



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/579
to 586 inclusive

In the Matter of Gwithian Common
Towans, Gwinear-Gwithian, Penwith
District, Cornwall

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 4 and 7 in the Rights Section of Register Unit No. CL 109 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objections No. X236 and X237 made by Pentewan Dock & Concrete Co. Ltd and noted in the Register on 4 September 1970, by Objections Nos X530, X531 and X499 made by Trustees of Charles Hockin and noted in the Register on 20 November 1970 and by Objections Nos X532, X533 and X498 made by T C James and noted in the Register on 20 November 1970 and 21 June 1971.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 15 May 1979. At the hearing (1) Gwinear-Gwithian Parish Council on whose application the Land Section registration was made, were represented by Mr E Thornton solicitor with A W H Harvey & Son, Solicitors of Penzance; (2) Aney Roadstone Corporation Limited as successor of Pentewan Dock and Concrete Company Limited, were represented by Mr T H Rouse solicitor of Frank & Caffin, Solicitors of Truro; (3) Mrs Mary Doris Hockin, Mrs Mary Evelyn Runnalls and Mr Donald Alfred Hayes Walters (the said Trustees, the Ownership Section registration at Entry No. 1 was made on their application) and Mr Richard Hawken Runnalls of Green Haven, Station Road, Lyskeard who is now a trustee of the Charles Hockin Trust in the place of Mrs M D Hockin and Mr D A H Walters, were all represented by Mr A R Butterfield solicitor of Walters & Barbary, Solicitors of Camborne; (4) Mr Thomas Charles James (the said Objector, the Ownership Section registration at Entry No. 2 was made on his application) was also represented by Mr Butterfield; (5) Mr John Richard on whose application Rights Section Entry No. 1 was made, attended in person; (6) Miss Madeline Thomas on whose application Rights Section Entry No. 7 was made, also attended in person; and (7) Cornwall County Council as registration authority were represented by Mr D Gill.

The land ("the Unit Land") in this Register Unit is an irregularly shaped strip containing (according to the Register) about 107 acres. Its west boundary (about $\frac{1}{2}$ a mile long) is the nearly straight northeast-southwest line of the foreshore. The Unit Land is all high above the level of H.M.T., so along its west boundary it is either cliffs or steeply sloping land. By the said Objections the Unit Land is in effect divided into 4 parts (whether these parts have any reality or relevance was at the hearing in question):- (1) an area ("the Sand Dunes Area") shown edged red on the plans attached to Objection Nos X236 and X237 (P D & C Co.), being the north part of the Unit Land extending for a little under $\frac{1}{2}$ a mile from the east boundary of such part (the road, B3301 leading northwards out of the Village) to a point near the northwest corner of the Unit Land; (2) an area ("the Central Open Area") being the part of the Unit Land which is hatched red on the plans (all the same) attached to Objections Nos X530 and X531 (Hockin) and to Objections Nos X532 and X533 (James), and which



- 2 -

is not within the Sand Dunes Area as above defined, and being about 1/6th of a mile long from northeast to southwest and about 150 yards wide; (3) an area ("the South Undisputed Area") irregularly shaped about 1/3rd of a mile from north to south and about the same from east to west, and being the part of the Unit Land south of the Central Open Area; and (4) an area ("the Small Grass Area") near the northeast corner of the Unit Land containing (so I estimate) about 2 acres or a little less, and being so much of the north part of the Unit Land as is south of and not included in the Sand Dunes Area as above defined.

The grounds of Objections Nos X236 and X237 (P D & C Co) are that the Sand Dunes Area is not common land and "no rights of common are or have been exercised over it". The grounds of Objections Nos X530 and X532 (Hockin and James) are that the Sand Dunes Area and the Central Open Area were not common land at the date of registration. The grounds of Objection Nos X531 and X533 (Hocken and James) are that the right at Rights Section Entry No 1 (applicant Mr Richard) does not extend "over all the land for which it is stated to be expressed; it is not exercisable over ... (the Sand Dunes Area and the Central Open Area) ...". The grounds of Objections Nos X498 and X499 (James and Hockin) are that the rights at Rights Section Entry No 4 (applicant Mrs L E S Marsh) and No 7 (applicant Miss M Thomas) do "not exist at all".

