



In the Matter of Muggleswick Common, Muggleswick,

Co. Durham (No. 2)

DECISION

This dispute relates to the registration at Entry No. 3 in the Rights section of Register Unit No. CL 75 in the Register of Common Land maintained by the Durham County Council and is occasioned by Objection No. 156 made by Mr A J R Collins and others and noted in the Register on 12 October 1972.

I held a hearing for the purpose of inquiring into the dispute at Durham on 8 October 1980. The hearing was attended by Mr R A Bibby, solicitor, on behalf of Mrs W S Thompson, the widow and successor to the tenancy of Mr W Thompson, the applicant for the registration, and Mr C J Thompson, solicitor, on behalf of the Objector.

The registration is of the right to graze 100 sheep attached to Allotment Farm, Waskerley, defined by reference to a supplemental map.

The late Mr Thompson was the tenant of Allotment Farm under a tenancy agreement dated 15 June 1956. No rights of common are mentioned in the agreement. Mr Thompson's forebears back to his great-grandfather had been tenants of the farm, but Mrs Thompson has only known the farm since 1948.

Allotment Farm was conveyed to Mr Thompson's landlords by a conveyance made 26 November 1953 between (1) The Church Commissioners for England (2) John Thomas Nixon and George Robert Nixon, and in 1966 the Church Commissioners sold Muggleswick Common to the Objectors.

The 1953 conveyance contains no mention of rights of common, so the right registered could only have been attached to Allotment Farm if the tenant had previously grazed sheep on the common as an appurtenance of his tenancy so that a right to graze would be included in the conveyance by virtue of section 62 of the Law of Property Act 1925.

There was no direct evidence that the sheep from Allotment Farm had ever been grazed on the common before 1948, the limit of Mrs Thompson's recollection, and there had been no such grazing since. However, the farm adjoins the common and Mrs Thompson relied on the existence of a gate and a smoot-hole in the boundary as evidence that sheep had passed between the common and the farm land.

I would be prepared to draw the inference that sheep from the farm had grazed on the common at some unknown time before 1948. This, however, is insufficient to bring the case within section 62 of the Act of 1925. For the purposes of that section regard has to be had to the time of the conveyance, and I am unable to find as a fact that in 1953 any grazing on the common was enjoyed with, or was reputed or known as part or parcel of or appurtenant to, the farm. Since there is no evidence that the right registered has been acquired by prescription since the conveyance in 1953 I refuse to confirm the registration.



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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

20th

day of

October

1980

CHIEF COMMONS COMMISSIONER