



In the Matter of Black Down Common in the
Parish of Culmstock

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and at Entry Nos. 1-3 in the Rights Section of Register Unit No. CL 90 in the Register of Common Land maintained by the Devonshire County Council and is occasioned by Objections No. 618 and 695 made by Mr J J Collier and the Rt. Honourable E D L Du Cann, MP., respectively and noted in the Register on 10 November 1970 and the registration at Entry No. 2 in the Rights Section of the same Register Unit occasioned by Objection No. 996 made by the said Rt. Hon. E D L Du Cann, MP., and noted in the Register on 20 July 1972.

and on the 13 April 1983.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 2 December 1981. The hearing was attended by Mr M R Rose of Messrs Clarke, Willmot and Clarke, Solicitors, of Wellington, Somerset who appeared for the applicants, Culmstock Parish Council, in the Land Section and Mr J H Pope, Mr and Mrs J Sinclair and Mr G Bartlett in the Rights Section and Mr P F Pugsley of Messrs Hole and Pugsley, Solicitors of Tiverton, Devon who appeared for Lt. Col. P J G Dobill who had acquired the interests represented by the objectors whose names appear on the Register, Mr Collier and the Rt. Hon. E D L Du Cann. Messrs Simmons and Simmons, Solicitors of the City of London had written stating that although the Rt. Hon. E D L Du Cann retained some interest in the Common under a right of pre-emption, he did not intend to take any part in the hearing or make any representations. Solicitors acting for Mr Collier had also notified the Office of the Commission that their client had ceased to own the land in respect of which he had lodged an Objection.

The following witnesses gave evidence in support of the applicants.

Mrs Muriel Ethel Holmes now living in Wellington had lived in Culmstock from 1973-79. She was an amateur historian. She produced a copy of an Anglo-Saxon Charter of the parish of Culmstock dated 960 AD. The parish is also referred to in the Domesday Book.

The parish was first vested in the Bishop of Exeter and later in the Dean and Chapter of Exeter in whose ownership it remained until the middle of the 19th century. In the period after the Restoration the Manor was leased by the Dean and Chapter to the Samford family.

In a survey of the Manor of Culmstock, commissioned by Parliament in June 1650, there is a finding that the Commoners have common of pasture upon Blackdown and Maidendown and the right to sow and till those commons without the licence of the Lord of the Manor and to take Marle. A later survey made in 1676 states that there are several commons of very large extent belonging to the Manor whereon the tenants have common of pasture, turbarry and liberty of tillage.

The Witness produced copies of lists of persons fined for encroachments one dated 1682 and the other in the 18th century. Another document in Latin (Circa 1682) referred to rights of pasturage over Blackdown.



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Miss Lynn Barr a Clerk with Messrs Clarke, Willmott and Clarke, produced a letter from the Librarian of Exeter Cathedral enclosing copies of Counterpart Leases of the Manor granted in 1661 and 1672 and an assignment of the latter to John Samford in 1679. The writer confirmed that there were subsequent leases to John Samford and his executors in his charge covering the period 1679-1734 and to William Samford in 1741. Both the two earlier leases contained a reference to waste and commons.

Also included with this letter was an Agreement for the sale of the Manor of Culmstock made between the Ecclesiastical Commissioners and Mrs Rosalie Collier dated 30 March 1882. The Manor is described in the first Schedule as 'subject to all rights of common and way and passage thereon and thereover'.

Mrs Marian Phyllis Bull said that she was currently Clerk of the Culmstock Parish Council and of the Culmstock Coal Charity and had lived in the parish for 33 years. The Coal Charity had owned 50 acres of land in the parish since 1883 some of which had recently been acquired by the Ministry of Transport to build a motor-way. These 50 acres were the only enclosure of land in the parish. There were three allotments on Black Down and two on Maiden Down and consent to the enclosure was given by one hundred persons who claimed common rights. In her time members of the parish had exercised common rights.

There was a document referring to common rights which had been lost.

In cross-examination the witness agreed that she was not a member of the parish council at the date when the application for registration was made.

Mrs Alice Mary Wells of Geaber Gidleigh near Chagford, a Clerk in the Devon County Council Record Office, said that she could find no record of any enclosure award for the Culmstock area. Had there been any enclosure she would have expected that there would have been a record of it.

The Tithe Plan made in 1841 showed no firm boundary on the North-east side of Blackdown. Maiden Down has a boundary all round it. The Apportionment Book dated 1842 contains a reference to 417 acres in the parish described as 'Common Land uncultivated over which many estates in the parish have a right of Pasturage for all sorts of cattle'.

Maiden Down and Black Down were shown in the list of lands and premises under the hearing 'Commons etc' and numbered 1892 and 1393 respectively.

