



In the Matter of Tracts of Land, Appleton le Moors, Lastingham,
Hutton le Hole, Spaunton, and Rosedale West, North Yorkshire
(No 2)

DECISION

These disputes relate to the registrations at Entry Nos 1 to 162 in the Rights section of Register Unit No. CL 162 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and are occasioned by Objection No. 0278 made by Mr L C Garside, Objection Nos 0293, 0295, and 0298 made by Mr J H Holt, and Objection No. 0212 made by Mr G W Darley and all noted in the Register on 16 November 1970.

The Objections made by Mr Garside and Mr Holt related to small areas of land which on investigation were found not to be comprised in the Register Unit. It will therefore only be necessary to consider the Objection made by Mr Darley.

I held a hearing for the purpose of inquiring into the dispute at Malton on 22, 23, and 24 May, on 22, 24, and 25 October, and 6, 7, and 8 November 1979. The hearing was attended by Mr Peter Collier, of counsel, Mr A R Iakin, Miss Norgate, Mr G F A Neway, Mr P J Lawrence, and Mr P M White, solicitors on behalf of a number of applicants, and by Mr Timothy Hartley, of counsel, on behalf of Mr Darley who was also the applicant for several registrations. Other applicants appeared in person.

There was no appearance by or on behalf of the applicants for the registrations at Entry Nos 32, 39, 49, 58, 59, 60, 64, 68, 74, 75, 77, 83, 85, 88, 89, 95, 97, 104, 109, 110, 131, and 162. In the absence of any evidence I refuse to confirm these registrations. I also refuse to confirm the registrations at Entry Nos 46, 133, 134, 135, 141, 142, 143, 144, 147, 155 and 159. These registrations were made on the application of Mr Darley, but since Mr Darley is the owner of the land comprised in the Register Unit, any rights which may have been attached to Mr Darley's other property in the past have been extinguished by unity of ownership and possession.

Although situate in five parishes, the land comprised in the Register Unit (hereafter referred to as Spaunton Moor) consists of the waste land of the the manor of Spaunton, of which manor Mr Darley is now the lord. The basis of the registrations in respect of which I heard evidence was a document entitled "Schedule of Owners of Property within the Manor shewing the Common Rights of Stray and Turbary attached to the respective Properties". This Schedule was prepared by Committees of the Jury of the Manor of Spaunton Court Leet and Court Baron with View of Frankpledge appointed for that purpose at a court held on 17 October 1907. A copy of the Schedule was sent to all owners of houses or buildings in the manor, with notice of a special court to be held on 27 July 1908 to consider the Schedule and deal with any objection to the list. At the special court, after numerous objections had been disposed of and the Schedule revised and altered, the Schedule was approved by the Jury, subject to certain claims which were adjourned. The adjourned cases, with others in which further evidence was submitted, were further considered and disposed of at the annual court held on 15 October 1908, when the Schedule was finally approved of by the Jury. It appears from the Schedule that there were 348 claims, of which 179 were allowed.



The Schedule sets out the situation of the houses and buildings to which rights of common were attached, stating in each case whether the right was one of stray or turf or both. The situation of each house and building is identified by a reference to the appropriate sheet of the 25-inch Ordnance Map. Most of the houses and buildings are described as "farm house", "house" or "cottage", but there is no indication of what, if any, land went with each. There is no indication of the numbers or classes of animals which those entitled to a right of stray could turn out, but the commoners' rights were further defined by the presentment of the Jury at the Annual Court held on 15 October 1914, when it was declared that by the custom of the manor owners of common rights were entitled to take stone, gravel, sand, bracken, and whins off the waste lands for use on their own property in the manor. With one exception, to which reference will be made later, the houses and buildings in respect of which I heard evidence can be identified with houses and buildings in the Schedule.

Despite its lack of precision, the 1908 Schedule has been treated as a "Bible" of common rights within the manor. Until the passing of the Commons Registration Act 1965 there was no trouble over grazing rights between the lord of the manor and the commoners. The reason for this was that only fourteen of the commoners were known to be actually exercising their grazing rights and the maximum number of grown sheep on the Moor at any one time was well within its stocking capacity. I was informed that the commoners had always assumed that there was no limit to their rights on Spaunton Moor and that they had unlimited and therefore equal grazing rights. The control and management of the common rights has remained with the Court Leet and Court Baron with View of Frankpledge, and is business which may still be transacted by the Court by virtue of Part III of Schedule 4 to the Administration of Justice Act 1977.

This happy state of affairs was brought to an end by the requirement of s.15 (1) of the Commons Registration Act 1965 that where a right of common consists of or includes a right, not limited by number, to graze animals or animals of any class, it shall for the purposes of registration under the Act be treated as exercisable in relation to no more animals or animals of that class, than a limited number. As required by s.15(2) of the Act, each applicant stated in his application the number of animals to be entered in the Register or the numbers of animals of different classes. Mr Darley's Objection alleges (inter alia) that each of the rights as claimed is excessive.

While s.15 of the Act of 1965 provides for the entry of numbers of animals in the Register, it does not provide any guidance as to the manner in which disputes relating to such numbers are to be resolved. All that can be said is that, since the Act provides for the registration of existing rights of common, it is not for me to decide what is fair and reasonable, but to endeavour to ascertain what numbers and classes of animals the commoners can turn out on the Moor as of right.

