



COMMONS REGISTRATION ACT 1965

Reference Nos. 45/2/34 and 35

In the Matter of Erringden Common or  
Bellhouse and Erringden Moor, Calderdale D.,

DECISION

These disputes relate to the registrations at Entry Nos. 1 to 3 inclusive and 5 to 16 inclusive in the Rights Section of Register Unit No. CL.422 in the Register of Common Land maintained by the former West Riding of Yorkshire County Council and are occasioned by Objection No. 166 made by Ellis Sutcliffe and Edgar Lumb and noted in the Register on 8 March 1971<sup>and</sup> Objection No. 2079 made by Bernard Pratt and noted in the Register on 12 September 1972.

I held a hearing for the purpose of inquiring into these disputes at Halifax on 11 and 12 December 1974.

The entries in the Rights Section of the Register which have given rise to these disputes are fifteen in number and all claim grazing rights over the land in question. The respective applicants all claim grazing rights as appurtenant to their respective farm lands. The land in question and the said respective farm lands are identified on the plan annexed to this decision. By Objection No. 46 Messrs Sutcliffe and Lumb object to all the entries other than their own and by Objection No. 2079 Bernard Pratt objects to Mr Sutcliffe's Entry No. 10. The objections are that the rights claimed are excessive and in some cases may not exist at all.

These disputes originally came on for hearing at Huddersfield on 16 October 1974 and on that occasion it was apparent that many of the applicants had come unprepared with no evidence to support their claims and that none of them had any evidence as to the quantification of the rights which they claimed. In these circumstances I decided to adjourn the hearing and to avail myself at the resumed hearing of the services of an assessor.

At the resumed hearing I had the invaluable assistance of Mr D.J. Yorke MA, FRICS as an assessor and in the course of the hearing Mr Yorke and I viewed the land in question.

The following persons appeared viz:

Entry Nos. 1 and 2  
Entry Nos. 5 and 7

Mr Bernard Pratt  
Mr J.A. Baker who also produced the deeds of Mr Tetlow the successor to Mr R. Charnley (Entry No. 5) and Martha Jane Mayers (Entry No. 3)



Entry No. 8	Mr & Mrs J.C. Blackburn
Entry No. 9	Mrs D. Hirst (successor to Mr B.B. Crossl
Entry No. 10	Mr M.A. Steel of Messrs Wadsworth Thomas Eastwood and Steele Solicitors for Mr Sutcliffe
Entry Nos. 11, 13 and 14	Mr and Mrs R.H. Jones (successors to Holme End Dyeing Co. Ltd and Mr S. Rowntz
Entry No. 16	Mr T.R.M. Sheriff
Entry No. 12	Mr M. Stocks

Mr H. Haigh (Entry No. 15) did not appear but produced his deeds. Mr Edgar Lumb also appeared but no longer wished to be associated with Mr Sutcliffe's objection. There being no objection to his Entry No. 4 it became final on 1 August 1972.

The land in question is a moor comprising some 330 acres. Notwithstanding that on all the maps produced it is divided into three parts described as Cock Hill Moor, Erringden Moor and Bell House Moor and that some of the deeds produced referred to rights over one or more of these parts, inspection of the land failed to reveal any demarcation between these three respective parts. The evidence was to the effect that within living memory the Moor had been grazed as one Moor without regard to any of the rights being limited to any part or parts of the Moor. In these circumstances there is no alternative but to treat the land in question as one Moor.

Inspection of the land disclosed that the Moor is currently being very much over grazed and the aggregate numbers of animals for which the applicants claim grazing rights are 1030 sheep and 282 cattle. Mr Baker whose memory went back to 1914. further than that of any other witness, stated that at that time approximately 80 cattle and no sheep were grazed on the Moor. No document which was produced gave any indication at all as to the quantification, if any, of the rights referred to therein. It is clear beyond doubt that all the rights claimed are excessive. Indeed Mr Sutcliffe stated that he registered his excessive claim in the hope that it would lead to negotiations which would result in agreement between all the interested parties. Unfortunately feeling on the Moor has run high and negotiations failed to lead to any agreement. Section 15 of the Commons Registration Act 1965 requires each registration of a right to graze animals to be for a definite number. Manifestly I am unable to confirm any of the registrations without modification and there is no evidence as to the quantification of the rights claimed. The documentary evidence as to the existence of and entitlement to grazing rights is to say the least unsatisfactory. By way of illustration I quote from a conveyance to Edgar Lumb dated 17 May 1965 whereby there were conveyed to him:-

"Four equal undivided eleventh parts or shares of and in all such estate and interest of and in Bell House Moor and Erringden Moor as were comprised in and conveyed by a mortgage dated 10 August 1908".

