



In the Matter of Moss Moor, Stanhope,  
Co. Durham

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DECISION

This reference relates to the question of the ownership of land known as Moss Moor, Stanhope, being the part of the land comprised in the Land Section of Register Unit No. CL.73 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 Mr M J W Reed, Mr W R Walton, Mr I Dalton, Mr R B Rutherford, Mr I H Bell, Mr H B Rutherford, Mr G B Rutherford, Mrs V Walton and Mr I S Walton, as Executors of I H Walton, deceased, Mr W. Ll Watson and Mr T S Watson, as Executors of C R Watson, deceased, and Mr R N Burton claimed to be the freehold owners of parts 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 7 March 1985. At the hearing Mr John Winch, of Counsel, appeared for Mr Reed, Mr W R Walton, Mr Dalton, Mr R B Rutherford, Mr Bell, Mr H B Rutherford, Mr G B Rutherford, Mrs Walton and Mr I S Walton and Mr W. Ll Watson and Mr T I Watson, and Mr D Mellor, Solicitor, appeared for Mr Burton. After the hearing was concluded and Mr Winch and Mr Mellor had left, Mr R A Bibby, Solicitor, asked to be heard on behalf of Mr and Mrs M Maddison, the applicants for the registration at entry No. 16 in the Rights Section of the Register Unit.

The land the subject of the reference was part of the land to be divided, allotted, and otherwise improved under the Act 39 Geo. III, C.69 (private).

The Scheme of the Act of 1799 was a somewhat unusual one. By section 18 the Commissioners were required to ascertain such parts of the stinted moors and pastures as in their judgement appeared to be the best situated and most capable of improvements to be divided and allotted and to ascertain the number of stints thereon and the persons entitled to them. Then by section 23 the Commissioners had to set out the improveable parts among the proprietors in proportion to their number of stints. Finally, after the best part of the stinted moors and pastures had been allotted, the Commissioners were required by Section 30 to set out the remainder as stints according to each persons's share.

No award was made until 1815. Then the land the subject of the reference was divided into sixteen allotments, each allottee being also given a second allotment of stints on Moss Moor. Although the allotments are not numbered in the award or on the plan accompanying it, it will be convenient to refer to them by the numbers on a modern plan produced by the claimants, on which the boundaries of the allotments are identifiable. It will also be convenient to deal with the plots on the modern plan in numerical order, although in some cases the claim has been made in respect of more than one plot.



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Plot No. 1 This is part of the allotment made to Elizabeth Pearcy for three stints. One undivided third part or share of the net proceeds of sale of this plot and all other the estate and interest of the testatrix in the same were included in the parcels of a conveyance made 17 February 1958 between (1) Elizabeth Hayman Peador (2) John Walton Reed, the testatrix being Annie Rowell, who died in 1946.

Plot No. 2 This is another part of the allotment made to Elizabeth Pearcy. The parcels of a Conveyance made 8 December 1953 between (1) George Wilfred Humble and John Frederick Thompson (2) Jonathan Stanley Humble and Cecil Humble (3) C Humble included this plot (formerly part of an allotment of land containing 50 ac., i.e. the allotment made to Elizabeth Pearcy) " which represented one half of a stint on the said Moss Moor". This plot was conveyed to Mr W R Walton by a Conveyance made 25 October 1977 between (1) Cecil Oliver Humble (named Cecil Humble in the 1953 Conveyance ) (2) William Rutherford Walton.

