

COMMONS REGISTRATION ACT³ 1965Reference Nos 209/D/247 to
270 inclusive

In the Matter of (1) Liddaton Down and Liddaton Green,
(2) an additional part of Liddaton Down, and (3) Bowden
Down, all in Brentor, West Devon District, Devon

DECISION

These 24 disputes relate to the registrations at Entry Nos 1 to 11 (inclusive), 13 and 14 in the Rights Section of Register Unit No. CL10 in the Register of Common Land maintained by the Devon County Council, at Entry Nos 1 to 12 (inclusive) 14 and 15 in the Rights Section of Register Unit No. CL11 in the said Register of Common Land and at Entry No. 1 in the Land Section and at Entry Nos 1 to 14 (inclusive) in the Rights Section of Register Unit No. CL34 in the said Register of Common Land (all of which Right Section registrations are summarised in the first four columns of the Schedule hereto) and are occasioned by the following Objections: (A) made by Mr William Richard Heyward No. 151 noted in the CL10 Register on 20 October 1970, No. 150 noted in the CL11 Register on 19 October 1970 and No. 149 noted in the CL34 Register on 20 October 1970; (B) made by Mr Charles Rivers Batchelor Nos 675 and 676 noted in the CL10 Register on 19 November and 17 December 1970, Nos 672, 673 and 674 noted in the CL11 Register on 20 November and 17 December 1970, and Nos 671 and 677 noted in the CL38 Register on 24 November and 17 December 1970; (C) made by Mr S Bickell No. 599 noted in the CR10 Register on 19 November 1970, Nos 488 and 600 noted in the CR11 Register on 20 November 1970 and Nos 487 and 601 noted in the CL38 Register on 24 November 1970; (D) made by Brentor Commoners Association Nos 681 and 684 noted in the CL10 Register on 19 November and 17 December 1970, Nos 678, 682 and 683 noted in the CR11 Register on 20 November and 17 December 1970, and Nos 679 and 680 noted in the CL34 Register on 24 November and 17 December 1970; and (E) made by Mr Albert John Davey No. 622 (the only objection to a Land Section registration) noted in the CL34 Register on 1 January 1971.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 14 October 1981. At the hearing (1) Mr P N Hewlitt solicitor of Parnall & Co, Solicitors of Launceston represented: (a) the Objectors Brentor Commoners Association (on the instruction of Mr F Blowey their secretary), (b) the Objector Mr Albert John Davey, (c) the persons stated in the fifth column of the Schedule hereto to be represented by him, being applicants for the said registrations therein mentioned or their successors in title (Mr A J Davey was one of such applicants), and (d) (his firm acting as agent for Anderson Longmore & Higham, Solicitors of Petworth, West Sussex) Mr Rivers Trelawny Batchelor, Mrs Catherine Treleaven Vander Klught and Mr Patrick Tindle Keith Anderson as executors of the said Objector Mr C R Batchelor (he died 10 December 1974 and probate of his will is dated 22 September 1975); (2) Mr W N Radcliffe solicitor of Shelley & Johns Solicitors of Plymouth represented the persons stated in the fifth column of the Schedule hereto to be represented by him, being applicants for the registration therein mentioned or their successors in title; and (3) Mr Frederick Cyril Brinacombe Heyward attended in person as successor in title of his father Mr William Richard Heyward who was not only one of the said Objectors but also an applicant for registrations in the Rights Sections as stated in the said Schedule.



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The land ("the CL 11 Land") in Register Unit No. CL 11 is in two pieces: one ("Liddaton Down") being a tract containing about 17 acres crossed by the road from North Brentor on the east to Chillaton on the west, and the other ("Liddaton Green") being a tract of about 3 acres about $\frac{1}{2}$ a mile to the north adjoining the road through Liddaton. The land ("Bowden Down") in Register Unit No. CL 10 is a tract of about 28 acres being about $\frac{1}{2}$ a mile east of Liddaton Down about $\frac{1}{3}$ of a mile southeast of Liddaton Green. The land ("the CL 34 Land") in Register Unit No. CL 34 is a tract of about 1 acre being a strip adjoining the southeast corner of Liddaton Down. In the Ownership Section of all these Register Units Mr C R Batchelor is registered as owner of all the land in them.

