



In the Matter of Mynydd-y-Drum Common,  
Ystradgynlais

## DECISION

This decision relates to a number of disputes arising on Register Unit No. CL.78 in the Register of Common Land maintained by the former Brecon County Council and Register Unit No. CL.98 in the Register of Common Land maintained by the former Glamorgan County Council.

The reason that these references have been heard together is that, as all agree, CL.78 and CL.98 refer to one and the same common known as Mynydd-y-Drum, Ystradgynlais.

This common which extends to some 1700 acres and had at the time of registration no internal fences, lies on the borders of Brecon (now Powys) and Glamorgan (now West Glamorgan). The county boundary runs through the south western part of the common leaving some 300 acres within Glamorgan and some 1400 acres within Brecon.

HISTORY

Where, as here, a single common lies partly in the area of one registration authority and partly in that of another, section 2(2) of the Commons Registration Act 1965 empowers the authorities to agree between themselves that one of them is to be the registration authority in relation to the whole of that common. In the absence of such an agreement a registration authority has no power to register land which lies outside its own area. Unfortunately no such agreement was made in this case.

The Glamorgan County Council on 2 January 1967 registered as common land of its own motion without application that part of the common which lay within its borders. The Brecon County Council however, on 6 May 1968, pursuant to an application made by the clerks of Ystradgynlais Higher and Ystradgynlais Lower Parish Councils, registered as common land the whole of the common including that part which lay in Glamorgan.

Since, in the absence of an agreement, the Brecon County Council had no power to register any land in Glamorgan that registration unit must be regarded as a nullity in so far as it purported to do so. As far as I can see there is nothing I can do about that fact except to record it.

It has, however, led to a situation which is unfortunate to say the least. For a single common to be registered as two separate units is bad enough. When those registrations are made by two separate registration authorities, matters become a good deal worse, but when part of that common has been registered twice, once by a registration authority which had power to do so and once by one which had not, the chances of that registration correctly recording the rights of the parties diminishes to vanishing point. And so it turned out here.

Corrected under regulation 33 of the Commons Commission  
Regulations 1971 as initialled by me on pages 10 and 11  
And as initialled on p 11  
PL-D 30 August 1990 Peter Landon-Davis 21 April 1988



First of all a considerable number of rights owners living in Brecon registered only in the Brecon registry. This is understandable enough. The register shows that all their applications were made after Brecon had wrongly registered the whole common. Probably when they went to register they were shown the register map of the whole common and were satisfied that they were claiming their full rights.

Those living in Glamorgan, however, all seem to have registered in both registers. This again is not surprising. All their registrations were made after Glamorgan had registered the small part of the common which lay in that county and applicants would probably have been told that if they wanted to register over the rest of the common they must go to Brecon.

What is more surprising perhaps is that quite a number of those who lived in Brecon had the perspicacity to register in Glamorgan as well. However a good number of the farms concerned appear to have belonged to the National Coal Board (not at the time of registration the owners of the common). No doubt the other had good advice from someone or even simply studied with care note 1 to the prescribed form of application (Commons Registration (General) Regulations\*1966. Appendix 1B Form 9) and were not misled by Brecon's invalid registration.

Thus, by the end of the registration period, the position was that some rights owners had registered their rights over the whole common while others had only succeeded in registering theirs over part.

#### THE REFERRED DISPUTES

But it did not end there. The Drym Commoners Association objected to a number of registrations (23 in all) on various grounds, but (with one exception) they only objected on CL.78, with the result that a number of rights which were duly registered on both units have become final on CL.98 but are the subject of disputes on CL.78 which have been referred to me.

On CL.98, however, the Glamorgan County Council identified a number of conflicting registrations which, as the Act requires, they have treated as objections and referred to me.

The Brecon County Council on the other hand had not, before the hearing, referred to me any disputes arising from conflicting entries. On the first day of the hearing, however, Mr Cave who represented their successors the Powys County Council, told me that certain conflicts on that register had now been identified. These cases were, at my suggestion, referred to me on the morning of the second day of the hearing.

