



COMMONS REGISTRATION ACT 1965

Reference Nos.258/D/15-19
inclusive.In the Matter of: Stott Hill Moor, Cowling and Sutton-in-Craven,
Craven D.DECISION.

These disputes relate to the Entry at No.1 in the Land Section and Entries Nos 1 to 65 inclusive in the Rights Section of Register Unit No. CL.11 in the Register of Common Land maintained by the former West Riding of Yorkshire County Council, and are occasioned by Objection no. 6 made by J.E. Bancroft noted in the Register on 15 November 1968 & Objection No.356 and 357 both made by M.J. Feather, R.L. Feather and K.W. Oxley (the Feather Trustees) both noted in the Register on 18 December 1970.

I held a hearing for the purpose of inquiring into these disputes at Skipton on 23rd and 24th July 1975.

Mr. Foster of Messrs Walker, Charlesworth & Foster, Solicitors appeared for the following applicants for common rights viz:-

Mr. Gilbert Hopkinson (Entries Nos.1,2 and 3)
 Mr. Terence Jackson (Entry No.48)
 Mr. Squire Jackson (Entry No.36) and
 Mr. de Sokes - the successor to Mr. Norman Binns (Entry No.57).
 Mr. Howarth, counsel, instructed by Messrs. Hittle & Whittaker appeared for the Trustees and the late Mr. W.S. Emmott (Entry No.4), and
 Mr. D.V. Evans of Messrs. Simpson Curtis & Co, Solicitors appeared for the Feather Trustees.

Notwithstanding the absence of an Entry in the Ownership Section of the Register Mr. Evans satisfied me that prima facie the Feather Trustees were the owners of the land in question, and in my view therefore the onus lay upon the claimants for common rights to establish those claims as against the prima facie owner.

It is convenient to deal first with the claim of the Emmott Trustees for rights appurtenant to Stott Hill Farm. Mr. Howarth came well prepared with an abstract of title commencing with a conveyance dated 13th March 1899 whereby Stott Hill Farm was conveyed "Together with the right of pasturage on the Common or Moor called Stott Hill Common situate in Cowling aforesaid". A grant in identical terms was contained in the conveyance to the late Mr. W.S. Emmott dated 11 November 1952. Faced with this evidence and that of Mrs. Makin, a niece of a former owner of Stott Hill Farm and the tenant farmer since 1952., Mr. Jennings, which established that the rights claimed had been exercised and not abandoned, the Feather Trustees conceded that I should confirm Entry No.4 modified so as to be limited to 25 sheep. This quantification was agreed by Mr. Evans and Mr. Howarth on the footing that on Stott Hill Moor the appropriate quantification is one sheep for 1 acre of byland, Stott Hill Farm now having 25 acres of by-land. Mr. Foster encouraged by Mr. Howarth's success managed to secure Mr. Hopkinson's deeds from the bank and these





-2-

revealed as regards Fair Place Farm (Entry No.1) a grant in similar terms to that in the Emmott Trustees' deed; and indeed there was evidence that the late Mr. Feather had agreed with a former owner of Fair Place Farm that he could graze 1 sheep for each acre of by-land. In these circumstances the Feather Trustees agreed that I should confirm the Entry at No.1 but contended that I should restrict the rights to one sheep per acre of by-land.

On the question of quantification two expert witnesses one on each side gave evidence, on behalf of Mr. Hopkinson Mr Hill, an auctioneer and valuer with no professional qualifications. He spoke of other farms and other moors, one with 62 acres of by-land which grazed 106 sheep - in round figures $1\frac{1}{2}$ sheep per acre, and he said he managed one 450 acre Farm in Sutton.

Mr. D.J. Yorke who gave evidence on behalf of the Feather Trustees has an M.A. degree in estate management and the qualification of F.R.I.C.S and has had 25 years in the management of estates, including a number with moors, and he manages four Farms in the vicinity owned by the Feather Trustees including Burtons which was believed to have grazing rights on Stott Hill Moor prior to its acquisition by the late Mr. Feather. Mr. Yorke said the appropriate quantification was 1 sheep per 1 acre of by-land and said that the Ministry paid on the basis of 1 sheep per acre for hill sheep. He said one sheep per acre of by-land was normal. Mr. Yorke described Stott Hill Moor and said that the northside was poor and mostly bracken and rock and that on the south side there was 400-450 acres of good grazing, and he expressed the view that Stott Hill Moor could maintain approximately 150 sheep.

The tenant farmer at Burtons and the Feather Trustees graze the moor as they are entitled to do provided they do not prejudice the commoner's rights, and this is a factor I must take into account.

