COMMONS REGISTRATION ACT 1965

Reference No.5/D/12

In the Matter of Snelson Common,

Snelson, Cheshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.50 in the Register of Common Land maintained by the Cheshire County Council and is occasioned by Objection No.24 made by Messrs. Meller Speakman and Hall, as agents to the Trustees of R.F. Silcock's Myerscough Trust, and noted in the Register on 26th November 1970.

I held a hearing for the purpose of inquiring into the dispute at Chester on 15th and 16th May 1973. The hearing was attended by Mr. P.W. Watkins, of counsel, for Miss A.C. Walsh, who applied for the registration, and by Mr. A.W. Simpson, of counsel, for the Objectors.

The Objection relates to only a portion of the land comprised in the Register Unit, but that is due only to the fact that the Objectors claim to be the owners of that portion. The boundary between that portion and the rest of the land comprised in the Register Unit appears to have no significance in the consideration of whether either portion of the land is "common land" as defined in section 22(1) of the Commons Registration Act 1965.

The grounds of objection are stated to be that a portion of the land is in the ownership of the Objector. I allowed Mr. Simpson to put forward as an additional ground of objection that the land is not common land as defined in the Act of 1965.

There being no rights of common registered in the Rights Section of the Register Unit, Mr. Simpson took the preliminary point that since any rights of common which may have at one time existed are no longer exercisable by reason of section 1(2)(b) of the Act of 1965, I cannot, as a matter of law, confirm the registration. For the reasons given in my decision in In the Matter of Kingsley Moss, Norley (1973), No.5/D/3, I find myself unable to accept this contention.

The earliest evidence adduced before me concerning the land in question is the tithe rent-charge apportionment for the township of Snelson dated 12th April 1848. In this document the land is described as "Snelson Common", and the landowners are stated to be "Freeholders of Snelson" and there is no rent-charge apportioned upon it.

The land is now mostly covered with self-sown trees and it has been named on the Ordnance Survey map since at least as early as 1909 as "The Common Wood". From 1939 part of the land at the southern end was used as a refuse tip by the Macclesfield Rural District Council, which paid a rent of £2 a year to the Objectors or their predecessors in title. The rent was paid until 1967, although the tip had been closed for some time previously.

The Objector's title to the portion of the land of which they claim to

be the owners goes back to a vesting deed dated 9th September 1926. There was no evidence relating to the title between 1867 and 1926.

Mr. Watkins called fifteen witnesses and produced four affidavits. It does not seem to be necessary to recapitulate this evidence in detail. I am satisfied by it that during the whole period of living memory down to the present time persons living in the neighbourhood have gone onto this land without asking permission and without being challenged and have cut peasticks and have taken sand, leaf mould, and firewood. Mr. R.W.C. Barratt, who was gamekeeper on the Astle Estate for 41 years until about 1964, said in his affidavit that he knew that this was being done, but that he never stopped it, nor was he instructed by his employers, who had a least a paper title to more than half the land in question, to do so. In so far as they have thought about it at all, most of the persons who gave evidence thought that "everybody" could make use of the land for these purposes.

This evidence, in itself, will not support the existence of rights of common. It was settled as long ago as Gateward's Case (1607), 4 Co. Rep. 59b that a right of common cannot exist in a fluctuating body of persons, such as the inhabitants of a locality. Nevertheless, it is my duty to consider whether the facts are consistent with any other explanation, for the existence of a right is not necessarily negatived by a mistaken supposition as to its nature: see Earl De la Warr v. Miles (1880), 17 Ch.D.535.

It appears from the tithe rent-charge apportionment that this land was regarded in 1867 as being in some way out of the ordinary. Its name of Snelson Common indicates this. While it is not unknown for land to retain its name as "X Common" after all rights of common have been extinguished, as by the operation of an inclosure award, there is no evidence in this case of the extinguishment of any common rights which may have given rise to the name of Snelson Common. Nor is there any evidence from which it can be inferred that any rights which there may have been have been abandoned.

Despite the mistaken belief that "everybody" had a right to take peasticks, etc. from this land, it is possible that some of those who did so did it in the exercise of a right. Indeed, it would be sufficient to bring the land within the definition of "common land" in section 22(1) of the Act of 1965 if it could be shown that even one person had a right to do so.

Of the witnesses there were four whose evidence covered the same ground. These were Miss Walsh, her sister and her two brothers. One of the brothers is the present owner of Snelson House, which is a few hundred yards from the land in question, and the four of them lived there with their parents as children about 70 years ago. They used to play on this land and they remember that their parents' gardener used to cut peasticks and get leaf mould from this land. This could have been done with the good-natured acquiescence of the owner of the land or it could have been done in the exercise of a legal right. The evidence is consistent with either possibility. Taking the other evidence into consideration, I have come to the conclusion, on a somewhat fine balance of probabilities, that the owner of Snelson House, if nobody else, had rights of common over this land at the date of registration.

For these reasons I 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 25th day of June 1973

Chief Commons Commissioner