



COMMONS REGISTRATION ACT 1965

Reference No. 273/D/97-99

In the matter of Gray Hill Common, Caerwent

DECISION

The first two disputes (273/D/97-98) relate to the registrations at Entry No 1 in the land section and at Entries Nos 1-6 in the rights section of Register Unit No CL59 in the register of common land, maintained by the Gwent County Council. They are both occasioned by objection No 81 made by Mr and Mrs G Prichard and noted in the register on 28 September 1970.

The third dispute (273/D/99) relates to the registration at Entry No 1 in the ownership section and is occasioned by objection No 82 made by Mr G Prichard and noted in the register on 28 September 1970.

I held a hearing for the purpose of inquiring into these disputes at Monmouth on 19 November 1985 and visited the land the following day. At the hearing Mr Samuel James Gibbons and Mr William Henry Cronk the claimants to the registrations at rights entries 2 and 3 respectively appeared in person, Mrs C Pearson of the Treasury Solicitors Office appeared for the Forestry Commission, the claimant to the registration at rights entry No 4, Mr R A Bazzard the applicant for the registration at rights entry No 5 and Mr L G Martin the successor in title to Mr P C Holloway the claimant to the registration at rights entry No 6 appeared in person. Mr George Matthews Prichard the objector and Mr Micklethwaite his successor in title to part of the unit land were represented by Mr O'Sullivan, solicitor, of Francis and Co, Chepstow. The Caerwent Community Council were represented by Mr D Harper and Mrs B P Blatchford (members). The Registration Authority were not represented.

Mr Prichard is also the applicant for the registration at rights entry No 1 claiming a right to graze 200 sheep over the whole unit but this claim was expressly withdrawn by Mr O'Sullivan at the outset of the hearing since Mr Prichard is in fact the owner of the greater part of the common. Mrs Pearson also withdrew the Forestry Commission's application. As to the dispute at Entry No 1 in the ownership section it appears that that application was withdrawn as long ago as 1 May 1972 by the applicant's trustee in bankruptcy. Accordingly I refuse to confirm these entries.

Although Mr Prichard's objection in the land section is limited to certain former enclosures within the unit land and although his objection to the rights arises only as a result of his objection in the land section, Mr O'Sullivan told me that Mr Prichard, as the owner of the land, wished to deny that any rights of common existed at all and was prepared to give evidence to this effect. That being so it seemed to me that since "the matter" which had been referred to me as a result of the objection in the land section, notwithstanding the limited nature of that objection, was "what is to be done about the registration to which objection has been taken?" - see In re West Anstey Common [1985] 1WLR 677 at page 686B - and since, by section 5(7) of the 1965 Act, that objection was to be treated as an objection to any registration of any rights over the land, it followed that the other question before me was "what is to be done about the registration of these rights to which objection is deemed to have been taken?" That being so the burden of proof was on the



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registrants of those rights not only to prove that those rights extended to those parts of the unit land to which Mr Prichard had expressly objected but to prove that those rights existed at all.

Furthermore, since I had been told that Mr Prichard was prepared to give this evidence, it was - to use the words of Walton J in In re Sutton Common, Wimbourne [1982] 1WLR 647, 656-7 which were adopted by Slade L J in the West Anstey case at page 688 - "borne in upon" me by this information which, if correct, was relevant that the registrations were questionable. That being so I was required to and did insist that the burden of proof of these registrations was properly discharged to my satisfaction.

The result was a much more thorough investigation of the affairs of this common than would have been necessary or possible, if I had been entitled or required to confine Mr Prichard to the terms of the objection he made in 1970.

The remaining questions before me therefore are:-

- (1) Is this land, or any part of it, common land?
- (2) Which of the remaining claims to common rights (ie Rights Entries 2, 3, 5 and 6) are proved and to what extent?

Since the answer to question (1) depends in the first place on whether the land is subject to rights of common it will be convenient to start with question (2).

