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COMMONS REGISTRATION ACT  
1965



Reference NOs: 276/D/458-474,  
475-477, 478-480,  
483-486, 748, 749

In the Matter of the following:-

1. (1) Black Mountain, Ystradgynlais Higher  
(2) An area formerly known as Limestone Quarry  
No.6 in the Great Forest of Brecknock
2. Forest Fawr, Triangles
3. (1) The Eastern Area of the Great Forest of  
Brecknock  
(2) An area formerly Limestone Quarry No. 1  
in the Great Forest of Brecknock both in the  
parishes of Senni, Glyn, Cray and Ystradfellte
4. Cribbarth, Ystradgynlais Higher and Glyntawe
5. Twyn Disgwydfa, Ystradgynlais Higher and Glyntawe
6. Tract of land known as Siarwad, Ystradfellte

#### DECISION

This decision <sup>is</sup> supplemental to my decision herein dated 11 July 1984.

Following this decision the following Objections were withdrawn by the Executive Committee of Allotment Holders of the Great Forest of Brecknock.

CL.3	178
CL.11	179
CL.49	180
CL.50	181
CL.63	183
CL.114	184

and in the absence of any person seeking to give further evidence in support of these Objections I confirm the registrations set out in Part I of the Schedule to this Decision.

After the time for appealing against my earlier decision had expired negotiations took place between Mr Selwyn and those acting for applicants whose applications were still challenged by Objections which had not been withdrawn. In the case of applications in the Rights section of the various register units the Objection was with one exception on the grounds that the alleged dominant tenement could not be identified with a tenement included in the list of those tenements which the Commissioners had in the 1819 Award certified as being entitled to rights of common over the Great Forest. These negotiations continued until the middle of October last and at each successive hearing I was informed that this or that objection had been withdrawn either unconditionally or on terms that the application should be modified in some respect. I have set out in Part II of the Schedule the Entry Nos. of those applications the Objection to which were withdrawn during this period showing where required any modifications that have been agreed.



*finished*  
The following ~~appeared as representatives at one or more of the hearings which took place at Brecon in 1985: on the 12-14 February, 1-3 and 21-23 May, 18-20 June, 23-25 July and 4 October.~~

The practice of the Registration Authority on receipt of applications was to insert full details of the rights claimed in column 4 of the Rights section of Register Unit CL.3 and in column 4 of the Rights sections of Register Units CL.11, 49 and 50 to enter a reference to the Rights Entry Number in the Register of CL.3. Consequently any decision made by me in relation to an Application in the Rights section of Register Unit CL.3 will apply to any application in the Rights section of the Register of any of the three other Register Units made by reference to that registration under CL.3.

Where the benefit of a registration in the Rights section of CL.3 has been transferred either wholly or in part the benefit of the corresponding registrations in the Registers of CL.11, 49 and 50 should also be transferred on the Register. Unless a Conveyance of the whole or part of a dominant tenement expressly provides to the contrary that Conveyance will have the effect of passing to the transferee the benefit of the rights mentioned in the registration or an apportioned part thereof.

Any transferee whose rights have not been so registered in the registers maintained for register units CL.11, 49 and 50 will be entitled on production of his Conveyance to have the omission put right.

I have set out in Part III and IV of the Schedule those registrations in the Register relating to Register Units CL.63 and 114 respectively which I confirm.

The following parties were represented at the hearings.

1. The Executive Committee of Allotment Holders of the Great Forest of Brecknock by Mr E C J Selwyn of Jeffreys and Powell, Solicitors of Brecon.
2. The Welsh Water Authority by Mr Vivian Chapman of Counsel instructed by Mr R J C Roberts.
3. Powys County Council by Mr K M Haynes, Solicitor.
4. South Wales Caving Club by Mr R *Smith*, a Trustee.
5. The Applicants at Rights Entry Nos 30-34 and 317 on Register Unit CL.3 by Mr T E I Morris of Glasbrooks, Solicitors of Llandoverly.
6. Powys County Council as Registration Authority by Mrs E M Morgan.
7. Hobbs Quarries Ltd by Mr Owen David of Counsel instructed by Anthony & Jarvie, Solicitors of Bridgend.
8. The Forestry Commission by Mr J Pemberton of the Treasury Solicitor's Office.
9. Tawe & Tributaries Angling Association by Mr J Mercer of Douglas Jones & Mercer, Solicitors of Swansea.



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10. Rights applicants on CL.113 and 114 and at Entry Nos 120,124,128, 130-133, 137-140 and 181 on CL.3 by Mr D Bird of Merchant Harries & Co., Solicitors of Aberdare.
11. Ystradgynlais Higher Community Council by Mr J R Davies (clerk).
12. Mr David Lloyd, Dr J M Lloyd & Cnewr Estates Ltd by Mr David Lloyd.
13. The Applicant at Rights Entry No. 251 on CL.3 and applicants for commons of piscary Mr Emlyn Thomas.

#### Rights of Piscary.

These claims are registered in the name of the Tawe and Tributaries Angling Association for a right of piscary in gross and appear in the case of Register Unit CL.3 as follows.

Entry No. 94  
Entry No. 95  
Entry No. 114

At Entry No. 94 the words 'Rights of Piscary' appears in column 4 and in column 5 the words 'that part of the River Twrch and its tributaries which flow through the Great Forest of Brecknock. Held in gross'. The wording of Entry No. 95 is the same with the substitution in column 5 of 'Tawe' for 'Twrch' and of Entry No. 112 with the substitution of 'Usk' for 'Twrch'.

In <sup>115</sup> Rights section of Register Units CL.11 and 49 the corresponding Entry Nos are 92,93 and 112. In column 4 there appear the words Ref: CL.3. Rights Section Entry No. 94,95 and 114 as the case may be and in column 5 the words 'Part of River Twrch, Tawe or Usk'.

In the case of CL.50 the Entry Nos are 93,94 and 113 but in other respects the pattern of CL.11 and 49 is followed.

Mr John Mercer a partner in the firm of Douglas Jones and Mercer, solicitors of Swansea appeared in support of the applications.

The Association had been in existence for about 85 years. Mr Jones who had made the applications on behalf of the Association was unable to give evidence. In 1900 the Tawe was polluted for about three-quarters of its length. Because of this younger members of the Association began to fish the mountain streams. In 1971 the Association purchased from the Cawdor Estate fishing rights on the west bank of the River Twrch. In 1972 the registration of those rights by the Trustees was confirmed. The Trustees purchased from the Gough Estate fishing rights in the River Giedd from its confluence with the Tawe to Tir Roger. The present application related to the stretch of that River from Tir Roger to its source.



Mr Mercer produced a copy of an O. S. Map of the western area of the Brecon Beacons National Park on a scale of 1:25,000 on which the stretches of the rivers over which the Association claimed rights of piscary were shown in the following colours.

<u>River Twrch</u>	(East Bank)	Red
River Gwys		Black
River Giedd		Blue and Yellow
River Haffes		Brown
River Tawe		Green
River Usk		Purple
River Tawe Fechan		Orange

Mr David Gild Jones said that he was 56 years old. With his father he first went fishing in the Upper stretches of the River Tawe at the age of 6. Both of them were members of the Association and lived 1-1½ miles from Abercraig. He had fished there for the last 50 years. Other persons fished there too, most of them members of the Association. The approaches to the fishing were rough but the fishing was excellent. There were no trout in Llyn-y-Fan Fawr, a lake lying a short distance to the west of the sources of the Tawe.

