



COMMONS REGISTRATION ACT 1965

Reference Nos. 232/D/117
232/D/118
232/D/119
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232/D/135

In the Matter of 10 Pieces of land on
the edge of the Quantock Hills in the parishes
of East Quantoxhead, West Quantoxhead,
Bicknoller, Crowcombe, Kilve and Holford,
West Somerset District, Somerset

DECISION

These 19 disputes (some of which have been so resolved that no decision of a Commons Commissioner about them is needed) relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 2, 3, 4, 5, 6, 7, 8 and 9 in the Rights Section of Register Unit No. CL.85 in the Register of Common Land maintained by the Somerset County Council and are (or were) occasioned by Objection Nos. 0/26, 0/38, 0/39, 0/40, 0/53, 0/193, 0/270, 0/274, 0/304 and 0/325 made and noted in the Register as stated in the second column of the Schedule hereto.

I held a hearing for the purpose of inquiring into these disputes at Taunton on 5 June 1975. At the hearing (1) Major Thomas Fleming Trollope-Bellew (he made Objection No. 0/40), (2) East Quantoxhead Trust Company Limited (they made Objection No. 0/143, not being one of the objections in question in these proceedings), (3) Mr Edward Thomas Down (he made Objection No. 0/325), (4) Risdon & Co (they made Objection No. 0/270) and (5) West Quantoxhead Parish Council were all represented by Mr A M Donne of counsel instructed by Risdon & Co Solicitors of Taunton; (6) Mr William Geoffrey King (he made Objection Nos. 0/38 and 0/304), (7) Mrs Lilian Mary Gliddon of Tower Hill Williton and Mr David John Gliddon of Raglan Williton (as successors in title of Mr E R Siddle who made Objection No. 0/274), (8) Mrs Lillian Grace Routh (Entry No. 3 in the Rights Section was made on her application), (9) Mrs Anne Margaret Busby of Manor Farm House Perry Green, Bridgwater (as successors in title of Mrs Gwendoline Margaret Pollard on whose application Entry No. 2 in the Rights Section was made), (10) Mr Mervyn Henry John Ham (Entry No. 4 in the Rights Section was made on his application) were all represented by Mr R W Morgan, solicitor of Clarke Willmott & Clarke Solicitors of



Taunton; (11) Somerset County Council (they are the registration authority and they made Objection Nos. 0/39 and 0/193) were represented by Mr D L Edwards assistant solicitor in the office of the County Secretary and by Mr T J Driver legal executive with the County Council; and (12) Mr Edward William House (Entry No. 7 in the Rights Section was made on his application) was present in person.

The land ("the Unit Land") comprised in this Register Unit is as originally registered described in the Register as being in 10 pieces as set out in the first column of the Schedule hereto. They are all on the edge of or near to the very large area of land containing (roughly estimated) about 20 square miles, and known as the Quantock Hills, most of which area is comprised in Register Unit No. CL.10. The 10 pieces when compared with this large area are all small, some of them very small indeed. There are 8 Entries in the Rights Section, one of a right of pasture over the whole of the Unit Land in continuation of these rights over the whole of the CL.10 land; the others of rights of grazing (or pasture or herbage) and of estovers and turbarry over various parts of the Unit Land in continuation of rights over parts of the CL.10 land and in some cases in continuation of rights over CL.26 land, CL.168 land and CL.187 land. There are also some Entries in the Ownership Section.

Mr Edwards said that the Objections which gave rise to these 19 disputes were not all the Objections which had given rise to disputes relating to the Unit Land. There was one other, being No. 0/143 made by East Quantoxhead Trust Company Limited ("the Trust Company"); the dispute occasioned by this Objection had not been referred to a Commons Commissioner with the others. He handed me a reference dated 5 June 1975 (the day of the hearing) to a Commons Commissioner of this dispute. Although it would for many of those present at the hearing have been convenient, if I had determined this dispute at the same time as the other 19, I am by reason of the Commons Commissioners Regulations 1971 precluded from doing so; it is I think clear that in relation to it, regulations 10, 13 and 14 have not yet been complied with. This reference is now filed under No. 232/D/223.