Mr Larkin argued that there was equality of rights among all commoners and that I ought therefore to confirm their rights on this basis, so that matters could continue in the future as they had done so satisfactorily in the past. This approach to the problem is not without its attractiveness, but it does not provide an answer to the question of the number of animals which each commoner can graze. Mr Larkin invited me to accept 400 sheep gaits, or such smaller number as may have been applied for, as the appropriate quantification, but there is no basis for this beyond the fact that this was the quantification adopted by the applicants after a number of meetings at which it proved impossible to find a basis acceptable to all the commoners and the lord of the manor.



Mr Hartley, on the other hand, argued that the only method of quantification known to the law is that based on what is known as levancy and couchancy, and Mr Collier accepted this so far as his client was concerned.

I find myself unable to construe s.15 of the Act of 1965 in any other way than as a requirement to measure the right by reference to levancy and couchancy. The manner in which this is to be done was described by Lush J. in Lascelles v Lord Onslow (1877), 2Q.B.D. 433, at p.449, as follows:-

"The right to turn out is measured by the capacity of the commonable tenement to maintain; it is to turn out as many commonable beasts as the winter eatage of the tenement together with the hay and other produce obtained from it during the summer is capable of maintaining".

It is not without interest to observe that the belief that all the commoners have equal rights to turn out an unlimited number of animals onto the Moor is of comparatively recent origin, for in Darley v. Lythe in the Malton County Court in 1890 Judge Bedwell granted an injunction restraining the defendant from stocking Spaunton Moor with any livestock other than livestock levant and couchant on his holding at Hutton le Hole, and that in Darley v Todd in the same court in 1902 Mr John Petch, the steward of the manor of Spaunton said in the course of his evidence:-

"The rule of levancy and couchancy prevails - that is, the land must be capable of maintaining during the winter the stock that is put on it /i.e. the Moor/ in summer".

Being satisfied that the applicants' rights must be measured by reference to levancy and couchancy, I turn to the question of how that operation is to be performed. On this I heard conflicting evidence.

Mr Holt, one of the applicants, is a Fellow of the Royal Institution of Chartered Surveyors and has acted as managing agent of the Ravenswick Estate, which lies to the south-west of Spaunton Moor. He gave evidence that the correct way in which to measure levancy and couchancy in this part of Yorkshire was on the basis of $2\frac{1}{2}$ sheep per acre of in-bye land. Mr Holt's evidence was supported by that of Mr Ronald Foster, who is a farmer on the neighbouring Milburn Estate and represents a part of Northern England on the National Farmers Union Central Hill Farming Committee.

For Mr Darley expert evidence was given by Mr W J Bulmer, a Fellow of the Royal Institution of Chartered Surveyors and a member of the Blackfaced Sheep Breeders Association of North Yorkshire. Mr Bulmer gave some estimated figures for a typical moor-edge farm of 80 acres. He calculated that such a farm would support on a levancy and couchancy basis 15 cows and their followers and 100 ewes and 50 followers and came to the conclusion that $1\frac{1}{2}$ sheep per acre of in-bye land could be carried on the adjoining moorland without necessitating a reduction in the number of cattle and leading to loss of profit.

Accepting the figures upon which Mr Bulmer arrived at his conclusion, it seems to me that his conclusion does not provide the answer to the problem which I have to solve, since he assumes a farm running both sheep and cattle. What is required is the number of sheep which could be levant and couchant if the farm were given over entirely to sheep. Mr Bulmer said in cross-examination that it would be impracticable to turn out all sheep instead of sheep and cattle. However, what has to be considered is not what would be the best farming practice, but the measurement of levancy and couchancy in terms of sheep units. Mr Hartley



drew my attention to the evidence of several witnesses whose flocks represented 1 or $1\frac{1}{4}$ sheep per acre of in-bye land, but it did not appear from the evidence that they were grazing the maximum possible number of sheep, which is what has to be estimated for the purposes of levancy and couchancy.

Giving the best consideration that I can to the matter, I have come to the conclusion that Mr Holt's $2\frac{1}{2}$ sheep per acre of in-bye land is preferable to Mr Bulmer's $1\frac{1}{2}$ sheep for the somewhat artificial purpose of these proceedings. In applying this to particular cases I shall ignore fractions of a sheep, since it is better for 1 acre to be under-stocked by 2 sheep than over-stocked by 3 sheep.

There being no evidence as to the land which was attached to each house or building when the 1908 Schedule was drawn up, there is no means of knowing whether there have been any changes subsequently, except in the case of a house or building which now has no land at all attached to it. This, however, is of no importance, since what has to be considered is the position at the time of the hearing.

It is next necessary to consider whether the grazing rights extend to any classes of animals other than sheep. The word "stray" is not a term of art, nor is there anything in the 1908 Schedule to define it. In the absence of any evidence as to the origin of the rights in this case in grant or prescription, I must assume that they have existed from time immemorial and are rights of common appendant and not appurtenant, for on every feoffment of arable land to be held of a manor in socage the law without express words presumed a grant of sufficient pasture in the waste for the beasts levant and couchant on the land: Year Book 26 Hen.VIII, 4, cited in Elton on Commons and Waste Lands, pp 47, 48. In such a case the right is restricted to commonable animals, namely, horses, oxen, cows, and sheep: Tyrringham's Case (1584), 4 Co. Rep. 36b.

