COMMONS REGISTRATION ACT 1965 Reference No. 276/D/278-279

In the matter of Land of 19.286 acres
Llandelwedd, Radnor District Council

DECISION

This dispute relates to the registration at Entry Nos 1-2 in the ownership section of Register Unit No. CL 65 in the Register of Common Land maintained by the former Radnorshire County Council and is occasioned by the conflicting registrations at Entry Nos 1-2 in the said ownership section.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 8 June 1978.

Mr J G Williams of J G Williams & Co appeared for the Trustees of the Glanusk Settlement and Mr D Jones of H V Vaughan & Co appeared for T W Jones and D P Jones the successors to T W Jones Senior, who by Entry No 2 in the Ownership Section claimed to be the owner of the land in question.

The land comprising of 19.206 acres OS Nos 37,39 and possibly part of OS 40 was registered as common land by the Glanusk Estate on 10 February 1969 and on the same date as Entry No 1 in the Ownership Section the Estate claimed ownership of the land.

There are no Entries in the Rights Section of the Register and Mr D Jones case was that since 1905. The land in question had always been occupied and enjoyed as part of Pennaenau Farm, to the exclusion of all persons other than the occupiers of the farm. In support of this case he produced

(1) a lease dated 16 October 1905, where by Howell Gwynne leased the farm as particularised in the schedule to Ada Hawkins. The particulars in the schedule included OS Nos 37, 39 and 40

(2) a conveyance dated 9 April 1965 where by Major General F D Gwynne Howell and Dr R Gwynne Howell conveyed the farm identified on the plan and particularised in the first schedule to T W Jones Senior. The plan and the First Schedule include OS Nos 37, 39 and 40

(3) a statutory declaration made on 29 March 1965 by Major General Gwynne Howell that he was authorised a Trustee of the Llandelwedd Hall Estate on 12 August 1926 and that the said farm, was the major portion of the property comprised in the Estate, of which he became a trustee and that since March 1926. The Trustees of the Llandelwedd Hall Estate had been in full free and undisturbed possession of the entire farm, and in receipt and enjoyment of the rents and profits as if right without any adverse claim made against them.

Mr T G Jones gave evidence that the land in question was wholly enclosed. His father became the tenant of the farm in 1945, and since that date no one, other than he and his late father had grazed on or made any other use of the land, which had been farmed as an integral part of the farm. He and his father had cleared the land of scrub and wood, ploughed and re-seeded it. They had renewed the water

supply which comes from a well situated on the land and repiped it. When the land was ploughed it was seeded with rape.

It is a matter for regret that Mr T G Jones did not object to the Entry in the Land Section which became final on 1 August 1972. Had he done so I would without hesitation have refused to confirm that registration; it is not subject to common rights and it is not waste being enclosed occupied and cultivated.

Mr Williams was manifestly under instructed and ill-equiped. He produced a map of the Glanusk Estates which he belived to have been prepared either side of the turn of this century, and an extract from a history book which he relied upon is establishing that there had been no enclosures in Elvel Manor. He invited me to consider an opinion given by counsel as indeed did Mr Jones. Counsel instructed by Mr Williams as appears from his opinion was inadequately instructed and he was therefore unable to arrive at any firm conclusion. Mr Williams was unable to tell me what, if any, researches his clients had made into the matters upon which counsel required further information. He did not cross-examine Mr T W Jones when he gave his evidence, which therefore stands uncontradicted.

Mr Williams case really rested on the map which he produced, on which the "commons" were coloured green. He did not prove that his clients were Lords of the Manor of Elvel and he did not refer to the map, to establish that the land in question was situated in that Manor. But he may have taken the view that this was not necessary and that I would have no alternative but to confirm his clients registration if Mr T W Jones failed to prove his title.

If I correctly understood Mr Williams submission it was that it was not possible for a squatter to acquire a possessory title to common land. The whole basis of this argument was the description of the land as common on the map. The word "common" has many technical and colloquial meanings and in my view even if Mr Williams submission was soundly based he would have to establish that the land was a common in the technical sense of being subject to rights of common, and there was no evidence of the exercise or the existence of any rights of common over the land. The evidence of Mr T W Jones established that no such rights have been exercised since 1945, and indeed the lease of 1905 gives rise to the inference that there has been no exercise of common rights since that date. Examination of the map revealed that OS No 37 was not coloured green. Thereon and the draftsman of the map did not claim that OS No 37 was common. It may be that when the map was prepared OS No 39 was waste not subject to common rights and that the draftsman of the map described it as being common in what then would have been the colloquial sense: waste not subject to common rights being defined as common land for the first time by the act of 1965.

In the absence of any evidence that the land was common land before the act of 1965 came into force, I cannot accept Mr Williams submission that Mr T G Jones could not have acquired a prescriptive title prior to that date. In my view Mr Williams submission was not sound in law even if the land was common land. At paragraph 2-96 on page 78 of Harris & Ryan on the law relating to common land the following passage appears:

"Rights of Common are extinguished over common land or parts of it which are encroached upon by persons who acquire after the period laid down by the Limitation Act 1939 protection from the right of re-entry. Indeed re-entry is barred both to the commoner and the owner of the soil."

If I am correct in holding that there is no legal bar to Mr T W Jones having acquired a good prescriptive title either from his vendors in 1965 or subsequently then in my view he has a good title and Mr Williams did not argue to the contrary effect.

I have been troubled by an argument not put forward by Mr Williams to the effect that since the Entry to the Land Section is Final, it is by virtue of Section 10 of the Act of 1965 "conclusive evidence of the matters registered as at the date of registration" and since there are no Entries in the Rights Section it must follow that the decision of the Court of Appeal in the case of Box Parish Council v Lacy given on 24 May 1978 be conclusive evidence that the land is in the ownership of the Lord of the Manor.

At the date when the Entry in the Land Section became final there were outstanding conflicting claims to ownership by the Glanusk Estate and Mr T W Jones.

The ratio for the decision of the Court of Appeal in the "Box" case was that the reason for classifying waste of a manor as common land was to protect waste in ownership of the Lord of the Manor, in cases where he was not ascertained. In my view the legislature never intended that an Entry in the Land Section which becomes final by default should defeat an outstanding or indeed any valid claim to ownership.

I am satisfied that Mr T W Jones claim to ownership was well founded and I confirm Entry No 2 in the ownership Section and refuse to confirm Entry No 1 in that Section. I have no power to deal with the Entry in the Land Section which in my view was wrongly made and the effect of my decision is that Mr T W Jones successors are the owners of the land, which is common land not subject to rights of common. In these circumstances the Entry in the Land Section can have no effect and it is to be hoped that in due course the legislature will provide for the removal from the Register of Entries in the Land Section which have been found to be wrongly made.

I am required by Regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by his 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 17th day of November 1978

E. A. L. Ha.

Commons Commissioner