Mr Teri Morgan Griffiths said that he was aged 57 and lived at Llanrhyn. He was the chairman of the Association. He had started fishing with his father at the age of 5 and had fished all the rivers ever since. His father and brothers were also members of the Association. He fished as a member of the Association and had always thought that the Association had fishing rights. Members of the Association lived in the area of the watershed. Licences to fish were issued by the Association and charges for fishing had been levied for the past 80 years.

Mr Windsor Clive Stephens said that he was aged 70 and lived at Cwm-Llynfill. He had been chairman and a member of the Committee of the Association for 35 years and was one of the Trustees.

Angling Clubs had to move upstream to avoid pollution. His father had been a member of the Association and he had joined at the age of 10. He began fishing when he was 6. He had not fished all the tributaries. Licences to fish for a day and longer periods had been issued since he joined the Committee and before that time. He had fished the Twrch, Tawe, Gwys and Giedd.

Mr Bryan Griffiths said he was aged 49 and lived at Glantryd. He had fished from the age of 8 having on the first occasion bought a ticket for 2/6. He fished the Twrch mostly and used to camp out at weekends.

Mr Mercer continued his submissions on July 23.

The Association had for many years appointed trustees who issued tickets to members allowing them to fish. The Association did not claim by prescription but relied on a lost modern grant. It was not a claim in gross. Trustees of an Association can claim by a lost modern grant.



Mr Mercer produced a copy of the current constitution and rules of the Association which had been adopted in 1968. There had been minor amendments passed subsequently but none of these affected the matter in issue. The Trustees are nowhere mentioned in the constitution. At the annual general meeting in 1974 a resolution was passed stating that the purchase of a fishing permit did not admit the purchaser to membership of the Association.

Mr Mercer also produced a list of the persons appointed by the Association to be River Watchers for the years 1959-69. River Watchers are referred to in Rule 14 as a category of persons entitled to inspect the permit of any person fishing in Association Waters and to examine such person's fishing basket or bag. A River Watcher is not an officer of the Association and the election of River Watchers is not one of the matters to be dealt with at an annual general meeting.

I was shown permits issued in 1943 and 1969 <sup>and</sup> ~~but~~ I accept that permits had been issued in a similar form since 1924. I noted that the permit for 1969 differed from the earlier permits in that the words 'Mountain Rights' had been added to the description of the fishing.

I was also shown a list of charges payable for permits going back to 1928 and a table showing the income derived from the sale of permits for the years 1963-70 (inclusive).

The Trustees had acquired in 1973 from the trustees of the Cawdor Estate rights of fishing by conveyance and also in 1950 from other vendors. Leases of fishing rights were made to Trustees. Eight new Trustees had been appointed at a general Meeting of the Association held in May 1949.

Mr Selwyn in support of the Objection submitted that there was no evidence that the Association had ever attempted to turn off persons fishing without permits in water, the fishing in which was not owned by or leased to the Association. Matches were fished in reservoirs and not in the rivers.

The fact that the words 'Mountain Rights' did not appear on permits issued before 1969 showed that the permits previously issued only applied to waters ~~the~~ fishing in which was owned by or leased to the Association. Although disclaimed it, the Association was in fact claiming a right in gross if it was issuing permits to non-members to fish in waters the fishing which was not owned or leased by the Association.

The decision in the Saltash Case did not apply to members of a fishing Association.

In my judgment the claim by the association to have acquired a right of common of piscary fails and the registrations cannot be confirmed.



The evidence in support of the claim is based on the testimony of individual members of the Association that they and other members of the Association had fished regularly in the rivers over which the right is claimed and that since 1924 the Association has issued on payment to its members and persons who are not members permits entitling them to fish in the Association's waters. Throughout the period the Association through its Trustees held fishing rights on tenancies or in fee simple and there is no evidence that these permits related to waters over which the association did not have fishing rights as tenants or owners. The addition of the words 'Mountain Rights' on the form of permit in 1969 for the first time is significant.

A right of common of piscary is the right of a commoner to take fish for the needs of his household. See Lord Chesterfield v Harris (1908) Ch 397 at p. 422.

In support of its claim the association alleged that since 1924 it had exercised the right to claim payment from members and non-members for fishing in the upper waters of several rivers. I do not accept the submission that the permits issued by the Association before 1969, when the words 'Mountain Rights' were added for the first time, extended to fishing which the Association had not purchased or leased.

If I am wrong in the view I have taken of the evidence any right of piscary which the Association might have acquired would not be a right of common and therefore not registrable under the Act of 1965. A right to fish is in law a profit a prendre but not every right to fish is a right of common of piscary. The latter as I have already indicated is limited to the needs of a dominant tenement.

For these reasons I must refuse to confirm all three registrations. I do not need to consider whether the individuals who gave evidence in support of the Association's claim have acquired any right of piscary because there is no application on the register in their names.

On 12 February 1985 Mr Morris appeared for the applicants at Rights Entry Nos 30-34 (inclusive) who claimed grazing rights over Register Unit Nos CL.3, 11, 49 and 50. The respective claims were set out in detail in the Rights Register relating to CL.3 and in the case of the other three units by reference in each case to the claim made in relation to CL.3. Mr Morris pointed out that all the dominant tenements were in the County of Dyfed (formerly Carmarthen) while the servient tenements were all in Powys (formerly Brecknock) and submitted that there was no defined county boundary. His clients relied on prescription.

Mr David Eirwyn Jones said that he was aged 65 and that his farm Cilgerddan was in the former county of Carmarthenshire. Before 1939 he had farmed over Eppynt and in the autumn of that year he moved to Gwydre and in the autumn



of 1949 he took over Cilgerddan (91 acres) and later Cilbryndwen (73 acres). He now had a settled flock of 530 which was run as two separate flocks. He had 530 breeding ewes and 200 ewe lambs for replacements.

(He was referred to a map on which were shown four adjoining acres coloured pink, blue, orange and hatched green respectively. This area is at the northern end of CL.3 at the sources of the River Twrch and the name Carnau Gwys appears in the middle of the area on the register map.) His claim was to graze 250 sheep and gimmers and their lambs, A gimmer is an ewe that has not had a lamb. Since 1949 he had shepherded the Cilgerddan flock which had grazed the pink area since 1949. He had another flock on Register Unit CL.18. He had grazed his flock on the pink land from 1949 onwards. His sheep knew the sheepwalk. Ewes from Tirpaun had grazed the blue area. Flocks from Gilgach and Gelli had been there since 1949.

In 1949 he took over 60 ewes and 20 lambs. The previous owner had a flock of about 150 ewes. Over the last 10 years the quality of the ewes had improved. By 1953 he had 200 ewes and 70-80 ewe lambs. He had never needed to go across the River Giedd to look for sheep. The owners of the four farms had always gathered in their flocks together ever since 1949.

He bought Cilbrydwen Farm in 1967. The Arospa for that farm is round the lake. The two flocks were entirely separate on the hills. One flock was of a different breed from the other, Now he had 300 ewes and 20 gimmers and expected 650 lambs from the two flocks. About half the ewes would have ~~new~~ lambs. He could winter 530 ewes on his farm.

13 February Mr Joseph Rees Williams aged 74 said that he owned Gelli farm and was the applicant at Rights Entry No.33. He had lived there since 1943 and his family had owned the farm since 1861. Gelli is 32 acres. He had two other farms, Talgryn (112 acres) and Fedw Hyrion (46 acres) purchased in 1953 and 1967 respectively.

He did not farm Talgryn before he purchased. Talgryn had been farmed for three generations by a family named Evans. His vendor was John Evens. The Evans family turned their stock on to the common. His claim was to graze 100 sheep and lambs and 5 ponies and their ~~flocks~~ foals.

