



COMMONS REGISTRATION ACT 1965

Reference Nos 210/D/452
to 455 inclusive
210/D/527
210/D/528
210/D/462
210/D/463

In the Matter of Dewlands Common
(1) south part about 22.87 acres,
(2) north part about 18.00 acres, and
(3) west connecting strip about 0.46 acres,
in Knowlton and Verwood, Wimborne District,
Dorset

DECISION

These 3 disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit (1) No. CL 82, (2) No. CL 50 and (3) No. CL 81 in the Register of Common Land maintained by Dorset County Council and are occasioned by (CL 82) Objection No. 133, (CL 50) Objection No. 137, and (CL 81) Objection No. 132 made by Mr Clunie Rutherford Dale and noted in the Register on 29 March, 9 August and 2 April 1971; by (CL 82) Objection No. 367 made by Mr George Edward Moore and noted in the Register on 29 March 1971; and by (CL 82) Objection No. 999 made by Mr Thomas Kershaw and noted in the Register on 26 March 1971.

I held a hearing for the purpose of inquiring into these disputes at Poole on 18 and 19 June 1980. At the hearing (1) Mrs Joyce Elfleda Duncan on whose application jointly with Mr Robert Duncan the registrations in the Rights Section were made attended in person on her own behalf and as representing him; (2) Knowlton Parish Council (a group council for Chalbury, Horton, Wimborne St Giles & Woodlands) as successor of Horton Parish Council on whose application the CL 82 and the CL 81 Land Section registrations were made and which said application is noted in the CL 50 Register were represented by Mrs E A Curry their clerk; (3) The Ramblers' Association an application by whom is noted in the Land Section of Register Unit No. CL 50 were represented by Mrs R Colyer who is their Footpath Secretary for the Dorset Area; (4) Mr C R Dale was represented by Mr J F R Bongard solicitor of Jacksons, Solicitors of Fordingbridge, (5) Wimborne District Council as successor in title of Mr C R Dale and as a concerned authority were also represented by Mr Bongard; (6) Mr G E Moore was represented by Mr G Evans, solicitor of Dibbens, Solicitors of Fernwood; (7) Mr T Kershaw was present in person and (8) Mrs Louisa Alice Rose Sturgess of 1 Vicarage Road, Sheringham, Norfolk was represented by her son-in-law Mr John Cyril Saunders.

In these proceedings I first considered the CL 82 land. The grounds of Objection No. 133 (Mr Dale) are not expressly limited to the part of the CL 82 land of which Mr Dale is in the Ownership Section registered as the owner, although Mr Bongard at the beginning of the hearing indicated that the District Council as his successor was only concerned with this part, being about two thirds of the whole, and hereinafter called "the Dale Part". The other parts I shall call (in accordance with their definition in the First Schedule hereto): (1) "the Moore Part", (2) "the Kershaw Part", (3) "the Sturgess Part", (4) "the 2.30 Acre Part", and (5) "the Southwest Corner Part". Mrs Curry said that the Horton Parish Council made



an application for registration (it was for all the CL 82 and CL 81 lands and for the part of the CL 50 land within their Parish boundary) because they thought they were under a duty to make a registration to help those who might have rights. Oral evidence was given by Mrs Duncan in support of the Rights Section registration, being of a right attached to Moorview (land with a house on it and nearby land together containing 1.81 acres). Mr J C Saunders gave oral evidence against the inclusion of the Sturgess Part in the registration. Mr G E Moore and his daughter-in-law Mrs Cicely Moore gave oral evidence against the inclusion of the Moore Part in the registration. Mr Bongard gave oral evidence against the inclusion of the Dale Part in the registration. Mr T Kershaw gave oral evidence against the inclusion of the Kershaw Part in the registration. In the course of this evidence the documents listed in Part I of the Second Schedule hereto were produced.

