



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/332  
209/D/339

In the Matter of Throwleigh Common,  
Throwleigh, West Devon District,  
Devon

SECOND DECISION

## Introduction

This second decision is supplemental to my decision dated 5 October 1984 and made about Register Unit No. CL19 in the Register of Common Land maintained by Devon County Council after a hearing at Exeter on 9, 10 and 11 November 1983 and 7 February 1984, by which (according to the decision table being the Third Schedule thereto), I confirmed with various modifications 15 Rights Section registrations including that at Entry No. 78, and refused to confirm 57 Rights Section registrations including those at Entry Nos. 7 and 78, and in which I made no mention of the Rights Section registration at Entry No. 80.

About the said three registrations, this second decision deals particularly with 7 and 80 and incidentally 78. No. 7 was made on the application of Ducarol Anne Katherine Steuart, as owner, of rights attached to Moor Cottage and field OS 9521 to graze 20 cattle, 60 sheep and 10 ponies over the whole of the land in the Register Unit. No. 80 was made on the application of David Charles George Alford, as part owner and part tenant of a right attached to Little Ensworthly and part Thule Farm to stray 30 cattle, 80 sheep, 12 ponies or equivalent at NFU scale on the whole of the land in this Register Unit from CL134 and CL164. No. 78 was made on the application of Lieutenant-Colonel John Rose Terry as owner, of rights attached to land at Great Ensworthly, Gidleigh.

For the purpose of further inquiring into these three registrations, I held a hearing at Plymouth on 3 November 1987. At this hearing: (1) Squadron Leader Norman Burton MBE and his wife Mrs Molly Evelyn Burton both of Moor Cottage, South Zeal, Okehampton as successors of Miss D A K Steuart who applied for the registration at Entry No. 7 were represented by Mr F J Woodward, solicitor of Burd Pearse Prickman & Brown, Solicitors of Okehampton; (2) and (3) Throwleigh Parish Council and Throwleigh Commoners Association were also represented by Mr F J Woodward (as they were at my 1983-84 hearing); and (4) the Attorney General for the Duchy of Cornwall was represented by Mr C Sturmer, land agent for their Dartmoor Estate (as he did at such hearing).

## Entry No. 7

In an application dated 23 January 1987 Squadron Leader and Mrs Burton (in effect) requested a Commons Commissioner to set aside his said October 1984 decision in respect only of the said registration at Entry No. 7, because for the reasons stated in the explanatory notes annexed the Commissioner had no jurisdiction to consider the reference to him by the County Council of a dispute relating to it and because



notwithstanding their normal remedy would be by way of appeal or proceedings by way of certiorari or by such other procedure as might be appropriate in the High Court, a Commons Commissioner had an inherent jurisdiction under the rules of natural justice to re-open the hearing without putting Messrs Burton or any other persons to the expense of such proceedings. In the annexed notes, mention was made of sections 2(1)(a), 5(6), 6(1) and 7(1) and (2) of the Commons Registration Act 1965, of regulations 4(7), 5 and 10 of the Commons Registration (General) Regulations 1966, of regulation 4(2) of the Commons Registration (Objections and Maps) Regulations 1968, and of regulation 3 of the Commons Regulations (Finality of Undisputed Registrations) Regulations 1970.

At the hearing Mr Woodward after producing or referring to the documents specified in the First Part of the Schedule hereto said (in effect):- Objection No. 901 made by Throwleigh Parish Council so far as it related to the registration at Entry No. 7 was void because it was made out of time in that the registration was made on 12 January 1968 and the objection is dated 28 April 1971, which is too late where a registration is made before 1 July 1968, see regulation 4 of the said 1968 regulations. The County Council therefore rightly in their letter of notification dated 13 July 1971 (NB/7 and 8) refused to note the Objection in the Register as regards Entry No. 7 and rightly at Entry No. 123 recorded that the registration "being undisputed became final on 1 October 1970", see section 7 of the 1965 Act. It follows that the County Council's notice of reference dated 15 March 1976 (NB/10) insofar as it included No. 7 was mistaken and/or irregular. Consequentially I had no jurisdiction in my decision to refuse to confirm the registration or in my decision to say anything about the registration. Mr Woodward referred me to Halsbury Laws of England 4th ed. vol. 1 (1973), tit. Administrative Law, paragraph 64: "The Rules of Natural Justice".

