COMMONS REGISTRATION ACT 1965



Reference No. 276/D/787-792

In the Matter of a Tract of land known as Cathedine Coedcae, Cathedine

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section and at Entry Nos 1,3,6 and 7 in the Rights Section of Register Unit No.CL.118 in the Register of Common Land maintained by the Powys County Council and is occasioned by Objections No. 93,645,647,650 and 651 made by Mr J A Blackham and noted in the Register on 15 December 1970 and 10 January 1973.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 28 November 1984 and at Brecon on 15 January 1985. The hearings were attended by Mrs E Morgan for the Registration Authority, Mr M Jarman instructed by Dilwyn Jones & Son, Solicitors of Llandrindod Wells for Mr C L Games and the Llangorse Hill Commoners Association Mr E J Selwyn of Jeffreys and Powell, Solicitors of Brecon for Mr T J Griffiths and Mr and Mrs D M Davies and Mr Eric Owen instructed by Howard Llewellyn and Co, Solicitors of Brecon for Mrs Blackham.

Cathedine Coedcae is an area of approximately 200 acres which adjoins a number of registered commons in an area to the North of Bwlch, which is itself, the A.40 Trunk Road roughly mid-way between Abergavenny and Brecon. The Entry in the Land Section was registered on 24 June 1968 as the result of an application made on 21 June 1968 by the Secretary of the Llangorse Hill Commoners Association.

This registration was followed by eight applications in the Rights Section made in the period 1968/9 and defined by reference as to an application relating to one of the other adjoining commons. In 1970 the late Mr Blackham registered an objection to the registration in the Land Section which also was effective as an objection to the individual registrations in the Rights Section though each such registration was later the subject of a specific objection.

In the period 1971/3 the late Mr Blackham approached the applicants at Rights Entry Nos 2,4 and 5-8 and obtained from them letters addressed to the Registration Authority withdrawing their respective applications for grazing rights on the Coedcae. These withdrawals Mr Blackham duly lodged with the Registration Authority only to discover at the begining of 1975 that the withdrawals relating to Entry Nos 6 & 7 had not been registered because they were signed after 31 July 1973, the closing date for that purpose. That left the current applicants at those Entry Nos free to pursue their respective claims. So far as Mr Games is concerned any other result would have created an injustice because Talsarn, the tenement to which the grazing rights were attached, had been conveyed to him by Mr Lloyd on 14 July 1972 nearly 14 months before 5 October 1973 the date on which he signed the notice of withdrawal. For that reason alone the purported withdrawal would



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have been a nullity. The letter of withdrawal is in Mr Blackham's handwriting except for Mr Lloyd's signature but as neither appeared before me I will not pursue the matter further, except to observe that by 15 October 1982 the date on which my copy of the register was certified as correct. Mr Lloyd's name had been deleted and Mr Games name had been substituted. The date on which the alteration was made is, unfortunately, not shown.

At the start of his case Mr Jarman put in evidence an album containing eight colour prints. These prints, which were admitted, were intended to show me the nature of the Eastern and Northern boundaries of the Coedcae. The view I formed from an examination of the album was that the Northern boundary was a narrow ditch running in a straight line due East-West. The Eastern boundary was also a ditch much less well defined than the ditch on the Northern boundary and running along the line of a cart track, which appeared wide enough to accommodate traffic in either direction.

Mr Trevor Powell Isaac aged 67, of Cartres Cwmdu said that he had lived in the area all his life. His father and cousins farmed in the area, and he had assisted his family and relatives on their farms. His father sfarm was at Gwndwn first North of Talsarn Farm, now owned by Mr Games The witness had lived in Cwmdu all his life except for 12 years when he was at school in Monmouth. He came back to Cwmdu at the age of 16. He spent summer holidays at his grandfathers farm at Gwndwn. He helped his grandfather and his uncle to p6t the sheep off the Mountain, Llangorn Hill, Coedcae. There had not been a fence between Coedcae and the rest of the Mountain for 60 years. In 1924 there was the remains of a fence which appeared to have collapsed about 20 years previously. Livestock would walk over the wires as he had himself seen. The wires were along the boundary of CL.118 and CL.58 and CL.118 and CL.23 along the line of the ditch in the photographs. The sheep would try to move in the direction of Nant-Y-Felin. His grandfather and uncle used to graze their flocks to the north of Blaen-Y- Cwm. From there the sheep would go on to the Coedcae. There was no fence to keep them out. Lambs were bought at Bwlch and kept until they were four years old. Ted Lloyd lived at Talsarn before Mr Games came there in 1972.

