COMMONS REGISTRATION ACT 1965 Reference Nos. 276/D/122 and 123

In the Matter of Glas -y-Bont (Lower)
Glasbury D.

DECISION

These disputes relate to the registrations at Entry Nos 5 and 6 in the Rights Section of Register Unit No.CL.31 in the Register of Common Land maintained by the former Radnorshire County Council and is occasioned by Objection Nos 649 and 938 both made by Major G W E De Winton and respectively noted in the Register on 29 September 1970 and 4 January 1972.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 7 June 1978. The hearing was attended by Mr W G Morris of Messrs. Dilwyn Jones and Sons on behalf of Major De Winton and by Mr W G Lloyd the applicant for rights under Entry No. 5 in person.

Mrs. J M Northam had by a letter addressed to the Radnorshire County Council withdrawn her claim to rights under Entry No. 6 and I therefore refuse to confirm that Entry.

Mr Lloyds claim under Entry No. 5 was in the following terms "A right to common of the soil river graval for buildings and repair of Well House Farm and Gwansire buildings, Glasbury on Wye".

Mr Lloyds first submitted that a right of common of the soil and a right to take sand and gravel was a right of common known to the law and this I of course accepted. His next submission if I correctly understood it was that since the land was common land, the Entry in the Land Section being final, then it followed that he had a right of common of the soil. My impression was that he believed that common land was subject to all categories of common rights. I pointed out to him that this was not the case and that rights of pasture might be destroyed if the land could be dug up. I pointed out to Mr Lloyd that he had to prove he was entitled to the particular right which he claimed either by grant, or by custom or by prescription.

Mr Lloyd gave evidence but had no evidence of the grant to him or any of his predecessors in title of the right which he claimed nor of any such customary right. He said that every parishioner had the right to take sand and gravel and I point out to him that failing evidence of a grant or a customary right this could not be the case as a fluctuating body such as parishioners could not acquire the right by prescription. Faced with these difficulties Mr Lloyd endeavoured to prove that he had acquired the right which he claimed by prescription. The land for which he claimed the rights was 15 acres originally part of Murdoch Farm which his family purchased from Major De Winton in 1926 and 6 acres part of Well House Farm which he had rented in 1936 and purchased in 1955. He left Murdoch in 1963.

Mr Lloyd spoke of taking sand and gravel in 1924 and 1925 but at that time Murdoch and the common were both in the ownership of Major De Winton and the taking of sand and gravel at that time could not be in the exercise of a right of common or be relevant to any claim by prescription. He referred to sand being taken to make a path to the School, but this could have no relevance to Mr Lloyds claim. He said he used to collect sand and gravel on his return from taking the wool clip to the station and that he paid for screened sand if it was screened for him by the Estate. Apart from this his evidence was that he took a substantial amount of sand and gravel for a shed at Murdoch in 1948 and of two instances in 1968/69 and 1970 these two instances being confirmed by a letter from his son who was unable to attend the hearing. Mr Lloyd in his evidence placed considerable reliance on the key to a gate which was erected to prevent gipsys gaining access to the land being readily available from the local shop.

In cross-examination Mr Lloyd admitted that he received a letter dated 17 September from Messrs. Woosnam and Tyler the agents for Major De Winton authorising him to take 10 trailer loads of gravel on payment of £1 per load and stating that the key could be collected from George Griffiths. It appears from the letter Mr Lloyd said that it was sent consequent upon an enquiry he made on the telephone Mr Lloyd did not answer Mr Woosnams letter. He said he asked for the key but was told he did not need it, he took gravel as he had always taken gravel, he did not pay and he did not tell Woosnam, Tyler anything. He remembered Mr Smith who sold sand outside the parish; every parishioner had the right to take sand and gravel. He did not take gravel every year. Major De Winton knew this was being done and the foreman saw the gravel being taken and said nothing nor did Mr Smith who was entitled to take gravel for about 10 years just before the last war, but Smith and sons have not taken gravel for years and years, George Griffiths also saw him taking gravel.

Mr C R Woosnam gave evidence on behalf of Major De Winton. He said his firm had been agents for Major De Winton since the last war and they had contracted all the gravel either directly or through Smiths. He produced an agreement whereby Smith was granted a yearly tenancy from 1 July 1924 at a rent of £31 per annum. Smith paying all rates and taxes. Under this agreement Smith was to charge only prices agreed by the Landlord or his agent and to display a notice of charges at the quarry and to supply the Landlord and persons authorised by him for purposes of the upkeep of the Estate free of charge and he was also to supply the Brecon and Radnorshire County Council with sand and gravel at 6d per ton but he could charge the County Councils at the same prices for [illegible] other than for building purposes.

