



COMMONS REGISTRATION ACT 1965

Reference Nos 50/D/14
50/D/15

In the Matter of land known as
Mynydd Tir-y-Cwmwd, Llanbedrog

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.6 in the Register of Common Land maintained by the Caernarvonshire County Council and are occasioned as to 50/D/14 by Objection No. 44 made by Mr. F.H. Mizoprio and noted in the Register on 17 August 1970, and as to 50/D/15 by Objection No. 37 made by Mr H.J.G. MacMaster and noted in the Register on 30 July 1970.

I held a hearing for the purpose of inquiring into the disputes at Caernarvon on 30 January 1973. The hearing was attended by Mr. E.D. Lewis, solicitor, for Llanbedrog Parish Council, and by Mr W. Williams, of Counsel, instructed by Messrs. Chappell & Perry, solicitors for the Objectors.

The land in question consists of the top of a headland abutting on Cardigan Bay, but excluding the cliffs along the beach. It is some 175 acres in extent, and its surface is rough mountain land, covered largely by heather, gorse, scrub and stone, interspersed with areas of rough pasture. There are several public footpaths across it and I have no doubt at all that for many generations, if not centuries, it has been a place to which the public at large have resorted for purposes of exercise and recreation. For the most part it is open and unenclosed.

There is good reason to believe that Mynydd Tir-y-Cwmwd was at one time part of the waste of a manor (very possibly, the Manor of *Edem*, to which reference is made in the Inclosure Award mentioned below), and that as such it was subject to rights of common. I say this because Mr. John Harris, the Clerk of Llanbedrog Parish Council, produced in evidence an extract from an Inclosure Award made early in the nineteenth century pursuant to an Inclosure Act passed in or about 1808, together with the Map A (being a map of Mynydd Tir-y-Cwmwd) referred to in the Award. These documents were obtained by Mr Harris from the County Archivist's Office. Map A shows that the whole of Mynydd Tir-y-Cwmwd was the subject of Allotments. Allotment No. 2, being the land of which Mr MacMaster is now the registered proprietor at the Land Registry, was allotted to a Mr Thomas P Jones Parry. Allotment No. 7, which corresponds to the land now belonging to Mr Mizoprio's company called Haulfryn Estate Co. Ltd, was allotted to a Mr G. Wardle. The extract from the Award refers to Allotment Nos 4 and 5, those pieces of land being described as "parts of the waste of the Common called Mynydd Tir Cwmwd". It is also worth observing from Map A that Allotment No. 1 was to "The Lord of the Manor".

Although no submission was made to me on the point, it seems to me that I must infer that the Inclosure Award operated to extinguish any pre-existing rights of common over Mynydd Tir-y-Cwmwd. On that footing, it is not possible to hold that the land is subject to rights of common on the basis of prescription at common law, and I shall proceed accordingly.



Curiously enough however, the Allotments so made were not physically enclosed. This fact emerges from the Particulars Plans & Conditions referring to outlying Portions of the Madryn Park Estate offered for sale by public auction in August 1896. This document was also produced by Mr Harris. Lot 1 of the Particulars included the greater part of Mynydd Tir-y-Cwmwd, and seems to correspond with the land of which Mr MacMaster is now the registered proprietor. The Plan Nos of the land are 649a, 649b, and 649c, and each is described as "Part of Allotment of Common on Mynydd Tir-y-Cwmwd". The Conditions of Sale (para 10) state: "The Allotments forming parts of Lot 1 are uninclosed, and the tenants of adjoining farms or lands, and it is stated of some farms or lands not parts of the Madryn Estate, turn their cattle or sheep thereinto and thereover, and the Vendors sell and will convey subject to any rights required by the tenants or beneficial owners of such other farms or lands as aforesaid

