



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/438-461

In the Matter of Eskdale Common,  
Eskdale

DECISION

These disputes relate to the registrations in all three sections of Register Unit No. CL 58 in the Register of Common Land maintained by the Cumbria County Council. They are occasioned by the following objections; all of which were noted in the Register on 2 October 1970: (1) Objection No. 16 made by the National Trust to Entry No. 1 in the Land Section, to all the Entries in the Rights Section and to Entry No. 1 in the Ownership Section: (2) Objections Nos. 76 to 78 and 80-94 made by Edwin Thomson and Company, being Objections to eighteen of the Entries in the Rights Section: (3) Objections Nos. 9, 10 and 11 made by E P Pitts to six of the Entries in the Rights Section.

I held a hearing for the purpose of inquiring into the disputes at Whitehaven on 27 November 1980. The hearing was attended by (1) Dr M Burns the Secretary of and representing the Eskdale Commoners Association, on whose application the registration at Entry No. 1 in the Land Section was made (2) Mr G Hall, Land Agent, representing the National Trust (3) Mr R A Moss, Chartered Surveyor, representing Edwin Thomson and Company (4) Mr E P Pitts in person (5) a number of Right-holders, present in person or by their representatives and (6) Mr Greer of the Registration Authority.

The National Trust's Objection (No. 16) and the Objections (Nos. 76 to 78 and 80-94) by Edwin Thomson and Company were withdrawn.

Mr Pitts's Objections all relate to the numbers of animals for which grazing rights are claimed. As regards this question, it appears that the Commoners Association takes the view that the number of stock registered with grazing rights should be based on the acreage of the common, which is about 7200 acres, and in the ratio of two ewes to the acre, giving a total number of some 14000 ewes: and that as the number of stock registered with grazing rights is some 13000 the registered numbers are acceptable. Mr Pitts on the other hand takes the view that the number should be based on the inbye acreage of each farm, which the Association, having regard to the wide variation in the quality of inbye land, considers impracticable. There are 28 Entries in the Rights Section and Mr Pitts's objections relate to six only, so that this difference of principle as to the basis for assessing numbers apparently does not arise in regard to most of the registered Rights:

a. Objection No. 9 relates to Entries No. 6 and 7 both made on the application of Mr N D Baines, who appeared in person. Entry No. 6 is claimed to be attached to Fold End (or Thorns) and is a right to graze 5 cows and followers or 100 sheep: it was agreed that the number of sheep should be reduced to



50 and I shall confirm the registration modified accordingly.

Entry No. 7 is claimed to be attached to Howes Farm and is of (inter alia) a right to graze 400 sheep, 25 cattle and 2 horses, (20 sheep to equal 1 cow). The Objection states that this "should contain 40 adult sheep and lambs or 1 cow and calf equivalent to 10 sheep, 1 horse to 20 sheep": that the claim is not in accordance with the Commoners Association resolution of the sheep/cattle equivalent, and would contribute towards overstocking the common and that the number would be impractical to maintain on the enclosed land at the necessary times of the year." I understand that the sheep/cattle equivalent accepted by the Association is 10 sheep equals 1 cow, which Mr Baines is, not unnaturally, happy to accept. The real dispute is as to the resulting number of cattle: the present Entry is considered to comprise a right to graze 25 cattle plus 20 cows (at the ratio of 20 sheep equals 1 cow). If the Association's ratio of 10 sheep equals one cow is substituted this would produce a right to graze 25 cattle plus 40 cows. In effect Mr Pitts, as I understand, maintains that the reference to 25 cattle should be deleted and the Association's ratio substituted, producing overall a right to graze 40 cows as an alternative to sheep.

Mr Baines in evidence said that Howes farm had been in his family since 1925, his grandfather and father having been his predecessors in title and that they had always grazed over 300 sheep on the common. He acquired the Fold End property in 1958, since when that and Howes farm had been farmed as one unit and he had grazed 400 sheep and 25 cattle. This evidence does not, in any view, establish an independent right to graze 25 cattle and I think the appropriate course is to modify the grazing right so as to read "the right to graze 400 sheep (or cattle on the basis of 10 sheep to equal one cow) and 2 horses, sheep to graze all year, cattle to 1 November, the right to let cattle go to water all year round".

Objection No. 10 relates to Entries No. 3, 5 (now 26) and 15 (now 30) and states that the rights should contain fewer animals.....the registrations would contribute to overstocking if all registered rights were used and it would be impractical to maintain the numbers on the respective enclosed land at the necessary times of year.

Entry No. 3 was made on the application of John W Baines, to whom Mr N D Baines is successor. The Entry is of (inter alia) a right to graze 100 sheep or cattle on a basis of 20 sheep equalling 1 cow and follower: it was agreed that this should be altered to a right to graze 30 sheep or 3 cows and followers, and I shall confirm the registration modified accordingly.

Entry No. 5 (now No. 26) was made on the application of Arthur E Irving. The Entry is of a right to graze 700 sheep or cattle or horses on basis of 10 sheep = 1 cow and 1 horse = 20 sheep. The Objection says that the number should be 400 adult sheep or equivalent in cattle. The right claimed is attached to Bridge End, which Mr Irving, who appeared in person and gave evidence



said he had farmed for about 30 years and had regularly grazed about 500 sheep. I think it appropriate to modify the right to graze 500 <sup>a right to</sup> sheep and followers or cattle or horses on basis of 10 sheep = 1 cow and 20 sheep = 1 horse, and I shall confirm the right modified accordingly.

Entry No. 15 (now No. 30) was made on the application of Neils K Thomson who appeared in person. The Entry is of a right to graze 600 sheep, cows, horses or geese and followers, and the Entry goes on to specify the equivalents of sheep to cattle, horses and geese. The Objection says that the numbers should be 250 adult sheep or equivalent in cattle. Giving evidence Mr Thomson said that he had farmed from Borrowdale Place Farm, to which the right is attached, for about 20 years, and had grazed on average about 400 sheep. I shall confirm the right modified by reducing the number of sheep to 400.

Objection No. 11 is to Entry No. 13 which was made on the application of the National Trust. The Objection is on the ground that the right should contain fewer animals: it was agreed that the right should be modified to a right to graze 750 ewes and followers, or the equivalent in cattle at the rate of 10 ewes = 1 cattle, and 2 horses. I confirm the registration modified accordingly.

Overall, my decision as regards the Land and Rights Sections is as follows:- I confirm the registration at Entry No. 1 in the Land Section without modification. I confirm the registrations at Entries No. 3, 6, 7, 13, 26 and 30 in the Rights Section with the respective modifications stated above, and the remaining registrations in the Rights Section without modification.

As regards the Ownership Section, Lord Egremont is provisionally registered as owner of the whole of the land comprised in the Register Unit. The National Trust's Objection relates to an area forming the north-eastern section of the land. I understood from Mr Hall that this area has been acquired by the National Trust, but the evidence of this acquisition was not available at the hearing, and I adjourned the hearing of the dispute as to the registration in the Ownership 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

28 January 1981

L. J. Harris Smith

Commons Commissioner