



COMMONS REGISTRATION ACT 1965

Reference No.6/U/9

In the Matter of Treguth Common,
Cubert, Truro R.D., Cornwall.

DECISION

This reference relates to the question of the ownership of land known as Treguth Common, Cubert, Truro Rural District, being the land comprised in the Land Section of Register Unit No.C.L.191 in the Register of Common Land maintained by the Cornwall County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Mr. L. J. Penna in a letter dated 10th May 1972 and Mrs. Winifred M. Wakeham, Miss Frances M. Wakeham (now Mrs. Shield) and Mr. A. Wakeham in a letter dated 17th May 1972 claimed ownership on grounds which were, as below mentioned, later explained fully to me. The Cubert Parish Council in a letter dated 2nd June 1972 formally claimed, if no owner can be traced, to be registered as owners. No other person claimed to have information as to ownership.

I held a hearing for the purpose of inquiring into the question of ownership of the land ("the Common") at Truro on 12th and 13th July 1972.

The hearing was attended by Mr. A. Wakeham (on whose application the land was registered as Common Land) and who appeared not only in his own interest but as representing Mrs. W. Wakeham and Mrs. Shield; and also by Mr. L. J. Penna. They both gave evidence.

The Common has an area of about 21 acres. On the west there is a stream (it flows into the sea nearby) and the seashore of Holywell Bay. On the south there is a group of houses and buildings known as "Holywell Bay". The road from Cubert to Holywell Bay leads directly to the Common. Mr. Penna is (or claims to be) the owner of six pieces of land: (i) Sandy Close, (ii) a car park, caravan site, shop and residence which abut on the south side of the Common, (iii), (iv) and (v), three bungalows near the Common and (vi) a building plot also near the Common. Mrs. Wakeham, Mrs. Shield and Mr. Wakeham or some one or more of them are (or claim to be) the owners of three pieces of land near the Common.

The case put by Mr. Penna was, as I understood it, as follows:- (i) In 1840 the Common was owned as to 1/2 by T. Hoblyn as to 7/24ths by W. Phillips and as to 5/24ths by J. Delbridge; (ii) in 1840 each of these three owned (in severalty) other land in the Parish; (iii) T. Hoblyn, W. Phillips and J. Delbridge held their shares in the Common as appurtenant or as belonging to the land they owned (in severalty) so that the share of T. Hoblyn or an appropriate fraction of such share passed under any conveyance made by him of any of the land he so owned or of any part of such land and so on, through all the successors in title of T. Hoblyn to any part of the land so owned by him; (iv) the pieces of land now owned by Mr. Penna, were in 1840 owned by T. Hoblyn; (v) accordingly Mr. Penna now owns a share in the Common equal to the fraction whose numerator is the area of the land which formerly belonged to T. Hoblyn in severalty and which now belongs to Mr. Penna and whose denominator is the area of the land formerly owned by T. Hoblyn, W. Phillips and J. Delbridge in severalty.



In support of this case Mr. Penna produced a Tithe Award dated 1840 by which the rent charged in lieu of tithe was apportioned between the lands of the parish. In the schedule to the Award the following items appeared (abbreviated in this decision):-

Land Owners	Occupiers	Number on Plan	Name and Description	State of Cultivation	Quantity
			Treguth Common		
Hoblyn Thomas	Himself))		5½ shares		
Phillips William	"))	120	3½ shares	Common	20.0.11
Phillips John	"))		2½ shares		
Thomas Hoblyn	"))		½ share		

Against the above quoted items in the column headed "Remarks" appears:-
"The Rent Charge in lieu of tithes of this Common has been apportioned upon the enclosed Lands in proportion to the respective shares of the Land Owners."

Mr. Penna produced six bundles each apparently containing numerous documents of title which he told me show that he is the owner of the six pieces of land above mentioned: but none of these documents so he said contained any express reference to the Common.

