



COMMONS REGISTRATION ACT 1965

Reference No.20/11/94.

In the matter of Bethacar Moor,
Colton, South Lakeland district, Cumbria

DECISION.

This reference relates to the question of the ownership of land known as Bethacar Moor, Colton, South Lakeland District being the part of the land comprised in the Land section of Register Unit No. CL.189 in the register of Common Land maintained by the Cumbria 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 Hart Jackson & Sons solicitors of Ulverston in a letter dated 16 October 1973 said that they act for the owners. 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 Kendal on 5 March 1975. At the hearing the persons whose names are set out in the schedule hereto and therein marked either "p" or "sp" were represented by Mr. R.F. Hart Jackson solicitor of Hart Jackson & Sons, and Colton parish Council were represented by Miss A.C.F. Dobson their chairman and Colonel A.R.R. Dobson their vicechairman.

The land ("the unit land") comprised in this Register unit contains (according to the register) about 551.17 hectares (1361.94 acres). Its registration in the Land section was pursuant to an application of the parish Council. The unit land is in two pieces; one ("the northerly parcel") is much the larger, being about 1 1/2 miles long from north to south, irregularly shaped in some places over 1 1/2 miles wide, comprises all or most of the land known as Bethacar Moor, and is situated northeast, east and southeast of High Withwaite (a village at the south end of Coniston Water); the other ("the southerly parcel") is about 400 yards south west of the northerly parcel between Oxen Park and Oxen Park (about a mile north of Colton), is a G shaped strip ~~about 200 yards long~~ with a varying width (averaging about 100 yards) and includes land known as Robin Haw. The northerly parcel is on the register map divided into two parts by the lines GH and KL (the points G & K are on the boundary of a piece of land which is not registered and which is all surrounded by the northerly parcel). The part ("the claimed part") north and north west of the line GH and KL is far the greater part of the northerly parcel, being all except a small area at the south east corner north of Oxen Park. Of the 22 Entries in the rights section, those numbered 1 to 8 do not relate at all to the claimed part, and those numbered 9 to 22 relate only to the claimed part. The only entry in the ownership section relates to part of the southerly parcel.

Mr. Hart Jackson contended that the claimed part belongs to the Land Owners of the Township of Withwaite who comprised the various persons who now enjoy common rights over the claimed part, and that accordingly the legal estate in the claimed part is now by the Law of Property Act 1925 section 39 and part 7 of the First schedule vested in the public trustee.



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He explained that the persons named in the second column of the Schedule hereto (except one who was very old but who was intended to be included) applied for ownership registration under the 1965 Act, but the registration authority rejected the application on the ground that a legal estate could not be vested in so many persons, that at the time his firm represented all the applicants, but since there had been changes in ownership, so that now his firm only represented those whose names are marked "R" and such of their successors entitled as are in the Schedule marked "RS". In support of his contention he produced the documents below mentioned.

A printed book 193 pages by A.P. Brydson entitled "Some records of Two Lakeland Townships (Blawith and Nibthwaite)". The author says the book is a result of long hours spent in the Record Office in London and in the British Museum and some of it is derived from old deeds of the different properties in his possession. It is undated, but from the list in it of owners and occupiers of Blawith and Nibthwaite in 1907-8 it may be inferred (Mr. Hart Jackson has seen the deeds of the Water Park Estate owned by the author) that it was written about then. After summarising a royal grant made in 1613 of lands in Nibthwaite to the Whitmores and a grant made in 1614 by them of the same lands to three persons, he continues "the three persons having got possession of Nibthwaite forthwith began to sell it; this was continued by various purchasers, so that in 1907 the property is in the hand of some 20 persons". The author then summarised the first indenture of sale (dated 1616) and continues: "To complete this subject the next document dated 17th March 1828 shows the exercise by the land-owners of Nibthwaite of the right to dispose of the common and commonable rights of Bethicar Moor in Nibthwaite Division. After a lapse of 112 years the original grantees by alienation and sale had increased to 20". He then summarises the 1828 indenture thus: "The Land-Owners after declaring that they are seized of the common or commonable rights of pasture and estover of the waste ground described within, sell to E. Harrison (consideration mentioned) all the piece of waste ground called... They also declare that at the time of delivery they are absolutely seized of and in the said common and commons the rights therein sold... in a good sure perfect absolute indefeasible estate of inheritance in fee simple in possession". The author continues "On the completion of the purchase the site was planted... the Scotch firs now form a landmark... The purchase money was handed over to the trustees to be applied towards defraying the highway rate in Nibthwaite and is presumably now devoted to that purpose. Under these grants the Land-Owners of Nibthwaite claim (inter alia) the sporting rights of that part of Bethicar Moor in Nibthwaite".

