COMMONS REGISTRATION ACT 1965

Reference Nos.206/D/24-28

In the Matter of Cusgarne Common and Waste
at Todpool and Hale Mills, Gwennap, Cornwall.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.CL 579 in the Register of Common Land maintained by the Cornwall County Council and are respectively occasioned by Objection No. X208 made by Mr J.J.Burley and noted in the Register on 23rd February 1971, Objection No. X273 made by Viscount Falmouth and noted in the Register on 6th March 1972, Objection No. X818 made by the Trustees of the Surface of the Western Section of the Manor of Cusgarne and noted in the Register on 6th March 1972, Objection No. X834 made by Mr J.E.Penrose and noted in the Register on 6th March 1972, and Objection No. X1348 made by Mr H.Trefusis and the Clowance Mineral Trustees and noted in the Register on 7th December 1972.

I held a hearing for the purpose of inquiring into the disputes at Truro on 13th March 1975. The hearing was attended by Mr A.Mattingley, Secretary of the Ramblers' Association, the applicant for the registration, Mr D.J.Williams, solicitor, for Mr Burley, Mr J.B.G.Holt, solicitor, for Lord Falmouth, Mr C.J.Tromans, solicitor, for the Trustees of the Surface of the Western Section of the Manor of Cusgarne, Mr C.J.Kingston, solicitor, for Mr Penrose, and Mr W.H.Ward, the agent for Mr Trefusis and the Clowance Mineral Trustees.

The registration was modified pursuant to an application dated 26th July 1973 made by the Ramblers' Association in order to meet eight objections. Mr Mattingley informed me that he was willing for the registration to be further modified by the exclusion of Ordnance Survey Parcels Nos.2166, 2215, and 2220. These modifications met the Objections of Mr Burley and Mr Penrose, leaving me to consider the remaining three Objections, which are in effect two Objections, since No. X818 and No.X1348 relate respectively to the surface of and the minerals in the same land.

Mr Mattingley stated that his case was that the land the subject of the outstanding Objections fell within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being waste land of a manor not subject to rights of common.

Dealing with the first element in this definition, Mr Mattingley argued that the land of the Objectors was waste land in the meaning of that expression laid down by Watson B. in Att-Gen.v Hanmer (1858) 27 L.J.Ch.837, at p.840, being open, uncultivated and unoccupied. After hearing detailed evidence by Mr M.H.Maydew, Lord Falmouth's agent, Mr Mattingley conceded that some portions of Lord Falmouth's land could not properly be described as "waste", being let to rent-paying tenants.

Lord Falmouth's other land comprised in the Register Unit and the land of the other Objectors can conveniently be considered together. It is all

part of an area which has been extensively mined for tin. It contains many old mine shafts and is largely covered with mining spoil. In recent years there has been reclamation work, spoil being removed for the sake of its stone content, and refuse being dumped in its place in the hope that the land can ultimately be restored to agriculture. Meanwhile it has a somewhat desolate appearance and is not capable of growing anything of value.

Assuming for the moment that all the land is parcel of some manor, I have to consider whether it is "waste land" in the sense in which that expression is used in section 22(1) of the Commons Registration Act 1965. Mr Mattingley argued that it is because it is what Watson B. called "open, uncultivated and unoccupied". Mr Tromans argued that this was insufficient to bring this land within the category of waste land of a manor not subject to rights of common, because there was no evidence that it ever had been subject to such rights. In support of this argument Mr Tromans relied on the note on section 22 of the Act of 1965 in 3 Halsbury's Statutes 934, where it is stated that waste land of a manor here must presumably mean waste land in which common rights have ceased to exist. No authority is cited in this note, and in my view it places too restricted a meaning on the expression. To my mind, so long as the waste land is not now subject to rights of common it is quite immaterial whether it was ever subject to such rights in the past.

This leaves me with a question upon which, so far as I am aware, there is no direct authority, namely whether "waste land" as a technical legal expression is confined to land in its natural state or whether it extends to land of which the present state is the result of human activity, in this case tin mining. The decision in Att-Gen.v Hanmer, supra throws no light on this problem because the land the subject of that case was in its natural state, being the foreshore of the estuary of the river Dee.

The only guidance which I have been able to find in this matter is in Ryan Industrial Fuels Ltd v. Morgan (V.O.), [1965] 1 W.L.R.1347. In that case the Court of Appeal proceeded on the footing that the material in a colliery tip constituted chattels and had not become part of the realty, although it had been on the land for many years, the colliery having been operated for about 100 years before it was finally abandoned in 1917. This point was not argued in the Court of Appeal, having been agreed between the parties, but in the absence of any authority to the contrary, I consider it incumbent upon me to proceed on a basis which has been the subject of approval by the Court of Appeal. This approval is consistent with the decision in Robinson v.Milne (1884), 53 L.J.Ch.1070. Although the point here in issue was not there raised in so many words and the decision turned on the terms of a lease, the case has some relevance, for it was held that the lessee of a coal-mine was entitled to the material in the spoil-bank, which North J. said at p.1075 "partook very much of the character of a trade fixture".

I have therefore come to the conclusion that the land which Mr Mattingley contended is waste land does not fall within that category, being occupied for the storage of chattels, namely the mining spoil.

For these reasons I refuse to confirm the registration.

The Objectors asked that in the event of their Objections being sustained I would order the Ramblers' Association to pay their costs. I do not consider that this is an appropriate case for an award of costs. The Ramblers' Association made the application for the registration in the belief that it was acting in the public interest. Although I have held the application to be bad in law, the point which it raised is a novel one in cases under the Act of 1965 and it seems to me that there was nothing frivolous or unreasonable in the making of the application.

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 15th day of April 1975

Chief Commons Commissioner