COMMONS REGISTRATION ACT 1965 Reference No 274/D/142

In the Matter of Glan y Mor, Aber Ogwen, Elanllechid, Arfon BC

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No VG. 29 in the Register of Town or Village Greens maintained by the former Caernarvonshire County Council and is occasioned by Objection No 125 made by J R Harper and noted in the Register on 26 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Caernarfon on 16 February 1977. The hearing was attended by Mr Gareth Edwards counsel instructed by Messrs Carter Vincent & Co on behalf of the Penrhyn Estate on whose behalf Mr Harper made his objection and by Mr Wormald who registered the land as a Village Green in person. Mr D Edward Smith Chief Legal Officer to the Arfon BC also appeared.

Mr Wormald based his claim that the land is a village green on the allegation that the inhabitants of a locality have for a period of not less than twenty years indulged in lawful sports and pastimes on theland. In order to establish this claim Mr Wormald had to prove:

(1) That the use was by inhabitants of a locality

(2) That the use was for lawful sports and pastimes, and

(3) That the use was as of right.

In my view Mr Wormald failed to establish any one of these essential elements.

The evidence led by Mr Wormald established that this strip of land adjoining the coast had been used for picnics and outings and generally for leisure for substantially more than the 20 year period. The evidence in my view falls far short of establishing a use for lawful sports and pastimes. The use proved by Mr Wormald is similar in all respects to the use by the public of the beaches in the UK and it is settled law that the public have no right to use the beaches for recreational purposes, see Beckett v Lyons 1967 ch. 449 at p 468. In my view mere access for recreation and exercise which Mr Wormald did prove falls far short of a use for lawful sports and pastimes. In my view lawful sports and pastimes in the context in which these words are found in the Act of 1965 refer to some recognised activity such as football, cricket, archery, fishing, boating, etc. Support for this view is to be found in the requirement that the use must be by the inhabitants of a locality which suggests some element of organization as for example the village football or cricket club, and indeed the right claimed must be by virtue of the claimant being an inhabitant of the defined locality.

In my view Mr Wormald's evidence failed to establish that any individual claimed to use the land for his recreation by virtue of being an inhabitant of a defined locality. In point of fact Mr Wormald spread his net very wide and claimed the use of the land for the Parishes of Llanllechid and Llandegai and the former Urban District of Bethesda.

In my view what Mr Wormald proved is the use by the public, as distinct from the inhabitants of a locality, for recreation and exercise, as distinct from lawful sports and pastimes, such use being by tolerance of the Penrhyn Estate and not as of right. Mr Wormald's desire to preserve amenities as they now exist is understandable, but I would remind him of the passage in the judgment of Harman LJ in Beckett v Lyons at p 470 where he said:-

> "If you push a privilege into a right you will find it opposed which it never would be so long as you admit it is a privilege."

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 4th day of April 1977

C. A. Le Fleming

Commons Commissioner