



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/3-10 incl
262/D/13-17 incl.

In the Matter of Coniston Fell, Dunnerdale Fell,
Seathwaite Fell and Torver High Common, in
Coniston, Duddon and Torver Parishes, South
Lakeland District, Cumbria

DECISION

These eight disputes relate to the registrations at Entry No 1 in the Land Section, at Entry Nos 1 to 47 inclusive and 50 to 58 inclusive in the Rights Section and at Entry Nos 1 3 and 4 in the Ownership Section of Register Unit No CL.29 in the Register of Common Land maintained by Cumbria County Council, and are occasioned by Objection Nos 54 55 56 and 58 made by the National Trust and noted in the Register on 4 December 1970, by Objection No. 387 made by the Youth Hostels Association and noted in the Register on 13 July 1972, and by the registrations at Entry Nos 1 and 3 in the Ownership Section being in conflict.

I held a hearing for the purpose of inquiring into the dispute at Kendal on 25 April 1973. At the hearing (1) The National Trust for Places of Historic Interest and Natural Beauty (in addition to being Objectors, Rights Section Entry Nos 41 42 43 and 44 were made on their application) were represented by Mr A H Whelan solicitor of Pattinson and Scott, solicitors of Windermere, (2) Mr Geoffrey Norris as one of the executors of Miss E J Cheetham (Ownership No.4 was made on her application jointly with Mr C H Cheetham) attended in person, he being a solicitor of Gatey Heelis and Co., solicitors of Windermere, and Mr William James Taylor of Pine Lodge, Pannet Hill, Millom (the other executor of Miss Cheetham) was represented by his co-executor Mr G Norris (3) Youth Hostels Association of England and Wales were also represented by Mr G Norris, (4) Mr John Edward Robinson of Newton Farm, Lady Hall, Millom who is Hon Secretary of Walna Scar Commoners Association, was as such represented by Mr E W Huck, solicitor of Thomas, Butter and Son., solicitors of Broughton in Furness, and (5) the Minister of Agriculture, Fisheries and Food (in relation to the Forestry Commission, Rights Section Entry No 3 was made on his application) was represented by Mr R Turner, solicitor in his Legal Department.

The land ("the Unit Land") in this Register Unit is a little more than 9 miles long from southwest to northeast and of variable width being for about half its length (the northeast part) about 3 or 4 miles wide and for the other half generally a mile or more wide. In the Rights Section there are 58 entries being of various rights of grazing; some of these Entries include, turbary and/or a right to cut and take bracken, and two of them, (Nos 48 and 49) have been avoided in consequence of decisions dated 19 December 1974^{and} made by the Chief Commons Commissioner.

The grounds of Objection No 54 (National Trust), being the only objection to the Land Section registration are: "the land hatched blue and hatched green on the attached plan was not common land at the time of registration"; the grounds of Objection No.58 (National Trust) to Rights Section Entry Nos 4 16 17 19 23 30 31 and 40 are: "that the above mentioned have no rights over the parts of the fell shown on the attached plan and verged red". The land so hatched blue ("the Cockley Beck and Dale Head Area), the land so hatched green ("the Tilberthwaite Area") and the land so verged red ("0/58 North Area") are each about 2 miles long



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from southwest to northeast and together form the northeast part of the Unit Land. By Section 5(7) of the 1965 Act, Objection No.54 is treated as an objection to all the Rights Section Entries. However at the beginning of the hearing Mr Whelan said that the National Trust would have no objection to my confirming all the Rights Section Entries so far as they relate to any of the land other than the Cockley Beck and Dale Head Area, the Tilberthwaite Area, and the O/58 North Area.

Mr Morris said that Objection No.387 (Youth Hostels Association) was withdrawn.

It being agreed that ownership was relevant to the Land Section disputes, I at the same time considered the Ownership Section Entries which are:-

1. Of Mr R M Moser, the land within S-E-O-T and southwest of U-W, that is of the part of the Unit Land northwest, west and southwest of Coniston including part of the Tilberthwaite Area, such part being an approximately triangular piece with sides of about $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ of a mile long at its east end and some comparatively narrow strips along its southeast side.
2. Of the Crown Estate Commissioners, the land in Torver (not in question in these proceedings).
3. Of Sir William Pennington-Ramsden, the land east of D-J, north of J-DI-EL together with part lying north of FI-X-GI and south of FI-HI-GI that is the O/58 North Area and a comparatively very small piece along the southwest boundary of the Tilberthwaite Area and within the Moser registration.
4. Mr C H and Miss E J Cheetham of nearly all the rest of the Unit Land, that is including the Cockley Beck and Dale Head Area, but not including any land of which Mr Moser or Sir W Pennington-Ramsden are registered as owners and not including either the Tilberthwaite Area or the O/58 North Area.

