



Reference Nos. 209/D/433
209/D/434.

In the Matter of Trendlebere
Down, part in Bovey Tracey,
Teignbridge District, Devon

DECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 2, 5 to 13 inclusive (7 has been replaced by Nos. 27 and 28) and 15 to 20 inclusive in the Rights Section of Register Unit No. CL81 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 44 made by Forestry Commission and noted in the Register on 23 September 1969.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 10 April 1984. At the hearing: (1) Mr Colin Noel Evans who applied for the Rights Section registrations at Entry Nos. 5 and 6 attended in person; (2) Mr Kurt Eric Allerfeldt and Mrs Evelyn Joan Allerfeldt who applied for the Rights Section registration at Entry No. 12 were represented by Mr A H D Mellor solicitor of Tozers, Solicitors of Newton Abbot; (3) Mr David William Coysh who applied for the Rights Section registration at Entry No. 15, was represented by his friend Mr R N Wills as secretary of Ilsington Commoners Association; (4) Dr Patrick Gerald Kidner and Mrs Grizelda Flora Kidner who applied for the Rights Section registrations at Entry Nos. 16 and 19, were represented by Mr R Keast solicitor of Stephens & Scown, Solicitors of Exeter; (5) Mr Frank Perryman who applied for the Rights Section registration at Entry No. 17 was represented by Mr M G Cleave, clerk with H Priscott & Co, Solicitors of Newton Abbot; and (6) Mrs J Rowe of Mill House, Lustleigh as successor of Mrs Moyra Congdon Lucas applied for the Rights Section registration at Entry No. 18 attended in person.

The land ("the Unit Land") in this register unit is a tract of about 25 acres, approximately triangular bounded on the south by the road B3344 between Manaton and Bovey Tracey and bounded on the northeast by Register Unit No. CL58 (being the remaining and much greater part of Trendlebere Down in the parish of Lustleigh). In the Ownership Section at Entry No. 1, Minister of Agriculture, Fisheries & Food is registered as the owner of the whole of the Unit Land and such registration being undisputed has become final.

The grounds of the Forestry Commission Objection, expressed to be applicable to the Land Section registration at Entry No. 1 are that the land was not common land at the date of registration. By subsection (7) of section 5 of the Commons Registration Act 1965 such objection is to be treated as being also an objection on all the Rights Section registrations. At the hearing I received a letter dated 6 April 1984 from the Treasury Solicitor saying that the Forestry Commission had instructed him to withdraw the said Objection they having reconsidered their position in the light of the circumstances.



This hearing followed a hearing about another part of Trendlebere Down (Register Unit No. CL 58) being the part in Lustleigh and about which see my decision of even date under reference Nos 209/D/430-432. All present at this Unit Land hearing were also present at my CL 58 hearing, and treated what had then been said (so far as relevant) as having been repeated.

It was common ground that the Unit Land is geographically (although not parochially) part (comparatively very small) of the area known as Trendlebere Down of which CL 58 is by far the greater part, and that it was not practicable to graze the Unit Land separately from the CL 58 land. Mrs Kidner said it had no separate water supply.

Mr Evans contended that the Objection having been withdrawn, he should have his rights (at Entry Nos 5 and 6); however he agreed that Sigford House and Little Sigford to which they are attached are south of Islington (some distance away from the Unit Land).

There was some discussion about possible grazing from Yarner (Entry No. 12); Mr Mellor mentioned a tract to the south. Mrs Kidner mentioned the cattle grid situated across the B3244 road situate at the corner by Holne Brake, near the east end of the Unit Land. She said that Yarner was not near the Unit Land, their being in between the wood and reservoir owned by the Nature Conservancy and the Water Board.

Although these proceedings are occasioned by the Forestry Commission Objection, which is particularly directed to the Land Section registration, as said above the Rights Section registrations are by it put in question, and such registrations are not conclusively established by the withdrawal of the Objection. I have no reason to suppose and from what I learnt about the Unit Land and the CL 58 land as a result of these two hearings I think it unlikely that the Forestry Commission by withdrawing their Objection intended to do any more than concede that the Unit Land was subject to at least one right of common. I decline to infer from such withdrawal that every Rights Section registration was properly made.

For the reasons set out in my said CL 58 decision I conclude that the next mentioned Rights Section registration made on the application of Dr and Mrs Kidner (identical with the CL 58 Nos 18 and 22) were properly made. Accordingly I CONFIRM the Rights Section registration and Entry Nos 16 and 19 without any modification.

From this conclusion, and as a necessary consequence as explained in my said CL 58 decision, I CONFIRM the Land Section registration at Entry No. 1 without any modification.

For the reasons set out in my said CL 58 decision, in respect of all the Unit Land registrations which have corresponding CL 58 registrations, I consider I should give a like decision. Accordingly I REFUSE to confirm the Rights Section registrations at the following Entry Nos 3 (C N Evans), 4 (C N Evans), 7 (A F Cowlard, E B Riley and C H Cowlard), 10 (W E Mills), 11 (G D Hart), 12 (K E and A J Allerfeldt), 15 (D W Coysh), 17 (F Perryman) and 20 (P M Roberts); AND I CONFIRM the Rights Section registrations at Entry Nos 2 (J F H Dadd), and 13 (M C Lucas).



The Rights Section registrations at Entry Nos 7 (replaced by Nos 27 and 28), 8 and 13 have no corresponding CL 58 registrations. That at Entry No. 8 made on the application of Mr J P P Mohan is "to stray ... from CL 25"; for the reasons set out in my said CL 58 decision about CL 58 Nos 11, 13, 19 and 21, I conclude that No. 8 was not properly made. That at Entry No. 13 was made on the application of Mr C O Holland; from him I have a letter dated 17 February 1984 addressed to the Clerk of the Commons Commissioners withdrawing any claim he may have to Commons rights over the lands in question (CL 81 and CL 184). Those at Entry Nos 27 and 28 were made on the application of Mr G Wills and Mr P R S Cullum and are "to stray ... from CL 25 and CL 26"; to them my reasoning about Entry No. 8 is applicable. For these reasons I REFUSE to confirm the Rights Section registrations at Entry Nos 7, 8 and 13 and at Entry Nos 27 and 28 which replace No. 7.

For the same reasons as are set out in my said CL 58 decision, I extend the liberty to apply therein granted to any mistake in this decision, such application to be made within the same THREE MONTHS period and otherwise as therein specified.

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 18th — day of March — 1985

A. A. Baden Fuller

Commons Commissioner