



In the Matter of Ravenglass Green and Saltings,
Muncaster, Copeland B

DECISION NO. 2

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. VG 110 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 1965 as the owner.

The original hearing of this matter was held on 19 April 1983 at Whitehaven. As appears from the Decision dated 7 September 1983 following that hearing, I was not satisfied (except as to a small section claimed by Mr J R Siddons) that any person owned the land. Subsequently to the issue of the Decision a request was made on behalf of Mrs R Newton, who was not present or represented at the original hearing, that the hearing be re-opened in order to consider her claim to ownership of a strip ("the claimed strip") of the Unit land.

Pursuant to this request, the hearing was re-opened at Keswick on 9 July 1984. At this hearing Mrs Newton was represented by Mr Ian McWilliam, of the firm of McWilliam and Co, Land Agents, Chartered Surveyors: Muncaster Parish Council by its former Clerk Mr H Longley: and Mr N Illman, Solicitor, appeared on behalf of Sir W Pennington-Ramsden, who did not oppose Mrs Newton's claim.

The Unit land is a long stretch of saltings and marshland which, at its northern end, lies between the village of Ravenglass and the estuary of the river Mite. Until recently Mrs Newton owned a property called Raven Villa situated in the Village and fronting on to the Unit land, and the claimed strip is the part lying between the boundary of her property and the line of medium high water mark (HWM). I was shown a photograph of the strip which appears to be a strip of waste sand or marsh which is not enclosed.

Mr Mc William based the claim on two alternative grounds, the first being acquisition of ownership by prescription. He called as his first witness Mr Longley who was Clerk to the Parish Council until 1982. He said it was never known who owned VG 110: he had recently been to the Raven Villa area - he did not know if there are drainage rights over the claimed strip. There is an electricity pole on or near the area - the Parish Council did not receive any way leave payments.

Mr McWilliam himself gave evidence. He told me that electricity is supplied to Raven Villa by a cable going under the soil of the claimed strip, and produced wayleave Agreements with the Electricity Authority from 1936 onwards: these were Agreements between the Authority and Muncaster Estates. Water was supplied to the Villa by Muncaster Estates through a pipe passing ~~under~~ under the Unit land including part of the claimed strip. Mr McWilliam said that no payment was made by Mrs Newton to Muncaster Estates in respect of the electricity cable or the water pipe, and suggested that this indicated ownership by his client of the



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claimed strip. In 1982 she obtained an improvement grant from Copeland Borough Council for 'relevant works' at Raven Villa: these included a new drainage system through pipes under the claimed strip. There was also a soakaway for rainwater into the claimed strip. Mr Borwick, who has recently bought Raven Villa from Mrs Newton, gave evidence and said that the new drainage system had been completed.

There were two witnesses called on behalf of the Parish Council. Mrs Annie Preston told me that her family lived in Raven Villa from 1907 until 1951 or 1952 when they sold the property to Mr John Preston. She had seen the title deeds, and her family did not own the marshland. Mrs Johnson said that the Unit land, including the claimed strip, was in general use by the public.

As regards the claim to ownership based on prescription, the existence and enjoyment of facilities by means of underground pipes or cables in respect of electricity, water and drainage, as described by Mr McWilliam, do not in my opinion constitute sufficiently extensive or exclusive possession of the claimed strip, so as to establish a squatter's title to that piece of land; nor was there any evidence of an animus possidendi - intention to possess the land as a whole - or of acts of ownership in relation to the land as a whole. The claim to ownership on this ground does not, in my view succeed.

The alternative ground for claiming ownership was the presumption of law that, in the absence of any other owner, land lying between HWM and adjoining property ("inland property") belongs to the owner of the inland property. Both Mr McWilliam and Mr Longley indicated that, as this was a legal question, they were not in a position to make any submissions on it. Such a presumption does exist: see *Lowe v Govett* 1832 3 B & A 836. But the ownership of such land does not pass to a succeeding owner of the inland property unless expressly conveyed to him: see *Nesbitt v Mablethorpe* UDC 1917 2 KB 568 at p.578, 1918 2 KB 1 at pp. 12,28 and *cf. Mellor v Walmesley* 1905 2 Ch 164. It was not suggested that the claimed strip was included expressly in the conveyance of Raven Villa to Mrs Newton or in any earlier conveyance of the Villa: and, this being so, this ground for the claim also fails.

In the result I am not satisfied that Mrs Newton is, or was, the owner of the claimed strip, and so far as this claim is concerned the Decision of 7 September 1983 is unaffected.

I should add that Mr McWilliam sought to raise a claim on behalf of Mrs Newton to a part of the Unit land adjoining a cottage, some distance to the south of Raven Villa, which she has recently acquired. This hearing was re-opened for the sole purpose of considering the ownership of the claimed strip, and I decline to consider the ownership of a further part of the Unit land, no notification of which had been made beforehand.



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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 September 1984

L. J. Morris Smith

Commons Commissioner