



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/280 to
285 inclusive

In the Matter of Martindale Common
including Beda Fell, Sleet Fell and
Place Fell, Martindale and Lakes Parishes,
Eden District, Cumbria

DECISION

These disputes relate to the registrations at Entry Nos 4, 5, 6, 9, 10 and 11 in the Rights Section of Register Unit No. CL2 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council and are occasioned by Objection Nos. 2/168, 2/169, 2/170, 2/171, 2/172 and 2/173 made by Mrs Sylvia Mary McCosh and noted in the Register on 13 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 2 July 1980. At the hearing (1) Mrs S M McCosh was represented by Mr M C Dutchman-Smith solicitor of Little & Shepherd, Solicitors of Penrith; and (2) S J Consultants Limited as successors of Fawnlees Estates Limited on whose application the registration at Entry No. 9 was made, were represented by Mr T M Arnison solicitor of Arnison & Co Solicitors of Penrith.

To the registration at Entry No. 9, the grounds of Objection are: "That the right does not exist". Mr Arnison on behalf of S J Consultants Limited conceded that the right (alleged to be attached to Waternook Farm) does not exist. Accordingly, and in the absence of any evidence in support of the right, I refuse to confirm the registration.

The registration at Entry No. 11, is of a right to graze:- (a) 500 ewes and their followers (to include shearlings) (b) 50 hogs (c) 12 head of cattle and followers; the registration was made on the application of Mr Wilson Bird. To this the grounds of Objection are: "That the right does not exist". Mr Dutchman-Smith produced a letter dated 6 March 1974 from Arnison & Co saying on behalf of Mr Bird (in effect) that he would claim grazing for 400 ewes instead of 500. Mr Dutchman-Smith said that Mrs McCosh is agreeable. Accordingly I confirm this registration with the modification that in column 4 for "500 ewes" be substituted "400 ewes".

The registration at Entry Nos. 4, 5 and 6 are of rights attached to Beckside Farm, Doe Green Farm and Bridge End Farm to graze 200 sheep, 400 sheep and 500 sheep respectively; the registrations were made on the application of Messrs R B Charlton, R F Walker and W G Mackey as owners. The grounds of Objection are: "That the rights should comprise fewer animals, 100 sheep, 200 sheep and 250 sheep respectively. Mr Dutchman-Smith produced a letter from Mr Roger Thompson who is the tenant of Town Head, Doe Green, Bridge End and Beckside farming them as one unit; he agreed to the withdrawal of Entry No. 4 it being a duplication of Entry No. 10 also relating to Beckside Farm, as to which (see below) and to the cancellation of Entry No. 5 in respect of Doe Green. Mr Dutchman-Smith explained that the agreement (perhaps not clearly expressed in the said statement) was that the registration at Entry Nos. 4 and 5 should be avoided in return for the Objection to the registration at Entry No. 6 being withdrawn. Accordingly and in the absence of any information or evidence



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relating to the validity or otherwise of these registrations, I refuse to confirm the registrations at Entry No. 4 and at Entry No. 5, and I confirm the registration at Entry No. 6 without any modification.

Registration at Entry No. 10 is of a right attached to Becksid Farm of a right to graze (a) 200 ewes and their followers (excluding their lambs) (b) 20 head of cattle and their followers and (c) 1 horse together with the right of estovers; the registration was made on the application of Miss J L Lockett "c/o G D Lockett Esq." The grounds of Objection are:- "That the rights should comprise fewer animals namely not more than 100 sheep". Mr Thompson in his said statement said in effect that this Entry should be amended to read "to graze 10 head of cattle with followers and 1 horse and a right of estover." Mr Dutchman-Smith produced a copy of a letter dated 28 June 1980 written by his firm to the solicitors of Mr and Mrs G D Lockett and their reply dated 30 June 1980; his firm's letter summarised the telephone conversation between Mr Dutchman-Smith and Mr Lockett in which Mr Lockett expressed his concern that his tenant Mr Thompson would have 900 sheep on this land, and Mr Dutchman-Smith explains that he would get this even if registration at Entry No. 10 included no sheep.

Although the documents produced by Mr Dutchman-Smith relating to Entry No. 10 are not very clear, I can I think properly conclude from them and from what he said, that Mr and Mrs G D Lockett either on behalf or as successors of Miss J L Lockett are agreeable to my modifying the registration as hereinafter set out: ~~although~~ ^{although} the modification in all its detail is not entirely agreed, ~~==~~ I consider that in the absence of any evidence in support of the registration, I can properly act on what was told to me at the hearing. Accordingly I confirm the registration at Entry No. 10 with the modification that in column 4 "200 ewes and their followers (including their lambs) (b)" be deleted and that for "(c)" be substituted "(b)".

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 22nd — day of July — 1980

a. a. Baines Fille

Commons Commissioner