Gray Hill is an extensive stretch of upland covering 169 acres standing above the surrounding country. It is for the most part very heavily infested with high bracken with many bushes, saplings and, in parts, trees. There are within it a number of clearly distinguishable former enclosures which are shown on the register map. These are the subject of Mr Prichard's objection. All the farms in respect of which rights of common are registered lie on the boundary of the land.

Rights Entry No 2: Cilvaynog Farm

Mr Cyril Henry Gibbons claims, as successor to his father Samuel James Gibbons, a right to graze 14 cattle and 35 sheep attached to Cilvaynog Farm of 25 acres. Cilvaynog farm is adjacent to the common at the north-eastern corner. Among the deeds produced by Mr Gibbons in evidence was an abstract of title dated 1946 which included a statutory declaration dated 13 June 1945 made by William Henry Reece who lived with his father at the farm from 1919 to 1941. He states:-

"8. The said farm known as Cilvaynog also carries with it the Right to graze sheep, cattle, horses, pigs, poultry and other animals upon Gray Hill and Bicca



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Common. This Right has been exercised, to my knowledge, since long before One thousand nine hundred and twelve and is exercised in common with other farms having a frontage on to Gray Hill and Bicca Common.

9. I do not know precisely whom are entitled to the said Rights in addition to the owners of Cilvaynog Farm and I am not aware of any restrictions which would limit the number of animals which might be grazed in this fashion, nor as to the time when the grazing should take place or any restriction upon the grazing whatsoever.

10. I have frequently put animals to graze on both Gray Hill and Bicca Common and no person has ever attempted to stop me nor has any claim been made that the Right thus exercised was being wrongly exercised."

Mr Gibbons gave evidence, that he went to Cilvaynog with his father in 1947 and took over from him on his death in 1982. During the whole of that time they kept some 40 to 50 sheep and 14-16 cattle and regularly turned them out on Gray Hill without seeking permission. On that evidence I am bound to conclude that at some time these rights were granted to the owner of Cilvaynog by a grant which has been lost. The rights claimed are not excessive for 25 acres and I shall confirm them.

Rights Entry No 3: Casa Mia

Mr William Henry Cronk claims a right to graze 30 ewes and their followers attached to a holding of 20 acres known as Casa Mia. This holding has a long frontage to Gray Hill at the north-west corner.

The only deed produced by Mr Cronk - a conveyance dated 10 November 1902 by which the land was conveyed by the Duke of Beaufort to Ronald Robert Hamilton Lockhart Ross - makes no mention of rights of common but it is of some significance that the plan attached to that conveyance refers to the land to the south as "Gray Hill Common".

Mr Cronk gave evidence that he had farmed the land since 1966 and had always turned out sheep on Gray Hill the numbers varying from 20 to 40. That was only two years before registration but he gave evidence that his predecessor Mr Larkham had also done so and Mr Gibbons said that while Mr Larkham had only been there about one year the two previous owners Hawkins and Powell who had each been there about 10 years had done the same. That takes us back to about 1945 when Mr Gibbons was only 7 years old but having regard to the situation of the land and Mr Reece's statutory declaration I have no difficulty in accepting that rights of grazing were exercised from this land as of right for more than twenty years before the date of registration. I shall accordingly hold that there must have been a grant of such a right to the owner of this land which has been lost.

Rights Entry No 5: Tile House Farm (formerly Ysgubor Kemeys)

Mr Roger Bazzard claims a right "to graze 50 ewes and lambs also horses and cattle and to cut fern and firewood". The evidence of a grazing right attaching to this farm is, I think, overwhelming. Among the deeds produced by Mr Bazzard is a statutory declaration dated 21 October 1908 by James Smith who says he had known the farm since 1877 when his cousin became tenant and had married his cousin's widow in 1892 and became tenant himself for two years. It states:-



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"During such period as I have known the said Tile House Farm and lands namely Thirty years and upwards the owner or tenant of such Farm and lands has enjoyed as appurtenant thereto a right of sheep walk and common without stint over the Common or waste land known as Greyhill situate in the said parish of Llanvair Discoed and such right has been exercised without any interruption whatsoever and is still enjoyed therewith".

