



COMMONS REGISTRATION ACT 1965

Reference No. 276/U/150

Register Unit No. BCL 39

**In the matter of a tract of land known as Llanynis and Part Pencarreg Common,
Builth Wells, Powys**

And in the matter of ownership of unclaimed land

DECISION

1. This reference relates to the question of the ownership of parts of a tract of land known as Llanynis & Part Pencarreg Common, Builth Wells, Powys ("the Common"). The registration of the Common in the Register of Common Land is maintained by Powys County Council as the Registration Authority. In order to understand the basis of this Decision it is necessary to have regard to the background circumstances by reference to the Sections of the Register.

Land Section

2. The Registration Authority (then Brecknock Borough Council) provisionally registered the Common as common land on the 28th September 1967 as Unit No. CL 39. The registration, at Entry No. 1 in the Land Section, was in response to an application (Application No. 22) for the registration of a right of common received on the 27th September 1967 from Messrs Confersinsa Investments Ltd. The Register map was drawn using plan 'A' supplied with the rights application in accordance with the provisions of Section 4 (2) of the 1965 Act. The Registration Authority then received an application for the registration of the Common as common land on the 17th June 1968. This was contained in Application No. 787 submitted by Lewis Henry Marshall as Agent for the Trustees of the Glanusk Settlement. The plan '5.3.58D' supplied

with the Application differed from that used to compile the map register and an additional tract of land was provisionally registered at Entry No. 2 in the Land Section on the 17th June 1968. The registrations at Entry Nos. 1 and 2 in the Land Section of the Register, being undisputed, became final on the 1st October 1970.

Ownership Section

3. On the 17th June 1968 the Registration Authority received an application (Application No. 788) for the registration of a claim to ownership of land. This was submitted by Lewis Henry Marshall as Agent for the Trustees of the Glanusk Settlement and included a claim for the ownership of part of CL 39 as described in plan '5.3.58D'. The application did not, however, include the eastern part of the Common. The significance of this omission will become apparent. The claim to ownership was entered in the Register on the 26th August 1968 at Entry No. 1 in the Ownership Section. This registration being undisputed, became final on the 1st August 1972. No claim to ownership, however, was received in respect of the remainder of the Register Unit.

Unclaimed Land

4. As required by Section 8 of the 1965 Act, the Registration Authority referred the matter of the ownership of the unclaimed eastern part of Unit No. CL 39 to the Commons Commissioner for a decision. The making of the notice of reference (No 276/U/9) was publicised in accordance with the Commons Commissioners Regulations 1971 and a Commons Commissioners' hearing was held in Brecon on the 12th July 1977. It would appear that no information was provided at the hearing to enable the Commons Commissioner to determine the ownership of this land and he ruled that the land remain subject to protection under Section 9 of the Act of 1965. Subsequently, on the 13th December 1977, the Ownership Section of the register was amended by the Registration Authority to include a reference to the Section 9 status of the land at Entry No. 2.

The current claims to Ownership

5. In October 2001, Powys County Council, in partnership with the Countryside Council for Wales, organised a Common Land Road Show. The purpose of this was to raise awareness of the new rights of access to common land provided by the Countryside and Rights of Way Act 2000. Later that month Powys County Council was contacted by solicitors acting for Mrs D M Evans and Mr I G Evans of Cwmtochen, Llanyis, and Mrs M E Price of Gwarallt, Llanyis, in connection with the (apparent incorrect) inclusion of parts of their farm holdings within the boundary of the Common. The Registration Authority requested evidence of title to the land. Following further investigation, a Notice of Reference dated 8th April 2003 was made by the Registration Authority to the Commons CommissionersBO. In June 2003, an additional claim to ownership, received from H Vaughan Vaughan & Co, solicitors acting for Mr D P Bevan of New Building, Maesmynis, Builth Wells, was forwarded to the Commons Commissioners. The relevant parcels of land are identified as the land edged red on the attached plan and lie to the east of the land registered within the ownership of the Glanusk Estate.
6. On 6th April 2004 I held a hearing in Builth Wells for the purposes of inquiring into the question of ownership. At the hearing a number of interested parties attended. These included Mrs Jenny Griffiths who is the Commons Registration Officer for the Registration Authority, and Mr Lloyd, a partner in the firm of H Vaughan Vaughan & Co, who was instructed by the following persons:
- (1) Mr David Price Bevan who claims ownership of OS Field No 136 a parcel of land lying in the south-eastern corner of the Common ("the Bevan Claim");
 - (2) Mr Thomas Vivian Price and Mr David Thomas Lloyd, the Executors of the Estate of Mrs Mary Elizabeth Price, Deceased, who claim ownership of OS Field Nos. 115, 117, 118, 119, and 139, all of which lie at the north east of the Common and to the north of the Evans land ("the Price Claim");
 - (3) Mrs Dilys Mary Evans and Mr Iestyn Gwyn Evans the Executors of the Estate of Mr William Reginald Evans,

Deceased, who claim ownership of OS Field Nos. 120, 121, 137 and 138 ("the Evans Claim"). These parcels lie at the south east of the Common and west of the Bevan land.

