



COMMONS REGISTRATION ACT 1965

Reference Nos 271/D/73
271/D/74
271/D/75

In the Matter of Cernyw Sheepwalk,
Llandrillo, Glyndwr District,
Clwyd

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL 26 in the Register of Common Land maintained by the Clwyd (formerly Merioneth) County Council and are occasioned by Objection No. 72 made by Mr George Ingram Barty-King and the most noble Robert George Duke of Westminster and noted in the Register on 13 October 1970 and by Objection No. 94 made by Mr Evan Owen Jones and noted in the Register on 30 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Holywell on 18 July 1980. At the hearing Mr E O Jones (the said Objector) and his sons Mr John Wyn Jones and Mr Ieuan Rhys Jones were represented by Mr I L Watkins, solicitor of Ineurin O Evans & Co and William Jones & Talog Davies Solicitors of Denbigh; and Mr Hugh Roberts and Mrs Jane Roberts on whose application the registration in the Rights Section was made, were represented by Mr D R Jones, solicitor of Cuthrie Jones & Jones, Solicitors of Bala.

I have a letter of 13 July 1977 from Iliffe and Edwards, Solicitor of Chesham, Bucks in which they say that Effold Properties Limited for whom they act had the land in this Register Unit conveyed to them by the Executors of the 4th Duke of Westminster.

The land ("the Unit Land") in this Register Unit is an irregularly shaped strip having a length of about $1\frac{1}{2}$ miles from northwest to southeast, and having a variable width of about $\frac{1}{8}$ to $\frac{1}{4}$ of a mile. Its northwest corner is at the junction of Nant y Waun with Nant Esgeiriau: its northeast corner is a little higher being near where the stream flowing down Cwm-pen-Illydan joins the Nant Esgeiriau. The south boundary is the County boundary between Clwyd (formerly Merioneth) and Powys (formerly Montgomery), which here follows the watershed line of the Berwyn Range where it extends southwestwards from Moel Sych 827 metres (2913 feet); the southwest corner of the Unit Land is an unnamed minor summit of 706 metres (2317 feet) and its southeast corner at a point at about 2500 feet.

The Unit Land generally appears as open moorland sloping steeply upwards from Nant Esgeiriau on the north to the comparatively very high County boundary on the south.

The registered right is attached to Cernwyn (in Llandrillo Parish) containing 61.644 acres, and is to graze at all times 560 sheep. The grounds of Objection No. 94 (Mr E O Jones) are: "That the right to graze does not extend over all the land over which it is stated to be exercisable but comprises the land shown on the attached plan only". The attached plan shows all the



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Unit Land except that ("the Objection Land") southeast of a straight line drawn approximately from the southwest 2317 feet corner in a direction approximately northeast. So the Objection Land comprises or includes nearly all the highest part of the Unit Land.

Mr H Roberts in the course of his evidence produced a conveyance dated 27 February 1961 by which Mr G K Ridley and Sir W C Crocker as personal representatives of H R A Duke of Westminster (he died 19 July 1953) conveyed to Mr H and Mrs J Roberts: (1) farm and lands called Plas-yn-Dinam containing 276.315 acres, (2) farmhouse and lands called Cernyw containing 61.644 acres, and (3) farmhouse and lands called Lletty containing 5.677 acres; these lands were expressed to be conveyed "with a right of grazing five hundred and sixty sheep on the adjoining moorland retained by the Vendors". Mr Roberts said (in effect) that his purchase was at a general sale made of the Estate (local) of the Duke of Westminster, and that the map which accompanied his application under the 1965 Act was the same as or based on that at the time of the sale supplied to him by Mr Sopwith.

Mr T A G Sopwith in the course of his evidence said (in effect):- The sale mentioned by Mr Roberts was of the Pale Estate. At the time his firm W H Corke and Arkwright were the managing agents of the Estate. He gave Mr Roberts a plan of his sheepwalk; the east boundary shown on this plan (being the boundary now disputed by Mr E O Jones) was also the east boundary of the Pale Estate. The land on the other side of this boundary (marked on the plan as Cadwst Sheepwalk) was part of another Estate in different ownership, as also was the farm Cadwst. He based this boundary on a map dated 1789 held in the Estate Office; and also on a plan attached to a transfer of the Estate which showed this boundary as a blue line and the Objection Land as part of the Pale Estate. Later he had found an OS map (1890 edition, 6" = 1 mile) made in the Pale Estate Office, which showed Cadwst coloured yellow with this colour going up to but not including the Objection Land.

In the cross examination of Mr Roberts and Mr Sopwith and in the evidence of Mr J W Jones (son of the Objector) reference was made to the land ("the CL 108 land") in Register Unit No. CL 108, and a copy of the Register map showing this land was produced. The CL 108 land is on the same side of the Berwyn Range as the Unit Land, and extends from some distance (perhaps a mile, possibly more) northeastwards from the east boundary of the Unit Land and southwestwards from the west boundary of the Unit Land, so that in effect the Unit Land slices the CL 108 land into two parts.

Mr J W Jones explained that at the date of the Objection (30 September 1970), the Objector (his father) was tenant at Cadwst and that in 1978 he (Mr J W Jones) and his brother (Mr I R Jones) bought Cadwst. He thought the area of the Objection Land was about 50 or 60 acres. He produced a colour photograph showing the cairn of stones at the 2317 feet corner, and another photograph showing a general view of the Cwym looking up it.

