

FULL COURT

(Lord Elliott, A Gillespie, D D McDiarmid, A B Campbell)

Steven v Crofters Commission

(Application Caithness RN 113 — Order of 25th July 1984)

“Decrofting” -- Application for “decrofting order” -- Proposed refusal by Crofters Commission -- Appeal to Scottish Land Court -- Local community composed largely of owner-occupiers -- Whether still a crofting community -- Proposed decision of Crofters Commission upheld. Crofters (Scotland) Act 1955 (as amended) section 16(9) and 16(a)(2) and (8)

The Applicant owner-occupier of a croft at John O’Groats with a share in the Dancansbyhead common grazings applied for a decrofting order under Section 16(9) of the Crofters (Scotland) Act 1955 so that she could be free, without interference from the Crofters Commission, to bequeath her croft to anyone of her choosing. She was supported in her application by the Clerk to the local grazings committee but opposed by a majority of the local crofters desiring that her croft should remain part of the local pool of croft land available to meet local demand. The Crofters Commission proposed to refuse the Application whereupon the applicant appealed to the Land Court. While concluding that the decrofting of the croft would not adversely affect the running of the common grazings, the Court nevertheless upheld the Commission's decision on the ground that no case had been made out for decrofting; and that the Applicant's case was really tantamount to a criticism of the very legislation itself which still applied to persons becoming owner-occupiers since 1955 and who still constituted a local crofting community.

The Note appended to the Court's Order is as follows: --

Miss Alice Steven has appealed to the Land Court under Section 16(A)(8) of the Crofters (Scotland) Act 1955 (as amended) against a proposed decision of the Crofters Commission dated 2 February 1984 refusing her a decrofting direction in respect of her croft at Eastend, John O’Groats, Caithness. Her grounds of appeal are that the Commission did not take adequate steps to ascertain the background and ability of those persons who expressed an interest in a tenancy of her croft; that the Commission had not specified in what way the general interests of the crofting community could be affected by taking her croft out of the Crofters Acts; that the community interest had not been sufficiently defined; and that like applications had been granted in other areas where crofting still predominates.

Section 16(A)(7) requires the Commission to give notice in writing to the Applicant of their proposed decision specifying the nature of and the reasons for such decision. The Commission have produced a detailed notice including a Statement of Facts and a note of all the written representations made by objectors as well as an account of the proceedings of the hearing held in the Seaview Hotel, John O’Groats on 22 November 1983 before their Area Commissioner, Mr N A MacAskill. Their main reasons for refusal are stated as follows:—

“In this case all the representations made either related to personal demand for the land or assertions that there was demand for the land from other persons. The Commission therefore had to examine and make their own assessment of the general interest of the local crofting community.

Having regard to all the observations received and the other information available to them including the investigating officer's report, the Commission concluded that there was within the locality of Eastend a community whose social, economic and structural make-up depended in some measure on the maintenance of crofting. It was difficult to quantify what harmful effect there might be on the general interest of the community in the locality of this croft if it were removed from crofting. The Commission are, however, satisfied that crofting is important to the area. It consequently follows that the needs of the crofting community are equally important".

"A problem which often exists in the crofting area is an unsatisfied demand for land. The Parish of Canisbay is an area with this problem and the Commission believe that to allow the land at Eastend to be decrofted in the face of this unsatisfied local demand would be unreasonable and against the community interest. They, therefore, consider that in this locality any croft land becoming available for letting should continue to be held on crofting tenure."

"The Applicant's case must also be considered. The Commission noted that Miss Steven's reasons for seeking decrofting were that she did not wish her land to be controlled by an outside body and that she wished to be free to do with it as she pleased. Miss Steven was also concerned that if she did eventually sell the croft, prospective buyers might be 'frightened off' by the threat of the Commission asking for reletting proposals. They also noted that her agent had agreed that refusal would not seriously prejudice Miss Steven although he considered that the balance of convenience for her still fell in favour of decrofting."

On appeal to this Court, it was requested on behalf of Miss Steven that the Application be heard de novo as the Land Court had also done in the previous appeal of Gray v Crofters Commission 1980 SLT (Land Ct) 2. Section 16A(8) provides that the Land Court "*may hear or consider such evidence as they think fit in order to enable them to dispose of the appeal.*" In these circumstances, the Court decided that a hearing on evidence would be required in order to enable them to dispose of the appeal with the prior citation of all the witnesses who had appeared at the previous hearing before the Area Commissioner, but at the request of the Appellant also Mr D S H Mackay, Department of Agriculture and Fisheries for Scotland, whose report had been relied upon by the Commission.

