



In the Matter of Braithwaite Common, Above
Derwent, Allerdale D.

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 266 in the Register of Common Land maintained by the former Cumberland County Council and now by Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Keswick on 21 May 1981. At the hearing Mr R B Watson, Solicitor, appeared on behalf of Above Derwent Parish Council: Mr R P Taylor, Solicitor, appeared on behalf of Mr and Mrs J Panton: Mr C W Richardson appeared in person: Mr G Hall, Land Agent, represented the National Trust: and Mr Greer of the Registration Authority attended.

The land comprised in this Register Unit consists of two separate areas, one ("the western piece") which adjoins Braithwaite village on the west, and the other which lies some distance to the east and is known as How Green. Mr and Mrs Panton and Mr Richardson were claiming ownership of their respective houses situated on the western piece. I understand that certain properties, including theirs, were registered in the western piece mistakenly and have since been excluded from the registration, so that I am not now concerned with their claims to ownership. There was no claim to ownership by any person to ownership of the western piece as it now stands, and it will remain subject to protection under Section 9 of the Act of 1965.

Ownership of How Green is claimed both by the National Trust and by the Parish Council. The National Trust's claim is based on a paper title, and Mr Hall produced a Conveyance dated 28 September 1979 Between (1) the Special Personal Representatives of Lord Egremont (2) the Commissioners of Inland Revenue (3) the National Trust, by which *Westwater* and land in Cumbria of over 30,000 acres were conveyed in satisfaction of estate duty to the National Trust. The land so conveyed included How Green. An examined Abstract of the title, commencing with a Vesting Deed, dated 10 February 1926, was also produced but the description of the properties comprised in the title thereby deduced is in too general terms to enable How Green to be identified as comprised therein.

The Parish Council's claim is based on evidence of acts of ownership by the Council, and Mr Watson called four witnesses. Mr J W Swainson the Chairman of the Council, has lived in Portinscale all his life - since 1913 (The How Green is in Portinscale Village). He remembers a notice on the Green put up by the Parish Council which he saw as a boy and said "No Camping": this notice disappeared but later there was a notice "No dumping: no litter: by order of the Parish Council". On one occasion the Council had had undergrowth cleared and in 1979 it started proceedings in the County Court against a Mr Jackson for obstructing access to the Green. In cross-examination by Mr Hall he agreed that the Council managed a number of areas in the district but said he knew nothing of byelaws made in 1904 with the agreement of the owner, Lord Leconfield, for land of his to be managed by the Council on his behalf.



Mr F Hodgson said that about 1964 he was employed in felling trees on the Green and he understood that this work was being done on behalf of the Parish Council. Mr Gordon Graham said that he had seen Parish Council notices on the Green after the end of the last war. Mr A Rortledge, who has been Clerk of the Parish Council since May 1969, referred to references in its Minutes in 1963 and 1964 to the felling of trees on the Green. He said that there were bye laws agreed with Lord Leconfield as to management of areas in the district and subsequently agreed with the National Trust, but that these did not apply to How Green, which had been managed by the Parish Council on the supposition that it was the owner.

Mr Hall did not call any evidence, but contended that the acts of management by the Council had been on behalf of the owner of the land, Lord Leconfield. On the evidence I do not find that this was the case, but nevertheless I do not think that the somewhat sporadic activities of the Parish Council in relation to the Green are sufficient to establish the ownership which it claims. This being so, I think the title shown by the National Trust is satisfactory and I shall accordingly direct the Cumbria County Council, as registration authority, to register the National Trust as the owner of the part known as How Green 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

13th July

1981

L. J. Morris Smith

Commons Commissioner