

COMMONS REGISTRATION ACT
1965



Reference No. 276/U/138

In the Matter of Two tracts of land,
one forming part of Moelfryn-Mawr and the
other forming part of Cerregbica

DECISION

This reference relates to the question of the ownership of the land above mentioned being part of the land comprised in the Land Section of Register Unit No. CL.36 in the Register of Common Land maintained by the Powys County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Welsh Water Authority claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Llandrindod Wells on 28 November 1984.

Mrs R E Dirken, Solicitor appeared for the Welsh Water Authority and produced the original of a Conveyance made on 11 August 1893 between R E Lloyd (1) R W L Lloyd (2) Mary A J L Lloyd R W L Lloyd and Edward Wood (3) and The Mayor Alderman and Citizens of Birmingham (4) whereby the two pieces of land were conveyed together with other land conveyed to Birmingham Corporation as part of its Water Undertaking. By virtue of a succession of Acts of Parliament reorganising the national water supply these two pieces of land are now vested in the Welsh Water Authority.

On this evidence I am satisfied that the Welsh Water Authority is the owner of the land, and I shall accordingly direct the Powys County Council, as registration authority, to register that Authority as the owner of the land under section 8 (2) of the Act of 1965.

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

3rd

day of

January 1985

George Harker

Commons Commissioner



COMMONS REGISTRATION ACT 1965

Reference No. 276/U/139

In the Matter of Ffridd Cwm-bychan-Mawr
Cwm Ednant, Rhiw-Goch, Moelfre
Waen Ty-isaf, Cwm Wern-Fach, Ffridd
Dolgadfan, Bwlch Glynmydd, Banc
Brondergoed, Banc Melyn, Moelfre Fach and
Llanerch yr Aur, all in Darowen and/or
Llanbrynmair, Montgomery District, Powys

DECISION

This reference relates to the question of the ownership of the part ("the Referred Part") hereinafter defined of the land of about 775.94 hectares (1917.732 acres) known as (1) Ffridd Cwm-bychan-Mawr, (2) Cwm Ednant, (3) Rhiw Goch, (4) Moelfre, (5) Waen Ty-isaf, (6) Cwm Wern-Fach, (7) Ffridd Dolgadfan, (8) Bwlch Glynmydd, (9) Banc Brondergoed, (10) Banc Melyn, (11) Moelfre Fach and (12) Llanerch yr Aur, in Darowen and Llanbrynmair parishes, Montgomery District which was (between November 1969 and July 1973) the land comprised in the Land Section of Register Unit No. CL76 in the Register of Common Land maintained by the Powys (formerly Montgomeryshire) County Council. In the circumstances set out in the First Schedule hereto, the areas of land comprising the Referred Part of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner are shown on the map ("Map No. 1") being page 2 of this decision, and thereon marked "XX, Y, CCC, RR, G, Z and W", and also shown as to the northeast part of the area marked XX on the map ("Map No. 2") being the upper part of page 3 of this decision, and as to the west part of the area marked G on the map ("Map No. 3") being the lower part of page 3 of this decision.