At the hearing, Miss Steven was represented by Mr Robert Hamilton, Solicitor, of Messrs D. W. Georgeson & Sons, Solicitors, Wick. The Crofters Commission was represented by Miss Flora Carmichael, Solicitor to the Commission but only under a watching brief and for the limited purpose of providing the court with any further information required. The Court were obliged to her for providing various items of information required in the course of the proceedings. Miss Carmichael declined to cross-examine witnesses and she explained that the Commission took the view they were now functus and that it would be inappropriate for them to appear as parties to the appeal. Witnesses were therefore led in chief by Mr Hamilton thereafter questioned by members of the Court and re-examined by Mr Hamilton. This procedure which was the best that could be achieved in the circumstances was agreed to by all parties present at the inception of the appeal hearing.

The factual background to this appeal is not really in dispute, although there emerged a sharp difference of principle among the crofters themselves expressed on one side

by Miss Steven, supported by Mr Houston the Clerk to the Grazings Committee and, on the other side, by several neighbouring crofters. Such differences were expressed without rancour and as matters of sincere conviction. They arise from the fact that the John O'Groats community has now become one not of crofting tenants but mainly of owner-occupiers. Out of 30 local crofts at John O'Groats, we were informed that only 3 are now let. All the others have been purchased —some of them prior to 1955. A map prepared by the Crofters Commission for the previous hearing was produced showing registered and unregistered crofts. It at first appeared arguable that Miss Steven's croft might not indeed need decrofting after all, if purchased prior to 1955 -- see, however, a Divisional Court decision to the contrary in Laird Applicant 1973 SLT (Land Ct) 4. But we were informed by the Commission that Miss Steven's croft had been relet under crofting tenure in 1965 when it became a registered croft again with Miss Steven and her aunt as new landlords and Miss Steven's late father as tenant. Miss Steven in 1979 became the sole owner-occupier of the croft which, being technically vacant, is therefore still subject to compulsory reletting.

In giving evidence, Miss Steven said that she had acquired the whole remaining interest in Eastend in 1979 but had lived there permanently since 1966. Her croft extends to some 15 acres of mainly arable land but is now worked by Alexander Sinclair, a neighbouring crofter, who keeps stock on it in return for various services including providing her throughout the year with peats. Miss Steven said she had taken care to ensure that he is not a legal tenant who could then acquire the croft from her. She herself works as a local schoolmistress at Keiss school; but, with the recent decline in the local school roll she now fears that she may be moved elsewhere so involving the vacation of her house and a possible threat from the Crofters Commission to displace her by asking for her reletting proposals -- although this has been her family croft for generations. Miss Steven said she had no intention of letting the croft to anyone else or of selling it for development or letting it pass out of agriculture. She nevertheless feels strongly that she is entitled to "freedom of use" (her original and sole ground of application) in the sense of being free from the control of the Commission and in particular from their vetting for suitability of the person to whom, in the end of the day, she intends to bequeath her croft.

Miss Steven said she regarded a crofter as someone who worked up to (say) 30-35 acres of land and hence she and her neighbours were as much crofters as the few who still leased their crofts. Nobody had explained to her the difference between those crofts which had been decrofted and those which had not. She still thought the crofting system of agriculture was good for John O'Groats but did not see why she, as an individual, needed to be subject to the Crofters Commission. She thought the only reason for refusing her application for decrofting was that certain objections had been made. But she could see no harm to the common grazings on Duncansbyhead which were grazed by a mixture of owners and tenants who each contributed towards the upkeep and the reseeding. She knew of various other registered crofts in the vicinity which had been decrofted including that of her cousin at Lybster. This was a croft of 8 acres arable and 6 acres of outrun which was also part of a crofting community. She admitted, however, that no objections had been lodged in that case. She did not think it prejudicial to have some outsiders purchasing occasional crofts as indeed had already happened locally. Miss Steven appreciated that she could readily obtain a decrofting order in respect of her dwellinghouse but said she nevertheless felt threatened in respect of her stading and fences worth, so she thought, some £12,000; and also in respect of her 15 acres of arable land worth she thought at least £10,000.

