



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/255-259

In the Matter of Burton Fell and Warcop Fell extending marginally into the Parishes of Musgrave and Hillbeck at Hanging Seal

DECISION

These disputes relate to (1) the registration at Entries no. 2, 15 and 22 in the Rights Section of Register Unit No. CL 122 in the Register of Common Land maintained by the former Westmorland County Council occasioned by Objections Nos. 2/32, 2/35 and 2/36 made by the Secretary of State for Defence and noted in the Register on 7 December 1970, (2) the conflicting registrations at (a) Entry No. 1 and Entry No. 26 (b) Entry No. 22 and Entry No. 26 in the Rights Section of the same Register Unit.

I held a hearing for the purpose of inquiring into the disputes at Penrith on 17 June 1980. The hearing was attended by Mr T Etherton, of Counsel, appearing on behalf of the Secretary of State: by Mr A M Fell, Solicitor, appearing on behalf of Mr J Akrigg (Entry No. 2): and by Mr M S Birtles, Solicitor, appearing on behalf of Mr T Ellwood (Entry No. 15).

The Objection to Entry No. 2 was withdrawn and I confirm the registration without modification. As regards Entry No. 15 it was agreed that this should be modified by substituting in column 4 "185 ewes with their followers" for "315 ewes with their followers", and I confirm the registration modified accordingly.

Entry No. 22 was registered on the application of Mr J F Lambert and Mr R W Lambert. Objection 2/36 stated that part of the land to which the right is claimed to attach ie. part of O.S. 764 and 777 comprising 1.735 acres ("the conflicting part") is owned by the Ministry of Defence, the number of sheep for which the right is claimed should be reduced to 93. The conflict between Entry No. 22 and Entry No. 26, which is a right of grazing registered on the application of the Secretary of State, arises because the conflicting part is comprised in the land to which this right (Entry No. 26) is claimed to attach. Mr Etherton produced a Conveyance dated 9 April 1945 by which land including the conflicting part was conveyed by R W Lambert to the War Department. Mr Etherton said that Objection 2/36 is withdrawn but that the conflict should be resolved by excluding the conflicting part from the land to which Mr Lambert's right is claimed to attach. This I think is the right course to take, and accordingly I confirm the registration at Entry No. 22 with the modification that in column 5 the numbers 764 and 777 be deleted and that there be inserted after the number 800 "together with part O.S. plots numbered 764 and 777".

Entry No. 1 was registered on the application of Mr R W Lambert and is a right of grazing claimed to attach to (inter alia) part O.S. plot No. 801a. The conflict between this and Entry No. 26 is, as I understand, the same as in the case of Entry No. 22 viz. that this piece of land is comprised in the land to which the right in Entry No. 26 is claimed to attach. The conveyance of



9 April 1945 also included part 801a and I think that the appropriate resolution of the conflict is to confirm the registration at Entry No. 26 with the modification that in column 5 for "plots numbered 801a and" there be substituted "plot numbered".

I confirm the registration at Entry No. 26 without modification.

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

28th July

1980

L. J. Morris Smith

Commons Commissioner