



COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/381-382

In the Matter of Loughrigg Common,
Grasmere and Rydal and Loughrigg
Cumbria (No.1)

DECISION

These disputes relate to the registration at Entry No 1 in the Ownership section of Register Unit No.CL.79 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objection No. 2/110 made by Mr R V R Marsh and noted in the Register on 13 August 1971 and the conflicting registration at Entry No. 2 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Kendal on 11 June 1981. The hearing was attended by Mr J Spedding, of Counsel, on behalf of the Earl of Lonsdale, the applicant for the registration, and by Mr E K Wilson, Solicitor, on behalf of the Objector. There was no appearance by or on behalf of Mr J P Blackledge, the applicant for the conflicting registration.

In the absence of any evidence to support the conflicting registration, it is unnecessary to consider the dispute occasioned by it. The Objection relates to only a very small part of the land comprised in the Register Unit. This part, known as Gilbert Scar, has an area of 6.372^{ac} and lies at the eastern extremity of the land comprised in the Register Unit. It consists of fairly steeply sloping woodland, with scrub and coppice in the northern part and slightly more mature deciduous trees in the southern part, but there is no evidence of management or of grazing. There ^{are} a fence to prevent animals falling over the edge of the scar and the remains of other walls and fences, but no evidence as to who erected them.

Lord Lonsdale is the lord of the manor of Loughrigg, and he claims that Gilbert Scar is part of the waste land of the manor in his ownership. The Objector, on the other hand, claims that Gilbert Scar is in the ownership of The Grennan Ltd by virtue of a conveyance made 24 September 1971 between (1) Edith Joyce Milward and Lorraine Joyce Lewis Milward (2) The Grennan Ltd.

It is admitted that Lord Lonsdale is the Lord of the Manor, but his documents of title merely include the manor of Loughrigg among other manors without further particularity. The only document which could be produced to supplement the documents of title was a map, based on an Ordnance Survey Map published in 1920, which purported to show the waste land of the manor including Gilbert Scar. This map has been kept in the Lonsdale Estate Office. The agent in the 1920's was Mr William Little, a solicitor, but it is not known that he prepared the map personally or on what material it was based.

By a lease dated 23 October 1961 Lord Lonsdale let his interest in the manor of Loughrigg to the National Trust for a term of 50 years determinable on his death at the rent of 1/- (5p) a year. A copy of the map was attached to the lease.



Gilbert Scar was included with the land to the north and east and a house known as Miller Bridge in the parcels of the conveyance of 24 September 1971. Mrs E J Milward and Miss L J L Milward had separate titles to the northern and southern parts of Gilbert Scar. The northern part (3a.3r.19p) was the subject of a Conveyance made 20 May 1948 between (1) Helen Rachel Clay (2) E.J.Milward and L J L Milward, and the southern part (2a.lr.29 p) was the subject of a Conveyance made 16 June 1952 between (1) Marjorie Bowden (2) E J Milward and L J L Milward. The title to the northern part can be traced back to the will dated 22 January 1910 of the Revd. John Harden Clay, who died on 31 October 1923, and the title to the southern part can be traced back to the will dated 11 December 1903 of Thomas Watson, who died on 19 June 1912. Thomas Watson held the southern part, which was described in the parcels of a Conveyance made 13 November 1912 as "all that plot piece or parcel of land being portion of a close of land called 'Gilbert Scar Wood'--- late in the occupation of the said Thomas Watson", with other land described as parts of an inclosure called "the Roads". The land held by Thomas Watson was stated to be subject to the reservations (if any) contained in an indenture of enfranchisement dated 2 June 1827 made between (1) William, Earl of Lonsdale (2) James Cookson. It does not, however, appear that all the land held by Thomas Watson was subject to these reservations, and it would, in my view, be unsafe to infer that any particular part of the land had been enfranchised in 1827. Nevertheless, as Willes J said when delivering the unanimous opinion of the Judges in Malcolmson v O'Dea (1862), 10 H.L.C.593, at p.614, in the case of property allowing of continuous enjoyment, without proof of actual exercise of the right, any number of mere pieces of paper or parchment ought to be of no avail. The difficulty in this case is that the nature of the land in question does not lend itself to continuous enjoyment and that the evidence of any sort of enjoyment is extremely slender.

