



In the Matter of Angerton Marsh, South
Lakeland D

DECISION

This reference relates to the question of the ownership of land described above being the part of the land comprised in the Land Section of Register Unit No. CL 87 in the Register of Common Land maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held hearings for the purpose of inquiring into the question of the ownership of the land at Kendal on 21 April 1983 and 28 February 1984. Claims to ownership were made by Boughton Estates Limited, Mr J S H Stutt, Mr B E Thexton, and Mr R C Cleasby. At the first hearing Boughton Estates Limited was represented by Mr R F H Jackson, Solicitor, but subsequently to that hearing his firm, by letter dated 15 June 1983, intimated that their client did not wish to pursue its claim: accordingly it was not represented at the second hearing.

At both hearings Mr L Hayton, Solicitor, appeared on behalf of Mr Stutt and Mr Thexton. Mr Cleasby was represented at the first hearing by Mr M S Graham, Solicitor, and at the second by Mr E W Huck, Solicitor. Mr Huck also represented Mr Breakwell and Mr Johnson who were concerned, not with the question of ownership, but with obstruction of rights of way.

(1) I will deal first with Mr Cleasby's claim to ownership. This is to a small triangular area ("the C area") at the northern tip of the land. This area was included in the property conveyed to Mr Cleasby by a Conveyance dated 3 April 1967, the vendor being Richard Cleasby, and comprised OS. Nos. 106 and 106a whose aggregate acreage is some 1.645 acres. I have seen the earlier title starting in 1961 and I am satisfied on the evidence that Mr Cleasby is the owner of the C area.

(2) Mr Stutt is already registered as owner of two small pieces, one lying within the line H G B on the register map and the other north of the line CD. He now claims freehold ownership of two other pieces, ("the S pieces"), one a triangular shaped area lying south of the line EF on the register map, and the other a rectangular area adjoining the south eastern boundary of the C area and the south western boundary of CL 114. Both the S pieces (as well as the pieces already in registered ownership) are hatched red on the attached plan.

The S pieces were included in property conveyed to Mr Stutt by his father John Robert Stutt in 1981, the Conveyance being a Deed of Gift dated 6 April 1981. The earlier documents of title starting with a Conveyance dated 9 February 1904 Between Elizabeth M Rawson and others and Robert C Whinerary show title in John Robert Stutt, and I am satisfied on the evidence that his son Mr J S H Stutt is now the owner of the S pieces.

(3) There remains for consideration the question of the ownership of the remaining land ("the main area") comprised in this Register Unit ie. other than the C area, the S pieces, and the two small pieces already in registered ownership. Claims in respect of the main area were made by Mr Stutt and Mr Thexton, these being claims not to freehold ownership for themselves but on the basis



of a number of undivided shares now owned by them respectively. On this basis, Mr Hayton submitted on their behalf that the legal ownership (and it is that with which I am concerned) vested in the Public Trustee under the provisions of the Law of Property Act 1925 and is still so vested. These claims were resisted by Mr Cleasby though neither he nor any other person claimed ownership.

It is to be observed that in the Rights Section there are eight Entries, which are now final, of sheep grazing rights, one each of which is exercisable by Mr Stutt, Mr Thexton and Mr Cleasby. It was not submitted, nor do I think, that these are directly relevant to the question of ownership.

(4) The claim to ownership by reference to the existence of undivided shares is based on documentary evidence which is the product of careful extensive research by Mrs Susan Dench, who is a qualified Archivist. Mrs Dench gave evidence of the details and results of her research. The documentation starts with an Indenture dated 14 February 1774 by which John Robinson conveyed Angerton Marsh to three joint purchasers on trust for 18 named persons in shares of different proportions, the purchase money (as the Indenture stated) having been paid by them in these proportions. The land conveyed is not delineated on a plan but is described by reference to its boundaries: it appears to correspond largely with the main area and Mrs Dench as a result of her researches confirmed this, and I accept that this is so. Although the Deed referred to there being 16 shares in all, in fact the aggregate of the shares separately given to the 18 persons is 15 $\frac{3}{4}$.

No further documentation has been found establishing the devolution of the land subsequent to the 1774 Indenture, but there is a manuscript copy of a draft Indenture of 1889 which has some evidentiary value. It recites the Indenture of 1774 and the successive deaths of the three trustees and the subsequent devolution of the trust estate to one John Todd: an Indenture of 1854 whereby John Todd conveyed the land to four new trustees, their successive deaths and a devise by the last survivor who died in 1888 of his trust estates to W W Jackson, his son and executor. The draft Indenture of 1889 is expressed to be made between W W Jackson of the one part and three individuals of the other part and to convey the land to the three to the use of themselves and a fourth named trustee upon trust for "the several persons who are now entitled to the pasturage and herbage of the marsh in certain shares or proportions ... specified in the Schedule hereto". There are ten persons named in the Schedule and the aggregate number of their shares is 96.

