



In the Matter of Redhill Down, St Neot,  
Cornwall (No. 1)

DECISION

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This dispute relates to the registrations at Entry Nos 1(now 25), 2 (now 26), 6 (now 34), 7 (now 35), and 22 (now 32) in the Rights section of Register Unit No. CL 158 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X 1049 made by the Redhill Commoners Association and noted in the Register on 22 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Truro on 13 December 1977. The hearing was attended by Mr R S Lyne, the applicant for the registration at Entry No. 25, Mrs A M Tucker, the wife of Mr H T Tucker, the applicant for the registration at Entry No. 26, and Mr R Smith, the applicant for the registration at Entry No. 32, and by Mr P Norman, surveyor, to whom I gave leave to appear for the Objector.

Mr Lyne stated that he did not wish to pursue his application.

Mrs Tucker sought to support the registration at Entry No. 26 by the conveyance under which Mr Tucker is the owner of Castle Davey, the alleged dominant tenement. This conveyance includes rights of pasturage and turbary in the moors and commons in the parishes of Cardinham and Warleggan. The land comprised in the Register Unit is, however, situate in the parish of St Neot. Mrs Tucker said that that was as far as she could take the matter.

Mr Smith claimed what was in effect a right by prescription, although he did not use that word. His registration relates to cattle and ponies, but his evidence related only to ponies. He gave evidence that he had regularly turned out ponies on the land comprised in the Register Unit for over 30 years and that they had never been put off. Mr W G Hambly, the Chairman of the Commoners Association, said that Mr Smith's ponies had strayed onto the land and that he had driven them off from time to time, and Mr J T Andrew said that he had seen Mr Smith's ponies being driven off. I do not attach much importance to the evidence as to the driving off of Mr Smith's ponies, since that was not done by the owner of the land. The real difficulty in Mr Smith's path is that the right is stated in his application to be a right in gross, and this is not one of the rare cases in which a right in gross can be acquired by prescription. Mr Smith sought to overcome this difficulty at the hearing by making an alternative claim that he had a right appurtenant to a farm which he owns, known as Cooda Farm, about 3 miles to the north. In my view, this change of front is not open to Mr Smith. While I have power under section 6(1) of the Commons Registration Act 1965 to modify the registration, this does not empower me to insert into the Register a right which is in law entirely different from that specified in the application.

There was no appearance by or on behalf of Mr W. J. Harris, the applicant for the registrations at Entry Nos 34 and 35, but his solicitors sent to the Clerk of the Commons Commissioners on 16 November 1976 a communication which clearly indicated an intention not to support the registration at Entry No. 34 and appeared to indicate a similar intention in respect of that at Entry No. 35.



For these reasons I refuse to confirm any of the registrations.

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 12<sup>th</sup> day of January 1978

A handwritten signature in cursive script, appearing to read "J. D. Quibb".

Chief Commons Commissioner