COMMONS REGISTRATION ACT 1965

Reference No 206/D/480

In the Matter of Gunwalloe Church Cove Beach,
Gunwalloe, Cornwall (No 2)

DECISION

This dispute relates to the registrations at Entry Nos 1 and 2 in the Rights section of Register Unit No CL 177 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No X 142 made by H R H Charles, Prince of Wales, Duke of Cornwall and noted in the Register on 19 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Truro on 15 December 1977. The hearing was attended by Mr D Lockyer, the Chairman of the Gunwalloe Parish Meeting, the applicant for the registration, by Mr B C Peters, solicitor, on behalf of Mr James Hocking, one of the applicants for the registration at Entry No 1, and Mr W H K Ferris, the applicant for the registration at Entry No 2, and by Mr N Butterfield, of counsel, on behalf of the Objector.

The registration at Entry No 1 is of a right to take sand and that at Entry No 2 is of a right to take stone and sand, each right being attached to the applicant's farm. At the conclusion of the evidence Mr Butterfield informed me that he was instructed to admit the existence of the right to take stone, but not the rights to take sand. It is therefore necessary for me to consider whether the existence of the rights to take sand have been proved.

The basis of the admission of the right to take stone was the undisputed evidence of the existence of a prescriptive right to do so. Those who had taken stone from the land comprised in the Register Unit have also taken sand from it, and the evidence regarding the taking of sand, had it stood alone, would have equally proved the existence of a prescriptive right to take sand. There is, however, a consideration relating to the taking of sand which does not apply to the taking of stone.

The whole of the land comprised in the Register Unit lies between the high and low-water marks of ordinary tides: in other words, it is part of the foreshore. It is therefore subject to the Act 7 Jac. I, c.18, passed in 1609. It is recited in the preamble to this Act (not printed in Halsbury's Statutes) that sea-sand had been found to be very profitable for the bettering of land and especially for the increase of corn and tillage in Devon and Cornwall, where the most part of the inhabitants had not commonly used any other "worth" for the bettering of their arable grounds and pastures, and that divers persons having lands adjoining the sea-shore had of late interrupted the bargemen and such others as had used at their free wills and pleasures to fetch sea-sand from below high-water mark unless they made composition at rates fixed by those having land adjoining the shore. It is then enacted by section 1 that it shall be lawful for all persons resident and dwelling in Devon and Cornwall to fetch and take sea-sand at all places below high-water mark where it is cast by the sea for the bettering of their land and the increase of corn and tillage at their wills and pleasures. Section 2 provides that bargemen and boatmen and all other carriers of sea-sand may land sand at places where they had done so within the previous 50 years and to use such ways as had been used during the previous 20 years, paying the accustomed dues. The Act was at first temporary, but it was made permanent by the Act 16 Car. I, c.4 (1640).

It is clear from the wording of the Act that it did not confer any new right, but was directed to the reinforcement of a pre-existing right. This right was the subject of a grant by Richard, King of the Romans, brother of Henry III, which was confirmed by a Royal Charter dated 28 June 1261: see Calendar of Charter Rolls 1257 - 1300, p.36.

The evidence which proved the existence of a prescriptive right to take stone from the foreshore would not support a prescriptive right to take sand attached to the land owned by the applicants for the registrations, since those who took sand were entitled to do so under the Act of 1609. The only right which the applicants have to take sand is that referred to in the Act of 1609. This is a right belonging to persons resident and dwelling in Devon and Cornwall. The rights which have been registered are rights attached to the applicants' farms, and are therefore not the rights to which they are personally entitled.

This consideration is sufficient for the purposes of my decision in this case. Mr Butterfield, however, took the further point that rights under the Act of 1609 are not rights of common and so are incapable of registration under the Commons Registration Act 1965. The general rule laid down in Gateward's Case (1607) 6 Co. Rep. 59b, is that there cannot be a right of common in a fluctuating body, such as the inhabitants of a particular district. There are, however, exceptions to this rule, one of them being that a grant made by the Crown to the inhabitants of a district may be held to have incorporated those to whom it is made for the purpose of enjoying the benefit of the grant: see Chilton v Corporation of London (1878), 7 Ch. D.735,741. It may be that the confirmation by Henry III of his brother's grant had such an effect, but it would be hazardous to express a view on that without examining the terms of the charter, which were not before me. Should a dispute arise in which there has been a registration of a right on the application of someone claiming as a resident, it will be necessary to obtain a copy of the entry in the Charter Roll. So far as the land comprised in this Register Unit is concerned, any right derived from the grant or the Act of 1609, if it is a right of common, has ceased to be exercisable by virtue of section 1(2)(b) of the Act of 1965 through not having been registered.

So far as this case is concerned I need say no more than that the right which has been registered has not been made out.

For these reasons I refuse to confirm the registration at Entry No 1 and I confirm the registration at Entry No 2 with the following modification, namely, the deletion of the words "and sand".

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 26th day of January 1978

Chief Commons Commissioner