



COMMONS REGISTRATION ACT 1965

Reference Nos. 262/D/4
262/D/5
262/D/6
262/D/7

In the Matters of Tenants Meadow,
Duddon, South LakelandD., Cumbria

DECISION

These four disputes relate to the registrations (D/4) at Entry No. 1 in the Land Section and (D/5) at Entry Nos. 1 to 5 inclusive in the Rights Section of Register Unit No. CL.243 in the Register of Common Land maintained by the Cumbria County Council and to the registrations (D/6) at Entry No. 1 in the Land Section and (D/7) at Entry Nos. 1 to 4 inclusive in the Rights Section of Register Unit No. CL.244 in the said Register and are occasioned by (D/4 & D/5) Objection No. 175 and (D/6 & D/7) Objection No. 176 made by Mrs. Frances Amelia Holloway and noted in the Register on 6 May 1971.

I held a hearing for the purpose of inquiring into these disputes at Kendal on 4 March 1973. At the hearing Mr. E. Satterthwaite, solicitor of Thomas Butler & Son, Solicitors of Broughton-in-Furness represented the following persons :- (1) Mr. John Martin Gott, (2) Mr. Albert Hatton, (3) Mrs. Dora Tyson and Mr. Edward Tyson, (4) Mrs. Ann Huddleston Fell and Mrs. Mary Knowles, and (5) Mr. Joseph Martindale Harrison. The said Entries in the Rights Section were made on the application of those represented by Mr. Satterthwaite or their predecessors as mentioned below.

The lands comprised in these two Register Units, because the rights of common over them are in most respects identical, can be considered together as one piece of land. This piece contains about 15 acres and is known as Tenants Meadow. As regards the rights of common, it must be treated as divided into eleven pieces or dales, the registered rights of common over which are attached to 3, 1, 2, 3 and 2 dales, being rights to graze over the other dales between 12 August and 31 December animals as specified in the Register.

Both objections are to the Entries in the Land Section and in the Rights Section and the grounds are therein stated as :- "ENTTAILED LAND LEFT BY Col. John Moore in his will 1649 for his descendants on leases of 300 years DIED 1650 in Ireland".

Mr. Satterthwaite in the course of his evidence produced epitomes of the title of :- (1) Mr. J.M. Gott (as successor under a conveyance dated 11 September 1965 to G. Walker who died 6 July 1962) to 2 dales in Tenants Meadow; (2) Mr. J.M. Harrison (as successor under a conveyance dated 15 November 1943 of W. Casson) to 2 dales in Tenants Meadow; (3) Mrs. D. and Mr. E. Tyson (personal representatives of Mr. Fred. Tyson who died on 6 August 1973) under a conveyance dated 7 February 1947 to the Blacksmiths Arms and a "dale formerly two dales" in Tenants Meadow; (4) Mrs. M. Knowl (as successor of Mrs. A.H. Fell and Mrs. E.M. Clark the personal representatives of J.Fell who died on 24 March 1966) under a conveyance dated 28 November 1906 (made



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to R. Fell and T.S. Fell) to Croglinhurst and other lands including "Seventhly ... customary dale ... in Tenants Meadow"; and (5) Mr. A. Hatton (as successor under a conveyance dated 12 July 1955 of E. Randall and E.H. Randall) to Knott End Farm and other lands including an "unfenced dale ... in ... Tenants Meadow". Mr. Satterthwaite said (in effect) :- Tenants Meadow is fairly good agricultural land from which you can get a crop and which can after the crop has been taken, be grazed.