Miss Steven considered that the crofting legal system had in the past been based on the relationship between landlord and tenants; but it should not now be operated against crofters like herself who had become owners of their crofts.

Mr Magnus Houston, Millhouse, John O'Groats gave evidence on Miss Steven's behalf. Mr Houston is Clerk to the Grazings Committee of Duncansbyhead Grazings and is also local assessor to the Crofters Commission. He occupies some 90 acres comprised in three crofts, two of which are still registered with the Commission. Unregistered crofts he regarded as "free" and registered ones only as now under the control of the Commission. He holds shares in the Duncansbyhead and Duncansbyhill Grazings although the latter, except on the apportionments, are only used for cutting peats. Mr Houston said that the Duncansbyhead grazings are well run and, due to reseeded, the sheep souming there had been increased from 7 to 10 sheep per share. Reseeding in 1982, amounting to 50 acres; reseeded in 1983 to 63 acres and this year another 60 acres were being done. He had been asked as Grazings Clerk to obtain the observations of his committee on Miss Steven's decrofting application. He therefore called a meeting of shareholders on 24 March 1983 at which 10 shareholders were present and a vote was then taken for or against supporting the decrofting application. There was no discussion and three shareholders (including himself) supported the bare motion in favour of decrofting but seven voted against. He duly reported this to the Commission.

Mr Houston said his own personal view and his views as Local Assessor which he had already conveyed to the Commission was that Miss Steven's croft should be allowed to be decrofted. If, as a result of school cutbacks, she were now forced to move to a new job out of Caithness, then the Commission could regard her as an absentee and ask for her proposals for reletting. If Eastend were so relet, she could then be forced under the 1976 Act to sell to the new tenant at a pittance which would be entirely wrong. He referred the Court to the Commission's Information pamphlet for Crofters on owner-occupied croft land (now produced) the initial paragraphs of which he said one had only to read to appreciate Miss Steven's predicament. While he appreciated the Commission did not usually ask crofter-owners to relet, the legal threat existed and could be exercised at any time. In his view, it was quite wrong that the last surviving member of the Steven family of John O'Groats should now be open to such threat. She had no near relation to put in as a tenant or subtenant, if forced to leave. Her family in the past had helped to break this croft from the hill and make it what it is today. It was not asking much, only a basic human right which was that a person should be able to do what she wants with her own.

With regard to local community interest, Mr Houston explained that the local Freswick Estate still owned the common grazings but the landlord now had no other interest. Mr Houston did not think the local crofting community would be affected by the decrofting of Eastend. The common thrashing mill, once employing 8 men, had now gone. The only communal activity was on Duncansbyhead Common Grazings where the shareholders were all charged the same price for using the communal dipper. Some who were not shareholders were even allowed to use it but only after 2 p.m. when other shareholders had finished. Many of these shareholders were not registered crofters. As Clerk to the grazings committee, he could not see that the decrofting of Eastend would make the slightest difference to the running of the common grazings.

Questioned about the local social fabric, Mr Houston observed that things could not stay still considering that the town of Thurso was full of newcomers from Dounreay who mainly benefited the local community. On the question of demand for more croft

land, he said this was so in any crofting community and he recognised that the local crofting demand here was a genuine one. Mr Houston, however, considered that the crofting system in places like Caithness, had in essence, changed. Formerly there was a tenant and landlord set up and the Crofters Acts were necessary for the security of tenure of the crofters. Now times had changed. The reverse could happen and the same legislation was now being used to threaten or take away the crofter's own security. Here at John O'Groats there was no township in the sense of everything being done together. Each croft was worked independently and neighbours helped each other, but as individuals. In answer to questions from the Court, Mr Houston added that he still regarded himself as a crofter and might even be interested in Eastend itself if up for sale; but he thought it only right that he should then pay the full going price.

