

COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/952 to 959 inclusive

In the Matter of (1) Zennor Green and (2) Churchtown Common and Tremeader Common, Zennor, Penwith District, Cornwall.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 and 2 in the Rights Section of Register Unit No. VG 683 in the Register of Town or Village Greens maintained by the Cornwall County Council. and at Entry No. 1 in the Land Section and at Entry Nos. 1 and 2 in the Rights Section of Register Unit No. CL 525 in the Register of Common Land maintained by the said council, and are occasioned by Objections Nos. X168 and X180 made by Conor Hubert Fallon and noted in the VG Register on 4, and in the CL Register on 11, February 1971, by Objections No. X1453 and X1454 made by M Griggs and noted in the CL Register on 4 December 1972, and by some of the registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 6 October 1980. For lack of time due to other business, I adjourned the proceedings. I held the adjourned hearing at Canborne on 11 March 1981. At these hearings, Mr Willy Eduard Hendryck Maeckelberghe and Mrs Margo Oates Maeckelberghe were represented by (in 1980) Mr Lee Thomas and (in 1981) Mr G D Calderwood solicitors of Vivian Thomas & Jervis, Solicitors of Penzance; (2) Mr Peter Cattran of Tregurthan, St Ives as successor of Mr C H Fallon (the Objector) was represented (in 1980) by Mr Cloete and (in 1981) by Mr B C Peters. Eolicitors of Hancock & Lawrence Solicitors of Truro; (3) Mrs Ellen Elizabeth Fleming of Trevaylor House, Gulval, Penzance, Mrs Flora Millie Berryman of Tremadda, Zennor, Mrs Mary Robina Craze also of Tremedda and Mrs Alison Symons of Trenwith House, St Ives as successors in title of Mrs Elizabeth Griggs on whose application the registration at CL 525 Ownership Section Entry No. 1 was made, and as persons concerned to support the Objection made by M Griggs were represented in 1980 by Mr T Le Grice solicitor of Pool Purchase and Le Grice, Solicitors of Penzance and in 1981 for the greater part of the hearing by Mr B C Peters; and (4) Mr Patrick Heron of Eagles Nest, Zennor attended (in 1981) in person.

The land ("the VG Land") in Register Unit No. VG 683 is about 300 yards long from east to west and has a variable width averaging about 100 yards. The land ("the CL Land") in Register Unit No. CL 525 is about 1 mile long from east to west, and has a width varying between about $\frac{1}{4}$ and $\frac{1}{2}$ a mile. Part of the north boundary of the CL Land is the B3306 road ("the Main Road") from St Ives to St Just; this road crosses the VG Land, the part south of the road being about 1/5th of the whole. Part of the southwest boundary of the CL Land is a stream ("the Stream") which flows from a point near Foage Farm northwestwards down to Pendour Cove; the Stream divides the VG Land into two parts, that south of the Stream being about 1/3rd of the whole. For the purposes of exposition I divide

