



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/315

In the Matter of Thwaites Fell, Thwaites
Millom, Millom Without

DECISION

This dispute relates to the registration at Entry No. 26 in the Rights Section of Register Unit No. CL 45 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by Objection No. 179 made by Mrs S G Johnson and noted in the Register on 12 December 1971.

I held a hearing for the purpose of inquiring into the dispute at Whitehaven on 25 November 1980. The hearing was attended by Mrs Johnson, by Mr Ian McWilliam, and by Mr Greer of the Registration Authority.

Entry No. 26 was made on the application of G A Cooper and is of a right, attached to Folds Farm and Bowscale Farm, to graze 125 sheep with followers and 15 cattle on Thwaites Fell. Mr McWilliam and his wife are successors in title to Bowscale Farm and the successor in title to Folds Farm is Land Co-Ordination Ltd of which company Mr McWilliam is the Secretary.

Thwaites Fell adjoins Ulpha Fell on the north, Folds Farm and Bowscale Farm are contiguous properties lying close to the northern boundary of Thwaites Fell and the eastern boundary of Ulpha Fell. I understand that Ulpha Fell is registered as common land (Unit No. CL 71) on which grazing rights were registered by Mr Cooper as attached to the two Farms and were not objected to: these were rights to graze 500 sheep with followers or 20 cattle. Objection No. 179 in the present case states that the rights of pasture of both Farms lie on Ulpha Fell only and not on Thwaites Fell: and goes on to say that the aggregate of the numbers for which grazing rights were claimed by Mr Cooper on the two Fells would be "an absurdly large stock for two very small farms, of which one is largely bog".

Mr McWilliam is a Chartered Surveyor and Land Agent, and from 1952 to 1973 was Agent for the Cheetham family who owned Duddon Hall Estate. Part of the Estate property was Bowscale Farm and Folds Farm which were purchased by Mr Cooper in 1964. Mr McWilliam said that till 1946 Bowscale was farmed by tenants, together with Rawfold Farm and River Fields, which lie some distance to the south-east of Bowscale: and he produced an Agreement of 8 July 1908 for the letting by G H Cheetham to John Riley on a yearly tenancy of Rawfold and Bowscale, together with a flock of 63 heathgoing sheep belonging to Bowscale. The Shepherds Guide for Cumbria (Lamb, 1937 edition) does not refer to Bowscale Farm by name with reference to either



Thwaites or Ulpha Fell: as regards Ulpha Fell, one H Barrow of Folds is listed as grazing two sheepstocks. In the part of the Guide dealing with Dunnerdale with Seathwaite there are references to two stocks grazed by William Leake of Rowfold one being 'Bowscale Stock'. Mr McWilliam also produced an Agreement dated 12 March 1946 by which C H Cheetham let to John Lindsay, of Folds Farm, property consisting of Bowscale Farm (55 acres) and River Fields (11.7 + 2.9 acres): there are attached to the Agreement 'Particulars of heath going sheep at Bowscale Farm' totalling 18. Mr McWilliam said that the number of Lindsay's stock in respect of Folds Farm Bowscale and River Fields was 550 ewes - he himself bought 203 ewes in 1980 when he purchased Bowscale: and he had from time to time seen something like 30 of Lindsay's cattle on Thwaites Fell but not on Ulpha Fell.

Mrs Johnson's evidence took the form of a written statement which she confirmed. This evidence was principally directed to the proposition that farms in Ulpha and Thwaites (such as Bowscale and Folds) have their fell rights on Ulpha not on Thwaites Fell, the one exception being Loganbeck which Mrs Johnson owns. I cannot accept this evidence as of much weight since it consisted for the most part of Mrs Johnson's account of what she had been told by a Mr Askew and Mr Bowes. The statement also gave an account of a dispute in 1825 which concerned rights of turbarry on Thwaites Fell and was, it appears, settled: this in my view throws no light on the question of rights of grazing 150 years later. Mrs Johnson called two witnesses, Mrs Florence M Brakewell whose husband is the tenant of Loganbeck and who said that Mr Lindsay's sheep, about 200 in number, and in summer some cows, came and grazed on Thwaites Fell on the Loganbeck Heaft from about 1953 onwards, when they (the Brakewells) no longer had sheep - the Lindsays sheep were trespassing on the good grass of Loganbeck. The other witness, Mr William Bowes, who has shepherded in the area from 1932 said that the boundary between Thwaites and Ulpha Fells was unfenced and he thought sheep strayed between the two.

There is I think no doubt that from time to time sheep from Bowscale and Folds have grazed on Thwaites Fell, but in my opinion the evidence does not establish the right which Mr Cooper registered. The documents produced and referred to by Mr McWilliam do show that Bowscale and Folds were farmed as one together with the River Fields, but not that their grazing rights were over Thwaites. In fact the strongest evidence of the exercise of such rights came from Mrs Brakewell, but the period of which she spoke (from 1953 onwards) is not sufficient to establish a right of prescription (the objection to it was made in 1971) and is more likely to have resulted from straying from Ulpha Fell than from Bowscale and Folds sheep being grazed on Thwaites independently of and as an addition to grazing on Ulpha. The basis of my decision is that I am not satisfied that the right registered by Mr Cooper has been established, not that no farms in Ulpha and Thwaites (except Loganbeck) have grazing rights on Thwaites nor that the number of animals, taking into account the number registered in respect of Bowscale and Folds on Ulpha Fell, is ~~exclusive~~ *exclusive*.



In the result I refuse to confirm the registration.

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. Harris Smith

Commons Commissioner