



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/617  
to 624 inclusive

In the Matter of (1) Threlkeld Common,  
and (2) Dickney, Kiln Howe and Mell Butts  
in Threlkeld, Eden District, Cumbria.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 25 inclusive in the Rights Section of Register Unit No. CL 65 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) County Council and at Entry No. 1 in the Land Section of Register Unit No. VG 14 in the Register of Town or Village Greens maintained by the said Council, and are occasioned by Objection No. 98 made by British Railways and noted in the CL 65 Register on 2 October 1970 and by the registrations (including that at Entry No. 1 in the Ownership Section) being in conflict with the VG registration.

I held a hearing for the purpose of inquiring into the disputes at ~~Penrith on 17 June 1981.~~ At the hearing Rt Hon James Hugh William 7th Earl of Lonsdale on whose application the CL Ownership Section Entry No. 1 registration was made, was represented by Mr C J F Vane of counsel instructed by Dickenson Dees & Co, Solicitors of Newcastle upon Tyne; and Mr William and Mrs Ann Robinson, Mr John Noel and Mrs Margaret Baxter, and Mrs Amy Bland and Mrs Winifred Swainson on whose application the CL Rights Section Entry Nos. 20, 21 and 22 were made, were represented by Mr L C Gardner solicitor of Broatch & Son, Solicitors of Keswick.

The land ("the CL 65 Land") comprises for the most part a tract about  $1\frac{1}{2}$  miles long from west to east, and at the west end about  $\frac{2}{3}$  of a mile and at the east end about  $1\frac{1}{2}$  miles wide; except for two comparatively very small areas, the land is all south of the strip along which formerly ran the railway from Penrith to Keswick. The CL Land Section registration was made on the application of Threlkeld Parish Council. In the CL Rights Section there are 25 registrations (including those above mentioned) of rights of grazing. In the CL Ownership Section Lord Lonsdale is registered as owner of all the CL 65 Land.

The land ("the VG 14 Land") comprises 5 pieces, 3 being in or near the Village and north of the A66(T) road, and the other 2 being south of the road, situated near Mill Bridge over the River Glenderamackin, one being north of and adjoining the river the other being south of and adjoining the river. The VG Land Section registration was also made on the application of Threlkeld Parish Council. The conflict between the CL and the VG registrations is occasioned by the south of the 2 pieces by Mill Bridge having been included both in the CL 65 Land and the VG 14 Land. The grounds of Objection No. 98 (British Railways) are in effect that the land therein mentioned was not common land at the date of registration and is in the ownership of the Board. I have letters dated 17 December 1980 and 19 May 1981 from British Rail Property Board (North Western Region) in which they ask for an assurance and then say that it has become clear that the Board's ownership has been excluded from the CL65 registration, so they need not pursue the Objection.



The information before me at the hearing indicated that the Board's ownership of any land with which they are likely to be concerned is not in question in these proceedings; however I can give no assurance to them about this and if they wish to be certain they should consult the Register map held by the County Council as registration authority. Having regard to their said letters, my decision is that the Objection should not have been made.

As to the said conflict:- The south of the 2 Mill Bridge pieces is a strip about 150 yards long and nowhere more than about 30 yards wide. Under the 1965 Act it cannot continue in both the VG Register and in the CL Register. In favour of it continuing in the CL Register it was said that along this piece there is a track used by nearly all the persons who have registered rights of common, for the purpose of obtaining access to the remainder of the CL65 Land. In favour of it continuing in the VG Register it was said that it is very similar to the other Mill Bridge piece on the other side of the River.

Nobody at the hearing wanting to argue in favour of either Register, Mr D A Pattinson (the Agent for the Lonsdale Estate) suggested that both the Mill Bridge pieces should continue in the VG Register, on the basis, as I understood it, that the CL65 Rights Section registrations and the CL65 Ownership Section registration would cease to apply to the south of the Mill Bridge piece, but not so as to prejudice any right of way there may be over it for the benefit of the remainder of the CL65 Land. Mr Gardner agreed with this suggestion. Nobody contending otherwise, my decision is that the conflict be resolved in favour of the VG Register.

Under the 1965 Act and the Regulations made under it, all the said registrations are in question by reason of the Objection and the said conflict. However nobody at the hearing suggested that the registration are except as aforesaid, in any way irregular. If the Objection had never been made, and the south Mill Bridge piece had never been included in the CL65 registration, all the registrations would have become final under section 7 of the Act without there ever having been any need for a hearing before a Commons Commissioner. In the absence of any evidence to the contrary, I consider I should produce the same result; so my decision is that except as aforesaid all the registrations with which I am concerned were properly made.

For the above reasons I confirm the registration at Entry No. 1 in the VG14 Land Section; I confirm the registration at Entry No. 1 in the CL65 Land Section with the modification that there be removed from the Register any land which is now included in the VG14 Register; I confirm the registrations in the CL65 Rights Section and the registration at Entry No. 1 in the CL65 Ownership Section without any modification save such as is necessarily consequential on the removal of the said land from the CL65 Land Section; and I refuse to confirm the registrations (if any) in the VG14 Rights Section or in the VG14 Ownership Section which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein as a result of any of the CL65 Rights Section and the CL65 Ownership Section registrations.

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 7th day of September 1981

A. A. Baden Fuller

Commons Commissioner

at En  
Nos.  
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