



COMMONS REGISTRATION ACT 1965

Reference No. 20/U/79

In the Matter of Black Moss,
Middlecough, and White Moss,
Duddon, South Lakeland D.,
Cumbria

DECISION

This reference relates to the question of the ownership of land known as Black Moss, Middlecough and White Moss, Duddon, South Lakeland District being the land comprised in the Land Section of Register Unit No. CL.84 in the Register of Common Land maintained by the Cumbria 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 Executor of John Stilling (by his solicitors Thomas Butler & Son) claimed ownership of certain allotments on Black Moss, Mr. J.M. Harrison claimed as owner of allotments on Black Moss and White Moss, and Mr. F.T. Wayles claimed ownership of a piece which he had coloured red on a plan. Sir William A. Lewthwaite, Bt. claimed ownership of land delineated on the plan annexed to a conveyance dated 6 March 1940 and later sent to the Clerk of the Commons Commissioners, the said conveyance and a list of his later documents of title. 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 Kendal on 4 March 1975. At the hearing (1) Mr. John Martindale Harrison was represented by Mr. W. Atkinson legal executive with Thomas Butler & Son, Solicitors of Broughton-in-Furness, in this matter acting as agents for Brown Pearson Son & Murray Solicitors also of Broughton-in-Furness, (2) The Kirkby Ireleth Commoners' Association (on whose application the registration of the land as common land was made) were represented by their secretary, Mr. W.D. Knipe, (he was accompanied by Mrs. Knipe); (3) Mr. Douglas Metcalfe was also represented by Mr. Knipe; and (4) Mr. Frederick Tyson Wayles attended in person. Sir W. Lewthwaite in a letter dated 18 February 1975 said that he did not propose to be represented at the hearing.

The land ("the Unit Land") now comprised in this Register Unit contains (according to the Register) about 19.262 hectares (47.596 acres), and consists of seven pieces, three being part of Black Moss (north of Middlecough) and four being part of White Moss (south of Middlecough). In the Rights Section of this Register Unit, two rights to take peat attached to (1) Skell Hill and (2) a house and ground at Sandside have been registered on the application of (1) Mr. A. Horn and (2) Mr. D. Metcalfe respectively.

Mrs. Knipe said that Mr. Horn and Mr. Metcalfe had rights over Black Moss and White Moss, but did not know over what parts, so the Commoners' Association registered the whole area, and then withdrew their application as regards parts to which objection was made. The Register shows that there were three objections (1) by Mr. J. Heyes, (2) on behalf of the Estate and Industrial Development Committee, Lancashire County Council, and (3) by Mr. F.T. Wayles. It seems that the land originally comprised in this Register Unit consisted of a much larger area more than a mile long and in place about $\frac{1}{2}$ mile wide, situated a little to the north of the A. 595 road and a little to the west of a river known as Kirkby Pool.



Mr. Atkinson who has since December 1950 been clerk of the Duddon Parish Council produced the Broughton Inclosure Award dated 31 March 1847 and the map referred to (both now held in the custody of the Parish Council) and a conveyance dated 15 November 1943 (now in the custody of Mr. Harrison). The 1847 Award was made under the Kirkby Ireleth (Township of Broughton) Inclosure Act 1829 (9 Geo. 4 c.5). By it there was allotted to John Atkinson of Lane End three pieces of land containing 8a. 2r. 10p., 1a. Or. Op., and 1a. 2r. 28p. therein described and delineated on the map. The award map shows allotments on Black Moss and White Moss whose boundaries correspond (in places a little more or less) with the boundaries delineated on the Register map; two of the said three allotments are within the Unit Land being on the Award map marked "John Atkinson (Lane End)" and "1-0-0" and "1a 2r. 28p", the former being the west of the three Black Moss pieces and the latter being within the most north of the four White Moss pieces. By the 1943 conveyance W. Casson conveyed to Mr. J.M. Harrison Lane End Farm "and Also an Allotment on Black Moss containing about one acre and an Allotment on White Moss containing about 1 acre". Mr. Atkinson said (in effect) :- The land shown on the Register map as Black Moss and White Moss is rough scrub land with some rough pasture; some of it is fenced in accordance with the 1847 Award but some is not.

Mr. Knipe produced the following documents in the custody of Mr. D. Metcalfe:-

(i) a conveyance dated 4 January 1893, G. Coulton and J. Coulton to J. Wilson, (ii) a conveyance dated 29 October 1902, J. Wilson to W. Cartmel, (iii) a deed of gift dated 4 June 1908, W. Cartmel to J. Cartmel, (iv) a conveyance dated 22 September 1958, J. Metcalfe to A. M. Metcalfe, and (v) a conveyance dated 9 February 1965 L. Metcalfe and others to D. Metcalfe. By all these deeds two or three dwelling houses or cottages were conveyed and also with them "Turbary Lots" described as being "one on White Moss one on Middle Moss and one on High Moss with the right of getting turbary near Waitham Hill ..." or in some such words without any indication of the locality of the lots referred to; the 1893 conveyance includes a statement that the lots were described in indentures of lease and release dated 3 and 4 June 1833.

