



In the Matter of Lushington Allotment, Whinfell,
Cumbria

DECISION

These disputes relate to the registration at Entry No. 3 in the Rights Section of Register Unit No. CL 145 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objection No. 2/205 made by Mr J Yates and Objection No. 2/206 made by Mr T R Ellwood and both noted in the Register on 21 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Kendal on 23 July 1980. The hearing was attended by Miss F Stockton, of Counsel, on behalf of Mr G R Park, the applicant for the registration, and Mr F Watkins, of Counsel, appeared on behalf of the Objectors.

The Objectors are the applicants for the registrations at Entry Nos. 1 and 2 in the Rights Section of the Register Unit, and the grounds of each of their Objections are that Mr Park's grazing rights are exercisable by fewer animals than the number stated in the registration.

Since the registration was made, Mr Park has acquired the freehold of the land comprised in the Register Unit by a conveyance made 11 May 1977 between (1) Selina Campbell Coates (2) George Richard Park and Annie Mary Park, his wife. Miss Stockton submitted that this conveyance extinguished by unity of possession any right of common over the land to which Mr Park may have been entitled. Mr Watkins submitted that this was not so, because Mr Park was not entitled to a mere profit à prendre, but to 155 sheepgates, which were a freehold incorporeal hereditament.

The land comprised in the Register Unit was the allotment numbered 41 on the map annexed to the Award made under the Strickland Roger, Whinfell and Helsington Inclosure Act of 1838 (1 and 2 Vict. C.XXXVIII). The Award was not produced in evidence, but the proceedings before me were conducted on the basis that the land (hereafter referred to as "the allotment") was unencumbered freehold immediately after the making of the Award.

The allotment and three farms known as Moor Bank, Tarnside, and Deepslack (with Winhow) have for many years been in common ownership, having been owned by James Wilson, who was the grandfather of Alan Christopher Hill Wilson, whose marriage settlement was dated 6 March 1919. There is no evidence as to the lettings of the three farms, but in a vesting deed made 25 October 1927 between (1) Arthur Wellesley Peckham and John Neville St. George Curwen (2) Alan Christopher Hill Wilson it is stated that the whole allotment was stinted as follows:-

| | | |
|----------------------|--------------|-----------|
| | Sheep stints | |
| Deepslade and Winhow | | 177½ |
| Moorbank | | 80½ |
| Tarnside | | 42 |
| | | <hr/> |
| | | 300 Total |

The sheep stints there set out were presumably those granted to the tenants of the three farms by the then current leases.



The three farms and the allotment were conveyed to Mr A J Stott by a conveyance made 11 November 1943 between (1) Alan Christopher Wyndham Wilson (2) Alan James Stott.

By an agreement made 15 March 1944 Mr Stott let to Mr Park on an agricultural tenancy from year to year Deepslack and Winhow Farm and 185 sheep stints on the allotment.

By a conveyance made 25 September 1946 between (1) A J Stott (2) Albert Edward Pearson there were conveyed to Mr Pearson Tarnside Farm together with the right of 64½ stints on the allotment and Moor Bank Farm together with the right of 80½ stints on the allotment.

By a conveyance made 17 October 1951 between (1) A J Stott (2) Alan Bradbury Peck there were conveyed to Mr Peck Deepslack and Whinhow Farm and the allotment.

Mr Watkins submitted that at some period there must have been an agreement between the owner of the allotment and the tenants of the three farms that there should be 300 stints and no more on the allotment and that this agreement being binding on the owner, Mr Stott exceeded his powers by granting 185 instead of 155 stints to Mr Park in 1944 and could only convey Deepslack and Whinhow Farm to Mr Peck with a right to graze on the allotment with 155 stints.

I find myself unable to infer that the owner of the allotment was at any time a party to limiting the grazing on the allotment to 300 stints. As owner he was entitled to grant to his tenants any rights over the allotment which he chose. Mr Stott was equally entitled to sell each of his farms with such rights as he might agree with the purchaser, although it was no doubt convenient to limit the rights conveyed to those in fact enjoyed by the sitting tenants. When Mr Stott came to sell the last of the farms to Mr Peck he could have sold it with any numbers of stints and retained the allotment, but since he sold the allotment as well, it would have been meaningless to have included stints in the parcels.

Mr Watkins argued that the word "Stint" has the same meaning as "cattlegate" and that it should be construed as meaning a freehold incorporeal tenement. It is clear on the authorities which he cited that "cattlegate" can have such a meaning, but what has to be ascertained is the meaning of "stint" in the context of the documents relevant to this case. It clearly cannot have had the meaning contended for by Mr Watkins in the earlier documents, where it relates to rights granted to agricultural tenants and is the measure of the number of sheep from each farm which could be grazed on the allotment. I can see no justification for giving the word a different meaning in the conveyance of 1946. The Objectors have each a profit à prendre under the conveyance of 1946 and Mr Park can use the allotment as he will, subject to the rights of the Objectors.

For these reasons I refuse to confirm the registration.

Miss Stockton and Mr Watkins agreed that costs should follow the event. I therefore order the Objectors to pay Mr Park's costs on County Court Scale 4..



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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 3rd day of October 1980

Chief Commons Commissioner