



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/41

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at "The Old Dry", forming part of  
Cheesewring Common, Minions

DECISION

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No.1 in the Land Section of Register Unit No. CL.131 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No.51 made by Mr Howard W Martin and referred to a Commons Commissioner on 18 March 1993.

I held a hearing to inquire into this objection at Liskeard on 27 January 1994.

At the hearing the Objector appeared in person. He submitted that the land to which the objection relates forms - and has at all times since 5 August 1945 formed - the site of a dwellinghouse and a garden used and enjoyed therewith.

The Objector produced copies of the following title deeds:

- (a) a conveyance dated 2 May 1935 (H R H Edward Prince of Wales to R R Prynne) whereby the land was conveyed by the following description: "ALL THAT parcel of land containing one rood and twenty-four perches or thereabouts with the old mine building standing thereon or on some part thereof situated at Minions....." as shown coloured green on the plan annexed thereto. (The land so coloured is the same as the land shown on the plan attached to the Notice of Objection).
- (b) a conveyance dated 7 July 1956 (Prynne to Boswell) whereby the land was conveyed by the following description: "All that piece or parcel of land containing one rood and twenty-four perches or thereabouts with the two Cottages now known as Newstead and Northleigh and workshop and all other buildings erected thereon or on some part thereof (formerly the old mine buildings) situate at Minions....." as shown on a copy of the same plan.
- (c) a conveyance dated 2 July 1971 (Hayes to Coish) whereby the land was conveyed by reference to the same plan as in the 1956 conveyance and by a similar description save that the buildings are described as "the dwellinghouse (formerly two dwellinghouses known as Numbers 1 and 2 Institute Cottages) erected thereon or on some part thereof and now known as "Old Dry" Minions aforesaid.....".
- (d) a conveyance dated 13 December 1972 (Coish to Martin) whereby the land was conveyed to the Objector by the same description as in the 1971 conveyance.

Mr R B M Budge gave evidence which may be summarised as follows:

- (i) He was born in 1934 and has known Cheesewring Common throughout his life;
- (ii) He remembers a group of people residing in Old Dry in the early 1940s;



(iii) In 1944 his father (and the family) moved further away from Cheeswring and during the next 8 years his visits to the Common became infrequent. He was therefore unable to say whether anyone resided at Old Dry during these years.

The Objector gave evidence to the effect that he did not know Cheese-wring until he purchased the Old Dry in 1972: that he and his family have since lived there: that in 1972 he planted between 100 and 150 pine trees along the southern and the lower part of the eastern and western boundaries of the land as a windbreak: and that he has used the land so enclosed for keeping chickens and the cultivation of vegetables and fruit down to the present time.

The Objector also produced a type-written statement signed and dated as follows:

"P. Collings 26-1-94  
1. Moorview Terrace, Upton Cross  
Liskeard, Cornwall, PL14 5AL

Witnessed by:

D.M. Bricknell  
Rosandown  
Upton Cross  
Liskeard, Cornwall, PL14 5AX".

The Objector said (when on oath) that he first heard of Mrs Collings ten days previously; that he took the statement from her over the telephone and typed it out and took it to her home for her to sign on 26 January: that he has known Mrs D M Bricknell for some time, as she is a retired school teacher who used to teach his children: and that Mrs Collings signed her statement in the presence of Mrs Bricknell who then witnessed it. In all the circumstances I am prepared to accept the statement as evidence of its contents. In the statement Mrs Collings says:

- (a) that she was born in Saltash, Cornwall in 1934, the daughter of Mr and Mrs Hodge
- (b) that the family was evacuated to Minions during the 1939/45 War following the blitz on Plymouth and Saltash
- (c) that towards the end of the War the family settled in the property now known as "The Old Dry" and lived there until 1962, when Mrs Collings left to get married although her parents and younger sister continued to live there for several more years
- (d) that her father used the land round the house for growing vegetables.

Mr Budge gave further evidence on behalf (as he said) of the Commoners owing to the absence from the hearing (at a funeral) of E A J Piper the Vice-Chairman of the St. Cleer and District Commoners Association. Mr Budge said he could not challenge what Mr Martin said, nor the contents of Mrs Collings' statement. He did however say that he does not remember any fencing round the land prior to about 1968 when a local contractor, Mr Blewitt, treated it with a vibro-tiller with a view to planting trees and making a garden.

After the hearing I inspected the land and saw the house and its surrounding land and trees.



On the above evidence, my conclusions in this case are as follows:

- (a) that the building now known as the "Old Dry" existed for many years prior to 1945;
- (b) that having regard to the 1935 conveyance it was probably not a dwellinghouse in that year;
- (c) that having regard to the evidence of Mr Budge and Mrs Collings (which is nowhere contradicted or put in doubt) it became a dwellinghouse a few years prior to 1945;
- (d) that it has since been a dwellinghouse;
- (e) that the land, shown by the title deeds to have been held with the dwellinghouse since 1935, is to be presumed to be its "garden" for the purposes of the 1989 Act - see Cresstock v Commons Commissioner 1992 1 WLR 1088, 1094;
- (f) that there is no evidence to rebut this presumption.

I accordingly consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the whole of the land to which this Objection relates.

I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 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

16

day of

February

1994

Commons Commissioner