Plot No. 3 This is another part of the allotment made to Elizabeth Pearcy (the remainder of this allotment is not comprised in the Register Unit). The later history of this plot is somewhat obscure. The parcels of a lease made 29 July 1937 between (1) The Ecclesiastical Commissioners for England (2) Richard Nicholson Burton included the right of sporting over the unenclosed lands known as (inter alia) Moss Moor coloured red on the annexed plan and "one undivided third share of and in an allotment on Moss Moor aforesaid which said allotment is coloured green and hatched red on the said plan". Unfortunately the plan annexed to this lease is now missing, but although the description is consistent with the allotment referred to being Plot No.3, it is by no means clear. However, the parcels of a Conveyance made 12 February 1959 between (1) The Church Commissioners for England (2) The Bracken Bank Shooting and Fishing Company Ltd include three several Moors and unenclosed allotments, including (inter alia) Moss Moor for the purposes of identification delineated on the plan marked "A" annexed thereto and thereon verged red except and reserving (inter alia) ten stints or cattlegates in and upon Moos Moor and subject to the existing sporting rights over and affecting the four allotments on Moss Moor hatched green on the plan. The land verged red on the plan includes the whole of the land the subject of the reference with the exception of Plots Nos 7 and 16, while the hatched land comprises Plots Nos 1,2,5,6,11 and 13. Following this Conveyance, a statutory declaration dated 2 March 1962 was made by Mr D A Collenette, the Estates Secretary to the Church Commissioners, in which he stated that the land verged red on the plan formed part of the Commissioners' estates known as the Durham Bishopric Estates until the sale in 1959, and that a search of the Commissioners' rent books and records indicated that for a period of upwards of thirty years before the sale in 1959 no one claimed to have any title to or interest in the land other than the Commissioners or their predecessors the Ecclesiastical Commissioners and their respective lesseas or tenants and that the Commissioners or their predecessors were in receipt of the rents and profits thereof. It was not argued by Mr Mellor that this conveyance operated to convey more than the land which had been the subject of the lease.



Plot No. 4 This was allotted to Thomas Coultherd for three stints. While this plot could be one of the allotments in the parcels of the 1937 lease referred to above, the absence of the plan referred to in the lease leaves this uncertain.

Plot No. 5 was allotted to Elizabeth Dalton for one stint. Two undivided third parts of this plot were included in the parcels of a Conveyance made 15 May 1979 between (1) William Lloyd Watson and Thomas Stanley Watson (2) William Rutherford Walton. The title to these undivided third parts can be traced back to a Conveyance made 13 May 1907 between (1) Joseph Dalton (2) Octavius Monkhouse (3) Harrison Watson

Plot No. 6 was allotted to Mary Dalton for one stint. The parcels of an assent made 6 November 1956 between (1) Martins Bank Ltd (2) Willilam Burders Dalton and Jesse Dalton (the Bank being the Executor of David Andrew Dalton, who died 29 January 1954) included one fourth part (and all other (if any) the share, estate, and interest of the testator) of and in this plot. Mr W B Dalton died on 11 October 1970.

Plot No. 7 was allotted to Joseph Currah for two stints. The parcels of the Conveyance made 15 May 1979 referred to ~~the~~ above also included "All those two stints or cattlegates on Moss Moor aforesaid and all or any allotment or allotments set out upon such moor for or in respect of the said stints or cattlegates (and which said stints or cattlegates or allotments in respect thereof are believed by the vendors to be represented by the piece or parcel of land shown verged red on the Plan hereunto annexed). The land shown verged red on the Plan is plot No. 7. This identification is consistent with the allotment of two stints to Joseph Currah. The title to this part of the parcels of the 1979 Conveyance is deduced from a Conveyance made 29 September 1928 made between (1) Alan Jared Gray (2) Barclays Bank Ltd (3) Martin Bank Ltd (4) Joseph Watson.

Plot No. 8 was allotted to William Bell with one stint. The parcels of the Conveyance made 8 June 1959 between (1) John Charles Bell (2) Harry Bell Rutherford and George Bell Rutherford included one equal undivided half part or share of and in the net proceeds of sale of this plot.

Plot No. 9 was allotted to Emerson Curragh for three stints. The parcels of the Conveyance made 23 November 1970 between (1) Kathleen Sophia Green (2) Cecil Oliver Humble and Francis Humble included this plot "representing three stints or cattlegates on Moss Moor". This plot was conveyed to Mr W R Walton by the Conveyance made 25 October 1977 referred to above.