consent dated 10 January 1842 signed by thirteen persons "We the undersigned Owners and Occupiers of Houses and Land within the Division of Nibthwaite... do hereby consent that George Shaw Petty Esquire may fence in and inclose a parcel of Common ground containing not more than 5 acres... adjoining his messuage... for the use and benefit of himself and his heirs and assigns. He the said... Petty... agrees to pay for the said Common ground the sum of £10 which said sum is to be laid out upon the Highways within the said Division. We the undersigned also reserve the liberty of washing sheep as usual also rights and privileges of roads leading to the common".

A bond dated 17 April 1710 by which the obligers in effect agreed to indemnify each other if they pulled down a fence enclosing contrary to law part of the common.

A bond dated 6 October 1714 by which the obligers in effect agreed to indemnify certain persons if they took legal proceedings to preserve the rights and privileges of and in the common Bethicar Moor.



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An extract of the Endowed Charities (Lancaster) Return dated 21 May 1900 comprising the reports made to the Charity Commissioners of the result of inquiries held in the Parish of Colton in the Division of Nibthwaite:- "Highways Fund...the information obtained in respect of (this Charity) was not so full or so definite as could be wished. It is stated that in 1827 or 1828 a portion of the Common Land on Bethacar Moor about 20 acres in extent...was sold by the landowners in the Nibthwaite Division or the majority of them, for the sum of £250 and that another piece of the same land...containing about 1 acre was sold at a date not ascertained for the sum of £10. Of the first mentioned purchase money £50 was applied it is believed by the Surveyor of the Highways towards the repair of the roads. The remainder with the sum of £10 obtained from the sale of the smaller piece is now invested upon a bond for £210 of the Mersey Docks Harbour Board... The interest is applied towards the reduction of the highway rate for the district.. Bethacar Moor appears to belong to the landowners of Nibthwaite in undivided shares".

A certificate in the names of P.R.B. Brydson, G. Ward and F.E. Hart-Jackson (the witness's father) for 993.57. 7.25% Redeemable Debenture Stock 1975 and 58 Ordinary Stock of the Mersey Docks and Harbour Company (being in lieu of £110 6½ Redeemable Debenture Stock 1971).

The Register of Electors of the Parish of Colton and Rusland (61 in all) for 1969/70.

Two deeds dated 1616.

Mr. Hart Jackson who has lived in Ulverston all his life (born in 1938) and worked there as a solicitor said (in effect):- The Grazing of the Claimed Part is with heave bred sheep; the local practice is for a flock of sheep to be heaved to (i.e. go with) a particular farm; it is not restricted to any particular part of the Common or its outage; farmers (apart from helping each other on a gath ing day) exercise their rights of grazing separately. Before the applications for registration a meeting was held to agree the acreage basis. On a change of tenant, the local practice is for an independent farmer as an expert to certify the flock that ought to be handed over to the new tenant (the tenancy agreement specifies the number of the flock owned by the landlord; the independent farmer identifies the sheep to be handed over); if the actual flock is bigger than is supposed to be kept there, the outgoing tenant keeps the surplus. He had seen many conveyances by which the local farms enjoying these rights were conveyed; in some of them following the description of the land there are words such as "together with a right to graze on Bethacar Moor with the flock of heave bred and heave going sheep" (the number of sheep may or not be stated); in others grazing rights are not mentioned at all, the parties presumably relying on the statutory provisions applicable. He had spoken to the Agent of the Duke of Buccleugh who is reputed to be the Lord of the Manor which now or formerly comprised or could have comprised the Claimed Part, and understood that he did not claim the ownership. The income of the Mersey stock is now paid to the Local Authority in discharge of general rates, who make a small allowance to the ratepayers in the township of Nibthwaite.

