COMMONS REGISTRATION ACT 1965 Reference No. 276/D/324-347

In the Matter of Heldre Hill,
Middletown, Trewern, Montgomery D

DECISION

Thses disputes relate to the registrations at Entry Nos 1, 2, 5, 6, 9, 15, 17 and 18 in the Rights Section of the Register Unit No. CL 1 in the Register of Common Land maintained by the former Montgomery County Council and are occasioned by the following objections

Nos 114, 47, 52, 48, 49, 50, 130, 51 and 46 all made by R H Mountford and respectively noted in the Register on 30 September 1978, 30 September 1970, 1 October 1970, 1 October 1970, 1 October 1970, 2 October 1970, 1 October 1970 and 1 October 1970.

Nos 73, 74, 71, 72, 68 and 69 all made by E C Edwards, Nos 73 and 74 being noted in the Register on 30 September 1970 and the remainder being noted in the Register on 1 October 1970.

Nos 61 and 75 both made by W E Roberts and Sons and respectively noted in the Register on 30 September 1970 and 1 October 1970.
No 67 made by J E Marsh and noted in the Register on 30 September 1970
No 66 made by J E Jones and noted in the Register on 30 September 1970
No 65 made by F R Roberts and noted in the Register on 30 September 1970
No 64 made by J R R Davies and noted in the Register on 30 September 1970
No 62 made by A M Davies and noted in the Register on 30 September 1970
No 63 made by T Edwards and noted in the Register on 30 September 1970

I held a hearing for the purpose of inquiring into these disputes at Welshpool on the 4 October 1978. Mr J F S Newsome of Messrs Scott Lister & Co appeared for Messrs Roberts. Mr J E Jones, Mr R H Mountford and Mr Delwyn William of Messrs Delwyn Williams & Co appeared for Mr A M Davies. Mr Owen, Mr Chapman and Mr E J Davies appeared in person.

The Entry in the Land Section is final, and it is not disputed that the applicants for Rights under the disputed Entries in the Rights Section are entitled to grazing rights, the objections to these Entries are objections as to quantum only.

The objectionscontend that there is a fixed scale of grazing of 1½ sheep to the acre, of the holding occupied subject to a proviso that holding of 10 acres or less should be entitled to graze 15 sheep, and subject to the further proviso that one head of cattle may be grazed in lieu of 5 sheep.

The scale of 1½ sheep to the acre was agreed at a meeting, at which those present constituted themselves . The Heldre Hill graziers committee, held on 17 November 1949. The main question which I hve to decide is whether any commoner has rights in excess of the scale which the objectors are willing to concede. Neither Mr Newsome nor Mr Williams came armed with any evidence of the early history of the common, but by good fortune Mr R E Morgan was present at the hearing and he gave evidence.

Mr Morgans evidence was to the following effect. He took his farm, the Dingle over in 1933 and farmed there until he retired in 1970. He never grazed the hill until 1950, it was mostly gorse and bracken before the 1939-45 war. During the war the common was requisitioned and ploughed and crops of potatoes and corn were grown. After the war the common was re-seeded and cattle were grazed by agreement with local agricultural committee on payment of a fixed sum for each head of cattle. In 1950 the common was de-requisitioned and it was with this in prospect that the meeting was convened and held in 1949.

Mr Morgan said he was present at the meeting in 1949, and that he was a member of the committee from its inception until he retired in 1970. He said that at the meeting the scale of 1½ sheep to the acre was generally agreed, and he could not remember any argument as to whether the scale should be more than 1½. He thought the scale was generally observed, but he could not say whether Mr Owen observed the scale or not. He said that if there is excess grazing available the committee pasture outside cattle at payment which at one time was £4 per beast. The committee needed the money for outside cattle, so as to have funds available to keep the hill to good order. There had been as many as 60 outside cattle. The commoners themselves now make payments to the committee.

Mr Morgan said that Mrs Baker was Lady of the Manor in 1950, and she was represented at the 1949 meeting by Mr Norman Lloyd. Mrs Baker sold the Lordship to another Mr Morgan in 1951, and he sold to the present Lord of the Manor, Mr Mountford. Mr Morgan in answer to me said he had some recollection of the scale of 1½ sheep to the acre being mentioned before the war.

