



COMMONS REGISTRATION ACT 1965

Reference No. 206/U/245

In the Matter of land at Craddock Moor, St. Cleer

DECISION

This reference relates to the question of the ownership of land at Craddock Moor St. Cleer being the land comprised in the Land Section of Register Unit No. CL.461 in the Register of Common Land maintained by the Cornwall County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (1) Mr G D R Searle and (2) Mr G B Bunney claimed to be the freehold owners of parts of the land in question and no other person claimed to have information as to its ownership.

Hearing

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Bodmin on 23rd October 1990.

Attendance at Hearing

The hearing was attended by Mr Martin Wright of Cornwall County Council, the Registration Authority, Mr S D Mutton of Stephens and Scown, Solicitors of Liskeard representing Mr G D R Searle, Mr M Wear of Bond Pearce, Solicitors of Plymouth representing Mr G B Bunney and Mr Searle and Mr Bunney in person.

Entries on Register

The land was registered as common land consequent upon a Rights application. There are 3 subsisting entries in the Rights Section of the Register of rights to graze cattle or ponies or sheep over this and other Register Units. There are no entries in the Ownership Section of the Register.

Previous Ownership Inquiry

There was a previous Ownership inquiry at Bodmin in 1982 before Chief Commons Commissioner Mr George Squibb. Mr Squibb was not satisfied that any person was the owner of the land, and it therefore remained subject to protection under Section 9 of the 1965 Act.

The Stream

The Register Unit is bisected by a stream but in nothing like equal halves, since the stream runs much closer to the northern boundary than to the southern.

Mr Searle's Claim

Mr Searle's claim is to a small piece of land, north of the stream at the western end of the Register Unit. Mr Mutton produced to me a bundle of title deeds, including the originals of the following:-



- (i) 18th February 1965 Conveyance between (1) John Saunders (2) Eric Hall and Eric Peter Snowdowne and (3) Richard James Drake Searle and Guthrie Donald Rupert Searle
(ii) 22nd July 1985 Probate of R J D Searle
(iii) 14th March 1989 Assent in favour of G D R Searle

Mr Mutton identified the piece of land in question as part of O.S.No. 2632 on the Ordnance Survey Map Second Edition 1906. The 1965 Conveyance included Part 2632 in the property thereby conveyed, and this passed to Mr G D R Searle under the Assent. I have annexed to this Decision marked "A" a photocopy of the plan to the 1965 Conveyance on which the part of O.S. 2632 included therein was identified, and I have indicated it with an arrow on the photocopy. As I read the Register Map (which is on a much smaller scale) the boundary of the Register unit lies along the line between Part O S 2632 and Part O S 2631 shown on Plan A. I was told that Mr Searle has occupied the land shown on Plan A as Part O S 2632 since 1965. On this evidence I am satisfied that Mr Searle is the owner of this piece of land.

Mr G D Bunney's Claim

After the hearing Mr Wear handed in to my Clerk a plan showing 3 parcels of land forming part of the Register Unit in respect of which Mr Bunney claimed to be in occupation. I have annexed to this Decision marked "B" a photocopy of that plan, on which I have marked the three parcels with the numbers 1, 2 and 3.

Mr Wear had previously produced to me the originals of two Conveyances as follows:-

- (i) 29th September 1961 between (1) R T H Arnold, T W Arnold and L A Hoskin and (2) D W P Bunney and G B Bunney
(ii) 20th June 1971 between (1) D W P Bunney (2) D W P Bunney and G B Bunney and (3) G B Bunney.

The 1961 Conveyance is of the farm known as Crylla containing an area of 109 acres or thereabouts, being the enclosures having the numbers there listed on the Ordnance Survey Map Second Edition 1907. There is no plan annexed to this deed. The 1971 Conveyance is an inter-family dealing in respect of the same 109 acres, and also has no plan.

One of the Ordnance Survey Numbers is 2632, without any qualification as to its being "Part only". Mr Wear however conceded that it related only to the part south of the stream (marked 1 on Plan B), and did not affect the part north of the stream of which Mr Searle claimed to be owner.

