



COMMONS REGISTRATION ACT 1965

Reference No. 11/U/13
11/U/15

In the Matters of two pieces of
land both known as Foggerthwaite
Common Quarry, Eggleston, Barnard
Castle R.D., Durham

DECISION

These references relate to the question of the ownership of two pieces of land both known as Foggerthwaite Common Quarry, Eggleston, Barnard Castle Rural District being the land comprised in the Land Section of Register Unit Nos. C.L.18 and C.L.17 in the Register of Common Land maintained by the Durham 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 Mr. John Stanley Kidd ("the Claimant") 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 Durham on 8 November 1972.

The hearing was attended by the Claimant who was represented by Mr. W. I. Watson solicitor of Messrs. Watsons solicitors of Barnard Castle, by Barnard Castle Rural District Council and by Eggleston Parish Council who both were represented by Mr. J. A. Jones who is the clerk of the Rural District Council. It was agreed that I should hear these two references together.

These two Units are situated on the north side of the road between Middleton-in-Teesdale and Eggleston. The West Unit (reference 11/U/15) is Register Unit No.C.L.17, is numbered 70 on the Register map and on the Ordnance Survey map dated 1921 and has an area of .334 acres. The East Unit (reference 11/U/13) is Register Unit No.C.L.18, is numbered 236 on the said maps, and has an area of 1.555 acres. On the said maps, the west Unit is bounded on the south east, northeast, north and north west by a field numbered 71, and the East Unit is bounded on the west and for a short distance on the north by the same field and on the north for the most part and on the east by a field numbered 235. Both these fields are part of Foggerthwaite Farm which is owned and occupied by the Claimant.

The Claimant in his evidence produced:- (i) An Ordnance Survey map dated 1854; on this map the West Unit was not delineated at all but was shown as included in the field thereon numbered 71 (being the same field as that also numbered 71 on the 1921 map) and, the East Unit (a little more or less) was delineated and thereon numbered 98 and the field numbered 235 on the 1921 map was thereon numbered 100. (ii) A conveyance dated 23 November 1929 by which the lands which are now known as Foggerthwaite Farm including pieces of land numbered 71 and 98 on the 1854 map were conveyed to Mr. J. and Miss S. Allinson. (iii) A conveyance dated 27 June 1951 by which the lands known as Foggerthwaite Farm including pieces of land numbered 71 and 98 on the said map were conveyed to Mr. R. H. Staley. And (iv) a conveyance dated 14 May 1958 by which Mr. R. H. Staley conveyed to the Claimant the lands known as Foggerthwaite Farm "(less Ordnance Survey Numbers 70 and 236 wrongly included in the plan and description to in such last mentioned conveyance (meaning that dated 27 June 1951))".



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The Claimant in his evidence with reference to the East Unit said:- This Unit is surrounded by a stone wall which has on its south side (the road side) a gate in it and on its north side a gap of about 10 feet with no gate; the land so enclosed is rough fell like land similar to the land in the higher parts of the Farm but distinct from the adjoining fields (numbered 71 and 235 on the 1921 map) which are meadow land. He (the Claimant) after he had bought the Farm in May 1958 had grazed this Unit with sheep; there was not a lot of grass but there was enough to make it worthwhile putting sheep on it, particularly with a view to getting them acclimatised to a change over from meadow land to fell land. Mr. R. H. Staley who still lived in the village had never claimed, nor had anybody else claimed to be the owner of this Unit.

The Claimant in his evidence with reference to the West Unit said:- On the south side (the roadside) there is no wall, so this Unit is open to the highway. The wall which separated this Unit from the adjoining field (numbered 71 on the 1921 map) had no gap or gate in it. The County Council had recently levelled this Unit with a view to stopping it from being used (as it had been in the past) as a rubbish tip. He (the Claimant) had never had anything to do with this Unit.

Mr. Watson said he could offer no evidence as to why these two Units were expressly excluded from the 1958 conveyance and submitted that whatever might be the reason, the Claimant had by his evidence showed that he had by possession acquired a title to the East Unit under the Limitation Act 1939. Mr. Jones did not on behalf of the Rural District Council and the Parish Council dispute the title of the Claimant.

On the evidence outlined above I conclude the title which Mr. R. H. Staley appears to have had under the 1929 and 1951 conveyances has been extinguished by the 1939 Act and that the Claimant has established that he is now in possession of this Unit in circumstances which make it practically certain that his possession will never be disturbed. Such possession is equivalent to ownership and I am therefore satisfied that he is the owner of the East Unit and I shall accordingly under section 8(2) of the 1965 Act direct the Durham County Council to register the Claimant, Mr. John Stanley Kidd of Foggerthwaite Farm, Eggleston, in the County of Durham as the owner of the land known as Foggerthwaite Common Quarry numbered 236 on the Register map and thereon shown as having an area of 1.555 acres, Eggleston Barnard Castle and being Register Unit No.C.L.18.

Having regard to the express exclusion of the West Unit from the 1958 conveyance and the absence of any evidence that the Claimant or any other person is or has ever been in possession of it, I am not satisfied that any person is the owner of the West Unit and such Unit 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 27th day of November 1972.

a. a. Baden Fuller