



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/103

In the Matter of 10 pieces of
land at Mickleton, Teesdale
District, Durham

DECISION

This reference relates to the question of the ownership of land being 10 pieces at Mickleton, Teesdale District being the land comprised in the Land Section of Register Unit No. CL164 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. The said 10 pieces are in the Register said to be known as (1) Bail Hill, (2) Parson Rigg, (5) Limestone, (6) Greet's, (7) East Harker, (8) East Field, (9) Pinfold, (10) Easter Beck, (11) Harker Moss, and (12) Kelton Moss. The registration originally comprised 13 pieces; consequent on Objections Nos 0197, 0274, 0340 and 0341, I held a hearing about the resulting disputes on 24 January 1973 and 29 April 1975, and gave about them a decision dated 25 July 1975, under which pieces numbered (3), (4) and (13) were wholly removed from the Register and part (the west part) of No. (12) was removed from the Register. For convenience I in this decision use the Register numbering, not using (3) or (4).

Following upon the public notice of this reference Fergus Michael Claud 17th Earl of Strathmore and Kinghorne claimed (his Solicitor's letter of 30 January 1986) that he should be registered as owner of two of the pieces. No other person claimed to be the freehold owner of the land in question or to have information about its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Durham on 5 February 1986 and at Middleton-in-Teesdale on 16 July 1986. At the hearing (1) the Earl of Strathmore and Kinghorne was represented (February only) by Mr A H Charlesworth, Solicitor of Keswick, (2) Mrs Joyce Cama was represented ~~by~~ (February only) by Mr Friar Spedding of counsel instructed by Dawson, Arnott & Pickering, Solicitors of Barnard Castle, (3) Mr Francis Morris Roy Gibson of Easter Beck House, Middleton-in-Teesdale attended in person, and (4) Mickleton Parish Council were represented by their chairman Mr Henry Hope.

At the hearing Mr Charlesworth said that the Earl of Strathmore and Kinghorne does not claim the land mentioned in the said letter of 30 January 1986.

Piece (6), Greet's: claim of Mrs Cama

In support of this claim Miss Karin Elizabeth Welsh, solicitor \longrightarrow
 \longrightarrow produced a conveyance dated 5 April 1949 by Ursula Heslop and William Gower Heslop to Joyce Cama and a conveyance dated 20 March 1920 by William Christopher George Dent to Harry Thomas, both held by her firm on behalf of Mrs Cama, and identified the leasehold land containing 9la.1r.28p. described in the Second Schedule to the 1949 conveyance with the land surrounding and including that one of the said 10 pieces which is in the Register, marked "Millstone Grits", being the piece ~~on the map~~ (Map) a little south of the words "Swarthy Top" marked on it,



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and as being the "(6) Greets" in the Register ^{specifically} ~~mentioned~~. She said that her information was that no rent had ever been paid by Mrs Cama for this leasehold land.

Mr Spedding said that on the map referred to in the Mickleton Inclosure Award dated 21 February 1810, the piece mentioned by Miss Welsh was called "Greets" and was by the Award allotted as a quarry.

The Second Schedule to the 1949 Conveyance described the land "the leasehold portion of the said allotment known as Swartha Top or Swarthy Top ... delineated and described on the said plan and thereon coloured round with red", the said plan being that attached to the 1920 conveyance. In the recitals to the 1949 conveyance, it is described as held for 1,000 years from 1607 at the yearly rent of "fifteen shillings and four pence and a free rent of six pence" granted by a lease dated 4 November 1607.

The Second Schedule to the 1920 conveyance is relevantly the same as the 1949 conveyance and the plan annexed to it clearly shows edged red land as including "Millstone Grits" situated south of "Swartha Top", and as clearly including "(6) Greets" specified in the Register.

On this evidence I was at the hearing satisfied (nobody contending otherwise) that Mrs Cama was entitled to the piece (6) Greets for a term of 1,000 years. However I could not then direct the registration of Mrs Cama as owner, because for the purposes of the Commons Registration Act 1965 ownership is limited to ownership of a legal estate in fee simple, that is exclusive of leasehold land, see section 22. But section 153 of the Law of Property Act 1925 provides for the enlargement of a leasehold long term as originally created of not less than 300 years at a rent not exceeding £1; so I gave Mrs Cama liberty to send an appropriate deed made in accordance with the section to the office of the Commons Commissioners.

