



COMMONS REGISTRATION ACT 1965

Reference Nos. 211/U/1
211/U/2
211/U/3
211/U/6
211/U/10

In the Matters of (1) Thornberry Quarry (South) Boldron, (2) Sealgill Quarry, Bowes, (3) Craggbeck Quarry, Bowes, (4) Thornberry Quarry (north), Boldron and (5) the Village Green (part), Boldron, all in Teesdale District, Durham

DECISION

These five references relate to the question of the ownership of (U/1) land having an area of about 3.905 acres and known as Thornberry Quarry (south), adjoining and north of the part of the A.67 road between Barnard Castle and Bowes and situated in Bowes; (U/2) land containing about 1.952 acres and known as Sealgill Quarry, about 1 mile west of Bowes and adjoining and north of the part of the A.66 road between Bowes and Brough and situated in Bowes; (U/3) land known as Craggbeck Quarry bounded on the north by Deepdale Beck near where it is crossed by the road from Bowes to Cotherstone; (U/6) land known as Thornberry Quarry (north) about 1 mile north of and at the end of a road leading from the said part of the A.67 road and situated in Boldron, all in Teesdale District and being the lands comprised in the Land Section of Register Unit (U/1) No. CL.2, (U/2) CL.3, (U/3) CL.60 and (U/6) CL.98 in the Register of Common Land maintained by the Durham County Council, and (U/10) land forming part of the Village Green of Boldron, and being the land comprised in the Land Section of Register Unit No. VG.77 in the Register of Town or Village Greens maintained by Durham County Council, and all (U/1, 2, 3, 6 and 10) being lands of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of these references (1) Mr W I Watson on behalf of the Lords in Trust of the Ancient Manor of Bowes claimed ownership of the CL.2, the CL.98 and the VG.77 lands, under a conveyance dated 20 November 1682, the subsequent appointment of Lords in Trust and the Bowes First Award dated 1768; and (2) Mr A J Turnbull as agent of the Trustees of the 16th Earl of Strathmore and Kinghorn deceased claimed ownership of the CL.2, CL.3, CL.98 and VG.77 lands. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the ownership of the lands at Bishop Auckland on (U/1, U/6 and U/10) 29 and 30 April 1975 and on (U/2 and U/3) 30 April 1975. At the hearing, Mr William Innes Watson, OBE, TD, DL, Mr John Davey Cooke-Hurle, Mr John Robert Ettey, Mr Robert Augustus Morritt, MBE, and Mr Lewis Guy (throughout the hearing and hereinafter together called "the Lords in Trust") were represented by Mr W I Watson (one of their number) solicitor of Watsons, Solicitors of Barnard Castle. The part of the hearing relating particularly to the Village Green was attended by Mr John George Allison, the chairman of the Boldron Parish Meeting.



Mr J C N Donald in the course of his evidence said (in effect):- He is now and has for the last 9 years been Steward of the Manor of Bowes. Under a trust deed dated 20 November 1682, the Manor is now held in trust for the freeholders of Bowes, Boldron, Sleightholme and Spital; the before 1682 history is recited in the deed. Bowes Moor is now held under the 1682 deed; it is now and always has been managed by the trustees ("the Lords in Trust") with the agreement of the Court Leet and Court Baron. The Moor is a very large grouse moor one of the finest in England, currently let on a 15 year basis. He kept a register of the freeholders entitled under the trust; the trustees are elected at a meeting of the Court (the attendance -- you would be lucky if you get 8 or 10); the Court sanctions changes in the register of freeholders; this has been the practice during the last 9 years and the minute books show that the practice has existed for long before.

Mr Donald produced:- (1) a manuscript book entitled "Award of Bowes Pastures dated 12 Oct 1768 and registered 10 Nov following : Award of Bowes Moor dated 29 Sep 1772 and registered 10 Nov following" (this book appears to be a copy made many years ago of these two Awards, one 215 pages and the other 118 pages of manuscript and includes a copy of the 1682 deed; (2) a printed schedule dated 21 March 1975 of "owners of Ancient Lands and Tenements within the said Manor (Bowes) with the acreages and rateable value of the properties under the decrees in the Suits of Morrill v Walton and Cradock v Highmoor..." (this Schedule lists about 70 names); and (3) a notice dated 1 October 1974 that the Court Leet or Court Baron of "the Lords in Trust for the Freeholds of the Manor" would be holden at "...", such notice being under an account of income and expenditure for the year to and a capital account at 5 April 1974 of the Manor.