At the beginning of the hearing Mr Butterfield asked for leave to amend the grounds of Objections Nos X530 and X532 by enlarging them so as to include the Small Grass Area; and said (in effect) that he had no objection to my confirming the registrations so far as they related to the South Undisputed Area. Mr Thornton not objecting, (although he made it clear that the Parish Council did not concede the Objections with or without any amendment), I granted the leave asked; see regulation 26 of the Commons Commissioners Regulations 1971.

Oral evidence was given by Mr W T Tregenza, Miss M Thomas, Mr J Richard and Mr W T H Dear as below mentioned, and the documents specified in the Schedule hereto were produced. On the day after the hearing, I walked the length of the Sand Dunes Area and the Central Open Area, and walked over much of the Small Grass Area; I also motored the length of and walked over part of the South Undisputed Area.

From the B3301 road to the South Undisputed Area there is from the southeast for motor cars easy access ("The Top Gateway"); the road which runs across the Area ends near a building which is called the Jan Pot (formerly a coast guard's lock-out, now apparently used in the tourist trade), and which is at the north end of the Central Open Area. This road provides access for a number of bungalows and chalets, many of which front on the Central Open Area, and provides access also to large car park situate on or near the south part of the Central Open Area. Together these two areas are not only a valuable amenity for the bungalows and chalets, but also an attraction to visitors for a walk, a picnic, or a splendid and delightful view of the sea and the coast line. I understood from Mr Thornton that the Parish Council wish to preserve the Unit Land as an amenity, and that West Penwith Rural District Council made byelaws for this purpose (they were not produced, although I noticed they were displayed on the Central Open Area; dated 7 April 1956 and approved by the Secretary of State 3 October 1956). Under the 1965 Act I am not



- 3 -

in these proceedings concerned (as Mr Thornton recognised) with amenity, but only to determine whether the rights of common in dispute should continue to be registered under the Act; Although of course I realise that my answer to this question may affect the amenity position under existing or future legislation.

The right claimed by Miss Thomas is in respect of 1.156 acres of land at 6 Treves Lane, situated about one mile south of the Village and about $\frac{1}{2}$ a mile south of the Top Gateway. Miss Thomas who is 65 years of age, was born at 6 Treves Lane and has lived there ever since, in the course of her evidence said (in effect):- Cattle from there have been grazed on the Unit Land up to about 5 years ago (when she sold her land); they were put on at the Top Gateway (?no gate) milking cows; "every day leave out Sunday". Her parents and grandparents (Thomas Gregory and Caroline Gregory who died in 1929 and 1942) lived there too. "About 20 years ago, I met Mr Hockin (the one who died over 20 years ago); he said the land is mine and you are grazing it. I won't tell you that I said. He said he could not fence it in, and so cattle still went". She mentioned another incident of 1891 when a locked gate was put up and after a complaint to a Member of Parliament, it was taken away.

The Central Open Area appears recently to have changed by the making of the car park and the erection of some buildings around the Jam Pot. On the Os map (6"=1 mi) is marked "Wheal (dis)", and there must have been changes when this Mine was open. Nevertheless making due allowance for these changes, I find that the Central Open Area and the South Undisputed Area have been from time immemorial in all now relevant respects the same as they are now, that is land in every way suitable, as described by Miss Thomas for grazing in common with the occupiers of Churchtown Farm and such other persons if any as might be entitled to graze.

No evidence was given by or on behalf of the Hockin Trustees or Mr James, although Mr Butterfield at the end of the hearing after all the oral evidence had been concluded and at my suggestion produced for my inspection Hockin Trustees' document of title listed in Part IV of the Schedule hereto. The description in the 1940 appointment of the freehold properties therein recited as being subject to trusts of the will includes: "(12) undefined portion of Gwithian Towns and foreshore subject to Common Rights ground rents paid by various tenants in respect of erecti of huts, £6 per annum".

I accept Miss Thomas' evidence. By the above quoted words she clearly meant that she told Mr Hockin that she had a right to graze: that neither he nor anyone else ever interfered with the right nor except on this one occasion (I disregard the 1891 incident) challenged it. The 20 years she mentioned may have been more (if she was referring to Mr Charles Hockin who died in 1943); this mistake (if it was so) does not I think affect her credibility. There was no evidence to show that she was not entitled to prescribe for the right she claimed at common law, and in my opinion such a prescription for the right has been established; so that the grounds of objection that her right does "not exist at all" has been disproved (quite apart from the concession made as above stated at the beginning of the hearing by Mr Butterfield in relation to the South Undisputed Area).