David Davies lived at Talsarn before Lloyd. The changeover took place during the war. He did not know Whether Davies and Lloyd were owners or tenants.

There was a field of 21 acres on the South side of the Coedcae which is now owned by Mr Games and formerly occupied by Davies and Lloyd. When the lived at Talsarn Davies sent sheep to this field and from there the sheep went on to the Coedcae. This happened every year from April/May to November. Lloyd's sheep were marked ELL. He had seen sheep so marked many times.



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Davies kept sheep from 1932 onwards. The witness helped to shear them until 1939. Davies had over 100 ewes, Lloyd's flock increased as time went on to a maximum of 300; all but 30-40 of these would be turned out on to the Coedcae. Shepherding was done on foot or on pony. Davies would go himself and the witness would help him from age 8/9-14 years. He also sheared Lloyd's sheep.

In cross-examination, Mr Isaac said that he helped Davies for the first time in 1924. The sheep would start from Talsarn east of the 21 acre field. When they left this field the sheep would wander all over the Mountain, including Coedcae and Llangorse Hill. In those days the field was included in the area which he referred to as the Mountain.CL.58 is to the North of Coedcae and to the East of Coedcae is CL.23 known as the Duke of Beaufort's Common. He remembered Davies's sheep grazing the Coedcae and after 1944/5 Lloyd's sheep were there. Lloyd's flock was up to 300 by 1948. Sheep from Talsarn did not go directly on to the Mountain but were driven first into the 21 acre field. Before 1972 there was a fence between the 21 acre field and the Coedcae.

RA cross examination the witness said that most of the sheep from Talsarn driven to the 21 acre field would go on to the Coedcae. Before 1925 the fence between the Coedcae and the 21 acre field was stock-proof.

Mr Jeffrey John Isaac now living at Ty-gwyn said that he was born at Gwndwn Farm in 1926 and lived there until 1949, when he moved to Cwmdu. He remembered Davies and Lloyd being at Talsarn and putting sheep in the 21-acre field. There was a fence between the field and Coedcae but it was not stock proof, just thorn-trees and wire. In 1946 a stock -proof fence was put up.

In 1940 Davies had about 200 sheep. From the 21 acre field the sheep would go on to the Coedcae. He used to help his father and their neighbours to collect sheep. The sheep from Gwndwn went to Cwm Bengie (at the north end of CL.23) Lloyd used to take his sheep to the 21 acre field. This happened every year.

Cross-examined, Mr Isaac said that he had been pressured by Mr Blackham to withdraw his application (Rights Entry No.6) He did not recall writing a letter withdrawing his application. He did not ask his cousin (the previous witness) to give evidence. He did not know whether there was more water in the 21 acre field than on the Coedcae. He saw Davies's sheep on the Coedcae in groups of 5-15 at different times along with sheep from other flocks.



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Recrees—examination the witness said that he knew of ten other farmers was grazed sheep on the Coedcae before 1949. Davies had 200 sheep in 1940. His recollection went back to 1936.

I allowed Mr Owen to cross-examine on the first answer and the witness gave the following names, Probert, Pryse, Davies, Games, Morris Davies, Watkins, Powell and Evans.

Mr W G Pritchard now aged 73 and of Penlan Cwmdu said in 1969 he was farming at Pennheol and made the application shown at Rights Entry Nos 5. He withdrew it after a meeting held at the offices of Mr Llewellyn, Mr Blackham's Solicitor, in Brecon. Mr Rees M.R.Davies, Chairman of the Commons Association was present.

He was at Pennheol for 30 years until 1976 and during all that time his sheep used to go to the Coedcae to graze. The route along which sheep would be driven to the Coedcae would depend upon the individual shepherd, who would try to keep his sheep together. He did not drive his sheep to any particular part of the Mountain.

He remembered Lloyd coming to Talsarn. Davies was there before Lloyd. Both had the 21 acre field. Davies had 200 sheep.

