



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/462

In the Matter of land between
Stainton Village and Keld Head,
Dacre, Eden District, Cumbria

DECISION

This reference relates to the question of the ownership of land between Stainton Village and Keld Head, Dacre, Eden District being the land comprised in the Land Section of Register Unit No. CL236 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) 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 (1) Mr John Hetherington as "Foreman Stainton Jury" said (letter of 24 November 1981) that the land originally one of the water supplies for Stainton Township also communal washing place for clothes, was with other lands awarded by the enclosure award for the benefit for all time of the residents of Stainton Township, and that it had since been administered for the benefit of Stainton residents by the Stainton Jury; (2) Dacre Parish Council said (letter of 1 December 1981) that in the absence of any successful claims to ownership of the land, they considered that the ownership should be vested in them; and (3) a group of people collectively known as the Stainton Jury claimed (their Solicitors' letter of December 1981) ownership. No other person claimed to be the freehold owner of the land in question 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 11 March 1982. At the hearing (1) Mr John Hetherington on whose application as "Acting Foreman of Stainton Jury" the registration was made, was represented by Mr D Mellor solicitor of Little & Shepherd, Solicitors of Penrith; (2) Dacre Parish Council were represented by Mr C Wilding their Clerk and (3) Mr Henry Noblett was represented by Mr K G Walker solicitor of Arnison & Co, Solicitors of Penrith.

The land ("the Unit Land") in this Register Unit is a strip about 70 yards long and having an average width of about 3 yards. It extends westwards from the road which runs north-south through the Village from a point a little to the north of the car park (on the opposite side of the road) now used with the Village Hall. It is bounded on the north by a small stream which rises a short distance away on the west (near the top of a steep slope) and continues eastwards under the road by the side of the Village Hall car park; it is bounded on the south by buildings and land held with Waltons Place.

Mr Hetherington in the course of his oral evidence produced: (1) an extract from the 1775 Greystock (Barony) (townships of Great and Little Stainton, Newbiggin and Great Blencowe) Inclosure Award, made under an Act 1772 (12 Geo. 3. c. 141); (2) an extract from the plan therein referred to; (3) a list of the present members of the Jury, (4) a foolscap book entitled "Account Book, Township Stainton Jury 1893", (5) an extract from the said book showing expenditure in relation



to the Unit Land in 1901 2/- for fixing new grate over culvert, 1902 11/6 for making new grate for Keld Head Spout and annually from 1906 to 1920, 2/- for "cutting nettles and rubbish to Keld Head Spout." An original of the Award was available at the hearing, but I did not study it because it was accepted that the extracts produced by Mr Hetherington contained all I needed.

As to the 1775 Award my attention was particularly drawn to: (a) the recital therein of the 1772 Act of the Commissioners' power to allot "Stone Quarries, Gravel Pits and Watering Places ... for the common use and benefit of all the owners and occupiers of houses and lands within any of the said Townships or Hamlets for their houses, Lands and cattle therein but not for any elsewhere"; (b) the direction (on page 149) "that the grass growing in any of the said private roads that is not hereinbefore mentioned or understood whose property the same is shall be the property of the whole Township of Stainton and that no person or persons do turn any cattle, sheep or horses into any of the said private roads or other public grounds upon any other account than driving to and from the said several fields or watering the said goods (sic) without the consent of the Jury of the said Township but that the grass growing thereon be eat and disposed of in such just and equitable manner as the said Jury shall think proper"; and (c) an order (page 229) that "no Lime Kilns be erected upon any part of those two places hereinbefore set out for Public Quarries called Herdow and Lakay but what a majority of the Jury of Stainton for the time being shall approve of and that a majority of the said Jury shall annually make such orders and regulations about the Lime Kilns and working of the said Quarries as they shall think right and proper and that all such orders and regulations as they make at the Head Court in each year for the said Township shall for that year be punctually observed and kept".