The difficulty with regard to the other two parcels (those numbered 2 and 3 on the plan) is that I have no means of identifying these with any of the Ordnance Survey numbers set out in the 1961 Conveyance. The plan submitted by Mr Wear (Plan B) is taken from a later edition of the Ordnance Survey, on which the numbers are different. No copy of the 1906 or 1907 Ordnance Survey was before me, save for the extract therefrom on Mr Searle's deeds (Plan A). This does not extend to area 2, and although it does include area 3 no Ordnance Survey number is shown in respect thereof.



Conveyance to A D Bolitho

A further difficulty facing me however was that there is indorsed on the 1971 Conveyance a memorandum in the following terms:-

"By a Conveyance dated the 16th day of December 1988 and made between George Brian Bunney of the one part and Anthony David Bolitho of the other part part of the land herein conveyed was conveyed to the said Anthony Bolitho in fee simple and the right of the said Anthony David Bolitho to production of the within written Conveyance was thereby acknowledged".

Mr Wear was unable to produce a copy of the Conveyance of 1988, so that I should in any event be unable to determine what part of the land comprised in the 1961 and 1971 Conveyances remains vested in Mr Bunney and what part has been conveyed away by him. It was in order to identify the land in respect of which Mr Bunney is still in occupation that Mr Wear after the hearing handed in the plan which I have reproduced as Plan B.

The Commons Commissioners had no notice prior to the hearing of any possible claim by Mr Anthony David Bolitho. I was informed that he had been told of the hearing at about midnight the previous night, but not surprisingly he did not attend. Accordingly I stated that I would postpone my Decision until the Commons Commissioners had notified Mr Bolitho (whose address was stated to be Down Hill Farm, Minions, St. Cleer) and given him the opportunity to make a claim under the Act. Mr Bunney agreed to co-operate with Mr Bolitho so far as possible.

On 30th October 1990 the Clerk of the Commons Commissioners wrote to Mr Bolitho at the address stated notifying him of the matter and asking him, if he wished to be registered as the owner of any part of the Register Unit, to send in a photocopy of the Conveyance to him of 16th December 1988 and any other documents he might consider relevant to his claim. No reply has ever been received to that letter, nor was it returned in the post. Reminders were sent to Mr Bolitho by the Commons Commissioners on 3rd December 1990 and 24th January 1991, but without result.

Registration at Land Registry

I understand that the Register Unit is in an area which is now subject to compulsory registration under the Land Registration Acts. It may be therefore that subsequent to the Conveyance to Mr Bolitho in December 1988 the land comprised therein was registered at the Land Registry. In that event, if the land conveyed to Mr Bolitho included any part of the Register Unit, the Land Registrar should have notified the Registration Authority and a Note to that effect should have been entered in the Commons Register pursuant to Regulation 21 of the Commons Regulation (General) Regulations 1966. There was no such note on the Commons Register at the date of the hearing.

Conclusion

In these circumstances I am unable to resolve the question whether Mr Bolitho ought to be registered as owner of any part of the Register Unit. I am also unable on the evidence at present before me to decide whether or not the areas marked 2 and 3 on Plan B were included in the Conveyances of 1961 and 1971 under which Mr Bunney claims title.



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It would be unfair to Mr Searle for me to delay any longer before issuing a Decision on his claim. As to Mr Bunney's claim, I am satisfied only that he is the owner of the area marked 1 on Plan B. I shall accordingly direct the Cornwall County Council as Registration Authority to register:-

- (i) Mr Searle as the owner of the land shown on Plan A as part O.S.2632
- (ii) Mr Bunney as the owner of the area marked 1 on Plan B.

The remainder of the Register Unit will remain subject to protection under section 9 of the 1965 Act.

Further Evidence

I shall allow Mr Bolitho and Mr Bunney a period of six weeks from the date on which this Decision is sent to them respectively in which to send in to the Office of the Commons Commissioners such documentary evidence as they may think fit in support of a claim to ownership of any other parts of the Register Unit. On receipt of such evidence I would then decide whether to issue a Supplementary Decision without a further hearing or whether to hold a further hearing.

