



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/752
205/D/753

In the Matter of unnamed land at
Drym, Praze, Crowan, Kerrier
District, Cornwall

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL 682 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X 206A made by the said Council and noted in the Register on 17 January 1973.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 6 October 1980. At the hearing Mr Bernard Raymond Burnett on whose application the Rights Section registration was made, was represented by Mr A R Butterfield solicitor of Walter & Barbary, Solicitors of Camborne; and Cornwall County Council were represented by Mr D M Gill.

The land ("the Unit Land") in this Register Unit is irregularly shaped, being approximately 150 yards long from east to west and about 60 yards wide. The Rights Section registration is of a right attached to Hillview Farm "to take quarrying stone". The Land Section registration was made in consequence of the application for registration of the right. The grounds of Objection are: "That the land was not common land at the date of registration"; by section 5(7) of the 1965 Act, the Objection must be treated as an objection to both the Land Section and the Rights Section registrations.

Mr Burnett who in 1953 from Mrs Winifred Champion purchased Great Drym Farm, formerly called Hillview Farm, in the course of his evidence described the use of the Unit Land made from the Farm during his ownership, and also as he understood from conversations with Mrs Champion the previous use made during and before her ownership. As to his ownership period, he said (in effect):- when he purchased his Farm there were on the Unit Land two old shafts (mining), but there had apparently been no mining activities for many years, and such buildings for mining purposes as might be expected to have been at one time around the shafts had almost entirely disappeared. When he purchased his Farm it included a farmhouse and some farm buildings. To these during his ownership he had added (erecting them on grass land near the existing farmhouse and buildings) 14 poultry houses, having on the average about 15,000 to 20,000 birds. In all he now had about 100,000 birds. For part of the foundations of these newly erected houses, had been used stone from the Unit Land; also stone had been taken from the Unit Land to surface tracks between them and the public road, and between various parts of his Farm. The stone so taken away was to a small extent part of former buildings on the Unit Land, but the greater part was stone which had during mining operations been brought up from the mine and left near the tops of the shafts (being from the mining point of view a waste product). Now of this stone there was only about 100 tons left. Nobody had ever claimed to be the owner of the Unit Land or had objected to the stone being taken as he described. As to what he understood from Mrs Champion (she was 89 years of age when she died), Mr Burnett said:- Some of the farm buildings were constructed from stone off the Unit Land; one of the windows in the



farmhouse was taken from a "Council House from the mine". She had constantly used stone to repair access roads to and from and around the Farm. To fix the dates, Mr Burnett produced a conveyance dated 20 June 1945 by which his Farm was conveyed by Mr F White to Mrs Champion.

I also had a statement dated 6 October 1980 from Mr Henry James whose father took over Drym Farm in 1930 and who himself took over in 1937 who said they were the only ones who removed "hedging stone", that he also cultivated the Unit Land, and put the fence up and grazed his cattle on it and also cut hay on many occasions. Mr D L C Roberts of Fernside, Praze, volunteered to give evidence; but what he said did not in any material respect affect that given by Mr Burnett as summarise above save that he may be mistaken thinking that the owners or occupiers of his Farm were the only person who took stone from the Unit Land.

Mr Butterfield referred me to Halsbury Laws of England (4th edition 1974) volume 6 paragraph 585, and to *Heath v Deane* 1905 2Ch 86, which shows that a right of digging for sand, stone, etc. has been recognised, and that it may be claimed by the freehold and copyhold tenants of a manor. But this paragraph must I think be read with paragraph 504: "a right of common has been defined as a right which one or more persons may have to take or use some portion of that which another man's soil naturally produces". In this case the stone taken by Mr Burnett, Mrs Champion and Messrs James was not naturally produced. The owner of the soil of the Unit Land could have expressly granted a right of taking the stone from his ruined buildings or from his mine, but of any such grant there was no evidence. The possibility of presuming or implying a grant take the product of an artificial work from evidence that the product has been actually taken is discussed in *Burrows v Lang* 1901 2Ch 502: as to this I need only say that none of the legal difficulties mentioned in that case were in this case overcome.

I need not consider whether the at present unknown owner of the Unit Land or anyone else has any legal right to object or would have any wish to object to taking of stone as Mr Burnett described; I am only concerned to determine whether the evidence put before me can be a basis of a registration under the 1965 Act either a right of common, or of the Unit Land being a common within the meaning of the Act. For the reasons above set out and in the opinion that it does not, and accordingly I refuse to confirm the registrations.

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 28th — day of November — 1980

a. a. B. Fuller