



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/864
to 867 inclusiveIn the Matter of Maenporth Beach,
Falmouth, Carrick District, CornwallDECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 and 2 in the Rights Section of Register Unit No CL 752 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No X 567 made by Mr Sam Billcliffe and Objection No X 811 made by His Royal Highness Charles Prince of Wales Duke of Cornwall and both noted in the Register on 1 March 1972.

I held a hearing for the purpose of inquiring into the disputes at Camborne on 3 October 1980. At the hearing Mr Billcliffe attended in person; the Duchy of Cornwall were represented by Mr R F T Halliday assistant land steward in their Liskeard office; Cornwall County Council on whose application the Rights Section registration at Entry No 1 was made, were represented by Mr D M Gill; and Carrick District Council were represented by Mr J P Winskill, Solicitor of the Council.

According to the Register map, the greater part ("the Tidal Part") of the land in this Register Unit is between the lines HWMNT and LWMNT; and a much smaller part ("the Land Part") is a strip above and adjoining the HWMNT line. The Land Section registration was made in consequence of the application for the Rights Section registrations; of these that at Entry No 1 is of a right attached to Meudon Farm to take sand and that at Entry No 2 made on the application of Mr Eustance John Benney is of a right attached to Trerose Farm to take sand for agricultural purposes.

In a letter dated 30 September 1980 Mr Winskill on behalf of Carrick District Council said: (1) that the Council is the estate owner in fee simple of certain parts of the land in this Register Unit; and (2) that because of the Sea Sand (Devon and Cornwall) Act 1609, the registrations were not proper.

Mr Halliday said (at the hearing) that he had been told by the London Office of the Duchy not to give evidence in support of Objection No X 811, but merely to have it recorded that the foreshore is within the freehold ownership of the Duchy of Cornwall.

Mr Gill referred to a letter dated 29 September 1980 from the Clerk and Chief Executive of Cornwall County Council saying that in view of the fact that the right to take sand from this beach already exists under the 1609 Act, the Council will withdraw their rights application in respect of Meudon Farm; Mr Gill in accordance with such letter said that the Council was agreeable to my refusing to confirm the Rights Section registration at Entry No 1.

The grounds of Objection No X 567 (Mr Billcliffe) are:- "Plan of Beach in question. This Beach has been in my ownership for 13 years. I run this for cars and holiday makers. I do not allow sand to be taken, there have in the past been prosecutions at Falmouth Court. I have no knowledge of Mr Benney ..., and the land in question was not common land at the date of registration". The plan attached to the



Objection showed the Land Part of the Register land. Mr Billcliffe (at the hearing) in effect repeated his grounds of Objection, and said that the land is in his ownership, and Mr Benney had no rights at all.

The 1609 Act (7. Jac. 1 c.18) provides that it "shall and may be lawful to and for all persons whatsoever resiant (sic) and dwelling within the said counties of Devon and Cornwall, to fetch and take sea sand at all places under the full sea-mark, where the same is or shall be cast by the sea for the bettering of their land, and for the increase of corn and tillage at their wills and pleasures." As regards the Tidal Part a right to take sand such as has been registered on the application of Mr Benney is inconsistent with the 1609 Act and is in my opinion therefore not registrable under the 1965 Act; see Harris and Ryan, Common Land (1967) paragraph 2-32. As regards the Land Part, in the absence of any evidence, I consider I should conclude that Mr Benney's registration was not properly made. Having regard to this conclusion, and the said withdrawal by the County Council and in the absence of any evidence that the Land Section registration could be supported if the land was not subject to some right of common, I refuse to confirm the registration at Entry No 1 in the Land Section and the registration at Entry Nos 1 and 2 in the Rights Section.

As to ownership:- Even if the Land Section registrations had been rightly made, I would at this hearing have had no jurisdiction in the absence of a reference to the Commons Commissioners made about by the County Council to express any opinion about ownership; and if the Land Section registration is now avoided in accordance with my decision, no such reference can ever be made. So I express no opinion as to the ownership claims (whether conflicting or reconcilable) above mentioned and I refuse to request of the Duchy to make or ask anybody else to make any record of their alleged ownership.

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 29th - day of October 1980.

a. a. Baden Fuller

Commons Commissioner