Mr Donald S H Mackay was also called as a witness by Mr Hamilton. He is a Higher Agricultural Officer at Thurso with the Department, and also acts as local lands officer for the Crofters Commission. As such he is the person to whom are passed all local applications for decrofting in this area. As a result of being sent the present application, he inspected the croft of Eastend along with its various buildings. He found the croft land to be well-maintained, the fences stockproof, but some drainage was needed at the lower end. He was also required to interview the various persons interested in a tenancy to see whether they were in a position to take over. From these interviews, he concluded that the local demand for Eastend was genuine. He thought there were no other communal or social factors involved apart from the Duncansbyhead Common Grazings. He thought these grazings might be adversely affected by an outsider coming in; for a person of non-crofter status would be likely to upset the others and it was through the cooperation of all the shareholders that the necessary work was best done. Mr Mackay had been involved in recommending the granting of the decrofting application to Miss Steven's cousin at Lybster. That application was successful because there were no common grazings there and no objections. Generally, if there were no objections, he recommended the granting of a decrofting application. Mr Mackay considered that if one decrofting application were to be granted here, others might follow. He would be very surprised if the Commission were ever to ask Miss Steven for her proposals for reletting. With regard to the amount an incoming tenant would have to pay on reletting (on the assumption the house was decrofted) he thought that about £15,000 would be required to take over the permanent improvements and stock the holding. Questioned about the financial resources of the respective tenants, he stated that he had not inquired into their financial ability to take over the tenancy.

The Court then heard evidence from the various objectors although the first of these, Mr William Mowat, indicated that he had now withdrawn his objection on learning that Miss Steven did not intend to take the land out of agricultural use.

Mr John Mowat, Victoria House, John O'Groats, said he strongly maintained his objection to the application. He was personally interested in more land for himself and ultimately for his son so that he could expand his farming enterprise. He presently has two crofts known as Broo and Little Stenster extending to 9.5 hectares arable and 4.25 hectares outrun with an apportionment on the Duncansbyhill Common Grazing. He also has a lease of the Breck. But he said he still needed more land to make a reasonable living and it was therefore in his interests to expand. All the young people could do with more land yet they could not really compete with open market prices if persons of non-crofter status were entitled to enter the field. This was the sole basis of his objection to decrofting and he did not consider that any harm to the common grazings would result from a decrofting order. Nevertheless, it

was vital to retain a pool of croft land. He also added that as long as everyone was part of a local community, it was reasonable that outsiders should be excluded thus maintaining the pool of crofting land. While the Commission could not guarantee this, they certainly helped.

Mr Mowat's personal interest in Eastend was both in the land and the house as a complete unit. He had given close thought to the running of Eastend, and had enough machinery to do so as he also did contracting work. His farming enterprise was in credit. He agreed that there was no actual community work apart from the common grazings. All the land was worked as small farms although the crofters also helped each other. Finally, he added that one would not get such good grants for Eastend if decrofted and crofting grants were better than ordinary ones. He added that if all the crofts at John O'Groats were decrofted, the holdings as such would soon vanish and be amalgamated into a few large units.

Mr William Steven, St Rowan, John O'Groats also objected to Eastend being taken out of crofting tenure which he considered to be removing it from the crofting community. He is no relation of Miss Steven. If the tenancy ever became available, he said he would be interested although he appreciated Miss Steven had no present intention of letting. He is presently the crofting tenant of several crofts extending in all to about 31 hectares. He said that the crofts in John O'Groats were all worked together and as long as it remained under the Crofting Acts, it was a crofting area. He said it would make all the difference whether Eastend was put on the market as a croft or not. He himself would be interested in a tenancy, if offered. He was keen to have more land and could cope with Eastend. He would be able to raise a sum of £10,000 as he presently had no overdraft. He could even take over the house if required and was interested in other land for his son now aged 14.

Mr John Sinclair, 3 Heatherbell Cottages, John O'Groats, now lives in a council house but lived on a croft all his life until he married. He said that he had helped his father from 1962-1976 to work Eastend of which his father then had the use. Mr Sinclair thought that if offered the tenancy he could manage to finance the expenditure involved by borrowing from the rest of his family. He regarded John O'Groats as a crofting community and he did not therefore see why Eastend should be decrofted.

Mr William Rosie gave evidence on behalf of his wife, Mrs Bessie Rosie, who is the crofter of two crofts at Burnside and Breck extending in all to 5.26 acres. He objected on the ground of loss to the community from the decrofting of Eastend. He thought that persons from the south could make higher offers and outbid the local people. If the holding remained a registered croft, he thought this would prevent this happening for under the crofting legislation there were no guarantees that the highest bidder for the permanent improvements would get the tenancy of the croft when advertised for sale. He said he could cope with further land and appreciated he would have to take over the improvements although he would not consider taking the house as well which might cost an extra £20,000.

