

COMMONS REGISTRATION ACT 1965

Reference Nos. 27/D/20
27/D/21
27/D/22
27/D/23

In the matter of Stagshaw Common,
Sandhoe, formerly Hexham R.D.,
now Tynedale D., Northumberland

DECISION

These disputes relate to the registrations at Entries: (A) No. 1, (B) Nos. 2 and 3, (C) No. 3, and (D) No. 2 in the Land Section of Register Unit No. CL. 5 in the Register of Common Land maintained by Northumberland County Council and are occasioned respectively (A) by (D/20) Objection No. 39 made by Mr. J.A. Cuthbert, (B) by (D/21) Objection No. 55 made by Mr. W. Hugonin, (C) by (D/22) Objection No. 56 made by the Executor of J.J. Straker Esq., and (D) by (D/23) Objection No. 58 also made by the Executor of J.J. Straker Esq., all which said Objections were noted in the Register on 2 March 1971.

I held hearings for the purpose of inquiring into these disputes at Newcastle-upon-Tyne on 6 and 8 March 1974. On the first day of the hearings, (1) Mr. J.A. Cuthbert was represented by Mr. C.J. Thompson, solicitor of Wilkinson and Marshall Solicitors of Newcastle-upon-Tyne, (2) Mr. J.M.S. Coates (executor of J.J. Straker, Esq.) was represented by Mr. J.N. Anthony solicitor of Dickinson Miller and Turnbull Solicitors of Newcastle-upon-Tyne, (3) the Duke of Northumberland and Mr. W. Hugonin (he is the Duke's Head Agent) were represented by Mr. D.P. Graham Chartered Surveyor, (4) the Ramblers Association were represented by Mr. R.C. Cummings Solicitor of Dees and Thompson Griffith & Co., Solicitors of Newcastle-upon-Tyne, (5) Corbridge Parish Council were represented by Mr. F.G. Newman, their Clerk and (6) Mr. H.C.H. Perks who is the rural officer of the Northumberland Rural Community Council attended in person. On the second day of the hearings (1) Mr. Cuthbert was represented as before, (2) Sandhoe Parish Council were represented by Mr. C.P. Rowe their chairman and (3) Mr. Perks attended as before.

The land ("the Unit Land") comprised in this Register Unit is in two pieces: one ("the West Piece") is on the west side of the main road ("the A 68 road", Watling Street) which runs from Corbridge and central England on the south across the Roman Wall nearby on the north and thence to Otterburn and Scotland; the other ("the East Piece") is on the east side of the A 68 road.

The West Piece (Entry No. 1) was registered pursuant to an application dated 9 May 1967 and made by Sandhoe Parish Council; in the application it is said to be "some 60 acres pasture"; as I read the O.S. Maps included in the below mentioned 1974 abstract it contains about 97 acres. The greater part of the East Piece was registered pursuant to an application dated 29 June 1968 and made by Mrs. Milburn; this part (the "Entry No. 2 land") adjoins and is open to the A 68



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road and is approximately an equal sided triangle (the west side being the road). The remaining part ("the Entry No. 3 land") was registered pursuant to an application (which included the land comprised in Mrs. Milburn's application) dated 17 December 1968 and made by the Ramblers' Association: it is a strip or tongue of land at the east end of the Entry No. 2 Land. The Rights Section of this Register Unit is blank. The Ownership Section contains one entry, being Mr. Cuthbert's ownership registration (undisputed) of the West Piece.