Mr Williams put to Mr Morgan a pro-forma agreement which he suggested to him had been signed by all the commoners. Mr Morgan said that these agreements arose out of Mr Chapman being unhappy, and that while he had no clear recollection of signing, he assumed that if the other commoners signed he would also sign. These agreements confirmed the scale of 1½ sheep to the acre and provided for the alternative of one head of cattle for five sheep and gave the committee power to authorise a maximum of 15 sheep or the alternative for holdings of up to 10 acres.

Mr Morgans evidence was not contradicted in any material way. No applicant for rights produced any document of title quantifying his common rights, ~~in forms of numbers of animals~~.

The view which I take is that the committee even if it is a duly constituted representative body had no power in 1949 to deprive a commoner of any rights to which he was then entitled. In so far as any such rights were undefined I must assume that such rights fell to be quantified by levancy and couchancy or alternatively I must presume that there was a scale, followed by long usage that provided for a viable rate of grazing having regard to the amount of grazing available on the common. The ~~two~~ alternative approaches are consistent in that the less available grazing there was on the common, the greater would be the burden on the enclosed bye land.

I have come to the conclusion that the scale of grazing prior to the 1939-45 war was not in excess of 1½ sheep to the acre for the following reasons.

(1) I was told that having regard to the area of the common, 300 acres approximately

and the area of bye land. The scale of 1½ sheep to the acre provides for the grazing of 3 sheep to the acre on the common.

(2) Bearing in mind the condition of the common prior to the war, mostly furze and bracken as described by Mr Morgan, 3 sheep to the acre was in my view the maximum and probably more than the common could support prior to the war.

(3) I am confirmed in the view which I have expressed at (2) above by the circumstance that Mr Morgan himself did not graze the common prior to the war, and Mr Chapman said there was little grazing.

(4) Further confirmation for the view which I have expressed is to be found in the current situation when the grazing is greatly improved. Most of the gorse and bracken having been removed, the land having been re-seeded and being maintained as good grazing.

If on a scale of 1½ sheep to the acre additional grazing is now available for 60 head of cattle = 300 sheep or 1 sheep per acre of common. It must in my view follow that prior to the improvement the scale of 1½ sheep was generous.

(5) Lastly but of much less weight the circumstances that Mr Morgan had some recollection that the figure of 1½ sheep was mentioned prior to the war, and that the meeting in 1949 adopted this figure, without discussion do give some indication that it had some historic significance.

I turn now to the individual Entries.

Entry No 1 was made by Mr K G Owen who claims to graze 50 sheep and 3 head of cattle. Objection No 73 alleges that his grazing should be restricted to 14 sheep or 3 cattle.

Mr Owen gave evidence that his parents and he, had always grazed sheep and cattle in excess of the scale. They were prior to 1956 tenant farmers when they purchased their farm from Mr Morgan the Lord of the Manor. The conveyance was produced and included a grant of "rights of grazing on the hill or common, known as Uppington Hill or Heldre Hill as are at present enjoyed, with the property herely conveyed".

Mr Owen said he knew about the current scale before the Act of 1965 came into force and in cross-examination he said there had always been an argument but the first objection was to the registration. He never went to the committee but he heard there were complaints .

In 1978 he grazed his 50 ewes.

Mr Owens father was present at the meeting in 1949.

Prior to 1956 neither Mr Owen nor his parents had any right of common, at that time they were grazing as the tenants of the Lord of the Manor also owned both their farm and the common. Mr Owens rights are those granted him by the conveyance of 1956 and in my view on the evidence, I must come to the conclusion that the rights "then enjoyed" granted to him were the rights in accordance with the scale accepted by his father and the Lord of the Manor in 1949.

No evidence was led that 14 sheep or 3 cattle was in accordance with the scale and on the assumption that Mr Owens farm is 10 acres or less I confirm Entry No 1 modified so as to limit his grazing to 15 sheep or 3 cattle.

Entry No 2 was made by J S Jones and E T Jones who claimed to graze an unspecified number of sheep and cattle, having in practice grazed 20-25 sheep and from time to time 2 or 3 cattle.

