



COMMONS REGISTRATION ACT 1965

Reference No 274/D/11, 12 & 13

In the Matter of Mynydd Llwyd Mawr,
Dolbenmaen, Dwyfor D

DECISION

These disputes relate to the registrations at Entry Nos 9 to 14 inclusive, 16 and 18 in the Rights Section of Register Unit No CL. 17 in the Register of Common Land maintained by the former Caernarvonshire County Council and are occasioned by Objection Nos 45-46 and 47 all made by Cymdeithas Mynyddig Dolbenmaen and all noted in the Register on 18 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Pwllheli on 25 May 1976. The hearing was attended by Mr Gwyn Roberts, Estate Agent, on behalf of the applicants under Entries 10 and 12, Mr R C Jones, Articled Clerk on behalf of the applicants under Entries 9, 11, 13 and 16, and Mr I E Owen, Solicitor of Messrs Robyns Owen & Son represented the objectors Cymdeithas Mynyddig Dolbenmaen.

This Unit CL. 17 adjoins Unit CL. 44; there is no obstacle separating the two units and no decision which I may give nor any Entry in the Register will prevent sheep grazing on both units if they so decide. In view of the fact that some of the Entries on both units are final I am unable to amalgamate either the Units or the rights exercisable over them. It is however the fact that in cases where applicants have claimed rights over both Units their claims are to graze one flock over both Units the apportionment of the claims as between the two units having no significance other than establish rights over both units for the requisite total. I will therefore deal with these disputes and those relating to CL. 44 on the footing that they are one mountain and that each flock grazed or entitled to be grazed on the mountain is one flock. In such cases as call for modifications of rights claimed by applicants over both Units I will modify the Entries relating to CL.17 and confirm the Entries on CL. 44.

The Objections to Entry Nos 9, 13, 14 and 16 are that they have lapsed and the Objections to Nos 10, 11, 12 and 18 are that their quantification is excessive.

I will deal first with the applications for rights which it is alleged have lapsed.

At an early stage Mr Jones submitted that since he had come to meet an objection that a right had lapsed it was implicit in that Objection that a right had at one time been subsisting and he had therefore not come armed with the proof of his titles. In my view this submission was sound, but it should be mentioned that conveyances which included vague references to undefined rights were produced. Mr Owen was at first disposed to contest Mr Jones' submission but when I pointed out



that at the very least Mr Jones was taken by surprise if he was to be called upon to prove his titles and would be entitled to an adjournment he agreed that lapse and excessive quantification were the only issues with which I would have to deal; all four applicants where rights were alleged to have lapsed gave evidence viz

Entry No 9 Mr Hughes Evans said that he bought his farm in December 1947 and that his solicitor had drawn his attention to the reference to rights in his conveyance and told him that those rights would be his "as long as water would run in the river." He stated that he had never exercised the rights but he had thought of doing so; he had never had any sheep until about 10 years ago. He has other mountain grazing in Moel Hebog and he said he never intended to abandon his rights.

Entry No 13 Mr William Williams bought his farm in April 1958 and he bought 55 sheep but they did not go on the mountain. He did not join Cymdeithas Mynyddie Dolbenmaen (hereinafter referred to as the Society) because he thought that there was no need so to do because his rights were in his conveyance. When he bought his farm he was concentrating on milk. He knew he had to have sheep on the mountain in order to establish a cynefin but said this could be done by putting ewe lambs on the mountain.

Entry No 14 Mr Roberts the son-in-law of Mrs Catherine Jones gave evidence on her behalf. He rents Mrs Jones' farm together with the rights and farms it together with his own farm, and has exercised the rights since 1966. Mrs Jones was a widow and her father exercised the rights up to 1940 and farmed the farm to full capacity, but he gave up putting sheep on the mountain when his age disabled him from tending them. Mr Roberts bought Mr Jones' sheep and put them with his flock in 1966 - an extra 50 to 60 sheep and he would not claim more than that number.

Entry No 16 Mr R T Davis gave evidence that he had never had any sheep on the mountain. He farmed his farm as a tenant from 1939 and purchased it in 1959. The previous tenant sold his sheep and he does not know if they went on the mountain. He did think of putting sheep on the mountain "but some said he didn't have a right". He could not remember who said this. His landlord never told him of the rights and he would be glad to have them. He registered 60 sheep, because he has rights on Moel Hebog - and this was an apportioned figure. He accepted that it is difficult to get a sheep accustomed to a new cynefin but said it was possible. He learned of his right when he purchased in 1959.