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Plot No. 10 was allotted to Mary Coulthard for 10½ stints. This plot is claimed by Mr W R Walton in reliance upon an assent and deed of gift made 17 June 1970 between (1) Robert Stobbs Walton and William Rutherford Walton (the administrators of the estate of Joseph Norman Rutherford deceased). (2) R S Walton (3) W R Walton. I am however, unable to identify plot No. 10 in the parcels of this assent and deed of gift.

Plot No. 11 was allotted to John Harrison of Wearhead for two stints. By his will dated 27 June 1888 and proved 12 August 1888 Joseph Harrison of Wearhead near Wearhead devised to his executors on trust for his daughter Hannah Walton one stint or cattlegate in or upon his unenclosed allotment on Moss Moor and one stint or cattlegate in or upon his enclosed allotment on Moss Moor together with a proportionate part of the allotment or allotments of land set out, held, or allotted in respect of the same cattlegates or stints or any of them. While clouded in some obscurity, the effect of this devise appears to have been to pass an undivided half share in plot No. 11. After divers mesne assurances and acts in the law this undivided half share was included in the parcels of an assent made 12 June 1931 between (1) William Arthur Whitfield (the executor of Hannah Walton) (2) Reine Florence Allinson, Ella Rae Peart, and John Harrison Walton on trust in equal shares as tenants in common until sale.

Plot No. 12 was allotted to John Coulthard for half a stint. While this plot could be one of the allotments in the parcels of the lease of 29 July 1937 referred to above, the absence of the plan referred to in the lease leaves this uncertain.

Plot No. 13 was allotted to Mary Coulthard for half a stint. This plot is claimed by Mr W R Walton in reliance on the assent and deed of gift made 17 June 1970 referred to above. I am, however, unable to identify this plot in the parcels of the assent and deed of gift.

Plot No. 14 was allotted to John Coulthard for half a stint. The parcels of a Conveyance made 8 December 1953 between (1) George Wilfred Humble and John Frederick Thompson (2) Jonathon Oliver Humble and Cecil Oliver Humble included one half of a stint or cattlegate on Moss Moor and a proportionate part (being enclosure No. 14) of the allotment or allotments (if any) set out and allotted in respect thereof. In spite of the somewhat obscure wording, I have come to the conclusion that this conveyed the whole of plot No. 14. This plot was conveyed to Mr W R Walton by the Conveyance made 28 October 1977 referred to above.

Plot No. 15 was allotted to Joseph Dawson for three stints. While this plot could be one of the allotments in the parcels of the 1937 lease referred to above, the absence of the plan referred to in the lease leaves this uncertain.



Plot No. 16 was allotted to Thomas Nattras in two parts- one of them being his allotment on Moss Moor for one stint and the other his second allotment on Burnhope Moor. This plot is identifiable from the plan on the assent and deed of gift of 17 June 1970 referred to above as being included in the parcels thereof.

I have considered whether I should re-open the hearing in order to give Mr and Mrs Maddison an opportunity of proving their ownership of one or more of the plots. I would only do this on an undertaking to pay the additional costs of the other claimants in any event, but before deciding whether to re-open the hearing on these terms I have read an affidavit sworn by Mrs Maddison since the hearing. It appears from the affidavit that Mr and Mrs Maddison wish to be registered as the owners of Plots No. 3 and 4. There are exhibited to the affidavit copies of two Conveyances, the first is a Conveyance made 12 August 1953 between (1) The Church Commissioners for England (2) William Graham and James English Graham, the parcels of which include "three stints in and upon Moss Moor near Lanehead", which are included in the parcels of a Conveyance made 18 June 1976 between (1) William Graham and James English Graham (2) Malcom Maddison and Wendy Maddison his wife.

There is no further identification of the three stints in either of the Conveyances, but Mrs Maddison stated in her affidavit that at the time of the 1976 Conveyance "My Husband and I were shown by the previous owners which stints we were acquiring which covered the land shown edged red on the said plan", i.e. Plot Nos 3 and 4. It is clear that the previous owners and Mr and Mrs Maddison were under a fundamental misapprehension regarding the nature of the stints in and upon Moss Moor. The stints are not areas of land, but the rights over the unenclosed parts of the moor fixed by the Commissioners under section 30 of the Act of 1799, while plots No. 3 and 4 which Mr and Mrs Maddison were shown were parts of the allotments of land made under Section 24 of the Act. There is thus, in my view, no prima facie case which would justify the re-opening of the hearing.

