



In the Matter of those tracts of land called  
Pikestone and Knitsley Fells in the parishes  
of Stanhope and Wolsingham in the County of  
Durham

DECISION

This dispute relates to the registration at the following Entry Nos. 1-4, 9-10, 12-25 in the Rights section of Register Unit No. CL 40 in the Register of Common Land maintained by the Durham County Council and is occasioned by Objections made by the Trustees of the Underley Estates.

I held a hearing for the purpose of inquiring into the dispute at Durham on 13 November 1980. The hearing was attended by Mr C S A Rich of Counsel instructed by Messrs Hodgson and Angus, Solicitors of who appeared for the applicants at Entry Nos. 1, 2 and 3; Mr N Burn of Messrs Smith Roddam and Co, Solicitors of who appeared for the applicants at Entry Nos. 9, 10 and 11, Mr Burn of Messrs Pearson, Burn and Coomer, Solicitors of Helmsley who appeared for the applicant at Entry No. 12 and Mr Brown-Humes of Messrs Hewitt Brown Humes and Hare, Solicitors of who appeared for the applicants at Entry Nos. 14-25. Mr Winch of Messrs Darling Heslop and Forster, Solicitors of appeared for the Objectors.

At or before the hearing the applications at the following Entry Nos. were withdrawn:- 3-4, 12, 14 and 16-25. The objection to the application at Entry No. 13 was withdrawn and the applications at the following Entry Nos. were agreed subject to the following modifications:-

<u>Entry No.</u>	<u>Modification</u>
2	Limited to 10 sheep and to the months of October and November in each year
9 now Mr J M Johnson	Limited to 100 sheep only
10 now Wearmouth	Limited to 250 ewes
15	Delete '10 cattle and' from particulars in Co 1.5 of register.

As a result the only contested objection related to the application at Entry No. 1 by Mr T D Ward to graze 300 sheep and followers over the whole of the Register Unit.

Mr Ward giving evidence said that he lived at Dene's Farm, Wolsingham and was aged 60. In 1964 he had purchased Wiserley Plantation and some adjoining land in all about 254 acres. Adjoining the Plantation on its north-eastern side was a piece of land roughly triangular in shape known as Knitsley Fell which formed part of Unit CL 40 but was some distance away from the remainder of the Unit. When he purchased the Plantation, there was a ~~drystone~~ stone wall between the Plantation and the Fell. The wall was not stock proof and he rebuilt the wall in 1965 with mortar and cement. There had been two smout holes in the old wall and when the wall was rebuilt he put the holes back in the same position. The purpose of a smout hole is to allow sheep to pass through a wall. He had bought his Vendor's flock of 120 sheep, which had previously run on the Plantation and the Fell. He knew that his Vendor (Harrison) had tended sheep on the Plantation for 10 years before he (the witness) purchased and had seen Harrison gathering sheep of the Fell.



Since the purchase he had kept his sheep mainly in the Plantation. About two years after the purchase he stopped running his sheep on the Fell because he could not find a suitable shepherd. He had 350 sheep on the Plantation. Hay could be grown on 150-200 acres of the Plantation, enough to support 300 sheep. He had kept the smout holes when he rebuilt the wall so that he could use them when necessary.

In cross-examination he said that he rebuilt the wall to keep the sheep on the Plantation and he retained the smout holes so that he could use them when required.

William Harrison of Allersgill Farm, Stanhope, aged 49, said that his parents and Uncles had always farmed in the Wolsingham area. 'Hopper' Harrison the previous owner of the Plantation was his Uncle whom he remembered in the period when he was owner of the Plantation. After he left school in 1945, he used to help his Uncle with his sheep at dipping and clipping time. The sheep were brought in from the Fell and the Plantation. He remembered the smouts being in use. He went to the Plantation regularly to help his Uncle until it was sold. There would be 50-80 sheep in the Fell; his Uncle had 180-200 sheep.

Mr Winch called no evidence on behalf of the objectors, the Trustees of the Underley Estates.

Mr Winch submitted that the real purpose of rebuilding the dividing wall was to keep the sheep on the Plantation and this could be evidence of intention to abandon the profit. The period of user under the Prescription Act 1832 would require continuous use until 1971. The final words of the Schedule to the Conveyance dated 13 January 1964 'together with all the right and share of evidence are to the unenclosed parts of the moor or common of Wolsingham aforesaid in respect of the said properties First and Secondly hereinbefore described' did not, submitted Mr Winch, refer to rights over Register Unit CL 40.

The doctrine of lost modern grant was very tenuous and did not assist the applicant. Mr Rich submitted that his evidence sufficiently established a lost modern grant which had not been abandoned. If the reference to the moor or common of Wolsingham did not refer to rights over CL 40, which he disputed, any rights which were the subject of a lost modern grant would pass by virtue of Law of Property Act 1925 S. 62.

I am satisfied on the evidence that Mr Ward's predecessor in title as owner of the Plantation had been grazing his sheep on the Fell for a sufficient period to enable me to find a lost modern grant, that right passed to Mr Ward by virtue of S. 62 and had not been abandoned. The right proved is substantially less than the right claimed by Mr Ward. It was only exercised over the Fell which is a relatively small part of the Register Unit CL 40 and it has only been exercised in respect of at the most 180 sheep.

For these reasons I make no order as for costs.



For these reasons I confirm the registration with the following modifications:-  
that it is limited to 180 sheep and to the area which I have referred to as  
'the Fell'.

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

17<sup>th</sup>

day of

March

1981

Commons Commissioner