



COMMONS REGISTRATION ACT 1965

Reference No 20/U/78

In the Matter of The Strands,
Rusland, Colton, South Lakeland
District, Cumbria

DECISION

This reference relates to the question of the ownership of land known as The Strands, Rusland, Colton, South Lakeland District being the land comprised in the Land Section of Register Unit No CL. 75 in the Register of Common Land 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 no person claimed to be the freehold owner of the land in question and no 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 Kendal on 5 March 1975. At this hearing (1) Colton Parish Council were represented by Miss A C F Dobson their chairman and Colonel A R E Dobson one of their members, and (2) Mr Robert Park of Thwaite Moss, Rusland attended in person. Mr Park said that he is the owner but had not his deeds with him; accordingly at my suggestion and at his request, I adjourned the proceedings. I held the adjourned hearing at Kendal on 25 April 1975; at this hearing Mr Park was represented by Mr W F Hallan, solicitor of W C Kendall and Fisher, Solicitors of Ulverston.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) about 0.129 of a hectare (0.319 of an acre), and is approximately square. On the Register map, it is shown as being on the east side of a small area of water ("the Pool") where Forge Beck is joined by Jones Beck (down which they become Rusland Pool) and as being crossed by a road or track which joins the road (about 300 yards away to the east) from Rusland to Thwaite and the road (about 400 yards away to the west) from Colton to Satterthwaite.

Mr Park in the course of his evidence produced: (1) a conveyance dated 15 February 1964 by which Mr A H Butchart conveyed to him First enclosures of land containing about 22.127 acres numbered on the OS map (1913 edition) as therein mentioned, and delineated on the plan annexed and therein edged blue (being lands near St Paul's Church and on the opposite side of the road from Rusland to Thwaite) and Secondly enclosures of land southwest of St Paul's Church containing about 17.311 acres "as numbered on the said OS map 273, 277 and 276 and so shown...on the plan annexed hereto and thereon edged green", together with rights of fishing as therein mentioned; and (2) an extract from the said OS map. The north side of the Unit Land and part of the south side of OS No 277 (a field of 9.725 acres) are the same; the plan on the 1964 conveyance includes (in the edged green) the part of the Unit Land which is to the north of the said road or track shown on the Register map as crossing it.



Mr Park said (in effect):- Between the Unit Land and OS No 277 there is a fence with a gate. When he first knew it, the Pool was a little pool with a bed containing much gravel and sand. The River Board have excavated this gravel and sand and dumped it on the Unit Land which adjoins; they first came in about 1967, and since they have come every three or four years. The Board before doing this asked for his permission, which he gave; this was during a conversation in about 1970.

Three days after the hearing I inspected the Unit Land. It is now for the most part a flat gravel-covered area on which cars (6 easily; there would be room for more) can be conveniently halted in beautiful and secluded surroundings. On the west side of the Unit Land the grounds slopes steeply down to the Pool; so the road or track marked on the Register map as crossing the Unit Land, except at the southeast corner where it enters the Unit Land, as a distinct track does not exist, and provides for vehicular traffic no access to the one time ford and to the road or track leading westward from it; however there is nearby footpath (with a footbridge over Forge Beck) so pedestrians are not inconvenienced. It seemed to me likely that the main purpose of the excavation done by the River Board was to improve the flow of the water, but their activities appear to have incidentally made an attractive picnic spot.

Having regard to the activities of the River Board, there may be some doubt whether the road or track shown on the Register map as crossing the Unit Land is a highway. However this may be, there is no reason why I should not for the benefit of Mr Park give full effect to the 1964 conveyance as expressed, and I conclude therefore that he is the owner of the part of the Unit Land north of the middle line of the road or track (now non-existent) shown on the Register map.

As regards the remainder of the Unit Land, I reject the contention made on behalf of Mr Park that the activities of the River Board because they were with his permission show that he has a possessory title. I am not persuaded that the permission he gave can be attributed to any more of the Unit Land and was by the 1964 conveyance expressed to be conveyed to him, or that the River Board by dumping near their excavated sand and gravel onto the Unit Land took possession of any part of it either for themselves or for Mr Park or for anyone else.

For the above reasons I am satisfied that Mr Park is the owner of part (for greater certainty hereinafter defined) of the Unit Land, and I shall accordingly in pursuance of section 2(2) of the 1965 Act direct the Cumberland County Council as registration authority to register Mr Robert Park of Thwaite Moss, Rusland, near Ulverston as the owner of the part of the land comprised in this Register Unit north of the middle line (not now apparent on the land) of the road or track (no longer now distinctly existing) which is shown on the inset Register map (based on OS 1/2500) by double dotted lines (such middle line to be drawn from near the "F" of "Ford" to where such road or track begins to run from the north-northwest along the east boundary of the land towards the south-southeast). I am not satisfied that any person is the owner of the remainder of the land and it 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.

Dated this 26th day of June 1978
A. B. Allen