Next I considered the CL 50 land; the registration was made on the application of Verwood Parish Council, although much of the land is not within that parish. The grounds of Objection No. 137 (Mr Dale) are not expressly limited to the parts of the CL 50 land of which Mr Dale is registered as the owner, although Mr Bongard said that the District Council was only concerned with this part, being about seveneighths of the whole and being in Part 2 of the First Schedule hereto defined as "the CL 50 North Part" and "the CL 50 South Part". Mrs Duncan in support of the Rights Section registration relied on the evidence she had already given. Mrs Colyer gave oral evidence in support of the Land Section registration and Mr Bongard gave further evidence against the registrations in both the Rights and Land Sections. In the course of this evidence the documents listed in part 2 of the Third Schedule hereto were produced.

Next I considered the CL 81 land, for and against the registrations of which Mr and Mrs Duncan and Mr Bongard relied on the evidence already given in relation to the CL 82 and CL 50 lands.

At the conclusion of the hearing Mr Bongard produced the document a copy of which is set out in the Fourth Schedule hereto showing that he on behalf of Mr Dale and the Wimborne District Council had reached a compromise with Mr and Mrs Duncan.

On the day after the hearing I inspected these lands accompanied by Mrs Duncan and Mr Kershaw nearly all the time and by Mr Moore while I was walking on or round the Moore Part.

The grounds of Objection No. 367 (Mr Moore) are in effect that the Moore Part is not common land. By section 5(7) of the 1965 Act, I must treat this Objection as relating not only to the registration in the Land Section but also to the registration in the Rights Section, such registration being of: "The right of common to depasture 2 cows. The right of turbary. The right to cut gorse or furse. The right to take and use water running over and along the land".

Moorview (house and land) is northwest of the Dale Part and southwest of the CL 50 South Part and of the CL 81 land. The Moore Part is southeast of the Dale Part. They are about 300 yards apart, so that the area of the Dale Part in between is considerable. In dealing with this Objection (No. 367, Mr Moore), I shall for the benefit of Mr and Mrs Duncan assume that they have a right as claimed by them over this in between area at least, and will therefore only consider the question whether they have proved that such right extends over the Moore Part.



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Under the documents produced by Mrs Duncan the successive owners of Moor View have been her father Mr C E King from 1924 (he died in 1958), her mother Mrs A R King till her death in 1963 and then Mr and Mrs Duncan. Mrs Duncan said in effect that her father until his death that she and her husband afterwards had put a cow (with a follower) and after her father's death goats on the common. The 1913 and the 1924 conveyances are expressed to include a right of common over the "common" or "heath" therein mentioned. At a sale in 1924 of the Shaftesbury Estate, the in between area at least was sold "subject to any rights of grazing that may exist". Mrs Duncan did not suggest that the animals put on to the in between area by her father and her husband were ever put on to the Moore Part. She contended (as I understood her) that they must have strayed there and that according to the OS Maps the Moore Part is part of the same piece of land as the in between area.

But against this contention:- The Moore Part was in 1952 conveyed to Mr Moore without any mention of it being part of a common. It was then so Mr Moore said fenced from the in between area, although the fence was dilapidated. In about 1964 the bungalow now there was built. Since then the Moore Part has been private ground either garden or cultivated or otherwise used with the Bungalow as it now appears: quite distinct from the in between area. So I find since about 1964 the right claimed could not have been effectively exercised and since about 1952 could not have been exercised as of right over the Moore Part.

I accept the evidence of Mr and Mrs Moore about the state of the Moore Part as they have known it. Balancing this evidence against the conflicting contentions of Mr and Mrs Duncan my conclusion is that the Moore Part was never *at any* now relevant time part of the area subject to the right which I have assumed Mr and Mrs Duncan now have; accordingly my decision is that the right they now claim does not extend to the Moore Part.

In the absence of any evidence of any other persons having any right, I also conclude that the Moore Part is not "land subject to a right of common" within the meaning of paragraph (a) the definition of "common land" in section 22 of the 1965 Act. As to the possibility of the Moore Part being "waste land of a manor" within paragraph (b) of the definition, the considerations mentioned below in relation to the CL 50 North Part are applicable, and additionally I have the evidence of Mr and Mrs Moore. Accordingly my decision is that Objection No. 367 wholly succeeds.

