



COMMONS REGISTRATION ACT 1965

Reference No 276/D/5-15 inclusive

In the Matter of Moelynaidd, Coxhead Bank, Llwynpentre Bank, Mill Bank and Llwynpentre, Llanbister and Llandewi, Radnor D

DECISION

These disputes relate to the registration at Entry Nos 11, 13, 19, 21, 38, 41, 42, 45, 43, 44 and 46 in the Rights Section of Register Unit No CL. 2 in the Register of Common Land maintained by the former Radnorshire County Council and is occasioned by the Objections set out in the Schedule to this decision.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 25 May 1977.

Mr Gareth Morris of Messrs Dilwyn Jones & Sons appeared for Mr D T Lewis, Mr L A Gayther and Mr A J J James the applicants for Rights under Entry Nos 11, 13 and 19 respectively, Mr Peter Morris of Messrs E P Careless & Co appeared for the Objector the Moelynaidd Commoners Association and Miss J Phillips appeared for the Objectors the Crown Estate Commissioners.

The Objections of the Crown Estate Commissioners were limited to claims to rights of piscary claimed by the applicants for Rights under Entry Nos 43, 44 and 46 who did not appear and Miss Phillips informed me that these claims to rights of piscary had been withdrawn and I therefore confirm Entry Nos 43, 44 and 46 modified so as to exclude the rights of piscary.

Before I deal with the remaining objections it will be convenient to set out the background to these disputes. Mr T D Pritchard the Secretary of the Association gave evidence that he was aged 47 and had lived on his farm all his life. He said that at the first meeting of the Association members were asked to put forward their suggestions as to the numbers they should graze or any other suggestions. There was no response to this invitation so Mr Pritchard put forward his own suggestion on a list similar to that given in evidence. The list was agreed by the majority and it was passed and seconded by a majority with a vote of thanks. The members then "slept on it" and on second thoughts the list was not acceptable so there was another meeting at which a subcommittee was appointed which later prepared another list which was presented to a third meeting. The members present were not asked for their opinions; they were told that if they had any objections they were to send them to the Secretary in writing and if they had no objections they were to collect their forms of claim and return them completed by a given date. There were objections by some who registered what they thought fit. The effect of this was to bring the numbers of animals for which claims were made above the aggregate number which the Association thought the Common could sustain and the Association took the view that some of the claims were unfair and that it should object to these claims.



The Common is 1173 acres; the Association took the view that it would sustain 4 sheep or the equivalent to an acre making 4692 sheep or their equivalent.

It was accepted by the Association that all the claimants for rights had rights and the disputes only concern numbers. The list put in evidence being that for which the Association contends disclosed some sort of scale heavily weighted in favour of small holdings and against large farms. By way of illustration I quote some illustrations viz:-

| | | |
|----------------|-----------------------|---------|
| Fish Pond | 1 $\frac{1}{2}$ acres | 8 sheep |
| Lower House | 3 $\frac{1}{2}$ " | 17 " |
| Court | 12 " | 52 " |
| Boot | 30 " | 80 " |
| Tylers | 52 " | 104 " |
| Great Caite | 100 " | 125 " |
| Bronllys | 211 " | 150 " |
| Transcoed | 241 " | 190 " |
| Maylord & Cefn | 294 " | 160 " |

Mr Pritchard did not in his evidence contend that the weighting illustrated by the figures set out above had any historical origin; it did no more than give effect to the views of some members of the Association. It is of course the fact that one does find many cases of small holders entitled to rights disproportionate to the areas of their holdings so as to enable them to maintain one or two "house cows" or other animals for their domestic use as for example working horses or ponies.

In the event all the registrations other than those the subject of these disputes have become final and accord with the Association's list and all except the three claimants for whom Mr Gareth Morris appeared had agreed prior to the hearing to accept the figures put forward by the Association and the effective disputes with which I have to deal are these between the Association and these three claimants.

These three claimants told me that they are prepared to conform with any scale which is fair and their particular grievances are that many of the smaller holdings are farmed together with large farms and that the owners of these large farms have by the weighting given to the smaller units procured an unfair advantage.

Whether the list put forward by the Association is fair or unfair is not for me to decide; I say no more than that it is in my view open to question. Conversely Mr Peter Morris pressed me to give a decision which would achieve total compliance with the Association's list pointing out that if I did not take that course the Association would be open to criticism from those whom it had persuaded to comply. This in my view is not a factor I can take into account in arriving at a decision. My duty is to confirm on the Register such rights as are proved to exist. It is in my view a matter for regret that once it was appreciated that there was difficulty in achieving a scheme acceptable to all the Commoners they were not left to make their own applications and a "blanket" objection was not made to all applications providing an opportunity for a Commissioner or an assessor to assist in formulating a fair scheme acceptable to all Commoners. With many registrations final it is now too late for me to take this course.



