



COMMONS REGISTRATION ACT
1965

Reference No. 220/D/326-327

In the Matter of Newton Fell,
Newton in Bowland

DECISION

These disputes relate to the registrations referred to below in the land and rights sections of Register Unit No. 176 in the Register of Common Land maintained by the Lancashire County Council.

I held a hearing for the purpose of inquiring into the disputes at Preston on 29 January 1986. The hearing was attended by Mr J M Woosnam, Solicitor, of Messrs. Houghton, Craven and Dicksons of Preston representing the trustees of the Peel Settled Estates, by Mr I B Dearing, Solicitor of Clitheroe representing the Executor of the late John W Cowking and Mr Strong, Solicitor, representing the Lancashire County Council as Registration Authority.

The Land Section

There are three disputes in the Land Section, each numbered 220/D/326.

The unit land was provisionally registered on 20 June 1968 in consequence of an application for registration of rights made on 7 March 1968 by James Arthur Randle Kay, Newton Hall, Newton-in-Bowland.

On 28 September 1970 three objections were made to this entry. They were No. 336 made by Thomas Breaks, No. 337 made by Stephen Scholfield and No. 342 made by Col. W R Peel and Co. W H Clifford as trustees of the Peel Settled Estates who were the landlords of the first two objectors. All three objections were noted in the register on 10 December 1970. All three objected to the inclusion in the registration of O.S.Nos. 7 and 8.

Thereafter there was correspondence between the parties and on 12 June 1973 T H Taylor and Son as agents for the successors in title to the Newton Hall Estate wrote to Messrs. Ingham and Yorke, agents for the objectors, admitting that O.S. 7 and 8 had been registered in error and agreeing that this land should be excluded from the registration.

It appears, however, that it was not possible to obtain all necessary consents before 31 July 1973 so that the registration could be modified under section 5(5) of the 1965 Act. Accordingly, the disputes had to be referred to a Commissioner.

In view of the admission made by the registrants and of the fact that no one appeared at the hearing to support the registration of O.S.7 and 8 as part of the common I shall confirm the registration in the land section with the modification that O.S. 7 and 8 shall be excluded from registration.



Rights Section

There are altogether seven disputes in this section. They have been collectively numbered 220/D/327. Three of the disputes arise under section 5(7) of the 1965 Act from the objections to entry No. 1 in the Land Section referred to above. They do not call for further mention.

The remaining four disputes arise from specific objections to entry No. 1 in the rights section. They are objection No. 300 made by Lord Clitheroe and noted in the Register on 27 November 1970 and three objections all noted in the register on 10 December 1970 - namely No. 338 made by Stephen Scholfield, No. 339 made by Thomas Breaks and No. 341 made by the trustees of the Peel Settled Estates.

I was told at the hearing that agreement had been reached between the parties that this registration - which provisionally claimed a right to graze 1,000 sheep and 100 cattle - should not be confirmed.

Mr Strong for the Registration Authority then asked me to direct that Authority to amend the rights section by inserting in it a right which had not been registered during the registration period. He said that Newton Fell had been divided into two adjacent registration units, CL.176 and CL.248, that an application had been made to register a right on CL.176 and that the Registration Authority had by mistake registered that right on CL.248 where it appears as entry No. 1 in the rights section and is subject to a specific objection. Since that entry gives the name of the applicant as John William Cowking I will refer to it as "Mr Cowking's right".

Mr Strong argued that, by virtue of the decision of the Court of Appeal in In re West Anstey Common [1985] Ch.329, a Commissioner had power to "look at the whole of the registration" that I should therefore transfer entry No. 1 from the rights section of CL.248 to the rights section of CL.176 subject to the same objection.

He said that, since all the rights registrations were deemed to have been objected to as a result of the objections in the land section referred to above, the question before me was "what should be done about these registrations to which objection is deemed to have been taken".

He then argued that therefore I should consider whether any other rights should have been registered. Mr Cowking's right should have been registered, he said. Therefore I should direct the Registration Authority to include it in the register.

Mr Dearing said he could not support this argument. Mr Woosnam made no comment.

In my view the argument is fallacious. It breaks down when it claims to derive, from a duty to consider what should be done about the registrations to which objection has been taken, a power to consider whether any other rights should have been registered.



The powers of a Commons Commissioner derive entirely from statute. Section 5(6) of the 1965 Act provides that where an objection is made to a registration the Registration Authority (with an immaterial exception) is to "refer the matter to a Commons Commissioner".

Section 6(1) provides that:

"The Commons Commissioner to whom any matter has been referred under Section 5 of this Act shall inquire into it and shall either confirm the registration, with or without modifications, or refuse to confirm it."

In the West Anstey case (supra) (which concerned a registration in the land section) the Court of Appeal were concerned with the meaning of the word "matter" in sections 5(6) and 6(1). They came to the conclusion that the "matter" which was referred to the Commissioner and into which he must inquire was the validity of the registration as a whole, that the Commissioner was not confined to considering the grounds put forward in the objection and that the question to which the Commissioner must address his mind was "What is to be done about the registration to which objection has been taken?"

"What is to be done?" of course means what is to be done by the Commissioner in exercise of the powers which have been conferred upon him, that is to say, should he confirm the registration with or without modifications or refuse to confirm it.

Applying that principle to the present case the question becomes "what is to be done about these rights registrations to which objection has been taken or is deemed to have been taken?"

That question in my view cannot possibly include the question "should any other rights which have not been registered but which should have been registered be registered now?"

The claim that a Commissioner has power to give such a direction seems to me to be contrary not only to the express words of Sections 5 and 6 as construed by the Court of Appeal but contrary to the whole scheme of the Act.

Section 1(2) provides -

"After the end of such period, not being less than three years from the commencement of this Act, as the Minister may by order determine

.....
 (b) no rights of common shall be exercisable over any such land" [i.e. land capable of being registered under the Act] "Unless they are registered either under this Act or under the Land Registration Acts 1925 and 1936".

The Minister determined by order that the period referred to in Section 1(2) should end on 31 July 1970 - see the Commons Registration (Time Limits) Order 1966, Article 2, as amended by Article 2 of the Commons Registration (Time Limits) (Amendment) Order 1970.



It would require very clear words to empower a Commissioner to order the registration of a right which had ceased to be exercisable. There are no such words in the Act.

Furthermore section 5(2) requires that after the date of registration there should be an objection period of at least 2 years. In fact the periods prescribed by regulation 4 of the Commons Registration (Objections and Maps) Regulations 1968 were rather longer than that. During the whole of that time the registration was to be open to public inspection and to objection by any member of the public. It would be quite inconsistent with such a system to permit a Commissioner to order the registration of a right which had not been on the register during the objection period and so had never been subject to public inspection or to objection.

It was suggested to me that it would be deplorable if, when a mistake was discovered, it could not be put right. With that I agree and it may be that at some future date someone will be empowered by Statute to look into this complaint. Since, however, I have no power to remedy such a mistake I will express no opinion as to whether one was made in this case or not.

Accordingly, I confirm entries Nos. 4 - 15 in the rights section without modification, I do not confirm entry No. 1 in that section and decline to make any further order.

I have delayed signing this decision pending the agreement of the parties in the connected case of CL.248 (220/D/319). The decisions in these two cases are now issued together.

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

28th

day of

July

1987

Peter Langham-Davies

Chief Commons Commissioner