As to the Objections Nos 132, 133 and 137 made by Mr Dale:- The evidence of Mrs Duncan left open the question; whether even assuming she and Mr Duncan have attached to Moor View a right of common over the CL 50 South Part (defined in the First Schedule hereto) such right extends to the CL 50 North Part and the CL 81 land of which Mr Dale is the registered owner. Under the documents of title produced by Mr Bongard, Mr Dale's title for his land north of the Does Lane Line (as defined in the First Schedule hereto) is different from his title to his land south of the Line; in that the south land (unlike the north land) was expressed to be conveyed "subject to any ... rights of grazing which may now exist ...". The appearance of these lands, and the circumstance that the Does Lane Line is a parish boundary are indications that the CL 50 North Part is distinct from the CL 50 South Part.



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So even in the absence of a compromise I should be inclined to conclude that the legal position was as has by the compromise been agreed. In the absence of any evidence or suggestion to the contrary, my decision is therefore (in accordance with the compromise) that the Dale Part, the CL 50 South Part and the CL 81 land are subject to a right of common as claimed by Mr and Mrs Duncan and that such lands are therefore within paragraph (a) of the said 1965 Act definition of "common land"; so as regards these lands the Objections of Mr Dale fail.

Although under the compromise Mr and Mrs Duncan can have no right of common over the CL 50 North Part, and this Part cannot therefore be within paragraph (a) of the said definition, such compromise is not evidence against CL 50 land being within paragraph (b) of the definition. Of those present or represented at the hearing only the Ramblers' Association contended that the CL 50 North Part was "waste land of the manor" within this paragraph; Mrs Colyer (as I understood her) relied on: (1) that the Part was not among the numbered plots in the Schedule to the Tithe Apportionment Award for the Parish of Verwood, being plots numbered as being then enclosures (there are some numbers and such schedules described as "enclosures from the common"); (2) the said Award mentions "commons unsuitable for cultivation" in the parish as containing 620 acres; (3) that the 1902 OS Map shows the CL 50 North Part with the name "Dewlands Common" (the CL 50 South Part and the Dale Part are not so named although the map might be read as treating them as included in Dewlands Common); and (4) the CL North Part now appears to be one piece of land with the CL 50 South Part and the CL 81 land. ^{From} What Mrs Colyer said about this Award (it was not produced although the accuracy of her summary was not challenged), I consider it to be no indication that CL North Part has any manorial history which could now be relevant. The documents of title to the CL 50 North Part produced by Mr Bongard not only provide no such indication but are some evidence that this Part has no such history. The map and the present appearance of the land have I think no decisive significance. Nobody else contending the contrary, my decision is that the CL 50 North Part is not within paragraph (a) ^G of the said definition and that Objection No. 137 as regards the CL 50 North Part wholly succeeds.

Objection No. 999 made by Mr Kershaw relates only to the registration in the Rights Section Entry so far as it relates to the Kershaw Part. I have a copy of a letter dated 28.3.73 from Mrs Duncan to the County Council in which in effect she withdraws her registration of the area to which Mr Kershaw objected. In the absence of any suggestion at the hearing that I should do otherwise, my decision is that this Objection (it relates only to the Rights Section Entry) succeeds.

I have above dealt with all the Objections so far as the Objectors at the hearing desired to press grounds of objection therein set out. However the grounds of the Objections made by Mr Dale are in general terms relating the entirety of these lands and in my view the circumstances ^{of} Mr Bongard do not ~~justify~~ press them further than as above stated cannot deprive me of the jurisdiction to deal with all the registrations as affecting every part of these lands as I think fit. By regulation 23(5) of the Commons Commissioners Regulation 1971, at the hearing of a dispute relating to the registration of land as common land I may if I think fit take evidence from any person present; this was such a hearing and I did think fit to take evidence from Mr Kershaw and Mr Saunders. Further I have inspected the land. So I conclude that I may properly deal with the other parts of these lands notwithstanding that Mr Bongard said that his Council were not concerned about them.



