



In the Matter of the Shingle Beds,  
Broughton West, South Lakeland D.,  
Cumbria,

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DECISION.

This reference relates to the question of the ownership of land known as the Shingle Beds next to Duddon Bridge, Duddon, South Lakeland District (formerly Broughton West, North Lonsdale Rural District) being the land comprised in the Land Section of Register Unit No. VG.52 in the Register of Town or Village Greens maintained by the Cumbria (formerly Lancashire) 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 Mr. Peter Onslow (through his Solicitors) claimed to be the freehold owner of the land in question and no other person claimed to be the owner or 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 Kendal on 4 March 1975. At the hearing (1) Duddon Parish Council were represented by Mr. M. Atkinson, legal executive with Thomas Butler & Sons, Solicitors of Broughton-in-Furness, and (2) Mr. Onslow was represented by Mr. J.M. O'Riordan, solicitor of Stanley H. Cross & Co., Solicitors of Chorley, Lancs.

Mr. Atkinson said that the Parish Council did not claim to be the owner. Mr. O'Riordan said that his client's claim was only to the part of the land on the northwest side of Duddon Bridge; in the course of his evidence he produced: (1) a conveyance dated 27 March 1973 by which Mr. F.B.H. Jackson and Mr. W.J. Gunson as personal representatives of Mr. J. Gunson (he died 25 June 1962) conveyed to Mr. Onslow a strip of land about half a mile long adjoining the east bank of the River Duddon, part of the bed of the River adjoining such strip and other land and riparian and other rights therein described; and (2) an examined abstract dated 1973 of the title of the executors of J. Gunson deceased to land at Woodland at Bank End.

Mr. Edward Postlethwaite Barker of Duddon Mount, Church Street, Broughton-in-Furness who is a member of the Parish Council and of the District Council volunteered to give evidence.

Two days after the hearing, I inspected the land. It is two pieces ("the Southeast Piece" and the Northwest Piece") southeast and northwest of the Bridge. Both are all pebble or shingle, washed down by the River. When I saw them, except for a small stone, they were all covered by the water of the River. I was told that most of the year they are both either all or for the most part dry (there had been much rain and (the water flows along a deep channel adjoining on the south). There is a track across the land north of the Southeast Piece leading down to the River, the appearance of which suggests that this is the way the Southeast Piece is approached by the public. There is no corresponding track to the Northwest piece



but this would not be practically inconvenient because most of the year it would be easy to go either on foot or with a vehicle from the Southeast Piece to the Northwest Piece (although they are shown on the Register map as separated by the Bridge, the shingle and pebbles are continuous) by going under the Bridge.

Mr. Barker said (in effect):- There was an ancient right under which local people from the Lancashire side of the River (before 1974 the County boundary was the middle line of the River to a point just above the Bridge and then along a line a little west of the River) to take shillows (shingle and pebbles) from this land, for use on their land. In the building of many of the houses in Broughton-in-Furness these shillows were used. Up to the present day local farmers have taken shillows for cement work on their farms. About 20 to 30 years ago Mr. Gunson (Mr. Onslow's predecessor in title) consulted the Parish Council about people taking shillows; he (Mr. Barker) was a member of the Committee of the Council which discussed the matter with Mr. Gunson. Mr. Gunson contended that people should not make money out of the shillows. The Committee said there was the ancient right above mentioned. Mr. Gunson said he was concerned because contractors from Millom in Cumberland were taking shillows. The Committee knew Mr. Gunson was personally interested because he had the fishing rights; however Mr. Gunson's interest at the meeting was not because he owned the land, but because he objected to people making money out of the shillows (taking them not for their personal use). The Committee agreed that Millom contractors were not within the ancient right. Mr. Gunson did not mind the shillows going to Broughton people. The Council took no action as a result of the meeting and Mr. Gunson did not raise the matter again. Nobody regulates how shillows are taken by local Broughton people. The shillows are formed by the River in spate: they are carried down every year when the River is in flood, so any shillows taken are always replaced naturally. The land (the Southeast Piece and the Northwest Piece) is used, especially in summer, by people paddling and bathing.