Mr Woosnam went on to say that this agreement came to an end in 1956 and was replaced by an arrangement set out in a letter dated 28 November 1956. Under this new arrangement Major De Winton proposed to charge 5/- per ton and consumers other than Smiths were only to be permitted to take gravel on application to Major De Winton or his agents, Smiths being notified of any permission granted, and were to provide a public weighbridge certificate of the amount of gravel taken. Mr Woosnam confirmed the evidence given by Mr Lloyd in cross-examination as to the 10 trailer loads and produced an account charging Mr Lloyd with £10 later marked "not taken".

In cross-examination Mr Woosnam disclaimed any personal knowledge of the key to the gate.

Mr W W Forsyth said he had been the farm manager since 1954, the gravel bed was at the corner of the estate and under his close supervision and he had never seen Mr Lloyd taking, gravel. Mr Griffith also had supervision and he and Mr Griffiths worked in close liaison and they each had a key. It was possible for about a year to gain access without a key as the receiving post was broken and inadequately repaired so that the post could be removed. This was about the early 70's,

In cross-examination he said the key was kept by Smith in 1954. If he saw anyone taking gravel he would note it and report it. Mr James broke the gate.

Major De Winton gave evidence on oath. He said when he attained the age of 21 he was given all the relevant information about the estate, but he was not told of any right to take sand and gravel. His father died in 1937 during the war he was in the forces and when he returned he made himself familiar with the running of the estate and had done so ever since he passed by the source of the gravel almost daily when he was at home, he had never seen Mr Lloyd taking gravel and he would surely have notified if 10 tons had been taken in one operation but he saw no such sign.

In my view Mr Lloyd came to the hearing in the belief that he was entitled as a parishioner to the right he claimed he may indeed be forgiven for having been under that impression since under the 1924 tenancy Smiths were bound to supply sand and gravel free for the upkeep of the Estate. Mr Lloyd in his evidence said that Smiths sold sand and gravel outside the parish. What Mr Lloyd failed to distinguish was that free sand and gravel was available to the Estate as distinct from the parish that such free sand was available to tenants of the Estate not as of right but because it was at the disposition of Major De Winton under the agreement he had made with Smiths. It was only when Mr Lloyd appreciated that he had no right in his capacity of a parishioner that he took the only course then open to him of endeavouring to establish a prescriptive right.

The right claimed by Mr Lloyd is of its nature difficult to establish by prescription, building and affecting repairs to buildings are not continuous processes like grazing and he did not claim to have taken sand and gravel in every year. Prior to 1968 Mr Lloyd only spoke of one specific instance in 1948 and of occasions when he picked up sand and gravel on his return from taking wool to the station. This evidence in my view falls far short of that required to establish a continuous use of the right claimed.

As regards the 1968 incident if Mr Lloyd offered no explaination as to why when asked to pay £10 he did not reply to Mr Woosnams letter and say he was entitled to have gravel free of charge. At the end of the day Mr Woosnam was clearly under the impression that Mr Lloyd had not taken any gravel and if he did take some graval he must in my view have acquired it by stealth and not as of right.

Mr Lloyds son sent with his letter two photographs of files of material which he said were the residue of what was taken in 1968 and 1970 but in my view and Mr Lloyd was on notice that Major De Winton was only prepared to sell him gravel he can only have acquired that gravel by stealth and its acquisition cannot assist him in establishing a prescriptive claim.

The evidence of the alleged exercise of the right claimed prior to 1968 is far too vagu to establish a prescriptive right.

I accept the evidence of Major De Winton and Mr Forsyth and Mr Woosnam and I do not accept Mr Lloyds evidence that Major De Winton saw him taking gravel. It is in my view possible that Mr Lloyd has had an occasional load of gravel prior to 1968 unknown to Major De Winton but I am satisfied that there has not been a continuous exercise of the alleged right such as to establish a prescriptive right.

For these reasons I refuse to confirm the registrations at Entries 5 and 6.

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 7th day of August 1978

G A Lello

Commons Commissioner.