



Reference Nos 262/D/822
to 830 inclusive

In the Matter of (1) Matterdale
Common, Matterdale Parish, and
(2) a part of the said Common,
Eden District, Cumbria

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 to 37 inclusive in the Rights Section and at Entry No. 1 in the Ownership Section of Register Unit No. CL67 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) County Council and to the registration at Entry No. 1 in the Land Section of Register Unit No. VG.17A in the Register of Town or Village Greens maintained by the said Council and are occasioned by Objections No. 21, No. 22, No. 65 and No. 66 (relating particularly to the Right Section registrations at Entry Nos. 20, 29, 21 and 24 respectively) made by Matterdale Common Conservators and noted in the Register on 2 October 1970 and by the said registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at ~~Penrith on~~ ~~10 March 1982.~~ At the hearing (1) Matterdale Common Conservators were represented by Mr E H Watson their Secretary; (2) Matterdale Parish Council were represented by Mr John Wilkinson their vice chairman; (3) Mr Stafford Vaughan Stepney Howard on whose application the Ownership Section registration was made was represented by Mr D Mellor, solicitor of Little & Shepherd, Solicitors of Penrith; (4) Mr Geoff Eoward Walker who made an application (noted in the Register) for the VG registration and who was one of the applicants for the registration at Rights Section Entry No. 29 was represented by his nephew Mr Robert James Mackenzie Walker of Witherwood Hall, Lower Cumberworth, Huddersfield (also of Nuttall Yarwood and Partners, architects and engineers of Barnsley, S. Yorks); (5) Mr Philip Ollerenshaw Walker on whose application jointly with Mr Michael Milnes Walker (since deceased) and the said Mr G H Walker the registration at Rights Section Entry No. 29 was made, was represented by his nephew the said Mr R J M Walker, who also attended as a person interested under the will of the said Mr M M Walker; (6) Miss de Moulpiéd of Undermell House, (formerly called Gill Cottage) Thackthwaite, Dacre attended in person as successor of Mrs Florence Ethel Brown, Mr Ian Anthony Brown and Miss Rosemary Anne Brown on whose application the registration at Rights Section Entry No. 21 was made; and (7) Mr N Gray on whose application the registration at Rights Section Entry No. 12 was made (not particularly disputed) was made, was also represented by Mr D Mellor.

The land ("the CL Land") in Register Unit No. CL67 is a tract (? 2 tracts) having a length of about 2½ miles long from northeast to southwest and a width of between 1 and 1½ miles. The Land Section registration was made on the application of Matterdale Common Conservators and an application by The Commons, Open Spaces and Footpaths Preservation Society ("COS & FPS") is noted. Of the 32 registrations originally in the Rights Section Nos. 2 and No. 6 have been replaced by No. 34 and Nos. 36 and 37 respectively. Mr S V S Howard is registered as owner of all the CL Land.

The Land ("the VG Land") in Register Unit No. VG17A is a piece of irregularly shaped land having a length from north to south of about 600 yards and a width



of between 200 and 400 yards. It is the most easterly part of the CL Land and is easily accessible from the road which runs through High Row. The VG registration was made on the application of COS & FPS, and an application by Mr G H Walker is noted.

I have a letter dated 6 October 1981 from COS & FPS saying (in effect) that their application for the VG registration was based on a clause in the provisional order dated 14 July 1882 and made under the Commons Act 1876, by which was reserved the privilege of playing games and enjoying other species of recreation and that in view of the terms of the Order, the Society now feels that the VG registration was wrongly made because the Order granted no rights of recreation. At the beginning of the hearing Mr R J M Walker on behalf of Mr G H Walker said his VG application was withdrawn and Mr Wilkins said that the Parish Council would not object to the VG registration being cancelled.

Next at the hearing oral evidence was given by Mr Tom Harper who is the Chairman of Matterdale Common Conservators and who in the course of his evidence produced a copy of an Inclosure Award dated 14 July 1882; he also produced the Conservators' register of the stints (totalling 650 stints as specified in the 1882 Award) and of their owners. The Award contained this declaration: "... reserve unto the inhabitants of the said Township and neighbourhood and to the public generally a privilege of playing games and of enjoying other species of recreation at all times subject to such byelaws as are hereinbefore mentioned ..." over the land numbered 3 on the map. Mr Harper explained that the Matterdale Commons Conservators were appointed each year under the 1882 Award and that they have power from time to time to levy a stint rate if they want money for fencing and things like that; this register has been kept so that the Conservators know who owns every stint. If effect was given to the Objections above mentioned (by avoiding altogether registrations at Entry Nos. 20, 21 and 29 and reducing No. 24 from 17½ to 17), the registrations in the Rights Section would add up to exactly 650 stints. The VG Land is the land by the 1882 Award made subject to the above quoted recreational declaration; it is little used by the inhabitants of the neighbourhood because the dwellinghouses nearby at High Row are few in number and other dwellinghouses are some distance away; however it is much used by the public at large particularly in winter for skiing for which it is very suitable.

The said 1882 award was made under 2 provisional orders both 27 February 1879 one for Regulation and one for Inclosure which orders were confirmed by the Inclosure and Regulation (Matterdale) Provisional Order Confirmation Act 1879, 42 & 43 Vict. c. lxxvi.

By Section 22 of the Commons Registration Act 1965 a Town or village Green is defined (so far as now relevant) as land "which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality ...". The above quoted allotment in the 1882 Award is (in my experience) unusual in that "the public generally" are included. I agree with the contention of the COS & FPS that this inclusion brings the VG Land outside the above quoted definition, and for this reason (such conclusion being supported by those present at the hearing) I refuse to confirm the VG 17A registration. However I record that in my view such refusal being for this reason, will in no way prejudice the recreational right granted by the above quoted allotment to the public generally and because "the inhabitants of the said township and neighbourhood" are part of the "public" it also follows that my refusal will not prejudice any recreational right they have under it.



