



COMMONS REGISTRATION ACT 1965

Reference Nos. 10/D/56-63

In the Matter of Hardown Hill,
Whitechurch Canonorum and Chideock, Dorset (No.2).

DECISION

Disputes 10/D/56-62 relate to the registration at Entries Nos.1 and 2 in the Rights Section of Register Unit No.C.L.45 in the Register of Common Land maintained by the Dorset County Council and are respectively occasioned by Objection No.843 made by Mr. D.C. Fleming-Williams; Objection No.848 made by Mr. T.R. Matthews; Objection No.850 made by M/s E.C. Hansford and Mr. A.C. Caddy; Objection No.851 made by Miss F.A. Love; Objection No.853 made by Col. H.J.G. Weld; Objection No.855 made by Mr. J. Caddy and Miss I.M.C. Caddy; and Objection No.857 made by Mr. H.G. Hasteed; and all noted in the Register on 19th November 1970. Dispute 10/D/63 is the deemed dispute occasioned by Objections Nos. 27, 180, 845, 856 and 859 made by various Objectors (Mr. J. Caddy and Miss I.M.C. Caddy, Mr. A.J. Hansford, Mr. A.M. Cooper and M/s J. Cooper, Miss I.M. Lind, and Mrs. L.W. Dart and Miss H.E. Wheeler) to Entry No.45 in the Land Section of the Register Unit.

I held a hearing for the purpose of inquiring into the disputes at Dorchester on 27th February 1974. The hearing was attended by Mr. Arthur Lyall, solicitor, on behalf of Mr. C.P. Gibson and Mrs. E.A. Gibson, who made the application for the registration at Entry No.1. Mr. O.R. Tett, solicitor, appeared on behalf of Miss L. Carlton, the successor in title of Mr. C.J. Buckoke who made the application for the registration at Entry No.2. Mr. P.J. Roper, solicitor, appeared on behalf of Mr. Matthews, M/s Hansford and Mr. A.E. Caddy, and Miss Love. Mr. E.J.V. Williams appeared on behalf of Col. Weld. Mr. P.J.S. Piper, solicitor, appeared on behalf of Mr. Hansford. Mr. J.G.A. Ling solicitor, appeared on behalf of Miss Lind and Mrs. Dart and Miss Wheeler. Mr. and Mrs. A.E. Rowe, the successors in title of Mr. and M/s Cooper, appeared in person. Miss Caddy appeared in person and on behalf of Mr. J. Caddy. Mr. Hasteed did not appear and was not represented.

Mr. Lyall stated that Mr. and Mrs. Gibson wished to pursue their application only in respect of four areas of land, the subjects of the Objections by Col. Weld, M/s Hansford and Mr. A.E. Caddy, Miss Love, and Mr. Hasteed.

Among the documents received by Mr. and Mrs. Gibson when they purchased Haddon Cottage, Morcombelake was an examined abstract of an indenture of 23rd April 1839 by which an unnamed cottage at Morcombelake was conveyed with "the right of common on Hardown Hill for consumable cattle levant and couchant upon the said premises and for cutting turf and furze to be consumed in the said cottage as appurtenant to the said premises". Presumably the cottage there referred to was that now known as Haddon Cottage.

For the reasons given in my decision in In the Matter of Hardown Hill (No.1) (1974), 10/D/45-55 there seems to be no room for doubt that there were rights of common appurtenant to Haddon Cottage as late as 1844. There is, however, no evidence of the exercise of any such rights within living memory, nor do the modern deeds of Haddon Cottage contain any reference to rights of common. As was observed by Buckley L.J. in Tehidy Minerals v Norman:



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[1971] 2 Q.B.528, at p.533, a lack of any attempt to transmit rights of common to a successor in title is evidence from which an intention to abandon the rights can be inferred. On the evidence before me I am satisfied that the rights of common formerly appurtenant to Haddon Cottage must be regarded as having been abandoned by one of Mr. Gibson's predecessors in title.

For these reasons I refuse to confirm the registration at Entry No.1.

Mr. Tett based Miss Carlton's claim on the statement in the abstract of Mr. Buckoke's title to her property that it was conveyed on 7th September 1874 with all buildings, commons, fences, hedges, ditches, etc. Mr. Tett fairly admitted that such words in a conveyance may only be what conveyancers call "general words" and do not necessarily imply that any such rights existed, but, if I understood his argument correctly, he contended that since there was evidence that other properties in Morcombelake had rights of common on Hardown Hill appurtenant to them, a conveyance of any property in Morcombelake "with all commons" should be construed as including rights of common on Hardown Hill.

This, to my mind, is attempting to place upon the document on which Mr. Tett relies an interpretation which it is not capable of sustaining. Such an interpretation is inconsistent with the negative evidence about Miss Carlton's property. There is no evidence that anyone has ever exercised rights over Hardown Hill in respect of it, nor is there any reference to such rights in the modern conveyances of the property. But what is perhaps most conclusive against Miss Carlton's claim is contained in another part of the document relied upon. The property conveyed in 1874 is described as land formerly enclosed from Hardown Hill. To my mind it is legally impossible for a piece of land which once formed part of a common to have any rights over that common unless such rights were subsequently acquired by prescription. There is no evidence of such acquisition in this case.

For these reasons I refuse to confirm the registration at Entry No.2.

The Objectors who appeared at the hearing asked me to make orders for costs against Mr. and Mrs. Gibson and against Miss Carlton. I cannot say that I regard either application as frivolous. On the other hand, I cannot say that in making their application Mr. and Mrs. Gibson were merely acting as public-spirited citizens and ought therefore to be relieved of liability for costs. This application was made by them for their own benefit, and had it been successful, it might have added substantially to the value of their property. In these circumstances I think that it would be unfair to the Objectors to their application to relieve Mr. and Mrs. Gibson of the usual burden falling upon an unsuccessful litigant in civil proceedings. I shall therefore order Mr. and Mrs. Gibson to pay to each Objector who appeared at the hearing his or her costs to be taxed on County Court Scale 2.

Equally, in exercising her right to be heard in support of Mr. Buckoke's application Miss Carlton is claiming to have a property right which would be directly affected by the outcome of the proceedings. However, the only Objector in respect of Mr. Buckoke's application was Mr. Hasteed, who did



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not appear and therefore cannot be entitled to costs.

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 **29th** day of March 1974

A handwritten signature in black ink, appearing to read 'C. J. Phillips', written in a cursive style.

Chief Commons Commissioner