



COMMONS REGISTRATION ACT 1965

Reference No. 268/D/64 to 67  
Inclusive.

In the Matter of (1) Scarth Wood Moor  
Whorlton and Osmotherley and (2) Near  
Moor, Whorlton, Hambleton District.

### DECISION

These disputes relate to the registration at Entry No.1 in the Land Section and Entry No.1 in the Rights Section of Register Unit No.CL.85 in the Register of Common Land maintained by the former West Riding of Yorkshire County Council and are occasioned by Objection No.0356 made by Viscount Ingleby and noted in the Register 5th November 1970, Objection No.0276 made by the National Trust noted in the Register on 23 November 1970 and Objection No.0198 made by Viscount Ingleby noted in the Register on 8th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Northallerton on 7th October 1975.

Mr. F. R. D. Dent of the National Farmers' Union appeared for Messrs M.H., D.I. and R.B. Bell the applicants for grazing rights, Mr. P.F.G. Fawcett, Viscount Ingleby's agent appeared on his behalf and the National Trust did not appear.

The land in question comprises two moors, Scarth Wood Moor and Near Moor. All parties were in agreement that Scarth Wood Moor was common land and that Messrs Bell had the right to graze 150 sheep over that Moor, the National Trust having notified its consent by signing a form of agreement dated 16th October 1974. The National Trust has no interest in Near Moor and the issue which I have to determine is whether Messrs. Bell have any and if so what grazing rights over Near Moor.

Mr Fawcett referred to a conveyance whereby Scarth Wood Moor was conveyed to the National Trust subject to Messrs Bells' right to graze 150 sheep and to a conveyance whereby Whorlton Moor of which Near Moor forms part was conveyed to Viscount Ingleby's predecessor in title subject to grazing rights for five farms which did not include Scarth Lees, Messrs Bells' farm, and he therefore drew the inference and submitted that Messrs Bells' rights were limited to Scarth Wood Moor.

Mr Dent referred to a conveyance to Messrs. Bells' predecessor in title whereby Scarth Lees was conveyed together with grazing rights over the adjoining and neighbouring moors as previously enjoyed. He accepted that this language was ambiguous and rested his case on prescription thereby taking Mr Fawcett by surprise.

Mr M H. Bell gave evidence in support of his claim by prescription. He came to Scarth Lees as a boy age 7 in 1934 and he lived there until he married in 1956 subject to absences at boarding school and agricultural school during term times. From 1956 until May 1965, when he moved back to Scarth Lees on his father's retirement he lived in his own house in the locality but he was still concerned with the farming at Scarth Lees. Mr Bell stated that throughout the period as to which he was competent to speak a flock of approximately 300 sheep had been maintained at Scarth Lees the flock being a "heft" flock which he explained was one comprising sheep born and grazed on a particular moor which save in the case of relatively rare exception did not stray from that moor. He told me that approximately half the flock, viz 150 sheep were hefted on Near Moor.





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He had never sought permission to graze these sheep on Near Moor nor had any complaint been made of that grazing.

In cross-examination by Mr Fawcett Mr Bell admitted that the sheep on Near Moor were not fed on that moor, they were fed he said at a convenient point close to Near Moor accessible to transport and he said he did not think he had the right to take vehicles on to Near Moor and in any event such vehicles would damage the moor in the winter when the going was soft. He further stated that at gatherings he would find no more than about 6 strays with his flock and approximately the same number of strays would be returned to him by other farmers. He recollected retrieving some sheep from a nearby wood when it was replanted but this evidence was inconclusive.

Mr Dent invited me to accept as evidence a statement witnessed by a J. P. by a Mr. Bosomworth to the effect that the Bells and their late father had grazed Near Moor for the last 50 years at least. Mr Fawcett who has been Lord Ingleby's agent for the last 20 years accepts that sheep from Scarth Lees have been grazed on Near Moor but his contention was that such grazing was by strays from Scarth Wood Moor and not as of right.

Mr Fawcett was taken by surprise by the case made against, he did not apply for adjournment nor did he call any oral evidence though he did in the course of argument tell me of his own experience.

Mr Fawcett motored along the road adjoining Near Moor two or three times in each week and saw sheep on Near Moor which he thought were strays. It was on some of these occasions that he saw the sheep being fed together with the sheep from Scarth Wood Moor where the road adjoins both moors. Mr Fawcett had also shot over Near Moor and always seen sheep though he would not express any view as to their numbers stating that the Moor was a large moor and 150 sheep would be of no great significance. He did however tell me that sheep established their own grazing terrain.

In the course of the hearing it emerged that Mr Fawcett and Mr Bell were on good terms and as appears from what I have said above no attack was made on Mr Bell's credibility as a witness. Lord Ingleby's real objection was to the land having the status of common land his apprehension being that the public might have rights; the grazing of the moor by one farmer was acceptable.

In these circumstances I must accept the evidence of Mr Bell that he has grazed a heft flock on Near Moor for not less than thirty years immediately preceeding the 8th September 1970 the date on which Viscount Ingleby's objection was entered in the Register and that he has therefore acquired a right of common by prescription under the Prescription Act 1832.

Viscount Ingleby and his agent knew that Near Moor was being grazed. Bearing in mind the disinclination of sheep to stray from their own terrain I am satisfied that if Viscount Ingleby and his agent had addressed their minds to the question they would have appreciated that all the sheep on Near Moor could not have been strays. As far as they were concerned I am of the opinion that the nature of the grazing only assumed importance when the land was registered as common land. Since in my view this case comes within the Prescription Act 1832 it is not necessary for me to express any view as to the status of the land prior to the requisite period of 30 years.



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For these reasons I confirm the registration. I confirm the Entry at No.1 in the Land Section of the Register and I confirm the Entry at No.1 in the Rights Section of the Register modified so as to limit the rights to graze 150 sheep on Scarth Wood Moor and to graze 150 sheep on Near Moor.

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 10<sup>th</sup> day of November 1975

C. A. Little

Commons Commissioner