



In the Matter of Muggleswick Common,  
Muggleswick, Co. Durham (No. 1)

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DECISION

This dispute relates to the registration at Entry No. 2 in the Rights section of Register Unit No. CL 75 in the Register of Common Land maintained by the Durham County Council and is occasioned by Objection No. 155 made by Mr A J R Collins and others and noted in the Register on 12 October 1972.

I held a hearing for the purpose of inquiring into the dispute at Durham on 8 October 1980. The hearing was attended by Mr Bibby, solicitor, on behalf of Mrs W S Thompson, the widow and successor to the tenancy of Mr W Thompson, the applicant for the registration, and Mr C J Thompson, solicitor, on behalf of the Objectors.

The registration is of the right to graze 50 sheep attached to land in Waskerley village, defined by reference to a supplemental map. Some of this land is owned by Mrs Thompson and some of it rented from the Durham County Council.

Mr Thompson never put any sheep on the common before 1972. However, Mr W L Lowes, who was born in 1909 and lived in Waskerley until 1932 gave evidence that his father occupied a part of the land in respect of which the right has been registered, comprising about  $6\frac{1}{2}$  ac.. Until he died in 1932 Mr Lowes, senior, grazed sheep on the common without making any payment. This was borne out by a note-book in which Mr Lowes, senior, made a record of his farming activities in 1918 and which shows that he then had some sheep on the common.

Mr Bibby accepted that the evidence would not support a statutory prescriptive right, but argued that this was a case of a lost modern grant and that the right so acquired had not been lost by non-exercise since 1932.

There is no evidence that the  $6\frac{1}{2}$  ac. of land occupied by Mr Lowes, senior, and the common were ever in common ownership. The question is therefore whether on the facts of the case enjoyment of the grazing for a period of upwards of 20 years preceding the death of Mr Lowes, senior, in 1932 permits or requires me to assume that such enjoyment was by virtue of a grant made before 1912 (being 20 years before 1932) and subsequently lost, and whether I ought to act on such a presumption: see Tehidy Minerals v Norman [1971] 2 Q.B. 528, at p.547. For the reasons given by the Court of Appeal in that case, I have come to the conclusion that I must deal with this case on the footing that such a grant was made to Mr Lowes, senior or to one of his unidentified predecessors.

Although there is no evidence that the right was exercised between 1932 and 1972, when Mr Thompson put 40 young sheep on the common, the mere fact that the right was not exercised is not evidence that it was abandoned.



Abandonment of a right of common can only be treated as having taken place where the person entitled to it has demonstrated a fixed intention never at any time thereafter to assert the right himself or to attempt to transmit it to anyone else: see Tehidy Minerals v Norman, supra, at p.553. There is no evidence of any such intention in this case.

Having come to the conclusion that there is a right of grazing sheep attached to  $6\frac{1}{2}$  ac. of the land in respect of which it was registered, it remains for me to consider the number of sheep to which that right extends. Evidence was given of the amount of hay which could be grown on the  $6\frac{1}{2}$  ac. of land to which the right is attached. This evidence was directed to establishing the number of sheep which the  $6\frac{1}{2}$  ac. could support on the basis of levancy and couchancy. It is, however, only necessary to consider levancy and couchancy where there is no evidence as to the number of animals to which a right extends. Mr Lowes, Junior, said that his father had about 20 ewes, though the number had risen to 34 just before Mr Lowes, senior, died in 1932. Since on the authority of Tehidy Minerals v Norman what has to be presumed is a grant made before 1912, it seems to me that the correct presumption is that the grant extended to 20 rather than to 34 ewes and that there is no evidence that it extended to more than 20 ewes.

For these reasons I confirm the registration with the following modifications: namely, the substitution of "20" for "50" and the substitution of a map showing the land occupied by Mr Lowes, senior, for the supplemental map referred to in the Register.

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

20<sup>th</sup>

day of

October

1980

CHIEF COMMONS COMMISSIONER