



In the Matter of Hentor Warren, Willings Wall Warren,
Trowlesworthy Warren, Shaugh Moor, Wotter Common,
The Ruts, and part of Crownhill Down, Shaugh Prior,
Devon (No. 2)

DECISION

These disputes relate to the registrations at Entry Nos 1 - 81, 83 - 94, 96 - 99 and 103 - 105 (all inclusive) in the Rights section of Register Unit No. CL 190 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 266 made by English Clays Lovering Pochin and Co. Ltd and Objections Nos. 339 and 341 made by the Roborough Estate Trustees and all noted in the Register on 19 November 1970, Objection No. 490 made by the National Trust and noted in the Register on 4 December 1970, Objection No. 619 made by Mrs J E S Cobbold and noted in the Register on 1 February 1971, Objection No. 264 made by English Clays Lovering Pochin and Co Ltd and noted in the Register on 28 October 1970, Objections Nos 337, 340 and 349 made by the Roborough Estate Trustees and all noted in the Register on 18 November 1970, Objections Nos 565 and 564 made by the Shaugh Commoners Association and both noted in the Register on 1 December 1970, Objection No. 398 made by H R H Charles, Prince of Wales and noted in the Register on 1 February 1971, Objection No. 399 made by H R H Charles, Prince of Wales and noted in the Register on 31 March 1971, Objection No. 985 made by H R H Charles, Prince of Wales and noted in the Register on 23 June 1972, Objections Nos 1071, 1072, 1073 and 1074, made by the Shaugh Commoners Association and all noted in the Register on 11 September 1972, Objections Nos 1004, 1005, 1006, 1007, 1008, 1009 and 1010 made by the Maristow Estate Trustees and all noted in the Register on 11 September 1972, Objection No. 1064 made by the National Trust and noted in the Register on 14 July 1972, and Objection No. 350 made by the Roborough Estate Trustees and noted in the Register on 18 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Paignton on 26, 27, 28 and 31 January and 2 February 1977. The hearing was attended by Mr Ian McCulloch of counsel, on behalf of the County Council; Mr David Lyzack, of counsel, on behalf of the National Trust; Mr Peter Langdon-Davies, of counsel, on behalf of the Shaugh Commoners Association (on 2 February); Mr D H Crocker, solicitor, on behalf of Mr R E Skelley and Mr R L Skelley, the applicants for the registrations at Entry Nos 27, 28 and 97, Mr R E Skelley, the applicant for the registration at Entry Nos. 19, 101, and 103, Mr D J Skelley, the applicant for the registration at Entry No. 30, Mr W R Morrish, the applicant for the registration at Entry No 92, Mr D C Turner, the applicant for the registration at Entry No. 24, Mr T Vincent, one of the applicants for the registration at Entry No. 25, the personal representatives of Mr C D Serpell, the applicant for the registration at Entry No. 38, Mr E W Mudge, the applicant for the registration at Entry No. 98, Mr R Hill, the applicant for the registration at No. 105, and Dr H P Burrows, the applicant for the registrations at Entry Nos 11 to 16; Mr C R Ansell, solicitor, on behalf of Mr J R Lascombe, the applicant for the registration at Entry No. 71; Mr R L Toms, solicitor, on behalf of Mr J Phillips, the applicant for the registrations at Entry Nos 93 and 94; Mr V H Leese, solicitor, on behalf of English Clays Lovering Pochin and Co. Ltd; Mr V H Jarne, solicitor, on behalf of the Shaugh Commoners Association (on 26, 27, 28 and 31 January); and Mr C Davies Jones, solicitor, on behalf of Mrs Cobbold. I gave leave to Mr R J Woodcock, chartered surveyor, to represent Mr A J Looton, the applicant for the registrations at Entry Nos 1, 2, 6 and 7, Mr and Mrs D B H Cannons, the applicants for the registrations at Entry Nos 3, 4, 5 and 91, Mr J H Legassick, the applicant for the registrations at Entry Nos 26 and 51, Mr H H Cole, the applicant for the registration at Entry No. 44, and Mr R H Mannin, the applicant for the registration at Entry No. 50. Sir Guy and Lady Sayer, the



applicants for the registration at Entry No. 8, Mr D H Scott, the applicant for the registrations at Entry Nos 9 and 53, Mr R P German, the applicant for the registration at Entry No. 10, Mr J H Manford, the applicant for the registration at Entry No. 17, and Mr F de M Lawson, the applicant for the registration at Entry No. 60, appeared in person.

↓
3c?

There was no appearance on behalf of the Roborough Estate Trustees, H R H Charles, Prince of Wales, and the Maristow Estate Trustees, or by or on behalf of the remainder of the applicants for registrations.