Miss Lynn Barn was recalled and produced 'A Historical Account of Devonshire' in which Black Down Common was mentioned on p.232. She also produced a Print of Particulars of Sale of the Nicholashayne Estate, which included Black Down Common, Maiden Down Common and the Lordship of the Manor of Culmstock. The particulars were prepared for an Auction Sale to be held on 28 June 1966 but it was common ground that the property was not sold at auction but subsequently in 1970 by private treaty. The two Commons were expressed to be sold subject to Common Rights. The Particulars of Sale included a plan of the estate and a Memorandum prepared by the Vendors Solicitors dealing with (inter alia) common rights.

Mr Geoffrey Bartlett, the applicant at Entry No. 3, said that he lived at Upcott Dairy Farm, which he owned but which was let to his son. The Farm was 175 acres



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in extent and originally included part of Tarbuddle and Quant's Farms. He had lived at Upcott Farm since 1934 when he was aged 2 years. His father was then tenant of the farm until 1951 when the witness purchased it. He was not grazing 9 mares and foals on Black Down Moor. He had grazed both cattle and horses on the Moor. In 1939 his father had 12-15 cattle and two horses on the Moor. In 1950 he was still grazing the same number. In 1969 the witness was grazing about 12-15 cattle and 1-2 horses on the Moor. He had cut bracken for bedding when straw was in short supply in 3 or 4 years. He did not remember whether his father had ever cut bracken.

In cross-examination the witness said that he grazed ponies not horses and agreed that Cattle tended to wander on the Moor. Friesians require better pasture than beef cattle. He occasionally had trouble due to animals straying while on the Moor. A race course had been laid out about 10 years ago and horses liked going on the the Course to graze. Ponies would be turned out all the year round. Cattle would graze from mid-May to November. He would put his cattle to graze on the Moor in five out of every ten years. As the acreage he farmed increased he would turn out more stock to graze on the Moor. He had not taken bracken since 1976.

I allowed Mr Rose to read Statutory Declarations by a number of elderly witnesses although he did not produce them for cross-examination. Their names were:-

- (i) Mr Benjamin Bartlett (father of the previous witness)
- (ii) Mrs Evelyn I Knowlman
- (iii) Mrs Emma P Symons
- (iv) Mr D V Seaford
- (v) Mr Frank Gill
- (vi) Mr Ernest Johnson
- (vii) Mr F S Authers

Mrs Amelia Sinclair said that she and her husband had jointly purchased Burgesses Cottage, Nicholashayne in 1967 but did not live there until 1979. She had spoken to a Mr Batchelor whose parents were tenants of the Cottage from 1931-38. The parents had farmed the land and used the Common for their animals. Neither she nor her husband had themselves exercised any rights of common. Their Vendor kept a cow, goats and pigs.

Mr John Sinclair the husband of the previous witness said that he had told Mr Geoffrey Bartlett that he could use his (the witness's) common rights and graze some horses on the Common.

Mrs Winifred Mary Andrews of Park Farm, Culmstock said that her husband's family had farmed Mr Geoffrey Bartlett's farm. She had known the Common for 25 years. She had seen animals on the Common, mostly horses and on the east side in cross-examination the witness said that there had been no change in the number of animals on the Common, which she would visit 4-5 times each year. She could not say whether she had ever seen cattle on the Common.

Major H A M Pyman had purchased Tarbuddle Farm, Nicholashayne in 1979 from Major P J H Pope the original applicant, and since then he had grazed a horse and a pony on the Common. There was no specific reference in the Conveyance to Major Pope to any specific common rights.



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The following gave evidence on behalf of the objector. Major Peter George James Dobree of Holcombe Court, Wellington said he was the registered owner of the Common. Before he contracted to purchase the Common, requisitions on title revealed that there were applications for registration in the Register of Common Land kept by the County Council.

He had first walked over the Common in the summer of 1925, it was a large empty area. Later in the period 1928-34 he rode on the Common when he visited the area; he saw no stock on the ground during that period. His first visit to the Common after the War was in 1947. Shortly after that until 1970 he would walk on the Common with his dogs about once a fortnight. He saw no stock on the Common while out walking.

In 1977 he considered buying the Common. He saw Mr Geoffrey Bartlett who told him that he was putting his ponies up on the Moor to feed them up before sale. Mr Bartlett did not think that either Major Pope or the Sinclairs had any rights over the Moor.

In the NE corner of the Common there are signs of an enclosure, some low banks and a ditch.

Bracken grows mostly on the sloping areas below the Beacon and near Windwhistle. On the NE part of the Moor gorse and heather grow.

