



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/308-310

In the Matter of about 69.5 acres called Lydlinch Common
in the Parish of Lydlinch, Dorset

DECISION

These references concerned objections to the registration of a number of rights alleged to exist over Lydlinch Common, Register Unit No. CL 42, the objections being made by the persons claiming to be owners of the Common.

I held a hearing for the purpose of inquiring into the disputes at Sherborne on 26 June 1980.

Mr P F Moule of Mayo and Son, Solicitor appeared for the individual claimants and Mr Colin Rimer instructed by Messrs Dawson and Company appeared for the objectors, the Trustees of Stock Estate.

No evidence was given in support of the claims the dates and numbers of the applications and the names of the applicants being respectively:-

27 February 1968	86	Peter Albert Bull
19 March 1968	99	Elsie Veryard
3 April 1968	116	Ronald Frederick Ford and Mary Elizabeth Ford
3 May 1968	144	John Eric Edwards and Florence Edwards
12 June 1968	190	Maurice John Lane

The Objection No. 474 of the Dorset County Council as Highway Authority made on 29 September 1970 was disposed of by consent in the terms of an agreement which was sent to the Commons Commission under cover of a letter from the County Council dated 14 July 1977. The effect of the agreement was that the area shown coloured pink on Drawing No. 4445/19 annexed thereto should be excluded. Although the question of ownership was not formally before me Mr Rimer produced documents of title which appeared to me to establish that his clients were the owners of Lydlinch Common. Mr Rimer conceded that even if all his clients' objections were upheld, the land was still common land as being waste land of the Manor.

The remaining applications are as follows:-

70. Albert James Cluett as tenant of Manor Farm claimed the right to graze 12 cattle.
83. Eva Betty Tite and Paul Richard Tite as owners of Prowers Farm claimed the right to pasture four cattle between 1 May and 30 November in each year.
84. John Frederick Coffin as owner of Vale Farm claimed the right to pasture three cattle between 1 May and 30 November in each year.



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100. Mr E D Frizzle and Mrs P T Frizzle as owners of Thornhill View Cottage claimed the right to pasture two cattle between 1 May and 30 November in each year.

101. Mr R W Herbert as the purchaser of Hollow Hill Cottage from Mrs Queenie Phillips claimed the right to pasture two cattle between 1 May and 30 November in each year.

102. Mr and Mrs Frizzle claimed the right to pasture four cattle or four horses between 1 May and 30 November in each year as owner of 2 roods and 19 perches of land immediately adjoining the Common on its northern edge immediately to the North of the T-Junction of A3030 and A357.

523. Mr Samuel Ernest Cluett as owner of Willow Cottage and Green Farm claimed the right to pasture eight cows or six cows and one horse.

626. Mr Henry Charles Cluett as owner of Darby's Farm claimed the right to graze six heifers.

633. Mr T J Rowland as owner of Newlands Farm claimed ten cattle leases.

Mr Moule conceded that as a tenant of Manor Farm which was owned by the Trustees of the Stock Estate who also owned the Common, Mr A J Cluett could not establish any rights of common against his landlords.

Mrs Eva Betty Tite whose husband was a nephew of Richard William Tite, a former owner of Prowers Farm, said she had known Prowers Farm all her life (she is 53). When she married in 1953, she went to live at Newman's Farm. She knew about grazing on Lydlinch Common but not specifically from Prowers Farm. Her husband's aunt Mrs Duffett who owned Vale Farm grazed 3-4 milk cattle (later beef cattle) on the Common. After Mrs Duffett, Mr E D Frizzle grazed cattle in 1976 and later in 1978 her son-in-law J F Coffin grazed cattle on the Common from Vale Farm. The witness could only speak as to Vale Farm since 1953. Her explanation as to the limitation of May to November was 'That's when it's allowed' and later 'You do not graze on wet ground'. She did not know who imposed the time restriction.

John Frederick Coffin, who now lives at Vale Farm which he bought in 1978 from Mr and Mrs M B R Tite, was born in Sherborne in 1928. He was familiar with the Lydlinch Common area but not with the common rights. When he had purchased Vale Farm he has been given to understand that the farm had the right to graze three cattle and a few sheep. If he could, he proposed to continue grazing was a useful adjunct to his farm. Mr E D Frizzle aged 58 had lived at Thornhill View since 1963. He was a lorry driver and had lived at Lydlinch all his life. He had owned cattle all his working life. He now owned twenty cattle. He kept three on the common, and the remainder on his own land; 16 acres adjoining the common. He had grazed cattle on the common since 1963. He knew that his predecessor Crofton Tite grazed cattle on the Common. He crossed the Common every day. Crofton Tite grazed ten cattle. His knowledge went back to when he was 10 years old. He owned cattle when he lived at Hyde Farm but did not graze them on the common. In the past he had owned sometimes more and sometimes less than 10 cattle.