The Commons Commissioners Regulations 1971 require written notice of these references to be given to the persons set out in regulation 14(3), and further require those persons to be given written notice of the hearing. Regulation 14 (1) also requires a notice giving particulars of the hearing to be published in one or more local newspapers.



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Since, however, all the parties entitled to notice were represented before me and since the resolution of these conflicts (which cannot alter the area of land registered as common or the number of animals which are entitled to graze over it) does not affect anyone else, I decided to dispense with these procedural requirements, and to dispose of these disputes at the same hearing as those which had been referred at the proper time. Taking into account those references the disputes before me are as follows-

CL. 78 - (Brecon) - disputes occasioned by objections

These disputes relate to the entries in the rights section of register unit no. CL.78, set out in the first column and are occasioned by the objections set out in the second column. The objector in each case is the Drym Commoners Association.

Reference No. 276/D/694:-

Entry No.	Objection No.
5	249
14	700
22	699
30	696
33	682
34	683
35	684
37	681
43	687
94	688
45	689
48	692
50	693
51	690
54	685

Reference No. 276/D/695:-

55	686
31	697

Reference No. 276/D/696:-

23	698
26	680
29	679
47	691

Reference No. 276/D/697:-

24	694
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Reference No. 276/D/698:-

28	695
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CL.78 - (Brecon) - disputes occasioned by conflicts

These disputes were referred at the hearing on 7 October 1987. They relate to:-

Reference No.	Conflict between Entry No.	and	Entry No.
276/D/698A	26		47
276/D/698B	47		26
276/D/698C	27		47
276/D/698D	47		27
276/D/698E	33		38
276/D/698F	38		33

CL.98 (Glamorgan) - dispute occasioned by objection by Drym Commoners Association

Reference No.	Entry No.	Objection No.
278/D/193	18	311

CL.98 (Glamorgan) - disputes occasioned by conflicts

Reference No	Conflict between Entry No.	and	Entry No.
278/D/188	3		20
278/D/189	7		30
278/D/190	9		30
278/D/191	18		2 on CL.71
278/D/191	18		3 on CL.71
278/D/194	20		3
278/D/195	30		7
278/D/196	30		9

THE HEARING

I held a hearing for the purpose of inquiring into these disputes at Swansea on 6, 7, 8 and 9 October 1987 and 26 and 27 January 1988. At the hearing Miss J E Pemberton of the Treasury Solicitors Office represented the Secretary of State for Wales and the Forestry Commission, Mr Vivian Chapman of Counsel instructed by Mr D Bevan represented the British Coal Corporation, (referred to in this decision as the National Coal Board), Mr M Jarman of Counsel instructed by Messrs. Jeffreys and Powell of Brecon and Mr Emlyn Thomas of the Farmers Union of Wales represented various rights claimants, Mr E L Harris, solicitor of Messrs. Edward Harris and Son of Swansea represented the Drym Commoners Association (the objectors) Mr Cave and Mrs B Morgan represented the Powys County Council and Mr B Humphreys and Mr J B John represented the West Glamorgan County Council.



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THE CL 78 (BRECON) DISPUTES

Entry No. 5 was objected to on the grounds that no rights attached to the 3 holdings in respect of which it was registered. Agreement was reached between Mr Jarman for the successors in title to the registrant, Mr Chapman for The National Coal Board the present owners of the common, and Mr Harris for the Drym Commoners Association that the registration should be confirmed with the modification that the right should attach only to Henllan Uchaf Farm as shown on the map marked "CL.78 Rights Entry No. 5" which will be sent with the copy of this decision which goes to the Powys County Council.

Entry No. 14 was objected to on the grounds that no grazing rights attached to the holding. Mr Jarman for Mr U.Davies successor in title to the registrant called no evidence in support of the right (which was claimed as being attached to Tonspyddaden Farm which is nearly 1½ miles from the nearest point on the common). He submitted, however, that since the registration was final on CL.98 it would "not make sense" not to confirm it on CL.78. I cannot accept that argument. Where a registration is objected to the burden of proof is on the registrant and I am bound to consider whether he has discharged that burden.

