



COMMONS REGISTRATION ACT 1965

Reference No 51/D/27

In the Matter of Land at Moel-y-Parc,
Aberwheeler, Glyndwr D

DECISION

This dispute relates to the registration at Entry No 34 in the Rights Section of Register Unit No CL. 19 in the Register of Common Land maintained by the former Denbighshire County Council and is occasioned by Objection No 34 made by Ifor Wynn Williams and noted in the Register on 21 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Mold on 13 May 1976. The hearing was attended by Mr Armon Ellis on behalf of Mr E E Matthews the applicant for rights under Entry No 34 and Mr Wynn Jones on behalf of the Aberwheeler Commoners Association on whose behalf Mr Wynn Williams now deceased made his objection. At about the time when the Commons Registration Act 1965 came into force a public meeting was held at the instance of the NFU and consequent upon that meeting the Aberwheeler Commoners Association was formed. The Association made some research as to what rights existed to graze on the land in question (hereinafter referred to as the Common) and the only evidence they found was a tithe map on which appeared a statement that the parishioners had rights in common. The inference which the Association drew from the tithe map was that grazing rights were appurtenant to land situate in the Parish and the Association went on to resolve that Entries in the Rights Section of the Register should be made on the scale of 2 ewes and one lamb for each acre of land farmed in the Parish.

In my view the Association was not justified in drawing the inference which they drew from the tithe map. The map referred to parishioners, not owners of land, and in the absence of a grant the parishioners, a fluctuating body of persons, could not have acquired rights of pasture. There was no evidence of any grant, nor of the Parish Council or any person having acted in the capacity of a trustee for the parishioners.

It is against this background that Mr Matthews comes to be in dispute with the Association. He owns a farm, which was tenanted by his family from 1880 to 1946 when it was conveyed to his father and him. The farm comprises some 58 acres of which about 4 acres are situate in the Parish.

The Association are content that Mr Matthews shall have the right to graze 8 ewes and 4 lambs, the scale agreed by the Association but Mr Matthews has registered the right to graze 50 ewes and 25 lambs.

Mr Matthews gave evidence that when he left school and came to work on the farm with his father they only had Southdown sheep which did not graze on the Common, and he wanted to acquire some Welsh sheep to go on the common. His father was not enthusiastic because he had previously grazed sheep on the Common and found them unprofitable. It is in my view improbable that the



father's unprofitable experience arose out of a mere 12 sheep and in my view a flock of Welsh sheep were grazed on the Common from Maesycoed Farm prior to 1938 but that there was no such grazing during the period that there were only Southdown sheep on the farm. The father withdrew his opposition and Mr Matthews acquired 12 or 20 lambs in 1940 which he put on the Common in 1941; the following year he bought a further 8 lambs and he made a later purchase of a further 12 lambs. Mr Matthews and a friend tended these sheep on the Common in the early days and he built up a flock of varying quality, the maximum being 75 adult sheep in 1955/6. Mr Matthews stated that until the present dispute there had never been any objection, he never asked for any consent and he never made any payment.

Mr Matthews is still grazing his sheep on the Common and he has an ear mark and a black M colour mark for his flock. Save as regards Mr Brook who said he objected to Mr Matthews's sheep because owing to the large numbers of sheep on the Common his fences were being broken down, he has grazed his flock from 1941 to 1970 without objection and in my view he was doing so in the exercise of a right which was in existence prior to 1938 but the exercise of which was temporarily discontinued during the time that there were only Southdown sheep on the farm.

It remains for me to quantify this right. Mr Matthews produced copies for his claims for subsidy from which it appeared to me that the average amount of sheep he has had on the Common is about 50 adult sheep, and I indicated that my provisional view was that Mr Matthews's Entry should be modified so as to give him the right to graze 32 sheep and 16 lambs, and Mr Ellis and Mr Wynn Jones stated on instructions that this quantification was acceptable to their respective clients.

For these reasons I confirm the Entry at No 34 in the Rights Section modified by substituting at (a) the words "graze 32 sheep and 16 lambs" for the words "graze 50 sheep and 25 lambs".

For the avoidance of doubts and for the information of any purchaser of a farm it should be clearly stated that throughout the Rights Section of the Register references to sheep are to ewes and followers and reference to lambs are to shearling ewes.

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 June

1976

C. A. Jetté

Commons Commissioner