



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/298

In the Matter of Reagill Green at  
High Green, Reagill, Crosby  
Ravensworth, Eden District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Reagill Green at High Green, Reagill, Crosby Ravensworth, Eden District, being the land comprised in the Land Section of Register Unit No. ~~VG 47~~ in the Register of Town or Village Greens 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 Crosby Ravensworth Local Council claimed (letter of 20 September 1979) ownership of the land saying that they managed it, renting it on a 50 week basis and collecting rent and also had play-swings erected for which they are responsible for insurance and repairs; and the Earl of Lonsdale claimed (his Solicitors' letter of 10 October 1979) ownership in his capacity as tenant for life of the Lonsdale Estate Trust. No other person claimed to be the freehold owner of the land in question or to have information about its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Penrith on 3 July 1980. At the hearing (1) Rt Hon James Hugh William 7th Earl of Lonsdale was represented by Mr K Wise, Surveyor of Lowther Estate Management Services, being Surveyors and Valuers of Penrith; and (2) Crosby Ravensworth Local Council, who combine the parishes of Maulds Meaburn, Crosby Ravensworth and Reagill, were represented by Mrs M Green their clerk and Mr C Jackson one of their members.

Mr Wise, who is the Surveyor to the Earl of Lonsdale and has since about 1940 been the Surveyor successively of the 5th, 6th and present Earl, in the course of his evidence produced a map being exhibit "WL1" to an affidavit sworn by Mr W Little on 8 August 1928 in proceedings relating to the Lonsdale Settled Estates. Mr Wise said that the red dotted lines on this map marked the boundaries of the Manors which formed part of the Estates and that the names of such Manors are underlined in red on such map. The land in this Register Unit although within red dotted lines for the Manor of Reagill is not on the map coloured or otherwise delineated particularly. Mr Wise said (in effect):- The Estates claim to own the soil; they have always in the past kept and looked after any village green within the Manors; in some cases they have assisted at parish meetings. Although they have not exercised any control they have been there to give assistance for example at Askham and at other villages. They do not wish to take away any rights the parishioners have regarding the upkeep and maintenance. In a lot of villages they sometimes let the land so as to get financial assistance for the upkeep. On this green they have just kept observation on it to see that no-one has developed it.

I indicated that this evidence so far offered did not prove ownership of the Earl of Lonsdale.

Mrs Green who has been clerk to the Local Council since it was formed in 1963 and has lived in the area for the last 12 years said (in effect):- The land is known



as Reagill Village Green. In 1953 the (then) Council erected play-swings, and these are maintained by the Local Council. In September 1975 the Local Council fenced the Green at a cost of £210; the fencing is maintained by the Local Council. After public advertisements for tenders, the Green is rented on a 50 week basis for the grazing of cattle and sheep; the Local Council collect the rent of £8 approximately and have done this since 1975. Periodically the shrubs are cleared away, and if any debris is put on the Green, they make sure that it has gone. Before 1975 the local children played on the Green and they had a fete there; also annually a bonfire. At HM Jubilee there was a fete with a bonfire and a barbecue and hot dogs. Before fencing the Local Council had to clear the land; there was a lot of shrub. The fence separates the land from the road (B road); it was fenced to keep cars out. Generally the Green is used by the Village as a playing field; the swings are still there; before putting them up the Local Council did not consult the Earl of Lonsdale or get his agreement.

On the application of Mr Wise, I adjourned the proceedings.

I held the adjourned hearing at Penrith on 17 June 1981. At this hearing (1) the Earl of Lonsdale was represented by Hon C Vane of counsel, instructed by Dickenson Dees, Solicitors of Newcastle upon Tyne; and (2) Crosby Ravensworth Local Council were represented by Mr J T Relph their chairman and Mrs M Green their clerk.

