



COMMONS REGISTRATION ACT 1965

Reference Nos 276/D/74-81

In the Matter of Rhosfaelog,
Llanbister, Radnor D

DECISION

These disputes relate to the registration at Entries Nos 19 and 20 in the Rights Section of Register Unit No CL. 19 in the Register of Common Land maintained by the former Radnorshire County Council and are occasioned by Objections Nos 1022 to 1029 inclusive made by Mr Gayther, Mr Hardwick, Mr Bowen and Mr Evans and all noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 9 November 1977.

Mr P Morris of Messrs Careless & Co appeared for the Objectors J Gayther, A Hardwick and W P Bowen. Mr W J Smith did not appear.

Mrs D O Hardwick had prior to the hearing agreed to the modification of the rights claimed by her so as to limit her claim to grazing rights to 22 sheep units. The only outstanding question which remains for decision is the question of Mr Smith's grazing rights.

The Objectors contend that Mr Smith's rights shall be limited to 50 sheep units, Mr Smith's claim is for 50 ewes with lambs, 12 barren sheep and 4 adult cattle with or without suckling young and he equates $1\frac{1}{2}$ dry sheep to 1 ewe and lamb and 1 beast to 5 sheep. His claim if my calculation is correct is therefore for 32 sheep units in excess of those for which the Objectors contend.

It is common ground that the rights for which the Objectors contend have no historical origin. They are the rights put forward to a meeting of commoners in 1967 set out in a document "List 3" and the voting at the meeting Mr Smith said was seven for and seven against the adoption of that list. This List 3 was put to the meeting after a previous "List 2" had been rejected. List 2 if I correctly understood what Mr Smith told me provided that each of 8 small farms should have 15 sheep units extra and that subject to that weighting in favour of small farms the grazing should be pro rata to the acreage of the farms based on a viable grazing of the common of 4 to 16 acre of common, viz approximately 2,000 sheep.

It cannot be disputed that Mr Smith if he is able to establish historic grazing rights in excess of those allocated to him in List 3 cannot be deprived of those rights by any agreement reached between the other commoners to which he is not a party.

The history of grazing on the common does not disclose any consistent pattern. Mr Hardwick said in evidence that he was born in 1914 and that in the days of his childhood until about 1930 liverfluke was prevalent and that for this reason grazing was on a small scale and only about 1 sheep to the acre was kept and that Mr Smith was then turning out about 25 sheep. Later during the 1939/45 war part



of the common was requisitioned, some 95 acres, and some farmers including Mr Smith at the request of the War Agricultural Committee reduced their stocking. It was common ground that the requisitioned land was improved and that stocking increased after it was derequisitioned. Mr Smith indeed complained that one farmer who had never grazed there before drove his sheep on to that land.

It is relevant to mention that Mr Smith's holding was originally three holdings viz Palace acquired in 1901, White Walls acquired in 1921 and The Lodge acquired in 1925. The total holding is entirely surrounded by common. Mr Smith has to fence against the common and the ratio of fencing to the acre of land owned by him is clearly larger than that on farms with only some of their land adjoining the common.

Mr Smith said in evidence that when the three holdings were acquired they carried the following stock: Palace - 27 ewes, 2 cows and 1 pony
White Walls - 34 ewes, 3 cows, 1 steer and 1 horse
The Lodge - 15 ewes, 1 cow, 1 heifer and 1 donkey
making in the aggregate 134 sheep units.

He said that in 1891-5 some farms were allotted extra grazing for maintenance work and mention was made that at one time a shepherd who kept an eye on all the sheep lived on the holding or part of it. Mr Smith further said that he had lived at Palace all his life and had farmed it since 1944. In cross-examination he said that at shearing time he had 71 sheep consisting of 46 ewes 18 wethers 4 rams and some yearling ewes. He said it was not correct that he only turned out 50 sheep, his deeds gave him unquantified common rights. He grows his winter feed and he expects to have 96 sheep during the winter but he will buy over 3 tons of hay and 1 ton of concentrates. He first remembered the stocking of 40-50 sheep, 7 cattle and 1 horse which was halved by the requisition. In 1944 there were 28 ewes and lambs, 3 cattle and 1 pony.

Mr Hardwick aged 63 who gave the evidence about the liver fluke, said he did not remember the reduction in stocking due to the requisition. He did not notice it and thought he would have noticed it. He said his guess would be that the stocking from Blace before the requisition would be 30/35 ewes, 2 or 3 cattle and 1 horse. Since the war there might have been one or two years when 60 ewes were turned out. He said he had to fence $\frac{3}{4}$ of his land, Croscynon. He said List 3 was agreed and that it was weighted in favour of Mr Smith in that his holding was treated as being only 25 acres with 50 units when it was in fact 27 acres which on the scale of List 3 would only entitle him to $40\frac{1}{2}$ units. He said he would expect Palace to maintain 60 sheep in the winter.

Mr Gayther in evidence said he was aged 60 and he remembered Mr Smith's father farming at Palace. In 1939 about 50-60 ewes were turned out and he agreed the figures Mr Smith gave for the year 1944. He said he did not agree the reduction in stocking as the result of the requisition. Since the war Mr Smith has turned out 60 sheep. He never saw any cattle and he thought about 60 sheep could be kept at Palace in the winter. In cross-examination he said he never saw any cattle, there could have been a horse and he agreed the common was sufficient for 2,000 sheep. Mr Bowen came to the area in 1948. He said about 50 to 60 were turned out from Palace but he never saw any cows. He only saw his next door neighbour's cattle. He thought Mr Smith could support 60 sheep. In cross-examination he said the only cattle were from Bryn Ddu which were turned out for water. He lived on the far side of the hill from Mr Smith.



All the Objectors agree that Mr Smith may have turned out as many as 60 sheep since the war and they also agree that he can maintain 60 sheep at Palace in the winter. List 3 provides for the grazing of 1582 sheep and on the assumption that the common is sufficient for 2,000 sheep there is grazing to spare.

The evidence as to fencing was the result of a suggestion made by me that grazing rights might have been weighted in favour of Palace by reason of its inconvenient situation in the middle of the common. I had such a case on another common. I am not impressed by the suggestion that there has been a weighting in favour of Mr Smith by treating his holding as being 25 and not 27 acres, for the reason that when one looks at List 3 one finds that there is no farm of more than 25 acres and less than 35 acres and any question of marginal relief could have been avoided by making the smallest farms a group of farms under 30, or even 35 acres. On the other hand List 3 does credit to those who were responsible for formulating it insofar as it is favourable to the small holdings at the expense of the large holdings.

I have come to the conclusion that on any view I cannot deprive Mr Smith of the right to turn out 60 sheep units which the Objectors agree that he may have turned out since the war and which he can maintain on his own land. I incline to the view that Palace, situate as it is in the middle of the common is and always was a "special case". Some support for this view is to be found in Mr Smith's evidence that weighting was given for maintenance in 1891-5 and if the shepherd lived on the holding it is probable that he enjoyed some privilege. Looking at the totality of the evidence I have come to the conclusion that Mr Smith's grazing rights are for 65 sheep units and I shall therefore confirm his registration modified accordingly.

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 4th day of January 1978

G A Little

Commons Commissioner