



COMMONS REGISTRATION ACT 1965

Reference No 45/U/281

In the Matter of Burnsall Common,  
Burnsall, Craven District, North Yorkshire

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DECISION

This reference relates to the question of the ownership of land known as Burnsall Common, Burnsall, Craven District being the land comprised in the Land Section of Register Unit No VG. 142 in the Register of Town or Village Greens maintained by the North Yorkshire (formerly West Riding) 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 the Trustees of the Chatsworth Settlement (by their Agent) in a letter dated 8 August 1973 claimed ownership of the land in question "excluding minerals reserved by previous owner R S Tempest in 1923" and Mr H R Tempest in letters dated August and September 1973 said (after provisionally claiming ownership) that having been unable to find any family connection he did not wish to pursue any claim; however later through his solicitors in a letter dated 19 March 1976 he said that the Executors of the will of his brother Stephen Tempest who died 12 December 1970 owned the mineral rights by virtue of their ownership of the Manor of Burnsall. 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 Skipton on 23 March 1976. At the hearing: (1) Mr Henry Roger Tempest was represented by Mr W Foster solicitor of Walker Charlesworth & Foster, Solicitors of Skipton, (2) Mr Brian Mark Whitlock-Elundell and Mr John Power (the Trustees of the will of Mr Stephen Tempest) were also represented by Mr Foster; (3) Mr H H Clark chairman of Burnsall Parish Meeting and Mr G Nicoll chairman of the Village Green Committee were represented by Mr J P Mewies, solicitor of J P Mewies & Co Solicitors of Skipton; and (4) the most noble Mary Alice Duchess of Devonshire and Mr Thomas Edward Sydney Egerton (the Trustees of the Chatsworth Settlement) were represented by Mr J M Sheard their Land Agent resident at Bolton Abbey.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) .078 hectares (about 1/5th of an acre). ]

It is about a mile south of the Village, and southwest of and a short distance (up a steep hill) from the road B6160 to Ilkley, approachable by a steep path or track leading to the Fell.

Mr Foster said that Mr Tempest and the Trustees do not claim ownership, but will apply for a note to be made on the Register as to their claim to the minerals.



Mr Menzies referred me to a letter dated 12 March 1976 from the County Archivist of North Yorkshire (produced by him at the hearing of the case before this one, reference 45/U/279), with which was enclosed a certified extract from the Tithe Rentcharge Apportionment Award dated 10 April 1850 for the township of Burnsall with Thorpe Sub Montem in the parish of Burnsall and a certified extract from the Award map. On this map the Unit Land is numbered "153" and in the Award it is described in the Schedule as "(landowners) Township: (Occupier) In hand: (No. referring to plan) 153: (name and description of premises) Common: (quantities A.r.p.) -, 1, 5: (payable to rectors) -". He said the Village paid for a gate which is near the southern end but a little way from the Unit Land, but apart from this could offer no evidence of possession.

Mr Sheard in the course of his evidence produced an examined abstract dated 1973 of the title of W J Duke of Buccleugh and M A Duchess of Devonshire to freehold property at Bolton Abbey with an extract from the plan annexed to the belowmentioned mortgage. The abstract commences with a further mortgage dated 30 August 1897 by which S C (8th) Duke of Devonshire mortgaged (among other freehold hereditaments) lands described as being in the "Township of Barden, Parish of Skipton: 449 (No. on the map No 1 annexed) Plantation adjoining Bracken the Haw (Quantities) 1 - 2 - 23", and as being in the "Township and Parish of Burnsall: 1 (No. on the said map) allotment planted (Quantities) 4-3-30". The abstract showed the lands comprised in this further mortgage to be vested (in 1973) in ARB (11th) Duke of Devonshire as the personal representative (special) of V C W (9th) Duke of Devonshire subject to an agreement under which the Duke of Buccleugh and the Duchess of Devonshire were purchasers.

Mr Sheard said that the Unit Land was within a plantation now known as Heber Plantation, and is now surrounded with trees. He identified it as being made up of parts of lands numbered 449 and 1 in the Schedule to the 1897 mortgage, and showed that the areas therein given corresponded nearly (although not exactly) with those on the Register map. The track on the side of the Unit Land and on the abstract map called "Moor Lane" and on the Register map called "Fell Lane" are not, he said, part of the Estate.

Mr Menzies said (in effect) that his clients were concerned to establish (if need be) that the Lane was subject to a public right of way, and that as Mr Sheard had said that he would not dispute the ownership of the Lane, they did not dispute the title as made out by Mr Sheard. Because Mr Sheard was uncertain as to the ownership of the Estate for "the legal estate in fee simple" (being the only form of ownership with which I am under the 1965 Act concerned, see section 22), Currey & Co Solicitors of London (who act for the Trustees) —→ since the hearing have sent me a copy appointment dated 24 October 1973 under which Mr Egerton became a Trustee in the place of the Duke of Buccleugh (who died 3 October 1973) and explained in their letter that the legal estate is still vested in the Duke as above stated.

To prevent any possible misunderstanding, I record that having considered the Register map, I conclude that the Lane is not part of the Unit Land and I am not therefore concerned to determine who is the owner of it. On the evidence summarised above, I am satisfied that the Duke is the owner of the Unit Land and I shall accordingly direct the North Yorkshire County Council as registration authority to register the most noble Andrew Robert Buxton Duke of Devonshire 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 19<sup>th</sup> day of June — 1976

a. a. Baden Fuller

Commons Commissioner