



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/586

In the Matter of Skinburness & Calvo
Marshes, Holme Abbey parish, Allerdale
District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Skinburness & Calvo Marshes, Holme Abbey parish, Allerdale District being the land comprised in the Land Section of Register Unit No. CL 26 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 (1) in a letter dated 5 December 1986, solicitors on behalf of Standish Settled Estates Trustees and as such owners of the manor of Holme Cultram gave notice of their entitlement to Manorial rights of sporting including wildfowling, also to any sand and gravel below these marshes; (2) in a letter dated 16 March 1987 solicitors for the Skinburness & Calvo Marshes Committee said they claimed ownership of the land in this Register Unit on behalf of the stinholders for the Public Trustee; and (3) in a letter dated 3 April 1987 the Secretary and Solicitor of North West Water said his researches indicate that the Authority does not own any of the land. 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 Wigton on 8 April 1987. At the hearing: (1) the Skinburness and Calvo Marshes Committee were represented by Mr T Wallis, solicitor of Crutes, Solicitors of Carlisle; (2) Holme Abbey Parish Council were represented by Mr J Briggs their chairman; (3) Mr J J Bowe of Calvo Farm, Silloth attended in person; and (4) Cumbria County Council as registration authority were represented by Mrs F Harrison administrative officer.

The land ("the Unit Land") in this Register Unit is for the most part by the sea (Moricambe Bay) about 2 miles northeast of Silloth and about 3 miles north-west of Abbey Town. Its east and northeast boundaries are the mouth of the River Waver and Moricambe Bay. Its northwest boundary is an inlet from the sea, and the path or track which runs from Groom Point to Skinburness. Its southwest, south and west boundaries are enclosed farm lands. From west to east it is a little over 3 miles long; about a mile from its west boundary, it is one mile or a little more wide; eastwards it gradually narrows to a point at its southeast end near Rumbling Bridge.

By a decision (reference Nos. 262/D/716-717) dated 1 June 1981 and made by Mr L J Morris Smith, Commons Commissioner after a hearing at Keswick on 20 May 1981, the then Land Section and Rights Section registrations in this Register Unit were confirmed. By a decision (reference Nos. 262/D/851-852) dated 9 April 1984 and made by Mr G D Squibb, QC, Chief Commons Commissioner, after a hearing at Carlisle on 27 March 1984, the confirmation of the then Ownership Section registration was refused; such registration was of the ownership of all the Unit Land by Anthony Edward Byron Standish, George Munro Kerr, and Robert Knight Lockhead, in their



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application dated 31 December 1969 described as "Trustees of Standish Settled Estates - Lord of Manor of Holme Cultram". Originally in the Rights Section of this Register Unit there were 58 registrations of varying numbers of stints (one stint equals 1 beast or 4 sheep or 2 ewes with followers) making altogether 353 stints; some of these registrations have since been cancelled and replaced by two or more other registrations.

At my 1987 hearing Mr David Michael Bowcock who has for the last 10 years been Assistant County Archivist, in the course of his oral evidence produced from the County Archives at the Castle, Carlisle: the 1806 Act and the 1814 Inclosure Award specified in Part I of the Schedule hereto. He explained that the Award and maps produced are not Quarter Sessions copies, but copies apparently made locally many years ago, being part of a collection of documents by Wigton Rural District Council deposited in the County Archives.

Mr Leslie Harrison who has owned stints since 1951, has been on the Skinburness and Calvo Marsh Committee since 1952, and is and has been for the last 30 years their Secretary, in the course of his oral evidence produced the documents specified in Part II of the Schedule hereto. He said (in effect):- The stint owners exercise their rights either by grazing their own animals or by letting their stints. The grazing period is from 1 May to 20 November approximately. Arrangements are made from time to time to winter sheep on the Unit Land. In the past the Marsh Committee had raised income by selling turf from the Unit Land. At the present time there is no levy on stint owners, although there was a levy in the past. At the present time, the committee let another 20 or 30 stints to provide an income.