The grounds stated in Objection No. 39 (made by Mr. Cuthbert; his objection is to Entry No. 1, being the West Piece) are:- "That this land is not Common Land but is owned by my family for many years subject to the right of the Duke of Northumberland to hold a Cattle Fair on it". The grounds stated in Objection No. 55 (made by Mr. Hugonin; this objection is to Entries No. 2 and 3) are:- "The area shown edged red on the attached plan is a stinted pasture awarded under the Corbridge Enclosure Act dated 1776 (Award dated 31st July 1779). The minerals and sub-soil belong to the Duke of Northumberland and were so registered under the Law of Property Act 1925." The grounds stated in Objection No. 56 (made by the Executor (Mr. J.J. Straker Esq.; this objection is to Entry No. 3) are:- "That this land is not common the owners and their predecessors having possessed the freehold & exercised freeholders' rights for upwards of 50 years." The grounds stated in objection No. 58 also made by the Executor of J.J. Straker Esq.; (this objection is to Entry No. 2) are:- "That this is a stinted pasture, the grazing rights of which were purchased from the Duke of Northumberland by the late J.C. Straker, predecessor of the present owner."

There being on the first day of the hearings some doubt as to whether the Sandhoe Parish Council had been given proper notice, I adjourned the consideration of the dispute relating to the West Piece to 8 March 1974. The hearings of the other disputes then proceeded.

Mr. Cummings said that the Ramblers Association was offering no evidence, but that on the evidence which he understood would be given on behalf of the Duke and Mr. Coates, he would submit that the registrations at Entry Nos. 2 and 3 should stand.

Mr. Anthony produced a plan dated 1875 entitled "Sketch of Stagshaw Bank Stinted Pasture" and showing the East Piece (except a small part of the East End of the Entry No. 3 land") as "STINTED PASTURE 37a., Or. 31p." He said that the evidence of Mr. Welch would show that all the stints were now owned by one person and that it therefore followed (so he submitted) that the pasture could not be a common.

Mr. Graham said (in effect);- After the 1776 Act and the 1779 Award (quoted below) took effect, this pasture was subject to 230 $\frac{1}{2}$ stints held altogether by 22 persons. In December 1875, Mr. J.C. Straker purchased the stints owned by the then Duke (his records show that the number of stint holders was then 10 and that Mr. Straker then owned three quarters of all the stints). There is now and has for some years been only one stint holder namely the Strakers of Stagshaw Hall. It is not the intention or wish of the Duke of Northumberland as Lord of the Manor to take away from any stint holders any right they may have on this stinted pasture, but if there is only one stint holder left, it is suggested that this pasture cannot be classified as a common. An objection was therefore made to it being registered as common.

Oral evidence was given by Mr. J.V. Welch who is a chartered surveyor and has acted



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since 1946 as agent for the Straker family, meaning Major J.A. Straker who died in or about 1970, his eldest son Mr. J.J. Straker who died shortly afterwards, his executor Mr. Coates and the widow of Mr. J.J. Straker (she is substantially interested in the Straker Estate); and also by Mr. Graham who has been employed in the management of the Estates of the Duke of Northumberland (an area of some 100,000 acres, all in Northumberland except a small part in Durham) since 1931 first as Assistant Surveyor and since 1945 as Surveyor.

Mr. Welch produced a conveyance dated 23 October 1950 by which Stagshaw Estates Limited and its liquidator Mr. J.M.S. Coates conveyed to Mr. J.A. Straker (who was one of the shareholders of Stagshaw Estates Limited) lands including numerous farms in and around Stagshaw and including particularly an item of land described as follows:- "ALL those 13 stints or sheepgates or other stints or rights of pasture and also ALL those 12 $\frac{1}{2}$ stints (so far as the Company is able to convey the same) in and upon that part of or parcel of ground and stinted pasture called Stagshaw Bank situate in the township of Corbridge which lies on the East Side of Watling Street (but not so as to convey any estate right title interest in or to any of the mines minerals and mineral substances lying and being within and under the agricultural surface of the said parcel of ground part of Stagshaw Bank or to interfere in any way with the rights now or for the time being in the Duke of Northumberland his successors in title or assigns or other or owners thereof to work get and take away the said mines minerals and mineral substances either with or without causing injury to the surface of the said stinted pasture as to him or them may seem fitting)".