Mr Woodward also explained (see paragraph 16 of the said explanatory notes) that Throwleigh Parish Council had no intention of objecting to rights of common by persons who owned property in the Parish; they confused the No. 7 registration with a registration of the same number on another Register Unit.

As a general rule a Commons Commissioner has no power to set aside a decision made by him, see *R v Cripps, Ex p Muldoon* 1984 1QB 686. To this rule there are some exceptions, for example clerical errors may be corrected under regulation 33 of the Commons Commissioners Regulations 1971; further the rule itself is applicable to a decision which was final and regular and has been perfected, "different considerations arise where the order may be said to be irregular for any of a variety of reasons", per Donaldson MR *ib* at page 695.

The papers available to me at my said 1983-84 hearing included a copy of Objection No. 901, a copy of the Register including Entry No. 123 and the reference dated 15 May 1976. I have no note or recollection of ever having given any consideration to the apparent inconsistencies between these three documents; having looked again at them it now seems clear that at the hearing I had no jurisdiction to consider Entry No. 7.



From the July 1971 letter (NB/8) it appears that the County Council never intended that I should give it any consideration; I have a copy of their letter dated 25 June 1986 to Mr Woodward saying: "On the face of it, it certainly appears to me that the Commissioner had no jurisdiction in directing the County Council to remove Entry No. 7 from the Register". Throwleigh Parish Council and Throwleigh Commoners Association who were among those largely participating in my 1983-84 hearing, agree the application. So upon the above considerations I conclude that my 1984 decision as regards Entry No. 7 was irregular and should be set aside.

Being now of the opinion that it was wholly inappropriate for me to mention the registration at Entry No. 7 in any decision of mine, I will in due course about it take the action specified in the first paragraph under the heading: Final hereinafter contained.

#### Entry No. 80

This Entry is not mentioned in any of the Objections by me considered at my said 1983/84 hearing. In the Register against this Entry it is noted:-

"The registration at Entry No. 79 (CL134) conflicts with the registration at Entry Nos. 80 (CL19) and 829 (CL164) and each of these registrations is accordingly to be treated as an objection to the other to the extent of a conflict".

By a reference dated 17 July 1987 Devon County Council referred to a Commons Commissioner the dispute as to the registration at CL19 Entry No. 80 occasioned by the conflicting registration CL134 Entry No. 79.

The CL134 (Gidleigh Common) Rights Section Entry No. 79 registration was made on the application of Mrs Beatrice Margaret Walker as owner, of a right attached to land at Thule in Gidleigh to graze 50 sheep, 20 cattle and 12 geese over the whole of the CL134 land. By a decision dated 30 June 1983, the CL164 (Forest of Dartmoor) Rights Section registration at Entry No. 829 (applicant Mr D G O Alford) was confirmed with the modification therein specified. By a decision dated 5 October 1984 the CL134 (Gidleigh Common) registration at Entry No. 73 (applicant Mr D G O Alford) and No. 79 (applicant Mrs B M Walker) were both confirmed with the modifications therein specified.

At my November 1987 hearing nobody said anything either for or against this registration.

By regulation 7 of the Commons Commissioners Regulations 1971, where there is a conflict between two registrations each is to be treated as an objection to the other. From the 1983 and 1984 CL164 and CL134 decisions, I am unable to deduce how (if at all) the No. 80 registration could be modified so as to accord with them.



The registration is expressed to be as a right to "stray". The word stray in one of its ordinary meanings describes an animal in a place which neither it nor its owner wants it to be; although in certain circumstances such an owner may have an excuse against being liable for trespass, the animal cannot properly be regarded as exercising of right of common. So the registration is confusing and in the absence of any explanation should be avoided.

Notwithstanding that there are numerous registrations in this Register Unit of right expressed as to "stray" which in the absence of any objection to them have become final, I decline to treat that at Entry No. 80 to which there is a deemed objection as necessarily proper in the absence of evidence.

There being a deemed objection and the registration being questionable, in the absence of any evidence, my decision is that it was not properly made. I therefore REFUSE to confirm it, and will in due course about it take the action specified in the first paragraph under the heading: Final.

