



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/655 to
651 inclusiveIn the Matter of parts of Gear Common,
Treen Common and Porthneor Common, in
Zennor, Penwith District, CornwallDECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1, 2, 3 and 4 in the Rights Section of Register Unit No CL 526 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objections No X 612 and X 1009 made by Mrs Ada Mary Thomas and noted in the Register on 16 December 1971 and 20 June 1972, by Objections No X 620 and X 1008 made by Mr William James Berryman and noted in the Register on 16 December 1971 and 5 June 1972, and by Objections No X 582 and X 1080 made by Mr William Neil Teague and Mrs Valerie Winifred Mitchell (executors of Richard Eddy deceased) and noted in the Register on 15 February 1972 and 19 September 1972

I held a hearing for the purpose of inquiring into the disputes at Camborne on 16 May 1979. At the hearing (1) M A E Temple on whose application Rights Section Entry No 1 was made, and (2) Dr D E Rieser on whose application Rights Section Entry No 2 was made, were both represented by Mr D R Palmer FRICS, Chartered Surveyor of Truro; (3) Mrs Eliza Keen Berryman and Mr Francis Craze Berryman as executors of the said Mr William James Berryman (he died 22 October 1978) were represented by his son Mr William Berryman; (4) Mr William Harold Percy Bowden and Mrs Gay Bowden both of Bosporthenis, Zennor were represented by Mr B Roberts solicitor of Cornish & Birtill, Solicitors of Penzance, and (5) Mr W B Cornish of Bosporthenis, New Mill, Penzance attended in person. Mr Cornish explained that he was interested as tenant of Dr Rieser, Mr Temple and Mr Mitchell in respect of his farm.

The land ("the Unit Land") in this Register Unit is irregularly shaped, being about a mile long from east to west and in some places nearly as much wide from north to south, although in other places much narrower. It is crossed by the road from Penzance by way of New Mill to Gurnards' Head, this road being on the Register map marked by the line A-B.

The Land Section registration was made pursuant to an application of the West Cornwall Footpaths Preservation Society. The grounds of the objections are (in effect) X 612 (Thomas) and X 620 (Berryman) that the part of the Unit Land southwest of A-B was not common land; X 1008 (Berryman) and X 1009 (Thomas) that the rights do not exist; and X 1080 and X 582 that the 2 parts of the Unit Land ("the Eddy Parts") ~~shown~~ on the plan attached to the objection (being about 1/5th ~~of~~ of that which is southwest of A-B) is not common land ~~and~~ the right registered at Entry No 3 (Mr A G and Mrs L M G James) does not ~~exist~~ ^{extend} over the Eddy parts.

