



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/428
209/D/429

In the Matter of part of Haytor
Down (Yarnet/Down) in Bovey Tracey,
Teignbridge District, Devon.

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and at Entry Nos. 1 to 37 inclusive (8, 23 and 26 having been replaced by Nos, 50 and 51*, Nos 47 and 48 and Nos. 44 and 45 respectively) in the Rights Section of Register Unit No. CL184 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections Nos. 689, 690 and 691 made by Kurt Eric Allerfeldt and Evelyn Joan Allerfeldt and noted in the Register on 17, 7 and 1 December 1970, and Nos. 575 and 972 made by H H Whitley as "Chairman of the Ilsington Commoners' Association" and noted in the Register on 30 November 1970 and 18 February 1972.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 10 and 12 April 1984. At the hearing: (1) Messrs K E and E J Allerfeldt who made Objections as aforesaid and who are in the Ownership Section at Entry No. 1 registered as the owners of the whole of the land ("the Unit Land") in this Register Unit, were represented by Mr A H D Mellor, solicitor of Tozers, Solicitors of Newton Abbot; (2) Mr Colin Noel Evans who applied for the Rights Section registrations at Entry Nos. 2 and 3, attended in person; (3) Mr Maurice Henry Retallick of Bagtor Barton, Ilsington as successor of Mr Harold George Retallick (he died in 1981) who as tenant (with Mr H H Whitley as owner) applied for the Rights Section registration at Entry No. 5 and who as owner (alone) applied for the Rights Section registrations at Entry Nos. 10 and 11, attended in person; (4) Mr Richard Norman Wills who with Mrs Rosemary Isabel Elizabeth Anne Wills applied for the Rights Section registrations at Entry Nos. 7 and 8, attended in person on his own behalf (she has ceased to be interested) and Mr Robert Charles Wills; (5) Mrs Yvonne Ware of Middlecott, Ilsington as executrix and sole beneficiary under the will of her husband Mr Alexander Herbert John Ware (he died in 1969) who applied for the Rights Section registrations at Entry No. 12, attended in person; (6) Mrs Eleanor Dorothea Riley and Miss Christabel Maxwell Cowland who with Miss Anita Frances Cowland applied for the Rights Section registrations at Entry No. 22, were represented by Mr J S Riley (their son and nephew respectively) of Ullacombe House and G Pilkington & Son as tenant of Ullacombe Farm (the land specified in the said registration at Entry No. 22) were represented by Mrs Valerie Elizabeth Pilkington; (7) Mr Wilfred Garner Bosence and Mr David William Coysh who applied for the registrations at Entry Nos. 29 and 33 respectively were represented by the said Mr R N Wills; (8) Dr Patrick Gerald Kidner and Mrs Griselda Flora Kidner who applied for the Rights Section registrations at Entry Nos. 34 and 37 were represented by Mr R Keast solicitor of

*Note: Such replacement of No. 8 was made on 24 May 1984, after the hearing.



Stephens & Scown, Solicitors of Exeter; and (9) Mr Frank Perryman who applied for the Rights Section registrations at Entry No. 35 was represented by Mr M G Cleave, Clerk with H Priscott & Co, Solicitors of Newton Abbot.

The Unit Land is a tract of about 147 acres being about 1½ miles long from its northwest end (there it adjoins Black Hill in the Parish of Manaton, being Register Unit No. 103) to its southeast end (near Ullacombe) and is nearly everywhere about 300 yards (or a little more) wide. The Ownership Section registration being undisputed has become final. The grounds of Objection No. 691 (to the Land Section registration) are "that the land was not common land at the date of registration". The grounds of Whitley Objections Nos. 575 and 972 to the Rights Section registrations at Entry No. 6 and Nos. 12, 15, 16, 20, 21, 23, 30, 31, 33 and 35 are "the rights do not exist at all". The grounds of Allerfeldt Objections Nos. 689 and 690 to all the Rights Section registrations are that the rights do not exist, alternatively that the rights relating to grazing and straying should comprise no more than a total of 50 bullocks or equivalent.

On the first day of the hearing (10 April):- Mr Keast said that the registrations at Entry Nos. 34 and 37 (Dr P G and Mrs G F Kidner) were withdrawn. Mr Cleave said that the registration at Entry No. 35 (Mr F Perryman) was withdrawn. Mrs Y Ware about the registration at Entry No. 12 handed in a letter dated 10 April 1984 signed by herself withdrawing her claim for rights provided that Yarner Down is deemed as a separate common from Haytor Down. Mrs V E Pilkington about the registration at Entry No. 2 handed in a paper claiming that → Pilkington and Son being the tenants of Ullacombe Farm since 1963 had, as had previous tenants, exercised rights.

Having other business, I then adjourned the proceedings until the day after the next.

On the second day of the hearing (12 April), Mr Mellor about the registration at Entry No. 22 handed in a paper (KTA/1) signed by Mr Gerald Pilkington as tenant of the freeholder of Ullacombe Farm namely Miss Cowland and Mrs Riley agreeing on their behalf that his rights should be limited to 40 cattle or 200 sheep; after some discussion Mr Mellor agreed to add "or 20 ponies". About the other registrations Mr Mellor contended that those expressed as a right "to stray", being at Entry Nos. 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20, 21 (replaced by Nos. 47 and 48), 24, 25, 26 (replaced by Nos. 44 and 45), 29, 30, 31 and 35 should not be confirmed because a right "to stray" was not registrable, and that those at Entry Nos. 1, 2, 3, 9, 10, 11, 12, 23, 27, 28, 32, 33, 34 and 37 should not be confirmed because objections had been made to them and they were not supported by any evidence (a reason equally applicable to those expressed as "to stray"). Further many of those who were concerned with these registrations had either before or at the hearing withdrawn them.

In the course of the discussion, Mr M H Rettallick said that the registrations at Entry Nos. 9 (H G Rettallick and H H Whitley), 10 and 11 (H G Rettallick) were withdrawn and Mr R N Wills said that the registrations at Entry Nos. 29 (W G Bosence) and 33 (D W Coysh) were withdrawn. I have a letter dated 17 February 1984 from Mr C Oscar Holland (applicant for the registration at Entry No. 28) sent to the Clerk of the Commons Commissioners withdrawing any claim he may have.



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I consider that I can properly give effect to the above recorded agreement made about the Rights attached to Ullacombe Farm, and I accept Mr Mellor's contentions about the other Rights Section registrations. Accordingly, I CONFIRM the Rights Section registration at Entry No. 22 with the MODIFICATION substitute "40 cattle or 200 sheep or 20 ponies" for "40 cows and followers 200 sheep and followers or 20 ponies in lieu of equivalent number of cows"; and I REFUSE to confirm the Rights Section registration at Entry Nos. 1 to 21 inclusive, and 23 to 37 inclusive (including any registrations which have replaced them).

There was no evidence or discussion about the Land Section registration. The definition of common land in the Commons Registration Act 1965 section 22 is: "(a) land subject to rights of common ...; (b) waste land of a manor...". My confirmation of the Rights Section registration at Entry No. 22 is enough to bring the land within paragraph (a) of the definition, and consequentially I CONFIRM the Land Section registration at Entry No. 1 without any modification. I express no opinion as to whether but for the agreement about Ullacombe Farm, the Unit Land would or would not have been within paragraph (b) of the definition.

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 13th day of March 1985.

a. a. Baden Fuller

Commons Commissioner