



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/393

In the matter of Cripdon
Down, Manaton, Teignbridge
District, Devon

DECISION

These disputes relate to the registrations at Entry Nos 1 to 11 inclusive in the Rights Section of Register Unit No. CL106 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 296 to Entry Nos 1, 2, 3 and 4 made by M J Bowden, Objection No. 624 to Entry Nos 1, 2 and 3 made by Gilbert George Shilston, Objection No. 628 to Entry Nos 1, 2 and 3 made by Jane Gillian Beeson, and Objection No. 638 to Nos 1 to 11 inclusive made by The Heathercombe Brake Trust of Heatree House, Manaton, and all noted in the Register on 25 November 1970; and by Objection No. 980 to Nos 4, 7, 8 and 11 made by Jane Gillian Beeson and noted in the Register on 31 May 1972.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 13 March 1984. At the hearing (1) Mr J H Hine of Wayside, Manaton as successor of Mr M J Bowden who made Objection No. 624 and applied for the Right Section registration at Entry No. 8, attended in person being helped by a neighbour Mr H F Pearce; (2) Mr G G Shilston who made Objection No. 628 and applied for the Rights Section registration at Entry No. 10, attended in person; (3) Mrs J G Beeson who made Objections Nos 628 and 980 and applied for the Rights Sections registration at Entry No. 10 was represented by her husband Mr Christopher William Restarick Beeson; (4) Mr Maurice Harold Retallick as successor of his father Mr Harold George Retallick who applied for the Rights Section registrations at Entry No. 1 (with Mr Herbert Hugh Whitley) and Nos 2 and 3 (alone) attended in person; and (5) the said Mr Herbert Hugh Whitley attended in person.

The land ("the Unit Land") in this Register Unit is a tract of about 110 acres about 1 mile southwest of Manaton church; its west boundary is the road which runs northwards from Ashburton by Swallerton Gate to join the B3344 road at Heatree Cross. There are 11 subsisting Rights Section registrations and the grounds of each of Objection put in question wholly the registrations to which it refers. In the Ownership Section "The Heathercombe Brake Trust" are registered (being undisputed, finally) as owners of all the Unit Land.

At the beginning of the hearing:- Mr M H Retallick and Mr H H Whitley said that the registrations at Entry Nos 1, 2 and 3 (Bagtor Barton, Crownley Park and Bagtor Mill) were withdrawn; Mr Beeson said that the registrations at Entry Nos 9 (Wayside) and 10 (Ford Farm) should stand; Mr Shilston said that the registration at Entry No. 5 (Torhill Farm) should stand. They were agreed that the registration at Entry No. 6 (Heatree Farm) should stand explaining that since the registration the farm had been sold to the Heatree Estate who were the same as the said Heathercombe Brake Trust. Mr Hine said he agreed that the registrations at Entry Nos 5, 6, 9 and 10 should stand. Mr Pearce explained



that the Heathercombe Brake Trust manage a School for boys, and Heatree Farm goes with the School.

Mr Beeson in the course of his oral evidence produced a conveyance dated 26 February 1958 by which Mr Robert Graham Kitson as personal representative of the Reverend John Archibald Kitson who died 22 January 1947, conveyed to Mr Matthew John Bowden the farm containing about 191.965 acres known as Ford Farm and a conveyance dated 23 July 1959 by which he conveyed to Mrs J G Beeson the said premises referentially to the 1948 conveyance; the parcels of the 1948 conveyance included: "And together also (by way of assurance and not exception) with the right (so far as the Vendor can grant the same) for the purchaser to enjoy rights of grazing on Cripdon Down and Eason Down to the extent of fifty ewes with their lambs or ten bullocks and two ponies". He said (in effect):- When the Heatree Estate was sold up, the manorial rights affecting the Unit Land were sold to a Midlands Timber company along with the timber on the Estate; afterwards the manorial documents were mislaid or lost; eventually the Heatree Estate re-acquired the manorial rights; therefore Objection No. 638 (to all the registrations) was he thought because they were not conversant with the rights on common provisions in the manorial documents. Since 1959 he had farmed Ford Farm (No. 10) and Eason Farm as one unit; Ford Farm (but not Eason Farm) had grazing rights (as above stated), and he had exercised such rights by grazing sheep (Scotch black face). On the Unit Land there was grass and some heather grazeable, with bracken fringes. Wayside (No. 9) in 1969 (the date of registration) was owned by the said Mr M J Bowden, bought by him from the Heatree Estate; from Wayside he turned out animals; before he bought he was tenant of the Estate. He (the witness) produced a written statement prepared by Mr H S Pearce and signed by Mr James Dunning, as written evidence by him.

In his statement Mr Dunning of Haytor View, Ipplepen, retired farmer aged 83 years said (in effect):- During his long stay in Manaton (1911 to 1941) Cripdon Down was always considered to be the common belonging to Ford Farm and he knew that Mr Joseph Willcocks who farmed Ford used it throughout. Torhill Farm, Manaton also used Hayne Down and Cripdon Down in his time at Manaton.

Mr D G Shilston in the course of his oral evidence produced a tenancy agreement dated 17 July 1937 under which his father was tenant of Torhill Farm of the Reverend J A Kitson; such agreement contained a clause providing that "the tenant should enjoy rights of grazing on Cripdon Down to the extent of 50 ewes (or 10 bullocks) and a couple of ponies ...". He said (in effect):- His father purchased Torhill Farm in 1948 and was given rights on Cripdon and Eason Downs. His father and he had been exercising these rights. Mr Hine is a successor of the said Mr Bowden. Messrs Bradford who applied for the registration at Entry No. 6 sold Heatree Farm to the School, so they have the rights registered.

The grounds of Objection No. 980 (Mrs J G Beeson), that the rights registered at Entry Nos. 4, 7, 8 and 11 "do not exist at all" give fair notice to those concerned with them that they are wholly disputed. In the absence of any evidence or argument in support of them I conclude that these registrations were not properly made. So having regard to the above recorded withdrawal of the registrations at Entry Nos. 1, 2 and 3, I refuse to confirm the said registrations at Entry Nos. 1, 2, 3, 4, 7, 8 and 11.

Notwithstanding that the Heathercombe Brake Trust was not represented at the hearing, on the evidence of Mr Beeson, Mr Dunning and Mr Shilston I conclude that the



registration at Entry No. 6 was properly made, as also on the same evidence I conclude so were the registrations at Entry Nos 5, 9 and 10. Accordingly I confirm all such registrations 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 the notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 3rd day of August 1984

a. a. Baden Fuller

Commons Commissioner