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He had never been challenged for grazing cattle on the common, As to other farms in the area, when he (the witness) was a boy, Richard Tite used to graze cattle from Prowers Farm fairly regularly on the common, more than one. He argued with Mrs Tite that beasts from Vale Farm were grazed on the common. His mother-in-law Mrs Queenie Phillips never exercised any grazing rights herself in respect of Hollow Hill Cottage. When he came to live there he exercised her rights. He did not know of any grazing on the common of beasts from Holbrook Green. Beasts from Darby Farm grazed on the common. He could not say how many but more than one. He did not know of any grazing from New House Farm. His uncle used to live at Stainers Farm and grazed cattle on the common, not always the whole of his herd.

At each entry to the common there were signs marked 'Unfenced Road, Beware of Animals'. When the common was registered, these signs disappeared overnight. The TB eradication scheme affected growth of grazing on the common.

In cross examination Mr Frizzle said that to his knowledge Sarah Tite did not live at Thornhill Cottage. Crofton Tite had other land, part of Vale Farm, while he lived at Thornhill Cottage, Colonel Yeatman gave him/his right. He was not relying on prescription. He referred to letters passing between Colonel Yeatman and himself in 1968. He thought that the Lord of the Manor had granted the right to his cottage. He claimed two beasts; he always thought it was two. His earliest memory of Vale Farm was in the time of Mr and Mrs Duffett. Mrs Duffett did graze beasts on the common. Richard Tite grazed from 1932 onwards, until the beginning of the war. He could say how many.

Mr R W Herbert who had purchased Hollow Hill Cottage from Mrs P T Frizzle, the surviving executor of Mrs Queenie Phillips, on the 15 October 1976 and who now resided there said that he believed he was acquiring rights of common when he purchased the cottage and would make use of them if they existed. In a Statutory Declaration made on the 7 October 1976 Mrs Frizzle stated that she and the owners and occupiers of the cottage had used a track running from the cottage across part of Lydlinch Common openly and without interruption since 1947 and that an area of land part of the common and bounded on the north by the said track was common land.

In relation to application No. 523 Mr Moule referred to (i) p. 13 of the Extract of Old Records produced by the Trustees of the Stock Estate recording that in 1887 H Cluett as occupier of Holbrook Farm (56 acres) had a right to graze 3 beasts on the common, (ii) p. 16 when H Cluett was shown as having a similar right in respect of 'Farm at Holbrook' in 1910 and (iii) p. 17 a similar entry for 1921.

Mr Samuel Ernest Cluett who claimed the right to pasture for eight cows or for six cows and one horse as owner of Willow Cottage and Holbrook Green Farm said that he had purchased the farm from Lampard the freeholder. He had never grazed cattle on the common. Different people grazed animals on the common. On his way to school he saw cattle from Prowers Farm crossing from that farm to the common. The farmer was Dickie Tite. He also saw cattle from Vale Farm entering and leaving the common. Crofton Tite kept cattle on the common for as long as he (the witness) could remember. He knew nothing of any grazing from Darby's Farm



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Mr Drake, who had Newhouse Farm before Wallace Frizzle, had cattle on the common. He remembered a cow being knocked down by a car.

In cross-examination Mr Cluett said that Willow Cottage which he owned was at present occupied by a mechanic. The horse was tied to Willow Cottage. He had never pastured a horse on the common.

Mr Henry Charles Cluett who lives at Darby's Farm which his father bought in 1926, referred to the sale particulars of Darby's Farm, the sale being advertised for 27 September 1926, which stated that the sale of the Farm (Lot 1) included 6 Heifer Leazes on Lydlinch Common which had been enjoyed without interruption by the Vendor and her family for over 40 years and to the Conveyance dated 10 January 1927 to Malcolm George Cluett which contained a specific reference to these rights in the parcels. The witness had lived at Darby's Farm all his life. His father exercised his right to graze putting 6 heifers on the common up to the outbreak of war, when the Army took over the common. Grazing was not resumed after the war. Fencing and a supply of water would have been required. Richard Tite used to drive about four animals on to the common from Prowers Farm and bring them back at night. The Duffetts on Vale Farm put beasts on the common during the allotted time. They milked their cows on the common. They had common rights for 6 cows. This did not stop during the war. Prowers Farm gave up some land in 1942. Crofton Tite of Thornhill View Cottage grazed six-seven cows on the common and used to milk them on the common. All the cottages had the right to put one-two beasts on the common. Lampard from Holbrook Farm used to put a few beasts on the common. He had seen cattle from Newhouse Farm on the common. Wallace Frizzle put cattle on the common from Newhouse Farm. The witness would be interested in using his rights if it became practicable.