This leads to the question of the equivalents of sheep in terms of horses, oxen, and cows. Each sheet of the Rights section of the Register Unit is headed by the following statement:-

"For the purposes of this register unit 1 sheep gait gives the right to
"graze 1 breeding ewe with followers, 3 geese or 3 ducks and 8 sheep gaits
"gives the right to graze 1 head of cattle, 1 donkey or 1 horse with a
"follower up to 1 year old".

One of the grounds of Mr Darley's Objection is that this definition of "sheep gait" is incorrect. It is certainly incorrect in that it includes geese, ducks and donkeys. It remains to consider whether the equivalence of sheep gaits with cattle and horses is correct.

The definition of "sheep gait" does not appear in any of the applications for registrations in the Rights section of the Register Unit. It originated at a meeting of the common right holders held at Spaunton at the beginning of March 1968 and was communicated to the former North Riding of Yorkshire County Council. It can therefore be regarded as having been included by implication in all the applications subsequently made. It seems that I can regard the equivalence of sheep gaits with cattle and horses as representing the collective wisdom of the common right owners present at the meeting. There being no evidence that it was wrong, I shall adopt it.



As a matter of drafting, it seems preferable to omit the note from each sheet of the Rights section and at the cost of considerably lengthening this decision to redraft the particulars of the rights in accordance with reg. 10(1) of and Model Entry No 7 in Schd. 2 to the Commons Registration (General) Regulations 1966. When confirming a registration quantified by reference to sheep gaits I shall do so with such modification as may be necessary to make the registration follow Model Entry No 7 as closely as possible, with such variations and adaptations as the circumstances may require.

Mr Hartley argued that some of the rights had been lost by abandonment. There was no direct evidence of abandonment, but Mr Hartley invited me to regard non-exercise of the rights over a long period as such evidence. He relied particularly in some cases on the cessation of the keeping of hill sheep and the sale of the flock, it being a difficult process to establish a new hill flock. Non-user is not in itself abandonment: it is only evidence from which abandonment can be inferred. There was no direct evidence of the circumstances in which flocks formerly owned by common right holders had been sold or in which rights had ceased to be used. It was not thought by the right holders in 1951 that any of them had abandoned their rights for a sum of money received as compensation for the requisition of part of the Moor which was divided among all the right holders.

In 1960 a new schedule of the common right holders and their properties was drawn up and revised in 1966, again without any suggestion that any of the rights had been abandoned. In 1961 a sum of money received as compensation for the extinguishment of the rights over part of the Moor which had been compulsorily acquired was divided among the right holders. All these transactions were carried out in the Court Leet and the members of the Jury could be expected to have drawn attention to the impropriety of paying money to those whose rights were known to have been extinguished by abandonment. Since then some of the right holders have abandoned their rights. Some did not apply to have their rights registered, and others did not appear at the hearing to support their registrations. Those who did appear clearly had no intention of abandoning their rights, and I find myself unable to infer that any of their predecessors in title had done so.

I now turn to the application of these general conclusions to the individual which remain for consideration.

Entry No. 1 This property has 12 ac. of in-bye land. I confirm the registration with the substitution of:

"To graze -

- (a) 30 sheep; or
- (b) sheep and cattle and horses together to a limit of 30 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "400 sheep gaits".

Entry No 2 This property consists in its present state of 0.081 ac. of land. There are on it some stones, which Mr W L Wilkinson, the applicant for the registration, said were the ruins of a cottage, though this was not accepted by one of Mr Darley's witnesses. Be that as it may, no house or other building on this land is included in the 1908 Schedule. The basis of Mr Wilkinson's claim is that the right attached to the property numbered 61 in the 1908 Schedule and known as Newlands Farm has been transferred to his land. Mr Wilkinson said that the right attached to Newlands Farm had been quantified by a requirement



in a tenancy agreement that the tenant should graze not less than 150 sheep on the Moor, that this right had become a right in gross, and that the right had been transferred to Mr Wilkinson's land before he purchased it for £5 from his father. In my view, it was impossible in law for a provision in a tenancy agreement to convert a right of common appendant for animals levant and couchant into a right to graze a fixed number of animals. There was therefore no right attached to Mr Wilkinson's land when he acquired it from his father.

I have dealt with Mr Wilkinson's argument at some length because he had obviously taken great pains in its preparation. Having given his argument careful consideration, I can only say that I find it based on an insecure legal foundation. I therefore refuse to confirm this registration.

Entry No. 3 This property has 43 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 107 sheep; or
- (b) sheep and cattle and horses together to a limit of 107 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait".

for "250 sheep gaits"

Entry No 4 This property has 80 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 200 sheep; or
- (b) sheep and cattle and horses together to a limit of 200 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "250 sheep gaits".

Entry No. 5 This property has 54 ac. of in-bye land. Since the registration is of 100 sheep gaits, I confirm it with the substitution of:-

"To graze -

- (a) 100 sheep, or
- (b) sheep and cattle and horses together to a limit of 100 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "100 sheep gaits".

Entry No. 6 This property has 46 ac. of in-bye land. Since the registration is of 100 sheep gaits, I confirm it with the substitution of:-

"To graze -

- (a) 100 sheep; or
- (b) sheep and cattle and horses together to a limit of 100 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "100 sheep gaits".



Entry No 7 This property has 27 ac. of in-bye land. I confirm the registration with the substitution of :-

"To graze -

- (a) 67 sheep; or
- (b) sheep and cattle and horses together to a limit of 67. gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "300 sheep gaits".

