



In the Matter of (1) Two Areas of Manorial Waste and Common Land (2) Areas of land known as Summerhill, Wylock Marsh, Robin Whin Largreen Point Creepshaw Marsh, Low Bank Hillock Whin and Trough Head, (3) Creepshaw Marsh and Saltmarsh, Biggar and (4) Land at South Walney, all on Walney Island, Barrow-in-Furness.

DECISION

(and CL 6)

This reference relates to the question of the ownership of land above mentioned being the land comprised in the Land Section of Register Unit Nos CL. 2, CL.3, CL.4 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 a hearing for the purpose of inquiring into the question of the ownership of the land at Barrow-in-Furness on 7 June 1984.

Mr T Greer appeared for Cumbria County Council, Mr C A Parker appeared for Barrow-in-Furness Borough Council, Mr Hart-Jackson of Hart Jackson & Sons solicitors of Ulverston appeared for Boughton Estates Ltd. Mr C G Parker, Mr G Appleby and Mr R Bowes appeared in person and several Rights Applicants were also present.

For reasons which were never explained these four registrations or some of them included land registered as part of another register unit. For this reason I decided to hear all four cases together and then to deal with the question of ownership.

The Liberty of Furness, of which Walney Island forms part, was granted to the Duke of Albemarle by His Majesty King Charles the Second in 1662 together with the Lordship of the Manor of Furness. At some later date, but not later than 1900 the Lordship of the Manor and the Liberty were transferred to the Duke of Buccleuch and by a Conveyance dated 2 August 1933 the then Duke transferred them to Boughton Estates Limited which claims to be the present owner of all four register units.

No claims for ownership were registered in respect of any register unit pursuant to section 4 of the Act of 1965.

The strongest claim to ownership of any part of any of the Register Unit was made by Mr G Appleby in respect of two fields in the outskirts of Biggar. In the course of trying to establish a possessory title to those fields Mr Appleby had lodged an affidavit with the Land Registry claiming to have grazed the two fields since 1968 and to have fenced them in 1970. Affidavits in support of this were sent to me by Mr Appleby's Solicitor in 1985.



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The registration of land as a common or as a town or village green or of any rights of common over such land is made conclusive evidence of the matters registered by section 10 of the Act of 1965 but there is no similar provision relating to decisions as to ownership, though it is generally accepted that such a decision is affective to enable the person registered to institute proceedings for any offence committed in respect of the land; see section 9.

In these circumstances I do not consider that any useful purpose would be served by re-opening the hearing to decide the question of ownership raised by Mr Appleby.

On my view of the evidence Boughton Estates Limited is the owner of the four register units and I propose to leave the decision on Mr Appleby's claim to a tribunal whose decision will be binding on the Company.

On this evidence I am satisfied that Boughton Estates Ltd is the owner of the land, and I shall accordingly direct the Cumbria County Council as registration authority, to register Boughton Estates Ltd as the owner of the land under section 8 (2) of the Act of 1985.

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

10th

day of

September

1985

George Hesketh
Commons Commissioner.