

COMMONS REGISTRATION ACT 1965

Reference Nos: 206/D/122
206/D/121
206/D/67-74
206/D/110-112
206/D/117-119
206/D/129-131
206/D/126-127
206/D/100-103
206/D/104-106
206/D/107-108

In the Matters of:

Two pieces of land at Trumarcombe Common - CL.463
Two pieces of land also known as Fore Down-CL.168
Fore Down CL.159
Trumarcombe Common CL.150
Four additional pieces of land also known as
Craddock Moor CL.281
Piece of land also known as St. Clear Downs CL.291
Piece of land at Craddock Moor CL.461
St. Clear Downs CL.129
Craddock Moor CL.149
Small Downs East of Common Moor CL.151
St. Clear Caradon D.

DECISION

These disputes relate to the registrations set out in the schedule to this decision in the respective Rights Sections of the above mentioned Register Units. In the Registers of Common Land maintained by the Cornwall County Council and are occasioned by the objections set out in the said schedules.

I held a hearing for the purpose of inquiring into the said disputes at Truro on 19 20 and 21 June 1978.

The said Register Units are all in one district and all the objections to claims for grazing rights, apart from one by Mr and Mrs Hosken, have been made by Mr R J Carpenter on behalf of the so called Rosecraddock Commoners Association (hereinafter called the association).

The associations contention is that all grazing rights should be in accordance with a scale of one unit = 1 beast or 1 pony or 5 sheep for each 2 acres of good bye land, and that I should modify, where necessary all the entries in the Rights section so as to accord with that scale.

I held a hearing on 15 July 1976 in the course of which it appeared that a large number of commoners agreed to accept that scale, but I adjourned that hearing for the reasons set out in my note dated 4 August 1976. I held the adjourned hearing on 19, 20 and 21 June 1978.

The association did not at the adjourned hearing lead any evidence and such information as I did obtain, was by reply to questions put by me to Mr Carpenter and Mr S J Bolitho, and on the last morning, when only two other commoners were present to Mr Hosken.



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I was told that the association was a district division of the Cornwall Commoners Association (hereinafter referred to as CCA) and that the association on the coming in to force of the Act of 1965 sought the advice of the solicitor to the CCA, who advised that rights should be registered in accordance with a scale of one unit for each acre of good bye land. I was further told that when the registrations came to be considered, the association came to the conclusion that the original proposed scale would result in the commons being substantially over grazed and that it was for this reason that the scale now proposed was put forward. I was told that the new scale was approved at a meeting of commoners. In answer to a question put by me I was told that one acre would support one unit during the winter months, and in answer to a further question put by me, it was accepted that the association had no power to regulate or police the grazing on the commons, and that while consideration has been given to the possibility of a scheme under the Commons Act 1899, it had been decided to defer any such action until the Registers had been finalised.

The Registrations fall into the following categories:-

- 1 Registrations that are final
- 2 Registrations which are provisional where the applicants have signed agreements to their modification
- 3 Registrations which are provisional where the applicants agreed to modifications in the course of the hearing
- 4 Registrations which are provisional where the applicants did not appear at the hearing
- 5 One case *re Steel* where no agreement was reached at the hearing
- 6 One case in which the association contended that the applicant was not entitled to any rights.

It is category (4) which causes me to have serious misgivings. I explained to the association that my duty was to confirm rights which were ~~proposed~~ to exist and not to force upon commoners an ~~agreed~~ scale which the association considered appropriate. I pointed out that I had no evidence and in particular no evidence as to the constitution or proceedings of the association, no expert evidence as to the viable grazing on the commons or as to the extent of grazing in the past. Mr Hosken the present chairman of the association appreciated my difficulty and he assured me that the meeting at which the new scale was approved, was duly conveyed and well attended, the hall being full and this was confirmed by the two commoners then present. He said that there were minutes and at my request agreed to forward to me such documents as he thought would be of assistance. Subsequent to the hearing there were sent to me the following documents, among others.

- 1 A history prepared by Mrs Hall the wife of a founder member of CCA, which shows that CCA was in 1936, approved by the Ministry with a set of rules. This history, further states that in about 1946 the Ministry of Land and Natural Resources advised that the constitution of the CCA was invalid because all the commons were not physically adjoining and that for this reason six District Associations were formed and that the Ministry sent a representative to formalise them under some uniform rules "copy attached".



