



COMMONS REGISTRATION ACT 1965

Reference Nos. 44/D/41  
44/D/42  
44/D/43  
44/D/44

In the Matter of 13 pieces (old quarries)  
Bail Hill, Parson Rigg, Green Rigg, Black Rigg,  
Limestone, Greet's, East Harker, East Field,  
Pinfold, Easter Beck, Harker Moss, Kelton Moss,  
and Kelton Hill, all in Mickleton, Teesdale D., Durham.

DECISION

These four disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No. CL.164 in the Register of Common Land maintained by the Durham County Council and are occasioned by Objection No. 0197 made by Mr. Thomas Henry Stokeld, by Objection No. 0274 made by Mr. A. Wall, by Objection No. 0340 made by Mr. J.D. Bentley and by Objection No. 0341 made by Mr. John Reginald Walters and all noted in the Register on 21 September 1970.

I held a hearing for the purpose of inquiring into these disputes at Richmond on 24 January 1973 and at Bishop Auckland on 29 April 1975. At the 1973 hearing (1) Mickleton Parish Council were represented by Mr. T. Carter their clerk (2) Startforth Rural Council were represented by Mr. A. Pooley and (3) Messrs Stokeld, Wall Bentley, & Walton were represented by Mr. R.W. Noble (secretary of the Barnard Castle branch of the National Farmers Union); all then present requested me to adjourn the proceedings. At the 1975 hearing Mickleton Parish Council were represented by Mr. J. Seery, solicitor of Marquis, Penna & Sutton, Solicitors of Bishop Auckland, and Messrs. Stokeld, Wall, Bentley and Walton were represented as before.

The land (the "Unit Land") comprised in this Register Unit consists of 13 pieces all being or reputed to be, or appearing to be old quarries and known as (1) Bail Hill, (2) Parson Rigg, (3) Green Rigg, (4) Black Rigg, (5) Limestone, (6) Greet's, (7) East Harker, (8) East Field, (9) Pinfold, (10) Easter Beck, (11) Harker Moss, (12) Kelton Moss and (13) Kelton Hill. The pieces are scattered over a wide area, the two most easterly (1) Bail Hill, (2) Parson Rigg being about 2½ miles east of the most westerly (12) Kelton Moss and the most northerly (5) Limestone being about 2 miles north of the most southerly (13) Kelton Hill. The registration was made on the application of the Parish Council.

The grounds of the objection are in all cases in effect that part of the Unit Land (as shown on the attached plan) was not common land at the date of registration. The part of the Unit Land shown on each attached plan is different.

Mr. Seery and Mr. Noble said that the Parish Council had agreed with Messrs. Stokeld Bentley and Walton that their Objections should be allowed. The plans attached to their Objections are or may not be clear, and after some discussion it was agreed



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that I should assume (as I recorded at the 1973 hearing) that objection No. 0197 related to part only of the piece (12) Kelton Moss, being the west part and being so much of the piece as is comprised in fields, 51, 53 and 54 on the O.S. map, that objection No. 0340 related to the whole of the piece (13) Kelton Hill, and that objection No. 0341 related to the whole of the two pieces (3) Green Rigg and (4) Black Rigg. There is I think no reason why I should not give effect to this agreement.

Accordingly I am concerned only with objection No. 0274 (Mr. Wall). It was agreed that this was intended to relate to the whole of the two pieces (1) Bail Hill and (2) Parson Rigg, and I proceed accordingly.

Mr. T. Dent who has lived in the district all his life (62 years) and who is secretary of the Mickleton Moss Committee (his Committee is not concerned with these pieces) produced the Mickleton Inclosure Award dated 21 February 1810. He said that the Award was kept at High Green Farm, owned by him and before him by many generations of his family and he believed it had always been kept there since it was made.

The Award contained the following allotments:- "And we do hereby assign... as and for common quarries forty one acres thirty seven perches twelve roods in twelve plots or parcels of land... (included was a plot of four acres one rood thirty five perches thereafter referred to as "Bail Hill Quarry", and a plot of one acre one rood twenty six perches thereafter referred to as "Parson Rigg Quarry"...and we do hereby order... the said twelve plots...shall forever hereafter be and remain open and in common as and for common quarries and that the same shall be for the use of the Proprietors of Messuages Lands, Tenements and Hereditaments having right of common upon the said Common or Moor or entitled to allotments in the said Town Fields or stinted Pastures their heirs executors administrators tenants lessees or assigns or any or every of them the stone to be gotten forth and out of the said quarries to be used in or upon the buildings or lands in respect whereof he or they are entitled to the right of common upon the said Common or Moor or entitled to allotments in the Town Fields and stinted pastures as aforesaid or any of them in or upon for or under any of the allotments made in respect thereof or for making or for repairing public and private Carriage or Bridle road (...?) but not for the use of any other person or persons or for sale or for any other purpose whatsoever and we do further award order and direct that all and every person and persons who by virtue of this our award shall have a right to work any of the said common quarries shall and do respectively work the same in a fair and orderly manner and do as little inconvenience to the earth other than removing the stone therefrom as maybe and that no person or persons shall have liberty or be permitted to work any of the said quarries or take any stones thereout or any then but at the distance of nine feet horizontally from the next adjoining to the said quarries respectively and where the same adjoin or border upon any road then at the like distance from the road and we do hereby order direct and award that the herbage or eatage of the said parcel of land hereinbefore by us set out as and for a quarry called by the name of Parson Rigg Quarry shall forever hereafter be enjoyed by the said John Longstaff and all future owners or occupiers of the sixth plot herein-after awarded to him and that he and they shall make and maintain a good and sufficient fence between the said common quarry and the said parsons Moss East Road that he or they shall also make and forever thereafter uphold and maintain and keep a good and sufficient well going Carriage Gate at the most convenient part of the said fence for the use and (...?) of the said Common Quarry and we do hereby order and



