



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/239

In the Matter of Ickornshaw Moor, Cowling,  
Craven D

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DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 15 in the Register of Common Land maintained by the former West Riding County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Skipton on 7 and 8 October 1980.

Following the public notice of this reference claims to ownership were made by

- (1) Freeholders of Ickornshaw, for whom Mr D Pedley, Solicitor, appeared at the hearing
- (2) the Cowling Gun Club, for whom Mr C Reeder, Solicitor, appeared
- (3) Mrs M J Feather and Mr R L Feather (jointly) for whom Mr D V Evans, Solicitor, appeared.

Cowling Parish Council, the Yorkshire Water Authority, and a number of rights holders appeared or were represented at the hearing, but no claims to ownership other than as mentioned above were made.

(1) Mr Pedley's case was that ownership of the Moor passed in the 16th century to the freeholders of Ickornshaw ("the Freeholders"), whom he defined as "those who are freehold owners of property within the manor of Ickornshaw". The number of these to day, he told me, is between 300 and 400: the number originally - in the 16th century - was, he said, 24 and at the end of the 19th century 30, but the number greatly increased as the result of sales of small lots in 1923 when the Carr Head Estate was broken up. Mr Pedley appeared for nineteen of the Freeholders and his submission was that by virtue of the provisions of the Law of Property Act 1925 ownership of the legal estate vested in the Public Trustee, the Freeholders being the persons beneficially entitled. This Inquiry is concerned with ownership of the legal estate, but Mr Pedley's case depended upon and was therefore directed to establishing the beneficial ownership of the Freeholders.

The claim of the Cowling Gun Club ("the Club") is that there had been adverse possession of the Moor by the Club and its predecessors for a period sufficiently long to extinguish the title of the true owner or owners. This claim, like that of the Freeholders, is to the whole of the Moor and the two claims are in direct conflict.

The third claim, that of Mr Evans's clients, is to a small strip on the eastern boundary of the Moor, adjoining Stott Hill Moor, which is owned by them. This question is essentially one of the line of the boundary of the property owned by them - does it extend so as to include the strip of Ickornshaw Moor which they claim?

(2) The Moor, according to the Register, now contains some 700 acres. In earlier centuries it appears that its area was nearer 1000 acres but a substantial tract lying to the northwest was in the 18th century enclosed as doles. There are 76



holders of rights registered and which have become final; these include rights of grazing, turbary and sporting.

(3) The Freeholders' Claim This claim is based on ancient records, the originals of which were not available, but some particulars of which are contained in newspaper and other articles, copies of which were produced. These are in the nature of historical accounts and are obviously written after some research into the matters recounted. In an article in the Craven Pioneer of 15 March 1929 it is stated that Ickornshaw Moor is included in the wastes or common lands of the manor of Ickornshaw (or Cowling as it was commonly called): that in or about 1565 the then lord of the Manor, Richard Tirrell, sold to the tenants of the manor their ancient holdings in fee simple (thereby making them freeholders of their respective holdings), reserving quit rents amounting to £15.4<sup>3</sup>, and that in 1583 his son, Edward Tirrell, conveyed to these freeholders the manor or lordship of Cowling including the commons, moors and wastes of the moors: and that the freeholders then proceeded to convey to each freeholder so many parts (the whole being divided into 304 parts) the number of parts taken by each being proportionate to the total of the former quit rents (304 shillings). Mr Pedley produced copies of two Indentures in the Public Record Office: the first dated 20 July 1584 by which Edward Tirrell granted to Peter Currer of Collinge a property called Coughlaughton, and there is a property of this name shown in a map of around 1844 to 1850 as in the hamlet of Ickornshaw: the second dated 22 June 1584 ("the Deed of Grant") by which Edward Tirrell granted and sold to 24 named persons (including Peter Currer) the reversion (after the death of one Grace Calton) of the lordships and manors of Connoleye and Collinge and of (inter alia) the wastes, heaths, moors, marshes, mosses belonging to those manors. Mr Pedley said that it was reasonable to assume that the 24 persons were the then freeholders - Peter Currer being shown by the first Indenture to be one of such freeholders - and 'Collinge' or Cowling being commonly used to describe Ickornshaw. In this connection it appears from Whitaker's History of Craven, p. 217 that Collinge (now Cowling) was a mesne manor subdivided into the manors of Colling, Stothill and Ickornshaw: and the author adds that Ickornshaw and Collinge belong to the freeholders.

