

COMMONS REGISTRATION ACT 1965

Reference Nos. 40/U/9-11

In the Matter of (1) land west of Newbiggin-on-Lune Village, (2) land in the said Village and (3) land west of Stone Gill, all in Ravenstone, Eden District, Cumbria

DECISION

These references relate to the question of the ownership of least (1) land west of Newbiggin-on-Lune in the vicinity of Ramingber Bridge and bounded to the north by the Kendal to Kirkby Stephen A685 road; (2) land in the village of Newbiggin-on-Lune OS Sheet No. NY70 Grid reference 706,051; and (3) land in the village of Ravenstonedale lying to the west of and including Stone Gill and bounded on the south by the weir and on the north by the said A685 road, being the land-s comprised in the Land Section of Register Unit (1) No. CL 34, (2) No. CL 35 and No. CL 36 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 these references no person claimed to be the freehold owner of the lands 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 lands at Penrith on 24 April 1979. At the hearing Mr R T W Hewestson, Mr D R Penrose and Mr J P Merrett were represented by Mr A M Fell solicitor of Fell Kilvington & Co, Solicitors of Penrith.

Mr Hewetson in the course of his evidence produced: (1) a conveyance dated 12 February 1920 by which the Rt Hon J W Lowther and Rt Hon H C Earl of Lonsdale appointed and conveyed to and to the use of Mr G E Thompson, the Manor of Ravenstonedale bounded as therein mentioned (except Park House Farm containing 541 acres 38 perches as therein described); (2) an assent dated 31 December 1947 by which the personal representatives of Mr G E Thompson (he died 4 Map 1940) assented to the vesting in Mr R P Hewetson of all the properties described in a vesting deed of 3 June 1927 as described in the Schedule (paragraph 76 of which included the Manor of Ravenstonedale); (3) a conveyance dated 31 July 1954 by which Mr R P Hewetson conveyed to Mr R T W Hewetson (the witness) among other lands the manor of Ravenstonedale; (4) a copy of a conveyance dated 29 September 1978 to which Mr Hewetson (the witness) conveyed to Mr Penrose and Mr Merratt ("the Trustees") the farm holdings and lands described in the First Schedule upon the trusts of a settlement dated 31 December 1976 and made by him; these lands included (paragraph 15) the Manor of Ravenstonedale; (5) an agreement dated 25 May 1967 for the sale of land to Westmorland County Council; and (6) a deed of exchange dated 24 January 1975 with Cumbria County Council.

Oral evidence was also given by Mr Merrett who in addition to being one of the Trustees of the 1976 settlement has acted as Land Agent to Mr Hewetson and his family for some 15 years.

Three days after the hearing I inspected the lands.



The general evidence of Mr Hewetson was to the following effect:-

He made an application for the registration as common land of all the lands which he believed to be waste lands of the Manor and over which he believed rights of common have been exercised. Among these lands were the CL 34, CL 35 and CL 36 lands; others are the area of the Common near Sunbiggin and the area of Ashfell; over these moors he and his predecessors in title and exercised shooting rights. He had also received shooting rent for Town Fell.

By section 8 of the 1965 Act I am on this reference required to say whether I am "satisfied" as to the ownership of any person. On the evidence summarised above, I conclude that the Trustees as successors of Mr Hewetson are now the owners of the Manor of Ravenstonedale, but such evidence does not satisfy me that the CL 34, CL 35 and CL 36 lands are waste lands of that Manor, because (1) although they are within the boundaries of the Manor as described in the 1920 conveyance, it does not in my view follow that all lands which are waste lands within those boundaries and which have been registered by Mr Hewetson or anyone else as common land under the 1965 Act, are necessarily waste lands (either historically or otherwise) of that Manor; and (2) it was not suggested that the shooting described by Mr Hewetson had ever extended to the CL 34, CL 35 and CL 36 lands; and (3) there was no evidence that such land and the Moors referred to by Mr Hewetson could properly be treated as one piece of land.

In the Land Section of all these Register Units there is a note that Mr N H Imman and Mrs H M Harrison-Beck claim (stating the effect of the note shortly) to be entitled to sporting rights, to the minerals and to turbary, piscary and timber. I understood that Mr Hewetson disputes this claim, particularly so far as it relates to the Moors. On this reference I have no jurisdiction to determine the propriety or otherwise of this note so far as it relates to the CL 34, CL 35 and CL 36 lands or to any other lands; nor can the absence of any evidence at the hearing before me from Messrs Imman and Harrison-Beck help the Trustees. Of course nothing in this decision will be binding on any Commons Commissioner or other tribunal who may become concerned to determine the ownership of the Moors mentioned by Mr Hewetson. Nevertheless the local evidence given by Mr Hewetson does I think provide a background on which I can evaluate the other evidence relating particularly to the CL 34, CL 35 and CL 36 lands.

