



COMMONS REGISTRATION ACT 1965

Reference Nos. 262/D/489-495

In the Matter of land known as Drigg Common  
or Drigg Rabbit Warren

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DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and Entries Nos. 1 to 6 in the Rights Section of Register Unit No. CL 324 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objections Nos. 144, 145, 146, 147, 148, 149 and 150 made by the former Cumberland County Council and all noted in the Register on 4 August 1972.

I held a hearing for the purpose of inquiring into the disputes at Whitehaven on 26 November 1980. The hearing was attended by Mr R Claydon, Solicitor, of the County Council and Mr J W Bremner. Mr Bremner represented the Society for the Preservation of Public Rights in Drigg and Neighbouring Areas and also appeared on his own behalf. The registration as common land was made on the application of the Society and Mr Bremner was the applicant for registration at Entry No. 2 in the Rights Section.

Objection No. 144 relates to a part only of the land in question ("the Unit land"): this part is shown on the plan accompanying the Objection and is an area ("the Reserve") comprising the south-eastern section of the Unit land. The ground of the objection is that the County Council as lessees of the Reserve object on the ground that the land was not common land at the time of the registration. The entries in the Rights Section are rights to take sand and gravel and in two cases (Entries No. 2 and No. 3) driftwood: the Objection in each case is, similarly, that the County Council as lessees of the Reserve object on the ground that the right does not exist at all.

As regards the applicants for rights, Mr R J P Cribb (Entry No. 1) had intimated his wish not to proceed with his application and accordingly I refuse to confirm the registration. There was no appearance by four of the applicants (Entries No. 3-6), and there was no evidence before me in support of the rights registered by them.

The dispute before me was as to Mr Bremner's right (Entry No. 2), to take sand, gravel and driftwood, which is registered as attached to his property High Saltcoats. This property lies on the other side of the estuary from the Unit land and was acquired by Mr Bremner in 1957. He produced two early deeds, one of 13 November 1792 by which a messuage known as Saltcoats was granted to one Brownrigg "together with....liberty to dig for and get freestone limestone clay marl or slate in or upon the said premises for the purpose of improving (them).....": the second dated 19 February 1825 by which the messuage and other lands were conveyed to one Grice "together with.....rights of common and turbarry moors underwoods and soil.....".



liberties privileges casements profits.....appertaining to the message". In evidence Mr Bremner said that he did not know whether his predecessors in title exercised the rights: he himself had not taken sand or gravel. His only interest was in taking chunks of seasoned wood which he had done since 1957 though not to any great extent. He got access to the foreshore at low tide, or sometimes by swimming across the estuary.

Mr Claydon called three witnesses. Mr Noel Porter who is aged 72 and was brought up in Ravenglass, is an assistant warden on the Reserve. He worked locally for 30 years and said that local people used to take sand and gravel from the top end of the dunes, but not from the dunes themselves except by permission of the Lord of the Manor. Since the last war, sand was only taken by tenants of the Estate and this has not been done since the lease to the County Council. Mr J C Rowley who is the land agent and valuer for the Council said he has day to day control of the Reserve. The County Council's lease of the Reserve was granted in 1966 by the Muncaster Estate for a term of 20 years and requires user for a nature reserve only. There is a Board of Management and a Warden, and there are Bye-laws applicable. Mr Rowley knew of no rights of common being exercised. Lord Carlisle, who has been the Agent of Sir William Pennington -Ramsden for 13 years and has known the area for some 50 years, said that he did not know of any common rights.

I do not find that the rights claimed by Mr Bremner are established by the evidence. It does not appear from the Deeds of 1792 and 1825 that the rights therein mentioned were exercisable over the Register Unit, and the evidence of Mr Bremner as to his exercise of rights since 1957 is insufficient, both as to the period of time and as to the extent of user, to establish rights by prescription.

In the result I do not find that any of the rights claimed have been established, and it was not suggested that the land was common land on the ground that it is waste land of the manor. Mr Claydon asked that in these circumstances I should decide that no part of the Unit land is common land, but I am not prepared to do this as the Objections, as I read them, relate only to the Reserve. I shall exclude the Reserve from the Register Unit, but otherwise I confirm the registrations in the Land Section and the Rights Section, except in the case of Entry No. 1 in the Rights Section, which I refuse to confirm.

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 22 January 1981

L. J. Morris Smith  
Commons Commissioner