



Reference No. 209/D/423

In the Matter of Rowden Down,
Bittleford Down and part of
Dunstone Down and Hamel Down
(Manor of Jordan), in
Widecombe-in-the-Moor,
Teignbridge District, Devon

DECISION

These disputes relate to the registrations at Entry Nos 13, 40 to 57 inclusive, 60, 61, 67 and 68 in the Rights Section of Register Unit No. CL 70 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No 473 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 11 February 1971, by Objections Nos. 790 and 1121 made by Devon County Council and noted in the Register on 12 January 1971 and 11 September 1972 and by Objection No. 880 made by Mr J Zab and noted in the Register on 13 November 1970.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 11 April 1984. At the hearing: (1) the Attorney-General for the Duchy of Cornwall was represented by Mr C Sturmer, Land Agent for their Dartmoor Estate; (2) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bouchier Sayer applied for the registration at Entry No. 12 attended in person on her own behalf and as representing him; (3) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the registration at Entry No. 13 was also represented by Lady S R P Sayer; (4) Mr Keith Stephen Fox who applied for the registration at Entry No. 22 was represented by Mr R J Michelmore, chartered surveyor of Michelmore Hughes, Chartered Surveyors of Newton Abbot; (5) Mr Frederick Archibald Mortimore who as tenant with Mr George Henry Ridd as owner applied for the registration at Entry No. 26 attended in person; (6) Mr Patrick Wrayford Coaker who with Mrs Edith Patricia Coaker applied for the registrations at Entry Nos. 38 and 39 attended in person on his own behalf and as representing her; (7) Mrs Eleanor Nancy Smallwood who applied for the registration at Entry No. 60 was also represented by Lady S R P Sayer; and (8) Mrs Anstice Brown who applied for the registration at Entry No. 69 was also represented by Mr R J Michelmore.

The land ("the Unit Land") in this Register Unit, so far as it is east of the road ("the North-South Road") which comes up from Jordan and then turns northwards to Rowden Cross and then continues northwards by Hatchwell Farm, comprises Bittleford Down, the east part of Dunstone Down and the south part of Hamel Down and is a tract about $2\frac{1}{4}$ miles long from Hamel Down Beacon (1,696 feet) on the north to the road between Cockingford and Shallaford on the south, and is mostly between about 300 and 600 yards wide; it is bounded on the east by the ridge between it and Dunstone Down (the western of the two tracts which make up Register Unit No. 68. The Unit Land so far as it is west of the North-South Road comprises Rowden Down (1,168 feet) about $\frac{1}{2}$ of a mile long from north to south and a little less wide.

In addition to the said 23 disputed registrations, there were originally 51 (not counting Nos 78 and 79 which replaced No. 62 and Nos. 96, 97, 98 and 99



which replace No. 55) registrations of which one (No. 14) has been cancelled and 47 being undisputed have become final as recorded at Entry Nos. 75, 76 and 80. One of the remaining three at Entry No. 12 (Sir G and Lady Sayer) is not so recorded and is not included in any reference (Form 36) made to a Commons Commissioner by the County Council as registration authority; on my copy of the County Council Objection No. 790 apparently originally applicable to Nos. 12 and 13, the figure "12" is deleted and over written "withdrawn". The two remaining at Nos. 15 (Mr T Reep) and 69 (Mrs A Brown), being of rights "to stray ... from CL69" are in the Rights Section recorded as being in conflict but they are not within any Objection and are not included in any reference (Form 36).

The grounds of Duchy Objection No. 473 applicable to the registrations at Entry Nos. 67 and 68 are that the right does not exist on the east of the North-south road. The grounds of the County Council Objections Nos. 790 and 1121 applicable to the registrations at Entry No. 13 and Nos. 40 to 57 inclusive, 60, 67 and 68 are that the right does not exist at all. The grounds of Zab Objection No. 880 applicable to the registration at Entry No. 61 are: "The applicants are claiming common rights as part of Hatchwell Farm, this is incorrect the land no longer forms part of Hatchwell Farm, therefore the right does not exist".

In the Ownership Section HRH Charles Prince of Wales, Duke of Cornwall is registered as owner of the east of the North-south road part of the Unit Land.

The registrations at Entry Nos. 16 to 39 inclusive, 58, 59, 62 to 66 inclusive and 70 to 74 inclusive being undisputed, have become final; so I am not concerned with the registrations at Entry Nos. 22, 26, 38 and 39 made on the application of Mr K S Fox, Mr F A Mortimore and Mr P R and Mrs E P Coaker.

At the beginning of the hearing Mr Sturmer said he would support the Duchy Objection No. 473; nobody at the hearing pursued the other Objections.