He came to Cwmdu when he was 14. He had helped Davies with shearing his sheep and washing them in the river. In 1930 he was aware that most of Davies's sheep went on to the Coedcae from the 21 acre field. They were sent to the 21 acre field first. They would be sent out to the Coedcae by Davies or his farm staff. This happened every year until Davies left.

The witness would have gone to help one of Davies's sheep if seen to be in difficulty and he would have done the same for Lloyd when he succeeded Davies at Talsarn. At some time during the war a fence was put up round the 21 acre field between the field and the Coedcae. Lloyd's sheep were turned out from the field on to the Coedcae. The sheep were driven from Talsarn in the direction of Cwm Bengie and then went towards the Coedcae and into the 21 acre field. The sheep would stray in the field for about two weeks and then be let out on to the Coedcae. Lloyd did the same as Davies. The witness helped Lloyd with his sheep, collecting them from the Mountain and shearing and dipping them each year.

In cross-examination the witness said that he had seen sheep from Talsarn being driven on to the Coedcae. He had seen Lloyd doing it and had helped him to put sheep both on to the Coedcae and into the 21 acre field. He was present with Lloyd when the sheep were released from the 21 acre field. The fence was repaired during the war. The fence was good except for the section between the 21 acre field and the Coedcae. Ewes and their lambs were turned



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out in the spring.

Lloyd took 2-300 sheep from Talsarn to the Mountain; Davies about 200.

Re-examined, Mr Pritchard said that when the fence was repaired, the fenceson the East, South and West/sides of the 21 acre field were sound. The new fencing was along the north side. There was a gate in the new fence on the northside. He had seen sheep with Davies' mark on them at the North end of the Mountain. He had seen sheep so marked being driven into the 21 acre field.

Mr Charles Llewellyn Games, the applicant at Entry No.7 in the Rights Section said that he was aged 60 and had lived at Talsarn since 1972. Before that he had lived from 1926 to 1972 at Clwyd-y-Graig. His father farmed Clwyd-y-Graig and the witness had lived on the farm for the whole of the period 1926-1972. The boundary between the Coedcae and the Mountain was the same when he was at Clwyd-y-Graig as it was now.

His father was tenant of Clwyd-y-Graig and turned out sheep from his farm on to the Coedcae 4-500 sheep every year. He used to help his father to put the sheep on the Coedcae and later to gather them in; this was from 1940 onwards. At that time he did not know who owned the Coedcae nor was he aware whether his father had any contact with the owner of the Coedcae. His father turned out his sheep on to the Coedcae openly. The witness was aware that there were other farmers who turned out their sheep on to the Coedcae. These included Jack Watkins at Blaen-y-Cwm Uchaf (100-200 sheep), Jack Davies at Cilfaenor, Rees Davies at Blaen-y-Cwm Isaf. The sheep used to stray over from other mountains, such as Pen Tir.

He knew Ted Lloyd who came to Talsarn as tenant in 1943. Lloyd turned his sheep on to the Coedcae, about 2-300 from the 21 acre field. The sheep would go to the field at the end of May and beginning of June and from there to the Coedcae. They were brought down for shearing in June and then went back to the Coedcae until the end of August/September.

The farmers helped each other gather up sheep from the Mountain. He used to help too, including Ted Lloyd's sheep.

There was a time when the fence between the 21 acre field and the Coedcae was open. There were posts and stakes remaining to show the line of the fence. Before the war this fence was not stock-proof. The fence was made stock-proof after the war and he had helped to make the fence good along the northern boundary of the 21 acre field. There was a gate in the part of the fence, which was put in after it was built. Lloyd or he would open the gate.



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The other farmers exercised grazing rights in the same way as his father. No permission was ever asked for or mentioned, as far as he was aware.

Lloyd left Talsarn before 1973 and the witness purchased Talsarn and the 21 acre field. The date of the Conveyance, which was produced was 14 July 1972. The Conveyance contains no mention of grazing rights.

The witness continued to take his sheep over to the 21 acre field and fromthere they went on to the Coedcae. He took the dry sheep up in May and left them in the 21 acre field for about 7-14 days to settle and then let them out on to the Coedcae.

