



In the Matter of Sprey Moor, Blisland,  
North Cornwall District, Cornwall

FIRST DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 5, 7, 9, 11, 12, 13, 14, 18, 19, 21, 23, 28, 35 (formerly 6) and 37 (formerly 27) in the Rights Section of Register Unit No. CL166 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objections No. X1334 and X1335 made by Cardinham Commons Committee and noted in the Register on 3 January 1973.

I held a hearing for the purpose of inquiring into the dispute at Truro on 3 July 1979. At the hearing (1) Mr Harold James Winn (he applied for the registration at Entry No. 7) attended in person; (2) Mr Charles Tapp (he applied for the registration now final at Entry No. 8); (3) Mr Wesley Smith (he applied for the registration at Entry No. 14) attended in person; (4) Mr Eric Ronald Cornelius (he applied for the registration at Entry No. 18) was represented by Mr M C Culver, solicitor of Coningsbys, Solicitors of Bodmin; (5) Mr Walter George Hambley (he applied for the registration at Entry No. 35, formerly 6) attended in person; (6) Mr Albert Robert Walkey and Mrs Florence Ann Walkey (they applied for the registration at Entry No. 38 formerly 28) were represented by Mr M J Keast surveyor of Rowse Jeffery & Watkins Estate Agents of Lostwithiel; (7) Mr John Llewellyn Smith (he applied for the registration at Entry No. 37 formerly 27) attended in person; (8) Lanhydrock Holdings (Jersey) Ltd of 3 Westaway Chambers, Don Street, Jersey Channel Islands as successors in title of the Rt Hon A V Viscount Clifden (he applied for the registration at Entry No. 21; they did not claim as his successor in respect of the registration made on his application at Entry No. 22) were represented by Mr Keast; and (9) Mr A Bettison of Roughlands, Bolventor as successor in title of Mr R J Gynn (he applied for the registration at Entry No. 5) was represented by Mr G I Chisholm solicitor of G & I Chisholm & Co, Solicitors of Bodmin; and (10) Mr T Howe who claimed as successor in title of Mr Hills who succeeded Mr James Douglas Morse (he applied for the registration at Entry No. 20) attended in person.

The land ("the Unit Land") according to the Register contains 256 acres. The grounds of objection No. X1335 to Entry Nos 7, 13, 14, 18, 19, 21, 23, 36 (formerly 12 and 38 (formerly 28) are: "That the right does not exist at all or if the right is proved that the right should comprise fewer animals namely one head of cattle or one pony or five sheep". The grounds of Objection No. X1334 to Entry Nos 5, 9, 11, 35 (formerly 6) and 37 (formerly 27) are: "That the right should comprise fewer animals namely one head of cattle or one pony or five sheep". The registrations at Entry Nos 2, 4, 5, 8, 10, 20, 22, 25 and 32 being undisputed have become final.

Before the hearing there had been sent to the Commons Commissioners: (1) a letter dated 25 June 1979 written on behalf of Mr W F Dyer (he applied for the registration at Entry No. 23) saying that he wished to withdraw his claim for grazing rights on Sprey Moor; and (2) a letter dated 9 June 1979 written by Mr J B Hore as Secretary and Treasurer of Cardinham Commoners Association saying that his Committee wished to withdraw all the objections made by their registrations on this common and that his Committee could not now provide evidence because the witnesses have died.



Mr Keast produced a postcard sent to him (or his clients) by Mr J B Howe to the same effect as the said 9 June letter; and I understood that others present or represented at the hearing had received similar postcards.

If the Objections had never been made, the registrations now disputed would have become final, see section 7 of the 1965 Act. For this reason, as a general rule, if an objector fails to support his objection, it is ~~not general rule~~ just that the registration should be confirmed without those who applied for them being put to the trouble and expense of proving that the registrations were properly made.

Mr Howe produced a paper summarising the registrations in the Rights Section of this Register Unit, and said that the numbers of animals registered should be sorted out, because for the Moor ~~(consisting of the registered area)~~ (about 256 acres) the total numbers were too many. Mr Chisholm contended that these proceedings were an inquiry and notwithstanding the "withdrawals" of the Objection, I can and should inquire, because the numbers of animals registered were ridiculous; he suggested that each of the applicants should prove their rights.

At the hearing I refused to hear any evidence or argument as to the disputed registrations.

Of the subsisting registration in the Rights Section (apart from that at Entry No. 25 particularly mentioned above), the number of animals permitted (a) for the registrations which have become final (9 registrations in all, if that at Entry No. 4 for turf only be disregarded), and (b) for the registrations which are disputed (14 registrations in all) total respectively (a) 211 head of cattle or 133 ponies or 945 sheep, and (b) 1,458 head of cattle or 435 ponies or 2,795 sheep. I have in these totals treated the registrations of cows or bullocks as of cattle, of horses as of ponies and of ewes as of sheep.

By sections 5 and 6 of the 1965 Act, when an objection is not withdrawn before the end of the "prescribed" period, the resulting dispute must be referred to a Commons Commissioner who "shall inquire into it". Although section 7 of the Act which deals with withdrawals is not on some points easily reconcilable with sections 5 and 6, reading them together, I think they mean that when, as in this case, objections are not withdrawn until after the end of the prescribed period, the Commissioner must "inquire into" resulting disputes; so in my view I have jurisdiction in this case to inquire into these registrations notwithstanding the attitude of the Commoners Association Committee.

For a tract of 256 acres the total number which would result on the application of the general rule above-mentioned, would be ridiculous; particularly if regard be had the registration at Entry Nos 13 and 18 being "150 cows and 150 ewes" and "70 cows and 65 horses and 200 sheep" (ie accumulative and not as in the other registrations disjunctive). In my opinion I am not required to give a decision which is apparently ridiculous (as seems likely from what Mr Howe and Mr Chisholm said) if it is avoidable. Further having regard to the evidence given in other cases considered by me immediately after this one in which registrations similar to those now disputed were questioned, I feel doubtful whether I can properly infer from the 1979 letter of Mr Hore that all the persons who could give evidence against these now disputed registrations have died.



Upon the considerations summarised above I adjourned these proceedings (except as regards the registration next mentioned) to a place and date to be fixed by a Commons Commissioner. As regards the registration mentioned in the letter written on behalf of Mr Dyer there is I think no reason why he should be troubled any further, and accordingly as contemplated by such letter I refuse to confirm the registration at Entry No. 23.

As regards the adjourned proceedings <sup>the</sup> question for consideration <sup>will</sup> be whether numbers which would result from the application of the general rule above-mentioned would in the particular circumstances of this case be ridiculous and whether if so the numbers should be sorted out. It does not necessarily follow that those registrations which are not proved will as a result of such hearing be avoided, although it seems to me that those concerned to support the registrations should be prepared to explain how the registrations will if they are not modified in some ~~agreed way or in some way are going to be reasonable~~ <sup>like the same</sup> way that the Moor will be grazable in a reasonable and practical way.

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 6<sup>th</sup> — day of November 1979

a. a. *Paula Fuller*

Commons Commissioner