



COMMONS REGISTRATION ACT 1965

Reference No. 206/D/982-987

In the Matter of Rosecare Green, St Gennys,
North Cornwall D

DECISION

These disputes relate to (1) the registrations at Entry No. 1 in the Land Section and at Entries Nos. 1, 2 and 3 in the Rights Section of Register Unit No. CL 180 in the Register of Common Land maintained by the Cornwall County Council occasioned by Objections Nos. X16 and X17 made by Mr J C and Mrs A W Edmeades and noted in the Register on 26 November 1969, (2) the registration at Entry No. 1 in the Rights Section occasioned by Objection No. X15 made by A J Rigby-Jones and noted in the Register on 7 November 1969, (3) the conflicting Entries Nos. 1 and 2 in the Ownership Section.

I held a hearing for the purpose of inquiring into the dispute at Bodmin on 14 October 1981. The hearing was attended by Mr W J Fry, Mr P Henshall, Mr Preller, and Mr Gill of the Registration Authority.

(1) The land comprised in this Register Unit ("the Unit land") lies partly to the north and partly to the south of a road. The part to the south is O.S. No. 1241 on the O.S. Map 1906 Edition and I will refer to it as O.S. 1241; the part to the north is, or consists substantially of, O.S. No. 1240 and I will refer to it as O.S. 1240.

The Unit land was registered as common land in consequence of Mr Fry's application to register rights (Entry No. 1 in the Rights Section) which is a right of grazing over the whole of the Unit land. Objections Nos. X16 and X17 relate only to O.S. 1241; as regards Objection No. X15, Mr Rigby-Jones did not appear and Mr Henshall, who claimed to be successor to Mr Rigby-Jones, did not seek to maintain the Objection if Mr Fry's grazing right did not extend to O.S. 1241. Mr Fry accepted this limitation so that I shall confirm Entry No. 1 modified by limiting the right to O.S. 1240.

(2) A further question arose relating to O.S. 1240, Mr Preller informing me that a small part of that area is in fact private property which should not have been included in the registration. Mr Fry accepted that this was the case and I shall exclude from the registration in the Land Section this small part which is shown on a plan (~~produced by Mr Gill~~), produced by Mr Gill, and is also accepted by St Gennys Parish Council.

(3) The position as regards O.S. 1241 is somewhat complicated. Entry No. 2 in the Rights Section was made in November 1969 on the application of Mr Rigby-Jones and is a right of grazing over the whole of the Unit land, claimed to be attached to land known as Rosecare Farm. Entry No. 3 was made in December 1969 on the application of Mr and Mrs Edmeades and is a right of grazing over the whole of the Unit land, also claimed to be attached to Rosecare Farm. The two rights are not identical in the number of animals for which rights are claimed, but there is plainly some



duplication as both are said to be attached to Rosecare Farm. It appears that the duplication arose since in or about November 1969 Mr Rigby-Jones sold the Farm to Mr and Mrs Edmeades.

(4) At about the time of the purchase Mr and Mrs Edmeades registered ownership of O.S. 1241 - this is Entry No. 2 in the Ownership Section; this conflicts with Entry No. 1, which relates to the whole of the Unit land and was registered on the application of St Gennys Parish Council in September 1969. Both Mr Rigby-Jones and Mr Edmeades have written to say that they have no further interest, and on his letter of 21 March 1981 Mr Edmeades states that "all objections and claims registered by me should be cancelled".

This disclaimer by Mr Edmeades means that, technically, Objections Nos. 16 and 17 are no longer operative but Mr Henshall, as successor in ownership to the Farm, agreed that there was a duplication of rights and was content that Entry No. 3 should be cancelled and Entry No. 2 modified to a right to graze 3 head of cattle or 15 sheep over O.S. 1241. At the same time he sought, in his capacity as successor to Mr Edmeades, to maintain ownership of O.S. 1241 (Entry No. 2 in the Ownership Section). Mr Henshall told me that his title deeds did not include O.S. 1241 but that Mr Edmeades had claimed to be entitled to ownership of O.S. 1241 and had planted trees on it: and that both of them had maintained it by mowing the grass. On this evidence, and having regard to Mr Edmeades's disclaimer, I am not prepared to confirm the registration by Mr Edmeades at Entry No. 2: nor in the absence of any evidence by the Parish Council do I confirm their registration at Entry No. 1 so far as it relates to O.S. 1241. Accordingly, as regards the Ownership Section, I confirm the registration at Entry No. 1 modified by excluding O.S. 1241 from the land to which it relates, and refuse to confirm the registration at Entry No. 2. This will leave O.S. 1241 without any person registered as owner, and if and when the question of its ownership is referred to a Commons Commissioner, nothing in this Decision will preclude either Mr Henshall or the Parish Council from then claiming ownership, supported by such evidence as in either case may be available.

(5) I confirm the registration at Entry No. 1 in the Land Section (modified as indicated in paragraph (2) above), and the registrations at Entries Nos. 1 and 2 in the Rights Section subject to the respective modifications referred to in paragraphs (1) and (4) above: and I refuse to confirm the registration at Entry No. 3 in that Section.

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 2 November

1981

L. J. Harris Smith

Commons Commissioner