



COMMONS REGISTRATION ACT 1965

Reference No 262/D/18

In the Matter of Herd House Moss,
Angerton, South Lakeland District,
Cumbria

DECISION

This dispute relates to the registration at Entry No 3 in the Rights Section of Register Unit No CL. 114 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) County Council and is occasioned by Objection No 316 made by Mr Charles John Slater and noted in the Register on 17 May 1972.

I held a hearing for the purpose of inquiring into the dispute at Kendal on 26 April 1978. At the hearing Mr Slater was represented by Mr E W Huck solicitor of Thomas Butler & Son, Solicitors of Broughton-in-Furness.

The land ("the Unit Land") in this Register Unit is in two pieces, separated by the railway line; together (if the railway be disregarded) they form an irregularly-shaped area a little more than $\frac{1}{2}$ a mile long from north to south and (at its widest) about $\frac{1}{2}$ a mile wide. The Rights Section has three Entries:- No 1 of a right to out and take peat from the part of the Unit Land southwest of the railway line; No 2 (made on the application of Mr Slater) of a right attached to Marshfield Farm to graze 50 head of cattle or 50 sheep over the part of the Unit Land northeast of the railway line (being a part having an area of about half of that of the whole of the Unit Land) and also over some land comprised in Register Unit No CL. 115 (a much smaller piece of land known as Rectory Moss situate nearby on the east); and No 3 (that now in dispute) made on the application of Mr John Robert Stutt of a right attached to Angerton Hall Farm to graze 200 sheep or 50 head of cattle over the part of the Unit Land east of the railway line.

The grounds of the Objection are: "That the right does not extend over all the land over which it is stated to be exercisable...(that is)...on the east side of the railway line...".

Mr Slater in the course of his evidence produced: (1) a conveyance dated 4 April 1968 by which Mrs D Wilson conveyed to him (Mr Slater) and his wife Mrs Jean Slater part of Marshfield Farm containing 56.120 acres "together with the right of herbage on Herd House Moss and Rectory Moss or such part thereof as is delineated on the said plan and thereon edged blue"; (2) an examined abstract dated 1968 of the title to Marshfield Farm which included a conveyance dated 15 April 1944 by which Mr B Horax and Mr E A Clark conveyed to Mrs D Wilson Marshfield Farm (then 140a.l.r.Op.) together "with the right of herbage on about 53 acres on Herd House and Rectory Mosses..."; and (3) an extract from the particulars of sale on 23 July 1902 of the Duddon Hall Estate, being particulars of lot 37 (Marshfield Farm) and lot 38 (Moss Farm and Herd House).

Mr W D Knipe secretary of the Kirkby Ireleth Commoners Association who is attending the hearing, having been concerned with the previous case, produced the map referred to in the said particulars, he having the original particulars in his possession.



Although both lots 37 and 38 include a right of herbage, if such particulars be read with the map referred to, it appears that the herbage included in lot 37 (Marshfield Farm) is over the part of Herd House Moss east of the railway line and the herbage included in lot 38 (Moss Farm and Herd House) is over the part of Herd House Moss west of the railway line.

Mr Slater said (in effect):- Moss Farm mentioned in the particulars is the same as that now known as Angerton Hall Farm. During the 11 years that he has owned the part of Marshfield Farm conveyed to him by the 1968 conveyance, he had never seen any stock of any kind from Angerton Hall Farm grazing on the part of the Unit Land east of the railway line. He and his wife received payment from the Northwest Electricity Authority for pylons erected on and from the Northwest Water Authority for pipes crossing the part of the Unit Land east of the railway line.

Mr Slater also produced a letter dated 25 April 1978 from Mr George H Ellershaw who said that during his tenancy of Marshfield Farm from 1956 to 1968 "never did Mr Dowson tenant of Angerton Hall (Moss Farm) owned by Mr Stutt...ever graze stock of any kind on Herd House Moss on the part to the east side of the railway line in his registration no 114...".

On the evidence summarised above, I am satisfied that the registration at Rights Section Entry No 3 should not have been made, and accordingly I refuse to confirm it.

I have read a letter from Brown and Murray, Solicitors of Barrow-in-Furness which was received by the Clerk of the Commons Commissioners in London on 24 April 1978 and with which was enclosed a copy of a letter dated 19 April 1978 from solicitors of Bournemouth apparently writing on behalf of Mr J R Stutt. As I first saw their letter after the hearing, in writing this decision, I have disregarded them.

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 15th day of May - 1978

A. A. Baker

Commons Commissioner