A lease of the land to Mr Bazzard's father dated 10 May 1909 and a conveyance in fee simple to him dated 11 July 1921 both refer to the land "together with the right of sheep walk and common over the common or waste land known as Grey (sic) Hill enjoyed in connection therewith". Finally a conveyance of 16 June 1921, a copy of which was produced by Mr Prichard, whereby the greater part of Gray Hill was conveyed to Mr Prichard's father William James Prichard in fee simple conveys it "subject to such right of grazing sheep as the owner or owners of the hereditaments known as "Ysgubor Kemeys" (ie Tile House Farm) situate in the said parish are now entitled to" (though it does not mention any other rights of common).

Mr Bazzard gave evidence that he was born at the farm 73 years ago and inherited it in 1950. As long as he can remember sheep - 50 or 60 up to 100 - were turned out on Gray Hill from the farm. Also some cattle and up to 3 or 4 horses.

It is quite clear from this evidence that for far longer than 20 years before 1969 (when the right was registered) rights of grazing on Gray Hill were exercised from Tile Farm, and that I must presume that there was a grant which has been lost of such a right to be measured by the number of stock which the farm is capable of maintaining in the winter from its own produce. Fifty ewes and lambs from 25 acres is not excessive. I shall accordingly confirm that part of the registration. The registration, however, goes on "also horses and cattle". No number is given and this part of the registration therefore does not comply with the requirements of section 15(2) of the 1965 Act which states that an application for registration of a grazing right "shall state the number of animals to be entered in the register or, as the case may be, the number of animals of different classes to be so entered". It might be argued that any registration or part of a registration which did not comply with this requirement was void and so incapable of confirmation. However, it was not so argued in this case and on the whole I think it fair to use my power under section 6(1) to confirm the registration with the modification that instead of "also horses and cattle" it shall read "or 10 horses or 10 cattle or sheep and/or cattle and/or horses together to a limit of 50 gates, each horse and each head of cattle counting as 5 gates and each ewe and lamb as 1 gate". This follows model entry No 7 in Schedule 2 to the Commons Registration (General) Regulations 1966.

Mr Bazzard also claims a right to cut fern and firewood. I am satisfied from his evidence that during the whole of this period his father and later he did cut fern from the common for use on the farm. His evidence as to firewood was rather confused but on the whole I am satisfied that during the same period firewood was cut on Gray Hill (there is plenty to be had there) to be burned in the farmhouse. I shall accordingly confirm both these registrations.

Rights Entry No 6: "Yew Tree Cottage"

Mr L G Martin as successor in title to Mr P C Holloway claims a right "to graze 20 ewes and lambs also 2 horses and 5 cattle. To cut fern or firewood". As far as grazing is concerned his case is simple. He produced a sealed order of the Chepstow



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County Court dated 7 December 1959 in an action between Goerge Matthews Prichard and P C Holloway (Male). One of the terms of that order, which was made by consent was as follows: "The plaintiff acknowledges the right of the defendant in common with others (if any) entitled to the like right to graze animals upon Gray Hill". Since the defendant was at that time the owner of Yew Tree Cottage the curtilage of which abuts on Gray Hill this can only refer to rights appurtenant to that land. It is conclusive against the plaintiff in that action George Matthews Prichard, the objector in this case. It is also consistent with a conveyance dated 4 September 1941 whereby Yew Tree Cottage was conveyed to Phillip Charles Holloway in fee simple "together with ... the grazing rights appurtenant to the said property and premises upon the land known as Gray Hill".

The objector, however, claims that the number of animals claimed is in any case too high. There being no other evidence of numbers I must apply the rules of levancy and couchancy. I have no evidence of the wintering capacity of this small holding which extends to 2½ acres including house, garden, buildings and all. Mr Martin himself is a woodcutter and does not keep any stock. It is however I think a matter of commonsense that 20 ewes and lambs also 2 horses and 5 cattle is far beyond the wintering capacity of this holding using only its own produce. I think it is fair to modify it to 10 ewes and lambs or 2 horses or 2 head of cattle or sheep and/or horses and/or cattle together to a limit of 10 gates, each horse and each head of cattle counting as 5 gates and each ewe and lamb counting as one gate".