Mr E J Davies the nephew of J S Jones appeared. The farm for which the claim was made is a small farm and he agreed that I should confirm Entry No 2, modified so as to limit the grazing rights to 15 sheep or 3 cattle.

Entry No 5 was made by Mr A M Davies who did not contest the application of the committees scale. He purchased his farm in 1961 and took possession in 1962. He produced the sale particulars on which he purchased, but not the conveyance, which stated that the farm was sold with "common grazing rights for 50 ewes and lambs and common grazing on Heldre Hill which is convenient to the farm".

The committee claim that Mr Davies predecessor in title only claimed grazing rights for 50 acres of bye land, but concede that he does in fact occupy 89 acres of bye land. The committees contention is that Mr Davies is bound by and restricted to the claim made by his predecessor. In my view this contention is not well founded. The committee had no power either to restrict existing rights or to grant new rights. The effect of the resolution passed in 1949 was in my view no more than an admission by the committee that the then existing rights, or in the case of the Lord of the Manor and his tenants quasi rights were on the agreed scale of 1½ sheep for each acre "occupied". In my view the circumstance that Mr Davies' predecessor claimed for less than his entitlement was not an abandonment of his full entitlement and it was open to him to correct his error at any time and even if it is suggested that there was an agreement between him and the other commoners only to claim for 50 acres, that agreement would not in my view bind his successor. On the ~~time~~ construction of the 1949 resolution, Mr Davies' claim for 89 acres is in accordance with his entitlement and it is relevant to mention that he said in evidence that he was paying £22.50 for a dues based on 90 acres. If Mr ~~Parish~~ Parish Mr Davies' predecessor erred in claiming only for 50 acres, the committee have also erred in accepting dues for land which they allege does not confer any grazing rights.

For those reasons I confirm Entry No 5, modified so as to confer the right to graze 135 sheep or 20 cattle.

Entry No 6 Mr Davies accepted that I should confirm this Entry, modified so as to limit the grazing rights to 15 sheep or 3 cattle.

Entry No 9 The objectors agreed that I should confirm this Entry.

Entry No 15 By this Entry, Mr Wood claimed:

(a) To graze 3 sheep
(b) To take water
(c) To harvest fern, gorse and sticks

The claim to graze 3 sheep was not contested, the taking of water is not a common right and has no place in the Rights Section of the Register, and the objectors conceded that Mr Wood should have the right to take ½ a ton of bracken in each year when available.

I should explain that the words "when available" are inserted so as not to restrict the maintenance of the common for grazing by keeping down the bracken. It was however conceded that some parts of the common were incapable of improvement and would so far as could be foreseen yield ½ a ton of bracken.

I confirm Entry No 15 modified so as to exclude (b) and so as to limit the right claimed under (c) to the right to take ½ a ton of bracken in each year when available.

Entry No 17 By this Entry Mr Chapman claimed to graze 100 sheep while the objectors claim that in accordance with the scale his entitlement should be 36 sheep or 5 cattle.

Mr Chapman gave evidence that in 1918 his father, purchases his farm together with the right to "depasture sheep on the adjoining Heldre Hill". He said he was aged 58, and that before the war the hill was bracken and gorse. His father put 100 sheep and 10 or 12 mountain ponies on the hill right through the years and that he continued the practice when his father passed on the farm to him, but he did not graze any ponies. He said his father never adhered to the committees scale and that he had continued up to the present day but that he only grazed for two very short periods. He said he had made payments to the committee which he insisted were donations and not subscriptions due from him, and that his father handed over to him in 1956.

In cross examination he agreed that his father was chairman of the committee from its inception to 1964. When there was some disagreement on the committee, his father attended a meeting with solicitors, but I took the view that the opinion expressed by the solicitors consequent on that meeting could not be evidence either for or against Mr Chapman. Mr Chapman said that last year he grazed 55 sheep, and that the periods during which he grazed were from May to mid July, and from December onwards depending on the weather. He further said he had not adhered to any limit and in the second period he has 100 sheep on the hill, and he weans his lambs in July. In 1956 and 1957 he did not adhere to any stocking limit. He knew of the extra stocking on payment and he had paid for extra cattle. He said he was a member of the committee but did not attend all meetings, and gave his donations for up-keep, £15 in every year prior to his year. The hill prior to requisition did support 100 sheep and ponies. There were not alot of other animals grazing and prior to the war the stock was on the hill from April to August.

