



COMMONS REGISTRATION ACT 1965

Reference Nos 263/D/41 to 48

inclusive.

In the Matter of Swarthmoor, Helwith Bridge,
Stainforth, Lawkland and Austwick, Craven D.,
North Yorkshire.

DECISION.

These disputes relate to the Entries at Nos.2, 3 and 5 in the Rights Section of Register Unit No. CL.247 in the Register of Common Land maintained by the former West Riding of Yorkshire County Council and are occasioned by objection no. 156 made by F & E Parrington & Sons, noted in the Register on 5th March 1971, objections Nos.376 and 377 both made by Frank Pearson and both noted in the Register on 21st December 1970, objections nos 378 and 379 both made by Henry Dugdale and both noted in the Register on 21st December 1970, objections Nos 380 and 381 both made by Mrs. M. Maudsley and both noted in the Register on 21st December 1970 and objection no. 452 made by Thomas Metcalfe noted in the Register on 12th January 1971.

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

Mr. D. Jordan of Messrs. Jordan & Charlesworth, solicitors appeared for Mr. Dugdale and Mrs Maudsley; Mr. Kyle of Messrs Greenwood Kyle & Goad, solicitors appeared for Messrs. Parrington; Mr. R.P. Hirst of Messrs Steele & Sons solicitors appeared for Mr. H. Nowell the applicant for rights under Entries Nos. 3 and 5 and Col. Field represented Mrs. E.L. Clapham the applicant for rights under Entry No.2. Mr. Pearson did not appear and was not represented. It was common ground that until some date in or about 1880 Swarthmoor and the adjoining moor Wise Brow, Register Unit No. CL.309, were one and the same moor and that at some time in the 1880's there was an informal arrangement pursuant to which a wall was built dividing what by virtue of their separate registrations are now two moors, and certain commoners were to graze on Swarthmoor and the other commoners were to graze on Wise Brow. The only factual evidence of this alleged informal agreement is the wall itself which is said to be manifestly newer than the other walls in the vicinity, and Col. Field stated that the lady of the Manor made a practice of riding and opening the gate in the wall in order to demonstrate that as far as she was concerned the moors were one and the same moor notwithstanding the wall. In the absence of any evidence that Wise Brow was ever in law severed from Swarthmoor I must treat them as one moor for the purpose of ascertaining the titles to rights exercisable over Swarthmoor.

Mrs. Clapham by Entry No 2 claims 18 sheep gaits and Col. Field produced a copy of the Austwick Award, dated 1814, made in 1803. Mrs. Maudsley said she had seen the original of the award in the church and that as regards Swarthmoor there were no documents later in date. The document produced by Col. Field referred to the 18 gaits now claimed by Mrs. Clapham. In more recent times Mrs. Clapham has leased her gaits to the father of Mr. Hodgson and to Mr. Nowell.



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The lease of her rights to Mr. Nowell gave rise to objections by the other commoners and a meeting was held, which as far as Mrs. Clapham's rights were concerned, left the issue unresolved. Mr. Nowell, notwithstanding that he had leased only 18 gaits, put 50 sheep on the moor; the sheep were strangers to the moor and disturbed the other sheep, as Mrs. Maudsley said in evidence, and it is not surprising that Mr. Nowell by this conduct did not endear himself to his neighbours and after the meeting he did not seek to graze more than 18 sheep.

Mr. Hirst produced from Mr. Nowell's title deeds a document signed by the Commissioner who made the 1814 award a notice of the award of 10 gaits.

On this evidence and the evidence in the more recent deeds which referred to common rights I have come to the conclusion that Mrs. Clapham is entitled to the 18 gaits claimed by her and, since she has not claimed any rights on Wise Brow, I will confirm her Entry No. 2. For the same reason I have come to the conclusion that Mr. Nowell is entitled to 10 gaits on Swarthmoor and Wise Brow together, but since he has registered 4 gaits on Wise Brow his title on Swarthmoor must be limited to 6 gaits.

Mr. Hirst on behalf of Mr. Nowell did not confine his claim under Entry No. 3 to the 10 gaits which were the most he could claim by virtue of the documents he produced. He sought to establish a prescriptive claim to the balance of 40 gaits which he registered.

