

ANALYSIS OF REGISTER OF COMMON LAND

ESKDALE COMMON – CL 58

Christopher Rodgers

The common, extending in total to 3071.5 hectares, was registered in the Land Section of the Commons Register as Register Unit CL58 on 15th May 1968. The registration became final following a Commons Commissioners decision on 28th January 1981. Several rights over the land are noted on the Land Section of the register for CL 58 – notably a right of way over the common reserved to the Forestry Commission between (i) Low Place and (ii) Bakerstead and Miterdale Head, and minerals rights leased to ARC Northern Limited by the Leconsfield Estate giving them the right to extract granite on the common.

The Rights section discloses registered rights to pasturage (sheep, cattle and horses), turbarry, estovers and in several cases rights to take water for cattle from brooks on the common.

Common of Pasture

There are 12330 rights to pasture sheep, cattle and horses registered in the Rights section of the register for CL 58. Of these, the most important (both numerically and in practice) are pasturage rights for sheep. There are 11630 pasturage rights for sheep registered on the common, of which 10757 are rights appurtenant (i.e. attached to a dominant tenement) and 873 are rights in gross (not so attached). The rights in gross on the common are contained in just two entries- entry 62 (600 sheep or cattle at a conversion rate of 20 sheep/ 1 cow) and entry 65 (227 sheep or cattle at a conversion rate of 10 sheep / 1 cow, or 20 sheep / 1 horse). These rights were subsequently transferred to tenants of the National Trust, and added to rights held by the latter as appurtenant to their tenanted farms.

The Eskdale register provides a good example of problematic outcomes of the registration process initiated by the Commons Registration Act 1965, and the anomalies to which it gave rise. At a meeting on August 12th 1970 it was agreed that the stocking rate to be used for registering rights should be an average of 2 sheep per acre of common, or 6 per enclosed area of each farm. Four of the register entries that record pasturage rights have rights to graze cattle *in addition* to sheep, while twenty eight entries have cattle pasturage rights expressed as *an alternative* to sheep. In the case of 14 entries the applicable conversion rate is expressed as 10 ewes and followers/ 1 cow. In another 14 entries the conversion rate is expressed as 20 ewes and followers/ 1 cow. This discrepancy does not appear to have a basis in customary practice on the common, or in agronomic requirements (for example in a difference in the quality of grazing available on different parts of the common). The Eskdale commoners association initially agreed that its members would register their rights using a ratio of 20 sheep to 1 cow at a meeting on 8th May 1968¹. A number of the original entries in the Rights

¹ Eskdale Commoners Association Minute Book, Meeting May 8th 1968, fol.34. I am grateful to the secretary of the Eskdale commoners association for permission to use and quote from this source.

Section of the register were registered on 29th June 1968, and these all apply the 20/1 conversion rate agreed upon. At a second meeting of the Eskdale commoners association on August 12th 1970 it was agreed that a conversion rate of 20sheep/1 cow was excessive, and a ratio of 10 sheep/ 1 cow or 20 sheep/horse was agreed upon². Members who had not yet done so agreed to register rights at a ratio of 10 sheep / 1 cow before completion of the registration process under the 1965 Act. A number of applications for registration made from August 1970 onwards therefore apply the 10/1 conversion rate. The secretary was asked to enquire of the commons registration officer whether pre-existing provisional registrations could be revisited, but it was agreed at a further meeting of the Association on August 26th 1970 that the numbers registered would be accepted without requesting any reduction³.

To add to the complexity of the picture, not all graziers were members of the commoners association, and some were therefore not party to the discussions that took place within the association. A number of applications after August 1970 therefore either still reflect the 20/1 conversion rate, or applied a wholly different formula when registering their rights. Some rights that were subsequently registered are also difficult to interpret meaningfully – for example entry 67 “the right to graze 5 sheep or cattle (20 sheep = 1 cow and follower)”, and several others (e.g. entries 70 and 71) in which the numerical conversion rate for the stated rights does not give a workable figure for cattle grazing rights. One entry (no. 30) reserves a right to graze geese.

Most entries give a right to graze sheep and followers without time limit; several entries, however, specify that lambs less than 1 year old can only be grazed on the common from 1st May to 31st October in any year. And several reserve rights to graze cattle to 1st November in any year (but without stating when the cattle may initially be put to the hill in any given year). In earlier centuries it is certainly the case that the movement of cattle to and from the common, and overwintering of sheep and lambs (on the common or on inbye land), would have been controlled by reference to the annual agricultural calendar. The record preserved in the *Eskdale Twenty Four Books* of 1587 refer, for example, to the rights of tenants below Bleabeck to keep their goods on the common until 1st November yearly, and to a requirement for tenants of Wasdalehead to remove their cattle and horses from the common within 14 days after Michaelmas (29th September) . Customary practice in this regard does not, therefore, appear to have survived into the register of rights compiled under the 1965 Act.

Turbary and Estovers

There are fourteen entries recording rights to take peat or turves (turbary) on the common. In addition, five entries give rights to estovers. This is sometimes expressed as the right to take bracken (e.g. entry 20) and sometimes as simply “estovers”. Common of estovers, broadly defined, includes not only bracken but a right to take gorse, heather, ferns and similar growths. It can also include house bote (the right to take timber to repair houses or buildings or as fuel) or hay bote (the right to lop timber to repair fences). It is not clear whether those

² Eskdale Commoners Association Minute Book, Meeting August 12th 1970, fol.59.

³ Ibid. Meeting August 26th 1970, fol. 65.

entries reserving simply “estovers” should be construed in this wider sense, or whether the intention was to record a right to take bracken – the presence of entries limited to the latter would indicate that this was intended in all cases and reflected the historic practice on the common. In practice, bracken is not today taken for animal bedding by any of the graziers who actively use the resources of the common. Two entries record a right to take water from brooks for animals grazing the common.