



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/288

In the Matter of Thorny Bank, Orton,
Eden District, Cumbria

DECISION

This dispute relates to the registration at Entry No. 1 in the Rights Section of Register Unit No. CL 14 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council and is occasioned by Objection No. 2/133 made by Crosby Ravensworth Commoners' Committee and noted in the Register on 17 November 1971.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 2 July 1980. The hearing was not attended by any person entitled to be heard.

The land in this Register Unit is south of and adjoins Birkbeck Fells Common, and is approximately triangular with sides of about 320, 910 and 940 yards. The registration now under consideration was made on the application of Mr Roy Wilson and is of a right attached to Eskew Head Farm, Tebay: "To graze:- (a) 160 sheep and (b) 27 head of cattle with the rights of turbary and estovers over the whole of the land comprised in this register unit, together with the whole of the land comprised in register units numbered CL 9, CL 10, CL 20 and CL 103". Additionally there is one other registration being No. 2 made on the application of Mr William Thwaites of a right attached to land in the register described by reference to OS plot numbers: "To graze:- (a) 60 sheep with their followers or (b) 12 head of cattle over the whole of the land comprised in this register unit"; although my copy of the Register is not clear, I assume that this registration (as is likely there having been no objection to it) has become final.

I need not consider the grounds of the objection because I have a letter dated 23 June 1980 to the Clerk of the Commons Commissioners by Mr Relph as Hon Secretary of the Crosby Ravensworth Commoners' Committee recording that they are prepared to withdraw the objection in view of the agreement attached. This agreement signed by Mr Thwaites and Mr Wilson is to the effect: (1) Thorny Bank is a stinted pasture with 18 stints; (2) they are the only two stint holders ~~holding~~ ^{owning} ~~the~~ ^{land} below ~~the~~ ^{land}; (3) a stint is a right to depasture either 5 ewes with their unweaned lambs or one head of cattle. The appended list shows Mr Thwaites entitled to stints of 2, 1, 5 and 8 attached to four named farms (total 16 stints) and Mr Wilson entitled to two stints one attached to Winster and the other to High Eskew Head (total 2 stints).

I can't give effect to the said agreement exactly because it contemplates that the registration at Entry No. 2 made by Mr Thwaites shall be amended and I because such registration has become final have no jurisdiction to amend it. Also I am in some difficulty because I do not know whether Mr Thwaites' 4 farms are all, or only some of them included in the OS plot numbers ^{appearing} ~~in~~ ^{at} his registration, and I do not know whether Winster is included in the OS numbers in the register used to describe High Eskew Head. Being constrained to leave the registration at Entry No. 2 unaltered, the best I can do is to assume that because the word "stints" is not



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used at Entry No. 2, it does not matter if it is not used at Entry No. 1;
(b) that no importance is attached to the difference if any between "followers"
and "unweaned lambs"; and (c) provided that the resulting rights are as between
Mr Thwaites and Mr Wilson attached to some land they own it matters not whether ~~land~~
lands ~~is~~ exactly as they have agreed. As to (c), I draw attention to section 13 of
the 1965 Act and to paragraph 29 of the Commons Registration (General) Regulations
1966 under which the circumstances there set out amendments may be made to
registered rights. For the above reasons I give no decision about the registration
at Entry No. 2, and I confirm the registration at Entry No. 1 with the following
modifications:- in column 5 at the beginning insert "(1)" before "Eskew Head" and
at the end insert "(2) OS plots numbered 1647 etc. as set out in this column at
Entry No. 2 below"; and in column 4 for all the existing words substitute:-
"(1) To graze:- (a) 10 sheep with their followers or (b) 2 head of cattle with
rights of turbarry and estovers over the whole of the land comprised in this
register unit, such right of grazing, turbarry and estovers being attached to the
land described in paragraph (1) of column 5; and (2) To graze:- (a) 20 sheep
with their followers or (b) 12 head of cattle over the whole of the land comprised
in this register unit, ~~such~~ right being attached to the land described in
paragraph (2) of column 5 and to be additional to the right registered at Entry
No. 2.

In case Mr Thwaites, Mr Wilson and/or Mr Relph can think of some better way of
overcoming the difficulty of giving effect to their agreement resulting from the
matters above mentioned I give to any of them liberty ~~to~~ within 6 weeks from the
date on which notice of this decision is sent to them to apply to me to make some alter-
ation in this decision which will better provide for what they have agreed. ~~By~~ such ~~any~~
application should in the first instance be made by letter to the Clerk of the
Commons Commissioners.

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 21st — day of July — 1980

a. a. Baden Fuller

Commons Commissioner