



COMMONS REGISTRATION ACT 1965

Reference No 27/U/66

In the Matter of Burndivot Common,
Henshaw, Tynedale District, Northumberland

DECISION

This reference relates to the question of the ownership of land known as Burndivot Common, Henshaw, Tynedale District being the land comprised in the Land Section of Register Unit No CL. 10 in the Register of Common Land maintained by the Northumberland 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 Hexham on 3 May 1976. At this hearing Lady Ursula Mary Blackett was represented by Mr D J Orde, land agent of J M Clark & Partners, Land Agents of Newcastle upon Tyne. Present also, because they were concerned with other cases, were Mr D Reay who is chairman of Henshaw Parish Council, Mr R Walton solicitor of Rae Walton & Hogg, Solicitors of North Shields who was representing Dr J C Knox. It appearing that the persons on whose application Entries had been made in the Rights Section might not have received any or adequate notice of the hearing, I adjourned the proceedings.

I held the adjourned hearing at Hexham on 9 March 1977. At this hearing Lady Ursula Mary Blackett was represented by Mr D J Orde as before, Mr John Jackson Dinning on whose application Rights Section Entry No 1 was made attended in person, and Mr John Makepiece Forster on whose application Right Section Entry No 5 was made also attended in person.

The land ("the Unit Land") comprised in this Register Unit is a tract about a mile long and in one part over half a mile wide, situated in an isolated part of Northumberland, near the Cumbria border, about 3 miles north of the Newcastle-Carlisle road (by the Wall, B6318).

Mr Dinning who has lived all his life (61 years) at Cranberry Brow (about 5 miles from the Unit Land), and who is now and has been since 1951 secretary of the Commoners Association in the course of his evidence produced: (1) a letter dated 15 April 1969 from the Ministry of Housing and Local Government as to the possible vesting of the legal estate in the Unit Land in the Public Trustee; (2) an account book (7" x 4") entitled "Burndivot Common 1872" extending from 1872 to 1938 and



including minutes of meetings; and (3) a day book (12" x 7") entitled "Burndivot Rent Book 1939" extending from 1939 to date and including a minute of meetings held in 1939 and 1951. He said (in effect):- The Unit Land has never been grazed by the commoners, but has always let and the rent divided among the "stintholders", on the basis of a capital value of £1189 (the books show that before 1957 it was £1191, £2 being then deducted for a field owned by the National Coal Board, and before 1899 it was £1173, £18 being then added in respect of a contribution to improvements). The yearly rent is currently £200, and the division is in accordance with the entitlement of each stintholder, so that one person gets only 16np and another over £30. After the discussion as to the effect of the 1965 Act, it was agreed that because it was impossible to relate the £1189 to actual stock (the Unit Land only carries 120 sheep) that the various stintholders should each claim 5 sheep irrespective of their share in the Unit Land. The committee now numbers 5, and only meets when someone so requests; there are appointed general meetings (not held annually but less frequently).

Mr Forster confirmed what Mr Dinning had said, and explained that the tenant grazed about 120 sheep on the Unit Land and did any ditching needed. Many of the stintholders live 4 or 5 miles from the Unit Land; they regard their share in the annual distribution of the rent as a source of income.

The 1872 Book begins with a receipt for £22 "rent for Burndivot Common" and a "balance against the Township 6(s) 10½(d)", followed by a distribution among 42 persons in varying numbers of 1173 shares, one getting over £2, 5 getting over £1, and many getting much less. The expression "balance in favour/against Township" continues to about 1889, and thereafter the balance is described just as "balance". The 1889 meeting is described as being "of the Stint-holders"; as also is that of 1898 at which it was agreed that "Messrs Jos Armstrong and N J Makepeace be appointed to go to Newcastle to inspect the Award for the purpose of ascertaining the liability of adjoining proprietors to fence against the Common" followed by "Messrs Armstrong & Makepeace report that they inspected the Award on Saturday Febr'y 12th & find that a plot or portion of Common situate at or near Humble... (?) containing 574-3-16 and lying on the north side of Burndivot Common was assigned and allotted to John Lowes and the Commissioners hereby direct John Lowes his heirs or assigns and all persons owners, occupiers of this plot shall within two years from date of Award (1783) make & erect & forever thereafter maintain a good and sufficient bounder fence on the East, West and South sides of this plot, also another plot or portion southeast of Burndivot Common was assigned to John Lowes containing 179-2-3 & he is required in like manner to fence on East and North sides, the West side being separated from Burndivot Common by the river Tippald which apparently constitutes a natural boundary. An allotment known as Pumbling Pool and including Pumbling Pool & Pumbling Quarry and containing 141-2-2 & lying east of Burndivot Common was assigned to Mathew Parker who shall within two years erect and maintain forever thereafter a good and sufficient bounder fence on the East, North & South sides, the West side is separated for a short distance by the river Tippald from Burndivot and it apparently constitutes a natural boundary...(there follows a sketch map). A later 1898 meeting described as "of the Freeholders Committee, and related to a proposed tenancy to which "any further or reopening of drains in the future to be borne in equal shares by the Freeholders & the Tenant" and provided for the erection of a wall "the quarrying and walling gate, posts hangings &c to be paid by the Freeholders". Subsequent meetings are described either as being of "the Committee" or "of the Stintholders Committee". There is memorandum dated May 27 1899 about the



