



COMMONS REGISTRATION ACT 1965

Reference Nos. 232/D/71

232/D/72

232/D/73

232/D/74

232/D/75

232/D/76

232/D/77

232/D/78

In the Matter of 11 Pieces of land on the edge of the Quantock Hills (1 in East Quantoxhead, 3 in West Quantoxhead, 3 in Bicknoller, 1 in Holford, 1 in Over Stowey and Crowcombe and West Bagborough and 2 in Over Stowey) in the West Somerset District, Sedgemoor District and Taunton Deane District, Somerset

DECISION

These disputes relate to the registrations at Entry No.1 in the Land Section and at Entry Nos.1, 2 and 3 in the Rights Section of Register Unit No. CL.187 in the Register of Common Land maintained by the Somerset County Council and are occasioned (D/71 and D/75) by Objection No.0/99 and made by Mr D T Peaster and noted in the Register on 24 March 1971, (D/72 and D/76) by Objection No. 0/144 and made by East Quantoxhead Trust Company Limited and noted in the Register on 24 March 1971, (D/73 and D/77) by Objection No.0/266 made by Major Thomas Fleming Trollope-Bellew and noted in the Register on 14 April 1971, and (D/74 and D/78) Objection No.0/791 made by Somerset County Council and noted in the Register on 4 September 1972.

I held a hearing for the purpose of inquiring into the disputes at Taunton on 5 June 1975. At the hearing (1) the Trust Company and (2) Major Trollope-Bellew were represented by Mr A M Donne of counsel instructed by Risdon & Co., Solicitors of Taunton, (3) Over Stowey Parish Council were represented by Mr F W Sayer their chairman and Mr R Wilson their clerk, and (4) Somerset County Council were represented by Mr D L Edwards assistant solicitor in the office of the County Secretary.

The land ("the Unit Land") comprised in this Register Unit is in 11 pieces described in the Register as set out in the Schedule hereto. In the Rights Section there are 3 Entries: (1) made on the application of Mrs E Gullick of a right of herbage and a right of estovers over the whole of the Unit Land and in continuation of these rights over part of the CL.10 land, the CL.26 land and the CL.85 land (I was told that the CL.10 land comprises a very large area, now open and unfenced and known as the Quantock Hills); (2) made on the application of Mr W C Towells of rights of estovers and turbary over part of the Unit Land and in continuation of rights over part of the CL.10 land, the CL.26 land and the CL.85 land; and (3) made on the application of Mr S J Barker of rights of estovers and turbary over part of the Unit Land and in continuation of rights over parts of the CL.10 land, the CL.26 land and the CL.85 land. There are 2 Entries in the Ownership Section of Williton Rural District Council as owners of part and of East Quantoxhead Trust Company Ltd as owners of another part.



The grounds of Objection No. 0/99 (Mr Peaster) are: "The land shaded blue on the attached plan was not common land at the date of registration". The land so shaded is triangular with sides about 30 yards long, being Piece no. 10 (southwest of Quantock Lodge).

The grounds of Objection No. 0/144 (the Trust Company) are: "The land coloured pink on the attached plan is not common land, it is used for agricultural and forestry purposes". The land so coloured is a crescent-shaped piece about 150 yards long and 20 yards wide, being Piece no. 1 (at Perry and southeast of Higher ground).

The grounds of Objection No. 0/266 (Major Trollope-Bellew) are: "The part of CL.187 shown coloured pink and unhatched on the attached plan is not common land". The land so coloured is an area just north of Crowcombe Combe Gate about 80 yards long and about 13 yards wide at its south end and about 35 yards wide at its north end; it is crossed by a motor road from Crowcombe to Nether Stowey. This area is at the west end of Piece no. 9 (access from Triscombe Stone to Crowcombe Gate).

The grounds of Objection No. 0/791 (County Council) are: "The land edged red on the attached plan was not common land at the date of registration". The lands so edged are (i) a strip a little over $1\frac{1}{4}$ miles long and for the most part about 25 yards wide, being the whole of Piece no. 9 (including the part mentioned in Objection No. 0/266); and (ii) a piece of about 30 yards square, being Piece No. 5 (northwest of Bicknoller Hill).