Mr J O Holliday who is and for the last 20 years has been (in succession to his father) Chairman of the Marsh Committee, said (among other things):- Cattle are run on the Unit Land in the summer and are not usually brought in. This Unit Land is not often flooded at high tide, and when it has been generally the rain washes the saline clear; nevertheless there is an element of danger with sheep at high tides. The Committee employed full-time one herdsman who watches out for this danger. The Unit Land is grazed with sheep; all kinds; after they have lambed they go onto the Unit Land with lambs at foot, generally according to set stocking; they have access to the whole of the Unit Land although for grazing purposes it is in two sections separately grazed: the "Skinburness End" and the "Brownrigg End"; there is a fence between them. Turf is taken and a certain section of ground is fenced off so that cattle have no access but it can be grazed by sheep; the section is applied with fertiliser, and rolled so that the turf can be cut; it is of value for lawns and bowling greens; the proceeds go to the Marsh Management Committee to help the running expenses of the Unit Land. Each year there were about 340 cattle and about 180 ewes (some with lambs) on the Unit Land.

Mr Wallis submitted that I should be satisfied that the Unit Land was owned by the Public Trustee on behalf of the stint holders as owners in undivided shares; by the 1806 Act and the 1814 Award, the Unit Land was allotted to the stintheolders.



This is the view expressed by counsel in his 1931 opinion (LH/8). The 1883, 1940 and 1952 Rules for Skinburness and Calvo Marshes (LH/3, 4 and 5) are on the basis that the stinholders are the owners.

After the hearing, with Mr Leslie Harrison I motored along the roads which are near to boundaries of the Unit Land, stopping from time to time to view parts which Mr Harrison thought might be interesting. He said (in effect):- To clear the ditches across the Unit Land, the Committee employed a drainage contractor; in October last on such drainage they spent £1,400. Pens I saw by Border Cottages, were used in connection with the grazing of cattle on the Unit Land. The winter sheep there (20 November to 1 April) were mostly Herdwick and Swaledale hogs. In the summer there were Suffolk crosses. The winter grazing (November to April) was by a few who paid the Marsh Committee so much a head, but there had been none such grazing since the big tide in 1984. He had lived in the area all his life (64 years) and remembered winter grazing before the war.

On the day following the hearing, at the Castle, Carlisle, I looked again at the 1814 Award.

Section 22 of the 1806 Act (page 13) recites "... there is a certain Part of the said Commons Moors or Wastes called The Marshes, which by reason of the same being subject to be overflowed by the Sea cannot conveniently be sub-divided by Hedges or Fences, but it would be of advantage to all Parties concerned that the same should be converted into a Stinted Pasture in the Manner and under the regulations hereinafter mentioned ...". Then the section requires the Commissioners to allot "unto and for such of the Proprietors or Persons interested in the said Marshes ... and such Part of the said Marshes as cannot by reason of the same being subject to be overflowed by the sea or otherwise, be conveniently sub-divided by hedges or fences as aforesaid and the same shall be used and enjoyed by the Proprietors and Persons as a Stinted Common Pasture"; the section goes on to direct the Commissioners to declare the number of cattle gates and shares of cattle gates such Proprietors and Persons interested respectively shall be entitled. Section 23 (page 14) makes it lawful for them or the major part in value thereof to make such rules and orders^{4.7} for regulating the Manner of using and occupying such Stinted Pasture at all Times of the year and for limiting and stinting the Number and kinds of the said Stock and for limiting the Times and Seasons for stocking and such other Rules and Orders and Regulations for the better Management and more convenient Enjoyment thereof respectively ...".

The Schedules to the 1814 Award which set out in detail the allotments to be enclosed, are indeed (as Mr Wallis said in his note specified in Part III of the Schedule hereto) "huge". Although the Award contains lengthy recitals of the 1806 Act (including the above quotations from it) I have been unable to find in it (or in the Schedules to it) any words which expressly allot "The Marshes" to the stinholders or to any persons as trustees for them in any form of words, such as "tenants in common", expressly defining the legal estate or interest to be taken by them.

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Nevertheless the Award contains as required by the 1806 Act a precise statement of the persons who were under it to have stints over "The Marshes", and I have no difficulty from the plan referred to in it in identifying the Unit Land with "The Marshes" specified in the Act as land which cannot, being "subject to being overflowed by the sea, conveniently be sub-divided by hedges and fences ..."