Mr. Graham produced the Corbridge Inclosure Act 1776 (16 Geo. 3.c. cvi), by which after reciting that "there are within the Manor and Parish of Corbridge ... certain open common Fields commonly called ... and certain stinted Pastures commonly called ... Stagshaw ..." and after also reciting that "the most Noble Hugh Duke of Northumberland and Elizabeth Duchess of Northumberland his wife are Lord and Lady of the said Manor of Corbridge", it was by the Act enacted (the side note to the section being "Stagshaw Bank to remain unenclosed") as follows:- "... nothing in this Act contained shall extend to empower the said Commissioners to allot or divide that Part of a Parcel of Ground called Stagshaw Bank lying on the East Part of a certain Street or ancient Highway, called Watling Street, and being Part or Parcel of the said stinted Pasture called Stagshaw, but the same shall remain and be enjoyed by several Proprietors having Stints thereon in such and the like Manner as if this Act had never been made; and the same shall be stinted in proportion to their present Number of Stints thereon, in such Manner as shall be directed by the said Commissioners or any Two of them in or by their general Award".

Mr. Graham also produced a copy (apparently certified by the Commissioners) of the Award dated 13 September 1779 and made under the 1776 Act. As regards stints on Stagshaw Bank, the Commissioners awarded: "... that the several Persons to whom Allotments are hereinbefore made, in lieu of their Stints and Shares of Stints upon the said several stinted Pastures or any of them, shall have and enjoy one full twentieth Part of Right of Pasturage upon that Part of the said stinted Pasture called Stagshaw Bank lying on the East part of Watling Street, and which by the said Act is reserved out of the Division and Inclosure hereby made of what he, she or they severally had or enjoyed before the Division, and for which he, she or they have or hath had an Allotment or Allotments, and shall have and enjoy



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on the said reserved Pasture, for and in lieu of four Stints which he, she, or they respectively so enjoyed or were intitled to, one Sheep-Gate only, and so in Proportion for every Stint or Part or Share of a Stint: AND we do hereby award that the said Stagshaw Bank shall be entirely stinted with Sheep, that the whole Number of Sheep shall not exceed fifty-eight, accounting five Sheep to every Stint".

Mr. Welch said (in effect):- The Straker family has for many years had as their family home and one of their residences, Stagshaw Hall about half a mile south of the Unit Land. When he took over the management of the Estate, the Stints were let at a yearly rent of £5: the tenancy was given up in 1964; but Mr. J.J. Straker (the Estate had been handed over to him by his father Mr. J.A. Straker) did not graze any sheep because of the huge increase of traffic on the A.68 road. In 1960 there was a bad motor crash caused by sheep, and the tenant then decided to take his sheep off. The Stinted Pasture has not been grazed since. The purpose of Objection No. 58 was to enable the Stinted Pasture to be fenced so that Sheep could graze there safely (and so that motorists could drive safely along the A.68 road). Before the last War there was a cricket pitch on the Stinted Pasture (kept up by the Estate Staff); he (Mr. Welch was born in 1923) had played cricket there: in those days there were many Estate employees and they organised a team (Corbridge Cricket Club - had their own ground elsewhere). During the time he had been managing the Estate, nobody had suggested that anybody (except the Strakers and their tenants) had any grazing rights on the Stinted Pasture or had suggested that anybody except the Strakers and the Duke, had any interest in it.

