



COMMONS REGISTRATION ACT 1965

Reference No.272/D/1682-
1686

In the Matter of (1) The tract of land
about 425 acres known as Twyn-y-Mach
(part of Black Mountain) in the Parish
of Quarter Bach
(2) Black Mountain in the Parishes of
Llandeilo Fawr and Llangadog
(3) Black Mountain, Llandeilo

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No. CL.91 in the Register of Common Land maintained by the Dyfed County Council and is occasioned by the conflicting registrations at Entry No. 245 in the Rights section of Register Unit No. CL.16 Entry No.255 in the Rights section of Register Unit No. CL.15 and Entry No.351 in the Rights section of Register Unit No. CL.18 in the Registers of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Llandeilo on 7 November 1995. The hearing was attended by Mr Gareth George Davies, Mr W J Lewis of the County Planning Department of Dyfed County Council and others.

The yellow land and the pink land

Having heard the evidence given at the hearing by Mr Lewis and Mr Davies (and no-one having given any other evidence) I find that the following facts are established in this case:

1. Mr Davies and his wife Mrs Margaret Rose Davies are the owners of the land edged in black on the attached plan ("the Farm").
2. That part of the Farm hatched horizontally on the plan ("the yellow land") is registered as part of the common CL.91.
3. By application No.619 and dated 25 June 1968 Mr D L Davies (the predecessor in title of Mr and Mrs Davies) applied to register rights over CL.18 CL.15 and CL.16. In that application the description of the land to which the rights were attached was by reference only to OS numbers which excluded both the yellow land and also the land hatched vertically on the plan attached to this Decision ("the pink land").
- (4) By letter dated 28 November 1968 the registration authority told Mr D L Davies they had difficulty tracing the O S numbers specified in his application and asked him to mark the boundary of his farm on a plan.



(5) In compliance with this request Mr D L Davies sent a plan under cover of a letter dated 18 December 1968, the boundary on which is the same as on the attached plan.

(6) The registration authority then prepared a map which has the same boundary as on Mr D L Davies's plan and is stamped "supplemental map referred to in column 5 of entry No. 351 in the rights section of register unit No. CL.18 in the Register of Common Land."

(7) By an oversight Mr Davies's plan (and the authority's supplemental map) were ignored when the relevant registered entries were made with the result that the yellow land was wrongly registered as part of CL.91 and the yellow land and the pink land were wrongly omitted from the land in respect of which rights are exercisable over CL.Nos. 16,15 and 18.

(8) The yellow land having been registered as part of CL.91 there is a conflict between that registration and the registration which should have been made in column 5 of the relevant entries in the Rights sections of CL.Nos. 16, 15 and 18.

In view of that conflict I have jurisdiction to modify the registers so as to remedy the errors and in the light of the above facts will do so.

The orange areas

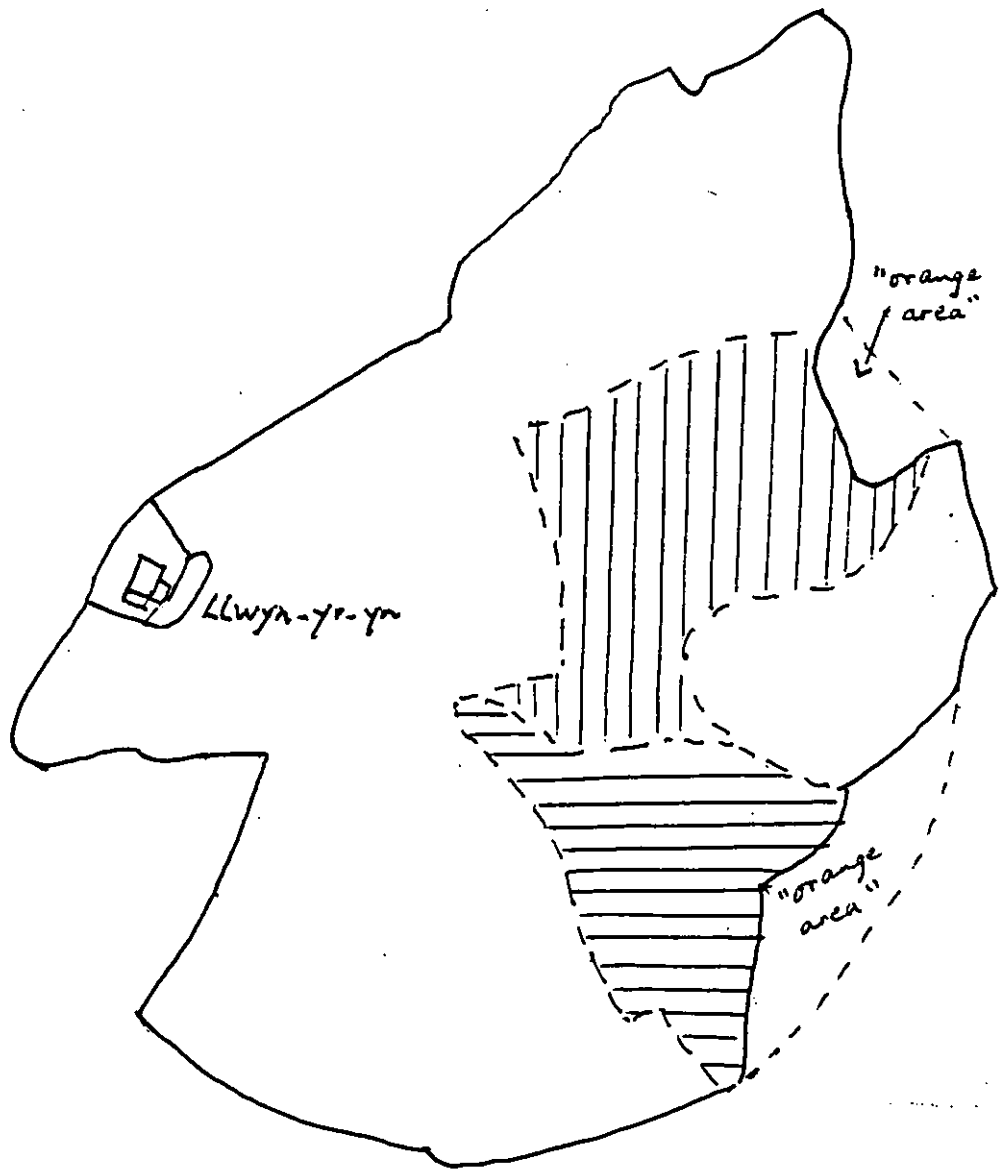
At the hearing Mr and Mrs Davies also applied for the removal from the common registered under CL.91 of two small pieces of land ("the orange areas") abutting on, but outside, the southern and eastern boundaries of the Farm. Mr Davies gave evidence as follows:

- (a) that he had no personal experience of the Farm or any adjoining land prior to 1989
- (b) that D L Davies had told him that he in 1967 had enclosed the orange areas with fencing and subsequently throughout the period 1968 to 1989 enjoyed exclusive use of them for grazing his animals.
- (c) that since 1989 he, Mr G G Davies and his wife had exclusively occupied the orange areas.

Mr Davies agreed that prior to the fencing the orange areas formed part of the common.

No other evidence was given at the hearing concerning the orange areas.

I have no doubt that I possess jurisdiction to hear this application as to the orange areas since I have to consider all questions which arise as to the CL.91 registration - Commons Registration Act 1965 sections 5(6): 6(1): Re West Anstey Common 1985 Ch 329 at p.340.



Plan referred to
in Decision dated
13th December 1995
(Ref No 272/D/1682-1686)



It also seems clear that as a matter of law I have to take into account facts as at the date of the hearing when considering whether or not the orange areas should be registered as common land - Central Electricity Generating Board v Clwyd County Council 1976 1 WLR 151 at 157: In re Merthyr Mawr Common 1989 1 WLR 1014 at 1022.

I conclude that they should be so registered for the following reasons.

(a) On the basis of the evidence mentioned above they were common land in 1967

(b) I am not satisfied they were fenced in 1967. In saying this I do not wish or intend to cast any doubt whatsoever on Mr Davies's veracity. But his evidence on this point was pure hearsay and I taken into account the fact that (as I was told) Mr D L Davies now lives at Maesadda Farm, Gwynfe and so far as I am aware there were no circumstances which might have prevented him from giving evidence at the hearing.

(c) No case was presented, nor evidence given, that the rights of commoners had been extinguished since the fencing: and I am not justified in concluding that such rights have been abandoned - see Re Yateley Common 1977 1 WLR 840 at 8845

(d) Since the fencing was unlawful (being in contravention of section 194 of the Law of Property Act 1925) neither Mr D L Davies nor his successors can rely on it for the purpose of gaining rights or other benefits for themselves - see George Legge & Son Ltd v Wenlock Corporation 1938 AC 204: Glamorgan County Council v Carter 1963 1 WLR 1: Hanning v Top Deck Travel Group Ltd 68 P & CR14.

Conclusion

In the above circumstances I confirm all the registrations but with the following modifications:

1. The yellow land shall be removed from the land section of CL.91: and
2. Column 5 of each of the Entries in the three Rights sections referred to in the first paragraph of this Decision shall be deleted and the following substituted: "Gelliau and Llwyn-yr-Yn Upper Cwmtwrch in the County of Dyfed being the land shown on the supplemental map and thereon surrounded by a verge line".



Supplementary

Before making any directions I should like to see the 3 supplemental maps which will be prepared (and appropriately marked so as to refer to the respective entries) in order to give effect to the modifications mentioned above.

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 13th day of December 1995

Commons Commissioner