



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/497

In the Matter of Crosby Garrett
Regulated Common, Crosby Garrett,
Eden District, Cumbria.

DECISION

This reference relates to the question of the ownership of land known as Crosby Garrett Regulated Common, extending over Crosby Garrett Fell, Crosby Garrett, Eden District being the land comprised in the Land Section of Register Unit No. CL4 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 Trustees of the Hewetson Trust claimed (a letter dated 16 December 1981 from A Hoggarth & Son) ownership. No other person claimed to be the freehold owner of the land in question 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 Penrith on 10 and 12 March 1982. At the hearing Mr D R Penrose and Mr J P Merrett (claiming as such Trustees) were represented by Mr T A Hodges solicitor of Fell Kilvington & Co, Solicitors of Kirkby Stephen; Mr Hodges also represented the Conservators of Crosby Garrett Regulated Common having been instructed on their behalf by Mr W E Sanderson their secretary.

The land ("the Common") in this Register Unit is a tract a little under 4 miles long from the northeast (a point near the railway viaduct at Crosby Garrett) to the west (a point in the middle of Sunbiggin Tarn) and having an average width of about 1 mile; it is approximately 621.20 hectares (about 1,926 acres). The Land Section registration was made on the application of the Conservators of Crosby Garrett Regulated Common. In the Rights Section there are 15 registrations of rights of grazing of varying numbers of stints (total 2,000 stints or thereabouts) together with (in nearly every registration) a right of turbary and to take stone.

Mr Hodges in the course of his evidence on behalf of Mr Penrose and Mr Merrett ("the Claimants") produced the documents specified in the Schedule hereto. He said that among the title deeds of the Claimants there is a plan of the Common apparently showing it as it was in 1882 when it was regulated by the rights over it being divided into stints and at about the time conservators were appointed. He understood from Mr Sanderson that the stint holders had never been concerned with anything other than the regulation of their grazing rights and that the sporting rights over the Common had always been exercised by the Lord of the Manor. He had no further information as to the regulation of the grazing rights.

Mr Merrett chartered surveyor and one of the Claimants said (in effect):- His proprietary interest in the Manor began on 29 September 1978 (under the 1979 conveyance); since then he (or his firm) had been the agent for the Trustees. He knew the area having been born there and been in practice at Kendal for the last



7 years. When he took over he understood from Mr R T W Hewetson (the previous owner since 1957) that he had always enjoyed the sporting rights over the Common. As regards the shooting, Mr Hewetson let it with other land owned by him to Mr Booth, as he (Merrett) knew because he had been (about 10 or 12 years ago) a guest of Mr Booth's syndicate and shot over it (a little grouse moor). During the last years as agent of the Trustees he had received from Mr Hewetson the rent for the sporting let paid to him by Mr Booth. As regards the fishing on Sunbiggin Tarn (approximately 1/3rd of the water area is part of the Common) Mr Hewetson formerly managed the fishing; and when he as agent took over continued to receive in respect of it £100 annually. As far as he knew the enjoyment of these sporting rights had never been disputed.

From the documents produced, I conclude that the Claimants are now the owners of the Manor of Crosby Garrett. By section 62 of the Law of Property 1925 a conveyance of a manor shall be deemed to include all (among other rights) "pastures ... commons ..." occupied or enjoyed with the same. Mr Hodges contended that there being no ownership claim either by the Conservators or by any of the stint holders, the evidence above summarised is enough to show that the Common was enjoyed with the Manor of Crosby Garrett, and accordingly the ownership of the Claimants was proved. At the hearing I indicated that I accepted this contention.

Since the hearing I have looked at the Commons Regulation (Crosby Garrett and Stivichall Commons) Provisional Orders Confirmation Act 1882 (45 Vic. c. xxvii); by this Act the provisional order dated 30 December 1881 was confirmed. By section 116 of the Inclosure Act 1845, the right of soil of and in all land which shall be converted into regulated pastures shall subject to the right of the lord of the manor to all or any of the mines minerals stone and other substrata, where the same shall be reserved to him under this Act, and to the other rights given or reserved by this Act and the award ... be vested in the ... the owners of the stints or rights of pasture therein proportioned to the shares ... as tenants of the common". So the stint holders as tenants in common are the owners of the Common unless the 1881 Order or the Award made under it otherwise provide. The Order supports the Claimants' case to be the Lords of the Manor of Crosby Garrett as it recites that before the Order was made Miss Agnes Elyetson Thompson as Lady of the Manor of Crosby Garrett was then entitled to the soil of the Common. But the Order is inconsistent with her after it continuing to be such owner in that it provides that she shall be entitled to one-sixteenth part in value of the rights of common "in lieu of her right or interest in the soil", and expressly reserves to her "the mines minerals stone and substrata", and the right to "all manner of game and fish upon and in the said Common and the waters thereof together with the right of hunting hawking fishing and fowling over the same"; such reservations would have been unnecessary if she had continued to be the owner of the soil. In my view the 1881 Order contemplated that the fee simple ownership should be in the stint holders in accordance with section 116 of the 1845 Act.

