



COMMONS REGISTRATION ACT 1965

Reference Nos 262/U/492
262/U/493

In the Matter of (1) Ravenstonedale
Common and (2) Greenrigg part of the
said Common, Ravenstonedale Parish,
Eden District, Cumbria

DECISION

These references relate to the question of the ownership of lands known as (1) Ravenstonedale Common and (2) Greenrigg part of the said Common, Ravenstonedale Parish, Eden District being the lands comprised in the Land Section of Register Unit (1) No. CL39 and (2) No. CL40 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) 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 Trustees of the Hewetson Trust claimed (letters dated 4 and 16 December 1981) ownership, and Mr James H Hird claimed (letter received 29 December 1981) to be the owner of a small plot in the area (CL39) concerned. No other person claimed to be the freehold owner of the lands 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 12 March 1982. At the hearing Mr D R Penrose and Mr J P Merrett (claiming as such Trustees) were represented by Mr T A Hodges solicitor of Fell Kilvington & Co., Solicitors of Kirkby Stephen; and Mr James Henry Hird attended in person.

The land ("the CL39 Land") in Register Unit No. CL39 is a tract in the Register described as bounded on the west by Bowerdale Beck, on the south by the Ravenstonedale Parish boundary and on the north and east by the enclosed lands of the Parish and as containing approximately 2,511.54 hectares (about 6,206 acres). It is irregularly shaped its extreme measurements being about 4 miles from a point near Ravenstonedale on the north to the Parish (and District formerly County) boundary on the south and about 3 miles from the Beck on the west to the enclosed lands (all near the A683 road) on the east. Regarded generally it is bounded on the west and south by fell and on the north and northeast by enclosed lands around Newbiggin on Lune and Ravenstonedale (the A685 road) and on the east and southeast by enclosed land west of the A683 road. In the Rights Section there are 55 registrations of rights to graze totalling about 8,500 ewes, 1,325 sheep and 2,500 summer hogs, about 500 cattle, about 150 horses or ponies, and in some cases pigs and/or geese and/or poultry, and/or estovers and/or turbarry.

The land ("the Greenrigg Land") in Register Unit No. CL40 is a tract in the Register described as bounded on the east and south by the Ravenstonedale Parish Boundary and on the north and west by the enclosed lands of the said Parish together with small plots of land beside Mashy Hill north of the said tract and containing approximately 1,034.32 hectares (about 2,556 acres). It is irregularly shaped, its extreme measurements being about 2½ miles from a point near High Stennerskeugh



(about 3 miles southeast of Ravenstonedale) on the north (disregarding the said small plots) to the said Parish (and District formerly County) boundary on the south and about 2 miles from the enclosed lands east of the A683 road on the west to the said Parish boundary (Mallerstang Common to the east) on the east. Regarded generally it is bounded on the northeast, east, and south by fell land and on the northwest and west by enclosed lands east of the A683 road. In the Rights Section there are 23 registrations of rights to graze totalling about 2,830 ewes, 550 sheep, and 1,425 hogs, about 190 cattle, about 85 horses or ponies and/or geese and/or estovers and/or turbary.

Mr Hodges in the course of his evidence on behalf of Mr Penrose and Mr Marrett ("the Claimants") produced the documents specified in the Schedule hereto.

Mr Marrett, chartered surveyor one of the Claimants said (in effect):- His proprietary interest in the Manor at Ravenstonedale began under the 1978 conveyance; since then he (or his firm) had acted as Agent for the Trustees (himself and Mr Penrose). When he took over he found that the shooting rights had been (so he understood from Mr R T W Hewetson) for many years been let over both the CL39 Land and the Greenrigg Land to Mr Richard Metcalfe-Gibson on an annual tenancy at a yearly rent of £40, and they had ever since been so let. He regarded the CL39 Land and the Greenrigg Land as two vast areas of common which subject to the rights registered were incapable of profitable use. Exceptionally from time to time from parts near the village money had been received for electrical wayleaves; and money had also been received from adjoining and essentially similar land sold for road widening.

Mr Hird in the course of his evidence produced a document relating to the house where he now lived on the land held with it. He said (in effect):- Such land is not part of the CL39 Land. When he acquired it, at the same time he bought a hut about 10 feet by 8 feet which he had used in connection with his building business. This hut was on part of the CL39 Land.

I reject the claim of Mr Hird to be the owner of the part of the CL39 Land on which his hut now stands because I am under the 1965 Act concerned only with ownership of an estate in fee simple, see section 22, and in my view such use as Mr Hird described as having been made by him of the hut falls far short of establishing a possessory title to such an estate in the land on which it stands.