In cross-examination he said that he retired from farming in 1968. He was referred to the second page of the note on Lydlinch Common by E F E Yeatman dated 12 February 1910, where it was stated that most of the 7 leazes for Darby's Farm had since been bought by Miss Sheppard, and to the list of Leaseholders in April 1921 where Darby's Farm was shown as having been allotted 6.

Mr Trevor John Rowland lives at Newlands Farm, Sturton Caundle and claimed the right to graze 10 cattle on the common as owner of Newhouse Farm. He referred to an Abstract of a Conveyance of Newhouse Farm to Sidney George Knott dated 19 December 1906 and to the Particulars of a Sale of Newhouse Farm by the personal representatives of Sidney Knott to be held on 23 September 1946 which included 10 beast leazes on Lydlinch Common at which his father Clifford Trevor Rowland was the purchaser, and to a lease of the farm granted by his father to Wallace Tom Frizzle on 24 November 1947 which included 10 beast leazes on the common. Newhouse Farm is described in the Particulars of Sale and in the Conveyance to C T Rowland dated 9 November 1946 as being then let to Wallace Tom Frizzle. He also referred to the list of leazes for 1910 and April 1921 which showed Newhouse Farm as entitled to 10 leazes.



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Mr Rowland said that he bought Newhouse Farm from his father in 1962. His father had bought Newman's Farm at the same time that he purchased Newhouse Farm. He (the witness) lived at Newman's Farmhouse. Wallace Frizzle put his beasts on the common until he died. He would be interested in exercising rights to graze on the common if the problems of traffic and water supply were solved. Brucellosis was a problem at first. T.T. herds cannot drink from streams.

Mr Rimer for the objectors said that he did not propose to call any witnesses.

He referred to the Statement of page 3 of the Notes by E F E Yeatman dated 12 February 1910, that 'Prowers Farm has no leazes. I suppose, the farmer was not on the case (sc. Committee)'. To establish prescription under the Prescription Act 1832, 30 years enjoyment up to the date of the objection must be shown ie. from 14 September 1940.

In the case of Mr E D Frizzle the only evidence showed 8 years 1932-1940. There was no evidence of use by Samuel Cluett after 1940. Mrs Tite (Vale Farm) only alleged use from 1953. I pointed out that Mr Henry Cluett had stated that the owners of Vale Farm continued to put beasts on the common during the war. Mr Rimer said the evidence as to the number of cattle grazed was insufficient.

Thornhill View Cottage (100). Crofton Tite had other land as well as the Cottage. The number of cattle grazed is not sufficiently proved. The claim was for 1 leaze rather than 2 by part not prescription. He referred to Aff-Cen v Horner 1913 2 Ch 140 at pp. 169-170. The Manor records show that the Lord of the Manor allowed certain property owners to graze cattle on the common. There was no grant by deed so Section 52 of the Law of Property Act 1925 applied. See Halsbury's Laws of England 4th Ed, Vol VI, paragraph 508.

As to the piece of land (102), in all the conveyances disclosed the reference in the parcels to rights of common of pasture upon or over Lydlinch Common were qualified by the words 'if any' and this did not assist the claimants. See Harris & Ryan at p: 59. There was no evidence to support a claim separate from that made in respect of Thornhill View Cottage.

In the case of Mr Herbert's cottage (101), no user was proved but if the Manorial Records helped the claim could only be for 1 cow.

Holbrook Green Farm (523). There was no evidence to support a claim under the Prescription Act 1832. If the Manorial Records supported the claim, it could only be for three beasts.

Darby's Farm (633). The Manorial Records showed an allocation of 10 leazes. There were references to this in the Auction particulars in 1946 and the leaze in 1947 but there was no reference to those rights in the Conveyance dated 9 November 1946. There was no sufficient user to support a claim under the Prescription Act 1832.

In reply Mr Moule stressed that the objectors had called no evidence. The Manorial Records pointed to the existence of rights not mere licences. He referred to



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Musgrave v Inclosure Commissioners (1874) LR9 QB 162. He contended that Common Law Prescription did not require continuous use until the date of the objections.