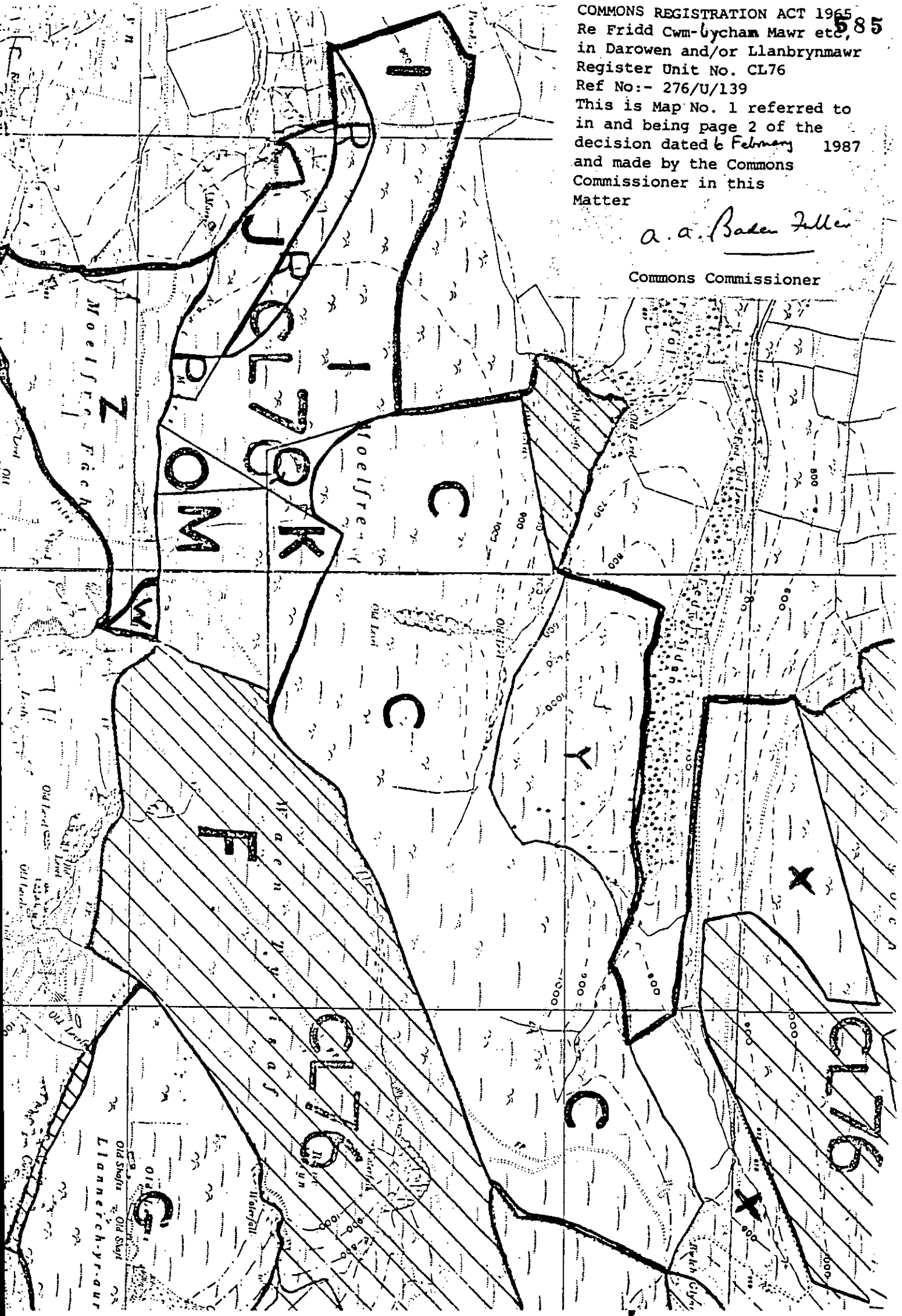
Following upon the public notice of this reference:- (a) Mr Evan Wynne Pughe of Cwmbychan Mawr, Commins Coch, Machynlleth and (b) Mr Joshua Thomas Jones and his wife Mrs Megan Jones of Geufron, Commins Coch, Machynlleth (their solicitors' letters of 18 October 1984) said that they owned as part of (a) Cwmbychan Mawr Farm and (b) Cringoed Farm areas of land which were but are no longer in this Register Unit; and (c) the Solicitor for Welsh Water Authority (letters of 5 November 1984, 26 February 1986 and 20 March 1986) said (in effect) that although at one time he thought his Authority might have an interest in the land in question, having studied the plans supplied he could confirm that the Authority had no interest in it. No person claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

