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COMMONS REGISTRATION ACT 1965

Reference No. 268/D/375

In the Matter of Burnsall and Thorpe Fell
in the parish of Thorpe and Burnsall

DECISION

This dispute relates to the registration at Entry Nos 1,2,3,4,5,8,9,13,14,15,16,23 and 27 in the Rights Section of Register Unit No. CL.213 in the Register of Common Land maintained by the North Yorkshire County Council and is occasioned by Objection No. 429 made by the Trustees of the Chatsworth Estate and noted in the Register on 18 February 1971.

I held a hearing for the purpose of inquiring into the dispute at Skipton on 13 May 1981. The hearing was attended by Mr W Foster of Messrs. Walker Charles Worth and Foster, Solicitors of Skipton who appeared for the applicants at Entry Nos 1, 3, 4, 5, 8, 9, 14, 15 and 23. Mr J G H Mackrell of Messrs. Wright and Wright Solicitors of Keighley who appeared for the applicants at Entry Nos 2 and 16 and Miss G J Maude of Messrs. Turner and Wall Solicitors of Keighley who appeared for the applicant at Entry No 27. Mr & Mrs W C Auderton the applicants at Entry No. 13 appeared in person. Mr J P Mewies of J P Mewies & Co., Solicitors of Skipton appeared for the objectors.

The grounds of the objection were that the sheep grazing rights claimed should comprise fewer animals.

Mr Mewies said that the number of sheep for which grazing rights had been claimed was 1621 and the Trustees case was that the maximum the Fell could support was 450.

As their evidence showed the applicants had fixed their respective claims by reference to the number of sheep which could be maintained throughout the winter on the in-by land of the respective dominant tenements. They did not necessarily claim the maximum number of sheep which such a basis would justify, but in no case did the claim exceed such maximum.

One applicant Mr J W Stockdale was prepared to reduce his claim at Entry No 2 from 195 to 130 sheep.

In support of their case the applicants relied on the evidence of Mr Frederick Medwyn Lyster a qualified Chartered Surveyor who had been in practice in the area for 29 years and who claimed to be familiar with the Moor and to have inspected the properties of nearly all the individual applicants.

Mr Lyster said that the Fell consisted mainly of heather and grass with some areas of bracken mostly on the side facing north. There were some areas with outcrops of rock but no significant area covered with bracken or cowberry.

In his view the stocking rate was 1-1½ acre per sheep. 900-1400 sheep was in his view a reasonable figure for stocking.

In recent years the Fell had not been used as well as it could have been. Stocking to capacity was necessary to maintain the fertility of the Fell. He thought the Fell was being undergrazed at the present and could take 50% more stock with advantage. An ~~expressed~~ reduction in the number of stock grazing the Fell would have an detrimental effect on the Fell. A limit of 450 sheep was extremely low and not realistic.

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In cross-examination the witness said that Barden Moor was wetter and had more bracken than the Fell and the owner of Barden Moor owned the farms with grazing rights over his moor. Over-grazing of heather may prejudice the number of grouse. More heather is produced by burning. He accepted that there were 200 acres of bracken and crowberry on the Fell.

Evidence for the objectors was given by:-

1. Mr Peter North F R I C S a partner in the firm of Dacre, Son and Hartley of Otley who had been in practice for 20 years. He had made a particular examination of the Fell for the hearing and in his view the proper stocking rate was 2½ acres per sheep. He managed a comparable Moor, Heyshaw Moor in Nidderdale where the stocking rate was 3 acres per sheep, though the grazing was not as good as the grazing on Burnsall Moor. He disagreed with Mr Lyster's figures of 900-1400. At that rate the heather would die off quickly.

The Fell was made up of:

Heather & Bilberry	715 acres
Grass	200 "
Crowberry	110 "
Bracken	93 "

which meant that there were just over 900 acres capable of being eaten by sheep. The sheep on the Fell were not shepherded and did not therefore spread about the whole area.

In cross-examination the witness said that he had managed other moors and in his firm he was the partner responsible for moor management. Heyshaw Moor was largely bracken. To improve the Fell he would eradicate the bracken with spray. Eradicating crowberry was more difficult. Improvement would increase the stock-carrying capacity of the Fell. He would expect the pasture to improve if the number of sheep grazing the Fell were limited to 440. He had examined the Fell for the first time about two weeks ago.

It was in the interest of the owners of the sporting rights over the Fell to have the right number of sheep on it. On Dallow Gill the correct allowance was 2 acres per sheep and on Carlton Moor 3 acres per sheep. His experience was that excess stocking might make the Fell useless for any purpose.

2. John Michael Sheard gave evidence in accordance with his written proof a copy of which is annexed to this decision.

In cross-examination he admitted that there had been no spraying to control bracken. Mr Mewies submitted that the time limit of the number of sheep which should be allowed to graze the Fell was the capacity of the Fell and the capacity of the in-by land of an applicant was irrelevant. The owners' interest in the Fell was grouse-shooting. Mr Foster and the other two solicitors appearing for the applicants submitted that the time limit was the number of sheep which an applicant's in-by land would support.

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Mr Sheard made two allegations in his proof which require comment. First the allegation in the fifth paragraph of page 1 of his proof that Estate Farms which exercise unstinted sheep rights on the objector's moors are limited to a reasonable number of sheep and a figure of what is reasonable is stated in the Tenancy Agreement is, in my view, strong evidence in favour of the applicants because the inference is that without such express limits the applicants' rights to graze would be limited by the capacity of their in-by land. Secondly although he stated on page 2 that in the last few years there had never been more than 300 sheep on the Fell, no attempt was made to support this figure by challenging the evidence of the applicants that the number of sheep grazed on the Fell was far in excess of 300.

I would also ~~assume~~ Assume that no objection was made to the claim at Entry No 6 to graze 90 sheep amounting to 30% of the alleged limit of 300.

In my judgment, the applicants have satisfied me (accepting in the case at Entry No 2 the reduced figure of 130) that in each case the claims put forward are within the limits of what each applicant's available in-by land would support.

This leaves only the question whether this or the capacity of the servient land is the true measure of the limit of grazing permitted. In principle one would expect that the limit of a right of profit would be related to the requirements of the dominant tenement rather thatn to those of the servient tenement. This view is supported by the authorities. see Halsbury's Laws of England 4th ed. vol VI para 551, Harris & Ryan Law Relating to Common Land at pp 63-4, and Williams on Rights of Common at p 31 et seq.

For these reasons I confirm the registration with the following modification: namely, the substitution of the figure of 130 for 195 in Entry No. 2.

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 23rd day of June 1981

George Herbert

Commons Commissioner

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