



In the Matter of Brecon Beacons in the parishes
of Cantref Modrydd and St David Without,
Brecknock D

DECISION

These disputes relate to the registration at Entries No. 23, 24, 27, 28, 32, 39-47, 50 and 52-55 in the Rights Section of Register Unit No. CL 56 in the Register of Common Land maintained by Powys County Council and are occasioned by Objections Nos. 173, 658 and 657 made by the Brecon Beacons Commoners Association ("the Association") and respectively noted in the Register on 5 November 1970 and 10 January 1973.

I held a hearing for the purpose of inquiring into the disputes at Brecon on 15 June 1982. The hearing was attended by Mr R Cawthorne representing Powys County Council; by Mr E Harris of the firm of Edward Harris and Son, appearing on behalf of the Association and of the Secretary of State for Wales for the Forestry Commission (successor to the applicant for rights under Entry No. 55); by a number of applicants for rights not affected by the Objections: Mr E C J^A Selwyn of the firm of Jeffreys and Powell was also present.

These disputes were the subject of a hearing by a Commons Commissioner, Mr C A Settle, on 18 April 1978 and he gave a written Decision dated 17 November 1978. This Decision ~~be~~ ultimately set aside on the application of the Secretary of State for Wales who was not represented at the hearing and had not received notice of it.

At the hearing before me Mr Harris told me that as regards Rights Entries Nos. 23, 24, 27, 28, 32, 50 and 52-54, the decisions by Mr Settle were accepted by the Objector and by the applicants under those Entries, and in a letter dated 4 June 1982 from the Solicitors who appeared for the applicants at the hearing in 1978, this was confirmed. Accordingly I refuse to confirm Entries Nos. 23, 27, 28, 32, 50, 52 and 54 and I confirm Entries Nos. 24 and 53 with the respective modifications which were then agreed and are specified in Mr Settle's Decision.

As regards Entry No. 55 the applicant and the Forestry Commission, as appeared from a letter of 11 June 1982 from the Commission's Solicitor, now withdrew the application and I refuse to confirm the Entry.

The remaining Entries Nos. 39-47 to which the Objections relate were all registered on the application of the former Breconshire County Council and Mr Cawthorne, representing its successor Authority, said that Mr Settle's decision as regards Entries Nos. 39-42 was accepted and accordingly I refuse to confirm those Entries.

This leaves for consideration Entries Nos. 43 to 47. These are Entries of rights to graze sheep, the rights being claimed in respect of Cefn Cantref Holdings Nos. 1 to 5. Mr Cawthorne produced sale particulars of sales first in 1919 and again in 1927 of properties which included Cefn Cantref Farm, containing some 164 acres. In the particulars in each sale it is stated that "appurtenant to the farm is a right of grazing on the Brecon Beacons". Mr Harris accepted that the property comprised the Holdings Nos. 1 to 5. Neither the Conveyances of the property following the sales nor a later Conveyance of 1935 to Breconshire County Council specifically referred to grazing rights.



-2-

Mr Cawthorne called two witnesses. Mr Ivor Higgin, the tenant of No. 4 Cefn Cantref (Entry No. 46) since before 1963 said that he had understood that the property was in 1927 sold with the hill rights and that he had been told by a Mr F Williams and a Mr Ely, a shepherd, where the rights were exercisable. He had also been told that after the sale in 1927 the rights were exercised by the then tenant. He himself had sheep but did not exercise the rights and did not know when they were last exercised from Cefn Cantref. He did not know if the rights were included in his tenancy or apportioned in any way: he did not take over a hill flock with his tenancy and agreed that it is the custom to take the hill flock with a farm having grazing rights. The second witness, Mr Brian Williams, had been tenant of 2 Cefn Cantref (Entry No. 44) since 1975: his is a dairy farm but he has a small sheep flock and would consider using the grazing rights if he had them. His next door neighbour Mr F Williams had said that he had been shown the area where the rights existed in the past.

Mr Harris called three witnesses (1) Mr Thomas B Phillips, ^{who} also has grazing rights (Entry No. 2) and has been Secretary of the Association since 1966, produced Sheep Registers relating to commons in the area, including Brecon Beacons. These books which date from the end of last century contain particulars of the farms which graze and of the several earmarks for their sheep: grazing rights on Brecon Beacons were not objected to by the Association if the farms had earmarks in the books. He had checked the earmarks in the books but had found none in respect of Cefn Cantref. Mr Phillips said that during his time (he is 44 years old) he had never seen Cefn Cantref sheep when out on the ~~mountain~~, and that all the grazing sheep did have earmarks. (2) Mr David J Phillips who is aged 78 and farms at Nevadd Farm (Rights Entries Nos. 1 and 3) said that he had always grazed on the mountain: he had never heard of Cefn Cantref having sheep on the mountain and had never seen sheep from Cefn Cantref farm passing his own farm, which would have been their way to the mountain. (3) Mr William Thomas Phillips, who's aged 77 and the applicant for Entry No. 20, said that he grazed 550 sheep on the mountain and had been on it all his working life. His farm is situated on the road to the Beacons along which sheep are driven and had never seen Cefn Cantref sheep or heard of them grazing.

In my view, the evidence does not establish the existence of the grazing rights registered under Entries Nos. 43 to 47. The statement in the sale particulars that there was a right of grazing on the Beacons is, at best, evidence that the then Vendors believed such right to exist, and there was no evidence adequate to show that such a belief was correct. The evidence of the two witnesses called by Mr Cawthorne as to the exercise of the rights was hearsay and even if admitted as of some evidential ~~value~~, included nothing as to the length of the period of actual and continuous exercise of the rights so as to found a claim to the rights by prescription: and on the evidence there is no basis other than prescription on which to base the claim. The evidence called by Mr Harris raises strong doubts as to the existence of the rights claimed, but it suffices to say that irrespective of that evidence there was no adequate proof of their existence, and I refuse to confirm the registrations at Entries Nos. 43 to 47.

Mr Harris asked for an order for costs. In this connection I should observe that Mr Settle after hearing the evidence then produced on behalf of the County Council refused to confirm the registrations. At this hearing the County Council has pursued the matter and adduced the further evidence of the two witnesses called



-3-

by Mr Cawthorne: in my view that further evidence has added little or nothing to support the claim, and in the circumstances I shall order the Powys County Council to pay the Association's costs of this hearing, so far as attributable to the dispute relating to the registration at Entries Nos. 43 to 47, such costs to be taxed on Scale 4.

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

23 August

1982

L. J. Morris Smith

Commons Commissioner