The land ("the Unit Land") in this Register Unit is a strip on the west side of which (a straight line a little over 200 yards long) is the said road leading southwards out of the nearby small village of Reagill, and on the east side of which is a fence or hedge along the edge of a ditch or gully, for the most part wide and deep with steep sides particularly against the north part of the Unit Land. From a spring near the south end of the Unit Land a small stream flows northwards along this ditch or gully. The Unit Land as registered does not include the verge of the said B road, but does include the ditch or gully. In and around it there is much waterside scrub; but elsewhere on the Unit Land is for the most part grass, nearly or about the same level as the road.

Miss S J MacPherson, Deputy County Archivist produced from the Cumbria County Council Record Office at Kendal the Reagill Inclosure Award dated 3 February 1813 by which was allotted to "Surveyors of the Highways for the time being for the Township or Manor of Reagill for public use and benefit a public quarry marked ... One other allotment ... (set out for a public watering place) ... One other public watering place marked on the said map or plan Number fifty left open to the said road and adjoining the ancient inclosures of the Earl of Lonsdale and Anthony Jacques and containing by admeasurement one acre three roods and seven perches be the same more or less ..." On the award map is delineated a plot marked: "Watg Place: 50: 1.307", and it was agreed at the hearing that this plot and the Unit Land are the same.

In support of the ownership claim of the Earl of Lonsdale oral evidence was given by Mr D A Pattinson who is now and has been for the last 30 years Chief Land Agent of the Earl of Lonsdale and his predecessor and who has known Reagill for 34 years, and by Mr T J Watson who is and has been since November 1957 woodland manager of the Estates; in the course of this evidence there was produced: (1) a vesting deed dated 17 January 1961 which was expressed to be supplemental to a vesting assent



dated 5 January 1953 and made between the Hon A J B Lowther (Captain Lowther) and the (7th) Earl of Lonsdale and by which Mr J L Wickham and the Hon A G Gordon ("Lord Adam Gordon") declared that about 18 Manors in Cumberland and about 41 Manors in Westmorland including Reagill were then vested in the Earl of Lonsdale upon the trusts of a compound settlement referred to in the 1953 vesting assent; (2) a copy of my decision dated 6 February 1981 and given in the matter of certain land in Yanwath and Eamont Bridge (Register Unit Nos. CL 128 and CL 129) in which upon the evidence there summarised I rejected the claim made by the Earl of Lonsdale to be the owner of such land (Reference Nos. 262/U/306-307); and (3) two letters dated 16 and 19 July 1954 from Crosby Ravensworth Parish Council and a copy letter dated 17 July 1954 from Mr Pattinson to them. On behalf of the Parish Council oral evidence was given by Mr J G Bland who has lived at Reagill for 42 years (he is now aged 57 years) and by Mr W H Anderson who has since 1959 lived at High Green, a dwellinghouse near the west side of the Unit Land (on the opposite side of the road).

Two days after the hearing, I inspected the Unit Land in the presence of Mr J J Watson, Mr J G Bland, Mr W H Anderson. Mr Bland then handed me a copy wayleave agreement dated 20 April 1967 and made between Crosby Ravensworth Parish Council ("the Owner") and the North Western Electricity Board ("Board") relating to low voltage overhead lines consisting of 2 low voltage power conductors and earth wires supported by one pole and any necessary stays as indicated in yellow on the plan.

For the Earl of Lonsdale Mr Vane contended: (1) that under the 1813 Award the then Earl of Lonsdale retained the legal estate which is now vested in the present Earl; or (b) if the legal estate has passed through the Surveyors of Highways, they and their successors had been dispossessed by the Earl of Lonsdale and his predecessors because they or their tenants had shot over the Unit Land and had taken the timber; or (iii) by this shooting and taking of timber the Earl of Lonsdale had a possessory title. Against this I have to consider: (a) whether under the Award the Unit Land was allotted by implication to the church-wardens and overseers as parish property or expressly to the Surveyors of Highways of whom the Local Council can properly be regarded as successors; or (b) the Local Council have a possessory title as the result of the acts they and their predecessors have done. It is to be observed however, that if I am not satisfied as to the title of the Earl of Lonsdale, it may be of little practical consequence if the Local Council have no title, because under subsections (3) and (5) of section 8 of the 1965 Act, in such circumstances I am required to direct the registration of the Local Council as owners.