Pursuant to such liberty, with a letter dated 21 February 1986 Dawson, Arnott & Pickering sent to the Commons Commissioners: (1) a deed of enlargement dated 21 February 1986 and made by Mrs Joyce Cama by which she in exercise of the powers conferred on her by the Law of Property Act 1925 and of every other power declared that the said term of 1,000 years shall be and is enlarged into a fee simple, (2) and (3) copies of the said 1949 and 1920 conveyances, and (4) a copy examined abstract of the said 1607 lease.

On this February 1986 deed and on the information given to me as above summarised at the February part of my hearing I am now satisfied that Mrs Cama is the owner of this one of the said 10 pieces, being that one of them in the Register called "(6) Greets" and delineated on the Register map as a plot a little south of the words "Swarthy Top" marked on it.

Piece (9), Pinfold: claim of Parish Council

At the July part of the hearing oral evidence was given by Mr H Hope who has been chairman of Mickleton Parish Council for the last 8 years, been a member for 2 years longer and lived in the parish since 1944. He ~~produced~~ produced the Minute books of the Council 1895-1934 and from 1969 to May 1985.



As to (9) the Pinfold, he drew my attention to entries to the following effect:
(page 59) 19 February 1898, door to be put on Pinfold, to be let by tender;
(page 63) 23 April 1898, let by tender the use of the Pinfold for one year;
(page 73) 15 March 1901, Mr Thomas Wardle paid 2s/6p for rent of Pinfold;
(page 177) 11 October 1979, two copies of the agreement for renting the Pinfold to Mrs N Earnshaw duly signed; rents due to 31 March 1980 received. Mr Hope said that the Pinfold is still rented to Mrs Earnshaw; and has always been let from as far back as he could remember, and the rent has always been received by the Parish Council.

After the hearing I inspected the Pinfold attended by Mr Hope. It is a rectangular plot having a frontage of about 25 ft to an open space near the middle of the village and on the south side of the main road through it. The plot is fenced, enclosing on its west side a small building with double gates leading onto the said open space and apparently used as a garage, and on its east side a small garden. Its appearance is consistent with it having at one time been used as a pinfold. Mr Hope said that as far back as he could remember, it had not been used as a pinfold, but had always been let.

On the above summarised evidence of Mr Hope and what I saw during my inspection, I am satisfied that the Parish Council are the owners of it.

Piece (5), Limestone: claim of Parish Council

As to this piece, Mr Hope said: it is a short distance southeast of West Pasture Road, and is or was locally known as Botany Tip. The piece is near to and on the northeast of the road fit for motor traffic which runs up to Botany (at or near the watershed) and beyond down to Hury in Baldersdale. Mr Hope drew my attention to entries in the Parish Council Minute Book to the following effect: (page 214) 9 April 1981, inquiry if Botany rubbish tip could receive any attention to make it look respectable, agreed with Councillor C Allinson that he make inquiries of Teesdale District about notice boards; (page 216) 14 May 1981, Teesdale Council have forwarded 2 notice boards for erection by the Parish Council at the site to prohibit people depositing rubbish; agreed with Councillor Walton he would find posts to fix these signs to and erect them; also agreed, inquiries be made if rubbish at this site could be levelled and covered over with soil; (page 218) 11 June 1981 Mr Graves agreed to tidy up the rubbish and cover with soil at the Botany tip as soon as possible; Mr Walton had erected the signs to prohibit the use of the tip.

After my July hearing, with Mr Hope, I inspected this piece. It appeared to have been an old limestone quarry. Mr Hope said that as far back as he could remember, it had never been worked and had always been used as a rubbish tip until it was levelled (as indicated in their minutes) at the expense of the Parish Council.

Although the notice boards are headed "Teesdale District Council", they neither claim ownership before nor attended the hearing. On the evidence above summarised and its appearance, I conclude that this piece (5) is in the reputed ownership of the Parish Council and that they may properly be regarded as being in possession. I am therefore satisfied that they are the owners of this piece.