Only Entry Nos 1 and 3 (Mr Moser and Sir W Pennington-Ramsden) are in conflict, Entry No 1 is also in issue so far as it comprises part (in relation to the rest of Entry, a small part) of the Tilberthwaite Area. Entry No 4 is in issue as regards the Cockley Beck and Dale Head Area.

In support of the Cheetham ownership claim, Mr Morris produced a conveyance dated 11 December 1903 by which Mrs E M Rawlinson and others conveyed to Mr G E Cheetham the Dutton Hall Estate. It was not disputed that Mr C H and Miss E J Cheetham were as his successors the owners of the Estate, that he died on 24 February 1976 and she died on 12 February 1977 and that Mr Morris and Mr Taylor are her executors.

Mr Morris relied on the following words in the second part of the 1903 conveyance schedule:-

"ALL THAT the Manor or Lordship of Dummerdale-with-Sentwaite in the County of Lancaster containing... (10,259) ... acres or thereabouts bounded on the extreme north by the Three Shire Stone at Wrynose, on the West by the River Dutton for upwards of ten miles..."



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The Cockley Beck and Dale Head Area is bounded on the east by the River Duddon and at its north corner is the Three Shire Stone with the result (so Mr Norris contended) that the propriety of the Ownership Section registration at Entry No.4 is established. He did not object to the Land Section registration of the Area.

Against the Cheetham ownership and against the Cockley Beck and Dale Head Area being common land at all, Mr Whelan produced: (1) a conveyance dated 24 April 1929 by which Mr A R Thompson conveyed to the National Trust, Cockley Beck Farm "together with all commons, common of pasture... belonging ... all of which... premises with the Fell belonging are for the purposes of identification only... delineated and edged red on the plan annexed", and (2) a conveyance dated 16 May 1929 by Mr J E Brookebank to the National Trust of Dale Head "all which... premises are for the purpose of identification... delineated and edged red on the plan annexed hereto", (3) and (4) some abstracts dated 1923 and 1929 of the earlier title. The plans on the two 1929 conveyances include (about half in each) all the Cockley Beck and Dale Head Area.

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Mr A J Lord, is now and has been since 1958 the Regional Agent of the National Trust for the region which now comprises Cumbria, said (in effect): When he first came to the Region the lands comprised in the two 1929 conveyances were let as one tenancy and since then there have been three other tenants, all of the same lands, described in the tenancy agreement by reference to a plan which was a combination of those on the two conveyances (one tenancy). The land so let comprised intake lands enclosed by walls (such lands being different from the unenclosed Fell and not forming part of the Unit Land) and Fell Land (now part of the Unit Land but objected to). He had always regarded Cockley Beck and Dale Head Area as a "freehold fell", (meaning it was included in the tenancy like the intake land); the area was included in the acreage mentioned in the agreement as being let. In the maps publicly issued by the National Trust of land owned by them, Cockley Beck and Dale Head area were included in their ownership. He could only think of one occasion on which Cockley Beck Farm and Dale Head Farm were treated differently: he had after discussion with, and at the request of the Walna Scar Commoners Association registered the right of common enjoyed by the tenant as attached to Dale Head Farm and not to both Cockley Beck Farm and Dale Head Farm (see Rights Section Entry No.44 relating to a right over the part of the Unit Land to the South).

Mr Turner said that the Minister had no objection to the Land Section registration being modified in accordance with Objection No.54 (National Trust).

Although in relation to "the fell" the April 1929 conveyance is not happily expressed, as I read it, the land thereby conveyed freehold includes all the land delineated on the plan and the words "the fell" refer to land not so conveyed over which the parties thought there might be rights of common; although both the 1929 conveyances are evidence that the National Trust thereby acquired an unincumbered freehold to the Cockley Beck and Dale Head Area, contra, the 1903 conveyance is evidence that the successors of Mr G H Cheetham are the freehold owners. I cannot I think resolve this conflict merely on the conveyances; considered by themselves, there is nothing to choose between them.



