



COMMONS REGISTRATION ACT 1965

Reference No. 276/D/538-559

In the Matter of Land in Parishes of Gladestry, Colva,  
Llanfihangel Nantmelan, Trewern and Gwaithla, Radnor D

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and to the Entries in the Rights Section of Register Unit No. CL 50 in the Register of Common Land maintained by the Powys County Council. They are occasioned by the following Objections:-

Objections to registration in the Land Section (and consequentially to all Rights)

No.	Objector	Date of noting in Register
797	J R Niblett	12 October 1970
750	D T Jackson	12 October 1970
678	E T C Bowen	12 October 1970
553	J Lewis, Dorothy E Lewis and T J Lewis	12 October 1970
591	Sir A C L Duff Gordon	12 October 1970

Objections to registrations in the Rights Section

No.	Objector and Entries Objected to	Date of noting in Register
48	S J P Lloyd: Nos. 1-7,9-15,17-18 and A D Rogers 30-33	19 December 1969
910	S J P Lloyd: " " " "	25 September 1970
320	L H Marshall: No. 20	26 September 1970
589	Sir A C L Duff Gordon: No. 20	28 September 1970
975	I J Lloyd: Nos. 25,26,28,29	12 July 1972
986	A D Rogers: Nos. 25,26,27,29-36	28 July 1972
999	Sir A C L Duff Gordon: No. 25	28 July 1972
588	Sir A C L Duff Gordon: No. 26	28 September 1970
1000	Sir A C L Duff Gordon: No. 26	28 July 1972
587	Sir A C L Duff Gordon: No. 28	28 September 1970
998	Sir A C L Duff Gordon: No. 28	28 July 1972
985	A D Rogers: No. 28	28 July 1972

I held a hearing for the purpose of inquiring into the disputes at Llandrindod Wells on 5 October 1982. There were the following appearances at the hearing:- (1) Mr H Cave, Land Agent of and representing the County Council, which had registered the land under Section 4(2)(b) of the 1965 Act. (2) Mr M Jarman, of Counsel, appearing on behalf of the Objectors making Objections Nos. 797, 750, 678 and 553 and of Mr J N Williams (Rights Entry No. 28). (3) Mr L A Wallace, Land Agent, representing Sir A C L Duff Gordon. (4) Mr G Morris, Solicitor, appearing on behalf of the estate of A D Rogers, and of Mr T Rogers (Rights Entry No. 31). (5) Miss A Davies, Solicitor, appearing on behalf of Gladestry and Colva Commoners Association (Objection No. 975).



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(6) Mr P Morris, Solicitor, appearing on behalf of Mr A E Jones (Rights Entry No. 29). (7) Mr J Bengough, Land Agent, representing Glanusk Estate Trustees (Objection No. 320).

A. Objections to registration in Land Section, (and consequentially to Rights)

Each of these five Objections related to a different part of the Unit land, the part being shown on the plan accompanying the particular Objection: each Objector is registered as owner of the part to which his Objection relates.

Consent to these Objections was given by those Rights holders represented at the hearing, and had been obtained in writing from the remaining Rights holders except one, Rights Entry No. 33, who had not been traced. The Objections were not resisted by the County Council. In these circumstances I shall give effect to the Objections, and confirm the Land Registration modified by excluding the five parts to which the Objections relate. Accordingly none of the rights registered will be exercisable over the excluded areas.

B. Objections to registrations in the Rights Section

(1) Objections 48, 910 and 986. The Rights Entries objected to are entries claiming rights over the whole of the Unit land, and these three Objections are to the rights so far as they are claimed to be exercisable over part of Gwaunceste Hill, this part ("the Gwaunceste part") being shown hatched red on the Register map. The great majority of the rights holders affected by these Objections have agreed to accept the Objections, and so far as they are concerned I shall modify their rights by excluding their application to the Gwaunceste part. There are two who have not so agreed: one, the claimant to the right under Entry No. 33 who was not present or represented, and I shall in the absence of evidence to support the claim also modify the right to the same extent: the claim of the other (Entry No. 29) I consider separately below. Two of the claimants (Entries Nos. 25 and 26), represented by Mr Jarman, are agreeable to their Entries being cancelled, and accordingly I refuse to confirm those two registrations.