2 A copy of the constitution of a committee constituted in 1966 for the purposes of the Commons Act 1908 for Higher Tremarcombe (or Torr Plain Moor) its powers being limited to making regulations as to the turning out of entire animals. This is the only evidence of the constitution of any body of commoners for Rosecraddock or St. Clear.

3 A licence agreement dated 4 December 1954 made between the Minister of Agriculture and Fisheries, S G Bolitho and R J Carpenter acting on behalf of the St. Clear Commoners Committee, licensing Fore Downs for use as agricultural land.

Other documents revealed activities in the name of the St. Clear Commoners Association, which I assume is another name for the Rosecraddock association and it is clear beyond doubt that a committee has rendered valuable service to the commoners in negotiating with local and other authorities. I can however see no evidence that there is even an unincorporated association which has any power to bind the commoners. Indeed in 1975 when the Cornwall County Council acquired some land and paid £100 compensation for the release of common rights it required each individual commoner to sign an agreement.

4 The minutes of the meeting of St. Clear Commoners Association held on 10 July 1972 related to common rights and is in the following terms:-
Regarding common rights it was decided to take each application on its merits and a large majority of members gave Mrs Pridham the acreage over which they are claiming rights. Mr A R Perry proposed 1 unit to 2½ acres by land, seconded by L Piper.

S J Bolitho moved an amendment of 1 unit to 2 acres as only about 6 people used the moor and they would be severely restricted. (seconded by I Giles). The amendment being carried. This assumes 1 unit to consist of 1 cow, 1 horse or 5 sheep. Miss Pridham who is working on the commons registrations read this out and asked for comments, but as the subject is so complete it was decided to call a meeting of the Sub. Committee formed for this purpose.

Statements were sent to me by Miss Pridham, Mr Hawke and P E Mitchall and L Snell to the effect that the meeting was well attended and convened to discuss common rights and that the resolution was discussed at length.

With one exception no evidence was led as to the quantification of rights at the date of registration and the history provided by Mrs Hall stated that CCA was advised shortly after its formation, that the rights were in accordance with levancy and couchancy.

At the end of the hearing I found myself faced with only two unresolved disputes to which I will refer later, but as I have indicated above there were applicants who did not appear and in those cases I was pressed to confirm their registrations modified so as to accord with the associations proposed scale.

The dilemma in which I find myself, is that if levancy and couchancy applies and on the admission on behalf of the association that one acre of bye land will support 1 unit, it can be argued that I have no alternative, but to confirm the rights of those who have not agreed otherwise on that scale.



However if I take that course I shall be doing a gross injustice to those applicants who registered their rights in accordance with the association proposed scale and whose registrations are now final and those applicants who have agreed to the modification of their rights, but whose registrations are still provisional who clearly agreed on the footing that the proposed scale, would be of universal application and they cannot be held to those agreements if other applicants who have not agreed are to receive ~~preparatal~~ preferential treatment.

There have been cases in my experience, where a small common surrounded by large farms is insufficient to support stock on the basis of levancy and couchancy and I have presumed, though it has not been strictly proved, that the grazing rights are in accordance with a viable scale.

In the instant case having regard to the large measure of agreement and the fact that I was told at the hearing that those who grazed the common had always restricted their grazing to viable numbers. I accept that the commons will not support stock on the basis of levancy and couchancy and I presume that the custom observed by those who have grazed as of right has been to observe a customary viable scale which is the proposed scale approved by an overwhelming majority of the commoners.

For this reason I confirm all the entries with one exception in accordance with the agreements made by the applicants and in the cases of applicants who did not appear in accordance with the proposed scale.

The one exception is Mr Stead, his application entry No. 30 in unit No. CL.149 is to graze 6 head of cattle or 30 Sheep or 6 Ponies. At the first hearing he claimed to graze many more animals than those stated in his application and when faced with his application signed by him, said he knew nothing of its contents. I was told at the adjourned hearing that his wife with the assistance of a J P had completed the form for his signature. Mr Stead at the original hearing and at the adjourned hearing stated he had always grazed many more animals in the belief that the common was "free for all" and he was indignant that his rights should be restricted even to those claimed by his application. He is the only commoner who both appeared and refused to make any agreement and the difference between the numbers claimed by him and those which accord with the proposed scale is in the context if the total numbers minimal and for this reason I propose to confirm his entry as it stands.