In his submissions on behalf of the Appellant, Mr Hamilton said that the evidence now highlighted how uneasily the crofting system sat alongside with owner-occupation. Crofting had developed under a landlord and tenant system whereas now in 1984 one saw the same system still trying to operate in a situation of croft ownership. In this area one might soon expect to see 100% owner-occupation. Against the new background of possible purchase under the 1976 Act, new leases were only granted within the family and no one would think of letting outside the

family to persons who could promptly purchase. Hence it was almost unknown now in these parts to find a true crofting tenancy and no such new crofting tenancies were ever advertised.

Mr Hamilton said the Appellant's reasons for decrofting were, firstly, that the powers of the Crofters Commission could present a future threat to her as the last member of a local crofting family. And secondly, that she wished to bequeath her croft to another person as she had no other relative. This was a situation with which she would eventually be faced. Yet, unless decrofted, Section 10(1) of the 1955 Act gave the Commission a power of veto over her chosen beneficiary to decide on his or her suitability. Hence Miss Steven now wished freedom to leave her croft to someone who could not be vetted by an outside body.

Mr Hamilton, however, conceded on the authority of Gray v Crofters Commission that the interest of the community was the primary consideration when deciding on decrofting. But his complaint was that the Commission proposed to refuse his client's application without having defined what the community interest was and without any evidence. He also disputed that there was here any actual township such as are to be found in the west where there are communal activities needing collective control. In such areas Mr Hamilton conceded that decrofting might be harmful if it led to the sale of crofts to holiday visitors who only stayed there for a few weeks in the year and were not part of the local community. Here, however, there was a community of independent owner-occupiers who shared machinery from time to time but only as individuals. Here the grazings were of less importance and, in any event, would be quite unaffected by the decrofting of Eastend. In Mr Hamilton's submission, the other graziers had really only objected because they did not regard "freedom of use" as a proper reason for decrofting and would really like to obtain Miss Steven's land more cheaply.

Mr Hamilton said there was already an ageing population in this depopulated area and crofts increasingly came on the market. The conflict was really between those crofters preferring the maintenance of the crofting legal system to obtain cheaper land and those nearing retirement who wished to sell and obtain the full market value of what was their own. He denied, however, that it was easier to obtain croft land, if still registered with the Commission or that it was likely to be cheaper if so registered. Hence no case had been made out that the community interest would be prejudiced as a result of granting the decrofting order sought. It was necessary for the Commission to identify the community interest in question and further that this would be prejudiced by decrofting. As this had not been done, the appeal should therefore be allowed.

Miss Carmichael for the Court's assistance observed that the Commission had been faced with an application, the reason for which was merely stated to be "freedom of use". Although this had now been substantially added to at the present hearing, no case had yet been made out. On the question of the general interest of the crofting community, she wished to point out that, quite apart from the tangible elements of communal working mentioned in evidence, there were also intangibles to be taken into account. The Commission also relied heavily, in practice, on their own people on the ground. A great deal of weight was thus given to local land staff and the Area Commissioner as well as to the views of the local assessor. Miss Steven, at an earlier stage, had given no real reasons for decrofting and appeared rather to have attempted to throw the onus upon the Commission to justify why she should not be allowed a decrofting order. This, in Miss Carmichael's submission, had placed the Commission in a difficult situation. She denied, however, that any onus rested upon

the Commission under Section 16(A)(2). On the contrary, persons wishing to obtain a decrofting direction must produce valid reasons why the status quo should be altered. The case now sought to be made out by Miss Steven was still a very slight one and the Court should not therefore disturb the decision of the Crofters Commission.

Decision

The decision whether or not to grant a decrofting direction under Section 16 of the 1955 Act (as amended by Section 13 of the 1976 Act) is primarily a matter within the discretion of the Crofters Commission. It was the new body set up in 1955 to take over from the Department and the Land Court most of the administrative duties connected with the crofting system in the crofting counties. While a new power to make "decrofting" directions contained in Section 16 was originally entrusted to the Secretary of State, this was, upon the introduction of croft purchase in 1976, transferred to the Commission subject, however, to the requirement to hold a quasi-judicial hearing and with a right of appeal to the Land Court. While given this power of review, however, the Court nevertheless consider that they should be slow to disturb a decision of the Commission if made in accordance with law and with adequate reasons to support it.