(5) Mrs Dench then referred me to a number of documents evidencing transactions whereby shares in the land were disposed of. There are two observations to be made in relation to these. Mr Hayton's submission is based on the provisions of the First Schedule to the Law of Property Act 1925, of which Part V.2 is in my opinion the relevant provision on the evidence adduced. For the purpose of that provision it is necessary to determine (inter alia) whether there were undivided shares in the land immediately before 1 January 1926. It is not necessary to determine who were then or are now the owners of the undivided shares and there is no provision in the Commons Registration Act for the entry in the Register of ownership of such shares.

In a number of the documents referred to what are disposed of are 'grasses' or 'cow grasses', which in other parts of the country are described as cattlegates. It seems to me highly probable that this was ~~is~~ case where the owners of the



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grasses were the owners as tenants in common in undivided shares of the land itself (see Halsbury's Laws of England 4th edⁿ Vol. 6 para. 522 and notes 1 and 4): and from the documents it appears that one undivided share of the land carried with it the right to six grasses.

(6) It is not I think necessary for me to consider in detail all the documents relating to transfers of undivided shares or grasses. The relevant transactions are these:-

(i) By a Conveyance of 9 May 1946 Samuel Whinerary conveyed to John Robert Stutt, Angerton Hall Farm, together with (1) 8 grasses on Angerton Marsh (2) $1\frac{1}{2}$ x $1/16$ th shares "now consisting of 9 cow grasses" in Angerton Marsh (3) 3 beast or cattle grasses on Angerton Marsh. All these interests were acquired by Samuel Whinerary before 1926.

(ii) By a Conveyance of 1 July 1960, the Official Solicitor as personal representative of H A Dickinson conveyed to John Robert Stutt, 11 shares in Angerton Marsh. From the recitals in that Conveyance it appears that those shares were in existence immediately before 1926.

(iii) By a Conveyance dated 2 September 1980, the Executor of William Postlethwaite who died in 1964 conveyed to Mr Thexton (inter alia) his share estate and interest in $6\frac{1}{2}$ cow grasses on Angerton Marsh. These grasses were acquired by William Postlethwaite in 1917, the Conveyance being dated 12 May 1917, the Vendors being William Tyson, James Tyson and Richard Tyson, and consequently were in existence immediately before 1926.

(7) Oral Evidence was given by Mr George Elwell, Mr Gainford, Mr Stutt and Mr Thexton, but this added nothing of significance in relation to the ownership of CL 87.

(8) The evidence adduced in support of the claim to ownership in undivided shares was itself not challenged by Mr Huck; Mr Cleasby's opposition to the claim was based on evidence of ownership by a Mr W S Rawlinson, ("the Testator") from about 1865 until his death in 1875. If such ownership existed it would of course be inconsistent with ownership of other persons in undivided shares. Mr Huck produced an unexamined abstract of the title of Mrs Elizabeth M Rawson (the Testator's widow and one of his executors) to "Angerton Farm site in the parishes of Broughton-in-Furness and Angerton forming part of the Duddon Hall Estate and comprising lot 34 in the Particulars of Sale". The Abstract bears the date 1902, in which year there was an auction sale of the Duddon Hall Estate. The root of title is a Mortgage by the Testator in 1865 of property amounting to 439 acres which is itemised in a Schedule and included 'Angerton and Fox Field Marsh 153 acres and Sand to Channell (six) 117 acres' and also 15 grasses on Angerton Marsh and 7 grasses on Angerton Marsh. In 1876 pursuant to an order of the High Court directing accounts and enquiries it was certified (inter alia) that the Testator's real estate consisted of the properties specified, and those included as one item 'Angerton Farm' of 439 acres, with a note "273 acres of this Marsh land on foreshore". In subsequent abstracted documents there is the same description of Angerton Farm and also separate inclusions of grasses on Angerton Marsh. In 1900 an order was made in the High Court proceedings for sale of (inter alia) the Testator's residuary real estate, and the sale by auction was accordingly made in 1902. As



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mentioned above, Angerton farm comprised lot 34, and neither the Particulars of that lot nor the area of lot 34 shown on the accompanying plan include any part of CL 87 (except the piece claimed by Mr Cleasby - see para (1) above), though they do include areas of marsh marked Angerton Marsh and Fox Field Marsh, which lie to the north of Angerton and outside the boundaries of CL 87. Nor, so far as I can see, do any of the lots in the sale include the main area. Lots 35 and 38 on the other hand include the right to 7 and 8 grasses respectively on Angerton Marsh.

The Abstract of Title does not enable me to identify the main part as included in the property with which it deals, and the evidence in support of the contention of ownership in the Testator and his successors (now apparently unknown) is unconvincing. If it had been in his ownership it is surprising that it was not included in the sale in 1902 of the Testator's real estate. The references in the Abstract and in the Sale Particulars to grasses on Angerton Marsh indicate that he may have had right to undivided shares, in the same way as such rights are now claimed by Mr Stutt and Mr Thexton and such limited ownership would be consistent with, not opposed to, the claim they advance.