With regard to Objection Nos. 0/26 (Lloyds Bank Limited), 0/38 (Mr King), 0/53 (Miss Hood) the grounds of which related to Pieces Nos. 7, 5 and/or 6 and 10 (D/117, D/118, D/121, D/127, D/128 and D/131):-

Mr Edwards said that the disputes occasioned by these Objections had been resolved and that the references relating to them either were made in error or had been withdrawn. He handed me a copy of the Register map as revised, which showed the 10 pieces as originally registered and such of them (or the parts of such of them) which had as a result of these revisions (and possibly for other reasons) ceased to be registered, as indicated in the third column of the Schedule hereto. Accordingly I decide nothing about these disputes, because I have no need to.

As regards Objection No. 0/193 (County Council) relating to part of Piece 3; (B) south part of Paradise Combe; (D/123 and D/133):-

The grounds stated in the Objection are: "The land shown verged red on the attached plan was not common land at the date of registration". Mr Edwards said (in effect):- This Objection was made by the County Council as registration authority because it was thought that it was evident that it was not part of the area known as the Quantock Hills. However the County Council has no evidence in support of their Objection and the enquiries that they had made had led them to the conclusion that the present owner did not wish to take any part in the proceedings. In these circumstances the County Council withdrew the Objection. Nobody at the hearing wished to support the Objection and accordingly my decision is that the Objection fails.



As regards Objection No. O/270 (Risdon & Co) Entry No. 7 in the Rights Section (Mr House), and being of a right of pasture for up to 6 sheep (interchangeable on the basis of 4 sheep equalling 1 cow or pony) and also rights of estovers; (D/126):-

Mr Edwards said that the reference relating to the dispute occasioned by this Objection was withdrawn, the dispute having been settled; Entry No. 7 in the Rights Section appears to give effect to the grounds stated in the Objection.

As regards Objection No. O/40 (Major Trollope-Bellew) relating to part of Piece 4;(A) Halsway Quarry, etc; (D/120 and D/130):-

The grounds of the Objection are:- "None of the land on the plan comprising this Register Unit is common land. The Unit includes Halsway Quarry and the whole area was comprised in an Inclosure Award". The plan accompanying the Objection shows coloured pink the part of Piece 4 southeast of Halsway Combe, being Halsway Quarry, and the access to it from Lower Halsway.

Major Trollope-Bellew in the course of his evidence produced an extract (certified by the County Archivist) of the Crowcombe Inclosure Award dated 20 April 1780 (made under the Crowcombe Inclosure Act 1776: 16.Geo.3.c.73) and an extract from the Award map. He said (in effect):- The land ("the Objection Land") described in his said Objection plan was he thought (more or less) the same as the triangular piece marked on the Award map as "K6", with an area of 3a.3r.19p. There is a registered bridleway across the Objection Land; the rest (the northeast part) is a quarry (red sandstone) known as Halsway Quarry. The quarry is fenced around; it is now let by him to Anglo American Asphalt. At the time of the Objection he was and is still receiving rent. He had had some complaint from the commoners about the fencing around the quarry, but the fences were still there.

Nobody at the hearing wished to contend that the Objection should not succeed.

The information I have about the 1780 Award falls short I think of showing that the Objection Land could not as a result of the Award now be common land, even if I take into account the evidence which Major Trollope-Bellew gave me at a previous hearing (relating to the CL.187 land), to the effect that Mr and Mrs Bernard (named in the said extract) were ancestors of his and that the Crowcombe Estate has ever since been in his family and is now owned by himself or his son. The said extract, although it refers to allotments of land which the Award map shows as surrounding the Objection Land on the northeast, does not mention plot K6. It may be that with further information about the Award I could reach some conclusion from it; however this may be, from the evidence given by Major Trollope-Bellew as to the present use of the lands as outlined above, and from there being no opposition to his Objection, I conclude that I ought to give effect to it.

Accordingly my decision is that this Objection succeeds.

As regards Objection No. O/325 (Mr Down) relating to the part of Piece 4;(B)northwest of Halsway Combe; (D/125 and D/135):-

The grounds stated in the Objection are: "The land edged green on the attached plan is owned by me and is not subject to any rights of common". Mr Donne on behalf of Mr Down said that this Objection was withdrawn. I conclude therefore that the Objection should not have been made and accordingly my decision is that the Objection fails.