Mr Hetherington who has lived in the Parish since 1924 (then 8 years old), been a member of the Parish Council for 35 years and been their vice chairman and chairman (for the last 2 years vice chairman) in the course of his evidence said (in effect):- Apart from the Jury being mentioned in the 1775 Award, the 1893 book shows that they have been continually active since then and there is an earlier book recording their activities since 1801. He became foreman in 1967 in succession to his father. The Jury as he knew it consisted of a group of persons who met at least twice a year and more often if occasion required and who were accepted as having some (nowhere defined) authority over matters in Stainton. Their principal activities as he knew them were the managing of and collecting of rents from 3 properties from which they at present received about £150 a year, and applying the monies so received for worthwhile purposes in Stainton; for example, helping in the repair of a local chapel, providing public seats, planting some flowering cherry trees in the Village, the upkeep of pens used for sheep dipping, and contributing to the cost of a playing field. As to the Unit Land, it adjoins Waltons Place where he had always lived. It was he thought originally a public watering place. When he came to the Village there was a water supply (meaning as I understood pipes from a main) but nevertheless the Unit Land was used occasionally for cattle particularly when water was very short in hot weather; it was also used for cooling butter because the water was always icy cold. The Unit Land had been maintained (meaning cutting the nettles etc) from 1967 by himself and before then for some 40 years by his father; they had so maintained it on behalf of the Jury (not as claiming for themselves personally).



Mr Hetherington was questioned by Mr Walker for about 50 minutes about the history of the Jury, the property it administered, the purposes for which it made grants and the manner of its appointment. About his answers to these questions I need only say that it was not suggested by Mr Walker or anyone else that the Jury had ever acted otherwise than to the best of their ability in accordance with the best interests of the residents in Stainton and that although it appeared that appointments to the Jury were made informally when needed by the continuing members, neither Mr Hetherington nor anyone else was able to suggest how otherwise such appointments could have been made.

At the conclusion of the evidence of Mr Hetherington there was some discussion as to its effect. It then seemed to me (as it does now) that the evidence established that the Unit Land had from time immemorial belonged to the Township within the popular meaning of these words, that the Jury being a fluctuating body with no defined constitution was in law incapable of being the owner within the meaning of the 1965 Act ("legal estate in fee simple" see section 22) and that by operation of law the ownership is now in the Parish Council. At the conclusion of this discussion, Mr Walker said that Mr Noblett no longer wished to offer evidence.

Two days after the hearing, I inspected the Unit Land. I have since looked at the 1772 Act and I can find no mention in it of a jury associated either with the Barony of Greystoke or with any of the Townships therein mentioned. I have noticed in the extract from the Award these words: "all the Inhabitants within the said Township of Stainton their respective heirs and assigns have a right at all times to go and fetch water from the well called Kill Well in the field called Low Norkeld belonging to the said John Nicholson and also to bleach their webs and cloth upon such part of the said field as lies within the said well and the south and south-east fence thereof"; I have no note or recollection of anything said at the hearing identifying these words as the Unit Land, so in reaching this decision I disregard them.

On the Award map the Unit Land was treated in the same way as the road and open spaces in the Village without any particular marking. From this and its present appearance and the continuous interest in it of the Jury who have for many years acted in the interests of Stainton I conclude that the Unit Land has belonged to the Township of Stainton from time immemorial. Immediately before this hearing relating to the Unit Land, I held another hearing relating to the site of the Village Hall, and reached the same conclusion; in a decision of even date (reference 262/5/464) upon the legal considerations therein set out I decided that the land is now in the ownership of the Parish Council as successors of the churchwardens and overseers of Stainton Township. Upon like legal considerations, (which I need not I think repeat herein) my decision as regards the Unit Land is the same.

Accordingly I am satisfied that the Parish Council as such successors are the owners of the Unit Land, and I shall accordingly direct the Cumbria County Council as registration authority, to register Dacre Parish Council as successors of the Churchwardens and Overseers of Stainton Township as the owners 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 14th — day of June — 1982

a. a. Baden Fuller

Commons Commissioner