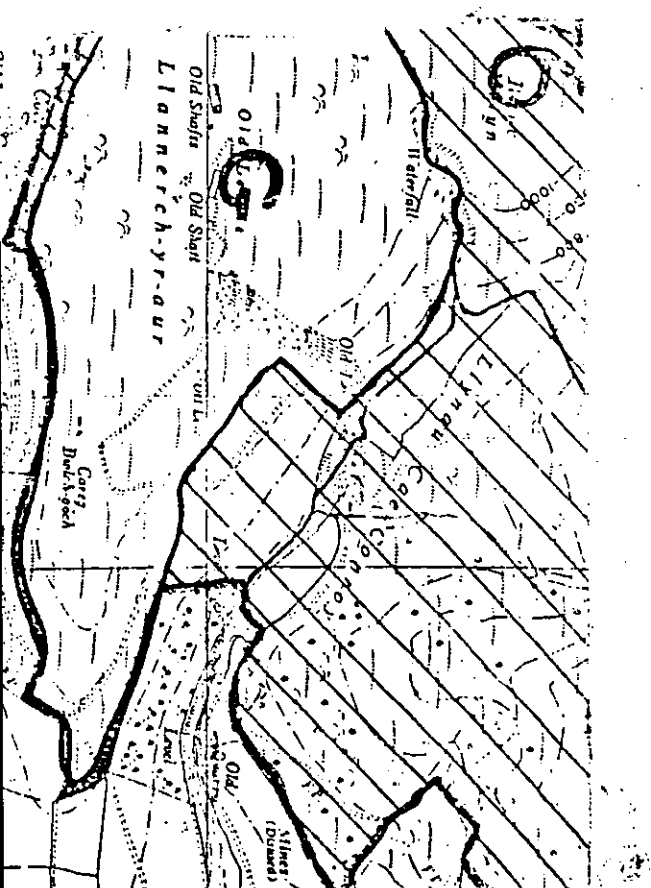
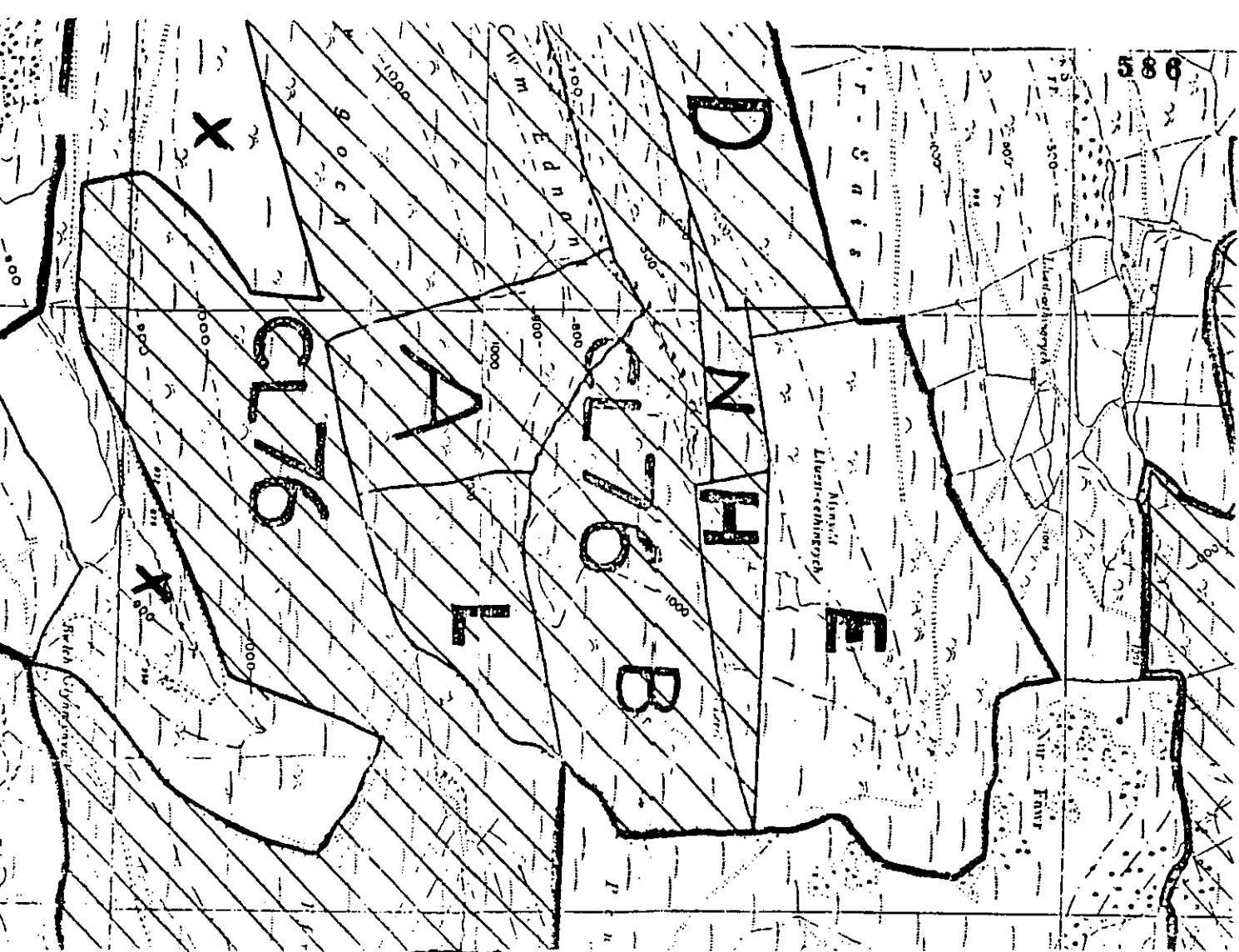
I held a hearing for the purpose of inquiring into the question of the ownership of the Referred Part at Welshpool on 30 April 1986. At the hearing: (1) Mr Evan Hughes Jones who claimed to be the owner of the area marked Y on Map No. 1, and who was the applicant for the Rights Section registration at Entry No. 3 of a right attached to Rhiwgriafol to graze 750 sheep over the Rhiwgriafol sheepwalk part of Moelfre marked C, Kand Q on the Register map, was represented