The other unresolved issue at the hearing was as to whether Trewalha Farm for which Mr Gill claimed rights on units CL.149 (entry 17) and CL.131 and CL.132 was entitled to rights.

Mr Carne of Messrs. Blight, Broad & Skinnard appeared for the applicant Mr Gill and called Mr F Sergent who said he had known Trewalha since 1910 and stock from Trewalha had always grazed at the commons. He remembered a Mr Arnold was there for 50 years before he committed suicide and he was quite sure that he grazed. Mr Arnolds father was at Crylla and he grazed from 1910 onwards. Mr Sergent left the area in 1932 and in cross examination he said he did not know what Mrs Beesly did.



Mr Gill gave evidence that he came to Trewalha in 1967 and that the scale particulars on which he bought, referred to grazing rights. He started grazing the second year he was at Trewalla. The most he had turned out was 25 beasts and he has gates leading on to the common. At the adjourned hearing I was told that the reason why the association opposed Mr Gills claim was that Trewalla was reputed in the locality not to carry common rights and in support of this allegation Mr Budge gave evidence. He is a licensee of a local public house and he said that Mrs Beesly came to his public house every 6 or 9 months when she was farming at Trewalla 15 to 20 years ago and she said she never had a right on any moor.

I have no doubt that Mr Budge was an honest witness, but I cannot accept his hearsay evidence as proving that Trewalla did not carry any rights. Even if Mr Budge's recollection of what Mrs Beesly said was accurate it does not follow that Mrs Beesly's belief that she had no rights was well founded. Mr Sergents evidence was uncontradicted and it would be surprising if this farm with gates on to the moor did not have rights. For these reasons I confirm entry No 17 or unit CL.149 and the corresponding entries on units CL.131 and CL.136 modified so as to accord with the proposed scale.

There are annexed to this decision, schedules relating to each of the above mentioned commons in part 1 of each such schedule are set out, the objections which occasioned the disputes, other than the cleared objections occasioned by the objections to entries in the land section. Those objectors took no part in the adjourned hearing, and in part 2 of each such schedule are set out my decisions on each of the entries the subject of these disputes.

In conclusion, I must mention that the hearing proceeded on the footing that all the Register Units the subject of this enquiry are in fact one common. The Entries in the Rights Sections which I have confirmed are in cases where the applicant has rights to graze on more than one register unit subject to the proviso that no more than the number of animals stated in the Entry shall be grazed at any one time over any one or more of the Register Units the subject of this decision.

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 27th day of October

1978

G. A. J. H. C.
Commons Commissioner

Part 1

<u>Objection No</u>	<u>made by:</u>	<u>noted in the Register</u>
X 1287	R J Carpenter	14 December 1972
X 1288	" "	" " "
X 1289	" "	" " "
X 1290	" "	" " "

<u>Entry No.</u>	<u>Part 11</u> <u>Modification</u>	<u>Rights</u>
2	34 Units	
3	21 Units	
5	29 Units	
6	64 Units	
8	21 Units	
9	26 Units	
13	6 units	No appearance
15	2 units	No appearance
16	5 units	No appearance
18(now 587)	22 units	
20	6 units	
22	4 units	No appearance
23	6 units	agreed at hearing
30	36 units	
31	20 units	
34	17 units	
38(now 50)	45 units	agreed at hearing
39(now 51)	23 units	agreed at hearing

SCHEDULE NO. 11 CL.463

Part 1

<u>Objection No</u>	<u>made by:</u>	<u>noted in the Register</u>
X 1530	R J Carpenter	21 November 1972

<u>Entry Nos</u>	<u>Part 11</u> <u>Modification</u>	<u>Rights</u>
3(now 16)	45 units	agreed at hearing
4(now 17)	23 units	agreed at hearing

SCHEDULE NO V CL.150

part 1

<u>Objection No</u>	<u>made by</u>	<u>Entered on Register</u>
X 1295	R J Carpenter	1 January 1973
X 1296	" "	" " "

part 11 Rights

<u>Entry No</u>	<u>Modification</u>
2	34 units
3	21 units
5	29 units
6	64 units
8	21 units
9	7 units
10	26 units
14	6 units
16(now 57)	22 units
18	6 units
19	4 units
27	36 units
28	20 units
34(now 48)	45 units
35(now 49)	23 units
37	6 units (Final)

