COMMONS REGISTRATION ACT 1965

Reference Nos.10/D/45-5

In the Matter of Hardown Hill,

Whitechurch Canonicorum and Chideock, Dorset (No.1)

DECISION

These disputes relate to the registration at Entry No.45 in the Land 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.27 made by Mr. J. Caddy and Miss I.M.C. Caddy and noted in the Register on 11th December 1969, and by Objection No.856 made by Miss I.M. Lind; Objection No.859 made by Mrs. I.W. Dart and Miss H.E. Wheeler; Objection No.180 made by Mr. A.J. Hansford; Objection No.829 made by Col. H.J.G. Weld; Objection No.842 made by M/s E.C. Hansford and Mr. A.E. Caddy; Objections Nos.844 and 846 made by Mr. D.C. Fleming-Williams; Objection No.845 made by Mr. A.M. Cooper and M/s J. Cooper; Objection No.847 made by Mr. S.R. Matthews; Objection No.852 made by Miss F.A. Love; and Objection No.858 made by Mr. H.G. Hastead, and all noted in the Register on 19th November 1970.

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. Mrs. R. Colyer, whose application was noted in the Register under section 4(4) of the Commons Registration Act 1965, appeared in person. Miss Caddy appeared in person and on behalf of Mr. J. Caddy Mr . P.J.S. Piper, solicitor, appeared on behalf of Mr. Hansford. Mr. E.J.V. Williams, solicitor, appeared on behalf of Col. Weld. Mr. P.J. Roper, solicitor, appeared on behalf of M/s Hansford and Mr. A.E. Caddy, Mr.Matthews and Miss Love. Mr. J.G.A. Lings, solicitor, appeared for 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. The other Objectors did not appear and were not represented.

Mr. Lyall stated that Mr. Gibson wished to pursue his application only in respect of four areas of land which he said were unfenced and unenclosed. These areas are the property of Col. Weld, M/s Hansford and Mr. A.E. Caddy, Miss Love, and Mr. Hastead. Mrs. Colyer, on the other hand, stated that she wished to pursue her application in respect of the whole of the land comprised in the Register Unit, though after hearing the evidence adduced on behalf of Mr. J. Caddy and Miss Caddy, Mr. Hansford, M/s Hansford and Mr. A.E. Caddy, Miss Lind, and Mrs. Dart and Miss Wheeler, she stated that she was satisfied that the properties belonging to those Objectors, being pre-1926 enclosures, should be excluded from the registration.

Although the land comprised in the Register Unit, stated to have an area of 59.7 ac., is there named "Hardown Hill", that name is not very precise. On the Ordnance Survey map the words "Hardown Hill" appear to be applied to a much larger area of land in the parish of Whitechurch Canonicorum than that comprised in the Register Unit, while the portion of the land comprised in

the Register Unit in the parish of Chideock, with an area of 13.373 ac., is named on the map as "High Bullen". In the Tithe Apportionment for the parish of Whitechurch Canonicorum, made in 1844, the name "Harldown Hill" ("Hatton Hill" on the annexed map) is applied to an area of 104 ac. 3r. 18p., which includes the area in that parish comprised in the Register Unit, and on the map annexed to the Tithe Apportionment for the parish of Chideock, made in 1841, most of the area now known as High Bullen is named "Haddon Hill", the name High Bullen being given to a small area in the south-east corner. That the name Hardown Hill (with its variants) has been applied to different areas of land at different times must therefore be borne in mind when considering the evidence.

The earliest piece of evidence adduced before me on behalf of Mr. and Mrs. Gibson was an indenture dated 18th January 1774, which was produced by Mr. N.C. Porter, of Knapp Cottage, Morcombelake. This document is a conveyance of a house with "common of pasture on Hardown Hill with the usual and accustomed right of cutting furze and turf". It is not possible to identify the house from the parcels of the indenture, but the indenture was handed to Mr. Porter with the title deeds of his house, so it seems a fair assumption that in 1774 there were rights of common over Hardown Hill appendant or appurtenant to the house now known as Knapp Cottage.

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.

In the Tithe Apportionments "Harldown Hill" and "Haddon Hill" are shown under the heading of "Sundries" without either owner or occupier, and the state of cultivation of "Harldown Hill" is described as "Furze". Mr. Lyall cited the definition of "furze" in the Oxford English Dictionary, which states that it grows abundantly on waste land.