At the hearing I first considered the CL 34 Land. It was agreed between Mr Hewlitt, Mr Radcliffe and Mr F C B Heyward that I should refuse to confirm the Land Section registration and all the Rights Section registrations.

I next considered the CL 11 Land (Liddaton Down and Liddaton Green). The grounds of Objection No. 150 made by Mr Heyward (it related only to Entry Nos. 1 to 11 inclusive) are: "I object to anyone claiming rights to the commons ... If they cannot produce deeds in reference to their claim giving the name of their holdings & acreage in reference in which they are claiming the rights to these commons also giving the date when they procured the rights to these commons". The grounds of the Objections Nos. 488 and 600 made by Mr Bickell are that the rights at Entry Nos. 14 and 15 do not exist. The grounds of Objections Nos. 672, 673 and 674 made by Mr Batchelor and the grounds of Objection Nos. 678, 682 and 683 made by the Commoners Association are the same: that the rights at Entry Nos. 9, 10, 11, 12, 14 and 15 do not exist at all or alternatively are excessive because they exceed 1 head of cattle for every 3 acres of land in respect of which the right is claimed.

Mr Hewlitt on behalf of the executors of Mr Batchelor said they would not object to the registrations becoming final subject to a stocking rate being agreed at one unit per three acres of land: he produced a letter dated 13 October 1981 from his principals to this effect.

Mr Hewlitt on behalf of Mr Higgins said that he owned as part of his farm the land immediately to the west of Stowford Hill and that the Register plan was incorrect so far as it related to the southwest corner of Liddaton Down; he produced a deed dated 19 March 1979 by which Mr Higgins conveyed to Messrs R G and E E M Higgins lands as edged red on a plan attached, and contended that the land with the red edging should be excluded from the register. I refused to consider this contention because the Land Section registration having become final (under section 7 of the 1965 Act in the absence of any objection) I have in my view no jurisdiction to alter it.

As regards the the registration at Entry No. 14 (Mr Perkin), I have a letter from him dated 12 January 1971 addressed to the Clerk of the County Council agreeing to this registration being cancelled. As regards the registration at Entry No. 15 (Mr Young), I have a letter from him dated 17 September 1981 addressed to the Commons Commissioners in which he gives his reasons for not attending the hearing and says his claims were based on the ancient right of all common men living in Devon to graze animals in the commons of Devon. Nobody present or represented at the



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hearing supported either of these two registrations. In the absence of any evidence in support of them, I conclude that they were not properly made.

The registrations at Entry Nos. 1 to 8 inclusive are only in question by reason of Objection No. 150 (Mr Heyward). Mr F C B Heyward explained that the basis of the grounds of objection were that his father wished those claiming rights to prove that such rights existed, and I have a letter to this effect dated 9 October 1981 from Peter Peter & Sons, Solicitors of Launceston. The Registrations at Entry Nos. 9 to 12 inclusive, also in question by reason of the Objection of Mr Batchelor and Brentor Commoners Association. Mr Hewlitt and Mr Radcliffe said those they represented and the Commoners Association were as regards numbers of animals agreed that the questions arising on these objections should be compromised on a basis which would result in the registrations being modified as specified in the fifth column of the Schedule hereto. After some discussion as to how registrations could be proved so as to meet the objection made by Mr Heyward and as to the time and cost of providing such proof and as to the value of the investigations already ~~being~~ made by the Commoners Association, Mr Heyward said that he was willing that the registrations at Entry Nos. 1 to 8 inclusive should be confirmed without modification and that those at Entry Nos. 9, 11 and 12 should be confirmed on the basis stated by Mr Hewlitt and Mr Radcliffe. I consider I can properly give effect to this agreement.

