



In the Matter of the tract of about 282 acres known as Abbeycroft Down and Ford Down in the parish of Tarrant Rushton, Dorset

DECISION

This dispute relates to the registration at Entry No. 235 in the Land section of Register Unit No. CL 235 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection Nos. 1005, 1218 and 1016 made by Messrs T P Tory and M S Tory (1005), Agents for the Crichel Estates and Hon Mrs M A S E Marten (1218) and Ministry of Defence (1016) respectively and noted in the Register ~~on~~ in the case of No. 1005, on 29 February 1972 and in the other two cases on 1 February 1973, and to the deemed dispute as to the Registration at Entries Nos. 1, 2, 3 and 4 in the Rights section of the Register Unit No. CL 235 in the Register of Common Land occasioned by Objections Nos. 1005, 1218 and 1016 made by the said Objectors in the Land Section and noted in the Register as aforesaid and an objection no. 1008 made by the Secretary of State for Defence and noted in the Register on 29 February 1972.

I held a hearing for the purpose of inquiring into the disputes at Dorchester on 24 June 1980.

Mr R C W Gooch of Thomas Coombs and Son, Solicitors, appeared for the applicants in the Rights section. Miss Sheila Cameron of Counsel instructed by Messrs Ford Cunningham and Co, Solicitors of Marlborough appeared for Messrs T P and M S Tory and Messrs Savills of Wimborne, Surveyors, appeared for Crichel Estates Ltd and the Hon Mrs M A S E Marten.

By a letter dated 19 December 1979 addressed to the Commons Commission, Property Services Agency on behalf of the Secretary of State for Defence stated that the Departments objection No. 1008 in the Rights Section had been replaced by objection No. 1016 in the Land Section and that in 1973 part of the land the subject of objection No. 1016 had been conveyed by the Secretary of State to the Hon Mrs Martin and the remainder had been conveyed to Messrs T P and M S Tory and the Defence Ministry retained no interest in such land.

Mr Gooch informed me that the claims made by Mr Hathaway and <sup>by</sup> Mr Peter Coleman, who had died in November 1979, were withdrawn.

Mr Eric Eugene Wells of Hill Side, Abbeycroft Down who was born in 1926 gave evidence as follows.

He had been told by his father, who was no longer alive, that his (the witness's) grandfather became a tenant of Hill Farm Tarrant Keyneston in 1904 and grazed sheep over Abbeycroft Down. He believed his grandfather was a tenant of the South Marist Estate. The grandfather had purchased the freehold of Hill Farm when that estate was sold.

He produced a copy of the Sale Particulars relating to the Sale of the Drax Tarrant Crawford Estate in 1919 on p. 6 of which it was stated that "Keyneston tenants may feed their flock of sheep during the day and drive them home at night".

Abbey Farm which includes the land in Register Unit CL 235 was sold subject to this provision. His grandfather farmed Hill Farm until his death in about 1935.



The witness saw sheep on Abbeycroft Down, which probably belonged to Mr Tory. He did not remember seeing sheep belonging to any other person on Abbeycroft Down. Since 1935 neither his father nor he had grazed sheep on Abbeycroft Down. During the last war Abbeycroft Down was part of an airfield used by troop-carrying gliders and during this period it was not possible to use the Down for grazing sheep. Part of the Down is still used as an airfield but some part is farmed by Crichel Estates Ltd. The witness identified the area, at present used as an airfield, on a map.

In the early 1930's there was fencing along B3082. This had been removed first after the war and replaced about 10 years ago by cattle netting. The witness had not himself exercised any rights of grazing. He had intended to graze sheep but decided that, if he did, his sheep would be removed. He consulted a solicitor and was advised to await the outcome of this hearing.

In cross-examination the witness said that "Keyneston tenants" meant farming tenants in Tarrant Keyneston. He had not brought any documents of title with him. His grandfather lived at Hill Farm. About 3 years ago he had sold the main fields of Hill Farm. His present holding was  $\frac{3}{4}$  acre and his claim to graze 300 sheep was made in respect of that  $\frac{3}{4}$  acre. His father had been the first to give the farm the name of Hill Farm. In the grandfather's time it had no name. His grandfather had only grazed sheep down to 1914.

*CSH*  
The four claimants had ~~not~~ <sup>not</sup> to decide on their claims. Hill Farm had originally comprised 150 acres. Hill Farm was in the parish of Tarrant Rushton. The land coloured purple on the map annexed to this application ( $\frac{3}{4}$  acre) was the only part of Hill Farm in Tarrant Keyneston. This land was occupied by a Mr Hubbard. There was no tenancy and nothing in writing.

Abbeycroft Down had been used as an airfield for the past 40 years. Part of Hill Farm was glebe land; the rest was owned by the estate. The original farm house was between the said land coloured purple and the road. His grandfather lived in that farm house until 1921 when he moved to the present farm house.

Mr Gooch submitted that Mr Wells and his father and grandfather before him were tenants of land of the "anor and as such had the rights mentioned in the 1919 sale particulars.

The evidence of non-user from the end of the first war to 1940 did not establish abandonment. Non-user is only evidence of abandonment and not conclusive by itself. See Tehidy Minerals v Norman (1970) 2 All E R 475 at p 492 and Halsbury's Laws of England 4th Ed. Vol VI para 629.

As most of Hill Farm was in Tarrant Rushton the rights could only be exercised in respect of land in Tarrant Keyneston. The number of sheep in respect of which the right was claimed was the result of an informal apportionment. His client had recently shown an intention to reassert his rights.

