



COMMONS REGISTRATION ACT 1965

Reference No 274/D/209

In the Matter of Gallows Point,
Beaumaris, Ynys Mon BC

DECISION

This dispute relates to the registration at Entry No A1 in the Land Section of Register Unit No VG. 5 in the Register of Town or Village Greens maintained by the former Anglesey County Council and is occasioned by Objection No O/27 made by the Town Council of Beaumaris and noted in the Register on 29 July 1970.

I held a hearing for the purpose of inquiring into the dispute at Llangefni on 22 March 1977.

Mr E L Gilson appeared for Ynys Mon Borough Council and argued the case for the Objector Beaumaris Town Council. Ynys Mon Borough Council is a concerned authority and entitled to be heard. The ownership of the land in question was not proved but Ynys Mon Borough Council claimed to own the land notwithstanding that the Objection stated that Beaumaris is the owner of the land. It may be that Ynys Mon Borough Council is the successor to Beaumaris consequent upon the local government reorganisation.

Mr Raban the Mayor of Beaumaris and Mr J B Jones a Town Councillor of Beaumaris appeared but they did not claim to represent Beaumaris which is not surprising since Mr Raban gave evidence in support of the Registration and against his Town's Objection.

Mr L Roberts claimed to appear for the Beaumaris Preservation Group in support of the Registration which was made on the application of Sir Leonard Owen. I assume that Sir Leonard Owen made his application in the interest of the Preservation Group and I treat Mr Roberts as appearing for Sir Leonard.

As appears from what I have said above the case was argued by Mr Roberts and Mr Gilson, the former contending that I should confirm the Registration and the latter contending that I should refuse to confirm the Registration.

The land in question is about one acre on the east and leeward side of Gallows Point adjoining the foreshore. Some time ago there was a proposal to develop this land, to which there was a substantial body of opposition. This proposal is, at any rate for the time being, not being proceeded with. Notwithstanding the earnest endeavours of Mr Roberts to lead evidence as to the proposed development I took the view that the merits or demerits of that proposal were no concern of mine and were not relevant to the question which it falls to me to decide.

The case for the confirmation of the Registration put forward by Mr Roberts was that the inhabitants of the locality have indulged in the sports or pastimes of yachting and boating on the land as of right for not less than 20 years.



Mr Gilson countered this proposition by contending that:

- (1) The use was not confined to the inhabitants of any defined locality but was a use by the public
- (2) That the use was not confined to sports or pastimes but included use by professional boatmen and fishermen

and

- (3) That in argument the use was not "as of right" but was permissive.

There is in my view a further point namely as to what activities are comprised in indulging in the sports and pastimes of yachting or boating? I will return to this question later.

The facts were not the subject of any serious dispute. Both before and immediately after the 1939/45 war the land was used by owners of small boats who left their boats on the land when they were not in the water. In these early days the owners of these boats were almost all inhabitants of Beaumaris or nearby villages. These boat owners repaired and maintained their boats when they were out of the water on the land. Two photographs marked CAS A & B said to have been taken in 1948 illustrate the use described above. Over the last ten years larger boats have used the land and a photograph marked CAS C said to have been taken on 2 January 1969 illustrates the increase and the changed character of the user. I was told at the hearing by more than one witness that there had been a dramatic increase in the user in the last five years. Subsequent to the hearing I inspected the land which was covered by boats of all types and sizes laid up for the winter on stocks. The laying up of boats in a boatyard is now expensive and the attraction of this piece of land is no doubt attributable to no charge being collected from the boat owners and the proximity of boatyards which appear to have increased since 1948. I was told that boat owners who come from as far afield as Liverpool lay up their boats on this land.

The onus in my view lies upon those who seek to impose on the land the status of a village green, and my duty is to decide whether or not the evidence placed before me entitles me to confirm the registration. Evidence was given in support of the Registration by Mr Leavett, Mr Brimcombe, Mr Goss, Mr Acton and Mr Raban. Evidence on behalf of the Objector was given by Mr Lloyd Williams and Mr Murphy.