Entry No. 8 This property ~~now~~ has an area of ~~only 2.91~~ ^{33 ac. of in-bye land}, though it would appear that it formerly included more land which has since been sold off. ~~While it is probably somewhat antediluvian to do so,~~ I confirm the registration with the substitution of "To graze 1 sheep" for "200 sheep gaits".

Entry No 9 This property has 100 ac. of in-bye land since the registration is of 200 sheep gaits, I confirm it with the substitution of:-

"To graze -

- (a) 200 sheep; or
- (b) sheep and cattle and horses together to a limit of 200 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "200 sheep gaits".

Entry No 10 This property has 12.96 ac. of in-bye land. It was conveyed to Mr W T S Stamper on 3 August 1979 with the benefit of certain easements, rights and other matters mentioned in the conveyance, but there was no mention of any right of common. If the rights of common formerly appendant to the property passed on the conveyance, it can only be by virtue of s.62(2) of the Law of Property Act 1925, but s.62(4) provides that s.62(2) only applies if and so far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained. I have come to the conclusion that the omission of any mention of the rights of common is not an expression of an intention contrary to s.62(2), and that the rights accordingly remain attached to the property. I therefore confirm the registration with the substitution of:-

"To graze -

- (a) 32 sheep; or
- (b) sheep and cattle and horses together to a limit of 32 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "100 sheep gaits".

Entry No. 11 This property has 65 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 162 sheep; or
- (b) sheep and cattle and horses together to a limit of 162 gaits, each head of cattle or horse counting as 8 gaits, and each sheep as 1 gait"

for "200 sheep gaits".





Entry No. 12 This property has $6\frac{1}{2}$ ac. of in-bye land. It is farmed by Miss Rose Farrow, who grazes 400 sheep and this was the basis of the 400 sheep gaits which were mentioned in many of the registrations, the aim being to ensure equality of rights, while allowing Miss Farrow to continue to graze 400 sheep. As I have already indicated this approach to the matter was unsound. Miss Farrow's right must be quantified by reference to levancy and couchancy. On this basis I confirm the registration with the substitution of:-

"To graze -

- (a) 16 sheep, or
- (b) sheep and cattle and horses together to a limit of 16 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "400 sheep gaits".

Entry No 13 This property has 5 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze 12 sheep or 4 sheep and 1 head of cattle or 4 sheep and 1 horse"

for "25 sheep gaits".

Entry No 14 This property has $16\frac{1}{2}$ ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 41 sheep; or
- (b) sheep and cattle and horses together to a limit of 41 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "150 sheep gaits".

Entry No. 15

This property has 43 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 107 sheep; or
- (b) sheep and cattle and horses together to a limit of 107 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait".

for "400 sheep gaits".

Entry No. 16 Mr Larkin informed me that he had received no instructions from his client regarding this registration. I therefore refuse to confirm it.

Entry No 17 This property has 3 ac. of in-bye land. I confirm the registration with the substitution of "To graze 7 sheep" for "20 sheep gaits".

Entry No. 18 This registration relates to two of the buildings (Nos 218 and 224) in the 1908 Schedule. ~~The property known as New Inn consists of 224 ac. and that known as Grange Farm of 230 ac.~~ The total number of sheep gaits registered in respect of the two properties is 600. This is fewer than $2\frac{1}{2}$ sheep per acre of in-bye land. It seems to me that the proper course is not to confirm the registration as it stands, but to divide the sheep gaits equally between the two properties. X Therefore, I confirm the registration with the following modifications, namely, the deletion of the words in columns 4 and 5 and the substitution in column 4 of the words:-

X in the proposals agreed by the owners



"(a) To graze -

- L200*
 (i) ~~L300~~ sheep; or
 (ii) sheep and cattle and horses together to a limit of ~~300~~ ²⁵⁰ gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

and to cut and take away peat, bracken, and top stones over the whole of the land comprised in this register unit

bordered
16/4/80
L400
 "(b) To graze -

- (i) ~~300~~ sheep; or
 (ii) sheep and cattle and horses together to a limit of ~~300~~ ⁴⁰⁰ gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

and to cut and take away peat, bracken, and top stones over the whole of the land comprised in this register unit

and in column 5 of the words:-

"(a) New Inn and Smallholding, Spaunton, shown (with Grange Farm, Spaunton) edged red on the supplemental map bearing the number of this register unit;

"(b) Grange Farm, Spaunton, shown (with New Inn and Smallholding, Spaunton) edged red on the supplemental map bearing the number of this register unit."

Entry NO 19 This property has 100 ac. of in-bye land. Since only 80 sheep gaits are registered, I confirm the registration with the substitution of:-

"To graze -

- (a) 80 sheep; or
 (b) sheep and cattle and horses together to a limit of 80 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "80 sheep gaits".

Entry No 20 This property is just a building with a garage and has no land attached to it. I therefore confirm the registration with the deletion of the words "40 sheep gaits".

Entry No 21 When Mr J W Waines, the applicant for this registration, bought the property it had no land attached to it. Mr Waines has since bought 25 ac. of land. In my view this land cannot be regarded as in-bye land for the purposes of levancy and couchancy. I shall therefore confirm the registration with the deletion of the words "100 sheep and".

Entry No 22 This registration relates to the same property as Entry No. 12, having been made on the application of the owner, while the registration at Entry No 12 was made on the application of the tenant. This registration ought, therefore, not to have been made, but the application for it should have been noted in the register under reg. 9(5) of the Commons Registration (General) Regulations 1966. In these circumstances I refuse to confirm the registration.

