



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/5.

In the matter of (1) Kelton Moss in  
Mickleton, Romaldkirk and Hunderthwaite,  
(2) Harker Moss, and (3) parson's Moss  
both in Mickleton, Teesdale District, Durham

DECISION.

This reference relates to the question of the ownership of land in three pieces;- (1) known as Kelton Moss, having an area of 15a,2r, 34p, being west of the road across Mickleton Moor from New Houses to Grassholme, and being in Mickleton, Romaldkirk and Hunderthwaite; (2) known as Harker Moss having an area of 16a, 3r, 2p, being west of the road from Hury northwards across the moor, and being in Mickleton, and (3) known as parson's Moss having an area of 17a,1r,24p, (these areas being taken from the Award below mentioned), being on Romaldkirk Moor between the said road from Hury and the road from Hunderthwaite to Mickleton, and all in Teesdale District and being the land comprised in the Land section of Register Unit No. CL.92 (or CL.1092) in the register of Common Land maintained by the Durham 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 Strathmore Estate claimed that the land, although the subject of an Inclosure Award, was still in the ownership of the Lord of the Manor, i.e. the present Trustees of Lord Strathmore. 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 Bishop Auckland on 29th April 1975. At the hearing Mr. James Haldane, Mr. Francis George Moore, and Mr. James Martin Haldane ("the Executors") were represented by Mr. A.H. Charlesworth, solicitor of Williamson & Co., Solicitors of Newcastle upon Tyne.

Mr. Charlesworth in the course of his evidence (given at an earlier hearing but I treated it as given as this hearing too) produced the following documents:- (1) a copy of the settlement dated 12 November 1908 made on the marriage of the Rt. Hon D.G. Earl of Strathmore and Kinghorne by which among other hereditaments, the Manor of Mickleton was granted, subject to certain uses thereby limited to the use of himself (he was the 14th Earl) for life; (2) a certified copy of a vesting deed dated 6 September 1926 which it was declared that certain hereditaments were then vested in the said Earl; (3) an assent dated 13 November 1968 by which the personal representatives of the 15th Earl assented to the vesting in the Rt. Hon. Timothy Patrick, Earl of Strathmore and Kinghorne (16th Earl) of the manors and lands therein described; (4) a copy of a confirmation dated 1 November 1972 by the Sheriff of Perth and Angus of the Executors nominated by the 16th Earl; (5) an abstract of the title of the Trustees of the Bowes Estate to freehold property setting out the devolution of the title of the settled hereditaments between 1908 (cc) settlement and the 1968 assent including a statement of the relevant death and probates; (6) a letter dated 23 April 1975 from Frere Cholmeley & Co., Solicitors of



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Lincolns Inn Fields, London, confirming that they had inspected documents above mentioned and (?) some certificates of search under the Land Charges Act 1972. E

Mr. T. Dent who is 62 years of age, has lived all his life near these pieces of land and is now and for at least 20 years has been secretary of the Mickleton Moss Committee, in the course of his evidence, produced the Romaldkirk and Mickleton (Township) Inclosure Award dated 21 February 1810 and made under the Romaldkirk and Mickleton (Township) Inclosure Act (42.Goe.3.c.lxx). By it, the Commissioners allotted "as and for peat, turf and ling for the use of the said proprietors (i.e. of the lands intended to be inclosed) and their respective tenants and lessees for the purpose of getting peat, turf and ling therefrom 50 acres of land in 3 distinct plots...the first ...which we shall hereinafter refer to and call by the name of Parsons Moss...second... which we shall hereinafter refer to and call by the name of Harker Moss...the third and last...which we shall hereinafter refer to and call by the name of Kelton Moss...AND we hereby order...that the said 50 acres of land so set out by us as aforesaid shall from henceforth and for ever after continue open and in common as and for such uses intents and purposes as are by the said in part recited Act direct but to or for no other use intent or purpose whatsoever".

Mr. Dent said (in effect): The products of these pieces of land have been used by the property owners of Mickleton for burning, thatching and that type of thing. The grazing(rough) is let by the Moss Committee; they apply the rent received to the benefit of the Village, e.g. they made a donation to the playing field Committee.

Mr. Charlesworth handed in a statutory declaration made on 24 April 1975 by Mr. E.R. G. Holmes who was born on 13 July 1888 and who became steward of the Manor of Mickleton in 1919. He declared (among other things) that he had from time to time (though not in recent years) visited the three pieces of land and had shot over the same with the permission of the Agents for the time being of the Strathmore Estates.

I am on this reference concerned only with the ownership of the legal estate in fee simple of these pieces of land, see section 22 of the 1965 Act.

In my opinion the executors have not established a title by possession; the oral evidence of Mr. Dent and the statutory declaration of Mr. Holmes are I think not enough. So to succeed the executors must establish a documentary title.

The 1802 Act and 1810 Award show that before the Award was made the ownership of these pieces of land was in the then Lord of the Manor. Whether in 1810 the Lord of the Manor ceased to be the owner depends on the effect of the Act and the Award. There are no rules of construction applicable; under an award, a lord of a manor may retain his interest in the legal estate if it is not by the award otherwise disposed of, see R. v. Inclosure (1871) 23 L.T. 778; or alternatively an award may be read as extinguishing every estate and interest of the Lord of the Manor, see Attorney General v. Bethwick 1892 2 Q.B. 555; the effect of each Inclosure Act and Award depends on its own particular terms, see Hooker v James (1968) 19 P.C.R. 525. The 1810 Award does not deal expressly with ownership, probably because the Commissioners thought that the rights mentioned in the above quoted allotment exhausted every possible use of these pieces of land; however this may be, I consider this case to be nearer to the 1871 case than to the 1892 case, and I accordingly conclude that notwithstanding



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the rights of the proprietors under the allotment, after the Award (1810) the legal estate in these pieces of land remained in the Lord of the Manor.

The documents produced by Mr. Charlesworth as set out above show that the executors are now entitled to the Lordship of the Manor. I conclude therefore that they have established a documentary title.

For these reasons I am satisfied that the executors are the owners of the land and I shall accordingly direct the Durham County Council as registration authority, to register Mr. James Haldane, Mr. Francis George Moore, and Mr. James Martin Haldane all of 16 Abercrombie place, Edinburgh as the owners of the land 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.

Dated this 9<sup>th</sup> — day of July — 1975.

*a. a. Baden Fuller*

Commons Commissioner.