Cross-examined, Mr Games said that he took over Clwyd-y-Graig from his father in 1968. Clwyd-y-Graig comprised 62 acres Pen Tir is N.E. of Clwyd-y-Graig. When his father was alive he rented 30 acres of Gwndwn Farm from Mr Stapleton and Ted Lloyd rented the rest of that farm. His father was tenant of Clwyd-y-Graig Farm from 1925 until 1964 when he purchased the freehold.

The witness was then shown copies of the Register of Common Land for Register Units CL.22,23,58 and 118. In the first three of these there were registrations in the Rights Section in respect of Clwyd-y-Graig and Gwndwn, but no similar registration under CL.118. The witness said that all registrations were in his name. The Clwyd-y-Graig sheep walk goes to the S.E corner of CL.118. This sheep-walk started at CL.118 and went to the top. The grazing rights attached to Clwyd-y-Graig were sold with the farm.

At this point Mr Owen put in a bundle of colour prints taken by Mr Selwyn at the beginning of January 1985 and admitted.

The Eastern Boundary of CL.118 was a bank and the Northern boundary a ditch. The Southern boundary was a fence running between CL.118 and the 21 acre field. Sheep from Clwyd-y-Graig were not so much turned out on to CL.118 as allowed to stray on to it.

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loyd used to take his sheep on to the 21 acre field and then let hem go on to the Coedcae. He would drive the sheep along the boundary ence and let them into the 21 acre field.

rom Talsarn the sheep would come from CL.22 along the fence on he Southern boundary of the Coedcae to the 21 acre field.

he sheep would be left in the field for about 14 days and then he gate was opened to let them into the Coedcae.



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In re-examination Mr Games said that the Coedcae was not regarded as a separate common. His father thought he had rights over all the commons in the area. At collection time sheep were collected from all the Commons. The Sheep would be well scattered, never all together, though mostly on the Coedcae.

Mr John Staley saw to the registration of the witness's applications for him. Mr Griffiths actually prepared the form relating to Clwyd-y-Graig. The witness intended his application to include rights of grazing on the Coedcae. Mr Griffiths (the Secretary) came to see him and took a note of what he said. He could not now remember what was written down. He mentioned the Coedcae. The date of the applications for CL.58 and CL.23 were June 1968, the date of the application in respect of CL.22 was February 1969. When he was at Talsarn he took his sheep to the 21 acre field as Ted

Mr Wilfred Ivor Parry now of Upper Blaen-y-Cwm said that in 1948 he moved to Blaen-y-Cwm to work for Mr M R Davies. In 1949 Mr Davies bought Cwm Bengie. In 1948 Upper Blaen-y-Cwm was occupied by Jack Watkins who retired in 1952. The witness took over the tenancy. in 1980 he took over the tenancy of Lower Blaen-y-Cwm as well.

The ditch along the Eastern and Northern sides of CL.118 was always considered to be the boundary between CL.118 and CL.23 and CL.458. There was no fence. Since 1948 he had from time to time tended flocks of sheep. Sheep had been turned out regularly from the top of Cwm Bengie on to CL.118. They would go on to CL.118 and CL.58. The sheep were driven on to CL.118. He did not regard CL.118 and CL.23 as separate commons. Watkins, Charles Games, Jack Davies and Rees Davies all put sheep on the common.

From Talsarn Lloyd drove his sheep to the 21 acre field and from there they went on to the common. This was a regular occurance. In 1952 he turned sheep from Upper Blaen-y-Cwm on to CL.118 and he still does. He also took a tenancy of the area to the East of the 21 acre field. In 1952 he took over a flock of 200 plus sheep, which would graze on CL.118. The whole Mountain was considered to be common land.

Mr Blackham was living in the neighbourhood in 1948. The witness never had any dealings with any one as owner of CL.118. He took no steps to register any rights. He left it to the Chairman and Secretary and the Farmers Union Officer and he did not discover that he had no rights registered over CL.118 until after the closing date. He had registered rights of CL.22, CL.23 and CL.58.



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In cross-examination the witness denied that he was aware that he had no rights of grazing over CL.118

Ted Lloyd registered rights over CL.23 and CL.58.

