



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/228
206/D/229
206/D/230
206/D/231

In the Matter of Tawna Downs,
Cardinham, North Cornwall
District, Cornwall

DECISION

These disputes relate to the registrations at Entry Nos 3, 8, 12, 17, 18, 19, 23 and 24 in the Rights Section of Register Unit No CL. 27 in the Register of Common Land maintained by the Cornwall County Council and are occasioned (D/228) by Objection No X389 (relating to all the said Entries) made by Mrs Dinah Rosemary Redfern and noted in the Register on 9 November 1970, (D/229 and D/230) by Objection Nos X502 and X503 (relating to Entry Nos 17 and 19) made by Mr P Norman and noted in the Register on 2 September 1971 and (D/231) by Objection No X535 (relating to Entry No 19) made by Mr N T Worden and noted in the Register on 2 September 1971.

I held a hearing for the purpose of inquiring into the disputes at Bodmin on 10, 13 and 14 December 1976. At the hearing: (1) Mr John Henry Pethybridge and Mr Leslie George Winder (they with Mr Cyril John Bate since deceased as owners applied for Entry No 23, they being the then trustees of the will of Thomas Henry Tonkin), (3) Mr Ronald Henry Bate (he as tenant applied for Entry No 8), (4) Mr Terence Alec Cox (he with Mr Jack Cox applied for Entry No 12) and (5) Mr & Mrs R D Allely of Glynn Haven, Little Downs, Cardinham (as successor in title of Mr R A and Mrs M H Cooper who applied for Entry No 17) were all represented by Mr J G R Romary solicitor of Pethybridges, Solicitors of Bodmin; (6) Mr Robert Douglas May (he and his wife Mrs Sylvia Mary May applied for Entry No 3) attended in person and as representing his wife; (7) Mrs Redfern and (8) Mr Norman attended in person; (9) Mr Worden was represented by Mr M C Culver solicitor of Wolferstans, Solicitors of Bodmin; and (10) Cornwall County Council as registration authority were represented by Mr D M Gill who is in charge of their common registrations.

The ("the Unit Land") in this Register Unit comprises a tract (according to the Register) of about 240 acres called Tawna Downs situated on the east side of a side road ("the North-south Road") which from the Unit Land runs southwards down a steep hill to join the Bodmin-Liskeard Road (A38) about 2 miles away and runs northwards to a junction of side roads ("the Little Downs Road Junction") about $\frac{1}{2}$ a mile away; of the roads at this junction two lead eastwards to Mount, one leads westwards to Bodmin and one leads northwards to Old Cardinham Castle Farm and to Cardinham Castle Farm. The Unit Land is grassland, is fenced from the Northsouth Road and is valuable grazing.



The Rights Section of this Register Unit, in addition to the 8 disputed Entries above mentioned, contains 11 Entries (Nos 1, 2, 4, 5, 7, 9, 13, 14, 15, 20 and 21) which being undisputed (or the disputes about them having been resolved) have become final; these Entries all being of rights to graze cattle and/or ponies and/or sheep, were made on the application of:- 1 and 2 Mr P Norman (9c and 2¹/₂s; 9c and 2¹/₂s) in respect of Higher Tawna Farm and Hole Farm, 4 and 5 Mrs M G Runnalls (5c or 5p or 25s; 5c or 4p or 20s) in respect of Venn and Tawna, 7 Mr R H Bate (7c or 7p or 35s) in respect of part of Old Cardinham Castle Farm, 9 Mr E Juleff (39c or 39p or 195s) in respect of Cabilla Barns, 13 Messrs R D and R S May (10c and 30s) in respect of Sina Farm, 14 Mrs K H and Mr N T Worden (33c and 60s) in respect of Higher Hill Farm, 15 Mrs K H Worden (3c and 10s) in respect of Lower Hill Farm, 20 Mr D Redfern (40c and 80s) in respect of Welltown Farm, and 21 Rt Hon A V Viscount Clifden (60c or 60p or 300s) in respect of Pinsla Park Farm. In the Ownership Section Tehidy Minerals Limited are registered as the owners of all the Unit Land.

