COMMONS REGISTRATION ACT 1965 Reference Nos. 276/D/401-402

In the Matter of Marl Pit,
Meifod

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and Entry No. 1 in the Rights Section of Register Unit No. CL 100 in the Register of Common Land maintained by the Powys County Council and is occasioned by Objection No. 214 made by the Forestry Commission and noted in the Register on 17 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Welshpool on 10 December 1980. The hearing was attended by Mr W Cook, of the firm of Harrison and Sons, Solicitors, appearing on behalf of Meifod Community Council ("the Council"): and by Mr R Turner, Solicitor, of the Forestry Commission.

The registration as common land was made in consequence of the Council's application to register "a right on behalf of the parishioners of Meifod to take gravel" from the Unit land. The Objection is on the ground that "the land was not common at the time of entry and that the right to take gravel does not exist".

The Unit land is a gravel pit of about one-fifth of an acre at Pentre in the Parish of Meifod: there is no owner entered in the Register but Mr Turner informed me, and this was not disputed, that in 1965 it became vested in the Secretary of State for Wales. Mr Cook called a number of witnesses. Mrs Doris Williams, Clerk to the Council since 1970 produced extracts from minutes of the Council. On 15 April 1907 there was a meeting at which a discussion took place as to the Earl of Powis's power to charge for "what has from time immemorial been considered a public gravel pit". On 2 March 1911 a resolution was passed by the Council "after looking into the Parish Terrier that 1 rood of land at Pentre known as Public Gravel Pit" is public property. In April 1928 it was decided at a meeting that a gate and wire be put at the gravel hole at Pentre and that payment be received for gravel loads by all except the parishioners. In June 1928 there was a further decision to procure wire and timber for the gate and that non-parishioners pay 1s/- per load for gravel and in October 1928 and February 1929 there was further reference to procuring payment of the fee from named persons. Mrs Williams said in evidence that there was only the one gravel hole in the parish and that no charge is made to parishioners, who just go and take it: no record is kept of the takers, the main users being residents in Meifod village, rather than the parishioners who live in a wider area than the village.

Evidence was given by six parishioners, Mr D N Bennett, Mr D Edwards, Mr C Jones,

Mr J E Watkin, Mr N A Watkin and Mr R Knill. In my view this evidence establishes that for the period of living memory some parishioners have taken gravel from the pit without payment or express permission and that there is a general belief or tradition that parishioners have a right to do this.

It was decided as long ago as Gateward's case (1607) 6 Co.Rep. 59b that there cannot be any right to a profit a prędre, such as the right here claimed, in a fluctuating body, as for example the inhabitants of a parish. In the present case the right is registered in the name of the Parish Council on behalf of the parishioners but this cannot in itself give validity to a right not recognised by the law. It is true that a corporate body may itself acquire such a right by prescription, and where that body is the corporation of a borough and at the same time the inhabitants of the borough have exercised a similar right it may be held that the corporation's right is held by it in trust for these inhabitants (cf. Goodman v Mayor of Saltash 1882 7 App. Cas. 623). But this possibility depends on the corporate body itself having the right, separately from the right exercised by the inhabitants, and there is no evidence that the Parish Council had itself the right to take gravel, independently of what the parishioners were doing.

In the case of some at least of the witnesses the evidence sufficiently established a prescriptive right in the individual to take gravel. Mr Cook suggested that in such cases, the personal right should be recognised; but this could now only be done by modifying the right registered by the Parish Council into a series of rights in favour of such of the witnesses as have given evidence and established a prescriptive right. There is jurisdiction to confirm a right with modification, but to substitute some individual rights for the right registered by the Parish Council would be entirely different from a confirmation of that right with modifications, and I cannot accept that this would be a proper course to take.

In the result I refuse to confirm the registration of the right. There is no other right of common registered and no suggestion that the land is waste land of the manor; accordingly the land does not qualify as common land and I refuse to confirm the registration at Entry No. 1 in the Land Section.

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 21 January 1981

L J Thomas Smith

Commons Commissioner