

In the Matter of Bowes Moor, Bowes, Co. DurhamDECISION

This reference relates to the question of the ownership of land known as Bowes Moor, Bowes, being the part of the land comprised in the Land Section of Register Unit No. CL.1001 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 the Lords in Trust for the Freeholders of the Manor of Bowes and the Freeholders and Stint Owners claimed to be the freehold owners 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 Durham on 6 and 7 March 1985. At the hearing the Lords in Trust for the Freeholders of the Manor were represented on 6 March by Capt J H McBain, their Steward and on 7 March by Mr W J Watson, Solicitor, and the Field Reeves of the Bowes Moor Regulated Pasture by Mr B Coates, their Secretary.

There is no dispute that the land in question was at one time in the ownership of the lords of the manor of Bowes. However, by an award made in 1859 under the Acts for the Inclosure Exchange and Improvement of Land ~~and~~ the land was set out and awarded to be used as a regulated pasture and there was set out, allotted, and awarded to the lords in trust of the manor of Bowes 361 sheep stints or gates on the regulated pasture, together with a rent-charge in lieu and in full compensation for the right and interest of the lords in trust in the soil of the land exclusively of the existing rights and interests in all mines, minerals, stone, and other substrata thereunder to be held by them upon trust for the persons beneficially interested in the rents and profits of the manor.

The effect of this award was to vest the soil in the owners of the stints as tenants in common by virtue of section 116 of the Inclosure Act 1845. In such a case the land became vested in the Public Trustee under Part V of the Second Schedule to the Law of Property Act 1925: see Re Cotherstone Moor Regulated Pasture (1961) Estates Gazette 1 July. It was argued by Capt McBain that the title of the Lords in Trust had been accepted from time to time by the Treasury Solicitor when small pieces of the Moor had been sold for road widening purposes and the recently constructed Bowes by-pass, though it appears that no Conveyance was even executed, and Mr Coates said that on these occasions payment was also made to the Field Reeves on behalf of the Stint owners. However, this argument was only directed to trying to persuade me to follow the lead of the Treasury Solicitor. With all respect to the Treasury Solicitor, I cannot regard his view of the law as having ~~an~~ even persuasive authority. My duty is to make up my own mind on the material before me.



-2-

Mr Watson in a written supplementary argument said that despite the Inclosure Acts, the award of 1859 was ineffective. This argument I am entirely unable to accept. Mr Watson also submitted a deed made 31 December 1958 between (1) Thomas King Bell, William Innes Watson and John Robert Ettey (2) John Davey Cooke-Hurle and John Gerald Milbank whereby the parties of the second part were appointed by the parties of the first part ~~were appointed~~ to be the trustees of an indenture made 29 November 1682 whereby the lordship of the manor of Bowes was conveyed to one John Laidman and others upon trust for the several freeholders according to their rateable shares. I have no reason to doubt that the present Lords in Trust are the successors in title of John Laidman and others, but this is no longer relevant to the question which I have to determine, the land having been vested in the owners of the stints as tenants in common by section 116 of the Inclosure Act 1845.

On the evidence before me I am satisfied that the Public Trustee is the owner of the land, and I shall accordingly direct the Durham County Council, as registration authority, to register him as the owner 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

23rd

day of

April

1985

Chief Commons Commissioner