In the documents listed in Schedule I conclude that the Claimants are now the owners of the Manor of Ravenstonedale. By section 62 of the Law of Property Act 1925 a conveyance of a manor is deemed to include "pastures ... wastes ... commons ... appertaining or occupied or enjoyed with the manor or reputed or known as part of it;" so I am concerned to consider whether the CL39 Land and the Greenrigg Land are so appertaining occupied enjoyed or reputed. As to this Mr Hodges relied not only on the evidence of Mr Marrett but also on the 1897 boundary described in the perambulation and the description of the Manor in the 1920 conveyance.

As I read the perambulation those taking part included in the Manor enclosed lands which have long ceased to be manorial, because they went from some point west of Beckett Hill across the A685 and A683 roads to Scandal Head via Scandal Beck. From



- 3 -

Scandal Beck (I assume a point lower down near Stennarskeugh Bridge) they went via Sandal Head by "High Dolphinsty" to the top of "Wild Boar Fell" thence "along the watershed over Aisgill Head" to the "head of the water of Uldale" and thence as far as Rawthey; to the extent last mentioned the perambulation closely follows east and south boundaries of the Greenrigg Land as shown on the Register map. From there onwards I have not found perambulation so easy to follow although it clearly ended at Bowerdale Head being the southwest corner of the CL39 Land. The description in the 1920 conveyance of the Manor of Ravenstonedale is by reference to the boundaries of other manors: on the north, Crosby Garrett, Smardale, Naitby and Kirkby Stephen, on the South Sedbergh, on the east Kirkby Stephen and Mallerstang and on the west Langdale and Orton; this description is an indication that the manors and the parishes in this locality were nominally the same, and that I can conclude that the description in the Register by reference to the Parish boundaries may sensibly be equated so far as applicable to that in the 1920 conveyance.

The fact of their registration under the 1965 Act is I think evidence enough that the CL39 Land and the Greenrigg Land are wastes or commons within section 62 of the 1925 Act. Before the 1925 Act manors could sensibly include enclosed lands not being wastes or common, so that the circumstance that the 1882 perambulation and the 1920 description of the north boundaries of the Manor do not correspond at all with the north boundaries of the CL39 Land and the Greenrigg Land does not affect their evidentiary value as regards the wastes and commons to the south. Accordingly on these two documents reinforced by the evidence of Mr Merrett about the present day shooting let I conclude that both the CL39 Land and the Greenrigg Land have at all relevant times been appurtenant to the Manor of Ravenstonedale and that they under the assurances listed in the Schedule hereto have for an estate in fee simple passed to the Claimants.

Upon the above considerations I am satisfied that the Claimants are the owners of the CL39 Land and the Greenrigg Land and I shall accordingly direct the Cumbria County Council, as registration authority, to register Mr Derek Roch Penrose of Park House, Barlow, Bakewell, Derby and Mr John Peter Merrett of 52 Kirkland, Kendal, Cumbria as the owners of the lands 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.

SCHEDULE
(Documents produced)

DPP/11 17 June 1887

A perambulation of the boundary of that part of the Manor of Ravenstonedale which abuts on "part of Smardale, Waitby Kirkby Stephen, Mallerstang and Sedbergh made by William Little, Steward of Rt Hon James Lowther, Lord of the said Manor ..."; subscribed by (about 20) persons present.



- DRP/12 12 February 1920 Conveyance (appointment by way of sale) by Rt Hon James William Lowther and 2 others as trustees of the will of Rt Hon Henry Earl of Lonsdale and other indentures and wills therein mentioned with the concurrence of Rt Hon Hugh Cecil Earl of Lonsdale to Gerard Elyetson Thompson of the Manor of Ravestonedale bounded as therein mentioned.
- DRP/13 9 June 1941 Probate of will of G E Thompson (he died 4 May 1940) granted to R Burra and A E M Gibson by which he devised all his property to his cousin Richard Percival Hewetson.
- DRP/14 31 December 1947 Assent by the said personal representative of G E Thompson in favour of R P Hewetson expressly including "76 the Manor or reputed Manor of Ravenstonedale".
- DRP/15 31 July 1954 Conveyance by R P Hewetson to his son Richard Talbot Wedderburn Hewetson expressly including "21 the Manor or reputed Manor of Ravenstonedale".
- DRP/16 29 September 1978 Conveyance (voluntary) by R T W Hewetson to D R Penrose and J P Merrett as trustees of the settlement of 31 December 1976 (for the benefit of grantors children).

Dated this 23rd — day of July — 1982

A. A. Borden Fuller

Commons Commissioner