



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/313

In the Matter of land southeast of
Colby Bridge, Colby, Bandleyside,
Eden District, Cumbria.

DECISION

This reference relates to the question of the ownership of land southeast of Colby Bridge, Colby, Eden District being the land comprised in the Land Section of Register Unit No. CL 139 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) 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 the Charity Commission sent to the office of the Commons Commissioner a copy of an affidavit sworn on 20 October 1980 by Mrs I E Jones who is an executive officer employed at their Northern Office. No persons claimed to be the freehold 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 24 October 1980. At the hearing Mr G A Hurst attended in person in his capacity as clerk of Colby Parish Meeting.

Mr Hurst produced the said affidavit from which it appeared that the Colby Moor Inclosure Award 1854 included an allotment: "unto the Churchwardens and Overseers of the said Township of Colby all these two pieces or parcels of land numbered respectively 52 and 53 upon the said map marked A and containing together three acres three roods and thirty seven perches to be held by them and their successors for ever in trust as a place of exercise and recreation for the inhabitants of the said Township and Neighbourhood..."

Mr Hurst said (in effect):- The parishes of Colby, Ormside and Hoff are now grouped together under Bandleyside Parish Council; the Colby Councillors were concerned that this land should be awarded to Colby and not to the three combined Parishes.

He thought that at the time of the registration nobody in the village knew of the allotment referred to in the affidavit. As to the 3a. 3r. 37p. mentioned in it, he thought that the land in this registration was not much if anything more than 1 acre. The land is near the River (Hoff Beck) where it forks, below the Bridge; it is mostly grassed with a lot of young saplings, particularly on one side; much of the other side is low lying with a tendency to become marshy. Nevertheless land in parts could be a useful playground for the Village.

Because of the doubts felt at the hearing as to the identity of the land described in the above quoted allotment with that with which I am concerned, I inspected a copy of the Award in the Public Record Office in London. On the Award map plot 53 is an irregularly shaped piece of land all north of the road over the Bridge to Appleby, situated to the east of what is (or was then) the Mill Stream



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and extending from the road to a point a short distance to the northeast of what is (or was then) Kangaroo Inn. Plot 52 is south of the road and its situation corresponds very closely to the land in this Register Unit as delineated on the Register map. Plots 53 and 52 on the Award map are thereon marked 3.1.15. and 0.3.11. (not totally the 3a. 3r. 37p. mentioned in the Award). *Not -*
- Withstanding ~~the~~ difficulty there may be in the area, I conclude that plot No. 52 mentioned in the allotment should for all purposes with which I am concerned be treated as the same as the land in this Register Unit.

Under the 1965 Act land allotted as plot No. 52 has been by the 1854 award could have been registered as a town or village green and not as common land, see section 21; and if it had been so registered and if I had not been satisfied as to its ownership, ~~it~~ would have been required by section 8 of the Act to vest it in the Parish Council. But having been registered as common land, I have no discretion to award it particularly for the benefit of Colby ~~and~~ to the exclusion of Ormside and Hoff (as suggested by Mr Hurst), being obliged by the Act to direct the registration of the land in whoever upon the evidence I am satisfied is the owner. Notwithstanding that the land may have been erroneously registered as common land, I consider that as to its ownership the chairman should have regard to the 1854 allotment and conclude that it is now vested in the successors of the Churchwardens and Overseers of the Township of Colby; being Bandleyside Parish Council. I am not concerned and have no jurisdiction to determine the trusts upon which the Parish Council ~~with~~ hold this land; but having regard to the views of the Colby Parish Councillors as above recorded, I can I think say that I know of no good reason why the trust declared by the Award for the benefit of the Township of Colby should not continue to be binding on the Parish Council.

In the above circumstances I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register Bandleyside Parish Council 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 30th day of January 1981

a. a. Baden Fuller

Commons Commissioner