It was then argued that the fact that the Association had not objected to the rights over CL.98 amounted to an admission that the right existed over CL.98 and therefore - since it was all one common - over CL.78 as well. That, together with the statutory declaration made by the registrant, it was argued, constituted at least a prima facie case. Whether this is so or not is something I need not decide since Mr Harris elected to call evidence.

He called William Thomas Rigby aged 67 who gave evidence, which I accept, that he had lived in the area all his life. Since 1952 he had farmed at Gefn yr Erw Farm which borders on the common near the North East corner - that is to say the part which is nearest to Tonspyddaden Farm. He himself had always turned sheep out on the common. He knew the registrant Howell Jeffrey Davies who used to keep sheep and cattle but never turned them out on this common. The witness had been Secretary of the Drym Commoners Association for 28 years from 1960 but had not dealt with the objections to rights registrations. This had been done by Mr Morgan Morgan. The witness had no idea why this right together with others had been objected to on CL.78 but not CL.98.

On this evidence I am not satisfied that any right of common over CL.78 attaches to Tonspyddaden farm. Accordingly I shall not confirm this entry.

Entries Nos 22 and 55 Both these registrations were objected to on the grounds that there were no grazing rights attached to the holding. Mr Randal Lewis the registrant (as tenant) of Entry No. 22 and the tenant of the registrant at Entry No. 55 (Pen y Waun Farm) supported both registrations.

Mr Lewis gave evidence that he was a retired miner and part-time farmer aged 67 years who has known the area all his life. In 1951 he moved into Pen y Waun Farm House where he was a tenant of the National Coal Board. This land is on the far side of Ystradgynlais about 1½ miles from the common. His predecessor David Edward Thomas who was there about 20 years kept sheep but he turned them out on the Great Forest of Brecon and not on Mynnydd y Drum. The witness kept cattle there not sheep. He sometimes turned them out on Mynnydd y Drum, about once in 3 years.



In June 1958 he took over the tenancy of what is described in the Register as "parcels of land adjoining Ystrad Fawr Villas" being the land to which Entry 22 is said to be attached. There he was the tenant of the trustees of the Ynisedwyn Estate who registered the right. It is in the town of Ystradgynlais but nearer to the common than Pen y Waun. His predecessor there was John Jones who, he estimated, had had the land for about 10 years. The witness had been friendly with John Jones who used to keep sheep. John Jones grazed this land together with other adjoining land and on colliery tips. Since the land was near the Drum common the witness "assumed" that he grazed that too but he never saw him do it.

This evidence clearly does not prove that grazing on Mynydd y Drum was carried out from either tenement for any period of 20 years prior to registration and I shall not confirm either entry.

Entry No. 23 was objected to on the grounds that the number of stock registered was excessive. It was agreed between the registrants (the National Coal Board) and the Commoners Association that the numbers should be reduced to 105 sheep or 21 cattle or 21 horses or a combination pro rata. Accordingly I shall confirm the registration with that modification.

Entry No. 24 was objected to on the grounds that part was "open cast and laid down to forestry". It was agreed between the registrants (the National Coal Board) and the Association that it should be confirmed but that the numbers should be reduced to 110 sheep or 22 cattle or 22 horses or a combination pro rata. I shall confirm the registration with that modification.

Entry Nos. 26 and 27 are dealt with under entry no. 47 below.

Entry No. 28 was objected to on the grounds that it "has been open cast and is planned for forestry". It was, however, agreed between The National Coal Board and the Commoners Association that it should be confirmed with the modification that the numbers in column 4 should be reduced to 230 sheep or 46 cattle or 46 horses. I shall confirm it with that modification.

Entry No. 29 was objected to on the grounds that the number of stock registered was excessive. It was agreed between Mrs Symonds (the daughter of the tenant) and the Commoners Association that the numbers should be reduced to 90 sheep or 19 cattle or 19 horses or a combination of such animals. I shall accordingly confirm the registration with that modification.



