



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/301
209/D/302

In the Matter of part (5 acres)
of Shaugh Moor, Shaugh Prior,
South Hams District, Devon

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and at Entry Nos. 1 to 13 inclusive in the Rights Section of Register Unit No. CL 236 in the Register of Common Land maintained by the Devon County Council, and are occasioned by Objections Nos. 342 and 343 made by Roborough Estate Trustees and noted in the Register on 1 and 2 December 1970 and Objection No. 1166 made by Devon County Council and noted in the Register on 14 August 1972.

I held a hearing for the purpose of inquiring into the disputes on 20 and 21 January 1983. At the hearing Mr Ivor Phillips on whose application the Right Section registrations at Entry Nos. 12 and 13 were made, attended in person; and Mr Ernest Frederick Palmer of Lambs Park, Sheepstor, Yelverton attended for the purpose of making a statement (hereinafter recorded) on behalf of the Roborough Estate Trustees on whose application (jointly with their tenants) the rights registrations at Entry Nos. 1 to 11 inclusive were made. Present also was Lady Sylvia Rosalind Pleadwell Sayer of Cator, Widdecombe-the-Moor on her own behalf and as representing Vice-Admiral Sir Guy Bouchier Sayer.

The land ("the Unit Land") in this Register Unit is a four sided piece containing about 5 acres, situated about 700 yards south of Cadover Bridge, and adjoining the east side of the road from there to Wotter. There are no more than 13 Rights Section registrations, and there are no registrations in the Ownership Section. The Roborough Estate Trustees Objections are to the Land Section and to all the Rights Section registrations; and the County Council Objection is to the Rights Section registration at Entry No. 13 (a right in gross).

Those present at the hearing as above recorded were all agreed that the Unit Land may properly be considered as part of the Shaugh Prior Commons (Register Unit No. CL 190) which together comprise an area of about 6 miles long from north to south, and for the most part between 1 and 2 miles wide and have as their northwest boundary the River Plym; the unit Land on its north, east and south sides adjoin this CL 190 land. Mr Palmer said that he had been asked by (the Agent of I suppose) the Maristow Estate Trustees (being as I know from my CL 188 hearing in May, July and November 1982 the Hon Henry Massey Lopes, the Hon George Edwards Lopes, Mr George Christopher Cadafael Tapps Gervis Meyrick and Mr Joseph Robertson Cook-Hurle, and being the same persons as the Roborough Estate Trustees) to say they did not wish to proceed with the Objection to the Land Section registration and as regards the Rights Section registrations Nos. 1 to 11 were content that they should end up the same as the corresponding registrations in Register Unit No. CL 190 of rights over the parts of the CL 190 land which adjoin the Unit Land; he said that it



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allowed that they wished me to base my Unit Land decision on that made by the Chief Commons Commissioners in relation to the CL 190 and dated 30 May 1977 entitled re Hentor Warren ... under reference Nos. 209/D/60-85, 89). Mr Phillips said he was agreeable to my refusing to confirm the Rights Section registration at Entry No. 13 and to my confirming the Rights Section registration at Entry No. 12 with the deletion of "piscary" and the deletion in column 5 of all land except that at Whitchurch (so that land at Buckland Monarchorum and at Plymouth would be deleted). I have a letter dated 4 November 1982 from Devon County Council saying that they were not contesting Objection No. 343 (the Unit Land is not common land); however they were not represented at the hearing.

In the above circumstances I consider that I should as regards the Unit Land follow as nearly as I can the said 1977 decision of the Chief Commons Commissioner. The Unit Land Rights Section registrations at Entry Nos. 1 to 11 inclusive and Nos. 12 and 13 are essentially the same as the CL 190 Rights Section registrations at Entry Nos. 33 to 43 inclusive and Nos. 93 and 94. The parts of the said 1977 decision relevant to the said registrations are set out in the Schedule hereto. Notwithstanding that I have no note or recollection of Mr Phillips at the hearing mentioning turbarry, estovers or the taking of stone or mentioning the Corner Yelverton, in the context of what was said at the hearing before me and of what was said by him at the 1977 hearing, I shall as regards the registration at Entry No. 12 follow the 1977 decision. My conclusion that some of the Rights Section registrations were properly made, under the 1965 Act necessarily involves a like conclusion about the Land Section registration.

On the above considerations my decision is as follows. I confirm the Land Section registration at Entry No. 1 without any modification. I confirm the Rights Section registrations at Entry No. 1 and 3 to 11 inclusive with the following modifications, namely the deletion in each case of the words "together with straying rights onto the remainder of CL 190 and register unit nos. CL 191 and CL 164(W) and (S)". I confirm the Rights Section registration at Entry No. 2 with the following modification, namely, the substitution of the words "66 bullocks or 10 sheep" for the words "90 units (N.F.U. Scale)" and the deletion of the words "together with straying rights onto the remainder of CL 190 and register unit nos. CL 191 and CL 164(W) and (S)". I confirm the Rights Section registration at Entry No. 12 with the following modifications: in column 4 the deletion of the words "turbarry, estovers, piscary, to take:- stone", the substitution of the figure "35" for the figure "68" and in column 5 the deletion from "8 Beechfield Avenue Yelverton ..." to "... in the County Borough of Plymouth". And I refuse to confirm the Rights Section registration at Entry No. 13.

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, 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
(Extracts from 1977 CL 190 decision)

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Another group of registrations - those at Entry Nos 35-40 (inclusive), 42, 43 and 84 - 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.

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During the hearing the only Objection to the registration at Entry No. 33 (No. 1071) with 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.

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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 turbarry, 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 turbarry, estover, 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.N.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.



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is insufficient to establish a right of common in gross, and I therefore refuse to confirm this registration.

dated the 2nd — day of March 1984.

A. A. Baden Fuller

Commons Commissioner