



In the Matter of Pen Moss
Accrington, Hyndburn Borough,
Lancashire

DECISION

This reference dated 31 October 1980 relates to the question of the ownership of land adjoining that known as Pen Moss (southeast of Accrington and about $\frac{1}{2}$ a mile north of Rising Bridge) Hyndburn Borough being the land comprised in the Land Section of Register Unit No. CL 266 in the Register of Common Land maintained by the Lancashire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

This reference is identical with that dated 29 June 1973. Following upon the public notice of this 1973 reference no persons claimed to be the freehold owner of the land or to have information as to its ownership. I held an inquiry into the question of the ownership of the land at Preston on 9 May 1978. There was no appearance at the hearing, and in my decision dated 17 May 1978, I said I was not satisfied that any person is the owner of it.

Mr John Holden and Mr Kenneth Holden asked (letter dated 17 October 1980 from Woodcock & Sons, Solicitors of Haslingden) that the hearing be re-opened and a further hearing be held in respect of the land on the grounds (stating the effect of the letter shortly) that they had failed to see the advertisements made in September 1973 or again in 1978 prior to the hearing and that by a conveyance dated 17 April 1968 Black Moss Farm at Stonefold Baxenden, Accrington (including the land in question) had been conveyed to them.

Following upon the public notice of this 1980 reference the Hon Ralph John Assheton claimed (his solicitor's letter of 16 June 1981) ownership because the land was within the Forest of Rossendale (part of the Honor of Clætheroe of which he was the Lord) and then withdrew such claim (his solicitor's letter dated 10 November 1981) on the ground that Woodcock & Sons had produced evidence of the ownership of Messrs Holden. 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 Preston on 25 November 1981. At the hearing Mr Kenneth Holden attended in person on his own behalf and as representing his father Mr John Holden; and Mr Peter Mawson Ashburner on whose application a registration was made in the Rights Section of a right attached to Browfield Farm to graze 25 head of cattle over the whole of the land in this Register Unit (and also over some land on the west in Register Unit No. CL 91), also attended in person.

Mr Kenneth Holden in the course of his evidence produced certified copies of:
(1) a conveyance dated 28 September 1951 by which Mr J E Birtwistle conveyed Black Moss Farm containing about 55.219 acres to Mr H and Mrs D Tattersall and Mr R and Mrs E Brown; (2) a conveyance dated 17 April 1968 by which Mr J H Cronkshaw conveyed to the said Farm to Mr John Holden and Mr Kenneth Holden; and (3) a legal charge dated 16 August 1974 by which Mr John Holden and his wife Mrs Dorothy Taylor Holden (therein called "the First Borrower") and Mr John Holden



and Mr Kenneth Holden (therein called "the Second Borrower") charged the lands described in the First Schedule to the Agricultural Mortgage Corporation Limited.

Mr Kenneth Holden said (in effect):- The land in this Register Unit ("the Unit Land") is the same as OS No. 323 containing 2.818 acres shown on the plan annexed to the 1951 conveyance and thereon included in that edged red. The original documents of which he had produced copies were with the Agricultural Mortgage Corporation. The Unit Land with the rest of the 53.219 acres of Black Moss Farm is included in the land edged red on the plan annexed to the 1974 legal charge and is that referred to in the First Part of the First Schedule thereto as plot No. 5553 containing 2.82 acres. He took possession of Black Moss Farm in 1968; he understood Mr Cronkshaw purchased it from Messrs Tattershall and Brown who had previously farmed it (the wives were sisters). The Unit Land is at the southwest corner of a much larger field: being grass land which he had regularly mown. In 1975 he undertook a drainage scheme (certified by the Ministry of Agriculture) which included this field and improved the Unit Land: tile drainage connecting with a big stone drain running to the east side of the Unit Land and through the field. Now a bypass road running to the west of the Unit Land is contemplated and for this part of the Unit Land will be needed.

The parcels of the 1968 conveyance are by reference to the 1951 conveyance plan; on this and the other evidence given at the hearing summarised above I was at the hearing satisfied that under it Mr John Holden and Mr Kenneth Holden then became the owners of the Unit Land. After the hearing, I noticed that the 1974 legal charge proceeds on the basis that Mr John Holden and Mrs Dorothy Taylor Holden as "the First Borrower" were then the owners of Black Moss Farm including the Unit Land (being therein described in the First Part of the First Schedule) under a conveyance dated 29 April 1970. Since the hearing Woodcock & Sons have (letter dated 23 March 1982) sent a certified copy of this conveyance; by Mr John Holden and Mr Kenneth Holden conveyed Black Moss Farm containing 53.219 acres again by reference to the 1951 conveyance to Mr John Holden and Mrs Dorothy Taylor Holden. So on the documents produced and oral evidence given at the hearing as supplemented by the said 1970 conveyance, I am satisfied that Mr J Holden and Mrs D T Holden are the owners of the land and I shall accordingly pursuant to Section 8(2) of the 1965 Act direct Lancashire County Council as registration authority to register Mr John Holden and Mrs Dorothy Taylor Holden both of Middle Sherfin Farm, Rising Bridge, Accrington as the owners of the land.

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 27th day of April — 1982

A. A. Baden Fuller

Commons Commissioner