At the beginning of the hearing the point was taken by Mr McCulloch and Mr Tyzack that a number of the rights registered are merely to stray animals on the land comprised in the Register Unit and that such rights are not registrable under the Commons Regulation Act 1965. After hearing Mr Crocker's argument to the contrary, I have come to the conclusion for the reasons given in my decision in In the Matter of Effingham Common (No. 1) (1976), Ref. No. 236/D/24-45, that while the owner of a straying animal may have an answer to an action of trespass, he has no original right of pasture which can be registered. I therefore refuse to confirm the registrations at Entry Nos. 1 to 7, 10 to 17, 19 to 22, 26, 28 to 32, 44 to 51, 72 to 74, 77, 78, 85 to 87, 91, 92, and 105, which relate solely to rights to stray. I shall also modify other registrations which include such rights.

Another group of registrations which can be dealt with en bloc are those of applicants who proved in In the Matter of Doombe Down, Hookney Down, and Headland Warren, North Bovey (No. 2), (1976), Ref. Nos. 209/D/43, 44, 45 - 48, 88 that they were venville tenants entitled to rights of common in all the Commons of Devon. It was agreed between all the parties other than the Shaugh Commoners Association that all the land comprised in the Register Unit, with the exception of Crownhill Down, is part of the Commons of Devon. Mr Langdon-Davies on behalf of the Shaugh Commoners Association argued that even if when the survey of the Duchy of Cornwall was made in 1608 each venville tenant was entitled to graze on the whole of the Commons of Devon, such a right has since been abandoned on all except the "home" common. In support of this argument he drew my attention to the passage on p.1150 of the memorandum submitted by the Dartmoor Commoners Association to the Royal Commission on Common Land, where it is stated:-

"The Commons of Devon are no longer regarded as one vast Common but as
"consisting of a large number of parish and manorial Commons over which
"reciprocal rights analogous to those of common pur cause de vicinage may,
"in most instances, be exercised".

Mr Langdon-Davies called a number of witnesses who stated that this was in fact the position during the whole period of living memory. He said that I ought to infer from this that there was at some time an agreement between the venville tenants that they would give up their rights over the Commons of Devon as a whole in return for having exclusive rights over their respective "home" commons. In the absence of any other explanation of how the present state of affairs came about, one might, on the analogy of a lost modern grant, infer the existence of such an agreement. However, this state of affairs is equally consistent with each venville tenant having turned out his animals on the part of the Commons of Devon nearest to his enclosed land because that was less trouble than driving them to some distant part of the Commons, and the animals not normally going far from the point at which they were turned out. The practical result would be the same as if there were a right to graze on the "home" common with rights pur cause de vicinage on adjoining commons. This could lead to the belief that this practice reflected the rights of the venville tenants. Such a situation would seem familiar to lawyers as being in accordance with the general law relating to rights of common. A pattern of rights



of this character is, however, dependent upon there being separate commons adjacent to each other. For the reasons given in my decision in In the Matter of Coombe Down, Hookney Down, and Headland Warren, North Bovey, supra I take the view that this never has been and still is not the case here. The Commons of Devon are but one common, and the fact that a venville tenant has exercised his rights over the part of that common which he finds most convenient does not justify an inference that he has intended to abandon his rights over the rest.

Mr Scott in his answer to Mr Langdon Davies's argument raised the further question whether there can in law be an abandonment by a commoner of his rights over part of a common. This is a point on which there seems to be no direct authority, but since I have come to the conclusion that there has been no abandonment, it is not necessary for me to consider this point.

Mr Langdon-Davies said that the reason why his clients had instructed him to argue that there had been an abandonment was that the confirmation of the rights registered by the venville tenants would lay Shaugh Common open to an invasion by large numbers of animals which would leave insufficient grazing for the animals of his clients. Such a fear seems to me to be ill-founded. While it has never been expressly stated, I strongly suspect that those who have registered venville rights are not really interested in putting their animals on Shaugh Common. Lady Sayer spoke of the threat to the Common from possible mineral workings, and it appears that she is more concerned to secure whatever environmental advantage may accrue from the registration of her rights than in the exercise of them. But be this as it may, I am not concerned with the motives of those applying for the registrations or with the fears of those who oppose them. Whether there are venville rights over this Common is a matter of law (for there is no dispute as to the facts) which I have to determine without regard to the desirability or otherwise of the result of my decision. I therefore confirm the registrations applied for by these applicants, namely Entry Nos. 1, 2, 23 to 33, 37, 39, 42 to 44, 47, 48, and 79 with the modification that the Land over which the rights are exercisable excludes the part of Crownhill Down comprised in this Register Unit.

