



COMMONS REGISTRATION ACT 1965

Reference No 50/D/5

In the Matter of the land called Ffridd Fawr
or Mynydd y Gorllwyn, Dolbenmaen

DECISION

This dispute relates to the registration at Entry No 2 in the Rights section of Register Unit No CL 57 in the Register of Common Land maintained by the Caernarvonshire County Council and is occasioned by Objection No 7 made by Robert Morris Williams and noted in the Register on 28 February 1969.

I held a hearing for the purpose of inquiring into the dispute at Bangor on 6 December 1972. The hearing was attended by Mr R G Woolley, instructed by Messrs Gwyndaf Williams & Roberts, on behalf of the applicant, and by Mr R E Davies of Messrs Ellis Davies & Co on behalf of the Objector.

The land in question comprises some 95 acres of mountain pasture, parts of which are either bog or covered with gorze and therefore provide little pasturage. There was a dispute as to the extent of these parts, but I am satisfied that the great bulk of the land provides reasonably good pasture for Welsh mountain sheep in the summer. The land is enclosed by an old stone wall, in which there are two gates and a number of sheep "creeps" i.e. holes or passages for letting through sheep, which can easily be closed by means of a stone slab. The land forms part of Mynydd Gorllwyn, but it is known locally, at any rate among farmers, as Ffridd Fawr.

The following grazing rights for sheep over the whole of the land have been registered in the Rights Section of this Register Unit:-

<u>Entry No</u>	<u>Name of Applicant</u>	<u>Number of Sheep</u>	<u>Name of Farm to which right attached</u>
1	R M Williams	60	Maesllech Ganol & Maesllech Isaf
2	Hugh Davies (the applicant)	100	Fron Oleu
3	John Davies and Mrs Davies	60	Bwlch-y-Fedwen
4	Mrs A Williams	97 Sheep & 97 lambs	Cefn Coch Uchaf

The registrations at entry Nos 1, 3 and 4, being undisputed, became final on 1 October 1970.

Mr Woolley stated in opening that the land comprised in CL 57 belonged to the Harlech Estate. This was not disputed, and it is supported by the evidence of Mr R M Williams to the effect that prior to the Auction Sale of 1911 (to which I refer below) only tenants of the Harlech Estate grazed their sheep on the land. I note also that the ~~Solicitors for the~~ Solicitors for the present Lord Harlech have put in a claim on his



behalf to the ownership of the land, and that no other person has claimed to be the owner (see Reference No 50/U/9). Accordingly, I proceed on the basis that the land in question, as well as the farms to which the grazing rights attach or are claimed to attach, belonged at the date of the said Auction Sale to the Harlech Settled Estate.

In September 1911 the then Lord Harlech as tenant for life put up for sale by public auction (among other properties) the five farms in respect of which grazing rights have been registered viz. Bwlch-y-Fedwen (Lot 78), Cefn Coch Uchaf (Lot 86), Maes y Llech Ganol (Lot 87), Maes y Llech Isaf (Lot 88), and Fron Oleu (Lot 92). Each farm was sold "together with such right of sheep pasturage on Mynydd Gorllwyn (or Ffridd Fawr) as is appurtenant to the Holding". Fron Oleu was bought at the Auction by William Allen Pugh, and by a Conveyance dated 10th January 1912 the farm was conveyed to him in fee simple "together with such right of common of pasturage upon or over Mynydd y Gorllwyn as is appurtenant to Fron Oleu".

At the date of the Auction Sale, Fron Oleu was in the occupation of a Mr Owen Lewis as tenant. His niece's husband, Mr J Owen Pierce, succeeded him as tenant in 1918, and remained tenant until 1922, when he was succeeded as tenant by Mr Hugh Davies (the father of the applicant) who remained tenant until 1942. In that year, Mr Davies bought the farm from Mr Pugh's personal representatives. In 1948, Mr Davies's son, the Applicant, became tenant of his father, and in 1969 the father conveyed the farm by way of gift to the Applicant and his wife.

Mr J O Pierce, Mr Hugh Davies (senior) and the applicant gave evidence before me. Mr R M Williams (the Objector), Mr Joseph Williams and Mr Griffith Pritchard Evans gave evidence in support of the objection.

Mr Pierce stated that during his tenancy he used to turn about 60 sheep every year to graze in Ffridd Fawr. He admitted, however, that his predecessor, Mr Owen Lewis might not have done so. Mr Hugh Davies (senior) did not send any sheep into Ffridd Fawr during his tenancy i.e. between 1922 and 1942. He gave two reasons for this. First, he said he had enough pasture for his sheep on Fron Oleu. Secondly, he was not sure whether he had the right to do so. But when he bought Fron Oleu in 1942 his Solicitor told him that he had a right to graze sheep on Fron Oleu, because "it was on the deeds". Accordingly, in or about April 1943, Mr Davies turned some 40 sheep into Ffridd Fawr. Immediately, objection was taken by the owners or occupiers of Cefn Coch Uchaf, Bwlch-y-Fedwen and Maes-y-Llech Ganol and Isaf, who instructed a Land Agent (Mr G F C Yale of Pwllheli) and afterwards a firm of solicitors (Messrs Arthur Owen & Co, also of Pwllheli) to write to Mr Davies requesting him to remove his sheep. Mr Davies stated that on five occasions his sheep were turned out of Ffridd Fawr at night. The objection, however, was not pursued, and Mr Davies continued to turn his sheep in increasing numbers, up to 70 or 80, to graze on Ffridd Fawr.