There is, however, another reason why Mr and Mrs Maddison are not qualified to be registered as the owners of plots No 3 and 4. Mr W Graham and Mr J E Graham applied for the registration of a right to graze 6½ stints (each stint counting as 6 sheep) during the period from 1 June to the 31 October and 20 sheep during the period 1 November to 31 May the following year attached to Burnt Hills Farm and other land over the whole of the land comprised in the register unit. This registration, being undisputed, became final on 1 August 1972, but on 6 July 1983, following an apportionment, it was replaced by two registrations, one to graze three stints over plots 3 and 4 attached to Burnt Hill Farm made on the application of Mr and Mrs Maddison, and the other a right to graze 3½ stints over plots Nos 3 and 4 made on the application of Mr J M Morgan. These registrations having become final, they are by virtue of section 10 of the Act of 1965 conclusive evidence of the matters registered. Since Mr and Mrs Maddison's right to graze 3 stints over plots No. 3 and 4 is inconsistent with



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ownership of those plots, it follows that it would be pointless to re-open the hearing to consider a claim which would be foredoomed to failure.

After the hearing Mr Bibby's firm submitted to me a statutory declaration by Mr G L Peart in which he claimed together with Mrs O Peast and Mr A L Peart as tenants in common to be entitled to the ownership of plots 12 and 15 as successors in title of the late Mr G Peart. There is exhibited to this declaration a copy of a Conveyance made 19 December 1958 between (1) The Church Commissioners for England (2) George Peart the parcels of which include "three stints or cattlegates and one half of another stint or cattlegate in or upon Moss Moor or Common situate near to Wearhead . . . . all of which said stints or cattlegates were immediately before the execution of those presents held or occupied by the Purchaser as tenant of the Commissioners".

There is no further identification of the three and half stints in the Conveyance, but Mr G E Peart states in his affidavit that the stints which his family has occupied and which are referred to in the Conveyance are the stints being Plot Nos 12 and 15 and that two of the stints relate to "the stint No. 12" and one and a half of the stints to "the stint No. 15". This statement is based upon a similar fundamental misapprehension regarding the nature of the stints in and upon Moss Moor referred to above. Plots Nos 12 and 15 are not "stints", but parts of the allotments of land made under Section 24 of the Act of 1799.

Furthermore, as in the case of Mr and Mrs Maddison, there is a further difficulty in the way of the claim in that the late Mr George Peart applied for the registration of  $3\frac{1}{2}$  stints attached to Mount Haley and Stone Drass Farm over the whole of the land comprised in the Register Unit. This registration was replaced by the right to graze  $3\frac{1}{2}$  stints over Plots Nos 12 and 15. This registration having become final, it is conclusive evidence of the matters registered and is inconsistent with the ownership of Plots Nos 12 and 15 by Mr G Peart or by the claimants or his successors in title. I therefore do not propose to re-open the hearing to consider this claim, which, like that of Mr and Mrs Maddison, would be foredoomed to failure.

On this evidence I am satisfied that Mr W R Walton is the owner of Plots Nos 2,7,9,14 and 16. I shall accordingly direct the Durham County Council, as registration authority to register him as the owner of those plots under section 8 (2) of the Act of 1965.

In the case of Plots Nos 1,5,6,,8 and 11 title to undivided shares has been proved. It is not, however, possible to enter undivided shares in the Ownership Section of a Register Unit, since it is provided by Section 22 (2) of the Act of 1965 that references in the Act to the Ownership and the owner of land are references to the ownership of a legal estate in fee simple in the land and to the person holding that estate. Since a legal estate is not now capable of subsisting or of being created in an undivided share in land by virtue of section 1 (6) of the Law of Property Act 1925, and there is no evidence in respect of