As regards Entry No 14, Mr Owen accepted that in the face of Mr Roberts' evidence which was uncontradicted he could not persist in a contention that Mrs Jones' rights had lapsed and he was content that I should confirm that Entry modified so as to be limited to 60 sheep.

As regards Entry Nos 9, 13 and 16 I have come to the conclusion that these rights have not lapsed - or as I prefer to put it, been abandoned. Late in the day Mr Owen referred me to the case of James v Stevenson 1893 AC 162 at p. 168, but I can find nothing in that case which affords him any assistance; it is indeed consistent with the case of Tehidy Minerals Ltd v Norman 1971 2 QB 528 in which Buckley LJ said at p. 593:-

"Abandonment of an easement or a profit a prendre can only, we think, be treated as having taken place where the person entitled to it has demonstrated a fixed intention never at any time thereafter to assert the right himself or to attempt to transmit it to anyone else."



Witnesses were called on behalf of the Society who confirmed that, Mr Hughes Evans, Mr William Williams and Mr Davies had not in fact grazed but they gave no evidence that any one or more of them had demonstrated a fixed intention not to graze. Mr Owen submitted that I should infer such an intention from the failure to exercise the rights but in my view in the instant case I am not entitled to draw any such inference. In the cases of Mr William Williams and Mr Davies the rights were the rights of their landlords until 1958 and 1959 respectively, and they did attempt to transmit those rights to their respective purchasers on the dates mentioned above.

In my view I cannot infer an intention on the part of a landlord to abandon his rights on the ground that his tenant farmer does not choose to exercise those rights. Mr Hughes Evans acquired his rights in 1967 and registered them in 1968 and in the face of his evidence that he never intended to abandon them impressed as he was by his solicitor's reference to the water in the river I am unable to infer that he intended to abandon and there is no evidence that he demonstrated any such intention.

Before dealing with the question of quantum it is necessary to mention that Entry No 10 (also Entry No 9 on CL. 44) and Entry No 12 (also Entry No 10 on CL. 44) relate to the same rights being respectively by the tenant and the landlord of the farm to which they are appurtenant. For this reason I refuse to confirm Entry No 10.

The Entries which are final are for 618 sheep on CL. 17 and 79 sheep on CL. 44 making in the aggregate 697 sheep. It was agreed that William Owen should have rights for 120 sheep on both Units - and as indicated above it was accepted that Mrs Catherine Jones should have the right to graze 60 sheep; in the result the rights on both units which are final as agreed are for 877 sheep.

I must now say a word about the Society; Mr Robert Wynn Owen the present chairman and other members gave evidence. The original chairman is dead; the minute book, if it ever existed, has been lost; there are as far as I am aware no rules. The Society did not come to the hearing prepared to put forward any settled policy for grazing the mountain and at a late stage a witness from the MTU gave evidence that he was at one time concerned to assist the Society but he left owing to dissensions among its members. I received no assistance from the Society as an unincorporated body and it did not put forward any constructive proposals.

Enquiries by me elicited the opinions that the number of sheep which both Units could sustain was 1500-2000 sheep - one witness put it as high as 2500. Mr Wynn Owen put it at 1500. It follows therefore that if the best use is to be made of the mountain there is room for 877 sheep to be divided among the applicants where Entries are provisional, and not now agreed.

These Entries are:

	<u>CL. 17</u>	<u>CL. 44</u>	
Mr Hughes Evans	35	5	
Mr Hughes Roberts	310	-	
Mr R I Jones	280	20	
Mr William Williams	130	30	
Mr & Mrs Davies	60	60	
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	815	110	Total 930
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If as I believe to be the case Mr & Mrs Davies' two applications each for 60 couple are for one flock of 60 ewes and their followers I can deduct 60 sheep from this total of 930, leaving 870 and I therefore propose to confirm rights on the disputed Entries on CL. 17 and CL. 44 so as to provide for the grazing of 870 sheep.

My decision as regards this Unit is as follows:

I confirm Entry Nos 9, 11, 12 and 13.
I confirm Entry No 14 modified so as to be limited to the right to graze 60 sheep.
I confirm Entry No 16 modified so as to be limited to the right to graze 50 sheep.
I confirm Entry No 18 modified so as to be limited to the right to graze 100 sheep.
I refuse to confirm Entry No 10.

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 23 day of June 1976

C A Jelle

Commons Commissioner