



COMMONS REGISTRATION ACT 1965

Reference No 27/0/38

In the Matter of The Banks and
Village Green, Embleton, Alnwick
District, Northumberland

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL 88 in the Register of Common Land maintained by the Northumberland County Council and is occasioned by Objection No 53 made by M Grant, T R Grant and Miss R Grant, trading as Grant Brothers and noted in the Register on 2 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Alnwick on 8 March 1977. At this hearing Embleton Parish Council were represented by Mr J E Blair one of their members, Mr L B Douglas attended in person and as representing R Douglas and Sons of Ashington Farm, Ashington and Mr P T Whitehead of Manor House (formerly East Farm House) attended in person. Mr Douglas and Mr Whitehead claiming that they were the successors in title of Messrs Grant (the Objectors), had only recently had notice of these proceedings and had therefore insufficient time to consider their position, I adjourned the proceedings.

I held the adjourned hearing at Alnwick on 21 June 1977. At this hearing Embleton Parish Council were represented by Mr Blair as before, Mr Patrick Thomas Whitehead and Mrs Angela Mary Whitehead were represented by Mr T Carney, solicitor of Carney & Joyce Solicitors of Newcastle upon Tyne and Mr Lancelot Bruce Douglas attended in person and as representing his brother Mr Robert Malcolm Douglas.

The land ("the Unit Land") comprised in this Register Unit is in three pieces. One piece ("the Village Green Piece") is triangular having sides of about 30 yards, 30 yards and 8 yards; it is situate on the east side of the main north-south road through the Village at the point where this road is joined by a road leading eastwards to the sea (Embleton Mouth) and southeastwards to Craster; this Piece has on it a stone fountain erected to commemorate the coronation of their Majesties King George V and Queen Mary, a seat to commemorate the coronation of Her present Majesty Queen Elizabeth II, a GPO telephone box, an iron pump and 4 newly planted trees; the Piece is surrounded on all sides by a made-up public road; it is for the most part grass land of attractive appearance, obviously a valuable amenity to all who live nearby or elsewhere in the Village. Another of the said pieces ("the North Banks Piece") is a strip having a length of about 100 yards and of varying width for the most part between 10 and 20 yards; essentially this Piece is a steep grassy bank, the south end of which is at the junction of the road leading to the sea and the road leading to Craster; its west (lower) boundary is a vehicular track (not made up) leading northwards back to the main road by the School, and its east (upper) boundary is a track (also not made up) providing access to Manor House (formerly East Farm House) and a dwelling house occupied (so I was told) with the School; this upper track stops near the top of the face of the quarry on the north. The remaining piece ("the South Banks Piece") is a strip having a length of about 250 yards and of varying width generally a little wider than the North Banks Piece; essentially it too is a steep grassy bank the north end of which is a little distant from the south end of the North Banks Piece, and



the south end of which is near where the Village ends on the Craster road; its east upper boundary is a track not made up leading to some nearby dwelling houses and farm and other buildings, and the wall enclosing the lands held therewith, and its west (lower) boundary is a vehicular road made up, being the Craster road. Both the North Banks Piece and the South Banks Piece are open to the roads or tracks which adjoin them; the south part of the South Banks Piece appears at one time to have been quarried, and along the east boundary of this part is a steep quarry face, so this part exceptionally is not accessible from the adjoining land on the east.

The grounds of the Objection (dated 25 September 1970) are (in effect) that the North Banks Piece and the South Banks Piece ("the Banks") "having been in the undisrupted (sic) possession of ourselves and our predecessors in title for many years without any common rights being exercised over the same."

At the hearing oral evidence was given by Mr Elair who has lived in the parish for 52 years, and been a member of the Parish Council for about 20 years, by Mrs A M Whitehead and by Mr L B Douglas. After the hearing I inspected the Unit Land.

