



In the Matter of Caradon Hill, Linkinhorne  
Caradon D.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and Entry Nos 1. 2 7.12 13 14-15 in the Rights Section of Register Unit No. CL.107 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X 127 made by J E C and G C L Daniel and noted in the Register on 17 July 1970.

I held a hearing for the purpose of inquiring into the dispute at Truro on 19 June 1978. The hearing was attended by Mr V M Carne of Messrs. Blight Broad and Skinnard on behalf of the personal representatives of the late W L Daniel. Mr D Hayward the successor to the applicant for rights under Entry No 1 appeared in person as also did Mr R Bond he and Mr J Vivian being the successors to the applicant under Entry No 2 in the Rights Section. Mr Barnaby the applicant under Entry No. 7 in the Rights Section also appeared.

I deal first with Entry No 1 under which Rights are claimed for East Caradon Farm which was conveyed to H G Rowell on 8 May 1929 together with the right of common of pasture and all other rights of common and commonable rights whatsoever (if any) Mr Rowell sold his farm to Mr and Mrs Shepherd in 1965 together with the rights described in the 1929 conveyance and Mr and Mrs Hayward purchased from Mr and Mrs Shepherd on 7 May 1976 together with the same rights. The sale particulars when Mr Rowell sold stated " the property adjoins an enclosed common extending to approximately 400 acres over which very extensive grazing rights have been enjoyed for a large number of years".

Mr Daniel gave evidence and he did not dispute that Mr Rowell grazed the common but he claimed that such grazing was not as of right but by permission of his late father. Mr Daniels father acquired the moor in 1957 subject to such commonable or other moorland rights as may belong to or be attached to farms and lands situate in the neighbourhood. It is relevant to note that Mr Rowell had been farming his farm for about 25 years before Mr Daniel senior acquired the moor. Mr Bolitho gave evidence Mr Rowell had a herd of 20 to 30 cattle. The rights claimed by Mr and Mrs Shepherd were for 6 cattle or 6 ponies or 30 sheep far less than Mr Rowells herd of cattle. Mr Daniels belief that there was a friendly arrangement between Mr Rowell and his late father is in my view probably justified but the arrangement may well have been that Mr Rowell should graze more cattle than his rights entitled him to graze. Mr Daniel accepted that the land was once common land and he had no evidence that Mr Rowell surrendered his rights. In these circumstances I confirm the Entry at No.1



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As regards Entry No 2 by a conveyance dated 9 November 1921 the property for which the rights are claimed was conveyed by M E Hicks to W C Munn together with full rights and liberty for the purchaser in common with all other persons who have or may hereafter have the like right to graze cattle sheep and horses on Caradon Common. All subsequent conveyances have conveyed the property together with the said rights which are quantified in the Register as the right to graze 10 cattle 10 sheep and 2 horses. The evidence was that there had for very many years been little if any exercise of this right such cattle as were on the moor having possibly escaped from the home farm but as was said by Buckley L J in *Tehidy Minerals Ltd v Norman* 1971 2QB at P528 and repeated by Foster J in *Re Eately Common* in order to prove abandonment of a right mere non user is not sufficient, what must be proved is a fixed intention by the owner of the right never at any time to assert the right himself or to attempt to transmit it to anyone else. In the light of the documentary evidence and in the absence of any evidence that any owner intended to abandon the right I confirm Entry No. 2.

Mr Barnaby claimed his right on his and other moors and he accepted that it did not extend to this moor. No other applicant appeared to support a claim for rights and I refuse to confirm all the outstanding Entrys other than Entrys 1 and 2. It follows from my confirmation of Entrys 1 and 2 in the Rights Section that I must confirm Entry No 1 in the Land Section.

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 21<sup>st</sup> day of July 1978

Commons Commissioner