



In the Matter of Donkey Common, Tebay,
Cumbria

DECISION

This reference relates to the question of the ownership of land known as Donkey Common, Tebay, being the land comprised in the Land Section of Register Unit No. VG 20 in the Register of Town or Village Greens maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act as the owner.

Following upon the public notice of this reference the Tebay Parish Council 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 24 April 1980.

At the hearing the Parish Council was represented by Mr T A Hodges, Solicitor, and Mr Fryer Spedding, of counsel, appeared for the Earl of Lonsdale.

The land the subject of the reference has an area of about 4 ac. and was formerly part of an area of about 6 ac. which was waste land in the technical sense of the term and is situate within the manor of Tebay, the lordship of which was vested in Lord Lonsdale by a primary vesting deed made 27 January 1961 between (1) John Lamplugh Wickham and Adam Granville Gordon (commonly called Lord Adam Gordon) (2) James Hugh William, Earl of Lonsdale (3) Hon. Arthur James Beresford Lowther.

On 10 December 1936 the Minister of Agriculture and Fisheries consented under section 2 of the Law of Commons Amendment Act 1893 to the inclosure and approvement by the then lords of the manor of the whole of the area of about 6 ac. subject to the condition that the land should be used as a public recreation ground for the inhabitants of the parish of Tebay.

About 1940 tennis courts and a bowling green were laid out on about half-an-acre of the land. The funds for this work were provided by local residents and administered by a committee of residents some of whom were also members of the Parish Council. Although the Parish Council did not provide any money, it has treated the land as if it owned it and Lord Lonsdale has taken no part in its administration.

About 1970 an area of about 2 ac. at the northern end of the land was acquired for the construction of a motorway. The purchase price was paid to Lord Lonsdale and the Parish Council received £50 as compensation for disturbance.

On this evidence Mr Hodges submitted that the Parish Council had acquired a possessory title to the land. I find myself unable to accept this submission. The consent under the Act of 1893 had no effect upon the ownership of the land. The inclosure or approvement of manorial waste by the lord of the manor leaves his title to the land unaltered. The condition attached to the consent ownership imposed an obligation on the owner for the time being to allow the inhabitants of the parish to go onto it for the purpose of recreation. I am not satisfied on the evidence that the Parish Council has been in possession of the land. What has been done on it has been in pursuance of the condition imposed in 1893 and



so could not have been resisted by the owner. Such a user of land cannot, in my view, form the basis of a claim to a possessory title.

For these reasons I am satisfied that Lord Lonsdale, as Lord of the manor, is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register him, 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

5th

day of

June

1980

Chief Commons Commissioner