



COMMONS REGISTRATION ACT 1965

Reference No 268/II/16

In the Matter of (1) Marsett Bardale
and (2) Marsett Green and Rigg, in
Bainbridge, Richmondshire District,
North Yorkshire

DECISION

This reference relates to the question of the ownership of land known as (1) Marsett Bardale and (2) Marsett Green and Rigg, in Bainbridge, Richmondshire District being the land comprised in the Land Section of Register Unit No CL. 39 in the Register of Common Land maintained by the North Yorkshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Messrs William James Metcalfe, Clarence Hodgson, Thomas Ewbank, G H Murphyn, James R Fawcett, Mary Halton, Jenny Hogg and Catherine Metcalfe collectively claimed to be the freehold owners of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Richmond on 10 February 1977. At the hearing the persons named in ~~the~~ ^{The} Schedule hereto were represented by Mr I C Scott solicitor of Malcolm E Scott, & Son, Solicitors of Leyburn. Also present were Mr Thomas Ewbank, Mr William James Metcalfe, Mr Laurence Henry Murfin and Mr Wilson Hodgson (son of Clarence Hodgson).

The land ("the Unit Land") comprised in this Register Unit is in two parts: (1) Marsett Bardale a track southwest of Marsett about $1\frac{1}{4}$ miles long and $\frac{3}{4}$ of a mile wide rising up from Bardale Beck on Cock Lake Side to about 1700 feet; and (2) Marsett Green and Rigg, an adjoining area ~~is~~ about $\frac{1}{4}$ of a mile long comprising a number of pieces adjoining or near Marsett Beck and north and west of Marsett. In the Rights Section there are 6 Entries each of gaits over Marsett Bardale and of gaits over Marsett Green and Rigg all attached to various farms.

Mr Scott produced a note (as set out in the Second Schedule hereto) made on behalf of his firm at the County Record Office at Northallerton from the Inclosure Award dated 29 April 1859 for Close Ing Pasture, Marsett Green and Rigg and Marsett Bardale, situate in the township of Bainbridge in the Parish of Aysgarth; made under the Second Annual Inclosure Act 1850 (13 & 14 Vict c.66) — — — — — and also the abstracts of title mentioned in the Third Schedule hereto.

Mr Ewbank who has for the last 13 years been secretary and treasurer of the Owners and Occupiers of Marsett Bardale Green and Rigg in the course of his evidence produced a list (as set out in the First Schedule hereto) of those who according to his records now own the gaits, a Minute Book of the meetings from 1877 to 1899 of the Marsett Bardale Green and Rigg Gait Owners and another Minute Book of their meetings from 1905 up to 1976 (being the book now currently in use).



Mr Scott contended that under sections 113 and 116 of the Inclosure Act 1845 the gait owners for the time being were also the owners of the land in shares proportionate to their gaits. He pointed out that all the meetings recorded in the 1877 to 1895 Minute Book are therein described as being of "owners and occupiers" and there were Entries relating to grants of rights of way and of shooting; also the documents comprised in the abstracts of title he produced included some references to the gait owners having, or were all not inconsistent with them having, a share of the land.

On this reference I am concerned with the ownership of the land for a legal estate in fee simple, see section 22 of the 1965 Act. By the Law of Property Act 1925 ownership of a legal estate in land in shares by tenants in common was abolished and all land formerly so held became vested in trustees as provided by the First Schedule of that Act.

Apart from the change effected by the 1925 Act, I accept Mr Scott's contention as to collective ownership: section 116 of the 1845 Act expressly so provides. Part V of the First Schedule to the 1925 Act contains provisions as to "Open Spaces", under which (stating its effect shortly) any such land held before 1925 in undivided shares vests in the Public Trustee, so that each person who would but for the Act have been a tenant in common shall have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting. As to this see the High Court decision in re Cotherstone, noted in the Estates Gazette, 1 July 1961.

