



In the Matter of Faugh Heads Pond and Lane,
Ainstable, Cumbria.

DECISION

This reference relates to the question of the ownership of land known as Faugh Heads Pond and Lane, Ainstable, being the land comprised in the Land Section of Register Unit No. CL 435 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.

Following upon the public notice of this reference the Ainstable Parish Council and Mr E Proud each 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 14 October 1981.

At the hearing the Parish Council was represented by Mrs M Wilson, its Clerk, and Mr Proud by Mr D Mellor, solicitor.

By the award made 7 May 1821 under the Ainstable Enclosure Act of 1818 (58 Geo III, c.9 (private)) part of the land in question was awarded, ordered and directed to be a private carriage or occupation road and the remainder was set out, allotted, and awarded as and for a public watering place for cattle for the use of the owners and occupiers for the time being of messuages, lands, and tenements within the parish of Ainstable.

The award left the freehold vested in the previous owner (presumably the lord of the manor and there is no evidence of a conveyance by that owner or one of his successors in title, but Mr Proud claimed to have a possessory title to both the carriage road and the watering place.

In 1955 Mr Proud's late father purchased the land surrounding the road and the watering place. During the last ten or fifteen years no one other than Mr Proud has used the watering place. About twenty years ago the late Mr Proud put up a temporary gate, held up by a rope, at the end of the carriage road. This he did because the beech hedge on the south side of the road had ceased to be stock-proof when he had animals in his adjoining field. Mr Proud has used his field for grazing in rotation - during a period of seven years it is arable for three years and pasture for four. The hedge has been cut down, but the stumps are still there.

In my view, the straying onto the land by Mr Proud's animals during four of the years in a seven-year cycle is not sufficient to constitute the taking of possession by Mr Proud so as to found a possessory title.

In the absence of any further evidence I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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.

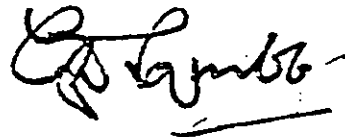
Dated this

2nd

day of

November

1981



Chief Commons Commissioner