



## COMMONS REGISTRATION ACT 1965

Reference No 209/D/313

In the Matter of Whitchurch Common,  
Whitchurch and Sampford Spinney,  
West Devon District, Devon

DECISION

These disputes relate to the registrations at Entry Nos 9, 46, 47, 123 to 140 inclusive, 146, 175, 176 and 199 in the Rights Section of Register Unit No CL 85 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections No 183, No 957 and No 958 made by Whitchurch Commoners Association and noted in the Register on 14 October 1970. 3 February 1972, Objection No 382 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 8 December 1970, and Objection No 792 made by Devon County Council and noted in the Register on 18 January 1971.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 22 June 1982. At the hearing (1) Whitchurch Commoners Association were represented by Mr D M Crocker solicitor of Bellingham & Crocker, Solicitors of Plympton, they being instructed by Captain E T G Madgwick as chairman of the Association; (2) the Attorney-General for the Duchy of Cornwall was represented by Mr C Sturmer, their Land Agent at Princetown; and (3) Lady Sylvia Rosalind Peadwell Sayer on whose application jointly with Vice Admiral Sir Guy Bouchier Sayer the Rights Section registration at Entry No. 46 was made, attended in person on her own behalf and as representing Vice Admiral Sayer.

The land ("the Unit Land") in this Register Unit contains about 1,190 acres being a tract of land from northeast to southwest about  $2\frac{1}{2}$  miles long, and being nearly everywhere between 1 mile and  $\frac{1}{2}$  a mile wide. About  $\frac{1}{3}$ rd of the Unit Land is north of the Tavistock-Moretonhampstead road (B3357) and includes Staple Tors and some land by Pork Hill; the remaining  $\frac{2}{3}$ rds is south of the road and includes Feather Tor and Pew Tor and some land near Moortown. In the Rights Section there are in addition to the 25 above mentioned disputed registrations, 162 other registrations which have become final. In the ownership section HRH Charles Prince of Wales, Duke of Cornwall is registered as the owner of the part of the Unit Land marked A on the Register map, being about  $\frac{9}{10}$ ths or more of the whole, and Flight Lt Harry Bartholomew is registered as owner of the remainder.

Rights Section Entry No. 9

This registration was made on the application of Mr Arthur Henry Perkins and is of a right attached to Tor Town (? Tor Down) Farm, Peter Tavy, of turbarry, to cut bracken and rushes, to take stone and "to graze 15 ponies 20 cattle 250 sheep". The grounds of Objection No. 183 are: "To stray" should be substituted for "To graze". I have a letter (yellow form addressed to Clerk of the Council, County Hall) dated 5.11.70. signed A H Perkins referring to "Obj. 183" and agreeing to the entry "being amended/cancelled". Since the registration and Objection, the registration has been replaced (16 July 1975) by Nos. 224 and 225 on the application of Mr A H Perkins and Mr D R and Mrs J P Greep, and these registrations have been replaced (10 December 1975) by registration Nos. 227,



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and 229 (Mr George Edward Mudge and Charles Edward Mudge junior trading as C E Mudge & Sons), No. 228 (Mr and Mrs H J Faulks), and No. 230 (Mr Arthur Henry Perkins).

On the day before the hearing in a case in which Mr Crocker was engaged, there was some discussion as to whether a right "to stray" was registrable; as to this see my decision of even date, re Blackdown, Register Unit Nos. CL 3 and CL 193, reference Nos. 209/D/310, 311, 312. Referring to this discussion, Mr Crocker asked that the grounds of the Objection should by amendment be treated as "the right should not be registered because it does not exist". Mr Sturmer supported this claim by Mr Crocker.

I consider I should allow the amendment asked for by Mr Crocker and for the reasons given in my decision of even date relating to the CL 3 and CL 193 registrations altogether avoid so far as I can any registration which includes the word "stray" in the absence of any evidence justifying a modification not using the word stray. This CL 85 case is different from that dealt with in my said decision in that out of the 162 CL 85 Rights Section registrations which have become final by the operation of section 7 of the 1965 Act because to them there has been no objection, no less than 91 include the word "stray". By the operation of section 7, in the absence of objection, many registrations all over England which are almost certainly in some respects irregular, have become final, and I must suppose that Parliament contemplated this might happen; that it has or may have happened as regards 91 of the CL 85 registrations provides no good reason why I having an opportunity of avoiding an irregularity as regards one registration should not take it. Accordingly I refuse to confirm the registration at Rights Section Entry No. 9 and the Rights Section Entry Nos. 224, 225, 227, and 228 which now replace such registration.

