



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/591

In the Matter of part of Blawith Fell,
Blawith and Subberthwaite,
South Lakeland District, Cumbria

SECOND DECISION

This decision is supplemental to a decision dated 28 October 1987 and made by me after a hearing at Keswick on 12 May 1987 following a reference relating to the question of the ownership of the part ("the Referred Part") therein defined of the land known as Blawith Fell, Blawith and Subberthwaite, being the land comprised in the Land Section of Register Unit No. CL155 in the Register of Common Land maintained by Cumbria County Council.

In the First Schedule to the said 1987 decision, the Referred Part was stated to include 7 pieces therein called: (1) The Tottlebank Piece, (2) The Subberthwaite Bank Piece, (3) The Houkler Hall Piece, (4) The Picthall Piece, (5) The Katymoss Piece, (6) The A5084 Roadside Piece, and (7) The South of Fairholme Green Piece. By the said decision as regards all the said pieces except The Katymoss Piece, the proceedings were adjourned.

I held the adjourned hearing at Ulverston on 19 January 1988. At such hearing: (1) Mr Joseph Reginald Stalker and Mrs Mary Stalker who claimed to own the Houkler Hall Piece were represented by Mr Rowland Frederick H Jackson solicitor of Hart Jackson & Sons, Solicitors of Ulverston; (2) Mr Ross Edward McMillan Baxter who claimed to own the Picthall Piece was represented by Mr M S Graham solicitor of Iain MacI Livingston, Solicitors of Ulverston; (3) The Lake District Special Planning Board who claimed to own the A5084 Roadside Piece were represented by Mr C J Chapman, solicitor employed in their Legal Department; and (4) Mr David Nicholson of Birch Bank Subberthwaite and Mr Keran Stalker of Greenholme Farm as persons interested in the registrations at Rights Section Entry Nos. 17 and 21 and as such concerned with the ownership of the Tottlebank Piece and the Subberthwaite Bank Piece attended in person.

In the course of his oral evidence Mr J R Stalker produced the documents specified in Part I of the Schedule hereto and said (in effect):- On 5 April 1952 he went into possession of Houkler Hall Farm which he had bought under the November 1951 conveyance (JRS/3) and had ever since farmed it in partnership with his wife Mary Stalker (Mary Fairer before they were married in 1952).

As appears in my said 1987 decision, on 2 June I inspected the Houkler Hall Piece accompanied by Mr J R Stalker. It appears to be part of Houkler Hall Farm as by the 1916 and 1951 conveyances expressed to be conveyed.

On the evidence above summarised, nobody suggesting the contrary, I am satisfied that Mr J R and Mrs M Stalker are the owners of it, and accordingly pursuant to section 8(2) of the 1965 Act I shall direct Cumbria County Council as registration authority to register Mr John Reginald Stalker and Mrs Mary Stalker both of Houkler Hall Farm, Blawith as owners of the Houkler Hall Piece.



In the course of his oral evidence Mr R E M Baxter produced the documents specified in Part II of the Schedule hereto, and said (in effect):- Mr A C C Baxter, grantee under the 1945 conveyance (REMB/2) was his father and Mrs Gwendoline Baxter, grantee under the 1975 conveyance is his mother. The Picthall Piece had been farmed by him, grazed with sheep and cattle; he thought it should not have been registered; it is totally enclosed by a stone wall.

As appears in my said 1987 decision, on 2 June I inspected the Picthall Piece, accompanied by Mrs J Baxter. It appears to be part of Picthall Farm as by the 1945 and 1975 conveyances and the 1982 deed expressed to be conveyed.

On the evidence above summarised, nobody suggesting the contrary, I am satisfied that Mr R E M Baxter is the owner of it, and accordingly pursuant to Section 8(2) of the 1965 Act, I shall direct Cumbria County Council as registration authority to register Mr Ross Edward McMillan Baxter of Picthall, Blawith as the owner of the Picthall Piece.