The registration at Rights Section Entry No. 20 was made on the application of Mr H G and Mrs M Grundy and is of a right (in gross) graze 1 stint and a right of turbary. The grounds of Objection No. 21 are "no stints are owned by Messrs Grundy ...". Messrs Grundy were not represented at the hearing, Mr Mellor explaining that although his firm Little & Shepherd were concerned with the application for the registration, they are now without instructions. The address of Mr and Mrs Grundy in their application is "Rampsbeck Hotel". Mr Harper said that the Award provides for the Hotel to have a right of turbary but all usable turf had been taken away long ago; he thought that Messrs Grundy ^{register} may have mistaken turf for stints; the Conservators did not include them. In the absence of any evidence in support of the registration I refuse to confirm it.

The registration at Entry No. 21 made on the application of Messrs Brown is of a right attached to Gill Cottage, Thackthwaite to graze 100 sheep and 4 ponies. The grounds of Objection No. 68 are: "no stints are owned by Messrs Brown ...". Mr Harper said he did not know why Messrs Brown made this registration. They did not appear in the Conservators' register. Miss de Moulpiéd offered no explanation. In the absence of any evidence I conclude that this registration was not properly met and accordingly I refuse to confirm it.

The registration at Rights Section Entry No. 24 was made on the application of Mr K Stockdale; it is of a right attached to Red Syke Farm to graze 17½ stints. The grounds of Objection No. 66 are: "the entry should read 17 stints". Mr Harper said that he had about last October asked Mr Stockdale if the Conservators clarified his registration and he agreed that 17 stints was correct. In the absence of any other evidence about this registration, I confirm it with the modification that for "17½ stints" in column 4 there be substituted "17 stints".

The registration at Rights Section Entry No. 29 made on the application of Messrs Walker, is of a right attached to Kate Brow to graze 1½ stints. The grounds of Objection No. 22 are: "Our register of stint owners does not show any stints to the credit of Messrs Walker". With their letter dated 26 February 1982, Nuttall Yarwood and Partners enclosed a photo copy of an abstract dated 1947 of title relating to Kate Brow; this included an abstract of an indenture dated September 1914 which recited that the real estate of Elizabeth Pickthall at her death (15 March 1914) included "one and a half stints on Matteredale Common" and also an abstract of the probate of the will of John William Pickthall who died in 1942, granted to his widow Mrs Martha Pickthall and his son Mr Ephraim Victor Pickthall. Mr Harper said that these 1½ stints had already been registered at Entry No. 111 (my copy of the Register shows the applicant as Mr H Harrison of Douthwaite Head Farm Dockray and his application as being numbered 599 and dated 26 June 1968), that the application for this registration was in fact made by Mrs Pickthall who formerly owned a house and 2 pieces of land and who sold the house and one piece to Messrs Walker, and that Mr Harrison somehow acquired the other piece. I have a copy of the application No. 599 dated 19 June 1968 and it is indeed apparently made by Mrs Martha Pickthall of 5 St James Street, Castletown, Penrith.

Mrs Watson who was attending the hearing as representing Cumbria County Council as registration authority, suggested that the Register had possibly been amended on receipt of a notification that Mr Harrison had acquired the 1½ stints registered by Mrs Pickthall, and that the copy of the Register supplied to me was made after such amendment. Mr R J M Walker offered no evidence as to how 1½ stints mentioned in the copy 1947 abstract had passed from Mrs M Pickthall and Mr E V Pickthall to Messrs Walker, and in the absence of any evidence in support of the registration



at Entry No. 29 I at the hearing concluded that it was not properly made. However it appearing that Mr R J M Walker may have been taken by surprise by the evidence of Mr Harper I at the hearing gave him liberty within 3 months from the date of the hearing to apply to me to consider further evidence saying that I had in mind that during such 3 months he might be able to improve the title of Messrs Walker and/or clarify the matter with Mr Harrison. In the absence of any application by Mr R J M Walker I adhere to the conclusion that I reached at the hearing and accordingly I refuse to confirm the registration at Rights Section Entry No. 29.

The other CL Rights Section registrations and the CL Ownership Section registration are only in question because the VG registration being in conflict with the CL Land Section registration must be treated as an Objection to all the CL registrations. However the substance of the matter is that these other CL registrations would but for the VG registration have been free from any Objection and would, if the VG registration had never been made, have without any hearing before a Commons Commissioner, become final under Section 7 of the 1965 Act. In the absence of any suggestion at the hearing that these other registrations were in any way irregular and indeed I understood from Mr Harper that in his view they were correct, I treat the statutory declarations made when these registrations were applied for as evidence enough of their propriety. I ~~do~~ not therefore consider any evidence which Mr Mellor may have been prepared to offer on behalf of Mrs N Gray in support of the registration at Entry No. 12 or the letters and the accompanying documents dated 5 March 1982 written by Mr G B Bates about his registration at Entry No. 32. Accordingly I confirm without any modification the CL67 Rights Section registration at Entry Nos. 1, 2 (replaced by the registration at Entry No. 34), 3, 4, 5, 6 (replaced by the registrations at Entry Nos. 36 and 37), 7 to 19 inclusive, 22, 23, 25 to 28 inclusive and also confirm without any modification the CL67 Ownership Section registration at Entry No. 1.

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 28th — day of July — 1982

a. a. Bates Fuller

Commons Commissioner