



COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/232 to 244 inclus

In the Matter of Treslea Downs, Cardinham,  
North Cornwall District, Cornwall

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### DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1, 2, 3, 4, 6, 7 (now 29), 8 (now 31), 9 (now 32), 10, 11, 12, 13, 15, 16, 17, 18, 19, and 20 (now 27) in the Rights Section and at Entry Nos 1 and 2 in the Ownership Section of Register Unit No CL. 128 in the Register of Common Land and are occasioned by (D/232, D/234, D/235 and D/236) Objection Nos X430, X429 and X1402 made by Mr W F Dyer and noted in the Register on (X/430 and X429) 26 November 1970 and (X1402) 2 January 1973, by (D/233 and D/240) Objection No X524 made by the Trustees of Thomas Henry Tonkin deceased and noted in the Register on 26 November 1970, by (D/237) Objection X396 and made by Mr A R Hanbury-Tenison and noted in the Register on 30 April 1971, by (D/238) Objection No X538 made by Cardinham Commoners Committee (chairman Mr T G Best and Hon Secretary Mr J B Hore) and noted in the Register on 24 August 1971, by (D/239) Objection No X1327 made by Cardinham Commoners Committee (chairman Mr N Worden and Hon Secretary Mr J B Hore) and noted in the Register on 2 January 1973, by (D/241 and D/242) by Entry Nos 10 and 11 in the Rights Section being in conflict, and by (D/243 and D/244) by Entry Nos 1 and 2 in the Ownership Section being in conflict.

I held a hearing for the purpose of inquiring into these disputes at Bodmin on 13 December 1976. At the hearing, (1) Mr John Henry Pethybridge and Mr Leslie George Winder (the Trustees of T H Tonkin deceased; Mr C R J Bate who was a trustee in 1970 has since died) were represented by Mr J G R Romary solicitor of Pethybridges, Solicitors of Bodmin; (2) Mr W F Dyer was represented by Mr J R P Evans solicitor of Peter Peter & Sons, Solicitors of Launceston; (3) Lanhydrock Holdings (Jersey) Ltd (as successors in title in respect of Rights Section Entry No 16 made on the application of the Rt Hon A V Viscount Clifden on whose application the Entry was made) was represented by Mr M J Keast chartered surveyor with Rowse Jeffrey & Watkins, Surveyors of Lostwithiel; (4) Mr William John Courts of Ellena Millpool Bodmin was also represented by Mr Keast; (5) Mr P Norman on whose application the Rights Section Entry No 1 was made attended in person and (6) also as representing Cardinham Commoners Committee and (7) Mr A R Hanbury-Tenison.

The land ("the Registered Land") comprised in this Register Unit is, if irregularities and outlying pieces be disregarded, approximately triangular, each side being about  $\frac{1}{2}$  of a mile long. Objection Nos X430 (Mr Dyer) and X524 (Tonkin Trustees) are to the Land Section Entry. Of the 18 disputed Rights Section Entries, 10 are the subject of particular Objections, being No X429 and X1402 by Mr Dyer, No X396 by Mr Hanbury-Tenison, and No X538 and X1327 by the Commoners Committee. Of the 10 other disputed Rights Section Entries, 2 are disputed because they (Entry No 11 made on the application of Mr Smeeth and Entry No 19 made on the application of the Tonkin Trustees) are in conflict. The remaining 6 Rights Section Entries are disputed by reason of the deemed objection to them occasioned by the said 2 Objections to the Land Section Entry.



Mr Evans referred me to and confirmed a number of documents showing that Mr Dyer with the agreement of a substantial proportion of the others concerned had withdrawn Objection Nos X429, X430 and X1402.

Mr Norman said that Mr Hanbury-Tenison had withdrawn Rights Section Entry No 19 (being that in conflict with Entry No 11) and had also withdrawn his Objection X396 and referred me to documents to this effect dated 30 November 1976 and signed by Mr Hanbury-Tenison (see D/237).

Mr Norman in respect of Objection No X524 said that Mr Hanbury-Tenison had become entitled as successor of the Tonkin Trustees to the land mentioned in this Objection; the land so mentioned is a strip about 200 yards long and 30 yards wide being part of the outlying piece at the north end of the Registered Land. Mr Norman referred me to an agreement dated between 16 and 22 November 1976 and signed by the persons on whose application Rights Section Entry Nos 1, 11, 12, 13, 19, 6, 17, 15, part 18, 27, 10, 16, 2, 3, 4, 31 and 32 had been made or their successors in title and by Mr Worden as chairman of Cardinham Commoners Association; by this agreement (see file D/240) signatories agreed that the land shown edged red on the plan attached thereto was not common land and was included in the Registered Land in error; the said plan ("the 1976 Agreement Plan") shows edged red the whole of the outlying strip at the north end of the Registered Land being an area which is about 500 yards long and about 200 yards broad and includes the land mentioned in Objection No X524. With the said agreement there is a withdrawal of Objection No X524 dated 24 November 1976 and signed by Mr Hanbury-Tenison and a consent to such withdrawal dated 29 November 1976 signed on behalf of the Tonkin Trustees.

With respect to Objection No X358 (the Commoners Committee) made to Rights Section Entry Nos 7 (now 29), 8 (now 31) and 9 (now 32), Mr Norman said that Mr Hawkins on whose application Entry No 7 was made could not now be found and Mr Romary said that Mr M W J Harris on whose application Entry Nos 8 and 9 were made now withdrew the Entries.

In respect of Objection No X1327 (the Commoners Committee) to Rights Section Entry Nos 16 and 18 both made on the application of Lord Clifden, Mr Norman said that the Objection to Entry No 18 was withdrawn and Mr Keast said that Lanhydrock Holdings (Jersey) Ltd as successors in title to Lord Clifden withdrew Entry No 16.