Mr. Gott in the course of his evidence produced a paper which his father (he died in May 1963) had held for many years recording "A Meeting of Dale holders of Tenants Meadow held at the Blacksmiths Arms, Broughton Mills on January 16, 1900", to which was attached a list of the "Meadow Lookers" from 1900 to 1908 and of the "Stands of Fog in Tenants Meadow" for the years 1900 and 1901. The paper recorded that at the meeting it was unanimously resolved to adopt the following rules:- "(1) That each dale holder keep in repair the meir stones at the low side of their dale ... and to have them standing well up out of the grass so that they can be seen when cutting. (2) That the meadow be not eaten after January 1st each year. (3) If weather be suitable to start cutting grass on July 1st all cattle to be in the Meadow not later than 10 a.m. not before 7 a.m. on 12th August be taken out on the 26th August and put in on the 9th September between the hours of 7 and 10 a.m. (4) That the Meadow Looker be at the gate between the hours of 7 and 10 a.m. on August 12. and September 9 to see that each dale holder puts his rights stands in $\frac{1}{2}$ stands to be ruled by teeth and not by age (in any dispute) the Meadow Looker to see also that all fences be kept good and to give notice to owners where fence wants repairing. Mr. Gott said (in effect) :- He did not know the origin of the arrangements by which Tenants Meadow was grazed in this way, but he understood from his father that it had been going on a very long time. "Fog" is the growth of grass after the hay crop had been cut. He explained how he understood "stands of fog" mentioned in the paper in 1900 and 1901 (they apparently then numbered 21) were apportioned (there being half stands) between 10 pieces of land.

The objector, Mrs. F.A. Holloway has, about this case, written three letters, received at the office of the Commons Commissioners in November 1974, January and February 1975. These letters contain no information which I could properly regard as supporting grounds set out in her objection. In the absence of any evidence of these grounds, I conclude that they are without any foundation.

Mr. Satterthwaite at the beginning of the hearing said (in effect) :- That the substance of the matter is that this field is owned by five people but so that there is no physical boundary between the parts they each own and so that each has the right to graze cattle over the whole field at certain times of the year. He contended that it was never intended that the 1965 Act should apply to land so held. The registration he said had been made at the suggestion of the County Council that the field was common land. The epitomes of title show that each part had been dealt with quite separately, and that I should, therefore, treat the registrations as invalid, with the result that if there was any difficulty the position could be conveniently determined by the County Court.

By section 22 (1) of the 1965 Act, common land is defined as meaning "(a) land subject to rights of common ... whether those rights are exercisable at all times or during limited periods ... ". In my view these words show that land subject to rights such



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as have been registered in this case is within the intention of the 1965 Act. I am I think concerned in this view by the marginal note against part 5 of the Form of Application for registration of a right of common scheduled to the Commons Registration (General) Regulations 1966 and by Halsbury Laws of England (4th edition volume 6) paragraph 517 which deals with Lammas Lands, meaning lands over which rights of common are exercisable after Lammas or (as in this case) old Lammas Day.

The epitomes of title include conveyances by which the parts of this field are (as stated by Mr. Satterthwaite) conveyed by a form of words commonly used for a conveyance of a distinct piece. But the parts are in each case referred to as a "dale", a word which according to the Oxford English Dictionary properly described ~~as~~ a share of common field or portion of an undivided field indicated by marks but not divided off. Such a field of necessity cannot be grazed otherwise than in common in some such way as is described in the paper produced by Mr. Gott.

In my opinion the registrations were properly made. If Mrs. Holloway had not made her objection, ~~it~~ would have become final without any hearing before a Commons Commissioner. I ought not, I think, because there happens to be an objection, ~~to~~ give effect to it merely because those who made the registrations would now like them cancelled regardless of the fact that I consider the grounds ~~being~~ the objection ~~to~~ be without any foundation.

Mr. Gott pointed out that the numbers set out in the register do not correspond with those apparently current (according to his paper) in 1900. However no suggestion was made at the hearing about these numbers, and not having been asked to do so I ~~decline~~ ~~to~~ modify the registrations in this respect.

For the reasons set out above I confirm the registrations without any modification.

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 dated 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 11/12 ———

day of April ——— 1975

A. A. Baden Fuller

Commons Commissioner