Oral evidence was given by Miss J E May a member of Risdon & Co Solicitors of Taunton who had on behalf of the Trust Company (their clients) done some research into the history of Piece no. 1. She produced: (1) a plan dated 1827 of the freehold property of John Fownes Luttrell Esq, and (2) a copy of East Quantoxhead Tithe Apportionment Award dated 25 May 1839. The 1827 plan shows Piece no. 1 as part of plot nos. 200, 201 and 202, and described as arable land and shows the adjoining land on the south (part of the large area of open land known as the Quantock Hills) as Furzy Land. The schedule to the 1839 Award shows plot nos. 200, 201 and 202 as "Plots from Common", and as then being tithable. Miss May said that the Trust Company was a holding company for the Luttrell family, and that she inferred that Piece no. 1, although not now fenced from the rest of the common land known as the Quantock Hills, had nevertheless ceased to be common land before 1839 and cannot therefore be common land now. Mr Donne pointed out that the Trust Company is registered as owner of the Piece.

Nobody at the hearing claimed that the Piece should be regarded as part of the land known as the Quantock Hills or should for any other reason be regarded as common land. Although the evidence against the Piece being common land is slight, I consider that I should in the absence of any contrary evidence give effect to it, and I accordingly conclude that Piece no. 1 should not have been registered as common land.

Major Trollope-Bellew in the course of his evidence produced an extract from the Crowcombe Inclosure Award dated 20 April 1780, certified by the County Archivist, which contained an allotment to James Bernard and Elizabeth his wife of "one other plot...containing...310 acres 11 perches being...part...of the said waste ground called Quantock Hills...bounded on the North East by part of the Parish of Kilve ...on the South East by the said public road or highway...awarded and now called ...Crowcombe Combe...". He said (in effect):- At the time of the Objection he



was the estate owner of the Crowcombe Estate but he has since transferred most of it to his son. The Estate had been in his family for a large number of years in succession to J and E Bernard (they are ancestors of his) as Lords of the Manor of Crowcombe. All the land coloured pink on his Objection plan is west and adjoins the motor road (tarmacadamed) now known as the Crowcombe Road (also known as the Stowey Road), which he identified as the road mentioned in the above quotation from the Award. He contended that the pink land ceased to be common land in 1780.

Mr Edwards in the course of his evidence produced a copy of the definitive map of the rights of way in this area drawn up by the County Council under the National Parks and Access to the Countryside Act 1949, showing bridleways, roads used as public paths and footpaths; Piece no. 9 is shown as a road used as a public path and Piece no. 5 is shown as being at and across the join of a bridleway and of a road used as a public path. He agreed with Mr Sayer that there is intercommonage on the Quantocks and that Piece no. 9 (the $1\frac{1}{4}$ mile strip) is a connecting link between the 2 parts of the Quantocks, but contended that it is nevertheless a highway and could not therefore be common land under the 1965 Act.

Mr Sayers said (in effect):- That the Over Stowey Parish Council contended that Piece no. 9 (the $1\frac{1}{4}$ mile strip) is common land although they did not dispute that there was a disused highway there (as Mr Edwards maintained). There is heather and gorse in many parts of the strip which would be difficult to walk through in places; apart from this, it is possible to walk anywhere over or along the Piece.

On the day after the hearing I walked a short distance down the no. 9 Piece both from the Triscombe end and from the Crowcombe Combe Gate end.

For the purposes of exposition, I treat Piece no. 9 as divided into two parts: (i) The part ("the Long Strip") extending a little over a mile from Triscombe Stone to the gate where the Piece at its northwest end starts to broaden out, and (ii) The part ("the End Piece") extending from the said gate to the northwest boundary of the Piece.

Under the general law apart from the 1965 Act, land may at the same time be subject to rights of common and be a public highway; however under the 1965 Act (which regulates the registrations now in question) it is clear that common land "does not include...any land which forms part of a highway", see section 22(1). The Long Strip is bounded by hedges on both sides nowhere more or much more than 30 yards apart, which separate it from the adjoining agricultural land; I have no reason for not applying to it the ordinary presumption of the law that the highway extends to the whole width between the hedges, see Attorney-General v Beynon 1972 Ch.1. Accordingly I conclude that the Long Strip should not have been registered as common land.

The applicability of the presumption to the End Piece is less obvious. The northeast part is crossed by a highway, which joins the tarmacadamed road; this afterwards runs northwards across extensive open ground. The presumption could not be reasonably applied to such open ground. But there is no reason why it should not apply at the southeast end of the End Piece. There must therefore be a place where the presumption ends. Having looked at the land and considered the judgment in Attorney-General v Beynon supra, I conclude that the presumption



ceases to be applicable at the north boundary of the End Piece, being the place where the hedges on either side of the roads and tracks which there meet are nearest together. I conclude therefore that all the End Piece is also highway, and should not have been registered as common land.

