



In the Matter of Longdale Fell, Orton, Cumbria,

(No. 1)

DECISION

This dispute relates to the registrations at Entry Nos. 2-23, 25 and 29-31 in the Rights section of Register Unit No. CL 42 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by the conflicting registrations at Entry Nos. 26 and 27 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 23 April 1980. The hearing was attended by Mr T A Hodges, Solicitor, on behalf of Mr R T W Hewetson, the applicant for the registration at Entry No. 18, Mr J A Hesmondhalgh, Solicitor, on behalf of Mr J Bland, the applicant for the registration at Entry No. 26 and by Mr R A Sterling, of counsel, on behalf of Mr J Herd, the applicant for the registration at Entry No. 27. There was no appearance by or on behalf of any of the applicants for the other registrations.

The conflicts are caused by the registration at Entry No. 26 being of the sole right to graze ewes and hoggs over the part of the land comprised in the register unit called Hazelgill Knot and the registration at Entry No. 27 being of the exclusive right to graze sheep, hoggs, cattle and horses over the part of the land comprised in the register unit called The Grains.

Mr Hesmondhalgh informed me that the meaning of the references to grazing rights in Mr Bland's title deeds was unclear and that he was instructed to ask for the deletion of the word "sole" from the registration at Entry No. 26.

The case regarding the registration at Entry No. 27 is complicated by the fact that Mr Bland applied for the registration in the Ownership section of the register unit of himself as the owner of The Grains. Mr Bland's registration in the Ownership section was in conflict with a registration in that section applied for by the Earl of Lonsdale, but this conflict was resolved by agreement in Mr Bland's favour.

It is clearly impossible for both of Mr Bland's registrations to be confirmed, and Mr Sterling informed me that he was instructed to elect in favour of the registration in the Ownership section. Mr Sterling, however, argued that, although he was asking me to refuse to confirm the registration at Entry No. 27, he was entitled to ask me also to refuse to confirm the other registrations in so far as they related to rights over "The Grains".

Mr Bland made no objection to any of the other registrations, but Mr Sterling relied on the provision in reg. 7(1) of the Commons Commissioners Regulations 1971 that where there is conflict between two registrations, then for the purpose of sections 5(6), 6 and 7 of the Commons Registration Act 1965 and for the purposes of the Regulations each shall be treated as an objection to the other.

The effect of reg. 7(1) was that when the case was called on I had before me 104 objections occasioned by the registration at Entry No. 26 and another fifty-two occasioned by the registration at Entry No. 27. There were, however, appearances

i.e. fifty-two



in respect of only ~~four~~ of those objections. Therefore, my proper course was to refuse to give effect to the fifty objections made by the applicants for registrations for whom there was no appearance, so resolving 100 of the objections. This left me with four objections to consider, namely, the registration at Entry No. 18, which I had to treat as objections to the registrations at Entry Nos. 26 and 27, and the registrations at Entry Nos. 26 and 27, which I had to treat as objections to the registration at Entry No. 18. The two objections relating to the registration at Entry No. 26 were resolved by Mr Hesmondhalgh's request for the deletion of the word "sole" from that registration. I now have to consider Mr Sterling's submission with regard to the remaining two objections.

A registration which has to be treated as an objection under reg. 7(1) of the Regulations of 1971 differs from an actual objection made under S.5 of the Commons Registration Act 1965 in an important respect. An objection made under S.5 of the Act was required by reg. 5(1) of the Commons Registration (Objections and Maps) Regulations 1968 to be in Form 26, and Form 26 provided for the grounds of objection to be stated. The applicant for a registration to which another registration is to be treated as an objection has therefore no statement of the grounds on which his opponent relies. The only course open to him is to read the conflicting registration and see wherein the conflict lies. In effect, what the applicant for the conflicting registration is saying is: "I object to the registration for which you have applied because the registration for which I have applied is correct". When Mr Herd instructed Mr Sterling not to ask for the registration at Entry No. 27 to be confirmed he was admitting that that registration was not correct. If he had wished to contend that the registration at Entry No. 18 was bad for some other reason, he could have made an objection under S.5 of the Act, stating his grounds as required by Form 26.

In the absence of any such objection, Mr Hodges was led to believe that the only case which he had to meet was that arising out of the treatment of the registration at Entry No. 27 as an objection to the registration at Entry No. 18.

For these reasons I confirm the registration at Entry No. 18, and I confirm each of the other registrations with the following modification, namely, the insertion in column 4 of the words "other than the parts called Hazelgill Knott and The Grains" after the words "in this register unit".

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

June

1980

Chief Commons Commissioner