As to shooting Mr Pattinson said (in effect):- For 21 years from 1953 he had the permission of Lord Lonsdale to shoot over his Reagill Estate comprising farms (let) and woodlands (in hand) which broadly speaking lies to the east and west of the Unit Land. The shooting was always in a party (a syndicate of 8 guns); partridge and pheasant; perhaps 14 times a year in the season (1 September/1 October to 1 February); they employed a full time keeper and for the shooting 12 beaters. There were always pheasants on the Unit Land because it was a scrubby area, a sort of haven for them where there was their natural food.

As to timber, Mr Pattinson and Mr Watson said (in effect):- In 1963 at the request of the North Western Electricity Board, the Estate felled 2 trees ("the 1963 trees") because they said they interfered with their electricity line (still there); at the suggestion of the owner of the House (High Green) at the same time the Estate cut down some scrub (ash and sycamore, mostly ash)

18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



so as to improve the view from the House. The timber from the 1963 Trees was cut up and disposed of by the Estate, the proceeds being paid into the Estate Woodland account. On the Unit Land there are now growing 2 spruce trees ("the two spruce") both now about 50 years old and it was suggested that they were planted by the Estate because the Estate owned nearby woodland on which they had planted similar trees.

Nobody at the 1981 hearing challenged the evidence given by Mrs Green at the 1980 hearing. But there was some conflict between the evidence of Mr Pattinson and Mr Bland as to the use made of the Unit Land during living memory. Mr Pattinson said that when he first knew the Unit Land (1947) it was a rough area with scrub upon which as far as he knew there was no human activity; when asked about activities on the Unit Land apart from those during the last few years, he mentioned the erection of the swings (1953) and the erection of the fence (1975) enclosing the Unit Land from the road and enabling it to be grazed and said that no grazing had been exercised before then. Against this Mr Bland said (in effect):- Ever since he could remember people had grazed cattle on the Unit Land, and drawn water for the cattle to drink from, particularly the late Mr Monkhouse and the late Mr Morson; and that he could well remember the Unit Land being used by children as a place for congregation and for having sports day (the School was nearby, although it is now a village hall). There used to be a well (now filled in) with a rope and a bucket for cattle. As a result of Mr Anderson challenging the propriety of shooting within 50 feet of a public road, Mr Pattinson described in some detail how he and his syndicate used to shoot on and around the Unit Land.

In my opinion the Unit Land was by 1813 Award allotted to the Surveyor of the Highways for a legal estate in fee simple, and any such estate previously vested in the then Earl of Lonsdale was thereby extinguished; whether or not thereafter he still retains some equitable interest, the Award is some evidence that it then became and has ever since continued to be a public watering place. Its registration under the 1965 Act as a town or village green was not disputed by Lord Lonsdale and is now final; quite apart from the Act, from its situation in relation to the Village, I find that it is subject to a customary recreational right for the benefit of the inhabitants of Reagill.

As to who was in possession of it from time to time, I first consider the position at the commencement of these proceedings, which I shall regard as September 1979 because although the reference by the County Council under the 1965 Act is dated 14 July 1976, nothing was done about it in the office of the Commons Commissioners until September 1979. Mr Pattinson did nothing about the 1975 fence and the subsequent grazing by the tenants of the Local Council; even if I am wrong thinking that he knew about them, he made it clear at the hearing that he did not then regard this fence or these lettings as inconsistent with the ownership of Lord Lonsdale and I infer he would have done nothing if he had known. I find that before September 1979 there was no controversy about anything done on or in relation to the Unit Land and that Lord Lonsdale and Mr Pattinson, on the one side and the Local Council and the local inhabitants on the other never raised any objection to each others activities. The circumstances that ever since 1975 the Unit Land has been continuously enclosed by a fence erected by the Town Council and has been continuously grazed since then by their tenants is in my opinion weighty evidence that they are in possession.