William Evans had farmed Talgryn before 1953. He was a sheep farmer and also put sheep on the hills in Carmarthenshire. William Evans was at Gelli in 1941 with a flock of 80 ewes and followers.

The wife and mother-in-law of the witness came to Gelli in 1941 and the witness joined them in 1943. Henry Davies, his wife's brother, exercised the Gelli grazing rights from 1941 to 1963. In 1963 he bought Henry Davies's flock. The Gelli flock grazed in the Great Forest. The Gelli sheep walk is coloured orange. Henry Davies had a flock of 250-280 on the sheepwalk coloured orange from 1941 to 1963. He also had other sheep which grazed elsewhere. From 1950 onwards Henry Davies turned 200-250 ewes on to the sheepwalk. In 1963 the witness bought 70-80 ewes from Henry Davies including 10 ewe lambs. Since 1963 the witness had grazed sheep on the sheepwalk coloured orange every year, about 100 ewes as well as 5 ponies and the occasional foal. Henry Davies also had



ponies and foals on register unit CL.18.

The witness turned sheep on to the hills at the beginning of April and ewes and ewelambs at the beginning of May. The flock would be brought down from the hills for shearing and would then go back. Gelli and 21 acres of Fedw Hyrion would support the flock during the winter.

His parents came to Llangwnedd in 1936. At that time sheep from Gelli were going to the Great Forest; about 70-80 sheep. The owner of Gelli was ~~running~~ two fields, about 7-8 acres. He could not be exact about the number of sheep but it was at least 60-70.

In cross-examination the witness said that Henry Davies bought his sheep from William Evans in 1941. The witness farmed the land at Gelli from 1943 onwards but did not send his sheep to the Great Forest to graze. He had some sheep but they grazed in Carmarthenshire. He bought sheep from Henry Davies in 1963. Davies had three separate flocks one of which (about 250-280) grazed on part of the Great Forest.

Gelli could easily support 2 ewes to the acre.

Mr Eirwyn Henry Llewelyn Williams said that he was aged 38. He lived at Gelli and farmed Gelli, Talwryn and Fedw Hyrion. His father bought 70-80 sheep in 1963. Henry Davies exercised the Gelli grazing rights until 1963. The Gelli flock was run by Davies from his own farm Gelli Gron. Since 1963 he had grazed the Gelli flock on the great Forest, - the sheep walk coloured orange.

Carmarthenshire farmers would help each other to collect flocks. He knew of no pressure on the grazing. In cross-examination the witness said that he knew Watkins who formerly farmed Cronydd. He grazed his flock on the hills above the witness's farm during 1966-71. Morgan and he filled the gap when Watkins left. He had not increased his grazing flock since 1971.

Mr John Gwynfor Rees Hughes said that he was the son of Emrys Hughes the applicant at Rights Entry No. 32 and was aged 38. Tirpaun Farm was 151 acres and his family had owned the farm for the past 75 years. The whole farm was permanent pasture. The settled flock was made up of 330 breeding ewes and 140-150 yearlings. This flock would produce annually 565-570 lambs.

Ewes and lambs went to the hill at the beginning of May, 150 ewes and lambs 40-50 ewes go on 15 April, yearlings go up after weaning about 10 August (120-130). Shearing is done in June and then the flock went back to the hills. Topping in October and then back to the Hills in december. This had been the practice ever since he could remember. There had not been any increase in the flock in recent years. The grazing patch is in Breconshire. The farm also had rights in Carmarthenshire. The Arosipa is in Breconshire. The eastern boundary is the River Giedd. The Arosipa of Gilfach, Gelli and Cilgerddan lie between the Tirpaun Arosipa and the River Twrch. The starting time for grazing was the same for all four farms. Collecting was done at the same time with all four farms joining in.





The whole flock is wintered at Tirpaun except for about 140-150 yearlings. The size of the flock was low in relation to the amount of grazing available.

His relationship with Brecon Farmers was good. He gave up keeping ponies in 1984. Previously he always had about 15 ponies on the hill, sometimes more sometimes less.

In cross-examination Mr Hughes said that his father bought 40 acres of additional land before 1950 and farmed it with Tirpaun. He had no grazing in Carmarthenshire. He kept 10-15 ponies. Ponies stray more than sheep. Some were in Carmarthenshire, some in Breconshire.

Mr Edgar Glyn Powell of Blaen Bwch said that he was aged 45. He traded as Howell Bros Farmers in partnership with his wife and brother-in-law. He owned Gilfach and Pentwynmwyn farms (Rights Entry Nos 30,31 and 317). He had purchased the farms in 1978. The combined acreage was 187 acres, 180 acres of which was pasture. He purchased a single settled flock of 600 sheep with the two farms.

On 22 May Mr Morris resumed his submissions in support of Rights Entries Nos 30-34 and 317.

Mr William Aneurin Davies of Blaen-llechach Llandeusant said that he was aged 65 and a farmer. He was born at Tir-Hen and had lived in Llandeusant all his life. As long as he could remember, farmers in that area of Carmarthenshire had always grazed their sheep in the area between the Twrch and the Giedd on Carnau Gwys. Tir-hen enjoyed grazing rights in that area. The farms to which he was referring were Cilgerddan, Gelli, Tir-Paun and Gilfach. His nephew Aneurin Davies exercised rights of grazing in respect of Tir-Hen on the Carmarthenshire side of the Twrch.

The witness started going to the Tir-Hen Arospa when he was 15. He took sheep to and from the Arospa. On his way he used to meet Mr Morgan Thomas of Cilgeddan. Mr Thomas died in 1948 and after his death the Trustees of his will retained the farm and the flock for a year. The flock and the farm were then purchased by Mr D E Jones, who had continued to graze the flock in the same area ever since. That flock has not increased since 1949.

The Hughes family at Tir-Paun had exercised grazing rights in the same area over the same period. He used to meet them on his way to and from the Tir-Hen Arospa. The Hughes family had farmed Tir-Paun for the past 55 years.

Gelli farm had it's Arospa in the same area (he was then shown the map on which the difference Arospas were in separate colours and agreed it was correct.) There had been no change in the Arospas during the period that he could remember.



This shows that for the period 1941-63 the rights claimed were not exercised as appurtenant to Gelli Farm so the applicants cannot rely on the Prescription Act 1832. On the other hand the Evans family, which had owned the property since 1861, had in 1941 a flock of 80 ewes and followers and William Evans the owner of Gelli in 1941 turned out sheep onto the Common and were doing so in 1936. The evidence that sheep from Gelli Farm grazed on land in this register unit only covers the period 1935-41 and 1963-1970. Grazing for the period after the dates of the Objection is not taken into account. In this case the application must fail.

Cilgerddan (91 acres). The claim is to graze 250 sheep and gimmers and their lambs. The evidence establishes that Mr Jones purchased the farm in 1949 and took over 60 ewes and 20 lambs from the previous owner, who had had a flock of 150 ewes during the period 1939-49. By 1953 Mr Jones's flock had increased to 200 ewes and 70-80 ewe lambs. He purchased Cilbrydwen Farm (73 acres) in 1967 and he now has a settled flock divided between the two farms of 530 breeding ewes. On his own admission Mr Jones had not grazed a flock of the size specified in his application for a period of 20 years. I am however justified under the principle of a lost modern grant having regard to the size of his flock in 1953 and I shall confirm the registration at 200 ewes and their lambs.

Mr Bird then appeared in support of Messrs. M T Bevan and Sons the registered applicants at Entry 137 in the Rights section of CL.3. The dominant tenement is Goitre Farm Ystradfellte comprising 61 acres and the application was for the right to graze 1,600 sheep and 10 cattle and 2 ponies. Objection No. 668 made by the Clerk to the Executive Committee of Allotment Holders of the Great Forest of Brecknock alleged that the numbers of stock registered were excessive for the land to which they were attached.