7. I should state that Mr Lloyd, for the three Applicants, provided me with useful skeleton arguments setting out all three claims to ownership. I have also been assisted by the concise opening statement produced by Mrs Griffiths for the Registration Authority. I do not propose to refer *in extenso* to the documentation provided in support of the Claims (which included copy title deeds and witness statements) as I am satisfied as to the respective roots of title and claims to ownership.

The Bevan Claim

8. The Epitome of Title clearly confirms that the Applicant has good documentary title to OS Field No 136. The land (The Rhos), of which this parcel forms part, has been owned by the Bevan family since 1925. As Mr Lloyd stated, it would seem that registration of this parcel as part of the Common probably occurred by mistake. The examined copy of the Grant of Probate indicates that the entirety of the Rhos is now vested in the sole name of Mr David Price Bevan. I am therefore satisfied as to the claim to ownership and I shall make an appropriate Direction to this effect.

The Price Claim

9. This claim falls into two parts, namely, (1) the land in respect of which there is paper title i.e. Field Nos. 115, 119, and 139, and (2) the land in respect of which there is no such paper title i.e. Field Nos. 117 and 118.
10. As to the (1), the Abstract of Title shows that the Personal Representatives have a good paper title to the Fields in question. As to the (2), I was referred to the Statutory Declaration of Mr Thomas Vivian Price declared on 29th November 2001. In this he confirmed that Field Nos. 117 and 118 had been in the undisputed possession of his family for upward of fifty years and have been occupied as part and parcel of Gwarallt to his memory for over forty years. This land has been enclosed and separated from the Common and no

one has ever exercised rights of common over it. Mr Price gave evidence before me confirming that the contents of this Statutory Declaration were true. Following the death of Mrs Price her Executors have remained in occupation of these parcels. Again the land was undoubtedly wrongly registered as part of the Common.

11. I am therefore satisfied as to the claim to ownership based upon the documentary and non-documentary evidence provided to me. I shall make an appropriate Direction to this effect.

The Evans Claim

12. I was referred to the Abstracts of Title in respect of the properties known as Cwmtochen of which OS Field Nos. 120, 121, 137 and 138 form part. Again the documentary evidence reveals that the Applicants have good paper title to the land in question. I shall make an appropriate Direction to this effect.

The Decision

13. I am satisfied that the claims made by the Applicants as to the ownership of the various parcels is made out. No person present at the hearing made any other claims or disputed the entitlement of the Applicants to their claims to ownership of the various plots. I therefore find the following:

- (1) Mr David Price Bevan is the owner of OS Field No 136;
- (2) Mr Thomas Vivian Price and Mr David Thomas Lloyd, the Executors of the Estate of Mrs Mary Elizabeth Price, Deceased, are the owners of OS Field Nos. 115, 117, 118, 119, and 139;
- (3) Mrs Dilys Mary Evans and Mr Iestyn Gwyn Evans, the Executors of the Estate of Mr William Reginald Evans, Deceased, are the owners of OS Field Nos. 120, 121, 137 and 138.

14. I shall accordingly direct that these persons be registered as the owners of these various parcels of land in the Ownership Section of Register Unit No.

BCL039. This is in accordance with my powers to do so pursuant to section 8(2) of the Commons Registration Act 1965.

15. It is obviously unfortunate that these parcels of land have been the subject of a mistaken registration as common land and continue to be so registered. The effect of the provisions of the Countryside and Rights of Way Act 2000 will mean that the public will have rights of access to this land despite the fact that the land has never been common land, as such, and should never have been so registered. New legislation is anticipated which it is intended will give effect to certain recommendations made in the Common Land Policy Statement published in July 2002. Until this proposed legislation is in force there is, however, no method of de-registering common land wrongly registered, except in very limited circumstances.
16. 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 the notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 11th day of April 2004

A handwritten signature in black ink, appearing to read 'E F Cousins', with a long horizontal flourish extending to the right.

Edward F Cousins
Chief Commons Commissioner