



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/269-279

In the Matter of: Cardinham Downs Cardinham  
North Cornwall D

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INTERIM DECISION

These disputes relate to all the subsisting registrations in the Rights Section of Register No CL 138 in the Rights Section of Register No CL 138 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No X 427 made by W F Dyer noted in the Register on 20 November 1970; objection No X 394 made by R J Lobb noted in the Register on 5 January 1971; objection No 1405 made by W F Dyer noted in the Register on 18 December 1972. Objection No X 426 made by W F Dyer noted in the Register on 20 November 1972 and objections Nos X 543, X 544 and X 1331 all made by the Cardinham Commoners Committee and respectively noted in the Register on 20 August 1971, 25 August 1971 and 18 December 1972, and by the conflicting registrations at Entries 25 and 55 and Entries 8 and 53 in the said Rights Section.

I held an adjourned hearing for the purpose of inquiring into these disputes at Bodmin on 6, 7, 8 and 9 March 1978.

The hearing was attended by:-

Mr V K Leese of Messrs Stephens & Scoun on behalf of the Cardinham Commoners Committee, Mr J Evans of Messrs Peter Peter & Sons on behalf of W F Dyer. Mr W A Daniel on behalf of R J Lobb and L J and H B Matthews. Mr G I Chisholm on behalf of P A Colenso-Dingle and K Tucker. Mr Nicholls of Messrs Graham & Graham on behalf of Brigadier Edward-Collins Mr J G R Romary of Messrs Pethybridges on behalf of P G Best of Mrs Runnals, Miss Pictor, Mrs Lane, Mr Coppin and Mr Rowe.

All the subsisting Entries in the Rights Section of the Register are provisional by my decision dated 3 May 1977. I confirmed the Entry in the Land Section and I adjourned all the disputes relating to the Entries in the Rights Section. It was clear to me that until the status of the land as common land was determined the parties were in no position to deal with the Entries in the Rights Section and it was also clear to me that it was in the best interests of all the parties to agree as to the grazing of this land. I hoped that in the course of the adjournment the parties would be able to arrive at an agreement.

At the outset of the adjourned hearing it appeared that a large measure of agreement had been reached as to which of the applicants were entitled to grazing rights and which applicants were not so entitled. It was also apparent that until it is established which applicants are to be entitled to grazing rights it will not be possible for the parties to agree as to the quantum of those rights.



In these circumstances I indicated that I would give an interim decision as to which Entries I would refuse to confirm and adjourn, Consideration of the remaining Entries so as to enable the parties to agree or failing agreement for me to decide at a further adjourned hearing with what, if any, modifications I should confirm the remaining Entries.

The parties are to be congratulated on having arrived at a large measure of agreement as to which Entries I shall in due course confirm and which Entries I shall refuse to confirm, and the disputes on which it falls to me to give a decision at this stage relate to Entries Nos 1 (now 44) 2 and 3, 8 or 29 (now 53), 13, 15, 16 (now 48), 17 (now 49) 18, 19 (now 50) 20, 21, 23, 24 (now 52), 27 28 36 and 37.

I was told that Entries Nos 11 (now 42) 12, 15, 16 (now 48) 17 (now 49) 20, 21, 27, 36 and 37 have been withdrawn and I refuse to confirm these Entries. I turn now to the remaining Entries in dispute at the adjourned hearing.

Entry No 1 (now 44). ~~Mr~~ Romany, Mr Williams the applicant under this Entry did not appear. In these circumstances I have no alternative but to refuse to confirm this Entry.

Entries Nos 2 and 3 Cardeast and Higher Cardeast applicant Mrs Runnalls aged 79 who gave evidence that her father James Bawden purchased Cardeast, Lower Cardeast and Higher Cardeast by a conveyance dated 25 March 1965. He moved to Cardeast in the summer of 1905 and he farmed all these properties as one farm, he had all the same type of cattle and all the cattle except the cows went on to the Downs from the cattle yard on to the top of Peaches Hill. In 1916/17 her father stopped farming and moved from Cardeast to Lower Cardeast formerly occupied by a farm/land, he kept three little meadows and some animals and the rest he let to Mr Knight. Mr Knight had much the same animals as her father and she occasionally saw these animals put out.

In 1926 Mrs Runnalls married and left Lower Cardeast and went to Welltown. When she visited her parents she occasionally saw Mr Knights animals taken on to the downs and this went on until the second world war. Her father died in 1944. She inherited the whole property subject to her mothers interest and the farms had been tenanted until recently. Father kept stock on his fields until he came to live with Mrs Runnalls in 1930 he had them on the downs. There were two or three cows and followers. The cows went out in the winter and the sheep occasionally for a short time.