Piece (8), East Field: claim of Parish Council

As to this piece, Mr Hope drew my attention to an entry in the Parish Council Minute Book to the following effect:- (page 256) 19 May 1983, Councillor Hope referred to a tree on the common land between Mickleton and Egglestone which was rotten and dangerous, and some members agreed if this was in order to saw it down and remove it; inquiries are to be made at Teesdale Council Office as to this, and if this site could be made tidy by the Parish Council. Mr Hope said that the tree had been felled accordingly.

On 7 October 1986, while on my way on other business to Middleton-in-Teesdale, I inspected this piece. It is on the south side, and for much of it open to Croft Yoke Lane, the B6281 road from Mickleton to Egglestone. On the Register map it is described as "old gravel pit", and so it appears; most of it is below or about the level of the road; it is much overgrown, nettles, scrub and trees of various sizes. Except by the road, it is surrounded by a stone wall in reasonably good condition, apparently stock proof and of some age; its appearance is therefore quite distinct from the land of the adjoining farms.

The appearance of the piece suggests that it has for a long time been treated as parish property within the popular meaning of these words. The attitude of the Parish Council in 1983 and the removal of the rotten tree is consistent with them being the reputed owners. Having in mind that these proceedings have been publicly advertised and that no one other than the Parish Council have claimed to be the owners, I am satisfied that they are such.

Piece (10), Easter Beck: claim of Mr F M R Gibson

This piece fronts on the northwest side of West Pasture Road and is a short distance northeast of Easterbeck House marked on the Register map.

At my February hearing, Mr F M R Gibson claimed ownership as successor of his mother who had bought it saying she had by her will left it to him and he as her executor had proved the will. I adjourned the further consideration of his claim to enable him to produce the conveyance to his mother and the probate of her will.

At my July hearing, Mr Gibson in the course of his evidence produced the documents specified in the Schedule hereto and said (in effect):- Easter Beck Farm by the 1942 conveyance contains about 30 acres; the piece is an old quarry containing under 1 acre and is included in the part of the said farm in the conveyance specified in the First Schedule thereto and therein said to contain 11a.2r.22p. and bounded on the north by the River Lune and on the south by the road to Grassholme.

After the hearing I inspected the piece in the presence of Mr Gibson and Mr Hope, having the 1942 conveyance and the 1956 probate with me. In explanation of them Mr Gibson said (in effect):- He was born in 1911. Of Easter Beck Farm, his father became tenant in 1916. His father died in 1928 and his mother succeeded him as tenant and so remained until she bought it in 1942. The piece had never been quarried in his lifetime. As to his mother's will, his wife Eva Gibson named in it died in 1985 and his son John named in it is now 37 years of age (at the time he was in the Farm house).



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In these proceedings under the 1965 Act I have to consider ownership, in section 22 defined as "ownership of a legal estate in fee simple". Because in the 1942 conveyance the land specified in the First Schedule thereto is expressed to be conveyed for the unexpired term of 1,000 years granted by a lease dated 4 November 1607, the documents produced by Mr Gibson do not support his claim to be the owner within the definition in the 1965 Act. This is reason enough for my saying, as I do, that I am not satisfied that he is the owner of it.

But I record that on his evidence and what I saw on my inspection, I am satisfied that Mr F M R Gibson as personal representative of his mother Mrs Elizabeth Hannah Gibson who died 14 April 1956 is the owner of the piece for the said term of years. But I am not satisfied as Mr Gibson at the hearing seemed to think I should be that he is the owner of the said piece (or any other part of the Farm) otherwise than as personal representative; to complete his title under the will, an assent passing the legal estate is needed. Mr Hope said that in the locality many of the lands are or were held for a term like that specified in the 1942 conveyance. Under section 153 of the Law of Property Act 1925 Mr Gibson if he can (as seems likely) fulfil the conditions specified in the section, is able to enlarge the 1,000 years term into an estate in fee simple by executing a deed. If he decides to execute such a deed, it might save him and others some trouble and expense if at the same time consideration was given to the making by him of an assent giving effect to the will. Because these requirements are to a lawyer simple, I consider that I ought not to dispose of this matter finally until Mr Gibson has had an opportunity of considering what he should do. At the conclusion of my inspection, he seemed inclined to do nothing about the making of any such deed; before he determines to adhere to this course, I suggest he considers how section 9 of the 1965 Act might in the result operate to his prejudice.

