Reference 209/D/406

COMMONS REGISTRATION ACT 1965

In the Matter of Buckfastleigh Moor,
West Buckfastleigh, South Hams District,
Devon

DECISION

These disputes relate to the registrations at Entry Nos. 2, 3, 12, 32 to 49 inclusive (47 has been replaced by Nos. 82, 83, 84 and 85), 52, 59 and 60 in the Rights Section of Register Unit No. CL146 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 626 made by Buckfastleigh West Commoners and noted in the Register on 1 January 1971 and by Objection No. 1138 made by Devon County Council and noted in the Register on 11 September 1972.

I held a hearing for the purpose of inquiring into the disputes at ~~Exeter~~ Plymouth on 9 and 10 May 1984. At the 9 May part of the hearing (1) Bennah Ltd who applied for the registrations at Entry Nos. 7, 8, 9, 10 and 11 (being undisputed all final) were represented by Mr P J R Michelmore FRICS of Michelmore Hughes Chartered Surveyors of Newton Abbot; (2) Mrs Francis Jill Juckes as successor of Mr Edwin Hopcroft Woodward and Mrs Isabella Amelia Woodward who applied for the registration at Entry No. 40 was represented by Mr R W Lewis solicitor of Woollcombe Watts & Co, Solicitors of Newton Abbot; and (3) Mr Arthur John Peter Pankhurst of 15 Birch Way, Weymouth, Dorset as a person having a possible interest in the land, attended in person. Mr S Glossop on behalf of Mr David John Powell of Holne Court, Holne asked me not to give any decision against the registrations at Entry Nos. 2, 3 and 52 until the morrow (10 May) when Mr Powell could attend (he being unable on 9 May). At the 10 May part of the hearing: (4) Devon County Council were represented by Mr P A J Browne their Senior Assistant Solicitor; (5) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bourchier Sayer applied for the registration at Entry No. 2 attended in person on her own behalf and as representing him; (6) Admiral Sir James F Eberle as successor in title of Mr David Miller Scott who applied for, and (7) Mrs Eleanor Nancy Smallwood who applied for, the Rights Section registrations at Entry Nos. 3 and 52 were also represented by Lady Sayer; Mrs Juckes was represented by Mr Lewis as before.

The land (the "Unit Land") in this Register Unit is a tract about 2¼ miles long from northwest to southeast and for the most part about ¼ of a mile wide; along its west boundary it adjoins the Forest of Dartmoor (Register Unit No. CL164), along most of its north boundary it adjoins Holne Moor (Register Unit No. 153) and along most of its southwest boundary it adjoins Dean Moor (Register Unit No. 162); along most of its other boundaries its adjoins enclosed farm lands to the west of Scorriton and Combe. Of the 70 Rights Section registrations originally made two of them Nos. 53 and 57 have been cancelled and superseded by Nos. 70, and 68 and 69 respectively. Of the other 68 in addition to the 24 disputed as aforesaid, there are 44 registrations being Nos. 1, 4, to 11 inclusive (4 has been replaced by Nos. 79 and 80), 13 to 31 inclusive, 50, 51, 54, 55, 56, 58 and 61 to 70 inclusive (67 has been replaced by Nos. 72, 76 and 77) which being undisputed have become final; of these 44 final registrations 14 (being Nos. 4 to 9 inclusive, 11, 21, 22, 23, 28, 50 and 56, are expressed "to stray". Of the said 24 disputed

registrations 11 (being Nos. 41 to 48 inclusive, 52, 59 and 60) are within both Objections Nos. 626 and 1138 and grounds of which are respectively "no grazing rights exist straying rights only" and "that the right does not exist at all". Of the 13 others, 3 being Nos. 2, 3 and 12, are within Objection No. 626 only; and the remaining 10 being Nos. 32 to 40 inclusive and 49, are within Objection No. 1138 only. In the Ownership Section Mr George Sherland is registered as owner of all the Unit Land except two comparatively small pieces north of the River Mardle (near Scorriton Down), and this registration being undisputed is final.

