



COMMONS REGISTRATION ACT 1965

Reference No.6/U/22

In the Matter of River Bank,
Ropewalk, Kea, Truro, R.D.,
Cornwall.

DECISION

This reference relates to the question of the ownership of land known as River Bank, Ropewalk, Kea, Truro Rural District, being the land comprised in the Land Section of Register Unit No.V.G.614 in the Register of Town or Village Greens 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 were made on behalf of the Right Honourable George Hugh, 9th Viscount Falmouth in letters dated the 16th and 19th May 1972 from his solicitors and on behalf of Mr. J. E. Nicholls in a letter dated the 17th May 1972 from his estate agents and a letter dated the 19th May 1972 from his solicitors. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Truro on the 13th July 1972.

At the hearing Lord Falmouth was represented by Mr. J. B. G. Holt, solicitor, of Messrs. Hancock & Lawrence of Truro, and Mr. J. E. Nicholls was represented by Mr. R. W. Money, solicitor, of Messrs. Sitwell, Money & Murdoch also of Truro.

In the course of the hearing Mr. Money on behalf of Mr. Nicholls said that Mr. Nicholls did not claim to be the owner of the land.

The land comprised in this Register Unit (if regard be had only to the Register map; as to this see below) consists of a stone built quay ("the Quay") which projects northwards from the shore line into Calenick Creek and of a strip of land ("the disputed strip") consisting for the most part of oaken coppice. The disputed strip is part of a wood, ("Trethewell Wood"), having an area according to the Register map, of 5.030 acres. The disputed strip is bounded on the north for the most part by the shore line to the west of the Quay and for a comparatively small part by the Quay and bounded on the south by a track which crosses Trethewell Wood and leads to the Quay.

Mr. Holt said that there were three questions for consideration: (i) who owns this land; (ii) whether the land can be registered as a village green; and (iii) alternatively whether by reason of the registration particulars being so inaccurate, this particular registration can stand.

As to question (i), I heard evidence from Mr. M. H. Maydew, who is and for the last twelve years has been the Senior Agent of Lord Falmouth (hereinafter called "the Claimant") and from Mr. Holt.

The Quay is a stone built revetment to the River; it was originally used (Mr. Maydew thought) for bringing to land stone for burning in a nearby old lime kiln (shown on the Register map), but it has not been so used for at least the last 12 years. Trethewell Wood was formerly of great value for rinding (taking the bark of the trees for tanning purposes), but now only one person does this.



Mr. Holt in his evidence produced an abstract dated 1955 of the title of E.H.J. 8th Viscount Falmouth to certain parts of the Cornwall Estate settled by the will of the 6th Viscount Falmouth which abstract commenced with a vesting deed dated the 20th January 1926 and an abstract intended to be currently dated of the title of the Claimant which continued the 1955 abstract. He produced a statutory declaration made on the 5th May 1955 and the conveyance and vesting deed dated the 24th March 1956 (being documents abstracted); these were held by him on behalf of the Claimant. The title as shown appeared to me regular; it related to a large area of land and was generally accepted in the neighbourhood. I conclude that the Claimant is the owner in fee simple of the part of the Cornwall Estate referred to.

The land comprised in this Register Unit as appears from the Register map consists of (i) Ordnance Survey No.2939 which No. has an area of .113 acres comprises (possibly only includes) the Quay, and (ii) (possibly, as to this see below) part of Ordnance Survey No.2984, which No. has an area of 5.030 acres and includes (possibly) the disputed strip. Mr. Maydew in his evidence produced: (i) and (ii) two leases dated the 22nd August 1798 being leases for lives by the then Lord Falmouth to R.A. Daniel of 150 acres 2 roods 83 perches, (iii) a tithe award dated 1846 showing the Earl of Falmouth as the owner of quay No.3074 and wood No.3075 shown on the annexed map, (iv) a manor record entitled "Lord Falmouth's Estate" relating to the Manor of Blanchland which showed 149 acres 2 roods 33 perches as having been let to R. A. Dani and being in hand in 1866, (v) and (vi) Ordnance Survey maps dated 1880 and 1907 and (vii) a terrier book apparently prepared for estate duty purposes on the death of the 7th Viscount. These documents were either from the muniment room of the Claimant or held on his behalf in Mr. Maydew's office. The schedule to the above mentioned statutory declaration of the 5th May 1955 and the schedule to the conveyance and vesting deed of the 24th March 1956 included among numerous other pieces of land therein described Ordnance Survey numbers 2939 and 2984; I was able to identify these with the Quay and wood referred to in the tithe award and terrier book.

On the evidence as outlined above I am satisfied that the Claimant is the owner of the land shown on the Ordnance Survey map No.2939 (the Quay) and No.2984 (Trethewell Wood) and accordingly is the owner of the land comprised in this Register Unit whether or not the land so registered includes the disputed strip.

On questions (ii) and (iii) Mr. Holt relied on the matters set forth in the following three paragraphs.

The Land Section of the Register so far as relevant is as follows:-
"20 Nov 1967 (date of entry). The piece of land called River Bank, Ropewalk, containing 0.113 acre or thereabout in the parish of Kea numbered 2939 on the Ordnance map of that Parish, as marked with a green verge line inside the boundary on the register map Registered pursuant to an application made 10th July 1967 by the Kea Parish Council The registration being undisputed became final on 1st October 1970." The Register map includes the disputed strip in the land marked with a green verge line, but as appears from the above quotation, the entry contains no reference to Ordnance No.2984.

