



Reference Nos 206/D/893
to 900 inclusive

In the Matter of (1) Boswednack
Commons and (2) Poniou Green,
Zennor, Penwith District, Cornwall

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and at Entry Nos 1, 2 and 3 in the Rights Section of Register Unit No. CL315 in the Register of Common Land maintained by the Cornwall County Council and at Entry No. 1 in the Land Section of Register Unit No. VG 682 in the Register of Town or Village Greens maintained by the said Council and are occasioned by Objection No. X774 made by Mr Charles Jelbert and Objection No. X961 made by Mr Francis John Lawry and both noted in the Register on 30 March 1972 and by the said CL registrations and the said VG registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 10 March 1981. At the hearing Mr Gordon Douglas Osborne on whose application the registration at CL 315 Rights Section Entry No. 1 was made, attended in person; and Mr J C Jelbert (son of the said Objector) attended in person.

The land ("the CL 315 land") in Register Unit No. CL 315 comprises six pieces: (1) a piece ("the northwest piece") being an irregularly shaped area about $\frac{1}{4}$ of a mile long from north to south and situated a short distance north of the B3306 road; (2) a piece ("the smallest piece") being a triangular area north of and adjoining the B3306 road and having a frontage to it of about 50 yards; (3) a piece ("the northeast piece") being an irregularly shaped area also adjoining the B3306 road near to a house (or group of houses) known as Poniou and extending northnorthwest for a little more than a $\frac{1}{4}$ of a mile; (4) and (5) two pieces ("the two small small moorland pieces") being irregularly shaped areas one about 200 yards long from north to south and the other smaller, and both being some distance south of the B3306 road; and (6) a piece ("the large moorland piece") being an irregular shaped piece than $\frac{1}{2}$ a mile long from north to south, and situated some distance south of the B3306 road and being on the OS map (6" = 1 mile) marked as part of Gear Common and part of Boswednack Common. The land ("the VG land") in Register Unit No. VG 682 is the south part of the northeast piece of the CL 315 land as above defined. The rights register in the CL Rights Section at Entry No. 1 (applicant Mr G D Osborne) and at No. 2 (applicants Mr J M and Mrs R M Roberts) are over the whole of the CL 315 land; the right registered at Entry No. 3 (applicant Mr J L Berryman) are over the northwest piece only.

The grounds of Objection No. X774 are: "That the land edged red on the plan ... was not common land at the date of registration". The land so edged (so far as it is CL 315 land at all) comprises 2 adjoining triangular areas being part of the northeast piece situate to the west and north of land on which there now stands a bungalow being west of (or part of a group known as) Poniou. Mr Jelbert in support of his father's Objection produced a conveyance dated 1 April 1955 by which Mr J L Berryman and his mortgagee conveyed to Mr Charles Jelbert land which comprised the said bungalow (or the site of it) and so much of the northeast piece as is included on the Objection plan. Mr J C Jelbert said (in effect) that Mr Charles Jelbert (his father) died in May 1972, that his mother now lived in the bungalow and that the Objection land was part of the land enjoyed with it.