As regards the Kershaw Part:- On the evidence of Mr Kershaw and on the appearance of this Part I conclude that it was not "waste land of the manor" within paragraph (b) of the said definition. By reason of the success of Objection No. 999, it cannot be within paragraph (a). I conclude therefore that the Kershaw Part was not properly included in the Land Section Registration.

As to the Sturgess Part:- The locality of this Part is such that if the Kershaw Part is not properly included in the registrations, neither could it be, because if Mr and Mrs Duncan have no rights over the Kershaw Part they would have no access to the Sturgess Part. For this reason and upon the evidence of Mr Saunders I conclude that the Sturgess Part should not be included either in the Land or the Rights Section of the CL 82 Registrater Unit.

As regards the 2.30 Acre Part:- OS Plot No. 7724 is enclosed from the Dale Part and appears to have been so enclosed for some time. On appearance alone it would not be sensible to include this plot in these registrations; during my inspection Mrs Duncan agreed/said that she never intended that her registration should extend over it. If this plot is excluded from the registration the part of Horton Way on which it fronts should also be excluded. I conclude therefore that the 2.30 Acre Part was not properly registered.

As to the Southwest Corner Part:- Compared with the adjoining Dale Part this is very small indeed. The boundary of the Dale Part as drawn in accordance with the title deeds relating to it, indicates that the Dale Part is a distinct piece of land. In my view there cannot sensibly be land of the size of the Southwest Corner Part which is both distinct from the Dale Part and common land; I conclude therefore that it too was not properly registered.

As regards the CL 50 semicircular Part:- The situation of this Part is such that if the CL 50 North Part is not properly registered (as I have above decided) neither is this part. And I so conclude.

As regards the CL 50 East Part:- I have no note or recollection of anyone at the hearing saying anything about this part. During my inspection it appeared possibly to be of some local importance because of the nearby dwellinghouses on the east; but in relation to the CL50 registration the scrub on it appeared very like that on the adjoining part of the CL 50 South Part and there seemed to be no reason why if Mr and Mrs Duncan have a right of commons (as I have decided they have) over the CL 50 South Part, such right should not also extend to the CL 50 East Piece as being part of the same piece of land. Nobody having objected to the inclusion of the CL 50 East Part in these registrations, it seems likely that its owner is unknown; one of the purposes of the 1965 Act being put under protection common land of which the owner is unknown, I consider I can in the public interest properly lean in favour for the registration of this Part, so that the resulting inquiry under section 8 of the Act may in the public interest produce a clarification of the legal position. Accordingly notwithstanding that Mrs Duncan during my inspection said she was indifferent whether right of common registered by her and Mr Duncan extended to it, my decision is that it does so extend and that this Part should therefore remain registered.

For the above reasons, I confirm the registration at Entry No. 1 in the CL 50 Land Section with the modification that there be removed from the Register all the land north of the Does Lane Line; I confirm the registration at Entry No. 1 in the CL 50



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Rights Section without any modifications save such as is consequential on the removal of the said land from the Register. I confirm the registration at Entry No. 1 in the CL 81 Land Section and at Entry No. 1 in the CL 81 Rights Section without any modification. I confirm the registration at Entry No. 1 in the CL 82 Land Section with the modification that there be removed from the Register, the Moore Part, the Kershaw Part, the Sturgess Part, the 2.30 Acre Part and the Southwest Corner Part; I confirm the registration at Entry No. 1 in the CL 82 Rights Section without any modification save such as is consequential on the removal of the said land from the Register.

Mr Kershaw claimed costs against Knowlton Parish Council because after Mr and Mrs Duncan had withdrawn their registration against the Kershaw Part, they in their letter of 9 January 1978 (in effect) refused to co-operate with him in obtaining in advance of the hearing the exclusion of the Kershaw Part from the registrations and had therefore put him to trouble and expense. I refuse such claim because in my view, Objection No. 99 did not relate to the Land Section and the Parish Council were therefore under no duty to consider the possibility of the Kershaw Part being excluded from the Land Section. No such exclusion could under the 1965 Act and the Commons Commissioners Regulations 1970 have been effected by the County Council as registration authority in advance of the hearing even with the consent of Mr Kershaw, Mr and Mrs Duncan and the Parish Council.

