



COMMONS REGISTRATION ACT 1965

Reference No. 276/U/144

In the Matter of part of the Great Forest of Brecknock
1. Cwar Glas. 2. eastern half of Castell-y-Greifr

DECISION

This reference relates to the question of the ownership of the land described above being part of the land comprised in the Land section of Register Unit No. CL.3 in the Register of Common Land maintained by the former Brecon County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Brecon on 24 January 1989.

At the hearing Mr N M Rolt, solicitor, appeared for Powys County Council as Highways Authority, Mr J P Jones, solicitor appeared for the Welsh Water Authority, Mr D J Powell, solicitor, of Messrs. Jeffreys and Powell, Brecon appeared for the Executive Committee of the Allotment Holders or Commoners of the Great Forest of Brecon and Mrs B Morgan represented the Registration Authority,

Two areas of unclaimed land have been referred to me.

The claim of Powys County Council

The County Council claim ownership of the eastern area which is a disused quarry known as Cwar Glas. Mr Rolt produced a certified copy of the inclosure award dated 10 June 1819.

Under that award the Commissioners awarded 10 areas (all quarries) identified on a map to the "surveyors for the time being of the roads within the said district".

Area No. 6 is clearly identifiable as being the eastern area of unclaimed land.

Mr Rolt drew my attention to Section 11 of the Highways Act 1862 whereby any property vested in any surveyors of any parish (an expression which, by section 3, includes any place maintaining its own highways) passed to and vested in the newly-formed highway board of the district. He also drew my attention to sections 25(1) and 67(1) of the Local Government Act 1894 whereby all property of the highway board was transferred to the newly-created rural district council within whose district it lay and to the Local Government Act 1929, by section 30(1) of which rural district councils ceased to be highway authorities and their functions were taken over by the county councils.



Section 118(1) of that Act makes special provision for quarries and by subsection (1)(b) requires the county council "if desired by the council of any rural district within the county" to take over any quarry belonging to the district council in their capacity as highway authority.

There is no direct evidence that the district council did desire the county council to take over this quarry but Mr Rolt asks me to assume - in the absence of any claim by the district council - that that is what must have happened.

He also relies on article 6(b) of the Local Authorities (Wales) (Property etc) Order 1973 made under the Local Government Act 1972 but that only deals with transfer to the county council of land held by a former highway authority, as such, for the purpose of their functions in relation to the highway. I do not think that a rural district council which ceased to be a highway authority in 1929 can be a "former highway authority" for this purpose.

However, I agree with Mr Rolt that in the absence of any claim from any other authority the most probable explanation is that this quarry did vest in the Brecon County Council under the 1929 Act. Accordingly I am satisfied that the Powys County Council is the owner and shall direct that Council as Registration Authority to register itself as the owner of this land under section 8(2) of the 1965 Act.

The Water Authority's Claim

The Welsh Water Authority claims to be the owner of the western of the two unclaimed areas which have been referred to me ("the western land").

Mr Jones produced an indenture dated 31 December 1920 made between Sir George Ferdinand Forester-Walker, Henry Edzell Morgan Lindsay (1) Lord Tredegar (2) and the Mayor and Aldermen of the County Borough of Swansea as the urban sanitary authority ("Swansea Council") (3) reciting a conveyance on sale between the same parties dated 16 May 1916 whereby land identified by a plan was conveyed to Swansea Council in fee simple and that on further investigation it had been agreed that the land intended to be conveyed was correctly shown on the plan attached to the 1920 indenture and that the 1916 conveyance was to be construed and read as if the plan attached to the 1920 indenture had originally been attached to the 1916 conveyance.

The plan attached to the 1920 indenture includes the western land.

He also produced the West Glamorgan Water Board Order 1966, which transfer all the land vested in the County Borough of Swansea in relation to its water undertakings to the West Glamorgan Water Board, the Local Authorities (Wales) (Property etc) Order 1973 which by article 16(1) and schedule 4 Part II transfers all land vested in the West Glamorgan Water Board (which was a "joint board" for the purposes of that schedule) in the Welsh National Water Development Authority and the Welsh National Water Development Authority (Change of Name) Order 1978 which changed the name of that Authority to the "Welsh Water Authority".



On that evidence I am satisfied that the "Welsh Water Authority" is the owner of the western land.

I shall accordingly direct the Powys County Council as Registration Authority, to register that Authority as the owner of the land under section 8(2) of the Act of 1965.

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 20th day of February 1989

Peter Landon-Davis

Chief Commons Commissioner