



COMMONS REGISTRATION ACT 1965

Reference No 274/D/112 to 123
inclusive

In the Matter of Mynydd Cilan,
Abersoch, Llanengan, Dwyfor D

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section and Entry Nos 1 to 14 inclusive in the Rights Section of Register Unit No CL. 41 in the Register of Common Land maintained by the Caernarvonshire County Council and are occasioned by Objections set out in the Schedule to this decision and the conflicting registration at Entry Nos 1 and 2 in the Ownership Section of the Register and the conflicting Entry Nos 2 and 6 in the Rights Section.

I held a hearing for the purpose of inquiring into the dispute at Caernarfon on 17 February 1977. The hearing was attended by Mr C Davies who appeared for Mr J G Thomas the Objector under Objection No 18, Mr Emlyn Williams the successor to W Roberts the Objector under Objection No 72 who appeared in person, Mr Emlyn Williams and Mr A G Drosinos respectively the Objectors under Objection Nos 120 and 121 who appeared in person, Mr G Evans who appeared for Mr T Ellis the applicant for rights under Entry No 12, Mr I E Owen who appeared for Mrs Ann Williams the applicant for rights under Entry No 13, and Mr G Hall who appeared for the National Trust.

Objections Nos 18 and ⁷²17 relate to two small parcels of land in the private ownership of the two Objectors, and it was accepted by all those attending the hearing that I should modify the Entry in the Land Section by excluding the land identified on the plan annexed to Objection No 18. Mr Williams stated that the plan annexed to Objection No 72 was inaccurate and I gave him leave to modify that Objection by substituting an accurate plan, and I will modify the Entry in the Land Section by excluding the land identified on the plan to be annexed to the modified Objection. There followed a contest between Mrs Ann Williams the owner of Penymynydd Farm which adjoins on the west the land the subject of Objection 120 and 121 in the ownership of Mr Emlyn Williams and Mr Drosinos. Mr Emlyn Williams produced a plan from among his title deeds which demonstrated that at the time when that plan was prepared it was clearly defined as being severed from the common on its southern boundary, the land to the south then being in the ownership of two individuals. In the face of this evidence Mr Owen accepted that Mrs Ann Williams could only claim rights over the land owned by Mr Emlyn Williams and Mr Drosinos by prescription.

Mrs Ann Williams gave evidence that she inherited Penymynydd from her late husband in 1968. She was born at Nant in 1942 and she remembered the land since about 1947 when she was five years old. Robert Owen Jones was the tenant of Penymynydd and she married him in 1963. In 1947 there were a fair number of animals which grazed on this Unit CL. 93.41 She visited Penymynydd frequently before she married. She was about 8 to 10 years old when she first walked there. She knew her father's



mark, a blue mark by the tail and she knew the mark of the Garrge Lwyd sheep, a blue mark behind the neck. When she went to Penymynydd she went along the path through the disputed area. There had always been sheep on the disputed area; there was nothing to stop them going there and cattle also graze there. They can go freely along the path and there are sheep and cattle grazing there today belonging to her and Mr Drosinos. Her animals had been there in 1968 and there had been no objection to their grazing there. Owen Jones became the tenant of Penymynydd in 1930 and purchased the farm in 1949. Evan Jones owned the farm in 1934; he had cattle and sheep on the mountain. Henry Thomas Williams owned Penymynydd until Evan Jones took it over. She now has 10 cattle and 100 sheep at Penymynydd.

Cross-examined by Mr Emlyn Williams she agreed that there was an alternative way from Nant to Penymynydd but said that whichever way she went she could see animals on the disputed land because people who lived in the area had always grazed on the mountain. Sheep had grazed at Penymynydd and she brings them down for lambing. She could not vouch before 1963. The disputed land is fenced on three sides and on the south side there is only a hedge on an earth bank standing about shoulder high. The bank would not stop sheep going on to the disputed land. She could not think of a similar bank on the mountain.

Re-examined she said the bank did not stop sheep going on to the disputed land.