The 1973 abstract commences with a vesting deed dated 21 April 1927 by which after reciting that the lands described were devised by the will of John Gunson ("The Testator", he died 29 March 1912) it was witnessed for the purposes of giving effect to the requirements of the Settled Land Act 1925 that all the lands described in the Schedule were vested in Mr. A. Gunson in fee simple; Mr. O'Riordan relied on the following item in the Schedule:-

"37. Buildings and land known as Bank End Farm  
in the occupation of Thomas Clarke customary rent 2/10d".

The abstract continues with a regular deduction of the title to the land described in the vesting deed from the personal representatives of the Testator to Mr. A. Gunson (he died 2 November 1938) and his personal representatives, and from them to Mr. S. Gunson and the conveying parties (being his personal representatives) to the 1973 conveyance. The abstract includes an agreement dated 6 March 1955 relating to the extinguishment of manorial incidents affecting the lands dealt with by the abstract, but it was not suggested that the words of description therein contained could be relevant to these proceedings. In my opinion the documents of title produced show that Mr. Onslow is the owner of the land which is both within the words above quoted from the 1927 vesting deed and the words of description in (as explained by the plan drawn on) the 1973 conveyance. Clearly the Northwest piece is within the 1973 words, so I am only concerned to construe the 1927 words.

Apart from the bed of the river and the Northwest Piece, the buildings and land known as Bank End Farm up to 1961 (the death of Mr. Gunson) and possibly for some time afterwards until they were divided in or about 1973, included not only the land by the 1973 conveyance expressed to be conveyed, but also extensive fields adjoining on the east and in particular included O.S. map plot no. 230, being a strip of land (now rough ground



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with some scrub and trees when I saw it, by the water edge) being the land which adjoins the north boundary of the Northwest Piece.

The effect of the decisions of the Courts as regards lands adjoining a river was in 1886 stated thus: "...if land adjoining a...river is granted, the half of...the river is presumed to pass, unless there is something in the language of the deed or in the nature of the subject matter of the grant or in the surrounding circumstances sufficient to rebut that presumption...", see Micklethwait v Newlay [1886] 33 Ch.D. 133, at page 155; this case has been followed and explained in Devonshire v Pattinson (1887) 20 Q.B.D. 263, and Hesketh v Willis (1968) 19 P. & C.R. 573.

The applicability of the presumption depends therefore on (1) whether the Northwest Piece is for the purposes of the rule part of the River Duddon, and (ii) if it is, whether the surrounding circumstances are sufficient to rebut the presumption.

As to (i):- Land which for most of the year is dry and over which for part of the year water of a river when in flood flows, is not necessarily part of the river for the purposes of the rule, although it maybe. Notwithstanding the use made of the Northwest Piece for bathing and paddling and for taking shingle and pebbles, from its appearance and the appearance of the surrounding land, particularly the water side edge of O.S. plot 930, I am of the opinion that the Northwest Piece is part of the bed of the River Duddon.

As to (ii):- As I read the decisions above cited, to rebut the presumption, the surrounding circumstances must be such as to indicate that when the Northwest Piece and Bank End Farm were in common ownership, to construe a grant of Bank End Farm as including the Northwest Piece would defeat the intention of the parties. In my opinion the evidence of Mr. Barker (which I accept) does not indicate any good reason why the Northwest Piece and Bank End Farm should be in different ownership. Further on appearance alone, having regard to the easier access to the Southeast Piece, and the position of the Bridge, I see no good reason why the Southeast Piece and the Northwest Piece should ~~not~~ be in the same ownership.

I conclude therefore that the presumption is applicable and is not rebutted. Accordingly I am satisfied that Mr. Onslow is the owner of the Northwest Piece. There was no evidence that he or anyone else is the owner of the Southeast Piece, and I am therefore not satisfied that any person is the owner of it. Accordingly I shall direct the Cumbria County Council as registration authority under section 8(2) of the 1965 Act to register Mr. Peter Onslow, of Brook House, Euxton Lane, Chorley Lancashire as the owner of the part of the land comprised in this Register Unit which is Northwest of the middle line of the road bridge over the River Duddon, and under Section 8(3) of the 1965 Act to register Duddon Parish Council as the owner of the part of the said land which is south-east of the said middle line.

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 1st

day of August - 1975.

a. a. Baden Fuller

Commons Commissioner.