Entry No. 23 This property consists of a house and garden and a paddock of approximately 1 ac. I confirm the registration with the substitution of "To graze 2 sheep" for "200 sheep gaits".



Entry No. 24 This property has 60 ac. of in-bye land. The registration includes a right of estovers, for the existence of which there was no evidence. Since the registration is for only 20 sheep gaits I confirm it with the substitution of:-

"To graze -

- (a) 20 sheep; or
- (b) sheep and cattle and horses together to a limit of 20 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "20 sheep gaits", and the deletion of "and estovers".

Entry No 25 This property has 294 ac. of in-bye land. The registration being in respect of 400 sheep gaits, I confirm it with the substitution of:-

"To graze -

- (a) 400 sheep; or
- (b) sheep and cattle and horses together to a limit of 400 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "400 sheep gaits".

Entry No 26 This property is a cottage with just over 1 ac. of land. I confirm the registration with the substitution of "~~The right to graze 2 sheep~~" for "30 sheep gaits".

Entry No 27 This property is a cottage without any land. I confirm the registration with the deletion of the words "50 sheep gaits and".

Entry No. 28 This is a property with $\frac{3}{4}$ ac. of orchard. I confirm the registration with the substitution of "To graze 1 sheep" for "100 sheep gaits".

Entry No. 29 This property consists of a school and school house with about $\frac{1}{2}$ ac. of land on which crops can be grown. I confirm the registration with the substitution of "To graze 1 sheep" for "400 sheep gaits".

Entry No. 30 This property has 3 ac. of in-bye land. I confirm the registration with the substitution of "To graze 7 sheep" for "30 sheep gaits".

Entry No. 31 This property has $\frac{1}{2}$ ac. of in-bye land. I confirm the registration with the substitution of "To graze 1 sheep" for "30 sheep gaits".

Entry No. 33 This property consists solely of the house site and garden. I confirm the registration with the deletion of the words "40 sheep gaits and"

Entry No 34 This property has an area of $\frac{1}{3}$ ac.. I confirm the registration with the deletion of the words "56 sheep gaits and".

Entry No. 35 This property, known as The Firs No. 1, and a property known as The Firs No. 2, which is the subject of the registration at Entry No 37, have a total area of $\frac{2}{3}$ ac. between them. It appears from the supplemental map that most of this area is attached to The Firs No. 2. I therefore confirm this registration with the deletion of the words "56 sheep gaits and".



Entry No 36 It appears from the supplemental map that this property has less than $\frac{1}{2}$ ac. of land attached to it. There was, however, evidence that three geese had been grazed from this land for many years and Mr Hartley accepted this. I therefore confirm the registration with the deletion of the words "56 sheep gaits" and the substitution of the words "To graze 3 geese".

Entry No 37 This property, known as The Firs No 2, and a property known as The Firs No. 1, which is the subject of the registration at Entry No. 35, have a total area of $\frac{2}{3}$ ac. between them. It appears from the supplemental map that most of this area is attached to The Firs No. 2. I therefore confirm the registration with the substitution of "To graze 1 sheep" for "56 sheep gaits".

Entry No. 38 This property has 26 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 65 sheep; or
- (b) sheep and cattle and horses together to a limit of 65 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "100 sheep gaits".

Entry No. 40 This property has 3 ac. of in-bye land. I confirm the registration with the substitution of "To graze 7 sheep" for "400 sheep gaits".

Entry No. 41 This property has 15 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 37 sheep; or
- (b) sheep and cattle and horses together to a limit of 37 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "48 sheep gaits".

Entry No 42 This property has 15 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 37 sheep; or
- (b) sheep and cattle and horses together to a limit of 37 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "50 sheep gaits".

Entry No 43 This property, known as The Stores, has $\frac{1}{2}$ ac. of land attached to it. I confirm the registration with the substitution of "To graze 1 sheep" for "400 sheep gaits".

Entry No. 44 This property has 8 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 20 sheep; or
- (b) sheep and cattle and horses together to a limit of 20 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "100 sheep gaits".



Entry No 45 This property has about $\frac{1}{2}$ ac. of in-bye land. I confirm the registration with the substitution of "To graze 1 sheep" for "100 sheep gaits".

Entry No 47 This property consists of a house and a garden of less than 1 ac. The words "top stones and" in the application have been omitted from the registration. Since it would be possible to turn part of the garden into in-bye land, I confirm the registration with the substitution of "To graze 1 sheep" for "12 sheep gaits" and the insertion of "top stones and" after "peat".

Entry No 48 This property comprises about $\frac{1}{2}$ ac. of garden and paddock. I confirm the registration with the substitution of "To graze 1 sheep" for "56 sheep gaits".

Entry No. 50 This property has no land attached to it on which crops can be grown. I confirm the registration with the deletion of "(a) The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 10 gaits (b)".

Entry No 51 This property has about $\frac{1}{2}$ ac. of in-bye land. I confirm the registration with the substitution of "To graze 1 sheep" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 150 gaits".

Entry No 52 This property has about $\frac{1}{2}$ ac. of in-bye land. I confirm the registration with the substitution of "To graze 1 sheep" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits".