Stanley Williams the husband of Mrs Ann Williams gave evidence and said he married her in 1968. He said he had lived at Sam Bach all his life; it was about 2 miles away. He is aged 51 and has known the land all his life. Two of his uncles lived at Garrge Lwyd and he remembered his uncles' sheep on the disputed land.

Cross-examined by Mr Emlyn Williams he said he came to Penymynydd in 1968. He used to work in Chester; he went away when he was about 22 or 23 and came back in 1968. He checked the sheep on his way to the hearing. The cynhefin of the Penymynydd shed was at Ha Borth. The Garrge Lwyd sheep had no earmark.

Mr Drosinos gave evidence that he is aged 60 and lives at Parc y Bregin and has lived there since 1946. He was there in 1937 and his wife was born and bred there. He has always considered the land as his own and not common. He has occasionally chased other sheep including those of Robert Jones off his land. The earth bank is about 4ft 6 high; his land has never been part of the mountain. The bank is of the newest type and it was put there as a boundary. Cross-examined he said the sheep of about six or seven graziers crossed the bank.

Mr Emlyn Williams gave evidence and produced his deeds and said he did not remember any sheep from Nant on the disputed land.

I asked Mr Thomas and Mr Ellis who both claimed grazing rights and were represented at the hearing whether they wished to claim that their rights to graze extended over the disputed land, but they were both content that it should be excluded from the Entry in the Land Section.

In these circumstances and in the light of the evidence I have without any hesitation come to the conclusion that Mr Emlyn Williams' and Mr Drosinos' land is not common land. Their Objections were made on 30 September 1970 and the thirty year period required for the acquisition of a prescriptive right would commence in 1940,



prior to the birth of Mrs Ann Williams. The evidence of Mrs Ann Williams does not therefore prove any grazing for the requisite period. It is clear that sheep not belonging to either Mr Emlyn Williams or Mr Drosinos have been on their land but I am satisfied that such sheep strayed on to the land either across the boundary bank or from Penymynydd when the fences between that farm and the disputed land were only in a moderate state of repair. Sheep that stray are not grazing as of right and no one other than Mrs Ann Williams claims that any such grazing was as of right, and she by reason of her age is incapable of giving any evidence as to whether in the early part of the thirty year period the sheep from Penymynydd were mere strays or grazing as of right. Mr Stanley Williams was less than frank when he stated he had lived at Sam Bach all his life and then admitted in cross-examination that he had been away working in Chester for about 20 years.

For these reasons I will exclude the land identified on Objections Nos 120 and 121 from the Entry in the Land Section.

Entry No 2 in the Rights Section was made by Mr G Williams the tenant of land at Tyddyn Perswyn and Entry No 6 was made by Mr R A Evans the owner of that land. Neither Mr Williams nor Mr Evans appeared. There was no specific objection to rights appurtenant to this land the rights claimed by Entry No 6 are in excess of those claimed by Entry No 2. In the absence of any specific objection, I see no reason why the claim by the tenant should prejudice the rights claimed by his landlord and I confirm Entry No 6 and refuse to confirm Entry No 2.

As regards the alleged conflict between the Entries in the Ownership Section, investigation establishes that there is in fact no conflict and I confirm Entry Nos 1 and 2 in the Ownership Section.

In the result:

- 1 I confirm the Entry in the Land Section modified so as to exclude the lands the subject of Objection Nos 18-72 (as modified), 120 and 121
- 2 I confirm the Entries in the Rights Section other than Entry No 2 and I refuse to confirm Entry No 2 as applicable to the Entry in the Land Section as modified
- 3 I confirm Entry Nos 1 and 2 in the Ownership Section.

The Schedule above referred to

Objection No 18	made by J G Thomas	entered in the register on 17.12.69
" " 72	" " W Roberts	" " " " " 30. 9.74
" " 120	" " E J Williams	" " " " " 30. 9.70
" " 121	" " A G Drosinos	" " " " " 30. 9.70

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 5 day of April

Armeda Hancock

to Regula 17: 33

C A Little

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17.11.1977

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C. A. Little

Commons Commissioner