Mr Chapman claimed that the A5084 Roadside Piece was owned by the Lake District Special Planning Board being the successor under the Local Government Act 1972 of the National Park Authority constituted in 1951 under the National Parks and Access to the Countryside Act 1949. In support of this claim oral evidence was given by Mr Hugh Jonathan James Williams surveyor and land agent with them, in the course of which he produced the abstract of title and conveyance specified in Part III of the Schedule hereto. Mr Chapman relied on the September 1971 conveyance made by the Boughton Estates Limited ("BEL"). Under this conveyance the Board became the owners of the part of the land in this Register Unit of which in July 1970 BEL were at Entry No. 2 of the Ownership Section registered as owners; the part being all the land in this register unit except the Referred Part herein before defined and a comparatively smaller area specified at Entry No. 1.

I accept Mr Chapman's submission that the circumstance that BEL July 1970 Ownership Section registration does not include the A5084 Roadside Piece (it is east of the line RS on the Register map mentioned in column 4 of the registration at Entry No. 2), does not necessarily preclude my being satisfied that they in September 1971 owned it, and were then able to convey it to the Board. But the circumstance requires some consideration as possibly casting some doubt on the Board's claim.

Mr Williams said (in effect):- The A5084 Roadside Piece is east of the road (A5084); Pen Hill is on the west side of the road: along the east boundary of the Piece is the wall of the enclosed land further from the road to the east. The land on both sides of the road (up to the said wall) appears the same and there is no physical barrier between (except so far as the road itself is a barrier). A short distance to the north, the road (A5084) at Fairholme Green crosses the land in this Register Unit leaving an area to the east mostly about 75 yards wide. He believed that the conveyance plan indicated the land thereon edged red included (at the line RS on the Register map) both sides of the road, that is all the A5084 Roadside Piece, so the ownership of it under the conveyance is in the Board.

Mrs Harrison said that from the Register map (held by the County Council as Registration Authority) it appears that the Register Unit does (along the line RS) include land on both sides of the road.

Having considered as best I can the plan on the 1971 conveyance, in conjunction with the information given to me by Mr Williams and Mrs Harrison, I conclude that by the



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1971 conveyance, the A5084 Roadside Piece was by it by expressed to be conveyed. The conveyance is therefore some (not conclusive) evidence that BEL were then, and under it the Board became, owners.

The plan annexed to the 1933 conveyance as it appears in the 1971 BEL abstract of title indecisive as to the question above considered. However the abstract at least shows that BEL so far as they were not absolute owners of the land east of the road owned the minerals under it up to the edge of the Lake.

The 30 Rights Section registrations are all over "the whole of the land comprised in this Register Unit". The A5084 Roadside Piece is finally registered as common land and is therefore prima facie different from highway verge. My hearings have been locally advertised, and neither the owner of the enclosed land to the east of the Piece nor anyone other than the Board has claimed ownership. It is I think reasonably certain that the Piece was at one time considered to be in the same ownership as the rest of the nearby common on the other side of the road; this ownership would so continue until 1971 unless BEL or their predecessors conveyed it to someone else. As between the 1970 Ownership Section Entry No. 2 showing such a prior conveyance, and the 1971 conveyance showing there was none such, I prefer the 1971 conveyance. I am therefore satisfied that the Board are the owners of the Piece and accordingly I shall pursuant to Section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register Lake District Special Planning Board of Bushes Walk, Kendal, Cumbria, LA9 4RH as the owner of the A5084 Roadside Piece.

After a short adjournment, when I considered another Register Unit, there was some discussion as to the ownership of the Tottlebank Piece and the Subberthwaite Bank Piece. Mr Chapman said: these Pieces are included in the registration, probably because they are apparently common land and because there is no physical boundary between them and the adjoining part of the land which is included in the Register Unit and which is owned by the Board; they had researched the matter, and made some inquiries of those concerned with the Broughton Tower Estate (now owned by the County Council), and had been unable to discover any owner.