Miss. Dobson said (in effect):- The Parish Council make no claim to ownership but considered it would be convenient if the ownership position was determined.

In my opinion, common land may be owned by the persons who have rights of common over it and the legal estate in fee simple in such land may by the Law of Property Act 1925 have become vested in the Public Trustee, as suggested



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by Mr. Hart-Jackson. I have set out the legal principles which I consider to be applicable to a case such as this in my decisions dated 15 July 1974 and 10 October 1974 in re Longton Out Marsh reference 20/U/31 and in re Ireshope Moor, reference 11/U/19; see also the High Court Decision, re Cotherstone, Estates Gazette, 1 July 1961. Whether such a combined soil and grazing ownership exists in respect of any particular common must be determined in the same way as the existence of other interest in land is determined; the relevant documents must be considered, along with the evidence as to the nature of the land and as to its use.

The 1616 deeds produced to me seem to be similar to that dated 1616 and summarised by A.P. Brydson in his book; none of the deeds seem to me to throw any light on the present ownership of the Claimed Part.

The 1828 Indenture, the 1842 Consent and the 1900 Return all indicate that it was considered that the landowners of Nibthwaite could sell the soil. I infer that the £10 mentioned in the 1842 Consent and the £10 mentioned in the 1900 Return are the same; the application of the proceeds of sale for public purposes considered by itself may be an indication that the soil was either Parish Property or was held on a public charitable trust, but contra the 1900 return indicates that such application may have originated in an agreement made at the time of the sale by the soil owners, and the 1842 consent appears to contain such an agreement.

The Landowners of the locality cannot (except under a charitable trust for inhabitants) own a legal estate in land. Ownership by someone being or claiming under a lord of a manor or by the parish, is negated by the absence of any such claimant. The 1828 indenture as summarised by A.P. Brydson, although consistent with a combined soil and grazing ownership, is not a clear indication for or against. However the 1900 Return is clear enough if the landowners of Nibthwaite can be read as meaning such of the landowners as have grazing rights over the Claimed Part. Having regard to all the information I have about this land, I conclude that I should so read it, and accordingly find that as regard to the Claimed Part a combined soil and grazing ownership exists.

For these reasons I am satisfied that the Public Trustee is the owner of the Claimed Part and I shall accordingly direct the Cumbria County Council as registration authority under section 2(2) of the 1965 Act to register the Public Trustee as the owner of the part of the Northerly Parcel of the land comprised in this Register Unit which is north or north-west of the lines GH and KL on the Register map. The remainder of the land comprised in this Register Unit so far as neither within the said direction nor the subject of the now existing Entry in the ownership section, will remain subject to protection under section 9 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.

