



COMMONS REGISTRATION ACT 1965

Reference No 52/D/2

In the Matter of Ffynnondy, CwmDECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No 41 in the Register of Common Land maintained by the Flintshire County Council and is occasioned by Objection No 33 made by the Trustees of the Bodrhyddan Estate and noted in the Register on 12 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Mold on 11 April 1973.

The hearing was attended by (1) Mr O Wynn Davis, Clerk to Cwm Parish Council (the applicant for registration), and (2) Mr J G Lloyd of Messrs Peckover, Burrill & Owen, Surveyors, Denbigh, on behalf of the Objectors.

It emerged that the Parish Council registered this land as common land on the basis of three Parish Council Minutes dated respectively 7 November 1902, 3rd December 1902 and 19 July 1905. The first two Minutes referred to the dangerous condition and subsequent repair of a public footpath called "Ffynnonrhydd" footpath which traversed the land in question and passed alongside or near a well. The word "Ffynnonrhydd" means "free well". The third Minute referred to the "Parish Wells" (ffynnonau y plwyf) as being in an unsatisfactory condition, and it was resolved that a door should be fitted to the well alongside "Ffynnonrhydd", (presumably a reference to the footpath).

Mr Wynn Davis, who has held the office of Parish Clerk for 21 years, was unable to call evidence to show that local inhabitants as such had drawn water from the well.

Mr Lloyd told me that the land in question forms part of the Bodrhyddan Estate, an estate of some 4500 acres, and that the only persons who used the well were tenants of the Estate. He called a witness - Mr Allen Jones, Foel Farm, Cwm. Mr Jones is the son of the tenant of Foel Farm, which belongs to the Bodrhyddan Estate and adjoins the land in question on all sides. He said that his father as such tenant used to take water from the well on CL.41, but that he knew of no one else who had done so. He did not think that the well referred to in the Parish Council Minutes was the well on CL.41, but was a well (which he described as a cave-like well which used to have a door) some distance to the south of CL.41.

On this evidence, I am bound to conclude that no rights of common have been proved to exist over the land in question. It is settled law that a right to take water from a well on another man's land is an easement, not a profit, because water in its natural state is not the subject of ownership: see Race v Ward (1855) 4 E & B 702. The same case shows that the inhabitants of a district - e.g. a parish - can acquire a customary right to take water from a well, but such a right, as it seems to me, would not be a right of common within the statutory definition. In any event, the evidence before me was wholly insufficient to establish that such a right had been acquired by the inhabitants of Cwm.



For these reasons I refuse to confirm the registration.

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 24th day of May 1973

A. E. Francis

Commons Commissioner