



COMMONS REGISTRATION ACT 1965

Reference No 276/D/82-96

In the Matter of Yswdfford,
Llananno and Llanbister,
Radnor D

DECISION

This dispute relates to the registration at Entry Nos 1-2 and 3 in the Rights Section of Register Unit No CL. 23 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 9 November 1977.

Mr Gareth-Morris of Messrs Dilwyn Jones & Son appeared for Mr C A Lewis the successor to W I Lewis the applicant at Entry No 1. Mr D Jones of Messrs H V Vaughan & Co appeared for Mr E P Hughes the applicant at Entry No 2 and Mr P Morris of Messrs Careless & Co appeared for the Objectors.

Mr Lewis' application is to graze 110 sheep and the Objectors contend that the grazing right should be limited to 27 or 30 sheep. Mr Hughes' claim is to graze 184 ewes and their lambs from The Closes and Castle View. Mr Jones on his behalf accepted that Castle View does not carry any rights and reduced Mr Hughes' claim to 140 sheep. The Objectors contend that Mr Hughes' rights should be limited to 45 or 43 sheep.

Mr C A Lewis gave evidence that he had known the Hill since 1929 and that W I Lewis purchased his farm in 1957 and that he assisted W I Lewis in washing and shearing. W I Lewis turned out in excess of 100 ewes. The farm is 20 acres and he said he thought he could winter 120 sheep. When he purchased there were 160 sheep. He could mow from 10 to 12 acres and get 100 bales of hay per acre, and a daily ration for 160 sheep would be 2 or 3 bales. The winter feeding would be for about 180 days. G I Weale owned the property prior to W I Lewis. He said the Common would carry between 2,000 and 3,000 sheep. Cross-examined he said W I Lewis used to take land for grazing cattle. He had another farm when he came and he reckons to turn out 120 sheep. The hay from 10 acres would keep 120 ewes through the winter. He would get 100 bales from an acre and there are 40 bales to the ton.

Mr J D Lewis lived in the area and had known it since 1937; he was farming and was the brother of W I Lewis and helped him out shearing. He had 140-150 ewes. 10 acres of the farm could be mown for hay and would produce about 50 bales to the acre. 110 sheep would require 2 bales per day. Cross-examined he said he remembered Mr Weale. The common is very "banky" and would carry 1500 sheep.



Douglas George Brown knew that sheep had been turned out since 1935 but gave no details as to numbers. Mr Gareth-Morris produced a statutory declaration by Gilbert Iver Weale who stated that he was the owner of Crychell Cottage from 1953 to 1957 and that his brother Trevor Weale who was owing to illness unable to give evidence had been the tenant of Crychell Cottage and lands from 1942 to 1953. Mr Weale's statement was that his brother always turned out in excess of 100 sheep and that he himself turned out 105 sheep. Mr G I Weale was unable to give evidence because his services were required by his aged employer.

Mr Hughes' farm was owned by Abraham Hamer in 1916 and was held in the Hamer family until 1939 when it was acquired by Walter Lewis; in 1950 Mr Cranshaw acquired the farm and in 1953 Mr Hughes acquired the farm from Mr Cranshaw.

Mr E P Hughes gave evidence that Fred Hamer who farmed from 1936 to 1939 thought the grazing was unlimited; he did not know how many sheep Fred Hamer turned out. He had helped to gather sheep for John Hamer who farmed from 1939 to 1946. He knew John Hamer had a big drove; he estimated 100 to 200. Walter Lewis turned out in excess of 100 sheep; it was his only farm. Cranshaw did not farm and he bought from Cranshaw for the rights.

He knew the right was for 100-200 and he turned out 120-140 ewes. He bought to breed hardy ewes and run the farm on its own. He can mow 10 acres; it is good land by the river and he can get 100 bales to the acre. He will require 2 bales a day for 2 months amounting to 180 bales a year. The break in grazing by Mr Cranshaw precludes any claim under the Prescription Act - at Common Law the claim could not exceed 2/5ths of the animals grazed since they were grazed from Castle View as well as The Closes.

Cross-examined he said Castle View is 21 acres and the remainder on which his revised claim is based is 34 acres. He never takes fodder from his other farm as he does not need it and he thinks the Common would carry 5 sheep to the acre.

George Brown gave evidence that he remembered John Hamer and his son. There was a large turn out then, about 200 every year. Walter Lewis turned out over 100 and he produced a letter from his father aged 86 in the following terms:

"I worked for Mr A Hamer of Crychell in the year of 1916 and they turned out to the Scotia Hill from the holding of Trodgrhiw 200 wethers and also ponies."

Cross-examined he said Abraham Hamer had another farm and kept wethers.

J R Price aged 62 said he remembered sheep going to and from the hill through his yard. He estimated 100-200; after 1929 they went another way.