The CL 34 land is approximately T-shaped; it is about 300 yards long from north to south and for the most part not more than about 60 yards wide. At its north end (the cross piece of the T) it is about 200 yards long from east to west and at this end is in places of considerable width. Just to the north are now extensive roadworks associated with the improvement of the A685 road for the purpose of providing a by-pass to the village of Newbiggin-on-Lune.

The 1975 deed of exchange was for the purpose of providing land for the by-pass now being constructed; the land given to the County Council was either part of or immediately north of the CL 34 land. Mr Merrett said that he dealt with the negotiations with the County Council as to this land on the basis that Mr Hewetson was the owner as Lord of the Manor. Mr Hewetson described the CL 34 land as being (before the roadworks) a boggy waste adjoining the old road.

This road improvement transaction, and the circumstance that nobody at the time (other than Mr Hewetson) came forward to claim ownership, in my opinion supports



his claim; that neither he nor Mr Merrett were able to think of any other acts of ownership, is not I think significant, because the nature of the land is such that it is unlikely that they could do anything at a cost which would be worth the resulting advantage. My conclusion is that the evidence shows the Trustees as successors of Mr Hewetson are the owners of the CL 34 piece.

The CL 36 land is a little over 100 yards long from north to south and has a variable width averaging about 50 yards. Along the west boundary flows a stream (Stone Gill). On its north side it is open to the A685 road and there is there a layby, of which the appearance and situation is such as to suggest that before it was made, it and the CL 36 were all one piece.

The 1965 agreement relates to the road improvement in the course of which this layby was constructed; the agreement proceeds on the basis that Mr Hewetson was then the owner. For reasons similar to those set out above in relation to the CL 34 land, I conclude that the Trustees as his successors are the owners of the CL 36 land.

The CL 35 land is an open area in the middle of the village of Newbiggin-on-Lune which surrounds but does not include the Village Hall. It is about 90 yards long from east to west and has a variable width between about 50 and 80 yards. The A685 road now runs across the CL 35 land, although on the Register map it seems likely that at the time of the registration, or at least at the time when the OS map (6" = 1 mile) was made, the A685 road here zig-zagged. The modern OS map (1/2500) shows the A 685 road as it now is and shows also a small triangular area (part of the CL 35 land) between it and the Village Hall as distinct; this distinct area is grass amenity land. The rest of the CL 35 land is variable; includes rough land behind the Village Hall and land to the north which has been tarmacadamed.

Mr Merrett could not remember ever having been concerned with any dealing relating to the CL 35 land, and Mr Hewetson himself did not mention anything.

The Village Hall is inscribed "Public 1925 Hall"; it is possible that it replaces a former building; also possible that it was built in 1925 on a site which together with the CL 35 land was waste landof the Manor. But on appearance alone there are other possibilities both as to the history of the Hall and of the CL 35 land. Unlike CL 34 land and the CL 36 land, its situation in the village is such as to suggest that it would always have been of some importance and therefore someone should be able to say something of its history. In my view the information put before me at the hearing, having regard to what I saw on my inspection, falls short of showing with any reasonable certainty that this land is or has ever been part of the waste lands of the Manor of Ravenstone and can therefore be now regarded as appurtenant to the Manor so as to pass under the conveyances produced. Accordingly I can form no opinion as to its ownership.

In the above circumstances I am satisfied that the Trustees are the owners of the CL 34 land and the CL 36 land and I shall accordingly pursuant to section 8(2) of the Act of 1965 direct the Cumbria County Council as registration authority to register Mr Derek Roch Penrose of Park House, Barlow, Bakewell, Derby and Mr John Peter Merrett of 52 Kirkland Kendal as the owners of the land comprised in Register Units No. CL 34 and No. CL 36. I am not satisfied that any person is the owner of the land comprised in Register Unit No. CL 35 and it will therefore remain subject to protection under section 9 of the 1965 Act.



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 13/C -

day of Septenber -

1979

a.a. Baden Fulle

Commons Commissioner