The mortgage dated 10 August 1908 was produced and while it did refer to grazing rights it did not define those rights nor did it state the lands to which those rights were appurtenant or the land over which they were exercisable.



A further equal 1/11th part was conveyed to Mr Edgar Lumb by a conveyance dated 11 October 1939 and the deeds produced disclosed that further equal 1/11th parts were conveyed.

As to:     4 parts to Mr Sutcliffe  
          1 part to Mr Sheriff  
          1 part to Mrs Hirst and  
          1 part to Mr Haigh

making together with the 5 parts conveyed to Mr Lumb 12/11ths. This result while it surprised me came as no surprise to Mr Sutcliffe who stated that there might well be others with similar claims and it is the fact that Mr and Mrs Jones title deeds contain an obscure reference to the mortgage dated 10 August 1908.

Mr Baker relied upon three conveyances dated respectively 29 August 1942, 14 June 1945 and 15 September 1970 whereby undefined rights over Bell House Moor and all such rights as the Bank could convey were conveyed to him.

Mr Blackburn and Mr and Mrs Jones had conveyed to them undefined rights over Cock Hill Moor, once called Fold Moor and Mr Stocks relied upon the sale particulars at the time of his purchase which stated that there were appurtenant to his farm "grazing rights on 400 acres of good grass moor".

Mr Pratt produced two ancient documents from the 18th century which contained references to cattle gaits and a conveyance to him dated 1952 which made no reference to grazing rights, such other documents of title as he may have had were retained by the Bank and were not available at the hearing. In addition to Mr Baker, Mr Pratt and Mr Sutcliffe gave oral evidence.

The overall picture as it appears to me is that at some remote time in history grazing rights were granted over the three component parts of the Moor as appurtenant to the lands surrounding the Moor. By reason of subdivision of the lands and changes of ownership it is no longer possible to determine the entitlement of any owner of land adjoining or adjacent to the Moor. Within living memory all the landowners have grazed on the Moor claiming to do so as of right. In 1914 the grazing rights were not abused when subsidies became available increasing numbers of animals were grazed on the Moor in about the year 1945. Save in the case of Mr Pratt the right of each of the applicant and their predecessors in title to graze on the Moor has never been contested. Mr Sutcliffe's objection is designed to put the applicants other than himself and Mr Lum to the proof of their respective titles and in reliance upon Mr Baker's evidence he denies that Mr Bernard Pratt has any title. Mr Bernard Pratt claims as the owner of Mittons Farm (Entry No. 1) and as the successor to his late father James Pratt the owner of Lower Rough Road and Kilnshaw Farms. All these three farms are currently farmed by Bernard Pratt.

James Pratt leased Rough Head Farm in 1946 and acquired the freehold in 1952, no evidence was given as to Mittons Farm and Kilnshaw Farm. Mr Baker in evidence said he told Bernard Pratt that Rough Head Farm had no grazing rights and he believed that to be the