Upon considerations like those mentioned in my said decision of even date, I give to Mr Arthur Henry Perkins, Mr George Arthur Mudge, Mr Charles Edward Mudge, and Mr and Mrs H J Faulks and their successors in title liberty within 3 months of the date on which notice of this decision is sent to the persons entitled to it, to apply to have this decision as regards Rights Section Entry No. 9 set aside and my said June 1982 hearing be opened for the purpose of establishing that I ought to confirm the said registrations with or without modification. Any such application should be in writing (it may be by letter) and be sent to the Clerk of the Commons Commissioners at London with a copy to Messrs Bellingham & Crocker solicitors of Plymouth as solicitors for the Whitchurch Commoners Association and (for their information) to the County Council as registration authority.

Rights Section Entry Nos. 46 and 47

The registrations at Entry No. 46 was made on the application of Vice Admiral and Lady Sayer: it is of a right attached to Old Middle Cator in Widecombe-in-the-Moor to cut peat and turves, to take stone sand and gravel and heath and fern, to graze 2 cattle or ponies, 10 sheep. The grounds of Objection No. 382 (Duchy) are in effect that no rights exist on the part marked (as above mentioned) A on the Register map (owned by the Duchy); the grounds of Objection No. 792 (County Council) are that the right does not exist at all.

Mr Sturmer said that as regards this Entry No., Objection No. 382 was withdrawn. Lady Sayer produced a copy of a letter dated 3 June 1980 from the County Secretary



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to Admiral Sayer, which includes: "I confirm that the County Council will not be pursuing its objection to your registrations of rights". Mr Crocker said that Commoners Association who had themselves made no objection to this registration accepted that it might be confirmed.

If neither of these Objections had been made, then this registration would have become final by the operation of section 7 of the 1965 Act. In the circumstances above set out, I consider I should produce the same result, and I confirm the registration of Rights Section Entry No. ~~46~~ without any modification. (46)

The registration at Entry No. 47 was made on the application of Mr David Miller Scott; it is of a right attached to the Village Farm, Holne of turbarry, estovers, to dig stone and sand and to graze 52 bullocks or ponies 208 sheep. The Objections to it are as above stated in relation to No. 46.

Lady Sayer said that the Village Farm is now owned by Admiral Sir James Eberle. From information I had before me at a hearing on 20 April 1982 relating to the Forest of Dartmoor, Register Unit No. CL 164 (which Admiral Sir James Eberle), attended in person, I understood that he would for reasons connected with the Falkland Islands Naval operations have difficulty in either attending or being represented at other hearings relating to Dartmoor. Lady Sayer said in effect that she knew of no relevant differences between Entry No. 46 and No. 47 mentioned that she had a letter from the Duchy's Solicitors saying in effect that the objections registrations made by persons "in Venville" were now withdrawn by the Duchy. Mr Sturmer was unable there and then to say anything about this registration but later after the conclusion of the hearing and before the midday adjournment confirmed that a letter was written by the Duchy's solicitors as stated by Lady Sayer and added that the Duchy had no further objection to the registration of common rights as her circumstances are similar to 13 other cases of Venville tenants in respect of which the Duchy had withdrawn their Objections, and agreed I could therefore confirm the registration at Entry No. 47.

There being no good reason why I should treat this registration differently from that at Entry No. 46, I confirm the registration at Rights Section Entry No. 47 without any modification.

Rights Section Entry Nos 123 to 140 inclusive and No. 146

The registrations at Entry Nos 123 to 130 inclusive are of rights of turbarry, of estovers and to dig stone and sand and do not include grazing; the registrations at Entry Nos 131 to 140 inclusive and No. 146 are similar save that they do include a right to graze. All these registrations are within Objections No. 382 (the Duchy) and No. 957 (Commoners Association), the grounds of No. 382 being that no rights exist over the said part of the Unit Land lettered A (the Duchy owned part) and of No. 957 "that the rights do not exist at all". As regards both these Objections, I have letters (yellow forms) addressed to the Clerk of the County Council, County Hall, signed by the applicants for the registrations at Entry Nos. 128, 136 and 140 agreeing to the registrations being cancelled; as regards Objection No. 382, I have a



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letter (yellow form) signed by the applicant for the registration at Entry No. 131 agreeing to it being "amended/cancelled".