SCHEDULE NO VI CL.151

part 1

<u>Objection No</u>	<u>made by</u>	<u>Entered on the Register</u>
X 1297	R J Carpenter	1 January 1973
X 1298	" "	" " "

part 11 Rights

<u>Entry No</u>	<u>Modification</u>
3	34 units
4	21 units
5	29 units
7	64 units
9	21 units
10	26 units
13	20 units
14	6 units
16(now 48)	22 units
18	6 units
19	4 units
26	36 units
27	20 units
31(now 51)	45 units
32(now 52)	23 units

Part I

<u>Objection No.</u>	<u>made by</u>	<u>date entered on Register</u>
X 1292	R J Carpenter	27 December 1972
X 1293	" "	" " "
X 1294	" "	" " "

Part II

<u>Entry No. 1 Rights Section</u>	<u>Modification</u>
3	34 units
4	21 units
6	29 units
7	64 units
9	21 units
10	9 units (agreed at hearing)
12	7 units agreed prior to hearing
13	26 units agreed at hearing
15	20 units agreed at hearing
17	confirm 48 units
18	21 units no appearance
20(now 59)	22 units agreed at hearing
22	6 units no appearance
23(now 60)	Withdrawn
24	4 units no appearance
30	confirm without modification
36	36 units
37	20 units agreed at hearing
37(now 55)	1 unit agreed prior to hearing
40(now 62)	45 units agreed at hearing
41(now 63)	28 units agreed at hearing

Part 1

<u>Objection No</u>	<u>made by</u>	<u>Entered in the Register</u>
X 563	Mr & Mrs Hosken	16 November 1970
X 1300	R J Carpenter	1 January 1973
X 1301	" "	" " "

Part 11

<u>Entry No</u>	<u>Modification</u>	
1	final	
3	34 units	
4	21 units	
5(now 43)	confirm without modification	
6	29 units	
7	64 units	
8(now 44)	confirm without modification	
9	21 units	
10	26 units	agreed at hearing
11(now 45)	confirm without modification	
12(now 46)	confirm without modification	
13	7 units	agreed prior to hearing
14	21 units	no appearance
15(now 54)	confirm without modification	
16(now 53)	22 units	agreed prior to hearing
17(now 55)	confirm without modification	
18	6 units	
19	4 units	no appearance
23	confirm without modification	
24(now 47)	confirm without modification	
25(now 49)	confirm without modification	
26(now 50)	confirm without modification	
28(now 51)	confirm without modification	
29	confirm without modification	
30	confirm without modification	
32(now 52)	confirm without modification	
34(now 56)	1 unit	agreed prior to hearing
35	confirm without modification	
36(now 61)	45 units	agreed at hearing
37(now 62)	28 units	agreed at hearing
39	6 units	agreed prior to hearing
40	6 units	no appearance
50	confirm without modification	

part 1

<u>Objection No.</u>	<u>made by</u>	<u>Entered on the Register</u>
X 1303	R J Carpenter	6 November 1972

<u>Entry No</u>	<u>part 11</u> Modification
6	Final
8	confirm without modification
10	45 units
12	28 units

part 1

<u>Objection No</u>	<u>made by</u>	<u>Entered on the Register</u>
X 1305	R J Carpenter	6 November 1972
X 1304	" "	" " "

<u>Entry No</u>	<u>part 11</u> Modification
2	2 units
4	6 units
5(now 12)	45 units
6(now 13)	28 units
3	confirm without modification
10	confirm without modification.

part 1

<u>Objection No</u>	<u>made by</u>	<u>Entered on the Register</u>
X 1306	R J Carpenter	25 November 1973

<u>Entry No</u>	<u>part 11</u> Rights Modification
3(now 9)	45 units
4(now 13)	28 units
6	confirm without modification

SCHEMATIC NO. 1 CL. 153

part 1

Objection No

made by

Entered on the Register

X 102

British Rail

30 July 1970

part 11

Entry No

Modification

8
9
10
11

confirm without modification
23 units
45 units
28 units