



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/283-292

In the Matter of Racecourse Downs
Cardinham and Helland
North Cornwall D

Interim Decision

This dispute relates to the registrations at all the subsisting Entries in the Rights section of Register Unit No CL 139 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by the Objections set out in the Schedule to this interim decision and the conflicting registrations at Entry Nos 27 and 34 and 9 and 30 in the said section.

I held an adjourned hearing for the purpose of inquiring into the dispute at Bodmin on 6th 8 and 9 March 1978. The hearing was attended by:

Mr W A Daniel of Messrs Arthur Goldberg on behalf of R J Lobb and L J & H B Matthews

Mr J G A Rornary of Messrs Pethybridges on behalf of J C Beer, R S Lyne,
E Tucker and F H Best

Mr J Evans of Messrs Peter Peter & Sons on behalf of J C Keast

Mr Nichols of Messrs Graham & Graham on behalf of Brigadier Edward-Collins and

Mr V K Leese of Messrs Stephens and Scown on behalf of the Cardinham Commoners Association.

On the 8 March 1977 I held a hearing at which I confirmed with modifications, the Entry in the Land Section and adjourned the hearing of the disputes relating to the Entries in the Rights Section. The adjourned hearing was heard by me together with that relating to the adjoining Unit No CL 138, many applicants for rights having claims on both this Unit and Unit No CL 138.

The objections to the Entries in the Rights Section which are all provisional are as to the existence of the rights and as to quantum. It was accepted at an early stage of this adjourned hearing that the Entries in the Rights Section which will become final cannot be quantified and modified as may be required until it is known which of the applicants will be entitled to final registrations. It was therefore agreed that I should confine this decision to deciding which Entries I will refuse to confirm and indicating which Entries I will confirm at a further adjourned hearing with or without modification.

Entry Nos 2, 3, 4, 14, 16, 21, 22, 28, 31, 47, 48, 55, 56, 57-59 and 61 were abandoned either prior to or in the course of the adjourned hearing and I refuse to confirm these Entries.



As regards Entries Nos 11, 13, 17, 18, 19, 20, 23, 26, 30, 32, 33, 34, 35, 36, 41, 46, 49, 51, 50, 52 and 60 the applicants did not appear to prove their respective entitlements to rights and I must therefore refuse to confirm these Entries.

The claims of the applicants under Entries Nos 9 and 43 (which are duplicated) 24 - 29 42 and 58 were resisted at the adjourned hearing and evidence was led on behalf of the applicants.

Before I deal with this evidence it will be convenient to set out my findings of fact as regards this Unit and Unit CL 138.

All the evidence led at the adjourned hearing was to the effect that both these commons were at all times within living memory prior to the 1939/45 was poor grazing land to a large extent covered with gorse. The grazing was of little if any value. The evidence was that farmers with established herds kept them on their own lands or pastured them for payment on the lands of other farms and that insofar as cattle were put on the commons they were fed with hay on the common. Without doubt cattle and probably some sheep were turned on to the commons, sometime to prevent "poaching" of the land on the home farms and also store cattle to find what feed they could. Some sheep may have been put on the commons for about six weeks in the spring. The animals put on the commons were let out of the farm gates, which were left open in some cases in the hope that the animals would return for their evening feed, or be driven on to the common along the most convenient land. The picture I have is that the commons were useful amenities but that they contributed little to the feeding of the farmers stocks. In these circumstances it is not surprising that the evidence as to the use of the commons during the 20 years prior to 1940 is not reliable.

The use of the commons prior to the war was I, am satisfied, regarded as unimportant by the farmers, save as an amenity of which they availed themselves as and when it suited them. It would be surprising if any witness had an accurate recollection of this use of common over a period more than 30 years ago.

From 1940 to 1960 the commons were under requisition and very large parts of them were ploughed and greatly improved.

It is common ground that only those farms which had the benefit of grazing rights on the commons in 1940 can be entitled to grazing rights today and I am not concerned with the use of the commons subsequent to 1940. This unit lies to the West of the main A30 road save, I was told, for a very small strip on the East Side of the road. Unit No CL 138 lies wholly to the West of the A30. The A30 has been improved. Since the years before the 1939/45 was and now carries a greatly increased burden of traffic. The evidence was that before the war the cattle strayed backwards and forwards across the road and one witness spoke of cattle straying down towards Bodmin and having to be driven back.

Consequent upon an enquiry by me as to whether this Unit and Unit No CL 138 were historically two commons or whether it was only by virtue of the registrations under the Act of 1965 that they were registered as two separate Units, Mr Daniel called Mr Lobb whose evidence on this point was as follows.



A hedge separated this Unit from Unit No CL 138 some of which still remains. The hedge followed the line of the road which accounts for a small part of this Unit lying on the East of the road, when the road was improved it cut through the hedge. There was another hedge on the Cardinham side of the road. There were hedges on both sides of the road, which have not been maintained and which have fallen into disrepair over the years. There had in the past been racing on this Unit land. The local inhabitants had always referred to this Unit as Racecourse Downs and to Unit No CL 138 as Cardinham Downs. Cattle could and did stray from one to the other.

On this evidence I am satisfied that this Unit and Unit No CL 138 always were two separate commons and I further take the view that a commoner only acquires a prescriptive right to graze on the common on which he turns out and does not acquire a prescriptive right over an adjoining common on to which his animals from time to time stray.

