



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/22 to 28 inclusive

In the Matter of Woodland Fell, in  
Kirkby Ireleth, Blawith, Subberthwaite  
and Torver parishes, South Lakeland  
District, Cumbria

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### DECISION

Of these seven disputes, one (D/22) relates to the registration at Entry No 1 in the Rights Section of Register Unit No CL. 55 in the Register of Common Land and is occasioned by Objection No 243 made by Holker Estate Trust and noted in the Register on 15 February 1972, another (D/23) relates to the registration at Entry No 13 in the same Rights Section, and is occasioned by Objection No 242 made by Holker Estate Trust and noted in the Register on 15 February 1972, and the remaining five (D/24-28) relate to Entry No 19 in the said Rights Section and are occasioned by Objection No 395, No 398, No 399, No 400 and No 401 made respectively by Mr Philip Downing as Chairman of Kirkby Ireleth Commoners Association, Mr William Wells Hodgson, Mr Robert Stephen Jackson, Mr John Stephenson, and Mr William Newby, and all noted in the Register on 18 July 1972.

I held a hearing for the purpose of inquiring into the disputes at Kendal on 26 April 1978. The hearing was attended (1) by Mr W D Knipe as Secretary of Kirkby Ireleth Commoners Association, and (2) by Mrs Jean Marian Hargreaves of Bridge End Farm on her own behalf and as representing her husband Mr J W Hargreaves (they being successors in title of Mr T E Peacock and Mr J E Brown on whose application the said Entry No 19 was made).

The land ("the Unit Land") in this Register Unit is a little over 4 miles long from north to south and has a width which in places (near the north end) is 1 mile or a little more, and most places about  $\frac{3}{4}$  of a mile and in two places a little less than  $\frac{1}{2}$  a mile. In addition to the Entries in the Rights Section above mentioned, this Section contains 33 Entries of rights to graze sheep or cattle (in some cases horses) and to cut and take bracken (and in some cases to cut and take peat) which registrations being undisputed have become final. In the Ownership Section the Holker Estate Trust are registered as owners of all the Unit Land except a small piece at the southeast corner and a narrow strip along the east side and a small piece near the northeast corner (that is, as owners more than 99% of the Unit Land) and the Boughton Estates Limited are registered as the owners of the last mentioned small piece.

As to Rights Section Entry No 19:-

This Entry made on the application of Messrs Peacock & Brown is of rights attached to Bridge End Farm (1) to graze 400 sheep or 80 head of cattle or sheep and cattle together, to a limit to 400 gates...(2) to cut and take bracken..."

The grounds of Objection Nos 395, 398, 399, 400 and 401 are all the same being: "That the numbers claimed are in excess of those to which the holding is entitled. It is suggested that the Entries should read:- To graze 200 sheep or 40 head of cattle or sheep and cattle together to a limit of 200 gates..."



Mrs Hargreaves at the hearing said that she and her husband purchased Bridge End Farm from Messrs Pollard Clegg & Jacques under a conveyance dated 3 November 1975 (a copy of which she produced) that she understood that they purchased the farm previously from Messrs Peacock and Brown. She said that she and her husband were agreeable to Entry No 19 being modified so as to give effect to the Objection. In the above circumstances I confirm Rights Section No 19 with the modification that for the figure "400" in the two places where it occurs (column 4 paragraph 1) there be substituted the figure "200" and for the figure "80" there be substituted the figure "40".

As to Rights Section Entry No 1:-

This registration was made on the application of Mr G D Holliday and is of a right attached to Greaves Ground, Torver (1) "to graze 300 sheep over the part of the land comprised in this Register Unit lying north of the line A-B and east of the line B-C on the Register map and the whole of the land comprised in Register Unit No CL. 57, (2) to cut and take bracken over...(the same land)...".

The grounds of Objection No 243 are:- "The rights were registered by Mr D G Holliday of...in respect of that land which is outside the Manor of Kirkby Ireleth. He is not therefore entitled to register rights of common".

As regards this registration two letters both dated 20 November 1974 have been received in the office of the Commons Commissioners: one from Mr D J L Lee on behalf of the Holker Estate Trust (Trustees to John ~~W~~ Burrows and the Marquis of Salisbury) in which he said that at a meeting Mr Holliday and he had agreed that his (Mr Holliday's) claim was incorrectly based and the boundary of Kirkby Moor is as stated in our submission of ownership, and that he has no rights of common upon it; the other from Mr Holliday in which he said that Mr Lee had told him the Objection was against a small part of the boundary, that in his plan he drew the boundary of Torver Low Common along the Parish boundary and he pointed out that the correct boundary was that shown on the survey map of 1808 which has also been accepted by the Crown Commissioners for Torver and that he accepted this as the correct boundary for commons rights and thus removing the Objection.

From the Register map it appears that the right registered by Mr Holliday was over only a very small part (at the north end) of the Unit Land (the right being I suppose substantially over CL. 57, I presume being Torver Common mentioned by Mr Holliday). Notwithstanding that nobody at the hearing spoke either for or against this Entry No or for or against the Objection, I conclude that I ought to act upon the said 1974 letters, and accordingly I refuse to confirm the registration at Rights Section Entry No 1.

As to Rights Section Entry No 13:-

This registration was made on the application of Mr Thomas Bavin and is of a right attached Rose Hill Farm, Torver to graze 30 sheep and to cut and take bracken over the same land as is specified in the corresponding entry at Entry No 1. The grounds of Objection No 242 are the same as the grounds of Objection No 243.

Notwithstanding that nobody at the hearing spoke for or against this Entry or for or against this Objection, and I have in relation to this Entry no letters such as the November 1974 letters above mentioned, I infer that the circumstances are in all relevant respects the same and I ought therefore to reach the same conclusion.





For the above reasons I refuse to confirm the registration at Rights Section Entry No 13.

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 *5<sup>th</sup>* day of *May* — 1978

*a. a. Baden Fuller*

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Commons Commissioner