



In the Matter of The Sandbank,
Pendower, Veryan, Carrick District,
Cornwall

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 734 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X1043 made by The National Trust for Places of Historic Interest or Natural Beauty and noted in the Register on 19 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Camborne on 8 October 1980. At the hearing Veryan Parish Council on whose application the registration was made, were represented by Mr R J Julyan their chairman; and The National Trust for Places of Historic Interest or Natural Beauty were represented by Mr C Nicholls solicitor with Pethybridges, Solicitors of Bodmin.

The land ("the Unit Land") in this Register Unit is approximately triangular; and is for the most part compared with its surroundings on the west north and east, very flat. On its south side (about 175 yards) it is bounded for about half by the beach (here a short distance above HWMMT) and for the other half by a stream which nearby flows into the sea and which is crossed by a footbridge; on its west side (about 200 yards) it is bounded by the said stream which from higher up flows down a narrow valley; on its north-east side (about 250 yards) it is bounded by a line corresponding (a little more or less) where the land starts to slope steeply upwards. The Unit Land is for the most sand (blown or cast up by the wind or the sea) with some grass and scrub.

Mr Julyan who has resided in the Parish all his life (65 years) and has been a member of the Parish Council for about 25 years and their chairman for about 10 or 12 years, in the course of his evidence produced the documents specified in Part I of the Schedule hereto. He asked that the affidavits and statements so produced be treated as evidence by the persons who made them. He said recently (26 September 1980) he had been told that in proceedings entitled "The Quadrant, Heath Road" a Commons Commissioner had transferred a registration from a Register of Town or Village Greens to a Register of Common Land, and contended that I should in this case effect such a transfer the other way round; accordingly (so he explained) his evidence was directed to showing that the Unit Land was a village green, he having in mind the preservation of the rights of Tregory, Ruan, Philleigh, Gerrans and Veryan. I have in the Schedule noted the locations particularly mentioned in the documents there listed.

As to his own personal knowledge of the Unit Land Mr Julyan said (in effect):-
As a boy after he had a bicycle (1928-29) he used to go to the Unit Land and saw people playing football on it. Before the war (1939-45) it was bare ground with the grass kept down by rabbits. During the war much of it was covered with "dragon teeth" and steel scaffolding (for defence); when the National Trust



took over they tore up trees and removed some of the grass. In bad weather and with a southwest wind the sea comes over the Unit Land up to the face of the dunes (some of which are included in the Unit Land). The Unit Land is approachable by a road from the west which goes as far as Pendower House from which to get on to the Unit Land the footbridge must be crossed; from the northeast it is accessible by road, and along it people come with cars which they leave parked on the Unit Land. In about 1971 the National Trust started charging drivers for parking but after public protest stopped doing so. He had seen an atlas of the Manor of Elerchr (now Elarkey) on which the Unit Land was marked as "common to four tenants"; he conceded these rights had been eroded away though he thought that some of them must have come down to the present day; however no rights of common had been registered under the 1965 Act by the Parish Council or anyone else. The house (or houses) with the land held therewith situated a short distance northeast of the Unit Land are known as "Hearts Content"; they were completed some time before the 1939-45 war. A small building on the Unit Land (a toilet block) was put up by the National Trust at his suggestion as chairman of the Parish Council in the late 1960s.

Notwithstanding that the National Trust had not before the hearing had any notice that it was the intention of the Parish Council to contend that the registration should be transferred to the Register of Town or Village Greens, I heard evidence on their behalf by Mr G E Trinick who is and has been since 1950 their Regional Director and Agent in Cornwall, leaving for a further consideration any application they might make for an adjournment or other relief on the grounds that they had been taken by surprise. In the course of his evidence Mr Trinick produced the documents listed in Part II of the Schedule hereto. The 1916 and 1961 conveyances are the same land save that the Hearts Content land is not included in the later; in both conveyances the land conveyed includes the Unit Land, being described as "Gwendra Farm" of about 140.74 acres in the first conveyance and of about 130.58 acres in the later conveyance.

Mr Trinick said that the land so acquired by the National Trust had so he understood up to the date of the acquisition always been let with Gwendra Farm; however after their acquisition at his suggestion the National Trust excluded the Unit Land and much of the land higher up by the stream from the tenancy; thus it came to be in hand and was in accordance with the policy of the National Trust left open for use by the public in accordance with the Byelaws of the National Trust. As to the history of the land he understood from a document which Mr Julyan showed him (obtained from the County Record Office) that in the 17th century there were several farmers, each having a little farm at Gwendra, each being a tenant and each having a right of common with the three others over the Unit Land but that from some time before the 1842 Award Gwendra was (as therein appeared) all let together.

As to the Unit Land being registerable as a Town or Village Green, I shall assume as I did in my decision referred to by Mr Julyan (dated 24 July 1979 given under reference No. 236/D/103) that I have jurisdiction on a reference of a dispute such as this I am now considering to modify a registration by transferring it from the Register of Common Land to the Register of Town or



Village Greens. The 1965 Act definition of a town or village green is (so far as now relevant) "land ... on which the inhabitants of a locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years".

In Halsbury Laws of England (4th edition 1974) volume 6 paragraph 525, with reference to the nature of the enjoyment which must be proved to establish such a customary right it is said: "the custom must be limited to the inhabitants of the parish, manor or other district for which it is claimed. The evidence must be consistent with the custom alleged and must not be too wide. Evidence proving that all the world went over and played games on a piece of waste land or common will not establish the custom for a particular parish".