Cross-examined Mrs Runnalls said she had been close to farming all her life. She could not remember the scale of her fathers stocking and could not remember the farms being empty. She said Cornwall is a cattle county and knew nothing of farmers not having enough cattle to turn out at Cardeast there were always as many animals as the farm could carry. It was about 80 acres. Father kept 6 acres, a few weeks to the summer after shearing 6 to 8 sheep were on the downs for a few weeks. Knight used to sent his animals to an enclosed moor and her father did the same but only some went on the enclosed moor. Knight had and mixed animals. Mr Nicholls came after 1931/32 and after Nicholls there was Mr Tucker.



Mr Roose aged 74 was familiar with Cardeast and was born about a mile from the common. He knew Bawden and used to ride over the common on a pony. He knew whose animals were on the common and saw Bawdens animals and saw them going home in about 1916. The farmers all round put their cattle out. Bawden had North Devons and he saw about 20 to 25 going back. He knew Knight who came about 1920 when he was still going on the common about once a fortnight. Knight had some North Devons on the Common and he would put out about 10 cows in milk. The two year olds were sent away. He remembered Knight leaving and Nicholls coming in the 1930's. Nicholls put out cattle horses and sheep about 12 cattle or horses he had about 25 sheep and 6 ponies on Fore Down.

Mr Steep gave evidence on behalf of the Objectors. He was born in 1901 and came to Cardinham in 1918. Knight was his step father, his animals went to Torn Bray St Lukes, they went away in the summer and some were kept when they came back. The cows stayed home in the summer. He never turned anything out.

Cross-examined he said twelve months animals went away he never knew of Knights animals being put on the common.

At this stage it will be convenient to state my conclusions as to the overall picture of this common. It is common ground that prior to the 1939/45 was it was very rough and largely covered with gorse. It did not provide any grazing of any appreciable value to the farmers save possibly for a few months in the spring and early summer. Confirmation for this conclusion to be found first by reason of the fact that the state of the land not ploughed during the war is by common agreement no better than it was before the war and that said land has today no real value for grazing. Secondly it is unlikely that if the common offered valuable grazing the farmers would have paid to send their animals away to graze on other land, as Mr Knight and others did.

There is however no doubt that animals were turned out on the common it was used as an amenity, rather than as grazing land to support their stocks, to prevent the land on the home farms being poached, and by farmers who kept store cattle to turn out animals when they were temporarily over stocked. The animals turned on to the common were either fed with hay at some convenient place on the common or returned to their home farms to be fed at night.

Since the common was in my view, prior to the 1939/45 war, no more than an amenity used by the farmers on occasions when it suited their convenience and since it was not of any substantial value for the maintenance of their stocks. I doubt if any witness paid any great attention to the use of the common between the wars. And the evidence of witnesses as to this unimportant use of the common more than forty years ago is in my view unlikely to be accurate in every detail.

What was unimportant before the last war has now become important because a large part of the common was improved under requisition during that war and now provides valuable grazing.

It is against this background that I consider the evidence referred to above.

Mr Roose was cross-examined on the evidence which he gave at the previous hearing and I find myself unable to place any great reliance on his recollection of events between the wars. Mrs Runnalls left Cardeast in 1926 and I would not expect her to have a clear and accurate recollection of the activities of the tenant farmers thereafter.



Mr Steep on the other hand was the step son of Mr Knight and his evidence satisfies me that grazing cattle on the common was no part of his farming operation. I am not convinced that he did not from time to time turn some animals on to the common, but I am satisfied that any such use of the common was not in the exercise of a grazing right and was tolerated by the owner of the common and those entitled to graze.

The evidence of Mrs Runnalls and Mr Roose in my opinion falls far short of that required to establish grazing rights for Cardeast and Higher Cardeast.

I should mention that the major part of the common was under requisition from 1940 to 1960 and also that before the war both the common and many of the surrounding farms were in the ownership of Lord Vivian.

For the reasons given above. I refuse to confirm Entries Nos 2 and 3.

Entries Nos 8 and 29 (now 53) These Entries are in conflict and are for the farm Treswithick.

Mr C M Robertson gave evidence that he purchased this farm in 1970, that it is 92 acres, he has never exercised any grazing rights. Half the land is now a club airfield. His daughter now farms the rest which was let to D Roose for grazing.

Mr Adrian Dingle gave evidence that he is aged 61 was born in Cardinham and that his family acquired Treswithick in 1930. It was used as a mixed farm and farmed by the family as an "off farm". The family kept stock on the farms mainly store cattle and sheep and occasionally used the common. The cattle were driven from the other farm, Callywith, across the Down and occasionally turned out from Treswithick. The problem was to find them they might be 10 or 12 miles away, they were fed on the Down in the winter and this practice continued until the fences went up. There were more cattle out in the summer than in the winter. They had some sheep out as well. Cross examined he said he lived at Callywith and left school at the age of 15. The family had 400 acres all farmed together. The moor was rough. The family kept 500 head of cattle and 200 sheep. The sheep strayed less than the cattle, some sheep were reared at Treswithick. From April to September they had 200 sheep, but they were not all on the moor. Together, about 20 to 30 cattle were turned out at any one time.

