



In the Matter of Langfield Common in the
Borough of Calderdale

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and at all Entry Nos. in the Rights Section of Register Unit No. CL 121 in the Register of Common Land maintained by the West Yorkshire County Council and is occasioned by Objection No. 481 made by Wakefield and District Water Board and noted in the Register and to the Registration at Entry No. 43 (now 49) in the same Rights Section occasioned by Objection No. 1543 made by James Greenwood and noted on 17 January 1972.

I held a hearing for the purpose of inquiring into the dispute at Bradford on 11 May 1982. The hearing was attended by Miss Panikkar of Messrs Jackson Stoney and Co, Solicitors of Rochdale appeared from the Secretary of the Freeholders of Langford Common and for some of the individual applicants in the Rights Section. Mr R J Simpson, Solicitor appeared for Yorkshire Water Authority as successor to Wakefield and District Water Board. Mr Wright of Messrs Hartley Thomas and Wright, Solicitors of Rochdale appeared for the applicants at Entry Nos. 38, 40 and 51.

After Evidence had been given in support of a number of applications in the Rights Section, I adjourned the hearing to enable the parties to look into the question of what rights were attached to ownership of a cattle-gate.

The hearing was resumed at Bradford on 29 March 1983. Mr Simpson stated that he had agreed to withdraw Objection 481 on terms that the area hatched blue in the plan annexed to that Objection. It appeared that in 1953, The Commons had effectively released their rights over this land in return for compensation when it had been acquired by Wakefield and District Water Board. Further, this land had been fenced off from the remainder.

The effect of the withdrawal of this Objection was to enable me to confirm the registration of the registration in the Land Section and all the registrations in the Rights Section except for that at Entry No. 43 (now 49) against which there was an outstanding Objection.

Miss Panikkar informed me that since the date of the first hearing, records had come to light and it appeared that in some cases the claims of the applicants were at variance with what appeared in the records. Miss Panikkar announced her intention of calling evidence to bring these discrepancies to light. For this she relied on the decision of Walton J in *Re Sutton Common, Womborne* [1982] 142 R. 447 in which it was laid down that where an application was the subject of an Objection it must be proved strictly. In my view this did not apply to the situation before me where the Objection had been withdrawn, except as to one application. Miss Panikkar was also in the difficulty that her clients included those who had overclaimed and those who had underclaimed. Mr Wright opposed the suggestion that evidence could be called to correct the rights claimed in individual applications. I therefore refused to permit evidence to be called in support of those applications to which there was no longer any Objection.



Mr George Sunderland of Sykes Gate Farm, Cragg Vale, said that he was 50 years of age and became tenant of this farm in 1955. His predecessor, Percy Sunderland, had been tenant since 1952. The witness had grazed sheep on the Common since 1955. He had started with 50 which he increased to 100 over the next three years and that figure had remained constant ever since. His predecessor had grazed about 30 sheep on the Common.

In cross-examination Mr Sunderland agreed that Sykes Gate Farm did not border on the Common. He drove his sheep directly on to the Common. If he were not a tenant of land owned by the Water Board his flock could get on to the Common from the highway. His claim to be entitled to graze his sheep on the Common had never been challenged.

Mr James Greenwood said that he was Secretary of the Freeholders of Langfield Common. The basis of Objection No. 1543 was that the claim was made in respect of a farm which was not on the list of farms owning gaits on the Common. His parents had lived at Sykes Gate Farm for many years before 1947. The farm was owned by the Fielding family of Todmorden, which also owned the land which is now owned by the Water Authority. His parents grazed about 80 sheep on High House Moor. There was no fence between Langfield Common and the Common Land purchased by the Yorkshire Water Authority's predecessor in title. There were no gaits attached to Sykes Gate Farm. The only way to keep Sunderland's sheep off the Common was to employ a full-time shepherd.

In cross-examination this witness said that he went to the Common by road twice a week.

Miss Panikkar referred to Halsbury's Laws of England (4th Ed) Vol. 6 at paras 592-3 and submitted in the absence of proof of user for at least 20 years a presumption could arise that there was a lost modern part. Mr Sunderland's user did not begin until 1955.

The Commoners had no power to make a grant.

Mr Wright for the applicants at Entry Nos. 38, 40 and 51 submitted that Mr Sunderland had not put his sheep on the Common directly but had allowed them to stray on to the Common from the land he now rented from the Water Authority.

Mr Sunderland has failed to prove user for more than 15 years and for only 12 years of that period was he grazing 100 sheep. In my view his claim is not made out.

For these reasons:-

1. I confirm the registration at Entry No. 1 in the Land Section subject to the exclusion of the land referred to in Objection No. 481.
2. I confirm all the registrations in the Rights Section except the registration at Entry No. 43 (now 49) confirmation of which is refused.



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

5th

day of

July

1983

Lennox Hexton

Commons Commissioner