



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/442-445

In the Matter of parts of Blackdown and West Blackdown, Mary Tavy

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No. CL.193 in the Register of Common Land maintained by the Devon County Council and are occasioned by the conflicting registrations at Entries No 49 and 72 in the Rights Section of the same Register Unit and Entries No. 55 and 78 in the Rights Section of Register Unit No. CL.3 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into these disputes at Exeter on 26th July 1995. The hearing was attended by Mr N Coveney Solicitor of Nash of Plymouth representing Mr A C Littlejohns Mr George Hill representing the Hill family and Mr Fairy.

Entry No.49 in the Rights Section of CL.193 was made on the application of William Arthur Lillicrap in respect of rights of turbary, to take stone, to cut bracken and rushes and to graze 15 cattle and 100 sheep over the whole of the land comprised in this register unit and register unit No. CL.3. The rights are expressed to be attached to Rowes Farm Horndon comprising a series of O.S. Numbers including O.S. No. 773 on the Second Edition 1906 for the Parish of Mary Tavy.

Entry No. 55 in the Rights Section of CL.3 is an exactly similar entry in respect of rights over this register unit and register unit CL.193. Once again the rights are expressed to be attached to Rowes Farm including O.S. No. 773.

The conflicts with the Land Section of CL.193 arise because O.S.773 was included on the Register Map as part of the common.

Mr A C Littlejohns is the successor in title to Mr W A Lillicrap in respect of Rowes Farm including O.S. 773. Mr Coveney produced to me a Schedule of Events commencing in 1872 together with Certified copies of various deeds referred to therein including the following:-

- (i) Conveyance dated 24th June 1964 between F G and A J Easterbrook and others of the one part and William Arthur Lillicrap of the other part
- (ii) Conveyance dated 26th September 1985 between W A Lillicrap of the one part and Arthur Cephas Littlejohns of the other part.

I am satisfied that both these deeds included O.S. No. 773 having an area of 1.424 acres.

Mr Coveney asked me to remove O.S. 773 from the Land Section of the Register of CL.193. No-one appeared before me to oppose his application, and I shall accordingly allow it.

Entry No. 72 in the Rights Section of CL.193 was made by Richard John Hill and Rowena Elizabeth Hill in respect of rights of turbary, to take stones, to cut bracken and rushes and to graze 6 ponies 100 cattle and 390 sheep over the whole of the land comprised in this register unit and register unit No. CL.3.



The rights are expressed to be attached to Higher and Lower Kingsett Farms, Mary Tavy, as set out in column 5 of Rights Entry No. 78 of CL.3.

Entry No. 78 in the Rights Section of CL.3 is a similar entry in respect of rights over this register unit and register unit CL.193. The rights are expressed to be attached to Higher and Lower Kingsett Farms comprising a series of O.S. Numbers including O.S. Nos. 962 965 and 979 on the Second Edition 1906 for the Parish of Mary Tavy.

The conflicts with the Land Section of CL.193 arise because O.S. No 962 and parts of O.S.Nos. 965 and 979 were included on the Register Map as part of the common.

Mr Hill produced the original of a Conveyance dated 24th June 1954 in favour of Richard John Hill, the plan to which included all land to the east of the river in the region of the disused Wheal Betsy from O.S.981 in the north to O.S.962 in the south.

Mr Hill said that he was the son of Richard John and Rowena Elizabeth Hill, and the farms were now held in trust for Richard John Hill who was 16 years of age.

Mr Hill asked me to remove from the Land Section of CL.193 all land to the east of the river in the region indicated. He said that none of the Rights holders contested his claim. No-one appeared before me to oppose his application, and I shall accordingly allow it.

Mr Coveney on behalf of Mr Littlejohns asked me to make an Order for payment of his costs by Devon County Council. He told me that he had given the Council notice of his intention to ask for costs. The Council was not represented before me to oppose his application.

Under Section 17(4) of the 1965 Act Commons Commissioners have the power to order any party to proceedings under the Act to pay any other party the costs incurred by that party in respect of the proceedings. In practice this power is seldom exercised, and as a rule only where an application or objection is clearly unsustainable and has been pursued unreasonably.

The grounds on which Mr Coveney bases his application are (1) that when a Common Land Search was made prior to Mr Littlejohns' purchase the County Council gave a clear certificate which failed to disclose that any part of the land purchased was registered as common land; and (2) that there appeared to be a manifest error on the Register Map for which the County Council was responsible.

As regards the error on the Register Map, this was a matter in respect of which the original owner, Mr Lillicrap, could have (but omitted to) make an Objection prior to March 1984 when the registration in the Land Section became final. As regards the defective Search Certificate, this a matter on which Mr Littlejohns may well have a claim against the County Council, but it is not within my jurisdiction to deal with it.

For these reasons, on this evidence and in the absence of any opposition I shall direct the Devon County Council as Registration Authority to modify Entry No. 1 in the Land Section of CL.193 by removing:-

(1) O.S. No. 773

(2) All land to the east of the river in the region of the disused Wheal Betsy from O.S.981 in the north to O.S.962 in the south.



For the reasons stated I shall not make the Order for costs asked for by Mr Coveney.

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

August

1995

Martin Roberts

Chief Commons Commissioner