Mr Morgan Ronald Bevan of Tongilfach Farm Glynneath said that he was aged 51 and a son of Meredith Thomas Bevan of Goitre Farm who had purchased that farm in October 1960. In 1964 the father transferred ownership of the farm into the names of himself and his two sons the witness and Meredith Mervyn Bevan. On the father's death on 8 April 1976 ownership of the farm vested in the two sons beneficially.

In a Conveyance of the farm made in September 1945 the transfer included "all the mountain rights". In the Award made in 1819 the farm is listed as no. 407 comprising 60 acres. The witness made the application which led to the registration and at that time the applicant owned

660 ewes  
230 yearlings  
200 wethers  
500 lambs  
10 rams  
10 cattle  
2 ponies



When his father purchased the farm he bought 500 ewes at the farm sale and later 30 ewes at a sale at Penderyn. He produced a copy of an advertisement of a sale of live and dead stock on Goitre (sic) Farm held on 22 September 1960 which included 1,370 Cheviot and Welsh sheep straight off the hill consisting of 700 ewes, 1,2,3 and 4 years old, 450 Hardy Ewe and wether lambs, 200 wethers and 20 Rams and 20 Attested Hereford Cattle.

His parents knew the farm well before they purchased it. The 530 ewes purchased by his father all had the Goitre earmark. All the sheep in the sale bore the Goitre earmark.

After the sale all the sheep which his father had purchased were driven back to the mountains. A count made in 1967 showed 660 ewes.

He produced a copy of a letter from the Welsh Office dated 30 June 1983 giving details of sheep counts during the period 1964-80. The figures for Goitre were:

	<u>Ewes &amp; Shearing Ewes</u>	<u>Ewe Lambs</u>	<u>Rams</u>
14. 7. 64	632	143	30
9. 7. 68	612	196	30
8.11. 71	837	370(wintering	35
8.11. 74	987	350 <sup>away</sup> )	38
9.11. 77	1236	350	63
10.11. 80	1347	on tack not counted	50

Separate figures were given for Tongilfach Farm.

The figures registered <sup>were</sup> ~~are~~ accurate.

His flock grazed the area to the North East of Goitre Farm.

His parents knew the previous owners of Goitre Farm, a Mr Lewis, who kept a very big flock and had two other farms. Before 1945 when Mr Lewis purchased Goitre Farm the owner was a member of the Llewelyn family.

He produced a Schedule of stock on Goitre Farm at the time of the sale in 1945, showing 447 sheep and 34 cattle.

During the summer the sheep were locked out of the farm. In winter they could get back under cover in bad weather. During February, March and part of April the sheep were on the dominant tenement. The farm could winter 700 ewes. Ewe lambs were sent away to tack for the winter. There were no disputes on the common.



The witness was now a member of the Allotment Holders Association. He also produced a letter from a firm of Auctioneers stating that during the period 1980-4 Goitre sheep fetched above average prices at stock sales.

In cross-examination Mr Bevan said that in 1960 Mr Lewis was employing a Bailiff. His parents knew Mrs Evans. He did not accept that there was any one called Jack Davies at Goitre Farm in 1945 nor did he know about a stone dipping bath.

A meeting of Commoners and Allotment Holders was held in the Church Hall Ystradfellte to discuss the terms of registration of rights of common when a motion was carried stating that each applicant should show in his application the number of sheep he believed he was entitled to graze.

He had fed concentrates to his sheep in winter since 1960. After 1970 he began to send ewes away in the winter, about 400, but there were always 700 ewes wintering on Goitre Farm.

Mr David William Everett said he lived at Trevanogg Terrace Penderyn and was aged 58. He used to be employed by Mr Lewis of Goitre Farm who also owned Bryncul Farm. From May 1955 to May 1958 he worked for Mr Lewis as Bailiff at Bryncul Farm. He was familiar with Goitre Farm. Mr Lewis kept his sheep at Goitre Farm and his cattle and ponies at Bryncul. There were 180 ewes at Bryncul but he did not know if Bryncul had any hill rights.

In 1956 and 1957 150 ewes were brought to Bryncul for two months for lambing. He was there for three winters. Mr Lewis had over 1,000 sheep at Goitre.

In cross-examination Mr Everett said that while he was at Bryncul no hay was ever sent to Goitre

Mr Cyril Bevan of Caer Howell Farm Penderyn said that he was aged 62 and a brother of Mr M R Bevan who had already given evidence. In 1950 he was farming Hendre Bollam Farm Ystradfellte. This farm was 2 miles from Goitre Farm. On one occasion he went to Goitre Farm to help with the shearing. There were more than 1,000 sheep to be shorn. 600 sheep a day was an average task. There were between 20 and 26 shearers.

In cross-examination Mr Bevan said that he turned out sheep on the hill.

Mr Meredith Mervyn Bevan another brother said he was aged 49. He recalled going to Goitre Farm in 1954 or 1955, when Mr Lewis was the owner, to help with the shearing. It was a heavy day's work. There were between 20 and 30 shearers present and they worked until 9.30.p.m. He was shearing and he could shear over 60 sheep in a day.



In cross-examination he said he had sheared sheep many times before this particular occasion.

22 May.

Mr Llewellyn Thomas Llewellyn of Penllwyn Einon Ystradfellte said that he was aged 55 and had lived at and farmed Penllwyn Einon since 1950. He went there with his father in 1950 and had farmed on his own account since 1958. Before 1950 he was at Nantwywynnam which was just across the valley from Goitre and the 60 acres owned by Lewis Lewis. It was within shouting distance. When he was 14 he and his brother went to Goitre to help with the dipping. They helped the Bailiff. The sheep were put into a stone tub one at a time. Llewellyn Davies squeezed the fleeces to recover the dip. This would be in the second week of August. They were dipping the Goitre flock. About 300 sheep were dipped. He did not remember whether the whole flock was dipped in the one day but they did not come back the next day.

He remembered William Powell being Bailiff at Goitre. During his time the flock increased quite a bit. When he left Nantwywynnam there were considerably more sheep at Goitre than at the time when he helped with the dipping. Mr Lewis owned other sheep, 180-200 at Bryncul Farm. He also rented Cilhepste where he kept 200 -220 sheep and he also owned Maes-y-rhidian.

These other farms were used during the winter to provide storage space for Mr Lewis's sheep along with Goitre. He did not personally see the sheep taken into those other farms but it was a matter of common knowledge.

In 1950 his father rented Pont Rhyd Hiwllan which is one mile from Goitre and he could see that the flocks at Goitre had increased considerably.

In 1967 he was elected to the Executive Committee of the Allotment Holders Association. At that time a Mr Loveridge was the only other member of the Committee from the Ystradfellte area. In May 1967 the two of them arranged a meeting in Ystradfellte. The meeting was held and Alderman Herbert Harris was elected Chairman and Mr Loveridge acted as Secretary. Shortly after the meeting Mr Loveridge handed his draft minutes which he still retained. (The witness produced the draft). The meeting was called to arrange the method of registering the applications for common rights. In 1971 Mr Loveridge was appointed Chairman when Alderman Harris left the district.

About two years ago the Committee received a complaint about over-grazing from the Secretary of Penderyn Common. This was said to be due to an invasion of sheep trespassing from the Great Forest. These sheep did stray onto Penderyn.



He did not keep all his sheep on his farm in winter. Some were sent away. In winter he fed the sheep cake, nuts and cereals. For upwards of 3 months he would use 12 bales of hay a day to feed 180 ewes.

