



COMMONS REGISTRATION ACT 1965

Reference Nos. 51/D/5 to 13
inclusive

In the Matter of Craig-y-Rhos Mountain,
Llantysilio, Glyndwr D

DECISION

These disputes relate to the Entry at No. 1 in the Land Section and the Entries at Nos. 1 and 2 in the Rights Section of Register Unit No. CL. 12 in the Register of Common Land maintained by the former Denbighshire County Council and are occasioned by Objection No. 2 made by H B and A Davies entered in the Register on 19 December 1969, Objection No. 3 made by William Jones entered in the Register on 19 December 1969 and Objection No. 79 made by Burton Wood Brewery Company (Forshaws) Ltd entered in the Register on 29 September 1970.

I held a hearing for the purpose of inquiring into these disputes at Llangollen on 1 April 1976. The hearing was attended by Mr Williams of Messrs David Hughes & Co on behalf of Mr Jones Roberts, Mr Richards of Messrs Clarks Richards & Sons on behalf of Mr W Jones and Mr Davies, Mr Wynn Jones, counsel, instructed by Messrs William Jones and Talog Davies on behalf of the Brewery, and by Mrs Douglas Jones in person.

I deal first with the claims for fishing rights at Entry Nos. 1 and 2 in the Rights Section of the Register. Mrs Douglas Jones gave evidence that her late husband had fished during an undefined period, and I was told that other local inhabitants were in the habit of fishing without objection but no evidence was given of any right so to do. It is well settled law that a fluctuating body, such as inhabitants, cannot prescribe for a "profit a prendre" such as the right to take fish and I therefore have come to the conclusion that the fishing referred to above was permissive and not as of right and I refuse to confirm any fishing rights.

Next Mr Wynn Jones proved that the Brewery acquired the land the subject of its objection on 25 October 1961 and he said it was not part of the mountain, was unsuitable for grazing and it had never been grazed as far as the Brewery was aware. These facts were admitted by all those attending and it was accepted that I should exclude from the Entry in the Land Section the land in the ownership of the Brewery.

There remains the outstanding question as to who is entitled to graze on the mountain.

The whole mountain was purchased by William Jones from the Tottenham Estate on the 16 December 1957 by private treaty after it was put up for sale but not sold in that year. It was sold subject to undefined grazing rights which were at that time being exercised. On the 15th April 1969 Mr W Jones sold the



west half of the mountain to Mr Davies and retained the east half, and on the 11th July 1974, Mr & Mrs Davies sold the south part of their land to Mrs Douglas Jones. This series of transactions explains the state of the Register. Mrs Douglas Jones and her late husband registered the land as common land and claimed grazing rights over the whole of it. Mr W Jones and Mr & Mrs Davies did not claim any rights by reason of the belief that they were entitled to graze on the land which they owned. Mr Jones Roberts who does not own any part of the mountain claims grazing rights over the whole mountain. The first question which I have to determine is whether Mr Jones Roberts is entitled to the rights which he claims by prescription.

Mr Jones Roberts gave evidence that his family had owned his farm for four generations and that he had lived there for 53 years. He farmed Coed Ial; W Jones's farm is Pant-y-ffynnon, and came there about 1946. Prior to 1946 Coed Ial and Pant-y-ffynnon used to graze their sheep on the mountain and at that time they each had flocks of about 55 to 60 sheep. Mr & Mrs Davies's farm and Mrs Douglas Jones's farm, Rhos-yn-Wst, also grazed on the mountain flocks of 65-70, and 50-60 sheep respectively.

The two last mentioned farms took their sheep off the mountain in about 1945 and Pant-y-ffynnon and Coed Ial took their sheep off the mountain in about 1947 owing to difficulties attributable to the gates being knocked down. Prior to the abortive auction Mr Jones Roberts went to see Messrs Richards and stated that Coed Ial had grazing rights. Mr Richards could find no reference to these rights in the Tottenham records, which was not surprising because Coed Ial even if it ever was Tottenham land had ceased to be Tottenham land many years previously and in any event there was unlikely to be any documentation of prescriptive rights. Mr Richards advised Mr Jones Roberts to take independent legal advice, which Mr Jones Roberts unfortunately failed to do.