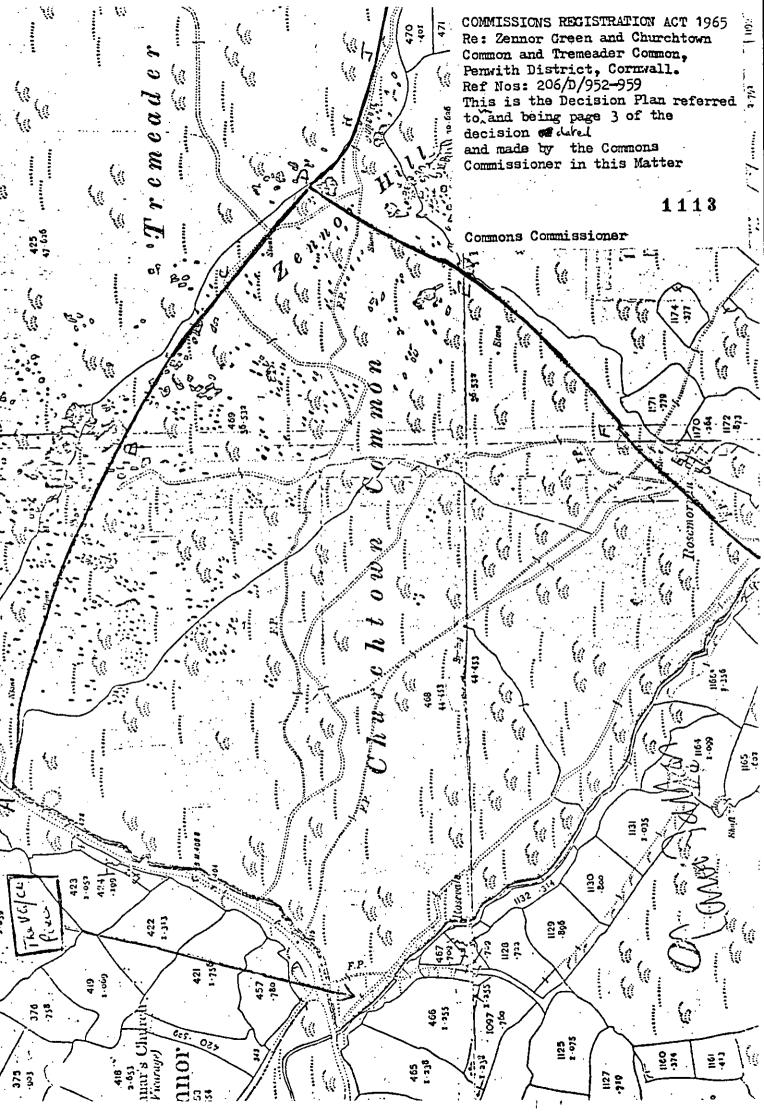


-- 2 -

the VG Land into four pieces: (a) piece ("the VG/CL Piece") which is both part of the VC Land and part of the CL Land, which is an area approximately triangular with sides of about 100 yards and which is to the south of the Main Road and to the east (or mostly to the east) of the Stream; (b) the piece ("the Chapel Piece") which is west of a minor road which runs a short distance southwest from St Semmers Church; (c) a piece ("the North of the Stream Piece") being the remainder of the VG Land north of the Stream; and (d) the piece ("the South of the Stream Piece") being the remainder of the VC Land to the south of the Stream and to the north of the Main Road. For the purposes of exposition I divide the CL 525 Land into five pieces: (a) VG/CL Piece as above defined; (b) the piece ("the Churchtown Piece") which is the part of the CL Land edged pink (or red) on the plan annexed to Objection No. X180; (c) piece ("the Tremeader Piece") which is the part of the CL Land which adjoins and is east of the Churchtown Piece and which adjoins and is west of the East Piece hereinafter defined; (d) the piece ("the East Piece") which is the part of the CL Land east of the Tremeader East line hereinafter defined; and (e) the piece ("the South Piece") which being the remainder of the CL Land is southeast of the Churchtown Piece and south of the Tremeader Piece. To give greater precision to the position of the boundaries of these five pieces; (1) a plan ("the Decision Plan") is hereunto annexed (being Page 3 of this decision) which is an uncoloured comy of the last mentioned Objection plan, the pink edging having been thickened at ABCDEFG so as to mark the northeast and southeast boundaries of the Churchtown Piece; (2) I define the Tremeader East line as the line which on the OS map 1/2500 separates plot Nos. 618 and 621 (40.511 and 23.448 acres) on the east from plot No. 425a (31.728 acres) on the west; and (3) I define the boundary between the Tremeader Piece and the South Piece as the thick line on the Decision Plan marked DHJK and the continuation of such line eastwards so that it is the south boundary of OS plot Nos. 425 and 425a (47.626 and 31.728 acres) and I explained that the line DHJK and its continuation is intended to correspond as near as maybe with the south boundary of the land edged red on the plan annexed to the asset dated 5 February 1980 and mentioned in the Schedule hereto.

