



COMMONS REGISTRATION ACT 1965

Reference Nos: 206/D/837
206/D/838
206/D/889

In the Matter of Goonhilly Downs
(Part), St Martin-in-Meneage,
Kerrier District, Cornwall

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 260 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No. X387 made by The Post Office and noted in the Register on 22 March 1971 and by Objection No. X1247 made by Mr Paul Anthony Taylor and by Objection No. X1321 and made by Sir (then Mr) John Stanley Vyvyan, and both noted in the Register on 12 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 8 October 1980. At the hearing The Post Office were represented by Mr J Ballenden of counsel instructed by Walters & Barbary, Solicitors of Camborne as agents for the Solicitor to the Post Office; and the Nature Conservancy Council were represented by Mr D B P Bradley, chartered surveyor, their Regional Land Agent.

The land ("the Unit Land") in this Register Unit is approximately triangular with sides of about 1/3rds of a mile, and contains (so I estimate) about 100 acres. It is crossed from northwest to southeast by the B3293 road between Helston and St Keverne. The registration was made on the application of Saint Martin Parish Council, and an application of The Cornwall Naturalists' Trust Ltd is noted. The grounds of the Objections are in effect the same, that the Unit Land was not common land at the date of registration, save that the Post Office Objection is limited to the part ("the PO Objection land") of the Unit Land, being a triangular area about 1/6th of the whole, ~~and~~ situated southwest of the B3293 road.

Mr D H Gill who was representing Cornwall County Council as registration authority, handed me a copy of a letter dated 11 June 1979 in which Cornwall Naturalists' Trust Ltd said (in effect) that they did not intend to be represented and were willing to sign a request to the Commons Commissioners to refuse to confirm the registration. Mr Gill said that he had had a telephone call on 3 October 1980 from which he understood that St Martin Parish Council wished to withdraw their application.

Mr Ballenden produced a conveyance dated 11 December 1961 by which Sir John Stanley Vyvyan conveyed to HM Postmaster-General lands containing about 101 acres of which the PO Objection land (about 15-20 acres) is the most easterly part. He said that the case of the Post Office was (or would have been but for the withdrawals) that even assuming Sir J S Vyvyan was and is Lord of the Manor, the 1961 conveyance contains no reference to any manorial rights or to the land



being waste land, and so the PO Objection Land became separated from the Manor and could not therefore be within paragraph (b) of the 1965 Act section 22 definition of common land. He referred to re Box 1980 Ch. 109. He on behalf of the Post Office claimed costs against the Parish Council producing in support copy letters dated 28 August 1975 and 21 April 1980 written by the Solicitor to the Post Office and a letter dated 13 May 1980 from the Parish Council in reply to the April 1980 letter; he suggested County Court scale 3 would be appropriate.

Mr Bradley who has for the last 15 years been the Regional Land Agent of the Nature Conservancy Council, in the course of his evidence produced: (1) a conveyance dated 6 April 1978 by which Sir John Stanley Vyvyan conveyed to the Nature Conservancy Council two pieces of land containing about 194.35 acres situate in Mawgan-St-Meneage and St Martin-in-Meneage, which pieces included all the Unit Land, except the PO Objection land; (2) the 1" = 1 mile OS map of 1879; (3) a letter dated 22 September 1980 from Bortase & Venning solicitors to Sir J S Vyvyan with which was enclosed a letter dated 18.9.80 signed by him authorising the Council to pursue his objections and including a PS in which he said that during his ownership (since 1950) no common rights had been exercised and that it was probable that he is Lord of the Manor but his family appear to own no records to this effect or if they do they have not been traced. Mr Bradley said (in effect):- in the Tithe Award (confirmed by the Tithe Commissioners in 1842) the Unit Land except a serpentine working numbered 753, is all within a much larger area numbered 752. They are both therein treated as tithable. Sir John Vyvyan had told him that his family had lived at Treloarwarren for the last 500 years. The PO Objection land is part of the land on the 1978 conveyance plan described as "Satellite Earth Station" where there are 3 huge "Dishes", at least one of which is on the PO Objection land. He on behalf of the Nature Conservancy Council also asked for costs against the Parish Council, although he thought that they should be limited in some way.

In view of the above recorded attitudes of the Naturalists' Trust and the Parish Council, and in the absence of any evidence in support of the registration, I conclude that it was not properly made, and accordingly I refuse to confirm it.

As to costs:- The Parish Council are not I think at risk as to costs merely because they applied for the registration; the 1965 Act and the Regulations made under it contemplate that before a dispute arising from any objection to a registration can be referred to a Commons Commissioner, a period shall elapse during which those concerned may discuss their position. These references are dated 22 July 1977, so of the said three letters one was during the discussion period and the other two after the references. In their 1975 letter the Post Office contend that as no rights of common are registered in view of CECB ~~the~~ Clwyd, the PO Objection land cannot be within the 1965 Act definition of common land; and say that the registration cannot pass "unchallenged, as strict control of entry to the Radio Station premises has to be exercised in the interests of security". In the April 1980 letter, no reference is made to their 1975 letter, but the importance of security is again mentioned.



Mr Ballenden, as I understood him relied mainly on the May 1980 letter in which the Parish Council say that "they do intend to pursue their application for registration ..." and on their failure to be represented at the hearing ~~or otherwise~~ ^{to} explain their attitude. I doubt whether it would be fair to make an order against the Parish Council for costs in their absence, they having had no notice that such a claim might be made against them; but to avoid an adjournment I will consider whether ^{prima facie} has been established. The non-attendance of the Parish Council cannot on costs be held against them. Neither of the Post Office letters makes any mention of the contention on which (as above recorded) the Post Office relied at the hearing; so the Parish Council could not have known either of the 1961 conveyance or that re Box would be relied on; their May 1980 letter ~~to~~ deals with the only point (that about security) made in the Post Office letters apparently assuming (there was no evidence they were ever corrected) that the interest of the Post Office was no more than a tenancy. ~~From~~ the above considerations I do not think fit to make any order for costs for the benefit of the Post Office.

No information was put before me to suggest that upon costs the Nature Conservancy Council were in any better position than the Post Office.

In view of the comments made at the hearing about the absence of any representations by the Parish Council, I recall that a letter dated 8 October 1980 from the Vice Chairman of the Parish Council was received in the office of the Commons Commissioners on 14 October 1980 in which they ~~both~~ expressed regret for the lateness of the withdrawal and explained the reasons behind the decision. Because neither Mr Ballenden nor Mr Bradley had at the hearing any opportunity of commenting on the said Parish Council's letters, in writing this decision I have disregarded it.

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 10th - day of December 1980

a. a. Baker Fuller

Commons Commissioner