



COMMONS REGISTRATION ACT 1965

Reference Nos:- (A) 209/D/419-420
(B) 209/D/423
(C) 209/D/425
(D) 209/D/435
(E) 209/D/436

In the Matter of (A) Unit No. CL68:- Part of Hamel Down and part of Bonehill Down (Manor of Widecombe), Widecombe-in-the-Moor; (B) Unit No. CL70:- Rowden Down, Bittleford Down and part of Dunstone Down and Hamel Down (Manor of Jordan), Widecombe-in-the-Moor; (C) Unit No. CL124:- Buckland Common and Pudsham Down, Buckland-in-the Moor; (D) Unit No. CL27:- Common by Grey Goose Nest, Islington; (E) Unit No. CL26:- Bagtor Common, Islington.

(A) THIRD AND (B), (C), (D) AND (E) SECOND DECISION

These disputes relate to the registrations at:- (A) Entry Nos. 14 and 66 in the Rights Section of Register Unit No. CL68 in the Register of Common Land maintained by Devon County Council; (B) Entry Nos. 15 and 69 in the Rights Section of Register Unit No. CL70 in the said Register; (C) Entry Nos. 9 and 24 in the Rights Section of Register Unit; (D) Entry Nos. 12 and 22 in the Rights Section of Register Unit No. CL27 in the said Register; and (E) Entry No. 26 in the Rights Section of Register Unit No. CL26 in the said Register; and are occasioned by the said Entry Nos. of (A), (B), (C) and (D) being in conflict with each other respectively and by (E) Entry No. 26 being in conflict with the said Entry Nos. 14, 15, 9, and 12.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 3 November 1987. At the hearing: (1) Mrs Anstice Brown was represented by Mr J Aylett, chartered surveyor of Michelmore Hughes, Chartered Surveyors of Newton Abbot, and (2) the Attorney General for the Duchy of Cornwall was represented by Mr C Sturmer, the Land Agent for their Dartmoor Estate.

The said registrations were made as the result of two applications. The first (A) 14, (B) 15, (C) 9 and (D) 12 by Mr Timothy Reep numbered 1062 dated 27 May 1968 for grazing and other rights over Unit No. 69 "and straying rights on adjoining commons CL27, CL68, CL70, CL103, CL124". The second (A) 66, (B) 69, (C) 24, (D) 22 and (E) 43 by Mrs Anstice Brown numbered 3409 dated 8 December 1969 for grazing and other rights over Unit No. 69 "and Straying Rights on adjoining commons ... CL25, 26, 27, 68, 70, 103 & 124, CL248".

About No. CL68, I held a public hearing at Exeter on 11 and 13 April 1984 and gave decisions dated 22 April 1985 and 7 January 1987 about disputes relating to 35 Rights Section registrations. In the last paragraph of page 5 of my April 1985 decision I set out my reasons for not then giving any decision about Entry Nos 14 and 66:

"Mr Coaker said I should refuse to confirm the registrations at Entry Nos. 14 and 66 both of rights attached to Blackslade Farm expressed as "to stray" from CL69, one made by Timothy Reep as tenant and the other by Mrs A Brown as owner, because a registration so expressed is irregular and Blackslade Farm is not in the Manor of Widecombe. ... None of these registrations are included in any reference made to a Commons Commissioner (form 36), and accordingly I have no jurisdiction to give any decision about them. ..."



About No. CL70, I held a public hearing at Exeter on 11 April 1984 and gave a decision dated 22 April 1985, about disputes relating to 23 Rights Section registrations. In the penultimate paragraph of my decision I set out my reasons for not then giving any decision about Nos. 15 and 69:-

"I gave no decision about the registration at Entry Nos. 15 and 69, they not having been referred to a Commons Commissioner".

About No. CL124, I held a public hearing at Exeter on 10 April 1984 and gave a decision dated 22 April 1985 about disputes relating to 7 Rights Section registrations. In my decision I confirmed none of the said disputed Rights Section registrations and made no mention of those at Entry Nos. 9 and 24.

About No. CL27, I held a public hearing at Exeter on 10 April 1984 and gave a decision dated 18 April 1985 about disputes relating to 3 Rights Section registrations. In my decision I refused to confirm such registrations and said that I then had no jurisdiction to give any decision about the registrations at Entry Nos. 12 and 22.

About No. CL26, I held a public hearing at Exeter on 10 and 13 April 1984 and gave a decision dated 18 March 1985 about disputes relating to 13 Rights Section registrations. In my decision I refused to confirm these registrations and said that I could then do nothing about Entry No. 43 because it was not then the subject of any reference to me, notwithstanding that Mr Michelmores on behalf of Mrs A Brown said the registration was withdrawn.

About all these nine registrations, I now have references (form 36) dated 12 June 1987 and made by Devon County Council; so now I am able to consider the propriety of all of them.

At my November 1987 hearing:- Mr Aylett for Mrs A Brown pointed out that Mr Reep was no longer tenant of Blackslade Farm and suggested that the registrations made on his application as such should not be confirmed and that those made on the application of Mrs Brown as owner should be preferred and therefore confirmed. Mr Sturmer pointed out that all the disputed registrations were expressed as rights "to stray" from CL69 (land in the Manor of Dunstone, parts of Dunstone Down and Blackslade Down), that Blackslade Farm was some distance from the CL70 land with which the Duchy is concerned (the Farm buildings are more than a quarter of a mile east of the East Webburn River, near the east part of the CL69 land, and some distance from the other part, the west side of which adjoins the CL70 land), and that in the decisions referred to above, I in the absence of evidence refused to confirm registrations expressed as "to stray". Mr Aylett offered no evidence as to the propriety of the registrations.

As to the applications of Mr Reep and Mrs Brown for grazing and other rights over the CL69 land, the resulting CL69 registrations were by me considered at a hearing on 11 April 1984, in the course of which Mr R J Michelmores said that Mr Reep was no longer tenant of Blackslade Farm and was in New Zealand. In my decision dated 22 April 1985 I confirmed the registration at CL69 Entry No. 79 made on the application of Mrs Brown with a modification therein specified.

Clearly the Mr Reep registrations and the Mrs Brown registrations cannot properly both remain on the Register; nobody at my 1987 hearing suggested they could. But I decline to assume that her registrations are proper merely because he has not attended or been represented at the hearing to support his. A conflict is a deemed objection, see Regulation 7 of the Commons Commissioners Regulations 1971, and



accordingly puts the registrations all in question notwithstanding that ^{they} except as regards CL70 were not disputed at the hearing, see re West Anstey 1985 Ch 329.

I adhere to the opinion I have expressed in my said decisions about these Register Units, and also in other Dartmoor decisions, that a registration expressed "as to stray" is irregular and should in the absence of any evidence justifying it, by me be avoided.

For these reasons I REFUSE to confirm all the said CL68, CL70, CL124, CL27 and CL26 Rights Section registrations made on the application of Mr Reep and Mrs Brown.

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 November 1987

A. A. Baden Fuller

Commons Commissioner