



COMMONS REGISTRATION ACT 1965

Reference Nos. 270/D/21-25
270/D/26-27
270/D/28-29

In the Matter of (1) A tract of land containing 2.682 acres of thereabouts known as Ilkley Moor and Burley Moor, Bradford (CL 207), (2) A piece of land containing 11.8 acres of land or thereabouts known as Ilkley Moor (part), Bradford (CL 233) and (3) The pieces of land known as Burley Moor, Burley in Wharfedale, Bradford (CL 295)

DECISION

These disputes relate to (1) the following registrations in the Rights Section of Registration Unit CL 207 in the Register of Common Land maintained by the former West Riding County Council (a) at Entry No. 1 occasioned by Objection No. 26 made by the former Ilkley Urban District Council (hereinafter referred to as Ilkley U.D.C.) and noted in the Register on 25 June 1969, (b) at Entry No. 2 occasioned by Objection No. 25 made by Ilkley U.D.C. and noted in the Register on 25 June 1969, (c) at Entry Nos. 3 and 4 occasioned by Objection No. 43 made by Ilkley U.D.C. and noted in the Register on 5 December 1969, (d) at Entry Nos. 5, 7, 8 and 9 occasioned by Objection No. 1270 made by Ilkley U.D.C. and noted in the Register on 7 June 1971 and (e) at Entry No. 6 occasioned by Objection No. 1272 made by Ilkley U.D.C. and noted in the Register on 7 June 1971. (2) the following registrations in the Rights Section of Registration Unit No. CL 233 in the said Register of Common Land (a) at Entry Nos 1 and 3 occasioned by Objection No. 1288 made by Ilkley U.D.C. and noted in the Register on 8 June 1971 and (b) at Entry No. 2 occasioned by Objection No. 1289 made by Ilkley U.D.C. and noted in the Register on 8 June 1971 and (3) the following registrations in the Rights Section of Register Unit No. CL 295 in the said Register of Common Land (a) at Entry Nos. 1 and 2 occasioned by Objection No. 42 made by Ilkley U.D.C. and noted in the Register on 3 December 1969 and at Entry Nos. 3, 4 and 5 occasioned by Objection No. 1271 made by Ilkley U.D.C. and noted in the Register on 7 June 1971.

I held a hearing for the purpose of inquiring into these disputes at Bradford on 10 February 1981 and on 20 and 21 October 1981.

The hearing was attended by the following:

(i) Mr R W Walls for the Registration Authority West Yorkshire Metropolitan County Council

(ii) Mr J M Collins (who only appeared on 10 February 1981) of Counsel instructed by Mr C M Pepper Senior Assistant Solicitor to Bradford Metropolitan City Council, the successor to Ilkley U.D.C., the Objector.

(iii) Mr L M Mandy of Messrs Newstead and Walker, Solicitors of Otley for Mr and Mrs G C Rowson, applicants at Entry No. 1 (CL 207)

(iv) Mrs J Clarke (10 February) and Mr Phillips (21 October) of Messrs J P Mewies and Company, Solicitors of Skipton for Mr BaTters successor to the applicant at Entry No. 2 (CL 207) and for the personal representatives of the applicants at Entry No. 5 (CL 207), No. 1 (CL 233 and No.3 (CL 295)



(v) Mr J Wetherill of Messrs Atkinson, Dacre and Slack, Solicitors of Otley for Mr W E Ellis the applicant at Entry No. 6 (CL 207) and No. 2 (CL 255) and Mr D L Ellis the applicant at Entry No. 7 (CL 207) & No. 3 (CL 235)

(vi) Mr J W Greetham also of Messrs Atkinson, Dacre and Slack for Messrs G H and J W Greaves, the applicants at Entry No. 8 (CL 207) and No. 4 (CL 295) and the said Messrs G H and J W Greaves and Mr B T Greaves, the applicants at Entry No. 9 (CL 207) and No. 5 (CL 295)

(vii) Mr F H Ratcliff of Messrs Sampson, Wade and Company, Solicitors of Bradford for Mr P D Marshall, owner of part of Ilkley Moor

(viii) Mr Harbottle of Messrs Bromet and Sons, Solicitors of Tadcaster for the owners of Burley Moor.

All parties agreed that the three cases should be heard together. On 10 February 1981 after the hearing had lasted just over one hour, I agreed to grant an adjournment at the request of the parties to give them an opportunity of reaching an agreed settlement pursuant to Regulation 31 of the Commons Commissioners Regulations 1971, but on the understanding that if no such agreement was reached before the next visit of a Commons Commissioner to Bradford, the cases would be relisted.

