



In the Matter of Burgh Marsh, Burgh by
Sands, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Burgh Marsh, Burgh by Sands, being the land comprised in the Land Section of Register Unit No. CL 70 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 no person claimed to be the freehold owner of the land in question, but Messrs Jackson and Bliss, Solicitors, on behalf of the Management Committee of the Burgh Marsh Proprietors 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 Carlisle on 23 March 1983.

At the hearing the Management Committee of the Burgh Marsh Proprietors was represented by Mr William George, of Counsel, and Mr W Watson, Solicitor, appeared for the Executors of Thomas Pattinson deceased.

By an award confirmed by the Inclosure Commissioners for England and Wales on 18 September 1848 the land the subject of the reference was converted from a gated pasture to a regulated pasture pursuant to the provisions of section 113 of the Inclosure Act 1845.

Under and by virtue of section 116 of the Act of 1845 the land in question was vested in the persons who were under the directions and determinations of the award the owners of the stints or rights of pasture therein as tenants in common in proportion to the number of stints allotted to each such owner. Immediately before 1 January 1926 the land was held at law and in equity in undivided shares vested in possession in such owners or their successors in title.

After the coming into operation of the Law of Property Act 1925 the land became vested in the Public Trustee, but there was some difference of opinion as to whether such vesting was by virtue of para. 1 (4) of Part IV of the First Schedule to that Act or whether the vesting was by virtue of para. 2 of Part V of that Schedule. In 1927 and 1928 there was correspondence with the Public Trustee who refused to accept notices of dealings with the stints under section 137(2)(iii) of the Act of 1925 unless he was nominated under section 138 of that Act.

At the hearing I was asked to adjourn the matter in order to give an opportunity for a deed of appointment of new trustees to be executed under para. 1 (4)(iii) of the First Schedule of the Act of 1925. This was done on 10 June 1983, when Mr E S Bliss, Mr J M Hodgson, Mr D Pattinson, and Mr D E Hodgson were appointed. The Public Trustee was informed of this by a letter dated 14 June, and on 17 June he replied, raising no objection to the action taken and stating that it appeared that he then had no interest in the land.



It does not appear to me that this necessarily concludes the matter. As I see it, it is still my duty to consider under which provision in the First Schedule to the Act of 1925 the land became vested in the Public Trustee. In this I have been greatly assisted by a written submission signed by Mr David Gilliland, of Counsel, which was handed to me at the hearing. It does not appear to be necessary for me to repeat the careful exposition of the law relating to the matter contained in Mr Gilliland's submission. Suffice it to say that I feel bound by the decision of Eve J in Re Townsend, (1930) 2 Ch. 338, cited by Mr Gilliland, to hold that the land did not vest in the Public Trustee under para. 2 of Part V of the First Schedule to the Act of 1925. It therefore follows that the land must have so vested under para. 1(4) of Part IV of the First Schedule.

In these circumstances I am satisfied that the new trustees are the owners of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register them 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.

Dated this

25th

day of

July

1983

Chief Commons Commissioner