The extracts from the Manorial Records relating to Lydlinch Common, copies of which were produced in evidence, covered the period from 1814 to 1921. After 1880 the rights of the Commoners many of which had previously been unlimited were restricted to about 75 leazes. All the records in my view confirm the opinion expressed by several of those who gave evidence that the occupiers of cottages bordering on the common had the right to graze beasts on the common. In nearly every case the records refer to named persons and it is not possible today to identify the cottage to which the rights were attached. The evidence also establishes that in a number of cases, rights of grazing which were exercised in the period between the wars were not exercised after 1945. During the war, the common was taken over by the Army. The explanation for this was given variously as the restrictions imposed for the prevention of brucellosis, difficulties about water supply, because a T.T. herd was not allowed to drink from a stream, and the fact that the common was not fenced from the road. Non user during this period 1940-1970 is of course fatal to a claim under the Prescription Act 1832. If however a right to graze can be established under an earlier lost modern grant, non user, particularly if there is an explanation for it, will not be evidence of abandonment.

I will now consider separately those applications which were pursued at the hearing and the objections thereto respectively.

Prowers Farm (83). The right claimed was to graze four cattle from the 1 May to 30 November in each year over the whole of the common. Mrs Eva Betty Tite wife of the owner knew about grazing on Lydlinch Common but not specifically from Prowers Farm. Her knowledge only went back to 1953. Mr Frizzle said that as a boy (he was born in about 1922) he remembered Richard Tite, who must have been the father-in-law of Mrs E B Tite grazing cattle from Prowers Farm fairly regularly on the Common. All he could say as to the number was 'more than one'. Mr S E Cluett remembered seeing cattle from Prowers Farm crossing to the Common on his way to school between the wars. Mr Henry Charles Cluett said the same and put the number at 4 cattle. The extracts from the Manorial Records shows that in the last century numbers of the Tite Family were involved in the management of the common. The names of John Tite and Uriah Tite appear among those attending annual meetings of lease holders. The note written by E D E Tite in 1910 record that in that year, W Tite had declined the appointment of Haywarden and that his father had been Haywarden for 40 years. The same note records that Prowers Farm had no leaze at the time. There is in fact no record of Prowers Farm ever having had grazing rights. The only period for which there is evidence of any grazing of beasts from Prowers Farm in the common is from about 1930 to the beginning of the Second War. This does not satisfy the requirements of the Prescription Act 1832 nor is it sufficient to establish a modern grant. This application fails.

Vale Farm (83). This application for the right to graze 3 cattle on the whole of the common between 1 May and 30 November in each year was originally made by



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Mrs Myrtle Fiander Duffett, the owner of the farm in 1968. Her successors in title, Mr and Mrs Coffin had purchased the farm in December 1978. Mr Coffin's evidence was that when he purchased the farm he had been given to understand that the right to graze three cows on the common in the summer went with the farm. Since purchasing the farm he had grazed three cows and a few sheep on the common.

Mrs Tite said that to her knowledge Mrs Duffett, who was her husband's aunt, had grazed 3-4 dairy cows and later the same number of beef cattle on the common and after her Mr Frizzle had grazed cattle there from 1976-1978. This evidence was corroborated by Mr Frizzle. Both the Cluett's spoke of cattle from Vale Farm being grazed on the common before the second war and Mr H C Cluett remembered the cattle being milked on the common in Mrs Duffett's time.

There is no reference to Vale Farm in any of the Manorial Records.

In my opinion there is insufficient evidence to support the claim for rights and accordingly it fails.

Thornhill View Cottage (100). Mr and Mrs Frizzle who had purchased the Cottage in 1962 claimed the right of pasture for two cattle between 1 May and 30 November in each year on the whole of the common. He claimed to have grazed three cattle on the common since 1963 and relied on a letter from Colonel Yeatman confirming that in 1921 the cottage had been granted a lease. If the Colonel had gone back further he would have found the same lease in the Records for 1910.

These claimants also relied on grazing rights alleged to have been exercised by Crofton Tite who had been the previous occupier of the cottage. It is not clear when Crofton Tite began to live at the cottage and he had other land as well.

In my view the evidence is insufficient to support a claim under the Prescription Act 1832 because it is not certain that it continued for 30 years and the ~~number~~ number of cattle pastured seems to have varied. John Tite purchased Thornhill Cottage in 1887 and on the evidence provided by the Manorial Records I find that this right was exercised by virtue of a lost grant and has not been abandoned. It is however limited to one lease and I will allow the application but limit it to one cow.

