



In the Matter of Side Fell, Askerton, Cumbria (No. 1)

DECISION

This dispute relates to the registrations at Entry Nos 1 to 6 in the Rights section of Register Unit No. CL 7 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by Objection No. 12 made by the Hon. Roger Eden and noted in the Register on 20 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Carlisle on 7 April 1981. The hearing was attended by Mr D J W Mawson, solicitor, on behalf of Mrs M E Wannop, the successor in title of Miss E J Kyle, one of the applicants for the registration at Entry No. 1, by Mr E S Bliss, solicitor, on behalf of Mr K A Foster, one of the applicants for the registration at Entry No. 3, Mr C N Owston, the successor in title of Mr J J Moscrop, the applicant for the registration at Entry No. 4, and Mr D Ferguson, the applicant for the registration at Entry No. 6, and by Mr P W Pickles, solicitor, on behalf of the Objector. There was no appearance by or on behalf of the other applicants for registrations.

The registrations relate to grazing rights, shooting rights, and rights of turbary. The Objection relates only to shooting rights, which are not rights of common, but Mr Pickles also asked me to refuse to confirm the registrations in so far as they relate to rights of turbary. In support of this application Mr Pickles relied on a provision in the Askerton Inclosure Act of 1802 (42 Geo. III, c.24 (private (not printed))) that it shall not be lawful to cut, dig, or carry away any turfs or sods in, upon, or from the moors, commons, and waste grounds of the manors in the parish upon pain of forfeiting to the lord of the manors such sum, not exceeding 39/- nor less than 5/- as shall be assessed at any court baron for the manor in which the offence shall be committed.

Since the Objection relates only to shooting rights, I shall not refuse to confirm the rights of turbary, even though their exercise may entitle the lord of the manor to an amerceiament under the Act of 1802.

The registration at Entry No. 4 is of grazing rights and shooting rights, but the application for the registration (No. 28) also included peat rights. The omission of the peat rights was clearly a merely clerical one, but it appears to be one which cannot be corrected under reg. 36 of the Commons Registration (General) Regulations 1966 (S.I. 1966 No. 1471), but since the rights of turbary in the other registrations were not the subject of the Objection, I shall confirm the registration with the addition necessary to correct the omission.

For these reasons I confirm the registrations with the following modifications; namely, the deletion of the references to shooting rights and the addition to Entry No. 4 of a right to take peat.

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.

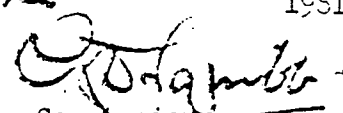
Dated this

28th

day of

April

1981


 Chief Commons Commissioner