(2) Objection 975. This Objection is referred to me as concerning Rights Entries Nos. 25, 26, 28 and 29 and relates to their exercise over the part of the Unit shown on the plan accompanying the Objection which is the part lying to the east of the Gwaunceste part and includes Llanfihangel Hill. Since Rights Entries Nos. 25 and 26 are to be cancelled there is no need to consider the objection so far as they are concerned: and as regards Entry No. 28 it has been agreed that the exercise of the rights shall be limited to the Gwaunceste part. Entry No. 29 is considered below.

(3) Objections 320 and 589. These are Objections to Entry No. 20, registered by Mr B J Arnall who was not present or represented at the hearing and whose Solicitors had written to withdraw the rights: accordingly I refuse to confirm the registration.

(4) Objections 999, 588 and 1000. These are Objections to Entries Nos. 25 and 26



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which, as mentioned above, are to be cancelled, and the Objections do not therefore require further consideration.

(5) Objections 587, 988 and 985. These are all Objections to Entry No. 28 which it has been agreed shall be modified, so as to be restricted to the Gwaunceste part and to limit the grazing right to 200 sheep units.

Rights Entry No. 29. This entry, made on the application of Mr A E Jones, is of a right to graze over the whole of the Unit land sheep, cattle and horses to a limit of 200 sheep units and a right to take bracken for litter. The rights are stated in the Register to be attached to part of a property called Upper Wernwilla, the part being some 70 acres in area.

Mr P Morris produced a number of documents. In 1945 the Gladestry Estate, was put up for sale by auction. The particulars of sale included as lot 30 Upper Gwerwilla of some 160 acres and stated that the land "has grazing rights on Colva Hill". It appears that the property was not then sold but at a subsequent sale in 1950, when again the particulars stated that "there are grazing rights on Colva Hill", part (the 70 acres) was sold to Mr R Davies. In answer to Requisitions made by his solicitors it was stated that "the vendor has no particulars of these grazing rights which have been in existence for very many years". In the Conveyance to Mr Davies dated 8 March 1951 the property included "the right as at present enjoyed with the premises.....to turn out for grazing or pasture on Colva Hill.....". Mr Davies put the 70 acres up for sale in 1962, the particulars stating that "there is a right of grazing on Colva Hill". Eventually the property was conveyed by Mr Davies to Mr A E Jones and in the Conveyance dated 29 October 1965 the parcels included "all such rights as may be appurtenant or appendant to the property...to turn out for grazing or pasture sheep on Colva Hill".

A statutory declaration dated 5 October 1982 by Mr R Davies was put in from which it appeared that from 1946 until 1952, he farmed the 70 acres first as tenant and after 1951 as owner, together with his own farm, Colva Farm, and turned out sheep on Colva Hill from both properties. He sold Colva Farm in 1952 and did not after that turn sheep out from the 70 acres, but it was never his intention to abandon the rights.

Mr A E Jones gave evidence in the course of which he said that after he purchased the 70 acres he did not turn out sheep from there because he hadn't the right type of sheep and then the Association told him there were no rights from his land.

Mr Idris Lloyd, the Chairman of the Commoners' Association, said that the reason for the Objection was that the 70 acres were the subject of an Inclosure Award of 1813.

The Inclosure Award was produced but it was not clear that the 70 acres was the subject of an award or, if it was, that there was anything in the terms of the award to preclude the acquisition of grazing rights over the Unit land.

