



In the Matter of Worston Moor, Worston,
Clitheroe

DECISION

These disputes relate to the registrations at the Entries in the Land Section and the Rights Section of Register Unit No. CL 44 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by the following Objections:

(A) Land Section No. 30 made by R J Assheton and No. 87 made by B H Lonsdale both noted in the Register on 4 December 1970.

- (B) Rights Section
- (1) Nos. 30 and 87 (~~and~~ above) to all Entries
 - (2) No. 28 to Entry No. 1 made by R J Assheton
 - (3) No. 29 to Entry No. 2 made by R J Assheton
 - (4) No. 61 to Entry No. 1 made by B H Lonsdale
 - (5) No. 60 to Entry No. 2 made by B H Lonsdale
 - (6) No. 37 to Entry No. 1 made by J Walmsley
 - (7) No. 32 to Entry No. 2 made by J Walmsley
 - (8) No. 34 to Entry No. 1 made by Mrs B Bailey
 - (9) No. 33 to Entry No. 2 made by Mrs B Bailey
 - (10) No. 36 to Entry No. 1 made by L W Dale
 - (11) No. 35 to Entry No. 2 made by L W Dale
 - (12) No. 42 to Entry No. 1 made by F W Hanson
 - (13) No. 41 to Entry No. 2 made by F W Hanson
 - (14) No. 45 to Entry No. 1 made by R Heaton
 - (15) No. 46 to Entry No. 2 made by R Heaton
 - (16) No. 346 to Entry No. 12 made by H Lonsdale
 - (17) No. 347 to Entry No. 12 made by R J Assheton

These Objections were noted in the Register on 4 December 1970 except Nos. 346 and 347 which were noted on 12 June 1972.

Worston Moor ("the Unit land") was registered as common land in consequence of the application of E Hargreaves and R Hargreaves to register a right to graze 200 sheep over the whole of the Unit land. On the Register map the Unit land is divided by a line A B running in a north west/south east line: I will refer to the part of the Unit land lying to the south west of the line which is 152 acres as "the SW area" and the part to the north east which is 90 acres as "the NE area". R J Assheton is registered as owner of the SW area, and also claims ownership of the NE area.

I held a hearing for the purpose of inquiring into the disputes at Preston on 12 November 1980. At the hearing Mr E Hargreaves appeared in person and Mr K Shaw, Solicitor, appeared on behalf of all the Objectors.

The Objections (Nos. 30 and 87) to the registration as common land relate only to the NE area and there is no dispute as to the registration of the SW area. Entries Nos. 3 to 10 inclusive in the Rights Section relate to rights only over the SW area and there is no dispute as to these: accordingly their registration and the registration of the SW area will be confirmed.



The remaining Entries in the Rights Section, Entries Nos. 1, 2 and 12 (No. 11 has been cancelled) are of rights over the whole of the Unit land. Entry No. 2 is of a right to graze 80 sheep and followers: the applicant, John Dobson, did not appear but it has been agreed that the Entry be confirmed modified so that the right is to graze 60 sheep and followers over the SW area only, and it will be confirmed with this modification.

Entry No. 12 was registered on the application of Mr and Mrs E King: the right claimed is to graze 3 horses and 10 sheep over the Unit land and the land in Register Unit CL 275 and is registered as attached to Brogden Farm. The Objections (Nos. 346 and 347) state that there is no right of pasturage attached to the farm. The applicants did not appear but in a letter dated 7 November 1980 Mr King wrote to the effect that he wished to register the right to graze 10 sheep over the part of the Unit land recognised as common land and was not now claiming a right to graze horses. Mr R M Parkinson of the firm of Ingham and Yorke, Chartered Surveyors, which acts for Mr Assheton, gave evidence. He told me that the Kings have owned Brogden Farm for about 16 years: it was part of a much larger farm, the rest of which was acquired by a Mr Bailey who registered rights (Entry No. 4) in respect of the property. Brogden Farm, he said, is only about one acre and the Kings have not owned any sheep or grazed animals on the Unit land. In the absence of evidence in support of the right, I think the Objections succeed and I refuse to confirm the registration at Entry No. 12.

There remains the dispute in respect of Entry No. 1. This claims a right, attached to Angram Green Farm, to graze 200 sheep and followers over the whole of the Unit land. The Objectors do not deny the existence of some grazing right but say (1) that it is exercisable only over the SW area (2) that the number of sheep is excessive: as to (2), Mr Assheton's Objection No. 28 says that the proper number is 31 sheep, and the remaining Objections, all made by other rights holders, say that it is 29 sheep.

