



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/14

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of land at the Cottages, Boskednan

DECISION

REFERENCE

This reference relates to an Objection under the Common Land (Rectification of Registers) Act, 1989 to the registration of part of the land registered at Entry No. 4 in the Land Section of Register Unit No. CL.707 in the Register of Common Land maintained by the Cornwall County Council.

NOTICE OF OBJECTION

The reference is occasioned by a Notice of Objection dated 2nd January 1992 made by William Patrick Trevarthen and Jennifer Georgina Trevarthen numbered OB14 and referred to a Commons Commissioner on 27th April 1992.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register Unit edged in red on the plan attached to the Objection ("the Objection land").

ENTRIES ON REGISTER

The land was registered as common land upon the application of West Cornwall Footpath Preservation Society. The registration being undisputed became final on 31st May 1973. There are 4 entries in the Rights Section of the Register as to the grazing of cattle and other rights affecting parts of the Register Unit.

OWNERSHIP INQUIRY

An inquiry into the ownership of the Register Unit was held by a Commons Commissioner on 1st March 1989. No person claimed ownership of the Objection land, and it therefore remained subject to protection under Section 9 of the Act of 1965.

WRITTEN REPRESENTATIONS

A written representation opposing the Objection was made by A W H Harvey & Son, Solicitors of Penzance acting for the Executors of the late Herbert Thomas Lutey, the registrant in respect of Rights Entry No. 11.

A written representation supporting the Objection was made by the Hon. Secretary of West Cornwall Footpath Preservation Society.

HEARING

I held a hearing to inquire into the Objection at Penzance on 23rd July 1992 and I made a site visit on the afternoon of the hearing.



ATTENDANCE AT HEARING

The hearing was attended by Mr Martin Wright and Mrs Stiff of Cornwall County Council the Registration Authority Mr D M Reid of Reginald Rogers & Son Solicitors of Helston representing the Objectors and Mr & Mrs Trevarthen in person.

WITHDRAWAL OF OPPOSING REPRESENTATION

After the date of the hearing had been fixed and the hearing had been advertised A W H Harvey & Son on behalf of the Executors of Mr Lutey withdrew their opposition to the Objection.

EVIDENCE IN SUPPORT

The evidence in support of the Objection included a Statutory Declaration by Edith Mary Rowe dated 8th April 1991. She declared that she was 66 years of age, that from about 1930 her aunt had lived at the Cottages, that she was a frequent visitor and became well acquainted with the house and land enjoyed therewith. She said (inter alia) that the Objection land "was used by my uncle as a yard to the said dwelling house and it was enclosed by a Cornish hedge on the north western side and a post and wire fence erected by my uncle on the eastern or road side boundary of the same. I am also aware that my uncle planted certain trees and shrubs on the land..... which I believe were planted with a view to identifying one of the boundaries of the same. I am also aware that my said uncle grew daffodils and lilies on part of the land.....".

This went on until her uncle died in 1978. After that date the story is taken up by the Objectors in their Statutory Declaration dated 2nd January 1992.

SITE VISIT

Although on the various plans the more northerly of the two parcels which comprise the Objection land appears to be part of a field (O.S. No. 335), it is clear on the ground that this is not the case. The levels of the land fall away sharply and the Objection land is more or less enclosed by the old Cornish hedges (that is to say, overgrown dry stone walls) referred to in Mrs Rowe's Statutory Declaration.

CONCLUSION

On this evidence, in the absence of any opposition, I consider that the requirements of Section 1(2) of the 1989 Act are satisfied in respect of the Objection Land.

APPEAL

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

3<sup>rd</sup>

day of

August

1992

*Martin Rottger*

Commons Commissioner