The VG Land Section registration was made on the application of Mr W F Lloyd. In the VG Rights Section there are two registrations: at Entry No. 1 also on the application of Mr W F Lloyd of a right attached to Ros Cottage or Rosevale of grazing, taking turf, peat, tree loppings etc; and at Entry No. 2 on the application of Mrs C P Hyslop of a similar right attached to Bridge Cottage. The grounds of Objection No. X168 (Mr C H Allon) are that the North of the Stream Piece was not a town or village green at the date of registration.

The CL Land Section registration was made on the application of the West Cornwall Footpath Preservation Society and applications by Mr P A S Pool and Mr W F Lloyd are noted. In the CL Rights Section are two registrations: at Entry No. 1 on the application of Mr W F Lloyd of a right similar to that made (as above mentioned) in the VC Rights Section also attached to Ros Cottage or Rosevale; and at Entry No. 2 on the application of Mr and Mrs Maeckelberghe of a right attached to Carne: "to graze 10 head of cattle and 2 horses; and to cut and take peat or turf; and to take tree loppings or gorse, furze, bushes or underwood." In the CL Cwnership Section at Entry No. 1 Mrs E Griggs is registered as the owner of the Tremeander Piece. The grounds of Objection No. X180 (Mr Fallon) are that the Churchtown Piece (including the VC/CL Piece) was not common land at the date of registration. The grounds of Objections Nos. X1453 and X1454 (M Briggs) are that the CL Land was not





common land at the date of registration and that the rights (registered in CL Rights Section) do not exist at all. I have a letter dated 9 June 1980 from the West Cornwall Footpaths Preservation Society saying that they wish as a Society to withdraw their application for registration.

The course of the 1981 proceedings was:- It was said and at the hearing no one disputed that: (a) the Churchtown Piece (including the VG/CL Piece), (b) the Tremeader Piece and (c) the East Piece were respectively owned (a) by Mr Cattran as successor of Mr Fallon, (b) by Mrs Flemming, Mrs Berryman, Mrs Craze and Mrs Symons as successors of Mrs E Griggs, and (c) by Mr Patrick Heron? (and? his wife Mrs Mary Delia Florence Heron), and that the South Piece may be owned by Mr Storrs who owns Foage Farm. Mr Calderwood said that Mr and Mrs Maeckelberghe withdraw any claim to any rights of common over the Churchtown Piece (including the VG/CL Piece). Oral evidence was then given in support of Objections Nos. X168 and X180 (Mr Fallon) by Mr Peter Cattran who owns Trevaglos Farm as successor of Mr Fallon under a conveyance dated 31 May 1979, and by Mr William Robert Craze who is and has been since October 1967 tenant of this Farm and who is vice chairman of Zennor Parish Council (although he made it clear that he did not in these proceedings represent them in any way). While they were giving this evidence. Mr Symons as owner of the building (formerly a chapel now about to be converted into a private dwelling house) adjoining the Chapel Piece volunteered some information about the VG Land (he is now 63 years of age, first went to the village when he was 12 years old and lived at Fagles Nest until. 1953). This evidence and information being undisputed, I proceeded to hear the in some respects conflicting evidence relating to Objections Nos. X1453 and X1454 (M Griggs), the CL Rights Section Entry No. 1 being supported by Mrs Maeckelberghe and and by Mr Harold Gordon Semmens who was born in Zennor 75 years ago and who has occupied Foage Farm since 1944, and the objections being supported by Mrs R Craze who was born in and has lived all her life in Zennor and who is part owner of Tremeader Farm and by Mr Richard John Berryman who was born in Zennor 59 years ago and has lived there all his life. Finally Mr Patrick Heron of Eagles Nest gave evidence about the East Piece and some of the controversies and difficulties there had been about the CL Land. In the course of this evidence documents were produced as stated in the Schedule hereto.

