



COMMONS REGISTRATION ACT 1965

Reference Nos 51/D/65
51/D/66

In the Matter of Rhyd-y-foel Common,
Abergele, Colwyn District, Clwyd

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 2, 3 and 4 in the Rights Section of Register Unit No CL 60 in the Register of Common Land maintained by the Clwyd (formerly Denbighshire) County Council and are occasioned by Objection No.N.O.1 made by Mr Adam Lythgoe and Mr Fred Lythgoe and noted in the Register on 25 March 1969.

Mr Commissioner C A Settle QC held a hearing for the purpose of inquiring into the disputes at Colwyn Bay on 4 February 1976, and adjourned the Matter. I held the adjourned hearing at Colwyn Bay on 16 July 1980. At this hearing: (1) The Llanddulas and Rhydyfoel Ratepayers & Electors Association were represented by Mr M Morgan solicitor of Mervyn Morgan, Solicitors of Colwyn Bay; (2) Mrs Olwen Davies Jones as widow of Mr Albert Edward Jones (he died 31 October 1976) on whose application the registration at Rights Section Entry No. 1 was made, was also represented by Mr Morgan; as also was (3) Miss Margaret Anne Jones on whose application the registration at Entry No. 2 was made; (4) Mr William Ellis Davies on whose application the registration at Entry No. 3 was made, attended in person; (5) Miss Kathleen Bright Williams of Gerlan, 3 Salem Terrace, Rhyd-y-foel as the daughter of Mr Hugh Bright Williams (he died in March 1976) on whose application the registration at Entry No. 4 was made, attended in person for part of the hearing; and (6) Mr Adam Lythgoe and Mr Fred Lythgoe, the Objectors, were represented by Mr P D Gill solicitor of Layton & Co., Solicitors of Liverpool.

Mr Morgan and Mr Gill said they were agreed that a letter dated 3 March 1980 and written by the Clerk of the Commons Commissioners to Mr Morgan MP for Denbigh was mistaken, in that the said 1976 adjournment was on an application, made on behalf of Messrs Lythgoe, and not as therein stated, made on behalf of the said Association. Mr W E Davies said that the 1976 adjournment was subject to a time limit; this was not agreed by Mr Gill; so I record that even if Mr Commissioner Settle did impose such a limit, I would consider it just to enlarge any time he may have fixed.

The land ("the Unit Land") in this Register Unit according to the Register comprises two pieces together containing about 58.46 acres and in the Register distinguished as Plot Numbers 4 and 5. Plot No. 4 ("the Well Piece") is irregularly shaped, being about 100 yards long and having a width of about 50 yards (in places a little more); it is situated a short distance from a bridge over the River Dulas, and is on the north side of the Cwyp Road (leading to the bridge from the east). Plot No. 5 ("the Main Piece"), being by far the greater part of the Unit Land, for the most part is a little under $\frac{2}{3}$ ds of a mile long from north to south, is bounded on the west either by Rhyd-y-foel Road (running northward from the Village) or by the fences of lands which front on this road, and is bounded on the northeast and southeast by nearly straight lines which meet near the top of Cefn yr Ogof about 450 feet higher than the Road (so this part of the Main Piece slopes steeply up to



- 2 -

the east). The Main Piece includes a smaller area about 200 yards long on both sides and on one side of the Cwypmp Road leading down to the said bridge. Excluded from the registration is an area ("the Greenhill Area") said to be about $\frac{3}{4}$ of an acre, which is surrounded by the Main Piece.

The grounds of the Objection are:- "That the land edged red on the plan annexed (excluding the land hatched blue) was not common land at the date of registration". The land so edged red includes all the Unit Land except an area ("the Roadside Area") which has a frontage of about 40 yards to the Rhyd-y-foel Road and extends about 80 yards from the Road and which is the same area as is hatched yellow and marked A on the Register map. Of the two areas so hatched blue, one ("the Craig Dulas Area") is the same as that hatched yellow and marked B on the Register map, being an area approximately circular near to and a little higher than the lands occupied with the dwellinghouses called "Craig Dulas" and "Craig Dulas Cottage". In the Ownership Section Messrs A and F Lythgoe are finally registered as owners of all the Unit Land except the two areas (totalling about 1.29 acres) so hatched yellow and marked A and B.