There was also produced to me by Mr Harris the Particulars of Sale of outlying portions of the Waynol Estate, offered for sale by public auction in 1907. Lot 14 included an allotment on Mynydd Tir-y-Cwmwd, which is the land belonging to Haulfryn Estate Co Ltd. Lot 19 also included an allotment on Mynydd Tir-y-Cwmwd (not part of the lands claimed by the Objectors), and a note in the Particulars stated that "the Grazing over the Allotment ... which has hitherto been enjoyed by the Tenants of Lots 15, 16, 17 and 18 is now discontinued and is included in the sale of this lot". Condition 6 of the Conditions of Sale provided that each lot was sold subject to various rights including "all rights of adjacent owners". This reference to "rights of adjacent owners" is unusual in a condition of this kind, and may have been inserted to guard against the possibility that adjacent owners (as distinct from tenants of the Waynol Estate) might have required prescriptive rights over the land. Plan No 1 in the Particulars shows that one adjacent owner was Mr. John Jones of Mount Pleasant, a small holding of which Mr and Mrs Brandon (who have registered grazing rights for 25 ponies in the Rights section of this Register Unit) have been the tenants for some 15 years.

The Parish Council called three elderly witnesses to give factual evidence in support of the registration. These were Richard Modyn Hughes, Robert Lewis Williams (aged 72 years) and the latter's brother John Williams (aged 86 years). Mr and Mrs Moss Brandon also gave evidence.

Mr R M Hughes used to live in a cottage called "Newport", adjacent to Mynydd Tir-y-Cwmwd, which had been built by his grandfather with stones obtained from the mountain. Both his grandfather, and, after his grandfather's death in 1937, the witness himself had habitually turned sheep on to the mountain to graze. They had no permission from anybody and no one objected. They did it as of right. Everybody regarded the mountain as common land. Mr Hughes said that a number of small farmers in the locality also turned their animals on to the mountain to graze. He had occasionally seen horses and cattle, as well as sheep, grazing there.

Mr R L Williams was born at Pen-y-Gamfa, a small holding near the mountain. They raised cattle, sheep, pigs, geese and poultry, and habitually turned them on to the mountain to graze. He had always regarded it as common land and it was used openly by everybody. No one raised any objection. He remembered one occasion in the 1920s when someone staked out a part of the mountain as a site for building. He removed the stakes, and they were not replaced. This was the only occasion he remembered when someone tried to enclose a part of the mountain.



Mr John Williams said he had been familiar with Mynydd Tir-y-Cwmwd during all his life. He was born at Pen-y-gamfa, but moved to Pen-y-glyn in 1925. He had always kept animals on the mountain - sheep, ponies, geese and ducks. He never asked for permission to do this, and no one ever objected. At least five or six other farmers in the locality took sheep to the mountain in the summer. There were scores of sheep there in the summer. He said that people generally regarded the mountain as common land. He remembered an occasion before the 1914-18 war when Mr Solomon Andrews (who had bought the greater part of the mountain from the Madryn Park Estate in 1896) started to build a wall on the mountain, but he was stopped. People objected to his enclosing any part of the mountain.

Mr Brandon and his wife, run a Riding School at Mount Pleasant, of which they became tenants some 15 years ago. Prior to that date, they had run the School at Half-Way Bungalow, another small holding in the vicinity. Before he and his wife took over the School, it had belonged to his wife's mother for many years. Mr Brandon said that School ponies had been turned out on the mountain to graze, to his knowledge since 1945, when he first met his wife. They usually turn out as many as 18 ponies on the mountain. Mrs Brandon confirmed this evidence and said that her mother had also used the mountain for grazing in the same way.

The evidence summarised above was not seriously challenged on behalf of the Objectors. The points taken by Mr Williams in his submissions were that the evidence was all consistent with the rights claimed being rights in gross; that no present owner of land had claimed any right of common; that all the witnesses, or at any rate all the witnesses except Mr R H Hugnes were tenants only of their respective holdings; that the rights over the mountain were in effect claimed for all and sundry; and that rights of common cannot be owned by a fluctuating class of persons: Gatewood's Case (1607) Jac. 152.

I cannot accept Mr Williams' submissions, except that it is, of course, true in law that rights of common cannot be owned by a fluctuating class of persons. It is also, no doubt, true that tenants of land cannot prescribe for themselves, but they can prescribe for the owners of land which they occupy. There is, as it seems to me, sufficient evidence to show that small farmers occupying small holdings near the mountain as owners or tenants have for upwards of 60 years as of right and without interruption made use of the mountain as grazing ground for their animals.

I find therefore, that at the date of registration the land was subject to rights of common acquired by statutory prescription.

For these reasons I confirm the registration.

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 3rd day of March 1973

A. E. Francis

Commons Commissioner