Mr. Graham said (in effect):- The Duke of Northumberland (10th Duke: he succeeded in 1940) is the Lord of the Manor of Corbridge. He now owns the subsoil of the Stinted Pasture. He also owns the sporting rights. Mr. Graham produced the counterpart Game Contract dated 23 August 1890 by which the 6th Duke let such rights on (among other lands) "the east side of Stagshaw Bank" to Mr. J.C. Straker (an endorsement shows Mr. J.J. Straker as tenant in 1969). He also produced a counterpart agreement dated 21 May 1900 by which the 7th Duke permitted Mr. J.C. Straker to maintain certain pipes "through or under the part of Stagshaw Bank Stinted Pasture which lies to the east of the Turnpike Road" (endorsed similarly). He said there was an agreement relating to the Stinted Pasture and other lands under which the North Eastern Electricity Board were permitted to maintain poles and stays. Answering questions by Mr. Cummings, Mr. Graham also said (in effect): Ever since the 1776 Act, Dukes of Northumberland were always the Lords of the Manor. It would not be right to say that the Duke owned the freehold of the Stinted Pasture: we (the Estate Office) have always been very particular to say that he only owned the subsoil and minerals: we regard the turf and 4 inches down (the normal root depth of the herbage, where the grazing comes from) as owned by the Stintholders. The 1779 Award shows the Duke as entitled to $53\frac{1}{2}$ (out of $230\frac{1}{4}$) stints (he being allotted 122 a. 1r. 18p. of the inclosed land); from the Estate records it appears that it was these $53\frac{1}{2}$ stints which were included in the bargain when Mr. J.C. Straker in 1875 bought 32 acres of land from the Duke. In reply to a question by me, Mr. Graham said that the Estates had been described in a vesting deed made in 1926 to give effect to the 1925 legislation; on the plan annexed, the land of which the Duke owned the surface was coloured pink, ^{and} (the land (minerals and common land) of which he did not own the surface, was coloured brown; the Stinted Pasture was coloured brown.



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Mr. Cummings submitted that as regards the part of the East Piece, situated in the parish of Ealton, Objection No. 56 was not supported by any evidence and there was no case to answer. As regards the part situated in the parish of Corbridge, he referred me to Halsbury Laws of England (3rd edition) Volume 5 page 298, to section 37 of the Commons Act 1876, to the dictum of the Chief Commons Commissioner in his decision, re. Pixie Mead dated 25 July 1972, reference 29/D/5 at page 22 of the decisions published by the Commons Open Spaces and Footpath Preservation Society in 1972) and to Attorney General v. Hanmer (1858) 27.L.J.837. His submissions were (as I understood him) entirely legal in the sense that he did not in any way dispute the facts as stated by Mr. Welch and Mr. Graham; he contended that the only possible conclusion from their evidence is that the Stinted Pasture is within the definition of common land in section 22 of the 1965 Act.

Mr. Anthony referred me to paragraph 9 (with a side note "The Kennels") of the parcels of the 1950 conveyance (being lands by the conveyance expressed to be conveyed Mr. A.J. Straker) and submitted that the description included the part of the Entry No. 3 Land not included in the Stinted Pasture as delineated on the 1875 plan.

On 9 March 1974, attended by Mr. Welch, I inspected the East Piece. Subsequently I walked over some of the adjoining land.

From Stagshaw Bank Bridge (where the A. 68 crosses Stagshaw Burn) to the bridge over which passes the track to Stagshaw Kennels, the Burn is clearly in the north east boundary of the Entry No. 2 land; a well-built wall running in front of "Low Houses" is clearly the south east boundary. There is no obvious boundary between Entry No. 2 land and the Entry No. 3 land: the distinction made in the Register between these pieces of land, is, I think, unreal and without any significance. The Entry No. 3 land is (as appears on the Register map) crossed by the Corbridge Parish boundary, and this Parish boundary is, I conclude the same as the east boundary of the Stinted Pasture shown on the 1875 plan, and can be identified by visible banks and walls with reasonable certainty. The Entry No. 2 land is rough grass with much bracken and willow herb and in places some scrub, particularly at the east end where it joins the Entry No. 3 land; at this end there is hardly any grass, and it is or maybe unsafe for sheep by reason of the nearby ravine. (The fence being out of repair) The Entry No. 3 land, at its west end, does not include the part of the ravine north of the Burn; proceeding east the Entry No. 3 land becomes at a lower level, and includes land north of the Burn comparatively flat; at its east end there appears an old pond or reservoir now derelict and nearly empty, the dam being in disrepair.

The East Piece now appears to be unused and useless.

