T Garratt chartered surveyor of Rendells, Chartered Surveyors of Chagford.

The land ("the Unit Land") in this Register Unit comprises two tracts of which the westernmost ("the Hamel Down Part") is part of Hamel Down and of which the eastern part ("the Bonehill Part") is part of Bonehill Down. The Hamel Down Part is about $1\frac{1}{2}$ miles long from north to south and is for much of its north part about $\frac{1}{2}$ a mile (in places more) wide and for much of its south part about $\frac{1}{4}$ of a mile wide; its north boundary (a straight line through Hamel Down Beacon) adjoins the remainder of Hamel Down (Register Unit No. CL67); its west boundary adjoins the southwest slopes of Hamel Down (the north part) of Register Unit No. CL70; its south boundary adjoins Dunstone Down (part of Register Unit No. CL69); generally it is west to northwest of the village of Widecombe-in-the-Moor and of the enclosed lands surrounding the village. The Bonehill Part is about $1\frac{1}{2}$ miles long from north to south and has a variable width of between $\frac{1}{3}$ rd of a mile and about 1 mile; its



north boundary adjoins the remaining part of Bonehill Down (the remaining part of Register Unit No. CL67); its south boundary adjoins Blackslade Down (the remaining part of Register Unit No. CL69); generally it is east and northeast of the village of Widecombe-in-the-Moor and of the enclosed lands which surround the village. In the Ownership Section at Entry No. 1 Mrs M R Barnett was registered as owner of the whole of the Unit Land and at Entry No. 2. HRH Charles Prince of Wales, Duke of Cornwall is registered as owner of the whole of the Hamel Down Part. The grounds of Barnett Objections Nos. 238 and 239 are "no rights exist (as claimed)" applicable respectively to Nos 8, 26, 33, 56, 59 and 71 and to Nos 9 to 12 inclusive, 27, 38 to 55 inclusive, 58, 60, 64, 65, 67 and 72. The grounds of Duchy Objection No. 465 are (in effect) "the right does not exist on the Hamel Down Part, applicable to to Nos 12, 38 to 55 inclusive, 58, 64 and 65. The grounds of Duchy Objection No. 466 are (in effect) the right of piscary and shooting does not exist on the Hamel Down Part, applicable to Entry No. 67. The grounds of Zab Objection No. 878 are "the applicants are claiming common rights as part of Hatchell Farm; this is incorrect, the land it no longer forms part of Hatchell Farm, therefore the rights do not exist"; applicable to Entry 59.

At the beginning of the hearing, Mr Sturmer said that the Duchy ownership claim was withdrawn, and accordingly as far as the Duchy was concerned, I could refuse to confirm the Ownership Section registration at Entry No. 2 and confirm that (Mrs M R Barnett) at Entry No. 1. Mr Sturmer afterwards took no further part in the proceedings and I understood that therefore the Duchy Objection No. 465 was also withdrawn, he having a few minutes earlier about Register Unit No. CL68 made a similar withdrawal of a similar Rights Section. Objection explaining that it was because the Duchy had no ownership. However the Duchy withdrawal of Objection No. 465, in no way simplified the proceedings because Barnett Objection No. 239 was on the same grounds and was applicable to the same (among others) registrations.

Next (after a short adjournment during which I considered other Registered Units), Mr Garratt said (in effect):- As to Objection No. 466, Mrs Russell did not claim either piscary or shooting over (as I understood him) any part of the Unit Land. As to Objection No. 239, Scobitor Farm is within the Manor of Widecombe and is a farm because of its size and situation one would expect to have common rights in an area such as Widecombe with its own manor. Indeed Mr Coaker had → the Particulars of Sale under which Scobitor Farm in 1928 was sold; these stated among other things that the Farm had rights.

Mr Coaker then produced the Particulars (?1929) in which Scobitor was described as containing 51a 3r 38p and as "Gentlemans Moorland Residence" with the farm in the occupation of W Dawe; the description included the words "The property has extensive and valuable common rights in the Widecombe Manor". He agreed that I might inspect Scobitor in the absence of any representative of Mrs Russell. Garratt

Having other business I gave no further consideration to the Unit Land until 13 April, when Lady S R P Sayer in support of the Rights Section Registrations at Entry Nos 11, 12 and 58 gave oral evidence by reference to a statement (Sayer/480) which she had prepared, and which was to the following effect:- The registered venville rights of those she represented are exercisable over the central Forest of Dartmoor and the commons adjoining the Forest which form a ring around the Forest and have been known and referred to from time immemorial as the Commons of Devon. The Bonehill Part is not part of the Commons of Devon and she