Mr Adrian Dingle also gave evidence in support of a claim for Callywith. Entry No 13 which he said was twice the size of Treswithick. The family had been tenants of Callywith for 100 years. It had no direct access to the moor but the animals could go up the lane.

Looked at against the background of the familys substantial farming operations it is clear that which they made occasional use of the moor for no more than 20 to 30 cattle out of 500 and for some sheep such occasional use was for convenience only and grazing on the moor was never an integral part of their farming operation. The evidence is in my view insufficient to establish prescriptive grazing rights either for Treswithick or Callywith and I refuse to confirm Entries 8.53 and 13.

In the course of the hearing I indicated that the land not now used as a club airfield might be entitled to rights. When I gave this indication I had not considered Callywith. Having come to the conclusion that Callywith is not entitled to rights it must in my view follow that Treswithich is not entitled to rights.



Entry No 18 made by S P Hawkins for Higher Corblake. Mr Hawkins did not appear. I was told that his holding is a farm house with little land and his claim was for 1 cow or its equivalent. In the absence of any evidence to support this claim I must refuse to confirm Entry No 18.

Entry No 19 (nor 50) made by Brigadier Edward Collins for Trewardale, Trecreek and Venterhorne.

Brigadier Edward-Collins gave evidence that Trewardale and Venterhorne were one holding. His grandmother farmed, his holding and he had no recollection of her turning stock on to this common and he had never turned stock out from Trewardale.

The claim for rights appurtenant to Trecreek is conceded by the Objectors. In the absence of any evidence of grazing from Trewardale I shall in due course confirm Entry No 50 modified so as to exclude the references to Trewardale and Venterhorne in column 5 of the Register and with such other modifications as may be necessary.

Entry No 23 claim by Doris Anne Lane for Lower Carblake.

A J Lane gave evidence that Doris Anne Lane purchased Lower Carblake from Mr Tomkins trustee in 1962. He first remembered the property in 1930 and he was then a journeyman butcher and delivered meat different families either on a pony or by trap. He visited Lower Carblake then occupied by Charles Tomkin. Mostly stocked with cattle. He could not remember any sheep. There is a lane leading from the farm house to the downs and a field of 8½ acres with two gates opening on to the Downs. Tomkin used to turn the cattle on the downs and shut the gates at certain times in the year. The cattle would number about 20 with all sorts and shapes and sizes. He visited Lower Carblake every week. The cattle were left out most of the year. He himself bought cattle from Tomkin but inspected them elsewhere. Cross-examined he said the cattle were mainly turned out in early spring. B Coppin was at Lidcutt. There might have been 100 to 150 cattle on the downs usually in bunches or groups. Tomkin had black cattle some had distinguishing features such as large horns and I would recognise them. They would be fed with hay on the downs and would come as a group to their feeding place at feeding time. He used to pay for his employer from Tomkin Williams and Chapman Williams had tremendous red devons. Chapman had all sorts. The furze would not prevent you seeing bullocks. He could not remember any sheep.

Mr D Roose aged 69 gave evidence that he was born where he now lives about a mile from the Down. He remembers Tomkin at lower Carblake and used to go there with his father. His father bought large cattle from Tomkin and sold him small cattle. He was a farmer and used to drive the cattle up the lane and on to the downs and would not bring them in at night and he usually had them there all year and he attended his cattle. Mr Roose often saw Tomkin on the Downs, hundreds of times outside the golf course, once on a Sunday morning to the annoyance of the golfers. Tomkin never changed his practices in 30 years. Mr Roose bought from Tomkin and also sold to him he went in the October about once a week. Cross-examined he said Tomkin and he had dealings since he was aged 18. He went to Badmin market every Monday morning cattle were fed on the moor with hay and came



to their feeding place at feeding time. Tomkin's bullocks were earmarked and he would recognise the marks. In 1925 there were a lot of cattle on the downs. Tomkin had a lot of cattle on the moor and he would feed only in winter.

The conclusion which I have arrived at on this evidence which was not contradicted is that Tomkin's business was that of buying store cattle, improving them and then reselling them. He turned his stock over and regularly turned out on the down, and I am satisfied that the use of the down was an integral part of his operations, and that he acquired a right either by prescription over a period of 30 years or by fest grant. And I will in due course confirm Entry No 23.