No. 78

In the letter dated 19 August 1987 giving to those concerned with this Register Unit notice of my said November 1987 hearing it was said:-

While this letter was being prepared the Commissioner noticed that in the Third Schedule to his CL19 October 1984 decision, in paragraph 1 he confirmed this registration with the modification therein specified, and in paragraph 3 he refused to confirm numerous registrations with the Entry Nos therein specified including "78". Elsewhere in his decision he dealt at some length with this registration and for the reasons by him specified in some detail he said he would confirm this registration with the modification specified in the said paragraph 1. Both from the substance of the decision and his recollection, the Commissioner is now of the opinion that inclusion of "78" in the said paragraph 3, was a clerical error on his part which he ought to correct.

Consequently on any such correction the Commissioner is also of the opinion that the notice dated 8 August 1985 by him given to Devon County Council pursuant to section 6(2) of the 1965 Act should be corrected by deleting "79" where it occurs between "... 77" and "81 ..." (being the numbers of the registrations therein stated to have become void.

These corrections for the benefit of Lt-Col J R Terry will be made by the Commons Commissioner in due course after the hearing now fixed for November next unless at it he is given some good reason to the contrary.

Neither before nor at my said November 1987 hearing did anyone provide me with any reason for not making the said corrections. Accordingly I shall in due course about it take the action specified in the first paragraph under the heading: Final.



## Final

The action which will be taken consequential upon the decisions hereinbefore contained will be as follows:-

(A) I shall in due course amend and correct the said October 1964 decision by (i) deleting "7" in the first line of the first paragraph of page 1; (ii) by deleting "7" and "78" in paragraph 3 of the Third Schedule, so that IN THE RESULT there will in my decision be no mention of the registration at Entry No. 7 and the registration at Entry No. 78 will have been and will remain confirmed with the modification as specified in paragraph 1 of the said Third Schedule.

(B) Pursuant to section 6(2) of the 1965 Act notice will be given to Devon County Council as registration authority stating that the Rights Section registration at Entry No. 80 has become void.

(C) The said notice will contain a memorandum to the effect that on the date thereof amendments and corrections mentioned in paragraph (A) above have been made.

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.

## SCHEDULE

(Documents produced or referred to)

## Part I: at hearing

NB/1	31 December 1973	Conveyance by Mrs Diana Barrie to Mr N and Mrs M E Burton of Moor Cottage and a field containing in the whole 1.466 acres and being OS No. 83 as delineated and edged red on plan annexed.
NB/2	22 August 1973	Assent by John Sommerville Scrivener and David Reginald Warren Jervois as personal representatives of Miss D A K Stuart (she died 14 May 1972) to the vesting in Diana Barrie of the said premises.
NB/3	--	Examined abstract of part of will dated 4 January 1972 of Miss D A K Stuart and of probate granted 19 July 1972.
NB/4	7 June 1947	Conveyance by Miss Marion Annie Endacott to Miss D A K Stuart of the said premises.
NB/5	23 January 1987	The said application and explanatory notes annexed.
NB/6	28 April 1971	Copy Objection No. 901 by Throwleigh Parish Council (received 2 May 1971) including No. 7.
NB/7	--	--



- NB/8 12 July 1971 Copy letter (yellow form) from County Council to Parish Council setting out the note made of the Objection No. 901 with a manuscript addition:- "It is now too late to object to Entry No. 7 which has already become final".
- NB/9 13 July 1971 Notification of Entry in Register of Objection No. 901 listing registration Entry Nos (not including 7).
- NB/10 15 March 1976 Notice of Reference (Dispute form 36) by Devon County Council of dispute as to the registration (among others) at Entry No. 7 occasioned by Objection No. 901.

## Part II: after hearing

- 4 November 1987 Letter from Burd Pearse Prickman & Brown enclosing receipts signed by or on behalf of the persons on whom copies of the said application and explanatory notes have been served on 2 October 1987: (1) C Sturmer (Duchy of Cornwall), (2) W Webber, (3) F J Kingsland, (4) R N Hurdle, (5) P N Webb, (6) C D Alford (7) D G G Alford, (8) Throwleigh Parish Council, (9) Devon County Council, (10) Lt-Col J R Terry and (11) Mr T W Endacott as Chairman of Throwleigh Commoners Association.

Dated this Sic \_\_\_\_\_ day of January \_\_\_\_\_ 1987.

A. A. Bowen Fuller

Commons Commissioner