In the light of Mr. Yorke's experience and his familiarity with the land in question and the Emmott Trustees' ready acceptance of the scale of 1 sheep per acre of by-land I have come to the conclusion that that is the appropriate scale, and I confirm the Entry at No.1 modified so as to be restricted to 46 sheep; that being the number of acres of by-land on Fair Place Farm.

No evidence was led in support of Mr. Terence Jackson's claim, and I therefore refuse to confirm the Entry at No.48. Mr. Squire Jackson gave evidence, he farmed at Court House Farm on his own from 1945 and acquired it in 1962, and has now retired. He spoke of Mr. Ogden putting sheep, about 30 in number, on the moor till 1940; then Mr. Driver from Fair Place took over until 1945. He himself had never kept any sheep; he was a builder all the time he was farming the land and he had not time to shepherd sheep. He had taken peat all the time he was at Court House for farming there, no one had stopped him and he saw the game-keeper regularly. He produced no deeds which established any right over Stott Hill Moor. He said that when he shepherded Mr. Ogden's sheep, Mr. Tatton was the owner of Court House Farm and Mr. Evans proved that Mr. Tatton owned Stott Hill Moor until he sold it in 1951. In view of the fact that Court House and the moor were in common ownership until 1931 and in view of the fact that there has been no grazing from Court House since 1945 or possibly 1940. Mr. Jackson has not in my view discharged the onus of establishing his right to graze. Mr. Jackson gave no evidence to support his claim to a right of sporting and the Feather Trustees led no evidence relating to his claim for a right of turbary. In these circumstances I confirm the Entry at No.56 modified so as to be limited to a right of turbary.

It remains to consider Mr. Hopkinson's two other farms Long Hill End and OverDean. Hopkinson acquired Long Hill End in 1959 and he said in evidence that he had never had any sheep at Long Hill End. No evidence was led as to any grazing from this Farm



-3-

and no documentary evidence was produced of the existence of any rights over Stott Hill Moor appurtenant to Long Hill Farm.

For these reasons I refuse to confirm the Entry at No.2. As regards Over Dean the situation is far from clear. Mr. Foster produced Deeds dated respectively 9th July 1787, 19th October 1797 and 10th December 1887 whereby Over Dean was sold, together with "commons, common of pasture and turbary" but the common over which these rights were exercisable is not identified. In this connection it is relevant to mention that Stott Hill Moor adjoins Ickornshaw Moor and while Over Dean adjoins Stott Hill Moor it is not far from Ickornshaw Moor.

Mr. Hopkinson said that he became the owner of Over Dean in 1951 when his uncle Joseph Hopkinson died who he thought owned it since 1912. When his uncle died Over Dean was let to a tenant farmer who moved out and Mr. Hopkinson moved in. The tenant farmer took his sheep away which he estimated to be about thirty in number and Mr. Hopkinson started with about 10 sheep and has built up a flock from that small beginning and he now has about 100 sheep and followers on his three farms. He has always grazed the moor and taken peat for his fires and stones for repairing his walls. He has never been challenged and none of his sheep have been rounded up, impounded or returned to him.

Mr. John Rushton aged 86 a retired farmer said the farms had always put their sheep on Stott Hill Moor and he had put his sheep on from Hardfield and Lower Summer House Farm. They all had rights and not a tenancy. In cross examination he said the moor was not stinted and free for all; he knew the keepers but could not say what they did.

Mr. Gallagher had lived at Cowling all his life except during his war service. The farmers always grazed and believed they had a right to do it.

Mr. Binns who gave evidence on behalf of Mr. de Sykes said that the trouble started when a Scots game keeper came. This was Mr. McEwen who gave evidence and was game keeper on Stott Hill Moor during the period 1954 to 1961. Mr. Feather acquired the moor on 14th October 1954.

Evidence was given on behalf of the Feather Trustees by Mr. Feather, Mr. McEwen aforesaid, Mr. Hanson and as mentioned above Mr. Yorke. Mr. Feather could give little direct evidence; any problems on the moor were dealt with by his father during his lifetime. The most he could say is that if there had been any serious problems he would have heard about them from his father and he heard of no such problems.

Mr. McEwen said he had never come across any of Hopkinson's sheep or Mr. Binn's sheep and he walked the moor daily. His instructions were to impound all except Feather's sheep, and he never had any trouble with Hopkinson. There were about 500 sheep, but there were several contiguous moors unfenced.

Mr. M. Wrigley who has been game keeper on the moor for almost the last six years gave evidence, but his employment dates from after that of Mr. Hopkinson's applications and for part of that time Mr. Hopkinson was grazing Fair Place, and his evidence is of no assistance.