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Entry No. 30 was objected to on the grounds that no grazing rights attached to the holding. I was told by Mr Chapman for the National Coal Board (the registrants) that four bungalows had been built on the dominant land (which extends to 2 acres) and that all the owners had been asked on 6 October 1987 by Mr Bevan solicitor to the Board whether they wished to support the registration and none wished to do so. Accordingly I shall not confirm this registration.

Entry No. 31 was objected to on the grounds that there were no grazing rights attached to this land. Mr Chapman for the National Coal Board (the registrants) told me that part had been sold to the Ystradgynlais R.D.C. (now Brecon Borough Council) and part to M and L Contractors (Ystradgynlais) Ltd. Both had had notice of the hearing but no one appeared to support the registration and I shall not confirm it.

Entry No. 33 was objected to on the grounds that no grazing rights are attached to the holding. Mr Jarman for Mr Daniel Rees the present owner of the land did not support the claim. In the absence of any evidence I shall not confirm it.

Entry No. 34 was objected to on the grounds that no grazing rights attached to the holding. It was agreed between the Forestry Commission (the registrants), the National Coal Board and the Commoners Association that it should be confirmed with a reduction in the stock numbers to 330 sheep or 66 cattle or 66 horses or a combination of such animals pro rata. I shall accordingly confirm the registration with that modification.

Entry No. 35 was objected to on the grounds that there were no grazing rights attached to the holding. The Forestry Commission, the purchasers of 64 out of 66 acres of the dominant land (now Entry No. 72), did not support the registration but Mr and Mrs Regan the purchasers of 2 acres (now Entry No. 71), said they might wish to do so. At their request they were released until the third day of the hearing. They did not however appear on that day and, in the absence of any evidence, I shall not confirm the registration.

Entry No. 37 was objected to on the grounds that no grazing rights attached to the holding. It was agreed between Mr Emlyn Thomas of the Farmers Union of Wales for Mrs C M Bowman the successor in title to the registrant, Mr Harris for the Commoners Association and Mr Chapman for the National Coal Board the present owners of the unit land that the registration should be confirmed but that the entry in column 5 should be replaced by the words "the land shown edged red on the supplemental map bearing the number of this registration". That map marked "CL.78 Rights Entry 37" will be sent with the copy of this decision which goes to the Powys County Council.

Entry No. 38 was not objected to. It conflicted however, with Entry No. 33 and the dispute arising from the conflict was referred to me on the second day of the hearing. It was submitted by Mr Chapman and Mr Harris that, since a conflicting registration was to be treated as an objection to the registration with which it conflicted the "matter" which had been referred to me regarding Entry No. 38 was the same as it would have been if it had actually been objected to. It put in issue not only the validity of the registration at Entry No. 38 to the extent that it conflicted with Entry No. 33 but its validity as a whole, I must therefore ask myself the question "what is to be done about this registration?" - see In re West Anstey Common [1985] Ch 329. Since they contended that the registration claimed rights for too many animals I should put the registrant, on whom the burden of proof lay, to strict proof of his rights.



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Since the rights claimed were on a very much bigger scale than those claimed by any other applicant it should be "born in upon me" that they might be excessive.

To this Mr Jarman for the registrant replied that the matter was not before me at all since when the question was raised whether the unrefereed conflict should now be referred to me he announced that he had instructions from the registrant to "withdraw" the registration at Entry No. 33 so no conflict any longer existed. This, I think, is wrong. There was in fact a conflict between entries 38 and 33. That being so there was a duty on the Registration Authority to refer it. The conflict was treated as an objection and both registrations rightly referred to me.

In my opinion a registration once made cannot be "withdrawn" at any rate after the end of the registration period. It can only be cancelled as provided in the Act. Section 4 of the Act requires the Registration Authority to register, among other matters, rights of common on application duly made. The registration is to be provisional only until it has become final under the following provision of the Act. Section 5 provides that where a registration has been objected to and the registrant so requests the registration authority may cancel the registration. It goes on to say, however, that unless the registration is cancelled before the end of a prescribed period (which has long since elapsed) the registration authority shall refer the matter to a Commons Commissioner.