As regards Objection O/39 (County Council) relating to Piece 8, the Pardlestone area; (D/119 and D/29):-

The grounds stated in the Objection are:- "The land shown verged red on the attached plan was not common land at the date of registration". The land so verged is the Piece 8.

Mr Edwards said (in effect):- The piece is now or was recently occupied by Lieutenant General Irwin. The County Council objected to this registration as common land because it was inclosed land. The only rights of common entered in the Rights Section which were over this land were Nos. 1 (Mrs Pollard), 6 (Mrs Gullick) and 7 (Mr House). The County Council had written letters to each of these persons. J Ruscombe Poole & Sons Solicitors of Bridgwater on behalf of Mrs Pollard, and Barrington & Sons Solicitors of Bridgwater on behalf of Mr House in letters dated 8 and 13 January 1971 said in effect that their clients did not wish their registration to apply to the land comprised in this Objection. The County Council had had no reply from Mrs Gullick.

Mr Morgan said that Mr and Mrs Busby as successors in title of Mrs Pollard were agreeable to effect being given to the Objection.

In the above circumstances I conclude that I ought to give effect to the Objection and accordingly my decision is that it succeeds.

As regards Objection Nos. O/274 (Mr Siddle) and O/304 (Mr King) relating to Piece 2 at Staple (D/122, D/124, D/132 and D/134):-

The grounds stated in Objection No. O/274 are:- "See plan attached. The land edged blue was owned by the late W J King and it is now vested in me as sole surviving executor. Accordingly the land was not common land at the date of registration". The land ("the Siddle Land") so edged comprises the north and greater part of Piece 2. The grounds stated in Objection No. O/304 are:- "See plan attached. The land edged blue is owned by me and was not common land at the date of registration". The land ("the King Land") so edged comprises nearly all of the remainder of Piece 2. The remaining land ("the Undisputed Part") is just within the southwest boundary of Piece 2 and lies along the north side of the road (the New Road) which leads from Staple up onto the CL.10 land (the Quantock Hills) to enter such land at a point a little south of and above Vinny Combe.

Mr Donne said that in relation to the disputes occasioned by the two Objections, the Parish Council was concerned that as much as possible of Piece 2 should be registered as common land. However he conceded that Objection No. O/274 was rightly made as regards all the Siddle land except the south part ("the Siddle Disputed Part"). No concession was made as regards the King part.

Later in the proceedings it appeared that the north boundary ("the ABCDEF Line") of the Siddle Disputed Part may be defined by reference to the O/274 and O/304 plans as follows:- AB, the south boundary of O.S. 37 (Rectory Plantation); BCD, the line on the plan from the southwest corner of the Rectory Plantation to the east end of the (Old) Hill lane, such east end being due west of the "Q" of "Quarry", and such line being a little to the north of the word "Quarry", and ending at the most northerly part of the King Land; DE, the line on the plan, along the northwest boundary of the King Land to the point where such boundary turns southeast; EF, the straight line, not on the plan, from this point to the point where the southwest boundary of the Siddle Land crosses the line which goes approximately south-southeast from the "a" of the words "Hill Lane".



Miss M F Shannon who is the Clerk to the West Quantoxhead Parish Council, in the course of her evidence produced: (1) the Parish of West Quantoxhead Tithe Apportionment Award dated 3 June 1841; (2) a map dated 1967 showing "all parcels bounded by the thickened line...are thought to be those making up the area of common land as agreed by the Tithe Commission of 1840"; (3) a map showing in 2 lots land sold on 17 September 1835 (this map she had been handed by Lord St Audries), (4) Minutes of Evidence (vol. 49) given on 2 May 1957 by the Quantock Commoners' Livestock Association, Friends of Quantock, Major T F Trollope-Bellew and the Quantock (1926) Committee to the Royal Commission on Common Land; (5), (6) and (7) cuttings dated 16 October 1926, 23 October 1926 and 27 August 1949 from the West Somerset Free Press; and (8) notes prepared by Mr W H Ashwin for Mr Gerald Wills MP about the fencing of Quantock Common.