In cross-examination Major Dobree said that he had bought the Common partly out of sentiment. Over the past ten years car traffic over the Moor had increased with resulting litter and motor-cycle scrambling had taken place on the Moor, also hand-gliding. He thought he could improve the Common by buying the land and putting cattle on it. He had had some help from the Nature Council but the area was too small to justify a Warden.

One difficulty was that there was little suitable grazing for horses and cattle. He had had complaints about animals straying off the Common. He had been advised that with hardy cattle and some improvement of the grazing the Common could be used for summer grazing which would be profitable. If the ground were limed the growth of grass would increase. There is an underlying stratum of flint which makes ploughing impracticable.

He saw no animals on the Common before 1970. He remembered two areas where bracken was being cut, one of them on the Common. He did not believe that 3,000 bales of bracken had ever been taken from the Common as Mr Bartlett alleged.

In re-examination the witness said that he was not Lord of the Manor but he did own the Common.

Mr Albert John Grey said he had lived at Coombes Head Cottage, Culm Davy since 1958. He had often walked over the Common but had never seen horses grazing; there was not enough grass. The only cattle he had seen had strayed there from nearby fields.

A race course had been built on the Common in about 1964. About three years later he had seen Mr Bartlett taking away the hay from the race course which he had previously cut. After that two horses were put there to graze. Since then the



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number of horses he had seen on the Common had increased but he had seen them more often on the land of other farmers and they only came on the Common to drink at a water-hole.

In cross-examination he said that he had been employed as a lorry driver and a boilerman but he was now retired.

In re-examination he said that he had worked for five years in an estate office as a student.

Mrs Marjorie Maud Spiller, who lived at Crossways Farm, Higher Wrangway said that she had been married for 35 years. She was courting for 9 years and in that period knew the Common. There were no animals grazing then. Horses had grazed on the Common for the past 7 years but not previously. She had seen Mr Bartlett taking hay to his ponies on the Common. Crossways was purchased in 1965. During the period 1945-1970 she would go walking on the Common about 6 times a year. She had been chased by horses on the Common. She did not like to see cattle on the Common.

Mr Pugsley made the following submissions:-

1. There was no evidence that fields OS. Nos. 315, 316, 317 and 318 had ever been part of the Common.
2. The evidence was insufficient to establish the rights claimed.
3. Although Mr Bartlett said that he and his father let out cattle and horses to roam, there was no sufficient grazing on the Common available for them.
4. Mrs Knowlman was unable to say that she had seen cattle on the Common.
5. The claims put forward were small in relation to the size of the Common.
6. The owner of the Common was not Lord of the Manor. Re. Box Hill therefore applied.

Mr Rose emphasised that all leases and sales of the Common which, had been put in evidence were made subject to common rights.

There is evidence in the ancient documents referred to by the witnesses called on behalf of the applicants which establishes, in my view incontrovertibly, that from the 17th century onwards and almost certainly from earlier times, tenants of the Manor of Culmstock had rights of pasture and tillage and liberty of turbary over Black Down Common.

Each of the applicants in the Rights Section claims in respect of property which adjoins the Common. The Common has in my view, never been enclosed. Major Dobree mentioned some low banks and a ditch in the NE corner which suggested an attempt at enclosure but in my view that is no reliable evidence that there ever was any attempt to enclose over part of the Common. Taking into account these facts and the evidence of the older people who made statutory declarations, general as it was, as to grazing on the Common, I take the view that each of the applicants had a right of pasturage appendant, such a right is subject to the



rules of levancy and couchancy but it is not lost by non-exercise though it can be lost by abandonment, the burden of proof of which is on the survient owner.

Mr Bartlett's position is stronger than that of the other applicants because Upcott's Farm is referred to in the 19th Century Deed which resulted in the release of 50 acres to finance a Coal Charity. One of the Commoners who signed lived at Upcott's Farm.

Entry No 1 in the Land Section and

On this footing I would confirm Entry Nos. 2 and 3 in the Rights Section excluding Bracken and Entry No. 1 limited to 2 cattle or 2 horses and excluding bracken and I would give the Objector leave to apply to reduce these figures on the grounds of levancy and couchancy such application to be made within four weeks of the date when notice of my decision is posted to him.

If the Rights applicants have to rely on prescription then on the evidence of Mr Geoffrey Bartlett and the Statutory Declaration of his father I would confirm the registration at Entry No. 3 limited to 15 cattle and 2 ponies. The other two applicants are not supported by evidence which is sufficiently specific to discharge the required burden of proof. *I would also accept Mr [unclear]'s submission and confirm the [unclear] registration at Entry No 1 in the Land Section to the [unclear] O.S. Nos 315-318.*

For these reasons I confirm the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1-3 in the Rights Section subject to the modifications mentioned.

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 *24th* day of *October* 1983

[Signature]

Commons Commissioner