Section 6 requires the Commons Commissioner to inquire into the matter and either confirm the registration, with or without modification or refuse to confirm it. If the Commons Commissioner confirms the registration it becomes final after the appeal period has expired. If he refuses to confirm it, it then becomes void.

Until then, however, it remains a provisional registration. The registrant cannot "withdraw" it. He need not of course, support it at the hearing but someone else may. The conflict is only resolved when the Commissioner gives his decision.

Mr Jarman then submitted that "West Anstey does not apply to conflicts". He did not elaborate on this submission and, he is of course, right that there is no mention in the judgments in that case of conflicting registrations. It is, however, in my opinion clear that the principles laid down in that case apply equally to them.

Section 19(1)(b) empowers the Minister to make regulations "for treating any registration conflicting with another registration as an objection to the other registration".

Regulation 7 of the Commons Commissioners Regulations 1971 made in exercise of that power provides that where there is a conflict between two registrations then for the purpose of sections 5(6), 6 and 7 of the Act and for the purposes of those Regulations each registration shall be treated as an objection to the other.

Thus section 5(6), which requires the registration authority to refer "the matter" to a Commissioner, applies equally to disputes which are occasioned by an actual objection and to disputes which are occasioned by a conflicting registration which is to be treated as an objection.





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The decision of the Court of Appeal in the West Anstey case is essentially a decision on the true construction of the word "matter" in section 5(6). It follows that under section 5(6) it applies equally to a "matter" which is referred to a Commissioner as a result of a conflicting registration.

In this case it was indeed "borne in on me" that the number registered might be excessive. As a result I did require the applicant to prove strictly his claim as far as numbers went.

In the end the parties agreed that the numbers of stock should be reduced by substituting for the entry in column 4 the words -

"To graze -

333 sheep plus lambs or  
67 cattle plus calves or  
67 horses plus foals or  
any combination of such stock  
pro rata"

I shall accordingly confirm this registration with that modification.

Entry No. 43 was objected to on the grounds that there are no grazing rights attached to the holding. The registrant Mr David Alex James appeared in person at the hearing. His case came on on the second day. He then stated that he did not wish to take the oath. I adjourned the matter until the following day so that he could reconsider the matter and obtain his title deeds from the bank. He did not, however, reappear and in the absence of any evidence to support it I shall not confirm this registration.

Entry No. 44 was objected to on the grounds that there are no grazing rights attached to the holding (described as "NCB land 3 acres"). No one supported the registration and I shall not confirm it.

Entry No. 46 was objected to on the grounds that there are no grazing rights attached to the holding. No one supported it and I shall not confirm it.

Entry Nos 26 27 and 47

Entry Nos 26 and 47 were objected to on the grounds that the number of stock registered were excessive.

Entry No. 27 was not objected to but was referred because of the conflict between it and Entry Nos. 26 and 47. The nature of these conflicts was that the supplemental map of the land provisionally registered as the dominant tenement of Entry No 47 includes part of the land provisionally registered as the dominant tenement of Entry No. 26 and part of the land provisionally registered as the dominant tenement of Entry No. 27.



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It has been agreed between Gladys Muriel Williams (the registrant of RE26 and present owner of the dominant land to that Entry), the National Coal Board (the present owners of the dominant land to Entry No 27), Mr Phillip Williams (the son of the registrant of Entry No. 47 and present tenant of the dominant land to that registration) and the Drym Commoners Association (the objectors to Entry Nos. 26 and 47)-

(1) That there be excluded from the dominant land to Entry No. 47 all land which is also registered as part of the dominant land to Entry Nos. 26 and 27.

(2) That effect be given to this agreement by substituting for the land described in column 5 the words "Coedcae Mawr Farm, Ystradgynlais (43 acres) being the land edged yellow on the supplemental map bearing the number of this register unit" [that map to be the map attached to the copy of this decision which will go to the Powys County Council and marked Entry No. 47].