In May 1953, another firm of solicitors (Messrs, David Thomas Williamson & Co of Llanrwst) were instructed by the Objector, Mr R M Williams, in the matter. They wrote to the Applicant, & threatened proceedings if he continued to turn his sheep into Ffridd Fawr. Correspondence ensued down to January 1954, the Applicant claiming that, under his father's title deeds, he had the same right as the Objector. Mr R M Williams stated that he did not take legal proceedings because of the heavy expense that they would involve. In fact, the Applicant continued thereafter to turn some 80 sheep on to Ffridd Fawr every year.



Mr R M Williams stated that, prior to 1943, the only farms whose sheep were grazed on Ffridd Fawr were Cefn Coch Uchaf, Bwlch-y-Fedwen, and Maes-y-Llech Ganol and Isaf. Down to that year, there was sufficient pasture for all the sheep turned on to the land, but after Fron Oleu began to graze there, his sheep were in poor condition when they were taken off the mountain in the autumn. He said that the land is not capable of carrying more than about 2 $\frac{1}{2}$ sheep per acre.

Mr Joseph Williams, the present tenant of Cefn Coch Uchaf, also said that, due to over-grazing, his sheep are in a worse condition than they used to be when they are brought down from Ffridd Fawr in the autumn. Mr Williams is 78 years of age, and has been well acquainted with Ffridd Fawr since he was a boy. He could not remember seeing any sheep, other than those from Cefn Coch Uchaf, grazing on Ffridd Fawr before 1911. He never found any sheep from Fron Oleu grazing there during the years 1914-18.

Mr G P Evans (aged 71) has known Ffridd Fawr since about 1911. Prior to 1942, the only sheep grazing there were those from Cefn Coch Uchaf, Bwlch-y-Fedwen, and Maes y Llech Ganol and Isaf. He was an assistant overseer from 1920, and collected the rates in the area. There were rights of sheepwalk attached to those farms (but not Fron Oleu) which were separately assessed for rates. Mr Pierce, he said, never had any sheep on Ffridd Fawr.

On this evidence, I find as a fact that Fron Oleu did not actually exercise or enjoy any grazing rights for sheep over Ffridd Fawr during the period 1922-42. I am unable to find that Fron Oleu actually exercised or enjoyed any such rights at any time before 1922. It is notorious that Welsh Mountain Sheep are nimble and liable to stray, and I think it quite possible that from time to time sheep from Ffridd Faen (the part of Fron Oleu which is adjacent to Ffridd Fawr) strayed into Ffridd Fawr by jumping over the wall, and that the occupier for the time being of Fron Oleu may not have been too assiduous in recovering the strays. But, save to that extent, I am not satisfied that Fron Oleu enjoyed any grazing on Ffridd Fawr prior to 1942.

It was rightly conceded by Mr Woolley that he could not rely on statutory prescription. He based his case on (1) common law prescription, (2) lost modern grant and (3) express grant. Common Law prescription is ruled out by the fact that in and prior to the year 1911 Ffridd Fawr and Fron Oleu were in common ownership. The doctrine of lost modern grant is, as it seems to me, also unavailable, because the user since 1942 is attributable to the belief of the applicant and his father that they were entitled to the grazing rights under the terms of the Conveyance of 10 January 1912 to their predecessor in title, Mr W A Pugh.

Everything turns, therefore, on whether the words "together with such right of common of pasturage upon or over Mynydd y Gorllwyn as is appurtenant to Fron Oleu" in the Conveyance dated 10 January 1912 operated as an express grant of the grazing rights claimed by the Applicant. It is clear that at common law no such right of common could have existed at the date of the Conveyance because Ffridd Fawr and Fron Oleu were in common ownership; see White v Taylor (No 2) (1969) 1 Ch 160. But as was decided in White v Taylor, the operation of the words which I have quoted is not confined to rights existing at law; they extend to rights which appertained or belonged in equity to the land conveyed. In White v Taylor, Mr Justice Buckley (as he then was) was able to find that the purchasers had equitable rights to the sheep grazing rights under their respective contracts of purchase. In that case, however, the particulars of sale stated in terms that each lot carried a specified number of sheep rights on Martin Down. There is no comparable statement in the Auction Particulars of 1911. The Particulars of Sale of Fron Oleu refer only to "such right of sheep pasturage ... as is appurtenant to the Holding". These words postulate a



a pre-existing appurtenant right, of which there was no evidence before me (quite apart from the impossibility of any such right existing at law). There was no evidence as to the terms of Mr Owen Lewis's tenancy, apart from what appears in the Particulars of the Auction Sale. I do not think that I can properly construe the words in question as an agreement to grant a right which did not previously exist.

I conclude, therefore, that the Applicant has not shown that he was entitled at the date of registration to grazing rights for any number of sheep on Mynydd Gorllwyn or Ffridd Fawr.

For these reasons I refuse to confirm the registration.

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

March

1973

A. E. Francis

Commons Commissioner