Mr Percy Stuart Tory of Hemsworth Farm, Witchampton, Tarrant Rushton, who was born in 1905 gave evidence for the objectors. Mr Tory said that he and several generations of his family before him had farmed in the Tarrant Rushton area. He was now the tenant of Hamsworth Farm of which members of his family had been tenants since 1916. The farm was owned by the Hon Mrs Marten. He was born at Crab Farm Shapwick, which lies to the South West of Abbeycroft Down. Hemsworth Farm is on the



South East side of the Down. His family has been tenants of Crab Farm for a long time. He and his son are the present tenants.

His uncle was J W Drake who was also a farmer. The uncle was tenant of Tarrant Abbey Farm and Tarrant Crawford Farm. In 1914, while ~~he~~<sup>he</sup> was living at Crab Farm, ~~he~~<sup>he</sup> stayed with my uncle who kept sheep and store cattle. In 1919 ~~the~~<sup>the</sup> uncle agreed to purchase the Tarrant Abbey and Tarrant Crawford Farms and then ~~my~~<sup>my</sup> father took over the purchase of the two farms from him. Tarrant Abbey Farm included Abbey-croft Down. ~~His~~<sup>His</sup> family has owned Tarrant Abbey Farm since 1921. ~~His~~<sup>His</sup> father took over the purchase of the two farms as ~~my~~<sup>my</sup> uncle has difficulty in raising the purchase money.

When ~~he~~<sup>he</sup> stayed with ~~my~~<sup>his</sup> uncle in 1914 ~~he~~<sup>he</sup> used to go with Joe, ~~my~~<sup>his</sup> uncle's shepherd, to the Down by day to graze the sheep and then back at night. ~~His~~<sup>His</sup> uncle owned the sheep, which came from Tarrant Abbey Farm. This continued during the period of the first war. No one else's sheep have grazed on the Downs either during the first war or since. Both ~~his~~<sup>his</sup> uncle and ~~his~~<sup>his</sup> father had a pedigree stud flock so they would not want any other sheep mixed with their flocks. In the period 1916-18 Hensworth Farm House was a Land Army hostel but my family had the land. When ~~he~~<sup>he</sup> used Hensworth Farm for sheep, the sheep went on the Down.

In 1923 the witness took charge of farming at Hensworth Farm and lived in the Farm House. ~~He~~<sup>He</sup> married in 1927 and have lived there ever since then. All farming was operated from Crab Farm. Tarrant Abbey Farm and the Farm House was sold in the 1920's and in about 1930 ~~his~~<sup>his</sup> father bought them back and later sold the House and 12 acres of land to Colonel Seymour whose widow still lived there.

The witness carries on a mixed farm including a pedigree herd of sheep. During the period 1920-1939 he used the Down for grazing; the ~~herd~~<sup>herd</sup> was shepherded.

In 1940 the whole of the Down was requisitioned. Even so he was allowed to continue grazing at his own risk with the permission of the Commanding Officer; grazing continued outside the perimeter track. He sold one flock after the end of the war but kept the other which he continued to graze on the Down.

For 60 years no one else's sheep had grazed on the Down. It was very important not to mix flocks.

Preston Farm had been owned by the Hardings since just before World War II. Previously it had been owned by the Andrews. Abbey Farm now belongs to ~~his~~<sup>his</sup> nephew Stephen Tory. ~~He~~<sup>He</sup> remembers that there was fencing at the South West end of the Down.

Hensworth Farm comprised 700 acres and Crab Farm 8-900 acres.

Miss Cameron submitted that any one seeking to establish a burden <sup>(S. 61)</sup> on the land of another must establish the right strictly as at the date when he ~~seeks~~<sup>seeks</sup> to register his claim; by a specific deed, by prescription or by proof of custom.

The words referred to on p 6 of the Auction particulars in 1919 were put in for the protection of the Vendors.

The rights claimed were not established by the evidence.

Although Mr Gooch submitted that the period of unexplained non-user by the Wells family ~~of~~<sup>of</sup> the alleged right of grazing began after the end of the first war, he



was in fact over stating his case because Mr Wells admitted in cross-examination that his grandfather had only grazed sheep on Abbotsford Down until 1914. The only evidence of actual user of the right claim is for the period 1904-1914 and the source of this evidence is Mr Wells' father, who did not tell his son how it came about that such a valuable right ceased to be exercised after 1914.

On the evidence I have heard Mr Wells claim can only succeed if he can establish a lost modern grant. The defence of abandonment was not raised.

On the balance of probabilities I am not satisfied that Mr Wells' grandfather did in fact graze sheep on the Down for the period 1904-1914 and that finding would dispose of his claim. Even if I had been satisfied that the right claimed had been exercised during those years, the fact that the right was never exercised at any time during the 25 years that elapsed between the start of the first war and the start of World War II and no explanation is offered for such non user prevents me from presuming in favour of the claimant of lost modern grant.

Were it necessary for me to decide the point I would have held that the tenant of a farm of 150 acres, one acre of which lay in Tarrant Keyneston and all the rest in Tarrant Rushton was not a "Keyneston tenant" in the sense in which that expression was used in the Auction Particulars relating to the Drax Estate Sale in 1919.

For these reasons I refuse to confirm any of the 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

8<sup>th</sup>

day of

September

1980

*Henry Harkell*

Commons Commissioner