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COMMONS REGISTRATION ACT 1965

Reference No 20/U/99

In the Matter of Ash Landing,
Claife, South Lakeland District,
Cumbria

DECISION

This reference relates to the question of the ownership of land known as Ash Landing, Claife, South Lakeland District, Cumbria being the land comprised in the Land Section of Register Unit No CL. 249 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) 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 no person claimed to be the freehold owner of the land in question and no person claimed 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 Kendal on 26 April 1978. At the hearing Claife Parish Council on whose application the registration was made, were represented by Rev J P Inman their clerk.

The land ("the Unit Land") in this Register Unit is a strip being (according to the Register map) about 70 yards long from north to south, and bounded on the east by Lake Windermere and on the west by the road (B 5285) from Hawkshead to the Ferry (about $\frac{1}{2}$ of a mile north of the Unit Land).

Mr Inman who has been clerk of the Council for the last 2 years in the course of his evidence produced: (1) the Claife Heights or Claife Common Inclosure Award dated 29 May 1799 made under the Hawkshead (Claife Township) Inclosure Act 1794 (34 Geo 3.c.xli), (2) a manuscript memorandum apparently made in 1897 by Mr C W Dymond of High Wray, (3) the Parish Council Minute Book from 1894 to 1962, and (4) a letter dated 23 May 1974 from the Lake District National Parks.

The 1799 Award contained an allotment as follows: "We...order that the several pieces or parcels of ground as now marked and set out upon the said Commons and Wasteland at the several places called Arthur Wood, the Heald and Ash Landing be also reserved and set apart as public landing places for the common use and benefit of the several owners and proprietors of land and tenements within the said township or division of Claife in loading and unloading of goods to be carried and brought in boats along the said Lake called Windermere Waters".

The Dymond memorandum mentions that the road to Ash Landing was kept in repair by the Surveyor of the Township of Claife in the same manner as the public roads, that in 1835 the Select Vestry decided to take over as a public highway the private road from Cunsey (on the south) to Ash Landing and that in 1880-2 a meeting of the Landowners and Ratepayers of Claife set up a committee to erect a pier at Ash Landing; money was collected but in the end facilities were provided for landing goods at Ferry Hotel and nothing more was heard.



The Minute Book records that in 1953 counsel's opinion was obtained as to a proposal to convert Tarn Hill (a common under the 1799 Award) into a children's playground (as a memorial to Her Majesty's coronation), that counsel advised that the landowners of Claife had no "de jure" authority and that the property should be taken over by the Parish Council under their statutory powers. Accordingly the Parish Council ever since have (so Mr Inman said) administered these common lands including Ash Landing. The 1974 letter records that Army cadets cut back and cleared Ash Landing and the writer expressed the hope that the Parish Council would find the work had been carried out "to their satisfaction".

Mr H Byers who has lived in this area all his life (77 years) and who has been for 12 years a member of the Parish Council, in the course of his evidence said (in effect):- As long as he could remember the Unit Land had been a public landing place for small boats; in the early days rowing boats, and now including small sailing boats. The Parish Council keep it tidy by arranging for the clearance of the rubbish; they have planted a few trees; there used to be a public seat, but this has gone.

Neither the 1799 Award nor the 1794 Act expressly provides who is to be the owner of the land allotted as a public landing place. The above quoted allotment in accordance with the Act contemplates that any such place shall be for the use of the several owners and proprietors of the land and tenements within the township of Claife; ~~and~~ having regard to the purpose of the Act set out in the recitals in it, and to the provision about landing places, I conclude that it was intended not only to benefit those persons whose lands were under it to be enclosed for their advantage but also to benefit the whole Township.

In my view the uncertainty as to ownership resulting from the Act and the Award was removed by section 17 of the Poor Relief Act 1819 and the decisions of the Court as to the effect of this section. By the section the churchwardens and overseers of a parish were empowered to "accept take and hold in the nature of a body corporate for and on behalf of the parish all the lands belonging to the parish". In *Doe v Hiley* (1830) 10 B&C 885, it was held that this section had the effect of vesting in the churchwardens and overseers all land belonging to the parish notwithstanding that the land was not acquired for the purposes relating to the poor and notwithstanding that such land might be vested in trustees (the mischief resulting from uncertainties as to how trusteeship has devolved being contemplated by the legislature). This decision has since been treated as applicable to all lands "belonging" to a parish in the "popular sense of that expression", see *Doe v Terry* (1835) 4 A&E 274 at page 281 and *Haigh v West* (1893) 2 QB 19 at page 31. Notwithstanding that Claife was not a parish but a township, this section is applicable, see Poor Relief Act 1662 section 21.

On the above considerations I conclude that the Unit Land has ever since the 1799 Award been parish property vested in 1819 in the churchwardens and overseers and their successors. The Parish Council are their successors under the Overseers Order 1927, and I need not therefore consider whether apart from the legal considerations summarised above I could properly conclude that they now have a good possessory title to the land.

On the above considerations I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register Claife Parish Council as the owner of the land under section 8(2) of the Act of 1965.



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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 26th day of June 1978

a. a. Baden Fuller

Commons Commissioner