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

8th

day of

April

1991

Martin Rott

Commons Commissioners

CRADDOCK
MOOR

2755
1-001

2757
1-921

2747
2-430

TREGARRICK

2748
1-003

2746
2-887

PLAN "A"

2628

CESSPIT

PT 2631

PT 2632

1965
-535

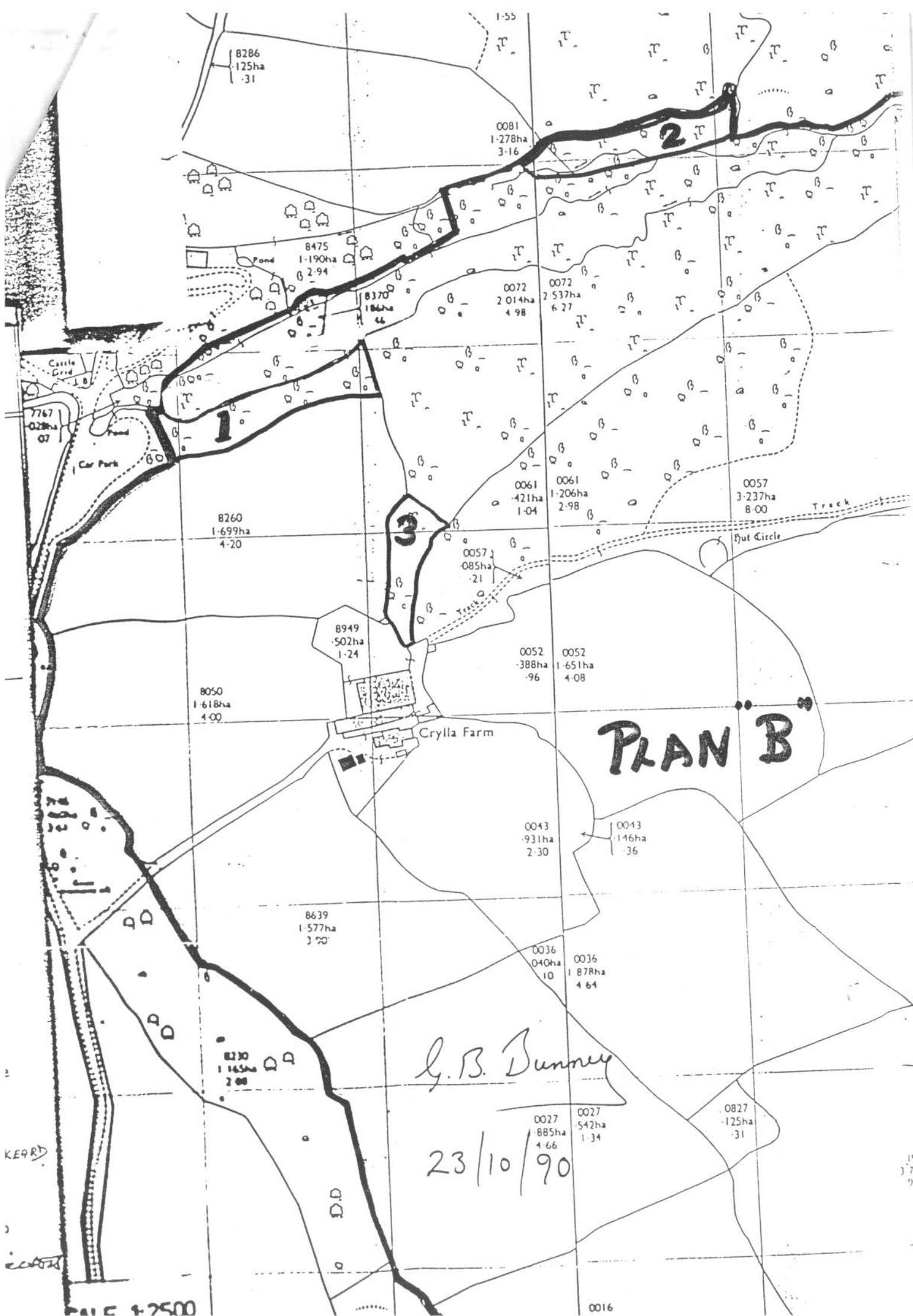
1966
4-363

CRYLLA

Compared and agreed with
plan on original correspondence

Stephen Seaton
L. S. Seaton

12th April 1959



PLAN B

G.B. Dunne

23/10/90

KEARD

SCALE 1:2500

19: 375 9: