



In the Matter of Cefn Modfedd, Uwchygarrreg

DECISION

This dispute relates to the registrations at Entry No 1 in the Land Section and Entries No 1 2 and 3 in the Rights Section of Register Unit No.CL.9 in the Register of Common Land maintained by the former Montgomeryshire County Council and is occasioned by Objection No. 195 made by D J Griffiths and noted in the Register on 16 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Welshpool on 4 June 1980. The hearing was attended by Mr B Roberts, Solicitor, appearing on behalf of the applicants for registration of Entries No 2 and 3 in the Rights Section: by Mr W M Davies the applicant for registration of Entry No 1 in the Rights Section: and by Mr J H Parsons, Solicitor, appearing on behalf of the Objector.

The registration as common land was made in consequence of the rights application: Sir Owen W W Wynn is registered as owner of the land in question ("the Unit Land") and his registration has become final.

The Unit Land Cefn Modfedd, of some 118 acres, lies to the west of Pontybedw and Ffridd y Cleiria. The registered rights are to graze sheep over the whole of the unit land and the Objection is on the ground that "the land or some part thereof crosshatched black on the plan (accompanying the objection) was not common land at the date of application". It became clear that the Objection did in fact relate to the part hatched black ("the black part") which is the northern section of the unit land, and not to the whole of the unit land, Mr Griffiths claiming that he owned the black part. Giving evidence he said that in 1943 he purchased Dolcaradog, a property lying to the north of the Unit Land. The conveyance does not include the Unit Land, but Mr Griffiths produced an Agreement dated 25 July 1856 between Sir Watkin Williams Wynn and Edward Davies. The Agreement recites that Sir W W Wynn is lord of the manor of Cyfeiliog and entitled to the soil of the waste of the manor, that E Davies is the owner of certain freeholds which included Dolcaradog and as such entitled to the right of sheepwalk on the pieces of land therein described being the part of the waste of the manor and that Sir W W Wynn has consented to an inclosure of the sheepwalks on the terms therein mentioned. The Agreement provided that E Davies might maintain and erect fences on and till the sheepwalks shown on the plan and it was agreed that the rights and interests of the lord of the manor in the soil continued. Mr Griffiths said that he claimed by virtue of the Agreement to own part of the unit but I can see no basis for this claim and indeed it is not altogether clear what part, if any, of the unit land is comprised in the sheepwalks indicated on the plan on the Agreement, which appear on the plan to lie to the south and south east of Pantybedw. It is also to be observed that the Agreement refers to E Davies accepting the "privilege of Inclosure" and it does not seem to me that the Agreement operated to create any proprietary rights enuring for the benefit of Dolcaradog.



From Mr D J Griffith's evidence and that of Mr John Griffiths, his tenant, it appeared that the tenant ploughed the black part some ten years ago, that it was fenced by them in 1979 and that the tenant obtained a Government grant and has done some cultivation and seeding on the piece and that Mr W M Davies took down part of the fence and put his sheep in.

Right No. 3 (to graze 150 sheep for the unit land) was registered in respect of Aberfelin and Noel Goeddyd by Richard Jones Jane Jones and Meirwen Hughes (their daughter). Mrs Hughes in evidence said that they came in 1929 as tenants of Aberfelin which they purchased in 1946, and grazed over the whole of the unit land from 1929, and it was also grazed by Mr Williams (Right No. 2) and the fatherinlaw of Mr Davies (Right No 3). A plan was produced (which I have marked M H) showing the unit land divided into three sections, the north west section edged blue (" the blue section") the central section edged red ("the red section") and the southern section edged green ("the green section"). Mrs Hughes said that there had been a fence for many years between the red and green sections and that the green section was grazed by Mr Williams and the red and blue sections by Mr Davies and her father. In 1962 a fence was put up between the red and blue sections, this was done with the mutual agreement of the commoners and Sir G W W Wynn was not consulted; the fences reproduced the way in which grazing was actually done- they on the blue section and Mr Davies on the red and were not a withdrawal of a claim to graze over the whole unit; they (her family) had ploughed the blue section. Mr Griffiths had never alleged rights over the land until the late 1960s.

Right No. 2 (to graze 150 sheep) was registered in respect of Cleiriau Isaf by Mr R E Williams, whose successor is Mrs Williams, and evidence was given by their daughter Mrs Anwyn Evans. A conveyance of Cleiriau Isaf to a predecessor in title dated 3 February 1910 conveyed the property "together with the right of pasturage on the unenclosed sheepwalk on Cefn Modfedd abutting on the said farm" ie the unit land. Mrs Evans said in regard to the fence put up between the red and green sections that this was agreed, she understood, at a meeting between her father, Mr Davies's father in law and Mr R Jones. The green part is their grazing land: there had been no disputes between her father and Mr Griffiths and before latter's objection she did not know of any rights claimed by him.

Right No 1 (to graze 160 sheep) was registered in respect of Pant-y-bedw by Mr W M Davies. He bought this property in 1959 from his father in law who had grazed on the red and blue sections, which he himself continued to do until the fences were erected, after which he grazed on the red which he still does. The fencing is convenient and was done with his agreement. He ploughed the land after Mr Griffiths had ploughed.

Mr Parsons did not seriously challenge the evidence as to grazing and in my view this evidence sufficiently established the rights of grazing. The black part, to which the objection relates, comprises the blue section and part of the red section, and, as I understood, the objection was based on a contention that under the agreement of 1856 and in the light of the activities of Mr Griffiths and his tenant on the black part, Mr Griffiths had rights of or a kin to ownership of the black part which entitled him to exclude the exercise of grazing rights. I do not think that this contention succeeds and, in the result, I confirm the registrations.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that the persons aggrieved by this decision as being erroneous in point of law may within 6 weeks from the date on which notice of this decision is sent to him, require me to state a case for the decision of the High Court.

Dated *L. A. Morris Smith* this *15* day of *September* 1980