Whether the land allotted by the above-quoted allotment extends (as Major Trollope-Bellew contends) to the edge of the tarmacadamed road, or extends only (as I should be inclined to think having looked at the land) only to the bank or to the hedge on the west side of the End Piece is a question which I would prefer not to decide without looking at the 1780 Award map and considering the terms of the Award as a whole. However I need express no opinion as to the question, because however the allotment took effect, it can do no more than provide an additional reason for the conclusion which I have (as above set out) reached on other grounds.

As regards Piece No. 5:- On the uncontradicted evidence of Mr Edwards that this Piece is part of the highway, I conclude that it too should not have been registered as common land.

As regards Piece no. 10 (southwest of Quantock Lodge) edged blue on the Objection No. 0/99 plan, nobody at the hearing expressed any view at all.

After the hearing I had some difficulty in identifying the triangular piece so delineated on the Objection plan; I found nothing corresponding with its south and northwest sides, and felt doubtful about the identity of its northeast side. Clearly much of the land north and east is private and much of the land on the south and west is indistinguishable from the large open area known as the Quantock Hills.

In the absence of any evidence from any person showing that this Objection is well founded and having regard to the circumstance that it may be in the public interest to enlarge rather than to confine the area of land known as the Quantock Hill and to the fact that Piece no. 11 appears to belong to this area, I conclude that it is common land and that the Objection fails.

If the Unit Land had been separately registered without Piece nos. 1, 5 and 9, and if Objection Nos. 0/144, 0/266 and 0/791 had never been made, the registrations both in the Land Section and in the Rights Section would have become final under sections 5 and 7 of the 1965 Act, notwithstanding that the rights registered in the Rights Section are in continuation of identical rights registered over the CL.10 land and other lands registered under the 1965 Act and notwithstanding that such registrations against the CL.10 and other registered land might by reason of some disputes relating to such registrations never become final or become modified in some way. This is an anomaly which is unavoidable because under the 1965 Act and the regulations made under it an application for registration of a right of common over land may, if the land is divided between two or more Register Units, result in the right of common appearing as a distinct registration in each such Register Unit, and in each such registration under ~~sub~~^{the} Act and regulations being dealt with independently.

I do not know whether the rights registered at Entry Nos. 1, 2 and 3 in the Rights Section of this Register Unit as regards the CL.10 land will at some future time become final (with or without some modification) or will never become final. Notwithstanding the anomaly which may result from my confirming without modification:



the registration of such rights against the Unit Land if they against other land never become final or are modified, I consider that I must as regards the Unit Land deal with all the registrations finally now. By so doing, I shall I think do nothing which will prejudice any objection affecting these rights so far as they may be exercisable against the CL.10 land or any other land.

For the above reasons I confirm the registrations in the Land Section of this Register Unit with the modification that there be removed from the Register the land coloured pink on the plan attached to Objection No. O/144 made by East Quantoxhead Trust Company Limited and the lands edged red on the plans attached to Objection No. O/791 and made by Somerset County Council and such part (if any) of the land coloured pink and unhatched on the plan attached to Objection No. O/266 and made by Major Trollope-Bellew as is not included in that edged red on either of the plans attached to the said County Council Objection, and I confirm the registrations in the Rights Section without any modification.

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

Pieces comprised in the Unit Land

- (1) Piece at Perry and south of Higher ground, East Quantoxhead
- (2) Piece southwest of Staple Plantation, West Quantoxhead
- (3) Piece east of Round Plantation, West Quantoxhead
- (4) Piece west of Haslett Plantation, West Quantoxhead
- (5) Piece northwest of Bicknoller Hill, Bicknoller
- (6) Piece east of Quantock Moor, Bicknoller
- (7) Piece northwest of Paradise Farm, Bicknoller
- (8) Piece northwest of No Man's land, Holford
- (9) Piece being the access from Triscombe Stone to Crowcombe Combe Gate, Over Stowey and Crowcombe and West Bagborough
- (10) Piece southwest of Quantock Lodge, Over Stowey
- (11) Piece east of Round Hill, Over Stowey

Dated this 21st day of *January* 1976

a. a. Bader Fuller

Commons Commissioner