I turn now to the disputed Entries

Entrys 9 and 43; Treswithick

Mr C M Robertson the present owner of Treswithick gave evidence that it comprised 92 acres and he purchased in 1970. He has never exercised any grazing rights and about half the land is now a club airfield and the other half is let for grazing.

Mr Adrian Dingle gave evidence that he is aged 61 was born in Cardinham and that his memory goes back to when he was about 12 years of age. His family acquired Treswithick in 1930 and it was a mixed farm, farmed as an "off farm" together with Callywith where he lived. Stock were kept on both farms mainly store cattle and sheep and occasionally turned out on Unit CL 138. Cattle were driven across the Down from one farm to the other. The problem was to find them; they might be 10 or 12 miles away and they were fed on the Down in the winter and ~~that~~ this practice continued until there was fencing on the moor. He had some sheep on the moor as well as cattle.

In cross examination he said the family had 400 acres all farmed together and that some sheep were reared at Treswithick. The moor was rough and the family kept 500 head of cattle and 200 sheep. The sheep strayed less than the cattle. From April to September these were 200 sheep but they were not all on the Down together, about 20 to 30 cattle were turned out at any one time.

The evidence given by Dr Dingle made no mention of any grazing on this Unit from Treswithick. Such animals as were turned out from Treswithick were clearly put on Unit No CL 138 and they as stated by Mr Dingle strayed far and wide and even if some did stray on to this Unit such straying could not found a claim for rights acquired by prescription. It is relevant to mention that the claim for Callywith Entry 14 has been abandoned. For these reasons I refused to confirm Entrys 9 and 43



Entry 24 Lower Carblake The claim was made by Doris Anne Lane who purchased the farm in 1962 from the late Mr Tomkins Trustee. Evidence was given as to Mr Tomkins' activities by Mr A J Lane and Mr D Roose. Mr Lane in cross examination said he saw Tomkins' stock about half a mile away and by the A30 road and that he saw his stock on this Unit on several occasions but that he never saw Tomkins drive his stock across the road and Mr Roose in his evidence in chief said he never saw Tomkin drive his cattle across the road.

In view of these admissions by Mr Lane and Mr Roose I am satisfied that Lower Carblake has no prescriptive right to graze on this Unit and I refuse to confirm Entry No 24.

Entry No 29 Higher Carblake Mr W J Coppin gave evidence in support of this claim. Mr Tomkins, he said, came to Higher Carblake after Mr Dingle and Mr Shaw. He moved away in 1922 and he knew Tomkins very well all his life. He gave no evidence that Tomkins turned out on this Unit and for the reasons given relating to Lower Carblake I refuse to confirm Entry No 29.

Entry No 42 Trewardale and Tren creek including Vatahorne Brigadier Edward-Collins the owner of these farms and a small adjoining common Unit No CL. 140 gave evidence as also did Mr C C Raw~~2~~. The evidence was that no stock was ever turned out from Trewardale during any relevant period.

Tren creek was let to Mr Thomas from the early 1900's until 1921 when Mr Cawr~~3~~ took over. The effect of the evidence was that the animals turned out from Tren creek would go on to Unit No CL. 140 and cross the road on to Unit No CL. 138; the right for Tren creek to graze on Unit No CL. 138 has been conceded but no evidence was given that stock from Tren creek were ever turned out on this Unit and I refuse to confirm Entry No 42.

Entry No 58 Teason and Lahays Mr Bate who gave evidence is aged 41 and he was clearly unable to speak of his own knowledge of the pre war history.

Mr Vallis gave evidence that he was born in 1908 and lived at Cardinham in 1924 and went to work for Mr C R J Bate at Teason. He said Teason had cattle which were put out on Fore down and Cardinham Downs at Peaches Hill. In cross-examination he said most years sheep and cattle were put out. The Teason cattle sometimes went to Cardinham and sometimes to Stews (another name for Fore down). The Teason animals in 1924 went to Cardinham from 1924 to 1930 to Fore down and he could not remember taking cattle to Cardinham after 1930. He gave no evidence of grazing on this Unit and I refuse to confirm Entry No 58.

The result of this adjourned hearing is therefore that I refuse to confirm all the subsisting Entries in the Rights Section other than Entries Nos 7, 8, 15, 25, 27, 37, 44 and 54 and I further adjourn this hearing for the purpose of considering what if any modification shall be made to these Entries which remain provisional.



As regards Ref No 206/D/287 I have refused to confirm the Entries Nos 16 and 21 the subject of Objection No x 546 and this reference is now finalised.

As regards References 206/D/289 and 290 I have refused to confirm Entry No 34 and I anticipate that I will confirm Entry No 27 and this conflict is resolved and these references are now finalised.

As regards References 206/D/291 and 292. I have refused to confirm Entries 9 and 30 and these references are now finalised.

THE SCHEDULE ABOVE REFERRED TO:

<u>Objection No</u>	<u>Objector</u>	<u>Date noted on register</u>
X 395	R J Lobb	5.1.71
X 301	L J & H B Matthews	5.1.71
X 527	I A & M S Jeffrey	30.11.70
X 545	Cardnham Commoners Association	26.8.71
X 546	" " "	26.8.71
X 1332	" " "	15.12.72

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 21st day of April 1978

Y A Lobb

Commons Commissioner