



In the Matter of (1) Oxenhope and Midgley
Moor and (2) Dimmin Dale, Wadsworth

DECISION

This dispute relates to the registrations at Entries in the Land, Rights and Ownership Sections of Register Units No. CL 498 and CL 297 in the Register of Common Land maintained by the West Yorkshire County Council and is occasioned by the Objections hereinafter mentioned.

I held hearings for the purpose of inquiring into the dispute at Bradford on 21 and 22 October 1981 and 11 and 12 May 1982. The hearing was attended by Mr C M Pepper and later Mr A Rhodes for Bradford Metropolitan City Council, Mr J Attack for Wadsworth Parish Council, Mr R J Simpson for Yorkshire Water Authority, Mr R S Preston-Jones, Land Agent, for Land Savile, Mr J Dixon of Messrs Clark and Sons, Solicitors of Halifax for Mr R H Murgatroyd, Mr T J Wilkinson of Messrs W and E Burr, Sugden and Co, Solicitors of Keighley for Messrs Rice Jones and Smith of Halifax for John Murgatroyd and Son Ltd, Mr F R Scholefield and many applicants in the Rights Sections appeared in person.

I heard the two references together for ^{the following} ~~several~~ reasons. The two units adjoined. Nearly all the claimants in the Rights Sections claimed the same rights over each unit. By the date of the hearing nearly all the servient land was owned by Mr Scholefield.

Before or during the hearing the applications at the following Entries in the Rights Section were accepted by Mr Scholefield without modification

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| CL 498 | 3-6, 44, 45 |
| CL 297 | 3-6, and the following were accepted with modifications |
| CL 498 | 1. 100 ewes and 10 cattle but exclude Nellmine Farm |
| | *7. 45 sheep no cattle |
| | 8. 200 sheep and 20 cattle |
| | *12. 80 sheep or 16 cattle |
| | 14. 35 sheep or 6 cattle |
| | 29. 52 sheep no cattle |
| | 30. 30 cattle |
| | 31. 30 cattle |
| | *33. 100 sheep no cattle |
| | 34. 50 sheep and 20 cattle |
| | *35. 22 sheep no cattle |
| | 37.* Old Hold Farm, 10 sheep |
| | * Commons Farm, 2 cattle or 10 sheep |
| | 48. 250 sheep and 8 cattle |
| | *55. 15 sheep no cattle |
| | *60. 12 sheep and no cattle |
| | *61. 12 sheep and no cattle |

An asterisk means that rights do not extend to Oxenhope Moor.

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| CL 297 | 8. Sheep limited to 200 |
| | *11. Cows reduced to 16 |
| | 14. Reduced to 35 sheep or 6 cows |



- 28. Delete 10 cattle
- 29. Delete 150 head of sheep
- 30. Delete 120 sheep
- 32. Reduced to 35 sheep or 6 cattle
- *33. Reduced to 100 sheep and no cattle
- 34. Reduced to 30 sucklers and 50 sheep
- *35. Reduced to 22 sheep and no cattle
- 37. *10. sheep from Old Hold Farms
 - * 2 cattle or 10 sheep from Commons Farm
- 45. 250 sheep and 8 cattle
- *54. 12 sheep no cattle
- *55. 12 sheep no cattle

An asterisk means that the rights are only exercisable in the old parish of Wadsworth.

Applications at the following Rights Entries were withdrawn

CL 498 18-20, 22-28, 32, 39-43
CL 297 7, 15-27, 31, 38-42

No evidence was given in support of the applications at the following Entry Nos.

CL 498 2, 9
CL 297 1, 9

The following evidence was given.

Entry No. 21. James Thomas said he was aged 56 and he and his family had been tenants of R H Murgatroyd for 40 years at Mytholom Farm. They kept 30 plus and cattle on the Moors. The family occupied Mytholom Farm for 40 years until 1979. He agreed he was a tenant of R H Murgatroyd who was the owner of the Moor. He had been a tenant since 1935 of Catherine House and Goose West Farms and the Owner since 1952. He had 30 stalls and grazed cattle but no sheep.

Entry Nos. 306. Mr A E Riddiough said that he was aged 52 and had lived all his life at Keelham Farm. His grandfather became tenant of this farm in 1901 and his father had purchased the freehold in 1930. Claytons Farm had been purchased in the 1920's, Little Nook Farm had been purchased in 1948 and Popples Farm had been purchased in 1940 by his father who was then the tenant.

In 1943 all the sheep had been sold off and from that time he had grazed 50-60 cattle on the Moor from the four farms which were now together as a single unit.

