



COMMONS REGISTRATION ACT 1965

Reference No. 276/D/436-445

In the Matter of Epynt in the Parishes of Llanfihangel  
Nant Bran and Merthyr Cynog, Brecknock B

DECISION

These disputes relate to the registrations at Entries Nos. 1 and 2 in the Land Section and Entries Nos. 1-36 in the Rights Section of Register Unit No. CL 5 in the Register of Common Land maintained by the Powys County Council. They are occasioned, first, by two Objections No. 109 made by Mr I Pritchard and No. 171 made by Mr W J Phillips both noted in the Register on 22 December 1970 which are Objections to the Land Section Entries and consequentially to all the Rights Entries: Secondly by Objections Nos. 125, 126 and 127 (noted in the Register on 2 November 1970) and Nos. 609, 610 and 611 (noted in the Register on 10 March 1972) all made by Middle Epynt Commoners ("the Association"). The registrations at Entry No. 1 in the Land Section was made on the application of the Association and that at Entry No. 2 on the application of Eagle Star Insurance Co Ltd ("Eagle Star").

I held a hearing for the purpose of inquiring into the disputes at Brecon on 7 July 1981. The hearing was attended by Mr I Pritchard in person, by Mr C Masterman, of Counsel, appearing on behalf of Mr W J Phillips and of Mr G H Powell (Rights Entry No. 31): by Mr R Jones Chairman of and representing the Association and by four applicants for registration in the Rights Section - Mr J Williams (Entry No. 4) and Mr J L Davies (Entry No. 20), Mr G Richards (Entries Nos. 26 and 27) and Mr J R E Davies (Entries Nos. 11, 12 and 13).

Objection No. 109 Mr Pritchard's Objection relates to a small triangular area adjoining a property called Blaengwy on the eastern boundary of the Unit land at its southern end. This area I was told was not included in the Association's application to register: no one present resisted the Objection and I shall exclude the area from the registration.

Objection No. 171 Mr Phillips's Objection relates to a small area ("the disputed area") which lies at the northern end of the Unit land on its western boundary. By a Conveyance dated 8 April 1960 the Vendors (the Executors of M Morgan) conveyed to Mr Phillips a farm and premises known as Rhulan Farm, which adjoins on its north-eastern boundary the disputed area. The Conveyance recited that M Morgan was at the date of his death in 1941 in nominal possession of the disputed area and had been for upwards of 12 years, and that the Vendors had continued in such nominal possession since M Morgan's death: the disputed area (as well as Rhulan) was conveyed to Mr Phillips for all the estate and interest of the Vendors of M Morgan.

Mr Phillips, giving evidence said that before he purchased Rhulan Farm he was tenant from 1953, since when he had his stock on the disputed area and only occasionally were there stray sheep from the common on it. In 1978 he erected



a fence on the eastern boundary of the disputed area on the line where it adjoins the common. No one had objected to his use of the disputed area and he claimed to have exclusive rights over it.

The Objection was resisted by the Association and Mr R Jones said that the disputed area was subject to equal rights in favour of other farms besides Rhulan, and Mr J Davies said that sheep always grazed on the disputed area until the fence was erected in 1978.

Mr Phillips's case, as I understood it, was that since 1953, when he became tenant of Rhulan, he had enjoyed exclusive rights of grazing on the disputed area and had acquired ownership of it in 1960. He did not deny that there may have been grazing rights exercisable by others over the disputed area but maintained that such rights had not been exercised since 1953. This, as I see it, is essentially a contention that such rights had been abandoned by non-user. Abandonment of rights of common can only be treated as having taken place where the persons entitled have demonstrated a fixed intention never at any time thereafter to assert the rights (see *Tehidy Minerals v Norman* 1971 2QB 528). In my opinion the evidence did not establish such an intention and accordingly this Objection does not succeed. I should add that this decision is not adverse to Mr Phillips's claim to own the disputed area: but for the purposes of this decision, it is not necessary to decide that question, which will arise for determination if and when the question of ownership is referred for decision by a Commons Commissioner.

I turn now to the Objections to individual rights made by the Association. The rights objected to are those registered under Entries Nos. 20, 25, 27, 31, 34 and 36.

Entry No. 20 This registration was made by Mr J L Davies and is of a right of grazing claimed to be attached to Pant Farm. Mr Davies in evidence said that he bought the Farm in 1966 and was told by the Vendor that there were grazing rights on the Unit land, but that they had not been exercised since 1946: Mr Davies himself had not exercised them. On this evidence I am not satisfied that the rights claimed do exist and I refuse to confirm the registration.

Entry No. 25 This registration is now withdrawn and accordingly I refuse to confirm

Entry No. 27 This Entry has been amended in the Register to meet the Objection, and I confirm the registration in its amended form.

Entry No. 31 Evidence was given in support of the right claimed and the Objection was withdrawn. Accordingly I confirm the registration.

Entry No. 34 There was no appearance by or on behalf of the applicant for registration, Mr G J Owen; I shall give effect to the Objection and modify the right to a right to graze 135 sheep or sheep equivalent, one pony to equal 4 sheep, and a right to cut fern or gorse.

Entry No. 36 The right registered on the application of Mr Phillips, is of a right to graze 268 sheep or equivalent in ponies. The objection states that the right should comprise 24 fewer sheep, but the Association now claims a reduction of 22 not 24. It is agreed between the parties that the reduction should only be made if Mr Phillips is not the owner of the disputed area. As I have said, I do not on the present references make any definitive finding as to ownership, but Mr Phillips made out a prima facie case for ownership and on



this basis I shall, for the purpose of the dispute as to the rights, give effect to what has been agreed and confirm the registration without modification.

In the result I confirm the registrations in the Land Section modified by excluding from the land the area which is the subject of Mr Pritchard's Objection. As regards the registrations in the Rights Section, I refuse to confirm those at Entries Nos. 20 and 25, I confirm the registrations at Entries Nos. 27 (as amended) 31 and 36 without modification, and I confirm the registration at Entry No. 34 modified as indicated above.

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 September 1981

*L. J. Morris Smith*

Commons Commissioner