Evidence was also given by Mr Iewan Jones and Mr Tom Owen who had been concerned with Cernwyn and Cadwst respectively many years ago and who attempted



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to explain the boundary of the Cerwyn and Cadwst sheepwalk, as they had known them during the period with which they had been concerned with the grazing of them. Unfortunately although they were trying to be helpful, their evidence about the boundary was so lacking in precision that I am unable to attach any significance to what either of them said.

As I understood Mr J W Jones at the hearing, he was concerned with the position resulting from the CL 108 land being sliced into two by the Unit Land. I had no copy of the CL 108 registration, but I understood from Mr J W Jones that the sheepwalks of Cadwst and other farms had all been included in this one CL 108 registration. There are no fences along the boundaries of the Unit Land between it and the adjoining sheepwalks or as I understood Mr J W Jones between any of the sheepwalks included in the CL 108 land. Mr Roberts said that the flock was grazed Cynefyn, but he explained that before his purchase, he had not been used to grazing on an open mountain, and did not know the procedure.

Where a large area of moorland is grazed by flocks Cynefyn (in England usual expression for such grazing is heaved or hefted) the rights may be registered in one of two ways: either all the Cynefyn may be treated as one common, so all the commoners have grazing rights over all the area and so that the Cynefyn are treated not as an essential part of the Rights Register but as an agreement between the right owners for the convenient exercise of their rights; or each Cynefyn may be treated as a different common so that each right owner grazes other sheepwalks by reason of vicinage only. It may be therefore that in relation to the CL 108 land and the Unit Land, there has been a mix up of two essentially different legal positions. Although this mix up may be illogical, in the particular circumstances of this case I can find no injustice because Mr Roberts has registered no rights over the CL 108 land and none of those entitled to graze the CL 108 land have registered any rights over the Unit Land. The possibility mentioned at the hearing that the Unit Unit might be fenced from the CL 108 land is I think (on the grounds of expense) remote.

On the day after the hearing I walked along the east boundary of the Unit Land accompanied by Mr Roberts, Mr J W Jones, and (for most of the time) Mr I R Jones. The boundary of the Unit Land where it is Nant-y-Jaun, or Nant Esgeiriau or (for a short distance) the stream flowing down the Cwm-pen-Ilydan is distinct; and where it is the County boundary it is for practical purposes clear enough, notwithstanding the line of the watershed is not a distinct ridge. But the east boundary is nowhere apparent on the land; nevertheless the general intention of the map boundary is obvious enough: an arbitrary line drawn about half way up the side of the Cwm and then proceeding straight up its steepest part and then turning eastwards on the top line of the Cwm where it begins to slope very steeply downwards. On appearance alone a boundary such as this is sensible enough and I saw no good reason for providing any other.

The west boundary of the Objection Land at its south end is the said cairn; but at its north end there is nothing to mark it: on appearance alone the north end cannot be anything but quite arbitrary. During my inspection Mr J W Jones relied



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particularly on the cairn as marking the point where three sheepwalks joined: (1) Cadwst to the east, (2) Cernyw in the middle, and (3) the adjoining sheepwalk on the west (Rhydygethin Maes). Quite apart from its possible use as marking a boundary of sheepwalks, the cairn's purpose could be merely as a convenient land mark (the 2317 summit); even if as I doubt, its primary purpose is to mark sheepwalk boundary that purpose could be fulfilled in respect of the two sheepwalks of Cernyview and Maes.

My conclusion as regards appearance only is that the boundary adopted by Mr and Mrs Roberts is more sensible than that proposed in the Objection.

Against the Objection boundary, I have the evidence of Mr Sopwith; as the boundary of the Pale Estate it had long been accepted in his office, and I infer that it would not have been so accepted unless it had also been accepted by those concerned with the adjoining Estate. In the absence of any good reason to the contrary I consider that the sheepwalk boundary should be the same as the Estate boundary.

It was pointed out by Mr D R Jones at the beginning of the hearing there is no apparent motive for the Objection; if the Objection succeeds, the owners of Cadwst will not by reason of their registration of grazing rights over the CL 108 land become entitled to graze the Objection land. So if the Objection succeeds the Objection land (50 or 60 acres at the top of the mountain) will not be common land and under the 1965 Act nobody will be entitled to graze it and its legal position will be extraordinary. While viewing the Objection land from the cairn I asked Mr J W Jones if he could explain the Objector's motives; I understood he had in mind that the numbers of animals registered was in some way dependent on the area of the sheepwalk and that if the Objection succeeded those at Cadwst would have a right to graze an additional 50 or so sheep. To achieve a result such as this, it would have been necessary not only to object to the extent of the registration made on the application of Mr and Mrs Roberts but to make an additional application in relation to the CL 108 land and/or to make an additional application for a right attached Cadwst over the Unit Land. Nothing like this was done on behalf of the Objector. Under the 1965 Act and the regulation imposing time limits made under it, it is now too late for anything such as Mr J W Jones seemed to have in mind to be put into effect.

Upon the considerations set out above, my decision is that Objection No. 94 (Mr E O Jones) wholly fails. There was no evidence in support of Objection No. 72 (Mr G I Barty-King and the Duke of Westminster), the grounds of which are:- "The land was not common land at the date of registration". But the evidence I have of Mr and Mrs Roberts that they were granted a right common under their 1961 conveyance, is against the objection. My decision is that this Objection too wholly fails. Accordingly I confirm the registrations in the Land Section and in the Rights Section without any modification.

TURN OVER



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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 29th — day of November — 1980.

a. a. Baden Fuller

Commons Commissioner