



COMMONS REGISTRATION ACT 1965

Reference No 50/D/45

In the Matter of Unenclosed Mountain
Land, Aber, Arfon D

REVISED DECISION

This dispute relates to the registration at Entry Nos 20, 27 to 32 inclusive, 41 & 45 in the Rights Section of Register Unit No CL. 3 in the Register of Common Land maintained by the former Caernarvonshire County Council and is occasioned by Objection No 62 made by the Executors of Lady Yarborough and noted in the Register on 24 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Caernarfon on 15 February 1977. Mr Ellis Owen of Messrs Robins Owen & Son appeared for the applicants for Rights under Entries Nos 27, 28, 29, 30 and 41 and Mr J Pritchard of Messrs Bellis & Co appears on behalf of the Objector, though in fact the case for the Objector was argued on behalf of the Aber Graziers Committee.

The issue between the parties can be stated in simple terms. The Aber Graziers contend that only farms with land in the Parish of Aber have grazing rights, while the applicants whose claims are the subject of Objection have farms in Llanfairfechan. It was not disputed that sheep from Llanfairfechan and indeed also from Llanlechid have grazed on the Unit Land and a notebook produced on behalf of the Aber farmers to which I will refer in greater detail later refers to such grazing in 1922.

It was not suggested by the Aber farmers that the Llanfairfechan farmers ever asked permission to graze on the Unit Land or that any objection to such grazing was ever made, but it was said that such grazing was permissive because the Llanfairfechan farmers were liable for a fine of a fixed sum for each sheep grazed by them on the Unit Land. The Unit Land was originally all owned by the Penrhyn Estate though part of it is now owned by the National Trust.

I turn now to the evidence:-

Mr Rowland Jones farms at Gerlan (Entry No 41) and is 45 years of age. He said his father and his grandfather owned Gerlan, and it is now owned in partnership by his three brothers and himself. He had taken sheep on to the Unit Land ever since he was a little boy and once got lost in Aber. He had been taking sheep on to the Unit Land all his life and no one had ever objected. The farmers at Gerlan always collected the sheep on the Unit Land with the other farmers and he was collecting with the College yesterday. Gerlan is about half a mile from the Fridd.

In cross examination he said he did not remember the constable at the annual gatherings during the period 1945/56. From 1953 till his death in 1959 his father was in charge.



William Jones had lived in the area for 65 years, he went to Gerlan when he was aged 2½. He lived there for 22 years and he was at another farm for 20 years. He remembered taking sheep to the mountain with his father and had been taking sheep there all his life and had always been asked to help and there had never been any objection and never had to ask permission; he took them there as of right without consent.

In cross examination he said there was a shepherd at the annual gathering, who counted all the Llanfairfechan sheep, who used to come and make a collection. The shepherd asked for a gift but he never paid. The shepherd was John Roberts who retired in 1953 and John Morgan took his place.

Re-examined he said the payment asked for was not a rent and no receipt was ever given for any such payment.

William Roger Jones a brother of the first two witnesses confirmed their evidence and had nothing to add.

William Hughes said he lived in the village and had been shepherding there for years. He said there was no payment for a right to graze; his father in law had an uncle living in Aber. His father in law talked about this payment, his uncle was in the Court of Manor and he said there was no need to pay and that Lord Penrhyn would never sue you. Later he was summoned to the Court of Manor for not paying so he said he was not going to pay any more and "no one came after, no one, or worried him at all. The payment Mr Hughes said was a tradition and he didn't feel he had to ask to graze.

Cross-examined he said ever other farmer paid the gift and followed tradition. This he said was not fines. The last payment he remembered was 1/6 per head and that might have been during the last war. Re-examined he said he didn't think he had to pay.

Glyn Jones of Glyn Aber said he had farmed at his farm for 20 years and his father and grandfather before him. Roberts was the constable and his duty was to patrol and he was in charge of the gathering. Each farmer would separate his own sheep. He himself only attended one gathering in 1948 or 1949 and John Roberts asked him to come. John Roberts stood at the gate and counted the sheep out and put them in charge of two farmers and then counted them and he understood that Roberts would later collect money. When John Roberts retired the Aber parish farmers had a meeting and tried to persuade the Penrhyn Estate to employ another constable but the estate refused. The farmers then appointed John Morgan with the approval of the Estate. He had been to see Mr Morgan's daughter and produced the written authority of the Estate and a note book of his; he also obtained two note books said to have been kept by John Roberts. Mr Glyn Jones, never gave the constable anything.

