



COMMONS REGISTRATION ACT 1965

Reference No. 276/D/299-301

In the Matter of Deildref Common Llangurig
Montgomery D

DECISION

These disputes relate to the registration at Entry No 1 in the Rights Section of Register Unit No. CL.43 in the Register of Common Land maintained by the former Montgomery County Council and are occasioned by Objection No. 15 made by Mrs M A M Thomas, Objection No. 23 made by Mrs L M Williams and Objection No. 28 all noted in the Register on 6 October 1970.

I held a hearing for the purpose of inquiring into these disputes at Welshpool on 14 June 1979. The hearing was attended by Mr J Little, Counsel, instructed by Messrs. Dilwyn Williams on behalf of Mr A M Davies on behalf of Mr A M Davies the applicant for Rights and by Mr R Spencer, Counsel, instructed by Messrs. Milwyn Jenkins and Jenkins on behalf of the Objector.

The principal contestants in this case are Mr A M Davies who farms at Deildref and claims by his Entry No 1 to graze 45 sheep on the unit land and Mr Rowlands who farms Bryn Cylla as the successor to Mrs Thomas and who by Entry No 4 claims to graze 100 sheep. The other two objectors are applicants to graze 10 sheep from 1st May to 1st October from two relatively small parcels of land and who have joined forces with Mr Rowlands.

Mr A M Davies in addition to the land surrounding the house and farm buildings at Deildref owns and farms an enclosed parcel of land which adjoins the unit land on the north (at the hearing and hereinafter referred to as the Yellow Land). The County Archivist produced a tithe map which showed the yellow land and the unit land as being part of a larger area of common, then known as Deildref. Mr Little did not produce any documents of title but he told me, and it was, not disputed that Mr A M Davies acquired his land including the yellow land from a Mr Bound in 1956. Mr Bound and his father William Bound had farmed at Deildref for very many years.

Mr Rowlands is the nephew of the late Mrs Thomas and she and her late husband acquired the farm Bryn Cylla from a family by the name of Turner in 1949 and Mr Spencer produced a conveyance dated 20 June 1921 whereby H L L Varney & Sons conveyed Bryn Cylla to David Turner together with such rights of grazing turbarry and pasturage (if any) as are now enjoyed by the purchaser in his capacity as tenant of the vendor over the adjoining sheep walk coloured green on the plan. The said plan identified the sheepwalk mentioned in the conveyance as being the Unit Land and on the sheepwalk on the plan are written the words "sheep run shared by Bryn-Cylla Ochr Deildref Maes Curig, Pen-y-Cae. The registrations at Entries Nos 2 and 3 are for Ochr Deildref and Maes Curig. No registration was made for Pen-y-Cae and my understanding is that there would have been no objection to such a registration if it had been made. Indeed Mr Rowlands said his aunt was interested in buying Pen-y-Cae when it came on the market but when she found no rights had been registered she lost interest.

It is settled law that if a commoner acquires part of the common by so doing he forfeits his rights over the remainder of the common and therefore I must infer either that if Deildref did once have common rights when the common included the yellow land, these rights were forfeited when the yellow land passed into the same ownership as the farm Deildref. Alternatively if the



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yellow land and the farm Deildref were conveyed to William Bound or his son by the owner of the common that conveyance did not include a grant for the good reason that the conveyance of the yellow land was in lieu of common rights. Some store was set by Mr A MDavies on the existence of an ancient gate post as indicating that there was once a gate leading from Deildref direct on to the common. This is consistent with Diildref having been entitled to common rights before the yellow land was severed from the common.

and in the absence of any evidence to the contrary
On this evidence, I must assume that neither William Bound nor his son ever had a proper title to the common right now acquired by Mr A M Davies.

In these circumstances Mr Little was compelled to claim a prescriptive title, either at common law or under the Prescription Act of 1832 or by lost grant. The onus of proving this title lies squarely on Mr A M Davies.

Mr A M Davies gave evidence that though he purchased Deildref in 1956 he did not move into the house till 1959. Mr Bound was a sick man and remained in the house when he was not in hospital. Mr Davies then lived two miles down the valley. He purchased Mr Bound's stock and he farmed the farm during the period 1956 to 1959.

Mr Davies said he had sheep on the hill and the trouble started when he and his wife came to live at Deildref. He said he had not had a lot of luck, the sheep were turned back either to his other hill or on to his fields and he did not know by whom. He kept on trying to graze sheep regularly. The owner never asked him to take sheep off.

I pause at this stage to deal with a submission by Mr Little that objections by other commoners were neither here nor there and that it was only the owner of the common who could by his objection prevent Mr Bound and later Mr Davies acquiring a title by long user. I reject this submission.

A right of common is a proprietary right and if a trespassor puts his sheep on the common which will deprive the commoner of the pasture to which he is entitled the commoner is entitled to protect his proprietary right. In many cases the owner of the common has no interest in the grazing and in some case he cannot be traced. A Commoners right of common would be a little or no value if he had to rely on the owner of the common to protect his right.