Oral evidence was first given by Mr W E Davies (now aged 68 years). On his application is registered (No. 3) a right attached to Nos 1 and 2 Greenhill ("the Greenhill' Area") to graze 40 sheep and 40 lambs and 2 ponies. He said (in effect):- He bought the Greenhill Area in 1946 at the Gwyrch Castle Estate 1946 sale (lot 62). Previously and for 20 years after the family of Williams lived there; this family had a small business requiring a horse and cart. The previous owner told him that there wasn't sufficient land to keep a carthorse so he grazed in on the Common; he also had sheep there. He (Mr Davies) as far as he was concerned had no interest in grazing; if the right he claimed is established, he is prepared to give it to the local community; his real concern was that the Unit Land should be kept open for the public to enjoy. He considered he had a right because he had "got it" on his deeds; however he had not thought it necessary to bring his deeds with him.

Oral evidence was next given by Miss M A Jones who was born in 1896. On her application is registered (No. 2) a right attached to Ty-Moel to graze 12 sheep over the Main Piece. She said (in effect):- She owned Ty-Moel. She and her father (he died 9 September 1932) and her grandfather before him had lived there and grazed sheep on the Main Piece. Her brother Mr Albert Edward Jones (applicant for the No. 1 registration) farmed Bodlondeb (the adjoining farm). Many others had grazed sheep from other farms. She described the grazing in detail identifying the places where the sheep werewashed and sheared; and also identifying the Pinfold.

After oral evidence had been given by Mr C M Williams who was born in 1948 and lived in the Village until 1970, oral evidence was given by Mrs O D Jones who is the widow of Mr A E Jones, on whose application is registered (No. 1) a right attached to Bodlondeb to graze 40 sheep over the Main Piece. She said (in effect):- She and her husband had lived at Bodlondeb since 1948. Before then some people evacuated from England had been there from about 1944; before that her husband's family had lived there for generations. Her husband had grazed sheep (on the Common) from when they came in 1948 until about 1971 when he became unwell (he was contemplating buying sheep when he died). She and her husband from 1930-1948 lived at Llysmaen (quite near). Sheep had been grazed by her husband's parents (one of them) during that period except that there was no grazing while the evacuees were there. They at



- 3 -

Bodlondeb being related to those at Ty-Moel had helped each other with the sheep, they being regarded as a family affair.

Mr E T Ellis who was born in 1904 and had lived at Hafod-Wryd in the course of his evidence described how the common had been grazed and mentioned that it had been customary to burn the gorse every Good Friday; recently after the gorse burning started, somebody probably thinking that the fire was accidental, had summoned the fire brigade. Mr J R Jones who was born at Acar described the grazing on the common as he remembered it. Mr G Rees who lived in the village from 1964 until recently described the result of his researches into the history of the Unit Land by visiting the National Library of Wales. Mr W A Cracroft who is now the headmaster of the local primary school and who accompanied Mr Rees to the National Library elaborated on what he said.

Mr Gill said that the only evidence in support of the Objection would be documentary. In the Schedule hereto are listed the documents he produced.

After the hearing I inspected the Unit Land accompanied by Mr W A Cracroft, walking from the Rhyd-y-foel Road down the Cwyp Road and back up to Bodlondeb and Tymoel; and also walking from the Rhyd-y-foel Road up to the Craig Dulas Area.

The Main Piece, although in places much overgrown with scrub, particularly in the south western parts, now appears to be common land within the popular meaning of these words: that is open land on which local farmers would be likely to graze sheep and which local people would be likely to use for recreational and other purposes as they pleased. That it has been so grazed and used at all times within living memory was established by the oral evidence summarised above. And the 1839 Tithe map and the 1843 Perambulation shows that it was at that time considered to be common land.

Although many may with Mr W E Davies hope that it will continue to be so grazed and used, the test which I have under the 1965 Act to apply is whether the Main Piece is within the definition of "common land" in such Act, that is:- "(a) land subject to rights of common... (b) waste land of a manor".

As to (a), I first consider the rights registered at Entry Nos. 1 and 2 in the Rights Section. The Objectors acquired the ownership of the Unit Land under the Gwrych Castle Estate 1946 sale and their 1947 conveyance. Miss M A Jones said that she bought it (meaning I think the cottages Ty-Moel which she improved) from the Gwrych Castle Estate. Mrs O D Jones although mentioning this sale, said that her husband did not buy the Bodlondeb lands when they moved there in 1948. From the oral evidence given I find that the grazing described by Miss M A Jones and Mrs O D Jones was done by those at Ty-Moel and Bodlondeb while they were either owners or tenants. In this part of this case Mr Gill contended (rightly I think) that a right of common (within the meaning of the 1965 Act) attached to Ty-Moel lands or to Bodlondeb lands could not exist as long as they were in the same ownership as the Main Piece. I find that they were not in the same ownership after the 1947 conveyance. As to whether they ceased to be in the same ownership at the time of the 1946 sale or earlier I cannot now say definitely because I did not at the hearing insist on being supplied with a copy of the 1946 sale particulars



- 4 -

(they are voluminous and the plan attached was large and complicated) and because I did not adjourn the proceedings to enable the title deeds of the Ty-Moel and Bodlondeb lands to be produced; all I can say is that according to my recollection the 1946 particulars included no part of such lands except the Ty-Moel cottage buildings.