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.

TURN OVER



FIRST SCHEDULE
(Definitions)

Part I: the CL 82 land

"The Dale Part" means the part of the CL 82 land of which Mr Clunie Rutherford Dale was on 27 May 1970 in the Ownership Section registered as owner.

"The Moore Part" means the part of the CL 82 land outlined in red on the plan attached to Objection No. 367 and made by Mr George Edward Moore.

"The Kershaw Part" means the part of the CL 82 land shown in red on the plan attached to Objection No. 999 and made by Mr Thomas Kershaw.

"The Sturgess Part" means the part of the CL 82 land which is north of the west half of the Kershaw Part.

"The 2.30 Acre Part" means the part of the CL 82 land (exclusive of the Moore Part) which is southeast of the Dale Part and which is or includes (i) OS plot No. 7724 on the OS map marked as containing 2.30 acres and (ii) so much of Horton Way as is both southwest of Margards Lane and northeast of the southwest corner of the said OS plot No. 7724.

"The Southwest Corner Part" means the remainder of the CL 82 land, being a small area about 15 yards long situated near the southwest corner of the Dale Part.

Part 2: the CL 50 land

"The Does Lane Line" means a line approximately straight which is a continuation approximately eastward in a straight line of the south boundary of Does Lane from where it meets Dewlands Road, which is for the most of its length a south boundary of the CL 50 land and which ends at or near the northwest corner of the land on the said OS map marked as held with a dwellinghouse "Pines".

"The CL 50 North Part" means the part of the CL 50 land which is north of the Does Lane Line and of which Mr Clunie Rutherford Dale was on 7 April 1970 in the Ownership Section registered as the owner.

"The CL 50 Semicircular Part" means part of the CL 50 land which is north of the Does Lane Line (exclusive of the CL 50 North Part) being a semicircular area northeast of the said CL 50 North Part.

"The CL 50 South Part" means the part of the CL 50 land (exclusive of the CL 50 North Part) of which Mr Clunie Rutherford Dale was registered as owner as aforesaid.

"The CL 50 East Part" means the remainder of the CL 50 land being a strip about 150 yards long which runs between the southeast corner of the CL 50 North Part and the east corner of the CL 50 South Part.



SECOND SCHEDULE

(Documents produced at the CL 82 part of the hearing)
Part 1: by Mrs Duncan

8 November 1913

Copy (certified 9 May 1973) of conveyance by Charles Williams as personal representative of Job Shearing (commonly known as Job Henning the younger: he died 25 December 1917) to Sidney Edward Trickett of 2 Freehold Fields (OS No. 292304 together containing 1.308 acres.

15 September 1924

Copy (similarly certified) of conveyance by S E Trickett to Charles Edward King of the said premises.

24 March 1964

Copy (similarly certified) of assent by Mrs J E Duncan and Mr M C Green as executors of Mrs Alfreda Rose King (she died 5 October 1963) in favour of Mr R and Mrs J E Duncan of the said premises.

12 November 1946

Extract from catalogue of sale of part of Shaftesbury Estate being lot 69 described as "land extending to about 18.651 acres".

Part 2: by Mr J C Saunders

26 August 1976

Statutory declaration made by Mrs Rose Louisa Saunders exhibiting copy of 1919 conveyance below mentioned (provides for use of Parish Council).

2 October 1976

Copy letter from Knowlton Parish Council to Bury & Bury.

23 June 1977

Letter from Bury & Bury to Mr and Mrs Saunders with copy plan referred to.

15 March 1978

Letter from Dorset County Council to Bury & Bury.

16 June 1980

Authority signed by Mrs L A R Sturgess.

10 June 1919

Conveyance (being original of copy exhibit to above declaration) made by Charles Williams to William Henry Heath of land and cottage.