The 1779 Award contemplates that as many as 58 sheep could graze on the Stinted Pasture; I understand from Mr. Welch that this number (at any rate in the present state of the East Piece) is obviously excessive, even if the sheep had extra feed in the winter. For sheep, a fence between the East Piece and the A.68 road (with a cattle grid across the track leading to Low Houses and Stagshaw Kennels) is essential: and the fence at the east end should be repaired against sheep falling into the ravine. The east end of the East Piece, which could not



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be made into pasture, could be planted with trees and tidied up. Suitable styles could be left in the fences so as not to interfere with ramblers.

In the absence of evidence, I do not know why the Ramblers Association and Mrs. Milburn made their applications for registration; many walkers would find much of the East Piece heavy going; many would find it interesting and perhaps exciting to walk over parts, eg. from West (Watling Street) to the east end (from there by the footpath to the site of Halton Chesters fort). Looking at the East Piece and knowing that the West Piece is on an O.S. map called "Stagshaw Bank Cattle Fair", I infer that in 1779 it was good country planning to leave the East Piece open as a Stinted Pasture. Mr. Graham said that the Cattle Fair was in 1927 abolished under the Cattle Fairs Act 1871; so any country planning considerations applicable to the East Piece in 1779 would be obsolete.

Although these proceedings are in form occasioned by disputes, all present at the enquiry seemed to me to be really concerned to find out if the East Piece could be improved for the benefit of everybody concerned, and particularly to discover if possible who is concerned, and who can say how the cost of any fences and cattle grid, any improvements to the Pasture and any tree-planting should be apportioned between those who use the A.68 road and who would benefit from the sheep grazing, benefit from any timber, or would benefit by having a more agreeable place to walk over and through.

I have no jurisdiction under the 1965 Act to make regulations for the improvement of this land. I decline therefore to express any opinion as to how this might be done and paid for. My opinion on the questions over which I have jurisdiction under the 1965 Act, is as follows: -

As to Objection No. 56:- As I construe the 1950 conveyance, all the lands therein described against the side note "Kennels" are north of the Burn: this is, I think, clear from the annexed plan. On my inspection I satisfied myself, that although part of the Entry No. 3 land is north of the Burn, that part is not included in the land by the 1950 conveyance expressed to be conveyed. There were indications (eg. tracks, a plank bridge, etc.) that those who now occupy Stagshaw Kennels (I understand that they are let to the Tynedale Hunt) with or without hounds walk over the Entry No. 3 land much as might be expected, having regard to its nature and its proximity to the Kennels; but these indications have, I think, no significance in relation to the Objection. In my opinion, neither Mr. Coates nor his predecessors, is or ever were the owners of the freehold of any part of the Entry No. 3 land and have never possessed the freehold or exercised freehold rights over it. However I am not surprised that the Objection was made, because the green verge line on the Register map is so wide and the configuration of the Entry No. 3 land is so extraordinary that except by walking over the land with the relevant plans in the hand, it is practically impossible to determine how the 1950 conveyance was intended to take effect in relation to the East Piece.

I treat Objection No. 58 as applicable, not only to the Entry no. 2 land, but also to so much of the Entry No. 3 land as is comprised in the stinted pasture



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as shown on the 1875 plan; in the circumstances, as they appeared at the hearing, it is, I think, just that I should give this Objection this larger effect. As I read the Objection, it is intended to mean that all the grazing rights over the Stinted Pasture were purchased by Mr. J.C. Straker.

The arithmetic of the above-quoted part of the 1779 Award is confusing. As I read it, before the Award there were $230\frac{1}{4}$ stints which burdened the land intended to be inclosed and the land intended to be left uninclosed with rights to graze altogether 1151 sheep (5sheep for every stint); after the Award there were $57\frac{9}{16}$ s sheep gates (one for every four of them before the Award stints), which burdened the land left uninclosed with rights to graze altogether $57\frac{9}{16}$ (not exceeding 58) sheep. The Award shows that the then Duke owned $53\frac{1}{2}$ before the Award stints and accordingly became entitled to $13\frac{3}{8}$ after the Award sheep gates.