As to whether there is in this case a relevant "locality":- Those who enjoyed playing on the Unit Land came from a number of villages at various distances from the Unit Land; as I measure in a straight line on the 1" OS map as follows (all approximate): Veryan 1.3 miles, Ruan High Lanes 1.2 miles, Ruan Lanithorne 2.5 miles, Philleigh 2.8 miles Gerrans 3.5 miles and Tregory 4 miles. Although any one of these villages might be regarded as a locality considered by itself, they cannot in my opinion in any now relevant sense be together regarded as one locality. Having considered the affidavits and statements produced by Mr Julyan and what he himself said, I find that the enjoyment of the Unit Land as he described by persons from the places above named and elsewhere in the neighbourhood was not essentially different from the enjoyment any member of the public could have had; the circumstance that the enjoyment described was often organised does not I think affect this finding. Accordingly my conclusion is that the evidence did not establish the customary right claimed.

Further in my view the evidence did not establish that the inhabitants of any locality have within the meaning of the other part of the 1965 Act definition "indulged in such sports and pastimes as of right for not less than twenty years". Under the Act the 20 years is that immediately preceeding 5 August 1965 (the date of the Act). I find that as from 1961 any such enjoyment was in accordance with the policy and byelaws of the National Trust permitting enjoyment by the public and accordingly was not "as of right" within the meaning of the definition.

The documents produced by and the evidence given on behalf of the National Trust are against the Unit Land being common land within the meaning of the 1965 Act. There was no contrary evidence; and indeed as I understood him Mr Julyan did not contend that the registration could, if the land is not a town or village green, be supported.

So being of the opinion that the land in question is neither a town or village green nor common land, I refuse to confirm the registration.

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.

[SCHEDULE OVER



SCHEDULE

(Documents produced)

Part I, on behalf of the Parish Council

- 30 September 1980 Letter from Pethybridges on behalf of National Trust to Veryan Parish Council.
- 14 April 1978 Letter from Carrick District Council to Veryan Parish Council.
- 3 October 1980 Affidavit of Mrs M Sincock (Ruan).
- 3 October 1980 Affidavit of Mrs Gladys Grigg (Veryan).
- 3 October 1980 Affidavit of Mr Llewellyn Rounsevell (Veryan).
- 3 October 1980 Affidavit of Mr Gerald A J Morse (Truro, Probus, Tregony, Gerrans, Veryan and "other places").
- 3 October 1980 Affidavit of Mr Percy Mingo (Tregony).
- 3 October 1980 Affidavit of Mr Wilfred Charles Lidgley (Tregony).
- 3 October 1980 Affidavit of Mr George Ernest Miners (Ruan).
- 3 October 1980 Affidavit of Mr Kenneth James Gregory Coad (Ruan Sunday School).
- 3 October 1980 Affidavit of Mrs Nellie Phillips (Ruan Sunday School).
- 3 October 1980 Affidavit of Mr Cyril John Johns (? Gerrans, waggons from Treluggan and Mathers Collins).
- 3 October 1980 Affidavit of Mrs Guinevere Collins (Portscatho).
- 3 October 1980 Affidavit of Mrs Edith Elizabeth Andain (Gerrans).
- 3 October 1980 Affidavit of Mr John Ward Dingle (Treworlas and Philleigh).
- 3 October 1980 Affidavit of Mrs Gertrude Maude Chester (Ruan Laniorne and Trewartha).
- 3 October 1980 Affidavit of Mr Bertie Hayes Dowrick (question and answer) (Veryan but "not frequented by parishioners only but to whosoever will/may come").
- 3 October 1980 Statement signed by Mr F O Dowrick (Veryan).
- 3 October 1980 Statement signed by Mr A C Barnicoat (Tregony).



- 3 October 1980 Affidavit of Mr Eric Arthur Miners (Ruan High Lanes).
- 3 October 1980 Affidavit of Mrs Jeanette Rowe Hearle (born at Gwendra Farm in 1894; father lessee from approximately 1893).
- "" Post card showing 2 girls on beach (one identified as Mrs Collins above mentioned).
- "" Glazed photograph "for Cyril please don't burn it".
- "" Another photograph of a Sunday group from Gerrans.
- "" Another photograph of a group.
- 30 July 1880 Extract from log book of Tregony Board School, being a quarto manuscript book starting 15 Feb 1870 when School opened, until 31 October 1919.
- 6.10.1980 Statement by Rev Ken Rogers, Parish of St George the Martyr (Truro).
- Part II, on behalf of the National Trust
- 28.8.73 Letter from Parish Council to Mr Prideaux (agent for National Trust).
- 27 February 1978 Copy letter from National Trust solicitor to Parish Council.
- 2 June 1961 Conveyance by Dr T L Bonar and Mrs M E Bonar as trustees of a principal vesting deed dated 18 November 1933 to the National Trust of Gwendra.
- 29 September 1916 Conveyance by Mr H de G T Warter and Mr H E Verey as personal representatives of Mr Digby Collins who died 25 January 1960 to Mr T M Bonar of Gwendra "now in the occupation of J H Middlecoat as yearly tenant".
- 8 November 1842 Tithe apportionment award to the Parish of Veryan with map showing Unit Land as included in lands owned by Mr Edward Collins, occupied by Mr W C Middlecoat and shown as tithable.
- 1961 Abstract of the title of Messrs T L Bonar and M E Bonar to Gwendra Farm commencing with a settlement dated 29 September 1917 and made by Mr T M Bonar.

Dated the 8th —

day of January 1981

a. a. Boden Fuller