I told Mr. Penna that I would not examine the documents in these bundles unless he could indicate to me in some way either how any one of them could be regarded as dealing with or showing the devolution of the shares of T. Hoblyn in the Common or how he established that part of his case which I have numbered (iii) above. Mr. Penna told me that he relied on the "Remarks" in the schedule to the award above quoted and on some of the indentures in the bundles containing words by which the land conveyed included "Commons". I accordingly examined an indenture dated 2nd February 1881 (which I understood to be typical) by which a piece of land containing 3 roods 10 perches (being part of the tenement of Treguth in the parish of Cubert) formerly in the occupation of W. W. Phillips was conveyed to W. Jacks (who Mr. Penna told me was his predecessor in title) "together with all buildings, fixtures, lights, commons, mines and minerals, fences, ways, watercourses, easements and appurtenances whatsoever to the said premises or any of them appertaining or with the same and any of them nor or heretofore enjoyed or reputed as part thereof or appurtenant thereto". Mr. Penna contended that the half share (5½ plus ½ shares in 12 shares) of T. Hoblyn above mentioned was "appurtenant etc" within the meaning of the above quoted words and that due to the proximity of the Common to the "tenement of Treguth" the word "commons" must refer to "the Treguth Common".

Mr. Penna concluded by stating that all he was interested in was that his rights and part ownership in Treguth Common should be recognised so that he should have some right to control the use of the Common and particularly prevent the misuse of the Common.



Mr. Wakeham after explaining that he adopted the contentions of Mr. Penna produced various rate books which contained entries relating, so he said, to Treguth Common; that dated 1907 was he said typical of the others and he showed me an entry which was (abbreviated) as follows:-

Occupier	Owner	Description of Property	Name	Estimated Extent
Penna Ellen	Self	Land	Treguth & Common	2. 3. 39
"	"	House	"	2. 3. 39
"	"	House	" 2½ shares	10. -. 27

Mr. Wakeham told me that he had lived in Holywell since 1929, he had always regarded Treguth Common as attached to the ground owned by the people of Treguth who had grazed bullocks on it. He rented a field called Great Close part of Treguth. When he first went there in 1929 Treguth had only two farms; since then parts of these had been sold for building sites.

Mr. Penna and Mrs. Wakeham produced conveyances or copy conveyances dated 30th December 1946, 13th April 1965 and 3rd June 1969 all relating, so they said, to the land they owned near the Common, all of which were in the usual form and none of which contained any reference to the Commons.

The identity of the Common with plot "120" mentioned in the schedule to the 1840 award was not obvious to me. At the hearing I did not consider the evidence tendered to me as to this or as to the ownership of Mr. Penna and of Mrs. Wakeham, Mr. Wakeham and Mrs. Shield of the pieces of land they claimed to own in severalty because in my view I would be wasting my time in so doing unless I could first draw the conclusion that somehow the Common or a share in it belonged or was appurtenant to such pieces of land in the way suggested by Mr. Penna. Of this essential part of their case there was, I think, no evidence at all. The circumstance that Mr. T. Hoblyn owned a piece of land in the parish in severalty and also an undivided share of land in the same parish is not, I think, by itself enough to establish that the share belongs to or is appurtenant to the land held in severalty, so as to pass under conveyance of the whole of it under general words such as are above quoted from the indenture of 2nd February 1881 or under similar words which would by section 62 of the Law of Property Act 1925 be implied in any of the conveyances made after the commencement of such Act.

A scheme under which a conveyance by Mr. T. Hoblyn or one of his successors in title of part of the land would either under the words above quoted from the 1881 indenture or from the said section 62 pass a fraction of an undivided share in the Common owned by T. Hoblyn proportional to the area of the land conveyed would, I think, be extraordinary. I cannot, I think, infer that any such scheme here existed in the absence of any evidence that the owners of the land expressly agreed to create it; in my view, it is not enough that in the circumstances of the Common as they now exist, such a scheme could produce a result which would be convenient to the owners of the land nearby.

Accordingly I conclude that Mr. Penna, Mrs. Wakeham, Mrs. Shield and Mr. Wakeham have not established that they or any of them are owners of any share in the Common. I reach this conclusion with some regret because I respect the



object Mr. Wakeham had in mind when he registered the Common as Common Land under the 1965 Act and appreciate the advantages which might result from the Common being subject to some such scheme as was suggested to me.

I have under the Act, I think, no power to give effect to the claim put forward by the Parish Council in their letter of the 2nd June 1972 although it may be section 9 of the 1965 Act will confer on them some of the advantages they may have hoped to obtain as owners.

For these reasons I am not satisfied that any person is the owner of the land, and accordingly the land falls into protection under section 9 of the Act.

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 25th day of October 1972.

a. a. Baden Fuller

Commons Commissioner