Before 1943 sheep from the three farms then owned by the family had grazed on the Moor in accordance with his claim.

In support of the claim at Entry No. 8, Mr Miles Sunderland said that he was born in 1944. Grain Cross Farm had been purchased in 1939, Cross Ends Farm in 1953 and Bedlam Farm in 1957. The number of stock which the family kept, fluctuated. In 1950 they had 400 sheep and 20 cattle. Now these were 400 sheep but no cattle.



Mr David Sunderland who was aged 29 said that the family had cattle grazing on the Moor during the period 1960-70. Mrs Phyllis Sunderland said that in 1940 she and her husband had 400 sheep and 20 cattle. Grain Farm, 3 miles from Midgley Moor. Cattle were put on the Moor while the hay crop on the farms was growing. The cattle were turned out on to the Moor and watched. Between 1956 and 1969 the number of sheep on the farms was between 400 and 450.

Mr W G Ainsworth the claimant at Entry No. 15 said that he was aged 37. His family purchased Hill Top Farm in 1945. There were 10 acres of land. Cattle were grazed on the Moor until 1960.

Mrs R M Pickles said that she and her husband first became tenants of Middle North Farm, 32 years ago. In 1950 they had 70 sheep and 30 cows on the Farm which grazed on the Moor. When her husband left she sold the sheep and kept the cows. She had kept 20 sheep since 1970.

Mrs Rosemary Greenwood said that her brother in law, G W Greenwood had become a tenant of Broadshaw Farm in 1928 and had purchased the freehold in 1930. She and her husband had purchased the freehold in 1976 and had sold about 25½ acres to Messrs Hollings and retained 10 acres. Previously this farm and Sparkes Hill Farm had been run together and there had been as many as 700 sheep on the two farms.

In cross-examination it was suggested that her brother in law's sheep and cattle used to stray and were a source of friction with neighbouring farmers during hay making.

Mr James Honsfield of Rough Farm said that he was 53 years of age. He had been born at Wickerhill Farm which was owned by his father. His father bought Rough Farm in 1949 and Brink Top Farm in 1950. Nellmire Farm was purchased in 1949 by his father who was the tenant. His father died in 1963. The farms were run together and there were 200 ewes and 10 cows and followers.

In cross-examination the witness admitted that when his father was tenant of Nellmire Farm his landlord was James Murgatroyd, who then owned the servient tenement.

Mr Raymond Newhouse said that he and his wife had purchased 22 acres of land at South Shields and Delph End from the estate of Mr G W Greenwood. When Mr Greenwood registered his application for grazing rights in respect of Broadshaw Farm, Pecket Well for 30 sucklers and calves and 200 sheep with lambs, he was also farming the land at South Shields and Delph End which was subsequently sold to Mr and Mrs Newhouse. This is confirmed by Mrs Rose Greenwood's evidence which was not challenged in this respect, that her brother in law kept 3-400 sheep on a farm of 36½ acres.

Mr James Thomas recalled said that G W Greenwood farmed Broadshaw Farm, Acre End, Little Purprize as owner and Delph End and South Shields as tenant. 50 acres.

Mr Frank Radcliffe Scholefield giving evidence in support of the objections in both cases said that he held the degree of B.Sc. in Agriculture and had been involved in farming for the past 40 years and for 30 of those in the area of the



two units. He was a working sheep farmer and spent much of his time on the Moor. In the 1960's he was a member of the County Executive Committee of the National Farmers Union and of the Hill Farming Committee. He was a member of Conservation Societies, such as the Royal Society for the Protection of Birds and the Commons Preservation Society and was currently *Chairman* of the West Yorkshire Farming and Wildlife Advisory Bureau.

He had purchased the two units CL 297 and CL 498 and the Castle Carr Estate in 1977 together with some land from Lord Savile. He withdrew Objection No. 1706 lodged by Lord Savile in the Land Section of CL 297. That left only Objection No. 1294. This Objection relates to a land which is separated on its western boundary from Midgley Moor by a continuous stone wall. This wall starts from Horse Pasture Clough, Dean Head Reservoir and continues past the southern end of the land edged red on the plan attached to the Objection. The land to the East of the wall is part of the Castle Carr Estate and not Common Land.

On this part of his case, Mr Scholefield was supported by Mr James Horsfield who had lived for the past 50 years at Rough Farm which lies to the South of Unit CL 297.

The basis of Objection No. 1328 was the lack of proximity of the dominant tenement to Unit CL 297.

