



In the Matter of tract of land known as
Goonhilly Downs, St Keverne, Cornwall

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and Entry No. 2 in the Rights Section of Register Unit No. CL 442 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by two Objections (1) No. X1070 made by C R Vaughan and noted in the Register on 14 August 1972, (2) No. X1255 made by Mr P A Tylor and noted in the register on 14 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Truro on 13 June 1979. The hearing was attended by Mr Gill of the Registration Authority, Mr J Richards a member of and representing St. Keverne District Council, Mr B C Peters, Solicitor of the firm of Hancock and Lawrence, on behalf of Mr Vaughan, Mr P A Tylor, Mr F Gilbert of Counsel on behalf of Nature Conservancy Council ("NCC"), and Mr M Steen of Counsel on behalf of Mr A Hughes.

The registration in the Land Section was made on the application of St. Keverne Parish Council, and a further application by Cornwall Naturalists' Trust is noted. The registration at Entry No. 2 is of a grazing right and was made on the application of Mr A Hughes. NCC claims to be successor to Mr P A Tylor in ownership of land comprised in the Register Unit ("the Unit Land") and accordingly supports Objection No. X1255, the grounds of which are that the land was not common land at the date of registration.

Mr Vaughan's Objection relates only to a very small portion of the Unit land lying at the N.E. tip of the rectangular piece near Traboe. The ground of this Objection is that this portion is a small vegetable garden, part of a private dwellinghouse and gardens, and no interested party resisted this Objection. As regards the more comprehensive Objection No. X1255 neither the Parish Council nor Cornwall Naturalists' Trust were interested to uphold the registration as common land, so that the dispute to be resolved was between Mr Hughes and NCC in respect of Mr Hughes's claimed grazing right. This right is claimed not over the whole of the unit land but over the parts which lie east of the red lines X-Y-Z and U-V on the Register Map, (I will refer to those parts as "the servient tenement").

2. The property to which the right is claimed to be attached is the New Inn Traboe, comprising land of some 17½ acres which adjoins the servient tenement at different points. The right claimed is "to graze 30 head of cattle or 12 ponies and 200 sheep", and Mr Hughes is claiming as tenant of the New Inn property. He has lived on this property for 36 years as tenant under an underlease granted in 1943 by a Mrs Oates, who at that time herself held under a 99 year lease granted in 1890 but acquired the freehold about 1940. She died in 1966 and her son Mr C S Oates is her successor in title.

Mr Hughes in evidence said that he regarded the servient tenement as 'Goonhilly Downs' on which the New Inn land abuts, and that throughout his occupation of New Inn he had grazed ponies and cattle (not sheep) on the Downs. To reach the



southern section of the servient tenement the animals have to cross a roadway to which there are seven gates giving access. Mr Oates in evidence said that he had known the area all his life - some 67 years - and remembered cattle being grazed from New Inn since about 1924 when a Mr Osborne Roberts was the tenant: and that Mr Hughes had been grazing since he was in occupation of New Inn.

No witnesses were called by Mr Gilbert, who however produced two documents (1) a Conveyance dated 29 September 1934 by which P D Williams conveyed to M P Williams a number of farms and lands including waste land part of the tenement of Resuic subject to rights of grazing on Close No. 1838 on the O.S. Map: (2) an Assent dated 29 December 1976 by the Executors of P D Williams in favour of Mr P A Tylor of lands which included land known as Resuic Waste and Resuic Common, which from the plan attached to the Assent appeared to comprise the Unit Land. As I understood, Mr Gilbert's suggestion by reference to these documents was that the Unit land was all part of Resuic Waste which (in the 1934 Conveyance) was expressly recognized as subject in part to rights of grazing, but with no reference to Mr Hughes's claimed right.

In my view the evidence of Mr Hughes and Mr Oates established the existence of grazing rights over the servient, though not for the numbers of animals claimed. Mr Hughes admitted that he picked the numbers "out of the air" and that he had never grazed sheep: and Mr Oates's evidence as to grazing by Osborne Roberts was that about 15 cattle and 3 ponies grazed on most days.

Mr Gilbert's main submission was that this was a claim to prescriptive rights of grazing by those who were tenants, not freeholders, of the property and that such rights are not obtainable by a tenant on his own behalf, only on behalf of the owners. It is of course the case that a right claimed by prescription must be claimed in favour of the fee simple owner of the dominant tenement, but a tenant can acquire a right against another's land which will enure for the benefit of his landlord's fee simple.

In cross-examination Mr Hughes did say that he claimed as tenant of Mrs Oates, not on her behalf, but in re-examination he said he claimed the right as going with the property. It is unreasonable to suppose that a layman giving answers to questions on this point is doing any more than stating facts as he sees them viz. that he made the claim as in fact the tenant - and the form of application to register rights of common indicates that the capacity in which the applicant is entitled to apply is "owner" or "tenant" - and that he was not expressly applying on behalf of his landlord, though he does recognize that it is a right going with or attached to property. I do not therefore accept Mr Gilbert's submission that the claim is not sustainable, as it is in my view a claim legitimately made by a tenant for a right attached to property.

In the result I confirm the registration of Entry No. 2 in the Rights Section with the modification that there be substituted for the particulars in column 4 a right "To graze 15 head of cattle or 3 ponies over those parts...J-V". The right will not extend to the part of the Register Unit to which Mr Vaughan's Objection relates, as to which part I refuse to confirm the registration at Entry No. 1 in the Land Section.



As regards the part of the Register Unit lying to the west of the red line, no rights of common are registered over this part nor was any evidence adduced that it is waste land of the manor, and I refuse to confirm the registration at Entry No. 1 in the Land Section in relation to this part.

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 22 August 1979

L. J. Morris Smith

Commons Commissioner