



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/272
262/D/273
262/D/274
262/D/275In the Matter of Barton Fell,
Barton, Eden District, CumbriaDECISION

These disputes relate to the registrations at Entry Nos 5, 13, 18 and 19 in the Rights Section of Register Unit No. CL 58 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council and are occasioned by Objection Nos 2/131, 2/135, 2/138 and 2/139 made by Mrs Sylvia Mary McCosh and noted in the Register on 19 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 1 July 1980. At the hearing (1) Mr Henry Fergus Atkinson who as owner was sole applicant for the registration at Entry No. 18 and was one of the applicants for the registration at Entry No. 19, and his wife Mrs Euphemia Elizabeth Atkinson who was the other applicant for the said No. 19 registration, were represented by Mr P Kershaw, solicitor of Kershaws, Solicitors of Penrith; and (2) Mrs S M McCosh was represented by Mr M C Dutchman-Smith, solicitor of Little & Shepherd, Solicitors of Penrith.

The land ("the Unit Land") in this Register Unit contains (according to the Register) approximately 695 hectares (~~approximately~~ 1,712.4 acres). In the Rights Section there are 19 subsisting registrations of rights to graze ewes, hogs, cattle and horses attached to various farms of which, apart from Nos 5, 13, 18 and 19 with which I am now dealing, all have become (although Nos 9 and 16 ^{are} not on my copy of the Register expressly stated to be) final. I was told that Mrs McCosh is in the Ownership Section registered as owner of all the Unit Land, although it appears in some of the papers I have that Daleman Estates Trustees are or may be now the owners.

The registration at Entry No. 5 was made on the application of Mr John Rayson and is of a right attached to Roe Head Farm to graze (a) 200 ewes with their lambs, (b) 75 hogs, (c) 50 head of cattle with their calves and (d) 10 horses. The grounds of Objection to it (No. 2/131) are: "That the right claimed should comprise fewer animals namely ...".

Mr Dutchman-Smith produced a letter dated 26 June 1980 signed by Mr Rayson and addressed to me as Commons Commissioner in which he agreed to restrict his rights to 200 ewes, 20 cattle and 10 horses. Mr Dutchman-Smith said that the "lambs" and "calves" would remain on the register. I consider that I should give effect to this agreement, and accordingly I confirm this registration with the modification that (in column 4) "(b) 75 hogs" be deleted, and for "(c)" and "(d)" be substituted "(b)" and "(c)" respectively.

The registration at Entry No. 13 was made on the application of the Rt Hon James Hugh William 7th Earl of Lonsdale as owner and Messrs Thomas and James Robert Bousfield as tenants of Outgang. The grounds of Objection (No. 2/135) are: "That the right claimed



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does not exist". Mr Dutchman-Smith produced a letter dated 10 June 1980 from Lowther Estate Management Services in which they agreed to the exclusion of the Unit Land and rights attached to Outgang Farm. I also have a letter dated 11 June 1980 from these Services addressed to the Clerk of the Commons Commissioners to the same effect. From these letters and in the absence of any evidence in support of the registration from Messrs Bousfield or anyone else, I conclude that the registration should not have been made accordingly I refuse to confirm it.

The registration at Entry Nos 18 and 19 are of rights attached to Kirkbarrow and Barton Glebe Farm, being (No. 18) "to graze:- (a) 498 ewes with their followers or (b) 83 head of cattle with their followers"; and (No. 19) "To graze:- (a) 222 ewes with their followers or (b) 37 head of cattle and their followers".

Mr Kershaw and Mr Dutchman-Smith said that Messrs Atkinson and Mrs McCosh agreed that I should modify these registrations as below set out. I consider I can properly act on this agreement, and accordingly I confirm the registration at Entry No. 18 with the modification that (in column 4) for "498 ewes" be substituted "200 ewes", for "or (b)" be substituted "and (b)", and for "83 head of cattle" be substituted "20 head of cattle"; and I confirm the registration at Entry No. 19 with the modification that (in column 4) for "222 ewes" be substituted "150 ewes", for "or (b)" be substituted "and (b)", and for "37 head of cattle" be substituted "10 head of cattle".

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 21st — day of July — 1980

a. a. Baze Fuller

Commons Commissioner