The first recital in the 1682 deed is of an indenture dated 4 August 1657 by which certain citizens of London authorised by an Act of the Common Council made by the Mayor Aldermen and Commoners conveyed to C Hanby "all that Lordship of Manor of Bowes with the rights...and also all wastes...within the Townships ...of Bowes, Boldron, Sleightholme, Stoneykeld and the Spittle...to the said Manor...of Bowes belonging..."; it appears that the Manor was a sub-Manor of the Manors of Middleham and Richmond granted by H M King Charles to certain citizens of London. After further recitals, it was by the 1682 deed witnessed that the conveyance therein mentioned of the said Manor and premises was made "upon trust and confidence that they the said W Bowes, T Robinson, D Smith and R Simpson and their heirs should and would from time to time and at all times from henceforth forever permit and suffer every of the persons mentioned in the schedule hereunto annexed their heirs and assigns being tenants of the several messuages lands or tenements in the said schedule contained now in their several tenures and occupations to have and convert to their own uses respectively or rateable share and proportion of the rents issues and profits of the Manor and premises...according to the proportion of the several antient yearly rents of the said messuages lands and tenements...".

Mr Watson produced a minute book of the Court Leet and Court Baron of the Manor of Bowes from 13 November 1908 (the last Court being on 5 December 1974) and described the proceedings of the Court which he had attended for many years. There is also a minute book the Lords in Trust and a minute book Field Reeves to deal with the grazing on Bowes Moor. The current bylaws and regulations applicable to Bowes Regulated Pasture were approved by the Home Secretary under section 15 of the Commons Act 1876 on 27 June 1968 (these bylaws replacing those made and confirmed in 1907-8). In the course of a hearing relating to a dispute about Bowes Moor (Reference 44/D/53) he referred to the Bowes Inclosure Award dated 20 October 1859 made under the Annual Inclosure Act 1857 (20 Vict.c.5).



Mr Donald provided me with a summary of the history of the Manor as he had extracted it from the books:- The 1682 Trust was carried out satisfactorily until 1802. At a meeting of freeholders on 17.10.1772, a table of fines for offences and encroachments confirmed by the Manor Court on 22.10.1716 was confirmed. There were regular meetings of the Manor Court up to 1802 and regular ridings of the marches. In 1802 Lord Rokeby the sole remaining trustee claimed the Manorial rights by inheritance and appointed a steward and gamekeeper, who were exercising their offices solely to the advantage of his Lordship with no regard to the interest of the freeholders; in 1808 there was a special meeting of the freeholders who passed resolutions stressing their rights; nothing was achieved and similar resolutions were passed in 1818; lawsuits followed and the original situation was restored in 1828. The Court met in October 1831 and Lords in Trust were appointed 12 November of that year. Since then Courts were held regularly, the accounts were presented and normal business transacted and this situation has continued to the present day, with the appointment of Lords in Trust and Stewards from time to time. In 1846 there was a dispute with Craddock. In 1856, some land was sold for the railway; in 1967 on the cessation of the line the west end of the railway embankment was purchased from British Railways. In 1866 the shooting was let by ticket to forty persons each paying £40; from 1874 onwards the shooting had been let on leases of various terms, the present lease expiring in 1984. The boundaries of the Manor were ridden in 1896 following the line of the Awards of 2.2.1851 and 6.5.59; some encroachments on the Trust were found; and they were ridden again in 1922.

The 1768 Award (made under the Bowes Inclosure Act 1766, 6 Geo.3.c.70) contained allotments as follows:- "...upon the said open ground or pasture called Bowes Cow Close a certain part and parcell of the same to be used for and as a common Quarry by us called and hereinbefore referred to by the name of Craggbeck Quarry ...and containing 2 acres 1 rood 20 perches of land...upon the said pasture called Bowes West Pasture a certain part and parcell of the same to be used for and as a common Quarry (by us called and hereinafter referred to by the name of Sealgill Quarry) containing 1 acre 2 roods and 30 perches of land...upon the said pasture called Thornberry at a place near the said gate called Boldron Moor Gate a certain part or parcell of the same pasture to be used as and for a common quarry containing 2 acres 3 roods 8 perches...at a certain place in the said Thornberry commonly called and known by the name of Greenrigg a certain part or parcell of the said pasture to be used as and for a common quarry containing 1 acre 0 rood 16 perches of land...".

