



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/276

In the Matter of Wharton Fell,  
Wharton, Eden District, Cumbria

DECISION

This dispute relates to the registration at Entry No. 10 in the Rights Section of Register Unit No. CL44 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council and is occasioned by Objection No. 2/26 made by Mr Michael Theodore Metcalfe-Gibson and noted in the Register on 17 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 1 July 1980. At the hearing (1) Mr M T Metcalfe-Gibson was represented by Mr A M Fell solicitor associate of Fell Kilvington & Co, Solicitors of Kirkby Stephen; and (2) Mr Keith Chippendale of Wharton Hall, Kirkby Stephen was present in person and was also represented by Mr A M Fell.

The land in this Register Unit is from north to south a little under  $3\frac{1}{2}$  miles long and has a variable width of nowhere more than about  $\frac{1}{2}$  a mile. In the Rights Section there are 12 registrations of rights of grazing including in some cases estovers; all except that at Entry No. 10 now under consideration being undisputed has become final. In the Ownership Section Mr Metcalfe-Gibson is finally registered as owner of all the land. The registration at Entry No. 10 was made on the application of Mrs Elizabeth Jane Tuer, and is of a right attached to Low House Farm to "graze:- (a) 130 ewes with their unweaned lambs (b) 50 hogs (c) 50 horses with foals at foot and (d) 20 head of cattle".

Mr Fell said that Mr Chippendale had become the owner of Low House Farm and he and Mr Metcalfe-Gibson after negotiation had agreed that the registration be modified as hereinafter provided. Mr Fell produced a letter dated 30 July 1973 written to the County Council by Hallam Scorer & Co, Solicitors of Kirkby Stephen (his firm at that time) setting out the agreement.

I consider I can properly act on the agreement, and accordingly I confirm the registration with the modification that in column 4 for the words: "50 horses with foals at foot and (d) 20 head of cattle" be substituted the words: "20 head of cattle and their followers or the equivalent number of sheep and their followers on the basis of 5 sheep is equivalent to 1 cow".

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 22<sup>nd</sup> — day of July — 1980

*a. a. Baker-Jones*

Commons Commissioner