First at the hearing (9 May),oral evidence in support of the registration at Entry No. 40 was given by Mr R W Lewis in the course of which he produced a Land Certificate from which it appeared that under Title No. DN 130710 Mrs F J Juckes on 13 July 1982 was registered with an absolute title to freehold land edged red on the Certificate plan and being therein describes as "land at Higher Combe, Buckfastleigh". He said (in effect):- Mrs Juckes is the successor in title of Mr and Mrs Woodward of the land now known as Higher Combe and in column 5 of Entry No. 40 described as "the land at Pixies House and adjoining fields comprising OS Nos. ... in the parish of Buckfastleigh West". He understood his client purchased this property on 12 August 1971 but unfortunately he had been unable to obtain detailed instructions from her in view of the fact that she resides in France, and also because ——→ she may have to travel to Canada. In support of the registration he relied on "common sense": the fact that the property adjoins Unit Land and an inspection would show that the Unit Land is its "home common". He had spoken on the telephone to Mr Browne of the County Council and understood that they were not going to pursue their Objection to this registration.

Mr Lewis also said that in support of registration at Entry No. 40 he would rely on the arguments advanced by Venville Tenants at previous Commons Commissioners hearings, particularly those relating to Hentor Warren, the Forest of Dartmoor, Sheepstor and Headland Warren; rather than explore these arguments in depth he would summarise them as follows: (1) his client is a Venville tenant (2) Venville tenants are entitled to exercise their rights over the Forest and the Commons of Devon which is a continuous belt of land adjoining the Forest; (3) the Commons of Devon are but one common over all and every part of which the Venville tenants may claim their rights; and (4) the Unit Land forms part of these Commons.

Mr A J P Pankhurst in the course of his oral evidence produced a conveyance dated 18 July 1961 by which Dean Park Investments (Buckfast) Limited conveyed to him the lands therein described.

I then considered the description in and the map annexed to, this conveyance. The land thereby conveyed apparently comprised or included Dean Moor being that in Register Unit No. CL162 (see my CL162 decision of even date) but did not include any part of the Unit Land. After some discussion during which Mr Pankhurst insisted that the CL162 land belonged to him, he agreed that the Unit Land was nothing to do with him.

Next (10 May):- Mr Browne on behalf of the County Council conceded the registration at Entry No. 40, saying that as to it Objection No. 1138 was withdrawn.

Mr Sturmer who is now and has been since 1970 the Land Agent of the Duchy of Cornwall in respect of their Dartmoor Estate, said (in effect):- Mr Edmunds (the agister since 1963 of the Duchy for the South Quarter of the Forest, being part of Register Unit No. CL164) has recently handed to him a list of the persons who as Venville Tenants had made payments to the Duchy; this list included Mr and Mrs Woodward (the applicants for the registration at Entry No. 40). Accordingly the Duchy accepted them as being (or having been) Veville tenants.

There was some discussion about a letter dated 20 April 1984 from Brigadier I S M Henderson, the heading of which included "CL146". It seemed that the letter might refer to the registration at Entry No. 82 made on the application of I S M and M B Henderson of Stoke Shallows of rights attached to land formerly part of Fore Stoke Farm; this registration in part replaces that at Entry No. 47 made on the application of Mr Hugh Clarkson and Mrs Mary Isobel Clarkson. There was then present Mr David John Powell who as vice chairman of Holne Commoners Association had given evidence at my Holne Moor CL153 hearing; at such a hearing I considered a CL153 registration made on the application of Lt Col R L Kenyon of rights attached to the Shanty, Forestoke, to be renamed Stoke Shallows. Mr Powell said Forestoke Farm and the Shanty are a short distance southwest of Holne Woods and about 1½ miles southeast of the (Venford) Reservoir. So this registration relates to lands in Holne, more than a mile from the Unit Land.

Next (May 10) Lady Sayer in support of the registrations at Entry Nos 2, 3 and 52 gave oral evidence by reference to a writing (Sayer/1) prepared by herself. She said (in effect):- The venville rights of those she represented are exercisable over the central Forest of Dartmoor and the commons adjoining the Forest which form a ring around the Forest and have been known and referred to from time immemorial as the Commons of Devon. The Unit Land is one of these Commons, being immediately contiguous with the Forest on the western side. Their status as venville right-holders and the extension of these rights over the Forest and its neighbouring commons, were confirmed by the Chief Commons Commissioner in his CL148 (Headland Warren) and CL190 (Shaugh Prior) decisions and by a High Court judgement dated 11 January 1980. Their own venville rights (of Sir Guy and Lady Sayer) are and always have been attached to their ancient Dartmoor holding of Cator in Widecombe parish, and "we have exercised these rights of grazing, turbary and estovers throughoutthe whole 56 years of our Cator ownership". Objections Nos. 310 and 556 have been withdrawn or cancelled (they are no concern of mine, not having been referred to me because I suppose they were withdrawn or cancelled within the period allowed by the 1965 Act); so the only extant objection isNo. 626, the grounds of which denying grazing rights concede straying and ignore turbary and estovers; these grounds, whatever they may have been intended to mean, were made before the said CL148 and CL190 decisions and High Court judgement. She therefore requested that the rights (at Entry Nos. 2, 3 and 52) be confirmed without modification.