As regard the description of Westcott Farm in column 5 of Rights Section Entry No. 12 Mr Radcliffe stated that the OS Nos. listed did not correctly describe Farm in that No. 325 should come out and Nos. 38, 1,319 and 1,327 should go in; and as showing this mistake he produced the plan of lot 49 in the Sale Particulars of an auction held by the Duke of Bedford on 11-12 July 1911. I consider I can properly correct this mistake.

There remains the registration of Entry No. ¹¹ ~~10~~ of a right attached to Broom Parks. ~~(This is the case)~~. Mr Radcliffe said that he understood that Broom Parks had been sold to Mr Stephens. Mr S B F Bicknell said that he had spoken yesterday (13 October 1981) to Mrs Stephens and told her about this hearing and she had said she would speak to her husband. ~~After~~ some discussion in the course of which it seems that there was no relevant difference between this registration and the 3 others made on the application of Mr S Bicknell and that if Mr Stephens had attended the hearing and had instructed either Mr Hewlitt or Mr Radcliffe, the Commoners Association would have agreed to compromise their objection on the same basis as the other registrations made on the application of Mr Bicknell; on this basis the modification of the registration of Entry No. 11 ^{be} from 12 cattle to 8 cattle. In these circumstances Mr Heyward agreed that it might be unjust to the owners of Broom Parks to avoid altogether registration at Entry No. 11 merely because no person attended to support it. In these circumstances I consider I can properly, Mr Heyward agreeing, give such owners at least the benefit of the compromise made in their absence.

So as regards the CL 11 Rights Section registrations, my decision is: I refuse to confirm the registrations at Entry Nos. 14 and 15. I confirm the registrations at Entry Nos. 1 to 8 inclusive without any modification and I confirm the registrations at Entry Nos. 9 to 12 inclusive with the modification set out in the fifth column of the Schedule hereto.



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I next considered Bowden Down (CL 10). It was agreed by those present or represented at the hearing that all that had been said and all the documents referred to about the CL 11 land, either the same as or essentially similar to those applicable to Bowden Down with a possible exception of Mr Perkin's said letter of Jan 12 1971. This letter, headed application 2,042 and agrees to the cancellation of Entry No. 14; Mr Perkin's registration as regards Bowden Down is No. 13, but all registrations made on his application as regards not only the CL 11 land but also Bowden Down and the CL 34^{1/2} land were made on one application made by him and numbered 2,042. Upon his letter, non-appearance at the hearing, and the absence of any evidence in support of this registration, I consider I can properly conclude that it should not have been made.

So as regards the CL 10 Rights Section registrations, for the same reasons as are hereinbefore set out in relation to the CL 11 land, my decision is:- I refuse to confirm registrations at Entry Nos. 13 and 14; I confirm the registration at Entry Nos. 1 to 7 inclusive without any modification; and I confirm the registration at Entry Nos. 8, 9, 10 and 11 with the modifications set out in fifth column of the Schedule hereto.

As regards the CL 34 land, ^{in the} absence of any evidence in support of the registrations and either with the agreement or without any objection from anyone present or represented at the hearing I conclude that these registrations should not have been made. Accordingly as regards this Register Unit, I refuse to confirm the Land Section registration at Entry No. 1 and I refuse to confirm the Rights Section registrations at Entry Nos. 1 to 14. I give no decision as to the Ownership of Section registration, because by section 6(3) of the 1965 Act it will be cancelled.

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
(Rights Section registrations)

CL 10 Bowden Down Entry No.	CL 11 Liddaton Down and Liddaton Green Entry No.	CL 34 land additional to Liddaton Down Entry No.	Applicant, land to which right is attached and nature of right registered	Representation at hearing, and my DECISION as regards CL 10 and CL 11 Rights Section registrations
1	1 (over Liddaton Green Park)	1	Francis Pearce Burcombe Farm Graze 6 cattle, 20 sheep and 3 pigs	Mr F Pearce was represented by Mr Hewlitt CONFIRM NO MODIFICATION



