



COMMONS REGISTRATION ACT 1965

Reference No. 206/D/671-672

In the Matter of a piece of land known as
Porthallow Beach, St. Keverne, Cornwall

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL 382 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No. X180A made by the County Council and noted in the Register on 25 June 1973.

I held a hearing for the purpose of inquiring into the dispute at Truro on 13 June 1979. The hearing was attended by Mr Gill of the Registration Authority and Mr R J Stillwell, Solicitor, on behalf of Mr J Richards.

The registration in the Land Section was made in consequence of an application by Mr J Richards to register a right of common, stated to be attached to Tregaminion Farm, the particulars of the right being "to collect and take away annually 50 cartloads of sea sand from between the high and low water marks within the whole area of this register Unit". The County Council's Objection was on the grounds that the land was not common land at the date of registration.

The evidence adduced by Mr Stillwell consisted of three affidavits, sworn by Mr J Richards, Mr C T Rickard and Mr C Tripp. I am satisfied by this evidence, which was not challenged by Mr Gill, that in the absence of other considerations, a prescriptive right to take sand is established. A further consideration does arise, however, having regard to the provisions of the Act 7 Jac.1, C.18 passed in 1609: Section 1 of that Act provides that it shall be lawful for all persons resident and dwelling in Devon and Cornwall to fetch and take sea sand at all places below high water mark for the bettering of their land and the increase of corn and tillage at their wills and pleasures. This statutory right is no doubt one exercisable by Mr Richards as a resident in Cornwall but it is a personal right not a right attached to property, and it is ^{the} latter type of right which Mr Richards has registered. Moreover if the right as registered is claimed to be a distinct and additional right to the statutory right, and the claim is based (as it is) on prescriptive, then in my view the claim fails since the exercise of the right is to be explained as an exercise of the statutory right, not of a right which the owner of the beach could have taken steps to prevent and must be taken to have acquiesced in.

Accordingly I do not think the right that is registered has been made out: and if the right goes, there is no other basis on the evidence before me for registration as common land.

For these reasons I refuse to confirm either registration.

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 22 August 1979

L. J. Morris Smith

Commons Commissioner