



In the Matter of Knorren Fell, Walton,
Cumbria

DECISION

These disputes relate to the registrations at Entry Nos. 1 to 29 in the Rights Section of Register Units Nos. CL 27 and CL 28 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objection No. 5 made by the Walton Parish Council and Objection No. 75 made by Mr R C Sutcliffe and both noted in the Register on 2 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Carlisle on 27 March 1984. The hearing was attended by Mr A H B Holmes, Solicitor, on behalf of Mr W G Kyle, the applicant for the registrations at Entry Nos. 1 and 2, and Mr John Moore, the successor in title of Midland Bank Executor and Trustee Company Ltd, the applicant for the registration at Entry No. 6, and by Mr P W Pickles, Solicitor, on behalf of Mrs M R Summers, the applicant for the registration at Entry No. 3, and Mr H A Summers, one of the applicants for the registrations at Entry Nos. 4 and 20. Mr Sutcliffe, who was also the applicant for the registration at Entry No. 9, and the applicants for the registrations at Entry Nos. 5, 7, 15 to 19, and 21 to 27 or their successors in title appeared in person. There was no appearance by or on behalf of the applicants for the remaining registrations, and the Walton Parish Council was represented by Mr J S Walker, its Chairman.

The grounds of both the objections were that the total numbers of animals for which grazing rights were claimed exceeded the capacity of the land comprised in the Register Unit. Since the registrations at Entry Nos. 6, 8, 11, 15 and 16 do not include any grazing rights, I confirm those registrations without amendment.

The application for the registration at Entry No. 28 did not state the number of animals to be entered in the Register, as required by section 15(2) of the Commons Registration Act 1965, and I therefore refuse to confirm that registration.

I was informed that all the applicants who appeared or were represented at the hearing, with the exception of Mr Kyle, had agreed with the Parish Council that the numbers of animals in each registration should not exceed 3 cattle and 10 sheep. Mr Walker also informed me that the Parish Council was willing for the registrations applied for by applicants who were not present or represented at the hearing to be confirmed subject to the same reduction in each case. I therefore confirm all these registrations with the modifications necessary to give effect to the agreements.

This leaves for consideration the registrations applied for by Mr Kyle. In so far as these registrations relate to grazing rights, Entry No. 1 is to graze 150 cattle or 600 sheep attached to Spout Bank Farm and Hill House Farm and to graze 10 cattle or 40 sheep attached to Closes 529, 530 and 531 forming part of Hillhead Farm.

Spout Bank Farm, having an area of 163.484 ac., was acquired by Mr Kyle by a Conveyance made 9 June 1958 between (1) Cyril Thomas Hessel (2) William Goodfellow Kyle. The parcels of this conveyance include rights of common over the common



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land and Walton Moss and Wastes of the Manor of Walton.

Hill House Farm was purchased by Mr Kyle in two parts. He acquired 12.28 acres in 1959 by a Conveyance which did not mention any rights of common, though it would, of course, include by virtue of section 62 of the Law of Property Act 1925 any rights of common then attached to the land. Mr Kyle acquired the major part of Hill House Farm, having an area of 98.633 acres, by a Conveyance made 31 March 1964 between (1) Alan Thompson Caird (2) W G Kyle. This Conveyance included such rights of common on Walton Moss or the Wastes of the Manor of Walton as the vendor had.

Closes 529, 530, 531 having an area of 16ac. 2r. 34p., were acquired by Mr Kyle by a Conveyance made 18 January 1968 between (1) Robert Francis Moscrop (2) W G Kyle. The parcels of this Conveyance included rights of pasturage.

As already stated, the objections relate only to the numbers of animals of each class to be entered in the Register and are based upon the grazing capacity of the land. This, however, is not the measure of an unquantified right of pasture. In such a case the measure is not related to the servient tenement, but to the dominant tenement, being the number of animals which the dominant tenement can support through the winter or, as is more shortly expressed, the number of animals levant and couchant.

The only evidence regarding levancy and couchancy was that given by Mr Kyle himself. Mr Kyle, like most modern farmers, does not, however, conduct his farming operations on the now somewhat out-of-day principles underlying the legal measure of levancy and couchancy. In particular, Mr Kyle buys in cake for his ewes just before lambing, and he also buys cake for his cattle. He also buys 25 tons of hay and 15 to 20 tons of manure a year, and he takes about 100 ac. to 130ac. of summer grazing. Although Mr Kyle keeps 350 cattle and 600 sheep, he does not have more than 40 cattle and 350 sheep on the land comprised in the Register Unit at any one time. Doing the best that I can to resolve Mr Kyle's evidence into what one may term classical levancy and couchancy, I have come to the conclusion that the correct numbers of animals for Spout Bank Farm and Hill House Farm together are 100 cattle or 400 sheep and for Closes 529, 530 and 531 are 6 cattle or 24 sheep. I therefore confirm the registrations at Entry Nos. 1 and 2 with the appropriate modifications.

For these reasons I confirm the remaining registrations with the modifications set out in the Schedule hereto annexed.

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

9th

day of

April

1984

[Handwritten signature]

Chief Commons Commissioner



SCHEDULE OF MODIFICATIONS

- Entry No. 1 Substitute "100 cattle" for "150 cattle" and "400 sheep" for "600 sheep"
- Entry No. 2 Substitute "6 cattle" for "10 herd of cattle" and "20 sheep" for "40 sheep".
- Entry No. 3 Substitute "3 cattle" for "4 cattle"
- Entry No. 4 Substitute "3 cattle" for "10 herd of cattle" and "10 sheep" for "20 head of sheep"
- Entry No. 5 Substitute "3 cattle" for "40 cattle" and "10 sheep" for "100 sheep".
- Entry No. 7 Substitute "3 cattle" for "16 cattle" and "10 sheep" for "150 hogs".
- Entry No. 9 Substitute "3 cattle" for "25 animals" and "10 sheep" for "50 sheep"
- Entry No. 10 Substitute "3 cattle" for "8 cattle" and "10 sheep" for "100 sheep".
- Entry No. 12 Substitute "3 cattle" for "10 cattle" and "10 sheep" for "100 sheep".
- Entry No. 13 Substitute "3 cattle" for "6 cows with calves" and "10 sheep and" for "20 sheep"
- Entry No. 14 Substitute "3 cattle" for "12 cattle"
- Entry No. 17 Substitute "3 cattle" for "10 cattle"
- Entry No. 18 Substitute "3 cattle" for "20 cattle" and "10 sheep" for "30 sheep"
- Entry No. 20 Substitute "3 cattle" for "10 cattle" and "10 sheep" for "50 sheep"
- Entry No. 21 Substitute "3 cattle" for "10 cattle" and "10 sheep" for "40 sheep"
- Entry No. 22 Substitute "3 cattle" for "20 cattle" and "10 sheep" for "50 sheep".
- Entry No. 23 Substitute "3 cattle" for "4 cattle"
- Entry No. 24 Substitute "3 cattle" for "15 cattle" and "10 sheep" for "50 sheep"
- Entry No. 25 Substitute "3 cattle" for "15 cattle" and "10 sheep" for "50 sheep"
- Entry No. 26 Substitute "3 cattle" for "4 cattle".
- Entry No. 27 Substitute "3 cattle" for "6 cattle" and "10 sheep" for "20 Sheep"
- Entry No. 29 Substitute "3 cattle" for "6 cattle" and "10 sheep" for "20 sheep".