case because of what he had been told by Mr Pickles a former owner of Rough Head Farm. Mr Pratt admitted a conversation with Mr Baker but stated that the objection was to the grazing of sheep and he denied that Mr Baker had ever alleged that Rough Head Farm had no grazing rights. Mr. Pratt stated that he and his father had grazed on the Moor since 1946 but it was not clear when he first put sheep on the Moor. Insofar as the evidence of Mr Pratt conflicts with that of Mr Baker I prefer the evidence of Mr Pratt. Mr Baker has contended and still contends that the grazing rights are confined to cattle and do not include sheep, his evidence is that the grazing of sheep was attributable to a subsidy during the 1939/45 war, a Mr Whittaker first grazed some sheep but it was only in or about 1952 that sheep in any numbers were grazed on the Moor. Not only has the hearsay evidence of what Mr Pickles told Mr Baker no probative value but the probability is that Mr Baker's objection was to the grazing of sheep at a time when Mr Pratt was grazing substantial numbers of sheep not earlier than 1952. There was no evidence of any objection to Pratt's grazing on the Moor other than the evidence of Mr Baker referred to above. Mr Baker stated that when he acquired Sandy Pickle Farm he grazed cattle additional to those which he previously grazed from High Green Farm and he did so on the footing that Sandy Pickles had grazing rights and it was "fair shares", and he added that Rake Head (Entry No.8), in respect of which only rights over Cock Hill Moor were claimed, had equal rights. In my view this evidence given by Mr Baker is a concise description of the situation as it exists today namely that all the applicants do have some right to graze on the Moor, that at some long distant date these rights were granted and defined but that with the passage of time the rights can no longer be identified or quantified and they can only be exercised on the basis of fair shares. Over recent years the principle of fair shares has broken down, excessive grazing by one owner has led to excessive grazing by another owner with the result that the Moor is substantially over grazed at the present time and ill feeling has been engendered and it has proved impossible for all the interested parties to arrive at an agreement which would enable me to make a direction with the consent of all the interested parties.

Since it is clear beyond doubt that rights to graze on the Moor have existed and been exercised beyond the time of living memory I am entitled to presume that these rights have a legal origin and I must in my view make two further presumptions, first that the rights as regards quantification were and are limited to the number of animals which the Moor can support and secondly that they were granted for the benefit of all the farms adjoining the Moor in proportion to the areas of these farms, and I make the further presumption that the lands for which rights are claimed by Entry Nos. 3, 5, and 9 which do not adjoin the Moor, once formed part of farms which did adjoin the Moor.

In these circumstances I have sought the advice of Mr Yorke as to the numbers of animals the Moor can sustain and as to the proportions in which the respective claimants are to be entitled to graze that number of animals.

Mr Yorke has advised me in a written report dated 17 December 1974 (a copy of which is annexed to this decision) that:

1. The Moor will sustain 70 gaits, and
2. That one gait will comprise



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One head of cattle either male or female up to the age of two years which may graze from 1 June to 30 September in each year, or

Three ewes with or without suckling lambs which may graze on the Moor during any part of the year. A suckling lamb to count as a ewe after 30 September in the year in which it has been born.

Mr Yorke's apportionment of the said 70 gaits is set out below and I confirm each of the Entry Nos. 1 to 3 and 5 to 16 inclusive modified so as to give effect to that apportionment viz.

<u>Entry No.</u>	<u>Number of Gaits</u>
1	2
2	9
3	1,2/3
5	1
6	2.2/3
7	2
8	2
9	1
10	8
11	2.1/3
12	9
13	6.1/3
14	5.2/3
15	4
16	5

Mr Lumb's Entry (No.4) has become final. I am happy to be able to say that he attended the hearing and that once he appreciated that it would be impossible for me to confirm any of the other Entries without modification he agreed to have his Entry amended so as to conform to such apportionment as Mr Yorke might advise. Mr Yorke advised that Entry No. 4 should be entitled to 8.1/3 gaits and this decision is conditional upon Mr Lumb raising no objection to my directing the West Yorkshire County Council to amend his Entry No. 4 accordingly.

At the hearing Mr Lumb stated that he was prepared to execute a deed restricting the rights of himself and successors in title but on reflection I have come to the conclusion that amendment of the Register is a more appropriate course. In lieu of executing a deed Mr Lumb or his solicitors should notify the registration authority that he consents to the amendment of his Entry in accordance with this decision.

No evidence was led in support of any rights of turbary or pannage and I refuse to confirm any such rights.

The course which I have taken is in my view the only practicable course. The only alternative would be for me to refuse to confirm all the entries other than Mr Lumb's entry thus leaving him as the only land owner entitled to grazing rights. Mr Lumb's co-operation in avoiding this manifestly unsatisfactory result which was never contemplated either by him or the other interested parties is a credit to him.



I have refrained from making any reference to the evidence not material for the purpose of this decision. Mr Yorke's report illustrates the extent to which the Moor has been over grazed. I am satisfied that no one individual is responsible for the over grazing which has given rise to ill feeling. It is to be hoped that one result of this decision will be to restore good neighbourly relations among all those entitled to graze on the Moor.

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

24<sup>th</sup>

day of January

1975

C A Little

Commons Commissioner