Mr E W Stock in his 1884 opinion deals with questions arising out of the confusing use in the 1806 Act of such words as "proprietors", "persons interested", and "allot", but expresses no opinion as to the ownership of the soil of the Marshes resulting from the 1806 Act and the 1814 Award.

Mr Wooll in his 1931 opinion concludes that the Public Trustee was then the owner under Part IV of the First Schedule to the Law of Property Act 1925 as Trustee for the stinholders, because they on 31 December 1925 held the land "at law or in equity in undivided shares vested in possession", see Part IV paragraph 1(4). His reasoning leading to this conclusion begins:-

"The question of the present vesting of the legal estate is one of some interest. I assume that a stint is a right to graze a certain number of beasts over an area of land of whom the stinholders are the undivided owners."

As a proposition of law, I doubt this assumption. As I see it, ownership in this case, starts with the second paragraph of the preamble to the 1806 Act:-

"And whereas Rowland Stephenson Esquire, is or claims to be sole Lord of the said Manor of Holme Cultram, and as such is seized of or entitled to the Soil and Royalties of and within or under the said Commons, Moors, and Wastes; ..."

So the question under the 1806 Act and the 1814 Award, is whether the title or possible title of Rowland Stephenson before the Act has, or has not, been taken away by them. As to the principles of law applicable to this question, I cannot usefully add to what I saw in my decision dated 15 July 1974, re Longton Out Marsh (reference no. 20/U/81, and such decisions as regards these principles be treated as repeated herein. They are so far as relevant, that the Act and Award must be read as a whole without any presumption for the ownership of the stinholders, merely because they are so called in the Act; to this extent I disagree with Mr Wooll. Nevertheless reading the Act as a whole, I conclude that the Act contemplated that the fee simple estate of Rowland Stephenson in The Marshes would be extinguished by his acceptance of the allotment made to him under Section 19, for such extinction is a necessary implication of sections 22 and 23 providing for the detailed regulation of the Pasture by the Stinholders on a basis inconsistent with them not being owners of the soil. So I agree with Mr Wooll's above quoted assumption, on the particular wording of the 1806 Act.

In the result, the legal estate in the Unit Land in my opinion vested in the Public Trustee under Part V of the First Schedule to the Law of Property Act 1925, see the 1961 High Court decision, re Cotherstone reported in the Estates Gazette of 1 July 1961. Mr Wallis (his firm's letter of 19 March 1987) referred to the decision dated 25 July 1983, re Burgh Marsh (reference no. 262/U/547) of Mr G D Squibb QC,



Chief Commons Commissioner from which it appears that persuaded by a written submission of counsel he felt bound to follow re Townshend 1930 2Ch 338, and concluded that Part IV of the said First Schedule was applicable; I have looked at the papers in the office of the Commons Commissioners about re Burgh Marsh, and have found no copy of the said written submission; the 1983 decision contains no reference to re Cotherstone, and it seems probable that it was not then cited or was overlooked or perhaps the Commissioner was influenced by the 1927-28 correspondence with the Public Trustee in his decision mentioned; however this may be, I consider myself bound by re Cotherstone which seems to me exactly in point. So as to the applicability of Part IV, I differ from Mr Wooll; but I agree his conclusion that the Unit Land in 1926 vested in the Public Trustee, for as to this result Part V does not differ from paragraph 1(4) of Part IV by him mentioned.

The subsequent history of the Unit Land as told by Mr L Harrison and Mr J O Holliday and the documents specified in Parts II and III of the Schedule hereto, are more consistent with its ownership by the stinholders (or the Public Trustee as their statutory Ownership successor under the 1925 Act) than of any successor of Rowland Stephenson as Lord of the Manor of Holme Cultram. Further notwithstanding the advertisement of these proceedings, nobody attended the hearing to claim to be the owner as Lord of this Manor or (except as stinholders) otherwise; the March 1984 decision against the Ownership Section registration of the Standish Settled Estates is consistent with there being now no manorial ownership; as also is the said December 1986 letter written on behalf of the Standish Settled Estates Trustees.