Another group of registrations - those at Entry Nos 35 - 40 (inclusive), 42, 43 and 44 - were subject only to the general objections made in respect of the registration in the Land section of the Register Unit. That registration having been confirmed with a modification, those objections have been disposed of, and I therefore confirm this group of registrations with modifications to exclude straying rights.

It will be convenient to deal with the remaining registrations in numerical order.

The registration at Entry No. 18 relates only to Crownhill Down. In a letter dated 3 January 1977 Messrs John Pearce and Sons, agents for Mr W R Palmer, the applicant for the registration, stated that Mr Palmer wished to "withdraw" his application to register grazing rights on Crownhill Down. I therefore refuse to confirm this registration.

There being no appearance by or on behalf of the applicants for the registrations at Entry Nos. 23, 30, 31, 55, 56, 69, 70, 76, 89, 90, 96 and 99 I refuse to confirm the registrations. I also refuse to confirm the registration at Entry No. 57, the application for which was "withdrawn".

The application made by Mr D J Turner for the registration at Entry No. 24 described the land over which the right of common attached to Higher Collard Farm was exercisable as Shaugh Moor, Lotter Common, and The Ruts. However, the land was entered in the



Register as the whole of the land comprised in the Register Unit. Not surprisingly, the National Trust accepted the registration at its face value and included it in Objection No. 1064. At the hearing Mr Crocker, also unaware that Mr Turner had claimed no right over the National Trust land, informed me that such claim was "withdrawn". Mr Crocker also informed me that Mr Turner did not wish to pursue his claim to turbarry and to take stone. I therefore confirm this registration with the appropriate modifications.

The application made by M/s W M Vincent and Mr H Vincent for the registration at Entry No. 25 described the land over which the right of common attached to Lower Collard Farm was exercisable as The Ruts and Shaugh Moor. However, the land was entered in the Register as the whole of the land comprised in the Register Unit. Again not surprisingly, the National Trust accepted the registration at its face value and included it in Objection No. 1064. Equally not surprisingly, Mr Crocker called evidence directed to showing that the right attached to Lower Collard Farm was exercisable over Trowlesworthy Warren and Hentor Warren. Mr Pyzack cross-examined and I considered the evidence on the basis that the claim extended to the National Trust land. Only after I had come to the conclusion that the evidence did not prove the existence of a right over the National Trust land did I discover that the application did not cover such a right. At the hearing Mr Crocker agreed that the animals to be included in the registration should be 40 cattle or 200 sheep. I therefore confirm the registration with the appropriate modifications.

During the hearing I was informed that the Shaugh Commoners Association was agreeable to the grazing of 72 cattle or 350 sheep over Shaugh Moor by Mr R E Skelley and Mr R L Skelley, the applicants for the registration at Entry No. 27 and that the applicants did not wish to pursue their claim to a right of turbarry over this land. I was also informed that the National Trust was agreeable to the grazing of 100 cattle and 70 sheep on its land and that the applicants did not wish to pursue their claim to rights of turbarry and to cut bracken and rushes over this land. I therefore confirm the registration with such modifications as will give effect to the terms of the agreements with the Shaugh Commoners Association and the National Trust.

During the hearing the only Objection to the registration at Entry No. 33 (No. 1071) was withdrawn in so far as it related to this registration. I therefore confirm the registration, but with a modification excluding the straying rights.

During the hearing it was agreed that the animals referred to in the registration at Entry No. 34 should be 66 bullocks or 330 sheep. I therefore confirm this registration with the appropriate modification and also a modification excluding the straying rights.

The registration at Entry No. 41 relates only to Shaugh Moor and was the subject of Objection No. 1071. During the hearing this Objection was withdrawn in so far as it related to this registration. I therefore confirm the registration, but with a modification excluding the straying rights.

Although the registration at Entry No. 71 is stated in the Register to relate to the whole of the land comprised in the Register Unit, the application made by Mr J R Luscombe relates only to Shaugh Moor. There being no objection to the registration in so far as it relates to Shaugh Moor, I confirm it with the modification necessary to bring it into conformity with the application.

I was informed during the hearing that Mr P G Ansell, the applicant for the registration at Entry No. 75 did not wish to pursue the matter. I therefore refuse to confirm this registration.



I was informed during the hearing that it was agreed that the animals in the registration at Entry No. 80 should be 2 cattle or 2 ponies or 8 sheep. I therefore confirm the registration with the appropriate modification.

I was informed during the hearing that it was agreed that the animals in the registration at Entry No. 81 should be 1 cow or 1 pony or 1 sheep. I therefore confirm the registration with the appropriate amendment.