I think it not unlikely that the 13 stints mentioned in the parcels above quoted from the 1950 conveyance were these $13\frac{3}{8}$ sheep gates (not as was assumed at the hearing 13 out of the $230\frac{1}{4}$ stints); but the $121\frac{1}{2}$ stints mentioned in the 1950 conveyance must be a reference to $121\frac{1}{2}$ before the Award Stints. However the arithmetic may be done, I find it impossible to conclude that Mr. J.C. Straker or any other predecessor of Mr. Coates, by purchase from the Duke of Northumberland or anyone else, became entitled to all the $230\frac{1}{4}$ before the Award stints or to all the $57\frac{9}{16}$ after the Award sheep gates. Indeed, looking at the list (prepared by Mr. Graham) of allotments which were made by the 1779 Award, it is obvious that many of the after Award sheep gates must have been so small that the owners would not have thought it worth while to exercise the rights with the likely result that nobody would have thought it worthwhile to purchase them.

Objection Number 55, as expressed, is without substance, because the grounds therein stated are irrelevant to the question whether the East Piece is or is not common land. Considered by themselves, the 1776 Act and the 1779 Award indicate that the Stinted Pasture was immediately before and continued to be after the Award, common land.

The ground of objection which was most discussed and pressed at the hearings was (in effect) that the evidence established that Mr. Coates had by some means which could not be particularised, become entitled to the sole right to graze the Stinted Pasture as delineated on the 1875 plan, to the exclusion of the Duke as owner of the soil (or the soil other than that immediately surrounding the roots of the herbage) and that such sole and exclusive right is not and never has been a right of common. Although this ground is not mentioned at all in Objections Nos. 55, 56 and 58, I consider I should deal with it, and I record that, if an application has been made, to amend the Objections accordingly, I would under regulation 26 of the Commons Commissioners Regulations 1971, have thought it just to allow the amendment. On the assumption that Mr. Coates has somehow acquired the right above mentioned, it may be that, for certain purposes he could be



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regarded as owner of 4 inches of the surface as Mr. Graham envisaged in his evidence. In Lonsdale v. Rigg (1856) 11 Ex. (H & G) 654, Alderson B. at page 681 treated persons who owned cattle gates to the exclusion of the Lord of the Manor as owning the surface of the soil. In Robinson v. Duleep (1878) 11 Ch. D. 798, Cotton L.J. at page 820 likened the position of the grantee of herbage to the position where the surface is in one person and the minerals in another. But I doubt the applicability of these judicial observations to this case, because the Duke's ownership of the Sporting rights is inconsistent with the Surface being owned entirely by another. Further a distinction is recognised between a right of Sole pasture which can only be exercised through the mouths of animals and a right of Sole herbage, the owner of which may mow the grass, see Williams: Rights of Common (1880) at page 21. In the 1776 Act and the 1779 Award, the word "Pasture" is used.

It is, I think, unnecessary for me to express any opinion as to whether, on the assumption supposed, apart from the 1965 Act, the right assumedly owned by Mr. Coates, could properly be described as a right of common, because, on the assumption supposed, the right is clearly within the definition of Section 22 of the 1965 Act (by which, in these proceedings I am bound): "rights of common includes ... rights of sole or several vesture or herbage or of sole or several pasture ..."

I need, I think, express no opinion as to whether on the date of registration, by reason of non-exercise of their rights under the 1779 Award, all the Stintholders except Mr. Coates and his predecessors, must be treated as having, before 1969 (the date of registration) abandoned or otherwise lost their rights for the benefit of either the Duke or Mr. Coates. However this may be, the evidence shows that Mr. J.A. and Mr. J.J. Straker were in 1969 entitled to at least 13 then subsisting Stints and that accordingly the Stinted Pasture (as shown on the 1875 plan) was then common land within the meaning of the 1965 Act and therefore properly registerable.