There seems to be no room for doubt that an area of land known as Hardown Hill (and its variants) and larger than that comprised in the Register Unit was waste land of the manor of Berne or Morcombelake and was subject to rights of common as late as 1844. It also seems highly probable that the land now called High Bullen was waste land of the manor of Chideock and also subject to rights of common as late as 1841. However, substantial parts of these areas have been enclosed since these dates. Not only is this apparent from the fact that Mr. and Mrs. Gibson could find only 59.7 ac. to register, but it is expressly stated in some of the Objectors' nineteenth century title deeds that the property in question had been lately enclosed from Hardown Hill. Enclosure on such a large scale indicates, to my mind, that at the time when it took place the rights of common were no longer being exercised. In the absence of evidence, it would not be right to assume that the enclosures were made forcibly in disregard of the rights of commoners. Indeed, there is negative evidence leading to the contrary conclusion, for there is no evidence of the exercise of any rights of common within living memor

nor do the modern deeds of Knapp Cottage and Haddon Cottage contain any reference to rights of common. As was observed by Buckley, L.J. in Tehidy Minerals v. Norman [1971] 2 Q.B. 528, at p.553, 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 all rights of common over the land in question must be regarded as having been abandoned.

This, however, does not necessarily mean that the registration is void. It must be further considered whether this land, or any of it, is waste land of a manor not subject to rights of common.

The various enclosures have encroached on Hardown Hill from all sides, so that there is now left a residual area of 15.8 ac. (Ordnance Survey No.1094), shaped roughly like a key-hole. This area is in a sense enclosed by the fences of the enclosures which surround it, but, having regard to what is known of the history of the vicinity, it would be right to see in it the last vestige of the waste land of the manor of Berne or Morcombelake. Most of this "core" of the waste is not the subject of any objection, but a small part of it is included in the plan referred to in Mr. Hastead's objection. The objections which have been pursued are concerned with the parcels of land owned by the respective Objectors only. There has thus been no answer before me to what I regard as a prima facie case for regarding the "core" as the remaining part of the manorial waste.

However, since I heard these disputes at the same time as disputes relating to the registration of a right of common by Mr. C.J. Buckoke, I cannot avoid having in mind what purported to be a copy of a conveyance to the National Trust of what I have termed the "core" of the waste. This conveyance could have severed the waste from the lordship of the manor and so caused it to lose its status as waste land of the manor.

I have come to the conclusion that in deciding these disputes I ought to ignore this document. Not only was it not proved by the production of the original from proper custody, but it is not evidence against those who are supporting the registration the subject of the present disputes. It was only a matter of convenience that the disputes about the registration of the right of common by Mr. Buckoke were heard at the same time as these disputes, but that does not make evidence adduced by a party in the rights disputes, who was not a party in these disputes, evidence against the parties in these dispute It is also possible that the part of the "core" land in respect of which Mr. Hastead's objection has been severed from the lordship of the manor, but in the absence of any evidence as to this, it seems to me that the proper course is to ignore this possibility. I shall therefore confirm this registration in so far as it relates to the "core" land.

Finally, it is necessary to consider whether the south-eastern part of the land, now called High Bullen, is waste land of the manor of Chideock. It belongs to Col.Weld, who is lord of the manor. It is uncultivated and is also unenclosed in the sense that it has no stock-proof boundary in its western side, the boundary on that side being no more than a bank about 4ft.6in.high. But this is not the whole story. In order to be waste land of a manor land must not be part of the demesne lands of the manor. see Att.-Gen. v. Hanmer (1858), 27 L.J. Ch.837, per Watson B. at p.841.

It appears from Col. Weld's documents of title that what is now called High Bullen was let to tenant farmers from as early as 1897 onwards. This indicates that it was enclosed from the waste at some time between 1841 and 1897. It is described as "Pasture" in the schedules of land included in the tenancies, and Col. Weld remembers a tenant who used a small part of the area as a garden and the rest for grazing. High Bullen is now let to Chideock Manor Farms Ltd, a company under the control of Col. Weld, and is not used for any purpose. I have come to the conclusion that enclosure during the nineteenth century changed the status of this land from manorial waste to demesne land.

For these reasons I confirm the registration with the following modification: namely the exclusion of the land not included in Ordnance Survey No.1094.

The Objectors who appeared at the hearing asked me to make orders for costs against Mr. and Mrs. Gibson and Mrs. Colyer. I do not consider that it would be right to make such an order against Mrs. Colyer, because she was acting bona fide in what she believed to be the public interest when she made her application for registration. Mr. and Mrs. Gibson's motives were, however, not so altruistic, for they also applied for the registration of rights of common attached to their house. They are not just members of the public, but claim to have a proprietary right which would be directly affected by the outcome of the proceedings: cf. Riggall v. Hereford County Council [1972] 1 W.L.R.171, per Lord Widgery C.J. at p.175. I can see no reason why Mr. and Mrs. Gibson should not suffer the usual fate of an unsuccessful litigant, and I shall therefore order them to pay to each of the Objectors who have appeared costs on County Court Scale 2.

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

Chief Commons Commissioner