The grounds of Objection No X389 (to all the disputed Entries) are: "That the rights do not exist at all". The grounds of Objection No X502 (to Entry No 7) are: "That the rights should be fewer animals, namely two units (a unit representing one head of cattle or one pony or 5 sheep). The grounds of Objection No 503 and 535 (to Entry No 19) are: "That the right does not exist at all or if the right is proved that the right should comprise fewer animals namely one unit (a unit representing one head of cattle, or one pony or 5 sheep)".

The proceedings were much simplified by the following circumstances:- As regards Entry No 19 made on the application of the Rt Hon A V Viscount Clifden of a right attached to Kingswood Farm to graze 51 head of cattle or 51 ponies or 255 sheep, in a letter dated 19 November 1976 Rowse Jeffery & Watkins Chartered Surveyors of Lostwithiel said that their clients Lanhydrock Holdings (Jersey) Ltd as successors of the late Viscount Clifden withdrew their application. As regards Entry No 18 made on the application of Mr W G D Rogers of a right attached to Hole Villa to graze 9 head of cattle or 5 ponies or 25 sheep, in a letter dated 7 December 1976 he withdrew this Entry No. As regards Entry No 17 made on the application of Mr R A and Mrs M H Cooper of a right attached to part of Groveland to graze 8 cows with suckling calves and 40 sheep with lambs, their solicitors in a letter dated 26 October and 8 November 1976 said that on 14 January 1971 they had been sold the property to Mr M L Clemo and they had been informed that Mr Clemo had sold his interest to Mr and Mrs Allely, and Mr Romary (who mentioned conveyances dated 14 January 1971 to Mr Clemo and 26 November 1971 to Mr and Mrs Allely) said they were prepared to accept Mr Norman's Objection No X502 (reducing the number to two units). As regards Entry No 12 made on the application of Messrs J and T A Cox of a right attached to Galgeth Farm to graze 20 head of cattle and 40 sheep, Mr Romary said that the Entry is withdrawn. As regards Entry No 8 made on the application of Mr R H Bate as tenant, Mr Romary said that the Entry was withdrawn because it was substantially the same as Entry No 23 (now being supported) made on the application of the Tonkin Trustees as owners. So in the result the only substantial questions in these proceedings were as to the validity of the registrations at Entry Nos 3, 17, 23 and 24 being all in issue by reason of Objection X389 made by Mr Redfern and being: No 3 on the application of Mr R D and Mrs S S May of a right attached to part of Higher Trevorder to graze 11 head of cattle and 35 sheep; No 17 on the application of Mr R A and Mrs M H Cooper attached to part of Groveland to graze (numbers altered to meet Objection X502) 2 head of cattle or 2 ponies or 10 sheep; Nos 23 and 24 made on the application of the Tonkin Trustees attached to Cardinham Castle Farm to graze 40 head of cattle or 160 sheep and attached to Pinsla Downs to graze 20 head of cattle or 160 sheep.



Mrs Redfern said that her Objection (dated 24 September 1970) was made before the Court of Appeal judgment (Buckley LJ) given on 3 December 1970 in a case relating to the Unit Land; this judgement is reported under the name Tehidy v Norman 1971 2 QB 529 (also 1971 2 WLR 711). The appeal was from a decision of deputy Judge Ellison given on 13 January 1970 after a hearing on 24, 25, 26, 27 and 28 March and 17 June 1969, in the course of which the Judge heard or read the evidence of 33 witnesses. Mrs Redfern said she withdrew her Objections as regards all Rights Section Entries relating to rights of common treated by Buckley LJ as having been established, and contended that Entry Nos 3, 17, 23 and 24 not having been so treated should be treated as abandoned or incapable of proof; she understood that the applicants for the Entries had had an opportunity of participating in the 1969 County Court proceedings, and had declined or had been advised against doing so.

In my opinion the form of the County Court proceedings (as reported 1971 2 QB 529) was not such as require any person who in 1969 claimed or had a right of common over the Unit Land either to participate in the proceedings or lose his right, and accordingly I reject this contention. However with a view to shortening the proceedings before me, it was agreed between Mr Romary and Mrs Redfern that the evidence said by Buckley LJ to have been given before Judge Ellison could be treated as having been given before me.

The land ("the Entry No 3 Land") to which the rights registered at Entry No 3 is attached is an irregularly shaped piece about $\frac{1}{2}$ a mile long and a $\frac{1}{4}$ of a mile wide adjoining the east side of the Unit Land; in the application it is described as "part of Higher Trevorder".