Mr D Nicholson said he grazed these two Pieces, and feared they might come into the ownership of someone interested in shooting to the detriment of graziers. Mr K Stalker agreed with Mr Nicholson. Mr Chapman mentioned as a possibility under future legislation, the taking over of these Pieces by the National Park Authority. Having regard to this discussion I gave Mr D Nicholson, and/or Mr K Stalker and/or Blawith and Subberthwaite Commoners Association (by them mentioned) liberty within two months of the hearing to apply for a further hearing for the purpose of establishing the ownership of these two Pieces.

Nobody offered any information as to the ownership of the South Fairholme Green Piece.



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No application for a further hearing having been made within the said two months, in the absence of any evidence as to their ownership, I am not satisfied that any person is the owner of the Tottlebank Piece or of the Subberthwaite Bank Piece or of the South Fairholme Green Piece, and they will therefore 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
(Documents produced)

Part I: by Mr J R Stalker
about the Houkler Hall Piece

JRS/1	-	Extract from OS map 1/2,500 showing Houkler Hall Piece delineated (a little more or less) and braced to adjoining part of Houkler Hall Farm.
JRS/2	9 November 1916	Conveyance by James Woodend to Matthew Nelson of the Farm Houkler Hall containing 67.147 acres described in the Schedule and edged pink on the endorsed map. Note: the Houkler Hall Piece is on such map distinctly delineated as including trees and a "spring" and in the Schedule is part of "270" (OS Nos.); Parrock (name); 2.914 (acreage).
JRS/3	8 November 1951	Conveyance by Matthew Nelson to Joseph Reginald Stalker and Mary Fairer as joint tenants beneficially and legally of 75.705 acres by reference to the said November 1916 conveyance and another conveyance to M Nelson of 8 September 1921 including in Schedule "270; Parrock; 2.914".
--	7 May 1952	Certificate of Marriage between Joseph Reginald Stalker and Mary Fairer.

Part II: by Mr R E M Baxter
about the Picthall Piece

REMB/1	--	OS map 6" = 1 mile, showing Picthall Piece edged green and numbered 4.
REMB/2	22 November 1945	Conveyance by Joan Fogg to Alfred Colin Clarke Baxter of Picthall Farm containing about 45 acres as shown edged red on plan drawn thereon. Note: the Picthall Piece is OS No. 172 containing 6.287 acres shown on the said plan within the edged red.



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REMB/3 19 February 1975 Conveyance by A C C Baxter to Gwendoline Baxter of Picthall Farm particularly shown and described on the plan drawn on the said 1945 conveyance.

REMB/4 2 November 1982 Deed of gift by Gwendoline Baxter to Ross Edward McMillan Baxter of the said premises.

Part III: by Mr H J J Williams
about the A5084 Roadside Piece

(1) 1971 Abstract of the title of the Boughton Estates Limited including:-
20 December 1910 Conveyance by the most noble W H W Duke of Buccleugh to the Rt Hon J C M Douglas Scott (Earl of Dalkeith) his heir apparent, of the Liberty or Lordship of the Manor of Furness and hereditaments within the Liberty subject to the uses of a settlement of 30 July 1860.

-- 5 November 1914 Duke of Buccleugh died and was succeeded by the Earl of Dalkeith.

-- 2 August 1933 Conveyance by the most noble J C Duke of Buccleugh to the Boughton Estates Ltd for valuable consideration of the Liberty and Lordship or Manor of Furness AND the Manors, Lands and Hereditaments within the liberty and district described in the Schedule hereto and delineated on the plans of the Furness Estate annexed.

(2) 20 September 1971 Conveyance by the Boughton Estates Limited to the Lake District Planning Board of land in the Manor of Blawith and containing 1,661 acres and part of Blawith Common as shown on the plan and thereon edged red.

Dated this 21st — day of April — 1988.

A. A. Boden Fuller