The 1841 Award showed plot No. 227 in the Schedule described as "unenclosed common" containing 330 acres 1 rood 26 perches and non-tithable as having a boundary corresponding with the ABCDEF line above defined and as shown on the 1967 map. The 1835 map shows the boundary of "THE COMMON" very nearly (although not exactly) as the ABCDEF line. Documents (4) to (8) were not read out at the hearing because Mr Morgan said that it was agreed that the documents showed that there had been objection to fencing in 1926, 1949, 1951 and 1957.

Mr King (the Objector) who has been concerned with the Quarry since 1931 in the course of his evidence said in effect:- Mrs L M Gliddon is his sister and Mr Siddle is a trustee of the Siddle Land for her. His father started acquiring land in the area in 1931 when he took over the old Williton Rural District Council quarry (that is the quarry north of the King Land). He (the Objector) managed the company which worked the quarry from 1932 to 1970. He was not aware of anyone exercising rights of common over the quarry land "because we had to fence to comply with the Mines and Quarries Act" and the fencing prevented people grazing stock in the area. In about 1940 unfortunately a landslide occurred, and he purchased the King Land from the Forestry Commission. It was just after that the New Road, to replace Hill Lane which had fallen into the quarry, was constructed. He produced a conveyance dated 1 June 1940 by which the Forestry Commission conveyed to him the King Land and also a part of the CL.10 land adjoining on the south and edged red on his Objection plan. He also produced an aerial photograph taken 2 or 3 years ago.

In answer to various questions by Mr Donne, Mr King said that the line ("the MFM line") of the fence he had constructed is (so far as now relevant) the southern boundary of the land edged red on his Objection (O/304) plan. He agreed that the south and east of the MFM fence is common land and that animals grazing such land graze right up to the fence and contended that the MFM fence effectively prevented any grazing further to the west. The fence is not along the line of the top of the quarry, but it would have been impracticable (for avoiding accidents) to put it nearer. The quarry is not now, and (so far as is now relevant) has not been worked since 1957.



Mr Morgan contended (in effect) that the Siddle Disputed Part and the King Land was not common land because the rights of common not having been exercised for a period of 20 years must be presumed to be abandoned, or alternatively the rights of common have been extinguished because there was there now no grass or other product in respect of which the rights could be exercised.

On the day after the hearing, I inspected the King Land and much of the Siddle Land.

At the hearing I had no evidence supporting in any detail the Entries in the Rights Section. It was however implicit in the case made by Mr Donne that the CL.10 land (or at least the parts of it adjoining the Siddle Land and the King Land) was subject to rights of common as registered in continuation over the Unit Land.

I was told by Mr Edwards that the registration of the CL.10 land was the subject of many objections, and that the disputes thereby occasioned had not yet been referred to a Commons Commissioner, so it is possible that the rights entered in the Rights Section of this Register Unit may so far as they continue over the CL.10 land be modified or even avoided altogether. Nevertheless I shall in this decision assume that at least one right of grazing and at least one right of estovers and turbarry as registered exists over the part of the CL.10 land adjoining the Siddle Land and the King Land, because much of what Mr King said in the course of his evidence was on this basis, and although he never dealt particularly with the rights over the adjoining CL.10 land, he agreed that it was common land. Further on his behalf Mr Morgan presented his case on this basis; and during my inspection it was obvious that the CL.10 land southeast of the MFM fence and extending for some miles, is common land at least within the popular meaning of these words.

So in substance these disputes about the Siddle Land and the King Land are boundary disputes.

In my opinion in former times (meaning before or about 1931) the boundary of the common land over which the rights which I have assumed existed over the CL.10 land was always the ABCDEF line. This appears not only from the 1841 Award but also from the O.S. map which was used as the basis of the Objection plan. The change in the physical features around the ABCDEF line since these maps were made is due to the quarrying from the north side of this line, and such quarrying led to the landslide which removed the Old Hall Lane and led to the construction of the New Road.

Accordingly in my opinion it is for the Objectors to establish that the rights of common which in 1931 existed right up to the ABCDEF line have been abandoned or otherwise extinguished.