claim no venville rights on that Part. Their status as venville right-holders and the fact that these ancient rights extend over the Forest and its neighbouring commons were confirmed by the Chief Commons Commissioner in his CL148 and CL190 decisions and further confirmed by the judgment of the High Court in 1980. Mr Coaker the present owner said (11 April) animals grazing on one part of Hameldon cannot possibly be prevented from grazing on the whole ridge; this is in accord with the said decisions and with registered venville rights being exercisable over the whole of that great common. Some entitled to rights had not registered because they did not know their entitlement to registration; as was explained in the evidence given to the Royal Commission on Common Land, the old historic position that the Commons of Devon are one large Common has come to be disregarded. The promotion of the Dartmoor Commons Bill will not be made any easier to achieve by inconsistencies in the confirmation of registered rights on different areas of the one great common. She being a parishioner of Widecombe made no difference to her claim to venville rights or to her opinion that every parish or manor should hold its own local manor court or commoners council under the general jurisdiction of a new Dartmoor Commoners' Council which the Bill is trying to set up.

Questioned by Mr Coaker:- She did not know whether the people concerned to support the registrations at Entry Nos 12 and 58 had ever used the Hamel Down Part; she was sure that they would not turn animals purposely ~~from~~ that area; "you simply cannot answer for ponies wandering or indeed a donkey either"; her donkey got out of her fields and walked over to Jordan. Those she represented had not purposely put animals onto the Hamel Down Part and have no intention of turning them out there any more than she would. There was no need for them to exercise their rights because (by non-exercise) there could be no abandonment.

As to the possibility, mentioned in the course of Mr Coaker's questions, that my decision about the registration at Entry No. 11 (rights attached to Old Middle Cator in the parish of Widecombe-in-the-Moor) might be different from my decision in respect of the registration at Entry Nos 12 and 58 of rights attached to lands in Holne, Lady Sayer said she could not accept a division between herself and Mrs Smallwood and Admiral Eberle.

Next after an adjournment during which I considered another Register Unit, Mr Coaker gave oral evidence in the course of which he said that he and Mrs Coaker purchased the Bagpark Estate in 1973 which included the Lordship of the Manor of Widecombe-in-the-Moor and produced: (1) a conveyance dated 20 March 1973 by which Mrs M R Barnett conveyed to Mr P W and Mrs E P Coaker first the house known as Bagpark together with 92.068 acres as described therein and shown on a plan annexed to a conveyance dated 8 February 1950, and secondly the Manor or Lordship of Widecombe-in-the-Moor extending over 707a.3r.2lp. and all the Manor rents within the Manor boundary (such being shown by a red line on the plan marked on the below mentioned 1927 conveyance); and (2) a conveyance dated 19 September 1927 by Cecil Mallaby Firth and Harriet Hylda Woodley to Alexander Nelson Radcliffe the said Manor with the lands aforesaid. The 1927 conveyance plan delineated with a red line and an area including (perhaps a little more or less the Hamel Down Part and the Bonehill Part and much of the enclosed lands surrounding the village on both sides of the East Webburn lying between between the said Parts.



Mr Coaker then concluded his oral evidence by making observations as hereinafter mentioned about many of the Rights Section registrations.

I ~~will~~ first consider the registrations at Entry Nos. 11, 12 and 58 supported by Lady Sayer. Her evidence and arguments in support of them were to the same effect as those by her at my CL69 hearing on 11 April about registrations identical except that the rights claimed were over the CL69 land instead of over the Unit Land. For the reasons set out under the heading Venville in my CL69 decision of even date, I decided that none of the said three CL69 registrations was properly made. Such reasons should be treated as repeated herein, and for the like reasons my decision is that none of the said three Unit Land registrations was properly made. Lady Sayer not wanting a division, I disregard the possibility of there being a right attached to Old Middle Cattor in Widecombe-in-the-Moor not attached to The Village Farm and Holne Court Farm in Holne.

Next I ~~will~~ consider the registration at Entry No. 67 of rights attached to Scobitor. At my CL124 hearing on 10 April, Mr Garratt and Mr Whitley (Mr Coaker being present) said that Mr Dawe was of Scobitor the predecessor in title of Mr K Johnson (the applicant for the registration); in the absence of any suggestion to the contrary, I infer that Mr Dawe or his predecessor in title became the owner of Scobitor under a contract made in accordance with the 1928 Particulars produced by Mr Coaker completed by a conveyance the parcels of which included common rights in Widecombe Manor. A conveyance is some evidence that the person who so conveyed was in possession of the rights so described and therefore that the purchaser under it became entitled to them, see *Blandy-Jenkins v Dunraven* 1899 → 2 Ch → 121. Mr Coaker neither produced nor made any reference to any records which might be held by him as Lord of the Manor of Widecombe ~~for~~^{land} grazing from Scobitor; grazing on the Bonehill Part is not convenient but is possible. Although the evidence in support of the registration is slight, in the absence of any evidence to the contrary my conclusion is that it is enough. Accordingly with the agreed deletion of "Piscary Shooting" my decision is that the registration at Entry No. 67 was properly made.