Oral evidence was given by Mr Courts in the course of which he produced a plan ("the Courts Plan") on which was shown edged red part of the Registered Land situated at its southeast corner being part of OS No 1635 and 335 and having an estimated area of 0.125 and 0.137 acres respectively, a deed of rectification and conveyance dated 5 November 1970 by which Mr Dyer conveyed to him (Mr Courts) and his wife the said part of the Registered Land and a statement dated between 23 November to December 1976 and signed by persons on whose application the Rights Section Entry Nos 6, 15, 17, 1, 4, 11, 12, 13, 19, 2, 3, 31, 32, 27, 10, part 18 were made or by their successors in title. By this statement signatories confirmed that the said part was not common land having been enclosed and occupied by Mr W J and Mrs E B Courts and their predecessors in title for upwards of 31 years and that they did not wish to pursue their claim to common rights on it → and had no objection to its being withdrawn from the Register.



Mr Courts said (in effect):- The said edged red part is just outside Mountpleasant Farm: it is fenced in with a wire fence about 3 feet high enclosing grassland with a shed on it in which he used to keep poultry; it had been enclosed for about 29 years. The statement had not been signed by Mr A T C Hawkins on whose application Entry No 7 (now 29) was made or by any successor in title of his because Mr Hawkins' holding (a small one between  $\frac{1}{4}$  and  $\frac{1}{2}$  a mile away) was now empty, Mr Hawkins having, so he understood died.

No one present at the hearing raised any objection to the suggestion that I should modify the Land Section Entry by excluding the land edged red on the 1976 Agreement Plan and the land edged red on the Courts Plan. In my opinion I have jurisdiction to make this modification notwithstanding that some of the land edged red on the 1976 Agreement Plan is outside that mentioned in Objection No X524 and that Mr Courts has himself made no objection; in my opinion any objection to an Entry in the Land Section brings the whole Entry within the jurisdiction of a Commons Commissioner notwithstanding that the grounds stated in the Objection are limited to a particular part of the land, it being open to a Commons Commissioner if he thinks just to amend the grounds of objection, see rule 26 of the Commons Commissioners Regulations 1971. Further the land edged red on the Courts Plan is part of the land mentioned in Objection No X430. In my opinion I can treat the documents produced as establishing that these parts of the Registered Land were registered in error and correct the Register accordingly notwithstanding that in respect of Rights Section Entry No 7 neither Mr A T C Hawkins nor any successor in title of his has attended the hearing or has signified his agreement. For these reasons my decision is that the Land Section Entry should be so modified.

As to the Rights Section Entries I consider I can properly act on the agreements and withdrawals as summarised above in respect of those Entries to which they relate. As regards those Entries which are disputed by reason of the deemed objection consequent upon the objections to the Land Section Entry, there is I think no need for those who applied for those Entries to establish their rights as against the parts of the Registered Land to which no Land Section Objection has been made; accordingly as regards these Entries my decision is that they were properly made. As regards the remaining Rights Section Entry being No 7 made on the application of Mr Hawkins: the grounds of Objection No X538 are "that the right does not exist at all; or, if the right is proved, that the right should comprise fewer animals namely one head of cattle, one pony or five sheep". The Entry as originally made (No 9) was to graze 14 head of cattle; as finally registered (No 29) it is to graze 9 head of cattle or 9 ponies or 45 sheep (I am not concerned with the part of the Entry which relates referentially to Register Units CL. 137 and 135). At or shortly before the hearing a document/was handed to my clerk signed on behalf of the Cardinham Commoners Association with reference to this Entry No saying: "Following a further meeting called to try to settle this dispute, the Cardinham Commoners Committee wish to withdraw the Objection made to this Entry that the right of common does not exist at all. The objection to the number of animals is not withdrawn". In the absence of any evidence supporting this right and having regard to the information given to me about the holding at the hearing, my decision is this Entry should be modified by reducing the number of animals in accordance with the grounds of the Objection.



The Ownership Section Entries now in conflict were made on the application of (1) Tehidy Minerals Ltd and (2) Mr W F Dyer. I have no note of any evidence or of any statement being made to me at the hearing as regards the conflict although I have some recollection of Mr Evans, who represented Mr Dyer, at one stage saying either that some agreement had been reached or that no difficulty was expected. However in the absence of any information I give no decision about the disputes occasioned by this conflict.

For the above reasons I confirm the registration at Entry No 1 in the Land Section with the modification that there be removed from the Register the lands edged red on the 1976 Agreement Plan and on the Courts Plan, I refuse to confirm Entry Nos 8 (now 31), 9 (now 32), 16 and 19 in the Rights Section, I confirm Entry Nos 1, 2, 3, 4, 6, 10, 11, 12, 13, 15, 17, 18 and 20 (now 27) in the Rights Section without any modification and I confirm Entry No 7 (now 29) in the Rights Section with the modification that for the words "9 head of cattle or 9 ponies or 45 sheep" there shall be substituted the words "one head of cattle or one pony or 5 sheep". To the notice which I am required by section 6 of the 1965 Act to give the registration authority I shall annex a copy of the 1976 Agreement Plan and the Courts Plan.

The disputes occasioned by Entry Nos 1 and 2 in the Ownership Section being in conflict (files D/243 and D/244) are adjourned to be heard at such date and place as may be fixed by a Commons Commissioner, but this adjournment will not preclude Tehidy Minerals Ltd and Mr Dyer or their successors in title applying for an agreed decision under regulation 31 of the said 1971 Regulations.

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 6<sup>th</sup> day of January 1977

a. a. Baden Fuller

Commons Commissioner