Mr R D May in the course of his evidence produced a copy conveyance dated 4 July 1957 by which Mr J Horton conveyed first a field part of Trevorder containing 20.841 acres and secondly the pieces of land described in the Schedule containing 41.566 acres to Mr R J May (the witness's father who died about a year ago) and Mr R D May (the witness), and a copy of a conveyance dated 6 March 1948 by which Tehidy Minerals Limited conveyed to Mr R J Ralph the said 41.566 acres. The Register map shows that the Entry No 3 Land is the land comprised in the 1957 conveyance, that is 20.841 acres plus the 41.566 acres.

Mr May said (in effect):- His claim was for the 41.566 acres (being the part of the Entry No 3 Land nearest to the Unit Land). Since 4 July 1957 when he and his father purchased this land, they had put out cattle and sheep onto the Unit Land and were continuing to do so. He was a defendant in the Tehidy v Norman case (Buckley LJ said that a right of common over the Unit Land in respect of Sina Farm about 40 acres was in force in October 1941 when the Unit Land was requisitioned). Entry No 13 in the Rights Section of a right to graze 10 cattle and 30 sheep attached to Sina Farm made on the application of his father and himself has become final. The 41.566 acres is known as "Redrice" to distinguish it from Sina.

Among the exceptions in the 1948 conveyance is one in these words:- "Fourthly all and All manner of commonable rights". At the date of the 1948 conveyance Tehidy Minerals Limited owned the Unit Land, so that before 1948 there were no rights of common attached to the Entry No 3 Land over the Unit Land and none were by the 1948 conveyance granted. At the time the cattle and sheep were put on the Unit Land as described by Mr May, he and his father also owned Sina Farm; in my view any grazing done by them on the Unit Land after they became the owners of the 41.566 acres must be ascribed to the right attached to Sina Farm unless such grazing was in some way (of which there was no evidence) distinctive. Quite apart from the absence of any such distinction, there can be no right attached to the 41.566 acres unless I can from the grazing described



by Mr May presume that Tehidy Minerals or their successors in title have at some time after the 1948 conveyance granted it; in my opinion the grazing since 1957 as described by Mr May is too short a period to form a basis of any such presumption. For these reasons in my opinion the Objection as regards Entry No 3 succeeds.

The land ("the Entry No 17 Land") to which the right registered at Entry No 17 is attached comprises about 9 acres situate between the two roads leading from the Little Downs road junction to Mount.

The Entry No 17 Land was formerly part of the lands known as, or held with lands known as Old Cardinham Castle Farm. There are also lands mentioned below known as Cardinham Castle Farm; although locally the difference is well understood, I mention this now to avoid confusion. As regards the Entry No 17 Land, it was part of lands ("the Remfry-Bunt Lands") comprised in a conveyance dated 28 March 1931 to Mr R H Bunt by Mr F G P Remfry as successor in title of his grandfather Mr G F Remfry who died 13 February 1882 and his father Mr F E Remfry who died 25 April 1907; in this conveyance the Remfry-Bunt Lands are described as "the farm called Old Cardinham with the several closes...of land...together with the rights of pasturage...on the Wastes and Downs of the Manor of Warleggan...and also all that messuage tenement and farm called Groveland...together with the rights of common of pasture within the Manor of Cabilla Barn and of fuel within Cabilla Barn Wood respectively belonging to the said tenement of Groveland...all...delineated on the plan...coloured pink" (between 40 and 50 acres) and also (for the residue of a 800 year term) a tenement known as Kents Downs coloured yellow in the plan (about 15 acres). By a conveyance dated 28 August 1965 Mr G W Bunt (the son of Mr R H Bunt who died in or before 1955) conveyed the Entry No 17 Land to Mr B M Barr; by a conveyance dated August 1969 he conveyed it to Mr and Mrs Cooper (the applicants); by a conveyance dated 14 January 1971, they conveyed it to Mr Clemo, and by a conveyance dated 26 August 1971 he conveyed it to Mr and Mrs Allely.