As against this I have the shooting done by Lord Lonsdale's tenant; I accept that shooting over land is at any rate if the land is used for nothing else some evidence of possession, see *Red House Farm v Catchpole* (1977) 244 Estates Gazette 295. Mr Pattinson explained: if the drives were in a southern direction or  $\longrightarrow$  the weather conditions were suitable, one of the 3 guns would be  $\longrightarrow$



on the Unit Land, but if the drives were otherwise, none of the guns would be there. It was obvious during my inspection that the ditch or gully would be attractive to pheasant and I infer that the pheasant there would have originated on the Reagill Estate belonging to Lord Lonsdale. This use of the Unit Land (14 times during the season) would be so unobjectionable to most owners that as evidence of possession by Lord Lonsdale it is I think of little weight.

As to the two spruce, on the evidence and what I saw on my inspection I find that they, being situated on either side of the now disused path leading to where there was a well, were not planted as timber but as an amenity. It was agreed at the inspection that they are American White spruce, not the same as the Norway spruce by the Estate planted on the nearby Pit Hill's Plantation; although it possible that when planted the two spruce came from somewhere off the Estate, I reject the suggestion that their presence from the date when they were planted until today is some evidence of continuing possession by Lord Lonsdale.

Balancing the conflicting evidence above summarised as best I can, I conclude that at the date of the commencement of these proceedings Lord Lonsdale was not and the Local Council were in possession.

As to the uses of the Unit Land before 1975 by persons other than Mr Pattinson and the members of his shooting syndicate:- I decline to infer from his ignorance of any human activities, that there were none such; on this aspect of the matter I accept the evidence of Mr Bland. Although the Estate felled the 1963 trees at the request of the North Western Electricity Board, the evidentiary value of such request is diminished by their subsequent acceptance from the Local Council of the way leave agreement dated 28 April 1967. I accept that the felling of the 1963 trees could be an act of possession by Lord Lonsdale; but it is of little weight because they were on the east boundary of the Unit Land on the east side of the ditch or gully and not easily referable to the remainder of the Unit Land. Having inspected the stumps, I decline to infer that these trees were planted as timber by Lord Lonsdale or his predecessors or that their continuing existence after they started to grow could be acts of possession by him or them. In considering whether this felling and the shooting activities of Mr Pattinson could amount to adverse possession against the successors in title of the surveyors of the highways, it is relevant that before 1975 the Unit Land was, unlike the rest of the Reagill Estate, open to the public road and was both under the 1813 Award and by reason of the customary recreational right, public land. In my opinion the felling of the 1963 trees and the shooting activities of Mr Pattinson and his syndicate, being so unobjectionable to an owner concerned to protect the Unit Land for the use of the public, cannot properly be regarded as adverse possession in any now relevant sense.

As to how the legal estate in 1813 in the Surveyors of the Highways subsequently devolved:- In the absence of some grant expressed or presumed, the devolution depends on a series of Acts and Orders. I have no evidence as to the state of the Unit Land at the time when these Acts and Orders came into effect so as to be able to determine the devolution at each stage. But such estate must have devolved on either the County Council or the District Council or the Local Council for public purposes, and it is obvious from the situation and present appearance of the Unit Land that these Councils would never at any time have objected to its being used by the inhabitants of Reagill. In my opinion this lack of evidence in no way supports the ownership claim of Lord Lonsdale.



For the above reasons I am satisfied that Lord Lonsdale is not the owner of the Unit Land. Under the relevant Acts and Orders it is possible that the Local Council are, and that the County Council and the District Council are not successors as regards the Unit Land of the Surveyors of Highways. The County Council and the District Council have had notice of these proceedings and neither has made any ownership claim. The Unit Land is such that the Local Council are obviously the persons who could in the public interest most conveniently be the owners. As between the three Councils, the indifference of the County Council and the District Council is enough for me to presume that under some Act or Order to which my attention has not been drawn or under some grant which has now been lost the Local Council are now owners. I am therefore satisfied that the Local Council are the owners of the land, and I shall accordingly direct the Cumbria County Council as registration authority, to register Crosby Ravensworth Local Council as the owner 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 16<sup>th</sup> ——— day of November ——— 1981

*a. a. Baden Fuller*

Commons Commissioner