



In the Matter of Hilton Fell, Murton, Cumbria

INTERIM DECISION

These disputes relate to a number of registrations in the Rights section of Register Unit No. CL 27 in the Register of Common Land maintained by the former Westmorland County Council and are occasioned by Objections made by the Secretary of State for Defence and by the Hilton Commoners Committee, and also conflicting registrations in the Rights Section.

I held a hearing for the purpose of inquiring into the disputes at Penrith on 17 and 18 June 1980, and Mr A G Holliday sat with me as assessor. The hearing was attended by Mr T Etherton of Counsel appearing on behalf of the Secretary of State, Mr M S Birtles, Solicitor, appearing on behalf of the Commoners Committee, Mr M O'Donoghue of Counsel appearing for Mr G Brass, the applicant for registration of Entry No. 6 and for Mr J W M Bell the applicant for registration of Entry No. 26; other Rights Holders were present or represented.

Objections

Entry No. 6 is the subject of three Objections, Nos. 2/48 and 2/124 by the Secretary of State noted in the Register on 15 July 1971 and 23 August 1971 respectively and No. 2/222 by the Commoners Committee noted in the Register on 8 August 1972. Agreement had been reached between the parties and in accordance with the agreement I confirm the registration with the modifications that (1) in Column 4 "420 ewes" be substituted for "520 ewes", (2) in Column 5 the figure "118" be deleted.

Entry No. 26 is the subject of Objections No. 2/63 by the Secretary of State and No. 2/237 by the Commoners Committee noted in the Register on 29 July 1971 and 8 August 1972 respectively. These Objections were withdrawn and I confirm the registration without modification.

As regards the remaining Objections, Mr Etherton and Mr Birtles asked that the hearing be adjourned and no one objected to this ~~cases~~ ^{cases}. A measure of agreement had been reached as to the general principles applicable to the rights and it was hoped that with further negotiation it would be possible for definitive agreement to be reached on at least a number of the disputes. No evidence in relation to the disputes was given at this hearing, and they will be adjourned to a future date and place.

Conflicts

Entry No. 63 was registered on the application of the Secretary of State as owner of land in Murton coloured blue on the supplemental map, ("the blue land"), and is a right to graze and also a right of turbary. This is in conflict with Entries No. 11, 16, 19, 23 and 31.

(a) Entry No. 11, registered on the application of G A W Slack as owner. This is a right of (inter alia) grazing in respect of land consisting of a number of OS plots which include OS plot No. 517, which in my copy of the Register has been altered to 571. Mr G A Slack, the son of the applicant appeared, and agreed that OS plot No. 517 was not in their ownership, and accordingly that that number (517) if it still appears in Column 5 should be deleted.



(b) Entry No. 23, registered on the application of R W Jackson as owner, who attended. This is a right of grazing and of turbarry and to take stone in respect of Bank Wood Farm comprising a number of OS plots, which include plot no. 544. The conflict arises in respect of a part of No. 544 included in the blue land and it was agreed that this part, which is to be identified on a plan to be prepared by the Secretary of State, should be excluded from the particulars in Column 5.

It should be observed that there are Objections to the rights registered in Entries No. 11 and No. 23, and the disputes occasioned by those Objections are among those adjourned.

(c) Entry No. 16 registered by William Patterson and Walter Patterson who attended. The entry is a right of grazing registered by the applicants as tenants in respect of OS plot No. 410 which is land comprised in the blue land. The applicants have a licence, not a lease, over the land from the Secretary of State and in the circumstances I think that the registration at Entry No. 16 should not be confirmed.

(d) Entry No. 19 registered by Oliver Allison, who attended. The entry is a right of grazing registered by the applicant as tenant in respect of a number of OS plots some of which are comprised in the blue land. The applicant has a licence not a lease over these plots from the Secretary of State and I think the registration should be modified by deleting in Column 5 all the plot and part plot numbers except those not comprised in the blue land viz. 399a, 399b, 520 and 526. A query arose whether either of the numbers 520 and 526 was a mistake for 520a - if so it should be deleted: but unless I am satisfied that there is such a mistake, my direction will not involve the deletion of either number.

(e) Entry No. 31, registered by J J Hebson who did not appear. The entry is a right of grazing registered by the applicant as tenant of OS plot No. 416 of the parish of Murton. This, I understand, is part of the blue land and Mr Etherton produced a Conveyance dated 19 November 1954 of Plot No. 416 to the War Department. I think the appropriate course is to resolve the conflict by refusing to confirm this registration.

Entry No. 63 will be confirmed.

There is a further conflict between Entry No. 65 and Entry No. 69. Both are rights registered in respect of Brackenber Gate, No. 65 by Elizabeth Ann Redbanks as owner and No. 69 by J B Bainbridge as tenant. Neither of the applicants appeared and since both rights are the subject of Objections the hearing of which is adjourned, I shall also adjourn the hearing of the dispute occasioned by the conflict.

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 July

1980

L. J. Harris Smith

Commons Commissioner