

In the matter of Nant y Moch, Gwynfe  
part of the Black Mountain, Dinefwr

DECISION

The dispute with which this reference was initially concerned related to the registration at Entry No. 1 in the Land section of Register Unit No. CL. 18 in the Register of Common Land maintained by Carmarthenshire County Council (formerly Dyfed County Council and hereafter called "the Council") and was occasioned by the conflicting registration at Entry No. 236 in the Rights Section of the same Register Unit. That dispute was the subject of a hearing held at Llandeilo on 7 November 1995 and of my Decision dated 13 December 1995.

As stated in the penultimate paragraph of that Decision, shortly before the hearing in November 1995 the Commons Commissioners were notified by the Council of a claim by David Tom Williams and Brynmor Williams ("Messrs Williams") that as owners of Cwrtbrynbeirdd ("the farm") they are entitled to graze over this common (CL.18) 740 ewes with their lambs and 17 ponies with their foals and that these rights should be added to the register: since this claim could not be heard at that hearing I adjourned it to a future date.

The adjourned hearing was held at Llandeilo on 30 July 1996 and was attended by, among others, Mr N.M. Rolt on behalf of the Brecon Beacons National Park Authority (the owner of this common and also of the common land registered under Unit Nos. CL.16 and CL.130), Messrs Williams and Mr W J Lewis for the Council.

At the hearing Mr D T Williams gave evidence. He said that he was born in 1944 and that he and Mr B Williams were the sons of the late W. Williams who died in 1987. From his evidence (which was supported by the evidence of his sister Mrs Owen given subsequently at the hearing) I am satisfied that W. Williams occupied the farm from 1953 until his death (as tenant until 1968 and thereafter as owner): that throughout this period he grazed sheep and ponies on CL.18 in accordance with the right claimed: and that Messrs Williams are his successors to the farm and the rights attached thereto.

There was no evidence to suggest the contrary.

I am also satisfied by Mr D.T. Williams's evidence and certain documents that in February 1969 W. Williams duly applied to the Council, as registration authority, to register his claim and that due to a misunderstanding the claim was registered over CL.16 and CL.130 but not over CL.18. The documents referred to above are:

(i) an application for registration received by the Council on 10 February 1969 and signed by W. Williams whereby he claimed that there was attached to the farm the right to graze 740 ewes with their lambs and 17 ponies and their foals over "Black Mountain Lower Part CL.18 And as shown on exhibit Map A CL.18":

(ii) copy letters from W. Williams to the Council dated 9 August 1982, 19 August 1982 and 1st October 1982:

(iii) a letter from Mr W J Lewis on behalf of the Council, to the Clerk of the Commons Commissioners dated 12 October 1995.

At the hearing, the claim was initially opposed by Mr Rolt on behalf of the owners but after the mid-day adjournment he informed me that as a result of negotiations with Messrs Williams he was willing to withdraw his opposition. Mr Rolt said that one of his concerns was that under the registrations as they stood Messrs Williams seemed to be already entitled to graze 740 ewes and 17 ponies over each of CL.16 and CL.130 and that if their present claim was allowed they would be entitled to graze a further 740 ewes and 17 ponies over CL.18. Messrs Williams told me that they were content that their claim should be limited to a total of the numbers stated and accordingly by a written agreement signed by the parties it was stated that they had "agreed for the compromise of" the application on terms that Messrs Williams would apply to the Commissioners for the following registrations to be made in the rights register of each of CL.18, CL.16 and CL.130 namely:

"The right of common of pasture for 740 ewes with their lambs and 17 ponies and their foals over the aggregate of (i) that part of the land which is edged red on the register map of CL.18 and indicated by the letters R/8 (ii) CL.16 and (iii) CL.130":

and that Messrs Williams should "in their said application in respect of CL.16 and CL.130 request that the entries Number 1 in each case shall be deleted". (Those entries are in respect of Messrs Williams's grazing rights over CL.16 and CL.130 mentioned above).

The application and request contemplated by the agreement has now been made by Messrs Williams in their letter to the Commissioners dated 28 August 1996.

As regard CL.16 and CL.130 I can clearly make the appropriate direction giving effect to the agreement reached, since its effect would be to reduce the burden of Messrs Williams's grazing rights over these two unit numbers.

As regards CL.18, however, it is, I think, arguable that I can only make the appropriate direction if I am satisfied that Messrs Williams are entitled to the grazing rights they claim over this unit number since the effect of the direction will be to increase the burden over that unit, over which numerous other graziers have rights. On the evidence and submissions made at the hearing I am so satisfied.

I would add that as a matter of law I take the view that I have jurisdiction to entertain Messrs Williams's claim with regard to CL.18 for the following reasons:

(a) As mentioned in the first paragraph of this Decision, the reference arose by reason of conflicting registrations.

(b) By reason of Regulation 7 of the Commons Commissioners Regulations 1971 a conflict, when referred to a Commissioner, triggers the provisions of the Commons Registration Act 1965 which relate to the making of objections to provisional registrations.

(c) Regulation 7 provides as follows:

"Where there is a conflict between two registrations then for the purpose of sections 5(6), 6 and 7 of the Act and for the purposes of these regulations each shall be treated as an objection to the other".

(d) Section 5(6) of the Act provides as follows:-

"Where such an objection is made..... the registration authority shall refer the matter to a Commons Commissioner".

(e) Section 6(1) of the Act provides as follows:

"The Commons Commissioner to whom any matter has been referred under Section 5 of the Act shall enquire into it and shall either confirm the registration, with or without modifications, or refuse to confirm it"....

(f) It therefore seems clear that in the present case, although in terms the references by Dyfed County Council dated 20 March 1995 are merely of a "dispute" occasioned by "conflicting registrations", the effect of the legislation mentioned above is to refer the whole of the registration, including matters arising before the reference is finally disposed of.

(g) In Re West Anstey Common 1985 Ch p.329 at p.340, Slade L J said that "an objection made under Section 4 to the registration of any land as common land necessarily puts in issue the entire registration. It is the act of registration to which objection is taken: and that act is indivisible". Also on p.340 Slade L J said that "the provisions of Section 5(6) which envisage a matter being referred to the Commissioner and those of Section 6(1) which envisage him "inquiring into it" presuppose that he must address his mind to a question. That question is, I think, what is to be done about the registration to which objection has been taken? That is the matter which is referred to him".

(h) The question in the present case is thus: what is to be done about the registration in the Land and Rights Sections to which objection is deemed (by Regulation 7) to have been made? The answer to this is, first, that any land included in the Land Section which it is shown during the course of the enquiry should not have been registered should be removed: (as mentioned in my Decision of 13 December 1995 this applies to enclosure 428): secondly, that any rights shown to have been omitted from the Rights Section should be added.

For these reasons I confirm the registrations but with the following modifications, namely:

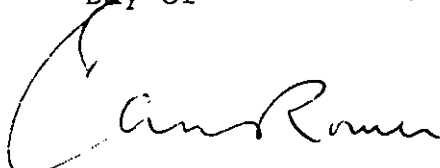
(a) that the Land Section shall be modified so as to exclude enclosure 428:

(b) that there shall be added to the rights section a further entry to the effect that Messrs Williams are entitled to the right of common of pasture for 740 ewes with their lambs and 17 ponies and their foals over the aggregate of (i) that part of the land which is edged red on

the register map of CL.18 and indicated by the letters R/8 (ii) CL.16 and (iii) CL.130, such rights being attached to the farm.

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 10<sup>th</sup> Day of October 1996

  
Commons Commissioner