Mr Sturmer said that all the lands to which these rights are attached are very distant from the Unit Land and contended that in the absence of any evidence of their exercise I should refuse to confirm the registrations. Mr Crocker supported this explaining that if these rights were exercised they would "swamp" the exercise of rights by the other (final) registrations.

Lady Sayer said (in effect):- Venville tenants (such as Admiral Sayer and herself) relied on the decision of the Chief Commons Commissioner and of the High Court that they had rights over common land such as the Unit Land irrespective of whether they were in "the Forest" or in any manor, and that she thought that at least 14 of the registrations in this Register Unit were on the application of such tenants. Mr Sturmer said that all these registrations were made by Venville tenants. The decisions referred to are re Coombe Down dated 17 February 1976 relating to Register Unit No. CL 148 reference 209/D/43-44, 46-48, 88; re Hentor Warren dated 30 May 1977 relating to CL 190 reference 209/D/60-85, 89; and re Henton Warren (High Court) judgment given by his Honour Judge Finlay on 26 October 1979 affirming the said 1977 decision.

Mr Crocker contended that notwithstanding the said decisions I should give a decision avoiding these registrations.

In my view the said decisions are not binding on the Commoners Association and they are entitled to separate decision by myself. Before and since the CL 85 hearing, I have heard much argument both for and against the points which were made as above mentioned in this case very shortly by Lady Sayer, and about these arguments, I gave a decision dated 30 June 1983: re Ditsworthy Warren Register Unit No. CL 188 reference 209/D/299. But I decline to deal with these CL 85 registrations as if the applicant had been represented and allowed me to inquire into the registration in the same detailed way as I did for the CL 188 registrations. The circumstance that Mr Sturmer agreed that the applicants were Venville tenants (he did not agree the registrations) does not show that they are necessarily proper. Objection No. 957 gives to all those concerned to support the registrations fair warning that they are disputed by the Commoners Association. The lands from which the rights claimed would be exercised are all in Holne, some 10 miles from the Unit Land, and in relation to it too remote for the sensible exercise of a right of common. In the absence of any evidence in support of the registration, the Commoners Association are relieved of the trouble and expense of any further inquiries on my part and are in my view entitled to a favourable decision from me. The circumstance of the Commoners Association agreed to the registrations at Entry Nos 46 and 47, being also of rights attached to land in Holne, is not relevant; for such agreement they may have good reason; I do not know their reason, but as Lady Sayer mentioned an appeal against my decision in the event of my deciding against her as a possibility and stressed that the rights she claimed were very small, I record that in my view this would be reason enough for treating Entry Nos 46 and 47 differently.

So I refuse to confirm registrations at Rights Section Entry Nos 123 to 140 inclusive and at Entry No. 146.



Rights Section Entry Nos 175 and 176

These registrations are in all respects the same as those at Entry Nos 131 to 140 above mentioned save that relevant Commoners Association Objection is No. 958 grounds:- "That the rights claimed do not exist at all".

Mr Sturmer said that the Duchy had no record of any Venville payment in respect of the rights in these registrations, so that to this extent the case for the Commoners Association is stronger, because the points advanced by Lady Sayer as above mentioned are not applicable.

For this reason and for the other reasons given above in relation to Entry Nos 131 to 140, I refuse to confirm the registrations at Rights Section Entry Nos 175 and 176.

Rights Section Entry No. 199

This registration was made on the application of Mr Charles Arthur Bellamy and is of a right attached to Grendon Farm, Tavistock "to stray 5 cattle 20 sheep". Grounds of Objection No. 958 (to this registration there is none other) are: "That the right claimed does not exist at all".

To this registration against it many of the other considerations set out above are equally applicable. Additionally against Mr Crocker stated that he had written to Mr Bellamy asking him about it and had recently a telephone message from him that he did not wish to proceed.

In these circumstances and in the absence of any evidence in support, I refuse to confirm the registration at Rights Section Entry No. 199.

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 11th day of July 1983

A. A. Baden Fuller

Commons Commissioner

Corrected in line 8 of page 3 by substituting 46 for 42  
A. A. Baden Fuller  
13 January 1984