COMMONS REGISTRATION ACT 1965
Re Fridd Cwm-lychan Mawr etc, 585
in Darowen and/or Llanbrynmawr
Register Unit No. CL76
Ref No:- 276/U/139

This is Map No. 1 referred to
in and being page 2 of the
decision dated 6 February 1987
and made by the Commons
Commissioner in this
Matter

a. a. Baker Jellie
Commons Commissioner





COMMONS REGISTRATION ACT 1965
 Re Fridd Cwm Vychan Mawr etc,
 in Darowen and /or Llanbrynmawr
 Register Unit No. CL76
 Ref No:- 276/U/139
 These are Map Nos 2 and 3
 referred to in and being page 3
 of the decision _____
 dated 6 February 1987
 and made by the Commons
 Commissioner in this Matter

a. a. Baden Fuller

Commons Commissioner



- 4 -

by Mr Wyn Howell Hughes solicitor with Humphrey Roberts & Bott, Solicitors of Aberystwyth; (2) Mr Gwilym Morris who claimed to be the owner of the area marked RR and who was the applicant for the Rights Section registration at Entry No. 5 of a right attached to Greiglan-ddu and Penrhos to graze 750 sheep on the part of Moelfre marked J and P on the Register map and for the Ownership Section registration at Entry No. 8 of his ownership of part of Moelfre Hill marked J and P on the Register map, was represented by Mr H Evans, solicitor of Henry Evans & Co, Solicitors of Machynlleth; (3) Mr Thomas Hugh Jones who claimed to be the owner of the area marked W and who was the applicant for the Ownership Section registration at Entry No. 10 of his ownership of the pieces lettered M and K on the Register map was represented by Mr Barrie W Jones solicitor with Humphreys & Parsons, Solicitors of Machynlleth; (4) Mr David Rowland Lewis who claimed to be the owner of the area marked Z was also represented by Mr Barrie E Jones; and (5) Lt-Col John Gilbert Maxwell Wybergh who applied for the Ownership Section registration at Entry No. 7 of his ownership of the parts lettered I, Q and O, on the Register map was also represented by Mr H Evans.

Mr Barrie W Jones whose firm wrote on behalf of Mr E W Pughe and Mr J T and Mrs M Jones the said letters of 18 October 1986 said that no claim was being made on their behalf because the land in which they were interested was not now although it had formerly been, comprised in this Register Unit.

