

COMMONS REGISTRATION ACT 1965



Reference No. 268/D/411

In the Matter of Sawbanks, Calton, Craven D

DECISION

This dispute relates to the registration at Entry No. 1 in the Rights Section of Register Unit No. CL 429 in the Register of Common Land maintained by the North Yorkshire County Council and is occasioned by Objection No. 179 made by W J Henderson and noted in the Register on 15 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Skipton on 19 October 1982. At the hearing Mr W Foster, Solicitor, appeared on behalf of the applicants for the registration, Messrs G E, J R and E W Richardson, and Mr D V Evans, Solicitor, on behalf of the Objector. Ms Claire Brooks, Solicitor, appeared on behalf of the executors of James Thompson, who are not however parties to the dispute.

Entry No. 1 is in two parts - (1) A right of shooting and sporting for all manner of game and rabbits and (2) a right of grazing sheep or cattle: the rights are stated to be attached to a property called, Nelson Farm. The Objection is to the right of shooting and sporting, and Mr Evans submitted that rights of shooting or sporting, though they may exist, are not rights of common or registrable as such.

Rights of shooting and sporting over land are normally incident to the ownership of the land, (in this case the land comprised in the Register Unit), and exercisable by the owner of the land: this may be the lord of the manor or some other person who has come to own the land. Third parties may be entitled to exercise the rights by virtue of a licence or other grant by the owner or, possibly, by prescription. A right of common is a right to take some of the natural produce of the common land for the needs of the property, the dominant tenement, to which the right is attached or of the animals farmed on that property. The definition of rights of common in Section 22(1) of the Commons Registration Act is not exhaustive but in fact contains no reference to rights of sporting and shooting: nor, so far as I know, is there any statutory definition or authoritative decision which treats such rights as rights of common. This, I think, is because such rights and their exercise are not essentially for the purpose of providing for the needs of the dominant tenement but for the enjoyment of sport, and accordingly they have not in the past been claimed as rights of common. Nor in my opinion do they qualify as rights of common for the purposes of the Commons Registration Act.

In a case concerning Lustleigh Cleave, Devon (Ref: 209/D/114) and referred to in 1978 CLY 222, the Chief Commons Commissioner held that rights of sporting and shooting are not rights of common, a view with which I agree: and accordingly I confirm the registration at Entry No. 1, modified by deleting the right of shooting and sporting.

I should add that I am not deciding that the rights do or do not exist: not being rights of common, that question is not one with which I am concerned. At the hearing evidence was given in support of the claim to the rights and was not seriously challenged by Mr Evans who relied on the contention, which I accept, that the rights in question are not rights of common. I express no view on the conclusions to be reached on the evidence I heard as to the entitlement of the claimants to any rights of sporting or shooting over the land.



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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

19 November

1982

*L. J. Morris Smith*

Commons Commissioner