Mr D J Powell had shortly before this part (May 10) of this hearing given oral evidence at a hearing before me relating to Holne Moor (CL152) to the effect that the rights over such Moor were limited to those having lands in the Parish or Manor of Holne to the exclusion of land (with the possible exception of

Old Middle Cator, Widecombe) of those having lands elsewhere, and in particular to the exclusion of those having lands in Buckfastleigh. So I explained to him that I was troubled about holding simultaneously that those of Buckfastleigh had no rights over Holne Moor and those of Holne had rights over Buckfastleigh Moor.

Mr Powell said (in effect):- Lady Sayer had acted for those at Holne in many common registration matters and what she was doing is "important to us"; also "it is important to us that those of Buckfastleigh should yield to us". He personally supported the Venville claim as put forward by Lady Sayer, but the majority of the Holne Commoners Association take the view that Holne Moor is for Holne only.

I said that I would inspect the parts of the Unit Land and of the Pixies House lands referred to in these proceedings; no one at the hearing expressed any wish to attend any such inspection.

The hearing then concluded.

Two days after the hearing, from the bridge at Combe over the River Mardle I considered walking up to Pixies House; the way there appeared to be privately enclosed, and perhaps not easy to find. So I went on to Scorriton. From there I walked up the rough track which ascends by some of the lands held with Pixies House (according to the Land Certificate map) as far as their northwest corner. From near such corner there is easy access to the northeast part of the Unit Land and from there to other parts, and the track divides into two (or more) paths, one going down to Chalk Ford and one onwards to the east end of the boundary between the Unit Land and Holne Moor (CL153). I had a good view of the fields next to the track shown on the Land Certificate map, as included in the Pixies House lands, but I was unable certainly to identify the Pixies House buildings with anything I was able to see.

As to Entry Nos. 2, 3 and 52:-

I first consider the contention of Lady Sayer that the propriety of these registrations is established merely by the circumstance that at the hearing nobody attended to support Objection No. 696 made by "Buckfastleigh West Commoners".

By section 7 of the Commons Registration Act 1965, a registration to which no objection has ever been made or about which all objections have been withdrawn before the end of the period specified in the section (long ago ended) becomes final. This section has no direct application to these registrations because Objection No. 696 was not withdrawn before the end of the period; non attendance or other absence of support is not a withdrawal. However the section is at least an indication that if it can be inferred that practically all objections may be treated as withdrawn, it would accord with the policy of the 1965 Act (apparently favouring a cheap and quick finality) for a Commons Commissioner to finalise a registration, if the circumstances at the hearing are essentially the same as they would have been if there had never been any objection.

In re Sutton 1982 1WLR 647, it was said by Walton J at page 656:

> "... the onus of proving his case is upon the person making the registration, once that registration requires confirmation by a commissioner. ... of

course in many situations extremely little by way of proof will be required ..."

And Walton J supposed such a situation (facts different from the instant case) saying of it:

"... although the objection of that person theoretically puts in question the status of the whole of the area, provided that nothing else arises to cast the slightest doubt upon the status of the remainder of the land, the commissioner will, I think be fully entitled to rely upon the original statutory declarations made by the registrant ... (in support of the registration) ..."

As to this burden of proof, see also Corpus Christi v Gloucester 1983 1QB 360 at page 379, and re West Anstey 1985 2WLR 677.

By comparing the Objection with the Register, it seems that "D F Webber (Sec)" who made it for the Association was objecting to all registrations of rights of grazing from lands outside Buckfastleigh but was content to leave any registration expressed as "to stray" or not including grazing, and also would not object to any registration if "stray" was substituted for "graze". For the reasons set out under the heading "Straying" in my decision dated 30 June 1983 re Forest of Dartmoor (CL164), I think he was mistaken in making no objection to registrations expressed as "to stray"; nevertheless the grounds of the Objection are sensible and no different from many others made about Register Units in the Dartmoor National Park which have resulted in the non conformation of the registrations.

A notice of this hearing was acknowledged in a letter dated 6 April 1984 headed "Buckfastleigh West Commoners' Assn", and signed "Carole Richardson, Secretary". I do not know why the Association was not represented at the hearing. I have a note that someone in the office of the Commons Commissioners spoke to her on 3 June 1984 about this non representation, but I can deduce nothing relevant from the recorded reply.