The number of sheep aged 1 year and upwards in the parish of Ystradfellte rose from 14,235 in 1973 to 18,949 in 1983.

In cross-examination Mr Llewellyn said that at the closing down sale of Goitre Farm held in September 1945, the purchaser bought no sheep and only two heifers. The sale records showed 38 cattle sold but he had never seen more than two cattle on the farm.

In re-examination the witness said that his family suffered heavy losses of sheep in the snow of 1947. Such losses were general and no flock escaped losses.

Mr Herbert Leyshon Morgan said that he was born in 1923. Since 1934 he had lived at Garreg Fawn which adjoins Goitre Farm and took over running Garreg Fawn in 1960. His father died in 1965. Garreg Fawn comprises 400 acres, 100 acres were good ground, 100 medium and 200 rough and stony. His application at Rights Entry 133 was made in respect of Garreg Fawn and Llwyn On Farms, With a combined area of 450 acres. His application was to graze 650 ewes 250 yearlings and 575 lambs 4 cattle and 2 ponies. Today he had 1,050 ewes 420 ewes on tack 950 lambs 10 cattle and 2 riding ponies. He only lambs to tack. He grew hay and cereal. He had 65 acres under hay.

He remembered the dipping arrangements at Goitre. He helped with the gathering but not with the dipping. He remembered the stone tub which could only take one sheep at a time.

In cross-examination the witness accepted that in 1945 the purchaser of Goitre Farm purchased the flock at the auction.

May 22 Mr John Llewellyn Duff Tay of Ty-Llyn Ystradfellte said that he was aged 45 and was employed as Waterworks Keeper at Dringarth Reservoir Ystradfellte. He was now the owner of Penfathor-Uchaf Farm (92 acres) where he was born. His brother owned Penfathor Isaf (93 acres). Their father had farmed both farms together from 1928 until his death in 1962.

In 1947 his father had about 1,000 sheep on the two farms. During the hard winter the flock was reduced to about 250. His father began to replace the stock which he had lost and by 1962 the number had risen to 400. He had registered a claim to graze 300 sheep 25 cattle and 12 ponies. A sheep means one over 1 year old, He now had 438 ewes 198 replacements (away on tack during the winter) 10 cows 3 mountain ponies, two of which he turned on to the hill. His Arospa was 3½ acres in the area of Nant Mawr (North East of his farm). His boundary was just North of Old Quarries.



Owing to an increase in Mr Bevan's flock in the 60's & 70's his flock has had to move out further in search of grazing. Mr Bevan's flock had steadily increased since 1960.

No hay has been cut on Goitre for the past 5 years. Very little hay was cut in the period 1975 - 80 and not much more in the years before 1975. Cattle from Goitre were only on the hill for 2 months during the summer.

In cross-examination the witness said that he was employed full time as a Water Keeper. His father's loss of 75% in 1947 was the worst in the district. 250-400 is a small increase. Mr Lewis would have taken over the Goitre flock. From 1945-60 Mr Lewis was rapidly expanding his flock. Mr Bevan took over where Mr Lewis left off. According to the Sale Notice there were 1350 sheep at Goitre in 1960. He accepted the figures given in the letter from the Welsh Office in June 1983.

For the last two years he had tacked away 200 ewes but he was not happy about the arrangement.

Until 1972 some hay was cut on Goitre and since 1972 some fields have grown swedes.

Mr Jenkin Morgan Powell said that he was aged 41 and lived at Tyle Ystradfellte. His father was William Powell who also lived at Tyle and was Bailiff at Goitre from 1945-60 for Lewis J Lewis son of E L Lewis. The witness lived at Tyle from 1945-60 and worked for Mr Loveridge. William Powell was now aged 69. He stammered and was deaf and had a fall from his pony last Christmas. Bryn cul Farm and Cilhepste Farm comprised 180 and 220 acres respectively.

His father was responsible for the sheep at Goitre. 350 ewes went to Bryn cul and Cilhepste and the rest remained at Goitre. In winter ewe lambs were sent to Maes-yr-rhidion Llyn Moch and Cefn Down. Wethers were on the hill. About 12-14 cattle were kept at Goitre, other cattle were at Maes-yr-rhidion. There was a shed for 12 cows at Goitre. Lewis had 6 ponies at Bryn cul, E L Lewis bought 330 sheep at the sale in September 1945. The number of sheep at Goitre did not increase. Bryn cul was bought in 1955. There were never more than 300 ewes on Goitre during the winter. After 1955 the size of the flock increased. The flock that his father looked after was sold in 1960.

After 1960 the cowshed at Goitre was no longer used as such. Coed Cae (20 acres) is poor land- fern and stones.

The eastern boundary of the Goitre Arospa was Twyn-Croes Gwalter and Llyn Penfathor. (This line runs in a N E direction parallel to a right angle bend in the western boundary of CL.50 beginning at a point marked Quarry and Llyn Penfathor is immediately south of the W. in Waen Dywarch).



His father kept a farm dairy. (The following entries were read)

1957. 15 Jan. 11 lambs and 1 ewe at Bryncul  
60 ewes, 2 rams and 2 wethers went to Clipste Coed  
30 March. 121 ewes gone to Bryncul  
4 April. 100 from Llwynarth and 105 from Maes-yr-rhidion  
23 May Fetching ewes and lambs from Bryncul and Clipste Coed  
24 May Earmarking 120 lambs from Bryncul  
16 Aug. 100 lambs to Hirwaun 80 lambs and 22 ewes to Bryncul
1959. 31 Mar. 131 ewes to Clipste  
7 Apr. 98 Yearlings from tack to hill  
8 Apr. 77 yearlings home from Maes-y-rhidion  
9 Apr 68 tack sheep home from Maes-y-rhidion  
14 Apr. Gathering ewes from Clipste and Bryncul  
8 May. 22 ewes and 19 lambs home from Maes-y-rhidion
1960. 7 Feb. Gathering lambs from Clipste and took them to Bryncul  
10 Feb. 85 lambs at Bryncul moved to Maes-y-rhidion. Dosing  
60 ewes and move from Bryncul to Clipste Coed  
18 Feb. 90 ewes to Clipste-there being 60 there already 150  
at Clipste  
15 Nov. 64 ewes to Bryncul  
17 Apr. 105 tack sheep all came home  
27 May. Earmarking 106 lambs from Bryncul
1973. 20 May. Goitre sheep seen being taken to Fan Fawr. Nearly all  
sheep have left Goitre all to Fan fawr  
23 May. This was reported to William Hansell a member of the  
Committee.

On 20 May his father and he followed Mr Beavan on their ponies to Llyn Llwrach. They spoke to him and told him he was out of bounds. Beavan left his sheep there.

In cross-examination Mr Powell said with reference to the diary entry of 20 May 73 that his father and he objected to the movement of Mr Beavans sheep to Fan Fawr. He was referred to the entries in his father's record of Stock Movements 1945-60 for the following days.

1959	1959	18 Jan
30 March		17 Nov
28 May		30
1 July		7 Apr
6		12 Jan
9		6 July
19		12 Aug
30		14 Aug
22 Oct		14 May
24		

At first Lewis Lewis's main flock was at Goitre. All 1350 sheep sold in September 1960 had the Goitre earmark. On the day of the sale the sheep from the three farms were brought to Goitre. Gathering would be done by a number of farmers because sheep stray.





( Fan Fawr is south-west of the *Yonk* centre).

Goitre Farm comprises 61 acres and the claim is to graze 1600 sheep 10 cattle and 2 ponies and it was clear from the terms of the objection that the applicant had to establish that his figures were not excessive.