The evidence given at the hearing was on many matters conflicting, but even if I accept Mr Davies evidence to which I have referred above as wholly accurate it is clear that from 1959 to June 1968, when he registered his claim to rights he was no grazing his sheep on the unit land "as of right," he knew their presence on the unit la was contested. It was common ground that there was an incident in 1964 when Mr Thomas and Mr Davies had words and Mr Thomas turned Mr Davies sheep off. Consequent on this incident Mr Davies said in cross-examination that he placed the matter in the hands of the Farmers Union of Wales but I was left in ignorance as to what, if any, action the Union took.

In the light of the evidence given, by Mr Davies himself, he can in my view only have the right which he claims if Mr Bound had that right in 1956 and it passed to him under the 1956 conveyance.



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Mr John Davies gave evidence . He married Miss Pakeman, the owner of Pen-y-Cae in 1957, he courted her for 6 or 7 years. He said he knew Mr Bound and saw his sheep on the unit land. Mr Bound's sheep were marked with a red B and he guessed that Mr Bound had about 30 to 40 sheep.

Mr R Brown aged 80 gave evidence that he had lived in the area all his life and that he knew Idris Bound (the father) who was a relative by marriage. He used to visit Idris Bound in the 1920's who had a grazing right on the "Hill" and put his sheep out, they used to walk together and he saw Bound's sheep on the Hill. He never visited William Bound (the Son).

Mr Rowland in his evidence said he went to work at Bryn Cylla in 1953 and during the period 1953 to 1956 he never saw any of Bound's sheep on the Hill

Catherine Ada Turner was born at Bryn-Cylla and she said she remembered the 1927 conveyance. She was then 14 to 15 years old. Her father was the tenant when he purchased the farm she said. She went on the Hill scores of times and never saw any of Bound's sheep. She said that Bound and her father were the best of friends, this was Idris Bound. There were strays which were turned back. She said in the early days sheep were not the main part of the farming.

Mr J W Jones gave evidence that he had a right to graze 10 sheep on the Unit Land which he exercised from 1939/40 to 1977. In the summer he was on the Hill most Sunday mornings and he never saw any of Bound's sheep.

In my view the evidence of Mr John Davies to the period commencing in or about 1950 and that of Mr R Brown falls far short of that required to establish a prescriptive right acquired by Idris and William Bound. I was impressed by the evidence of Catherine Turner, in the days when her father and Idris Bound were firm friends and when sheep were not a major factor in the farming activities. It is possible that there were many strays and that they were tolerated. This neighbourly attitude appears to have persisted as long as the Bounds were at Deildref. Mr Davies said he had no trouble till he went to live at Deildref. Neither Idris nor William Bound could acquire a prescriptive right if the grazing of their sheep on the Unit Land was permissive or attributable to mere tolerance, and if there was any such grazing this may well have been the case when there were not many sheep at Bryn Cylla.

I am happy to be able to decide this case on the footing that Mr A M Davies has not discharged the burden of proof which lies on him, so that I do not have to deal with the conflicts in the evidence, as to which I say nothing. This will I hope enable Mr Davies and Mr Rowlands to establish a good neighbourly relationship such as existed between their predecessors.

For the reasons given above I refuse to confirm the Registration.

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

16th

day of

July

1979

G. A. Little

Commons Commissioner

" For addendum to this decision, see next page."



Addendum to decision dated 16 July 1979

I have since writing my decision dated 16 July 1979 received copies of Mr Davis title deed.

Four conveyances dated respectively 4 June 1912, 18 March 1921 21 May 1941 and 26 June 1956, this last conveyance being the conveyance to Mr & Mrs Davies all described in the parcels the land conveyed as

" all that messuage a tenement and lands with the appurtenances thereto belonging called or known by the name of Deildre situate lying and being in the parish of Llangwring".

There are no maps or plans on or annexed to any of these conveyances but Mr Davies has with his title deeds a statutory declaration made by William Idris Bound with a plan attached. Mr Bound declared that the farm Deildre comprised the land edged in red on the said plan and that the access to the farm and O S No. 2210 was along the routes coloured brown on the said plan which lead to the public highway.

The photocopy of the plan does not show the colouring nor can I find O S 2210 on the plan which may well be the yellow land which adjoins O S No. 2211.

The four conveyances mentioned above do not refer to common rights nor do they throw any light on when or how the yellow land came to be in the same ownership as the farm Deildre.

Mr Davies title deeds do not ^{change} ~~convince~~ me to alter the view which I expressed in my decision that such rights as may have been appurtenant to Deildre were terminated either by operation of law or by agreement when the yellow land was taken out of the common and passed into the same ownership as the farm Deildre. An earlier conveyance dated 10 June 1846 which did refer to common rights was sent to me, but this was prior to the conveyancing Act 1881 when the practice was to include all appurtenances which might be appurtenant to the land whether or not they existed and of course it cannot affect the situation created when the yellow land was taken out of the common.

G. A. Little

30 July 1979