



COMMONS REGISTRATION ACT 1965

Reference No 206/D/203-5 inclusive

In the Matter of Tregonetha Downs, Well
Moor and Village Green, St Wenn, Restormel BC

DECISION

These disputes relate to the registration at Entry Nos 2, 3 and 5 in the Rights Section and Entry No 1 in the Ownership Section of Register Unit No CL. 252 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No X 651 made by J F Julian and noted in the Register on 7 October 1969 and Objection No X599 made by T S Brenton noted in the Register on 22 February 1972.

I held a hearing for the purpose of inquiring into the dispute at Truro on 13 July 1976.

This hearing took an unusual course. Mr Best of Messrs Pethybridges appeared for Captain Doughty and at the beginning of the day invited me to take the case first on the footing that the disputes had been disposed of by agreement between the parties and that his only application was for costs, and in support of that application he produced some correspondence passing between Messrs Farrer & Co the solicitors for the Duchy of Cornwall and Mr Doughty and his firm.

By a letter dated 22 June 1976 Messrs Farrer wrote to Mr Doughty after they had received notice of the reference in the following terms:-

" We see from the Register that you have made a provisional registration in the Rights Section to graze fifty cattle or one hundred and twenty sheep in respect of the property known as Phillip's Tenement. We are advised by our clients who are the owners of the land in question, that there has been no history of grazing on the moor at any stage and we have certainly seen no evidence in support of any claim such as yours.

In the circumstances we must ask you either to withdraw forthwith your registration or to provide us with evidence which indicates the existence of your right. You will appreciate that the Duchy cannot allow unsubstantiated claims to be entered on the Register and must protect the rights of the genuine graziers. In circumstances such as these therefore, the Duchy may be obliged to contest a hearing for the registration of rights where there appears to be no basis for this, with the attendant liability of costs.

We trust that this will not be necessary in your case and look forward to hearing from you accordingly. "

This letter was entirely misconceived. The Duchy had not objected to any of the Entries in the Rights Section, nor to the Entry in the Land Section. The Duchy was only concerned in the hearing by reason of Mr Brenton's objection to the Duchy's Entry in the Ownership Section.



Mr Best's firm answered this letter on 30 June 1976 and while they did in that letter state that "It is a matter for comment that you have not previously made any objection to our client's grazing rights during the usual statutory period" instead of leaving the matter there and pointing out that there was no dispute between their client and the Duchy and therefore no reference of any such dispute they appear to have envisaged that it was open to the Duchy to object to their client's rights application at the hearing. This letter did not provide any evidence to support Capt Doughty's claim for Rights. On 12 July 1976 Messrs Farrer wrote a long letter to the Commons Commissioner which contains the following two paragraphs:-

"At the time when the two claimants made their registrations without of course having the benefit of knowing what their evidence was in support of these claims, it appeared to the Duchy that after considerable research these claims were on balance not valid and should therefore be disputed. It was for this reason that the Duchy lodged objections."

and later

"Having taken further instructions and investigated the matter fully we wrote to the respective claimants' solicitors on 7 July informing them that the Duchy no longer wished to pursue their objections."

No copy of the letter of 7 July was produced to me by Mr Best.

I can find no indication in my copy of the Register that there ever were any objections by the Duchy to the Rights applications. Furthermore a copy of the Notice of Reference 206/D/205 was sent to the Duchy on 22 April 1976 which clearly states that the dispute on that Reference is confirmed to the Entry in the Ownership Section and the Notice of hearing dated 7 June 1976 sent to the Duchy relates only to that Reference. The Duchy's letter of 12 July 1976 is misleading as also was Mr Best's submission to me which was that by only withdrawing their objection at the last moment without any evidence as to the foundation of Capt Doughty's claim the Duchy had compelled Capt Doughty to bear unnecessary costs.

The fact of the matter is that there never was any dispute between the Duchy and Capt Doughty and Mr Best's attendance at the hearing was unnecessary; his proper course was to point this out to the Duchy and to assume that in the absence of an objection or a reference relating to Capt Doughty's claim for rights no Commissioner would deal with a case which had not been referred to him. In these circumstances I cannot award Capt Doughty any costs.

The true position was brought to my notice later in the day when Mr Gillingham of Messrs Whitford & Sons appeared on behalf of Mr Julian and the successors to Mr Brenton, the latter having agreed that their rights do not extend over the land the subject of Mr Julian's objection, which had also been excluded from Capt Doughty's claim for Rights. The Entry in the Land Section being consequential on the claim for rights, I confirm the Entry in the Land Section modified so as to exclude the land the subject of Mr Julian's Objection No X 651, such land being identified on the plan attached to that objection, and I confirm the Entry Nos 2, 3 and 5 in the Rights Section as applicable to the Entry in the Land Section modified as aforesaid and I confirm the Entry in the Ownership Section, which in fact excludes Mr Julian's land.



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 4th day of August 1976

C. A. Little

Commons Commissioner