



COMMONS REGISTRATION ACT 1965

Reference Nos 50/D/7
50/D/8

In the Matter of land known as
Pen Braichmelyn, Bethesda in the Parish of
Llanllechid, Caernarvonshire

DECISION

This dispute relates to the registration at Entry No 1 in the Land and Rights sections of Register Unit No CL.101 in the Register of Common Land maintained by the Caernarvonshire County Council and is occasioned by Objection No 81 made by the Secretary of State for Wales on behalf of the Forestry Commission and noted in the Register on 30th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Bangor on 5th December 1972. The hearing was attended by Mr M R Wormald (the applicant for registration) and Mr F P R Mallows (Legal Department, Forestry Commission).

The land in question consisted, before it was planted with trees by the Forestry Commission, of rough pasture, broken by rocks and copses of birch, scrub-oak and beech. The land was purchased (with other adjoining land) for the Forestry Commission in 1960 from the special executors of the Right Hon Hugh Napier Baron Penrhyn. At the hearing, there was produced to me the original conveyance dated 23 April 1960 from such executors to the Minister of Agriculture (acting in exercise of the powers of the Forestry Act 1945). The land was conveyed to the Minister in fee simple "subject to and with the benefit of all existing rights and easements and subject to all quasi-easements now or heretofore exercised or enjoyed over the property hereby conveyed for the benefit of any other property forming part of the Penryhn Estate". The conveyance made no reference to rights of common, and, in answer to enquiries before contract, the Vendors' Solicitors stated that the Vendors were not aware of any such rights over the land.

Mr Peter Evans, who is employed by the Forestry Commission as a forester in charge of tree planting, gave evidence before me to the effect that the whole of the land in question, excepting certain areas left unplanted for amenity reasons, has now been planted with trees. He said that the tree-planting operations were watched by some old inhabitants of the village of Bethesda, and that no one claimed that the land was common land or objected to its being planted with trees. He also said that people from the village came on the land to gather sticks, but that this was done with the permission of the Forestry Commission, and that the Commission did not admit that any one had the right to come on the land for this purpose.

Mr Wormald has resided at 17 James Street, Bethesda, for some six years. His garden backs on to the land in question, and there is a wicket gate in his rear boundary fence which gives him direct access to the land. He has lived in Bethesda since 1952. It seems clear that Mr Wormald's motive in registering this land as common land, and in registering rights of estovers in gross over it, was not so much to assert or preserve any right of his own, - ~~he did not, for example, claim any right of common for himself~~ - but to establish the rights of the local inhabitants to use the land as a place of public resort and recreation. I have no doubt that his actions were inspired by a sense of public duty, and he has spent much time and trouble in inspecting public records and interviewing and obtaining statements from local inhabitants.



Mr Wormald contended that the land was common land, on the ground that it was subject to rights of common viz. rights of grazing and estovers.

As regards grazing, there is no doubt that the occupiers of some eight fields adjoining or near the land habitually and for generations past - that is, prior to the purchase of the land in 1960 for the Forestry Commission and, in the case of one occupier at least, for some years afterwards - turned cows and sheep on to the land to graze. It appears that each of these occupiers had the right to keep one cow on the land from April to September, and to keep sheep on the land between September and April. It is plain, however, that all these occupiers were tenants of the Penrhym Estate (whose trustees sold the land to the Minister of Agriculture in 1960), and that the rights of grazing were exercised and enjoyed by them in that capacity. It follows that these grazing rights of common were not rights of common.

As regards estovers, Mr Wormald has registered a right of estovers in gross over the whole of the land (Ref No. 50/D/8). Mr Wormald, however, called no evidence apart from his own (which is limited to the period since 1952), and he was unable to give any evidence of limitation or restriction as to the quantity of timber or underwood which might be taken. In my view, there is insufficient evidence to justify a finding that the land was subject to a right of common of estovers at the date of the registration.

Mr Wormald furnished me with copies of or extracts from a number of historical documents, but, although I have read them with interest, I do not find that they have any bearing on the question which I have to determine, viz. whether the land was, at the date of registration, subject to rights of common. There was no evidence before me that the land ever formed part of the waste of a manor. The documents produced by Mr Wormald show that Llanllechid (where the land is situate) was not a manor, but a parish.

Mr Wormald also put in a number of statements - mostly in Welsh - by various local inhabitants. As I explained to him, these statements, being unsworn, are not evidence. I have, however, read them. They confirm me in the view that the conclusion I have reached on the evidence are right.

For these reasons I refuse to confirm the registrations.

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

13th

day of March 1973

A. E. Francis

Commons Commissioner