COMMONS REGISTRATION ACT 1965 Reference No 276/D/51

In the Matter of Cwm-y Wyn and
Medwalleth Common, Beguildy,
Radnor D

DECISION

This dispute relates to the registration at Entry No 18 in the Rights Section of Register Unit No CL. 20 in the Register of Common Land maintained by the former Radnorshire County Council and is occasioned by Objection No 17 made by A Pugh & Sons and noted in the Register on 30 May 1969.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 8 November 1977.

Mr Gareth-Morris of Messrs Dilwyn Jones & Sons appeared for Mr Gardner and Mr P Morris of Messrs E P Careless & Co appeared for Mr A C Pugh.

This common is 1880 acres in area and there are more than thirty commoners entitled to graze the common, and all of these with the exception of Mr Gardner now accept that their rights fall to be quantified on the scale of 3 sheep units for each acre of land owned by them. Mr Gardner's provisional claim on the Register is for 300 sheep units but at the commencement of the hearing Mr Gareth-Morris stated that Mr Gardner had now reduced his claim to 150 sheep units. Mr Gardner's farm Cwm Fodl is 21 acres in area, and his claim is therefore to graze 7-8 sheep for each acre owned by him.

Mr Gardner and Mr J L Mills gave evidence in support of Mr Gardner's claim and Mr A C Pugh and Mr S J Pugh gave evidence on behalf of the Objector.

A great deal of the evidence was addressed to the question as to whether if the rule of levancy and couchancy is applicable Mr Gardner's farm can support 150 sheep in the winter months. There was no substantial conflict of evidence on this point and I need not refer to it in detail; it did establish that the farm Cwm Fodl could grow sufficient hay to maintain 150 sheep in the winter months and Mr Gareth-Morris rested his case on this evidence.

The evidence as to the grazing from Cwm Fodl was that Mr Gardner's brother acquired this farm from a Mr Botwood in 1947 and that a Mr Jones farmed as tenant from 1940 to 1947 turning out 40-60 sheep until shortly before he moved in 1947 when his flock had increased from 90-100. Mr Gardner's brother started in a small way and by 1952 when he purchased another farm Bryn Sych he had increased his flock to 40-60 and he then further increased his flock eventually up to 200 sheep. Mr Gardner who took some part in the purchase of Cwm Fodl said the auctioneer told him that the grazing was unlimited. Mr Gardner stated that the intention was to keep Welsh sheep at Cwm Fodl and this had always been done. It was said that Welsh sheep require less sustenance than other breeds but in my view I cannot distinguish between breeds on the Register. Mr Gardner said hay

had never in recent times been grown at Cwm Fodl and that such hay as was required was brought over from Bryn Sych or some other source. Mr Gardner stated that he had never heard of the scale of 3 sheep units to the acre. No authorities were cited to me in argument and the question I have to resolve is whether or not the rule of levancy and couchancy is applicable notwithstanding the acceptance by all the other commoners of the scale of 3 sheep units to the acre.

I am in my view bound to presume in the instant case where all the commoners accept a scale less than that of levancy and couchancy that the common is insufficient to support the number of animals which could by grazed if that rule were applicable. Presuming as I do presume that the Common is insufficient for grazing in accordance with the rule I am in my view bound to presume that where as in the instant case one finds a scale accepted by all but one of the commoners, that such scale was and is the custom binding on all the commoners.

Common sense compels one to assume that the rule of levancy and couchancy can never have applied to a small area of common surrounded by large farms capable of supporting flocks which the common was never sufficient to maintain. In such cases a different smaller scale was fixed either by the manorial court or by agreement which by long user established a custom; see Halsbury Laws of England 4th Edn Vol 6 p 204.

No evidence was led as to the origin of the scale of 3 sheep units to the acre but its acceptance by all the commoners with the exception of Mr Gardner in my view entitles me to presume that it was and is binding on all the commoners. I find some support for this view in the judgment of Fry LJ in Robertson v Hartopl 43 ch Div 484 at p 518 where in commenting on the decision in Lascalles v Lord Onslow 2 CBD 433 he says "in the absence of any other evidence the actual user of the common for the last ten years might be regarded as some evidence of the extent of the rights of the commoners and in that point of view the case may be correct". I also attach some significance to the fact that Mr Jones observed the scale of 3 sheep to the acre until his flock increased when he moved away. Mr Gardner's brother could of course not have acquired from Mr Botwood any greater right than Mr Botwood's farm had in 1947.

I have come to the conclusion that the scale of 3 sheep units to the acre was and is binding on all the commoners and for this reason I confirm Mr Gardner's registration modified so as to be limited to 63 sheep units.

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 17th day of March 1978

G. J. Le Hir

Commons Commissioner