



In the Matter of Roseacre Green (part),
St.Gennys, Cornwall

DECISION

This reference relates to the question of the ownership of land known as Roseacre Green (part), St.Gennys being the part of the land comprised in the Land Section of Register Unit No.CL.180 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 no person claimed to be the freehold owner of the land in question and no one claimed 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 Bodmin on 5 February 1985. At the hearing, the St.Gennys Parish Council was represented by Mr V Taylor, its Clerk, and Mr P D Henshaw appeared in person.

The Parish Council is registered as the owner of the land comprised in the Register Unit other than the part comprising O S No.1241. O.S. No. 1241 is bounded on the South-West by land known as Roseacre Farm, belonging to Mr Henshaw. Mr Henshaw based his claim to the ownership of O S No. 1241 on a possessory title. However, on 13 October 1969 Mr A J Rigby-Jones, Mr Henshaw's predecessor in title, applied for the registration of a right to graze over the whole of the land comprised in the Register Unit, such right being attached to Roseacre Farm. That registration was entered in the Rights Section of the Register Unit on 7 November 1969, but since it was in conflict with another registration, the matter was referred to a Commons Commissioner. By a direction of the Commons Commissioner the registration made on the application of Mr Rigby-Jones became final on 1 September 1982 subject to a modification that the right to graze should be limited to O.S.No. 1241.

The registration as so modified is fatal to Mr Henshaw's claim to the ownership of O S No. 1241, for a man cannot have a right of common over land of which ^{he} is the owner. Ownership and a right of common being mutually exclusive and the right of common attached to Mr Henshaw's land having become final, it is impossible for him to be registered as the owner of the servient tenement.

In the absence of any further evidence I am not satisfied that any person is the owner of the land the subject of the reference, and it will therefore 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 this

21st

day of

February

1985

Chief Commons Commissioner