



COMMONS REGISTRATION ACT 1965

Reference No 45/1/279

In the Matter of Village Green,  
Burnsall, Craven District, North  
Yorkshire

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DECISION

This reference relates to the question of the ownership of land known as Village Green, Burnsall, Craven District, North Yorkshire being the land comprised in the Land Section of Register Unit No VG. 141 in the Register of Town or Village Greens maintained by the North Yorkshire County Council (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 Mr H R Tempest in letters dated 22 July, 2 August and 25 September 1973, claimed ownership, Mr Robert S Percy in a letter dated 28 July 1973 set out a number of matters relating to the Green with the possible intention of claiming ownership, and the Chairman of Burnsall Parish Meeting in a letter dated 11 March 1976 on behalf of the Meeting claimed ownership. 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 Skipton on 25 March 1976. At the hearing, (1) Mr Henry Robert Tempest was represented by Mr W Foster solicitor of Walker Charlesworth & Foster, Solicitors of Skipton, (2) Mr Brian Mark Whitlock-Blundell of Crosby Hall, Liverpool and Mr John Power of Fawcett House, Lower Wortley, Leeds (the trustees of the will of Mr Stephen Tempest who died on 12 December 1970) were also represented by Mr Foster; and (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 also of Skipton.

The course of the proceedings was as follows:- Mr H R Tempest gave oral evidence and produced the documents specified in the First Schedule hereto. Oral evidence was then given by Mr H H Clark who is 68 years old, has lived in Burnsall all his life, and is now and has been since 1964 chairman of the Parish Meeting, and by Mr W Stockdale who is 65 years old, has lived in Burnsall all his life and was (before Mr Clark) chairman of the Parish Meeting for about 20 years; in the course of their evidence, they produced the documents specified in the Second Schedule hereto. After a short adjournment Mr Foster produced the documents specified in the Third Schedule. On 5 April 1976 I inspected the land.





The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) .560 hectares (about 1 1/2 acres). It is two pieces separated by the road (B 6160) which runs down the valley of the River Wharfe through the Village of Burnsall. One of these pieces ("the West Piece", a little more than 1 acre) is bounded on the east by the River and is grassland with some trees; the other piece ("the East Piece") is bounded on the west by buildings (including a garage and some shops) and some agriculture land.

Most of the hearing was spent in considering the evidence offered on behalf of Mr H R Tempest ("the Claimant") or the said Trustees in support of the contentions (as I understood them): (a) the Lordship of the Manor of Burnsall and the lands in Yorkshire now known as the Broughton Estate have for 400 years and upwards been owned by the Tempest family, and (b) the Unit Land now belongs and had always belonged to the Manor and is therefore now part of the Estate owned by the Claimant or his Trustees. Apart from the 1973 vesting deed (which mentions neither the Manor nor the Unit Land) and the 1971 probate of the will of Mr Stephen Tempest, the documents and events by which the Estate and the Manor have devolved were neither produced nor distinctly stated at the hearing. I shall assume them to be as set out below. I say assume because in the absence of evidence as to the 1938 Settlement, and possibly as to other documents such as might have come into existence on the death of Major A C Tempest, on the passing of the Settled Land Act 1925, and on the death of General H R Tempest, I am not satisfied that the Estate and Manor have certainly devolved together on the Claimant or his Trustees. But I record that if on this assumption I had felt that there was any chance of my deciding in favour of the claim, I would have given the Claimant an opportunity of producing such documents or providing such other evidence as might be requisite, because nobody at the hearing suggested that there was any doubt about the title to the Broughton Estate or to the Lordship of the Manor.

The documents and events relating to the Estate and Manor mentioned at the hearing were:- In 1566, the Manor of Burnsall was bought by Henry Tempest, see History and Antiquities of the Deanery of Craven by T D Whittaker (3rd edition 1973, being an edited 1st edition 1878) volume 2 page 502, produced by Mr Foster. In 1738 the Manor passed from Stephen Tempest senior to Stephen Tempest junior, see the 1738 indenture of bargain and sale inrolled. Sir Charles Robert Tempest, Baronet (the Claimant's grandfather's uncle) owned the Estate until his death on 8 December 1865, see the 1850 Tithe Award, which shows him as owning tithable land in Burnsall, and the 1883 agreement and 1887 conveyance made by the trustees of his estate. On his death the Estate became subject to the uses of his will under which Major A C Tempest (the Claimant's grandfather) was tenant for life, see the 1883 agreement and the 1906 and 1914 accounts produced by the Claimant. In 1897 the Estate was resettled, so the Claimant said. I have no note or recollection of being told when Major A C Tempest died but I infer from the said accounts that it was after 1915. He was succeeded in or before 1920 by Brigadier General H R Tempest (the Claimant's father), see minute of the meeting on 21 December 1920 in which Lieutenant-Colonel Tempest is treated as owner. The Estate was by him again resettled by a settlement dated 6 April 1930, see the 1973 vesting deed. He died in 1940, and was succeeded by Mr Stephen Tempest (the Claimant's brother) as tenant for life. On his death in 1970 the Claimant succeeded as tenant for life and expects to be succeeded by his son. I was not shown any copy or abstract of the 1938 Settlement, so I state the succession from what the Claimant said, and cannot say how the legal estate in fee simple may have devolved.





