



COMMONS REGISTRATION ACT 1965

Reference Nos 276/D/229 to 248 inclusive

In the Matter of Y Frochas,  
Castle Caereinion, Montgomery D

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DECISION

These disputes relate to the Entries at Nos 2 (as modified by Entry No 11), 3, 5, 8 (as modified by Entry No 12), 9 and 10 in the Rights Section in the Register of Common Land maintained by the former Montgomeryshire County Council and are occasioned by Objections Nos 37 and 38 both made by the Powis Estate and both entered on the Register on 17 September 1950; Objection Nos 77, 78, 79 and 80 all made by W R Jones all entered in the Register on 23 September 1970; Objection Nos 81, 82, 83 and 84 all made by R H Francis and all entered in the Register on 25 September 1970 and Objection Nos 85, 86, 87 and 88 all made by R H & G E Williams all entered in the Register on 25 September 1970.

I held a hearing for the purpose of inquiring into these disputes at Welshpool on 18 April 1977.

Mr Salt, solicitor and Mr P L Marriott the agent for the Powis Estate appeared for the Powis Estate. Mr R I Bainbridge of Messrs Milwyn Jenkins & Jenkins appeared for the Objectors and the applicants for Rights, Mr A Williams (Entry Nos 2 and 11), Mrs D Schilcher (Entry No 3), Mr R W Clarke (Entry No 5), Mr D R Joseph (Entry Nos 8 and 12) and Mr J L F Jones (Entry Nos 9 and 10) appeared in person. The Objections of the Powis Estate were the Entry Nos 3 and 5.

As regards Entry No 3:- The Powis Estate was content that Mrs Schilcher's grazing rights should be limited to 1 horse and 6 cattle and 20 sheep and she was content that her rights should be so limited.

As regards Entry No 5:- The Powis Estate was content that Mr Clarke should have the grazing rights he claimed but no other rights and Mr Clarke agreed to his Entry being modified accordingly.

The Objectors other than the Powis Estate are those whose registrations at Entry Nos 4, 6 and 7 in the Rights Section are final, there having been no Objections to these Entries.

As regards Entry No 2 & 12:- The Objectors were content that Mr Williams should have the Rights claimed by him under Entry No 11 and I therefore confirm Entry 11 and refuse to confirm Entry No 2.

The Unit Land comprises 89.414 acres and I was told that only about half of it is suitable for grazing the remainder being covered by bracken and gorse. The whole common was requisitioned during the 1939/45 war and improved by the War Agricultural Committee who also wired the major part on the north against the road. I was told



that when the common was derequisitioned it was over grazed and that it has reverted to its former state and that the fence has now fallen into disuse, the whole common now being open to the road and that at the present time it is very little grazed. At the request of the parties I inspected the common, accompanied by Mr Marriott. The common is without doubt in a rough state and Mr Marriott pointed out to me that it was covered with a type of coarse grass not suitable for grazing sheep which as the result of over grazing had spread and prevented the better grass, suitable for grazing sheep, from growing. Mr Marriott told me that cattle would eat this grass though it was not very nourishing and he suggested that one way to improve the common would be to graze it extensively with cattle. It is clear that there is a real need for a scheme to improve the common and I met Mr Jones, one of the Objectors, on the common who told me that this was appreciated but that any action for the improvement of the common was awaiting this decision. The registrations which are final are for an aggregate of 314 sheep or an equivalent number of cattle on the basis of 1 head of cattle for five sheep. I was told that Mr Francis and Messrs Williams claimed their rights by prescription on the basis one sheep per acre of the dominant tenements. Mr Francis who owns a large area of woodland not claiming for that land, Mr Jones had a reference to a right to graze 20 sheep among his documents and he told me he claimed for 25 sheep because of the improved grazing; his holding I was told is 14 acres, a scale of almost 2 sheep to the acre, and it follows that the suggested scale of 1 sheep to the acre cannot be binding on me.

The Objectors claimed that the rights claimed under Entry 2 and 3 did not exist. The rights claimed under Entry No 2 (now Entry 11) are conceded. Mr Joseph the applicant for rights under Entry No 8 gave evidence that he had always, for a period exceeding that necessary to entitle him to a prescriptive right, cut bracken which he used for covering his potatoes. He had never grazed and had no evidence of any rights of grazing having been exercised as appurtenant to his property, the Dingle. He said he had been advised that he was a commoner by virtue of his cutting bracken and that as a commoner he could exercise all available common rights on the common. If this advice was given to Mr Joseph it was clearly wrong. In the light of Mr Joseph's evidence he is in my view entitled to exercise the right of cutting bracken and Mr Bainbridge accepted that he ~~may be~~ entitled to that right. I therefore confirm Entry No 8 modified so as to be limited to a right to cut bracken. There remain for consideration Entry Nos 3, 5, 9 and 10 as to which the objections are only as to quantum.

Entry No 3 presents the greatest difficulty. Mrs Schilcher claims rights as appurtenant to the two plots in the middle of the common which I saw in the course of my inspection on one of which said plots there is her bungalow and the other is an enclosed field. The two plots together comprise more than 3 and less than four acres. She gave evidence that her mother acquired the property in 1912 and that her mother and she herself had always grazed on the common. She said she had 12 cattle and 50 ewes until 2 May 1970 when the fences were cut and she still has a mare and foal in her own fields. She got rid of her ewes and she said only the horses use the common now. She was emphatic she wished to retain the right to graze a horse which was her only means of transport to her property until she acquired mechanical transport and she might have to rely on a horse in the future. There is no road to her property and in my view she is wise to seek to retain the right to keep a horse. She said she had been harassed and treated by some of the commoners. This isolated holding



with no access by road is in my view in a different position from all the other holdings. One has only to see it to come to the conclusion that it must have had common rights on a scale different from those appropriate to the other holdings. Mrs Schilcher has agreed to the quantum acceptable to the Powis Estate which no doubt took into account the special circumstances applicable to this holding. Mr Marriott at my request agreed to research in the records of the Powis Estate with a view to finding any evidence as to the quantification of the rights. Mrs Schilcher's deed gave her undefined rights. I have since the hearing heard from Mr Marriott that there is a nil return to his researches.