Initially some of the applications included claims to graze cattle and for rights of turbarry, sporting and to take minerals other than coal. However, by the conclusion of the submissions all these claims had been withdrawn and the only claims remaining were to graze sheep on one or more of the register units. In every application the objector alleged that the number of sheep which might be grazed on the register unit should be determined by the rules of levancy and couchancy and thus only as many sheep might be turned on the servient tenement as the dominant tenement would maintain by its produce throughout the winter and that such number was less than the number claimed in each application.

In all but two of the applications (these at Entry Nos. 1 and 2 in the Rights Section of Register Unit CL 207) there was also an averment that none of the rights claimed existed.

Mr Geoffrey Charles Rowson, the applicant at Entry No. 1 (CL 207) also claimed to be entitled to graze 70 sheep on that unit said that he had been at Rose Farm since 1953. The farm comprised 69½ acres. Originally he had been a tenant of Ashbridge Farms. He was told by their agent that the farm had grazing rights on the Moor. He did not begin to put sheep on the Moor until three years ago. He grew hay on his farm for winter fodder and cereals for cattle. His farm could cope with feeding 200 sheep in winter.

In cross-examination he said that he had a flock of Masham sheep which did not go on the Moor. He had 40 sheep which went on the Moor. His claim to graze 70 sheep was based on what he thought was a reasonable figure as he ran the farm at the time. He had 25 acres under cereals. If his flock of sheep increased to 200 he would get rid of other beasts.

Mr Giles Ben Atkinson of Hodson's Farm said that he was A.R.I.C.S. and has been in practice in the area for 20 years as an auctioneer and valuer. He was a part-time farmer and kept sheep. He had about 20 acres under plough, for cereals



or reseeded grass. He grew no arable crops on his farm.

At this point the hearing was adjourned. On 20 October 1981 I ~~acquiesced~~ ^{replied} an application by Mr Pepper for an adjournment to suit the convenience of counsel.

On the resumption of the hearing Mr W E Ellis withdrew his applications which related to Units CL 207 and 233 and Mr Pepper withdrew his client's objection to Mr and Mrs Rowson's application.

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Mr David Lancaster Ellis as sole owner of Cragg House Farm gave evidence in support of the application to graze 350 sheep on units 207 and 233. Mr Ellis said that he was aged 49 and had lived at Cragg House Farm all his life. His family had lived there since 1914 the first occupant being his grandfather who was a tenant. The witness's parents had purchased the farm in 1946. As long as he could remember the family grazed 500 sheep on the Moor. He now grazed 650 sheep on the Moor and his own land which adjoined the Moor. The rate of grazing had been continuous. He produced a Rayer's report dated 11 November 1896 which stated that Messrs Jno. and Wm. Ellis were then grazing 600 sheep on the Moor.

Jno. Ellis was his great-grandfather and Wm. Ellis his great-uncle. T Cockshott also mentioned in the report was then living at Cragg House Farm. In 1928 his grandfather was served with a notice by Ilkley U.D.C. of its intention to promote a bill to enable it to acquire part of the Moor by compulsory purchase. In the Schedule to the notice his grandfather was described as a Freeholder and Inhabitant of the Township of Ilkley as to certain rights of common in and over the Moor and Common. Mr Ellis produced two letters written to his father by the Ilkley ~~Urban District Council~~ ^{asking} for particulars of the number of sheep he pastured on the Common. So far as he knew his father did not answer either letter. The Council had made no further attempt to challenge these rights.

Cragg House Farm is 255 acres. He could winter 650 sheep on the Farm even through a bad winter. The farm is 50% rough grazing and 50% good grazing land. In a bad winter he did not as a rule use the rough grazing. CL 207 and 233 were he thought about 1200-1400 acres. His sheep did well on the Moor. There are about 1100-1200 sheep grazing the Moor. In his view the Moor could cope with this number.

In answer to Mr Pepper, Mr Ellis said that his 650 ^{sheep} could live on Cragg House Farm all the year round. He had some cattle but he could not feed both sheep and cattle on the farm all the year round.

Joseph William Greaves of Hag Farm, aged 53 years said that he farmed Hag Farm and Hagg Top Farm with his two brothers. The family had purchased Cragg Top Farm in 1948 and had occupied it since 1947. They had enjoyed the grazing of Cragg Top Farm since 1940. His father was a farmer and he had been a farmer all his life. The family purchased Hag Farm in 1967 from the Layfield Family who had purchased it in 1952. The Layfields had been tenants since 1939. They were good neighbours. He went to work for them in 1943. He married in 1953 and his wife was a Miss Layfield.



- 4 -

The Layfields ran sheep on the Moor. His father ran sheep on the Moor from Low House Farm and Cragg Cottage Farm. In the early 1940's they ran 7-800 from Cragg Cottage and Cragg Top. They bought Hag Farm for the grazing rights. Hag Farm is very good land. Altogether they own or rent 340 acres of grazing land. His sheep spend 10-13 weeks each year on his own land. There would be a lot more sheep on the Moor 25 years ago than there were today. He did not think the Moor was overgrazed. They had increased the number of animals on the Moor over the years. They mostly used Burley Moor. There is more *ling* on Burley Moor. There is more bent on Ilkley Moor. Sheep like a mixture.