Mr. Nowell in evidence said that he lived at Crows Nest, Postwick, Lancaster and he acquired Far End Farm in 1960; that he had put sheep on Swarthmoor, but not much in the last two or three years as he did not wish to tread on anyone's toes. He further said that before he came he lived within 12 miles and he had helped get Mr. Hartley's sheep off the moor when Mr. Hartley was the owner of Far End. He put sheep on the moor mostly in winter, about 40 in number a half stint.

There was no objection by local farmers but he suspected his sheep were "dogged off". He had always put sheep on Wise Brow; he thought there was unlimited grazing on the moor; the custom was 1 sheep to 3 acres of the land. He was advised to claim for 40 sheep when he registered.

In cross-examination he said he could winter 154 sheep and that Swarthmoor could stand 160 sheep. At the present time there are 200 sheep, 9 bullocks and 20 calving heifers at Far End. Some sheep from Wise Brow strayed on to Swarthmoor; he had to wire the wall between Swarthmoor and Wise Brow. He was not grazing Swarthmoor now because he was short of staff and did not wish to fall out with the farmers. He had heard stories of the informal agreement.

Recalled, Mr. Nowell agreed that when he put 50 sheep on the moor in 1950 in purported exercise of Mrs. Clapham's rights he was asked to withdraw them and did in fact reduce the number to 18. He remembered the meeting referred to above which was called by the N.F.U. Secretary. His sheep came from Stockdale. He went to the meeting and since at that meeting the discussion centered round Mrs. Clapham's 18 gaits it is difficult to understand how he later formed the opinion that there was unlimited grazing. He further said that Mr. Storey, one of his predecessors in title, did not graze on the moor; he was, he said, more interested in race horses. He knew of, but because of an emergency in





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his family, did not go to a meeting of commoners convened to consider what action to take with regard to the registration of common rights.

Mr. Nowell's application at Entry No. 3 was made on 25 June 1968 and entered in the register on 21st January 1969, and Mr. Nowell's evidence as to grazing was therefore limited as to 8 or 9 years, save only that he referred to Mr. Hartley having grazed. Mr. Hirst sought to overcome this difficulty by calling Mr. Hodgson, now employed by Mr. Nowell, having been so employed since 1969; for ten years prior to that he farmed at Foredale. He gave evidence as to Mr. Nowell's grazing - and as to that there was a serious conflict of evidence - but he gave no evidence as to grazing upon Far End farm prior to 1960 and, indeed, he was probably unable so to do since he only came to Foredale in about 1959.

Apart from Mr. Nowell's evidence that he had helped remove Mr. Hartley's sheep from the moor, no evidence was led as to grazing from Far End farm prior to 1960. The onus of establishing the prescriptive rights claimed by him lies on Mr. Nowell and it is manifest that, even if all the evidence given by him was uncontradicted, that evidence was quite inadequate to substantiate any prescriptive rights. In these circumstances I do not think it is necessary to refer in detail to the evidence given by Mr. Parrington, Mr. Thomas Metcalfe, Mr. Dugdale and Mrs Maudsley. They all gave evidence to the effect that apart from strays Mr. Nowell had no sheep on Swarthmoor.

I found Mrs. Maudsley an impressive witness; she had lived at Knight Stainforth for 50 years, and has now no interest in the subject matter of these disputes. She was also the only person connected with this case other than Col. Field who had done any research. She said her husband, now deceased, was very friendly with Mr. Hartley; she said Mr. Hartley did not have sheep on the moor and that her husband "would have blown up" if Mr. Nowell had put sheep on the moor.

For these reasons I confirm the Entry at No. 3, modified so as to be limited to 6 gaits.

By Entry No. 5 Mr. Nowell claimed 1 dale giving the right to cut hay, straw and bedding, and this right was conveyed to him.

I was told that there is no hay or straw available for cutting on Swarthmoor but that there is a small quantity of reeds or rushes which could be used for bedding. Mr. Nowell conceded that he had never exercised this right and no evidence was led that any of his predecessors had done so; he did however say that he remembered one unidentified man cutting reeds or rushes. In the absence of any evidence that this right as appurtenant to Far End Farm has been exercised within living memory, I have come to the conclusion that it has been abandoned.

For the reasons given above I confirm the Entry at No. 2; I confirm the Entry at No. 3 modified so as to be limited to six gaits, and I refuse to confirm the Entry at No. 5.

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.





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Dated this 7th day of August 1975

C. A. Selby

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Commons Commissioner