



In the Matter of the Tract of about
688.0 Acres called Edlogan Common in
the parishes of Panteg, Llanfechfa
Upper and Abercarn

DECISION

These disputes relate:-

(1)(273/D/104) to the registration in the land section of Register Unit No. CL.26 in the Register of Common Land maintained by the Gwent County Council occasioned by Objection No. 122 made by the Pontypool Park Estate and noted in the Register on 12 November 1970 and by Objection No. 7 made by the British Steel Corporation and noted in the Register on 30 June 1970.

(2)(273/D/105) to the registrations at Entry Nos 1-25 in the rights section of that unit occasioned by those objections.

I held a hearing for the purpose of enquiring into these disputes at Monmouth on 30 April 1986 and visited the land on 2 May 1986.

The hearing was attended by Mrs Brown representing the Mynydd Maen Amalgamated Commoners Association, Mr Wright the present claimant under Entry No. 2 in the rights section and Mr Richard Hanbury-Tenison the owner of the greater part of the unit land.

273/D/104 Land Section

Objection 7 by the British Steel Corporation relates to a thin strip of land adjoining the unit boundaries at a place called Cwm Lickey at the north of the unit. All parties present agreed that it was not part of the common I accordingly allow the objection and shall direct the Registration Authority to omit this land from registration.

Objection 122 by Richard Hanbury-Tenison owner of the Pontypool Park Estate claims that three areas within the common shown on the objection plan are not common land. I will number these areas 1, 2 and 3 reading from north to south.

Mrs Brown produced a number of written statements by persons who had known the common for periods of up to 60 years stating that areas 2 and 3 had never in their memory been fenced and had always been freely grazed by the Commoners' animals without permission or protest from the owners of the common. There was no need to decide whether these statements could be admitted in evidence since Mr Hanbury-Tenison admitted their truth. As



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to area no. 1 - known as Artillery Field - the parties agreed that there were remains of a wall and that the land had at one time been enclosed and used for milking cows but the wall had not been stockproof for at least 60 years and during that time the land had been grazed by the commoners' stock in the same way as the other two areas.

Mr Hanbury-Tenison produced two tenancy agreements, which were accepted by Mrs Brown as being genuine. The first showed that on 28 July 1959 B Powell acknowledged himself to be the tenant of area no. 1 (which comprises 11.629 acres) together with other land to a total of 26.610 acres "forming part of the Pontypool Park Estate" at an annual rent of £50. The second showed that areas 2 and 3 had been let together with Gelligravog farm in 1940 to Henry Lloyd at an annual rent of £50. The two areas are described as being rough pasture and as extending to 11a 3r 24p and 25a 2r 15p respectively. The total area of the demised land was 119a 3r 38p. Mr Hanbury-Tenison agreed that these areas were not fenced at the time but argued that these tenancy agreements showed that at the date of registration the land was "let land" not "common land".

The fact that land is let, however, does not prevent it from being subject to rights of common. In my view the only conclusion to be drawn from the agreed facts is that for at least 40 years before the date of registration the commoners as a whole had allowed their stock to graze all three areas without permission or protest and had thereby acquired a right of pasture over them and satisfied the burden of proof which lay on them to prove that these areas were common land. I accordingly confirm the registration in the land section with the modification that the land referred to in objection no 7. by the British Steel Corporation be omitted from registration.

273/D/105 Rights Section

The 25 rights provisionally registered over the unit land varied considerably both in the type of animals in respect of which they were claimed and in the number of animals claimed per acre of the dominant tenements. However I was told by Mr Hanbury-Tenison the owner of the whole common, by Mrs Brown who as secretary of the Mynydd Maen Amalgamated Commoners Association represented all the rights claimants except Mr Wright (the present claimant under R E 2) and Mr David Francis (the claimant under R E 25) that they agreed that all the rights registered except R E 25 were correct. Mr Wright later told me that he too was in agreement.



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This enables me to confirm the following entries in the rights section:-

1	5	8	13	19
2	6	11	15	20
4	7	12	16	22

R.E. 25 was a claim by David Francis for a right to graze 50 sheep and 2 horses attached to O.S.1300 (1966 Edition) which extends to about $\frac{1}{4}$ acre. This registration was opposed by both the owner of the common and the Commoners Association. It seems on the face of it extremely doubtful to say the least. The applicant, though given notice of the hearing, did not appear to support it and I shall not confirm it.

There remain a number of entries which claimed rights attached to land belonging to Mr Hanbury-Tenison, the owner of the whole of the unit land. A landowner cannot have rights of common over his own land - see Baring v Abingdon (1892) 2 Ch at page 400 Per Kay L.J and White v Taylor (No.2) (1969) 1 Ch at page 179 D Per Buckley L.J.

Any rights which the owner of the common may have to graze the common are not rights of common and their registration cannot be confirmed. They are rights inherent in the owner to graze his own land or to authorise others to do so subject only to any rights other persons may have over the land. Similarly any rights which his tenants claim as being attached to land owned by the owner of the common are not rights of common. Furthermore, since they are at most rights "held for a term of years or from year to year", they are expressly excluded from registration under Section 22 (1) of the Commons Registration Act 1965.

Under rights entry 24 the owner of the common claims rights of grazing as attached to 9 farms belonging to him. I shall not confirm that registration. The following rights entries are claims by tenants of the same farms and will not be confirmed -

3	10	18
9	17	21

That does not mean that these claimants have no right to graze the common. They have such rights express or implied as are theirs under their tenancy agreements. But those rights are not registrable under the 1965 Act.



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Under Rights Entry 14 William Henry Bradford claims rights as attached to three areas of land of which the applicant is the owner and over Cwm Farm Land of which he is tenant and which is owned by the owner of the common.

Doing the best I can with the figures with which I have been supplied I have come to the conclusion that at the date of registration he owned 77.379 acres and rented 60.674 acres from the owner of the common, making a total of 138.053 acres. How he came to claim in respect of 112½ acres has not been made clear to me. Since all parties were prepared to agree that in respect of those 112½ acres he was entitled to graze 20 cattle 400 ewes and 12 horses I propose to reduce those numbers by a factor of $\frac{77.379}{112.5}$ or .687. Applying that

factor I shall modify this entry to read 14 cattle, 275 breeding ewes and followers and 8 horses. This does not mean that Mr Bradford's right to graze is necessarily confined to these figures. He will also have whatever rights he is entitled to under his tenancy agreement with the owner of the common.

Rights Entry 23 registered by the Forestry Commission has been withdrawn.

Accordingly I confirm Rights Entries:-

1	5	8	13	19
2	6	11	15	20
4	7	12	16	22

I confirm Rights Entry 14 with the modification that the numbers of animals registered in column 4 shall be reduced to 14 cattle, 275 breeding ewes and followers and 8 horses.

I refuse to confirm Rights Entries:-

3	17	23
9	18	24
10	21	25

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 13th day of May 1986

Peter Landon-Dunn

Chief Commons Commissioner