In cross-examination Mr Greaves said that when he was a lad there were more sheep on the Moor. The flocks increased to their present level 15 years ago. Depending on the winter they had bought extra feed. They had some cattle.

In re-examination Mr Greaves said that they ran 100-150 cattle from Cragg Top, when he was a lad. The family had bought Layfields sheep when they purchased Hag Farm.

21 October 1981

I was informed that Mr Fawcitt's claim had been accepted limited to 70 sheep on CL 207 and that Mr Wallbank's representatives had withdrawn the claim to graze any cattle.

Mr Frederick Mervyn Lister then gave evidence for the applicants.

In answer to Mr Greetham the witness said that he was a Chartered Surveyor and practised in Otley as an Agricultural Valuer. He has practised in the area for 29 years and his firm was more than 100 years old. He was the fifth generation of agricultural valuers. He was also an agricultural auctioneer and sold at Otley and Bingley. There was very little written material about the extent of the grazing rights of local farmers. There were references in valuations to sheep rights. There were references in valuations to sheep rights being unlimited or unstinted.

He claimed to have a good working knowledge of most farms in the valley and had noticed a reduction in the number of sheep grazing the Moors since 1960. This was perhaps due to the increase in the recreational activities on the Moors, the public use of the Moors for all purposes.

The Moors are not high and sheep spend 75% of the year on the Moors and the remainder on the farms. The productivity of the farm land (as opposed to the Moor land) had increased enormously since 1945.

Hag Farm is just under 70 acres and Crag Top Farm is about 15 acres. The land is sloping. They are smallish grassland farms depending on grassland ~~feeding~~ for their viability. Their size is marginal; the enclosed land is in good heart. Over-grazing is ultimately adverse to the farmer's interest. He had sold sheep for Messrs Greaves and they had all been in good condition.



- 5 -

If a farmer reduced his flock of sheep he would have to take on something else to keep the farm viable.

In answer to Mr Wetherill for the applicant^s at Entry No. 7, the witness said that this applicant followed the same practice in dividing grazing time between his farm and the Moors. He would expect the farm to support over 500 sheep. Mr Ellis has a good reputation as a sheep farmer.

In cross-examination by Mr Pepper, Mr Lister said that he had no records of any counting of sheep. He knew that his clients had grazing land away from the Moors. In general he could identify one farmer's sheep from another's. Recreational activities took place on the Moors. During the war part of the Moors was used as a training area and damage was caused eg. to the drainage. There had been greater public use of the Moors since 1950. Over the last 20 years the areas of heather had been reduced largely due to increased public access. There was enough burning of heather. He had not been involved in any sale or transfer of grazing rights. The sheep could be comfortably supported by the feed available on individual farms.

Mr Pepper then called evidence on behalf of the Objector.

Mr Walter Flesher said he was 87 years old and had been gamekeeper of Burley Moor from 1940-1961. In the course of his work he saw what farming activities were taking place on the Moor. York View was a small farm. Mr Layfield had Hag Farm and some one else had Hag Top Farm. They had 100 sheep each. Burley Moor enjoyed mild temperatures in most years when sheep could stay on the Moor for the whole year.

In cross-examination he said that he knew Mr Layfield and Mr Andrews who farmed York View. There were now more than 200 sheep on the Moor than there were in 1940. He had lived in Burley all his life. He was keeper on the Burley side not Ilkley.

Major Francis Roger Ingham of Bellwood Hall Ripon, North Yorkshire said that he was one of three Trustees who were beneficial owners of Burley Moor, which was purchased in 1949. He was a qualified Land Agent but did not practise. Until recently the Trustees employed an agent but he now looked after the Moor. The number of sheep on the Moor increased after they purchased. They could not burn the heather because of the presence of the sheep. He understood that the small holders of Burley could turn sheep on to the Moor under the terms of the will of a Mrs Crofton. Their agent had tried to get the farmers to agree on a policy for grazing but no one turned up at the meetings. The Trustees employed two men to drive off sheep which strayed on to ~~the~~ land. He had no record of how many sheep there were on the Moor at any time.

Mr Morgan said he was employed by the City Council as Countryside Officer with responsibility for Rural Management. He had a degree in Geography and Planning. In 1975 the City arranged a count of sheep. On Ilkley and Burley Moors ie. Register Units CL 207, 255 and 295 there were 1279 sheep. On the rest of the



- 6 -

massif there were just under 1,200 sheep. On 13 October 1981 there were 870 sheep on the Moors.

Detailed records relating to Ilkley Moor go back to 1875. Since 1960 all vegetation has been gradually overtaken by crowberry and bracken. Bracken had reached the maximum limit. The quality of grazing had sunk dramatically.