I am not concerned with the claim in such letter "to Manorial right of sporting, including wildfowling, also to any sand or gravel below these marshes"; such entitlement is not ownership within the 1965 Act, see section 22. Mr Harrison in his statement (LH/1) mentions such a claim to sporting rights "in the past it has been conceded that this is the case (although the solicitors currently advising the Marsh's Committee do not know on what legal basis this concession was made). All I need to say is: any such entitlement does not affect my conclusions about ownership in fee simple.

Nobody at the hearing contending to the contrary, I accept the submissions of Mr Wallis about the ownership of the Public Trustee. I am therefore satisfied that the Public Trustee is the owner of the Unit Land and I shall accordingly pursuant to Section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register the Public Trustee as owner.

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 in 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.

TURN OVER



SCHEDULE
(Documents produced)

Part I: from County Archives

DMB/1 copies of pages 12 to 19	1806	Holme Cultram Inclosure Act; 46 Geo 3. c.cxii (6,107 acres).
DMB/2, 3 and 4; copies of pages 4, 5 and 6	10 November 1814	Holme Cultram Inclosure Award.
--	--	Maps detached from, but believed to be and kept as belonging to the said 1814 Award.

Part II: by Mr Leslie Harrison

LH/1	April 1987	Statement of evidence.
LH/2	1984	Skinburness, Calvo & Brownrigg Marsh. Names and addresses of 64 stint owners with numbers of stints (total 400).
LH/3	1883	Skinburness and Calvo Marshes. Copy, Rules and Regulations (4 pages brief with back sheet): John Backhouse Beckton, Solicitor, 8 Castle Street, Carlisle; R Benson, Wigton. J B Beckton's copy.
LH/4	1940	Skinburness & Calvo Marshes. Rules & Regulations, 1940. "We the undersigned being the major part in value of the proprietors or persons interested in the Skinburness and Calvo Marshes in pursuant of the powers given or reserved to us by the Twenty Third Section of the Holme Cultram Inclosure Act, do hereby agree that the following shall be rules and regulations for the management of the said Marshes for the present year, and so on from year to year until the same can be altered by the requisite majority of the Proprietors and persons interested in the said Marshes."



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(2) That the said Marshes shall be stinted annually on a day in May to be fixed at the annual meeting and cleared of all manner of cattle on twentieth day of November.

(3) That there shall be no half stints on the said Marshes that ...

SHEEP

(4) Two ewes and their followers (not to have more than four followers) shall be one stint and four Geld sheep as one stint ..."

"WINTERAGE

(17) No persons shall put on the said Marshes any cattle or sheep between the twentieth day of November and the twenty fifth day of March without the concurrence of the Committee and paying therefor ..."

(21 regulations altogether).

LH/5	10 October 1953	Rules similar to LH/4: 24 regulations altogether: printed signatures including John E Holliday and Leslie Harrison as members of Committee.
LH/6	1 May 1884	Copy (1½ pages brief with back sheet): opinion of Mr E W Stock on the construction of certain clauses in The Holme Cultram Enclosure Act.
LH/7	April 1931	Case for opinion of counsel (Mr Wooll), John Backhouse Beckton, Solicitor, Carlisle.
LH/8	29 April 1931	His opinion (6½ pages fullscap).
LH/9	14 May 1974	Conveyance by Sydney Newton to Leslie Harrison and Clarice Mary Harrison.

Part III: by Mr T Wallis

14 May 1981. Notes made of attendance at County Valuers Department with extracts from the registrations under the Commons Registration Act 1965 and of the objections thereto; notes of attendance at the records office at the Castle, Carlisle with extracts from the Award made under the Holme Cultram Enclosure Act, 46 Geo 3, c.112, and the Award made under it (16 pages or so of parchment with a number of maps and plans and a "huge Schedule").



19 September 1898

Conveyance by Edward Salvin Bowley to Hannah Sketon of farm containing 67a.3r.12p., "together with seven stints on Skinburness Marsh".

10 April 1941

Assent by Joseph Atkinson and Thomas Atkinson as person representatives of Joseph Smith Atkinson (he died 6 May 1940) of "three stints on Skinburness & Calvo Marsh".

Dated this 28th day of August _____ 1987

A. A. Baden Fuller

Commons Commissioners