In my view it matters not whether the ownership of the Main Piece was severed from these lands in 1947 or 1946 or much earlier because I can reach my decision in accordance with the judgement in *Tehidy v. Norman* 1971 2 QB 528: if a right of common is exercised as of right for 20 years, a grant of such right should be presumed. By analogy with section 16 of the 1965 Act, I consider that the 20 year period should be treated as ending on the date of the Objection (21 March 1969). As to the grazing from Ty-Moel and Bodlondeb for this 20 year period, I consider that I should give full effect to the evidence of Miss M A Jones and Mrs O D Jones and find as I do that the Main Piece was grazed with sheep as they described and that such grazing was always as of right. Mr Gill contended because the 1947 conveyance was not expressed to be subject to any rights of common I should infer that at that time there were none being exercised. Although I accept that the conveyance is some evidence of this, I regard it as being of insignificant weight compared with the oral evidence put before me. The present appearance of the land is consistent with the grazing described by Miss M A Jones and Mrs O D Jones as having been done ever since they could remember the land and is consistent with all the other oral evidence given. In my view it matters not that some of such grazing before the year 1947 may have been done by them as tenants rather than as owners. The other documents produced by Mr Gill have in my opinion no relevant evidential value. So my decision is that the rights registered at Entry Nos 1 and 2 have been established.

The Greenhill area was in the same ownership as the Unit Land at the time of the Gwrych Castle Estate 1946 sale, so the right claimed at Entry No. 3 is not established unless either in accordance with *Tehidy v. Norman* ^{supra}, there has been grazing as of right for a 20 year period or Mr W E Davies has "got it in his deeds" as he said. As to the 20 year period:- Mr Davies said at the beginning of his evidence that the Williams family grazed there previously to the 1946 sale and for 20 years after, and he mentioned particularly the horse they used for their cart; he did not describe what the family had done because, so he told me he had no personal knowledge and because, as I understood him, he thought others present knew more than he did. He made it clear he did not himself graze any sheep or ponies. No other witness described particularly grazing from the Greenhill Area. I cannot from what Mr Davies said about grazing done by the Williams family presume that a grant of a right of common attached to the Greenhill Area was ever made; on his evidence the Williams family could not after the ownership of the Unit Land and of the Greenhill Area was severed, have grazed for any longer period than exactly 20 years. The period may have been shorter (eg if it was measured from the 1947 conveyance). Mr Davies' failure to graze when he himself went into occupation, although not evidence of his abandoning any right, does not support any presumption that the right ever came into existence under a presumed grant. As to his deeds:- At the hearing I said that although I thought it unlikely that Mr Davies' deeds did contain a grant of a right of common such as would justify the registration at Entry No. 3, if he sent to or produced at the London office of the Commons Commissioners the deeds on which he relied, I would look at them; he has not done this; accordingly I conclude that his deeds do not support the registration.



- 5 -

My decision is therefore that this registration at Entry No. 3 was not properly made; I give this decision with some regret because Mr Davies was helpful at the hearing by giving evidence first and in other ways; but perhaps the Unit Land may be preserved for the benefit of the public as he wanted as a result of the registrations at Entry Nos. 1 and 2 which I have decided were properly made.

The registration made on the application of Mr H P Williams at Entry No. 4 is of a right "held in gross" to graze 35 sheep over the Unit Land. Miss K B Williams left the hearing before addressing me or giving evidence, being (so I was told) unable for domestic reasons to attend any longer. Mr C M Williams in the course of his evidence said that he had seen sheep on the common and he knew Miss Kathleen Williams had sheep because she used to go and tend them. Apart from this I had no evidence supporting the right claimed. Against the right Mr Gill produced the 1969 paper apparently signed by Mr H P Williams. A grazing right in gross over land such as the Unit Land would be extraordinary. In the absence of any suggestion as to how the registration might be amended ~~by the registration~~ and in the absence of any precise evidence about the right, my decision is that the registration at Entry No. 4 should not have been made.