Objections Nos. 238 and 239 wholly put in question all the other disputed Rights Section registrations. In the absence of any evidence or argument in support of any of them, my decision is that none was properly made. Additionally Mr Coaker against them made the following observations which I accept:- Nos. 8, 9 and 10, the lands are outside the Manor of Widecombe and are the wrong side of the cattle grid (between them and the Unit Land). No. 26, Mr Mortimore of Lizwell at my CL69 hearing (11 April) said that over the Unit Land he claimed only a right to stray; such a right is not registrable, see my CL69 decision of even date. Nos 27 (North Bovey), 33 (Isaford Farm in the Manor of Natsworthy), 38 to 55 inclusive (Holne), 56 (Lydford), 60 (replaced by Nos 81 and 82, North Bovey), 64 (South Zeal and South Tawton), 65 (South Tawton) and 72 (Manaton) are not in the Manor of Widecombe. No. 59 made on the application of Mr Alfred Archibald Price; Hatchwell Farm although in the parish of Widecombe is not in the Manor of Widecombe (CL70 is between the Farm and the Hameltdown Park); rights over the Unit Land have never been exercised. No. 71, Blackaton Manor to



which the rights are claimed to be attached, although in the parish of Widecombe is not in the Manor of Widecombe, it adjoins Blackslade Down being part of Register Unit No. CL69. Additionally Mr Coaker criticised Nos. 56 and 72 as expressed as "to stray" and therefore not registrable. However 15 registrations so expressed being undisputed have become final!

I need not consider Objection No. 878 made by Mr J Zab because the registration at Entry No. 59 to which it relates is also within Objection No. 238 and is therefore within the preceding paragraph.

Of the registrations referred to me, there remain only the Ownership Section registrations at Entry Nos. 1 and 2. But for the Duchy registration at Entry No. 2, Mrs Barnett registration at Entry No. 1 would being undisputed have become final under Section 7 of the Commons Registration Act 1965. As I understood Mr Sturmer, the Duchy withdrawal of their registration at Entry No. 2 was made after investigation. The 1973 conveyance produced by Mr Coaker supports the Barnett registration because it is such that in the ordinary way before it was made the title would have been fully investigated. I have no reason to doubt such registration. In these circumstances my decision is that the registration at Entry No. 1 was properly made and that registration at Entry No. 2 having been withdrawn should be avoided.

Being concerned only with the ownership of the Unit Land in 1968 when the Ownership Section registrations were made, I give no decision about the ownership required by Mr Coaker in 1973. If he wishes the Register in this respect to be up to date, he (or his advisers) should consider Section 12 of the Commons Registration Act 1965.

So summarising my decisions as herein before set out:- I REFUSE to confirm the Rights Section registrations at Entry Nos. 8 to 12 inclusive, 26, 27, 33 (to 55 inclusive, 58, 59, 60, 64, 71 and 72 (including nos 81 and 82 which replace 60); AND I CONFIRM the registration at Entry No. 67 with the MODIFICATION in column 4 delete "Piscary Shooting".

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Mr Coaker suggested I should refuse to confirm the registrations at Entry Nos. 14 and 66 both of rights attached to Blackslade Farm expressed as "to stray" from CL69, one made by Mr Timothy Reep as tenant and the other by Mrs A Brown as owner, because a registration so expressed is irregular and Blackslade Farm is not in the Manor of Widecombe. He also suggested that because Mrs Barnett has withdrawn her Objection to Nos. 36 and 37 made on the application of him and his wife Mrs E P Coaker, I should confirm them. None of these registrations are included in any reference made to a Commons Commissioner (form 36), and accordingly I have no jurisdiction to give any decision about them. The exclusion of Nos. 36 and 37 from any such reference may perhaps be explained by the words "Objection withdrawn" which appear against these Nos. in my copy of the Schedule annexed to Objection No. 238. The exclusion of Nos. 14 and 66 from any such reference may be because they are in conflict (as regarded in the Rights Section) and the need for making reference has been overlooked. None of these registrations is recorded in the copy of the Register which I have as having become either void or final, but my copy has no sheet Nos. 39 to 42 inclusive.



Because there may be in these Sheets registrations replacing those with which I have dealt, I record that my refusal to confirm any registration by reference to it by No. should be treated as including a refusal to confirm any registrations which have replaced it. But any person concerned with any such registration recorded in a sheet of which I have no copy has liberty to apply to correct this paragraph of this decision; such applications should be made the same way and within the same time limit as the liberty to apply in my CL69 decision date by me granted.

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.

Date this 22nd — day of April — 1985

a. a. Baden Fuller

Commons Commissioner

Corrected on page 5 by substituting "33, 38 to 55" for "33 to 55"

a a Baden Fuller

7 January 1987