It was not suggested that the Public Trustee had ever been asked, or that in the foreseeable future he would ever be asked to act; so it may be that his ownership of the legal estate will not affect the use of the land now being made by the gait owners. However this may be, there was no evidence that the Public Trustee had been divested of the legal estate which by the 1925 Act became vested in him, and accordingly I am of the opinion that he is still the owner.

For the above reasons I am satisfied that the Public Trustee is the owner of the Unit Land and I shall accordingly direct the North Yorkshire County Council as registration authority to register the Public Trustee as the owner of the land under section 8(2) of the Act of 1965.

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.

FIRST SCHEDULE

	Gait Owners	Bardale Cattle Gaits	Green & Rigg Calf Gaits
1	Thomas Ewbank Marsett Farm Askrigg, Leyburn	18½ 1	8
2	Miss Catherine Metcalfe Laygate House Bainbridge Leyburn	13	4



3	Pers Reps of Clarence Hodgson Marsett Askrigg, Leyburn	42	17½
4	William James Metcalfe (3) Nappa Scar Askrigg Mary Halton (1/16th) Salisbury House Askrigg Leyburn Jane Metcalfe (1/16th) Dale View Farm Thornton Rust Leyburn	16½	7
5	Lawrence Henry Murfin West End Farm Marsett	34	8½
6	James Hall Fawcett Knights Close Marsett, Askrigg Edgar Reynolds Swinithwaite, Leyburn (Trustees of James Robert Fawcett dec'd)	1	
		<u>126</u>	<u>45¼</u>

SECOND SCHEDULE

Whereas the Inclosure of Close Ing Pasture Marsett Green and Rigg and Marsett Bardale situate in the Township of Bainbridge in the Parish of Aysgarth in the County of York has been duly authorised under the provisions of "The Acts for the Inclosure Exchange and Improvement of Land".

An Order under their Seal dated the thirtieth day of October One thousand eight hundred and fifty duly ordered and directed that Marsett Green and Rigg and Marsett Bardale aforesaid should be converted into and used as regulated pastures under the provisions of the said Acts.

And I do hereby award the Herbage of the said piece or parcel of land numbered 14 (Marsett peat ground) to the Owners of Stints or rights of Pasture in Marsett Bardale.

And I further declare that I have according to the directions of the said Order of the said Commissioners bearing date the thirtieth day of October One thousand eight hundred and fifty set out and do hereby set out and allot and award the aforesaid Marsett Green and Rigg and Marsett Bardale to be used as regulated pasture.



45½ stints in Marsett Green and Rigg.

126 stints in Marsett Bardale.

And I do further declare that in the Schedule next hereinafter following I have set opposite to the Names of the respective Owners of the said Stints or rights of pasture in the said regulated pastures the proportionate shares or aliquot parts which the respective Owners for the time being of the said stints or rights of pasture shall be liable to pay any sum of money required to be raised by way of Rate on such Owners under the provisions of the said Acts.

THIRD SCHEDULE

- A Abstract of title of Mr T Ewbank to Marsett Farm comprising a conveyance dated 13 May 1963 by E Hall to T Ewbank
- B Abstract of title of Miss Catherine Metcalfe to land at Marsett commencing with a conveyance dated 19 March 1904 by J C Winn and others to G Coates including answers dated 27 February 1934 to requisitions on title
- C Abstract of title of Mr Clarence Hodgson to land at Marsett commencing with an assent dated 28 September 1965
- D Abstract of title of Mr L H Murfin to West End Farm, Marsett comprising answers dated 3 August 1934 to requisitions on title and a conveyance dated 13 May 1964 by Mr J Pratt to Mr L H Murfin and a conveyance dated 29 October 1946 by W Banks to J Pratt
- E Abstract of title of Mr W T Metcalfe (a 1/6th share, a 1/6th and a 1/3 share) and of Mrs M Halton and Miss J Metcalfe (1/6th share each) comprising wills, probates and assents and commencing with the will of T Metcalfe who died on 5 May 1879

Dated this 4th day of March 1977

a. a. Baden Fuller

Commons Commissioner