In support of the Entry No 17 oral evidence was given by Mr R H Bate who produced or referred to (1) the said 1931 Remfry-Bunt conveyance, (2) a conveyance dated 29 September 1965 by which Mr G W Bunt conveyed to him (Mr R H Bate) the field OS 911 containing 3.321 acres and Kents Down both being part of the Remfry-Bunt Lands; (3) the said conveyance of 25 August 1965 by Mr G W Bunt to Mr B M Barr of the Entry No 17 Land (4) a counterpart lease dated 23 August 1876 by Mr G F Remfry of a tenement described as "Old Cardinham Groveland portion of Cardinham Castle Tenement Kents Down Symonds Tenement...containing seventy-five acres" (5) a statutory declaration made on 8 February 1868 by Mr T Courts and Mrs Meagor and (6) a booklet entitled A History of the Church and Parish of St Mewbred, Cardynham by the Reverend Gilbert H Doble 1939.

Mr Bate was one of the defendants in the Tehidy v Norman proceedings and reference was made to the following words in the Court of Appeal judgment:- "The evidence about that part of Castle Farm in respect of which a claim is made to grazing rights on the down is also not very extensive, but it includes the evidence of one G W Bunt, who was born on the Farm in 1915 and lived there for 50 years until 1975. He and his father before him farmed this farm throughout this period. His evidence is to the effect that during all this time down to October 1941 Tawna Down was grazed from this farm".

Mr Bate said (in effect):- He succeeded in the Tehidy v Norman proceedings by virtue of his ownership under the said 1965 conveyance of part of the Remfry-Bunt Lands. He explained that although his father in 1931 became tenant of part of the Remfry-Bunt



Lands he was never tenant of the whole of the lands as shown in the 1931 conveyance plan; his father's part was known as "Bates Old Cardinham Farm", and the part farmed by Mr Bunt was known as "Bunts Old Cardinham Farm"; he identified Groveland with the part of the Remfry-Bunt Lands between the two roads from Lower Downs Road Junction to Mount.

Mr G W Bunt who was born in 1915 on Old Cardinham Castle Farm, was the owner under the 1931 conveyance and lived there for about 50 years until 1965, gave evidence in the course of which he said (in effect):- In 1965 he gave evidence in the County Court proceedings; he and his father before him farmed this farm; "it was actually three tenements, this is where there were snags; from this farm we grazed the Unit Land without any hindrance whatsoever". He used to go down to Cabilla Barn Wood to cut fern when he was a youngster. Cabilla Barn was (and is) the farm so called south of the Unit Land.

Mr Bunt's evidence before me was evidently not as complete as that given by him in the County Court and summarised by Buckley LJ, and by him described as "not very extensive". Nevertheless I should not I think give it any less effect and I conclude therefore that a grazing right over the Unit Land in respect of the Remfry-Bunt Lands was in existence in October 1941. The division of these lands by Mr G W Bunt when in 1965 he sold it in parts did not extinguish these rights. There was never any reason why they should not be apportioned. So I conclude that a grazing right attached to the Entry No 17 Land has been proved.

I should record that Buckley LJ in his judgment makes no mention of the 1931 conveyance. The words in it about the rights of common of pasture within the Manor of Cabilla Barn might refer to rights over the Unit Land. In the 1939 history, there is a reference to Lord Clifden's Atlas 1696, and the Manor of Cabilla is said to include Cabilla Barn and numerous other places. As used in the conveyance the words apparently limit the rights attached to the Remfry-Bunt Lands to the Groveland part, a limitation inconsistent with the conclusion of Buckley LJ based on evidence of user. Mr Romary contended that the 1868 declaration and the 1876 lease showed that since that date Grovelands had been farmed with Old Cardinham Farm. I have too little information to form any conclusion as to the effect of the words in the 1931 conveyance, except that I cannot imagine how they could have an effect prejudicial to the present claim in relation to the part of the Entry No 17 Land known as Groveland.

Upon the above considerations my decision is that the Objection as regards the Entry No 17 Land fails.

The land ("the Entry No 23 Land") to which the right registered at Entry No 23 is attached, comprises 76.498 acres and was by a conveyance dated 12 February 1931 conveyed by the executors of T C Viscount Clifden (he died on 19 July 1930) to Mr T H Tonkin (he died 9 March 1961). By an assent dated 1 January 1960 these 76.49 acres became vested in Mr C R J Bate, Mr J H Pethybridge and Mr L G Winder upon the trusts of his will.

