



COMMONS REGISTRATION ACT 1965

Reference No.268/D/52

In the Matter of Westerdale Moor,
Westerdale, North Yorkshire (No.4).

DECISION

This dispute relates to the registration at Entry No.7 in the Rights Section of Register Unit No.CL 8 in the Register of Common Land maintained by the former North Riding County Council and is occasioned by Objection No.0165 made by the Rt. Hon. R.F.Wood, Mr C.C. Egerton, and Mr M.J.B. Todhunter and noted in the Register on 15th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Scarborough on 6th November 1974. The hearing was attended by Mr H. Hewitt, solicitor, on behalf of Mr N.W. Pearson and Mrs F.C. Pearson, the successors in title of Mr L. Gray, the applicant for the registration, and by Mr H. Harrod, of counsel, on behalf of the Objectors.

The registration for which Mr Gray applied was for the right to graze 375 ewes and followers and the right of turbary, bracken, and stones. The only dispute between the parties was as to the number of ewes and followers.

Mr and Mrs Pearson derive their title to High House Farm, to which their rights are annexed, through divers mesne assignments from a conveyance made 23rd January 1940 between (1) Charles William Slingsby, Earl of Feversham (2) Charles William Ernest Duncombe and William Greville Worthington (3) Thomas Place, whereby High House Farm was conveyed with other properties. All the properties were sold with benefit of rights of pasture on Westerdale Moor. These rights were set out in a schedule and in the column headed "Maximum number of sheep" the number set against High House Farm was 75.

Mr Hewitt called evidence directed to showing that when High House Farm was occupied by a tenant before the sale in 1940 more than 75 sheep had been put onto the moor by the tenant, and also to showing that the number of sheep which could be supported in the winter on the farm was 180.

Mr Harrod produced deeds showing that Westerdale Moor had been the subject of settlements for many years before Lord Feversham became the absolute owner in 1957. Mr Hewitt agreed that there was no room for prescription in this case and that Mr and Mrs Pearson's rights were those conveyed by the 1940 conveyance. Mr Hewitt, however, contended that those rights were not limited to the maximum number of 75 sheep specified in the conveyance, but that by virtue of section 62 of the Law of Property Act 1925 the conveyance must be deemed to have included a right to pasture as many sheep as had in fact been pastured by the occupier of the farm before the conveyance.

I find myself unable to accept this argument. In my view the specific



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mention of 75 sheep in the conveyance precludes the possibility of construing it so as to pass a right to graze some larger number of sheep to be ascertained by external evidence. The rule of construction to be applied is that conveniently summarized in the maxim expressio unius est exclusio alterius. Applying that rule to the 1940 conveyance I can only confirm the registration with the following modification:- namely, the substitution of the figure "75" for the figure "375".

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 **20th** day of December 1974

Chief Commons Commissioner