



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/487

In the Matter of Bowscar Free Quarry,
near Penrith, Eden District, Cumbria.

DECISION

This reference relates to the question of the ownership of land known as Bowscar Free Quarry near (about $2\frac{1}{2}$ miles north of) Penrith, Eden District being the land comprised in the Land Section of Register Unit No. CL440 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) 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 P H Thompson said (letter of 14.12.81. to the County Council) that 1.275 acres of this land belongs to Forest Hill Farm together with the herbage of the remaining 2.25 acres. No person claimed to be the freehold owner of the land in question and no other 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 Penrith on 12 March 1982. At the hearing (1) Mrs G A Harris was represented by Mr R H M Hargreave solicitor of Dickenson Dees, Solicitors of Newcastle upon Tyne; and (2) Mr P H Thompson was represented by Mr D Mellor solicitor of Little & Shepherd, Solicitors of Penrith.

Mr Mellor said that Mr Thompson did not make any claim to the ownership of the land (when writing his 1981 letter he made a mistake about his plans).

Mrs Harris in the course of her oral evidence produced: (1) a conveyance dated 2 February 1937 by which Mr J Armstrong and Mr C Armstrong as personal representatives of Mr Thomas Armstrong (he died 1 May 1936) conveyed to her (Mrs Harris) Bowscar Farm and other lands as described in Parts 1, 2 and 3 of the Schedule containing altogether 482 a. 2 r. 34 p.; (2) extracts certified 9 March 1982 by the Assistant Archivist of Cumbria Record Office at Carlisle from the Inglewood Forest Inclosure Act 1803, from the Inglewood Forest Inclosure Award 1818 and from the map therein referred to as "Plan"; (3) lease dated 18 October 1946 by which she demised from year to year 457.581 acres of land to Mr Henry Thompson; and (4) a bundle of correspondence between her agents Smith Core & Co and Sir Alfred McAlpine & Son Ltd, and commencing and ending with copy letters dated 15 September 1967 and 10 June 1968.

I can from the plan annexed to the 1937 conveyance identify the land ("the Unit Land") in this Register Unit with that therein described in part 3 of the Schedule thereto: "Part 109 (OS No): Wood (Description): 4.3.3. (A.R.P.)"; such land is thereby conveyed for "the right title and interest (if any) of the Vendors", and it and the Farm and other lands are conveyed "subject to the exceptions ... of mines and minerals and other matters contained in the Inglewood Forest Inclosure Act and in the Award of Commissioners made thereunder". The 1818 Award includes an allotment



"unto the said Surveyors of the Highways of the said several Parishes or Township for the use of the said Surveyors and of the Owners and Occupiers of Messuages lands and tenements within the said respective Parishes and Townships the following plots or parcels of ground as and for Stone Quarries, Gravel, Sand, and Clay Pits that is to say ..."; this allotment includes "five acres" described by reference to the Plan from which I can identify it as being or including the Unit Land. The Unit Land is included in the Schedule to the 1946 tenancy agreement without making any distinction between it and the remainder of the land (all Bowsca Farm) thereby let, as "109: Fox Wood: 5.117". Mrs Harris said (in effect):- After her purchase from Messrs Armstrong in 1937 she continued to live in the house: Bowsca House. At that time the Unit Land was rough ground, heather, apparently a quarry which had been worked out; since then it had never been used as a quarry except for the odd stone got out by her tenant for repairing a wall or anything like that. The Unit Land had been let by her along with the rest of the Farm for which she had received rent. No claim to ownership of the Unit Land against her had ever been made. In 1967 (as appears from the said correspondence) her agents (Smiths Gore & Co) negotiated an agreement with Sir Alfred McAlpine & Son Ltd under which they could use the Unit Land as a tip (they were in need of such because they were concerned with the construction of the nearby M6 motorway). Under this agreement she received rent (£50). Under it sub-soil from the motorway construction was tipped and the former topsoil which had been removed was subsequently restored in 1968.

Since the hearing I have looked at the Penrith and Edenhall etc. and the Forest of Inglewood Inclosure Act 1803 (43 Goe. 3. c. ciii.) by which 28,000 acres were inclosed. From a consideration of the Act and the 1819 Award and the 1937 conveyance and nothing else, I would have inclined to the view that the Unit Land is now vested in the Eden District Council or some other local council as successors of the Surveyors of Highways, ~~but~~ I would have felt some doubt as to whether the inclusion of the Unit Land in the letting of Bowsca Farm was an act of possession adverse to such Council. But ~~in my view~~ the tipping done during the construction of the motorway under the agreement made with Mrs Harris and the payment of rent to her under it together amount to a taking of possession by her of the Unit Land which was adverse to any such Council. Further in the absence of any claim by any other person (Eden District Council have had notice of this hearing) I conclude from such tipping that Mrs Harris was then under the 1937 conveyance the reputed owner of the Unit Land. Upon these considerations I am satisfied that Mrs Harris is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register Mrs Gwendolen Arden Harris of Bowsca, Penrith as the owner of the land under section 8(2) 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 14th day of June 1982

A. A. Baden Fuller