(3) That the following entries be substituted for those in column 4 of the registrations-

Entry 26. "Right of pasture. To graze  
204 sheep plus lambs or  
40 cattle plus calves or  
40 horses plus foals or  
any combination of such stock  
pro rata"

PL-1) Entry 27. "Right of pasture. To graze  
45 ~~43~~ sheep plus lambs or  
9 cattle plus calves or  
PL-1) 9 ~~6~~ horses plus foals or  
any combination of such stock  
pro rata"

Entry 47. "Right of pasture. To graze 130  
sheep plus lambs or 26 cattle  
plus calves or 26 horses plus foals  
or any combination of such stock  
pro rata"

Entry No. 48 was objected to on the grounds that there are no grazing rights attached to the holding. Agreement was reached between the registrant, the Commoners Association and The National Coal Board that the registration should be confirmed but that the numbers should be reduced to 54 sheep or 11 cattle or 11 horses or a combination of such animals pro rata. I shall accordingly confirm the registration with that modification.



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Entry No. 50 was objected to on the grounds that there are no grazing rights attached to the holding. The registrants were the Yniscedwyn Trustees but the registration was supported by Mr Hugh Neville Phillips tenant of the whole at the time of registration but now tenant of part and owner of the rest. He was represented by Mr Jarman. Ynisglantawe Farm, which is provisionally registered as the dominant tenement extends to 26.062 acres and does not abut the common. Mr Phillips gave evidence that he is a grocer and part-time farmer aged 63. He has been tenant of the farm since 1954 but has never turned out on the mountain. His case is based on what he was told by his sister-in-law Mary Hanna Davies who died in December 1985 at the age of 83. I admitted this evidence under the Civil Evidence Act 1968. No notices had been served but the other parties did not object.

He told me that she had helped her father Jonathan Davies who had been tenant from 1915 to 1951 to take cattle from the farm onto Mynydd -y-Drum. This occurred "from the 30's to the late 40's". Since that period could not possibly be as much as 20 years and since Mr Phillips admitted in cross-examination that this might well have covered a period of only 12 or 13 years I am unable to decide that the right attached to this farm on the basis of lost modern grant or any other basis. Accordingly I shall not confirm this registration.

Entry No. 51 (now <sup>68</sup> 69 and 70) was objected to on the grounds that there are no grazing rights attached to this tenement. It was agreed between Mr R J Huggard and Mr and Mrs P Yorke (successors in title to the registrant), the Drym Commoners Association (the objectors) and the National Coal Board that for the entry in column 4 there should be substituted the words "Rights of pasture to graze 178 sheep plus lambs or 35 cattle plus calves or 35 horses plus foals or any combination of such stock pro rata" ~~and that the supplemental map referred to in column 5 should be modified by deleting from it the enclosure numbered 19 thereon extending to 5.570 acres.~~ I shall accordingly confirm this registration with those modifications.

Entry No. 54 was objected to on the grounds that there are no grazing rights attached to the tenement. Mr John of the Registration Authority told me that he had spoken to Mrs White, who, with Mr Avery are owners of part and tenants and prospective purchasers of the remainder of the dominant land and that they do not wish to support the registration. Accordingly I shall not confirm it.

Entry No. 55 The decision on this entry has been given together with that on Entry No. 22 above.

#### THE CL.98 (GLAMORGAN) DISPUTES

Entry Nos. 3 and 20 have been referred because of a conflict between them. They are the same rights as Entry Nos 33 and 38 on CL.78 (Brecon) respectively (see above). Accordingly I shall not confirm Entry No. 3 and shall confirm Entry No. 20 with the modification that for the entry in column 4 there shall be substituted "Right of pasture to graze - 333 sheep plus lambs or 67 cattle plus ~~calves~~ or 67 horses plus foals or any combination of such stock pro rata".

It was also agreed between the parties that the words after "register unit" in column 4 of entry No 20 should be excluded from registration and I shall confirm that registration with that for the modification.



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Entry Nos. 7, 9 and 30 have been referred because of a conflict between them. They are the same rights as Entry Nos. 27, 26 and 47 on CL.78 (Brecon) respectively. The only difference is that there is no objection to any of them on this register.

