



In the Matter of Land known as
Moughton, Austwick-----

DECISION

This dispute relates to the registration at Entry No. 9 in the Rights section of Register Unit No. CL.86 in the Register of Common Land maintained by the North Yorkshire County Council and is occasioned by Objection No. 375 made by Mr E Booth and noted in the Register on 21 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Skipton on 2 July 1985. The hearing was attended by Mr E Booth and by Lt. Col. G.W.H. Field, the successor to Mr R.H. Bowring, the applicant at Rights Entry No. 9.

Entry No. 9 in the Rights section is a right held in gross by the Churchwardens of Austwick Parish Council to graze 2 ewes and their followers to the extent of two sheep gaits over the whole of the land comprised in this register unit. The objection states that any rights which formerly existed have now ceased to exist through lapse of usage for more than 30 years.

It was common ground that an inclosure award of 1814 made under the authority of an Act of Parliament passed in 1805 allotted two sheep gates on "Mooton", agreed to be this common, to the Churchwarden (or Churchwardens) and overseer (or overseers) of the poor of Austwick.

Lt. Col. G.W.H. Field a present churchwarden of Austwick gave evidence that the rights had never been exercised or let in his time and that since their registration under the Commons Registration Act 1965 nothing had been done pending the resolution of the present dispute. He had found no mention in the records of the parochial church council of these rights being used. If they had been used he would expect to find something in the records. He agreed that the award required the owners of sheepgates to contribute to the repair of the wall and gates in proportion to their rights and that there was no evidence of the Churchwardens ever having done so. He denied, however, that the rights had been abandoned. He certainly had no intention of abandoning them and if the registration was confirmed he would ask the Parochial Church Council for permission either to let or to sell the rights and to allot the proceeds to the Austwick combined charities.

Mr Henry Edmund Morphet, a farmer and fellow-member of the management committee of Moughton Common with the objector, Mr Ernest Booth, who was also present, gave evidence that he and Mr Booth had been appointed to the committee in 1968, that his father had been appointed in 1938, that his and Mr Booth's joint grand father had been appointed in 1896 and another ancestor in 1838.



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He produced the committee's minute book containing minutes of all meetings since 1814. Public meetings of all right holders had been held on the second Saturday in February every year. There was no reference at all in those minutes to the two rights allotted to the churchwardens, although the chairman in 1877, one John Ingleby, had also been a churchwarden. The total of the sheep gates originally allotted on Mooton was 551. In calculating the liability to contribute to the repairs until fairly recently there was shown a total of 551 sheep gates divided among 6 graziers. When the committee checked the registrations under the 1965 Act they found that one of the right owners had registered 10 sheep gates too few. When they counted the registrations up they found that they totalled 543½ that is to say 551 less 10 plus the two rights now in issue. Where the ½ came from was a mystery. He suggested that the two rights allotted to the churchwardens might have been sold off.

I do not think that the proper inference to draw from this evidence is that the rights have been abandoned. I certainly accept Colonel Field's evidence that he has no intention of abandoning them and that, if he is found to be the owner he will see to it that they are used to raise money for the appropriate charity. But I am afraid he is too late. It must be remembered that the churchwardens and overseers of the poor were in a position of trust. It was their duty to see that any property which was allotted to them was used for the benefit of the poor - certainly not abandoned. Though they may sometimes have been farmers themselves, as churchwardens they owned no sheep. The only way they could make use of their sheep gates for the benefit of the poor was to sell them or let them to some farmer who could use them. I think that what must have happened is that they sold the rights at an early stage to one of the farmers who grazed the moor and applied the proceeds of sale for the benefit of the poor. If they had not done this the total of the rights held by the graziers who had to contribute to the repairs would have been 549 not 551.

That being so, while I do not think these rights have been abandoned, I also do not think that they are still owned by the churchwardens. Accordingly I refuse to confirm the registration.

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

11th

day of

July

1985

Robert Langdon-Davis
 Commons Commissioner