I can guess all sorts of reasons why the Association was not represented at the hearing. That they after their Objection acquired new information about the registrations objected to which led them to suppose that the registrations were proper, is among my less likely guesses. I conclude that the non attendance of the Association is no evidence at all that the registrations were properly made. So I reject the said contention.

I next consider the contentions of Lady Sayer relating to Venville. What she said about Venville at this Unit Land hearing was too short for me to draw any conclusion; so I shall treat as before me (as I think Lady Sayer intended) all the documents, evidence and arguments about Venville which were at my Ditsworthy Warren hearing (CL138) presented by a solicitor acting on behalf of Lady Sayer, and about which I gave a decision dated 30 June 1983 by reference to my said June 1983 CL164 decision; in these decisions I considered generally "the Venville-Commons of Devon claim" and particularly the possible relevance of the CL158 and CL190 decisions and the High Court judgment mentioned by Lady Sayer at this Unit Land hearing. For the reasons set out in my said June 1983.

decisions I reject the Venville-Commons of Devon claim and conclude that nothing said by Lady Sayer at this Unit Land hearing, either actually or by reference to what was on her behalf said at other hearings, in any way supports these registrations.

Next I consider whether her evidence that "we have exercised there our own Venville rights ... throughout the whole 56 years of our Cator ownership" establishes a right by prescription or presumed grant. I accept this statement as meaning that Sir Guy and Lady Sayer have for so long exercised rights over Spitchwick Common (CL33), being that one of the Commons of Devon nearest to Old Middle Cator. But having regard to the situation of Old Middle Cator in relation to the Unit Land, I do not accept the statement as meaning that animals have been actually grazed or that rights or turbary or estovers have been actually exercised from Old Middle Cator over the Unit Land; I think she meant no more than on the assumption that any rights attached to Old Middle Cator necessarily included rights over the Forest (CL164) and all the commons adjoining the Forest (the Commons of Devon), the exercise of rights over Spitchwick Common must in law be treated as an exercise over the Forest and all such Commons of Devon. For the reasons set out in the preceding paragraph I reject such legal attribution and conclude that there was at this Unit Land hearing no evidence that the registration at Entry No. 2 could be supported by prescription or presumed grant.

I have reached this conclusion notwithstanding that Lady Sayer was not at the hearing questioned about her statement. At hearings about other Units in the Dartmoor National Park she made a similar statement and was questioned about it & it became clear that she did not actually put out any animal, or ~~have~~ actually exercised any right of turbary and estovers on any of the Commons of Devon, (except in one or two cases as a demonstration against abandonment ~~of~~ one of the Commons of Devon ~~other than these~~ in the vicinity of Old Middle Cator).

That the Objection does not expressly put in question turbary and estovers does not affect the burden of proof being applicable to them, see re Sutton and re West Anstey supra.

Lady Sayer said nothing about any actual exercise of the rights registered at Entry Nos. 3 and 52, so about them I also conclude that they cannot be supported by prescription or presumed grant.

So within the above quoted words of Walton J "extremely little in the way of proof will be required" and "cast the slightest doubt": I do not have "extremely little", I have nothing at all. Additionally, the observations of Mr Powell do cast doubt on the status of these registrations; on the evidence given by him at my CL153 hearing held immediately before this Unit Land hearing and in the presence of the same persons, he produced documents satisfying me (as stated in my CL153 decision of even date) that those with lands in Buckfastleigh had no rights over the CL153 land; it would be inconsistent with such evidence for persons who have rights from land in Holne over the CL153 land and thus able to (from it) exclude those from Buckfastleigh should have rights over the Unit Land. I doubt whether he and others having land in Holne can properly wish to confine grazing over the CL153 land to persons having land in Holne and at the same time properly wish persons having land in West Buckfastleigh to be unable to confine grazing on the Unit Land to persons having land in West Buckfastleigh.

For the above reasons my decision is that the burden of proof which by law rests with those seeking to establish these registrations at Entry Nos. 2, 3 and 52 has not been discharged and accordingly I REFUSE to confirm these registrations.

As to Entry Nos. 12, 41 to 48 inclusive, 59 and 60:-

All these registrations are within Objection No. 626. At the hearing no evidence or argument was offered in support of them. So the case for their propriety is weaker than that for Entry Nos. 2, 3 and 52; for the reasons set out about such last mentioned Entry Nos, I REFUSE to confirm the registrations at Entry Nos. 12, 41 to 48 inclusive, 59 and 60.

