



COMMONS REGISTRATION ACT 1965

Reference Nos. 206/D/18 & 19

In the Matter of Carnkie Common
Wendron, Kerrier D, Cornwall

These disputes relate to the registrations at Entry No.1 in the Land Section and Entry No.1 in the Rights Section of Register Unit No. CL 739 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No. X 211A made by the Cornwall County Council and noted in the Register on 18 January 1973.

I held a hearing for the purpose of inquiring into the disputes at Truro on 9 May 1975.

The hearing was attended by Mr R.A. Bullough of Messrs G.L. Robins, Solicitors for Mr E.H. James and Mr Gill on behalf of the Cornwall County Council. Mr. Gill informed me that Mr W.S. Richards's objection No.X1075 to Register Unit No.CL 239 had been wrongly registered and was intended for this Register Unit No.CL 739 and that the Cornwall County Council only maintained its objection in order to enable Mr Richards to attend and be heard at this hearing. In these circumstances I acceded to an application by Mr Fox of R. Rogers & Son Solicitors for Mr W.S. Richards to appear on his behalf.

Notwithstanding that there is no Entry in the Ownership Section of the Register Mr Fox satisfied me that Mr Richards had a bona fide claim to the whole or some part of the land in question. While Mr Bullough did not admit Mr Richards claim to ownership he accepted that his claim was made bona fide. There is no dispute as to ownership before me and I propose to say as little as possible on matters relevant to the question of ownership so as not to prejudice any litigation of that issue.

The land in question was all wasteland on which was situated a quarry. At some date, a Mr James, a second cousin of Mr E.H. James, erected a carpenter's shop at the western end which he sold to Mr Richards in 1946, since when, Mr Richards has carried on a garage business on the land purchased by him. Mr E.H. James applied to register common rights over the land on 30 December 1969 and that application was entered in the Rights Section of the Register on 31 March 1970. The only question which I have to decide is whether or not Mr James's claim to Common Rights is well founded.

Mr. Richards gave evidence and for the reasons stated above I say nothing about his evidence as to his activities on the land. He stated that he had never seen any cattle grazing on the land nor had he seen anyone taking any of the natural produce of the land. He was cross-examined as to activities by Mr Wearn and Mrs Winn who attended the hearing, but they have not registered any claims to Common Rights and ^{their activities} can have no relevance to the question as to whether or not Mr James is entitled to any Common Rights appurtenant to his farm 'Sunnyside'. It was never put to Mr Richards in cross-examination that either Mr James or any tenant of 'Sunnyside' had exercised any common rights.



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Mr James (the vendor to Mr Richards) and Mr Jeffrey gave evidence. They are aged respectively 77 and 72 and have lived in the locality all their lives. Neither of them had seen any grazing and Mr James remembered a Mr Eade taking some sand from the quarry in about 1928.

Mr E.T. James gave evidence, he is aged 75, he resided abroad from 1936 until a date on or about the time when he registered his common rights though he paid frequent visits to Carnkie where his mother resided though she did not reside at 'Sunnyside' which was let at all material times to a tenant farmer. Mr James spoke of taking sand when he was a child for his father's paths and of taking sand and turf on his visits in later years for his mother's paths and garden and he remembered his grandfather's pony being grazed on the land.

Mrs Winn gave evidence that she remembered grazing on the land about twenty years ago.

No witness gave any evidence that any cattle from 'Sunnyside' had been grazed on the land nor that any sand, stone or turf had been taken from the land, for use at 'Sunnyside'. Mr James stated in cross-examination that he formulated his claim to rights on advice. He was no doubt correctly advised that he would have to claim those rights as appurtenant to 'Sunnyside' but in the event he was unable to adduce one shred of evidence in support of that claim and for this reason I refuse to confirm the Entries at No.1 in the LandSection and Entry No.1 in the Rights Section of the Register Unit.

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.....May.....1975

C. A. Settle.

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Commons Commissioner