Entry No. 53 This property has 41 ac. of in-bye land attached to it, of which only 2 ac. are at present occupied with the cottage. I do not consider that the letting of most of the land has extinguished the right of stray. The registration is limited to 100 gaits but it includes a right of estovers, for the existence of which there was no evidence. So I confirm it with the substitution of:-

"To graze -

- (i) 100 sheep; or
- (ii) sheep and cattle and horses together to a limit of 100 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits", and the deletion of "estovers".

Entry No 54 This property has 45 ac. of in-bye land attached to it, none of which is at present let with the cottage. I do not consider that the letting of the land has extinguished the right of stray. The registration is limited to 100 gaits, so I confirm it with the substitution of:-

"To graze -

- (i) 100 sheep; or
- (ii) sheep and cattle and horses together to a limit of 100 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "To graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits".



Entry No 55 This property has 20 ac. of in-bye land attached to it. I confirm the registration with the substitution of:-

"To graze -

- (i) 50 sheep; or
- (ii) sheep and cattle and horses together to a limit of 50 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "To graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits".

Entry No. 56 This property has 26 ac. of in-bye land attached to it. I confirm the registration with the substitution of:-

"To graze -

- (i) 65 sheep; or
- (ii) sheep and cattle and horses together to a limit of 65 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "To graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits".

Entry No 57 This property includes only about $\frac{1}{4}$ ac. of land on which crops can be grown. I confirm the registration with the deletion of "(a) To graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 25 gaits (b)".

Entry No 61 This property includes only about $\frac{1}{4}$ ac. of land on which crops can be grown. I refuse to confirm the registration.

Entry No 62 Mr Larkin informed me that he had no instructions from his client regarding this registration. I therefore refuse to confirm it.

Entry No. 63 This registration is of a right of turbary only, I confirm it.

Entry No. 65 This property includes about $\frac{1}{2}$ ac. of land on which crops can be grown. I confirm the registration with the substitution of "To graze 1 sheep" for "50 sheep gaits".

Entry No 66 This property consists in all of 31 perches, being a cottage, outbuildings, and garden ground adjoining. I confirm the registration with the deletion of "8 sheep gaits and".

Entry No. 67 This property has only $\frac{1}{4}$ ac. of land attached to it. I confirm the registration with the deletion of "15 sheep gaits and".

Entry No. 69 This property has 0.4 ac. of land, which is mostly garden. I confirm the registration with the substitution of "To graze 1 sheep" for "16 sheep gaits".

Entry No 70 This property includes about 1.178 ac. of land on which crops can be grown. I confirm the registration with the substitution of:- "To graze 2 sheep" for "100 sheep gaits".

Entry No 71 This property and the property the subject of the registration at Entry No 70 appear to have formed parts of the house numbered 148 in the 1908 Schedule. The two were included in a single application and there can be only one right attached to the whole. The evidence relates solely to the property the subject of the registration at Entry No 70, which I have confirmed with a modification. In these circumstances I can do no other than refuse to confirm this registration.



Entry No. 72 Mr Lakin informed me that he had no instructions from his client regarding this registration, so I refuse to confirm it.

Entry No 73 When the registration was made this property had 1 ac. of land attached to it, but it now has only $\frac{1}{4}$ ac. I confirm the registration with the deletion of "16 sheep gaits and".

Entry No 76 This registration is of the right to cut and take away peat, bracken, and top stones. Mr Noel Jones said that the property had been conveyed to him and his wife on 28 September 1977 with the right to cut and take away peat, and that that was all he was claiming. I therefore confirm the registration with the deletion of "bracken, and top stones".

Entry No. 78 This property consists of the cottages numbered 219 and 221 in the 1908 Schedule, but the rights there stated were extinguished when it came into the ownership of Mr Darley. In April 1964 Mr Darley conveyed the property with all common rights. Mr Hartley submitted that this conveyance did not recreate the former rights. This, in my view, is correct. However, some effect must be given to the words in the conveyance relating to common rights, and this can only be done by construing it as a new grant of rights of common appurtenant of the same kind as the former rights appendant to the two cottages. There is now only just over 1 ac. of land attached to the property, so I confirm the registration with the substitution of "To graze 2 sheep" for "200 sheep gaits".

Entry No. 79 This property has a yard and a garden with a total area of 0.7 ac., but there would be nothing to prevent the land which is now the garden being used for the support of one sheep. I therefore confirm the registration with the substitution of "To graze 1 sheep" for "50 sheep gaits".

Entry No 80 This property has a garden and an orchard with a total area of less than 1 ac. I confirm the registration with the substitution of "To graze 1 sheep" for "16 sheep gaits".

Entry No. 81 This property does not include any land on which crops can be grown. I confirm the registration with the deletion of "100 sheep gaits and".

Entry No. 82 This property has 2.2 ac. of garden and paddock. The registration includes a right of estovers, for the existence of which there was no evidence. I confirm the registration with the substitution of "To graze 5 sheep" for "100 sheep gaits", and the deletion of "and a right of estovers".

Entry No 84 This property has 33 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

- (a) 82 sheep; or
- (b) sheep and cattle and horses together to a limit of 82 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "200 sheep gaits".

Entry No 86 This property has 36 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze-

- (a) 90 sheep; or
- (b) sheep and cattle and horses together to a limit of 90 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "200 sheep gaits".



Entry No 87 This property has 4 ac. of in-bye land. I confirm the registration with the substitution of "To graze 10 sheep or 2 sheep and 1 head of cattle or 2 sheep and 1 horse" for "200 sheep gaits".

