



In the Matter of Poldu Cove, Mullion,
Kerrier District, Cornwall

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 3 to 8 inclusive, 10 to 19 inclusive, 21, 24 (formerly 20) and 26 (formerly 22) in the Rights Section of Register Unit No. CL 228 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X144 made by His Royal Highness Charles Prince of Wales Duke of Cornwall and noted in the Register on 19 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Camborne on 7 October 1980. At the hearing the Duchy of Cornwall were represented by Mr R F T Halliday assistant land steward in their Liskeard office; and the persons on whose application Rights Section registrations were made and who are named in the second column of the Schedule hereto and there said to be "represented by Mr Peters", were represented by Mr B C Peters solicitor of Hancock & Lawrence, Solicitors of Helston.

The land in this Register Unit according to the Register map is a tract nearly rectangular about 180 yards by 150 yards (perhaps about 6 acres) all situated between HWENT and LLEENT. The rights registered are summarised in the Schedule hereto. The grounds of Objection are: "That the land was not common land at the date of registration". By section 5(7) of the 1965 Act, the Objection must be treated as an Objection to the Rights Section registrations.

As to the registration at Entry No. 14, I have the letter of withdrawal specified in the fourth column of the Schedule hereto. As to the registrations at Entry Nos 10, 13, 15, 18, 19, 24 and 26, Mr Peters said he was instructed to withdraw these registrations. Nevertheless he wished, except as regards sand to support the registrations at Entry Nos 3, 4, 5, 8 and 21 with oral evidence; sand was excepted because by reason of the Sea-sand (Devon and Cornwall) Act 1609 (7 Jac 1. c.18), it was unnecessary and inappropriate to include sand.

Mr Halliday said (in effect):- The Duchy were represented because they wished me to record that this land is Duchy foreshore. He had no instructions as to what he was to say about the Objection; he understood that The Duchy was not "going to fight" this being their present official policy.

Mr Peters said that if this was the Duchy's official policy, they should have communicated it to the persons adversely affected by the Objection, and that he therefore on behalf of his clients claimed costs. It being apparent that Mr Halliday was taken by surprise by this claim, I asked if he wished to apply for an adjournment: later at the hearing he said that he, having telephoned the London office of the Duchy, would not ask for an adjournment because they were content that I should exercise my discretion.



In support of the registrations evidence was given by (1) Mr W Hendy of Angrouse Farm (Entry No. 8); (2) Mr R J Beare of Colvenor Farm (Entry No. 4); (3) Mr L J Lawrence of Gweleath (Entry No. 3); (4) Mr J C Bowden who was born at and until 1974 was at Skéwes Farm (Entry No. 5); (5) Mr A E Bowden his son; (6) Mr A B Thomas of Teneriffe Farm (Entry No. 21); and (7) Mr William Alfred Sterling who is now 84 years of age, who has lived in Mullion all his life, and who was between 1922 and 1939 concerned with the collection of sand shingle and seaweed from this beach.

This evidence was (stating its effect shortly):- From time to time as a consequence of a favourable combination of the tide, the wind and the weather, large quantities of seaweed and stone are cast up by the sea. Some of this has for many years been collected and used for the purposes of the farms above named; in all cases this collection and use was for more than 20 years before 27 May 1970 (the date of the Objection). The availability of this seaweed and stone following the favourable combination of tides wind and weather, when it happened, became locally known to those who wanted the seaweed and stone and they collected it; it being practically impossible to regulate such collection, the seaweed and stone was often taken by those who came first.

In my opinion the circumstance that the seaweed and stone were sometimes taken by persons who have not registered under the 1965 Act, does not prevent my giving full effect to the evidence above summarised and concluding as I do that the collection and use of the seaweed and stone as described by these witnesses was as of right and was for a long enough period to raise a presumption of a grant in accordance with the principles established in *Tehidy v Norman* 1971 2QB 528.

Of the Rights Section registrations not supported by any oral evidence and not withdrawn by letter or by Mr Peters as above mentioned, there remain only those at Entry Nos 6, 7, 11, 12, 16 and 17. Of these all except Nos 6 and 12 are registered as "not attached to any land", that is I suppose as a right in gross; it is unlikely that any such right could be established, so in the absence of any evidence my decision is that these four registrations were not properly made. As regards Entry No. 6 made on the application of Mr Gribble as being a right attached to land adjoining the cemetery, I was told this land is really part of the Parish Cemetery and that Mr Gribble who knew of the hearing has indicated lack of interest. As regards Entry No. 7 of a right attached to Trenance Farm, I have no note or recollection of anything being said about this farm at the hearing. As regards these rights although it may be probable that Trenance Farm has the same right attached to it as are attached to the other farms, and it may be possible there is a right attached to some part of the Cemetery, in the absence of any evidence in support of these rights, my decision is that these two registrations were not properly made.

For the above reasons, I confirm the registrations at Entry Nos 3, 4, 5, 8 and 21 in the Rights Section with the modification that in every such registration the word "sand" be deleted from column 4; and I refuse to confirm the registrations at Entry Nos 6, 7, 10 to 19 inclusive, 24 (formerly 20) and 26 (formerly 22).

As to the Duchy's claim that I do record that the land is Duchy Foreshore:- In the Ownership Section of this Register Unit, His Royal Highness Charles Prince of



Wales, Duke of Cornwall is registered as the owner of the whole of the land. This registration being undisputed has become final. I have no jurisdiction either to add to or subtract from this registration. Accordingly I refuse to take any action on the said claim of the Duchy.

