



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/245
206/D/246

In the Matter of Warleggan Down,
Warleggan, Caradon District,
Cornwall

DECISION

These disputes relate to the registrations (D/245) at Entry Nos 10 (now 38), 11 (now 39), 19 (now 35, 20 and 21 and (D/246) at Entry No 2 (now 32) and 12 in the Rights Section of Register Unit No CL. 135 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by (D/245) by Objection X979 and (D/246) Objection No X1437 made by Warleggan Down Commoners Association and noted in the Register on 11 April 1972 and 8 December 1972.

I held a hearing for the purpose of inquiring into the disputes at Bodmin on 10 December 1976. At the hearing (1) Mr J R F and Mrs J F Rogers (Entry No 21 was made on their application), (2) Mr W J Harris (Entry Nos 38 and 39 were made on his application), and (3) Mr W J D Harris (Entry No 12 was made on his application) were all represented by Mr J G R Romary, solicitor of Pethybridges, Solicitors of Bodmin; (4) Mr R F Lyne (Entry Nos 32 and 35 were made on his application) was represented by Mr P N Hewlett, solicitor of Parnell Goodwin & Chegwn, Solicitors of Launceston; (5) Colonel J E Fry as Hon Secretary of Warleggan Commoners Association (they made the said Objections) was represented by Mr P Norman chartered surveyor of Bodmin; and (6) Cornwall County Council as registration authority were represented by Mr D M Gill who is in charge of their commons registrations.

The land ("Warleggan Down") comprised in this Register Unit is about 700 yards long from north to south and about 500 yards wide from east to west; for the purposes of exposition I disregard the narrow strip which projects from the middle of the west side toward Carburrow. Warleggan Down is crossed by and is open to a through road leading northwards from the village of Warleggan; this road enters Warleggan Down at its southeast corner at a point about 600 yards from the Village. Warleggan Down can also be approached from the Village by a side road which enters it at its southwest corner (also about 600 yards from the Village) and which then crosses and is open to Warleggan Down near its west side, and after crossing the said strip terminates at Carburrow.



The Rights Section contains (if former Entries which have been replaced by new Entries be disregarded) 19 subsisting Entries. Of these, 12 have become final, they being of rights to graze a multiple of 1 head of cattle or 1 pony or 5 sheep attached to various farms, amounting altogether to 282 head of cattle or 282 ponies or 1410 sheep. The remaining 7 Entries (being the disputed Entries above mentioned) are of similar grazing rights (except Entry No 12 which is for cattle only), amounting altogether to 128 head of cattle or 100 ponies or 500 sheep. The numbers are expressed to be in respect of rights extending over various other Units registered under the 1965 Act.

The course of the proceedings was as follows:- Mr Romary said that the applications of Mr W J Harris (Entry Nos 38 and 39) are withdrawn. Mr Norman said that the South Western Water Authority are the successors in title of Peter Farmers Ltd (the applicants for Entry No 20). Oral evidence was given by Mr W J D Harris in support of Entry No 12 (made on his application) in the course of which he produced a conveyance 13 April 1968, an abstract of title including an appointment dated 30 June 1967, a conveyance dated 5 May 1961, and an examined copy of a conveyance dated 12 June 1950. Mr Norman after he had considered this evidence, said that the Committee of the Commoners Association were not aware of Mr Harris' title, and having regard to the documents now produced, he on their behalf was agreeable that I should confirm the registration at this Entry No without any modification. Mr Norman handed me a letter dated 7/12/76 written to the Warleggan Commoners Association by the Estate Management Officer of the South Western Water Authority with reference to Entry No 20. Oral evidence was given by Mrs F J Rogers in support of Entry No 21 in the course of which he produced a conveyance dated 2 July 1968 from Mr & Mrs Byford to Mr Rogers and herself, a letter dated 26 April 1968 from Wilson Parnall & Goodwin (solicitors for Mr & Mrs Byford) to Peter Peter & Son (solicitors of Mr & Mrs Rogers), an abstract dated 1968 of the title of Mr & Mrs M S Byford which included a conveyance dated 30 July 1965 by Mr G W Bunt (sole surviving child of Mr R H Bunt who died 20 October 1954) to them, and an abstract dated 1965 of the title of Mr G W Bunt which included a copy of a conveyance dated 28 March 1931 by Mr F G P Remfry (grandson of Mr G F Remfry who died 13 February 1882 and son of Mr F E R Remfry who died 25 April 1907) to Mr R H Bunt. Oral evidence was given by Mr R F Lyne in support of Entry No 32 (he gave no evidence in support of Entry No 35), in the course of which he produced a conveyance dated 15 May 1964 by Mr J C and Mrs W I Golley to himself (Mr Lyne), a conveyance dated 31 August 1954 by Commander J G Elgar to Mr & Mrs Golley, a conveyance dated 1 September 1948 by Mr E W S Bartlett and his purchaser to Commander J G Elgar (a sub-purchaser), an abstract dated 1948 of the title of Mr E W S Bartlett which commenced with a conveyance dated 2 August 1887 and ended



