



In the Matter of Sand Edge Common,
Wolsingham, Co. Durham (No. 4)

DECISION

This dispute relates to the registration at Entry No. 1 in the Rights section of Register Unit No. CL 48 in the Register of Common Land maintained by the Durham County Council and is occasioned by Objection No. 67 made by Mr T R F Fenwick and noted in the Register on 13 September 1972.

I held a hearing for the purpose of inquiring into the dispute at Durham on 9 October 1980. The hearing was attended by Mr C Vance, of counsel, on behalf of the trustees of the will of the late Mr J W Thompson, the applicant for the registration, and by Mr J S Stephenson, solicitor, on behalf of the Objector.

The registration is of the right to graze 100 sheep and their unweaned lambs over the whole of the Common attached to Viewley Hill Farm.

The late Mr Thompson became the tenant of Viewley Hill Farm in 1927 and he acquired the freehold reversion from the Church Commissioners in 1953. The parcels of the conveyance made 29 June 1953 included the commonable rights (if any) on Sand Edge Common. The Church Commissioners' title went back to an indenture of 24 January 1863, which included all commonable rights (if any) affecting Sand Edge Common.

At some date unknown the Church Commissioners or their predecessors, the Ecclesiastical Commissioners, became the owners of the manorial rights over the common which rights were conveyed by the Church Commissioners to the Objector on 14 January 1966 with a reservation of the rights of the commoners and stint-holders. The Objector applied to be registered in the Ownership section of the Register Unit as the owner of the whole of the land comprised in the Register Unit. This registration was undisputed and became final on 1 August 1972.

Mr J W Thompson's son, Mr G D J Thompson, who was born in 1938, stated that during the whole period of his memory until his father died in 1972 his father put not more than 50 sheep on the Common during the period May to September. Mr Thompson, senior, did not do this every year, but usually every other year. The Objector, Mr W Morrison, his head keeper, and Mr F W White, who had grazed sheep on the Common as manager of Tunstall House Farm since 1953, all stated that they had never seen sheep belonging to Mr Thompson, senior on the Common.

All these witnesses gave me the impression that they were speaking the truth to the best of their ability. Faced with the conflict between their evidence, I have come to the conclusion that I find the positive evidence of Mr G D S Thompson more reliable than the negative evidence of the other three witnesses.

Having found as a fact that Mr Thompson, senior, grazed up to 50 sheep on the Common between May and September with some regulatory between the mid 1950's and his death in 1972, it is necessary for me to consider whether a right to do so has become attached to his farm.



There are two possible ways in which this could have come about. If the Church Commissioners were the owners of the Common when they sold the farm to Mr Thompson, senior, in 1953, the right would have passed on the conveyance by virtue of section 62 of the Law of Property Act 1925. If, on the other hand, the Church Commissioners acquired the Common at some time between the sale of the farm in 1953 and the sale of the Common in 1966, the right to graze would have been acquired under the Prescription Act 1832. There is also the further possibility that the Church Commissioners never owned the Common because the manorial rights did not include the ownership of the soil of the Common, though this seems to be unlikely.

Interesting though these questions of law are, it does not appear to me to be necessary to decide them in this case. On the facts which I have found, by the time that Mr Thompson, senior, applied for the registration in 1968 he must have acquired, not the full right which he set out in his application, but the more limited right supported by his son's evidence, in one of the two possible ways submitted by Mr Vance.

For these reasons I confirm the registration with the following modifications:- namely, the substitution of "50" or "100" and the insertion after "lambs" of "in the months from May to September in each year".

Mr Vance applied for costs in the event of the confirmation of the registration, while Mr Stephenson submitted that there should be no order as to costs in any event. I have come to the conclusion that this is not a case for an award of costs.

I am required by regulation 30(f) 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

22nd

day of

October

1980

Chief Commons Commissioner