As to the costs claimed on behalf of Messrs Lawrence, Mr Beare, J C Bowden and Son, Messrs Hendy, and Mr Thomas:- In my opinion neither a person who applies for a registration under the 1965 Act nor a person who under the Act makes an objection to a registration is at any risk as to costs merely by making the application or objection. Under the Regulations made under the Act, following an objection to a registration, a period must elapse before the resulting dispute can be referred to a Commons Commissioner (in this case the reference is dated 14 April 1976); one of the purposes of this delay is to enable the parties to discuss their positions with a view to reaching an agreement or to discovering the extent of their differences. There was no evidence that there had been any such discussion during this period or at any time before the hearing on 7 October 1978. The 1965 Act provides that a Commons Commissioner shall "inquire into" a dispute; words indicating that his hearing is not to be regarded as being similar to a proceeding before a Judge of the High Court; I conclude therefore that the costs of such a hearing are not, like as is I understand the practice in the High Court, to follow the event almost automatically, and that a person is not to be prejudiced as regards costs merely because he does not choose to attend at the hearing or to take any other action.

Accordingly if I am to award costs against the Duchy, I must do so as a result of something said at the hearing by Mr Halliday. The substance of the claim for costs is that the Duchy could before the hearing have written to the Claimants and in their letter have set out what Mr Halliday said at the hearing about their policy. It may be that if such a letter had been written and had reached Messrs Hancock and Lawrence, they and the Duchy would between them have realised that a public inquiry could be avoided by an application under regulation 31 of the Commons Commissioners Regulations 1970 setting out the terms of the decision which it was agreed should be made by the Commissioner; but however this may be, I cannot punish in costs the Duchy for not beginning a correspondence which could equally well have been begun by the Claimants. I cannot infer from anything said by Mr Halliday that if any correspondence had been begun by the Claimants, it would from lack of co-operation by the Duchy have necessarily been unproductive. Upon these considerations, I refuse to make any order as to costs.

I suppose it could be said that the Duchy being owners of a considerable area of lands and having a staff better acquainted than most with the possibility of taking advantage of the said regulation 31, might in the interests of the inhabitants of Devon and Cornwall inform such as them as have made registrations to which His Royal Highness has made an Objection of their willingness (if they are willing) to co-operate in making a regulation 31 application. It may be that those in the Duchy responsible for advising His Royal Highness on these matters might with advantage consider the desirability of adopting a policy which would avoid the sort of criticism which has as above recorded been made in this case against them.

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.

SCHEDULE

Entry No.	Applicants and land to what right is attached	Rights	Representation and remarks
3	Leslie James Lawrence and Leslie John Lawrence; owners Gweleath	To take sand and stone	Represented by Mr Peters.
4	Reginald John Bears; owner. Colvenor Farm	To take sand and seaweed	Represented by Mr Peters
5	John Carter Bowden & Son; Owners. Skewes Farm	To take sand, seaweed; shingle and stone	Represented by Mr Peters
6	Richard Norman Gribble; tenant Land adjacent to Cemetery	To take sand and seaweed	—
7	Benjamin Thomas Newton; Owner. Trenance Farm	To take sand seaweed, shingle and stone	—
8	William Hendy and Leslie Thomas Hendy; Owners. Angrouse Farm	To take sand and seaweed	Represented by Mr Peters
10	George Bryan Garfield Cattram; Owner. Not attached to any land	To take sand and seaweed	Represented by Mr Peters; WITHDRAWS.

Entry No.	Applicants and land to what right is attached	Rights	Representation and Remarks
11	Reginald James Day Freeman; Owner Not attached to any land	To take sand stone and gravel and seaweed	—
12	William David Everett Harris; Tenant Not attached to any land	To take sand	—
13	Cyril James Harry; tenant. Not attached to any land	To take sand and shingle	Represented by Mr Peters; WITHDRAWS
14	Hatton Bros (JPM Hatton); owner Not attached to any land	To take sand and seaweed	Stratton & Holborrow, Chartered Surveyors of Marazion in letter of 1 August 1980 say they WITHDRAW
15	William Hannibal Roberts; owner. Not attached to any land	To take sand and seaweed for agri- cultural purposes	Represented by Mr Peters; WITHDRAWS
16	Nicholas Walter Tripp; tenant. Not attached to any land.	To take sand, stone, gravel and seaweed	—
17	Hannibal George Williams; owner.	To take sand and shingle	Note:- Mr Peters said that Mr J A Williams (Entry No. 19) told him that his brother Mr H G Williams is now deceased.
18	William Arthur Williams; owner. Not attached to any land.	To take sand seaweed and shingle	Represented by Mr Peters; WITHDRAWS

Entry No.	Applicants and land to what right is attached	Rights	Representation and Remarks
19	John Andrew Williams; owner. Not attached to any land.	To take sand seaweed and shingle	Represented by Mr Peters; WITHDRAWS
21	Beatrice Thomas and Albert Bree Thomas; owners. Teneriffe Farm.	To take sand and seaweed for agricultural purposes and to take stone for hedging.	Mr A B Thomas represented by Mr Peters; Mrs Beatrice Thomas is now deceased.
24 (formerly 20)	Richard Peter Trounson; owner. Not attached to any land.	To take sand and seaweed	Represented by Mr Peters; WITHDRAWS
26 (formerly 22)	Lindsay Mitchell; owner. Windyridge Farm	To take sand shingle and seaweed	Represented by Mr Peters; WITHDRAWS

Dated the

day of

1980

Commons Commissioner