with a conveyance dated 1 November 1947 by Mr F D L Green and others (trustees of the will of G C B Baron Vivian (he died 28 December 1940) to Mr E W S Bartlett, and Particulars of land known as the Glyn Estate containing 4,573 acres offered for sale by auction on 8 August 1947. In support of the Objections oral evidence was given by Mr H A Jackson who has lived for 29 years at Whitewalls to the north of Warleggan Down, by Mr W M T Keast who has lived all his life (56 years) at Tor House also to the north of Warleggan Down and by Colonel J E E Fry who has since 1965 lived at Treveddoc to the west of Warleggan Down and before that at Mennabroom to the east of Warleggan Down.

On 11 October 1976 I inspected Warleggan Down being accompanied for most of the time by Colonel Fry, Mr Keast, Mr Norman and Mr Jackson (above mentioned) and by Mr H T Tucker of Castle Dewey; subsequently accompanied by Mr Norman, I walked over part of Treslea Down and viewed the lands in respect of which rights of common over Warleggan Down were claimed by Mr & Mrs Rogers and by Mr Lyne.

Mrs Rogers in the course of her evidence said in effect:- When she and her husband in 1968 purchased the land, they understood that there were rights attached to it: "It was on the deeds"; they understood that they bought the land "with the outright". They had exercised the "outright" with ponies which they had put on Treslea Down; these ponies must have gone on to Warleggan Down (by the road through the Village) because there is nothing to prevent them going from one Down to the other.

Mr Lyne in the course of his evidence said in effect that he applied for registration because of the words in the conveyances. He had not exercised rights over Warleggan Down.

The existence of a right of common appurtenant to land as a general rule depends on there having been a grant actual or presumed by the owner of the soil of the common. No actual grant by the owner of the soil of Warleggan Down in favour of Mr & Mrs Rogers or Mr Lyne or any predecessor in title of theirs was produced, and none of the deeds produced referred to any such actual grant. So I am concerned to say whether such a grant can be presumed having regard to what is contained in the deeds produced, that is whether they have a paper title.

Documents of title are evidence of the ownership of the land or of the rights dealt with, because they are regarded as acts of ownership in relation to the land or to the rights, see Lord Lindley MR in *Blandy-Jenkins v Dunraven* 1899 2 Ch 121 at page 125 et seq; I am concerned therefore to consider how far if at all the deeds produced are acts of ownership of the grazing rights now claimed by Mr & Mrs Rogers and by Mr Lyne over Warleggan Down. No deed can ever be conclusive, it being generally a question of fact whether the deeds and the other evidence about the land or right establish ownership, see the detailed discussion in the House of Lords in *Bristow*



v Cormican (1878) 3. AC. 641 and Johnston v O'Neill 1911 AC 552 (both cases relating to rights of fishing). As to the evidentiary weight of documents of title, I do not overlook that on sales of land documents of title by which the land has been conveyed coupled with the ability of the vendor to deliver possession, are every day accepted as satisfactory evidence of ownership, and that although such evidence is not conclusive, it is very rare indeed for such evidence to be successfully challenged. However as regards rights attached to land, a conveyance of land is not evidence of any right of common or other right being attached to it merely because the conveyance contains general words such as "together with all commons etc etc"; the proper construction of such general words being to read them as if the words "if any" were added, see Lord Lindley MR in Baring v Abingdon 1892 2 Ch 374 at page 388. So I conclude that I must consider the intention of the makers of the deeds produced to me, so far as it can be deduced from the words used in them and the surrounding circumstances so far as I can infer them from any admissible evidence; the relevant intention being to do an act of ownership in respect of the rights now claimed by Mr & Mrs Rogers and by Mr Lyne over Warleggan Down.