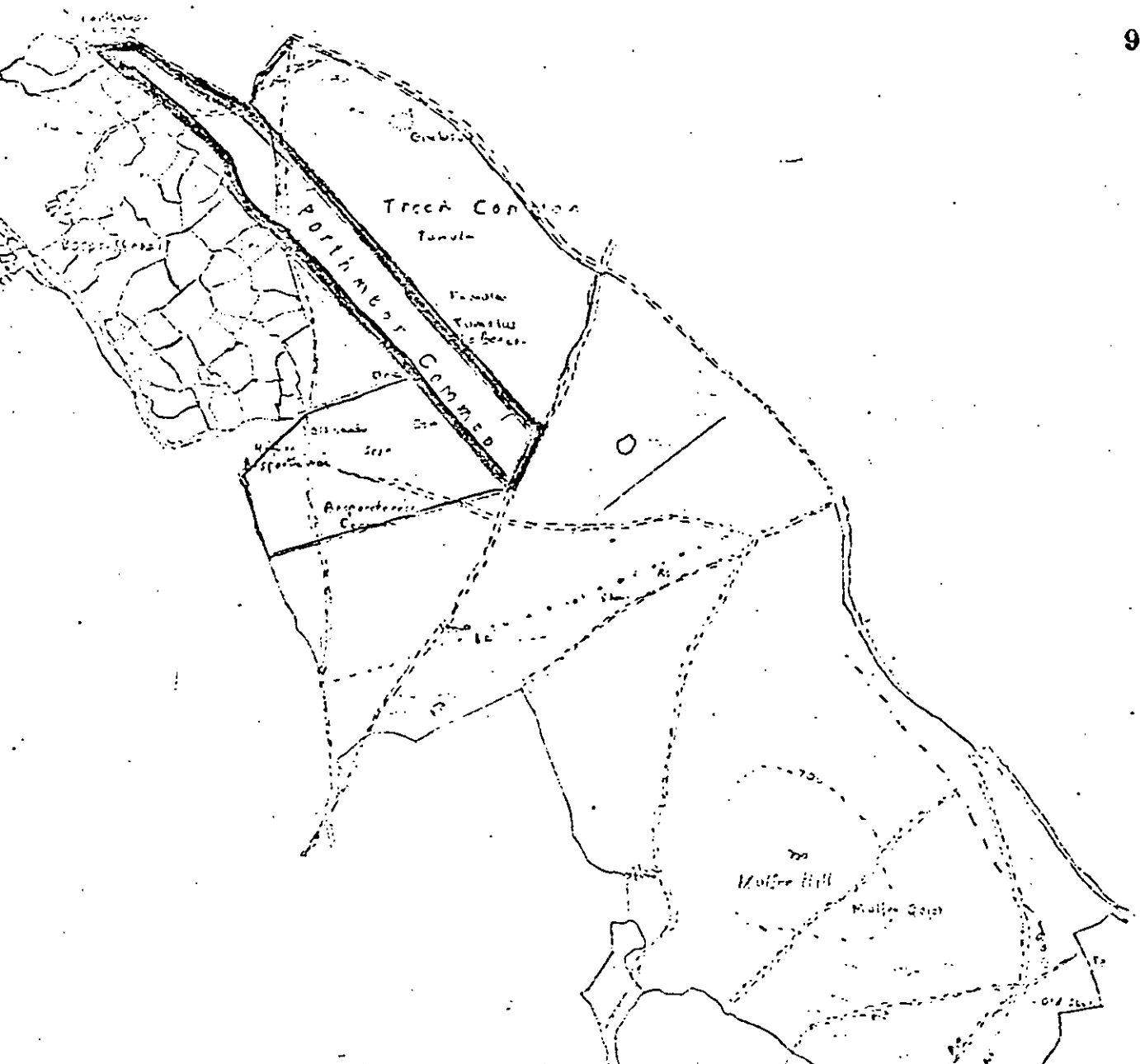
Mr Palmer on behalf of Mr Temple and Dr Rieser (Rights Section Entry Nos 1 and 2) said that they were willing to concede Objections Nos X 582 and X 1080 (Eddy), so



that the Eddy Parts could be removed from the Register and that with a view to meeting the objections of Mrs Thomas he Mr Berryman proposed that a further part (all of it south of A-B) of the Unit Land as delineated and edged green on a plan ("the D R Palmer Plan") attached to a letter dated 15 March 1979 and addressed to the office of the Commons Commissioners, should also be removed from the Register. An uncoloured copy of the D R Palmer Plan on which I have marked with a thick black line the area which is on the original edged green is page 3 of this decision. Mr Berryman said (in effect) that he agreed the objections Nos X 620 and X 1008 should have no larger effect than conceded and proposed by Mr Palmer. ~~He~~ To my copy of Objections Nos X 612 and X 1009 (Thomas) is annexed a copy of a letter dated 26 July 1973 from her in which she withdraws these Objections.

