



COMMONS REGISTRATION ACT 1965

Reference No 58/D/43 and 44

In the Matter of Stanner Rocks,  
Old Radnor and Burlingjobb,  
Radnor D

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DECISION

This dispute relates to the registration at Entry No 1 in the Land Section and Entry No 1 in the Rights Section of Register Unit No CL. 63 in the Register of Common Land maintained by the former Radnorshire County Council and is occasioned by Objection No 47 made by Hereford County Council and noted in the Register on 18 December 1969.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 24 May 1977.

Mr C J Lloyd the applicant for rights appeared in person, Mr R F W Ungoes-Thomas counsel instructed by Mrs A Woodward of the Forestry Commissioner appeared on behalf of the Commission the tenants under a 999 year lease granted by the Hereford County Council, Mr D B Jones appeared for the Powys County Council and Mr Holman and Mr Bownes appeared for the former Hereford County Council.

The land in question is some 88 acres and was acquired by Hereford County Council in 1931 with a view to opening a quarry. The quarry was never opened, and in 1950 the land was leased to the Forestry Commission who planted the land in 1952 and 80 acres have been planted.

Mr Lloyd's claim is to graze 40 sheep on the land and to take bracken for litter.

Mr Lloyd gave evidence in support of his claim which is based on long user. He said he came to Bilmore Farm in July 1929 as the tenant of a Mr H H Miles who lived in Kent and that he bought the farm in 1949. He asked the agent if Rocks were included with the farm for letting and was told the Rocks had always belonged to the farm. When the Rocks were sold to Hereford he went to see the agent to ask about his right and was told there would be no interference as they were only required by Hereford for a quarry. Just after the Council bought the surveyor and some officials came round and found two stakes missing and came to his house with the police and asked about the stakes. Mr Lloyd told them one was on the fire and the other was burnt and he produced a letter from Hereford County Council which the police sergeant and the surveyor looked at. The sergeant said "that's the stuff to give them Mr Lloyd, I am going". Mr Lloyd thinks the surveyor has retired; he can't find the letter but I think its effect was to state that no one except Mr Lloyd had the right to remove timber from or go on to the land. The letter was written by the Hereford County Council soon after it acquired the land. Mr Lloyd said he was still grazing and there had been no interference.

Cross-examined he said the agents were Vaughan Baker that the land is now fenced but there was no fence in 1929. He complained to Hereford County Council about others taking wood and this was why the County Council wrote the letter. He said he could



only take dead wood; he removed what he had the right to take when he wanted it; he knew his rights. He didn't take the letter as giving him any rights.

The Commission put a fence up to protect their trees. The present fence was put up two years ago, the planting was in 1952; the fence was all the way down his land. He put sheep in and they went in after 1952. The fence was to protect the trees from rabbits; there was no complaint of damage to the trees by sheep, and he was sure he grazed after 1952. After 1952 the only dealings he had with the Commission related to some hurdles which Mr Yapp said had been sold to the Council; after that he had no dealings with Mr Yapp. He said he would be blind if he did not see the trees being planted. The sheep went on where the Rocks join Navages Wood which adjoins the Rocks on the north and by a gate opposite Stanner station, and he used that gate. He signed a letter dated 23 April 1952 which was produced and which related to the siting of the fence, whereby he agreed to the fence being placed for some of its length on his land. He did not agree that sheep on the land would have been turned off after 1952. He turned on as before but for about two years after the planting he only turned on 35 sheep instead of 45. He said there is quite a lot of grazing on the unplanted area.

In answer to a question by me as to why if he had grazing rights he did not resist the planting he said he went to a solicitor in Kington who told him there was no use objecting as they would only make him plant.

For the Commission there was produced an affidavit by Mr Yapp and Mr Stumbles gave evidence inter alia that Mr Yapp was too ill to attend and give oral evidence.