Entry No 24 (now 52) Teason. By this Entry Mr R J Bate claims rights for two farms. Teason and Lahays which have always been farmed together. The objectors concede that Lahays is entitled to rights.

Mr Bate in evidence said that Teason had been in his family as far back as 1700 and the Farwood family owned it for many years. The down was used for 25 cows and 75 sheep. The cattle in the summer and the sheep all year round. Lahays was conveyed to C R J Bate by the Duchy of Cornwall with common rights on 7 March 1923. Cross examined he said his family also owned a farm called Pemporth of 90-100 acres.

Mr Vallis born 3 September 1908 lived at Cardinham in 1924 and went to work for Mr Bate at Teason. Teason had cattle which were put out on Fore Down and Cardinham Down. At Peaches Hill. He could not say what numbers of cattle were kept they were store cattle and turned out on the downs. This went on until the war and sheep were also put on the downs. He worked at Pomhall, Cardinham and Fore Down. Cardinham was very rough and there was just a track to the Down. He had no idea how many sheep there were. A few working horses were turned out in the summer. He took Teason and Lahays cattle out together Penhall cattle went out separately.

Cross-examined He said he didn't take sheep out, other hands did that. The Teason cattle sometimes went to Cardinham and sometimes to Slew's, another name for Foredown. Teason cattle went to Cardinham in 1924 and later to Fore Down. They went to Cardinham in 1924 to 1930. He could not remember taking cattle to Cardinham 1930.

The only evidence of cattle from Teason being turned on to Cardinham is over a six year period in 1924 to 1930 when the practice ceased. And this evidence does not suffice to establish either a right by prescription or by last grant.

In due course I will confirm Entry No 52 modified so as to exclude any reference to Teason in Column 5 of the Register and with such other modification as may be necessary.

Entry No 28 Higher Carblake made by W B & E Coppin,

Mr J Coppin gave evidence that he was born at Lidcutt farm in 1900 and lived there until 1922 and went to Cardinham school and later to Bodmin and left school when he was aged 15. He remembers Higher Carblake when Mr Dingle and later Mr Shaw lived there. Dingle kept North Devon cattle and they certainly went on the Downs. He first remembered going on the moors in 1910. He remembered Dingles cattle going in and out of his farm, they would be driven on to the far corner of



of the moors and wander anywhere. There was more than one entrance on to the moor. Dingle left about 1915. Between 1910 and 1915 Dingle put out on the moors regularly his stock was Devon cattle. In 1915 Shaw came to Higher Carblake and carried on in the same way as Dingle. At this time Mr Coppin had left school and worked on the farm with his father. He went on to Cardinham Down frequently as they were putting out from Lidcutt themselves. As far as he was aware Shaw put cattle on the moor each year. He remained at Lidcutt until 1922 when he moved but he continued to visit them. He could not speak as to Shaws putting cattle out after 1922. Shaw left in 1928 when Tomkin took over Higher Carblake and he was living at Lower Carblake. He knew Tomkin well all his life Cross examined he said Higher Carblake was 70 to 80 acres of which little was cultivated it was used mostly for grazing or hay. Dingle had sheep of no particular breed, some were longwool. He did not know the numbers of animals Dingle & Shaw kept Shaw was the son of a vicar and he did not notice whether he had any idea of farming, he did not think the farm was neglected or badly farmed.

I have already earlier in this decision decided that Lower Carblake carries grazing rights by reason of Tomkin having acquired such rights for the benefit of Lower Carblake. The evidence of Mrs Coppin that Tomkin grazed from 1928 onwards is further support for the conclusion which I reached, and I am bound therefore to decide that Tomkin also acquired rights for Higher Carblake.

In due course I will confirm Entry No 28 modified as may be necessary.

To sum up I refuse to confirm Entries Nos 44, 23 8.53 42 12 13 15 48 49 18 20 21 27 36 37 and 55.

I adjourn the hearing as to the remaining Entries in the Rights Section which I anticipate I will confirm at an adjourned hearing with the modifications mentioned in this interim decision and such other modifications as may be necessary.

I have refused to confirm Entry No 55 because I have resolved by the conflict between Entries 55 and 25 in favour of the claim by the owner Entry No 25. The rights are appurtenant to the land and the tenant can of course exercise those rights by virtue of his tenancy.

In conclusion I would mention that I envisage that the Entries in the Rights Section will be modified where necessary. So as to be in each case in the simple form:- "The right to graze X animals over this Unit". If any farm has rights over both this Unit and Racecourse Downs, those rights must be apportioned by agreement.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this interim decision as being erroneous in point of law may require me to state a case for the decision of the High Court.

Dated this

26<sup>th</sup>

day of

May

1978

COMMONS COMMISSIONER