



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/329

In the Matter of Seat How,
Embleton, Allerdale District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Seat How, Embleton, Allerdale District being the land comprised in the Land Section of Register Unit No. CL 367 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) 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 Embleton and District Parish Council said (letter dated 28/11/1980) that this land is a parish quarry which forms part of the Embleton Quarry face whereby the Parish Quarry Trustees received a royalty of so much per ton on stone extracted or failing a given tonnage a "rent" at so much per year paid half yearly. No person claimed to be the freehold owner of the land in question and no other person claimed 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 Keswick on 27 April 1981. At the hearing Embleton and District Parish Council were represented by Mr O W Todhunter their clerk.

Mr Todhunter in the course of his evidence said (in effect):- The land ("the Unit Land") in this Register Unit (according to the Register map it is about 175 yards from west to east and about 150 yards from north to south) was a quarry; it was closed in about 1945. He knew about it because before he retired (he is now 76 years of age), he was from about 1934 secretary of a roadstone quarry company: Embleton Granite Company and Threlkeld Granite Company who in 1936 amalgamated to become Keswick Granite Company, and who later became part of Amalgamated Roadstone. His Company rented this land from the Parish Quarry Trustees, so much dead rent and so much tonnage rent (perhaps 6d per ton); annually the Company paid something like £70. The Parish Quarry Trustees as an organisation still exist; they consist of two person nominated by the Parish Council and one nominated by Allerdale District Council. The present Parish Council came into existence in 1976 by a combination of the former Embleton Parish Council, Wythop Parish Meeting and Setmurthy Parish Meeting; before 1976, two of the Trustees were nominated by Embleton Parish Council. Before the formation of Allerdale District Council, the other Trustee was nominated by Cockermouth Rural District Council. Mr Curtin is now and has been for many years clerk of the Parish Quarry Trustees, and has all their documents; they meet about once a year.

Mr Todhunter produced: (1) an extract supplied to him by Mr Curtin from the Setmurthy and Embleton Enclosure Award dated 2 November 1824; and (2) an extract from an OS map showing in outline the areas of the Enclosure Award Quarry No. 1 and Quarry No. 2. According to this map, about 1/10th of the ~~Unit Land~~ Unit Land 



- 2 -

842

~~The Extract Register Unit~~ forms a little less than half of the outlined area of Quarry No. 1. The Award does not expressly indicate who is to be the owner of the Quarry land awarded by it.

Being of the opinion that the evidence summarised above indicated this ^{Unit} land was or might be held in some public charitable trust, I gave the Parish Council liberty to provide further information about the constitution of the Parish Quarry Trustees, and said I would defer my decision until they had had an opportunity of doing this.

In May 1981 Mr Todhunter produced to Mr Morris Smith Commons Commissioner then hearing cases at Keswick: (1) a copy of a letter dated 29 April 1981 by Mr Todhunter to R W Hindmoor of Egremont Estate and his reply dated 12 May 1981 and headed "Egremont Estate Company" (Directors Lord Egremont and Lady Egremont); and (2) a copy of a letter dated 29 April 1980 by Mr Todhunter to D G W Hurst, Director ARC and a reply dated 11 May 1981 from Amey Roadstone Corporation Limited (Group Lands Department at Chipping Sodbury) with which was enclosed: (a) lease dated 5 August 1915 by Joseph Johnson and 3 others as trustees of "a certain Charity called The Stone Quarry at Embleton ... and regulated by a Scheme established by an order of the Board of Charity Commissioners ..." dated 13 March 1914 granted to The Cumberland Granite Company Limited (pursuant to an order of the said Commissioners dated 30 July 1915) the quarry known as the Parish Quarry for 47 years from 30 September 1914; and (b) a copy of a lease dated 18 March 1963 by which William Stanley Martin and 3 others as trustees of the said charity regulated by the same Scheme granted to The Keswick Granite Company Limited (pursuant to an order of the said Commissioners dated 7 February 1913) the said Parish Quarry for 21 years from 30 September 1961.

Under cover of a letter dated 31 July 1981 I have received from the Charity Commission (Northern Office) a copy of the said 1914 Scheme together with copy instructions dated 23 October 1912 to Counsel to advise Embleton Parish Council and his opinion thereon of 20 November 1912 together with another opinion of his dated 16 December 1911 and therein referred to.

That there is a charity ("The Charity") as described in the said 1914 Scheme is I think established by the evidence summarised above.

As to the Unit Land being now subject to the trusts of the Charity:- The 1813 Award, the 1914 Scheme, the 1915 lease and the 1963 lease are all expressed to relate to a quarry containing about 2 acres 3 roods and 4 perches. The Unit Land as I estimated from the Register maps is between $3\frac{1}{2}$ and $5\frac{1}{2}$ acres; the delineation of the Unit Land on the Register maps (based on the OS map, 6" = 1 mile) corresponds closely to that thereon marked "Embleton Quarry". But the Unit Land does not correspond with that delineated on the extract Enclosure Award map I have as Quarry No. 1; such last-mentioned land being as to more than half to the east Unit Land. And there is nothing on any OS map I have corresponding to the land so allotted.

As I understood Mr Todhunter all the Unit Land has been occupied under the 1915 and 1963 leases. This fact and the two leases when considered by themselves are I think satisfactory evidence enough of the ownership in fee simple of the Charity. Nevertheless I should I think deal with questions which might arise on the other evidence.



