



COMMONS REGISTRATION ACT
1965

Reference No. 262/D/895-898

In the Matter of the tract of land called
Dufton Fell, Dufton

DECISION

These disputes relate to the following registrations in the Rights section of Register Unit No. CL.81 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by the so-called conflicting registrations hereinafter set out:-

| <u>Entry No.</u> | <u>Register Unit No</u> | <u>Occasioned by Entry No</u> | <u>Register Unit No</u> |
|------------------|-------------------------|-----------------------------------|-------------------------|
| 27 | CL.81 | 30 | CL.81 |
| 27 | CL.81 | 46 | CL.82 |
| 30 | CL.81 | 27 | CL.81 |
| 30 | CL.81 | 42 | CL.82 |

I held a hearing for the purpose of inquiring into these disputes at Appleby-in-Westmorland on 9 June 1987. The hearing was attended by Mrs F Harrison appearing for Cumbria County Council the registration authority, Mrs K Blue of Messrs. Scott Duff & Co. Penrith on behalf of Mr Robert Thompson Park and by representatives of the commoners whose rights are already finally registered.

Entry No. 27 (CL.81) is in respect of the right to graze:-

- (a) 450 ewes with their followers and
- (b) 180 hogs together with the right of turbarry over the whole of the land in this register unit together with the whole of the land comprised in register unit CL.82. The land to which the right is attached is Bow Hall Farm Dufton (of which further particulars are stated in the register) and the applicant for registration is Mr R T Park, in the capacity of owner. Entry No.30 (CL.81) is an identical registration save for the name of the applicant, namely Mr John Watson Dargue, in the capacity of tenant. In the same way Entry Nos. 42 and 46 in CL.82 are in respect of the right to graze 450 ewes and 180 hogs together with the right of turbarry over the whole of that register unit and the land comprised in CL.81, such right being attached to Bow Hall Farm. Once again these are duplicate entries, No. 42 made on the application of Mr Park as owner and No. 46 made on the application of Mr Dargue as tenant.

These double registrations in respect of the same rights, made on the application of both landlord and tenant of the same dominant land, ought not to have been made. The correct procedure which ought to have been adopted by the former registration authority was to have registered whichever application was made first, and then to have noted the second application on the register. See Regulation 9(5) of the Commons Registrations (General) Regulations 1966, which provides as follows:-

"Where an application is made for the registration of a right of common attached to any land, but the right has already been registered in such manner that, if the application were acceded to, no conflict would arise between the two registrations, the registration authority shall not register the right again but (unless it determines to reject the application) shall note the application in the register."



No-one present at the hearing suggested that there was any conflict between Mr Park and Mr Dargue. It was merely a case of both of them having applied to register the same rights.

I was told that Mr Dargue died in or about 1976, and that no-one succeeded to his tenancy. Although there have since his death been occasional lettings, there has not since been and is not now any agricultural tenancy of Bow Hall Farm. On the other hand Mr Park still owns Bow Hall Farm, and wishes to maintain the registrations.

In these circumstances I will confirm the registration at Entry No. 27 made on the application of Mr Park, and refuse to confirm Entry No. 30 made on the application of Mr Dargue.

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 24th day of June 1987

Mati Rott

Commons Commissioner