Having regard to the foregoing considerations, I give to Mr F M R Gibson and any successor in title of his liberty to apply to a Commons Commissioner for a second decision made in this matter about this piece under which a Commissioner will say that he is satisfied that the applicant is the owner of the piece and will direct the County Council as registration authority to register him as owner under section 8(2) of the 1965 Act. Any such application should in the first instance be made by letter to the clerk of the Commons Commissioners in London. With it should be sent the original of any deed made under section 153 of the 1925 Act, and of any assent made by Mr Gibson, and the original or properly certified copies of the said 1942 conveyance (and plan attached to it) and of the 1954 probate. If the application is made within THREE MONTHS of the day on which this decision is sent out or within such extended time as a Commons Commissioner may allow, it may be that a second decision in this matter ~~may~~ be made in accordance with the application without the applicant being required to give notice of it to Durham County Council, Teesdale District Council and Mickleton Parish Council as the local authorities referred to and entitled to the benefit of the said section 9 of the 1965 Act and without requiring the applicant to attend any further public hearing. If however the application is not made before the expiration of the said THREE MONTHS, the applicant must not be surprised if the Commons Commissioner dealing with it requires him to give such notice to the said local authority asking for their comments ~~on its implication~~ and declines to proceed further with it otherwise than at a public hearing.



The other pieces

In the absence of any evidence about the 5 other pieces which are the subject of this reference, I am not satisfied that any person is the owner of them and they will therefore remain subject to protection under section 9 of the 1965 Act.

Consequential and final

Being satisfied that Mrs Cama is the owner of piece (6) I shall pursuant to section 8(2) of the 1965 Act direct Durham County Council as registration authority to register Mrs Joyce Cama of Swartbeck Point, Howtown on Ullswater, Penrith, Cumbria as owner of that one of the ten pieces comprising the land in this register unit which is in the Register called "(6) Greets" and which is delineated on the Register map as a plot a little south of the words "Swarthy Top" marked on it.

Being satisfied that Mickleton Parish Council are the owners of the pieces (9), (5) and (8) I shall pursuant to section 8(2) of the 1965 Act direct Durham County Council to register Mickleton Parish Council as the owner of that one of the said ten pieces which is in the register called "(9) Pinfold" and which has a frontage of about 25 ft to an open space near the middle of the village, that one of the said ten pieces which is in the register called "(5) Limestone" and which is situated a short distance southeast of West Pasture Road, and that one of the said ten pieces which is in the register called "(8) East Field" and which adjoins the south side of Croft Yoke Lane (the B6281 road from Mickleton to Egglestone).

In the absence of any evidence that anyone other than Mr F M R Gibson could be the owner of that one of the said ten pieces which is in the register called "(10), Easter Beck, and which is on the northwest side of West Pasture Road, and not being satisfied that he is the owner, I am not now satisfied that any person is the owner of it and it will, unless pursuant to the liberty to apply hereinbefore granted to Mr F M R Gibson and his successors in title ~~or~~ other decision about it is made by a Commons Commissioner, remain subject to protection under section 9 of the 1965 Act.

As to the 5 other of the said 10 pieces which are in the register called "(1) ~~Bale~~^{Bale} Hill, (2) Parson Rig, (7) East Harker, (11) Harker Moss and (12) Kelton Moss", not being satisfied that any person is the owner of them, they will therefore remain subject to protection under section 9 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.

T. W. J. R.



SCHEDULE

(documents produced by Mr F M R Gibson)

FRMG/2	20 July 1956	Probate of will of Elizabeth Hannah Gibson who died 14 April 1956 granted to Francis Maurice Roy Gibson as surviving executor therein named; her will dated 5 February 1953 included a specific devise of her farm in West Pasture Road to her trustees upon trust for her son Maurice Roy Gibson for life and after his death to his wife Eva Gibson and after her death upon trust for John Gibson (son of Maurice) if he attains the age of 21 years.
FRMG/3	4 February 1942	Conveyance by James Walter Dent and Martins Bank Limited to Elizabeth Hannah Gibson as personal representatives of John Kipling who died 24 March 1940 and as mortgagee of lands described in the Schedules thereto delineated on the plan drawn thereon coloured red and blue, that specified in the First Schedule being therein specified as containing 11a.2r.22p. and those specified in the Second and Third Schedules specified as containing together 17a.2r.14p.

Dated this 12th day of December 1986

A. A. Baden Fuller

Commons Commissioner