For any part of the Unit Land to be properly registered as common land when there are in the Rights Section no properly registered rights of common over such part, it must be within the sub-paragraph (b) of the definition of "common land" in the 1965 Act, that is "waste land of a manor not subject to any rights of common". I do not know why the Footpaths Society ever registered the Unit Land. No evidence was given that any part of the Unit Land has any manorial history; I understand that although the Unit Land has boundaries which are visually distinct enough, in many places they are no obstruction to humans or animals, and that the Unit Land is generally rough moorland ~~generally~~ the same as that which surrounds it on nearly all sides. In accordance with Regulation 23(5) of the Commons Commissioners Regulations 1970, I heard ~~also~~ evidence of Mr F W Bowden (the father of Mr W H P Bowden represented by Mr Roberts; he and Mrs G Bowden have under such Regulations no entitlement to be heard in these proceedings). Mr F W Bowden, being concerned only with a part ("the Bowden Area") of the Unit Land north of A-B, being an area about 150 yards and 70 yards wide adjoining the road and being the part of the Unit Land west of a line drawn in a northerly direction through the point "A" on the Register map, in the course of his evidence, ~~he~~ produced a conveyance dated 31 October 1972 by Mr J Pearson to Mr W H P and Mrs G Bowden and an examined abstract dated 1941 of the title of Mr T W Basset which included a conveyance dated 23 March 1919 to him. Both the 1972 and 1919 conveyances are expressed to convey ~~much~~ other land, and therein described as "Thirdly all the estate and interests of the Vendor of and in ..."; such thirdly described land being the Bowden Area. Mr Bowden said that the Bowden Area is surrounded by a fence which his son had erected and it includes a stream which is the water supply of his land. On the day after the hearing, I inspected the Unit Land from the road and walked over some of the Bowden Area. From what I saw and from the information given me at the hearing as above summarised, I conclude that not only the Bowden Area but also every other part of the Unit Land over which there are no properly registered rights of common is not properly registered as common land under the 1965 Act.

As regards any such rights, those registered at Entry No 1 and No 2 (Temple and Rieser) I consider I can and ought to give effect to the concession and proposal of Mr Palmer accepted by Mr Berryman. As regards the rights registered at Entry Nos 3 and 4 (James and Eddy), in the absence of any evidence in support of them, I would but for the concession next mentioned have concluded the registrations were not properly made; however Mr Palmer and Mr Berryman conceding that these rights ^{might} properly be registered to the same extent as the registrations at Entry Nos 1 and 2, I consider should give effect to this concession.



COMMONS REGISTRATION ACT 1965

Re: Parts of Gear Common, Treen Common, and Porthmeor Common, in Zennor, Penwith District, Cornwall

Ref No:- 206/D/656-661

This is page 3 of the decision dated 6 June 1979 and made by the Commons Commissioner in this Matter, being the copy map therein called "the D R Palmer Plan".

Traced from Cornwall shs SW.42SE, SW.43NE & SW.43NW (1850-1860)

a. a. Bades Fuller

Commons Commissioner

D.R. Palmer
Chief Constable
Land Reg. Office
Treva.



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As regards part of the Unit Land northeast of A-B (not included in any objection) the Register should show that the rights registered at Entry Nos 1 and 4 (Temple and Eddy), are not claimed to be exercisable over this part. Mr Palmer conceded the right claimed by Dr Rieser also is not exercisable ~~over~~ this part (as I would infer from the map next to his application). The map annexed to the application of Mr A G and Mrs LM G James also shows that the right claim by them is not so exercisable. I conclude therefore that this part of the Unit Land should not have been registered notwithstanding that there has been no objection to it as such, ought in the public interest to be removed. Having regard to the above considerations, I confirm the registration at Entry No 1 in the Land Section with the modification that there be removed from the Register: (a) the land edged red on the plans attached to Objection No X 582 and No X 1030 (the same plan); (b) the land edged green on the D R Palmer Plan in this decision referred to; and (c) all the land northeast of the line A-B on the Register map; and I confirm the registration of the Rights Section at Entry Nos 1, 2, 3 and 4 with such modification only as is consequential on the removal of the said land (a), (b) and (c) above from the Register.

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 6th — day of June 1972

a a. Brian Fuller

Commons Commissioner