My conclusion on the evidence is that the rights registered by Mr Jones have not



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been established. The only evidence of the exercise of any grazing rights is that contained in Mr Davies's statutory declaration and relates to a period of six years, insufficient to establish a prescriptive right. The basis of the claim was the reference to grazing rights in the documentary evidence, which indeed does indicate the belief of the owner in 1945 and 1950 that there were sheep grazing rights and the similar belief of Mr Davies when he purchased the 70 acres. This belief may have been correct, but I am still left without any evidence as to the origin or extent of the grazing rights and it is to be observed that the documentary evidence referred to rights on Colva Hill, which is only a part of the Unit land, and that there was no reference to a right to take bracken. I am not satisfied on the evidence that the rights as registered exist and accordingly I refuse to confirm the registration.

To summarise (1) I confirm the land registration with the modification that the five parts mentioned in A above be excluded from the land. In the Rights Section (2) I refuse to confirm the registrations at Entries Nos. 20, 25, 26 and 29. (3) I confirm the registrations at Entries Nos. 21, 22 and 24 without modification. (4) I confirm the registration at Entry No. 28 modified so as to be restricted to the Gwaunceste part and to limit the grazing right to 200 sheep units. (5) I confirm the remaining registrations in the Rights Section modified so as to exclude their application to the Gwaunceste part.

Mr Jarman applied for an order that the costs of his clients, the four land Objectors, (Objections Nos. 797, 750, 678 and 553) be paid by the County Council. The registration was made by the Radnorshire County Council following applications to register rights made in March 1968: most of the applications did not precisely define the boundaries of the area over which the rights were claimed, but the County Council was aware that the commoners were not claiming rights over the four parts claimed to be owned by the Objectors. However there was some documentary evidence to suggest to the County Council that those parts might, even in the absence of rights, qualify for registration as common land as waste land of a manor, and in the upshot the whole area of the Unit land was registered and the rights registered over the whole. In 1971 when there was still time to modify the rights, the Commoners proposed to withdraw their rights over the four parts but after a meeting with the County Council, at which the then Land Agent of Radnorshire County Council advised them to leave the registrations over the whole area, the commoners decided not to withdraw their registrations over the four parts.

By hindsight it is, I think, unfortunate that the rights were not then modified and the registrations adjusted, but it was in the end the decision of the Commoners: the County Council had no axe of its own to grind and was recommending what it thought to be in the interests of the Commoners. In my view the part played by the Council in regard to the registration and the question of the inclusion of the four parts in the registration in 1968-1971 were not such as to justify an award of costs against it.

There was correspondence in 1973 between the Radnorshire County Land Agent and Solicitors for the Commoners' Association in which the question of adjusting the registrations to exclude the four parts by taking action to amend the Register



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in accordance with Regulation 27 of the Commons Registration Regulations 1966 but this came to nothing. Apparently there was no further action taken by any party to avoid the necessity of a hearing on the matter, although the disputes caused by the four objections might, as I see it, have been dealt with by consent, Regulation 31 of the Commons Commissioners Regulations 1971 if the Objectors or the Commoners had seen fit to initiate the procedure under that Regulation. The only step taken by the Objectors was that some 10 days before the hearing a representative of the Objectors solicitors discussed with County Council officers the attitude of the County Council to withdrawing the registration of the four parts. In the absence on leave of the Council's land agent they were not able to be given an authoritative statement.

It was of course then too late to withdraw the matter from the hearing, which had already been publicly notified, and I do not think the County Council was required at that late stage to commit itself in advance of the hearing. As matters turned out the Council did not oppose the Objections at the hearing and I am not prepared to criticise their attitude by ordering them to pay any costs. It was suggested that unnecessary costs had been incurred by the Objectors to prepare their case for the hearing but I am not convinced that any substantial extra costs need have been incurred. The Objectors were aware that the Commoners were not resisting their Objections, and the only use which, in the absence of rights, could have been made in support of the registration of their four parts, was that they were waste land of the manor - a case which, having regard to their private ownerships and the decision in Re Box Hill Common 1980 Ch. 109, it was not very realistic to anticipate.

Accordingly I make no order as to costs.

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

19 November

1982

*L. J. Morris Smith*

Commons Commissioner