



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/303

In the Matter of the Green, Outhgill,  
Mallerstang, Eden District Cumbria

DECISION

This reference relates to the question of the ownership of land (two pieces) called the Green, Outhgill, Mallerstang, Eden District being the land comprised in the Land Section of Register Unit No. VG 42 in the Register of Town or Village Greens 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 Mr Guy Thompson claimed (his solicitors letters of 11 October and 6 December 1979) to be the freehold owner the land in question (the whole of it). No other person claimed to be the freehold owner of the land 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 22 October 1980. At the hearing Mr Guy Thompson was represented by Mr H Snow, legal executive with Arnold, Greenwood & Son, Solicitors of Kendal.

The land ("the Unit Land") in this Register Unit according to the Register map was originally 5 and is now 2 pieces: one of which ("the Becksid Piece") is between about 150 and 200 yards on the north side of and adjoining Outhgill Beck; the other piece ("the North Piece") being irregularly shaped and about 40 yards long from north to south situated a little to the north of the Becksid Piece.

Mr Snow in the course of his evidence produced: (1) a conveyance dated 8 November 1962 by which Mr G G Shiel as surviving personal representative of the Rt Hon J S R Baron Hothfield (he died on 21 December 1952) conveyed to Mr Thompson the common or moorland being the eastern portion of Mallerstang Common containing about 3,600 acres as delineated (rough and purely for identification purposes) on the plan annexed and thereon coloured green; (2) particulars dated 1962 of sales of part of the Appleby Castle Estate by auction including as lot 6 (coloured green on the plan) the sheep grazing common of Mallerstang Common extending to about 3,600 acres; (3) an abstract of title (examined 10 August 1962) including a statutory declaration made on 1 August 1962 by Miss R M Heelis that her father had from 1925 to his death in 1963 been steward of the Manors of Kirkby Stephen, Little Asby and Brough, and she was well acquainted with the Appleby Castle Estate and that the common known as East and West Mallerstang were waste lands of the Manor of Kirkby Stephen; (4) requisitions on title and replies thereto dated 6 and 12 September 1962; "the plan is believed to be correct but its accuracy cannot be guaranteed. There are no plans on the title deeds ..."; (5) the Tithe Apportionment Award for the Township of Mallerstang confirmed by the Tithe Commissioners on 31 December 1844 with which was bound up a map (1839 survey) of the Township in the parish of Kirkby Stephen, such map showing a large uncoloured area marked "COMMON".



Mr Snow said that there was no village of Mallerstang, the name being locally understood as referring to a part of the Eden valley (between the two Mallerstang Commons).

As to the Tithe map, the Beckside Piece is uncoloured, ie ~~not~~ treated as part of the Common; it may be that the North Piece is also so treated but the map is not clear. The map annexed to the 1962 conveyance may include both or one of or neither of the two pieces which together make up the Unit Land; it is not clear. Nevertheless it having been proved that the common land thereto adjoining the Unit Land is in the ownership of Mr Thompson, I ~~to~~ consider that in the absence of any other evidence and of any claim by the Parish Meeting or by the District Council, I ought to conclude that the Unit Land is for ownership purposes ~~as~~ part of the East Mallerstang Common dealt with by the documents produced by Mr Snow. Accordingly I am satisfied that Mr Thompson is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register Mr Guy Thompson of Hanging Land House, Mallerstang, Kirkby Stephen as the owner of the 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 this 8<sup>th</sup> — day of January — 1981

a. a. Baden Fuller

Commons Commissioner