COMMONS REGISTRATION ACT 1965 Reference Nos 276/D/1, 2, 3 and 4

In the Matter of The Beacon, Black Mountain, Stanley Hill, Fron Bank, Pool Hill, Cnwch Bank, Rhoscrug, Cefn Pawl, Gernygawfon Hill, Beguildy and Llanbister, Radnor D

DECISION

These disputes relate to the registrations at Entry Nos , 28, 31 and 51 in the Rights Section of Register Unit No CL. 5 in the Register of Common Land maintained by the former Radnorshire County Council and are occasioned by Objection Nos 62, 58, 55 and 54 all made by the Beacon and Pool Hill Commoners Association and all noted in the Register on 17 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 25 May 1977.

Mr Gareth Morris of Messrs Dilwys Jones & Sons appeared for Messrs R Deaking & Sons the applicants for rights under Entry No 7, Mr P J Medlicott of Messrs S H Medlicott & Son appeared for Mr S A O Moorman the applicant for rights under Entry No 28 and for Mr J V J Duggan, the applicant for rights under Entry No 51. Mr Peter Morris appeared for Mr P Morgan representing the Objectors. Mr J C Bright the applicant for rights under Entry No 31 withdrew his application in writing on 20 May 1977 and did not appear. Mr Medlicott withdrew Mr Duggan's application. The contest at the hearing was therefore confined to Entry Nos 7 and 28.

Entry No 7

The applicant owns Llancoch Hill which was at one time open to the Commons but has by stages been enclosed. I quote from the statement of Mr S V Deakins which he read in evidence:

> "Llancoch Hill which forms part of our farm which is now totally enclosed has been gradually enclosed since 1939 and the last 15 acres enclosed in 1957. Up to that time sheep were put out on Llancoch Hill and they have also grazed the Common and the sheep on the Common also grazed Llancoch Hill."

The evidence of Mr J C Deakins was to the same effect. This evidence does not in my view establish any right for the Deakins sheep to graze on the common. Accepting their evidence they turned their sheep on to their own land and they strayed on to the common. Conversely sheep turned on to the common strayed on to their land. This evidence discloses intercommoning as between Llancoch and the land now registered as a common; it has all the features of common of pasture by reason of vicinage see Halsburys Laws of England 4th Edition Vol 6 pp 208 and 209.

Common of pasture by reason of vicinage has been said not to be a right but only anexcuse for trespass so that no complaint can be made of sheep turned out on land "A" grazing on land "B", so long as no complaint is made of sheep turned out on land B grazing on land A. This so called right is based on mutuality and can be terminated at any time by either side fencing the boundary; thus in the instant case. When Llancoch fenced and excluded the sheep from the common by so doing the right for sheep from Llancoch ~~could be excluded from the common.~~ to graze the common was determined.
For this reason I refuse to confirm the Entry at No 7.

I must mention that the Association did not accept Messrs Deakins version of the facts. Mr Morgan and Mr Swancott gave evidence of the existence of a fence which separated Llancoch from the common which was burnt down in 1945 and they further said that few if any animals from Llancoch were grazing on the common - at the most only a few strays.

If I be wrong in deciding that the fencing of Llancoch determined the right of Llancoch sheep to go on the common, I am nevertheless of the opinion that Llangoch has never, whatever may have been the conditionof the fence, grazed the common. The animals were turned on to Llancoch and it was accepted that the grazing on Llangoch was better than that on the common, and I accept the evidence of Mr Morgan and Mr Swancott that few if any Lancoch animals grazed the common. There was a conflict of evidence as to the use of the common made by animals from Llancoch and I refer to this evidence by way of precaution in case there is an appeal. The view which I take is that Messrs Deakins' evidence does not discharge the onus which rests upon them of establishing a right of common at the date of registration.

Entry No 28

By a conveyance dated 26 September 1945 Mr Moorman acquired Lower Goitre Farm "Together with the right of run on the Goitre Hill." In 1932 Mr Moorman's predecessor in title Alfred Davies enclosed 35.72 acres as an encroachment from the Crown Wastes and by a conveyance made in 1962 the Crown conveyed this encroachment to Mr Moorman. The plan attached to this conveyance identifies the encroachment (No 14) as Goitre Hill and is clearly taken from the revised Ordnance Survey of 1901 with which I was supplied after the hearing.

Mr Moorman did not at the hearing claim to graze on any part of the common other than Goitre Hill but he claimedthat Goitre Hill extended to a pond on the south boundary of what ~~in all~~ the maps is described as Gwern y ~~Gaufron~~ Gaufron Hill.

The large scale Ordnance Map referred to above shows Goitre Hill and Gwen y Gaufron (on that map Gwern-y-Geufron) Hill as two distinct hills and it seems to me probable that the boundary lies along a footpath running north and south between the two Hills. On any view the pond referred to my Mr Moorman lies very far inside Gwen-y-Gaufron.

The plan on the 1962 conveyance discloses that the encroachment comprised all but a small triangle of land lying to the east of this path. On the geographical evidence I am satisfied that Mr Moorman's rights confined to Goitre Hill were confined to the land enclosed by Mr Davis.

However if I have reached a wrong conclusion on the grography and Mr Moorman's rights extended beyond the enclosed land these rights were in my view extinguished when he acquired the encroachment. It is settled law that if a commoner acquires part of the common that terminates his right of common over the whole of the land affected. The reason for this is that if he continued to graze on the remainder of the land after excluding his own land he would increase the burden on the remaining land to the detriment of the other commoners, see White v Taylor 1969 L Ch 150 at p 158. It follows that Mr Moorman's right of common was extinguished when he acquired the enclosure.

For the reasons given above I refuse to confirm Entry Nos 7, 28, 31 and 51 in the Rights Section.

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 20th day of June 1977

E A Sethe

Commons Commissioner