In determining whether or not to give a decrofting direction, the Commission is required under Section 16(A)(2) to *"have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for a tenancy of the croft from persons who might reasonably be expected to obtain that tenancy if the croft were offered for letting on the open market on the date when they are considering the application"*.

In the previous appeal of Gray v The Crofters Commission, *supra* the Court interpreted this statutory guideline to mean that the general interests of the local crofting community are paramount and hence, in that case, should be allowed to prevail in favour of decrofting to enable a voluntary scheme of reorganisation to go ahead. This had been agreed between the Landlord and the local crofters to include a major drainage improvement which would otherwise have been frustrated by alleged local demand for the marshland in question, the draining of which only the landlord appeared, on the evidence, to be in a position to undertake.

The present case is entirely different from Gray. Having now heard the evidence, the Court endorse the Commission's view that there is clear evidence here of genuine local demand from other crofters for this land. Also that at least two of the potential tenants are in a position to take over a tenancy and have access to adequate finance to enable them to do so. There also appears to be a sufficient crofting community, as opposed to an isolated croft where decrofting might more readily be expected to follow. The special feature, however, on which the present appeal is based is that John O'Groats is a community almost entirely comprised of crofter-owners rather than of crofting tenants. Hence the contentions by Mr Houston in evidence and by Mr Hamilton in his closing submissions that the crofting system, designed for a landlord and tenant relationship, has now, since the passing of the 1976 Act, become difficult to apply. It is said now to threaten the security of tenure of the crofters themselves including, in *particular*, Miss Steven.

These submissions, however, are really tantamount to a general attack upon the legislation itself which, until altered by Parliament, this Court is bound to apply.

For the Commission's powers to call for reletting under Section 16 of the 1955 Act, do at least still apply to owner-occupied crofts purchased after 1955. This is because an owner-occupier is deemed to occupy a vacant croft by virtue of Section 16(11A) of the 1955 Act (as amended by paragraph 12(c) of the First Schedule to the Crofters (Scotland) Act 1961). Nevertheless, we are bound to agree with Mr Hamilton that certain aspects of this legislation are not entirely apt to fit the position where a crofter has purchased his landlord's interest. But the Court has nevertheless to do the best it can to apply the law as it stands and to make it workable.

An owner-occupier does not even fall within the definition of a "crofter" contained in Section 2(2) of the 1955 Act who requires to be the tenant of a croft holding under a lease. Yet all the owner-occupiers who gave evidence in the present case still regarded themselves as crofters and their holdings as crofts in the same way as adjoining tenants. All are still engaged in crofting agriculture, cultivating small holdings often in conjunction with auxiliary occupations and all regarding themselves as part of a local community. We consider that Parliament must have intended a local crofting community at least to include persons who have become owner-occupiers since 1955.

We understand that no previous decrofting orders have been granted in the area of John O'Groats. We were also informed on behalf of the Crofters Commission that Miss Steven's croft was re-registered after 1955 so it, and many others, clearly remain subject to the Crofters Acts.

We therefore conclude that the Commission were entitled to conclude, despite the incidence of much owner-occupation, that there is still a local crofting community at John O'Groats.

The policy of the Commission in regard to the exercise of their decrofting powers now claimed to be threatening Miss Steven, as well as other owner-occupiers, is stated in Paragraphs 2 and 3 of their guidance pamphlet for owner-occupied croft land as follows:—

"2. The Commission have power to require that the croft land which has become vacant should be let to a crofting tenant. In practical terms, this does not create a problem for the new owner (the former crofter) so long as he -- or a member of his family -- continues to occupy and work the acquired land for agricultural purposes. In those circumstances, it is Commission policy not to call for letting".

"3. But if, for example, the croft was sold to someone who was not permanently resident, or who was clearly not of crofter status, or who did not work it, the Commission might call on the new owner for reletting proposals, depending on the strength and nature of the demand for land from persons who might reasonably be expected to obtain the tenancy of the croft if it were offered for letting on the open market."

The reasons advanced by Miss Steven's solicitor for the contention that these powers pose a threat are that a prospective purchaser would be frightened off, given

the powers of the Commission to seek reletting proposals. Also that she wishes to leave Eastend in her will to a person who might be vetted by the Crofters Commission and then be forced to relet. She thus wishes to avoid the possibility of her legatee, if not of acceptable crofter status, being asked by the Commission for reletting proposals.