Mr Pedley referred to further documents in support of the contention that in the 16th century the Freeholders acquired the manor and common or moor of Ickornshaw. In the Stell Collection at Keighley is a record of a complaint of 13 June 1586 by Thomas and John Lacock (they were among the 24 named persons in the Deed of Grant) which recited Richard Tirrell's seisin of the manors of Cowling and Conoley and a conveyance "about 20 years since" to the manors' tenants of the lands in their possession. I also saw a photocopy of the record of an Inquisition apparently in 1597, of Hugh Atkinson (one of the 24 named persons) which stated that he purchased the lands and tenements of Richard Tirrell and then the freeholders of Collinge bought all free rents and manors of Collinge of Edward Tirrell his son.

Mr Pedley also referred me to records and various transactions which he submitted showed dealings with undivided shares in the moor. Among these was his own extract of a Deed in the Briggs collection at Keighley dated 10 January 1602 which appeared to be in the nature of a marriage settlement and which contained a reference to a part of all moors, commons and waste ground of the soil of the same



of the townships and hamlets of Collinge Conondly and Ickornshaw according to the rate of 25<sup>d</sup> and 7 pence of annual rent. There are also records of

- (1) a Feoffment of 30/8/1621 by Hugh Smyth of 2 messuages and 15 one-third parts of the common (to be divided into 304 parts) in Cowling
- (2) a Sale of 13/1/1632 by Robert Smith of 4 acres and 3 roods in the commons and moors of Ickornshaw and a  $\frac{1}{2}$  part (the whole to be divided into 304 equal parts) of the manor of Collinge and the moors and mosses of Ickornshaw (as yet undivided)
- (3) a Lease of 12/2/1689 of land apparently in Ickornshaw and 3 parts of 1 part (the whole to be divided into 304 equal parts) of the manor of Collinge and the moors of Ickornshaw as yet undivided.

The subsequent history is based on research made by a Mr P A Fisher the outcome of which is the subject of two newspaper articles, one apparently in August 1927 and the other in July 1934; a copy of the latter was furnished by the Cowling Parish Council. Mr Fisher's father and grandfather were, it appears, each the estate agent for the Carr Head estate. Mr Pedley produced a copy of a note apparently made by Thomas Fisher which is obviously the source of the account in the two newspaper articles of three transactions. According to the note and the articles these were (1) a Deed in 1657 by which the freeholders in Ickornshaw (of whom there were 26) divided the moors commons and wastes of Ickornshey and Gill, setting forth every man's portion in respect of his ancient rents and freehold in Ickornshey and Gill: (2) a lease of 1773 by the freeholders of the manor of lordship of Ickornshey for the gathering of limestone from the beck or waste grounds in the lordship of Ickornshey: (3) a Division in 1775 of the commons moors and wastes by the freeholders of Ickornshey, namely of the mosses of Redshey Warlewithes and Ickornshaw. The note (and the newspaper accounts) go on to say that none partook except such as were freeholders within Ickornshey and that after the division many of the doles were annexed by those freeholders having farms in Cowling to such farms.

There was also produced a photocopy of a list of 1846 headed "Farmer Freeholders in the Ickornshaw ( or Ickornshey) each freeholder is a lord of the manor and has common rights on Ickornshaw Moor only". On the list and allowing for duplications, these numbered 32. A newspaper cutting of 27 August 1892, reporting a dispute as to shooting rights, mentions that the number of persons interested as freeholders is a "little more than 30".