Angram Green Farm is a property of some 50 acres which adjoins part of the north western boundary of the SW area. Mr E Hargreaves produced a copy of a Conveyance dated 19 August 1976 by which the Vendor Thomas U Liddle conveyed the Farm to Mr Hargreaves and his wife together with an unlimited right of pasturage for sheep upon a piece of land adjoining to and situate on the south side of the farm called Worston Moor "containing 190 acres or thereabouts". Giving evidence, Mr Hargreaves said that his father Robert purchased the farm about 1950, when there was a tenant Edward Bailey who remained as tenant for about 10 years. The Hargreaves then lived on a farm about four miles away and he (the witness) used to go down to Angram Green Farm about 6 times a year with his father. He saw Bailey's sheep over the whole of the moor. Bailey grazed about 100 sheep - he would guess that figure as it was the number Bailey sold when he left. Mr Hargreaves said he moved into Angram Green Farm as a tenant about 1960 and built up a flock of about 200 sheep which he grazed over the whole Moor and has continued to do so. At present there are 130 sheep of his on the Moor. In 1979 he returned 198 sheep on the Ministry of Agriculture census form and gets subsidy on 155 breeding ewes.

Mr Hargreaves said (in cross-examination) that he brings down all the ewes for lambing on to Angram Green Farm - there are then 200 animals on the farm, which can maintain them: he has beef cattle for which he purchases feed. He does not know which are the 190 acres referred to in the Conveyance. He knows the boundary stones on the A-B line, but there is no fence and animals stray across the line.



-3-

Mr Parkinson gave evidence in support of the Objections. Mr Assheton, as I have said, claims to own the NE area. I do not have to decide the question of ownership of that area, but Mr Parkinson produced copies of documents of title which showed that land which included the NE area was in 1961 vested in Mr Assheton as tenant for life under a settlement. He is registered as owner of the SW area, and Mr Parkinson told me that his title to that area is as lord of the Manor and not as tenant for life.

It appears that property which included the NE area was purchased by William Assheton in 1813, and that his son, also William Assheton, subsequently erected the stones marking the boundary between the NE area and the SW area, which are inscribed "WA" and are still on the ground. The line AB on the Register map corresponds with this boundary, and it is marked on an 1850 map which was produced. In fact it appears from an affidavit of 1763 in the manorial records that this was then the boundary between 'Mr York's common' and 'the Commons of Worston'. Mr Parkinson said that since the purchase in 1813 it appears from the records that the Assheton family has always regarded the NE area as belonging to them and not subject to any rights. He produced tenantry agreements of 1924, 1949 and 1974 for the letting by the Asshetons of farms and in which the NE area was included: in the agreements no reference was made to the existence of common rights.

Mr Parkinson's evidence does establish that the NE area has always been regarded as not subject to common rights, but this does not conclude the question whether, as Mr Hargreaves claims, grazing rights have been acquired over that area in respect of Angram Green Farm. That claim, as I see it, can only be established on the basis of prescription, i.e. of long enjoyment of the claimed right. Mr Hargreaves's evidence as to grazing by Mr Bailey "over the whole of the moor" and of a number of sheep which was guesswork was too vague to establish satisfactorily the nature and extent of any grazing by Mr Bailey's sheep in the period 1950-1960. I accept Mr Hargreaves's evidence as to grazing by his own sheep since 1960; but the period of such grazing relevant for consideration is the period to the date of the Objections - 1970 - and a period of ten years (1960-1970) is insufficient to establish a right by prescription. Accordingly I find that Mr Hargreaves is not entitled to a right of grazing over the NE area.

As regards the SW area, equally Mr Hargreaves has not established a right to graze as many as 200 sheep. The Objectors however have not objected to the existence of some right of grazing over that area and I was told that they are agreeable to 60 as the number of sheep in Mr Hargreaves's case.

I understand that the number of sheep comprised in the registered rights of the other rights holders is based on the acreages of their in-by land, which they have all accepted. The figure of 60 which the Objectors are prepared to accept for Mr Hargreaves is more generous than the application of that basis would produce: and in all the circumstances I think the right course is to confirm Mr Hargreaves's right but modified so as to extend only to the SW area and to 60 sheep.

In the result I confirm the registration in the Land Section modified so as to exclude the NE area: I confirm the registrations at Entries Nos. 1 to 10 in the Rights Section modified as to Entries No. 1 (Mr Hargreaves) and No. 2 (Mr Dobson) as indicated above: and I refuse to confirm the registration at Entry No. 12 (Mr and Mrs King).



-4-

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

1st December

1980

L. J. Harris Bennett

Commons Commissioner