Mr. Wayles in the course of his evidence produced :- (i) a manuscript "Extract from Broughton Inclosure Award", (ii) a conveyance dated 19 December 1874 from J. Ashburner to W. Wilson, (iii) a conveyance dated 18 February 1885 from W. Wilson to W. Wayles and (iv) a conveyance dated 19 November 1964 from E.A. Clark and another (as personal representatives of W. Wayles) to F.T. Wayles. The 1964 conveyance was of (1) an "allotment ... on Middlescough Moss ... containing ... (3a 2r. 2p.) ... awarded by the Broughton Inclosure Award to John Ashburner (Grizebeck) as Purchaser from Robert Hannah", and (2) an "allotment ... on Middlescough Moss ... containing ... (3a.30p.) .. awarded by the said Broughton Inclosure Award to William Walker as purchaser from the Trustees of Alice Brockbank ...". The 1874 and the 1885 conveyances included allotments "on Middlescough Moss" containing 3a. 2r. 2p. and 3a.30p., being therein described by reference to the adjoining allotments and in the 1874 conveyance also by reference to the allottees as in the 1962 conveyance. Of these two allotments, that marked on the Award map as "John Ashburner (Grizebeck) as purchaser from Robert Hannah 3-2-2" is included in the Unit Land being the same as the southern of the two smaller of the four White Moss pieces, and the other marked on the Award map as "William Walker as purchaser from the Trustees of Alice Brockbank being 3-0-30 is not included in but adjoins the Unit Land immediately to the south of the Ashburner piece. Mr. Wayles said (in effect) :- He claimed under the 1964 conveyance. When he objected to the registration as it was originally made, the land he marked on the plan accompanying the objection was the Walker piece; it was only subsequentl



that he discovered that he had, on the objection, omitted to delineate the Ashburner piece.

On the evidence summarised above, I am satisfied that Mr. Harrison is the owner of part of the Unit Land as claimed by Mr. Atkinson, and I shall accordingly direct the Cumbria County Council as registration authority to register Mr. John Martindale Harrison of Lane End Farm, Broughton-in-Furness as the owner of two parts of the land comprised in this Register Unit (such land consists of seven pieces) being (i) the part which is the west of the three pieces in the Register map shown as part of Black Moss and which contains about 1 acre and (ii) the part which is itself part of the north of the four pieces in the Register map shown as part of White Moss and which contains about 1 acre 2 roods 28 perches and which is delineated on the map referred to in the Broughton Inclosure Award dated 31 March 1847 and therein marked "John Atkinson (Lane End) 1a-2r-28p"; and I shall in my direction annex a copy of the relevant part of the said Award map, which has (as arranged at the hearing) been sent to me by Thomas Butler & Son.

Although the documents produced by Mr. Knipe make it likely that Mr. Metcalfe is the owner of one or more of the allotments made by the 1847 Award, I cannot from these documents or from any other evidence given at the hearing determine to which of such allotments he is entitled. Accordingly I am not satisfied that he is the owner of any part of the Unit Land. On this reference I am not concerned with the validity or otherwise of the right to take peat which has been registered in the Rights Section on his application.

It may well be that if Mr. Wayles had in his objection included not only the Walker piece but also the Ashburner piece, such piece would not now be included in the Register as common land. Neither on this reference nor I think on any other reference which could now be made to a Commons Commissioner, have I any jurisdiction to put him in the same position as he might have been if he had drawn the plan annexed to his objection differently; I must deal with the Register as I find it. On the evidence as outlined above, I am satisfied that he is the owner of the Ashburner piece, and I shall accordingly under section 8(2) of the 1965 Act direct the Cumbria County Council as registration authority to register Mr. Frederick Tyson Wayles of Fairbourne, Kirkby-in-Furness as the owner of the part of the land comprised in this Register Unit (consisting of seven pieces) being the part which is the south of the two smaller of the four pieces in the Register map shown as part of White Moss.

The said 1940 conveyance produced by Sir W. Lewthwaite ("the Absent Claimant") includes a plan headed "Allotments on Middlescough" and shows edged pink two adjoining strips one marked "Trustee of Thomas B. Dixon" and the other marked "James Spedding as Purchaser from the Trustees of Agnes Dixon". The plan and the strips marked on it correspond with the plan and the strips marked on the map referred to in the 1847 Award the original of which was produced at the hearing. Nevertheless I cannot merely on consideration of the 1940 conveyance conclude that the Absent Claimant is the owner of any part of the Unit Land, because (among other reasons) his subsequent title has not been produced to me.

In the absence of any other evidence, I am not satisfied that any person is (except as regards Mr. Harrison and Mr. Wayles as set out above) the owner of any part of the Unit Land, and it will therefore remain subject to protection under section 9 of the 1965 Act.

Having considered the correspondence between the Clerk of the Commons Commissioners and the Absent Claimant I conclude that he may have misunderstood the course which the



proceedings before me were likely to take and that I ought therefore not to finally conclude these proceedings without giving him the opportunity of proving any claim he may have to the part of the Unit Land which is or may be delineated on the 1940 conveyance as above described, and I accordingly adjourn these proceedings to 10.30 a.m. on Wednesday the 11th day of June 1975 at the Court Room at the office of the Commons Commissioners in London, and I will at such adjourned hearing consider any evidence which may be offered by the Absent Claimant or anyone else in relation to the ownership of the last mentioned part of the Unit Land. I have adjourned the proceedings to London, because the Absent Claimant writes from a London address and because from what happened at the hearing before me at Kendal I conclude that the persons who were then present or represented would not wish to be concerned in anyway about this part of the Unit Land. However the adjourned proceedings will be public and anybody who wishes can attend or be represented or can make written representations to the Clerk of the Commons Commissioners as to the conclusion I should reach at such adjourned hearing about the part of the Unit Land which I shall then consider.

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 11th — day of April — 1975

a. a. Baden Fuller

Commons Commissioner