

COMMONS REGISTRATION ACT 1965



Reference Nos 262/D/60 to
69 inclusive

In the Matter of (1) The Green,
(2) Fell Lane and (3) Milburn Forest
including Red Carle, all in Milburn,
Eden District, Cumbria

DECISION

These disputes relate to the registrations at Entry Nos 1, 2 and 3 in the Rights Section of Register Unit No. VG 28 in the Register of Town or Village Greens maintained by the Cumbria (formerly Westmorland) County Council, to the registrations at Entry No. 1 in the Land Section of Register Unit No. VG 29 in the said Register and of Register Unit No. CL 5 in the Register of Common Land maintained by the said Council, and to the registrations at Entry Nos 1 to 11 inclusive, 14, 15, 16, 18, 19 and 21 to 26 inclusive in the Rights Section of the said Register Unit No. CL 5; and are occasioned: (CL 5, L/S and all R/S Entries) by Objection Nos 1/27 and 1/29 made by Milburn Parish Council and noted in the Register on 13 and 14 November 1970; (CL 5, R/S Entries Nos 1, 2 and 11) by Objection No. 1/31 made by Mr Henry Francis Wales and noted in the Register on 16 October 1970; (CL 5, R/S Entry No. 16) by Objection No. 2/27 made by Mr John Robinson, Mr Arthur Holmes, Mr Bernard Braithwaite and Mr Thomas Forrest and noted in the Register on 17 November 1970; (VG 28) by Objections Nos 1/30 and 1/32 made respectively by the said Parish Council and Mr Wales and noted in the Register on 13 November 1972; and (CL 5, R/S Entry Nos 9 and 11) by Objection No. 2/215 and made by Nature Conservancy, National Environment Research Council and noted in the Register on 25 July 1972; and (VG 29 and CL 5) by the registration in the Land Sections of these last mentioned Register Units being in conflict.

I held a hearing for the purpose of inquiry into the disputes at Penrith on 24 April 1979. At the hearing (1) Milburn Parish Council (the VG 28 and VG 29 Land Section registrations were made on their application) were represented by their chairman Mr J Heelis and by Mrs R Birkett one of their members; (2) Mr Wales and his wife Mrs Marjorie Wales (in addition to him being an objector, the registration at CL 5 Rights Section Entry No. 3 was made on their application) were represented by Mr D Mellor, solicitor with Little and Shepherd, Solicitors of Penrith; (3) Mr Richard Atkinson (the registrations at VG 28 and CL 5 Rights Section Entry Nos 1 and 2 were made on his application) was represented by his son Mr Roger Milburn Atkinson (he said that his father had on the death of his uncle Mr George Cannon Atkinson purchased Underwood Farm being the land to which the registration registered at CL 5 Rights Section Entry No. 11 is attached); (4) Mr Peter Hall Hetherington (the registration at VG 28 Rights Section Entry No. 3 and at CL 5 Rights Section Entry No. 8 were made on his application) was also represented by Mr R M Atkinson; (5) Mr J Heelis also attended in person as being the person now entitled to benefit of the registration at CL 5 Rights Section Entry No. 9, he being in succession to Mr J M Fairer on whose application the registration was made, the present owner of OS Nos 13, 166, 217 and 230 being land to which the right registered is attached; and (6) The Nature Conservancy Council who as statutory successors of National Environment Research Council are entitled to the benefit of the registration at Entry No. 1 in the CL 5 Ownership Section were represented by Mr M Rawes officer in charge of the Moor House, Field Station and Mr J S R Elliott FRICS, their Regional Land Agent (North West).

The land ("The Green") in Register Unit No. VG 28 is a rectangular piece (the roads which cross it are excluded) in the middle of the Village of Milburn; as I



estimate from the Register map it is between 200 and 300 yards long and 70 and 90 yards wide. In the Ownership Section at Entry No. 1, Corlands Minerals Limited are registered as the owners of all the Green.

The land ("Fell Lane") in Register Unit No. VG 29 is a comparatively narrow strip between 700 and 900 yards long extending northeastwards from the north corner (or a point near such corner) of the Green towards the Fell. The land ("the CL 5 land") in Register Unit No. CL 5 comprises Fell Lane, a larger area known as Red Carle, a comparatively small area ("the DEFG Area") marked on the Register map by these letters and a very much larger area (about 5 miles long) known as Milburn Forest bounded on the northeast and the north by Crowdundle Beck up to Tees Head and beyond by the River Tees and bounded on the south by Knockore Beck and beyond by Trout Beck (flowing into the River Tees); according to the Register the CL 5 land contains 2,032.87 hectares (5,023 acres). In the CL 5 Ownership Section Mr J D Thornborrow is at Entry No. 2 registered as the owner with Red Carle, Corlands Minerals Limited is at Entry Nos. 4 and 5 registered as owner of Fell Lane and the DEFG Area and Natural Environment Research Council is at Entry No. 1 registered as owner of Milburn Forest (all the rest and by far the greater part) except for comparatively small area ("the red Area") coloured red on the Register map of which Corland Minerals Limited are at Entry No. 3 registered as owner.