A right of common can only be abandoned when there is a fixed intention never to exercise the right again, see Tehidy v Norman 1971 2 Q.B.528. There being no evidence about what any commoner actually intended, I must consider whether such an intention can be inferred from what commoners did not do.

As to there having been no objection to the quarrying:-

In my opinion taking stone from land is not always inconsistent with there being a right over it of grazing, estovers and turbarry. Much depends on the extent and nature of the land in question. In some cases, e.g. when the area of the land is small, a quarry and a right of grazing could not sensibly coexist. But in a large area such



as the CL.10 land, (considered with or without the Siddle Disputed Part and the King Land) this is not necessarily so. In modern times much quarrying is done on the basis that in due course the surface will be restored and a common right owner can I think then reasonably expect that when the soil has been restored and the vegetation starts once more to grow, his rights will continue. This seems to me to be in accordance with ordinary usage; I know of a moor (Kirkby Ireleth, Cumbria) all of which is registered as common land, notwithstanding that there is on part of it a quarry far larger than anything I saw near Staple.

If the rights of grazing over the CL.10 land are such that the owners can object to any taking of stone, it may be that they have prejudiced their rights over the Siddle Disputed Part and the King Land by not taking any legal proceedings in respect of the encroachments from the quarry north of the ABCDEF line. But if the rights are such that the owners cannot object to any taking of stone by the soil owner which does not substantially affect the grazing, by not taking proceedings they have not provided any basis for a finding that they have showed any intention to abandon their rights. It is for the Objectors to prove abandonment, and in the absence of evidence, I decline for their benefit to make any assumptions as to the nature of the rights alleged to have been abandoned.

Alternatively the objections in 1949, 1951 and 1957 to the fences which it was conceded (as above stated) were made generally, must I think be taken to extend to the quarrying done behind the objectionable fences.

As to fencing:-

Mr King explained that the MMM fence was put up to comply with the Mines and Quarries Act. If this was his reason, I cannot I think ascribe to the owners of the rights of common ignorance of it. If they had concluded that they could not object to the quarry, no intention to abandon their right can be ascribed to their not objecting to a fence, erected as much for their benefit as for the benefit of anyone else.

As to the exhaustion of the product:-

A large part of the Siddle Disputed Part and the King Land has not yet been quarried, so that the vegetation is not (so far as was relevant) essentially different from that on the other side of the MMM fence. Of course nothing is growing on the quarry face. Although as far as I could see nothing had been done to restore the surface of the quarry bed since quarrying operations discontinued, there is considerable amount of vegetation; properly restored, or even with a little help much of the vegetation would come again.

So, over the part of the Siddle Disputed Part and of the King Land (a very substantial part of the whole), the product has not been exhausted, or affected at all except to the extent that the MMM fence by preventing grazing and discouraging persons from walking over it, has resulted in the vegetation growing more freely. As regards the quarry bed, I see no reason why the rights should be ~~lost~~ deemed to be lost for exhaustion of the product when the product may become again. Nothing of course will ever grow again on the quarry face, but the horizontal area occupied by this, is negligible.



For the above reasons I conclude that the rights of common over the Siddle Disputed Part and the King Land have not been lost either by abandonment or by exhaustion of the product.

My decision is accordingly (A) that Objection O/274 succeeds as regards all the land edged blue on the Objection plan which is north of the ABCDEF line and fails as regards all such land south of the ABCDEF line and (B) that Objection O/304 fails wholly.

Mr Edwards said (rightly I think) that I could not by reason of the outstanding Objection O/143 make any final confirmation of any of the registrations. It is perhaps unlikely that the dispute occasioned by this Objection when it is heard by a Commons Commissioner will result in a decision that any land not described in the grounds of objection therein stated (being Piece No. 1 at Perry) was not properly registered as common land. Nevertheless a Commons Commissioner would under the 1971 Regulations (rule 26) have power to go beyond the grounds of objection and I cannot at this stage presume that he would do so. For this reason I do not now confirm any of the registrations. Nevertheless my decisions as above set out will be binding (subject to any appeal) on all persons entitled to be heard at the hearing of the disputes which I have dealt with, so although it is not now certain that the land the objections in respect of which I have held have failed will remain on the Register, it is at least certain (subject to any appeal) that the land the objection in respect of which I have held have succeeded will cease to remain on the Register and that the Commons Commissioner who deals with the outstanding Objection O/143 will either refuse to confirm the registration at Entry No. 1 in the Land Section or confirm it with such a modification which will remove such lands at least.