TURN OVER



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SCHEDULE

Representation and Right Section Entry No.	Name and Address	Property owned in the Nibthwaite Division.
R:(2) Entry No.9	The National Trust for Places of Historic Interest or Natural Beauty, Broadlands, Borrans Rd Ambleside, Westmorland.	1) Woodland and Pasture adjoining and adjacent to Coniston Water. 2) Park-a-Moor Farm.
RS: his personal representatives: Entry No.21.	Sawrey Milburn Nibthwaite Farm High Nibthwaite, Ulverston.	Nibthwaite Farm.
R.	Paul Reginald Benson Brydson Water Park, Ulverston.	Water Park.
R.	George Gard Nibthwaite Grange Low Nibthwaite Nr. Ulverston.	1) Nibthwaite Grange 2) Nibthwaite Grange House
R. Mrs. Quirk and R.S. her daughters; (1) Entry No.10, and (3) Entry No.11. Query whether Entry No.15 also relates.	Mrs.Kate Marie Paula Sophie Kirk 6 Boyne Terrace Mews London W.11 and John Cole 66 Lincoln's Inn Fields London. W.C.2.	1) Nibthwaite Old Hall 2) Nibthwaite Old Hall cottages 3) Lake End.
R.	Lt. Commander Ian Hugh Pirnie Caws Beck Nibthwaite Nr. Ulverston.	Caws Beck.
R.	Lowry Stephen Hart Jackson 60 Kings Street Manchester.	Rose Cottage.
R: (1) Entry No.12.	Francis Bertrand Hart Jackson 8-10 New Market Street, Ulverston and the said Lowry Stephen Hart Jackson	1) Stock Farm 2) Arklid Farm



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R.	Myles Satherthwaite Mount Etna Low Nibthwaite Nr. Ulverston.	1) Nibthwaite Bobbin Mill 2) Mount Etna
R.	James Lawrence Kidd Whitaker, 1, Clifton Street, Blackpool.	Three houses at Low Nibthwaite
-	John Sheldon Barn End Cottage Nibthwaite	Barn End Cottage.
R.	Gordon Kiddie Fell View Cottage Low Nibthwaite Nr. Ulverston.	Fell View Cottage (formerly Arklid Cottage)
R: Entry No.14	The said Sawrey Wilburn and William Fairer, Arklid Farm, Nibthwaite, near Ulverston.	Town end.
R. Entry No.15	Wilfred Douglas Wilburn High Bethcar Nibthwaite	High Bethcar
-----	Captain Kenneth Alfred Goudge R.N. Mrs. Elizabeth Remington Goudge Bridge Field Spark Bridge.	Bridge Field
R.	Richard Kirkham Harrison Bridge Field Cottage Spark Bridge Nr. Ulverston	Bridge Field Farm
R	John Atham Gaddington Bennets Close, Wiswell, Shay Whalley, Lancashire	Bridge Field Cottage.



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S. her son and daughter
in law; Entry No.16.

Mrs. Ethel Boyren
Little Holme,
Blawith
Nr. Ulverston.

Hill Park.

R: Entry No.22

Walter Robert Dickinson
Abbot Park
Colton
Nr. Ulverston.

Abbot Park.

R.

John Dallas Ulf Machell
Penny Bridge Hall
Nr. Ulverston

Park End Wood (formerly Kirkby Wood).

R. Entry No.17

Joe Jackson
High Ickenthaite
Haverthwaite
Nr. Ulverston.

High Ickenthaite

R: Entry No.19.

Peter Mayor Fairclough and
Patricia Fairclough
Low Ickenthaite
Rusland,
Nr. Ulverston.

Low Ickenthaite

R: W.M. Dickinson and
D. Dickinson (Mrs. W.M.
Dickinson is now dec'd);
Entry No.18.

Bertha Mary Dickinson, Adam
Nyles Dickinson and Oswald
Dickinson, Park House Bank
Haverthwaite, Nr. Ulverston.

Park House Bank.

R: Entry No.20

David Henry Stephen Pain,
10 Lane Street, Liverpool
Marion Sarah Dobson, 5555 Cote
des Neiges Road, Montreal
Province of Quebec, Canada,
Anthony Richard Benedict
Dobson, Springfield,
Colton, Ulverston and
Benjamin George Palin
Dobson, 42 Old Mill Lane,
Colton.

Ashlack Farm.

Felix Charles Wraight &
Mrs. Lucy Marjell Wraight,
Town Yeat Cottage, Hithwaite
Near Ulverston.

Town Yeat Cottage.

Dated this 29th —

day of July — 1975.

a. a. Bates *Filler*

Commons Commissioner.