I turn now to the cases of the three above-mentioned applicants.

Mr Lewis claim Entry No 11 is for 225 sheep and the Association is prepared to concede 177 sheep.

Mr Gayther's claim Entry 13 is for 200 sheep and the Association is prepared to concede 160 sheep.

Mr James claim Entry 19 is for 180 sheep and the Association is prepared to concede 140 sheep.

Mr Pritchard conceded that all their three respective farms were capable of sustaining the respective numbers for which they claimed; he also said that the numbers on the Association's list were maximum numbers namely those for August and September when the grazing on the Common is at its peak. He said that Mr Lewis grazed no more than 125 sheep. Mr Lewis said in evidence that his grandfather purchased his farm in 1903; his father took it over in the early 1930's and he had been farming it with him since the early 1940's and the farm had always had a flock of 300 to 400 ewes. His brother Wilfred Lewis also gave evidence that he was born in 1914 and that in the 1930's D T Lewis would have been keeping at least 250 ewes excluding yearlings and old ewes. The yearling ewes about sixty in number would have been turned out in May. Mr Lewis and indeed Mr Gayther and Mr James are all entitled to unquantified grazing rights by virtue of their title deeds.

Mr Gayther gave evidence that he winters 100 ewes and had about 220 sheep on the Common in August and September; his farm is 160 acres. His evidence was that in 1938 his farm comprised 260 acres but that two lots, Lower Crosscynon of 21 acres and The Llyn of 58 acres, had been sold off and that in 1938 300 sheep were turned out. He points out that the Association have allotted 78 sheep to the 25 acres and 100 sheep to the 58 acres making 178 sheep for 84 acres while the Association have only allotted him 160 sheep for the remaining 160 acres. In the face of this apparent discrepancy Mr Gayther's dissatisfaction is understandable and since it is not disputed that his farm can sustain the 220 sheep for which he claims.

Mr James gave evidence that he is aged 49 and has lived at his farm *Dulic* Farm all his life and that his memory goes back to 1938 and that since then at least 120 ewes and about 15 horses or ponies have been turned out from that farm.

Mr Wilfred Lewis in his evidence confirmed that of Mr Gayther and Mr James. All the Commoners accept that 1 horse or pony is equivalent to 10 sheep and that 1 cow is equivalent to 5 sheep.

Mr Lewis's farm is 185 acres, Mr Gayther's farm is 160 acres and Mr James' farm is 120 acres and their respective claims for 225, 200 and 180 sheep cannot be said to be unreasonable when compared with the 125 sheep allotted by the Association to the 100 acres of Great Cantal or the 100 sheep allotted to 50 acres of the Llyn.

In a case where an association puts forward a scheme which is on its face ~~value~~ both reasonable and fair to all the commoners and only a few applicants dissent from that scheme, I take the view that I am entitled to presume that the rights which are exercisable are those which are in the best interests of all the commoners. In my view however that is not this case. I have come to the conclusion that the



rights claimed by Mr Lewis, Mr Gayther and Mr James are both reasonable and those which they have exercised in the past, and in my view neither the Association nor I can deprive them of those rights, and for this reason I confirm Entry Nos 11, 13 and 19.

In the light of what Mr Peter Morris told me I must confirm Entry Nos 21, 38, 41, 42 and 45 modified as follows:-

| | |
|--|-----|
| Entry No 21 so as to limit the grazing right to 80 sheep | |
| 38 | 60 |
| 41 | 36 |
| 42 | 28 |
| 45 | 190 |

or their equivalent numbers of horses, ponies or cows.

I have refrained from dealing with the specific complaints made of the Association's list in the hope that notwithstanding the Entries on the Register the Association will with the cooperation of all the Commoners be able to ensure that the Common is not over grazed.

The schedule above referred to

| | | |
|--|--------------------------------|--------------------|
| Objection No 26 made by Moelynaidd Commoners Association entered | | on the Register on |
| | | 25 November 1969 |
| 27 | " | " |
| 31 | " | " |
| 33 | " | " |
| 112 | " | 11 September 1970 |
| 574 | " | 29 September 1970 |
| 575 | " | " |
| 929 | " | 23 November 1970 |
| 958 | The Crown Estate Commissioners | 9 June 1972 |
| 959 | " | " |
| 960 | " | " |

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 20th day of June

1977

Y. A. Lettle

Commons Commissioner