As Buckley L.J. stated in Lord Chesterfield v Harris (1908) 2 Ch 397 at p.421 " Prescription in the Que estate..... is necessarily measured by the size or nature or wants of the estate in respect of which the prescription is made". The effect of this rule in a case where the applicant is unable to show that he has been granted the right to graze a fixed number of animals is that his rights will depend on the rule of levancy and coxchancy which means the number of animals which the dominant tenement will maintain by its produce - during the winter months.

In reaching a conclusion on what this figure should be I am not assisted by the number of sheep carrying the Goitre earmark, particularly in a case in which the applicant owns or rents more than one farm. On considering all the evidence I find myself unable to find what proportion of the flocks owned by the applicant were Goitre sheep in the sense that they could be wintered on the dominant tenement. For these reasons I can only confirm the registration at the reduced figure of 600 sheep, 10 cattle and two ponies.

May 21

CL.63. Mr Owen David of Counsel instructed by Messrs. Anthony & Jarvie solicitors of Bridgend appeared for Hobbs (Quarries) Holdings Limited (Hobbs Quarries) as successor to Penwyllt Silica Brick Co. Ltd, the original applicants at Entry No. 7 in the Rights Section, for the right to graze 120 sheep 4 ponies and 4 cattle and the right of Turbary, Mining and Quarrying in, upon, under and over the land comprised in the register unit. These rights are alleged to be attached to the Land and Quarry known as Twyn-y-Ffeld and land and Quarries known as Penwyllt Quarries.

A section of railway line built by the Neath & Brecon Railway Company runs through the middle of the Register Unit. Mr David produced two Conveyances respectively dated 15 June 1970 and 8 December 1978 whereby Hobbs Quarries purchased from British Railways Board that part of the surface of the register unit on which the track had been built. Neither purchase included any mines or minerals under the land conveyed or any right of support for such mines or minerals. By a Deed Poll dated 19 April 1983 Hobbs Quarries compensated allotment holders in respect of the land purchased from the British Railways Board. The line runs through the Register Unit in the direction NNE to SSW. The western part (by far the smaller) had been grazed; the eastern part is a quarry. Hobbs Quarries now owns the land described in CL.5 of Rights Entry No. 7. and has agreed to provide access for the Commoners between the western and eastern parts.



The Common is land locked. The total number of sheep for which grazing rights have been registered exceeds 3,000 over an area of 40 acres before deduction of the railway tract.

Mr David Lloyd said that he was an applicant in the Rights section. John Christie built the Neath Tramway in 1820 without a private Act of Parliament and purchased the mineral rights in respect of the Commoners' Allotment. Hobbs Quarries had no right to mines or minerals by virtue of its purchases from British Rail Board as mines and minerals were expressly excluded from the sale.

The Commoners who accepted compensation when the Railway was built had no mineral rights by virtue of the Limestone Quarries allotment.

Mr Selwyn for the Executive Committee of Allotment Holders of the Great Forest of Brecknock referred to page XXV of Annexure lll to the Award. The various areas described in the numbered paragraphs were all appointed to the Surveyor of the district.

The right of mining or quarrying registered at Rights Entry No. 7 must be limited to take in stone for the repair of roads within the Great Forest for the properties of the Commoners. This right was given to persons having rights of common over the Crown's Allotment or over the Commoners' Allotments. Any rights of grazing over land comprised in a Limestone Quarry attached to the dominant tenement in Rights Entry No. 7 would be residual because the dominant owner had no rights of grazing over the Commoners' Allotment.

Mr Lloyd had not registered claims in respect of land owned by him which was originally part of the Crown Allotment. Mr David submitted that as successors to land which had been part of the Crown Allotment Hobbs Quarries had no rights over the Commoners Allotment but it had rights over CL.63 by virtue of the opening paragraph on p. XXV under the heading "Limestone Quarries" and to pasturage by virtue of the first paragraph under the heading " Grass Quarry Allotments" on p. XXXViii.

The first issue which I have to determine is the extent of the right of quarrying to which Hobbs Quarries is entitled as successor to the application registered at Rights Entry No. 7. The right to take Limestone from a quarry on land owned by a third party is a profit a prendre. A right of common to take Limestone in this way is also a profit a prendre but not every right to take Limestone is a right of common and the Register is only concerned with rights of common.

The difference is conveniently illustrated in Alfred Beckett Ltd. v. Lyons (1967) Ch 449 a decision of the Court of Appeal.

In that case the defendant claimed to be entitled to gather coal from the foreshore in unlimited quantities. Originally the coal had outcropped through the sand. Subsequently the supply was augmented by the slag from



a neighbouring pit which was carried out mechanically and dumped in the sea. The defendant employed local labour to collect the coal in sacks which they carried to the top of a cliff where the coal was collected in lorries owned or hired by the defendant and carried in land to industrial customers. The gatherers were paid for each sack delivered to the lorries. The plaintiff was the owner of the foreshore and alleged that the persons collecting coal were trespassers.

One of the arguments put forward by the defendant was that the local inhabitants had a right to collect coal from the foreshore. In a characteristic passage at 472-3 Harman L.J. draws a distinction between a cottager collecting coal to warm his cottage and the commercial enterprise which the defendant had built up. A parallel is to be found in the Old Testament in the story of Naomi and Ruth gleaning in the fields after the reapers had left. Boaz would have viewed the situation differently if the gleaners had reaped the crop and sold the grain to a third party.

In the present case persons who enjoy rights of common over the Crown Allotment or the Commoners' Allotment are limited to the rights specified in the opening paragraph under the heading "Limestone Quarries" which on the analogy of the decision of the Court of Appeal would not include sale to the community at large. Whether Hobbs Quarries has any such greater right it is not within my jurisdiction to decide. I am only concerned to indicate the limitations implicit in a decision to confirm the registration of a right to quarry.

So far as grazing is concerned the first paragraph on page XXXViii under the heading "Grass on Quarry Allotments" on its true construction gives the same rights of grazing to persons having rights of common over the Crown Allotment as those having rights of common over the Commoners Allotment.



CLAIMS TO OWNERSHIP

CL.3 Mr V.J. Chapman of Counsel instructed by Mr R.J.C. Roberts, Solicitor for the Welsh Water Authority appeared in support of the registration at Entry No. 1 in the Ownership Section of this register unit to be the owner of part of the register unit originally made by the West Glamorgan Water Board. Objection No. 54 made by Executive Committee of the Allotment Holders of the Great Forest of (1) Brecknock had been withdrawn.

Mr Chapman produced a Conveyance made on 16 May 1916 between Sir George Ferdinand Forrestier Walker and Henry Edzell Morgan Lindsay of the first part the Right Honourable Courtenay Charles Evan Lord Tredegar of the second part and the Mayor Alderman and Burgesses of the County Borough of Swansea of the third part and (2) a supplemental Deed made on 31 December 1920 between the same parties whereby there were conveyed to the parties of the third part for the consideration therein mentioned all the rights (therein more particularly mentioned) formerly owned by the Crown in the land the subject of the registration and certain other land.

Mr Chapman also referred me to certain Orders which satisfied me that his client was now the owner of that part of the register unit mentioned in Entry No. 1

CL.11 Mr Chapman then referred me to the registration at Entry No. 1 in the ownership section of this register unit in the name of the West Glamorgan Water Board. Objection No. 511 made by the Executive Committee of the Allotment Holders of the Great Forest of Brecknock had been withdrawn.

Mr Chapman referred to the documents and other evidence which he had produced in support of his client's claim with regard to CL.3 and I am satisfied on that evidence that his client is now the owner of the land referred to in this registration.

