



COMMONS REGISTRATION ACT 1965

Reference No. 208/U/48

In the Matter of Fere Mere and
Frost Mere, Monyash

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 79 in the Register of Common Land maintained by the Derbyshire 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 claims to ownership of the land in question ("the Unit land") were made by Monyash Parish Council and by Mr J Millington 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 Matlock on 8 May 1980. At the hearing the Parish Council was represented by its clerk, Mr J R Hildebrand, and Mr Millington appeared in person.

The two Meres forming the Unit land are adjacent but divided by a path: the northern one is Fere Mere and the southern Frost Mere. The Parish Council claims to own both and Mr Millington claims Frost Mere only. Mr Hildebrand produced a Conveyance of Fere Mere dated 5 May 1971 by North Derbyshire Water Board to the Parish Council: this Mere is let to a fishing club which pays the Parish Council an annual rent of £40. On this evidence I am satisfied that the Parish Council is the owner of Fere Mere.

As regards Frost Mere, Mr Millington produced title deeds and relating to property known as Mere House, formerly The Farm, which adjoins Frost Mere on the east. This property was purchased by Jessie Bagshaw in 1947; its description in the Conveyance dated 11 September 1947 was first the dwellinghouse known as "The Farm"containing .075 of an acre or thereabouts, secondly two pieces of land abutting on Town Street and adjoining the Churchyard and the Farm and containing together 1.012 acres or thereabouts, the two pieces of land O.S. 411 Wellyard and Barn Croft .812 acre and O.S. .250 (part) Berry Croft .2 acre (approx). The property by the same description was conveyed to Charles Henry Millington in 1959 and after his death in 1968 was vested in Mr J Millington the claimant, by an Assent dated 3 September 1971. The question which arises on Mr Millington's title deeds is whether Frost Mere can be identified as included in the property which has passed into his ownership.

Frost Mere is now an unenclosed area of grass lying between Mr Millington's house and Rakes road. Mrs A Robinson, the Chairman of the Parish Council, stated in evidence that when it was a Mere containing water, it had been used by the farmers until water was piped, after which it fell into disuse and was filled in with rubble by the Parish Council in the late 1940's. It has since remained an open space, not used for any particular purpose and not maintained by the Parish Council which, however, in 1975 granted a wayleave for pipes to the Severn Trent Sewage Board and received a payment of £18. The Parish Council has no title deeds to



Frost Mere and the evidence does not, in my view, establish a possessory title in its favour.

Reverting to Mr Millington's claim, none of his title deeds contains a plan of the property and I do not find it possible from the verbal description of the property to identify satisfactorily Frost Mere as part of the property acquired by Mr Millington. Mr Millington produced a copy of the O.S. map on which the boundaries of his property (not including Frost Mere) are marked, and as so marked and having regard to the acreages stated in the verbal description it appears that the property he acquired falls within those boundaries without the inclusion of Frost Mere. Mr Millington's claim to Frost Mere, as I understood him, rested on the reference in the title deeds to the two pieces of land "abutting on Town Street" and he contended that as Frost Mere on its western side abutted on the Street and no other part of his property did, the described property must have included Frost Mere. I follow his argument but I am not persuaded that this consideration is in itself sufficient to justify the interpretation of the property as described as extending to include the further ~~acre~~^{area} of Frost Mere.

I have examined the earlier title deeds: in a conveyance to a Mr Hawley of 25 March 1862, the property conveyed consisted of the dwelling house and three adjoining pieces of land (1) Wellyard and Barn Croft, 2 roods and 39 perches (2) Berry Croft 27 perches (3) Meer and Meer Yard, 2 roods and 24 perches bounded by lands of Moses Tunnicliffe Glebe land, Church land and the Town Street of Monyash. Then in a conveyance by Hawley dated 17 February 1902, the property conveyed comprises the dwellinghouse and the first two pieces of land but does not include the third piece Meer and Meer Yard, 2 roods and 24 perches. In this conveyance the description of the property conveyed concludes "all which hereditaments are bounded by land.....belonging to.....Edwin Johnan and by Glebe land the Churchyard and the town street of Monyash and by a piece of land covered with water containing 2 roods and 24 perches formerly belonging to..... Hawley and sold by him to the Bakewell Rural District Council". This is clearly the third piece of land comprised in the Conveyance of 1862 ie. Meer and Meer Yard, and as so described it seems virtually certain that this third piece of land was either Fere Mere or both Meres. If indeed it was both Meres then Frost Mere as well as Fere Mere had been sold by Hawley and never passed to Jessie Bagshaw or the Millingtons: if it was only Fere Mere then it is significant that whilst there is ~~express~~ reference to that Mere there is not, as one would expect, ~~an~~ ~~express~~ reference to Frost Mere, if Mere was to be included in the property elsewhere described in the deeds. Further it is to be observed that in 1862 when, as it seems, Fere Mere at least was part of the property acquired by Hawley, the reference to the property being bounded by...the Town Street was accurate, and it may well be that the references in the later deeds to "abutting on Town Street" is a carryover from the earlier description to a time when, Fere Mere having been previously sold, it was in fact no longer appropriate.

I list in the Schedule below the title deeds produced by Mr Millington. Mr Millington in evidence said (and I accept) that since 1967 he had mowed Frost Mere and kept it tidy, and has not objected to people using it for picnicking and the like. He had no knowledge of the grant of the wayleave by the Parish Council and had he known he would have claimed the £18. This evidence does not in my opinion establish a possessory title in his favour.



In the result I am not satisfied that any person is the owner of Frost Mere and it will therefore remain subject to protection under section 9 of the Act of 1965. I am satisfied that Monyash Parish Council is the owner of Fere Mere and I shall accordingly direct the Derbyshire County Council, as registration authority, to register the Parish Council as the owner of Fere Mere under section 8(2) 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.

Schedule of Mr Millington's Title Deeds

1. 25 March 1862 (1) Robert Henry Chaney (2) William Hawley (3) John Housley
Conveyance (4) William Finney
2. 24 January 1898 (1) William Hawley (2) James Dunn Harrison
Mortgage
3. 17 February 1902 (1) James Dunn Harrison (2) William Hawley (3) David Frost
Conveyance
4. 22 July 1933 Personal Representatives of David Frost to E.W. Frost and J Frost
Assent
5. 23 August 1947 (1) J Frost (2) R G Twyford (Appointment of new Trustee)
6. 11 September 1947 (1) J Frost and R G Twyford (2) Jessie Bagshaw
Conveyance
7. 22 June 1959 (1) Jessie Bagshaw (2) Charles Henry Millington
Conveyance
8. 3 September 1971 Personal Representatives of C H Millington to Joshua Millington
Assent

Dated: 25 June 1950

L. J. Morris Smith

Commons Commissioner