In 1858 a meeting of the freeholders was convened by four persons stated in the Notice of Meeting to be freeholders within the lordship of Ickornshaw and possessed of two thirds of the yearly value of the lands in the lordship. The Notice was addressed to all such persons as can claim common right by reason of their freehold to and upon the moors, commons and wastelands being within the reputed lordship of Ickornshaw, and was for the purpose of deciding upon the proper numbers of animals each freeholder is entitled in respect of his freehold to depasture upon the moors commons and wastes within the township of Ickornshaw. From a copy of subsequent minutes it appears that the Meeting resolved to call a meeting of the tenant farmers occupying right of pasturage on the moors commons and pastures to fix a stint: and that the meeting of the tenant farmers was held the following week at which resolutions were passed fixing the stint, and resolving that the regulations be submitted to the Freeholders for their sanction and consent.

Mr Pedley called three witnesses, Mr J Sawley who had lived in Ickornshaw for 18 years, and said that Ickornshaw people have always thought that the sporting rights





and part ownership of the Moor belonged to them: Mr E Metcalfe who has lived in Ickornshaw since 1956 and said that his understanding was that only farmers in Ickornshaw could put sheep on the moor; and Mr D Gott who has lived at Park Farm Cowling (which is in Ickornshaw) for 45 years and his father and grandfather before him, and said that they had always understood they had freehold rights - grazing, shooting and taking peat - on the Moor: he was not claiming ownership of the Moor, only these freehold rights.

(4) The Gun Club's Claim

This claim is based on adverse possession by the Club.

The origin of the Club is somewhat obscure. One foolscap sized book was produced in which are minutes (unsigned) of 23 April 1967 which read 'Club Formed', and there follow the names of six Committee members and a statement that registration of common land was discussed. The next record appears to be a loose leaf note of a meeting on 28 July 1975 at which "club formed", a Committee elected and there is a reference to 'Balance from original club £33.47'. In a second foolscap sized book are minutes of Committee meetings of the Club from August 1978 to September 1980 and of Annual General Meetings in March 1979 and August 1980. I was shown a copy of the Rules, the date of adoption of which was not certain: in the Rules the objects of the Club are stated to be to co-ordinate, preserve and control the rights of those parishioners of Cowling legally entitled to shoot over Ickornshaw Moor, and there is provision for the appointment of trustees.

Mr Reeder called a number of witnesses. Mr Frank C Smith who was born in 1896 and had known the Moor all his life said that he started shooting in 1915 and continued till 1972. Before the Club was formed, those who shot were called "the Shooters". A Joe Smith acted as treasurer and collected voluntary subscriptions for looking after the stone hut used by the Shooters: and there was a get together at the end of the season. A man called Lot Shuttleworth spent much of his time living in the hut which he painted and whitewashed and in return was supplied with a gaming licence and cartridges. The witness was not a member of the Club but said the Club had looked after the moor - it used to burn the heather and repair crossing places over dykes, and trap vermin. He had always understood that people of Cowling Parish (including Ickornshaw) had a right to shoot on the Moor.

Mr William Hayes has lived in Cowling since 1940 and is a member of the Committee of the club. He said that people who lived in the Parish of Cowling shot: he himself shot every year except in wartime or years when shooting was stopped because of shortage of birds. Butts were built - some by a Mr Douglas Smith with whom he went shooting. He confirmed what Mr F C Smith said about Lot Shuttleworth who, Mr Hayes said, did the vermin trapping. Heather burning was done every year by "a gang of us".

The stone hut fell into disrepair after the last war, and it was done up by the club in 1968/9, new windows and doors put in and paid for out of subscriptions. Mr Hayes said that all residents of Cowling are welcome to join the club, and that ownership is claimed on behalf of those residents.

Mr D Hoyle who is aged 56 and has always lived in Cowling, became a member of the club in 1976. He said that trustees have been appointed under the club rules and he remembered Lot Shuttleworth repairing the hut and paths, burning heather and trapping vermin. People living in the Parish of Cowling may shoot without permission or any particular land qualification. Mr Howard Livesey, the



Secretary of the Club, said the Club was formed in April 1967 and produced the current Minutes book and Mr A Rishton, the former Secretary, said he wrote the minute as to formation in 1967, but did not say what in fact took place in that or succeeding years. Mrs Dorothy Makin, who has lived in Cowling for 51 years said that shooting is not confined to Ickornshaw people but is carried on by all parishioners.