CL.49 There is no registration in the Ownership Section.

CL.50 There is a registration at Entry No. 1 in the ownership section of this register unit in the name of Eagle Star Insurance Co. Ltd (hereinafter referred to as 'Eagle Star') dated 29 January 1967. Objection No. 512 made by the Executive Committee of the Allotment Holders of the Great Forest of Brecknock had been withdrawn.

Mr K M Haynes solicitor for Powys County Council appeared on behalf of the Council in support of the registration as purchaser from the original applicant of the interest in respect of which the registration was made.

Mr Haynes produced an Abstract of the Title starting with a Vesting Deed made on 26 March 1926 pursuant to the Settled Land Act, 1925 by Sir George Ferdinand Forestier Walker and Henry Edzell Morgan Lindsay in favour of the Right Honourable Courtenay Charles Evan Lord Tredegar as tenant for life under the settlement therein mentioned being the same settlement as is mentioned in the two deeds



dated 16 May 1916 and 31 December 1920 which I had already inspected.

Eagle Star acquired its interest in the property referred to in the registration by a Conveyance made on 6 May 1959 between C. C. S. Rodney, A. C. E Mark and F. J. Chivers of the one part and Eagle Star of the other part whereby the said property together with other property for the consideration therein mentioned was conveyed to Eagle Star.

Powys County Council acquired from Eagle Star the property the subject of the registration by a Conveyance made 2 March 1984 between Eagle Star of the one part and the County Council of the other part the original of which was produced to me.

CL.63 Ownership of the whole of this register unit was originally claimed by Ystradgynlais Higher Community Council and Glyntawe Community Council. The registration was the subject of Objection No. 170. The registration was withdrawn on 20 June 1985.

CL.114 No claim of ownership has been registered.

Two matters were raised as to the effect of the wording of the entry in the register made by the Registration Authority as a result of receiving an application for rights over the Great Forest of Brecknock. Before dealing with these two matters it is necessary to say something about the practice of registration authorities. An area will be entered in the Land Section of a register unit as a common in one of two ways. The first and most usual way is as the result of an application for the registration of an area designated in the application as a common. The other is as a result of an application for the registration of a claim for rights of common over a specified area. In the second case a registration in the Land Section will be made by the registration authority on its own initiative for the very good reason that the claim for rights of common necessarily involves the existence of an area of common land.

In either case the registration authority normally accepts the definition of the area to be registered as a common, which appears in the application. In many cases this creates



no problems. There are however cases in which one or more adjacent areas have been registered as separate units which it is clear from the evidence given before a Commissioner that two or more of these units are regarded by persons claiming rights of common as forming a single common. This is established by the evidence given by witnesses who refer to two or more adjacent units as 'the Hill', or 'the Mountain' or some similar name.

This may create no problems particularly if there is an active Commoners Association or Commoners Committee.

In this case I have been dealing with six separate register units CL.3, CL. 11, CL. 49, CL. 50, CL.63 and CL. 114, which together represent what is now left of the Commoners Allotment referred to the Allotments made on 10 June 1819 by the two Commissioners pursuant to the 1815 Act as amended by the 1818 Act. It is not disputed that the persons named in the Schedule to the Allotment and their successors enjoyed all the rights of common that were exercisable by Commoners over any part of the Commoners Allotment.

The dates in which registrations were entered in the Land Sections of the respective register units are as follows:-

CL.3.	1.	26 June 1967
	2.	29 July 1970 (Formerly Limestone Quarry No. 6)
CL.11.	1.	24 July 1967
CL.49.	1.	20 December 1967
CL.50.	1.	20 December 1967
	3.	29 July 1970 (Formerly Limestone Quarry No. 7)
CL.63.	1.	19 February 1968
CL.114.	1.	24 June 1968



Applications for the registration of a right of common are made on CR Form 9 (Revised), which is divided into 7 parts. The relevant part for the present inquiry is Part 4. which is entitled 'Description of the land over which the right of common is exercisable'. Below these words the following appear.

'Name by which commonly known  
 Locality  
 Colour on plan'

In the left hand margin below the word and figure 'Part 4' the following appear in brackets ' (see notes 3 and 4) and adjacent to the words 'colour on the plan' "2" Delete reference to plan where name is submitted, a plan must be used except as mentioned in Note 4".

Note 3. is entitled 'Meaning of "rights of Common" <sup>and</sup> ~~which~~ includes a definition extracted from the official explanatory booklet "Common Land" and does not bear on the present inquiry.

Note 4. entitled "Land Descriptions is in these terms.

" (a) For the purposes of Part 4. Except where the land has already been registered under the Act ( as to which see below and Note No. 5), the particulars asked for at part 4 of the form must be given, and a plan must accompany the application. The particulars in part 4 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of the plan. This must be drawn to scale in ink or other permanent medium and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice), and it must be marked as an exhibit to the statutory declaration. ( Note 6. )

Where the land has already been registered and comprises the whole of the land in one or more register units, a plan is unnecessary provided the register and register unit number(s) are quoted (see Note 5). If the application concerns only part of the land comprised in a register unit, however, it will not always be possible to dispense with a plan. A plan will not be needed if the land can be described by reference to some physical feature such as a road, river or railway, so that the description might, for example read "The land in register unit No.... lying to the south of the road from A to B." Where this method is not practicable the land must be described by a plan prepared as mentioned above. In cases where the procedure of reference to an existing register unit is adopted, part 4 of the form should be adapted accordingly, and where no plan is submitted inappropriate references to a plan should be deleted.

(b) For purposes of part 6. If the right is attached to any farm, holding or other land, that land should be described in part 6. This may be done either by a plan prepared as explained in (a) above, or, alternatively, by reference to the numbered parcels on the most recent edition of the ordnance map ( quoting the edition ), supplemented, where necessary, to describe part of a parcel, or any land not numbered on the ordnance map, by a plan prepared in accordance with (a) above. Sufficient particulars of the locality must in any case be given to enable



the land to be identified on the ordnance map.

If the right is held in gross, that is, not attached to any land, that fact should be stated in part 6."

An inspection of the copies of the applications with which I have been supplied reveals that in the majority of the applications the words 'Great Forest of Brecknock' after the words 'Name by which commonly known' are all that has been inserted. No plan has been submitted and paragraph 4 of the Statutory Declaration in support has been deleted.

On the first page of the form a number has been allotted to the Application and inserted. Below the words 'Register Unit No(s)' the words and figures 'CL. 3.11.49 and 50' have been written in black ink with a broad pen and in a fainter hand the numbers of the Entries in the Rights section of the respective register units have been added. In the Rights Section the full details of the rights claimed are set out in Register Unit CL.3 and in the other Register Units the claim for Rights is by reference to the Entry in CL.3.

Mr Selwyn submitted that but for the insertion of the words and figures in black with a claim for rights of common over the Great Forest of Brecknock would include rights over CL.63 and 114.

With hindsight this problem would not have arisen if all 6 register units had been included in a single title - 'Great Forest of Brecknock (Commoners Allotment)'. However the applicant who completed Form 9 in the way I have indicated is in my view entitled to press the point that what appears in the Rights Section does not represent what he has put on his application and he and others who made their applications in the same way are in my view entitled to have the claims entered in the Rights Section of Register Units 63 and 114. This concession will not extend to those applicants Part 4 of whose application was made by reference to a plan which did not include all six units or contained a reference to specific register units, not including CL.63 or CL.114.

On 23 May Mr Bird made an application on behalf of the applicants at the following Entry Nos in the Rights Section of Register Unit CL.3, 124, 128, 130, 132, 134 and 138. The names of the applicants and of the tenements in respect of which the applications were made ~~are~~ as follows.