At the hearing, I first considered the objections made by the Parish Council and Mr Wales to the VG 28 Rights Section Entry Nos. 1, 2, and 3 (made on the application of Mr R Atkinson and Mr P H Hetherington). Mr Heelis handed me an agreement signed by Mr R M Atkinson and Mr Hetherington and having annexed to it statements (generally agreeing) signed by members of the Parish Council. I said that if Mr Wales was agreeable (as he was) I would give effect to this agreement provided that the actual wording for the modification to be made in the register differed slightly from the words in the agreement set out. After some discussion the wording set out below was agreed between Mr Heelis, Mr R M Atkinson and Mr Mellor, said that I have for the reasons set out below inserted the words "together with the land known as Fell Lane comprised in Register Unit No. VG 29".

So in accordance with the agreement and without any objection by any others present at the hearing, I confirm the registrations at Entry Nos. 1, 2 and 3 in the VG 28 Rights Section with the modification that in each case for the words in column 4 "together with the land known as Milburn Fell/the whole of the land/comprised in register unit No. CL 5 in the Register of Common Land", there be substituted: "together with the land known as Fell Lane comprised in register unit No. VG 29 Provided that (a) the grazing shall be limited to non-commercial animals; (b) the right so registered shall be held for the benefit of the inhabitants of the Village generally to be administered by the Parish Council, and (c) the rights so registered shall not be exercised by the trustees personally for the benefit of their own lands so long as the grazing is enjoyed by the inhabitants (including the trustees as inhabitants)".

As regards the conflict between the CL 5 and VG 29 Land Section registrations, Mr Heelis said that Fell Lane had always been separated from the rest of the CL 5 land by a gate, and was generally considered as belonging to the Green and as not grazeable like the rest of the CL 5 land. It was agreed by him, Mr R M Atkinson, Mr Mellor that I should as regards these registrations resolve the conflict in favour of VG 29, but I at their request record that such agreement was on the basis accepted by them and others present at the hearing that there is a right of way along



Fell Lane for access to the CL 5 land from the southwest for the benefit of the CL 5 land. I am not concerned in these proceedings with any such right of way (as to a possible note about it on the register, see regulation 21 of the Commons Registration General Regulations 1966), but I consider nevertheless that I should act on the agreement about this conflict, and accordingly I confirm the VG 29 Land Section registration without any modification and confirm CL 5 Land Section registration with the modification that there be removed from the Register all the land comprised in Register Unit No. VG 29.

As regards the CL 5 Rights Section registrations (which will now as a result of their Entries in such Rights Section no longer apply to Fell Lane): - Mr Heelis said that the Parish Council had no objection to any of them; but I must nevertheless consider the registrations at Entries Nos. 1, 2, 9, 11 and 16 which are the subject of Objection Nos. 1/31, 2/27, and 2/215. As regards Entry Nos. 1, 2, 9 and 11 it was agreed by those present at the hearing (there being none other concerned) that I confirm the registration at Entry No. 1 with the modification that for the words in Column 4 there be substituted: "to graze 1,000 ewes and lambs over the whole of the land comprised in this register unit", I confirm the registration at Entry No. 2 with the modification that for the words in Column 4 there be substituted: "To graze 425 ewes and lambs over the whole of the land in this register unit", and I confirm registration at Entry No. 9 with the modification that in Column 4 there be added at the end "provided that the Right of Piscary shall not extend to the part of the land in this register unit lying to the east of the line F-G on the registers map"; and I confirm the registration at Entry No. 11 with the modification that for the words in Column 4 there be substituted: "to graze 600 ewes and lambs together with the right turbary and piscary over the whole of the land in this register unit provided that the said right of piscary shall not extend to the part of the land in this register unit lying to the east of the line F-G on the register map."

As regards the registration at the CL 5 Rights Section Entry No. 16 made on the application of Mr R W Taylor of a right attached to OS plot No. 4 to graze 50 ewes with the followers:- I have a letter dated 23 April 1979 from Hewitson and Harker, solicitors of Kirkby Stephen in which they say on behalf of Mr Taylor and others they are agreeable to accept the exclusion of Fell Lane from the CL 5 land provided that they are shown in the register in respect of the CL 5 excluding Fell Lane land; the writer appears altogether to have overlooked Objection No. 2/27 grounds of which are to the effect that the registration at Entry No. 16 was not properly made because OS plot 4 is not in the Parish of Milburn. Mr Wales at the hearing said (in effect):- OS plot No. 4 as shown in the plan attached to Mr Taylor's application (Form 9, dated 14 February 1969) was part of Slakes Farm (as stated in the application); Slakes Farm (or most of it) is in the Parish of Milburn but this plot is in the Parish of Long Marton (township Knock) and there is therefore no right of grazing over Milburn Forest in respect of it. Mr Taylor had agreed this.