A letter dated 6th July 1972 from the Kea Parish Council addressed to the Clerk to the Commons Commissioners which after referring to this Register Unit, (so far as material) was as follows:- "It has been established, to the satisfaction of this Council, that the above piece of land is in the ownership of Viscount Falmouth Tregothan, Truro, and accordingly the application made for registration as common land is withdrawn".



Further evidence by Mr. Maydew which (in effect) was:- "My assistant, Mr. Carter Lewis, went to County Hall, Truro to search the Register of Footpaths and he told me that no footpath to the Quay was registered there. I have no knowledge of any public right of way on foot or otherwise to the Quay from the public road from Calenick to Porth Kea (being a public highway south Trethowell Wood). I am not aware of any customary rights of the inhabitants of any locality to indulge in sports and pastimes on the Quay or the other part of the land surrounded by the green verge line. I am not aware of the inhabitants of any locality having indulged in sports or pastimes as of right or at all at any time. Sometime in June of this year I met a member of the Kea Parish Council, Mr. P. J. May, and informed him that this was Lord Falmouth's land and I heard as a result of my discussion with Mr. May that the Kea Parish Council met and their decision was to withdraw and I had a letter from the Parish Council to this effect. Mr. May told me that after the meeting of the Parish Council that in fact they had registered the Quay as village green on the grounds that no one claimed ownership of this area. Mr. May gave me no other reason. The area of the Quay, meaning Ordnance Survey No. 2939 treating such No. as bounded on the south by Trethowell Wood, that is as bounded by a line which continues the high water mark where it exists east and west of the green verge line (on the Register map) is in my view .113 acres, as stated on the Register map. This .113 acres could not include the rest of the land (meaning the disputed strip) also on the Register map surrounded by a green verge line. I would estimate the last area to be about twice that of the Quay, say a quarter to a third of an acre."

Mr. Holt explained that those acting for the Claimant had before the 1st October 1970 searched the Register of Common Land kept under the Act by the Cornwall County Council for the purpose of discovering whether any land of the Claimant had been registered, but it had not occurred to them to search the Register of Town or Village Greens for the same purpose. He contended as regards question (ii) that I should direct the County Council to cancel the whole of the registration quoted above or alternatively as regards question (iii) direct the County Council to redraw the green verge line on the Register map so that it included only the Quay which was, as explained in the evidence of Mr. Maydew the only part which could properly be described as "containing 0.113 acre" or as "numbered 2939 on the Ordnance map".

In my opinion I have no jurisdiction as contended on behalf of the Claimant as regards question (ii) in relation to this land on this reference or any other reference which could now be made to me, to consider whether this land ought or ought not to have been registered as a town or village green. The jurisdiction of a Commons Commissioner to consider whether land is or is not properly registered as a town or village green is, I think, by sections 5 and 6 of the Act limited to registrations to which an objection in accordance with the Act has been made (no such objection has been or can now be made by the Claimant); a Commons Commissioner has, I think, no jurisdiction in respect of a registration which has become (as this registration has become) final under section 7 of the Act.

In my opinion I have no jurisdiction as contended on behalf of the Claimant as regards question (iii) either to rectify or direct the Cornwall County Council as registration authority to rectify the Register by deleting the disputed strip or to declare that the registration on its true construction does not include the disputed strip. No such jurisdiction is by the Act or any regulation under it expressly conferred on a Commons Commissioner. If on a reference under section 8 it is necessary as a preliminary to determining ownership to identify the land which has been registered, a Commons Commissioner has, I think, implied



jurisdiction for this purpose to resolve any ambiguity there may be in the Register; this I did in my decision dated 10th May 1972 re Allen Green reference 16/U/8. But in this case, because I am satisfied that the Claimant is the owner of the disputed strip as well as all other the land comprised in the Register Unit, it is not necessary for me to determine whether the disputed strip on a true construction of the registration is or is not registered under the Act as a town or village green. By regulation 36 of the Commons Registration (General) Regulations 1966 a registration authority (in this case the Cornwall County Council) are in the circumstances set out in the regulation required to correct errors or omissions in any register; in my opinion I have no jurisdiction either under the Act or under the Regulations to review any decision the Cornwall County Council may have made or may make under this regulation.

Accordingly I decline to consider questions (ii) and (iii) raised as above stated on behalf of the Claimant.

I should perhaps record that if I had jurisdiction to consider either of these two questions I should, having regard to the terms of reference to me (Form 37) and of the public notice of the reference (Form 38) consider that express notice of my intention to exercise this jurisdiction should be given to the registration authority and to every concerned authority and also record that if I cancelled the registration as contended as regards question (ii), it would, I think, follow that I could not properly direct the Cornwall County Council to register the Claimant as owner.

As I am against the contentions made by the Claimant as regards question (ii) and (iii) and am satisfied (as above stated) that the Claimant is the owner, I shall, in pursuance of section 8(2) of the Act direct the Cornwall County Council, as registration authority, to register the Claimant the Rt. Hon. George Huch, 9th Viscount Falmouth as the owner of the land.

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 16th day of October 1972

a. a. Baden Fuller

Commons Commissioner.