As regards the remainder of the East Piece (the east part of the Entry No. 3 land), all in the parish of Halton, Objections Nos. 55 and 56 are without any foundation (Mr. Anthony and Mr. Graham indicated that Mr. Coates and the Duke were only on these references concerned with land in the parish of Corbridge). I have no evidence about this remainder except the statutory declaration made on 13 December 1968 by Brenda Swann, registration officer of the Ramblers' Association in support of their application for registration and what I saw on my inspection. From the site of the derelict reservoir there is a ditch (apparently now disused) leading up to Halton Castle; so it may be that the reservoir was originally made for those living there or farming the surrounding land. In all other respects this remainder of the East Piece appears always to have been as all of it now is, waste land. It could reasonably be considered waste land of a Manor. Following the principles set out in my decision dated 2 February 1973, re. Pound Compton Dando, reference 36/D/19, I conclude that this land was also properly registerable as common land. 32

I am afraid that my conclusion may not much help to determine how the East Piece should be dealt with. Any difficulties there are, appear to me to have arisen quite apart from the 1965 Act, and the Act, although it may not have improved the position, may not, I think, make it any worse. I have recorded the facts in this

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Partgate



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case in some detail, ^{because} ~~but~~ it seems to me that, if any amendment of the 1965 Act is ever considered by Parliament, the problems raised by the peculiar circumstances of the East Piece, might with advantage be considered at the same time, particularly the problems resulting from a huge increase of motor traffic on a road across land which is unfenced, and which could, with advantage, be grazed; and see also Section 8 of the Animals Act, 1971.

At the hearing on the 8th March, 1974, Mr. Rowe and Mr. Perks said that the Parish Council wished to withdraw the registration of the West Piece.

Mr. Thompson, in the course of his evidence produced the following documents of title by arrangement with the below-mentioned mortgagees of Mr. J.A. Cuthbert: (1) a vesting deed dated 24 February 1931 by which Mr. H.D. Cuthbert declared that the Beaufront Estate, being lands in the parishes of Acomb, Sandhoe and Corbridge therein described (including the mansion house Beaufront Castle) were vested in him Mr. H.D. Cuthbert on the trusts of a settlement made by himself of even date; (2) a copy of letters of administration to the Estate of Mr. H.D. Cuthbert (he died on 2 July 1959); (3) a legal charge dated 9 September 1962 by his personal representatives to the Agricultural Mortgage Corporation of the Beaufront Castle Estate comprising altogether 2085.271 acres, and (4) an assent dated 12 August, 1968, by the survivors of the said personal representatives vesting the Beaufront Castle Estate in Mr. J.A. Cuthbert in fee simple. The description in and the plans annexed to the 1931, 1962 and 1968 documents above mentioned, all included along with other land the West Piece without any difference or distinction, and there is nothing in any of the documents to suggest that any of the West Piece was or ever had been common land. That it is on the plans called "CATTLE FAIR" is, I think no indication that it ever was common land within the meaning of the 1965 Act.

In the above circumstances I conclude that the West Piece is not properly registerable under the 1965 Act.

For the above reasons, I confirm all the registrations at Entries Nos. 1, 2 and 3 in the Land Section of this Register Unit with the modification that all land on the west side of the A.68 road be removed from the Register. My direction to the County Council will be in this form, notwithstanding that in this decision, I have, ~~by~~ reading the Entries in conjunction with the applications mentioned in the Register, been able to proceed on the basis that the only land on the west side of the A.68 road, is that comprised in Entry No. 1, because such Entry, considered by itself, might be read as including land to the east of the A.68 road which, in accordance with my decision, should remain registered.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain 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

15th

day of

July

1974

a. a. Baden Fuller

COMMONS COMMISSIONER

* Post Script. As to these problems see *Davies v Davies*, a decision of the County Appeal
 reported in Times Newshaper 16 July 1974.