



## COMMONS REGISTRATION ACT 1965

Reference No. 262/U/360

In the Matter of Hewer Hill,  
Freestone Quarry, Castle Sowerby,  
Eden District, Cumbria

SECOND DECISION

This decision is supplemental to my decision dated 5 October 1981 given upon a reference relating to the ownership of land known as Hewer Hill, Freestone Quarry, Castle Sowerby, Eden District, being the land comprised in Register Unit No. CL 336 in the Register of Common Land maintained by Cumbria County Council.

My said decision was given after a hearing at Penrith on 18 and 19 June 1981 at which Castle Sowerby Parish Council were represented. On their behalf Mr J A Foster gave oral evidence in the course of which he said that this land is surrounded by land forming part of a farm owned or farmed by Mr Brian Strong. There was then some discussion as to the possibility of Mr Robert Samuel Strong who signed the application for the registration on behalf of the Parish Council, being mistaken in thinking that this land was not part of his farm. So I gave Mr Brian Strong liberty to apply to re-open the hearing and to set aside my said decision so far as it related to this CL 336 land.

Such an application was made in a letter dated 25 January 1982 signed on behalf of Mr Brian Strong by Mr D A Hellard of The National Farmers Union (Cumbria Branch). I held a hearing at Penrith on 12 March 1982 for the purpose of considering this application; Mr Brian Strong attended in person.

He said in the course of his evidence (in effect):- He farmed Hewer Hill Farm, in part as owner and in part as tenant of Miss K Ingles of Storm House, Dalston, Carlisle. The land ("the Unit Land") in this Register Unit is next to the land of which he is tenant, being OS No 300; (area) 1.512 acres; "Old Quarry". Of this tenanted land he, and before him his father and grandfather had been tenants-for over 100 years: the farm buildings which are part of the Farm were rebuilt in 1889 from (so he understood) stone from the quarry on the Unit Land. He understood that his farm had the use of the grazing of the Unit Land for keeping in order the gates crossing the bridle path which runs by the Farm buildings and then southwards along and within the east side of the Unit Land. He has no title deeds relating to the Unit Land, and in his tenancy agreement it was not included in the land therein described as let. He had been in touch with Miss Ingles and understood that she does not wish to make any claim. His father Mr B S Strong was the chairman of the Parish Council when the registration was made. He produced particulars dated 26 December 1956 of an auction of the Farm, and a manuscript copy of the will of Mr John Strong. When his father took on the Farm the Unit Land was just a very small quarry on to which he used to tip soil if he did any building.



If I am to re-open the June 1981 hearing and set aside my October 1981 decision, I must conclude that there is some prospect that if I did so of my being at any adjourned hearing satisfied as to some person being the owner of the Unit Land; ~~using~~ using the word "owner" as defined in section 22 of 1965 Act as meaning the owner of the legal estate in the fee simple. In my view the use in 1889 for building of the stone from the Unit Land can be ascribed to the right registered on the application of Mr R S Strong of the parishioners to take freestone and the grazing can be ascribed to a conditional right of common; so neither provides satisfactory evidence of any taking of possession as owner of the estate in fee simple. Further even if I could conclude that there was such taking of possession, because it was done by Mr Brian Strong and his predecessor by reason of he and they being tenants the result in law would be not to give him a title to the estate in fee simple but merely to add land to his tenancy, see Halsbury Laws of England (4th edition 1981) volume 27 paragraph 164 et seq. Knowing nothing of the title of Miss Ingles I cannot conclude that she is the owner of the fee simple estate or infer that if the hearing was re-opened she would attend in person or by her representative, ~~or~~ to claim ownership.

I consider that no useful purpose would be served by re-opening my June 1981 hearing and accordingly I refuse Mr Strong's said application to set aside my said October 1981 decision. The Unit Land will therefore remain subject to protection under section 9 of the Act of 1965.

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 1st day of July — 1982

a. a. Baden Fuller

Commons Commissioner

