



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/396
209/D/397

In the Matter of Western Common
(otherwise Bell Tor waste)
adjacent to Holwell Down, Manaton,
Teignbridge District, Devon

DECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 2, 3 and 4 in the Rights Section of Register Unit No. CL 108 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 57 made by Mr William Wallace Whitley and noted in the Register on 15 May 1970.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 16 March 1984. At the hearing (1) Mr William Hugh Whitley as successor of Mr W W Whitley who not only made the Objection but also is in the Ownership Section at Entry No. 1 registered (finally, being undisputed) as owner of all the land ("the Unit Land") in this Register Unit, was represented by Mr C Thomas, solicitor with Harold Michelmores & Co, Solicitors of Newton Abbot; and (2) Manaton Parish Council were represented by Miss M E Bindloss their chairman.

The Unit Land is a tract approximately triangular of about 19 acres; its southeast side (about 700 yards) is on the west side of and adjoins the road (public fit for motor traffic) which runs from Hemsworth Gate (road junction to Haytor Vale) on the south to Manaton on the north; its west side (about 550 yards) adjoins Bonehill Down (Register Unit No. CL 68). In the Rights Section there are two registrations (Nos 1 and 4) of rights of turbarry, to graze etc., and two registrations (Nos 2 and 3) of rights "to stray". The grounds of objection are: "This land is part of the above farm (Holwell) and has no common rights on it, as shown on the enclosed map".

I have three forms (yellow) directed to the Clerk of the County Council signed by or on behalf of the applicants for the Rights Section registrations at Entry Nos 1, 2 and 3, and dated --, 19/6/70 and June 6 1970, agreeing to the Land Section being amended "by removing the land the subject of this objection (No. 57) ...".

Mr W H Whitley in the course of his oral evidence produced a conveyance dated 14 April 1915 by which Sir Harry Trelawney Eve conveyed to Herbert Whitley farm house buildings and lands known as Holwell (Bolwell) containing about 370.402 acres; the annexed plan shows the land thereby conveyed as an approximately triangular area extending up to and including the Unit Land thereon numbered 516 and 518, these numbers in the Schedule being described as "Holwell Common (unenclosed); common; 6.041" and "Part of do; do; 13.192".

Mr Whitley who is 48 years of age said (in effect):- Mr W W Whitley who made the objection was his father; he died last year. The Herbert Whitley named in the said 1915 conveyance was his (the witness') great uncle; he died childless and under his will the land thereby conveyed, in 1956 passed to his father; the land shown on the map enclosed with the Objection comprises all the 1915 conveyance land and some land to the west (around Emsworthy) purchased by his father in about 1958. His father



left these lands to him (the witness). He had always known the Unit Land as "Bell Tor waste"; the first time he knew that it might be called "Western Common" was when his father told him that it was so called in the Register; he had no idea why it was said in the Register to be so called. He could not explain why the Unit Land in the 1915 conveyance was described as "common"; it is along (and within) the boundary of Manaton Parish. His father always told him that there were no common rights over it. There is now a cattle grid across the road a short distance north of the Unit Land; a little further to the north there used to be a gate post indicating that there had been a gate across the road; so the only way to the Unit Land from any farm in Manaton would have been through this gate. The Unit Land is open to the road, the Farm being separated from it by the fence which is on the other (east) side of the road. Along the boundary between the Unit Land and the adjoining Bonehill Down (CL 68) in the parish of Widecombe-in-the-Moor) is a low mound (also the parish boundary of Manaton). Mr Ford of Bonehill Farm with the permission of his father and his great uncle (through his father) cut bracken; he never registered a right. Of those who had registered rights over Bonehill Down none had registered a right (other than to stray from it at Entry No. 2) over the Unit Land.

Miss Bindloss produced a "statement to Commons Commissioner by Manaton Parish Council" about Units CL 103 to 110, explaining that their interest lies in the changes which could occur were any of these commons to be deregistered and become liable to fencing and other agricultural improvements and pointing out that unfortunately some of the relevant parish records have been missing for at least 3 years. She said that the Parish Council before the registrations notified the County Council of their commons and included the Unit Land because it is called "common", looks like a common and is in the parish. She agreed with the evidence given by Mr Whitley.

I first consider whether the Unit Land is within paragraph (a) of the definition of "common land" in section 22 of the Commons Registration Act 1965: "land subject to rights of common ...". For there being such rights over the Unit Land, I have that there is no fence or obstruction between it and the adjoining Bonehill Down (CL 68), that it is open to the road, and its general appearance is not unlike the adjoining parts of CL 68. But against there being such rights I have that none of the registrations over CL 68 extend to the Unit Land, except Entry No. 2 is "to stray ... on to (the Unit Land) ... from CL 68 ..."; and that as above stated the applicants for the registrations at Entry Nos 1, 2 and 3 have agreed to the cancellation of the Land Section registration impliedly negatives any relevant rights of common. As to the registration at Entry No. 4 of a right attached to Easdon Farm, I have no evidence in support of it; because the farm is over 2 miles away from the Unit Land, a right of common for it is unlikely. Notwithstanding the description of the Unit Land in the 1915 conveyance as "common" it is expressed to be conveyed as part of the Farm. Upon these considerations I conclude that the Unit Land is not subject to any right of common.

I next consider paragraph (b) of the said definition:- "waste land of a manor ...". There was no evidence that the Unit Land has any connection with any manor; the 1915 conveyance is some evidence of there being none. I conclude that the Unit Land is not within this paragraph.



For these reasons I refuse to confirm all the said Land Section and Rights Section 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 15th — day of October — 1984

A. A. Baden Fuller.

Commons Commissioner