In support of this registration further oral evidence was given by Mr R J Bate, and also by Mrs E Juleff orally and by Mrs L A Tonkin by a statutory declaration made on 13 December 1976. Against it, Mrs Rodfern gave oral evidence.



From the judgment of Buckley LJ, it appears that the Unit Land was conveyed to Tchidy Minerals by Viscount Clifden on 19 January 1920, and I infer that until then the Entry No 23 Land and the Unit Land were in common ownership. The Unit Land was requisitioned in October 1941 and its subsequent history is set out in the judgment of Buckley LJ. So applying the law as stated by him, I am concerned to determine how far grazing rights were enjoyed from the Entry No 23 Land over the Unit Land between 1920 and 1941, and I must assume that before 1920 there were no rights of common beyond such as a landlord may over his own land permit one of his tenants to exercise. In this respect the Entry No 23 Land is different from the Remfry-Bunt Lands, in respect of which the rights over the Unit Land may have existed from time immemorial.

In and before 1920, Mr Charles Lawry was tenant of the Entry No 23 Land. In 1925 he died, and was succeeded by his widow Mrs Annie Lawry. In 1927 their daughter Miss E A Lawry married Mr T H Tonkin, and they went to live at Cabilla Farm; and Mrs Lawry went there too; Mr Tonkin looked after the Entry No 23 Land. In 1928 Mr George Bate moved to Cardinham Castle Farm House (OS 683 on the Entry No 23 Land); his wife was Mr Tonkin's sister, and their son Mr R H Bate (who gave evidence, then aged 6) went with them. In 1931 Mr Tonkin became the owner of the Entry No 23 Land, and shortly afterwards Mr G Bate became a tenant of part (about 30 acres) and Mr Hodge became the tenant of the remainder. It was not until 1944 that Mr G Bate took over the whole Farm as tenant.

As to the grazing on the Entry No 23 Land on the Unit Land before the time when Mr R H Bate could remember (about 1932) the evidence of Mrs Juleff and of Mrs Tonkin was different. Mrs Juleff who was born in 1901 said (in effect):- Her father and mother went to Old Cardinham in 1917, he father rented a cottage from Mr Lawry; when she was 17 she went to Cabilla Farm and has been there ever since. She said generally from when she was 13 years of age cattle and sheep from Cardinham Castle Farm had been turned out onto the Unit Land. Mrs Tonkin who was born in 1895 said: "During the whole time I lived at Cardinham Castle (all her life until 1927)...the cattle on the Farm, as well as the cattle from all the neighbouring farms, used to go out on all downs locally including Long Downs, Little Downs, Bunny's Hill and Creslea Downs".

It is I think unfortunate that Mrs Tonkin was unable to give oral evidence, but I cannot disregard the circumstance that she does not in her statutory declaration mention the Unit Land particularly at all. Nobody at the hearing suggesting otherwise I cannot disregard the possibility that her reason was that she felt she could not truthfully say that cattle from the Farm before 1927 used to go onto the Unit Land. While Mrs Juleff was giving evidence I formed the opinion that what she was saying about grazing from the Farm on the Unit Land was a matter of inference, rather than actual personal knowledge, from what she remembered having seen when she was living at her father's cottage and what she had heard while at Cabilla Farm, and that she was never personally concerned with what happened. The position of Mrs Tonkin must I think have been very different; she would have known whether cattle went from the Farm onto the Unit Land. Its nearest point is about $\frac{1}{2}$ a mile away (unlike the Remfry-Bunt Lands whose nearest point is about 200 yards).



by Mrs Redfern the relevant situation of these lands is such that it is unlikely that there is in respect of the Entry No 24 Land any right of common over the Unit Land. Accordingly my decision is that the Objection as regards the Entry No 24 Land succeeds.

For the above reasons I refuse to confirm the registrations at Entry Nos 8, 12, 18, 19, 23 and 24 in the Rights Section of this Register Unit and I confirm the registration at Entry No 17 with the modification that for the figures "8" and "40" in column 4 there be substituted the figures "2" and "10" respectively.

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 17th day of March _____

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a a. Basia Julia

Commons Commissioner