



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/304

In the Matter of Coltsford Common  
and four other pieces of land near  
Church Brough Bridge, Brough,  
Eden District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Coltsford Common and four other lands near Church Brough Bridge, Brough, Eden District being the five lands comprised in the Land Section of Register Unit No. VG 68 in the Register of Town or Village Greens 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 this reference Brough Parish Council claimed (letter of 10 October 1979) the land in question. No other person claimed to be the owner of the land or 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 23 October 1980. At the hearing Brough Parish Council were represented by Mrs M Powrie, their clerk.

Mrs Powrie in the course of her evidence briefly described the five lands which together make up this Register Unit: (1) the largest ("the Common Piece") which comprises the bed of Swindale Beck and land on either side of it; (2) a much smaller area ("the River Piece") which is bounded on the north by another beck and is situated a short distance south of the Common Piece; (3) another area ("the Green Piece") which is by Church Bridge and which is kept as a village green; (4) another area ("the North Verges Piece") which is to the east of the Common Piece; and (5) another area ("the South Verges Piece") which is to the east of the River Piece. Mrs Powrie said (in effect):- The Common Piece and the North Verges Piece are now crossed by the recently constructed Brough Bypass and the South Verges Piece is crossed by a new road. The Common Piece (apart from the part taken for the Bypass) has for at least the last 15 years been let annually by the Parish Council for grazing; it has also been let by them to a local amenity association at a peppercorn rent, and they use it as a playing field (a football pitch). The River Piece is not (?) describable because the River has encroached. The Green Piece is a "proper" village green. Recently the Parish Council has conveyed to the Minister of Transport the part of the Common Piece used by the Bypass, and this part is now fenced off; the Parish Council have no title deeds to any of these Pieces, but their possessory title to the Commons Piece was accepted by the Minister.

After the hearing Messrs Hewitson & Harker, Solicitors of Kirkby Stephen as solicitors for the Parish Council sent me a copy of a deed of exchange dated 18 December 1979 by which (among other things) the Parish Council conveyed to the



Minister of Transport the pieces of land delineated on a plan annexed thereto and the Minister conveyed to the Parish Council other pieces of land as delineated on another plan annexed.

Although it may be that the land so conveyed to the Parish Council is for many purposes to be considered as substituted for that conveyed by them to the Minister should perhaps for this reason be registered under the 1965 Act, I am not in these proceedings concerned with it. Land by the said 1979 deed conveyed to the Minister of Transport includes the part ("the MofT Part") of the Common Piece which is south and east of the line delineated on the map being page 3 of this decision and which is thereon marked PQR, and which is north of the line thereon marked ST (the said map is based on the said 1979 deed plans, the said lines PQR and ST being drawn by myself from the colouring on such plans). No other parts of the five lands in this Register Unit were by the 1979 deeds expressed to be conveyed to the Minister of Transport.

On the evidence summarised above, I am satisfied that the Parish Council are under a possessory title owner of all the Common Piece except the MofT part and I shall accordingly direct the Cumbria County Council as registration authority to register Brough Parish Council as the owner of the Common Piece except the MofT part pursuant to section 8(2) of the 1965 Act.

As to the MofT part and so much of the two Verges Pieces as have now been made up as part of the Bypass or as a new road, it may be that this registration under the 1965 Act is now of no practical importance and may hereafter be cancelled; however having no reason to the contrary I must on this reference decide the ownership questions on the evidence I have. Accordingly I am satisfied that the Minister of Transport is the owner of the MofT Part and I shall accordingly direct the Cumbria County Council as registration authority to register the Minister of Transport as the owner of the part of the Common Piece herein called the MofT Part. And in the absence of any evidence I am not satisfied that any person is the owner of the four other lands in this Register Unit, and I shall accordingly direct the Cumbria County Council as registration authority to register Brough Parish Council as the owner of the River Piece, the Green Piece, the North Verges Piece and the South Verges Piece under section 8(3) 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 8<sup>th</sup> — day of January 1981

A. A. Baden Fuller

Commons Commissioner

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DECISION