The Claimant said (in effect):- He is 51 years old. For most of the time that his brother was owner (1940 to 1970) he was abroad or in the South of England, so that his whole knowledge of the Estate is from 1970. At Broughton Hall they have a vast collection of documents; he had picked out those he thought helpful. His contentions were (as I understood him) essentially the same as those set out in his said 1973 letters:- In November 1920 Burnsall Parish Meeting resolved that the attention of the Lord of the Manor be called to the state of the Village Green and that he be asked to take steps for its protection. General Tempest on 24 December 1929 noted: "General Tempest confirmed his previous decision to allow the Parish Meeting to run the green by means of a Green Committee which should have full power to act". He (the Claimant) now receives annually from the Post Office, ~~may leave money for an~~ underground telephone line under a consent in 1936 signed by General Tempest. He relied also on the references to the Green in the before 1929 documents he produced.

One of the Minute Books produced relates to the Parish Meetings from 1924 to 1975 and also to the meetings of the Green Committee from 1923 to 1929. The other Minute Book produced records "the Special Meeting on 11 November 1920 called at the request of several Parochial Electors to consider the state of the Village Green through its use and abuse by the ever increasing number of motor cars, motor chara's & motor cycles during the summer months...", and another Special Meeting on 21 December 1921 at which the Chairman (Mr J Stockdale, father of the "r Stockdale who gave evidence at the hearing) reported that members of the Green Committee met Lieutenant Colonel Tempest with his Agent Mr Graham...Lieut Col Tempest expressed his sympathy and entire agreement with the entire meeting viz to fence in the Village Green so as to preserve its ancient rights and privileges for those to whom they belonged". The book continues with a record of numerous meetings always entitled "of the Green Committee, up to 1975, being apparently still in use. At the hearing my attention was drawn to a minute of a Parish Meeting held on 20 March 1935 in which it was recorded that Mr Bland (a member) had an interview with Mr Graham (Agent of the Lord of the Manor) regarding the possible purchase of the Manorial Rights of the Village Green; £15 was the sum asked but Mr Bland was of the opinion that General Tempest would accept £10, conveyancing charges to be paid by the Village. Unfortunately neither plans nor deeds could be produced. Such being the case... (it was resolved)...the matter be left on the table pending further enquiries". And my attention was also drawn to a minute of a meeting on 13 March 1961 recording "Discussion took place re Village Green Banking - Lord of the Manor had discounted (sic) responsibility; ultimately left to the Green Ctee".

Mr Clark said (in effect):- The Minute Books did contain statements from time to time indicating that those present at the meeting thought that the Lord of the Manor had rights in or over the Unit Land. But the Tempest family as far as he knew (meaning I think from the books or otherwise) had never taken any interest in the Unit Land for the last 50 years at least. The Village had a record to be proud of; they had worked hard on the Unit Land, mowed it and spent money on it. For example they had erected the post and chain fence which now protects the West Piece, and arranged for the repair of the bank of the River where it flows by the Unit Land (preventing erosion by a post and wire protection of stones). He had never before the hearing heard it suggested that General Tempest instigated the Green Committee; his view was that the Green Committee started in 1920 as appeared from the Minute Books.



As to possession:- From the Minute Books, the oral evidence of Mr Clark and Mr Stockdale, and the appearance of the Unit Land, I conclude that the Green Committee are now and have been for at least the last 30 years in possession of it. The Unit Land appears to be well cared for and a valuable amenity for those who live near it and others in the Village, and I cannot imagine how it could possibly be in its present agreeable state if the Green Committee had not done repeated acts of ownership such as described in general terms by these witnesses. I have not overlooked that the Claimant under the 1936 consent currently receives 5p annually in respect of an underground telegraphic line along the northwest, and along for approximately 20 yards the northeast side of the Unit Land and for permission to erect a post; this seems to me too slight a circumstance to be referable to possession of the whole of the Unit Land, particularly as the Green Committee receive a similar payment (as stated by Mr Stockdale); it may be that the Claimant has some possession of the soil around the telegraph line and under the post, but it was not suggested that I should in these proceedings consider the possible distinct ownership of this very small area of land. I reject altogether the suggestion that I can infer from General Tempest's 1929 note that thereafter all the activities of the Green Committee were on his behalf and on the behalf of his successors in title; I do not think the note has this meaning, and the suggestion is contrary to the evidence of what the Green Committee actually did.