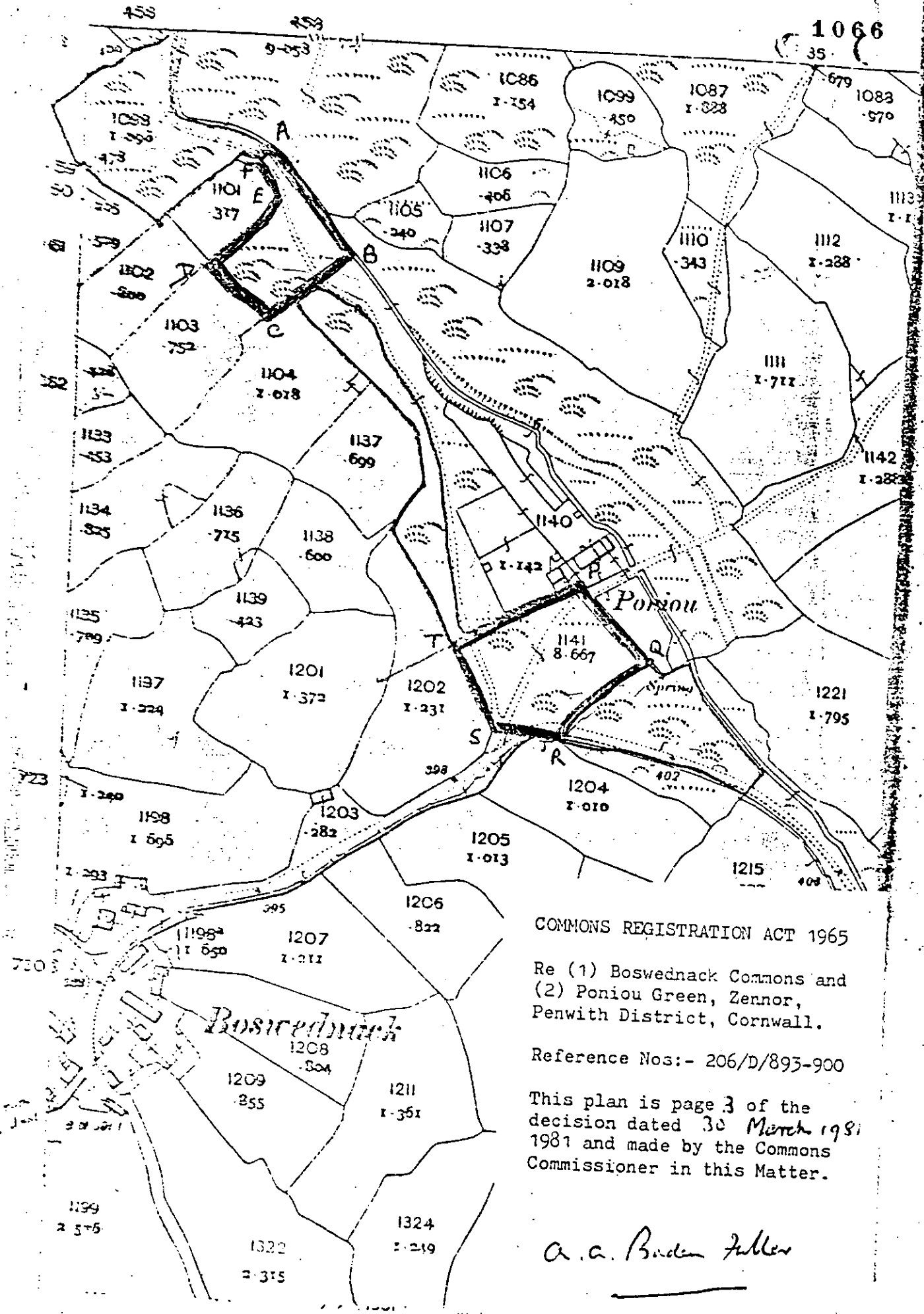
Mr Osborne said he accepted Mr Jelbert's Objection. The 1955 conveyance makes no mention of any of the land thereby conveyed being common land, and it is I think some evidence that it was not subject to any rights of common such as had been registered. In the absence of any evidence against the Objection, my decision is that it succeeds.

The VG registration was made on the application of Mr W F Lloyd. I have a letter dated 9 March 1981 from Poole Purchas and Le Grice, Solicitors of Penzance (Mr Osborne's solicitors) enclosing a letter dated 6 March 1981 from Mr Lloyd saying that he wished to withdraw his registration of VG 682 (Poniou Green) and CL 315 (Bowednack Common) so far as these conflict with the registration of Mr Osborne. Two days after the hearing, I walked over the VG land; it is for the most part rough wasteland adjoining the B3302 road where it makes a right hand turn a short distance south of the said Poniou dwellinghouses; part of it however nearer to these houses is comparatively tidy being an attractive grass covered area. In the absence of any evidence of the VG land being within the 1965 Act definition of a town or village green, my decision is the conflict between the CL and the VG registrations should be resolved against the VG registration.

The grounds of Objection No. X961 are: "Those parts of the land which are provisionally registered with rights of common (shown edged red on the attached plan) are not common land but are owned by the Objector". The attached plan shows edged red part of the northeast piece (not the same part as but adjoining the X774 Jelbert Objection land) and part of the south moorland piece. The plans being pages 3 and 4 of this decision are uncoloured copies of the relevant part of the said Objection plan except that I have on one added thick black lines marked ABCDEF and PQRST and on the other thickened with a black line the on the original coloured red.