The nature of these conflicts was that the supplemental map of the land provisionally registered as the dominant tenement of Entry No. 30 includes part of the land provisionally registered as the dominant tenement of Entry No. 7 and part of the land provisionally registered as the dominant tenement of Entry No. 9.

It has been agreed between Gladys Muriel Williams (the registrant as tenant and present owner of the dominant land to Entry no. 9), The National Board (the registrant of Entry No. 7) and Mr Phillip Williams (the son of the registrant of Entry No. 30 and present tenant of the dominant land to that registration) -

(1) That there be excluded from the dominant land to Entry No. 30 all land which is also registered as part of the dominant land to Entry No. 7 and Entry No. 9

(2) That effect be given to this agreement by substituting for the land described in column 5 the words "Coedcae Mawr Farm Ystradgynlais (43 acres) the land edged yellow on the supplemental map bearing the number of this register unit" [that map to be the map attached to the copy of this decision which will go to the West Glamorgan County Council marked "CL.98 Rights Entry 30"]

(3) That the following entries be substituted for those in column 4 of the registration -

Entry No. 7 "Right of pasture. To graze  
45 sheep plus lambs or  
9 cattle plus calves or  
9 horses plus foals or  
any combination of such stock  
pro rata"

Entry No. 9 "Right of pasture. To graze  
204 sheep plus lambs or  
40 cattle plus calves or  
40 horses plus foals or  
any combination of such stock  
pro rata"

Entry No. 30 "Right of pasture. To graze  
130 sheep plus lambs or  
26 cattle plus calves or  
26 horses plus foals or  
any combination of such stock  
pro rata"



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Entry No. 18 is the same registration as Entry No. 5 on CL.78 (Brecon). The objection by the Drym Commoners Association is, however, rather different and appears only to object to the registration to the extent that it attached to two of the three farms in respect of which it is registered. However that may be the parties have agreed that this registration, like Entry No. 5 on CL.78 should be confirmed with the modification that the right should attach only to Henllan Uchaf Farm as shown on the map marked "CL.98 rights entry 18" which will be sent with the copy of this decision which goes to the West Glamorgan County Council. I shall accordingly confirm it with that modification.

This entry also conflicts with Entry Nos. 2 and 3 on CL.71 (Glamorgan) Rhos Common. The conflict with Entry No. 2 arises from the fact that O.S. 454 and 490 are registered as part of the dominant tenement in both cases. Since it is now agreed that Entry No. 18 should attach only to Henllan Uchaf as shown on the plans referred to above, which does not include O.S. 454 or 490, that conflict is resolved.

Entry No.3 on CL.71 (Glamorgan) will not be confirmed. That resolves that conflict - see my decision on CL.71 (Glamorgan) dated 12 October 1987 reference 278/D/173-187.

#### CONCLUSION

I have now dealt with all the matters concerning these two units which have been referred to me. For the reasons given at the beginning of this Decision the resolution of these disputes can only go part of the way to remedy the defects which have arisen over the registration of rights of common over this land. I have, however, done all that lies in the power of a Commons Commissioner namely to inquire into the registrations which have been properly referred to him under the Act and either to confirm them, with or without modification, or to refuse to confirm them. Any further alteration in these registration units must be left to others.

It was suggested to me that I should modify all the rights registrations which have been referred to me by the inclusion of the words (in the case of rights registered in CL.98) -

" over the whole of the land comprised in this register unit which land and the land comprised in register unit No. CL.78 in the register of common land maintained by the former Brecon County Council constitute one common"

While, as I have already recorded, it is generally agreed that all the land comprised in the two register units was indeed one common, it seems to me that the only result of adding these words to a registration would be to suggest that rights registered over CL.98 only were somehow registered over CL.78 when they are not. The result would I think be all the more confusing because the proposed modification could in any case only be made to the minority of registrations which have been referred to me leaving the others in their existing form. For these reasons I must decline to make any such modification.



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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

3<sup>rd</sup>

day of

February

1988

*Peter Landon-Davis*

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Chief Commons Commissioner