



COMMONS REGISTRATION ACT 1965

Reference Nos. 271/D/47 & 48

In the Matter of Mountain Colliery Yard
and Sidings, Buckley Alyn and Deeside D. Clwyd

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.99 in the Register of Common Land maintained by the former Flintshire County Council and are occasioned by Objection No. 52 made by Mr. C.H. Fletcher and noted in the Register on 10th April 1972 and Objection No. 53 made by James Lithgow (UK) Ltd and noted in the Register on 19th April 1972.

I held a hearing for the purpose of inquiring into the disputes at Mold on 13th March 1975. Mr. Owen, counsel, appeared on behalf of Mr. Fletcher, instructed by Messrs Roberts, Moore & Son and on behalf of James Lithgow (UK) Ltd. instructed by Messrs Walker Smith & Way. Mr. Shone and Mr. Roberts represented the Buckley Residents Association. Mr. Makinson of Messrs Walker Smith and Way proved the respective titles of Mr. Fletcher and James Lithgow (UK) Ltd. to the freehold of the land in question. There are no entries in the Rights Section of the Register.

The history of this land is that in 1897 a colliery commenced operations under a mining lease and the land was used for the purpose of a colliery and a large part of the land was covered by railway sidings. When the colliery ceased operations the land was used as a coal depot until the early 1950's. The sidings were removed in or about the year 1945. In 1952 the freehold was sold by P.R. Davies-Cooke to the Castle Firebrick Company Limited and Mr. Fletcher and Lithgow derive their titles from that Company.

Mr. Edwards and Mr. John Owen gave evidence as to the fencing of the land and Mr. Edwards who was an employee of Lithgow stated that if any cows managed to penetrate on to the land he would chase them off. No rights of common are claimed over the land in question and since it has been used for industrial purposes since 1897 and is still being so used it cannot in my view be waste of the Manor.

Mr. Shone spoke of an agreement in writing which he had seen and had on instructions put in the boiler the effect of which was to restore the land to its former status when the colliery ceased working. Mr. Shone very frankly stated that Mr. Davies-Cooke was not a party to that agreement, though he could not remember who the parties were, and Mr. Davies-Cooke was therefore not bound by the agreement and was free to convey the freehold free from encumbrances. It was this faith in the alleged agreement for the restoration of the land to its pre 1897 status that led the association to register the land as common land in good faith.

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

19th

day of March

1975

Commons Commissioner