Mr Blair in the course of his evidence said (in effect):- He had not before the hearing seen any deeds; he had always understood that part of the North Banks Piece north of the line ("Line A") he drew on the Register map (such a part is about $\frac{1}{2}$ of the Piece) belonged to the Vincent Edward Turst, that the part of the South Banks Piece south of the line ("Line D") which he drew on the map (being about $\frac{1}{6}$ th of the Piece) belonged to the Church Commissioners and that the rest of the Banks was owned by the people who owned the adjoining farms. He had never seen anybody working on the Banks. They are grass and there is the quarry face; they have never been fenced in any way. The Banks have always looked as they do now, except that Messrs Grants cut (the grass on) the part of the Banks which belong to their farm from the time when the Banks were registered as common land (1969) until they left (1972); before then (1969) the Banks were not cut at all. He considered the Banks were common land because the public have always used them; he thought if you go back for 100 years, ponies would have grazed on the Banks. The Banks have never been quarried in his time; he understood they were quarried about 70 or 80 years ago; the quarry on the north side (Embleton Quarry) was so he understood quarried from about 150 years ago until it was closed in 1961.

When I inspected the Banks they appeared to be waste land; I disregarded the small area apparently now being grazed (I was told that the goat was recently acquired by Mrs Whitehead) and the small area to the south apparently used for car parking.

Apart from the documents of title produced as below mentioned, there was no evidence of any possession such as is mentioned in the above quoted grounds of objection.

The documents produced were as follows:- (1) a conveyance dated 15 January 1960 by which Sir B I Sutherland conveyed to Messrs J, C R, M and T R Grant (as trustees for themselves and Miss R M Grant) Embleton East Farm containing about 194.780 acres and Embleton Glebe Farm containing about 67.799 acres, (2) a conveyance



dated 28 November 1972 by which Messrs C R and T R Grant conveyed to Messrs R M and L B Douglas of first Embleton East Farm and Embleton Glebe Farm containing (as newly calculated) 160.780 acres and secondly "THOSE pieces of land marked as Grass Banks containing an area of two acres...delineated on the plan attached..."; (3) a conveyance dated 17 August 1976 by which Messrs R M & L B Douglas conveyed to Mr P T and Mrs A M Whitehead first the farmhouse and premises known as East Farm House, secondly land coloured round blue on the plan attached and thirdly an adjoining building; and (4) an abstract dated 1959 of the title relating to Embleton East Farm and Embleton Glebe Farm comprising (a) a conveyance dated 27 November 1919 by Mrs C M S Eyres-Monsell to Mr A M Sutherland of (among other lands) the Manor of Stamford and Dunstanburgh and farm lands containing about 3992.832 acres (including Embleton East Farm), (b) a conveyance dated 28 June 1920 by the Vicar of Embleton with the approval of the Ecclesiastical Commissioners and the consent of Merton College, Oxford to Sir A M Sutherland of Embleton Glebe Farm containing 101.599 acres and (c) a conveyance dated 21 June 1956 by the personal representatives of Sir A M Sutherland (he died 29 March 1953) to Sir B I Sutherland of (among other lands) the Manor of Stamford and Dunstanburgh and farmlands in Embleton containing about 888.856 acres including Embleton East Farm and Embleton Glebe Farm.

The 1960 conveyance was most relied on as showing the ownership (or possession) of Messrs Grant. The parcels are "ALL THAT the property described in the first and second schedules hereto"; the habendum contains the words "(but as regards only the piece of land described in the said second schedule as Grass Banks for all the estate and interest of the vendor therein)"; the First Schedule describes the Embleton East Farm as shown on the plan attached "coloured round with red and coloured yellow" and among numerous OS nos mentioned includes "110X Banks 1.500"; the Second Schedule describes Embleton Glebe as coloured round with blue and coloured yellow on the plan by reference to OS Nos including (without any number) "Grass Banks .500". The 1960 conveyance treats the Banks specially in two respects: the Banks are the only land on the plan coloured yellow and as appears from the above quotation from the habendum no convenants for title are given as regards one quarter of the Banks. This quarter I identify as being the south part of the South Banks Piece opposite Glebe Farm, but it must I think be a little more than that described by Mr Blair by reference to line D.

Although the three conveyances comprising the 1959 abstract all have plans including either or both East Embleton Farm and Embleton Glebe Farm, no part of the Banks is included in the land thereon delineated.