Entry No 90 This property has 1½ ac. of in-bye land. I confirm the registration with the substitution of "To graze 3 sheep" for "25 sheep gaits".

Entry No. 91 This registration is of a right to cut and take away peat, bracken, and top stones only. I confirm it.

Entry No 92 This property has 12 ac. of in-bye land. I confirm the registration with the substitution:-

"To graze -

(a) 30 sheep; or

(b) sheep and cattle and horses together to a limit of 30 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "56 sheep gaits".

Entry No 93 This registration is of a right to cut and take away, peat, bracken, and top stones only. I confirm it.

Entry No. 94 This property does not include any land on which crops can be grown. I confirm the registration with the deletion of "16 sheep gaits and".

Entry No 96 This property does not include any land on which crops can be grown. I confirm the registration with the deletion of "50 sheep gaits and".

Entry No 98 The evidence as to the in-bye land attached to this property was unclear, but it appears from the supplemental map that it has an area approximately the same as that of the property the subject of the registration at Entry No 99, which has an area of 93 ac. I confirm the registration with the substitution of:-

"To graze -

(a) 232 sheep; or

(b) sheep and cattle and horses together to a limit of 232 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "400 sheep gaits".

Entry No. 99 This property has 93 ac. of in-bye land. I confirm the registration with the substitution of:-

"To graze -

(a) 232 sheep; or

(b) sheep and cattle and horses together to a limit of 232 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "400 sheep gaits".

Entry Nos 100 and 101 Each of these registrations is of the right to cut and take away peat, bracken, and top stones only. I confirm the registrations.

Entry No 102 This property has an area of 2r. 9p. I confirm the registration with the substitution of "1 sheep" for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 24 gaits".





Entry No 103 Mr Lakin informed me that he had no instructions from his client regarding this registration. I therefore refuse to confirm it.

Entry No 105 This property has a garden of less than half an acre. I refuse to confirm the registration.

Entry No. 106 This property has an area of approximately 2.7 ac., of which 0.41 ac. is a car park. I confirm the registration with the substitution of "5 sheep" for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 56 gaits".

Entry No. 107 This property has 212 ac. of in-bye land. Since the registration is limited to 200 gaits, I confirm it with the substitution of:-

"To graze -

(a) 200 sheep; or

(b) sheep and cattle and horses together to a limit of 200 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "200 sheep gaits".

Entry No 108 Mr Lakin informed me that he had no instructions from his client regarding this registration, which I therefore refuse to confirm.

Entry No. 111 This property consists of two former cottages converted into a single dwellinghouse. The evidence as to the identity of the cottages with cottages mentioned in the 1908 Schedules was somewhat imprecise, but giving it my best consideration I have come to the conclusion on the balance of probabilities that the cottages were those numbered 240 and 246a in the 1908 Schedule. There is only $\frac{1}{4}$ ac. of garden attached to the property. I confirm the registration with the deletion of "(d) to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 8 gaits".

Entry No 112 This property includes approximately 4 ac. of land on which crops can be grown. The registration includes a right of pannage, for the existence of which there was no evidence. I confirm the registration with the substitution of:- "10 sheep" for "25 breeding ewes and their followers", and the deletion of "(d) the right of pannage for 2 pigs and their followers".

Entry No. 113 This property has ¹⁵⁰~~50~~ ac. of in-bye land. I confirm the registration with the substitution of ~~"125 for 200"~~.

Entry No 114 This property has 52 ac. of in-bye land. I confirm the registration with the substitution of "130" for "200".

Entry No 115 This registration is of the right to cut and take away peat only. I confirm it.

Entry No. 116 This property does not include any land on which crops can be grown. The registration includes the right to take estovers, for the existence of which there was no evidence. I confirm it with the deletion of "(d) To take estovers" and "(e) To graze sheep, cattle, donkeys, horses, geese and ducks to a limit of 32 gaits".

Entry No 117 This property includes approximately 220 ac. on which crops can be grown. Since the registration is of a right to graze 150 sheep, I confirm it.



Entry No 118 Mr Lakin informed me that he had no instructions from his client regarding this registration, which I refuse to confirm.

Entry No. 119 This property has an area of 2 ac. I confirm the registration with the substitution of "5 sheep" for "sheep, cattle, horses, donkeys and geese and ducks to a limit of 100 gaits".

Entry No. 120 This property is a cottage with a garden of $\frac{1}{2}$ ac. I confirm the registration with the substitution of "1 sheep" for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 9 gaits".

Entry No. 121 Mr Lakin informed me that this registration was no longer being pursued. I therefore refuse to confirm it.

Entry No 122 This property does not include any land on which crops can be grown. I refuse to confirm the registration.

Entry No. 123 This property includes approximately $\frac{1}{2}$ ac. of land on which crops can be grown. I confirm the Registration with the substitution of "To graze 1 sheep" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 20 gaits".

Entry No. 124 This property includes approximately $\frac{1}{2}$ ac. of land on which crops can be grown. I confirm the registration with the substitution of "To graze 1 sheep" for "The right to graze 25 sheep".

Entry No. 125 This property has two-thirds of an acre of garden. I confirm the registration with the substitution of "1 sheep" for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 100 gaits".

Entry No 126 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- (i) 200 sheep; or
- (ii) sheep and cattle and horses together to a limit of 200 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 200 gaits".

Entry No 127 This registration is of a right of turbary only. I confirm it.