Arising out of the registrations at Entry Nos. 1 and 2, the following matters of detail required clarification. I have assumed that "plot No. 1 only" in column 4 of the No. 2 registration is a mistake for "plot No. 5 only" this being apparent from Miss Jones' application dated 15 July 1968. The lands edged blue on the supplemental map mentioned in column 5 of the registrations at Entry Nos. 1 and 2 overlap; On my inspection it was apparent that the Bodlondeb land at Entry (No. 1) should not include Acar or the land north of a line starting a little to the south of Ty-Moel Cottage and that the Ty-Moel land at Entry No. 2 should only include land north of this line. At page 6 of this decision is a copy (hereinafter called "the Decision Map") of my copy of one of the Supplement Register maps on which I have marked this line "PQ" and identified Acar by the line XY; I shall modify these registrations accordingly.

As to the Roadside area of which Messrs Lythgoe are not the registered owners, I know of no good reasons why this area should be excluded from the registration. As to the Craig Dulas Area on my inspection this appeared to have been taken into one or other of the lands enjoyed with the nearby dwellinghouses; it is some distance from Ty-Moel and Bodlondeb and appears to be the bed of an old quarry which is distinctly marked on the OS map. Although no evidence about it was given at the hearing, I consider from what I saw that no useful purpose would be served by of being subject grazing rights attached to Ty-Moel and Bodlondeb and I shall modify the registration accordingly.

As to the Well Piece:- The applications made by Miss A E Jones and Miss M A Jones did not include this Piece in the land over which they claimed a right of grazing. However there was evidence at the hearing that the sheep which were grazed on the Main Piece were regularly washed in the river by Cwyp Mill; also on the ^{the} map ~~the~~ Well Piece is with the Main Piece included in the "common land" therein delineated. The Llanddulas and Rhyd-y-foel Ratepayers & Electors Association

COMMONS REGISTRATION ACT 1965

Re: Rhyd-y-foel Common,
Abergele, Colwyn District,
Clwyd.