I have a copy of a letter dated 16 July 1973 from Pool & Purchas, Solicitors of Penzance to Cornwall County Council in which they on behalf of Mr Osborne say in respect of Objection No. X961 (in effect) that he will withdraw from his application the land on the plan being page 3 of this decision except the area PQRST, and withdraw also all the land edged with a thick black line on the plan being page 4 of this decision. I have a letter dated 3 February 1981 from Boase, Bennetts & James, Solicitors of Penzance saying that Mr J L Berryman died on 8 February 1970 and that on 8 April 1971 Boswednack Farm was sold to Mr F J Lawry (his Objection is dated 15 February 1972). Mr Osborne at the hearing said (in effect) that Mr Lawry had left Boswednack Farm being succeeded by Mr Ramsay who was succeeded by Mr E R Beckett (his solicitors Messrs Harvey of Penzance telephoned the office of the Commons Commissioners on 6 March 1981). Mr Osborne also said the land to which the rights registered at Entry No. 2 are attached (the applicants Mr and Mrs Roberts) has since the registration being split: the farm land part being occupied successively by Mr Ashley and Mrs Hyslam and the farm land part being occupied by himself.

As regards the parts of the CL 315 land which are not the subject of any Objection, I consider that save as hereinafter mentioned the persons who made application for registration of rights should keep the benefit of their registrations, for as regards these parts this would have been the result of section 7 of the 1965 Act if these parts had happened to be separately registered. Although I have no evidence in support of Objection X961, I consider that to the extent it was conceded in 1973 by Mr Osborne through his solicitor, I ought to give effect to it; but as regards



COMMONS REGISTRATION ACT 1965

Re (1) Boswednack Commons and
(2) Poniou Green, Zennor,
Penwith District, Cornwall.

Reference Nos:- 206/D/893-900

This plan is page 3 of the
decision dated 30 March 1981
and made by the Commons
Commissioner in this Matter.

a. a. Baden Fuller

Commons Commissioner

1465
3-461

1067

1462
1-406

1464
1-308

COMMONS REGISTRATION AC. 1965

Re (1) Boswednack Commons and
(2) Ponio Green, Zennor,
Penwith District, Cornwall.

Reference Nos:- 206/D/893-900

This plan is page 4 of the
decision dated 30 March 1981
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a. a. Bades Fuller

Commons Commissioner

Pt 1740
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Boswednack
Common

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3-157

235-255

3-157

812

1741
3-155

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C o m m o n

1740
255-255

812

B. 4. 6144

813

Pt 1740
2-15 APPX

1741^(a)
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the area ABCDEF on the plan being page 3 of this decision, because Mr Osborne said he had grazed this area, I consider that in the absence of any evidence in support of the Objection he ought to keep the benefit of his registration of it. As regards the part of the northeast piece which lies between the areas ABCDEF and PQRST on the said plan not comprised either in Objection X774 or X961, being a track leading to the cliff and verges on either side, I consider that for convenience the boundary of the registered land should be rounded up so as to be the line BC. Although Mr Osborne said that he had not grazed the area ABCDEF, because there is no objection to this land being common land and it might (so it seemed to me when I walked over it) be an advantage if it was grazed by somebody, I consider that it should be dealt with like the rest. The smallest piece when I looked at it, apparently was an accessway to some dwellinghouses, quite unsuitable for grazing; as the basis for the registrations with which I am concerned is apparently grazing rights, I consider that this smallest piece should be excluded.

Notwithstanding that I have no evidence in support of the registration at Rights Section Entry No. 2 made on the application of Mr and Mrs Roberts, I consider that this, having been originally registered identically with Entry No. 1, should be dealt with in the same way. The registration at Entry No. 3 (the right being over the northwest piece only) not having been the subject of any objection, should I think stand unaltered.

So for the above reasons, I refuse to confirm the registration at Entry No. 1 in the Land Section of Register Unit No. VG 682; I refuse to confirm the registrations (such as are mentioned in the note of the said Section), which are deemed to have been made in the Rights Section of this Register Unit by reason of registrations in the CL 315 Rights Section (so that in the result all the VG 682 registrations will become void); I confirm the registration at Entry No. 1 in the Land Section of Register Unit No. CL 315 with the modification that there be removed from the Register (1) all the land in this decision called the northeast piece except the areas (which will continue to be registered) delineated on the plan being page 3 of this decision within the thick black lines ABCDEF and PQRST; (2) part of the land in this decision called the large moorland piece which is on the plan being page 4 of this decision thereon marked by thick black line and (3) land in this decision called the smallest piece (being OS No. 1203 on the plan being page 3 of this decision); I confirm the registrations at Entry Nos 1 and 2 in the CL 315 Rights Section with such modification only as is consequential on the removal of the said lands from the Register; and I confirm the registration at Entry No. 3 in the said Rights Section without any modification.

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 30th —

day of March —

1981.

a. a. B. J. J.

Commons Commissioner