#### (5) The Feathers' Claim

The Feathers Claim is to a strip shown on a plan which Mr Evans put in and which I have marked 'F'. This is a strip lying inside the eastern boundary of the Moor as shown on the register map, the boundary being the western boundary of Stott Hill Moor, ~~of~~ which is registered Common Land (CL 11). The Feathers Claim Ownership of Stott Hill Moor and this appears to be established, (though I am not determining the ownership of CL 11) by the documents of title produced by Mr Evans. On the Register maps the boundary between the two Moors just south of Andrew Hill, where a dyke forks, follows the line of the Eastern fork until near its source and then straightens and continues to Maw Stones. If the straight line to Maw Stones is projected to the north west, it reaches the fork of the dyke at Andrew Hill: the strip in question is that lying between the projected line and the eastern fork of the dyke.

The last in date of the relevant Conveyances was made on 14 October 1954 between (1) Duke of Buccleuch and Another (2) Chatsworth Estates Coy and (3) Leigh Feather. The property conveyed including Stott Hill Moor coloured green on the plan attached to the Conveyance. That Conveyance and earlier documents of title show a good paper title to the property in Leigh Farmer and the boundary shown on the 1954 and earlier plans appear to me to show a boundary along the projected line and indicate accordingly that the claimed strip is included.

Some evidence was given relating to the boundary in question. Mr F C Smith said that the two dykes were called Boundary Dyke (ie the eastern fork) and Old Boundary Dyke (ie the western fork) and he always regarded Boundary Dyke as the boundary: cross-examined by Mr Evans he said that "they" used to say the boundary line was a straight line from Moor Stones to Beck Foot and White House. This line corresponds to the projected line and to the boundary indicated on the plans on the documents of title. Mr W Hayes said that within the last two years boundary stones had been placed to the east of Boundary Dyke and that owners on both sides of the boundary had allowed people shooting to come across from either moor.

#### Conclusions

#### (6) A. The Feathers' Claim

In my opinion the claim by Mr Evans's clients to the strip in question is established. Leigh Feather died in 1965 and his surviving Executors are Mrs M J Feather and Mr R L Feather and I shall direct North Yorkshire County Council as registration authority to register them as owners of the strip in question.



### B. The Gun Club Claim

For many years people have shot over the Moor and have co-operated in arrangements to facilitate their activities. On the evidence I find that there has been such co-operation since at least 1940 in regard to such matters as maintaining the stone hut, burning heather, trapping vermin and repairing crossing places. There was at most a loose association of the Shooters of some of them: and in my view the evidence does not establish the existence before 1975 of a club or other organisation recognisable as a body with a constitution regulating its procedures and membership, or with officers and a committee carrying out executive functions on behalf of members. Individual shooters may have had rights over the moor, acquired by prescription or otherwise, but I do not see how such rights were acquired by the Club as it is to day but which, in my view, did not exist as such prior to 1975. Moreover, if it did have an earlier existence, there was nothing in the evidence to show that the individuals in shooting and carrying out their other activities were doing so on behalf of the Club: indeed there were only two witnesses whose evidence showed that they were both shooters and members of the Club. Even assuming that the collective activities of the shooters over a number of years constituted adverse possession, there is no basis in my opinion on which the Club can claim to have acquired or succeeded to their rights.

The claim to ownership by adverse possession fails for a further and distinct reason. The Moor is an area of some 700 acres and the activities of the shooters are in my view attributable to the exercise and facilitating of shooting rights (actual or claimed) and not to an intention to possess the Moor as their own property, nor was it exclusive of the true owners (whoever they might be).

Mr Reeder cited in support of his claim the case of Redhouse Farms (Thornidon) Ltd v. Catchpole reported in 1976 12 Sol. Jo. 136. There a small parcel of marshy land belonging to a farm had been shot over by C for some 20 years: the court found that the land was suitable only for shooting and that the owners, who had made no use of it and had no direct access to it, had abandoned possession, and that in these circumstances C had acquired title by adverse possession. The present case is very different - the Moor can be used for other purposes than shooting, is made use of by other persons than the Club, and there is access to it. The case cited does show that the exercise of shooting rights can in particular circumstances amount to adverse possession, but in my view the circumstances in the present case are not such as to lead to that conclusion.