In re-examination Mr Parry said that applicants who in 1973 had withdrawn their applications in relation to CL.118 still thought they were entitled to rights over that area.

Mr Owen produced a photocopy of an Inclosure Award made on 25 May 1861 by Isaac Davies, Land Surveyor of Brecon, relating to Blackmore or Cathedine Common. Register Unit CL.118 was part of Allotment No.46 in favour of Holford James Price and William Gwynne and the boundaries of the unit are clearly recognisable from the map annexed to the Award.

Mr David Davies now of 3, Post Office Road, Glangnwyney and aged 82 said that he had been brought up by his grandmother at Talsarn where his uncle was the tenant. He moved to Talsarn in 1918. After he left school he worked on his uncles farm. He married in 1924 and left Talsarn but his uncle stayed on. He used to help his uncle with the sheep. He took the sheep from Talsarn, put them in the 21 acre field and shut the gate on them. He often saw his uncle with his sheep.

In cross-examination Mr Davies said that when he married in 1924 he went to live in Abergavenny; from there he moved in 1942 to Talgarth. From 1918-24 there was no fence between the 21 acre field and the Coedcae. The sheep could go on to the Coedcae from the field.

Re-examined he said that there was a good spring of water in the 21 acre field.

Mr Thomas John Griffiths aged 77 said that he had farmed Lower Nant-y-Felin since 1941. He knew Edward Lloyd. Lower Nant-y-Felin adjoined CL.118. He did not notice where Edward Lloyd took his sheep to graze. He never saw him putting his sheep on CL.118. He had seen Edward Lloyd tending his sheep in the 21 acre field.

In cross-examination Mr Griffiths said that Edward Lloyd came to Talsarn in 1943. He did not remember a fence being put up after 1945 between the 21 acre field and the Coedcae. Sheep went back and fowrth from the field to the Common. The 21 acre field would not support Edward Lloyd's flock through a summer.

The witness was shown photocopies of two deeds respectively dated 21 September 1976 and 27 February 1979 both made between the late Mr Blackham of the first part himself of the second part and Mr and Mrs D M Davies of the third part. The witness identified his signature on both documents and said that he had signed the later



document at Mr Blackham's request.

Mr Edwin Selwyn said that he was the senior partner in the firm of Jeffreys and Powell, Solicitors of Brecon. Shown the two Deeds of 1976 and 1979 he said that on each occasion he acted for Mr Griffiths and Mrs Davies for whom he had acted in 1971.

Talsarn Farm and the Coedcae were in different parishes and the distance between the Farm and the nearest point on the Coedcae was 2,000 metres or 1% miles.

There was also produced a copy of Conditions of Sale governing the disposal of an Estate in about 1919 which included the two farms which Mr Griffiths and Mr and Mrs Davies had made an application for the registration of grazing rights over CL.118.

In the Particulars of Sale both farms were described as having grazing rights over CL.118 without any details of the number or nature of the animals entitled to graze. There was no mention of Mr Griffiths rights in the Conveyance of either farm which was made pursuant to the Conditions of Sale which had been put in evidence,

Mr Selwyn said that the present position was that Mrs Blackham, as successor in title to herlate husband, withdrew the objections to the registration in the Land Section and to the provisional registrations at Entry Nos 1 and 3 in the Rights Section.

Mr Owen subkitted that there were two matters which greatly weakened the evidence adduced on behalf of Mr Games application that the farmers in the area of CL.ll8 did not regard themselves as exercising grazing rights over a number of separate commons but treated the area, often referred to as "the Mountain", as a simple common.

First all the applications for grazing rights by these farmers either omitted any application in respect of CL.118 or in the case of those whose applications included CL.118 the application had been subsequently withdrawn so far as it applied to CL.118. It was quite by chance that the applicants at Rights Entry No. 6 & 7 were not bound by their signed withdrawals.

Although Mr Games had not made the application on behalf of Talsarn Farm which he did not acquire until 1972 niether had be made any application on behalf of Clwyd-y-Graig Farm although his evidence was that sheep from that farm regularly grazed on the Coedcae.

for Owen also submitted that the way in which sheep from Talsarn got on the Coedcae failed to satisfy the requirements of the Prescription act 1832 that any user relied on must be open. In support of this argument Mr Owen referred to the evidence of Mr David Davies tho was at Talsarn Farm from 1918-1924.