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award that the herbage and eatage of the parcel of land hereinbefore by us set apart as and for a Common Quarry and called by the name of "Bail Hill Quarry" shall forever hereafter be enjoyed by William Langstaff and all future owners or occupiers of the plots hereinafter awarded to him and that he or they shall make and maintain . . . . . well going Carriage Gate at the east end of the said Bail Hill Quarry in and adjoining the said Parson Moss East road".

The Award was made under the Romaldkirk and Mickleton (Township) Inclosure Act 1802 (42 Geo. 3 c. lxx). The Act required the Commissioners to allot the lands thereby authorised to be divided "after deducting"... so much... as shall be set out for public highways... and for a common Quarry or Quarries and common Watering places or wells..."; but contained no indication as to how any quarry allotment should be expressed.

No other evidence was given at the hearing. A few days afterwards I inspected both the two pieces, Bail Hill and Parson Rigg. The Bail Hill piece (about  $4\frac{1}{2}$  acres) is a little distance from the road, on the north side of the hill overlooking Teesdale. It does not appear to have been quarried for some time; except for the steep parts which were or could become the quarry face, there is much grass, obviously of some value for grazing. There is no fence between the piece and the land (higher up the hill) on the south side; the piece appears to be being grazed with such land. The Parson Rigg piece (about  $1\frac{1}{2}$  acres) is by the side of the road, a little higher up the hill and is in all now relevant respects much the same as (although smaller than) the Bail Hill piece.

Mr. Seery said (in effect): The Parish Council, although recognising that no one is now getting or is likely in the near future to want to get stone, nevertheless wish to preserve the rights granted to the Parish by the allotment. Mr. Noble said (in effect):- Mr. Wall is content with the position as it was before the Act of 1965; he as owner freely grazed the land subject to the remote possibility that someone in the parish might want to get stone; however he is apprehensive that if it remains registered as common land under the Act, the public will have or get rights to use it, and the exercise of these rights may seriously interfere with his use of these pieces for grazing. Mr. Seery said that the Parish Council accepted the view of Mr. Wall that the land should not be used by the public. In these circumstances Mr. Seery and Mr. Noble requested me to make a modification to the register which would make it clear that the registration would never confer on the public any right and would do no more than preserve the rights granted under the Award by the words above quoted.

The Royal Commission on Common Land in their 1955 Report recommended legislation which would specify the rights that the public would have over land registered as common land; this one of their recommendations has not yet been adopted by Parliament although the 1965 Act gives substantial effect to their recommendations as to registration. So the uncertainty which the Parish Council and Mr. Wall feel about the effect of registration under the 1965 Act on the pieces I am now considering, may be general. In my opinion I have no jurisdiction under the Act to make the modification requested because in my view the effect of the registration is a matter not for me but for determination (so far as not regulated by Parliament under some future Act) under the general law as it now stands.

In these circumstances I must I think determine whether these pieces of land are within the definition of common land in Section 22 of the 1965 Act, notwithstanding that the Parish Council and Mr. Wall may have little or no idea to what the consequences will be.



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By the section "common land" is defined as meaning "land subject to rights of common..." and "rights of common" are defined as including "rights of sole...herbage". Whether or not the right to get stone as granted by the above quoted allotment is (as I am inclined to think it is) a right of common within the 1965 Act, it is I think, clear that the right of herbage expressly granted by the allotment is a right of common. Accordingly I consider these pieces are properly registered.

For the reasons outlined above I confirm the registration at Entry No.1 with the following modification; there shall be removed from the register: (a) the whole of the piece of land known as (3) Green Rigg; (b) the whole of the piece of land known as (4) Black Rigg; (c) part of the piece of land known as (12) Kelton Moss being so much (the west part) of the piece as is comprised in fields 51, 53 and 54 on the Ordnance Survey map; and (d) the whole of the piece (13) Kelton Hill.

I am required by regulations 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 25<sup>th</sup> — day of July 1975.

a. a. Baden Fuller.

Commons Commissioner.