There is no evidence before me in this case of a right to cut fern or firewood except the statutory declaration of the late Phillip Charles Holloway in support of his registration. However in view of the inherent likelihood of the existence of such a right over such a common and the lack of any evidence to the contrary, I shall accept that declaration be sufficient evidence and confirm the registration.

I think I should place on record that the Yew Tree Cottage with which this dispute is concerned is not the Yew Tree Cottage shown on the register map but another cottage shown about 200 yards to the east but not named.

The objector's evidence

Mr Prichard gave evidence in opposition to these claims. He is the owner of the whole of the unit land except a strip at the north end, it having been conveyed to his father with other land in 1921. He agreed that Mr Bazzard and his father had put sheep and horses on the common and also cattle but not very often. At first he said that no one else put stock on the common as a regular thing but later agreed that Mr Gibbons and his father did turn out sheep and it became clear that he did not really know who turned out stock or how many. This is not perhaps surprising having regard to the size of the common and the very thick cover on it during most of the year. I do not regard Mr Prichard's evidence as casting any doubt on the evidence of the rights claimants. Where it conflicts with that of the claimants I prefer their evidence.



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The Land Registration

Since Gray Hill is subject to rights of common it is common land within the meaning of the Act and I shall confirm the entry in the Land Section - but with certain modifications.

Two of these are quite clear. There have been included in the unit land as shown on the register map, first the larger part of the Casa Mia farm which is clearly shown on the register map as enclosed land, which was enclosed in 1902 according to the conveyance referred to above, which has been enclosed since 1956 according to Mr Cronk, and which was enclosed as shown on the register map on the day of my inspection, and second a small enclosure not marked on that map immediately to the east of Yew Cottage and forming part of its land.

A statutory declaration was made on 4 December 1984 (at the time of the sale of Yew Cottage to Mr Martin) by Leonard Charles Holloway the son of Phillip Charles Holloway who died on 16 March 1984. He stated that he was born in 1949 and that when he was a young child this and another close were fenced from the common. Part of the terms of compromise of the action in 1969 referred to above was that it should remain so and it had done so up to that date. It was enclosed on the day of my inspection. I shall in due course direct that this enclosure be omitted from the registration.

There remain the enclosures within the unit land. Three of these in the south-east corner of the unit were sold to Richard Micklethwaite in 1971. At that time they were unenclosed but Mr Prichard gave evidence that "up until the late 1960's" they had been fenced, the fences having been destroyed by fire. I inspected the two southernmost of these enclosures and found signs of quite old enclosures - derelict stone walls and hedges grown in places into tall trees. There were no remains of fences to be seen but there were, in contrast to the rest of the common considerable areas of grass not yet infested with fern which is consistent with the land having been enclosed and intensively grazed comparatively recently.

I conclude these areas were enclosed as late as the late 1960's and had been enclosed for a long time. That being so, and none of the commoners contending otherwise I am not satisfied that they were subject to rights of common in 1969 and shall direct that they be omitted from the registration.

There remains one other enclosure which is referred to in Mr Prichard's objection. This lies to the north-west of the common. It was not sold to Mr Micklethwaite and I have neither heard any evidence about it nor been invited to inspect it. It is, however, marked on the ordnance map as enclosed land in the same way as the other enclosures and scant though that evidence is I am not satisfied that it is common land and shall direct that it too shall be omitted from the registration.

I therefore confirm Entry No 1 in the Land Section and Entries Nos 2, 3, 5 and 6 in the Rights Section with such modifications as are referred to above.