-4-

A letter from the Trustees of the Chatsworth Settlement addressed to Mr. Yorke dated 16th May 1967 was then produced, those Trustees having rented the shooting since 1944. It was stated in the letter as far as the author could remember only two adjoining owners were running sheep on the moor.

OverDean was conveyed to Mr. Hopkinson together with all common rights. He has grazed the moor continuously since 1951. The tenant from whom Mr. Hopkinson took over kept sheep and, having regard to the evidence of Mr. Rushton and Mr. Gallagher and the geographical situation of OverDean adjoining Stott Hill Moor, it would be surprising if that tenant did not graze his sheep on Stott Hill Moor. Since there are without doubt grazing rights appurtenant to farms in the vicinity it would also be surprising if Over Dean did not have the benefit of similar rights. The circumstance that Mr. Hopkinson had in his possession the ancient deeds produced by him indicates that Over Dean is a farm of some antiquity. Looking at all the evidence led on behalf of Mr. Hopkinson in my view it enables me to presume a grant of grazing rights appurtenant to Over Dean over Stott Hill Moor.

The only evidence to set against that referred to above is that of Mr. McEwen. He came upon the scene in 1954, not long after Mr. Hopkinson commenced with his ten sheep, and he left before Mr. Hopkinson acquired Fair Place. Mr. McEwen was only a gamekeeper, unlike Mr. Wrigley who was a gamekeeper and shepherd. Mr. McEwen in his evidence went no further than to say that he never came across Hopkinson's sheep and he spoke of a figure of 500 sheep. Bearing in mind the small number of sheep Mr. Hopkinson was grazing during the period of Mr. McEwen's employment and the circumstance that his primary duty was that of a gamekeeper it may well be that he did not concern himself with relatively insignificant numbers of sheep. Mr. Binns spoke of trouble starting when Mr. McEwen came upon the scene; it may be the case that Mr. Hopkinson's few sheep did not warrant any trouble. In my view Mr. McEwen's evidence is not such that I can reject that given by Mr. Hopkinson, and I confirm the Entry at No.3, modified so as to be limited to a right to graze 24 sheep, that being the number of acres of by-land at Over Dean.

Mr. de Sykes is the successor to Norman & Mary Binns at Deanfield and DeanHole, and since he only acquired these properties in 1970 his case stands or falls on the evidence of Mr. Binns. Mr. Binns said he had grazed on Stott Hill and Ickornshaw Moors and unlike Mr. Hopkinson he has registered rights on Ickornshaw. In these circumstances I find it impossible to make any presumption in favour of Deanfield and Dean Hole. Mr. Binns said he thought he had a right and he thought the right was in his deeds, but no evidence was led which established any right to graze on Stott Hill or indeed any right. If any rights existed they may have been confined to Ickornshaw.

The Feather Trustees have by Entry No.64 claimed the right to graze 50 sheep on part of this Register Unit. I refuse to confirm this Entry. In my view the Feather Trustees can exercise all their rights as owner provided always that by so doing they do not prejudice the commoner's rights. It is on record in this decision that the evidence led by the Feather Trustees is that Stott Hill Moor will maintain approximately 150 sheep and they can in my view therefore graze approximately 55 sheep. No evidence was led by the Feather Trustees as to turbarry and the collecting of stone for the repair of walls, and they are content that in cases where grazing rights are confirmed and such rights are also claimed and also in the case of Squire Jackson I shall confirm the Entries as regards those rights.



-5-

To sum up therefore.

I confirm the Entry at No.1 modified so as to limit the right to graze to 46 sheep and their followers.

I confirm the Entry at No.3 modified so as to limit the right to graze to 24 sheep and their followers.

I confirm the Entry at No.4 modified so as to limit the right to graze to 25 sheep and their followers.

I confirm the Entry at No. 56 modified so as to exclude all rights claimed other than a right of turbary.

I refuse to confirm all other Entries in the Rights Section of the Register.

In conclusion I must mention that I have had an application on behalf of Mr. J. M. Townsend to have his claim heard on the ground that he is the owner of Great House Farm in succession to Mr. & Mrs. Senter and that he did not receive notice of the hearing as the house was empty when the notice was delivered.

to be heard

There is in my view merit in Mr. Townsend's application and I have come to the conclusion that the best course is to provide Mr. Townsend with a copy of this decision indicating that I will accede to an application to re-open the hearing, but only as regards Great House Farm, and on the footing that if he does apply for the hearing to be re-opened he will be at risk as to costs.

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

7th

day of

August

1975

Commons Commissioner.