cost of improvements ^{about} the purchasers of lands at Henshaw "having joined with the other freeholders, an additional sum of eighteen pounds now ranks for dividends." At a meeting held in November, the tenant was asked "to cooperate with the owners in cutting open drains &c...". At a meeting 27 April 1926 there was a discussion about "Mr Murray having sublet the common and going out this May without consulting the Owners or their agents". The meetings form only a very small part of the entries in the book; the remainder (the greater part) comprises a detailed account of the annual distribution of the receipt always described as "rent for Burndivot Common" or some such words.

The 1939 book shows annual distributions regularly of rent, but throws no light on ownership.

The 1904 Return to the House of Commons of Inclosure Awards held by Clerks of the Peace, for the County of Northumberland includes that for _____ the common of Melkridge and Henshaw in the parish or township of Haltwhistle made under 23 Geo.3. (1782), the Award being dated 9 Nov 1787. It is perhaps unfortunate that I have been unable to look at the Award, but I have looked at the Henshaw and Melkridge Inclosure Act 1783 relating to the inclosure of 14000 acres, at Henshaw in Fell the Out Fell, and Scotts Coultered Waste comprising 10,000 acres. The Act mentions a tract of land called Cawfield and provides for its division "unto and amongst the several owners and proprietors of stints upon the said tract of land in proportion to the number of stints belonging to each proprietor therein..."

The 27 Entries in the Rights Section of grazing rights, all of which have become final, being the result of the agreement described to me by Mr Dinning, cannot in any way be equated to any stints known to the persons ^{who} since 1872 have as "stintholders" been receiving a share of the rent and from time to time been meeting as such, and cannot therefore have any bearing on the present ownership of the Unit Land.

Under the 1965 Act, I am concerned only with the ownership of the legal estate in fee simple, see section 22. By the Law of Property Act 1925, ownership of a legal estate in land by tenants in common was abolished; any land so owned before the 1925 Act, under it became vested in trustees as provided by Part IV of the First Schedule. So I am concerned to determine whether the Unit Land was before 1925 owned by the so called stintholders as tenants in common.

That the persons who dealt with the Unit Land described themselves as stinholders is against any such ownership, because as a general rule persons who so describe themselves have a right of grazing; such a right of grazing may be combined with ownership of a share in the land corresponding to the grazing right, but the difficulty in this case is that none of the stinholders have ever grazed the land since 1872, and I have no evidence that any of them did so before then.

In favour of the stinholders having in relation to the Unit Land more than a right of grazing and being owners of it as tenants in common, I have: (a) the record of the 1872 and 1939 books of lettings in words more appropriate to lettings of land by owners than to lettings of collective grazing rights by those entitled to them, (b) the above quoted references in the 1872 book to "freeholders" and "owners", (c) a possibility that the word "stinholders" was used as referring to persons who historically had both grazing rights and ownership rights and (d) the existence



recognised in the 1783 Act of such a form of ownership as being applicable to Cawfield, which if it did not (as is I think likely) include the Unit Land, was not far away.

The 1783 Act mentions Sir Edward Blckett baronet as the Lord of the Manor. Bearing in mind that no successor of his has claimed ownership of the Unit Land, I consider I ought to give effect to the indication in the 1783 Act, the 1872 book, the letting practice of the Committee for the last 55 years, and conclude, as I do, that immediately before the commencement of the 1925 Act the Unit Land was held in undivided shares for the persons who then as stinholders received a proportion of the rent shared on the basis of a capital value of £1191.

It follows from this conclusion, that on 1 January 1926 the Unit Land vested in the Public Trustee under sub para (4) of paragraph 1 of the said Part IV. The Public Trustee has, so I understand, not yet been requested to act and may never be requested to act. Being under the 1965 Act now only concerned with the legal estate, I need express no opinion as to the present ownership of the undivided shares held by the various stinholders or as to how new trustees might, if thought convenient, be appointed in the place of the Public Trustee.

For the above reasons I am satisfied that the Public Trustee is the owner of the Unit Land and I shall accordingly direct the Northumberland County Council as registration authority to register the Public Trustee 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 22nd day of April ————— 1977

a. a. Baron Fuller

Commons Commissioner