



COMMONS REGISTRATION ACT 1965

Reference No: 40/U/17.

In the Matter of Sandpit on Kaber Rigg,
near Rookby, Kaber, Eden District, Cumbria

DECISION

This reference relates to the question of the ownership of land being a sandpit (or quarry) on Kaber Rigg, near Rookby, Kaber, Eden District being the land comprised in the Land Section of Register Unit No. CL102 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council of which no person is registered under Section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Penrith on 25 April 1979. At the hearing Kaber Parish Council were represented by Mr W M Hutchinson their chairman, and Mr B Hutchinson their clerk.

Mr W N Hutchinson said (in effect):- He thought the land was about 1/4 of an acre, or slightly more; it is covered with gorse bushes and has not been used as a sandpit for some time. The surrounding land (about 5,000 acres) is the Winton and Kaber Regulated Common established under an Act of Parliament of 1911; the grazing (sheep generally, although other stocks can be put) is quantified by stints and managed by the Conservators (he is their chairman). He thought that the land (the sandpit) was left open under the 1911 Act for the use of the Parish.

After the hearing, the Parish Council sent me an extract from the Winton and Kaber Award, which contained a declaration setting out "for the use of the persons interested in the Commons on their lands messuages and buildings specified in the Schedule hereto but not otherwise or for sale One Sandpit on Kaber Rigg containing by admeasurement Ca. 1r. Op. delineated on the said Map No.3 hereto annexed and thereon marked Sandpit ...".

I infer that the Award was made under the Commons Regulation (Winton and Kaber) Provisional Order Confirmation Act 1911, (1 & 2 Geo.5 c. clxxx). The order recites that the "Commons (except Winton Cow Close and Winton Longrigg) are waste lands of the lordships or manors of Winton and Kaber (otherwise known as South Stainmore) within the Manor paramount of Brough and the Right Honourable Henry James Baron Hothfield the lord of all the said Manors claims to be entitled as such lord to the soil of the Commons (except as aforesaid)". Part III, headed "Provisions for the benefit of the neighbourhood" of the said Provisional Order provides for quarries for the repair or roads within the said parishes of Winton and Kaber (as set out in the Award as above quoted). Part V of the Provisional Order provides:- this provisional order is to be without prejudice to the right of the lord of the Manor in the soil of the Commons including that the mines and minerals thereunder ...". However this Part V provision was by the act amended because (as therein it appears the House of Commons so required) by inserting the words "if any" after the word right.

In my opinion the 1911 Act and the award made under it provide no evidence as to the present ownership of the Sandpit with which I am now dealing. The Act shows that



Lord Hothfield claimed to be the owner of the soil, but Parliament insisted that he might not be. Neither the 1911 Act or the extract from the Award supplied to me contains anything to support an ownership claim by the Parish Council. If the common had been regulated under the Inclosure Act 1845, it might have as a result come into the ownership of the commoners under Section 116; however as I read the 1911 Act it was made in accordance with the provisions of the Commons Act 1876, which contains nothing about the commoners becoming owners; further the hearing before me no claim was made by them or by the Conservators on their behalf; indeed Mr Hutchinson said they would rather the Parish Council own the land, their present intention being if possible to get it tidied up.

Although I have no wish to interfere with such a laudible intention, I cannot otherwise conclude that at the hearing I had no evidence of ownership. In the absence of any such evidence I am not satisfied that any person is the owner of the land and I will therefore be 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 2nd day of August 1979.

A. A. Baden Fuller

Commons Commissioner