By the 1972 conveyance the Banks are expressly conveyed being separately described from the rest of the lands therein comprised and being distinctly delineated on the plan B. And by the 1976 conveyance to Mr and Mrs Whitehead the part of the North Banks Piece opposite the dwelling house and premises on the east side conveyed to them is also expressly included.

On the evidence summarised above (there was none other relating to possession), I am not satisfied that Messrs Grant and their predecessors in title have for many years been in possession of the Banks in any now relevant sense of the word 'possession' and accordingly their Objection if it be confined to the grounds therein set out in my opinion fails.



Mr Blair, in answer to questions by Mr Calne as to the Parish Council's motives in making the registration said (in effect):- The general idea was that the title was in the Lord of the Manor but nobody expected the Banks to belong to anybody. It was thought that the Banks were common land but that people might object to the registration. The idea was to register ~~it~~ so as to make sure who owned ~~it~~. The Council wanted to find out who the Banks belonged to and they hoped the position would be clarified.

That the Parish Council should regard it as of importance to know who was the owner of the Banks, seemed to me to be reasonable when I inspected the Banks. Clearly ownership might be advantageous to some persons, particularly persons owning other lands nearby; but it is easy to imagine the circumstances in which such ownership might be disadvantageous. Both Messrs Douglas and Mr and Mrs Whitehouse at the hearing relied on conveyances (those dated 1972 and 1976) which they had executed on the basis that they were or would together become the owners of the Banks. If they had not at the hearing accepted ownership, I would have refused to allow them to go beyond the grounds of the Objection made by Messrs Grant, because if no ownership was claimed the registration should in the public interest stand (the Parish Council would then have some idea as to the legal position). But it being clear that Messrs Douglas and Mr and Mrs Whitehead are as between themselves and the Parish Council claiming to be the owners, I shall in accordance with rule 26 of the Commons Commissioners Regulations 1971 treat the grounds of objection put forward by Messrs Grant as amended so as to include the contention that the Banks are not within the definition of common land set out in section 22 of the 1965 Act.

The only relevant part of such definition is "waste land of a manor". That the Banks are and have for many years been waste land is I think established by their present appearance and the evidence of Mr Blair. Although the conveyances comprised in the 1959 abstract include the Manors of Stamford and Dunstanburgh, and although Stamford and Dunstanburgh are names of localities near to Embleton, nobody said anything at the hearing from which I could infer that the Banks were ever reputed to be part of these Manors. The houses and buildings on the east side of the Banks are all at a higher level than most of the rest of the Village (which is mostly on the west side); these houses and buildings, although not new (in appearance I estimate some of them to be nearly 100 years old or older) appear to me (except perhaps parts of the farm buildings) to be generally more modern as habitations than the other houses in the Village. On appearance therefore I deduce that before these habitations were built, the Banks were part of the adjoining farms on the east, and that the Banks have become waste land as a result, not of any manorial custom, but by an increase in the population of the Village and a consequential extension of the inhabited buildings to the east. Whether or not my deduction from the present appearance of the Banks is historically correct, such appearance provides no grounds for supposing that the Banks are now waste land by reason of anything which could be described as manorial.

On the above considerations, I conclude that the Banks do not come within the words "of a manor" in the above quoted definition, and accordingly my decision in relation to the Banks (given on the basis of ownership claims as above set out) is that no part of them is within the definition, and they should not therefore have been registered under the 1965 Act.



Nobody at the hearing suggested that the Village Green Piece was not properly registered under the Act. Notwithstanding the memorials and other things on it, it can I think properly be described as waste land. Its appearance is such that it may now be and may always have been waste land by reason of something manorial. If it had been registered under the 1965 Act by itself, there would have been no objection, and such registration would have become final without there ever having been any reference about it to a Commons Commissioner. In my opinion I can and ought to produce the same result.

For the reasons set out above I confirm the registration with the modification that the North Banks Piece and the South Banks Piece as defined above in this decision be removed from the Register so that in the "Description of the land" now contained in the Land Section of the Register for the words "three pieces of land together called THE BANKS and" there shall be substituted the words "piece of land called" and so that the Register map shall be altered by deleting from the three pieces distinguished by the number of this Register unit, the two pieces on the east.

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 1st — day of August

1977

a. a. Baden Fuller

Commons Commissioner