In cross examination he said that the sheep of William Jones and Lloyd Jones were rightly on the adjoining land and strayed but they had established dynhefins. Fines were in order for them. Mr Morgan's wages were what he could get out of the job, he only devoted about seven days per annum and a few evenings to this job.

I pause here to refer to the documents produced by Mr Glyn Jones.



(1) The authority dated 23 April 1954 signed by the Agent of the Penrhyn Estate is in the following terms:

"To whom it may concern

This is to certify that Mr R K Morgan, 20 Britannia (sic) Terrace, Llanllechid has full authority to act as Estrays Bailiff and Mountain Watcher and these persons holding grazing rights in the Manor of Aber and he will be fully responsible for collecting all fees and fines."

Mr Morgan's notebook insofar as any entries are dated deals with 1954 and 1955. It lists numbers of sheep and and lists in one payments amounting to £4 from ten farmers in respect of numbers of sheep, the maximum being 8 sheep and the smallest one sheep. There is one other similar list in which the cash entries amount to £6.19.6 but no record that this was ever paid. There is a pencil entry "to pay" against 75 sheep from Gerlan but when and by whom that entry was made was unexplained. Of the other notebooks one is clearly that of Mr Roberts, so far as the liability of farmers from Llanfairfechan is concerned it is unhelpful. There are lists of trivial sums set against small numbers of sheep, but no reference at all to any sums relating to flocks of sheep from Llanfairfechan.

The other notebook starts in 1922 and ends in 1934.

In respect of each of these years there are entered numbers of animals grazing from Aber and in each year after these Entries appears a statement in the following terms:-

"There are "x" sheep from Llanllechid Parish and "y" sheep from Llanfairfechan Parish and the latter shall be charged by the Constable of the Manor of Aber."

In 1928 the wording was changed and it was stated that "the latter will be charged and dealt with by the Manor Court" in lieu of the Constable of the Manor.

At the foot of these Entries in the book in the years 1925, 1927 and 1928 there is a rubber stamp "Estate Office - Received - -192-, the date being stated in each case. There is no signature for any receipt.

Griffith Owen Griffiths of Aber had farmed there for 50 years. He attended the gatherings until the last four years. The Llanfairfechan sheep were out out and counted by the shepherd. He used to go and collect the money at the gathering; he said some paid and others didn't. He was involved in employ^{ed} Morgan. In cross-examination he said the money was for grazing sheep on the Manor.

John Beaty Harber is the resident land agent to the Penrhyn Estate and was appointed to that post in 1967. He searched for and could not find any relevant records and said that there was a fire in 1930. He did produced three letters one being a copy letter to Professor Roberts in answer to a request about the payment of fines for estrays which stated

"As you are aware the control of the grazing rights is now vested in your committee, but in order to assist you I am quite prepared to sign the letter of application for payment of the 31st inst as per draft enclosed which I herewith return."



The request sent by Professor Roberts related to nine claims amounting in the aggregate to £10.17.6 the largest claim being for £3.15 in respect of 50 sheep and the smallest for 1/6 for 1 sheep.

Richard Ogwen Ellis aged 68 said he hardly had any sheep in the gathering. If you had sheep in the pound you knew you had to pay. In the early 40's I remember there was a second gathering after the shearing to get in the stragglers. I paid John Roberts my 1/-; he said he was responsible to the Penrhyn Estate. The charges were general. Cross-examined he said the reason for gatherings was for farmers to get their own sheep and for others to get their strays.

William Stanley Jones said his family had farmed for about 10 years. At the gathering the sheep would be cut out and the shepherd would approach the farmers and say how much they owed. He checked the earmarks till 1953. He saw John Roberts being paid. The late David Jones paid at the pens. He attended the Manor Court from 1927 to the mid 30's. The presiding man was from the solicitors and he decided the date of walking the mountain. The mountain constable gave the evidence. The Court would deal with the money, the constable would not collect.

