COMMONS REGISTRATION ACT 1965

Reference Nos 50/D/16
50/D/17

In the Matter of land known as
Mynydd Tir-y-Cwmwd, Llanbedrog

DECISION

These disputes relate to the registration at Entry No 1 in the Rights Section of Register Unit No CL.6 in the Register of Common Land maintained by the Caernarvonshire County Council and are occasioned as to 50/D/16 by (Objection No 37 made by Mr K J G MacMaster and noted in the Register on 30th July 1970 and as to 50/D/17 by Objection No 44 made by Mr F H Minoprio and noted in the Register on 17th August 1970.

I held a hearing for the purpose of inquiring into the dispute at Caernarvon on 30 January 1973. The hearing was attended by Mr E D Lewis, solicitor, for Mr and Mrs Moss Brandon (the applicants for registration) and by Mr R G Woolley, Counsel, instructed by Messrs Chappell & Perry, Solicitors for the Objectors.

At the request of the parties, these disputes were heard by me at the same time as 50/D/14 and 50/D/15. All four disputes relate to Mynydd Tir-y-Cwmwd, Llanbedrog, and the evidence was the same. I have summarised the evidence in my decision on 50/D/14 and 50/D/15, and the parties are referred to that decision.

The land to which the grazing right for 25 ponies registered by Mr and Mrs Brandon is said to be attached consists of a small holding called Mount Pleasant, of which they have been tenants for some 15 years. It appears from Inclosure Map A that Mount Pleasant formed part of Allotment No 6 made by the Award. It follows that Mr and Mrs Brandon must rely on prescription under the Prescription Act 1832, that is, they must show uninterrupted user of the land as of right for grazing 25 ponies for a period of 30 years at least.

I am satisfied that Riding School ponies - although not as many as 25 - have been turned out to graze on Mynydd Tir-y-Cwmwd as of right and without interruption by Mr and Mrs Brandon, and previously by Mrs Brandon's mother, for upwards of 30 years. If the law allowed it, I would have been prepared to hold that they had acquired a right of common of grazing in gross by prescription. Unfortunately, however, it is settled law that a right of common in gross cannot be acquired by statutory prescriptic see Shuttleworth v Le Fleming (1865) 19C. B. (NS) 687.

The question, therefore, is: have Mr and Mrs Brandon proved enjoyment for 30 years c a right of grazing for ponies in respect of Mount Pleasant? It is clear that they have not. They have only proved such enjoyment for 15 years.

I have considered whether I can properly find that the successive owners and occupiers of Mount Pleasant have turned animals (not necessarily ponies) on the mountain for grazing, so as to enable me to confirm the registration as to animals generally ie cattle, sheep and horses. I have regretfully come to the conclusion that there is no sufficient evidence to warrant such a finding. None of the other witnesses referred specifically to Mount Pleasant, and there is no evidence that Mr and Mrs Brandon's predecessors in occupation of Mount Pleasant made use of the mountain for grazing even ordinary farm animals. It is not unlikely that they did, but there was

no evidence before me. The presumption of continuance can, no doubt, operate in reverse, but I do not consider that there is sufficient justification for resorting to it in a case of this kind.

For these reasons I refuse to 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 3rd day of March 1973

H.E. Francis

Commons Commissioner