



In the Matter of a tract of land known as
Panne Hill, Penbualt, formerly known as
Gwarafog

DECISION

This dispute relates to the registration at Entry Nos. 1, 2, 3 and 4 in the Rights Section of Register Unit No. CL 72 in the Register of Common Land maintained by the Powys County Council and is occasioned by Objections No. 246, 500, 465, 501 and 502 made by Messrs Davies or the Glanusk Estate and noted in the Register.

I held a hearing for the purpose of inquiring into the dispute at Brecon on 27 July 1983. The hearing was attended by Mr Bengough of Messrs Knight Frank and Rutley, Chartered Surveyors of Hereford appearing for the Glanusk Estate and Mr T M Evans of Messrs Sydney G Thomas and Co, Solicitors of Builth Wells appearing for Messrs W E, P G and C J Davies. Mr R T Jones and Mr A M Davies the applicants at Entry Nos. 2 and 3 in the Rights Section respectively appeared in person.

Messrs Davies withdrew that part of their application at Entry No. 1 in the Rights Section relating to the right to take water. Mr Jones had already withdrawn his claim for a right to take stone from the quarry for road repairs to his farm. Mr W P Price of Aberceinos Farm, the applicant at Entry No. 4, had in writing reduced his application for a right of common of pasturage for 300 sheep to include lambs until weaning to the same right for 250 sheep comprising 120 ewes plus lambs until weaning and 130 dry hogs.

As a result of these amendments, Objections Nos. 246, 465 and 502 were withdrawn.

Mr Rees Trevor Jones, giving evidence in support of his claim to graze 200 sheep from Vron and Corrin Farms on the Panne, said that the combined acreage of the two farms was 296. He moved into Vron Farm in 1943 and into Corrin Farm in 1947 and he bought the farms in 1950. He had 100 ewes at Corrin in 1943 and 300 ewes in 1947. He had had as many as 700 ewes on the two farms.

In cross-examination Mr Jones said that the Artillery ranges which are east of the Panne were requisitioned in 1941. His land lord was compensated for loss of common rights over the ranges which were extinguished. Licenses for grazing were issued. His length of fencing on his boundary with the Panne is 500 yards. The gate from his property to the Common is a pony gate 4 feet wide. He had not exercised grazing rights on the Panne since the fence was put up in about 1950. He thought that the Commoners last employed a shepherd in 1943. He did not remember the shepherd driving sheep off the Panne.

On being shown a copy of the Particulars of Sale relating to Corrin and Vron Farms on the sale of Cilmercy Park Estate in 1950, he admitted that the Particulars only referred to grazing rights in the case of Goytre Farm. The Estate had been bought as a whole by a purchaser called Knight who had resold it off in lots.

His claim to grazing rights was based on the fact that his farm adjoined the Panne and that he had to maintain a fence. As owner of Corrin and Vron Farms he



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had licences to graze sheep on the Ranges.

Mr William Emrys Davies one of the Objectors said that he first moved to Tyncoed Farm in 1923 when he was 3 years old. He lived there until 1941 when the family moved to Corrin. He lived at Corrin until 1947 when he moved to Goytre Farm, which he left in 1950 and moved to Tyncoed where he lived today.

He had known the Panne since he was 7. When he was at Corrin he never went to the Panne with sheep. There was a gate across the road and he used to close the gate each night.

The shepherd used to come down to the Panne every morning from Ffirwd-wen in the middle of the ranges.

The fence was first put up in about 1946. It followed the line of the road. The first fence was inadequate and was replaced in 1948 by a pig-netting fence.

After 1948 no sheep from Corrin or Vron grazed the Panne. The only farms with sheep on the Panne are Goytre and Aberceiros. Doly-Menin Farm has a boundary with the Panne of about 125 yards.

Mr Cyril James Davies aged 55 said he lived at Goytre Farm which he owns. His father became tenant of Corrin when he was 13. In 1946 he (the witness) returned to Tyncoed. He married in 1953 and went to live at Goytre. Corrin and Vron farms did not put sheep on the Panne. If I found one of Mr Jones's sheep on the Panne, I would telephone him and he would come to collect it.

Goytre had no grazing rights over the ranges.

Mr Alun Morgan Davies said that he purchased Doly-menin Farm in 1950. He had not grazed sheep on the Panne. Jones Bros were tenants before me for about 50 years. They put cattle on the Panne from about 1930 until the Range was closed. I was told this by another grazier. I grazed some sheep on the Panne from 1950-53 until the Range was fully closed. I was told that Doly-menin had grazing rights. My frontage on the Panne is 170 yards.

In cross-examination Mr Davies said that he had not used the gate in his farm to put sheep on the panne. He had not grazed the Panne during the past 30 years.

Mr Evans submitted that Mr Jones and Mr Morgan Davies could only have acquired rights to graze the Panne by prescription. The Panne is now a detached common.

Only Goytre and Aberceiros have rights over the Panne. There is no sufficient user for prescription. Our sheep pasture is above the fence. I had a licence to graze 100 sheep and I was told the rest must go on the land adjoining the Panne.

Until they were compulsorily acquired by the Ministry of Defence, the Ranges and the Panne were not separated and there does not appear to have been any problems about sufficiency of grazing area. A consequence of this acquisition was the erection of a fence which separated Mr Jones' farms from the Panne. The grazing rights over the Ranges were extinguished and compensation was paid.



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In future any grazing over the Ranges was by licence of the Ministry of Defence which were limited and a charge is made. It is significant that in the Particulars of Sale of the Cilmercy Park Estate, only Goytre Farm was stated to have grazing rights.

Neither Mr Jones nor Mr Morgan have been able to establish sufficient user to create a right of grazing under the Prescription Act, 1832 or even to raise the prescription of a lost modern grant. I accept the evidence of Mr W E Davies above grazing on the Panne. The proper inference is that the sheep from the farms of Mr Jones and Mr Morgan Davies grazed the Ranges until the rights were expropriated.

For these reasons I confirm the registrations at Entry Nos. 1 and 4 with the modifications accepted by the respective claimants.

I refuse to confirm the registrations at Entry Nos. 2 and 3.

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

15th

day of

September

1983

Commons Commissioner