William John Jones who claimed a right in gross said he had had 88 sheep on the mountain continuously since 1934 and never paid any fines.

There was also produced at the hearing a copy of a Report by Mr R E Hughes of the Nature Conservancy, Bangor in which was set out an analysis of the grazing on the Unit Land in the years 1939, 1945 and 1952. The relevant extract from this report is as follows:-

	1952	1945	1939
Trespass from Llanefechid	400	274	340
Trespass from Llanfairfechan	240	270	240

I attach no importance to the word trespass in this document; the probability is that Mr Hughes obtained his information from the Aber Committee.

It is also convenient to mention at this stage that the Penrhyn Estate withdrew its Objection to Entry No 45 in respect of a Llanlechid farm modified so as to reduce the number of sheep to be grazed from 150 to 75. Such evidence as was available at the hearing did not distinguish between Llanllechid sheep and Llanfairfechan sheep.

Now the evidence as regards Gerlan is that sheep from this farm have been grazed on the Unit Land for well in excess of the prescriptive period and a prescriptive right to graze appurtenant to that farm would without doubt be established unless the claims for payment of fines precludes the acquisition of the right by prescription. Year after year the sheep went on to the Unit Land without asking for permission and without objection. Whether or not the Jones paid any so called fines their sheep continued to graze the land. There is no evidence that either the Penrhyn Estate or the Aber farmers ever took the line if you don't pay you cannot graze. In Ryan & Harris on the law relating to common land at p 35 paragraphs 2 to 6 is to be found the following passage:-



"It is often difficult to distinguish a right of common from a licence. In particular there may be instances where licences to pasture cattle or take gravel can be mistaken for rights of common and although a licence is usually distinguishable on account of a periodic payment which is normally made the mere fact of there being a payment does not itself show that a licence rather than a right of common is involved. There are rights of common for which a payment has to be made and there are licences for which there is no consideration in cash."

The evidence is that John Roberts who was an employee of the Penrhyn Estate by attending the gatherings and counting the sheep recognised the presence of Llanfairfechan sheep, and until his retirement in 1953 he considered that a fine was payable in respect of each such sheep. Even if such fines were legally enforceable I take the view that in the case of the farm Gerlan it has acquired a prescriptive right to graze subject to any obligation to pay fines which may be established.

It is clear that from and after the retirement of John Roberts the Penrhyn Estate never sought to recover any fines though it was willing in 1955 to assist the Aber farmers. The last slender evidence of any receipt by the Penrhyn Estate of fines for sheep from Llanfairfechan is the unsigned rubber stamp receipt in the book said to be John Roberts' book in 1928. There is no evidence of the Manor Court ever having enforced any payment of fines.

I am not satisfied that any fines were ever legally enforceable though there may well have been an arrangement that graziers from outside the Penrhyn Estate would make a contribution either to or in respect of the shepherd.

My conclusion on the point argued at the hearing is:-

- 1 That even if there were legally enforceable fines these fines would not preclude the acquisition of prescriptive rights to graze; and
- 2 I am not satisfied that any fines were legally enforceable.

I turn now to the Entries to which the Objection refers.

Entries Nos 20, 27, 28 and 29 By inadvertance no mention of these rights was made at the hearing but I have now been informed that there is no objection to these Entries and I therefore confirm them.

Entry No 30 is a claim by William John Jones to the right in gross to graze 88 sheep. He said he had grazed these 88 sheep since 1934 without objection. Rights in gross cannot be claimed under the Prescription Act 1832; see Harris & Ryan at page 50 para 2.38 and on the evidence a claim at common law is on the evidence clearly not open to Mr Jones - I refuse to confirm this Entry.

Entry Nos 31 and 32 relate to the rights of piscary. No evidence was led as to these rights and I refuse to confirm these Entries.



Entry No 41 I confirm for the reasons given above modified by the exclusion of the right to graze 10 ponies as to which no evidence was given.

Entry No 45 I confirm modified so as to limit the right of grazing to 75 ewes and their lambs.

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 14th day of November 1977

Y. A. Little

Commons Commissioner