For the above reasons, the claim by the Club has in my opinion not been established.

### C. The Freeholders Claim

This claim rests on evidence which, Mr Pedley submitted, shows that in the 16th century the Moor came to belong to the persons owning freeholds in the manor or reputed manor of Ickornshaw: that it was owned by them in undivided shares and has continued to be so owned by the successive freeholders. If this was the position on 1 January 1926 and if there were then at least five such freeholders, then by virtue of the provisions of the Law of Property Act 1925 (First Schedule, Part IV para 1(4)) the legal ownership of the Moor vested in the Public Trustee,



in effect as trustees for the freeholders; and Mr Pedley invited me to come to ~~that~~ conclusion. The Register in dealing with ownership, is concerned only with the legal ownership and correspondingly, it is the legal ownership with which I am concerned; accordingly I do not have to attempt to ascertain details of all the persons who are now or were on 1 January 1926 the owners or the proportions of their respective shares, nor did Mr Pedley require to establish these matters. For his claim to succeed he had to establish ownership at 1 January 1926 in undivided shares by at least five persons and this he sought to do by establishing ownership by the persons who were freeholders of property within the manor.

I have referred above in some detail to the documentary and other evidence adduced, the preparation of which has clearly involved a good deal of time and research.

On this evidence I find that in 1583 or 1584 the moor was conveyed to the then freeholders; that in 1657 the then freeholders divided the moor among themselves in undivided and proportionate shares; and that in 1725 the then freeholders ("the 1775 freeholders") made another division among themselves. The nature of this division is not apparent, but the reference in Mr P A Fisher's note to "Doles" being subsequently annexed to Cowling farms suggests that in part at least there was a division of actual strips of land, and this may be the origin of the tract of the original moor which came to be enclosed. There is little in the evidence after the 18th century bearing directly on the ownership of the moor; the record of the meeting of freeholders in 1858 indicates that the then freeholders regarded themselves as having "common right" over the moor, but that they were then concerned with rights of pasturage not with ownership.

There is in my view no basis in law for the proposition that if at any particular point of time the freeholders were owners of the moor in undivided shares, all subsequent freeholders down to the present day consequently acquired or succeeded to the undivided shares owned by their predecessors in title to the Ickornshaw freeholds; any freehold owner could have disposed of an undivided share in the moor owned by him separately from his freehold tenement.

The divisions made in 1657 and 1775 must have been made on the basis that the then freeholders were owners, and the one made in 1657 was among the ~~1657~~ <sup>then</sup> freeholders in undivided shares. The effect of the 1775 division is not evident; if it did not result in undivided shares, the basis of the present claim goes. Assuming however (in favour of the present claim) that undivided shares in the "1775" freeholders continued, by whom did those shares come to be owned 150 years or so later? There is no evidence of disposals of these shares as such by assignment or will, nor is there evidence of acts of ownership over the moor by the freeholders. It may be the case that by one means or another undivided shares vested from time to time in successive freeholders but under section 8(2) of the Commons Registration Act 1965 I have to be satisfied that some person is the owner of the land - on the facts of the present case that at least five persons were owners of undivided shares on the 1 January 1926, and accordingly that, under the Law of Property Act 1925, ownership of the whole has become vested in the Public Trustees. Without evidence to establish the title to shares of at least five persons on the 1 January 1926, I am not satisfied that this was the case, and accordingly do not accept Mr Pedley's claim to ownership in the Public Trustee on behalf of the freeholders.



The result of the hearing is (a) that I am satisfied that Mrs M J Feather and Mr R L Feather are the owners of the strip claimed by them and I shall direct the County Council to register them accordingly; (b) that, as to the remainder of the moor comprised in the Register Unit, I am not satisfied that any person is the owner and it 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.

Dated this

1<sup>st</sup>

day of

December

1980

*L. J. Morris Smith*

Commons Commissioner