So unless the Award made under the 1881 Order and the 1882 Act provided that Miss A E Thompson should continue as the fee simple owner of the soil (possible but unlikely), such ownership then became vested in the stint holders as tenants in common subject to her right to the mines and minerals and her right to the game and fish.



Thus the 1881 Order and the 1882 Act much affect the cogency of Mr Hodges' said contention. In the absence of any evidence that the game and fish rights had ever been severed from the fee simple ownership, I could from the proved enjoyment by the Claimants and their predecessors of the game and fish have ascribed such enjoyment to their fee simple ownership and not otherwise. But now knowing that the shooting and fishing right were in 1882 severed from the fee simple ownership, their proved enjoyment of such rights provides no basis for my ascribing such enjoyment to anything beyond the rights created by the 1881 Order and the 1882 Act for the benefit of Miss A E Thompson. So as matters now stand, I have no good reason for not giving full effect to the ownership of the stint holders conferred by the said section 116.

By the Law of Property Act 1925 tenancy in common for a legal estate in land was abolished; with the result that land owned by stint holders in common under the said section 116 became under part V of the First Schedule to the Act vested in the Public Trustee, see re Cotherstone Moor Regulated Pasture, reported (Estates Gazette of 1 July 1961. Such vesting may be of no practical consequence until some dealing with the fee simple ownership is under consideration.

As I understood Mr Merrett, apart from the grazing, the sporting and fishing rights and the mines and minerals it is at present at least doubtful, ^{under the} fee simple ownership of the Common is of any value to anyone. So to prevent misunderstanding I record that my conclusion that such ownership is by law now vested in the Public Trustee for the benefit of the stint holders must not be taken to mean that I am casting any doubt on the Claimants ownership of the shooting and fishing rights as they are now enjoyed.

As my decision is contrary to what at the hearing I indicated it would be I give to the Claimants liberty within 4 months from the date on which notice of this decision is sent to them to make representations to me about the applicability of section 116 of the Inclosure Act 1845 or to apply to a Commons Commissioner to adjourn the hearing so that they can offer further evidence or argument. As matters now stand on the evidence put before me at the hearing I am for the reasons set out above satisfied that the Public Trustee is the owner of the land and I shall accordingly subject to anything that may be done by a Commons Commissioner under the said liberty, direct the Cumbria County Council as registration authority to register the Public Trustee as the owner of the land under section 8(2) of the 1965 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.



1067

- 4 -

SCHEDULE
(Documents produced)

DRP/1	8 March 1909	Letters of administration with the will of Agnes Elyetson Thompson (she died 7 December 1908) granted to her nephew Richard Bovil Thompson, a specific devise for his life of her "Lordship or Manor of Crosby Garrett and all the rights ... appurtenant thereto", and after his decease to her nephew Gerard Elyetson Thompson and his heirs.
DRP/2	7 June 1941	Probate of the will of G E Thompson (he died 4 May 1940) to R Burra and A E M Gibson by which he gave all his property to his cousin Richard Percival Hewetson.
DRP/3	31 December 1947	Assent by his said personal representative in favour of R P Hewetson all properties in a vesting deed of 3 June 1927 and "all other (if any) the freehold properties vested" in the said G E Thompson mentioning particularly the said Manor.
DRP/4	29 October 1957	Probate of the will of R P Hewetson (he died 13 June 1957) granted to his son Richard Tatton Wedderburn Hewetson and Mr A M Fell.
DRP/5	4 April 1966	Assent by the said personal representative of R P Hewetson in favour of Mr R T W Hewetson expressly including "47 the Manor or reputed Manor of Crosby Garrett".
DRP/7	29 September 1978	Conveyance (voluntary) by Mr R T W Hewetson to the Claimants as trustees of a settlement of 31 December 1976 (for the benefit of grantor's children).

Dated this 23rd — day of July — 1982

a. c. Baden Fuller

Commons Commissioner