



In the Matter of Skiddaw Common,
Bassenthwaite, Allerdale D

DECISION

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. CL 426 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 a claim to ownership of the land in question ("the Unit land") was made on behalf of stinholders.

I held a hearing for the purpose of inquiring into the question of the ownership of the Unit land at Keswick on 20 April 1983. At the hearing Mr J H Fryer-Spedding of Counsel appeared on behalf of the claimants, and Mr T H Ewart successor to the applicant for registration at Entry No. 1 in the Rights Section also attended.

The Unit land together with the land in three other registered Units - CL 216, CL 64, and CL 252 - forms a substantial area (which I will refer to as "the Composite area") of Skiddaw and Bassenthwaite Commons. The division into four separate Units reflects the registration structure under the Act of 1965, rather than intrinsically separate identities: they adjoin and run into one another and physically form one large area.

The claim made on behalf of the stinholders is based on an Award dated 14 August 1771 made pursuant to an Inclosure Act of 1770. The relevant provision of the Act, dealing with the residue of the Commons and Waste lands of the Manor or Parish of Bassenthwaite, directed the Commissioners to inclose them with boundaries to be marked, and order them to be stinted with such number of sheep or cattle as was most beneficial to the persons interested; "and then apportion, divide, allot and assign the same sheepgates or cattlegates with the ground and soil thereof" to and among the proprietors of ancient messuages within the Manor "in or by like or equal shares thereof" for and in respect of the messuages: at the same time allotting to other persons interested in the commons and waste lands a due and reasonable share of such sheepgates or cattlegates in proportion to their respective interests. There follows a proviso reserving to the Lords of the Manor, royalties and manorial rights other than (a) rights of common and (b) "their interest in the soil and inheritance" of the commons and waste lands. The composite area falls substantially within the relevant part of the map accompanying the Award, by which an allotment was made to approximately fifty stinholders.

There are cases of some antiquity where the question has arisen whether cattlegates include both the grazing rights and the ownership of the soil, or carry only the grazing rights without any rights of ownership: see Williams on Rights of Common pp. 81 to 84, Halsbury's Laws of England 4th edⁿ. Vol 6 para. 522. Having regard to the provision in the Inclosure Act for division and allotment of the sheepgates or cattlegates "with the ground and soil thereof", I think the award was of sheepgates or cattlegates together with ownership of a corresponding undivided share in the soil.



Evidence was given by Mr T H Ewart: he and his family have stints on the area, which he said is typical fell pasture with mossy valleys, and has some fencing on the eastern and southern sides and a boundary wall on part of the west side: it is all open land. He identified the composite area on the Award map.

Mr Fryer-Spedding submitted that this was a case in which under the transitional provisions of the Law of Property Act 1925 the legal estate in the composite area vested in the Public Trustee. This in my view is correct; such vesting being by virtue of the provisions of the First Schedule to the Act, Part V para 2 or, alternatively, of Part IV para 4.

I shall accordingly direct the Cumbria County Council, as registration authority, to register the Public Trustee as the owner of the Unit 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

7 July

1983

L. J. Morris Smith

Commons Commissioner