



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/216

In the Matter of Milford Common,
Hartland, Torridge District,
Devon

DECISION

This dispute relates to the registrations at Entry Nos 1 and 2 in the Rights Section of Register Unit No. CL94 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 934 made by Mr John Thomas Gifford and Mr Stanley Gifford and noted in the Register on 6 September 1971.

I held a hearing for the purpose of inquiring into the dispute at Barnstaple on 26 March 1981. At the hearing (1) Mr John Moore Metherell Britton on whose application as owner the Rights Section Entry No. 1 registration was made, was represented by Mr J Rowland, solicitor with Peter Peter & Son, Solicitors of Holsworthy; (2) Mr George Leslie John Heywood on whose application as tenant the Rights Section Entry No. 2 registration was made, was represented by Mr N M V Richards solicitor of Bazeley Barnes & Bazeley, Solicitors of Bideford; (3) his wife Mrs Phyllis Ann Heywood and her mother Mrs Nellie Dennis as owners or persons beneficially interested in East Milford Farm were also represented by Mr Richards; (4) Mr William Waddon-Martyn of Tonacombe, Moorwenstowe, Cornwall as being or claiming to be the owner of all or part of the Common was present in person; and (5) Mr Joseph Gifford of 9 North Close, Kilhampton, Bude as a person who had bought a 3,500 ton Aux. Tanker which had been wrecked below the cliff (below Gunpath Beach) attended in person.

The land ("the Unit Land") in this Register Unit is a tract of about 91 acres being about 1,500 yards long from north to south and having a variable width averaging about 300 yards. On the OS map it is shown as ("the North Piece") No. 2179 (48.587 acres), ("the South Piece") No. 1698 (34.181 acres), and ("the South-west Strip") No. 1699 (8.528 acres). The registered rights are of grazing. The grounds of the Objection are (in effect), that the Objectors have for 30 years and upwards cultivated OS Nos 1698 and 1699, fenced, ploughed and produced cereals on them, and been paid Government subsidies in respect of the cultivation, and before this rented the land to Mr Lewis Goaman for 5 or 6 years, that the public have not tried to exercise rights, that there were no common rights, and that the Objectors had acquired a possessory title.

I have a letter dated 11 February 1981 from Jeremy Ferguson & Co, Solicitors of Bideford saying they now act for Mr S Gifford who is the owner in fee simple of Southole Farm, Hartland and Milford Common, Mr J T Gifford having died.

At the hearing there was some discussion as to the ownership of the Unit Land, in the course of which it was said that in 1942 the South Piece and much of the South-west Strip was taken over by the War Agricultural Committee, and after its return this had as regards the north part of the South Piece been farmed by Messrs Gifford and as regards the south part of the South Piece been farmed by Messrs Britton and Heywood. Against the ownership claim made as above stated



in the Objection, Mr Waddon-Martyn claimed to be the owner of all the Unit Land. Mr Joseph Gifford while making it clear that he was not authorised to represent the Objector Mr F Gifford who is his uncle, said that he was concerned to know who is the owner because he desired to have access to the Wreck. In my opinion I have in these proceedings no jurisdiction to determine who is the owner of any part of the Unit Land, although if evidence of ownership ~~should be~~ (it was not) offered in support of the Objection, might have been admissible and the question whether the Rights Section registrations were properly made. Because the Land Section registration has become final, a reference will I suppose almost certainly be made at some future time to a Commons Commissioner in accordance with Section 8 of the 1965 Act to say whether he is satisfied that any person is the owner; I cannot now anticipate any such reference.

Mr Rowland and Mr Richards contended that in the absence of any evidence in support of the Objection I should confirm the registrations; additionally or alternatively Mr Richards relied on the evidence given at the hearing orally by Mr Heywood.

After the hearing, I noticed that the copy on the Commons Commissioners' file of the notice of this hearing to Jeremy Ferguson & Co did not state the address to which the notice was sent, ~~so~~ I caused enquiries to be made of the Post Office and also (on the telephone) of Jeremy Ferguson & Co. The Post Office reported that ~~the~~ recorded delivery packet numbered H992939 (being that containing the said notice) addressed to Messrs Jeremy Ferguson & Co, Solicitors, Bideford, North Devon, EX39 2HF was delivered to that address on 20/2/1981 and signed for by "E Wallis". So, without prejudice to any application that may be made by or on behalf of Mr Gifford that I should re-open the hearing and set aside decision ^(this) on the ground that no proper notice was sent to him or his solicitors, and I consider that I ought to give a decision only in regard to the information put before me at the hearing.

If no Objection had been made, ~~to~~ ~~that~~ the Rights Section registrations ^{never having been} ~~would~~ ~~disputed,~~ ~~they~~ would have become final under Section 7 of the 1965 Act without any reference to a Commons Commissioner. The grounds of Objection are expressly limited to the South Piece ^{and} the adjoining part of the South-west Strip. So I can I think assume that the registered rights of grazing extend at least to the North Piece. I consider that the lack of any attendance or representation by Mr Gifford at the hearing indicates an indifference to the outcome and that I ought therefore to treat the registrations as proper as regards all the ^{attendant} Unit Land, notwithstanding his solicitors in their February 1980 letter "to possibly sorting the matter out by negotiation rather than having to trouble the Commons Commissioner for a Hearing", and notwithstanding that the information and oral evidence before me at the hearing did not cogently establish the existence of the grazing rights. By so acting, I shall be producing a finality which the 1965 Act contemplates may in the absence of objection result ~~in~~ an application based on no more evidence than a statutory declaration on a printed form. For these reasons I confirm the 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 notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 23rd — day of June 1981

A. A. Baker ^{Jules}

Commissioner