On the day after the hearing, I inspected the CL Land in the presence of Mrs Maeckelbarghe, Mr T P Semmens (son of the witness), Mrs Craze, Mrs Symons, Mr C H J Symons and Mrs Berryman, and for some of the time Mr H R Sannens (the witness) and Mr Herron. Later unattended I inspected the VC Land.

As to Objection Nos. X168 and X180 (Ifr Fallon):- The plan annexed to the 1979 conveyance shows the North of the Stream Piece, the VG/CL Piece and the Churchtown Piece as the same as the remaining land thereby conveyed and there is nothing in the conveyance distinguishing these pieces from such remaining land. Mr Craze above the North of the Stream Piece and the VG/CL Piece said:- The land is overgrown and boggy. As far as he knew nothing had ever been done there, except possibly children had taken bushes off it for Guy Fawkes night ("they worked quite hard doing it"). After the Village School closed in 1933, these pieces had not been used by anyone for recreational purposes.

As regards to the last mentioned 3 pieces, in the absence of any evidence that the rights of common registered would extend over them and that they could for any



- 5 -

other reason properly be regarded either as a town or village green or as common land, I conclude from the evidence summarised above (nobody at the hearing challenged it in any way) sufficiently establishes that these pieces should not have been included in any of the registrations. My decision is therefore that Objections Nos. X168 and X180 wholly succeeds.

By far the greater part of the hearing was concerned with the question whether the grazing right registered at Entry No. 2 (Mr and Mrs Maeckelberghe) extended to the Tremeader Piece, it having been said that the grounds of Objections Nos. X1453 and X1454 although expressed generally were intended to apply only to the Tremeader Piece.

If land has been grazed as of right for 20 years a grant of a grazing right by the owner may be presumed, at Tehidy v Norman 1971 22B: 528. By analogy with section 16(2) of the 1965 Act, I consider that the 20 year period should be taken back from the date of the Objections made by M Griggs (31 July 1972).

While listening to the evidence of Mrs Maeckleberghe and Mr Sannens, I found it impossible wholly to forget that they had given evidence before me at a hearing on 14 May 1980 relating to the Drove Road, Sperris and other lands south and east of the CL Land, about which evidence I gave a decision dated 13 October 1980, ref. nos. 256/D/631-636 etc., and it may be therefore that there were gaps in what they said at this 1981 hearing which they expected me to fill and which I have unconsciously filled by what I learnt in 1980.

The case for the grazing right claimed was that Mr Sannens since 1944 when he came to Foage Farm had in exercise of a right attached to Carne grazed his cattle on the Tremeader Piece. That there is such a right over the Drove Road between Carne and the Tremeader Piece and over Sperris was established in the 1980 proceeding, see my said 1980 decision. So when Mr Sannens at the beginning of his evidence said that he had grazed Sperris I was surprised that he did not mention the Tremeader Piece. He was questioned in some detail about where he had put his cattle in exercise of the right he supposed attached to Carne, and during my inspection, he showed me the place and walked with me along the part of the Drove Road where he said the cattle usually went.

I find that his cattle were put onto the Drove Road through a gateway or gap in the hedge (Cornish) on the south side of the Drove Road at a point about 170 yards from the entrance to Carne, that they usually from there entered along the Drove Road to the east for about 1/3rd of a mile until they got to a pond or damp patch about 50 yards east of the extreme southeast corner of the Tremeader Piece, that is to say contrary to what anyone who had just looked at the maps might expect, cattle did not usually go from the point of entrance above mentioned straight across the Drove Road onto the Tremeader Piece for the purpose of grazing there.

Between the Grove Road and the Tremeader Piece there is a low bank, possibly the remains of a neglected old Cornish hedge, which marked clearly enough the boundary (being that shown on the OS map); but this boundary provides no serious obstacle to any animal desirous of grazing on the other side. Yet for an animal coming through to the said point of entrance knowing there was eatage about 1/3rd of a mile to the east, this bank would be indication enough of the route.