In support of the claim of Mr E H Jones to the area marked Y on Map No. 1, Mr W H Hughes in the course of his oral evidence produced the documents specified in Part I of the Second Schedule hereto.

In support of his claim to the area marked RR on Map No. 1, Mr Gwilym Morris gave oral evidence in the course of which he produced the documents specified in Part II of the Second Schedule hereto. He said (in effect):- He had lived in the area all his life (65 years). The 1956 Forestry Commission Plan (GM/2) shows the whole of the Graiglan-ddu and Penrhos and the nearby parts of the mountain; the north boundary (ABCD) of the edged and hatched red land marked on the map GM/3 correspond with part (XYZ) of the north boundary of the edged black on the 1956 Forestry Commission plan; the red land is additional to the 79.159 acres comprised in the 1975 conveyance (GM/1), and is on the 1956 plan hatched and marked "pt 1788"; the whole of 1788 is about 450 acres; the 1956 plan was prepared because the Forestry Commission were then thinking of buying. There is a fence, pignetting and barbed wire, along (or near) the line ABCD which was put up in the time of the previous owner Mrs Reben; he (the witness) remembered it being put up, he being then at school. The line of the boundary of the land on the north side (the Tynewydd side) was agreed ^{with} ~~between~~ Mr Edward Owen; he was succeeded by Col Wybergh of Tynewydd (now the registered owner of the area II). The letters on the Register map do not correctly show the fences; they have been renewed, but always in the same place. The land by this boundary (ABCD) is very steep.

In support of his claim to the area marked W on Map No. 1, Mr Thomas Hugh Jones gave oral evidence in the course of which he produced the documents specified in Part III of the Second Schedule hereto. He said (in effect):- The area he claimed is edged blue on map THJ/1, is a small part of Moelfre Fach, and is part of Barhedyn Farm, which he acquired under the 1965 deed of gift (THJ/2) made by his



- 5 -

father Hugh Pugh Jones. The edged blue is part of the "unenclosed sheepwalk mentioned in the deed; the edged red on the map THJ/1 is the area claimed by Mr D L Lewis (marked Z on Map No. 1). Thomas Rees and Eleanor Rees mentioned in the 1935 assent (THJ/3) were his grandparents. There is a pig wire fence between the edged blue (W) and the edged red (Z); he with the aid of a workman put it up in 1956, the line of the boundary being then agreed by Mr Lewis; about this boundary there was never any dispute by Mr Lewis or anyone else. He (the witness) owned the areas marked K and M on Map No. 1.

Questioned by Mr H Evans about the boundary between the areas II, Q and O owned by Col Wybergh on the north and the areas J and P owned by Mr G Morris and the areas M and K owned by himself on the south and southeast, Mr T H Jones indicating the line by me on THJ/1 marked ABCDEFG said that there was nothing in between and that the appearance of such line is as might be inferred more or less from the map GM/3.

In support of his claim to the area marked Z on Map No. 1, Mr David Rowland Lewis produced the documents specified in Part IV of the Second Schedule hereto. He said (in effect):- He is aged 44 years (born 1941). The farm described in the 1971 conveyance (DRC/2) as containing 337.306 acres and including "pt 1788" containing "57.350" acres is the same as the farm described in the 1922 conveyance (DRC/4) as containing 225a.2r.33p together with unenclosed sheepwalks; one of the unenclosed sheepwalks, that in the 1922 conveyance said to be "abutting on the farm aforesaid" being the area he claims (marked Z on Map No. 1) is the same as the "pt 1788" of 57.350 acres shown on the 1971 conveyance plan. Evan Lewis mentioned in the 1968 assent (DRC/1) was his father; under it he and his brother Emyr Hedd Lewis farmed until the 1971 conveyance (DRL/2). On the south of the area he claimed (Z) is land of the Forestry Commission, which they fenced in the early 1950's. On the west of the area (Z) is other land of the Farm (Cefnbarhedyn). The north boundary of the area (Z) (explained by the witness by reference to the plan THJ/1 on which I have marked four points 1, 2, 3 and 4) is: —————→ between points 1 and 2 (from the north-west corner of Z along the south side of J, P to the south-east corner of O) there has been a fence as long as he (the witness) could remember; along the boundary between the points 2 and 3 (the south sides of O and M) there is a pignetting and barbed wire fence put up in 1956 at the same time as that described by Mr T H Jones as by him put up between the points 3 and 4 (the south-east side of the area W). There had never been any dispute about these fences either with Mr T H Jones or anyone else.

