



COMMONS REGISTRATION ACT 1965

Reference Nos.44/D/50-52

In the Matter of Stony Moor,
Newton and Pickering, North Yorkshire (No.2).

DECISION

These disputes relate to the registrations at Entry Nos.1 to 5 and 7 in the Rights Section of Register Unit No.CL 50 in the Register of Common Land maintained by the former North Riding County Council and are occasioned by Objection No.0299 made by the Minister of Agriculture, Fisheries and Food and noted in the Register on 6th October 1970, Objection No.053 made by Mr E.Aconley and noted in the Register on 3rd February 1970, and Objection No.0306 made by the Minister of Agriculture, Fisheries and Food and noted in the Register on 6th October 1970.

I held a hearing for the purpose of inquiring into the dispute at Malton on 11th February 1975. The hearing was attended by Mr J.D.Whitehead, solicitor, on behalf of Mr J.Allanson and Mr N.M.Allanson, the applicants for the registration at Entry No.4, by Mr W.D.Curnock, solicitor, on behalf of the Minister of Agriculture, Fisheries and Food, and by Mr Aconley in person.

Mr Curnock informed me that he wished to pursue the Minister's Objections only in respect of the registration at Entry No.1. There being no evidence in support of this registration, I refuse to confirm it.

Mr Aconley's Objection relates only to the registration at Entry No.4 made by Mr J.Allanson and Mr N.M.Allanson. This registration is of the right to graze 35 cattle over the part of the land comprised in the Register Unit lying to the east of a red line marked A B on the Register Map and the right is claimed as held in gross.

The land lying to the east of the line A B on the Register Map is shown on the map referred to in the Enclosure Award made 28th April 1799 under the Newton and Pickering Enclosure Act of 1785 (25 Geo.III, c 26 (private)) as "Common Pasture". In the Award this land is allotted to twenty persons, each of them to have one or more undivided twenty-seventh parts, such allotments being declared to be made for and in respect of ancient common right messuages, cottages or sites thereof situate in the township of Newton. By a conveyance made 6th April 1965 between (1) Thomas Houlden Coverdale (2) Peter Aconley there was conveyed to Mr Aconley such right as the vendor had in five of the twenty-seventh parts.

The two Mr Allansons, who are father and son, are the tenants of Upper Farm, Stony Moor, which is the property of the Forestry Commission. The Allansons went to Upper Farm in 1936. Their immediate predecessor at Upper Farm was a Mr Smith, who had been there for three or four years, and Mr Smith had followed a Mr Grayson, who had been there for 22 years.

Mr John Allanson said that Mr Grayson and Mr Smith had grazed cattle on

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the land in question and that he did so because they had done so. At first Mr Allanson had 10 cattle, but he built up his herd to 35, which he attained about 10 years ago. Nobody ever objected to the Allansons' cattle grazing on the land. Mr Aconley knew about it, but allowed it to continue as a matter of goodwill.

Mr Whitehead contended that the Allansons had acquired a right of pasture in gross by prescription. While it is legally possible for such a right to be acquired by prescription, such a claim is difficult to make out, since the Prescription Act 1832 does not relate to profits à prendre in gross: see Shuttleworth v. Le Fleming (1865), 19 C.B.N.S 687, at p.709. Mr Whitehead must therefore rely on prescription at common law. The basis of prescription at common law is enjoyment from time immemorial, i.e. from 1189, the first year of the reign of Richard I. This is clearly inapplicable in the present case, since the enjoyment on which reliance is placed did not start until 1936. The only other way in which prescription at common law can be supported is by reliance on the legal fiction of a lost modern grant. A lost modern grant is, however, only a way of explaining a long enjoyment of uncertain origin which must have originated since 1189, and it can only be prayed in aid where the enjoyment can be reasonably accounted for in any other matter. Here we know that the enjoyment started in 1936 and that there was in fact no grant, only an acquiescence by the owners of the land on which the Allansons' cattle grazed. Such acquiescence might have been the basis of a claim under the Prescription Act 1832 by the owners of Upper Farm, to a right appurtenant to that farm, but it will not support a claim to a right in gross by the tenants: see Austin v. Amhurst (1877), 7 Ch.D.689, at 692.

For these reasons I refuse to confirm the registrations at Entry Nos.1 and 4 and I confirm the registrations at Entry Nos.2,3,5, and 7, there being no objection to those registrations.

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 4th day of March 1975

Chief Commons Commissioner