COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/4 to 13
(inclusive)

In the Matter of Cheesewring Common, St. Cleer, Henwood Common St. Cleer, and Longstone Downs St. Cleer all in Caradon D., Cornwall

DECISION

These disputes relate to (1) The Entry at No. 1 in the Land Section and the Entries at Nos. 1, 2, 5, 6 and 9 in the Rights Section of Register Unit No. CL.131 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No. X196 made by His Royal Highness Charles Prince of Wales Duke of Cornwall and noted in the Register on 4th September 1970. (2) The Entry at No. 1 in the Land Section and the Entries at Nos. 1 to 5 inclusive in the Rights Section of Register Unit No. CL.132 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by Objection No. X192 made by His Royal Highness Charles Prince of Wales Duke of Cornwall and noted in the Register on 4th September 1970; and (3) The Entry at No 1 in the Land Section and the Entries at Nos. 1A, 2, 6, 7, 9, 10 and 12 in the Rights Section of Register Unit No. CL.147 in the Register of Common Land maintained by the Cornwall County Council and are occasioned by :- Objection No. X191 made by His Royal Highness Charles Prince of Wales Duke of Cornwall and noted in the Register on 4th September 1970, Objection Nos. X511, X512 and X513 made by R.H. Budge and noted in the Register on 20th August 1971; and Objection No. X1291 made by the Rosecraddoc Commoners Association and noted in the Register on 8th December 1972.

I held a hearing for the purpose of inquiring into these disputes at Truro on the 6th and 7th May 1975. Mr. Sher counsel instructed by Messrs. Farrers appeared for His Royal Highness Charles Prince of Wales Duke of Cornwall and I will for the sake of brevity refer to his Client as "the Duchy".

Mr. Carne of Messrs. Blight Broad & Skinnard appeared for Mr. E.J. Hoare and Mr. S. Turner; Mr. W. Pitt of Messrs. Wilson Parnall & Godwin appeared for Mr. Gill and Mr. Budge; Mr. Lawrence appeared in person; and Mr. Bolitho represented the Rosecraddoc Commoners Association. Mr. & Mrs. Moore did not appear.

I have consolidated these references which relate to three separate Units because the Duchy is the undisputed owner of all three Units, the early history is common to all three Units and much of the evidence given at the hearing was relevant to more than one Unit. All three Units with the exception of a part of Unit No. 131 are in the Manor of Rillaton, part of Unit No. 131 is in the adjoining Manor of Carnedon Prior. At all times prior to 1848 the whole of the land comprised in these three Units was unenclosed waste. In the year 1848 the Assessionable Manors Award for the Manor of Rillaton dated 14th March 1846 (hereinafter referred to as the

Rillaton Award) made pursuant to the Duchy of Cornwall No.2 Act 1844 and was confirmed by an Act of 31st August 1848. The Rillaton Award adjudged and awarded that the lands set out in the Schedule marked B should belong to the Duke of Cornwall free from any common rights, the persons previously entitled to common rights having admitted to the Commissioners that they had been fully compensated for their loss. This summary of the effect of the Rillaton Award is subject to one qualification to which I will refer later in this decision. Mr. Sher produced a certified copy of the Rillaton Award and also the two above mentioned Acts.

I can now conveniently dispose of the references relating to No. CL.132. Mr. Sher produced a tenancy agreement whereby the Duchy leased this land to one, John Bradford for the term of 35 years commencing Michaelmas 1849 which contained a covenant by John Bradford to fence the same with a good and substantial stone fence. Mr. George Coumbe of Henwood Farm, the present tenant of No. CL.132 gave evidence:- he stated that the land was enclosed by a stone wall mixed with sand and earth which was 6ft. to 7 ft. high but in places might be only 4ft. 6in. He was constantly pestered with hill cattle owing to gates being left open. In the winter he was pestered by a lot of ponies. He always turned back animals straying on his land. Colin George Coumbe the father of George Coumbe confirmed his son's evidence and stated that he had been at Henwood since 19th October 1947.

The only applicant for common rights over No. CL.132 who gave evidence was Mr. Gill and he stated in cross-examination that he did not know whether or not there was a fence dividing No. CL.131 from No. CL.132 or whether his cattle had in fact grazed No. CL.132. The only other evidence of grazing on No. CL.132 was given by Mr. S.J. Bolitho who said his ponies regularly grazed No. CL.132 but he did not know if they had been turned off. Mr. Gills evidence is inconsistent with any claim by him to graze CL.132 as of right and in my view Mr. Gill's claim to graze No. CL.132 must fail.

At the outset of the hearing Mr. Carne stated that Mr. Hoare claimed rights by virtue of their having been conveyed to him and in the course of the hearing I gave him leave to appear for Mr. & Mrs. Turner who, late in the day discovered that their deeds conveyed common rights to them, as will appear later in the decision. I am of the opinion that Mr. Hoare and Mr. & Mrs. Turner have no title to any rights over No. CL 132 and I must therefore refuse to confirm the Entry No. 1 in the Land Section and all the Entries in the Rights Section of Unit No. CL.132.