While the quantification of the rights acceptable to the Powis Estate does reflect the special circumstances affecting Mrs Schilcher's holding that quantification is out of all proportion to the Registrations which are final. In the absence of any evidence as to the correct quantification of Mrs Schilcher's rights the best that I can do is to quantify those rights at a figure between that acceptable to the Powis Estate viz 1 horse and 6 cattle and 20 sheep which is the equivalent of 50 sheep and one horse on the Objectors scale. The figure acceptable to the Objectors is 10 sheep. I have no doubt that Mrs Schilcher's mother did require a horse in 1912 and for very many years thereafter and I have come to the conclusion that the best I can do is to confirm Entry no 3 modified so as to limit the rights of grazing to 1 horse and 6 cattle or 30 sheep. It will be seen that the figure for cattle or sheep is mid way between that acceptable to the Powis Estate and that put forward by the Objectors. This figure also appears to me to be reasonable in the context that anyone living on Mrs Schilcher's holding would expect some compensation in grazing rights to compensate for its manifest disadvantages.

Entry No 5 is the only case in which there was any firm evidence of the exercise of grazing rights. Mr Joseph gave evidence for Mr Clarke. He said he had lived at the Dingle all his life, over 60 years. He said there were a number of small holdings surrounding the common occupied by employees of the Llanerchydol Estate and they used to graze the hill and take litter. No cattle used to graze during the winter. He himself as a boy used to drive cattle on to the hill for an old lady who occupied a cottage and this went on up to the war. Mr Joseph remembered a Mrs Gough who occupied Mr Clarke's property Fron Haul; he used to look after her calves and drive them on to the common. Mrs Gough died in the early 1920's when a Mr Lloyd came to Fron Haul and he used to put one or two cows on the common. Mr Lloyd left in 1934 and Mr Sutton came to Fron Haul and he did the same as Mr Lloyd until Mr J Jones came to Fron Haul. The common was requisitioned at that time and Jo Jones worked for the War Agricultural Committee but he did not graze. Jo Jones was still the tenant at the date of derequisition; he left in 1960. After 1950 Jo Jones kept cows and sold milk but Mr Joseph could not remember if he grazed.

Cross examined Mr Joseph said he did not actually see Mr Lloyd and Mr Sutton put their cattle on the common but everybody knew what they were doing. There were about six beasts, 2 cows, 2 calves and 2 yearlings. Mr Joseph also spoke of bracken being cut for Fron Haul.

Mr J L F Jones gave evidence for Mr Clarke and said he came to the area in 1932 and he used to see Mr Lloyd drive his two or three cattle on to the common; then Mr Sutton came and he carried on the same. When Jo Jones went Mr Jones bought the property and he carried on grazing cattle, sheep and ponies but he was the first to graze sheep and he would have claimed for 3 cattle only.



Mr T H Williams one of the Objectors gave evidence that he had lived at Frochas Common all his life and that he had never seen any cattle from Fron Haul on the Common. He would go to the common about twice a week in the summer. His sheep and cattle used to roam the whole common. He knew most of the animals of other people. There could have been animals from Fron Haul and he would have missed them.

In the light of the evidence given by Mr Joseph and Mr J L F Jones I have come to the conclusion that I must confirm Entry No 5 modified so as to be limited to the right to graze 3 cattle and the right to cut bracken.

Entry Nos 9 and 10 both made by Mr J L F Jones. The rights are claims under Entry No 9 for Sunny View (3.375 acres) and under Entry No 10 for Pugh's Cottage Colddiau (15 acres).

Mr Jones gave evidence that he had grazed in the past but was not grazing now. He is engaged in tree growing which he took up when the wire was cut. The existence of rights for Entry Nos 9 and 10 is not contested, but the Objectors contend that each Entry should be limited to the right to graze 5 sheep or 1 cow.

In answer to a question by me, Mr Bainbridge could offer no explanation why Mr Jones should not have rights for Pugh's Cottage similar to Mr Jones' rights for his 14 acres at Tybrith.

I have come to the conclusion that I must confirm Entry No 9 modified so as to be limited to the right to graze 2 cattle or 10 sheep and to cut bracken, and that I must confirm Entry No 10 modified so as to be limited to the right to graze 20 sheep or 5 cattle and to cut bracken.

Subject to any appeal the effect of this decision will be that there are eight commoners of whom only seven will have grazing rights. It will be open to these commoners and the Powis Estate to agree among themselves as to how the common is to be grazed in the future. The fencing requires to be reinstated and it will be in the best interests of all the commoners to improve the quality of the grazing. Any scheme must in my view safeguard the smallholders. It is not uncommon to find smallholders with rights disproportionate to their holdings in order to enable them to keep the animals required for their own domestic use, and I believe that such is the situation in the instant case. It occurs to me that the commoners might usefully seek advice from the National Farmers Union and/or the Powis Estate with a view to securing the improvement of the Unit Land and preventing its further deterioration, and agreeing a scheme which will achieve these objectives.

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 14<sup>th</sup> day of

1977

J. A. L. H. C.

Commons Commissioner