There is no evidence of any use of the disputed land having been made by Lord Lonsdale or his tenant, the National Trust. On the other side, evidence was given by the Objector, who is both the Secretary of The Grennan Ltd and a nephew of Mrs Milward. The Objector has known the land since 1948. He said that he had done maintenance work on the safety fence in order to stop sheep from the common getting through to the Miller Bridge land to the east and that cattle belonging to the tenant of the land to the east had gone into the wood for shelter, though no right to do this was included in the tenancy agreement. Mrs E M Biden, a sister of the Objector, who has lived in Miller Bridge House since 1970 and before that in the gardener's cottage since 1960, said she had taken fallen wood for firewood from the whole length of the disputed land and had given permission to boys to collect wood.

Although there is no evidence of any use of the land being made by either Lord Lonsdale or the National Trust, the granting of the lease was an act of ownership on the part of Lord Lonsdale. While the probative value of the transaction would have been much greater if the National Trust had subsequently made some use of the land, it can at least be said that Lord Lonsdale has been in receipt of the rent, though the portion of the rent attributable to the disputed land must be minimal. Against that has to be set the repair of the fence by the Objector and the taking of firewood by Mrs Biden and her licensees. Mr Spedding pointed out that the taking of firewood by Mrs Biden was consistent with there being a profit à prendre attached to the Miller Bridge property, but such a profit would extend only to taking wood for use on the dominant tenement and would not enable the occupier to allow other persons to take wood for use elsewhere. Furthermore, the taking of wood by Mrs Biden would only be consistent with there being a profit à prendre until 2 January 1970. Not having been registered in the Rights Section of the Register Unit, any such profit would not have been exercisable after that date by virtue of S.1 (2) (b) of the Commons Registration Act 1965.



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I am thus faced with two nicely balanced cases, neither of which can be described as strong. On Lord Lonsdale's side is his exercise of ownership by the granting of the lease to the National Trust and the receipt in respect of the disputed land of a minute fraction of the rent of 5p. per annum. On the Objector's side, I disregard the work on the fence done by the Objector, since it was not an enjoyment of the land, but only an endeavour to stop sheep from the common using it as a means of access to the land to the east, while the taking of firewood by Mrs Biden before 2 January 1970 might not have been an act of ownership, but the exercise of a profit à prendre. I am thus left with the giving of permission to boys to collect firewood and the taking of wood by Mrs Biden after 2 January 1970, to set against the lease and the receipt of the rent. The acts of ownership on each side can fairly be described as minimal, but the physical acts on the land itself seem to me to have slightly greater weight than the lease and the receipt of the rent, which have not involved any physical contact with the land.

This is sufficient to dispose of the matter, but it has also to be borne in mind that Lord Lonsdale's claim to ownership is based upon the contention that the land in dispute is waste land of the manor of Loughrigg. This contention seems to me to be inconsistent with the description of the southern part of the land in the parcels of the indenture of 13 November 1912 as "portion of a close of land called 'Gilbert Scar Wood' --- late in the occupation of the said Thomas Watson". Presumably the other portion of the close called "Gilbert Scar Wood" was the northern part of the land in dispute though it cannot be assumed that that portion was also in the occupation of Thomas Watson. Nevertheless, the description of the land as a "close" indicates that it did not in 1912 fall within the definition of manorial waste enunciated by Watson B in Att. - Gen. v Hammer (1858) 27 L.J.Ch.837, and this is fortified by the fact that a part, if not the whole, of it was occupied.

For these reasons I confirm the registration with the following modification, namely the exclusion from the particulars in column 4 of the land the subject of the Objection.

My only jurisdiction under S.6 (1) of the Act of 1965 is to give a decision on the registration which is the subject of the disputes. I have no power to decide that the Grennan Ltd is the owner of the disputed land and then to make a new registration in respect of it. That land will have to remain for the time being without any person registered as its owner, so that in due course the question of its ownership will have to be referred to a Commons Commissioner under s.8 (1) of the Act.

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

June

1981

Chief Commons Commissioners.