



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/44

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Bowithick House, forming part of The Green,
Bowithick, Altarnun

DECISION

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No. 1 in the Land Section of Register Unit No. CL.389 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No.49 made by Mr E C Yeo and referred to a Commons Commissioner on 7 April 1993.

I held a hearing to inquire into this objection at Launceston on 23 February 1994.

At the hearing the Objector was represented by Mr John Parnall of Parnall Langsford, Solicitors, and the Altarnun Parish Council by Mr G Hooper.

Mr Parnall submitted that the land had at all times since 5 August 1945 consisted of an outbuilding and garden used and enjoyed with a dwellinghouse namely Bowithick House. As appears from the plan annexed to the Notice of Objection (and as I verified for myself when inspecting the site after the hearing) the land the subject of the objection is as to nearly one-half thereof the site of a building ("the building") and as to the remainder ("the grass") unbuilt upon and covered with grass. The land has an area of about one quarter of an acre.

The Objector gave evidence to the effect that he was born in 1927 and has been a farmer throughout his adult life. He and his wife Bessie Yeo purchased the land in 1962 as part of a farm which was conveyed to them by a Conveyance dated 29 September 1962 by the description "ALL THAT messuage or dwellinghouse, outbuildings fields or closes of land known as Bowithick situate in the Parish of Altarnun... containing in the whole... 74 acres or thereabouts" as described in the schedule and delineated on the plan annexed thereto. This Conveyance was produced. For many years prior to this purchase the Objector farmed other farms nearby namely:

- (i) Glenmoor (measuring 106 acres)
- (ii) Pennydarne (where the Objector was born and which measures 121 acres) and
- (iii) Old Park (measuring 135 acres).

The Objector has lived at Bowithick in the farmhouse since 1962 and has known it well, as a farmhouse, all his life. His memory of the building goes back to his childhood when he remembers the ground floor being used for a pony and trap and a cart. He said the building is built of granite and was probably constructed in the 19th century. This evidence is corroborated by a statutory declaration made by Mrs F A Venning who was born in 1934 and has known Bowithick well all her life: she said that her father inherited Bowithick from his brother in 1954 and



farmed it until his death in 1961 during which time the building was used for grinding corn: and that the building and the grass were and are ancillary to Bowthick farmhouse.

The Objector said that since 1945 the building had been used almost entirely for agricultural purposes. He himself had used part of it (a lean-to) for ewes with their lambs and the main part of the building (which is on two floors) for storing timber for repairs, and also binder twine and other articles used on the farms.

Mr Hooper, for the Parish Council, asked the Objector whether his mother could remember the building standing where it now stands. (Although this was an unusual form of question, I allowed it). The Objector answered that his mother, Mrs Jane Jasper Yeo, could remember: that she was now 85 and not present at the hearing but she had signed a statement (which he produced) in which she said that she could very well remember a farmer over 70 years ago keeping an engine in the building in conjunction with the adjoining mowey, where corn was stacked and also a cart for the adjoining house.

At the hearing I expressed some doubt whether a building used for agricultural purposes can be an "outbuilding used and enjoyed with [a] dwellinghouse" within Section 1(3) of the 1989 Act. In my view it can be, for the following reasons:

- (a) user and enjoyment of an outbuilding depend to some extent on the nature of the building to which it is ancillary: and if it is a farmhouse such user and enjoyment naturally include purposes connected with farming
- (b) it has been held that the 1989 Act should be liberally construed - see Cresstock v Commons Commissioner 1992 1 WLR 1088: Re Land at Freshfields 66 p and CR 9: Storey v Commons Commissioner Vinelott J. 22 February 1993

Moreover in the present case:

- (a) there is evidence of some use for domestic purposes - e.g. the keeping of coal for the house and of a pony and trap and
- (b) the building is only about 50 yards from the farmhouse, standing between it and the public highway.

On the above evidence (which I accept) I conclude that the building is and has at all times since 1945 been an outbuilding used and enjoyed with a dwellinghouse namely Bowthick farmhouse.

As to the grass, no evidence was tendered to the effect that it is part of a garden. On inspection it appeared as an area of fairly long, rough grass. But the evidence indicates that it has been held with Bowthick under the same title since 1945, there is accordingly a presumption that it forms part of Bowthick farmhouse's garden (see Cresstock (above) at page 1094) and there is no evidence to rebut this presumption.

In the above circumstances I consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the whole of the land to which this objection relates.



I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 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

3rd

day of

March

1994

Alan Roper

Commons Commissioner