Hollow Hill Cottage (101). The claim to a right of pasture for two cattle between 1 May and 30 November in each year over the whole of the common was first registered in 1968 by the then owner Mrs Queenie Phillips. It was pursued before me by Mr R W Herbert who had purchased the cottage in 1976.

The Abstract of Title to this property showed that it was formerly owned by Richard Brown who made his will in 1918 and died on 15 March 1921. His name appears on the list of Lease holders for 1910 and his widow's name appears on the list for April 1921. Not surprisingly Mr Herbert was unable to give any oral evidence in support of the claim but he believed he was acquiring rights of common when he purchased the cottage. There is in my view sufficient evidence on which I can find a lost modern grant and the claim therefore succeeds but is limited to one animal.



The piece of land situate at Lydlinch Common having an area of 2 roods and 19 perches (102). Mr and Mrs Frizzle as owners of this piece of land claimed the right of pasture between 1 May and 30 November in each year over the whole of the common. This claim was in addition to their claim in respect of Thornhill View Cottage (100) though no separate evidence was given in respect of the two claims. In the records for the year 1887 there is a reference to a plot of 2 roods and 18 perches but it is described as a house and garden. The Abstract of Title shows that the plot in respect of which the claim was made was purchased by General Park in 1888. The last plot on the list is shown as owned by General Park and occupied by J Jacob, who was a predecessor in title of the claimants and entitled to 1 horse lease. In the records for 1910 and 1921, there are four entries against the name of J Jacob, one of which is described as 1 lease for horse. J Jacob died in . The records do not identify the piece of land in respect of which the claims made and in my view this claim fails.

Holbrook Green Farm (523). This claim made by Samuel Ernest Cluett is for a right of common to pasture 8 cows or 6 cows and 1 horse over the whole of the common. Mr Cluett had not himself pastured beasts on the common and Mr Frizzle did not know of any animals being pastured on the common from Holbrook Green Farm. Mr H C Cluett said that Lampard the previous owner of this farm used to put a few beasts on the common. An examination of the Manorial Records shows that since 1887 this farm has enjoyed three cattle leazes and on this evidence I am entitled to find and I do find that the claim is established to this extent.

Darby's Farm (626). Mr Henry Charles Cluett claims a right of common to graze six heifers over the whole of the common. His father bought this Farm in 1926 and the Sale Particulars stated that there was included six heifer leazes on the common which had been enjoyed without interruption by the Vendor and her family for over forty years. This right was specifically included in the Conveyance. Mr Cluett also had lived at Darbys Farm all his life said that his father exercised this right up to the outbreak of war when the common was taken over by the Army, but did not resume it after the war for reasons which Mr Rimer conceded did not establish abandonment of the right. Darby's Farm is shown in the List of Leazeholders in April 1921 as entitled to 6 cattle leazes and I am satisfied on this evidence that this right had been exercised lawfully until the outbreak of the war under a lost modern grant.

Newhouse Farm (633). Mr T J Rowland who claimed ten cattle leazes over the whole of the Common had purchased the Farm in 1962 from his father who had purchased it in 1946. In the Particulars of Sale in 1946, Newhouse Farm was described as including ten beast leazes on Lydlinch Common. Although these leazes were not referred to in the subsequent Conveyance, they are referred to in a lease granted by the Purchaser in 1947 to Wallace Frizzle who had previously been the tenant of the Vendor and Wallace Frizzle continued to put beasts on the common until he died. Newhouse Farm is shown in the Manorial Records for 1910 and 1921 as entitled to ten beast leazes. Although user sufficient to satisfy the Prescription Act 1832 is not established, I am able to find and I do find a lost modern grant and in any view the claim is established.



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For these reasons I confirm the registrations with the following modifications.

1. The registration in the Register of Common Land of the area shown edged in green on the plan, with the addition of the areas hatched in blue on the plan enclosed with the letter dated 27 February 1968, written by the County Council to the Sturminster Rural District Council but excluding the areas of land shown coloured pink on Plan No. 4445/19 attached to the objection dated 29 September 1970 of the County Council and registered on 29 January 1971.

2. In the Right Section the following applications:-

- (i) No. 100 for one beast
- (ii) No. 101 for one beast
- (iii) No. 523 for three cattle leazes
- (iv) No. 626 for six heifers
- (v) No. 633 for ten cattle leazes.

I refuse to confirm any of the other applications in the Rights Section.

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

2nd

day of

Oct 30

1980

George H. H. H.

Commons Commissioner