In support of the Duchy Objection Mr Sturmer gave oral evidence saying (in effect):- The registrations at Entry Nos 67 and 68 are of rights claimed to be attached to lands in South Tawton. There was nothing in the Duchy records showing that any Venville payments in respect of these lands had ever been made and accordingly they did not regard these lands as having any rights over the part of the Unit Land owned by the Duchy (being all except Rowden Down). He had never heard of any rights such as were claimed ever being exercised on the Unit Land. He thought that there was no known owner of Rowden Down.

Lady Sayer gave oral evidence by reference to a statement (Sayer/401) in which she said (in effect):- The registered rights at Entry Nos. 12, 13 and 60 are known as venville rights and are exercisable on the Forest of Dartmoor and the commons adjoining the Forest known from time immemorial as the Commons of Devon which form a ring round the Forest. Their status as venville tenants was confirmed by the Chief Commons Commissioner in his CL 148 (Coombe Down etc) and CL 190 (Shaugh Prior etc) decisions and a High Court judgement dated 11 January 1980. The rights attached to their own holding (Old Middle Cator) both venville and manorial had been confirmed by the Chief Commons Commissioner on their home common of Spitchwick CL33. The County Solicitor in a letter dated 3 June 1980 had withdrawn objection to their registrations.



I accept the evidence of Mr Sturmer against the registrations at Entry Nos. 67 and 68. On this evidence and in the absence of any contrary evidence or arguments in support of the registrations, my decision is that they were not properly made.

All the other disputed registrations are in question (except No. 61 as to which see below) by reason only of the County Council Objections Nos. 790 and 1121, the grounds of which put the registrations wholly in question, so the burden of proof is on those who seek to support them.

In favour of the registrations:- I do not know why the Objections were made; if the Objections had not been made, the registrations would have become final under section 7 of the Commons Registration Act 1965 without any reference to a Commons Commissioner. The Duchy as owners of the east of the North-south road part of the unit land by making no objection provide some evidence of the validity of the registration, see my Forest of Dartmoor (CL164) decision of 30 June 1983; and such validity was perhaps supported by Mr Sturmer's statement that Duchy Objection No. 473 was pursued because Nos. 67 and 68 were not in venville, implying that the other registrations were in venville and were therefore valid.

The Sayer registration at Entry No. 12 is special in that ^{it} being of a right attached to Old Middle Cator ~~which being~~ so near to the Unit Land, might be conceded. Identical rights attached to Old Middle Cator over Spitchwick (CL33) being undisputed became final without any decision of a Commons Commissioner. Further I am not (as above explained) concerned to give a decision about this Entry No. 12.

Unavoidably so it seems to me I must, having so little or no information about the disputed registrations at somewhat arbitrarily. I reject the argument that because the County Council have written saying that they would not pursue their objections and were not represented at the hearing, by itself is evidence that the registrations were properly made. The evidence and argument of Lady Sayer in support of Entry Nos. 13 and 60 are the same as those which I have rejected in my CL69 decision of even date for the reasons therein set out under the heading Venville; such reasons should be treated as repeated. To these registrations there are no corresponding registrations in the Spitchwick (CL33) register, so the Chief Commons Commissioner CL33 decision dated 26 March 1977 does not help them. Having regard to the situation of farms in Holne in relation to the Unit Land, it is unlikely that grazing from them on the Unit Land could be practicable. Balancing the conflicting considerations as best I can, my decision is that these registrations were not properly made.

As to the registrations at Entry Nos. 40 to 57 inclusive:- Against the registrations at Entry Nos. 45, 53 and 57 I have statements (yellow forms) dated 17/10/72 and 24/9/72 and signed by Lt-Col P R Lane-Joynt and Mr W H Norrish agreeing to their cancellation. Nobody at the hearing offered any evidence or said anything in support of these 18 registrations. The rights claimed are attached to land in Holne for (No. 57) Buckfastleigh; the situation of such lands in relation to the Unit Land is against their being attached to them any such rights. My decision is that these registrations too were not properly made.



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As to the registration at Entry No. 61, of a right to graze 5 ponies attached to land at Hatchwell Farm, to which Objection No. 880 made by Mr Zab is applicable, on the special grounds above mentioned:- The application was for the same right not only over the Unit Land but also the CL68 and CL69 land; for the reasons set out in my CL68 and CL69 decisions of even date I have concluded that the registrations as regards such Register Units were not properly made. It is I think for the applicant when a registration has been disputed to offer some evidence in support of it. My decision is therefore that it was not properly made.

Summarising my decisions as above setout, I REFUSE to confirm all the said disputed registrations being Nos. 13, 40 to 57 inclusive, 60, 61, 67 and 68. Such refusal extends to any registrations which have replaced any of them.

I give no decision about the registrations at Entry Nos. 12, 15 and 69, they not having been referred to a Commons Commissioner. Hopefully there may be enough in this decision to enable the County Council after referring to the applicants either to finalise or to avoid these registrations without the need of a further hearing before a Commons Commissioner.

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 22nd ————— day of April ————— 1985

A. A. Baden Fuller

Commons Commissioner