Mr Donald said that the records of the meetings of the Lords in Trust contained a number of references to their quarries:- 1895, 1896, 1897 and 1899, general regulations; 1897 and 1908, Sealgill Quarry; 1897, 1908, 1923, 1943 and 1963, Thornberry Quarry, and 1902 and 1917 Craggbeck. He identified the Thornberry Quarry allotment with Thornberry Quarry (south) CL.2; some time ago it was let for a bit of grazing; it used to be used as a dump but being near the road was filled in; it is now about 3 acres; there is a notice on it "MANOR OF BOWES : TIPPING OF REFUSE PROHIBITED : by Order of J C N Donald, Steward". He identified the allotment of Greenrigg with the Thornberry Quarry (north) CL.98. The Sealgill and the Craggbeck Quarries so allotted are the same as the CL.3 and the CL.60 lands; but query whether the quarry by the 1768 Award allotted as being southwest of Cragg Bridge is not the same as that in the 1965 Act Register called Cragg Beck.

The VG.77 land is a small piece of grass land south of the road leading westwards out of Boldron, having a frontage of about 15-20 yards and a depth of about 30-40 yards. It is west of and detached from a much larger piece of grass land in the middle of Boldron, known as The Green. Mr Allison said that it was understood in the Village that the Green was owned by the Lords in Trust, and



that this small piece of land was shown on an 1841 map as part of the Green; in his view it is part of the Green.

Mr Watson contended that the evidence established that all the pieces of land in question on these 5 references are now and always have been part of the waste lands of the Manor of Bowes and are therefore in the same ownership as the Manor. This contention is supported by the 1766 Act.*

After the hearing I inspected all these pieces, and they all appeared to be such as would belong to the manor of the locality. The evidence summarised above showed that the Manor of Bowes is the only manor in the locality, and I accordingly conclude that the ownership is as claimed by Mr Watson.

By section 22 of the 1965 Act, references in the Act to ownership are "to the ownership of a legal estate in fee simple". Mr Watson contended (rightly I think) that immediately before the Law of Property Act 1925 the Manor of Bowes and all the lands belonging thereto were under the trusts referred to in the 1682 indenture held in trust in undivided shares for the successors in title of the beneficiaries therein described, and that consequently in accordance with the provisions of that Act, by which land formerly held in undivided shares has been subjected to statutory trusts for sale, these lands then vested as specified in Part IV of the First Schedule, with the result that these lands being then vested in trustees may and still are vested in trustees in accordance with paragraph (1) of such Part.

The evidence establishes that the Lords in Trust appointed as described by Mr Donald are the managing Trustees; whether as such they also have the legal estate is I think a difficult question. Mr Watson referred to a minute of a meeting of the freeholders held on 10 January 1914 stating "that counsel advised that the appointment of the nominees of the freeholders can be made by the continuing Lords in Trust without applying to the Court appears to be conclusively established by the declaration contained in the order dated 24 April 1895 as to the power of Mr Thomas Witham to appoint new trustees under section 10 of the Trustee Act 1893". This section (like section 36 of the Trustee Act 1925) provides for appointments to be made in writing by the surviving or continuing trustees, and section 12 of the 1893 Act (like section 40 of the 1925 Act) provides in effect that if the appointment is made by deed, the legal estate will pass to the new trustees. It seems to me that the legal estate (with which I am concerned) cannot pass under an appointment made at a meeting (if not followed by a deed) of the Court Baron and Court Leet in the manner described by Mr Donald; I know of no provision of the 1925 Act or of any other Act which enables a legal estate in a manor and lands belonging thereto held on the statutory trusts for sale to pass otherwise than is usual in the case of other land held on such statutory trusts for sale. I conclude therefore that I cannot properly direct "the Lords in Trust" described in these words to be registered as owners of the lands.

The question discussed in the preceding paragraph is technical, and apart from the 1965 Act the answer may be (as Mr Watson pointed out) of no practical consequence. Because all the persons beneficially interested under the said statutory trusts for sale are represented before me, and because it is clear that beneficiaries under a trust should not be prejudiced by any defect in the trusteeship, I can I think properly direct the registration of the trustees of such trusts as owners.

*Note:—The preamble of the 1766 Act shows that the Manor was then held in Trust; there is nothing in the Act affecting the manorial ownership of the lands which under it could be allotted as common quarries.



Being satisfied for the reasons set out above that the trustees are the owners of all these lands, I shall accordingly under section 8(2) of the 1965 Act direct Durham County Council as registration authority to register the Trustees of the statutory trusts for sale which by the Law of Property Act 1925 became on the commencement of such Act applicable to the Manor of Bowes, and to all or some of the lands then belonging or reputed to belong thereto by reason that such Manor and such lands were then held in undivided shares under the trusts declared by or referred to in an indenture dated 20 November 1682 and made between William Bowes and others of the one part and John Laidman and others of the other part as owners of all the lands which are in question under these five references.

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, with 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 22nd day of *December* 1975

a. a. Boden Fuller

Commons Commissioner