The 1931 conveyance (relied on by Mrs Rogers) contains the words "All that... farm called Old Cardinham with the several closes...of land belonging thereto situate in the Parish of Cardinham...together with the rights of pasturage and turbarry on the Waste and Downs of the Manor of Warleggan which remained unenclosed and also through the waste lands of the Lords of Cardinham as respectively belong to the said Manor of Cardinham And also all that...farm called Groveland with the several closes...of land thereto belonging situate in the Parish of Cardinham aforesaid and 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 of which said premises...are...delineated on the plan attached hereto and thereon coloured pink...". The original of this conveyance was produced to me at Bodmin by persons concerned in a case I heard subsequently to this one (about Tawna Down), so although Mrs Rogers produced only a copy, I have the original before me when writing this decision. The land coloured pink on the 1931 conveyance plan includes all the land ("the Rogers Land") containing about 42 acres comprised in the 1968 conveyance from Mr & Mrs Byford to Mr & Mrs Rogers. Coloured pink on the 1931 conveyance plan in addition to the Rogers Land are also (a) a strip of between 1 and 2 acres between the Rogers' land and White Hill (Cardinham Castle), (b) OS No 911 containing 3.321 acres west of the public road leading from the south to Old Cardinham, and (c) fields containing about 18 acres (being Groveland) which are south of the public road running along the south side of the Rogers Land. The 1931 conveyance also comprises "Kents Downs" coloured yellow in the plan and held for the residue of a then unexpired term of 800 years; the yellow land contains about 15.8 acres and was conveyed with "water courses ways paths passages commons of pasture and turbarry liberties...to the same belonging..

The argument for Mr & Mrs Rogers was that Warleggan Down is now in the parish of Warleggan, and it should therefore be inferred that it is one of the Wastes and Downs of the Manor of Warleggan mentioned in the 1931 conveyance. However neither Mrs Rogers nor any of the other witnesses who gave evidence gave me any information about this Manor (or any other Manor) and said in effect that the Manorial words above quoted from the 1931 conveyance now had locally (except as a guess) no meaning.



From the Rogers Land there is easy access to Treslea Down an area of open land approximately triangular whose sides are each about $\frac{1}{2}$ of a mile long. The most direct way for animals from the Rogers Land to Warleggan Down would be across Treslea Down and then down a lane to the public road which goes through Warleggan Village and then along that road to one of the 2 above mentioned approaches to Warleggan Down, a distance from Treslea Down of a little less or a little more than one mile according to the approach selected. There is nothing to prevent an animal wandering from Treslea Down to Warleggan Down, and nobody disputed that some ponies may have done so. Between Warleggan Down and Teeslea Down there is situated Warleggan Church and Village and much enclosed farm and other land.

It may be that any person lawfully putting animals on Treslea Down cannot be sued for trespass in respect of animals put there wandering onto Warleggan Down; but the two Downs are distinct pieces of land, and there cannot I think be a right to put animals on Treslea Down with the hope or expectation that they will in due course for the benefit of their owner find their way on their own to Warleggan Down. However there is no legal reason why there should not be attached to the Rogers Land a right of pasturage on Treslea Down and also a right of pasturage on Warleggan Down; although both such rights may legally exist, it seems to me that a person who wished in any deed to convey expressly such a right over Warleggan Down would realise that having regard to the relative situation of the Rogers Land and this Down and to the appearance of the neighbouring land, he would have to make his meaning particularly clear; it would not I think occur to anyone who knew only the appearance of the neighbourhood that there was attached or could usefully be attached any right of pasturage for Old Cardinham over Warleggan Down.

Nobody suggested that the neighbourhood was in 1931 different from what it is now, and I infer that it was in all relevant respects the same. At the end of 1925, for most practical purposes manors were abolished by the Law of Property Act 1922, and I infer that the words "wastes or downs of the Manor of Warleggan" had in 1931 no more certain meaning than they have now. The expression "which remained unenclosed" even used in the 1931 conveyance suggest that not all the land historically waste of the Manor was intended to be included; no inclosure award relating to this Manor was mentioned and I infer that the inclosures referred to in the 1931 conveyance must have been in accordance with custom; some of the now extensive inclosed lands between Warleggan Down and Treslea Down may at one time have been part of the wastes of some manor; however this may be, for practical purposes Warleggan Down as against Treslea Down (and also the 1931 conveyance lands too) is inclosed. If Mr Remfry intended when he made the 1931 conveyance to do an act of ownership in relation to a right of pasture over Warleggan Down, the words he used (or approved of) not only lack precision but are inappropriate. In my opinion he had no such intention, and it follows that the 1931 conveyance in accordance with the legal principles outlined above is no evidence that such a right existed in 1931.

