



In the Matter of Commondale Moor, Commondale,  
North Yorkshire (No. 2)

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DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 190 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No. 0205 made by Lord Guisborough and noted in the Register on 6 March 1970.

I held a hearing for the purpose of inquiring into the dispute at Whitby on 27 May 1977. The hearing was attended by Mr H D Riley, the applicant for the registration, and by Mr J J Todd, solicitor, on behalf of the Objector.

Mr Riley sought to support the registration on the ground that the land comprised in the Register Unit fell within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being subject to rights of common. He relied upon the registrations at Entry Nos 2, 3, and 4 in the Rights section of the Register Unit. The registration at Entry No. 4 was made by Mr Riley in respect of rights to cut and take away bracken and to graze cattle. For the reasons given in my decision in In the Matter of Commondale Moor, Commondale (No. 1) (1977), Ref. Nos 268/D/271 - 274 I am not satisfied that there are any such rights as those registered at Entry No. 4

The registration at Entry No. 2 was made on the application of the late Mr J W Muir in respect of rights claimed to be attached to a property known as Fowle Green, and the registration at Entry No. 3 was made on the application of Mr G Robinson in respect of rights claimed to be attached to Skelderskew Farm. Before the hearing the solicitors for Mr Muir's executors informed the Clerk of the Commons Commissioners by letter that they "withdrew" the application, and Mr Robinson's solicitors sent a similar intimation regarding his registration. Mr Riley contended that he was entitled to rely upon these registrations, notwithstanding the "withdrawals".

Mr Riley argued that I ought to ignore the "withdrawals" and found my decision upon the facts as they were on 28 June 1968, when the registrations on which he relied were entered in the Register. It is, however, clear that my duty is to have regard to the facts at the date of the hearing: see per Goff J. (as he then was) in Central Electricity Generating Board v. Clwyd County Council [1976] 1 W.L.R.151, at p.156.

Mr Riley next took the point that the registration at Entry No. 2 had become final because there had been no objection to it. There was no specific objection to this registration, although there was one to the registration at Entry No. 3. The Objector's reason for objecting to one of the two registrations is not apparent. It was in fact an unnecessary step, for he had objected to the registration the subject of this dispute, and the objection to this registration had effect by virtue of section 5(7) of the Commons Registration Act 1965 as an objection to the registrations in the Rights section of the Register Unit. There can therefore be no doubt that the registration at Entry No. 2 had not become final at the date of the hearing.



Mr Riley was right in saying that the "withdrawals" had no legal effect. It would therefore have been open to him as a matter of law to prove that the rights registered at either Entry No. 2 or Entry No. 3 were in existence at the date of the hearing. It appeared that there was a right of common of pasture attached to both Fowle Green and Skelderskew Farm in 1893. There was, however, no evidence that any such right was still in existence at the date of the hearing. It would appear that neither Mr Muir's executors nor Mr Robinson, who were the persons in the best position to know, considered that there was any subsisting right. The rights existing in 1893 may have been abandoned many years ago or they may have been extinguished by agreement with the owner of the land comprised in the Register Unit, with or without valuable consideration, immediately before the hearing. This is a matter upon which it is idle to speculate. The onus was on Mr Riley to establish the existence of a right at the date of the hearing. That was an onus which he could not discharge without the co-operation of at least one of the owners of the alleged dominant tenements, for they alone knew the position at the date of the hearing.

For this reason I refuse to confirm the registration.

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 4th day of July 1977

CHIEF COMMONS COMMISSIONER