On 1 May 1986 I inspected the areas J, RR, II, Q, K, M, O, P, Z and W on Map No. 1 walking over or near them and seeing across a fence much of the area CCC, in the presence of Mr Gwilym Morris and his solicitor Mr H Evans (concerned with areas RR, J and P), Mr T H Jones (concerned with the areas M, K and W). During the inspection I met Colonel J G W Wybergh concerned with the areas III, Q and O. Mr D L Lewis drove me along the track which runs from near the north-west corner to the east end of the area Z. I saw some of the surroundings because we started from Byrhedyn (of Mr T H Jones) and returned by Cefn Byrhedyn (of —————→ Mr D L Lewis), and I travelled in vehicles driven by Mr G Morris and Mr D L Lewis.

None of the four claimants to areas of the Referred Part disputed the ownership claims made by any of the others.

The area on Map No. 1 marked Y claimed on behalf of Mr E H Jones was by the 1922 conveyance (EHJ/2) expressed to be conveyed as part of Rhiwgriafol Farm in the



- 6 -

same word as were used about the rest of the farm (other than the sheepwalk). The area was similarly expressed to be conveyed by the 1951 and 1954 assents. The documents produced are evidence of ownership as claimed; I have no evidence to the contrary and no reason for not accepting the documents as reliable evidence. I am therefore satisfied that the claim was properly made.

The area on Map No. 1 marked Z → by the 1922 conveyance (DRL/4) was conveyed as a "sheepwalk", the wording used being different from that used in respect of the 225 acres being the main part of the farm and this wording was followed in the 1968 assent (DRL/1). But contra in the 1971 conveyance (DRL/2) the area Z was conveyed using wording applicable to all the farm. I incline to the view that in general the conveyance of a sheepwalk in the absence of special circumstances carries with it a right of common and not any right of ownership in fee simple; but however this may be, whatever might be the proper inference to draw from the 1922 conveyance and the 1968 assent, Mr D R Lewis could acquire by possession an interest greater than a right of common in an area of land grazed by his sheep and the sheep of his predecessors in title. During my inspection of the area Z it was apparent that it was a much improved pasture such as was unlikely to have come into existence save by the care of a single owner who was able to exclude grazing by others; much of the area slopes steeply down to Nant Maes and across this steep slope there is a road constructed, so Mr Lewis told me by himself to facilitate the care of sheep during exceptionally bad weather. None of the rights of common registered in the Rights Section are therein expressed to extend over any part of the area. On the oral evidence given by Mr D L Lewis at the hearing and on what I saw during my inspection, I conclude that he and his predecessors in title have been in undisputed possession of the area Z for at least 12 years and probably ever since 1956 when the fences were erected as stated by Mr T H Jones and Mr D L Lewis at the hearing. Upon these considerations I am satisfied that this ownership claim was properly made.

The area of Map No. 1 marked W is compared with that marked Z very small and appears to be part of the areas M and K. Upon considerations essentially the same as those set out in the preceding paragraph I am satisfied that the ownership claim of Mr T H Jones was properly made.