In cross-examination Mr Morgan said that he had been employed in his present post since 1974.

Mr J Pallister said that he practised as a Chartered Surveyor and Valuer and had been retained in 1981 to give evidence on levancy and couchancy. He had practised in the Skipton - Clitheroe area for 20 years. He had visited all the claimants' farms. The problem was to equate like with like. One could arrive at a common denominator. One acre of very good land produced 6-8 tons of grass in a year. 6-8 tons of grass produces 1 ton of starch equivalent. One milk cow producing two gallons per day required one tone per year.

The witness produced two schedules. The first showed an assessment in terms of stocking units (1 unit = 5 borned type sheep) of (i) the optimum stocking of each of the claimants farms, (ii) the actual stocking, (iii) the number of stocking units represented by each claim, and (iv) the number of units recommended as acceptable in the opinion of the witness. This showed the following allocation of units:-

1. Rowson 11
2. Balters 1½
3. Lloyd 1.35
4. Fawcitt 10
5. Wallbank 4
6. W E Ellis nil
7. M Ellis and D Ellis 18
- 8-9. Greaves (both claims) 12

The other schedule set out details showing how the figure of stocking units for each of the dominant tenements had been reached. The notes which formed part of this schedule showed that the witness had assumed that levancy and couchancy should be calculated on the number of sheep which the dominant tenement could maintain all year round.

In cross-examination the witness said that he had made only one visit to each claimant's farm. He did not go on every part of a farm. He spent more time talking to the farmer than inspecting the land. His figures were based on the assumption that the sheep were kept on the dominant tenement all the year round.

He did not take fertiliser into account.

All those representing the claimants submitted that Mr Pallister's understanding of levancy and couchancy was wrong and that the true test was the number of sheep which the dominant tenement could support during the winter months. I had already



- 7 -

mentioned to Mr Pepper that his witness's views on the meaning of levancy and couchancy had never been put to the expert witness for the applicants.

I will deal first of all with Mr Pallister's view as to the meaning of the term 'levancy and couchancy' that it relates to the number of cattle which the dominant tenement can support throughout the whole year. In my view this view is at variance with the authorities, which establish that the term means the number of cattle which the dominant tenement can support during the winter months. See Robertson v Hartopp (1889) 43 CL.D.484 at pp. 516-517 and Halsbury's Laws of England 4th Ed. Vol vi paragraph 551. For this reason I am unable to derive any assistance from Mr Pallister's evidence.

As a result of the withdrawal of Mr W E Ellis's application and the agreements reached as to the claims of Mr and Mrs Rowson, Mr and Mrs Wallbank, Mr Fawcitt and Mrs Lloyd, the claims that remain in dispute are those made by Mr Batters, Mrs D L Ellis, and the two claims made by Messrs Greaves.

The Objection to Mr Crabtree's claim for grazing ^{at Entry No 2} was that the number of sheep for which the right was claimed exceeded the number which the dominant tenement could maintain by its produce throughout the winter. The burden of proof was on the Objector and it has not been discharged so this claim in my opinion succeeds.

Mr D L Ellis was born in 1932 and had lived at Cragg House Farm all his life and was now the owner. His family had farmed there since 1914 and there was evidence that his great-grandfather and great-uncle had run sheep on the Moor in the previous century, though not necessarily from Cragg House Farm. When Ilkley U.D.C. was contemplating the compulsory purchase of part of the Moor in 1928, it clearly recognised in a letter to the witness's grandfather that the latter had rights over the Common.

I come now to the claims of the Greaves family both of which are to graze 500 sheep on units CL 207 and 295. One claim is made in respect of Cragg Top Farm by Messrs G H and J W Greaves and the other in respect of Hag Top Farm by the same two and B T Greaves. The Greaves family like the Lister family has had a long history of sheep farming in the area but in my opinion the evidence does not support claims for more than 350 sheep in respect of either farm. With that reduction the claims are made out.

In the result I confirm the following Entries with the modifications set out.

CL 207

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| Entry No. 1 | |
| Entry No. 2 | |
| Entry No. 3 | |
| Entry No. 4 | for 70 sheep only |
| Entry No. 5 | for 30 sheep only |
| Entry No. 7 | |
| Entry No. 8 | for 350 sheep only |
| Entry No. 9 | for 350 sheep only |



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| CL 233 | Entry No. 3 | |
| CL 295 | Entry No. 4 | for 350 sheep only |
| | Entry No. 5 | for 350 sheep only |

I refuse to confirm the following Entries

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| CL 207 | Entry No. 6 |
| CL 233 | Entry Nos. 1 and 2 |
| CL 295 | Entry Nos. 1, 2 and 3 |

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 May 1982

George Haslewell

Commons Commissioner