



SE 7
ASIDE
125

COMMONS REGISTRATION ACT 1965

Reference No.45/U/133

In the Matter of Lambert's Quarry,
Kirkby Malzeard, Laverton and Dallowgill,
North Yorkshire

DECISION

This reference relates to the question of the ownership of land known as Lambert's Quarry, Kirkby Malzeard, being the land comprised in the Land Section of Register Unit No.CL 193 in the Register of Common Land maintained by the former West Riding of 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 no person claimed to be the freehold owner of the land in question and no one 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 Harrogate on 6th May 1975.

At the hearing the Kirkby Malzeard Parish Council was represented by Mr J.Bowen, one of its members. Mr Bowen informed me that he believed that the land in question was one of the quarries appointed by the Award dated 30th June 1789 made under the Kirkby Malzeard Inclosure Act of 1787 (27 Geo.III,c. xxiv). The original Award was destroyed by fire in February 1908. Mr Bowen produced a copy of part of the Award. This mentions two quarries known as Knowl Quarry and Coalpit Quarry. Coalpit Quarry is comprised in Register Unit No.CL 191. Both Coalpit Quarry and Knowl Quarry were described in the Award as being situated on Kirkby Low Moor and as having areas of 36 perches and 1 acre respectively. The land the subject of this reference is quite near to Coalpit Quarry and is about four times its size, so I feel able to identify the Lambert's Quarry of the modern Ordnance Survey Map with the Knowl Quarry of the Award.

The Award, the wording of which is set out in my decision in In the Matter of Coalpit Goal, Kirkby Malzeard (1975) Ref.No.45/U/132, contains no provision as to the ownership of either quarry. In such a case the ownership of the soil would remain in the lord of the manor: see R. v. Inclosure Commissioners for England and Wales (1871), 23 L.T.778. There was, however, no evidence as to who is now lord of the manor or as to whether the ownership of this land had been disposed of by one of his predecessors.

Since 1947 the land has been used as a refuse tip by the villagers of Kirkby Malzeard, subject to the control of the Parish Council. The Parish Council itself, however, has made no use of the land. With some hesitation I have come to the conclusion that the exercise of control over the villagers using it as a refuse tip does not constitute possession by the Council adverse



-2-

to the true owner, whoever he may be.

I am therefore not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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.

Dated this 17th day of June 1975

Chief Commons Commissioner