



COMMONS REGISTRATION ACT 1965

Reference Nos. 262/D/783-784

In the Matter of Bolton Fell Moss, Hethersgill,
Cumbria, (NO.1)

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No.CL.229 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objection No. 137 made by Mr T.S.Simpson and Objection No. 119 made by the Hethersgill Parish Council, and both noted in the Register on 4 August 1972. However, the reference of the dispute occasioned by Objection No. 119 can fairly be described as a "ghost", since the grounds of that objection relate to certain rights and the word "Land" has been deleted, but so faintly as to escape the notice of whoever prepared the notice of reference.

I held a hearing for the purpose of inquiring into the dispute at Carlisle on 22 March 1983. The hearing was attended by Mr Simpson in person. Mr Simpson is also the Chairman of the Hethersgill Parish Council, the applicant for the registration. There were also present Mr J.M.Hall, Mr A H B Holmes, and Mr M E Cousins, Solicitors, on behalf of several applicants, for registrations in the Rights section of the Register Unit and Mr T.Atkinson, Mr T A Strogen, Mr J W Alston, Mr G.Sisson and Mr E J Dobson, also applicants for the registrations in the Rights Section appeared in person.

The land comprised in the Register Unit was formerly part of the Commons and Waste grounds of the manor of Kirkclinton. Controversies having arisen between the lord of the manor and the freeholders, customary tenants, and Commoners of the Lord of the Manor, arbitrators were appointed, and on 1 May 1735 they awarded that the interested parties should with all convenient speed divide, allot, and make partition of all and every the commons, moors, mosses, and waste grounds lying within the manor and that the same be subdivided and allotted among the commoners according to the then yearly value of their respective ancient messuages, lands, and tenements within the manor as they were valued in the Schedule to the award. There is in the Cumbria County Record Office an indenture tripartite made 11 June 1748 whereby a parcel or share of moss and moss ground the subject of the award was conveyed to one Andrew Hetherington.

It appears that the titles of all the applicants for registrations in the Rights section of the Register Unit derive from similar conveyances by the lord of the manor. Each of the applicants is the owner of land to the south of the registered land and has a peat on the part of the registered land adjoining ~~his the part of the registered land adjoining~~ his inclosed land to the south.

It appears that a belief has grown up amongst those described as "the elders of the village" that each of the owners has a right to cut peat and that when he has cut peat the land from which he has cut it becomes part of his freehold. If this were correct it would be so remarkable a local custom as to warrant learned articles in academic legal journals. I am, however, satisfied on the evidence before me that the belief of "the elders of the village" is not correct. This was also the view of those who appeared at the hearing, with the exception of Mr Sisson, who claimed that his right to cut peat was a right of common.



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The land thus being not subject to rights of common and having ceased to be waste land of the manor of Mirklington in the eighteenth century, it does not fall within either limb of the definition of "Common Land" in Section 22 (1) of the Commons Registration Act 1962, and I therefore refuse to confirm the registration.

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

13~~th~~

day of

June

1983

Chief Commons Commissioner