I turn now to Unit Nos. CL.131 and CL.147. These lands are those parts of two parcels awarded to the Duchy by the Rillaton Award which have not been enclosed. No. CL.147 i bounded on the north by a Unit No. CL.148 known as Twelve Mens Moor and is open to that Moor and it and No. CL.131 were at all material times open to two other Moors on their western boundaries known as Siblybrook Moor and Craddock Moor. I was told that the Duchy concedes that No. CL.148 is Common Land, and it is the subject of a separate Reference. From what was said at the hearing for the purpose of this hearing I assume that Craddock Moor is also Common Land, though if there is a hearing relating to Craddock Moor that assumption may prove to be unfounded.

All the oral evidence was save as the matters of detail consistent and to the effect that at all material times animals grazing on No. CL.131, No. CL.147, No. CL.148 and Craddock Moor strayed from one Unit or Moor to another, all the owners of animals grazing on these lands were friendly and helpful to each other and no one either asked for or gave or refused permission for any grazing on any particular piece of land.

It was against this background that Mr. Pitt claimed common rights over No. CL.131 for Mr. Gill and over No. CL.147 for Mr. Budge and Mr. Lawrence claimed rights over No. CL.147.

Mr. Pitt submitted that his Clients were entitled to a common of pasture by reason of vicinage. In my view "common per cause de vicinage" is not a "right of common" capable of registration under the Commons Registration Act 1965.

In Jones v Robin 1D Q.B. 620 Parke B. stated at p.632 :- "It must be considered to be established that a common, or as it is sometimes called feeding, Corbets case, per cause de vicinage is not properly a right of common, a profit à prendre, but rather an excuse for a trespass".

Furthermore, Tyrringhams case Cokes Reports 2 Part IV at p. 36 is authority for the proposition that a right by reason of vicinage may be terminated at anytime by either of the two contiguous pieces of land being enclosed so as to prevent cattle straying from one piece of land to the other.

Mr. Sher submitted that a right of common a cause de vicinage could only exist as between two commoners and that it could not exist as between commoners on the one hand and a private owner on the other hand and that therefore since No. CL.131 and No. CL.167 were in the ownership of the Duchy and had for many years past been let to tenant farmers the right could not exist in the Instant Case. Jones v Robin was a case between two private owners and Parke B. stated at p. 635 that :- "On the whole the authorities appear to show that there is no necessity for commoners on both sides in order to give validity to a claim of common per cause de vicinage though where such common exists most frequently there are commons on both sides." ; and later at p. 635 he states that a common a cause de vicinage "has its origin from a presumed mutual grant or covenant between the owners of each farm that neither of them or their tenants should sue the other or his tenants or distrain or perhaps even drive their cattle away so long as the farms should respectively lie open to each other."

In my view a right of common a cause de vicinage is a contractual or quasi contractual right in the sense that so long as one owner takes the benefit of the contract and allows his cattle to stray he must also accept the burden and permit his neighbours cattle to do likewise. The right is not in my view a right in rem and the Commons Registration Act is in my opinion only concerned with rights in rem ; it does not in my opinion envisage the registration of a right against the land of B which B can terminate unilaterally at any time by enclosing the land. Since I take the view that a right of common a cause de vicinage is not registerable under the Commons Act 1965 it would be wrong for me to express any view as to whether any such rights exist in the instant case.

Mr. Pitt on behalf of his clients as alternatives to rights of common a cause de vicinage submitted that they were entitled to prescriptive rights or customary rights.

In my view the claims to prescriptive rights must fail; not only is the overall picture one of tolerance among neighbours but none of Mr. Pitt's Clients in their evidence asserted any right to graze No.CL.131 and No. CL.147 independently of any other rights to graze. On the other hand Mr. Perry whose father farmed Wardbrook Farm from 1932 to 1971 which included No. CL.147 and later from 1956 also included No. CL.131 and who assisted his father until he moved to the nearby farm, Sparetts, about fifteen

years ago stated that his father made a headage charge for grazing on No. CL.131; he had seen stock belonging to Lawrence, Bolitho, Sandcock and Budge on No. CL.131 and No. CL.147 but none belonging to Gill. No headage charge was made to these neighbours but their stock was turned away when the Perrys fed their own stock on the moors.

Only Mr. Budge claimed to have turned stock direct on to No. CL.147 and this he did only three or four times a year recently because an alternative means of access to the moors had been closed or otherwise become impracticable. Mr. Bolitho stated that when ponies or stock were gathered they were turned loose at the most convenient place.

