



In the Matter of Mufra Hill, Madron and
Zennar, Penwith D

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 111 in the Register of Common Land maintained by the Cornwall County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference claims to ownership of parts of the land in question ("the Unit land") were made by Mr D R Mitchell and by Mr N Dawe, Mr F Dawe and Mr R Dawe ("the Dawes") jointly.

I held a hearing for the purpose of inquiring into the question of the ownership of the Unit land at Truro on 19 May 1983.

At the hearing Mr J Wilson, Solicitor, appeared on behalf of Mr Mitchell and Mr R Hall, Solicitor, on behalf of the Dawes Trustees. Mr R H Mann, who is the owner of a small triangular area on the eastern side of the Unit land, appeared in person but did not claim ownership of any further part. I will refer to the remainder of the Unit land (ie. excluding Mr Mann's piece) as "the unowned land".

1. Mr Mitchell's claim. This claim, which was not resisted by Mr Hall, is to a small area ("the M area") on the north western part of the Unit land. By a Conveyance dated 1 October 1919 Henry L Coulson conveyed to Matthew Eddy a farm property at Bosporthenis. After his death the property was vested in his three sons by an Assent dated 7 December 1943. By a Conveyance dated 1 January 1944 the three sons conveyed the property to Richard Eddy, who died in 1965 and whose personal representatives, by an Assent dated 8 November 1974, vested the property in the claimant, Mr Mitchell. I am satisfied on this evidence that the property comprised in the 1919 Conveyance vested in Mr Mitchell. The subsequent documents describe the property by reference to that Conveyance, in which the property is identified on an attached plan. Bosporthenis lies to the north-west of the Unit land: the property identified on the plan includes a rectangular area at its southern end which appears to comprise a small part (the M area) in the north-west of the Unit land. I am not able to identify it precisely in the Register map, but I am satisfied that Mr Mitchell is the owner of the part of the Unit land falling within the area shown on the Conveyance plan.

2. The Dawes claim. The origin of this claim is a Conveyance dated 22 December 1913 between the Duke of Leeds (1) his Settled Land Act Trustees (2) and William Dawe and Matilda Dawe (3). To this Conveyance there is a plan attached showing different areas: the parcels refer to four areas edged respectively green, yellow, red and blue: on the copy plan I have seen there is in fact no area edged green. The Dawes claim ownership of the area edged yellow ("the yellow area") and one section of an area edged blue ("the blue section"). The yellow area is or includes a substantial part of the Unit land, and the blue section is the western half of an area edged blue, and is a strip on the eastern edge of the Unit land at the southern tip of Mr Mann's piece.



The parcels of the property conveyed by the Conveyance ("the 1913 property") are:-

- (1) The dwelling house and farm lands delineated on the plan and edged green "Together with such commonable and other rights (if any) as the present Duke may possess in the property marked with a yellow border on the .. plan"
- (2) The Duke's one-third share in the cottage known as Chyncoey edged red on the plan "Together with such commonable and other rights (if any) as the present Duke may possess in the property marked with a blue border line on the .. plan".

Matilda Dawe survived her husband William Dawe: she died in January 1942 and probate of her will was granted to her executors Norman and Felix Dawe on 20 July 1942. On 26 September 1942 they executed a Deed of Appointment appointing themselves and Percy Dawe as trustees in place of the Public Trustee of certain properties in which, as executors of Matilda Dawe, they were interested in more than one-half. Among these was the 1913 property but only certain parts of it; these parts, so far as I can relate them as described in the Deed of Appointment to the plan on the 1913 Conveyance, were the Chyncoey premises and the property edged blue on the plan: these were the parts in regard to which the 1913 Conveyance conveyed only one-third share (see (2) above) and it is accordingly to be expected that they were the only parts to which the Deed of Appointment, which was dealing with property in which there were undivided shares, would relate.

As regards the parts of the Unit land claimed by the Dawes - the yellow area and the blue section - the result, so far as the Deeds to which I was referred show, was that there was conveyed to Norman and Matilda Dawe the commonable and other rights (if any) possessed by the Duke of Leeds over the yellow area and that those rights have passed in the case of the yellow area to the executors of Matilda Dawe and in the case of the blue section to the three Dawes. But in neither case is the wording of the 1913 Conveyance, in my view, appropriate or sufficient to comprise the ownership of the land itself, nor can I see any context in the Conveyance to justify an interpretation other than the natural meaning of the words used i.e. commonable and other rights in the land, not the land itself.

Mr Felix Dawe gave evidence: he said that Mulfra Hill had been in the family for 70 years and that they always ran cattle on the Hill - he himself did so when he farmed there between 1942 and 1972. His father had sold gravel from the Hill and there was a pen on the Hill for straying cattle. This evidence, in my opinion, is consistent with the exercise of rights over the Hill but not adequate to indicate ownership of the land itself.

In the result I am not satisfied that the Dawes, or any other person except Mr Mitchell, is the owner of any part of the unowned land. Accordingly I shall direct the Cornwall County Council, as registration authority, to register Mr D R Mitchell as the owner of the M area under section 8(2) of the Act of 1965 and the remainder of the ~~unowned~~ land will remain subject to protection under section 9 of the Act of 1965.



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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

28 July

1983

L. J. Morris Smith

Commons Commissioner