The application made by Mrs J E S Cobbold for the registration at Entry No. 83 describes the right of common attached to her four properties as exercisable over Shaugh Moor, but this was entered in the Register as the whole of the land comprised in the Register Unit. During the hearing I was informed that it was agreed that the animals referred to in the registration should be 221 bullocks or 1100 sheep or 221 ponies. I therefore confirm the registration with the modifications necessary to make it conform to the application and the agreement.

I was informed during the hearing that it was agreed the animals in the registration at Entry No. 84 should be 3 cows or 3 ponies or 6 sheep. I therefore confirm the registration with the appropriate modification.

I was informed during the hearing that the Trustees of the estate of the late Mr C D Serpell, the application for the registration at Entry No. 88 desired that the registration should be restricted to Crownhill Down. There being no objection to this, I confirm the registration with the appropriate modification.

I was informed during the hearing that the National Trust was agreeable to the registration at Entry No. 93 of a right to graze 35 stock units over Willings Wall Warren and Hentor Warren and that Mr I Phillips, the applicant for the registration, was agreeable to the deletion of the rights of turbary, estovers, piscary, and to take stone on the whole of the National Trust land. Mr Phillips stated in evidence that he had not put stock onto Shaugh Moor. So far as the part of Crownhill Down comprised in the Register Unit is concerned, Mr Phillips contended that he was entitled to graze as a man of Devon, but his evidence did not satisfy me that any of the rights which he claimed was attached to any of the four properties in Grenofen, Yelverton, and Plymouth referred to in his application. I therefore confirm the registration with the modifications necessary to give effect to the agreement with the National Trust.

Mr Phillips "withdrew" his application for the registration at Entry No. 94 in so far as it related to the land of the National Trust. The registration is of rights of turbary, estovers, piscary, to take stone, and to graze 68 stock units in gross. Rights of common in gross cannot be claimed under the Prescription Act 1832: see Shuttleworth v Le Fleming (1865), 18 C.B.M.S. 687, at p. 709. Mr Phillips adduced no evidence in support of his application other than that he had from time to time put animals on parts of the land in question and had collected bracken from it. This is insufficient to establish a right of common in gross, and I therefore refuse to confirm this registration.

Broomage Farm, to which the registration at Entry No. 97 relates was conveyed to Mr R E Skelley and Mr R L Skelley, the applicants for the registration, on 4 December 1952 with the right of grazing and the other rights (if any) upon Crownhill Down as had been enjoyed for the past 30 years by the owners and occupiers of the property. Mr E H Lillicrap, the vendor, had grazed cattle on Crownhill Down and the applicants have continued to do so without permission or objection.

X By the exclusion of



However, it appeared that Mr Skelley was referring to the eastern side of Crownhill Down and that he had never put his cattle onto the western part belonging to Mrs Cobbold, which alone is comprised in the Register Unit, though his cattle had strayed onto that part. As I have already stated, I do not consider that straying rights are capable of registration. During the hearing Mr Crocker informed me that the applicants were not claiming any rights over the National Trust land. So far as Shaugh Moor is concerned, no cattle from Broomage Farm went there before 1952. Since 1952 the applicants have from time to time put cattle onto Shaugh Moor. Mr R E Skelley said that the stock from Broomage Farm would not be distinguishable from the other stock on Shaugh Moor. In my view the applicants have not made out a right to graze on Shaugh Moor by prescription. I therefore refuse to confirm the registration.

The application made by Mr E W Mudge for the registration at Entry No. 98 describes the land over which the right of common attached to Colwichtown Farm was exercisable as Lee Moor, with a right of vicinage onto part Crownhill Down and Shaugh Moor, but the land was entered in the Register as that part of the land comprised in the Register Unit north-west of the Cadover Bridge to Cornwood Road, which is not the description in the application. I was informed during the hearing that the National Trust was agreeable to the registration of grazing rights for 100 cattle or 500 sheep, but with the deletion of the words "north-west of the Cadover Bridge to Cornwood Road". I therefore confirm the registration with the agreed modification as to the animals and the substitution of Lee Moor for the words to be deleted.

During the hearing I was informed that the National Trust was agreeable to the registration at Entry No. 103 of a right to graze 50 cattle and 50 sheep on Willings Wall Warren and Mentor Warren and that Mr R E Skelley, the applicant for the registration, was agreeable to the deletion of the rights of turbarry and to cut bracken and rushes on the whole of the National Trust land. Mr Carne stated that the objection relating to Shaugh Moor was not being pursued. The only evidence relating to the part of Crownhill Down comprised in the Register Unit was that Mr Skelley's cattle had strayed onto it. I therefore confirm the registration with the appropriate modifications.

I was informed during the hearing that the National Trust did not wish to support the registration at Entry No. 104, which I therefore refuse to confirm.

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 30th day of May 1977

Chief Commons Commissioner