Mr Yapp was the Head Forester in Radnor Forest at the time of the planting and retired in 1967. He deposed to having conversations with William Lloyd, but no William Lloyd was known to Mr C J Lloyd and I infer that Mr Yapp's recollection as to Mr Lloyd's christian name is defective. Mr Yapp deposed to correspondence with the Forestry Conservancy Office about the fence which was eventually agreed and erected and goes on to say that after the erection of the fence sheep were kept out apart from the occasional trespass which was not of any serious consequence "no more than the trespass we get in many other plantations".

Mr R E Stumbles the District Forestry Officer said he had held that position since 1961. He said his research had disclosed that the land was felled and devastated woodland in 1950, all usable timber having been removed during the war.

In 1961 the trees had reached the thicket stage; all the trees were planted in 1952. Some scrub oak was left and that area would have provided some grazing. The unplanted area was about 8 to 10 acres. He said the Commission's policy is to fence against all stock until the trees are 6ft to 7ft high. In 1952 they would also have fenced against rabbits. The policy is to remove strays. In 1961 there was one fairly wide grass ride which would have given some grazing; it was about 30ft wide and about  $\frac{1}{2}$  an acre. From time to time there were strays; he had complaints from other farmers; they came onto their land via Navages Wood.

In cross-examination he said he had never reported damage to the trees and he did see the old fence before it was replaced.

Mr Lloyd gave no evidence in support of his alleged right to cut bracken and though he gave evidence of an alleged right to take dead wood, he has not made any such claim on the Register. All I have to consider is the claim to graze.



The burden of proof lies upon Mr Lloyd and in my view he has not discharged that burden. It is probable that so long as the Rocks lay open to Mr Lloyd's farm his sheep went on to the Rocks, but I am not convinced that after the fence was erected he turned his 40 sheep on to the Rocks. I have no doubt that the fence which was erected in 1952 was a stockproof fence and not a mere protection against rabbits. If it was not a stockproof fence, why would Mr Lloyd have to use the gate by Stanner station! Then again it seems to me improbable that Mr Lloyd would have taken his 40 sheep to Stanner station to turn them on to the Rocks where there were only 8 to 10 acres of unplanted land available for grazing and most of these acres could only provide poor grazing. Then again it is in my view unlikely that the erection of no more than rabbit wire would have called for the correspondence and negotiations for the erection of a fence in 1952. I find Mr Lloyd's account of the advice he was given by his solicitor difficult to accept; I know of no way in which he could be compelled to plant land in the ownership of the Hereford County Council leased to the Commission for 999 years

I infer from the circumstance that Mr Lloyd sought advice that he appreciated that when the land was planted he would no longer be entitled to graze his sheep on the Rocks and therefore than even if he did thereafter continue to graze his sheep on the Rocks such grazing would not have been as of right. There is no documentary evidence of the dealings between Mr Lloyd and the Hereford County Council and it is possible and even probable that Mr Lloyd's use of the Rocks between 1931 and 1950 was permissive. Prior to the 1939/45 war the land was woodland which was cleared of usable timber during the war. It is in my view significant that Mr Lloyd was anxious to collect dead wood but he did not in his evidence indicate that the question of grazing was ever canvassed between him and the Hereford County Council.

For these reasons I am not satisfied that Mr Lloyd has ever grazed the Rocks as of right. When the Rocks were open to Mr Lloyd's farm his sheep did not doubt go on to the Rocks but there is no evidence that either Hereford County Council or Mr Lloyd ever attached any importance to their so doing until the Commission planted and erected a fence. As to the period subsequent to 1952, I prefer the evidence of Mr Yapp to that of Mr Lloyd. Mr Lloyd's sheep or some of them may on occasions have strayed on to the Rocks but I have no doubt that Mr Lloyd well knew that the Commission was doing its best to exclude his sheep.

For these reasons I refuse to confirm the registrations.

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 20 day of June 1977

G. A. Settle

Commons Commissioner