As to ownership before 1920:- In the Tithe Award the ownership is said to be "Township", (occupiers) "In Hand"; the Claimant said his grandmother wrote in pencil (as his copy now appears) "A C Tempest" in place of "Township" which is typewritten. I do not regard either the Award or the pencil note as evidence of ownership, although I accept that before 1920 many persons considered that General Tempest was the owner of the Unit Land and that this appears from the pre-1920 documents produced.

As to General Tempest's abandonment of ownership:- From the 1921 Minutes and the 1929 Note that General Tempest confirmed his "decision to allow the Parish Meeting to run the Village Green by means of a Green Committee who should have full power to act", I infer that some time before 1929 something happened (a "decision" was given) between General Tempest and the representatives of the Parish Meeting which was intended by both of them to affect the legal position of the Green. I read the note as having been made by General Tempest for his own personal use, and not as recording an agreed form of words, but I infer that at the time General Tempest and the representatives of the Parish Meeting thought that he was, or at least might be the owner. As above stated I reject the suggestion that they did no more than arrange that the Green Committee was thenceforth the agent of General Tempest who could direct them as he pleased at any time. I also reject the suggestion that he intended to make some arrangement which was temporary. The alternatives are I think either that General Tempest intended to be finished with the Green altogether as far as he as owner was concerned, or that he intended to hand over the management of the customary rights of the inhabitants to the Green Committee retaining for himself the ownership rights.

Of these two alternatives, I prefer the former. I infer that General Tempest in effect represented and was understood to represent that the Village Green should thereafter belong to the Parish Meeting as owners. As appears from the 1921 and 1922 receipts, the Green Committee spent £124 and £25-11-2 wholly on the Green; subsequently they have done many things on the Green on the same basis. In





my opinion General Tempest and his successors in title have ever since 1920 been estopped from denying the title of the Green Committee which he had represented to them that they would have, and it is not in my view necessary for them in order to establish their title to produce any deed or grant actually conveying the land.

If (contrary to my view) the decision of General Tempest as understood by the Parish Meeting was that he did no more than hand over to them the management of the customary rights, it is I think clear that subsequently they did much more than manage these rights. In my opinion the Green Committee have been in possession since 1929, and accordingly any title which General Tempest then had to the Unit Land was extinguished either by the Limitation Act 1939 or the previous Acts which replaced it. In the absence of evidence as to the nature of the settlements to which the Unit Land was then subject, I need not I think consider whether any of the exceptions in these Acts relating to lands in settlement could be applicable.

In my opinion the various acts done after the 1929 note which were on behalf of the Claimant said to support his ownership claim do not do so. The 1935 discussions about a possible sale appear to have been unproductive. Although one of the 1936 Bills of Costs indicates that the solicitors thought General Tempest the owner, the transaction seems to have concerned the Rural District Council and not the Parish Meeting; further the other Bill of Costs shows that General Tempest refused to pay the costs Mr Stockdale had been put to. As to the word "discounted" in the 1961 Minute, Mr Stockdale said that although he remembers communicating with Mr Stephen Tempest he couldn't remember whether he saw him personally or wrote to him, but the answer he gave to the Parish Meeting as recorded in a minute was correct; the question was whether Mr Stephen Tempest would be prepared to help with the work necessary to prevent erosion by the River and to this he "discounted" responsibility; neither the request to Mr Tempest nor his answer supports the ownership claim now made by the Claimant. Generally, I conclude from the evidence of Mr Clark that subject as above mentioned neither General Tempest nor Mr Stephen Tempest nor the Claimant nor the said Trustees have ever been interested in the Unit Land for at least 50 years.

For the reasons summarised above I reject the Claimant's contentions.

In my opinion the Village Green Committee were at all times acting on behalf of the Parish Meeting. By section 19 of the Local Government Act 1894 the "body corporate by the name of the chairman and overseers of the parish" may hold land for the purposes of the parish; in my opinion any title to land which was acquired by the Parish Meeting as a result of the things done by General Tempest as above described vested in this body corporate. This body corporate was reconstituted by the Local Government Act 1933 and again reconstituted by section 13 of the Local Government Act 1972 so that it now has the name of "The Parish Trustees of Burnsall".

For the reasons set out above I am satisfied that the Parish Trustees are the owners of the Unit Land and I shall accordingly direct the North Yorkshire County Council as registration authority to register the Parish Trustees of Burnsall as the owners 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.

