



In the Matter of Trewarmett Down and Prince of
Wales Quarry, Tintagel

DECISION

This dispute relates to the registration at Entry No. 1 and Entry Nos. 1, 2 and 3 in the Land and Rights Sections respectively of Register Unit No. CL 339 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X190 made by His Royal Highness Charles Prince of Wales, Duke of Cornwall and noted in the Register on 4 September 1970 and to the registration at Entry No. 1 and Entry Nos. 1, 2 and 3 in the Land and Rights Sections respectively of Register Unit No. CL 201 in the Register of Common Land maintained by the said Council and is occasioned by Objection No. X195 made by His Royal Highness Charles Prince of Wales, Duke of Cornwall and noted in the Register on 4 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Lostwithiel on 1 April 1981. The hearing was attended by Mr P J T Knight appearing for himself and his wife Mrs D R Knight and Tintagel Parish Council, Mr H J F Brown appearing for Mr H J Brown, Mr J H Morgan of Messrs Parnall Godwin and Chegwin, Solicitors of Launceston appearing for Mr A P Scott and Mr Sher of Counsel instructed by Messrs Farrers, Solicitors of London appearing on behalf of His Royal Highness.

The two Register Units adjoin and all parties agreed that the two references should be heard together. Mr F who had entered an objection to each application had withdrawn his objection before the hearing. *Mr Mitchell*

claimed Mr Knight said that he had farmed Trewarmett Farm continuously since 1946. He had purchased the farm as sitting tenant in 1960. He had exercised the rights claimed continuously since 1946, ~~claiming~~ by grazing cattle and had never been challenged. In 1970 he sold most of his land to Mr Scott. Cross-examined he agreed that quarrying was taking place on part of the land. The grazing was of poor quality and the whole area could only support 20 head of cattle on a permanent basis. Grazing and mining did not conflict.

There is a line running East and West in the shape of a continuous low mound which divides Unit CL 339 in half. He sold some land to Mr Scott in 1970 and some more in 1980. He grazed different numbers of cattle on the Units at different times of the year. The grazing is a convenience. His own land is good grazing land. There were times when there were many more than 20 head of cattle on the Units.

Mr Scott who claimed to be the successor to the application made at Entry No. 3, produced his documents of title. In a Conveyance dated 8 May 1912 to one of his predecessors in title property is conveyed 'Together also with right of pasture and all other commonable rights of the vendor in on and over King's Down and Trewarmett Down'. He had known the Quarry for 13 years. At



first quarrying took place over only one acre; now it extended to four acres. Last week it had been suggested to him that the quarry should be fenced. There is an opening from his land to the quarry. The Units were not good pasture for use in a permanent basis. Cattle come from some distance away to graze on the pasture. He did not know how the numbers in his claim were calculated. When shown a copy of a Tithe Map by Mr Sher, the witness said that Plot No. 875 which was coloured blue comprised both Register Units. Mr Scher produced a series of 14 Mineral Licences covering the period from 1851 to 1978 relating to Enclosure No. 875 all of which imposed on the licensee an obligation to restore the surface and replace the top soil when quarrying ceased.

Mr Jack Hickish of Launceston said that he had been Land Steward for the Western District of the Duchy Estates for 23 years. Register Units CL 339 and 201 comprised about 70 acres and would support 20 cows though the quality of the land might eventually improve. No one had ever tried to stop the quarrying operations. The East West line of the low mound had never been a stock-proof barrier.

In cross-examination the witness accepted that the persons who grazed beast on the Units would not be likely to know the terms on which quarrying licences had been granted. There had recently been an increase in the pace of expansion of mining activities.

Mr Sher referred to an Act of Parliament 7+8 Vic c. 105 S.44 of which had abolished all rights (in gross but not appendant or appurtenant) of pasture or common right over land owned by the Duchy with a provision (S.45) for compensation at the discretion of the Commissioners. The Commissioners were two Barristers of Lincoln's Inn and a Captain in the Royal Engineers whose task was to inquire into and record the assets of the Duchy.

In their award the Commissioners had found that there was no manorial waste of the Duchy. Mr Sher submitted that any rights of common must therefore depend on enjoyment since 1845 and none of the applicants had succeeded in proving user for the period of 30 years required by the Prescription Act 1832. He further submitted that, if I were against him on his first submission, I should nevertheless find that any rights of common were subservient to the right of the Duchy and its licensees to quarry.

For the proposition he relied on the case of Bateson v Green and another (1793) S.T.R. 411, in which it was held on appeal that the plaintiff which was entitled to pasture cows on a common had no cause of action against the lord of the manor for loss of grazing due to the digging of clay-pits dug on the common, by the lord and his licensees which resulted in an insufficiency of grazing for the l. The evidence showed that clay had been dug for the past 70 years. There was no evidence that there had been any recent increase in the area of land from which clay was dug. Mr Sher, submitted that this principle applied equally to a claim under the Prescription Act as it



did to a claim of customary right. He also relied on Halsbury's Laws of England (4th Ed) vol VI para. 647 and vol XIV para. 158.

Accordingly Mr Sher claimed that I should refuse to confirm any of the registrations or that if I found the applications for rights made out I should declare that they were subservient to the right to quarry.

He also produced some correspondence covering the period 1858-1869 in which Officials of the Duchy appeared to take a severe attitude to encroachments on Trewarmett Down.

Notwithstanding the passing of the Act 7 and 8 Vic C.105, I am satisfied that in the case of the property formally owned by William Boney and acquired by Mr Scott in 1970 enjoyed rights of grazing. Mr Knight had exercised his rights from 1946 for a period long enough to satisfy me as to their lawful origin even though user after the date in 1970 does not count for the purposes of the Prescription Act 1832.

Mr Brown the remaining applicant for rights was unable to attend the hearing because of illness and his son was not old enough to recall what user his father had made of the Common before 1970. I therefore propose to adjourn this part of the reference. If the parties can agree, the matter can be dealt with, without a further hearing. Otherwise this part of the reference must await a hearing when Mr Brown can be present.

On Mr Sher's submission that the rights of grazing are subservient to the right of the Duchy to quarry this is not in my view supported by the evidence. No one suggested that quarrying had taken place to the *detriment* of grazing rights.

For these reasons I confirm the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 and 3 in the Rights Section in Register Units CL 339 and 201. The remainder of the reference is adjourned.

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 14th day of June 1981

George Hammett

Commons Commissioner