



COMMONS REGISTRATION ACT 1965

Reference Nos 268/D/428
268/D/429In the Matter of Blea Moor,
Ingleton, Craven District,
North YorkshireDECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and at Entry Nos 4, 5, 6, 7, 10, 12, 13, 14 and 17 in the Rights Section of Register Unit No. CL194 in the Register of Common Land maintained by the North Yorkshire (formerly West Riding) County Council and is occasioned by Objection No. 571 made by the British Railways Board and noted in the Register on 19 February 1971.

Mr Commons Commissioner Hesketh held a hearing for the purpose of inquiring into the dispute at Skipton on 17 October 1984. At the hearing: (1) the British Railways Board were represented by Mr D Stubbington; (2) Mrs Betsy Edith Mason as successor of Mr William Mason who applied for the Rights Section registration at Entry No. 4 and as applicant with him for the Rights Section registration at Entry No. 17(ii) (replacing in part No. 3), attended in person; (3) (a) Mr James Hammon Morphet, (b) Mr James Handley, (c) Mrs Lucy Bell Redhead, and (d) Mr George Thomas Dent who applied for the Rights Section registration at Entry Nos (a) 6, (b) 7 and 12, (c) 10, and (b) 13, were represented by Mr T W Goad solicitor of Goad & Butcher, Solicitors of Settle; and (4) Mr John Clifford White who applied for the Rights Section registrations at Entry Nos 14 and 17(i) (replacing the other part of No. 3), was represented by Mr E R D Johnson solicitor of Willan & Johnson, Solicitors of Hawes. After some discussion, the hearing was adjourned.

I held the adjourned hearing at Skipton on 5 and 7 February 1985. At this hearing (1) the British Railways Board were represented by Mr Richard Joseph Dean, surveyor with the North Western Region of their Property Board; and (2) Mrs Betsy Edith Mason attended in person helped by her son Mr George Carter Mason (on 5 February only).

The land ("the Unit Land") in this Register Unit is a tract containing about 1080 acres, much of its south-east boundary being the road running from Ribbleshead northeastwards towards Hawes; near and within its southwest boundary it is crossed by the Settle-Carlisle railway which here runs along the Ribbleshead (Batty Moss) Viaduct and by the embankment on either side leading to it. In the Rights Section there are the said 9 registrations all of rights to graze.



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In the Ownership Section Dr J A Farrer is registered as owner of the whole of the Unit Land.

The grounds of the Objections are: "The land was not common land at the date of registration, ie land edged and hatched blue on the attached plan"; the land so edged and hatched (the "Objection Land") is a strip of little more than $\frac{1}{2}$ of a mile long and having a width varying between about 20 yards and about 100 yards. The Objection Land comprises the said Viaduct with the land on either side of it and the adjoining embankments.

I have a letter dated 30 January 1985 from British Rail Property Board enclosing a copy of a form of agreement intended to be executed by (1) British Railways Board, (2) Goad & Butcher, solicitors of Settle on behalf of James Hammond Morpet, James Handley and Lucy Bell Redhead, (3) Willian & Johnson, Solicitors of Hawes on behalf of John Clifford White, and (4) Betsy Edith Mason. In this letter it is stated that they had been advised by Willan & Johnson that John Edwin & Gladys Greenbank, and George Thomas Dent (applicants for the registrations at Entry Nos 5 and 13) have sold their grazing rights to John Clifford White (applicant for registrations at Entry Nos 14 and 17(i)).

On the first day of the hearing having, owing to other business, very little time available, after a brief discussion with Mr Dean and Mr and Mrs Mason I adjourned the proceedings to the day after the next.

On the second day of the hearing I had the copy of the 1971 correspondence specified in the Schedule hereto and Mr Dean in the course of his oral evidence produced the 1870 documents specified in such Schedule. He said (in effect):- The Midlands Railway Company purchased the Objection Land under powers conferred by the Midland Railway (Settle to Carlisle) Act 1866. By the 1870 documents all rights of common then existing over the Objection Land were extinguished. At the October 1984 hearing it was claimed that some or all of the Commoners may have acquired prescriptive rights to pass through the viaduct from one part of the Unit Land to the other. The Board since such hearing had agreed with the Commoners that if every claim to common rights over the Objection Land is withdrawn, access for stock would be permanently afforded through the viaduct for the benefit of all parties holding grazing rights; and this arrangement is now being formally documented. He understood therefore from the parties or their representative solicitors that no further objections were raised by any of the Commoners to the Objection Land being removed from the Register.

I accept Mr Dean's contention that 1870 documents he produced do establish that all grazing rights over the Objection Land then existing were extinguished and that accordingly no grazing rights over the Objection Land could have been properly registered unless they came into existence since 1870 by prescription or otherwise. I am not concerned with the arrangement now being documented because it relates to access for stock not to any right of common. It may be that none of the Commoners were represented on the second day of my hearing because they were satisfied that Mr Dean would make the statement above recorded and that would be enough for their purpose; however this may be, in the absence of



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any evidence in support of the Rights Section registrations, my decision is that so far as they relate to the Objection Land none of them was properly made.

Consequentially the Land Section registration as regards the Objection Land would not be proper unless it was at the date of registration "waste land of a manor" within the definition of common land in Section 22 of the Commons Registration Act 1965. From the 1870 document and the use of the Objection Land for railway purposes ever since, I conclude that it has never at any now relevant time been waste land of a manor. My decision is that therefore the Objection Land should be removed from the Register.

I am not concerned with the Ownership Section registration, because consequentially on the removal of the Objection Land from the Register such registration will cease to be applicable to it. In the absence of any objection to the Land and Rights Section registrations so far as they relate to the remainder of the Unit Land and from what was said about them by Mrs and Mr Mason I conclude that they were all properly made.

Upon the above considerations, I confirm the Land Section registration at Entry No. 1 with the modification that there be removed from the Register the land edged and hatched blue on the plan attached to the said Objection No. 571. And I confirm the Rights Section registrations at Entry Nos 4, 5, 6, 7, 10, 12, 13, 14 and 17 without any modification save such as is necessarily consequential on such removal.

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.

SCHEDULE
(Documents produced)

--	8 April 1971 to 2 June 1971	Copy correspondence between Greenwood Kyle & Goad, Solicitors of Settle on behalf of Mr James Handley of Gunnerfleet (Entry Nos 7 and 12) and Mrs L B Redhead of Stonycroft (Entry No. 10) and the Clerk of West Riding County Council.
BR/1	19 June 1870	Conveyance by which James Farrer after reciting his seizin in fee of the hereditaments thereafter granted "subject to the rights of common of the cattle gait and sheep-gait owners thereover ... stated in the first schedule hereto except such rights of the said James Farrer ..." conveyed to Midland Railway Company among other land the Objection Land in the First Schedule thereto described as "Moor Land or High



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Pasture: 17a.1r.33p ... part of Bleamoor Pasture and is together with the remainder of the said Pasture subject to rights of common for the depasturing of cattle in stints or cattle gaits in the following proportions, viz ... "Mr Samuel James Brown 165 Beast Gaits; Mr James Farrer (party hereto) 49 Beast Gaits, Mr Henry Proctor 2 Beast Gaits (total) 216".

BR/2 16 February 1870

Conveyance by Samuel James Brown to Midland Railway Company of cattle gait rights over the Objection Land.

BR/3 21 April 1870

Conveyance by Henry Proctor to The Midland Railway Company of all his estate and interest in the Objection Land.

Dated this 21st day of *March* 1985

A. A. Baden Fuller

COMMONS COMMISSIONER