Mr J R R Davies aged 38 gave evidence that he had lived at Heldre since 1964 and has been the secretary of the committee since 1970.Up to 1964 Mr Chapman was reasonable but after that he was not happy and he made it as awkward as possible for the committee to manage the hill. The sheep are marked. Since 1964 the sheep grazed by Mr Chapman far exceeded the scale.

When Mr Chapman had the opportunity to cross examine Mr Davies it became clear that there was ill feeling. Mr Chapman put to Mr Davies that he grazed the hill to the limit of his entitlement, for as long as the climate allowed.

The view which I formed at this stage was that Mr Chapman felt agrieved because in his view his grazing, in excess of the scale for two short periods, did not impose a greater burden on the hill that grazing in accordance with the scale throughout the whole period, when grazing was practicable. As the result of questions put by me, I formed the impression that Mr Chapmans farming operation differed from those of the other commoners.

Mr Chapman agreed with me that if all the commoners grazed all year round on the scale of his application for rights, the hill would be substantially ever grazed, and when I pointed out to him that the rights are appurtant to the land and not personal to him, and that if I confirmed his Entry a successor would be entitled to graze throughout the year and could not be compelled to graze for only two periods. He appreciated the point.

I indicated that the differences between Mr Chapman and the committee might be resolved if Mr Champman accepted the scale, but the committee would arrive at an agreement with him that in consideration of his grazing for only two short periods he should, during these two periods be entitled to graze in excess of the scale. The Rights Section of the Register defines the rights, it is in my view open to the commoners to agree among themselves how these rights shall be exercised and the basis of any agreement between the commoners and Mr Chapman would be that his grazing for two short periods should not impose any greater burden on the hill, than if he grazed without any limitation on the period of his grazing in accordance with the scale. Mr Davies without in any way binding the committee did indicate that he saw no objection to an agreement on the lines suggested above. In the last resort a common can only be grazed in the best interests of all the commoners. If there is consensus and a willingness to co-operate, ~~then~~ I can do no more than express the hope that one result of the hearing may be to establish good relations between Mr Chapman and the other commoners. The differences between them in my view arose through a failure of communication and Mr Chapman not appreciating that his rights are not personal to him.

I cannot find that Mr Chapmans strict entitlement differs from those of the other commoners and indeed his father accepted that such was the case in 1949. For this reason I confirm Entry No 17, modified so as to limit the grazing rights to 36 sheep or 7 cattle.

Entry No 18 the parties agreed that I should confirm this Entry.

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 5th day of December 1978

H. A. Leale

Commons Commissioner

For addendum to Hill decision see next page

Re Heldre

Addendum to decision dated 5 December 1978

Since writing this decision I have received from Mr Delwyn Williams, photo copies of the Conveyance dated 3 February 1962, whereby Mr and Mrs Paish conveyed Monks field to Mr and Mrs A M Davies and the Conveyance dated 28 August 1920 referred to in that Conveyance.

The 1962 Conveyance states that the 1920 Conveyance wrongly described the property as being in the Parishes of ~~Wolston~~ and Alberbury, instead of the Parishes of Trelystan and Uppington. It is the fact that 05 803; 2 283 is in the Parish of Wollaston. In the Schedule to the 1920 Conveyance 05 13; 36 100 acres was wrongly bracketed with 05 803 and this described as being in the Parish of Wollaston. The plan on the 1920 Conveyance clea ly shows the Parish boundary as running between 05 803 and 05 13. This error explains Mr Paish's mistaken belief that he had only 50 acres entitled to grazing rights, and confirms my view that Mr and Mrs A M Davies cannot be penalised for Mr Paish's mistake. The inference which I draw, is that Mr Paish never intended to abandon any rights appurtenant to 05 13, but was in error in thinking that the land did not carry rights.

The 1962 conveyance, which sought to remedy the errors in the 1920 Conveyance in the Schedule, wrongly included the land in the Parish of Trelystan, whereas it is in Uppingto If the 36·1 acres of 05 13 are added to the 52 184 acres said by the 1962 Conveyance to b in Uppington, the land which qualifies for rights is 88·248 acres.

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