As Mr Morris pointed out the Three Shire Stone mentioned in the 1903 conveyance is an important landmark and it would be natural to expect that the Manor should extend up to it. But there is no reason why some person would not acquire possessory title adverse to the Lord of the Manor. Although I am not, I think, entitled to attach importance to what Mr Lord said about the Fell being "freehold", on his evidence I find that the Cockley Beck and Dale Head Area was let with the farm and that the National Trust have received rent from it since some time before 1958. I have no evidence that anyone as successor of Mr G H Cheetham has received any such rent or received or done anything in respect of the Area. Balancing the conflicting evidence above summarised as best I can, my conclusion is that the ownership of the National Trust is established and that of the successors of Mr C H and Miss E J Cheetham is disproved. As to the Cockley Beck and Dale Head Area being common land within the definition of Section 22 (1) of the 1965 Act, the 1929 conveyances are some evidence against. No evidence was offered at the hearing that the Area was subject to any rights of common or of it being of a manor in any way which could now be relevant. I conclude therefore that the Area should not have been included in the Land Section registration.

As regards the Tilberthwaite Area, in support of Objection No.54, Mr Whelan produced a conveyance dated 6 October 1930 by which Mrs H B Heelis conveyed to the National Trust Tilberthwaite Farm, which expressly included Tilberthwaite Fell 777a. 3r.2p., being land which by reference to the plan annexed I identify with the Tilberthwaite Area. He also produced a conveyance dated 6 December 1936 which contained words indicating that lands in or around Tilberthwaite were the subject of an award dated 17 April 1858 for the enclosure of Tilberthwaite Fell. Mr Huck said that the Commoners Association accepted that the Tilberthwaite Area was not common land. In the absence of contra evidence, I conclude that this Area too, is in the ownership of the National Trust and should not have been included in the Land Section registration.

Accordingly my decision as regards objection Nos 54 55 and 56 is that they all wholly succeed.

As regards the 0/58 North Area;- At Rights Section Entry No. 41, a right attached to Fell Foot Farm, Little Lengdale (to the north of the Unit Land) has been registered on the application of the National Trust. The substance of the Objection is that the 0/58 North Area is distinct from the rest of the Unit Land being part of the Pennington-Rausden Estate, and accordingly the only right of common which could exist over it must be attached to lands which are on the Langdale side of the Unit Land.

With regard to this, oral evidence was given by Mr J E Robinson, who said (in effect):- The Malna Scar Commons Association was formed on 26 January 1968 and consists of persons interested in registering common rights on Dunnerdale Fells. Southwaite Fells, Coniston Fell and Torver High Common: there are about 57 numbers. Some of their members are concerned with the registrations to which Objection No. 58 relates. The Association concedes that the Ownership is correct. The members of the Association are concerned with the remainder of the Unit Land. He could not think of anybody other than the National Trust who could have common rights over the 0/58 North Area. In the absence of any evidence to the contrary my decision is that Objection No. 58 wholly succeeds.





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The grounds of Objection No.357 (Youth Hostels) indicate that it was intended to relate to a small area of land on which there is or was a Youth Hostel. As the objection was withdrawn, my decision is that it wholly fails. There remains only the conflict between the conflicting Ownership Section registrations at Entries Nos 1 and 3 (Mr Moser and Sir W Pennington-Ramsden). This conflict relates to a small piece within the area FI-X-GI-HI-GI. At the hearing I understood the fell in this area is very rough and it may be of little consequence who is the owner. The area is detached from the rest of the land comprised in the Pennington Ramsden ownership registration, and cannot therefore conveniently be owned with it; in the absence of any other evidence, my decision is that the conflict should be resolved in favour of Entry No 1 (Mr Moser).

For the above reasons I confirm the Land Section registration with the modification that there be removed from the Register the land shown hatched blue and hatched green on the plan attached to Objection No.54; I confirm the Rights Section registrations at Entry Nos 1 to 47 and 50 to 58 with the modification as regards those at Entry Nos 4 16 17 19 23 30 31 and 40 that the rights thereby registered do not extend over the land shown on the plan attached to Objection No 58 and thereon verged red and as regards all the said registrations with the modification necessarily consequential on the removal from the Register of the said Objection No 54 land; and I confirm the registration at Entry Nos 1 3 and 4 in the Ownership Section with the modifications; as regards the registration at Entry No 1 that there be removed from the Register so much of the said Objection No 54 land as is comprised therein (being the part thereof referred to in Objection No.56), as regards registration at Entry No.3 that there be removed from the Register so much of the land comprised therein as has been registered at Entry No 1 as being in the ownership of Mr Roger Michael Moser, and as regards the registration at Entry No 4 that there be removed from the Register so much of the said Objection No 54 land as is comprised therein (being that referred to in Objection No.55).

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 10th

day of July

1978

a. a. Baden Fuller