- |      |               |                           |
|------|---------------|---------------------------|
| 124. | Mr D Powell   | Cwm Nant                  |
| 128. | Mr D Lewis    | Porth-yr-Ogog             |
| 130. | Mr W Powell   | Bwlch Farm                |
| 132. | (now 369-372) | Mr T Lewis Blaennedd Isaf |
| 134. | Mr L Lewis    | Nant Croen farm           |
| 138. | Mr T Lewis    | Garn Wen Farm.            |





In each case part of the dominant tenement abutted on Register Unit CL.114 and the applicants had been accustomed to graze their flocks on CL.114 but had not made any application to register any such rights in the Rights Section of that Register Unit. All six applications are dated 24 June 1968 and were entered in the Rights Section of Register Unit CL.3 on 26 August 1968. In each case there were similar registrations over CL.11, 49 and 50.

I have seen photostat copies of all 6 applications, 4 of them 124, 130, 134 and 138 are in the same form in the Part 4 reading

Name by which commonly known The Great Forest  
 Locality Brecon  
 Colour on plan CL. Unit 3/11/49/50

All the additions to the printed forms are typed. In the case of 128 the wording was the same except that after the words 'colour on plan' the words 'edged with a solid yellow line on the plan attached hereto' were typed in and subsequently struck out in type and the words and figures CL Unit 3/11/49/50 were typed in in their place. The alteration was initialled by the Commissioner for Oaths before whom the Statutory Declaration in support was made. At that stage Application 128 became the same as the form already mentioned.

Part 4 of Application No. 132 is in the same terms as the form I have already mentioned except that the letters and figures CL. are not typed but written in ink. In Part 6. the word 'Isha' appears twice in type and on the first occasion the letter 'G' has been added in ink but where the word appears for the second time no correction has been made. However two lines further on there was a blank space after the word 'edged' so that the fourth line of typing read 'edged.... on the plan attached hereto'. In the gap the word 'blue' has been inserted in ink and the addition has been initialled by the Commissioner for Oaths. On this evidence I am satisfied that what appears in Part 4 of the Form 9 was on the Form before it was signed by the Applicant.

In the result each of the 6 applicants expressly limited his claims to rights over Register Units CL.3/11/49/50 and their claims to have their rights extended to include CL.114 must fail.

Duplicate registrations. CL.3

In the course of the hearing the following two cases of duplicate registrations came to light in the Rights Section.

(a) The application at Entry No. 217 was made by Mr Gwilym Morgan as tenant in respect of a property named Bronwydd to graze 450 sheep plus lambs. The application Entry No. 253 made on behalf of L 400  
 The Forestry Commission as owner of Bronwydd and Gilfach Bronwydd Farms is to graze 500 sheep. A comparison of the plans attached to the two applications shows that the land which is the subject



of Mr. Morgan's claim included an area to the east of Bronwydd called Plas Mount. In these circumstances and for reasons which will shortly appear I shall direct that the registration at Entry No. 217 be deleted from the register. Mr Morgan will of course have the benefit of his landlord's registration in respect of Bronwydd.

(B) The application at Entry No. 242 is made by Mr Thomas Llewellyn as tenant of Nantllechau Farm for the right to graze 150 sheep. The application at Entry No. 255 (as amended in 1973) is made by the Forestry Commission in respect of three farms Nantyllechau (sic), Pan-y-ddeufryn and Gwern-Picoed Farms as owner for the right to graze 1,580 sheep. A comparison of the respective plans shows that Nantllechau Farm is included in this registration. In the circumstances I shall direct that the registration in the name of the tenant be deleted. The plan annexed to the application registered at Entry No. 255 also shows that the land described in column 5 of the register included Plas Mount.

~~transferred~~

For these reasons I confirm the following registrations CL.3 Rights Section Entry Nos. 30, 31, ~~(as amended)~~ 32 34 (limited to 200 sheep and their lambs) and 137 (limited to 600 sheep 10 cattle and 2 ponies) and I refuse to confirm the Entry Nos. 33, 94, 95, 114, 217, 242, and 317. In the same rights section I also refuse to confirm the registrations at the following Entry Nos. 82, 141, 156, 158, 174, 230, 240, 256, 287, 288 and 295. These last applications were either unsupported or withdrawn. I also refuse to confirm the registration at Entry No. 1 in the Ownership Section of Register Unit CL. ~~113~~ 63. 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 this decision is sent to him, require me to state a decision for the opinion of the High Court.

Dated this 26<sup>th</sup> day of March 1986

*John Harker*

Commons Commissioner  
Re-amended in green pursuant  
to Regulation 33

Amended in red  
pursuant to para  
33 of the Regulations  
*John Harker*  
25. ix. 86

*Mark Poth*  
5<sup>th</sup> May 1988



## SCHEDULE

## Part I

Land Section

CL.3 Entries Nos 1 and 2  
 CL.11 Entry No. 1  
 CL.49 Entries 1 and 2  
 CL.50 Entry Nos 1 and 3

Rights Section

CL.3. Nos. 1-3, 5, 8, 9, 11, 13-20, 22-29, 35-39, 41-45, 48-51, 56, 60-63, 65-72, 74, 76, 78-81, 83-89 (incl 85A), 91, 92, 96, 97, 99-102, 105-113, 115, 116, 123-125, 129-131, 133-136, 139, 145-155, 159, 160, 162-172, 175-186, 188, 189, 192, 193, 195, 198-203, 205-214, 218-223, 226-229, 232-235, 239, 243-250, 263-265, 267-271, 274, 275, 277, 278, 284, 286, 289 and 289A, 290~~X~~, 291, 293, 294, 296, 297, 299, 300, 304, 306-316, 318, 319, 322-325, 330-337, 340-369A, 370-372, ~~374-378~~. *121, 177, 302*

Entry No. 1 in the ownership sections of Register Units CL. 3, 11 and 50.

## Part II

CL.3.

(a) 4, 10, 12, 21, 30, 52, 53, 57-59, 75, 77, 90, 93, 98, 103, 104, 119, 120, 128, 138, 140, 144, 157, 161, 173, 187, 190, 191, 194, 196, 215, 236, 237, 251-3, 258, 259, 262, 266, 272, 273, 276, 279, 280, 281, 283, 285, 301, 305, 320, 321, 326~~X~~, 329, 338, 339, 354, 355.

- (b) 64 Delete Pont-y-Fedwen in Col. 5 and reduce to 212 sheep  
 73 Delete Bronallt Farm in Col. 5 and reduce to 116 sheep  
 204 Reduce number of sheep from 370 to 204  
 231 Increase number of sheep from 300 to 330  
 238 Reduce number of sheep from 100 to 15  
 255 Reduce number of sheep to 1580  
 257 Delete ~~Cwmport~~ in Col. 5 and reduce number of sheep to 70 *column*  
 261 Delete Dolydd and Ton Planwydd in Col. 5 and reduce number of sheep to 420  
 282 Reduce acreage to 90 acres and grazing rights to 126 sheep and 25 ponies  
 298 Reduce grazing rights to 570 sheep plus lambs until weaned or stock equivalent  
 303 Reduce number of sheep from 900 to 630 and delete ~~Llwyn Fedwen in Col. 5.~~

\*all words in brackets except names in column 3 delete

*Mati Rott*  
 5<sup>th</sup> May 1988



## Part III

CL.63 Land Section Entry No. 1

Rights Section Entry Nos 1-4, 6-23, 25-28.

Part ~~III~~ IV

CL.114 Land Section Entry No. 1

Rights Section Entry Nos 1-16 and 18-21