Mr E O Bennett gave evidence for the Objectors that he had lived in the area all his life. He remembered Mr Weale and thought he grazed less than 20 sheep. At gathering he would see all the sheep and this was why he gave the figure of 20 sheep. Mr Lewis turned out more, probably 80-100 and he would have thought he bought concentrates. Two thirds of the Common is useless, covered with bracken and gorse. The figures of 2,000-3,000 sheep grazing on the Common are ridiculous; the Common would be run down if the full amount were grazed. It is possible to get more than a ton of hay from an acre; 5 or 6 bales of hay a day would be required for 100 sheep in a yard.



Fred Hamer and Lewis grazed. He did not think Hughes turned out 120, perhaps only 60 and he thought his farm could carry 40 in the winter.

XX Mr Morris he said the registrations were maxima; ^{hay} they could be grown on $\frac{1}{3}$ of Mr Lewis' holding and would yield about one ton per acre. He gets up to 100 bales to the acre,; the winter is 6 months, November to May. 2 cwt of hay are required per day for 100 sheep. He thought Mr Lewis could winter the sheep for which he claimed.

XX Mr Jones he said 3 bales of hay a day for 100 sheep was a reasonable average. He himself doesn't winter many sheep on the hill. He sent up about 200 in the summer and they did badly. The sheep are not doing "good enough" on the common; it is overgrazed and he considered Mr Hughes was overgrazing. He did know how many sheep Hughes grazed; he had never gathered with him.

J M Thomas aged 59 had lived at his farm for 25 years and remembered Mr Weale who started with a small number of 20 sheep and the second Mr Weale increased the number. He himself winters 143 sheep on 115 acres. The Hill will carry 1 to $1\frac{1}{4}$ per acre. It is a rough Hill, half bracken and gorse. It would not be impractical to improve it. Cross-examined he said his first recollection was in 1953. The figure of $1\frac{1}{4}$ to the acre is based on the number maintainable on the common. It is $1\frac{1}{4}$ to an acre of *bye* land and is appropriate to the viable grazing of the Common.

There are ten applicants of rights in the Rights Section of the Register and of these it appears that all except Mr Lewis and Mr Hughes have accepted a scale of grazing which they regard as appropriate, a scale substantially less than levancy and couchancy.

The Common is 366 acres of which $\frac{1}{2}$ to $\frac{2}{3}$ is of no value for grazing. The evidence of Mr Bennett and Mr Thomas on this point was not challenged. A figure between $\frac{1}{2}$ and $\frac{2}{3}$ of the Common suitable for grazing is say 160 acres, on which 8 commoners have admitted rights for 1075 sheep based on $1\frac{1}{4}$ per acre of bye land. This represents about 6 sheep to the acre of common land suitable for grazing and Mr Bennett's evidence was that even on this scale the sheep did poorly. In the light of this evidence I am in my view bound to presume that a scale of grazing based on levancy and couchancy was never operated on this common and that most if not all of the commoners always operated a scale which was viable.

The statutory declaration of Mr Weale conflicts with the evidence of Mr Bennett and Mr Thomas. I cannot reject the evidence of Mr Bennett and Mr Thomas and if I am to attach any weight to the evidence of Mr Weale I must infer that he and his brother did on occasions graze numbers of animals in excess of the scale accepted by other commoners. This occasional grazing did not come to the notice of Mr Bennett at gathering time. As regards Mr Weale's evidence there is the further point that until 1953 his brother was grazing as a tenant and it is possible that he was the tenant of the owner of the common and any grazing was by permission of his landlord and not as of right.

As regards Mr Lewis' evidence he put the viable rate of grazing on the Common at a figure even greatly in excess of that put forward by his brother and he said that when he purchased there were 160 sheep and this figure was confirmed by his brother, and it is common ground that the grazing from this 20 acres was increased



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by the Lewis'. This extra grazing has not been of sufficient duration to establish a prescriptive right. The conclusion I have reached is that Mr Lewis has not established any right on a scale different from that of the other commoners and I therefore confirm his Entry No 1 modified so as to limit his grazing rights to 30 sheep units viz $1\frac{1}{2}$ units to each of his 20 acres of lye land.

Mr Hughes claim is for 34 acres of lye land and applying the same scale as I have applied in Mr Lewis' case, he will be entitled to 51 sheep units and I confirm Entry No 2 modified so as to limit his grazing rights to 51 sheep units. The evidence does not in my view establish a prescriptive right to graze more sheep than in accordance with the scale acceptable to the other commoners.

The Objector to Mr Nicholls' Entry at No 3 did not appear and Mr Morris said his clients raised no objection to that Entry and I confirm Entry No 3.

The Schedule above referred to

Objection No 306	made by H O Hughes	entered in the Register on 28 September 1970
" No 1011	" " A E Thomas	" " " " " 26 July 1972
" No 1013	" " J M M Thomas	" " " " " " " "
" No 1015	" " E D Bennett	" " " " " " " "
" No 307	" " H O Hughes	" " " " " 28 September 1970
" No 1010	" " A E Thomas	" " " " " 26 July 1972
" No 1012	" " J M M Thomas	" " " " " " " "
" No 1014	" " E D Bennett	" " " " " " " "
" No 308	" " H O Hughes	" " " " " 28 September 1970

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 25th day of November

1977

Y. A. Little

Commons Commissioner