Mrs Craze said she had never in the time of her mother Mrs Griggs or subsequently seen any cattle other than their own grazing on the Tremeader Piece; indeed her family made very little use of the Piece (as I understood either for grazing or anything else). Mr Berryman said the same. Their evidence was criticised because from Tremeader Farm they could not (because it is in the valley on the other side of the Main Road) the south parts of the Tremeader Piece being the parts nearest to Carne. It was evident on my inspection that these south parts are not visibile from or beyond the Main Road; but it was equally evident that such eagher as there was on the Tremeader Piece was on the parts near the Main Road and that there was practically no eatage on the south parts near the Drove Road; so that any person desirous of exercising a grazing right on the Tremeader Piece (assuming it to be a distinct piece of land) but his animals on the south parts.

As to the Tremeader Piece being a distinct piece of land, the deeds produced by Mrs Craze show that Tremeader Common, Croft Sugal, Lower Croft Speres and Higher Croft Speres had for many years before 1912 been held in 8/22nd and 14/22nd undivided shares and that then these shares came into the ownership of Mr and Mrs Dow (her grandmother and step-grandfather) and Miss Pilcher (subsequently Mrs Griggs her mother). Shed identified Tremeader Common, Croft Sugal, Lower Croft Speres and Higher Croft Speres (more or less) with the Tremeader Piece on the OS map Nos. 425 and 425a (more or less) containing 47.626 and 31.728 acres.

On this evidence, and being much influenced by what I saw on my inspection, my conclusion is that Mr Sannens when for grazing he put animals on the Drove Road at the beginning of the day (collecting them at the end of the day) did not exercise any right of grazing over the Tremeader Piece and that the animals so put as far as they may from time to time have gone onto the Tremeader Piece strayed, their action being possibly justifiable pursuant to a right of vicinage; I understood this conclusion is that which Mr Sannens expected me to reach.

As to the rights apart from grazing claimed by Mr and Mrs Maeckelberghe to take peat or turf and to take tree loppings etc. She explained that there being no electricity at Carne, since she went there (1964) the principal source of heat was paraffin, although on occasions there had been fires of turves and underwood; the kitchen and dining area of the house hat'a large fireplace for which such a fire was particularly suitable.

I need not consider whether the use of turves and underwood as described by Mrs Maeckelberghe would if it had gone on long enough be a basis for presuming a grant of a right, because ---- her evidence only covers part of the requisite 20 year period mentioned above. I inspected the fireplace she mentioned; while I accept her evidence that it is as old as the house (at least 100 years, I reject her contention that I can from it deduce that turves and underwood from the Tremeader Piece or any other part of the CL Land were the only or principal source of heat for the occupiers of Carne. On my inspection I saw no peat deposits, and Sour re indications (the remains of Sperris mine) of activities near Carne which would have needed fuel; I decline to dresethe inference on the fireplace that wood brought from a distance and possibly coal also was not burnt there or that any turves and underwood from nearby burnt there was necessarily taken off the CL Land as of right. My conclusion therefore is as regards peat or turf and the tree loppings etc, registration should not have been made being as above stated of the opinion that as regards grazing it should not have been made over the Tremeader Piece, my decision is that Objections X1453 and X1545 as applied to the Tremeader Piece wholly succeed.



-7 -

As regards the remainder of the VC Land and the remainder of the CL Land not dealt with by any of the said Objections:— The 1965 Act treats a registration as being wholly in the said Objection of any kind is made to it and confers on a Commons Commissioner power to modify it in any way not necessarily limiting him to grounds set out in any objection. However the Commons Commissioners Regulations 1971 provides in effect that a Commissioner shall not deapart from the grounds stated in an Objection unless he "thinks it just in all the circumstances", are regulation 16.

