



COMMONS REGISTRATION ACT 1965

Reference No.44/D/13

In the Matter of A Piece of Land at
Old Byland, Yorkshire (North Riding)
(No.2)

DECISION

This dispute relates to the registration at Entry No.1 in the Rights Section of Register Unit No. 189 in the Register of Common Land maintained by the North Riding of Yorkshire County Council and is occasioned by Objection No.0336 made by Mr. Donald Swift and noted in the Register on 3rd November 1970.

I held a hearing for the purpose of inquiring into the dispute at Malton on 10th April 1973. The hearing was attended by Mr. Austine Bell, the applicant for the registration, and by Mr. J.J. Pearlman, solicitor, for Mr. Swift.

For the reasons given in my decision in In the Matter of a Piece of Land at Old Byland (No.1), 44/D/12, I have decided to confirm the registration of the land the subject of this reference as common land because I am satisfied that Mr. Bell is entitled to rights of common over it. Indeed, Mr. Swift does not now contend that Mr. Bell is not so entitled. Mr. Swift's contention now is that he also is entitled to a right of common over the land in question in that he is entitled to graze a horse upon it. Mr. Pearlman therefore asked that I should confirm the registration, but that I should modify it by inserting the right claimed by Mr. Swift.

In my view, I have no power to do this. My only jurisdiction in this matter is the statutory one conferred upon me by section 6(1) of the Commons Registration Act 1965. If, as I intend to do, I confirm this registration, I can do it with or without modifications. Mr. Pearlman contended that to insert the right claimed by Mr. Swift would be to confirm the registration with a modification. I find myself unable to accept this contention. As I see it, a modified registration is still the original registration and must therefore be in a form in which it could have been made in the first place. The registration in this case was made under reg.9(3) of the Commons Registration (General) Regulations 1966 because the registration authority accepted the application for registration made by Mr. Bell. Mr. Bell's right to apply for the registration rested upon reg.7(2) of the Regulations of 1966. Under reg.7(2) Mr. Bell could not have applied for the registration of a right of common owned by Mr. Swift, because such an application could only have been made by the owner of the right. For me to modify the registration in the manner sought by Mr. Pearlman would be to turn it into a registration for which Mr. Bell could not have applied in the first place. This I have no power to do.

For these reasons I confirm the registration without modification.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as



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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 18th day of April 1973


Chief Commons Commissioner