The 1965 conveyance from Mr Bunt to Mr & Mrs Byford is of the pink land comprised in the 1931 conveyance except the pieces (a) west of the road, and (c) Grovelands above mentioned and contains words which are substantially the same as (although



somewhat abbreviated) as those used in the 1931 conveyance as above quoted. For the reasons set out above in relation to Mr Remfry, I conclude that these words do not show any now relevant intention on the part of Mr Bunt.

The 1968 conveyance by Mr & Mrs Byford to Mr & Mrs Rogers contains the words "together with the rights of pasturage and turbarry appertaining thereto". These words are too general to show any intention to deal with any right such as is now claimed over Warleggan Down. The 1968 letter does not I think take the matter any further; the writer merely summarises (correctly enough I think) the words of the 1931 and 1965 conveyances.

My conclusion is therefore that Mrs Rogers is mistaken when she said that the rights claimed by her and her husband are "in their deeds".

This conclusion should not be taken as any reflection on those responsible for the preparation of the 1931, 1965 and 1968 conveyances. They were concerned to see that any rights of pasture attached to the land conveyed, also were conveyed. Any such rights would have been conveyed by operation of section 62 of the Law of Property Act 1925 (replacing section 6 of the Conveyancing Act 1881). The circumstances that the conveyances had this effect does not show that they provide evidence of there being any such rights, see *Baring v Abingdon* supra.

It is reasonably obvious that the words above quoted from the 1965 and the 1968 conveyances were based on some earlier deed or deeds; I would suppose, the draftsman intended (quite properly in the circumstances) to draw attention to the possibility of there being similar words in preceding deeds. The 1931 conveyance shows that the Remfry ownership goes back to sometime before 1882, and it may be that the similar words in the 1931 conveyance were taken from some deed made more than 50 years before, at a time when such words would have had some intelligible meaning. However this may be, even if I am wrong in thinking that the 1931, 1965 and 1968 conveyances are not any evidence of the existence of the rights now claimed, I would when balancing their evidentiary value against contra evidence provided by the present appearance of the neighbourhood conclude that the rights claimed had not been proved.

The 1948 and 1964 conveyances produced by Mr Lyne contained the words "together also with such rights of pasture and turbarry as are vested in the Vendor and which he is empowered to grant (but so that the Vendor shall be under no liability to define the same) as are appurtenant to the property conveyed in the moors and commons in the Parish of Cardinham and Warleggan". These words reflect paragraph 30 of the Conditions of Sale (applicable to all lots) in the 1947 Particulars, but there is nothing in the descriptions of lots 9 and 12 (being Golden Lake Cottage and the adjoining fields now owned by Mr Lyne) to suggest that they enjoyed any common rights; nor is there any mention of any such rights in 1887 Abstract.

Persons cannot by making a deed intend to exercise acts of ownership in relation to rights mentioned in the deed, if such deed clearly states that there may be no such rights. Further, Golden Lake Cottage and the adjoining fields are more remote



from Warleggan Down than the Rogers Land. For the reasons set out in relation to the claim of Mr & Mrs Rogers, I conclude that there is no evidence to support the claim of Mr Lyne.

The circumstance that the owner of some land which is about the same distance from Warleggan Down as Golden Lake Cottage and which was one of the lots mentioned in the 1947 Particulars has registered under the 1965 Act a right of common over Warleggan Down and that this registration has become final, possibly because the Warleggan Commons Committee did not make any or have withdrawn their objection, in my opinion provides no reason why I should produce a similar result for the benefit of Mr Lyne.

There was no evidence in support of Entry No 21. Notwithstanding that the 1976 letter from the South Western Water Authority contains no clear concession that such rights do not exist, I consider that in the absence of any evidence in support, and having regard to the information given to me about the situation of the land to which such rights were attached, that I can properly conclude (as I do) that the right should not have been registered.

There is I think no good reason why I should not act on the concessions recorded above in favour of Entry No 12 against Entry Nos 38 and 39.

For the above reasons I refuse to confirm the registrations at Entry Nos 20, 21, 32, 35, 38 and 39 in the Rights Section and I confirm the registration at Entry No 12 in the said Section without any modification.

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 7th day of January 1977

a. a. Batten Fuller

Commons Commissioner