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

Part I Land Section (Rights incidentally disputed)

of land sing Unit s originally ered	Objections the grounds of which refer particu- larly to the piece	Position immediately before hearing	Position under this decision
Perry, Quantoxhead	O/143 made by East Quantoxhead Trust Company Limited	The reference of the dispute occasioned by this Objection was handed in at the hearing on 5 July 1975	Objection not affected by decision and the dispute is therefore not yet determined (file reference 232/D/223)



Staple, Quantoxhead	(A) Large part on the north (about 25 acres or more):- O/274 made by Edward Rowland Siddle and noted in the Register on 14 April 1971 (D/124 and D/134)	(A) Dispute for determination	(A) Objection succeeds as regards all land north of ABCDEF line and fails as regards all land south of the ABCDEF line
	(B) Smaller part at south corner (about 2 acres) O/304 made by W G King and noted in the Register on 1 April 1971 (D/122 and D/132)	(B) Dispute for determination	(B) Objection fails
	(C) Another small part along the southwest boundary	(C) Not mentioned in any grounds of objection	(C) Decision not applicable to this part
Paradise Combe, Miller	(A) North Part	(A) This part had been removed from the Register	Decision not applicable to this part
	(B) South part (O.S.149 and 146: about 8 acres) O/193 made by Somerset County Council and noted in the Register on 13 April 1971 (D/123 and D/133)	(B) Dispute for determination	(B) Objection fails
Halsway Quarry Access to Lower Halsway Combe (a piece about 300 yards long and 100 yards wide with an access strip on the southwest about 250 yards long) O/40 made by Major Trollope-Bellew and noted in the Register on 30 November 1970 (D/120 and D,130)	(A) Part southeast of	(A) Dispute for determination	(A) Objection succeeds
By, Bicknoller Rowcombe	(B) A smaller part north-west of Halsway Combe (about 50 yards across): O/325 made by Mr Edward Thomas Down and noted in the Register on 14 April 1971 (D/125 and D/135)	(B) Dispute for determination	(B) Objection fails



Great Hill and Combe Combe, noller and combe	(A) A small part (at east corner of Piece 5 and/or Piece 6: O/38 made by William Geoffrey King and noted in the Register on 30 November 1970 (D/121 and D/131)	The whole of Great Hills and Triscombe Combe had been removed from the Register and the reference of the dispute occasioned by O/38 has been withdrawn	Decision not applicable to these Pieces
Great Hill Triscombe, Crowcombe			
(8) and (9) e pieces of l in the llestone area, e and Holford	(7) The northwest piece: O/26 made by Lloyd's Bank Ltd and noted in the Register on 21 July 1969 (D/117 and D/127)	(7) This piece had been removed from the Register	Decision not applicable to this Piece
	(8) The southeast piece (O.S. 220 and 219; about 1.3 acres) O/39 made by Somerset County Council and noted in the Register on 30 November 1970 (D/119 and D/129)	(8) Dispute for determination	(8) Objection succeeds
	(9) The southeast piece	(9) This piece had been removed from the Register	Decision not applicable to this Piece
Land to the c of Woodlands l, also in Ford	O/53 made by Miss Elizabeth Acland Hood and noted in the Register on 30 November 1970 (D/118 and D/128)	This land had been removed from the Register and the reference of the dispute occasioned by O/53 had been withdrawn	Decision not applicable to this Piece

Part II Rights Section

ection O/270 made by Risdon & Co noted in the Register 1 April) was against Entry Nos. 1 and 7 the Rights Section (D/126)	(A) Entry No.1 no longer subsisting	(A) Decision not applicable to this right
	(B) Entry No. 7 (applicant Mr Edward William House). The response had been withdrawn	(B) Decision not applicable to this right

Dated this 21st day of *January* 1976
a. a. Baden Fuller

Commons Commissioner