



In the Matter of a Tract of land known as
Abergwesyn Hill Llanfihangel Abergwesyn
and Llanwrthwl.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and at Entry Nos 3-14 in the Rights Section and at Entry Nos 1 in the ownership sections of Register Unit No.CL.94 in the Register of Common Land maintained by the Powys County Council and is occasioned by Objection Nos 161, 214 and 248 made by the Forestry Commission, Objections Nos 521-529 made by the Agent for the Glanus Estate and by Objections Nos 627-633 made by the Birmingham Corporation and all noted in the Register the conflicting registration at Entry No 3 in the ownership section of Register Unit No.CL.94 in the Register of Common Land maintained by the Council.

I held hearings for the purpose of inquiring into the dispute at Brecon on 22 February and 28 March 1984 and on 1 May 1985. These hearings were attended by Mrs Pearson from the Treasury Solicitors Office representing the Forestry Commission, Mrs Durward solicitor for the Welsh Water authority as successor to the Birmingham Corporation, Mrs Morgan for the Registration Authority, Mr D W Davies of Milwyn Jenkins and Jenkins, solicitors of Lampeter. for himself as the applicant at Rights Entry No. 13, Mr Bengough of Messrs. Knight Frank and Rutley Land Agents of Hereford for the Glanus Estate, Mr T E Morris of Glasbrooks solicitors of Llandovery for the National Trust which acquired the interest of the Glanus Estate in the Common during the course of the hearing and Mr E Thomas County Secretary of the Farmers of Brecon for Mr W Morgan and Mr G Jones applicants in the Rights Section.

Nearly all the matters in dispute were settled at the first hearing. There remained the claim at Rights Entry No. 13 by Mr D W Davies for a common of pasture in gross.

Further hearings fixed for the decision of the outstanding question on 28 March and 27 November 1984 were adjourned on the grounds that the parties had not completed the necessary research into the authorities and the case came on for hearing on 1 May 1985, when the representation was as follows: Mrs Morgan for the Registration authority Mr E Thomas for Mr W Morgan Mr Davies in person Mrs C Pearson for the Treasury Solicitor Mr T E Morris for the National Trust which had since the first hearing acquired the freehold of the unit from the Glanus Estate.

After Mr Davies had opened his case I was requested to defer resuming the hearing until after the midday adjournment and on the resumption I was informed that the parties had agreed that I should be invited to allow the objections to Mr Davies' application to be withdrawn and to confirm the registration at Entry No. 13 in the Rights Section.



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Before a decision to this effect was issued I received an application from Mr R O D Thrupp the applicant at Entry No. 3 in the Rights Section for the hearing to be re-opened as he had not been given formal notice of the hearing. On confirming that this was the fact I directed a re-hearing on 1 October 1985.

At the hearing Mr Davies appeared in person Mr David Lloyd of H V Vaughan and Co., solicitors of Builth Wells for the applicants at Entry No. 12 in the Rights section Mrs Durward for the Welsh Water Authority Mr Morris for the National Trust Mrs Pearson for the Treasury Solicitor's Department for the Forestry Commission and Mr E Thomas for the several applicants at Entry Nos 3,7,14,15 and 18 in the Rights Section. David Walters Davies, the applicant, said that he was a solicitor and the owner of a freehold farm in the district of Abergwesyn. He was born on 29 September 1923. His parents were Arnold Walter Davies and Sarah Jones Davies. His mother was a daughter of John David Edwards and was known in her family as Pattie. James Edwards who lived at Nantstalwyn and David Charles Edwards who lived at Nant Hwch were brothers of his mother. He used to spend annual holidays with these uncles. He usually stayed at Nant Hwch as D C Edwards was a bachelor. Apart from the period 1943-45 he visited both properties regularly. James Edwards enjoyed right of grazing sheep on Esgairadar. On many occasions he accompanied his uncles when they were gathering sheep at shearing and at other times.

The register unit is bounded on the west by the River Irfon, on the North by the Llanwrtwl parish boundary.

James Edwards retired in 1954. He let the grazing rights on Esgairadar to D C Edwards and William Morgan on an oral tenancy at a rent of £12.p.a. J I James the agent of the Manselton Estate arranged for D C Edwards and Wm. Morgan to take over the tenancy of Nantstalwyn at an annual rent of £88. He produced a copy of a conveyance of Nantstalwyn to the Ministry of Agriculture Fisheries and Food. The grantors were the trustees of the Manselton Estate. He drew attention to the reply to enquiry 17 which gave particulars of this tenancy.

By an agreement in writing dated 13 December 1966 Mrs Sarah Ann Edwards the widow and sole executrix of the will of James Edwards had agreed to sell to David Green and the witness a common of pasture in gross owned by James Edwards at his death over an area therein stated to be owned by the Lord of the Manor of Glanus for the sum of £500.

Mrs Sarah Anne Edwards died on 11 April 1967 and her will was proved in the Newcastle upon Tyne District Probate Registry on 2 June 1967 by her daughter Mrs Elizabeth Jones Jones the sole executrix named in the will.



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The witness produced a conveyance made the 16 November 1984 between Elizabeth Jones Jones of the one part and himself of the other part whereby after reciting that the sum of £500 had been paid to Sarah Anne Edwards during her lifetime in pursuance of the said agreement of 13 December 1966 but that she had not executed any conveyance in pursuance of the said contract of sale and that David Green had died on 17 May 1976. Elizabeth Jones Jones as Personal Representative by representation of James Edwards and as personal representative of Sarah Anne Edwards conveyed as signed confirmed and released to the witness the right of common of pasture in gross for 750 sheep and lambs 20 rams 1 mares 3 geldings at all times of the year and 1 stallion for the period 1 May to 10 October in each year over the area therein mentioned and all the right of grazing and all the rights and interests of James Edwards and Sarah Anne Edwards in the said area unto the witness in fee simple.

The witness also produced a receipt for Estate Duty paid on a corrective affidavit filed by the witness and Mrs Anne Kathleen Rees as personal representative of Mrs Sarah Jones (Pattie) Davies, who died on 8 October 1967 which shows the rights comprised in the conveyance of 16 November 1984 as property subject to the trusts of the will of D C Edwards and one of the assets passing on the death of Sarah Jones Davies.

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The witness produced a note book/which James Edwards had kept annual records showing the number of his flocks. These records were made at shearing time and covered the period 1925-1953, and were set out by reference to the areas which such flocks usually grazed and Esgairadar (sic) came at the head of the list. In cross-examination Mr Davies said that his ancestors had farmed the properties outside the common as tenants. John Jones had been tenant of Nantstalwyn and Nanthwch. The following were tenants in succession of Nantstalwyn during their respective lives. John Jones, Anne Edwards, John David Edwards, James Edwards and D C Edwards and Wm Morgan.

James Edwards retired in 1954 and gave up his tenancy of Nantstalwyn

Before him the following members of the family had farmed Nantstalwyn as tenants

John Jones
Ann Edwards
John David Edwards

In the summer of 1954 after D C Edwards and Wm Morgan had obtained the promise of a tenancy of Nantstalwyn they purchased from James Edwards the flock of sheep which grazed Esgairadar. The cheque for £50 which was sent in December 1957 to meet the demand for the form of which D C Edwards and Wm Morgan had objected was made out by the witness.



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After the death of D C Edwards, Wm Morgan refused to pay more than the £88 p.a. rent for Nantstalwyn. There is no reference to Esgairadar in any of the wills.

Any-one visiting Esgairadar could have told by the ear-marks that the flocks from Nantstalwyn was trespassers.

Payment of rent to the agent was a payment to his principal. The letter written by the agent on 6 December 1957 was written to the addressee as the client of firm of solicitors.

In 1959 the trustees of the will of D C Edwards agreed to sell his half interest in the partnership flocks to Wm Morgan. All James Edwards' sheep were dipped and shorn at Nantstalwyn.

James Edwards would not sell his sheep to D C Edwards and Wm Morgan until they had agreed to pay rent for the grazing.

James Edwards died in 1963. In September 1957 the agent for the Manselton Estate made a demand for rent partly for Nantstalwyn partly for Esgairadar.

Mr Roger Owen Dalton Thrupp aged 57 of Glangewesyn Farm Abergwesyn said that he purchased the farm in 1966. Knowing that rights of grazing were mentioned as appurtenant to the farm in the Conveyances to his predecessors in title in 1955 and 1961 and they were similarly mentioned in the Conveyance to him since the purchase he had exercised grazing rights over the area bounded on the west by the River Gwesyn up to Bryn Ma.

He assisted other commoners to gather in their sheep for shearing and at other times. At the end of each day's gathering any sheep not part of the flock being gathered would be returned to their owners that evening or, if necessary, after being kept overnight at the farm of the farmer whose flock was being gathered. The area of Abergwesyn Hill which he knew best ran between the Rivers Irfon and Camarch in the parish of Abergwesyn. One farmer whom he assisted in this way on Esgairadar was Mr Cladwyn Hope of Pentwyn Farm the original applicant at Entry No. 4. His sheep were known as the Dol-y-iar flock, being gray-faced as opposed to white-faced. (The witness identified on the map the area which this flock grazed). He did this over a period of 7 years from 1966-1973 until Mr Hughes gave up his tenancy. He continued to assist his successors in the same way.

He was aware that the tenants of Nantstalwyn also grazed the area. The Dol-y-iar flock had a different earmark from other sheep grazing the area. The Nantstalwyn flock had its own earmark.

He had never seen any one who was an employee of Mr Davies. He knew Mr William Morgan.



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Cross-examined Mr Thrupp said that he did not inspect the Register of Commons at the time when he made his own registration. He did not know the terms on which Mr Morgan's sheep grazed the common. He first became aware of the wording of the claim at Entry No. 13 before 1 May last.

The area of the whole common is 18,000 acres. It is the custom of the commoners to graze a particular area. When gathering sheep it is the practice to gather in as many as you can. Sheep not gathered at the first round-up were sheared later.

Mr David Thomas Gwyn Jones aged 50 of Pentwyn Farm said that in 19.2 he purchased the Farm and the Dol-y-lar flock at the same time and identified on the map the Arospa for the farm. He was the applicant at Entry No. 18. He was born in Abergwesyn. His father's farm was Nant-yr-Hwch Beulah, which is N E of Abergwesyn. His father grazed sheep on the common and was the applicant at Entry No. 5. He produced a lease of Nant-Yr-Hwch Beulah made 14 July 1907 by David Jones to Thomas Jones (the witness's grandfather) and another lease of the same farm granted on 14 July 1954 to David Jones (the witness's father) which included grazing rights for 330 sheep.

He moved to Cynghordy in August 1955 where he remained until 1982 when he purchased Pentwyn.

From the age of 12 he had assisted flockmasters with gathering, shearing and dipping their sheep (including sheep from Pantwyn Farm) and he knew their several Arospas. Dol-y-lar and Nantstalwyn flocks grazed on Esgairadar. He did not know whether Mr Davies had any right of common on Abergwesyn.

Cross-examined the witness said that he had attended shearings at Nantstalwyn before 1955 and knew Mr James Edwards. He agreed the general area of Esgairadar as shown on the plan mentioned in the latter's Statutory Declaration when he was shearing at Nantstalwyn in 1950 he did know where the sheep came from. He knew the sheep belonged to Mr James Edwards. He knew that William Morgan and D C Edwards became partners and farmed Nantstalwyn and Esgairadar. He knew that their sheep were on Esgairadar during 1954-58. He knew of D C Edwards death and that these sheep remained on Esquairdar after his death.

As far as he knew the only farming operation carried on by the partnership on Esgairadar was grazing sheep.

Mr Ivor Richard Davies aged 66 produced a Tenancy Agreement dated 8 November 1951 from Mr E A Thomas to himself relating to Trysgol Farm. He resided at Bwlch-Gorllwyn, Abergwesyn. The agreement included the right to graze 335 sheep on Abergwesyn Hill. He knew Mr James Edwards and went to Nantstalwyn Farm in 1936 and 1937 to shear sheep for him. There was no dispute between Mr Edwards and the Graziers before 1954.



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Mr John Cledwyn Hope aged 51 now of Caen-Pandy Farm Builth Wells, said that he had previously lived at Pentwyn farm from the age of 5 until he left there in 1973. His great grandfather became tenant of Pentwyn in 1862 and his grandfather Thomas Wright Hope was tenant of Pentwyn when the witness was born. His grandfather died in 1945 and was succeeded by the witness's uncle. He joined his uncle at Pentwyn in 1954 and remained there until 1973.

Mr James Edwards had his sheep shepherded all the year round. The witness went to Nantstalwyn to shear sheep. The sheep were counted on a stick ten at a time. Wethers would be in the sheep count. Nantstalwyn sheep were on Esgairadar summer and winter.

Cross-examined the witness said that while Mr Edwards was at Nantstalwyn the sheep belonged to him. The witness was at Nantstalwyn in 1954. Mr John Edward Jones aged 60 of Nant Trwyd Treararon said that from an early age he and his brothers used to go to Nantstalwyn to help with the shearing. His eldest brother was employed by Mr James Edwards for two years as shepherd there. Another brother worked for Mr Edwards in 1953-4. Up to the age of 15 the witness used to look after the lamb-shearing. Later at the age of 18 he put the marks on the sheep after shearing.

Flock management was carried out by an owner and his shepherd. The witness helped with gathering sheep and was still helping William Morgan. He knew of the partnership between Morgan and D C Edwards and worked for the partners. The Nantstalwyn flock was transferred to the partnership.

On the death of D C Edwards Morgan took over the whole flock.

Cross-examined the witness said that he did not remember the date when Morgan took over the whole flock.

Mr James Edwards would go with his shepherd to the Arospar. The witness had never worked at Nantstalwyn on a regular basis nor did he know the boundaries of Esgairadar.

Mr William Morgan the applicant at Entry No. 14 in the Rights Section said that he was aged 67 and had come to work for D C Edwards in 1938 at Nantyrhwch as a shepherd. Nantyrhwch Farm was in the parish of Llandandewi - Abergwesyn and had no rights of grazing on Abergwesyn Hill.

He remained at Nantyrhwch as a shepherd until 1960. He was acquainted with Nant-stalwyn Farm, the tenant being James Edwards, a brother of D C Edwards.

In 1954 he discovered that James Edwards was giving up his tenancy of Nantstalwyn. He attended a meeting in Swansea at the Manselton Estate Office the others present being D C Edwards J I James, agent for the Estate and D W Davies. The Manselton Estate owned the freehold of Nantstalwyn Farm. He remembered that the agent asked for a rent of £100.p.a. for the farm, which D C Edwards and he ultimately agreed to pay.



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At the time D C Edwards and he had agreed to become partners but there was no written agreement. The Agent said they ought to give something to Jim (James Edwards) for rent. D C Edwards said 'you can do whatever you like with Jim. We are not going to pay more than £100 I know the background to Esgairadar too well and Jim has no more claim than others grazing the common'.

Later D C Edwards and he were given a joint tenancy of the farm from 29 September 1954 at £100.p.a.

On Thursday 16 September in the presence of Mr Davies, D C Edwards and he paid for the settled sheep flock from Nantstalwyn Farm, 1646 sheep including lambs.

Mr Davies made out the cheque which was for £5184.18.0. The cheque was drawn on an account in the names of Edwards and Morgan. Either of them could sign cheques. Both the cheque and the counterfoil were made out by Davies and the cheque was signed by D C Edwards and himself. They paid 3 guineas a head for the flock which was a good price in 1954.

On 19 September D C Edwards and he paid James Edwards £57 for sheep from Moelprysgau. i.e. without the swallow-tail mark. As tenants of Nantstalwyn Farm they continued to graze their sheep on Esgairadar. The partnership never paid any separate rent for this grazing. They paid £50 half-yearly to the Manselton Estate Office. D C Edwards died in 1959 and the witness purchased his share in the settled flock and continued grazing the flock on Esguairdar.

The witness was then shown a letter dated 8 January 1960 from R H Williams a solicitor acting for James Edwards making an appointment with the witness at the solicitor's office on the following Wednesday. The witness kept the appointment and the others present were the solicitor and James Edwards. The solicitor told the witness that James Edwards was claiming payment for sheep from Nantystalwyn grazing on Esgairadar. He told the solicitor that he did not know why James Edwards was claiming rent for sheep grazing on Esguairdar because James Edwards had told him that Esguairdar was common land.

The solicitor told him that James Edwards had been receiving rent years ago for grazing sheep. He asked who had paid the rent. He knew from D C Edwards that James Edwards had received rent for tack sheep from Ochor-Gareg Tregaron. The solicitor said that money paid for tack sheep was not rent. At this point James Edwards walked out of the office. Two weeks later the solicitor informed the witness that James Edwards had no claim for rent and had no title to the land.



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He later received letters from a firm of solicitors in Aberystwyth which he referred to his own solicitor in Lampeter. No evidence was ever produced in support of the claim by James Edwards for grazing rent and the matter died.

He was never aware of any agreement by the partnership to pay James Edwards over and above what had been agreed for rent for Nantstalwyn. No proceedings were ever brought to recover the alleged rent of £12.p.a.

The right to graze sheep on Esgairadar was a great help to the tenant of Nantstalwyn. He had always thought of it as a right of common.

He produced a letter from the Agricultural Department of the Welsh Office at Llandrindod Wells dated 23 June 1981 under the heading "Hill Livestock Compensatory Allowances" which accepted his claim in respect of provisional rights on Abergwesyn Hill as set out in Entry No. 14 in the Rights Section.

The following properties owned by the Edwards family in the area

Maesglas
 Penygraig and Llwyn-yr-Hwch in
 Caron
 Ochor-Gareg
 Blaenffuos
 Rhyn -Dywyll

did not exercise rights over Abergwesyn Hill.

He knew that W H J Lloyd of Cwmnant Tregaron never had an agricultural tenancy on Esgairdar. He had never seen him grazing sheep on Esgairadar or any other part of the common.

Cross-examined Mr Morgan said that he first learned that James Edwards intended to retire in about June 1954. He was shown a letter from Mr James the Agent for the Manselton Estate to D C Edwards dated 14 June 1954 inquiring if the latter would be prepared to pay a yearly rent of £110 and agreed that he had shown the letter and as a result went to Swansea with D C Edwards and D W Davies.

He was then shown a letter from Mr James to D C Edwards dated 7 August 1954 in which the writer stated that he had seen James Edwards on 6th August and had agreed with him in the matter of the 300/400 acres of land belonging to him which ran with Nantstalwyn. The writer said he could offer to let Nantstalwyn at a yearly rent of £100 to include the land referred to above and if D C Edwards agreed to the offer, he could see his brother at once with a view to taking over the sheep.

In the final paragraph the writer indicated that there was another applicant who would be willing to pay £100 a year and urged a speedy reply.



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A further letter between the same parties dated 12 August showed that a letter of acceptance by D C Edwards dated 10 August had been received.

Mr Morgan said that he had not seen the letter of 7 August and did not remember an offer of a yearly rent of £91. He was shown a letter dated 20 July 1954 and written to D W Davies and said that it had been written by his wife. He also admitted having seen the letter written on 18 July 1954 by J I James. He said that he and D C Edwards had instructed D W Davies to offer £100 p.a. rent on their behalf. He had also seen the letter dated 12 August 1954 from J I James to D W Davies accepting the offer of £100. p.a. rent for Nantstalwyn.

Until September 1957 rent demands were issued half yearly for the sum of £50. The demand for the half-yearly rent due at 29 September 1957 differed in two respects from previous demands. In the premisses column the property had previously been described as 'Nantstalwyn' in this demand the words 'with Esgairadar' had been added in brackets and below the words in brackets were added the words and figures:

"Nantstalwyn	£88. 0. Op.a.	
Esgairadar	£12. 0. Op.a.	

	£100. 0. 0.	"

On the instructions of D C Edwards and the witness D W Davies wrote to J I James requesting that a rent demand be sent in the same form as the previous demands.

A reply was received from J I James dated 6 December 1957 insisting that there was an agreement to pay J D Edwards £12 p.a. out of the rent. At the end of December 1957 a cheque for £50 was sent to J I James.

Nantstalwyn was sold to the Forestry Commission in August 1958 and a payment of £50 in respect of rent was made to J I James early in October 1958. In April 1959 £44 was paid to the Forestry Commission by way of rent. J I James used to pay £6 out of the half-yearly rent to J D Edwards. J D Edwards farmed Nantstalwyn from 1938- 1954 and had sheep on Esgairadar. The witness knew that D W Davies was now the owner of Nantynhwch.

In cross-examination Mr Morgan said that D C Edwards and he never agreed to pay a separate rent to J D Edwards for Esgairadar. In July 1954 J D Edwards and D C Edwards were on good terms but not in October because D C Edwards was not prepared to pay rent for Esgairadar. He understood that the demands for rent were made in respect of Nantstalwyn. Nantynhwch did not exercise grazing rights over Esgairadar. After 1958 the rent demanded for Nantstalwyn was £44 half - yearly. In 1966 he received a demand for rent for Esgairadar from D W Davies which he refused to pay.



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Mrs Elizabeth Jones Jones said that she was born at Nantstalwyn in 1921, the only child of J D and Sarah Anne Edwards. She lived there until she married Verdun Jones in 1947 when she moved to Dinas Farm which is about 10 miles distance from Nantstalwyn. She was familiar with Esgairadar. From about 1930 she used to go riding with her father on Esgairadar when he was shepherding. There were sheep grazing on Esgairadar and occasionally ponies. To her knowledge her father exercised grazing rights on Esgairadar from 1930-47. He had no other grazing rights on the Mountain.

After her marriage she visited her parents regularly. Her father exercised his grazing rights continuously until he retired in 1954. When her father retired, her parents moved to Tregaron and gave up the tenancy of Nantstalwyn. Esgairadar had nothing to do with the Manselton estate. Her father had the grazing rights on Esgairadar. They were owned by him. Her uncle D C Edwards and Mr Morgan arranged to take over the tenancy of Nantstalwyn and her father made arrangements with J I James that the rent to be paid for Esgairadar was £12.p.a. to be received through J I James. This rent was paid while D C Edwards was alive but after his death in 1958 Mr Morgan refused to pay rent.

In her great grandfather's time Esgairadar was attached to Cilpyll. Her great grandfather moved from Nantstalwyn to Cilpyll when he married. He owned Cilpyll and sent sheep from there to graze Esgairadar. Her grandmother Anne Edwards was a daughter of John Jones. Her father inherited Nantstalwyn in 1925. He had lived there from 1895-1954. Mrs Jones was shown a record of flocks kept by her father relating to shearing counts for the period 1925-53, which she recognised.

In cross-examination Mrs Jones said that she knew that her father only had grazing rights over Esgairadar and that he was not the owner of it. She was familiar with the area of the Nantstalwyn Arospa. No other persons had grazing rights on Esgairadar. She did not know if the Dol-y-lar flock grazed Esgairadar. Nantyhwhch and Pentwyn had no grazing rights over Esgairadar.

Her father employed a shepherd who visited Esgairadar almost daily. The object of shepherding was to keep sheep from other flocks off his Arospa.

She knew that her father had let the grazing on Esgairadar for £12.p.a. The money came from the Manselton Estate. There was no arrangement between her father and D C Edwards.

Her father had told her that he had met Morgan in a solicitor's office in Tregaron and that Morgan had refused to pay rent for grazing on Esgairadar. Her father instructed a firm of solicitors in Aberystwyth but subsequently dropped his claim.



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Cilpyll is about 17 miles from Esgairadar. Sheep could be wintered on Esgairadar. She could recognise the markings of her father's sheep.

Mr Davies put in a Statutory Declaration made by James Edwards on 18 December 1961, a copy of which is annexed to this decision.

He also referred to the following documents:

1. The will dated 28 January 1896 of John Jones of Cilpyll who died on 20 February 1905.
2. The will dated 20 May 1918 of Ann Edwards who died on 22 May 1918
3. Probate of the will of Ann Edwards dated 29 November 1919.
4. The will dated 2 September 1921 of John David Edwards who died on 3 February 1925.
5. Probate of the will of John David Edwards dated 24 February 1926.
6. A Conveyance and Release made 19 October 1942 between James Edwards, D C Edwards and Rhys William Jones of the one part and the Mayor, Alderman and Citizens of the City of Birmingham of the other part of the rights of the grantors over Waunlas, Penlan and Esgair Gynog part of the Nantstalwyn sheepwalk in the parish of Llandewi- Abergwessyn, the grantees being the owners of the soil and two Statutory Declarations (i) by James Edwards dated 10 March 1942 and (ii) by Rhys William Jones dated 17 August 1942.
7. An agreement dated 10 October 1958 for the sale of Nantstalwyn Farm subject to the tenancy of D C Edwards and W Morgan at the yearl: rent of £88 for the sum of £4613 made by James Idris James as agent for Germaine Lord and Rauf Mansel as trustees for sale and the Ministry of Agriculture, Fisheries and Food acting in exercise of the powers of the Forestry Act, 1945, together with Precontract Enquiries and Replies and Requisitions on Title and Replies.
8. A bundle of documents relating to a sale of the farm known as Moel-Prysgau for the sum of £3,300 subject to a tenancy of a rent of £70.p.a.

The parties were the same as those involved in the sale of Nantstalwyn.



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Submissions

Mr Davies submitted that a right of grazing in gross was recognised by law. He relied on prescription at common law. The right of grazing had been exercised for a period in excess of 60 years nec vi nec necelan nec precario. The right was capable of being inherited and assigned or conveyed. The right had been exercised over a substantial part of the common.

In column 3 of the Rights Section of the Register Entry No. 13 contains the following words in brackets "(part of sole vesture and herbage in gross formerly common of pasture appurtenant (sic)" and in column 5 the following words 'underlined' Now Common of Pasture in gross, formerly Common of Pasture Appertenant'

John Jones could have claimed a right of common in gross under the presumption of a lost modern grant based on user for 20 years or more and on his death that right devolved through his will to his daughter Ann Edwards as part of the live and dead stock furniture goods chattels and effects at the time of his decease in at or upon the farm of Nantstalwyd. It would then pass on the death of Ann Edwards in 1918 to her husband John David Edwards and on his death in 1925 to James Edwards.

Alternatively James Edwards himself could have claimed a right of grazing in gross based on his occupancy of Nantstalwyn From 1925 to 1954.

Rights in gross could not be claimed under the Prescription Act, 1832. Shuttleworth v. Le Fleming. (1865) 19C.B (NS) 687. Nor could they be claimed without stint Lord Chesterfield v Harris (1908) 2 ch 397.

After 1925 rights in gross could only be transferred by deed and he relied on the Conveyance by Elizabeth Jones Jones dated 16 November 1984.

His claim was supported by the Conveyance and Release of Rights made the 19th October 1942 between James Edwards, David Charles Edwards and Rhys William Jones of the one part and the Birmingham Corporation of the other part.

Mr Thomas referred to the documents of Title produced by the claimant and made the point that the rights claimed were not specifically referred to in a document of title dated earlier than 1966. There was no specific transfer until 16 November 1984. There was no evidence to provide a base for the claim on the Register.

The sheep were grazed as a right appurtant to Nantstalwyn and the right was exercised by persons occupying Nantstalwyn as tenants. The properties owned by the persons described by the claimant as his predecessors were situated some distance (12 miles) from the Hill. Caron Parish is more than 10 miles distant. Maesglas Tregaron the nearest farm to Esgairadar has made no claim for rights of grazing.



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Nantstalwyn Farm is in the parish of Llandewi-Abergwesyn. Esgairadar is in the parish of Llanfirhangel Abergwesyn. Nantyrhwch never exercised grazing rights over Esgairadar. The evidence shows that the grazing rights were exercised in respect of Nantstalwyn.

There is no evidence of how a right appurtenant became a right in gross. A tenant has no power to sever appurtenant rights. It is not disputed that the tenants of Nantstalwyn acquired appurtenant rights by prescription. As tenants they would be prescribing on behalf of the owner of the freehold. Pugh v. Savage (1970) 2 Q.B 873. No claim to a right in gross was made until the application which became Rights Entry No. 13.

Mr Morris

The claim is to enjoy a right of pasture in gross over part of Register Unit CL.94. No capacity for making such a claim is set out in the application. The initial claim is for an appurtenant right, which it was alleged was severed by the will of John Jones. A claim is also made for acquisition of the right after 60 years enjoyment. James Edwards states that there has been long user of Esgairadar for grazing.

John Jones who was the owner of Cilpyll had a tenancy of Nantstalwyn. Cilpyll is about 15 miles from Esgairadar. Nantstalwyn has been tenanted by successive members of the same family since 1905. The rent of £100 was paid until the death of D C Edwards, payments of rent since his death have been based on the figure of £88 p.a. with periodical increases.

Mrs Jones thought that the grazing rights might be attached to Cilpyll. Apart from the records kept by James Edwards between 1925 and 1953 there is no evidence of the quantum of grazing rights.

When John Jones died in 1905 the grazing rights would in the absence of express exclusion pass to the new tenant on the part of a tenancy. On this basis there could have been no severance by James Edwards when he surrendered his tenancy in 1954.

When Mrs Jones gave evidence she added a fact which was not in her Statutory Declaration when she said that her grandfather had exercised grazing rights over the common as owner of Cilpyll. She recalled that lambs and yearlings from Nantstalwyn wintered at Cilpyll, which is a low land farm by comparison with Nantstalwyn. The Nantstalwyn flock had its own earmark so when any sheep from Nantstalwyn which had wintered at Cilpyll came back to Nantstalwyn, they were Nantstalwyn sheep and not a Cilpyll flock. Cilpyll has no grazing rights on the register unit.



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Prescription requires a dominant and servient tenement. The right claimed must accommodate the dominant tenement and the dominant and servient tenements must be in separate ownership. The right must be capable of forming the subject matter of a grant and must be definite.

Mr Davies said in evidence that he did not know which was the dominant tenement to which the right was originally appurtenant. James Edwards does not deal with this point but the inference from his Statutory Declaration is that the right was appurtenant to Nantstalwyn. Nantstalwyn must have been the dominant tenement. Any severance could only have been from Nantstalwyn.

The right must confer a benefit on the dominant tenement. It is not enough that the right gives the owner of the dominant tenement some personal advantage. The benefit to the dominant tenement must be permanent. Nantyrhwch which was owned by James Edwards and adjoined the register unit had no grazing rights over the unit.

All the farms, other than Nantstalwyn, which enjoy grazing rights over the unit are in the parish of Llanfihangel Abergwesyn. Any prescriptive right could only have been appurtenant to Nantstalwyn. Mr Davies has never exercised the right claimed.

Any grant of the right could only have been for the benefit of the dominant tenement.

As to creation of grants in gross see Mallor v Spateman (1669) 1 Saunders 339.

In reply Mr Davies said that he relied on long enjoyment by John Jones and his successors as tenants of Nantstalwyn of grazing rights over Esgairadar going back to 1892. He did not admit that John Jones did not acquire a right of grazing Esgairadar as owner of Cilpyll.

Mrs Ann Edwards acquired grazing rights over Nantstalwyn.

A grant of rights of grazing in gross can be made to any person; see cases referred to in Harris & Ryan at p.40. John Jones had a personal right of grazing vested in him as early as 1892, part of which James Edwards with others conveyed to the Birmingham Co-operation in 1942.

Wm Morgan has not acquired any part of his claim to grazing rights.

Abergwesyn Hill an area of 18,000 acres was provisionally registered as a common in June 1968. This dispute relates to an area on the N.W. side known as Esgairadar. adjoining Esgairadar on its western boundary is a farm called Nantstalwyn. From at least 1884 until his death in 1905 John Jones was the tenant of this farm on which he kept a flock of sheep which grazed on Esgairadar. John Jones had a daughter Ann who had married John David Edwards and in his will dated 28 January 1896 he gave to Ann Edwards all the live and dead stock furniture goods chattels and affects at the time of his decease in, on or about Nantstalwyn Farm.



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John Jones died on 20 February 1905. Ann Edwards and her husband continued to farm Nantstalwyn as tenants though there was no evidence as to whether the tenancy was in her name. Ann Edwards died on 22 May 1918 and by her will dated 20 May 1918 and proved on 29 November 1919 she left the whole of her estate to her husband who survived her.

John David Edwards continued farming Nantstalwyn as a tenant and grazing the flock based there on Esgairadar. He died on 3 February 1925 and by his will dated 2 September 1921 and proved on 24 February 1926 bequeathed his flock of sheep and ponies and all other his live and dead farming stock household furniture and other effects (except wool) at decease in, on or about Nantstalwyn to his son James Edwards absolutely.

James Edwards farmed Nantstalwyn as tenant until 1954 when he retired and a new tenancy of Nantstalwyn was granted to his brother David Charles Edwards and William Morgan who had agreed to go into partnership. During that period of his tenancy James Edwards kept a written record of the number of sheep in the different flocks. The count was made at shearing time and shearing was carried out at Nantstalwyn. It is common ground that the figures shown against Esgairadar relate to the flock which was based on Nantstalwyn, grazed on Esgairadar and owned by James Edwards.

The freehold of Nantstalwyn Farm was owned by the Trustees of the Manselto Estate, whose agent was J I James with an office in Swansea. Negotiations took place in or about July 1954 at the agents office and Mr Davies the claimant and an admitted solicitor attended with D C Edwards and Wm Morgan. Ultimately these later offered a rent of £100 p.a. for Nantstalwyn which was accepted and they went into possession on an oral tenancy from Michaelmas 1954. The partners purchased from James Edwards his flock of sheep which grazed on Esgairadar at 3 guineas a sheep for the sum of about £5,185. There were 1,646 sheep including their lambs.

According to Mr Davies there was an agreement by the two partners that £12 part of the agreed rent should be paid to James Edwards in return for being allowed to graze the flock on Esgairadar. James Edwards had claimed that he was entitled to be paid for enjoyment of the grazing right which he regarded as his personal property. The suggestion was said to have come from the agent.

Wm Morgan denied any knowledge of such an agreement. Demands for rent were sent out half yearly in March and September until September 1957 when the rent demand of £50 was expressed to be in respect of 'Nantstalwyn (with Esgairadar)

Nantstalwyn	£88. 0.0. p.a.
Esgairadar	£12. 0. 0.p.a.

£100. 0. 0.



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The partners instructed Mr Davies to return the rent demand with a request that it be replaced with a demand in the form hitherto use and pointing out that no previous reference had ever been made to Esgairadar or a demand note. Mr Davies wrote to the agent in these terms on 13 November 1957.

The agent replied on 6 December expressing surprise at the terms of the letter he had received and alleging that the lessees knew that James Edwards claimed possessory rights over Esgairadar and were fully aware of the arrangements for paying him £12. p.a. The cheque for £50 was sent to the agent at the end of December and rent was paid out of the partnership account in 1958. At the end of 1958 the freeholders sold Nantstalwyn to the Forestry Commission subject to the tenancy. There was no evidence as to the form in which demands for rent were made after 1957 but the partnership bank account shows payments of £50 half yearly until the sale.

Shortly after the sale of Nantstalwyn D C Edwards died and the payment made in April 1959 was £44 to the Forestry Commission. Wm Morgan refused to pay anything more than the rent due to the Forestry Commission after his partner's death. He purchased his late partners interest in the partnership.

James Edwards made some attempt to obtain payment from Wm Morgan for grazing on Esgairadar but after a meeting attended by both of them at the office of the solicitor acting for James Edwards at which the solicitor informed his client that payment for tack was not rent, the matter was dropped.

After D C Edwards and Wm Morgan had been accepted as tenants James Edwards agreed to sell them his flock. The cheque for £50 paid in December 1957 made up of £44 and £6 was made out by Mr Davies. Wm Morgan stopped paying rent for grazing after D C Edwards died. There is no reference to Esgairadar in any of the wills to which I was referred. Any one visiting the common could have recognised the Nantstalwyn sheep by the earmarks. Payment of rent to J I James was a payment to his principal.

The letter dated 6 December 1957 written by J I James was written to Messrs. Arnold Davies & Davies as solicitors for D C Edwards and Wm Morgan.

In September 1959 the trustees of the will of D C Edwards agreed to sell to Wm Morgan the Testator's interest in one half of the Nantstalwyn flock of sheep. James Edwards' sheep were shown in the records as Nantstalwyn sheep. James Edwards did not sell his Nantstalwyn sheep to D C Edwards and Wm Morgan until they had obtained a tenancy of Nantstalwy James Edwards died in 1963.

The demand for rent sent by the agent for the Manselton Estates dated 29 September 1957 for the first time contained a reference to Esgairadar and showed a split of the rent between Nantstalwyn and Esgairadar in the premises column. In all previous demands the only premises referred to were Nantstalwyn.



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James Edwards made a statutory Declaration in 1962, which was read in evidence in support of his claim, without making any reference to the alleged arrangement for payment of rent to him by his brother and Wm Morgan. D C Edwards is dead and I have not heard any evidence on the point from the agent.

Whatever may be the true version of the events which led up to the parting of a tenancy of Nantstalwyn to D C Edwards and Wm Morgan I do not consider it necessary to reach a conclusion on this aspect of the case in order to decide the claim and I do not propose to pursue the matter further.

Some of the witnesses stated that the Del-y-lar flock grazed Esgairadar which might appear to cast doubt on the claimant's case that no sheep other than the Nantstalwyn flock ever grazed Esgairadar. All the evidence casting doubt on the claimants' version related to the period after 1954.

Mrs Jones Jones gave her evidence after the witnesses opposing the claim. The reason for this was that when the hearing opened it was thought that she would be unfit to give evidence and the question of taking her evidence on commission was being considered. In the end she was able to appear in the witness box.