In addition to Mr. Gill, Mr. Lawrence and Mr. Budge,Mr. Hoare, Mr. Bolitho, Mr. Vine, Mr. Sargent and Mr. Thompson, who only came to the district in 1971, gave evidence. They all confirmed the good neighbourly relations which existed as between the farmers who grazed on one or both of the moors Nos. CL.131 and CL.147, their evidence being consistent with vicinage or mere tolerance, and therefore inconsistent with the existence of any prescriptive rights. For these reasons I reject the claims to grazing rights made by Mr. Gill, Mr. Budge and Mr. Lawrence based on prescription.

Mr. Sher took the point that the tenancies which from time to time existed of both Nos. CL.131 and CL.147 precluded the commoners from prescribing as against the Duchy. This point will be open to him on appeal if the occasion arises.

Mr. Pitts final submission that there are customary rights was based on the confirmation by the Minister of Agriculture and Fisheries on 8th September 1936 of the Bodmin Commons Regulations made on the 19th June 1936 under the Commons Act 1908. The said Regulations defined Bodmin Moors as comprising various Manors including Rillaton and Mr. Pitts submission was that the Regulations approved by the Minister constituted a locality and that intercommoning was part of the local law of that locality.

The Commons Act 1908 is entitled as an Act to Regulate the turning out upon Commons of Entire Animals and the Regulations which by virtue of Section 1 of the Act may be made are confined to Regulations for turning out entire animals and the administration of such Regulations. The Bodmin Commons Regulations were in fact, as was to be expected, limited in their scope, to the matters set out in Section 1 of the Act. It is relevant to refer to sub-section 1(7) of the Act which is in the following terms "For the purposes of this Act two or more adjoining commons may by order of the Board of Agriculture and Fisheries be declared to be one common and shall be treated as such accordingly".

The Act is one of very limited application and the definition of Bodmin Moors is by the Act itself restricted in its use to the purposes of the Act. In my opinion neither the Act nor anything done or purported to be done under the powers conferred by the Act can have any bearing upon the rights of any landowner or any commoner save as regards the right to turn out entire animals. Nos. CL.131 and CL. 147 are in the Manor of Rillaton and the farms of Mr. Gill, Mr. Lawrence and Mr. Budge are all in other Manors and in my view therefore, their claims to customary rights fail.

I now pass to the claim to rights by Mr. Hoare who farms at Upton Hall and Mr. & Mrs. Turner who farm at Dunsley both in the Manor of Carnedon Prior and who have had rights

of common conveyed to them.

Schedule B to the Rillaton Award stated that the land numbered A1(a) on the map annexed thereto was "Land over which the Tenants of the Manor of Carnedon Prior claim a right of common". The land number A1(a) is part of No. CL.131 and a copy of the relevant part of the map annexed to the Rillaton Award on which the land numbered A1(a) is defined is annexed to this decision. The Duchy who are to be congratulated for their industry and probity produced a letter dated 24th February 1900 of a purely domestic character which stated in terms that the tenants of the former Manor of Carnedon Prior had rights of common over the area A1(a). In my opinion the Deeds produced by Mr. Hoare and Mr. & Mrs. Turner established their titles to grazing rights over the area A1(a) and in the light of the evidence Mr. Sher did not contend that those rights had been abandoned.

The evidence given was that five acres would sustain 1 cow with calf or 5 sheep with 5 lambs or 1 pony. The area A1(a) is 169 acres and will therefore sustain 30 cows or their equivalents. The quantification of the rights claimed by Mr. Hoare and Mr. & Mrs. Turner are clearly excessive since they must be restricted to the area A1(a). Having regard to the respective areas of Upton Park and Dunsley and the proportion which area A1(a) bears to the whole of No. CL.131 in my view Upton Park shall have the right to graze 20 beasts or their equivalents and Dunsley shall have the right to graze 10 beasts or their equivalents over the area A1(a).

The effect of my decision is therefore as follows:-

CL.131 (1) I confirm the Registration at Entry No. 1 in the Land Section modified so as to exclude land other than area A1(a) as defined on the map annexed to this decision.

(2) I confirm Entry No. 9 in the Rights Section modified so as to confer the right to graze 20 beasts or 100 sheep or 20 ponies over the said area A1(a). Each cow to include 1 calf and each ewe to include one lamb.

(3) I confirm Entry No. 1 in the Rights Section of the Register modified by including in column 5 of the Register the land described in column 5 in the Register against Entry No. 6 and so as to confer the right to graze 10 beasts or 50 sheep or 10 ponies over the area A1(a). Each cow to include 1 calf and each ewe to include 1 lamb.

(4) I refuse to confirm the Entries at Nos. 2, 5 & 6 in the Rights Section of the Register.

CL.132 I refuse to confirm the Entry at No. 1 in the Land Section of the Register and I refuse to confirm the Entries at Nos. 1 to 5 inclusive of the Rights Section of the Register.

CL.147. I refuse to confirm the Entry at No. 1 of the Land Section of the Register and I refuse to confirm the Entries at Nos. 1A, 2, 6, 7, 9, 10 and 12 in the Rights Section of the Register.

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 5th day of June 1975

C A Settle

Commons Commissioner