



COMMONS REGISTRATION ACT 1965

Reference Nos:- 209/D/293  
209/D/292

In the Matter of (1) Knowle Down, and  
(2) Fillace Down, (1) in Walkhampton, and  
(2) in Walkhampton and Horrabridge, West Devon  
District, Devon.

#### DECISION

These disputes relate (1) to the registrations at Entry Nos 4 to 9 inclusive, 13, 14 and 22 to 30 inclusive in the Rights Section of Register Unit No. CL 37 in the Register of Common Land maintained by Devon County Council, and (2) to the registrations at Entry Nos 3 to 9 inclusive, 11, 13, 14, 20, 21 and 22 in the Rights Section of Register Unit No. CL 36 in the said Register; and are occasioned by (1) CL 37 Objection Nos 999, 1000 and 1001, and (2) by CL 36 Objection Nos 997 and 998 made by the Maristowe Estate Trustees and noted in the Register on 11 September 1972.

I held hearings for the purpose of inquiring into the disputes at Plymouth on 20 and 21 January 1983. At the hearings (1) Mr Ernest Fredrick Palmer on whose application the undisputed and now final CL 37 registrations at Entry Nos 11, 16 and 42 were made and the disputed CL 36 registration at Entry No. 9 was made, and (2) Mr Ivor Phillips on whose application the CL 37 disputed registrations at Entry Nos 23 and 24 were made, both attended in person.

The land ("the Knowle Land") in Register Unit No. CL 37 is a tract containing about 33½ acres situated a little under ½ a mile northwest of Walkhampton on the north side of and open to the road (fit for motor traffic) from Horrabridge. The land ("the Fillace Land") is a piece containing a little under 8 acres situated mostly on the north side on the said road and adjoining the southwest side of the Knowle Land. The CL 37 and the CL 36 Land Section registrations being undisputed have become final. The disputed Rights Section registrations are summarised in the Schedule hereto. In the CL 37 and CL 36 Ownership Sections, the Roborough Estate Trustees are registered as the owner of the whole of the Knowle Land and the Fillace Land. As appears in the Schedule hereto the grounds of the said Objections are either that the rights do not exist at all, or that the turbarry does not exist at all or that the rights are excessive and should be reduced to the National Farmers' Union scale.

The Roborough Estate Trustees registered as owner and the Maristowe Estate Trustees who made the Objections are the same persons. As to the Knowle Land I have a letter dated 14 December 1982 from their Solicitors saying that although they do not propose to bring oral evidence at the hearing they oppose a number of the Entries in the Rights Section because the land to which the rights are alleged to be attached is outside the parish and in their submission only those claimants within the Walkhampton parish should have their Entries in the Rights Section confirmed, providing the applicants can prove their claims, as the Knowle Land is a small area and as has been the practice for the past, should be reserved for the use of the applicants in the parish; and the letter continues with details below summarised. As to the Fillace Land I have another letter also dated 14 December 1982 from the said Solicitors to the same effect with the addition that the claims for a straying right are not registrable, and with more details about each registration with supporting documents.



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Mr Phillips: Knowle Land, Entry Nos 23 and 24

At the hearing Mr Phillips asked that the oral evidence he had given at a previous January 1983 hearing in the matter of Penn Moor and Stall Moor, Register Unit No. CL 112, about which I have given a decision of even date under reference Nos. 209/D/303-304, should be treated as given in this case too. By way of additional evidence he said (in effect):- The Knowle Land is in the Manor of Callisham and Knowle, Callisham being in the parish of Meavy some miles away. Beechfield Avenue is right on the boundary of the parish of Walkhampton, and he therefore claimed that there is a right annexed to 8 Beechfield Avenue, Yelverton notwithstanding that it is only a dwelling and a garden and is not an agricultural holding. Alternatively he had a right as "a man of Devon" owning property in Devon; living in the area without agricultural land he might want to turn out an odd pony etc and on occasions to collect wood for his house. He acquired Beechfield Avenue in about 1955 and was living there at the date of the registration, and had so continued until about 1978; he had no cattle sheds or sheep pens in the garden. The Knowle Land has been used by a lot of people similarly situated to himself.