The claims in respect of grazing sheep totalled 5638 animals for 2366 acres. The management of Moors in an urban area was important, because over-grazing impaired the quality of the pasture. This pasture was in Category 5. There was mill stone underlying the soil which is the least favourable situation. It is necessary to keep a balance between heather and grass and between young heather and old heather. Heather benefits sheep and grouse. In the early stages of its growth, especially if the growth is as slow as it is on Category 5 pasture, the heather is vulnerable to over-grazing. Sheep benefit from eating heather in hard weather and are provided with additional minerals, mainly copper, which prevents 'sway back'. Management of heather is by burning. The total stocking rate should not exceed 1200 sheep. Applicants would be well served if they were allowed $1\frac{1}{2}$ sheep for each acre of the dominant tenements.

There were 5 Objections to the Land Section of Unit CL 498. Two of these, 1295 and 1968 were based on the same arguments as had been put forward in support of Objection 1294 in the Land Section of Unit CL 297.

Objections Nos. 1669 and 1678 had been put forward by the then Bradford Corporation and the then Calderdale Water Board respectively, and I am satisfied that the area edged red on the plan attached to this decision and marked 'A' should be excluded from registration.

Objection 1708 was originally made on behalf of Lord Savile and sought to exclude the western half of that part of unit CL 498 from registration in the Land Section with alternative objections relevant to the applications in the Rights Section.

As to Objection 1295 I am satisfied on the evidence that land lying to the east of the stone wall described as running south from House Pasture Clough should



be excluded from registration in the Land Section.

Objection 1709 was withdrawn by Mr Scholefield except for two areas (i) Roms Greave which is referred to in a Statutory Declaration made on 12 May 1982 by Roger Sidney Preston Jones, Lord Saviles Agent for the past 20 years, and (ii) Weather House near Stack House Lane, which was tenanted and had walled boundaries. These two areas will be excluded from registration in the Land Section.

There was evidence that OS. Nos. 386 and 388 were separated from the unit by a stone wall and in my view they should be excluded from registration.

I have read an affidavit of William David Aspinall a director of John Murgatroyd and Son Ltd, dated 10 May 1982 and sworn on behalf of the Company. On the evidence of this affidavit I am satisfied that the land therein described as High House Pasture should also be excluded from registration in the Land Section.

Dealing now with the disputed applications in the Rights Sections, I find that Mr Horsfield's claim succeeds except as to Nellmire Farm. The claims at Entry Nos. 16 and 17 in Register Unit CL 498 are not confirmed as they are now extinguished. Mr Thomas's claim at Entry No. 21 in the same unit also fails because the landlord owned the dominant and servient tenements. His claim at Entry No. 30 and the corresponding claim at Entry No. 29 in Register Unit CL 297 succeed, but not in relation to sheep. Both claims by Mr Pickles succeed but only in respect of 30 cows.

Mr Harris's claim at Entry No. 36 fails for lack of evidence. Mr Ainsworth's claims in respect of Hill Top Farm fail because his evidence only established that grazing took place between 1945 and 1960.

The claims of Mr and Mrs Newhouse fail because although there was evidence to support the claims there was no land on the Register to which it could apply and it is too late now to allow a claim to be introduced.

For these reasons, 1. I confirm the registrations at the following Entries in Register Unit CL 297.

Land Section Entry No. 1 excluding the land edged red on the plan attached to Objection No. 1294

Rights Section Entry Nos. 3-6 without modification and subject to the modifications already indicated.

Entry Nos. 8, 11, 14, 28-30, 32-35, 37, 45, 54 and 55 and I refuse to confirm the following Entry Nos. 1, 2, 7, 9, 15-27, 31, 38-42.

2. I confirm the registrations at the following Entries in Register Unit CL 493.

Land Section Entry No. 1 excluding
(a) the land shown edged purple on the plan annexed to Objection No. 1294 other than the most northerly part
(b) Roms Greave and Weather House



- (c) the land described as High House Pasture in the affidavit of William David Aspinall dated 10 May 1982
(d) Fields No. 386 and 388
(e) the land shown edged red on plan 'A'

Rights Section (unconditional) 3-6, 44 and 45 subject to modifications already mentioned 1, 7, 8, 10, 12, 29, 30, 31, 33, 34, 35, 37, 48, 55, 60, 61.

Land Section Entry No. 1.

I refuse to confirm the following Entries in the Rights Section 2, 9, 18-28, 32, 36, 39-43, 57.

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

2nd

day of

April

1983

Kenya Horrocks

Commons Commissioner