



In the Matter of Spitchwick Commons,
Widecombe-in-the-Moor, Devon (No. 4)

DECISION

This dispute relates to the registration at Entry No. 31 in the Rights section of Register Unit No. CL 33 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 235 made by Mr R J Michelmore and noted in the Register on 19 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Paignton on 25 January 1977. The hearing was attended by Mr J Scrivener, solicitor, on behalf of Mr W A L Bovey, the applicant for the registration, and Mr J A F Kittow, solicitor, on behalf of the Objector.

Mr Bovey claims to be entitled to rights of estovers and turbary, and the right to take stone, sand, and gravel, and to graze 64 bullocks or ponies and 256 sheep or their equivalent as the owner of land at Middle Cator Farm. This land was formerly part of an ancient tenement which, according to a conveyance made 22 April 1875 between (1) John Morrish (2) Elias Morrish (3) Edward William Cox, was then called Middle Cator alias Morrish's Cator alias Higher Cator and Cator Yeat. This tenement remained in the undivided ownership of members of the Morrish family under 1928, when an old house on it was sold by Mr Richard Morrish to Vice-Admiral Sir Guy and Lady Sayer, who also acquired a small part of the land. This house is now known as Old Middle Cator. This dispute therefore raises the same point as that in the case of Mrs Giles dealt with in my decision in In the Matter of Spitchwick Commons, Widecombe-in-the-Moor (No. 1), (1977) Ref. No. 209/D/102. However the facts of the two cases are not quite on all fours.

Before the sale of Old Middle Cator in 1928 Mr Morrish had moved to another house on the land now owned by Mr Bovey and had allowed Old Middle Cator to become derelict. After the sale Mr Morrish continued to pay the chief rent until he redeemed it on 29 October 1935.

Mr Bovey bought his property in 1947. The sale particulars mentioned grazing rights on Spitchwick Common, and after he purchased the land Mr Bovey grazed his animals and also cut turf on the Common. He stated that in his opinion the house on his land is about 140 or 150 years old and probably built on the site of an earlier house. He also stated that part of the old farm buildings are visible. That there was a house on this site in addition to the house at Old Middle Cator is consistent with the parcels of the 1875 conveyance, where it is stated that the premises formerly consisted of three messuages and one cottage with the appurtenances.

For the reasons given in my decision in In the Matter of Spitchwick Commons (No. 1), supra I am satisfied that the right of common of pasture to which Mr Richard Morrish was entitled was apportioned on the sale of Old Middle Cator in 1928. Mr Kittow agreed that if the right of pasture is apportionable, the number of animals set out in Mr Bovey's application represents a correct apportionment of the right attached to the original area comprised in the 1875 conveyance. In the absence of evidence to the contrary, it seems to me that my proper course is to proceed on the basis that Old Middle Cator and the house now on Mr Bovey's land are two of the three messuages and one cottage formerly on the ancient tenement the subject of the 1875 conveyance. There is nothing in the extracts from the records of the court leet produced by Mr Michelmore to indicate that each ancient



tenement had only one house on it. While the rights of turbary and estovers and common in the soil could not be exercised in respect of a new house, those rights would be exercisable in respect of as many houses as there were at the time when the freehold tenement was created, which must have been before the passing of the Statute of Quia Emptores in 1289. In the absence of any evidence that the house on Mr Bovey's land is a new house in the sense that it is not the successor of a house existing on the same site when the tenement was created and in view of the evidence that there were formerly three messuages and one cottage on the ancient tenement, I have come to the conclusion that rights of turbary and estovers and common in the soil are attached to Mr Bovey's house as well as to Old Middle Cator, in respect of which such rights have been registered and have become final.

For these reasons I confirm the registration.

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 26th day of March 1977

A handwritten signature in cursive script, appearing to read 'J. S. L. Quibb'.

Chief Commons Commissioner