As regards the Chapel Piece and the South of the Stream Piece, nobody at the hearing contended either for or against my confirming their registration. Mr Symons said (as was apparent on my inspection) that there is apparently no difference between the North of the Stream Piece and the South of the Stream Piece. There was no evidence that anyone had ever proposed and the south of the Stream Piece could sensibly exist. The only part of grazing over the South of the Stream Piece could sensibly exist. The only part of the VC Land which has any resemblance to a village green within the popular meaning of these words is the Chapel Piece which is a small area of land in front of the building which was a chapel; I had no evidence that this area was ever used for recreational purposes and to leave this part of the VC Land on the register by itself would be to produce a result altogether different for anything which could have been intended by those responsible for the registrations. On these considerations, I consider it just that the VC registration should in their entirety be avoided.

About the East Piece Mr Hermon said in effect:— In 1963 there was a local campaign against a proposal by the Admiralty to use CL Land and much other nearby land as a permanent troop landing exercise place; as part of this campaign he and his wife made the 1963 Deed of Covenant with the National Trust (restricting the use of the East Piece to some of the adjoining CL523 Land (Sperris). When the registrations I am now considering were made he thought they would help to preserve the land as a public amenity; however it now seems that such registration may not have this effect; Mrs Griggs and her daughters were equally within her counsel to be treated as an objector as regards to East Piece.

Many people when the 1965 Act came into operation thought that registrations under it would preserve land in some way which would benefit the public but since many persons feel doubtful as to whether the registration can or ever will have this effect so Mr Herron's views on this position are not exceptional. I have no jurisdiction to allow him to make an Objection out of time. The evidence given at the hearing shows that the Tremeader Piece to the East Piece are historically distinct pieces of land and if they had been registered as different Registration Units, there would have been no objection to the East Piece and the registrations would have become final without any hearing before a Commons Commissioner. understood that Mrs Maeckleberghe although sharing many of Mr Herron's views about the preservation for the public benefit of these lands is not prepared to agree that the rights of common she has registered should as regards East Piece be avoided; as a result of my said 1980 decision the identical right of common over adjoining land belonging to Mr and Mrs Herron has become final. On these considerations it would not I think be just to avoid the registrations as regards the East Piece which were deliberately although possibly on mistaken grounds, at the time accepted by Mr and Mrs Hermon. For these reasons I shall do nothing to prevent these registrations so far as the East Piece is concerned becoming final.



- 8 -

There remains the South Piece about which I have little or no evidence apart from what I saw at my inspection. The registration at Right Section Entry No. 1 (Mr Lloyd) could not sensibly exist over the South Piece if it did not exist over the Churchtown Piece; it is perhaps not clear whether it exists at all over the South Piece; however this may be, I consider it just that this registration should be avoided altogether. But as regards registration at Rights Section Entry No. 2 (grazing: Mr and Mrs Maeckelberghe): the South Piece is land distinct from the other pieces, (it includes Logan Stone, a remarkable rock formation of some public interest); if it had (as it might have) been registered as a distinct Register Unit, there would have been no Objection to it and it would have become final under Section 7 of the 1965 Act without any hearing before a Commons Commissioner, as also would have the registration in the Land Section so far as it relates to the South Piece. Such finality may incidentally benefit the public; I consider I should produce the same result.

As a result of this decision and my said 1980 decision the description in the CL 525 Land Section and the cross references to other register units in the CL 525 Rights Section should be altered as hereinafter provided.

