



In the Matter of Murton Fell, Murton

DECISION

These disputes relate to the registration at a number of Entries in the Rights section of Register Unit No. CL 26 in the Register of Common Land maintained by the former Westmorland County Council and are occasioned by (1) Objections made by the Secretary of State for Defence, by Murton Commoners Association and by J H Beadle and G Wharton and Sons. (2) Conflicting registrations at Entries No. 42 and No. 51.

The Entries and Objections are as follows: I shall refer to the Secretary of State for Defence as "SSD" and Murton Commoners Association as "the Association".

<u>Entry No.</u>	<u>Objector</u>	<u>No. of Objection and date of noting in Register</u>	
3	Association	2/160	29/6/72
4	Association	2/160	29/6/72
5	Association	2/160	29/6/72
6	Association	2/160	29/6/72
7	Association	2/160	29/6/72
8	Association	2/160	29/6/72
9	Association	2/160	29/6/72
11	Association	2/161	29/6/72
14	(SSD	2/68	5/8/71
	(Association	2/109	13/6/72
15	(SSD	2/69	5/8/71
	(Association	2/150	13/6/72
16	(SSD	2/70	5/8/71
	(Association	2/150	13/6/72
22	(SSD	2/76	5/8/71
	(Association	2/150	13/6/72
23	(SSD	2/77	5/8/71
	(Association	2/150	13/6/72
28	SSD	2/82	5/8/71
37	(SSD	2/91	5/8/71
	(Association	2/150	13/6/72
42	(SSD	2/108	11/8/71
	(Association	2/150	13/6/72
	(G Wharton & Sons	2/149	23/5/72
43	Association	2/150	13/6/72
44	(SSD	2/109	11/8/71
	(Association	2/150	13/6/72
45	Association	2/161	29/6/72
47	(Association	2/161	29/6/72
	(J H Beadle	2/216	4/8/72
48	Association	2/161	29/6/72
49	(SSD	2/105	11/8/71
	(Association	2/150	13/6/72
51	Association	2/161	29/6/72
52	Association	2/150	13/6/72
53	(Association	2/161	29/6/72
	(J H Beadle	2/217	7/8/72



I held a hearing for the purpose of inquiring into the disputes at Penrith on 17 and 18 June 1980, with Mr A G Holliday as assessor. The hearing was attended by Mr T Etherton of Counsel appearing on behalf of the Secretary of State: by Miss B M Balmer the secretary of and representing the Commoners Association, and Mr J H Beadle a member of the Association: and a number of rights holders appeared or were represented.

- (1) Entry No. 4. The Objection was withdrawn and I confirm the registration.
- (2) Entries No. 14, 15, 16, 22, 23, 28, 37, 42, 43, 44, 49, 52. The Objections to these Entries were on the ground that the rights do not exist. Entry No. 28 has already been cancelled; in the case of Entry No. 22, Mr G Harker, Solicitor, appeared on behalf of the applicants and withdrew the claim to rights. As regards the remaining Entries there was no appearance of or on behalf of the rights holders, a number of whom had written to withdraw their applications. Accordingly I refuse to confirm the registration at all these Entries.
- (3) Entries No. 3, 5, 6, 7, 8, 11, 45, 47, 48, 51, 53. The Objections to these Entries related to the numbers of animals for which grazing rights are claimed. In the case of Entries No. 3 and No. 11, there was no appearance by the applicant and the Objection is upheld. In the case of Entries No. 6 and 8, Mr G A Slack (the applicant) appeared: the land to which the rights are attached had been sold and he did not oppose the Objections, and his successors in title did not appear. In the case of the remaining Entries, I should record that the following applicants attended the hearing, Mr J H Beadle (No. 5), Mr Walter Idle (No. 45), Mr G L Wharton (No. 51), Mr Elliott the successor to Mr W Parlour (No. 53) and that all applicants were represented in the case of Miss Chadwick (the successor to Evelyn Binks No. 7) by Mr D Mellor, Solicitor, in the case of No. 47 by Mr M S Birtles, Solicitor, and in the case of No. 45 by Mr G Harker, Solicitor. In all these cases modifications in the rights were agreed or accepted.

I shall accordingly confirm the registration of the Entries referred to in this paragraph with the appropriate modifications, which are set out in the Schedule below

The Schedule

Rights confirmed with modifications

<u>Entry No.</u>	<u>Modification in Column 4 of Rights Section</u>
3	For "50 sheep" substitute "44 ewes and followers"
5	For "25 sheep" substitute "(a) 10 ewes and followers and (b) 6 cattle"
6	For "50 sheep and 1 horse" substitute "20 ewes and followers"
7	For "(a) 10 sheep and (b) 1 horse" substitute "one horse and follower"
8	For "(a) 20 sheep and (b) 10 horses" substitute "(a) 6 ewes and followers (b), 1 cattle"
11	For "(a) 10 ewes" substitute "5 ewes" and delete "(b) 5 hogs and (c) 10 horses with their followers"
45	For "(a) 200 sheep and (b) 2 horses" substitute "(a) 190 ewes and followers and (b) 6 cattle"
47	For "(a) 2000 ewes/hogs with their followers (b) 60 head of cattle with their followers (c) 60 head of cattle with their followers and (c) 15 horses " substitute "(a) 1360 ewes and followers in the months of January to October (both inclusive) (b) 1060 ewes and followers in the months of November and December (c) 60 head of cattle in the months of November and December and (d) 4 horses"



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- 48 For "(a) 60 ewes/hoggs with their followers and (b) 15 horses with
their followers" substitute "24 ewes and followers"
51 For "(a) 120 ewes (b) 55 gimmer hoggs and (c) 2 horses" substitute
"(a) 160 ewes and followers (b) 6 cattle"
53 For "2000 sheep" substitute "1450 ewes and followers"

(4) Entry No. 9. This was registered on the application of Mr A B Hogg and is a right to graze 25 sheep and 5 horses, the right being claimed to be attached to three OS plots in Murton. In its Objection the Association said that the rights should comprise fewer animals and recommended 5 ewes and no horses. Giving evidence Mr Hogg said the OS plots were situated in Murton Village and about $1\frac{1}{2}$ acres in area and he had owned them for some 15 years. He had grazed 8 horses on average all the year round except in bad weather but had not grazed sheep: Mr Coulding the previous owner had grazed sheep. He himself lived in Murton, but his farm was not in that parish and he grazed sheep on Hilton Common.

The evidence in my opinion was insufficient to establish the right he had registered. It was clear that his primary interest was to establish a right to graze horses. Miss Balmer said that the Association considered the appropriate scale for grazing rights was 4 sheep per acre of land owned and that 1 horse was equivalent to 4 sheep: and that on this basis the Association was prepared to modify its objection to allow the grazing of 1 horse and follower. Mr Holliday is of opinion that having regard to the $1\frac{1}{2}$ acres owned by Mr Hogg the proper registration is of a right to graze 1 horse and follower: on the view (which I take) that Mr Hogg has not established the right he claims, I will confirm the registration but modified to a right to graze 1 horse and follower and no sheep.

The conflicting registrations which occasion a dispute are those at Entry No. 42 and Entry No. 51. Since the registration at Entry No. 42 is one of those which I refuse to confirm, the conflict will disappear, ~~and I am satisfied that the right is not confirmed.~~

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

28 July

1980

Commons Commissioner