



Reference No. 262/U/14

COMMONS REGISTRATION ACT 1965

In the Matter of The Green,
Blencairn Village Culgaith,
Eden District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as The Green, Blencairn Village, Culgaith, Eden District, being the land comprised in the Land Section of Register Unit No. VG 69 in the Register of Town or Village Greens maintained by the Cumbria (formerly Cumberland) 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 Mr J K Stamper claimed (his solicitor's letter of 11 January 1979) ownership as Lord of the Manor of Blencairn. 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 Penrith on 25 April 1979. At the hearing (1) Culgaith Parish Council were represented by Mr D Youngman their chairman and Mr W A Whitfield their clerk; (2) Mr J K Stamper was represented by Mr C R Arnison solicitor of Arnison & Co, Solicitors of Penrith; (3) Professor James MacDonald Cassels of 14 Dudlow Court, Dudlow Nook Road, Liverpool was represented by Mrs J King solicitor with Harrison Grainge & Reed, Solicitors of Penrith; and (4) Dr Michael Joseph Clay attended in person on his own behalf and as representing his wife Mrs Dorothy Maribel Clay.

The land ("the Unit Land") in this Register Unit comprises a number of pieces, for the most part grassland, on either side of and open to the road which runs east-west through the centre of the Village and the road which runs from the Village to the northeast; together they extend over a distance of about 600 yards. In the course of the proceedings, particular mention was made of two comparatively very small areas: an area ("the Cassels Area") at the southwest end (north side) of the Unit Land and an area ("the Clay Area") near the southwest end and in front of or near The Croft. In the course of his evidence Dr Clay produced an OS map 1971 edition (1/2500) which includes Blencairn. I define the land claimed by Dr Clay as I understood it to be ("the Clay Area") as being the L-shaped land delineated on this map as three adjoining pieces (none of which is shaded) together having a frontage to the road through the centre of the Village of about 145 feet, and all adjoining and to the southwest, west, and northwest of The Croft (delineated and shaded on the said map). Of such adjoining three pieces, the southeast is crossed by line 639 on the said map and is about 32 feet long and 30 feet deep, the middle is about 45 feet long and 32 feet deep and the northwest is L-shaped and has a northwest side of about 50 feet.

At the beginning of the hearing evidence was given by Mr J W Harrison in support of a claim by Professor Cassels to the Cassels Area. After a short adjournment,



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Mrs King said that the claim was withdrawn and I therefore need say nothing about it.

Dr Clay in support of his claim to the Clay Area produced a conveyance dated 25 January 1978 by which Mr J M Ryder as personal representative of Daisy Cowperthwaite (she died 9 August 1977) conveyed The Croft and a field at the rear to Dr and Mrs Clay, and a statutory declaration made on 24 July 1978 by Mr J L Carrick. The Clay Area was expressly included in the 1978 conveyance and Mr Carrick said of it that in 1943 on the instruction of Daisy Cowperthwaite he and his brother erected a fence around it. Dr Clay said that it is still so fenced and is distinct from the rest of the Village Green.

Mr J K Stamper in the course of his evidence produced a conveyance dated 2 February 1952 by which Messrs R and W Brunskill conveyed to Mr J W A Stamper (his father) first Blencairn Hall or Blencairn Hall Farm and the lands held with it containing about 353.067 acres, secondly sheep gaits and rights of common and thirdly the Manor of Blencairn; and a conveyance dated 31 December 1970 Mr J W A Stamper with the concurrence of Mrs S J Stamper (his mother) to Mr J K Stamper (himself) of the property comprised in the said 1952 conveyance. By the 1952 conveyance the Manor of Blencairn thereby conveyed was expressed to include "the wastes or waste lands of the said Manor or Manors which said wastes or waste lands are estimated and believed to comprise One thousand one hundred and twenty six acres or thereabouts ...". Mr Stamper said (in effect):- The wastes of the Manor referred to in the 1952 conveyance comprised (? included) Blencairn Fell and Blencairn Rigg; over these he had exercised sporting rights fishing rights and mineral rights. It was always understood that he owned the Village Green as being part of the Rigg which adjoins it on the west.

There was at the hearing some suggestion that the Parish Council had done some acts of management in and about the Unit Land and purported to grant the right of access over it; Mr Stamper said (in effect) - that he and his father before him have always been the reputed owners. Having regard to subsection (3) of section 8 of the 1965 Act the Parish Council are the only persons directly concerned to dispute any ownership claim of Mr Stamper; Mr Youngman and Mr Whitfield ~~indicated~~ indicated that the claim was not disputed, I consider I ought to give full effect to the evidence of Mr Stamper and conclude that the Unit Land is in ~~the~~ ownership ~~as~~ as Lord of the Manor except so far as he has been effectively dispossessed by Dr Clay and his predecessor in title. As to this Mr Amison ~~indicated~~ indicated that Mr Stamper did not dispute the claim of Dr Clay, so I conclude that he and Mrs Clay are the owners of the Clay Area. I should record that there is some doubt whether the Clay Area is in fact included in the Unit Land; I have no jurisdiction on this reference to decide the extent of the Unit Land, and I consider therefore that I should proceed on the basis that it might be so included. It may be that the County Council as registration authority will be able to clarify the register at this point by providing a more detailed map and exercising the power conferred on by paragraph 36 of the Commons Registration (General) Regulations 1966.



For the above reasons I am satisfied that Dr and Mrs Clay are the owners of the Clay Area and that Mr Stamper is the owner of the remainder of the Unit Land and having regard to the doubt to whether the Clay Area is part of the Unit Land I shall pursuant to section 8(2) of the Act of 1965 direct the Cumbria County Council as registration authority to register Dr Michael Joseph Clay and his wife Mrs Dorothy Muriel Clay both of The Croft, Blencairn as the owners of so much (if any) of the Clay Area defined in this decision as forms part of the land comprised in this register unit and to register Mr Joseph Kenneth Stamper of Blencairn Hall, Blencairn as the owner of the remainder of the said land.

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 hi, require me to state a case for the decision of the High Court.

Dated this 25th — day of June — 1979

A. A. Baden Fuller

Commons Commissioner