



COMMONS REGISTRATION ACT 1965

Reference No 262/U/310

In the Matter of The Pinfold, near
Mains Farm, Howtown Road, Pooley
Bridge, Barton Parish, Eden District,
Cumbria

DECISION

This reference relates to the question of the ownership of land known as The Pinfold near Mains Farm, Howtown Road, Pooley Bridge, Barton Parish, Eden District being the land comprised in the Land Section of Register Unit No CL132 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 Mrs Sylvia Mary McCosh claimed (her solicitors' letter of 26 September 1979) ownership of the land in question. No other person claimed to be the owner 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 24 October 1980. At the hearing Mrs McCosh was represented by Mr D Mellor solicitor of Little & Shepherd, Solicitors of Penrith; and Barton Parish Council on whose application the registration was made, was represented by Mr J E Lowthian their clerk.

Before the hearing, I received a letter dated 17 October 1980 from the Solicitor of the Lake District Special Planning Board with which was enclosed a copy of an agreement dated 1 May 1979 and made between Mrs McCosh and the Board. At the hearing Mr Lowthian said that the Parish Council does not dispute Mrs McCosh's ownership claim.

Mr Mellor in the course of his evidence produced: (1) a letter dated 17 October 1980 from the Cumbria County Council Archives Department saying (among other things) that there was no relevant enclosure award and that on the Tithe Map (surveyed June 1838) accompanying the Tithe Award confirmed 11 April 1839 for High Barton (which included Pooley Bridge), this land is uncoloured and in the Award described with no owner or occupier, simply as "Pinfold"; (2) a vesting deed dated 5 April 1961 by which Mr E W Hasell conveyed to Mrs McCosh (his daughter) the property described in the First Schedule upon the Trusts of a trust instrument of the same date; and (3) the said 1979 agreement by which Mrs McCosh in consideration of the yearly sum of £10 granted to the Lake District Special Planning Board a licence to use the land therein described (being the land in this Register Unit) for the purpose of a picnic area and to carry out all necessary works of construction to facilitate this use. In the First Schedule to the 1961 deed is described particularly in the First, Second and Third Parts various lands with their approximate acreage (amounting altogether to more than 3,000 acres) and in the Fourth Part the Manor of Dalemain, the Manor of Dacre and the Barony of Barton comprising the Manors of Barton, Martindale and Patterdale.



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Mr Lowthian described the land (in the 1971 agreement ~~that~~^{it} is said to contain 120 square yards) and explained that the Parish Council did not want it now it has been taken over by the Planning Board, although previously they had tidied it.

After the hearing I inspected the land. It is surrounded (apart from a small entrance gap) by a stone wall about 3 feet high, and there are some well established trees within or near it; within there is a seat. Its general appearance is consistent with it having been a pinfold; it appeared to be well maintained to be an attractive place for a picnic.

The land is not expressly included in any of the lands particularly described in the Schedule to the 1961 vesting deed nor is it part of any of the waste land mentioned in the Fourth Part of the Schedule as being included in the Manors. Accordingly, notwithstanding that the 1961 vesting deed is ~~some~~^{some} evidence of the ownership of Mrs McCosh of the Manors thereby expressed to be conveyed, it is not either considered by itself or with the registration made under the 1965 Act ~~as~~ evidence of her ownership of this land, because there is nothing to connect either the Manors or Mrs McCosh with the land. However the 1979 Agreement by which she purports to deal with the land is an act of possession by her, and as such is some evidence of her having some interest in it; as also are the construction of works by the Planning Board and the payment of rent under the agreements. These acts of possession in conjunction with the 1961 vesting deed in my view provides ~~some~~ evidence that the land is part of waste land of one of the Manors therein mentioned and that Mrs McCosh is accordingly the owner in fee simple. Bearing in mind that such ownership is not disputed by the Parish Council, ~~it~~^{it} must I think be taken to know the local conditions, ~~and~~ I am satisfied that Mrs McCosh is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register Mrs Sylvia Mary McCosh of Huntfield, Biggar, Lanark 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 8th —

day of January — 198

a. a. Baden Fuller

Commons Commissioner