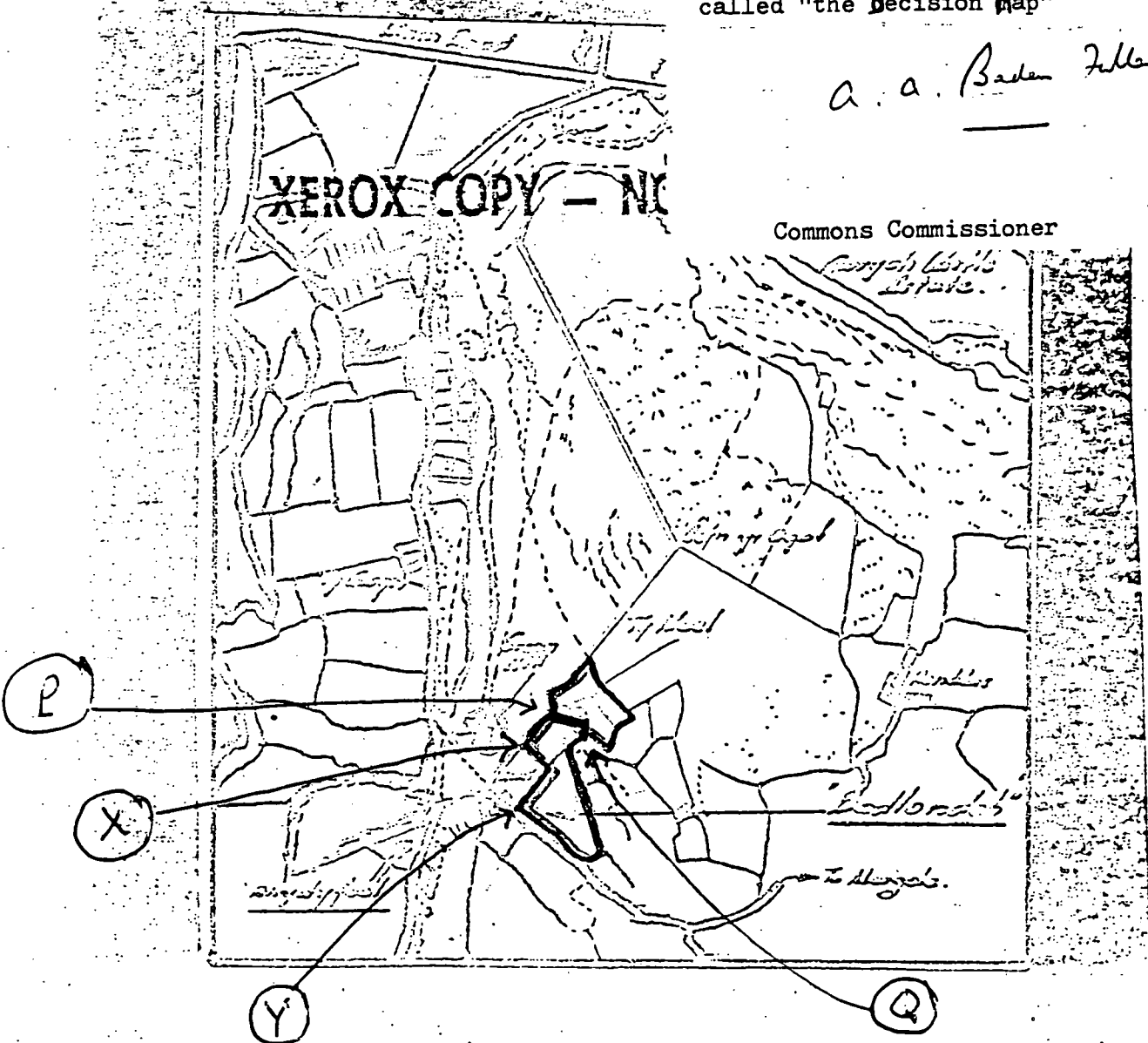
Ref:- 51/D/65-66

This is the map which is page 6
of the decision dated 10 November 1980
and made by the Commons Commissioner
in this Matter and which is therein
called "the Decision Map"

a. a. Baden Fuller

Commons Commissioner

SUPPLEMENTAL MAP REFERRED TO IN COLUMN
OF ENTRY No. 2 IN THE RIGHTS SECTION
REGISTER UNIT No. CL 60 IN T
REGISTER OF COMMON LAND





- 7 -

included it in their application, and no evidence particularly against its inclusion was given on behalf of the Objectors. In my opinion where sheep are grazed on a common, the place which is customarily used for assembling them prior to washing is just as much part of the common as the rest; accordingly for the purpose of supporting the Association's registration I can and should modify the Rights Section registrations to include the Well Piece notwithstanding that the applications for these rights do not expressly include it.

For the reasons set out above, I confirm the registration at Entry No. 1 in the Land Section with the modification that there be removed from the Register the plot of land which is one of the two plots mentioned in column 4 of the Ownership Section and which is therein stated to be hatched yellow and marked B (being the northern of the said two plots). I confirm the registration at Entry No. 1 in the Rights Section with the modification that in column 4 the words "part of" and the words "(ie over Plot No. 5 only)" be deleted and in column 5 the blue edging of the supplemental map therein referred to be altered so as to exclude for the land so edged blue all the land in the Decision Map north of the line PQ and all the land southwest of the line XY. I confirm the registration at Entry No. 2 in the Rights Section with the modification that in column 4 the words "part of" and the words "(ie over Plot No. 1 only)" be deleted and in column 5 the blue edging of the supplemental map therein referred be altered so as to exclude from the land blue edged all the land on the Decision Map south of the line PQ. And I refuse to confirm registrations at Entry Nos. 3 and 4 in the Rights 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.

SCHEDULE

(Documents Produced)

I. Mr W G Davies

Map of Unit Land

11 July 1946

Particulars of Sale of the Gwrych Castle Estate, with coloured plan of lots.

II. Miss M A Jones

OS map having marked on it the parish boundary as deduced from below mentioned 1843 document and showing the "Blue Stone"

1911/1912

Summer Dipping at Borth Farm from Rhyd-y-foel Common "made by William Roberts, Borth"



- 8 -

III. Mr G Rees

"The Parish of Llanddulas" stating the area of common and unenclosed land in the detached townships of Tre'r Clan and Tre'r Cefn and including a record of the perambulation of the boundary in 1843 with a copy of the minute of the vestry meeting setting out what happened and a copy of a notice of the vestry meeting to be held on 11 September 1840.

1839

Extract from Tithe map annexed to the Apportionment. Award for the parish of Llanddulas made 22 February 1843 (from the National Library of Wales).

IV. Mr P D Gill

8 January 1947

Conveyance by Rt Hon Thomas Hesketh Douglas Blair Earl of Dundonald to Adam Lythgoe, Fred Lythgoe and Joseph Lythgoe.

12 March 1969

Paper signed by Hugh Bright Williams that he then paid A & F Lythgoe "ten shillings being ten years rent at one shilling per year rent of 58 acres of your land at Llanddulas & Rhyd-y-foel.

12 December 1952

Letter from Ministry of Agriculture and Fisheries to Layton & Co.

3 April 1953

Letter from Inland Revenue Valuation Office to Layton & Co.

9 June 1953

Ditto.

Dated the 10th day of *November* 1980

A. A. Bowen Jullis

Commons Commissioner