

In the Matter of Cock Moor, Brompton by Sawdon,
North Yorkshire (No. 2)

DECISION

These disputes relate to the registrations at Entry No. 1 - 6 in the Rights section of Register Unit No. CL 261 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and are occasioned by Objections Nos. 0481 and 0507 made by the former County Surveyor and noted in the Register on 4 August 1972 and 18 August 1972 respectively and Objections Nos. 0454, 0455 and 0456 made by the Solicitor for the Affairs of the Duchy of Lancaster and all noted in the Register on 31 July 1972.

Objections Nos 0481 and 0507 related only to certain land on either side of Cockmoor Road. For the reasons given in my decision in In the Matter of Cock Moor, Brompton by Sawdon (1975), Ref. Nos 169-170 I confirmed the registration in the Land section with the exclusion of the land the subject of these Objections. This leaves outstanding Objections Nos. 0454, 0455 and 0456.

The outstanding Objections relate to the registrations at Entry Nos 1, 2 and 3 respectively. Each of these registrations consists of the right to shoot game and the right to cut and take sticks and bracken and the registrations at Entry Nos 1 and 2 also include rights to graze. The grounds of each of the Objections are that the right to shoot game on this land does not exist as a right of common.

I held a hearing for the purpose of inquiring into the dispute at Whitby on 27 May 1977. The hearing was attended by Mr R Temple, as successor to Mr J F Temple, the applicant for the registration at Entry No. 2, and by Miss Sheila Cameron, of counsel, on behalf of the Duchy of Lancaster. There was no appearance by or on behalf of the applicants for the registrations at Entry Nos 1 and 3, but there was produced to me a written consent by J W Chafer Ltd, the applicant for the registration at Entry No. 1 to the deletion of this Entry from the Register.

Although her client had objected only to Entry Nos 1, 2 and 3 in the Rights section, Miss Cameron contended that she was entitled also to attack Entry Nos 4, 5 and 6 in that section and also the entry in the Land section of the Register Unit.

So far as the entry in the Land section is concerned I received a consent signed by all the parties entitled to be heard to the confirmation of that entry with a modification excluding certain land on either side of Cockmoor Road. I gave a decision in accordance with the proposed terms on 21 January 1976, followed by a notice of final disposal dated 28 April 1976. Miss Cameron argued that this was a nullity, since there were outstanding objections to entries in the Rights section. In my view, this argument is unsound. An objection to an entry in the Land section of a register unit has effect as an objection to every entry in the Rights section of that register unit by virtue of reg. 6(5) of the Commons Registration (Objections and Maps) Regulations 1968 (S.I. 1968 No. 989), but there is no corresponding provision whereby an objection to an entry in the Rights section has effect as an objection to an entry in the Land section. Not having objected to the entry in the Land section of this Register Unit, the Duchy of Lancaster was not a party entitled under reg. 19(1) of the Commons Commissioners Regulations 1971 (S.I. 1971 No. 1727) to be heard at the hearing of the disputes



as to the registration of the land and cannot now be heard to say that that registration should not have been confirmed.

As to the entries in the Rights section, Miss Cameron contended that the objections to the registrations at Entry Nos. 1, 2 and 3 and the objections by the County Surveyor to the registrations at Entry Nos. 4, 5 and 6 gave me jurisdiction to refuse to confirm all the registrations, in spite of the fact that her client's Objections related only to parts of the registrations at Entry Nos 1, 2 and 3 (the rights to shoot game). It may well be right to say that the "matter" which is referred to a Commons Commissioner under section 5(6) of the Commons Registration Act 1965 and into which he has to inquire under section 6(1) of that Act embraces the registration as a whole. Nevertheless, the jurisdiction so conferred must be exercised in accordance with the rules of natural justice. The applicants for the registrations at Entry Nos 4, 5 and 6 would have received no notice of an objection by the Duchy of Lancaster. Furthermore, the only disputes relating to those registrations were occasioned by the Objections made by the County Surveyor, and the Duchy of Lancaster was not entitled under reg. 19(2) to be heard at the hearing of those disputes. The applicants for the registration at Entry No. 3 may well have not attended the hearing because they were content that the registration should be modified by the exclusion of the right to shoot game and thought that the rest of the registration was not in jeopardy, while Mr Temple attended prepared only to support his right to shoot game, having been led by the form of Objection No. 0455 to believe that his rights to cut and take sticks and bracken and to graze were not in question. In my view, it would be contrary to natural justice to do more than consider whether the registrations at Entry Nos 2 and 3 should be modified by the exclusion of the rights to shoot game.

Mr Temple was unable to cite any authority for the proposition that a right to shoot game is a right of common known to the law. Prima facie the right to take game belongs to the owner of the soil and, while he may grant to another a right to take game on his land, such a right does not appear to be a right of common, even if it is not an exclusive right. Any such right of common seems to have been unknown to Elton and Williams, the classic authors on commons.

For these reasons I refuse to confirm the registration at Entry No. 1 and I confirm the registrations at Entry Nos. 2 and 3 with the deletion of the words, "The right to shoot game". It is unfortunate that there was no objection to these words where they appear in the registrations at Entry Nos 4, 5 and 6, but it seems to me that it would be wrong to modify those registrations in that respect in reliance upon a jurisdiction conferred on me solely because the County Surveyor objected to the inclusion of certain roadside strips in the Register unit and all the more so when the County Surveyor's Objections have been met by the exclusion of the roadside strips from the Register Unit. Taking some comfort from the fact that references under section 3 of the Act of 1965 sometimes disclose that registrations which would patently have been insupportable have become final in the absence of any objection, I confirm the registrations at Entry Nos 4, 5 and 6.

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 21st day of June 1977

Chief Commons Commissioner