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-	1 (over Liddaton Down Park except 6877 Stewford Hill	-	Ditto	Ditto	CONFIRM NO MODIFICATION
2	4	3	Joan Ellen Mary Sparrow. Glandower Graze 6 cattle and 18 sheep	Mr F Pearce as successor in title of Mrs J E M Sparrow was represented (as above stated) by Mr Hewlitt	CONFIRM NO MODIFICATION
3	3	2	William Richard Heyward. East Liddaton. Graze 45 cattle, 60 sheep 1 horse and $\frac{1}{2}$ the part of the Collage	Mr W R Heyward's son Mr F C B Heyward as his successor in title	CONFIRM NO MODIFICATION
4	5	4	Norman Henry Gerry. West Park. Graze 2 cattle and 15 sheep	Mr N H Gerry was represented by Mr Hewlitt	CONFIRM NO MODIFICATION
5	6	5	Henry Roy Blowey. Bowden Hill . Graze 10 cattle and 25 sheep	Mr H R Blowey was represented by Mr Hewlitt	CONFIRM NO MODIFICATION
6	7	6	James William Higgins. Stowford Hill. Graze 1 bullock and 10 sheep	Mr Ronald James Higgins as sole executor and successor in title of Mr J W Higgins was represented by Mr Hewlitt	CONFIRM NO MODIFICATION



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7	8	7	James Howard Johnston Woods. Liddaton. Graze 8 cattle and 15 sheep	Mr J H M Woods was represented by Mr Hewlitt
				CONFIRM NO MODIFICATION
8	9	8	Sidney Bicknell. Bickfords and Newlands Holdings. Turbary: take stones; cut rushes and bracken; graze 25 cattle, 50 sheep	Mr S Bicknell is now deceased. — Mr Sidney Brian Francis Bicknell and Mrs Kathleen Margaret Abel as his successors in title of Bickfords and Newlands Holdings were represented by Mr Radcliffe
				CONFIRM with modification for "graze: 25 cattle 50 sheep", substituted "graze: 17 cattle and 31 sheep"
9	10	9	Sidney Bicknell Part of Liddaton Farm. Turbary; take stone; cut bracken and rushes; graze 12 cattle and 25 sheep	Mr S Bicknell is (as above stated) now deceased. Mr George Martyn Hills as his successor in title Liddaton Farm was represented by Mr Radcliffe
				CONFIRM with modification for "graze 12 cattle 25 sheep" substituted "graze 8 cattle and 15 sheep"
10	11	10	Sidney Bicknell. Broom Parks Turbary; take stone; cut rushes and bracken; graze 12 cattle	Mrs Bicknell (as above stated) is now deceased. CONFIRM with the modification for "graze 12 cattle substitute "graze 8 cattle"



11	12	11	Sidney Bicknell, Westcott Farm. Turbary; take stone: cut bracken and rushes; graze 5 ponies, 125 cattle 325 sheep	Mr S Bicknell (as above stated) is now deceased. Mr Sidney Brian Francis Bicknell and Mrs Kathleen Margaret Abel as his successor in title to Westcott Farm were (as above stated) represented by Mr Radcliffe.
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CONFIRM with
 modification in
 column 4 for "graze
 5 ponies 125 cattle
 325 sheep"
 substitute 3 ponies
 and 83 cattle and
 215 sheep", and in
 column 5 after
 "37" insert "38,
 1,327 and 1,328"
 and delete "325"

12 FINAL	13 FINAL	12 provisional	Albert John Davey Whitstone Farm Graze 5 cattle 25 sheep	Mr A J Davey was represented by Mr Hewlitt
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FINAL

13	14	13	George Vivian Perkin. Perry Ash. Turbary; graze 11 cattle or 55 sheep or equivalent 1 cattle = 5 sheep	Mr Perkin neither attended nor was represented. His letter of Jan 12 1971 about application No. 2042 and Entry No. 14 refers.
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CONFIRMATION
REFUSED

TURN OVER



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14

15

14

Dennis Charles
Young. In gross.
Estovers, turbary,
to graze 4 ponies,
4 goats 1 cow
6 geese

Mr D C Young neither
attended or was
represented. His
letter dated
17 September 1981
refers.

CONFIRMATION
REFUSED

Dated the 7th —

day of *January* 1981

a. a. Baden Fuller

Commons Commissioner