As to Entry Nos. 32 and 39 inclusive:-

These registrations are all within County Council Objection No. 1138. They are of rights of turbary, estovers and to dig stone and sand and do not include grazing, and perhaps for this reason not included in Objection No. 626. As regards Entry No. 37, I have a yellow form dated 17/10/72 signed by Lt-Colonel P R Lane-Joynt agreeing to the registration being cancelled.

For the reasons above set out about Entry Nos. 2, 3 and 52, I cannot from the lack of support by the County Council of Objection No. 1138, infer that these registrations were rightly made.

The registrations are essentially the same as the CL153 Rights Section registration at Entry Nos. 31 to 38 inclusive of identical rights over Holne Moor, and these CL153 registrations being undisputed have become final. The rights as registered over the Unit Land are extraordinary in that it would be unusual (and generally undesirable) for rights of this kind to be exercisable from one parish over land in another parish; this casts some doubt on them. For reasons applicable to registrations within Objection No. 626 as set out above, (being Nos. 12, 41 to 48 inclusive, 59 and 60) I REFUSE to confirm registrations at Entry Nos. 32 to 39 inclusive.

As to Entry No. 40:-

This registration is of rights of estovers, turbary, to take sand and gravel and to graze 33 bullocks or ponies and 133 sheep attached to land at Pixies House and the adjoining fields and was as above appears supported by Mr Lewis.

Although Mr Lewis presented a Venville argument partly in much the same words as and partly by reference to the contentions of Lady Sayer, his argument being about a different subject matter has a more persuasive effect. During my hearings about other register units in the Dartmoor National Park, I had much evidence to the effect that there are numerous rights attached to land in one parish over a register unit in that parish and over the Forest of Dartmoor (CL164) and that such rights where they existed together, were often called Venville rights. The existence of rights called Venville rights attached to land in one parish over a register unit in that parish does not necessarily establish (as Lady Sayer has in this and other cases contended) that there is to such land also attached rights over all the Register Units in other parishes which adjoin the Forest (the Commons of Devon); but evidence that responsible persons have accepted that there are attached to land in one parish rights called Venville, is I thinnk some evidence that to such land there are rights over the register unit in such parish (over

its "home common"). So the Duchy acceptance (mentioned by Mr Sturmer as above recorded) of the Pixies House land and adjoining fields as being in Venville is in my opinion some evidence that there is attached to them rights of common over the Unit Land.

During my inspection I looked at some of the fields adjoining Pixies House, particularly those nearest to the Unit Land and it seemed to me probable that their owner or occupier would from time immemorial have exercised rights. Accordingly I accept what Mr Lewis said (as above recorded) is common sense.

That the Buckfastleigh Commoners Association have not objected to this registration and that the rights as claimed are attached to land in Buckfastleigh is some support for it. I doubt whether Mr Browne's concession (the right ~~was properly made~~ supports); but at least such concession is not against it.

For the above reasons I consider that I have some evidence that the registration was properly made. It may be that it is "extremely little in the way of proof"; but I have I think "nothing else to cast the slightest doubt" on the registration and can I think "rely upon the original statutory declarations (made by Messrs Woodward)". Accordingly my decision is that the registration at Entry No. 49 was rightly made and I CONFIRM it without any modification.

As to Entry No 49:—

This registration was made on the application of William Henry Norrish relates to 17.28 acres in (?) West Buckfastleigh, and is similar to that at Entry No. 40; it is within Objection No. 1138 and not within Objection No. 626. Nobody at the hearing attended to support the registration, and on the principles outlined above about other Entry Nos., I conclude that the burden of proof of its propriety has not been discharged, and accordingly I REFUSE to confirm this registration at Entry No. 49.

It may be that those concerned with this registration had some good reason for not attending the hearing and could ~~if they had~~ have given evidence similar to that given in support of the registration at Entry No. 40. So I call their attention to regulation 21 of the Commons Commissioners regulations 1971 under which (stating the effect of the regulation shortly) a person who did not attend a hearing may apply to a Commissioner to re-open it and to set aside any decision, if he is satisfied that that person has sufficient reason for his absence. But it should be noticed that such an application under the regulation must be made within 10 days from the date on which notice of the decision was sent to that person.

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 part 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 12th — day of July — 1985

A. A. Baden Fuller

Commons Commissioner

Corrected on page 1 by initialled Pigmark for error in the first line of the second paragraph

A. A. Baden Fuller
14 January 1986