The principles involved in this case are in many respects similar to those considered by the Court of Appeal in *Beckett v Lyons* 1967 CL 449. In that case the alleged right was that of the inhabitants of the County of Durham to gather coal washed up by the tides on the beach, and Harman LJ said at p 472 that in order to establish the alleged right "it would not be necessary to prove exercise of the privilege from every part of the county but at least it would be necessary to show that the coal gatherers supposed themselves to be gathering coal in the right of their inhabitancy and of that I see no sign".

In the instant case no witness said he used the land in the right of his inhabitancy of a defined locality.



Mr Leavett said that the use of the land was by local inhabitants; there were very few visiting boats. At that time (1935) there were about 19 people and he could name them all; they all lived in the area Penmon to Gly Garth. In cross-examination he said that a visitor from Liverpool could have stored his boat on the land and there were three commercial boat owners.

Mr Brimcombe said he had a boat on the land in 1940 and he still had one. The use was largely local. The users were working people; the majority came from Beaumaris except for a few from Llangoed and Penmon. In cross-examination he said there was nothing to prevent outsiders storing their boats and in re-examination he said there was no restriction.

Mr Cross who had used the land as a member of the local Sea Scouts said the majority of the people who used the land were locals.

Mr Acton has had a boat on the land since 1962. He knew most of the others who used the land for boating; there were about 20-25 of them including an odd outsider.

No witness said that the use of the land was restricted to inhabitants of a defined locality and this is not surprising since it was only at the end of the hearing that Mr Roberts at my request when asked to define the locality supplied me with a list which included Beaumaris and six villages in the vicinity which he claimed was the locality whose inhabitants had used the land "as of right".

No witness claimed that the use of the land was restricted to the inhabitants of any locality and I am satisfied that no boatowner when maintaining his boat on the land ever thought he was entitled so to do by virtue of his being an inhabitant of any defined locality. Insofar as any boat owner may have considered what if any right he had in my view he thought he was exercising a public right available to all and sundry, but even if there was a public right as to which I express no view that would preclude the land being a village green as defined by the Act of 1965.

Comparing the use of the land as it was in 1948 with its use today I incline to the view that the early use was attributable to tolerance on the part of the owner. This case resembles that of *Beckett v Lyons*, supra in that in *Beckett v Lyons* so long as the gathering of coal was confined to residents in the vicinity gathering sacks of coal for their own use the practice was tolerated but once the practice developed into a commercial undertaking it was no longer tolerated. So in this case; it is understandable that so long as the land was used by 20 to 25 boat owners of modest means to leave their small boats, which could be launched and beached by hand, above high water mark the practice was unobjectionable. The use of the land today bears no resemblance to the use in the early years of the 20-year period referred to in the definition of a Town or Village Green in Section 22 of the Act of 1965. The conclusion I reached when I inspected the land was that unless the owner of the land takes control of the situation it will become, if it has not already become, a "nautical slum".

I have much sympathy with the owners of small boats whose enjoyment of the pleasures of boating have been prejudiced by the recent abuses of the land and I gave anxious thought as to whether I could give a decision which would enable them to continue to enjoy the amenities as they enjoyed them in the earlier years. For the reasons given above I have come to the conclusion that on the evidence and the law I cannot hold that the land is a Town or Village Green as defined in the Act of 1965 and must refuse to confirm the Registration.



At the hearing emphasis was laid on the suitability of the land for launching and beaching small boats situate as it is in the lee of Gallows Point, a factor which the owner of the land will no doubt bear in mind when considering whether or not it should continue to tolerate the use of the land or part of it by bona fide owners of small boats resident in the area. For my part I doubt whether the owner of a boat laid up for the winter can, when the boat is laid up and not ready to be put in the sea, be said to be indulging in the sport or pastime of boating, and even if I erred in deciding that the land is not a Town or Village Green the use of the land for laying up large boats would not in my view be permissible. I am informed by Mr Gilson, who can put it no higher, that consideration is being given to the proposal that local owners of small boats may continue to enjoy the amenities they enjoyed in the early years on part of the land.

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 17th day of June

1977

J A Felle

Commons Commissioner