Entry No. 128 This property has approximately 6 ac. of in-bye land. The registration includes the rights of piscary and estovers, for the existence of which there was no evidence. I confirm the registration with the substitution of:-

"To graze -

"15 sheep or 7 sheep and 1 head of cattle or 7 sheep and 1 horse"

for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 200 gaits" and the deletion of "the right of piscary (d) the right of estovers".

Entry No. 129 This property has $\frac{3}{4}$ ac. of garden. The registration includes the right of estovers, for the existence of which there was no evidence. I confirm the registration with the substitution of "To graze 1 sheep " for "the right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits" and the deletion of "the right of estovers (c)".



Entry No 130 Mr Lakin informed me that he had no instructions from his client regarding this registration. I therefore refuse to confirm it.

Entry No 132 This property does not include any land on which crops can be grown. The registration includes the right of estovers, for the existence of which there was no evidence. I confirm the registration with the deletion of "(a) The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits; (b) the right of estovers (c)".

Entry No 136 This property has an area of about $2\frac{1}{2}$ ac. I confirm the registration with the substitution of "To graze 6 sheep" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits".

Entry No 137 This property comprises about 4 ac. of land which was purchased with the house No 245 in the 1908 Schedule. Mr H Paris, the present owner, subsequently purchased from the same vendors 2.24 ac. of land without a house, the conveyance stating that it was conveyed with a common right. I am not satisfied on the evidence that this area of 2.24 ac. was originally attached to the house numbered 245 in the 1908 Schedule. I confirm the registration with the substitution of:- "To graze 10 sheep or 2 sheep and 1 head of cattle or 2 sheep and 1 horse" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits".

Entry No 138 This property has only one-third of an acre of land attached to it. The registration includes the right of estovers, for the existence of which there was no evidence. There was, however, evidence that Squadron Leader W Hall, the owner of the property, had acquired a right to graze geese by prescription and Mr Hartley accepted that 25 was a reasonable quantification of this right. I therefore confirm the registration with the substitution of "To graze 25 geese (b)" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits (b) The right of estovers (c)".

Entry No 139 The area of this property is less than $\frac{1}{4}$ ac. The registration includes the right of estovers, for the existence of which there was no evidence. I confirm the registration with the deletion of "(a) The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits (b) The right of estovers (c)".

Entry No 140 This property has 1 ac. of orchard, garden, and lawn. The registration includes the right of estovers, for the existence of which there was no evidence. I confirm the registration with the substitution of "To graze 2 sheep (b)" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 400 gaits (b) The right of estovers (c)".

Entry No. 145 This property has approximately 1 ac. of garden and lawn. I confirm the registration with the substitution of "2" for "100".

Entry No 146 This property has about $1\frac{3}{4}$ ac. of land attached to it. I confirm the registration with the substitution of "To graze 3 sheep" for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 56 gaits".

Entry No 148 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 270 sheep;
- (ii) sheep and cattle and horses together to a limit of 270 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 270 gaits".



Entry No 149 This property has 65 ac. of in-bye land attached to it. I confirm the registration with the substitution of:-

"To graze

- (a) 162 sheep; or
- (b) sheep and cattle and horses together to a limit of 162 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

over the whole of the land comprised in this register unit"

for the entry in column 4.

Entry No. 150 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 162 sheep,
- (ii) sheep and cattle and horses together to a limit of 162 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese and ducks to a limit of 162 gaits".

Entry No 151 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 127 sheep;
- (ii) sheep and cattle and horses together to a limit of 127 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese, and ducks to a limit of 127 gaits".

Entry No. 152 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 153 sheep;
- (ii) sheep and cattle and horses together to a limit of 153 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese, and ducks to a limit of 153 gaits".

Entry No 153 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 64 sheep;
- (ii) sheep and cattle and horses together to a limit of 64 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese, and ducks to a limit of 64 gaits".

Entry No 154 This registration is based on $2\frac{1}{2}$ sheep per acre of in-bye land. I therefore confirm it with the substitution of:-

- "(i) 225 sheep;
- (ii) sheep and cattle and horses together to a limit of 225 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "sheep, cattle, horses, donkeys, geese, and ducks to a limit of 225 gaits".



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Entry No 156 This property has 51 ac. of in-bye land attached to it. I confirm the registration with the substitution of "127" for "150"

Entry No. 157 This property has 90 ac. of in-bye land attached to it. I confirm the registration with the substitution of:-

"To graze

- (i) 225 sheep; or
- (ii) sheep and cattle and horses together to a limit of 225 gaits, each head of cattle or horse counting as 8 gaits and each sheep as 1 gait"

for "The right to graze sheep, cattle, horses, donkeys, geese and ducks to a limit of 250 gaits".

Entry No. 158 This property has 96 ac. of in-bye land attached to it. The registration is of the right to graze 200 sheep. I therefore confirm it.

Entry No. 160 This registration includes the right of estovers, for the existence of which there was no evidence. I confirm the registration with the deletion of "(a)" and "(b) The right of estovers".

Entry No. 161 The right of common appentant to this property was extinguished when it came into the ownership of Mr Darley. However, Mr Hartley accepted that when it was sold to Mr J W Aconley on 31 May 1978 rights of common were attached to it, but only $\frac{3}{4}$ ac. of land was conveyed with it. I confirm the registration with the substitution of "1" for "110".

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

7th

day of

December

1979

CHIEF COMMONS COMMISSIONER