



In the Matter of Hutton  
Roof Village Green,  
Mungrisdale, Eden District,  
Cumbria

FIRST DECISION

This reference relates to the question of the ownership of land known as Hutton Roof Village Green, Mungrisdale, Eden District being the land comprised in the Land Section of Register Unit No. VG 90 in the Register of Town or Village Greens maintained by the Cumbria (formerly Cumberland) 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 (1) Mungrisdale Parish Council said (letter dated 3 January 1979 from their clerk) that they understood that this Green is (with a recreation allotment and another Green in Register Units Nos VG 165 and VG 106) awarded to the parish under an old Inclosure Award but they "have no supporting documents relating to this; and (2) Mr M and Mr M M Barnes said (letter received 19 April 1969) that they had an agricultural Repair Workshop adjoining the land and that machinery awaiting repair is stored on part of it and that their business had been established for more than 25 years. No person claimed to be the freehold owner of the land in question and no other 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 Penrith on 25 April 1979. At the hearing (1) Mr Andrew Boyes and Mrs Isabel Boyes of 52 Shaw Wood Road, Thursby, Carlisle were represented by Mr D Mellor solicitor of Little & Shepherd, Solicitors of Penrith; and (2) Mr Thomas Barnes, Mrs Mary Barnes and Mr John Barnes of Hutton Roof Farm, Hutton Roof, Penrith who are in partnership as farmers under the name "T M & J Barnes" were also represented by Mr Mellor.

Mr Mellor opened the proceedings by saying that Mrs I Boyes claimed ownership of all the land as part of Hutton Roof Farm of which she is the owner and which is tenanted by the partnership T M & J Barnes and that having no documentary evidence of ownership, their ownership claim is by possession and use over a long period of time.

In support of the claim oral evidence was given by Mr & Mrs Boyes and by Mr Thomas Barnes. After the hearing, Mr Mellor supplied me with certified copies of the documents listed in the First Schedule hereto.

Since the hearing there have been received in the office of the Commons Commissioners the letters listed in the Second Schedule hereto, some of which contain information about the land which was not available to me at the hearing and nearly all suggest that there may be persons who could if the hearing was reopened or treated as adjourned, give evidence which might throw light on its present ownership.

By regulation 21 of the Commons Commissioners Regulations 1971, a Commissioner may proceed with a hearing in the absence of any person entitled to be heard. However such regulations also provides that if a Commissioner does this, he may on the application of that person reopen the hearing and set aside any decision. Under regulation 20 the Parish Council were entitled to be heard at the April hearing, and I must I think (although I may not have said so at the time, be taken to have proceeded in their absence in accordance with regulation 21). The Clerk of the Commons



Commissioners has written to the Parish Council explaining the regulation; in their last letter dated 1 October 1979, the Parish Council say (in effect):- They do not feel justified in demanding another inquiry "as you already have all the relevant evidence". However to support the claim they made on 3 January they enclose a map supplied by the Cumbria County Council record office to show that the village green "includes a public watering ground awarded to the Parish in 1796". The Lake District Planning Board has now served enforcement notices for misuse of the green. The Council hope the ownership question will be resolved in its favour.

As I read the said Parish Council letter they are asking me to give a decision against Mrs Boyes on information supplied by them in letters which neither Mrs Boyes nor her solicitors on her behalf will have an opportunity of explaining or dealing with. In my opinion this course would be unjust and I refuse to follow it.

Regulation 21 is not applicable to the other persons who have written letters as set out in the Second Schedule hereto. So in the result I have no application under this regulation; nevertheless I am not I think obliged to give a decision on the evidence put before me on behalf of Mrs Boyes at the April hearing if I consider it just to grant an adjournment.

By regulation 23 of the said 1971 Regulations, as a hearing relating to the question of the ownership of any unclaimed land, the Commissioner may take evidence from any person present who gives his name and address and wishes to give evidence. No such person at the April hearing so volunteered, but as I read the letters listed in the Second Schedule hereto, there are or may be a number of persons who if they had known of the hearing and/or the possible claim on behalf of Mrs Boyes, would have volunteered evidence. Accordingly notwithstanding the absence of any request by the Parish Council to reopen the hearing, I adjourned the proceedings.

At the adjourned hearing <sup>it will be</sup> reopened to the writers of the letters or any other person to volunteer evidence in accordance with regulation 23 and to produce any documents they consider relevant. By regulation 17 a Commissioner shall sit in public accordingly in my view as a general rule I should pay no attention to information supplied to me by letter not explained or referred to by any person present at the hearing. The adjourned hearing will be at the ~~Cannock Chamber, Cannon Works~~, <sup>Christians Parish Rooms, Park Road, Peaslip</sup> Peaslip on Tuesday 22 January 1980 at 10.30 am.

I am required by regulation 30(1) of the Common 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

Part A:- Farm and lands of 81 acres 13 perches

- (1) 14 November 1876 Deed of enfranchisement by Henry Charles Howard as Lord of the Manor of Greystoke in favour of William Longrigg of various tenements then subject to customary rents as a freehold estate of inheritance discharged from all rents etc.
- (2) 1919 Abstract of the title of William Falconfield Longrigg to Hutton Roof Farm comprising an abstract of the said 1876 deed, the will of William Longrigg and the probate of it.



## FIRST SCHEDULE - (Cont'd)

- (3) 3 July 1919 Conveyance by William Fallowfield Longrigg as devisee under the will of William Longrigg (he died 11 May 1915) to Miss Kate Parker of Hutton Roof Farm containing 81 acres 18 perches then in the occupation of George Armstrong as tenant comprising the OS Nos in the Schedule listed.
- (4) 13 July 1963 Assent by Mrs Isabel Boyes as executrix of Miss Kate Parker (she died 13 March 1963) to the vesting in herself of the farm containing about 81 acres and 18 perches, then in her occupation as delineated on the plan annexed and comprising the OS Nos therein specified.

## Part B:- Pastures and other lands of 32.964 acres

- (5) 1951 Abstract of the title of Lady M. R Denman to a freehold estate at Hutton Roof being an abstract of a conveyance dated July 1917 by The Equitable Reversionary Interest Society Limited to her of a farm and land then in the occupation of Mrs Isabella Hind as tenant and containing about 60 acres 2 roods and 20 perches.
- (6) 25 March 1961 Conveyance by Lady May Padley Denman to Mr Andrew Boyes and Mrs Isabel Boyes of lands at Hutton Roof and Low End described in the Schedule by reference to OS Nos containing altogether about 32.964 acres.

## SECOND SCHEDULE

(Letters received since April Hearing)

- (1) 7 May, 3 July,  
30 July,  
21 August, and  
1 October 1979 from Mrs E D Pyman  
of Redmire,  
Mungrisdale,  
Penrith as Clerk  
to Mungrisdale  
Parish Council
- (2) ~~10 July~~ and  
1 October 1979 from Mr J R Stevenson of  
Brow Top Farm,  
Mungrisdale, Penrith



## SECOND SCHEDULE - (Cont'd)

(3) 25 September 1979

from Watson Lewis & Co, Chartered Surveyors  
of St Andrews Churchyard, Penrith, as agents  
for the Richardson (Wham Head) Estate.

(4) 24 October 1979

from Squadron Leader T L Thompson of  
5 Ash Road, Tring, Herts.

Dated this 18<sup>th</sup>

day of November

1979.

*a. a. Baden Fuller*

Commons Commissioner