



COMMONS REGISTRATION ACT 1965

Reference No. 268/D/303-304

In the Matter of Eavestone Moor in the
Parishes of High and Low Bishopside and
Eavestone, Harrogate B

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and Entry No. 1 in the Rights Section of Register Unit No. CL 609 in the Register of Common Land maintained by the North Yorkshire County Council and is occasioned by Objection No. 92 made by Godfrey S Bostock and noted in the Register on 6 April 1971.

I held a hearing for the purpose of inquiring into the dispute at Harrogate on 11 March 1981. The hearing was attended by Mr Robert Wakefield of Counsel, appearing on behalf of Mr Bostock and by Mr Ian McCulloch, ^{of Counsel} appearing on behalf of Mr J S Learoyd, one of the applicants for registration at Entry No. 1 in the Rights Section.

The registration in the Land Section was made in consequence of the application to register in the Rights Section. The ground of the Objection is to the effect that Mr Bostock is the fee simple owner of the Moor and that any grazing rights Mr Learoyd may have are by virtue of an agricultural tenancy and as such are not registerable, and that the land was not common land at the date of registration.

The right registered is to graze 500 sheep and followers over the Moor and is claimed to be attached to Smaden Head Farm. The origin of the right is a grant made in a Conveyance of 1948 by the owner of the Moor to the then owner of the Farm of "the exclusive right of grazing" over the Moor. This right was the subject of litigation between the parties in 1975, in which a declaration was sought by the Learoyds that the exclusive grazing rights over the Moor became annexed in perpetuity to the Farm and were vested in its owners. The case, *Anderson and Others v Bostock* 1976 1 Ch. 312 - was heard by Blackett-Ord V.C. and he decided (inter alia) that an exclusive right of grazing without limit appurtenant to a dominant tenement is unknown to the law, and dismissed the action. The Order made in that case embodied an undertaking by Mr Learoyd to procure vacation of Entry No. 1 in the Rights Section: this undertaking is still in force, and Mr McCulloch naturally felt unable to submit that the right be confirmed. Moreover, having regard to the substantive decision of the Vice-Chancellor, he accepted that the right is not a right of common within the definition in Section 22(1) of the Commons Registration Act.

In these circumstances I refuse to confirm the registration at Entry No. 1 in the Rights Section. I understood from Mr McCulloch that there was a possibility of his client seeking, in other proceedings, to claim the benefit



- 2 -

of the right granted in 1948, though not as a right of common appurtenant to Smaden Head Farm. As to this, Mr Wakefield took me through the relevant documents of title relating to Smaden Head Farm subsequent to the 1948 Conveyance and submitted that those documents showed no title, either in law or in equity, in the Learoyds. It is not necessary, and I do not propose, to make any finding on this question: suffice it to say that the right at Entry No. 1 is registered as attached to the Farm, that it originated in the grant in 1948, and that this grant has been decided by Blackett-Ord V.C. to be ineffectual to create an appurtenant right. The registered right is limited, as required by Section 15(2) of the Commons Registration Act, to a maximum number (500) of animals, so that it is not unlimited as was the right in issue before the Vice-Chancellor: but the registered right (and I understood Mr McCulloch to accept this) originated in and depended upon the grant made in 1948 and if that grant was ineffectual it could not be the basis of the limited right.

As regards the registration in the Land Section, the cancellation of the Rights Entry will leave the Moor subject to no rights of Common and there was no suggestion or evidence that the Moor is waste land of a manor and qualifies as common land on that ground. Accordingly I refuse to confirm that registration as well as the registration in the Rights Section, and shall order the Objector's costs of these proceedings to be paid on Scale 4 by Mr Learoyd.

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

7 April

1981

Commons Commissioner