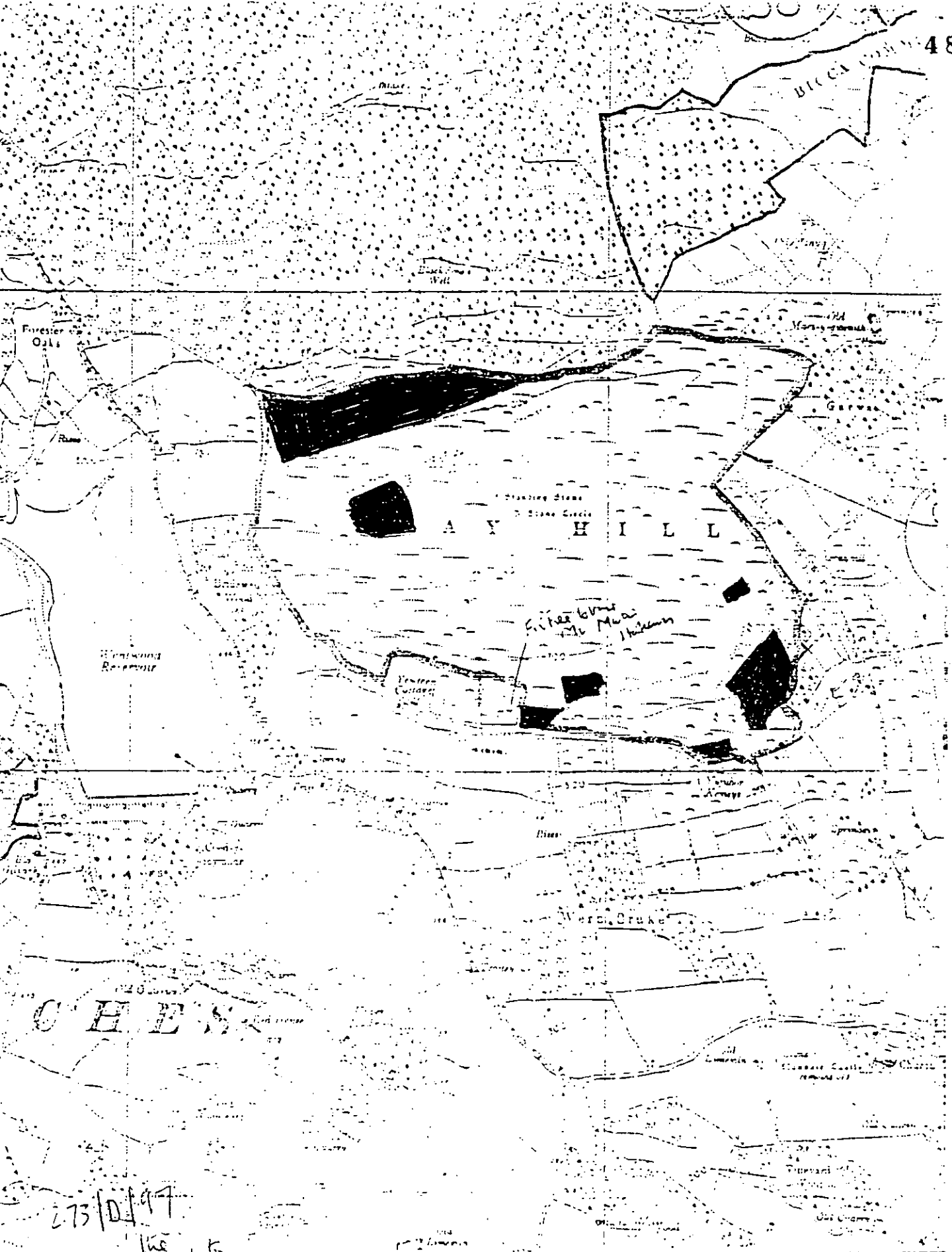


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I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this ^{6th} day of *December* 198~~5~~⁶

Peter Lanyon-Davis
COMMONS COMMISSIONER



273/D/97

This is the
 plan referred to
 in the notice of final
 approval signed by me
 on 4 March 1986.

P. L. [unclear] - Dances

Copy Resistor Map
 CL 59.6 unit
 273/D/97-49