When he was cross-examined Wm Morgan Mr Davies put to him two letters one dated 18 July 1957 and the other dated 20 July 1957. The earlier letter was written by the agent for the Manselton Estate to D C Edwards to let him know that there was a likelihood that his principals would receive from the Brestry Commission an offer to purchase Nantstalwyn and inquiring whether he & Wm Morgan would consider making an offer. The land letter was in the handwriting of Mrs Morgan to Mr Davies and was signed 'uncle Dai & William'. Enclosed with it was the earlier letter and the writer requested Mr Davies to find out the selling price and arrange a meeting with the agent within the week.

By mistake Mr Davies gave the year in which the letters were written as 1954. The object of introducing these two letters appeared to be to show that D C Edwards and Wm Morgan were keen to take over at Nantstalwyn. No one including myself noticed the discrepancy. After the close of the hearing I instructed the parties to supply me with copies of the documents which they had produced at the hearing. Mr Davies sent me his documents in 6 Folders and in Folder No. 2 the two letters appear as items 3 and 4 and in the index on the outside of the Folder the date is shown as 1954, as I recorded it in my notebook, instead of 1957. For this reason neither letter is of any assistance in deciding the issue of what was arranged before a tenancy of Nantstalwyn was granted to D C Edwards and Wm Morgan.



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Mr Davies produced a receipt for Estate Duty dated 5 November 1969 which included particulars of assets subject to the trusts of the will of D C Edwards. One of these assets (item 10) was the grazing rights which were conveyed in 1984 by Mrs Jones Jones to Mr Davies and which the Trustees Mr Davies and David Green are said to have agreed to purchase in 1966 from Mrs Sarah Anne Edwards as executrix of the will of James Edwards.

In her Statutory Declaration and in her evidence Mrs Jones Jones referred to her father's claim to own grazing rights over Esgairader independently of any tenancy of Nantstalwyn. On her mother's death she became executrix by representation of her father's will. In these capacities she could be expected to have among her papers evidence which would show whether these rights were shown as an asset in her father's estate and secondly the original of the agreement in writing dated 13 December 1966 made between her mother of the one part and Mr Davies and Mr Green of the other part. The counterpart of the agreement have been in the possession of Mr Davies as a trustee of the will of D C Edwards. None were produced.

Although the claim at Entry No. 13 is in the name of Mr Davies he did not give any indication as to the nature of his interest in the claim whether as trustee or beneficiary at the date of his application, 31 December 1969.

In my view the decision of Mr Davies' claim depends on what modern grant is in all the circumstances to be presumed. Having regard to the continued enjoyment by successive tenants of Nantstalwyn of rights of grazing over Esgairadar the grant to be presumed is *in favour of the owners in fee simple of Nantstalwyn based on the long user by their tenant John Jones.* Such a presumption supplies a rational explanation for the continuous user by successive tenants the evidence of which has not been challenged.

Mr Davies relied on the decision of the Court of Appeal in A.G. v. Tomline (1880) 15 Ch D 150, but in my view that case was decided on special facts which do not apply in the present case. I also rely on the following passage in the 5th Edition of Megarry and Wade. The Law of Real Property at p.878.

"Naturally the court has refused to presume a lost modern grant which would be contrary to statute or custom. But although the English authorities are to the contrary there seems nothing in principle that necessarily excludes a lost modern grant to a person owning less than a fee simple."

It was agreed that if Mr Davies succeeded in his claim he should be registered for grazing rights for 525 sheep, 12 horses and 3 geldings or stock equivalent on the basis that 1 horse or gelding equalled 5 sheep



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The following matters were agreed at or before the hearing which began on 1 October 1985.

Objection No. 248 was withdrawn
Objections Nos. 161 and 214 were confirmed.

The following Entries in the Rights Section should be confirmed subject to any modification set out below.

3. Right to cut turf is limited to the domestic requirements of the holding to which the right is attached.

5.

7. Rights to cut bracken and turf are limited to the domestic requirements of the holding to which they are attached.

9.

10. Rights not exercisable over area shown coloured blue on the plan attached to Objection No. 631.

11. Rights not exercisable over area shown coloured blue on the plan attached to Objection No. 630.

12. Rights not exercisable over area shown coloured blue on the plan attached to Objection No. 629

14.

15. Delete Right to cut turf

16. Right to cut turf is limited to the domestic requirements of the holding to which it is attached

17. Delete Right to cut turf. Right to cut bracken is limited to the domestic requirements of the holding to which it is attached.

18. Rights to cut bracken and turf are limited to the domestic requirements of the holding to which they are attached.

19. " " " "

20.

21.

For these reasons I confirm the registrations at (1) Entry Nos 1 and 2 in the ~~Rights~~ section subject to the exclusion of the areas referred to in Objections Nos 161 and 214

(2) Entry Nos 3, 5, 7, 9-12 and 14-21 in the Rights Section subject to the modifications already mentioned. and

(3) Entry Nos 1, ~~2, 3~~, and 4 in the ~~Land~~ ^{Ownership} Section ~~subject to the~~



~~Exclusion from Entry No. 1 of the land the subject of the registration at Entry No. 3.~~

I refuse to confirm the registration at Rights Entry No. 13.

I order Mr Davies to pay the costs of the parties represented by Mr Morris and Mr Thomas respectively to be taxed on County Court Scale 3 (if not agreed) limited to costs incurred on the 1,2,3 and 4 October 1985. Had Mr Davies succeeded I should have made a similar order in respect of his costs against the parties represented by Mr Morris and Mr Thomas respectively to be paid by them in equal shares.

Liberty to apply for an order for taxation,

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 5th day of March 1986

Joseph Harker

COMMONS COMMISSIONER

*Amended in accordance to para 33 of the 1971 Regulations
Joseph Harker
19.iii.86.*