For the above reasons I refuse to confirm the VG 683 registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 and 2 in the Rights Section. I confirm the CL 525 registration at Entry No. 1 in the Land Section with the modification that there be removed from the register the lands in this lecision called the VG/CL Piece, the Churchtown Piece and the Tremeader Piece and with the further modification that the description of the land in the Land Section be altered using such words as Cornwall County Council as registration authority think appropriate so as to describe aptly the lands remaining as a result of the said modification. I refuse to confirm the registration at CL 525 Rights Section Entry No. 1 (Mr Lloyd). I confirm registration of the registration at CL 525 Rights Section Entry No. 2(Mr and Mrs Maeckelber; he) with the modification (a) that in column 4 the words "and to cut and take peat or turf; and to take tree loppings or gorse, furze, bushes or underwood" be deleted; (b) that the concluding words in this column which now indicate the land over which is exerciseable the grazing rights now registered be modified (in words to be selected by the Cornwall County Council as registration authority) to indicate that such land is that comprised in this register unit and in the whole of register unit Nos. 523, 524 and 751: and (c) such other modifications as are necessarily consequential on the removal from the register of the VG/CL Piece, Churchtown Piece and the Tremeader Piece.

I am required by Regulation 30(1) of the Commons Commissioner's 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 the notice of the decision is said to him, require me to state a case for the decision of the High Court.

TURN OVER for SCHEDULE



(Documents)

I: Produced by Mr P Heron at hearing on 14 May 1980 relating to S Sperris Croft (Part of CL523)

26 June 1963

Deed of covenant by Patrick Heron and Mary Delia Florence Heron with the National Trust for Places of Historic Interest and Natural Beauty restricting use made on the land therein described (including the East Piece).

II: Produced by Mr P Cattran

31 May 1979

Conveyance by Mr C H Fallon to Mr P Cattran of (among other lands) dwelling house and lands known as Treveglos as edged red on plan annexed.

III: Produced by Mrs M O Maeckelberghe

4 December 1964

Conveyance by Mr P H Wynter to Mr W E H and Mrs M O Maeckelberghe of Carne.

29 September 1906

Conveyance by Mr W T Tresidder to Mr J T Short of Carne.

IV: Produced by Mrs Craze at the hearing

5 February 1980

Assent by personal representatives of Mrs Elizabeth Griggs (she died 21 January 1977) to the vesting of the Tremeader Piece in Mrs E E Flemming, Mrs F M Berryman, Mrs M R Craze and Mrs A Symons.

11 August 1905

Conveyance by Mr T F Francis to Mr T M Dow and his wife Mr F E Dow of Tremeader Farm (1000. 1r. 15p.) together with 14/22nd parts of Tremeader Common containing 87a. 3r.

29 September 1912

Conveyance by Mr W H Borlase and others to Miss Elizabeth Pilcher of a moiety or half share of (i) Tremeader containing 26a. 2r., (ii) other lands containing 25a. 1r. 38p.; and (iii) 8/22nds parts of land

Dor Mullion Land		 190.
Tremeader Common	59a.	
Croft Sugal		4p.
Lower Croft Speres	17a.	
Higher Croft Speres		14p.

Subject "to the several rights of Common of Pasture and of turbary and otherwise now subsisting in respect thereof.



V: Produced by Mr Heron

13 June 1963

Newspaper cutting from The Cornishman: "Beauty Spot in Danger" about proposel (following one to reopen Carnelloe Mine) by the Admiralty to take for RN Commando training 358a. of land including Sperris Croft.

13 June 1963

Newspaper cutting from the Daily Telegraph: letter headed "Threatened Moorland: Zennor Owners were not approached", re Admiralty Proposal, from Patrick Heron.

18 June 1963

Newspaper cutting from The Times: letter headed Cornwall Moorland about the said Admiralty proposal signed by numerous persons.

VI: Produced by Mrs Craze at the of my Inspection

1 September 1910

Conveyance by Mr W H Borlase (mortgagee) and Mr W J Ellis to Mr T M Dow of a moiety or half share of (i) Tremeader containing 26a. 2r. (ii) land containing 25a. 3r. 28p. and (iii) 8/22nds parts of land described as above quoted from the 1912 conveyance, with conveyance dated 19 November 1910 endorsed thereon by Mr T M Dow to himself and Mrs F E Dow.

Dated the 26 12 ----

day of August -

1981.

a. a. Bada Fille

Commons Commissioner