Mr J Richard is 84 years of age and very deaf; for this reason Mr Thornton, Mr Butterfield and I had some difficulty in obtaining his evidence, it being generally necessary to put questions to him in writing. Notwithstanding some



of his answers seem to have no relation to the questions put, I consider that he well understood what the proceedings were about and that his answers to the questions which he did understand are reliable. The right he claimed is in respect of 3.899 acres of land situated about 1/3rd of a mile southeast of the Top Gateway. He said (in effect) that until the rights had been sold under a conveyance of 1976 they had been exercised ever since 1825 (by his grandfather before him) and (by reference to the Register map) over all the Unit Land. He seemed confused by and did not answer the question as to how he had exercised the rights.

Miss Thomas in the course of her evidence said that Mr Richard grazed his cows as she did. The grounds of objection in her case differ from those in the case of Mr Richard because his right is not put in issue except over the Central Open Area and the South Dunes Area. I can see no reason for holding against Mr Richard his confusion about how he exercised the rights which at the hearing no one present suggested he had not got; I cannot imagine how he could exercise the rights except by putting cattle onto the Unit Land at the Top Gateway; what they did afterwards is, quite apart from the evidence of Miss Thomas, almost obvious if the Unit Land has always been in all relevant respects as it is now.

In the absence of any evidence on behalf of the Hockin Trustees and Mr James, I do not know, and I decline to guess, why they think the grazing over the South Disputed Area unobjectionable and that over the Central Open Area objectionable. There are differences: more of the Central Area is car park and it is more walked over (I suppose by persons going to and from the car park); so much of the grass not so good. But in former times when there were fewer tourists, the differences must have been less, and there is not now and I infer never was anything to stop cattle going from one to the other. In my opinion there is not now and never has been any relevant difference between the two Areas, and accordingly the rights of Miss Thomas and Mr Richard extend to the Central Open Area at least.

Although there is nothing to prevent human beings or animals going freely between the Central Open Area and the Sand Dunes Area, it now appears in some ways distinct in that in the region of the Jam Pot, the Unit Land on the north becomes rough (sand dunes) and the Jam Pot and some chalets or bungalows near there (apparently more recent than the Jam Pot) have a divisive effect. Further the Sand Dunes Area has some reality in that it is one of the two pieces distinctly delineated on the 1965 Lease and Licence, now vested in Amalgamated Roadstone Corporation Ltd ("ARC").

The 1965 Lease and Licence recites that Mrs Hockin, Mrs Rurnalls and Mr Walters are the owners of the land for the freehold estate, and such recital is consistent with the documents of title produced by Mr Butterfield. But the recital is difficult to reconcile with the Ownership Section registration since, made on the application of the Hockin Trustees and Mr James therein described as "jointly" owners of all the Unit Land. It may be that Mr James is (as the documents produced suggest) the tenant of Churchtown Farm, but no document was produced explaining how he has become entitled as one of four joint owners to the fee simple estate in the Unit Land. The Ownership Section registration may be prima facie evidence but it is not conclusive, see section 10 of the 1965 Act. In the absence of evidence (the documents produced are not I think enough) I make no finding as to what are the respective estates and interests of the Hockin Trustees and Mr James in the Unit Land or any part of it.



I infer that AMC never had any reason to doubt the validity of the 1965 Lease and Licence, and Mr Rouse said that they were now holding over and in the course of negotiating further terms. For their benefit I will consider the objection made by P D & C Co on the basis that the Lease and Licence took effect as expressed. In my opinion even on this basis, the mere making of the Lease and Licence is no evidence against Miss Thomas and Mr Richard who could know nothing about the plan annexed to it. So I must consider what was done under the Lease and Licence.

As to this, Mr Dear who has as a chargehand, for the last 31 years worked successively for P D & C Co and ARC, in the course of his evidence said (in effect) :- For a good many years they worked on the beach (not on but near the Unit Land); on the Sand Dunes Area they have worked since about 1970. The sand was taken for building at a rate of about 150 tons a day, the area ("the Worked Area") is "in the region of 200 feet either way".