The area on Map No. 1 marked RR lies between the area II of which Colonel J G M Wybergh is registered as owner and the areas J and P of which Mr G Morris is registered as the owner. Upon my inspection it appeared that there is nothing on the ground which can sensibly be said on Map No. 1 to be delineated or identified by the plot RR, and that it would not be sensible for there to be any land between the area II and the areas J and P which was not either wholly in the same ownership as that of the area II or wholly in the same ownership as that of the areas J and P or partly in the ownership of one and partly in the ownership of the other. I feel uncertain as to the line of the fence at the hearing said by Mr G Morris to have been put up on the line ABCD in the time of Mrs Reben ; whatever such line may have by him been intended, I am unable to identify it with any line marked on the Register map. On my inspection any land identifiable in any way with the area RR seem to me to be such as could somewhere conveniently include the ownership boundary line which I have to determine but that it would be of little practical consequence to the owners of the land on either side of such line where it was drawn. In these → circumstances I conclude that such line should be in accordance with the claim put forward by Mr Morris at the hearing, no objection having been →



- 7 -

made to it on behalf of Col Wybergh who was there represented by the same solicitor, or by him in person during my inspection, that is to say it should be the line of the north boundary of the area on Map No. 1 marked RR. Upon these considerations I am satisfied that the claim of Mr Morris to be the owner of this area was properly made.

My decision as to the four areas of the Referred Part ownership of which was claimed at the hearing is as set out in the Third Schedule hereto. The consequence of my not being satisfied about the ownership of the other areas is also set out in such Schedule.

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.

FIRST SCHEDULE
(the Referred Part)

As originally registered in 1968, the Land Section registration contained about 776 hectares (1,918 acres) and comprised the 12 areas numbered (1) to (12) in the first paragraph of this decision; such land comprised two pieces, one ("the North Piece") about 1 mile long from east to west and about half a mile wide on the register map called Ffridd Cwm-Bychan-Mawr and the other ("the Main Piece") at its north end about 150 yards from the south side of the North Piece, extending southwards for about 2 miles and having a width from east to west varying between 1 mile and 2 miles.

On 26 July 1973 the Land Section registration became final with the following modifications: area to read 404.804 hectares (1000.505 acres) and the land hatched black comprising an area of 371.110 hectares (917.227 acres) removed from the Register. On the Register map the land so removed is hatched black, and the remaining areas are either not lettered at all or lettered E, CCC, II, PR, Q, K, J, P, O, M and G. From the Register map, I identified the areas removed as being: (1) the whole of the north piece being or including Ffridd Cwm-Bychan-Mawr (2) Cwm Ednant, except (?) the area which may be part of the Cwm on the register map called Mynydd Lluest-cethingrych; (3) Rhiw-Goch, (5) Waen Ty-usaf, (6) Cwm Wern-Fach, (7) Ffridd Dolgadfan, (8) all or some part of Bwlch Glynmynydd, (9) Banc Brondergoed. Map No. 1 being page 2 of this decision is a copy of part of the Register map with the addition made by myself of the letters XX, Y, Z and W, identifying the remainder of the land now in this Register Unit not now on the Register map lettered. The evidence at the hearing was for the most part directed to the southwest part of the land now in this Register Unit shown on Map No. 1, but for convenience Map No. 2 and Map No. 3 being page 3 of this decision show as a continuation of Map No. 1 remainder of such land.

In the Ownership Section as hereinbefore stated there are registrations of the ownership of the areas lettered E, I, Q, O, J, P, M and K so in the result the Referred Part comprises the areas on Maps Nos 1, 2 and 3 lettered XX, Y, CCC, RR, G, Z and W.



- 8 -

SECOND SCHEDULE
(Documents produced)

Part I: on behalf of Mr Evan Hughes Jones

EHJ/1	14 December 1976	Notice by Powys County Council of modification of Register with copy Land Section including Entry showing showing 1973 finality and modification, and copy of Register map with the hatched black referred to in such Entry and with manuscript cross hatched blue showing area claimed by Mr E H Jones.
EHJ/2	16 March 1954	Assent by Evan Hughes Jones as administrator of estate of Hannah Jones who died 7 August 1953 intestate to vesting in himself of farm Rhiwgriafol containing 380a.2r.20p. as described in Schedule to conveyance dated 20 January 1922 (see EHJ/3 below).
EHJ/3	20 January 1922	Conveyance by (1) Margaret Francis (2) Margaret Jane Jones (3) Thomas Henry Vaughan, and (4) the Revd Evan Griffith Jones and another to (5) Richard Jones of farmhouse and land known as Rhiwgriafol in Darowen containing 380a.2r.20p. together with the sheepwalk belonging thereto more particularly described in the Schedule delineated and coloured as to the said farm and lands pink and as to the said sheepwalk green on the plan drawn thereon. Note: area Y included in pink; area CCC (a little more or less) same as green.



