



COMMONS REGISTRATION ACT 1965

Reference Nos. 262/D/286
262/D/287

In the Matter of Mallerstang Common
(northern and eastern parts) including
Birkett Common, Mallerstang, Eden District,
Cumbria

DECISION

These disputes relate to the registrations at Entry No. 1 and at Entry No. 2 in the Ownership Section of Register Unit No. CL 93 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council and are occasioned by the said registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Penrith on 2 July 1980. At the hearing (1) Mrs Flora Mackenzie Charlton on whose application the registration at Entry No. 1 was made, was represented by Mr T A Hodges solicitor with Fell Kilvington & Co, Solicitors of Kirkby Stephen; and (2) Mr John Morphet, who is chairman of Mallerstang Parish Meeting, attended in person.

The land in this Register Unit is U shaped, the bottom of the U being to the north; its east part is about $4\frac{1}{2}$ miles long from north to south and its west part is about 3 miles long; these two parts are joined at the north by a strip 2 miles long from east to west and about $\frac{3}{4}$ of a mile wide. At Entry No. 1 Mrs Charlton is registered as owner of the west part, her ownership in the Register being defined as the part "lying south of the line X-Y on the Register map". At Entry No. 4 Mr John Malcolm Guthrie and Mr James Malcolm Driver are registered as owners of the part lying south of the line A-B-C and north of the line A-D-C; the area between these two lines at its widest is about 200 yards. The line X-Y runs approximately midway between the line A-B-C, so registrations are in conflict to the extent of the path south of the line X-Y and north of the line A-D-C.

I have a letter dated 25 February 1980 to the Clerk of the Commons Commissioners from E & A Heelis, Solicitors of Appleby saying (in effect) that the land of which Messrs Guthrie and Driver are registered as owners was acquired by them under a conveyance made in 1965 and was conveyed by them to the Kirkby Stephen Anglers Association by a conveyance dated 26 June 1973. I also have a written request dated 17 June 1980 signed on behalf of Mrs Charlton and Messrs Guthrie and Driver requesting the Chief Commons Commissioner to confirm the registration of Entry No. 3 or to confirm the registration of Entry No. 1 with the modification that the land be redefined as the land lying south of the line A-D-C.

Mr Morphet mentioned the registration of the Land Section of Register Unit No. VG41 in the Register of Town or Village Greens with which I would be concerned at a hearing on the following day, such registration being of a strip which is about 300 yards from north to south nowhere more than about 35 yards wide and being situated to the east of the River Eden (next to Mrs Charlton's part of the CL93 land) and west of Blue Grass Farm. He said, such VG registration ~~was a mistake in the~~ should have comprised or included part of the CL93 Land of which the ownership was claimed by Messrs Guthrie and Driver.



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These proceedings relate to the disputes arising by reason of the said conflict ~~between~~ the said two ownership registrations; in my copy of the Register, the Land Section registrations is said to have become final; ~~in my copy~~ ^{in these} proceedings I am obliged by the 1965 Act to assume that no part of the CL93 land is ~~a~~ town or village green within the definition of the 1965 Act. Further, ~~these~~ ^{these} proceedings relate ~~to~~ only to such disputes I have ~~no~~ ^{no} jurisdiction to deal with any such mistake as was mentioned by Mr Morphet; as to whether it can be rectified by the High Court or in any other way I express no opinion. In my view in these proceedings I must confine myself to the Ownership conflict; as to ~~this~~ Mr Hodges repeat~~ed~~ ^{ed} ~~ed~~ ^{ed} June 1980 request above mentioned; ~~and~~ it being apparent that by complying with it I cannot prejudice but can only benefit Messrs Guthrie and Driver and their successors the Kirkby Stephen Anglers Association, I consider that I must comply with it.

Accordingly for the above reasons I confirm the registration at Entry No. 3 without any modification, and I confirm the registration at Entry No. 1 with the modification that in column 4 for the words "south of the line X-Y" be substituted "south of the line A-D-C".

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 22nd

day of

July

1980

a. a. Baker *Fuller*

Commons Commissioner