On behalf of ARC it was said (and not disputed) that the sand was taken away in a lorry carrying between 15 and 20 tons and that from the point of view of ARC it was "a small operation". Standing as I did during my inspection on the edge of the Worked Area and considering it by itself it looked large; nevertheless, in relation to the whole of the Sand Dunes Area I consider that the operation can properly be described as small. The Worked Area is on its south side surrounded by much blown sand and is in a part of the Sand Dunes Area valueless for cattle grazing. Whatever may be the grazing rights over it, the owner, who ever he may be, is I think entitled to get the sand if he does it in a way which is in relation to grazing is reasonable. I find the workings are and have been reasonable, such that the persons entitled to graze have never had any grounds of complaint; so the things done under the 1965 Lease and Licence are not against the claims of Miss Thomas and Mr Richard.

It was suggested that I must presume Miss Thomas and Mr Richard abandoned their rights in relation to the Sand Dunes Area by doing nothing about the workings, and Mr Rouse referred me to Halsbury (4th edition 1974) Volume 6 paragraph 629. Abandonment requires a fixed intention never to exercise the right again or to attempt to transmit it to any one else, see *Tekidy v Norman* 1971 2QB 528. Quite apart from it being difficult to rely on things done after the date of registration under the 1965 Act as showing any such intention, in my view the Worked Area is far too small to be treated as referable to the whole of the Sand Dunes Area. Of course grazing in the Worked Area is not now possible, but there is grazable grass in the Sand Dunes Area around the Jam Pot, and it is I suppose possible that the Worked Area will after the sand has been got, be restored (perhaps better than before) and then be grazed again.

From a point on the B3103 road (at the hearing called "The Glencoe Gateway") there runs a sandy track ("Sandy Lane") along and within the south side of the Sand Dunes Area right up to the Jam Pot. For ordinary motor cars Sandy Lane is except for a short distance to the Small Green Area practically impassible. Mr W T Tregenza who is 58 years of age, has lived in the parish all his life and is now and has been for the last 9 years a member of the Parish Council said (in effect):- He remembers a horse and wagon being driven along this track and it is marked on the OS map (6" = 1 mile) by a double dotted line. The derelict building near the Glencoe



Gateway on the other side of Sandy Lane used to be the smithy. The Sand Dunes Area gets terrific gales which shift the sand about. Miss Thomas mentioned that she remembers the sand being blown about in the Sand Dunes Area; she said her cattle often went as far as this Area because they were found walking from the Glencoe Gateway (there was never a gate there).

On the said OS map, the Sand Dunes Area is with the South Undisputed Area and the Central Open Area included in that called "Gwithian Towans" as part of the same piece of land.

Mr Dear said (in effect) that he had never seen cattle at any time around the Worked Area; the only cattle were those which "got out of Mr James' fields" and "cattle on the Towans itself". As regards grading before the date of the Objection (1970) I am not persuaded that Mr Dear (who at that time was working below the level of the Unit Land) was either interested in or could have seen how cattle were grazed. In the absence of any evidence to the contrary I infer from the present appearance of the Unit Land that cattle put onto the Unit Land at the Top Gateway would have, (as Miss Thomas said they did) gone onto the Sand Dunes Area (there being no obstacle in their way) particularly as hereinafter mentioned the Small Grass Area was then available. I find that the Sand Dunes Area too is in all relevant respects part of the same piece of grazable land as the South Undisputed Area and Central Open Area are; my decision is therefore that the rights of Miss Thomas and Mr Richard extend to it.

Of the Small Grass Area, Mr Treganza said that it was "always used in my time as common land" and had "not to my knowledge" been fenced. In answer to questions from Mr Butterfield, he said the area was used by Mr James as a caravan site and had been so used by him under a licence granted annually by the District Council for many years (15 to 20 was mentioned) and that it might have been fenced (he mentioned a single strand of barbed wire) as he had not been there for some time Miss Thomas said that it had never been fenced as she remembered it.