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Mr Jarman submitted that on the evidence I should find that his client had satisfied the requirements of the Prescription Act and that his registration should be confirmed.

For completeness I should also mention that at the hearing on 15 January I was supplied with a further set of 23 colour prints, suitably indexed and described, taken by Mr Selwyn and treated as agreed documents.

The file of documents sent by the Registration Authority when this dispute was referred to a Commons Commissioner for decision included copies of the Register and of any application in dispute with a copy of all relevant objections.

The application in the Land Section registered on 24 June 1968 was signed by Eric John Griffiths as Secretary of Llangorse Hill Commoners Association on 12 June 1968. Mr Griffiths' address is the same as that of the witness of the same name.Lower Nant-y-Felin Farm. The land claimed to be common land in his application was allocated the Register Unit No.CL.118.

Along with this application came photostat copies of the four applications for registration of a right of common which had not been withdrawn and were subject to one or more objections.

The applications registered at Rights Entry Nos 1,3 and 7, the expolications relate to one or more Register Units. Each applicant is able to give a name and registration number to the several commons to which his application relates except for the Coedcae. The other commons are one or more of the following. Cefn Moel (CL.22) Pen Tir (CL.23) and Llangorse Hill (CL.58). CL.118 is described as Cathedine Coedcae but no unit number is given. All these applications bear the marks of having been completed in one or more places by a third party.

The only evidence produced by Mr Owen to counter the considerable body of evidence that animals from Talsarn and elsewhere grazed the Coedcae was the statement of Mr T J Griffiths that he had not noticed Edward Lloyd taking his sheep any-where or putting them on the Coedcae, though he had seen Edward Lloyd tending his sheep in the 21 acre field. Apart from Mr Games himself none of the witnesses who gave evidence in support of his claim had anything to gain by the success of his application because none of them had made the necessary applications. For the sake of accuracy I must refer to Mr J J Isaac whose application had not been effectively withdrawn. None of Mr Isaac's evidence was directed to the support of his own claim.



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On the other point raised by Mr Owen namely the failure of the witnesses including Mr Games to register rights applications against the Coedcae. Having regard to the number of different commons in the area and the fact that all of them put their applications in the hands of officials of one organisation or the other, I see no reason to disbelieve these witnesses when they said that they thought they had taken the steps necessary to secure registration of the rights they intended to claim.

I come now to Mr Owen's point that the grazing rights alleged to have been exercised by Mr Edward Lloyd and his predecessor's at Talsarn Farm had not been exercised in a way that would satisfy the requirement that for a prescriptive claim to succeed either by statute or at Common Law, the right claimed must have been exercised openly we and not stealthily or clandestinely.

Mr Owen submitted that the sheep from Talsarn were taken to the 21 acre field and after an appropriate settling-in-period they would be allowed to find their way on to the Coedcae, and that this was not open user.

The evidence in my view established that from about 1918 until some time towards the end of the 1939-45 war there was no stock proof fence along the northern boundary of the 21 acre field with the Coed cae. The fence was repaired but there was always a gate in that fence through which sheep could be turned on to the Coed cae. My conclusion is that the object of repairing the fence was to prevent sheep from Talsarn escaping from the 21 acre field on to the Coed cae until their owner was ready to turn them out.

For nearly 30 years i.e. from 1918 there had been no fence or other barrier to stop sheep going from the Coedcae from the 21 acre field. Grazing carried out in this way by an initial journey to the field was in my opinion open in a sense sufficient to satisfy the requirements of statute or common law. I see no reason why the repair of the fence when a gate was put in the new length of fencing should alter the position.

In my view nothing turns on the two agreements between Mr Blackham and two of the applicants which were executed in 1976 and 1979. Mr Games did not call any evidence in support of his claim to graze horses and Mr Isaac did not pursue his claim.

For these reasons I confirm the registrations at Entry No 1 in the Land Section and at Entry Nos 1 and 2 in the Rights Section without modification and Entry No 7 in the Rights Section subject to the modification that it is limited to sheep. I refuse to confirm the registration at Entry No 6 in the Rights Section.



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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

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Commons Commissioner.

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