



In the Matter of Quarry known as Lackay,  
Dacre, Cumbria (NO.2)

DECISION

This dispute relates to the registration at Entry No 1 in the Rights Section of Register Unit No. CL.354 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by Objection No. 173 (a) made by the Dacre Parish Council and noted in the Register on 4 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 31 October 1980. The hearing was attended by Mr H Noblett, the applicant for the registration. There was no appearance on behalf of the Parish Council, but Mr C Wilding, its Clerk, informed the Clerk of the Commons Commissioners by a letter dated 6 October 1980 that the Objection was "withdrawn".

The registration is of the right of the residents of Stainton to take stone from Lackay Quarry and the particulars of the land to which the right is attached are stated as "Riseholm, Stainton", Riseholme being the name of Mr Noblett's property.

The right as stated is legally impossible, for it was held in Gateward's Case (1607) 5 Co. Rep. 59b that there can be no right of common in a fluctuating body, such as the residents of a place. However, by the inclosure award made on 10 September 1775 under the Great and Little Stainton Newbiggin and Great Blencow Inclosure Act of 1772 (12.Geo. III c.141 (private)) the land in question was awarded as a quarry for the benefit of all the owners and occupiers of houses and land to get stone in any of the townships or hamlets the subject of the award for their houses and land therein but not for any elsewhere. Mr Noblett's property is in the township of Stainton and therefore has a right to take stone attached to it. This right was also attached to other property in the township, but there was no registration in respect of any other property, and the registration of a right of the residents cannot stand. I have therefore come to the conclusion that the only right which can be registered on Mr Noblett's application is that attached to Riseholme.

For these reasons I confirm the registration with the following modifications, namely, the deletion of the words "of the Residents of Stainton".

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

November

1980

Chief Commons Commissioner