Part 3: by Mr Moore

- 11 December 1952 Conveyance by Mr Herbert James Rolles Fryer and another to Mr George Edward Moore of pieces of land containing about 3.248 acres and 15.985 acres.
- 5 March 1974 Conveyance by Mr G Moore and Gemmoor Investment Company Limited to Mr George Herbert William Moore and Mrs Cicely Moore.

Part 4: by Mr J F R Bongard

- Epitome of title of C R Dale and Wimborne District Council to (A) 11 acres adjoining Dewland Road and known as Dewlands Heath or Common and (B) land containing 18.65 acres south of Doe's Lane and known as Dewlands Common.
- 24 June 1891 Examined abstract of the title of Shaftesbury Estates Company including a conveyance dated 24 June 1935 by Rt Hon 9th Earl of Shaftesbury to Shaftesbury Estates Company.
- 17 September 1947 Conveyance by Shaftesbury Estates Company to Miss Violet Mary Dale of land containing 18.651 acres.
- 24 September 1958 Copy Probate of will of Miss V M Dale (she died 1 July 1958).
- 24 September 1958 Copy assent by her personal representative in favour of Mr Clunie Rutherford Dale.
- 12 June 1975 Conveyance by Mr C R Dale to the Wimborne District Council of (A) and (B) lands.
- 4 July 1849 Tithe Apportionment Award (from the County Records Office) for the Parish of Morton.

Part 5: by Mr T Kershaw

- 23 December 1955 Conveyance by Winifred Helen Collins to T Kershaw of 5.17 acres of land as described in a conveyance of 25 August 1950.
- 1953 Abstract of title of Martin Hasket (starting with a conveyance of 24 June 1891).
- 1838 Copy OS map.



- 1885 Extract from Tithe Map.
- 1869 Extract from (?) Tithe Map.
- 1860 Extract from Railway Map.
- 1844 Extract from Tithe Apportionment Award
(as altered in 15 April 1869).
- 21 July 1976 Letter from Y Stowel of the Shaftesbury
Estates to Mr Kershaw.
- 4 August 1977 Letter from the Earl of Shaftesbury to
Mr Kershaw.
- 9 January 1978 Letter from Knowlton Parish Council.

THIRD SCHEDULE

(Documents produced at or after CL 50 part of the hearing)
Part 6: by Mrs Colyer

Summary of Tithe Award.

- 17 June 1980 Letter from D H Scriven to Mrs Colyer.
- 26 November 1971 Letter from D H Scriven to Mrs Colyer.
- 1902 OS Map Second Edition.
- Picture postcard of Dewlands Common addressed
to Miss R Hopkins.

Part 7: by Mr Bongard

- 1935 Examined abstract of title including
conveyance dated 30 December 1920 by
Rt Hon S J Earl of Normanton and others to
Job Brewer and Robert Thorne.
- 22 November 1934 Conveyance by Job Brewer to Violet Mary Dale.
- 13 December 1969 Assent by her personal representatives
in favour of Mr Clunie Rutherford Dale.
- Policy statement of Wimborne District Council.
- February 1971 Informal Plan for Verwood Village and Three
Legged Cross prepared for Dorset County Council



FOURTH SCHEDULE
(Compromise Agreement)

We Joyce Elfleda Duncan and Robert Duncan of Moorview, Dewlands Common hereby agree to give up our claim to common rights over that part of CL 50 which lies to the north of the line of Doe's Lane.

19 June 1980 (Signed) J E Duncan, L Duncan.

I John Frederick Ross Bongard solicitor on behalf of Clunie Rutherford Dale and Wimborne District Council hereby withdraw the objection of the said C L Dale and the said Council to the registrations of common rights by Mr and Mrs Duncan to that part of CL 50 and CL 82 which is to the south of the line of Doe's Lane and is now within the ownership of the Council.

19 June 1980 (Signed) J Bongard

Dated the 29th day of October — 1980

a. a. Bada Fuller

Commons Commissioner