



COMMONS REGISTRATION ACT 1965

Reference No. 262/D/500-504

In the Matter of Muncaster Fell or
Common, Copeland B

DECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and four Entries in the Rights Section of Register Unit No. CL 330 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by Objections Nos. 186, 187, 188, 189 and 190 all made by Mr J P Jacobs and noted in the Register on 4 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Whitehaven on 23 July 1981. The hearing was attended by Mrs Susan Johnson, representing the Friends of the Lake District and Muncaster Parish Council, both applicants for registration in the Land Section, by Miss A Rogan, Solicitor, appearing on behalf of the Objector, by Mr D Ferreira of Ravenglass and Eskdale Railway Company and by Mr T Greer of the Registration Authority.

By letter dated 9 July 1981 the Solicitors acting for the four applicants (or their successors) for registration in the Rights Section withdrew their claims. The effect of this is that there are no rights of common registered and the registration as common land cannot be based on paragraph (a) of the definition of common land in Section 22(1) of the 1965 Act viz. "land subject to rights of common", but depends for its validity on the proposition that the land comprised in the Register Unit ("the Unit land") falls within the alternative paragraph (b) of the definition viz. "waste land of a manor not subject to rights of common". This was the proposition for which Mrs Johnson contended, except in relation to three areas of the Unit land which she accepted are not common land. These three areas are shown on a plan lettered T which she produced and consist of (1) an area ("area A") forming the western end of the Unit land which now belongs to the Railway Company (2) an area ("area B") on the southern boundary of the Unit land (3) an area ("area C") forming the south-eastern section of the Unit land described as Muncaster Head Park. With the exclusion of these three areas the issue before me was whether the remainder of the Unit land - ("the main area") - qualified for registration as waste land of a manor.

Mr Longley, the Chairman of the Parish Council, giving evidence said that the application to register by the Parish Council was made as there were people with rights of common and substantial parts were unenclosed. Mrs Johnson referred me to a number of historical records from which it appeared that Muncaster Fell was land of the Manor and subject to grazing rights and was from time to time referred to as common or common land: in the 1842 Tithe Award, Muncaster Fell of some 700 acres was shown with other moorland as untithed and early OS map showed it as unenclosed in 1857. None of this was challenged by Miss Rogan.

In November 1969 part of the Muncaster Castle Estate was advertised for sale by the Lord of the Manor, Sir William Pennington-Ramsden. The property to be sold



- 2 -

included the Unit land (except for a small triangular shaped piece which I refer to below) and was purchased by the Objector, to whom it was conveyed by a Conveyance dated 10 July 1970: in the Conveyance the main area and area C were described as 'Muncaster Fell' and as subject to grazing rights and were conveyed "subject to such grazing rights as may be vested in adjoining owners under the Commons Registration Act 1925".

Evidence was given by Mr Ian MacWilliam, Land Agent, who managed the Muncaster Estate from 1931 to 1971, his employer during the greater part of this period being Sir John Pennington-Ramsden and then Sir William. He said that the Fell was divided for grazing purposes among the tenanted farms of the estate, the landlord being the Lord of the Manor: he said that there were walls or fences around the whole common and described the situation as that of a private fell used by a private owner and his tenants. In cross-examination by Mrs Johnson he said that the grazing areas of tenants were not separately identified: otherwise his evidence was not challenged.

In 1969 when the applications to register were made by the Parish Council and the Friends of the Lake District the position having regard to the historical evidence and the fact that there was some grazing on the Unit land, may well have been that the land was subject to rights of common of some kind and I would suppose that, understandably enough, the registration was applied for on that basis. It is now known that there are no rights of common registered under the 1965 Act and, as Mrs Johnson accepted, the registration has to be supported on the basis that the land qualifies for registration, as waste land of a manor not subject to rights of common. On the evidence and particularly that of Mr MacWilliam I am not satisfied that the land did come within the definition of waste land of a manor as recently stated by Megarry V C in *Baxendale v Instow Parish Council* 1981 2 WLR 1055 at p.1059. However, this may be, Miss Rogan's submission on behalf of the Objector was directed to a different point viz. that since on the sale to the Objector the land comprised in the sale was severed from the manor it had ceased to be land of a manor: See *Re Box Hill Common* 1980 Ch 109. It is true that in that case the severance occurred years before the registration under the 1965 Act and that in the present case the registration was made in February 1970 ie. some months before the Conveyance which effected the severance: nevertheless, on the authority of the *Box Hill* decision, the land conveyed ceased to be land of the manor, and in accordance with the judgment of Goff J in *Central Electricity Generating Board v Clwydd County Council* 1976, 1 WLR 151 my decision should be based on the facts as they subsist at the date of the hearing. This being so, in my opinion the land comprised in the conveyance ceased to be land of a manor in July 1970 and is not common land as defined in the 1965 Act.

As mentioned above, the land comprised in the Conveyance did not include a small triangular piece which is on the southern boundary of the Unit land at its western end marked with the letter Z on plan T. The *Box Hill* decision has no application to this piece of land, but none of the evidence given related specifically to its being land of the manor or its character as waste land: and I am not satisfied that it is waste land of a manor.



- 3 -

In the result, with the exclusion of areas A B and C and my findings as to the main area (including the Z piece), in my opinion no part of the Unit land qualifies for registration as common land, and I refuse to confirm the registration.

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

23 September

1981

Commons Commissioner