- 9 -

EHJ/4 -- Map (6" = 1 mile) showing coloured yellow extent of overlap of 1922 conveyance pink land over the Referred Part as shown on the Register map.

EHJ/4 12 December 1951 Assent by Evan Hughes Jones and bis Ivor Jones as personal representatives of Richard Jones who died 11 April 1951 to vesting in Hannah Jones of farmhouse and parcels of land called Rhiwgraifol containing 380.a.2r.20p. together with the sheepwalk belonging thereto.

Part II: by Mr Gwilym Morris

GM/1 20 March 1957 Conveyance by Isabella Mary Alison Rieben to Gwilym Morris of farm and lands known as Graiglandu and Penrhos containing about 79.159 acres.

Endorsed memorandum of conveyance dated 26 September 1967 by within named G Morris to John David Menhenick of the dwellinghouse forming part of the property comprised in the within conveyance.

GM/2 26/7/56 Forestry Commission plan (6" = 1 mile) delineating Graig-lan-ddu and Pen-rhos

GM/3 -- OS map (6" = 1 mile) showing land edged green held with Graig-lan-ddu and land edged and hatched red to the northeast.

Part III: by Mr Thomas Hugh Jones

THJ/1 -- Extract from Register map showing greater part of Moelfre Fach edged red and small part at northeast corner edged blue



- 11 -

by a conveyance dated
24 November 1950.

DRL/2	12 March 1971	Conveyance by (1) Emyr Hedd Lewis (vendor) (2) him and David Rowland Lewis (trustees) to (3) David Rowland Lewis (purchaser) of the said freehold farm and land known as Cefynbarhedyn containing 337.306 acres.
DRL/3	13 March 1971	Statutory declaration made by David Rowland Lewis, (1) past 29 years (whole lifetime) resided at Cefnbarhedyn (2) since left school assisted father; (3) well acquainted with property; (4) believe conveyed to his grandfather David Lewis by conveyance of 15 March 1922 (see DRL/4 below); (5) the unenclosed sheepwalk referred to in the 1922 conveyance has been enclosed.
DRL/4	15 March 1922	Conveyance by Richard Gillart to David Lewis of farm known as Cefn Byrhedyn containing about 225a.2r.33p. "together with the two unenclosed sheepwalks belonging thereto and occupied therewith one of these latter abutting on the farm aforesaid and the other lying at a distance of about half a mile therefrom".

TURN OVER



- 12 -

THIRD SCHEDULE
(Decision table)

(A) Being satisfied for the reasons hereinbefore appearing, that the persons specified in the below first column are the owners of the respective areas of the Referred Part specified in the below second column, I shall pursuant to section 8(2) of the 1965 Act direct Powys County Council as registration authority to register the said persons as the owners of the said respective areas.

(1) Owner	(2) Area of Referred Part
(a) Mr Evan Hugh Jones of Croeslyn, Newtown Road, Machynlleth	(a) As the owner of the area of the Referred Part marked Y on Map No. 1
(b) Mr Gwilym Morris of Tycoch, Melinbenhedwn, Darowen	(b) As the owner of the area of the Referred Part marked RR on Map No. 1
(c) Mr Thomas Hugh Jones of Barhedyn, Melin-Barhedyn, Machynlleth	(c) As the owner of the area of the Referred Part marked W on Map No. 1
(d) Mr David Rowland Lewis of Cefnbyrhedyn Melinbarhedyn Machynlleth	(d) As the owner of the area of the Referred Part marked Z on Map No. 1

(B) In the absence of any evidence I am not satisfied that any person is the owner of the areas of the Referred Part marked XX, CCC, and G on Map No. 1 and Map No. 2, and they will therefore remain subject to protection under section 9 of the 1965 Act.

Dated this 6th _____ day of February _____ 1987

A. A. Baden Fuller

Commons Commissioner