FIRST SCHEDULE

(Documents produced by Mr H R Tempest)

- HRT1 17 March 1971 Probate of the will of Stephen Tempest (he died on 12 December 1970) granted to J Power and B H Whitlock-Blunck
- HRT2 Sept/Oct 1890 Free rents due to the Trustees of the late Sir Charles Robert Tempest Bart: Michaelmas 1889 - Whitsuntide 1890
- HRT3 1914 Lords Rents due to Major A C Tempest, Lord of the Manor of Burnsall with Thorpe (including 3 items relating to "on Green")
- 1915 Ditto
- HRT4 1906 Ditto: endorsed "Baron Officers Balance Sheet for 1906"
- HRT5 6 January 1921 Copy letter to Mr Stavert (?the Vicar) from (?) Lt-Colonel R S Tempest (refers to meeting on 7 December mentioned in minutes of meeting on 21 December 1920)
- HRT6 8 April 1914 Letter from J Stockdale (chairman of Burnsall Parish Meeting) to ? Tempest
- HRT7 13 November 1920 Letter to (presumably) R S Tempest
- HRT8 16 November 1920 Letter from J Stockdale to (presumably) R S Tempest
- HRT9 7 March 1922 Letter to General Tempest signed by W J Stavert, and four others including J Stockdale
- HRT10 8 March 1922 Letter from Mr R G Graham to J Stockdale
- HRT11 21 March 1922 Copy letter from General R S Tempest to Mr Stavert
- HRT12 16 April 1923 Letter from J Stockdale to (presumably) General Tempest
- HRT13 24 December 1929 Note in handwriting of General Tempest "prescrit R G Graham Agent/Mr Stockdale Chairman of Green Committee/RST
- HRT14 16 December 1936 Letter Post Office to General R S Tempest about underground telegraph line
- HRT15 19 December 1936 Copy consent to line signed by Roger S Tempest for rent of 1 shilling
- HRT16 September 1973 Way leave payments to Broughton Hall Settled Estates £2-55p in all, including 0.05p for underground telegraphic line
- HRT17 September 1975 Ditto
- HRT18 13 March 1936 Knowles & Harrison Solicitors' bill to Brigadier General Tempest about writing to RDC about underground cable "on the road was your property there was no need to enter into any agreement"
- HRT19 18 March 1936 Knowles & Harrison bill to Brigadier General Tempest about the request to F Laycock in 1931 to restore his approach road to Green
- 18 January 1738 Bargain and sale inrolled by Stephen Tempest the Elder in favour of Stephen Tempest the Younger, all in the Manor of Broughton Thorp and Burnsall





- NHC20 Certified 3 June 1908 Typewritten extract from Burnsall &c Tithe  
(original dated 10 Apportionment Award  
April 1850, see NHC2  
below)
- NHC20 1883 Draft agreement leading to conveyance NHC21 below  
bis
- NHC21 18 July 1887 Duplicate conveyance by J Fleming and W F Tempest  
(trustees of Sir Charles Robert Tempest Baronet;  
he died 3 December 1865) of 4 acres of land at  
Thorp Fell to Bradford Corporation (for water  
purposes)
- NHC21 18 July 1887 Duplicate conveyance by J Fleming and W F Tempest  
(trustees of Sir Charles Robert Tempest Baronet  
who died 3 December 1865) of 4 acres of land at  
Thorp Fell to the Bradford Corporation for waterworks  
purposes
- Tempest 21 June to 20 July 1878 Correspondence about encroachment on Burnsall Green:  
31 (put to Mr Stockdale in solicitor for Trustees of Sir C R Tempest's Estates  
cross-examination) require removal of railings

SECOND SCHEDULE

(Documents produced by Mr N H Clark and Mr Stockdale)

- NHC1 12 March 1976 Letter from H Y Ashcroft County Archivist of  
North Yorkshire
- NHC2 10 April 1850 Certified copy of Tithe Apportionment showing  
Entry Nos 152 and 153 and relevant part of the  
plan
- NHC3 23 October 1923- Burnsall Parish Meeting Minute Book  
8 September 1975
- NHC4 11 November 1920- Burnsall Green Committee: Minutes of Meeting  
10 February 1976
- NHC5 14 June 1921 Receipt for 2124 (oak posts etc)
- NHC6 2 November 1922 Receipt for 225-11-2 (posts etc)
- WS1 - Way leave payment of 0.10p by Yorkshire Electricity  
Board to Burnsall Green Committee





THIRD SCHEDULE  
(Documents produced by Mr Foster)

- 27 July 1973

Vesting deed in favour of Claimant

Dated the 30<sup>th</sup> day of June — 1976

a. a. Baden Fuller

Commons Commissioner