



COMMONS REGISTRATION ACT, 1965.

Reference Nos 206/D/208  
206/D/209  
206/D/210

In the Matter of Church Hay Down  
Saint Breward, North Cornwall  
District, Cornwall

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DECISION

These disputes relate to the registrations (D/208) at Entry Nos 19, 31 (now 74) and 39 (D/209) at Entry No 1 and (D/210) at Entry Nos 13 (now 66), 16 (now 68), 26, 30 (now 73), 33, 34, 38 (now 77), 40 (now 78), 42, 43 (now 80), 44 (now 81) and 45 (now 53) in the Rights Section of Register Unit No CL. 113 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by (D/208) Objection No X292, (D/209) Objection No X282 and (D/210) Objection No X287 made by Captain Robin Henry Edward Hall (Lord of the Manor) and Mr Cyril John Greenaway (chairman of the Commoners Association) and noted in the Register on (D/208) 30 November, (D/209 & 210) 16 September 1970.

I held a hearing for the purpose of inquiring into the disputes at Bodmin on 7 December 1976. At the hearing (1) Mr W J Carter on whose application Rights Section Entry No 54 was made, (2) Mr J C Old on whose application Rights Section Entry No 78 (formerly No 40) was made and (3) Mr David Hill of Tremarvid, Blisland as owner of Roughground in succession to Mr E C Parr on whose application Rights Section Entry No 39 was made, were all represented by Mr G I Chisholm solicitor of G and I Chisholm, Solicitors of Bodmin; (4) Mr A R and Mrs F A Walkey on whose application Rights Section Entry No 53 (formerly 45) was made, were represented by Mr M J Keast chartered surveyor of Rowse Jeffrey & Watkins, Surveyors of Lostwithiel; and (5) Cornwall Commoners Association, (6) Hamatethy Commoners Association, (7) Mrs Margaret Anna Hall widow of Captain R H E Hall one of the said Objectors, and (8) Mr C J Greenaway the other of the said Objectors, were all represented by Mr V Leese Solicitor of Stephens & Scown, Solicitors of Bodmin.

The land ("the Unit Land") comprised in this Register Unit is known as Church Hay Down and contains (according to the Register map) 10.817 acres (being OS Nos 525 and 597). It is crossed by and is open to the road which runs southeast from the village of St Brewards to Lady Down, and thence to Blisland. In the Rights Section there are 24 undisputed Entries of grazing rights which expressed in Units (1 Unit = 1 head of cattle = 1 pony = 5 sheep) amounting together to 341 Units; all or many of these rights are registered as being also over other registered land. The 15 Rights Section Entries which are mentioned in these references and to which objection has been made as aforesaid are summarised in the Schedule hereto. The grounds of Objection Nos 292 and 282 are that the rights do not exist at all; the grounds of Objection No 287 are that the rights should comprise fewer animals. Additionally there is Rights Section Entry No 54 made on 13 March 1974 (not apparently replacing any previous Entry) which is headed "Registration Omission". In the Ownership Section Captain R H Hall is registered as owner of all the Unit Land, and this registration being undisputed has become final.



Mr Chisholm on behalf of Mr Carter in effect asked me to validate or at least express an opinion about Entry No 54 and said that Mr Carter was present to give evidence in support of the Entry and would say that although his application was made in due time, owing to some mistake the Entry in the Register was made in due time. Mr Gill said (in effect) that the registration before March 1974 was probably due to the map produced not being clear, and that the registration authority would have no objection to my advising them about the point raised by Mr Chisholm.

At the hearing I refused to hear the evidence of Mr Carter for the following reasons:- The Commons Commissioners have under the 1965 Act and the Regulations made under it no jurisdiction to give any decision about any Entry except under a reference duly made to them by a registration authority. No reference relating to Entry No 54 has been made to the Commons Commissioners. By regulation 36 of the Commons Registration Act (General) Regulations 1966 a registration authority may correct the errors or omissions therein specified subject to the conditions therein set out, but neither the Act nor the Regulations confer on the Commons Commissioners any jurisdiction to say how the registration authority shall exercise the power thereby conferred on them. Although in exceptional circumstances a Commons Commissioner to deal with a dispute duly referred to him may have incidentally to express an opinion about a correction or possible correction to the Register, there are here no such exceptional circumstances in relation to Entry No 54. In my opinion I ought not to express an opinion, and accordingly ought not to hear evidence on a question outside my jurisdiction.

Mr Hill in support of Entry No 39 and against Objection No X292 gave oral evidence in the course of which he produced a statutory declaration made on 6 April 1971 by Mr E C Parr and a notice of a meeting of the Hamatethy Manor Commoners Association to be held on 8 June 1967. At the conclusion of his evidence and after Mr Chisholm had considered the matter with his client, Mr Hill withdrew his claim.

In support of the Objections oral evidence was given by Mrs M A Hall who has lived at Hamatethy since 1924 and who is life tenant under the will of Captain Hall (he died 7 April 1972) and as such interested in the Unit Land, and by Mr C J Greenaway who is chairman of the Hamatethy Commoners Association. They or one of them explained to me the basis of the Objections and told me, as set out in column (6), of the Schedule hereto of the agreements which had been reached with some of the applicants and of the mistakes which they now realised had been made in the Objections. Their evidence was not challenged by Mr Chisholm or Mr Keast; apart from those they represented, none of the applicants for the said Rights Section Entries attended or were represented at the hearing. Accordingly I need I think say no more than that I accept the evidence of Mrs Hall and Mr Greenaway showing that the Objections were (except where they said they had made mistakes) validly made as regards the Entries about which they had reached no agreement, entirely and as regards the other Entries to the extent which had been agreed.