It is unfortunate that at the hearing there was no person present representing either Mr R W Taylor as applicant for Entry No. 16 or Messrs Robinson, Holmes nor Braithwaite and Forest and that said letter of 23 April 1979 was apparently written on behalf of both Mr Taylor and Mr Holmes who made Objection No 2/27. I also have a letter dated 20 April 1979 from Robert T Forrester and Son, solicitors of Barrow in Furness written on behalf of Mr and Mrs Braithwaite but they make no mention of the registration at Entry No. 16 or of the Objection. In my opinion I am not obliged to accept the above quoted proviso in the letter of 29 April 1979; nor do I treat Mr Wales' statement as to Mr Taylor's agreement as decisive. No one at the hearing disputed that plot No.



is not in the Parish of Milburn; by reason of its situation as it appears on the map attached to Mr Taylor's application and in the absence of any supporting evidence I conclude that the registration was not properly made. Accordingly I refuse to confirm registration at Right Section Entry No. 16.

The other CL 5 Right Section registrations but for the objections made by the Parish Council would have become final under Section 7 of the 1965 Act. In view of Mr Heelis' explanation of the Parish Council's reason for making their objection, I consider I should produce the same result. Accordingly I confirm the CL 5 Rights Section registration at Entry Nos. 3 to 8 inclusive, 10, 14, 15, 18, 19, and 21 to 26 inclusive without any modification save such as is necessarily consequential upon the removal of Fell Lane from the register of common land.

By Regulation 14 of the Commons Registration (General) Regulation 1966, every entry in the Rights Section of Register Unit No. CL 5 is deemed also to be made in the Rights Section of Register Unit No. VG 29 (Fell Lane), so I have to consider to what extent if at all I should confirm or modify the entries so deemed to be made in the VG 29 Rights Section corresponding to each of the entry No. 1 to 11 inclusive, 14, 15, 16, 18, 19, 21-26 inclusive in the Rights Section of Register Unit No CL 5.

Objection No. 1/29 (the Parish Council) is an objection to all these deemed entries on the grounds as I read it and as explained by Mr Heelis the rights registered are altogether inappropriate to Fell Lane being a village green which is (as above stated) distinct from the rest of the CL 5 land and separated from it by a gate (at the top of Fell Lane). As I read the said letters of 23 and 29 April 1979 Mr A Holmes, Mr R W Taylor, Miss D E Hunter, Mr and Mrs N B Taylor and Mr and Mrs Braithwaite are agreeable the Rights Section Entries Nos. 6, 16, 18, 19 and 21 and No. 15 being treated as inapplicable to Fell Lane. As regards the deemed registrations corresponding to Entries Nos. 3, 9 and 11 Mr Mellor, Mr Atkinson and Mr Heelis were agreeable to my treating them as inapplicable to Fell Lane. With regards all the other deemed registrations (except those which correspond with Entries Nos. 1 and 2 and 8 and which are specially mentioned below) on Mr Heelis' statement about the gate and Fell Lane being distinct and from what I saw of it as I walked up part of it 3 days after the hearing I consider these deemed Rights Section registrations should not have been made and accordingly I refuse to confirm the registrations which are deemed to be made under the said 1966 Regulation in consequence of the registrations at Entry Nos. 3 to 7 inclusive, 9 to 11 inclusive, 14, 15, 16, 18, 19 and 21 to 26 inclusive in the CL 5 Rights Section.

As regards the deemed registrations in the VG 29 Rights Section corresponding with the registrations at Entries Nos. 1, 2 and 8 (Mr Atkinson and Mr Hetherington), it was I think implicit in what was said at the hearing (although I have no note or recollection of it being expressed by anyone) that Fell Lane should as regards grazing be treated in the same way as the Green. Accordingly I confirm VG 29 Rights Section registration which under the said 1966 Regulations are deemed to be made as a result of Entries Nos. 1, 2 and 8 in the CL 5 Rights Section with the modification that in each case for the all deemed words in Column 4 that relating to the Register Unit No. CL 5 be deleted, that the words "together with the land known as Milburn Green comprised in Register Unit Nos VG 28" be retained and that there be added at the end "provided that (a) the grazing shall be limited to non-commercial animals; (b) the rights so registered shall be held for the benefit of the inhabitants of the village generally to be registered by the Parish Council; and (c) the rights so registered shall not be exercised by the trustees personally for the benefit of their own land



so long as the grazing is enjoyed by the inhabitants (including the trustees as inhabitants". Because there will be rights over the VG 29 land (Fell Lane) corresponding to those over VG 28 land (the Green), the words mentioned at page 2 of this decision in relation to the VG 28 Rights Section register and referring to the VG 29 land, are appropriate. So in the result all the Right Section registrations in the VG 28 and VG 29 register Units will (except for the interchange of 28 and 29 where appropriate) be identical.

Because much of this decision is based on what was said to me at the hearing and because it may be that I have not given full effect to what was then agreed, I give any person who was present or represented at the hearing and any other person who was entitled to be heard at it, liberty within 42 days of this decision being sent to them to apply to me to amend the decision. Any such application should in the first instance be made by letter addressed to the Clerk of the Commons Commissioners.

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 6th - day of June 1979.

a. a. Baden Fuller

Commons Commissioner