



In the Matter of Hill Site, West End,
Burgh-by-Sands, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Hill Site, West End, Burgh-by-Sands, being the land comprised in the Land Section of Register Unit No. CL 41 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 Burgh-by-Sands Parish Council and Mr J T Bimson. claimed to be the freehold owners 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 Carlisle on 5 February 1980.

At the hearing the Parish Council was represented by Mrs J M Johnson, its Chairman, and Mr Bimson appeared in person.

Mr Bimson purchased a neighbouring farm, called Hill Farm, in 1975. There is no mention of the land the subject of the reference in Mr Bimson's deeds, but he claimed that the land forms part of Hill Farm.

The land in question was formerly a pond. Before the installation of a mains water supply it was the only source of water supply to Hill Farm. It was then cleared out by the owner or tenant of Hill Farm, and it was never used on a regular basis by anyone other than the owner or tenant of Hill Farm. By 1959 there were complaints about the nettles and thistles growing near the pond. In the mid-1960's a farmer had been placing implements on the land and in 1966 he was asked by the Parish Council to remove them. On 27 February 1967 the Chairman of the Parish Council authorised the erection of a temporary post and wire fence to prevent the placing of farm implements on the land. In 1970 the Parish Council obtained estimates for a scheme for draining the pond, filling it in and re-seeding, but deferred doing the work owing to the cost. In 1975 Mr Bimson was given permission by the Parish Council to remove the wire fence, which was by then broken and lying in the grass, so that one of his cows had been caught in it. In 1976 Mr Bimson asked if he could fill in the pond and whether the Parish Council would sell or lease the land to him. It was agreed to let him fill in the pond, but not to sell or lease the land to him. In 1977 the pond was filled in. At the beginning of 1979 there was still a lot of filling in to be done and the site needed levelling with proper drainage. Mr Bimson was asked to estimate for doing this work. On 25 April 1979 Mr Bimson put in his estimate, but on 20 June 1979 Mr Bimson stated that he claimed to be the owner of the land.



The facts regard^{ing} the use of the pond as a source of water for Hill Farm are equally consistent with it being in the same ownership as the farm or with the owner of the farm having a right to take water from the pond. The fact that the pond was not included in the conveyance to Mr Bimson makes it more probable that there was only a right to take water, which had ceased to be exercised when the main's water supply was installed.

In my view the Parish Council took possession of the land by erecting the fence in 1967 and have remained in possession long enough to have acquired a possessory title.

For these reasons, I am not satisfied that Mr Bimson is the owner of the land and I am satisfied that the Parish Council is the owner, and I shall accordingly direct the Cumbria County Council, as registration authority, to register the Burgh-by-Sands Parish Council 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

22nd

day of

February

1980

Chief Commons Commissioner