



In the Matter of a Tract of land known  
as Mynyddtroed Common, Talgarth

DECISION

This dispute relates to the registration at Entry Nos 31 and 34 in the Rights section of Register Unit No. CL.12 in the Register of Common Land maintained by the Powys County Council and is occasioned by various objections.

I held a hearing for the purpose of inquiring into the dispute at Brecon on 27 November 1984. The hearing was attended by Mr Elwyn Griffiths, who appeared in support of the registration at Rights Entry No. 31 in the name of Mr P P Griffiths. Mr V G Jones represented the Mynydd Troed Commoners Association. No one appeared on behalf of Mr J V M Thomas the applicant at Rights Entry No. 34.

I held a hearing at Brecon on 18 October 1983 at which I gave a decision on all the other registrations in the Rights Section apart from these two which I adjourned because of the inability through illness of the applicants to attend.

In both cases the Commoners Association had lodged an objection 'that the rights does (sic) not exist at all'.

Mr Elwyn Griffiths said that his father Mr P P Griffiths had died earlier in the year and I admitted in evidence a Statutory Declaration by the deceased made on 13 November 1983. The material parts of which were as follows:

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1. I am aged 75 years and am the owner of Penynwrlodd Farm Talgarth which was purchased by me in March 1955.
  2. I have been well acquainted with the said farm for most of my life as my father was the tenant thereof from 1912 to 1940. During that period I well remember my father turning between 85 and 156 sheep on to Mynydd Troed Common to graze on the common.
  3. When I took over the tenancy of the farm from my father in 1940 grazing on the common was reduced due to a change in farming policy at the said farm whilst a lowland flock of sheep was being established.
  4. Since 1955 I have not used the common for grazing although I have continued to cut and remove fern from the common as and when required."

In early January 1972 the late Mr Griffiths wrote to "The Commissioner, Commons Registration Act 1965, Breconshire County Council", with reference to Commons CL.12/31/1294. The two last numbers being the respective numbers of the Entry in the Rights register and his original application. The letter is in the handwriting of his son Mr Elwyn Griffiths. The letter is in these terms.

"I would like to appeal against the objection submitted by the Secretary, Mynydd Troed Commons Association, Objection No. 412, regarding my application for registration of common rights on Mynydd Troed.

The grounds of objection submitted to me state, "That the rights



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do not exist at all".

My appeal is based on the grounds that on checking through diaries of past years, records show that during the 1930's sheep were turned on to the hill known as Mynydd Troed from Penyrwrlodd Farm, therefore I see no reason why the Commoner's Association feel justified in objecting to my application".

This letter is stamped as having been received by the County Council on 17 January 1972.

The County Land Agent wrote to Mr Griffiths on the same day advising him that unless he could resolve his dispute with the Commoners Association, the case would be referred to the Commons Commissioner, for a decision in the future.

Mr John William Jones aged 64 of Trefacca Farm, Talgarth said that he had been the owner of Trefacca Farm since 1950 and until 1950 he had lived at Neuaddfach Farm Talgarth. He had been acquainted with Penyrwnlodd Farm, now owned by Mr P P Griffiths, and his wife. He could remember Mr Griffiths putting sheep on the common from 1926 onwards.

In cross-examination he said that Trefacca Farm was three miles from the common as the crow flew but further by road. Mr Griffiths' sheep would be mixed with other sheep on the common. There was a road which crossed the common. The sheep were turned on to Mynydd Troed Common not Butlin Common. He could identify Mr Griffiths' sheep which were cross-breed and brown-faced. He could not give the number of sheep put on the common by Mr Griffiths. The Glanusk Estate had been sold before the period to which he was referring. The Glanusk Estate employed an Estate Agent who kept a record.

Mr William Rees Powell of Middle Genfford Farm Talgarth said that he was 61 years old and the owner of his farm. During the period 1928-1940 he used to walk across Mynydd Troed Common where he saw Mr P T Griffiths, the father of Mr P P Griffiths, shepherding on horseback on the common. He had 70-80 sheep.

In cross-examination the witness said that he had never shepherded on the common. He was in the locality to visit his uncle and grandmother. He had seen the sheep being put on the common, 2-4 times a year.

The fences had been moved in the early "30's", or even earlier. There was no fence to stop sheep crossing the road. The sheep were on the bottom of Mynydd Troed Hill. The Witness had never grazed sheep on Mynydd Troed Common.



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Mrs Margaret Bufton now of Hillview Estate, Builth Wells said that her age was 66 and that from 1927-47 she had lived with an uncle about  $\frac{1}{2}$ - $\frac{3}{4}$  miles from Penyrwrlodd Farm.

When <sup>she</sup> ~~he~~ went to school Mr Griffiths' sheep were on the common. Mr Griffiths' grandfather took them on to the common along the path at the north end of the common. In answer to cross-examination Mrs Bufton said that she lived  $\frac{1}{2}$  mile from the common. Mr Griffiths' sheep went up by the road. The grandfather was mostly on a pony.

Mr Elwyn Griffiths submitted that his father had registered his right on the basis that his (Mr Elwyn Griffiths) grandfather had grazed sheep on the common. He also produced 4 diaries kept by his father in the late "30's" in them of which there was a single entry recording the number of sheep. All the figures differed.

Mr V E Jones then began to call evidence on behalf of the Commoners. While the first witness was giving evidence I decided that as the burden of proof was on the applicant and the applicant's evidence did not raise a prima facie case in support of his claim I ought to have dismissed the claim at the conclusion of the applicant's case.

Mr Griffiths' claim can only proceed if he can establish a lost modern grant. He cannot rely on the Prescription Act 1832 because he concedes that grazing closed after 1940. Apart from the Statutory Declaration of the late Mr Griffiths the evidence of the other witnesses, if accepted, establishes that for the period '1926-1940' the late Mr Griffiths or his father was grazing sheep on the Common, the father being usually on a pony. Only one of the witnesses, Mr W R Powell, could speak as to the size of the flock, which he put at 70-80. In my judgment this evidence falls short of what is required to support the finding of a lost modern grant.

The only evidence that sheep were turned on to the common before 1924 is paragraph 2 of Mr P P Griffiths Statutory Declaration. Mr Griffiths was born in 1908 and I would put the date on which his recollection would be reliable as nearer 1920 than 1912. The figures 85-156 are derived from the diaries.

The fact that Mr Griffiths had died before the hearing makes his declaration admissible but because the declaration is not subject to the test of cross-examination the weight to be attributed to the contents of the declaration is a matter for me.

Mr Griffiths' declaration was made shortly after the hearing at Brecon on 18 October 1983. It is significant that the letter of January 1972 makes no claim to user before 1930. No mention is made of the grazing by his father which is alleged to have begun in 1912.