In answer to questions by Mr Palmer, Mr Phillips said (in effect):- He personally had not stocked the Knowle Land at all, but he knew people from Council houses who kept ponies and who were never challenged for using it, although he could not say whether such persons had registered rights. He remembered his grandfather telling him of a Mr Sellack who used to come round demanding payment for putting stock on the Moor and his grandfather always refused to pay; he thought that was in about 1910. That was the only knowledge he had of a Moorman. He himself is now aged 57 years; his grandfather died in the late 1950s.

Mr Palmer while not objecting to Mr Phillips relying on the evidence he had given in the CL 112 case, said he also wished to rely on the cross examination of Mr Kittow in that case.

The evidence and arguments of Mr Phillips to me seem essentially the same as those which he put forward in the CL 112 case, and which I have in my decision of even date about such case rejected for the reasons therein set out. For the like reasons I refuse to confirm the Knowle Land CL 37 Rights Section registrations at Entry Nos. 23 and 24.

Registrations, not exist at all

By far the greater number of the registrations I am now considering come within Objection Nos. 1000 and 997, the grounds of which are that the rights "do not exist at all". An Objection made in this form puts the burden of proof on the persons who seek to support the registrations, and in the absence of any evidence or information about any registration, my only possible conclusion is that it was not properly made. But the December 1982 letters contain information about the registrations all of which except as next below mentioned indicate that the writer considers that the rights do not exist. At the hearing Mr Palmer gave oral evidence against the registrations, providing by way of confirmation of his views the list (CL 37/EFP) of commoners set out in 9 December 1922 in connection with the Plymouth Corporation Bill, with further names added in November 1928. Further I have letters (yellow forms) written in 1972 to the County Council agreeing to the cancellation or amendment of Entry Nos. 5, 9 and 13 in consequence of Objection No. 1000 and of Nos 3, 5 and 11 in consequence of Objection No. 997. I need not



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summarise this information as evidence because without it, I would conclude that these registrations were not properly made. Upon the above considerations, I refuse to confirm the Knowle Land CL 37 Rights Section registrations at Entry Nos. 4, 5, 6, 7, 9, 13, 14, 22, 25, 26, 27 and 29; and refuse to confirm Fillace Land CL 36 Rights Section registrations at Entry Nos. 3, 4, 5, 6, 7, 11, 14, 20, 21 (replaced by 30 and 31) and 22.

Exceptionally as regards Fillace Land CL 36 Rights Section Entry No. 13 made on the application of Mr J E Burton, I have conflicting information. The said Solicitors in their said December 1982 letter say "after further consideration the Trustees are prepared to withdraw the Objection against Entry No. 13 ... and have written to Mr Burton accordingly". Mr Palmer suggested in effect that Foxhams being on the other side of the River Walkham was not in the Manor and that confirmation should be refused. Because the registration is only in question by reason of Objection No. 997 made by the trustees, I consider that I should act on the concession made by them and conclude that the registration was properly made. Accordingly I confirm the said CL 36 registration at Entry No. 13 without any modification.

#### Turbary

Upon like considerations to those set out above, Mr Palmer agreeing I conclude that the registrations to which Objections Nos. 999 and 998 relate would not have included turbary. Accordingly I confirm the Knowle Land CL 37 Rights Section registration at Entry Nos. 28 (replaced by Nos. 37 and 38) and the Fillace Land CL 36 Rights Section registrations at Entry Nos. 8 and 9 with the modification that in column 4 the word "turbary" be deleted.

#### Excessive numbers

Objection No. 1001 relates to Knowle Land CL 37 Entry Nos. 8 and 30. It appeared from the said December 1982 letter that the Solicitors had no reply to their suggestion of a discussion about the numbers. Mr Palmer at the hearing said that the NFU scale 1 head of cattle or 1 pony or 5 sheep per acre of relevant inby land, but was then unable to give the acreage of the relevant land of Mr D Walker and Mr H C Skelley. Since the hearing Mr Palmer has written to me (letter dated 9 March 1983) saying (in effect) that Mr Walker's relevant land is 6.31 acres so that the stock should be reduced to 7 ponies or 7 cattle or 35 sheep and that Mr Skelley's Town Farm is 44.141 acres and the stock should be reduced to 40 cattle and 22 sheep. In the absence of any other evidence or information, my decision is accordingly: I confirm the Knowle Land CL 37 Rights Section registration at Entry No. 8 with the modification that for "graze 24 ponies or 18 steers or 48 sheep" there be substituted "graze 7 ponies or 7 cattle or 35 sheep"; and at Entry No. 30 with the modification that for "graze 50 sheep 200 cattle" there be substituted "graze 40 cattle and 22 sheep".