Mr Jones Roberts stated in his evidence that William Jones, who at one time had worked for his grandfather, approached him and said he was going to buy the mountain, to which he replied that he could not do that as he, Jones Roberts, and others were grazing. By this time, so Mr Jones Roberts said, his sheep were back on the mountain and William Jones well knew that he had rights.

I pause here to mention that though Mr Jones Roberts was cross-examined by Mr Richards there was no cross-examination either as to the conversation between Mr Jones and Mr Jones Roberts or as to the presence of Mr Jones Roberts's sheep on the mountain in 1957. I pointed out to Mr Richards that if Mr Jones was going to contradict the evidence given by Mr Jones Roberts he was bound to put Mr Jones's version of the facts in cross-examination, whereupon Mr Richards asked for a brief adjournment to take his client's instructions. After a brief adjournment Mr Richards very properly admitted that in the absence of any instruction and in the face of the uncontradicted evidence of Mr Jones Roberts he could not continue to resist Mr Jones Roberts' claim.

In these circumstances it is not necessary for me to deal in detail with the remainder of the evidence given by Mr Jones Roberts. In 1958 he entered into an agreement with Mr Jones which on its face was a licence for him to graze his sheep on the mountain, and which he signed without any independent legal advice and which he believed to be no more than an agreement to contribute to the cost of some fencing. Had any evidence been led on behalf of Mr Jones the



circumstances in which this agreement came to be executed would have called for a close scrutiny. This agreement only ran for one year and thereafter Mr Jones endeavoured to exclude Mr Jones Roberts's sheep from the mountain but he persisted in asserting his rights.

It is only right that I should say that I have referred throughout to Mr W Jones because the Objection was made by him but his son-in-law has taken over the farming at Pant-y-ffynnon. Insofar as there is implicit in this decision some criticism of Mr W Jones I am satisfied that some, if not all, of the responsibility for the treatment meted out to Mr Jones Roberts is that of the son-in-law.

It was accepted by all four persons who are entitled to graze on the mountain that it will sustain approximately 135³⁴⁴. A rough apportionment of this number of sheep among the said four persons in proportion to their respective farms is as follows:-

Mr Jones Roberts	30 acres	24 sheep
Mr William Jones	54 acres	44 sheep
Mrs Douglas Jones	56 acres	44 sheep
Mr & Mrs Davies	34 acres	28 sheep.

Mr Jones Roberts is in my view entitled to graze his flock of 24 sheep over the whole of the mountain and insofar as any fences which have been erected will prevent him exercising that right he is entitled to have those fences removed. Not only do these fences infringe Mr Jones Roberts's rights but it seems to me probably that they also infringe the provisions of Section 194 of the Law of Property Act 1925.

Mrs Douglas Jones has purchased part of the mountain since she registered her rights in 1967. Neither she nor the other two owners of parts of the mountain can have rights to graze over their own land and I am not concerned with any agreements as between them, but any grazing on their lands must not interfere with and must leave adequate grazing for Mr Jones Roberts's 24 sheep, and his right to graze that number of sheep is based on the assumption that no more than 140 sheep will be grazed on the mountain at any one time.

For these reasons I confirm the Entry at No. 1 in the Land Section of the Register modified so as to exclude the land in the ownership of the brewery identified on the plan annexed to this decision. I refuse to confirm the Entry at No. 1 in the Rights Section of the Register and I confirm the Entry at No. 2 in the Rights Section modified so as to limit the grazing right to 24 sheep in lieu of 98 sheep and to exclude "fishing rights".

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 6th day of May 1976

C. A. Settle

Commons Commissioner