- 3 -

As to the said differences in the area of the Unit Land and the 2a 3r 4p mentioned in the other documents, these are not decisive against the Charity being now owner of the larger area. I infer that the Charity has through its tenants encroached on adjoining land; any title against the owners of such land would enure for the benefit of the lessor, and the trusts applicable to the Charity in the Scheme mentioned would be applicable to the land so encroached on, see re Ingleton 1956 1 Ch 585.

In the said opinion of counsel reference is made to the terms of the allotment and to the 1813 Act under which it was made: "allot ... as and for public stone quarries and Sand and Gravel Pits and Watering Places within the said Township ... as ... delineated on the said Maps ... to be hereafter appropriated to and for the Common Use and Benefit of the Owners or Occupiers of Messuages Lands and Tenements and the Surveyors of the Highways for the time being within the said Township ...". Counsel advised that the Charity Commissioners had power under section 18 of the Commons Act 1899 to make a scheme and at any rate after the scheme had been made, to authorise the granting of leases of the land. In his instructions reference is made to the recital in the Act of Rt Hon George O'Brien Earl of Egremont being (1813) Lord of the Manor, and it is therein stated that the present Lord Leconfield is now (1912) Lord of the Manor. Counsel refers to an opinion of his own in which he said under an allotment similar words the legal interest would remain in the Lord and that the allotment did not extend to the whole beneficial interest so that the Lord had a "real interest" in it; he used the words "so long at any rate as the charitable trust subsists", apparently assuming that it could come to an end.

But even assuming that this opinion correctly states the legal position as it was in 1912, it does not I think follow that the same position remains now. Although the 1914 Scheme may not have been intended (as seems likely in view of the said opinion) in any way to prejudice the Lord of the Manor, the 1915 and 1963 leases and the occupation of the lessees under them on the basis that the Lord of the Manor was not concerned is I think cogent as to the present position. The legal estate in fee simple is the only estate with which I under the 1965 Act am concerned. I conclude that any right the Lord of the Manor may have had to this in 1912 has either been got in by the Law of Property Act 1925 or must be presumed to have been granted to the Charity. As to his possible beneficial interest; -either the Charity ceased to subsist in 1915 when the lease made it impossible to carry out the terms of the above quoted allotment so the Lord of the Manor has been dispossessed and his interest extinguished by the Limitation Act 1939; or the Charity has not yet ceased to subsist and the Lord of the Manor's interest is still a future interest and I am not concerned with it.

So on the evidence I now have I am satisfied that the Charity is the owner of the Unit Land.

As a general rule an ownership registration under the 1965 Act should name the persons in whom the legal estate is vested. I cannot in this case do this because I do not know who these persons are. However because persons interested under a trust should not be prejudiced by any uncertainty as to the identity of their trustees, I consider I can direct a registration such as is hereinafter set out.



Accordingly I shall direct the Cumbria County Council as registration authority in pursuance of section 8(2) of the Act of 1965 to register as the owners of the Unit Land the trustees of the Charity consisting of the Embleton allotment for a public stone quarry in the ancient township of Embleton in the ancient parish of Brigham mentioned the Scheme established by an order of the Charity Commissioners dated 13 March 1914 being the persons in whom should be vested the legal estate in any land held upon the trusts of the said Charity either as being part of the land particularly mentioned in the said Scheme or as being land which has been added or accrued thereto by operation of law or under the Limitation Act 1939 or otherwise.

In the said 1912 instructions to counsel it is said "Lord Leconfield's mineral lessees are working in proximity to the Public Quarry and it would be an advantage not only in respect of the minerals comprised in the lease by Lord Leconfield but also for the proper development of the stone comprised in the Public Quarry that the lessees should continue their workings through the Public Quarry. The Public Quarry has been worked from time to time but only in a desultory manner without any system. The stone in question is a very good quality granite and if the stone in the public quarry could be worked a fair sum in royalties would accrue therefrom ... the Council is desirous if they have the power to let the public quarry to the same lessees as are working Lord Leconfield's Quarry ... "This suggests there may be two quarries adjoining each other and one owned by the Charity and the other owned by somebody else. Because I may have misunderstood the evidence of Mr Todhunter (it was given before I had some of the documents above referred to), I shall direct copies of this decision to be sent to Egremont Estate Company and to Amey Roadstone Corporation Limited, and I give to them and to anyone claiming under them or connected with them or in the same group within six weeks after this decision is sent to them to apply to the Commons Commissioners to set aside this decision and re-open the hearing. And I give a similar liberty to Cumbria County Council (they are mentioned as possible claimants ~~for~~ the 1981 letter [Egremont Estate Company]) to Allerdale District Council (as being under the 1914 Scheme the possible successor of the Rural District Council of Cockermouth) and to the Charity Commissioners. Any such application should be made in writing (it may be made by letter) to the Clerk of the Commons Commissioners and it should summarise the evidence which would be given at any adjourned hearing as to the ownership of this land and list any documents which would be relied on; a copy of the application should be sent to Embleton Parish Council. If no such application is received in six weeks, an ownership direction in pursuance of section 8(2) of the 1965 Act in the terms set out above will as soon as practicable be sent to the County Council.

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 19th — day of October — 1981.

a. a. Barclay Fuller