I am required by regulation 30(1) of the Commons Commissioners Regulations 1972 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.



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SCHEDULE  
(Disputed Registrations)

## Notes:-

(1) CL 36:- Original registrations total 35 of which 8 have been cancelled, 10 have become final and as below mentioned 17 are disputed. Objection No. 999 to No. 28, turbarry does not exist at all; Objection No. 1000 to Nos 4, 5, 6, 7, 9, 13, 14, 22, 23, 24, 25, 26, 27 and 29, right does not exist at all; Objection No. 1001 to Nos 8 and 30, numbers are excessive and should be reduced to NFU scale.

(2) CL 37:- Original registrations total 28 of which 7 have been cancelled, 8 being undisputed have become final and the below mentioned 13 are disputed. Objection No. 997 to Nos 3, 4, 5, 6, 7, 11, 13, 14, 20, 21, and 22, rights does not exist at all; Objection No. 998 to Nos 8 and 9 right of turbarry does not at all.

CL 37 Entry No.	CL 36 Entry No.	Applicant, and land to which right is attached.	Decision
4	3	William Arthur Cole and John Henry Cole: Vixentor Farm, Whitchurch.	Confirmation refused
--	4	Winifred Pauline Meadows: Part Whymington Farm, Sampford Spiney	Confirmation refused
5	5	Dorothy Elizabeth Furze: Part Dunridge, Horrabridge	Confirmation refused
6 (replaced by 44 and 45)	6 (replaced by 34 and 35)	Colin Mark Northmore: Parktown Farm, Walkhampton	Confirmation refused
7	7	William Hedley Benney: The Grove, Horrabridge.	Confirmation refused
8 excessive number	--	Denis Walker: OS Nos 0712 & 1104 and Nos 1192 & 1597, Meavy.	Confirm, reduc- ing number to "7 ponies or 7 cattle or 35 sheep"
9	8 not turbarry	Nora Veale; Fillace, Horrabridge	CL 37 confirma- tion refused; CL 36 confirm with deletion of "turbarry"
--	9 not turbarry	Ernest Frederick Palmer; Part Fillace Farm, Horrabridge	Confirm with deletion of "turbarry"
13	11	John Francis Luscombe; Part Brook Farm, Sampford Spiney.	Confirmation refused



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--	13	John Edward Burton; Foxhams Farm, Horrabridge	Confirm with- out any modification
14	14	Charles Alfred McLaren and Eileen Gertrude McLaren; Ward House, Walkhampton.	Confirmation refused
22	20	John Harold Capon; part Foxhams (OS No. 57) Horrabridge.	Confirmation refused
23	--	Ivor Phillips: Ash Mill and part Ash Lands, Grenofen; Whitchurch; 8 Beechfield Avenue Yelverton; The Corner Yelverton, Buckland Monarchorum; 1 and 1A Weston Park Road, Plymouth.	Confirmation refused
24	--	Ivor Phillips: in gross.	Confirmation refused
25	--	Mary Kay Blake; land at Foxhams (OS No. 2983 etc), Horrabridge and Walkhampton.	Confirmation refused; note CL 36 regis- tration at Entry No. 23 being undisputed has become final
26	--	Denis Walker; field OS 6094 and 5901, Walkhampton.	Confirmation refused
27	--	Harold Charles Skelley; Manor Farm, Dousland, Meavy and Walkhampton	Confirmation refused
28 (replaced by 37 and 38); not turbary	21 (replaced by 30 and 31	Percy Robert Scutt; Middle Lake Farm, Yelverton, Meavy.	CL 37, confirm with deletion of "turbary"; CL 36 confirmation refused
29	<u>22</u>	Michael William Howard; Parlby Arms and Bicklime or Bridge Lands, Sampford Spiney.	Confirmation refused



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30  
excessive  
number

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Harold Charles Skelley; Town Farm,  
Walkhampton.

Confirm  
reducing number  
to "40 cattle  
and 22 sheep"

Dated the

2<sup>nd</sup>

day of

March

1984

A. A. Baden Fuller.

Commons Commissioner