



COMMONS REGISTRATION ACT 1965

Reference Nos 274/D/56 & 57

In the Matter of Foel Fawr,
Maentwrog, Merionnydd D

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section and the Entry No 1 in the Rights Section of Register Unit No CL. 76 in the Register of Common Land maintained by the former Merioneth County Council and is occasioned by Objection No 130 made by The Forestry Commission and noted in the Register on 11 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Dolgellau on 10 February 1977. The hearing was attended by Mr F Mallows on behalf of The Forestry Commission and by Mr D Williams of the National Farmers Union on behalf of Mr Morris Jones the applicant for grazing rights.

This dispute, like many similar disputes, is occasioned by adjoining farms having sheepwalks on a mountain the respective boundaries of each sheepwalk not being identified on the ground of an open unenclosed mountain.

In the instant case the adjoining sheepwalks were appurtenant to the farms Bryn Saeth and Gellidy Ugl, the latter being in the ownership of Mr Morris Jones the applicant for rights. The Unit Land is in the ownership of the Forestry Commission as also is the farm Bryn Saeth. By an agreement in writing with plan attached dated 13 October 1967 the tenant of Bryn Saeth surrendered to the Forestry Commission 68 acres in exchange for 20 acres. The Tenancy agreement in respect of Bryn Saeth was not produced at the hearing and the case was argued by Mr Mallows on the footing that what was surrendered was the right to graze on the land surrendered. In practice it no doubt did not matter whether the land or only the right to graze on the land was comprised in the tenancy since the land was only used for grazing. The plan on the said agreement clearly included the Unit Land. The Forestry Commission produced a map dated 1905 on which was marked the Bryn Saeth libert which comprised the land identified on the plan annexed to the agreement of 13 October 1967. The Forestry Commission acquired the Unit Land and surrounding land in 1924 by virtue of the Forestry (Transfer of Woods) Order 1924. The Forestry Commission's case was that there were never any rights over the Unit Land other than the Bryn Saeth rights, which were not strictly speaking rights since Bryn Saeth and the Unit Land were in common ownership.

I turn now to the evidence given and led by Mr Morris Jones who claimed rights over the Unit Land.

Mr Morris Jones in evidence said that he bought the farm in 1965 and had lived there since 1928 and he produced the sale particulars of a sale in 1910 when his farm, Lot 44, was offered for sale with a sheepwalk. He said Mr Hugh Jones took him to the mountain and showed him the sheepwalk and he said that the Unit Land is part of a larger area which he has always grazed. He said a fence was "very very wrong" but my impression is that this complaint related to a right of way. He had seen the Forestry Commission's officials and complained when they started to plant the second plantation in 1968, he saw a caterpillar and complained and the



work ceased pending the decision to be given on this dispute. In cross-examination he identified his farm and said his sheepwalk was the Unit Land and land adjoining it to the south.

Mr David Davis said in evidence that he was the tenant of Bryn Saeth which he bought from the Forestry Commission about 5½ years ago. He said the sheep from Mr Morris' farm kept to their own cynhefin on the south west corner of the forestry land and that there was a libert for Bryn Saeth sheep. In cross-examination he said that the land on the 1968 agreement plan was that which he gave up in 1968. The libert was Bryn Saeth mountain; his father had been at Bryn Saeth for 44 years and had sheep with a Bryn Saeth ear mark. There were no sheep from Mr Morris' farm on his libert, Mr Morris' sheep were on Foel Fawr. When faced with the plan on the 1968 agreement he said the plan was wrong. In re-examination he said that the whole of the Bryn Saeth libert had been planted and also a piece of Mr Morris Jones' mountain including a part of Foel Fawr.

Mr G Williams gave evidence that he was aged 63 and was born at Mr Morris Jones' farm and he remembered his father and his grandfather at that farm. The libert of Mr Morris Jones' farm was in about 1905 or 1908 moved from Migneint to Maenturog and his father established his sheep there. In 1926 he was with his father and grandfather collecting sheep and his father set up the cairn on the top of Foel Fawr and the cairn is still there. In cross-examination he said the cairn is on the summit and his father set it up when he was there watching his sheep. In re-examination he said the sheepwalk goes all round the cairn down to the drive and in further cross-examination he said some of the sheepwalk has been planted, namely the bit at the bottom down to the drive.

Robert John Jones aged 61 was born at the farm next to Mr Morris Jones' farm. His brother used to gather sheep with William Jones and later with Morris Jones and his brother walked the boundaries of Morris Jones' sheepwalk with him in order to show him the boundaries. After his brother moved away he would go up to gather sheep with Morris Jones. Foel Fawr is like a bowl turned upside down and the sheepwalk is all round.

Robert Thomas Jones gave evidence on behalf of the Forestry Commission and is a forester employed by the Commission who worked on the land acquired by the Commission in 1921 from 1961 to 1970. He knew Morris Jones' sheepwalk and according to the records he had no rights over the Unit Land. There was no fence and Mr Jones' sheep could get on to the Unit Land. The problem arose in 1968 after the exchange with Bryn Saeth. He said the plan on the 1968 agreement identified the Bryn Saeth libert which included the Unit Land and he produced the map referred to earlier in this decision which identified the Bryn Saeth libert. He did not dispute that Mr Morris' sheep had continually grazed the Unit Land and were still grazing there although since 1968 such grazing was without prejudice.

In the light of this evidence it is beyond dispute that sheep from Mr Morris Jones' farm have grazed the Unit Land since before 1926, the date within Mr G Williams own recollection. It is also clear that Mr Morris Jones' neighbours Mr Davis at Bryn Saeth and Mr Robert John Jones were in agreement as to what they believed were the boundaries of Mr Morris Jones' sheepwalk.



This long established practice accepted by the neighbouring farmers does in my view give rise to the inference that such grazing was as of right. It is established by the sale particulars that Mr Morris Jones' farm was offered for sale with grazing rights and I assume that these rights were the rights recognised in 1926. I accept that the hearsay evidence as to the rearrangement of grazing rights in 1905 or 1908 has little evidential value, but if there was such a rearrangement it would account for the discrepancy between the Bryn Saeth libert defined on the old map and the more limited libert claimed by Mr Davis in his evidence.

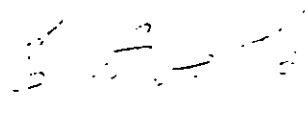
Mr Robert Thomas Jones in his evidence said that according to the records Mr Morris Jones had no rights over the Unit Land. It is to say the least possible that the records which Mr Robert Thomas Jones referred to were out of date when the Forestry Commission acquired the land and in my view the evidence all points to that having been the case. The probability is that the 1968 agreement was prepared by the Forestry Commission in reliance on the records. No evidence was led to establish that the Forestry Commission ever made any enquiries as to the activities of the farmers on the mountain. In the course of the hearing it was suggested that Mr Morris Jones' sheep encroached on the Bryn Saeth libert because Bryn Saeth did not have sufficient sheep to graze what was believed to be the Bryn Saeth libert. Mr Davis in his evidence clearly stated that none of Mr Morris Jones' sheep were on the Bryn Saeth libert and an enquiry made by the tenant of Bryn Saeth would have revealed that Mr Morris Jones claimed to be grazing as of right.

I have come to the conclusion that I must presume a lawful origin for Mr Morris Jones' grazing and confirm the Entry in the Land Section and the Entry 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.

Dated this 1st day of April

1977


Commons Commissioner