(9) In the result I am satisfied on the evidence as to the main area, that this was a case where the land was held in undivided shares immediately before 1 January 1926: furthermore, on the evidence and on a view of the land which I made on 29 February, it was and is an open space for the purposes of para 2 of Part V of the First Schedule to the Law of Property Act and by virtue of that paragraph vested in the Public Trustee, with rights of access and user by the tenants in common as mentioned in the paragraph.

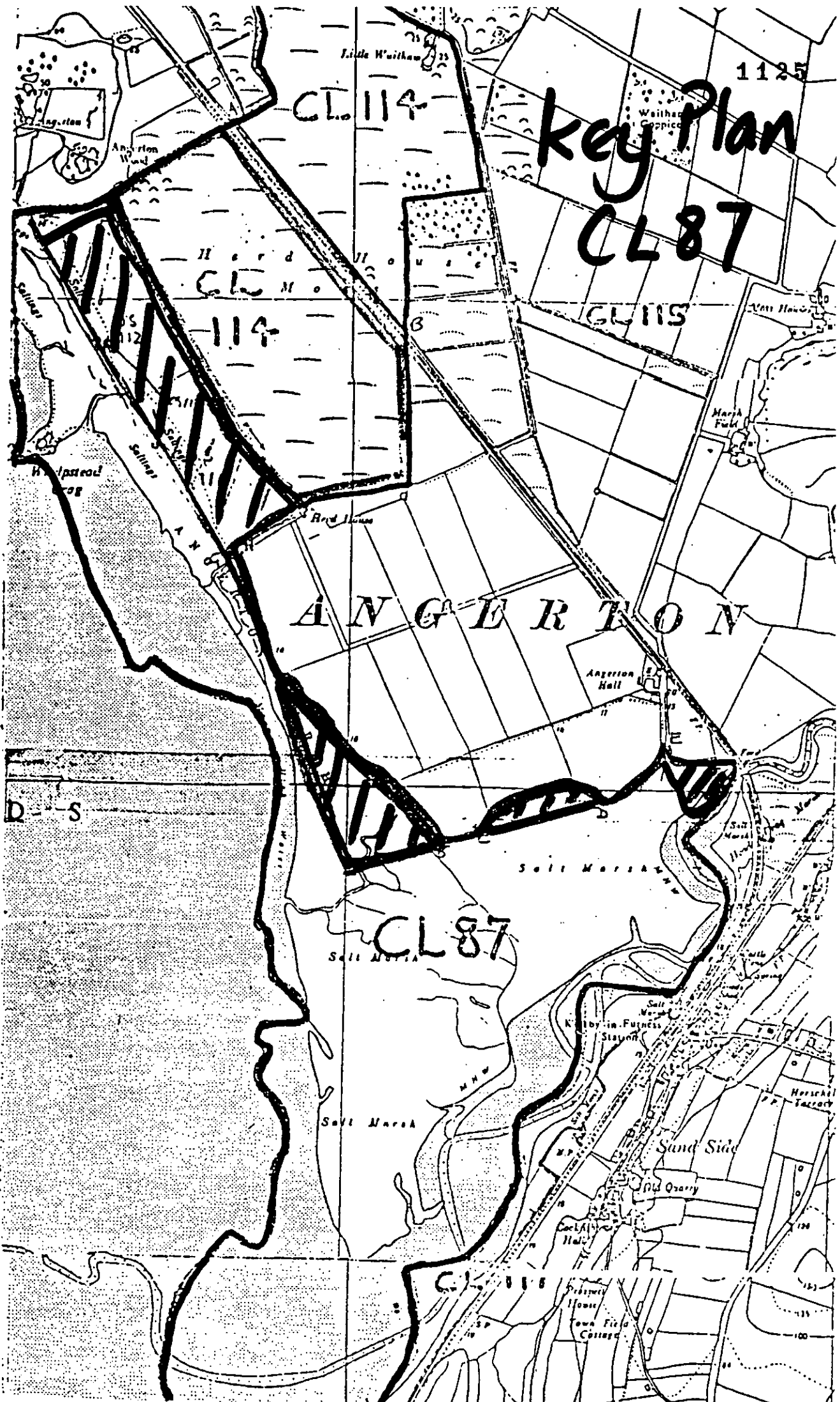
(10) Accordingly, I shall direct the Cumbria County Council as registration authority, to register, under Section 8(2) of the Act of 1965 (a) Mr Cleasby as the owner of the C area (b) Mr J S H Stutt as the owner of the S pieces and (c) the Public Trustee as the owner of the main area.

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.

Mr Hayton made an application as regards the costs of the proceedings in this case and in that relating to CL 114 (Ref: 262/U/540), both cases having been heard on the same occasions. This application was more apposite to the CL 114 case and I have considered this matter in my Decision on that case. I make no order as to the costs of the proceedings in this case of CL 87.

Dated 16 May 1984

L. J. Morris Smith
Commons Commissioner



1125
 key Plan
 CL87

CL114

CL87

CL115

CL114

ANGERTON

CL87

CL115

Line indicates ownership of land on line - common land.