This, however, is the very situation which the existing legislation was intended to prevent. Furthermore, we must observe that if advertised for sale the right category or purchaser would have no reason to be frightened off, nor in the event of a bequest would the right category of legatee. Miss Steven has no present intention of officially letting her croft or allowing it to pass out of agricultural use, although, as a school teacher, she may be moved to another location. But again her control of occupation is most unlikely to be challenged by the Commission. There is also nothing to stop Miss Steven, whenever she wishes, obtaining a decrofting order in respect of her house which is worth at least £20,000. The Court are therefore, unable to see any significant prejudice or hardship to Miss Steven just because she may not be effectively able to leave her croft to someone whom she herself thinks would be unacceptable to the Commission as not being of crofter status. In reply to questions from the Court, Miss Steven even admitted in evidence that she was not really suffering hardship but only "something more than inconvenience".

It was also contended that the 1976 Act gives rise to a manifest injustice when now combined with the compulsory reletting provisions for a new tenant nominated by the Commission could immediately purchase the croft from the owner. But that is to overlook the provisions of Section 1(2) of the 1976 Act under which a purchasing tenant first requires the authorisation of the Land Court. Also Section 2(2)(a) which provides that the Court shall refuse such authorisation where they are satisfied by the landlord (i.e. the former owner-occupier) that the making of the order would cause "a *substantial degree of hardship to the landlord*". See Geddes v Gilbertson Skye & Lochalsh RN 277, 9 September 1983.

John O'Groats has two common grazings, firstly the Duncansbyhill Common Grazings which are unregulated and little used for agricultural purposes and, secondly, the Duncansbyhead Grazings which are regulated. The latter provides good grazing and indeed has been the subject of recent reseeding schemes including the only such reseeding carried out in Caithness on a communal basis. There is no communal grazing of the inbye land in winter which is good arable land primarily directed towards growing keep and for rearing good quality livestock. There are no local cooperatives in operation for purchasing or providing services. There is a good local road system and markets are within easy reach for individuals to do all their own marketing. There is no communal ownership of farm machinery although crofters do combine to help each other and contractors are sometimes hired.

The Court agree with the Appellant that the decrofting of Eastend will have no significant effect upon the only communal activity in the neighbourhood namely the running of the Duncansbyhead Common Grazings. These Common Grazings moreover do not play the same overwhelming part in relation to the inbye as they do on the west coast or in the islands. At John O'Groats, as in other coastal parts of Caithness, the inbye is mostly fertile arable worked as small farms which lend themselves more to being worked as independent units. That the decrofting of Eastend would not affect the common grazings was also the view of all the witnesses, apart from Mr Mackay. Mr Macfarlane, the Chief Technical Officer of the Crofters Commission itself, in his report (Production 10) also stated: --

“While communal working of the grazings might represent community interest there is nothing to show or any reason to think that it would be better served by refusing the application and I do not think that it can be assumed that decrofting would necessarily be against the community interest so far as the grazings were concerned”.

The decrofting of Eastend, however, would reduce the local pool of croft land kept available for persons of crofter status and in a situation where there is present local demand. While each decrofting application has to be considered on its own merits, nevertheless if this application were now to be granted on the present grounds, further decrofting applications in like circumstances might be difficult to resist with possible harm to the local community. Miss Steven’s family have, till now, had the benefit of the crofting legislation from which she now seeks to be released taking her croft out of the pool so that it is no longer available to serve future local demand, She has produced no evidence of significant prejudice or hardship due to remaining under the Crofters Acts other than subjection to the very legislation itself which is what she meant by “freedom of use”. In our judgement something more is required.

The Commission have taken the view that Miss Steven’s croft should still remain subject to the Crofters Acts and therefore part of the local pool of croft land. We consider that insufficient reasons have been presented for overturning their proposed decision.

We therefore uphold the proposed decision of the Crofters Commission to refuse the decrofting application.

The Applicant's solicitor intimated that, in these circumstances, he made no motions for expenses.

For Applicant: Mr R P C Hamilton, W.S., Wick

For Respondents: Miss F. C. C. Carmichael, Solicitor, Inverness