In the circumstances and for the reasons set out above:- I refuse to confirm Rights Section Entry Nos 1, 19, 39 and 74 (formerly 31). I confirm Rights Section Entry Nos 34 and 81 (formerly 44) without any modification. I confirm Rights Section Entry Nos 26, 33, 42, 53 (formerly 45), 66 (formerly 13), 68 (formerly 16), 73 (formerly 30), 77 (formerly 38), 78 (formerly 40), and 80 (formerly 43) with the following modifications in column 4, that is to say in each case for the number of animals



mentioned after the words: "To graze", there be respectively substituted the following words:

No 26:-	"25 head of cattle or 25 ponies or 125 sheep"
No 33:-	" 1 head of cattle or 1 pony or 1 sheep"
No 42:-	" 1 head of cattle or 1 pony or 1 sheep"
No 53:-	"31 head of cattle or 31 ponies or 155 sheep"
No 66:-	"10 head of cattle or 10 ponies or 50 sheep"
No 68:-	"12 head of cattle or 12 ponies or 60 sheep"
No 73:-	"12 head of cattle or 12 ponies or 60 sheep"
No 77:-	" 3 head of cattle"
No 78:-	"58 head of cattle or 58 ponies or 290 sheep"
No 80:-	"129 head of cattle or 129 ponies or 645 sheep"

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.

SCHEDULE  
(Disputed Rights Section Entries)

(1) Entry No; former number in ( )	(2) Applicant	(3) Right	(4) Attached to	(5) Relevant Objection	(6) Remarks
19	F H Parr	graze 1 cow or 1 pony or 1 sheep; peat	Halagenna Farm	X292; Right does not exist at all	Not in Hamatethy
39	E C Parr	graze 6 cattle or 18 sheep	Roughground	Ditto	Ditto: Mr D Hill withdraws
74 (31)	F G G Old, F G Old & C E Old	graze 38 cattle or 190 sheep or 19 ponies	West Rose	Ditto	Cancellation request signed F G Old



1	J Matthews	graze 5 cattle, 1 horse and 200 poultry	OS 597A (bungalow) part of Church Hay Down	X282; right does not exist at all	To small to justify a Unit. Applicant deceased, but his widow Mrs Matthews now occupies bun- galow and aware of proceedings
26	W G Leworthy	graze 28 cattle or 28 ponies or 140 sheep; peat and turf	High Steps	X287: right should comprise fewer animals; acceptable number 21	Mr Greenaway has agreed with Mr Leworthy for a modification so as to read 25, 25 and 125
33	J Knight and K M Knight	graze 2 cattle or 2 ponies or 10 sheep; peat or turf	Hazelmere	Ditto; acceptable number 1	Mr Greenaway has agreed with Mr Morris who is now the owner for a modification so as to read 1, 1 or 5
34	Ditto	graze 1 cattle or 1 pony or 5 sheep; peat or turf	Brookside	Ditto; acceptable number 1	Objection as regards this Entry is a mistake
42	A A Parker	graze 2 cattle or 10 sheep	Solomans Tenement	Ditto; acceptable number 1	No agreement, but Objection No is appropriate to acreage of the Tenement
53 (45)	A R Walkey & F A Walkey	graze 60 cows <u>and</u> 12 horses or 300 sheep	Casehill	Ditto; acceptable number 19	Agreed by Mr Keas at the hearing, a modification 31 <u>or</u> 31 <u>or</u> 155
66 (13)	H J Fitzpatrick	graze 11 cattle or 11 ponies or 55 sheep; peat	Tor Farm, Advent	Ditto, acceptable number 10	Mr Greenaway negotiated agreem for a modification to 10, 10 & 50
68 (16)	B Cleave & M Cleave	graze 14 cows or 14 ponies or 70 sheep; peat	Newhall Advent	Ditto; acceptable number 12	Mr F L Yeo is now the owner; no agr ment; Objection N is appropriate to the land to which the right is attached



73 (30)	D F A Rees	graze 14 cattle, 70 sheep and 14 ponies	Palmers	Ditto; acceptable number 9	Mr Greenaway was agreed with Mr Palmer who has succeeded Mr Rees for modification so as to read 12 or 60 or 12
77 (38)	C M Crowle	graze 12 cattle	Springfield and Hill	Ditto; acceptable number 3	No agreement; Objection number is appropriate to acreage of land to which right is attached
78 (40)	J C Old	graze 110 cattle or 550 sheep or 110 ponies; turf or peat	Shallowbridge, Corgelly, and Poldue Farms	Ditto; acceptable number 44	Agreed at hearing by Mr Chisholm, to a modification so as to read 58, 290 and 58
80 (43)	P G Throssell & E Throssell	graze 140 cows or 140 ponies or 700 sheep; turf or peat	Fellover numerous OS nos	Ditto; acceptable number 129	Agreed with modification so to read 129, 129 or 645
81 (44)	Ditto	to graze 7 cows or 7 ponies or 35 sheep; turf or peat	Fellover; within blue line on supplemental map	Ditto; acceptable number 129	Objection was a mistake

Dated the

6/15

day of

January

1977

a. a. Baden Fuller

Commons Commissioner