



COMMONS REGISTRATION ACT 1965

Reference Nos 54/D/32 to 49 inclusive

In the Matter of Arenig Fawr, Mynydd  
Nodol, Cefn Llwyn Y Bugail Y Castell,  
Llanycil, Meirionnydd D

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DECISION

These disputes relate to the registrations at Entry Nos 10, 11, 13, 18 to 22 and 25 in the Rights Section of Register Unit No CL. 46 in the Register of Common Land maintained by the former Caernarvonshire County Council and are occasioned by the Objections set out in the Schedule to this decision and conflicting registrations at Entry Nos 5 and 26 in the Rights Section of this Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Caernarfon on 8 February 1977. The hearing was attended by:

Mr A Kerfoot on behalf of the Welsh Water Authority, successor to Liverpool Corporation

Mr D Williams of the National Farmers Union on behalf of D C Jones & P M Jones (Entry 11), R & D Evans (Entry 5) and R J Evans (Entry 25)

Mr Parsons on behalf of R E Evans (Entry 26), H L Evans (Entry 10), R W Evans, W Roberts and D J Rowlands (Objection to Entries 18 and 19)

Mr R L Thomas on behalf of Mr T D Jones and Mr J M Jones

Mr D M Pugh on behalf of Mr G O Roberts (Entry No 22)

Mr T D Jones on behalf of Mr R L Thomas.

The Objections to Entry Nos 11, 13, 19-20, 21, 22, 23 and 25 in the Rights Section made by the Crown Estates Commissioners were confined to the claims for rights of piscary claimed in these Entries and the Crown accepted that as far as it was concerned I could confirm these Entries modified so as to exclude all rights of piscary. All the applicants for rights of piscary except R J Evans & Sons the applicants at Entry No 25 withdrew their claims to rights of piscary. There being no objections to the Entries at Nos 11, 13, 20 and 21 other than those made by the Crown I confirm these Entries modified so as to exclude any rights of piscary.

Mr Robert Evans gave evidence in support of the claim to a right of piscary at Entry No 11. His farm Tyddyndu was on the south bank of the brook Nant-Lir which was the boundary between his farm and the Unit Land and he claimed to fish in the Pistyll Gwyn, the head water of Nant-Lir which lies wholly within the Unit Land. He said his grandfather and father had fished the Pistyll Gwyn before him, that he had caught as many as six fish in a day and 20 to 25 fish in a season and he took the fish home for use there.

In cross-examination he said the fish he caught were trout and that the water was not shallow when there was a flood. He demonstrated the size of the fish in a manner not unusual with fishermen whereby the size of the fish appeared on reflection to increase. He said he had not fished in the last two years. He



recognised Mr W E H Pugh; he had seen him many times with a gun but had never seen him fishing and that he was not fishing when he saw him. He did not know that Mr Pugh was the lessee of the sporting rights. He did not take out a River Board licence; he bought his tackle locally but not from Mr Pugh who had kept a tackle shop in Bala. He thought that because his grandfather and father fished he had a right to fish. He saw others fishing but did not object because he liked to see others enjoying themselves; he felt the others were trespassing. There was he said good fishing in the Pystill Gwyn. He fished after work. In re-examination he said he had an old fishing rod which belonged to his father. He thought his father bought a licence. The upper reaches of the river were within his sheepwalk.

Mr W E H Pugh gave evidence on behalf of the Crown and he produced two leases of sporting rights from the Crown; he said he had never fished on the land, the fishing was not worth the effort. The Pystill Gwyn was normally not more than 6"-10" deep, very narrow and did not hold any fish of any size. He kept a tackle shop and he never thought the fishing was worth while.

I have no doubt that Mr R E Evans and his father and grandfather before him have fished as they were and are entitled to do from their bank of the Nant-hir and when conditions were suitable fish up stream in the Pistyll Gwyn. It is highly unlikely that when they were doing so after work in the summer which does not include the shooting season, they would have encountered either Mr Pugh or anyone other than their near neighbours. No evidence was given as to any By Laws made by the River Authority but it is possible and even probable in the light of Mr Pugh's evidence as to the size of the fish in the Pistyll Gwyn that any trout taken out of that stream should have been returned to the water and Mr R E Evans may well think that his fishing in these small streams did not merit the taking out of a River Board licence. I have come to the conclusion that the fishing in the Pistyll Gwyn on the rare occasions when it has been fishable for diminutive trout did not amount to the exercise of a right of piscary and was no more than an activity which no one was present to control and which was so insignificant that no one considered that it warranted any control. For this reason I refuse to confirm the right of piscary in Entry No 25 but confirm that Entry modified so as to exclude that right.

As regards Entries 22 and 23 the Objectors agreed that I should confirm each of these Entries modified so as to limit the grazing rights to the right to graze 100 sheep in lieu of the right to graze 150 sheep and by excluding the right to take fish.

As regards Entry No 10, it was established that Mr H L Evans was in fact grazing or purporting to graze the 280 sheep for which he claimed rights under this Entry as the tenant of Gwern y Genau whose rights are final under Entry No 9. I was told that there is a pending County Court action in which Mr Evans' tenancy of Gwern y Genau is in issue. Mr Parsons accepted that Mr Evans had failed to prove any title to the rights he claims under Entry No 10 and I refuse to confirm this Entry.

As regards Entry Nos 18 and 19, Refs 54/D/39 and 40, I adjourn these two references at the request of the Welsh Water Authority.

I turn now to the References 54/D/32 and 33 occasioned by the conflict between Entry Nos 5 and 36. Mr Williams who appeared for R J Evans & Sons (Entry 26) produced an agreement under which his clients purchased a flock of 100 to 120 ewes formerly grazed from Fron Ucha and it was contended that these rights were additional to those claimed as appurtenant to Fron Ucha under Entry 26. Even if the said agreement was effective to sever the rights from Fron Ucha and in my view it was



not, there was no evidence that Fron Ucha was ever entitled to graze more than the 215 sheep claimed under Entry No 26 and I am not satisfied that Fron Ucha was so entitled. For these reasons I refuse to confirm Entry No 5 and there being no objection to Entry No 26 I confirm that Entry.

The Schedule above referred to

Objection No 28	made by J M Jones	enclosed in the Register on 11 September
" 47	" " W E Pugh	" " " " " " "
" 125	" " Liverpool Corporation	" " " " " 9 November 1977
" 362	" " R W Evans	" " " " " 2 February 1977
" 485	" " D J Rowlands	" " " " " 13 September 1977
" 486	" " R W Evans	" " " " " " "
" 366	" " Crown Estate Commissioners	" " " " " 8 February 1977

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 14<sup>th</sup> day of March

1977

*J. H. H.*  
Commons Commissioner