The Small Grass Area is now (as I saw on my inspection) apparently distinct from the Sand Dunes Area in that along much of its north side there is a substantial sand bank separating it from Sandy Lane and apparently protecting it from blown sand and in that the north side is everywhere fenced, near its southeast corner substantially, so that access for pedestrians with animals is difficult. But the length of fence near the northeast corner appears to be recent; but for this length access for pedestrians and animals would be easy and I had no difficulty in imagining how the Small Grass Area would have appeared in relation to Sandy Lane and the Sand Dunes Area if this length of fencing had not been there; Notwithstanding the said sandbank, the Small Grass Area would have appeared to be part of Gwithian Towans as it is marked on the said OS map.

In the absence of any evidence by or on behalf of the Hockin Trustees or Mr James, as to the history of this fencing or as to the use made by them on the Small Grass Area or as to why they did not include in the Objections when they originally made them, I find that the fencing I saw is recent and that at all relevant times



there was nothing between the Sand Dunes Area and the Small Grass Area to prevent the cattle there grazing on both. On this finding, on the evidence of Miss Thomas that her cattle were found at the Glencoe Gateway and on the appearance of the Unit Land as I infer it must have always been, I conclude that for the purposes with which I am concerned the Small Grass Area has at all relevant times been just as much part of Gwithian Towns as the three other Areas with which I have been dealing.

My general conclusion is therefore that for all purposes with which I am concerned the four Areas into which the Objections I am considering the Unit Land has been divided, have no reality and they all form one piece of land; and accordingly registrations made by Miss Thomas and Mr Richard were rightly made. It follows from the definition of "common land" in the 1965 Act that the Land Section registration was also rightly made.

There is no evidence in support of the registration at Rights Section Entry No 4 made on the application of Mrs Marsh, apart from her statutory declaration made on 26 February 1959 (see CR Form 9) in support of it. The claim was as tenant of property edged blue on the plan (I suppose one of the before-mentioned chalets or bungalows); and the right claimed (to graze 2 goats) was said to be attached to Churchtown Farm, shown on her map as the buildings and the small surrounding area all situated east of the Small Grass Area not far from the Glencoe Gateway. The right claimed is quite different from the rights of Miss Thomas and Mr Richard about which I have much evidence; and such evidence although not particularly directed against the registration of Mrs Marsh is generally against her claim. I conclude that her registration was not rightly made.

For the reasons set out above I refuse to confirm the registration at Rights Section Entry No 4 and I confirm the registrations at Rights Section Entry Nos 1 and 7 and at Land Section Entry No 1 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.

TURN OVER FOR SCHEDULE



SCHEDULE

Part I: Parish Council

11 May 1979

Letter from Gwithian Towans Ratepayers' Association.

Part II: ARC Ltd

23 June 1965

Lease and Licence by Mrs M D Hockin, Mrs M E Runnalls and Mr D A H Walters to Pentewan Dock & Concrete Company Limited to dig from the Towans Sand Dunes edged blue and red on the plan annexed for 7 years from 1 August 1975 with option for further term of 7 years (Annexed a supplemental lease and licence dated 4 February 1969 relating to land adjoining the Unit Land).

31 December 1970

Assignment by Pentewan Dock and Concrete Company Limited to Amalgamated Roadstone Corporation Limited of the premises and rights granted by the leases and licences of 28 June 1965 and 4 February 1969.

Part III: Mr Richard

14 January 1825

Indenture of bargain and sale by W Carthew in favour of William Harris and Charles Harris of two fields known as the Lands Ground.

6 December 1976

Conveyance by John Richard to Terence Desmond Thomas of three fields known as Sandyground being OS Nos 203, 210 and 211 containing about 3.399 acres.

Part IV: Hockin Trustees

21 March 1889

Probate of will of Richard Hockin who died 14 December 1888.

14 July 1944

Probate of will of Charles Hockin who died 13 December 1943 granted to Mrs M D Hockin, Mrs M E Runnalls and Mr D A H Walters.

1 March 1943

Appointment of Trustees by said Executors with consent of annuitants reciting that the trust property included the scheduled freehold property.

9 February 1970

Appointment of Mr H D H Runnalls as trustee in the place of Mr D A H Walters.



850

- 9 -

3 March 1972

Appointment of Mr R H Runnalls as a trustee in the
place of Mr H D H Runnalls.

Dated this 5th —

day of October — 1979

A. A. Baden Fuller

Commons Commissioner